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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: NSD580/2018  
File Title: RAFFAELE WEBB v GETSWIFT LTD ACN 604 611 556 & ANOR  
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A handwritten signature in blue ink, reading 'Warwick Soden'.

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As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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No. NSD 580 / 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

**RAFFAELE WEBB**

Applicant

**GETSWIFT LIMITED (ACN 604 611 556)**

First Respondent

**JOEL MACDONALD**

Second Respondent

**FURTHER AMENDED STATEMENT OF CLAIM**

**(Filed pursuant to Order 3 of the orders of Justice Lee dated 4 April 2019)**

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## A. PARTIES

1. The Applicant brings this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth).
2. This proceeding is commenced by the Applicant on his own behalf and on behalf of those persons who:
  - (a) acquired an interest in fully paid ordinary shares (**Shares**) in the First Respondent (GetSwift Limited, GSW.AX) (**GetSwift**) during the period from 24 February 2017 until the close of trading on 19 January 2018 inclusive (**Claim Period**);
  - (b) suffered loss and damage by or resulting from the alleged contravening conduct of the Respondents as described in this Further Amended Statement of Claim; and
  - (c) are not or were not during the Claim Period:
    - (i) directors or officers or a close associate (as defined in section 9 of the *Corporations Act 2001* (Cth)) of GetSwift; or
    - (ii) a related party (as defined in section 228 of the *Corporations Act*) of GetSwift; or
    - (iii) a related body corporate (as defined in section 50 of the *Corporations Act*) of GetSwift; or
    - (iv) an associated entity (as defined in section 50AAA of the *Corporations Act*) of GetSwift; or
    - (v) a Justice, Registrar, District Registrar, or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia,  
  
(**Group Members**).
3. As at the date of the commencement of this proceeding, there are seven or more persons who have claims against the Respondents.

4. The Applicant acquired GetSwift Shares in the Claim Period.

**Particulars**

The Applicant acquired 1,026 GetSwift Shares on 11 December 2017 at an execution price of \$3.88 per share.

5. GetSwift, at all material times:
- (a) was a corporation registered pursuant to the Corporations Act and capable of being sued;
  - (b) has had on issue Shares that were:
    - (i) traded on the ASX under the designation “GSW”;
    - (ii) ED Securities within the meaning of section 111AE of the Corporations Act;
    - (iii) accordingly, quoted ED Securities within the meaning of section 111AM of the Corporations Act;
  - (c) as the issuer of Shares:
    - (i) was listed on the ASX;
    - (ii) was subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
    - (iii) was a listed disclosing entity within the meaning of section 111AL of the Corporations Act;
    - (iv) was subject to the requirements of section 674 of the Corporations Act; and
  - (d) was a person and a corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
  - (e) was a person within the meaning of s 18 of the *Australian Consumer Law* set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:

- (i) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);
  - (ii) s 28 of the *Fair Trading Act 1987* (NSW);
  - (iii) s 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
  - (iv) s 16 of the *Fair Trading Act 1989* (Qld);
  - (v) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
  - (vi) s 19 of the *Fair Trading Act 2010* (WA);
  - (vii) s 14 of the *Fair Trading Act 1987* (SA); and/or
  - (viii) s 27 of the *Consumer Affairs and Fair Trading Act* (NT),
- (individually, or together, the **ACL**).

6. The Second Respondent (**Mr Macdonald**) was at all material times a director, and the managing director, of GetSwift.

## **B. GETSWIFT'S BUSINESS AND CORPORATE GOVERNANCE**

7. At all material times, GetSwift operated a software platform (**GetSwift Platform**) made available over the internet that provided a business client that used that platform with logistics management, tracking, dispatch, route and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps.
8. At all material times, GetSwift made available the use of the GetSwift Platform to client businesses in exchange for pricing that comprised;
- (a) a per-delivery transaction fee of up to \$0.29 per delivery, with discounts applied to larger clients using a tiered fee structure based on the client's monthly transactional volume and the length of contract commitment;
  - (b) no fixed maintenance or upfront set-up fees;

- (c) additional subscription fees on a delivery driver basis for fleet management and smart routing.
9. At all material times, as part of his responsibilities as a director of GetSwift, Mr Macdonald was responsible for, inter alia:
- (a) overseeing the strategic aims of GetSwift set by management and overseeing management's performance within that framework;
  - (b) overseeing GetSwift's performance and the progress and development of its strategic plan;
  - (c) controlling and approving financial reporting, capital structures and material contracts;
  - (d) ensuring that a sound system of risk management and internal controls are in place;
  - (e) undertaking a formal and rigorous review of the corporate governance policies to ensure adherence to ASX recommendations;
  - (f) ensuring that GetSwift's obligations to shareholders are understood and met;
  - (g) ensuring an adequate system is in place for the proper delegation of duties for the effective day to day running of the company without GetSwift's board losing sight of the direction that the company is taking;
  - (h) consulting with the Board and Company Secretary to determine the form and content of any ASX release;
  - (i) agreeing on the proposed text of any ASX release and ensuring that GetSwift established a vetting procedure to ensure that any ASX announcements were factual and did not omit any material information;
  - (j) ensuring that any GetSwift ASX announcements were expressed in a clear and objective manner that allowed investors to assess the impact of information when making investment decisions;



- (k) any other matter considered desirable and in the interest of the company.

### Particulars

The Applicant refers to:

- i. GetSwift 2017 Annual Report to Shareholders dated 29 September 2017, Pages 16 to 19 "Corporate Governance Statement";
- ii. GetSwift prospectus dated 7 December 2016, Pages 53 to 55 "Board and Corporate Governance"; and
- iii. GetSwift Continuous Disclosure Policy in force throughout the Claim Period.

## C. FRUIT BOX GROUP CONTRAVENTIONS

### *I Fruit Box Group Misleading Conduct*

10. On 24 February 2017, GetSwift published and lodged with the ASX an announcement entitled "*GetSwift signs The Fruit Box Group (Box Corporate) to a 3 year, 7M+ deliveries contract*" (**Fruit Box Group Announcement**).
11. By the Fruit Box Group Announcement, GetSwift represented that:
  - (a) GetSwift and the Fruit Box Group had entered into a contract with a term of three years (**Fruit Box Group Contract**) pursuant to which the Fruit Box Group was contractually obliged:
    - (i) to use the GetSwift Platform for its deliveries for three years;
    - (ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for three years;
  - (b) any proof of concept period, trial phase, limited roll-out or free trial period had already occurred, and the Fruit Box Group Contract was not conditional upon any of them occurring;
  - (c) it had reasonable grounds to project that the Fruit Box Group would use the GetSwift Platform for in excess of 7,000,000 deliveries during the term of the Fruit Box Group Contract (**Fruit Box Projection**),

(collectively, **Fruit Box Group Representations**).

### Particulars

The representation in paragraph (a) was expressly made by the Fruit Box Group Announcement.

The representation in paragraph (b) was implied from the absence of qualification in the Fruit Box Group Announcement, and from the context of previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which were not qualified or withdrawn.

The representation in paragraph (c) was in part implied from a statement made in the Fruit Box Group Announcement that “exclusive contract projected at more than 7,000,000 + total aggregate deliveries” and in part implied from the absence of qualification in the Fruit Box Group Announcement, and from the context being the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, which statements were not qualified or withdrawn. The Applicant also relies on section 769C of the Corporations Act, section 12BB of the ASIC Act and section 4 of the ACL.

12. Each of the Fruit Box Group Representations was:
  - (a) made in relation to a financial product, namely GetSwift Shares; and
  - (b) made in trade or commerce.
  
13. By making the Fruit Box Group Representations GetSwift engaged in conduct:
  - (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
  - (b) in relation to a financial service within the meaning of:
    - (i) section 12BAB(1) of the ASIC Act; further or alternatively
    - (ii) section 766A(1)(a) of the Corporations Act;
  - (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.
  
- 13A. The Fruit Box Contract (which was dated 21 February 2017) provided inter alia that:

- (a) by clause 3, that the Fruit Box Group exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **Fruit Box Services Clause**);
  - (b) by clause 4, that the term of the engagement comprised: (i) a Limited Roll Out which expired on 1 April 2017, and (ii) an Initial Term of 36 months to start no later than 1 April 2017 unless the Fruit Box Group gave notice in writing to GetSwift at least 7 days before 1 April 2017 that it elected not to continue the contract beyond the Limited Roll Out (the **Fruit Box Term Clause**).
14. The Fruit Box Group Representations and each of them were false and misleading, in that:
- (a) the Fruit Box Group Contract did not oblige the Fruit Box Group to use the GetSwift Platform, but entitled the Fruit Box Group to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it;
  - (b) the Fruit Box Group Contract did not oblige the Fruit Box Group to use only the GetSwift Platform for automated dispatching or tracking of delivery of goods during the term of the Fruit Box Group Contract;
  - (c) the Fruit Box Group was entitled to give notice that it elected to end the Fruit Box Contract on 1 April 2017 in accordance with the Fruit Box Term Clause;
  - (d) by reason of the matters referred to in (a) to (c) above GetSwift did not have a reasonable basis to project that the Fruit Box Group would use the GetSwift Platform for in excess of 7,000,000 + deliveries during the term of the Fruit Box Group Contract.

### **Particulars**

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of

GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd; and

- ii. The terms of the Fruit Box Group Contract including, inter alia, the Fruit Box Services Clause and the Fruit Box Term Clause.

Further particulars may be provided after discovery.

15. By reason of the matters set out in paragraphs 10 to 14 above, by making the Fruit Box Group Representations and each of them, GetSwift engaged in conduct in trade or commerce:
- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
  - (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
  - (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Fruit Box Group Misleading Conduct).**

## *II Fruit Box Group False Statements Conduct*

16. Further or alternatively, the Fruit Box Group Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the Fruit Box Group Representations.

### **Particulars**

The matters in paragraph 14 are referred to and relied on.

Further particulars may be provided after discovery.

17. The Fruit Box Group Announcement, at the time it was issued, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the

effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

18. When GetSwift issued the Fruit Box Group Announcement, it ought reasonably to have known that the Fruit Box Group Announcement was false in a material particular or was materially misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 14.

19. By reason of the matters set out in paragraphs 16 to 18, by issuing the Fruit Box Group Announcement, GetSwift contravened section 1041E of the Corporations Act (**Fruit Box Group False Statements Conduct**).

### *III Fruit Box Group Macdonald Misleading Conduct*

20. Further or alternatively, by approving for publication the Fruit Box Group Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the Fruit Box Group Representations (**Fruit Box Group Macdonald Representations**).

### **Particulars**

The particulars subjoined to paragraph 11 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the Fruit Box Group Announcement, given his role as the Managing Director and CEO of GetSwift.

In addition, Mr Macdonald's name was stated as the point of contact for further information in the Fruit Box Group Announcement and Mr Macdonald's signature appears on the execution clause of the Fruit Box Group Contract.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald at paragraph 9 above.

21. Each of the Fruit Box Group Macdonald Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
  - (b) made in trade or commerce.
22. By approving for publication the Fruit Box Group Announcement, Mr Macdonald engaged in conduct:
- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
  - (b) in relation to a financial service within the meaning of:
    - (i) section 12BAB(1) of the ASIC Act; further or alternatively
    - (ii) section 766A(1)(a) of the Corporations Act;
  - (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.
23. The Fruit Box Group Macdonald Representations and each of them were false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 14.

Further particulars may be provided after discovery.

24. By reason of the matters set out in paragraphs 20 to 23, by approving for publication the Fruit Box Group Announcement, Mr Macdonald engaged in conduct in trade or commerce:
- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
  - (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
  - (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Fruit Box Group Macdonald Misleading Conduct).**

*IV Fruit Box Group Macdonald False Statements Conduct*

25. Further or alternatively, the Fruit Box Group Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the Fruit Box Group Macdonald Representations.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 14.

Further particulars may be provided after discovery.

26. The Fruit Box Group Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
27. When Mr Macdonald disseminated the Fruit Box Group Announcement, he ought reasonably to have known that the Fruit Box Group Announcement was false in a material particular or was materially misleading.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 14.

28. By reason of the matters set out in paragraphs 25 to 27, by disseminating the Fruit Box Group Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**Fruit Box Group Macdonald False Statements Conduct**).

*V Fruit Box Disclosure Contravention and Fruit Box Projection Disclosure*

### *Contravention*

29. On 20 March 2017, the Fruit Box Group gave notice to GetSwift that it elected not to continue the Fruit Box Contract beyond the Limited Roll Out which expired on 1 April 2017, as it was entitled to pursuant to the Fruit Box Term Clause.

### **Particulars**

The Applicant refers to:

- i. The GetSwift response of 24 January 2018 to the ASX Aware Query letter of 22 January 2018 and paragraphs B.5 and B.8(b) of that letter; and
  - ii. The email from Fruit Box Group Director, Martin Halphen, to Joel Macdonald dated 20 March 2017 which stated, inter alia, “this email is notice that we are terminating the agreement and will not be continuing the agreement for the Initial Term at the end of the limited roll out/trial period”.
30. By reason of the matters set out in paragraphs 11 and 29, GetSwift was aware, for the purposes of ASX Listing Rule 19.12:
- (a) as at 20 March 2017 and at all material times thereafter until the end of the Claim Period, that the Fruit Box Group (or alternatively the parties by agreement) had terminated the Fruit Box Group Contract and that it would not continue beyond 1 April 2017;
  - (b) as at 20 March 2017 and at all material times thereafter until the end of the Claim Period, that no deliveries would take place, and that GetSwift would earn no revenue, under the Fruit Box Group Contract,
- (individually, collectively, or in any combination, **Fruit Box Information**).

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 29.

Each of the items of the Fruit Box Information was information which did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and therefore was information of which it was aware within the meaning of ASX Listing Rule 19.12.



Further particulars may be provided after discovery.

31. Further or alternatively, by reason of the matters set out in paragraphs 9, 11 and 29, Macdonald was aware, for the purposes of ASX Listing Rule 19.12, of the Fruit Box Information during the same times as GetSwift was aware of it.

### Particulars

Mr Macdonald's awareness of those matters is to be inferred from his role as the Managing Director and CEO of GetSwift. In addition, Mr Macdonald's signature appears on the Fruit Box Group Contract dated 21 February 2017 and he was the recipient of the email referred to in the particulars to paragraph 29.

Further particulars may be provided after discovery.

32. The Fruit Box Information, and each individual item of the Fruit Box Information, was:
- (a) information that a reasonable person would expect to have a material effect on the price or value of GetSwift Shares;
  - (b) not generally available;
  - (c) information needed by an investor to make an informed assessment of the entity's financial performance and financial position.
33. By reason of the matters alleged in paragraphs 5 and 32, GetSwift was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to notify the ASX immediately of the Fruit Box Information on and from the time when it became aware of it.
34. Notwithstanding the matters alleged in paragraphs 30 to 33, GetSwift did not notify the ASX of the Fruit Box Information at any time during the Claim Period.
35. By reason of the matters alleged in paragraphs 30 to 34, GetSwift contravened section 674(2) of the Corporations Act (**Fruit Box Disclosure Contravention**).
36. By reason of the matters set out in paragraphs 30 to 35, the Fruit Box Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant Fruit Box Information and was a continuing contravention that continued throughout the Claim Period.

37. Further Mr Macdonald was involved in the Fruit Box Disclosure Contravention, and thereby contravened section 674(2A) of the Corporations Act.

### Particulars

The Applicant refers to and repeats paragraph 22.

Mr Macdonald was the Managing Director and Chief Executive Officer of GetSwift at the time of the Fruit Box Disclosure Contravention.

The Fruit Box Information was information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and was therefore information of which GetSwift was aware within the meaning of ASX Listing Rule 19.12, having regard to:

- i. GetSwift's response dated 24 January 2018 to ASX Aware Query letter of 22 January 2018 and the definition of 90 Day Proof of Concept contained therein;
- ii. The ASX Announcement dated 2 February 2018 titled "market update" and the definition and characteristics of "enterprise clients" explained therein;
- iii. The 9 February GetSwift response to ASX Aware query letter of 6 February 2018 wherein Mr Macdonald's signature appears as author of the letter;
- iv. The Fruit Box Group Announcement specifies Mr Macdonald as the point of contact;
- v. The execution clause of the Fruit Box Group Contract bears Mr Macdonald's signature; and
- vi. The Limited Roll Out term contained in the Fruit Box Group Contract.

Further particulars will be provided after discovery.

- 37A. As at 24 February 2017, and at all material times during the Claim Period, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, that:

- (a) the Fruit Box Group had told GetSwift that it currently made 1.5 million deliveries annually;
- (b) the Fruit Box Group had not provided GetSwift with its actual historical, or any estimate of, its future projected deliveries or growth in deliveries;
- (c) in making the Fruit Box Projection, GetSwift assumed an annual deliveries

growth rate of approximately 24%, without any input from Fruit Box, (individually, collectively, or in any combination, **Fruit Box Projection Information**).

### **Particulars**

The Applicant relies on paragraph 30 of the Statement of Claim filed by ASIC in proceeding VID146/2019 (ASIC v GetSwift Ltd and others) (**ASIC Statement of Claim**)

Each of the items of the Fruit Box Projection Information was:

- (a) information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties;
- (b) therefore information of which GetSwift was aware within the meaning of ASX Listing Rule 19.12.

Further particulars will be provided following discovery and/or subpoenas of third parties.

37B. Further, or alternatively, by reason of the matters set out in paragraphs 9, 29 and 37A, Mr Macdonald was aware, for the purposes of ASX Listing Rule 10.12, of the Fruit Box Projection Information during the same time as GetSwift was aware of it.

### **Particulars**

Mr Macdonald's awareness of those matters is to be inferred from the matters set out in the particulars to paragraph 37A. In addition, Mr Macdonald's signature appears on the Fruit Box Group Contract.

37C. The Fruit Box Projection Information, and each item of the Fruit Box Projection Information, was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of GetSwift shares;
- (b) not generally available;
- (c) information needed by an investor to make an informed assessment of the entity's financial performance and financial position.

37D. By reason of the matters alleged in paragraphs 5 and 37A, GetSwift was obliged

by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to notify the ASX immediately of the Fruit Box Projection Information on and from the time when it became aware of it.

37E. Notwithstanding the matters alleged in paragraphs 37A and 37C, GetSwift did not notify the ASX of the Fruit Box Projection Information at any time during the Claim Period.

37F. By reason of the matters alleged in paragraphs 37A to 37F, GetSwift contravened section 674(2) of the Corporations Act (**Fruit Box Projection Disclosure Contravention**).

37G. By reason of the matters alleged in paragraphs 37A and 37E, the Fruit Box Projection Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant Fruit Box Projection Information and was a continuing contravention that continued throughout the Claim Period.

37H. Further, Mr Macdonald was involved in the Fruit Box Projection Disclosure Contravention and thereby contravened section 674(2A) of the Corporations Act.

### **Particulars**

Mr Macdonald was the Managing Director and Chief Executive Officer of GetSwift at the time of the Fruit Box Projection Disclosure Contravention.

By reason of his responsibilities at paragraph 9, Mr Macdonald did or ought reasonably to have known the Fruit Box Projection Information, having regard to the Fruit Box Contract which bears Mr Macdonald's signature.

The Applicant relies on paragraph 30 of the ASIC Statement of Claim and the particulars subjoined to it. Further particulars will be provided following discovery and/or subpoenas of third parties.

## **D. APRIL 2017 CBA CONTRAVENTIONS**

### *I April 2017 CBA Misleading Conduct*

38. On 4 April 2017, GetSwift published and lodged with the ASX an announcement

entitled “*Commonwealth Bank and GetSwift sign exclusive partnership*” (**April 2017 CBA Announcement**).

39. By the April 2017 CBA Announcement, GetSwift represented that:

(a) GetSwift and the Commonwealth Bank of Australia (**CBA**) had entered into an exclusive multi-year partnership (**CBA Contract**) that would:

- (i) allow CBA’s retail merchants to access an affordable best in class logistics platform;
- (ii) turn every Albert POS vendor into a delivery-ready store – automatically queueing, batching, routing and dispatching the delivery of any good purchased using an Albert POS;

(the **Represented Albert POS Logistics Solution**).

(b) it had reasonable grounds to:

- (i) project that retail merchants of CBA would conduct more than 257.4 million deliveries using GetSwift’s Platform accessed by the Represented Albert POS Logistics Solution over the next five years, with an aggregate transaction value of \$9 billion;
- (ii) project that the Represented Albert POS Logistics Solution would be fully deployed nationally in 2017;

(c) any proof of concept period, trial phase, limited roll-out or free trial period had already occurred, and the CBA Contract was not conditional upon any of them occurring,

(collectively, **April 2017 CBA Representations**).

### **Particulars**

The representations in paragraph (a) were expressly made by the April 2017 CBA Announcement.

The representations in paragraph (b) were in part implied from statements made in the April 2017 CBA Announcement that “*GetSwift estimates the deal will result in over 257,400,000 deliveries on its*

*platform over the next five years, with an estimated aggregate transaction value of \$9 billion,”(CBA Projections)* and “CBA will work with GetSwift to develop new and innovative solutions through the Albert terminal and other devices, where a payments terminal can even be a GPS tracker of the goods. *Rollouts will commence shortly to selected markets with a full national deployment expected to be in place in 2017*” and in part implied from the absence of qualification in the April 2017 CBA Announcement, and from the context being the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

The representation in paragraph (c) was implied from the absence of qualification in the April 2017 CBA Announcement, and from the context of previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

The Applicant also relies on section 769C of the Corporations Act, section 12BB of the ASIC Act and section 4 of the ACL.

40. Each of the April 2017 CBA Representations was:
- (a) made in relation to a financial product, namely GetSwift Shares; and
  - (b) made in trade or commerce.
41. By making the April 2017 CBA Representations, GetSwift engaged in conduct:
- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
  - (b) in relation to a financial service within the meaning of:
    - (i) section 12BAB(1) of the ASIC Act; further or alternatively
    - (ii) section 766A(1)(a) of the Corporations Act;
  - (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.
- 41A. The CBA Contract (which was dated on or around 29 March 2017) provided inter alia as follows:
- (a) by paragraph B and clause 1.1, that the Project was defined to be the work

CBA and GetSwift had agreed to perform in partnership with the aim of providing the GetSwift App with which customers are able to optimize, dispatch, route, keep track of their deliveries to end customers on any Albert device and other platforms;

- (b) by clause 1.1, that Project Plan meant the plan for execution of the Project, as attached to the CBA Contract and as amended from time to time according to the process in clause 3.1(g);
- (c) by clause 1.1, that GetSwift App meant the application developed by GetSwift on the Pi programme ecosystem for the Project;
- (d) by clause 2, that the term of the Agreement would end no later than 2 years from the date on which the signing by both parties was completed;
- (e) by clause 3.1(a), that GetSwift would perform the Services contemplated by the Project Plan;
- (f) by clause 3.1(b), that the Services would include:
  - (i) the creation and supply of the Deliverables;
  - (ii) the development (including testing) of the GetSwift App;
  - (iii) the submission of the GetSwift App for review by CBA for the purposes of inclusion of such GetSwift App in the CBA Pi Programme;
  - (iv) the correction of any defects or issues following the technical and security reviews;
- (g) that CBA would cooperate and collaborate with GetSwift to promote the GetSwift App, with such promotional activity to be agreed between the parties and documented in a Project Plan; and
- (h) by clause 3.2, that the performance of the Services (and suitability of the Deliverables) were subject to approval by CBA.

42. The April 2017 CBA Representations and each of them were false and

misleading, in that:

- (a) The CBA Contract provided as alleged in paragraph 41A above, and the deployment of the Represented Albert POS Logistics Solution therefore depended on an agreed Project Plan being finalised and successfully completed by GetSwift before the GetSwift Platform could be offered on CBA's Albert POS vendor terminals;
- (b) a Project Plan was not attached to the CBA Contract and no Project Plan was ever prepared or agreed;
- (c) therefore the Albert Represented Albert POS Logistics Solution was never implemented;
- (d) by reason of the matters referred to in (a) to (c) above, GetSwift did not have a reasonable basis to:
  - (i) project that retail merchants of CBA would conduct more than 257.4 million deliveries using the GetSwift Platform over the next five years from the date of the CBA Contract, with an aggregate transaction value of \$9 billion;
  - (ii) expect that GetSwift's Platform would be fully deployed before the end of 2017.

### **Particulars**

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.
- ii. The terms of the CBA Contract including, inter alia, the definition of Deliverables, Project Plan and Services at clause 1.1 and the description of "GetSwift Services and CommBank Commitments at clause 3.1".
- iii. An email from the Respondents' solicitors to the Applicant's solicitors dated 10 December 2018 wherein it is stated on behalf of the Respondents that no Project Plan was prepared in relation to the CBA Contract.



- iv. The absence of any explanation for the failure to prepare or agree on the terms of a Project Plan and develop the GetSwift App if GetSwift had reasonable grounds for the April 2017 CBA Representations.
- v. The email from H Polites of Media + Capital Partners forwarding an email from N Kitchen of CBA to J Macdonald and B Hunter of GSW dated 3 April 2017.

Further particulars may be provided after discovery.

43. By reason of the matters set out in paragraphs 38 to 42, by making the April 2017 CBA Representations and each of them, GetSwift engaged in conduct in trade or commerce:
- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
  - (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
  - (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(April 2017 CBA Misleading Conduct).**

## *II April 2017 CBA False Statements Conduct*

44. Further or alternatively, the April 2017 CBA Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the April 2017 CBA Representations.

### **Particulars**

The matters in paragraph 42 are referred to and relied on.

Further particulars may be provided after discovery.

45. The April 2017 CBA Announcement, at the time it was issued, was likely to

induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

46. When GetSwift issued the April 2017 CBA Announcement, it ought reasonably to have known that the April 2017 CBA Announcement was false in a material particular or was materially misleading.

### **Particulars**

The matters in paragraph 42 are referred to and relied on.

47. By reason of the matters set out in paragraphs 44 to 46, by issuing the April 2017 CBA Announcement, GetSwift contravened section 1041E of the Corporations Act (**April 2017 CBA False Statements Conduct**).

### *III April 2017 CBA Macdonald Misleading Conduct*

48. Further or alternatively, by approving for publication the April 2017 CBA Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the April 2017 CBA Representations (the **April 2017 Macdonald Representation**).

### **Particulars**

The particulars subjoined to paragraph 39 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the April 2017 CBA Announcement, given his role as the Managing Director and CEO of GetSwift. In addition, Mr Macdonald's signature appears on the CBA Contract dated 29 March 2017.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald at paragraph 9 above.

49. The April 2017 CBA Macdonald Representation was:
- (a) made in relation to a financial product, namely GetSwift Shares;

- (b) made in trade or commerce.
50. By approving for publication the April 2017 CBA Announcement, Mr Macdonald engaged in conduct:
- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
  - (b) in relation to a financial service within the meaning of:
    - (i) section 12BAB(1) of the ASIC Act; further or alternatively
    - (ii) section 766A(1)(a) of the Corporations Act;
  - (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.
51. The April 2017 CBA Macdonald Representation was false and misleading.

#### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 42.

Further particulars may be provided after discovery.

52. By reason of the matters set out in paragraphs 48 to 51, by approving for publication the April 2017 CBA Announcement, Mr Macdonald engaged in conduct in trade or commerce:
- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
  - (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
  - (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(April 2017 CBA Macdonald Misleading Conduct).**

*IV April 2017 CBA Macdonald False Statements Conduct*

53. Further or alternatively, the April 2017 CBA Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the April 2017 CBA Macdonald Representations.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 39.

Further particulars may be provided after discovery.

54. The April 2017 CBA Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
55. When Mr Macdonald disseminated the April 2017 CBA Announcement, he ought reasonably to have known that the April 2017 CBA Announcement was false in a material particular or was materially misleading.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 39.

56. By reason of the matters set out in paragraphs 53 to 55, by disseminating the April 2017 CBA Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**April 2017 CBA Macdonald False Statements Conduct**).

*V April 2017 CBA Disclosure Contravention*

- 56A. As at 4 April 2017, and at all material times during the Claim Period, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, that:

- (a) GetSwift had assumed the CBA Projections over a five year period whereas the CBA Contract was for a period of two years;
  - (b) GetSwift had calculated the CBA Projections by assuming the existence of 55,000 retail merchants of CBA with Albert Devices;
  - (c) CBA had informed GetSwift that:
    - (i) the number of CBA retail merchants was not 55,000;
    - (ii) the CBA Projections appeared to be global figures, not reflective of the domestic market; and
    - (iii) GetSwift should use Australian numbers as CBA only offered the Albert terminals in Australia;
  - (d) the CBA Projections had been calculated by GetSwift without any input from CBA, except as pleaded in subparagraph (c) above;
  - (e) the CBA Contract was subject to a Project Plan;
  - (f) no Project Plan was subsequently agreed to between GetSwift and CBA;
  - (g) no application had been developed for deployment on the Albert terminals;
- (individually, collectively, or in any combination, **CBA Information**).

### Particulars

The Applicant relies on paragraph 48 of the ASIC Statement of Claim and the particulars subjoined to it.

The Applicant relies on the email from H Polites of Media + Capital Partners forwarding an email from N Kitchen of CBA to J Macdonald and B Hunter of GetSwift dated 3 April 2017.

Each of the items of the CBA Information was:

- (a) Information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties;
- (b) Therefore information of which GetSwift was aware within the meaning of ASX Listing Rule 19.12.

Further particulars will be provided following discovery and/or subpoenas of third parties.

56B. Further, or alternatively, by reason of the matters set out in paragraphs 9, 48 and 56A, Mr Macdonald was aware, for the purposes of ASX Listing Rule 19.12, of the CBA Information during the same time as GetSwift was aware of it.

### Particulars

Mr Macdonald's awareness of those matters is to be inferred from the matters set out in the particulars to paragraph 56A. In addition, Mr Macdonald's signature appears on the CBA Contract.

56C. The CBA Information, and each item of the CBA Information, was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of GetSwift shares;
- (b) not generally available;
- (c) information needed by an investor to make an informed assessment of the entity's financial performance and financial position.

56D. By reason of the matters alleged in paragraphs 5 and 56A, GetSwift was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to notify the ASX immediately of the CBA Information on and from the time when it became aware of it.

56E. Notwithstanding the matters alleged in paragraphs 56A and 56D, GetSwift did not notify the ASX of the CBA Information at any time during the Claim Period.

56F. By reason of the matters in paragraphs 56A and 56E, GetSwift contravened section 674(2) of the Corporations Act (**CBA Disclosure Contravention**).

56G. By reason of the matters in paragraphs 56A and 56F, the CBA Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant CBA Information and was a continuing contravention that continued throughout Claim Period.

56H. Further, Mr Macdonald was involved in the CBA Disclosure Contravention and

thereby contravened section 674(2A) of the Corporations Act.

### **Particulars**

Mr Macdonald was the Managing Director and Chief Executive Officer of GetSwift at the time of the CBA Disclosure Contravention.

By reason of his responsibilities at paragraph 9, Mr Macdonald did or ought reasonably to have known the CBA Information, having regard to the CBA Contract which bears Mr Macdonald's signature.

The Applicant relies on paragraph 48 of the ASIC Statement of Claim and the particulars subjoined to it. Further particulars will be provided following discovery and/or subpoenas of third parties.

## **E. LONE STAR GRILL CONTRAVENTIONS**

### *I Lone Star Grill Misleading Conduct*

57. On 20 April 2017, GetSwift published and lodged with the ASX an announcement entitled "*Lone Star Texas Grill and GetSwift Sign Exclusive Partnership*" (**Lone Star Grill Announcement**).

58. By the Lone Star Grill Announcement, GetSwift represented that:

(a) GetSwift and Lone Star Texas Grill (**Lone Star Grill**) had entered into a contract with a term of two or more years (**Lone Star Grill Contract**) pursuant to which Lone Star Grill was contractually obliged:

(i) to use the GetSwift Platform for its deliveries for the term of the Lone Star Grill Contract;

(ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for the term of the Lone Star Grill Contract;

(b) any proof of concept period, or trial phase or limited roll-out had already occurred, and the Lone Star Grill Contract was not conditional upon any of them occurring,

(collectively, **Lone Star Grill Representations**).

### Particulars

The representation in paragraph (a) was expressly made by the Lone Star Grill Announcement.

The representation in paragraph (b) was in part implied from the absence of qualification in the Lone Star Grill Announcement, and from the context being the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

59. Each of the Lone Star Grill Representations was:
- (a) made in relation to a financial product, namely GetSwift Shares;
  - (b) made in trade or commerce.
60. By making the Lone Star Grill Representations, GetSwift engaged in conduct:
- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
  - (b) in relation to a financial service within the meaning of:
    - (i) section 12BAB(1) of the ASIC Act; further or alternatively
    - (ii) section 766A(1)(a) of the Corporations Act;
  - (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.
- 60A. The Lone Star Grill Contract (which was dated 20 March 2017) provided inter alia that:
- (a) by clause 3, that Lone Star Grill exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **Lone Star Services Clause**);
  - (b) by clause 4, that the term of the engagement comprised: (i) a Free Trial Period of 1 month which expired on or around 20 April 2017, and (ii) an Initial Term of 36 months (the **Lone Star Term Clause**).
61. The Lone Star Grill Representations and each of them were false and



misleading, in that:

- (a) the Lone Star Grill Contract did not oblige Lone Star Grill to use the GetSwift Platform, but entitled Lone Star Grill to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it;
- (b) the Lone Star Grill Contract did not oblige Lone Star Grill to use only the GetSwift Platform for automated dispatching or tracking of delivery of goods during the term of the Lone Star Grill Contract;
- (c) Lone Star Grill was entitled to give notice that it elected to end the Lone Star Grill Contract prior to the expiration of the Free Trial Period in accordance with the Lone Star Term Clause.

### **Particulars**

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.
- ii. The terms of the Lone Star Grill Contract including, inter alia, the Lone Star Services Clause and the Lone Star Term Clause.

Further particulars may be provided after discovery.

62. By reason of the matters set out in paragraphs 57 to 61 by making the Lone Star Grill Representations, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Lone Star Grill Misleading Conduct).**

*II Lone Star Grill False Statements Conduct*

63. Further or alternatively, the Lone Star Grill Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the Lone Star Grill Representations.

**Particulars**

The matters in paragraph 61 are referred to and relied on.

Further particulars may be provided after discovery.

64. The Lone Star Grill Announcement, at the time it was issued, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
65. When GetSwift issued the Lone Star Grill Announcement, it ought reasonably to have known that the Lone Star Grill Announcement was false in a material particular or was materially misleading.

**Particulars**

The Applicant refers to and repeats the matters set out in in paragraph 61.

66. By reason of the matters set out in paragraphs 63 to 65, by issuing the Lone Star Grill Announcement, GetSwift contravened section 1041E of the Corporations Act (**Lone Star Grill False Statements Conduct**).

*III Lone Star Grill Macdonald Misleading Conduct*

67. Further or alternatively, by approving for publication the Lone Star Grill Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the Lone Star Grill Representations (**Lone Star Grill Macdonald Representations**).

### Particulars

The particulars subjoined to paragraph 58 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the Lone Star Grill Announcement, given his role as the Managing Director and CEO of GetSwift.

In addition, Mr Macdonald is listed as the point of contact in relation to any queries arising from the Lone Star Grill Announcement and Mr Macdonald's signature appears on the Lone Star Grill Contract executed on 20 March 2017.

Further, the Applicant relies on:

- i. An email from Mr Macdonald to Lone Star Grill Director of Information Technology Bob "Crash" Macey dated 4 April 2017 wherein the publication of the Lone Star Grill Announcement is discussed.
- ii. The GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

68. Each of the Lone Star Grill Macdonald Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

69. By approving for publication the Lone Star Grill Announcement, Mr Macdonald engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

70. The Lone Star Grill Macdonald Representations and each of them were false and misleading.

#### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 61.

Further particulars may be provided after discovery.

71. By reason of the matters set out in paragraphs 67 to 70, by approving for publication the Lone Star Grill Announcement, Mr Macdonald engaged in conduct in trade or commerce:
- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
  - (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
  - (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Lone Star Grill Macdonald Misleading Conduct).**

#### *IV Lone Star Grill Macdonald False Statements Conduct*

72. Further or alternatively, the Lone Star Grill Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the Lone Star Grill Macdonald Representations.

#### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 61.

Further particulars may be provided after discovery.

73. The Lone Star Grill Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
74. When Mr Macdonald disseminated the Lone Star Grill Announcement, he ought reasonably to have known that the Lone Star Grill Announcement was false in a material particular or was materially misleading.

### Particulars

The Applicant refers to and repeats the matters set out in paragraph 61.

75. By reason of the matters set out in paragraphs 72 to 74, by disseminating the Lone Star Grill Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**Lone Star Grill Macdonald False Statements Conduct**).

## F. PIZZA HUT CONTRAVENTIONS

### *I Pizza Hut Misleading Conduct*

76. On 28 April 2017, GetSwift published and lodged with the ASX an announcement entitled "*Pizza Hut and GetSwift sign exclusive partnership*" (**Pizza Hut Announcement**).
77. By the Pizza Hut Announcement, GetSwift represented that:
- (a) GetSwift and Pizza Hut had entered into a contract with a term of two or more years (**Pizza Hut Contract**) pursuant to which Pizza Hut was contractually obliged:
    - (i) to use the GetSwift Platform for its deliveries for the term of the Pizza Hut Contract;
    - (ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for the term of the Pizza Hut Contract;

- (b) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred, and the Pizza Hut Contract was not conditional upon any of them occurring,

(collectively, **Pizza Hut Representations**).

### **Particulars**

The representation in paragraph (a) was expressly made by the Pizza Hut Announcement.

The representation in paragraph (b) was implied from the absence of qualification in the Pizza Hut Announcement, and from the context of previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

78. Each of the Pizza Hut Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

79. By making the Pizza Hut Representations, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

79A. The Pizza Hut Contract (which was dated 20 April 2017) provided inter alia that:

- (a) by clause 3, that Pizza Hut exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **Pizza Hut Services Clause**);
- (b) by clause 4, that the term of the engagement comprised: (i) a Proposed

Limited Initial Roll Out to start on or about 2 May 2017 where no fees were to be charged for use of the GetSwift Platform during the initial three month time period, and (ii) unless Pizza Hut gave notice to end the contract during the Proposed Limited Initial Roll Out – an initial term of 12 months, with an option to renew for an additional 12 months (the **Pizza Hut Term Clause**).

80. The Pizza Hut Representations and each of them were false and misleading, in that:
- (a) the Pizza Hut Contract did not oblige Pizza Hut to use the GetSwift Platform, but entitled Pizza Hut to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it;
  - (b) the Pizza Hut Contract did not oblige Pizza Hut to use only the GetSwift Platform for automated dispatching or tracking of delivery of goods during the term of the Pizza Hut Contract;
  - (c) the Pizza Hut Contract was not for a term of two or more years but was for a term of 12 months with an option to renew for a further 12 months;
  - (d) the Pizza Hut Contract contained a Proposed Limited Initial Roll Out where no fees were to be charged for use of the GetSwift Platform during the initial three month time period; and
  - (e) The Pizza Hut Contract was not between GetSwift and Pizza Hut, the largest pizza chain in the world but, rather, was between GetSwift and Pizza Pan Group Pty Ltd (ACN 614 499 213) (**Pizza Pan**), a company incorporated in Australia.

### Particulars

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.
- ii. The terms of the Pizza Hut Contract including, inter alia, the Pizza Hut Services Clause and the Pizza Hut Term Clause.

iii. The parties to the Pizza Hut Contract.

Further particulars may be provided after discovery.

81. By reason of the matters set out in paragraphs 76 to 80, by making the Pizza Hut Representations, GetSwift engaged in conduct in trade or commerce:
- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
  - (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
  - (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Pizza Hut Misleading Conduct).**

## *II Pizza Hut False Statements Conduct*

82. Further or alternatively, the Pizza Hut Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the Pizza Hut Representations.

### **Particulars**

The matters in paragraph 80 are referred to and relied on.

Further particulars may be provided after discovery.

83. The Pizza Hut Announcement, at the time it was issued, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
84. When GetSwift issued the Pizza Hut Announcement, it ought reasonably to have known that the Pizza Hut Announcement was false in a material particular or was materially misleading.



### Particulars

The matters in paragraph 80 are referred to and relied on.

85. By reason of the matters set out in paragraphs 82 to 84, by issuing the Pizza Hut Announcement, GetSwift contravened section 1041E of the Corporations Act (**Pizza Hut False Statements Conduct**).

### *III Pizza Hut Macdonald Misleading Conduct*

86. Further or alternatively, by approving for publication the Pizza Hut Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the Pizza Hut Representations (**Pizza Hut Macdonald Representations**).

### Particulars

The particulars subjoined to paragraph 77 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the Pizza Hut Announcement, given his role as the Managing Director and CEO of GetSwift.

In addition, Mr Macdonald's signature appears on the execution clause of the Pizza Hut contract dated 20 April 2017.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

87. Each of the Pizza Hut Macdonald Representations was:
- (a) made in relation to a financial product, namely GetSwift Shares;
  - (b) made in trade or commerce.
88. By approving for publication the Pizza Hut Announcement, Mr Macdonald engaged in conduct:
- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
  - (b) in relation to a financial service within the meaning of:

- (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
  - (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.
89. The Pizza Hut Macdonald Representations and each of them were false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 80.

Further particulars may be provided after discovery.

90. By reason of the matters set out in paragraphs 86 to 89, by approving for publication the Pizza Hut Announcement, Mr Macdonald engaged in conduct in trade or commerce:
- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
  - (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
  - (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Pizza Hut Macdonald Misleading Conduct).**

#### *IV Pizza Hut Macdonald False Statements Conduct*

91. Further or alternatively, the Pizza Hut Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the Pizza Hut

Macdonald Representations.

### Particulars

The Applicant refers to and repeats the matters set out in paragraph 80.

Further particulars may be provided after discovery.

92. The Pizza Hut Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
93. When Mr Macdonald disseminated the Pizza Hut Announcement, he ought reasonably to have known that the Pizza Hut Announcement was false in a material particular or was materially misleading.

### Particulars

The Applicant refers to and repeats the matters set out in paragraph 80.

In addition, Mr Macdonald's signature appears on the execution clause of the Pizza Hut Contract dated 20 April 2017.

94. By reason of the matters set out in paragraphs 91 to 93, by disseminating the Pizza Hut Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**Pizza Hut Macdonald False Statements Conduct**).

### V *Pizza Hut Disclosure Contravention*

94A. As at 28 April 2017:

- (a) The actual parties to the Pizza Hut Contract were GetSwift and Pizza Pan, an Australian proprietary company;
- (b) Pizza Pan has never had any locations overseas;
- (c) Pizza Pan was not a subsidiary of Yum!;
- (d) Pizza Pan was, in truth, an Australian franchisee operating a Pizza Hut branded store in Australia only;

- (e) Pizza Pan never operated any restaurants outside of Australia;
- (f) The Pizza Hut Contract did not allow GetSwift to provide international services, rather it allowed GetSwift to provide Australian services to Pizza Pan;

(individually, collectively, or in any combination, the **Pizza Hut Information**)

### **Particulars**

The Applicant relies on paragraph 62 of the ASIC Statement of Claim and the particulars subjoined to it. Each of the items of the Pizza Hut Information was:

- (a) Information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties;
- (b) It was therefore information of which GetSwift was aware within the meaning of ASX Listing Rules 19.12.

The Applicant further relies on the Pizza Hut Contract, including the parties to that Contract.

Further particulars will be provided following discovery and/or subpoenas of third parties.

94B. Further, or alternatively, by reason of the matters set out in paragraph 9, 86 and 94A, Mr Macdonald was aware, for the purposes of ASX Listing Rule 19.12, of the Pizza Hut Information during the same time as GetSwift was aware of it.

### **Particulars**

Mr Macdonald's awareness of those matters is to be inferred from the matters set out in the particulars to paragraph 94A. In addition, Mr Macdonald's signature appears on the Pizza Hut Contract.

94C. The Pizza Hut Information, and each item of the Pizza Hut Information, was;

- (a) information that a reasonable person would expect to have a material effect on the price or value of GetSwift shares;
- (b) not generally available;
- (c) information needed by an investor to make an informed assessment of the entity's financial performance and financial position.

- 94D. By reason of the matters alleged in paragraphs 5 and 94A, GetSwift was obliged, by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act, to notify the ASX immediately of the Pizza Hut Information on and from the time when it became aware of it.
- 94E. Notwithstanding the matters alleged in paragraphs 94C and 94D, GetSwift did not notify the ASX of the Pizza Hut Information at any time during the Claim Period.
- 94F. By reason of the matters in paragraphs 94A and 94E, GetSwift contravened section 674(2) of the Corporations Act (**Pizza Hut Disclosure Contravention**).
- 94G. By reason of the matters in paragraphs 94A and 94E, the Pizza Hut Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant Pizza Hut Information and was a continuing contravention that continued throughout the Claim Period.
- 94H. Further, Mr Macdonald was involved in the Pizza Hut Disclosure Contravention and thereby contravened section 674(2A) of the Corporations Act.

### **Particulars**

Mr Macdonald was the Managing Director and Chief Executive Officer of GetSwift at the time of the Pizza Hut Disclosure Contravention.

By reason of his responsibilities at paragraph 9, Mr Macdonald did or ought reasonably to have known the Pizza Hut Information, having regard to the Pizza Hut Contract which bears Mr Macdonald's signature.

The Applicant relies on paragraph 62 of the ASIC Statement of Claim. Further particulars will be provided following discovery and/or subpoenas of third parties.

## **G. APRIL APPENDIX 4C CONTRAVENTIONS**

### *I April Appendix 4C Misleading Conduct*

95. On 28 April 2017, GetSwift published and lodged with the ASX an announcement entitled "*APPENDIX 4C & QUARTERLY REVIEW*" (**April**

**Appendix 4C Announcement).**

96. By the April Appendix 4C Announcement, GetSwift represented that when GetSwift thereafter made announcements to the market via documents lodged with the ASX to the effect that GetSwift had entered into a contract with a client:
- (a) the relevant contract would have benefits to GetSwift which are secure, quantifiable and measurable;
  - (b) GetSwift would have reasonable grounds for considering that that contract would have a material positive effect on the GetSwift business;
  - (c) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred and the relevant announcement was not conditional upon any of them occurring,

**(April Appendix 4C Representations).****Particulars**

The representation in paragraph (a) was express, and the representation in paragraph (b) was implied from a fair reading of the April Appendix 4C Announcement and in part implied from absence of qualification in the April Appendix 4C Announcement, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

The representation in paragraph (c) was implied from the absence of qualification in the April Appendix 4C Announcement, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

The Applicant also relies on section 769C of the Corporations Act, section 12BB of the ASIC Act and section 4 of the ACL.

97. Each of the April Appendix 4C Representations was:
- (a) made in relation to a financial product, namely GetSwift Shares;
  - (b) made in trade or commerce.

98. By making the April Appendix 4C Representations, GetSwift engaged in conduct:
- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
  - (b) in relation to a financial service within the meaning of:
    - (i) section 12BAB(1) of the ASIC Act; further or alternatively
    - (ii) section 766A(1)(a) of the Corporations Act;
  - (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.
99. The April Appendix 4C Representations and each of them were false and misleading, in that:
- (a) the client contracts that were announced by GetSwift prior to and following 28 April 2017 did not have benefits to GetSwift which were secure, quantifiable and measurable;
  - (b) GetSwift did not have reasonable grounds for considering that those contracts and each of them would have a material positive effect on the GetSwift business;
  - (c) GetSwift had not adopted and did not intend to adopt the policy set out in the April Appendix 4C Announcement.

### **Particulars**

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.
- ii. The Lone Star Grill Term Clause, the Pizza Hut Term Clause and the Fruit Box Term Clause.
- iii. The Project Plan, milestones or deliverables referred to in the CBA Contract, referred to at paragraph 41A above.

Further particulars may be provided after discovery.

100. By reason of the matters set out in paragraphs 95 to 99 above, by making the April Appendix 4C Representations and each of them, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(April Appendix 4C Misleading Conduct).**

## *II April Appendix 4C False Statements Conduct*

101. Further or alternatively, the April Appendix 4C Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the April Appendix 4C Representations.

### **Particulars**

The matters in paragraph 99 are referred to and relied on.

Further particulars may be provided after discovery.

102. The April Appendix 4C Announcement, at the time it was issued, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

103. When GetSwift issued the April Appendix 4C Announcement, it ought reasonably to have known that the April Appendix 4C Announcement was false in a material particular or was materially misleading.



### Particulars

The Applicant refers to and repeats the matters set out in paragraph 99.

104. By reason of the matters set out in paragraphs 101 to 103, by issuing the April Appendix 4C Announcement, GetSwift contravened section 1041E of the Corporations Act (**April Appendix 4C False Statements Conduct**).

### *III April Appendix 4C Macdonald Misleading Conduct*

105. Further or alternatively, by approving for publication the April Appendix 4C Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the April Appendix 4C Representations (**April Appendix 4C Macdonald Representations**).

### Particulars

The particulars subjoined to paragraph 96 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the April Appendix 4C Announcement, given his role as the Managing Director and CEO of GetSwift.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

106. Each of the April Appendix 4C Macdonald Representations was:
- (a) made in relation to a financial product, namely GetSwift Shares;
  - (b) made in trade or commerce.
107. By approving for publication the April Appendix 4C Announcement, Mr Macdonald engaged in conduct:
- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
  - (b) in relation to a financial service within the meaning of:

- (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
  - (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.
108. The April Appendix 4C Macdonald Representations and each of them were false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 99.

Further particulars may be provided after discovery.

109. By reason of the matters set out in paragraphs 105 to 108, by approving for publication the April Appendix 4C Announcement, Mr Macdonald engaged in conduct in trade or commerce:
- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
  - (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
  - (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

### **(April Appendix 4C Macdonald Misleading Conduct).**

#### *IV April Appendix 4C Macdonald False Statements Conduct*

110. Further or alternatively, the April Appendix 4C Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the April Appendix 4C

Macdonald Representations.

### Particulars

The Applicant refers to and repeats the matters set out in paragraph 99.

Further particulars may be provided after discovery.

111. The April Appendix 4C Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
112. When Mr Macdonald disseminated the April Appendix 4C Announcement, he ought reasonably to have known that the April Appendix 4C Announcement was false in a material particular or was materially misleading.

### Particulars

The Applicant refers to and repeats the matters set out in paragraph 99.

113. By reason of the matters set out in paragraphs 110 to 112, by disseminating the April Appendix 4C Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**April Appendix 4C Macdonald False Statements Conduct**).

## H. ALL PURPOSE TRANSPORT CONTRAVENTIONS

### *I All Purpose Transport Misleading Conduct*

114. On 8 May 2017, GetSwift published and lodged with the ASX an announcement entitled "*All Purpose Transport sign commercial agreement with GetSwift*" (**All Purpose Transport Announcement**).
115. By the All Purpose Transport Announcement, GetSwift represented that:
- (a) GetSwift and All Purpose Transport had entered into a contract with a term

of two or more years (**All Purpose Transport Contract**) pursuant to which All Purpose Transport was contractually obliged:

- (i) to use the GetSwift Platform for its deliveries for the term of the All Purpose Transport Contract;
  - (ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for the term of the All Purpose Transport Contract;
- (b) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred, and the All Purpose Transport Contract was not conditional upon any of them occurring,

(collectively, **All Purpose Transport Representations**).

#### **Particulars**

The representation in paragraph (a) was expressly made by the All Purpose Transport Announcement.

The representation in paragraph (b) was implied from the absence of qualification in the All Purpose Transport Announcement, and from the context of previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, which statements were not qualified or withdrawn.

116. Each of the All Purpose Transport Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares; and
- (b) made in trade or commerce.

117. By making the All Purpose Transport Representations, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively

- (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

117A. The All Purpose Transport Contract (which was dated 28 April 2017) provided inter alia that:

- (a) by clause 3, All Purpose Transport exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **All Purpose Transport Services Clause**);
- (b) by clause 4, that the term of the engagement comprised: (i) a Free Trial Period which expired on 1 June 2017, and (ii) an initial term of 36 months to start no later than 1 June 2017 unless All Purpose Transport gave notice in writing to GetSwift (at least 7 days before 1 April 2017) that it elected not to continue the contract beyond the Free Trial Period (the **All Purpose Transport Term Clause**).

118. The All Purpose Transport Representations and each of them were false and misleading, in that:

- (a) the All Purpose Transport Contract did not oblige All Purpose Transport to use the GetSwift Platform, but entitled All Purpose Transport to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it;
- (b) the All Purpose Transport Contract did not oblige All Purpose Transport to use only the GetSwift Platform for automated dispatching or tracking of delivery of goods during the term of the All Purpose Transport Contract;
- (c) All Purpose Transport was entitled to give notice that it elected to end the All Purpose Transport Contract on 1 April 2017 in accordance with the All Purpose Transport Term Clause.

### **Particulars**

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.
- ii. The terms of the All Purpose Transport Contract including, inter alia, the All Purpose Transport Services Clause and the All Purpose Transport Term Clause.

Further particulars may be provided after discovery.

119. By reason of the matters set out in paragraphs 114 to 118 above, by making the All Purpose Transport Representations and each of them, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(All Purpose Transport Misleading Conduct).**

## *II All Purpose Transport False Statements Conduct*

120. Further or alternatively, the All Purpose Transport Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the All Purpose Transport Representations.

### **Particulars**

The matters in paragraph 118 are referred to and relied on.

Further particulars may be provided after discovery.

121. The All Purpose Transport Announcement, at the time it was issued, was likely

to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

122. When GetSwift issued the All Purpose Transport Announcement, it ought reasonably to have known that the All Purpose Transport Announcement was false in a material particular or was materially misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out paragraph 118.

123. By reason of the matters set out in paragraphs 120 to 122, by issuing the All Purpose Transport Announcement, GetSwift contravened section 1041E of the Corporations Act (**All Purpose Transport False Statements Conduct**).

### *III All Purpose Transport Macdonald Misleading Conduct*

124. Further or alternatively, by approving for publication the All Purpose Transport Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the All Purpose Transport Representations (**All Purpose Transport Macdonald Representations**).

### **Particulars**

The particulars subjoined to paragraph 115 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the All Purpose Transport Announcement, given his role as the Managing Director and CEO of GetSwift. In addition, Mr Macdonald's signature appears on the All Purpose Transport Contract dated 28 April 2017.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

125. Each of the All Purpose Transport Macdonald Representations was:
- (a) made in relation to a financial product, namely GetSwift Shares;

- (b) made in trade or commerce.
126. By approving for publication the All Purpose Transport Announcement Mr Macdonald engaged in conduct:
- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
  - (b) in relation to a financial service within the meaning of:
    - (i) section 12BAB(1) of the ASIC Act; further or alternatively
    - (ii) section 766A(1)(a) of the Corporations Act;
  - (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.
127. The All Purpose Transport Macdonald Representations were false and misleading.

#### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 118.

Further particulars may be provided after discovery.

128. By reason of the matters set out in paragraphs 124 to 127, by approving for publication the All Purpose Transport Announcement, Mr Macdonald engaged in conduct in trade or commerce:
- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
  - (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
  - (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,



**(All Purpose Transport Macdonald Misleading Conduct).**

*IV All Purpose Transport Macdonald False Statements Conduct*

129. Further or alternatively, the All Purpose Transport Announcement was false in a material particular or was materially misleading, because it included or gave rise to the All Purpose Transport Macdonald Representations.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 118.

Further particulars may be provided after discovery.

130. The All Purpose Transport Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
131. When Mr Macdonald disseminated the All Purpose Transport Announcement, he ought reasonably to have known that the All Purpose Transport Announcement was false in a material particular or was materially misleading.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 118.

132. By reason of the matters set out in paragraphs 129 to 131, by disseminating the All Purpose Transport Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**All Purpose Transport Macdonald False Statements Conduct**).

*V All Purpose Transport Disclosure Contravention*

133. On a date not presently known to the Applicant, All Purpose Transport (or alternatively the parties by agreement) terminated the All Purpose Transport

Contract during the Free Trial Period, and advised GetSwift of that termination.

### Particulars

GetSwift response dated 9 February 2018 to ASX letter of 6 February 2018, paragraph 2.

134. By reason of the matters set out in paragraphs 5, 115 and 133, GetSwift was aware, for the purposes of ASX Listing Rule 19.12:

- (a) as at 8 May 2017 and at all material times thereafter until the end of the Claim Period, that the All Purpose Transport Contract contained a Free Trial Period in the All Purpose Transport Term Clause;
- (b) as at the date (not presently known to the Applicant) when All Purpose Transport advised GetSwift of (or agreed to) the termination of the All Purpose Transport Contract and at all material times thereafter until the end of the Claim Period, that All Purpose Transport ceased using the GetSwift Platform;
- (c) as at the date (not presently known to the Applicant) when All Purpose Transport advised GetSwift of (or agreed to) the termination of the All Purpose Transport Contract and at all material times thereafter until the end of the Claim Period, that no deliveries would take place, and GetSwift would earn no revenue, under the All Purpose Transport Contract;
- (d) alternatively to (b) and (c) above, on or around 17 July 2017 that All Purpose Transport had ceased engaging with GetSwift, in the context of not having made any deliveries using the GetSwift Platform,

(individually, collectively, or in any combination, **All Purpose Transport Information**).

### Particulars

The Applicant refers to:

- i. GetSwift response dated 9 February 2018 to ASX letter of 6 February 2018, paragraph 2.

- ii. The definition of Free Trial Period in the All Purpose Transport Contract dated 28 April 2017 and the All Purpose Transport Term Clause.
- iii. Paragraphs 81 and 82 of the ASIC Statement of Claim.

Each of the items of the All Purpose Transport Information was information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and therefore was information of which it was aware within the meaning of ASX Listing Rule 19.12.

Further particulars may be provided after discovery and/or subpoenas of third parties.

135. Further or alternatively, by reason of the matters set out in paragraphs 9, 115 and 133, Mr Macdonald was aware, for the purposes of ASX Listing Rule 19.12, of the All Purpose Transport Information during the same times as GetSwift was aware of it.

### **Particulars**

Mr Macdonald's awareness of those matters is to be inferred from Mr Macdonald's position as Managing Director and CEO. In addition, Mr Macdonald's signature appears on the All Purpose Transport Contract dated 28 April 2017.

The Applicant repeats the particulars subjoined to paragraph 135 above.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

Further particulars may be provided after discovery.

136. The All Purpose Transport Information, and each individual item of the All Purpose Transport Information, was:
- (a) information that a reasonable person would expect to have a material effect on the price or value of GetSwift Shares;
  - (b) not generally available;
  - (c) information needed by an investor to make an informed assessment of the entity's financial performance and financial position.

137. By reason of the matters alleged in paragraphs 5 and 122, GetSwift was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to notify the ASX immediately of the All Purpose Transport Information on and from the time when it became aware of it.
138. Notwithstanding the matters alleged in paragraphs 136 and 137, GetSwift did not notify the ASX of the All Purpose Transport Information at any time during the Claim Period.
139. By reason of the matters alleged in paragraphs 136 to 138, GetSwift contravened section 674(2) of the Corporations Act (**All Purpose Transport Disclosure Contravention**).
140. By reason of the matters set out in paragraphs 136 to 139, the All Purpose Transport Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant All Purpose Transport Information and was a continuing contravention that continued throughout the Claim Period.
141. Further Mr Macdonald was involved in the All Purpose Transport Disclosure Contravention, and thereby contravened section 674(2A) of the Corporations Act.

### Particulars

The Applicant refers to and repeats paragraph 28.

Mr Macdonald was the Managing Director and Chief Executive Officer of GetSwift at the time of the All Purpose Transport Disclosure Contravention.

The All Purpose Transport Information did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and was therefore information of which Mr Macdonald was aware within the meaning of ASX Listing Rule 19.12, having regard to:

- i. GetSwift's response dated 24 January 2018 to ASX Aware Query letter of 22 January 2018 and the definition of 90 Day Proof of Concept contained therein;
- ii. The ASX Announcement dated 2 February 2018 titled "market update" and the definition and characteristics of "enterprise clients" explained therein;

- iii. The 9 February GetSwift response to ASX Aware query letter of 6 February 2018 wherein Mr Macdonald's signature appears as author of the letter;
- iv. The All Purpose Transport Contract dated 28 April 2017 where Mr Macdonald's signature appears on the execution clause; and
- v. The All Purpose Transport Term Clause.

Further particulars will be provided after discovery.

## I. CITO CONTRAVENTIONS

### *I CITO Misleading Conduct*

142. On 21 May 2017, GetSwift published and lodged with the ASX an announcement entitled "*CITO Transport signs commercial agreement with GetSwift*" (**CITO Announcement**).

143. By the CITO Announcement, GetSwift represented that:

- (a) GetSwift and CITO had entered into a contract with a term of two or more years (**CITO Contract**) pursuant to which CITO was contractually obliged:
  - (i) to use the GetSwift Platform for its deliveries for the term of the CITO Contract;
  - (ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for the term of the CITO Contract
- (b) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred and the CITO Contract was not conditional upon any of them occurring,

(collectively, **CITO Representations**).

### **Particulars**

The representation in paragraph (a) was expressly made by the CITO Announcement.

The representation in paragraph (b) was implied from the absence of qualification in the CITO Announcement, and from the context being the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

144. Each of the CITO Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

145. By making the CITO Representations, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

145A. The CITO Contract (which was dated 4 April 2017) had characteristics *inter alia* that:

- (a) by clause 3, CITO exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **CITO Services Clause**); and
- (b) there was no specified term.

146. The CITO Representations and each of them were false and misleading, in that:

- (a) the CITO Contract did not oblige CITO to use the GetSwift Platform, but entitled CITO to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it;
- (b) the CITO Contract did not oblige CITO to use only the GetSwift Platform

for automated dispatching or tracking of delivery of goods during the term of the CITO Contract;

- (c) the CITO Contract contained a Free Trial Period of at least two months' duration under which GetSwift would earn no revenue; and
- (d) the CITO Contract was not for a period of two or more years but had no fixed term at all.

### **Particulars**

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.
- ii. An email from info@getswift.com to Kosta Metaxiotis of Phillip Morris International dated 8 May 2017 granting a further 30 day Free Trial Period.
- iii. An email from Mr Macdonald to Kosta Metaxiotis dated 9 May 2017 and granting a further 30 day Free Trial Period.
- iv. The CITO Contract dated 4 April 2017 where the section described as "term" is struck through and initialled.
- v. An email from Mr Macdonald to Kosta Metaxiotis dated 15 May 2017 attaching a copy of the counter signed CITO Contract, after the section described as "term" had been struck through.
- vi. The terms of the CITO Contract including, inter alia, the CITO Services Clause.

Further particulars may be provided after discovery.

147. By reason of the matters set out in paragraphs 142 to 146 above, by making the CITO Representations and each of them, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading

or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively

- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(CITO Misleading Conduct).**

## *II CITO False Statements Conduct*

148. Further or alternatively, the CITO Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the CITO Representations.

### **Particulars**

The matters in paragraph 146 are referred to and relied on.

Further particulars may be provided after discovery.

149. The CITO Announcement, at the time it was made, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
150. When GetSwift issued the CITO Announcement, it ought reasonably to have known that the CITO Announcement was false in a material particular or was materially misleading.

### **Particulars**

The matters in paragraph 146 are referred to and relied on.

151. By reason of the matters set out in paragraphs 148 to 150, by issuing the CITO Announcement, GetSwift contravened section 1041E of the Corporations Act **(CITO False Statements Conduct).**

## *III CITO Macdonald Misleading Conduct*



152. Further or alternatively, by approving for publication the CITO Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the CITO Representations (**CITO Macdonald Representations**).

#### **Particulars**

The particulars to paragraph 143 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the CITO Announcement, given his role as the Managing Director and CEO of GetSwift. In addition, Mr Macdonald's signature appears on the CITO Transport Contract.

The Applicant refers to the Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

153. Each of the CITO Macdonald Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

154. By approving for publication the CITO Announcement, Mr Macdonald engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

155. The CITO Macdonald Representations and each of them were false and misleading.

#### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 146.

Further particulars may be provided after discovery.

156. By reason of the matters set out in paragraphs 152 to 154, by approving for publication the CITO Announcement, Mr Macdonald engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(CITO Macdonald Misleading Conduct).**

#### *IV CITO Macdonald False Statements Conduct*

157. Further or alternatively, the CITO Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the CITO Macdonald Representations.

#### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 146.

Further particulars may be provided after discovery.

158. The CITO Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

159. When Mr Macdonald disseminated the CITO Announcement, he ought reasonably to have known that the CITO Announcement was false in a material

particular or was materially misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 146.

160. By reason of the matters set out in paragraphs 157 to 159, by disseminating the CITO Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**CITO Macdonald False Statements Conduct**).

#### *V CITO Disclosure Contravention*

161. On a date not presently known to the Applicant, CITO (or alternatively the parties by agreement) terminated the CITO Contract during the Free Trial Period, and advised GetSwift of that termination.

### **Particulars**

GetSwift response dated 9 February 2018 to ASX letter of 6 February 2018, paragraph 2.

162. Further or alternatively, by reason of the matters set out in paragraphs 5, 143 and 161, GetSwift was aware, for the purposes of ASX Listing Rule 19.12:
- (a) as at 21 May 2017 and at all material times thereafter until the end of the Claim Period, that the CITO Contract contained a Free Trial Period of at least two months' duration;
  - (b) as at the date (not presently known to the Applicant) when CITO advised GetSwift of (or agreed to) the termination of the CITO Contract and at all material times thereafter until the end of the Claim Period, that CITO (or alternatively the parties by agreement) had terminated the CITO Contract;
  - (c) as at the date (not presently known to the Applicant) when CITO advised GetSwift of (or agreed to) the termination of the CITO Contract and at all material times thereafter until the end of the Claim Period, that no deliveries

would take place, and GetSwift would earn no revenue, under the CITO Contract; and

- (d) as at 4 April 2017, the CITO Contract contained no fixed term, (individually, collectively, or in any combination, **CITO Information**).

### Particulars

The Applicant refers:

- i. To GetSwift response dated 9 February 2018 to ASX letter of 6 February 2018, paragraph 2.
- ii. The CITO Contract dated 4 April 2017 where the section described as “term” is struck through and initialled.
- iii. An email from Mr Macdonald to Kosta Metaxiotis dated 15 May 2017 attaching a copy of the countersigned CITO Contract, after the section described as “term” had been struck through.

Each of the items of the CITO Information was information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and therefore was information of which it was aware within the meaning of ASX Listing Rule 19.12.

Further particulars may be provided after discovery.

163. Further or alternatively, by reason of the matters set out in paragraphs 9, 143 and 161, Mr Macdonald was aware, for the purposes of ASX Listing Rule 19.12, of the CITO Information during the same times as GetSwift was aware of it.

### Particulars

Mr Macdonald’s awareness of those matters is to be inferred from the matters set out in the particulars to paragraph 162. In addition, Mr Macdonald’s signature appears on the CITO Transport Contract.

Further particulars may be provided after discovery.

164. The CITO Information, and each item of the CITO Information, was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of GetSwift Shares;
- (b) not generally available;

- (c) information needed by an investor to make an informed assessment of the entity's financial performance and financial position.
165. By reason of the matters alleged in paragraphs 5 and 150, GetSwift was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to notify the ASX immediately of the CITO Information on and from the time when it became aware of it.
166. Notwithstanding the matters alleged in paragraphs 164 and 165, GetSwift did not notify the ASX of the CITO Information at any time during the Claim Period.
167. By reason of the matters alleged in paragraphs 164 to 166, GetSwift contravened section 674(2) of the Corporations Act (**CITO Disclosure Contravention**).
168. By reason of the matters set out in paragraphs 164 and 167, the CITO Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant CITO Information and was a continuing contravention that continued throughout the Claim Period.
169. Further Mr Macdonald was involved in the CITO Disclosure Contravention, and thereby contravened section 674(2A) of the Corporations Act.

### **Particulars**

Mr Macdonald was the Managing Director and Chief Executive Officer of GetSwift at the time of the CITO Disclosure Contravention.

The CITO Information was information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and was therefore information of which GetSwift was aware within the meaning of ASX Listing Rule 19.12, having regard to:

- i. GetSwift's response dated 24 January 2018 to ASX Aware Query letter of 22 January 2018 and the definition of 90 Day Proof of Concept contained therein;
- ii. The ASX Announcement dated 2 February 2018 titled "market update" and the definition and characteristics of "enterprise clients" explained therein;

- iii. The 9 February GetSwift response to ASX Aware query letter of 6 February 2018 wherein Mr Macdonald's signature appears as author of the letter; and
- iv. The CITO Transport Contract, which bears Mr Macdonald's signature.

Further particulars will be provided after discovery.

## J. HUNGRY HARVEST CONTRAVENTIONS

### *I Hungry Harvest Misleading Conduct*

170. On 1 June 2017, GetSwift published and lodged with the ASX an announcement entitled "*Hungry Harvest and GetSwift sign exclusive partnership*" (**Hungry Harvest Announcement**).

171. By the Hungry Harvest Announcement, GetSwift represented that:

- (a) GetSwift and Hungry Harvest had entered into a contract with a term of two or more years (**Hungry Harvest Contract**) pursuant to which Hungry Harvest was contractually obliged:
  - (i) to use the GetSwift Platform for its deliveries for the term of the Hungry Harvest Contract;
  - (ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for the term of the Hungry Harvest Contract;
- (b) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred, and the Hungry Harvest Contract was not conditional upon any of them occurring,

(collectively, **Hungry Harvest Representations**).

### **Particulars**

The representation in paragraph (a) was expressly made by the Hungry Harvest Announcement.

The representation in paragraph (b) was implied from the absence of qualification in the Hungry Harvest Announcement, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

172. Each of the Hungry Harvest Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

173. By making the Hungry Harvest Representations, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

173A. The Hungry Harvest Contract (which was dated 1 May 2017) provided inter alia that:

- (a) by clause 3, Hungry Harvest exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **Hungry Harvest Services Clause**);
- (b) by clause 4, that the term of the engagement comprised: (i) a Free Trial Period which expired on 1 July 2017, and (ii) an Initial Term of 36 months to start no later than 1 July 2017 unless Hungry Harvest gave notice in writing to GetSwift at least 7 days before 1 April 2017 that it elected not to continue the contract beyond the Free Trial Period (the **Hungry Harvest Term Clause**).

174. The Hungry Harvest Representations and each of them were false and

misleading, in that:

- (a) the Hungry Harvest Contract did not oblige Hungry Harvest to use the GetSwift Platform, but entitled Hungry Harvest to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it;
- (b) the Hungry Harvest Contract did not oblige Hungry Harvest to use only the GetSwift Platform for automated dispatching or tracking of delivery of goods during the term of the Hungry Harvest Contract;
- (c) Hungry Harvest was entitled to give notice that it elected to end the Hungry Harvest Contract on 1 July 2017 in accordance with the Hungry Harvest Term Clause.

### **Particulars**

The Applicant relies on statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.

The terms of the Hungry Harvest Contract including, inter alia, the Hungry Harvest Services Clause and the Hungry Harvest Term Clause.

Further particulars may be provided after discovery.

175. By reason of the matters set out in paragraphs 170 to 174 above, by making the Hungry Harvest Representations and each of them, GetSwift engaged in conduct in trade or commerce:
- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
  - (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
  - (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,



**(Hungry Harvest Misleading Conduct).**

*II Hungry Harvest False Statements Conduct*

176. Further or alternatively, the Hungry Harvest Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the Hungry Harvest Representations.

**Particulars**

The matters in paragraph 174 are referred to and relied on.

Further particulars may be provided after discovery.

177. The Hungry Harvest Announcement, at the time it was made, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

178. When GetSwift issued the Hungry Harvest Announcement, it ought reasonably to have known that the Hungry Harvest Announcement was false in a material particular or was materially misleading.

**Particulars**

The matters in paragraph 174 are referred to and relied on.

179. By reason of the matters set out in paragraphs 176 to 178, by issuing the Hungry Harvest Announcement, GetSwift contravened section 1041E of the Corporations Act (**Hungry Harvest False Statements Conduct**).

*III Hungry Harvest Macdonald Misleading Conduct*

180. Further or alternatively, by approving for publication the Hungry Harvest Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the Hungry Harvest Representations (**Hungry Harvest Macdonald Representations**).

### Particulars

The particulars subjoined to paragraph 171 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the Hungry Harvest Announcement, given his role as the Managing Director and CEO of GetSwift.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

181. Each of the Hungry Harvest Macdonald Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

182. By approving for publication the Hungry Harvest Announcement, Mr Macdonald engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

183. The Hungry Harvest Macdonald Representations and each of them were false and misleading.

### Particulars

The Applicant refers to and repeats the matters set out in paragraph 174.

Further particulars may be provided after discovery.

184. By reason of the matters set out in paragraphs 180 to 183, by approving for publication the Hungry Harvest Announcement, Mr Macdonald engaged in

conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Hungry Harvest Macdonald Misleading Conduct).**

*IV Hungry Harvest Macdonald False Statements Conduct*

185. Further or alternatively, the Hungry Harvest Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the Hungry Harvest Macdonald Representations.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 174.

Further particulars may be provided after discovery.

186. The Hungry Harvest Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

187. When Mr Macdonald disseminated the Hungry Harvest Announcement, he ought reasonably to have known that the Hungry Harvest Announcement was false in a material particular or was materially misleading.

## Particulars

The Applicant refers to and repeats the matters set out in paragraph 174.

188. By reason of the matters set out in paragraphs 185 and 187, by disseminating the Hungry Harvest Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**Hungry Harvest Macdonald False Statements Conduct**).

## K. FRF COURIERS CONTRAVENTIONS

### *I FRF Couriers Misleading Conduct*

189. On 30 June 2017, GetSwift published and lodged with the ASX an announcement entitled "*FRF Couriers sign commercial agreement with GetSwift*" (**FRF Couriers Announcement**).

190. By the FRF Couriers Announcement, GetSwift represented that:

- (a) GetSwift and FRF Couriers had entered into a contract with a term of two or more years (**FRF Couriers Contract**) pursuant to which FRF Couriers was contractually obliged to use the GetSwift Platform for its deliveries for the term of the FRF Couriers Contract;
- (b) any proof of concept period, trial period, trial phase, limited roll-out or free trial period had already occurred and the FRF Couriers Contract was not conditional upon any of them occurring,

(Collectively, the **FRF Couriers Representations**).

## Particulars

The representation in paragraph (a) was expressly made by the FRF Couriers Announcement. The representation in paragraph (b) was implied from the absence of qualification in the FRF Couriers Announcement, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7

December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

191. The FRF Couriers Representations were:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

192. By making the FRF Couriers Representations, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

192A. The FRF Couriers Contract (which was dated 2 November 2016) provided inter alia that:

- (a) by clause 3 that FRF Couriers exclusively engaged GetSwift to provide use of the GetSwift platform and related consultancy advice (the **FRF Couriers Services Clause**);
- (b) by clause 4 that the term of the engagement comprised: (i) a Free Trial Period which expired on 15 January 2017, and (ii) an Initial Term of 36 months to start no later than 15 January 2017 unless FRF Couriers gave notice in writing to GetSwift at least 7 days before 15 January 2017 that it elected not to continue the contract beyond the Free Trial Period (the **FRF Couriers Term Clause**).

193. The FRF Couriers Representations were false and misleading, in that:

- (a) the FRF Couriers Contract did not oblige FRF Couriers to use the GetSwift Platform, but entitled FRF Couriers to use the GetSwift Platform to the

extent it chose to do so, but without any obligation to use it;

- (b) FRF Couriers was entitled to give notice that it elected to end the FRF Couriers Contract on 15 January 2017 in accordance with the FRF Couriers Term Clause;
- (c) If FRF Couriers chose not to use the GetSwift Platform (as it was not obliged to do) then there was no obligation to pay GetSwift.

### **Particulars**

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.
- ii. An email from Mr Macdonald to Brett Kennely, Business Development Manager at FRF Couriers dated 15 May 2017 at 2:30pm where the FRF Couriers Contract was described as a "trial".
- iii. Addendum No.1 to the FRF Couriers Contract.
- iv. The terms of the FRF Couriers Contract including, inter alia, the Services Clause and the Term Clause.

Further particulars may be provided after discovery.

194. By reason of the matters set out in paragraphs 189 to 193 above, by making the FRF Couriers Representations, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(FRF Couriers Misleading Conduct).**

*II FRF Couriers False Statements Conduct*

195. Further or alternatively, the FRF Couriers Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the FRF Couriers Representations.

**Particulars**

The matters in paragraph 193 are referred to and relied on.

Further particulars may be provided after discovery.

196. The FRF Couriers Announcement, at the time it was made, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

197. When GetSwift issued the FRF Couriers Announcement, it ought reasonably to have known that the FRF Couriers Announcement was false in a material particular or was materially misleading.

**Particulars**

The matters in paragraph 193 are referred to and relied on.

198. By reason of the matters set out in paragraphs 195 to 197, by issuing the FRF Couriers Announcement, GetSwift contravened section 1041E of the Corporations Act (**FRF Couriers False Statements Conduct**).

*III FRF Couriers Macdonald Misleading Conduct*

199. Further or alternatively, by approving for publication the FRF Couriers Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the FRF Couriers Representations (**FRF Couriers Macdonald Representations**).

**Particulars**

The particulars subjoined to paragraph 190 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the FRF Couriers Announcement, given his role as the Managing Director and CEO of GetSwift.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

200. The FRF Couriers Macdonald Representations were:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

201. By approving for publication the FRF Couriers Announcement, Mr Macdonald engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

202. The FRF Couriers Macdonald Representations were false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 193.

Further particulars may be provided after discovery.

203. By reason of the matters set out in paragraphs 199 to 202, by approving for publication the FRF Couriers Announcement, Mr Macdonald engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely



to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively

- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(FRF Couriers Macdonald Misleading Conduct).**

#### *IV FRF Couriers Macdonald False Statements Conduct*

204. Further or alternatively, the FRF Couriers Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the FRF Couriers Macdonald Representations.

#### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph.

Further particulars may be provided after discovery.

205. The FRF Couriers Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

206. When Mr Macdonald disseminated the FRF Couriers Announcement, he ought reasonably to have known that the FRF Couriers Announcement was false in a material particular or was materially misleading.

#### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 193.

207. By reason of the matters set out in paragraphs 204 to 206, by disseminating the

FRF Couriers Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**FRF Couriers Macdonald False Statements Conduct**).

## L. TRANCHE 1 CLEANSING NOTICE CONTRAVENTIONS

### *I Tranche 1 Cleansing Notice Misleading Conduct*

208. On 4 July 2017 GetSwift published and lodged with the ASX an announcement entitled “*Tranche 1 Placement Completed – Appendix 3B and Cleansing Notice*” (**Tranche 1 Cleansing Notice**).

209. By the Tranche 1 Cleansing Notice, GetSwift represented that there was no information concerning GetSwift that a reasonable person would expect to have a material effect on the price or value of GetSwift Shares which GetSwift had not disclosed to the ASX prior to releasing the Tranche 1 Cleansing Notice (**Tranche 1 Cleansing Notice Representation**).

### Particulars

This was implied from statements in the Tranche 1 Cleansing Notice that it was a notice under section 708A(5) of the Corporations Act and that GetSwift had complied with section 674 of the Corporations Act as at the date of the notice.

210. The Tranche 1 Cleansing Notice Representation was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

211. By making the Tranche 1 Cleansing Notice Representation, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;

- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

212. The Tranche 1 Cleansing Notice Representation was false and misleading.

### Particulars

The Applicant refers to:

- i. The GetSwift response of 24 January 2018 to ASX Aware Query letter of 22 January 2018, paragraphs A.4,A.5,B.3 and B.5;
- ii. The definition of “90 Day Proof of Concept” contained in the GetSwift response of 24 January 2018 to ASX Query letter of 22 January 2018;
- iii. The intermittent and scalable nature of GetSwift contracts with corresponding impacts on revenue described in the GetSwift ASX Announcement dated 2 February 2018; and
- iv. The Fruit Box Information, the All Purpose Transport Information and the CITO Information, the Fruit Box Projection Information and the CBA Information.

Further particulars may be provided after discovery.

213. By reason of the matters set out in paragraphs 208 to 212, by making the Tranche 1 Cleansing Notice Representation, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Tranche 1 Cleansing Notice Misleading Conduct).**

## *II Tranche 1 Cleansing Notice False Statements Conduct*

214. Further or alternatively, the Tranche 1 Cleansing Notice Representation was false in a material particular or was materially misleading.

### **Particulars**

The Applicant refers to and repeats the particulars to paragraph 212.

Further particulars may be provided after discovery.

215. The Tranche 1 Cleansing Notice Representation, at the time it was made, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

216. When GetSwift made the Tranche 1 Cleansing Notice Representation, it ought reasonably to have known that the Tranche 1 Cleansing Notice Representation was false in a material particular or was materially misleading.

### **Particulars**

The Applicant refers to and repeats the particulars to paragraph 212.

217. By reason of the matters set out in paragraphs 214 to 216, by making the Tranche 1 Cleansing Notice Representation, GetSwift contravened section 1041E of the Corporations Act (**Tranche 1 Cleansing Notice False Statements Conduct**).

## **M. TAKEAWAY.COM CONTRAVENTIONS**

### *I Takeaway.com Misleading Conduct*

218. On 25 July 2017, GetSwift published and lodged with the ASX an announcement entitled “*GetSwift expands into Asia with Takeaway.com*” (**Takeaway.com Announcement**).

219. By the Takeaway.com Announcement, GetSwift represented that:

(a) GetSwift and Vietnammm.com, a subsidiary of Takeaway.com, had

entered into a contract with a term of two years or more (**Takeaway.com Contract**) pursuant to which Vietnammm.com was contractually obliged:

- (i) to use the GetSwift Platform for its deliveries for the term of the Takeaway.com Contract;
  - (ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for the term of the Takeaway.com Contract;
- (b) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred and the Takeaway.com Contract was not conditional upon any of them recurring,

(collectively, **Takeaway.com Representations**).

#### **Particulars**

The representation in paragraph (a) was expressly made by the Takeaway.com Announcement.

The representation in paragraph (b) was implied from the absence of qualification in the Takeaway.Com Announcement, and from the context of the previous statements by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

220. Each of the Takeaway.com Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

221. By making the Takeaway.com Representations, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;

- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

221A. The Takeaway.com Contract (which was dated 22 June 2017) provided inter alia that:

- (a) by clause 3, that Vietnammm.com exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **Takeaway.com Services Clause**);
- (b) by clause 4, that the term of the engagement comprised: (i) a Free Trial Period which expired on 1 August 2017, and (ii) an Initial Term of 36 months to start no later than 1 August 2017 unless Takeaway.com (via its subsidiary Vietnammm.com) gave notice in writing to GetSwift at least 7 days before 1 August 2017 that it elected not to continue the contract beyond the Free Trial Period (the **Takeaway.com Term Clause**).

222. The Takeaway.com Representations and each of them were false and misleading, in that:

- (a) the Takeaway.com Contract did not oblige Vietnammm.com to use the GetSwift Platform, but entitled Vietnammm.com to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it;
- (b) the Takeaway.com Contract did not oblige Vietnammm.com to use only the GetSwift Platform for automated dispatching or tracking of delivery of goods during the term of the Vietnammm.com Contract;
- (c) Takeaway.com (via its subsidiary Vietnammm.com) was entitled to give notice that it elected to end the Takeaway.com Contract on 1 August 2017 in accordance with the Takeaway.com Term Clause.

### Particulars

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.

- ii. The terms of the Takeaway.com Contract including, inter alia, the Takeaway.com Services Clause and the Takeaway.com Term Clause.

Further particulars may be provided after discovery.

223. By reason of the matters set out in paragraphs 218 to 222 above, by making the Takeaway.com Representations and each of them, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Takeaway.com Misleading Conduct).**

## *II Takeaway.com False Statements Conduct*

224. Further or alternatively, the Takeaway.com Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the Takeaway.com Representations.

### **Particulars**

The matters in paragraph 222 are referred to and relied on.

Further particulars may be provided after discovery.

225. The Takeaway.com Announcement, at the time it was made, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

226. When GetSwift issued the Takeaway.com Announcement, it ought reasonably

to have known that the Takeaway.com Announcement was false in a material particular or was materially misleading.

### Particulars

The matters in paragraph 222 are referred to and relied on.

227. By reason of the matters set out in paragraphs 224 to 226, by issuing the Takeaway.com Announcement, GetSwift contravened section 1041E of the Corporations Act (**Takeaway.com False Statements Conduct**).

### *III Takeaway.com Macdonald Misleading Conduct*

228. Further or alternatively, by approving for publication the Takeaway.com Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the Takeaway.com Representations (**Takeaway.com Macdonald Representations**).

### Particulars

The particulars subjoined to paragraph 219 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the Takeaway.com Announcement, given his role as the Managing Director and CEO of GetSwift.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald at paragraph 9 above.

In addition, Mr Macdonald expressly refers to notifying the ASX of the Takeaway.com Contract in an email dated 24 July 2017 to Jochem Lisser, Managing Director, Takeaway.com (Asia) and his signature appears on the Vietnammm.com Contract.

229. Each of the Takeaway.com Macdonald Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

230. By approving for publication the Takeaway.com Announcement, Mr Macdonald



engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

231. The Takeaway.com Macdonald Representations and each of them were false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 222.

Further particulars may be provided after discovery.

232. By reason of the matters set out in paragraphs 228 to 231, by approving for publication the Takeaway.com Announcement, Mr Macdonald engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Takeaway.com Macdonald Misleading Conduct).**

*IV Takeaway.com Macdonald False Statements Conduct*

233. Further or alternatively, the Takeaway.com Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the Takeaway.com Macdonald Representations.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 212.

Further particulars may be provided after discovery.

234. The Takeaway.com Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

235. When Mr Macdonald disseminated the Takeaway.com Announcement, he ought reasonably to have known that the Takeaway.com Announcement was false in a material particular or was materially misleading.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 222.

236. By reason of the matters set out in paragraphs 233 to 235, by disseminating the Takeaway.com Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**Takeaway.com Macdonald False Statements Conduct**).

**N. TRANCHE 2 CLEANSING NOTICE CONTRAVENTIONS**

*I Tranche 2 Cleansing Notice Misleading Conduct*

237. On 16 August 2017 GetSwift published and lodged with the ASX an

announcement entitled “*Tranche 2 Placement Completed – Appendix 3B and Cleansing Notice*” (**Tranche 2 Cleansing Notice**).

238. By the Tranche 2 Cleansing Notice, GetSwift represented that there was no information concerning GetSwift that a reasonable person would expect to have a material effect on the price or value of GetSwift Shares which GetSwift had not disclosed to the ASX prior to releasing the Tranche 2 Cleansing Notice (**Tranche 2 Cleansing Notice Representation**).

#### **Particulars**

This was implied from statements in the Tranche 2 Cleansing Notice that it was a notice under s 708A(5) of the Corporations Act and that GetSwift had complied with s 674 of the Corporations Act as at the date of the notice.

239. The Tranche 2 Cleansing Notice Representation was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

240. By making the Tranche 2 Cleansing Notice Representation, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

241. The Tranche 2 Cleansing Notice Representation was false and misleading.

#### **Particulars**

The Applicant refers to:

- i. The GetSwift response of 24 January 2018 to ASX Aware Query letter of 22 January 2018, paragraphs A.4,A.5,B.3 and B.5;
- ii. The definition of “90 Day Proof of Concept” contained in the GetSwift response of 24 January 2018 to ASX Query letter of 22 January 2018;
- iii. The intermittent and scalable nature of GetSwift contracts with corresponding impacts on revenue described in the GetSwift ASX Announcement dated 2 February 2018; and
- iv. The Fruit Box Information, the All Purpose Transport Information and the CITO Information, Fruit Box Projection Information and the CBA Information.

Further particulars may be provided after discovery.

242. By reason of the matters set out in paragraphs 237 to 241, by making the Tranche 2 Cleansing Notice Representation, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Tranche 2 Cleansing Notice Misleading Conduct).**

## *II Tranche 2 Cleansing Notice False Statements Conduct*

243. Further or alternatively, the Tranche 2 Cleansing Notice Representation was false in a material particular or was materially misleading.

### Particulars

The Applicant refers to and repeats the particulars to paragraph 241.

Further particulars may be provided after discovery.

244. The Tranche 2 Cleansing Notice Representation, at the time it was made, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
245. When GetSwift made the Tranche 2 Cleansing Notice Representation, it ought reasonably to have known that the Tranche 2 Cleansing Notice Representation was false in a material particular or was materially misleading.

### Particulars

The Applicant refers to and repeats the particulars to paragraph 241.

246. By reason of the matters set out in paragraphs 243 to 245, by making the Tranche 2 Cleansing Notice Representation, GetSwift contravened section 1041E of the Corporations Act (**Tranche 2 Cleansing Notice False Statements Conduct**).

## O. FANTASTIC FURNITURE CONTRAVENING CONDUCT

### *I Fantastic Furniture Misleading Conduct*

247. On 23 August 2017, GetSwift published and lodged with the ASX an announcement entitled "*GetSwift signs Betta Home Living and Fantastic Furniture*" (**Fantastic Furniture Announcement**).
248. By the Fantastic Furniture Announcement, GetSwift represented that:
- (a) GetSwift and Fantastic Furniture had entered into a contract with a term of two years or more (**Fantastic Furniture Contract**) pursuant to which Fantastic Furniture was contractually obliged:

- (i) to use the GetSwift Platform for its deliveries for the term of the Fantastic Furniture Contract;
  - (ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for the term of the Fantastic Furniture Contract;
- (b) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred and the Fantastic Furniture Announcement was not conditional upon any of them occurring,

(collectively, **Fantastic Furniture Representations**).

### Particulars

The representation in paragraph (a) was expressly made by the Fantastic Furniture Announcement.

The representation in paragraph (b) was implied from the absence of qualification in the Fantastic Furniture Announcement, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

249. Each of the Fantastic Furniture Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

250. By making the Fantastic Furniture Representations, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning

of section 764A of the Corporations Act.

250A. The Fantastic Furniture Contract (which was dated 5 July 2017) provided inter alia that:

- (a) by clause 3, that Fantastic Furniture exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **Fantastic Furniture Services Clause**);
- (b) by clause 4, that the term of the engagement comprised: (i) a Free Trial Period which expired on 1 October 2017, and (ii) an Initial Term of 36 months to start no later than 1 October 2017 unless Fantastic Furniture gave notice in writing to GetSwift at least 7 days before 1 October 2017 that it elected not to continue the contract beyond the Free Trial Period (the **Fantastic Furniture Term Clause**).

251. The Fantastic Furniture Representations and each of them were false and misleading, in that:

- (a) the Fantastic Furniture Contract did not oblige Fantastic Furniture to use the GetSwift Platform, but entitled Fantastic Furniture to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it;
- (b) the Fantastic Furniture Contract did not oblige Fantastic Furniture to use only the GetSwift Platform for automated dispatching or tracking of delivery of goods during the term of the Fantastic Furniture Contract;
- (c) Fantastic Furniture was entitled to give notice that it elected to end the Fantastic Furniture Contract on 1 October 2017 in accordance with the Fantastic Furniture Term Clause.

### **Particulars**

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.

- ii. The terms of the Fantastic Furniture Contract including, inter alia, the Fantastic Furniture Services Clause and the Fantastic Furniture Term Clause.

Further particulars may be provided after discovery.

252. By reason of the matters set out in paragraphs 247 to 251 above, by making the Fantastic Furniture Representations and each of them, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Fantastic Furniture Misleading Conduct).**

## *II Fantastic Furniture False Statements Conduct*

253. Further or alternatively, the Fantastic Furniture Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the Fantastic Furniture Representations.

### **Particulars**

The matters in paragraph 251 are referred to and relied on.

Further particulars may be provided after discovery.

254. The Fantastic Furniture Announcement, at the time it was made, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.



255. When GetSwift issued the Fantastic Furniture Announcement, it ought reasonably to have known that the Fantastic Furniture Announcement was false in a material particular or was materially misleading.

### Particulars

The matters in paragraph 251 are referred to and relied on.

256. By reason of the matters set out in paragraphs 253 to 255, by issuing the Fantastic Furniture Announcement, GetSwift contravened section 1041E of the Corporations Act (**Fantastic Furniture False Statements Conduct**).

### *III Fantastic Furniture Macdonald Misleading Conduct*

257. Further or alternatively, by approving for publication the Fantastic Furniture Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the Fantastic Furniture Representations (**Fantastic Furniture Macdonald Representations**).

### Particulars

Matters in the particulars to paragraph 248 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the Fantastic Furniture Announcement, given his role as the Managing Director and CEO of GetSwift.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

258. Each of the Fantastic Furniture Macdonald Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

259. By approving for publication the Fantastic Furniture Announcement, Mr Macdonald engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

260. The Fantastic Furniture Macdonald Representations and each of them were false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 251.

Further particulars may be provided after discovery.

261. By reason of the matters set out in paragraphs 257 to 260, by approving for publication the Fantastic Furniture Announcement, Mr Macdonald engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Fantastic Furniture Macdonald Misleading Conduct).**

262. Further or alternatively, the Fantastic Furniture Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the Fantastic Furniture Macdonald Representations.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 251.

Further particulars may be provided after discovery.

263. The Fantastic Furniture Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

264. When Mr Macdonald disseminated the Fantastic Furniture Announcement, he ought reasonably to have known that the Fantastic Furniture Announcement was false in a material particular or was materially misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 251.

265. By reason of the matters set out in paragraphs 262 to 264, by disseminating the Fantastic Furniture Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**Fantastic Furniture Macdonald False Statements Conduct**).

### *V Fantastic Furniture Disclosure Contravention*

266. On a date not presently known to the Applicant, but believed to be about September 2017, Fantastic Furniture gave notice to GetSwift that it elected not to continue the Fantastic Furniture Contract beyond the Free Trial Period which expired on 1 October 2017, as it was entitled to do so pursuant to the Fantastic

Furniture Term Clause.

### Particulars

GetSwift response dated 9 February 2018 to ASX letter of 6 February 2018, paragraph 2.

267. By reason of the matters set out in paragraphs 5, 248 and 266, GetSwift was aware, for the purposes of ASX Listing Rule 19.12:

- (a) as at 5 July 2017 and at all material times thereafter until the end of the Claim Period, that the Fantastic Furniture Contract contained a Free Trial period of at least two months duration contained in the Fantastic Furniture Term Clause;
- (b) as at the date (not presently known to the Applicant) when Fantastic Furniture advised GetSwift of (or agreed to) the termination of the Fantastic Furniture Contract and at all material times thereafter until the end of the Claim Period, that Fantastic Furniture (or alternatively the parties by agreement) had terminated the Fantastic Furniture Contract and that it would not continue beyond 1 October 2017;
- (c) as at the date (not presently known to the Applicant) when Fantastic Furniture advised GetSwift of (or agreed to) the termination of the Fantastic Furniture Contract and at all material times thereafter until the end of the Claim Period, no deliveries would take place, and GetSwift would earn no revenue, under the Fantastic Furniture Contract;
- (d) as at the date (not presently known to the Applicant) when Fantastic Furniture stated to GetSwift that the signatory of Fantastic Furniture to the Fantastic Furniture Contract was not authorised to have signed that contract, that Fantastic Furniture had so stated,

(individually, collectively, or in any combination, **Fantastic Furniture Information**).

### Particulars

The Applicant refers to:

- i. GetSwift response dated 9 February 2018 to ASX letter of 6 February 2018, paragraph 2.
- ii. The Fantastic Furniture Term Clause.
- iii. Email from Joel Macdonald to Simon Nguyen dated 6 July 2017 wherein the “trial” is referred to.

Each of the items of the Fantastic Furniture Information was information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and therefore was information of which it was aware within the meaning of ASX Listing Rule 19.12.

Further, GetSwift’s awareness of those matters is to be inferred from the matters set out at paragraphs 251(a) to 251(c) above.

Further particulars may be provided after discovery.

268. Further or alternatively, by reason of the matters set out in paragraphs 9, 248 and 266, Mr Macdonald was aware, for the purposes of ASX Listing Rule 19.12, of the Fantastic Furniture Information during the same times as GetSwift was aware of it.

### **Particulars**

Mr Macdonald’s awareness of those matters is to be inferred from the matters set out at paragraph 9 and Mr Macdonald’s position as Managing Director and CEO. In addition, Mr Macdonald’s signature appears on the Fantastic Furniture Contract dated 5 July 2017.

Further particulars may be provided after discovery.

269. The Fantastic Furniture Information, and each item of the Fantastic Furniture Information, was:
- (a) information that a reasonable person would expect to have a material effect on the price or value of GetSwift Shares;
  - (b) not generally available;
  - (c) information needed by an investor to make an informed assessment of the entity’s financial performance and financial position.
270. By reason of the matters alleged in paragraphs 5 and 255, GetSwift was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act

to notify the ASX immediately of the Fantastic Furniture Information on and from the time when it became aware of it.

271. Notwithstanding the matters alleged in paragraphs 269 and 270, GetSwift did not notify the ASX of the Fantastic Furniture Information at any time during the Claim Period.
272. By reason of the matters alleged in paragraphs 269 and 271, GetSwift contravened section 674(2) of the Corporations Act (**Fantastic Furniture Disclosure Contravention**).
273. By reason of the matters set out in paragraphs 269 and 272, the Fantastic Furniture Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant Fantastic Furniture Information and was a continuing contravention that continued throughout the Claim Period.
274. Further Mr Macdonald was involved in the Fantastic Furniture Disclosure Contravention, and thereby contravened section 674(2A) of the Corporations Act.

### Particulars

The Applicant refers to and repeats paragraph 259.

Mr Macdonald was the Managing Director and Chief Executive Officer of GetSwift at the time of the Fantastic Furniture Disclosure Contravention.

The Fantastic Furniture Information was information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and was therefore information of which Mr Macdonald was aware within the meaning of ASX Listing Rule 19.12, having regard to:

- i. GetSwift's response dated 24 January 2018 to ASX Aware Query letter of 22 January 2018 and the definition of 90 Day Proof of Concept contained therein;
- ii. The ASX Announcement dated 2 February 2018 titled "market update" and the definition and characteristics of "enterprise clients" explained therein;
- iii. The 9 February GetSwift response to ASX Aware query letter of 6 February 2018 wherein Mr Macdonald's signature appears as author of the letter;

- iv. Mr Macdonald's signature appears on the Fantastic Furniture Contract dated 5 July 2017; and
- v. The Fantastic Furniture Term Clause.

Further particulars will be provided after discovery.

## **O1. BRS FRANCHISING CONTRAVENING CONDUCT**

### *I BRS Franchising Contravening Conduct*

274A. On 23 August 2017, GetSwift published and lodged with the ASX an announcement entitled "*GetSwift signs Betta Home Living and Fantastic Furniture*" (**BRS Franchising Announcement**).

274B. By the BRS Franchising Announcement, GetSwift represented that:

- (a) GetSwift and BRS Franchising had entered into a contract with a term of two years or more (**BRS Franchising Contract**) pursuant to which BRS Franchising was contractually obliged:
    - (i) to use the GetSwift Platform for its deliveries for the term of the BRS Franchising Contract;
    - (ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for the term of the BRS Franchising Contract;
  - (b) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred and the BRS Franchising Contract was not conditional upon any of them occurring,
- (collectively, **BRS Franchising Representations**).

### **Particulars**

The representation in paragraph (a) was expressly made by the BRS Franchising Announcement. The representation in paragraph (b) was implied from the absence of qualification in the BRS Franchising Announcement, and from the context of previous statements made by GetSwift in its prospectus which was released to the market on 7

December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

274C. Each of the BRS Franchising Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

274D. By making the BRS Franchising Representations, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

274E. The BRS Franchising Contract (which was dated 14 June 2017) provided inter alia that:

- (a) by clause 3 that the BRS Franchising Contract exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **BRS Franchising Services Clause**);
- (b) by clause 4 that the term of the engagement comprised: (i) a Trial Period which expired on or around 14 August 2017, and (ii) an Initial Term of 18 months duration, provided that BRS Franchising elected in writing to continue to the Initial Term (the **BRS Franchising Term Clause**).

274F. The BRS Franchising Representations and each of them were false and misleading, in that:

- (a) the BRS Franchising Contract did not oblige BRS Franchising to use the GetSwift Platform, but entitled BRS Franchising to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it;



- (b) the BRS Franchising Contract did not oblige BRS Franchising to use only the GetSwift Platform for automated dispatching or tracking of delivery of goods during the term of the BRS Franchising Contract;
- (c) BRS Franchising was entitled to not elect to continue to the Initial Term in accordance with the BRS Franchising Term Clause.

### **Particulars**

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.
- ii. The terms of the BRS Franchising Contract including, inter alia, the BRS Franchising Services Clause and the BRS Franchising Term Clause.

Further particulars may be provided after discovery.

274G. By reason of the matters set out in paragraphs 274A to 274F above, by making the BRS Franchising Representations and each of them, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL.

### **(BRS Franchising Misleading Conduct)**

*II BRS Franchising False Statements Conduct*

- 274H. Further or alternatively, the BRS Franchising Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the BRS Franchising Representations.

#### **Particulars**

The matters referred to in paragraph 274F are referred to and relied on.

Further particulars may be provided after discovery.

- 274I. The BRS Franchising Announcement, at the time it was made, was likely to induce persons in this jurisdiction to acquire shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
- 274J. When GetSwift issued the BRS Franchising Announcement, it ought reasonably to have known that the BRS Franchising Announcement was false in a material particular or was materially misleading.

#### **Particulars**

The matters in paragraph 274F are referred to and relied on.

- 274K. By reason of the matters set out in paragraphs 274H to 274J, by issuing the BRS Franchising Announcement, GetSwift contravened section 1041E of the Corporations Act (**BRS Franchising False Statements Conduct**).

### *III BRS Franchising Macdonald Misleading Conduct*

- 274L. Further or alternatively, by approving for publication the BRS Franchising Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the BRS Franchising Representations (**BRS Franchising Macdonald Representations**).

#### **Particulars**

Matters in the particulars to paragraph 274B are referred to and relied on.

It may be inferred that Mr Macdonald approved the publication of the BRS Franchising Announcement, given his role as the Managing Director and CEO of GetSwift.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

In addition, Mr Macdonald's signature appears on the BRS Franchising Contract dated 14 June 2017.

274M. Each of the BRS Franchising Macdonald Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

274N. By approving for publication the BRS Franchising Announcement, Mr Macdonald engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

274O. The BRS Franchising Macdonald Representations and each of them were false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 274F.

Further particulars may be provided after discovery.

274P. By reason of the matters set out in paragraphs 274L to 274O, by approving for publication the BRS Franchising Announcement, Mr Macdonald engaged in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(BRS Franchising Macdonald Misleading Conduct).**

*IV BRS Franchising Macdonald False Statements Conduct*

274Q. Further or alternatively, the BRS Franchising Announcement was a statement disseminated by Mr Macdonald that was false in a material particular, or was materially misleading because it included or gave rise to the BRS Franchising Macdonald Representations.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 274B.

Further particulars may be provided after discovery.

274R. The BRS Franchising Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

274S. When Mr Macdonald disseminated the BRS Franchising Announcement, he ought reasonably to have known that the BRS Franchising Announcement was false in a material particular or was materially misleading.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 274F.

274T. By reason of the matters set out in paragraphs 274Q to 274T, by disseminating the BRS Franchising Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**BRS Franchising Macdonald False Statements Conduct**).

## **P. BARE BURGER CONTRAVENTIONS**

### *I Bare Burger Misleading Conduct*

275. On 30 August 2017, GetSwift published and lodged with the ASX an announcement entitled "*Bareburger signs commercial agreement with GetSwift*" (**Bare Burger Announcement**).

276. By the Bare Burger Announcement, GetSwift represented that:

- (a) GetSwift and Bareburger.com (**Bare Burger**) had entered into a contract with a term of two years or more (**Bare Burger Contract**) pursuant to which Bare Burger was contractually obliged:
  - (i) to use the GetSwift Platform for its deliveries for the term of the Bare Burger Contract;
  - (ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for the term of the Bare Burger Contract
- (b) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred, and the Bare Burger Contract was not conditional upon any of them occurring,

(collectively, **Bare Burger Representations**).

### **Particulars**

The representation in paragraph (a) was expressly made by the Bare Burger Announcement.

The representation in paragraph (b) was implied from the absence of qualification in the Bare Burger Announcement, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

277. Each of the Bare Burger Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

278. By making the Bare Burger Representations, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

278A. The Bare Burger Contract (which was dated 22 June 2017) provided inter alia that:

- (a) by clause 3, that Bare Burger exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **Bare Burger Services Clause**);
- (b) by clause 4, that the term of the engagement comprised (i) a Free Trial Period which expired on 1 August 2017, and (ii) an Initial Term of 36 months to start no later than 1 August 2017 unless Bare Burger gave notice in writing to GetSwift at least 7 days before 1 August 2017 that it elected not to continue the contract beyond the Free Trial Period (the **Bare Burger Term Clause**).

279. The Bare Burger Representations and each of them were false and misleading,

in that:

- (a) the Bare Burger Contract did not oblige Bare Burger to use the GetSwift Platform, but entitled Bare Burger to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it;
- (b) the Bare Burger Contract did not oblige Bare Burger to use only the GetSwift Platform for automated dispatching or tracking of delivery of goods during the term of the Bare Burger Contract;
- (c) Bare Burger was entitled to give notice that it elected to end the Bare Burger Contract on 1 April 2017 in accordance with the Bare Burger Term Clause.

### **Particulars**

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.
- ii. The terms of the Bare Burger Contract including, inter alia, the Bare Burger Services Clause and the Bare Burger Term Clause.

Further particulars may be provided after discovery.

280. By reason of the matters set out in paragraphs 275 to 279 above, by making the Bare Burger Representations and each of them, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Bare Burger Misleading Conduct).**

*II Bare Burger False Statements Conduct*

281. Further or alternatively, the Bare Burger Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the Bare Burger Representations.

**Particulars**

The matters in paragraph 279 are referred to and relied on.

Further particulars may be provided after discovery.

282. The Bare Burger Announcement, at the time it was made, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

283. When GetSwift issued the Bare Burger Announcement, it ought reasonably to have known that the Bare Burger Announcement was false in a material particular or was materially misleading.

**Particulars**

The matters in paragraph 279 are referred to and relied on.

284. By reason of the matters set out in paragraphs 281 to 283, by issuing the Bare Burger Announcement, GetSwift contravened section 1041E of the Corporations Act (**Bare Burger False Statements Conduct**).

*III Bare Burger Macdonald Misleading Conduct*

285. Further or alternatively, by approving for publication the Bare Burger Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the Bare Burger Representations (**Bare Burger Macdonald Representations**).

**Particulars**



The particulars at to paragraph 276 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the Bare Burger Announcement, given his role as the Managing Director and CEO of GetSwift. In addition, Mr Macdonald's signature appears on the Bare Burger Contract.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

286. Each of the Bare Burger Macdonald Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

287. By approving for publication the Bare Burger Announcement, Mr Macdonald engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

288. The Bare Burger Macdonald Representations and each of them were false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 279.

Further particulars may be provided after discovery.

289. By reason of the matters set out in paragraphs 285 to 288, by approving for publication the Bare Burger Announcement, Mr Macdonald engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Bare Burger Macdonald Misleading Conduct).**

*IV Bare Burger Macdonald False Statements Conduct*

290. Further or alternatively, the Bare Burger Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the Bare Burger Macdonald Representations.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 279.

Further particulars may be provided after discovery.

291. The Bare Burger Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

292. When Mr Macdonald disseminated the Bare Burger Announcement, he ought reasonably to have known that the Bare Burger Announcement was false in a material particular or was materially misleading.

## Particulars

The Applicant refers to and repeats the matters set out in paragraph 279.

293. By reason of the matters set out in paragraphs 290 to 292, by disseminating the Bare Burger Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**Bare Burger Macdonald False Statements Conduct**).

## Q. N A WILLIAMS CONTRAVENTIONS

### *I N A Williams Misleading Conduct*

294. On 12 September 2017, GetSwift published and lodged with the ASX an announcement entitled "*GetSwift Partners with N A. Williams in 1bn+ Transaction Per Annum Opportunity in the Automotive Sector*" (**N A Williams Announcement**).

295. By the N A Williams Announcement, GetSwift represented that:

- (a) GetSwift and N A Williams had entered into a contract with a term of five years (**N A Williams Contract**) pursuant to which N A Williams and GetSwift:
  - (i) expected to transform delivery services across the automotive sector;
  - (ii) the fulfilment of which would take 15-19 months due to the project scope, size and complexity of the channel partners;
- (b) it had reasonable grounds:
  - (i) to project that the N A Williams Contract would significantly increase GetSwift's revenue by more than \$138,000,000 per year once fully captured;
  - (ii) for an estimate that the N A Williams Contract would potentially yield in excess of 1.15 billion transactions a year when fully implemented;

- (c) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred and the N A Williams Contract was not conditional upon any of them occurring,

(collectively, **N A Williams Representations**).

### Particulars

The representation in paragraph (a) was expressly made by the N A Williams Announcement.

The representation in paragraph (b) was in part implied from statements made in the N A Williams Announcement that “*signing the 5 year agreement is expected to significantly increase the company's reoccurring revenues by more than \$138,000,000 per year once fully captured*” and “*The Company estimate that this structure will potentially yield in excess of 1.15 Billion (1,150,000,000) transactions a year when fully implemented*” (**N A Williams Projection**) and in part implied from the absence of qualification in the N A Williams Announcement, and from the context of previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

The representation in paragraph (c) was implied from the absence of qualification in the N A Williams Announcement, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

The Applicant also relies on section 769C of the Corporations Act, section 12BB of the ASIC Act and section 4 of the ACL.

296. Each of the N A Williams Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares; and
- (b) made in trade or commerce.

297. By making the N A Williams Representations, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:

- (i) section 12BAB(1) of the ASIC Act; further or alternatively
- (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

297A. The NA Williams Contract (which was dated on or around 19 August 2017) provided inter alia that:

- (a) by clause 2, that GetSwift appointed N A Williams as its exclusive representative to provide sales and marketing services for the GetSwift Platform and related services to the Automotive Aftermarket in North America;
- (b) by clause 3, that GetSwift was to compensate N A Williams on all net sales resulting directly from N A Williams's sales efforts which were accepted by GetSwift in the territory for which payment by the customer was received;
- (c) by clause 5, that N A Williams was to promptly report to GetSwift all negotiations and purchase orders for acceptance by GetSwift;
- (d) by clause 13, that the contract had a three-year term;
- (e) by clause 14, that either party could terminate for any reason the N A Williams Contract by giving ninety (90) days written notice of such intention to the other party.

298. The N A Williams Representations and each of them were false and misleading, in that:

- (a) either party could terminate the N A Williams Contract for any reason by giving ninety (90) days written notice;
- (b) The NA Williams Contract was not for a term of five years but was for a three year period;
- (c) by reason of the matters referred to in (a) and (b) above, GetSwift did not have a reasonable basis to project that the N A Williams Contract would

yield in excess of 1.15 billion transactions a year when fully implemented;

- (d) by reason of the matters referred to in (a) and (b) above, GetSwift did not have a reasonable basis to project that the N A Williams Contract would increase GetSwift's annual revenue by \$138,000,000 or more once fully captured.

### **Particulars**

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.
- ii. The definition of Term in the N A Williams Contract.

Further particulars may be provided after discovery.

299. By reason of the matters set out in paragraphs 294 to 298 above, by making the N A Williams Representations and each of them, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(N A Williams Misleading Conduct).**

## *II N A Williams False Statements Conduct*

300. Further or alternatively, the N A Williams Announcement was a statement that

was false in a material particular or was materially misleading, because it included or gave rise to the N A Williams Representations.

#### **Particulars**

The matters in paragraph 298 are referred to and relied on.

Further particulars may be provided after discovery.

301. The N A Williams Announcement, at the time it was issued, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
302. When GetSwift issued the N A Williams Announcement, it ought reasonably to have known that the N A Williams Announcement was false in a material particular or was materially misleading.

#### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 298.

303. By reason of the matters set out in paragraphs 300 to 302, by issuing the N A Williams Announcement, GetSwift contravened section 1041E of the Corporations Act (**N A Williams False Statements Conduct**).

### *III N A Williams Macdonald Misleading Conduct*

304. Further or alternatively, by approving for publication the N A Williams Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the NA Williams Representations (the **NA Williams Macdonald Representation**).

#### **Particulars**

The particulars subjoined to paragraph 295 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the N A Williams Announcement, given his role as the Managing Director and CEO of GetSwift.

305. The N A Williams Macdonald Representation was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

306. By approving for publication the N A Williams Announcement, Mr Macdonald engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

307. The N A Williams Macdonald Representation was false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 299.

Further particulars may be provided after discovery.

308. By reason of the matters set out in paragraphs 304 to 307, by approving for publication the N A Williams Announcement, Mr Macdonald engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively



- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(N A Williams Macdonald Misleading Conduct).**

*IV N A Williams Macdonald False Statements Conduct*

309. Further or alternatively, the N A Williams Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the N A Williams Macdonald Representation.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 299.

Further particulars may be provided after discovery.

310. The N A Williams Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
311. When Mr Macdonald disseminated the N A Williams Announcement, he ought reasonably to have known that the N A Williams Announcement was false in a material particular or was materially misleading.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 299. In addition, Mr Macdonald's signature appears on the NA Williams Contract.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

312. By reason of the matters set out in paragraphs 309 to 311, by disseminating the N A Williams Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**N A Williams Macdonald False Statements Conduct**).

V *NA Williams Disclosure Contravention*

312A. As at 12 September 2017, and at all material times during the Claim Period, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, that:

- (a) N A Williams was a representative organisation for certain automobile companies and retailers in North America and it could not compel any of them to enter into any agreements, including any agreement with GetSwift;
- (b) N A Williams had no involvement in the logistics and delivery operations of any of its clients;
- (c) N A Williams did not know the logistics operations, if any, of any of its clients;
- (d) N A Williams did not know whether its clients would be interested in, or have any use for, the GetSwift Platform;
- (e) N A Williams had not told GetSwift the number of deliveries its clients made;
- (f) the N A Williams Projection was based on an estimate made by N A Williams together with GetSwift and that estimate was expressed at a high level of generality;
- (g) GetSwift did not apply a discount to the N A Williams Projection to take into account any barriers to market entry, potentially faced by N A Williams Clients;
- (h) the N A Williams Contract was for a term of three years;
- (i) as noted above, N A Williams could terminate the N A Williams Contract on ninety days notice;
- (j) in order for GetSwift to generate any revenue under the N A Williams Contract, GetSwift would be required to negotiate and enter into, separate contracts with each N A Williams Client;

- (k) Genuine Parts Company, the largest of the N A Williams Clients had evaluated the GetSwift Platform and decided not to adopt it in favour of another platform,

(Individually, collectively or in any combination, the **N A Williams Information**).

### **Particulars**

The Applicant relies on paragraph 187 of the ASIC Statement of Claim and the particulars subjoined to it.

Each of the items of the N A Williams Information was:

- (a) Information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties;
- (b) Therefore information of which GetSwift was aware within the meaning of ASX Listing Rule 19.12.

312B. Further, or alternatively, by reason of the matters set out in paragraphs 9 and 312A, Mr Macdonald was aware, for the purposes of ASX Listing Rule 19.12 of the N A Williams Information during the same time as GetSwift was aware of it.

### **Particulars**

Mr Macdonald's awareness of those matters is to be inferred from the matters set out in the particulars to paragraph 312A. In addition, Mr Macdonald's signature appears on the N A Williams Contract.

312C. The N A Williams Information, and each item of the N A Williams Information, was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of GetSwift shares;
- (b) not generally available;
- (c) information needed by an investor to make an informed assessment of the entity's financial performance and financial position.

312D. By reason of the matters alleged in paragraphs 5 and 312A, GetSwift was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the

Corporations Act to notify the ASX immediately of the N A Williams Information on and from the time when it became aware of it.

312E. Notwithstanding the matters alleged in paragraphs 312C and 312D, GetSwift did not notify the ASX of the N A Williams Information at any time during the Claim Period.

312F. By reason of the matters alleged in paragraphs 312A to 312E, GetSwift contravened section 674(2) of the Corporations Act (**N A Williams Disclosure Contravention**).

312G. By reason of the matters alleged in paragraphs 312A to 312F, the N A Williams Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant N A Williams Information and was a continuing contravention that continued throughout the Claim Period.

312H. Further, Mr Macdonald was involved in the N A Williams Disclosure Contravention and thereby contravened section 674(2A) of the Corporations Act.

### **Particulars**

Mr Macdonald was the Managing Director and Chief Executive Officer of GetSwift at the time of the N A Williams Disclosure Contravention.

The N A Williams Information was information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and was therefore information of which Mr Macdonald was aware within the meaning of ASX Listing Rule 19.12, having regard to the N A Williams Contract which bears Mr Macdonald's signature.

The Applicant relies on paragraph 187 of the ASIC Statement of Claim and the particulars subjoined to it. Further particulars will be provided following discovery and/or subpoenas of third parties.

## **R. JOHNNY ROCKETS CONTRAVENTIONS**

### *I Johnny Rockets Misleading Conduct*

313. On 25 October 2017, GetSwift published and lodged with the ASX an

announcement entitled “*GetSwift Signs Exclusive Partnership with Johnny Rockets*” (**Johnny Rockets Announcement**).

314. By the Johnny Rockets Announcement, GetSwift represented that:

- (a) GetSwift and Johnny Rockets had entered into a contract with a term of two years or more (**Johnny Rockets Contract**) pursuant to which Johnny Rockets was contractually obliged:
  - (i) to use the GetSwift Platform for its deliveries for the term of the Johnny Rockets Contract;
  - (ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for the term of the Johnny Rockets Contract;
- (b) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred and the Johnny Rockets Contract was not conditional upon any of them occurring,

(collectively, **Johnny Rockets Representations**).

#### **Particulars**

The representation in paragraph (a) was expressly made by the Johnny Rockets Announcement.

The representation in paragraph (b) was implied from the absence of qualification in the Johnny Rockets Announcement, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

315. Each of the Johnny Rockets Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

316. By making the Johnny Rockets Representations, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;

- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

316A. The Johnny Rockets Contract (which was dated 15 October 2017) provided inter alia that:

- (a) by clause 3, that Johnny Rockets exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **Johnny Rockets Service's Clause**);
- (b) by clause 4, that the term of engagement comprised: (i) a Limited Roll Out of which expired on 1 December 2017, alternatively 1 January 2018 and (ii) an Initial Term of 36 months to start no later than 1 December 2017, alternatively 1 January 2018, unless Johnny Rockets gave notice in writing to GetSwift at least 7 days before 1 December 2017, alternatively 1 January 2018, that it elected not to continue the contract beyond the Limited Roll Out (the **Johnny Rocket's Term Clause**).

317. The Johnny Rockets Representations and each of them were false and misleading, in that:

- (a) the Johnny Rockets Contract did not oblige Johnny Rockets to use the GetSwift Platform, but entitled Johnny Rockets to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it;
- (b) the Johnny Rockets Contract did not oblige Johnny Rockets to use only the GetSwift Platform for automated dispatching or tracking of delivery of goods during the term of the Johnny Rockets Contract;
- (c) Johnny Rockets was entitled to give notice that it elected to end the Johnny Rockets Contract on 1 December 2017, alternatively 1 January 2018 in accordance with the Johnny Rocket's Term Clause.

### Particulars

The Applicant relies on:

- i. Statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.
- ii. The terms of the Johnny Rockets Contract including, inter alia, the Johnny Rockets Service's Clause and the Johnny Rocket's Term Clause.

Further particulars may be provided after discovery.

318. By reason of the matters set out in paragraphs 313 to 317 above, by making the Johnny Rockets Representations and each of them, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Johnny Rockets Misleading Conduct).**

### *II Johnny Rockets False Statements Conduct*

319. Further or alternatively, the Johnny Rockets Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the Johnny Rockets Representations.

### Particulars

The matters in paragraph 317 are referred to and relied on.

Further particulars may be provided after discovery.

320. The Johnny Rockets Announcement, at the time it was made, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
321. When GetSwift issued the Johnny Rockets Announcement, it ought reasonably to have known that the Johnny Rockets Announcement was false in a material particular or was materially misleading.

### Particulars

The matters in paragraph 317 are referred to and relied on.

322. By reason of the matters set out in paragraphs 319 to 321, by issuing the Johnny Rockets Announcement, GetSwift contravened section 1041E of the Corporations Act (**Johnny Rockets False Statements Conduct**).

### *III Johnny Rockets Macdonald Misleading Conduct*

323. Further or alternatively, by approving for publication the Johnny Rockets Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the Johnny Rockets Representations (**Johnny Rockets Macdonald Representations**).

### Particulars

The particulars at to paragraph 314 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the Johnny Rockets Announcement, given his role as the Managing Director and CEO of GetSwift. In addition, Mr Macdonald's signature appears on the Johnny Rockets Contract.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

324. Each of the Johnny Rockets Macdonald Representations was:



- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

325. By approving for publication the Johnny Rockets Announcement, Mr Macdonald engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

326. The Johnny Rockets Macdonald Representations and each of them were false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 317.

Further particulars may be provided after discovery.

327. By reason of the matters set out in paragraphs 323 to 326, by approving for publication the Johnny Rockets Announcement, Mr Macdonald engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in

contravention of section 18 of the ACL,

**(Johnny Rockets Macdonald Misleading Conduct).**

*IV Johnny Rockets Macdonald False Statements Conduct*

328. Further or alternatively, the Johnny Rockets Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the Johnny Rockets Macdonald Representations.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 317.

Further particulars may be provided after discovery.

329. The Johnny Rockets Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

330. When Mr Macdonald disseminated the Johnny Rockets Announcement, he ought reasonably to have known that the Johnny Rockets Announcement was false in a material particular or was materially misleading.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 317.

331. By reason of the matters set out in paragraphs 328 to 330, by disseminating the Johnny Rockets Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**Johnny Rockets Macdonald False Statements Conduct**).

*V Johnny Rockets Disclosure Contravention*

331A. On 9 January 2018, and at all material times during the Claim Period, GetSwift was aware for the purposes of ASX Listing Rule 19.12 that Johnny Rockets had terminated the Johnny Rockets Contract (**Johnny Rockets Information**).

### **Particulars**

The Applicant relies on paragraph 211 of the ASIC Statement of Claim.

The Johnny Rockets Information was:

- (a) Information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties;
- (b) therefore information of which GetSwift was aware within the meaning of ASX Listing Rule 19.12.

Further particulars will be provided following discovery and/or subpoenas of third parties.

331B. Further or alternatively, by reason of the matters set out in paragraphs 9 and 331A, Mr Macdonald was aware, for the purposes of ASX Listing Rule 19.12, of the Johnny Rockets Information during the same time as GetSwift was aware of it.

### **Particulars**

Mr Macdonald's awareness of those matters is to be inferred from the matters set out in the particulars to paragraph 331A. In addition Mr Macdonald's signature appears on the Johnny Rockets Contract.

331C. The Johnny Rockets Information was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of GetSwift shares;
- (b) not generally available;
- (c) information needed by an investor to make an informed assessment of the entity's financial performance and financial position.

331D. By reason of the matters alleged in paragraphs 5 and 331A, GetSwift was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to notify the ASX immediately of the Johnny Rockets

Information on and from the time when it became aware of it.

331E. Notwithstanding the matters alleged in paragraphs 331C and 331D, GetSwift did not notify the ASX of the Johnny Rockets Information at any time during the Claim Period.

331F. By reason of the matters in paragraphs 331A to 331F, GetSwift contravened section 674(2) of the Corporations Act (**Johnny Rockets Disclosure Contravention**).

331G. By reason of the matters in paragraphs 331A and 331F, the Johnny Rockets Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant Johnny Rockets Information and was a continuing contravention that continued throughout the Claim Period.

331H. Further, Mr Macdonald was involved in the Johnny Rockets Disclosure Contravention and thereby contravened section 674(2A) of the Corporations Act.

### Particulars

Mr Macdonald was the Managing Director and Chief Executive Officer of GetSwift at the time of the Johnny Rockets Disclosure Contravention.

The Johnny Rockets Information was information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and was therefore information of which Mr Macdonald and GetSwift was aware within the meaning of ASX Listing Rule 19.12.

The Applicant relies on paragraph 211 of the ASIC Statement of Claim. Further particulars will be provided following discovery and/or subpoenas of third parties.

## S. OCTOBER APPENDIX 4C CONTRAVENTIONS

### *I October Appendix 4C Misleading Conduct*

332. On 31 October 2017, GetSwift published and lodged with the ASX an announcement entitled “*APPENDIX 4C & QUARTERLY REVIEW*” (**October**

**Appendix 4C Announcement).**

333. By the October Appendix 4C Announcement, GetSwift represented that when GetSwift thereafter made announcements to the market via documents lodged with the ASX to the effect that GetSwift had entered into a contract with a client:
- (a) the relevant contract would have benefits to GetSwift which are secure, quantifiable and measurable;
  - (b) GetSwift would have reasonable grounds for considering that that contract would have a material positive effect on the GetSwift business;
  - (c) any proof of concept period, or trial phase or limited roll-out had already occurred, and the relevant contract was not conditional upon any of them occurring,

**(October Appendix 4C Representations).****Particulars**

The representation in paragraph (a) was express, and the representation in paragraph (b) was implied from a fair reading of the October Appendix 4C Announcement and in part implied from the absence of qualification in the October Appendix 4C Announcement, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

The representation in paragraph (c) was implied from the absence of qualification in the relevant contracts, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

The Applicant also relies on section 769C of the Corporations Act, section 12BB of the ASIC Act and section 4 of the ACL.

334. The October Appendix 4C Representation was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

335. By making the October Appendix 4C Representation, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

336. The October Appendix 4C Representation was false and misleading, in that:

- (a) the client contracts that were announced by GetSwift prior to and following 31 October 2017 did not have benefits to GetSwift which were secure, quantifiable and measurable;
- (b) GetSwift did not have reasonable grounds for considering that those contracts and each of them would have a material positive effect on the GetSwift business;
- (c) GetSwift had not adopted and did not intend to adopt the policy set out in the April Appendix 4C Announcement.

### **Particulars**

The Applicant refers to:

- i. The GetSwift response of 24 January 2018 to ASX Aware Query letter of 22 January 2018, paragraphs A.4,A.5,B.3 and B.5;
- ii. The definition of “90 Day Proof of Concept” contained in the GetSwift response of 24 January 2018 to ASX Query letter of 22 January 2018;
- iii. The intermittent and scalable nature of GetSwift contracts with corresponding impacts on revenue described in the GetSwift ASX Announcement dated 2 February 2018; and

- iv. The Free Trial Period, Limited Roll Out and/or Project Plan, milestones or deliverables referred to in the contracts as set out above and below.

The Applicant also refers to and relies upon section 769C of the Corporations Act, section 12BB of the ASIC Act and section 4 of the ACL. Further particulars may be provided after discovery.

337. By reason of the matters set out in paragraphs 332 to 336, by making the October Appendix 4C Representation, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(October Appendix 4C Misleading Conduct).**

## *II October Appendix 4C False Statements Conduct*

338. Further or alternatively, the October Appendix 4C Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the October Appendix 4C Representation.

### **Particulars**

The matters in paragraph 336 are referred to and relied on.

Further particulars may be provided after discovery.

339. The October Appendix 4C Announcement, at the time it was made, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares

in GetSwift.

340. When GetSwift issued the October Appendix 4C Announcement, it ought reasonably to have known that the October Appendix 4C Announcement was false in a material particular or was materially misleading.

### Particulars

The matters in paragraph 336 are referred to and relied on.

341. By reason of the matters set out in paragraphs 338 to 340, by issuing the October Appendix 4C Announcement, GetSwift contravened section 1041E of the Corporations Act (**October Appendix 4C False Statements Conduct**).

### *III October Appendix 4C Macdonald Misleading Conduct*

342. Further or alternatively, by approving for publication October Appendix 4C Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the October Appendix 4C Representation (**October Appendix 4C Macdonald Representation**).

### Particulars

The particulars to paragraph 333 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the October Appendix 4C Announcement, given his role as the Managing Director and CEO of GetSwift.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald at paragraph 9 above.

343. The October Appendix 4C Macdonald Representation was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

344. By approving for publication the October Appendix 4C Announcement Mr Macdonald engaged in conduct:



- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

345. The October Appendix 4C Macdonald Representation was false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 336.

Further particulars may be provided after discovery.

346. By reason of the matters set out in paragraphs 342 to 345, by making the October Appendix 4C Macdonald Representation, Mr Macdonald engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(October Appendix 4C Macdonald Misleading Conduct).**

347. Further or alternatively, the October Appendix 4C Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the October Appendix 4C Representation.

### Particulars

The Applicant refers to and repeats the matters set out in paragraph 336.

Further particulars may be provided after discovery.

348. The October Appendix 4C Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

349. When Mr Macdonald disseminated the October Appendix 4C Macdonald Announcement, he ought reasonably to have known that the October Appendix 4C Announcement was false in a material particular or was materially misleading.

### Particulars

The Applicant refers to and repeats the matters set out in paragraph 336.

350. By reason of the matters set out in paragraphs 347 to 349, by disseminating the October Appendix 4C Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**October Appendix 4C Macdonald False Statements Conduct**).

## T. YUM! BRANDS CONTRAVENTIONS

### *I Yum! Brands Misleading Conduct*

351. On 1 December 2017, GetSwift published and lodged with the ASX an announcement entitled "*Yum! Brands and GetSwift Sign Multi Year Partnership*" (**Yum! Brands Announcement**).

352. By the Yum! Brands Announcement, GetSwift represented that:

- (a) it had reasonable grounds to project that:
  - (i) under the contract it had entered into with Yum! Brands (which included Yum! and certain other affiliated brands) with a term of two or more years (**Yum! Brands Contract**), more than 250,000,000 deliveries annually would be made by Yum! Brands using the GetSwift Platform;
  - (ii) initial deployments will commence in the Middle East, and Asia Pacific, with more than 20 countries slated to be rolled out in the first and second phase, followed by a broader deployment thereafter;
- (b) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred and the Yum! Brands Contract was not conditional upon any of them occurring,

**(Yum! Brands Representations).**

#### **Particulars**

The representation in paragraph (a) was partly express and partly implied from statements made in the Yum! Brands Announcement that GetSwift “*had signed a global multiyear partnership with Yum! Brands*” and “*The Company estimates that more than 250,000,000 deliveries annually will benefit from its platform as a result of this partnership after implementation*” (the **Delivery Threshold**) and in part implied from the absence of qualification in the Yum! Brands Contract, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, which statements were not qualified or withdrawn.

The representation in paragraph (b) was implied from the absence of qualification in the Yum! Brands Announcement, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

The Applicant also refers to and relies upon section 769C of the Corporations Act, section 12BB of the ASIC Act and section 4 of the ACL.

353. The Yum! Brands Representation was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

354. By making the Yum! Brands Representation, GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

354A. The Yum! Brands Contract (which was dated 28 November 2017) provided inter alia that:

- (a) by clause 2.1, that GetSwift would deliver to Yum! certain Services and Deliverables described in Statements of Work;
- (b) by clause 2.2(a) Deliverables would meet certain deadlines, specifications and acceptance criteria set forth in each Statement of Work;
- (c) by clause 3.2, each Statement of Work was expected to contain, inter alia, a summary and detailed description of the Services and Deliverables to be provided by GetSwift, applicable service standards and time for completion;
- (d) by clause 1.2, Deliverables were defined to mean the specific product or products to be provided by GetSwift as a result of or in connection with Services under a Statement of Work, including software;
- (e) by clause 1.5, Statement of Work was defined to mean the specific agreement from time to time by which Yum! as a customer may engage

GetSwift to perform Services and provide Deliverables.

355. The Yum! Brands Representation was false and misleading, in that:

- (a) GetSwift did not have a reasonable basis to project that, under the Yum! Brands Contract, more than 250,000,000 deliveries annually would be made by Yum! Brands using the GetSwift Platform;
- (b) the Delivery Threshold referred to in the particulars subjoined to paragraph 352 above depended upon the execution of Statements of Work pursuant to the Yum! Brands Contract;
- (c) no Statements of Work were ever executed between GetSwift and Yum!.

### **Particulars**

The Applicant relies on statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.

The Yum! Brands Contract dated 28 November 2017 and the definition of Deliverables contained therein as “the specific product or products to be provided by [GetSwift] as a result of or in connection with Services under a SOW, [Statement of Work] including software”.

An email from the Respondents’ solicitors to the Applicant’s solicitors dated 11 December 2018 wherein it is stated “we are instructed that there were no Statements of Work executed between our client and Yum!”.

Further particulars may be provided after discovery.

356. By reason of the matters set out in paragraphs 351 to 355, by making the Yum! Brands Representation, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively

- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Yum! Brands Misleading Conduct).**

*II Yum! Brands False Statements Conduct*

357. Further or alternatively, the Yum! Brands Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the Yum! Brands Representation.

**Particulars**

The matters in paragraph 354 are referred to and relied on.

Further particulars may be provided after discovery.

358. The Yum! Brands Representation, at the time it was made, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

359. When GetSwift issued the Yum! Brands Announcement, it ought reasonably to have known that the Yum! Brands Announcement was false in a material particular or was materially misleading.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraphs 401(d) to 401(h) above.

360. By reason of the matters set out in paragraphs 357 to 359, by issuing the Yum! Brands Announcement, GetSwift contravened section 1041E of the Corporations Act (**Yum! Brands False Statements Conduct**).

*III Yum! Brands Macdonald Misleading Conduct*

361. Further or alternatively, by approving for publication the Yum! Brands Announcement, Mr Macdonald engaged in conduct that resulted in the making

by GetSwift of the Yum! Brands Representations (**Yum! Brands Macdonald Representations**).

### **Particulars**

The particulars subjoined to paragraph 351 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the Yum! Brands Announcement, given his role as the Managing Director and CEO of GetSwift. In addition, his signature appears on the Yum! Brands Contract.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

362. The Yum! Brands Macdonald Representation was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

363. By approving for publication the Yum! Brands Macdonald Announcement, Mr Macdonald engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

364. The Yum! Brands Macdonald Representation was false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 354.

Further particulars may be provided after discovery.

365. By reason of the matters set out in paragraphs 361 to 364, by approving for publication the Yum! Brands Announcement, Mr Macdonald engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Yum! Brands Macdonald Misleading Conduct).**

#### *IV Yum! Brands Macdonald False Statements Conduct*

366. Further or alternatively, the Yum! Brands Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the Yum! Brands Macdonald Representation.

#### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 354.

Further particulars may be provided after discovery.

367. The Yum! Brands Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

368. When Mr Macdonald disseminated the Yum! Brands Announcement, he ought reasonably to have known that the Yum! Brands Announcement was false in a



material particular or was materially misleading.

### Particulars

The Applicant refers to and repeats the matters set out in paragraph 354.

369. By reason of the matters set out in paragraphs 366 to 368, by disseminating the Yum! Brands Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**Yum! Brands Macdonald False Statements Conduct**).

#### *V Yum! Disclosure Contravention*

369A. As at 1 December 2017, and at all material times during the Claim Period, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, that:

- (a) Yum! was considering the use of the GetSwift Platform for its Pizza Hut international franchises only, exclusive of Pizza Hut United States and China;
- (b) Yum! was considering testing the GetSwift Platform in two test markets which had not yet been determined;
- (c) Yum! had not made a decision to roll out the GetSwift Platform to 20 countries;
- (d) any subsequent roll out of the GetSwift Platform beyond the two test markets was conditional on the successful completion of a proof of concept, trial or free trial period;
- (e) Yum! had not told GetSwift that it had intended to roll out the GetSwift Platform to a “broader deployment”;
- (f) Yum! was testing other providers of “last-mile” delivery solutions in various markets which offered similar services to the GetSwift Platform;
- (g) Yum! did not provide to GetSwift the information underpinning the Delivery Threshold;
- (h) Yum! had not given GetSwift any information about whether the GetSwift

Platform would be offered to or promoted by its other Yum! affiliated brands;

- (i) Yum! had no power to compel any Yum! affiliated brands to enter into agreements with GetSwift and/or use the GetSwift Platform,

(individually, collectively, or in any combination, **Yum! Information**).

### **Particulars**

The Applicant relies on paragraph 231 of the ASIC Statement of Claim and the particulars subjoined to it.

As to sub-paragraphs (a), (d) and (f), the Applicant further relies on the telephone conversation between D Sinha of Yum! and Mr Macdonald and Mr Hunter of GetSwift in about September or October 2017, in which Sinha made statements substantially to the effect pleaded in sub-paragraph (a), as referred to in paragraph 231(a) of the ASIC Statement of Claim.

As to sub-paragraph (b), the Applicant further relies on the email from D Sinha of Yum! to Mr Macdonald and Mr Hunter of GetSwift dated 7 September 2017. This document is not presently available to the Applicant.

Each of the items of the Yum! Information was:

(a) Information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties;

(b) Therefore information of which GetSwift was aware within the meaning of ASX Listing Rule 19.12.

369B. Further, or alternatively, by reason of the matters set out in paragraphs 9, 361 and 369A, Mr Macdonald was aware, for the purposes of ASX Listing Rule 19.12, of the Yum! Information during the same time as GetSwift was aware of it.

### **Particulars**

Mr Macdonald's awareness of those matters is to be inferred from the matters set out in the particulars to paragraphs 369A. In addition, Mr Macdonald's signature appears on the Yum! Contract.

369C. The Yum! Information, and each item of the Yum! Information, was:

- (a) Information that a reasonable person would expect to have a material effect on the price or value of GetSwift shares;
- (b) not generally available;
- (c) information needed by an investor to make an informed assessment of the entity's financial performance and financial position.

369D. By reason of the matters alleged in paragraphs 5 and 359, GetSwift was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to notify the ASX immediately of the Yum! Information on and from the time when it became aware of it.

369E. Notwithstanding the matters alleged in paragraphs 369C and 369D, GetSwift did not notify the ASX of the Yum! Information at any time during the Claim Period.

369F. By reason of the matters in paragraphs 369A to 369F, GetSwift contravened section 674(2) of the Corporations Act (**Yum! Disclosure Contravention**).

369G. By reason of the matters in paragraphs 369A and 369E, the Yum! Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant Yum! Information and was a continuing contravention that continued throughout the Claim Period.

369H. Further, Mr Macdonald was involved in the Yum! Disclosure Contravention and thereby contravened section 674(2A) of the Corporations Act.

### **Particulars**

Mr Macdonald was the Managing Director and Chief Executive Officer of GetSwift at the time of the Yum! Disclosure Contravention.

The Yum! Information was information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and was therefore information of which Mr Macdonald was aware within the meaning of ASX Listing Rule 19.12.

The Applicant relies on paragraph 231 of the ASIC Statement of Claim and the particulars subjoined to it.

As to sub-paragraphs (a),(d) and (f), the Applicant also relies on the telephone conversation between D Sinha of Yum! and Macdonald and Hunter of GetSwift in about September or October 2017, in which Sinha made statements substantially to the effect pleaded in sub-paragraph (a), as referred to in paragraph 231(a) of the ASIC Statement of Claim.

As to sub-paragraph (b), the Applicant also relies on the email from D Sinha of Yum! to Macdonald and Hunter of GetSwift dated 7 September 2017. This document is not presently available to the Applicant.

## U. AMAZON CONTRAVENTIONS

### *I Amazon Misleading Conduct*

370. On the morning of 1 December 2017, GetSwift published and lodged with the ASX an announcement entitled "*GetSwift and Amazon*" (**First Amazon Announcement**).

371. By the First Amazon Announcement, GetSwift represented that:

- (a) GetSwift and Amazon had entered into a contract (**Amazon Contract**) pursuant to which Amazon was contractually obliged:
  - (i) to use the GetSwift Platform for its deliveries in more than one country for the term of the Amazon Contract;
- (b) any proof of concept period, trial period, limited roll out, or free trial period had already occurred and the Amazon Contract was not conditional upon any of them occurring,

**(Amazon Representations).**

#### **Particulars**

The Amazon Representation was partly express and partly implied. The representation in paragraph (b) was implied from the absence of qualification in the Amazon Announcement, and from the context of previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

To the extent it was express, it was contained in the First Amazon Announcement which described the Amazon Contract as a “global agreement”.

To the extent it was implied, it was implied from the content of the First Amazon Announcement read in the context of the April Appendix 4C Announcement and the October Appendix 4C Announcement. The Applicant also refers to and relies upon section 769C of the Corporations Act, section 12BB of the ASIC Act and section 4 of the ACL.

372. On the evening of 1 December 2017, GetSwift published and lodged with the ASX an announcement entitled *"GetSwift – Update on Amazon"* (**Second Amazon Announcement**).

373. By the Second Amazon Announcement, GetSwift repeated the Amazon Representations.

#### **Particulars**

The representation was partly express and partly implied.

To the extent the representation was express, it was contained in the Second Amazon Announcement which described the Amazon Contract as a “global agreement”.

To the extent the representation was implied, it was implied from the content of the Second Amazon Announcement read in the context of the April Appendix 4C Announcement and the October Appendix 4C Announcement and the absence of qualification in the Second Amazon Announcement, and from the context of previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

The Applicant also refers to and relies upon section 769C of the Corporations Act, section 12BB of the ASIC Act and section 4 of the ACL.

374. The Amazon Representation was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

375. By making the Amazon Representation GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;

- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

375A. The Amazon Contract (which was dated 18 August 2017) provided inter alia that:

- (a) Amazon made no representation or promise as to the amount of business GetSwift could expect at any time under the Amazon Contract;
- (b) nothing in the Amazon Contract was to be construed as requiring Amazon to utilize or implement any or all of the Services of system at any given time;
- (c) Amazon could terminate the Amazon Contract for whatever reason on giving 30 days written notice.

376. The Amazon Representation was false and misleading, in that the Amazon Contract did not oblige Amazon to use the GetSwift Platform, but entitled Amazon to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it.

#### **Particulars**

The Applicant relies on statements and admissions made in a letter dated 24 January 2018 from Brett Eagle, General Counsel and Corporate Affairs of GetSwift, addressed to Ms Stephanie So of ASX Compliance Pty Ltd.

In addition, the terms of the Amazon Contract including, inter alia, clause 1.1 and clause 10.1.

Further particulars may be provided after discovery.

377. By reason of the matters set out in paragraphs 370 to 376, by making the Amazon Representation, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely

to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively

- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Amazon Misleading Conduct).**

## *II Amazon False Statements Conduct*

378. Further or alternatively, each of the First Amazon Announcement and the Second Amazon Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to or repeated the Amazon Representation.

### **Particulars**

The matters in paragraph 376 are referred to and relied on.

Further particulars may be provided after discovery.

379. Each of the First Amazon Announcement and the Second Amazon Announcement, at the time it was made, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

380. When GetSwift issued the First Amazon Announcement and the Second Amazon Announcement, it ought reasonably to have known that that announcement was false in a material particular or was materially misleading.

### **Particulars**

The matters in paragraph 376 are referred to and relied on.

381. By reason of the matters set out in paragraphs 378 to 380, by issuing the First

Amazon Announcement and the Second Amazon Announcement, GetSwift contravened section 1041E of the Corporations Act (**Amazon False Statements Conduct**).

### *III Amazon Macdonald Misleading Conduct*

382. Further or alternatively, by approving for publication the First Amazon Announcement and the Second Amazon Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the Amazon Representations (**Amazon Macdonald Representations**).

#### **Particulars**

The particulars subjoined to paragraph 371 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the Amazon Announcement, given his role as the Managing Director and CEO of GetSwift. In addition, Mr Macdonald's signature appears on the Amazon contract.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald at paragraph 9 above.

383. The Amazon Macdonald Representation was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

384. By approving for publication the First Amazon Announcement and the Second Amazon Announcement, Mr Macdonald engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;



- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

385. The Amazon Macdonald Representation was false and misleading.

#### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 376.

Further particulars may be provided after discovery.

386. By reason of the matters set out in paragraphs 383 to 385, by approving for publication the First Amazon Announcement and the Second Amazon Announcement, Mr Macdonald engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(Amazon Macdonald Misleading Conduct).**

#### *IV Amazon Macdonald False Statements Conduct*

387. Further or alternatively, each of the First Amazon Announcement and the Second Amazon Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the Amazon Macdonald Representation.

### Particulars

The Applicant refers to and repeats the matters set out in paragraph 376.

Further particulars may be provided after discovery.

388. Each of the First Amazon Announcement and the Second Amazon Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.
389. When Mr Macdonald disseminated the Amazon Announcement and the Second Amazon Announcement, he ought reasonably to have known that that announcement was false in a material particular or was materially misleading.

### Particulars

The Applicant refers to and repeats the matters set out in paragraph 376.

390. By reason of the matters set out in paragraphs 387 to 389, by disseminating the Amazon Announcement and the Second Amazon Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**Amazon Macdonald False Statements Conduct**).

## V. DECEMBER 2017 CBA CONTRAVENTIONS

### *I December 2017 CBA Misleading Conduct*

391. On 18 December 2017, GetSwift published and lodged with the ASX an announcement entitled "*CBA and GetSwift Update*" (**December 2017 CBA Announcement**).
392. By the December 2017 CBA Announcement GetSwift represented that:
- (a) GetSwift and CBA had entered into the CBA Contract pursuant to which CBA had:

- (i) partnered with GetSwift to offer retail merchants the ability to compete with their global counterparts when it comes to deliveries and logistics; and
  - (ii) the partnership referred to immediately above was exclusive and would allow CBA to access an affordable best in class logistics platform to continue to improve their customer experience in distributing their goods;
- (b) CBA had approved the deployment of the Represented Albert POS Logistics Solution to CBA's retail merchants starting in February 2018;
  - (c) it had reasonable grounds to project that approximately 90,000 merchants would use the new operating system with the GetSwift Platform starting from February 2018;
  - (d) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred, and the CBA Contract was not conditional upon any of them occurring,

**(December 2017 CBA Representations).**

**Particulars**

The representations in (a) and (b) were expressly made by the December 2017 CBA Announcement.

The representation in (c) was in part implied from the statement made in the December 2017 CBA Announcement that "*approximately 90,000 merchants would receive the new operating system with the GetSwift Platform with go to live rollouts planned from Feb 2018*" and in part implied from the absence of qualification in the December 2017 CBA Announcement, and from the context of previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

The representation in paragraph (d) was implied from the absence of qualification in the December 2017 CBA Announcement, and from the context of the previous statements made by GetSwift in its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary in section 1.2, and which statements were not qualified or withdrawn.

The Applicant also relies on section 769C of the Corporations Act, section 12BB of the ASIC Act and section 4 of the ACL.

393. Each of the December 2017 CBA Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

394. By making the December 2017 CBA Representations GetSwift engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

395. The December 2017 CBA Representations and each of them was false and misleading in that:

- (a) the CBA Contract provided as alleged in paragraph 41A above, and the deployment of the Represented Albert POS Logistics Solution therefore depended on an agreed Project Plan being finalised and successfully completed by GetSwift before the GetSwift Platform could be offered on CBA's Albert POS vendor terminals;
- (b) as at 18 December 2017 CBA had only agreed to adopt the GetSwift Platform subject to CBA's ongoing approval of Project Plans, services, deliverables and/or milestones to be performed by GetSwift;
- (c) no project plan was ever prepared between GetSwift and CBA; and
- (d) by reason of the matters referred to in (a) to (c) above, GetSwift did not have a reasonable basis to project that approximately 90,000 merchants

would use the new operating system with the GetSwift Platform starting from February 2018.

### Particulars

The Applicant refers to:

- i. GetSwift' s letter dated 9 February 2018 in response to ASX letter of 6 February 2018, paragraph 3.
- ii. The Australian Financial Review article dated 19 January 2018.
- iii. The terms of the CBA Contract including, inter alia, the definition of Deliverables, Project Plan and Services at clause 1.1 and the description of "GetSwift Services and CommBank commitments at clause 3.1".
- iv. An email from the Respondents' solicitors to the Applicant's solicitors dated 10 December 2018 which states, "we are instructed that no Project Plan was prepared in relation to the CBA Contract".

The Applicant also refers to and rely upon section 769C of the Corporations Act, section 12BB of the ASIC Act and section 4 of the ACL.

Further particulars may be provided after discovery.

396. By reason of the matters set out in paragraphs 391 to 395, by making the December 2017 CBA Representations, GetSwift engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(December 2017 CBA Misleading Conduct).**

## *II December 2017 CBA False Statements Conduct*

397. Further or alternatively, the December 2017 CBA Announcement was a statement that was false in a material particular or was materially misleading, because it included or gave rise to the December 2017 CBA Representations.

### **Particulars**

The matters in paragraph 395 are referred to and relied on.

Further particulars may be provided after discovery.

398. The December 2017 CBA Announcement, at the time it was issued, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

399. When GetSwift issued the December 2017 Announcement, it ought reasonably to have known that each of the December CBA Representations was false in a material particular or was materially misleading.

### **Particulars**

The matters in paragraph 395 are referred to and relied on.

400. By reason of the matters set out in paragraphs 397 to 399, by issuing the December CBA Representations, GetSwift contravened section 1041E of the Corporations Act (**December 2017 CBA False Statements Conduct**).

## *III December CBA Macdonald Misleading Conduct*

401. Further or alternatively, by approving for publication the December 2017 CBA Announcement, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the December 2017 CBA Representations (**December 2017 CBA Macdonald Representations**).

### **Particulars**

The particulars in paragraph 392 are referred to and repeated.

It may be inferred that Mr Macdonald approved the publication of the December CBA Announcement, given his role as the Managing Director and CEO of GetSwift.

The Applicant refers to the GetSwift Continuous Disclosure Policy in force during the Claim Period and the roles and responsibilities of Mr Macdonald referred to at paragraph 9 above.

402. Each of the December 2017 CBA Macdonald Representations was:

- (a) made in relation to a financial product, namely GetSwift Shares;
- (b) made in trade or commerce.

403. By approving for publication the December 2017 CBA Announcement, Mr Macdonald engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
  - (i) section 12BAB(1) of the ASIC Act; further or alternatively
  - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

404. The December 2017 CBA Macdonald Representations were false and misleading.

### **Particulars**

The Applicant refers to and repeats the matters set out in paragraph 395.

Further particulars may be provided after discovery.

405. By reason of the matters set out in paragraphs 401 to 404, by approving for

publication the December 2017 CBA Announcement, Mr Macdonald engaged in conduct in trade or commerce:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act; further or alternatively
- (c) that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL,

**(December 2017 CBA Macdonald Misleading Conduct).**

*IV December 2017 CBA Macdonald False Statements Conduct*

406. Further or alternatively, the December 2017 CBA Announcement was a statement disseminated by Mr Macdonald that was false in a material particular or was materially misleading, because it included or gave rise to the December 2017 CBA Macdonald Representations.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 395.

Further particulars may be provided after discovery.

407. The December 2017 CBA Announcement, at the time it was disseminated, was likely to induce persons in this jurisdiction to acquire Shares in GetSwift, or to have the effect of increasing, maintaining or stabilising the price for trading in Shares in GetSwift.

408. When Mr Macdonald disseminated the December 2017 CBA Announcement, he ought reasonably to have known that the December 2017 CBA Announcement was false in a material particular or was materially misleading.



### Particulars

The Applicant refers to and repeats the matters set out in paragraph 395.

409. By reason of the matters set out in paragraphs 406 to 408, by disseminating the December 2017 CBA Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**December 2017 CBA Macdonald False Statements Conduct**).

### W. TOAST CONTRAVENTIONS

410. [Deleted].

411. [Deleted].

412. [Deleted].

413. [Deleted].

414. [Deleted].

415. [Deleted].

416. [Deleted].

417. [Deleted].

418. [Deleted].

419. [Deleted].

420. [Deleted].

421. [Deleted].

422. [Deleted].

423. [Deleted].

424. [Deleted].

425. [Deleted].

426. [Deleted].

427. [Deleted].

428. [Deleted].

## **X. CONTINUING REPRESENTATIONS**

429. Each of:

- (a) the Fruit Box Representations;
- (b) the Fruit Box Macdonald Representations;
- (c) the April 2017 CBA Representations;
- (d) the April 2017 CBA Macdonald Representations;
- (e) the Lone Star Grill Representations;
- (f) the Lone Star Grill Macdonald Representations;
- (g) the Pizza Hut Representations;
- (h) the Pizza Hut Macdonald Representations;
- (i) the April Appendix 4C Representations;
- (j) the April Appendix 4C Macdonald Representations;
- (k) the All Purpose Transport Representations;
- (l) the All Purpose Transport Macdonald Representations;
- (m) the CITO Representations;
- (n) the CITO Macdonald Representations;
- (o) the Hungry Harvest Representations;

- (p) the Hungry Harvest Macdonald Representations;
- (q) the FRF Couriers Representations;
- (r) the FRF Couriers Macdonald Representations;
- (s) the Takeaway.com Representations;
- (t) the Takeaway.com Macdonald Representations;
- (u) the Tranche 1 Cleansing Notice Representations;
- (v) the Tranche 2 Cleansing Notice Representations;
- (w) the Fantastic Furniture Representations;
- (x) the Fantastic Furniture Macdonald Representations;
- (y) the Bare Burger Representations;
- (z) the Bare Burger Macdonald Representations;
- (aa) the N A Williams Representations;
- (bb) the N A Williams Macdonald Representations;
- (cc) the Johnny Rockets Representations;
- (dd) the Johnny Rockets Macdonald Representations;
- (ee) the October Appendix 4C Representation;
- (ff) the October Appendix 4C Macdonald Representation
- (gg) the Yum! Brands Representations;
- (hh) the Yum! Brands Macdonald Representations;
- (ii) the Amazon Representations;
- (jj) the Amazon Macdonald Representations;
- (kk) the December 2017 Representations; and

(II) the December 2017 Macdonald Representations,

was a continuing representation, and continued to be maintained by GetSwift or Mr Macdonald or both (as the case may be) from the date on which it was made until the end of the Claim Period.

### Particulars

GetSwift or Mr Macdonald or both (as the case may be):

- (i) made, repeated, further and alternatively confirmed, the substance of the representations in releases to the ASX;
- (ii) did not amend, qualify or withdraw the substance of the representations prior to the publication of the Australian Financial Review article dated 19 January 2018;
- (iii) did not release to the ASX any further information that would significantly supplement or modify the representations.

## Y. CLIENT CONTRACTS DISCLOSURE CONTRAVENTIONS

430. At all material times during the Claim Period, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, that:

- (a) its client contracts provided for a Free Trial Period, Limited Roll Out, deliverables, Project Plans and/or milestones;
- (b) on or around 1 August 2017, the majority of its client contracts were still in a Free Trial Period or Limited Roll Out;
- (c) its client contracts did not oblige the relevant client to use the GetSwift Platform;
- (d) its client contracts could be terminated by the relevant client at any time, (individually, collectively, or in any combination, **Client Contract Information**).

### Particulars

The Applicant refers to GetSwift response of 24 January 2018 to ASX aware query letter of 22 January 2018.

Each of the items of the Client Contract was information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and therefore was information of which it was aware within the meaning of ASX Listing Rule 19.12.

The Applicant refers to the contracts between GetSwift and GetSwift clients set out above.

Further particulars may be provided after discovery.

431. Further or alternatively, by reason of the matters set out in paragraphs 9, throughout the Claim Period, Mr Macdonald was aware, for the purposes of ASX Listing Rule 19.12, of the Client Contract Information.

### **Particulars**

The majority of GetSwift's client contracts were executed by Mr Macdonald.

Further particulars may be provided after discovery.

432. The Client Contract Information was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of GetSwift Shares;
- (b) not generally available;
- (c) information needed by an investor to make an informed assessment of the entity's financial performance and financial position.

433. By reason of the matters alleged in paragraphs 5 and 432, GetSwift was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to notify the ASX immediately of the Client Contract Information on and from the time when it became aware of it.

434. Notwithstanding the matters alleged in paragraphs 432 and 433, GetSwift did not notify the ASX of the Client Contract Information at any time during the Claim Period.

435. By reason of the matters alleged in paragraphs 432 to 434, GetSwift contravened section 674(2) of the Corporations Act (**Client Contract Disclosure Contravention**).
436. By reason of the matters set out in paragraphs 432 to 435, the Client Contract Disclosure Contravention was a continuing contravention that continued throughout the Claim Period.
437. Further Mr Macdonald was involved in the Client Contract Disclosure Contravention, and thereby contravened section 674(2A) of the Corporations Act.

### **Particulars**

The Applicant refers to and repeats paragraph 28.

Mr Macdonald was the Managing Director and Chief Executive Officer of GetSwift at the time of the Client Contract Disclosure Contravention.

The Client Contract Information was information that did or ought to have come to the attention of an officer of GetSwift in the course of the performance of their duties and was therefore information of which GetSwift was aware within the meaning of ASX Listing Rule 19.12, having regard to:

- i. GetSwift's response dated 24 January 2018 to ASX Aware Query letter of 22 January 2018 and the definition of 90 Day Proof of Concept contained therein;
- ii. The ASX Announcement dated 2 February 2018 titled "market update" and the definition and characteristics of "enterprise clients" explained therein;
- iii. The 9 February GetSwift response to ASX Aware query letter of 6 February 2018 wherein Mr Macdonald's signature appears as author of the letter; and
- iv. Mr Macdonald's signature appears on the majority of client contracts.

Further particulars will be provided after discovery.

## **Z. CORRECTIVE DISCLOSURES AND PRICE OF GETSWIFT SHARES**

438. On Thursday 18 January 2018 the closing price of GetSwift Shares was \$3.13.

439. On 19 January 2018, the Australian Financial Review published and lodged with the ASX an article entitled “GetSwift: Too Fast For Its Own Good”, which stated inter alia that:

- (a) an investigation by AFR Weekend had revealed that GetSwift twice failed to update the market about losing materially significant contracts;
- (b) Fantastic Furniture and The Fruit Box Group had said they never used GetSwift’s last-mile logistics software after an initial trial, despite the company’s ASX announcements about multi-year deals with each, and:
  - (i) The Fruit Box Group had said “we tested the product and it didn’t go beyond the pilot stage”;
  - (ii) Fantastic Furniture had said “at the end of the trial we said thanks but no thanks”;
- (c) CBA had said GetSwift moved prematurely in December 2017 when it outlined revenue forecasts for a partnership which was only in the pilot phase;
- (d) Mr Macdonald had said that the Fruit Box Group Contract was pulled immediately after GetSwift made the statement to the market, but “it’s not material now”.

440. On Friday 19 January 2018 the closing price of GetSwift Shares was \$2.92.

441. On 22 January 2018 GetSwift Shares were placed into trading halt.

442. On 25 January 2018 GetSwift published on the ASX a letter entitled “Response to ASX letter regarding GetSwift Ltd (GSW): aware query”, which stated inter alia:

- (a) at the time it made the Fruit Box Announcement, GetSwift considered that the addition of Fruit Box as a client could potentially have a material effect;
- (b) the Fruit Box Contract did not have an initial pilot testing trial period, but provided for a limited roll out period and fees were only to be charged from the start of the initial period, and GetSwift did not believe the Proof of

Concept period was a material condition of the contract;

- (c) the Fruit Box Contract was terminated on or about 20 March 2017;
- (d) at the time it made the Fantastic Furniture Announcement, GetSwift considered that the addition of Betta Home Living and Fantastic Furniture as clients could potentially have had a material effect, but if only one of those clients had been added at that time, in isolation, the information would not have had a material effect;
- (e) the Fantastic Furniture Contract was not subject to any initial pilot testing trial period, but was a 38 month contract comprising a trial period and an initial term. Fees were only to be charged from the start of the initial term;
- (f) the circumstances of notification by Fantastic Furniture regarding the Fantastic Furniture Contract left GetSwift with the impression that activity may resume;
- (g) GetSwift had not disclosed Proof of Concept periods in contracts because GetSwift does not believe them to be material conditions, as it will have no bearing on the commercial relationship in terms of the ability of clients to cease using the GetSwift Platform. Regardless of any Proof of Concept period, because contracts are pay as you go, clients that no longer want to use the platform cease using it, and this was then reflected in GetSwift's periodic reporting of delivery transactions and revenue;
- (h) GetSwift had no reason to believe that CBA would not use the GetSwift Platform, and this belief was the basis for GetSwift's statement that it expected to see revenues from market utilization to start manifesting in mid-2018 and the CBA deal was estimated to result in over 257,400,000 deliveries on its platform over the next five years with an estimated aggregate transaction value of \$9 billion.

443. On 19 February 2018 GetSwift published and lodged with the ASX an announcement entitled "Market Update" which stated inter alia that:

- (a) clients typically had contracts which were initially two years in length, with



initial periods of testing and integration;

- (b) Almost 50% of GetSwift's client contracts had progressed through to early stages of the revenue generation phase;
- (c) GetSwift would continue to assess on a case by case basis whether contracts moving to revenue generation phase (or their termination) required disclosure to the market.

444. Between 22 January 2018 and 19 February 2018 GetSwift Shares were suspended from quotation on ASX.

445. On 19 February 2018, trading in GetSwift Shares resumed, and the price (which had hitherto been \$2.92) opened at \$1.15, and traded as low as \$0.97, closing at \$1.31.

446. On 20 February 2018 the GetSwift Share price fell further, closing at \$0.95.

447. On 21 February 2018 the GetSwift Share price fell further, closing at \$0.51.

448. Annexure A to this statement of claim shows the price of GetSwift Shares on each day from 24 February 2017 to 21 February 2018.

## **AA. LOSS AND DAMAGE**

449. During the Claim Period, the Applicant and each of the Group Members acquired an interest in GetSwift Shares:

- (a) in a market regulated by, inter alia, the ASX Listing Rules and sections 674(2) and 1041H of the Corporations Act;
- (b) in a market where the price or value of GetSwift Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and sections 674(2) and 1041H of the Corporations Act;
- (c) in a market to which the representations alleged in this statement of claim

had been made and which a reasonable person would expect to have a material effect on the price or value of GetSwift Shares; and/or

- (d) further or alternatively to sub-paragraph (c), in a market to which the material information alleged in this statement of claim had not been disclosed and which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of GetSwift Shares.

### Particulars

Particulars of the Applicant's transactions involving GetSwift Shares during the Claim Period are set in the following table:

Date	Trade type	Volume	Price per security	Transaction value
11/12/2017	BUY	1,026	\$3.38	\$3,980.88

Particulars of the shareholdings of the Group Members will be provided following the initial trial.

450. By reason of the matters alleged in paragraphs 448 and 449:

- (a) the Fruit Box Group Misleading Conduct;
- (b) the Fruit Box Group False Statements Conduct;
- (c) the Fruit Box Group Macdonald Misleading Conduct;
- (d) the Fruit Box Group Macdonald False Statements Conduct;
- (e) the Fruit Box Disclosure Contravention;
- (e1) the Fruit Box Projection Disclosure Contravention;
- (f) the April 2017 CBA Misleading Conduct;
- (g) the April 2017 CBA False Statements Conduct;
- (h) the April 2017 CBA Macdonald Misleading Conduct;

- (i) the April 2017 CBA Macdonald False Statements Conduct;
- (i1) CBA Disclosure Contravention;
- (j) the Lone Star Grill Misleading Conduct;
- (k) the Lone Star Grill False Statements Conduct;
- (l) the Lone Star Grill Macdonald Misleading Conduct;
- (m) the Lone Star Grill False Statements Conduct;
- (n) the Pizza Hut Misleading Conduct;
- (o) the Pizza Hut False Statements Conduct;
- (p) the Pizza Hut Macdonald Misleading Conduct;
- (q) the Pizza Hut Macdonald False Statements Conduct;
- (q1) the Pizza Hut Disclosure Contravention;
- (r) the April Appendix 4C Misleading Conduct;
- (s) the April Appendix 4C False Statements Conduct;
- (t) the April Appendix 4C Macdonald Misleading Conduct;
- (u) the April Appendix 4C Macdonald False Statements Conduct;
- (v) the All Purpose Transport Misleading Conduct;
- (w) the All Purpose Transport False Statements Conduct;
- (x) the All Purpose Transport Macdonald Misleading Conduct;
- (y) the All Purpose Transport Macdonald False Statements Conduct;
- (z) the All Purpose Transport Disclosure Contravention;
- (aa) the CITO Misleading Conduct;
- (bb) the CITO False Statements Conduct;

- (cc) the CITO Macdonald Misleading Conduct;
- (dd) the CITO Macdonald False Statements Conduct;
- (ee) the CITO Disclosure Contravention;
- (ff) the Hungry Harvest Misleading Conduct;
- (gg) the Hungry Harvest False Statements Conduct;
- (hh) the Hungry Harvest Macdonald Misleading Conduct;
- (ii) the Hungry Harvest Macdonald False Statements Conduct;
- (jj) the FRF Couriers Misleading Conduct;
- (kk) the FRF Couriers False Statements Conduct;
- (ll) the FRF Couriers Macdonald Misleading Conduct;
- (mm) the FRF Couriers Macdonald False Statements Conduct;
- (nn) the Takeaway.com Misleading Conduct;
- (oo) the Takeaway.com False Statements Conduct;
- (pp) the Takeaway.com Macdonald Misleading Conduct;
- (qq) the Takeaway.com Macdonald False Statements Conduct;
- (rr) the Tranche 1 Cleansing Notice Misleading Conduct;
- (ss) the Tranche 1 Cleansing Notice False Statements Conduct;
- (tt) the Tranche 2 Cleansing Notice Misleading Conduct;
- (uu) the Tranche 2 Cleansing Notice False Statements Conduct;
- (vv) the Fantastic Furniture Misleading Conduct;
- (ww) the Fantastic Furniture False Statements Conduct;
- (xx) the Fantastic Furniture Macdonald Misleading Conduct;

- (yy) the Fantastic Furniture Macdonald False Statements Conduct;
- (zz) the Fantastic Furniture Disclosure Contravention;
- (zza) the BRS Franchising False Statements Conduct;
- (zzb) the BRS Franchising Macdonald Misleading Conduct;
- (zzc) the BRS Franchising Macdonald False Statements Conduct;
- (aaa) the Bare Burger Misleading Conduct;
- (bbb) the Bare Burger False Statements Conduct;
- (ccc) the Bare Burger Macdonald Misleading Conduct;
- (ddd) the Bare Burger Macdonald False Statements Conduct;
- (eee) the N A Williams Misleading Conduct;
- (fff) the N A Williams False Statements Conduct;
- (ggg) the N A Williams Macdonald Misleading Conduct;
- (hhh) the N A Williams Macdonald False Statements Conduct;
- (hhhh) the N A Williams Disclosure Contravention;
- (iii) the Johnny Rockets Misleading Conduct;
- (jjj) the Johnny Rockets False Statements Conduct;
- (kkk) the Johnny Rockets Macdonald Misleading Conduct;
- (III) the Johnny Rockets Macdonald False Statements Conduct;
- (IIII) the Jonny Rockets Disclosure Contravention;
- (mmm) the October Appendix 4C Misleading Conduct;
- (nnn) the October Appendix 4C False Statements Conduct;
- (ooo) the October Appendix 4C Macdonald Misleading Conduct;

- (ppp) the October Appendix 4C Macdonald False Statements Conduct;
  - (qqq) the Yum! Brands Misleading Conduct;
  - (rrr) the Yum! Brands False Statements Conduct;
  - (sss) the Yum! Brands Macdonald Misleading Conduct;
  - (ttt) the Yum! Brands Macdonald False Statements Conduct;
  - (ttta) the Yum! Disclosure Contravention;
  - (uuu) the Amazon Misleading Conduct;
  - (vvv) the Amazon False Statements Conduct;
  - (www) the Amazon Macdonald Misleading Conduct;
  - (xxx) the Amazon Macdonald False Statements Conduct;
  - (xxxx) the Amazon Disclosure Contravention;
  - (yyy) the December 2017 CBA Misleading Conduct;
  - (zzz) the December 2017 CBA False Statements Conduct;
  - (aaaa) the December 2017 CBA Macdonald Misleading Conduct;
  - (bbbb) the December 2017 CBA Macdonald False Statements Conduct;
  - (cccc) [Deleted];
  - (dddd) [Deleted];
  - (eeee) [Deleted];
  - (ffff) [Deleted];
  - (gggg) the Client Contract Disclosure Contravention,
- (individually, collectively or in any combination, the **Contravening Conduct**) separately or together or in any combination caused the market price for

GetSwift Shares to be materially higher during the Claim Period than:

- (hhhh) their true price; and/or
- (iiii) alternatively, the price that would have prevailed if that Contravening Conduct had not occurred.

### **Particulars**

That the Contravening Conduct caused the price of GetSwift Shares to be higher during the Claim Period than it would have been had it not occurred is to be inferred from the movements in the price of GetSwift Shares following the publication of the Australian Financial Review article dated 19 January 2018, the ASX announcement by GetSwift dated 25 January 2018 and the ASX announcement by GetSwift dated 19 February 2018.

451. The Applicant and each of the Group Members acquired an interest in GetSwift Shares during the Claim Period on the assumption generally made in the market and on which they were entitled to act that the price at which they acquired that interest represented the market price in a market that had been informed of all material information relating to GetSwift.

### **Particulars**

Investors in shares on the ASX are generally aware that there is a complex and comprehensive regulatory regime including, inter alia, the ASX Listing Rules and sections 674(2) and 1041H of the Corporations Act, which has as one of its purposes to ensure that the market is promptly informed of all information which is relevant to the price at which shares are traded.

If the Contravening Conduct had not occurred, the Applicant and the Group Members would either have acquired an interest in GetSwift Shares at a price which had not been artificially inflated or they would not have acquired an interest in GetSwift Shares at all during the Claim Period.

452. Further or alternatively, the Applicant and all or some of the Group Members acquired an interest in GetSwift Shares during the Claim Period in reliance upon one or more of:

- (a) the Fruit Box Representations;

- (b) the April 2017 CBA Representations;
  - (c) the Lone Star Grill Representations;
  - (d) the Pizza Hut Representations;
  - (e) the April Appendix 4C Representations;
  - (f) the All Purpose Transport Representations;
  - (g) the CITO Representations;
  - (h) the Hungry Harvest Representations;
  - (i) the FRF Couriers Representations;
  - (j) the Takeaway.com Representations;
  - (k) the Tranche 1 Cleansing Notice Representations;
  - (l) the Fantastic Furniture Representations;
  - (l1) the BRS Franchising Representations;
  - (m) the Bare Burger Representations;
  - (n) the N A Williams Representations;
  - (o) the Johnny Rockets Representations;
  - (p) the October Appendix 4C Representation;
  - (q) the Yum! Brands Representations;
  - (r) the Amazon Representations; and
  - (s) the December 2017 Representations,
- (individually, collectively or in any combination, the **Representations**).

### **Particulars**



Particulars of the Applicant's reliance on any of the Representations will be provided prior to the initial trial.

Particulars of reliance for the remaining Group Members who relied directly on any of the Representations will be provided following the resolution of the common questions.

453. Further or alternatively, one or more of the Representations materially contributed to the decision of the Applicant and all or some of the Group Members to purchase GetSwift Shares at the prevailing market price during the Claim Period.

#### **Particulars**

The Applicant refers to and repeats the particulars to paragraph 450.

454. If GetSwift and Mr Macdonald had not engaged in the Contravening Conduct, the Applicant and the Group Members would either:

- (a) have acquired an interest in GetSwift Shares at a lower price; or
- (b) not have acquired an interest in GetSwift Shares at all during the Claim Period.

#### **Particulars**

The Applicant refers to and repeats the particulars to paragraph 450.

#### *Claim of loss from GetSwift*

455. By reason of GetSwift's Contravening Conduct, the Applicant and each of the Group Members have suffered loss and damage.

#### **Particulars**

The loss suffered by the Applicant and Group Members is the greater of:

- i. the difference between the price at which they acquired an interest in GetSwift Shares during the Claim Period and the price at which that interest would have been acquired at that time had the Contravening Conduct not occurred (**Price Inflation**). Particulars of the Price Inflation in relation to GetSwift Shares at the relevant times will be provided following the provision of

expert evidence;

- ii. alternatively, the difference between the price at which they acquired an interest in GetSwift Shares during the Claim Period and whatever is “left in hand” or was realised upon a sale of those shares following the publication of the Australian Financial Review article dated 19 January 2018, the ASX announcement by GetSwift dated 25 January 2018 and the ASX announcement by GetSwift dated 19 February 2018, modified to take into account so much, if any, of the movement in the traded price of GetSwift Shares which did not result from the Contravening Conduct;
- iii. alternatively, for days during the Claim Period and thereafter where the traded price of GetSwift Shares fell as a result of the disclosure of information which had not previously been disclosed because of the Contravening Conduct, the quantum of that fall; or
- iv. alternatively, for the Applicant and those Group Members who, but for the Contravening Conduct, would not have retained or acquired GetSwift Shares during the Claim Period, the difference, at the date of the hearing, between their actual position as a result of having acquired an interest in GetSwift Shares during the Claim Period and the position in which they would have been had they not acquired that interest.

456. By reason of the matters alleged in paragraphs 449 to 455, GetSwift is liable to compensate the Applicant and each of the Group Members for the amount of the loss and damage suffered by them from GetSwift pursuant to section 1041I of the Corporations Act, section 12GF of the ASIC Act, and section 236 of the ACL.

457. Further or alternatively, by reason of the matters alleged in paragraphs 449 to 455, GetSwift is liable pursuant to section 1317HA of the Corporations Act to compensate the Applicant and the Group Members for the damage that resulted from its contravention of section 674(2).

*Claim of loss from Mr Macdonald*

458. Further or alternatively, by reason of Mr Macdonald’s Contravening Conduct, the Applicant and each of the Group Members have suffered loss and damage.

**Particulars**

The Applicant refers to and repeats the particulars subjoined to paragraph 455.

459. By reason of the matters alleged in paragraphs 449 to 455 and 458, the Applicant and each of the Group Members:

- (a) may recover the amount of the loss and damage suffered by them from Mr Macdonald pursuant to section 1041I of the Corporations Act and section 12GF of the ASIC Act;
- (b) further or alternatively, are entitled to compensation from Mr Macdonald pursuant to section 1317HA of the Corporations Act for the damage that resulted from his contraventions of section 674(2A).

## **BB. COMMON QUESTIONS OF FACT OR LAW**

460. The questions of law or fact common to the claims of the Applicant and the Group Members are:

- (a) whether, during the period between 24 February 2017 to 19 January 2018, the First Respondent made:
  - (i) the Fruit Box Representations;
  - (ii) the April 2017 CBA Representations;
  - (iii) the Lone Star Grill Representations;
  - (iv) the Pizza Hut Representations;
  - (v) the April Appendix 4C Representations;
  - (vi) the All Purpose Transport Representations;
  - (vii) the CITO Representations;
  - (viii) the Hungry Harvest Representations;
  - (ix) the FRF Couriers Representations;
  - (x) the Takeaway.com Representations;

- (xi) the Tranche 1 Cleansing Notice Representations;
  - (xii) the Tranche 2 Cleansing Notice Representations;
  - (xiii) the Fantastic Furniture Representations;
  - (xiiiia) the BRS Franchising Representations;
  - (xiv) the Bare Burger Representations;
  - (xv) the N A Williams Representations;
  - (xvi) the Johnny Rockets Representations;
  - (xvii) the October Appendix 4C Representation;
  - (xviii) the Yum! Brands Representations;
  - (xix) the Amazon Representations; and
  - (xx) the December 2017 Representations,  
(together, **GetSwift Representations**);
- (b) whether the making of any or all the GetSwift Representations constituted conduct:
- (i) in relation to a financial product for the purposes of section 1041H of the Corporations Act;
  - (ii) in relation to a financial service for the purposes of section 12DA of the ASIC Act; and
  - (iii) in trade or commerce for the purposes of section 12DA of the ASIC Act and/or section 18 of the ACL.
- (c) whether the GetSwift Representations were misleading or deceptive or likely to mislead or deceive in contravention of section 1041H of the Corporations Act and/or section 12DA of the ASIC Act and/or section 18 of the ACL;

- (d) whether, during the period between 24 February 2017 to 19 January 2018, the Second Respondent engaged in conduct which resulted in the making of:
- (i) the Fruit Box Macdonald Representations;
  - (ii) the April 2017 CBA Macdonald Representations;
  - (iii) the Lone Star Grill Macdonald Representations;
  - (iv) the Pizza Hut Macdonald Representations;
  - (v) the April Appendix 4C Macdonald Representations;
  - (vi) the All Purpose Transport Macdonald Representations;
  - (vii) the CITO Macdonald Representations;
  - (viii) the Hungry Harvest Macdonald Representations;
  - (ix) the FRF Couriers Macdonald Representations;
  - (x) the Takeaway.com Macdonald Representations;
  - (xi) the Fantastic Furniture Macdonald Representations;
  - (xia) the BRS Franchising Macdonald Representations;
  - (xii) the Bare Burger Macdonald Representations;
  - (xiii) the N A Williams Macdonald Representations;
  - (xiv) the Johnny Rockets Macdonald Representations;
  - (xv) the October Appendix 4C Macdonald Representation;
  - (xvi) the Yum! Brands Macdonald Representations;
  - (xvii) the Amazon Macdonald Representations; and
  - (xviii) the December 2017 Macdonald Representations,

(together, **Macdonald Representations**);

- (e) whether the conduct of the Second Respondent which resulted in the making of any or all the Macdonald Representations constituted conduct:
  - (i) in relation to a financial product for the purposes of section 1041H of the Corporations Act;
  - (ii) in relation to a financial service for the purposes of section 12DA of the ASIC Act; and
  - (iii) in trade or commerce for the purposes of section 12DA of the ASIC Act and/or section 18 of the ACL.
- (f) whether the Macdonald Representations were misleading or deceptive or likely to mislead or deceive in contravention of section 1041H of the Corporations Act and/or section 12DA of the ASIC Act and/or section 18 of the ACL;
- (g) whether:
  - (i) the Fruit Box Announcement;
  - (ii) the April 2017 CBA Announcement;
  - (iii) the Lone Star Grill Announcement;
  - (iv) the Pizza Hut Announcement;
  - (v) the April Appendix 4C Announcement;
  - (vi) the All Purpose Transport Announcement;
  - (vii) the CITO Announcement;
  - (viii) the Hungry Harvest Announcement;
  - (ix) the FRF Couriers Announcement;
  - (x) the Takeaway.com Announcement;

- (xi) the Tranche 1 Cleansing Notice Announcement;
- (xii) the Fantastic Furniture Announcement;
- (xiia) the BRS Franchising Announcement;
- (xiii) the Bare Burger Announcement;
- (xiv) the N A Williams Announcement;
- (xv) the Johnny Rockets Announcement;
- (xvi) the October Appendix 4C Announcement;
- (xvii) the Yum! Brands Announcement;
- (xviii) the Amazon Announcement; and
- (xix) the December 2017 Announcement,  
(together **Announcements**);

were:

- (xx) false in a material particular, or materially misleading;
  - (xxi) likely to induce persons to apply for or acquire financial products; and
  - (xxii) known by, or reasonably ought to have been known by, the First Respondent to be false in a material particular and further, or in the alternative, materially misleading, in contravention of section 1041E(2) of the Corporations Act;
  - (xxiii) known by, or reasonably ought to have been known by, the Second Respondent to be false in a material particular and further, or in the alternative, materially misleading, in contravention of section 1041E(2) of the Corporations Act;
- (h) whether the making of the Representations caused the First Respondent's share price to be higher during the Claim Period than it would have been had they not been made and, if so, to what extent or by what amount;

- (i) whether the Applicant and the Group Members are persons who suffered loss or damage by the First Respondent's contravention or contraventions of section 1041H of the Corporations Act, and/or section 12DA of the ASIC Act, and/or section 18 of the ACL and, if so, what is the proper method of assessment of that loss and damage;
- (j) whether the First Respondent was aware, for the purposes of ASX Listing Rules 3.1 and 19.12, and, if so, when, of:
  - (i) the Fruit Box Group Information;
  - (ii) the Fruit Box Projection Information;
  - (iii) CBA Information;
  - (iv) N A Williams Information;
  - (v) Johnny Rockets Information;
  - (vi) Yum! Information;
  - (vii) the All Purpose Transport Information;
  - (viii) the CITO Information;
  - (ix) the Fantastic Furniture Information;
  - (x) the Client Contract Information,  
  
(together **Material information**);
- (k) whether any or all of the Material Information was:
  - (i) information that a reasonable person would expect to have a material effect on the price or value of the First Respondent's shares within the meaning of ASX Listing Rule 3.1 and section 674(2)(c)(ii) of the Corporations Act; and
  - (ii) not generally available within the meaning of section 676 of the Corporations Act;



- (l) whether the First Respondent contravened section 674(2) of the Corporations Act by failing to disclose any or all of the Material Information as soon as it was aware of that information;
- (m) if any contraventions by the First Respondent of section 674(2) of the Corporations Act are established, whether the Second Respondent was involved in those contraventions and thereby contravened section 674(2A) of the Corporations Act;
- (n) whether the failure to disclose any or all of the Material Information as soon as the First Respondent was aware of that information caused the First Respondent's share price to be higher during any part of the Claim Period than it would have been had those matters been disclosed as soon as the Respondent was aware of them and, if so, to what extent or by what amount; and
- (o) whether the group members are persons who suffered loss and damage as a result of the First Respondent's contraventions of section 674(2) of the Corporations Act and the Second Respondent's contraventions of section 674(2A) of the Corporations Act, and, if so, what is the proper method of assessment of that loss or damage.

**AND THE APPLICANT CLAIMS**, for himself and on behalf of the Group Members, the relief set out in the Application filed herein.

Date: 24 April 2019



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Signed by Timothy Michael Luke Finney  
Lawyer for the Applicant

This pleading was prepared by O Bigos and E Olivier of Counsel, and settled by D G Collins of Her Majesty's Counsel.

**ANNEXURE A –GETSWIFT SHARE PRICE HISTORY: 24 FEBRUARY 2017 UNTIL  
21 FEBRUARY 2018  
(as provided by ASX)**

<b>Date</b>	<b>Open (\$)</b>	<b>High (\$)</b>	<b>Low (\$)</b>	<b>Close (\$)</b>
24 February 2017	0.45	0.48	0.45	0.48
27 February 2017	0.48	0.48	0.48	0.48
28 February 2017	0.47	0.48	0.45	0.45
01 March 2017	0.45	0.45	0.45	0.45
02 March 2017	0.48	0.49	0.46	0.465
03 March 2017	0.47	0.47	0.45	0.45
06 March 2017	0.47	0.48	0.47	0.48
07 March 2017	0.48	0.48	0.46	0.46
08 March 2017	0.46	0.485	0.46	0.485
09 March 2017	0.49	0.52	0.49	0.5
10 March 2017	0.505	0.55	0.5	0.5
13 March 2017	0.5	0.53	0.5	0.53
14 March 2017	0.54	0.615	0.54	0.585
15 March 2017	0.6	0.655	0.55	0.55
16 March 2017	0.55	0.6	0.55	0.59
17 March 2017	0.59	0.6	0.58	0.6
20 March 2017	0.6	0.62	0.57	0.57
21 March 2017	0.61	0.62	0.605	0.61
22 March 2017	0.58	0.59	0.57	0.57
23 March 2017	0.58	0.58	0.57	0.57
24 March 2017	0.56	0.56	0.5	0.53
27 March 2017	0.53	0.53	0.53	0.53
28 March 2017	0.52	0.53	0.52	0.53
29 March 2017	0.52	0.52	0.46	0.46
30 March 2017	0.475	0.5	0.46	0.46
31 March 2017	0.47	0.47	0.47	0.47
03 April 2017	0.49	0.495	0.49	0.49
04 April 2017	0.625	0.785	0.6	0.73
05 April 2017	0.72	0.74	0.65	0.665
06 April 2017	0.665	0.765	0.665	0.75
07 April 2017	0.76	0.82	0.7	0.725
10 April 2017	0.74	0.74	0.715	0.715
11 April 2017	0.75	0.78	0.73	0.73
12 April 2017	0.75	0.795	0.75	0.76
13 April 2017	0.76	0.76	0.68	0.71
18 April 2017	0.7	0.7	0.64	0.655
19 April 2017	0.67	0.7	0.65	0.65
20 April 2017	0.66	0.68	0.62	0.68
21 April 2017	0.67	0.67	0.64	0.65
24 April 2017	0.67	0.675	0.66	0.675

Date	Open (\$)	High (\$)	Low (\$)	Close (\$)
26 April 2017	0.675	0.7	0.675	0.7
27 April 2017	0.7	0.7	0.675	0.675
28 April 2017	0.675	0.69	0.525	0.69
01 May 2017	0.68	0.68	0.635	0.635
02 May 2017	0.66	0.66	0.57	0.6
03 May 2017	0.6	0.62	0.6	0.615
04 May 2017	0.615	0.615	0.615	0.615
05 May 2017	0.61	0.61	0.6	0.6
08 May 2017	0.6	0.69	0.58	0.62
09 May 2017	0.675	0.68	0.6	0.6
10 May 2017	0.605	0.715	0.6	0.715
11 May 2017	0.715	0.795	0.695	0.795
12 May 2017	0.85	0.9	0.8	0.885
15 May 2017	0.89	0.89	0.81	0.87
16 May 2017	0.84	0.85	0.84	0.85
17 May 2017	0.865	0.865	0.76	0.795
18 May 2017	0.75	0.76	0.73	0.76
19 May 2017	0.76	0.79	0.76	0.79
22 May 2017	0.825	0.86	0.825	0.845
23 May 2017	0.845	0.845	0.79	0.79
24 May 2017	0.8	0.835	0.8	0.82
25 May 2017	0.835	0.91	0.835	0.865
26 May 2017	0.865	0.915	0.86	0.88
29 May 2017	0.87	0.87	0.85	0.86
30 May 2017	0.86	0.86	0.845	0.85
31 May 2017	0.85	0.85	0.82	0.835
01 June 2017	0.835	0.88	0.82	0.85
02 June 2017	0.85	0.86	0.85	0.86
05 June 2017	0.86	0.88	0.85	0.88
06 June 2017	0.87	0.87	0.84	0.85
07 June 2017	0.87	0.9	0.86	0.87
08 June 2017	0.87	0.955	0.87	0.95
09 June 2017	0.955	1	0.92	0.92
13 June 2017	0.95	0.98	0.88	0.89
14 June 2017	0.895	0.895	0.84	0.875
15 June 2017	0.875	0.905	0.875	0.9
16 June 2017	0.895	0.895	0.79	0.795
19 June 2017	0.8	0.86	0.8	0.85
20 June 2017	0.87	0.88	0.855	0.86
21 June 2017	0.86	0.86	0.86	0.86
22 June 2017	0.86	0.86	0.86	0.86
23 June 2017	0.88	1.01	0.88	0.995
26 June 2017	1.01	1.035	0.96	0.98
27 June 2017	0.98	0.98	0.89	0.89
28 June 2017	0.9	0.915	0.89	0.895
29 June 2017	0.9	0.93	0.9	0.9
30 June 2017	0.92	0.95	0.915	0.94
03 July 2017	0.95	0.97	0.9	0.91
04 July 2017	0.93	0.93	0.85	0.85
05 July 2017	0.89	0.96	0.885	0.945
06 July 2017	0.96	0.96	0.92	0.92
07 July 2017	0.925	0.95	0.92	0.935

Date	Open (\$)	High (\$)	Low (\$)	Close (\$)
10 July 2017	0.935	0.99	0.925	0.98
11 July 2017	0.98	1.03	0.955	1
12 July 2017	1	1	0.98	1
13 July 2017	1.01	1.07	0.99	0.99
14 July 2017	1.005	1.05	0.995	1.05
17 July 2017	1.075	1.175	1.04	1.04
18 July 2017	1.06	1.115	1.025	1.1
19 July 2017	1.12	1.15	1.085	1.15
20 July 2017	1.17	1.195	1.13	1.18
21 July 2017	1.175	1.19	1.145	1.16
24 July 2017	1.17	1.18	1.1	1.13
25 July 2017	1.15	1.16	1.05	1.05
26 July 2017	1.06	1.09	1.02	1.02
27 July 2017	1.08	1.08	1.025	1.035
28 July 2017	1.055	1.135	1.05	1.06
31 July 2017	1.06	1.06	1.035	1.035
01 August 2017	1.07	1.07	1.01	1.035
02 August 2017	1.06	1.06	1	1.02
03 August 2017	1.04	1.04	1	1
04 August 2017	1.02	1.02	0.93	0.985
07 August 2017	1	1	0.97	0.99
08 August 2017	1	1	0.98	0.99
09 August 2017	1	1	0.975	0.985
10 August 2017	0.99	1.02	0.91	0.93
11 August 2017	0.97	0.97	0.91	0.91
14 August 2017	0.98	1.01	0.98	0.99
15 August 2017	1.02	1.035	1	1.03
16 August 2017	1.04	1.09	1.035	1.05
17 August 2017	1.095	1.1	1.02	1.05
18 August 2017	1.05	1.05	1.005	1.02
21 August 2017	1.04	1.045	0.99	1
22 August 2017	1.035	1.035	0.98	1
23 August 2017	1.005	1.07	1.005	1.015
24 August 2017	1.04	1.04	1	1.01
25 August 2017	1.015	1.03	1	1.01
28 August 2017	1.01	1.035	0.995	1.03
29 August 2017	1.03	1.03	1	1.005
30 August 2017	1.025	1.055	1.025	1.025
31 August 2017	1.045	1.14	1.03	1.12
01 September 2017	1.15	1.195	1.13	1.16
04 September 2017	1.175	1.26	1.15	1.26
05 September 2017	1.285	1.32	1.225	1.25
06 September 2017	1.27	1.36	1.25	1.35
07 September 2017	1.39	1.55	1.36	1.5
08 September 2017	1.55	1.64	1.46	1.575
11 September 2017	1.595	1.75	1.595	1.735
12 September 2017	1.88	2.35	1.84	2.06
13 September 2017	2.18	2.25	2.05	2.12
14 September 2017	2.15	2.17	1.905	2
15 September 2017	1.98	2.06	1.925	2.02
18 September 2017	2.01	2.08	1.96	1.96
19 September 2017	1.96	2	1.77	1.77

Date	Open (\$)	High (\$)	Low (\$)	Close (\$)
20 September 2017	1.8	1.98	1.66	1.98
21 September 2017	1.97	1.985	1.855	1.98
22 September 2017	1.96	2.03	1.89	1.99
25 September 2017	2.03	2.18	2.01	2.16
26 September 2017	2.27	2.36	2.24	2.29
27 September 2017	2.36	2.66	2.31	2.65
28 September 2017	2.78	2.88	2.35	2.48
29 September 2017	2.52	2.63	2.45	2.59
02 October 2017	2.62	2.74	2.6	2.7
03 October 2017	2.75	2.88	2.71	2.88
04 October 2017	2.93	3.18	2.9	3.15
05 October 2017	3.07	3.15	2.92	3.15
06 October 2017	3.1	3.11	2.96	3.01
09 October 2017	2.95	2.96	2.65	2.75
10 October 2017	2.71	2.77	2.55	2.77
11 October 2017	2.78	2.96	2.77	2.91
12 October 2017	2.88	2.88	2.75	2.76
13 October 2017	2.76	2.8	2.71	2.73
16 October 2017	2.72	2.73	2.57	2.58
17 October 2017	2.58	2.58	2.21	2.45
18 October 2017	2.48	2.49	2.2	2.36
19 October 2017	2.35	2.6	2.32	2.58
20 October 2017	2.58	2.6	2.47	2.55
23 October 2017	2.64	2.77	2.54	2.56
24 October 2017	2.61	2.69	2.54	2.54
25 October 2017	2.62	2.75	2.57	2.59
26 October 2017	2.64	2.65	2.49	2.5
27 October 2017	2.54	2.55	2.42	2.51
30 October 2017	2.59	2.65	2.42	2.44
31 October 2017	2.51	2.59	2.38	2.41
01 November 2017	2.46	2.48	2.35	2.44
02 November 2017	2.45	2.59	2.42	2.56
03 November 2017	2.58	2.64	2.49	2.5
06 November 2017	2.51	2.66	2.51	2.58
07 November 2017	2.66	2.68	2.46	2.5
08 November 2017	2.51	2.57	2.36	2.38
09 November 2017	2.37	2.37	2.24	2.28
10 November 2017	2.32	2.32	2.2	2.21
13 November 2017	2.2	2.2	2.02	2.08
14 November 2017	2.13	2.32	2.12	2.16
15 November 2017	2.18	2.19	2.05	2.07
16 November 2017	2.05	2.12	1.97	2.04
17 November 2017	2.06	2.24	2.06	2.24
20 November 2017	2.24	2.4	2.11	2.13
21 November 2017	2.14	2.21	2.1	2.14
22 November 2017	2.16	2.19	2.12	2.17
23 November 2017	2.19	2.2	2.11	2.15
24 November 2017	2.15	2.16	2.02	2.09
27 November 2017	2.07	2.09	1.99	2.02
28 November 2017	1.995	2	1.895	1.975
29 November 2017	1.95	2.03	1.865	1.96
30 November 2017	1.96	1.96	1.96	1.96

Date	Open (\$)	High (\$)	Low (\$)	Close (\$)
01 December 2017	3.56	4.36	3.5	3.6
04 December 2017	4.5	4.6	3.95	4.3
05 December 2017	4.34	4.37	3.51	3.7
06 December 2017	3.6	4	3.3	4
07 December 2017	3.6	4	3.3	4
08 December 2017	4	4	4	4
11 December 2017	4.12	4.24	3.77	3.85
12 December 2017	3.84	3.87	3.5	3.58
13 December 2017	3.59	3.79	3.55	3.55
14 December 2017	3.57	3.59	3.44	3.48
15 December 2017	3.5	3.54	3.34	3.42
18 December 2017	3.43	3.75	3.41	3.5
19 December 2017	3.65	3.72	3.45	3.66
20 December 2017	3.67	3.71	3.595	3.65
21 December 2017	3.65	3.67	3.56	3.64
22 December 2017	3.63	3.67	3.53	3.55
27 December 2017	3.65	3.85	3.58	3.85
28 December 2017	3.87	4.02	3.67	3.68
29 December 2017	3.7	3.84	3.66	3.7
02 January 2018	3.7	3.75	3.62	3.66
03 January 2018	3.62	3.73	3.6	3.69
04 January 2018	3.69	3.69	3.61	3.61
05 January 2018	3.62	3.65	3.49	3.6
08 January 2018	3.6	3.6	3.31	3.32
09 January 2018	3.28	3.36	3.17	3.18
10 January 2018	3.14	3.17	3.04	3.11
11 January 2018	3.11	3.16	3.05	3.14
12 January 2018	3.13	3.14	3.07	3.11
15 January 2018	3.13	3.24	3.13	3.17
16 January 2018	3.13	3.24	3.1	3.2
17 January 2018	3.18	3.18	3.03	3.03
18 January 2018	3.05	3.14	3.05	3.13
19 January 2018	3.14	3.17	2.77	2.92
22 January 2018	3.14	3.17	2.77	2.92
23 January 2018 – 16 February 2018	2.92	2.92	2.92	2.92
19 February 2018	0.98	1.475	0.98	1.31
20 February 2018	1.28	1.33	0.93	0.95

## **ANNEXURE B – DEFINITIONS**

**ACL** means the Australian Consumer Law, being schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**All Purpose Transport Announcement** is defined in paragraph 114.

**All Purpose Transport Contract** is defined in paragraph 115.

**All Purpose Transport Disclosure Contravention** is defined in paragraph 139.

**All Purpose Transport False Statements Conduct** is defined in paragraph 123.

**All Purpose Transport Information** is defined in paragraph 134.

**All Purpose Transport Macdonald False Statements Conduct** is defined in paragraph 132.

**All Purpose Transport Macdonald Misleading Conduct** is defined in paragraph 128.

**All Purpose Transport Macdonald Representations** is defined in paragraph 124.

**All Purpose Transport Misleading Conduct** is defined in paragraph 119.

**All Purpose Transport Representations** is defined in paragraph 115.

**All Purpose Transport Services Clause** is defined in paragraph 117A.

**All Purpose Transport Term Clause** is defined in paragraph 117A.

**Amazon Contract** is defined in paragraph 371.

**Amazon False Statements Conduct** is defined in paragraph 381.

**Amazon Macdonald False Statements Conduct** is defined in paragraph 390.

**Amazon Macdonald Misleading Conduct** is defined in paragraph 386.

**Amazon Macdonald Representation** is defined in paragraph 382.

**Amazon Misleading Conduct** is defined in paragraph 377.

**Amazon Representation** is defined in paragraph 371.

**April 2017 CBA Announcement** is defined in paragraph 38.

**April 2017 CBA False Statements Conduct** is defined in paragraph 47.

**April 2017 CBA Macdonald False Statements Conduct** is defined in paragraph 56.

**April 2017 CBA Macdonald Misleading Conduct** is defined in paragraph 52.

**April 2017 CBA Macdonald Representations** is defined in paragraph 48.

**April 2017 CBA Misleading Conduct** is defined in paragraph 43.

**April 2017 CBA Representations** is defined in paragraph 39.

**April Appendix 4C Announcement** is defined in paragraph 95.

**April Appendix 4C False Statements Conduct** is defined in paragraph 104.

**April Appendix 4C Macdonald False Statements Conduct** is defined in paragraph 113.

**April Appendix 4C Macdonald Misleading Conduct** is defined in paragraph 109.

**April Appendix 4C Macdonald Representations** is defined in paragraph 105.

**April Appendix 4C Misleading Conduct** is defined in paragraph 100.

**April Appendix 4C Representations** is defined in paragraph 96.

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth).

**ASX Listing Rules** means the Listing Rules of the ASX.

**ASX** means the Australian Securities Exchange.

**Bare Burger Announcement** is defined in paragraph 275.

**Bare Burger Contract** is defined in paragraph 276.

**Bare Burger False Statements Conduct** is defined in paragraph 284.

**Bare Burger** is defined in paragraph 276.

**Bare Burger Macdonald False Statements Conduct** is defined in paragraph 293.

**Bare Burger Macdonald Misleading Conduct** is defined in paragraph 289.

**Bare Burger Macdonald Representations** is defined in paragraph 285.

**Bare Burger Misleading Conduct** is defined in paragraph 280.

**Bare Burger Representations** is defined in paragraph 276.

**Bare Burger Services Clause** is defined in paragraph 278A(a).

**Bare Burger Term Clause** is defined in paragraph 278A(b).

**BRS Franchising Announcement** is defined in paragraph 274A.

**BRS Franchising Contract** is defined in paragraph 274

**BRS Franchising False Statements Conduct** is defined in paragraph 274K.

**BRS Franchising Macdonald False Statements Conduct** is defined in paragraph 274J.

**BRS Franchising Macdonald Representations** is defined in paragraph 274L.



**BRS Franchising Macdonald Misleading Conduct** is defined in paragraph 274P.

**BRS Franchising Representations** is defined in paragraph 274.

**BRS Franchising Services Clause** is defined in paragraph 274E.

**BRS Franchising Term Clause** is defined in paragraph 274E.

**CBA Contract** is defined in paragraph 39.

**CBA** means the Commonwealth Bank of Australia.

**CITO Announcement** is defined in paragraph 142.

**CITO Contract** is defined in paragraph 143.

**CITO Disclosure Contravention** is defined in paragraph 167.

**CITO False Statements Conduct** is defined in paragraph 151.

**CITO Information** is defined in paragraph 162

**CITO Macdonald False Statements Conduct** is defined in paragraph 160.

**CITO Macdonald Misleading Conduct** is defined in paragraph 155.

**CITO Macdonald Representations** is defined in paragraph 152.

**CITO Misleading Conduct** is defined in paragraph 147.

**CITO Representations** is defined in paragraph 143.

**CITO Services Clause** is defined in paragraph 145A.

**Claim Period** means the period from 24 February 2017 to 19 January 2018 inclusive.

**Client Contract Disclosure Contravention** is defined in paragraph 435.

**Client Contract Information** is defined in paragraph 430.

**Contravening Conduct** is defined in paragraph 120.

**Corporations Act** means the Corporations Act 2001 (Cth).

**December 2017 CBA Announcement** is defined in paragraph 391.

**December 2017 CBA False Statements Conduct** is defined in paragraph 400.

**December 2017 CBA Macdonald Misleading Conduct** is defined in paragraph 125

**December 2017 CBA Macdonald Representations** is defined in paragraph 123.

**December 2017 CBA Misleading Conduct** is defined in paragraph 396.

**December 2017 CBA Representations** is defined in paragraph 392.

**Fantastic Furniture Announcement** is defined in paragraph 247.

**Fantastic Furniture Contract** is defined in paragraph 248.

**Fantastic Furniture Disclosure Contravention** is defined in paragraph 272.

**Fantastic Furniture False Statements Conduct** is defined in paragraph 256.

**Fantastic Furniture Macdonald False Statements Conduct** is defined in paragraph 265.

**Fantastic Furniture Macdonald Misleading Conduct** is defined in paragraph 261.

**Fantastic Furniture Macdonald Representations** is defined in paragraph 257.

**Fantastic Furniture Misleading Conduct** is defined in paragraph 252.

**Fantastic Furniture Representations** is defined in paragraph 248.

**Fantastic Furniture Services Clause** is defined in paragraph 250A.

**Fantastic Furniture Term Clause** is defined in paragraph 250A.

**First Amazon Announcement** is defined in paragraph 370.

**FRF Couriers Announcement** is defined in paragraph 189.

**FRF Couriers Contract** is defined in paragraph 190.

**FRF Couriers False Statements Conduct** is defined in paragraph 198.

**FRF Couriers Macdonald Misleading Conduct** is defined in paragraph 203.

**FRF Couriers Macdonald Representation** is defined in paragraph 199.

**FRF Couriers Misleading Conduct** is defined in paragraph 194.

**FRF Couriers Representation** is defined in paragraph 190.

**FRF Couriers Services Clause** is defined in paragraph 192A.

**FRF Couriers Term Clause** is defined in paragraph 192A.

**Fruit Box Disclosure Contravention** is defined in paragraph 35.

**Fruit Box Group Announcement** is defined in paragraph 10.

**Fruit Box Group Contract** is defined in paragraph 11.

**Fruit Box Group False Statements Conduct** is defined in paragraph 19.

**Fruit Box Group Macdonald False Statements Conduct** is defined in paragraph 28.

**Fruit Box Group Macdonald Misleading Conduct** is defined in paragraph 24.

**Fruit Box Group Macdonald Representations** is defined in paragraph 20.

**Fruit Box Group Misleading Conduct** is defined in paragraph 15.

**Fruit Box Group Representations** is defined in paragraph 11.

**Fruit Box Services Clause** is defined in paragraph 13A.

**Fruit Box Term Clause** is defined in paragraph 13A.

**Fruit Box Information** is defined in paragraph 267.

**Fruit Box Information** is defined in paragraph 30.

**GetSwift means** the First Respondent.

**GetSwift Platform** is defined in paragraph 7.

**GetSwift Shares** means ordinary securities in GetSwift.

**Group Members** is defined in paragraph 2.

**Hungry Harvest Announcement** is defined in paragraph 170.

**Hungry Harvest Contract** is defined in paragraph 171.

**Hungry Harvest False Statements Conduct** is defined in paragraph 179.

**Hungry Harvest Macdonald False Statements Conduct** is defined in paragraph 188.

**Hungry Harvest Macdonald Misleading Conduct** is defined in paragraph 184.

**Hungry Harvest Macdonald Representations** is defined in paragraph 180.

**Hungry Harvest Misleading Conduct** is defined in paragraph 175.

**Hungry Harvest Representations** is defined in paragraph 171.

**Hungry Harvest Services Clause** is defined in paragraph 173A.

**Hungry Harvest Term Clause** is defined in paragraph 173A.

**Johnny Rockets Announcement** is defined in paragraph 313.

**Johnny Rockets Contract** is defined in paragraph 314.

**Johnny Rockets False Statements Conduct** is defined in paragraph 322.

**Johnny Rockets Macdonald False Statements Conduct** is defined in paragraph 331.

**Johnny Rockets Macdonald Misleading Conduct** is defined in paragraph 327.

**Johnny Rockets Macdonald Representations** is defined in paragraph 323.

**Johnny Rockets Misleading Conduct** is defined in paragraph 318.

**Johnny Rockets Representations** is defined in paragraph 314.

**Johnny Rockets Services Clause** is defined in paragraph 316A.

**Johnny Rockets Term Clause** is defined in paragraph 316A.

**Lone Star Grill Announcement** is defined in paragraph 57.

**Lone Star Grill False Statements Conduct** is defined in paragraph 66.

**Lone star Grill Macdonald False Statements Conduct** is defined in paragraph 75.

**Lone Star Grill Macdonald Misleading Conduct** is defined in paragraph 71.

**Lone Star Grill Macdonald Representations** is defined in paragraph 67.

**Lone Star Grill Misleading Conduct** is defined in paragraph 61.

**Lone Star Grill Representations** is defined in paragraph 58.

**Lone Star Services Clause** is defined in paragraph 60A.

**Lone Star Term Clause** is defined in paragraph 60A.

**Mr Macdonald** is defined in paragraph 6.

**N A Williams Announcement** is defined in paragraph 294.

**N A Williams Contract** is defined in paragraph 304.

**N A Williams False Statements Conduct** is defined in paragraph 303.

**N A Williams Macdonald False Statements Conduct** is defined in paragraph 312.

**N A Williams Macdonald Misleading Conduct** is defined in paragraph 308.

**N A Williams Macdonald Representations** is defined in paragraph 304.

**N A Williams Misleading Conduct** is defined in paragraph 299.

**N A Williams Representations** is defined in paragraph 295.

**October Appendix 4C Announcement** is defined in paragraph 332.

**October Appendix 4C False Statements Conduct** is defined in paragraph 341.

**October Appendix 4C Macdonald False Statements Conduct** is defined in paragraph 350.

**October Appendix 4C Macdonald Misleading Conduct** is defined in paragraph 346.

**October Appendix 4C Macdonald Representation** is defined in paragraph 342.

**October Appendix 4C Misleading Conduct** is defined in paragraph 337.

**October Appendix 4C Representation** is defined in paragraph 333.

**Pizza Hut Announcement** is defined in paragraph 76.

**Pizza Hut Contract** is defined in paragraph 77.

**Pizza Hut False Statements Conduct** is defined in paragraph 85.

**Pizza Hut Macdonald False Statements Conduct** is defined in paragraph 94.

**Pizza Hut Macdonald Misleading Conduct** is defined in paragraph 90.

**Pizza Hut Macdonald Representations** is defined in paragraph 86.

**Pizza Hut Misleading Conduct** is defined in paragraph 81.

**Pizza Hut Representations** is defined in paragraph 77.

**Pizza Hut Services Clause** is defined in paragraph 79.

**Pizza Hut Term Clause** is defined in paragraph 79.

**Pre-Revenue Phase** is defined in paragraph 14.

**Price Inflation** is defined in paragraph 455.

**Representations** is defined in paragraph 122.

**Second Amazon Announcement** is defined in paragraph 372.

**Shares** is defined in paragraph 2.

**Takeaway.com Announcement** is defined in paragraph 218.

**Takeaway.com Contract** is defined in paragraph 219.

**Takeaway.com False Statements Conduct** is defined in paragraph 227.

**Takeaway.com Macdonald False Statements Conduct** is defined in paragraph 236.

**Takeaway.com Macdonald Misleading Conduct** is defined in paragraph 232.

**Takeaway.com Macdonald Representations** is defined in paragraph 228.

**Takeaway.com Misleading Conduct** defined in paragraph 223.

**Takeaway.com Representations** is defined in paragraph 219.

**Takeaway.com Services Clause** is defined in paragraph 221A.

**Takeaway.com Term Clause** is defined in paragraph 221A.

**Tranche 1 Cleansing Notice False Statements Conduct** is defined in paragraph 217.

**Tranche 1 Cleansing Notice** is defined in paragraph 208.

**Tranche 1 Cleansing Notice Misleading Conduct** is defined in paragraph 213.

**Tranche 1 Cleansing Notice Representation** is defined in paragraph 209.

**Tranche 2 Cleansing Notice False Statements Conduct** is defined in paragraph 246.

**Tranche 2 Cleansing Notice** is defined in paragraph 237.

**Tranche 2 Cleansing Notice Misleading Conduct** is defined in paragraph 242.

**Tranche 2 Cleansing Notice Representation** is defined in paragraph 238.

**Yum! Brands Announcement** is defined in paragraph 351.

**Yum! Brands Contract** is defined in paragraph 352.

**Yum! Brands False Statements Conduct** is defined in paragraph 360.

**Yum! Brands Macdonald False Statements Conduct** is defined in paragraph 369.

**Yum! Brands Macdonald Misleading Conduct** defined in paragraph 365.

**Yum! Brands Macdonald Representation** is defined in paragraph 361.

**Yum! Brands Misleading Conduct** is defined in paragraph 356.

**Yum! Brands Representations** is defined in paragraph 352.