

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
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File Title: RAFFAELE WEBB v GETSWIFT LTD ACN 604 611 556 & ANOR  
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A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

### Important Information

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

**THIRD FURTHER AMENDED STATEMENT OF CLAIM**

**(Filed pursuant to Order 1 of the orders of Justice Lee dated 17 February 2021)**

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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) (**FCAA**).
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 Third 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 which was released to the market on 7 December 2016, Pages 53 to 55 "Board and Corporate Governance"; and
- iii. GetSwift Continuous Disclosure Policy in force throughout the Claim Period.

9A. On 7 December 2016, GetSwift published and lodged with the ASX a prospectus dated 26 October 2016 in respect of its initial public offering in which it stated that:

- (a) GetSwift was an early stage growth-oriented software company which had incurred operating losses to date (page 10);
- (b) the main reasons for raising capital and seeking a listing on the ASX were (page 7):
  - (i) fulfilment of existing growth demand in markets in which GetSwift currently operated;
  - (ii) capturing increased volume and scale across targeted markets;
  - (iii) establishing an organisation that could support and sustain current and future global growth;
- (c) during 2016 GetSwift had experienced sustained growth with the number of monthly transactions completed using the GetSwift Platform increasing by an average of 20+% and a total of 402% since 1 January 2016 (page 9 and section 3.5 at page 26);

- (d) Enterprise clients, being larger organisations with multi-site requirements and trading volumes of greater than 10,000 deliveries per month, were one of two main client segments (page 28);
- (e) typically, Enterprise clients were granted a 90-day proof of concept (**POC**) trial and the client then moves to a standard contract (page 28);
- (f) GetSwift's Enterprise clients which had entered into a POC trial had a 100% sign up rate to contracts as at the date of the prospectus (page 28).

## 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 on and from 24 February 2017 until the end of the Claim Period 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; alternatively, GetSwift projected 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);

(ca) it had reasonable grounds for making the Fruit Box Projection (Fruit Box Projection Reasonable Grounds Representation);

~~(d) it had reasonable grounds to project that the Fruit Box Group Contract would generate revenue for GetSwift by the exclusive use of the GetSwift platform by the Fruit Box Group, which managed over 1,500,000+ deliveries every year with significant growth projections in place, for its deliveries for the next three years; alternatively, GetSwift expected that the Fruit Box Group Contract would generate revenue for GetSwift by the exclusive use of the GetSwift platform by the Fruit Box Group, which managed over 1,500,000+ deliveries every year with significant growth projections in place, for its deliveries for the next three years (the Fruit Box Revenue Representation);~~

(e) it had reasonable grounds for making the Fruit Box Revenue Representation (Fruit Box Revenue Reasonable Grounds Representation),

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

#### Particulars

- (i) The representation in paragraph (a) was expressly made by the Fruit Box Group Announcement.
- (ii) 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.
- (iii) The representation in paragraph (c) was in part ~~implied from a~~ express, constituted by the statements made in the Fruit Box Group Announcement that “GetSwift signs The Fruit Box Group (Box Corporate) to a 3 year, 7m+ deliveries contract” and

*“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.

(iii) The Fruit Box Projection Reasonable Grounds Representation in paragraph (ca) was in part implied from the Fruit Box Projection, and in part implied from the absence of qualification in the Fruit Box Group Announcement.

(iv) The Fruit Box Revenue Representation in paragraph (d) was in part express, constituted by the representation alleged in paragraph (a) and by a statement in the Fruit Box Group Announcement that *“Fruit Box currently manages over 1,500,000 + deliveries every year with significant growth projections in place”*, and partly implied from the absence of qualification in the Fruit Box Group Announcement, from the Fruit Box Group Announcement being marked as price sensitive, 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.

(iva) The Fruit Box Revenue Reasonable Grounds Representation in paragraph (e) was in part implied from the Fruit Box Revenue Representation, and in part implied from the absence of qualification in the Fruit Box Group Announcement.

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

(vi) Each of the Fruit Box Group Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

11A. Each of:

- (a) the Fruit Box Projection;
- (b) the Fruit Box Projection Reasonable Grounds Representation;
- (c) the Fruit Box Revenue Representation; and

(d) the Fruit Box Revenue Reasonable Grounds Representation,

was a representation with respect to a future matter or matters.

12. Each of the Fruit Box Group Representations and the Continuation of the Fruit Box Group Contract Representations (alleged in paragraph 14A below) was:

(e) made in relation to a financial product, namely GetSwift Shares; and

(f) made in trade or commerce.

13. By making the Fruit Box Group Representations and the Continuation of the Fruit Box Group Contract Representations GetSwift engaged in conduct:

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

(h) 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;

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

13A. The Fruit Box Group 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**).

13B. As at 24 February 2017:

- (a) the Fruit Box Group had told GetSwift that it currently made 1.44 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 that the Fruit Box Group would exercise an option to extend the Fruit Box Group Contract for a further 24 months, where the exercise of that option was at the absolute discretion of the Fruit Box Group;
- (d) alternatively to (c), in making the Fruit Box Projection, GetSwift assumed an annual deliveries growth rate of approximately 24%, without any input from the Fruit Box Group,

(individually, collectively, or in any combination, the **Fruit Box Projection Information**).

### Particulars

The Applicant relies on:

- i. paragraph 30 of the Statement of Claim filed by ASIC (**ASIC Statement of Claim**) in proceeding VID146/2019 (ASIC v GetSwift Ltd and others) (**ASIC Proceeding**);
- ii. emails from Veronika Mikac to Mr Macdonald sent at 5:36pm and 5:36am and 5:22am on 16 February 2017; and
- iii. an email from Scott Mison to Brett Eagle sent at 1:15pm on 23 February 2017, and clause 4 of the Fruit Box Group Contract.

13C. On 20 March 2017, the Fruit Box Group gave notice to GetSwift that it elected not to continue the Fruit Box Group 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 Mr 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".

13D. On and from 20 March 2017:

- (a) the Fruit Box Group had terminated the Fruit Box Group Contract and it would not continue beyond 1 April 2017;
- (b) no deliveries would take place, and 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 13C.

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) as at 24 February 2017, the Limited Roll Out had not occurred and the Fruit Box Group was entitled to give notice that it elected not to continue the Fruit Box Group Contract beyond the Limited Roll Out in accordance with the Fruit Box Term Clause;

- (d) ~~by reason of the matters referred to in (a) to (c) above and the Fruit Box Projection Information, 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;~~
- (e) by reason of the matters in (a) to (c) above and the Fruit Box Projection Information, there was no reasonable basis for the Fruit Box Projection, the Fruit Box Projection Reasonable Grounds Representation, the Fruit Box Revenue Representation, or the Fruit Box Revenue Reasonable Grounds Representation, and GetSwift did not have a reasonable basis grounds for making ~~it~~ them;
- (ea) each of the Fruit Box Projection, the Fruit Box Projection Reasonable Grounds Representation, the Fruit Box Revenue Representation, and the Fruit Box Revenue Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL;
- (f) further, from 20 March 2017, each of the Fruit Box Group Representations was false as a result of the Fruit Box Information.

### 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.

14A. Further and alternatively, by failing to publish and lodge with the ASX an announcement that the Fruit Box Group had elected not to continue with the Fruit Box Group Contract, GetSwift represented from 20 March 2017 until the end of the Claim Period that:

- (a) the Fruit Box Group Contract remained operative;
- (b) it continued to have reasonable grounds for the Fruit Box Projection; and



(c) the Fruit Box Group Contract would continue to generate revenue in accordance with the Fruit Box Revenue Representation,

(the **Continuation of the Fruit Box Group Contract Representations**).

### Particulars

Each of the Continuation of the Fruit Box Group Contract Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend or qualify the substance of the representation; and/or did not release to the ASX any information that would significantly supplement or modify the representation during the Claim Period.

14AA. Each of the Continuation of the Fruit Box Group Contract Representations in paragraphs 14A(b) and 14A(c) above was a representation with respect to a future matter or matters.

14B. The Continuation of the Fruit Box Group Contract Representations were false and misleading as a result of the Fruit Box Information.

14C. Further, each of the Continuation of the Fruit Box Group Contract Representations in paragraphs 14A(b) and 14A(c) above was false or misleading, in that:

(a) by reason of the Fruit Box Information, there was no reasonable basis for those representations and GetSwift did not have reasonable grounds for making them; and

(b) each of those representations is taken to be misleading by operation of s 769C of the Corporations Act, further or alternatively s 12BB of the ASIC Act, and further or alternatively s 4 of the ACL.

15. By reason of the matters set out in paragraphs 10 to ~~14B~~14C above, by making the Fruit Box Group Representations, the Continuation of the Fruit Box Group Contract 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.

- 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.

The Applicant refers to an email from Mr Macdonald to Mr Mison sent at 10.48am on 23 February 2017.

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.

Each of the Fruit Box Group Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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.

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. [Deleted.]

30. By reason of the matters set out in paragraphs 11 and 13C , as at 20 March 2017 and at all material times thereafter until the end of the Claim Period, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, of the Fruit Box Information.

**Particulars**

The Applicant refers to and repeats the matters set out in paragraph 13C.

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.

31. Further or alternatively, by reason of the matters set out in paragraphs 9, 11, 13C and 30, Mr 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 13C.

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.

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, of the Fruit Box Projection Information.

### **Particulars**

The Applicant refers to the particulars to paragraph 13B.

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.

37B. Further, or alternatively, by reason of the matters set out in paragraphs 9, 13B 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 13B. 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 37C, 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 to 37D, 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 37E, GetSwift contravened section 674(2) of the Corporations Act (**Fruit Box Projection Disclosure Contravention**).
- 37G. By reason of the matters alleged in paragraphs 37A to 37F, 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**

The Applicant refers to the particulars to paragraph 13B.

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 Group 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.

## 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 on and from 4 April 2017 until the making of the December 2017 CBA Announcement 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) 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; alternatively, GetSwift estimated 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 (**CBA Projections**);
  - (ii) the Represented Albert POS Logistics Solution would be fully deployed nationally in 2017; alternatively, GetSwift expected that the Represented Albert POS Logistics Solution would be fully deployed nationally in 2017 (**CBA Roll-Out Projection**);

- (ba) it had reasonable grounds for making each of the CBA Projections and the CBA Roll-Out Projection (CBA Projections and Roll-Out Projection Reasonable Grounds Representations);
- (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;
- (d) ~~it had reasonable grounds to~~ the CBA Contract would generate revenue for GetSwift by the use of the GetSwift Platform by CBA's retail merchants for 257.4 million deliveries over the next five years; alternatively, GetSwift estimated that the CBA Contract would generate revenue for GetSwift by the use of the GetSwift Platform by CBA's retail merchants for 257.4 million deliveries over the next five years (the CBA Revenue Representation);
- (e) it had reasonable grounds for making the CBA Revenue Representation (CBA Revenue Reasonable Grounds Representation),
- (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)(i) and (ii) were in part ~~implied express, constituted by the~~ 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 CBA Projections and Roll-Out Projection Reasonable Grounds Representations in paragraph (ba) was in part implied by CBA

Projections and the CBA Roll-Out Projection, and in part implied from the absence of qualification in the April 2017 CBA Announcement.

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 CBA Revenue Representation in paragraph (d) was in part implied from the CBA Projections and the CBA Roll-Out Projections, and in part implied from the absence of qualification in the April 2017 CBA Announcement, from the April 2017 CBA Announcement being marked as price sensitive, 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 CBA Revenue Reasonable Grounds Representation in paragraph (e) was in part implied by CBA Revenue Representation, and in part implied from the absence of qualification in the April 2017 CBA Announcement.

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

Each of the April 2017 CBA Representations was a continuing representation, by reason that GetSwift made the representation; and/or repeated, or confirmed the substance of, the representation in the April Appendix 4C Announcement alleged at paragraph 95 below, an ASX Announcement titled “GetSwift Investor Presentation” published and lodged with the ASX on 9 May 2017 (**May 2017 Investor Presentation**), and an ASX Announcement titled “Appendix 4C and Yearly Review” published and lodged with the ASX on 28 July 2017 (**July Appendix 4C Announcement**); and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation prior to the making of the December 2017 CBA Announcement.

39A. Each of:

- (a) the CBA Projections;
- (b) the CBA Roll-Out Projection;
- (c) the CBA Projections and Roll-Out Projection Reasonable Grounds Representations;

- (d) the CBA Revenue Representation; and
- (e) the CBA Revenue Reasonable Grounds Representation  
was a representation with respect to a future matter or matters.

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 C 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);
- (ba) by clause 1.1, that the Exclusivity Period of the Project was a period of 24 months and limited to the geographic region of Australia;

- (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;
- (fa) by clause 3.1(d), that CBA would only load the GetSwift App onto Albert devices with merchant category codes agreed by the parties in the Project Plan;
- (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.

41B. On and from 4 April 2017:

- (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) the CBA Contract provided that the GetSwift App would only be loaded onto Albert terminals with the merchant category codes agreed by GetSwift and CBA in the Project Plan;
- (d) no merchant category codes had been or were ever agreed between GetSwift and CBA;
- (e) the CBA Contract did not oblige CBA retail merchants to use the GetSwift App;
- (f) CBA had informed GetSwift that:
  - (i) the number of CBA retail merchants was not 55,000; and
  - (ii) not all of CBA retail merchants had an Albert terminal;
- (g) the CBA Projections had not been provided by, or otherwise approved by, CBA;
- (h) the CBA Contract was subject to a Project Plan;
- (i) no Project Plan was subsequently agreed to between GetSwift and CBA;
- (j) no application had been, or was ever, developed for deployment on the Albert terminals during the Claim Period;
- (k) the GetSwift App was never deployed on the Albert terminals during the Claim Period,

(individually, collectively, or in any combination, the **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 Harrison Polites of Media + Capital Partners forwarding an email from Natalie Kitchen of CBA to Mr Macdonald and Bane Hunter of GetSwift dated 3 April 2017.

As to sub-paragraph (f)(ii), the Applicant relies on a CBA Media Briefing Note forwarded to Mr Macdonald and Mr Hunter on 15 March 2017.

As to paragraphs (j) and (k), the Applicant refers to the matters in the December 2017 CBA Announcement.

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 and the CBA Information, GetSwift did not have a reasonable basis to:
    - (i) estimate 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;
  - (e) by reason of the matters in (a) to (d) above and the CBA Information, there was no reasonable basis for the CBA Projections, the CBA Roll-Out Projection, the CBA Projections and Roll-Out Projection Reasonable Grounds Representations, the CBA Revenue Representation, or the CBA Revenue Reasonable Grounds Representation, and GetSwift did not have a reasonable ~~basis~~ grounds for making ~~it~~ them;



- (f) each of the CBA Projections, the CBA Roll-Out Projection, the CBA Projections and Roll-Out Projection Reasonable Grounds Representations, the CBA Revenue Representation, and the CBA Revenue Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

### 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, Exclusivity Period and Services at clause 1.1, clause 2, clause 3.2, clause 6, 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 Mr Polites of Media + Capital Partners forwarding an email from Ms Kitchen of CBA to Mr Macdonald and Mr Hunter of GSW dated 3 April 2017.
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.

- 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 CBA Macdonald Representations**).

**Particulars**

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

The Applicant refers to the email from Mr Macdonald to Mr Hunter, Mr Mison, Mr Eagle, and Jamila Gordon sent at 1:34am on 3 April 2017.

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.

Each of the April 2017 CBA Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation prior to the making of the December 2017 CBA Announcement.

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.

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.

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 42.

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, of the CBA Information.

### Particulars

The Applicant refers to the particulars to paragraph 41B.

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.

56B. Further, or alternatively, by reason of the matters set out in paragraphs 9, 48, 41B 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 paragraphs 41B and 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 56C, 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 to 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 to 56E, GetSwift contravened section 674(2) of the Corporations Act (**CBA Disclosure Contravention**).

56G. By reason of the matters in paragraphs 56A to 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

The Applicant refers to the particulars to paragraph 41B.

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.

### 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 on and from 20 April 2017 until the end of the Claim Period 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;

- (c) ~~it had reasonable grounds to expect that~~ the Lone Star Grill Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by Lone Star Grill for its deliveries for the next two or more years; alternatively, GetSwift expected that the Lone Star Grill Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by Lone Star Grill for its deliveries for the next two or more years (the **Lone Star Grill Revenue Representation**);
- (d) it had reasonable grounds for making the Lone Star Grill Revenue Representation (Lone Star Grill Revenue Reasonable Grounds Representation),
- (collectively, the **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.

The Lone Star Grill Revenue Representation in paragraph (c) was in part express, constituted by the representation in paragraph (a) and in part implied from the absence of qualification in the Lone Star Grill Announcement, from the Lone Star Grill Announcement being marked price sensitive, 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 Lone Star Grill Revenue Reasonable Grounds Representation in paragraph (d) was in part implied by Lone Star Grill Revenue Representation and in part implied from the absence of qualification in the Lone Star Grill Announcement.

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



Each of the Lone Star Grill Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

58A. Each of:

- (a) the Lone Star Grill Revenue Representation; and
- (b) the Lone Star Grill Revenue Reasonable Grounds Representation,  
was a representation with respect to a future matter or matters.

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 was to expire no later than 30 September 2017,

(ii) a Limited Initial Roll Out; and (iii) 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) [Deleted.]
- (d) as at 20 April 2017, the Free Trial Period had not elapsed and/or the Limited Initial Roll Out had not occurred;
- (e) at no time during the Claim Period had Lone Star Grill informed GetSwift that it had decided to proceed to use the GetSwift Platform beyond the Free Trial Period and/or Limited Initial Roll Out, or was the Lone Star Grill Contract generating revenue for GetSwift;
- (f) by reason of the matters in (a) to (e) above, there was no reasonable basis for the Lone Star Grill Revenue Representation or the Lone Star Grill Revenue Reasonable Grounds Representation, and GetSwift did not have a reasonable ~~basis~~ grounds for it making them;
- (g) each of the Lone Star Grill Revenue Representation and the Lone Star Grill Revenue Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

### 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.
  - iii. As to paragraphs (d) and (e), a draft ASX announcement titled “Market Update” dated 21 January 2018, which lists the Lone Star Grill Contract in a ‘Pre-Roll Out’ Stage; and a report titled “Profit & Loss and Metrics - 18 November 2017” which records Loan Star Grill as having had no deliveries on the GetSwift Platform.
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.

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.

Each of the Lone Star Grill Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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.

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 on and from 28 April 2017 until the end of the Claim Period that:
- (a) GetSwift and Pizza Hut had entered into a contract with a term of two or more years pursuant to which Pizza Hut was contractually obliged:
    - (i) to use the GetSwift Platform for its deliveries for the term of the contract;
    - (ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for the term of the contract;
  - (b) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred, and the contract was not conditional upon any of them occurring;
  - (c) ~~it had reasonable grounds to expect that the contract with Pizza Hut would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by Pizza Hut for its deliveries for two or more years; alternatively, GetSwift expected that the contract with Pizza Hut~~

would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by Pizza Hut for its deliveries for two or more years (the **Pizza Hut Revenue Representation**);

- (d) it had reasonable grounds for making the Pizza Hut Revenue Representation (**Pizza Hut Revenue Reasonable Grounds Representation**),

(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.

The Pizza Hut Revenue Representation in paragraph (c) was in part ~~implied from~~ express, constituted by the representations in paragraph (a), and in part implied from the absence of qualification in the Pizza Hut Announcement, from the Pizza Hut Announcement being marked price sensitive, 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 Pizza Hut Revenue Reasonable Grounds Representation in paragraph (d) was in part implied by the Pizza Hut Revenue Representation and in part implied from the absence of qualification in the Pizza Hut Announcement.

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

Each of the Pizza Hut Representations was a continuing representation, by reason that GetSwift made the representation; and/or repeated, or confirmed, the substance of the representation in the May 2017 Investor Presentation and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.



77A. Each of:

- (a) the Pizza Hut Revenue Representation; and
  - (b) the Pizza Hut Revenue Reasonable Grounds Representation,
- was a representation with respect to a future matter or matters.

78. Each of the Pizza Hut Representations was:

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

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

- (e) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (f) 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;
- (g) in relation to a financial product, being GetSwift Shares, within the meaning of section 764A of the Corporations Act.

79AA. On or about 20 April 2017, GetSwift Logistics Pty Ltd, a subsidiary of GetSwift (referred to collectively in Part F as GetSwift) signed a term sheet (**Pizza Pan Contract**) with Pizza Pan Group Pty Ltd (**Pizza Pan**).

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

- (a) by clause 3, that Pizza Pan exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **Pizza Pan Services Clause**);
- (b) by clause 4, that the term of the engagement comprised: (i) a period of systems integration, referred to as a “Joint Product & Production roadmap implementation” to start on or about 2 May 2017 (ii) 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 (iii) unless Pizza Pan 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 and a further option to renew for 12 months after that (the **Pizza Pan Term Clause**).

79B. On and from 28 April 2017:

- (a) the actual parties to the Pizza Pan 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 Pizza Hut branded stores in Australia only;
- (e) Pizza Pan never operated any restaurants outside of Australia;
- (f) the Pizza Pan 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.

80. The Pizza Hut Representations and each of them were false and misleading, in that:

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

- (b) the Pizza Pan Contract did not oblige Pizza Pan to use only the GetSwift Platform for automated dispatching or tracking of delivery of goods during the term of the Pizza Pan Contract;
- (c) the Pizza Pan 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 Pan 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 as at 28 April 2017, the system integration had not occurred, the Proposed Limited Initial Roll Out had not commenced and the initial three month time period had not elapsed;
- (e) The Pizza Pan Contract was not between GetSwift and Pizza Hut, the largest pizza chain in the world but, rather, was between GetSwift and Pizza Pan, a company incorporated in Australia;
- (f) at no time during the Claim Period had Pizza Pan informed GetSwift that it had decided to proceed to use the GetSwift Platform beyond the Limited Initial Roll Out, or was the Pizza Pan Contract generating revenue for GetSwift;
- (g) by reason of the matters in (a) to (f) and the Pizza Hut Information, there was no reasonable basis for the Pizza Hut Revenue Representation or the Pizza Hut Revenue Reasonable Grounds Representation, and GetSwift did not have a reasonable ~~basis~~ grounds for it making them;
- (h) each of the Pizza Hut Revenue Representation and the Pizza Hut Revenue Reasonable Grounds Representation is taken to be misleading by the operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

### 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 Pan Contract including, inter alia, the Pizza Pan Services Clause and the Pizza Pan Term Clause.
  - iii. The parties to the Pizza Pan Contract. Pizza Pan was a wholly owned subsidiary of Allegro Funds (AFSL 345995) that held the Master Franchisee Licence for Pizza Hut in Australia.
  - iv. As to paragraph (f), the matters referred to in paragraphs 42 to 50 of the affidavit of Patrick David Branley sworn 4 October 2019 in the ASIC Proceeding.
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.

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.

The Applicant refers to an email from Mr Macdonald to Mr Mison sent at 3:06am on 28 April 2017.

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 Pan 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.

Each of the Pizza Hut Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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.

- 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 Pan 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, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, of 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 Pan Contract, including the parties to that Contract.

- 94B. Further, or alternatively, by reason of the matters set out in paragraph 9, 79B, 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 Pan 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 94C, 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 94A to 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 to 94E, GetSwift contravened section 674(2) of the Corporations Act (**Pizza Hut Disclosure Contravention**).

94G. By reason of the matters in paragraphs 94A to 94F, 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 Pan Contract which bears Mr Macdonald's signature.

The Applicant relies on paragraph 62 of the ASIC Statement of Claim.

## **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 on and from 28 April 2017 until the end of the Claim Period 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.

Each of the April Appendix 4C Representations was a continuing representation, by reason that GetSwift made the representation; and/or repeated or confirmed the substance of the representation in the October Appendix 4C Announcement alleged in paragraph 332 below; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

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

96A. Each of the April Appendix 4C Representations was a representation with respect to a future matter or matters.

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;
- (d) by reason of the matters in (a) to (c) above, there was no reasonable basis for any of the April Appendix 4C Representations, and GetSwift did not have reasonable grounds for making them;
- (e) each of the April Appendix 4C Representations are taken to be misleading by the operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

### 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.
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.

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.

Each of the April Appendix 4C Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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.

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 on and from 8 May 2017 until the end of the Claim Period 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;
  - (c) ~~it had reasonable grounds to expect that~~ the All Purpose Transport Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by All Purpose Transport for its deliveries for two or more years; alternatively, GetSwift expected that the All Purpose Transport Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by All Purpose Transport for its deliveries for two or more years (the All Purpose Transport Revenue Representation);
  - (d) it had reasonable grounds for making the All Purpose Transport Revenue Representation (the All Purpose Transport Revenue Reasonable Grounds Representation),
- (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.

The All Purpose Transport Revenue Representation in paragraph (c) was in part express, constituted by the representation in paragraph (a) and in part implied from the absence of qualification in the All Purpose Transport Announcement, from the All Purpose Transport

Announcement being marked price sensitive, 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 the April Appendix 4C Announcement, and which statements were not qualified or withdrawn.

The All Purpose Transport Revenue Reasonable Grounds Representation in paragraph (d) was in part implied from the All Purpose Transport Revenue Representation and in part implied from the absence of qualification in the All Purpose Transport Announcement.

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

Each of the All Purpose Transport Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

115A. Each of:

- (a) the All Purpose Transport Revenue Representation; and
- (b) the All Purpose Transport Reasonable Grounds Revenue Representation,  
was a representation with respect to a future matter or matters.

116. Each of the All Purpose Transport Representations and the Continuation of the All Purpose Transport Revenue Representation (alleged in paragraph 118A) 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 and the Continuation of the All Purpose Transport Revenue 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.

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 June 2017) that it elected not to continue the contract beyond the Free Trial Period (the **All Purpose Transport Term Clause**).

117B. On and from 17 July 2017:

- (a) the Free Trial Period had not commenced;
- (b) All Purpose Transport had ceased engaging with GetSwift, in the context of not having made any deliveries using the GetSwift Platform;
- (c) no deliveries would take place, and GetSwift would earn no revenue, under the All Purpose Transport Contract;

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

### Particulars

The Applicant refers to:

- i. GetSwift's response dated 9 February 2018 to ASX letter of 6 February 2018, point 7;

ii. Paragraphs 81 and 82 of the ASIC Statement of Claim.

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) as at 8 May 2017, the Free Trial Period had not occurred and All Purpose Transport was entitled to give notice that it elected not to continue the All Purpose Transport Contract beyond the Free Trial Period in accordance with the All Purpose Transport Term Clause;
- (d) by reason of the matters in (a) to (c) above, there was no reasonable basis for the All Purpose Transport Revenue Representation or the All Purpose Transport Revenue Reasonable Grounds Representation and GetSwift did not have a reasonable ~~basis~~ grounds for making it them;
- (da) each of the All Purpose Transport Revenue Representation and the All Purpose Transport Revenue Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL;
- (e) further, from 17 July 2017, the All Purpose Transport Revenue Representation was false as a result of the All Purpose Transport Information.

### **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.

118A. Further or alternatively, by failing to publish and lodge with the ASX an announcement that no deliveries would take place under the All Purpose Transport Contract, GetSwift represented from 17 July 2017 until the end of the Claim Period that the All Purpose Group Contract would continue to generate revenue in accordance with the All Purpose Transport Revenue Representation (the **Continuation of the All Purpose Transport Revenue Representation**).

#### **Particulars**

The Continuation of the All Purpose Transport Revenue Representation was a continuing representation, by reason that GetSwift made the representation; and/or did not amend or qualify the substance of the representation; and/or did not release to the ASX any information that would significantly supplement or modify the representation during the Claim Period.

118AA. The Continuation of the All Purpose Transport Revenue Representation was a representation with respect to a future matter or matters.

118B. The Continuation of the All Purpose Transport Revenue Representation was false and misleading as a result of the All Purpose Transport Information.

118C. The Continuation of the All Purpose Transport Revenue Representation was false or misleading, in that:

- (a) by reason of the All Purpose Transport Information, there was no reasonable basis for the All Purpose Transport Revenue Representation and GetSwift did not have a reasonable grounds for making it; and
- (b) the All Purpose Transport Revenue Representation is taken to be misleading by operation of s 769C of the Corporations Act, further or alternatively s 12BB of the ASIC Act, and further or alternatively s 4 of the ACL.

119. By reason of the matters set out in paragraphs 114 to ~~118B~~118C above, by making the All Purpose Transport Representations, the Continuation of the All Purpose Transport Revenue Representation 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.

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.

The Applicant relies on the email from Mr Macdonald to Mr Milson, Ms Gordon, Mr Hunter, and Mr Eagle sent at 12:43am on 8 May 2017.

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.

Each of the All Purpose Transport Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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.

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. [Deleted.]

134. By reason of the matters set out in paragraphs 5, 115 and 117B, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, of the All Purpose Transport Information.

### **Particulars**

The Applicant refers to the particulars to paragraph 117B.

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.

135. Further or alternatively, by reason of the matters set out in paragraphs 9, 115 117B 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 117B 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.

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 136, 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 135 to 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 135 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 135 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 128.

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.

**I. CITO CONTRAVENTIONS**

*I CITO Misleading Conduct*

142. On 22 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 on and from 22 May 2017 until the end of the Claim Period 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;
- (c) ~~it had reasonable grounds to expect that the CITO Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by CITO for its deliveries for two or more years;~~ alternatively, GetSwift expected that the CITO Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by CITO for its deliveries for two or more years (the **CITO Revenue Representation**);

(d) it had reasonable grounds for making the CITO Revenue Representation (the CITO Revenue Reasonable Grounds Representation),

(collectively, the **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.

The CITO Revenue Representation in paragraph (c) was in part express, constituted by the representation in paragraph (a) and in part implied from the absence of qualification in the CITO Announcement, from the CITO Announcement being marked price sensitive 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 the April Appendix 4C Announcement, and which statements were not qualified or withdrawn.

The CITO Revenue Reasonable Grounds Representation in paragraph (d) was in part implied from the CITO Revenue Representation and in part implied from the absence of qualification in the CITO Announcement.

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

Each of the CITO Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

#### 143A. Each of:

- (a) the CITO Revenue Representation; and
- (b) the CITO Revenue Reasonable Grounds Representation,

was representation with respect to a future matter or matters.

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.

145B. On and from 22 May 2017:

- (a) CITO had entered into the CITO Contract for the purpose of facilitating a tripartite transaction between CITO, GetSwift and Phillip Morris (**PMI**), pursuant to which PMI would pay monies to CITO for warehousing services, and CITO would not make any deliveries using the GetSwift Platform or pay monies to GetSwift;
- (b) CITO had not advised GetSwift that it would otherwise use the GetSwift Platform to make deliveries; and
- (c) the CITO Contract contained no fixed term,

(individually, collectively, or in any combination, the **CITO Information**).

### Particulars

GetSwift response dated 9 February 2018 to ASX letter of 6 February 2018, point 7.

Email from Paul Calleja of CITO to Mr Macdonald dated 10 April 2017, and email from Mr Macdonald to Mr Calleja and Kosta Metaxiotis of PMI dated 18 April 2017.

The CITO Contract dated 4 April 2017 and executed on or around 10 May 2017 where the section described as “term” is struck through and initialled.

The matters referred to in paragraphs 11, 12, 27, 28, 35, 36(c), 44(d) and 47 to 50 of the affidavit of Paul Simon Calleja affirmed 19 September 2019 in the ASIC Proceeding.

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, as at 21 May 2017, the Free Trial Period had not elapsed;
- (d) the CITO Contract was not for a period of two or more years but had no fixed term at all;
- (e) at no time during the Claim Period had CITO informed GetSwift that it had decided to use the GetSwift Platform to make deliveries, or made any payments to GetSwift under the CITO Contract; and
- (f) by reason of the matters in (a) to (e) above and the CITO Information, there was no reasonable basis for the CITO Revenue Representation or the

CITO Revenue Reasonable Grounds Representation, and GetSwift did not have a reasonable ~~basis~~ grounds for making it them;

- (g) each of the CITO Revenue Representation and the CITO Revenue Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

### 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~~ Mr Macdonald 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 Contact dated 4 April 2017 and executed on or around 10 May 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.
  - vii. As to paragraph (e), the matters referred to in paragraphs 35, 41 and 47 to 49 of the affidavit of Paul Simon Calleja affirmed 19 September 2019 in the ASIC Proceeding.
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.

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.

The Applicant refers to an email from Mr Macdonald to Mr Mison sent at 11:09pm ~~10:33pm~~ on 21 May 2017.

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.

Each of the CITO Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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.

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. [Deleted.]
162. Further or alternatively, by reason of the matters set out in paragraphs 5, 143 and 145B, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, of the CITO Information.

### Particulars

The Applicant refers to the particulars to 145B.

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.

163. Further or alternatively, by reason of the matters set out in paragraphs 9, 143, 145B and 162, 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 145B. In addition, Mr Macdonald's signature appears on the CITO Transport Contract.

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 164, 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 to 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.

## 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 on and from 1 June 2017 and at all times until the end of the Claim Period 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;
  - (c) ~~it had reasonable grounds to expect that the Hungry Harvest Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by Hungry Harvest for its deliveries for the next two or more years; alternatively, GetSwift expected that the Hungry Harvest Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by Hungry Harvest for its deliveries for the next two or more years~~ (the **Hungry Harvest Revenue Representation**);
  - (d) it had reasonable grounds for making the Hungry Harvest Revenue Representation (the **Hungry Harvest Revenue Reasonable Grounds Representation**),
- (collectively, the **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.

The Hungry Harvest Revenue Representation in paragraph (c) was in part express, constituted by the representation in paragraph (a) and in part implied from the absence of qualification in the Hungry Harvest Announcement, from the Hungry Harvest Announcement being marked price sensitive, and from the context being the previous statements made by GetSwift in the April Appendix 4C Announcement

and 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 Hungry Harvest Revenue Reasonable Grounds Representation in paragraph (d) was in part implied from the Hungry Harvest Revenue Representation, and in part implied from the absence of qualification in the Hungry Harvest Announcement.

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

Each of the Hungry Harvest Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

171A. Each of:

- (a) the Hungry Harvest Revenue Representation; and
- (b) the Hungry Harvest Revenue Reasonable Grounds Representation,  
was a representation with respect to a future matter or matters.

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 July 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) as at 1 June 2017, the Free Trial Period had not elapsed and Hungry Harvest was entitled to give notice that it elected not to continue the Hungry Harvest Contract beyond the Free Trial Period in accordance with the Hungry Harvest Term Clause;
- (d) by reason of the matters in (a) to (c) above there was no reasonable basis for the Hungry Harvest Revenue Representation or the Hungry Harvest Revenue Reasonable Grounds Representation, and GetSwift did not have a reasonable ~~basis~~ grounds for making ~~it~~ them;
- (e) each of the Hungry Harvest Revenue Representation and the Hungry Harvest Revenue Reasonable Grounds Representation is taken to be

misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

### **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.

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.

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.

The Applicant refers to emails from Mr Macdonald to Mr Mison, Mr Hunter, Mr Eagle, and Ms Gordon sent at 12:01pm and 4:04pm on 31 May 2017.

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.

Each of the Hungry Harvest Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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.

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 13 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 on and from 13 June 2017 until the end of the Claim Period 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;
  - (c) ~~it had reasonable grounds to expect that~~ the FRF Couriers Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the use of the GetSwift Platform by FRF Couriers for its deliveries for two or more years; alternatively, GetSwift expected that the FRF Couriers Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the use of the GetSwift Platform by FRF Couriers for its deliveries for two or more years (the **FRF Couriers Revenue Representation**);
  - (d) it had reasonable grounds for making the FRF Couriers Revenue Representation (the **FRF Couriers Revenue Reasonable Grounds Representation**),

(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.

The FRF Courier Representation in paragraph (c) was in part express, constituted by the representation in paragraph (a) and in part implied from the absence of qualification in the FRF Couriers Announcement, from the FRF Couriers Announcement being marked price sensitive, and from the context being the previous statements made by GetSwift in the April Appendix 4C Announcement and 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 FRF Couriers Revenue Reasonable Grounds Representation in paragraph (d) was in part implied from the FRF Couriers Revenue Representation, and in part implied from the absence of qualification in the FRF Couriers Announcement.

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

Each of the FRF Courier Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

190A. Each of:

- (a) the FRF Couriers Revenue Representation; and
  - (b) the FRF Couriers Revenue Reasonable Grounds Representation,
- was a representation with respect to a future matter or matters.

191. The FRF Couriers Representations and the Continuation of the FRF Couriers Revenue Representation (alleged in paragraph 193A below) 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 and the Continuation of the FRF Couriers Revenue 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.

192A. The FRF Couriers Contract (which was dated 2 November 2016 and as varied by an addendum dated 7 June 2017 (**Addendum**)) 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**);
- (c) by clause 3(a) of the Addendum, FRF Couriers would use the GetSwift Platform in connection with delivery services it provided to PMI;
- (d) by clause 3(a) of the Addendum, PMI had separately agreed to pay GetSwift for each delivery undertaken by FRF Couriers for PMI, and GetSwift, upon receipt of payment from PMI, would pay a fee to FRF Couriers (**FRF Couriers Payment Clause**).



192B. On and from 12 November 2017:

- (a) invoices issued by GetSwift in accordance with the FRF Couriers Payment Clause were unpaid since August 2017;
- (b) GetSwift had decided to cut-off FRF Couriers from the GetSwift Platform;
- (c) no deliveries would take place, and GetSwift would earn no revenue, under the FRF Couriers Contract,

(individually, collectively, or in any combination, the **FRF Couriers Information**).

### **Particulars**

The Applicant relies on an email from Mr Macdonald to Mr Hunter dated 12 November 2017.

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 other than in connection with deliveries for PMI, but otherwise 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 not to continue the FRF Couriers Contract beyond the Free Trial Period 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 other than in connection with deliveries for PMI) then there was no obligation to pay GetSwift;
- (d) if FRF Couriers undertook a delivery for PMI using the GetSwift platform, GetSwift was obliged to pay FRF Couriers a fee pursuant to the FRF Couriers Payment Clause and there was no obligation on FRF Couriers to pay GetSwift;
- (e) by reason of the matters in (a) to (d) above and the FRF Couriers Payment Clause, there was no reasonable basis for the FRF Couriers Revenue

Representation or the FRF Couriers Revenue Reasonable Grounds Representation, and GetSwift did not have a reasonable basis grounds for making it them;

(ea) each of the FRF Couriers Revenue Representation and the FRF Couriers Revenue Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL;

(f) further, on and from 12 November 2017, the FRF Couriers Revenue Representation was false by reason of the FRF Couriers Information.

### 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 Kennerley, Business Development Manager at FRF Couriers dated 15 May 2017 at 2:30pm.
- iii. Addendum No.1 to the FRF Couriers Contract.
- iv. The terms of the FRF Couriers Contract including, inter alia, the FRF Couriers Services Clause, the FRF Couriers Payment Clause and the FRF Couriers Term Clause.

193A. Further and alternatively, by failing to publish and lodge with the ASX an announcement that GetSwift had decided to cut-off FRF Couriers from the GetSwift Platform, GetSwift represented from 12 November 2017 until the end of the Claim Period that the FRF Couriers Contract would continue to generate revenue in accordance with the FRF Couriers Representation (the **Continuation of the FRF Couriers Revenue Representation**).

### Particulars

Each of the Continuation of the FRF Couriers Revenue Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend or qualify the substance of the representation; and/or did not release to the ASX any

information that would significantly supplement or modify the representation during the Claim Period.

193AA. The Continuation of the FRF Couriers Revenue Representation was a representation with respect to a future matter or matters.

193B. The Continuation of the FRF Couriers Revenue Representation was false and misleading as a result of the FRF Couriers Information.

193C. Further, the Continuation of the FRF Couriers Revenue Representation was false or misleading, in that:

- (a) by reason of the FRF Couriers Information, there was no reasonable grounds for the Continuation of the FRF Couriers Revenue Representation and GetSwift did not have a reasonable grounds for making it; and
- (b) the Continuation of the FRF Couriers Revenue Representation is taken to be misleading by operation of s 769C of the Corporations Act, further or alternatively s 12BB of the ASIC Act, and further or alternatively s 4 of the ACL.

194. By reason of the matters set out in paragraphs 189 to ~~193B~~193C above, by making the FRF Couriers Representations and the Continuation of the FRF Couriers Revenue 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,

**(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.

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.

The Applicant refers to an email from Mr Macdonald to Mr Mison, Mr Hunter, Ms Gordon, and Mr Eagle sent at 7:48am on 13 June 2017.

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.

Each of the FRF Couriers Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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 193.

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**).

#### *V FRF Couriers Disclosure Contravention*

- 207A. By reason of the matters set out in paragraphs 5, 190 and 192B, as at 12 November 2017 and at all material times thereafter until the end of the Claim Period, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, of the FRF Couriers Information.

### Particulars

The Applicant refers to and repeats the matters set out in paragraph 192B.

Each of the items of the FRF Couriers 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.

- 207B. Further or alternatively, by reason of the matters set out in paragraphs 9, 190, 192B and 207A, Macdonald was aware, for the purposes of ASX Listing Rule 19.12, of the FRF Couriers 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 was the sender of the email referred to in the particulars to paragraph 192B.

- 207C. The FRF Couriers Information, and each individual item of the FRF Couriers Information, was:

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

207D. By reason of the matters alleged in paragraphs 5 and 207C, 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 FRF Couriers Information on and from the time when it became aware of it.

207E. Notwithstanding the matters alleged in paragraphs 207A to 207D, GetSwift did not notify the ASX of the FRF Couriers Information at any time during the Claim Period.

207F. By reason of the matters alleged in paragraphs 207A to 207E, GetSwift contravened section 674(2) of the Corporations Act (**FRF Couriers Disclosure Contravention**).

207G. By reason of the matters set out in paragraphs 207A to 207F, the FRF Couriers Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant FRF Couriers Information and was a continuing contravention that continued throughout the Claim Period.

207H. Further Mr Macdonald was involved in the FRF Couriers Disclosure Contravention, and thereby contravened section 674(2A) of the Corporations Act.

### **Particulars**

The Applicant refers to and repeats paragraph 201.

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

The FRF Couriers 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.



## 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 on and from 4 July 2017 until the end of the Claim Period 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.

The Tranche 1 Cleansing Notice Representation was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

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, the CITO Information, the Fruit Box Projection Information, the CBA Information, the FRF Couriers Information and the Pizza Hut Information.

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.

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 on and from 25 July 2017 until the end of the Claim Period that:

- (a) GetSwift and Vietnammm.com, a subsidiary of Takeaway.com, had entered into a contract with a term of two years of 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;
- (c) ~~it had reasonable grounds to expect that the Takeaway.com Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by Vietnammm.com for its deliveries for the next two or more years; alternatively, GetSwift expected that the Takeaway.com Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by Vietnammm.com for its deliveries for the next two or more years~~ (the **Takeaway.com Revenue Representation**);
- (d) it had reasonable grounds for making the Takeaway.com Revenue Representation (the **Takeaway.com Revenue Reasonable Grounds Representation**).

(collectively, the **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.

The Takeaway.com Revenue Representation in paragraph (c) was in part express, constituted by the representation in paragraph (a) and in part implied from the absence of qualification in the Takeaway.com Announcement, from the Takeaway.com Announcement being marked price sensitive and from the context being the previous statements made by GetSwift in the April Appendix 4C Announcement and 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 Takeaway.com Revenue Reasonable Grounds Representation in paragraph (d) was in part implied by Takeaway.com Revenue Representation and in part implied from the absence of qualification in the Takeaway.com Announcement.

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

Each of the Takeaway.com Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

219A. Each of:

- (a) the Takeaway.com Revenue Representation; and
  - (b) the Takeaway.com Revenue Reasonable Grounds Representation,
- was a representation with respect to a future matter or matters.

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 and executed on 30 July 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) as at 25 July 2017, the Free Trial Period had not elapsed and Takeaway.com (via its subsidiary Vietnammm.com) was entitled to give

notice that it elected not to continue the Takeaway.com Contract beyond the Free Trial Period in accordance with the Takeaway.com Term Clause;

- (d) by reason of the matters in (a) to (c) above, there was no reasonable basis for the Takeaway.com Revenue Representation or the Takeaway.com Revenue Reasonable Grounds Representation, and GetSwift did not have a reasonable ~~basis~~ grounds for making it them;
- (e) each of the Takeaway.com Revenue Representation and the Takeaway.com Revenue Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

### 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.

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.

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.

Each of the Takeaway.com Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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 222.

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 on and from 16 August 2017 until the end of the Claim Period 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.

The Tranche 2 Cleansing Notice Representation was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

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, the CITO Information, the Fruit Box Projection Information, the CBA Information, the FRF Couriers Information and the Pizza Hut Information.
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.

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 on and from 23 August 2017 until the end of the Claim Period 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;
- (c) ~~it had reasonable grounds to expect that~~ the Fantastic Furniture Contract would generate revenue for GetSwift in an amount which would have a

material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by Fantastic Furniture for its deliveries for the next two or more years; alternatively, GetSwift expected that the Fantastic Furniture Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by Fantastic Furniture for its deliveries for the next two or more years (the **Fantastic Furniture Revenue Representation**);

- (d) it had reasonable grounds for making the Fantastic Furniture Revenue Representation (Fantastic Furniture Revenue Reasonable Grounds Representation),

(collectively, the **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.

The Fantastic Furniture Representation in paragraph (c) was in part express, constituted by the representation in paragraph (a) and in part implied from the absence of qualification in the Fantastic Furniture Announcement, and from the context being the previous statements made by GetSwift in the April Appendix 4C Announcement and 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 Fantastic Furniture Revenue Reasonable Grounds Representation in paragraph (d) was in part implied by the Fantastic Furniture Revenue Reasonable Grounds Representation and in part implied from the absence of qualification in the Fantastic Furniture Announcement.

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

Each of the Fantastic Furniture Representations was a continuing representation, by reason that GetSwift made, repeated, or confirmed, the substance of the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

248A. Each of the Fantastic Furniture Revenue Representation and the Fantastic Furniture Revenue Reasonable Grounds Representation was a representation with respect to a future matter or matters.

249. Each of the Fantastic Furniture Representations and the Continuation of the Fantastic Furniture Contract Representations (alleged in paragraph 251A below) 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 and the Continuation of the Fantastic Furniture Contract 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**),

250B. On 22 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, point 2.

Email from Simon Nguyen of Fantastic Furniture to Kurt Clothier of GetSwift sent at 6:35am on 22 September 2017.

250C. On and from 22 September 2017:

- (a) the Free Trial Period had not elapsed;
- (b) Fantastic Furniture had terminated the Fantastic Furniture Contract and it would not continue beyond 1 October 2017;
- (c) no deliveries would take place, and GetSwift would earn no revenue, under the Fantastic Furniture Contract,

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

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) as at 23 August 2017, the Free Trial Period had not elapsed and Fantastic Furniture was entitled to give notice that it elected not to continue the Fantastic Furniture Contract beyond the Free Trial Period in accordance with the Fantastic Furniture Term Clause;
- (d) by reason of the matters in (a) to (c) above, there was no reasonable basis for the Fantastic Furniture Revenue Representation or the Fantastic Furniture Reasonable Grounds Revenue Representation, and GetSwift did not have a reasonable ~~basis~~ grounds for making it them;
- (e) each of the Fantastic Furniture Revenue Representation and the Fantastic Furniture Revenue Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL;
- (f) further, from 22 September 2017 each of the Fantastic Furniture Representations was false as a result of the Fantastic Furniture Information.

### **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.

251A. Further and alternatively, by failing to publish and lodge with the ASX an announcement that Fantastic Furniture had elected not to continue with the Fantastic Furniture Contract, GetSwift represented from 22 September 2017 until the end of the Claim Period that:

- (a) the Fantastic Furniture Contract remained operative;
  - (b) the Fantastic Furniture Contract would continue to generate revenue in accordance with the Fantastic Furniture Revenue Representation,
- (the **Continuation of the Fantastic Furniture Contract Representations**).

### Particulars

Each of the Continuation of the Fantastic Furniture Contract Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend or qualify the substance of the representation; and/or did not release to the ASX any information that would significantly supplement or modify the representation during the Claim Period.

251AA. The Continuation of the Fantastic Furniture Contract Representation in paragraph 251A(b) above was a representation with respect to a future matter or matters.

251B. The Continuation of the Fantastic Furniture Contract Representations were false and misleading as a result of the Fantastic Furniture Information.

251C. Further, the Continuation of the Fantastic Furniture Contract Representation in paragraph 251A(b) above was false or misleading, in that:

- (a) by reason of the Fantastic Furniture Information, there was no reasonable basis for the representation and GetSwift did not have reasonable grounds for making it; and
- (b) the representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

252. By reason of the matters set out in paragraphs 247 to ~~251B~~251C above, by making the Fantastic Furniture Representations, the Continuation of the Fantastic Furniture Contract 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.

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.

The Applicant refers to emails from Mr Macdonald to Mr Mison and Mr Hunter sent at 3:03pm and 3:39pm on 22 August 2017.

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.

Each of the Fantastic Furniture Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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).**

*IV Fantastic Furniture Macdonald False Statements 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.

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. [Deleted.]

267. By reason of the matters set out in paragraphs 5, 248 and 250B, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, of the Fantastic Furniture Information.

### **Particulars**

The Applicant refers to the particulars to paragraph 250B.

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.

268. Further or alternatively, by reason of the matters set out in paragraphs 9, 248, 250B and 267, 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**

Email from John Ozovek to Mr Macdonald sent at 10:02pm on 22 September 2017.

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.

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 269, 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 267 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 267 to 271, GetSwift contravened section 674(2) of the Corporations Act (**Fantastic Furniture Disclosure Contravention**).
273. By reason of the matters set out in paragraphs 267 to 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.

## 01. BSR FRANCHISING CONTRAVENING CONDUCT

### *I BSR 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*” (**BSR Franchising Announcement**).

274B. By the BSR Franchising Announcement, GetSwift represented on and from 23 August 2017 until the end of the Claim Period that:

- (a) GetSwift and BETTA Home Living, a trading name of BSR Franchising Pty Ltd (**BSR Franchising**) had entered into a contract with a term of two years or more (**BSR Franchising Contract**) pursuant to which BSR Franchising was contractually obliged:
  - (i) to use the GetSwift Platform for its deliveries for the term of the BSR Franchising Contract;
  - (ii) to use only the GetSwift Platform for automated dispatching and tracking of delivery of its goods for the term of the BSR Franchising Contract;
- (b) any proof of concept period, trial phase, limited roll-out, or free trial period had already occurred and the BSR Franchising Contract was not conditional upon any of them occurring;
- (c) ~~it had reasonable grounds to expect that~~ the BSR Franchising Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by BSR Franchising for its deliveries for the next two or more years; alternatively, GetSwift expected that the BSR Franchising Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive

use of the GetSwift Platform by BSR Franchising for its deliveries for the next two or more years (the **BSR Franchising Revenue Representation**);

- (d) it had reasonable grounds for making the BSR Franchising Revenue Representation (**BSR Franchising Revenue Reasonable Grounds Representation**),

(collectively, **BSR Franchising Representations**).

### Particulars

The representation in paragraph (a) was expressly made by the BSR Franchising Announcement. The representation in paragraph (b) was implied from the absence of qualification in the BSR 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.

The BSR Franchising Revenue Representation in paragraph (c) was in part express, constituted by the representation in paragraph (a) and in part implied from the absence of qualification in the BSR Franchising Announcement, and from the context being the previous statements made by GetSwift in the April Appendix 4C Announcement and 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 BSR Franchising Revenue Reasonable Grounds Representation in paragraph (d) was in part implied by BSR Franchising Revenue Representation and in part implied from the absence of qualification in the BSR Franchising Announcement.

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

Each of the BSR Franchising Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

274BA. Each of:

- (a) the BSR Franchising Revenue Representation; and

(b) the BSR Franchising Revenue Reasonable Grounds Representation,  
was a representation with respect to a future matter or matters.

274C. Each of the BSR Franchising Representations was:

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

274D. By making the BSR 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 BSR Franchising Contract (which was dated 14 June 2017 and executed on 21 August 2017) provided inter alia that:

- (a) by clause 3 that the BSR Franchising Contract exclusively engaged GetSwift to provide use of the GetSwift Platform and related consultancy advice (the **BSR Franchising Services Clause**);
- (b) by clause 4 that the term of the engagement comprised: (i) a Trial Period of two months commencing on the date that the parties reasonably agreed that the GetSwift Platform was operating effectively and available for immediate use by BSR Franchising, and (ii) an Initial Term of 18 months duration, provided that BSR Franchising elected in writing during the Trial Period to continue to the Initial Term (the **BSR Franchising Term Clause**).

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

- (a) the BSR Franchising Contract did not oblige BSR Franchising to use the GetSwift Platform, but entitled BSR Franchising to use the GetSwift Platform to the extent it chose to do so, but without any obligation to use it;
- (b) the BSR Franchising Contract did not oblige BSR Franchising to use only the GetSwift Platform for automated dispatching or tracking of delivery of goods during the term of the BSR Franchising Contract;
- (c) as at 23 August 2017, the Trial Period had not commenced and BSR Franchising was entitled to not elect to continue to the Initial Term in accordance with the BSR Franchising Term Clause and;
- (d) the term of the BSR Franchising Contract was 20 months not two or more years;
- (e) at no time during the Claim Period:
  - (i) had BSR Franchising agreed that the GetSwift Platform was operating effectively and available for immediate use by BSR Franchising, or informed GetSwift that it had decided to proceed to use the GetSwift Platform beyond the Trial Period; or
  - (ii) was the BSR Franchising Contract generating revenue for GetSwift;
- (f) by reason of the matters in (a) to (e) above, there was no reasonable basis for the BSR Franchising Revenue Representation or the BSR Franchising Revenue Reasonable Grounds Representation, and GetSwift did not have a reasonable ~~basis~~ grounds for it them;
- (g) each of the BSR Franchising Revenue Representation and the BSR Franchising Revenue Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

### 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 BSR Franchising Contract including, inter alia, the BSR Franchising Services Clause and the BSR Franchising Term Clause.
- iii. As to paragraph (e), a draft response to an ASX letter, both dated 22 January 2018, at point 13.

274G. By reason of the matters set out in paragraphs 274A to 274F above, by making the BSR 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.

#### **(BSR Franchising Misleading Conduct)**

#### *II BSR Franchising False Statements Conduct*

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

### Particulars

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

274I. The BSR 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 BSR Franchising Announcement, it ought reasonably to have known that the BSR 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 BSR Franchising Announcement, GetSwift contravened section 1041E of the Corporations Act (**BSR Franchising False Statements Conduct**).

### *III BSR Franchising Macdonald Misleading Conduct*

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

### Particulars

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

The Applicant refers to emails from Mr Macdonald to Mr Mison and Mr Hunter sent at 3:03pm and 3:39pm on 22 August 2017.

It may be inferred that Mr Macdonald approved the publication of the BSR 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 BSR Franchising Contract dated 14 June 2017.

Each of the BSR Franchising Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

274M. Each of the BSR 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 BSR 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 BSR 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.



274P. By reason of the matters set out in paragraphs 274L to 274O, by approving for publication the BSR 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,

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

#### *IV BSR Franchising Macdonald False Statements Conduct*

274Q. Further or alternatively, the BSR 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 BSR Franchising Macdonald Representations.

#### **Particulars**

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

274R. The BSR 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 BSR Franchising Announcement, he ought reasonably to have known that the BSR 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 BSR Franchising Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**BSR 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 on and from 30 August 2017 until the end of the Claim Period 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;
- (c) ~~it had reasonable grounds to expect that~~ the Bare Burger Contract would generate revenue for GetSwift in an amount which would have a material

positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by Bare Burger for its deliveries for the next two or more years; alternatively, GetSwift expected that the Bare Burger Contract would generate revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business by the exclusive use of the GetSwift Platform by Bare Burger for its deliveries for the next two or more years (the **Bare Burger Revenue Representation**);

- (d) it had reasonable grounds for making the Bare Burger Revenue Representation (**Bare Burger Revenue Reasonable Grounds Representation**),

(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.

The Bare Burger Revenue Representation in paragraph (c) was in part express, constituted by the representation in paragraph (a) and in part implied from the absence of qualification in the Bare Burger Announcement, from the Bare Burger Announcement being marked price sensitive, and from the context being the previous statements made by GetSwift in the April Appendix 4C Announcement and 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 Bare Burger Revenue Reasonable Grounds Representation in paragraph (d) was in part implied by Bare Burger Revenue Representation and in part implied from the absence of qualification in the Bare Burger Announcement.

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

Each of the Bare Burger Representations was a continuing representation, by reason that GetSwift made the representation;

and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

276A. Each of:

- (a) the Bare Burger Revenue Representation; and
  - (b) the Bare Burger Revenue Reasonable Grounds Representation,
- was a representation with respect to a future matter or matters.

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 comprised a Term Sheet dated 22 June 2017 and executed on or around 19 August 2017 including an amendment under cover of email from Mr Macdonald dated 19 August 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 October 2017, and (ii) an Initial Term of 36 months to start no later than 1 October 2017 unless Bare Burger 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 **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) as at 30 August 2017, the Free Trial Period had not elapsed, and Bare Burger was entitled to give notice that it elected not to continue the Bare Burger Contract beyond the Free Trial Period in accordance with the Bare Burger Term Clause;
- (d) at no time during the Claim Period had Bare Burger informed GetSwift that it had decided to proceed to use the GetSwift Platform beyond the Free Trial Period, or was the Bare Burger Contract generating revenue for GetSwift;
- (e) by reason of the matters in (a) to (d) above, there was no reasonable basis for the Bare Burger Revenue Representation or the Bare Burger Revenue Reasonable Grounds Representation, and GetSwift did not have a reasonable ~~basis~~ grounds for it making them;
- (f) each of the Bare Burger Revenue Representation and the Bare Burger Revenue Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

### 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.
- iii. As to paragraph (d), a draft ASX announcement titled "Market Update" dated 21 January 2018, which lists the Bare Burger Contract as being in a 'Pre-Roll Out' Stage.

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.

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.

The Applicant refers to an email from Mr Macdonald to Zane Banson, Brett Feltingoff and Mr Hunter sent at 9:13pm on 29 August 2017.

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.

Each of the Bare Burger Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the

substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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.

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 two announcements entitled "*GetSwift Partners with N A. Williams in 1bn+ Transaction Per Annum Opportunity in the Automotive Sector*" (**N A Williams Announcements**).

#### Particulars

The first N A Williams Announcement was published at 9:05am on 12 September 2017 (**First N A Williams Announcement**).

The second N A Williams Announcement was published at 10:31am on 12 September 2017 (**Second N A Williams Announcement**).

295. By the N A Williams Announcements, GetSwift represented on and from 12 September 2017 until the end of the Claim Period 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; alternatively, GetSwift projected that the N A Williams Contract would significantly increase GetSwift's revenue by more than \$138,000,000 per year once fully captured (the **N A Williams Revenue Representation**);

- (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; alternatively, GetSwift estimated that the N A Williams Contract would potentially yield in excess of 1.15 billion transactions a year when fully implemented **(N A Williams Transaction Projection)**;
- (ba) it had reasonable grounds for making each of the N A Williams Revenue Representation and the N A Williams Transactions Representation (N A Williams Revenue and Transaction Projection Reasonable Grounds Representations);
- (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, the **N A Williams Representations**).

### Particulars

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

The representation in paragraph (b) was in part implied expressly constituted by ~~from~~ the statement made in the Second 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 statement made in both the N A Williams Announcements that “*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 Announcements, 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 N A Williams Revenue and Transaction Projection Reasonable Grounds Representations in paragraph (ba) was in part implied by the N A Williams Revenue Representation and the N A Williams Transaction Projection, in part implied from the absence of qualification in the N A Williams Announcements.

The representation in paragraph (c) was implied from the absence of qualification in the N A Williams Announcements, 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.

Each of the N A Williams Representations was a continuing representation, by reason that GetSwift made the representation; and/or repeated, or confirmed the substance of, the representation in the October Appendix 4C Announcement; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

295A. Each of:

- (a) the N A Williams Revenue Representation;
- (b) the N A Williams Transaction Projection; and
- (c) the N A Williams Revenue and Transaction Projection Reasonable Grounds Representations,

was a representation with respect to a future matter or matters.

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 1, 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

297B. On and from 12 September 2017:

- (a) N A Williams was a representative organisation for certain automobile companies and retailers in North America (**N A Williams Clients**) 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 disclosed to GetSwift any independent information, data or research to assist in quantifying the annual number of deliveries for either the entire automotive aftermarket or channel customers;
- (f) the N A Williams Transaction Projection was based on an estimate made by GetSwift and that estimate was expressed at a high level of generality;
- (g) GetSwift did not apply a discount to the N A Williams Transaction Projection to take into account any barriers to market entry potentially faced by N A Williams Clients;
- (h) in making the N A Williams Revenue Representation, GetSwift did not account for the compensation payable to N A Williams pursuant to clause 3 of the N A Williams Contract;
- (i) the N A Williams Contract was for a term of three years;
- (j) N A Williams could terminate the N A Williams Contract on ninety days' notice;
- (k) 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;
- (l) Genuine Parts Company, the largest of the N A Williams Clients, had evaluated the GetSwift Platform and informed GetSwift that it had decided not to adopt it in favour of another platform;
- (m) N A Williams had not given GetSwift any information about the price that N A Williams Clients might pay per delivery;
- (n) none of the other N A Williams Clients had trialled or agreed to trial the GetSwift Platform;
- (o) none of the N A Williams Clients had entered into any agreement with GetSwift, and at no time during the Claim Period had any of the N A Williams Clients entered into any agreement with GetSwift, to use the GetSwift Platform,

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

### Particulars

The Applicant relies on:

- (i) paragraph 187 of the ASIC Statement of Claim and the particulars subjoined to it;
- (ii) as to paragraph (h), an email from Mr Ozovek dated 22 February 2018, and Attachment 2 to the N A Williams Contract;
- (iia) as to paragraph (l), an email from Bruce Richards of Genuine Parts Company to Mr Hunter sent at 8:31pm on 15 May 2017;
- (iii) as to paragraph (o), the matters referred to in paragraphs 51, 55 to 58 and 60 of the affidavit of Roger McCollum sworn 14 May 2019 in the ASIC Proceeding.

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 N A 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 and the N A Williams Information, 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 and the N A Williams Information, 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;
- (e) by reason of the matters in (a) to (d) and the N A Williams Information, there was no reasonable basis for making the N A Williams Revenue Representation, the N A Williams Transaction Projection, or the N A

Williams Revenue and Transaction Projection Reasonable Grounds Representations, and GetSwift did not have reasonable grounds for making them;

- (f) each of the N A Williams Revenue Representation, the N A Williams Transaction Projection, and the N A Williams Revenue and Transaction Projection Reasonable Grounds Representations is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

### **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;

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 Announcements were statements that were false in a material particular or were materially misleading, because they included or gave rise to the N A Williams Representations.

**Particulars**

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

301. The N A Williams Announcements, at the time they were issued, were 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 Announcements, it ought reasonably to have known that the N A Williams Announcements were 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 Announcements, 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 Announcements, Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the N A Williams Representations (the **N A Williams Macdonald Representations**).

**Particulars**

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

Email from Mr Macdonald to Mr Banson sent at 10:03am on 12 September 2017.

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

Each of the N A Williams Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

305. The N A Williams Macdonald Representations were:

- (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 Announcements, 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 Representations were false and misleading.

### **Particulars**

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

308. By reason of the matters set out in paragraphs 304 to 307, by approving for publication the N A Williams Announcements, 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 Announcements were statements disseminated by Mr Macdonald that were false in a material particular or were materially misleading, because they included or gave rise to the N A Williams Macdonald Representations.

#### **Particulars**

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

310. The N A Williams Announcements, at the time they were disseminated, were 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 Announcements, he ought reasonably to have known that the N A Williams Announcements were 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 N A 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 Announcements, 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, of the N A Williams Information.

### Particulars

The Applicant relies on the particulars to paragraph 297B above.

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, 297B 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 312C, 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 312A to 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.

## 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 on and from 25 October 2017 until the end of the Claim Period 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;
- (c) ~~it had a reasonable basis to estimate~~ there would be two million or more transactions per year under the Johnny Rockets Contract upon complete adoption and utilisation; alternatively, GetSwift expected that there would

be two million or more transactions per year under the Johnny Rockets Contract upon complete adoption and utilisation (Johnny Rockets Deliveries Representation);

(ca) it had reasonable grounds for making the Johnny Rockets Deliveries Representation (Johnny Rockets Deliveries Reasonable Grounds Representation);

(d) ~~it had a reasonable basis to estimate that the Johnny Rockets Contract would generate revenue for GetSwift by the use of the GetSwift Platform by Johnny Rockets for its deliveries, which would be two million or more per year upon complete adoption and utilisation; alternatively, GetSwift estimated that the Johnny Rockets Contract would generate revenue for GetSwift by the use of the GetSwift Platform by Johnny Rockets for its deliveries, which would be two million or more per year upon complete adoption and utilisation~~ (the **Johnny Rockets Revenue Representation**);

(e) it had reasonable grounds for making the Johnny Rockets Revenue Representation (Johnny Rockets Revenue Reasonable Grounds Representation),

(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.

The Johnny Rockets Deliveries Representation in paragraph (c) was in part ~~implied~~ express, constituted by ~~from~~ the statement made in the Johnny Rockets Announcement that, “*The Company’s indicative estimates are for a transaction yield in excess of millions of deliveries per year upon adoption and utilisation,*” and in part implied from the absence of qualification in the Johnny Rockets 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 Johnny Rockets Deliveries Reasonable Grounds Representation in paragraph (ca) was in part implied by the Johnny Rockets Deliveries Representation, and in part implied from the absence of qualification in the Johnny Rockets Announcement.

The Johnny Rockets Revenue Representation in paragraph (d) was in part ~~implied~~ express, constituted by ~~from~~ the statement made in the Johnny Rockets Announcement that, “*The Company’s indicative estimates are for a transaction yield in excess of millions of deliveries per year upon adoption and utilisation,*”, and in part implied from the absence of qualification in the Johnny Rockets Announcement, and from the context being the previous statements made by GetSwift in the Appendix 4C Announcement and 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 Johnny Rockets Revenue Reasonable Grounds Representation in paragraph (e) was in part implied by the Johnny Rockets Revenue Representation, and in part implied from the absence of qualification in the Johnny Rockets Announcement.

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

Each of the Johnny Rockets Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

314A. Each of:

- (a) the Johnny Rockets Deliveries Representation;
- (b) the Johnny Rockets Deliveries Reasonable Grounds Representation;
- (c) the Johnny Rockets Revenue Representation; and
- (d) the Johnny Rockets Revenue Reasonable Grounds Representation,

was a representation with respect to a future matter or matters.



315. Each of the Johnny Rockets Representations and the Continuation of the Johnny Rockets Contract Representations (alleged in paragraph 317A below) 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 and the Continuation of the Johnny Rockets Contract 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 Services 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 Rockets Term Clause**).

316B. On and from 9 January 2018:

- (a) the Limited Roll Out had not commenced;
- (b) Johnny Rockets had given notice to GetSwift that it had elected not to continue with the Johnny Rockets Contract;
- (c) no deliveries would take place, and GetSwift would earn no revenue, under the Johnny Rockets Contract.

(individually, collectively, or in any combination, the **Johnny Rockets Information**).

### **Particulars**

The Applicant relies on an email from Stephan Roman to Brian Aiken sent at 2:27am on 9 January 2018.

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) as at 25 October 2017, the Limited Roll Out had not commenced and Johnny Rockets was entitled to give notice that it elected not to continue the Johnny Rockets Contract beyond the Limited Roll Out in accordance with the Johnny Rockets Term Clause;
- (d) by reason of the matters in (a) to (c) above, there was no reasonable basis for the Johnny Rockets Deliveries Representation, the Johnny Rockets Deliveries Reasonable Grounds Representation, the Johnny Rockets Revenue Representation, or the Johnny Rockets Revenue Reasonable

Grounds Representation, and GetSwift did not have a reasonable basis grounds to make it them;

- (e) ~~by reason of the matters in (a) to (d) above, there was no reasonable basis for the Johnny Rockets Revenue Representation, and GetSwift did not have a reasonable basis to make it~~ each of the Johnny Rockets Deliveries Representation, the Johnny Rockets Deliveries Reasonable Grounds Representation, the Johnny Rockets Revenue Representation, and the Johnny Rockets Revenue Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL;
- (f) further, from 9 January 2018, the Johnny Rockets Representations were false by reason of the Johnny Rockets Information.

### **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 Services Clause and the Johnny Rockets Term Clause.

317A. Further and alternatively, by failing to publish and lodge with the ASX an announcement that Johnny Rockets had elected not to continue with the Johnny Rockets Contract, GetSwift represented from 9 January 2018 until the end of the Claim Period that:

- (a) the Johnny Rockets Contract remained operative;
- (b) it continued to have reasonable grounds for the Johnny Rockets Deliveries Representation and the Johnny Rockets Revenue Representation;

- (c) the Johnny Rockets Contract would continue to generate revenue in accordance with the Johnny Rockets Revenue Representation,  
(the **Continuation of the Johnny Rockets Contract Representations**).

### Particulars

Each of the Continuation of the Johnny Rockets Contract Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend or qualify the representation; and/or did not release to the ASX any information that would significantly supplement or modify the representation during the Claim Period.

317AA. Each of the Continuation of the Johnny Rockets Group Contract Representations in paragraphs 317A(b) and 317A(c) above was a representation with respect to a future matter or matters.

317B. The Continuation of the Johnny Rockets Contract Representations was false and misleading as a result of the Johnny Rockets Information.

317C. Further, each of the Continuation of the Johnny Rockets Contract Representations in paragraphs 317A(b) and 317A(c) above was false or misleading, in that:

- (a) by reason of the Johnny Rockets Information, there was no reasonable basis for those representations and GetSwift did not have reasonable grounds for making them; and
- (b) each of those representations is taken to be misleading by operation of s 769C of the Corporations Act, further or alternatively s 12BB of the ASIC Act, and further or alternatively s 4 of the ACL.

318. By reason of the matters set out in paragraphs 313 to ~~317B~~317C 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.

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.

Email from Mr Macdonald to Mr Banson sent at 10:16am on 25 October 2017.

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.

Each of the Johnny Rockets Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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.

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, of the Johnny Rockets Information.

### Particulars

The Applicant relies on the email from Mr Roman to Mr Aiken of GetSwift sent at 2:27am on 9 January 2018, and emails to and from Mr Aiken, Mr Ozovek, Mr Hunter, and Mr Macdonald of the same date.

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.

331B. Further or alternatively, by reason of the matters set out in paragraphs 9, 317A 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 317A and 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 331C, 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 331A to 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 to 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.

## **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 on and from 31 October 2017 until the end of the Claim Period 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.

Each of the October Appendix 4C Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

333A. Each of the October Appendix 4C Representations was a representation with respect to a future matter or matters.

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;
- (d) by reason of the matters in (a) to (c) above, there was no reasonable basis for any of the October Appendix 4C Representations, and GetSwift did not have reasonable grounds for making them;
- (e) each of the October Appendix 4C Representations are taken to be misleading by the operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

### **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.

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.

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.

Each of the October Appendix 4C Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in

conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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).**

*IV October Appendix 4C Macdonald False Statements 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.

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 on and from 1 December 2017 until the end of the Claim Period that:

(a) ~~it had reasonable grounds to project that~~ 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; alternatively, GetSwift estimated that under the Yum! Brands Contract more than 250,000,000 deliveries annually would be made by Yum! Brands using the GetSwift Platform (**Yum! Brands Deliveries Projection**);

~~(aa) initial deployments will~~ would 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; alternatively, GetSwift expected that initial deployments would 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 (**Yum! Brands Rollout Projection**);

(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;

- (c) Yum! Brands was not permitted to terminate the Yum! Brands Contract for convenience;
- (d) ~~it had a reasonable basis to project that the Yum! Brands Contract would generate revenue for GetSwift by the use of the GetSwift Platform by Yum! Brands, in more than 20 countries in the first and second phase, and for 250,000,000 deliveries annually following implementation; alternatively, GetSwift expected that the Yum! Brands Contract would generate revenue for GetSwift, by the use of the GetSwift Platform by Yum! Brands, in more than 20 countries in the first and second phase, and for 250,000,000 deliveries annually following implementation~~ (the **Yum! Brands Revenue Representation**);
- (e) it had reasonable grounds for making each of the:
- (i) Yum! Brands Deliveries Projection;
  - (ii) Yum! Brands Rollout Projection; and
  - (iii) Yum! Brands Revenue Representation,
- (the **Yum! Brands Reasonable Grounds Representations**),
- (subparagraphs (a) to (e) collectively, the **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 (aa) was expressly made by the Yum! Brands Announcement.

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 representation in paragraph (c) was implied in part from representation in paragraph (a) and in part from the absence of qualification in the Yum! Brands Announcement, and 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, which statements were not qualified or withdrawn.

The Yum! Brands Revenue Representation in paragraph (d) was implied in part from representation in paragraphs (a) and (aa) and the Delivery Threshold, and in part from the absence of qualification in the Yum! Brands Announcement, and the context of the previous statements made by GetSwift in the April and October Appendix 4C Announcements and its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, which statements were not qualified or withdrawn.

The Yum! Brands Reasonable Grounds Representations in (e) are in part implied from the Yum! Brands Deliveries Projection, the Yum! Brands Rollout Projection, and the Yum! Brands Revenue Representation, and in part implied from the absence of qualification in the Yum! Brands 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.

Each of the Yum! Brands Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation during the Claim Period.

352A. Each of:

- (a) the Yum! Brands Deliveries Projection;
- (b) the Yum! Brands Rollout Projection;
- (c) the Yum! Brands Revenue Representation; and
- (d) the Yum! Brands Reasonable Grounds Representations,

was a representation with respect to a future matter or matters.

353. The Each of the Yum! Brands Representations was:

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

354. By making the Yum! Brands 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.

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! Brands (which included Yum! and its affiliated brands) 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! Brands as a customer may engage GetSwift to perform Services and provide Deliverables.

354B. On and from 1 December 2017:

- (a) Yum! Brands 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! Brands was considering testing the GetSwift Platform in two test markets;
- (c) Yum! Brands 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! Brands had not told GetSwift that it had intended to roll out the GetSwift Platform to a “broader deployment”;
- (f) Yum! Brands was testing other providers of “last-mile” delivery solutions in various markets which offered similar services to the GetSwift Platform;
- (g) Yum! Brands did not provide to GetSwift the information underpinning the Delivery Threshold;
- (h) Yum! Brands 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! Brands had no power to compel any Yum! affiliated brands to enter into agreements with GetSwift and/or use the GetSwift Platform;
- (j) no statement of work had been issued under the Yum! Brand Contract by Yum! Brands, or was ever issued during the Claim Period,

(individually, collectively, or in any combination, the **Yum! Information**).

### Particulars

The Applicant relies on paragraph 231 of the ASIC Statement of Claim and the particulars subjoined to it.

As to paragraphs (a), (d) and (f), the Applicant further relies on the telephone conversation between Devesh Sinha of Yum! Brands and Mr Macdonald and Mr Hunter of GetSwift in about September or October 2017, in which Mr Sinha made statements substantially to the effect pleaded in paragraph (a), as referred to in paragraph 231(a) of the ASIC Statement of Claim.

As to paragraph (b), the Applicant further relies on the email from Mr Sinha of Yum! Brands to Mr Macdonald and Mr Hunter of GetSwift sent at 6:48pm on 7 September 2017.

355. The Yum! Brands Representations ~~was~~ were false and misleading, in that:

- (a) by reason of the matters in (b) to (d) below and the Yum! Information, GetSwift did not have a reasonable basis to ~~project~~ estimate 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 inter alia 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! Brands;
- (d) the Yum! Brands Contract did not have a fixed term length and permitted Yum! Brands to terminate for convenience on 30 days written notice;
- (e) by reason of the matters in (b) to (d) above and the Yum! Information, GetSwift did not have a reasonable basis for making the Yum! Brands Rollout Projection;
- (f) by reason of the matters in (a) to (e) above and the Yum! Information, GetSwift did not have a reasonable basis for making Yum! Brands Deliveries Projection, the Yum! Brands Rollout Projection, the Yum!

Brands Revenue Representation, or the Yum! Brands Reasonable Grounds Representations;

- (g) each of the Yum! Brands Deliveries Projection, the Yum! Brands Rollout Projection, the Yum! Brands Revenue Representation, and the Yum! Brands Reasonable Grounds Representations is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

### 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, including clauses 12.1 and 12.2, 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!”.

356. By reason of the matters set out in paragraphs 351 to 355, by making the Yum! Brands Representations, GetSwift engaged in conduct in trade or commerce:

- (h) 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
- (i) 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
- (j) 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 Representations.

**Particulars**

The matters in paragraph 355 are referred to and relied on.

358. The Yum! Brands Representations, at the time ~~it was~~ they were made, ~~was~~ were 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 paragraph 355 and the particulars thereto.

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 ~~354~~352 are referred to and repeated.



The Applicant refers to an email from Mr Macdonald to Mr Banson and Mr Eagle sent at 9:29pm on 30 November 2017.

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.

Each of the Yum! Brands Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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 355.

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.

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, of the Yum! Information.

### Particulars

The Applicant refers to the particulars to paragraph 354B.

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, 354B 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 354B and 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 369C, 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 369A to 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 369E, GetSwift contravened section 674(2) of the Corporations Act (**Yum! Disclosure Contravention**).

369G. By reason of the matters in paragraphs 369A to 369F, 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 paragraphs (a),(d) and (f), the Applicant also relies on the telephone conversation between Mr Sinha of Yum! Brands and Mr Macdonald and Mr Hunter of GetSwift in about September or October 2017, in which Mr Sinha made statements substantially to the effect pleaded in paragraph (a), as referred to in paragraph 231(a) of the ASIC Statement of Claim.

As to paragraph (b), the Applicant also relies on the email from D Sinha of Yum! Brands to Mr Macdonald and Mr Hunter of GetSwift dated 7 September 2017.

## 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 from the First Amazon Announcement until the making of the Second Amazon Announcement that:

- (a) GetSwift and Amazon had entered into a contract (**Amazon Contract**) pursuant to which Amazon was contractually obliged 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 material positive effect that the Amazon Contract would have on the GetSwift business was not conditional upon any of them occurring to the satisfaction of Amazon with the GetSwift Platform;
- (c) ~~it had reasonable grounds to expect that the Amazon Contract would generate revenue of an amount which would have a material positive effect on the GetSwift business; alternatively, GetSwift expected that the Amazon Contract would generate revenue of an amount which would have a material positive effect on the GetSwift business~~ (**First Amazon Revenue Representation**);
- (d) it had reasonable grounds for making the First Amazon Revenue Representation (**First Amazon Revenue Reasonable Grounds Representation**),

(the **First Amazon Representations**).

### **Particulars**

The First Amazon Representations were partly express and partly implied.

The representation in paragraph (b) was implied from the absence of qualification in the First 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 the representation in paragraph (a) was express, it was contained in the First Amazon Announcement which described the Amazon Contract as a “global agreement”.

To the extent the representation in paragraph (a) 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 First Amazon Revenue Representation in paragraph (c) was implied from the absence of qualification in the First Amazon Announcement, from the First Amazon Announcement being marked price sensitive, as well as from the context of previous statements made by GetSwift in the April and October Appendix 4C Representations and its prospectus which was released to the market on 7 December 2016, particularly in section 3.7, and in the summary section 1.2, and which statements were not qualified or withdrawn.

The First Amazon Revenue Reasonable Grounds Representation in paragraph (d) was in part implied by the First Amazon Revenue Representation and in part implied from the absence of qualification in the First Amazon 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.

Each of the First Amazon Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation until the making of the Second Amazon Announcement.

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 making the Second Amazon Announcement, GetSwift represented on and from the making of the Second Amazon Announcement until the end of the Claim Period that:

- (a) the First Amazon Representations were not misleading or deceptive and did not require qualification or correction, save that:
  - (i) the extent of the services to be provided and the revenues to be derived would be generated from specific transactions agreed with Amazon pursuant to the Amazon Contract;
  - (ii) due to the terms of the Amazon Contract the number of deliveries the Amazon Contract may generate was currently not determinable;
- (b) ~~it had a reasonable basis to expect that Amazon intended to enter into agreements or specific transactions pursuant to the Amazon Contract which would generate revenue which would have a material positive effect on the GetSwift business; alternatively, GetSwift expected that Amazon intended to enter into agreements or specific transactions pursuant to the Amazon Contract which would generate revenue which would have a material positive effect on the GetSwift business~~ (**Second Amazon Revenue Representation**);
- (c) it had reasonable grounds for making the Second Amazon Revenue Representation (**Second Amazon Revenue Reasonable Grounds Representation**),

(the **Second Amazon Representations**).

#### Particulars

The Applicant relies on:

- (i) the making of the First Amazon Announcement and the particulars at paragraph 371 above;

- (ii) the terms of the Second Amazon Announcement; and
- (iii) the absence of any other qualification, disclosure, or correction in respect of the First Amazon Announcement in the Second Amazon 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.

Each of the Second Amazon Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation until the end of the Claim Period.

373A. Each of:

- (a) the First Amazon Revenue Representation;
  - (b) the First Amazon Revenue Reasonable Grounds Representation;
  - (c) the Second Amazon Revenue Representation; and
  - (d) the Second Amazon Revenue Reasonable Grounds Representation,
- was a representation with respect to a future matter or matters.

374. The First and Second Amazon Representations were:

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

375. By making the First and Second Amazon 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.

375A. On and from 1 December 2017:

- (a) Amazon had required GetSwift to execute the Amazon Contract and a Confidentiality Agreement as prerequisites for negotiating and entering into a proposed agreement for the conduct of a pilot test of the GetSwift Platform for a period of 6-12 months, limited to deliveries in the United States estimated to be 50-100 deliveries per month, for the purpose of enabling Amazon to further evaluate the GetSwift Platform (the **Proposed Trial Pilot Service**);
- (b) Amazon had proposed to pay a fixed fee of US\$50,000 for the Proposed Trial Pilot Service because it sought the opportunity to further evaluate the GetSwift Platform before making a decision whether to use the GetSwift Platform for transactions, other than as part of the Proposed Trial Pilot Service, which would generate revenue for GetSwift,

(individually, collectively, or in any combination, the **Amazon Proposed Trial Pilot Service Information**)

### Particulars

The Applicant relies on:

- i. emails from Mariza Hardin of Amazon to Mr Hunter, Mr Macdonald and Mr Ozovek dated 30 August 2017, 1 September 2017, and 14, 28 and 30 November 2017; and
- ii. the matters referred to in paragraphs 17, 18, 19, 22 and 38 of the Affidavit of Ms Hardin dated 5 September 2019 filed in the ASIC Proceeding.

375B. The Amazon Contract (which was dated 17 November 2017 and executed on 30 November 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 or system at any given time;
- (c) Amazon could terminate the Amazon Contract for whatever reason on giving 30 days written notice;
- (d) the Amazon Contract imposed on GetSwift an obligation of confidence, and GetSwift was not to disclose the Amazon Contract without Amazon's prior written authorisation (**Amazon Confidentiality Clause**),

(individually, collectively, or in any combination, the **Amazon Contract Information**).

375C. On and from 2 December 2017:

- (a) no agreement had been entered into between Amazon and GetSwift for the conduct of the pilot test of the GetSwift Platform;
- (b) Amazon had informed GetSwift that:
  - (i) it considered the First and Second Amazon Announcements to be a breach of trust because the Announcements were made without Amazon's approval, against Amazon's direct instructions, and in breach of the Amazon Confidentiality Clause, breach of which entitled Amazon to terminate the Amazon Contract immediately; and
  - (ii) it was re-evaluating its relationship with GetSwift and was exploring all available options,

(individually, collectively, or in any combination, the **Amazon Relationship Re-evaluation Information**).

### Particulars

Email from Ms Hardin to Mr Hunter, Mr Macdonald and Mr Eagle dated 2 December 2017.

376. The First and Second Amazon Representations were false and misleading, in that:

- (a) the Amazon Contract did not oblige or entitle Amazon to use the GetSwift Platform;
- (b) any material positive effect that the Amazon Contract would have on the GetSwift business would only result from Amazon deciding to enter into agreements for specific transactions if it was satisfied with the performance of the GetSwift Platform following the Proposed Trial Pilot Service;
- (c) by reason of the Amazon Proposed Trial Pilot Service Information and the Amazon Contract Information, and on and from 2 December 2017 the Amazon Relationship Re-evaluation Information, there was no reasonable basis for the First Amazon Revenue Representation, the First Amazon Revenue Reasonable Grounds Representation, the Second Amazon Revenue Representation, or the Second Amazon Revenue Reasonable Grounds Representations, and GetSwift did not have a reasonable basis for making them;
- (d) each of the First Amazon Revenue Representation, the First Amazon Revenue Reasonable Grounds Representation, the Second Amazon Revenue Representation, and the Second Amazon Revenue Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL.

#### **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, clauses 1.1, 1.2, 5.2, 10.1, 13.7, 13.12, 13.13, 13.14 and Exhibit A.

377. By reason of the matters set out in paragraphs 370 to 376, by making the First and Second Amazon 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,

**(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 they included or gave rise to or repeated, respectively, the First and Second Amazon Representations.

**Particulars**

The matters in paragraph 376 are referred to and relied on.

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 those announcements were false in a material particular or were 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 First and Second Amazon Representations (**Amazon Macdonald Representations**).

#### **Particulars**

The particulars subjoined to paragraph 371 are referred to and repeated.

The Applicant refers to an email from Mr Macdonald to Mr Banson and Mr Eagle sent at 9:29pm on 30 November 2017.

It may be inferred that Mr Macdonald approved the publication of the First and Second Amazon Announcements, 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.

Each of the Amazon Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation other than as alleged in paragraph 373.

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.

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.

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 First 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 First Amazon Announcement and the Second Amazon Announcement, Mr Macdonald contravened section 1041E of the Corporations Act (**Amazon Macdonald False Statements Conduct**).

*V Amazon Disclosure Contravention and Amazon Relationship Re-evaluation  
Disclosure Contravention*

390A. As at 1 December 2017 and at all material times thereafter during the Claim Period, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, of:

- (a) the Amazon Proposed Trial Pilot Service Information; and

- (b) the Amazon Contract Information,  
(individually, collectively, or in any combination, the **Amazon Information**).

#### **Particulars**

The particulars to paragraphs 375A and 375B are repeated.

Each of the items of the Amazon 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.

390B. Further or alternatively, by reason of the matters set out in paragraphs 9, 371, 375A, 375B, and 390A, Mr Macdonald was aware, for the purposes of ASX Listing Rule 19.12, of the Amazon 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 375A and ~~375B~~375C.

390C. The Amazon Information, and each item of the Amazon 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.

390D. By reason of the matters alleged in paragraphs 5 and 390C, 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 Amazon Information on and from the time when it became aware of it.

390E. Notwithstanding the matters alleged in paragraphs 390A to 390D, GetSwift did not notify the ASX of the Amazon Information at any time during the Claim Period.



390F. By reason of the matters alleged in paragraphs 390A to 390E, GetSwift contravened section 674(2) of the Corporations Act (**Amazon Disclosure Contravention**).

390G. By reason of the matters set out in paragraphs 390A to 390F, the Amazon Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant Amazon Information and was a continuing contravention that continued throughout the Claim Period.

390H. Further Mr Macdonald was involved in the Amazon 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 Amazon Disclosure Contravention.

The Amazon 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 particulars subjoined to paragraph 375A and 375B.

390I. As at 2 December 2017 and at all material times thereafter during the Claim Period, GetSwift was aware, for the purposes of ASX Listing Rule 19.12, of the Amazon Relationship Re-evaluation Information.

#### **Particulars**

The particulars to paragraphs 375C are repeated.

Each of the items of the Amazon Relationship Re-evaluation 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.

390J. Further or alternatively, by reason of the matters set out in paragraphs 9, 371, 375C and 390I, Mr Macdonald was aware, for the purposes of ASX Listing Rule 19.12, of the Amazon Relationship Re-evaluation 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 375C.

390K. The Amazon Relationship Re-evaluation Information, and each item of the Amazon Relationship Re-evaluation 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.

390L. By reason of the matters alleged in paragraphs 5 and 390K, 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 Amazon Relationship Re-evaluation Information on and from the time when it became aware of it.

390M. Notwithstanding the matters alleged in paragraphs 390I to 390L, GetSwift did not notify the ASX of the Amazon Relationship Re-evaluation Information at any time during the Claim Period.

390N. By reason of the matters alleged in paragraphs 390I to 390M, GetSwift contravened section 674(2) of the Corporations Act (**Amazon Relationship Re-evaluation Disclosure Contravention**).

390O. By reason of the matters set out in paragraphs 390I and 390N, the Amazon Relationship Re-evaluation Disclosure Contravention commenced no later than the time when GetSwift became aware of the relevant Amazon Relationship Re-evaluation Information and was a continuing contravention that continued throughout the Claim Period.

390P. Further Mr Macdonald was involved in the Amazon Relationship Re-evaluation 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 Amazon Relationship Re-evaluation Disclosure Contravention.

The Amazon Relationship Re-evaluation 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 particulars subjoined to paragraph 375C.

## 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 on and from 18 December 2017 until the end of the Claim Period 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) the April 2017 CBA Representations were not false or misleading and did not require qualification or correction, save that:

- (i) CBA had approved the deployment of the Represented Albert POS Logistics Solution to CBA's retail merchants starting in February 2018;
  - (ii) ~~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; alternatively, GetSwift expected that approximately 90,000 merchants would use the new operating system with the GetSwift Platform starting from February 2018 (December CBA Projection);
  - (iii) it had reasonable grounds for making the December CBA Projection (December CBA Projection Reasonable Grounds Representation);
- (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,

**(December 2017 CBA Representations).**

**Particulars**

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

As to paragraph (b), the Applicant refers to the making of the April 2017 CBA Announcement and the particulars to paragraph 39 above, the terms of the December 2017 CBA Announcement; and the absence of any other qualification, disclosure or correction in respect of the April 2017 CBA Announcement in the December 2017 CBA Announcement.

The representation in (b)(i) was expressly made in the December 2017 CBA Announcement.

The representation in (b)(ii) 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 December CBA Projection Reasonable Grounds Representation in paragraph (b)(iii) was in part implied by the December CBA Projection and in part from the absence of qualification in the December 2017 CBA Announcement.

The representation in paragraph (c) 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.

Each of the December 2017 CBA Representations was a continuing representation, by reason that GetSwift made the representation; and/or did not amend, qualify or withdraw the substance of the representation; and/or did not release to the ASX any further information that would significantly supplement or modify the representation until the end of the Claim Period.

392A. Each of:

- (a) the December CBA Projection; and
  - (b) the December CBA Projection Reasonable Grounds Representation,
- was a representation with respect to a future matter or matters.

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 and the CBA Information, there was no reasonable basis for the December CBA Projection or the December CBA Projection Reasonable Grounds Representation, and GetSwift did not have a reasonable grounds for making them; ~~basis to project that approximately 90,000 merchants would use the new operating system with the GetSwift Platform starting from February 2018;~~
  - (e) each of the December CBA Projection and the December CBA Projection Reasonable Grounds Representation is taken to be misleading by operation of s 12BB of the ASIC Act, further or alternatively s 769C of the Corporations Act, and further or alternatively s 4 of the ACL;
  - (f) as at 18 December 2017, the April 2017 CBA Representations were false and misleading by reason of the matters in (a) to (c) and the CBA Information.

### Particulars

The Applicant refers to:

- i. GetSwift' s letter dated 9 February 2018 in response to ASX letter of 6 February 2018, point 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";
- v. As to paragraph (e), the matters in paragraph 41B(a), (c)-(e), (f)(iv), and (h)-(k) in particular.

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.

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.

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.

Email from Mr Macdonald to Mr Eagle sent 1:58am on 17 December 2017.



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.

Each of the December 2017 CBA Macdonald Representations was a continuing representation, by reason that Mr Macdonald engaged in conduct that resulted in the making by GetSwift of the representation; and/or the substance of the representation was not amended, qualified or withdrawn; and/or no further information was released to the ASX that would significantly supplement or modify the representation during the Claim Period.

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.

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.

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. [Deleted.]

**Y. PROGRESSIVE AND CUMULATIVE CONTRAVENTION**

430. [Deleted.]

431. [Deleted.]

432. [Deleted.]

433. [Deleted.]

434. [Deleted.]

435. [Deleted.]

436. [Deleted.]

437. [Deleted.]

437A. By the conduct which constituted some or all of:

- (a) the Fruit Box Group Misleading Conduct;
- (b) the Fruit Box Group False Statements Conduct;
- (c) the April 2017 CBA Misleading Conduct;

- (d) the April 2017 CBA False Statements Conduct;
- (e) the Lone Star Grill Misleading Conduct;
- (f) the Lone Star Grill False Statements Conduct;
- (g) the Pizza Hut Misleading Conduct;
- (h) the Pizza Hut False Statements Conduct;
- (i) the April Appendix 4C Misleading Conduct;
- (j) the April Appendix 4C False Statements Conduct;
- (k) the All Purpose Transport Misleading Conduct;
- (l) the All Purpose Transport False Statements Conduct;
- (m) the CITO Misleading Conduct;
- (n) the CITO False Statements Conduct;
- (o) the Hungry Harvest Misleading Conduct;
- (p) the Hungry Harvest False Statements Conduct;
- (q) the FRF Couriers Misleading Conduct;
- (r) the FRF Couriers False Statements Conduct;
- (s) the Takeaway.com Misleading Conduct;
- (t) the Takeaway.com False Statements Conduct;
- (u) the Fantastic Furniture Misleading Conduct;
- (v) the Fantastic Furniture False Statements Conduct;
- (w) the Fantastic Furniture Disclosure Contravention;
- (x) the BRS Franchising False Statements Conduct;
- (y) the Bare Burger Misleading Conduct;

- (z) the Bare Burger False Statements Conduct;
- (aa) the N A Williams Misleading Conduct;
- (bb) the N A Williams False Statements Conduct;
- (cc) the Johnny Rockets Misleading Conduct;
- (dd) the Johnny Rockets False Statements Conduct;
- (ee) the October Appendix 4C Misleading Conduct;
- (ff) the October Appendix 4C False Statements Conduct;
- (gg) the Yum! Brands Misleading Conduct;
- (hh) the Yum! Brands False Statements Conduct;
- (ii) the December 2017 CBA Misleading Conduct;
- (jj) the December 2017 CBA False Statements Conduct;

GetSwift progressively represented from 24 February 2017 until the end of the Claim Period that:

- (kk) each of the Fruit Box Group, Lone Star Grill, Pizza Hut, All Purpose Transport, CITO, Hungry Harvest, FRF Couriers, Vietnammm.com, Fantastic Furniture, BRS Franchising, Bare Burger, N A Williams, Johnny Rockets and Yum! Brands (the **Purportedly Revenue Generating Contract Enterprise Clients**) had evaluated the GetSwift platform and decided to proceed to use it pursuant to contracts which were generating revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business;
- (ll) each of the Purportedly Revenue Generating Contract Enterprise Clients were instances of GetSwift achieving its objective of growth in revenue by providing an Enterprise client with the opportunity to evaluate the GetSwift platform during a trial period, which had then proceeded to use the GetSwift platform under a contract which

generated revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business;

- (mm) every Enterprise client in respect of which GetSwift had published and lodged an announcement with the ASX that it had entered into an agreement with GetSwift after GetSwift's listing on the ASX (**Announced Enterprise Clients**) (save for Amazon and CBA) had proceeded to use the GetSwift platform pursuant to an agreement which generated revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business,

(the **Progressive and Cumulative Representations**).

437B. Each of the Progressive and Cumulative Representations was:

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

437C. By making the Progressive and Cumulative 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.

437D. The Progressive and Cumulative Representations and each of them were false and misleading, in that:

- (a) none of the Purportedly Revenue Generating Contract Enterprise Customers had informed GetSwift that they had decided to proceed to use the GetSwift Platform pursuant to an agreement which generated

revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business;

- (b) none of the Purportedly Revenue Generating Contract Enterprise Customers were an instance of GetSwift achieving its objective of growth in revenue, as none of them had proceeded to use the GetSwift platform under a contract which generated revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business;
- (c) none of the Purportedly Revenue Generating Contract Enterprise Customers had proceeded to use the GetSwift platform pursuant to an agreement which generated revenue for GetSwift in an amount which would have a material positive effect on the GetSwift business; and
- (d) the only Purportedly Revenue Generating Contract Enterprise Customers which had proceeded to use the GetSwift platform under an agreement which generated any revenue for GetSwift were:
  - (i) Vietnammm.com commencing in or around mid-October 2017; and
  - (ii) Hungry Harvest commencing in or around November 2017.

437E. By reason of the matters set out in paragraphs 437A to 437D by making the Progressive and Cumulative 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,

(the **Progressive and Cumulative Misleading Conduct**).



**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 Group Announcement, GetSwift considered that the addition of Fruit Box as a client could potentially have a material effect;
- (b) the Fruit Box Group 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 Group 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) the 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 Macdonald 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;
- (mma) the FRF Couriers Disclosure Contravention;
- (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;
- (zzaa) the BSR Franchising Misleading Conduct;
- (zza) the BSR Franchising False Statements Conduct;
- (zzb) the BSR Franchising Macdonald Misleading Conduct;
- (zzc) the BSR 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;
- (hhha) 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;
- (xxxa) the Amazon Disclosure Contravention;
- (xxxb) the Amazon Relationship Re-evaluation 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 Progressive and Cumulative Misleading Conduct,

(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 Group Representations;
- (aa) the Continuation of the Fruit Box Group Contract 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;
- (fa) the Continuation of the All Purpose Transport Revenue Representation;
- (g) the CITO Representations;
- (h) the Hungry Harvest Representations;
- (i) the FRF Couriers Representations;
- (ia) the Continuation of the FRF Couriers Revenue Representation;
- (j) the Takeaway.com Representations;
- (k) the Tranche 1 Cleansing Notice Representations;
- (ka) the Tranche 2 Cleansing Notice Representations;
- (l) the Fantastic Furniture Representations;
- (la) the Continuation of the Fantastic Furniture Contract Representations;
- (l1) the BSR Franchising Representations;

- (m) the Bare Burger Representations;
  - (n) the N A Williams Representations;
  - (o) the Johnny Rockets Representations;
  - (la) the Continuation of the Johnny Rockets Contract Representations;
  - (p) the October Appendix 4C Representation;
  - (q) the Yum! Brands Representations;
  - (r) the First Amazon Representations;
  - (ra) the Second Amazon Representations;
  - (s) the December CBA 2017 Representations; and
  - (t) the Progressive and Cumulative Representations,
- (individually, collectively or in any combination, the **Representations**).

### **Particulars**

The matters referred to in paragraphs 16 to 18 and 24 to 28 of the affidavit of Raffaele Webb affirmed 31 January 2019 in this proceeding.

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 are set out in Exhibit 11 of the report of Ramsey Zein dated 1 May 2020;
- 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 Group Representations;
  - (ia) the Continuation of the Fruit Box Group Contract 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;
  - (via) the Continuation of the All Purpose Transport Revenue Representation;
  - (vii) the CITO Representations;
  - (viii) the Hungry Harvest Representations;
  - (ix) the FRF Couriers Representations;
  - (ixa) the Continuation of the FRF Couriers Revenue Representation;
  - (x) the Takeaway.com Representations;
  - (xi) the Tranche 1 Cleansing Notice Representations;
  - (xii) the Tranche 2 Cleansing Notice Representations;
  - (xiii) the Fantastic Furniture Representations;

- (xiiia) the Continuation of the Fantastic Furniture Contract Representations;
  - (xiiib) the BSR Franchising Representations;
  - (xiv) the Bare Burger Representations;
  - (xv) the N A Williams Representations;
  - (xvi) the Johnny Rockets Representations;
  - (xvia) the Continuation of the Johnny Rockets Contract Representations;
  - (xvii) the October Appendix 4C Representation;
  - (xviii) the Yum! Brands Representations;
  - (xix) the First Amazon Representations;
  - (xixa) the Second Amazon Representations;
  - (xx) the December 2017 CBA Representations; and
  - (xxi) the Progressive and Cumulative 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 Group 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 BSR 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 Group 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;
- (xia) the Tranche 2 Cleansing Notice Announcement;
- (xii) the Fantastic Furniture Announcement;
- (xiia) the BSR Franchising Announcement;
- (xiii) the Bare Burger Announcement;
- (xiv) the N A Williams Announcements;
- (xv) the Johnny Rockets Announcement;
- (xvi) the October Appendix 4C Announcement;
- (xvii) the Yum! Brands Announcement;
- (xviii) the First Amazon Announcement;
- (xix) the Second Amazon Announcement; and
- (xx) the December 2017 Announcement,  
(together **Announcements**);

were:

- (xxi) false in a material particular, or materially misleading;
- (xxii) likely to induce persons to apply for or acquire financial products; and
- (xxiii) 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;
- (xxiv) 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 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) [Deleted];
  - (xi) the Pizza Hut Information;
  - (xii) the FRF Couriers Information;
  - (xiii) the Amazon Information; and

- (xiv) the Amazon Relationship Re-evaluation 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;
- (p) whether the Court ought to make an order for an aggregate award of damages in a sum determined by the Court as being the total principal

monetary amount of damages to be paid to the Applicant and Group Members by the First and Second Respondents pursuant to section 33Z(1)(e) and/or section 33Z(1)(f) and/or section 33Z(1)(g) of the FCAA (**Aggregate Damages**), and if so, the formula by which each individual Group Member's loss is to be determined and satisfied from the Aggregate Damages.

**AND THE APPLICANT CLAIMS**, for himself and on behalf of the Group Members, the relief set out in the Application filed herein.

Date: 19 February 2021



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Signed by Timothy Michael Luke Finney  
Lawyer for the Applicant

This third further amended pleading was prepared by E Collins of Senior Counsel, R Davies and E L Olivier of Counsel.

~~This pleading was prepared by D G Collins of Her Majesty's Counsel, O Bigos of Senior Counsel and E L Olivier of 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
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

Date	Open (\$)	High (\$)	Low (\$)	Close (\$)
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

Date	Open (\$)	High (\$)	Low (\$)	Close (\$)
07 July 2017	0.925	0.95	0.92	0.935
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



Date	Open (\$)	High (\$)	Low (\$)	Close (\$)
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
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

Date	Open (\$)	High (\$)	Low (\$)	Close (\$)
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
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).

**Addendum** is defined in paragraph 192A.

**Aggregate Damages** is defined in paragraph 460.

**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 117B.

**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 Revenue Representation** 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 Contract Information** is defined in paragraph 375B.

**Amazon Confidentiality Clause** is defined in paragraph 375B.

**Amazon Disclosure Contravention** is defined in paragraph 390F.

**Amazon False Statements Conduct** is defined in paragraph 381.

**Amazon Information** is defined in paragraph 390A.

**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 Proposed Trial Pilot Service Information** is defined in paragraph 375A.

**Amazon Relationship Re-evaluation Information** is defined in paragraph 375C.

**Amazon Relationship Re-evaluation Disclosure Contravention** is defined in paragraph 390N.

**Announcements** is defined in paragraph 460.

**Announced Enterprise Clients** is defined in paragraph 437A.

**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 Revenue Representation** is defined in paragraph 276.

**Bare Burger Services Clause** is defined in paragraph 278A.

**Bare Burger Term Clause** is defined in paragraph 278A.

**BSR Franchising** is defined in paragraph 274B.

**BSR Franchising Announcement** is defined in paragraph 274A.

**BSR Franchising Contract** is defined in paragraph 274

**BSR Franchising False Statements Conduct** is defined in paragraph 274K.

**BSR Franchising Macdonald False Statements Conduct** is defined in paragraph 274T.

**BSR Franchising Macdonald Representations** is defined in paragraph 274L.

**BSR Franchising Macdonald Misleading Conduct** is defined in paragraph 274P.

**BSR Franchising Misleading Conduct** is defined in paragraph 274G.

**BSR Franchising Representations** is defined in paragraph 274B.

**BSR Franchising Revenue Representation** is defined in paragraph 274B.

**BSR Franchising Services Clause** is defined in paragraph 274E.

**BSR Franchising Term Clause** is defined in paragraph 274E.

**CBA Contract** is defined in paragraph 39.

**CBA** means the Commonwealth Bank of Australia.

**CBA Information** is defined in paragraph 41B.

**CBA Projections** is defined in paragraph 39.

**CBA Roll-Out Projection** is defined in paragraph 39.

**CBA Revenue Representation** is defined in paragraph 39.

**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 145B.

**CITO Macdonald False Statements Conduct** is defined in paragraph 160.

**CITO Macdonald Misleading Conduct** is defined in paragraph 156.

**CITO Macdonald Representations** is defined in paragraph 152.

**CITO Misleading Conduct** is defined in paragraph 147.

**CITO Representations** is defined in paragraph 143.

**CITO Revenue Representation** 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.

**Continuation of the All Purpose Transport Revenue Representation** is defined in paragraph 118A.

**Continuation of the Fantastic Furniture Contract Representations** is defined in paragraph 251A.

**Continuation of the FRF Couriers Revenue Representation** is defined in paragraph 193A.

**Continuation of the Fruit Box Group Contract Representations** is defined in paragraph 14A.

**Contravening Conduct** is defined in paragraph 450.

**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 2018 CBA Macdonald False Statements Conduct** is defined in paragraph 409.

**December 2017 CBA Macdonald Misleading Conduct** is defined in paragraph 405.

**December 2017 CBA Macdonald Representations** is defined in paragraph 401.

**December 2017 CBA Misleading Conduct** is defined in paragraph 396.

**December 2017 CBA Representations** is defined in paragraph 392.

**Delivery Threshold** is defined in paragraph 352.

**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 Revenue Representation** is defined in paragraph 248.

**Fantastic Furniture Services Clause** is defined in paragraph 250A.

**Fantastic Furniture Term Clause** is defined in paragraph 250A.

**FCAA** means the Federal Court of Australia Act 1976 (Cth)

**First Amazon Announcement** is defined in paragraph 370.

**First Amazon Revenue Representation** is defined in paragraph 371.

**First Amazon Representations** is defined in paragraph 371.

**First N A Williams Announcement** is defined in paragraph 294.

**FRF Couriers Announcement** is defined in paragraph 189.

**FRF Couriers Contract** is defined in paragraph 190.

**FRF Couriers Disclosure Contravention** is defined in paragraph 207F.

**FRF Couriers False Statements Conduct** is defined in paragraph 198.

**FRF Couriers Information** is defined in paragraph 192B.

**FRF Couriers Macdonald False Statements Conduct** is defined in paragraph 207.

**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 Payment Clause** is defined in paragraph 192A.

**FRF Couriers Representation** is defined in paragraph 190.



**FRF Couriers Revenue 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 Projection** is defined in paragraph 11.

**Fruit Box Projection Disclosure Contravention** is defined in paragraph 37F.

**Fruit Box Projection Information** is defined in paragraph 13B.

**Fruit Box Group Representations** is defined in paragraph 11.

**Fruit Box Revenue Representation** 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 13D.

**GetSwift means** the First Respondent.

**GetSwift Platform** is defined in paragraph 7.

**GetSwift Representations** is defined in paragraph 460.

**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 Revenue Representation** 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 Disclosure Contravention** is defined in paragraph 331F.

**Johnny Rockets False Statements Conduct** is defined in paragraph 322.

**Johnny Rockets Information** is defined in paragraph 316B.

**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 Revenue Representation** is defined in paragraph 314.

**Johnny Rockets Services Clause** is defined in paragraph 316A.

**Johnny Rockets Term Clause** is defined in paragraph 316A.

**July Appendix 4C Announcement** is defined in paragraph 39.

**Lone Star Grill** is defined in paragraph 58.

**Lone Star Grill Announcement** is defined in paragraph 57.

**Lone Star Grill Contract** is defined in paragraph 58.

**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 62.

**Lone Star Grill Revenue Representation** is defined in paragraph 58.

**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.

**Macdonald Representations** is defined in paragraph 460.

**Material Information** is defined in paragraph 460.

**May 2017 Investor Presentation** is defined in paragraph 39,

**Mr Macdonald** is defined in paragraph 6.

**N A Williams Announcements** is defined in paragraph 294.

**N A Williams Contract** is defined in paragraph 295.

**N A Williams Disclosure Contravention** is defined in paragraph 312F.

**N A Williams False Statements Conduct** is defined in paragraph 303.

**N A Williams Information** is defined in paragraph 297B.

**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 Transaction Projection** is defined in paragraph 295.

**N A Williams Representations** is defined in paragraph 295.

**N A Williams Revenue Representation** 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 Pan** is defined paragraph 79AA.

**Pizza Pan Contract** is defined in paragraph 79AA.

**Pizza Hut Disclosure Contravention** is defined in paragraph 94F.

**Pizza Hut False Statements Conduct** is defined in paragraph 85.

**Pizza Hut Information** is defined in paragraph 79B.

**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 Revenue Representation** is defined in paragraph 77.

**Pizza Pan Services Clause** is defined in paragraph 79A.

**Pizza Pan Term Clause** is defined in paragraph 79A.

**PMI** is defined in paragraph 145B.

**Price Inflation** is defined in paragraph 455.

**Progressive and Cumulative Misleading Conduct** is defined in paragraph 437E.

**Progressive and Cumulative Representations** is defined in paragraph 437A.

**Proposed Trial Pilot Service** is defined in paragraph 375A.

**Purportedly Revenue Generating Contract Enterprise Clients** is defined in paragraph 437A.

**Representations** is defined in paragraph 452.

**Represented Albert POS Logistics Solution** is defined in paragraph 39.

**Second Amazon Announcement** is defined in paragraph 372.

**Second Amazon Revenue Representation** is defined in paragraph 373.

**Second N A Williams Announcement** is defined in paragraph 294.

**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 Revenue Representation** is defined in paragraph 219.

**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.

**Yum! Brands Revenue Representation** is defined in paragraph 352.

**Yum! Brands Rollout Projection** is defined in paragraph 352.

**Yum! Disclosure Contravention** is defined in paragraph 369F.

**Yum! Information** is defined in paragraph 354B.