



Annexure 2

Notice to Group Members

OPT OUT NOTICE

FEDERAL COURT OF AUSTRALIA

Raffaele Webb v GetSwift Limited (NSD580/2018)

SECTION 1

1. A class action has been commenced by Mr Raffaele Webb on behalf of all persons who acquired shares in GetSwift Limited (ACN 604 611 556) during the period from 24 February 2017 until the close of trading on 19 January 2018 (inclusive) (**Webb Class Action**).
2. The Federal Court has ordered that this Notice be published. You have been identified as a potential class member. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, the Court has appointed an independent barrister who can answer any questions you may have and their contact details are provided below. You are not obliged to use his services and may seek your own independent advice.
3. This Notice provides important information about:
 - (a) your status as a group member in the Webb Class Action;
 - (b) what you need to do to remove yourself from participating in the Webb Class Action (**opt out**) if you wish to do so; and
 - (c) the orders made in the Webb Class Action in respect of how group members will contribute to the costs of the litigation if the Webb Class Action is successfully resolved.

What is a class action?

4. A class action is an action that is brought by one person (**Applicant**) on his or her own behalf and on behalf of a class of people (**Group Members**) against another



person or persons (**Respondents**) where the Applicant and the class members have similar claims against the Respondents.

5. The Applicant in a class action does not need to seek the consent of Group Members to commence a class action on their behalf or to identify a specific Group Member. However, Group Members can cease to be Group Members by opting out of the class action. An explanation of how Group Members are able to opt out is found below in Section 2, Option B.

What is the Webb Class Action?

6. The Webb Class Action was filed on 13 April 2018 and alleges that:
 - (a) GetSwift and Mr Joel Macdonald (its Chief Executive Officer) engaged in misleading or deceptive conduct, and breached GetSwift's obligations of continuous disclosure between 24 February 2017 and 19 January 2018 (inclusive) (**Claim Period**); and advances a claim that
 - (b) persons who purchased GetSwift shares within the Claim Period have suffered compensable loss.
7. The detailed allegations are set out in the Applicant's **Amended Statement of Claim** filed with the Federal Court on 11 January 2019.
8. The Respondents have filed a **Defence** in these proceedings denying the claims made against them and intend to defend the Webb Class Action.

Are you a Group Member in the Webb Class Action?

9. The Webb Class Action is 'open' in that it includes all persons who acquired shares in GetSwift during the Claim Period.
10. You are a Group Member if you meet the following criteria:
 - (a) you acquired shares in GetSwift during the period from 24 February 2017 until 19 January 2018 (inclusive);
 - (b) you are not a director or officer, a close associate, a related party, a related body corporate, or an associated entity of GetSwift (as defined by the *Corporations Act*) or a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia; and



(c) you have suffered loss and damage by reason of the conduct alleged against GetSwift in the Statement of Claim.

11. If you fit the above description, you should read this Notice carefully as it will affect your rights.
12. If you are unsure as to whether or not you are a Group Member, you should contact the Independent Court appointed Barrister, Mr Caspar Conde, on (02) 9151 2058 or by email to conde@newchambers.com.au.

Other Class Actions

12A The Webb Class Action is the only class action proceeding as two other class actions have been stayed. If this changes, you will be given notification of what options are available to you at that time.

What do Group Members need to do?

13. Group Members have two options:
 - (a) **Option A:** remain group members in the Webb Class Action; or
 - (b) **Option B:** opt out of the Webb Class Action.
14. There are different consequences depending on which option you choose:
 - (a) **Option A:** Group Members who wish to **remain a Group Member** in the Webb Class Action are not required to respond to this Notice. If you do not opt out, you will continue to be a person or entity whose claim against the Respondents is a claim the subject of the class action, and you will maintain the opportunity to benefit from any judgment or settlement in the class action. This also means that you may be bound by any judgment or settlement of the proceeding. In due course, the Court may require you to take further steps to confirm your participation in the class action. If this occurs, a further notice will be sent to the address held for you by GetSwift's share registry operator.
 - (b) **Option B:** Group Members who **opt out** of the proceeding will not be bound by the outcome of the Webb Class Action and will be excluded from receiving any monetary compensation that results from the Webb Class Action. Group Members who opt out of the proceeding will no longer be Group Members in



the proceeding following their opt out, and will preserve their legal rights against the Respondents to the class action. If you wish to opt out, you need to follow the steps outlined in Section 2, Option B.

Will Group Members be liable for legal costs?

15. In the Webb Class Action, the Court has made orders that Therium Litigation Finance (Australia) Limited (**Therium**) is to fund legal costs and indemnify the Applicant and Group Members in respect of any adverse costs orders which may be made and provide any security for costs that the Court may order.
16. The Applicant has retained Phi Finney McDonald to act as his solicitors (**Solicitors**). It is not necessary for you or other Group Members to retain Phi Finney McDonald in order to be a Group Member in the class action.
17. The Applicant's liability for legal costs and out of pocket expenses (**disbursements**) will be funded by Therium and recovered by Therium only in the event of a successful outcome of the proceeding (judgment or settlement). In the event of such an outcome, the Applicant will seek an order that those legal costs and disbursements be paid out of the *total* amount recovered for *all* group members (**costs reimbursement order**).
18. The Federal Court will assess the legal costs and disbursements incurred in the proceeding and make a reimbursement order for only an amount that the Court determines is reasonable.
19. In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party (**adverse costs order**).
20. In a class action, it is only the Applicant that faces the risk of an adverse costs order if the action fails. As a group member, an adverse costs order will not be made against you.

Common fund orders

21. As noted above, the Webb Class Action is being funded by Therium. The Court has made orders (**common fund orders**) setting a commission to pay Therium and providing for the reimbursement of Claim Expenses (as defined in the Funding Terms annexed to the Court's common fund orders). A copy of these orders, which



set out the terms of the funding arrangements can be obtained by visiting the NSW District Registry of the Federal Court of Australia.

22. The commission sought that is payable to Therium will be the lesser of (a) or (b), being:
- (a) a multiple of:
 - (i) 2.2 times the Pre-Resolution Expenses (as defined in the Funding Terms) paid or payable by Therium prior to achieving a successful outcome in the proceeding, if the parties in the proceeding enter into a settlement agreement on or before 12 April 2019 and that settlement subsequently receives Court approval; or
 - (ii) 2.8 times the Pre-Resolution Expenses (as defined in the Funding Terms) paid or payable by Therium prior to achieving a successful outcome in the proceeding, if the class action is successfully resolved on or after 12 April 2019; or
 - (b) 20% of the total amount received from the Respondents after deducting the Claim Expenses and Remaining Costs (as defined in the Funding Terms).
23. No Group Member will be liable to pay any amount of money to Therium, or the Solicitors, unless and until there is a successful outcome in the proceeding. If a successful outcome is reached (subject to any other order the Court might make), then the amounts payable to Therium and/or the Solicitors will be deducted from the settlement or judgment sum before the balance is distributed to Group Members. The total amount paid to Therium and the Solicitors in the event of a successful outcome will not exceed the settlement or judgment sum.

Where can you obtain copies of relevant documents?

24. Copies of the relevant documents, including the Originating Application, Statement of Claim, Defence and the common fund orders, may be obtained by inspecting them at the Federal Court by visiting a District Registry of the Federal Court in Sydney, Canberra, Melbourne, Brisbane, Adelaide, Perth, Hobart or Darwin. The addresses for these registries are available at www.fedcourt.gov.au or by calling the NSW District Registry on (02) 9230 8567.



What if you have further questions?

25. The Court appointed an independent Barrister to assist Group Members with any questions they may have in relation to anything contained within this Notice.
26. If you have further questions or queries, you may email the court appointed independent Barrister with any questions at:

conde@newchambers.com.au



SECTION 2 YOUR TWO OPTIONS

Options for Group Members

Option A – Remain a Group Member

If you wish to remain a Group Member, you are not required to respond to this Notice. In the event that the Court makes orders in the future requiring you to take further steps to confirm your participation in the class action (including your participation in any settlement of the class action), a further Notice will be sent to you.

Option B – Opt out

If you do not wish to remain a Group Member in the Webb Class Action, you must opt out of the proceeding by completing the “Opt Out Notice” form annexed to this Notice as Schedule A.

As matters currently stand, if you opt out of the Webb Class Action, you:

- Will not be affected by any orders made in the Webb Class Action;
- Will not be permitted to receive any distribution from any damages award or settlement outcome arising from the Webb Class Action; and
- Will be able to commence separate proceedings on your own behalf if you so wish.

Opt out forms must be submitted to the New South Wales District Court Registry of the Federal Court of Australia (Level 17, 184 Phillip Street, Sydney) before **4:00pm AEDT on 28 March 2019**. Opt out notices received after this time will not be accepted, and you will remain as a Group Member in the Webb Class Action but will not be permitted to make a claim for part of any settlement (see Option B above).