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Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID972/2018
File Title: HOLLY SOUTHERNWOOD & ANOR V BRAMBLES LIMITED
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 25/06/2021 12:51:41 PM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

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Form 17
Rule 8.05(1)(a)

AMENDED CONSOLIDATED STATEMENT OF CLAIM

Amended on 25 June 2021 pursuant to leave granted by the Honourable Justice Murphy on 21 June 2021

No. VID972 of 2018

Federal Court of Australia
District Registry: Victoria
Division: General

HOLLY SOUTHERNWOOD

First Applicant

**WILLIAM VINCENT KIDD AND MARY AGNES COLLUM AS TRUSTEES FOR THE
MAGNESS-BENNETT SUPERANNUATION FUND**

Second Applicants

BRAMBLES LIMITED (ACN 118 896 021)

Respondent

Filed on behalf of Holly Southernwood and William Vincent Kidd and Mary Agnes Collum ATF the Magness-Bennett Superannuation Fund

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NOTE AS TO TERMINOLOGY

In this Amended Consolidated Statement of Claim, the following conventions are used in referring to financial results:

- (a) FY2016, FY2017, etc. refer to the financial years ended 30 June 2016, 30 June 2017, etc.;
- (b) 1H and 2H refer to the first half and second half of the relevant financial year respectively;
- (c) 1Q, 2Q etc., refer to the first quarter, second quarter etc. of the relevant financial year;
- (d) References to dollar sums are approximations, and in the case of million-dollar amounts, are approximated to the first decimal point.

Defined terms are summarised in Annexure B.

A. PARTIES

A.1 The Applicants and Group Members

1. The Applicants commence this proceeding as representative parties pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on their own behalf and on behalf of all persons who:
 - (a) entered into a contract to acquire an interest in ordinary shares in the Respondent (**Brambles Shares** and **Brambles**, respectively) between 18 August 2016 and 17 February 2017 (inclusive) (**Relevant Period**); and
 - (b) suffered loss or damage by, or which resulted from, the conduct of Brambles as pleaded below; and
 - (c) are not any of the following as at the date of commencement of this proceeding:
 - (i) a related party (as defined by section 228 of the *Corporations Act 2001* (Cth) (the **Corporations Act**) of Brambles;

- (ii) a related body corporate (as defined by section 50 of the *Corporations Act*) of Brambles;
- (iii) an associated entity (as defined by section 50AAA of the *Corporations Act*) of Brambles;
- (iv) an officer or a close associate (as defined by section 9 of the *Corporations Act*) of Brambles;
- (v) a Justice, Registrar, District Registrar or Deputy District Registrar of the Federal Court of Australia or the High Court of Australia,

(Group Members).

- 2. The Applicants each entered into contracts to acquire interests in Brambles Shares on the Australian Securities Exchange (**ASX**) during the Relevant Period as set out in Annexure A.
- 3. As at the date of the commencement of this proceeding, there are more than seven Group Members.

A.2 Brambles

- 4. At all material times Brambles:
 - (a) has been and is a company incorporated under the *Corporations Act*;
 - (b) has been and is a corporation listed on a financial market operated by the ASX;
 - (c) had and has on issue Brambles Shares which were and are:
 - (i) traded on the ASX under the designation “BXB”;
 - (ii) ED securities within the meaning of section 111AE of the *Corporations Act*;
 - (iii) quoted ED securities within the meaning of section 111AM of the *Corporations Act*; and
 - (iv) financial products within the meaning of the *Corporations Act*;

- (d) was and is a listed disclosing entity within the meaning of section 111AL(1) of the *Corporations Act*;
 - (e) was and is subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
 - (f) has been and is by reason of:
 - (i) the matters in sub-paragraphs (a) to (e) above; and
 - (ii) sections 111AP(1) and/or 674(1) of the *Corporations Act*,
an entity to which section 674(2) of the *Corporations Act* applied and applies;
 - (g) was and is a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - (h) has been and is a person within the meaning of:
 - (i) section 1041H of the *Corporations Act*;
 - (ii) section 12DA of the *ASIC Act*; and
 - (iii) section 18 of the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:
 - A. section 131 of the *Competition and Consumer Act 2010* (Cth); and
 - B. section 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic),
(individually, or together, the **ACL**).
5. At all material times the ASX was a market operator of a listing market, namely the ASX's financial market, in relation to Brambles Shares for the purposes of section 674(1) of the *Corporations Act* (**Market**).
6. At all material times Rule 3.1 of the ASX Listing Rules provided that once an entity is or becomes aware of any information concerning it that a reasonable person would expect to

have a material effect on the price or value of the entity's securities, the entity must, unless the exceptions in ASX Listing Rule 3.1A apply, immediately tell the ASX that information.

7. At all material times, there existed a market of investors and potential investors in Brambles Shares on the ASX.

B. BRAMBLES' BUSINESS

B.1 Pallets Business

8. At all material times, Brambles carried on business globally as the provider of supply chain logistics solutions (**Global Pallets Business**) including the provision of:

- (a) pooled pallets (**Pooled Pallets**) through its "CHEP" business (**Pooled Pallets Business**); and

Particulars

Pooled Pallets are pallets supplied by Brambles to a customer to be used in the transportation of goods through a supply chain and that are shared by multiple participants through that supply chain under a circular "share and reuse" model.

At the end of the cycle of use, Pooled Pallets are collected by or otherwise returned to Brambles.

A single Pooled Pallet can be used multiple times, by multiple customers and in multiple supply chains.

- (b) whitewood pallets (**Whitewood Pallets**).

Particulars

Whitewood Pallets are "single use" pallets, which are provided by suppliers of Whitewood Pallets, including Brambles, to a customer and which, after use, are required to be returned to the same location from which they were issued, in an exchange-based "supply and recycle" model.

9. At all material times, Brambles conducted operations in North America (**North American Operations**) including by the provision through its CHEP business of:

- (a) Pooled Pallets (**North American Pooled Pallets Business**, also referred to as **"US Pooled"**); and

Particulars

In FY2016:

- (i) North American Pooled Pallets Business accounted for approximately 68% of Brambles' pallet business revenue in its North American Operations;
- (ii) North American Operations accounted for approximately 39% of Brambles' Group sales revenue.

The Applicants refer to the investor presentation that Brambles released and published to the ASX on 18 August 2016 (**FY2016 Investor Presentation**).

~~Further particulars may be provided following discovery.~~

- (b) Whitewood Pallets (**North American Whitewood Pallets Business**, also known as "US Recycled").

Particulars

Brambles operated its North American Whitewood Pallets Business using the business name CHEP Recycled.

In FY2016, the North American Whitewood Pallets Business generated revenue in Brambles' North American Operations of approximately US\$460 million, and Underlying Profit declined by US\$25 million compared to the prior year.

- 10. As part of its North American Pooled Pallets Business, Brambles supplied Pooled Pallets into distribution channels:

- (a) in which each participant had a contractual relationship with Brambles (**Participating Distributor Channels**); and
- (b) in which some participants had a contractual relationship with Brambles, but others were "non-participating distributors" (**NPDs**), who did not have a contractual relationship with Brambles (**NPD Channels**).

- 11. At all material times:

- (a) the costs incurred by Brambles to service NPD Channels were higher than those for Participating Distributor Channels; and

Particulars

In the ordinary course, and all other things being equal, Brambles:

- (i) incurred higher transport, recovery and repair costs for; and

- (ii) experienced a higher number of lost or otherwise irrecoverable,

Pooled Pallets in NPD Channels.

~~So far as they are able to say before discovery, t~~The Applicants rely on the statement in an earnings call with market analysts and investors convened by Brambles on 18 August 2016 (**FY2016 Earnings Call**), to the effect that Brambles' risk of loss and recovery costs are higher in NPD Channels.

The content of the FY2016 Earnings Call was transcribed and published by Open Briefing.

- (b) by reason of the matters in sub-paragraph (a), the issue fee that Brambles charged for Pooled Pallets issued into a NPD Channel was higher than for Pooled Pallets issued into a Participating Distributor Channel.

Particulars

For Pooled Pallets issued to manufacturers who then transferred the Pooled Pallets into NPD Channels, Brambles would generally levy an upcharge to the manufacturer to whom it issued the pallet, at the time the pallet was transferred to a non-cooperating distributor.

The quantum of the upcharges levied on the manufacturer depended on whether the distributors to whom the manufacturer transferred the pallet had an arrangement with Brambles for the return of the pallet (**Semi Cooperating Distributor**) or not (**Non Cooperating Distributor**).

At all relevant times, the upcharge levied on manufacturers who transferred Pooled Pallets to:

- (i) Semi Cooperating Distributors, was generally \$3.75; and
- (ii) Non Cooperating Distributors, was generally \$8.75,
(BXB.602.011.7364).

12. In the ordinary course, including in FY2016, Brambles:

- (a) earned an issue fee at the time that it issued a new Pooled Pallet;
- (b) earned a rental fee for the period of time that a Pooled Pallet was in circulation in any given supply chain;
- (ba) earned a transfer fee when a Pooled Pallet was transferred from a manufacturer to a distributor;

(bb) referred to the total revenue earned from the issue of Pooled Pallets, including all upcharges, net of any sales allowances or discounts, as the 'rate per issue' or 'RPI':

- (c) did not incur substantial operating costs in relation to a Pooled Pallet until it was required to collect, transport, repair and store the Pooled Pallet at one of its facilities; and
- (d) incurred the costs in sub-paragraph (c) in relation to each Pooled Pallet approximately four times in each financial year.

Particulars

~~So far as the Applicants are able to say before discovery, t~~The Applicants refer to the statement on page 3 of an earnings call with market analysts and investors convened by Brambles on 20 February 2017 (**1H2017 Earnings Call**) that *"in [Brambles'] business revenue tends to be largely earned upfront when the pallet is issued, and the costs associated with the issued pallets are weighted to the end of the cycle, when pallets are sorted, collected, returned to service centres and repaired"*.

The content of the 1H2017 Earnings Call was transcribed and published by Open Briefing.

~~Further particulars may be provided following discovery.~~

B.2 Brambles Personnel

13. At all material times Rule 19.12 of the ASX Listing Rules provided that an entity becomes aware of information if, and as soon as, an officer has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.
14. During the Relevant Period, the officers of Brambles within the meaning of section 9 of the *Corporations Act* and Rule 19.12 of the ASX Listing Rules included, but were not limited to, the persons named in paragraphs 15 to 20B24 below.
15. Tom Gorman (**Gorman**) was from October 2009 and at all times during the Relevant Period:
- (a) Chief Executive Officer and an Executive Director of Brambles; and

- (b) Chairman of the Executive Leadership Team.
16. Graham Chipchase (**Chipchase**) was from January 2017 to the end of the Relevant Period:
- (a) Chief Executive Officer Designate of Brambles; and
 - (b) working closely with Gorman during the period of transition between Gorman and Chipchase holding that position.
17. Zlatko Todorcevski (**Todorcevski**) was from 2012 to 17 November 2016 the Chief Financial Officer of Brambles.
18. Nessa O'Sullivan (**O'Sullivan**) was:
- (a) from 10 October 2016 to 17 November 2016:
 - (i) Chief Financial Officer Designate of Brambles; and
 - (ii) working closely with Todorcevski during the period of transition between Todorcevski and O'Sullivan holding that position; and
 - (b) from 17 November 2016 to the end of the Relevant Period, Chief Financial Officer of Brambles.
19. Stephen Johns (**Johns**) was from September 2014 and at all times during the Relevant Period Independent Non-Executive Chairman of Brambles.
- 19A. From March 2013 and at all times during the Relevant Period, Peter Mackie (**Mackie**):
- (a) was the Group President of the Global Pallets Business;
 - (b) reported directly to Gorman and Todorcevski, or Chipchase and O'Sullivan;
 - (c) was a member of the Executive Leadership Team of Brambles;

Particulars

The members of the Executive Leadership Team were:

- (i) Gorman;
- (ii) Todorcevski;
- (iii) Mackie;

- (iv) Jean Holley, Brambles' Chief Information Officer;
 - (v) Wolfgang Orgeldinger, Group President, Reusable Plastic Containers;
 - (vi) Jason Rabbino, Group President, Containers, and Head, Group Strategy;
 - (vii) Nick Smith, Group Vice President, Human Resources;
 - (viii) from in or about January 2017, Chipchase; and
 - (ix) from in or about October 2016, alternatively November 2016, O'Sullivan.
- (d) was identified in Brambles' 2016 Annual Report as 'Key Management Personnel':

Particulars

Accounting Standard AASB 124 required Brambles' financial statements to disclose, *inter alia*, 'key management personnel compensation in total ...' (AASB124.17).

AASB 124.9 defined 'key management personnel' as '*those persons having authority and responsibility for planning, directing and controlling the activities of the entity directly or indirectly ...*'.

- (e) was a member of the Global Pallets Leadership Team:

Particulars

The other members of the Global Pallets Leadership Team included:

- (a) Buster Kennett; and
 - (b) Kim Rumph.
- (f) together with Buster Kennett, was responsible for the:
- (i) oversight and approval of strategy, budgets, forecasts and reforecasts for;
and
 - (ii) actual financial performance of,
the Global Pallets Business.

19B. Buster Kennett (**Kennett**) was from 2014 and at all times during the Relevant Period:

- (a) the Chief Financial Officer of the Global Pallets Business;
- (b) a member of the Global Pallets Leadership Team;
- (c) a member of the North American Operations Executive Leadership Team; and

- (d) together with Mackie, responsible for the:
 - (i) oversight and approval of strategy, budgets, forecasts and reforecasts for;
and
 - (ii) financial performance of,
the Global Pallets Business.

20. Kim Rumph (**Rumph**) was at all times during the Relevant Period:

- (a) President of the North American Operations ~~Pooled Pallets Business~~;
- (b) a member of the Global Pallets Leadership Team;
- (c) a member of the North American Operations Executive Leadership Team;
- (d) together with Matthew Lallatin until October 2016, and Brett Hill from about October 2016 to the end of the Relevant Period, responsible for the:
 - (i) oversight and approval of strategy, budgets, forecasts and reforecasts for;
and
 - (ii) financial performance of,
the North American Operations.

20A. Matthew Lallatin (**Lallatin**) was from October 2012 until about October 2016:

- (a) the Chief Financial Officer of the North American Operations;
- (b) a member of the North American Operations Executive Leadership Team; and
- (c) together with Rumph responsible for the:
 - (i) oversight and approval of strategy, budgets, forecasts and reforecasts for;
and
 - (ii) financial performance of,
the North American Operations.

20B. Brett Hill (Hill) was from about October 2016 until the end of the Relevant Period:

- (a) the acting Chief Financial Officer of the North American Operations;
- (b) a member of North American Operations Executive Leadership Team; and
- (c) together with Rumph responsible for the:
 - (i) oversight and approval of strategy, budgets, forecasts and reforecasts for;
and
 - (ii) financial performance of,

the North American Operations.

21. ~~[Not used] Laura Nador (Nador) was at all times during the Relevant Period President of the businesses operated by Brambles as part of its North American Operations under the names CHEP USA Pooled Pallets and Pallecon North America.~~

21A In FY2016 the:

- (a) Global Pallets Business accounted for approximately 74% of the revenue and 85% of the Underlying Profit (as defined in paragraph 23(b) below);
- (b) North American Operations accounted for approximately 39% of the revenue and 39% of the Underlying Profit;
- (c) North American Pooled Pallets Business accounted for approximately 27% of the revenue and 31% of the Underlying Profit;
- (d) North American Whitewood Pallets Business accounted for approximately 8% of the revenue,

earned by Brambles in that financial year.

22. ~~By reason of the matters pleaded in paragraphs 15 to 21 above:~~

- (a) paragraphs 15 to 19 above, each of Gorman, Chipchase, Todorcevski, O'Sullivan, and Johns, Rumph and Nador (together **Officers**) were officers of Brambles within the meaning of section 9 of the *Corporations Act* and ASX Listing Rule 19.12; and

(aa) paragraphs 19A to 21A above, each of Mackie, Kennett, Rumph, Lallatin and Hill:

- (i) made, or participated in making, decisions that affected the whole, or a substantial part, of the business of Brambles; and
 - (ii) in the premises, were officers of Brambles within the meaning of section 9 of the *Corporations Act* and ASX Listing Rule 19.12; and
- (b) sub-paragraphs (a) and (aa), any information which came, or which ought reasonably to have come, into the possession of any of the persons referred to in sub-paragraphs (a) or (aa) above (each being an **Officer**, and together being **Officers**) in the course of the performance of their respective duties was information of which Brambles was aware for the purposes of ASX Listing Rule 3.1.

C. AUGUST 2016 FORECAST AND CONTRAVENTIONS

C.1 August 2016 Conduct

23. On or about 18 August 2016 Brambles, at the time of releasing its financial report for FY2016 (**FY2016 Financial Results**), stated to the Market that, or to the effect that:

- (a) in FY2016, Brambles had generated sales revenue:
 - (i) of approximately US\$5,535 million (**FY2016 Revenue**);
 - (ii) growth of 8% at constant currency (**FY2016 Revenue Growth**);
 - (iii) of approximately US\$1,489 million in the North American Pooled Pallets Business; and
 - (iv) growth in the North American Pooled Pallets Business of approximately 8%;

Particulars

The statements in sub-paragraphs (a)(i) and (ii) were express and contained in the FY2016 Financial Results (page 8).

The statements in sub-paragraphs (a)(iii) and (iv) were express and contained in the FY2016 Financial Results (page 16).

- (b) in FY2016, Brambles had generated:
- (i) underlying non-statutory profit (**Underlying Profit**) of US\$993 million (**FY2016 Underlying Profit**); and
 - (ii) growth in Underlying Profit of 9% at constant currency (**FY2016 Underlying Profit Growth**);

Particulars

The statements in sub-paragraph (b) were express and contained in the FY2016 Financial Results (page 9).

~~So far as the Applicants are able to say prior to discovery, Brambles calculated Underlying Profit as statutory earnings excluding:~~

- (i) acquisition related costs;
- (ii) restructuring and integration costs;
- (iii) impairment of goodwill; and
- (iv) acquisition gains.

The Applicants refer to the FY2016 Investor Presentation (page 41).

~~Further particulars may be provided following discovery.~~

- (c) in FY2016:
- (i) Brambles had expended capital of approximately US\$294 million on new pallets in the North American Pooled Pallets Business; and
 - (ii) the expenditure in (i) was the highest level of capital expenditure on new Pooled Pallets that Brambles had incurred in the North American Pooled Pallets Business in any financial year in the previous decade;

Particulars

The statement in sub-paragraph (i) was express and contained in the FY2016 Investor Presentation (Appendix 14, page 49).

The statement in sub-paragraph (ii) was express and made in the FY2016 Earnings Call (page 7).

- (d) ~~[not used] FY2016 set the foundations for a platform of very strong future growth (**FY2016 Strong Foundations Representation**);~~

Particulars

~~The FY2016 Strong Foundations Representation was express and made in the FY2016 Earnings Call (page 2).~~

- (e) for FY2017 Brambles forecast that it would achieve year on year growth in sales revenue of between 7% and 9% (**August Sales Revenue Forecast**);

Particulars

The August Sales Revenue Forecast was express and contained in an announcement that Brambles released and published to the ASX on 18 August 2016 titled "*Brambles reports strong FY16 result, in line with upgraded guidance. Sales revenue momentum and profit leverage expected to continue in FY17*" (**FY2016 Results Announcement**) (pages 1 and 3).

- (f) for FY2017 Brambles forecast that it would achieve year on year growth in Underlying Profit of between 9% and 11% (**August Underlying Profit Forecast**);

Particulars

The August Underlying Profit Forecast was express and contained in the FY2016 Results Announcement (pages 1 and 3).

- (g) in FY2016 Brambles:

- (i) had invested capital in operational and indirect costs efficiencies, including in the North American Pooled Pallets Business;
- (ii) had invested capital in a "durability program" (**Durability Program**), the purpose of which was to:
- A. improve the quality of Pooled Pallets; and
- B. decrease the amount that it had to spend on new pallets and the cost to repair existing pallets; and
- (iii) by reason of the matters in sub-paragraphs (i) and (ii), expected to realise costs efficiencies in FY2017 sufficient to achieve the August Underlying Profit Forecast;

Particulars

The statement in sub-paragraph (i) was express and made in the FY2016 Earnings Call (page 2).

The statement in sub-paragraph (ii) was express and made in the FY2016 Results Announcement (page 3).

The statement in sub-paragraph (iii) was express and made in the FY2016 Earnings Call (pages 2 and 15).

(August Costs Representations);

- (h) Brambles had established prices for the sale of Pooled Pallets to customers whose supply chains included NPDs (**NPD Pallets**) that were sufficient to:
- (i) offset the increased costs to service NPD Pallets; and
 - (ii) achieve the August Underlying Profit Forecast,
- (August Price Representation);**

Particulars

The August Price Representation was express and made in the FY2016 Earnings Call.

- (i) Brambles re-iterated a target for return on capital invested (**ROCI**) of 20% by FY2019 (**August ROCI Forecast**); and

Particulars

The August ROCI Forecast was express and contained in the FY2016 Results Announcement (page 1).

Brambles stated in an Investor Presentation published and released to the ASX on 9 December 2013 (**December 2013 Investor Presentation**) that:

- (i) it expected to leverage its invested capital base more efficiently as the company grew, and that it projected a rate of Return on Capital Invested in FY19 of 20% (page 20); and
- (ii) *“ROCI is the best reflection over time of a high-quality financial performance”* (page 21).

At all material times Brambles determined ROCI as Underlying Profits divided by “Average Capital Invested” (a twelve-month average of capital invested calculated as net assets before tax balances, cash and borrowings but after adjustment for accumulated ~~significant~~ pre-tax significant items, actuarial gains or losses and net equity adjustments for equity settled share-based payments) (December 2013 Investor Presentation, page 240).

The August ROCI Forecast excluded foreign exchange impacts and acquisitions made by Brambles since December 2013, being the date that it set the target.

In its FY2016 Investor Presentation (pages 27 and 28), Brambles identified the indicative drivers of its ability to achieve the August ROCI Forecast as:

- (i) the Durability Program;
- (ii) mitigation of input cost pressures;
- (iii) direct cost efficiencies;
- (iv) indirect cost reductions;
- (v) US\$1.08 billion growth in capital expenditure.

- (j) Brambles reaffirmed its FY19 targets of constant currency sales revenue growth in the high-single digits and its FY19 targets of underlying profit growth exceeding sales revenue growth (**Medium-Term Targets**).

Particulars

The Medium-Term Targets were express, and made in writing and orally: FY2016 Results Announcement, page 1; FY2016 Investor Presentation, slides 4, 29-30, 39; FY2016 Earnings Call, pages 3, 10.

24. By the ~~FY2016 Strong Foundations Representation~~, August Sales Revenue Forecast, August Underlying Profit Forecast, August Costs Representations, August Price Representation, August ROCI Forecast and Medium-Term Targets, Brambles represented to the Market that:

- (a) Brambles had undertaken all necessary and reasonable investigations before making any statement or representation as to the state of its business and accounts and had satisfied itself on reasonable grounds following those investigations that the public statements were substantially accurate and not misleading or deceptive in any respect; and
- (b) no information had come to the attention of Brambles that meant that there was any material risk that Brambles would not achieve the August Sales Revenue Forecast, August Underlying Profit Forecast, August Costs Representations, August Price Representation, August ROCI Forecast or the Medium-Term Targets,

(August Implied Representations).

25. Brambles did not wholly correct the:
- (a) [not used] ~~FY2016 Strong Foundations Representation~~;
- (b) August Sales Revenue Forecast;
- (c) August Underlying Profit Forecast;
- (d) August Costs Representations;
- (e) August Price Representation;

- (f) August ROCI Forecast;
- (g) ~~the~~ Medium-Term Targets; or
- (h) August Implied Representations,

(August Representations) which were accordingly continuing representations, to the extent that they remained unqualified and uncorrected, until 20 February 2017, and otherwise until 23 January 2017.

Particulars

The Applicants refer to the January Partial Disclosure pleaded in paragraph 59 below and the February Disclosure pleaded in paragraph 61 below.

26. The August Representations were:
- (a) conduct in trade or commerce;
 - (b) in relation to:
 - (i) a financial product within the meaning of sub-sections 763A(1)(a) and 764A(1)(a) of the *Corporations Act*, namely Brambles Shares; and
 - (ii) a financial service within the meaning of:
 - A. sections 766A(1)(a) and 766B(1) of the *Corporations Act*; and
 - B. section 12BAB(1)(a) of the *ASIC Act*;
 - (c) as to the August Sales Revenue Forecast, August Underlying Profit Forecast, August Costs Representations, August Price Representation, August ROCI Forecast and Medium-Term Targets, made in relation to future matters within the meaning of:
 - (i) section 769C of the *Corporations Act*;
 - (ii) section 12BB of the *ASIC Act*; and
 - (iii) section 4 of the *ACL*; and

- (d) information that a reasonable person would expect to have a material effect on the price or value of Brambles Shares.

Particulars

The matters in sub-paragraph (d) are to be inferred from the matters in paragraphs 39, 49 and 58 below.

Further particulars may be provided following ~~discovery and the receipt of expert reports.~~

C.2 True State of Affairs in August 2016

C.2.1 Features of Brambles' performance in FY2016

27. A material part of Brambles' FY2016 Revenue Growth and FY2016 Underlying Profit Growth was attributable to an increase in FY2016 of:

- (a) ~~[not used] capital expenditure on, and sales of, new Pooled Pallets;~~

Particulars

~~The Applicants refer to:~~

- ~~(i) and repeat paragraph 23(c) above and the particulars to that paragraph;~~
- ~~(ii) the statement in an earnings call with market analysts and investors convened by Brambles on 21 August 2017 (**FY2017 Earnings Call**) that capital expenditure reduced in FY2017 as costs were managed in the context of excess pallet inventories, following accelerated pallet purchases in FY2016, and lower volume growth during FY2017 (page 4).~~

~~The content of the FY2017 Earnings Call was transcribed and published by Open Briefing.~~

~~So far as the Applicants are able to say before discovery, in the ordinary course, including in FY2016, Brambles:~~

- ~~(i) accounted for the purchase of new pallets as capital expenditure;~~
- ~~(ii) recognised revenue from the sale of new Pooled Pallets at the time that the pallets were sold;~~
- ~~(iii) did not incur substantial costs in relation to a new pallet at the time that it was issued.~~

~~Further particulars may be provided following discovery.~~

- (b) ~~the issue sales~~ of Pooled Pallets in the North American Pooled Pallets Business to participating distributors whose supply channel included NPDs; and

Particulars

In FY2016:

- (i) the North American Pooled Pallets Business:
 - (A) issued approximately 274.3M Pooled Pallets, of which approximately 23.4M, or 8.5%, were NPD Pallets, which represented an increase of approximately 58% in the number of NPD Pallets;
 - (B) earned revenue of approximately \$1,489.3M, which was an increase of approximately \$116.5M, or 8%;
 - (C) realised Underlying Profit of approximately \$316M, which was an increase of approximately \$30.5M, or 10.7%, from FY2015;
- (ii) of that:
 - (A) revenue growth, approximately \$18.5M, or 16%;
 - (B) Underlying Profit growth, approximately \$6.6M, or 21%.

was attributable to increased up-charges levied on new or existing customers for the issue of Pooled Pallets into NPD Channels (BXB.500.139.3716 at .3750 and .3751);
- (iii) the North American Pooled Pallets Business experienced a material increase in the number of Pooled Pallets that were transferred by manufacturers to the top 10 NPD Channels by volume (BXB.501.021.8301);
- (iv) the top 10 NPD Channels by volume included channels that involved the transfer by manufacturers of pallets to The Home Depot and Nash Finch, each of which Brambles had changed from a participating distributor channel to an NPD Channel in 1H2016.

~~So far as they are able to say before discovery,~~ The Applicants also refer to:

- (v) and repeat paragraphs 10, 11 and 23(a) above and the particulars to those paragraphs; and
 - (vi) the statement in the FY2016 Earnings Call that a proportion of the FY2016 Revenue Growth was attributable to “upcharges for NPD flows” (page 5).
- (c) the issue sales of Pooled Pallets, including new Pooled Pallets, to customers who had previously used Whitewood Pallets.

Particulars

The Applicants refer to the statement on page 3 of the earnings call with market analysts and investors convened by Brambles on 21 August 2017 (FY2017 Earnings Call) that Brambles’ FY2016 Revenue Growth “reflected increased conversion of [Whitewood Pallet] users to [Pooled Pallets] enabled by higher [Whitewood Pallet] prices.”.

Brambles estimated that the conversion in FY2016 of customers from its North American Whitewood Pallets Business to its North

American Pooled Pallets Business had an 'impact of [approximately] \$5Min (sic)' in revenue earned by the North American Pooled Pallets Business in FY2016 (BXB.500.074.1310).

28. In FY2016:

- (a) Brambles' revenue from the issue sales of new Pooled Pallets in its North American Pooled Pallets Business in FY2016, including NPD Pallets, was very strong ~~exceptional~~ when compared with prior equivalent periods; and
- (b) Brambles earned a greater proportion of that revenue in 2H2016 than it did in 1H2016 ~~primarily earned in 2H2016.~~

Particulars

The Applicants refer to and repeat paragraph 27(b) above, and the particulars to that paragraph.

Schedule A to this Amended Consolidated Statement of Claim sets out the volume of new pallet issues by the North American Pooled Pallets Business from FY2013 to FY2016.

Schedule B to this Amended Consolidated Statement of Claim sets out the average issue fee, daily rental and transfer fees that the North American Pooled Pallets Business charged for the issue of Pooled Pallets (net of NPD upcharges) in FY2016.

~~So far as they are able to say before discovery,~~ The Applicants also refer to:

- (i) the statement in a presentation that Brambles published and released to the ASX on 21 August 2017 titled "*Copies of slides for investor presentation and webcast*" (**FY2017 Investor Presentation**) that revenue growth in the North American Pooled Pallets Business had been approximately 5% in each of FY2014 and FY2015 (page 12);
- (ii) the statement in the FY2017 Investor Presentation that "*growth in NPD revenue in FY16 was weighted towards the second half of the year delivering increased revenue in 2H16 and increased costs in FY17*" (page 12);
- (iii) the statement in the FY2017 Earnings Call that Brambles' North American Pooled Pallets Business had experienced "*exceptionally strong revenue performance in the second half of FY16*" (pages 3 to 4); and
- (iv) the statement in a presentation that Brambles published and released to the ASX on 20 February 2017 (**1H2017 Presentation**) that its North American Pooled Pallets Business had experienced 7% revenue growth in 1H2016, and 10% revenue growth in 2H2016 (page 11).

~~Further particulars may be provided following discovery.~~

28A. In FY2016, a substantial part of the revenue growth achieved by Brambles' North American Pooled Pallets Business was the result of increased RPI and increased prices for existing customers.

Particulars

Of the approximately \$116.5 million revenue growth generated by the North American Pooled Pallets Business in FY2016, approximately \$42.7 million, or 37%, was the result of increased RPI from existing customers, including increased prices for Niagara Water, Unilever and Nestle (BXB.500.139.3716).

28B. In FY2016, Brambles' North American Pooled Pallets Business made significant pricing increases because of higher prices in the market for Whitewood Pallets (which were at a multi-year high), but prices in the Whitewood Pallets market had levelled off by mid FY2016.

Particulars

- (i) Between FY2010 and FY2016, the cost of Whitewood cores, which US Recycled purchased from retailers, reconstituted and sold as recycled pallets, increased by an average of approximately \$1.25. In the same period, the price for which US Recycled sold recycled pallets increased by an average of approximately \$1.89.
- (ii) On 19 May 2016 Lallatin told Todorcevski that the price for 'A Grade' recycled pallets had hit a 'price ceiling' in December 2015, Brambles had begun moderating prices in January 2016, and continued to decline in May (BXB.500.142.3733).
- (iii) The January 2016 5YP Presentation (BXB.500.141.5132) stated that the North American Pooled Pallets Business' 'aggressive performance in price for FY16 [was] driven by actions against a high-priced whitewood market. With price in whitewood markets levelling off, expectations for pricing activity in future years reduced'. The January 2016 5YP Presentation was sent to Rumph and Lallatin.
- (iv) In FY2016 Brambles:
 - (A) took 'aggressive price increases' in its North American Whitewood Pallets Business (BXB.500.074.1310), as the consequence of rising prices in the market for Whitewood Pallets, such that the price for Whitewood Pallets in FY2016 'was at a multi-year high';
 - (B) took advantage of the increase for Whitewood Pallets, and the 'gap' between the price for Whitewood Pallets and Pooled Pallets, by increasing the price of Pooled Pallets (BXB.501.018.8467 and BXB.500.143.3981);

- (C) by reason of the increase in the price for Whitewood Pallets, was able to effect strategic customer price increases and increase its NPD upcharges (BXB.501.015.2651).
- (v) The FY2017 Budget Presentation (BXB.501.017.5066) stated that, while the Whitewood Pallets Business had 'taken significant pricing' increases in FY2016, the 'FY16 exit pricing forecast [was] below' the budget for pricing in FY2017. The FY2017 Budget Presentation was presented to Gorman and Todorcevski.
- (vi) The email from Lallatin to, *inter alia*, Todorcevski, Rumph, Kennett and Mackie (BXB.500.074.1310).

28C. In FY2016, Brambles competed in the market for Pooled Pallets in the United States with PECO Pallets Inc. (PECO), which:

- (a) was seeking to increase its market share by aggressive pricing strategies and targeting a wide range of customers, including NPD Channels; and
- (b) was sufficiently capitalised to allow it to maintain a price advantage over the North American Pooled Pallets Business beyond FY2016.

Particulars

- (i) In FY2016, PECO had increased its market share from 3% in FY2011 to 7% in FY2016 (BXB.500.008.5567).
- (ii) In FY2016, the price for which the North American Pooled Pallets Business issued new Pooled Pallets was approximately \$0.50 higher than the price charged by PECO (BXB.500.141.5132).
- (iii) In April 2016, the North American Pooled Pallets Business lost its business with Kraft-Heinz to PECO. Brambles' assessment was that the effect of the loss of Kraft-Heinz would be to reduce the revenue earned by the North American Pooled Pallets Business by approximately \$12 million in FY2017.
- (iv) In FY2016, the negotiations for potential deals with existing customers of the North American Pooled Pallets Business in which PECO had participated and had engaged in aggressive pricing, and that had forced the North American Pooled Pallets Business to reduce the price that it offered to secure the business, included contracts with:
 - (A) Niagara Bottling; and
 - (B) Danone International Brands.
- (v) The wider range of potential customers that PECO had begun targeting included customers in NPD Channels, which PECO had previously avoided servicing because of the relatively higher costs to serve.

- (vi) BXB.500.019.8880 (the Initial Budget Submission, referred to below), stated that PECO's strategy appeared to have shifted 'toward pursuit of volume growth, as evidenced by their aggressive pricing strategies in several recent National deals', and PECO appeared 'to be targeting a wider range of potential customers'.
- (vii) On 26 January 2016, Justin Bachtell (Bachtell), Sales Finance Director, CHEP sent an email to Lallatin in which he stated that Dan Martin, Senior Vice President, Sales, CHEP was concerned about the North American Pooled Pallets Business' ability to meet its price targets in FY2017 'especially given the large amounts of pressure we're starting to see PECO put on these deals' (BXB.501.030.8044).

28D. In FY2016, the proportion of pallets issued by the North American Pooled Pallets Business that were damaged when returned to Brambles ("damage rate") had continued to increase year on year, and the rate of increase was larger for NPD Pallets, and was particularly large for pallets issued to Walmart (which was a significant customer of the North American Pooled Pallets Business).

Particulars

- (i) In FY2016, Brambles experienced a damage rate in the North American Pooled Pallets Business of approximately 61.5%, which was:
- (A) an increase of 0.9% from FY2015; and
- (B) 1.2% worse than its budgeted damage rate of 60.3%.
- (ii) Brambles' damage rates since FY2013 were as follows:
- | | <u>FY13</u> | <u>FY14</u> | <u>FY15</u> | <u>FY16</u> |
|--------------------|--------------|--------------|---------------|----------------------|
| <u>Damage rate</u> | <u>53.8%</u> | <u>59.0%</u> | <u>60.6 %</u> | <u>61.3 to 61.5%</u> |
- (iii) Brambles assessed that:
- (A) the damage rate for NPD Pallets was approximately 75% in FY2015 and FY2016, which was a premium over PD Pallets of 13.5 – 13.8%;
- (B) the excess repair costs attributable to the higher damage rate for NPD Pallets was approximately \$4.3 million in FY2015, and \$6.46 million in FY2016, (BXB.501.051.8178).
- (iv) With regard to the damage rate of Pooled Pallets issued by the North American Pooled Pallets Business that were transferred by manufacturers to Walmart:

- (A) the contractual arrangement with Walmart allowed Walmart unrestricted reuse of Pooled Pallets that were transferred to it, which resulted in 'extremely high cycle time and damage rates from the Walmart network' (BXB.500.140.1358);
- (B) in FY2016, the North American Pooled Pallets Business had experienced a damage rate for Pooled Pallets transferred by manufacturers to Walmart of 83.8%, compared with an average damage rate for Pooled Pallets not transferred by manufacturers to Walmart of approximately 50.9% (BXB.500.020.7417);
- (C) in a review of the North American Pooled Pallets Business prepared for the meeting of the Board of Brambles held on 20 April 2016 (BXB.500.140.1358), the North American Pooled Pallets Business described the challenges faced by the business from its relationship with Walmart and the steps it proposed to take to address those challenges, which included no specific steps to reduce cycle time or damage rates.

29. In FY2016, Brambles had not incurred the operating costs, or a substantial proportion of the operating costs, associated with the increase in revenue in FY2016, further or alternatively 2H2016, from the ~~sale~~ issue of:

- (a) new Pooled Pallets; further or alternatively
- (b) NPD Pallets,

by the North American Pooled Pallets Business.

Particulars

~~So far as they are able to say prior to discovery, t~~The Applicants refer to and repeat paragraphs 12 and 28 above and the particulars to those paragraphs.

~~Further particulars may be provided following discovery.~~

Brambles assessed that the average cycle time for NPD Pallets in:

- (i) FY2015 was 109.8 days; and
- (ii) FY2016, was 137.4 days,

(BXB.500.019.6006).

The effect of the average cycle time in FY2016 (which was approximately 4.5 months) was that the operating costs associated with issuing new Pooled Pallets or NPD Pallets after about February 2016 would not be felt until July 2016 (i.e. in FY2017).

C.2.2 Brambles' process of budgeting and giving guidance for FY2017

29A. On or about 18 January 2016, Gorman sent to Brambles' Executive Leadership Team a budget guidance note for the preparation of Brambles' FY2017 budget (ELT Guidance Note).

Particulars

BXB.500.076.5012. The ELT Guidance Note was sent to Todorcevski and Mackie.

29B. The ELT Guidance Note:

- (a) set out Brambles' expectations for the preparation of budgets by Brambles' business units for FY2017;
- (b) stated that, or to the effect that:
 - (i) it was important that, in FY2017, Brambles show momentum towards its medium term commitments, which included annual revenue growth of between 7% and 9%, and the August ROCI Forecast;
 - (ii) it had been 'challenging to present adequate progress against the [August ROCI Forecast] in FY15 and FY16 with headwinds in costs particularly in our North American Businesses';
 - (iii) it was 'therefore critical that [Brambles] demonstrate improvements towards these targets in [FY2017];
 - (iv) the Business Unit expectations for FY2017 for CHEP (of which the North American Pooled Pallets Business forms a part), was:
 - (A) for over 7% revenue growth, driven by 4 to 8% growth in mature markets, made up of 1 to 2% increases in price, 1 to 2% organic growth, and 2 to 4% net new business;
 - (B) Underlying Profit growth of greater than 22%, driven in part by direct cost efficiencies.

ParticularsBXB.500.076.5012.

29C. In or about March 2016, the North American Pooled Pallets Business prepared its first budget submission for FY2017 (Initial Budget Submission).

ParticularsBXB.500.019.8880.

29D. Prior to the preparation of the Initial Budget Submission, Lallatin was informed that:

- (a) there were 'big concerns' about budgeting an additional \$10 million in revenue from an additional \$0.03 increase in RPI in FY2017, on top of the existing revenue assumption in Brambles' 5 Year Plan (5YP);
- (b) the increase in RPI achieved to date in FY2016 'was not sustainable and contain[ed] a lot of one time activities' that would not repeat in FY2017;
- (c) the \$0.08 RPI growth forecast for FY2017 in the 5YP was already 'fairly aggressive...especially given the large amounts of pressure we're starting to see PECO put on [deals to renew or secure new business]'; and
- (d) the proposed increase set out in (a) would result in RPI growth in FY2017 of \$0.11, or 2%, from FY2016.

ParticularsThe Applicants refer to:

- (i) the January 5YP Presentation, which records that the forecast RPI in FY2016 was \$5.18, and in FY2017 was forecast to be \$5.26 (BXB.500.141.5132 18). The January 5YP Presentation was sent to Rumph and Lallatin.
- (ii) Email from Bachtell to Lallatin dated 26 January 2016 (BXB.501.030.8044).

29E. The Initial Budget Submission stated that in FY2017, the North American Pooled Pallets Business would:

- (a) earn total revenue of approximately \$1,606 million, which was:
 - (i) an increase of approximately \$98 million, or 6.5%, from FY2016; and

- (ii) approximately \$11 million less than the revenue for FY2017 proposed in Brambles' five year plan to FY2021;
- (b) achieve net revenue growth from an increase in the volume of Pooled Pallets that it issued in FY2016 of approximately \$76.7 million, or 5.1%, which would result from approximately:
 - (i) \$36.9 million in prospective new business in the 'sales funnel', which was a gross increase from FY2016 of 2.5% or 7 million additional volume from the previous year;
 - (ii) \$52.6 million of 'Unidentified Wins' of new business, which was a gross increase from FY2016 of approximately 3.5% or 10.2 million additional volume, and 'assume[d] higher confidence of 75% for new wins to compensate for sales funnel shortfall' compared with FY2016; and
 - (iii) \$27.9 million in losses;
- (c) earn revenue from an increase in the RPI of Pooled Pallets of approximately \$21 million, or 1.4%;
- (d) achieve RPI of \$5.27 in FY2017, being an increase of \$0.06 (or 1.2%) on forecast RPI of \$5.21 in FY2016;
- (e) achieve an approximately 0.1% increase in the revenue that it earned from the issue of NPD Pallets, which would be achieved entirely from the rollover of the conversion in FY2016 of The Home Depot and Nash Finch from participating distributors to NPDs;
- (f) incur direct costs of approximately \$1,093 million, which was an increase of approximately \$55 million from FY2016, of which total direct costs attributable to the budgeted increase in the volume of Pooled Pallets in FY2017 would be approximately \$43 million (an increase of approximately \$8 million from FY2016);

- (g) reduce costs incurred by reason of damage to Pooled Pallets in an amount that was \$11 million less than it incurred in FY2016, but:
 - (i) identified the damage rate as a key challenge in FY2017; and
 - (ii) assessed the probability of achieving the budgeted reduction in damage rate as '50%';
- (h) achieve Underlying Profit of approximately \$348 million, which was an increase of approximately 9% from FY2016;
- (i) achieve ROCI of 19.2%.

Particulars

BXB.500.019.8880; BXB.500.020.0354.

29F. Following the preparation of the Initial Budget Submission, the North American Pooled Pallets Business prepared a revised budget submission on or about 4 April 2016 (**Revised Budget Submission**).

29G. Following the provision of the Revised Budget Submission:

- (a) Lallatin informed Rumph that "market softening in 2H FY16" in the Whitewood Pallets market was one of the key risks for FY2017;

Particulars

Email from Lallatin to Rumph dated 5 April 2016 (BXB.500.140.5701).

- (b) Mackie sent an email to Rumph, which:
 - (i) attached a table that 'shows where we are on the [Pallets Business] relative to the Brambles guidance that I would like us to get to', which 'solve[d] for ROCI of 19.7% in the North American Operations;
 - (ii) stated that there were a 'small number of very clear reasons that explain why we are off guidance and I actually believe that getting to 7% revenue growth as a consequence is unrealistic'; and

- (iii) asked Rumph to look at offsets so as to achieve the Underlying Profit forecast;

Particulars

Email from Mackie to Rumph dated 11 April 2016 (BXB.500.015.8110).

- (c) Lallatin and Rumph:
- (i) prepared a revised proposal that, *inter alia*, improved forecast Underlying Profit by \$11 million;
- (ii) identified \$2 million in asset recovery risk, which had not been included in the Revised Budget Submission, and which was linked to the increase in FY2016 of issues of NPD Pallets; and
- (iii) on 14 April 2016 told Mackie that they had '*scrubbed our NA Budget and are getting very concerned about the level of stretch here*'.

Particulars

Emails from Lallatin to Rumph and Carmelo Alonso-Bernaola Ruiz (**Ruiz**), Brambles' Senior Vice President, Global Supply Chain dated 12 April 2016; email from Rumph to Ruiz dated 13 April 2016 (BXB.500.016.0740).

Email from Rumph to Mackie dated 14 April 2016 (BXB.500.075.2804).

29H. Following the preparation of the Revised Budget Submission, the North American Pooled Pallets Business prepared a further revised budget submission on or about 13 April 2016 (**Second Revised Budget Submission**).

29I. Following the provision of the Second Revised Budget Submission:

- (a) on 14 April 2016, Ruiz told Mackie that he considered that:
- (i) the direct cost cutting initiatives in the Second Revised Budget Submission, which included \$11 million saving from forecast improvements in Pooled Pallet durability, were a '*huge stretch*', and '*the highest level ever targeted (or delivered)*';

- (ii) the proposed cost cutting initiatives left 'no margin for error';
- (iii) the Underlying Profit budgeted for the North American Pooled Pallets Business was the 'most aggressive and stretched ULP. It comes with risks in all line items, sales, direct cost, overheads and capex'; and
- (iv) the FY2017 budget for the Global Pallets Business was 'full of risks and [he did] not see any major opportunity that could help us.';

Particulars

Email from Ruiz to Mackie dated 14 April 2016 (BXB.500.080.4148).

- (b) on 16 April 2016, Rumph caused to be prepared, and provided to Mackie, a memorandum dated 16 April 2016 (**Headlines in FY17B Memo**) that stated that:
 - (i) the revenue growth assumptions for the North American Pooled Pallets Business adopted in the preparation of the FY2017 budget were 'very aggressive given one-time benefits in FY16 that aren't likely to repeat (NPD upcharges...price increases responding to recycled market)';
 - (ii) the proposed RPI increase in FY2017 was \$0.02 higher than the plan in which Brambles had set its target return for ROCI in FY2019;
 - (iii) '[i]f the damage rate improvements do not manifest as planned, we face up to \$11M in unbudgeted repair cost'; and
 - (iv) the growth in the transfer of NPD Pallets in FY2016 would drive more than \$2 million of recovery fees that would 'hit us' in FY2017, and which were not in the budget;

Particulars

BXB.500.020.0306; BXB.500.020.0305.

- (c) on 18-19 April 2016, Tracy Scott (**Scott**), the President of US Recycled, and Kennett prepared a PowerPoint slide that stated in relation to the Whitewood Pallets market:

- (i) the 'jump off' from FY16 presents significant risk to [the FY2017 budget] as we continue to drop prices to deliver volume...difficult to predict landing point;
- (ii) 'prices still moving down'; and
- (iii) 'volume still converting to poolers and lower grade (B) pallets while we stabilize (sic.) price points'.

Particulars

BXB.500.140.5659.

29J. On or about 22 April 2016, the budget for the Global Pallets Business was presented to Gorman and Todorcevski (FY2017 Budget Presentation).

Particulars

BXB.501.017.5066.

29K. The FY2017 Budget Presentation stated that:

- (a) revenue earned by the North American Pooled Pallets Business in FY2017 would increase by 6.7% to \$1,610 million;
- (b) the revenue generated by an increase in the price of Pooled Pallets by the North American Pooled Pallets Business in FY2017 would increase by 1.3%, or approximately \$21 million;
- (c) revenue generated from new wins in FY2017 would be approximately \$89.5 million, of which \$53 million was 'currently unidentified'; and
- (d) while the Whitewood Pallets Business had 'taken significant pricing' increases in FY2016, the 'FY16 exit pricing forecast [was] below' the budget for pricing in FY2017.

Particulars

BXB.501.017.5066.

29L. After the FY2017 Budget Presentation:

- (a) on 6 May 2016, Todorcevski sent an email to, *inter alia*, Mackie in which he shared a series of proposed amendments to the Second Revised Budget Submission that Gorman considered would enable Brambles to have a 'group budget with a [0.5%] improvement in both [Underlying Profit] margin and ROCI in FY17 (sic.)':

Particulars

BXB.500.161.2895.

The changes that Todorcevski proposed were:

- (i) a reduction in overheads of the Global Pallets Business of \$24 million, which would increase both Underlying Profit and cash flow by \$12 million; and
- (ii) a reduction in capital expenditure on Pooled Pallets and non-hire stock of \$40 million.

BXB.500.066.1965 (Email from Gorman dated 6 May 2016).

- (b) by 11 May 2016, and in response to the email from Todorcevski above, Mackie told Todorcevski that he:

- (i) considered that it was 'highly unlikely [he could] commit to these levels';
and
- (ii) saw 'little point in writing down a number I know won't be delivered and requires choices that continue to weaken the core business of the group even to get close';

Particulars

BXB.500.161.2895 and BXB.501.017.4380.

- (c) on 19 May 2016:

- (i) Mackie told Todorcevski that:
- (A) the 'risk in [the Second Revised Budget Submission] was significant with a large degree of unidentified stretch imposed on the team so I think positioning in the range is going to be really important'; and

- (B) he had asked his 'team' to enter into BRACS additional Underlying Profit of \$7.8 million, and a reduction in capital expenditure of \$15 million, for the Pallets Business;

Particulars of (i)

BXB.500.080.2120 (Email from Mackie to Todorcevski dated 19 May 2016).

- (ii) Mackie told Rumph to enter into BRACS, for the North American Operations, *inter alia*, additional:

- (A) costs reductions totalling \$4 million; and
 (B) reduction in capital expenditure of \$10 million;

Particulars of (ii)

BXB.501.023.5989 (Email from Mackie to Rumph dated 19 May 2016).

- (iii) Rumph forwarded Mackie's request to Ruiz, who replied (all sic.) '*I think we all realize how stretch (sic.) the direct cost budget is now with limited capital, but I am keeping confident on the team and their commitment to focus and deliver.*';

Particulars of (iii)

BXB.500.142.3731 (Emails between Rumph, Ruiz and Lallatin dated 19 May 2016).

- (d) on 20 May 2016:

- (i) Kennett told Lallatin that the effect of Mackie's proposed changes set out in (c)(i) above, was that '*we are expecting*' from the Second Revised Budget Submission:

- (A) net improvement of Underlying Profit of \$2.5 million;
 (B) an assumed improvement in the 'average capital invested' of '*at least \$5 million as a result of the 10M cape[x] reduction*'; and
 (C) an improvement in cash flows of approximately \$12 million;

- (ii) Lallatin told Kennett that:
- (A) the North American Operations would have those changes loaded into BRACS on 20 or 21 May 2016; and
- (B) he 'honestly believe[d]' that the reduction in capital expenditure, and therefore the reduction in the ability of the North American Operations to deliver on cost cutting initiatives was 'setting ourselves up for failure'.

Particulars

BXB.501.029.6353 (Emails between Lallatin and Kennett dated 20 May 2016).

29M. On or about 28 June 2016, the board of Brambles approved the budget for FY2017 (FY2017 Budget).

Particulars

BXB.002.005.0041.

29N. In the FY2017 Budget:

- (a) revenue had increased for the:
- (i) North American Operations by approximately \$3.4 million from the Initial Budget Submission of approximately \$2,373 million, to approximately \$2,376.3 million; and
- (ii) North American Pooled Pallets Business by approximately \$3.5 million from the Initial Budget Submission of approximately \$1,606 million to \$1,609.5 million;
- (b) Underlying Profit had increased for the:
- (i) North American Operations by approximately \$11.9 million from the Initial Budget Submission of approximately \$443.4 million, to approximately \$455.3 million; and

- (ii) North American Pooled Pallets Business by approximately \$13.3 million from the Initial Budget Submission of approximately \$347.6 million to \$360.9 million;
- (c) ROCI had increased for the:
 - (i) North American Operations by 0.7%, from 19.2% to 19.9%; and
 - (ii) North American Pooled Pallets Business by 1.0%, from 19.2% to 20.2%;
- (d) the budget for revenue earned from the issue of Pooled Pallets in the North American Pooled Pallets Business in FY2017 was based on the view that the level of price growth experienced in FY2016 would continue in FY2017;

Particulars

BXB.500.069.8115.

- (e) RPI in FY2017 was forecast to be \$5.30, which was an increase from RPI earned in FY2016 of \$0.08, or approximately 1.5%;

Particulars

BXB.501.021.3464.

- (f) there was budgeted reduction in the damage rate in the North American Pooled Pallets Business (which translated to a material reduction in the direct costs of the business);

Particulars

- (i) The budgeted reduction in the damage rate was 2%, from 61.3% to 59.3%, which translated to a saving of \$11 million in direct costs.
- (ii) This budgeted reduction was approximately 1.8% unfavourable to the FY2017 damage rate assumed in:
 - (A) Brambles' five year plan (BXB.500.141.5132); and
 - (B) the preliminary budget presented by the North American Pooled Pallets Business at a North American Leadership Meeting held on or about 26 February 2016 (BXB.500.140.6072).
- (iii) Brambles' sales and operations plan for FY2017 assumed a reduction in the damage rate of Pooled Pallets issued by the North American Pooled Pallets Business that were transferred by manufacturers to Walmart of 2.2%, from 83.2% in FY2016 to 81% in FY2017 (BXB.500.140.6100).

- (g) no additional amounts were included in the direct costs budgeted for the North American Pooled Pallets Business for FY2017 to account for the risk of additional Asset Recovery fees for NPD Pallets issued in FY2016 (which was an omission of a material amount of direct costs).

Particulars

On 12 April 2016, Lallatin wrote to Rumph and Ruiz, while the North American Pooled Pallets Business was preparing the Second Revised Budget Submission, and stated that the higher than expected NPD transfers in FY2016 'will increase Asset Recovery fees in FY17 as many of the flows will not return until then. This could be [approximately] \$2M+ of risk that we do not have in the budget' (BXB.500.016.0740).

C.2.3 The trading performance of the North American Operations in July 2016

- 29O. On or about 12 August 2016, Brambles prepared 'flash' results for trading in July 2016 by its business units, including the North American Pooled Pallets Business (July Results).

Particulars

BXB.501.014.4594.

- 29P. The July Results recorded that, in July 2016:

- (a) the North American Pooled Pallets Business had:
- (i) generated revenue of approximately \$153.1 million, which was approximately \$2.9 million worse than the FY2017 Budget;
 - (ii) direct costs of approximately \$110.4 million, which was approximately \$1.7 to \$1.8 million worse than the FY2017 Budget; and
 - (iii) Underlying Profit of approximately \$27.8 million, which was approximately \$4 million worse than the FY2017 Budget;

Particulars

BXB.501.014.4594; BXB.500.017.4873.

As to the direct costs, approximately:

- (i) \$1.1 million of the shortfall was in operations, which included repair costs, which was 1.8% worse than budget (BXB.500.115.0922); and

- (ii) \$258,000 of the shortfall was in asset recovery, which was 4.6% worse than budget.
- (b) US Recycled:
- (i) earned revenue from the sale of Whitewood Pallets of approximately \$42.5 million, which was approximately \$2.8 million worse than the FY2017 Budget; and
 - (ii) earned an average price of \$5.96 which was \$0.09 less than the price estimated in the FY2017 Budget.

Particulars

US Recycled Month End Review for July 2016, emailed to Lallatin on 16 August 2016 (BXB.500.020.8299).

29Q. On 14 August 2016, Lallatin sent an email to Kennett and Rumph (which was forwarded to Mackie and Todorcevski) (July Results Email) which attached a spreadsheet that set out what Lallatin described as 'some of the pressure points in the month [of July 2016] that may continue in future periods', being the following variances from the FY2017 Budget:

- (a) revenue earned from rental fees charged to manufacturers for each day that they held a Pooled Pallet (P Day Revenue) was approximately \$1.1 million worse than the FY2017 Budget;
- (b) approximately \$2.5 million in revenue worse than budget, accounted for by a 'miss in pricing';
- (c) revenue earned from the various other charges associated with the rental of Pooled Pallets, including transfer fees and NPD upcharges, was approximately \$0.9 million worse than budget;
- (d) direct costs associated with damaged pallets were approximately \$0.4 million worse than budget, as the result of a higher than budgeted damage rate (of 62% compared to 61.3%); and
- (e) direct costs related to repair and handling of pallets were approximately \$1.4 million worse than budget, which was the result of higher reuse of pallets by retailers with

whom the North American Pooled Pallets Business had a total pallet management arrangement (including Walmart).

Particulars

BXB.500.074.2311 (Email from Lallatin to Rumph and Kennett, forwarded by Rumph to Mackie), attaching BXB.500.074.2314.

BXB.500.017.5442 (Email from Kennett to Gorman and Todorcevski), attaching BXB.500.017.5444.

29R. In FY2017, and prior to 18 August 2016:

- (a) the damage rate of Pooled Pallets issued by the North American Pooled Pallets Business in July 2016 was 62%, which was 0.7% worse than the FY2017 Budget;
- (b) the damage rate for Pooled Pallets transferred by manufacturers to Walmart was approximately 84%, which was higher than the damage rate experienced in the prior corresponding period of July 2015; and
- (c) the damage rate was a key takeaway of possible future risk from the July Results Email.

Particulars

Email from Scaiff to Todorcevski dated 15 August 2016 (BXB.500.160.6968), stating in relation to the July Results Email the 'key take aways (sic.) of possible future risk [were] the higher damage rate and lower fuel price'.

29S. In FY2017, and prior to 18 August 2016, the North American Pooled Pallets Business:

- (a) won new business which Brambles had estimated would generate annualised revenue of approximately \$6.2 million, but won no new business from PECO; and
- (b) lost the business of Redgold to PECO, by which it lost revenue in FY2017 of approximately \$1.7 million.

Particulars

BXB.500.017.6512.

29T. In July 2016, the North American Pooled Pallets Business earned average RPI of \$5.13, which was \$0.14 (or 2.7%) worse than the RPI for July 2016 included in the FY2017 Budget.

ParticularsBXB.500.115.0922.**C.2.3 Position at 18 August 2016**29U. As at 18 August 2016:

- (a) the revenue earned by the North American Pooled Pallets Business in FY2017 (including P Day Revenue) was worse than the FY2017 Budget, and there was a material risk this would continue to be the case;
- (b) the average RPI earned by the North American Pooled Pallets Business in FY2017 was worse than the FY2017 Budget, and there was a material risk this would continue to be the case;
- (c) the damage rate for Pooled Pallets in the North American Pooled Pallets Business in FY2017 was worse than the FY2017 Budget, and there was a material risk this would continue to be the case; and
- (d) repair and handling costs in the North American Pooled Pallets Business in FY2017 were worse than the FY2017 Budget, and there was a material risk this would continue to be the case.

ParticularsParagraphs 29O to 29R are repeated.29V. As at 18 August 2016, it was unlikely that the increase in revenue growth that Brambles had experienced in FY2016 by reason of the increased:

- (a) RPI that it charged in FY2016 for Pooled Pallets; and
- (b) number of NPD Pallets that it had issued in FY2016,

would be repeated in FY2017.**Particulars**Paragraphs 29B, 29D, 29E, 29G, 29I, 29K, 29L, 29N, 29P(a), 29Q, 29R and 29T, and the particulars thereto, are repeated.

29W. As at 18 August 2016, by reason of the matters pleaded in paragraphs 28C and 29S, Brambles was likely to face continuing price-based competition from PECO in FY2017, including for customers in the NPD Channel, with the result that the RPI that Brambles could charge for the issue of Pooled Pallets to:

- (a) existing customers who renewed their agreements with the North American Pooled Pallets Business in FY2017; and/or
- (b) new customers whose business the North American Pooled Pallets Business secured in FY2017,

would decrease over the RPI charged in FY2016.

Particulars

Paragraphs 28C and 29S, and the particulars thereto, are repeated.

29X. Further or in the alternative, as at 18 August 2016, it was unlikely that in FY2017:

- (a) the proportion of Pooled Pallets that were damaged when they were returned to the North American Pooled Pallets Business; and
- (b) the costs incurred by Brambles to repair those damaged pallets,

would decrease as against what Brambles experienced in FY2016 by 2% or at all.

Particulars

The Applicants refer to and repeat paragraphs 12, 28D, 29N(f), 29Q(d)-(e) and 29R above, and the particulars to those paragraphs.

Each 1% increase in the rate of Pooled Pallets that were damaged at the time they were returned to Brambles translated to an approximately \$5 - \$6 million increase in direct costs incurred by Brambles in the repair of those pallets (BXB.602.011.7364).

30. As at 18 August 2016, it was likely, alternatively there was a material risk, that the increase in sales ~~the issue~~ of:

- (a) new Pooled Pallets; ~~further or~~ alternatively
- (b) NPD Pallets,

in FY2016, ~~further or alternatively in 2H2016~~, would result in an ~~material~~ increase in the ratio of direct costs incurred by Brambles to service ~~these~~ Pooled Pallets in FY2017 of approximately 10% compared with FY2016 (~~FY2017 Service Costs Increase~~).

Particulars

- (i) Paragraphs 29, 29E(f), 29N(c) and 29P(a)(ii), and the particulars thereto, are repeated.
- (ii) Brambles assessed that the ratio of direct costs attributable to the budgeted increase in the volume of Pooled Pallets in FY2016 would increase from approximately 45% in FY2016, to approximately 56% in FY2017 (BXB.501.017.7055).
- (iii) The North American Pooled Pallets Business attributed the budgeted increase in direct costs as a proportion of sales in FY2017 to the:
 - (A) purchase of additional Pooled Pallets in FY2016, due to 'capitalization (sic.) so the cost of growth is lower during the initial year' (BXB.500.020.0354); and
 - (B) increase in the issue of NPD Pallets in FY2016 'which will show as a volume impact in FY16 to FY17.

~~So far as they are able to say prior to discovery, t~~ The Applicants also refer to:

- (i) and repeat paragraphs 12, 28 and 29 above and the particulars to those paragraphs;
- (ii) the statements in the 1H2017 Earnings Call that:
 - (A) Brambles had *"noted an overall increase in [its] costs resulting from additional transportation, handling and asset recovery costs. These additional costs have been partly driven by our expansion into NPD channels"* (page 2);
 - (B) *"the cost-to-serve also increased during [1H2017] in part due to a change in the mix of customers and retailers participating in the network. This included an increased number of flows to NPD channels for which we charge higher fees"* (page 4).
- (iii) the statement on page 9 of the FY2017 Investor Presentation that *"FY17 performance [had been] impacted by challenges in the US pallets business"* and that the increase in net plant costs and net transport costs was *"[l]argely due to plant and transport cost increases in CHEP Americas, particularly US pallets"; and*
- (iv) the statement on page 3 of the FY2017 Earnings Call that the growth in revenue and Underlying Profit in FY2016 *"reflected an increase in higher cost to serve...NPD flow, which drove both volume and pricing growth."*

~~Further particulars may be provided before discovery.~~

31. ~~[Not used] The extent of the FY2017 Service Costs Increase, and its potential effect on the earnings of the North American Pooled Pallets Business in FY2017, was insufficiently understood or certain to Brambles to permit it to have confidence in the August Underlying Profit Forecast.~~

Particulars

~~So far as the Applicants are able to say before discovery, they refer to the statement by Gorman in the 1H2017 Earnings Call that Brambles had to make sure that it understood and accurately reflected the cost to serve the NPD Channel (page 11).~~

~~Further particulars may be provided following discovery.~~

32. ~~As at 18 August 2016, it was likely, alternatively there was a material risk, that the price for which competitors of Brambles and its competitors, and Brambles, could sell Whitewood Pallets would materially decrease in FY2017 from FY2016 prices:~~

~~(a) — in absolute terms; further or alternatively~~

~~(b) — relative to the price for which Brambles could sell Pooled Pallets.~~

Particulars

Paragraphs 28B, 29I(c), 29K(d) and 29P(b), and the particulars thereto, are repeated.

~~So far as the Applicants are able to say before discovery, they~~The Applicants also refer to:

- (i) and repeat paragraph 27(c) above and the particulars to that paragraph;
- (ii) the statement in the FY2016 Earnings Call that, in FY2016, the price at which Brambles could sell Whitewood Pallets had reached its “ceiling” (page 11);
- (iii) the statements on page 13 of the FY2017 Earnings Call by Chipchase that “*one of the things that clearly drives the whitewood pricing over time is the lumber price and that has been coming and therefore driving prices down. The bigger thing is supply and demand and because [in FY2016] there was a big improvement in the conversion from whitewood to [pooled] that left a lot of whitewood producers with excess stock and therefore I think they dumped that on the market and were driving prices down with that, us included I suspect*”.

Further particulars may be provided following discovery the service of expert evidence.

33. By reason of the matters in paragraph 32 above, as at 18 August 2016 it was likely, alternatively there was a material risk, that in 1H2017 Brambles would earn revenue ~~experience a material decline in:~~

- (a) ~~revenue earned by~~ in its North American Whitewood Pallets Business; and
- (b) ~~sales revenue~~ from the conversion of potential purchasers of new Pooled Pallets who instead continued to use Whitewood Pallets,

that was materially lower than the revenue forecast in the FY2017 Budget.

Particulars

Paragraphs 28B and 29P(b), and the particulars thereto, are repeated.

~~So far as they are able to say before discovery,~~ The Applicants refer to:

- (i) and repeat paragraph 32 and the particulars to that paragraph;
- (ii) the statement made by Gorman in an earnings call with market analysts and investors convened by Brambles on 23 January 2017 (**January 2017 Earnings Call**) that prices for Whitewood Pallets had declined in FY2017 by reason of increased supply in the market (page 6);
- (iii) the statement in the FY2017 Investor Presentation that in FY2017 Brambles' North American Pooled Pallets Business had experienced "[m]odest (revenue) growth of 2%" and that growth had been "*impacted by lower whitewood prices, increased competition and cycling the exceptional revenue growth in FY2016*" (page 12);
- (iv) the statements in the FY2017 Earnings Call that in FY2017:
 - (A) "*slower rate of net new business conversions due to extended and more competitively negotiated tender processes. This trend has been driven by a decline in recycled whitewood pallet prices over the last 12 months*" (page 2);
 - (B) a reduction in Whitewood prices meant that it took Brambles longer to convert marginal customers to Pooled Pallets (page 7).

The content of the January 2017 Earnings Call was transcribed and published by Open Briefing.

34. By reason of the matters in paragraphs ~~27 to~~ 28B, 28C, 28D, 29, 29D, 29G(a), 29I, 29L(c)(i) and (d)(ii), 29N, 29P to 29X, 30, 32 and 33 ~~above,~~ as at 18 August 2016 it was likely, alternatively there was a material risk, that in FY2017:

- (a) Brambles would experience a material increase in the costs to service incurred in the North American Pooled Pallets Business; and
- (b) revenue earned by Brambles from the sale of:
 - (i) Pooled Pallets in the North American Pooled Pallets Business; and
 - (ii) Whitewood Pallets in the North American Whitewood Pallets Business,
 would decrease, alternatively, would not be sufficient to off-set the increase referred to in sub-paragraph (a).

Particulars

The Applicants refer to and repeat paragraphs ~~27 to 28B, 28C, 28D, 29, 29D, 29G(a), 29I, 29L(c)(i) and (d)(ii), 29N, 29P to 29X, 30, 32 and 33~~ above and the particulars to those paragraphs.

~~Further particulars may be provided following discovery.~~

35. In the premises, as at 18 August 2016 it was likely, alternatively there was a material risk, that Brambles would:

~~(aa) achieve neither its August Sales Revenue Forecast nor its Medium Term Targets of constant currency sales growth in the high-single digits; further or alternatively~~

(a) ~~achieve in FY2017:~~

~~(i) no Underlying Profit growth; further or alternatively~~

(i) in FY2017 Underlying Profit growth materially less than its August Underlying Profit Forecast; further or alternatively and

(ii) neither its August ROCI Forecast, nor its Medium-Term Targets of Underlying Profit growth exceeding sales revenue growth.

~~(b) not achieve its August ROCI Forecast; further or alternatively~~

~~(c) not achieve its Medium Term Targets.~~

Particulars

~~So far as the Applicants are able to say before discovery, b~~By reason of the matters in paragraph 23(i) and the particulars to that paragraph, an increase in costs incurred in the ordinary course of business was likely, in the absence of an offsetting increase in revenue, to result in a reduction in:

- (i) Underlying Profit; and/or
- (ii) ROCI.

~~Further particulars may be provided following discovery.~~

C.3 August Continuous Disclosure Contraventions

35A. The following information existed at and from 18 August 2016:

(a) in respect of **Revenue**:

- (i) it was likely or there was at least a material risk that Brambles would not achieve year on year growth in sales revenue of between 7% and 9% in FY2017, or its medium term target of constant currency sales revenue growth in the high single digits; and
- (ii) an integral reason for this was that revenue in Brambles' North American Pooled Pallets Business (US Pooled) would likely not meet budget in FY2017;

(b) in respect of **Profit**:

- (i) it was likely or there was at least a material risk that Brambles would not achieve year on year underlying profit growth of between 9% and 11% in FY2017, its medium term target of underlying profit growth exceeding sales revenue growth, or its ROCI target of 20% by FY2019; and
- (ii) integral reasons for this were that: (A) revenue in Brambles' North American Pooled Pallets Business (US Pooled) would likely not meet budget in FY2017; and (B) direct costs were going up in US Pooled,

((a) or (b), or (a) and (b) together, being the **August Information**).

~~36. The matters pleaded in paragraphs 28 to 35 above (together, severally and in any combination, **August Information**)~~ The August Information constituted information that:

- (a) Brambles had (within the meaning of section 674(2) of the *Corporations Act*) by no later than 18 August 2016;

Particulars

~~The August Information related to the actual performance of Brambles' business in 1H2017.~~

~~Further, senior management Brambles' Officers identified in Schedule C ought reasonably to have had the August Information because:~~

- ~~(i) Brambles had made announcements to the Market concerning its August Underlying Profit Forecast;~~
- ~~(ii) the August Information affected the continued reliability of those announcements; and~~
- ~~(iii) Brambles' management systems allowed its officers to receive sales revenue reports on a weekly basis meant that at the end of each month, Officers of Brambles received:

 - ~~(A) 'flash' results, which described, *inter alia*, the revenue and Underlying Profit earned by the North American Pooled Pallets Business, whether those results were better or worse than budget, and commentary on the results; and~~
 - ~~(B) a 'Month End Close' presentation and Pallets Performance Review Presentation, which set out data for the North American Pooled Pallets Business for the preceding month;~~~~
- ~~(iv) the August Information related to the actual performance of Brambles' business in FY2016 and 1H2017 to date; and~~
- ~~(v) they received, created or sent the documents identified in Schedule C.~~

~~Further particulars may be provided following discovery.~~

- ~~(b) was not generally available within the meaning of section 674(2)(c)(i) of the *Corporations Act*;~~
- ~~(c) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Brambles Shares within the meaning of section 674(2)(c)(ii) of the *Corporations Act*; and~~
- ~~(d) in the premises in sub-paragraphs (a) to (c), by the operation of Listing Rule 3.1, Brambles was obliged to tell the ASX by no later than 18 August 2016.~~

37. Brambles:

- (a) did not tell the ASX the August Information at any time prior to 23 January 2017, when it was partially disclosed, alternatively at any time prior to 20 February 2017 when it was partially disclosed;

- (b) in the premises in sub-paragraph (a), contravened ASX Listing Rule 3.1; and
- (c) in the premises in sub-paragraphs (a) and (b), contravened section 674(2) of the *Corporations Act*,

(August Continuous Disclosure Contraventions).

C.3A Alternative August Continuous Disclosure Contraventions

37A. Alternatively to paragraph 36:

(a) by no later than 18 August 2016, Brambles had (within the meaning of section 674(2) of the *Corporations Act*) the following information (together, the **Alternative August Information**):

- (i) US Pooled had undertaken aggressive pricing in FY2016, against a high-priced whitewood market, where prices had levelled off to well below Brambles' budgeted pricing for FY2017;

Particulars of (i)

The particulars to paragraph 28B are repeated. The 5YP Presentation was actually known to Rumph and Lallatin.

Paragraph 29K is repeated. The FY2017 Budget Presentation was actually known to Gorman and Todorcevski.

- (ii) PECO was putting large amounts of pressure on US Pooled's deals to secure new business or renew existing business, by aggressive pricing;

Particulars of (ii)

BXB.501.030.8044. This was actually known to Lallatin.

- (iii) senior management within the North American Pooled Pallets Business had been informed that:

(A) the NPD upcharges and price increases experienced by US Pooled in FY2016 were unlikely to repeat in FY2017; and

(B) the RPI increases achieved in FY2016 by US Pooled would not repeat in FY2017;

Particulars of (iii)

Paragraph 29D is repeated. This was actually known to Lallatin.

Paragraph 29I(b) is repeated. This was actually known to Rumph and Mackie.

- (iv) senior management within the Global Pallets Business believed that achieving 7% revenue growth in FY2017 was unrealistic;

Particulars of (iv)

Paragraph 29G is repeated. This was actually known to Mackie and Rumph.

- (v) the CFO of the North American Operations believed that reductions in capital expenditure in the FY2017 Budget were setting the business up for failure, by reducing the business' ability to deliver on cost cutting initiatives included in the FY2017 Budget;

Particulars of (v)

Paragraph 29L is repeated. This was actually known to Lallatin and Kennett.

- (vi) after one month of trading in FY2017, US Pooled was behind budget on revenue and direct costs (due to a higher than budgeted damage rate, and higher repair and handling costs), which the Chief Financial Officer of the North American Operations considered were pressure points that may continue in future periods;

Particulars of (vi)

Paragraph 29Q is repeated. This was actually known to Lallatin, Rumph, Kennett, Mackie, Todorcevski and Gorman.

Further Particulars of (i) - (vi)

Alternatively, Brambles' Officers identified in paragraphs 37A(a)(i) to (vi) above ought reasonably to have had the relevant Alternative August Information because those Officers received, created or sent the documents identified in those paragraphs.

- (b) the Alternative August Information was information that was not generally available within the meaning of section 674(2)(c)(i) of the *Corporations Act*;

(c) the Alternative August Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Brambles Shares within the meaning of section 674(2)(c)(ii) of the *Corporations Act*, and

(d) in the premises in sub-paragraphs (a) to (c), by the operation of Listing Rule 3.1, the Alternative August Information was information that Brambles was obliged to tell the ASX by no later than 18 August 2016.

37AB. Brambles was obliged to tell the ASX the Alternative August Information by no later than 18 August 2016 only if it did not have or was not obliged to disclose the August Information.

37B. Brambles:

(a) did not tell the ASX the Alternative August Information at any time prior to 23 January 2017, alternatively at any time prior to 20 February 2017, when it was partially disclosed;

(b) in the premises of sub-paragraph (a), contravened ASX Listing Rule 3.1; and

(c) in the premises of sub-paragraphs (a) and (b), contravened section 674(2) of the *Corporations Act*;

(Alternative August Continuous Disclosure Contraventions).

C.3B Ongoing continuous disclosure contraventions

37C. By failing to tell the ASX the August Information, or the Alternative August Information on or after 18 August 2016, Brambles contravened section 674(2) of the *Corporations Act* on each day between 18 August 2016, and 23 January 2017 when it was partially disclosed, alternatively any time prior to 20 February 2017 when it was partially disclosed.

C.4 August Representations – misleading or deceptive conduct

38. Further or in the alternative, by reason of the matters in paragraphs 27 to 29, 29U to 35 and/or 36(a) and/or 37A(a) above, Brambles:

- (a) did not by 18 August 2016, have reasonable grounds for making the:
 - (i) August Sales Revenue Forecast;
 - (ii) August Underlying Profit Forecast;
 - (iii) August Costs Representations;
 - (iv) August Price Representation;
 - (v) August ROCI Forecast; or
 - (vi) Medium-Term Targets;
- (b) by reason of the matters in sub-paragraph (a), did not have reasonable grounds for making the representations in (a) August Representations within the meaning of:
 - (i) section 769C of the *Corporations Act*;
 - (ii) section 12BB of the *ASIC Act*; further or alternatively
 - (iii) section 4 of the *ACL*; and
- (c) in the premises, by making the August Representations, engaged in conduct that was misleading or deceptive or that was likely to mislead or deceive in contravention of:
 - (i) section 1041H(1) of the *Corporations Act*;
 - (ii) section 12DA(1) of the *ASIC Act*; further or alternatively
 - (iii) section 18 of the *ACL*,

(together and severally, the **August Misleading Conduct Contraventions**).

C.5 Market effects of August Contravening Conduct

39. In the period from 18 August 2016 to the end of the Relevant Period, the:

(a) August Continuous Disclosure Contraventions; ~~further or alternatively~~

(aa) Alternative August Continuous Disclosure Contraventions; further or alternatively

(b) August Misleading Conduct Contraventions,

(together and severally, **August Contravening Conduct**) caused the traded price for Brambles Shares to be materially higher during the Relevant Period than:

(i) their true ~~price~~value; or

(ii) the price that would have existed if the August Contravening Conduct had not occurred,

(August Inflation).

Particulars

The August Inflation is to be inferred from:

- (i) the characteristics of the Market set out in paragraph 64 below;
- (ii) the fact that the August Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of Brambles Shares;
- (iia) in the alternative to (ii), the fact that the Alternative August Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of Brambles Shares;
- (iii) the fact that each of the August Representations was a representation that a reasonable person would expect to have a material effect on the price or value of Brambles Shares; and
- (iv) the movements in the traded price of Brambles Shares following the January Partial Disclosure and February Disclosure, as set out in paragraphs 60(e) and 62(e) below.

Further particulars will be provided following ~~discovery and~~ the receipt of expert reports.

D. OCTOBER 2016 CONTRAVENTIONS

D.1 October 2016 Conduct

40. On 20 October 2016, in an announcement published and released to the ASX (**1Q17 Trading Update**), Brambles stated that, or to the effect that:

- (a) it had earned sales revenue in 1Q2017 from continuing operations of US\$1,420.1 million, representing a 5% increase on the prior corresponding period;
- (b) excluding revenue earned from its North American Whitewood Pallets Business, revenue growth in its Pallets Americas business was 6% when compared with 1Q2016;
- (c) the 1Q2016 Pallets Americas Sales Revenue reflected “*modest growth in the [North American Pooled Pallets Business]*”;
- (d) the modest growth in revenue in the North American Pooled Pallets Business in 1Q2017 was due to the “*deferral of some new business opportunities*”;
- (e) it expected to earn sufficient revenue from new business in the North American Pooled Pallets Business in 2H2017 to achieve the August Underlying Profit Forecast (**October Revenue Representation**);

Particulars

The October Revenue Representation was express and contained in the 1Q17 Trading Update (page 1).

- (f) repeated and thereby reaffirmed the August Underlying Profit Forecast Representation-(**October Underlying Profit Representation**); and

Particulars

The October Underlying Profit Representation was express and contained in the 1Q17 Trading Update (page 1).

- (g) it expected to achieve its Medium-Term Targets (**October Medium-Term Outlook Representation**).

41. By reason of the matters pleaded in paragraph 40 above, Brambles reaffirmed the August Costs Representations (**October Costs Representation**).

Particulars

~~So far as the Applicants are able to say before discovery, t~~The matters the subject of the October Costs Representation are to be inferred from:

- (i) the October Revenue Representation; and
- (ii) the October Underlying Profit Representation.

~~Further particulars may be provided following discovery.~~

42. By the October Revenue Representation, October Underlying Profit Representation, October Costs Representation and October Medium-Term Outlook Representation, Brambles represented to the Market that:

- (a) Brambles had undertaken all necessary and reasonable investigations before making any statement or representation as to the state of its business and accounts and had satisfied itself on reasonable grounds following those investigations that the public statements were substantially accurate and not misleading or deceptive in any respect;
- (b) no information had come to the attention of Brambles that meant that there was any material risk that Brambles would not achieve the October Revenue Representation, the October Underlying Profit Representation, the October Costs Representation or the October Medium-Term Outlook Representation,

(October Implied Representations).

43. Brambles did not wholly correct the:

- (a) October Revenue Representation;
- (b) October Underlying Profit Representation;
- (c) October Costs Representation;
- (d) October Medium-Term Outlook Representation; or
- (e) October Implied Representations,

(together **October Representations**) which were accordingly continuing representations, to the extent that they remained unqualified and uncorrected, until 20 February 2017, and otherwise until 23 January 2017.

Particulars

The Applicants refer to the January Partial Disclosure pleaded in paragraph 59 below and the February Disclosure pleaded in paragraph 61 below.

44. The October Representations were:
- (a) conduct in trade or commerce;
 - (b) in relation to:
 - (i) a financial product within the meaning of sections 763A(1)(a) and 764A(1)(a) of the *Corporations Act*, namely Brambles Shares;
 - (ii) a financial service within the meaning of:
 - (A) sections 766A(1)(a) and 766B(1) of the *Corporations Act*; and
 - (B) section 12BAB(1)(a) of the *ASIC Act*;
 - (c) made in relation to future matters; and
 - (d) information that a reasonable person would expect to have a material effect on the price or value of Brambles Shares.

Particulars

The matters in sub-paragraph (d) are to be inferred from the matters alleged in paragraph 39, and 49 and 58 below.

Further particulars may be provided following ~~discovery and the~~ receipt of expert reports.

D.2 True State of Affairs in October 2016

45. By 20 October 2016:
- (a) the indicators of Brambles' financial situation, performance and prospects in FY2017, the subject of paragraphs 28B, 28C, 28D, 29, 29D, 29G(a), 29I, 29L(c)(i) and (d)(ii), 29N, 29P to 29X, 30, 32 and 33 above, had not improved the facts,

~~matters and circumstances the subject of the August Information remained substantially the same;~~

D.2.1 Performance of the North American Pooled Pallets Business

(aa) the North American Pooled Pallets Business had:

- (i) earned revenue of approximately \$390.1 million, which was approximately \$8.5 million, or 2.1% worse than the FY2017 Budget;
- (ii) earned Underlying Profit of approximately \$67 million, which was approximately \$13.7 million, or 17% worse than the FY2017 Budget, and 0.3% worse than the prior corresponding period;
- (iii) issued approximately 76.2 million Pooled Pallets, which was 1% worse than the FY2017 Budget; and
- (iv) realised an average RPI of \$5.13, which was \$0.06, or 1.2% worse than the FY2017 Budget;

Particulars

BXB.500.114.7802.

(ab) the revenue earned by the North American Pooled Pallets Business from:

- (i) increases in the price that it was able to charge for the issue of new pallets;
and
- (ii) P Day Revenue and Customer Mix,

had increased by net \$4.7 million or 1.3% since the prior corresponding period, but had included:

- (A) rollover revenue of approximately \$1.3 million from NPD upcharges from transfers by manufacturers to Home Depot and Nash Finch from the transfer of those customers to the NPD Channel in FY2016;

- (B) P Day Revenue of approximately \$2.1 million worse than the prior corresponding period; and
- (C) Customer Mix and transfer fees of approximately \$0.9 million worse than the prior corresponding period;

Particulars

BXB.500.068.2395.

(ac) the North American Pooled Pallets Business had:

- (i) incurred direct costs of approximately \$284.2 million, which was approximately \$6.8 million, or 2.4%, worse than the FY2017 Budget;
- (ii) experienced a damage rate of approximately 61.4% for all returned Pooled Pallets, which was 0.5% worse than the FY2017 Budget;
- (iii) experienced a damage rate of approximately 86.8% for Pooled Pallets that had been transferred to Walmart, which was an increase of approximately 4.4% from the prior corresponding period; and
- (iv) incurred Asset Recovery costs of approximately \$14 million, which was approximately \$1.8 million favourable to the prior corresponding period, but 1.4% worse than the FY2017 Budget;

Particulars

BXB.500.114.7801, attaching BXB.500.114.7802 (Email from Thad Linderman, Director, Financial Planning and Analysis Team for CHEP North America to, *inter alia*, Kennett dated 12 October 2016, attaching a presentation for the US Pooled Month Close Meeting).

(ad) the North American Pooled Pallets Business attributed the increase in repair costs in 1Q2017 to:

- (i) reuse of Pooled Pallets by retailers with whom the North American Pooled Pallets Business had a 'total pallet management' agreement, which included Walmart; and
- (ii) 'other retailer dynamics and unknown repairs that we are investigating for accuracy at present';

ParticularsBXB.500.068.2395.

- (b) ~~[not used] Brambles had incurred costs since 1 July 2016 in its usual operating activities, including in its North American Pooled Pallets Business, that were materially greater than those required in that period to make it probable that Brambles would achieve the:~~
- ~~(i) — August Underlying Profit Forecast;~~
 - ~~(ii) — August Costs Representations;~~
 - ~~(iii) — October Underlying Profit Representation; or~~
 - ~~(iv) — October Costs Representation;~~

Particulars

~~So far as the Applicants are able to say prior to discovery, the matters in sub-paragraph (b) are to be inferred from:~~

- ~~(i) — the matters in sub-paragraph (a);~~
- ~~(ii) — the fact that pallets were ordinarily returned to Brambles up to four times per year, and Brambles' statement on page 12 of the FY2017 Results Presentation that "*growth in NPD revenue in FY16 was weighted towards the second half of the year delivering increased revenue in 2H16 and increased costs in FY17*";~~
- ~~(iii) — the statement in the First Trading Update (as defined at paragraph 59 below) that the North American Pooled Pallets Business had experienced costs pressures during the "*back end*" of 1H2017 (page 2);~~
- ~~(iv) — the statements made by Gorman in the 1H2017 Earnings Call that Brambles had:

 - ~~(a) — experienced higher costs to serve by reason of the increase in the sale of Pooled Pallets into NPD Channels (pages 4, 7, 11);~~
 - ~~(b) — to make sure that it understood and accurately reflected the cost to serve the NPD Channels (page 14).~~~~

~~Further particulars may be provided following discovery.~~

- (c) ~~by reason of increased competition, the:~~
- ~~(i) the North American Pooled Pallets Business was not attracting sufficient new customers; and;~~

- (A) won new business, or secured additional issues with existing customers, that Brambles assessed would deliver revenue in FY2017 of approximately \$6.9 million, and annualised revenue of approximately \$8.5 million, which was approximately \$21 million worse than the FY2017 Budget;
- (B) had won no business from PECO in FY2017;
- (C) had lost business to PECO that reduced revenue that the North American Pooled Pallets Business otherwise would have earned by approximately \$1.7 million;
- (D) lost that business in part because PECO was able to offer a lower price than the North American Pooled Pallets Business;
- (E) was at a competitive disadvantage to PECO because PECO was not exposed to agreements with retailers that entitled those retailers to unlimited reuse of Pooled Pallets; and
- (F) assessed that volume growth from net wins in 1Q2017 was approximately 2.5%, which was worse than both the FY2017 Budget (4.1%) and 1Q2016 (3.9%);

Particulars

The North American Pooled Pallets Business had lost the business of Red Gold in September 2016.

BXB.500.017.6359.

BXB.500.068.2395.

- (ii) the North American Pooled Pallets Business had experienced a reduction in the price that it was able to bid for new business because of price competition from PECO, including potential deals in the 'pipeline' at the end of 1Q2017~~North American Whitewood Pallets Business was not able to sell Whitewood Pallets at a value sufficient to generate net revenue in an amount likely to enable Brambles to achieve the August Underlying Profit Forecast;~~

Particulars

BXB.602.011.5357.

The agreements in relation to which it experienced a reduction in price included agreements and potential agreements with:

- (A) Cott Beverages, in which PECO's pricing submission (\$4.00) was materially lower than the RPI earned by the North American Pooled Pallets Business in its agreement with a subsidiary of Cott Beverages (\$4.45);
- (B) National Beef, an existing customer of PECO, in which Brambles approved a RPI of \$4.09 for PD Pallets only, or \$6.46 including NPD Pallets, which was pricing that Brambles considered would 'hit PECO between the eyes' (BXB.501.028.6695);
- (C) Arcadia Farms, an existing customer of PECO, in which Brambles approved the offer of an average RPI of \$4.52, which was materially less than the existing RPI charged by PECO, and in which the customer made clear to Brambles that it was necessary to suggest savings from the current PECO rate to secure the business (BXB.501.036.4039);
- (D) JBS, an existing customer of the North American Pooled Pallets Business:
 - (1) with whom it was attempting to win an additional 2.2 million issues;
 - (2) for which it lodged an offer on 23 September 2016 that involved a RPI of \$5.08 in the first year, and a ROCI of 5.8%; and
 - (3) for which it was prepared to make that offer, despite Kennett not 'lik[ing] these financials at all' because the business represented approximately 3% of its annual revenue, and 'we cannot afford this sort of volume to another competitor (sic.)' (BXB.500.117.0032);
- (E) First Quality Products Incorporated, an existing customer of both Brambles and PECO that was seeking to award all its business to one company, for which Brambles approved an average RPI of \$4.19 in September 2016, which it revised in October 2016 to \$4.13 (BXB.500.077.5546).

~~The competition was with the sale of Whitewood Pallets and with PECO Pallet Inc.~~

The Applicants refer to:

- (i) ~~and repeat sub-paragraph (a) above;~~
- (ii) ~~the statement in the 1H2017 Earnings Call that:~~
 - (a) ~~the "rate of sales revenue growth slowed in the first quarter of 2017 with pool competition and lower whitewood pricing putting added pressure on the net new business conversions" (page 3);~~
 - (b) ~~"we've seen now a reduction in [Whitewood Pallet] prices, what that does is with the marginal customer~~

~~that we are trying to convert, it takes longer to work through that process...” (page 7);~~

~~(c) — “competitive pressures during the half resulted in lower pricing growth and lower net new business wins in the US Pooled Pallets business and also resulted in a revenue decline in the US Recycled Pallets business” (page 2).~~

~~(iii) — 1H2017 Earnings Call, pages 2, 6-7 and 15.~~

~~Further particulars may be provided following discovery.~~

(iii) the North American Pooled Pallets Business had determined to accept lower priced deals in order to:

(A) increase the prospect of being able to issue a sufficient volume of Pooled Pallets to promote volume density for pooling efficiency; and

(B) avoid the negative network impact of losing the at risk volume;

Particulars

BXB.002.004.0464.

BXB.500.117.1400.

(ca) [not used] there was a significant increase in net pallet returns relative to net pallet issues in the North American Pooled Pallets Business;

Particulars

The Applicants refer to:

(i) — 1H2017 Earnings Call, pages 2-3;

(ii) — 1H2017 Presentation, slide 6.

~~Further particulars may be provided following discovery.~~

(cb) potential customers of the North American Pooled Pallets Business were taking longer to make a decision whether or not to enter into contracts to participate in the pooling distribution channel than Brambles had experienced in FY2016;

Particulars

The Applicants refer to ~~the First Trading Update (defined in paragraph 59 below);~~

(i) subparagraph (c) above, and the particulars to that paragraph;

(ii) the statement in an overview of the 1Q2017 results sent by Rumph to, amongst others, Gorman, Todorcevski and Mackie, that the lower rate of growth in new wins in 1Q2017

'is being driven by an increase in the time required for [conversion of opportunities in the 'pipeline'], mainly due to:

- postponement of decisions due to market uncertainty
- managing ROCI expectations (through pricing decisions) with 2019 target in mind
- Whitewood price declines',

(BXB.500.068.2395).

Further particulars may be provided following discovery.

- (d) a material proportion of revenue from new business in the North American Pooled Pallets Business in 1Q2017 was earned from business that had in fact been secured in FY2016; and

Particulars

So far as they are able to say before discovery, the Applicants refer to:

- (i) ~~the statement in the FY2017 Investor Presentation that "not new business wins and price/mix growth largely driven by rollover wins from FY16" (page 13);~~
- (ii) ~~the statement in the FY2017 Earnings Call in 1Q2017 the North American Pooled Pallet Business "achieved 5% revenue growth, largely driven by rollover wins from FY16" (page 4).~~

Further particulars may be provided following discovery.

In 1Q2017:

- (i) the impact on revenue from new wins was approximately \$14.4 million, before total losses of approximately \$5 million;
- (ii) the positive volume impact was driven in part by revenue from JBS-Swift (\$3.5 million) and Niagara Bottling (\$1.9 million), as well as revenue from other business secured in FY2016;
- (iii) Brambles assessed that the FY2017 revenue impact from new business secured in 1Q2017 would be approximately \$6.9 million, compared with the FY2016 revenue impact of business secured in 1Q2016 of approximately \$20.3 million,

(BXB.602.011.5368).

D.2.2 Trading performance of US Recycled in 1Q2017

(da) US Recycled had:

- (i) earned revenue of approximately \$134.9 million, which was approximately \$3.3 million, or 2.4% worse than the FY2017 Budget;

- (ii) sold approximately 16.8 million pallets, which was 4.8% worse than the FY2017 Budget;
- (iii) realised an average price per recycled pallet of \$5.93, which was approximately \$0.12 worse than the FY2017 Budget, which US Recycled described as 'declining rapidly'; and
- (iv) an underlying loss of approximately \$600,000, which was 132.2% worse than the FY2017 Budget;

Particulars

BXB.501.071.7812.

BXB.500.017.6359.

D.2.3 Overall trading performance in 1Q2017

- (e) by reason of the matters in sub-paragraphs (a) to (da), as at 20 October 2016, Brambles' performance in the North American Pooled Pallets Business and US Recycled since 1 July 2016 meant it was likely, alternatively there was a material risk, that Brambles would:
 - (ia) achieve neither:
 - (A) its August Sales Revenue Forecast; nor
 - (B) its Medium-Term Targets, and/or the October Medium-Term Outlook Representations, of constant currency sales revenue growth in the high-single digits; further or alternatively
 - (i) achieve in FY2017:
 - ~~(A) — no Underlying Profit growth; further or alternatively~~
 - (A) in FY2017 Underlying Profit growth materially less than its August Underlying Profit Forecast and/or October Underlying Profit Representation; and

(B) neither its August ROCI Forecast nor its Medium-Term Targets, and/or the October Medium-Term Outlook Representation, of Underlying Profit growth exceeding sales revenue growth.

~~(ii) not achieve its August ROCI Forecast;~~

~~(iii) not achieve its Medium-Term Targets;~~

~~(together, separately or in any combination, **October Information**).~~

Particulars

The matters in sub-paragraph (e) are to be inferred from the matters in sub-paragraphs (a) to (d).

D.3 October Continuous Disclosure Contraventions

45A. The following information existed at and from 20 October 2016:

(a) Revenue

- (i) Brambles' performance in its North American Operations since 1 July 2016 meant it was likely or there was at least a material risk that Brambles would not achieve year on year growth in sales revenue of between 7% and 9% in FY2017, or its medium term target of constant currency sales revenue growth in the high single digits; and
- (ii) an integral reason for this was that revenue in Brambles' North American Pooled Pallets Business (US Pooled) would likely not meet budget in FY2017;

(b) Profit

- (i) Brambles' performance in its North American Operations since 1 July 2016 meant it was likely or there was at least a material risk that Brambles would not achieve year on year underlying profit growth of between 9% and 11% in FY2017, its medium term target of underlying profit growth exceeding sales revenue growth, or its ROCI target of 20% by FY2019;

- (ii) integral reasons for this were that: (A) revenue in Brambles' North American Pooled Pallets Business (US Pooled) would likely not meet budget in FY2017; and (B) direct costs were going up in US Pooled,

((a) or (b), or (a) and (b) together, being the **October Information**).

46. The October Information was information that:

- (a) Brambles had (within the meaning of section 674(2) of the *Corporations Act*) by no later than 20 October 2016;

Particulars

The Applicants refer to and repeat the particulars to paragraph 36(a) above.

~~The October Information related to the actual performance of Brambles' business in 1H2017. Further, senior management Brambles' Officers identified in Schedule C ought reasonably to have had the information because:~~

- (i) Brambles had made announcements to the Market concerning its guidance; ~~and~~
 - (ii) the October Information affected the continued reliability of those announcements;
 - (iii) of the fact that by about 20 October 2016, Brambles management ~~had would have~~ received management accounts for July to ~~September~~ October 2016 (inclusive);
 - (iv) further or in the alternative to (iii), Brambles' management systems meant that at the end of each month, officers of Brambles received:
 - (A) 'flash' results, which described, *inter alia*, the revenue and Underlying Profit earned by the North American Pooled Pallets Business, and US Recycled, whether those results were better or worse than budget, and commentary on the results;
 - (B) 'Month End Close' presentation and Pallets Performance Review Presentation, which set out data for US Pooled and US Recycled for the preceding month;
 - (v) the October Information related to the actual performance of Brambles' business in 1H2017; and
 - (vi) they received the documents identified in Schedule C.
- (b) was not generally available within the meaning of section 674(2)(c)(i) of the *Corporations Act*;

- (c) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Brambles Shares within the meaning of section 674(2)(c)(ii) of the *Corporations Act*; and
- (d) in the premises in sub-paragraphs (a) to (c), by the operation of Listing Rule 3.1, Brambles was obliged to tell the ASX by no later than 20 October 2016.

46A. From no later than 20 October 2016, Brambles was obliged to tell the ASX the October Information in addition to the August Information (to the extent there was any difference between them).

47. Brambles:

- (a) did not tell the ASX the October Information (or the August Information) any time from 20 October 2016 prior to 23 January 2017 when it was partially disclosed, alternatively at any time prior to 20 February 2017 when it was partially disclosed;
- (b) in the premises in sub-paragraph (a), contravened Listing Rule 3.1; and
- (c) in the premises in sub-paragraphs (a) and (b), contravened section 674(2) of the *Corporations Act*,

(October Continuous Disclosure Contraventions).

D.3A Alternative October Continuous Disclosure Contraventions

47A. Alternatively to paragraph 46:

- (a) by no later than 20 October 2016, Brambles had (within the meaning of section 674(2) of the *Corporations Act*) the following information (together **Alternative October Information**):
 - (i) after one quarter of trading, US Pooled was behind the FY2017 Budget on revenue and direct costs (due to a higher than budgeted damage rate, and higher repair and handling costs);

Particulars of (i)

The Applicants refer to and repeat paragraphs 45(aa) to 45(ad) above.

The 'flash' results for September 2016 showed that US Pooled had earned month to date revenue that was approximately \$5.5 million worse than budget, and Underlying Profit that was approximately \$9.8 million worse than the FY2017 Budget.

This was actually known by Gorman, Todorcevski, Mackie and Rumph.

(ii) after one quarter of trading:

(A) US Recycled was behind the FY2017 Budget on revenue; and

(B) it was unlikely that US Recycled would 'catch up to budgeted levels for the year':

Particulars of (ii)

BXB.602.011.5368 (Responses to questions posed by Todorcevski regarding 1Q2017 results).

This was actually known by Todorcevski.

(iii) the CEO and CFO of Brambles believed that US Pooled had performed very poorly in FY2017 to date;

Particulars of (iii)

BXB.500.160.6333 (Email from Gorman to Mackie dated 15 September 2016), in which Gorman said he believed that the Pooled Pallets Business had had a 'very bad start to the year'.

BXB.500.077.4911 (Email from Gorman to Mackie (copied to Todorcevski) dated 7 October 2016), in which Gorman stated he was 'completely shocked at how poor the results' were for the Pooled Pallets Business in 1Q2017, with "total Pallets, compared to Budget, down \$10 million top line and down \$12 million ULP (US Pooled appears to be primary driver)".

BXB.500.068.1099 (Email from Todorcevski to Gorman dated 7 October 2016), in which Todorcevski said the results for September 2016 were about 'as poor an outcome in a month in US pooled as I've seen'.

This was actually known by Gorman, Todorcevski and Mackie.

(iv) the CFO and CEO of Brambles had both been informed, and believed, that top line revenue was significantly short in US Pooled, and that costs incurred in the business had rapidly continued to worsen;

Particulars of (iv)

BXB.500.068.1099 (Email from Todorcevski to Gorman dated 7 October 2016), in which Todorcevski said 'Top line is only part of the story but costs continue to worsen, and fast'. This was actually known by Todorcevski and Gorman.

- (v) the CEO and CFO of Brambles had both been informed, and believed that:
- (A) the reason why US Pooled was \$5.5 million behind budget on top line revenue included pricing stretch, and that its budget for new business wins by US Pooled was set at a time when whitewood pallet prices were at their peak, and these conditions no longer existed;
- (B) US Pooled had incurred \$4 million above the FY2017 Budget in direct costs including because of a clear issue in repair volumes;
- (C) the relationship between US Pooled and Walmart had to change if the performance of US Pooled was to fully recover;

Particulars of (v)

BXB.500.077.4509 (Email from Mackie to Gorman and Todorcevski dated 12 October 2016), in which Mackie said:

- (i) the approximately \$5.5 million variance in revenue from budget for US Pooled in 1Q2017 arose mainly from the '\$4 million miss on wins' which arose because 'the budget for wins target was set when white to blue conversions were at their peak and these have now fallen away as white prices have come off their peak' and that the 'softness [in new wins] is concerning';
- (ii) the approximately \$4 million variance in direct costs from budget for US Pooled in 1Q2017 arose in part from a 'clear issue in repair volumes in the month (\$1.4 million) which more than countered any benefit from the lack of issue volume';
- (iii) 'in reality a full US recovery based on [the September results] requires a change in Walmart'.

This was actually known by Mackie, Gorman and Todorcevski.

Further Particulars of (i) to (v)

Alternatively, Brambles' Officers identified in paragraphs 47A(i) to (v) ought reasonably to have had the Alternative October Information because those Officers received, created or sent the documents identified in those paragraphs.

- (b) the Alternative October Information was not generally available within the meaning of section 674(2)(c)(i) of the *Corporations Act*,
- (c) a reasonable person would expect the Alternative October Information, if it were generally available, to have a material effect on the price or value of Brambles Shares within the meaning of section 674(2)(c)(ii) of the *Corporations Act*, and
- (d) in the premises in sub-paragraphs (a) to (c), by the operation of Listing Rule 3.1, Brambles was obliged to tell the ASX the Alternative October Information by no later than 20 October 2016.

47AB. Brambles was obliged to tell the ASX the Alternative October Information by no later than 20 October 2016:

- (a) only if it did not have or was not obliged to disclose the August Information or the October Information; and
- (b) in that case, in addition to the Alternative August Information (to the extent there was any difference between them).

47B. Brambles:

- (a) did not tell the ASX the Alternative October Information at any time prior to 23 January 2017, when it was partially disclosed, alternatively at any time prior to 20 February 2017 when it was partially disclosed;
- (b) in the premises in sub-paragraph (a), contravened ASX Listing Rule 3.1; and
- (c) in the premises in sub-paragraphs (a) and (b), contravened section 674(2) of the *Corporations Act*,

(Alternative October Continuous Disclosure Contraventions).

D.3B Ongoing continuous disclosure contraventions

47C. By failing to tell the ASX the October Information, or the Alternative October Information on or after 20 October 2016, Brambles contravened section 674(2) of the *Corporations Act* on

each day between 20 October 2016 and 23 January 2017 when it was partially disclosed, alternatively any time prior to 20 February 2017 when it was partially disclosed.

D.4 October Representations – misleading or deceptive conduct

48. Further or in the alternative, by reason of the matters in paragraphs 45 and/or 46(a), further or in the alternative, 47A above, Brambles:

(a) did not, by 20 October 2016, have reasonable grounds for making or maintaining (as the case may be) the:

- (i) August Sales Revenue Forecast;
- (ii) August Underlying Profit Forecast;
- (iii) August Costs Representations;
- (iiia) August Price Representation;
- (iv) August ROCI Forecast Representation;
- (iva) Medium-Term Targets;
- (v) October Revenue Representation;
- (vi) October Underlying Profit Representation;
- (vii) October Costs Representation;
- (viii) [not used] October ROCI Forecast;
- (ix) October Medium-Term Outlook Representation;

(b) by reason of the matters in sub-paragraph (a), did not have reasonable grounds for the representations in (a) October Representations within the meaning of:

- (i) section 769C of the *Corporations Act*;
- (ii) section 12BB of the *ASIC Act*, further or alternatively
- (iii) section 4 of the *ACL*; and

(c) in the premises, by:

- (i) making the October Representations; further or alternatively
- (ii) not correcting the August Representations;

engaged in conduct that was misleading or deceptive or was likely to mislead or deceive in contravention of:

- (A) section 1041H(1) of the *Corporations Act*,
- (B) section 12DA(1) of the *ASIC Act*, further or alternatively
- (C) section 18 of the *ACL*,

(together and severally, **October Misleading Conduct Contraventions**).

D.5 Market effects of October Contravening Conduct

49. In the period from 20 October 2016 to the end of the Relevant Period, the:

- (a) October Continuous Disclosure Contraventions; ~~further or alternatively~~
- (aa) Alternative October Continuous Disclosure Contraventions; further or alternatively
- (b) October Misleading Conduct Contraventions;

(together and severally **October Contravening Conduct**) caused the traded price for Brambles Shares to be materially higher during the Relevant Period than:

- (i) their true ~~price~~value; or
- (ii) the price that would have existed if the October Contravening Conduct had not occurred;

(October Inflation).

Particulars

The October Inflation is to be inferred from:

- (i) the characteristics of the Market for Brambles Shares set out in paragraph 64 below;
- (ii) the fact that the October Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of Brambles Shares;

(ii) in the alternative to (ii), the fact that the Alternative October Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of Brambles Shares;

(iii) the fact that each of the October Representations was a representation that a reasonable person would expect to have a material effect on the price or value of Brambles Shares; and

(iv) the movements in the traded price of Brambles Shares following the January Partial Disclosure and February Disclosure as set out in paragraphs 60(e) and 62(e) below.

Further particulars may be provided following ~~discovery and~~ the receipt of expert reports.

E. NOVEMBER 2016 CONTRAVENTIONS

E.1 November 2016 Conduct

50. On 16 November 2016, at the time of its Annual General Meeting, Brambles repeated and thereby affirmed the:

(a) August Underlying Profit Forecast;

(aa) August Sales Revenue Forecast;

(b) August Costs Representations;

(c) August ROCI Forecast; and

(d) ~~the~~ Medium-Term Targets,

(November AGM Representations).

Particulars

The November AGM Representations were partly express and partly to be implied.

To the extent that they were express, they were made in:

(i) an address by Johns to the Annual General Meeting of Brambles (**AGM Address**); and

(ii) a copy of the AGM Address that Brambles published and released to the ASX on 16 November 2016 (**AGM Announcement**).

To the extent that they were implied, they are to be inferred from the AGM Address and the AGM Announcement.

51. By the November AGM Representations, Brambles represented to the Market that:
- (a) Brambles had undertaken all necessary and reasonable investigations before making any statement or representation as to the state of its business and accounts and had satisfied itself on reasonable grounds following those investigations that the November AGM Representations ~~public statements~~ were substantially accurate and not misleading or deceptive in any respect;
 - (b) no information had come to the attention of Brambles that meant that there was any material risk that Brambles would not achieve the November AGM Representations;
- (together **November Implied Representations**).

52. Brambles did not wholly correct the:
- (a) November AGM Representations; and
 - (b) November Implied Representations,
- (together **November Representations**) which were accordingly continuing representations, to the extent that they remained unqualified and uncorrected, until 20 February 2017, and otherwise until 23 January 2017.

Particulars

The Applicants refer to the January Partial Disclosure pleaded in paragraph 59 below and the February Disclosure pleaded in paragraph 61 below.

53. The November Representations were:
- (a) conduct in trade or commerce;
 - (b) in relation to:
 - (i) a financial product within the meaning of sections 763A(1)(a) and 764A(1)(a) of the *Corporations Act*, namely Brambles Shares;

- (ii) a financial service within the meaning of:
 - (A) sections 766A(1)(a) and 766B(1) of the *Corporations Act*, and
 - (B) section 12BAB(1)(a) of the *ASIC Act*,
- (c) as to the November AGM Representations, made in relation to future matters; and
- (d) information that a reasonable person would expect to have a material effect on the price or value of Brambles Shares.

Particulars

The matters in sub-paragraph (d) are to be inferred from the matters alleged in paragraph 39, 49 and 58 below.

Further particulars may be provided following ~~discovery and~~ the receipt of expert reports.

E.2 True State of Affairs in November 2016

54. By 16 November 2016:

- (a) ~~the facts, matters and circumstances the subject of the August Information and October Information remained substantially the same~~ the indicators of Brambles' financial situation, performance and prospects in FY2017, the subject of paragraphs 28B, 28C, 28D, 29, 29D, 29G(a), 29I, 29L(c)(i) and (d)(ii), 29N, 29P to 29X, 30, 32, 33 and 45(aa) to (e) above, had not improved;

E.2.1 Trading performance of US Pooled to November 2016

- (b) ~~Brambles had experienced a material decrease in the net number of Pooled Pallets that it had issued in the North American Pooled Pallets Business~~ had issued materially fewer Pooled Pallets than forecast in the FY2017 Budget;

Particulars

By 16 November 2016, the North American Pooled Pallets Business had:

- (i) issued approximately 104.5 million Pooled Pallets since the beginning of FY2017, which was 1.4% worse than the FY2017 Budget (BXB.602.008.1508);
- (ii) had in no month in FY2017 achieved its budgeted issue volume for that month.

(ba) for FY2017 to 30 October 2016, US Pooled had:

- (i) earned year to date revenue of approximately \$536.8 million, which was approximately \$15.9 million, or 2.9% worse than the FY2017 Budget, and only 8.1% better than the prior corresponding period;
- (ii) realised an average RPI of \$5.14, which was \$0.08, or 1.5% worse than the FY2017 Budget;
- (iii) secured new business wins since 30 September 2016 with a predicted revenue impact in FY2017 of only approximately \$3.2 million;
- (iv) secured no new business from any of the 'larger deals' that it had identified at the end of 1Q2017;

Particulars

BXB.602.008.1508.

BXB.501.075.1064.

BXB.500.068.2395.

(bb) for FY2017 to 30 October 2016, US Pooled had:

- (i) incurred direct costs of approximately \$391.7 million, which was approximately \$11.6 million, or 3%, worse than the FY2017 Budget;
- (ii) earned Underlying Profit of approximately \$90.6 million, which was approximately \$25.3 million, or 21.9% worse than the FY2017 Budget, and 6.4% worse than the prior corresponding period;
- (iii) experienced a damage rate of approximately 61.1% for all returned Pooled Pallets, which was 0.3% worse than the FY2017 Budget;
- (iv) experienced a damage rate for Pooled Pallets transferred to Walmart of 85.9%, which was an increase of 2.9% from the previous year;
- (v) incurred Asset Recovery costs that were approximately \$2.2 million worse than the prior corresponding period, and 1.8% worse than the FY2017 Budget;

ParticularsBXB.500.115.1024 and BXB.501.075.1064.**E.2.2 Trading performance of US Recycled to November 2016**(bc) US Recycled had:

- (i) earned revenue of approximately \$185.7 million, which was approximately \$9 million, or 4.6% worse than the FY2017 Budget;
- (ii) sold approximately 23.2 million pallets, which was approximately 1.8 million or 7.5% worse than the FY2017 Budget;
- (iii) realised an average price per recycled pallet of \$5.92, which was approximately \$0.11 worse than the FY2017 Budget;
- (iv) earned Underlying Profit of approximately \$300,000, which was 90.8% worse than the FY2017 Budget;

ParticularsBXB.500.139.2715.

(c) [not used] Brambles had incurred costs since 1 July 2016 in its usual operating activities, including in its North American Pooled Pallets Business, that were materially greater than those required in that period to make it probable that Brambles would achieve the:

- (i) August Underlying Profit Forecast;
- (ii) August Costs Representations;
- (iii) October Underlying Profit Representation;
- (iv) October Costs Representation; or
- (v) November AGM Representations;

Particulars

So far as the Applicants are able to say prior to discovery, the matters in sub-paragraph (c) are to be inferred from:

- (i) the matters in sub-paragraphs (a) and (b) above;

~~(ii) the statement in the Second Trading Update (as defined at paragraph 61 below) that in 1H2017, the North American Pooled Pallet Business had experienced higher transportation, handling and asset recovery costs (page 6);~~

E.2.3 Overall trading performance in 1Q2017

(d) in the premises, by reason of the matters in sub-paragraphs (a) to (bc), as at 16 November 2016, Brambles' performance in the North American Pooled Pallets Business and US Recycled since 1 July 2016 meant it was likely, alternatively there was a material risk, that Brambles would:

(ia) achieve neither its:

(A) August Sales Revenue Forecast, including the October Revenue Representation and, to the extent that they concerned Brambles' revenue, the November AGM Representations; nor its

(B) Medium-Term Targets, including the October Medium-Term Outlook Representation and, to the extent that they concerned the Medium-Term Targets, the November AGM Representations, of constant currency sales revenue growth in the high-single digits; further or alternatively

(i) ~~achieve in FY2017:~~

~~(A) no Underlying Profit growth; further or alternatively~~

(A) in FY2017 Underlying Profit growth materially less than its August Underlying Profit Forecast, October Underlying Profit Representation, and November AGM Representations; and

(B) neither its August ROCI Forecast nor its Medium-Term Targets, including the October Medium-Term Outlook Representation and, to the extent that they concerned the Medium-Term Targets, the November AGM Representations, of Underlying Profit growth exceeding sales revenue growth.

~~(e) by reason of the matters in sub-paragraphs (a) to (d) it was likely, alternatively there was a material risk, that Brambles would not achieve:~~

~~(i) its August ROCI Forecast;~~

~~(ii) its Medium Term Targets,~~

Particulars

The Applicants refer to and repeat the matters in:

(i) sub-paragraphs (a) to ~~(d)~~ above;

(ii) paragraph 35(b) above,

and the particulars to those paragraphs.

~~(together, separately or in any combination **November Information**).~~

E.3 November Continuous Disclosure Contraventions

54A. At and from 16 November 2016:

(a) **Revenue**

(i) Brambles' performance in its North American Operations since 1 July 2016 meant it was likely or there was at least a material risk that Brambles would not achieve year on year growth in sales revenue of between 7% and 9% in FY2017, or its medium term target of constant currency sales revenue growth in the high single digits; and

(ii) an integral reason for this was that revenue in Brambles' North American Pooled Pallets Business (US Pooled) would likely not meet budget in FY2017;

(b) **Profit**

(i) Brambles' performance in its North American Operations since 1 July 2016 meant it was likely or there was at least a material risk that Brambles would not achieve year on year underlying profit growth of between 9% and 11% in FY2017, its medium term target of underlying profit growth exceeding sales revenue growth, or its ROCI target of 20% by FY2019; and

- (ii) integral reasons for this were that: (A) revenue in Brambles' North American Pooled Pallets Business (US Pooled) would likely not meet budget in FY2017; and (B) direct costs were going up in US Pooled.

((a) or (b), or (a) and (b) together, being the **November Information**).

55. The November Information was information that:

- (a) Brambles had (within the meaning of section 674(2) of the *Corporations Act*) by no later than 16 November 2016;

Particulars

The Applicants refer to and repeat paragraphs 36(a) and 46(a), and the particulars to those paragraphs.

~~The November Information related to the actual performance of Brambles' business in 1H2017. Further, senior management Members of the Brambles board, at their meeting held on 15 and 16 October 2016, 'actively talk[ed] about a guidance downgrade', and had actual knowledge of the information in paragraph 54(d) (BXB.500.160.1107).~~

Further, Brambles' Officers identified in Schedule C ought reasonably to have had the information because:

- (i) Brambles had made announcements to the Market concerning its guidance;
- (ii) the November Information affected the continued reliability of those announcements; ~~and~~
- (iii) of the fact that by about 16 November 2016, Brambles management ~~would have had~~ received management accounts for July to ~~October~~ November 2016 (inclusive);
- (iv) Brambles' management systems meant that at the end of each month, officers of Brambles received:
 - (A) 'flash' results, which described, *inter alia*, the revenue and Underlying Profit earned by the North American Pooled Pallets Business, and US Recycled, whether those results were better or worse than budget, and commentary on the results;
 - (B) 'Month End Close' presentation and Pallets Performance Review Presentation, which set out data for US Pooled and US Recycled for the preceding month;
- (v) the November Information related to the actual performance of Brambles' business in 1H2017; and
- (vi) they received, created or sent the documents identified in Schedule C.

Schedule C annexed to this Amended Consolidated Statement of Claim sets out the Officers of Brambles who knew, or ought reasonably to have known, the November Information.

~~Further particulars may be provided following discovery.~~

- (b) was not generally available within the meaning of section 674(2)(c)(i) of the *Corporations Act*,
- (c) was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Brambles Shares within the meaning of section 674(2)(c)(ii) of the *Corporations Act*, and
- (d) in the premises in sub-paragraphs (a) to (c), by the operation of Listing Rule 3.1, was information that Brambles became obliged to tell the ASX by no later than 16 November 2016.

55A. From no later than 16 November 2016, Brambles was obliged to tell the ASX the November Information in addition to the August Information and the October Information (to the extent there was any difference between them).

56. Brambles:

- (a) did not tell the ASX the November Information any time prior to 23 January 2017 when it was partially disclosed, alternatively at any time prior to 20 February 2017 when it was partially disclosed;
- (b) in the premises in sub-paragraph (a), contravened Listing Rule 3.1; and
- (c) in the premises in sub-paragraphs (a) and (b), contravened section 674(2) of the *Corporations Act*,

(November Continuous Disclosure Contraventions).

E.3A Alternative November Continuous Disclosure Contraventions

56A. Alternatively to paragraph 56 above:

- (a) by no later than 16 November 2016, Brambles had (within the meaning of section 674(2) of the Corporations Act) the following information (together **Alternative November Information**):

- (i) US Pooled was behind budget on revenue and direct costs (due to a higher than budgeted damage rate, and higher repair and handling costs), and this had become worse since September 2016;

Particulars of (i)

The Applicants refer to paragraphs 54(b) to (bb) above, and the particulars to those paragraphs.

BXB.500.115.1023, attaching BXB.500.115.1024 (Email from Linderman to, *inter alia*, Rumph and Kennett attaching slides for the US Pooled monthly close meeting for October 2016 dated 11 November 2016).

BXB.501.075.1062 attaching BXB.501.075.1064 (Email from Linderman to, *inter alia*, Rumph attaching Pallets Performance Review presentation for October 2016, dated 14 November 2016).

BXB.500.068.2387 attaching BXB.500.068.2395 (Email from Rumph to, *inter alia*, Gorman, Todorcevski and Mackie, attaching an overview of the 1Q2017 results).

This was actually known by Gorman, Todorcevski, Mackie and Rumph.

- (ii) US Recycled was behind the FY2017 Budget on revenue;

Particulars of (ii)

The Applicants refer to paragraph 54(bc) above, and the particulars to that paragraph.

BXB.500.139.2714 attaching BXB.500.139.2715 (Email from Scott to Rumph, attaching slides for the US Pooled monthly close meeting for October 2016 dated 11 November 2016).

This was actually known by Rumph.

- (iii) Brambles' CFO believed that the Global Pallets Business had not been able to explain the 'root cause of Sep and Oct, which is the worrying piece for me';

Particulars of (iii)

BXB.500.160.1187 (Email from Mackie to Todorcevski, forwarded to Gorman, dated 14 November 2016).

This was actually known by Gorman and Todorcevski.

- (iv) Brambles' CEO believed that in order to meet its market guidance for FY2017, Brambles needed to develop opportunities to improve underlying profit by \$15-\$20 million compared with its present forecast;

Particulars of (iv)

BXB.500.077.7520 (Email from Gorman to Executive Leadership Team dated 14 November 2016), in which Gorman said 'we need to develop opportunities to improve Underlying Profit by \$15 - \$20 million compared with our present forecast'.

This was actually known by Gorman, Todorcevski, O'Sullivan and Mackie.

Further particulars of (i) to (iv)

Alternatively, Brambles' Officers identified in paragraphs 56A(i) to (iv) ought reasonably to have had the relevant Alternative November Information because those Officers received, created or sent the documents identified in those paragraphs.

- (b) the Alternative November Information was not generally available within the meaning of section 674(2)(c)(i) of the *Corporations Act*;
- (c) a reasonable person would expect the Alternative November Information, if it were generally available, to have a material effect on the price or value of Brambles Shares within the meaning of section 674(2)(c)(ii) of the *Corporations Act*; and
- (d) in the premises in sub-paragraphs (a) to (c), by the operation of Listing Rule 3.1, Brambles was obliged to tell the ASX the Alternative November Information by no later than 16 November 2016.

56AB. Brambles was obliged to tell the ASX the Alternative November Information by no later than 16 November 2016:

- (a) only if it did not have or was not obliged to disclose the November Information, October Information or the August Information; and

(b) in that case, in addition to the Alternative October Information (to the extent there was any difference between them).

56B. Brambles:

- (a) did not tell the ASX the Alternative November Information at any time prior to 23 January 2017, when it was partially disclosed, alternatively at any time prior to 20 February 2017 when it was partially disclosed;
- (b) in the premises in sub-paragraph (a), contravened ASX Listing Rule 3.1; and
- (c) in the premises in sub-paragraphs (a) and (b), contravened section 674(2) of the *Corporations Act*,

(Alternative November Continuous Disclosure Contraventions).

E.3B Ongoing continuous disclosure contraventions

56C. By failing to tell the ASX the November Information, or the Alternative November Information on or after 16 November 2016, Brambles contravened section 674(2) of the *Corporations Act* on each day between 16 November 2016, and 23 January 2017 when it was partially disclosed, alternatively any time prior to 20 February 2017 when it was partially disclosed.

E.4 November Representations – misleading or deceptive conduct

57. Further or in the alternative, by reason of the matters in paragraphs 54 and/or 55(a), further or in the alternative 56A and 56B above, Brambles:

- (a) did not by 16 November 2016, have reasonable grounds for making or maintaining (as the case may be) the:
 - (i) August Sales Revenue Forecast;
 - (ii) August Underlying Profit Forecast;
 - (iii) August Costs Representations;
 - (iiia) August Price Representation:

- (iv) August ROCI Forecast;
 - (iva) Medium-Term Targets;
 - (v) October Revenue Representation;
 - (vi) October Underlying Profit Representation;
 - (vii) October Costs Representation;
 - (viii) October Medium-Term Outlook Representation;
 - (ix) November AGM Representations;
- (b) by reason of the matters in sub-paragraph (a), did not have reasonable grounds for the November Representations within the meaning of:
- (i) section 769C of the *Corporations Act*;
 - (ii) section 12BB of the *ASIC Act*; further or alternatively
 - (iii) section 4 of the *ACL*;
- (c) in the premises, by:
- (i) making the November Representations;
 - (ii) not correcting the October Representations; further or alternatively
 - (iii) not correcting the August Representations,

engaged in conduct that was misleading or deceptive or was likely to mislead or deceive in contravention of:

- (A) section 1041H(1) of the *Corporations Act*;
- (B) section 12DA(1) of the *ASIC Act*; further or alternatively
- (C) section 18 of the *ACL*;

(together and severally, **November Misleading Conduct Contraventions**).

E.5 Market effects of November Contravening Conduct

58. In the period from 16 November 2016, to the end of the Relevant Period, the:

(a) November Continuous Disclosure Contraventions; ~~further or~~ alternatively

(aa) Alternative November Continuous Disclosure Contraventions; further or alternatively

(b) November Misleading Conduct Contraventions;

(together and severally **November Contravening Conduct**) caused the traded price for Brambles Shares to be materially higher during the Relevant Period than:

(i) ~~their true price value~~; or

(ii) the price that would have existed if the November Contravening Conduct had not occurred,

(November Inflation).

Particulars

The November Inflation is to be inferred from:

- (i) the characteristics of the Market for Brambles Shares set out in paragraph 64 below;
- (ii) the fact that the November Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of Brambles Shares; ~~and~~
- (iia) in the alternative to (ii), the fact that the Alternative November Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of Brambles Shares;
- (iii) the fact that each of the November Representations was a representation that a reasonable person would expect to have a material effect on the price or value of Brambles Shares;
- (iv) the movements in the traded price of Brambles Shares following the January Partial Disclosure and February Disclosure, as set out in paragraphs 60(e) and 62(e) below.

Further particulars may be provided following ~~discovery and~~ the receipt of expert reports.

F. CORRECTIVE DISCLOSURES

F.1 January 2017 partial disclosure

59. On 23 January 2017, Brambles stated to the Market that, or to the effect that, ~~it expected:~~

- (a) in 1H2017 it expected:
 - (i) sales revenue growth of approximately 5%;
 - (ii) Underlying Profit growth of approximately 3%;
- (b) in FY2017 it expected:
 - (i) sales revenue growth to be below the August Sales Revenue Forecast; and
 - (ii) Underlying Profit growth to be below the August Underlying Profit Forecast;
- (c) Brambles had delivered sales revenue growth in every operating segment and ~~u~~Underlying ~~p~~Profit growth in every operating segment other than the North American Operations;
- (d) in the North American Operations:
 - (i) Brambles had experienced some revenue and cost pressures, during the back end of the first half, which were partly due to US retailer destocking, which impacted volumes and resulted in increased transport and plant costs associated with higher-than-expected pallet returns (**Customer Destocking Issues**);
 - (ii) Brambles had also continued to see a deferral of potential customer conversions to pooling in North America (**Ongoing Customer Deferral Issue**), and pricing pressure across the North American Whitewood Pallets Business;
- (e) Brambles would provide updated full-year guidance as part of its half-year results announcement on 20 February 2017;

- (f) further, as to the Ongoing Customer Deferral Issue:
- (i) Brambles had a very good pipeline of new business and was in continuing discussions with potential customers;
 - (ii) Brambles did not believe it had lost any business to competitors, but the dynamics of the market were such at the moment that it was taking a little bit longer for its customers to come to a decision point;
 - (iii) a number of Brambles' FMCG (fast moving consumer goods) and CPG (consumer packaged goods) customers were now working with third party procurement agencies, and that was taking a bit more time to reach a decision;
 - (iv) Brambles was seeing that there was more analytical work being done by potential customers before coming to a decision whether to move to pooling or stay with whitewood;
 - (v) Whitewood prices were coming down and *'that [was] potentially one of the anecdotal reasons that some of the conversions'* from Whitewood Pallets were stepping back to see where the market was going;
- (g) ~~F~~urther, as to the Customer Destocking Issue:
- (i) ~~W~~hen Brambles saw destocking that meant that forward expectations for demand were declining;
 - (ii) ~~T~~he rate of destocking had occurred particularly quickly due to a very weak back end of the first half, and even more specifically in December, when Brambles saw significant destocking;
 - (iii) ~~I~~t was premature to draw any conclusion as to whether the destocking was going to continue through the second half of the year;
 - (iv) ~~O~~ne effect of destocking in the period was that Brambles incurred the repair cost of returned pallets, transportation costs and storage costs, but

any revenue associated with those pallets was deferred to future periods (though not all costs would be recovered);

- (h) Further, the Ongoing Customer Deferral Issue and the Customer Destocking Issue together gave rise to a position where Brambles' stock levels were higher than Brambles expected them to be, and this drove costs in the period (**Additional Costs Issue**),

(January Partial Disclosure).

Particulars

The January Partial Disclosure was express and contained in an announcement that Brambles published and released to the ASX on 23 January 2017 titled "*Brambles Limited: First-half 2017 Trading Update*" (page 1) (**First Trading Update**) and in the "*Interim 2017 Brambles Ltd Trading Update Conference Call*" (**23 January Call**).

60. The information the subject of the January Partial Disclosure:

- (a) related to the subject matter of the:
- (i) August Contravening Conduct;
 - (ii) October Contravening Conduct; and
 - (iii) November Contravening Conduct;

Particulars

The January Partial Disclosure concerned the:

- (i) revenue that Brambles anticipated it would earn;
- (ii) costs that Brambles anticipated it would incur;
- (iii) Underlying Profit that Brambles anticipated that it would earn;
- (iv) ROCI that Brambles anticipated it would earn; and
- (v) progress that Brambles could reasonably expect to make towards achieving its Medium-Term Targets,

in FY2017, and the ROCI that Brambles expected to generate in FY2019.

- (b) was information that a reasonable person would expect to have a material effect on the price or value of Brambles Shares;

- (c) operated to qualify, supplement or partly correct the information available to the Market relating to the subject matter of the August Contravening Conduct, the October Contravening Conduct and the November Contravening Conduct;

Particulars

The January Partial Disclosure qualified, supplemented or partially corrected the information available to the Market the subject of the August Contravening Conduct, October Contravening Conduct and November Contravening Conduct by forecasting Underlying Profit for FY2017 of less than the August Underlying Profit Forecast.

The correction was partial because, by 23 January 2017, Brambles knew or ought reasonably to have known that it was likely, alternatively there was a material risk, that Brambles would achieve:

- (i) no Underlying Profit growth in FY2017;
- (ii) a ROCI materially less than the August ROCI Forecast.

The Applicants refer to and repeat paragraph 54(d) and 54(e) above and the particulars to that paragraph.

Further particulars may be provided following ~~discovery~~ the receipt of expert reports.

- (d) to the extent that it supplemented, qualified or corrected the information available to the Market the subject of the August Contravening Conduct, October Contravening Conduct and/or November Contravening Conduct caused:
- (i) persons who held Brambles Shares to lower the price at which they were willing to dispose of Brambles Shares in the Market; and
 - (ii) persons who were considering acquiring Brambles Shares to lower the price at which they were willing to purchase Brambles Shares in the Market.

Particulars

The effect is to be inferred from the character of the Market as set out in paragraph 64 below and the change in the traded price of Brambles Shares following the January Partial Disclosure.

Further particulars will be provided following ~~discovery~~ and the receipt of experts' reports.

- (e) by reason of the matters in sub-paragraph (d):
- (i) caused the price at which Brambles Shares traded to decline from a closing price of \$12.28 on 20 January 2017, to a closing price of \$10.34 on 23 January 2017 (a decline of approximately 15.8%); and

- (ii) by the movement in sub-paragraph (i), partially corrected the August Inflation, October Inflation and November Inflation.

Particulars

The corrective effect is to be inferred from the character of the Market as set out in paragraph 64 below and the change in the traded price of Brambles Shares following the January Partial Disclosure.

Further particulars will be provided following ~~discovery and~~ the receipt of expert reports.

F.1A January Representations – misleading or deceptive conduct

60A On 23 January 2017, by reason of the matters pleaded in paragraph 59, Brambles represented to the Market that:

- (a) the Destocking Issue was a reason that Brambles would not achieve its FY2017 guidance ~~(FY17 Guidance Failure Reason Representation)~~;
- (b) notwithstanding that Brambles would not achieve its guidance for revenue and underlying profit growth in FY2017, and there was a risk that Brambles would not achieve its Medium-Term Targets for revenue and underlying profit growth:
- (i) the Customer Destocking Issue and the Ongoing Customer Deferral Issue ~~was~~ were not necessarily likely to affect Brambles' ability to substantially achieve the Medium-Term Targets (**Revised Medium-Term Outlook Representations**);
- (ii) the North American Pooled Pallets Business remained able to achieve sufficient growth to drive Brambles to substantially achieve the Medium-Term Targets (**Revised North American Pooled Pallets Performance Representation**),

(each being **23 January Representations**).

Particulars

The Revised Medium-Term Outlook Representations were made impliedly. The Applicants refer to the express statements pleaded in paragraph 59 and say that the absence of any express modification, qualification or contradiction to the October Medium-

~~Term Targets Outlook~~ Representation in the First Trading Update, together with the positive statements pleaded in paragraph 59(f)(i)-(iv) and (g)(iii)-(iv) and (h), which emphasised additional costs in the current financial period, gave rise to the Revised Medium-Term Outlook Representations.

The Revised North American Pooled Pallets Performance Representation was made impliedly. The Applicants refer to the express statements pleaded in paragraph 59 and say that the absence of any express modification, qualification or contradiction to the October Revenue Representation in the First Trading Update, together with the positive statements pleaded in paragraph 59(f)(i)-(iv) and (g)(iii)-(iv) and (h), which emphasised additional costs in the current financial period, gave rise to the Revised North American Pooled Pallets Performance Representation.

60B Further, on 23 January 2017, by reason of the matters pleaded in paragraphs 59 and 60A, Brambles represented to the market that:

(a) Brambles had reasonable grounds for making each of the Revised Medium-Term Outlook Representations and the Revised North American Pooled Pallets Performance Representation;

(b) Brambles was able, from the information available to it, to provide a reasonably reliable guide as to:

(i) the revenue that Brambles would derive in the medium-term, generally and from the North American Pooled Pallets Business;

(ii) the underlying profit that Brambles would derive in the medium-term, generally and from the North American Pooled Pallets Business,

(January Outlook Reliability Representation);

(c) there was no information known to Brambles which it had not disclosed on 23 January 2017 which created a material risk that the January Partial Disclosure was unreliable **(January No Material Risk Representation),**

(each being **January Implied Representations**).

60C Brambles did not wholly correct the:

(a) 23 January Representations; and

(b) January Implied Representations,
 (together, **January Representations**) which were accordingly continuing representations,
 to the extent that they remained unqualified and uncorrected until 20 February 2017.

60D The January Representations were:

- (a) conduct in trade or commerce;
- (b) in relation to:
 - (i) a financial product within the meaning of sections 763A(1)(a) and 764A(1)(a) of the *Corporations Act*, namely Brambles Shares;
 - (ii) a financial service within the meaning of:
 - (A) sections 766A(1)(a) and 766B(1) of the *Corporations Act*; and
 - (B) section 12BAB(1)(a) of the *ASIC Act*; and
- (c) in the case of the 23 January Representations, made in relation to future matters.

60E By reason of the matters in paragraphs 27 to 35, 45 and 54 above, Brambles:

- (a) did not, by 23 January 2017, have reasonable grounds for making the 23 January Representations;
- (b) by reason of the matters in sub-paragraph (a), did not have reasonable grounds for the 23 January Representations within the meaning of:
 - (i) section 769C of the *Corporations Act*;
 - (ii) section 12BB of the *ASIC Act*; further or alternatively
 - (iii) section 4 of the *ACL*; and
- (c) in the premises, by making the January Representations, engaged in conduct that was misleading or deceptive or was likely to mislead or deceive in contravention of:
 - (i) section 1041H of the *Corporations Act*;

- (ii) section 12DA(1) of the *ASIC Act*, further or alternatively
- (iii) section 18 of the *ACL*,

(together and severally, the **January Misleading Conduct Contraventions**).

F.2 February 2017 partial disclosure

61. On 20 February 2017, at the time of releasing its 1H2017 interim financial report, Brambles:

- (a) published and released to the ASX announcements titled:
 - (i) “Brambles reports results for the half-year ended 31 December 2016”;
 - (ii) “Copies of slides for webcast”,
 (together, the **Second Trading Update**);
- (b) stated to the Market that, in 1H2017 it had earned:
 - (i) sales revenue of approximately US\$2,744.7m, being a 5% increase in revenue compared with 1H2016 (**1H2017 Revenue Growth**);
 - (ii) Underlying Profit of approximately US\$468.9m, being a 3% increase in Underlying Profit compared with 1H2016;
- (c) stated that, or to the effect that, for FY2017 it anticipated:
 - (i) sales revenue growth in line with the 1H2017 Revenue Growth; and
 - (ii) no growth in Underlying Profit when compared with FY2016;
- (d) withdrew the August ROCI Forecast;
- (da) withdrew the Medium-Term Targets; and
- (e) stated that challenges in the Pallets North America business included “*higher transportation, handling and asset recovery costs*”,

(together the **February Disclosure**).

Particulars

The February Disclosure was express and contained in the Second Trading Update.

62. The information the subject of the February Disclosure:

- (a) related to the subject matter of the:
 - (i) August Contravening Conduct; and/or
 - (ii) October Contravening Conduct; and/or
 - (iii) November Contravening Conduct;

Particulars

The February Disclosure concerned the:

- ~~(i) growth in Underlying Profit that Brambles anticipated earning in FY2017;~~
- ~~(ii) the ROCI that Brambles expected to generate by FY2019.~~
- (i) revenue that Brambles anticipated it would earn;
- (ii) costs that Brambles anticipated it would incur;
- (iii) Underlying Profit that Brambles anticipated it would earn;
- (iv) ROCI that Brambles anticipated it would earn; and
- (v) progress that Brambles could reasonably expect to make towards achieving its Medium-Term Targets,
in FY2017, and the ROCI that Brambles expected to generate in FY2019.

- (b) was information that a reasonable person would expect to have a material effect on the price or value of Brambles Shares;
- (c) operated to further qualify, supplement or correct the information available to the Market concerning the subject matter of the August Contravening Conduct, October Contravening Conduct and/or November Contravening Conduct;

Particulars

The February Disclosure further qualified, supplemented or corrected the information available to the Market the subject of the August Contravening Conduct, October Contravening Conduct and November Contravening Conduct because it forecast that Brambles would:

- (i) experience no growth in Underlying Profit in FY2017; and
- (ii) enjoy a return on invested capital by FY2019 in an amount materially less than the August ROCI Forecast.

Further particulars may be provided following ~~discovery~~ the receipt of expert reports.

- (d) to the extent that it further supplemented, qualified or corrected the information available to the Market the subject of the August Contravening Conduct, October Contravening Conduct and/or November Contravening Conduct, caused:
- (i) persons who held Brambles Shares to lower the price at which they were willing to dispose of Brambles Shares in the Market; and
 - (ii) persons who were considering acquiring Brambles Shares to lower the price at which they were willing to purchase Brambles Shares in the Market;

Particulars

The effect is to be inferred from the character of the Market as set out in paragraph 64 below and the change in the traded price of Brambles Shares following the February Disclosure.

Further particulars will be provided following ~~discovery and~~ the receipt of expert reports.

- (e) by reason of the matters in sub-paragraph (d):
- (i) caused the price at which Brambles Shares traded to decline from a closing price of \$10.51 on 17 February 2017 to a closing price of:
 - A. \$9.47 on 20 February 2017; and
 - B. \$9.28 on 21 February 2017,

(a decline of approximately 11.8%);
 - (ii) by the movements in sub-paragraph (i), corrected the residual August Inflation, October Inflation and November Inflation.

G. CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS

63. The Applicants and Group Members:

- (a) entered into contracts for the acquisition of interests in Brambles Shares during the Relevant Period (**Period Shares**); and
- (b) on either of 23 January 2017 or 20 February 2017 still held the Period Shares acquired earlier in the Relevant Period.

Particulars

Particulars of the Applicants' acquisitions of Period Shares are set out in Annexure A.

Particulars of acquisitions of Period Shares by other Group Members will be provided after the trial of the common questions or otherwise as the Court may direct.

G.1 Market Conditions

64. The Applicants and Group Members acquired and thereafter retained their Period Shares in the Market, being a market of investors or potential investors in Brambles Shares:

- (a) operated by the ASX;
- (b) regulated by, inter alia, the ASX Listing Rules and sections 674(2) and 1041H of the *Corporations Act*;
- (c) where Brambles had the obligations set out in paragraphs 4 and 6 above;
- (d) in which the price at which Brambles Shares were trading rapidly adjusted to reflect all material information concerning those securities that was disclosed by Brambles in accordance with the ASX Listing Rules and sections 674(2) and 1041H of the *Corporations Act*; and
- (e) in which the following conduct had occurred:
 - (i) the August Continuous Disclosure Contraventions;
 - (ia) in the alternative to (i), the Alternative August Continuous Disclosure Contraventions;
 - (ii) the October Continuous Disclosure Contraventions;
 - (iia) in the alternative to (ii), the Alternative October Continuous Disclosure Contraventions;
 - (iii) the November Continuous Disclosure Contraventions;
 - (iiia) in the alternative to (iii), the Alternative November Continuous Disclosure Contraventions;

- (iv) the August Misleading Conduct Contraventions;
 - (v) the October Misleading Conduct Contraventions;
 - (vi) the November Misleading Conduct Contraventions; and
 - (vii) the January Misleading Conduct Contraventions,
- (together, **Contravening Conduct**)

(f) in which:

(i) by reason of the:

- A. August Continuous Disclosure Contraventions;
- B. October Continuous Disclosure Contraventions; ~~and~~
- C. November Continuous Disclosure Contraventions;
- D. in the alternative to A, Alternative August Continuous Disclosure Contraventions;
- E. in the alternative to B, Alternative October Continuous Disclosure Contraventions; and
- F. in the alternative to C, Alternative November Continuous Disclosure Contraventions.

information that a reasonable person would expect to have a material effect on the price or value of Brambles Shares had not been disclosed; and

(ii) by reason of the:

- A. August Misleading Conduct Contraventions;
- B. October Misleading Conduct Contraventions;
- C. November Misleading Conduct Contraventions; and
- D. January Misleading Conduct Contraventions,

there had been released information that was misleading or deceptive or likely to mislead or deceive that a reasonable person would expect to have an effect on the price or value of Brambles Shares.

G.2 Market-based causation

65. The Applicants and Group Members:

- (a) paid an inflated purchase price for their Period Shares;

Particulars

Particulars of the quantum of the:

- (i) August Inflation from 18 August 2016;
- (ii) October Inflation from 20 October 2016;
- (iii) November Inflation from 16 November 2016;
- (iv) corrective effects of the January Partial Disclosure and the February Disclosure,

will be provided following the receipt of expert reports.

- (b) by still holding, on either of 23 January 2017 or 20 February 2017, Period Shares acquired earlier in the Relevant Period, suffered loss and damage as the January Partial Disclosure and/or the February Disclosure (as the case may be) caused the removal of inflation from the ASX trading price of the Period Shares.

Particulars

The Applicants refer to and repeat the particulars as to correction of the August Inflation, October Inflation and November Inflation by the January Partial Disclosure and February Disclosure set out in paragraphs 60(e) and 62(e) above. Further particulars as to the quantum of inflation in the traded price from time to time will be provided following the receipt of expert reports.

The loss suffered by the Applicants and Group Members is the greater of:

- (i) the difference between the price at which they acquired their interest in the Period Shares and the price at which the ~~their~~ Period Shares would have traded at that time had the Contravening Conduct not occurred (**Price Inflation**). Particulars of the Price Inflation in relation to the Period Shares will be provided following the filing of expert evidence; or
- (ii) alternatively, Price Inflation loss less any August Inflation, October Inflation and/or November Inflation recovered upon a sale of any Period Shares during the Relevant Period; or

- (iii) alternatively, for the days during the Relevant Period and thereafter where the traded price of Brambles 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 any Group Members who, but for the Contravening Conduct, would have retained or acquired an alternative investment, the difference, at the date of hearing, between their actual position as a result of having acquired Period Shares and the position in which they would have been had they made or retained the alternative investment.

Particulars of the Applicants' losses will be provided prior to trial, by provision of an updated Annexure A.

Particulars of the individual losses of Group Members will be provided following the trial of common questions or as the Court may direct.

66. Further or alternatively, the Applicants and some or all of the Group Members acquired an interest in the Period Shares as a result of holding and acting upon the assumption (being also an assumption generally made by all participants in the Market for Brambles Shares) that:

- (a) the price at which they acquired the Period Shares represented the market price in a market that had been informed of all material information relating to Brambles; and
- (b) all such material information had been incorporated into and was reflected in the price of the Period Shares as at the time of acquisition,

(Price Integrity Assumption).

Particulars

Investors and potential investors in shares on the ASX, including Brambles Shares, are generally aware that there is a 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.

Particulars of the Applicants holding and relying upon the Price Integrity Assumption will be provided before trial. Particulars for each of the Group Members who also held and relied upon the Price Integrity Assumption will be provided following resolution of the common questions.

G.3 Individual Reliance

67. Further or alternatively to the preceding paragraph, some Group Members acquired and thereafter retained their Period Shares in reliance upon one or more of the:

- (a) August Representations;
- (b) October Representations;
- (c) November Representations; and
- (d) January Representations.

Particulars

Particulars of reliance for individual Group Members will be provided following the trial of common questions.

H. ENTITLEMENT TO RELIEF

68. By reason of the matters in paragraphs 59 to 67 above, Brambles is obliged, pursuant to section 1317HA of the *Corporations Act*, to compensate the Applicants and Group Members for the damage that resulted from Brambles' contraventions of section 674(2).

69. Further or in the alternative, by reason of the matters set out in paragraphs 59 to 67 above, the Applicants and each of the Group Members may recover from Brambles the amount of the loss and damage suffered by them pursuant to:

- (a) section 1041I of the *Corporations Act*;
- (b) section 12GF of the *ASIC Act*; and/or
- (c) section 236 of the *ACL*.

AND THE APPLICANTS CLAIM, for themselves and on behalf of the Group Members, the relief set out in the Originating Application.

Date: 25 June 2021



Signed by Ben Hardwick
Lawyer for the First Applicant



Signed by ~~Brooke Dellavedova~~ Steven Foale
Lawyer for the Second Applicants

This amended pleading was prepared by:

BF QUINN

WAD EDWARDS

TJD CHALKE

CJ TRAN

**ANNEXURE A – PARTICULARS OF THE APPLICANTS’ SHAREHOLDINGS
IN BRAMBLES SHARES DURING THE RELEVANT PERIOD**

Ms Southernwood acquired an interest in Brambles Shares as outlined in the following table:

Date of Purchase	Number of Brambles Shares	Average price per share (\$)	Amount paid (not incl. brokerage) (\$)	Brokerage (\$)	Amount paid (incl. brokerage) (\$)
23 August 2016	390	12.94	5011.50	35.08	5046.58
6 September 2016	413	12.19	5001.43	35.01	5036.44
2 November 2016	440	11.43	4994.00	35.00	5029.00
23 January 2017	470	10.72	5005.50	35.04	5040.54
23 January 2017	483	10.43	5003.88	35.03	5038.91

Ms Southernwood disposed of her interest in Brambles Shares acquired during the Relevant Period as outlined in the following table:

Date of Sale	Number of Brambles Shares	Average price per share (\$)	Trade value (not incl. brokerage) (\$)	Brokerage (\$)	Net proceeds (incl. brokerage) (\$)
3 January 2017	440	12.45	5517.60	38.62	5478.98

William Vincent Kidd and Mary Agness Collum ATF the Magness-Bennett Superannuation acquired 1,219 Brambles Shares on 23 December 2016 at a price of \$12.30 per share, for a total sum of \$15,010.02.

ANNEXURE B – DEFINED TERMS

1H2017 Earnings Call is defined in paragraph 12

1H2017 Presentation is defined in paragraph 28

1H2017 Revenue Growth is defined in paragraph 61

1Q17 Trading Update is defined in paragraph 40

5YP is defined in paragraph 29D

23 January Call is defined in the particulars to paragraph 59

23 January Representations is defined in paragraph 60A(b)

ACL is defined in paragraph 4

Additional Costs Issue is defined in paragraph 59(h)

AGM Address is defined in paragraph 50

AGM Announcement is defined in paragraph 50

Alternative August Continuous Disclosure Contraventions is defined in paragraph 37B

Alternative August Information is defined in paragraph 37A

Alternative November Continuous Disclosure Contraventions is defined in paragraph 56B

Alternative November Information is defined in paragraph 56A

Alternative October Information is defined in paragraph 47A

Alternative October Continuous Disclosure Contraventions is defined in paragraph 47B

ASIC Act is defined in paragraph 4

ASX is defined in paragraph 2

ASX Listing Rules is defined in paragraph 4

August Continuous Disclosure Contraventions is defined in paragraph 37

August Contravening Conduct is defined in paragraph 39

August Costs Representations is defined in paragraph 23

August Implied Representations is defined in paragraph 24

August Inflation is defined in paragraph 39

August Information is defined in paragraph 35A6

August Misleading Conduct Contraventions is defined in paragraph 38

August Price Representation is defined in paragraph 23

August Representations is defined in paragraph 25

August ROCI Forecast is defined in paragraph 23

August Sales Revenue Forecast is defined in paragraph 23

August Underlying Profit Forecast is defined in paragraph 23

Bachtell is defined in paragraph 28C

Brambles is defined in paragraph 1

Brambles Shares is defined in paragraph 1

Chipchase is defined in paragraph 16

Contravening Conduct is defined in paragraph 64

Corporations Act is defined in paragraph 1

Customer Destocking Issue is defined in paragraph 59(d)(i)

Damage rate is defined in paragraph 28D

December 2013 Investor Presentation is defined in paragraph 23

Durability Program is defined in paragraph 23

ELT Guidance Note is defined paragraph 29A

February Disclosure is defined in paragraph 61

First Trading Update is defined in paragraph 59

~~**FY17 Guidance Failure Reason Representation**~~ is defined in paragraph 60A(a)

FY2016 Earnings Call is defined in paragraph 11

FY2016 Financial Results is defined in paragraph 23

FY2016 Investor Presentation is defined in paragraph 9

FY2016 Results Announcement is defined in paragraph 23

FY2016 Revenue is defined in paragraph 23

FY2016 Revenue Growth is defined in paragraph 23

~~**FY2016 Strong Foundations Representation**~~ is defined in paragraph 23

FY2016 Underlying Profit is defined in paragraph 23

FY2016 Underlying Profit Growth is defined in paragraph 23

FY2017 Budget is defined in paragraph 29M

FY2017 Budget Presentation is defined in paragraph 29J

FY2017 Earnings Call is defined in paragraph 27

FY2017 Investor Presentation is defined in paragraph 28

~~**FY2017 Service Costs Increase** is defined in paragraph 30~~

Global Pallets Business is defined in paragraph 8

Gorman is defined in paragraph 15

Group Members is defined in paragraph 1

Headlines in FY17B Memo is defined in paragraph 29I

Initial Budget Submission is defined in paragraph 29C

January 2017 Earnings Call is defined in paragraph 33

January Implied Representations is defined in paragraph 60B

January Misleading Conduct Contraventions is defined in paragraph 60E

January No Material Risk Representation is defined in paragraph 60B(c)

January Outlook Reliability Representation is defined in paragraph 60B(b)

January Partial Disclosure is defined in paragraph 59

January Representations is defined in paragraph 60C

Johns is defined in paragraph 19

July Results is defined in paragraph 29O

July Results Email is defined in paragraph 29Q

Kennett is defined in paragraph 19B

Lallatin is defined in paragraph 20A

Mackie is defined in paragraph 19A

Market is defined in paragraph 5

Medium-Term Targets is defined in paragraph 23(j)

~~**Nador** is defined in paragraph 21~~

Non Cooperating Distributors is defined in paragraph 11

North American Pooled Pallets Business is defined in paragraph 9

North American Operations is defined in paragraph 9

North American Whitewood Pallets Business is defined in paragraph 9

November AGM Representations is defined in paragraph 50

November Continuous Disclosure Contraventions is defined in paragraph 56

November Contravening Conduct is defined in paragraph 58

November Implied Representations is defined in paragraph 51

November Inflation is defined in paragraph 58

November Information is defined in paragraph 54A

November Misleading Conduct Contraventions is defined in paragraph 57

November Representations is defined in paragraph 52

NPDs is defined in paragraph 10

NPD Channels is defined in paragraph 10

NPD Pallets is defined in paragraph 23

October Continuous Disclosure Contraventions is defined in paragraph 47

October Contravening Conduct is defined in paragraph 49

October Costs Representation is defined in paragraph 41

October Implied Representations is defined in paragraph 42

October Inflation is defined in paragraph 49

October Information is defined in paragraph 45A

October Medium-Term Outlook Representation is defined in paragraph 40(g)

October Misleading Conduct Contraventions is defined in paragraph 48

October Representations is defined in paragraph 43

October Revenue Representation is defined in paragraph 40

October Underlying Profit Representation is defined in paragraph 40

Officers is defined in paragraph 22

Ongoing Customer Deferral Issue is defined in paragraph 59(d)(ii)

O'Sullivan is defined in paragraph 18

P Day Revenue is defined in paragraph 29Q

Participating Distributor Channels is defined in paragraph 10

PECO is defined in paragraph 28C

Period Shares is defined in paragraph 63

Pooled Pallets is defined in paragraph 8

Pooled Pallets Business is defined in paragraph 8

Price Inflation is defined in paragraph 65

Price Integrity Assumption is defined in paragraph 66

Relevant Period is defined in paragraph 1

Revised Budget Submission is defined in paragraph 29F

Revised Medium-Term Outlook Representations is defined in paragraph 60A(b)(i)

Revised North American Pooled Pallets Performance Representation is defined in paragraph 60A(b)(ii)

ROCI is defined in paragraph 23

RPI is defined in paragraph 12

Ruiz is defined in paragraph 29G

Rumph is defined in paragraph 20

Scott is defined in paragraph 29I(c)

Second Revised Budget Submission is defined in paragraph 29H

Second Trading Update is defined in paragraph 61

Semi Cooperating Distributors is defined in paragraph 11

Todorcevski is defined in paragraph 17

Underlying Profit is defined in paragraph 23

US Pooled is defined in paragraph 9

US Recycled is defined in paragraph 9

Whitewood Pallets is defined in paragraph 8

Schedule A

Volume of new pooled pallet issues

Transfer Volume by Channel (million)¹								
	Participating Distributor	<i>Change from PCP</i>	NPD	<i>Change</i>	TOTAL	<i>Change</i>	MIX	
1H13	113.5	4.90%	6.8	1.49%	120.3	4.70%	94.35%	5.65%
2H13	117.6	6.14%	6.8	3.03%	124.4	5.96%	94.53%	5.47%
FY13	231.1	5.57%	13.7	3.01%	244.8	5.43%	94.40%	5.60%
1H14	120.2	5.90%	6.6	-3.70%	126.8	5.40%	94.80%	5.20%
2H14	119.4	1.50%	6.9	1.10%	126.3	1.50%	94.50%	5.50%
FY14	239.6	3.70%	13.5	-1.30%	253.1	3.40%	94.70%	5.30%
1H15	123.9	3.10%	7.1	7.20%	130.9	3.30%	94.60%	5.40%
2H15	122.5	2.60%	7.8	12.70%	130.3	3.10%	94.00%	6.00%
FY15	246.4	2.80%	14.8	10.00%	261.2	3.20%	94.30%	5.70%
1H16	125.3	1.10%	9.6	36%	134.9	3.00%	92.90%	7.10%
2H16	125.5	2.50%	13.8	77.80%	139.4	7%	90.10%	9.90%
FY16	250.8	1.80%	23.4	57.90%	274.3	5.00%	91.50%	8.50%
1H17	128.3	2.40%	11.4	19.10%	139.7	3.60%	91.80%	8.20%

¹ BXB.602.011.7364 at .7387 and BXB.500.124.5781.

Schedule B**Average fees charged for issue and transfer of Pooled Pallets in FY2016**

FY2016 Rates ²													
	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	FY2016 Rate
Issue Fee	\$3.723	\$3.739	\$3.750	\$3.756	\$3.784	\$3.779	\$3.839	\$3.858	\$3.854	\$3.900	\$4.230	\$3.837	\$3.838
Transfer Fee	\$0.635	\$0.641	\$0.678	\$0.644	\$0.663	\$0.673	\$0.663	\$0.636	\$0.617	\$0.638	\$0.618	\$0.619	\$0.643
Rental Rate	\$0.0314	\$0.0311	\$0.0310	\$0.0308	\$0.0320	\$0.0309	\$0.0305	\$0.0303	\$0.0310	\$0.0304	\$0.0315	\$0.0319	\$0.0311
NPD Upcharge	\$3.026	\$2.967	\$3.034	\$2.709	\$2.523	\$2.478	\$2.666	\$2.353	\$2.212	\$2.022	\$3.043	\$2.829	\$2.613

² BXB.501.075.0816.

Schedule C**Particulars of constructive knowledge**

No.	Paragraph	Date	Officer	Means	Doc ID
August Information					
<u>1.</u>	28A	12 Sep 16	Rumph	Email from Chiriacescu to Rumph.	BXB.500.139.3715 attaching BXB.500.139.3716
<u>2.</u>	28B Particular (ii)	19 May 16	Todorcevski, Mackie, Rumph, Lallatin	Email from Lallatin to Todorcevski, forwarded to Mackie and Rumph.	BXB.500.142.3733
<u>3.</u>	28B Particular (iii)	26 Jan 16	Rumph, Lallatin	Brambles 5YP US Pooled Presentation	BXB.500.141.5127 attaching BXB.500.141.5132
<u>4.</u>	28B Particular (iv) and (v)	1. 5 Feb 16 2. 4 Aug 16 3. 30 Jan 17	1. Mackie, Kennett 2. Gorman, Todorcevski, Mackie, Kennett, Rumph, and Lallatin. 3. Gorman, O'Sullivan, Mackie, Kennett, Rumph	1. Email from Kennett to Mackie 2. Presentation was circulated by email Lallatin to named officers. 3. Email from Rumph to named officers.	1. BXB.501.015.2650, attaching BXB.501.015.2651 2. BXB.500.074.1308 attaching BXB.500.074.1310 3. BXB.500.143.3980, attaching BXB.500.143.3981
<u>5.</u>	28C Particular (i)	20 Feb 17	Rumph	<i>Draft version</i> Email from Young to named officers.	BXB.500.008.5566 attaching BXB.500.008.5567 (also sent to Rumph for review at BXB.500.126.0871)

No.	Paragraph	Date	Officer	Means	Doc ID
<u>6.</u>	28C Particular (ii)	26 Jan 16	Rumph, Lallatin	Email from Linderman to named officers.	BXB.500.141.5127 attaching BXB.500.141.5132
<u>7.</u>	28C Particular (iii)	1. 23 Mar 16 2. 31 Mar 16 3. 11 May 16 4. 30 Jan 17	1. Rumph, Lallatin 2. Board of Directors 3. Mackie, Kennett 4. Gorman, O'Sullivan, Mackie, Kennett, Rumph	1 Email from Lindeman to named officers. 2. Brambles March 2016 Board Report. 3. Email from Limpanatevin to named officers, attaching PPR presentation. 4. Email from Rumph to named officers.	1. BXB.500.140.5840 attaching BXB.500.140.5841 2 BXB.002.004.0287 at .0303 3. BXB.500.017.6801, attaching BXB.500.017.6802. 4. BXB.500.143.3980, attaching BXB.500.143.3981
<u>8.</u>	28C Particular (iv) <i>Niagara</i>	1. 31 Dec 15 2. 9 Feb 16 3. 1 Apr 16	1. Board of directors 2. Todorcevski 3. Board of directors	1. December 2015 Board Report. 2. Email thread between Bachtell, Martin and Todorcevski 3. April 2016 Board Report	1. BXB.002.004.0183 2. BXB.500.164.2142 3. BXB.002.004.0326
<u>9.</u>	28C Particular (iv) <i>Dannon</i>	25 Apr 16	Todorcevski	Email thread between Todorcevski and Daniel Martin.	BXB.500.159.5114
<u>10.</u>	28C Particular (v)	1. 26 Jan 16 2. 23 Mar 16 3. 15 Apr 16 4. 12 Nov 15	1. Lallatin 2. Rumph, Lallatin 3. Rumph, Lallatin 4. Todorcevski, Kennett	1. Email thread between Lallatin and Justin Bachtell. 2. Email from Linderman to named officers. 3. Email thread between Rumph, Lallatin and Linderman.	1. BXB.501.030.8044 2. BXB.500.140.5840 attaching BXB.500.140.5917 3. BXB.500.140.5704

No.	Paragraph	Date	Officer	Means	Doc ID
				4. Email thread sent to Todorcevski, Kennett and others.	4. BXB.500.117.1419, attaching BXB.500.117.1422
<u>11.</u>	28C Particular (vi)	24 Mar 16	1. Mackie, Kennett 2. Rumph, Lallatin	1. Email from Limpanatevin to named officers attaching US Pooled FY17 Budget presentation 2. Email from Linderman to Rumph and Lallatin attaching US Pooled FY17 Budget presentation	1. BXB.500.019.8879 attaching BXB. 500.019.8880 2. BXB.500.140.5840 attaching BXB.500.140.5841
<u>12.</u>	28C Particular (vii)	26 Jan 16	Lallatin	Email from Bachtell to Lallatin regarding FY17 Plan.	BXB.501.030.8044
<u>13.</u>	28D Particular (i)	FY15: 14 Jul 16	FY15: Rumph, Lallatin	FY15: Email from Linderman to, <i>inter alia</i> , Rumph and Lallatin attaching June FY16 Pallets Performance Review Presentation.	FY15: BXB.500.115.1466, attaching BXB.500.115.1467 (June FY16 PPR slide 41)
		FY16: 21 Jun 16	FY16: Todorcevski	FY16: Email from Scaiff to, <i>inter alia</i> , Todorcevski dated attaching final budget paper.	FY16: BXB.500.159.7032, attaching BXB.500.159.7033 (final FY17 budget board paper)
<u>14.</u>	28D Particular (ii)	FY13, FY14 and FY15: 14 Jul 16	FY13, FY14 and FY15: Rumph, Lallatin	FY13, FY14 and FY15: Email from Linderman to, <i>inter alia</i> , Rumph, Lallatin, attaching presentation.	FY13, FY14 and FY15: BXB.500.115.1466, attaching

No.	Paragraph	Date	Officer	Means	Doc ID
					BXB.500.115.1467 (June FY16 PPR slide 41)
		FY16: 21 Jun 16	FY16: Todorcevski	FY16: Email from Scaiff to, <i>inter alia</i> , Todorcevski attaching final budget paper.	FY16: BXB.500.159.7032, attaching BXB.500.159.7033 (final FY17 budget board paper).
<u>15.</u>	28D Particular (iii)	18-Apr-17	Hill	Email from Baltasar to Hill, attaching memo	BXB.501.051.8177, attaching BXB.501.051.8178
<u>16.</u>	28D Particular (iv)(A)	20 Apr 16	Board of directors	Board paper	BXB.500.140.1358
<u>17.</u>	28D Particular (iv)(B)	27 Feb 25 Aug 16	Rumph, Lallatin.	FY17 Budget, S&OP Supply Plan for Fiscal 2017 Email from Young to named officers, attaching PPR presentation.	BXB.500.140.6071 attaching BXB.500.140.6100 BXB.500.020.7416, attaching BXB.500.020.7417
<u>18.</u>	28D Particular (iv)(C)	20 Apr 16	Board of directors	Board paper	BXB.500.140.1358
<u>19.</u>	29	6 Sep 16	Rumph, Lallatin-	North American BSR Presentation	BXB.500.019.6005 attaching BXB.500.019.6006
C.2.2 Brambles' process of budgeting and giving guidance for FY2017					

No.	Paragraph	Date	Officer	Means	Doc ID
<u>20.</u>	29A and 29B	18 Jan 16	Gorman, Mackie, Todorcevski.	Email from Gorman to named officers.	BXB.500.076.5011, attaching BXB.500.076.5012
<u>21.</u>	29C	24 Mar 16	Mackie, Kennett.	Email from Limpanatevin to, <i>inter alia</i> , named officers.	BXB.500.019.8879, attaching BXB.500.019.8880
<u>22.</u>	29D	26 Jan 16	1. Rumph, Lallatin 2. Lallatin	1. Email from Linderman to named officers. 2. Email from Bachtell to Lallatin.	1. BXB.500.141.5127, attaching BXB.500.141.5132 2. BXB.501.030.8044
<u>23.</u>	29E	1. 24 Mar 16 2. 31 Mar 16	1. Mackie, Kennett. 2. Mackie, Kennett, Rumph, Lallatin	1. Email from Limpanatevin. 2. Email from Lallatin to named officers, attaching presentation.	1. BXB.500.019.8879 attaching BXB.500.019.8880 2. BXB.500.020.0350, attaching BXB.500.020.0354.
<u>24.</u>	29F	4 Apr 16	Kennett, Rumph, Lallatin	Email from Linderman	BXB.500.140.5774
<u>25.</u>	29G(a)	15 Apr 16	Rumph, Lallatin.	Email from Lallatin to Rumph outlining main risks.	BXB.500.140.5701
<u>26.</u>	29G(b)	12 Apr 16	Mackie, Kennett, Rumph, Lallatin.	Email from Mackie to Kennett and Rumph, forwarded to Lallatin	BXB.500.015.8110 attaching BXB.500.015.8112
<u>27.</u>	29G(c)	13 and 14 Apr 16	Mackie, Rumph, Lallatin.	Email from Lallatin to Rumph, email from Rumph to Mackie	BXB.500.016.0740, BXB.500.075.2804

No.	Paragraph	Date	Officer	Means	Doc ID
<u>28.</u>	29H	12 Apr 16	Mackie, Kennett, Rumph, Lallatin.	Email from Rumph to named officers.	BXB.500.075.2804
<u>29.</u>	29I(a)	14 Apr 16	Mackie, Kennett.	Email from Ruiz to Mackie and Kennett.	BXB.500.080.4148
<u>30.</u>	29I(b)	16 Apr 16	Mackie, Kennett, Rumph, and Lallatin.	Email from Rumph to, <i>inter alia</i> , named officers, attaching Headlines in FY17B Memo.	BXB.500.020.0305, attaching BXB.500.020.0306
<u>31.</u>	29I(c)	18 Apr 16	Kennett, Rumph, Scott .	PowerPoint slide sent by Scott via email to Rumph	BXB.500.140.5656 attaching BXB.500.140.5659
<u>32.</u>	29J and 29K	22 Apr 16	Gorman, Todorcevski, Mackie, Kennett.	1. Presented to Gorman and Todorcevski in person (email from Kennett to Mackie on 14 May 2016). 2. Kennett emailed a shorter pre-read presentation to Gorman, Todorcevski and Mackie on 19 April 2016.	1. BXB.501.017.5065, attaching BXB.501.017.5066 (final presentation); 2. BXB.500.019.7731, attaching BXB.500.019.7732 (pre-read presentation)
<u>33.</u>	29L(a)	11 May 16	Todorcevski, Mackie.	Emails between Todorcevski and Mackie.	BXB.500.161.2895
<u>34.</u>	29L(b)	1. 10 May 16 2. 11 May 16	1. Todorcevski, Mackie, Kennett 2. Todorcevski, Mackie	1. Emails between Todorcevski, Mackie and Kennett 2. Emails between Todorcevski and Mackie.	1. BXB.501.017.4380 2. BXB.500.161.2895
<u>35.</u>	29L(c)(i)	19 May 16	Todorcevski, Mackie	Emails between Todorcevski and Mackie.	BXB.500.080.2120
<u>36.</u>	29L(c)(ii)	19 May 16	Mackie, Rumph, Lallatin	Email from Mackie to Rumph and Lallatin.	BXB.501.023.5989

No.	Paragraph	Date	Officer	Means	Doc ID
<u>37.</u>	29L(c)(iii)	19 May 16	Rumph, Lallatin	Emails between Rumph, Lallatin.	BXB.500.142.3731
<u>38.</u>	29L(d)	20 May 2016	Kennett, Lallatin	Emails between Lallatin and Kennett.	BXB.501.029.6353
<u>39.</u>	29N(a) – (c)	28 Jun 16	Todorcevski, Mackie, Kennett, Rumph	See Annexure 1	See Annexure 1
<u>40.</u>	29N(d)	2 Feb 17	O'Sullivan	Email from Rumph	BXB.500.069.8114 attaching BXB.500.069.8115.
<u>41.</u>	29N(e)	10 Aug 16	Lallatin	Email from Bachtell	BXB.501.021.3464
<u>42.</u>	29N(f) Particular (i)	1. 24 Mar 16 2. 21 Jun 16	1. Mackie, Kennett. 2. Brambles Board of Directors, Gorman, Todorcevski.	1. Email from Limpanatevin to Mackie, Kennett, Ruiz and others attaching US Pooled FY17 Budget presentation 2. Email from Scaiff to, <i>inter alia</i> , Todorcevski attaching final budget paper.	1. BXB.500.019.8879, attaching BXB.500.019.8880 slides 4 and 6 2. BXB.500.159.7032, attaching BXB.500.159.7033 (at _039)
<u>43.</u>	29N(f) Particular (ii)	24 Mar 16	Mackie, Kennett.	Email from Limpanatevin to, <i>inter alia</i> , Mackie and Kennett attaching US Pooled FY17 Budget presentation.	BXB.500.019.8879, attaching BXB.500.019.8880 slides 4 and 6
<u>44.</u>	29N(f) Particular (iii)	27 Feb 16	Rumph, Lallatin	Email from Linderman to, <i>inter alia</i> , Rumph and Lallatin, attaching sales and operations supply plan presentation for FY2017.	BXB.500.140.6071, attaching BXB.500.140.6100
<u>45.</u>	29N(f)	12 Apr 16	Rumph; Lallatin	Email from Lallatin to Rumph.	BXB.500.016.0740, .0741.

No.	Paragraph	Date	Officer	Means	Doc ID
C.2.3 The trading performance of the North American Pallets Business in July 2016					
<u>46.</u>	29O and 29P(a)	12 Aug 16	1. Gorman, Todorcevski 2. Kennett, Rumph, Lallatin. 3. Kennett. 4. Rumph, Lallatin 5. Mackie	1. Email from Barbosa to, <i>inter alia</i> , Gorman and Todorcevski. 2. Email from Linderman to named officers and others. 3. Emails between Kennett and others. 4. 'Just Post Close Actuals' presentation emailed by Thad Linderman to named officers. 5. Email from Kennett.	1. BXB.500.068.8985, attaching BXB.500.068.8984 2. BXB.500.115.1010, attaching BXB.500.115.1012 (CHEP NA Flash) 3. BXB.501.014.4591, attaching BXB.501.014.4594 4. BXB.500.115.0921, attaching BXB.500.115.0922, .0923. 5. BXB.500.017.6163 attaching BXB.500.017.6166
<u>47.</u>	29P(b)	16 Aug 16	Scott , Lallatin	Email from C Young attaching 'Month end close' presentation	BXB.500.020.8298 attaching BXB.500.020.8299
<u>48.</u>	29Q	14 Aug 16	1. Kennett, Rumph, Lallatin 2. Gorman, Todorcevski, Kennett	1. Email from Lallatin to Kennett, and Rumph, which was forwarded by Rumph to Mackie 2. Email from Kennett to Gorman and Todorcevski	1. BXB.500.074.2311, attaching BXB.500.074.2314 2. BXB.500.017.5442, attaching BXB.500.017.5444
<u>49.</u>	29R	15 Aug 16	Gorman, Todorcevski, Kennett.	Email from Kennett	BXB.500.160.6968

No.	Paragraph	Date	Officer	Means	Doc ID
<u>50.</u>	29S	15 Sep 16	Mackie, Kennett	Email from Limpanatevin attaching Aug 16 PPR	BXB.500.6439, attaching BXB.500.017.6512
<u>51.</u>	29T	12 Aug 16	Rumph, Lallatin, Nader, Scott	Email from Linderman attaching July month end close presentation	BXB.500.115.0921 attaching BXB.500.115.0922
C.2.3 Position at 18 August 2016					
<u>52.</u>	29U	14 Aug 16	Gorman, Todorcevski, Kennett	Email from Kennett to Gorman and Todorcevski	BXB.500.017.5442, attaching BXB.500.017.5444
<u>53.</u>	29V	14 Aug 16	Gorman	The means identified in paras 29B, 29K, 29P(a), 29Q above.	The documents referred to in 29B, 29K, 29P(a), 29Q above
		14 Aug 16	Todorcevski	The means identified in 29B, 29K, 29L(a) – (c)(i), 29N(a) – (c) and (e), 29P(a), 29Q, 29R above.	The documents referred to in 29B, 29K, 29L(a) – (c)(i), 29N(a) – (c) and (e), 29P(a), 29Q, 29R above
		14 Aug 16	Mackie	The means identified in 29B, 29E, 29G(b) – (c), 29I(a) and (b), 29K, 29L(a) – (c)(ii), 29N(a) – (c), 29Q above.	The documents referred to in 29B, 29E, 29G(b) – (c), 29I(a) and (b), 29K, 29L(a) – (c)(ii), 29N(a) – (c), 29Q above.

No.	Paragraph	Date	Officer	Means	Doc ID
		12 Aug 16	Rumph	The means identified in 29E, 29G(b) and (c), 29I(b), 29L(c), 29P(a), 29Q, and 29T above.	The documents referred to in 29E, 29G(b) and (c), 29I(b), 29L(c), 29P(a), 29Q, 29T above.
		14 Aug 16	Lallatin	The means identified in 29D, 29F, 29G(a), 29I(b), 29P(a) and 29Q above.	The documents referred to in 29D, 29F, 29G(a), 29I(b), 29P(a) and 29Q above.
<u>54.</u>	29W	14 Jul 16	Lallatin	The means identified in 29C and 29T above.	The documents referred to in 29C and 29T above.
<u>55.</u>	29X	21 Jun 16	Todorcevski, Lallatin	The means identified in 28D, 29N(b), 29Q(d) and (e), and 29R above.	The documents referred to in 28D, 29N(b), 29Q(d) and (e), and 29R above.
<u>56.</u>	30 Particular (i)		The officers identified in 29, 29E, 29N(c) and 29P(a) above.	The means identified in 29, 29E, 29N(c) and 29P(a) above.	The documents referred to in 29, 29E, 29N(c) and 29P(a) above.
<u>57.</u>	30 Particular (ii)	29 Mar 16	Kennett	Email from I Almeida to, <i>inter alia</i> , Kennett.	BXB.501.017.7054, attaching BXB.501.017.7055, .7056.
<u>58.</u>	30 Particular (iii)	31 Mar 16	Mackie, Kennett, Rumph, Lallatin	Email from Lallatin to named officers.	BXB.500.020.0350, attaching BXB.500.020.0354, .0369.
<u>59.</u>	32	16 Aug 16	Kennett.	The matters 28B, 29K(d), and 29P(b).	The documents referred to in 28B, 29K(d), and 29P(b) above.

No.	Paragraph	Date	Officer	Means	Doc ID
<u>60.</u>	33	16 Aug 16	Lallatin	The matters in 28B and 29P(b).	The documents referred to in 28B and 29P(b) above.
<u>61.</u>	34 and 35	16 Aug 16	Mackie, Rumph, Lallatin.	The matters in 28B, 28C, 28D, 29, 29D, 29G(a), 29I, 29L(c)(i), 29N and (d)(ii), 29P to 29X, 30, 32, and 33above.	The documents referred to in 28B, 28C, 28D, 29, 29D, 29G(a), 29I, 29L(c)(i), 29N and (d)(ii), 29P to 29X, 30, 32, and 33above.
October Information					
D.2.1 Trading performance of the North American Pooled Pallets Business in 1Q2016					
<u>62.</u>	45(a)	6 Sep 16	The officers referred to in 28 to 29 above.	The means identified in 28 to 29 above.	The documents referred to in 28 to 29 above.
<u>63.</u>	45(aa)	12 Oct 16	Kennett.	Email from Linderman to, <i>inter alia</i> , named officers.	BXB.500.114.7801, attaching BXB.500.114.7802
<u>64.</u>	45(ab)	14 Oct 16	Gorman Todorcevski O'Sullivan Mackie, Kennett and Rumph.	Email from Rumph to named officers.	BXB.500.068.2387, attaching BXB.500.068.2395
<u>65.</u>	45(ac)(i)	12 Oct 16	Kennett.	Email from Linderman to, <i>inter alia</i> , Kennett..	BXB.500.114.7801, attaching BXB.500.114.7802 at 7806
<u>66.</u>	45(ac)(ii)	12 Oct 16	Kennett.	Email from Linderman to, <i>inter alia</i> , Kenett.	BXB.500.114.7801, attaching BXB.500.114.7802 at 7806

No.	Paragraph	Date	Officer	Means	Doc ID
<u>67.</u>	45(ac)(iii)	11 Oct 16	Mackie, Kennett	Email from Limpanatevin to, <i>inter alia</i> , named officers.	BXB.500.017.6358, attaching BXB.500.017.6359 at .6378 (slide 40)
<u>68.</u>	45(ac)(iv)	12 Oct 16	Kennett.	Month end close presentation for September 2016 emailed by Linderman to, <i>inter alia</i> , Kennett	BXB.500.114.7801, attaching BXB.500.114.7802 at 7806
<u>69.</u>	45(ad)	14 Oct 16	Gorman, Todorcevski, O'Sullivan, Mackie, Kennett, Rumph	Email from Rumph to named officers.	BXB.500.068.2387, attaching BXB.500.068.2395, .2398.
<u>70.</u>	45(c)(i)	1. 15 Sep 16 2. 14 Oct 16 3. 14 Apr 15	1. Mackie, Kennett. 2. Gorman, Todorcevski Mackie, Rumph, O'Sullivan 3. Board of directors	1. Email from Limpanatevin to named officers attaching August FY17 PPR Presentation. 2. Email from Rumph to named officers attaching a memo regarding CHEP NA 1Q17 Performance. 3. Board paper – CHEP Pallets North America Review	1. BXB.500.017.6439 attaching BXB.500.017.6512 2. BXB.500.068.2387 attaching BXB.500.068.2395 and BXB.500.068.2389 3. BXB.500.015.6359
<u>71.</u>	45(c)(i)(A)	11 Oct 16	Mackie, Kennett	September 2016 Pallets Performance Review presentation.	BXB.500.017.6358 attaching BXB.500.017.6359
<u>72.</u>	45(c)(i)(B)	1. On or about 31 Aug 16 2. 15 Sep 16	1. Board of Directors 2. Mackie, Kennett.	1. August FY17 Board Report 2. Email from Limpanatevin to named officers attaching August FY17 PPR Presentation.	1. BXB.001.001.0760 2. BXB.500.017.6439 attaching BXB.500.017.6512

No.	Paragraph	Date	Officer	Means	Doc ID
<u>73.</u>	45(c)(i)(C)	15 Sep 16	Mackie, Kennett.	Email from Limpanatevin to named officers attaching August FY17 PPR Presentation.	BXB.500.017.6439 attaching BXB.500.017.6512
<u>74.</u>	45(c)(i)(D)	2 Feb 17	Rumph.	Emails between Rumph.	BXB.500.126.6899
<u>75.</u>	45(c)(i)(E)	1. 14 Apr 15 2. 10 Feb 17	1. Board of directors 2. O'Sullivan, Chipchase	1. Board paper – CHEP Pallets North America Review 2. Email from O'Sullivan to Chipchase.	1. BXB.500.015.6359 2. BXB.500.036.2668
<u>76.</u>	45(c)(i)(F)	14-Oct-16	Gorman, Todorevski Mackie, Rumph, O'Sullivan	Email from Rumph to named officers attaching a memo regarding CHEP NA 1Q17 Performance.	BXB.500.068.2387, attaching BXB.500.068.2395
<u>77.</u>	45(c)(ii)	14 Oct 16	Gorman, Todorcevski, Mackie, Rumph, O'Sullivan	Email from Rumph to named officers attaching a memo regarding CHEP NA 1Q17 Performance.	BXB.500.068.2387 attaching BXB.500.068.2395 and BXB.500.068.2389
<u>78.</u>	45(c)(ii)(A)	30 Sep 16	Kennett	Email from Adlam to Kennett attaching Cott winback pricing strategy.	BXB.501.011.5075, attaching BXB.501.011.5076
<u>79.</u>	45(c)(ii)(B)	1. 4 Aug 16 2. 25 Aug 16	1. Rumph, Lallatin 2. Lallatin	1. Email from Antar to named officers attaching pricing and capex review (BXB.500.139.1964 attaching BXB.500.139.1966)	1. BXB.500.139.1964 attaching BXB.500.139.1966 2. BXB.501.028.6695

No.	Paragraph	Date	Officer	Means	Doc ID
				2. Email from Martin to Lallatin (BXB.501.028.6695)	
80.	<i>45(c)(ii)(C)</i>	20 Dec 16	Hill	Email from Bachtell to Hill	BXB.501.036.4033, attaching BXB.501.036.4039
81.	<i>45(c)(ii)(D)</i>	23 Sep 16	Mackie, Kennett, Todorcevski, Rumph, Lallatin	Email from Bailey to named officers attaching pricing and capex review	BXB.500.117.0032, attaching BXB.500.117.0033
82.	<i>45(c)(ii)(E)</i>	1. 11 Sep 16 2. 26 Oct 16	1. Todorcevski, Mackie, Kennett, Rumph, Lallatin 2. Mackie, Kennett, Rumph	1. Email from Antar to named officers attaching capex and pricing review 2. Email from Antar to named officers attaching pricing and capex review	1. BXB.500.077.8109 attaching BXB.500.077.8110, circulated to Todorcevski at BXB.500.077.4236 2. BXB.500.077.5543 attaching BXB.500.077.5546
83.	45(c)(iii)(A)	23 Dec 16	Gorman, O'Sullivan, Kennett, Mackie	Email from Sahagian to named officers attaching Brambles November 2016 Board Report.	BXB.500.061.2902 attaching BXB.500.061.2903
84.	45(c)(iii)(B)	12 Nov 16	Todorcevski, O'Sullivan, Kennett.	Email from Martin to named officers attaching JBS Summary financials	BXB.500.117.1400 attaching BXB.500.117.1403
85.	45(cb)	14 Oct 16	Gorman, Todorcevski Mackie, Rumph, Kennett, O'Sullivan	Email from Rumph to named officers attaching 'September Actual (P3) Responses for Brambles'.	BXB.500.068.2387 attaching BXB.500.068.2395 and BXB.500.068.2389

No.	Paragraph	Date	Officer	Means	Doc ID
D.2.2 Trading performance of US Recycled in 1Q2017					
<u>86.</u>	45(da)	1. 11 Oct 16 2. 13 Oct 16	1. Mackie, Kennett 2. Kennett, Rumph	1. Email from Limpanatevin to, <i>inter alia</i> , Mackie, Kennett. 2. Email from Linderman to named officers.	1. BXB.500.017.6358, attaching BXB.500.017.6359 2. BXB.501.071.7810, attaching BXB.501.071.7812
D.2.3 Overall trading performance in 1Q2017					
<u>87.</u>	45(f)	14 Oct 16	Officers identified in 45(a) to (d) above.	The means identified in 45(a) to (d) above.	Documents identified in 45(a) to (d) above.
November Information					
E.2.1 Trading performance of North American Pooled Pallets Business to November 2015					
<u>88.</u>	54(b)	11 Nov 16	Rumph, Kennett.	Email from Linderman to, <i>inter alia</i> , named officers attaching October 2016 Month End Package.	BXB.500.115.1023 attaching BXB.500.115.1024
<u>89.</u>	54(ba)(i) and (ii)	11 Nov 16	Rumph, Kennett..	Email from Linderman to, <i>inter alia</i> , named officers.	BXB.500.115.1023, attaching BXB.500.115.1024
<u>90.</u>	54(ba)(iii)	15 Nov 16	Rumph.	Email from Linderman to named officers, attaching presentation	BXB.501.075.1062, attaching BXB.501.075.1064

No.	Paragraph	Date	Officer	Means	Doc ID
<u>91.</u>	54(ba)(iv)	14 Oct 16	Gorman, O'Sullivan Todorcevski, Mackie, Kennett, Rumph.	Email from Rumph to named officers.	BXB.500.068.2387, attaching BXB.500.068.2395
<u>92.</u>	54(bb)(i), (ii), (iii) and (v)	11 Nov 16	Rumph, Kennett.	Email from Linderman to, <i>inter alia</i> , named officers.	BXB.500.115.1023, attaching BXB.500.115.1024
<u>93.</u>	54(bb)(iv)	15 Nov 16	Rumph.	Email from Linderman to named officers, attaching presentation	BXB.501.075.1062, attaching BXB.501.075.1064
<i>E.2.2 Trading performance of US Recycled to November 2016</i>					
<u>94.</u>	55(bc)	11 Nov 16	Rumph.	Email from Scott to Rump, attaching presentation.	BXB.500.139.2714, attaching BXB.500.139.2715
<i>E.2.3 Overall trading performance to November 2016</i>					
<u>95.</u>	55(d)	15 Nov 16	The officers set out in 55(b) to (c) above.	The means set out in 55(b) to 55(c) above.	The documents set out in 55(b) to (c) above.

Schedule C, Annexure 1

	Initial Budget Submission³	Revised Budget Submission⁴	Second Revised Budget Submission⁵	FY2017 Budget Presentation⁶	FY2017 Budget⁷	Change from Initial Budget Submission to FY2017 Budget
<i>Date</i>	<i>Prepared around 24 March</i>	<i>Prepared around 4 to 8 April 2016</i>	<i>Prepared around 13 April 2016</i>	<i>Prepared around 19 to 22 April 2016</i>	<i>Approved by the board of Brambles around 28 June 2016</i>	
Sales Revenue (USD \$M)						
North American Pooled Pallets Business	1,606	[Not known]	[Not known]	1,609.5	1,609.5	3.5
North American Operations	2,372.9	2,375.4	2,376.3	2,376.4	2,376.3	3.4
Pooled Pallets Business	4,618.2	4,620.7	4,623.0	4,623.6	4,625.5	7.3
ULP (USD \$M)						

³ North American Pooled Pallets Business (BXB.500.019.8880 at .8883 and BXB.500.115.1408); North American Operations (BXB.500.015.8112 at .8113); Pooled Pallets Business (BXB.500.015.8112 at .8112).

⁴ North American Pooled Pallets Business (BXB.500.115.1408); North American Operations (BXB.500.015.8112 at .8113); Pooled Pallets Business (BXB.500.015.8112 at .8112).

⁵ North American Pooled Pallets Business (BXB.500.115.1408); North American Operations (BXB.501.017.6602 at .6603 and BXB.501.017.6611); Pooled Pallets Business (BXB.501.017.6602 at .6602 and BXB.501.017.6611).

⁶ North American Pooled Pallets Business (BXB.501.017.5066 at .5144); North American Operations (BXB.501.017.5066 at .5143); Pooled Pallets Business (BXB.501.017.5066 at .5142).

⁷ North American Pooled Pallets Business (BXB.500.115.1408 and BXB.501.017.3984); North American Operations (BXB.002.007.0116 at .0134 and BXB.501.017.3984); Pooled Pallets Business (BXB.002.007.0116 at .0133 and BXB.501.017.3984).

North American Pooled Pallets Business	347.6	355.6	358.4	358.7	360.9	13.3
North American Operations	443.4	449.8	452.7	452.7	455.3	11.9
Pooled Pallets Business	1,013.6	1,027.8	1,039.7	1,034.5	1,042.3	28.7
ROCI (%)						
North American Pooled Pallets Business	19.2%	19.8%	20.0%	20.0%	20.2%	1.0%
North American Operations	19.2%	19.5%	19.7%	19.7%	19.9%	0.7%
Pooled Pallets Business	22.5%	23.0%	23.5%	23.3%	23.5%	1.0%

CERTIFICATE OF LAWYERS

We, Ben Hardwick and Steven Foale, certify to the Court that, in relation to the amended consolidated statement of claim filed on behalf of the Applicants, the factual and legal material available to us at present provides a proper basis for each allegation in the pleading.

Date: 25 June 2021



Signed by Ben Hardwick
Lawyer for the First Applicant

Signed by Steven Foale
Lawyer for the Second Applicants