



**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT**

Case: S ECI 2020 01590

Filed on: 21/04/2023 04:37 PM

No. S ECI 2020 01590

BETWEEN

BRETT STALLARD AS TRUSTEE FOR THE STALLARD SUPERANNUATION FUND

First Plaintiff

STEVEN NAPIER

Second Plaintiff

-and-

TREASURY WINE ESTATES LTD (ACN 004 373 862)

Defendant

AMENDED CONSOLIDATED STATEMENT OF CLAIM

**Filed pursuant to order 1 of the orders submitted by consent of the parties to the
Honourable Justice Nichols on 13 April 2023**

Date of Document:	21 April 2023	
Filed on behalf of:	Brett Stallard as trustee for the Stallard Superannuation Fund (First Plaintiff) and Steven Napier (Second Plaintiff)	
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NOTE:

In this amended consolidated statement of claim, the following conventions are used in referring to financial results:

- (a) FY19, FY20, etc refer to the financial years ended 30 June 2019, 30 June 2020, etc;
- (b) CY18 etc refers to the calendar years ended 31 December 2018, 31 December 2019 etc;
- (c) 1H, 2H refer to the first half and second half of the relevant financial year (1H19 being the six month period ended 31 December 2018, 2H19 being the six month period ended 30 June 2019, etc.);
- (d) 1Q, 2Q, 3Q, 4Q refer to the quarters of the relevant financial year (2Q19 being the three month period ended 31 December 2018, 3Q19 being the three month period ended 31 March 2019, etc.); and
- (e) yoy refers to year on year.

All references to currency (including the symbol '\$') are to Australian Dollars unless otherwise stated.

The defined terms are set out in Annexure C to this amended consolidated statement of claim.

A. THE PARTIES AND GROUP MEMBERS

A.1 The Joint Plaintiffs and Group Members

1. Brett Stallard (**Stallard**) and Steven Napier (**Napier**) (together, **Joint Plaintiffs**) commence this proceeding as a group proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) on their own behalves and on behalf of all the Group Members.
2. Stallard brings this proceeding in his capacity as trustee for the Stallard Superannuation Fund.
3. The Joint Plaintiffs and the **Group Members** are all persons who or which:
 - (a) at any time during the period from 30 June 2018 to the close of trade on 28 January 2020 inclusive (**Relevant Period**) entered into a contract (whether by themselves or by an agent or trustee) to acquire an interest in fully paid ordinary shares in the Defendant, Treasury Wine Estates Ltd (**Treasury**);

Particulars

- i. Particulars of Stallard's shareholding in Treasury during the Relevant Period are set out in Annexure A to this amended consolidated statement of claim.
- ii. Particulars of Napier's shareholdings in Treasury during the Relevant Period are set out in Annexure B to this amended consolidated statement of claim.

- iii. Particulars of the shareholdings of the Group Members during the Relevant Period will be provided after the trial and determination of the common questions.
 - (b) suffered loss or damage by or resulting from the conduct of Treasury alleged in this amended consolidated statement of claim; and
 - (c) were not during any part of the Relevant Period, and were not as at the date of commencement of this proceeding, any of the following:
 - (i) a director or officer, or a close associate (as defined by s 9 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of Treasury;
 - (ii) a related party (as defined by s 228 of the *Corporations Act*) of Treasury;
 - (iii) a related body corporate (as defined by s 50 of the *Corporations Act*) of Treasury;
 - (iv) an associated entity (as defined by s 50AAA of the *Corporations Act*) of Treasury;
 - or
 - (v) a Chief Justice, Justice or Registrar of the Supreme Court of Victoria or the High Court of Australia.
4. As at the date of the commencement of this proceeding there were more than seven Group Members.

A.2 Treasury

5. Treasury:
- (a) is and was at all material times a corporation incorporated under the *Corporations Act* and capable of being sued;
 - (b) is and was at all material times a corporation listed on the Australian Securities Exchange (**ASX**), being a financial market operated by Australian Securities Exchange Limited;
 - (c) at all material times had on issue ordinary shares (**Treasury Shares**) which were:
 - (i) trading on the ASX under the designation "TWE";
 - (ii) ED securities within the meaning of s 111AE of the *Corporations Act*;
 - (iii) quoted ED securities within the meaning of s 111AM of the *Corporations Act*;
 - (iv) a financial product within the meaning of s 763A(1)(a) and s 764(1)(a) of the *Corporations Act* and s 12BAA(1)(a) and s 12BAA(7)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

- (v) able to be acquired and sold by investors and potential investors in Treasury Shares on the ASX (**Treasury ASX Share Market**);
- (d) is and was at all material times a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
- (e) is and was at all material times subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
- (f) is and was at all material times subject to the requirements of s 674 of the Corporations Act;
- (g) is and was at all material times a trading corporation within the meaning of the ASIC Act;
- (h) is and was at all material times a person within the meaning of:
 - (i) s 1041H of the Corporations Act;
 - (ii) s 12DA of the ASIC Act; and/or
 - (iii) s 18 of the Australian Consumer Law, as applicable pursuant to s 131 of the *Competition and Consumer Act 2010 (Cth)* (**ACL**); and
- (i) is and was at all material times operating using a financial year of 1 July to 30 June for reporting purposes.

6. At all material times, the ASX was a market operator of a listing market, namely the ASX's financial market, in relation to the Treasury Shares, for the purposes of s 674(1) of the Corporations Act.

B. TREASURY'S CONTINUOUS DISCLOSURE OBLIGATIONS

7. During the Relevant Period, Treasury was obliged by s 111AP(1) and/or s 674(2) of the Corporations Act and/or Rule 3.1 of the ASX Listing Rules, once it became aware of any information concerning Treasury that a reasonable person would expect to have a material effect on the price or value of Treasury Shares, to tell the ASX that information immediately, unless any of the exceptions in Rule 3.1A of the ASX Listing Rules applied (**Continuous Disclosure Obligations**).
8. During the Relevant Period, pursuant to Rule 19.12 of the ASX Listing Rules, Treasury became aware of information if, and as soon as, an officer of Treasury had, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of Treasury.

C. TREASURY'S WINE BUSINESS

C.1 Treasury's US Wine Market

9. At all material times, TWE carried on a business of producing, marketing, distributing and selling wine in business segments identified as "the Americas" (**Americas**) (which included the United States of America (**US**), Latin America ("LATAM") and Canada), "ANZ" (Australia and New Zealand), "Asia" and "EMEA" (Europe, Middle East and Africa).
10. At all material times, there was a market in the US for the production, sale and distribution of wine (**US Wine Market**).
11. At all material times, Treasury:
 - (a) carried on a vertically integrated global wine business which included the production, marketing, sale and distribution of wine in the US Wine Market; and
 - (b) participated in the sale of wine in the following three segments of the US Wine Market:
 - (i) the 'luxury' segment, being wine trading at a retail shelf price of at least \$20 per bottle;
 - (ii) the 'masstige' segment, being wine trading at a retail shelf price of between \$10 to \$20 per bottle; and
 - (iii) the 'commercial' segment, being wine trading at a retail shelf price of between \$5 to \$10 per bottle.

Particulars

Treasury ASX announcement presentation dated 15 August 2019 entitled '2019 Treasury Wine Estates Annual Results' (**FY19 Results Presentation**), page 8.

- (c) had a premiumisation strategy to increase net sales revenue globally by focusing sales on high margin 'luxury' and 'masstige' segments and exiting lower margin commercial segments (**Premiumisation Strategy**).
12. From FY15 to FY17, the Americas division of Treasury:
 - (a) grew revenue from approximately \$776.2 million to \$1,062 million; and
 - (b) grew Earnings Before Interest, Tax, the "SGARA" agricultural accounting standard and material items (**EBITS**) from approximately \$84 million to approximately \$190 million.
13. At all material times on and from 1 January 2016, as part of the Premiumisation Strategy, Treasury acquired assets from Diageo Plc's (**Diageo**) US and United Kingdom (**UK**) wine business, including the brands known as "Sterling Vineyards", "Beaulieu Vineyards" and

“Acacia” (**Key Diageo Brands**) which were in calendar years 2014 and 2015 the highest selling US brands acquired by Treasury as part of the Diageo acquisition.

Particulars

- i. Treasury acquired the Key Diageo Brands on 1 January 2016 as part of its acquisition of the majority assets in Diageo’s US and UK wine businesses: Treasury ASX Announcement entitled “TWE announces acquisition of Diageo’s wine business for US\$600 million and entitlement offer” dated 14 October 2015, pages 1-2.
 - ii. Treasury ASX Announcement entitled “Treasury Wine Estates successfully completes the acquisition of Diageo’s wine business” dated 1 January 2016.
14. At all material times prior to 31 January 2018, Treasury sold all or the vast majority of its wine in the US Wine Market to licenced distributors who in turn sold such wine through consumer channels (**Distributor Model**).
15. At all material times from about 31 January 2018, Treasury adopted a new ‘route-to-market’ model for the distribution of wine in the US Wine Market, which entailed:
 - (a) direct sales and distribution to key national retail partners in California and Washington state (where direct sales to retailers were permitted);
 - (b) a hybrid (direct and indirect sales) distribution model with its key retail partners in Florida;
 - (c) the appointment of new full-service distributor partners in other US states (where legislation required wine producers and sellers to sell wine only to licensed distributors for on-sale to wine retailers), including Illinois and Colorado; and
 - (d) Treasury’s distribution channel in the US being converted from a wholly indirect distribution model (pursuant to the Distributor Model) to one in which some of Treasury’s wine was sold through direct and hybrid distribution models and new US distributor partners,
(Route-To-Market Model).

Particulars

Treasury ASX announcement dated 31 January 2018 entitled ‘Treasury Wine Estates Interim 2018 financial result’ (**31 January 2018 Announcement**), page 2.

16. At all material times, Treasury:
 - (a) recorded sales revenue and booked profits for its indirect wine sales in the US upon “**shipment**” (being acceptance by US distributors of wine sales to them), rather than upon “**depletion**” (being wine sales from distributors to retailers); and
 - (b) at the time of recording shipments to US distributors:

- (i) raised an accrual for expected levels of discounts and rebates to be paid or credited to distributors in relation to the sale; and
 - (ii) deducted the expected accrual from Treasury's sales revenue for the period.
17. At all material times, California accounted for approximately 85% of all wine produced in the US Wine Market.

Particulars

The National Association of American Wineries, 'United States Wine and Grape Industry FAQs', page 2.

18. At all material times, wine sourced from wine manufacturers but sold, marketed and promoted by retailers under their own "private label" was traded in the US Wine Market (**private label wine**).
19. At all material times, finished wine stored in tanks for bottling or sale (**bulk wine**) was traded in the US Wine Market, and was primarily acquired by wine companies, including Treasury, for the production of commercial and masstige wine.
20. In FY14 to FY17, the Americas division contributed:
- (a) over 40% of Treasury's Net Sales Revenue (**NSR**); and
 - (b) over 30% of Treasury's EBITs.

Particulars

- i. In FY14:
 - A. the Americas region achieved \$731.9m in NSR on a reported currency basis, representing 43% of Treasury's total group NSR of \$1,705.6m; and
 - B. the Americas region achieved \$74.9m in EBITs on a reported currency basis, representing 33% of Treasury's total group EBITs of \$226.8m.

Treasury ASX Announcement dated 21 August 2014 entitled "TWE 2014 Full Year Results", pages 6 and 10, and Treasury ASX Announcement dated 19 September 2014 entitled "2014 Annual Report", pages 7 and 95.
- ii. In FY15:
 - A. the Americas region achieved \$794.5m in NSR on a reported currency basis, representing 43% of Treasury's total group NSR of \$1,848.3m.
 - B. the Americas region achieved \$93.2m in EBITs on a reported currency basis, representing 35% of Treasury's total group EBITs of \$265.1m.

Treasury ASX Announcement dated 19 August 2015 entitled "2015 Full Year Results", pages 8 and 13, and Treasury ASX Announcement dated 1 September 2015 entitled "2015 Annual Report" (**2015 Annual Report**), pages 7 and 83.

- iii. In FY16:
 - A. the Americas region achieved \$991m in NSR on a reported currency basis, representing 44% of Treasury's total group NSR of \$2,232.6m.
 - B. the Americas region achieved \$136.3m in EBITs on a reported currency basis, representing 36% of Treasury's total group EBITs of \$378.3m.

Treasury ASX Announcement dated 18 August 2016 entitled "Treasury Wine Estates Annual 2016 financial result", page 5, and Treasury ASX Announcement dated 1 September 2016 entitled "2016 Annual Report", pages 5 and 72.

- iv. in FY17:
 - A. the Americas region achieved \$1,062m in NSR on a reported currency basis, representing 44% of Treasury's total group NSR of \$2,401.7m.
 - B. the Americas region achieved \$189m in EBITs on a reported currency basis, representing 38% of Treasury's total group EBITs of \$498.2m.

Treasury ASX Announcement dated 17 August 2017 entitled "Treasury Wine Estates Annual 2017 financial results", page 5, and Treasury ASX Announcement dated 30 August 2017 entitled "2017 Annual Report" pages 8 and 70.

21. In FY18 and FY19, the "Americas" division contributed:

- (a) at least 40% of Treasury's NSR; and
- (b) over 30% of Treasury's EBITs.

Particulars

- i. In FY18,
 - A. the Americas region achieved \$961.8m in NSR on a reported currency basis, representing 40% of Treasury's total group NSR of \$2,429m; and
 - B. the Americas region achieved \$193m in EBITs on a reported currency basis, representing 33% of Treasury's total group EBITs of \$583.8m.

Treasury ASX announcement dated 16 August 2018 entitled "Annual 2018 financial result" (**16 August 2018 Announcement**), page 5, and Treasury ASX Announcement dated 29 August 2018 entitled "2018 Annual Report" (**2018 Annual Report**), pages 12 and 71.

- ii. In FY19,
 - A. the Americas region achieved \$1,134.4m in NSR on a reported currency basis, representing 40% of Treasury's total group NSR of \$2831.6m.
 - B. the Americas region achieved \$218.7m in EBITs on a reported currency basis, representing 30% of Treasury's total group EBITs of \$720.1m.

Treasury ASX announcement dated 15 August 2019 entitled 'Treasury Wine Estates Annual 2019 financial result', pages 5 and 9 (**FY19 Results**)

Announcement), and Treasury ASX Announcement dated 28 August 2019 entitled “2019 Annual Report” (**2019 Annual Report**), pages 12 and 71.

- iii. In the period FY14-FY19, TWE’s US EBITs contributed the majority of its Americas EBITs.

C.2 Treasury Officers

22. Michael Clarke (**Clarke**) was:

- (a) from 20 February 2014 and at all times thereafter during the Relevant Period the Managing Director and Chief Executive Officer of Treasury; and
- (b) by reason of the matters alleged in subparagraph 22(a), above, at all times during the Relevant Period an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.

23. Matt Young (**Young**) was:

- (a) from 1 May 2018 and at all times thereafter during the Relevant Period the Chief Financial Officer of Treasury; and
- (b) by reason of the matters alleged in subparagraph 23(a), above, at all times during the Relevant Period an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.

24. Robert Foye (**Foye**) was:

- (a) from ~~1 January 2018~~ 9 May 2017 until ~~24 18~~ January 2019 the Chief Operating Officer of Treasury;
- (aa) from 1 January 2018 until 1 July 2018, as part of his role as Chief Operating Officer, was also President, Americas; and
- (b) by reason of the matters alleged in subparagraph 24(a) and 24(aa), above, at all times from the start of the Relevant Period until 21 January 2019 an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.

25. Tim Ford was:

- (a) ~~between about~~ from 9 May 2017 and June 2018 the Managing Director, Europe, South East Asia, Middle East and Africa and Global Supply Chain at Treasury;
- (b) ~~between about~~ from 1 July 2018 ~~and to~~ 24 18 January 2019 the Deputy Chief Operating Officer of Treasury;
- (c) from ~~24 19~~ January 2019 and at all times thereafter during the Relevant Period the Chief Operating Officer of Treasury; and

(d) by reason of the matters alleged in subparagraphs 25(a) to 25(c), above, at all times during the Relevant Period an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.

26. Angus McPherson (**McPherson**) was:

- (a) from about July 2014 to 30 June 2018, Managing Director ANZ at Treasury;
- (b) from 1 July 2018 until ~~about 15~~ 14 February 2019, Managing Director ANZ and Europe at Treasury;
- (c) ~~between about~~ from 15 February 2019 and ~~about 23~~ to 30 September 2019, Managing Director ANZ, Europe, South East Asia, Middle East and Africa at Treasury;
- (d) ~~between about 24 September~~ from 1 October 2019 and ~~about 12 January~~ to 1 February 2020, President, Americas & Global Sales at Treasury; and
- (e) by reason of the matters alleged in subparagraphs 26(a) to 26(d), above, at all times during the Relevant Period until about 12 January 2020, an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.

27. Victoria Snyder (**Snyder**) was:

- (a) from ~~about July 2017~~ 1 March 2018 to 1 July 2018, Executive Vice President, Americas at Treasury;
- (b) from 2 July 2018 ~~until about 19~~ to 23 August 2019, President, Americas at Treasury; and
- (c) by reason of the matters alleged in subparagraphs 27(a) and 27(b), above, at all times during the Relevant Period until about 19 August 2019, an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.

28. Gunther Burghardt was:

- (a) from 1 May 2018 ~~until about~~ to 31 August ~~2019~~ 2018, Executive Vice President, Operations – Americas at Treasury;
- (aa) from 1 September 2018 to 28 February 2019, Executive Vice President, Supply – Americas at Treasury;
- (ab) from 21 September 2018 to 28 February 2019 was on leave from his roles at Treasury;
and
- (b) by reason of the matters alleged in subparagraph 28(a) to 28(ab), above, at all times during the Relevant Period until about August 2019, an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.

29. Paul Rayner was:
- (a) at all times during the Relevant Period the Chairman of the Board, and an independent director, of Treasury; and
 - (b) by reason of the matters alleged in subparagraph 29(a), above, at all times during the Relevant Period an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.
30. Each of:
- (a) Ed Chan;
 - (b) Louisa Cheang (from 1 December 2018);
 - (c) Warwick Every-Burns;
 - (d) Garry Hounsell;
 - (e) Colleen Jay; and
 - (f) Lauri Shanahan,
- was:
- (g) at all times (unless otherwise stated) during the Relevant Period an independent non-executive director of Treasury; and
 - (h) by reason of the matters alleged in subparagraph 30(g), above, at all times (unless otherwise stated) during the Relevant Period an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.
31. Michael Cheek was:
- (a) at all times during the Relevant Period until ~~29 August~~ 18 October 2018 an independent non-executive director of Treasury; and
 - (b) by reason of the matters alleged in subparagraph 31(a), above, at all times during the Relevant Period until 29 August 2018 an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.
32. By reason of the matters alleged in paragraphs 22 to 31, above, any information of which any of the persons referred to in those paragraphs (**Treasury Officers**) became aware in accordance with Rule 19.12 of the ASX Listing Rules was information of which Treasury was aware for the purposes of s 111AP(1) and/or s 674(2) of the Corporations Act and/or Rule 3.1 of the ASX Listing Rules.

C.3 Treasury Monitoring Systems

33. At all material times, Treasury:

- (a) had a dedicated consumer insights and innovation team tracking consumer trends, including with respect to the US Wine Market;

Particulars

2018 Annual Report, page 18.

- (b) had global business planning processes, including portfolio reviews and global volume alignment processes, including with respect to the US Wine Market;

Particulars

2018 Annual Report, pages 18 and 19.

- (c) had a system for inventory management which entailed a discipline of close monitoring of stock levels across its wholesale and retail partners, including with respect to the US Wine Market;

Particulars

- i. Treasury Investor and Analyst Conference Call transcript dated 17 May 2018, page 2.
- ii. FY19 Treasury Results Earnings Call transcript dated 15 August 2019, page 8.

- (d) received detailed inventory and depletion data from most of its distributor partners in the US Wine Market on a monthly basis;

- (e) had access to Nielsen scan data, being point of sales data recording sales of wine to retail consumers at a selection of retail outlets within the US (**Nielsen sales data**), which captured approximately 40% of TWE's US sales volume;

Particulars

Nielsen aggregates and reports point of sales data recording sales of wine to retail consumers at a selection of retail outlets such as supermarkets within the US.

- (ea) had access to IRI scan data, being point of sales data recording sales of wine to retail consumers at a selection of retail outlets within the US;

- (f) had a team, or teams, which compiled and reviewed the inventory and depletion data referred to in subparagraph 33(d), above, for quality and integrity, and prepared an internal report capturing the data and qualitative commentary from the US sales team; and

- (g) had a system which involved Treasury's leadership team reviewing the internal report referred to in subparagraph 33(f), above, and Treasury taking required actions to support and drive depletions,

(together, the **Treasury Monitoring Systems**).

Particulars

Treasury 2019 Investor Day Event transcript dated 24 September 2019, page 29.

D. JUNE 2018 CONTRAVENTIONS

D.1 June 2018 Misleading or Deceptive Conduct

34. On 31 January 2018, Treasury represented in its 31 January 2018 Announcement that, by reason of its new route-to-market model, the performance of the "Americas" division would strengthen through FY19 and FY20 and contribute to accelerated EBITs growth for Treasury through FY19, FY20 and beyond (the **January 2018 Representation**).

Particulars

In the 31 January 2018 Announcement, Treasury stated that:

- i. Treasury reported 25% EBITs growth and an EBITs margin of 21.9% (up 4.4 pts) in 1H18.
 - ii. The Americas region reported 8% EBITs growth and an EBITs margin of 19.9% (up 3.7 pts) in 1H18.
 - iii. Treasury was announcing a new route-to-market improvement in the US.
 - iv. The EBITs margin and EBITs growth in the Americas region in 1H18 included an adverse one-off impact of \$10m from reduced shipment as part of the transition process associated with the Route-To-Market Model.
 - v. The Route-To-Market Model involved a series of transformational changes in the US that were expected to strengthen the company's competitive positioning, increase efficiency and effectiveness, and drive portfolio growth.
 - vi. Once fully embedded, the changes implemented through the Route-To-Market Model were expected to be margin enhancing for the Americas.
 - vii. Treasury expected the Route-To-Market Model to be fully embedded by 2H19.
 - viii. The Route-To-Market Model would strengthen the long-term outlook for the Americas region.
 - ix. In FY19, Treasury expected full year EBITs growth to accelerate to approximately 25%.
 - x. The business model changes, along with increased availability of high end wine, would set up Treasury for accelerated growth in FY19, FY20 and beyond.
35. The January 2018 Representation was a representation as to a future matter.

36. The January 2018 Representation was made:
- (a) in trade or commerce in relation to financial services (being Treasury Shares) within the meaning of s 12DA(1) of the ASIC Act;
 - (b) in relation to a financial product or financial services (being Treasury Shares) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act; and
 - (c) in trade or commerce within the meaning of s 18 of the ACL.
37. Treasury did not, at any time before 28 January 2020, withdraw or qualify the January 2018 Representation, which was a continuing representation from 31 January 2018 and throughout the Relevant Period.
38. As at 30 June 2018:
- (a) the 2018 grape harvest in the US was expected to be at least average sized;
 - (b) retail sales of US wine had decelerated;
 - (c) there was a backlog of inventory in US wineries' tanks and barrels;
 - (d) inventory was being sold in the US at a discount through the bulk wine market by reason of oversupply;
 - (e) there was generally a lead time from wine grape harvest to sale of wine products in the global wine market of more than six months; and
 - (f) the matters alleged in subparagraphs 38(a) to (e), above, were likely to create downward pressure on prices in the US Wine Market going forward,
- (the **June 2018 US Market Conditions**).

Particulars

- i. Ciatti Global Wine and Grape Brokers report entitled 'California Report' dated June 2018, pages 2, 3 and 4.
- ii. Wines Vines Analytics Report article entitled 'Early Reports Put 2018 Harvest at Above Average' dated 17 July 2018.
- iii. The Americas Commercial Review presentation for 30 June 2018 stated that the overall growth by volume in the market for \$4+ non-box table wine in the previous 52 weeks was 0.8%, with -7.8% growth in the previous 13 weeks against the prior comparable period, and -8.1% growth in the previous 4 weeks against the prior comparable period. The presentation also stated that the "Market further softened over [last 4] weeks, all price tiers experienced slowed growth." (TRE.021.013.2902 at .2909.)

39. As at 30 June 2018:

- (a) Treasury had experienced a year on year decline in sales in the US-Americas, including of the Key Diageo Brands, ~~from July 2016 to June 2017 (the **FY17 Treasury Brands Sales Decline**) and from July 2017 to June 2018 in FY18 (the **FY18 Treasury Brands Sales Decline**);~~

Particulars

- ~~i. The FY17 Treasury Brands Sales Decline as tracked by Nielsen sales data was as follows, for the Key Diageo Brands:~~
- ~~A. Acacia by 17.2% yoy;~~
- ~~B. Beaulieu Vineyard by 22.7% yoy; and~~
- ~~C. Sterling Vineyards by 1.6% yoy.~~
- ~~ii. The FY18 Treasury Brands Sales Decline as tracked by Nielsen sales data was as follows, for the Key Diageo Brands:~~
- ~~A. Acacia by 19.4% yoy;~~
- ~~B. Beaulieu Vineyard by 15.6% yoy; and~~
- ~~C. whereas Sterling Vineyards increased by 1.8% yoy~~
- ~~iii. Further, for July 2018, Treasury's total retail wine sales in the supermarket channel as tracked by Nielsen sales data declined by 17%.~~
- iv. As at 30 June 2018, the Americas division reported a decrease in year-to-date shipments of 13.3% yoy, and a decrease in year-to-date net sales revenue of \$76.5 m or 9.3% yoy. (TRE.021.013.2902 at .2904.)
- v. As at 20 May 2018, the Key Diageo Brands had all experienced double-digit sales volume declines over the past 52 weeks, as follows: Sterling -33.2%, Beaulieu Vineyards -17.9%, Acacia -14.7%, A by Acacia -16.3%, BV Coastal Estates -12.2%. (TRE.002.033.5426 at .5426.)

- (b) [not used] Treasury had experienced reduced sales growth in respect of sales of its wines (including the Key Diageo Brands) in the US in 4Q18;

Particulars

~~In 4Q18, Treasury's wine sales growth in the US by value was below the US industry average and, for all or most of the period, negative as tracked by Nielsen sales data.~~

~~By 25 July 2018, Nielsen sales data for 19 Crimes revealed that its sales growth was slowing.~~

- (c) Since 2015 In FY18, Treasury had experienced an ongoing a year-on-year decline in total US distributor depletions in respect of all of its top-selling brands (except for 19 Crimes and Matua), including the Key Diageo Brands;

Particulars

Impact Databank depletions data-

As at 30 June 2018, total US distributor depletions had declined by 11.6 million cases, or 11%, yoy. (TRE.002.030.1650 at .1659.)

- (ca) Distributor depletions in California and the Southeast (including Florida), which were markets in which the Route-to-Market model was being implemented, were declining in 2H18.

Particulars

As at 30 June 2018, distributor depletions had decreased in California by 45% in the previous month, 35% in the previous 3 months, and 25% in the previous 6 months, and in the Southeast by 20% in the previous month, and 13% in the previous 3 months. (TRE.002.030.1650 at .1658.)

- (cb) Treasury had lost market share in key segments in the US in FY18;

Particulars

- i. As at 17 June 2018, sales of Treasury’s table wines by volume in the US had declined over the previous 52 weeks in comparison to the overall market in every segment except the “Premium \$8.00 – \$10.99” segment, as follows (TRE.021.013.2902 at .2909):

Segment	% change by volume in previous 52 weeks – total US market	% change by volume in previous 52 weeks – Treasury
Popular \$4.00 - \$7.99	- 3.2	- 6.8
Premium \$8.00 - \$10.99	+ 0.9	+ 25.7
Super premium \$11.00 - \$14.99	+ 6.6	- 14.2
Ultra premium \$15.00 - \$19.00	+ 9.4	- 2.0
Luxury \$20.00 - \$24.99	+ 8.6	- 2.2
Super luxury \$25 +	+ 5.3	- 1.9

- ii. As at 30 June 2018, the Americas division reported a decrease in year-to-date shipments of 13.3% yoy, and a decrease in year-to-date net sales revenue of \$76.5 m or 9.3% yoy. (TRE.021.013.2902 at .2904.)

- iii. Treasury stated to the market in its 2018 Annual Report that “[u]nderlying volume growth” in the Americas division was flat, excluding the impact of the exit from lower-margin commercial volume, reduced shipments associated with the implementation of the route-to-market model, and the non-repetition of deep discounting that occurred in FY17. (Treasury Annual Report 2018, p.25.)
- (d) the matters alleged in sub-paragraphs (a) to (cb), above, were trends that were reasonably likely to:
- (i) continue in FY19 and FY20; and
- (ii) create downward pressure on prices for Treasury’s wines in the US going forward the profitability of the Americas division in FY19 and FY20,
- (the **June 2018 Treasury US Market Conditions**).

Particulars

Slowing retail sales, erosion of demand, growing wine supply and wine consumer demographic changes put increased financial pressure on all market participants.

39A As at 30 June 2018:

- (a) Treasury had forecast in its F19-23 Strategic Plan that the Americas division would achieve EBITs of \$189 million in FY18, \$240 million in FY19 (representing approximately 27% yoy EBITs growth); and \$280 million in FY20 (representing approximately 16.6% yoy EBITs growth) (the latter two figures being the **F19–20 Forecast**):

Particulars

TWE F19-23 Strategic Plan dated 9 April 2018. (TRE.002.002.0528 at .0602.)

- (b) the Americas division had reported 1H18 EBITs of \$100.4 million, against budgeted EBITs of \$107.4 million, representing a shortfall against its 1H18 budget of \$7 million or 6.5% on a constant-currency basis;

Particulars

CFO Report to the Board issued 17 January 2018. (TRE.003.001.2420 at .2481.)

- (c) despite the matters in paragraph (b), the Americas division’s underlying 1H18 EBITs was \$90.6 million, representing a shortfall against budget of \$16.8 million or 15.6% on a constant-currency basis;

Particulars

In an email from Young to Clarke dated 6 July 2018, Young states that the underlying EBITs is calculated by subtracting \$19.8 million for “Judgements” and adding \$10 million for “Destock for X”. (TRE.004.012.2507.)

- (d) the Americas division was to report FY18 EBITs of \$189 million:
- (i) against budgeted EBITs of \$215.1 million, representing a shortfall against budget of \$26.1 million or 12.1%;
 - (ii) against forecast EBITs (as at 9 February 2018) of \$186.8 million, representing a surplus to forecast of \$6.2 million or 3.3% on a constant-currency basis;

Particulars

- i. CFO Report to the Board issued 30 July 2018. (TRE.003.001.2859 at .2922.)
 - ii. Memorandum for the Board of Directors re: F18 Forecast issued 22 February 2018. (TRE.004.023.4192 at .4193.)
- (e) despite the matters in paragraph (d), the Americas division’s underlying FY18 EBITs was \$147.1 million:
- (i) representing a shortfall against budget of \$68 million or 31.6%;
 - (ii) representing a shortfall against forecast EBITs (as at 9 February 2018) of \$39.7 million, or 27% on a constant-currency basis,

Particulars

- i. Americas Commercial Review presentation for June 2018. (TRE.021.013.2902 at .2904.)
- ii. In an email from Young to Clarke dated 12 August 2018, in response to Clarke asking “What’s the true underlying ebits margin” after “removing the \$25m buffer used to cover the cost of change in RTM”, Young states that “EBITs reduces to \$147.2m”. (TRE.004.011.7081.)

(the FY18 Americas Budget Miss).

40. As at 30 June 2018:

- (a) ~~the June 2018 US Market Conditions, and/or the June 2018 Treasury US Market Conditions, and/or the FY18 Americas Budget Miss were likely to materially adversely impact on Treasury's performance in the~~ would materially reduce the likelihood of the Americas division meeting the FY19–20 Forecast ~~in future financial periods,~~ notwithstanding the existence of the new Route-To-Market Model; and
- (b) ~~a deterioration in the performance in~~ underperformance in the Americas division would ~~materially adversely impact on Treasury's ability to~~ result in a likelihood, or alternatively, a material risk, that Treasury would not achieve accelerated EBITs growth in ~~future financial periods~~ FY19, FY20 and beyond,

(the **June 2018 US Market Conditions Impact Information**).

Particulars

- i. The June 2018 US Market Conditions were likely to have the following impact on the Americas division:
 - A. negatively impact volumes and sales;
 - B. require Treasury to undertake higher levels of discounting to maintain market share across all price points;
 - C. negatively impact Treasury's ability to recover or offset increases in the cost of goods sold (**COGS**); and
 - D. negatively impact Treasury's ability to rely on premiumisation to maintain profits.
- ii. The Joint Plaintiffs refer to subparagraph 38(f), above, and the continuing nature of the June 2018 US Market Conditions for their impact on Treasury's financial performance in FY19, FY20 and beyond ~~future financial periods, including FY20.~~
- iii. ~~Treasury's sensitivity to the June 2018 US Market Conditions in the abovementioned manner is to be inferred from the fact that Treasury ultimately identified these matters as reasons for the FY20 forecast downgrade on 28 January 2020.~~
- iv. ~~The June 2018 Treasury US Market Conditions had the same impacts as June 2018 US Market Conditions (and the previous three paragraphs of the particulars are repeated).~~
- v. The occurrence and amount of the FY18 Americas Budget Miss meant that the Americas division had to exceed its forecast year-on-year EBITs growth in order to achieve the FY19–20 Forecast EBITs, and thereby to contribute to accelerated EBITs growth for Treasury.

- vi. The Joint Plaintiffs refer to and repeat paragraphs 38(f) and 39(d) above, and the particulars to those paragraphs.

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

- 41. As at 30 June 2018, alternatively 15 August 2018, (and at all material times afterwards), one or more of the Treasury Officers knew or ought to have known information being:
 - (a) the June 2018 US Market Conditions;
 - (b) the June 2018 Treasury US Market Conditions; ~~and/or~~
 - (ba) the FY18 Americas Budget Miss; and/or
 - (c) the June 2018 US Market Conditions Impact Information.

Particulars

- ~~i. The June 2018 US Market Conditions, the June 2018 Treasury US Market Conditions and the June 2018 US Market Conditions Impact Information were known or ought to have been known based on an analysis by one or more of the Treasury Officers of public information combined with a knowledge of Treasury's business and sensitivities, the Treasury Monitoring Systems and information which would come into the possession of one or more of the Treasury Officers in the proper performance of their duties.~~
- ~~ii. The fact that one or more of the Treasury Officers knew or ought to have known the alleged information can be inferred from the fact that Treasury ultimately identified these matters as reasons for the FY20 forecast downgrade on 28 January 2020.~~

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

Knowledge of June 2018 US Market Conditions

- i. **Grape harvest:** Treasury Officers knew, or alternatively, ought to have known, that the 2018 grape harvest in the US was expected to be at least average sized because this information was set out in, or ought reasonably to have been inferred from:
 - (A) a Bulk Market Update dated 20 May 2018 which stated that the "Overall V18 Crop [was] looking good" (TRE.056.012.8011), and Treasury Officers ought to have received this information due to the Treasury Monitoring Systems; and
 - (B) an email from Ford to Young and Burghardt, which discussed the bulk wine inventory position and stated that "BW [bulk wine] excess is a V18 problem only" (TRE.005.027.0462).

- ii. **Retail sales:** Treasury Officers knew, or alternatively, ought to have known, that retail sales of US wine had decelerated because this information was set out in, or ought reasonably to have been inferred from:
- (A) the December 2017 CFO Report, which stated there was “softer depletion performance in [US Trade]”;
 - (B) the CFO Reports for December 2017, February 2018 and March 2018, which stated that distributors were holding fewer cases in inventory versus the prior fiscal year;
 - (C) the Americas Commercial Review presentation for June 2018, which stated the matters in particular iii to paragraph 38 above,

and Treasury Officers received this information as set out in the Schedule.

- iii. **Inventory backlog and lead time:** Treasury Officers knew, or alternatively, ought to have known, of the information alleged at paragraphs 38 (d) and (e) above because that information was contained in the documents in particulars i and ii to paragraph 38, which were widely read industry publications, and the information in those documents ought reasonably to have come into the possession of Treasury Officers in the course of performing their duties.
- iv. **Downward pressure on prices:** Treasury Officers knew, or alternatively, ought to have known, that the matters alleged in subparagraphs 38(a) to (e) above were reasonably likely to continue and to create downward pressure on prices in the US Wine Market because a reasonable person in the position of a Treasury Officer would have this information (or alternatively formed this opinion) based on the information in particulars i–iii above (together or in any combination).

Knowledge of June 2018 Treasury US Market Conditions

- v. **Americas sales decline:** Treasury Officers knew, or alternatively, ought to have known, of the FY18 Treasury Brands Sales Decline because this information was set out in, or ought reasonably to have been inferred from:
- (A) the Americas Commercial Review presentation for May 2018;
 - (B) the Americas Commercial Review presentation for June 2018; and/or
 - (C) the IRI Topline report dated 20 May 2018,

and Treasury Officers received this information as set out in the Schedule.

- vi. **Decline in US distributor depletions:** Treasury Officers knew, or alternatively, ought to have known, that Treasury had experienced a year-on-year decline in total US distributor depletions because this information was set out in, or ought reasonably to have been inferred from:
- (A) the Americas Commercial Review presentation for May 2018; and/or
 - (B) the Americas Commercial Review presentation for June 2018,
- and Treasury Officers received this information as set out in the Schedule.
- vii. **Loss of overall US market share in FY18:** Treasury Officers knew, or alternatively, ought to have known, that Treasury had lost overall market share in the US in FY18 because this information was set out in, or ought reasonably to have been inferred from:
- (A) the Americas Commercial Review presentation for May 2018;
 - (B) the Americas Commercial Review presentation for June 2018; and/or
 - (C) Treasury's 2018 Annual Report,
- and Treasury Officers received this information as set out in the Schedule.
- viii. **Downward pressure on profitability:** Treasury Officers knew, or alternatively, ought to have known, that the matters alleged in paragraph 39(a)–(cb) above were reasonably likely to continue and to create downward pressure on the profitability of the Americas division in FY19 and FY20 because a reasonable person in the position of a Treasury Officer would have this information (or alternatively formed this opinion) based on the information in particulars v–vii above and/or the matters alleged in paragraph 39A (together or in any combination).

Knowledge of FY18 Americas Budget Miss

- ix. **Treasury Officers knew of the matters alleged in paragraph 39A by no later than 15 August 2018 because this information was set out in:**
- (A) The TWE F19-23 Strategic Plan dated 9 April 2018;
 - (B) the CFO Report to the Board issued 17 January 2018;
 - (C) an email from Young to Clarke dated 6 July 2018;
 - (D) the CFO Report to the Board issued 30 July 2018

- (E) a Memorandum for the Board of Directors re: F18 Forecast issued 22 February 2018;
 - (F) the Americas Commercial Review presentation for June 2018; and
 - (G) an email from Young to Clarke dated 12 August 2018,
- and Treasury Officers received this information as set out in the Schedule.

Knowledge of June 2018 US Market Conditions Impact Information

- x. Treasury Officers knew, or alternatively, ought to have known, of the June 2018 US Market Conditions Impact Information because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) having come into possession of the information in particulars i–ix above (together or in any combination).

42. In continuing to make the January 2018 Representation on and from no later than 30 June 2018, or alternatively 15 August 2018, and at all material times thereafter until the end of the Relevant Period, Treasury did not, or did not adequately, take account, or make a genuine assessment, of:

- (a) the June 2018 US Market Conditions;
- (b) the June 2018 Treasury US Market Conditions; ~~and/or~~
- (ba) the FY2018 Americas Budget Miss; and/or
- (c) the June 2018 US Market Conditions Impact Information.

Particulars

~~i. The fact that the matters identified above were not or not adequately taken into account is to be inferred from the fact that certain of the matters in subparagraphs 42(a) to (c), above, (namely, the need for higher levels of discounting to maintain share across all price points and the negative impact on Treasury’s ability to recover or offset increases in COGS), were identified as reasons for the FY20 forecast downgrade on 28 January 2020 but were present as at 30 June 2018.~~

~~ii. The Joint Plaintiffs refer to:~~

~~A. the absence of any announcement by Treasury regarding the matters alleged in subparagraphs 38(a) to 38(e), above, as at 30 June 2018;~~

~~B. the absence of any, or any adequate, discussion, consideration or analysis of the matters alleged in subparagraphs 38(a) to 38(e) or 39, above, in the 16 August 2018 Announcement.~~

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

This is to be inferred from the fact that nothing in the Board pack nor the minutes for the Board Meeting dated 16 August 2018 (at which the publication of the 16 August 2018 Announcement and 2018 Annual Report was approved) reflect any, or any adequate, discussion, consideration or analysis of the matters alleged in subparagraphs 38(a) to 38(e) or 39 above. (See TRE.003.001.2859 (Board pack); TRE.003.001.5367 (minutes).)

43. By reason of the matters alleged in paragraphs 38 to 40 and/or 41 and 42, above, on and from no later than 30 June 2018, or alternatively 15 August 2018, and at all material times thereafter until the end of the Relevant Period, Treasury did not have reasonable grounds for continuing to make the January 2018 Representation.
44. By reason of the matters alleged in paragraphs 34, 35, 36, 37, 38 to 40 and/or 43, above, on and from no later than 30 June 2018, or alternatively 15 August 2018, and at all material times thereafter until the end of the Relevant Period, Treasury engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:
- (a) s 1041H(1) of the Corporations Act;
 - (b) s 12DA(1) of the ASIC Act; and/or
 - (c) s 18 of the ACL,
- (the **June 2018 Misleading or Deceptive Conduct Contravention**).

D.2 June 2018 Continuous Disclosure Contravention

45. Further or alternatively, by 30 June 2018, alternatively 15 August 2018, and at all material times thereafter during the Relevant Period, one or more of the Treasury Officers were aware (within the meaning of Rule 19.12 of the ASX Listing Rules) of the June 2018 US Market Conditions Impact Information.

Particulars

- i. The Joint Plaintiffs refer to and repeat the particulars to paragraph 41, above.
- ii. To the extent that the June 2018 US Market Conditions Impact Information is an opinion, it is an opinion which ought reasonably to have been formed by Treasury Officers by reason of the matters in the particulars to paragraph 41.

~~Further particulars will be provided following the completion of discovery.~~

46. The June 2018 US Market Conditions Impact Information was information that:
- (a) was not generally available within the meaning of s 676 of the Corporations Act; and
 - (b) a reasonable person would expect to have a material effect on the price or value of Treasury Shares within the meaning of Rule 3.1 of the ASX Listing Rules and s 674(2)(c)(ii) of the Corporations Act.

Particulars

- i. The June 2018 US Market Conditions Impact Information included Treasury's own information relating to its business, projections and sensitivities, including its future performance and performance against budget.
- ii. The materiality of the information is to be inferred from the impact of the corrective disclosure alleged in paragraphs 117 and 118, below.

Further particulars will be provided after ~~discovery~~ and the filing of expert reports.

47. By reason of the Continuous Disclosure Obligations and the matters alleged in paragraphs 45 and 46, above, on and from 30 June 2018, alternatively 15 August 2018, Treasury became immediately obliged to inform the ASX of the June 2018 US Market Conditions Impact Information.
48. Treasury did not, at any time prior to 28 January 2020, inform the ASX of the June 2018 US Market Conditions Impact Information.
49. By reason of the matters alleged in paragraphs 45 to 48, above, Treasury contravened Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act (the **June 2018 Continuous Disclosure Contravention**).

E. FEBRUARY 2019 CONTRAVENTIONS

E.1 February 2019 Misleading or Deceptive Conduct Contravention

50. On 14 February 2019, Treasury represented in its 1H19 results announcement that it expected reported EBITs growth in FY20 in the range of approximately 15% to 20% (the **February 2019 Representation**).

Particulars

- i. Treasury ASX announcement dated 14 February 2019 entitled "Treasury Wine Estates Interim 2019 financial result" (**1H19 Results**), pages 2, 3 and 5.
- ii. Treasury ASX announcement presentation dated 14 February 2019 entitled "Treasury Wine Estates Interim Results", page 21.

51. The February 2019 Representation was a representation as to a future matter.

52. The February 2019 Representation was made:
- (a) in trade or commerce in relation to financial services (being Treasury Shares) within the meaning of s 12DA(1) of the ASIC Act;
 - (b) in relation to a financial product or financial services (being Treasury Shares) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act; and
 - (c) in trade or commerce within the meaning of s 18 of the ACL.

53. As at 14 February 2019:

- (a) ~~the June 2018 US Market Conditions remained in existence and conditions were continuing to deteriorate, such deterioration being due primarily to unfavourable shifts in consumer demographics and a slowing of market premiumisation trends; market commentators on the US Wine Market were expecting:~~
 - (i) decreasing sales growth in the “baby boomer” consumer demographic;
 - (ii) flat sales growth in the millennial consumer demographic; and
 - (iii) that the trend of premiumisation “nearing its apex”.

Particulars

Silicon Valley Bank Report dated 6 February 2019, entitled ‘State of the Wine Industry’, pages 6 to 13. (TRE.006.017.6996.)

- (b) the 2018 grape harvest in the US was expected to be a record with 4.4 million tons forecast for California, and the Pacific Northwest also expected to set records, which was likely to result in:
 - (i) ~~higher~~ lower grape prices;
 - (ii) flat premium wine prices, and declines in pricing in masstige and commercial wine; and/or
 - (iii) increased sales of competitively priced private label wine available in retail channels.

Particulars

- i. Ciatti Global Wine and Grape Brokers report entitled ‘California Report’ dated November 2018, page 2 and 3.
- ii. State of the Wine Industry Report 2019, page 6, 12,13, 17 and 19. (TRE.006.017.6996.)

iii. A “Bulk Market High Level January 2019 Global Update” email dated 1 February 2019 sent by Cathy Ference (Director, Bulk Wine) to several TWE employees stated that:

- (A) “Key takeaways” from the 2019 Unified State of the Industry presentation included that there was “[s]trong supply – softening demand”, contributing to a “[d]emand problem”;
- (B) the 2018 California harvest was “likely to be the biggest in California’s history”, estimated at more than 4.3 million tons;
- (C) the record harvest coupled with slow bulk wine and case good sales, along with limited capacity, led to some overages being “left on the vine, or sold at discount prices”;
- (D) negociants (that is, purchasers of grapes, juice or bulk wine who sell wine under their own names) “will be active seizing bulk purchase opportunities”;
- (E) grape pricing was “currently estimated to be flat to decreasing”;
- (F) the global market was becoming a “Buyer’s Market” due to a shift from a “[g]lobal grape shortage to [g]lobal surplus”; and
- (G) suppliers “world-wide are facing the new reality of falling pricing”.

(TRE.053.001.0020 at .0020–.0021.)

(c) the US wine industry was expected to transition to a period of:

- (i) flat to negative volume growth;
- (ii) low sales growth;

Particulars

- i. State of the Wine Industry Report 2019, pages 12–13. (TRE.006.017.6996.)
- ii. As at 27 January 2019, the total US market for non-box table wine priced at or above \$4 had not grown, in volume terms, over the prior 52 weeks. (TRE.013.014.6875 at .6891.)

(ca) a “trade war” between the United States and China led to wine that would otherwise be exported to China needing to be sold in the United States;

Particulars

An email from Clarke (CEO) dated 1 November 2019 states that “with the ongoing trade war - there is more product in the USA trying to find a home (in the USA) ie. it hasn’t gone to Asia - this increases discounting and private label is winning in this area”. (TRE.002.001.4209.)

- (d) as a result of the matters set out in subparagraphs 53(a) to 53(ca), above, at the end of 2018, the US Wine Market had an oversupply (the **2018 Harvest Oversupply**);

Particulars

An email from Gareth Young (Director of Supply, Strategy and Inventory Management, Americas) dated 26 January 2019 stated that a “Bulk Market Glut”, which was caused by increased planting in California alongside a “larger than average 2018 vintage”, had “flooded the market”, which meant that Treasury was “entering an oversupply period”. (TRE.021.050.3483 at .3484.)

- (e) there was generally a lead time from wine grape harvest to sale of wine products in the global wine market of more than six months;
- (f) there was and was likely to continue to be an added supply of private label wine products in the US Wine Market;

Particulars

- i. Between 3 November 2018 and 26 January 2019, yoy sales of private label wine increased on each monthly measurement date, on average, 20% by value as tracked by Nielsen sales data.
- ii. The Joint Plaintiffs refer to and repeat to paragraph 53(b) above, and particular iii to that paragraph.

- (g) the matters alleged in subparagraphs 53(a) to 53(f), above, were likely to:
- (i) create downward pressure on prices in the US Wine Market going forward, including in the premium wine segment; and
- (ii) mean it would be more difficult for participants in the US Wine Market to rely on premiumisation to maintain or increase profits,

(together, the **February 2019 US Market Conditions**).

Particulars

- i. Silicon Valley Bank report dated 6 February 2019, entitled ‘State of the Wine Industry’, pages 6 to 13.

- ii. Treasury's wine release profile in the US Wine Market included wines released immediately and wines held in inventory for up to 5 years.

54. As at 14 February 2019, ~~the June 2018 Treasury US Market Conditions were continuing and deteriorating, in that:~~

(a) Treasury:

- (i) had experienced a ~~decline in sales in the US from FY17 to FY18, namely the FY17 Treasury Brands Sales Decline and the FY18 Treasury Brands Sales Decline;~~
- (ii) was experiencing a further decline in the US of sales of the Key Diageo Brands in FY19 to date (the **FY19 Treasury Brands Sales Decline**);

Particulars

- i. The particulars to paragraph 39(a) are repeated. ~~The FY19 Treasury Brands Sales Decline for the full financial year was as follows:~~

- A. ~~Acacia by 39.2% yoy;~~
- B. ~~Beaulieu Vineyard by 16.2% yoy; and~~
- C. ~~Sterling Vineyards by 10.3% yoy;~~

- ii. ~~The Joint Plaintiffs say that these declines were also the case proportionately for the 7.5 months of FY19 to 14 February 2019, and this was the FY19 Treasury Brands Sales Decline to date.~~

- iii. As at January 2019, for Sterling Vineyards, Beaulieu Vineyard and Acacia:

- (A) shipments were down by 3.5%, 7.7% and 36.5% (respectively) year-to-date against the prior corresponding period; and
- (B) net sales revenue was down by 7.0%, up by 16.8%, and down by 30.2% (respectively) year-to-date against the prior corresponding period on a constant-currency basis.

(TRE.013.014.6875 at .6885.)

(b) Although Treasury's Americas division had experienced year-on-year sales growth in 1H19 as compared to 1H18, its sales in 1H19 were below 1H17 in both volume and revenue;:-

- (i) ~~had experienced reduced sales growth in respect of sales of its wines (including the Key Diageo Brands) in the US in 4Q18; and~~
- (ii) ~~was experiencing reduced sales growth in respect of sales of its wines (including the Key Diageo Brands) in the US in FY19 to date;~~

Particulars

- i. ~~The particulars to paragraph 39(b) are repeated.~~
- ii. ~~Further, in 1Q19, Treasury's sales growth by value as tracked by Nielsen sales data was, across its entire portfolio, at or below the US industry average and at negative or less than around 4% growth.~~
- iii. Treasury's 1H17 interim financial results reported year-to-date Americas shipments of 7.9 million nine litre equivalents (9Le) and reported-currency net sales revenue of A\$566.3 million. (NAP.999.001.0005 at 0022).
- iv. As at December 2017, the Americas division reported year-to-date shipments of 7.285 million 9Le and reported-currency net sales revenue of A\$391.2 million. (TRE.004.028.8660 at .8663.)
- v. As at December 2018, the Americas division reported year-to-date shipments of 7.427 million 9Le and net sales revenue of A\$436.1 million, which represented growth of 1.9% in volume and 12.3% in revenue as against 1H18 (on a constant currency basis), but was substantially below 1H17. (TRE.049.001.0182 at .0185.)

(ba) Treasury's Americas division had experienced a significant year-on-year sales decline and loss of market share in commercial wine, which was its largest segment by volume and second-largest segment by value:

Particulars

- i. As at 13 July 2018, the volume of commercial wine sold by Treasury's Americas division was declining faster than that of its competitors. (TRE.016.023.2637 at .2638.)
- ii. As at 27 January 2019, Treasury's US business had experienced negative sales growth of 14.5% in dollar terms and 14.5% in volume terms in the "Popular \$4.00–7.99" price segment over the previous 52 weeks, in comparison to an overall decline in the segment of 3.4% in dollar terms and 3.4% in volume terms. The "Popular \$4.00–7.99" price segment was the largest segment by volume and second-largest segment by value reported for Treasury's US business. (TRE.013.014.6875 at .6891.)

(c) Treasury's Americas division had experienced:

- (i) an overall year-on-year decline in US distributor depletions; and

- (ii) a year-on-year decline in distributor depletions in California of 11% and Florida/the South East of 4%, both of which were markets in which the Route-to-Market transition had been implemented;

~~an ongoing decline in US distributor depletions in respect of all of its top-selling brands (except for 19 Crimes and Matua), including the Key Diageo Brands from 2015 through at least 30 December 2018 (being the end of 1H19);~~

Particulars

~~Impact Databank depletions data.~~

Americas Commercial Review for January 2018 (TRE.013.014.6875 at .6876, .6890.)

- (ca) Treasury's costs of goods sold for a significant proportion of the bulk wine in its inventory exceeded the price for which Treasury could sell that wine, which was a result in part of the price effects of the US-wide oversupply in bulk wine;

Particulars

Email chain involving Young (CFO), Ford (COO) and Gareth Young (Director of Supply, Strategy and Inventory Management, Americas), 25–26 January 2019 (TRE.021.050.3483).

- (cb) Sales growth of Treasury's key masstige brand 19 Crimes had begun to slow, including because of price increases effected by Treasury;

Particulars

- i. A "19 Crimes H2'19 Brand Update" dated February 2019 stated that "Growth has started to slow driven by declines in Red Blend and The Banished (Dark Red Blend), that "recent aggressive price increases have contributed to this downtrend in Independent markets", and that "there is a 492K [9LE] gap to budget". (TRE.016.007.5171 at .5172.)
- ii. An email to Snyder dated 9 October 2018 stated that Treasury was maintaining an increased price point compared to the previous October. (TRE.017.011.4971.)
- iii. An "IRI Topline" report dated 27 January 2019 showed that the change in rate of sales for 19 Crimes over the past 13 weeks was – 23.4%. (TRE.010.008.1968 at .1970.)

- (d) Treasury's market share in the US was falling had fallen in 2H18 and 1H19;

Particulars

~~Nielsen sales data indicated that between 3 November 2018 and 26 January 2019, in a market in which Nielsen sales data of private label wines had increased on average by over 20 basis points on each measurement date, Treasury's yoy market share had:~~

- ~~i. declined by over 2 basis points on 3 November 2018;~~
- ~~ii. declined by over 30 basis points on 1 December 2018;~~
- ~~iii. declined by over 10 basis points on 29 December 2018; and~~
- ~~iv. declined by over 15 basis points on 26 January 2019.~~

In the 52 weeks to 27 January 2019, the total US market for non-box table wine priced at or above \$4 had grown 1.9% by dollars and was flat by volume, whereas Treasury's sales had fallen 1.1% by dollars and 6.0% by volume. (TRE.013.014.6875 at .6891.)

(e) the matters alleged in sub-paragraphs 54(a) to (d), above, were trends that were reasonably likely to:

- (i) continue in FY20;
- (ii) create downward pressure on the profitability of the Americas division in FY20 prices for Treasury's wines in the US going forward, including in the premium wine segment; and
- (iii) negatively impact Treasury's ability to rely on premiumisation to maintain or increase profits,

(the **February 2019 Treasury US Market Conditions**).

Particulars

- i. Treasury's management attributed the shortfall in the Americas division's EBITs result for 1H19 to "unfavourable mix and pricing". (TRE.003.001.3627 at .3675.)
- ii. Based on its continued trends of falling below plans, as reflected in first half fiscal 2019 financials and the Americas commercial reviews, Treasury was experiencing considerable performance issues in the significant Americas division, including the US Market.

55. As at 14 February 2019, the February 2019 US Market Conditions and/or the February 2019 Treasury US Market Conditions were likely to materially adversely impact Treasury's financial performance in ~~future financial periods~~ in the Americas division in FY20 (the **February 2019 US Market Conditions Impact Information**).

Particulars

- i. The February 2019 US Market Conditions were likely to have the following impact on the Americas division:
 - A. negatively impact volumes and sales;
 - B. require Treasury to undertake higher levels of discounting to maintain market share across all price points;
 - C. negatively impact Treasury's ability to recover or offset increases in COGS; and
 - D. negatively impact Treasury's ability to rely on premiumisation to maintain profits.
- ii. The Joint Plaintiffs refer to subparagraph 53(g) and the continuing nature of the February 2019 US Market Conditions for their impact on Treasury's financial performance in ~~future financial periods, including~~ FY20.
- iii. Treasury's sensitivity to the February 2019 US Market Conditions in the abovementioned manner is to be inferred from the fact that Treasury ultimately identified these matters as reasons for the FY20 forecast downgrade on 28 January 2020.
- iv. The February 2019 Treasury US Market Conditions had the same impacts as the February 2019 US Market Conditions (and the previous three paragraphs are repeated).

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

55A. For 1H19, Treasury's Americas division reported:

- (a) shipments of 7,427,200 9LE against a budget of 7,524,900 9LE, a shortfall against budget of 97,700 9LE or 1.3%;
- (b) net sales revenue of \$604.6 million against a budget of \$633.1 million, a shortfall against budget of \$28.5 million or 4.5% on a constant-currency basis;
- (c) EBITS of \$112.1 million against a budget of \$118.6 million, a shortfall against budget of \$6.5 million or 5.5% on a constant-currency basis; and
- (d) EBITS growth of 2.2% voy on a constant-currency basis.

(the 1H19 Americas Budget Miss).

Particulars

December 2018 Chief Financial Officer Report, issued 22 January 2019.
(TRE.003.001.3627 at .3676.)

55B. Treasury's Americas division failed to meet its year-to-date EBITs budgets in each month of 1H19 for which data was reported (the 1H19 Americas Monthly Underperformance).

Particulars

The monthly "Flash" results report for 1H19 included the following information:

Month	EBITS variance to budget (\$ million, constant currency)	EBITS variance to budget (%)	Document ID
July 2018	- 10.0	Infinite (budgeted loss)	TRE.002.030.0960 at .0961
August 2018	- 1.1	- 13.8%	TRE.002.030.0917 at .0918
September 2018			No flash results available
October 2018	- 5.1	- 11.3%	TRE.002.030.0687 at .0688
November 2018	- 16.9	- 20.6%	TRE.004.002.2521 at .2522
December 2018	- 7.0	- 6.5%	TRE.015.002.9406 at .9407

55C. As at 14 February 2019:

- (a) the making of the February 2019 Representation had been approved by a subcommittee established by Treasury's Board;

Particulars

Minutes of the meeting of Treasury's Board on 13 February 2019. (TRE.001.001.0299 at .0306.)

- (b) the making of the February 2019 Representation was approved by the subcommittee based on a "F19 Forecast & F20 Preliminary Plan" presented by Young (CFO);

Particulars

- i. Minutes of the meeting of Treasury's Board on 13 February 2019. (TRE.001.001.0299 at .0306.)
- ii. F19 Forecast & F20 Preliminary Plan issued 6 February 2019. (TRE.002.002.2555.)

(c) the F19 Forecast & F20 Preliminary Plan stated that management was “in the preliminary stages of the F19 5YP” (five-year plan) and that “expectations for regional and group results are set out below”, and continued to state that:

(i) the “Current F20 Plan” forecast the Americas division to earn EBITs of \$250 million, representing 8.7% growth against the forecast EBITs result for FY19; and

(ii) that Treasury Group’s total forecast EBITs for FY20 would include \$36 million in EBITs above the total regional forecasts, an unspecified portion of which was attributable to assumed “improved US performance”;

and

Particulars

F19 Forecast & F20 Preliminary Plan issued 6 February 2019.
(TRE.002.002.2555.)

(d) the Board had not yet approved Treasury’s budget for FY20 when the February 2019 Representation was made,

(the February 2019 Forecast Process.)

Particulars

Treasury’s Board approved Treasury’s FY20 budget at a meeting on 2 April 2019. (TRE.001.001.0332 at .0340.)

55D. As at 14 February 2019, Treasury’s attainment of reported EBITs growth in FY20 in the range of approximately 15% to 20% (being the subject of the February 2019 Representation) was subject to material risk in that:

(a) the forecast was based on the February 2019 Forecast Process;

(b) the Americas division represented approximately 31.4% of Treasury’s forecast FY20 EBITs in the F19 Forecast & F20 Preliminary Plan;

Particulars

F19 Forecast & F20 Preliminary Plan issued 6 February 2019.
(TRE.002.002.2555.)

(c) the Americas division had suffered the FY18 Americas Budget Miss, the 1H19 Americas Budget Miss, and the 1H19 Americas Monthly Underperformance, which ought reasonably to have called into question the reliability of Treasury’s systems and processes for forecasting the performance of the Americas division,

Particulars

- i. In an email dated 26 November 2018 with the subject "Update to Draft 5YP", Ford wrote "this is going to be a shit show", and "I fully understand that the ... US is a trainwreck". (TRE.004.002.5857.)
- ii. In an email dated 1 December 2018 with the subject "Fwd: 5YP", Clarke wrote that "The ELT [Executive Leadership Team] have made a dogs dinner of this 5YP [five-year plan]". (TRE.002.030.5547.)

(the February 2019 Forecast Risks).

56. [not used] As at 14 February 2019, there had been a change in Treasury's Americas leadership (the February 2019 Leadership Change).

Particulars

- i. ~~On 21 January 2019, Treasury announced to the ASX the departure of its Chief Operating Officer, Foye, who was based in the US, effective immediately.~~

~~Further particulars will be provided following the completion of discovery.~~

57. [not used] As at 14 February 2019, the February 2019 Leadership Change was likely to materially adversely impact Treasury's operating performance in FY20 in the Americas division (the February 2019 Leadership Impact Information).

Particulars

- i. ~~The Chief Operating Officer played an important role in ensuring the following in the Americas division:
 - A. ~~momentum in relation to distribution and execution of programming in the US Market, including the execution of the Route-To-Market Model; and~~
 - B. ~~momentum in planning.~~~~
- ii. ~~The departure of the Chief Operating Officer and changes in that role were likely to cause Treasury's US wine business to lose execution momentum into FY20.~~
- iii. ~~Treasury's performance in the US Market was sensitive to loss of execution momentum.~~
- iv. ~~The fact that leadership changes and execution momentum were likely to impact operational performance can be inferred from the fact that Treasury ultimately identified these matters as a reason for the FY20 forecast downgrade on 28 January 2020.~~

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

58. As at 14 February 2019, by reason of a combination of the February 2019 US Market Conditions Impact Information by itself, or alternatively, in combination with the February 2019

Forecast Risks and the ~~February 2019 Leadership Impact Information~~, together, it was likely or, alternatively, there was a material risk that Treasury would not achieve growth in EBITs at a rate of 15% to 20% in FY20 (the **February 2019 Combined US Impact Information**).

Particulars

- i. The Joint Plaintiffs refer to and repeat the particulars subjoined to paragraphs 55 ~~and 57~~ above. The adverse impact on financial and operational performance was likely to have an impact on the EBITs of the Americas division.
- ii. The Joint Plaintiffs draw an inference of the combined impact of these matters on Treasury's ability to achieve growth in EBITs at a rate of 15% to 20% in FY20, in circumstances where, as alleged in paragraph 21, the "Americas" division had contributed at least 40% of Treasury's NSR and over 30% of Treasury's EBITs.

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

59. As at 14 February 2019 (and at all material times afterwards), one or more of the Treasury Officers knew or ought to have known, information being:

- (a) the February 2019 US Market Conditions;
- (b) the February 2019 Treasury US Market Conditions;
- (c) the February 2019 US Market Conditions Impact Information;
- (ca) the February 2019 Forecast Risks; and/or
- (d) [not used] ~~the February 2019 Leadership Change;~~
- (e) [not used] ~~the February 2019 Leadership Impact Information; and/or~~
- (f) the February 2019 Combined US Impact Information.

Particulars

- ~~i. The February 2019 US Wine Market Conditions were publicly known.~~
- ~~ii. The February 2019 US Market Conditions Impact Information and the February 2019 Treasury US Market Conditions were known or ought to have been known based on an analysis by one or more of the Treasury Officers of public information combined with a knowledge of Treasury's business and sensitivities, the Treasury Monitoring Systems and information which would come into the possession of one or more of the Treasury Officers in the proper performance of their duties.~~
- ~~iii. The February 2019 Leadership Change was known to Treasury.~~
- ~~iv. The February 2019 Leadership Impact Information was known or ought to have been known based on a combined knowledge of one or more of the Treasury's Officers of the departure of Foye, a knowledge of Treasury's~~

~~business and sensitivities to leadership change, the Treasury Monitoring Systems and information that one or more of the Treasury Officers would come across in the proper performance of their duties.~~

~~The February 2019 Combined US Impact Information was known or ought to have been known based on an inference of the combined effect of the matters identified at (i) to (iii), above.~~

- ~~v. The fact that one or more of the Treasury Officers knew or ought to have known the alleged information can be inferred from the fact that Treasury ultimately identified these matters as a reason for the FY20 forecast downgrade on 28 January 2020.~~

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

Knowledge of February 2019 US Market Conditions

- i. The matters alleged in paragraphs 53(a)–(ca), (e) and (f) above were common knowledge in the US Wine Market, and therefore ought reasonably to have been known to Treasury’s Officers.
- ii. The matters in the “Bulk Market High Level January 2019 Global Update” email dated 1 February 2019 (TRE.053.001.0020) (see particular iii to paragraph 53(b) and particular ii to paragraph 53(f)) ought reasonably to have been brought to the attention of Snyder and/or Burghardt on or soon after that date, in light of their roles as alleged at paragraphs 27–28 above.
- iii. Treasury Officers knew of the matters in particular ii to paragraph 53(c) by no later than 14 February 2019, because they was contained in an “Americas Commercial Review” report that was sent to Clarke, Foye, Young, Burghardt, Snyder and/or Ford in the ordinary course of Treasury’s business. (TRE.013.014.6875 at .6891.)
- iv. Clarke knew of the matters in paragraph 53(ca) because they were contained in an email sent by him on 1 November 2019. (TRE.002.001.4209.)
- v. The matters in the email from Gareth Young (Director of Supply, Strategy and Inventory Management, Americas) dated 26 January 2019 (referred to in the particulars to paragraph 53(d) above) ought reasonably to have been brought to the attention of Snyder and/or Burghardt on or soon after that date, in light of their roles as alleged at paragraphs 27–28 above.
- vi. Treasury Officers knew, or alternatively, ought to have known, of the matters alleged in paragraph 53(g) because a reasonable person in the position of a Treasury Officer would have this information (or alternatively formed this opinion) based on the information in particulars i–v above (together or in any combination).

Knowledge of February 2019 Treasury US Market Conditions

- vii. **Americas sales decline:**
- (A) The Joint Plaintiffs repeat particular vi to paragraph 41 above.
 - (B) Treasury Officers knew, or alternatively, ought to have known, that Treasury was experiencing the FY19 Treasury Brands Sales Decline by no later than 14 February 2019, because the information was contained in an Americas Commercial Review report for January 2018 that was sent to Clarke, Foye, Young, Burghardt, Snyder and/or Ford in the ordinary course of Treasury's business. (TRE.013.014.6875 at .6885.)
- viii. **Sales growth:** Treasury Officers knew that the sales of Treasury's Americas division in 1H19 were below 1H17 in both volume and revenue because that information ought reasonably to be inferred from information contained in:
- (A) Treasury's 1H17 interim financial results;
 - (B) the Americas Commercial Review presentation for December 2017;
and
 - (C) the Americas Commercial Review presentation for December 2018,
and Treasury Officers received that information as set out in the Schedule.
- ix. **Sales decline in commercial wine:** Treasury Officers knew that Treasury's Americas division had experienced a significant year-on-year sales decline and loss of market share in commercial wine because that information was set out in:
- (A) a Project Sustain ALT Update dated July 13, 2018, which Treasury Officers received as set out in the Schedule; and
 - (B) an Americas Commercial Review report for January 2018 that was sent to Clarke, Foye, Young, Burghardt, Snyder and/or Ford in the ordinary course of Treasury's business by no later than 14 February 2019. (TRE.013.014.6875 at .6891.)
- x. **Declining distributor depletions:** Treasury Officers knew that Treasury's Americas division had experienced an overall year-on-year decline in US distributor depletions and a year-on-year decline in distributor depletions in California of 11% and Florida/the South East of 4%, both of which were markets in which the Route-to-Market transition had been implemented, because that information was contained in an Americas Commercial Review

report for January 2018 that was sent to Clarke, Foye, Young, Burghardt, Snyder and/or Ford in the ordinary course of Treasury's business by no later than 14 February 2019. (TRE.013.014.6875 at .6876, .6890.)

- xi. **Bulk wine COGS:** Treasury Officers knew that Treasury's costs of goods sold for a significant proportion of the bulk wine in its inventory exceeded the market price for that wine, in part due to the price effects of the US-wide oversupply in bulk wine, because that information was contained in an email chain involving Young and Ford dated 25–26 January 2019. (TRE.021.050.3483.)
- xii. **Falling US market share:** Treasury Officers knew that Treasury's market share in the US was falling because that information was contained in an Americas Commercial Review report for January 2018 that was sent to Clarke, Foye, Young, Burghardt, Snyder and/or Ford in the ordinary course of Treasury's business by no later than 14 February 2019. (TRE.013.014.6875 at .6891.)
- xiii. **Downward pressure on profitability:** Treasury Officers knew, or alternatively, ought to have known, that the matters alleged in paragraph 54(a) to (d) above were reasonably likely to continue and to result in the matters alleged in paragraph 54(e) because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) having come into possession of the information in particulars i–xii above and/or the matters alleged in paragraphs 55A and 55B (together or in any combination).

Knowledge of February 2019 US Market Conditions Impact Information

- xiv. Treasury Officers knew, or alternatively, ought to have known, of the February 2019 US Market Conditions Impact Information because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) having come into possession of the information in particulars i–xiii above (together or in any combination).

Knowledge of February 2019 Forecast Risks

- xv. Treasury Officers knew, or alternatively, ought to have known, of the February 2019 Forecast Risks because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) based on the following information:
 - (A) the December 2018 Chief Financial Officer Report (which included information comprising the 1H19 Americas Budget Miss);

- (B) the “Flash” results for July 2018 to December 2018 (which included information comprising the 1H19 Americas Monthly Underperformance);
- (C) the minutes of the meeting of Treasury’s Board on 13 February 2019 and the F19 Forecast & F20 Preliminary Plan issued 6 February 2019 (which included information comprising the February 2019 Forecast Process);
- (D) the email from Ford dated 26 November 2018 and the email from Clarke dated 1 December 2018;

and Treasury Officers received that information as set out in the Schedule.

Knowledge of February 2019 Combined US Impact Information

- xvi. Treasury Officers knew, or alternatively, ought to have known, of the February 2019 Combined US Impact Information because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) having come into possession of the information in particulars i–xv above (together or in any combination).

60. In making the February 2019 Representation, Treasury did not, or did not adequately, take account, or make a genuine assessment, of:

- (a) the February 2019 US Market Conditions;
- (b) the February 2019 Treasury US Market Conditions;
- (c) the February 2019 US Market Conditions Impact Information;
- (ca) the February 2019 Forecast Risks; and/or
- (d) [not used] the February 2019 Leadership Change;
- (e) [not used] the February 2019 Leadership Impact Information; and/or
- (f) the February 2019 Combined US Impact Information.

Particulars

- ~~i. The Joint Plaintiffs refer to the 1H19 Results and in particular to page 9 (Americas regional summary) and the absence of any, or any adequate, discussion, consideration or analysis of the matters alleged in subparagraphs 53(a) to 53(e) or paragraph 56, above.~~
- ~~ii. The fact that the matters identified above were not or not adequately taken into account is also to be inferred from the fact that certain of the matters in subparagraphs 59(a) to 59(e), above, (namely, unexpected changes in Treasury's Americas leadership resulting in a loss of execution momentum, accelerated growth in private label wine, the need for higher levels of discounting to maintain share across all price points and the negative impact on Treasury's ability to recover or offset increases in COGS), were identified as reasons for the FY20 forecast downgrade on 28 January 2020 but were present as at 14 February 2019.~~

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

This is to be inferred from the fact that nothing in the Board pack nor the minutes for the Board Meeting dated 13 February 2019 reflect any, or any adequate, discussion, consideration or analysis of the matters alleged in paragraphs 53 to 58 above. (See TRE.003.001.3627 (Board pack); TRE.002.002.2555 (F19 Forecast & F20 Preliminary Plan); TRE.001.001.0299 (minutes).)

61. By reason of the matters alleged in paragraphs 53 to 58 and/or 59 and 60, above, Treasury did not have reasonable grounds for making the February 2019 Representation.
62. Treasury did not, at any time before 28 January 2020, withdraw or qualify the February 2019 Representation, which was a continuing representation throughout the Relevant Period.
63. By reason of the matters alleged in paragraphs 50, 51, 52, 53 to 58, 61 and 62, above, on and from no later than 14 February 2019 and at all material times thereafter until the end of the Relevant Period, Treasury engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:
 - (a) s 1041H(1) of the Corporations Act;
 - (b) s 12DA(1) of the ASIC Act; and/or
 - (c) s 18 of the ACL,

(February 2019 Misleading or Deceptive Conduct Contravention).

E.2 February 2019 Continuous Disclosure Contravention

64. Further or alternatively, by 14 February 2019 and at all material times thereafter during the Relevant Period, one or more of the Treasury Officers were aware (within the meaning of Rule 19.12 of the ASX Listing Rules) of:

- (a) the February 2019 US Market Conditions Impact Information;
- (b) ~~[not used] the February 2019 Treasury US Market Conditions;~~
- (ba) the February 2019 Forecast Risks; and/or
- (c) ~~[not used] the February 2019 Leadership Impact Information; and/or~~
- (d) the February 2019 Combined US Impact Information.

Particulars

- i. The Joint Plaintiffs refer to and repeat the particulars subjoined to paragraph 59, above.
- ii. ~~As to subparagraph 64(c), it can be inferred that based on its knowledge of the matters set out in subparagraphs 64(a) and 64(b), one or more Treasury Officers had formed the opinion that there was a material risk that the Company would not achieve growth in EBITs at a rate of 15% to 20% in FY20.~~
- iii. To the extent that the February 2019 US Market Conditions Impact Information, the February 2019 Forecast Risks, and the February 2019 Combined US Impact Information are opinions, they are opinions which ought reasonably to have been formed by Treasury Officers by reason of the matters in the particulars to paragraph 59.

~~Further particulars will be provided following the completion of discovery.~~

65. Each of:

- (a) the February 2019 US Market Conditions Impact Information;
- (b) ~~[not used] the February 2019 Leadership Impact Information; and/or~~
- (ba) the February 2019 Forecast Risks; and/or
- (c) the February 2019 Combined US Impact Information,

was information that:

- (d) was not generally available within the meaning of s 676 of the Corporations Act; and
- (e) a reasonable person would expect to have a material effect on the price or value of Treasury Shares within the meaning of Rule 3.1 of the ASX Listing Rules and s 674(2)(c)(ii) of the Corporations Act.

Particulars

- i. The matters set out in subparagraphs 65(a) to 65(c) included Treasury's own information relating to its business, projections and sensitivities, including its future performance and performance against budget.
- ii. The materiality of the information is to be inferred from the impact of the corrective disclosure alleged in paragraphs 117 and 118, below.

Further particulars will be provided after ~~discovery and~~ the filing of expert reports.

66. By reason of the Continuous Disclosure Obligations and the matters alleged in paragraphs 64 to 65, above, on and from 14 February 2019, Treasury became immediately obliged to inform the ASX of:

- (a) the February 2019 US Market Conditions Impact Information;
- (b) ~~[not used] the February 2019 Leadership Impact Information; and/or~~
(ba) the February 2019 Forecast Risks; and/or
- (c) the February 2019 Combined US Impact Information.

67. Treasury did not, at any time prior to 28 January 2020, inform the ASX of:

- (a) the February 2019 US Market Conditions Impact Information;
- (b) ~~[not used] the February 2019 Leadership Impact Information; and/or~~
(ba) the February 2019 Forecast Risks; and/or
- (c) the February 2019 Combined US Impact Information.

68. By reason of the matters alleged in paragraphs 64 to 67, above, Treasury contravened Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act (the **February 2019 Continuous Disclosure Contravention**).

F. AUGUST 2019 CONTRAVENTIONS

F.1 August 2019 Misleading or Deceptive Conduct Contravention

69. In its 2019 annual results announcement published on 15 August 2019, Treasury reaffirmed that it expected reported EBITs growth in FY20 in the range of approximately 15% to 20% (the **August 2019 Representation**).

Particulars

- i. FY19 Results Announcement, pages 2, 3 and 5.
- ii. FY19 Results Presentation, page 20.

70. The August 2019 Representation was a representation as to a future matter.

71. The August 2019 Representation was made:
- (a) in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;
 - (b) in relation to a financial product or financial services (being Treasury Shares) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act; and
 - (c) in trade or commerce within the meaning of s 18 of the ACL.

72. As at 15 August 2019:

- (a) ~~sales of private label wine in the US had grown significantly throughout 2H19; the February 2019 US Market Conditions otherwise remained in existence and were continuing;~~

Particulars

- i. ~~The continuing market conditions included an increase in private label wine sales and a deceleration in retail sales of US wine as was measured by Nielsen sales data as follows:~~
 - (A) Between 23 February 2019 and 20 April 2019, yoy sales of private label wines by volume and value increased on average by over 20% on each measurement date.
 - (B) Between 18 May 2019 and 10 August 2019, yoy sales of private label wines by value increased on average by over 15% on each measurement date.
- ii. An email newsletter received by Snyder on 9 May 2019 with the subject "Private Label Wines Make Their Presence Felt On Impact's 'Hot Brands' List" stated, inter alia, that "chain retailers [were] ramping up their private label activity in the wine category" and that "private labels [were] enjoying rapid gains lately". (TRE.017.026.1548 at .1549-.1550.)
- iii. On or around 18 June 2019, Clarke said: "Commercial is more stagnant to declining, but it is a very large part of the market and it does give you scale. ... The other thing that's happening in commercial is that private label is starting to grow. We see – it's growing more so than what you've seen in the past and what – the best way to articulate it is America is now catching up with where Europe and Australia are, for example, with the size of the private label market being so big, and so there's been a catch up in America in the commercial segment on private label." (TRE.086.001.0182.)

- (b) the 2018 California grape harvest was confirmed at 4.28 million tons of grapes, which was a record;

Particulars

A “Bulk Market High Level April 2019 Global Update” dated 18 April 2019 stated that “CA V18 hits record volume of 4.282 Million Tons!” (TRE.055.001.0002.)

- (c) the 2019 grape harvest in the US was expected to be normal or average to above normal or average;

Particulars

- i. USDA Crop Production report released 12 August 2019, page 32 referring to 4.28 million tons of grapes in California in 2018 and 4.2 million tons of grapes in California in 2019.
- ii. Ciatti Wine Brokers Global Market report dated July 2019 entitled ‘Global Market Report’ (**July 2019 Ciatti Report**), page 3 referring to “crop size looking normal”.
- iii. Ciatti Wine Brokers Global Market report dated August 2019 entitled ‘Global Market Report’ (**August 2019 Ciatti Report**), page 3 referring to “crop size looking normal”.
- iv. 2019 Annual Report, page 29, stated “forecast grape tonnage may be slightly below V18, given it was a large vintage”.
- v. A “Bulk Market High Level July 2019 Global Update” dated 31 July 2019 stated that the V19 harvest “looks a bit shorter” but “won’t be under 4M tons”. (TRE.055.001.0014.)

- (d) surplus stock from the 2018 Harvest Oversupply remained available in the US Wine Market;

Particulars

- i. July 2019 Ciatti Report, pages 3 to 4.
- ii. August 2019 Ciatti Report, pages 3 to 4.
- iii. A “Bulk Market High Level April 2019 Global Update” email dated 18 April 2019 stated that there was a “Global surplus” and that “We are identifying our bulk excesses”. (TRE.055.001.0002.)
- iv. A “Bulk Market High Level July 2019 Global Update” email dated 31 July 2019 stated that there was a “Global surplus” and that “We are producing a little too much for demand”. (TRE.055.001.0014.)

- (e) as a result of the matters alleged in subparagraphs 72(a) to 72(d), above, the wine oversupply problem in the US Wine Market was likely to and would continue;

- (f) bulk wine pricing across California was at its lowest level in five years; and

Particulars

- i. July 2019 Ciatti Report, pages 3 to 4.
- ii. August 2019 Ciatti Report, pages 3 to 4.

- (fa) on 3 April 2019, Constellation Brands announced that it was selling all of its wine brands that sold wines with a retail price of less than \$11 to E. & J. Gallo Winery;

Particulars

Constellation Brands announcement dated 3 April 2019 titled “Constellation Brands repositions wines and spirits business”.

- (g) the matters alleged in subparagraphs 72(a) to (fa), above, were likely to:
- (i) create downward pressure on prices in the US Wine Market going forward, including in the premium wine segment; and
 - (ii) mean it would be more difficult for participants in the US Wine Market to rely on premiumisation to maintain or increase profits,

(the **August 2019 US Market Conditions**).

73. As at 15 August 2019; ~~the February 2019 Treasury US Market Conditions were continuing, in that:~~

- (a) Treasury had experienced; ~~a decline in sales in the US from FY17 to FY19 of Treasury wines, namely~~
- (i) ~~the FY17 Treasury Brands Sales Decline,~~ the FY18 Treasury Brands Sales Decline and the FY19 Treasury Brands Sales Decline; and

Particulars

The particulars to paragraphs 39(a) and 54(a) are repeated.

- (ii) as at 14 July 2019, year-on-year sales declines for the Key Diageo Brands.

Particulars

The sales declines were set out in the “IRI Topline: 7.14.19” report as follows (TRE.002.007.0005 at .0010):

Brand	Dollar % change against prior 52 weeks	Volume % change against prior 52 weeks
BV	- 1.6%	- 10%
Sterling Luxury	- 79.6%	- 53.0%
Sterling Napa Valley	- 18.2%	- 26.4%
Acacia	- 23.9%	- 23.9%
Sterling Vintners' Collection	- 3.0%	- 5.8%
A by Acacia	- 33.8%	- 36.7%
BV Coastal Estates	- 20.5%	- 20.5%

- (b) [not used] Treasury had experienced reduced sales growth in respect of sales of its wines (including the Key Diageo Brands) in the US in 4Q18 and FY19;

Particulars

The particulars to paragraph 54(b) and subparagraph (a) above are repeated.

- (c) [not used] Treasury had experienced an ongoing decline in US distributor depletions in respect of all of its top-selling brands (except for 19 Crimes and Matua), including the Key Diageo Brands, from 2015 through at least 30 December 2018 (being the end of 4H19);

Particulars

The particulars to paragraph 54(c) are repeated.

- (ca) in FY19, Treasury's Americas division had experienced a significant year-on-year sales decline and loss of market share in commercial wine, which was its largest segment by volume and second-largest segment by value;

Particulars

As at 16 June 2019, the US had experienced negative sales growth of 12.7% in dollar terms and 12.2% in volume terms in the "Popular \$4.00–7.99" price segment over the previous 52 weeks, in comparison to an overall decline in the segment of 3.0% in dollar terms and 3.7% in volume terms. The "Popular \$4.00–7.99" price segment was the largest segment by volume and second-largest segment by value reported. (TRE.010.045.0004 at .0004; TRE.022.001.8628 at .8644.)

- (cb) the 19 Crimes brand:

- (i) had experienced slowing sales growth in FY19;
- (ii) had experienced slowing depletions growth in FY19;
- (iii) was being discounted in key markets during 2H19;
- (iv) was experiencing increasing costs of goods sold; and
- (v) required year-on-year volume growth of 42% to meet its F20 sales budget.

Particulars

- i. As to sub-paragraph (i): as at 14 July 2019, the rate of sales change for the 19 Crimes Brand was – 4.8% over the previous 52 weeks and – 10.0% over the previous 13 weeks, indicating declining sales growth. (TRE.002.007.0005 at .0010.)
- ii. As to sub-paragraph (ii): as at 25 May 2019, 19 Crimes depletions growth had slowed to 5% per month. (TRE.024.061.9344 at .9348.)
- iii. As to sub-paragraph (iii): as at 13 June 2019, 19 Crimes had been discounted to \$8.99 in the East Coast. (TRE.006.014.5681.)
- iv. As to sub-paragraph (iv): as at 25 May 2019, Treasury was projecting the costs of goods sold for 19 Crimes wine to increase by \$2 per case. (TRE.024.061.9344 at .9346.)
- v. As to sub-paragraph (v): 19 Crimes – F20 Path to Plan draft presentation (TRE.024.061.9344 at .9345).

- (d) Treasury's market share in the US was falling had fallen in FY19; and

Particulars

- ~~i. The particulars to paragraph 54(d) are repeated, in respect of the period between 3 November 2018 and 26 January 2019.~~
- ~~ii. Further Nielsen sales data indicated that between 23 February 2019 and 20 April 2019, in a market in which yoy Nielsen sales data of private label wines by value had increased on average by over 20 basis points on each measurement date, Treasury's yoy market share had:

 - ~~A. declined by over 2 basis points on 23 February 2019;~~
 - ~~B. declined by over 19 basis points by 23 March 2019; and~~
 - ~~C. declined by over 15 basis points by 20 April 2019.~~~~
- ~~iii. Further, Nielsen sales data indicated that between 18 May 2019 and 10 August 2019, in a market in which yoy Nielsen sales data of private label wines by value had increased on average by over 15 basis points on each measurement date, Treasury's yoy market share had:

 - ~~A. declined by over 10 basis points on 18 May 2019;~~~~

- ~~B. declined by over 10 basis points on 15 June 2019;~~
- ~~C. increased by 10 basis points on 13 July 2019; and~~
- ~~D. increased by over 1 basis point on 10 August 2019.~~

In the 52 weeks to 14 July 2019, the total US market for non-box table wine priced at or above \$4 had grown 1.9% by dollars and had shrunk 0.2% by volume, whereas Treasury's sales had fallen 0.2% by dollars and 3.6% by volume. (TRE.002.007.0005.)

- (e) the matters alleged in sub-paragraphs (a) to (d), above, were trends that were reasonably likely to:
 - (i) continue in FY20;
 - (ii) create a downward pressure on the profitability of the Americas division in FY20; and prices for Treasury's wines in the US and/or the volume of Treasury's wines sold in the US going forward,
 - (iii) negatively impact Treasury's ability to rely on premiumisation to maintain or increase profits,

(the **August 2019 Treasury US Market Conditions**).

74. As at 15 August 2019, the August 2019 US Market Conditions and/or the August 2019 Treasury US Market Conditions were likely to materially adversely impact Treasury's financial performance in FY20 in the Americas division (the **August 2019 US Market Conditions Impact Information**).

Particulars

- i. The August 2019 US Wine Market Conditions were likely to have the following impact on the Americas division:
 - A. negatively impact volumes and sales;
 - B. require Treasury to undertake higher levels of discounting to maintain share across all price points;
 - C. negatively impact Treasury's ability to recover or offset increases in COGS; and
 - D. negatively impact Treasury's ability to rely on premiumisation to maintain profits.
- ii. Treasury's sensitivity to the August 2019 US Wine Market Conditions in the abovementioned manner is to be inferred from the fact that Treasury ultimately identified these matters as reasons for the FY20 forecast downgrade on 28 January 2020.
- iii. The August 2019 Treasury US Market Conditions had the same impacts as the August 2019 US Market Conditions (and the previous two paragraphs are repeated).

Further particulars will be provided following the completion of discovery and the filing of expert reports.

74A. The August 2019 Representation was based in part on the FY20–FY24 Five-Year Plan (FY20 5YP), also known as the “Red Plan”, which forecast:

- (a) FY19 group EBITs of \$676 million;
- (b) FY20 group EBITs of \$775 million, representing approximately 15% year-on-year EBITs growth;

Particulars

TWE F20–F24 Strategic Plan, dated 2 April 2019. (TRE.003.001.3873 at .3939.)

- (c) FY19 EBITs for the Americas division of \$240 million; and
- (d) FY20 EBITs for the Americas division of \$268 million, with shipments of 15.1 million 9Les, NSR of \$1,270 million, and average NSR per 9LE of \$84.1.

Particulars

TWE F20–F24 Strategic Plan, dated 2 April 2019. (TRE.003.001.3873 at .3948.)

74B. The FY20 5YP:

- (a) set group EBITs targets based (at least in part) on consensus estimates of share market analysts;

Particulars

- i. A draft “Red 5YP F20–24” dated 6 February 2019, and a further draft “Red 5YP F20–24” dated 7 February 2019, compared F20 EBITs plans to analyst consensus estimates of EBITs at 95% of consensus and 100% of consensus. (TRE.004.001.0764; TRE.002.029.3051.)
- ii. In an email dated 24 February 2019 with the subject line “RE: Red 5YP – Draft I”, Young asks: “How is this now all looking vs updated consensus?” (TRE.004.042.2994 at .2996.)
- iii. In a presentation dated 6 September 2019 prepared for a Group Financial Planning & Analysis meeting, the “Red 5YP” was referred to as a “Central build” with a “Key input” for Year 1 stated to be “Consensus – this should align to above already”. (TRE.004.029.0356 at .0363.)

- (b) was primarily a “top-down” build that did not incorporate any, or any adequate, “bottom up” input from Treasury’s divisional management; and

Particulars

- i. In an email dated 25 January 2019, Coby van Horck (Finance Manager, Group Financial Planning & Analysis) said, under the heading “Budget (Red Plan)”, “The F20 budget process will be a central CEO lead process (in line with prior year), with no workload required by the regions.” (TRE.021.050.9361.)
- ii. In an email dated 13 June 2019, Trenton Gallagher (Finance Director, Financial Planning & Analysis, Americas) said that “Red is always loaded by group, it’s the purely corporate build”. (TRE.024.014.3451.)
- iii. In a presentation dated 6 September 2019 prepared for a Group Financial Planning & Analysis meeting, the “Red 5YP” was referred to as a “Central build”. (TRE.004.029.0356 at .0363.)

- (c) was not intended to be used operationally by Treasury’s regional businesses,

Particulars

Presentation dated 22 August 2019. (TRE.004.029.2965.)

(the FY20 5YP Process).

74C. For FY19, Treasury’s Americas division reported:

- (a) shipments of 14,026,600 9LE against a forecast of 14,421,900 9LE, a shortfall against forecast of 395,399 9LE or 2.7%;
- (b) net sales revenue of \$1,134.4 million against a forecast of \$1,219.5 million, a shortfall against forecast of \$85.1 million or 7% on a constant-currency basis;
- (c) net sales revenue per 9LE of \$80.90 against a forecast of \$84.60, a shortfall against forecast of \$3.70 or 4.37% on a constant-currency basis;
- (d) EBITS of \$218.7 million against a forecast of \$232.6 million, a shortfall against forecast of \$13.9 million or 6% on a constant-currency basis; and
- (e) EBITS growth of 1.76% voy.

(the FY19 Americas Budget Miss).

Particulars

June 2019 Chief Financial Officer Report, issued 7 August 2019. (TRE.003.001.4314 at .4398.)

74D. As at 15 August 2019, Treasury's Americas division had:

(a) experienced the 1H19 Americas Monthly Underperformance; and

Particulars

The Joint Plaintiffs repeat the particulars to paragraph 55B above.

(b) failed to meet its EBITs budgets or forecasts in each month of 2H19 (together with the 1H19 Americas Monthly Underperformance, the **FY19 Americas Monthly Underperformance**).

Particulars

The Americas Commercial Review presentations for 2H19 included the following information:

Month	EBITS YTD variance to reforecast (\$ million)	EBITS YTD variance to reforecast (%)	Document ID
January 2019	- 3.2	- 3.9	TRE.013.014.6875 at .6882
February 2019	- 7.4	- 8.4	TRE.002.009.7273 at .7280
March 2019	- 8.6	- 8.1	TRE.013.014.6693 at .6700
April 2019	- 11.7	- 9.7	TRE.013.011.0975 at .0982
May 2019	- 13.0	- 9.6	TRE.013.046.8405 at .8412
June 2019	- 12.8	- 7.7	TRE.022.001.8628 at .8633

74E. In each month of 2H19, Treasury's Americas division reported shortfalls in sales volume, average unit price, and product mix as compared to the reforecast completed in January 2019 (the **2H19 Americas Key Monthly Metrics Miss**).

Particulars

The Americas Commercial Review presentations for January to June 2019 (TRE.013.014.6875 at .6882, TRE.002.009.7273 at .7280, TRE.013.014.6693 at .6700, TRE.013.011.0975 at .0982, TRE.013.046.8405 at .8412, TRE.022.001.8628 at .8633).

74F. On 13 August 2019, trading results for July 2019 were reported to Treasury Officers, which showed that, as at 31 July 2019:

(a) Treasury's year-to-date EBITs was a loss of \$11.9 million, which was \$11.7 million above budget, on a constant-currency basis;

(b) the America's division's year-to-date EBITs was a loss of \$10.7, which was \$3 million below budget, on a constant-currency basis (**July 2019 Americas Budget Miss**).

Particulars

Email attaching July Month Results from Young to Clarke and Ford dated 13 August 2019 (TRE.004.028.4706 (email), TRE.004.028.4710 (attachment)).

74G. As at 15 August 2019, Treasury's attainment of reported EBITs growth in FY20 in the range of approximately 15% to 20% (being the subject of the February 2019 Representation and the August 2019 Representation) was subject to material risk in that:

(a) the forecast was based on the FY20 5YP, which was the result of the FY20 5YP Process and not a process that included (or included adequate) bottom-up input from Treasury's regions, in particular the Americas division;

(b) the Americas division represented approximately 34.6% of Treasury's forecast FY20 EBITs in the FY20 5YP; and

Particulars

TWE F20-F24 Strategic Plan, dated 2 April 2019. (TRE.003.001.3873 at .3939, .3948.)

(c) the Americas division had suffered the FY19 Americas Budget Miss, the FY19 Americas Monthly Underperformance, the 2H19 Americas Key Monthly Metrics Miss, and the July 2019 Americas Budget Miss, which ought reasonably to have called into question the reliability of Treasury's systems and processes for forecasting the performance of the Americas division,

(the **August 2019 Forecast Risks**).

75. As at 15 August 2019, there had been, and/or were about to be, changes in Treasury's Americas leadership (the **August 2019 Leadership Changes**).

Particulars

- i. ~~In August 2019~~ On 31 July 2019, Michelle Terry, Chief Marketing Officer, left her employment with Treasury.
 - ii. ~~On 19-23 August 2019~~, Snyder, President, the Americas, left her employment with Treasury, and McPherson was appointed to that role on 1 October 2019.
 - iii. ~~In about August 2019~~ On 28 February 2019, Gunther Burghardt, former Chief Financial Officer and Executive Vice President of Operations for the Americas, left his employment with Treasury.
 - iv. Foye had ~~already~~ departed Treasury as identified in paragraph 24, above.
- ~~Further particulars will be provided following the completion of discovery.~~

76. As at 15 August 2019, the August 2019 Leadership Changes were likely to materially adversely impact Treasury's operating performance in FY20 in the Americas division (the **August 2019 Leadership Impact Information**).

Particulars

- i. The persons identified in the particulars to paragraph 75, above, played an important role in ensuring the following in the Americas division:
 - A. momentum in relation to distribution and execution of programming in the US Wine Market in 1H20, including the execution of the Route-to-Market Model; and
 - B. planning momentum in 2Q20.
- ii. The departure of those persons, ~~in addition to the February 2019 Leadership Change,~~ was likely to cause Treasury's US wine business to lose execution momentum, and was likely to detract from management coalescing around strategy execution.
- iii. Treasury's performance in the US Wine Market was sensitive to loss of execution momentum.
- iv. The fact that leadership changes would impact on execution momentum and therefore operational performance can be inferred from the fact that Treasury ultimately identified this as a reason for the FY20 forecast downgrade on 28 January 2020.

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

77. As at 15 August 2019, by reason of ~~the combined effect of the August 2019 US Market Conditions Impact Information~~ by itself, or alternatively, in combination with the August 2019 Forecast Risks and/or the August 2019 Leadership Impact Information, together, it was likely, or, alternatively, there was a material risk that Treasury would not achieve growth in EBITs at a rate of 15% to 20% in FY20 (the **August 2019 Combined US Impact Information**).

Particulars

- i. The Joint Plaintiffs refer to and repeat the particulars subjoined to paragraphs 73 and 76, above. The adverse impact on financial and operational performance was likely to have an impact on the EBITs of the Americas division.
- ii. The Joint Plaintiffs draw an inference of the combined impact of these matters on Treasury's ability to achieve growth in EBITs at a rate of 15% to 20% in FY20, in circumstances where, as alleged in paragraph 21, the Americas division had contributed at least 40% of Treasury's NSR and over 30% of Treasury's EBITs.

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

78. As at 15 August 2019 (and at all material times afterwards), one or more of the Treasury Officers knew or ought to have known, information being:
- (a) the August 2019 US Market Conditions;
 - (b) the August 2019 Treasury US Market Conditions;
 - (c) the August 2019 US Market Conditions Impact Information;
 - (ca) the August 2019 Forecast Risks;
 - (d) the August 2019 Leadership Changes;
 - (e) the August 2019 Leadership Impact Information; and/or
 - (f) the August 2019 Combined US Impact Information.

Particulars

- ~~i. The August 2019 US Wine Market Conditions were publicly known.~~
- ~~ii. The August 2019 US Market Conditions Impact Information and the August 2019 Treasury US Market Conditions were known or ought to have been known based on an analysis by one or more of the Treasury Officers of public information combined with a knowledge of Treasury's business and sensitivities, the Treasury Monitoring Systems and information which would come into the possession of one or more of the Treasury Officers in the proper performance of their duties.~~
- ~~iii. The August 2019 Leadership Changes were known to Treasury.~~
- ~~iv. The August 2019 Leadership Impact Information was known or ought to have been known based on a combined knowledge of one or more of the Treasury Officers of the departure of the various Treasury leaders, a knowledge of Treasury's business and sensitivities to leadership change, the Treasury Monitoring Systems and information one or more of the Treasury Officers would come across in the proper performance of their duties.~~
- ~~v. The August 2019 Combined US Impact Information was known or ought to have been known based on an inference of the combined effect of the matters identified at (i) to (iv), above.~~
- ~~vi. The fact that one or more of the Treasury Officers knew or ought to have known the alleged information can be inferred from the fact that Treasury ultimately identified these matters as a reason for the FY20 forecast downgrade on 28 January 2020.~~

~~Further particulars will be provided following the completion of discovery.~~

Knowledge of the August 2019 US Market Conditions

- ~~i. The information alleged in paragraphs 72(a)–(fa) were common knowledge in the US Wine Market, and therefore ought reasonably to have been known to Treasury's Officers.~~

ii. **Private label wine growth:** Further, Treasury Officers knew, or alternatively, ought to have known, that sales of private label wine had grown significantly throughout 2H19, because the information was received by Treasury Officers as follows:

(A) on 9 May 2019, Snyder received the email newsletter referred to in particular ii to paragraph 72 (TRE.017.026.1548 at .1549–.1550.);

(B) on or around 18 June 2019, Clarke made the statement referred to in particular iii to paragraph 72 (TRE.086.001.0182); and

(C) in a conference call with analysts on 15 August 2019:

(1) Clarke referred to “a U.S. wine market that is challenging. Most notably, in the Commercial tier, where retailers are increasingly focusing on private label”; and

(2) Ford said “As [Clarke] mentioned earlier, aggressive discounting by competitors and the increased proliferation of private label offerings are presenting some challenges that we have had to navigate at the Commercial end of the U.S. market.”

(NAP.200.001.0012 at .0003, .0007).

iii. **Grape and bulk wine surplus:**

(A) The information in:

(1) the “Bulk Market High Level April 2019 Global Update” email dated 18 April 2019 (TRE.055.001.0002) referred to in the particulars to paragraph 72(b) and particular iii to paragraph 72(d); and

(2) the “Bulk Market High Level July 2019 Global Update” email dated 31 July 2019 (TRE.055.001.0014) referred to in particular v to paragraph 72(c) and particular iv to paragraph 72(d),

ought reasonably to have been brought to the attention of Snyder and/or Burghardt soon after those emails were sent, in light of their roles as alleged at paragraphs 27–28 above.

iv. **Downward pressure on prices:** Treasury Officers knew, or alternatively, ought to have known, the information alleged in paragraph 72(g) as follows:

- (A) Treasury's Officers knew, or alternatively, ought to have known, the information alleged in paragraphs 72(b)–(d) because the F20–F24 Strategic Plan dated 2 April 2019 listed “Grape and bulk wine market cycles – currently moving into surplus” as one of the “threats to manage” for the Americas division (TRE.003.001.3873 at .3899);
- (B) in a conference call with analysts on 15 August 2019:
- (1) Clarke referred to “a U.S. wine market that is challenging. Most notably, in the Commercial tier, where retailers are increasingly focusing on private label and where we are witnessing some competitors unsustainably discounting their brands to chase volume ahead of potential structural changes to their own businesses”; and
- (2) Ford said “As [Clarke] mentioned earlier, aggressive discounting by competitors and the increased proliferation of private label offerings are presenting some challenges that we have had to navigate at the Commercial end of the U.S. market”;
- (NAP.200.001.0012 at 0003, 0007); and
- (C) further or alternatively, Treasury Officers knew, or alternatively, ought to have known, the information because a reasonable person in the position of a Treasury Officer would have this information (or alternatively formed this opinion) based on the information in particulars i–iii above (together or in any combination).

Knowledge of the August 2019 Treasury US Market Conditions

- v. **Americas sales decline:** Treasury Officers knew, or alternatively, ought to have known, the information in paragraph 73(a) above as follows:
- (A) The Joint Plaintiffs repeat particular vii to paragraph 59 above.
- (B) Treasury Officers knew, or alternatively, ought to have known, that Treasury had experienced year-on-year sales declines for the Key Diageo Brands because that information was contained in the “IRI Topline: 7.14.19” and Treasury Officers received that information as set out in the Schedule.
- vi. **Sales decline and loss of market share in commercial wine:** Treasury Officers knew, or alternatively, ought to have known, that in FY19, Treasury's Americas division had experienced a significant year-on-year sales decline and loss of market share in commercial wine, which was its largest segment by volume and second-largest segment by value, because that information

was set out in the Americas Commercial Review presentation for June 2019, which was sent to Clarke, Foye, Young, Burghardt, Snyder and/or Ford in the ordinary course of Treasury's business (TRE.022.001.8628 at .8644).

vii. **19 Crimes brand issues:** Treasury Officers knew, or alternatively, ought to have known, the information alleged in:

(A) paragraph 73(cb)(i) above, because that information was set out in the "IRI Topline: 7.14.19", and Treasury Officers received that information as set out in the Schedule;

(B) paragraph 73(cb)(ii) above, because that information was set out in a draft presentation titled "19 Crimes – F20 Path to Plan" dated 25 May 2019, and Snyder received that information as set out in the Schedule;

(C) paragraph 73(cb)(iii) above, because that information was set out in an email chain dated 14 June 2019, involving Ben Duemler (CFO, Americas), Trenton Gallagher (Finance Director, Financial Planning & Analysis, Americas), and Sasha Krasnochtcheki (Corporate Financial Planning & Analysis) (among others) (TRE.006.014.5681), the information in which ought reasonably to have been brought to the attention of Snyder and/or Burghardt soon after those emails were sent, in light of their roles as alleged at paragraphs 27–28 above;

(D) paragraph 73(cb)(iv) above, because that information was set out in because that information was set out in a draft presentation titled "19 Crimes – F20 Path to Plan" dated 25 May 2019, and Snyder received that information as set out in the Schedule;

(E) paragraph 73(cb)(v) above, because that information was set out in a draft presentation titled "19 Crimes – F20 Path to Plan" dated 25 May 2019, and Snyder received that information as set out in the Schedule.

viii. **Falling US market share:** Treasury Officers knew that Treasury's market share in the US had fallen in FY19 because that information was set out in the "IRI Topline: 7.14.19", and Treasury Officers received that information as set out in the Schedule.

ix. **Downward pressure on profitability:** Treasury Officers knew, or alternatively, ought to have known, that the information alleged in subparagraphs 73(a) to (d) above amounted to trends that were reasonably likely to continue and result in the matters alleged in paragraph 73(e) because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) having come into possession of the information in particulars ii–viii above and/or the

matters alleged in paragraphs 74C–74F above (together or in any combination).

Knowledge of the August 2019 US Market Conditions Impact Information

- x. Treasury Officers knew, or alternatively, ought to have known, of the August 2019 US Market Conditions Impact Information because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) having come into possession of the information in particulars ii–ix above (together or in any combination).

Knowledge of the August 2019 Forecast Risks

- xi. Treasury Officers knew, or alternatively, ought to have known, of the August 2019 Forecast Risks because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) based on the following information:

(A) **FY20 5YP:** the information alleged in paragraphs 74A and 74G(b), which was contained in the TWE F20–F24 Strategic Plan, dated 2 April 2019;

(B) **FY20 5YP Process:**

(1) the information alleged in paragraph 74B(a), which was contained in the draft “Red 5YP F20–24” dated 6 February 2019, the draft “Red 5YP F20–24” dated 7 February 2019, and an email from Young dated 24 February 2019; and

(2) the information alleged in paragraph 74B(b), which was contained in an email dated 25 January 2019 from Coby van Horck (Finance Manager, Group Financial Planning & Analysis) (TRE.021.050.9361), and an email dated 13 June 2019 from Trenton Gallagher (Finance Director, Financial Planning & Analysis, Americas) (TRE.024.014.3451), and ought reasonably to have been known to Young based on his position as alleged in paragraph 23 above;

(C) **Americas FY20 EBITs contribution:** the information alleged in paragraph 74G(b), which was contained in the TWE F20–F24 Strategic Plan, dated 2 April 2019;

(D) **FY19 Americas Budget Miss:** the information alleged in paragraph 74C, which was contained in June 2019 Chief Financial Officer Report, issued 7 August 2019;

- (E) **FY19 Americas Monthly Underperformance**: the information alleged in paragraph 74D, which was contained in:
 - (1) the Americas Commercial Review presentations for July 2018 to December 2018 (which included information comprising the 1H19 Americas Monthly Underperformance), as set out in particular xv to paragraph 59 (and the corresponding references in the Schedule); and
 - (2) the Americas Commercial Review presentations for January 2019 to June 2019;
- (F) **2H19 US Key Monthly Metrics Miss**: the information alleged in paragraph 74E, which was contained in the Americas Commercial Review presentations for January 2019 to June 2019;
- (G) **July 2019 Americas Budget Miss**: the information alleged in paragraph 74F, which was contained in an email attaching July Month Results from Young to Clarke and Ford dated 13 August 2019 (TRE.004.028.4706 (email), TRE.004.028.4710 (attachment));

and, except as stated otherwise above, Treasury Officers received that information as set out in the Schedule.

Knowledge of the August 2019 Leadership Changes

- xii. Treasury Officers knew, or alternatively, ought reasonably to have known, of the August 2019 Leadership Changes as follows:
 - (A) Clarke knew, or ought reasonably to have known, of the August 2019 Leadership Changes on and from the dates each of them occurred by reason of his position as Managing Director and Chief Executive Officer of Treasury;
 - (B) Snyder's departure was known to McPherson, who replaced Snyder as President, Americas on 24 September 2019;
 - (C) Foye's departure was known to Ford, who replaced Foye as Chief Operating Officer of Treasury from 19 January 2019.

Knowledge of the August 2019 Leadership Impact Information

- xiii. Clarke ought reasonably to have known of the August 2019 Leadership Impact Information, or alternatively, ought reasonably to have formed the opinion comprising the August 2019 Leadership Impact Information, by

reason of his position as Managing Director and Chief Executive Officer of Treasury.

Knowledge of the August 2019 Combined US Impact Information

xiv. Treasury Officers knew, or alternatively, ought to have known, of the February 2019 Combined US Impact Information because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) having come into possession of the information in particulars ii–xiii above (together or in any combination).

79. In making the August 2019 Representation, Treasury did not, or did not adequately, take account, or make a genuine assessment, of:
- (a) the August 2019 US Wine Market Conditions;
 - (b) the August 2019 Treasury US Market Conditions;
 - (c) the August 2019 US Market Conditions Impact Information;
 - (ca) the August 2019 Forecast Risks;
 - (d) the August 2019 Leadership Changes;
 - (e) the August 2019 Leadership Impact Information; and/or
 - (f) the August 2019 Combined US Impact Information.

Particulars

- ~~i. The Joint Plaintiffs refer to the FY19 Results Announcement and in particular to page 9 (Americas regional summary) and the absence of any, or any adequate, discussion, consideration or analysis of the matters alleged in subparagraphs 72(a) to 72(f) or paragraph 75, above.~~
- ~~ii. The fact that the matters identified above were not or not adequately taken into account is also to be inferred from the fact that certain of the matters in subparagraphs 79(a) to 79(e) above, (namely, unexpected changes in Treasury's Americas leadership resulting in a loss of execution momentum, accelerated growth in private label wine, the need for higher levels of discounting to maintain share across all price points and the negative impact on Treasury's ability to recover or offset increases in COGS), were identified as reasons for the FY20 forecast downgrade on 28 January 2020 but were present as at 15 August 2019.~~

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

This is to be inferred from the fact that nothing in the Board pack nor the minutes for the Board Meeting dated 15 August 2019 reflect any, or any adequate, discussion, consideration or analysis of the matters alleged in paragraphs 72–78 above. (See TRE.003.001.2859 (Board pack); TRE.003.001.3873 (TWE F20–F24 Strategic Plan); TRE.003.001.5367 (minutes).)

80. By reason of the matters alleged in paragraphs 72 to 77 and/or 78 and 79, above, Treasury did not have reasonable grounds for making the August 2019 Representation.
81. Treasury did not, at any time before 28 January 2020, withdraw or qualify the August 2019 Representation, which was a continuing representation from 15 August 2019 until the end of the Relevant Period.
82. By reason of the matters alleged in paragraphs 69, 70, 71, 72 to 77 and/or 80 and 81, above, on and from no later than 15 August 2019 and at all material times thereafter until the end of the Relevant Period, Treasury engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:
- (a) s 1041H(1) of the Corporations Act;
 - (b) s 12DA(1) of the ASIC Act; and/or
 - (c) s 18 of the ACL,
- (August 2019 Misleading or Deceptive Conduct Contravention).**

F.2 August 2019 Continuous Disclosure Contravention

83. Further or alternatively, by 15 August 2019 and at all material times thereafter during the Relevant Period, one or more of the Treasury Officers were aware (within the meaning of Rule 19.12 of the ASX Listing Rules) of:
- (a) the August 2019 US Market Conditions Impact Information;
 - (aa) the August 2019 Forecast Risks;
 - (b) the August 2019 Leadership Impact Information; and/or
 - (c) the August 2019 Combined US Impact Information.

Particulars

- i. The Joint Plaintiffs refer to and repeat the particulars subjoined to paragraph 78, above.
- ~~ii. As to subparagraph 83(c), it can be inferred that based on its knowledge of the matters set out in subparagraphs 83(a) and 83(b), one or more Treasury Officers had formed the opinion that there was a material risk that the Company would not achieve growth in EBITs at a rate of 15% to 20% in FY20.~~

- iii. To the extent that the August 2019 US Market Conditions Impact Information, the August 2019 Forecast Risks, the August 2019 Leadership Impact Information, or the August 2019 Combined US Impact Information are opinions, they are opinions which ought reasonably to have been formed by Treasury Officers by reason of the matters in the particulars to paragraph 78.

~~Further particulars will be provided following the completion of discovery.~~

84. Each of:

(a) the August 2019 US Market Conditions Impact Information;

(aa) the August 2019 Forecast Risks;

(b) the August 2019 Leadership Impact Information; and/or

(c) the August 2019 Combined US Impact Information,

was information that:

(d) was not generally available within the meaning of s 676 of the Corporations Act; and

(e) a reasonable person would expect to have a material effect on the price or value of Treasury Shares within the meaning of Rule 3.1 of the ASX Listing Rules and s 674(2)(c)(ii) of the Corporations Act.

Particulars

i. The matters set out in subparagraph 84(a) to 84(c) included Treasury's own information relating to its business, projections and sensitivities, including its future performance and performance against budget.

ii. The materiality of the information is to be inferred from the impact of the corrective disclosure alleged in paragraphs 117 and 118, below.

~~Further particulars will be provided after discovery and the filing of expert reports.~~

85. By reason of the Continuous Disclosure Obligations and the matters alleged in paragraphs 83 and 84, above, on and from 15 August 2019, Treasury became immediately obliged to inform the ASX of:

(a) the August 2019 US Market Conditions Impact Information;

(aa) the August 2019 Forecast Risks;

(b) the August 2019 Leadership Impact Information; and/or

(c) the August 2019 Combined US Impact Information.

86. Treasury did not, at any time prior to 28 January 2020, inform the ASX of:

(a) the August 2019 US Market Conditions Impact Information;

(aa) the August 2019 Forecast Risks;

- (b) the August 2019 Leadership Impact Information; and/or
- (c) the August 2019 Combined US Impact Information.

87. By reason of the matters alleged in paragraphs 83 to 86, above, Treasury contravened Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act (the **August 2019 Continuous Disclosure Contravention**).

G. OCTOBER 2019 CONTRAVENTIONS

G.0 1Q20 Performance

87A. In or around August 2019, Treasury released its 2019 Penfolds wine collection for sale, whereas in prior years the Penfolds collection was not released until October (**Penfolds Early Release**).

Particulars

August 2019 Chief Financial Officer Report, issued 19 September 2019. (TRE.003.001.4853 at .4920).

87B. The effects of the Penfolds Early Release were that:

- (a) revenue that had been budgeted to be earned in and from October 2019 was instead earned in and from August 2019; and
- (b) Treasury's trading results against budget for August and September 2019 would be positively affected by the Penfolds Early Release, which effects would not continue in October 2019 and thereafter,

(Penfolds Early Release Revenue Effects).

Particulars

The August 2019 Chief Financial Officer Report, issued Thursday 19 September 2019, stated that the "Variance to Budget" for the year-to-date August result "primarily reflects favourable mix in ANZ arising from the release of the 2019 Penfolds collection." (TRE.003.001.4853 at .4920).

87C. As at 26 August 2019, Treasury Officer Ford was forecasting that the Americas division would fall short of its FY20 EBITs budget by US\$44 million, and that there were insufficient initiatives identified to meet the budget (the **Americas Budget Gap**).

Particulars

In an email from Ford dated 26 August 2019, Ford identified forecast shortfalls to the Americas division's FY20 EBITs Budget as follows (in US\$):

- (a) \$22 million “Current trading gap/risk”
- (b) \$10 million “BAU [Business As Usual] price risk”;
- (c) \$7 million risk of “SLOB” and discounts and rebates in California; and
- (d) \$5 million for “GBS/Fire/Lease which we used in F19 and had budgeted to use in F20”,

which combined for a forecast “gap to solve of \$44m USD”. (TRE.005.014.2564.)

87D. On 8 September 2019, trading results for August 2019 were reported to Treasury Officers, which showed that, as at 31 August 2019:

- (a) Treasury’s year-to-date EBITs was \$3.7 million, which was \$36 million above budget, on a constant-currency basis;
- (b) the Americas division’s year-to-date EBITs was a loss of \$13 million, which was \$1.8 million below budget, on a constant-currency basis;
- (c) however, excluding the impact of the Penfolds Early Release (and a release date change for Wynns wine):
 - (i) Treasury’s year-to-date EBITs was a loss of \$49.8 million, which was \$10.8 million below budget, on a constant-currency basis; and
 - (ii) the Americas division’s year-to-date EBITs was a loss of \$21.6 million, which was \$8.1 million below budget, on a constant-currency basis.

(August 2019 Trading Results).

Particulars

Email attaching August Month Results from Young to Clarke, Ford and Parkinson dated 8 September 2019 (TRE.002.002.1647 (email), TRE.013.022.7159 (attachment)).

87E. On 7 October 2019, trading results for September 2019 were reported to Treasury Officers, which showed that as at 30 September 2019:

- (a) Treasury’s year-to-date EBITs was \$71.5 million, which was \$18.3 million above budget, on a constant-currency basis;
- (b) the Americas division’s year-to-date EBITs was \$6 million, which was \$16.9 million below budget, on a constant-currency basis; and

- (c) the report to Treasury Officers did not specify the impact of the Penfolds Early Release on these results.

(September 2019 Trading Results).

Particulars

Email attaching September Month Results from Parkinson to Clarke, Ford and Young dated 7 October 2019 (TRE.002.001.1621 (email), TRE.002.001.1622 (attachment)).

- 87F. In the premises of paragraphs 74F(b), 87D(b) and 87E(b), the Americas division had reported three consecutive months of EBITs shortfalls to budget (1Q20 Americas Underperformance).**

G.1 October 2019 Misleading or Deceptive Conduct Contravention

88. On 16 October 2019, in an ASX announcement entitled “2019 AGM Chairman and CEO Addresses” (**October 2019 Announcement**), Treasury reaffirmed that it expected reported EBITs growth in FY20 in the range of approximately 15% to 20% (the **October 2019 Representation**).

Particulars

October 2019 Announcement, page 9.

89. The October 2019 Representation was a representation as to a future matter.
90. The October 2019 Representation was made:
- (a) in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;
 - (b) in relation to a financial product or financial services (being Treasury Shares) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act; and
 - (c) in trade or commerce within the meaning of the ACL.
91. As at 16 October 2019:
- (a) ~~sales of private label wine in the US had continued to grow in FY20; the August 2019 US Wine Market Conditions remained in existence and were continuing;~~

Particulars

- (i) ~~The continuing market conditions included an increase in private label wine sales and a deceleration in retail sales of US wine as~~ was measured by Nielsen sales data between 7 September 2019 and 5 October 2019.

- (ii) The Joint Plaintiffs repeat the particulars to paragraph 72(a) above.
- (b) additional information about the size of the 2019 US grape harvest confirmed that it was expected to be average to above average;

Particulars

- i. Ciatti Global Markets report entitled 'Global Market Report' dated September 2019 (**September 2019 Ciatti Report**), pages 3 to 4.
 - ii. Ciatti Global Markets report entitled 'Global Market Report' dated October 2019 (**October 2019 Ciatti Report**), pages 2 and 12 to 13.
 - iii. A "Bulk Market High Level July 2019 Global Update" dated 24 September 2019 stated that the V19 harvest "looks a bit shorter" but "won't be under 4M tons". (TRE.053.001.0247.)
- (c) surplus stock from the 2018 Harvest Oversupply remained available in the US Wine Market;

Particulars

- i. September 2019 Ciatti Report, pages 3 to 4.
 - ii. October 2019 Ciatti Report, pages 3 to 4.
 - iii. A "Bulk Market High Level July 2019 Global Update" dated 24 September 2019 stated that there was a "Global surplus" and that "We are producing a little too much for demand" (TRE.053.001.0247.)
- (d) Casegood bottled table wine sales in the US were stagnant;

Particulars

- i. October 2019 Ciatti Report, page 12.
 - ii. As at 6 October 2019, the total market in the "\$4+ Non Box" segment had grown by 0.8% in dollar terms and shrunk by 1.6%, with a rate of sales change of -2.3%, over the previous 13 weeks. (TRE.002.002.8115 at .8116.)
- (e) the slowness of the US Wine Market was reported not to be a short-term phenomenon;

Particulars

- i. September 2019 Ciatti Report, page 2.
 - ii. October 2019 Ciatti Report, page 12.
- (f) as a result of the matters set out in subparagraphs 91(a) to 91(e), above, the wine oversupply problem in the US Wine Market was likely to and would continue,

- (fa) the acquisition of Constellation Brands' commercial wine brands by E. & J. Gallo Winery had not yet completed, resulting in discounting of commercial wine;

Particulars

In an email from Clarke to Young dated 3 October 2019, Clarke stated that "The hangover of the incomplete Gallo/Constellation transaction, continues to drive discounting in the marketplace - which is unhelpful (D&R spends)." (TRE.004.025.1923.)

- (g) the matters alleged in subparagraphs 91(a) to (fa), above, were likely to:
- (i) create downward pressure on prices in the US Wine Market going forward, including in the premium wine segment;
 - (ii) mean it would be more difficult for participants in the US Wine Market to rely on premiumisation to maintain or increase profits,

(the **October 2019 US Market Conditions**).

92. As at 16 October 2019, the August 2019 Treasury US Market Conditions were continuing and deteriorating, in that:

- (a) Treasury had experienced: ~~a decline in sales in the US from FY17 to FY19 of the Treasury Brands, namely the FY17 Treasury Brands Sales Decline,~~
- (i) the FY18 Treasury Brands Sales Decline and the FY19 Treasury Brands Sales Decline; and

Particulars

The particulars to paragraph 39(a), and 54(a) and 73(a) are repeated.

- (ii) as at 6 October 2019, year-on-year sales declines for the Key Diageo Brands.

Particulars

The sales declines were set out in an IRI Topline report dated 6 October 2019 as follows (TRE.002.002.8115 at .8120):

Brand	Dollar % change against prior 52 weeks	Volume % change against prior 52 weeks
BV	- 0.1%	- 5.2%
Sterling Luxury	- 17.9%	- 26.0%

Acacia	- 16.7%	- 12.3%
Sterling Vintners' Collection	- 4.1%	- 5.7%
A by Acacia	- 32.7%	- 33.8%
BV Coastal Estates	- 17.2%	- 14.5%

(b) [not used] Treasury:

- (i) ~~had experienced reduced sales growth in respect of sales of its wines (including the Key Diageo Brands) in the US in 4Q18 and FY19; and~~
- (ii) ~~had experienced reduced sales growth in respect of sales of its wines (including the Key Diageo Brands) in the US in FY20 to date;~~

Particulars

- i. ~~The particulars to paragraph 73(b) are repeated.~~
- ii. ~~Further, Treasury's Nielsen sales data growth in the period between 1 August 2019 and 30 November 2019 was -3.1% yoy across the portfolio, and -1.8% across Treasury's top 5 brands.~~
- iii. ~~The Joint Plaintiffs say this was also proportionately the case in the period to 16 October 2019 and part of an ongoing trend in FY20, given that Treasury's Nielsen sales data growth in the period from 1 December 2019 to 28 December 2019 was -2.2% yoy across the portfolio, and -1% across Treasury's top 5 brands, and in the period from 29 December 2019 to 25 January 2020 was -3.5% yoy across the portfolio, and negative across Treasury's top 5 brands.~~

(c) [not used] Treasury had experienced an ongoing decline in US distributor depletions in respect of all of its top-selling brands (except for 19 Crimes and Matua), including the Key Diageo Brands, from 2015 through at least 30 December 2018 (being the end of 1H19);

Particulars

~~The particulars to paragraph 73(c) are repeated.~~

(ca) the 19 Crimes brand had continued to experience slowing sales growth since 15 August 2019;

Particulars

As at 6 October 2019, the rate of sales change for the 19 Crimes brand was – 10.1% over the previous 52 weeks and - 18.1% over the previous

13 weeks, indicating declining sales growth. (TRE.002.002.8115 at .8120.)

- (d) Treasury's market share in the US was falling had continued to fall since 15 August 2019 in value terms;

Particulars

- i. ~~The particulars to paragraph 73(d) are repeated, in respect of the period from 3 November 2018 to 10 August 2019.~~
- ii. ~~Further Nielsen sales data indicated that between 7 September 2019 and 5 October 2019, in a market in which yoy Nielsen sales data of private label wines had increased on average by over 15 basis points on each measurement date, Treasury's yoy market share had:~~
 - A. ~~declined by over 10 basis points on 7 September 2019; and~~
 - B. ~~declined by over 10 basis points on 5 October 2019.~~

In the 13 weeks to 6 October 2019, the total US market for non-box table wine priced at or above \$4 had grown 0.8% by dollars, whereas Treasury's sales had grown 0.7% by dollars. (TRE.002.002.8115 at .8116.)

- (da) in each of July, August and September 2019, Treasury's Americas division had engaged in significant discounting of price compared to the Business Plan Plus budget and the prior year (on a year-to-date basis);

Particulars

- i. In July 2019, year-to-date price was negative US\$3.2 million against the Business Plan Plus budget and negative US\$4.7 million against the prior year. (TRE.002.002.1744 at .1745.)
- ii. In August 2019, year-to-date price was negative US\$3.8 million against the Business Plan Plus budget and negative US\$6.6 million against the prior year. (TRE.002.002.1652 at .1655.)
- iii. In September 2019, year-to-date price was negative US\$8.9 million against the Business Plan Plus budget and negative US\$9.5 million against the prior year. (TRE.014.036.1783 at .1788.)

- (e) the matters alleged in sub-paragraphs (a) to (da), above, were trends that were reasonably likely to:

- (i) continue in FY20;

- (ii) create downward pressure on the profitability of the Americas division in FY20; and prices for Treasury's wines in the US and/or the volume of Treasury's wines sold in the US going forward,
- (iii) negatively impact Treasury's ability to rely on premiumisation to maintain or increase profits,

(the **October 2019 Treasury US Market Conditions**).

93. As at 16 October 2019, the October 2019 US Wine Market Conditions and/or the October 2019 Treasury US Market Conditions were likely to materially adversely impact Treasury's financial performance in FY20 in the Americas division (the **October 2019 US Market Conditions Impact Information**).

Particulars

- i. The October 2019 US Wine Market Conditions:
 - A. had or were likely to have a negative impact on volumes and sales;
 - B. had required and/or were likely to require Treasury to undertake higher levels of discounting to maintain share across all price points;
 - C. had and/or were likely to negatively impact Treasury's ability to recover or offset increases in the COGS; and
 - D. had and/or were likely to negatively impact Treasury's ability to rely on premiumisation to maintain profits in the Americas division.
- ii. In September, Treasury had "walked away" from just under half a million cases of commercial volume in the US due to private label growth, aggressive market pricing and higher COGS.
- iii. Treasury's sensitivity to the October 2019 US Wine Market Conditions in the abovementioned manner is to be inferred from the fact that Treasury ultimately identified these matters as reasons for the FY20 forecast downgrade on 28 January 2020.
- iv. The October 2019 Treasury US Market Conditions had the same impacts as the October 2019 US Market Conditions (and the previous three paragraphs are repeated).

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

- 93A. As at 15 October 2019, the August 2019 Forecast Risks continued.

Particulars

The Joint Plaintiffs repeat paragraphs 74A to 74F and the particulars thereto.

- 93B. As at 16 October 2019, Treasury's attainment of reported EBITs growth in FY20 in the range of approximately 15% to 20% (being the subject of the February 2019 Representation, the

August 2019 Representation, and the October Representation) was subject to material risk in that:

- (a) the forecast was based on the FY20 5YP, which was the result of the FY20 5YP Process and not a process that included (or included adequate) bottom-up input from Treasury's regions, in particular the Americas division;
- (b) the Americas division represented approximately 34.6% of Treasury's forecast FY20 EBITs in the FY20 5YP;

Particulars

TWE F20–F24 Strategic Plan, dated 2 April 2019. (TRE.003.001.3873 at .3939, .3948.)

- (c) the Americas division had suffered the FY19 Americas Budget Miss, the FY19 Americas Monthly Underperformance, the 2H19 US Key Monthly Metrics Miss, and the 1Q20 Americas Underperformance; which ought reasonably to have called into question the reliability of Treasury's systems and processes for forecasting the performance of the Americas division;
- (d) the Americas Budget Gap existed; and
- (e) the group-wide year-to-date surplus to budget reported in the September 2019 Trading Results was attributable to the Penfolds Early Release Revenue Effects, meaning that budgeted revenue in October 2019 was less likely to be achieved,

(the **October 2019 Forecast Risks**).

94. As at 16 October 2019, in addition to the August 2019 Leadership Changes, there had been further changes in Treasury's Americas leadership (the **October 2019 Leadership Changes**).

Particulars

- i. During 2Q20, McPherson had been unable to relocate to the US as planned in his role as President, the Americas, and Ben Dollard had to subsequently be appointed to the role as President, the Americas.
- ii. McPherson took leave from his role as President on 6 November 2019 and remained on leave at the end of the Relevant Period.
- iii. There had previously been the ~~February 2019 Leadership Change~~ and the August 2019 Leadership Changes.

~~Further particulars will be provided following the completion of discovery.~~

95. As at 16 October 2019, the October 2019 Leadership Changes were likely to materially adversely impact Treasury's operational performance in FY20 in the Americas division (the **October 2019 Leadership Impact Information**).

Particulars

- i. The absence of the President of the Americas division from the US, along with the ~~February 2019 Leadership Change and the August 2019 Leadership Changes~~, meant that it was likely that Treasury would:
 - A. lose momentum in relation to distribution and execution of programming in the US Wine Market in 1H20, including the execution of the Route-To-Market Model; and
 - B. lose planning momentum in 2Q20.
- ii. Treasury's performance in the US Wine Market was sensitive to loss of execution momentum.
- iii. The fact that US leadership changes would impact on execution momentum and therefore operational performance can be inferred from the fact that Treasury ultimately identified this as a reason for the FY20 forecast downgrade on 28 January 2020.
- iv. On or around 3 October 2019, Clarke was of the opinion that the change in General Manager – Americas from Snyder to McPherson resulted in shipments falling behind depletions. (TRE.004.025.1923.)

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

96. As at 16 October 2019, by reason of ~~the combined effect of~~ the October 2019 US Market Conditions Impact Information by itself, or alternatively, in combination with the October 2019 Forecast Risks, and/or the October 2019 Leadership Impact Information, it was likely, or, alternatively, there was a material risk that Treasury would not achieve growth in EBITs at a rate of 15% to 20% in FY20 (the **October 2019 Combined US Impact Information**).

Particulars

- i. The Joint Plaintiffs refer to and repeat the particulars subjoined to paragraphs 91 and 95 above. The adverse impact on financial and operational performance was likely to have an impact on operating performance in the "Americas" division would impact on the EBITs of the Americas division.
- ii. The Joint Plaintiffs draw an inference of the combined impact of these matters on Treasury's ability to achieve growth in EBITs at a rate of 15% to 20% in FY20, in circumstances where, as alleged in paragraph 21, the Americas division had contributed at least 40% of Treasury's NSR and over 30% of Treasury's EBITs.

~~Further particulars will be provided following the completion of discovery.~~

97. As at 16 October 2019 (and at all material times afterwards), one or more of the Treasury Officers knew or ought to have known, information being:
- (a) the October 2019 US Market Conditions;
 - (b) the October 2019 Treasury US Market Conditions;

- (c) the October 2019 US Market Conditions Impact Information;
- (ca) the October 2019 Forecast Risks;
- (d) the October 2019 Leadership Changes;
- (e) the October 2019 Leadership Impact Information; and/or
- (f) the October 2019 Combined US Impact Information.

Particulars

- ~~i. The October 2019 US Wine Market Conditions were publicly known.~~
- ~~ii. The October 2019 US Market Conditions Impact Information and the October 2019 Treasury US Market Conditions were known or ought to have been known based on an analysis of public information by one or more of the Treasury Officers combined with a knowledge of Treasury's business and sensitivities, the Treasury Monitoring Systems and information which would come into the possession of one or more of the Treasury Officers in the proper performance of their duties.~~
- ~~iii. The October 2019 Leadership Changes were known to Treasury.~~
- ~~iv. The October 2019 Leadership Impact Information was known or ought to have been known based on a combined knowledge of one or more of the Treasury Officers of the departure of the various Treasury leaders, a knowledge of Treasury's business and sensitivities to leadership change, the Treasury Monitoring Systems and information one or more of the Treasury Officers would come across in the proper performance of their duties.~~
- ~~v. The October 2019 Combined US Impact Information was known or ought to have been known based on an inference of the combined effect of the matters identified at (i) to (iv), above.~~
- ~~vi. The fact that one or more of the Treasury Officers knew or ought to have known the alleged information can also be inferred from the following:

 - ~~A. in September 2019, Treasury "walked away" from just under 0.5 million cases of commercial volume in the US due to private label growth, aggressive market discounting and Treasury's higher COGS;~~
 - ~~B. Treasury admitted in the 29 January 2020 Earnings Call that there was a realisation in "September, October" that the surplus wine in the marketplace was having a significant impact; and/or~~
 - ~~C. Treasury ultimately identified these matters as a reason for the FY20 forecast downgrade on 28 January 2020.~~~~

~~Further particulars will be provided following the completion of discovery.~~

Knowledge of the October 2019 US Market Conditions

- i. The matters alleged in paragraphs 91(a)-(fa) were common knowledge in the US Wine Market, and therefore ought reasonably to have been known to Treasury's Officers.
- ii. The Joint Plaintiffs repeat particulars i-iii to paragraph 78 above. Additionally:

- (A) **Grape and bulk wine surplus:** The information in subparagraphs 91(b)–(c) above was contained in the “Bulk Market High Level July 2019 Global Update” dated 24 September 2019 (TRE.053.001.0247), and ought reasonably to have been brought to the attention of McPherson soon after the email was sent, in light of his role as alleged at paragraph 26(d) above.
 - (B) **Stagnant bottled table wine sales:** The information in subparagraph 91(d) above was contained in an IRI Monthly Review dated 8 September 2019, and McPherson received that information as set out in the Schedule.
 - (C) **Discounting as a result of Gallo acquisition:** The information in subparagraph 91(fa) was contained in an email from Clarke to Young dated 3 October 2019, in which Clarke stated that “The hangover of the incomplete Gallo/Constellation transaction, continues to drive discounting in the marketplace - which is unhelpful (D&R spends).” (TRE.004.025.1923.)
- iii. **Downward pressure on prices:** Treasury Officers knew, or alternatively, ought to have known, of the information alleged in paragraph 91(g) because:
- (A) of the matters stated in particular iv(A)–(B) to paragraph 78 above; and
 - (B) further or alternatively, Treasury Officers knew, or alternatively, ought to have known, that information because a reasonable person in the position of a Treasury Officer would have this information (or alternatively formed this opinion) based on the information in particulars i–ii above (together or in any combination).

Knowledge of the October 2019 Treasury US Market Conditions

- iv. **Americas sales decline:** Treasury Officers knew, or alternatively, ought to have known the information in paragraph 92(a) above as follows:
 - (A) The Joint Plaintiffs repeat particular vii to paragraph 59 above.
 - (B) Treasury Officers knew, or alternatively, ought to have known, that Treasury had experienced year-on-year sales declines for the Key Diageo Brands because that information was contained in the “IRI Topline: 10.6.19”, and Treasury Officers received that information as set out in the Schedule.
- v. **19 Crimes slowing sales growth, falling market share:** Treasury officers knew, or alternatively, ought to have known the information alleged in subparagraphs 92(ca) and 92(d) because that information was contained in

the “IRI Topline: 10.6.19”, and Treasury Officers received that information as set out in the Schedule.

- vi. **Discounting:** Treasury Officers knew, or alternatively, ought to have known the information alleged in subparagraph 92(da) because it was set out in the Americas Commercial Review presentations for July 2019, August 2019, and September 2019, and Treasury Officers received that information as set out in the Schedule.
- vii. **Downward pressure on profitability:** Treasury Officers knew, or alternatively, ought to have known, that the information alleged in subparagraphs 92(a) to (da) above amounted to trends that were reasonably likely to continue and result in the matters alleged in paragraph 92(e) because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) having come into possession of the information in particulars ii–vi above and/or the matters alleged in paragraphs 87A–87F above (together or in any combination).

Knowledge of the October 2019 US Market Conditions Impact Information

- viii. Treasury Officers knew, or alternatively, ought to have known, of the August 2019 US Market Conditions Impact Information because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) having come into possession of the information in particulars ii–vii above (together or in any combination).

Knowledge of the October 2019 Forecast Risks

- ix. Treasury Officers knew, or alternatively, ought to have known, of the October 2019 Forecast Risks because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) based on the following information:
 - (A) **F20 5YP; F20 5YP Process:** The Joint Plaintiffs repeat particulars xi(A)–xi(B) to paragraph 78 above.
 - (B) **Americas FY20 EBITs contribution:** The Joint Plaintiffs repeat particular xi(C) to paragraph 78 above.
 - (C) **FY19 Americas Budget Miss, the FY19 Americas Monthly Underperformance, the 2H19 US Key Monthly Metrics Miss:** The Joint Plaintiffs repeat particulars xi(D) to xi(F) to paragraph 78 above.
 - (D) **Penfolds Early Release Revenue Effects:** the information alleged in paragraph 87B, which was contained in the August 2019 Chief Financial Officer Report, issued Thursday 19 September 2019;

- (E) Americas Budget Gap: the information alleged in paragraph 87C, which was contained in an email from Ford dated 26 August 2019;
- (F) 1Q20 Americas Underperformance: the information alleged in paragraphs 74F(b), 87D(b) and 87E(b), which was contained (respectively) in:
 - (1) an email from Young to Clarke and Ford dated 13 August 2019;
 - (2) an email from Young to Clarke, Ford and Robert Parkinson (Group Financial Controller) dated 8 September 2019;
 - (3) an email from Robert Parkinson (Group Financial Controller) to Clarke, Ford and Young dated 7 October 2019,

and, except as stated otherwise above, Treasury Officers received that information as set out in the Schedule.

Knowledge of the October 2019 Leadership Changes

- x. The Joint Plaintiffs repeat particular xii to paragraph 78.
- xi. Further, Clarke knew, or ought reasonably to have known, of McPherson's leave from his role by reason of his position as Managing Director and Chief Executive Officer of Treasury.

Knowledge of the October 2019 Leadership Impact Information

- xii. Clarke ought reasonably to have known of the October 2019 Leadership Impact Information, or alternatively, ought reasonably to have formed the opinion comprising the October 2019 Leadership Impact Information, by reason of his position as Managing Director and Chief Executive Officer of Treasury.
- xiii. Clarke's knowledge of the October 2019 Leadership Impact Information (insofar as it concerns the departure of Snyder) can be inferred from his statement in an email to Young dated 3 October 2019 that "Americas needs to pick up on shipments, which are well below depletions – I believe that this is partially due to the change in GMs (Vic [Snyder] to Angus [McPherson]) and Angus learning (quickly) that we have to keep chasing the sales organization to performance manage distributors, who will always delay in ordering." (TRE.004.025.1923.)

- xiv. The Board's knowledge of the October 2019 Leadership Impact Information (insofar as it concerns the departure of Snyder) can be inferred from the CEO Report to the Board dated 14 October 2019, which repeated the statement in particular xiii above. (TRE.003.001.4853 at .4912.)
- xv. Clarke's knowledge of the October 2019 Leadership Impact Information can be inferred from his statement in a text message on 3 December 2019 as follows: "re asx - we should admit that this management change is a 'setback by half a year' given that it's a do over of what we tried to do with Gus [McPherson] at begin [sic] of this half." (TRE.086.001.0008.)

Knowledge of the October 2019 Combined US Impact Information

- xvi. Treasury Officers knew, or alternatively, ought to have known, of the October 2019 Combined US Impact Information because a reasonable person in the position of a Treasury Officer would have had this information (or alternatively formed this opinion) having come into possession of the information in particulars ii–xv above (together or in any combination).

98. In making the October 2019 Representation, Treasury did not, or did not adequately, take account, or make a genuine assessment, of:
- (a) the October 2019 US Market Conditions;
 - (b) the October 2019 Treasury US Market Conditions;
 - (c) the October 2019 US Market Conditions Impact Information;
 - (ca) the October 2019 Forecast Risks;
 - (d) the October 2019 Leadership Changes;
 - (e) the October 2019 Leadership Impact Information; and/or
 - (f) the October 2019 Combined US Impact Information,

Particulars

- i. The Joint Plaintiffs refer to the October 2019 Announcement and the absence of any, or any adequate, discussion, consideration or analysis of the matters alleged in subparagraphs 91(a) to 91(f) or paragraph 94, above.
- ii. The fact that the matters identified above were not or not adequately taken into account is also to be inferred from the fact that certain of the matters in subparagraphs 98(a) to 98(e) above, (namely, unexpected changes in Treasury's Americas leadership resulting in a loss of execution momentum, accelerated growth in private label wine, the fact that Treasury had walked away from just under 0.5 million cases of commercial volume in the US due to private label growth, the need for higher levels of discounting to maintain share across all price points and the negative impact on Treasury's ability to recover or offset increases in COGS), were identified as reasons for the

FY20 forecast downgrade on 28 January 2020 but were present as at 16 October 2019.

Further particulars will be provided following the completion of discovery and the filing of expert reports.

99. By reason of the matters alleged in paragraphs 91 to 96 and/or 97 and 98, above, Treasury did not have reasonable grounds for making the October 2019 Representation.

G.2 October Performance

99A. As at 1 November 2019, any further deterioration in Treasury’s performance at the Group level and/or in the Americas division would make it unlikely that Treasury would achieve growth in EBITs at a rate of 15% to 20% in FY20.

99B. On 8 November 2019, Treasury’s draft results for October 2019 showed that, as at 1 November 2018:

(a) the Group’s year-to-date EBITs was \$25.8 million or 16.9% under budget, on a constant-currency basis;

(b) the Americas division’s year-to-date EBITs was \$34.9 million or 57% under budget, on a constant-currency basis,

(the matters in paragraphs 99A and 99B together are the **October 2019 Results Information**).

Particulars

October Month Results. (TRE.002.002.1509.)

99C. As at 8 November 2019 (and at all material times afterwards), one or more of the Treasury Officers knew or ought reasonably to have known of the October 2019 Results Information.

Particulars

i. Clarke and/or Ford had actual knowledge of the October 2019 Results Information, because:

(A) in a text message to Ford on 1 November 2019, Clarke stated “I have thought a lot about the next three weeks and how we cannot miss any further in USA. You (and I) will get questions about what did you do to help in USA when you realised things were not going well. ... We now run the risk of missing horribly” (TRE.089.001.0031); and

(B) on 8 November 2019, Clarke and Ford received Treasury’s draft flash results for October 2019. (TRE.002.002.1508, TRE.002.002.1509.)

ii. Alternatively, Clarke and/or Ford ought reasonably to have known of the October 2019 Results Information, as that information ought reasonably to

have been inferred (or that opinion formed) from the information known to Clarke and/or Ford as at 8 November 2019.

100. Treasury did not, at any time before 28 January 2020, withdraw or qualify the October 2019 Representation, which was a continuing representation from 16 October 2019 until the end of the Relevant Period.
101. By reason of the matters alleged in paragraphs 88, 89, 90, 91 to 96, 99 ~~and to~~ 100, above, on and from no later than 16 October 2019, alternatively 8 November 2019, and at all material times thereafter until the end of the Relevant Period, Treasury engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:
- (a) s 1041H(1) of the Corporations Act;
 - (b) s 12DA(1) of the ASIC Act; and/or
 - (c) s 18 of the ACL,
- (October 2019 Misleading or Deceptive Conduct Contravention).**

G.3.2 October 2019 Continuous Disclosure Contravention

102. Further or alternatively, by 16 October 2019, and at all material times thereafter during the Relevant Period, one or more of the Treasury Officers were aware (within the meaning of Rule 19.12 of the ASX Listing Rules) of:
- (a) the October 2019 US ~~Wine~~ Market Conditions Impact Information;
 - (aa) the October 2019 Forecast Risks;
 - (b) the October 2019 Leadership Impact Information; and/or
 - (c) the October 2019 Combined US Impact Information.

Particulars

- i. The Joint Plaintiffs refer to and repeat the particulars subjoined to paragraph 97, above.
- ii. Further or alternatively, the fact that one or more of the Treasury Officers were aware of the matters identified in paragraph 102 is to be inferred from the fact that, in September 2019, Treasury “walked away” from just under 0.5 million cases of commercial volume in the US due to private label growth, aggressive market discounting and Treasury’s higher COGS.
- iii. In addition, Treasury admitted in the 29 January 2020 Earnings Call that there was a realisation in “September, October” that the surplus wine in the marketplace was having a significant impact.
- iv. ~~As to subparagraph 102, it can be inferred that based on its knowledge of the matters set out in subparagraphs 102(a) and 102(b), one or more of the Treasury Officers had formed the opinion that there was a material risk that~~

~~the Company would not achieve growth in EBITs at a rate of 15% to 20% in FY20.~~

- v. To the extent that the October 2019 US Market Conditions Impact Information, the October 2019 Forecast Risks, the October 2019 Leadership Impact Information, or the October 2019 Combined US Impact Information are opinions, they are opinions which ought reasonably to have been formed by Treasury Officers by reason of the matters in the particulars to paragraph 97.

103. Each of:

(a) the October 2019 US Market Conditions Impact Information;

(aa) the October 2019 Forecast Risks;

(ab) the October 2019 Results Information;

(b) the October 2019 Leadership Impact Information; and/or

(c) the October 2019 Combined US Impact Information,

was information that:

(d) was not generally available within the meaning of s 676 of the Corporations Act; and

(e) a reasonable person would expect to have a material effect on the price or value of Treasury Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

Particulars

- i. The matters set out in subparagraphs 103(a) to 103(c) included Treasury's own information relating to its business, projections and sensitivities, including its future performance and performance against budget.
- ii. The materiality of the information is to be inferred from the impact of the corrective disclosure alleged in paragraphs 117 and 118, below.

Further particulars will be provided after discovery and the filing of expert reports.

104. By reason of the Continuous Disclosure Obligations and the matters alleged in paragraphs 102 to 103, above, on and from 16 October 2019, alternatively 8 November 2019, Treasury became immediately obliged to inform the ASX of:

(a) the October 2019 US Market Conditions Impact Information;

(aa) the October 2019 Forecast Risks;

(ab) the October 2019 Results Information;

(b) the October 2019 Leadership Impact Information; and/or

(c) the October 2019 Combined US Impact Information.

105. Treasury did not, at any time prior to 28 January 2020, inform the ASX of:
- (a) the October 2019 US Market Conditions Impact Information;
 - (aa) the October 2019 Forecast Risks;
 - (ab) the October 2019 Results Information;
 - (b) the October 2019 Leadership Impact Information; and/or
 - (c) the October 2019 Combined US Impact Information.
106. By reason of the matters alleged in paragraphs 102 to 105, above, Treasury contravened Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act (the **October 2019 Continuous Disclosure Contravention**).

H. SUSTAINABLE GROWTH MISLEADING OR DECEPTIVE CONDUCT

107. ~~[not used] Further and in the alternative, from prior to, and during, the Relevant Period, Treasury represented that it was pursuing a strategy of sustainable growth and was not engaging in behaviour which undermined sustainable growth in favour of short-term profit (the Sustainable Growth Representation).~~

Particulars

- ~~i. In Treasury's 2015 Annual Report published on 1 September 2015, Treasury stated:

 - ~~A. "As foreshadowed, FY15 was a critical year for TWE. During the year, we embedded substantial strategic, operational and cultural change within our organisation in order to enhance the quality and sustainability of the Company's base business" (page 4); and~~
 - ~~B. "Premiumisation remains a key component of TWE's strategy, and we are determined that our Luxury, Masstige and Commercial brands will be increasingly competitive" (page 6)~~~~
- ~~ii. In Treasury's ASX announcement entitled "TWE announces acquisition of Diageo's wine business" published on 14 October 2015, Treasury stated:

 - ~~A. "Acquisition enhances TWE's premiumisation strategy; more than 80% of Diageo Wine's US net sales revenue is generated by its Luxury and Masstige portfolio" (page 1);~~
 - ~~B. "Diageo's US wine business comprises approximately 4 million cases of wine for FY15, with a strong representation in the growing Luxury and Masstige segments" (page 2);~~
 - ~~C. "On today's announcement, Mr. Paul Rayner, Chairman of TWE commented: "The acquisition of Diageo Wine represents a highly compelling strategic and financial opportunity for TWE's shareholders. Diageo Wine's business is very aligned to our strategic roadmap and we expect that the acquisition will deliver long-term value creation to our global operations and to our shareholders" (page 3);and~~~~

- D. ~~“As we integrate the acquisition of Diageo Wine we will preserve the quality of the wines while replicating the journey that we began with TWE eighteen months ago. This will include increasing the efficiency and profitability of the business with a focus on costs, investing in the valuable brands we have acquired and delivering sustainable long-term top line growth globally” (page 3);~~
- iii. ~~In Treasury’s ASX announcement entitled “2016 Interim Results Announcement” and the “2016 Interim Results Investor and Analyst Presentation”, published on 18 February 2016, Treasury stated:~~
- A. ~~“On today’s result, TWE’s Chief Executive Officer, Michael Clarke commented: “Our interim 2016 result demonstrates a continuation of the momentum in fiscal 2015 and highlights the benefits of having repositioned our business to deliver strong earnings growth on a balanced, sustainable base” (Announcement, page 2);~~
- B. ~~“A particular highlight during the first half of fiscal 2016 was the acquisition of Diageo Plc’s Wine business (“Diageo Wine”). The acquisition drives a crucial step change for the growth of TWE’s Luxury and Masstige portfolio in the US, by providing instant access to more premium fruit. On 1 January 2016, TWE’s US business transitioned from a Commercial wine weighted business, to a portfolio structure where the Luxury and Masstige versus Commercial portfolios are more balanced” (Announcement, page 2);~~
- C. ~~“TWE has commenced a re-set period for the acquired Diageo Wine business, during which the Company will accelerate investment in consumer marketing in key brands and ensure the business is strongly positioned for long-term, sustainable growth” (Announcement, page 2);~~
- D. ~~“TWE’s journey to a balanced & sustainable model continues” (Presentation, page 3);~~
- E. ~~“TWE is delivering consistent earnings growth and margin accretion on a more balanced and sustainable base business” (Presentation, page 22); and~~
- F. ~~“Accelerate growth and lead in Luxury and Masstige segments; reshaping the Commercial portfolio and asset base, and optimising brand investment~~
- ~~• Strategy to grow and lead in Luxury and Masstige categories supported by strong US wine market fundamentals~~
 - ~~• Size and scale of TWE’s Luxury and Masstige portfolio doubled by acquisition of Diageo Wine~~
 - ~~• Re-set period for Diageo Wine commenced to drive sustainable base business and reinvigorate brand health”~~
- ~~(Presentation, page 2).~~
- iv. ~~In Treasury’s ASX announcement entitled “2016 Annual Results Announcement”, published on 18 August 2016, Treasury stated:~~
- A. ~~“On today’s result, TWE’s Chief Executive Officer, Michael Clarke commented: “Our FY16 result demonstrates that momentum across our business is accelerating. TWE is now delivering consistent~~

- earnings growth and margin accretion on a more balanced, sustainable and quality earnings basis" (page 2)
- B. "Americas Regional Perspective ... Sustainable momentum and EBITs margin accretion expected" (page 16); and
- C. "Summary and outlook ... TWE is delivering consistent earnings growth and margin accretion on a more balanced and sustainable base business" (page 16).
- v. In Treasury's ASX announcement entitled "2017 Interim Results Announcement" and Treasury's ASX announcement entitled "2017 Interim Results Investor and Analyst Presentation", published on 14 February 2017, Treasury stated:
- A. "The acquisition of the Diageo Wine business on 1 January 2016 has already delivered positive upside to TWE, despite the significant investment in re-settling the brands as well as addressing unsustainable volume and customer contracts in F16. As stated at the time of acquisition, the rationale for acquiring Diageo Wine was to secure increased access to Luxury and Masstige fruit which would in turn, deliver immediate portfolio benefits to TWE's US business. The immediate portfolio mix benefit of the acquisition is evident in the America's 1H17 result" (Announcement, pages 2-3);
- B. "US brand portfolio now positioned for sustainable volume and value growth in 2H17; targeting volume and value growth in line with category in 2H17" (Presentation, page 22);
- vi. In Treasury's ASX Announcement dated 30 August 2017 entitled 'Annual Report', Treasury stated:
- A. "The F17 results are a testament to the disciplined and sustainable way in which the Company operates" (page 2);
- B. In FY17, Treasury "Completed rollout of harmonised upgrades to TWE's global Enterprise Resource Planning (ERP) systems, enhancing controls processes to support the delivery of long-term sustainable results;" (page 12); and
- C. "The Board believes the Group's successful focus on sustainable earnings growth, cost management and operational" (page 45).
- vii. In Treasury's Full Year 2018 Treasury Wine Estates Ltd Earnings Call transcript dated 16 August 2018:
- A. Clarke stated: "Looking forward, we will continue making the tough, long-term strategic decisions to further strengthen our regional business model every year to deliver long-term, sustainable growth." (page 3);
- B. Young stated: "And so in summary, our fiscal '18 financial results demonstrate our ability to deliver strong results in a disciplined and sustainable way and, at the same time, invest for future growth" (page 5);
- C. Clarke stated: "Firstly, we actively manage shipments to ensure that customer depletions exceed shipments over the course of a year to drive pent-up demand globally. We deliberately allocate inventory to fiscal years and regions to ensure we maintain apparent scarcity and, therefore, protect our brand health and protect our pricing power by

~~deliberately allocating to future years rather than selling our wine in the current year. Therefore, it is actually against our interests to lead a customer to drive short-term outcomes.” (page 8);~~

~~D. Clarke stated: “And so in summary, we are and will continue to be a truly growth business and one that is focused on sustainable long-term objectives, not short-term tactics.” (page 8); and~~

~~E. Clarke stated: “I’m not interested and my team’s not interested in short-term tactics to get to a number. We’re focused on doing the right things that deliver the long-term, sustainable results.” (page 15);~~

~~viii. In the 2018 Annual Report, Treasury stated:~~

~~A. Treasury’s mission was to “Create long term value for TWE and everyone who touches our Company by being sustainable in everything we do” (page 31); and~~

~~B. “Sustainable results are the bedrock of the Company’s incentive framework and the Board and Management are intent on motivating performance that positions TWE for the long term.” (page 46);~~

~~ix. In the FY19 Results Announcement, Treasury stated: “Sustainability is at the heart of everything we do at TWE, and we will continue to pursue opportunities to enhance the fundamentals of our business with a mindset of prioritising long-term success over short-term outcomes.” (page 4).~~

~~x. The Sustainable Growth Representation was partly express and partly implied.~~

~~xi. To the extent that it was express, the Joint Plaintiffs refer to particulars (i)-(iv), above.~~

~~xii. To the extent that it was implied, it was to be implied from the matters referred to in particulars (i)-(iv) above.~~

108. [not used] ~~The Sustainable Growth Representation was made:~~

~~(a) in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;~~

~~(b) in relation to a financial product or financial services (being Treasury Shares) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act; and~~

~~(c) in trade or commerce within the meaning of s 18 of the ACL.~~

109. [not used] ~~Treasury did not, at any time during the Relevant Period before 28 January 2020, withdraw or qualify the Sustainable Growth Representation, which was a continuing representation throughout the Relevant Period.~~

110. [not used] ~~At all times in the Relevant Period, Treasury’s strategy was not one of sustainable growth, in that:~~

~~(a) it depended primarily on the performance of two brands (Matua and 19 Crimes), in circumstances in which:~~

- ~~(i) the June 2018 US Market Conditions (further, or alternatively, the June 2018 Treasury US Market Conditions) existed as at and from 30 June 2018;~~
 - ~~(ii) the February 2019 US Market Conditions (further, or alternatively, the February 2019 Treasury US Market Conditions) existed as at and from 14 February 2019;~~
 - ~~(iii) the August 2019 US Market Conditions (further, or alternatively, the August 2019 Treasury US Market Conditions) existed as at and from 15 August 2019;~~
 - ~~(iv) the October 2019 US Market Conditions (further, or alternatively, the October 2019 Treasury US Market Conditions) existed as at and from 16 October 2019; and~~
- ~~(b) it involved behaviour which undermined sustainable growth in favour of short-term profit, by reason of the matters alleged in paragraph 16, above, which involved Treasury recognising revenue at the point of shipment (not when depletion occurred).~~

Particulars

The Joint Plaintiffs repeat the particulars to paragraphs 38 to 39, 53 to 54, 72 to 73 and 91 to 92 above.

Further particulars will be provided following the completion of discovery.

111. ~~[not used] By reason of the matters pleaded in paragraphs 107 to 110 above, by no later than the start of the Relevant Period, and at all times thereafter until the end of the Relevant Period, the Sustainable Growth Representation was misleading or deceptive, or likely to mislead or deceive in contravention of:~~

~~(a) s 1041H(1) of the Corporations Act;~~

~~(b) s 12DA(1) of the ASIC Act; and/or~~

~~(c) s 18 of the ACL;~~

~~(Sustainable Growth Misleading or Deceptive Conduct Contravention).~~

I. DIAGEO BRANDS MISLEADING OR DECEPTIVE CONDUCT

112. From prior to, and during, the Relevant Period, Treasury represented that its acquisition and integration of “Diageo Wine” enhanced the execution of its premiumisation strategy (the **Diageo Brands Representation**).

Particulars

- i. ~~[not used] The Joint Plaintiffs repeat particulars (ii), (iii) and (v) of paragraph 107.~~
- ii. Treasury stated:

A. In Treasury's ASX announcement entitled "TWE announces acquisition of Diageo's wine business" published on 14 October 2015:

- (1) "Acquisition enhances TWE's premiumisation strategy; more than 80% of Diageo Wine's US net sales revenue is generated by its Luxury and Masstige portfolio" (page 1);
- (2) "Diageo's US wine business comprises approximately 4 million cases of wine for FY15, with a strong representation in the growing Luxury and Masstige segments" (page 2);
- (3) "On today's announcement, Mr. Paul Rayner, Chairman of TWE commented: 'The acquisition of Diageo Wine represents a highly compelling strategic and financial opportunity for TWE's shareholders. Diageo Wine's business is very aligned to our strategic roadmap and we expect that the acquisition will deliver long-term value creation to our global operations and to our shareholders" (page 3); and
- (4) "As we integrate the acquisition of Diageo Wine we will preserve the quality of the wines while replicating the journey that we began with TWE eighteen months ago. This will include increasing the efficiency and profitability of the business with a focus on costs, investing in the valuable brands we have acquired and delivering sustainable long-term top line growth – globally" (page 3).

B. In Treasury's ASX announcement entitled "2016 Interim Results Announcement" and the "2016 Interim Results Investor and Analyst Presentation", published on 18 February 2016:

- (1) "A particular highlight during the first half of fiscal 2016 was the acquisition of Diageo Plc's Wine business ("Diageo Wine"). The acquisition drives a crucial step-change for the growth of TWE's Luxury and Masstige portfolio in the US, by providing instant access to more premium fruit. On 1 January 2016, TWE's US business transitioned from a Commercial wine weighted business, to a portfolio structure where the Luxury and Masstige versus Commercial portfolios are more balanced" (Announcement, page 2);
- (2) "TWE has commenced a re-set period for the acquired Diageo Wine business, during which the Company will accelerate investment in consumer marketing in key brands and ensure the business is strongly positioned for long-term, sustainable growth" (Announcement, page 2); and
- (3) "Accelerate growth and lead in Luxury and Masstige segments; reshaping the Commercial portfolio and asset base, and optimising brand investment
 - Strategy to grow and lead in Luxury and Masstige categories supported by strong US wine market fundamentals
 - Size and scale of TWE's Luxury and Masstige portfolio doubled by acquisition of Diageo Wine

- Re-set period for Diageo Wine commenced to drive sustainable base business and reinvigorate brand health

(Presentation, page 2).

C. In Treasury's ASX announcement entitled "2017 Interim Results Announcement" and Treasury's ASX announcement entitled "2017 Interim Results Investor and Analyst Presentation", published on 14 February 2017:

(1) "The acquisition of the Diageo Wine business on 1 January 2016 has already delivered positive upside to TWE, despite the significant investment in re- settling the brands as well as addressing unsustainable volume and customer contracts in F16. As stated at the time of acquisition, the rationale for acquiring Diageo Wine was to secure increased access to Luxury and Masstige fruit which would in turn, deliver immediate portfolio benefits to TWE's US business. The immediate portfolio mix benefit of the acquisition is evident in the America's 1H17 result" (Announcement, pages 2-3).

D. In the 31 January 2018 Announcement: "Whilst Commercial wine continues to play an important role in TWE's portfolio, the completion of the Diageo Wine integration, along with the Company's Supply Chain Optimisation initiative and actions to increase access to Masstige and Luxury wine, are now facilitating the exit from lower margin Commercial volume, without materially impacting profit or profitability." (page 4); and

E. In the 16 August 2018 Announcement: "Americas reported a 2% EBITs reduction to \$193.0m and an EBITs margin of 20.1% (up 2.0ppts). Underlying premiumisation, strong EBITs growth in Canada, Direct-to-Consumer (DTC) and Latin America, Diageo Wine integration synergies and cost optimisation were offset by the one-off \$25m adverse EBITs impact from the route-to-market changes in the US, which largely related to reduced shipments." (page 2).

- iii. The Diageo Brands Representation was partly express and partly implied.
- iv. To the extent that it was express, the Joint Plaintiffs refer to particulars (i), (iii) and (v) of paragraph 107 and (i)-(ii), above.
- v. To the extent that it was implied, it was to be implied from the matters referred to in particulars (i), (iii) and (v) of paragraph 107 and particulars (i)-(ii) above.

113. The Diageo Brands Representation was made:

- (a) in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;
- (b) in relation to a financial product or financial services (being Treasury Shares) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act; and
- (c) in trade or commerce within the meaning of s 18 of the ACL.

114. Treasury did not, any time during the Relevant Period before 28 January 2020, withdraw or qualify the Diageo Brands Representation, which was a continuing representation throughout the Relevant Period.
115. At all times in the Relevant Period, the acquisition and integration of Diageo Wine did not enhance Treasury's execution of its premiumisation strategy, given:
- (a) ~~the FY17 Treasury Brands Sales Decline included declines in the Key Diageo Brands;~~
 - (b) the FY18 Treasury Brands Sales Decline included declines in the Key Diageo Brands;
 - (c) the FY19 Treasury Brands Sales Decline included declines in the Key Diageo Brands;
 - (d) ~~the FY20 Treasury Brands Sales Decline included declines in the Key Diageo Brands;~~
 - (e) the fact that there was no or limited prospects of long term improvement in the sales performance of the Key Diageo Brands in the longer term as the brands were mature or maturing; and
 - (f) the circumstances in which:
 - (i) the June 2018 US Market Conditions (further, or alternatively, the June 2018 Treasury US Market Conditions) existed as at and from 30 June 2018;
 - (ii) the February 2019 US Market Conditions (further, or alternatively, the February 2019 Treasury US Market Conditions) existed as at and from 14 February 2019;
 - (iii) the August 2019 US Market Conditions (further, or alternatively, the August 2019 Treasury US Market Conditions) existed as at and from 15 August 2019; and
 - (iv) the October 2019 US Market Conditions (further, or alternatively, the October 2019 Treasury US Market Conditions) existed as at and from 16 October 2019.

Particulars

The Joint Plaintiffs repeat the particulars to paragraphs 38 to 39, 53 to 54, 72 to 73 and 91 to 92 above.

Further particulars will be provided following the completion of discovery.

116. By reason of the matters alleged in paragraphs 112 to 115, above, during the Relevant Period, Treasury engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:
- (a) s 1041H(1) of the Corporations Act; and/or
 - (b) s 12DA(1) of the ASIC Act; and/or
 - (c) s 18 of the ACL,

(Diageo Brands Misleading or Deceptive Conduct Contravention).

J. INFORMATION DISCLOSURE AND SHARE PRICE IMPACT

117. On 28 January 2020 at 6:33pm (after trading had closed on the ASX), Treasury published and lodged with the ASX a Trading Update (**Treasury Trading Update**), which stated, *inter alia*, that or to the effect that:

- (a) Treasury had missed its 1H20 EBITs versus its own expectations;
- (b) as a result of challenging conditions in the US Wine Market, Treasury now expected reported EBITs growth for FY20 of 5% to 10%;
- (c) the downgrade to the FY20 guidance had been driven primarily by underperformance in Treasury's US results in 1H20 due to:
 - (i) US Wine Market dynamics, including discounting and an accelerated growth of private label wine, which led to Treasury's inability to recover COGS in the US commercial and luxury segments; and
 - (ii) unexpected changes in Treasury's Americas leadership, resulting in a loss of execution momentum through 1H20 which would carry into 2H20; and
- (d) the Americas division EBITs was \$98.3 million on a reported currency basis, representing a 17.3% decline on the prior corresponding period.

Particulars

Treasury Trading Update, pages 2 and 3.

118. Following the Treasury Trading Update, the price of Treasury Shares declined materially.

Particulars

The price declined from \$16.68 per share at the close of trading on 28 January 2020 to \$12.35 per share at the close of trade on 29 January 2020.

119. The information contained in and the subject of the Treasury Trading Update:

- (a) was information that a reasonable person would expect to have a material effect on the price or value of Treasury Shares;
- (b) related to the subject matter of the January 2018 Representation, the February 2019 Representation, the August 2019 Representation, the October 2019 Representation, ~~the Sustainable Growth Representation~~ and the Diageo Brands Representation (collectively, the **Representations**);
- (c) related to the subject matter of the:
 - (i) the June 2018 US Market Conditions Impact Information;

- (ii) the February 2019 US Market Conditions Impact Information;
- (iii) ~~the February 2019 Leadership Impact Information;~~
- (iiia) the February 2019 Forecast Risks;
- (iv) the February 2019 Combined US Impact Information;
- (v) the August 2019 US Market Conditions Impact Information;
- (va) the August 2019 Forecast Risks;
- (vi) the August 2019 Leadership Impact Information;
- (vii) the August 2019 Combined US Impact Information;
- (viii) the October 2019 US Market Conditions Impact Information;
- (viiiia) the October 2019 Forecast Risks;
- (ix) the October 2019 Leadership Impact Information; ~~and/or~~
- (x) the October 2019 Combined US Impact Information; and/or
- (xi) the October 2019 Results Information.

(collectively, the **Information**);

- (d) operated to correct or partly correct the information available to the market concerning the subject matter of the Representations and the Information;
- (e) by correcting or partly correcting the Representations and the Information, influenced persons who commonly invest in securities by causing:
 - (i) persons who held Treasury Shares to reduce the price at which they were willing to dispose of those shares; and
 - (ii) persons who were considering acquiring Treasury Shares to reduce the price at which they were willing to purchase those shares;

Particulars

The said effect is to be inferred from the character of the market for Treasury Shares as alleged in paragraph 120, below, and the Treasury Shares price decline alleged in paragraph 118 and the particulars thereto.

Further particulars will be provided following the filing of expert reports.

- (f) caused the price at which Treasury Shares traded on the ASX (**Traded Price**) to adjust downward toward the price which would have existed if the Contraventions (as

defined in paragraph 120, below), or any one or combination of them, had not occurred;

- (g) caused the market to adjust the Traded Price downward to correct or partly correct the effects of the Contraventions, or any one or combination of them; and
- (h) by reason of the matters alleged in subparagraphs 119(a) to 119(g), had a material adverse effect on the Traded Price of Treasury Shares.

K. CONTRAVENTIONS CAUSED LOSS OR DAMAGE

120. During the Relevant Period, the Treasury ASX Share Market was a market:

- (a) regulated by, inter alia, ss 674(2) and 1041H of the Corporations Act, Rule 3.1 of the Listing Rules and s 12DA of the ASIC Act; and
- (b) in which the price at which Treasury Shares traded on the ASX was, or was reasonably expected to have been, influenced by the material information concerning Treasury that was published on the ASX or that otherwise became publicly available.

121. During the Relevant Period:

- (a) the June 2018 Misleading or Deceptive Conduct Contravention;
- (b) the June 2018 Continuous Disclosure Contravention;
- (c) the February 2019 Misleading or Deceptive Conduct Contravention;
- (d) the February 2019 Continuous Disclosure Contravention;
- (e) the August 2019 Misleading or Deceptive Conduct Contravention;
- (f) the August 2019 Continuous Disclosure Contravention;
- (g) the October 2019 Misleading or Deceptive Conduct Contravention;
- (h) the October 2019 Continuous Disclosure Contravention; and/or
- (i) ~~[not used] the Sustainable Growth Misleading or Deceptive Conduct Contravention;~~
~~and/or~~
- (j) the Diageo Brands Misleading or Deceptive Conduct Contravention,

(together, the **Contraventions**) separately or together caused the price at which Treasury Shares traded on the ASX to be higher than their true value and/or the market price that would have prevailed but for the Contraventions (or any of them).

Particulars

This is to be inferred from paragraphs 117 to 119, above, and the particulars subjoined thereto.

Particulars of the extent to which the Contraventions caused the price at which Treasury Shares traded on the ASX to be higher than their true value and/or the market price that would have prevailed but for the Contraventions (or any of them) will be provided after the filing of expert reports.

122. By reason of the matters alleged in paragraph 121, above, at the times during the Relevant Period when each of the Joint Plaintiffs and all of the Group Members entered into a contract to acquire interests in Treasury Shares, the price of the shares they acquired had been inflated by one or more of the Contraventions.

Particulars

- i. Particulars of Stallard's shareholding in Treasury during the Relevant Period are set out in Annexure A to this consolidated statement of claim.
- ii. Particulars of Napier's shareholdings in Treasury during the Relevant Period are set out in Annexure B to this consolidated statement of claim.
- iii. Particulars of the shareholdings of the Group Members during the Relevant Period will be provided after the trial and determination of the common questions.

123. Further and in the alternative to the matters alleged in paragraphs 121 and 122, above, each of the Joint Plaintiffs and some of the Group Members entered into a contract to acquire interests in Treasury Shares during the Relevant Period as a result of holding and acting upon the assumption, being an assumption generally made in the Treasury ASX Share Market and on which they were entitled to act, that the Traded Price represented the market price in a market:

- (a) that had been informed of all material information concerning Treasury that was required to be disclosed by it in accordance with the ASX Listing Rules and ss 674(2) of the Corporations Act;
- (b) in which Treasury had not made any statements or representations that were misleading or deceptive or likely to mislead or deceive.

Particulars

- i. Investors and potential investors in shares on the ASX, including Treasury Shares, are generally aware that there is a complex and comprehensive regulatory regime including, inter alia, the ASX Listing Rules and ss 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 securities are traded and that representations made to the market are not misleading or deceptive.

- ii. Particulars of Stallard holding and relying upon the alleged assumption will be provided prior to trial.
- iii. Particulars of Napier holding and relying upon the alleged assumption will be provided prior to trial.
- iv. Particulars with respect to the assumptions held by some of the Group Members will be provided following the determination of the common questions to the extent that they are relevant to question of whether they have suffered loss and damage.

124. Further or alternatively, the Second Plaintiff and some Group Members entered into a contract to acquire an interest in the Treasury Shares directly in reliance upon the Representations, or one or more of them.

Particulars

Particulars of Napier's reliance on any of the Representations will be provided prior to trial.

Particulars of the identified of Group Members who relied upon any of the Representations will be provided following the determination of the common questions to the extent that they are relevant to the question of whether they have suffered loss and damage.

125. If Treasury had not engaged in the Contraventions (or any one or combination of the Contraventions):

- (a) Each of the Joint Plaintiffs and Group Members would have acquired their interests in Treasury Shares at the lower market price that would have prevailed; and/or
- (b) some of the Group Members would not have acquired an interest in the Treasury Shares.

126. By reason of the matters alleged in paragraph 125, above, each of the Joint Plaintiffs and the Group Members suffered loss and/or damage in relation to their interests in Treasury Shares by and resulting from the Contraventions (or any one or combination of the Contraventions).

Particulars

- i. The loss alleged in subparagraph 125(a), above, will be calculated by reference to:
 - A. the difference between the price at which each of the Joint Plaintiffs and Group Members acquired an interest in Treasury Shares during the Relevant Period and the price at which the Treasury Shares would have traded at that time had the Contraventions (or any one or combination of the Contraventions) not occurred; or
 - B. Alternatively, on the days after the Relevant Period when the traded price of Treasury Shares fell as a result of the disclosure of information which had not previously been disclosed because of the Contraventions, the quantum of that fall.
- ii. The loss alleged in subparagraph 125(b), above, will be calculated by reference to:

- A. A. the price at which some Group Members acquired an interest in Treasury Shares during the Relevant Period, adjusted to deduct the true value of that interest at the time of the transaction; or
- B. for those Group Members who would have, but for the Contraventions (or any one or combination of the Contraventions) retained or acquired an alternative investment, the difference between the actual position as a result of having acquired an interest in Treasury Shares during the Relevant Period and the position they would have been in had they made that alternative investment.

Particulars of the Joint Plaintiffs' respective losses will be provided after the filing of expert reports.

The losses suffered by Group Members who acquired an interest in Treasury Shares during the Relevant Period are not particularised in this statement of claim. Particulars in relation to Group Members' losses will be obtained and provided following opt out, the determination of the Joint Plaintiffs' claims and identified common issues at an initial trial and if, and when, it is necessary for a determination to be made of the individual claims of those Group Members.

L. ENTITLEMENT TO RELIEF

- 127. By reason of the matters alleged in paragraphs 120 to 126, above, each of the Joint Plaintiffs and each of the Group Members are entitled to recover the amount of the loss and damage suffered by them from Treasury as a result of the conduct alleged in this statement of claim pursuant to s 1041I of the Corporations Act and/or s 12GF of the ASIC Act.
- 128. Further or alternatively, Treasury is obliged pursuant to s 1317HA of the Corporations Act to compensate each of the Joint Plaintiffs and Group Members for the damage that resulted from its contravention of s 674(2) of the Corporations Act.

M. COMMON QUESTIONS OF FACT OR LAW

- 129. The questions of law or fact common to the claims of each of the Joint Plaintiffs and the Group Members are:
 - (a) at what date or dates did Treasury become aware, within the meaning of Rule 19.12 of the ASX Listing Rules, of:
 - (i) the June 2018 US Market Conditions Impact Information;
 - (ii) the February 2019 US Market Conditions Impact Information;
 - (iii) ~~[not used] the February 2019 Leadership Impact Information;~~
 - (iiia) the February 2019 Forecast Risks;
 - (iv) the February 2019 Combined US Impact Information;
 - (v) the August 2019 US Market Conditions Impact Information;

- (va) the August 2019 Forecast Risks;
- (vi) the August 2019 Leadership Impact Information;
- (vii) the August 2019 Combined US Impact Information;
- (viii) the October 2019 US Market Conditions Impact Information;
- (viii) the October 2019 Forecast Risks;
- (viii) the October 2019 Results Information;
- (ix) the October 2019 Leadership Impact Information; and/or
- (x) the October 2019 Combined US Impact Information;

(b) whether:

- (i) the June 2018 US Market Conditions Impact Information;
- (ii) the February 2019 US Market Conditions Impact Information;
- (iii) ~~[not used] the February 2019 Leadership Impact Information;~~
- (iii) the February 2019 Forecast Risks;
- (iv) the February 2019 Combined US Impact Information;
- (v) the August 2019 US Market Conditions Impact Information;
- (va) the August 2019 Forecast Risks;
- (vi) the August 2019 Leadership Impact Information;
- (vii) the August 2019 Combined US Impact Information;
- (viii) the October 2019 US Market Conditions Impact Information;
- (viii) the October 2019 Forecast Risks;
- (viii) the October 2019 Results Information;
- (ix) the October 2019 Leadership Impact Information; and/or
- (x) the October 2019 Combined US Impact Information,

was, throughout all or some of the Relevant Period, information:

- (xi) that was not generally available within the meaning of s 676 of the Corporations Act; and

(xii) that a reasonable person would expect to have a material effect on the price or value of Treasury Shares within the meaning of Rule 3.1 of the ASX Listing Rules and s 674(2)(c)(ii) of the Corporations Act,

and, if so, throughout which part or parts of the Relevant Period;

(c) whether Treasury, throughout all or part of the Relevant Period, contravened s 674(2) of the Corporations Act by not immediately telling the ASX of:

(i) the June 2018 US Market Conditions Impact Information;

(ii) the February 2019 US Market Conditions Impact Information;

(iii) ~~[not used] the February 2019 Leadership Impact Information;~~

(iiiia) the February 2019 Forecast Risks;

(iv) the February 2019 Combined US Impact Information;

(v) the August 2019 US Market Conditions Impact Information;

(va) the August 2019 Forecast Risks;

(vi) the August 2019 Leadership Impact Information;

(vii) the August 2019 Combined US Impact Information;

(viii) the October 2019 US Market Conditions Impact Information;

(viiiia) the October 2019 Forecast Risks;

(viiiib) the October 2019 Results Information;

(ix) the October 2019 Leadership Impact Information; and/or

(x) the October 2019 Combined US Impact Information,

and, if so, throughout which part or parts of the Relevant Period;

(d) whether Treasury, during the Relevant Period, made:

(i) the January 2018 Representation;

(ii) the February 2019 Representation;

(iii) the August 2019 Representation;

(iv) the October 2019 Representation; and/or

(v) ~~[not used] the Sustainable Growth Representation; and/or~~

(vi) the Diageo Brands Representation,

and, if so, when during the Relevant Period;

(e) whether, during the Relevant Period, one or more of the Treasury Officers knew or ought to have known information being:

(i) the June 2018 US Market Conditions;

(ii) the June 2018 Treasury US Market Conditions;

(ia) the FY18 Americas Budget Miss;

(iii) the June 2018 US Market Conditions Impact Information;

(iv) the February 2019 US Market Conditions;

(v) the February 2019 Treasury US Market Conditions;

(vi) the February 2019 US Market Conditions Impact Information;

(via) the February 2019 Forecast Risks

(vii) [not used] ~~the February 2019 Leadership Impact Information;~~

(viii) the February 2019 Combined US Impact Information;

(ix) the August 2019 US Market Conditions;

(x) the August 2019 Treasury US Market Conditions;

(xi) the August 2019 US Market Conditions Impact Information;

(xia) the August 2019 Forecast Risks;

(xii) the August 2019 Leadership Impact Information;

(xiii) the August 2019 Combined US Impact Information;

(xiv) the October 2019 US Market Conditions;

(xv) the October 2019 Treasury US Market Conditions;

(xvi) the October 2019 US Market Conditions Impact Information;

(xvia) the October 2019 Forecast Risks;

(xvii) the October 2019 Leadership Impact Information; ~~and/or~~

(xviii) the October 2019 Combined US Impact Information; and/or;

(xviiiia) the October 2019 Results Information.

and, if so,

(xix) which Treasury Officer or Treasury Officers; and

- (xx) throughout which part or parts of the Relevant Period,
- (f) whether, during the Relevant Period, Treasury had no reasonable grounds for making:
- (i) the January 2018 Representation;
 - (ii) the February 2019 Representation;
 - (iii) the August 2019 Representation; and/or
 - (iv) the October 2019 Representation,
- (g) whether Treasury, throughout the Relevant Period, failed to withdraw or qualify:
- (i) the January 2018 Representation;
 - (ii) the February 2019 Representation;
 - (iii) the August 2019 Representation;
 - (iv) the October 2019 Representation; and/or
 - (v) [not used] ~~the Sustainable Growth Representation; and/or~~
 - (vi) the Diageo Brands Representation,
- and if so, throughout which part or parts of the Relevant Period;
- (h) whether, in making and failing to withdraw or qualify the Representations, or any of them, Treasury contravened s 1041H(1) of the Corporations Act, s12DA(1) of the ASIC Act and/or s18 of the ACL;
- (i) whether the Contraventions (or one or any combination of them) had the effect that prices for Treasury Shares were, during the Relevant Period, higher than their respective true value and/or the market price that would have prevailed but for the Contraventions (or any of them) and, if so, by how much; and
- (j) if the Contraventions (or one or any combination of them) had any of the effects referred to at subparagraph 129(i), above:
- (i) whether compensation is recoverable by each of the Joint Plaintiffs and the Group Members;
 - (ii) the correct measure of any compensation recoverable by each of the Joint Plaintiffs and the Group Members; and
 - (vii) whether any, and if so what, relief other than monetary relief should be granted in favour of the Plaintiff and some or all of the Group Members.

AND THE JOINT PLAINTIFFS CLAIM, for themselves and on behalf of the Group Members:

- A. Declarations that the Defendant by the conduct alleged in the Consolidated Statement of Claim committed the breaches alleged in the Consolidated Statement of Claim;
- B. Damages and/or statutory compensation pursuant to s 1317HA of the Corporations Act, s 1041(1) of the Corporations Act, s 12GF(1) of the ASIC Act and/or s 236 of the ACL;
- C. Interest pursuant to statute;
- D. Costs; and
- E. Such other orders as the Court deems fit.

Dated: 21 April 2023

Slater and Gordon Lawyers

Lawyers for First Plaintiff

Maurice Blackburn Lawyers

Lawyers for Second Plaintiff

This pleading was prepared by FK Forsyth QC, W A D Edwards and E Levine of counsel, and amended by FK Forsyth KC, TJD Chalke and TA Rawlinson of counsel.

ANNEXURE A

STALLARD'S SHAREHOLDING IN TREASURY DURING THE RELEVANT PERIOD

Date	Number of Treasury Shares	Transaction	Unit Price (\$)
19/12/2019	1,000	Acquisition	16.79

ANNEXURE B – NAPIER’S SHAREHOLDINGS IN TREASURY

Date	Number of Treasury Shares	Transaction	Unit Price (\$)
13/07/2018	300	Acquisition	17.55
27/07/2018	550	Acquisition	18.15
12/09/2018	500	Acquisition	18.1
19/09/2018	500	Acquisition	17.75
8/11/2018	500	Acquisition	15.5
3/12/2018	500	Acquisition	14.51
27/02/2019	750	Acquisition	15.29
4/03/2019	750	Acquisition	15.36
5/04/2019	750	Acquisition	14.83
7/05/2019	250	Acquisition	16.09
8/05/2019	500	Acquisition	15.165
2/08/2019	2,000	Disposal	17.375
12/08/2019	500	Acquisition	16.48
26/08/2019	1,500	Disposal	17.85
21/10/2019	750	Acquisition	16.595
22/10/2019	750	Acquisition	17.01
5/12/2019	750	Acquisition	17.155

Date	Number of Treasury Shares	Transaction	Unit Price (\$)
10/12/2019	750	Acquisition	17.09
31/12/2019	1,000	Acquisition	16.2
7/01/2020	1,000	Acquisition	16.475
28/01/2020	2,000	Disposal	16.61

ANNEXURE C – DEFINITIONS

16 August 2018 Announcement has the meaning set out in the particulars to paragraph 21

1H19 Results has the meaning set out in the particulars to paragraph 50

1H19 Americas Budget Miss has the meaning set out in paragraph 55A

1H19 Americas Monthly Underperformance has the meaning set out in paragraph 55B

1Q20 Americas Underperformance has the meaning set out in paragraph 87F

2H19 Americas Key Monthly Metrics Miss has the meaning set out in paragraph 74E

2015 Annual Report has the meaning set out in the particulars to paragraph 20

2018 Annual Report has the meaning set out in the particulars to paragraph 21

2018 Harvest Oversupply has the meaning set out in paragraph 53(c)

2019 Annual Report has the meaning set out in the particulars to paragraph 21

31 January 2018 Announcement has the meaning set out in the particulars to paragraph 15

ACL has the meaning set out in paragraph 5(h)(iii)

Americas has the meaning set out in paragraph 9

Americas Budget Gap has the meaning set out in paragraph 87C

ASIC Act has the meaning set out in paragraph 5(c)(iv)

ASX has the meaning set out in paragraph 5(b)

ASX Listing Rules has the meaning set out in paragraph 5(e)

August 2019 Ciatti Report has the meaning set out in paragraph 72(c)

August 2019 Combined US Impact Information has the meaning set out in paragraph 77

August 2019 Continuous Disclosure Contravention has the meaning set out in paragraph 87

August 2019 Forecasts Risks has the meaning set out in paragraph 74G

August 2019 Leadership Changes has the meaning set out in paragraph 75

August 2019 Leadership Impact Information has the meaning set out in paragraph 76

August 2019 Misleading or Deceptive Conduct has the meaning set out in paragraph 82

August 2019 Representation has the meaning set out in paragraph 69

August 2019 Treasury US Market Conditions has the meaning set out in paragraph 73

August 2019 Trading Results has the meaning set out in paragraph 87D

August 2019 US Market Conditions Impact Information has the meaning set out in paragraph 74

August 2019 US Wine Market Conditions has the meaning set out in paragraph 72

Bulk wine has the meaning set out in paragraph 19

Clarke has the meaning set out in paragraph 22

COGS has the meaning set out in the particulars to paragraph 40

Continuous Disclosure Obligations has the meaning set out in paragraph 7

Contraventions has the meaning set out in paragraph 121

Corporations Act has the meaning set out in paragraph 3(c)(i)

Depletion has the meaning set out in paragraph 16(a)

Diageo has the meaning set out in paragraph 13

Diageo Brands Representation has the meaning set out in paragraph 112

Diageo Brands Misleading or Deceptive Conduct Contravention has the meaning set out in paragraph 116

Distributor Model has the meaning set out in paragraph 14

EBITS has the meaning set out in paragraph 12(b)

February 2019 Combined US Impact Information has the meaning set out in paragraph 58

February 2019 Continuous Disclosure Contravention has the meaning set out in paragraph 68

February 2019 Forecast Process has the meaning set out in paragraph 55C

February 2019 Forecast Risk has the meaning set out in paragraph 55D

February 2019 Leadership Change has the meaning set out in paragraph 56

February 2019 Leadership Impact Information has the meaning set out in paragraph 57

February 2019 Misleading or Deceptive Conduct has the meaning set out in paragraph 63

February 2019 Representation has the meaning set out in paragraph 50

February 2019 Treasury US Market Conditions has the meaning set out in paragraph 54

February 2019 US Market Conditions Impact Information has the meaning set out in paragraph 54

February 2019 US Market Conditions has the meaning set out in paragraph 53

Foye has the meaning set out in paragraph 24

~~**FY17 Treasury Brands Sales Decline** has the meaning set out in paragraph 38(a)~~

FY18 Americas Budget Miss has the meaning set out in paragraph 39A

FY18 Treasury Brands Sales Decline has the meaning set out in paragraph 38(a)

FY19 Americas Budget Miss has the meaning set out in paragraph 74C

FY19 Americas Monthly Underperformance has the meaning set out in paragraph 74D

FY19 Treasury Brands Sales Decline has the meaning set out in paragraph 53(a)

FY19 Results Announcement has the meaning set out in the particulars to paragraph 21

FY19 Results Presentation has the meaning set out in the particulars to paragraph 11(b)

FY20 5YP Process has the meaning set out in paragraph 74B

Group Members has the meaning set out in paragraph 3

Key Diageo Brands has the meaning set out in paragraph 13

Information has the meaning set out in paragraph 119(c)

January 2018 Representation has the meaning set out in paragraph 34

Joint Plaintiffs has the meaning set out in paragraph 1

July 2019 Americas Budget Miss has the meaning set out in paragraph 74F

July 2019 Ciatti Report has the meaning set out in paragraph 72(c)

June 2018 Continuous Disclosure Contravention has the meaning set out in paragraph 49

June 2018 Misleading or Deceptive Conduct has the meaning set out in paragraph 44

June 2018 Treasury US Market Conditions has the meaning set out in paragraph 39

June 2018 US Market Conditions has the meaning set out in paragraph 38

June 2018 US Market Conditions Impact Information has the meaning set out in paragraph 40

McPherson has the meaning set out in paragraph 26

Napier has the meaning set out in paragraph 1

Nielsen sales data has the meaning set out in paragraph 33(e)

NSR has the meaning set out in paragraph 20(a)

October 2019 Announcement has the meaning set out in paragraph 88

October 2019 Ciatti Report has the meaning set out in the particulars to paragraph 91(b)

October 2019 Combined US Impact Information has the meaning set out in paragraph 96

October 2019 Continuous Disclosure Contravention has the meaning set out in paragraph 106

October 2019 Forecast Risks has the meaning set out in paragraph 93B

October 2019 Leadership Changes has the meaning set out in paragraph 94

October 2019 Leadership Impact Information has the meaning set out in paragraph 95

October 2019 Misleading or Deceptive Conduct has the meaning set out in paragraph 101

October 2019 Results Information has the meaning set out in paragraph 99A and 99B

October 2019 Treasury US Market Conditions has the meaning set out in paragraph 92

October 2019 US Market Conditions has the meaning set out in paragraph 91

October 2019 US Market Conditions Impact Information has the meaning set out in paragraph 93

October 2019 Representation has the meaning set out in paragraph 88

Penfolds Early Release has the meaning set out in paragraph 87A

Penfolds Early Release Revenue Effects has the meaning set out in paragraph 87B

Premiumisation Strategy has the meaning set out in paragraph 11(c)

Private label wine has the meaning set out in paragraph 18

Relevant Period has the meaning set out in paragraph 3(a)

Representations has the meaning set out in paragraph 119(b)

Route-To-Market Model has the meaning set out in paragraph 15

September 2019 Trading Results has the meaning set out in paragraph 87E

September 2019 Ciatti Report has the meaning set out in the particulars paragraph 91(b)

Shipment has the meaning set out in paragraph 16(a)

Snyder has the meaning set out in paragraph 27

Stallard has the meaning set out in paragraph 1

~~**Sustainable Growth Representation** has the meaning set out in paragraph 107~~

~~**Sustainable Growth Misleading or Deceptive Conduct Contravention** has the meaning set out in paragraph 114~~

Traded Price has the meaning set out in paragraph 119(f)

Treasury has the meaning set out in paragraph 3(a)

Treasury ASX Share Market has the meaning set out in paragraph 5(c)(v)

Treasury Monitoring Systems has the meaning set out in paragraph 33

Treasury Officers has the meaning set out in paragraph 32

Treasury Shares has the meaning set out in paragraph 5(c)

Treasury Trading Update has the meaning set out in paragraph 117

UK has the meaning set out in paragraph 13

US has the meaning set out in paragraph 9

US Wine Market has the meaning set out in paragraph 10

Young has the meaning set out in paragraph 23

Schedule: Officer Awareness

Added to the Amended Consolidated Statement of Claim

No	Paragraph (particular)	Officer authors	Officer recipients	Means	Awareness date	DocID
1.	41ii(A)		Clarke, Ford, Burghardt, Directors	Memorandum for the Board	13 February 2018	TRE.003.001.2420 at .2480
2.	41ii(B)		Young, Clarke, Burghardt, Ford, McPherson, Directors	Memorandum for the Board	13 February 2018 10 April 2018 16 May 2018	TRE.003.001.2420 at .2485 TRE.003.001.2595 at .2661 TRE.003.001.2700 at .2739
3.	41ii(C)		Clarke, Foye, Burghardt, Young, Snyder	Email	16 July 2018	TRE.021.013.2902 at .2909 TRE.002.030.1649 (email)
4.	41v(A)		Clarke, Foye, Young, Burghardt, Snyder	Email	13 June 2018	TRE.004.012.5991 at .5993 TRE.004.012.5989 at .5990 (email)
5.	41v(B)		Clarke, Foye, Burghardt, Young, Snyder	Email	16 July 2018	TRE.021.013.2902 at .2904 TRE.002.030.1649 (email)
6.	41v(C)		Clarke, Foye, Snyder, Burghardt	Email	5 June 2018	TRE.002.033.5426 TRE.002.033.5424 (email)
7.	41vi(A)		Clarke, Foye, Young, Burghardt, Snyder	Email	13 June 2018	TRE.004.012.5991 at .6000 TRE.004.012.5989 at .5990 (email)

No	Paragraph (particular)	Officer authors	Officer recipients	Means	Awareness date	DocID
8.	41vi(B)		Clarke, Foye, Burghardt, Young, Snyder	Email	16 July 2018	TRE.021.013.2902 at .2911 TRE.002.030.1649 (email)
9.	41vii(A)		Clarke, Foye, Young, Burghardt, Snyder	Email	13 June 2018	TRE.004.012.5991 at .5998 TRE.004.012.5989 at .5990 (email)
10.	41vii(B)		Clarke, Foye, Burghardt, Young, Snyder	Email	16 July 2018	TRE.021.013.2902 at .2909 TRE.002.030.1649 (email)
11.	41vii(C)		Directors	Inferred from publication	No later than 29 August 2018	
12.	41ix(A)		Directors	Memorandum to the Board	9 April 2019	TRE.002.002.0528 at .0602 (see minutes TRE.003.001.5339)
13.	41ix(B)	Young	Directors, Clarke, Ford, Burghardt	Memorandum to the Board	13 February 2018	TRE.003.001.2420 at .2481
14.	41ix(C)	Young	Clarke	Email	6 July 2018	TRE.004.012.2507
15.	41ix(D)	Young	Directors, McPherson, Ford	Memorandum to the Board	15 August 2018	TRE.003.001.2859 at .2922
16.	41ix(E)	Young	Directors	Memorandum to the Board	On or around 22 February 2018	TRE.004.023.4192 at .4193 TRE.004.023.4191 (email)
17.	41ix(F)		Clarke, Foye, Burghardt, Young, Snyder	Email	16 July 2018	TRE.021.013.2902 at .2904 TRE.002.030.1649 (email)
18.	41ix(G)	Young	Clarke	Email	12 August 2018	TRE.004.011.7081

No	Paragraph (particular)	Officer authors	Officer recipients	Means	Awareness date	DocID
19.	59viii(A)		Board, Clarke, Young (by inference from its publication)	ASX announcement approved by the Board	No later than 14 February 2017	NAP.999.001.0005 at _0022
20.	59viii(B)		Clarke, Foye, Burghardt, Snyder	Email	15 January 2018	TRE.004.028.8660 at .8663 TRE.004.028.8659 (email)
21.	59viii(C)		Clarke, Young, Foye, Snyder	Email	15 January 2019	TRE.049.001.0182 at .0185 TRE.002.030.0358 (email)
22.	59ix(A)		Snyder, Burghardt	Email	13 July 2018	TRE.016.023.2637 at .2638 TRE.016.023.2635 (email)
23.	59xv(A)	Young	Directors, Ford, McPherson	Memorandum to the Board	No later than 13 February 2019	TRE.003.001.3627 at .3676
24.	59xv(B)		Clarke, Young	Email	9 August 2018	TRE.002.030.0960 at .0961 (July 2018) TRE.002.030.0959 (email)
25.			Clarke, Young	Email	11 September 2018	TRE.002.030.0917 at .0918 (August 2018) TRE.002.030.0916 (email)
26.			Clarke, Young	Email	8 November 2018	TRE.002.030.0687 at .0688 (October 2018) TRE.002.030.0686 (email)
27.			Young	Email	10 December, 2018	TRE.004.002.2521 at .2522 (November 2018)

No	Paragraph (particular)	Officer authors	Officer recipients	Means	Awareness date	DocID
						TRE.004.002.2520 (email)
28.			Clarke, Young, Burghardt, Foye		12 January 2018	TRE.015.002.9406 at .9407 (December 2018) TRE.015.002.9404 (email)
29.	59xv(C)	Young	Directors, Young	Memorandum to the Board	13 February 2019	TRE.001.001.0299 at .0306 TRE.002.002.2555
30.	59xv(D)	Clarke, Ford	Young (received the Ford email)	Email	26 November 2018 (Ford email) 1 December 2018 (Clarke email)	TRE.004.002.5857 (Ford email) TRE.002.030.5547 (Clarke email)
31.	78v(B)		Clarke, Ford, Snyder	Email	30 July 2019	TRE.002.007.0005 at .0010 TRE.002.007.0001 (email)
32.	78vii(A)		Clarke, Ford, Snyder	Email	30 July 2019	TRE.002.007.0005 at .0010 TRE.002.007.0001 (email)
33.	78vii(B)		Snyder	Email	30 May 2019	TRE.024.061.9344 at .9348 TRE.024.061.9341 (email)
34.	78vii(D)		Snyder	Email	30 May 2019	TRE.024.061.9344 at .9346 TRE.024.061.9341 (email)
35.	78vii(E)		Snyder	Email	30 May 2019	TRE.024.061.9344 at .9345 TRE.024.061.9341 (email)
36.	78viii		Clarke, Ford, Snyder	Email	30 July 2019	TRE.002.007.0005 at .0005 TRE.002.007.0001 (email)
37.	78xi(A)		Directors, Ford, Young, Snyder	Memorandum to the Board	2 April 2019	TRE.003.001.3873

No	Paragraph (particular)	Officer authors	Officer recipients	Means	Awareness date	DocID
38.	78xi(B)(1)		Young	Email	6 February 2019	TRE.004.001.0764 TRE.004.001.0762 (email)
39.	78xi(B)(1)		Clarke, Young	Email	7 February 2019	TRE.002.029.3051 TRE.002.029.3050 (email)
40.	78xi(B)(1)	Young		Email	24 February 2019	TRE.004.042.2994
41.	78xi(C)		Directors, Ford, Young, Snyder	Memorandum to the Board	2 April 2019	TRE.003.001.3873 at .3939, .3948
42.	78xi(D)	Young	Directors, Ford	Memorandum to the Board	14 August 2019	TRE.003.001.4314 at .4398
43.	78xi(E)(2) 78xi(F)		Clarke, Ford, Young, Snyder	Email, or circulation in the ordinary course of Treasury's business	No later than 14 August 2019	TRE.013.014.6875 at .6882 (January 2019) TRE.002.009.7273 at .7280 (February 2019) TRE.002.020.5609 (email) TRE.013.014.6693 at .6700 (March 2019) TRE.002.002.2290 (email) TRE.013.011.0975 at .0982 (April 2019) TRE.013.011.0974 (email) TRE.013.046.8405 at .8412 (May 2019) TRE.002.002.2086 (email) TRE.022.001.8628 at .8633 (June 2019)
44.	78xi(G)	Young	Clarke, Ford	Email	13 August 2019	TRE.004.028.4710 TRE.004.028.4706 (email)

No	Paragraph (particular)	Officer authors	Officer recipients	Means	Awareness date	DocID
45.	97ii(B)		McPherson	Email	21 September 2019	TRE.002.002.8115 at .8116 TRE.006.005.0001 (email)
46.	97iv(B)		McPherson	Email	17 October 2019	TRE.002.002.8115 at .8120 TRE.002.002.8109 (email)
47.	97v		McPherson	Email	17 October 2019	TRE.002.002.8115 at .8116, .8120 TRE.002.002.8109 (email)
48.	97vi		Clarke, Young, Ford, McPherson	Email, or circulation in the ordinary course of Treasury's business	9 October 2019	TRE.002.002.1744 at .1745 (July 2019) TRE.002.002.1743 (email) TRE.002.002.1652 at .1655 (August 2019) TRE.014.036.1783 at .1788 (September 2019) TRE.002.002.1560 (email)
49.	97ix(D)	Young	Directors, Young, Ford, McPherson	Memorandum to the Board	14 October 2019	TRE.003.001.4853 at .4920
50.	97ix(E)	Ford		Email	26 August 2019	TRE.005.014.2564
51.	97ix(F)(1)	Young	Young, Clarke and Ford	Email	13 August 2019	TRE.004.028.4710 TRE.004.028.4706 (email)
52.	97ix(F)(2)	Young	Young, Clarke and Ford	Email	8 September 2019	TRE.013.022.7159 TRE.002.002.1647 (email)
53.	97ix(F)(3)		Young, Clarke and Ford	Email	7 October 2019	TRE.002.001.1622 TRE.002.001.1621 (email)