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Details of Filing

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File Title: HOLLY SOUTHERNWOOD & ANOR V BRAMBLES LIMITED
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A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

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

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Defence to the Amended Consolidated Statement of Claim

No. VID 972 of 2018

Federal Court of Australia
District Registry: Victoria
Division: General

HOLLY SOUTHERNWOOD

First Applicant

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

Second Applicant

BRAMBLES LIMITED (ACN 118 896 021)

Respondent

In response to the Applicants' Amended Consolidated Statement of Claim dated 25 June 2021~~14 May 2019~~, the Respondent (**Brambles**) says:

NB: Unless the otherwise stated:

- A. *terms defined in the Amended Consolidated Statement of Claim have the same meanings when used in this Defence to the Amended Consolidated Statement of Claim;*
- B. *headings and definitions are adopted from the Amended Consolidated Statement of Claim for ease of reference and are not treated as part of the pleadings; and*
- C. *for avoidance of doubt, Brambles does not plead to the headings or definitions employed by the Applicants and in particular does not plead to (and does not admit) headings or definitions which incorporate characterisations of conduct.*

Filed on behalf of: The Respondent, Brambles Limited

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A. PARTIES

A.1 The Applicants and Group Members

1. It denies the allegations in paragraph 1(b), and otherwise does not plead to paragraphs 1(a) and (c) as they make no material allegation against it.
2. It does not know and therefore ~~does~~ cannot admit paragraph 2.
3. It does not know and therefore ~~does~~ cannot admit paragraph 3.

A.2 Brambles

4. It admits paragraph 4, and it will refer at the trial to the full terms of ss 111AP and 674 of the Corporations Act and Listing Rules 3.1 and 3.1A.
5. It admits paragraph 5.
6. It admits paragraph 6, and it will refer at the trial to the full terms of Listing Rules 3.1 and 3.1A.
7. It admits paragraph 7.

B. BRAMBLES BUSINESS

B1. Pallets Business

8. As to paragraph 8, it says that:
 - (a) at all material times Brambles was a supply-chain logistics company operating in more than 60 countries, which operated through the following business ~~divisions~~segments:
 - (i) CHEP Americas: The pallet pooling and recycled pallet management businesses in the Americas;
 - (ii) CHEP Europe Middle East and Africa (**EMEA**): The pallet pooling businesses in EMEA;
 - (iii) CHEP Asia Pacific: The pallet and pooling businesses in Asia-Pacific;
 - (iv) RPCs: The Reusable Plastic Crates (**RPC**) businesses in Europe, North America, South America and Asia carried out under the IFCO brand, and in Australia, New Zealand and South Africa under the CHEP brand; and
 - (v) Containers: Including the Automotive, Pallecon, Oil & Gas, and Aerospace container businesses (until the Containers business

~~segment division~~ was merged with the above business divisions ~~segments~~ referred to in sub-paragraphs 8(a)(i)-(iii) on 1 March 2017).

- (b) the CHEP Americas business included:
- (i) ~~the CHEP North American Pooled Pallet Business~~—apallet pooling businesses operating in the United States (US Pooled) and Canada (CHEP Canada); and
 - (ii) until its sale on 14 February 2018 – **CHEP Recycled**, a North American Whitewood Pallet recycling business; and
 - (iii) until its sale on 14 February 2018 – Paramount, a Canadian Whitewood Pallet recycling business;

Particulars

CHEP Americas also included Brambles' pallet operations in Latin America.

- (c) the CHEP North American ~~Pooled Pallet B~~pallet pooling businesses operated through a 'share and reuse' model, under which:
- (i) Brambles would provide for leasing standardised pallets to customers from its service centres as and when required by customers;
 - (ii) customers would use these pallets and Brambles' support services to transport the customers' goods through the supply chain; and
 - (iii) customers would either arrange for the pallets return to Brambles or transfer it to another participant for reuse;
- (d) CHEP Recycled and Paramount sold Whitewood Pallets (typically of lower grade than the standardised pallets) to customers; and
- (e) it otherwise denies the allegations in paragraph 8.

Particulars

In FY2016, each of the Brambles business ~~segments~~ divisions contributed to Brambles' groupwide revenue of US\$5,535.4 million in approximately the following proportions (\$ figures are in USD):

- Pallets (**CHEP Global**) – \$4,089.9 million (73.88% of total revenue), which is further broken down geographically:

- CHEP Americas – \$2,427.8 million (43.86% of total revenue)
- CHEP EMEA – \$1,343.1 million (24.26% of total revenue)
- CHEP Asia-Pacific – \$319.0 million (5.76% of total revenue)
- RPCs – \$991.8 million (17.92% of total revenue)
- Containers – \$453.7 million (8.2% of total revenue)

The over 60 countries that Brambles operates in span four geographic regions for reporting purposes. In FY2016, each of the geographic regions contributed to Brambles' groupwide revenue of US\$5,535.4 million in approximately the following proportions (\$ figures are in USD):

- Americas – \$2,755.2 million (49.77% of total revenue)
- Europe – \$2,074.4 million (37.48% of total revenue)
- Australia – \$373.7 million (6.75% of total revenue)
- Other – \$332.1 million (6.00% of total revenue)

(p 51 of Brambles 2016 Annual Report dated 18 August 2016 (**FY2016 Annual Report**)).

9. As to paragraph 9, it:

(a) says that at all material times until the sale of CHEP Recycled on 14 February 2018, Brambles conducted pallet pooling and recycling operations in North America through the CHEP North Americas businesses (US Pooled, CHEP Canada, CHEP Recycled and Paramount, together **CHEP North America**), which involved:

(i) US Pooled leasing pooled pallets to its customers in the United States for use and return to the business (~~**USA Pooled Pallets Business**~~), comprising about US\$1,489.3 million of the total US\$2,427.8 million revenue of the CHEP Americas business in FY2016 (or approximately 61%);

Particulars

Brambles does not sell Pooled Pallets. It earns revenue from leasing Pooled Pallets (even though that revenue is described as 'sales revenue' as required by the applicable accounting standards).

The revenue figures are published on p 11 of the FY2016 Annual Report.

- (ii) CHEP Canada leasing pooled pallets to its customers in Canada for use and return to the business (~~Canada Pooled Pallets Business~~), comprising about US\$236.8 million of the total US\$2,427.8 million of revenue of the CHEP Americas business in FY2016 (or approximately 10%);

Particulars

Collectively, US Pooled~~the USA Pooled Pallets Business~~ and the CHEP Canada Pooled Pallets Business comprised the CHEP North American Pooled Pallet Business.

The revenue figures are published on p 11 of the FY2016 Annual Report.

- (iii) the sale of Whitewood Pallets by CHEP Recycled, whose revenue comprised US\$460.0 million of the total US\$2,427.8 million revenue of the CHEP Americas business in FY2016 (or approximately 19%), under which:

- (A) Brambles purchased used Whitewood Pallets, known as 'cores', from retailers and other core vendors;
- (B) Brambles recycled these cores to convert them into Whitewood Pallets of merchantable quality; and
- (C) Brambles then sold these recycled Whitewood Pallets to customers in the United States and Canada; and

Particulars

In addition, Latin America comprised US\$241.7 million of revenue in FY2016, or approximately 10% of CHEP Americas' FY2016 revenue.

The revenue figures are published on p 11 of the FY2016 Annual Report.

- (b) ~~it~~ otherwise denies the allegations in paragraph 9.
10. As to paragraph 10, it:
- (a) refers to and repeats paragraph 9 above;
- (b) says that ~~as part of the CHEP North American Pooled Pallets Business, Brambles, through US Pooled and CHEP Canada,~~ leased Pooled Pallets to customers who used the Pooled Pallets to deliver goods to:
- (i) persons with whom Brambles had a contractual relationship or other arrangement for the collection of pallets (**Participating Distributors, or PDs**); or
- (ii) persons with whom Brambles did not have a contractual relationship (**Non-Participating Distributors, or NPDs**);
- (c) says that the supply chain of Pooled Pallets to NPDs (**NPD Channel**) involved the following steps:
- (i) Brambles would lease a Pooled Pallet to a customer (usually a manufacturer);
- (ii) that customer would supply goods, and thereby transfer the Pooled Pallet to a person in the customer's distribution chain (usually a retailer) who did not have a 'participating distributor' contract with Brambles in relation to returning the Pooled Pallets to Brambles; and
- (iii) Brambles' asset recovery team would recover or work with third parties to recover the Pooled Pallets;
- (d) says that at all material times, revenue generated from customers distributing Pooled Pallets into NPD Channels accounted for a relatively small proportion of Brambles' revenue; and

Particulars

In FY2016, customers of ~~the USA Pooled Pallets Business~~ transferred approximately 23 million Pooled Pallets into NPD ~~e~~Channels, approximately 8.5 million more than in FY2015. As a percentage, transfers to NPDs were approximately 5.7% of the total number of USA Pooled Pallet transfers in FY2015, and approximately 8.5% in FY2016.

Brambles refers to and repeats the matters pleaded and particularised at paragraph 27 below.

BXB.602.011.7364 at 7387.

(e) otherwise denies the allegations in paragraph 10.

11. It denies the allegations in paragraph 11, and says that at all material times:

(a) its USA Pooled Pallets Business classified NPD Channels in two ways:

- (i) semi-cooperating distributor (**SCD**) channels; and
- (ii) non-cooperating distributor (**NCD**) channels;

Particulars

The difference between SCD and NCD channels is that Brambles was able to calculate a 70% or better 'flow-through ratio' (which is calculated on a monthly basis by dividing the number of Pooled Pallet returns against the number of Pooled Pallets issued) for pallets transferred to and recovered from the SCDs' locations, generally because the third party returning the pallets had agreed to report the pallets against a global identification number assigned by Brambles to the SCDs' location.

(b) Brambles charged customers who distributed Pooled Pallets to NPDs an upcharge, in addition to the initial transfer fee and daily use fee (as described in sub-paragraph 11(c)), to account for the risk of higher costs associated with manufacturers transferring pallets into NPD eChannels;

Particulars

The upcharge was levied by Brambles to account for the potential higher transport and repair costs, increased cycle time and asset recovery program fees associated with pallets transferred into NPD eChannels and the potential loss of pallets.

The upcharge was charged either expressly to customers (a variable rate) or incorporated implicitly as part of the calculated fee (a flat fee).

- (c) the upcharge for customers who distributed Pooled Pallets through the SCD channels was lower than the upcharge for customers who distributed Pooled Pallets through the NCD channels; and

Particulars

The amount of upcharge for distribution into SCD or NCD channels differed by customer in the USA Pooled Pallets ~~B~~business, but in 2016 the standard charge was US\$3.75 per Pooled Pallet distributed into a SCD channel, and typically between US\$6.50 and US\$8.75 per Pooled Pallet distributed into an NCD channel. Some customers had fixed fee arrangements, where the costs associated with the customer distributing Pooled Pallets into SCD and NCD channels were built into a higher transfer fee, rather than a separate, variable upcharge.

- (d) by about FY2016 Brambles had improved its ability to recover Pooled Pallets which had been distributed through the NPD Channels, thereby reducing the risk of incurring higher costs associated with the longer cycle times and higher loss rates of Pooled Pallets distributed into the NPD ~~e~~Channels.

Particulars

The flow-through ratio for the USA Pooled's ~~Pallets Business~~ NPD ~~e~~Channels was 109.01% in July 2016, 102.13% in August 2016, and 103.28% in September 2016.

12. It denies the allegations in paragraph 12, and says that in the ordinary course of its pallet pooling business, including in FY2016:

- (a) the fees Brambles charged its customers (on either a fixed or variable fee arrangement) were based on a pricing model which determined an appropriate pricing structure using modelled assumptions;

Particulars

The assumptions in the pricing model included, inter alia, a customer's annual issue volume, the distribution channel profile (including the volume and portion of transfers into NPD and PD Channels, and within the NPD Channel, SCD and NCD Channels), operating costs and cycle time.

- (b) Brambles (through its CHEP Global business) charged customers on either a variable or fixed fee arrangement;
- (c) for customers on variable fee arrangements:
 - (i) Brambles charged customers an issue fee at the time of issuing a Pooled Pallet to a customer for use in the customer's distribution network;
 - (ii) issue fees were accounted for by Brambles as revenue earned in the financial year that a Pooled Pallet was initially transferred by Brambles;
 - (iii) Brambles charged customers a daily rental fee, levied from the date that a Pooled Pallet was issued to a customer until the date that: (i) the pallet was either transferred to another participant in the distribution channel, being either a PD or NPD, of the Brambles customer; or (ii) the pallet was returned to Brambles;
 - (iv) Brambles charged customers a transfer fee when the Pooled Pallet was transferred from a customer to another person in that customer's distribution channel;
 - (v) for transfers made by a customer to a NPD, Brambles also charged the customer an upcharge in addition to the transfer fee (with different upcharges applying for SCDs and NCDs, as set out in paragraph 10 above);
 - (vi) the transfer fee, including any upcharge, was accounted for by Brambles as revenue earned in the financial year in which the Pooled Pallet was transferred from Brambles' customer to the next participant in the distribution channel;
 - (vii) additional revenue could be generated from fees included in a contract or pricing structure;
- (d) for customers on fixed fee arrangements, there was a single fee that incorporated a weighted average of activity-based components (including NPD upcharges);
- (e) the total revenue earned from the issue of Pooled Pallets, including any upcharges, was referred to as the 'revenue per issue' (RPI);
- (f) Brambles' operating costs included:

- (i) collection costs to retrieve Pooled Pallets from NPDs or their third party providers, and from PDs who were not responsible for collection costs under their arrangements with Brambles;
 - (ii) transportation costs for Pooled Pallets Brambles collects from NPDs or their third party providers, and PDs who were not responsible for transportation costs under their arrangements with Brambles;
 - (iii) inspection costs for all pallets collected, or returned, and repair costs, depending on the condition of the pallet once collected by, or returned to, Brambles; and
 - (iv) an Irrecoverable Pooling Equipment Provision (**IPEP**) charge in relation to Pooled Pallets that cannot be economically recovered, and for which there is no reasonable expectation of receiving compensation; and
- (g) each Pooled Pallet was issued by Brambles to customers, on average approximately three times per year.

B2. Brambles Personnel

13. It admits paragraph 13.
14. As to paragraph 14, it says that during the Relevant Period (but excluding the periods during which O'Sullivan was a designate in, but had not assumed, her role), Gorman, Todorcevski, O'Sullivan, ~~and Johns~~ and Mackie were officers of Brambles within the meaning of s 9 of the Corporations Act and Rule 19.12 of the ASX Listing Rules, and otherwise denies the allegations in paragraph 14.
15. It admits paragraph 15.
16. It admits that Chipchase was the Chief Executive Officer Designate from 1 January 2017 to the end of the Relevant Period and otherwise denies paragraph 16.
17. It admits paragraph 17.
18. In answer to paragraph 18, it:
- (a) refers to and repeats paragraph 14 above;
 - (b) admits that O'Sullivan was the Chief Financial Officer Designate of Brambles from 10 October 2016 to 17 November 2016;
 - (c) admits that O'Sullivan was the Chief Financial Officer of Brambles from 17 November 2016 to the end of the Relevant Period; and
 - (d) otherwise denies paragraph 18.

19. It admits paragraph 19.

19A. In answer to paragraph 19A, it:

- (a) admits that Mackie was the Group President of CHEP Global from March 2013 to the end of the Relevant Period;
- (b) admits that at all times from March 2013 to the end of the Relevant Period Mackie reported directly to Gorman;
- (c) admits that from March 2013 to the end of the Relevant Period, Mackie was a member of the Executive Leadership Team of Brambles;
- (d) admits that Mackie was a member of the Pallets Leadership Team (PLT) and was identified in the Brambles FY2016 Annual Report as a member of Brambles' 'Key Management Personnel';
- (e) admits that Mackie was responsible for oversight of strategy, budgets, forecasts, reforecasts and the financial performance of CHEP Global; and
- (f) otherwise denies paragraph 19A.

19B. In answer to paragraph 19B, it:

- (a) admits that Kennett was the Chief Financial Officer of CHEP Global from 2014 to the end of the Relevant Period;
- (b) admits that Kennett was a member of the PLT during the Relevant Period;
- (c) admits that Kennett was responsible for oversight of budgets, forecasts and reforecasts of CHEP Global; and
- (d) otherwise denies paragraph 19B.

20. In answer to paragraph 20, it:

- (a) ~~It~~ says that Rumph was the President of CHEP Pallets North America and a member of the CHEP North America Executive Leadership team (**CHEP North America ELT**);

Particulars

The CHEP North America ELT comprised:

- i. the President of CHEP North America;
- ii. the Presidents of each business unit within CHEP North America (being the Presidents of US Pooled, CHEP Canada, and Recycled);

- iii. the Chief Financial Officer of CHEP North America;
 - iv. the Vice Presidents of each of Human Resources; Marketing and Customer Solutions; Strategic Planning and Finance; Supply Chain; Asset Control; Retail Supply Chain Solutions; and Sales and Customer Operations.
- (b) admits that Rumph was responsible for oversight of strategy, budgets, forecasts, reforecasts and the financial performance of CHEP North America; and
- (c) otherwise denies paragraph 20.

20A. In answer to paragraph 20A, it:

- (a) says that Lallatin was the Chief Financial Officer of CHEP North America and a member of the CHEP North America Leadership team from the beginning of the Relevant Period until around 7 October 2016;
- (b) admits that while he was the Chief Financial Officer of CHEP North America, Lallatin was responsible for oversight of budgets, forecasts and reforecasts of CHEP North America;
- (c) otherwise denies paragraph 20A.

20B. In answer to paragraph 20B, it:

- (a) says that Hill was the Interim Chief Financial Officer of CHEP North America and a member of the CHEP North America Leadership team from around 18 November 2016 to the end of the Relevant Period;
- (b) admits that while he was the Chief Financial Officer of CHEP North America, Hill was responsible for oversight of budgets, forecasts and reforecasts of CHEP North America; and
- (c) otherwise denies paragraph 20B.

21. [Not used]As to paragraph 21, it:

- (a) ~~says that Nador was appointed Senior Vice President / General Manager of the CHEP USA business from July 2016 to March 2017;~~
- (b) ~~says that Nador became President of CHEP Pooled Pallets USA, with responsibilities for CHEP Recycled, Pallico and Automotive (the latter two forming part of the Containers business prior to March 2017) in March 2017, after the Relevant Period; and~~

- (c) ~~otherwise denies the allegations in paragraph 21.~~

21A. It admits paragraph 21A.

22. As to paragraph 22, it:

- (a) refers to and repeats paragraphs 14 to 21A above;
- (b) says that at trial, it will refer to the full terms and effect of Listing Rules 3.1 and 19.12; and
- (c) otherwise denies the allegations in paragraph 22.

C. AUGUST 2016 FORECAST AND ALLEGED CONTRAVENTIONS

C1. August 2016 Conduct

23. As to paragraph 23, it:

- (a) refers to and repeats paragraph 21A above;
- (b) says that on 18 August 2016, Brambles released to the ASX:
- (i) its FY2016 Annual Report;
- (ii) its market release for the full year ended 30 June 2016 (**FY2016 Results Announcement**); and
- (iii) its results presentation for the full year ended 30 June 2016 (**FY2016 Investor Presentation**), which accompanied an investor briefing that took place 10:00am AEST that day (**FY2016 Earnings Call**);
- (c) as to sub-paragraph (a), it:
- (i) admits sub-paragraphs (a)(i) and (ii);
- (ii) denies the allegations in sub-paragraphs (a)(iii) and (iv), and says that:
- (A) the US\$1,489.3 million revenue and 8% revenue growth figures were expressed for ~~the USA Pooled Pallets Business~~; and
- (B) that the 8% revenue growth figure was expressed on a constant-currency basis;
- (d) admits sub-paragraph (b);
- (e) denies the allegations in sub-paragraph (c), and says that:
- (i) the US\$294 million figure was expressed in the FY2016 Investor Presentation to be growth capital expenditure for pallets globally in FY2016;

- (ii) the FY2016 Earnings Call stated that the US\$294 million expenditure was the highest level of pallet capital expenditure that Brambles had incurred in its global pallets businesses in any financial year in the previous decade;
- (iii) the FY2016 Earnings Call Investor Presentation stated that the increase in pallet capital expenditure was expressed to be largely due to strong growth with customers and an increase in US plant stock levels to help mitigate transportation costs, and also due to investment to support continued customer restocking in the US, albeit those capital expenditures slowed during the second half of the year;
- (iv) page 2 of the FY2016 Results Announcement stated that there was an “impact of increased operating costs in the North American recycled pallets business, short-term network inefficiencies in the North American RPCs business and ongoing industry headwinds in the Oil & Gas business”; and
- (v) page 3 of the FY2016 Results Announcement stated that “Our North American recycled pallets business faced a number of operating and industry challenges during the year”;
- (f) ~~[not used] admits sub-paragraph (d), and says that this statement was a forward-looking statement and was therefore subject to the disclaimers, qualifications and risk factors expressed at the time of the release of the documents referred to in sub-paragraph (a), and referred to on the FY2016 Earnings Call;~~

Particulars

The disclaimer on page 53 of the FY2016 Investor Presentation stated:

~~The release, publication or distribution of this presentation in certain jurisdictions may be restricted by law and therefore persons in such jurisdictions into which this presentation is released, published or distributed should inform themselves about and observe such restrictions. This presentation does not constitute, or form part of, an offer to sell or the solicitation of an offer to subscribe for or buy any securities, nor the solicitation of any vote or approval in any jurisdiction, nor shall there be any sale, issue or transfer of the securities referred to~~

~~in this presentation in any jurisdiction in contravention of applicable law.~~

~~Persons needing advice should consult their stockbroker, bank manager, solicitor, accountant or other independent financial advisor. Certain statements made in this presentation are forward-looking statements.~~

~~These forward-looking statements are not historical facts but rather based on Brambles' current expectations, estimates and projections about the industry in which Brambles operates, and beliefs and assumptions. Words such as "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," and similar expressions are intended to identify forward-looking statements.~~

~~These statements are not guarantees of future performance and are subject to known and unknown risks, uncertainty and other factors, some of which are beyond the control of Brambles, are difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements. Brambles cautions shareholders and prospective shareholders not to place undue reliance on these forward-looking statements, which reflect the view of Brambles only as of the date of this presentation.~~

~~The forward-looking statements made in this presentation relate only to events as of the date on which the statements are made. Brambles will not undertake any obligation to release publicly any revisions or updates to these forward-looking statements to reflect events, circumstances or unanticipated events occurring after the date of this presentation except as required by law or by any appropriate regulatory authority.~~

The FY2016 Annual Report contained the following disclaimer regarding forward-looking statements: (Contents page, FY2016 Annual Report)

~~Forward-Looking Statements~~

~~Certain statements made in this Annual Report are "forward-looking statements" — that is, statements related to future, not~~

~~past, events. Words such as "anticipates", "expects", "intends", "plans", believes", "seeks", "estimates" and similar expressions are intended to identify forward-looking statements. These forward-looking statements are not historical facts but rather are based on Brambles' current beliefs, assumptions, expectations, estimates and projections. Forward-looking statements are not guarantees of future performance, as they address matter that are uncertain and subject to known and unknown risks, uncertainties and other factors that are beyond the control of Brambles, are difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements. Brambles cautions shareholders and prospective shareholders not to place undue reliance on these forward-looking statements, which reflect the views of Brambles only as of the date of this release. The forward-looking statements made in this Annual Report relate only to events as of the date on which the statements are made—Brambles will not undertake any obligation to release publicly any revisions or updates to these forward-looking statements to reflect events, circumstances or events occurring after the date of this release, except as may be required by law or by an appropriate regulatory authority.~~

The FY2016 Annual Report also contained the following qualifications and risk factors:

~~Outlook~~

~~Subject to there being no material change in underlying economic conditions, in FY17 we expect to deliver constant-currency growth in sales revenue in the range of between 7% and 9% and Underlying Profit growth in the range of between 9% and 11%. We have forecast Underlying Profit to be between US\$1,055 million and US\$1,075 million, at 30 June 2016 foreign exchange rates.~~

~~We remain committed to delivering the five-year targets we set out in December 2013 which were to deliver annual constant-currency sales revenue growth in the high single digits, with Underlying Profit growth exceeding sales revenue growth, and~~

achieving Return on Capital Invested of 20% by the end of the 2019 financial year.

(p 2 FY2016 Annual Report).

4.1 Strategic and Operating Risks

Brambles has identified a number of key factors that influence its strategic objectives and financial performance targets (refer to section 5) and which create areas of opportunity. These factors also create risks to the execution of Brambles' strategic objectives, which have been assessed in the context of the Group's risk management framework, as described under Principles 7 of the Corporate Governance Statement on Brambles' website. The table below outlines these key factors, the associated risks and mitigating actions Brambles implemented in FY16.

Key factors: Macro-economic environment; Industry trends, particularly in the context of dynamic retail, grocery and consumer goods supply chains; Internal execution capabilities, in particular maintaining control and quality of pooled equipment in line with customer needs; Meeting customer demand for sustainable outsourced supply chain solutions amid an intensifying competitive environment.

Brambles has identified the following additional risks to its financial performance and operations. These risks have been assessed in the context of Brambles' risk management framework and were addressed by the following mitigating actions in FY16:

Operating risks: Execution and integration of acquisitions; Potential for interruption, compromise or failure of the systems and technology upon which Brambles relies to operate its business; Regulatory compliance, particularly as Brambles operates in a large number of countries with widely differing legal regimes, legislative requirements and compliance cultures; Ability to attract, develop and retain high performing individuals, as well as having proper succession planning.

(p 5, FY2016 Annual Report).

In addition, at the beginning of the FY2016 Earnings Call it was stated that: '*all forward-looking statements are subject to the disclaimer on slide 53 of the deck we lodged with the ASX this morning*' (p 1 of the transcript of the FY2016 Earnings Call).

- (g) denies sub-paragraph (e) and says that:
- (i) the 7% to 9% revenue guidance was expressed on a constant-currency basis;
 - (ii) the statement was expressed to be subject to there being no material change in underlying economic conditions;
 - (iii) at trial, it will refer to the full terms and effect of the FY2016 Annual Report, FY2016 Investor Presentation and FY2016 Earnings Call, including treatment of the Oil & Gas business in its guidance; and

Particulars

Earnings and growth was expressed in the FY2016 Results Announcement using 30 June 2016 FX rates, and noting that the guidance is based on FY2016 results from continuing operations but excluding the Oil & Gas business which was to be deconsolidated and equity accounted upon the creation of the HFG Oil & Gas Joint Venture in 2017.

- (iv) to the extent the alleged statement was made, it was a forward-looking statement and was therefore subject to the disclaimers, qualifications and risk factors expressed at the time of the release of the documents referred to in sub-paragraph (a), and referred to on the FY2016 Earnings Call;

Particulars

~~Repeat particulars to sub-paragraph 23(e) above.~~ The disclaimer on page 53 of the FY2016 Investor Presentation stated:

The release, publication or distribution of this presentation in certain jurisdictions may be restricted by law and therefore persons in such jurisdictions into which this presentation is released, published or distributed should inform themselves about and observe such restrictions. This presentation does not constitute, or form part of, an offer to sell or the solicitation of an

offer to subscribe for or buy any securities, nor the solicitation of any vote or approval in any jurisdiction, nor shall there be any sale, issue or transfer of the securities referred to in this presentation in any jurisdiction in contravention of applicable law.

Persons needing advice should consult their stockbroker, bank manager, solicitor, accountant or other independent financial advisor. Certain statements made in this presentation are forward-looking statements.

These forward-looking statements are not historical facts but rather based on Brambles' current expectations, estimates and projections about the industry in which Brambles operates, and beliefs and assumptions. Words such as "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," and similar expressions are intended to identify forward-looking statements.

These statements are not guarantees of future performance and are subject to known and unknown risks, uncertainty and other factors, some of which are beyond the control of Brambles, are difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements. Brambles cautions shareholders and prospective shareholders not to place undue reliance on these forward-looking statements, which reflect the view of Brambles only as of the date of this presentation.

The forward-looking statements made in this presentation relate only to events as of the date on which the statements are made. Brambles will not undertake any obligation to release publicly any revisions or updates to these forward-looking statements to reflect events, circumstances or unanticipated events occurring after the date of this presentation except as required by law or by any appropriate regulatory authority.

The FY2016 Annual Report contained the following disclaimer regarding forward-looking statements: (Contents page, FY2016 Annual Report)

Forward-Looking Statements

Certain statements made in this Annual Report are "forward-looking statements" – that is, statements related to future, not past, events. Words such as "anticipates", "expects", "intends", "plans", believes", "seeks", "estimates" and similar expressions are intended to identify forward-looking statements. These forward-looking statements are not historical facts but rather are based on Brambles' current beliefs, assumptions, expectations, estimates and projections. Forward-looking statements are not guarantees of future performance, as they address matter that are uncertain and subject to known and unknown risks, uncertainties and other factors that are beyond the control of Brambles, are difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements. Brambles cautions shareholders and prospective shareholders not to place undue reliance on these forward-looking statements, which reflect the views of Brambles only as of the date of this release. The forward-looking statements made in this Annual Report relate only to events as of the date on which the statements are made – Brambles will not undertake any obligation to release publicly any revisions or updates to these forward-looking statements to reflect events, circumstances or events occurring after the date of this release, except as may be required by law or by an appropriate regulatory authority.

The FY2016 Annual Report also contained the following qualifications and risk factors:

Outlook

Subject to there being no material change in underlying economic conditions, in FY17 we expect to deliver constant-currency growth in sales revenue in the range of between 7% and 9% and Underlying Profit growth in the range of between 9% and 11%. We have forecast Underlying Profit to be between US\$1,055 million and US\$1,075 million, at 30 June 2016 foreign exchange rates.

We remain committed to delivering the five-year targets we set out in December 2013 which were to deliver annual constant-

currency sales revenue growth in the high single digits, with Underlying Profit growth exceeding sales revenue growth, and achieving Return on Capital Invested of 20% by the end of the 2019 financial year.

(p 2 FY2016 Annual Report).

4.1 Strategic and Operating Risks

Brambles has identified a number of key factors that influence its strategic objectives and financial performance targets (refer to section 5) and which create areas of opportunity. These factors also create risks to the execution of Brambles' strategic objectives, which have been assessed in the context of the Group's risk management framework, as described under Principles 7 of the Corporate Governance Statement on Brambles' website. The table below outlines these key factors, the associated risks and mitigating actions Brambles implemented in FY16.

Key factors: Macro-economic environment; Industry trends, particularly in the context of dynamic retail, grocery and consumer goods supply chains; Internal execution capabilities, in particular maintaining control and quality of pooled equipment in line with customer needs; Meeting customer demand for sustainable outsourced supply-chain solutions amid an intensifying competitive environment.

Brambles has identified the following additional risks to its financial performance and operations. These risks have been assessed in the context of Brambles' risk management framework and were addressed by the following mitigating actions in FY16:

Operating risks: Execution and integration of acquisitions; Potential for interruption, compromise or failure of the systems and technology upon which Brambles relies to operate its business; Regulatory compliance, particularly as Brambles operates in a large number of countries with widely differing legal regimes, legislative requirements and compliance cultures; Ability to attract, develop and retain high performing individuals, as well as having proper succession planning.

(p 5, FY2016 Annual Report).

In addition, at the beginning of the FY2016 Earnings Call it was stated that: 'all forward-looking statements are subject to the disclaimer on slide 53 of the deck we lodged with the ASX this morning' (p 1 of the transcript of the FY2016 Earnings Call).

- (h) denies sub-paragraph (f) and says that:
- (i) the 9% to 11% underlying profit guidance was expressed on a constant-currency basis;
 - (ii) the statement was expressed to be subject to there being no material change in underlying economic conditions;
 - (iii) at trial, it will refer to the full terms and effect of the FY2016 Annual Report, Investor Presentation and Earnings Call, including treatment of the Oil & Gas business in its guidance; and

Particulars

Repeat particulars to sub-paragraph 23(fg)(iii) above.

- (iv) to the extent the alleged statement was made, it was a forward-looking statement and was therefore subject to the disclaimers, qualifications and risk factors expressed at the time of the release of the documents referred to in sub-paragraph (a), and referred to on the FY2016 Earnings Call;

Particulars

Repeat particulars to sub-paragraph 23(eg)(iv) above.

- (i) admits sub-paragraphs (g)(i) and (ii) but denies the allegations in sub-paragraph (g)(iii);
- (j) denies the allegations in sub-paragraph (h);
- (k) denies the allegations in sub-paragraph (i) and says further that:
 - (i) the FY2016 Results Announcement stated that "*Brambles FY19 ROCI target of 20% excludes FX impacts and acquisitions made since December 2013 (the date the target was set). As such the Airworld, Braecroft, Ferguson Group, IFCO Japan, Rentapack, Transpac and Empacotecnia acquisitions are excluded from this ROCI calculation*"; and

- (ii) the target for a return on capital invested (**ROCI**) of 20% by FY2019:
- (A) was announced by Brambles in December 2013 as part of a five-year plan;

Particulars

The five-year plan was announced on 9 December 2013 in a series of presentations titled 'Investment Market Briefing Presentations'.

- (B) to the extent the alleged statement was made, it was a forward-looking statement and was therefore subject to the disclaimers, qualifications and risk factors expressed at the time of the release of the documents referred to in sub-paragraphs 23(a)(i)-(iii),

Particulars

Repeat particulars to sub-paragraph 23(eg)(iv) above, and further relies on the disclaimer on slide 5 of the Investment Market Briefing Presentations:

"The release, publication or distribution of this presentation in certain jurisdictions may be restricted by law and therefore persons in such jurisdictions into which this presentation is released, published or distributed should inform themselves about and observe such restrictions.

This presentation does not constitute, or form part of, an offer to sell or the solicitation of an offer to subscribe for or buy any securities, nor the solicitation of any vote or approval in any jurisdiction, nor shall there be any sale, issue or transfer of the securities referred to in this presentation in any jurisdiction in contravention of applicable law.

Persons needing advice should consult their stockbroker, bank manager, solicitor, accountant or other independent financial advisor. Certain statements made in this presentation are forward-looking statements.

These forward-looking statements are not historical facts but rather are based on Brambles' current expectations, estimates and projections about the industry in which Brambles operates,

and beliefs and assumptions. Words such as "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," and similar expressions are intended to identify forward-looking statements.

These statements are not guarantees of future performance and are subject to known and unknown risks, uncertainties and other factors, some of which are beyond the control of Brambles, are difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements. Brambles cautions shareholders and prospective shareholders not to place undue reliance on these forward-looking statements, which reflect the view of Brambles only as of the date of this presentation.

The forward-looking statements made in this presentation relate only to events as of the date on which the statements are made. Brambles will not undertake any obligation to release publicly any revisions or updates to these forward-looking statements to reflect events, circumstances or unanticipated events occurring after the date of this presentation except as required by law or by any appropriate regulatory authority."

- (C) was qualified by further statements in August 2014 and August 2015 which were released to the ASX; and

Particulars

On 20 August 2014, Brambles stated that its FY2019 targets were subject to certain key external factors that present potential risks to Brambles. These risks continued to apply to the FY2019 targets on 18 August 2016.

At page 4 of Brambles' 2014 Annual Report, released to the ASX on 20 August 2014, Brambles identified the following "key external factors that influence its assumptions and targets and create areas of opportunity and risk":

- The macro-economic environment, with expectations for global growth remaining challenging in the foreseeable future;

- Industry trends, in particular in the context of a dynamically changing retailing landscape and the ongoing globalisation of many supply chains; and
- Customer demand for sustainable outsourced supply-chain solutions amid an intensifying competitive environment.

At slide 25 of the Investor Presentation dated 20 August 2015, Brambles stated that its FY2019 targets were based on assumptions made in December 2013 and additional assumptions made December 2015:

Assumptions made in December 2013:

- Macro
 - Flat growth in major economies
 - Challenging environment for political leadership
 - Cost pressures
- Industry
 - New store formats and multi-channel fulfilment
 - SKU [Stock Keeping Unit] proliferation and promotional complexity
 - Growth of private label, online and omni-channel
 - Global flows and standardisation
- Customer
 - Demand for solutions providers
 - Outsourcing of non-core activities
 - Sustainability focus
 - Competitor activity

Additional assumptions made in August 2015:

- Impacts of improved US pallet pool management and support for increased retail inventories
- IFCO pool growth and crate diversification

- Pervasive impact of weak global growth outlook
 - Intensifying competitor activity
 - Scale of opportunity for differentiated offering
- (l) admits sub-paragraph (j), and says that the statement was a forward-looking statement and was therefore subject to the disclaimers, qualifications and risk factors expressed at the time of the release of the documents referred to in sub-paragraph (a) and on the FY2016 Earnings Call referred to in sub-paragraphs (b) and (eg)(iv) above, as well as the disclaimers, qualifications and risk factors expressed at the time of announcing the five-year plan referred to in sub-paragraph 23(j)(ii)(B) and in subsequent periods as referred to in sub-paragraph 23(j)(ii)(C).

Particulars

Repeat particulars to sub-paragraphs 23(g)(iv), 23(jk)(ii)(B) and (C) above.

24. It denies the allegations in paragraph 24 and refers to and repeats paragraph 23 above.
25. It denies the allegations in paragraph 25 and refers to and repeats paragraph 23 above.
26. It denies the allegations in paragraph 26 and refers to and repeats paragraph 23 above.

C.2 Alleged True State of Affairs in August 2016

27. It denies the allegations in paragraph 27, refers to and repeats paragraphs 9-12 above, and says further that:
- (a) [not used]in FY2016, as in other years, Brambles did not sell Pooled Pallets, but leased them to customers;
 - (b) [not used]in FY2016, as in other years, Brambles incurred capital expenditure on new Pooled Pallets, and earned revenue from leasing Pooled Pallets to customers;
 - (c) [not used]in FY2016, Brambles' groupwide capital expenditure (on a cash basis) was US\$1,080.3 million compared to US\$982.5 million in FY2015, and this included capital expenditure on purchases of new Pooled Pallets;

Particulars

~~FY2016 Annual Report p 9.~~

- (d) ~~[not used] in FY2016, as in other years, Brambles did not attribute specific parts of its revenue growth or underlying profit growth to capital expenditure relating to purchases of new Pooled Pallets;~~
- (e) in FY2016, as in other years, ~~the~~ CHEP North America's ~~an~~ Pooled Pallets business' revenue growth and underlying profit was driven by customers' demand for Pooled Pallets (through organic volume or from new customer wins), which was subject to change from time to time including as a result of macroeconomic and microeconomic factors;

Particulars

At all material times Brambles distinguished its revenue growth between:

(i) 'net new wins' – which referred to revenue earned in the initial 12-month period of a contractual arrangement with a new customer, and was allocated on a proportional basis over those 12 months; and

(ii) 'organic growth' – which referred to all other revenue, including revenue earned from a customer whose contract was renewed and revenue earned through the expansion of existing business through an increase in the number of pallets issued to existing customers under existing contracts.

- (f) ~~[not used] in FY2016, as in other years, the CHEP North American Pooled Pallets business units purchased new Pooled Pallets (a capital expenditure item) if and when forecast demand for Pooled Pallets within the relevant business unit exceeded the number of existing Pooled Pallets within that business unit;~~
- (g) in FY2016, as in other years, ~~the~~ CHEP North American ~~Pooled Pallets Business~~ (including US Pooled) issued Pooled Pallets to customers whose distribution channels included NPDs;
- (h) in FY2016, as in other years, some Pooled Pallets were transferred by customers to the NPD eChannels;
- (i) in FY2016, as in other years, transfers by customers of Pooled Pallets to the NPD eChannels comprised only a small part of the total Pooled Pallet transfers;

Particulars

In FY2015 Brambles made 261 million Pooled Pallet issues in ~~the USA Pooled Pallets Business~~, and out of those approximately 14.5 million (or approximately 5.5%) were transferred into NPD eChannels.

In FY2016, Brambles made 275 million Pooled Pallet issues in ~~the USA Pooled Pallets Business~~, and out of those, approximately 23 million (or approximately 8.5%) were transferred into NPD eChannels.

- (j) in FY2016, as in other years, Brambles did not issue Pooled Pallets to distributors, but to customers (usually manufacturers) who were neither classified as 'participating' nor 'non-participating', and these customers then transferred the Pooled Pallets to persons (usually retailers) who were either PDs or NPDs (and within the category of NPDs – either SCDs or NCDs);
- (k) in FY2016, as in other years, much of the growth in the number of Pooled Pallets transferred into NPD channels resulted from the ~~decisions by~~ reclassification of the Pooled Pallet recipients of Pooled Pallets (usually retailers) ~~no longer to maintain a contractual relationship with Brambles as~~ from PDs to NPD;

Particulars

BXB.501.015.6158; BXB.602.011.7364.

In October 2015, contractual arrangements with two US Pooled customers, Nash Finch and The Home Depot, were varied with the effect that both customers were reclassified as NPDs. This materially contributed to the increase in NPD volumes from FY2015 to FY2016.

34% of the approximately 8.5 million increase in NPD transfers in ~~the USA Pooled Pallets Business~~ between FY2015 and FY2016 was attributable to a single retailer, Home Depot, ~~deciding to become~~ being reclassified as NPD. When this occurred, all of the Pooled Pallets that Brambles was issuing to any of its customers to deliver their manufactured goods to Home Depot became NPD transfers.

The number of Brambles' NPD transfers is subject to the supply chains of Brambles' customers. Brambles has limited control over the proportion of its pallets issued into NPD eChannels.

- (l) in FY2016, as in other years, a part of the growth strategy of Brambles Pooled Pallets' business was to convert users of Whitewood Pallets (both customers of competitors, and customers of CHEP Recycled while it was owned by Brambles) to using Brambles' Pooled Pallets; and
- (m) some of the customers to whom Pooled Pallets were issued in FY2016 had previously used Whitewood Pallets.

28. It denies the allegations in paragraph 28, refers to and repeats paragraphs 9-12, 21A, 23 and 27 above, and says further that:

- (a) in FY2016, ~~the USA Pooled's Pallets Business~~ revenue was US\$1,489.3 million, which included revenue earned from issuing Pooled Pallets to customers who distributed Pooled Pallets into NPD Channels; and

Particulars

FY2016 Annual Report, p 11.

- (b) specifically, ~~the USA Pooled's Pallets Business~~ revenue was:
 - (i) US\$727.4 million in 1H2016; and

Particulars

Brambles 1H16 Results Announcement dated 22 February 2016, p 6.

- (ii) US\$761.9 million in 2H2016.

Particulars

FY2016 Annual Report, p 11.

28A. In answer to paragraph 28A, it refers to and repeats paragraphs 9-12, 21A, 23 and 27-28 above, and says further that:

- (a) in February 2016, Brambles' FY2016 sales and Underlying Profit guidance was increased from 6-8% to 8-10% (on a constant currency basis), following strong results in 1HFY16:

Particulars

Brambles 1H16 Results Announcement, 22 February 2016 (BXB.500.050.0422).

- (b) in FY2016, the year-on-year revenue growth for US Pooled included:
- (i) organic growth of approximately 1.4%;
 - (ii) net new wins of approximately 3.9%;
 - (iii) price/mix growth of approximately 3.2%, comprised of:
 - (A) price growth of approximately 1.3%;
 - (B) mix growth of approximately 2%;

Particulars

BXB.500.122.0969 p 18.

- (c) otherwise denies paragraph 28A.

28B. It denies the allegations in paragraph 28B, refers to and repeats paragraphs 9-12, 21A, 23 and 27-28A above, and says further that:

- (a) there were a large number of regional whitewood pallet markets across the United States, with no national whitewood pricing index or universal price of whitewood cores across the United States;
- (b) there were different grades of whitewood cores to reflect their quality, referred to as "A class", "B class" or "C class". The cost for purchasing whitewood cores and the price obtained by CHEP Recycled for selling whitewood cores varied between regional markets and the grade of whitewood cores; and
- (c) in FY2016, the cost of purchasing whitewood cores fluctuated between \$2.71 to \$2.77, and the average sales price for whitewood pallets fluctuated between \$5.90 and \$6.09;

Particulars

In FY2016, the average cost of purchasing whitewood cores, and the average sale price of A and B Grade whitewood cores, was as follows:

<u>Month of FY16</u>	<u>July</u>	<u>Aug</u>	<u>Sept</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>June</u>
<u>Core cost (\$)</u>	<u>2.73</u>	<u>2.77</u>	<u>2.71</u>	<u>2.72</u>	<u>2.72</u>	<u>2.74</u>	<u>2.75</u>	<u>2.73</u>	<u>2.74</u>	<u>2.75</u>	<u>2.74</u>	<u>2.76</u>
<u>WW Av. Sale Price – A Grade</u>	<u>6.76</u>	<u>6.75</u>	<u>6.81</u>	<u>6.82</u>	<u>6.83</u>	<u>6.92</u>	<u>6.86</u>	<u>6.73</u>	<u>6.80</u>	<u>6.77</u>	<u>6.69</u>	<u>6.75</u>

<u>WW – Av. Sale Price B Grade</u>	<u>4.94</u>	<u>4.98</u>	<u>5.02</u>	<u>5.05</u>	<u>5.08</u>	<u>5.16</u>	<u>5.13</u>	<u>5.13</u>	<u>5.13</u>	<u>5.15</u>	<u>5.10</u>	<u>5.08</u>
<u>WW – Av. Sale Price (A+B)</u>	<u>5.94</u>	<u>5.90</u>	<u>5.95</u>	<u>5.97</u>	<u>6.01</u>	<u>6.09</u>	<u>6.03</u>	<u>6.00</u>	<u>6.02</u>	<u>6.07</u>	<u>6.04</u>	<u>6.05</u>

BXB.501.073.7307, p 5; BXB.500.020.8299, p 8.

28C. In answer to paragraph 28C it:

- (a) admits that PECO was a competitor of Brambles in the market for Pooled Pallets in the United States in FY2016;
- (b) does not know and therefore cannot admit sub-paragraph (a);
- (c) says PECO was a participant in the Pooled Pallets market in the United States, with an approximate market share from FY2013 to FY2016 as follows:
 - (i) FY2013: 5%;
 - (ii) FY2014: 6%;
 - (iii) FY2015: 7%; and
 - (iv) FY2016: 7%;

Particulars

Brambles Strategy Review, '5YR Plan and Initiative Review', 20 February 2017, p 11 (BXB.500.008.5567).

- (d) says that US Pooled's approximate share of the Pooled Pallets market in the United States from FY2013 to FY2016 was as follows:
 - (i) FY2013: 36%;
 - (ii) FY2014: 37%;
 - (iii) FY2015: 38%;
 - (iv) FY2016: 40%; and

Particulars

Brambles Strategy Review, '5YR Plan and Initiative Review', 20 February 2017, p 11 (BXB.500.008.5567).

- (e) otherwise denies paragraph 28C.

28D. In answer to 28D, it refers to and repeats paragraphs 9-12, 21A, 23 and 27-28C above, and:

(a) says that for US Pooled, the damage rate for Pooled Pallets from FY2013 to FY2016 was:

(i) FY2013: 55.8%;

(ii) FY2014: 58.1%;

(iii) FY2015: 60.6%;

(iv) FY2016: 61.5%.

Particulars

BXB.500.139.3716.

(b) says further that on 1 July 2015, US Pooled began the roll-out of an investment program (referred to as the **Durability Program**), designed to improve the durability of its pooled pallets over the five-year period from FY2016 to FY2020;

Particulars

The Durability Program included two initiatives to increase the durability of pallets within the US Pooled pallet pool:

(i) adding clinched nails to the construction of new pallets and the repair of pallets returned to service centres; and

(ii) using nail plates in the construction of new pallets.

FY2015 Annual Report, p 9 (BXB.603.008.5501).

(c) says that the Durability Program followed testing at the CHEP Pallet Test Track Facility which considered a number of alternative initiatives to reduce the damage rate in pooled pallets issued in the United States;

Particulars

BXB.500.008.4025.

(d) says that based on the testing at the CHEP Pallet Test Track Facility, the initiatives incorporated in the Durability Program projected a reduction in the damage rate of pooled pallets issued in the United States from 61.9% in FY2016 to 54.1% in FY2020;

Particulars

BXB.500.161.4973 at 4995.

- (e) says that based on the testing at the CHEP Pallet Test Track Facility, the initiatives incorporated in the Durability Program projected that the damage rate of pooled pallets issued in the United States would reduce by 3.8% from FY2016 to FY2017;

Particulars

BXB.500.020.0591 at 0595.

- (f) says that the Brambles FY2017 Board budget presentation (**Brambles FY2017 Budget Presentation**) projected a reduction in the damage rate of pooled pallets issued in the United States from FY2016 to FY2017 of approximately 1.8%;

Particulars

BXB.500.040.5075 at 5099.

- (g) says that at the end of FY2016, approximately 21.9% of pooled pallets in the United States had been upgraded with clinched nails and approximately 5.3% of pooled pallets had nail plates; and

Particulars

BXB.500.161.4973 at 4993.

- (h) otherwise denies paragraph 28D.

29. It denies the allegations in paragraph 29, refers to and repeats paragraphs 9-12, 21A, 23 and 27-28D above, and says further that:

- (a) in FY2016, as in each financial year, the issuing of Pooled Pallets by ~~the USA Pooled Pallets Business~~ resulted in operating costs which were incurred partly in that financial year and partly in the next financial year, and this was incorporated in the FY2017 budget;

Particulars

An example of an operating cost incurred at the time of issue (and therefore in the same financial year as the issue) is the cost of initially transporting a Pooled Pallet from Brambles to a customer. An example of an operating cost that would be incurred some time after the issue of the Pooled Pallet (and

therefore sometimes in the next financial year to the issue) is the costs associated with transporting a Pooled Pallet back to Brambles, and the costs associated with repairing the Pooled Pallet.

- (b) the issuing of Pooled Pallets that were 'new' resulted in operating costs that were lower than the issuing of Pooled Pallets that were 'old', because upon their return to Brambles, the new Pooled Pallets were less likely to require repair than the old Pooled Pallets.

29A. It admits paragraph 29A.

29B. In answer to paragraph 29B, it:

- (a) says that the ELT Guidance Note provided 'top-down' guidance on Brambles' expectations for the FY2017 budget of Brambles' business divisions;
- (b) says further that at trial it will rely on the ELT Guidance Note for its full terms and effect;
- (c) says further that the expectations provided in the ELT Guidance Notice were expectations for the CHEP, IFCO and Containers business divisions as a whole, based on a portfolio approach, and were not targets set for each business within the (such as US Pooled);
- (d) says further that the preparation of the annual budget involved a 'bottom-up' process which included the preparation of budgets that were subject to internal review and discussion, before being consolidated at a country business unit (CBU) level (for example, US Pooled, CHEP Canada (including Paramount) and CHEP Recycled each prepared an annual budget for review and consolidation at the CHEP North America (CBU) level);

Particulars

In FY2017, the CHEP Global annual budget process included the following steps:

- (i) Brambles provided 'top-down' guidance on its expectations to the President and Chief Financial Officer of each business division;
- (ii) each business within each CBU (with the CBUs together making up the business division, for example, CHEP Global) prepared an annual 'bottom-up' budget, which was subject to internal review and discussion, before

being consolidated at the CBU level (for example, US Pooled, CHEP Canada (including Paramount) and CHEP Recycled each prepared an annual budget for review and consolidation at the CHEP North America level);

(iii) the President and Chief Financial Officer of the CBUs presented their annual budget to the leadership team of the business division for review (for example, the President and Chief Financial Officer of CHEP North America presented the CHEP North America budget to the PLT);

(iv) once the review was complete and any adjustments were discussed and agreed, the CBU budgets were consolidated into the CHEP Global budget;

(v) the President, Chief Financial Officer and senior members of CHEP Global presented their annual budget to the Chief Executive Officer, Chief Financial Officer and senior members of Brambles for review and discussion;

(vi) once the review was complete and any adjustments were discussed and agreed, each business division's budget (e.g. CHEP Global) was consolidated into the Brambles budget at the Group level; and

(vii) the Brambles budget was then presented by the Brambles Chief Executive Officer and Chief Financial Officer to the Board of Directors of Brambles for review and approval (subject to any adjustments agreed and made).

(e) admits that the ELT Guidance Note contained statements to the effect alleged in subparagraph (b)(i) to (iv)(A); and

(f) otherwise denies paragraph 29B.

29C. It admits paragraph 29C and refers to and repeats paragraph 29B above.

29D. In answer to paragraph 29D, it:

(a) refers to and repeats paragraphs 29B to 29C above;

- (b) says that for FY2017, Brambles undertook a concurrent five-year planning and budgeting process, in accordance with the Brambles planning cycle, with instructions for both developed in around November, and the five-year plan reviews occurring in around January to February 2016, and the budget reviews occurring in around March to April 2016;

Particulars

For FY2017, following the development of five-year plan and budget planning instructions in around November to December 2015, the CHEP Global CBUs started preparing their five-year plan in around December 2015. The CBUs then submitted and presented their five-year plan to senior members of the CHEP Global team at the end of January 2016, with senior members of the CHEP Global team presenting the consolidated CHEP Global five-year plan to Gorman and Todorcevski in mid-February 2016. The FY2017 budget was prepared by the CBUs in around February to March 2016, with an initial submission and presentation at the end of March to CHEP Global.

- (c) says further that for FY2017, the FY2017-FY2021 five-year plan was developed, with the approved FY2017 budget for the financial year becoming the first year of the FY2017-FY2021 five-year plan, once the FY2017 annual budget planning process was completed;
- (d) says further that for FY2017, the five-year plan process for each CHEP CBU (including US Pooled and each other business within CHEP North America) commenced in around January 2016, and the annual budget planning process for each CHEP CBU (including US Pooled and each other business within CHEP North America) commenced in around late February to March 2016;

Particulars

- i. CHEP Global FY17-FY21 Five Year Plan Instructions, section 1.3 "Key Dates" (p 4) (BXB.501.008.5223);
- ii. CHEP Global FY17 Budget Instructions, section 1.3 "Key Dates" (p 4) (BXB.501.008.5255);
- iii. Email sent from Thad Linderman to Lallatin on around 13 January 2016, confirming the CHEP North America internal FY2017 budget review would occur on around 26 February 2016 (BXB.501.066.4424);

iv. Email sent from Thad Linderman to members of the CHEP North America Finance team on around 14 January 2016, attaching a document titled 'Finance Team 5YP Refresh Process Review Meeting Agenda', which document stated:

"1. Review 5YP Refresh Instructions

...

Calendar

- 5YP: Refresh Baseline in January (Feb 1) with Strategic initiatives added in May (May 20)
- FY17 Budget due in March, two weeks after the February forecast
- 5YP reviews with NA Leadership team January 25th, 29th. Moreno workshops January 27th, 28th
- 5YP BRACS model and PowerPoint presentation due to Global February 1st.

...

4. Review FY17 Budget Calendar

- FY17 S&OP available February 15th
- First pass from all entities due Monday, February 22nd, with NA leadership meeting Friday, Feb 26th
- Final template and BRACS load due March 17th, with Submission to Global Monday March 21st"

(BXB.501.028.3100; BXB.501.028.3101).

- (e) admits that on around 25 January 2016, Justin Bachtell (Sales Finance, CHEP North America) (**Bachtell**), sent an email to members of the CHEP North America team, including Lallatin, titled 'FY'17 Plan', stating; "Now that I'm somewhere that I can re-look at the deck from today I have big concerns with layering on another \$10M to revenue in FY'17 without adjusting volume", and
- (f) admits that on around 25 January 2016, Bachtell sent a further email to Lallatin, stating "We might be able to get an additional \$0.01 in FY'17, but it's hard to see a path to another \$0.03"; and

Particulars (e) and (f)

BXB.501.030.8044.

(g) otherwise denies paragraph 29D.

29E. In answer to paragraph 29E, it:

(a) refers to and repeats paragraphs 9-12 and 27-29D above;

(b) says that at trial it will rely on the Initial Budget Submission (**US Pooled FY2017 Budget Presentation**) for its full terms and effect;

(c) in answer to sub-paragraph (a), it:

(i) admits that the US Pooled FY2017 Budget Presentation stated that US Pooled would earn total revenue of approximately US\$1,606 million (at June 2015 FX rates, as are all other \$ figures referred to in this paragraph);

(ii) says in answer to sub-paragraph (a)(i), that this was approximately US\$98 million, or 6.5%, more than the FY2016 forecast, which had been completed in February 2016 and the approximately US\$98 million was comprised of:

(A) US\$76.7 million in volume growth (organic and net new wins, including rollover wins); and

(B) US\$21.2 million in rate/mix growth;

(iii) says in answer to sub-paragraph (a)(ii), that the revenue of US\$1,606 million was approximately US\$11 million less than the revenue projected for FY2017 in Brambles' five-year plan to FY2020; and

(iv) otherwise denies the allegations in sub-paragraph (a);

(d) in answer to sub-paragraph (b), it:

(i) admits that the US Pooled FY2017 Budget Presentation stated that of the revenue growth referred to in (c) above, US Pooled would achieve volume growth of approximately US\$76.7 million, or 5.1%;

(ii) says in answer to sub-paragraph (b)(i), that it admits that the US Pooled FY2017 Budget Presentation stated that US Pooled would achieve US\$36.9m in wins and says further that those wins were expected to be achieved through new and existing customers;

- (iii) says further in answer to sub-paragraph (b)(i), that US\$36.9m in wins was a 2.5% increase (compared to the FY2016 forecast), or an additional 7 million pallet issues, of which 3 million was a rollover from FY16 and was already confirmed;
- (iv) says in answer to sub-paragraph (b)(ii), that it admits that the US Pooled FY2017 Budget Presentation stated that US Pooled would achieve US\$52.6m in 'unidentified wins', which was a 3.5% increase (compared to the FY2016 forecast), or an additional 10.2 million pallet issues;
- (v) says in answer to sub-paragraph (b)(ii), that it admits that the US Pooled FY2017 Budget Presentation stated, against the 'unidentified wins', that the "10.2M volume assumes higher confidence of 75% for new wins to compensate for sales funnel shortfall"; and
- (vi) says in answer to sub-paragraph (b)(ii), that it admits that the US Pooled FY2017 Budget Presentation stated that US Pooled assumed US\$(27.9) million in losses for FY2017, or (1.9)%, and says further that the US Pooled FY2017 Budget Presentation stated that was "(5.3)M volume of which (1.8)M is from Heinz and (1.6)M is rollover from FY16 that in driven by many smaller inside sales accounts";
- (e) it denies the allegations in sub-paragraph (c) and says that the approximately US\$21 million in revenue attributable to rate (or 1.4% year on year growth rate) in the US Pooled FY2017 Budget Presentation referred to price and mix, with price and mix further comprised of various categories contributing to the US\$21 million or 1.4%;
- (f) in answer to sub-paragraph (d), it admits that the US Pooled FY2017 Budget Presentation stated that US Pooled would achieve RPI of \$5.27 in FY2017, being an increase of \$0.06 (or 1.2%) on RPI of \$5.21 in the FY2016 forecast, which had been completed in February 2016;
- (g) in answer to sub-paragraph (e), it admits that slide 19 in the US Pooled FY2017 Budget Presentation stated that US Pooled would generate 0.1% revenue growth in FY2017 relating to the conversion of The Home Depot and Nash Finch from PDs to NPDs during FY2016;
- (h) in answer to sub-paragraph (f), it admits that the US Pooled FY2017 Budget Presentation stated that:

- (i) US Pooled would incur direct costs of approximately US\$1,093 million, which was an increase of approximately US\$55 million more than the FY2016 forecast, which had been completed in February 2016;
 - (ii) of the approximately US\$1,093 million of direct costs, approximately US\$43 million were attributable to volumes;
- (i) says further in answer to sub-paragraph (f), that the US Pooled FY2017 Budget Presentation stated that the direct costs attributable to volumes in the FY16 forecast (which had been completed in February 2016) was approximately US\$35 million, or a total increase of approximately US\$8 million;
- (j) in answer to sub-paragraph (g), it:
 - (i) refers to and repeats paragraph 28D;
 - (ii) says that the US Pooled FY2017 Budget Presentation stated that the Durability Program was "driving damage rate down 2pp, saving US \$11 million";
 - (iii) says further that in the US Pooled FY2017 Budget Presentation on the page titled "FY17 Budget Summary" (slide 6), there was a section titled "Key challenges & focus areas" and under that heading, focus areas and challenges identified included, among other things, damage rate;
 - (iv) says further that the US Pooled FY2017 Budget Presentation contained a slide titled "Risks and Opportunities: FY17 Budget" and it included a list of items identified as either a risk or opportunity, with almost all items listed as having a 50% probability, including damage rate;
 - (v) otherwise denies the allegations in sub-paragraph (g);
- (k) in answer to sub-paragraph (h), it admits that the US Pooled FY2017 Budget Presentation stated that US Pooled would achieve Underlying Profit of approximately US\$348 million, which was an increase of approximately \$30 million compared to the FY2016 forecast, or 9%; and
- (l) in answer to sub-paragraph (i), it admits that the US Pooled FY2017 Budget Presentation stated that US Pooled would achieve ROCI of 19.2%; and
- (m) otherwise denies paragraph 29E.

29F. In answer to paragraph 29F, it:

- (a) refers to and repeats paragraphs 9-12 and 27-29E above;
- (b) says that from around 24 March 2016 until the CHEP Global budget review meetings were held on 30 and 31 March 2016, the CHEP Global team reviewed the budget presentations received from each CHEP Global CBU (including CHEP North America, and the US Pooled FY2017 Budget Presentation), identifying questions and issues for discussion during the budget review meetings scheduled to occur with each CBU on around 30 to 31 March 2016;
- (c) says further that following the review referred to in (b) above, the CHEP Global team sent an email to the President and CFO of each CHEP Global CBU containing questions regarding their respective FY2017 budget submissions, including to CHEP North America, CHEP Europe and CHEP Latin America (**CHEP LATAM**);

Particulars

CHEP North America (BXB.500.020.0346); CHEP Europe (BXB.500.020.0315); CHEP LATAM (BXB.500.019.8877).

- (d) says further that on around 31 March 2016, the CFO of CHEP North America, based in Atlanta, Georgia, USA, sent an email to the CFO of CHEP Global answering the questions referred to in (c) above;

Particulars

BXB.500.020.0350; BXB.500.020.0354.

- (e) says further that on around 30 to 31 March 2016, CHEP Global held budget review meetings with the President and Chief Financial Officer of each CHEP Global CBU, including CHEP North America; and
- (f) from in around early April 2016 until the CHEP Global FY2017 budget presentation review meeting with the CEO and CFO of Brambles on 22 April 2016 (attended by, inter alia, Gorman, Todorcevski, Mackie, Kennett and Carmelo Alonso-Bernaola Ruiz (**Alonso-Bernaola**)), the CHEP Global team developed the CHEP Global consolidated FY2017 budget presentation, which included inter alia, working with the President and Chief Financial Officer of each CHEP Global CBU to make adjustments to the budget submissions reviewed at the meetings referred to in (e) above;

ParticularsBXB.500.140.5774.

- (g) says that at trial it will rely on the emails and documents referred to above for their full terms and effect; and
- (h) otherwise denies paragraph 29F.

29G. In answer to paragraph 29G, it:

- (a) refers to and repeats paragraphs 9-12 and 27-29F above;
- (b) says that at trial it will rely on the emails and documents referred to in the paragraph for their full terms and effect;
- (c) admits that on around 15 April 2016, Lallatin sent a draft document to Rumph titled 'NAM Key topics FY17B' covering a range of topics related to the CHEP North America FY2017 Budget and that draft document stated among other things that "Pricing risk in Recycled as WW market softening in 2H FY16, driving up inventory";

ParticularsBXB.500.140.5701.

- (d) admits that on around 11 April 2016, Mackie sent an email to Rumph as alleged in sub-paragraph (b);
- (e) in answer to sub-paragraph (c):
 - (i) it refers to and repeats paragraphs 29B, 29D and 29F(e) above;
 - (ii) says that consistently with Brambles' 'bottom up' annual budget planning process, in April 2016, the President and Chief Financial Officer of CHEP North America worked with the CHEP Global team to develop the CHEP Global FY2017 Budget;
 - (iii) admits that on around 14 April 2016 Rumph sent an email to Mackie as alleged; and
- (f) otherwise denies paragraph 29G.

29H. It denies the allegations in paragraph 29H and otherwise refers to and repeats paragraphs 9-12 and 27-29G above.29I. In answer to paragraph 29I, it:

- (a) refers to and repeats paragraphs 9-12 and 27-29H above;

- (b) says that at trial it will rely on the emails and document referred to in the paragraph for their full terms and effect;
- (c) admits that on around 14 April 2016, Alonso-Bernaola sent an email to Mackie providing comments on the draft CHEP Global FY2017 Budget which contained words to the effect of those referred to in quotation marks in 29l(a);
- (d) admits that on around 16 April 2016, Rumph sent an email to Mackie which attached a document titled "NAM Key Topics FY17B" which contained words to the effect of those referred to in quotation marks in 29l(b); and
- (e) admits that on around 18 April 2016, Scott sent an email to Rumph which attached a document titled "Recycled summary FY17 budget 4.18.16" that contained words to the effect of those referred to in quotation marks in 29l(c); and
- (f) otherwise denies paragraph 29l.

29J. It admits paragraph 29J.

29K. In answer to paragraph 29K, it:

- (a) it refers to and repeats paragraphs 9-12 and 27-29J above;
- (b) says that at trial it will rely on the CHEP Global FY2017 budget presentation (CHEP Global FY2017 Budget Presentation) for its full terms and effect;
- (c) it admits sub-paragraph (a);
- (d) in answer to sub-paragraph (b), it admits that the CHEP Global FY2017 Budget Presentation stated that:
 - (i) in relation to US Pooled pricing, "Pooled pricing delivers \$51M in F17B compared to \$43M in F16F";
 - (ii) the revenue generated by US Pooled from an increase in price in FY2017 would increase by 1.3%, or approximately \$20 million;

Particulars

CHEP Global FY2017 Budget Presentation, slide 33
(BXB.501.017.5066).

- (e) in answer to sub-paragraph (b), it says further that in the CHEP Global FY2017 Budget Presentation, US Pooled pricing versus consumer price index (CPI) was described as "in-line with expectations given 3 Year averages";

Particulars

CHEP Global FY2017 Budget Presentation, slide 35
(BXB.501.017.5066).

- (f) it admits sub-paragraph (c), and says further that the US Pooled 'unidentified wins' were in line with the FY2016 forecast, with US Pooled expected to over-deliver on net new wins against the FY2016 budget;

Particulars

CHEP Global FY2017 Budget Presentation, slide 40, 42
(BXB.501.017.5066).

- (g) in answer to sub-paragraph (d), it says that in relation to pricing for CHEP Recycled, the CHEP Global FY2017 Budget Presentation stated that "Significant pricing taken in F16, with impacts now seen on volumes. F16 exit pricing forecast below F17B pricing. Change in mix of A and B-grade pricing" and otherwise denies sub-paragraph (d).

Particulars

CHEP Global FY2017 Budget Presentation, slide 33
(BXB.501.017.5066).

29L. In answer to paragraph 29L, it:

- (a) refers to and repeats paragraphs 9-12 and 27-29K above;
- (b) says that at trial it will rely on the emails referred to in the paragraph for their full terms and effect;
- (c) in answer to sub-paragraph (a):
- (i) it admits that on around 9 May 2016, Todorcevski sent an email to Mackie, copied to Kennett, Alonso-Bernaola and Jackie Callaway (Financial Controller, Brambles) (**Callaway**), including a number of proposed amendments to the CHEP Global FY2017 Budget;
- (ii) denies that the email referred to in (c)(i) above contained words to the effect of those contained in quotation marks in 29L(a); and
- (iii) otherwise denies sub-paragraph (a);

Particulars

BXB.500.015.3860.

- (d) in answer to sub-paragraph (b):

- (i) it admits that on around 9 May 2016, Mackie sent an email to Todorcevski, copied to Kennett, Alonso-Bernaola and Callaway, in response to the email at (c)(i) above which included words to the effect of "I will look at both profit and capex today but it is highly unlikely I can commit to these levels, I will give you what we think is deliverable and allows traction in growth initiatives";

Particulars

BXB.500.015.3860.

- (ii) it admits that on around 11 May 2016, Mackie sent an email to Todorcevski, following a further email exchange with Todorcevski between 9 and 11 May 2016, stating that, "The issue is the stretch when combined with what I have done already to the budget on direct cost and capex. I appreciate the help but see little point in writing down a number I know wont [sic] be delivered and requires choices that continue to weaken the core business of the group even to get close";

Particulars

BXB.500.161.2895.

- (e) admits sub-paragraph (c);
 (f) it admits sub-paragraph (d); and
 (g) otherwise denies paragraph 29L.

29M. It admits paragraph 29M.

29N. In answer to paragraph 29N, it:

- (a) refers to and repeats paragraphs 9-12 and 27-29M above;
 (b) says that at trial it will rely on the documents referred to in the paragraph, and the documents referred to below, for their full terms and effect;
 (c) in answer to sub-paragraphs (a) to (b):
 (i) it admits that revenue for US Pooled in the:
 (A) US Pooled FY2017 Budget Presentation was US\$1,606 million;
and
 (B) CHEP Global FY2017 Budget Presentation was US\$1609.5 million;

Particulars

BXB.500.019.8880, p 4; BXB.501.017.5066, p 79.

- (ii) it admits that revenue for CHEP North America in the:
- (A) CHEP North America FY2017 budget presentation (**CHEP North America FY2017 Budget Presentation**) was US\$2,373 million; and
- (B) CHEP Global FY2017 Budget Presentation and Brambles FY2017 Budget Presentation was approximately US\$2,376 million;

Particulars

BXB.500.019.8969, p 4; BXB.501.017.5066, p 78;

BXB.500.040.5075, p 19.

- (iii) it admits that Underlying Profit for US Pooled in the:
- (A) US Pooled FY2017 Budget Presentation was US\$348 million; and
- (B) CHEP Global FY2017 Budget Presentation was US\$358.7 million; and

Particulars

BXB.500.019.8880, p 4; BXB.501.017.5066, p 79.

- (iv) it admits that Underlying Profit for CHEP North America in the:
- (A) CHEP North America FY2017 Budget Presentation was US\$443 million;
- (B) CHEP Global FY2017 Budget Presentation was US\$452.7 million; and
- (C) Brambles FY2017 Budget Presentation was US\$455 million; and

Particulars

BXB.500.019.8969, p 4; BXB.501.017.5066, p 78;

BXB.500.040.5075 p 19.

- (v) it otherwise denies the allegations in sub-paragraphs (a) to (b);
- (d) in answer to sub-paragraph (c):

- (i) it admits that ROCI for US Pooled in the US Pooled FY2017 Budget Presentation was 19.2% and says further that the ROCI for US Pooled in the CHEP Global FY2017 Budget Presentation was 20%;

Particulars

BXB.500.019.8880, p 4; BXB.501.017.5066, p 79.

- (ii) it admits that ROCI for CHEP North America in the CHEP North America FY2017 Budget Presentation was 19.2% and says further that the ROCI for CHEP North America in the CHEP Global FY2017 Budget Presentation was 19.7%; and

Particulars

BXB.500.019.8969, p 4; BXB.501.017.5066, p 78.

- (iii) otherwise denies sub-paragraph (c);
- (e) it denies sub-paragraph (d);
- (f) it admits sub-paragraph (e);
- (g) in answer to sub-paragraph (f), it:
- (i) refers to and repeats paragraph 28D;
- (ii) says that the FY2017 Budget included a projected reduction in the US Pooled damage rate of approximately 1.8%; and
- (iii) otherwise denies sub-paragraph (f); and
- (h) it denies sub-paragraph (g).

29O. It admits paragraph 29O.

29P. In answer to paragraph 29P, it:

- (a) refers to and repeats paragraphs 9-12 and 27-29O above;
- (b) says that in July FY2017 (which was the first reporting period for FY2017 (P1)) commenced on 1 July 2016 and ended on 6 August 2016; and
- (c) says further that, in P1, CHEP Global:
- (i) earned revenue of approximately US\$425.6 million (in 30 June 2016 FX rates, as are all other \$ figures referred to in this paragraph), which was US\$(2.4) million unfavourable to the FY2017 Budget;
- (ii) incurred direct costs of approximately US\$270.9 million, which was US\$0.5 million ahead of the FY2017 Budget; and

- (iii) generated Underlying Profit of approximately US\$98.2 million, which was US\$(2.9) million worse than the FY2017 Budget;
- (d) says further that, as part of CHEP Global's P1 results, US Pooled:
 - (i) earned revenue of approximately US\$153.1 million, which was US\$(2.9) million worse than the FY2017 Budget;
 - (ii) incurred direct costs of approximately US\$110.4 million, which was US\$1.7 million worse than the FY2017 Budget; and
 - (iii) generated Underlying Profit of approximately US\$27.8 million, which was US\$(4.0) million worse than the FY2017 Budget;
- (e) says further that, as part of CHEP Global's P1 results, CHEP Recycled:
 - (i) earned revenue of approximately US\$53 million, which was US\$(1.1) million worse than the than the FY2017 Budget;
 - (ii) incurred direct costs of approximately US\$48.2 million, which was US\$1.3 million ahead of the FY2017 Budget; and
 - (iii) generated Underlying Profit of approximately US\$0.4 million, which was US\$0.1 million better than budget; and

Particulars

BXB.500.068.8031; BXB.500.068.8033.

- (f) says further in answer to sub-paragraph (b) that in P1, the average price per whitewood pallet earned by CHEP Recycled was US\$5.96; and
- (g) otherwise denies the paragraph.

29Q. In answer to paragraph 29Q, it:

- (a) refers to and repeats paragraphs 9-12 and 27-29P above;
- (b) says that at trial it will rely on the emails and documents referred to in the paragraph for their full terms and effect; and
- (c) otherwise admits the paragraph.

29R. In answer to paragraph 29R, it:

- (a) refers to and repeats paragraphs 9-12 and 27-29Q above;
- (b) admits that the damage rate of Pooled Pallets issued by US Pooled in July FY2017 (or P1) was 62% versus a budgeted damage rate of 61.3%;

- (c) says that the variance referred to in (b) had an impact of US\$(0.4) million which was offset by the components per repair (CPR) results of US\$0.3 million for July FY2017; and
- (d) otherwise denies the paragraph.

29S. In answer to paragraph 29S, it:

- (a) refers to and repeats paragraphs 9-12 and 27-29R above; and
- (b) otherwise admits the paragraph.

29T. In answer to paragraph 29T, it:

- (a) refers to and repeats paragraphs 9-12 and 27-29S above;
- (b) says that in July FY2017 (or P1) US Pooled earned average RPI of \$5.13; and
- (c) otherwise denies the paragraph.

29U. It denies paragraph 29U and otherwise refers to and repeats paragraphs 9-12 and 27-29T above.

29V. It denies paragraph 29V and otherwise refers to and repeats paragraphs 9-12 and 27-29U above.

29W. It denies paragraph 29W and otherwise refers to and repeats paragraphs 9-12 and 27-29V above.

29X. It denies paragraph 29X and otherwise refers to and repeats paragraphs 9-12 and 27-29W above.

30. It denies the allegations in paragraph 30 and otherwise refers to and repeats paragraphs 9-12 and 27-29X above.

Particulars

Brambles FY2017 budget included overheads of US\$844 million and other indirect costs of US\$96 million across the Group (figures are pre-budget flex).

Brambles Budget and five year plan Board presentation dated June 2016 (BXB.002.007.0116 at 0127).

~~31. [not used]It denies the allegations in paragraph 31, refers to and repeats paragraphs 9-12 and 27-30 above, and says further that:~~

- ~~(a) at all material times the CHEP North American Pooled Pallet business operated on a model where revenue associated with a Pooled Pallet was~~

earned during the time from when the Pooled Pallet was issued to a customer to when the customer transferred the Pooled Pallet, and there were costs associated with that Pooled Pallet that would be incurred, on average approximately three times per year;

- (b) ~~when forecasting the Underlying Profit for the FY2017 budget, Brambles took into account, inter alia, the volume of Pooled Pallets that had been, or were anticipated to be, issued in FY2016, and the expected costs (yet to be incurred) associated with the Pooled Pallets that were issued in FY2016 and would be incurred in FY2017;~~
- (c) ~~there are specific cost pressures in the pallet industry related to microeconomic and macroeconomic factors that are outside industry participants' control;~~

Particulars

~~The relevant market factors include consumer confidence, retailer inventory behaviours, GDP growth, inflation and Whitewood core prices.~~

- (d) ~~the volume of Pooled Pallets issued in FY2016 did not lead to any different or unique types of cost pressures for FY2017;~~

Particulars

~~FY2017 budget presentation for CHEP Pallets sets out expected direct costs for FY2017 (BXB.001.003.0001 at 0044-0045).~~

- (e) ~~the cost pressures that exist in the pallet industry in general, and the broader economic landscape, were frequently mentioned in Brambles' disclosures to the ASX in August 2016, as well as in prior periods;~~

Particulars

~~By way of example only:~~

~~In the FY2016 Annual Report and the FY2016 Earnings Call, 'direct cost pressures' were discussed in the context of Brambles' efficiency programs.~~

~~Costs pressures within the business were also mentioned on page 2 of the 1H2016 Results (in the context of discussing mitigation efforts), on page 27 of the 15 and 16 September~~

~~2015 Investor Presentation, and in the key points section of the
FY2015 Investor Presentation dated 20 August 2015.~~

32. It denies the allegations in paragraph 32, refers to and repeats paragraphs 9-12 and 27-30~~4~~ above, and says further that:
- (a) in FY2016 and FY2017, as in other years, CHEP Recycled (which was part of ~~the CHEP North Americas business~~) sold Whitewood Pallets in 46 region-based markets in North America; and
 - (b) in FY2016 and FY2017, as in other years, the price at which Brambles sold its Whitewood Pallets in each such market was affected by macroeconomic and microeconomic factors, and varied from time to time, having regard to fluctuations in the Whitewood core prices and supply and demand factors within each of the region-based North American markets.
33. It denies the allegations in paragraph 33 and otherwise refers to and repeats paragraphs 9-12 and 27-32 above.
34. It denies the allegations in paragraph 34 and otherwise refers to and repeats paragraphs 9-12 and 27-32 above.
35. It denies the allegations in paragraph 35, refers to and repeats paragraphs 9-12 and 27-32 above, and says further that:
- (a) Brambles' Underlying Profit forecast, as expressed in the FY2016 Annual Report, FY2016 Results Announcement and FY2016 Investor Presentation, was a groupwide forecast of 9-11% growth on a US\$993 million FY2016 Underlying Profit, across all the ~~segments~~business divisions and geographic regions referred to in paragraph 8 above;
 - (b) Underlying Profit is one of the key inputs for calculating ROCI; and

Particulars

ROCI is calculated by dividing Underlying Profit by Average Capital Invested. Average Capital Invested is a twelve-month average of capital invested. Capital invested is calculated as net assets before tax balances, cash and borrowings but after adjustment for actuarial gains and losses and net equity adjustments for equity-settled share-based payments (see Glossary of the FY2016 Annual Report at pp 85-86).

- (c) Brambles' FY2019 targets, as expressed in the FY2016 Annual Report, FY2016 Results Announcement and FY2016 Investor Presentation, were groupwide revenue and Underlying Profit targets.

C.3 Alleged August Continuous Disclosure Contraventions

- 35A. It denies the allegations in paragraph 35A and refers to and repeats paragraphs 9 to 12, 23 and 35 above.
36. It denies the allegations in paragraph 36, refers to and repeats paragraph 23, and 27 to 35A above, and says further that:
- (a) there was no August Information as alleged and in those circumstances no obligation arose to disclose the August Information to the ASX;
 - (b) further or alternatively, to the extent that there was August Information, Brambles did not have it by 18 August 2016 or at all and in those circumstances no obligation arose to disclose the August Information to the ASX by 18 August 2016 or at all;
 - (c) further or alternatively, if the ~~alleged matters pleaded in paragraphs 28-35~~ August Information existed as alleged (which is denied), the matters constitute information which was generally available within the meaning of section 676 of the Corporations Act; and
 - (d) further or alternatively, even if the matters comprising the August Information, as at 18 August 2016, constituted information that a reasonable person would expect to have a material effect on the price or value of shares in Brambles (which is denied), the information as between 18 August 2016 and 20 February 2017:
 - (i) was information that:
 - (A) a reasonable person would not expect to be disclosed, for the reasons set out in sub-paragraph (C) below;
 - (B) was confidential, and the ASX had not formed the view that the information had ceased to be confidential; and
 - (C) comprised matters of supposition, further or alternatively, was insufficiently definite to warrant disclosure;
 within the meaning of ASX Listing Rules 3.1A.1 to 3.1A.3; and
 - (ii) by reason of the matters in sub-paragraph (i) above:
 - (A) was not information to which ASX Listing Rule 3.1 applied; and

- (B) was not information which section 674(2) of the Corporations Act required be notified to ASX at any time prior to 20 February 2017, or alternatively 23 January 2017.

37. In answer to paragraph 37, it:

- (a) refers to and repeats paragraphs 23 and 27 to 36 above and otherwise admits sub-paragraph (a);
- (b) denies the allegations in sub-paragraph (b); and
- (c) denies the allegations in sub-paragraph ~~paragraph~~ (c).

~~37A.~~ It says in the alternative that if and to the extent that this Court finds that Brambles contravened or may have contravened section 674(2) of the Corporations Act as alleged (which is denied):

- (a) Brambles acted honestly;
- (b) having regard to all the circumstances of the case, Brambles ought fairly to be excused for the contravention; and
- (c) this Court ought in its discretion relieve Brambles from liability for such contravention, pursuant to section 1317S of the Corporations Act.

37A. It denies the allegations in paragraph 37A, refers to and repeats paragraphs 23 and 27 to 37 above, and says further that:

- (a) if the Alternative August Information existed (which is denied), the matters constitute information which was generally available within the meaning of section 676 of the Corporations Act; and
- (b) further or alternatively, even if the matters comprising the Alternative August Information, as at 18 August 2016, constituted information that a reasonable person would expect to have a material effect on the price or value of shares in Brambles (which is denied), the information as between 18 August 2016 and 20 February 2017:
 - (i) was information that:
 - (A) a reasonable person would not expect to be disclosed, for the reasons set out in sub-paragraph (C) below;
 - (B) was confidential, and the ASX had not formed the view that the information had ceased to be confidential; and
 - (C) comprised matters of supposition, further or alternatively, was insufficiently definite to warrant disclosure;

within the meaning of ASX Listing Rules 3.1A.1 to 3.1A.3; and

- (ii) by reason of the matters in sub-paragraph (i) above:
 - (A) was not information to which ASX Listing Rule 3.1 applied; and
 - (B) was not information which section 674(2) of the Corporations Act required be notified to ASX at any time prior to 20 February 2017, or alternatively 23 January 2017.

37AB. It denies the allegations in paragraph 37AB and refers to and repeats paragraphs 23 and 35 to 37A above.

37B. In answer to paragraph 37B:

- (a) it refers to and repeats paragraphs 23 and 35 to 37AB above and otherwise admits sub-paragraph (a);
- (b) denies the allegations in sub-paragraph (b); and
- (c) denies the allegations in sub-paragraph (c).

It says in the alternative that if and to the extent that this Court finds that Brambles contravened or may have contravened section 674(2) of the Corporations Act as alleged (which is denied):

- (a) Brambles acted honestly;
- (b) having regard to all the circumstances of the case, Brambles ought fairly to be excused for the contravention; and
- (c) this Court ought in its discretion relieve Brambles from liability for such contravention, pursuant to section 1317S of the Corporations Act.

37C. It denies the allegations in paragraph 37C and refers to and repeats paragraphs 23 and 35 to 37B above.

C.4 Alleged August Representations – Misleading or Deceptive Conduct

38. It denies the allegations in paragraph 38, and says further that if and to the extent (which is denied) it made the August R₁ representations in (a) as alleged, then it had reasonable grounds for making the said representations at the time they were made because:

- (a) of the matters set out in paragraphs 9-12, 23, 27-32 and 35 to 37C above;
- (b) any such representations were based on Brambles' FY2017 Budget and five-year plans, which were prepared following Brambles' usual business planning processes;

Particulars

Preparation of the Brambles FY2017 budget and FY17-FY21 five-year plan commenced in November 2015, when the Brambles Headquarters financial planning and analysis team (**FP&A**) sent each of the Brambles business ~~segments~~ divisions instructions and a timeline. Brambles' head offices communicated a set of preliminary targets for each business ~~segment~~division's FY2017 budget and five-year plan in the week commencing 14 December 2015.

Repeat particulars to paragraph 38(d) below.

For ~~the USA Pooled, Pallets Business~~ the budgeting process then included the preparation and presentation of:

- the draft FY17 Budget Presentation US Pooled (**Draft FY17 US Pooled Budget Presentation**) (BXB.500.140.6072); and
- the USA S&OP Supply Plan for Fiscal 2017 (**FY17 S&OP Plan**) (BXB.500.140.6100),

to the CHEP North American Leadership Team on 26 February 2016.

On 28 February 2016, the CHEP North American FP&A team circulated a spreadsheet containing follow-up queries arising from the presentation of the draft budget to the North American Leadership Team (BXB.500.140.6011). On 5 March 2016, the CHEP North American FP&A team circulated a further spreadsheet proposing amendments to the Draft FY17 US Pooled Budget Presentation arising from the CHEP North American Leadership Meeting presentation (BXB.500.140.6282).

On 15 March 2016 there was a further meeting of the CHEP North American Leadership Team, where the revised draft FY17 USA Budget was discussed (BXB.500.140.5989).

On 17 March 2016, Thad Linderman sent a list of action items to various people in the business, being further updates required to the Draft FY17 US Pooled Budget Presentation arising from the 15 March 2016 meeting (BXB.500.140.5961).

On 24 March 2016, the CHEP North American business sent the CHEP Global Pallets' finance team the following inputs for the FY2017 budget:

- the FY17 Budget Total North America Pallets Presentation (BXB.500.140.5917);
- the FY17-US Pooled FY2017 Budget Presentation (BXB.500.140.5841);
- the FY17 Budget CHEP Canada and Paramount Presentation (BXB.500.140.5865);
- the FY17 Budget CHEP Recycled Presentation (BXB.500.140.5891); and
- the FY17 Budget NAHQ (BXB.500.140.5910).

These documents were collated with draft budget presentations from other ~~pallet country business units (CBUs)~~ and sent to Peter Mackie, the ~~Global Head~~ President of CHEP Global Pallets, and Buster Kennett, CFO of CHEP Global Pallets. CHEP The North American CBU presented its draft budget to the Brambles Group finance team on 1 April 2016 (BXB.500.016.4441).

On 1 April 2016, Matthew Lallatin circulated a list of action items arising from the presentation (BXB.500.140.6194).

On 12 April 2016, a 'Budget Flash' of the draft FY2017 budget was sent to Gorman, Todorcevski and the Brambles Group finance team (BXB.500.066.4917).

On 19 April 2016, the CHEP Global Pallets-CFO sent Gorman and Todorcevski a 'pre-read' version of the 'CHEP Pallets FY17 Budget Presentation', which was presented to Gorman and Todorcevski on 22 April 2016 (BXB.500.019.7732).

On 22 April 2016, senior members of the CHEP Global team (Mackie, Kennett and Alonso-Bernaola) presented the CHEP Global FY2017 Budget Presentation to Gorman and Todorcevski (BXB.501.017.5066).

The draft FY2017 Brambles budget was finalised around May to June 2016 and submitted to the Brambles Reporting and

Consolidation System (**BRACS**) before it was provided to the Board for approval at the June 2016 Brambles Board meeting.

In August 2016, Brambles performed a 'budget flex', adjusting the FY2017 budget to 30 June 2016 foreign exchange rates. The post-flex budget included US\$18 million of headroom to the bottom of the FY2017 Underlying Profit guidance, and this headroom included a US\$10 million contingency, as shown on slide 5 of BXB.002.007.0165.

- (c) any such representations were based on the most current financial information available to Brambles' Board as at 16 August 2016;

Particulars

Brambles Financial Update, July 2016, BXB.002.007.0165.

- (d) the ROCI and growth targets for FY2019 were based on a five-year plan set in December 2013, that was updated annually as part of the Brambles budgeting and five-year planning processes, including in February 2016, and again in May 2016, ahead of presentations to the Brambles Board in relation to the five-year plans in the June and August 2016 Board meetings.

Particulars

Gorman and Todorcevski presented the FY2017 Budget and five-year plan at the Brambles Board meeting held on 28-30 June 2016. The presentation stated that Brambles was on track to deliver 20% ROCI by FY19 (BXB.002.007.0116 at 0118).

At the 16 August 2016 Board meeting, Todorcevski presented an update of the Underlying Profit component of the five-year plan (BXB.002.002.1759 at 1797), which included US\$32m of contingency.

C.5 Alleged Market effects of August Contravening Conduct

39. It denies the allegations in paragraph 39.

D. ALLEGED OCTOBER 2016 CONTRAVENTIONS

D.1 October 2016 Conduct

40. As to paragraph 40, it:

- (a) refers to and repeats paragraph 23 above;

- (b) says that in its 1Q2017 Trading Update, it announced that it earned revenue from continuing operations of US\$1,420.1 million, representing a 5% increase (on an actual currency basis) from the corresponding previous period, and otherwise admits sub-paragraph (a);
- (c) says that the 1Q2017 Trading Update stated: “*excluding the contribution from the North American recycled pallet business, growth in Pallets Americas was 6% at constant currency*”, and otherwise denies the allegations in sub-paragraph (b);
- (d) says that:
 - (i) ~~the USA Pooled Pallet business~~ forms only part of ~~the CHEP North American Pooled Pallets Business~~, which also includes ~~the CHEP Canada, CHEP Recycled and Paramount Pooled Pallets business~~; and
 - (ii) says that the 1Q2017 Trading Update stated: “*This reflected strong growth in Latin America and modest growth in the US pooled pallet business reflecting lower customer mix benefits and the deferral of some new business opportunities. The conversion of these opportunities is expected to deliver stronger growth in the second half of the year*”,
and otherwise denies the allegations in sub-paragraph (c);
- (e) refers to and repeats paragraph 40(d) above, and otherwise admits sub-paragraph (d);
- (f) refers to and repeats paragraph 40(d) above, and otherwise admits sub-paragraph (e);
- (g) says that the 1Q2017 Trading Update repeated the substance of the statement alleged in paragraph 23(f) of the Amended Consolidated Statement of Claim, and otherwise ~~does not admit~~ denies sub-paragraph (f); and
- (h) says that the 1Q2017 Trading Update repeated the substance of the statement alleged in paragraph 23(j) of the Amended Consolidated Statement of Claim, and otherwise ~~does not admit~~ denies sub-paragraph (g).

41. It says that the 1Q2017 Trading Update repeated the substance of the statement alleged in paragraph 23(g) of the Amended Consolidated Statement of Claim, and refers to and repeats paragraph 23 above, and otherwise denies the allegations in paragraph 41.

42. It denies the allegations in paragraph 42 and otherwise refers to and repeats paragraphs 23 and 40-41 above.
43. It denies the allegations in paragraph 43 and otherwise refers to and repeats paragraphs 23 and 40-41 above.
44. It denies the allegations in paragraph 44 and refers to and repeats paragraphs 23 and 40-41 above.

D.2 Alleged True State of Affairs in October 2016

45. Int answer to ~~denies the allegations in~~ paragraph 45, and it:
- (a) refers to and repeats paragraphs 9-12, 27-32 and 35 above;
- (b) says that the most current financial information available to the Brambles Board as at 20 October 2016 was ~~the information contained in the September Financial Update, which relevantly showed for 1Q2017~~ for the first quarter of FY2017 (ending 1 October 2016) (1Q2017). In 1Q2017 Brambles achieved:
- (i) groupwide sales revenue ~~was of~~ of US\$1,419 million (US\$8 million below budget), which was 7% higher than the prior corresponding period (on a days-adjusted basis);
- (ii) groupwide Underlying Profit ~~was of~~ of US\$239 million (US\$8 million below budget), which was 8% higher than the prior corresponding period (on a days-adjusted basis);

Particulars

September 2016, Financial Update, Slide 24
(BXB.002.007.0240).

- (c) in 1Q2017, CHEP Global achieved:
- (i) sales revenue was approximately US\$1,085.5 million (US\$10.1 million below budget), which was 4.1% higher than the prior corresponding period (on a days-adjusted basis);
- (ii) Underlying Profit was approximately US\$221.7 million (US\$12.6 million below budget), which was 12.3% higher than the prior corresponding period);
- (iii) ROCI of 31.4%;

Particulars

CHEP Global P3 Flash Report (BXB.501.014.3516;
BXB.500.017.6352).

- (d) in 1Q2017 CHEP North America achieved:
- (i) sales revenue was approximately US\$570.6 million (US\$14.3 million below budget), which was 2.9% higher than the prior corresponding period (on a days-adjusted basis);
 - (ii) Underlying Profit was approximately US\$88.8 million (US\$17 million below budget), which was 3.7% higher than the prior corresponding period;
 - (iii) ROCI of 23.7%;

Particulars

CHEP Global P3 Flash Report (BXB.501.014.3516;
BXB.500.017.6352).

- (e) in 1Q2017 US Pooled:
- (i) achieved:
 - (A) sales revenue was approximately US\$390.9 million (US\$8.5 million below budget), which was 4.9% higher than the prior corresponding period (on a days-adjusted basis);
 - (B) Underlying Profit was approximately US\$67.1 million (US\$13.7 million below budget);
 - (C) ROCI of 23.1%;

Particulars

CHEP Global P3 Flash Report (BXB.501.014.3516;
BXB.500.017.6352).

- (ii) issued approximately 76.28 million Pooled Pallets on a year to date basis;
- (iii) realised RPI of \$5.13 on a year to date basis;

Particulars

US Pooled ABC Metrics September P3 FY17
(BXB.500.114.8185; BXB.500.114.8187).

- (iv) achieved year to date pallet issue volume growth of 9% compared to the prior corresponding period (for 1Q2017 versus 1Q2016);
- (v) achieved revenue per issue growth of approximately 1.2% compared to the prior corresponding period (for 1Q2017 versus 1Q2016);

Particulars

September FY17 Pallets Performance Review (PPR) – CHEP North America (BXB.500.017.6359), slide 48; US Pooled ABC Metrics September P3 FY17 (BXB.500.114.8185; BXB.500.114.8187).

- (f) in 1Q2017 CHEP LATAM and CHEP Europe:
 - (ii) were ahead of budget on revenue, on a year to date basis, together earning a total of US\$363.5 million in revenue (together, these CHEP CBUs were ahead of budget on revenue by US\$6.3 million);
 - (iii) were ahead of budget on Underlying Profit, on a year to date basis, together earning a total of US\$93.1 million in Underlying Profit (together, these CBUs were ahead of budget on Underlying Profit by US\$4.8 million);

Particulars

CHEP Global P3 Flash Report (BXB.501.014.3516; BXB.500.017.6352).

- (g) says further, in relation to US Pooled, for 1Q2017, that:
 - (i) in July to August 2016, won contracts with an annualised value of US\$6.2 million and an FY2017 impact of approximately US\$5.7 million, with customers including Smithfield – Denison, Laqunitas Brewing, Premium Water – Las Vegas;

Particulars

BXB.500.017.6512, p 7 (slide 14).

- (ii) in September 2016, contracts collectively worth more than US\$40 million in revenue were closing with customers including Mondelez, Niagara, Welch's, Premium Water and Domino Sugar.
- (iii) contracts with Cott, JBS, First Quality, National Beef, Smithfield, Royal Oak, West Rock, Blue Bunny, Solo Cup and Niagara were under negotiation and were expected to close in FY2017 Q2 and Q3;

- (iv) revenue in Q1 from NPD volume increases unrelated to Home Depot or Nash Finch had increased by \$1.2m;

Particulars (ii) to (iv)

BXB.500.017.6359, p 2; BXB.500.068.2395, p 2;

BXB.500.017.6512, p 2.

- (h) admits sub-paragraph (ac);

- (i) says, in relation to US Pooled, that it:

- (i) incurred direct costs of \$284.2 million, which was \$6.8 million or 2.4% more than the FY2017 Budget;

Particulars

BXB.501.014.3516, p 2.

- (ii) experienced a damage rate of approximately 61.4%, which was an increase of approximately 0.5% compared to the FY2017 Budget, or 0.2% compared to the equivalent period in FY2016;

Particulars

BXB.500.114.7802, p 5.

- (iii) incurred asset recovery costs of \$13.982 million, which was an increase of approximately \$0.2 million or 1.4%, compared to the budget.

Particulars

BXB.500.114.7802, p 5; BXB.500.017.6359.

- (j) says further that there are specific cost pressures in the pallet industry related to microeconomic and macroeconomic factors that are outside industry participants' control;

Particulars

The relevant market factors include consumer confidence, retailer inventory behaviours, GDP growth, inflation and Whitewood core prices.

- (k) says that, in answer to sub-paragraph (da), in relation to CHEP Recycled:

- (i) it refers to and repeats paragraph 32 above;

- (ii) during 1Q2017, Underlying Profit was US\$0.1 million favourable to budget in July 2016, US\$0.7 million under budget in August 2016, and US\$1.8 million under budget in September 2016;

Particulars

July (BXB.500.017.4873 at 4876), August (BXB.500.017.6512 at 6515) and September (BXB.500.017.6359 at 6362) 2016
PPR Pallets Performance Reviews for CHEP North America.

- (iii) it admits sub-paragraphs (da)(i)-(ii) and (iv);
- (iv) it admits that during 1Q2017, CHEP Recycled realised an average price per recycled pallet of \$5.93, which was approximately \$0.12 worse than the FY2017 Budget; and
- (l) otherwise denies paragraph 45.
- (m) [not used]at trial, it will refer to the full terms and effect of the 1H2017 Earnings Call and the 1H2017 Presentation.
- (n) [not used]says that:
- (i) ~~at all material times Brambles distinguished its revenue growth between:~~
- ~~(A) 'net new wins' which referred to revenue earned in the initial 12-month period of a contractual arrangement with a new customer, and was allocated on a proportional basis over those 12 months; and~~
- ~~(B) 'organic growth' which referred to all other revenue, including revenue earned from a customer whose contract was renewed.~~

D.3 Alleged October Continuous Disclosure Contraventions

- 45A. It denies the allegations in paragraph 45A and refers to and repeats paragraphs 9 to 12, 23, 35 and 45 above.
46. It denies the allegations in paragraph 46, refers to and repeats paragraphs 35 to 37C, 40, 45 and 45A above, and says further that:
- (a) there was no October Information as alleged and in those circumstances no obligation arose to disclose the October Information to the ASX at any time;
- (b) further or alternatively, to the extent that there was October Information, Brambles did not have it by 20 October 2016 or at all, and in those

circumstances no obligation arose to disclose the October Information to the ASX by 20 October 2016 or at all;

- (c) further or alternatively, if the ~~alleged matters pleaded in paragraph 45~~ October Information existed as alleged (which is denied), the matters constitute information which was generally available within the meaning of section 676 of the Corporations Act; and
- (d) further or alternatively, even if the matters comprising the October Information, as at 20 October 2016, constituted information that a reasonable person would expect to have a material effect on the price or value of shares in Brambles (which is denied), the information as between 20 October 2016 and 20 February 2017:
 - (i) was information that:
 - (A) a reasonable person would not expect to be disclosed, for the reasons set out in sub-paragraph (C) below;
 - (B) was confidential, and the ASX had not formed the view that the information had ceased to be confidential; and
 - (C) comprised matters of supposition, further or alternatively, was insufficiently definite to warrant disclosure;

within the meaning of ASX Listing Rules 3.1A.1 to 3.1A.3; and
 - (ii) by reason of the matters in sub-paragraph (i) above:
 - (A) was not information to which ASX Listing Rule 3.1 applied; and
 - (B) was not information which section 674(2) of the Corporations Act required be notified to ASX at any time prior to 20 February 2017, or alternatively 23 January 2017.

46A. It denies the allegations in paragraph 46A and refers to and repeats paragraphs 23, 35 to 37C, 40, and 45 to 46 above.

47. As to paragraph 47, it:

- (a) refers to and repeats paragraphs 46 and 46A above, paragraphs 59 and 61 below, and otherwise admits sub-paragraph (a);
- (b) it denies the allegations in sub-paragraph (b); and
- (c) it denies the allegations in sub-paragraph (c).

47A. It says in the alternative that if and to the extent that this Court finds that Brambles contravened or may have contravened section 674(2) of the Corporations Act as alleged (which is denied):

- (a) Brambles acted honestly;
- (b) having regard to all the circumstances of the case, Brambles ought fairly to be excused for the contravention; and
- (c) this Court ought in its discretion relieve Brambles from liability for such contravention, pursuant to section 1317S of the Corporations Act.

47A. It denies the allegations in paragraph 47A, refers to and repeats paragraphs 23, 35 to 38, 40 to 41, and 45 to 47, and says further that:

- (a) if the Alternative October Information existed as alleged (which is denied), the matters constitute information which was generally available within the meaning of section 676 of the Corporations Act; and
- (b) further or alternatively, even if the matters comprising the Alternative October Information, as at 20 October 2016, constituted information that a reasonable person would expect to have a material effect on the price or value of shares in Brambles (which is denied), the information as between 20 October 2016 and 20 February 2017:
 - (i) was information that:
 - (A) a reasonable person would not expect to be disclosed, for the reasons set out in sub-paragraph (C) below;
 - (B) was confidential, and the ASX had not formed the view that the information had ceased to be confidential; and
 - (C) comprised matters of supposition, further or alternatively, was insufficiently definite to warrant disclosure;

within the meaning of ASX Listing Rules 3.1A.1 to 3.1A.3; and
 - (ii) by reason of the matters in sub-paragraph (i) above:
 - (A) was not information to which ASX Listing Rule 3.1 applied; and
 - (B) was not information which section 674(2) of the Corporations Act required be notified to ASX at any time prior to 20 February 2017, or alternatively 23 January 2017.

47AB. It denies the allegations in paragraph 47AB, refers to and repeats paragraphs 23, and 35 to 47A above, and says further that:

- (a) it did not have and was not obliged to disclose the August Information or the October Information (either separately or in combination) because no such information existed as alleged;
- (b) there was no Alternative August Information as alleged and in those circumstances no obligation arose to disclose the Alternative August Information to the ASX at any time;
- (c) there was no Alternative October Information as alleged and in those circumstances no obligation arose to disclose the Alternative October Information to the ASX at any time; and
- (d) further or alternatively, to the extent that there was Alternative August Information and/or Alternative October Information (which is denied), Brambles did not have it by 20 October 2016 or at all.

47B. As to paragraph 47B, it:

- (a) refers to and repeats paragraphs 46 to 47AB above and paragraphs 59 and 61 below and otherwise admits sub-paragraph (a);
- (b) denies the allegations in sub-paragraph (b); and
- (c) denies the allegations in sub-paragraph (c).

It says in the alternative that if and to the extent that this Court finds that Brambles contravened or may have contravened section 674(2) of the Corporations Act as alleged (which is denied):

- (a) Brambles acted honestly;
- (b) having regard to all the circumstances of the case, Brambles ought fairly to be excused for the contravention; and
- (c) this Court ought in its discretion relieve Brambles from liability for such contravention, pursuant to section 1317S of the Corporations Act.

47C. It denies the allegations in paragraph 47C, refers to and repeats paragraphs 23, and 35 to 47B above.

D.4 Alleged October Representation – Misleading or Deceptive Conduct

48. It denies the allegations in paragraph 48, and says further that if and to the extent (which is denied) it made the ~~October R~~ representations in (a) as alleged, then it had

reasonable grounds for making the said representations at the time they were made, because:

- (a) of the matters set out in paragraphs 9-12, 23, 27-32, 35, 38 and 45 above;
- (b) the most current financial information available to the Brambles Board as at 20 October 2016 was contained in the September Board report which showed that in 1Q2017:
 - (i) revenue was US\$1,419 million (or less than 1% below FY2017 budget for the period) and was 7% higher than for the prior corresponding period (on a days-adjusted basis); and
 - (ii) Underlying Profit was US\$239 million, (or approximately 3% below FY2017 budget for the period) and was 8% higher than for the prior corresponding period (on a days-adjusted basis); and

Particulars

Brambles Financial Update, September 2016
(BXB.002.007.0240 at 0243).

- (c) Brambles undertakes quarterly reforecasts to assess its year to date performance against budget. All business divisions ~~segments~~ referred to in paragraph 8(a) above take part in the reforecast process. By 20 October 2016, ~~the~~ CHEP North America's ~~n~~ CBU's input to the September 2016 reforecast had been loaded onto BRACS;

Particulars

As part of its September 2016 reforecast (BXB.500.019.7669):

- on 23 September 2016, each ~~country business unit~~ (CBU) submitted an initial reforecast to the CHEP Global Pallets CFO detailing the financial performance of each CBU to date;
- the CHEP Global Pallets finance team reviewed the initial reforecasts with each CBU on 3 October 2016;
- the monthly Pallet Performance Reviews were conducted on 11 October 2016, which for ~~the~~ CHEP North American ~~Pooled Pallet Business~~ and CHEP Recycled, provided details of sales revenue and underlying profit against the FY2017 budget, as well as information about prospective new customer pursuits

and costs (including sources of costs, such as core prices);

- the September reforecasts were submitted onto BRACS on 13 October 2016.

(d) to the extent year to date financials during the first three months of FY2017 were below budget for CHEP North American Pooled Pallets and CHEP Recycled, leading up to 20 October 2016, Gorman and Todorcevski were involved in reviewing the year to date performance, and Brambles had reasonable grounds to maintain groupwide revenue and Underlying Profit guidance for FY2017 because:

- (i) the delay of new customer wins was expected to be a timing issue, with the expectation that the first quarter gap would be closed by the end of FY2017; and

Particulars

On 13 October 2016, Kim Rumph sent Todorcevski and others an email (copying Tom Gorman) (BXB.500.001.0925) with two attachments:

- North American Pallets: September Actual (P3) Responses for Brambles (BXB.500.001.0927)
- US Pooled FY17 Q1 Overview (BXB.500.001.0933)

The table on page 3 of the US Pooled FY17 Q1 Overview identified transactions that were in negotiation and expected to recover that gap.

- (ii) higher direct costs for the period against the FY2017 budget in the year to date, some of which were considered to be one-time items, were not considered material in the context of the Brambles Group as a whole, and the business had identified and was continuing to identify plans to address these.

Particulars

US Pooled FY17 Q1 Overview, page 3 (BXB.500.001.0933 at 0935).

D.5 Alleged Market effects of October Contravening Conduct

49. It denies the allegations in paragraph 49.

E. ALLEGED NOVEMBER 2016 CONTRAVETIONS

E.1 November 2016 Conduct

50. As to paragraph 50, it:
- (a) refers to and repeats paragraphs 23 and 40 above;
 - (b) refers to the full terms of the AGM Address and the AGM Announcement;
 - (c) says that in the AGM Address, Brambles' Chairman said: '*[a]s noted in our recent first-quarter trading update, our FY17 guidance for sales revenue growth of 7- 9% and Underlying Profit growth of 9-11%, both on a constant-currency basis, remains unchanged*'; and
 - (d) otherwise denies the allegations in paragraph 50.
51. It denies the allegations in paragraph 51 and otherwise refers to and repeats paragraphs 23 and 50 above.
52. It denies the allegations in paragraph 52 and otherwise refers to and repeats paragraphs 23 and 50 above.
53. It denies the allegations in paragraph 53 and otherwise refers to and repeats paragraphs 23 and 50 above.

E.2 Alleged True State of Affairs in November 2016

54. ~~In answer to denies the allegations in paragraph 54, and it:~~
- (a) refers to and repeats paragraphs 9-12, 27-32, 35 and 45 above;
 - (b) says that:
 - (i) direct costs budgeted for the period 1 July 2016 to 31 October 2016 were US\$1,313m;
 - (ii) direct costs incurred for the period 1 June 2016 to 31 October 2016 were US\$1,316m; and

Particulars

October 2016 Financial Update presented to the Board on 14
November 2016 (BXB.002.007.0251 at 0255).

- (c) says that the most current financial information available to the Brambles Board as at 16 November 2016 was the information for the period from 1 July to 5 November 2016 (July FY2017 to October FY2017 or P1 to P4) contained in the ~~October 2016 Financial Update~~, which showed that:

- (i) ~~for the period from 1 July 2016 to 31 October 2016, groupwide revenue from continuing operations was US\$1,958 million, which was under budget by US\$15 million (or approximately 1%) while being 6% higher than the prior corresponding period; and~~
- (ii) ~~for the period from 1 July 2016 to 31 October 2016, groupwide Underlying Profit from continuing operations was US\$339 million, which was under budget by US\$18 million (or approximately 5%) while being 7% higher than the prior corresponding period; and~~

Particulars

Brambles Financial Update, October 2016 (BXB.002.007.0251 at 0253).

- (d) says, in answer to sub-paragraph (ba), that for FY2017 to the end of October FY2017 (or P4 of FY2017), US Pooled:
 - (i) earned revenue of US\$536.8 million, which was approximately US\$(15.9) million worse than the FY2017 Budget (or approximately 2.9% worse than the FY2017 Budget), and was approximately US\$40.3 million ahead of the prior corresponding period (or approximately 8.1% year on year sales growth);
 - (ii) achieved an average RPI of \$5.14, which was \$0.07, or approximately 1.3% worse than the FY2017 Budget;

Particulars

BXB.602.008.1508, p 25.

- (e) admits sub-paragraph (bb) for the period from 1 July to the end of October FY2017 (5 November 2016);
- (f) admits sub-paragraph (bc) for the period from 1 July to the end of October FY2017 (5 November 2016); and
- (g) otherwise denies paragraph 54.

E.3 Alleged November Continuous Disclosure Contraventions

54A. It denies the allegations in paragraph 54A and refers to and repeats paragraph 54 above.

55. It denies the allegations in paragraph 55, refers to and repeats paragraphs 23, 35 to 37, 45 to 47C, and 54 to 54A and says further that:

- (a) there was no November Information as alleged;
- (b) further or alternatively, to the extent that there was November Information, Brambles did not have it by no later than 16 November 2016 or at all;
- (c) further or alternatively, if the ~~alleged matters pleaded in paragraph 55~~ November Information existed as alleged (which is denied), the matters constitute information which was generally available within the meaning of section 676 of the Corporations Act; and
- (d) further or alternatively, even if the matters comprising the November Information, as at 16 November 2016, constituted information that a reasonable person would expect to have a material effect on the price or value of shares in Brambles (which is denied), the information as between 16 November 2016 and 20 February 2017:
 - (i) was information that:
 - (A) a reasonable person would not expect to be disclosed, for the reasons set out in sub-paragraph (C) below;
 - (B) was confidential, and the ASX had not formed the view that the information had ceased to be confidential; and
 - (C) comprised matters of supposition, further or alternatively, was insufficiently definite to warrant disclosure;
 within the meaning of ASX Listing Rule 3.1A.1 to 3.1A.3; and
 - (ii) by reason of the matters in sub-paragraph (i) above:
 - (A) was not information to which ASX Listing Rule 3.1 applied; and
 - (B) was not information which section 674(2) of the Corporations Act required be notified to ASX at any time prior to 20 February 2017, or alternatively 23 January 2017.

55A. It denies the allegations in paragraph 55A and refers to and repeats paragraphs 23, 35 to 37, 45A to 47C and 54 to 55 above.

56. As to paragraph 56, it:

- (a) refers to and repeats paragraph 55 to 55A above, paragraphs 59 and 61 below, and otherwise admits sub-paragraph (a);
- (b) denies the allegations in sub-paragraph (b); and
- (c) denies the allegations in sub-paragraph (c).

56A. It says in the alternative that if and to the extent that this Court finds that Brambles contravened or may have contravened section 674(2) of the Corporations Act as alleged (which is denied):

- (a) Brambles acted honestly;
- (b) having regard to all the circumstances of the case, Brambles ought fairly to be excused for the contravention; and
- (c) this Court ought in its discretion relieve Brambles from liability for such contravention, pursuant to section 1317S of the Corporations Act.

56A. It denies the allegations in paragraph 56A, refers to and repeats paragraphs 23, 35 to 38, 45 to 47C and 54 to 56, and says further that:

- (a) if the Alternative November Information existed as alleged (which is denied), the matters constitute information which was generally available within the meaning of section 676 of the Corporations Act; and
- (b) further or alternatively, even if the matters comprising the Alternative November Information, as at 16 November 2016, constituted information that a reasonable person would expect to have a material effect on the price or value of shares in Brambles (which is denied), the information as between 16 November 2016 and 20 February 2017:
 - (i) was information that:
 - (A) a reasonable person would not expect to be disclosed, for the reasons set out in sub-paragraph (C) below;
 - (B) was confidential, and the ASX had not formed the view that the information had ceased to be confidential; and
 - (C) comprised matters of supposition, further or alternatively, was insufficiently definite to warrant disclosure;

within the meaning of ASX Listing Rules 3.1A.1 to 3.1A.3; and
 - (ii) by reason of the matters in sub-paragraph (i) above:
 - (A) was not information to which ASX Listing Rule 3.1 applied; and
 - (B) was not information which section 674(2) of the Corporations Act required be notified to ASX at any time prior to 20 February 2017, or alternatively 23 January 2017.

56AB. It denies the allegations in paragraph 56AB, refers to and repeats paragraphs 23, 35 to 47C and 54A to 56A above, and says further that:

- (a) it did not have and was not obliged to disclose the Alternative November Information, nor the August Information, the October Information or the Alternative October Information, either separately or in any combination, because no such information existed as alleged;
- (b) there was no Alternative November Information, nor any August Information, October Information or Alternative October Information, as alleged, either separately or in any combination, and in those circumstances no obligation arose to disclose the Alternative November Information to the ASX at any time;
- (c) there was no Alternative November Information as alleged and in those circumstances no obligation arose to disclose the Alternative November Information to the ASX at any time; and
- (d) further or alternatively, to the extent that there was Alternative October Information and/or Alternative November Information (which is denied), Brambles did not have the information by 16 November 2016 or at all.

56B. As to paragraph 56B, it:

- (a) refers to and repeats paragraphs 46 to 47A, 56A to 56AB above and paragraphs 59 and 61 below and otherwise admits sub-paragraph (a);
- (b) denies the allegations in sub-paragraph (b); and
- (c) denies the allegations in sub-paragraph (c).

It says in the alternative that if and to the extent that this Court finds that Brambles contravened or may have contravened section 674(2) of the Corporations Act as alleged (which is denied):

- (a) Brambles acted honestly;
- (b) having regard to all the circumstances of the case, Brambles ought fairly to be excused for the contravention; and
- (c) this Court ought in its discretion relieve Brambles from liability for such contravention, pursuant to section 1317S of the Corporations Act.

56C. It denies the allegations in paragraph 56C, refers to and repeats paragraphs 23, 35 to 47C and 54A to 56B above.

E.4 Alleged November Representations – misleading or deceptive conduct

57. It denies the allegations in paragraph 57, and says further that if and to the extent (which is denied) it made the ~~November R~~ representations in (a) as alleged, then it had reasonable grounds for making the said representations at the time they were made, because:

- (a) of the matters set out in paragraphs 9-12, 27-32, 35, 38, 45, ~~and 54~~ and 56A to 56B above;
- (b) by 16 November 2016, Brambles had in place an FY2017 Status Review for the US Pooled ~~Pallets B~~ Business which addressed reasons why the USA Pooled ~~Pallets Business~~ had underperformed as against the FY2017 budget, and strategies to meet the budget by the end of the financial year;

Particulars

The FY2017 Status Review (BXB.500.067.7197 at 7198 and 7205).

- (c) at the 15-16 November 2016 Board meeting, Gorman reported that CHEP Americas was finalising an action plan to improve its performance for the balance of FY2017; and

Particulars

The action plan comprised a 'North America Pallets Performance Review' presented by Rumph to O'Sullivan on 21 November 2016 (BXB.500.143.0675) and a 'CHEP Pallets Recovery Actions' presentation sent by the Group FP&A team to O'Sullivan and Mackie on 25 November 2016 (BXB.500.077.3497).

- (d) by 16 November 2016, the Brambles' Board had received an update on the five-year plan to FY2019, including the steps and actions necessary to achieve the FY2019 target (including US\$32m of contingency).

Particulars

Todorcevski presented an update on the five-year plan to FY2019 at the 15-16 November 2016 Board meeting (BXB.002.007.0258).

E.5 Alleged Market effects of November Contravening Conduct

58. It denies the allegations in paragraph 58.

F. ALLEGED CORRECTIVE DISCLOSURES**F1. Alleged January 2017 Partial Disclosure**

59. As to paragraph 59:

- (a) subject to reference to the full terms of the First Trading Update and the 23 January Call, it refers to and repeats paragraph 23 above, and otherwise admits paragraph 59;
- (b) it says that the statements set out in paragraph 59 were forward-looking statements and were therefore subject to the disclaimers, qualifications and risk factors referred to in the First Trading Update; and

Particulars

The disclaimer of page 2 of the First Trading Update stated:

"Certain statements made in this release are "forward-looking statements" – that is, statements related to future, not past, events. Words such as "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," and similar expressions are intended to identify forward-looking statements. These forward-looking statements are not historical facts but rather are based on Brambles' current beliefs, assumptions, expectations, estimates and projections.

Forward-looking statements are not guarantees of future performance, as they address matters that are uncertain and subject to known and unknown risks, uncertainties and other factors that are beyond the control of Brambles, are difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements. Brambles cautions shareholders and prospective shareholders not to place undue reliance on these forward-looking statements, which reflect the views of Brambles only as of the date of this release.

The forward-looking statements made in this release relate only to events as of the date on which the statements are made – Brambles will not undertake any obligation to release publicly any revisions or updates to these forward-looking statements to reflect events, circumstances or events occurring after the date

of this release, except as may be required by law or by any appropriate regulatory authority."

- (c) it says further that statements relating to deferral and delays in converting customers for ~~the CHEP US Pooled Pallet Business~~ covered both:
- (i) conversions of Whitewood Pallet users to Pooled Pallets; and
 - (ii) deferrals in customer decisions switching from one Pooled Pallet provider to another (which were unrelated to Whitewood Pallet prices).

60. As to paragraph 60, it:

- (a) says that the price at which Brambles Shares traded declined from a closing price of \$12.28 on 20 January 2017 to a closing price of \$10.34 on 23 January 2017 (a decline of approximately 15.8%); and
- (b) otherwise denies the allegations in paragraph 60.

F.1A Alleged January 2017 Partial Disclosure

60A. As to paragraph 60A, it:

- (a) refers to and repeats paragraphs 23 and 59 above;
- (b) denies the allegations in paragraph 60A; and
- (c) says further that customer deferrals in 1H2017 included Cott Beverage (representing US\$12.5 million of annualised revenue) and First Quality (representing US\$5.9 million of annualised revenue), who subsequently executed contracts with Brambles in March 2017.

60B. It denies the allegations in paragraph 60B.

60C. It denies the allegations in paragraph 60C and otherwise refers to and repeats paragraph 60A above ~~and otherwise~~.

60D. It denies the allegations in paragraph 60D and otherwise refers to and repeats paragraph 60A above.

60E. As to paragraph 60E, it:

- (a) refers to and repeats paragraphs 9-12, 23, 27, ~~32~~, 35, 45, 54, 59 and 60A above;
- (b) otherwise denies the allegations in paragraph 60E; and

(c) says further that, if and to the extent (which is denied) it made the January Representations as alleged, it had reasonable grounds for making the said representations at the time they were made because:

- (i) of the matters referred to in paragraphs 9-12, 23, 27, ~~32~~, 35, 45, 54, 59 and 60A above;
- (ii) by 23 January 2017, US Census data (contained in the January 2017 Board pack) showed retailer destocking in Q3 and Q4 of calendar year 2016 (1Q2017 and 2Q2017), and this coincided with an increase of Brambles' US plant stock;

Particulars

US Census Data and US plant stock levels are shown in the December 2016 Financial Update (BXB.002.006.0497 at 0506).

- (iii) there were several customer accounts including JBS and First Quality that Brambles was expecting to secure in 2Q2017 when it was preparing its September reforecast, that were not secured in 2Q2017, but which Brambles expected to secure in 2H2017.

Particulars

US Pooled FY17 Q1 Overview (BXB.500.001.0933 at 0934).

As part of the CHEP North American Pooled Pallets' input for the December reforecast, it had prepared a presentation called 'CHEP Pallets US Pooled – FY17 December Forecast Review' dated 8 December 2016. (BXB.500.124.7050; BXB.500.124.7051~~BXB.500.006.0991 at 1003~~).

- (iv) by 23 January 2017, Brambles had completed its December reforecast:

Particulars

As part of its December 2016 reforecast (BXB.500.139.3023 attaching BXB.500.139.3024):

- On 2 December 2016, each CBU loaded their respective inputs onto BRACS and sent their FY2017 Forecast Analysis Pack to the CHEP Global Pallets finance team;
- On 15 December 2016, Buster Kennett, Peter Mackie and Carmelo Alonso-Bernaola Ruiz held one on one

reviews with each of the Business Units, where they presented the reforecasts with key issues; and

- On 16 December 2016, the December reforecast was finalised on BRACS including outcomes from the one-on-one reviews.

F.2 Alleged February 2017 partial disclosure

61. Save that it will refer at the trial to the full terms of the Second Trading Update and the February Disclosure, it admits paragraph 61.

62. As to paragraph 62, it:

- (a) says that the price at which Brambles Shares traded declined from a closing price of \$10.51 on 17 February 2017 to a closing price of \$9.34 on 20 February 2017 and \$9.28 on 21 February 2017; and
- (b) otherwise denies the allegations in paragraph 62.

G. ALLEGED CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSSES

63. It refers to and repeats paragraph 2 above, and otherwise does not know and therefore ~~does~~ cannot admit paragraph 63.

G.1 Market Conditions

64. As to paragraph 64, it:

- (a) says that at all material times the market for Brambles Shares was operated by the ASX and was regulated by, inter alia, the ASX Listing Rules and sections 674(2) and 1041H of the Corporations Act;
- (b) says that Brambles had the obligations set out in paragraphs 4 and 6;
- (c) says that at trial, it will refer to the full terms and effect of Listing Rules 3.1, 3.1A and 19.12;
- (d) says that the price of Brambles Shares would reasonably be expected to have been informed or affected by material information disclosed to the ASX and by other publicly available information, amongst other factors affecting the price at which those shares were traded; and
- (e) otherwise denies the allegations in paragraph 64.

G.2 Market-based causation

65. It denies the allegations in paragraph 65.

66. As to paragraph 66, it:
- (a) denies that the Applicants or Group Members made any assumption of the kind alleged in paragraph 66;
 - (b) denies that participants in the market for Brambles Shares made any assumption of the kind alleged in paragraph 66;
 - (c) says further that for the reasons set out in this Defence, the market for Brambles Shares had been informed of all information about which Brambles was obligated to inform the market; and
 - (d) says further that if (which is denied) the Applicants and Group Members made the said acquisitions on the assumption alleged, then for the reasons set out in this Defence, the assumption was valid.

G.3 Individual Reliance

67. It denies the allegations in paragraph 67.

H. ENTITLEMENT TO RELIEF

68. It denies the allegations in paragraph 68.

69. It denies the allegations in paragraph 69.

Date: 10 September 2021 ~~14 June 2019~~



Signed by Paul Nicols
Lawyer for the Respondent

This pleading was prepared by Paul Nicols, lawyer, and settled by ~~Catherine Button of Her Majesty's Counsel and Oren Bigos Kane Loxley~~ of Counsel.

Certificate of lawyer

I Paul Nicols certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non-admission in the pleading.

Date: 10 September 2021 ~~14 June 2019~~



Signed by Paul Nicols
Lawyer for the Respondent