



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

Case: S ECI 2020 01590  
Filed on: 20/11/2020 07:44 PM  
No. S ECI 2020 01590

**BETWEEN**

**BRETT STALLARD AS TRUSTEE FOR THE STALLARD SUPERANNUATION FUND**

First Plaintiff

**STEVEN NAPIER**

Second Plaintiff

-and-

**TREASURY WINE ESTATES LTD (ACN 004 373 862)**

Defendant

**CONSOLIDATED STATEMENT OF CLAIM**

**Filed pursuant to order 7 of the orders made by the Honourable Justice Nichols  
on 15 October 2020**

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Date of Document:	20 November 2020	
Filed on behalf of:	Brett Stallard as trustee for the Stallard Superannuation Fund (First Plaintiff) and Steven Napier (Second Plaintiff)	
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## NOTE:

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

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

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

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

## A. THE PARTIES AND GROUP MEMBERS

### A.1 The Joint Plaintiffs and Group Members

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

### Particulars

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

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

## **A.2 Treasury**

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

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

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

## **B. TREASURY'S CONTINUOUS DISCLOSURE OBLIGATIONS**

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

## C. TREASURY'S WINE BUSINESS

### C.1 Treasury's US Wine Market

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

#### Particulars

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

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

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

#### **Particulars**

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

#### **Particulars**

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

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

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

#### **Particulars**

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

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

#### **Particulars**

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

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

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



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

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

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

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

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

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

#### Particulars

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

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

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

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

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

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

## **C.2 Treasury Officers**

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

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

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

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

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

- (a) from 1 January 2018 until 21 January 2019 the Chief Operating Officer of Treasury; and
- (b) by reason of the matters alleged in subparagraph 24(a), above, at all times from the start of the Relevant Period until 21 January 2019 an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.

25. Tim Ford was:

- (a) between about May 2017 and June 2018 the Managing Director, Europe, South East Asia, Middle East and Africa and Global Supply Chain at Treasury;
- (b) between about July 2018 and 21 January 2019 the Deputy Chief Operating Officer of Treasury;
- (c) from 21 January 2019 and at all times thereafter during the Relevant Period the Chief Operating Officer of Treasury; and
- (d) by reason of the matters alleged in subparagraphs 25(a) to 25(c), above, at all times during the Relevant Period an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.

26. Angus McPherson (**McPherson**) was:
- (a) from about July 2014 to 30 June 2018, Managing Director ANZ at Treasury;
  - (b) from 1 July 2018 until about 15 February 2019, Managing Director ANZ and Europe at Treasury;
  - (c) between about 15 February 2019 and about 23 September 2019, Managing Director ANZ, Europe, South East Asia, Middle East and Africa at Treasury;
  - (d) between about 24 September 2019 and about 12 January 2020, President, Americas & Global Sales at Treasury; and
  - (e) by reason of the matters alleged in subparagraphs 26(a) to 26(d), above, at all times during the Relevant Period until about 12 January 2020, an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.
27. Victoria Snyder (**Snyder**) was:
- (a) from about July 2017 to 1 July 2018, Executive Vice President, Americas at Treasury;
  - (b) from 2 July 2018 until about 19 August 2019, President, Americas at Treasury; and
  - (c) by reason of the matters alleged in subparagraphs 27(a) and 27(b), above, at all times during the Relevant Period until about 19 August 2019, an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.
28. Gunther Burghardt was:
- (a) from 1 May 2018 until about August 2019, Executive Vice President, Operations – Americas at Treasury; and
  - (b) by reason of the matters alleged in subparagraph 28(a), above, at all times during the Relevant Period until about August 2019, an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.
29. Paul Rayner was:
- (a) at all times during the Relevant Period the Chairman of the Board, and an independent director, of Treasury; and
  - (b) by reason of the matters alleged in subparagraph 29(a), above, at all times during the Relevant Period an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.
30. Each of:
- (a) Ed Chan;
  - (b) Louisa Cheang;

- (c) Warwick Every-Burns;
- (d) Garry Hounsell;
- (e) Colleen Jay; and
- (f) Lauri Shanahan,

was:

- (g) at all times during the Relevant Period an independent non-executive director of Treasury; and
- (h) by reason of the matters alleged in subparagraph 30(g), above, at all times during the Relevant Period an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.

31. Michael Cheek was:

- (a) at all times during the Relevant Period until 29 August 2018 an independent non-executive director of Treasury; and
- (b) by reason of the matters alleged in subparagraph 31(a), above, at all times during the Relevant Period until 29 August 2018 an officer of Treasury within the meaning of Rule 19.12 of the ASX Listing Rules.

32. By reason of the matters alleged in paragraphs 22 to 31, above, any information of which any of the persons referred to in those paragraphs (**Treasury Officers**) became aware in accordance with Rule 19.12 of the ASX Listing Rules was information of which Treasury was aware for the purposes of s 111AP(1) and/or s 674(2) of the Corporations Act and/or Rule 3.1 of the ASX Listing Rules.

### **C.3 Treasury Monitoring Systems**

33. At all material times, Treasury:

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

#### **Particulars**

2018 Annual Report, page 18.

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

#### **Particulars**

2018 Annual Report, pages 18 and 19.

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

**Particulars**

- i. Treasury Investor and Analyst Conference Call transcript dated 17 May 2018, page 2.
  - ii. FY19 Treasury Results Earnings Call transcript dated 15 August 2019, page 8.
- (d) received detailed inventory and depletion data from most of its distributor partners in the US Wine Market on a monthly basis;
- (e) had access to Nielsen scan data, being point of sales data recording sales of wine to retail consumers at a selection of retail outlets within the US (**Nielsen sales data**), which captured approximately 40% of TWE's US sales volume;

**Particulars**

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

- (f) had a team, or teams, which compiled and reviewed the inventory and depletion data referred to in subparagraph 33(d), above, for quality and integrity, and prepared an internal report capturing the data and qualitative commentary from the US sales team; and
- (g) had a system which involved Treasury's leadership team reviewing the internal report referred to in subparagraph 33(f), above, and Treasury taking required actions to support and drive depletions,
- (together, the **Treasury Monitoring Systems**).

**Particulars**

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

**D. JUNE 2018 CONTRAVENTIONS**

**D.1 June 2018 Misleading or Deceptive Conduct**

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

## Particulars

In the 31 January 2018 Announcement, Treasury stated that:

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

35. The January 2018 Representation was a representation as to a future matter.

36. The January 2018 Representation was made:

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

37. Treasury did not, at any time before 28 January 2020, withdraw or qualify the January 2018 Representation, which was a continuing representation from 31 January 2018 and throughout the Relevant Period.

38. As at 30 June 2018:

- (a) the 2018 grape harvest in the US was expected to be at least average sized;
- (b) retail sales of US wine had decelerated;
- (c) there was a backlog of inventory in US wineries' tanks and barrels;
- (d) inventory was being sold in the US at a discount through the bulk wine market by reason of oversupply;
- (e) there was generally a lead time from wine grape harvest to sale of wine products in the global wine market of more than six months; and
- (f) the matters alleged in subparagraphs 38(a) to (e), above, were likely to create downward pressure on prices in the US Wine Market going forward,

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

#### **Particulars**

- i. Ciatti Global Wine and Grape Brokers report entitled 'California Report' dated June 2018, pages 2, 3 and 4.
- ii. Wines Vines Analytics Report article entitled 'Early Reports Put 2018 Harvest at Above Average' dated 17 July 2018.

39. As at 30 June 2018:

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

#### **Particulars**

- i. The FY17 Treasury Brands Sales Decline as tracked by Nielsen sales data was as follows, for the Key Diageo Brands:
  - A. Acacia by 17.2% yoy;
  - B. Beaulieu Vineyard by 22.7% yoy; and
  - C. Sterling Vineyards by 1.6% yoy.
- ii. The FY18 Treasury Brands Sales Decline as tracked by Nielsen sales data was as follows, for the Key Diageo Brands:
  - A. Acacia by 19.4% yoy;
  - B. Beaulieu Vineyard by 15.6% yoy; and
  - C. whereas Sterling Vineyards increased by 1.8% yoy
- iii. Further, for July 2018, Treasury's total retail wine sales in the supermarket channel as tracked by Nielsen sales data declined by 17%.

- (b) Treasury had experienced reduced sales growth in respect of sales of its wines (including the Key Diageo Brands) in the US in 4Q18;

**Particulars**

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

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

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

**Particulars**

Impact Databank depletions data.

- (d) the matters alleged in sub-paragraphs (a) to (c), above, were likely to create downward pressure on prices for Treasury's wines in the US going forward,

(the **June 2018 Treasury US Market Conditions**).

40. As at 30 June 2018:

- (a) the June 2018 US Market Conditions and/or the June 2018 Treasury US Market Conditions were likely to materially adversely impact on Treasury's performance in the Americas division in future financial periods, notwithstanding the existence of the new Route-To-Market Model; and

- (b) a deterioration in the performance in the Americas division would materially adversely impact on Treasury's ability to achieve accelerated EBITs growth in future financial periods,

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

**Particulars**

- i. The June 2018 US Market Conditions were likely to have the following impact on the Americas division:
- A. negatively impact volumes and sales;
  - B. require Treasury to undertake higher levels of discounting to maintain market share across all price points;
  - C. negatively impact Treasury's ability to recover or offset increases in the cost of goods sold (**COGS**); and
  - D. negatively impact Treasury's ability to rely on premiumisation to maintain profits.



- ii. The Joint Plaintiffs refer to subparagraph 38(f), above, and the continuing nature of the June 2018 US Market Conditions for their impact on Treasury's financial performance in future financial periods, including FY20.
- iii. Treasury's sensitivity to the June 2018 US Market Conditions in the abovementioned manner is to be inferred from the fact that Treasury ultimately identified these matters as reasons for the FY20 forecast downgrade on 28 January 2020.
- iv. The June 2018 Treasury US Market Conditions had the same impacts as June 2018 US Market Conditions (and the previous three paragraphs of the particulars are repeated).

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

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

#### **Particulars**

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

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

42. In continuing to make the January 2018 Representation on and from no later than 30 June 2018 and at all material times thereafter until the end of the Relevant Period, Treasury did not, or did not adequately, take account, or make a genuine assessment, of:
- (a) the June 2018 US Market Conditions;
  - (b) the June 2018 Treasury US Market Conditions; and/or
  - (c) the June 2018 US Market Conditions Impact Information.

#### **Particulars**

- i. The fact that the matters identified above were not or not adequately taken into account is to be inferred from the fact that certain of the matters in subparagraphs 42(a) to (c), above, (namely, the need for higher levels of discounting to maintain share across all price points and the negative impact on Treasury's ability to recover or offset increases in COGS), were identified as reasons for the FY20 forecast downgrade on 28 January 2020 but were present as at 30 June 2018.
- ii. The Joint Plaintiffs refer to:
  - A. the absence of any announcement by Treasury regarding the matters alleged in subparagraphs 38(a) to 38(e), above, as at 30 June 2018;
  - B. the absence of any, or any adequate, discussion, consideration or analysis of the matters alleged in subparagraphs 38(a) to 38(e) or 39, above, in the 16 August 2018 Announcement.

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

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

## **D.2 June 2018 Continuous Disclosure Contravention**

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

### **Particulars**

The Joint Plaintiffs refer to and repeat the particulars subjoined to paragraph 41, above.

Further particulars will be provided following the completion of discovery.

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

### **Particulars**

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

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

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

## **E. FEBRUARY 2019 CONTRAVENTIONS**

### **E.1 February 2019 Misleading or Deceptive Conduct Contravention**

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

### Particulars

- i. Treasury ASX announcement dated 14 February 2019 entitled “Treasury Wine Estates Interim 2019 financial result” (**1H19 Results**), pages 2, 3 and 5.
  - ii. Treasury ASX announcement presentation dated 14 February 2019 entitled “Treasury Wine Estates Interim Results”, page 21.
51. The February 2019 Representation was a representation as to a future matter.
52. The February 2019 Representation was made:
  - (a) in trade or commerce in relation to financial services (being Treasury Shares) within the meaning of s 12DA(1) of the ASIC Act;
  - (b) in relation to a financial product or financial services (being Treasury Shares) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act; and
  - (c) in trade or commerce within the meaning of s 18 of the ACL.
53. As at 14 February 2019:
  - (a) the June 2018 US Market Conditions remained in existence and conditions were continuing to deteriorate, such deterioration being due primarily to unfavourable shifts in consumer demographics and a slowing of market premiumisation trends;

### Particulars

- Silicon Valley Bank Report dated 6 February 2019, entitled ‘State of the Wine Industry’, pages 6 to 13.
  - (b) the 2018 grape harvest in the US was expected to be a record with 4.4 million tons forecast for California, and the Pacific Northwest also expected to set records, which was likely to result in:
    - (i) higher grape prices;
    - (ii) flat premium wine prices, and declines in pricing in masstige and commercial wine; and/or
    - (iii) increased sales of competitively priced private label wine available in retail channels.

### Particulars

- i. Ciatti Global Wine and Grape Brokers report entitled ‘California Report’ dated November 2018, page 2 and 3.
    - ii. State of the Wine Industry Report 2019, page 6, 12,13, 17 and 19.
  - (c) the US wine industry was expected to transition to a period of:
    - (i) flat to negative volume growth;
    - (ii) low sales growth;

- (d) as a result of the matters set out in subparagraphs 53(a) to 53(c), above, at the end of 2018, the US Wine Market had an oversupply (the **2018 Harvest Oversupply**);
- (e) there was generally a lead time from wine grape harvest to sale of wine products in the global wine market of more than six months;
- (f) there was and was likely to continue to be an added supply of private label wine products in the US Wine Market;

**Particulars**

Between 3 November 2018 and 26 January 2019, yoy sales of private label wine increased on each monthly measurement date, on average, 20% by value as tracked by Nielsen sales data.

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

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

**Particulars**

- i. Silicon Valley Bank report dated 6 February 2019, entitled 'State of the Wine Industry', pages 6 to 13.
- ii. Treasury's wine release profile in the US Wine Market included wines released immediately and wines held in inventory for up to 5 years.

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

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

**Particulars**

- i. The particulars to paragraph 39(a) are repeated.
- ii. The FY19 Treasury Brands Sales Decline for the full financial year was as follows:
  - A. Acacia by 39.2% yoy;

- B. Beaulieu Vineyard by 16.2% yoy; and
- C. Sterling Vineyards by 10.3% yoy,
- iii. The Joint Plaintiffs say that these declines were also the case proportionately for the 7.5 months of FY19 to 14 February 2019, and this was the FY19 Treasury Brands Sales Decline to date.

(b) Treasury:

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

**Particulars**

- i. The particulars to paragraph 39(b) are repeated.
- ii. Further, in 1Q19, Treasury's sales growth by value as tracked by Nielsen sales data was, across its entire portfolio, at or below the US industry average and at negative or less than around 4% growth.

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

**Particulars**

Impact Databank depletions data.

(d) Treasury's market share in the US was falling;

**Particulars**

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

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

(e) the matters alleged in sub-paragraphs 54(a) to (d), above, were likely to create downward pressure on prices for Treasury's wines in the US going forward, including in the premium wine segment, and negatively impact Treasury's ability to rely on premiumisation to maintain or increase profits,

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

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

#### **Particulars**

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

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

56. As at 14 February 2019, there had been a change in Treasury's Americas leadership (the **February 2019 Leadership Change**).

#### **Particulars**

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

Further particulars will be provided following the completion of discovery.

57. As at 14 February 2019, the February 2019 Leadership Change was likely to materially adversely impact Treasury's operating performance in FY20 in the Americas division (the **February 2019 Leadership Impact Information**).

#### **Particulars**

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

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

58. As at 14 February 2019, by reason of a combination of the February 2019 US Market Conditions Impact Information and the February 2019 Leadership Impact Information, together, there was a material risk that Treasury would not achieve growth in EBITs at a rate of 15% to 20% in FY20 (the **February 2019 Combined US Impact Information**).

#### **Particulars**

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

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



59. As at 14 February 2019 (and at all material times afterwards), one or more of the Treasury Officers knew or ought to have known, information being:
- (a) the February 2019 US Market Conditions;
  - (b) the February 2019 Treasury US Market Conditions;
  - (c) the February 2019 US Market Conditions Impact Information;
  - (d) the February 2019 Leadership Change;
  - (e) the February 2019 Leadership Impact Information; and/or
  - (f) the February 2019 Combined US Impact Information.

#### **Particulars**

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

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

60. In making the February 2019 Representation, Treasury did not, or did not adequately, take account, or make a genuine assessment, of:
- (a) the February 2019 US Market Conditions;
  - (b) the February 2019 Treasury US Market Conditions;
  - (c) the February 2019 US Market Conditions Impact Information;

- (d) the February 2019 Leadership Change;
- (e) the February 2019 Leadership Impact Information; and/or
- (f) the February 2019 Combined US Impact Information.

#### **Particulars**

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

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

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

## **E.2 February 2019 Continuous Disclosure Contravention**

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

- (a) the February 2019 US Market Conditions Impact Information;
- (b) the February 2019 Treasury US Market Conditions;
- (c) the February 2019 Leadership Impact Information; and/or
- (d) the February 2019 Combined US Impact Information.

### **Particulars**

- i. The Joint Plaintiffs refer to and repeat the particulars subjoined to paragraph 59, above.
- ii. As to subparagraph 64(c), it can be inferred that based on its knowledge of the matters set out in subparagraphs 64(a) and 64(b), one or more Treasury Officers had formed the opinion that there was a material risk that the Company would not achieve growth in EBITs at a rate of 15% to 20% in FY20.

Further particulars will be provided following the completion of discovery.

65. Each of:

- (a) the February 2019 US Market Conditions Impact Information;
- (b) the February 2019 Leadership Impact Information; and/or
- (c) the February 2019 Combined US Impact Information,

was information that:

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

### **Particulars**

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

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

66. By reason of the Continuous Disclosure Obligations and the matters alleged in paragraphs 64 to 65, above, on and from 14 February 2019, Treasury became immediately obliged to inform the ASX of:
- (a) the February 2019 US Market Conditions Impact Information;
  - (b) the February 2019 Leadership Impact Information; and/or
  - (c) the February 2019 Combined US Impact Information.
67. Treasury did not, at any time prior to 28 January 2020, inform the ASX of:
- (a) the February 2019 US Market Conditions Impact Information;
  - (b) the February 2019 Leadership Impact Information; and/or
  - (c) the February 2019 Combined US Impact Information.
68. By reason of the matters alleged in paragraphs 64 to 67, above, Treasury contravened Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act (the **February 2019 Continuous Disclosure Contravention**).

## **F. AUGUST 2019 CONTRAVENTIONS**

### **F.1 August 2019 Misleading or Deceptive Conduct Contravention**

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

#### **Particulars**

- i. FY19 Results Announcement, pages 2, 3 and 5.
  - ii. FY19 Results Presentation, page 20.
70. The August 2019 Representation was a representation as to a future matter.
71. The August 2019 Representation was made:
- (a) in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;
  - (b) in relation to a financial product or financial services (being Treasury Shares) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act; and
  - (c) in trade or commerce within the meaning of s 18 of the ACL.

72. As at 15 August 2019:

- (a) the February 2019 US Market Conditions otherwise remained in existence and were continuing;

#### Particulars

The continuing market conditions included an increase in private label wine sales and a deceleration in retail sales of US wine as measured by Nielsen sales data as follows:

- i. Between 23 February 2019 and 20 April 2019, yoy sales of private label wines by volume and value increased on average by over 20% on each measurement date.
  - ii. Between 18 May 2019 and 10 August 2019, yoy sales of private label wines by value increased on average by over 15% on each measurement date.
- (b) the 2018 California grape harvest was confirmed at 4.28 million tons of grapes;
- (c) the 2019 grape harvest in the US was expected to be normal or average to above normal or average;

#### Particulars

- i. USDA Crop Production report released 12 August 2019, page 32 referring to 4.28 million tons of grapes in California in 2018 and 4.2 million tons of grapes in California in 2019.
  - ii. Ciatti Wine Brokers Global Market report dated July 2019 entitled 'Global Market Report' (**July 2019 Ciatti Report**), page 3 referring to "crop size looking normal".
  - iii. Ciatti Wine Brokers Global Market report dated August 2019 entitled 'Global Market Report' (**August 2019 Ciatti Report**), page 3 referring to "crop size looking normal".
  - iv. 2019 Annual Report, page 29, stated "forecast grape tonnage may be slightly below V18, given it was a large vintage".
- (d) surplus stock from the 2018 Harvest Oversupply remained available in the US Wine Market;

#### Particulars

- i. July 2019 Ciatti Report, pages 3 to 4.
  - ii. August 2019 Ciatti Report, pages 3 to 4.
- (e) as a result of the matters alleged in subparagraphs 72(a) to 72(d), above, the wine oversupply problem in the US Wine Market was likely to and would continue;

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

**Particulars**

- i. July 2019 Ciatti Report, pages 3 to 4.
  - ii. August 2019 Ciatti Report, pages 3 to 4.
- (g) the matters alleged in subparagraphs 72(a) to (f), above, were likely to:
- (i) create downward pressure on prices in the US Wine Market going forward, including in the premium wine segment; and
  - (ii) mean it would be more difficult for participants in the US Wine Market to rely on premiumisation to maintain or increase profits,

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

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

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

**Particulars**

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

- (b) Treasury had experienced reduced sales growth in respect of sales of its wines (including the Key Diageo Brands) in the US in 4Q18 and FY19;

**Particulars**

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

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

**Particulars**

The particulars to paragraph 54(c) are repeated.

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

**Particulars**

- i. The particulars to paragraph 54(d) are repeated, in respect of the period between 3 November 2018 and 26 January 2019.

- ii. Further Nielsen sales data indicated that between 23 February 2019 and 20 April 2019, in a market in which yoy Nielsen sales data of private label wines by value had increased on average by over 20 basis points on each measurement date, Treasury's yoy market share had:
    - A. declined by over 2 basis points on 23 February 2019;
    - B. declined by over 19 basis points by 23 March 2019; and
    - C. declined by over 15 basis points by 20 April 2019.
  - iii. Further, Nielsen sales data indicated that between 18 May 2019 and 10 August 2019, in a market in which yoy Nielsen sales data of private label wines by value had increased on average by over 15 basis points on each measurement date, Treasury's yoy market share had:
    - A. declined by over 10 basis points on 18 May 2019;
    - B. declined by over 10 basis points on 15 June 2019;
    - C. increased by 10 basis points on 13 July 2019; and
    - D. increased by over 1 basis point on 10 August 2019.
- (e) the matters alleged in sub-paragraphs (a) to (d), above, were likely to create a downward pressure on prices for Treasury's wines in the US and/or the volume of Treasury's wines sold in the US going forward,

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

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

#### **Particulars**

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

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

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

#### **Particulars**

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

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

#### **Particulars**

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

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

77. As at 15 August 2019, by reason of the combined effect of the August 2019 US Market Conditions Impact Information and the August 2019 Leadership Impact Information, there was a material risk that Treasury would not achieve growth in EBITs at a rate of 15% to 20% in FY20 (the **August 2019 Combined US Impact Information**).



### **Particulars**

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

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

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

### **Particulars**

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

ultimately identified these matters as a reason for the FY20 forecast downgrade on 28 January 2020.

Further particulars will be provided following the completion of discovery.

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

#### **Particulars**

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

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

80. By reason of the matters alleged in paragraphs 72 to 77 and/or 78 and 79, above, Treasury did not have reasonable grounds for making the August 2019 Representation.
81. Treasury did not, at any time before 28 January 2020, withdraw or qualify the August 2019 Representation, which was a continuing representation from 15 August 2019 until the end of the Relevant Period.

82. By reason of the matters alleged in paragraphs 69, 70, 71, 72 to 77 and/or 80 and 81, above, on and from no later than 15 August 2019 and at all material times thereafter until the end of the Relevant Period, Treasury engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) s 1041H(1) of the Corporations Act;
- (b) s 12DA(1) of the ASIC Act; and/or
- (c) s 18 of the ACL,

**(August 2019 Misleading or Deceptive Conduct Contravention).**

## **F.2 August 2019 Continuous Disclosure Contravention**

83. Further or alternatively, by 15 August 2019 and at all material times thereafter during the Relevant Period, one or more of the Treasury Officers were aware (within the meaning of Rule 19.12 of the ASX Listing Rules) of:

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

### **Particulars**

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

Further particulars will be provided following the completion of discovery.

84. Each of:

- (a) the August 2019 US Market Conditions Impact Information;
- (b) the August 2019 Leadership Impact Information; and/or
- (c) the August 2019 Combined US Impact Information,

was information that:

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

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

#### **Particulars**

- i. The matters set out in subparagraph 84(a) to 84(c) included Treasury's own information relating to its business, projections and sensitivities.
- ii. The materiality of the information is to be inferred from the impact of the corrective disclosure alleged in paragraphs 117 and 118, below.

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

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

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

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

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

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

### **G. OCTOBER 2019 CONTRAVENTIONS**

#### **G.1 October 2019 Misleading or Deceptive Conduct Contravention**

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

#### **Particulars**

October 2019 Announcement, page 9.

89. The October 2019 Representation was a representation as to a future matter.

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

91. As at 16 October 2019:

- (a) the August 2019 US Wine Market Conditions remained in existence and were continuing;

**Particulars**

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

- (b) additional information about the size of the 2019 US grape harvest confirmed that it was expected to be average to above average;

**Particulars**

- i. Ciatti Global Markets report entitled 'Global Market Report' dated September 2019 (**September 2019 Ciatti Report**), pages 3 to 4.
  - ii. Ciatti Global Markets report entitled 'Global Market Report' dated October 2019 (**October 2019 Ciatti Report**), pages 2 and 12 to 13.
- (c) surplus stock from the 2018 Harvest Oversupply remained available in the US Wine Market;

**Particulars**

- i. September 2019 Ciatti Report, pages 3 to 4.
  - ii. October 2019 Ciatti Report, pages 3 to 4.
- (d) casegood sales in the US were stagnant;

**Particulars**

October 2019 Ciatti Report, page 12.

- (e) the slowness of the US Wine Market was reported not to be a short-term phenomenon;

**Particulars**

- i. September 2019 Ciatti Report, page 2.
- ii. October 2019 Ciatti Report, page 12.

- (f) as a result of the matters set out in subparagraphs 91(a) to 91(e), above, the wine oversupply problem in the US Wine Market was likely to and would continue,
- (g) the matters alleged in subparagraphs 91(a) to (f), above, were likely to:
  - (i) create downward pressure on prices in the US Wine Market going forward, including in the premium wine segment;
  - (ii) mean it would be more difficult for participants in the US Wine Market to rely on premiumisation to maintain or increase profits,

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

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

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

**Particulars**

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

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

**Particulars**

- i. The particulars to paragraph 73(b) are repeated.
- ii. Further, Treasury's Nielsen sales data growth in the period between 1 August 2019 and 30 November 2019 was -3.1% yoy across the portfolio, and -1.8% across Treasury's top 5 brands.
- iii. The Joint Plaintiffs say this was also proportionately the case in the period to 16 October 2019 and part of an ongoing trend in FY20, given that Treasury's Nielsen sales data growth in the period from 1 December 2019 to 28 December 2019 was -2.2% yoy across the portfolio, and -1% across Treasury's top 5 brands, and in the period from 29 December 2019 to 25 January 2020 was -3.5% yoy across the portfolio, and negative across Treasury's top 5 brands.
- (c) Treasury had experienced an ongoing decline in US distributor depletions in respect of all of its top-selling brands (except for 19 Crimes and Matua), including the Key Diageo Brands, from 2015 through at least 30 December 2018 (being the end of 1H19);

### Particulars

The particulars to paragraph 73(c) are repeated.

- (d) Treasury's market share in the US was falling;

### Particulars

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

- (e) the matters alleged in sub-paragraphs (a) to (d), above, were likely to create downward pressure on prices for Treasury's wines in the US and/or the volume of Treasury's wines sold in the US going forward,

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

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

### Particulars

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

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

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

**Particulars**

- i. During 2Q20, McPherson had been unable to relocate to the US as planned in his role as President, the Americas, and Ben Dollard had to subsequently be appointed to the role as President, the Americas.
- ii. There had previously been the February 2019 Leadership Change and the August 2019 Leadership Changes.

Further particulars will be provided following the completion of discovery.

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

**Particulars**

- i. The absence of the President of the Americas division from the US, along with the February 2019 Leadership Change and the August 2019 Leadership Changes, meant that it was likely that Treasury would:
  - A. lose momentum in relation to distribution and execution of programming in the US Wine Market in 1H20, including the execution of the Route-To-Market Model; and
  - B. lose planning momentum in 2Q20.
- ii. Treasury's performance in the US Wine Market was sensitive to loss of execution momentum.
- iii. The fact that US leadership changes would impact on execution momentum and therefore operational performance can be inferred from the fact that Treasury ultimately identified this as a reason for the FY20 forecast downgrade on 28 January 2020.

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

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

**Particulars**

- i. The Joint Plaintiffs refer to and repeat the particulars subjoined to paragraphs 91 and 95 above. The adverse impact on financial and operational performance was likely to have an impact on operating performance in the "Americas" division would impact on the EBITs of the Americas division.



- ii. The Joint Plaintiffs draw an inference of the combined impact of these matters on Treasury's ability to achieve growth in EBITs at a rate of 15% to 20% in FY20, in circumstances where, as alleged in paragraph 21, the Americas division had contributed at least 40% of Treasury's NSR and over 30% of Treasury's EBITs.

Further particulars will be provided following the completion of discovery.

97. As at 16 October 2019 (and at all material times afterwards), one or more of the Treasury Officers knew or ought to have known, information being:
- (a) the October 2019 US Market Conditions;
  - (b) the October 2019 Treasury US Market Conditions;
  - (c) the October 2019 US Market Conditions Impact Information;
  - (d) the October 2019 Leadership Changes;
  - (e) the October 2019 Leadership Impact Information; and/or
  - (f) the October 2019 Combined US Impact Information.

#### **Particulars**

- i. The October 2019 US Wine Market Conditions were publicly known.
- ii. The October 2019 US Market Conditions Impact Information and the October 2019 Treasury US Market Conditions were known or ought to have been known based on an analysis of public information by one or more of the Treasury Officers combined with a knowledge of Treasury's business and sensitivities, the Treasury Monitoring Systems and information which would come into the possession of one or more of the Treasury Officers in the proper performance of their duties.
- iii. The October 2019 Leadership Changes were known to Treasury.
- iv. The October 2019 Leadership Impact Information was known or ought to have been known based on a combined knowledge of one or more of the Treasury Officers of the departure of the various Treasury leaders, a knowledge of Treasury's business and sensitivities to leadership change, the Treasury Monitoring Systems and information one or more of the Treasury Officers would come across in the proper performance of their duties.
- v. The October 2019 Combined US Impact Information was known or ought to have been known based on an inference of the combined effect of the matters identified at (i) to (iv), above.
- vi. The fact that one or more of the Treasury Officers knew or ought to have known the alleged information can also be inferred from the following:
  - A. in September 2019, Treasury "walked away" from just under 0.5 million cases of commercial volume in the US due to private label growth, aggressive market discounting and Treasury's higher COGS;
  - B. Treasury admitted in the 29 January 2020 Earnings Call that there was a realisation in "September, October" that the surplus wine in the marketplace was having a significant impact; and/or

- C. Treasury ultimately identified these matters as a reason for the FY20 forecast downgrade on 28 January 2020.

Further particulars will be provided following the completion of discovery.

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

**Particulars**

- i. The Joint Plaintiffs refer to the October 2019 Announcement and the absence of any, or any adequate, discussion, consideration or analysis of the matters alleged in subparagraphs 91(a) to 91(f) or paragraph 94, above.
- ii. The fact that the matters identified above were not or not adequately taken into account is also to be inferred from the fact that certain of the matters in subparagraphs 98(a) to 98(e) above, (namely, unexpected changes in Treasury's Americas leadership resulting in a loss of execution momentum, accelerated growth in private label wine, the fact that Treasury had walked away from just under 0.5 million cases of commercial volume in the US due to private label growth, the need for higher levels of discounting to maintain share across all price points and the negative impact on Treasury's ability to recover or offset increases in COGS), were identified as reasons for the FY20 forecast downgrade on 28 January 2020 but were present as at 16 October 2019.

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

99. By reason of the matters alleged in paragraphs 91 to 96 and/or 97 and 98, above, Treasury did not have reasonable grounds for making the October 2019 Representation.
100. Treasury did not, at any time before 28 January 2020, withdraw or qualify the October 2019 Representation, which was a continuing representation from 16 October 2019 until the end of the Relevant Period.

101. By reason of the matters alleged in paragraphs 88, 89, 90, 91 to 96, 99 and 100, above, on and from no later than 16 October 2019 and at all material times thereafter until the end of the Relevant Period, Treasury engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) s 1041H(1) of the Corporations Act;
- (b) s 12DA(1) of the ASIC Act; and/or
- (c) s 18 of the ACL,

**(October 2019 Misleading or Deceptive Conduct Contravention).**

## **G.2 October 2019 Continuous Disclosure Contravention**

102. Further or alternatively, by 16 October 2019 and at all material times thereafter during the Relevant Period, one or more of the Treasury Officers were aware (within the meaning of Rule 19.12 of the ASX Listing Rules) of:

- (a) the October 2019 US Wine Market Conditions Impact Information;
- (b) the October 2019 Leadership Impact Information; and/or
- (c) the October 2019 Combined US Impact Information.

### **Particulars**

- i. The Joint Plaintiffs refer to and repeat the particulars subjoined to paragraph 97, above.
- ii. Further or alternatively, the fact that one or more of the Treasury Officers were aware of the matters identified in paragraph 102 is to be inferred from the fact that, in September 2019, Treasury “walked away” from just under 0.5 million cases of commercial volume in the US due to private label growth, aggressive market discounting and Treasury’s higher COGS.
- iii. In addition, Treasury admitted in the 29 January 2020 Earnings Call that there was a realisation in “September, October” that the surplus wine in the marketplace was having a significant impact.
- iv. As to subparagraph 102, it can be inferred that based on its knowledge of the matters set out in subparagraphs 102(a) and 102(b), one or more of the Treasury Officers had formed the opinion that there was a material risk that the Company would not achieve growth in EBITs at a rate of 15% to 20% in FY20.

Further particulars will be provided following the completion of discovery.

103. Each of:

- (a) the October 2019 US Market Conditions Impact Information;
- (b) the October 2019 Leadership Impact Information; and/or

- (c) the October 2019 Combined US Impact Information, was information that:
- (d) was not generally available within the meaning of s 676 of the Corporations Act; and
- (e) a reasonable person would expect to have a material effect on the price or value of Treasury Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

#### **Particulars**

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

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

104. By reason of the Continuous Disclosure Obligations and the matters alleged in paragraphs 102 to 103, above, on and from 16 October 2019, Treasury became immediately obliged to inform the ASX of:
- (a) the October 2019 US Market Conditions Impact Information;
  - (b) the October 2019 Leadership Impact Information; and/or
  - (c) the October 2019 Combined US Impact Information.
105. Treasury did not, at any time prior to 28 January 2020, inform the ASX of:
- (a) the October 2019 US Market Conditions Impact Information;
  - (b) the October 2019 Leadership Impact Information; and/or
  - (c) the October 2019 Combined US Impact Information.
106. By reason of the matters alleged in paragraphs 102 to 105, above, Treasury contravened Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act (the **October 2019 Continuous Disclosure Contravention**).

## H. SUSTAINABLE GROWTH MISLEADING OR DECEPTIVE CONDUCT

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

### Particulars

- i. In Treasury's 2015 Annual Report published on 1 September 2015, Treasury stated:
  - A. "As foreshadowed, FY15 was a critical year for TWE. During the year, we embedded substantial strategic, operational and cultural change within our organisation in order to enhance the quality and sustainability of the Company's base business" (page 4); and
  - B. "Premiumisation remains a key component of TWE's strategy, and we are determined that our Luxury, Masstige and Commercial brands will be increasingly competitive" (page 6)
- ii. In Treasury's ASX announcement entitled "TWE announces acquisition of Diageo's wine business" published on 14 October 2015, Treasury stated:
  - A. "Acquisition enhances TWE's premiumisation strategy; more than 80% of Diageo Wine's US net sales revenue is generated by its Luxury and Masstige portfolio" (page 1);
  - B. "Diageo's US wine business comprises approximately 4 million cases of wine for FY15, with a strong representation in the growing Luxury and Masstige segments" (page 2);
  - C. "On today's announcement, Mr. Paul Rayner, Chairman of TWE commented: 'The acquisition of Diageo Wine represents a highly compelling strategic and financial opportunity for TWE's shareholders. Diageo Wine's business is very aligned to our strategic roadmap and we expect that the acquisition will deliver long-term value creation to our global operations and to our shareholders" (page 3);and
  - D. "As we integrate the acquisition of Diageo Wine we will preserve the quality of the wines while replicating the journey that we began with TWE eighteen months ago. This will include increasing the efficiency and profitability of the business with a focus on costs, investing in the valuable brands we have acquired and delivering sustainable long-term top line growth – globally" (page 3);
- iii. In Treasury's ASX announcement entitled "2016 Interim Results Announcement" and the "2016 Interim Results Investor and Analyst Presentation", published on 18 February 2016, Treasury stated:
  - A. "On today's result, TWE's Chief Executive Officer, Michael Clarke commented: "Our interim 2016 result demonstrates a continuation of the momentum in fiscal 2015 and highlights the benefits of having repositioned our business to deliver strong earnings growth on a balanced, sustainable base" (Announcement, page 2);
  - B. "A particular highlight during the first half of fiscal 2016 was the acquisition of Diageo Plc's Wine business ("Diageo Wine"). The

acquisition drives a crucial step-change for the growth of TWE's Luxury and Masstige portfolio in the US, by providing instant access to more premium fruit. On 1 January 2016, TWE's US business transitioned from a Commercial wine weighted business, to a portfolio structure where the Luxury and Masstige versus Commercial portfolios are more balanced" (Announcement, page 2);

- C. "TWE has commenced a re-set period for the acquired Diageo Wine business, during which the Company will accelerate investment in consumer marketing in key brands and ensure the business is strongly positioned for long-term, sustainable growth" (Announcement, page 2);
  - D. "TWE's journey to a balanced & sustainable model continues" (Presentation, page 3);
  - E. "TWE is delivering consistent earnings growth and margin accretion on a more balanced and sustainable base business" (Presentation, page 22); and
  - F. "Accelerate growth and lead in Luxury and Masstige segments; reshaping the Commercial portfolio and asset base, and optimising brand investment
    - Strategy to grow and lead in Luxury and Masstige categories supported by strong US wine market fundamentals
    - Size and scale of TWE's Luxury and Masstige portfolio doubled by acquisition of Diageo Wine
    - Re-set period for Diageo Wine commenced to drive sustainable base business and reinvigorate brand health"(Presentation, page 2).
- iv. In Treasury's ASX announcement entitled "2016 Annual Results Announcement", published on 18 August 2016, Treasury stated:
- A. "On today's result, TWE's Chief Executive Officer, Michael Clarke commented: "Our FY16 result demonstrates that momentum across our business is accelerating. TWE is now delivering consistent earnings growth and margin accretion on a more balanced, sustainable and quality earnings basis" (page 2)
  - B. "Americas Regional Perspective ... Sustainable momentum and EBITs margin accretion expected" (page 16); and
  - C. "Summary and outlook ... TWE is delivering consistent earnings growth and margin accretion on a more balanced and sustainable base business" (page 16).
- v. In Treasury's ASX announcement entitled "2017 Interim Results Announcement" and Treasury's ASX announcement entitled "2017 Interim Results Investor and Analyst Presentation", published on 14 February 2017, Treasury stated:
- A. "The acquisition of the Diageo Wine business on 1 January 2016 has already delivered positive upside to TWE, despite the significant investment in re-settling the brands as well as addressing unsustainable volume and customer contracts in F16. As stated at the time of acquisition, the rationale for acquiring Diageo Wine was to

- secure increased access to Luxury and Masstige fruit which would in turn, deliver immediate portfolio benefits to TWE's US business. The immediate portfolio mix benefit of the acquisition is evident in the America's 1H17 result" (Announcement, pages 2-3);
- B. "US brand portfolio now positioned for sustainable volume and value growth in 2H17; targeting volume and value growth in line with category in 2H17" (Presentation, page 22);
- vi. In Treasury's ASX Announcement dated 30 August 2017 entitled 'Annual Report', Treasury stated:
    - A. "The F17 results are a testament to the disciplined and sustainable way in which the Company operates" (page 2);
    - B. In FY17, Treasury "Completed rollout of harmonised upgrades to TWE's global Enterprise Resource Planning (ERP) systems, enhancing controls processes to support the delivery of long-term sustainable results;" (page 12); and
    - C. "The Board believes the Group's successful focus on sustainable earnings growth, cost management and operational" (page 45).
  - vii. In Treasury's Full Year 2018 Treasury Wine Estates Ltd Earnings Call transcript dated 16 August 2018:
    - A. Clarke stated: "Looking forward, we will continue making the tough, long-term strategic decisions to further strengthen our regional business model every year to deliver long-term, sustainable growth." (page 3);
    - B. Young stated: "And so in summary, our fiscal '18 financial results demonstrate our ability to deliver strong results in a disciplined and sustainable way and, at the same time, invest for future growth" (page 5);
    - C. Clarke stated: "Firstly, we actively manage shipments to ensure that customer depletions exceed shipments over the course of a year to drive pent-up demand globally. We deliberately allocate inventory to fiscal years and regions to ensure we maintain apparent scarcity and, therefore, protect our brand health and protect our pricing power by deliberately allocating to future years rather than selling our wine in the current year. Therefore, it is actually against our interests to load a customer to drive short-term outcomes." (page 8);
    - D. Clarke stated: "And so in summary, we are and will continue to be a truly growth business and one that is focused on sustainable long-term objectives, not short-term tactics." (page 8); and
    - E. Clarke stated: "I'm not interested and my team's not interested in short-term tactics to get to a number. We're focused on doing the right things that deliver the long-term, sustainable results." (page 15);
  - viii. In the 2018 Annual Report, Treasury stated:
    - A. Treasury's mission was to "Create long term value for TWE and everyone who touches our Company by being sustainable in everything we do" (page 31); and
    - B. "Sustainable results are the bedrock of the Company's incentive framework and the Board and Management are intent on motivating performance that positions TWE for the long term." (page 46);

- ix. In the FY19 Results Announcement, Treasury stated: “Sustainability is at the heart of everything we do at TWE, and we will continue to pursue opportunities to enhance the fundamentals of our business with a mindset of prioritising long-term success over short-term outcomes.” (page 4).
- x. The Sustainable Growth Representation was partly express and partly implied.
- xi. To the extent that it was express, the Joint Plaintiffs refer to particulars (i)-(iv), above.
- xii. To the extent that it was implied, it was to be implied from the matters referred to in particulars (i)-(iv) above.

108. The Sustainable Growth Representation was made:

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

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

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

- (a) it depended primarily on the performance of two brands (Matua and 19 Crimes), in circumstances in which:
  - (i) the June 2018 US Market Conditions (further, or alternatively, the June 2018 Treasury US Market Conditions) existed as at and from 30 June 2018;
  - (ii) the February 2019 US Market Conditions (further, or alternatively, the February 2019 Treasury US Market Conditions) existed as at and from 14 February 2019;
  - (iii) the August 2019 US Market Conditions (further, or alternatively, the August 2019 Treasury US Market Conditions) existed as at and from 15 August 2019;
  - (iv) the October 2019 US Market Conditions (further, or alternatively, the October 2019 Treasury US Market Conditions) existed as at and from 16 October 2019; and
- (b) it involved behaviour which undermined sustainable growth in favour of short-term profit, by reason of the matters alleged in paragraph 16, above, which involved Treasury recognising revenue at the point of shipment (not when depletion occurred).



## Particulars

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

Further particulars will be provided following the completion of discovery.

111. By reason of the matters pleaded in paragraphs 107 to 110 above, by no later than the start of the Relevant Period, and at all times thereafter until the end of the Relevant Period, the Sustainable Growth Representation was misleading or deceptive, or likely to mislead or deceive in contravention of:

- (a) s 1041H(1) of the Corporations Act;
- (b) s 12DA(1) of the ASIC Act; and/or
- (c) s 18 of the ACL,

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

### I. DIAGEO BRANDS MISLEADING OR DECEPTIVE CONDUCT

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

## Particulars

- i. The Joint Plaintiffs repeat particulars (ii), (iii) and (v) of paragraph 107.
- ii. Treasury stated:
  - A. In the 31 January 2018 Announcement: “Whilst Commercial wine continues to play an important role in TWE’s portfolio, the completion of the Diageo Wine integration, along with the Company’s Supply Chain Optimisation initiative and actions to increase access to Masstige and Luxury wine, are now facilitating the exit from lower margin Commercial volume, without materially impacting profit or profitability.” (page 4); and
  - B. In the 16 August 2018 Announcement: “Americas reported a 2% EBITs reduction to \$193.0m and an EBITs margin of 20.1% (up 2.0ppts). Underlying premiumisation, strong EBITs growth in Canada, Direct-to-Consumer (DTC) and Latin America, Diageo Wine integration synergies and cost optimisation were offset by the one-off \$25m adverse EBITs impact from the route-to-market changes in the US, which largely related to reduced shipments.” (page 2).
- iii. The Diageo Brands Representation was partly express and partly implied.
- iv. To the extent that it was express, the Joint Plaintiffs refer to particulars (i), (iii) and (v) of paragraph 107 and (i)-(ii), above.

- v. To the extent that it was implied, it was to be implied from the matters referred to in particulars (i), (iii) and (v) of paragraph 107 and particulars (i)-(ii) above.

113. The Diageo Brands Representation was made:

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

114. Treasury did not, any time during the Relevant Period before 28 January 2020, withdraw or qualify the Diageo Brands Representation, which was a continuing representation throughout the Relevant Period.

115. At all times in the Relevant Period, the acquisition and integration of Diageo Wine did not enhance Treasury's execution of its premiumisation strategy, given:

- (a) the FY17 Treasury Brands Sales Decline included declines in the Key Diageo Brands;
- (b) the FY18 Treasury Brands Sales Decline included declines in the Key Diageo Brands;
- (c) the FY19 Treasury Brands Sales Decline included declines in the Key Diageo Brands;
- (d) the FY20 Treasury Brands Sales Decline included declines in the Key Diageo Brands;
- (e) the fact that there was no or limited prospects of long term improvement in the sales performance of the Key Diageo Brands in the longer term as the brands were mature or maturing; and
- (f) the circumstances in which:
  - (i) the June 2018 US Market Conditions (further, or alternatively, the June 2018 Treasury US Market Conditions) existed as at and from 30 June 2018;
  - (ii) the February 2019 US Market Conditions (further, or alternatively, the February 2019 Treasury US Market Conditions) existed as at and from 14 February 2019;
  - (iii) the August 2019 US Market Conditions (further, or alternatively, the August 2019 Treasury US Market Conditions) existed as at and from 15 August 2019; and
  - (iv) the October 2019 US Market Conditions (further, or alternatively, the October 2019 Treasury US Market Conditions) existed as at and from 16 October 2019.

## Particulars

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

Further particulars will be provided following the completion of discovery.

116. By reason of the matters alleged in paragraphs 112 to 115, above, during the Relevant Period, Treasury engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) s 1041H(1) of the Corporations Act; and/or
- (b) s 12DA(1) of the ASIC Act; and/or
- (c) s 18 of the ACL,

**(Diageo Brands Misleading or Deceptive Conduct Contravention).**

## J. INFORMATION DISCLOSURE AND SHARE PRICE IMPACT

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

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

- (d) the Americas division EBITs was \$98.3 m on a reported currency basis, representing a 17.3% decline on the prior corresponding period.

**Particulars**

Treasury Trading Update, pages 2 and 3.

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

**Particulars**

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

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

- (a) was information that a reasonable person would expect to have a material effect on the price or value of Treasury Shares;
- (b) related to the subject matter of the January 2018 Representation, the February 2019 Representation, the August 2019 Representation, the October 2019 Representation, the Sustainable Growth Representation and the Diageo Brands Representation (collectively, the **Representations**);
- (c) related to the subject matter of the:
- (i) the June 2018 US Market Conditions Impact Information;
  - (ii) the February 2019 US Market Conditions Impact Information;
  - (iii) the February 2019 Leadership Impact Information;
  - (iv) the February 2019 Combined US Impact Information;
  - (v) the August 2019 US Market Conditions Impact Information;
  - (vi) the August 2019 Leadership Impact Information;
  - (vii) the August 2019 Combined US Impact Information;
  - (viii) the October 2019 US Market Conditions Impact Information;
  - (ix) the October 2019 Leadership Impact Information; and/or
  - (x) the October 2019 Combined US Impact Information,
- (collectively, the **Information**);
- (d) operated to correct or partly correct the information available to the market concerning the subject matter of the Representations and the Information;
- (e) by correcting or partly correcting the Representations and the Information, influenced persons who commonly invest in securities by causing:

- (i) persons who held Treasury Shares to reduce the price at which they were willing to dispose of those shares; and
- (ii) persons who were considering acquiring Treasury Shares to reduce the price at which they were willing to purchase those shares;

#### **Particulars**

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

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

- (f) caused the price at which Treasury Shares traded on the ASX (**Traded Price**) to adjust downward toward the price which would have existed if the Contraventions (as defined in paragraph 120, below), or any one or combination of them, had not occurred;
- (g) caused the market to adjust the Traded Price downward to correct or partly correct the effects of the Contraventions, or any one or combination of them; and
- (h) by reason of the matters alleged in subparagraphs 119(a) to 119(g), had a material adverse effect on the Traded Price of Treasury Shares.

#### **K. CONTRAVENTIONS CAUSED LOSS OR DAMAGE**

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

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

121. During the Relevant Period:

- (a) the June 2018 Misleading or Deceptive Conduct Contravention;
- (b) the June 2018 Continuous Disclosure Contravention;
- (c) the February 2019 Misleading or Deceptive Conduct Contravention;
- (d) the February 2019 Continuous Disclosure Contravention;
- (e) the August 2019 Misleading or Deceptive Conduct Contravention;
- (f) the August 2019 Continuous Disclosure Contravention;

- (g) the October 2019 Misleading or Deceptive Conduct Contravention;
- (h) the October 2019 Continuous Disclosure Contravention;
- (i) the Sustainable Growth Misleading or Deceptive Conduct Contravention; and/or
- (j) the Diageo Brands Misleading or Deceptive Conduct Contravention,

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

#### **Particulars**

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

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

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

#### **Particulars**

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

Particulars of the shareholdings of the Group Members during the Relevant Period will be provided after the trial and determination of the common questions.

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

- (a) that had been informed of all material information concerning Treasury that was required to be disclosed by it in accordance with the ASX Listing Rules and ss 674(2) of the Corporations Act;

- (b) in which Treasury had not made any statements or representations that were misleading or deceptive or likely to mislead or deceive.

**Particulars**

- i. Investors and potential investors in shares on the ASX, including Treasury Shares, are generally aware that there is a complex and comprehensive regulatory regime including, inter alia, the ASX Listing Rules and ss 674(2) and 1041H of the Corporations Act, which has as one of its purposes to ensure that the market is promptly informed of all information which is relevant to the price at which securities are traded and that representations made to the market are not misleading or deceptive.
- ii. Particulars of Stallard holding and relying upon the alleged assumption will be provided prior to trial.
- iii. Particulars of Napier holding and relying upon the alleged assumption will be provided prior to trial.

Particulars with respect to the assumptions held by some of the Group Members will be provided following the determination of the common questions to the extent that they are relevant to question of whether they have suffered loss and damage.

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

**Particulars**

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

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

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

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

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

**Particulars**

- i. The loss alleged in subparagraph 125(a), above, will be calculated by reference to:

- A. the difference between the price at which each of the Joint Plaintiffs and Group Members acquired an interest in Treasury Shares during the Relevant Period and the price at which the Treasury Shares would have traded at that time had the Contraventions (or any one or combination of the Contraventions) not occurred; or
  - B. Alternatively, on the days after the Relevant Period when the traded price of Treasury Shares fell as a result of the disclosure of information which had not previously been disclosed because of the Contraventions, the quantum of that fall.
- ii. The loss alleged in subparagraph 125(b), above, will be calculated by reference to:
- A. the price at which some Group Members acquired an interest in Treasury Shares during the Relevant Period, adjusted to deduct the true value of that interest at the time of the transaction; or
  - B. for those Group Members who would have, but for the Contraventions (or any one or combination of the Contraventions) retained or acquired an alternative investment, the difference between the actual position as a result of having acquired an interest in Treasury Shares during the Relevant Period and the position they would have been in had they made that alternative investment.

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

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

## **L. ENTITLEMENT TO RELIEF**

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



**M. COMMON QUESTIONS OF FACT OR LAW**

129. The questions of law or fact common to the claims of each of the Joint Plaintiffs and the Group Members are:

(a) at what date or dates did Treasury become aware, within the meaning of Rule 19.12 of the ASX Listing Rules, of:

- (i) the June 2018 US Market Conditions Impact Information;
- (ii) the February 2019 US Market Conditions Impact Information;
- (iii) the February 2019 Leadership Impact Information;
- (iv) the February 2019 Combined US Impact Information;
- (v) the August 2019 US Market Conditions Impact Information;
- (vi) the August 2019 Leadership Impact Information;
- (vii) the August 2019 Combined US Impact Information;
- (viii) the October 2019 US Market Conditions Impact Information;
- (ix) the October 2019 Leadership Impact Information; and/or
- (x) the October 2019 Combined US Impact Information;

(b) whether:

- (i) the June 2018 US Market Conditions Impact Information;
- (ii) the February 2019 US Market Conditions Impact Information;
- (iii) the February 2019 Leadership Impact Information;
- (iv) the February 2019 Combined US Impact Information;
- (v) the August 2019 US Market Conditions Impact Information;
- (vi) the August 2019 Leadership Impact Information;
- (vii) the August 2019 Combined US Impact Information;
- (viii) the October 2019 US Market Conditions Impact Information;
- (ix) the October 2019 Leadership Impact Information; and/or
- (x) the October 2019 Combined US Impact Information,

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

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

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

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

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

- (i) the June 2018 US Market Conditions Impact Information;
- (ii) the February 2019 US Market Conditions Impact Information;
- (iii) the February 2019 Leadership Impact Information;
- (iv) the February 2019 Combined US Impact Information;
- (v) the August 2019 US Market Conditions Impact Information;
- (vi) the August 2019 Leadership Impact Information;
- (vii) the August 2019 Combined US Impact Information;
- (viii) the October 2019 US Market Conditions Impact Information;
- (ix) the October 2019 Leadership Impact Information; and/or
- (x) the October 2019 Combined US Impact Information,

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

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

- (i) the January 2018 Representation;
- (ii) the February 2019 Representation;
- (iii) the August 2019 Representation;
- (iv) the October 2019 Representation;
- (v) the Sustainable Growth Representation; and/or
- (vi) the Diageo Brands Representation,

and, if so, when during the Relevant Period;

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

- (i) the June 2018 US Market Conditions;
- (ii) the June 2018 Treasury US Market Conditions;

- (iii) the June 2018 US Market Conditions Impact Information;
- (iv) the February 2019 US Market Conditions;
- (v) the February 2019 Treasury US Market Conditions;
- (vi) the February 2019 US Market Conditions Impact Information;
- (vii) the February 2019 Leadership Impact Information;
- (viii) the February 2019 Combined US Impact Information;
- (ix) the August 2019 US Market Conditions;
- (x) the August 2019 Treasury US Market Conditions;
- (xi) the August 2019 US Market Conditions Impact Information;
- (xii) the August 2019 Leadership Impact Information;
- (xiii) the August 2019 Combined US Impact Information;
- (xiv) the October 2019 US Market Conditions;
- (xv) the October 2019 Treasury US Market Conditions;
- (xvi) the October 2019 US Market Conditions Impact Information;
- (xvii) the October 2019 Leadership Impact Information; and/or
- (xviii) the October 2019 Combined US Impact Information,

and, if so,

- (xix) which Treasury Officer or Treasury Officers; and
  - (xx) throughout which part or parts of the Relevant Period,
- (f) whether, during the Relevant Period, Treasury had no reasonable grounds for making:
- (i) the January 2018 Representation;
  - (ii) the February 2019 Representation;
  - (iii) the August 2019 Representation; and/or
  - (iv) the October 2019 Representation,
- (g) whether Treasury, throughout the Relevant Period, failed to withdraw or qualify:
- (i) the January 2018 Representation;
  - (ii) the February 2019 Representation;
  - (iii) the August 2019 Representation;

- (iv) the October 2019 Representation;
- (v) the Sustainable Growth Representation; and/or
- (vi) the Diageo Brands Representation,  
and if so, throughout which part or parts of the Relevant Period;
- (h) whether, in making and failing to withdraw or qualify the Representations, or any of them, Treasury contravened s 1041H(1) of the Corporations Act, s12DA(1) of the ASIC Act and/or s18 of the ACL;
- (i) whether the Contraventions (or one or any combination of them) had the effect that prices for Treasury Shares were, during the Relevant Period, higher than their respective true value and/or the market price that would have prevailed but for the Contraventions (or any of them) and, if so, by how much; and
- (j) if the Contraventions (or one or any combination of them) had any of the effects referred to at subparagraph 129(i), above:
  - (i) whether compensation is recoverable by each of the Joint Plaintiffs and the Group Members;
  - (ii) the correct measure of any compensation recoverable by each of the Joint Plaintiffs and the Group Members; and
- (vii) whether any, and if so what, relief other than monetary relief should be granted in favour of the Plaintiff and some or all of the Group Members.

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

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

Dated: 20 November 2020

Slater and Gordon Lawyers

Lawyers for First Plaintiff

Maurice Blackburn Lawyers

Lawyers for Second Plaintiff

This pleading was prepared by F Forsyth QC, W A D Edwards and E Levine of counsel.

**ANNEXURE A**

**STALLARD'S SHAREHOLDING IN TREASURY DURING THE RELEVANT PERIOD**

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

## ANNEXURE B – NAPIER'S SHAREHOLDINGS IN TREASURY

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

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



## ANNEXURE C – DEFINITIONS

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

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

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

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

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

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

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

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

**Americas** has the meaning set out in paragraph 9

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

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

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

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

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

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

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

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

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

**August 2019 Representation** has the meaning set out in paragraph 69

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

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

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

**Bulk wine** has the meaning set out in paragraph 19

**Clarke** has the meaning set out in paragraph 22

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

**Continuous Disclosure Obligations** has the meaning set out in paragraph 7

**Contraventions** has the meaning set out in paragraph 121

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

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

**Diageo** has the meaning set out in paragraph 13

**Diageo Brands Representation** has the meaning set out in paragraph 112

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

**Distributor Model** has the meaning set out in paragraph 14

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

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

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

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

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

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

**February 2019 Representation** has the meaning set out in paragraph 50

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

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

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

**Foye** has the meaning set out in paragraph 24

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

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

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

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

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

**Group Members** has the meaning set out in paragraph 3

**Key Diageo Brands** has the meaning set out in paragraph 13

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

**January 2018 Representation** has the meaning set out in paragraph 34

**Joint Plaintiffs** has the meaning set out in paragraph 1

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

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

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

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

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

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

**McPherson** has the meaning set out in paragraph 26

**Napier** has the meaning set out in paragraph 1

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

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

**October 2019 Announcement** has the meaning set out in paragraph 88

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

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

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

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

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

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

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

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

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

**October 2019 Representation** has the meaning set out in paragraph 88

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

**Private label wine** has the meaning set out in paragraph 18

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

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

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

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

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

**Snyder** has the meaning set out in paragraph 27

**Stallard** has the meaning set out in paragraph 1

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

**Sustainable Growth Misleading or Deceptive Conduct Contravention** has the meaning set out in paragraph 111

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

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

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

**Treasury Monitoring Systems** has the meaning set out in paragraph 33

**Treasury Officers** has the meaning set out in paragraph 32

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

**Treasury Trading Update** has the meaning set out in paragraph 117

**UK** has the meaning set out in paragraph 13

**US** has the meaning set out in paragraph 9

**US Wine Market** has the meaning set out in paragraph 10

**Young** has the meaning set out in paragraph 23