



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT

No. S ECF 2023 01899

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B E T W E E N

RAEKEN PTY LTD ATF DOWRICK SUPERANNUATION FUND (ACN 110 057 684)
Plaintiff

-and-

JAMES HARDIE INDUSTRIES PLC (ARBN 097829895)
Defendant

AMENDED STATEMENT OF CLAIM

Amended pursuant to order 1 of the orders made by the Honourable Justice Croft on 26
August 2025

Date of Document:	26 August 2025	Solicitors Code:	11747
Filed on behalf of:	The Plaintiff	DX:	N/A
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A PRELIMINARY

A.1 The Plaintiff and the Group Members

1. This proceeding is commenced as a group proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) by the Plaintiff on its own behalf and on behalf of all persons who:
 - (a) during the period between 7 February 2022 and 7 November 2022 (inclusive) (**Relevant Period**) acquired (whether themselves or by an agent or trustee) through any trading platform:
 - (i) an interest in CHESS Units of Foreign Securities in the Defendant (**James Hardie**) ~~traded as listed~~ on the Australian Securities Exchange (**ASX** and **JHX Shares**);

- (ii) American Depositary Receipts in James Hardie ~~traded~~ as listed on the New York Stock Exchange (**JHX ADRs**);
- (iii) long exposure to JHX Shares by entering into equity swap confirmations in respect of James Hardie shares (**JHX Equity Swaps**);
- (b) have suffered loss or damage by or resulting from the conduct of James Hardie pleaded in this Statement of Claim; and
- (c) were not during any part of the Relevant Period, and are not as at the date of this Statement of Claim, any of the following:
 - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of James Hardie;
 - (ii) a related body corporate (as defined by s 50 of the Corporations Act) of James Hardie;
 - (iii) an associated entity (as defined by s 50AAA of the Corporations Act) of James Hardie;
 - (iv) an officer or a close associate (as defined by s 9 of the Corporations Act) of James Hardie; or
 - (v) a Justice or the Chief Justice of the Supreme Court of Victoria or a Justice or the Chief Justice of the High Court of Australia,

(Group Members).

2. The Plaintiff acquired an interest in JHX Shares during the Relevant Period.

PARTICULARS

- (i) Details of the particular acquisitions of JHX Shares by the Plaintiff are set out below:

Date	Transaction type	Number of JHX Shares	Price
6 April 2022	BUY	240	\$41.28
26 October 2022	BUY	601	\$33.28
28 October 2022	BUY	449	\$33.44

3. As at the commencement of this proceeding, there were more than seven Group Members.

A.2 The Defendant

4. James Hardie, is and at all material times was:
 - (a) a public limited company incorporated and registered in Ireland and is capable of being sued;

- (b) a person within the meaning of ss 1041E and 1041H of the Corporations Act;
- (c) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- (d) a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:
 - (i) s 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
 - (ii) s 28 of the *Fair Trading Act 1987* (NSW);
 - (iii) s 16 of the *Fair Trading Act 1989* (Qld);
 - (iv) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
 - (v) s 19 of the *Fair Trading Act 2010* (WA);
 - (vi) s 14 of the *Fair Trading Act 1987* (SA);
 - (vii) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT); and/or
 - (viii) s 27 of the *Consumer Affairs and Fair Trading Act* (NT);
 (individually, or together, **Australian Consumer Law**).
- 5. At all material times during the Relevant Period, James Hardie followed a fiscal year commencing 1 April of any given year and ending on 31 March of the following year.
- 6. At all material times during the Relevant Period:
 - (a) JHX ADRs were able to be purchased and sold by investors on the New York Stock Exchange using the code or designation “JHX”; and
 - (b) each JHX ADR represented one JHX Share and the price at which JHX ADRs traded on the NYSE exchange reflected (i) the price of one JHX Share and (ii) the exchange rate between Australian dollars and United States of America dollars.

A.3 Relevant James Hardie personnel

- 7. Aaron Erter (**Erter**) was, from 2 September 2022 to present, James Hardie’s Chief Executive Officer (**CEO**), and a Director of James Hardie.
- 8. Harold Wiens (**Wiens**) was, from 7 January 2022 to 2 September 2022, James Hardie’s Interim CEO and a director of James Hardie. After 2 September 2022 Wiens remained a director of James Hardie.
- 9. Michael Hammes (**Hammes**) was, from around January 2008 to 3 November 2022, the Chair and a director of James Hardie.

10. Anne Lloyd (**Lloyd**) was, from 3 November 2022, the Chair, previously the Deputy Chair, as well as a director of James Hardie.
11. The following persons were also directors of James Hardie at all times during the Relevant Period (unless otherwise stated):
 - (a) Persio V Lisboa;
 - (b) Rada Rodriguez;
 - (c) Susanne B Rowland;
 - (d) Nigel Stein;
 - (e) Dean Seavers (until 21 March 2022); and
 - (f) Peter John Davis (from 10 August 2022).

(together with Erter, Wiens, Hammes and Lloyd, the **James Hardie Board**).
12. The following persons were also officers during the Relevant Period:
 - (a) Jason Miele (**Miele**, Chief Financial Officer);
 - (b) Sean Gadd (**Gadd**, President, North America);
 - (c) Joe Blasko (Chief Legal and Compliance Officer and Corporate Secretary);
 - (d) Ryan Kilcullen (Executive Vice President, Global Operations);
 - (e) John Arneil (General Manager, Asia Pacific);
 - ~~(f) Joe Liu (Chief Technology Officer);~~
 - ~~(g) James Johnson (Global Chief Information Officer);~~
 - ~~(h) Jill Kolling (VP ESG & Chief Sustainability Officer);~~
 - ~~(i) Stephen Balsavich (Global Head of Transformation);~~
 - ~~(e1) Jörg Brinkman (President Europe, until 3 November 2022);~~
 - (j) Christian Claus (President Europe, from 4 November 2022);
 - ~~(k) Chad Fredericksen (VP North America Professional Channel);~~
 - ~~(l) John Madson (VP North America Sales);~~
 - ~~(m) Atousa Ghoreichi (SVP North America Marketing, PR and Communications);~~
 - (l) David Hill (Global Financial Controller),

(together with the James Hardie Board, **James Hardie Officers**).

13. All persons listed at paragraphs 7 to 12 above were officers of James Hardie within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
14. ~~[Not used] The persons listed above at paragraphs 7 to 12 do not represent an exhaustive list of persons who were officers of James Hardie within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.~~
15. By reason of the matters pleaded at paragraphs 7 to 12 above, information of which any members of the James Hardie Board or James Hardie Officers became aware, or which ought reasonably to have come into their possession in the course of the performance of their respective duties as directors or officers of James Hardie was information of which James Hardie was aware (within the meaning of aware in ASX Listing Rule 19.12).

A.4 The Defendant's Obligations

16. At all material times, James Hardie was:
 - (a) included in the official list of the financial market operated by the ASX;
 - (b) an entity, the securities of which are ED securities for the purposes of s 111AE of the Corporations Act;
 - (c) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
 - (d) subject to and bound by the ASX Listing Rules, which are and at all material times were "listing rules" within the meaning of s 674 of the Corporations Act; and
 - (e) obliged (unless any of the exceptions in ASX Listing Rule 3.1A were applicable) to immediately inform the ASX of any information concerning James Hardie upon becoming aware of that information if the information was not generally available and James Hardie knew, or was reckless or negligent with respect to whether, the information would, if it were generally available, have a material effect on the price or value of JHX Shares.

(Continuous Disclosure Obligations).

17. At all material times, James Hardie was prohibited pursuant to:
 - (a) section 1041H of the Corporations Act and s 12DA of the ASIC Act, from engaging in conduct in relation to JHX Shares (being a financial product within the meaning of the Corporations Act and ASIC Act); and
 - (b) section 18 of the Australian Consumer Law, from engaging in conduct in trade or commerce,that was misleading or deceptive or likely to mislead or deceive.
18. At all material times, James Hardie was prohibited, pursuant to section 1041E of the Corporations Act, from making a statement or disseminating information if:

- (a) the statement or information was false in a material particular or was materially misleading; and
- (b) the statement or information was likely:
 - (i) to induce persons in this jurisdiction to apply for financial products; or
 - (ii) to induce persons in this jurisdiction to dispose of or acquire financial products; or
 - (iii) to have the effect of increasing, reducing, maintaining or stabilising the price for trading in financial products on a financial market operated in this jurisdiction; and
- (c) when James Hardie made the statement, or disseminated the information:
 - (i) James Hardie did not care whether the statement or information was true or false; or
 - (ii) James Hardie knew, or ought reasonably to have known, that the statement or information was false in a material particular or was materially misleading.

18A. At all material times, James Hardie reported its financial results on the basis of a fiscal year which commenced on 1 April, and concluded on 31 March, such that:

- (a) **FY20** commenced on 1 April 2019 and concluded on 31 March 2019 (with **1Q20** being the period from 1 April 2019 to 30 June 2020, **2Q20** being the period from 1 July 2019 to 30 September 2019, **3Q20** being the period from 1 October 2019 to 31 December 2019, and **4Q20** being the period from 1 January 2020 to 31 March 2020);
- (b) **FY21** commenced on 1 April 2020 and concluded on 31 March 2021 (with **1Q21** being the period from 1 April 2020 to 30 June 2020, **2Q21** being the period from 1 July 2020 to 30 September 2020, **3Q21** being the period from 1 October 2020 to 31 December 2020, and **4Q21** being the period from 1 January 2021 to 31 March 2021);
- (c) **FY22** commenced on 1 April 2021 and concluded on 31 March 2022 (with **1Q22** being the period from 1 April 2021 to 30 June 2021, **2Q22** being the period from 1 July 2021 to 30 September 2021, **3Q22** being the period from 1 October 2021 to 31 December 2021, and **4Q22** being the period from 1 January 2022 to 31 March 2022);
- (d) **FY23** commenced on 1 April 2022 and was to conclude on 31 March 2023 (with **1Q23** being the period from 1 April 2022 to 30 June 2022, **2Q23** being the period from 1 July 2022 to 30 September 2022, **3Q23** being the period from 1 October 2022 to 31 December 2022, and **4Q23** being the period from 1 January 2023 to 31 March 2023).

18B. At all material times, James Hardie was obliged:

- (a) by ASX Listing Rules 4.3A and 4.3B, to lodge with ASX the information set out in Appendix 4E (preliminary final report) no later than two months after the end of the accounting period applicable to James Hardie (namely by 31 May of each calendar year), which included a commentary on the results for the period which must include any significant information needed by an investor to make an informed assessment of the entity's activities and results, which would include but not be limited to discussion of the matters set out in Appendix 4E, Item 14, including any other factors which are likely to affect results in the future;
- (b) by ASX Listing Rule 4.3D, to give ASX an explanation immediately once it is or becomes aware of any circumstances which are likely to materially affect the results or other information contained in Appendix 4E (preliminary final report) given to ASX;
- (c) by ASX Listing Rules 4.5, to lodge with ASX its audited accounts no later than 3 months after the end of the accounting period applicable to James Hardie (namely, by 30 June of each calendar year),

(Periodic Disclosure Obligations).

B JAMES HARDIE'S BUSINESS

B.1 James Hardie's business

- 19. At all material times ~~prior to~~ from at least FY20 and during the Relevant Period, James Hardie's principal business activities comprised manufacturing and selling building materials, primarily in the North American market (**NA Market**), European market and the Asia-Pacific market (including Australia).
- 20. At all material times ~~prior to~~ from at least FY20 and during the Relevant Period, James Hardie operated 19 manufacturing facilities across three regions: North America (**NA**), Asia-Pacific (**APAC**) and Europe (**EU**).
- 21. At all material times ~~prior to~~ from at least FY20 and during the Relevant Period, James Hardie's principal product line was fibre-cement products (**FC Products**).

PARTICULARS

- (i) James Hardie's primary products included
 - (A) Exteriors – external siding products (~88% of the JHX NA business in FY22).
 - (B) Interiors – “backer”, being cement board installed as backing for tiles (~ 12% of the JHX NA business in FY22).
- (ii) James Hardie's main exterior products included:
 - (A) Plank – horizontal fibre cement siding.
 - (B) Panel – vertical fibre cement siding.
 - (C) Shingle – smaller rectangle-shaped siding.

(D) Trim – fibre cement product for corners, columns, fascia, doors and windows.

(E) Soffit – coverage for the underside of roof eaves and exterior porch ceilings.

[JHX.0032.0012.1054];[JHX.0005.0029.2411].

22. At all material times prior to and during the Relevant Period, James Hardie was the number one manufacturer of FC Products for the building and construction industry worldwide.

B.2 James Hardie’s NA Business

23. At all material times, from at least FY20 the North American division of James Hardie’s business (**NA Business**) contributed the majority of its revenue, earnings before interest and tax (**EBIT**), and profit.

PARTICULARS

- (i) *For FY20 (financial year ending 31 March 2020), James Hardie Group’s total Net Sales was US\$2,607 million, Adjusted EBIT US\$487 million, Adjusted Net Operating Profit (after tax) was US\$353 million: FY20 Annual Report, p 5.*
- (ii) *For FY20 the NA Business accounted for approximately 70% of Net Sales of the Group and almost 97% of Adjusted EBIT. Net Sales figure of over US\$1,816 million, Adjusted EBIT of US\$471 million and Adjusted EBIT Margin expanded to 25.9%: FY20 Annual Report, p 5.*
- (iii) *For FY21 (financial year ending 31 March 2021), James Hardie Group’s total Net Sales was US\$2,909 million, Adjusted EBIT US\$629 million, Adjusted Net Income US\$458 million: FY21 Annual Report, p 5.*
- (iv) *For FY21 the NA Business accounted for 70% of Net Sales of the Group and 77% of Adjusted EBIT. Net Sales figure of over US\$2.0 billion, Adjusted EBIT of US\$588 million and Adjusted EBIT Margin expanded to 28.8%: FY21 Annual Report, p 13.*

24. At all material times, from at least FY20 the bulk of James Hardie’s FC Products sold in the NA Market were sold for residential construction purposes.

PARTICULARS

- (i) *“In US and Canada, the largest application for fibre cement building products is in external siding for the residential building industry,” FY21 Annual Report, p 45.*

25. At all material times, from at least FY20, ~~the majority of~~ James Hardie’s revenue, EBIT and profit from the NA Business was derived from sales split between the “Repair &

Remodel” end market (**R&R Sector**), and the balance from the “new construction” end market (**New Construction Sector**) (the R&R/NC End Market Split).

PARTICULARS

- (i) ~~In FY22, approximately 65% of the total volume of James Hardie’s sales in the NA Market were in the R&R Sector: FY22 Annual Report, pp 9 and 17, Investor Day 2022 Presentation Day 1, p 52.~~
- (ii) ~~In FY21, James Hardie reported that “while it historically has had strong business in the repair and remodel segment, we believe that the opportunity for future growth remains significant...we plan to amplify and accelerate that demand by marketing directly to homeowners...”, FY21 Annual Report, p 6.~~

26. At all material times, James Hardie held ~~a very substantial~~ an over 80 percent market share of the FC Product market in the NA Market.

PARTICULARS

- (i) “We are the largest FC producer in North America with ten plants.” FY22 Annual Report, p 151.
- (ii) “James Hardie Industries plc is a world leader in the manufacturing of fibre cement building solutions...” FY21 Annual Report, p 41.
- (iii) “Our growth above market reflects both market share gains in single family new construction as well as increasing penetration in the repair and remodelling segment.” FY22 Annual Report, p 16,
- (iv) “We expect that North American Fiber Cement growth will continue above market – Although there are some strong competitors, we expect James Hardie will continue to push toward its 35/90 target (35% fibre cement market share with 90% market share of fiber cement) given its high-quality product offering, strong branding, and weaker competitors in the vinyl category.” RBC Capital Markets, ‘James Hardie Industries plc: Global Investor Day Takeaways’, 13 September 2022, p 10,
- (v) “James Hardie is the leading provider of fiber cement siding in the US housing market and controls more than 90% of that market.” RBC Capital Markets ‘James Hardie Industries plc: Global Investor Day Takeaways’, 13 September 2022, p 11.
- (vi) Further particulars will be provided on completion of ~~discovery~~ and expert evidence.
- (vii) Email from Marc Castillo to James Brennan-Chong, 13 January 2022 stating “...we are 90% market share” [JHX.0013.0001.7172].
- (viii) Presentation, ‘Market Intelligence: North American Competitive Fiber Cement’, March Quarter 2022 – June Review 2022, as at

end of the March 2022 quarter, James Hardie's North American share of the fiber cement market (exteriors only) was estimated at 85.9% [JHX.0028.0001.0576].

27. At all material times, the competitors of James Hardie's NA Business in the NA Market included manufacturers of:

- (a) vinyl, engineered and natural wood cladding or panelling (**Competing Products**); and
- (b) other FC Product manufacturers.

PARTICULARS

- (i) *As to (a) above, see Investor Day 2022 Presentation Day 1, p 47 James Hardie's most serious competitors in Competing Products included engineered wood siding manufacturer Louisiana Pacific (LP): See Email from Miele to James Brennan-Chong, 3 May 2022 [JHX.0002.0002.2868]; See also Document Authored by Erik Booth, 'Thoughts on LP Strategy') and vinyl siding manufacturer Cornerstone Building Brands [JHX.0034.0012.2238].*
- (ii) *As to (b) above, these included Allura, Nichiha, American Fibre Cement and Cembrit Etex Group.*
- (iii) *Further particulars will be provided on completion of ~~discovery~~ ~~and~~ expert evidence.*

C JAMES HARDIE'S FY23 GUIDANCE (7 FEBRUARY 2022)

C.1 James Hardie's published financials in FY20 to FY22

28. In FY20 (between 1 April 2019 and 31 March 2020), James Hardie published the following quarterly results:

Net Sales	1Q20	2Q20	3Q20	4Q20
Group (USD m)	656.8	660.1	616.7	673.2
NA (USD m)	452.3	459.6	430.0	474.5
APAC (AUD m)	154.4	164.2	149.4	146.1
EU (€ m)	85.4	79.0	76.5	93.3
 EBIT	 1Q20	 2Q20	 3Q20	 4Q20
Group (Adj, USD m)	124.4	134.2	107.2	121.0
NA (USD m)	113.5	124.7	112.3	120.0
APAC (AUD m)	35.4	39.5	34.2	29.9
EU (€ m)	9.1	7.8	6.1	4.1
 ANOP	 1Q20	 2Q20	 3Q20	 4Q20

Group (Adj, USD m)	90.2	98.6	77.4	86.6
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PARTICULARS

- (i) *1Q20 Results Pack, pp 7, 8, 22, 23 and 36.*
- (ii) *2Q20 Results Pack, pp 9, 11, 14, 22, 23 and 36.*
- (iii) *3Q20 Results Pack, pp 10, 12, 15, 23 and 24.*
- (iv) *4Q20 Results Pack, pp 7, 10, 13, 26 and 27.*

29. James Hardie published the following financial results for the Group in FY20:

- (a) Total Net Sales of US\$2,607 million;
- (b) Adjusted EBIT of US\$487 million; and
- (c) Adjusted Net Operating Profit of US\$352.8 million.

PARTICULARS

- (i) *FY20 Annual Report, p 5.*

30. In FY21 prior to the commencement of the Relevant Period (between 1 April 2020 and 31 March 2021), James Hardie published the following quarterly results:

Net Sales	1Q21	2Q21	3Q21	4Q21
Group (USD m)	626.3	736.8	738.6	807.0
NA (USD m)	451.8	515.0	518.1	555.3
APAC (AUD m)	138.7	170.6	163.3	162.6
EU (€ m)	75.4	85.3	85.3	104.6
EBIT	1Q21	2Q21	3Q21	4Q21
Group (Adj, USD m)	124.9	163.1	167.9	173.1
NA (USD m)	130.9	148.6	155.6	152.9
APAC (AUD m)	33.6	54.1	45.9	43.7
EU (€ m)	2.0	9.4	8.8	15.7
ANI	1Q21	2Q21	3Q21	4Q21
Group (Adj, USD m)	89.3	120.5	123.3	124.9

PARTICULARS

- (i) *1Q21 Results Pack, pp 6, 7, 8, 10 and 13.*
- (ii) *2Q21 Results Pack, pp 7, 8, 10, 12 and 16.*
- (iii) *3Q21 Results Pack p 4.*
- (iv) *4Q21 Results Pack p 5.*

31. James Hardie published the following financial results for the Group in FY21:

- (a) Total Net Sales of US\$2,909 million;
- (b) Adjusted EBIT of US\$629 million; and
- (c) Adjusted Net Income (ANI) of US\$458 million.

PARTICULARS

- (i) *FY21 Annual Report, p 5.*

32. In FY22 prior to but also including the commencement of the Relevant Period (between 1 April 2021 and 31 March 2022), James Hardie published the following quarterly results:

Net Sales	1Q22	2Q22	3Q22	4Q22
Group (USD m)	843.3	903.2	900.0	968.2
NA (USD m)	577.1	635.3	644.9	694.0
APAC (AUD m)	184.1	196.6	196.5	200.5
EU (€ m)	103.3	104.6	97.6	115.0
 EBIT	 1Q22	 2Q22	 3Q22	 4Q22
Group (Adj, USD m)	180.5	205.7	204.1	225.3
NA (USD m)	169.3	182.5	183.3	206.1
APAC (AUD m)	50.4	60.6	53.6	52.8
EU (€ m)	13.5	14.2	10.4	16.1
 ANI	 1Q22	 2Q22	 3Q22	 4Q22
Group (Adj, USD m)	134.2	154.9	154.1	177.5

PARTICULARS

- (i) *1Q22 Results Pack, p 5.*
- (ii) *2Q22 Results Pack, p 6.*
- (iii) *3Q22 Results Pack, p 5.*
- (iv) *4Q22 Results Pack, p 6.*

33. James Hardie published the following financial results for the Group in FY22:

- (a) Total Net Sales of US\$3,614.7 million;
- (b) Adjusted EBIT of US\$815.6 million; and
- (c) ANI of US\$620.7 million.

PARTICULARS

- (i) *FY22 Annual Report, p 2.*

C.2 James Hardie's 7 February 2022 Guidance

34. On 7 January 2022, James Hardie published and released to the ASX an announcement titled "James Hardie Industries Appoints Harold Wiens as Interim CEO" (the **7 January Announcement**).
35. In the 7 January Announcement, James Hardie made the following statements:
- (a) Wiens had been appointed Interim CEO;
 - (b) Previous CEO Jack Truong's employment had been terminated, effective immediately, for breaches of the James Hardie Code of Conduct;
 - (c) In addition:
 - (i) Chair ~~Michael~~ Hammes had been appointed to the role of Executive Chairman while the CEO succession was undertaken;
 - (ii) Gadd had been promoted to North America President;
 - (d) As to FY22 guidance:
 - (i) Based on the continued, strong execution of the global strategy across all three regions and the expectation for continued residential and market growth in the USA, James Hardie's management was raising its guidance for fiscal year 2022, ending 31 March 2022;
 - (ii) Management raised fiscal year 2022 ANI guidance range to US\$605 million to US\$625 million, raised from the prior guidance range of US\$580 million to US\$600 million; and
 - (iii) The comparable prior year ANI for fiscal year 2021 was US\$458 million.

PARTICULARS

- (i) *7 January Announcement, pp 1 and 2.*
36. On 7 January 2022, a call with market analysts was held in conjunction with the 7 January Announcement (the **January Special Call**). At the January Special Call, James Hardie made the following statements:
- (a) James Hardie was "*currently finalizing our annual planning process and expect continued momentum into fiscal year 2023*";
 - (b) James Hardie planned to provide guidance for FY23 at the third quarter earnings release call on 8 February 2022;
 - (c) the guidance for FY23 will "*reflect the continued momentum that we've built this year*";
 - (d) "*there's not going to be any backing away from any of the targets we've set out. The team is well positioned to deliver on them.*"

PARTICULARS

- (i) *The statements (a) to (d) above were express, and made by Miele in the January Special Call.*

37. The proposal that guidance for the coming financial year would be presented at the same time as third quarter earnings represented a departure from usual practice for James Hardie, which had not done so for at least the previous decade.

PARTICULARS

- (i) *3Q12 Results Pack, p 7.*
- (ii) *3Q13 Results Pack pp 6 and 7.*
- (iii) *3Q14 Results Pack pp 7 and 8.*
- (iv) *3Q15 Results Pack p 3.*
- (v) *3Q16 Results Pack, p 3.*
- (vi) *3Q17 Results Pack, p 3.*
- (vii) *3Q18 Results Pack, p 3.*
- (viii) *3Q19 Results Pack, p 3.*
- (ix) *3Q20 Results Pack, p 4.*
- (x) *3Q21 Results Pack, p 4.*

38. On 7 February 2022, James Hardie published and released to the ASX the 3Q22 Results Pack (**7 February Announcement**).

39. In the 7 February Announcement, James Hardie made the following statements:

(a) as to FY22 guidance:

- (i) Based on the continued, strong execution of the global strategy across all three regions and the expectation for continued residential and market growth in the USA, James Hardie's management was raising its guidance for fiscal year 2022, ending 31 March 2022;
- (ii) Management raised fiscal year 2022 ANI guidance range to US\$620 million to US\$630 million, raised from the prior guidance range of US\$605 million to US\$625 million announced on 7 January 2022; and
- (iii) The comparable prior year ANI for fiscal year 2021 was US\$458 million, (together the **FY22 Guidance**).

(b) as to FY23 guidance:

- (i) James Hardie's management announced a fiscal year 2023 ANI guidance range of US \$740 million to US \$820 million, an 18-31% increase from FY22 guidance midpoint; and
- (ii) For the North America division:

- (A) Net Sales Growth of 16% to 20% from FY22 was expected; and
 - (B) An EBIT Margin of 30% to 33% was expected,
- (together, the **FY23 Guidance**).

PARTICULARS

- (i) *The FY22 Guidance statements were express, and made in writing in the 3Q22 Results Pack, pp 5 and 47.*
- (ii) *The FY23 Guidance statements were express, and made in writing in the 3Q22 Results pack, pp 5 and 48.*

40. On 7 February 2022, an earnings call with analysts was held in conjunction with the 7 February Announcement (the **February Earnings Call**). At the February Earnings Call, James Hardie also made the following statements:

- (a) With respect to the R&R Sector:
 - (i) US homeowner wealth had never been higher, with home equity averaging \$US302,000 per property;
 - (ii) even if interest rates rose 100 basis points, that would only cost homeowners an extra \$US25 a month on average, based on those taking out a \$US50,000, 10-year home equity loan to complete renovations;
 - (iii) James Hardie did not believe this potential for interest rates to rise was a deterrent to homeowners deciding to remodel their homes; and
 - (iv) James Hardie saw the R&R Sector as “*pretty robust, at least for the next 24 months*”;
- (b) “*there's a lot of backlogs within the new construction space as well, a lot of uncompleted homes*”;
- (c) James Hardie expected to increase market share in North America during FY23; and,
- (d) in the context of visibility on customer orders in the North American business, James Hardie had “*fairly strong commitments*” from customers and was “*very very confident that the numbers are right*”,

(together, the **7 February Statements**).

PARTICULARS

- (i) *The 7 February Statements (a), (c) and (d) above were express, and made by Gadd in the February Earnings Call.*
- (ii) *The 7 February Statement (b) above was express and made by Miele in the February Earnings Call.*

41. On 7 February 2022, by reason of the matters pleaded in paragraphs 39 and 40, James Hardie made the following representations to the market of investors and potential investors in JHX Shares (**Affected Market**):

(a) James Hardie would deliver:

- (i) growth of between 17% to 32% in ANI for the FY23 year; and
- (ii) a range of US\$740 million to US\$820 million for ANI for FY23,

(FY23 Group Guidance Representations);

(b) James Hardie's NA Business would achieve:

- (i) Net Sales Growth of 16% to 20%; and
- (ii) an EBIT Margin of 30% to 33%,

(NA FY23 Guidance Representations);

(b1) James Hardie's NA business would experience strong demand in FY23 in both the R&R Sector and the New Construction Sector (**Demand Guidance Representation**);

(c) ~~James Hardie did not consider~~ increases in interest rates ~~would not to~~ significantly impact the demand for its products (**Interest Rate Demand Guidance Representation**);

(d) James Hardie would ~~expected to~~ increase market share in FY23 (**Market Share Representation**);

(e) James Hardie had strong customer commitments and ~~confidence in its~~ visibility on future orders (**Pipeline Representation**),

(each being **FY23 Guidance Representations**).

PARTICULARS

(i) *The FY23 Guidance Representations in sub-paragraphs (a) and (b) were express, and the Plaintiff refers to the FY23 Guidance pleaded in paragraph 39(b);*

(ii) *The FY23 Guidance Representation in sub-paragraph (b1) was partly express and partly implied, and the Plaintiff refers to the 7 February Statements pleaded in paragraph 40(a)(iv), (b), (c) and (d) and the particulars therein.*

(iii) *The FY23 Guidance Representations in sub-paragraphs (c), (d) and (e) were partly express and partly implied, and the Plaintiff refers to the 7 February Statements pleaded in paragraph 40(a)(ii)-(iii), (b), (c) and (d) and the particulars therein.*

42. On 7 February 2022, by reason of the matters pleaded in paragraphs 38 to 41, James Hardie made the following representations to the Affected Market~~market of investors and potential investors in JHX Shares~~ (**Affected Market**):

(a) James Hardie had reasonable grounds for making each of the FY23 Guidance Representations (**FY23 Guidance Basis Representation**);

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

(i) the ANI that James Hardie would derive, both in the short and medium-term, generally and from its NA Business;

(ii) its net sales and EBIT margin in FY23, generally and from its NA Business;

(iiA) the level of demand for FC Products from its NA Business in FY23;

(iii) the impact of inflation and the increase in interest rates by the US Federal Reserve on the demand for FC Products and margins in its NA Business in FY23;

(iv) the likelihood that James Hardie would increase market share in FY23, and the impact of competition on the demand for FC Products in its NA Business in FY23; and/or

(v) ~~the reliability of~~ its backlog of and forecast future customer orders, and their impact on the demand for FC Products in its NA Business in FY23,

(**Guidance Reliability Representations**);

(c) ~~[Not used] there was no information known to James Hardie which created a material risk that the FY23 Guidance Representations were unreliable~~ (**No Material Risk Representation**);

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

PARTICULARS

Each of the February Implied Representations is to be implied from the giving by James Hardie of the FY23 Guidance, the making by James Hardie of the 7 February Statements and the making by James Hardie of the FY23 Guidance Representations.

CA. HOW THE FY23 GUIDANCE WAS PREPARED

42A. At all material times, James Hardie prepared forecasts for each of its NA, APAC and EU divisions on a monthly basis and used a convention whereby each forecast incorporated the latest year to date actuals plus a forecast for the remaining months.

PARTICULARS

Presentation, 'NA Demand Planning Process', 19 May 2022
[JHX.0027.0061.8257].

42B. In November 2021, James Hardie began to incorporate FY23 forecasts into its monthly forecasting cycle and prepared the first iteration of the FY23 NA forecast (the FY23 7+5 NA forecast):

<u>USD (m)</u>	<u>FY23 7+5</u>
<u>Volume (mmstf)</u>	<u>3,467.5</u>
<u>Net sales</u>	<u>\$3,146.6</u>
<u>Cash cost</u>	<u>\$1,344.8</u>
<u>Freight cost</u>	<u>\$273.9</u>
<u>Unallocated</u>	<u>=</u>
<u>EBIT</u>	<u>\$1,046.4</u>
<u>EBIT margin</u>	<u>33.3%</u>

PARTICULARS

(i) Excel Spreadsheet, '7+5 HFM Upload Template – FY22-FY25 – NA', 15 November 2021 [JHX.0031.0029.8810]; Excel Spreadsheet, 'FY23 8+4 NA Forecast Draft, [JHX.0050.0002.6775].

42C. In December 2021, James Hardie prepared the FY23 8+4 NA Forecast:

<u>USD (m)</u>	<u>FY23 8+4</u>
<u>Volume (mmstf)</u>	<u>3,443.5</u>
<u>Net sales</u>	<u>\$3,111.3</u>
<u>Cash cost</u>	<u>\$1,307.3</u>
<u>Freight cost</u>	<u>\$271.8</u>
<u>Unallocated</u>	<u>\$87.7</u>
<u>EBIT</u>	<u>\$1,004.2</u>
<u>EBIT margin</u>	<u>32.3%</u>

PARTICULARS

- (i) The FY23 8+4 NA Forecast contained an 'unallocated' costs line of \$87.7 million that forced an EBIT margin of 32% for Q1 – Q3, and 33% for Q4.
- (ii) Excel Spreadsheet, 'FY23 8+4 NA Forecast Draft, [JHX.0050.0002.6775]].

42D. In January 2022, James Hardie prepared the FY23 9+3 NA Forecast:

<u>USD (m)</u>	<u>FY23 9+3</u>
<u>Volume (mmstf)</u>	<u>3,414.8</u>
<u>Net sales</u>	<u>\$3,085.1</u>
<u>Cash cost</u>	<u>\$1,296.9</u>
<u>Freight cost</u>	<u>\$292.0</u>
<u>Unallocated</u>	<u>\$46.0</u>
<u>EBIT</u>	<u>\$995.6</u>
<u>EBIT margin</u>	<u>32.3%</u>

PARTICULARS

- (i) Excel Spreadsheet, 'Copy of FY22-FY25 9+3 Mgmt Reported PL v1 – NA', 17 January 2022, [JHX.0031.0003.2484].
- (ii) The FY23 9+3 NA Forecast contained an 'unallocated' costs line of \$46 million that forced an EBIT margin of 32.3% for FY23.

42E. On 16 January 2022, Miele emailed the APAC, EU, NA and finance leadership teams about a "Forecast Blitz" requesting that each division resubmit the FY23 9+3 Forecast and remove all "hedges".

PARTICULARS

- (i) Email from Miele to Gadd and Ryan Kilcullen, 15 January 2022, before the Forecast Blitz is communicated to the APAC, EU, NA and finance leadership teams, stating that "...I believe we need to perform a quick refresh / deep review of the 9+3... We need to flush out all hedges, etc. I don't plan on sharing this version of the forecast with the Board, or use it to set bonuses, but we need 100% clarity on what our best estimate is. I want us to manage any hedge on one UNALLOCATED line so we have full understanding to deliver every single quarter" [JHX.0002.0003.8672].
- (ii) Email from Miele to John Arneil, Jörg Brinkmann, Ryan Kilcullen, Gadd, Daniel James, Brian Jungwirth, Beth Geisen, Khamille De

Lara and Sayan Duttachoudhury, 16 January 2022
[JHX.0002.0001.3133].

42F. In late January 2022, James Hardie updated the FY23 9+3 NA Forecast (the **Final FY23 9+3 NA Forecast**):

<u>USD (m)</u>	<u>FY23 9+3</u>
<u>Volume (mmstf)</u>	<u>3,414.8</u>
<u>Net sales</u>	<u>\$3,085.1</u>
<u>Cash cost</u>	<u>\$1,296.9</u>
<u>Freight cost</u>	<u>\$291.8</u>
<u>Unallocated</u>	<u>\$39.5</u>
<u>EBIT</u>	<u>\$989.4</u>
<u>EBIT margin</u>	<u>32.1%</u>

PARTICULARS

- (i) Excel Spreadsheet, Copy of FY22-FY25 9+3v2 Mgmt Reported PL v1 – NA, 28 January 2022 [JHX.0032.0009.0146].
- (ii) The final FY23 9+3 NA Forecast contained an ‘unallocated’ costs line of \$39.5 million (reduced from \$87.5 million in the FY23 8+4 NA Forecast and \$46 million in the FY23 9+3 NA Forecast) that forced an EBIT margin of 32.1% for FY23.

42G. The Final FY23 9+3 NA Forecast was presented to the Board at the 3 February 2022 Board meeting and was not changed at the time James Hardie provided the FY23 Guidance.

PARTICULARS

Board Presentation ‘JH Integrated Strategic Plan FY23-FY24’, 3 February 2022, [JHX.0011.0001.2053_0059] at 0108 to 0111.

42H. At the time of providing the FY23 Guidance, James Hardie had not finalised its fixed FY23 financial commitment (the FY23 Plan), or its FY23 – FY25 Strategic Plan (the **3 Year Plan**).

PARTICULARS

- (i) Email from Miele to Hammes, 21 February 2022 regarding the proposal for the 3 Year Plan at the May board meeting, where Miele states “Our recommendation is that we complete the 3 year planning process internally – that is, complete the financials for FY24 & FY25 and make any necessary revisions to FY23 based on new information obtained between now and May. [JHX.0002.0003.3123].

- (ii) Email from Brian Jungwirth to David Hill, Jill Gellatly and Michael Volk, 11 March 2022, stating that “The three year plan was not presented to the BOD in the Feb Board meeting like last year. They [sic] was only a high level slide for next year presented and that is true for all regions...” [JHX.0027.0001.1311].

D THE TRUE POSITION AS AT 7 FEBRUARY 2022

D.1 Demand for FC Products and Competing Products in the NA Market in FY21, and as at 7 February 2022

43. Between early 2021 and early 2022, the suppliers of Competing Products to FC Products, namely vinyl, engineered and natural wood, were exposed to short-term supply chain issues, including:
 - (a) significant material shortages;
 - (b) significant labour shortages;
 - (c) global supply chain constraints, in respect of products that were manufactured outside of the US; and
 - (d) wait time on manufacturing capacity expansion projects.

PARTICULARS

- (i) Cornerstone Building Brands, Inc. Q3 2021 Earnings Call, 10 November 2021, p 6.
 - (ii) Email from James Brennan-Chong to Grant Taylor and Marc Castillo, 12 October 2021, stating that “LP is currently supply constrained until March of 2022, when they are expected to have commissioned new capacity” [JHX.0013.0019.6946].
 - (iii) Email from Marc Castillo to James Brennan-Chong, 10 December 2021, noting that fiber cement competitor Nichiha, had completed a new plant in North America and production capacity would increase by 20% [JHX.0013.0017.3716].
 - (iv) Presentation, ‘NA Price Increase Recommendation’, 10 October 2021. “Allura continues to experience significant supply constraints” and “Vinyl producers were experiencing “delays in shipments and service out 6 weeks”: [JHX.0009.0042.0076 at .7748].
 - (v) Further particulars will be provided on completion of ~~discovery~~ and expert evidence.
44. Between early 2021 and early 2022, US lumber prices fluctuated significantly, spiking twice at over 300% of the long-term average of approximately US\$400 per 1000 board feet.

PARTICULARS

- (i) Current and historical lumber commodity prices available online at <https://nasdaq.com/market-activity/commodities/lbs/>
- (ii) Email from James Brennan-Chong to Miele, 11 January 2022 where Brennan-Chong notes “Lumber prices have collapsed” and “US residents free to spend their time doing other things than home maintenance and DIY.” [JHX.0013.0015.6924].

45. By reason of the matters in paragraphs 43 and 44 above, between early 2021 and early 2022, there was a substantial reduction in supply, and/or significant increases in price, for Competing Products in the NA Market.

PARTICULARS

- (i) *Cornerstone Building Brands, Inc. Q3 2021 Earnings Call, 10 November 2021, p 6.*
- (ii) *Cornerstone Building Brands, Inc. Q1 2022 Results, 3 May 2022, p 1.*
- (iii) *Further particulars will be provided on completion of ~~discovery~~ and expert evidence.*

46. Between November 2021 and early 2022, there was an increase in volume of new construction in the US residential housing construction market (both in total, and for single unit residential construction).

PARTICULARS

US Census Bureau Monthly New Residential Construction data – New housing starts:

Month	Total	Single Unit
Jan 2021	1,602	1,117
Feb 2021	1,430	1,053
Mar 2021	1,711	1,243
Apr 2021	1,505	1,061
May 2021	1,605	1,110
Jun 2021	1,664	1,165
Jul 2021	1,573	1,124
Aug 2021	1,576	1,095
Sep 2021	1,559	1,094
Oct 2021	1,563	1,079
Nov 2021	1,706	1,220
Dec 2021	1,768	1,212
Jan 2022	1,666	1,157

47. By reason of matters ~~raised above~~ pleaded at paragraphs 43 to 46 above:

- (a) the demand for James Hardie's FC Products in the NA Market was elevated between 2021 and 7 February 2022 ~~the beginning of the Relevant Period~~; but
- (b) due to the temporary nature of the factors driving the increase, it was likely that the elevated demand would ease prior to or during FY23 (that is, before or during the period from 1 April 2022 to 31 March 2023),
(the temporary elevated demand being the **Temporary FC Product Demand Conditions**).

D.2 Inflationary pressures and increased interest rates in the US, as at 7 February 2022

D.2.1 Inflation

48. From in or around October 2021 to January 2022, the inflation rate in the United States increased significantly.

PARTICULARS

*US Bureau of Labor Statistics January 2020 to January 2023 data
– 12 month inflation rate:*

Month	Total
Mar 2021	<u>1.72.6%</u>
Apr 2021	<u>2.64.2%</u>
May 2021	<u>4.25.0%</u>
Jun 2021	<u>5.40%</u>
Jul 2021	<u>5.4%</u>
Aug 2021	<u>5.34%</u>
Sep 2021	<u>5.4%</u>
Oct 2021	<u>6.2%</u>
Nov 2021	<u>6.82%</u>
Dec 2021	<u>7.06.8%</u>
Jan 2022	<u>7.50%</u>

D.2.2 Interest rate rises

49. On or around 26 January 2022, the US Federal Reserve published and released a statement that inflation was well above two percent and with a strong labour market and the Committee expected it would soon be appropriate to raise the target range for the federal funds rate (the **January Interest Rate Likely Rise Statement**).

PARTICULARS

The January Interest Likely Rate Rise Statement was express and contained in the US Federal Reserve, 'Federal Reserve press release', 26 January 2022, p 1.

~~D.3 The likely impacts on James Hardie's NA Business as at 7 February 2022~~

D.2.3 Impact of inflation

50. As at 7 February 2022, US inflation, commonly measured by the Consumer Price Index (CPI), was well above two percent and further inflationary pressures for 2022 were likely.

PARTICULARS

- (i) *The Plaintiff repeats paragraphs 48 to 49 above.*
 - (ii) *David Roberts emails Miele on 14 January 2022 stating that 'The CPI (Consumer Price Index) is the most common metric that is tracked for inflation – specifically as it relates to impact on households etc. This is the number that gets quoted in the news etc.': [JHX.0005.0006.6460.]*
51. As at 7 February 2022, high inflation in the US was likely to increase the cost of building and construction materials in the US (**Inflation Conditions**).

PARTICULARS

- (i) *See for example James Hardie's statements in the 2Q23 Results Pack, p 10.*
 - (ii) *Further particulars will be provided on completion of ~~discovery~~ **and** expert evidence.*
52. By reason of the matters pleaded in paragraph 51 above, as at and from 7 February 2022 a sustained period of high inflation in the US was likely to have an adverse impact on the demand for James Hardie's products, as consumer spending in the residential housing market slowed (**Inflation Demand Conditions**).

PARTICULARS

- (i) *It was likely from around January 2022, as a consequence of high inflation in the US, that interest rates were set to increase.*
- (ii) *By reason of matters above, it was likely as at February 2022, that expected housing construction levels in FY23 would be adversely affected by increases in interest rates.*
- (iii) *Any drop in the housing construction market resulted in a decrease in demand for James Hardie's FC Products in North America.*
- (iv) *By reason of the matters above, it was likely that the decrease in demand for James Hardie's products would not be offset by any increase in prices due to the increased inflation.*
- (v) *By reason of the matters above, sustained high inflation in the US was likely to have an adverse impact on the Net Sales growth experienced by James Hardie's NA Business, and therefore the James Hardie Group.*

- (vi) *The backlog of homes under construction in the United States was not a reliable means for James Hardie to justify proportionate increases in demand for its products in the FY23 forecast.*
 - (vii) *Further particulars will be provided on completion of ~~discovery~~ and expert evidence.*
53. As at 7 February 2022, an increase in the cost of building and construction materials was likely to cause James Hardie's NA Business to incur additional "input and freight costs" Cost of Goods Sold (COGS), which would not be recouped from customers (COGS Increase Conditions).

PARTICULARS

- (i) *The additional COGS were "input and freight costs".*
 - (ii) *The Plaintiff refers to, for example, James Hardie's express statements in the 1Q23 Results Pack, "Q1 FY23 vs Q1 FY22", p 10.*
 - (iii) *The Plaintiff refers to the increased costs of freight, pulp, natural gas, labour and cement from increased inflation: 2Q23 Results Pack, p 10.*
 - (iv) *Further particulars will be provided on completion of ~~discovery~~ and expert evidence.*
54. By reason of the matters pleaded in paragraph 53 above, as at 7 February 2022, high inflation in the US (and the Inflation Conditions, Inflation Demand Conditions and/or COGS Increase Conditions) was likely to adversely impact the ANI growth and EBIT Margin achieved by James Hardie's NA Business, and James Hardie Group.

PARTICULARS

- (i) *The Plaintiff repeats the particulars to paragraphs 51, 52 and/or 53. The additional costs referred to in paragraph 53 would result in an impact in underlying ANI growth because of its impact on the Gross Margins.*
 - (ii) *Further particulars will be provided on completion of ~~discovery~~ and expert evidence.*
55. By reason of the matters pleaded in paragraphs 48 and 50 to 54, as at 7 February 2022, sustained high inflation in the US was likely to cause adverse impacts on the Net Sales Growth, ANI growth and EBIT Margin achieved by James Hardie's NA Business, and James Hardie Group in FY23 (together, the **7-February Inflation Impacts**).

D.2.4 Impact of interest rate rises

56. By no later than 7 February 2022, it was likely that the US Federal Reserve would increase interest rates through FY23 in order to combat inflation in the US (**Interest Rate Conditions**).

PARTICULARS

(i) *The January Interest Rate Likely Rise Statement is repeated.*

57. As at 7 February 2022, increases in interest rates by the US Federal Reserve and the Interest Rate Conditions were likely to adversely impact the demand for James Hardie's FC Products in the NA Market in FY23, in that they:
- (a) were likely to increase the cost of debt-funded building and construction materials; and
 - (b) were likely to dampen the demand for the R&R Sector and New Construction in the US residential housing construction market, **(Interest Rate Demand Conditions)**.
58. As at 7 February 2022, the ANI growth, Net Sales growth and EBIT Margin achieved by James Hardie's NA Business, and James Hardie in FY23 was likely to be adversely impacted by the increasing interest rate environment ~~matters~~ pleaded in paragraphs 50 to 57 **(February Interest Rate Impacts)**.

D.3A Cumulative demand impacts of market conditions

- 58A. As at 7 February 2022, demand for FC Products and volume growth in James Hardie's NA Business in FY 23 was likely to be adversely impacted by:
- (a) the Temporary FC Product Demand Conditions;
 - (b) the February Inflation Impacts; and/or
 - (c) the February Interest Rate Impacts.

D.3B. Demand Forecasting Method and Volume Forecasts as at February 2022

- 58B. As at 7 February 2022, James Hardie's FY23 demand forecasts upon which the FY23 Guidance, the 7 February Statements and the FY23 Guidance Representations were based were generated by applying historical market growth rates for the R&R Sector and the New Construction Sector as growth rates to FY22 volumes (the **Demand Forecasting Method**).

PARTICULARS

- (i) *Excel spreadsheet entitled FY23-27 Demand Roadmap Model 10.29.21, dated 15 November 2021 [JHX.0014.0007.3222].*
- 58C. The use of FY22 volume in the Demand Forecasting Method as a base for the FY23 volume forecast overstated, or was likely to overstate, underlying customer demand because James Hardie had undertaken promotions and other volume-shaping activity in FY21 and FY22 (prior to 7 February 2022) which meant that FY22 volumes were not, or were not likely to be, representative of underlying base volumes, as at 7 February 2022 or at any time thereafter in which the Demand Forecasting Method was used.

PARTICULARS

- (i) The position as at 7 February 2022 and thereafter is shown by the email from Clay Gruenstein to Sarah Mulhall, 19 April 2022, where Gruenstein issues a warning about the accuracy of the Demand Forecasting Method “This is a growth model that estimates our expected fair share volume by applying calculated market growth to prior year shipments. That methodology has worked extremely well in the past, but as you know, in addition to all sorts of unprecedented external factors throwing off our models, we’ve also made many adjustments in the segment over the past couple years that have caused shipments to significantly deviate from what we would have normally expected true demand levels to be.” [JHX.0032.0020.5830].
- (ii) The position as at 7 February 2022 and thereafter is shown by the email from Clay Gruenstein to Chad Fredericksen, 18 May 2022, where, in response to the year-on-year drop in Multi-Family sales evident by mid-May, Gruenstein states “...it dawned on me last night that this still an issue of deliberate actions we took in the segment to shape volume that caused abnormally skewed comps in April / May. We’ve done so much in the segment over the past couple years to intentionally influence volume that our models and the base volumes they depend on are hardly valid anymore and need some time of normalcy to reset.” [JHX.0034.0005.3765].
- (iii) The position as at 7 February 2022 and thereafter is shown by the email from Clay Gruenstein to Sarah Mulhall, 19 May 2022, where in explaining the decline in “I’m not particularly concerned with the current YoY decline in orders as we’ve taken so many actions in the segment to influence demand over the past year that volume comparisons will be unrealistic in several timeframes throughout this year, like the current. [JHX.0032.0033.7231].

58D. Further, or alternatively, as at 7 February 2022, the Demand Forecasting Method generated volume forecasts for FY23 which exceeded James Hardie’s manufacturing capacity.

PARTICULARS

- (i) Email from Elizabeth ‘Beth’ Geisen to Sean Patal, Joseph Mills, Sarah Mulhall and Matt Logan, 27 January 2022 where Geisen states “...we have not resourced unconstrained modeling/orders forecasting over the last year given supply constraints (forecast = shipment capability).” [JHX.0014.0010.1350].
- (ii) Email from Miele to Gadd, 7 April 2022 where Miele states “highlight that the volume number was determined by the supply chain team” [JHX.0002.0004.3506].

58E. Further, or alternatively, as at 7 February 2022, the Demand Forecasting Method: incorporated an assumption that the R&R/NC End Market Split was weighted towards

the R&R Sector on about a 65%/35% basis (the **End Market Split Assumption**), which:

- (a) had not been verified by James Hardie;
- (b) was not accurate;
- (a) meant that the Demand Forecasting Method was not able to correctly take into account changes in New Construction Sector growth rates.

PARTICULARS

- (i) Excel spreadsheet containing the FY23 9+3 volume build entitled “220106 FY23 9+3 Build with Regional PDG Adjusts.xlsx”, dated 6 January 2022 [JHX.0050.0003.3280], containing workbook links to:
 - (A) the excel spreadsheet entitled “The Regional BMG PDG build FY23 – FY25” dated 15 December 2021, [JHX.0014.0007.3218] at sheet ‘Historical ship + Estimate’,
 - (B) the excel spreadsheet entitled “FY23-27 Demand Roadmap Model 10.28.21.xlsx” at sheet BMG PDG Summary [JHX.0014.0007.3091].
- (ii) Email from Marc Castillo to James Brennan-Chong, 16 January 2022 noted that “There was no apparent way to breakout our volume by NC and R&R, which in hindsight makes sense” and that based off the John Burns data, James Hardie’s sales split was 40% NC and 60% R&R [JHX.0013.0003.1863].
- (iii) Email from Erik Booth to James Brennan-Chong, 23 January 2022 raised concerns about the accuracy of the 44 million homes figure (being total houses more than 40 years old) that was used by James Hardie to estimate the size of the repair and remodel market and stated “I felt it was embarrassing to wave one’s hand around and imply the available market for re-sides if 44MM homes” and that the real number of houses was closer to 15 million (including homes 30 to 40 years old) [JHX.0013.0005.1418].
- (iv) Email from Sarah Mulhall to Pam Chang, 2 February 2022 that stated “we do not have a true view of R&R vs New Construction but I can tell you what we estimate!” [JHX.0014.0009.3957].
- (v) Email from James Brennan-Chong to Erik Booth, 16 February 2022 estimating that on an annual basis, “the total siding market is 3,675m [standard feet]” which “Feels so low...” (noting that at this point in time, James Hardie was forecasting FY23 NA volume of 3,340mmst) [JHX.0013.0007.7890].
- (vi) Email from James Brennan-Chong to Erik Booth and Sarah Mulhall, 22 February 2022 where number of reside projects is discussed, noting that “re-sides are probably only half of R&R cladding.” [JHX.0013.0009.1078].

- (vii) Email from Erik Booth to Robert Scott, James Brennan-Chong and Marc Castillo, 7 March 2022 enclosing a NAHB survey which “indicates that fibre cement cladding in the US is 2/3 new construction and 1/3 R&R – opposite of what some ex-employees liked to posit” [JHX.0013.0004.3025].

58F. Further, or alternatively, as at 7 February 2022, the Demand Forecasting Method did not take into account adequately, or at all, that James Hardie had been clearing its backlog for approximately six months, and that, once the backlog had been cleared, there would be a drop in addressable demand.

PARTICULARS

- (i) Email from Nick Langhammer, to Beth Geisen, Stephanie Lunt and Mark Wallace, 20 October 2021 noted that “As Gadd brought up yesterday, our order file is decreasing because we are clearing out our backlog” [JHX.0032.0064.7879].
- (ii) Email from Beth Geisen to Gadd, 3 June 2022 that indicates James Hardie was beginning to clear its backlog as early as September 2021 [JHX.0038.0006.6628].
- (iii) Email from Miele to Gadd, 24 June 2022 enclosing a graph that demonstrates a decline in siding backlog since August 2021, and a sudden drop in siding backlog between May and June 2022 [JHX.0002.0002.8714].

58G. Further, or alternatively, as at 7 February 2022, the Demand Forecasting Method did not factor in the impact of the Temporary FC Product Demand Conditions (or their cessation) on customer demand adequately, or at all.

PARTICULARS

- (i) The Demand Forecasting Method used FY21 and FY22 market growth rates to forecast FY23 demand growth, and by doing so did not adjust for the Temporary FC Product Demand Conditions

58H. Further, or alternatively, as at 7 February 2022, the Demand Forecasting Method did not factor in the impact of the Inflation Demand Conditions and/or February Inflation Impacts on customer demand adequately, or at all.

PARTICULARS

- (i) The Demand Forecasting Method used FY21 and FY22 market growth rates to forecast FY23 demand growth, and by doing so did not adjust for the Inflation Demand Conditions or the February Inflation Impacts.

58I. Further, or alternatively, as at 7 February 2022, the Demand Forecasting Method did not factor in the February Interest Rate Impacts on customer demand adequately or at all.

PARTICULARS

- (i) The Demand Forecasting Method used FY21 and FY22 market growth rates to forecast FY23 demand growth, and by doing so did not adjust for the February Interest Rate Impacts.

58J. Further, or alternatively, as at and from 7 February 2022, the Demand Forecasting Method was not adequate to predict the volume growth that James Hardie's NA Business would experience in FY23.

PARTICULARS

- (i) Each of paragraphs 58C, 58D, 58E, 58F, 58G, 58H and/or 58I is repeated.
- (ii) The plaintiff says that the Demand Forecasting Method was not adequate at any time during which James Hardie was preparing the FY23 Guidance, including the times pleaded in paragraphs 42A to 42H.

D.3C Cumulative impacts of market conditions, methodology, and process

58K. As at and from 7 February 2022, James Hardie was unlikely to achieve the FY23 Guidance by reason of:

- (a) as to market conditions in the NA Business and their impacts, the matters pleaded in paragraph 58A (or any of them);
- (b) as to the methodology for forecasting demand and volume growth employed in the May Reaffirmed FY23 Guidance, the matters pleaded in paragraphs 58B to 58J; and/or
- (c) the matters pleaded in paragraphs 42A to 42H failing to sufficiently factor in (a) and (b) above into the company's forecasts.

58L. As at and from 7 February 2022, the FY23 Guidance was not reasonably based, by reason of:

- (a) as to market conditions in the NA Business and their impacts, the matters pleaded in paragraph 58A (or any of them);
- (b) as to the methodology for forecasting demand and volume growth employed in the May Reaffirmed FY23 Guidance, the matters pleaded in paragraphs 58B to 58J; and/or
- (c) the matters pleaded in paragraphs 42A to 42H failing to sufficiently factor in (a) and (b) above into the company's forecasts.

D.4 The February Information

59. As at 7 February 2022:

- (a) it was likely that the financial performance and financial results of James Hardie's NA Business in FY23 would be adversely affected by the impact of high inflation on the cost of and demand for FC Products;
- (b) it was likely that the financial performance and financial results of James Hardie's NA Business in FY23 would be adversely affected by the impact of increased interest rates on the demand for FC Products;
- (c) it was likely that the financial performance and financial results of James Hardie's NA Business in FY23 would be adversely affected by the demand for FC Products being impacted by increased competition and the end of temporary elevated demand conditions experienced in FY22 ~~the end of the Temporary FC Product Demand Conditions~~ ;
- (c1) it was unlikely that James Hardie's NA Business would achieve volume growth in FY23 to support net sales or earnings growth rates in FY23 in the order conveyed by the FY23 Guidance;
- (d) it was unlikely that James Hardie's NA Business would achieve net sales or earnings growth rates in FY23 in the order conveyed by the FY23 Guidance; and
- (e) it was unlikely (given the likely performance of the NA Business in FY23) that James Hardie would achieve EBIT and ANI growth rates in FY23 in the order conveyed by the FY23 Guidance,

((a) to (e) each being the **February Information**).

PARTICULARS

- (i) *Paragraphs ~~50~~ 43 to 58A above are repeated.*
- (ii) *Paragraphs 58B to 58J are repeated.*
- (iii) *Paragraph 58K and/or paragraph 58L are repeated.*
- (iv) *Further particulars will be provided on completion of ~~discovery~~ ~~and~~ expert evidence.*

60. Further, or alternatively, as at 7 February 2022, James Hardie's market share and position in the NA Market for FC Products was not likely to support net sales or earnings growth rates in FY23 in the order conveyed by the FY23 Guidance (**Additional February Information**).

PARTICULARS

- (i) *Paragraphs ~~43~~ 50 to 59 above are repeated.*
- (ii) *Further particulars will be provided on completion of ~~discovery~~ ~~and~~ expert evidence.*

E JAMES HARDIE'S MAINTENANCE AND REAFFIRMATION OF THE FY23 GUIDANCE ~~BETWEEN 7 FEBRUARY 2022 AND 16 AUGUST 2022~~

E.1 Maintenance of the FY23 Guidance Representations

61. Between 7 February 2022 and 16 August 2022, James Hardie did not say anything to modify, qualify or contradict any of the FY23 Guidance Representations.

PARTICULARS

James Hardie reaffirmed the FY23 Guidance Representations, and paragraphs 63 to 69 below are repeated.

62. By reason of the matters pleaded in paragraph 61, from 7 February 2022 to 15 August 2022 inclusive, James Hardie continued to make each of the FY23 Guidance Representations.

E.2 Reaffirmation of the FY23 Guidance Representations

63. On 17 May 2022, James Hardie published and released to the ASX the 4Q22 Results Pack (**17 May Announcement**), which included its Appendix 4E (preliminary final report) for FY22.

64. In the 17 May Announcement, James Hardie stated:

- (a) ANI for the James Hardie Group had increased 36% to US\$620.7 million for FY22;
- (b) There was a 20% increase in 4Q22 Group Net Sales; and
- (c) For the North America division, FY23 guidance of:
 - (i) Net Sales Growth of 18% to 22% (increase by 2% points from February); and
 - (ii) An EBIT Margin of 30% to 33% (no change from February).

PARTICULARS

These statements were express and contained in the 4Q22 Results Pack, pp 2, 5, 39 and 47.

65. Further, in the 17 May Announcement, James Hardie reaffirmed the FY23 Guidance, (save for the Net Sales Growth for the North America division which was increased), of US\$740 million to US\$820 million (the **May Reaffirmed FY23 Guidance**).

PARTICULARS

The May FY23 Reaffirmed Guidance was express and contained in the 4Q22 Results Pack, pp 2 and 47.

65A. The May Reaffirmed FY23 Guidance was information provided by James Hardie under, and in accordance with, ASX Listing Rule 4.3A.

66. On 17 May 2022, an earnings call with analysts was held in conjunction with the 17 May Announcement (the **May Earnings Call**). At the May Earnings Call, James Hardie also made the following statements:

- (a) about 65% of the company's business was centred on the R&R Sector, which was showing robust growth;
- (b) ~~renovation~~ R&R sector backlogs were running at more than double the normal levels;
- (c) rising interest rates were having little effect on R&R Sector demand; and
- (d) James Hardie was "*taking [market] share and we believe we'll continue to do that*".

(together, the 17 May Statements).

PARTICULARS

- (i) *The statement at (a) above was expressly made by Miele in the May Earnings Call.*
- (ii) *The statements at (b) to (d) above were expressly made by Gadd in the May Earnings Call.*

67. On 17 May 2022, by reason of the matters pleaded in paragraphs 63 to 66, James Hardie represented to the market of investors and potential investors in JHX Shares that, notwithstanding the US interest rate rises experienced since 7 February 2022:

- (a) James Hardie would achieve sufficient growth over FY23 to deliver:
 - (i) growth of 26% at the mid-point relative to FY22 in ANI for the FY23 year; and
 - (ii) a range of US\$740 million to US\$820 million for ANI for FY23,

(Reaffirmed FY23 Group Guidance Representations);

- (b) the North American division would achieve:

- (i) Net Sales Growth of 18% to 22% (an increase from 16% to 20%); and
- (ii) EBIT Margin of 30% to 33%,

(Increased NA FY23 Guidance Representations);

- (b1) James Hardie's NA's business would experience strong demand in FY23 in both the R&R Sector and the New Construction Sector (Reaffirmed Demand Guidance Representation);

- (c) James Hardie did not consider increases in interest rates would significantly impact the demand for its FC Products (**Reaffirmed Interest Rate Demand Guidance Representation**);
 - (d) James Hardie was increasing its market share, and expected this to continue (**Reaffirmed Market Share Representation**); and
 - (e) James Hardie had a significant backlog of customer orders for its FC Products (**Reaffirmed Pipeline Representation**),
- (each being **Reaffirmed FY23 Guidance Representations**).

PARTICULARS

- (i) *The Reaffirmed FY23 Guidance Representations were both express and implied, and the Plaintiff refers to the May Statements pleaded in paragraphs 63 to 66 and the particulars referred to therein.*
- (ii) *To the extent they were implied, the Plaintiff refers to the express statements pleaded in paragraphs 63 to 66, and says that the absence of any modification, qualification or contradiction to the FY23 Guidance Representations, either in the May Announcements, or prior to them, gave rise to the Reaffirmed FY23 Guidance Representations.*

68. Further, by reason of the matters pleaded in paragraph 67, James Hardie repeated each of the FY23 Guidance Representations.

PARTICULARS

- (i) *The Reaffirmed FY23 Guidance Representations were in substance a repetition of the FY23 Guidance Representations.*
- (ii) *The Increased NA FY23 Guidance Representations were in substance a repetition of the NA FY23 Guidance Representations.*
- (iii) *The Reaffirmed Demand Guidance Representation was in substance a repetition of the Demand Guidance Representation*
- (iv) *The Reaffirmed Interest Rate Demand Guidance Representation was in substance a repetition of the Demand Guidance Representation.*
- (v) *The Reaffirmed Pipeline Representation was in substance a repetition of the Pipeline Representation.*

69. Further, on 17 May 2022, by reason of the matters pleaded in paragraphs 63 to 68, James Hardie:

- (a) represented to the market of investors and potential investors in JHX Shares that James Hardie had reasonable grounds for:
 - (i) making each of the Reaffirmed FY23 Guidance Representations; and/or

- (ii) repeating, as at 17 May 2022, each of the FY23 Guidance Representations,

(Reaffirmed FY23 Guidance Basis Representations); and

- (b)** repeated, as at 17 May 2022, each of the Guidance Reliability Representations;

- (i) [Not used] ~~the Guidance Reliability Representation; and~~

- (ii) [Not used] ~~the No Material Risk Representation,~~

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

PARTICULARS

Each of the May Implied Representations is to be implied from the making by James Hardie of the Reaffirmed FY23 Guidance Representations, and the repetition by James Hardie of the FY23 Guidance Representations.

70. [Not used] ~~Throughout the Relevant Period, James Hardie represented to the market of investors and potential investors in JHX Shares that, notwithstanding the US interest rate rises and the US Construction Market Softening:~~

- ~~(a) — there was a significant backlog of orders in New Construction;~~

- ~~(b) — James Hardie expected to increase market share in North America during FY23;~~

- ~~(c) — R&R Sector backlogs were running at double the normal levels;~~

- ~~(d) — rising interest rates were having little effect on demand in the R&R Sector, which was showing robust growth;~~

- ~~(e) — management were confident that the assumptions used regarding backlogs and future customer orders generally were correct,~~

~~(Customer Backlog Representation.)~~

PARTICULARS

- ~~(i) — As to (a), statements expressly made by Miele in the February Earnings Call.~~

- ~~(ii) — As to (b), statements expressly made by Gadd in the February Earnings Call and the May Earnings Call.~~

- ~~(iii) — As to (c), statements expressly made by Gadd in the May Earnings Call and then again was expressly stated in Jefferies, 'James Hardie: It's FY24 That We Really Focus On', 16 August 2022, p 4 and RBC, 'James Hardie Industries plc: Setting themselves up to thrive, 16 August 2022, p1.~~

- ~~(iv) — As to (d), statements expressly made by Gadd in the February Earnings Call, and by Miele and Gadd in the May Earnings Call and then again was expressly made at the Investor Day 1~~

~~presentation and published in UBS 'James Hardie Industries: Investor Day – Key Takeaways 14 September 2022', p 1.~~

~~(v) As to (e), statements expressly made by Gadd in the February Earnings Call.~~

E.3 Maintenance of the Reaffirmed FY23 Guidance Representations

71. Between 17 May 2022 and 16 August 2022, when the August Announcements were released, James Hardie did not say anything to modify, qualify or contradict any of the Reaffirmed FY23 Guidance Representations.
72. By reason of the matters pleaded in paragraph 71, from 17 May 2022 until 16 August 2022, when the August Announcements were released, James Hardie continued to make each of the Reaffirmed FY23 Guidance Representations.

EA. HOW THE MAY REAFFIRMED FY23 GUIDANCE WAS PREPARED

72A. Between 7 February 2022 and 16 May 2022, in respect of preparing its monthly FY23 NA forecast, James Hardie:

(a) did not prepare a FY23 10+2 NA Forecast in February 2022.

PARTICULARS

- (i) Presentation, 'ELT Meeting – SGA', 23 May 2022 [JHX.0028.0002.8285].
- (ii) Excel Spreadsheet, 'FY23 11+1 NA Forecast Draft', 16 March 2022 [JHX.0050.0002.6751].

(b) prepared a FY23 11+1 NA Forecast in March 2022, a FY23 0+12 NA Forecast in April 2022, and an initial version of a FY23 1+11 NA Forecast on 12 May 2022. The forecasts for NA included:

<u>USD (m)</u>	<u>FY23 11+1</u>	<u>FY23 0+12</u>	<u>FY23 1+11</u>	<u>FY23 1+11 (rev)</u>
<u>Volume (mmstf)</u>	<u>3,414.8</u>	<u>3,460.5</u>	<u>3,464.9</u>	<u>3,474.9</u>
<u>Net sales</u>	<u>\$3,085.1</u>	<u>\$3,200.5</u>	<u>\$3,206.4</u>	<u>\$3,217.4</u>
<u>Cash cost</u>	<u>\$1,296.9</u>	<u>\$1,398.5</u>	<u>\$1,434.9</u>	<u>\$1,438.5</u>
<u>Freight cost</u>	<u>\$291.8</u>	<u>\$306.8</u>	<u>\$305.8</u>	<u>\$314.6</u>
<u>Unallocated</u>	<u>\$13.0</u>	<u>=</u>	<u>=</u>	<u>=</u>

<u>SG&A</u>	<u>\$299.8</u>	<u>\$294.1</u>	<u>\$292.4</u>	<u>\$272.7</u>
<u>EBIT</u>	<u>\$986.9</u>	<u>\$1,008.2</u>	<u>\$978.9</u>	<u>\$995.9</u>
<u>EBIT margin</u>	<u>32.0%</u>	<u>31.5%</u>	<u>30.5%</u>	<u>31.0%</u>

PARTICULARS

- (i) Column 1: The FY23 11+1 NA Forecast was finalised around 15 March 2022: See email from Kevin Brannan to Bruce Pinkley, Raahi Patel, Khamille De Lara and Frances Akalusi, 15 March 2022, [JHX.0031.0001.1147]; Excel Spreadsheet, '11+1 HFM Upload Template – FY22-FY23 – NA', 15 March 2022, [JHX.0031.0001.1149]; Excel Spreadsheet, 'FY23 11+1 NA Forecast Draft', 16 March 2022, [JHX.0050.0002.6751].
- (ii) Column 2: The FY23 0+12 NA Forecast was finalised around 18 April 2022: See Presentation, 'FY23 0+12 North America FP&A', 18 Apr 2022, [JHX.0032.0033.3183]; Excel Spreadsheet, 'Copy of 0+12 HFM Upload Template v1 – FY23 NA v3', 18 April 2022, [JHX.0031.0005.4270]; Email from Kevin Brannan to Bruce Pinkley, Frances Akalusi and Sayan Duttachoudhury, 19 April 2022, [JHX.0031.0001.7702].
- (iii) Column 3: The FY23 1+11 NA Forecast was finalised around 12 May 2022 with a projected EBIT of \$979M and EBIT margin of 30.5%: See Excel Spreadsheet, 'FY23 1+11 NA Forecast Review FINAL', 12 May 2022, [JHX.0031.0001.4598]; Excel Spreadsheet, 'Commercial Finance Workbook', 20 May 2022, [JHX.0031.0001.5656]. This version was later revised on around 20 May 2022 where EBIT was increased to \$995.9M and EBIT margin increased to 31% after Selling, General & Administrative costs (SG&A) was revised down by approximately \$20M, and volume was increased by 10mmstf: See Excel Spreadsheet, 'Commercial Finance Workbook', 20 May 2022, [JHX.0031.0001.5656]: Column 4

72B. At all material times between 6 January 2022 until the preparation of the FY23 0+12 NA Forecast in April 2022, volume in NA was held flat to 3,414.8 mmstf.

PARTICULARS

The plaintiff refers to paragraph 42F and 72A above and the particulars therein.

72C. The FY23 Plan, and the 3 Year Plan were loaded into James Hardie's Hyperion Financial Management (HFM) system on 19 April 2022.

PARTICULARS

Email from Kevin Brannan to Bruce Pinkley, Frances Akalusi and Sayan Duttachoudhury, 19 Apr 2022, [JHX.0032.0016.3680].

72D. The FY23 Plan and the 3 Year Plan were aggressive in terms of the revenue and EBIT growth targeted for FY23 from the NA Business.

PARTICULARS

- (i) Emails from Miele to Hammes between 19-20 April 2022 where Miele made the following statements in respect of the FY23 Plan[JHX.0005.0002.4426]:
 - (A) “I do not see any UPSIDE risk due to market conditions, mostly only downside. An idea would be to use the forecasts to set the 1.5x target rather than 1.0x knowing that the key risk is downward”.
 - (B) ‘Some of the plans are aggressive. I thought about this more again last night, I think setting some (or all) of the Plan figures at 1.5x is a simple method to cut through the market uncertainty and also drive the team in a year of not only market uncertainty but CEO uncertainty.’
- (ii) Email from Wiens to Bob Stefansic and Miele, 20 April 2022, regarding changing the FY23 Plan numbers to a 1.5x multiplier (from a 1.0x multiplier), Wiens stated “I think the best thing is to present the plan as it is and I will make a comment about its aggressiveness” [JHX.0005.0002.3921].
- (iii) Email from Gadd to Miele dated 25 April 2022, stating that “I still think the EBIT % [of 30.4%] is very aggressive... Actually so is the growth but overall EBIT % worries me the most.” [JHX.0005.0013.4316]
- (iv) Presentation, FY2023 Short-Term Incentive Plan, 11 May 2022. The presentation accompanying the proposed increase noted that “Management believes the targets are more aggressive than prior years” [JHX.0032.0034.4752].

72E. On 10 May 2022, James Hardie finalised its NA results for April 2022, the first month of FY23. The April 2022 results were well below the FY23 0+12 NA Forecast, and included:

(a) EBIT of \$52.0 million:

- (i) approximately 18% worse than the FY23 0+12 NA Forecast.
- (ii) approximately 11% higher than April FY22.

(b) EBIT margin of 24%;

- (i) approximately 320 bps worse than the FY23 0+12 NA Forecast.
- (ii) approximately 350 bps worse than April FY22.

(c) Net sales of \$216.6 million:

- (i) approximately 7% worse than the FY23 0+12 NA Forecast.

- (ii) approximately 27.1% higher than April FY22.
- (d) Cash cost of \$102.5 million:
 - (i) approximately 4% worse than the FY23 0+12 NA Forecast.
 - (ii) approximately 30% worse than April FY22.
- (e) Freight of \$23.8 million:
 - (i) approximately 4% worse than the FY23 0+12 NA Forecast.
 - (ii) approximately 34% worse than April FY22.
- (f) Volume of 243.4 mmstf:
 - (i) approximately 7% worse than the FY23 0+12 NA Forecast.
 - (ii) approximately 7.8% higher than April FY22.

PARTICULARS

Frances Akalusi circulated via email on 10 May 2022 the NA Business Results for April 2022 Wiens, Miele, Gadd and others, attaching a presentation, 'April FY23 – JHBP Business Results', 10 May 2022: [JHX.0005.0013.1036]; [JHX.0005.0013.1038].

72F. The biggest drivers of the miss to forecast in the April 2022 results pleaded in paragraph 72E above were:

- (a) volume, contributing \$(7.3) million to EBIT; and
- (b) increased cash cost, contributing \$(3.1) million to EBIT.

72G. On 11 May 2022, Miele, Gadd and senior NA leadership met to review the FY23 1+11 NA Forecast, which projected a 1Q23 EBIT margin of only 24.5%.

PARTICULARS

- (i) Excel Spreadsheet, 'FY23 1+11 NA Forecast Draft v2', 12 May 2022, [JHX.0050.0002.4972].
- (ii) Email from Marc Setty to Rick Wion, Atousa Ghoreichi and Joseph Charlson, 12 May 2022, forwarding an email from Gadd entitled 'Adjustments to hit the year') [JHX.0032.0028.0945].

72H. On 12 May 2022:

- (a) Miele and Gadd were informed that in respect of the NA 1Q23 Forecast, an EBIT margin of 27% was more or less a best case scenario that "require[d] all of the volume interventions to occur as well as more restrictions in SG&A."

PARTICULARS

Email from Shirley Criddle to Gadd and Miele, 13 May 2022, [JHX.0005.0004.2492].

- (b) Gadd sent an email to NA leadership instructing the team to get more aggressive on price increases while slowing recruitment, marketing spend, travel and entertainment and noted that “Yesterday we looked at the forecast and saw that with the inflationary costs that are coming into the business it puts our EBIT range at risk for the full year.”

PARTICULARS

Email from Marc Setty to Rick Wion and Atousa Ghoreichi, 12 May 2022, forwarding an email from Gadd entitled ‘Adjustments to hit the year’ [JHX.0032.0028.0945].

- (c) Miele emailed Gadd and in respect of the FY23 NA EBIT margin, stated, “I don’t see a path to 33%”.

PARTICULARS

See email from Miele to Gadd, 12 May 2022, [JHX.0002.0004.5117].

72I. On 12 May 2022, the Board convened for the first time since 3 February 2022 and the FY23 Plan and 3 Year Plan were presented, including the following financial commitments:

- (a) The FY23 NA Plan:

<u>NORTH AMERICA</u>			
<u>USD\$</u>	<u>FY23 Plan</u>	<u>FY22 Actual</u>	<u>FY23 VPY %</u>
<u>Volume (mmstf)</u>	<u>3,347.0</u>	<u>3,112.2</u>	<u>7.5%</u>
<u>Net Sales</u>	<u>\$3,055.8</u>	<u>\$2,551.3</u>	<u>19.8%</u>
<u>Cash Cost</u>	<u>\$1,352.2</u>	<u>1,140.9</u>	<u>18.5%</u>
<u>Freight</u>	<u>\$306.8</u>	<u>269.3</u>	<u>13.9%</u>
<u>SG&A</u>	<u>279.0</u>	<u>212.6</u>	<u>31.3%</u>
<u>EBIT</u>	<u>\$928.4</u>	<u>\$741.2</u>	<u>25.3%</u>
<u>EBIT %</u>	<u>30.4%</u>	<u>29.1%</u>	<u>130bps</u>

(b) The FY23 Global Plan:

<u>GLOBAL</u>			
<u>USD\$</u>	<u>FY23 Plan</u>	<u>FY22 Actual</u>	<u>FY23 VPY %</u>
<u>Volume (mmstf)</u>	<u>4,995</u>	<u>4,698</u>	<u>6%</u>
<u>Net sales</u>	<u>\$4,240</u>	<u>\$3,615</u>	<u>17%</u>
<u>Cash cost</u>	<u>\$1,934</u>	<u>\$1,704</u>	<u>13%</u>
<u>Freight</u>	<u>\$428</u>	<u>\$377</u>	<u>14%</u>
<u>SG&A</u>	<u>\$554</u>	<u>\$460</u>	<u>21%</u>
<u>Adjusted EBIT</u>	<u>\$1,034</u>	<u>\$816</u>	<u>27%</u>
<u>Adjusted Net Income</u>	<u>\$779</u>	<u>\$621</u>	<u>25%</u>

(c) The FY23-FY25 Three Year Plan (Global):

<u>FY23 – FY25 THREE YEAR PLAN</u>			
<u>USD\$</u>	<u>FY23</u>	<u>FY24</u>	<u>FY25</u>
<u>Volume (mmstf)</u>	<u>4,995</u>	<u>5,375</u>	<u>5,628</u>
<u>Net sales</u>	<u>\$4,240</u>	<u>4,832</u>	<u>5,344</u>
<u>Cash cost</u>	<u>\$1,934</u>	<u>2,129</u>	<u>2,284</u>
<u>Freight</u>	<u>\$428</u>	<u>453</u>	<u>477</u>
<u>SG&A</u>	<u>\$554</u>	<u>602</u>	<u>668</u>
<u>Adjusted EBIT</u>	<u>\$1,034</u>	<u>\$1,320</u>	<u>\$1,525</u>
<u>Adjusted Net Income</u>	<u>\$779</u>	<u>\$1,022</u>	<u>\$1,191</u>

PARTICULARS

- (i) James Hardie's Board convened only on a quarterly basis and in Calendar Year 2022, convened on the following dates:

- (A) 3 February 2022;
 (B) 12 May 2022;
 (C) 10 – 11 August 2022; and

- (D) 4 November 2022.
- (ii) The FY23 Plan was not presented at the 3 February 2022 Board Meeting and instead, the basis for the FY23 Financial Outlook was the FY23 9+3 final Forecast (which forecast higher growth than the FY23 Plan): See Board presentation, 'JH Integrated Strategic Plan FY23-FY24', 3 February 2022, [JHX.0011.0001.2053 0059] at 0108 to 0111 and Email from Miele to Gadd and Ryan Kilcullen, 19 April 2022 containing 'NA Financials – May Board v Feb Board' [JHX.0002.0003.4370].
- (iii) Quarterly Business Update, 12 May 2022 Board Meeting, [JHX.0011.0001.1802 0120].

F THE TRUE POSITION BETWEEN 7 FEBRUARY 2022 AND 17 MAY 16 AUGUST 2022

F.1 Demand for FC Products and Competing Products in the NA Market ~~after 7 February 2022~~ as at 17 May 2022

73. After 7 February 2022, and by no later than 17 May ~~June~~ 2022, the spike in the lumber prices in the NA Market stabilised.

PARTICULARS

The lumber price peaked at approximately \$US1,300 per thousand feet on or around 16 February 2022, before falling to approximately:

- (a) *\$US1,000 per thousand feet on 28 March 2022;*
- (b) *\$US800 per thousand feet on 10 May 2022; and*
- (c) *\$US600 per thousand feet on 6 June 2022.*

Current and historical lumber commodity prices available online at <https://nasdaq.com/market-activity/commodities/lbs/>

- 73A As at 17 May 2022, competitor Louisiana Pacific had commenced operation of a new factory producing engineered wood siding.

PARTICULARS

Email from Gadd to John Madson, 4 May 2022 with the subject 'LP's new plant is started' noting that "This should have us concerned for sure. This plane [plant] while not ideally situated will have LP outing on another 220mmsft in the Northeast. This will allow them to flex there network and generally get more sales out. This plane [plant] can make, plank, panel and trim." [JHX.0009.0017.5447].

74. By reason of matters raised above at paragraph 73 and 73A, as at 17 May 2022, the supply of Competing Products made from natural and engineered wood, relative to James Hardie's FC Products, improved or was likely to improve in FY23 (**Competing Product Supply Improvement Conditions**).

PARTICULARS

- (i) The stabilisation in lumber prices led to a reduced cost of producing the timber-based siding, given the lower cost overall of the inputs required for production of the Competing Product; and
- (ii) This led to the cost of the Competing Product reducing overall, and becoming more price competitive vis-à-vis James Hardie's FC Products, which would result in an improvement in the supply of Competing Products relative to James Hardie's FC Products.

75. ~~Throughout~~ By 17 May 2022, supply-chain issues that had impacted the supply of Competing Products resolved, increasing the supply (or lowering the price) of Competing Products (**Further Competing Product Supply Improvement Conditions**).

PARTICULARS

- (i) 10 November 2021: 'PVC supply is slowly getting better' Cornerstone Building Brands Q3FY21 earnings call, [RAE.0001.0001.3322].
- (ii) 31 March 2022: Barclay's report '[W]e started to see normalization in PVC prices in early 2022: [JHX.0005.0001.4442].
- (iii) Word Document authored by Cecelia McDonald, 'Market Pulse Summary', 'Vinyl is returning to supply health and normal lead times' 18 April 2022, [JHX.0032.0020.5871].

76. By reason of matters raised above at paragraph 73 to 75, on or after 7 February 2022 and by 17 May 2022, customers became less likely to substitute James Hardie's FC Products in place of Competing Products, reducing demand for James Hardie's FC Products (**Competing Product Demand Conditions**).

PARTICULARS

- (i) the increased supply of Competing Products, as alleged at paragraphs 73 to 75 made it unnecessary for customers to substitute towards James Hardie FC Products given the price competitiveness of Competing Products increasing the demand of those products vis-à-vis James Hardie's FC Products; and
- (ii) This was likely to lead, and led, to reduced demand for James Hardie's FC Products.

77. Between February 2022 and August 2022, and as at 17 May 2022, there was a continuing decrease in the volume of new starts in the NA Market for US residential construction, including single unit construction (**US Construction Market Softening**).

PARTICULARS

US Census Bureau Monthly New Residential Construction data – New Starts:

Month	Total	Single Unit
Feb 2022	1,777	1,213
Mar 2022	1,716	1,191
Apr 2022	1,805	1,173
May 2022	1,562	1,073
Jun 2022	1,575	1,013
Jul 2022	1,377	900

- (i) Email from James Brennan-Chong to David Roberts and Marc Castillo, 17 February 2022, noting that “SF Starts down 2% and completions down 8%?!?! Wow.” [JHX.0013.0001.7541].
- (ii) Email from Gadd to Miele, 30 March 2022, that notes “[a]bsolute volumes of permits appear to be slowing” [JHX.0005.0008.0297].

78. By reason of matters pleaded at paragraphs 73 to 77 ~~43 to 58~~ above and ~~79 to 83~~ below, as at 17 May 2022, the demand for James Hardie’s FC Products in the NA Market in FY23 was likely to either decrease, or increase at a reduced rate from that experienced in FY22 (**May Demand/Competition Impacts**).

F.2 Continuing inflationary pressures and increased interest rates in the US

F.2.1 Inflation

79. Between 7 February 2022 and 16 August 2022 (including as at 17 May 2022), the inflation rate in the United States continued to remain at elevated levels.

PARTICULARS

US Bureau of Labor Statistics January 2020 to January 2023 data:

Month	Total
Feb 2022	7.5%
Mar 2022	8.5%
Apr 2022	8.0%
May 2022	8.6%
Jun 2022	9.1%
Jul 2022	8.5%

F.2.2 Interest rate rises

80. On 16 March 2022, the US Federal Reserve published and released a statement that the Committee had decided to raise the target range for the federal funds rate to 0.25% to 0.5% and anticipated that ongoing increases in the target range would be appropriate (the **March US Interest Rate Rise Statements**).

PARTICULARS

The March US Interest Rate Rise Statements were express and contained in the US Federal Reserve, 'Federal Reserve press release', 16 March 2022, p 1.

81. Further, on 4 May 2022, the US Federal Reserve published and released a statement that the Committee had decided to raise the target range for the federal funds rate to 0.75% to 1.0% and anticipated that ongoing increases in the target range would be appropriate (the **May US Interest Rate Rise Statements**).

PARTICULARS

The May US Interest Rate Rise Statements were express and contained in the US Federal Reserve, 'Federal Reserve press release', 4 May 2022, p 1.

82. ~~[Not used] On 15 June 2022, the US Federal Reserve published and released a statement that the Committee had decided to raise the target range for the federal funds rate to 1.5% to 1.75% and anticipated that ongoing increases in the target range would be appropriate (the **June US Interest Rate Rise Statements**).~~

PARTICULARS

~~*The June Interest Rate Rise Statements were express and contained in the US Federal Reserve, 'Federal Reserve press release', 15 June 2022, p 1.*~~

83. ~~[Not used] Further, on 27 July 2022, the US Federal Reserve published and released a statement that the Committee had decided to raise the target range for the federal funds rate to 2.25% to 2.5% and anticipated that ongoing increases in the target range would be appropriate (the **July US Interest Rate Rise Statements**).~~

PARTICULARS

~~*The July Interest Rate Rise Statements were express and contained in the US Federal Reserve, 'Federal Reserve press release', 27 July 2022, p 1.*~~

~~F.3 The Post-February likely impacts on James Hardie's NA Business~~

F.2.3 Impacts of inflation

84. Paragraphs 50 to 52-58 are repeated, as at 17 May 2022.

84A. Paragraph 53 is repeated, and further or alternatively, as at 17 May 2022, an increase in the cost of building and construction materials was likely to cause James Hardie's NA Business to incur additional COGS which would not be recouped from customers.

PARTICULARS

- (i) *The particulars to paragraph 53 are repeated.*

84B. Further to paragraph 84A, as at 17 May 2022, James Hardie's COGS expectation for FY23 had escalated to between \$90 million to \$130 million, a significant increase on the \$40 million to \$60 million expectation provided in February 2022.

PARTICULARS

- (i) *James Hardie 17 May 2022 Earnings Call. Express comments made by Miele [RAE.0001.0001.3099]. The estimate provided in February 2022 was \$40million to \$60 million.*
- (ii) *The Purchase Price Variance (PPV) within the FY23 1+11 NA Forecast shows that costs increased by more than \$35 million from the FY23 0+12 NA PPV forecast prepared in April 2022 to the FY23 1+11 NA PPV Forecast prepared in May 2022: See Email from Rahul Patel to Paul Seabrook and Robert Koch, 6 May 2022 [JHX.0027.0061.4770].*

84C. Further to paragraphs 84A and 84B, as at 17 May 2022, James Hardie had limited ability to increase prices in its NA Business to recoup increased COGS, and such steps were unlikely to offset the impact of inflation on COGS in its NA Business.

PARTICULARS

- (i) *On 18 April 2022, James Hardie announced an out-of-cycle price increase of 4% would take effect from 20 June 2022.*
- (ii) *The proposed increase was insufficient to offset all of the additional input and freight costs incurred.*
- (A) *Email from Kessner to manufacturing team, 18 May 2022. "The impact of inflation has pushed past our ability to offset through increased pricing and RTY/net hour performance": [JHX.0027.0067.9074].*
- (B) *The price increase was estimated to provide a \$70 million contribution to FY23 EBIT: See Board Paper, 'Enterprise Readiness for Uncertain Markets', 10 August 2022, [JHX JHX.0011.0001.1508_0047] at .0124*
- (C) *The FY23 1+11 NA Forecast, prepared in May 2022, estimated that EBIT would be down \$12.3 million against the previous FY23 0+12 NA Forecast, despite the incorporation of the out of cycle price increase: See Presentation, 'ELT Meeting', 24 May 2022, [JHX.0005.0001.0163] at .0170.*

- (iii) The proposed increase would not be felt until later in FY23 and any positive impact on James Hardie's immediate performance was limited
- (A) Whilst the price increase taken by JH will offset raw material headwinds as currently forecast, the impact would not be felt until Q2: See Email from Shirley Criddle to Gadd and Miele, 13 May 2022, [JHX.0031.0003.6371]
 - (B) On 9 June 2022 Shirley Criddle emails Bob Stefansic commenting that James Hardie needs to 'exercise cost control in the first half of the year to offset inflation' since the impact of their most recent price increase will not be felt until later in the FY, [JHX.0027.0060.1383].
 - (C) Benefits were not immediately realised due to shipping down backlog/open orders (i.e. product sold at the older (and lower) price), an increase in gross credit note accruals and other factors: See Email from Aleksander Mrugala to Frances Akalusi, 8 September 2022, [JHX.0031.0018.8112] And Email from Khamille De Lara to Ankush Agrawal to Shirley Criddle, 25 May 2022, [JHX.0027.0066.7971].
- (iv) The proposed increase was "a fairly large departure from James Hardie's commercial approach" and was poorly received by some of James Hardie's customers:
- (A) Out-of-cycle price increase could negatively impact retail channel: See Email from Jennifer Bressler, VP Retail Market Development to Gadd, 7 April 2022 [JHX.0009.0013.4272].
 - (B) Three days after James Hardie implemented its out-of-cycle price increase, one US homebuilder noted that the shift in macroeconomic conditions meant that "price increases must be eliminated" and that there was "not anymore room in the market to push pricing". Steve Jones (Sales) distributed this update to senior sales staff on 23 June 2022 noting "pricing push back is here" [JHX.0032.0030.2715]
 - (C) Gadd's comment in James Hardie's 16 May 2022 earnings call that James Hardie's customers "were the ones that actually recommended to us to take the price increase" was inaccurate – the customers he was referring to were contractors who faced a choice of price increases or surcharges imposed by James Hardie, and contractors preferred the former: see Earnings Call Transcript, 16 May 2022, [RAE.0001.0001.3099] at .3113 and Email from Gadd to Miele, 18 March 2022, [JHX.0002.0004.0286].
 - (D) Market Intelligence circulated third-party data to ELT that noted remodeling customers were becoming more budget constrained and "pushing back on constant price

increases”: Email from James Brennan-Chong to Miele and Gadd, 13 August 2022 [JHX.0005.0030.1228].

- (v) The proposed increase did not apply to existing backlog and any backlog that was shipped down following the 20 June 2022 price increase would be shipped at a cheaper price (pre the 4% increase)

84D. By reason of the matters pleaded in paragraphs 84 to 84C above, as at 17 May 2022, high inflation in the US was likely to adversely impact the ANI growth and EBIT Margin achieved by James Hardie’s NA Business, and James Hardie Group.

PARTICULARS

- (i) The Plaintiff repeats the particulars to paragraphs 53, 84A to 84B. The additional costs referred to in paragraphs 53, 84A and 84B would result in an impact in underlying ANI growth because of its impact on the Gross Margins.
- (ii) Further particulars will be provided on completion of expert evidence.

85. Further or alternatively, as at 17 May 2022, each of the matters pleaded in paragraphs 50 to ~~55-58~~ were (or remained) the case, or had been exacerbated by the matters pleaded in paragraphs 73 to ~~79~~ 78-above, and in particular:

- (a) the Inflation Conditions existed, or continued to exist;
(b) the Inflation Demand Conditions existed, or continued to exist;
(c) the COGS Increase Conditions existed, or continued to exist;

86. By reason of the matters pleaded in paragraphs 84 to 85, as at 17 May 2022, the further sustained high inflation in the US pleaded in paragraph 79 was likely to cause adverse (or increased adverse) impacts on the Net Sales Growth, ANI growth and EBIT Margin achieved by James Hardie’s NA Business, and James Hardie in FY23 for the reasons set out above in paragraphs 84 to 84D ~~51 to 53~~ (together, the **May Inflation Impacts**).

F.2.4 Impact of interest rate rises

86A. Paragraphs 56 to 57 are repeated, as at 17 May 2022.

87. As at and from 7 February 2022, alternatively 17 May 2022, it was likely that the US Federal Reserve would continue to increase interest rates through FY23 in order to combat inflation in the US.

PARTICULARS

- (i) ~~As from 7 February 2022, the January US Interest Rate Likely Rise Statement is repeated.~~
- (ii) As from 17 May 2022, the January US Interest Rate Likely Rise Statement, the March US Interest Rate Rise Statements and the May US Interest Rate Rise Statements are repeated.

88. As ~~at and from 7 February 2022, alternatively~~ 17 May 2022, further increases in interest rates by the US Federal Reserve (and/or the interest rate rises in fact implemented) were likely to adversely impact (or increasingly adversely impact) the demand for James Hardie's FC Products in the NA Market in FY23, in that they:
- (a) were likely to increase the cost of debt-funded building and construction materials; and
 - (b) were likely to dampen the demand for the R&R Sector and New Construction in the US residential housing construction market.
- 88A. Further or alternatively, as at 17 May 2022, each of the matters pleaded in paragraphs 56 to 57 were (or remained) the case, or had been exacerbated by the matters pleaded in paragraphs 80 to 81 above, and in particular the Interest Rate Demand Conditions existed, or continued to exist.
89. As at ~~7 February 2022, alternatively~~ 17 May 2022, ANI growth, Net Sales growth and EBIT Margin achieved by James Hardie's NA Business, and James Hardie in FY23 was likely to be adversely impacted by the increasing interest rate environment ~~matters~~ pleaded in paragraphs 84 to 88A (**May Interest Rate Impacts**).

F.3A Cumulative demand impacts of market conditions

- 89A. As at 17 May 2022, demand for FC Products and volume growth in James Hardie's NA Business in FY23 was likely to be adversely impacted by:
- (a) the Temporary FC Product Demand Conditions;
 - (b) the May Demand/Competition Impacts;
 - (c) the May Inflation Impacts; and/or
 - (d) the May Interest Rate Impacts.

F.4 Overestimation of Customer backlogs

90. As at 17 May 2022, ~~the method used by James Hardie's to calculate the~~ backlog of unfilled customer orders in the US was unlikely to be a reliable guide for actual sales in FY23 (**Customer Backlog Information**), in that, by reason of the matters pleaded in paragraphs 73 to 89:
- (a) it was likely that, with the increased inflation and interest rate pressures, new home construction in North America would decrease;
 - (b) interest rate rises would tend to lead a proportion of customers to cancel orders with James Hardie as end-market clients postponed or cancelled R&R Sector projects, and the risk of that phenomenon occurring would increase as interest rates increased;

- (c) increases in inflation would also tend to lead to “big builders” cancelling large projects as the increased input prices would mean that to the extent that the builders had already agreed to a fixed price for building projects, the margin between their costs and their revenue for those projects would be reducing, and the risk of this phenomenon occurring would continue to increase as inflation continued to rise;
- (d) reduction in supply chain constraints affecting Competing Products would tend to reduce the backlog as some customers would cancel orders and switch to Competing Products;
- (e) reduction in supply chain constraints affecting Competing Products would tend to reduce James Hardie’s market share;
- (f) the US Construction Market Softening would likely lead a proportion of customers in retail and wholesale channels “destocking” by selling existing inventory at a faster rate than it was being replenished by purchasing new FC Products from James Hardie, with the effect being to run down customer warehouse stocks, such that sales to end-consumers would not result in new orders from James Hardie.

90A. Further, as at 17 May 2022:

- (a) big builders, in clearing their own backlog of residential construction, had frequently already taken delivery of the necessary siding to complete the project, such that a surge in completions had little impact on demand for FC Products;

PARTICULARS

Email from Jamal Saghir to Stephanie Lunt, 10 March 2022, “... if the “surge” is DRH/ Lennar clearing out their backlog over the next three months. If that’s the case, we should NOT really see a spike in orders, since that material should in theory be in the channel due to builder delays.” [JHX.0032.0008.5974].

- (b) James Hardie had been clearing its own backlog of orders for approximately nine months;

PARTICULARS

- (i) The plaintiff refers to paragraph 58F and the particulars therein.

- (c) average backlog in 1Q23 was down 24% on 1Q22;

PARTICULARS

Email from Sarah Mulhall to Miele, 23 June 2022, “Please see below a file I sent to Shirley earlier- you will see April-June average backlog is down 24% YOY.” [JHX.0005.0006.5961].

- (d) absent the impact of shipping backlog, order volumes were only up 4% on 1Q22;

PARTICULARS

- (i) Email from Miele to Shirley Criddle and Beth Geisen, 1 July 2022, where Mulhall confirms order volumes were only up 4% compared to prior year to which Miele states “All that said – I believe we are at about 4=5% order volume growth for this period. And the only reason we are out performing that number is we are draining our backlog. As such, as the backlog evaporates I believe we are in REAL TROUBLE of seeing a big drop in our shipment growth year on year.” Miele then requests that Criddle prepare an analysis of how big the backlog is as at 30 June 2022 [JHX.0002.0010.3759].
- (e) it was not clear to James Hardie how much backlog was available to draw on for the balance of FY23;

PARTICULARS

The plaintiff refers to and repeats the particulars to paragraph 90A(d) above.

F.4A Actual performance between 7 February 2022 and 17 May 2022

90B. Paragraph 72E is repeated.

90C. James Hardie implemented a number of one-off initiatives in 4Q22 in order to boost volumes in NA in 4Q22.

PARTICULARS

- (i) Presentation, ‘Integrated S&OP L4 Update’, 27 Jan 2022). By 27 January 2022, James Hardie’s 4Q22 performance was off track and NA volume was trending below target [JHX.0005.0010.9324].
 - (ii) Presentation, ‘Integrated S&OP L4 Update’, 24 Feb 2022) [JHX.0005.0006.9446]; Presentation, ‘Integrated S&OP L4 Update’, 10 March 2022, [JHX.0032.0007.5589]. To meet the Q4 Forecast, a number of initiatives were introduced to boost volume results in the final 6 weeks of FY22 which included:
 - (A) shipping inventory of NT3 Trim from a region experiencing low demand to the South, which was experiencing relatively higher demand for that product;
 - (B) altering freight plans to send rail shipments South; and
 - (C) driving demand in the multi-family segment in the South and West.
- 90D. As at 17 May 2022, James Hardie had experienced improved volume results for 4Q22 when compared to earlier quarters in FY22.

PARTICULARS

- (i) The plaintiff refers to and repeats paragraphs 32 and 64(b) above, in which James Hardie’s 4Q22 results for NA are pleaded. Those

results showed significant improvement over prior quarters in FY22

90E. As at 17 May 2022, James Hardie's improved volume results in NA in 4Q22 as pleaded in paragraph 90D was the result of the one off initiatives implemented by James Hardie to meet the NA 4Q22 volume forecast, as pleaded in paragraph 90C.

90F. As at 17 May 2022, James Hardie's implementation of the one-off initiatives pleaded in paragraph 90C in order to meet its 4Q22 volume forecasts and achieve the 4Q22 results as pleaded in paragraph 90D, were likely to have, and had, a negative impact on James Hardie's volume results in NA in 1Q23.

PARTICULARS

- (i) Presentation, 'Integrated S&OP L4 Update', 3 March 2022). [JHX.0005.0005.3967]. A February 2022 invoicing miss (overall -26mmstft in NA) was moved to March 2022 as a +26mmstft beat to that month's forecast, which put more pressure on volume for March 2022.
- (ii) The 4Q22 volume levers created a pull forward of volume into 4Q22 which negatively impacted 1Q23 volume.
 - (A) Presentation, 'Integrated S&OP L4 Update', 14 April 2022. Miss to order rate in South Central "likely driven by pull forward into FY22 Q4": [JHX.0031.0005.1679] at .1682.
 - (B) Presentation, 'Integrated S&OP L4 Update', 28 April 2022. Miss in NA exteriors order rates "largely driven by PR Plank given Q4 load-in and Q1 production to service": [JHX.0005.0013.2281] at p 3.

F.4B Demand Forecasting Method and Volume Forecasts as at 17 May 2022

90G. As at 17 May 2022:

- (a) James Hardie continued to use the Demand Forecasting Method; and James Hardie's FY23 demand forecasts upon which the May Reaffirmed FY23 Guidance, the 17 May Statements and the Reaffirmed FY23 Guidance Representations were based were generated using the Demand Forecasting Method.
- (b) alternatively to sub-paragraph 90G(a):
 - (i) James Hardie had begun to forecast demand in the NA Business using an unconstrained order volume methodology, assigning sales volume sell assuming no supply chain constraints or regional allocations, using 10-month rolling growth trends with historical seasonality, and adjusting for baseline interventions and judgement calls for regions on allocation (the Revised Demand Forecasting Method); and

- (ii) James Hardie's FY23 demand forecasts upon which the May Reaffirmed FY23 Guidance, the 17 May Statements and the Reaffirmed FY23 Guidance Representations were based were generated using the Revised Demand Forecasting Method.

PARTICULARS

- (i) Presentation entitled "1+11 Volume" dated 20 April 2022 [JHX.0032.0022.0764]; Presentation entitled "NA Demand Planning Process" dated 19 May 2022 at [JHX.0027.0061.8257]. With its current state of knowledge, the plaintiff cannot say whether the Revised Demand Forecasting Method was used on and from 20 April 2022, or on and from 20 May 2022.
- (ii) James Hardie calculated the 10-month rolling growth trend at the region, finish and product group level and did so by adding the order rates for the previous 10 months divided by the sum of order rates for the comparable 10-month period in the previous year; see excel spreadsheet entitled "220526 2+10 Forecast Model BG C+ Edits" at 'Updated Forecast' [JHX.0014.0008.8618] and excel spreadsheet entitled 220620 3+9 Forecast Model v3 BG at 'Updated Forecast' [JHX.0014.0008.8671].
- (iii) The Revised Demand Forecasting Method became the first step in the monthly volume forecast process and represented the underlying demand for James Hardie's products and after the Revised Demand Forecasting Method was prepared:
- (A) it was 'lagged' to reflect the delay in orders to invoices; ColorPlus products were lagged by 20 days, Prime Products were lagged by 28 days, (the **Unconstrained Invoices Forecast**); and
- (B) the **Unconstrained Invoices Forecast** was provided to the supply chain team for adjustments for production and shipment capability constraints (the **Constrained Invoices Forecast**), being the final volume forecast that was loaded into the NA segment forecast.

90H. Further or alternatively to paragraph 58C, the use of FY22 volume in the Demand Forecasting Method, or alternatively in the Revised Demand Forecasting Method, as a base for the FY23 volume forecast overstated, or was likely to overstate, underlying customer demand because James Hardie had undertaken promotions and other volume-shaping activity in FY21 and which meant that FY22 volumes were not, or were not likely to be, representative of underlying base volumes, as at 17 May 2022 and at all times thereafter.

PARTICULARS

- (i) The particulars to paragraph 58C are repeated as at 17 May 2022.
- (ii) Email exchange between Shirley Criddle and Miele, 22 March 2022, where in response to Criddle's comments that "The issue is the lack of system data on the order side", Miele states, "[w]hat I

want you to focus on is how we leverage the order file data to identify trends, help drive the business and help with forecasting.”. Adds “[w]e are not leveraging the inbound orders enough” [JHX.0027.0060.3265].

(iii) Subsequent documents also are relied on, namely:

(A) Email exchange between Miele and James Brennan-Chong, 3 June 2022, regarding trends in customer data where Miele states, “We need to focus on the dealers and distributors. We have plenty of info on NC. R&R is what we need to figure out. We need the trends in the Boise, BFS, Lansing data.” [JHX.0002.0002.2429].

(B) Email exchange between James Brennan-Chong and Miele, 17 July 2022, where Brennan-Chong responds to Miele’s request for customer data to forecast trends noting, “It was the collective view that Inventory and Pick tickets are our most forward leading indicators. The holy grail would be our customers’ incoming purchase orders, but we don’t have that.” [JHX.0005.0035.4038].

90I. Further, or alternatively, as at 17 May 2022, the Demand Forecasting Method, or alternatively the Revised Demand Forecasting Method, generated volume forecasts for FY23 which exceeded James Hardie’s manufacturing capacity.

PARTICULARS

(i) The particulars to paragraph 58D are repeated as at 17 May 2022.

90J. Further, or alternatively, as at 17 May 2022, the Demand Forecasting Method, or alternatively the Revised Demand Forecasting Method, incorporated the End Market Split Assumption), which:

(a) had not been verified by James Hardie;

(b) was not accurate;

(c) meant that the Demand Forecasting Method was not able to correctly take into account changes in New Construction Sector growth rates.

PARTICULARS

(i) The particulars to paragraph 58E are repeated as at 17 May 2022.

90K. Further, or alternatively, as at 17 May 2022, the Demand Forecasting Method, or alternatively the Revised Demand Forecasting Method, did not take into account adequately, or at all, that James Hardie had been clearing its backlog for approximately nine months, and that, once the backlog had been cleared, there would be a drop in addressable demand.

PARTICULARS

(i) The particulars to paragraph 58F are repeated as at 17 May 2022.

90L. Further, or alternatively, as at 17 May 2022, the Demand Forecasting Method, or alternatively the Revised Demand Forecasting Method, did not factor in the impact of the Temporary FC Product Demand Conditions (or their cessation) on customer demand adequately, or at all.

PARTICULARS

(i) The particulars to paragraph 58G are repeated as at 17 May 2022.

90M. Further, or alternatively, as at 17 May 2022, the Demand Forecasting Method, or alternatively the Revised Demand Forecasting Method, did not factor in the impact of the Inflation Demand Conditions and/or May Inflation Impacts on customer demand adequately, or at all.

PARTICULARS

(i) The Demand Forecasting Method used FY21 and FY22 market growth rates to forecast FY23 demand growth, and by doing so did not adjust for the Inflation Demand Conditions or the May Inflation Impacts.

90N. Further, or alternatively, as at 17 May 2022, the Demand Forecasting Method, or alternatively the Revised Demand Forecasting Method, did not factor in the May Interest Rate Impacts on customer demand adequately or at all.

PARTICULARS

(i) The Demand Forecasting Method used FY21 and FY22 market growth rates to forecast FY23 demand growth, and by doing so did not adjust for the May Interest Rate Impacts.

90O. Further, or alternatively, as at and from 17 May 2022, the Demand Forecasting Method, or alternatively the Revised Demand Forecasting Method, was not adequate to predict the volume growth that James Hardie's NA Business would experience in FY23.

PARTICULARS

- (i) Each of paragraphs 90H, 90I, 90J, 90K, 90L, 90M, and/or 90N, is repeated.
- (ii) The plaintiff says that the Demand Forecasting Method was not adequate at any time during which James Hardie was preparing the May Reaffirmed FY23 Guidance based on it, including the times pleaded in paragraphs 72A to 72I.
- (iii) Alternatively, the plaintiff says that the Revised Demand Forecasting Method was not adequate at any time during which James Hardie was preparing the May Reaffirmed FY23 Guidance based on it, including the times pleaded in paragraphs 72A to 72I.

F.4C Cumulative impacts of market conditions, methodology, and process

90P. As at and from 17 May 2022, James Hardie was unlikely to achieve the May Reaffirmed FY23 Guidance by reason of:

- (a) as to market conditions in the NA Business and their impacts, the matters pleaded in paragraph 89A (or any of them);
- (b) as to the actual FY23 YTD performance of the NA Business and its implications for achievability of the May Reaffirmed FY23 Guidance, the matters pleaded in paragraphs 90B to 90F;
- (c) as to the methodology for forecasting demand and volume growth employed in the May Reaffirmed FY23 Guidance, the matters pleaded in paragraphs 90G to 90O; and/or
- (d) the matters pleaded in paragraphs 72A to 72I failing to sufficiently factor in (a), (b) and/or (c) above to the company's forecasts, and in particular paragraphs 72G and 72H.

90Q. As at and from 17 May 2022, the May Reaffirmed Guidance was not reasonably based, by reason of:

- (a) as to market conditions in the NA Business and their impacts, the matters pleaded in paragraph 89A (or any of them);
- (b) as to the actual FY23 YTD performance of the NA Business and its implications for achievability of the May Reaffirmed FY23 Guidance, the matters pleaded in paragraphs 90B to 90F; and/or
- (c) as to the methodology for forecasting demand and volume growth employed in the May Reaffirmed FY23 Guidance, the matters pleaded in paragraphs 90G to 90O; and/or
- (d) the matters pleaded in paragraphs 72A to 72I failing to sufficiently factor in (a), (b) and/or (c) above to the company's forecasts, and in particular paragraphs 72G and 72H.

F.5 The May Information

91. As from 17 May 2022:

- (a) it was likely that the financial performance and financial results of James Hardie's NA Business in FY23 would be adversely affected by the impact of high inflation on the cost of and demand for FC Products;
- (b) it was likely that the financial performance and financial results of James Hardie's NA Business in FY23 would be adversely affected by the impact of increased interest rates on the demand for FC Products;

- (c) it was likely that the financial performance and financial results of James Hardie's NA Business in FY23 would be adversely affected by the demand for FC Products being impacted by increased competition and the end of temporary elevated demand conditions experienced in FY22 ~~the end of the Temporary FC Product Demand Conditions~~;
 - (c1) it was unlikely that James Hardie's NA Business would achieve volume growth in FY23 to support net sales or earnings growth rates in FY23 in the order conveyed by the FY23 Guidance;
 - (d) it was unlikely that James Hardie's NA Business would achieve net sales or earnings growth rates in FY23 in the order conveyed by the FY23 Guidance, as reaffirmed by the May Reaffirmed FY23 Guidance; and
 - (e) it was unlikely (given the likely performance of the NA Business in FY23) that James Hardie would achieve EBIT and ANI growth rates in FY23 in the order conveyed by the FY23 Guidance, as reaffirmed by the May Reaffirmed FY23 Guidance,
- ((a) to (e) each being the **May Information**).

PARTICULARS

- (i) *Paragraphs 73 to 90A above are repeated.*
- (ii) *Paragraphs 90B to 90F are repeated;*
- (iii) *Paragraphs 90G to 90O are repeated;*
- (iv) *Paragraph 90P and/or 90Q are repeated.*
- (vii) *Further particulars will be provided on completion of ~~discovery~~ ~~and~~ expert evidence.*

92. Further, or alternatively, as at 17 May 2022, James Hardie's market share and position in the NA Market for FC Products was not likely to support net sales or earnings growth rates in FY23 in the order conveyed by the FY23 Guidance, as reaffirmed by the May Reaffirmed FY23 Guidance) (**Additional May Information**).

PARTICULARS

- (i) *Paragraphs 72A-73 to 91 above are repeated.*
- (ii) *Further particulars will be provided on completion of ~~discovery~~ ~~and~~ expert evidence.*

G JAMES HARDIE'S REVISED FY23 GUIDANCE

G.1 16 August 2022 Announcement

93. On 16 August 2022, James Hardie:

- (a) published and released to the ASX the 1Q23 Results Pack (**16 August Publication**); and
 - (b) convened an earnings call (**August Earnings Call**), in a manner likely to bring things said during it to the attention of the market of investors and potential investors in JHX Shares,
- (together, the **August Announcements**).

PARTICULARS

- (i) *The August Earnings Call was convened at 8:30am Australian Eastern Standard Time.*
- (ii) *The participants on the August Earnings Call included Weiens, Miele and Gadd.*

G.2 Revised FY23 Guidance

94. On 16 August 2022, by the August Announcements, James Hardie stated that:

- (a) management adjusts the full year FY23 ANI guidance to a range of US\$730 million to US\$780 million (~~previously US\$740 million to US\$820 million~~);
- (b) the adjusted full year FY23 ANI guidance represents a 22% increase at the midpoint relative to FY22;
- (c) for the North America division:
 - (i) Net Sales Growth of 18%+ growth versus FY22 (~~previously 18% to 22% increase was now expected~~); and
 - (ii) an EBIT Margin of 28% to 32% (~~previously 30% to 33% increase was now expected~~);
- (d) the business saw ~~plenty of~~ scenarios where Net Sales Growth for the North America Division would ~~actually~~ exceed 22%, so they no longer believed that the top-end cap was relevant; ~~and~~
- (e) ~~[Not used] James Hardie had a significant backlog of work in the US housing construction market and Management were reasonably confident that the strong backlogs would carry through to January 2023;~~

(together the **Revised FY23 Guidance**).

PARTICULARS

- (i) *Statements (a) to (c) were expressly made in the 1Q23 Results Pack, p 45;*
- (ii) *Statement (d) was expressly made by Miele in the August Earnings Call;*

- (iii) ~~[Not used] Statement (e) was expressly made by Gadd in the August Earnings Call.~~

95. By the 16 August Announcements, James Hardie also stated:

(a) as to reasons for James Hardie's revised guidance:

- (i) unprecedented levels of inflation;
- (ii) global supply chain disruptions; and
- (iii) war in Europe,

saw the macroeconomic environment change around James Hardie significantly, creating uncertainty for the housing markets in all three regions that the company does business in and was putting pressure on the FY23 financial results due to increased input and freight costs;

(b) the primary reasons for adjusting guidance downward were said to be: "*continued inflationary pressures globally, lowered expectations regarding Europe segment EBIT, the impact of a strengthening US dollar on the translation of our APAC and Europe earnings and housing market uncertainty*"; and

(b1) in 1Q23, the North American team delivered outstanding net sales growth of 28% to US\$740.1M and strong volume growth of 11%. They also delivered a robust bottom line outcome with EBIT increasing 13% to US\$19.18M at a margin of 25.9%

(b2) the margin delivered by the North American business in 1Q23 was below the previously communicated expected range for the full year, driven by significant and accelerating cost inflation across raw material inputs and freight. Margins would sequentially improved throughout FY23 as James Hardie had successfully executed a second price increase effective on June 22, 2022;

(b3) the adjustments made by James Hardie in 1Q22 to adapt to changing market conditions (including the second price increase effective 20 June 2022) had had no impact on 1Q23 in terms of EBIT margin, but James Hardie was very pleased with its financial results and where it was positioned, including delivery of the 25.9% EBIT margin while experiencing unprecedented inflationary pressures and continuing to increase investment in growth.

(b4) James Hardie expected North American EBIT margin to improve sequentially throughout FY23, even if there was no improvement in input costs, but James Hardie was starting to see some improvements in freight (in July 2022). James Hardie had lowered its full year FY23 range from 30% to 33% to a range of 28% to 32%. The continued inflationary pressures created an environment where James Hardie did not see a path to 33% for the full year, and the midpoint of 30% is more reflective of a most likely scenario than the prior midpoint of 31.5%.

(c) the North American team was prepared to thrive in any housing market and James Hardie had positioned itself to be nimble to adapt to changing markets and to

continue to deliver growth above the market and strong returns. ~~despite this,~~ James Hardie was prepared for a variety of US housing markets and was positioned to continue to. ~~outcomes and was focused on ensuring delivering~~ growth above market and strong returns ~~regardless of market conditions.~~

- (d) James Hardie had a significant backlog of work in the US housing construction market and Management were reasonably confident that the strong backlogs would carry through to January 2023;

PARTICULARS

- (i) Statements (a) and (b) above were expressly made in the 1Q23 Results Pack, pp 2 to 4, and in the August Earnings Call.
- (ii) Statements (b1), (b2) and (b3) were expressly made by Miele in the August Earnings Call (p.4)
- (iii) Statements (b4), (c) and (d) were expressly made by Gadd in the August Earnings Call. ~~In regards to (e) above, this statement was expressly made by Gadd as follows: “Our team is also prepared for a variety of US housing market outcomes and are focused on ensuring we will deliver growth about market and strong returns regardless of market conditions.”~~

95A. By the Revised FY23 Guidance and the matters pleaded in paragraph 95, James Hardie:

- (a) reduced its guidance range for James Hardie group ANI; but
- (b) increased its guidance range for net sales growth in James Hardie’s NA business while slightly reducing its guidance range for EBIT margin growth in that business

PARTICULARS

	<u>FY23 Guidance</u>	<u>Revised FY23 Guidance</u>
<u>Group ANI</u>	<u>US\$740 to \$820 million</u>	<u>US\$730 to \$780 million</u>
<u>Net Sales Growth</u> <u>(v FY22)</u>	<u>16% to 20%</u>	<u>18%+</u> <u>(no top end cap; plenty of</u> <u>scenarios exceeding 22%)</u>
<u>EBIT Margin</u>	<u>30% to 33%</u>	<u>28% to 32%</u> <u>(mid-point of 30% is a</u> <u>“most likely” scenario)</u>

96. On 16 August 2022, by reason of the matters pleaded in paragraphs 94 to 95A, James Hardie represented to the market of investors and potential investors in JHX Shares that:

(a) the reasons for having to revise down the FY23 Guidance in terms of ANI for the James Hardie group were:

- (i) continued inflationary pressures globally;
- (ii) lowered expectations regarding Europe segment EBIT;
- (iii) the impact of a strengthening US dollar on the APAC and Europe earnings; and
- (iv) housing market uncertainty,

(FY23 Guidance Modification Reason Representation),

(b) notwithstanding that James Hardie would not achieve the FY23 Guidance and the Reaffirmed May FY23 Guidance, ~~James Hardie stated that:~~

- (i) the full year FY23 ANI guidance had decreased to US\$730 million to US\$780 million (previously US\$740 million to US\$820 million) **(Revised FY23 Group Guidance Representation);**
- (ii) the ~~August FY23 Guidance~~ Revised FY23 Group Guidance Representation was still a 22% increase at the mid-point relative to FY22;
- (iii) the North America division would achieve in FY23:

(A) Net Sales Growth of 18% to 22% (an increase from the 16% to 20% estimated as part of the original FY23 Guidance in May 2022), and there were scenarios where Net Sales Growth would exceed 22%; and

(B) an EBIT Margin of 28% to 32%, with the midpoint of 30% being most likely 30% to 33%,

(Revised NA FY23 Guidance Representations);

- (iv) ~~[Not used]. James Hardie envisaged several scenarios where the Net Sales Growth in the North American division would actually exceed 22%;~~
- (v) James Hardie still had a significant backlog of work in the US housing construction market, **(Revised Pipeline Representation);** and
- (vi) James Hardie still expected to increase market share in North America during FY23 **(Revised Market Share Representation),**

(together the **Revised FY23 Guidance Representations**).

PARTICULARS

- (i) *The FY23 Guidance Modification Reason Representation was express and made by James Hardie in the 1Q23 Results Pack, p 4.*

- (ii) *The Revised FY23 Group Guidance Representation were made expressly by James Hardie in the 1Q23 Results Pack, pp 2, 4 and 45.*
- (iii) *The Revised NA FY23 Guidance Representations were made expressly by James Hardie in the 1Q23 Results Pack, p 45.*
- (iv) *The Revised Pipeline Representations was express, and made by Gadd in the August Earnings Call.*
- (v) *The Revised Market Share Representations was express, and made by Gadd in the August Earnings Call.*

97. Further, on 16 August 2022, by reason of the matters pleaded in paragraphs 94 to 96, James Hardie represented to the market of investors and potential investors in JHX Shares that:

- (a) James Hardie had reasonable grounds for making each of the Revised FY23 Guidance Representations, ~~the Revised NA FY23 Guidance Representations and the Revised Pipeline Representation~~ **(Revised FY23 Guidance Basis Representations)**;
- (b) James Hardie was able, from the information available to it, to provide a reasonably reliable guide as to:
 - (i) the ~~ANI net income~~ that James Hardie would derive, both in the short and medium-term, generally and from the North American division;
 - (ii) the net sales and EBIT margin growth in the FY23 fiscal year, generally and for the North American division; and
 - (iiA) the level of demand for FC Products from its NA Business in FY23;
 - (iii) the impact of inflation and the increase in interest rates by the US Federal Reserve on the demand for its FC Pproducts and margins in its NA Business in FY23;
 - (iv) the likelihood that James Hardie would increase market share in FY23, and the impact of competition on the demand for FC Products in its NA Business in FY23; and/or
 - (v) its backlog of and forecast future customer orders, and their impact on the demand for FC Products in its NA Business in FY23,**(Revised FY23 Guidance Reliability Representation)**;
- (c) ~~[not used] there was no information known to James Hardie which it had not disclosed as part of the August FY23 Announcements which created a material risk that the August FY23 Announcements were unreliable~~ **(Revised No Material Risk Representation)**,

(each being, **August Implied Representations**).

PARTICULARS

- (i) *The Revised Guidance Basis Representations and the Revised Guidance Reliability Representations are to be implied from the making by James Hardie of the express representations.*
- (ii) *[Not used] The Revised No Material Risk Representation is to be implied from the making by James Hardie of the August FY23 Representations.*

GA. PREPARATION OF THE REVISED FY23 GUIDANCE

97A. By no later than mid-June 2022, James Hardie had finalised its NA results for May 2022, the second month of FY23, and recorded its second consecutive month of poor performance. The May 2022 results were well below the FY23 1+11 NA Forecast, prepared just several weeks beforehand:

- (a) EBIT of \$58.6 million:
 - (i) approximately 16% worse than the FY23 1+11 NA Forecast.
 - (ii) approximately 3.7% higher than May FY22.
- (b) EBIT margin of 24.0%:
 - (i) approximately 250 bps worse than the FY23 1+11 NA Forecast.
 - (ii) approximately 660 bps worse than May FY22.
- (c) Net sales of \$244.3 million:
 - (i) approximately 7% worse than the FY23 1+11 NA Forecast.
 - (ii) approximately 32.3% higher than May FY22.
- (d) Cash cost of \$119.2 million:
 - (i) approximately 5% worse than the FY23 1+11 NA Forecast.
 - (ii) approximately 53.8% worse than May FY22.
- (e) Freight of \$27.9 million:
 - (i) approximately 2% worse than the FY23 1+11 NA Forecast.
 - (ii) approximately 27.5% worse than May FY22.
- (f) Volume of 274.0 mmstf:
 - (i) approximately 7% worse than the FY23 1+11 NA Forecast.
 - (ii) approximately 16.8% higher than May FY22.

97B. The biggest drivers of the miss to forecast in the May 2022 results were:

- (a) volume, contributing \$(7.5) million to EBIT; and
- (b) increased cash cost, contributing \$(2.7) million to EBIT.

PARTICULARS

On 10 June 2022, Frances Akalusi circulated the NA Business Results for May 2022 to Wiens, Miele, Gadd and others: See Presentation, 'May FY23 – JHBP Business Results', 10 June 2022, [JHX.0005.0017.5358] attaching [JHX.0005.0007.5360].

97C. On 23 May 2022, Gadd emailed the NA leadership team stating that “cash costs are ramping up at a rate that is not sustainable +51% over last year”.

PARTICULARS

Email from Gadd to NA Leadership Team, 23 May 2022, [JHX.0027.0066.5282].

97D. As at early to mid-June 2022, it was less than 3 months into the financial year and:

- (a) James Hardie’s NA performance was already 14% below the FY23 Plan.

PARTICULARS

The FY23 NA EBIT trend was \$804m (FY23 Plan for NA was \$928m): See Enterprise Readiness for Uncertain Markets presentation for 10 & 11 August 2022 Board Meeting) at (.0124), [JHX.0011.0001.1508_0047].

- (b) there was a clear decline in orders growth and demand was weaker than forecast in several regions of NA.

PARTICULARS

- (i) *Email from Cecelia McDonald to Beth Geisen and Mike Williams, 6 June 2022, confirming that volume misses in Mid-Atlantic, Midwest and Southwest regions were driven by reduced demand [JHX.0032.0035.7946].*

97E. On 10 June 2022, and in response to the May 2022 results, Gadd emailed Miele and said “We need to wake everyone up, we are delivering revenue of +30% and it is throning into single digit increases in EBIT. Everyone needs to pull back now! We are still acting normal and things are not NORMAL!!”.

PARTICULARS

Email from Miele to Gadd, 10 June 2022, [JHX.0002.0002.7189].

97F. The FY23 2+10 NA Forecast was prepared on or around 13 June 2022 and both Miele and Gadd considered that serious adjustments were needed to “have a chance of hitting the year”.

PARTICULARS

(i) On 13 June 2022, Miele emailed the Global ELT and made the following comments:

(A) “We are running up a hill that keeps getting steeper and steeper. And we are not making the adjustments necessary to deliver a strong financial year. Through 2 months in North America, Sales are up 30%, yet EBIT is only up 7%. And all indications are it will get worse unless we take action.”

(B) “The world around us is changing quickly, we need to take more serious steps now, to ensure we are not getting further out ahead of ourselves.”

[JHX.0002.0001.2988].

(ii) On 14 June 2022, and following a Global ELT meeting, Gadd emailed a number of senior NA team members noting that:

(A) “I have just come out of an ELT and we have aligned that we need to make a significant shift in our send profile to have a chance of hitting the year. As you can see below the increase risk in 1 month has increased by \$25M.”

(B) “Also, as you can see we are struggling to hit our forecasts below, we are now forecasting \$971M a decrease of \$37M in just 2 months. If this continues at this rate, we will miss EBIT by ~\$150M for the year. Or end up with EBIT of ~\$850M. Remember to hit 3x we need \$1B.”

[JHX.0009.0028.4474].

97G. On or about mid-June 2022, a FY23 forecast for NA was prepared by De Lara, at the request of Miele, which annualised FY23 performance to date and showed a substantial risk to FY23 EBIT.

PARTICULARS

(i) Email from Khamille De Lara to Miele, 17 June 2022 attaching Excel Spreadsheet, FY24 2+10 Adjustment’, [JHX.0005.0007.7682] and [JHX.0005.0007.7684] respectively.

(ii) This Forecast was not used but tracked closely to the ultimate NA full year FY23 result at the volume/sales level.

97H. On 13 June 2022, the FY23 NA 2+10 Forecast was uploaded to the HFM system and included:

<u>USD (m)</u>	<u>FY23 2+10</u>
<u>Volume (mmstf)</u>	<u>3,445.2</u>

<u>Net sales</u>	<u>\$3201.6</u>
<u>Cash cost</u>	<u>\$1,435.5</u>
<u>Freight cost</u>	<u>\$320.7</u>
<u>Unallocated</u>	<u>=</u>
<u>EBIT</u>	<u>\$970.9</u>
<u>EBIT margin</u>	<u>30.3%</u>

PARTICULARS

Email from Kevin Brannan to Frances Akalusi, 13 June 2022 and attachment Excel Spreadsheet, Copy of 2+10 HFM Upload Template FY23 – NA, 13 June 2022, [JHX.0032.0036.2763] and [JHX.0032.0036.2766].

97I. By mid-July 2022, James Hardie had finalised its NA results for June 2022, the third month of FY23, and recorded a largely positive performance to the FY23 2+10 NA forecast, including:

- (a) EBIT of \$81.2 million:
 - (i) approximately 1.2% higher than the FY23 2+10 NA Forecast.
 - (ii) approximately 23% higher than June FY22.
- (b) EBIT margin of 29.1%:
 - (i) approximately 30 bps higher than the FY23 2+10 NA Forecast.
 - (ii) approximately 70 bps worse than June FY22.
- (c) Net sales of \$279.2 million:
 - (i) Flat to the FY23 2+10 NA Forecast.
 - (ii) approximately 25.9% higher than June FY22.
- (d) Cash cost of \$131.2 million:
 - (i) Flat to FY23 2+10 NA Forecast.
 - (ii) approximately 36.2% worse than June FY22.
- (e) Freight of \$32.4 million:
 - (i) Flat to FY23 2+10 NA Forecast.
 - (ii) approximately 31% worse than June FY22.
- (f) Volume of 306.3 mmstf:
 - (i) approximately 2% worse than the FY23 2+10 NA Forecast.
 - (ii) approximately 10% higher than June FY22.

PARTICULARS

On 13 July 2022 Frances Akalusi circulated the NA Business Results for June 2022 via email to Wiens, Miele, Gadd and others [JHX.0031.0011.2524] attaching Presentation, 'June FY23 – JHBP Business Results', 13 July 2022, [JHX.0031.0011.2526].

97J. The June 2022 results were skewed by the following:

- (a) the pull forward of volume from the 20 June 2022 price increase as customers placed orders earlier to avoid paying more after the 20 June 2022 price increase; and
- (b) pull forward demand from promotional activity in the South regions (Carolinas, South Central, Southeast and South Atlantic).

PARTICULARS

Email from Cecelia McDonald to Mike Williams and Beth Geisen, 23 June 2022), where for June 2022 there was:

- (i) "~10mmstf jump-up in orders in June for the final 2 days of the pricing exception. This would all be pull-forward from July." See also Presentation, 'Enterprise Readiness for Uncertain Markets', 10 August 2022 at 0099, [JHX.0011.0001.1508_0047].
- (ii) 32mmstf of primed plank PPV orders "and if 50% of that is pull-forward, that would mean a 16mmstf pull-forward impact, which we split between June and July (which matches what we are hearing from the sales team; they talk about distributors not needing plank for ~6 weeks)."

[JHX.0032.0032.3997].

97K. On 13 July 2022, the FY23 3+9 NA Forecast was uploaded to the HFM system and included:

<u>USD (m)</u>	<u>FY23 3+9</u>
<u>Volume (mmstf)</u>	<u>3,378.8</u>
<u>Net sales</u>	<u>\$3,155.3</u>
<u>Cash cost</u>	<u>\$1,451.8</u>
<u>Freight cost</u>	<u>\$338.2</u>
<u>Unallocated</u>	<u>=</u>
<u>EBIT</u>	<u>\$913.6</u>
<u>EBIT margin</u>	<u>29.0%</u>

PARTICULARS

- (i) An earlier version of the FY23 3+9 NA Forecast was uploaded on 12 July 2022 with a projected EBIT of \$970.1 million and EBIT Margin of 30.8%. See Email from Frances Akalusi to Kevin Brannan, 12 July 2022, [JHX.0032.0030.5871]; And Excel Spreadsheet, 'FY23 3+9 NA Forecast (Broken Links) v2', [JHX.0032.0030.5873].
- (ii) A revised version was then uploaded on 13 July 2022 after the ELT requested a version that incorporated "more risks". See Email from Kevin Brannan to Frances Akalusi and Khamille De Lara, 13 July 2022, [JHX.0032.0029.2990]; And Excel Spreadsheet, 'Copy of 3+9 HFM Upload Template – FY23 – NA', [JHX.0032.0029.2992].

97L. By mid-August 2022, James Hardie had finalised its NA results for July 2022, the fourth month of FY23, and recorded poor performance to the FY23 3+9 NA Forecast including:

- (a) EBIT of \$64.6 million:
 - (i) approximately 1% worse than the FY23 3+9 NA Forecast.
 - (ii) approximately 15% higher than July FY22.
- (b) EBIT margin of 27.6%:
 - (i) approximately 110 bps worse than the FY23 3+9 NA Forecast.
 - (ii) approximately 90 bps higher than July FY22.
- (c) Net sales of \$233.7 million:
 - (i) approximately 5% worse than the FY23 3+9 NA Forecast.
 - (ii) approximately 19% higher than July FY22.
- (d) Cash cost of \$109.4 million:
 - (i) approximately 5% worse to FY23 3+9 NA Forecast.
 - (ii) approximately 25% worse than July FY22.
- (e) Freight of \$23.6 million:
 - (i) approximately 12% worse to FY23 3+9 NA Forecast.
 - (ii) approximately 23% worse than July FY22.
- (f) Volume of 254.8 mmstf:
 - (i) approximately 4% worse than the FY23 3+9 NA Forecast.
 - (ii) approximately 5% higher than July FY22.

PARTICULARS

On 10 August 2022 Frances Akalusi circulated the NA Business Results for July 2022 via email to Wiens, Miele, Gadd and others, attaching Presentation, 'July FY23 – JHBP Business Results', 10 August 2022, [JHX.0005.0035.2621] and [JHX.0005.0035.2623] respectively.

97M. The biggest drivers of the miss to forecast in the July 2022 results were:

- (a) volume, contributing \$(3.8) million to EBIT; and
- (b) price mix, contributing \$(2.2) million to EBIT.

97N. The FY23 4+8 NA Forecast was uploaded to the HFM system on 9 August 2022 and included:

<u>USD (m)</u>	<u>FY23 4+8</u>
<u>Volume (mmstf)</u>	<u>3,359.4</u>
<u>Net sales</u>	<u>\$3,138.6</u>
<u>Cash cost</u>	<u>\$1.451</u>
<u>Freight cost</u>	<u>\$333.9</u>
<u>Unallocated</u>	<u>=</u>
<u>EBIT</u>	<u>\$899.2</u>
<u>EBIT margin</u>	<u>28.6%</u>

PARTICULARS

Email from Kevin Brannan to Frances Akalusi, 9 August 2022, [JHX.0031.0013.2313]; Excel Spreadsheet, 'Copy of 4+8 HFM Upload Template – FY23 – NA, [JHX.0031.0013.2314].

97O. The Revised FY23 Guidance was determined by no later than 14 August 2022 by Miele.

PARTICULARS

- (i) Email from Miele to Lauren Richey, 14 August 2022 [JHX.0002.0010.0945].
- (ii) The revised range had been suggested by Miele to Gadd as early as 16 July 2022: "I was thinking about taking 10 off the bottom and 20 off the top which would be 750-800; basically exactly in-line with this." [JHX.0002.0011.3750]

97P. The Revised FY23 Guidance was based off an outdated FY23 3+9 NA Forecast that:

- (a) was based upon the June 2022 results which were skewed, as pleaded in paragraphs 97I to 97J above

- (b) did not take into account the July 2022 results, as pleaded in paragraphs 97K to 97L above;
- (c) did not take into account the forecast in operation at the time of the August 2022 Announcements, as pleaded in paragraph 97N above which predicted financial results below the Guidance that was provided.

PARTICULARS

On 11 August 2022, and 5 days prior to the provision of the Revised FY23 Guidance, the FY23 4+8 Global Forecast was loaded into James Hardie's HFM system which projected NA EBIT of \$899.2 million, and a Global ANI of \$724.3M: See Email from Khamille De Lara to Miele, 11 August 2022, [JHX.0005.0038.9201].

H THE TRUE POSITION AS AT 16 AUGUST 2022

H.1 Demand for FC Products and Competing Products in the NA Market as at 16 August 2022

97Q. Further or alternatively to paragraph 73, after 7 February 2022, and by no later than 16 August 2022, the spike in the lumber prices in the NA Market stabilised.

PARTICULARS

The particulars to paragraph 73 are repeated.

97R. Paragraph 73A is repeated.

PARTICULARS

The particulars to paragraph 73A are repeated.

97S. Further, or alternatively to paragraph 74, by reason of the matters pleaded at paragraph A and B, as at 16 August 2022, the Competing Product Supply Improvement Conditions existed, or continued to exist.

PARTICULARS

The particulars to paragraph 74 are repeated.

97T. Further, or alternatively to paragraph 75, by 16 August 2022, the Further Competing Product Supply Improvement Conditions existed, or continued to exist.

PARTICULARS

The particulars to paragraph 75 are repeated. Further:

- (i) Email from Gadd to John Madson, 15 June 2022, where Gadd states “we are definitely fighting imports from allure” [JHX.0009.0025.4983].
- (ii) Email from Patrick Rhode to Matt Logan, Sean Patel and Mark Wallace, 1 July 2022, where Rhode identifies loss of market share to LP in the Southwest [JHX.0032.0021.6180].
- (iii) Email from Ozlem Akcakoca to John Madson, 12 July 2022, confirming a meaningful loss of business to LP in Colorado [JHX.0032.0023.9192].
- (iv) Email from Miele to Gadd, 25 July 2022, where Miele states “[s]upply chains normalizing???” in response to a graph that indicates the bulk of improvement in container ship waiting time happened back in February 2022 [JHX.0002.0012.3548].

97U. As at 16 August 2022, supply-chain issues that had impacted the supply of Competing Products ceased to have any meaningful positive impact upon demand for James Hardie’s FC Products.

PARTICULARS

Email from Sarah Mulhall re Daily Orders, 9 August 2022, “[a] recent article from John Burns highlights supply chain constraints are easing so our competition are getting back in the game.” [JHX.0005.0038.2154].

97V. Further or alternatively to paragraph 76, by reason of matters pleaded at paragraphs 97A to 97E, on or after 7 February 2022 and by 16 August 2022, the Competing Product Demand Conditions existed or continued to exist.

PARTICULARS

- (i) The increased supply of Competing Products, as alleged at paragraphs 73 to 75 and 97T made it unnecessary for customers to substitute towards James Hardie FC Products given the price competitiveness of Competing Products increasing the demand of those products vis-à-vis James Hardie’s FC Products; and
- (ii) This was likely to lead, and led, to reduced demand for James Hardie’s FC Products.

97W. Between February 2022 and August 2022, and as at 16 August 2022, the US Construction Market Softening continued to exist, and had worsened.

PARTICULARS

The particulars to paragraph 77 are repeated.

97X. By reason of matters pleaded at paragraphs 43 to 58 and 79 to 83 above, and 97Q to 97W above, as at 16 August 2022, the demand for James Hardie’s FC Products in the NA Market in FY23 was likely to either decrease, or increase at a reduced rate from that experienced in FY22 (**August Demand/Competition Conditions**).

H.2 Continuing inflationary pressures and increased interest rates in the US

H.2.1 Inflation

97Y. Further to paragraph 79, as at 16 August 2022, the inflation rate in the United States continued to remain at elevated levels.

PARTICULARS

The particulars to paragraph 79 are repeated.

H.2.2 Interest rate rises

97Z. Further to paragraphs 80 and 81 (which are repeated), on 15 June 2022, the US Federal Reserve published and released a statement that the Committee had decided to raise the target range for the federal funds rate to 1.5% to 1.75% and anticipated that ongoing increases in the target range would be appropriate (the **June US Interest Rate Rise Statements**).

PARTICULARS

The June US Interest Rate Rise Statements were express and contained in the US Federal Reserve, 'Federal Reserve press release', 15 June 2022, p 1.

97AA. Further, on 27 July 2022, the US Federal Reserve published and released a statement that the Committee had decided to raise the target range for the federal funds rate to 2.25% to 2.5% and anticipated that ongoing increases in the target range would be appropriate (the **July US Interest Rate Rise Statements**).

PARTICULARS

The July US Interest Rate Rise Statements were express and contained in the US Federal Reserve, 'Federal Reserve press release', 27 July 2022, p 1.

H.2.3 Impact of inflation

97BB. Paragraphs 50 to 52 and 84 to 84D are repeated, as at 16 August 2022

97CC. As at 16 August 2022, each of the matters pleaded in paragraphs 50 to 52 and 84 to 84D were (or remained) the case, or had been exacerbated by the matters pleaded in paragraphs 97A to 97H and/or 97L above, and in particular:

- (a) the Inflation Conditions existed, or continued to exist;
- (b) the Inflation Demand Conditions existed, or continued to exist;
- (c) the COGS Increase Conditions existed, or continued to exist;

97DD. By reason of the matters pleaded in paragraphs 97Y to 97Z, as at 16 August 2022, the further sustained high inflation in the US pleaded in paragraphs 79 and 97Y was likely to cause adverse (or increased adverse) impacts on the Net Sales Growth, ANI growth and EBIT Margin achieved by James Hardie's NA Business, and James Hardie in FY23

for the reasons set out above in paragraphs 51 to 53 (together, the **August Inflation Impacts**).

H.2.4 Impact of interest rate rises

97EE. Paragraphs 56 and 57 and 87 to 88 are repeated, as at 16 August 2022.

97FF. Further or alternatively, as at 16 August 2022, each of the matters pleaded in paragraphs 87 to 88 were (or remained) the case, or had been exacerbated by the matters pleaded in paragraphs 97W to 97X above, and in particular the Interest Rate Demand Conditions existed, or continued to exist.

97GG. As at 16 August 2022, ANI growth, Net Sales growth and EBIT Margin achieved by James Hardie's NA Business, and James Hardie in FY23 was likely to be adversely impacted by the increasing interest rate environment pleaded in paragraphs 97BB to 97CC (**August Interest Rate Impacts**).

H.2A Cumulative demand impacts of market conditions

98. At the time of the Revised FY23 Guidance, and by no later than 16 August 2022, the following matters had occurred and/or continued:

- (a) there had been four consecutive interest rate rises as pleaded above at paragraphs ~~79 to 83~~ 97J to 97K;
- (b) the US housing construction market continued to contract, seeing approximately a 12% drop from the previous month (in terms of single unit residential construction figures);

PARTICULARS

- (i) *The Plaintiff refers to and repeats particulars to paragraph 77 and 97G above.*

(b1) public builder cancellation rates had increased;

PARTICULARS

- (i) *"Public builder June quarter cancellation rates lifted to 16%, from 10% in the March quarter": Presentation, 'North America Flash Intel: June quarter 2022 builder's commentary', 3 August 2022, [JHX.0032.0045.4717]*
- (i) *Other companies had cited cancellation rates as a cause for concern:*
 - (A) *On 21 June 2022, Marc Castillo emails the ELT the Flash Intel on Lennar Q222 Earnings: "so far in June 'new orders, traffic, sales incentives, and cancellations had worsened due to a rapid spike in mortgage rates and headwinds": [JHX.0005.0008.0827].*
 - (B) *On 21 July 2022, Marc Castillo emails the ELT the Flash Intel on DR Horton Q322 Earnings: "In June, we began to*

see a moderation in demand and an increase in cancellations due to the rapid rise in mortgage rates and continued inflationary pressures across most of the economy”: [JHX.0009.0012.9017] and .9018.

(ii) James Hardie’s market intelligence team received regular reports and commentary from industry stakeholders and throughout June 2022, many of these materials referenced spikes in cancellation rates:

(C) Email from Zelman Research to James Brennan-Chong enclosing Zelman Research Report, 15 June 2022: “Western Markets Homebuilding Report: Absorptions Plummet Amid Spike in Cancellation Rates”: [JHX.0013.0007.5813]

(D) Email from CRC Macro Research to Beth Geisen enclosing CRC High-Frequency Macroeconomic Data Points, 17 June 2022: “Softer traffic and a step up in cancellations are also contributing to an increase in incentives, largely via buying down mortgage rates and aiding with closing costs”: [JHX.0032.0030.3420]

(E) Email from John Burns Real Estate Consulting to James Brennan-Chong forwarded to Miele and Gadd, 7 July 2022: “Cancellation rates jumped to 14.5% nationally, up from 6.5% one year ago and 10.4% this May”: [JHX.0005.0037.6173] at 0002.

(F) Email from CRC Home Improvement Council to James Brennan-Chong, 18 July 2022: “According to Redfin, Cancelled Home Sales rose to 15% in June, an increase of 4 points compared to one year ago, driven by higher rates and rising inflationary pressures, causing potential homeowners to reconsider their purchase”: [JHX.0013.0022.2548].

(c) the US housing construction market was likely to continue to decline, or alternatively remain depressed, for the remainder of FY23 and into FY24;

PARTICULARS

(i) *the Plaintiff refers to Jefferies, ‘James Hardie: It’s FY24 That We Really Focus On’, 16 August 2022, p 5, “We don’t think this issue will be as acute for JHX but nonetheless not everything in the cycle is within management’s control. Should inflation remain persistent, interest rates would continue to rise and debt and demand pressure could build for employers that leads to a slackening in employment. House prices fall in that environment and with it demand for residing. Consumer confidence in the US may already be factoring in this expectation given the multi-decade lows it is plumbing.”*

- (ii) Email from Gadd to Johnny Cope and John Madson, 9 August 2022, indicating a clear deterioration over 6-months on all indicia [JHX.0009.0009.2131].
- (iii) Email from Cecelia McDonald to Beth Geisen, 5 August 2022, showing concerns that blended market growth (BMG), a key metric in the volume forecasting process, was inflated (and inaccurate) [JHX.0014.0012.6164].
- (iv) Email from Hammes to Miele, 13 August 2022, includes key takeaways from latest John Burns US Remodeler Index data:
 - 1. Homeowners are more hesitant to sign large, new remodeling contracts.
 - 2. Manufacturers' lead times are improving for some product categories, and remodeling project timelines are stabilizing.
 - 3. Customers are becoming more budget constrained and pushing back on constant price increases.
 - 4. With an average project backlog of 5.2 months, remodelers expect revenue growth of 6%-9% in 2022.[JHX.0005.0030.1228].
- (v) Further particulars will be provided on completion of ~~discovery~~ and expert evidence.
- (d) [Not used] ~~a decrease in the volume of R&R Sector projects and/or new builds would have a materially adverse effect on the profitability of the North American Division of the James Hardie business;~~
- (e) [Not used] ~~a decrease in the profitability of the North American division would result in a decrease in profitability to the overall Group given the significance of the North American division to overall earnings;~~

PARTICULARS

- (i) ~~The Plaintiff refers to and repeats particulars to paragraph 23 above.~~
- (ii) ~~Further particulars will be provided on completion of discovery and expert evidence.~~
- (f) [Not used] ~~the overstatement of the customer backlog by James Hardie's management continued;~~

PARTICULARS

- (i) ~~the Plaintiff refers to and repeats particulars to paragraph 70 (item (iii)) and paragraph 90.~~
- (ii) ~~Further particulars will be provided on completion of discovery and expert evidence.~~
- (g) Further or alternatively, James Hardie's Revised FY23 Guidance was based upon a FY23 budget that assumed substantially higher revenue than what was

reasonable due to the matters pleaded above at paragraphs 50 to 60, 84 to 92, and 97Q to 97GG.

98A. Further to paragraph 98, as at 16 August 2022, demand for FC Products and volume growth in James Hardie's NA Business in FY23 was likely to be adversely impacted by:

- (a) the Temporary FC Product Demand Conditions;
- (b) the August Demand/Competition Impacts;
- (c) the August Inflation Impacts; and/or
- (d) the August Interest Rate Impacts.

H.2B Actual performance between 17 May 2022 and 16 August 2022

98B. Paragraphs 97A to 97B, 97I to 97J and 97L to 97M are repeated.

98C. As at 8 June 2022, year-to-date results were falling short of the FY23 volume targets.

PARTICULARS

- (i) *Email from Ed Seden to Scott Doyle, Matt Armstrong, Karen Barnes and Jeff Rettig, 8 June 2022, "[o]verall revenue is -\$14M, being driven entirely by the reduced volume forecast for FY23". [JHX.0038.0006.6670].*

98D. On 24 June 2022, James Hardie adjusted short-term forecasts for NA but left volume expectations for the balance of FY23 intact.

PARTICULARS

- (i) *Email from Gadd to Beth Geisen, 24 June 2022, where Geisen emails Gadd a "view on the unconstrained orders". Notes a "34mmstf call down on orders side" and before supply chain constraints. Notes that "we shared two alternative scenarios for risk/opp in the Exteriors outlook. The range shown below from +5 to +14% on total NA order growth." Gadd states "[w]e need to protect the 241 [mmstf] backlog!!!! It's good for predictability and insurance when and if we have a recession". [JHX.0009.0027.3093].*

98E. As at August 2022, extrapolating year-to-date demand resulted in projected volumes falling well short of the FY23 targets.

PARTICULARS

- (i) *Email from Cecelia McDonald to Beth Geisen, 29 June 2022, where the 12-month trend shows ColorPlus underperforming the current consensus by 116mmstf. [JHX.0032.0028.1499].*
- (ii) *Email from Cecelia McDonald to, among others, the demand forecasting team, 20 July 2022, acknowledges that a 65mmstf*

(~2%) drop in the demand forecast (to YoY growth of 7%) was at the low end given that:

- July 2022 was flat YoY;
- most of the market data points were lagging indicators.

[JHX.0013.0030.1086].

- (iii) The plaintiff refers to and repeats paragraphs 98B to 98E above.

H.2C Demand Forecasting Method and Volume Forecasts as at 16 August 2022

98F. As at and from 16 August 2022, James Hardie continued to forecast demand-side volume using the Revised Demand Forecasting Method, and James Hardie's FY23 demand forecasts upon which the Revised FY23 Guidance and Revised FY23 Guidance Representations were based were generated using the Revised Demand Forecasting Method.

98G. As from the date pleaded in paragraph 98G, and as at 16 August 2022, the use of FY22 volume in the Revised Demand Forecasting Method as a base for the FY23 volume forecast overstated, or was likely to overstate, underlying customer demand because James Hardie had undertaken promotions and other volume-shaping activity in FY21 and which meant that FY22 volumes were not, or were not likely to be, representative of underlying base volumes.

PARTICULARS

- (i) The particulars to paragraph 90H are repeated as at 16 August 2022, so far as they relate to the Revised Demand Forecasting Method.
- (ii) Email exchange between Miele and James Brennan-Chong, 3 June 2022, regarding trends in customer data where Miele states, "We need to focus on the dealers and distributors. We have plenty of info on NC. R&R is what we need to figure out. We need the trends in the Boise, BFS, Lansing data." [JHX.0002.0002.2429].
- (iii) Email from Robert Koch to Khamille De Lara and Frances Akalusi, 8 June 2022, "Demand was sourced incorrectly last cycle. We (me) can't forecast anything with whatever level of accuracy is being asked for these days, if the first step is wrong. The costs do not blend out between Prattville vs Wax vs Tacoma. Production does not drive current month cost, demand does." [JHX.0027.0062.2977].
- (iv) Email from Ozlem Akcakoca to John Madson and Johnny Cope, 12 Jul 2022, where Akcakoca states "Mortgage rates are wrecking DR Horton sales on top of their metering. Texas is falling off a cliff as of June.: [JHX.0032.0023.9192].
- (v) Email exchange between James Brennan-Chong and Miele, 17 July 2022, where Brennan-Chong responds to Miele's request for customer data to forecast trends noting, "It was the collective view that Inventory and Pick tickets are our most forward leading

indicators. The holy grail would be our customers' incoming purchase orders, but we don't have that." [JHX.0005.0035.4038].

- (vi) *Email from Gadd to Miele and Ryan Kilcullen, 1 August 2022, regarding decline in DR Horton starts and impact on James Hardie order file [JHX.0005.0037.7713].*

98H. Further, or alternatively, as at 16 August 2022, the Revised Demand Forecasting Method generated volume forecasts for FY23 which exceeded James Hardie's manufacturing capacity.

PARTICULARS

- (i) *The particulars to paragraph 58C and 90H are repeated as at 16 August 2022.*

98I. Further, or alternatively, as at 16 August 2022, the Revised Demand Forecasting Method: incorporated the End Market Split Assumption), which:

- (a) had not been verified by James Hardie;
(b) was not accurate;
(c) meant that the Revised Demand Forecasting Method was not able to correctly take into account changes in New Construction Sector growth rates.

PARTICULARS

- (i) *The particulars to paragraph 58D and 90J are repeated as at 16 August 2022.*

98J. Further, or alternatively, as at 16 August 2022, the Revised Demand Forecasting Method did not take into account adequately, or at all, that James Hardie had been clearing its backlog for approximately nine months, and that, once the backlog had been cleared, there would be a drop in addressable demand.

PARTICULARS

- (i) *The particulars to paragraph 58E and 90K are repeated as at 16 August 2022.*

98K. Further, or alternatively, as at 16 August 2022, the Revised Demand Forecasting Method did not factor in the impact of the Temporary FC Product Demand Conditions (or their cessation) on customer demand adequately, or at all.

PARTICULARS

- (i) *The particulars to paragraph 58F and 90L are repeated as at 16 August 2022.*

98L. Further, or alternatively, as at 16 August 2022, the Revised Demand Forecasting Method did not factor in the impact of the Inflation Demand Conditions and/or August Inflation Impacts on customer demand adequately, or at all.

PARTICULARS

- (i) The Revised Demand Forecasting Method used FY21 and FY22 actual order rates to forecast FY23 demand growth, and by doing so did not adjust for the Inflation Demand Conditions or the August Inflation Impacts.

98M. Further, or alternatively, as at 16 August 2022, the Revised Demand Forecasting Method did not factor in the August Interest Rate Impacts on customer demand adequately or at all.

PARTICULARS

- (i) The Revised Demand Forecasting Method used FY21 and FY22 actual order rates to forecast FY23 demand growth, and by doing so did not adjust for the August Interest Rate Impacts.

98N. Further, or alternatively, as at 16 August 2022, the Revised Demand Forecasting Method was not adequate to predict the volume growth that James Hardie's NA Business would experience in FY23.

PARTICULARS

- (i) Each of paragraphs 98G, 98H, 98I, 98J, 98K, 98L, 98M and/or 98N, is repeated.

H.2D Cumulative impacts of market conditions, methodology, and process

98O. As at and from 16 August 2022, James Hardie was unlikely to achieve the Revised FY23 Guidance by reason of:

- (a) as to market conditions in the NA Business and their impacts, the matters pleaded in paragraph 98 to 98A (or any of them);
- (b) as to the actual FY23 YTD performance of the NA Business and its implications for achievability of the Revised FY23 Guidance, the matters pleaded in paragraphs 98B to 98D; and/or
- (c) as to the methodology for forecasting demand and volume growth employed in the May Reaffirmed FY23 Guidance, the matters pleaded in paragraphs 98E to 98M;
- (d) the matters pleaded in paragraphs 97A to 97N failing to sufficiently factor in (a) to (c) above into the company's forecasts, and in particular paragraph 97N.

98P. As at and from 16 August 2022, the Revised FY23 Guidance was not reasonably based, by reason of:

- (a) as to market conditions in the NA Business and their impacts, the matters pleaded in paragraph 98 to 98A (or any of them);

- (b) as to the actual FY23 YTD performance of the NA Business and its implications for achievability of the Revised FY23 Guidance, the matters pleaded in paragraphs 98B to 98D; and/or
- (c) as to the methodology for forecasting demand and volume growth employed in the May Reaffirmed FY23 Guidance, the matters pleaded in paragraphs 98E to 98M;
- (d) the matters pleaded in paragraphs 97A to 97N failing to sufficiently factor in (a) to (c) above into the company's forecasts, and in particular paragraph 97N.

H.3 The August Information

99. By 16 August 2022, by reason of the matters in paragraphs ~~73-97A~~ 97A to 98P above:

- (a) it was likely that the financial performance and financial results of James Hardie's NA Business in FY23 would be adversely affected by the impact of high inflation on the cost of and demand for FC Products;
- (b) it was likely that the financial performance and financial results of James Hardie's NA Business in FY23 would be adversely affected by the impact of interest rates on demand for FC Products;
- (c) it was likely that the financial performance and financial results of James Hardie's NA Business in FY23 would be adversely affected by the demand for FC Products being impacted by increased competition and the end of temporary elevated demand conditions experienced in FY22 ~~the end of the Temporary FC Product Demand Conditions~~;
- (c1) it was unlikely that James Hardie's NA Business would achieve volume growth in FY23 to support net sales or earnings growth rates in FY23 in the order conveyed by the FY23 Guidance;
- (d) it was unlikely that James Hardie's NA Business would achieve net sales or earnings growth rates in FY23 in the order conveyed by the Revised FY23 Guidance; and
- (e) it was unlikely (given the likely performance of the NA Business in FY23) that James Hardie would achieve EBIT and ANI growth rates in FY23 in the order conveyed by the Revised FY23 Guidance,

((a) to (d) ~~(e)~~ each being the **August Information**).

PARTICULARS

- (i) Paragraphs 97A to 97H above are repeated;
- (ii) Paragraphs 97I to 97P are repeated;
- (iii) Paragraphs 98 to 98N are repeated;
- (iv) Paragraphs 98O and/or 98P are repeated;

- (v) Further, as to (e), as at 16 August 2022 James Hardie could not reasonably rely on any material overperformance in its APAC and EU Businesses to offset underperformance in NA because the APAC and EU operating segments:
- (A) provided a much smaller contribution to Global ANI (approximately ~24% of the total Group in terms of Adjusted EBIT percentage) [FY22 Annual Report, p 17].
 - (B) were either underperforming or barely meeting forecast, and by the time the FY23 4+8 forecasts was prepared in August 2022, EU EBIT was forecast to be approximately 52% below the FY23 0+12 forecast presented to the Board in May, and APAC EBIT was forecast to be approximately 5% below the FY23 0+12 forecast presented to the Board in May: see Excel Spreadsheet, 'FY23 1+11 Global Forecast Preview', 2 October 2022, [JHX.0005.0003.3408]; And Excel Spreadsheet, 'FY23 5+7 Global Forecast Preview v2', 1 November 2022, [JHX.0032.0042.8995].
 - (C) were experiencing a "mirror" in Global trends with respect to increased inflation and interest rate rises: See Board Paper, 'Enterprise Readiness for Uncertain Markets', 10 August 2022, [JHX.0011.0001.1508_0047] at .0071 and .0168.
- (vi) Further particulars will be provided on completion of expert evidence.

100. Further, or alternatively, by 16 August 2022, by reason of the matters in paragraphs 73 to 99 above, James Hardie's market share and position in the NA Market for FC Products was not likely to support net sales or earnings growth rates in FY23 in the order conveyed by the Revised FY23 Guidance (**Additional August Information**).

I JAMES HARDIE'S MAINTENANCE AND REAFFIRMATION OF THE REVISED FY23 GUIDANCE BETWEEN 16 AUGUST 2022 AND 8 NOVEMBER 2022

I.1 Maintenance of Revised FY23 Guidance

101. Between 16 August 2022 and 8 November 2022, when the November ~~Publications Announcements~~ were released, James Hardie did not say anything to modify, qualify or contradict any of the Revised FY23 Guidance Representations ~~or Customer Backlog Representation~~.

PARTICULARS

James Hardie reaffirmed the Revised FY23 Guidance Representations ~~and the Customer Backlog Representation~~, and paragraph 103 below is repeated.

102. By reason of the matters pleaded in paragraph 101, from 16 August 2022 to 8 November 2022 when the November Announcements were released, James Hardie continued to make each of the Revised FY23 Guidance Basis and Reliability Representations.

I.2 12 September 2022 – Reaffirmation of Revised FY23 Guidance

103. On 12 September 2022 (**Investor Day 1**) and 13 September 2022, James Hardie held investor day sessions in New York, with the relevant presentations released to the market after ASX close of trade on 12 and 13 September respectively.
104. On Investor Day 1, James Hardie:
- (a) reaffirmed the ~~August Revised~~ FY23 Guidance, including the Net Sales Growth and EBIT Margin for the North America Division;
 - (b) stated that the North America operations were “built for growth”, ~~including and~~ that it was expected that there would be a 10 year volume Compound Annual Growth Rate (**CAGR**) of 9%, 10 year Netw Sales CAGR of 12% and a 10 Year Adjusted EBIT CAGR of 16%;
 - (c) ~~stated that~~ the North American division was now 65% “Repair & Remodel” and 35% “New Construction”; and
 - (d) the strong backlog of work in the US housing construction market remained and management were reasonably confident that the strong backlogs supported the FY23 outlook.

PARTICULARS

- (i) *Statement (a) was expressly made in the Investor Day 2022 Presentation Day 1, p 7.*
- (ii) *Statement (b) was expressly made in the Investor Day 2022 Presentation Day 1, p 44.*
- (iii) *Statement (c) was expressly made in the Investor Day 2022 Presentation Day 1, p 52.*
- (iv) *Statement (d) was expressly made at the Investor Day 1 presentation and published in UBS ‘James Hardie Industries: Investor Day – Key Takeaways 14 September 2022, p 1.*

J CORRECTIVE DISCLOSURE

J.1 8 November 2022 Announcements

105. On 8 November 2022, James Hardie:
- (a) published and released to the ASX an announcement entitled “James Hardie Industries Announces Second Quarter Fiscal Year 2023 Results” (the **8 November Publication**); and

- (b) convened an earnings call (**November Earnings Call**), in a manner likely to bring things said during it to the attention of the market of investors and potential investors in JHX Shares,

(together, the **November Announcements**).

PARTICULARS

- (i) *The November Earnings Ceall was convened at 8:30am Australian Eastern Daylight Time.*
- (ii) *The participants on the November Earnings Ceall included Erter and Miele.*

106. On 8 November 2022, by the November Announcements, James Hardie stated that:

- (a) Adjusted FY2023 ANI Guidance Range had been revised downwards to a range of US\$650 million to US\$710 million (changed from the prior range of US\$730 million to US\$780 million) (the **Updated 2023 ANI**);
- (b) Global Net Sales increased by 10% to US\$997.6 million for 2Q23;
- (c) ANI increased by 13% to US\$175.8 million for 2Q23; and
- (d) It was announcing a new capital allocation framework, including US\$200 million share buyback.

PARTICULARS

Statements (a) to (d) were expressly made in the 2Q23 Results Pack, p 2.

107. As to reasons for James Hardie's revised guidance, James Hardie stated that:

- (a) the Updated 2023 ANI, changed from the prior range of US\$730 million to US\$780 million, due to a decline in volume expectations;
- (b) the Updated 2023 ANI was based on the challenging macro-economic conditions, and housing market uncertainty; and
- (c) for the North America division, Net Sales Growth was revised down to 13%+ (from 18%+) growth and the expected EBIT margin was revised down to 28% to 30% (previously 28% to 32%);
- (d) new home construction was down, with completions outstripping starts;
- (e) the builder backlog was less significant than expected, including due to a change in building practices, and that this was something that James Hardie ought to have identified sooner;
- (f) cancellations amongst the big builders were up; and
- (g) there was some destocking and inventory reduction amongst customers, but that the company believed that this phase was over,

PARTICULARS

- (i) *Statements (a) and (b) were expressly made in the 2Q23 Results Pack, p 4.*
- (ii) *Statement (c) was expressly made in the 2Q23 Results Pack, p 41.*
- (iii) *Statements (d) to (g) were expressly made by Erter in the November Earnings Call.*

(together the **Revised November FY23 Guidance**).

J.2 Price response following the November Announcements

108. Following the release of the November Announcements and the Revised November FY23 Guidance, the price of JHX Shares and JHX ADRs fell substantially.

PARTICULARS

- (i) *The price of JHX Shares fell on the ASX from a closing price of \$33.39 on 7 November 2022 to a closing price of \$28.16 on 10 November 2022, on a traded volume of over 10 million JHX Shares (being a decline of approximately 13.7% on 8 November 2022 and a further 2% over the subsequent two days);*
- (ii) *The price of JHX ADRs fell in a manner correlating to the falls in the price of JHX Shares.*

K WHAT JAMES HARDIE KNEW OR OUGHT TO HAVE KNOWN

K.1 February 2022 and the ~~timing of the~~ FY23 Guidance

109. As at 7 February 2022 and at the time of the FY23 Guidance (or alternatively, on each day after 7 February 2022), ~~and by reason of matters raised above at paragraphs 43 to 47 above,~~ James Hardie knew or ought to have known that the demand for James Hardie's FC Products in the NA Market was elevated only temporarily between November 2021 and the beginning of the Relevant Period vis-à-vis its competitors.

PARTICULARS

- (i) *The plaintiff refers to and repeats paragraphs 43 to 47 to above and the particulars therein.*
- (ii) *"Competition in this market comes primarily from substitute products, such as natural wood or OSB, vinyl, stucco and brick. We believe we can continue to increase our market share from these competing products through targeted marketing programs designed to educate customers and homeowners on our brand and the performance, design and cost advantages of our products." FY21 Annual Report, p 45.*

- (iii) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their responsibility for managing James Hardie's competitive position, and their own statements about who their main competitors were, and that it would therefore be expected that the JHX officers tracked competitor market conditions as it impacted their business planning and financial position which the officers were responsible for managing, and in their position as officers they were uniquely able to assess the true impact of the market conditions on the Company's financial performance.*
- (iv) *Further particulars will be provided on completion of ~~discovery~~ and expert evidence.*

109A. As at 7 February 2022 and at the time of the FY23 Guidance (or alternatively, on each day after 7 February 2022), James Hardie knew or ought to have known of the Inflation Conditions, the Inflation Demand Conditions and/or the COGS Increase Conditions.

PARTICULARS

- (i) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their responsibility for managing James Hardie's business having regard to economic conditions, and their own statements about the impact on James Hardie's business caused by economic conditions such as higher inflation, and that it would therefore be expected that JHX officers tracked such economic conditions as it impacted their business planning and financial position which the officers were responsible for managing, and in their position as officers they were uniquely able to assess the true impact of the economic conditions such as higher interest rates on the Company's financial performance.*
- (ii) *The Plaintiff refers to and repeats the particulars to paragraphs 48 and 50 to 52.*
- (iii) *Further particulars will be provided on completion of expert evidence.*

109B. As at 7 February 2022 and at the time of the FY23 Guidance (or alternatively, on each day after 7 February 2022), James Hardie knew or ought to have known of the February Inflation Impacts.

PARTICULARS

- (i) *The particulars to paragraph 109A are repeated.*
- (ii) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reason of the knowledge they had or ought to have had of the Inflation Conditions, the Inflation Demand Conditions and/or the COGS Increase Conditions.*

110. As at 7 February 2022 and at the time of the FY23 Guidance (or alternatively, on each day after 7 February 2022), and by reason of matters pleaded in paragraphs 48 to 49 above, James Hardie knew or ought to have known of the Interest Rate Conditions that the US Federal Reserve was likely to increase interest rates for consecutive periods through FY23 to address increasing inflation (that is, the Interest Rate Conditions existed).

PARTICULARS

- (i) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their responsibility for managing James Hardie's business having regard to economic conditions, and their own statements about the impact on James Hardie's business caused by economic conditions such as higher interest rates, and that it would therefore be expected that JHX officers tracked such economic conditions as it impacted their business planning and financial position which the officers were responsible for managing, and in their position as officers they were uniquely able to assess the true impact of the economic conditions such as higher interest rates on the Company's financial performance.*
- (ii) *The Plaintiff refers to and repeats particulars to paragraphs ~~48 to 49,~~ and 56 to 58 above.*
- (iii) *Further particulars will be provided on completion of ~~discovery~~ and expert evidence.*

111. As at 7 February 2022 and at the time of the FY23 Guidance (or alternatively, on each day after 7 February 2022), James Hardie knew or ought to have known that an increase in interest rates in the US was likely to cause a decrease in demand in the US housing construction market for FC Products (that is, the Interest Rate Demand Conditions existed).

PARTICULARS

- (i) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their responsibility for managing James Hardie's business having regard to economic conditions, and their own statements about the impact on James Hardie's business caused by economic conditions such as higher interest rates, and that it would therefore be expected that JHX officers tracked such economic conditions as it impacted their business planning and financial position which the officers were responsible for managing, and in their position as officers they were uniquely able to assess the true impact of the economic conditions such as higher interest rates on the Company's financial performance.*
- (ii) *"Our business is dependent on the residential and commercial constructions markets". "Any slowdown in the markets we serve would likely result in decreased demand for our products and cause us to experience decreased sales and operating income. In addition,*

deterioration or continued weaknesses in general economic conditions, such as higher interest rates... could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.” FY21 Annual Report, p 194.

- (iii) *The Plaintiff refers to and repeats the particulars to paragraphs 50 to 52 above.*
- (iv) *The Plaintiff refers to and repeats the particulars to paragraph 110 above.*
- (v) *Further particulars will be provided on completion of ~~discovery~~ and expert evidence.*

111A. As at 7 February 2022 and at the time of the FY23 Guidance (or alternatively, on each day after 7 February 2022), James Hardie knew or ought to have known of the Interest Rate Impacts.

PARTICULARS

- (i) *The particulars to paragraph 110 and 111 are repeated.*
- (ii) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reason of the knowledge they had or ought to have had of the Interest Rate Conditions and/or the Interest Rate Demand Conditions.*

112. As at 7 February 2022 and at the time of the FY23 Guidance (or alternatively, on each day after 7 February 2022), James Hardie knew or ought to have known that demand for FC Products and volume growth in James Hardie’s NA Business in FY23 was likely to be adversely impacted by the cessation of a temporary elevation of demand in FY22, and by the higher inflation and interest rate environment in FY23. As at 7 February 2022 and at the time of the FY23 Guidance, James Hardie knew or ought to have known that a decrease in demand that superseded any increase in price received for FC Products due to increased prices (higher inflation) was likely to have an adverse impact on the revenue growth experienced by the North American division, and therefore the James Hardie Group.

PARTICULARS

- (i) *The particulars to paragraph 109 to 111A are repeated.*
- (ii) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reason of the knowledge they had or ought to have had of the matters pleaded in paragraphs 109 to 111A.*
- ~~(iii) *The North American division of James Hardie accounted for approximately 76% of the total Group in terms of Adjusted EBIT percentage of total James Hardie Group: FY22 Annual Report, p 17.*~~
- ~~(iv) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their own statements about the importance and size of*~~

~~the NA Market vis-à-vis the James Hardie Group, and that it would therefore be expected that JHX officers tracked the impact of decreased demand on revenue as it impacted their business planning and financial position which the officers were responsible for managing and in their position as officers they were uniquely able to assess the true impact of decreased demand on the Company's financial performance.~~

- (v) ~~Further particulars will be provided on completion of discovery and expert evidence.~~

112A. As at and from 7 February 2022 and at the time of giving the FY23 Guidance (or alternatively, on each day after 7 February 2022), James Hardie knew that it was using the Demand Forecasting Method, and knew or ought reasonably to have known that the Demand Forecasting Method had the features pleaded in paragraphs 58C, 58D, 58E, 58F, 58G, 58H and/or 58I.

PARTICULARS

- (i) James Hardie Officers, at least Wiens, Miele and Gadd, knew, or ought reasonably to have come into possession of information as to how what methodology was being used by James Hardie to forecast demand, and therefore of the Demand Forecasting Method.
- (ii) Each of the features pleaded in paragraphs 58C, 58D, 58E, 58F, 58G, 58H and/or 58I were features which James Hardie Officers, at least Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge as it may be reasonably inferred from the existence of the information they had or ought to have had, as identified above (i.e. the manner in which the FY23 volume forecast was created with reference to historical market growth rates).
- (iii) Further, the particulars to paragraphs 58C, 58D, 58E, 58F, 58G, 58H and/or 58I are repeated. The plaintiff says that information which was known to persons who reported to Miele or his direct reports (including, in the NA Finance Team, Criddle, Mulhall, Geisen, and Chang, in the Global Finance team, Hill and Gellatly and in the Investor Relations team, Brennan-Chong) as to the features there pleaded, ought to have been ascertained by Miele in the ordinary course of his duties.
- (iv) Further particulars will be provided on the completion of expert evidence

112B. As at and from 7 February 2022 and at the time of giving the FY23 Guidance (or alternatively, on each day after 7 February 2022), James Hardie ought reasonably to have known that the Demand Forecasting Method was not adequate to predict the volume growth that James Hardie's NA Business would experience in FY23, as pleaded in paragraph 58J.

PARTICULARS

- (i) The particulars to paragraphs 109 to 112A are repeated.
- (ii) James Hardie Officers, at least Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge as it may be reasonably inferred from the existence of the information identified above.
- (iii) Further particulars will be provided on the completion of expert evidence

113. As at 7 February 2022 and at the time of giving the FY23 Guidance (or alternatively, on each day after 7 February 2022), James Hardie knew or ought to have known the February Information and/or the Additional February Information ~~by reason of matters pleaded above at paragraphs 50 to 58.~~

PARTICULARS

- (i) James Hardie Officers, at least Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge as it may be reasonably inferred from the existence of the information they had or ought to have had, as identified above in paragraphs 109, 109A, 110, 111, 111A, 112, 112A and/or 112B (i.e. the demand conditions, inflation and interest rate increase information, and the features of the Demand Forecasting Method).
- ~~(ii) The Plaintiff refers to and repeats particulars to paragraphs 50 to 58.~~
- (iii) Further particulars will be provided on completion of ~~discovery~~ and expert evidence, including as to what guidance (if any) should have been given in lieu of the FY23 Guidance.

K.2 ~~Between February and May 2022 and the Reaffirmed FY23 Guidance~~

114. ~~By reason of matters pleaded at paragraph 80 above, by no later than 16 March 2022~~ As at and from 17 May 2022 (alternatively, as at from each day after 17 May 2022), James Hardie knew or ought to have known that high inflation ~~and increases in interest rates:~~

- (a) was ~~were~~ likely to increase the cost of building and construction materials; and
- (b) was ~~were~~ likely to dampen the demand for R&R Sector and new construction in the US residential housing construction market; and
- (c) was ~~were~~ likely to adversely impact James Hardie's ANI, Net Sales Growth and EBIT Margin.

PARTICULARS

- (i) "Our business is dependent on the residential and commercial constructions markets". "Any slowdown in the markets we serve would likely result in decreased demand for our products and

cause us to experience decreased sales and operating income. In addition, deterioration or continued weaknesses in general economic conditions, such as higher interest rates... could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.” FY21 Annual Report, p 194

- (ii) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their own statements about the impact on James Hardie’s business caused by economic conditions such as higher interest rates and inflation, and that it would therefore be expected that JHX officers tracked such economic conditions as it impacted their business planning and financial position which the officers were responsible for managing, and in their position as officers they were uniquely able to assess the true impact of the economic conditions including higher interest rates and inflation on the Company’s financial performance.*
- (iii) *The Plaintiff refers to and repeats matters stated above in paragraphs 84 to 89 and the particulars referred to therein.*
- (iv) *Further particulars will be provided on completion of ~~discovery~~ ~~and~~ expert evidence.*

114A. As at and from 17 May 2022 (alternatively, as at from each day after 17 May 2022), James Hardie knew or ought to have known of the Competing Product Supply Improvement Conditions, the Further Competing Product Supply Improvement Conditions and/or the Competing Product Demand Conditions.

PARTICULARS

- (i) *The particulars to paragraphs 73 to 76 are repeated.*
- (ii) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their own statements about who their main competitors were, and that it would therefore be expected that the JHX officers tracked competitor market conditions as it impacted their business planning and financial position which the officers were responsible for managing, and in their position as officers they were uniquely able to assess the true impact of the market conditions on the Company’s financial performance.*
- (iii) *Further particulars will be provided on completion of expert evidence.*

114B. As at and from 17 May 2022 (alternatively, as at from each day after 17 May 2022), James Hardie knew or ought to have known of the US Construction Market Softening.

PARTICULARS

- (i) *The particulars to paragraph 77 are repeated.*

- (ii) James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their responsibility for managing James Hardie's business having regard to economic conditions, and that it would therefore be expected that the JHX officers tracked market conditions as it impacted their business planning and financial position which the officers were responsible for managing, and in their position as officers they were uniquely able to assess the true impact of the market conditions on the Company's financial performance.
- (iii) James Hardie knew or ought to have known that there was decline in the volume of new construction and R&R Sector builds, due to its awareness of the inflation increases and interest rate increases as pleaded in paragraphs 114D to 116 below.
- (iv) Further particulars will be provided on completion of expert evidence.

114C. As at and from 17 May 2022 (alternatively, as at from each day after 17 May 2022), James Hardie knew or ought to have known that the demand for James Hardie's FC Products in the NA Market in FY23 was likely to either decrease, or increase at a reduced rate from that experienced in FY22 (that is, the May Demand/Competition Impacts).

PARTICULARS

- (i) The particulars to paragraphs 114A and 114B are repeated.
- (ii) James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their responsibility for managing James Hardie's business having regard to economic conditions, and that it would therefore be expected that the JHX officers tracked market conditions as it impacted their business planning and financial position which the officers were responsible for managing, and in their position as officers they were uniquely able to assess the true impact of the market conditions on the Company's financial performance.
- (iii) Further particulars will be provided on completion of expert evidence.

114D. As at 17 May 2022 and at the time of the May Reaffirmed FY23 Guidance (or alternatively, on each day after 17 May 2022), James Hardie knew or ought to have known of the Inflation Conditions, the Inflation Demand Conditions and/or the COGS Increase Conditions, and they existed or continued as at 17 May 2022.

PARTICULARS

- (i) The particulars to paragraph 109A are repeated.
- (ii) The Plaintiff refers to and repeats the particulars to paragraphs 79 and 84 to 84D.

- (iii) Further particulars will be provided on completion of expert evidence.

114E. As at 17 May 2022 and at the time of the May Reaffirmed FY23 Guidance (or alternatively, on each day after 17 May 2022), James Hardie knew or ought to have known of the May Inflation Impacts.

PARTICULARS

- (i) The particulars to paragraph 109B and 114D are repeated, as at 17 May 2022.
- (ii) James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reason of the knowledge they had or ought to have had of the Inflation Conditions, the Inflation Demand Conditions and/or the COGS Increase Conditions, as at 17 May 2022

115. On and from 4 May 2022, when the US Federal Reserve made the May US Interest Rate Rise Statements, and as at 17 May 2022 and at the time of the May Reaffirmed FY23 Guidance (or alternatively, on each day after 17 May 2022), James Hardie knew or ought to have known that further interest rates were likely (that is, that the Interest Rate Conditions existed, or continued and were likely to continue).

PARTICULARS

- (i) The Plaintiff repeats paragraph 114 above and the particulars therein and says further that the likelihood of further interest rates increases was clear from the US Federal Reserve announcements.
- (ii) The particulars to paragraph 110 are repeated.
- (iii) Further particulars will be provided on completion of ~~discovery~~ and expert evidence.

116. By reason of matters pleaded at paragraph 115 above, by no later than 17 May 2022 and at the time of the May Reaffirmed FY23 Guidance (or alternatively, on each day after 17 May 2022), James Hardie knew or ought to have known that any further increase in interest rates or inflation:

- (a) was likely to increase the cost of building and construction materials;
- (b) was likely to dampen the demand for R&R Sector and new construction in the US residential housing construction market (that is, that the Interest Rate Demand Conditions existed, or continued and were likely to continue); and
- (c) was likely to adversely impact James Hardie's ANI, Net Sales Growth and EBIT Margin (that is, the May Interest Rate Impacts).

PARTICULARS

- (i) The Plaintiff repeats particulars to paragraphs 110, 111 and, 111A and 115.

- (ii) James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reason of the knowledge they had or ought to have had of the Interest Rate Conditions and/or the Interest Rate Demand Conditions, as at 17 May 2022.
- (iii) Further particulars will be provided on completion of ~~discovery~~ and expert evidence.

116A. As at 17 May 2022 and at the time of the May Reaffirmed FY23 Guidance (or alternatively, on each day after 17 May 2022), James Hardie knew or ought to have known that demand for FC Products and volume growth in James Hardie's NA Business in FY23 was likely to be adversely impacted by the cessation of a temporary elevation of demand in FY22, and by the higher inflation and interest rate environment in FY23.

PARTICULARS

- (i) The particulars to paragraphs 112 and 114 to 115 are repeated.
- (ii) James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reason of the knowledge they had or ought to have had of the matters pleaded in those paragraphs.
- (iii) Further particulars will be provided on completion of expert evidence.

117. ~~[Not used] At all material times on and from 17 May 2022, an increase in inflation and increased interest rates caused a decline in the volume of new construction builds and R&R Sector projects in the US.~~

PARTICULARS

- ~~(i) The Plaintiff repeats paragraphs 84 to 89 above.~~
- ~~(ii) Further particulars will be provided on completion of discovery and expert evidence.~~

118. ~~[Not used] By no later than 17 May 2022, James Hardie knew or ought to have known that there was decline in the volume of new construction and R&R Sector builds, due to its awareness of the inflation increases and interest rate increases as pleaded above at paragraphs 115 to 117.~~

PARTICULARS

- ~~(i) The Plaintiff repeats matters pleaded above at paragraphs 77 and 84 to 89 above.~~
- ~~(ii) Further particulars will be provided on completion of discovery and expert evidence.~~

119. ~~[Not used] At all material times from 17 May 2022, James Hardie knew or ought to have known that a downturn in the housing market would cause:~~

- ~~(a) — A decrease in the volume of sales that James Hardie could expect to achieve in the North American division for FY23;~~
- ~~(b) — An adverse impact on the revenue growth experienced by the Group, as pleaded above at paragraph 89; and~~
- ~~(c) — An adverse impact on James Hardie’s ANI, Net Sales Growth and EBIT Margin, as pleaded in paragraph 89 above.~~

PARTICULARS

- ~~(i) — The Plaintiff repeat the particulars to paragraphs 50 to 58 above.~~
- ~~(ii) — Further particulars will be provided on completion of discovery and expert evidence.~~

120. By reason of the matters pleaded at paragraphs ~~70 and 90~~ above, by no later than 17 May 2022, James Hardie knew or ought to have known of the Customer Backlog Information that it was overstating its level of customer backlog orders in the US.

PARTICULARS

- (i) *The Plaintiff repeats paragraphs ~~70 and 90~~ and 90A above and the particulars to paragraph 90A.*
- (ii) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their own statements about the extent of the customer backlogs and pipeline of work that James Hardie had, and that it would therefore be expected that JHX officers tracked such information and changes in that information as it impacted their business planning and financial position which the officers were responsible for managing.*
- (iii) *Further particulars will be provided on completion of ~~discovery~~ and expert evidence.*

120A. As at and from 17 May 2022 and at the time of the May Reaffirmed FY23 Guidance (or alternatively, on each day after 17 May 2022), James Hardie:

- (a) knew that it was using the Demand Forecasting Method, or alternatively, the Revised Demand Forecasting Method, and
- (b) knew or ought reasonably to have known that the Demand Forecasting Method and/or the Revised Demand Forecasting Method had the features pleaded in paragraphs 90H, 90I, 90J, 90K, 90L, 90M, and/or 90N.

PARTICULARS

- (i) *James Hardie Officers, at least Wiens, Miele and Gadd, knew, or ought reasonably to have come into possession of information as to how what methodology was being used by James Hardie to forecast demand, and therefore of the Demand Forecasting Method and/or the Revised Demand Forecasting Method.*

- (ii) Each of the features pleaded in paragraphs 90H, 90I, 90J, 90K, 90L, 90M, and/or 90N were features which James Hardie Officers, at least Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge as it may be reasonably inferred from the existence of the information they had or ought to have had, as identified above (i.e. the manner in which the FY23 volume forecast was created with reference to historical market growth rates and/or unconstrained order volumes).
- (iii) Further, the particulars to paragraphs 90H, 90I, 90J, 90K, 90L, 90M, and/or 90N are repeated. The plaintiff says that information which was known to persons who reported to Miele or his direct reports (including, in the NA Finance Team, Criddle, Mulhall, Geisen, and Chang, in the Global Finance team, Hill and Gellatly and in the Investor Relations team, Brennan-Chong) as to the features there pleaded, ought to have been ascertained by Miele in the ordinary course of his duties.
- (iv) Further particulars will be provided on the completion of expert evidence

120B. As at and from 17 May 2022 and at the time of the May Reaffirmed FY23 Guidance (or alternatively, on each day after 17 May 2022), James Hardie ought reasonably to have known that the Demand Forecasting Method and/or the Revised Demand Forecasting Method was not adequate to predict the volume growth that James Hardie's NA Business would experience in FY23, as pleaded in paragraph 90O.

PARTICULARS

- (i) The particulars to paragraphs 114 to 120A are repeated.
- (ii) James Hardie Officers, at least Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge as it may be reasonably inferred from the existence of the information identified above.
- (iii) Further particulars will be provided on the completion of expert evidence.

121. As at 17 May 2022 and at the time of the Reaffirmed FY23 Guidance (or alternatively, on each day after 17 May 2022), James Hardie knew or ought to have known the May Information and/or the Additional May Information.

PARTICULARS

- (i) James Hardie Officers, at least Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge as it may be reasonably inferred from the existence of the information identified above (i.e. the demand conditions, inflation and interest rate increase information, and the features of the Demand Forecasting Method and/or the Revised Demand Forecasting Method).

- (ii) The Plaintiff refers to and repeats particulars to paragraphs 73 to 90A, 90B to 90F, 90G to 90O and 90P and/or 90Q-50 to 58.
- (iii) Further, as to each of sub-paragraphs (d) and (e) of the May Information, the Plaintiff repeats paragraphs 72D to 72H, and in particular paragraphs 72D and 72H, which was information actually known by both Gadd and Miele.
- (iv) Further particulars will be provided on completion of discovery and expert evidence, including as to what guidance (if any) should have been given in lieu of the May Reaffirmed FY23 Guidance.

K.3 August 2022 and the Revised FY23 Guidance

~~122. [Not used] By reason of matters pleaded at paragraph 82 above, by no later than 15 June 2022, James Hardie knew or ought to have known that any further increase in interest rates or inflation:~~

- ~~(a) — was likely to increase the cost of building and construction materials;~~
- ~~(b) — was likely to dampen the demand for R&R Sector and new construction in the US residential housing construction market; and~~
- ~~(c) — was likely to adversely impact James Hardie's ANI, Net Sales Growth and EBIT Margin.~~

PARTICULARS

- ~~(i) — The Plaintiff repeats particulars to paragraph 116.~~
- ~~(ii) — Further particulars will be provided on completion of discovery and expert evidence.~~

122A. As at and from 16 August 2022 (alternatively, as at from each day after 16 August 2022), James Hardie knew or ought to have known of the Competing Product Supply Improvement Conditions, the Further Competing Product Supply Improvement Conditions and/or the Competing Product Demand Conditions.

PARTICULARS

- (i) The particulars to paragraphs 97Q to 97V are repeated.
- (ii) James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their own statements about who their main competitors were, and that it would therefore be expected that the JHX officers tracked competitor market conditions as it impacted their business planning and financial position which the officers were responsible for managing, and in their position as officers they were uniquely able to assess the true impact of the market conditions on the Company's financial performance.

- (iii) Further particulars will be provided on completion of expert evidence.

122B. As at and from 16 August 2022 (alternatively, as at from each day after 16 August 2022), James Hardie knew or ought to have known of the of the US Construction Market Softening.

PARTICULARS

- (i) The particulars to paragraphs 97W are repeated.
- (ii) James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their responsibility for managing James Hardie's business having regard to economic conditions, and that it would therefore be expected that the JHX officers tracked market conditions as it impacted their business planning and financial position which the officers were responsible for managing, and in their position as officers they were uniquely able to assess the true impact of the market conditions on the Company's financial performance.
- (iii) James Hardie knew or ought to have known that there was decline in the volume of new construction and R&R Sector builds, due to its awareness of the inflation increases and interest rate increases as pleaded in paragraphs 122D to 124 below.
- (iv) Further particulars will be provided on completion of expert evidence.

122C. As at and from 16 August 2022 (alternatively, as at from each day after 16 August 2022), James Hardie knew or ought to have known that the demand for James Hardie's FC Products in the NA Market in FY23 was likely to either decrease, or increase at a reduced rate from that experienced in FY22 (that is, the August Demand/Competition Impacts).

PARTICULARS

- (i) The particulars to paragraphs 122A and 122B are repeated.
- (ii) James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their responsibility for managing James Hardie's business having regard to economic conditions, and that it would therefore be expected that the JHX officers tracked market conditions as it impacted their business planning and financial position which the officers were responsible for managing, and in their position as officers they were uniquely able to assess the true impact of the market conditions on the Company's financial performance.
- (iii) Further particulars will be provided on completion of expert evidence.

122D. As at 16 August 2022 and at the time of the Revised FY23 Guidance (or alternatively, on each day after 16 August 2022), James Hardie knew or ought to have known of the Inflation Conditions, the Inflation Demand Conditions and/or the COGS Increase Conditions, and they existed or continued as at 16 August 2022.

PARTICULARS

- (i) The particulars to paragraphs 114D are repeated.
- (ii) Further particulars will be provided on completion of expert evidence.

122E. As at 16 August 2022 and at the time of the Revised FY23 Guidance (or alternatively, on each day after 16 August 2022), James Hardie knew or ought to have known of the August Inflation Impacts.

PARTICULARS

- (i) The particulars to paragraphs 122D are repeated.
- (ii) James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reason of the knowledge they had or ought to have had of the Inflation Conditions, the Inflation Demand Conditions and/or the COGS Increase Conditions, as at 16 August 2022.

123. At all material times on and from 27 July 2022, when the US Federal Reserve made the July US Interest Rate Rise Statements, and as at 16 August 2022 and at the time of the Revised FY23 Guidance (or alternatively, on each day after 16 August 2022), James Hardie knew or ought to have known that further interest rates were likely (that is, that the Interest Rate Conditions existed, or continued and were likely to continue).

PARTICULARS

- (i) The Plaintiff repeats paragraph ~~8397Z~~ and 97AA above and the particulars therein and says further that the likelihood of further interest rates increases was clear from the US Federal Reserve announcements.
- (ii) The particulars to paragraphs 115 are repeated.
- (iii) Further particulars will be provided on completion of expert evidence.

124. By reason of matters pleaded at paragraph 123 above, by no later than ~~27 July~~ 16 August 2022, James Hardie knew or ought to have known that any further increase in interest rates or inflation:

- (a) was likely to increase the cost of building and construction materials;

- (b) was likely to dampen the demand for R&R Sector and new construction in the US residential housing construction market (that is, that the Interest Rate Demand Conditions existed, or continued and were likely to continue); and
- (c) was likely to adversely impact James Hardie's ANI, Net Sales Growth and EBIT Margin (that is, the August Interest Rates Impacts).

PARTICULARS

- (i) *The Plaintiff repeats particulars to paragraph 116 and 123.*
- (ii) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reason of the knowledge they had or ought to have had of the Interest Rate Conditions and/or the Interest Rate Demand Conditions, as at 16 August 2022.*
- (iii) *Further particulars will be provided on completion of ~~discovery~~ and expert evidence.*

124A. As at 16 August 2022 and at the time of the Revised FY23 Guidance (or alternatively, on each day after 16 August 2022), James Hardie knew or ought to have known that demand for FC Products and volume growth in James Hardie's NA Business in FY23 was likely to be adversely impacted by the cessation of a temporary elevation of demand in FY22, and by the higher inflation and interest rate environment in FY23.

PARTICULARS

- (i) *The particulars to paragraphs 116A and 122A to 123 are repeated.*
- (ii) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reason of the knowledge they had or ought to have had of the matters pleaded in those paragraphs.*
- (iii) *Further particulars will be provided on completion of expert evidence.*

124B. As at and from 16 August 2022 and at the time of giving the Revised FY23 Guidance (or alternatively, on each day after 16 August 2022), James Hardie:

- (a) knew that it was using the Revised Demand Forecasting Method, and
- (b) knew or ought reasonably to have known that the Revised Demand Forecasting Method had the features pleaded in paragraphs 98G, 98H, 98I, 98J, 98K, 98L, and/or 98M.

PARTICULARS

- (i) *James Hardie Officers, at least Wiens, Miele and Gadd, knew, or ought reasonably to have come into possession of information as to how what methodology was being used by James Hardie to forecast demand, and therefore of the Demand Forecasting Method and/or the Revised Demand Forecasting Method.*

- (ii) Each of the features pleaded in 98G, 98H, 98I, 98J, 98K, 98L, and/or 98M were features which James Hardie Officers, at least Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge as it may be reasonably inferred from the existence of the information they had or ought to have had, as identified above (i.e. the manner in which the FY23 volume forecast was created with reference to historical market growth rates and/or unconstrained order volumes).
- (iii) Further, the particulars to paragraphs 98G, 98H, 98I, 98J, 98K, 98L, and/or 98M are repeated. The plaintiff says that information which was known to persons who reported to Miele or his direct reports (including, in the NA Finance Team, Criddle, Mulhall, Geisen, and Chang, in the Global Finance team, Hill and Gellatly and in the Investor Relations team, Brennan-Chong) as to the features there pleaded, ought to have been ascertained by Miele in the ordinary course of his duties.
- (iv) Further particulars will be provided on the completion of expert evidence

124C. As at and from 16 August 2022 and at the time of giving the Revised FY23 Guidance (or alternatively, on each day after 16 August 2022), James Hardie ought reasonably to have known that the Revised Demand Forecasting Method was not adequate to predict the volume growth that James Hardie's NA Business would experience in FY23, as pleaded in paragraph 98N.

PARTICULARS

- (i) The particulars to paragraphs 122A to 124B are repeated.
- (ii) James Hardie Officers, at least Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge as it may be reasonably inferred from the existence of the information identified above.
- (iii) Further particulars will be provided on completion of expert evidence.

125. As at 16 August 2022 and at the time of the Revised FY23 Guidance, James Hardie knew or ought to have known the August Information and/or the Additional August Information ~~by reason of matters pleaded above at paragraphs 73 to 92, 98 to 100.~~

PARTICULARS

- (i) The Plaintiff refers to and repeats particulars to paragraphs ~~73 to 92, 98 to 100~~ 97Q to 98P.
- (ii) James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge as it may be reasonably inferred from the existence of the information identified above (i.e. the demand conditions, inflation and interest rate increase information, and the features of the Revised Demand Forecasting Method) and by reference to their own statements about the impact on James Hardie's business caused by economic conditions such as higher interest rates and inflation, as well as

the impact of changes in demand for FC Products vis-à-vis their competitors' products, and that it would therefore be expected that JHX officers tracked such information as it impacted their business planning and financial position which the officers were responsible for managing.

- (iii) *Further, as to each of sub-paragraphs (a) and (e) of the August Information, the Plaintiff repeats paragraphs 97C, 97E, 97F, 97G and 97L which was information actually known by one or more of Wiens, Miele or Gadd.*
- (iv) *Further particulars will be provided on completion of ~~discovery~~ and expert evidence, including as to what guidance (if any) should have been given in lieu of the Revised FY23 Guidance.*

126. Further, on or around 16 August 2022, James Hardie knew or ought to have known ~~that James Hardie continued to overstate the customer backlog levels and therefore was aware~~ of the Customer Backlog Information.

PARTICULARS

- (i) *The Plaintiff refers to and repeats particulars to paragraphs 90.*
- (ii) *James Hardie Officers, including Wiens, Miele and Gadd, ought reasonably to have come into possession of this knowledge by reference to their own statements about the extent of the customer backlogs and pipeline of work that James Hardie had, and that it would therefore be expected that JHX officers tracked such information and changes in that information as it impacted their business planning and financial position which the officers were responsible for managing.*
- (iii) *Further particulars will be provided on completion of ~~discovery~~ and expert evidence.*

L CONTINUOUS DISCLOSURE CONTRAVENTIONS

L.1 James Hardie's awareness of the information

127. Each of:

- (a) the February Information;
- (b) the Additional February Information;
- (c) the May Information;
- (d) the Additional May Information;
- (e) the Customer Backlog Information;
- (f) the August Information; and

(g) the Additional August Information,

(each being **Material Information**), was information of which James Hardie was aware within the meaning of ASX Listing Rule 19.12.

PARTICULARS

- (i) *The Plaintiff refers to and repeats paragraphs 109 to 126 and the particulars referred to therein.*
- (ii) *Further particulars will be provided on completion of ~~discovery~~ ~~and~~ expert evidence.*

L.2 Material information not generally available

- 128. Each item of the Material Information was information that, until 8 November 2022, was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
- 129. Each item of the Material Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of JHX Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.

PARTICULARS

The information was not generally available because James Hardie had made express statements to investors to the effect that it was insulated from the impact of the pleaded market conditions, and information about the impact of the pleaded market conditions on James Hardie's current and future financial performance was not generally available.

- 130. James Hardie was negligent with respect to whether each item of the Material Information would have a material effect on the price or value of the JHX Shares within the meaning of s 674A(2)(d) of the Corporations Act.

PARTICULARS

- (i) *From time to time throughout the Relevant Period and by no later than 12 September 2022, James Hardie had made the statements pleaded in Parts C.2, E.2, G.2 and I.2 above.*
- (ii) *Each of the statements set out in (i) above was published in a manner likely to bring what was said in those statements to the attention of the Affected Market.*
- (iii) *By reason of (ii) above, the contents of those statements in (i) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell JHX Shares.*
- (iv) *During the Relevant Period, the true position was as reflected by the Material Information ~~pleaded in Part K~~ but was not known to the Affected Market.*

- (v) *Had the true position referred to in (iv) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (i) above, and JHX (and its directors and officers) acting reasonably would have considered that such qualification or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell JHX Shares.*
- (vi) *James Hardie's directors and officers knew that it made the statements set out in (i) above, that they had been made to the Affected Market as set out in (ii) above and having regard to their inherent nature knew or ought reasonably to have known that the contents of those statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell JHX Shares, as set out in (iii) above.*
- ~~(vii) *During the Relevant Period, some of James Hardie's directors and officers had actual knowledge of the matter particulars in (iv) above.*~~
- (viii) *Having regard to (iv) above, James Hardie's directors and officers who had the actual knowledge as set out in (vii) above failed to:*
 - a. *consider whether their actual knowledge qualified or contradicted all or any of James Hardie's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell JHX Shares, so concluding and then causing a corrective disclosure to be made; and*
 - b. *communicate their actual knowledge to all James Hardie directors and officers (and those persons with responsibility for James Hardie's compliance with ASX Listing Rule 3.1 and 4.3D) so that James Hardie could properly consider whether the actual knowledge qualified or contradicted all or any of James Hardie's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell JHX Shares, so concluding and then causing a corrective disclosure to be made.*
- (ix) *Alternatively, having regard to (vi) above, James Hardie failed to ensure that its systems involved processes to ensure that those James Hardie directors and officers who had actual knowledge as set out in (vii) above:*
 - a. *considered whether their actual knowledge qualified or contradicted all or any of James Hardie's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell JHX Shares, so concluding and then causing a corrective disclosure to be made; and*
 - b. *communicated their knowledge to all James Hardie directors and officers (and those persons with*

responsibility for monitoring James Hardie's compliance with ASX Listing Rule 3.1 and 4.3D) so that James Hardie could properly consider whether their actual knowledge qualified or contradicted all or any of James Hardie's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell JHX Shares, so concluding and then causing a corrective disclosure to be made.

(x) *Alternatively, having regard to (iv) above, James Hardie's directors and officers who did not have actual knowledge as set out in (vii) above failed to obtain that information which they ought to have obtained in the course of their duties and:*

- a. consider whether it qualified or contradicted all or any of James Hardie's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell JHX Shares, so concluding and then causing a corrective disclosure to be made; and*
- b. communicate it to all James Hardie directors and officers (and those persons with responsibility for monitoring James Hardie's compliance with ASX Listing Rule 3.1 and 4.3D) so that James Hardie could properly consider whether it qualified or contradicted all or any of James Hardie's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell JHX Shares, so concluding and then causing a corrective disclosure to be made.*

(xi) *Alternatively, having regard to (vi) above, James Hardie failed to ensure that its systems involved processes to ensure that those James Hardie directors and officers who did not have actual knowledge as set out in (vii) above obtained that information which they ought to have obtained in the course of their duties and:*

- a. considered whether their knowledge so obtained qualified or contradicted all or any of James Hardie's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell JHX Shares, so concluding and then causing a corrective disclosure to be made; and*
- b. communicated their knowledge so obtained to all James Hardie directors and officers (and those persons with responsibility for monitoring James Hardie's compliance with ASX Listing Rule 3.1 and 4.3D) so that James Hardie could properly consider whether their actual knowledge qualified or contradicted all or any of James Hardie's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering*

whether to buy or sell JHX Shares, so concluding and then causing a corrective disclosure to be made.

- (xii) *Further particulars will be provided on completion ~~of discovery~~ and expert evidence.*

L.3 Contravention of Listing Rules

131. By reason of the matters pleaded in paragraphs 127 to 130, pursuant to ASX Listing Rule 3.1, James Hardie became obliged to tell the ASX each or any item of the Material Information on and from the date that James Hardie had, or obtained that information.
132. James Hardie did not communicate any of the Material Information to the ASX before 8 November 2022.
133. In the circumstances set out in paragraphs 128 to 132, James Hardie contravened subsections 674(2) and 674A(2) of the Corporations Act (**Continuous Disclosure Contraventions**).

133A. Further, or alternatively, as at 17 May 2022:

- (a) the May Information and/or the Additional May Information comprised significant information needed by investors to make an informed assessment of James Hardie's activities and results, being factors which were likely to affect results in the future; and
- (b) pursuant to ASX Listing Rule 4.3A, James Hardie became obliged to give the ASX each or any of the May Information and the Additional May Information in its Appendix 4E (preliminary final report) for FY22 that it published with the 17 May Announcement (as pleaded in paragraph 63), on and from 17 May 2022; and
- (c) James Hardie did not give the ASX each or any of the May Information and the Additional May Information in its Appendix 4E (preliminary final report) for FY22.

133B. In the circumstances set out in paragraphs 127(c) to (d), 128 to 129 (and/or 130) and 133A, James Hardie contravened subsections 674(2) and 674A(2) of the Corporations Act (**Periodic Disclosure Contraventions**).

133C. Further, or alternatively, by reason of the matters pleaded in paragraphs 62 to 65A and 127(c) to (g), from and after the publication of the 17 May Announcement on 17 May 2022:

- (a) the Material Information pleaded in paragraph 127(c)-(g) (or any of it) comprised circumstances which were likely to materially affect information contained in the Appendix 4E (preliminary final report) for FY22 given to ASX by James Hardie (as pleaded in paragraph 63), namely the Reaffirmed FY23 Guidance and/or the Reaffirmed FY23 Guidance Representations; and

- (b) pursuant to ASX Listing Rule 4.3D, James Hardie became obliged to tell the ASX each or any of the Material Information (other than the February Information and the Additional February Information) on and from the date that James Hardie had, or obtained that information, by way of explanation of circumstances which were likely to materially affect information contained in the Appendix 4E (preliminary final report) given to ASX by James Hardie; and
- (c) James Hardie did not tell, and has not told, the ASX each or any of the Material Information pleaded in paragraph 127(c)-(g) (or any of it) on and from the date that James Hardie had, or obtained that information, by way of explanation of circumstances which were likely to materially affect information contained in the Appendix 4E (preliminary final report) given to ASX by James Hardie.

133D. In the circumstances set out in paragraphs 127(c) to (g), 128 to 129 (and/or 130) and 133C, James Hardie contravened subsections 674(2) and 674A(2) of the Corporations Act (also **Periodic Disclosure Contraventions**).

M MISLEADING OR DECEPTIVE CONDUCT AND MATERIALLY MISLEADING STATEMENTS

M.1 Misleading Conduct Contraventions from 7 February 2022

134. The making of each of the FY23 Guidance Representations and the February Implied Representations was conduct engaged in by James Hardie:
- (a) in trade or commerce; and
 - (b) in relation to JHX Shares.
135. As at and from 7 February 2022, James Hardie did not have reasonable grounds for making the FY23 Guidance Representations, by reason of the circumstances set out in paragraphs 42A-43 to 60 and 109 to 114.

PARTICULARS

- (i) *Each of the FY23 Guidance Representations was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*
136. As at and from 7 February 2022, by making and/or failing to correct or qualify each of the FY23 Guidance Representations, in the circumstances set out in paragraphs 42A-43 to 60 and 109 to 114; James Hardie engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
137. As at and from 7 February 2022, James Hardie did not have reasonable grounds for making and maintaining the February Implied Representations, by reason of, in the case of:

- (a) the Guidance Reliability Representations, the circumstances set out in paragraphs ~~42A-43~~ to 60 and 109 to 114 and 136; and
 - (b) ~~[Not used] the No Material Risk Representation, the circumstances set out in paragraphs 128 to 133.~~
138. By making and/or failing to correct or qualify each of the Guidance Reliability Representations:
- ~~(a) — the Guidance Reliability Representations; and~~
 - ~~(b) — the No Material Risk Representation,~~
- James Hardie engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
139. By reason of the matters pleaded in:
- (a) paragraph 136, in relation to the FY23 Guidance Representations;
 - (b) paragraph 138, in relation to the February Implied Representations,
- James Hardie contravened section 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each a **Misleading Conduct Contravention**).

M.2 Misleading Statements Contraventions from 78 February 2022

140. By reason of the matters pleaded in paragraphs ~~42A-43~~ to 60 and 109 to ~~114-113~~ and 136, each of the FY23 Guidance Representations was materially misleading.
141. By reason of the matters pleaded in paragraphs ~~42A-43~~ to 60 and 109 to ~~114-113~~ and 138, each of the February Implied Representations was materially misleading.
142. Each of the FY23 Guidance Representations and February Implied Representations was likely:
- (a) to induce persons in this jurisdiction to dispose of or acquire JHX Shares; and/or
 - (b) to have the effect of increasing, reducing, maintaining or stabilising the price for trading in JHX Shares.
143. Each of the FY23 Guidance Representations and February Implied Representations was made by James Hardie when James Hardie ought reasonably to have known that the representation was materially misleading, in the case of:
- (a) the FY23 Guidance Representations being the circumstances set out in paragraphs ~~42A-43~~ to 60 and 109 to ~~114-113~~;
 - (b) the February Implied Representations being the:

- (i) Guidance Reliability Representations, the circumstances set out in paragraphs ~~42A-43~~ to 60 and 109 to ~~114-113~~; and
- (ii) ~~[Not used] the No Material Risk Representation, the circumstances set out in paragraphs 127 to 133.~~

PARTICULARS

- (i) *The Plaintiff refers to and repeats matters stated above in paragraphs ~~42A-43~~ to 60, 109 to ~~114-113~~, 127 to 133 and the particulars referred to therein.*
- (ii) *Further particulars will be provided on completion of ~~discovery~~ and expert evidence.*

144. By reason of the matters pleaded in:

- (a) paragraphs 140, 142 and 143(a) by making each of the FY23 Guidance Representations; and
- (b) paragraphs 141, 142 and 143(b) by making each of the February Implied Representations,

James Hardie contravened section 1041E of the Corporations Act (each a **Misleading Statements Contravention**).

M.3 Misleading Conduct Contraventions from 17 May 2022

145. The making of each of the Reaffirmed FY23 Guidance Representations (including the repetition of the FY23 Guidance Representations) and May Implied Representations was conduct engaged in by James Hardie:

- (a) in trade or commerce; and
- (b) in relation to JHX Shares.

146. As at and from 17 May 2022, James Hardie did not have reasonable grounds for making and maintaining the Reaffirmed FY23 Guidance Representations in the circumstances set out in paragraphs ~~72A-73~~ to ~~83~~92, 115 to 121 and 134 to 136.

PARTICULARS

Each of the Reaffirmed FY23 Guidance Representations was a representation as to a future matter, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.

147. As at and from 17 May 2022, by making and/or failing to correct or qualify each of the Reaffirmed FY23 Guidance Representations in the circumstances set out in paragraphs ~~72A-73~~ to ~~83~~92, 115 to 121 and 134 to 136, James Hardie engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.

148. As at and from 17 May 2022, James Hardie did not have reasonable grounds for making and maintaining the May Implied Representations, by reason of, in the case of:
- (a) the Reaffirmed FY23 Guidance Basis Representations, the circumstances set out in paragraphs ~~72A-73~~ to ~~83~~92, 115 to 121, 134 to 136 and 147;
 - (b) the ~~Reaffirmed~~ Guidance Reliability Representation, the circumstances set out in paragraphs ~~72A-73~~ to ~~83~~92, 115 to 121, 134 to 136 and 147; and
 - (c) [Not used] the ~~Reaffirmed No Material Risk Representation~~, the circumstances set out in paragraphs ~~127 to 133~~.
149. By making and/or failing to correct or qualify each of:
- (a) the Reaffirmed FY23 Guidance Basis Representations; and
 - (b) the ~~Reaffirmed~~ Guidance Reliability Representation; ~~and~~
 - (c) [Not used] the ~~Reaffirmed No Material Risk Representation~~,
- James Hardie engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
150. By reason of the matters pleaded in:
- (a) paragraph 147, in relation to the Reaffirmed FY23 Guidance Representations;
 - (b) paragraph 149, in relation to the May Implied Representations;
- James Hardie engaged in Misleading Conduct Contraventions.

M.4 Misleading Statements Contraventions from 17 May 2022

151. By reason of the matters pleaded in paragraphs ~~72A-73~~ to 92, 115 to 121, 134 to 136, 147 and 148, each of the Reaffirmed FY23 Guidance Representations was materially misleading.
152. By reason of the matters pleaded in paragraphs ~~72A-73~~ to 92, 115 to 121, 134 to 136, 147 to 149, each of the May Implied Representations was materially misleading.
153. Each of the Reaffirmed FY23 Guidance Representations and May Implied Representations was likely:
- (a) to induce persons in this jurisdiction to dispose of or acquire JHX Shares; and/or
 - (b) to have the effect of increasing, reducing, maintaining or stabilising the price for trading in JHX Shares.
154. Each of the Reaffirmed FY23 Guidance Representations and May Implied Representations was made by James Hardie when James Hardie ought reasonably to have known that the representation was materially misleading, in the case of:

- (a) the Reaffirmed FY23 Guidance Representations being the circumstances set out in paragraphs ~~72A-73~~ to 92, 115 to 121, 134 to 136 and 147;
- (b) the May Implied Representations being the:
 - (i) Reaffirmed FY23 Guidance Basis Representations, the circumstances set out in paragraphs ~~72A-73~~ to 92, 115 to 121, 134 to 136 and 147;
 - (ii) ~~Reaffirmed~~ Guidance Reliability Representation, the circumstances set out in paragraphs ~~72A-73~~ to 92, 115 to 121, 134 to 136 and 147; and
 - (iii) ~~[Not used] Reaffirmed No Material Risk Representation, the circumstances set out in paragraphs 127 to 133.~~

PARTICULARS

- (i) *The Plaintiff refers to and repeats matters stated above in paragraphs ~~72A-73~~ to 92, 115 to 121, 127 to 136 and the particulars referred to therein.*
- (ii) *Further particulars will be provided on completion of discovery and expert evidence.*

155. By reason of the matters pleaded in:

- (a) paragraphs 151, 153 and 154(a), by making each of the Reaffirmed FY23 Guidance Representations; and
- (b) paragraph 152, 153 and 154(b), by making each of the May Implied Representations,

James Hardie engaged in Misleading Statements Contraventions.

M.5 Misleading Conduct Contraventions from 16 August 2022

156. The making of each of the Revised FY23 Guidance Representations and the August Implied Representations was conduct engaged in by James Hardie:

- (a) in trade or commerce; and
- (b) in relation to JHX Shares.

157. As at and from 16 August 2022, James Hardie did not have reasonable grounds for making the Revised FY23 Guidance Representations, by reason of the matters pleaded in paragraphs ~~98~~ 97A to 100, 122A to 126, 134 to 136 and 145 to 148.

PARTICULARS

Each of the Revised FY23 Guidance Representations was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.

158. As at and from 16 August 2022, by making and/or failing to correct or qualify each of the Revised FY23 Guidance Representations, by reason of the matters pleaded in paragraphs ~~98~~ 97A to 100, ~~122A~~ to 126, 134 to 136, 145 to 148 and 157 above, James Hardie engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
159. As at and from 16 August 2022, James Hardie did not have reasonable grounds for making the August Implied Representations, by reason of, in the case of:
- (a) the Revised FY23 Guidance Basis Representations, the circumstances set out in paragraphs ~~98~~ 97A to 100, ~~122A~~ to 126, 134 to 136, 145 to 148, 157 to 158;
 - (b) the Revised FY23 Guidance Reliability Representation, the circumstances set out in paragraphs ~~98~~ 97A to 100, ~~122A~~ to 126, 134 to 136, 145 to 148, 157 to 158; and
 - (c) ~~[Not used] the Revised No Material Risk Representation, the circumstances set out in paragraphs 127 to 133.~~
160. By making and/or failing to correct or qualify each of:
- (a) the Revised FY23 Guidance Basis Representations;
 - (b) the Revised FY23 Guidance Reliability Representation; and
 - (c) ~~[Not used] the Revised No Material Risk Representation,~~
- James Hardie engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
161. By reason of the matters pleaded in:
- (a) paragraph 158, in relation to the Revised FY23 Guidance Representations;
 - (b) paragraph 160, in relation to the August Implied Representations,
- James Hardie engaged in Misleading Conduct Contraventions.

M.6 Misleading Statements Contraventions from 16 August 2022

162. By reason of the matters pleaded in paragraphs ~~98~~ 97A to 100, ~~122A~~ to 126, 134 to 136, 145 to 148 and 157, each of the Revised FY23 Guidance Representations was materially misleading.
163. By reason of the matters pleaded in ~~98~~ 97A to 100, ~~122A~~ to 126, 134 to 136, 145 to 148, 157 to 159, each of the August Implied Representations was materially misleading.
164. Each of the Revised FY23 Guidance Representations and the August Implied Representations was likely:
- (a) to induce persons in this jurisdiction to dispose of or acquire JHX Shares; and/or

- (b) to have the effect of increasing, reducing, maintaining or stabilising the price for trading in JHX Shares.
165. Each of the Revised FY23 Guidance Representations and the August Implied Representations was made by James Hardie when James Hardie ought reasonably to have known that the representation was materially misleading, in the case of:
- (a) the Revised FY23 Guidance Representations, in the circumstances set out in paragraphs ~~98~~ 97A to 100, ~~122A~~ to 126, 134 to 136, 145 to 148, 155(a) and 157;
 - (b) the August Implied Representations being the:
 - (i) the Revised FY23 Guidance Basis Representations, the circumstances set out in paragraphs ~~98~~ 97A to 100, ~~122A~~ to 126, 134 to 136, 145 to 148, 155(b), 157 to 161;
 - (ii) the Revised FY23 Guidance Reliability Representation, the circumstances set out in paragraphs ~~98~~ 97A to 100, ~~122A~~ to 126, 134 to 136, 145 to 148, 155(b), 157 to 161; and
 - (iii) ~~[Not used] the Revised No Material Risk Representation, the circumstances set out in paragraphs 127 to 133,~~

PARTICULARS

- (i) *The Plaintiff refers to and repeats matters stated above in paragraphs ~~98~~ 97A to 100, ~~122A~~ to 136, 145 to 148 and the particulars referred to therein.*
 - (ii) *Further particulars will be provided on completion of discovery and expert evidence.*
166. By reason of the matters pleaded in:
- (a) paragraph 162, 164 and 165(a), by making each of the Revised FY23 Guidance Representations; and
 - (b) paragraph 163, 164 and 165(b), by making each of the August Implied Representations,

James Hardie engaged in Misleading Statements Contraventions.

N CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS

N.1 Acquisition of JHX Shares

167. During the Relevant Period, the Plaintiff and the Group Members acquired interests in JHX Shares, JHX ADRs or JHX Equity Swaps.

PARTICULARS

- (i) *Paragraph 2 is repeated.*
- (ii) *Particulars of acquisitions by Group Members will be provided after the trial of the Plaintiff's claim.*

N.2 Market-based causation

168. The Plaintiff and the Group Members acquired their interests in JHX Shares in a market of investors or potential investors in JHX Shares:

- (a) ~~operated by~~ listed on the ASX;
- (b) regulated by, inter alia, the ASX Listing Rules and sections 674(2) and 674A(2) of the Corporations Act;
- (c) where James Hardie had the obligations pleaded in paragraphs 16 to 18B, including the Continuous Disclosure Obligations and Periodic Disclosure Obligations;
- (d) where the price or value of JHX Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and sections 674(2) and 674A(2) of the Corporations Act;
- (e) where:
 - (i) material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of JHX Shares (namely the Material Information);
 - (ii) misleading or deceptive conduct had been engaged in (namely the conduct the subject of the Misleading Conduct Contraventions and/or Misleading Statements Contraventions) that a reasonable person would expect to have a material effect on the price or value of JHX Shares, in that if they had not been made no investors or potential investors in JHX Shares would have been in a position to read or rely upon them.

169. During the Relevant Period, the market for JHX ADRs was a market that traded on the basis that the market for JHX Shares had the features pleaded in paragraph 168 above.

170. During the Relevant Period, the market for JHX Equity Swaps was a market that traded on the basis that the market for JHX Shares had the features pleaded in paragraph 168 above.

171. By reason of the matters pleaded at 168 above, at all times during the Relevant Period when Group Members who entered into JHX Equity Swaps entered into such JHX Equity Swaps, they did so at a time when:

- (a) the market price for JHX Shares was substantially greater than:
 - (i) their true value; and/or

- (ii) the market price that would have prevailed but for the Market Contraventions;
- (b) the JHX Equity Swaps had been defined by reference to the price of JHX Shares which had the features described at sub-paragraph (a);
- (c) by reason of the matters pleaded in sub-paragraphs (a) and (b), the value of the future cashflows to be received by the equity amount receiver pursuant to the JHX Equity Swaps by reference to the performance of JHX Shares was diminished and/or the value of the cashflows to be paid by the equity amount received in return was inflated.

PARTICULARS

Particulars will be provided prior to the trial of the individual claims of Group Members following the determination of the common questions.

172. In the Relevant Period, the Continuous Disclosure Contraventions and/or Periodic Disclosure Contraventions and/or the Misleading Conduct Contraventions and/or the Misleading Statements Contraventions (and each of them) (**Market Contraventions**) caused the market price of JHX Shares to be, or materially contributed to the market price of JHX Shares being, substantially greater than:
- (a) their true value; and/or
 - (b) the market price that would have prevailed but for the Market Contraventions,
- from the respective dates that those Market Contraventions commenced, as pleaded in this Statement of Claim.

PARTICULARS

Particulars will be provided at the time of service of the Plaintiff's evidence in chief.

173. The declines in the price of JHX Shares pleaded in Part J.2 above was caused or materially contributed to by:
- (a) the market's reaction to the information released to the ASX in the 16 August 2022 Announcement; and
 - (b) the Market Contraventions.

PARTICULARS

Particulars will be provided at the time of service of the Plaintiff's evidence in chief.

174. Further, or alternatively, if James Hardie had:
- (a) disclosed to the market the Material Information at any time in the Relevant Period; and/or

- (b) not engaged in the conduct the subject of the Misleading Conduct Contraventions and/or Misleading Statements Contraventions,

the price of JHX Shares would have fallen substantially.

PARTICULARS

Particulars will be provided at the time of service of the Plaintiff's evidence in chief.

N.3 Reliance

175. Further, or in the alternative, in the decision to acquire JHX Securities:

- (a) the Plaintiff and some Group Members would not have acquired JHX Shares and/or JHX ADRs, or entered into JHX Equity Swaps, at the prices and in the volumes they were acquired, if the Material Information had been disclosed to them and/or the ASX, the non-disclosure of which for the reasons pleaded in paragraphs 128 to 133 constituted contravening conduct;

- (b) the Plaintiff and some Group Members acquired JHX Shares and/or JHX ADRs at the prices and in the volumes they were acquired in reliance upon some or all of the following representations (and/or James Hardie not having corrected or qualified such representations):

- (i) the FY23 Guidance Representations (or any of them);
- (ii) the February Implied Representations (or any of them),

which, for the reasons pleaded in paragraphs 134 to 144 constituted contravening conduct.

- (c) the Plaintiff and some Group Members acquired JHX Shares and/or JHX ADRs at the prices and in the volumes they were acquired in reliance upon some or all of the following representations (and/or James Hardie not having corrected or qualified such representations):

- (i) the Reaffirmed FY23 Guidance Representations (or any of them);
- (ii) the May Implied Representations (or any of them),

which, for the reasons pleaded in paragraphs 145 to 155 constituted contravening conduct.

- (d) the Plaintiff and some Group Members acquired JHX Shares at the prices and in the volumes they were acquired in reliance upon some or all of the following representations (and/or James Hardie not having corrected or qualified such representations):

- (i) the Revised FY23 Guidance Representations (or any of them);
- (ii) the August Implied Representations (or any of them),

which, for the reasons pleaded in paragraphs 156 to 166 constituted contravening conduct.

PARTICULARS

- (i) *The Plaintiff would not have acquired JHX Shares at the price and volume referred to in paragraphs 2 and 167 had the Material Information been disclosed to the ASX and the fact that they were not corrected or qualified prior to the Plaintiff acquiring JHX Shares.*
- (ii) *The identity of all those Group Members which or who relied directly on any or all of the representations referred to in subparagraph (b) are not known with the current state of the Plaintiff's knowledge and cannot be ascertained unless and until those advising the Plaintiff take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims. Those instructions will be obtained (and particulars of the identities of those Group Members will be provided) following opt-out, the determination of the Plaintiff's claim and identification of 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.*

N.4 Loss and damage

176. The Plaintiff and the Group Members suffered loss and damage resulting from the Market Contraventions.

PARTICULARS

- (i) *The loss alleged in paragraph 176 is calculated by reference to:*
 - 1. *the difference between the price at which the Plaintiff and ~~G~~group M~~m~~embers acquired an interest in the shares and the price that would have prevailed but for the Market Contraventions;*
 - 2. *alternatively, the price at which some ~~G~~group M~~m~~embers acquired an interest in the shares, adjusted to deduct the true value of that interest at the time of the transaction;*
 - 3. *in addition to the loss in 1 and 2, the loss of the opportunity to achieve a reasonable rate of return on the monies used to purchase the interest in the shares.*
- (ii) *Further particulars will be provided at the time of service of the Plaintiff's expert evidence.*
- (iii) *Particulars of the losses of Group Members are not known with the current state of the Plaintiff's knowledge and cannot be ascertained unless and until those advising the Plaintiff take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's*

claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt-out, the determination of the Plaintiff's claim 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.

O COMMON QUESTIONS OF LAW OR FACT

1. When did James Hardie become aware (within the meaning of Listing Rule 19.12) of:

- (a) the February Information;
- (b) the Additional February Information;
- (c) the May Information;
- (d) the Additional May Information;
- (e) the Customer Backlog Information;
- (f) the August Information; and
- (g) the Additional August Information?

2. Whether:

- (a) the February Information;
- (b) the Additional February Information;
- (c) the May Information;
- (d) the Additional May Information;
- (e) the Customer Backlog Information;
- (f) the August Information;
- (g) the Additional August Information,

was:

- (h) material information; and
- (i) not generally available,

within the meaning of ASX Listing Rule 3.1 or Chapter 6CA of the Corporations Act that James Hardie was obliged to disclose, but failed to disclose such that James Hardie contravened section 674(2) of the Corporations Act?

3. Whether James Hardie was negligent with respect to whether each item of the:

- (a) the February Information;
- (b) the Additional February Information;
- (c) the May Information;
- (d) the Additional May Information;
- (e) the Customer Backlog Information;
- (f) the August Information; and
- (g) the Additional August Information,

was material information and would have a material effect on the price or value of the JHX Shares within the meaning of s 674A(2)(d) of the Corporations Act?

3A. Whether

- (a) the May Information; and
- (b) the Additional May Information,

was information which James Hardie was obliged to tell the ASX within the meaning of ASX Listing Rule 4.3A, but failed to disclose such that James Hardie contravened section 674(2), further or alternatively section 674A(2) of the Corporations Act.

3B. Whether

- (a) the May Information;
- (b) the Additional May Information;
- (c) the Customer Backlog Information;
- (d) the August Information;
- (e) the Additional August Information,

was information which James Hardie was obliged to disclose, or provide an explanation of, to the ASX within the meaning of ASX Listing Rule 4.3D, but failed to disclose such that James Hardie contravened section 674(2), further or alternatively section 674A(2) of the Corporations Act.

4. Whether James Hardie contravened section 1041E of the Corporations Act or s 12DB(1) of the ASIC Act by making, maintaining and/or failing to qualify:

- (a) the FY23 Guidance Representations;
- (b) the Reaffirmed FY23 Guidance Representations; and
- (c) the Revised FY23 Guidance Representations?

5. Whether James Hardie contravened section 1041H of the Corporations Act or section 12DA(1) of the ASIC Act or s 18 of the ACL by making, maintaining and/or failing to qualify:
 - (a) the FY23 Guidance Representations;
 - (b) the Reaffirmed FY23 Guidance Representations; and
 - (c) the Revised FY23 Guidance Representations?
6. Whether the Market Contraventions had the effect that the price of acquisition for JHX Shares was greater than their true value and/or the market price that would have prevailed but for the Market Contraventions and if so:
 - (a) whether statutory compensation is recoverable by the Plaintiff and some or all of the Group Members?
 - (b) the correct measure of the statutory compensation for which James Hardie may be liable to the Plaintiff and some or all of the Group Members?
7. 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 PLAINTIFF CLAIMS on their own behalf and on behalf of the Group Members:

- A. A declaration that the Defendant contravened ASX Listing Rule 3.1, ~~and~~ section 674(2) and section 674A(2) of the Corporations Act by not informing the ASX immediately of some or all of:
 - (a) the February Information;
 - (b) the Additional February Information;
 - (c) the May Information;
 - (d) the Additional May Information;
 - (e) the Customer Backlog Information;
 - (f) the August Information;
 - (g) the Additional August Information; and
 - (h) any combination of two or more items of the information referred to in subparagraphs (a) to (g).
- B. An order pursuant to section 1317HA(1) of the Corporations Act that the Defendant pay compensation to the Plaintiff and Group Members for damage caused by its contraventions of section 674A(2) of the Corporations Act.
- C. A declaration that the Defendant engaged in conduct in contravention of:
 - (a) section 1041E of the Corporations Act;

- (b) section 1041H(1) of the Corporations Act;
 - (c) section 12DA(1) of the ASIC Act;
 - (d) section 12DB(1) of the ASIC Act; and
 - (e) section 18 of the ACL.
- D. An order pursuant to:
- (a) section 1041I of the Corporations Act that the Defendant pay compensation to the Plaintiff and Group Members for damage caused by the conduct of the Defendant in contravention of sections 1041E and 1041H of the Corporations Act.
 - (b) section 12GF of the ASIC Act that the Defendant pay compensation to the Plaintiff and Group Members for damage caused by the conduct of the Defendant in contravention of sections 12DA(1) and 12DB(1) of the ASIC Act.
 - (c) section 236 of the ACL that the Defendant pay compensation to the Plaintiff and Group Members for damage caused by the conduct of the Defendant in contravention of section 18 of the ACL.
- E. Interest pursuant to statute.
- F. Costs.
- G. Such further or other order as the Court determines is appropriate.

Date: ~~8 May 2023~~ 26 August 2025



Signed by Mathew Chuk
Lawyer for the Plaintiff

This amended pleading was prepared by Echo Law and Sahrah Hogan and William Stone of counsel, and settled by W.A.D. Edwards of King's Counsel.

ANNEXURE A

Defined Terms

1Q20 has the meaning set out in paragraph 18A(a).

1Q20 Results Pack means the document published by the ASX at 7:30am AEST on 9 August 2019, containing a cover page summarising James Hardie’s financial results for the three months ended 30 June 2019 and including the following documents:

1. Media Release titled “James Hardie Industries Announces Adjusted Net Operating Profit of US\$90.2 million for Q1 Fiscal Year 2020” (pp 2-4);
2. Management’s Analysis of Results (pp 5-27);
3. Management Presentation (pp 28-76);
4. Condensed Consolidated Financial Statements (pp 77-103).

1Q21 has the meaning set out in paragraph 18A(b).

1Q21 Results Pack means the document published by the ASX at 7:30am AEST on 11 August 2020, containing a cover page summarising James Hardie’s financial results for the three months ended 30 June 2020 and including the following documents:

1. Media Release titled “James Hardie Announces First Quarter Fiscal Year 2021 Results” (pp 2-4);
2. Management’s Analysis of Results (pp 5-21);
3. Management Presentation (pp 22-53);
4. Condensed Consolidated Financial Statements (pp 54-70).

1Q22 has the meaning set out in paragraph 18A(c).

1Q22 Results Pack means the document published by the ASX at 7:30am AEST on 10 August 2021, containing a cover page summarising James Hardie’s financial results for the three months ended 30 June 2021 and including the following documents:

1. Media Release titled “James Hardie Industries Announces Record First Quarter Fiscal Year 2022 Results” (pp 2-7);
2. Management’s Analysis of Results (pp 8-23);
3. Management Presentation (pp 24-56);
4. Condensed Consolidated Financial Statements (pp 57-73).

1Q23 has the meaning set out in paragraph 18A(d).

1Q23 Results Pack means the document published by the ASX at 7:30am AEST on 16 August 2022, containing a cover page summarising James Hardie’s financial results for the three months ended 30 June 2022 and including the following documents:

1. Media Release titled “James Hardie Industries Announces First Quarter Fiscal Year 2023 Results” (pp 2-7);
2. Management’s Analysis of Results (pp 8-22);
3. Management Presentation (pp 23-61);
4. Condensed Consolidated Financial Statements (pp 62-77).

2Q20 has the meaning set out in paragraph 18A(a).

2Q20 Results Pack means the document published by the ASX at 7:30am AEDT on 7 November 2019, containing a cover page summarising James Hardie’s financial results for the six months ended 30 September 2019 and including the following documents:

1. Media Release titled “James Hardie Announces Adjusted Net Operating Profit of US\$98.6 million for Q2 Fiscal Year 2020 and US\$188.8 million for the half year ended 30 September 2019” (pp 2-4);
2. Management’s Analysis of Results (pp 5-27);
3. Management Presentation (pp 28-75);
4. Condensed Consolidated Financial Statements (pp 76-106)
5. Half-Yearly Directors’ Report.(pp 106-107)

2Q21 has the meaning set out in paragraph 18A(b).

2Q21 Results Pack means the document published by the ASX at 8:12am AEDT on 10 November 2020, containing a cover page summarising James Hardie’s financial results for the six months ended 30 September 2020 and including the following documents:

1. Media Release titled “James Hardie Industries Announces Record Second Quarter Fiscal Year 2021 Results” (pp 2-5);
2. Management’s Analysis of Results (pp 6-24);
3. Management Presentation (pp 25-56);
4. Condensed Consolidated Financial Statements (pp 57-75)

2Q22 has the meaning set out in paragraph 18A(c).

2Q22 Results Pack means the document published by the ASX at 8:08am AEDT on 9 November 2021, containing a cover page summarising James Hardie’s financial results for the six months ended 30 September 2021 and including the following documents:

1. Media Release titled “James Hardie Industries Announces Record Second Quarter Fiscal Year 2022 Results” (pp 2-8);
2. Management’s Analysis of Results (pp 9-26);
3. Management Presentation (pp 27-63);
4. Condensed Consolidated Financial Statements (pp 64-81)
5. Half-Yearly Directors’ Report (pp 82-83).

2Q23 has the meaning set out in paragraph 18A(d).

2Q23 Results Pack means the document published by the ASX at 7:30am AEDT on 8 November 2022, containing a cover page summarising James Hardie’s financial results for the six months ended 30 September 2022 and including the following documents:

1. Media Release titled “James Hardie Industries Announces Second Quarter Fiscal Year 2023 Results” (pp 2-7);
2. Management’s Analysis of Results (pp 8-22);
3. Management Presentation (pp 23-61);
4. Condensed Consolidated Financial Statements (pp 62-74)
5. Half-Yearly Directors’ Report (pp 75-76).

3 Year Plan has the meaning set out in paragraph 42H.

3Q12 Results Pack means the document published by the ASX at 8:55am AEDT on 28 February 2012, containing a coversheet summarising James Hardie’s financial results for the nine months ended 31 December 2011 and including the following documents:

1. Media Release titled “3rd quarter net operating profit US\$27.7m Nine month net operating profit US\$108.3m” (pp 2-14);
2. Management’s Analysis of Results (pp 15-36);
3. Management Presentation (pp 37-64);
4. Consolidated Financial Statements (pp 65-92).

3Q13 Results Pack means the document published by the ASX at 9:02am AEDT on 27 February 2013, containing a coversheet summarising James Hardie’s financial results for the nine months ended 31 December 2012 and including the following documents:

5. Media Release titled “3rd quarter net operating profit US\$28.8m Nine month net operating profit US\$113.1m” (pp 2-14);
6. Management’s Analysis of Results (pp 15-37);
7. Management Presentation (pp 38-65);

8. Condensed Consolidated Financial Statements (pp 66-94).

3Q14 Results Pack means the document published by the ASX at 8:57am AEDT on 28 February 2014, containing a coversheet summarising James Hardie's financial results for the nine months ended 31 December 2013 and including the following documents:

1. Media Release titled "3rd quarter net operating profit US\$43.7m Nine month net operating profit US\$152.0m" (pp 2-18);
2. Management's Analysis of Results (pp 19-43);
3. Management Presentation (pp 44-101);
4. Condensed Consolidated Financial Statements (pp 102-132).

3Q15 Results Pack means the document published by the ASX at 7:30am AEDT on 20 February 2015, containing a coversheet summarising James Hardie's financial results for the nine months ended 31 December 2014 and including the following documents:

1. Media Release titled "James Hardie announces Adjusted Net Operating Profit of US\$48.6 million for Q3 Fiscal 2015 and US\$164.1 million for the nine months ended 31 December 2014" (pp 2-4);
2. Management's Analysis of Results (pp 5-26);
3. Management Presentation (pp 27-76);
4. Condensed Consolidated Financial Statements (pp 77-106).

3Q16 Results Pack means the document published by the ASX at 7:32am AEDT on 19 February 2016, containing a coversheet summarising James Hardie's financial results for the nine months ended 31 December 2015 and including the following documents:

1. Media Release titled "James Hardie Announces Adjusted Net Operating Profit of US\$56.2 million for Q3 Fiscal 2016 and US\$185.0 million for the nine months ended 31 December 2015" (pp 2-4);
2. Management's Analysis of Results (pp 5-26);
3. Management Presentation (pp 27-65);
4. Condensed Consolidated Financial Statements (pp 66-90).

3Q17 Results Pack means the document published by the ASX at 9:27am AEDT on 3 February 2017, containing a coversheet summarising James Hardie's financial results for the nine months ended 31 December 2016 and including the following documents:

1. Media Release titled "James Hardie Announces Adjusted Net Operating Profit of US\$52.6 million for Q3 Fiscal Year 2017 and US\$194.0 million for the nine months ended 31 December 2016" (pp 2-5);
2. Management Presentation (pp 6-43);

3. Management's Analysis of Results (pp 44-66);
4. Condensed Consolidated Financial Statements (pp 67-91).

3Q18 Results Pack means the document published by the ASX at 7:30am AEDT on 2 February 2018, containing a coversheet summarising James Hardie's financial results for the nine months ended 31 December 2017 and including the following documents:

1. Media Release titled "James Hardie Announces Adjusted Net Operating Profit of US\$69.9 million for Q3 Fiscal Year 2018 and US\$205.5 million for the nine months ended 31 December 2017" (pp 2-4);
2. Management's Analysis of Results (pp 5-25);
3. Management Presentation (pp 26-66);
4. Condensed Consolidated Financial Statements (pp 67-89).

3Q19 Results Pack means the document published by the ASX at 8:32am AEDT on 5 February 2019, containing a coversheet summarising James Hardie's financial results for the nine months ended 31 December 2018 and including the following documents:

1. Media Release titled "James Hardie Announces Adjusted Net Operating Profit of US\$65.9 million for Q3 Fiscal Year 2019 and US\$226.7 million for the nine months ended 31 December 2018" (pp 2-5);
2. Management's Analysis of Results (pp 6-32);
3. Management Presentation (pp 33-89);
4. Condensed Consolidated Financial Statements (pp 90-119).

3Q20 has the meaning set out in paragraph 18A(a).

3Q20 Results Pack means the document published by the ASX at 5:07pm AEDT on 11 February 2020, containing a cover letter and a coversheet summarising James Hardie's financial results for the nine months ended 31 December 2019 and including the following documents:

5. Media Release titled "James Hardie Announces Adjusted Net Operating Profit of US\$77.4 million for Q3 Fiscal Year 2020 and US\$266.2 million for the nine months ended 31 December 2019" (pp 3-5);
6. Management's Analysis of Results (pp 6-28);
7. Management Presentation (pp 29-76);
8. Condensed Consolidated Financial Statements (pp 77-106).

3Q21 has the meaning set out in paragraph 18A(b).

3Q21 Results Pack means the document published by the ASX at 8:18am AEDT on 9 February 2021, containing a cover page summarising James Hardie’s financial results for the nine months ended 31 December 2020 and including the following documents:

1. Media Release titled “James Hardie Industries Announces Record Third Quarter Fiscal Year 2021 Results” (pp 2-6);
2. Management’s Analysis of Results (pp 7-24);
3. Management Presentation (pp 25-58);
4. Condensed Consolidated Financial Statements (pp 59-77).

3Q22 has the meaning set out in paragraph 18A(c).

3Q22 Results Pack means the document published by the ASX at 7:30am AEDT on 7 February 2022, containing a cover page summarising James Hardie’s financial results for the nine months ended 31 December 2021 and including the following documents:

9. Media Release titled “James Hardie Industries Announces Third Quarter Fiscal Year 2022 Results” (pp 2-7);
10. Management’s Analysis of Results (pp 8-25);
11. Management Presentation (pp 26-66);
12. Condensed Consolidated Financial Statements (pp 67-83).

3Q23 has the meaning set out in paragraph 18A(d).

4Q20 has the meaning set out in paragraph 18A(a).

4Q20 Results Pack means the document published by the ASX at 7:30am AEST on 19 May 2020, containing a cover page summarising James Hardie’s financial results for the year ended 31 March 2020 and including the following documents:

1. Media Release titled “James Hardie Announces Net Operating Profit of US\$86.6 million for Q4 Fiscal Year 2020 and US\$352.8 million for the full year ended 31 March 2020” (pp 2-4);
2. Management’s Analysis of Results (pp 5-32);
3. Management Presentation (pp 33-82);
4. Consolidated Financial Statements (pp 83-138).

4Q21 has the meaning set out in paragraph 18A(b).

4Q21 Results Pack means the document published by the ASX at 7:33am AEST on 18 May 2021, containing a cover page summarising James Hardie’s financial results for the year ended 31 March 2021 and including the following documents:

1. Media Release titled “James Hardie Industries Announces Record Fourth Quarter And Fiscal Year 2021 Results” (pp 2-7);
2. Management’s Analysis of Results (pp 8-26);
3. Management Presentation (pp 27-68);
4. Consolidated Financial Statements (pp 69-113).

4Q22 has the meaning set out in paragraph 18A(c).

4Q22 Results Pack means the document published by the ASX at 7:30am AEST on 17 May 2022, containing a cover page summarising James Hardie’s financial results for the year ended 31 March 2022 and including the following documents:

1. Media Release titled “James Hardie Industries Announces Fourth Quarter And Fiscal Year 2022 Results” (pp 2-8);
2. Management’s Analysis of Results (pp 9-27);
3. Management Presentation (pp 28-68);
4. Consolidated Financial Statements (pp 69-111).

4Q23 has the meaning set out in paragraph 18A(d).

7 February Announcement has the meaning set out in paragraph 38 and is the 3Q22 Results Pack.

~~**7 February Inflation Impacts** has the meaning set out in paragraph 55.~~

7 February Statements has the meaning set out in paragraph 40.

7 January Announcement has the meaning set out in paragraph 34 and is the document published by the ASX at 8:05am AEDT on 7 January 2022 titled “James Hardie Industries Appoints Harold Wiens as Interim CEO”.

8 November Publication has the meaning set out in paragraph 105(a) and is the 2Q23 Results Pack.

16 August Publication has the meaning set out in paragraph 93(a) and is the 1Q23 Results Pack.

17 May Announcement has the meaning set out in paragraph 63 and is the 4Q22 Results Pack.

17 May Statements has the meaning set out in paragraph 66.

Additional August Information has the meaning set out in paragraph 100.

Additional February Information has the meaning set out in paragraph 60.

Additional May Information has the meaning set out in paragraph 92.

Affected Market has the meaning set out in paragraph 41.

ANI has the meaning set out in paragraph 31(c).

APAC has the meaning set out in paragraph 20.

ASIC Act has the meaning set out in paragraph 4(c).

ASX has the meaning set out in 1(a)(i).

August Announcements has the meaning set out in paragraph 93.

August Demand/Competition Conditions has the meaning set out in paragraph 97X.

August Earnings Call has the meaning set out in paragraph 93(b).

August Implied Representations has the meaning set out in paragraph 97.

August Inflation Impacts has the meaning set out in paragraph 97DD.

August Interest Rate Impacts has the meaning set out in paragraph 97GG.

August Information has the meaning set out in paragraph 99.

Australian Consumer Law has the meaning set out in paragraph 4(d).

CAGR has the meaning set out in paragraph 104(b).

CEO has the meaning set out in paragraph 7.

COGS Increase Conditions has the meaning set out in paragraph 53.

Competing Product Demand Conditions has the meaning set out in paragraph 76.

Competing Product Supply Improvement Conditions has the meaning set out in paragraph 74.

Competing Products has the meaning set out in paragraph 27(a).

Constrained Invoices Forecast has the meaning set out in paragraph 90G(b).

Continuous Disclosure Contraventions has the meaning set out in paragraph 133.

Continuous Disclosure Obligations has the meaning set out in paragraph 16.

Corporations Act has the meaning set out in paragraph 1(c)(i).

CPI has the meaning set out in paragraph 50.

Customer Backlog Information has the meaning set out in paragraph 90.

~~**Customer Backlog Representation** has the meaning set out in paragraph 70.~~

Demand Forecasting Method has the meaning set out in paragraph 58B.

Demand Guidance Representation has the meaning set out in paragraph 41(b1).

EBIT has the meaning set out in paragraph 23.

End Market Split Assumption has the meaning set out in paragraph 58E.

Erter has the meaning set out in paragraph 7.

EU has the meaning set out in paragraph 20.

FC Products has the meaning set out in paragraph 21.

February Earnings Call has the meaning set out in paragraph 40.

February Implied Representations has the meaning set out in paragraph 42.

February Inflation Impacts has the meaning set out in paragraph 55.

February Information has the meaning set out in paragraph 59.

February Interest Rate Impacts has the meaning set out in paragraph 58.

Further Competing Product Supply Improvement Conditions has the meaning set out in paragraph 75.

FY20 Annual Report means the document published by the ASX at 4:04pm AEST on 24 August 2020 with the document description “Australian Annual Review Fiscal Year 2020”.

FY21 Annual Report means the document published by the ASX at 8:32am AEST on 19 May 2021 with the document description “Combined Annual Report/Annual Report on Form 20-F”.

FY22 Annual Report means the document published by the ASX at 8:21am AEST on 18 May 2022 with the document description “Combined FY22 Annual Report/Annual Report on Form 20-F”.

FY22 Guidance has the meaning set out in paragraph 39(a).

FY23 Group Guidance Representations has the meaning set out in paragraph 41(a).

FY23 Guidance has the meaning set out in paragraph 39(b).

FY23 Guidance Basis Representation has the meaning set out in paragraph 42(a).

FY23 Guidance Modification Reason Representation has the meaning set out in paragraph 96(a).

FY23 Guidance Representations has the meaning set out in paragraph 41.

Gadd has the meaning set out in paragraph 12(b).

Group Members has the meaning set out in paragraph 1.

Guidance Reliability Representations has the meaning set out in paragraph 42(b).

Hammes has the meaning set out in paragraph 9.

HFM has the meaning set out in paragraph 72C.

Increased NA FY23 Guidance Representations has the meaning set out in paragraph 67(b).

Inflation Conditions has the meaning set out in paragraph 51.

Inflation Demand Conditions has the meaning set out in paragraph 52.

Interest Rate Conditions has the meaning set out in paragraph 56.

Interest Rate Demand Conditions has the meaning set out in paragraph 57(b).

Interest Rate Demand Guidance Representation has the meaning set out in paragraph 41(c).

Investor Day 1 has the meaning set out in paragraph 103.

Investor Day 2022 Presentation Day 1 means the document published by the ASX at 4:35pm AEST on 12 September 2022 with the document description “JHX Investor Day 2022 Presentation Day 1”.

January Interest Rate Likely Rise Statement has the meaning set out in paragraph 49.

January Special Call has the meaning set out in paragraph 36.

James Hardie has the meaning set out in paragraph 1(a)(i).

James Hardie Board has the meaning set out in paragraph 11.

James Hardie Officers has the meaning set out in paragraph 12.

JHX ADRs has the meaning set out in paragraph 1(a)(ii).

JHX Equity Swaps has the meaning set out in paragraph 1(a)(iii).

JHX Shares has the meaning set out in paragraph 1(a)(i).

June US Interest Rate Rise Statements has the meaning set out in paragraph 97Z82.

July US Interest Rate Rise Statements has the meaning set out in paragraph 97AA83.

Lloyd has the meaning set out in paragraph 10.

March US Interest Rate Rise Statements has the meaning set out in paragraph 80.

Market Contraventions has the meaning set out in paragraph 172.

Market Share Representation has the meaning set out in paragraph 41(d).

Material Information has the meaning set out in paragraph 127.

May Demand/Competition Impacts has the meaning set out in paragraph 78.

May Earnings Call has the meaning set out in paragraph 66.

May Implied Representations has the meaning set out in paragraph 69(b).

May Inflation Impacts has the meaning set out in paragraph 86.

May Information has the meaning set out in paragraph 91.

May Interest Rate Impacts has the meaning set out in paragraph 89.

May Reaffirmed FY23 Guidance has the meaning set out in paragraph 65.

May US Interest Rate Rise Statements has the meaning set out in paragraph 81.

Miele has the meaning set out in paragraph 12(a).

Misleading Conduct Contravention has the meaning set out in paragraph 139.

Misleading Statements Contravention has the meaning set out in paragraph 144.

NA has the meaning set out in paragraph 20.

NA Business has the meaning set out in paragraph 23.

NA FY23 Guidance Representations has the meaning set out in paragraph 41(b).

NA Market has the meaning set out in paragraph 19.

New Construction Sector has the meaning set out in paragraph 25.

~~**No Material Risk Representation** has the meaning set out in paragraph 42(e).~~

November Announcements has the meaning set out in paragraph 105.

November Earnings Call has the meaning set out in paragraph 105(b).

Periodic Disclosure Contraventions has the meaning set out in paragraphs 133B and 133D.

Periodic Disclosure Obligations has the meaning set out in paragraph 18B.

Pipeline Representation has the meaning set out in paragraph 41(e).

R&R/NC End Market Split has the meaning set out in paragraph 25.

R&R Sector has the meaning set out in paragraph 25.

Reaffirmed Demand Guidance Representation has the meaning set out in paragraph 67(b1).

Reaffirmed FY23 Guidance Basis Representations has the meaning set out in paragraph 69(a).

Reaffirmed FY23 Group Guidance Representations has the meaning set out in paragraph 67(a).

Reaffirmed FY23 Guidance Representations has the meaning set out in paragraph 67.

Reaffirmed Interest Rate Demand Guidance Representation has the meaning set out in paragraph 67(c).

Reaffirmed Market Share Representation has the meaning set out in paragraph 67(d).

Reaffirmed Pipeline Representation has the meaning set out in paragraph 67(e).

Relevant Period has the meaning set out in paragraph 1(a).

Revised Demand Forecasting Method has the meaning set out in paragraph 90G.

Revised FY23 Guidance has the meaning set out in paragraph 94.

Revised FY23 Guidance Representations has the meaning set out in paragraph 96(b).

Revised FY23 Group Guidance Representation has the meaning set out in paragraph 96(b)(i).

Revised FY23 Guidance Basis Representations has the meaning set out in paragraph 97(a).

Revised Guidance Reliability Representation has the meaning set out in paragraph 97(b).

Revised Market Share Representation has the meaning set out in paragraph 96(b)(vi).

Revised NA FY23 Guidance Representations has the meaning set out in paragraph 96(b)(iii).

~~**Revised No Material Risk Representation** has the meaning set out in paragraph 97(c).~~

Revised November FY23 Guidance has the meaning set out in paragraph 107.

Revised Pipeline Representation has the meaning set out in paragraph 96(b)(v).

SG&A has the meaning set out in paragraph 72A.

Temporary FC Product Demand Conditions has the meaning set out in paragraph 47.

The Final FY23 9+3 NA Forecast has the meaning set out in paragraph 42F.

Unconstrained Invoices Forecast has the meaning set out in paragraph 90G(b).

Updated 2023 ANI has the meaning set out in paragraph 106(a).

US Construction Market Softening has the meaning set out in paragraph 77.

Wiens has the meaning set out in paragraph 8.

Certificate of lawyer

I, Mathew Chuk, certify to the Court that, in relation to the amended statement of claim filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~8 May 2023~~ 26 August 2025



Signed by Mathew Chuk
Lawyer for the Plaintiff