

41, D7

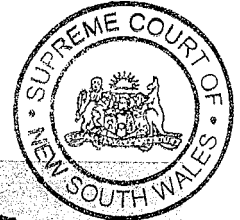
FIRST DEFENDANT'S COMMERCIAL LIST RESPONSE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity Division
List	Class Action List
Registry	Sydney
Case number	2017/294069

FILED

12 FEB 2018



TITLE OF PROCEEDINGS

N.A.

First plaintiff	Haliburton Charles David Findlay
Second plaintiff	Marian Jennifer Denny Findlay
First defendant	DSHE Holdings Limited (Receivers and Managers Appointed) (in Liquidation) (ACN 166 237 841)
Number of defendants	3

FILING DETAILS

Filed for	DSHE Holdings Limited (Receivers and Managers Appointed) (in Liquidation) (ACN 166 237 841) First defendant
Filed in relation to	Plaintiffs' claim
Legal representative	Scott Geoffrey Hedge of Colin Biggers & Paisley Pty Ltd
Legal representative reference	SGH:1708389
Contact name and telephone	Adrian Konstantinidis (02) 8281 4555
Contact email	scott.hedge@cbp.com.au

COMMERCIAL LIST RESPONSE

A. NATURE OF DISPUTE

1. The First Defendant (DSHE) agrees that the Plaintiffs' summary of the case (contained in paragraphs 1-19 of the Statement of Claim) reflects the plaintiff's contentions in the pleading.
2. The proceeding is brought at a time when the Liquidators' investigations are on-going.

B. ISSUES LIKELY TO ARISE

1. DSHE agrees that the common questions identified by the plaintiffs in paragraphs 226 - 228 of the Statement of Claim are likely to arise in the proceedings.

2. DSHE agrees that the issues raised in paragraphs 229 - 231 will arise if liability is proved against one or more of the defendants, but says they may not be common questions to all Group Members and may be questions to be dealt with on sub-group or individual basis.
3. If any of the defendants are found liable, should their liability be reduced proportionately having regard to the extent of responsibility for the loss of each liable defendant and the extent to which any other concurrent wrongdoer is liable for that same loss.
4. Are alleged admissions in the "Company's proceedings" (as defined) brought by the receivers and managers of DSHE, which are particularised in these proceedings by the plaintiff, matters which are admissions binding upon the First Defendant (a company that is in liquidation) in these proceedings.

C. DEFENDANT'S RESPONSES TO CONTENTIONS

I. INTRODUCTION

1. In answer to paragraphs 1 to 19 of the Statement of Claim, DSHE:
 - (a) DSHE accepts that the Summary of the Case outlines the Plaintiffs' Contentions in these proceedings;
 - (b) relies on the pleadings contained in Part C of this Commercial List Response; and
 - (c) otherwise does not admit the allegations contained in the said paragraphs.

2-19. *[Intentionally left blank]*

20. DSHE does not plead to paragraph 20 of the Statement of Claim as it does not contain any allegations against it.
21. DSHE does not plead to paragraph 21 of the Statement of Claim as it does not contain any allegations against it.
22. DSHE does not plead to paragraph 22 of the Statement of Claim as it does not contain any allegations against it.
23. DSHE does not plead to paragraph 23 of the Statement of Claim as it does not contain any allegations against it.
24. DSHE does not plead to paragraph 24 of the Statement of Claim as it does not contain any allegations against it.

II. PART 10 OF THE CIVIL PROCEDURE ACT 1995 (NSW)

25. DSHE does not plead to paragraph 25 of the Statement of Claim as it does not contain any allegations against it.
26. In answer to paragraph 26 of the Statement of Claim, DSHE:
- (a) denies the allegations contained in paragraph 26(b) of the Statement of Claim; and
 - (b) otherwise does not plead to the balance of the said paragraph as it does not contain any allegations against it.
27. DSHE does not know and cannot admit the allegations contained in paragraph 27 of the Statement of Claim.

III. THE PARTIES

28. In answer to paragraph 28 of the Statement of Claim, DSHE:
- (a) says that the plaintiffs sold 3,500 shares on 1 September 2015; and
 - (b) otherwise admits the allegations contained in the said paragraph.
29. DSHE admits the allegations contained in paragraph 29 of the Statement of Claim.
30. DSHE admits the allegations contained in paragraph 30 of the Statement of Claim.
31. DSHE admits the allegations contained in paragraph 31 of the Statement of Claim.
32. In answer to paragraph 32 of the Statement of Claim, DSHE:
- (a) admits that it traded from stores located mostly in Australia and via its on-line website; and
 - (b) otherwise does admit the allegations contained in the said paragraph.
33. DSHE admits the allegations contained in paragraph 33 of the Statement of Claim.
34. In answer to paragraph 34 of the Statement of Claim, DSHE:
- (a) says Michael Potts (**Potts**):

- (i) was appointed as finance director in or about September 2013 or October 2013, noting registration of DSHE 25 October 2013;
 - (ii) was appointed as company secretary from 25 October 2013 to 12 August 2014; and
- (b) otherwise admits the allegations contained in the said paragraph.

IV. DSHE'S ACCOUNTING OBLIGATIONS

- 35. DSHE admits the allegations contained in paragraph 35 of the Statement of Claim.
- 36. DSHE admits the allegations contained in paragraph 36 of the Statement of Claim.

AASB 101

- 37. In answer to paragraph 37 of the Statement of Claim, DSHE:
 - (a) relies upon Australian Accounting Standard AASB 101 for its full terms and effect; and
 - (b) otherwise admits the allegations contained in the said paragraph.
- 38. In answer to paragraph 38 of the Statement of Claim, DSHE:
 - (a) relies upon Australian Accounting Standard AASB 101 and the AASB Framework for its full terms and effect; and
 - (b) otherwise admits the allegations contained in the said paragraph.
- 39. In answer to paragraph 39 of the Statement of Claim, DSHE:
 - (a) relies upon Australian Accounting Standard AASB 101 and the AASB Framework for its full terms and effect; and
 - (b) otherwise admits the allegations contained in the said paragraph.
- 40. In answer to paragraph 40 of the Statement of Claim, DSHE:
 - (a) relies upon Australian Accounting Standard AASB 101 for its full terms and effect; and

- (b) otherwise admits the allegations contained in the said paragraph.

AASB 102

41. In answer to paragraph 41 of the Statement of Claim, DSHE:

- (a) relies upon Australian Accounting Standard AASB 102 for its full terms and effect;
and
- (b) otherwise admits the allegations contained in the said paragraph.

42. DSHE does not admit the allegations contained in paragraph 42 of the Statement of Claim.

43. DSHE denies the allegations contained in paragraph 43 of the Statement of Claim.

AASB 108

44. In answer to paragraph 44 of the Statement of Claim, DSHE:

- (a) relies upon AASB 108 for its full terms and effect; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

45. In response to paragraph 45 of the Statement of Claim, DSHE:

- (a) relies upon Australian Accounting Standard AASB 108 for its full terms and effect;
and
- (b) otherwise admits the allegations contained in the said paragraph.

46. DSHE does not admit the allegations contained in paragraph 46 of the Statement of Claim.

V DSHE'S RECEIPT OF REBATES

47. In answer to paragraph 47 of the Statement of Claim, DSHE:

- (a) says that the allegations are so general, broad and vague as to be embarrassing and reserves its rights to bring an application in respect of the allegations contained in the said paragraph; and
- (b) under cover of the objection in subparagraph (a) above, does not admit the allegations contained in the said paragraph.

48. In answer to paragraph 48 of the Statement of Claim, DSHE:

- (a) says that the allegations are so general, broad and vague as to be embarrassing and reserves its rights to bring an application in respect of the allegations contained in the said paragraph; and
- (b) under cover of the objection in subparagraph (a) above, does not admit the allegations contained in the said paragraph.

49. In answer to paragraph 49 of the Statement of Claim, DSHE:

- (a) says that the allegations are so general, broad and vague as to be embarrassing and reserves its rights to bring an application in respect of the allegations contained in the said paragraph; and
- (b) under cover of the objection in subparagraph (a) above, does not admit the allegations contained in the said paragraph.

50. In answer to paragraph 50 of the Statement of Claim, DSHE:

- (a) says that the allegations are so general, broad and vague as to be embarrassing and reserves its right to bring an application in respect of the allegations contained in the said paragraph; and
- (b) under cover of the objection in subparagraph (a) above:
 - (i) admits that from time to time it received rebates from suppliers outside the standard agreements between suppliers and DSH;
 - (ii) admits that from time to time it received promotional support from its suppliers; and
 - (iii) otherwise does not admit the allegations contained in the said paragraph.

51. In answer to paragraph 51 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraph 50 of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

52. In answer to paragraph 52 of the Statement of Claim, DSHE:

- (a) says that the allegations are so general, broad and vague as to be embarrassing and reserves its rights to bring an application in respect of the allegations contained in the said paragraph; and

- (b) undercover of the objection in subparagraph (a) above:
 - (i) does not admit the Rebate-maximisation practices as alleged in these proceedings; and
 - (ii) otherwise does not admit the allegations contained in the said paragraph.

53. In answer to paragraph 53, DSHE:

- (a) refers to and repeats paragraph 52 of this Commercial List Response.
- (b) otherwise does not admit the allegations contained in the said paragraph.

VI. DSHE'S FINANCIAL STATEMENTS, DIRECTORS' DECLARATIONS AND ASX ANNOUNCEMENTS & RESULTS BRIEFINGS

February 2015

54. In answer to paragraph 54 of the Statement of Claim, DSHE:

- (a) says the 2015 Half Year Financial Statements were published on 17 February 2015;
- (b) relies on the said announcement for its full terms and effect ;and
- (c) otherwise admits the allegations contained in the said paragraph.

55. DSHE admits the allegations contained in paragraph 55 of the Statement of Claim.

56. DSHE admits the allegations contained in paragraph 56 of the Statement of Claim.

57. DSHE admits the allegations contained in paragraph 57 of the Statement of Claim.

58. DSHE does not admit the allegations contained in paragraph 58 of the Statement of Claim.

59. DSHE admits the allegations contained in paragraph 59 of the Statement of Claim.

60. DSHE admits the allegations contained in paragraph 60 of the Statement of Claim.

Directors' 2015 Half Year Representations

61. DSHE does not plead to paragraph 61 of the Statement of Claim as it does not contain any allegations against it.

62. DSHE does not plead to paragraph 62 of the Statement of Claim as it does not contain any allegations against it.

DSHE's 2015 Half Year Representations

63. In answer to paragraph 63 of the Statement of Claim, DSHE:

- (a) says that at the Board Meeting held on 16 February 2015, the board of directors resolved that the accounts for the half year ended 28 December 2014, including the directors' declaration be adopted and the Company Secretary be authorised to release them to the market via the Australian Stock Exchange and DSHE's website;

Particulars

Minutes of Board Meeting held on 16 February 2015

- (b) admits the board of directors, including Nicholas Abboud (**Abboud**) and Potts, represented that DSHE's financial statements and notes thereto were in accordance with the *Corporations Act 2001*, including compliance with accounting standards and giving a true and fair view of the financial position and performance of DSHE; and
- (c) otherwise does not admit the allegations contained in the said paragraph.
64. DSHE does not admit the allegations contained in paragraph 64 of the Statement of Claim.

17 February ASX Announcement & Results Briefing

65. In answer to paragraph 65 of the Statement of Claim, DSHE:

- (a) says that at the Board Meeting held on 16 February 2015, the board of directors resolved that the accounts for the half year ended 28 December 2014, ASX Announcement and Analyst Presentation be adopted and the Company Secretary be authorised to release them to the market via the Australian Stock Exchange and DSHE's website;

Particulars

Minutes of Board Meeting held on 16 February 2015

- (b) otherwise admits the allegations contained in the said paragraph.

66. DSHE admits the allegations contained in paragraph 66 of the Statement of Claim and relies on the 17 February 2015 ASX Announcement and Results Briefing for their full terms and effect.

August 2015

67. DSHE admits the allegations contained in paragraph 67 of the Statement of Claim and relies on the Annual Report and 2015 Full Year Financial Statements for their full terms and effect.
68. DSHE admits the allegations contained in paragraph 68 of the Statement of Claim.
69. DSHE admits the allegations contained in paragraph 69 of the Statement of Claim.
70. DSHE admits the allegations contained in paragraph 70 of the Statement of Claim.
71. DSHE does not admit the allegations contained in paragraph 71 of the Statement of Claim.
72. DSHE admits the allegations contained in paragraph 72 of the Statement of Claim and relies on the Annual Report and the declaration for their full terms and effect.
73. DSHE admits the allegations contained in paragraph 73 of the Statement of Claim.

Directors' 2015 Full Year Representations

74. DSHE does not plead to paragraph 74 of the Statement of Claim as it does not contain any allegations against it.
75. DSHE does not plead to paragraph 75 of the Statement of Claim as it does not contain any allegations against it.

DSHE's 2015 Full Year Representations

76. In answer to paragraph 76 of the Statement of Claim, DSHE:
- (a) says that at the Board Meeting held on 17 August 2015, the board of directors resolved to adopt the financial statements, comprising the Appendix 4E, Appendix 4G, Annual Report including financial statements, ASX Release and analyst presentation and authorised the Company Secretary to release them to the market via the Australian Stock Exchange, subject to final review of the accounts by Abboud and Potts;

Particulars

Minutes of Board Meeting held on 17 August 2015

- (b) admits the board of directors, including Abboud and Potts, represented that DSHE's financial statements and notes thereto were in accordance with the *Corporations Act 2001*, including compliance with accounting standards and giving a true and fair view of the financial position and performance of DSHE; and
 - (c) otherwise does not admit the allegations contained in the said paragraph.
77. DSHE does not admit the allegations contained in paragraph 77 of the Statement of Claim.

18 August ASX Announcement & Results Briefing

78. In answer to paragraph 78 of the Statement of Claim, DSHE:
- (a) says that at the Board Meeting held on 17 August 2015, the board of directors resolved to adopt the ASX Announcement and Result Briefing and authorised the Company Secretary to release them to the market via the Australian Stock Exchange, subject to final review of the accounts by Abboud and Potts; and

Particulars

Minutes of Board Meeting held on 17 August 2015

- (b) admits that an announcement was made to the ASX on 18 August 2015 of the Full Year 2015 Results;
 - (c) admits that on 18 August 2015, it lodged with the ASX the FY2015 Results Briefing;
 - (d) says further that it lodged other documents with the ASX on 18 August 2015 being Appendix 4E, Annual Report 2015, Appendix 4G and notification of dividend/distribution; and
 - (e) otherwise does not admit the allegations contained in the said paragraph.
79. DSHE admits the allegations contained in paragraph 79 of the Statement of Claim and relies on the said announcement for its full terms and effect.

VII. DSHE'S ACCOUNTING TREATMENT OF REBATES

Accounting Treatment of Switched Rebates

80. DSHE does not admit the allegations contained in paragraph 80 of the Statement of Claim.
81. DSHE does not admit the allegations contained in paragraph 81 of the Statement of Claim.
82. DSHE does not admit the allegations contained in paragraph 82 of the Statement of Claim.
83. DSHE does not admit the allegations contained in paragraph 83 of the Statement of Claim and further says that:
- (a) DSHE engaged David White (**White**) and Deloitte Touche Tohmatsu (**Deloitte**) to conduct a review of its interim financial reports for the half year ended 28 December 2014 (**HY2015 Financial Statements**), and an audit of its financial report for the financial year ended 28 June 2015 (**FY2015 Financial Statements**);

Particulars

Letter from Deloitte to Bill Wavish of DSHE dated 13 November 2014

- (b) in completing its review or audit of DSHE's HY2015 Financial Statements or FY2015 Financial Statements, the accounting treatment of rebates was an area of focus for Deloitte;

Particulars

Deloitte Report to the Finance and Audit Committee for the year ended 28 June 2015

- (c) in completing its review of DSHE's HY2015 Financial Statements, Deloitte adopted the following procedures:
- (i) Understanding the key controls associated with the completeness and validity of the recording of rebate income;
- (ii) Critically evaluating management's methodologies in capturing, calculating and recognising rebates received and receivable, including the underlying key assumptions;

- (iii) Testing the controls in place to ensure that they are operating effectively throughout the year;
- (iv) Performing substantive testing on a sample of rebates recorded/accrued at balance sheet date as well as reviewing a sample of supplier agreements to ensure they have been correctly treated; and
- (v) Assessing the completeness and accuracy of the provision for any disputed claims with suppliers.

Particulars

Deloitte External audit strategy for the year ending 28 June 2015,
dated 18 November 2014

- (d) in completing its review of DSHE's HY2015 Financial Statements, Deloitte adopted the following procedures:
 - (i) Discussing the nature of the rebate agreements with key members of DSHE management;
 - (ii) Analysing the various types of rebates recognised by assessing the nature and the classification of the rebates;
 - (iii) Performing a walkthrough of the process;
 - (iv) Detailed testing of a sample of rebates recognised throughout the year by tracing to supporting documentation, with a focus on rebates accrued as at 28 June 2015; and
 - (v) Assessing whether any rebates represent amounts which should be deferred.

Particulars

Deloitte Report to the Finance and Audit Committee for the year
ended 28 June 2015

- (e) after undertaking the audit and review pleaded at paragraph 83(b)-(d) of this Commercial List Response, Deloitte:
 - (i) did not identify any unadjusted differences with respect to vendor rebates;

Particulars

Deloitte Report to the Finance and Audit Committee for the year ended 28 June 2015

- (ii) represented that in the opinion of White and Deloitte that:
 - (A) the financial report of DSHE was in accordance with the *Corporations Act 2001* including:
 - (1) giving a true and fair view of DSHE's financial position at 28 June 2015 and of its performance for the year ended on that date; and
 - (2) complying with the Australian Accounting Standards and the *Corporations Regulations 2001*.
 - (B) DSHE's consolidated financial statements also complied with International Financial Reporting Standards as disclosed in Note 2 of the financial statements

Particulars

Independent Auditor's Report dated 17 August 2015, contained in DSHE's 2015 Annual Report

- 84. In answer to paragraph 84 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraph 83 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.
- 85. In answer to paragraph 85 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraph 83 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.
- 86. In answer to paragraph 86 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraph 83 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.

Accounting treatment of Scan Rebates

87. DSHE does not admit the allegations contained in paragraph 87 of the Statement of Claim.
88. DSHE does not admit the allegations contained in paragraph 88 of the Statement of Claim.
89. DSHE does not admit the allegations contained in paragraph 89 of the Statement of Claim.
90. DSHE does not admit the allegations contained in paragraph 90 of the Statement of Claim.
91. In answer to paragraph 91 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraph 83 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.
92. In answer to paragraph 92 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraph 83 and 91 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.
93. In answer to paragraph 93 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraph 83 and 91 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.
94. In answer to paragraph 94 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraph 83 and 91 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.

Accounting Treatment of O&A Rebates

95. DSHE does not admit the allegations contained in paragraph 95 of the Statement of Claim.
96. DSHE does not admit the allegations contained in paragraph 96 of the Statement of Claim.

97. DSHE does not admit the allegations contained in paragraph 97 of the Statement of Claim.
98. DSHE does not admit the allegations contained in paragraph 98 of the Statement of Claim.
99. In answer to paragraph 99 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraph 83 of this Commercial List Response;
 - (b) further says that, Deloitte:
 - (i) reported that DSHE's processes, reconciliations and supporting evidence for O&A Rebates had significantly improved compared to FY14 with accrued rebates based on supporting evidence provided by the buyers and reviewed by finance before accruals were raised;

Particulars

Deloitte Report to the Finance and Audit Committee for the year ended 28 June 2015

- (ii) undertook analysis of DSHE's gross margin, net advertising costs and overall costs of doing business as a percentage of sales to determine whether the allocation of O&A rebates was reasonable and reflected the fundamental economic nature of the activity;

Particulars

Deloitte Report to the Finance and Audit Committee for the year ended 28 June 2015

- (iii) concurred with management's allocation of O&A rebates;

Particulars

Deloitte Report to the Finance and Audit Committee for the year ended 28 June 2015

- (c) otherwise does not admit the allegations contained in the said paragraph.
100. DSHE does not admit the allegations contained in paragraph 100 of the Statement of Claim.

101. DSHE does not admit the allegations contained in paragraph 101 of the Statement of Claim.
102. DSHE does not admit the allegations contained in paragraph 102 of the Statement of Claim.
103. In answer to paragraph 103 of the Statement of Claim, DSHE:
- (a) says that at the Board Meeting on 7 December 2015, the board discussed potentially implementing changes in relation O&A Rebates from 1 December 2015;
 - (b) relies on the Minutes of Board Meeting held on 7 December 2015; and
 - (c) otherwise does not admit the allegations contained in the said paragraph.

VIII. DSHE'S FAILURE TO WRITE DOWN ITS INVENTORY

104. In answer to paragraph 104 of the Statement of Claim, DSHE repeats paragraph 52 and 53 of this Commercial List Response.
105. DSHE denies the allegations contained in paragraph 105 of the Statement of Claim.
106. DSHE does not admit the allegations contained in paragraph 106 of the Statement of Claim.
107. In answer to paragraph 107 of the Statement of Claim, DSHE:
- (a) says that Mike Holtzer (**Holtzer**) and Agile Commerce Consulting were retained by DSHE pursuant to a letter dated 25 September 2015;
 - (b) relies upon that letter for its full terms and effect; and
 - (c) otherwise does not admit the allegations in the said paragraph.
108. In answer to paragraph 108 of the Statement of Claim, DSHE:
- (a) says that on or about 25 September 2015, Potts received a document entitled 'Dick Smith Holdings Inventory Paper' (**Inventory Paper**);
 - (b) relies on the Inventory Paper for its terms and effect;
 - (c) says that on 23 November 2015, Holtzer provided Potts with a summary of an estimated inventory impairment relating to bad stock;

Particulars

Email from Mike Holtzer to Michael Potts dated 23 November 2015

- (d) says that on 26 November 2015, Holtzer sent an email to Potts containing 2 attachments entitled 'Dick Smith Analysis' and 'AP changes to DS Pitch';

Particulars

Email from Mike Holtzer to Michael Potts dated 26 November 2015

- (e) otherwise does not admit the allegations contained in the said paragraph.
109. In answer to paragraph 109 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraph 108 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.
110. In answer to paragraph 110 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraph 108 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.
111. DSHE admits the allegations contained in paragraph 111 of the Statement of Claim and relies on the said announcement for its full terms and effect.
112. DSHE does not admit the allegations contained in paragraph 112 of the Statement of Claim, and further says that:
- (a) in conducting its audit for the financial year ended 29 June 2014, Deloitte:
 - (i) undertook to:
 - (A) review the inventory costing and provisioning methodologies adopted as required under AASB 102 Inventories;
 - (B) review management's evolving provision methodologies and provide guidance as to the appropriateness of the methodology for both pre and post-acquisition inventory balances;
 - (C) analyse reports developed by management to track actual selling prices for stock sold during the period and the allocation of 'scan' provision utilisation rates; and

- (D) assess each inventory provision, subject to materiality, to determine the appropriateness of any provisions recognised under AASB 102 *Inventories*.

Particulars

Deloitte External Audit Strategy for the financial year ending 29 June 2014, dated 16 January 2014, section 3.2.

- (ii) identified inventory as a *"key area of focus and audit response"*;

Particulars

Deloitte Report to the Finance and Audit Committee for the year ended 28 June 2015, dated 18 November 2014, section 1.2.

- (iii) confirmed that it had reviewed the assumptions and methodology applied and concurred with the revised methodology for inventory obsolescence.

Particulars

Deloitte Report to the Finance and Audit Committee for the year ended 29 June 2014, dated 6 August 2014.

- (b) in conducting its audit for the financial year ended 28 June 2015, Deloitte:

- (i) adopted the following procedures with respect to inventory:

- (A) tested controls around the inventory obsolescence reconciliation, review and approval process;
- (B) reviewed inventory costing and provisioning methodologies adopted as required under AASB 102 *Inventories*;
- (C) used data analytics to analyse reports developed by management to track actual selling prices for stock sold during the period and the allocation of 'scan' provision utilisation rates; and
- (D) reviewed management's assessment based on this information and other evidence as to the appropriateness of the percentages provided on stock lines.

Particulars

Deloitte External Audit Strategy for the financial year ending 28 June 2015, dated 18 November 2014, section 3

- (ii) identified inventory as a *"key area of focus and audit response"*;

Particulars

Deloitte Report to the Finance and Audit Committee for the year ended 28 June 2015, section 1.2

- (iii) confirmed it had assessed the assumptions and methodology applied in respect of inventory obsolescence and concurred with the revised methodology.

Particulars

Deloitte Report to the Finance and Audit Committee for the year ended 28 June 2015, section 3.2

113. DSHE denies the allegations contained in paragraph 113 of the Statement of Claim.

114. DSHE denies the allegations contained in paragraph 114 of the Statement of Claim.

115. DSHE denies the allegations contained in paragraph 115 of the Statement of Claim.

116. In answer to paragraph 116 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraph 41 of this Commercial List Response;
- (b) denies paragraph 116(a); and
- (c) otherwise does not admit the allegations contained in said paragraph.

117. DSHE denies the allegations contained in paragraph 117 of the Statement of Claim.

118. DSHE denies the allegations contained in paragraph 118 of the Statement of Claim.

IX. DSHE'S MISLEADING OR DECEPTIVE CONDUCT

119. DSHE does not admit the allegations contained in paragraph 119 of the Statement of Claim and repeats its pleading to paragraph 63 and 74 of this Commercial List Response.

(A) 2015 Half Year Financial Statements

120. In answer to paragraph 120 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

121. In answer to paragraph 121 of the Statement of Claim, DSHE

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

122. In answer to paragraph 122 of the Statement of Claim, DSHE

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

(B) DSHE's 2015 Half Year Implied Representations

123. In answer to paragraph 123 of the Statement of Claim, DSHE

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response;
- (b) does not plead to the allegations against Abboud or Potts; and
- (c) otherwise does not admit the allegations contained in the said paragraph.

(C) 17 February 2015 ASX Announcement & Results Briefing

124. In answer to paragraph 124 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

(D) 2015 Full Year Financial Statements

125. In answer to paragraph 125 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and

- (b) otherwise does not admit the allegations contained in the said paragraph.

126. In answer to paragraph 126 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

127. In answer to paragraph 127 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

(E) DSHE's 2015 Full Year Implied Representation

128. In answer to paragraph 128 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to paragraph 123 of this Commercial List Response;
- (b) refers to and repeats its response to Parts VII and VIII of this Commercial List Response;
- (c) does not plead to the allegations against Abboud or Potts; and
- (d) otherwise does not admit the allegations contained in the said paragraph.

(F) 18 August 2015 ASX Announcement & Results Briefing

129. In answer to paragraph 129 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

X. DSHE's CONTRAVENTION OF SECTION 1041E OF THE CORPORATION ACT

(A) 2015 Half Year Financial Statements

130. In answer to paragraph 130 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to paragraphs 120 and 122 of this Commercial List Response;
- (b) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (c) otherwise does not admit the allegations contained in the said paragraph.

131. In answer to paragraph 131 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

132. In answer to paragraph 132 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

(B) DSHE's 2015 Half Year Implied Representations

133. In answer to paragraph 133 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to paragraphs 123 and 130 of this Commercial List Response;
- (b) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (c) otherwise does not admit the allegations contained in the said paragraph.

134. In answer to paragraph 134 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to paragraphs 123 and 131 of this Commercial List Response
- (b) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (c) otherwise does not admit the allegations contained in the said paragraph.

135. In answer to paragraph 135 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

(C) 17 February 2015 ASX Announcement & Results Briefing

136. In answer to paragraph 136 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to paragraph 124 of this Commercial List Response;
- (b) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (c) otherwise does not admit the allegations contained in the said paragraph.

137. In answer to paragraph 137 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

138. In answer to paragraph 138 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

(D) 2015 Full Year Financial Statements

139. In answer to paragraph 139 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to paragraphs 125 to 127 of this Commercial List Response;
- (b) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (c) otherwise does not admit the allegations contained in the said paragraph.

140. In answer to paragraph 140 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

141. In answer to paragraph 141 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

(E) DSHE's 2015 Full Year Implied Representation

142. In answer to paragraph 142 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to paragraphs 128 and 130 of this Commercial List Response;
- (b) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (c) otherwise does not admit the allegations contained in the said paragraph.

143. In answer to paragraph 143 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to paragraphs 131 and 140 of this Commercial List Response;
- (b) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (c) otherwise does not admit the allegations contained in the said paragraph.

144. . In answer to paragraph 144 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
- (b) otherwise does not admit the allegations contained in the said paragraph.

(F) 18 August 2015 ASX Announcement & Results Briefing

145. In answer to paragraph 145 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to paragraph 129 and 136 of this Commercial List Response;
 - (b) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
 - (c) otherwise does not admit the allegations contained in the said paragraph.
146. In answer to paragraph 146 of the Statement of Claim, DSHE:
- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.
147. In answer to paragraph 147 of the Statement of Claim, DSHE:
- (a) refers to and repeats its response to Parts VII and VIII of this Commercial List Response; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.

XI. MR ABBOUD'S CONTRAVENTIONS

148. DSHE does not plead to paragraph 148 of the Statement of Claim as it does not contain any allegations against it.
- (A) Sections 1041H and 1041E in relation to the 2015 Half Year Financial Statements**
149. DSHE does not plead to paragraph 149 of the Statement of Claim as it does not contain any allegations against it.
150. DSHE does not plead to paragraph 150 of the Statement of Claim as it does not contain any allegations against it.
151. DSHE does not plead to paragraph 151 of the Statement of Claim as it does not contain any allegations against it.
152. DSHE does not plead to paragraph 152 of the Statement of Claim as it does not contain any allegations against it.
153. DSHE does not plead to paragraph 153 of the Statement of Claim as it does not contain any allegations against it.

154. DSHE does not plead to paragraph 154 of the Statement of Claim as it does not contain any allegations against it.

(B) Sections 1041H and 1041E in relation to the Directors' Half Year Implied Representations

155. DSHE does not plead to paragraph 155 of the Statement of Claim as it does not contain any allegations against it.
156. DSHE does not plead to paragraph 156 of the Statement of Claim as it does not contain any allegations against it.
157. DSHE does not plead to paragraph 157 of the Statement of Claim as it does not contain any allegations against it.
158. DSHE does not plead to paragraph 158 of the Statement of Claim as it does not contain any allegations against it.

(C) Sections 1041H and 1041E in relation to the 17 February 2015 ASX Announcement & Result Briefing

159. DSHE does not plead to paragraph 159 of the Statement of Claim as it does not contain any allegations against it.
160. In answer to paragraph 160 of the Statement of Claim, DSHE:
- (a) says that at the Board Meeting held on 16 February 2015, the board of directors resolved that the accounts for the half year ended 28 December 2014, ASX Announcement and Analyst Presentation be adopted and the Company Secretary be authorised to release them to the market via the Australian Stock Exchange and DSHE's website.

Particulars

Minutes of Board Meeting held on 16 February 2015

- (b) otherwise does not admit the allegations contained in the said paragraph.
161. DSHE admits the allegations contained in paragraph 161 of the Statement of Claim.
162. DSHE does not plead to paragraph 162 of the Statement of Claim as it does not contain any allegations against it.

- 163. DSHE does not plead to paragraph 163 of the Statement of Claim as it does not contain any allegations against it.
- 164. DSHE does not plead to paragraph 164 of the Statement of Claim as it does not contain any allegations against it.
- 165. DSHE does not plead to paragraph 165 of the Statement of Claim as it does not contain any allegations against it.

(D) Sections 1041H and 1041E in relation to the 2015 Full Year Financial Statements

- 166. DSHE does not plead to paragraph 166 of the Statement of Claim as it does not contain any allegations against it.
- 167. DSHE does not plead to paragraph 167 of the Statement of Claim as it does not contain any allegations against it.
- 168. DSHE does not plead to paragraph 168 of the Statement of Claim as it does not contain any allegations against it.
- 169. DSHE does not plead to paragraph 169 of the Statement of Claim as it does not contain any allegations against it.
- 170. DSHE does not plead to paragraph 170 of the Statement of Claim as it does not contain any allegations against it.
- 171. DSHE does not plead to paragraph 171 of the Statement of Claim as it does not contain any allegations against it.

(E) Sections 1041H and 1041E in relation to the Directors' 2015 Full Year Implied Representation

- 172. DSHE does not plead to paragraph 172 of the Statement of Claim as it does not contain any allegations against it.
- 173. DSHE does not plead to paragraph 173 of the Statement of Claim as it does not contain any allegations against it.
- 174. DSHE does not plead to paragraph 174 of the Statement of Claim as it does not contain any allegations against it.
- 175. DSHE does not plead to paragraph 175 of the Statement of Claim as it does not contain any allegations against it.

(F) Sections 1041H and 1041E in relation to the 18 August 2015 ASX Announcement & Results Briefing

- 176. DSHE does not plead to paragraph 176 of the Statement of Claim as it does not contain any allegations against it.
- 177. DSHE does not plead to paragraph 177 of the Statement of Claim as it does not contain any allegations against it.
- 178. DSHE admits the allegations contained in paragraph 178 of the Statement of Claim.
- 179. DSHE does not plead to paragraph 179 of the Statement of Claim as it does not contain any allegations against it.
- 180. DSHE does not plead to paragraph 180 of the Statement of Claim as it does not contain any allegations against it.
- 181. DSHE does not plead to paragraph 181 of the Statement of Claim as it does not contain any allegations against it.
- 182. DSHE does not plead to paragraph 182 of the Statement of Claim as it does not contain any allegations against it.

XII. MR POTTS' CONTRAVENTION

- 183. DSHE does not plead to paragraph 183 of the Statement of Claim as it does not contain any allegations against it.

(A) Sections 1041H and 1041E in relation to the 2015 Half Year Financial Statements

- 184. DSHE does not plead to paragraph 184 of the Statement of Claim as it does not contain any allegations against it.
- 185. DSHE does not plead to paragraph 185 of the Statement of Claim as it does not contain any allegations against it.
- 186. DSHE does not plead to paragraph 186 of the Statement of Claim as it does not contain any allegations against it.
- 187. DSHE does not plead to paragraph 187 of the Statement of Claim as it does not contain any allegations against it.
- 188. DSHE does not plead to paragraph 188 of the Statement of Claim as it does not contain any allegations against it.

189. DSHE does not plead to paragraph 189 of the Statement of Claim as it does not contain any allegations against it.

(B) Sections 1041H and 1041E in relation to the Directors 2015 Half Year Implied Representation

190. DSHE does not plead to paragraph 190 of the Statement of Claim as it does not contain any allegations against it.

191. DSHE does not plead to paragraph 191 of the Statement of Claim as it does not contain any allegations against it.

192. DSHE does not plead to paragraph 192 of the Statement of Claim as it does not contain any allegations against it.

193. DSHE does not plead to paragraph 193 of the Statement of Claim as it does not contain any allegations against it.

(C) Sections 1041H and 1041E in relation to the 17 February 2015 ASX Announcement & Results Briefing

194. DSHE does not plead to paragraph 194 of the Statement of Claim as it does not contain any allegations against it.

195. In answer to paragraph 195 of the Statement of Claim, DSHE:

(a) refers to and repeats its pleading to paragraph 160 of this Commercial List Response; and

(b) otherwise does not admit the allegations contained in the said paragraph.

196. DSHE admits the allegations contained in paragraph 196 of the Statement of Claim.

197. DSHE does not plead to paragraph 197 of the Statement of Claim as it does not contain any allegations against it.

198. DSHE does not plead to paragraph 198 of the Statement of Claim as it does not contain any allegations against it.

199. DSHE does not plead to paragraph 199 of the Statement of Claim as it does not contain any allegations against it.

200. DSHE does not plead to paragraph 200 of the Statement of Claim as it does not contain any allegations against it.

(D) Sections 1041H and 1041E in relation to the 2015 Full Year Financial Statements

- 201. DSHE does not plead to paragraph 201 of the Statement of Claim as it does not contain any allegations against it.
- 202. DSHE does not plead to paragraph 202 of the Statement of Claim as it does not contain any allegations against it.
- 203. DSHE does not plead to paragraph 203 of the Statement of Claim as it does not contain any allegations against it.
- 204. DSHE does not plead to paragraph 204 of the Statement of Claim as it does not contain any allegations against it.
- 205. DSHE does not plead to paragraph 205 of the Statement of Claim as it does not contain any allegations against it.
- 206. DSHE does not plead to paragraph 206 of the Statement of Claim as it does not contain any allegations against it.

(E) Sections 1041H and 1041E in relation to the Directors' 2015 Implied Representations

- 207. DSHE does not plead to paragraph 207 of the Statement of Claim as it does not contain any allegations against it.
- 208. DSHE does not plead to paragraph 208 of the Statement of Claim as it does not contain any allegations against it.
- 209. DSHE does not plead to paragraph 209 of the Statement of Claim as it does not contain any allegations against it.
- 210. DSHE does not plead to paragraph 210 of the Statement of Claim as it does not contain any allegations against it.

(E) Sections 1041H and 1041E in relation to the 18 August 2015 ASX Announcement & Results Briefing

- 211. DSHE does not plead to paragraph 211 of the Statement of Claim as it does not contain any allegations against it.
- 212. DSHE does not plead to paragraph 212 of the Statement of Claim as it does not contain any allegations against it.

213. DSHE admits the allegations contained in paragraph 213 of the Statement of Claim.
214. DSHE does not plead to paragraph 214 of the Statement of Claim as it does not contain any allegations against it.
215. DSHE does not plead to paragraph 215 of the Statement of Claim as it does not contain any allegations against it.
216. DSHE does not plead to paragraph 216 of the Statement of Claim as it does not contain any allegations against it.
217. DSHE does not plead to paragraph 217 of the Statement of Claim as it does not contain any allegations against it.

XIII. CAUSATION LOSS AND DAMAGE

218. In answer to paragraph 218 of the Statement of Claim, DSHE:
- (a) admits that the plaintiffs purchased the shares as alleged, and further says that the plaintiffs sold 3,500 shares on 1 September 2015; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.
219. In answer to paragraph 219 of the Statement of Claim, DSHE:
- (a) admits that the market in which DSE shares were traded was regulated by the ASX Listing Rules and s674(2) of the *Corporations Act 2001*;
 - (b) admits that the provisions of ss1041E and 1041H of the *Corporations Act 2001* were in force when shares in DSHE were traded in the market;
 - (c) says, in answer to paragraph 219(c) that, it admits that the price of DSHE shares would reasonably be expected to have been informed or affected by material information disclosed to the ASX and by other publicly available information, amongst other factors affecting the price at which those shares were traded;
 - (d) repeats its response to Parts V, VII and VIII of this Commercial List Response and otherwise denies paragraph 95(d); and
 - (e) Otherwise denies the allegations contained in the said paragraph.
220. DSHE denies the allegations contained in paragraph 220 of the Statement of Claim.
221. DSHE denies the allegations contained in paragraph 221 of the Statement of Claim.

222. DSHE does not admit the allegations contained in paragraph 222 of the Statement of Claim.
223. DSHE denies the allegations contained in paragraph 223 of the Statement of Claim.
224. DSHE denies the allegations contained in paragraph 224 of the Statement of Claim.
225. DSHE does not plead to paragraph 225 of the Statement of Claim as it does not contain any allegations against it.

XIV. COMMON QUESTIONS

226. In answer to paragraphs 226 to 231 of the Statement of Claim, DSHE:
- (a) admits some of the questions of law or fact pleaded in the Statement of Claim are common questions of fact between the plaintiffs and the Group Members;
 - (b) says that some of the questions of law or fact may only be common questions as between certain groups or sub-groups of the plaintiffs and Group members; and
 - (c) otherwise denies the allegations contained in the said paragraphs.

XV. PROPORTIONATE LIABILITY

227. Further, or in the alternative, if DSHE is found liable to the plaintiffs and Group Members for contraventions of the Corporations Act 2001 as pleaded at Parts IX and X of the Statement of Claim (which are not admitted), it says that the claims of the plaintiffs and Group Members are 'apportionable claims' within the meaning of section 1041L of the Corporations Act 2001.

Particulars

- (a) For the purpose of this proportionate liability pleading only, and without admission, DSHE refers to and repeats the matters alleged in respect of Abboud in Part XI of the Statement of Claim and says that if those matters are established, and the plaintiffs and Group members have suffered loss or damage by reason of the alleged contraventions, Abboud is a concurrent wrongdoer (within the meaning of section 1041L of the *Corporations Act 2001*) in relation to each such claim made against DSHE.
- (b) For the purpose of this proportionate liability pleading only, and without admission, DSHE refers to and repeats the matters alleged in respect of Potts in Part XII of the Statement of Claim and says that if those matters are established, and the plaintiffs and Group members have suffered loss or damage by reason of the

alleged contraventions, Potts is a concurrent wrongdoer (within the meaning of section 1041L of the *Corporations Act 2001*) in relation to each such claim made against DSHE.

228. Accordingly, DSHE's liability (if any) to the plaintiffs and Group Members is limited by section 1041N of the *Corporations Act 2001* and to an amount reflecting that proportion of loss which is just, having regard to the extent of DSHE's responsibility for that loss.

229. In relation to proportionate liability, the Liquidators' investigations are ongoing. The Liquidators reserve their rights to identify additional concurrent wrongdoers.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

1. There are no questions appropriate for referral to a referee.

E. A STATEMENT AS TO WHETHER THE PARTIES HAVE ATTEMPTED MEDIATION; WHETHER THE PARTY IS WILLING TO PROCEED TO MEDIATION AT AN APPROPRIATE TIME

1. The parties have not attempted to mediate.
2. DSHE is willing to proceed to mediation at an appropriate time.


SIGNATURE OF LEGAL REPRESENTATIVE

This commercial list response does not require a certificate under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014*.

Signature of legal representative

Capacity

Date of signature

 (Scott Hledge)

Solicitor

12 February 2018