

## FIRST DEFENDANT'S DEFENCE TO AMENDED JOINT STATEMENT OF CLAIM

### COURT DETAILS

|             |                                  |
|-------------|----------------------------------|
| Court       | Supreme Court of New South Wales |
| Division    | Equity                           |
| List        | Class Action Panel               |
| Registry    | Sydney                           |
| Case number | 2017/294069 & 2018/52431         |

### TITLE OF PROCEEDINGS

#### **Proceeding 2017/294069**

|                      |  |
|----------------------|--|
| First plaintiff      | <b>Haliburton Charles David Findlay</b>  |
| Second plaintiff     | <b>Marian Jennifer Denny Findlay</b>   |
| First defendant      | <b>DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)</b> |
| Number of defendants | <b>457</b>   |

#### **Proceeding 2018/52431**

|                      |  |
|----------------------|--|
| First plaintiff      | <b>Epaminondas Mastoris</b>  |
| Second plaintiff     | <b>Lena Mastoris</b>   |
| First defendant      | <b>DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)</b> |
| Number of defendants | <b>457</b>   |

### FILING DETAILS

|                                |  |
|--------------------------------|--|
| Filed for                      | <b>DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)</b> , First defendant |
| Filed in relation to           | Plaintiffs' Amended Joint Statement of Claim   |
| Legal representative           | Scott Hedge, Colin Biggers & Paisley Pty Ltd   |
| Legal representative reference | SGH:1709693  |
| Contact name and telephone     | Scott Hedge, (02) 8281 4555<br>Adrian Konstantinidis, (02) 8281 4555   |
| Contact email                  | scott.hedge@cbp.com.au<br>adrian.konstantinidis@cbp.com.au   |

## **PLEADINGS AND PARTICULARS**

### **A. PARTIES AND BACKGROUND**

*Paragraphs 1 to 32 intentionally not used.*

#### **A.1. PART 10 OF THE CIVIL PROCEDURE ACT 1995 (NSW)**

33. In answer to paragraph 33 of the Amended Joint Statement of Claim, the first defendant (DSH):
- (a) admits that proceeding 2017/294069 and proceeding 2018/52431 have each been commenced as a representative proceeding; and
  - (b) otherwise does not know and cannot admit any allegation contained in paragraph 33.
34. In answer to paragraph 34 of the Amended Joint Statement of Claim, DSH:
- (a) denies that it caused any loss or damage to the Findlay Group Members; and
  - (b) otherwise does not know and cannot admit any allegation contained in paragraph 34.
35. DSH does not know and cannot admit the allegations in paragraph 35.
36. In answer to paragraph 36 of the Amended Joint Statement of Claim, DSH:
- (a) denies that it caused any loss or damage to the Mastoris Group Members; and
  - (b) otherwise does not know and cannot admit any allegation contained in paragraph 36.
37. DSH does not know and cannot admit the allegations in paragraph 37.

#### **A.2. THE PARTIES**

##### **A.2.1. The plaintiffs in the Findlay proceedings**

38. DSH does not admit the allegations in paragraph 39 of the Amended Joint Statement of Claim.

##### **A.2.2. The plaintiffs in the Mastoris proceeding**

39. DSH does not the allegations in paragraph 39 of the Amended Joint Statement of Claim.

**A.2.3. The first defendant in both proceedings: DSH**

- 40. DSH admits the allegations paragraph 40 of the Amended Joint Statement of Claim.
- 41. DSH admits the allegations in paragraph 41 of the Amended Joint Statement of Claim.
- 42. DSH admits the allegations in paragraph 42 of the Amended Joint Statement of Claim.
- 43. In answer to paragraph 43 of the Amended Joint Statement of Claim, DSH:
  - (a) admits that it traded from stores located mostly in Australia and via its on-line website; and
  - (b) otherwise does not admit the allegations in paragraph 43.

**A.2.4. The second defendant in both proceedings: Mr Abboud**

- 44. DSH admits the allegations in paragraph 44 of the Amended Joint Statement of Claim.

**A.2.5. The third defendant in both proceedings: Mr Potts**

- 45. As to paragraph 45 of the Amended Joint Statement of Claim, DSH:
  - (a) says that Michael Potts (**Potts**) was appointed as Finance Director in or about September 2013 or October 2013, noting registration of DSH on 25 October 2013; and
  - (b) otherwise admits the allegations in paragraph 45.

**A.2.6. The fourth to 457<sup>th</sup> defendants**

- 45A. DSH admits the allegations in paragraph 45A of the Amended Joint Statement of Claim.
- 45B. DSH admits the allegations in paragraph 45B of the Amended Joint Statement of Claim.

**A.3. BACKGROUND**

- 46. DSH admits the allegations in paragraph 46 of the Amended Joint Statement of Claim.
- 47. DSH admits the allegations in paragraph 47 of the Amended Joint Statement of Claim.
- 48. DSH admits the allegations in paragraph 48 of the Amended Joint Statement of Claim.
- 49. DSH admits the allegations in paragraph 49 of the Amended Joint Statement of Claim.
- 50. DSH admits the allegations in paragraph 50 of the Amended Joint Statement of Claim.

51. DSH admits the allegations in paragraph 51 of the Amended Joint Statement of Claim.
52. DSH admits the allegations in paragraph 52 of the Amended Joint Statement of Claim.
53. DSH admits the allegations in paragraph 53 of the Amended Joint Statement of Claim.
54. DSH admits the allegations in paragraph 54 of the Amended Joint Statement of Claim.
55. DSH does not plead to paragraph 55 of the Amended Joint Statement of Claim because that paragraph contains no allegations against DSH.
56. DSH admits the allegations in paragraph 56 of the Amended Joint Statement of Claim.

## **B. THE REPRESENTATIONS**

### **B.1. THE PROSPECTUS REPRESENTATIONS**

#### **B.1.1. The legal status of the Prospectus**

57. In answer to paragraph 57 of the Amended Joint Statement of Claim, DSH:
  - (a) will rely on ss 709 and 710 of the *Corporations Act 2001* (Cth) (**CA**) for their full terms and effect; and
  - (b) otherwise admits the allegations in paragraph 57.
58. DSH admits the allegations in paragraph 58 of the Amended Joint Statement of Claim.
59. In answer to paragraph 59 of the Amended Joint Statement of Claim, DSH:
  - (a) says that on or about 13 November 2013, the board of DSH resolved that the Prospectus be approved for lodgement with ASIC and ASX; and
  - (b) otherwise does not admit the allegations in paragraph 59.
60. DSH admits the allegations in paragraph 60 of the Amended Joint Statement of Claim.

#### **B.1.2. Financial Information Basis Representation**

61. In answer to paragraph 61 of the Amended Joint Statement of Claim, DSH:
  - (a) says that the forecast financial information included in the Prospectus comprised a pro forma forecast consolidated cash flow statement for FY14, together with a reconciliation to the FY14 statutory forecast consolidated cash flow statement;

- (b) says that the Prospectus also included a report by Deloitte Corporate Finance Pty Ltd (**DCF**), which had reviewed the Pro Forma Historical Information and the Forecast Financial Information; and
- (c) otherwise admits paragraph 61.

62. DSH admits the allegations in paragraph 62 of the Amended Joint Statement of Claim.

63. DSH admits the allegations in paragraph 63 of the Amended Joint Statement of Claim.

### **B.1.3. FY13 Performance Representations**

64. In answer to paragraph 64 of the Amended Joint Statement of Claim, DSH:

- (a) says that the Prospectus stated that the Historical Financial Information for the three years ended 30 June 2013 had been derived from:
  - (b) the audited financial statements of Dick Smith Sub-Holdings Pty Limited (**DSSH**) for the period from the Acquisition to 30 June 2013; and
  - (c) the unaudited accounting records of DSE Holdings Pty Ltd for the period from 28 June 2010 to 26 November 2012;
- (d) says that the Prospectus further stated that the income statements for each of the three years ended 30 June 2013 (referred to as pro forma historical financial statements) had the following adjustments applied:
  - (e) sales and contribution to EBIT of the 73 stores that were closed prior to Acquisition were excluded;
  - (f) depreciation expense prior to the Acquisition was adjusted to reflect the fair value adjustments recorded to plant and equipment at Acquisition;
  - (g) interest and tax expense was adjusted to reflect the post-Offer capital structure and borrowings;

#### **Particulars**

Prospectus, p 53.

- (h) says the Prospectus further stated that the unaudited income statements for the period from 1 July 2010 to 26 November 2012, which were derived from the unaudited accounting records of DSE Holdings Pty Ltd, excluded certain items, such as inventory impairment, write downs of plant and equipment and onerous

lease provisions as those adjustments were not recorded in the DSE Holdings Pty Ltd unaudited income statements. Those items were charged to either the Acquisition balance sheet or the impairment loss and restructuring provisions;

### **Particulars**

Prospectus, p 53.

- (i) admits that the Prospectus stated that the Pro Forma Historical Information had been prepared in accordance with the recognition and measurement principles described in Australian Accounting Standards (including the Australian Accounting Interpretations) and the summarised accounting policies of Dick Smith as set out in Section 11 of the Prospectus.
- (j) otherwise denies the allegations in paragraph 64.

65. In answer to paragraph 65 of the Amended Joint Statement of Claim, DSH:

- (a) admits the allegations in sub-paragraph 65(a);
- (b) admits the allegations in sub-paragraph 65(b);
- (c) admits the allegations in sub-paragraph 65(c);
- (d) admits the allegations in sub-paragraph 65(d);
- (e) admits the allegations in sub-paragraph 65(e);
- (f) admits the allegations in sub-paragraph 65(f);
- (g) admits the allegations in sub-paragraph 65(g);
- (h) admits the allegations in sub-paragraph 65(h);
- (i) admits the allegations in sub-paragraph 65(i);
- (j) admits the allegations in sub-paragraph 65(j);
- (k) admits the allegations in sub-paragraph 65(k);
- (l) says that the Prospectus stated that the Pro forma Historical Financial Information for FY13 had been prepared in accordance with the recognition and measurement principles described in Australian Accounting Standards (including the Australian

Accounting Interpretations) and the summarised accounting policies of Dick Smith as set out in Section 11 of the Prospectus; and

(m) otherwise denies the allegations in paragraph 65.

66. In answer to paragraph 66 of the Amended Joint Statement of Claim, DSH:

(a) admits that Potts verified the statements set out at paragraphs 65(a) to 65(j) of the Amended Joint Statement of Claim;

(b) admits that Potts verified the statement that the Pro Forma Historical Financial information for FY13 had been prepared in accordance with the recognition and measurement principles described in the Australian Accounting Standards (including the Australian Accounting Interpretations) and the summarised accounting policies of Dick Smith as set out in Section 11 of the Prospectus; and

(c) otherwise denies the allegations in paragraph 66.

#### **B.1.4. FY13 Balance Sheet Representations**

67. DSH admits the allegations in paragraph 67 of the Amended Joint Statement of Claim.

68. DSH admits the allegations in paragraph 68 of the Amended Joint Statement of Claim.

#### **B.1.5. Obsolete Stock Representation**

69. DSH admits the allegations in paragraph 69 of the Amended Joint Statement of Claim.

70. DSH admits the allegations in paragraph 70 of the Amended Joint Statement of Claim.

#### **B.1.6. 1Q14 Representations**

71. In answer to paragraph 71 of the Amended Joint Statement of Claim, DSH:

(a) admits the allegations in sub-paragraph (a);

(b) admits the allegations in sub-paragraph (b);

(c) as to sub-paragraph (c), says that the Prospectus stated that DSSH's 1Q14 pro forma CODB was \$(56.7) million;

(d) says that the Prospectus stated that:

(i) pro forma sales declined by 10.6% to \$273.3 million in 1Q14 on the previous corresponding period, while like for like pro forma sales declined

by 12.2% over the same corresponding period, largely due to the cycling of increased sales in 1Q13 that were associated with increased promotional and inventory clearance activity;

**Particulars**

Prospectus, p 66.

- (ii) when compared against management's pro forma adjusted 1Q13 sales, 1Q14 pro forma sales declined by 2.2% on a total basis and declined by 3.1% on a like for like basis;

**Particulars**

Prospectus, p 67.

- (iii) the overall decline of management's adjusted like for like sales in 1Q14 was driven by adjusted like for like pro forma sales growth in Australia of 2.4%, offset by a decline in adjusted like for like pro forma sales in New Zealand of 24.7%.

**Particulars**

Prospectus, p 67.

- (e) otherwise admits the allegations in paragraph 71.

72. DSH admits the allegations in paragraph 72 of the Amended Joint Statement of Claim.

**B.1.7. The Transformation Representations**

73. DSH admits the allegations in paragraph 73 of the Amended Joint Statement of Claim.

74. DSH does not admit the allegations in paragraph 74 of the Amended Joint Statement of Claim.

75. DSH admits the allegations in paragraph 75 of the Amended Joint Statement of Claim.

**B.1.8. The Growth and Forecast Representations**

76. In answer to paragraph 76 of the Amended Joint Statement of Claim, DSH:

- (a) as to sub-paragraph (a), says that the Prospectus stated that:



- (i) for FY14, total pro forma sales were forecast to be \$1,226 million, representing a 4.2% decline on FY13 pro forma sales;
- (ii) like for like sales on a pro forma adjusted basis were forecast to decline by 2.5% in FY14;
- (iii) for the forecast of like for like sale, it was assumed that product and category mix would continue to be weighted toward private label brands consistent with previous periods.

### **Particulars**

Prospectus, p 70.

- (iv) otherwise admits the allegations in sub-paragraph 76(a);
  - (b) otherwise admits the allegations in sub-paragraph 76(b) to (g).
77. DSH admits the allegations in paragraph 77 of the Amended Joint Statement of Claim.
78. In answer to paragraph 78 of the Amended Joint Statement of Claim, DSH:
- (a) admits that the verification of the statements made in the Prospectus was a pre-condition to the approval of the Prospectus for publication; and
  - (b) otherwise does not admit the allegations in paragraph 78.
79. DSH does not admit the allegations in paragraph 79 of the Amended Joint Statement of Claim.

### **B.1.9. Financial Covenants Representations**

80. DSH admits the allegations in paragraph 80 of the Amended Joint Statement of Claim.
81. DSH admits the allegations in paragraph 81 of the Amended Joint Statement of Claim.
82. In answer to the allegations in paragraph 82 of the Amended Joint Statement of Claim, DSH:
- (a) says that the Prospectus included the following table of financial undertakings under the New Facility:

| <b>Financial undertakings</b> | <b>Note</b> | <b>Required ratio</b>  |
|-------------------------------|-------------|--|
| Adjusted Leverage Ratio       | 1           | <p>Less than 6.00x at all times from the date of the New Facility to 31 December 2013 (inclusive)</p> <p>Less than 5.25x at all times from 1 January 2014 to 31 March 2014 (inclusive)</p> <p>Less than 4.80x at all times from 1 April 2014 to 30 June 2014 (inclusive)</p> <p>Less than 5.00x at all times for the financial year ending 30 June 2015</p> <p>Less than 4.75x at all times for the financial year ending 30 June 2016</p> |
| Leverage Ratio                | 2           | Less than 2.5x at all times  |
| Fixed Charge Cover Ratio      | 3           | Not less than 1.25x at all times   |

1 **Adjusted Leverage Ratio** – Calculated as:  $(\text{Total debt} + (\text{annual rent expense} \times 8)) \div \text{EBITDAR}$  (earnings before interest, tax, depreciation, amortisation and rent).

2 **Leverage Ratio** – Calculated as:  $\text{Total debt} \div \text{EBITDA}$ .

3 **Fixed Charge Cover Ratio** – Calculated as:  $\text{EBITDAR} \div (\text{net interest expense} + \text{fees and principal repayments in relation to finance debt} + \text{rent expense})$ .

(b) says that the Prospectus also stated that:

*Dick Smith must also ensure that there are no amounts drawn under the revolving inventory facilities for a period of not less than five consecutive calendar days in each financial year. This covenant may be satisfied if in respect of any five consecutive calendar days in each financial year, Dick Smith has cash in a bank account in an amount exceeding the amounts outstanding. Dick Smith must also provide evidence to the Lender, on or prior to the first week of January 2014, that it has A\$30 million of headroom under the facility (and/or cash in this amount).*

## Particulars

Prospectus, p 76.

(c) otherwise denies the allegations in paragraph 82.

83. In answer to the allegations in paragraph 83 of the Amended Joint Statement of Claim, DSH:

(a) as to sub-paragraph (a):

(i) admits that the Prospectus stated, "Dick Smith expects to remain in compliance with these undertakings."

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

(b) admits the allegations in sub-paragraph (b).

84. DSH admits the allegations in paragraph 84 of the Amended Joint Statement of Claim.

### **B.2. POST-PROSPECTUS REPRESENTATIONS**

#### **B.2.1. August 2014 – FY14 Financial Statements**

85. DSH admits the allegations in paragraph 85 of the Amended Joint Statement of Claim and will rely on the FY14 Financial Statements for their full terms and effect.

86. DSH admits the allegations in paragraph 86 of the Amended Joint Statement of Claim.

87. DSH admits the allegations in paragraph 87 of the Amended Joint Statement of Claim.

88. In answer to paragraph 88 of the Amended Joint Statement of Claim, DSH:

(a) says that the consolidated statement of financial position included in the FY14 Financial Statements represented that:

(i) Trade and other receivables = \$46,688,000;

(ii) Inventories = \$253,814,000;

(iii) Trade and other payables = \$247,691,000; and

(b) otherwise denies the allegations in paragraph 88.

89. DSH admits the allegations in paragraph 89 of the Amended Joint Statement of Claim.
90. DSH admits the allegations in paragraph 90 of the Amended Joint Statement of Claim.
91. DSH admits the allegations in paragraph 91 of the Amended Joint Statement of Claim.

**B.2.1.1. Directors' FY14 Representations**

92. DSH does not plead to paragraph 92 of the Amended Joint Statement of Claim as that paragraph does not contain any allegation against DSH.
93. DSH does not plead to paragraph 93 of the Amended Joint Statement of Claim as that paragraph does not contain any allegation against DSH.

**B.2.1.2. DSH's FY14 Representations**

94. In answer to paragraph 94 of the Amended Joint Statement of Claim, DSH:
- (a) says that at the Board Meeting held on 18 August 2014, the board of directors resolved that the accounts for the year ended 29 June 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 DSH's website;

**Particulars**

Minutes of Board Meeting held on 18 August 2014.

- (b) admits the board of directors, including Nicholas Abboud (**Abboud**) and Potts, represented that DSH's financial statements and notes thereto were in accordance with the CA, including compliance with accounting practices and giving a true and fair view of the financial position and performance of DSH and the DSH Group; and
- (c) otherwise does not admit the allegations contained in paragraph 94 of the Amended Joint Statement of Claim.
95. DSH does not admit the allegations contained in paragraph 95 of the Amended Joint Statement of Claim.

**B.2.2. FY14 ASX Announcement & Results Briefing**

96. In answer to paragraph 96 of the Amended Joint Statement of Claim, DSH:
- (a) says that at the Board Meeting held on 18 August 2014, the board of directors resolved that the accounts for the year ended 29 June 2014, ASX Announcement

and FY14 Results Briefing be adopted and the Company Secretary be authorised to release them to the market via the ASX, subject to final review of the accounts by Abboud and Potts;

### **Particulars**

Minutes of Board Meeting held on 14 August 2014.

(b) otherwise admits the allegations in paragraph 96.

97. In answer to paragraph 97 of the Amended Joint Statement of Claim, DSH:

(a) says that some of the statements set out in the particulars to paragraph 97 are inaccurate;

(b) says that some of the statements set out in the particulars to paragraph 97 are not to be found in the FY14 ASX Announcement or the Results Briefing;

(c) says that for the reasons set out in subparagraphs (a) and (b) above, the allegations in paragraph 97 of the Amended Joint Statement of Claim are so general, broad and vague as to be embarrassing; and

(d) under cover of that objection in sub-paragraph (c) above, does not admit the allegations in paragraph 97.

### **B.2.3. August 2015 – FY15 Financial Statements**

98. DSH admits the allegations in paragraph 98 of the Amended Joint Statement of Claim and will rely on the FY15 Financial Statements for their full terms and effect.

99. In answer to paragraph 99 of the Amended Joint Statement of Claim, DSH:

(a) says that the FY2015 Financial Report stated that the 2015 statutory EBITDA was \$71.9 million and the 2015 pro forma EBITDA was \$78.9 million; and

(b) otherwise admits the allegations in paragraph 99.

100. In answer to paragraph 100 of the Amended Joint Statement of Claim, DSH:

(a) denies that the consolidated statement of profit or loss included any representation as to the pro forma NPAT; and

(b) otherwise admits the allegations in paragraph 100.

101. DSH admits the allegations in paragraph 101 of the Amended Joint Statement of Claim.
102. DSH admits the allegations in paragraph 102 of the Amended Joint Statement of Claim.
103. DSH admits the allegations in paragraph 103 of the Amended Joint Statement of Claim and will rely on the FY15 Financial Statements and the Directors' declaration for their full terms and effect.
104. DSH admits the allegations in paragraph 104 of the Amended Joint Statement of Claim.

***B.2.3.1. Directors' FY15 Representations***

105. DSH does not plead to paragraph 105 of the Amended Joint Statement of Claim as that paragraph does not contain any allegation against DSH.
106. DSH does not plead to paragraph 106 of the Amended Joint Statement of Claim as that paragraph does not contain any allegation against DSH.

***B.2.3.2. DSH's FY15 Representation***

107. In answer to paragraph 107 of the Amended Joint Statement of Claim, DSH:
- (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 that the board of directors, including Abboud and Potts, represented that DSH's financial statements and notes thereto were in accordance with the CA, including compliance with accounting standards and giving a true and fair view of the financial position and performance of DSH; and
- (c) otherwise does not admit the allegations in paragraph 107.
108. DSH does not admit the allegations in paragraph 108 of the Amended Joint Statement of Claim.

#### **B.2.4. FY15 ASX Announcement & Results Briefing**

109. In answer to paragraph 109 of the Amended Joint Statement of Claim, DSH:

- (a) says that at the Board Meeting held on 17 August 2015, the board of directors resolved to adopt the ASX Announcement and Results 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 FY15 Financial Statements;
  - (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 paragraph 109.
110. On the basis that the “various positive statements” referred to in paragraph 110 are confined to those set out in the particulars to that paragraph, DSH admits the allegations in paragraph 110.

### **C. REQUIRED ACCOUNTING ADJUSTMENTS**

#### **C.1. DSH'S ACCOUNTING OBLIGATIONS**

111. DSH admits the allegations in paragraph 111 of the Amended Joint Statement of Claim and relies upon Australian Accounting Standards AASB 3, AASB 101, AASB 102, AASB 108, AASB 112, AASB 116, AASB 118, AASB 132, AASB 136, AASB 139, AASB 1031 for their full terms and effect.
112. In answer to paragraph 112, DSH:
- (a) admits that from the date of its registration on 25 October 2013, it was required to prepare financial statements and notes for each financial year which gave a true and fair view of the financial position and performance of DSH (and, if

consolidated financial statements were required for the DSH Group, a true and fair view of the financial position and performance of the DSH Group); and

(b) otherwise does not admit the allegations in paragraph 112.

113. In answer to paragraph 113 of the Amended Joint Statement of Claim, DSH:

(a) repeats paragraph 111 above; and

(b) otherwise does not admit the allegations in paragraph 113.

**C.1.1. AASB 101**

114. DSH admits the allegations in paragraph 114 of the Amended Joint Statement of Claim.

115. DSH admits the allegations in paragraph 115 of the Amended Joint Statement of Claim.

116. DSH admits paragraph 116 of the Amended Joint Statement of Claim.

117. DSH admits the allegations in paragraph 117 of the Amended Joint Statement of Claim.

118. In answer to paragraph 118 of the Amended Joint Statement of Claim, DSH:

(a) says that when preparing DSH's and the DSH Group's financial statements, DSH management was required to assess the DSH Group's ability to continue as a going concern.

(b) says that when management was aware, in making its assessment, of material uncertainties related to events or conditions that may have cast significant doubt upon the DSH Group's ability to continue as a going concern, DSH was required to disclose those uncertainties.

**C.1.2. AASB 102**

119. DSH admits the allegations in paragraph 119 of the Amended Joint Statement of Claim.

120. DSH admits the allegations in paragraph 120 of the Amended Joint Statement of Claim.

121. DSH does not admit the allegations in paragraph 121 of the Amended Joint Statement of Claim.

122. DSH admits the allegations in paragraph 122 of the Amended Joint Statement of Claim.

123. In answer to paragraph 123 of the Amended Joint Statement of Claim, DSH:



- (a) admits that it was required to recognise the amount of any write-down of inventories to net realisable value and all losses of inventories as an expense in the period the write down or loss occurred;
- (b) admits that the financial statements were required to disclose the carrying amount of inventories carried at fair value less costs to sell; and
- (c) otherwise does not admit the allegations in paragraph 123.

**C.1.3. AASB 108**

124. In answer to paragraph 124 of the Amended Joint Statement of Claim, DSH:

- (a) says that in the absence of an Australian Accounting Standard that specifically applied to a transaction, other event or condition, management was to use its judgment in developing and applying an accounting policy that resulted in information that was:
  - (i) relevant to the economic decision-making of users; and
  - (ii) reliable, in that the financial statements:
    - (A) represented faithfully the financial position, financial performance and cash flows of the DSH Group;
    - (B) reflected the economic substance of transactions, other events and conditions, and not merely the legal form;
    - (C) were neutral; that is, free from bias;
    - (D) were prudent; and
    - (E) were complete in all material respects; and
- (b) otherwise does not admit the allegations in paragraph 124.

125. In answer to paragraph 125 of the Amended Joint Statement of Claim, DSH:

- (a) relies upon Australian Accounting Standards AASB 108 for its full terms and effect; and
- (b) otherwise admits the allegations in paragraph 125.

126. DSH does not admit the allegations in paragraph 126 of the Amended Joint Statement of Claim.

**C.1.4. AASB 132 and AASB 139**

127. DSH admits the allegations in paragraph 127 of the Amended Joint Statement of Claim.

128. In answer to paragraph 128 of the Amended Joint Statement of Claim, DSH:

(a) says that AASB 132 provided that “contract” and “contractual” referred to an agreement between two or more parties that had clear economic consequences that the parties had little, if any, discretion to avoid, usually because the agreement was enforceable by law, which agreement could take a variety of forms and need not be in writing; and

(b) otherwise does not admit the allegations in paragraph 128.

129. DSH admits the allegations in paragraph 129 of the Amended Joint Statement of Claim.

130. DSH admits the allegations in paragraph 130 of the Amended Joint Statement of Claim.

**C.1.5. AASB Framework**

131. DSH does not admit the allegations in paragraph 131 of the Amended Joint Statement of Claim.

132. DSH does not admit the allegations in paragraph 132 of the Amended Joint Statement of Claim.

133. DSH does not admit the allegations in paragraph 133 of the Amended Joint Statement of Claim.

134. DSH does not admit the allegations in paragraph 134 of the Amended Joint Statement of Claim.

**C.2. INVENTORY**

135. DSH does not admit the allegations in paragraph 135 of the Amended Joint Statement of Claim.

136. DSH does not admit the allegations in paragraph 136 of the Amended Joint Statement of Claim.

137. DSH does not admit the allegations in paragraph 137 of the Amended Joint Statement of Claim.

138. In answer to paragraph 138 of the Amended Joint Statement of Claim, DSH:

- (a) says that Mike Holtzer (**Holtzer**) and Agile Commerce Consulting were retained by DSH 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 paragraph 138.

139. In answer to paragraph 139 of the Amended Joint Statement of Claim, DSH:

- (a) says that on or about 25 September 2015, Potts received a document titled “Dick Smith Holdings Inventory Paper” (**Inventory Paper**);
- (b) relies on the Inventory Paper for its terms and effect; and
- (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 two attachments titled “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 in paragraph 139.

140. In answer to paragraph 140 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraph 139 above; and
- (b) otherwise does not admit the allegations in paragraph 140.

141. In answer to paragraph 141 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraph 139 above; and
  - (b) otherwise does not admit the allegations in paragraph 141.
142. DSH admits the allegations in paragraph 142 of the Amended Joint Statement of Claim and will rely on the ASX Announcement dated 30 November 2015 for its full terms and effect.
143. DSH does not admit the allegations in paragraph 143 of the Amended Joint Statement of Claim and says further that:
- (a) in conducting its audit for the financial year ended 29 June 2014, Deloitte Touche Tohmatsu (**DTT**):
    - (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 guidelines 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 process 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.
    - (ii) identified inventory as a "key area of focus and audit response";

**Particulars**

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

**Particulars**

DTT 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**

DTT 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, DTT:
  - (i) adopted the following procedures with respect to inventory:
    - (A) tested controls around the inventory obsolescence and 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**

DTT External Audit Strategy for the financial year ended 28 June 2015, dated 18 November 2014, section 3.

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

**Particulars**

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

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

## **Particulars**

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

- 144. DSH denies the allegations in paragraph 144 of the Amended Joint Statement of Claim.
- 145. DSH denies the allegations in paragraph 145 of the Amended Joint Statement of Claim.
- 146. DSH denies the allegations in paragraph 146 of the Amended Joint Statement of Claim.
- 147. DSH denies the allegations in paragraph 147 of the Amended Joint Statement of Claim.
- 148. DSH denies the allegations in paragraph 148 of the Amended Joint Statement of Claim.
- 149. DSH denies the allegations in paragraph 149 of the Amended Joint Statement of Claim.
- 150. DSH denies the allegations in paragraph 150 of the Amended Joint Statement of Claim.
- 151. DSH denies the allegations in paragraph 151 of the Amended Joint Statement of Claim.

### **C.3. REBATES**

#### **C.3.1. The Rebate Maximisation Practice and its Consequences**

- 152. In answer to paragraph 152 of the Amended Joint Statement of Claim, DSH:
  - (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 (a) above:
    - (i) does not admit the Rebate Maximisation Practice as alleged in these proceedings; and
    - (ii) otherwise does not admit the allegations in paragraph 152.
- 153. In answer to paragraph 153 of the Amended Joint Statement of Claim, DSH:
  - (a) refers to and repeats paragraph 152 above; and
  - (b) otherwise does not admit the allegations in paragraph 153.

154. In answer to paragraph 154 of the Amended Joint Statement of Claim, DSH:

- (i) refers to and repeats paragraph 152 above; and
- (ii) otherwise does not admit the allegations in paragraph 154.

**C.3.2. Accounting Treatment of Switched Invoice Rebates**

155. In answer to paragraph 155 of the Amended Joint Statement of Claim, DSH:

- (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 paragraph 155; and
- (b) under cover of the objection in sub-paragraph (a) above, does not admit the allegations in paragraph 155.

156. DSH does not admit the allegations in paragraph 156 of the Amended Joint Statement of Claim.

157. DSH does not admit the allegations in paragraph 157 of the Amended Joint Statement of Claim.

158. DSH does not admit the allegations in paragraph 158 of the Amended Joint Statement of Claim.

159. DSH does not admit the allegations in paragraph 159 of the Amended Joint Statement of Claim.

160. DSH does not admit the allegations in paragraph 160 of the Amended Joint Statement of Claim.

161. DSH does not admit the allegations in paragraph 161 of the Amended Joint Statement of Claim.

162. DSH does not admit the allegations in paragraph 162 of the Amended Joint Statement of Claim.

**C.3.3. Accounting Treatment of Volume Rebates**

163. In answer to paragraph 163 of the Amended Joint Statement of Claim, DSH:

- (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 paragraph 163; and
- (b) under cover of the objection in sub-paragraph (a) above, does not admit the allegations in paragraph 163.

164. DSH does not admit the allegations in paragraph 164 of the Amended Joint Statement of Claim.

165. DSH does not admit the allegations in paragraph 165 of the Amended Joint Statement of Claim.

166. DSH does not admit the allegations in paragraph 166 of the Amended Joint Statement of Claim.

167. DSH does not admit the allegations in paragraph 167 of the Amended Joint Statement of Claim.

168. DSH does not admit the allegations in paragraph 168 of the Amended Joint Statement of Claim.

169. DSH does not admit the allegations in paragraph 169 of the Amended Joint Statement of Claim.

#### **C.3.4. Accounting Treatment of O&A Rebates**

170. In answer to paragraph 170 of the Amended Joint Statement of Claim, DSH:

- (a) admits that DSH obtained rebates, some which were ad hoc and individually negotiated, from suppliers and service providers; and
- (b) otherwise does not admit the allegations in paragraph 170.

171. In answer to paragraph 171 of the Amended Joint Statement of Claim, DSH:

- (a) refers to repeats paragraph 170 above; and
- (b) otherwise does not admit the allegations in paragraph 171.

172. DSH does not admit the allegations contained in paragraph 172 of the Amended Joint Statement of Claim.



### **C.3.5. Transfers from Cost of Doing Business to the Cost of Goods Sold**

173. DSH does not admit the allegations in paragraph 173 of the Amended Joint Statement of Claim.

174. DSH does not admit the allegations in paragraph 174 of the Amended Joint Statement of Claim.

175. DSH does not admit the allegations in paragraph 175 of the Amended Joint Statement of Claim.

### **C.3.6. Recording income prior to the sale of relevant stock or the incurring of the relevant marketing expense**

176. DSH does not admit the allegations in paragraph 176 of the Amended Joint Statement of Claim.

### **C.3.7. Double counting rebate income and “pulling forward” rebate income**

177. DSH does not admit the allegations in paragraph 177 of the Amended Joint Statement of Claim.

178. DSH does not admit the allegations in paragraph 178 of the Amended Joint Statement of Claim.

179. DSH does not admit the allegations in paragraph 179 of the Amended Joint Statement of Claim.

### **C.3.8. Recording rebates when recovery was not probable**

180. DSH does not admit the allegations in paragraph 180 of the Amended Joint Statement of Claim.

181. DSH does not admit the allegations in paragraph 181 of the Amended Joint Statement of Claim.

### **C.3.9. O&A Rebates and Accounting Standards**

182. DSH does not admit the allegations in paragraph 182 of the Amended Joint Statement of Claim.

183. DSH does not admit the allegations in paragraph 183 of the Amended Joint Statement of Claim.

184. DSH does not admit the allegations in paragraph 184 of the Amended Joint Statement of Claim.

185. DSH does not admit the allegations in paragraph 185 of the Amended Joint Statement of Claim.

186. DSH does not admit the allegations in paragraph 186 of the Amended Joint Statement of Claim.

187. In answer to paragraph 187 of the Amended Joint Statement of Claim, DSH:

(a) refers to and repeats paragraph 159 and 166 above;

(b) says further that DTT:

(i) reported that DSH's processes, reconciliations and supporting evidence for O&A Rebates had significantly improved compared to the FY14 with accrued rebates based on supporting evidence provided by buyers and reviewed by finance before accruals were raised;

**Particulars**

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

(ii) undertook analysis of DSH'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 were reasonable and reflected the fundamental economic nature of the activity;

**Particulars**

DTT 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**

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

(c) otherwise does not admit the allegations in paragraph 187.

### **C.3.10. Lack of system to reliable track and record rebates**

188. DSH does not admit the allegations in paragraph 188 of the Amended Joint Statement of Claim.

189. DSH does not admit the allegations in paragraph 189 of the Amended Joint Statement of Claim.

190. DSH does not admit the allegations in paragraph 190 of the Amended Joint Statement of Claim.

191. DSH does not admit the allegations in paragraph 191 of the Amended Joint Statement of Claim.

192. DSH does not admit the allegations in paragraph 192 of the Amended Joint Statement of Claim.

### **C.4. WARRANTY SIGN ON LIABILITY**

193. DSH does not admit the allegations in paragraph 193 of the Amended Joint Statement of Claim and says further that in its Report to the Board for the period ended 30 June 2013, DTT:

(a) reported that “Other adjustments relate primarily to an unearned revenue liability raised in respect of The Warranty Group sign-on bonus. Management ascribed a fair value of \$2.1 million to this liability at acquisition, however due to the requirements of AASB 3 we have assessed the fair value of this as \$nil. This adjustment has been included on the schedule of unadjusted differences in Appendix A”.

(b) recognised an overstatement of Warranty Sign-on fee recognised on acquisition but advised that “In performing our audit we have not identified any unadjusted differences that could, in our judgment, either individually or in aggregate have a material effect on the consolidated financial report for the period ended 30 June 2013.”

194. DSH does not admit the allegations in paragraph 194 of the Amended Joint Statement of Claim.

195. DSH does not admit the allegations in paragraph 195 of the Amended Joint Statement of Claim.

196. DSH does not admit the allegations in paragraph 196 of the Amended Joint Statement of Claim.
197. In answer to paragraph 197 of the Amended Joint Statement of Claim, DSH:
- (a) refers to and repeats paragraphs 194 to 196 above; and
  - (b) otherwise does not admit the allegations in paragraph 197.
198. DSH does not admit paragraph 198 of the Amended Joint Statement of Claim and further says that in its Report to the Board for the period ended 30 June 2013, DTT:
- (a) reported that "*Other adjustments relate primarily to an unearned revenue liability raised in respect of The Warranty Group sign-on bonus. Management ascribed a fair value of \$2.1 million to this liability at acquisition, however due to the requirements of AASB 3 we have assessed the fair value of this as \$nil. This adjustment has been included on the schedule of unadjusted differences in Appendix A*";
  - (b) recognised an overstatement of Warranty Sign-on fee recognised on acquisition but advised that "In performing our audit we have not identified any unadjusted differences that could, in our judgement, either individually or in aggregate, have a material effect on the consolidated financial report for the period ended 30 June 2013.

### **Particulars**

DTT Report to the Board for the period ended 30 June 2013,  
section 2.5 & Appendix A

199. DSH does not admit the allegations in paragraph 199 of the Amended Joint Statement of Claim.
200. DSH does not admit the allegations in paragraph 200 of the Amended Joint Statement of Claim.
201. DSH does not admit the allegations in paragraph 201 of the Amended Joint Statement of Claim.
- C.5. DOUBTFUL DEBTS PROVISION**
202. DSH does not admit the allegations in paragraph 202 of the Amended Joint Statement of Claim.

203. DSH does not admit the allegations in paragraph 203 of the Amended Joint Statement of Claim.

204. DSH does not admit the allegations in paragraph 204 of the Amended Joint Statement of Claim.

205. DSH does not admit the allegations in paragraph 205 of the Amended Joint Statement of Claim.

206. In answer to paragraph 206 of the Amended Joint Statement of Claim, DSH:

(a) refers to and repeats paragraphs 202 to 205 above; and

(b) otherwise does not admit the allegations in paragraph 206.

207. DSH does not admit the allegations in paragraph 207 of the Amended Joint Statement of Claim.

#### **C.6. DEFERRED EXPENSES**

208. DSH does not admit the allegations in paragraph 208 of the Amended Joint Statement of Claim.

209. DSH does not admit the allegations in paragraph 209 of the Amended Joint Statement of Claim.

210. DSH does not admit the allegations in paragraph 210 of the Amended Joint Statement of Claim.

#### **C.7. CAPITALISATION OF WAGES**

211. In answer to paragraph 211 of the Amended Joint Statement of Claim, DSH:

(a) admits that in FY14 in recorded certain wages and salaries as an expense;

(b) otherwise does not admit the allegations in paragraph 211.

212. DSH does not admit paragraph 212 of the Amended Joint Statement of Claim.

213. DSH does not admit paragraph 213 of the Amended Joint Statement of Claim.

#### **C.8. ONEROUS LEASES**

214. DSH does not admit paragraph 214 of the Amended Joint Statement of Claim.

- 215. DSH does not admit paragraph 215 of the Amended Joint Statement of Claim.
- 216. DSH does not admit paragraph 216 of the Amended Joint Statement of Claim.
- 217. DSH does not admit paragraph 217 of the Amended Joint Statement of Claim.
- 218. DSH does not admit paragraph 218 of the Amended Joint Statement of Claim.

**C.9. DEED OF RELEASE PAYMENT**

- 219. DSH does not admit paragraph 219 of the Amended Joint Statement of Claim.
- 220. DSH does not admit paragraph 220 of the Amended Joint Statement of Claim.
- 221. DSH does not admit paragraph 221 of the Amended Joint Statement of Claim.
- 222. DSH does not admit paragraph 222 of the Amended Joint Statement of Claim.

**C.10. RESTATEMENT OF FY14 AND FY15 FINANCIAL STATEMENTS**

- 223. DSH does not admit paragraph 223 of the Amended Joint Statement of Claim.
- 224. DSH does not admit paragraph 224 of the Amended Joint Statement of Claim.
- 225. DSH does not admit paragraph 225 of the Amended Joint Statement of Claim.
- 226. DSH does not admit paragraph 226 of the Amended Joint Statement of Claim.

**D. CONTRAVENTIONS**

**D.1. DSH'S MISLEADING OR DECEPTIVE CONDUCT**

**D.1.1. The Prospectus**

- 227. In answer to paragraph 227 of the Amended Joint Statement of Claim, DSH:
  - (a) repeats paragraphs 144 to 149, 193 to 201, 202 to 207, 208 to 210; and
  - (b) otherwise does not admit paragraph 227 of the Amended Joint Statement of Claim.
  
- 228. In answer to paragraph 228 of the Amended Joint Statement of Claim, DSH:
  - (a) refers to and repeats paragraphs 144 to 149, 193 to 201, 202 to 207, 208 to 210 above; and

- (b) otherwise, does not admit the allegations in paragraph 228 of the Amended Joint Statement of Claim.
229. In answer to paragraph 229 of the Amended Joint Statement of Claim, DSH:
- (a) refers to and repeats paragraphs 62 and 76 above; and
  - (b) otherwise, does not admit the allegations in paragraph 229.
230. In answer to paragraph 230 of the Amended Joint Statement of Claim, DSH:
- (a) admits that the Prospectus did not disclose the matters set out in that paragraph;
  - (b) refers to and repeats paragraphs 135 to 151, 193 to 201, 202 to 207 and 208 to 210 above; and
  - (c) otherwise, does not admit the allegations in paragraph 230.
231. In answer to paragraph 231 of the Amended Joint Statement of Claim, DSH:
- (a) admits that the Prospectus did not disclose the matters set out in that paragraph;
  - (b) refers to and repeats paragraphs 62, 135 to 151, 193 to 201, 202 to 207 and 228 to 230 above; and
  - (c) otherwise, does not admit the allegations in paragraph 231.
232. In answer to paragraph 232 of the Amended Joint Statement of Claim, DSH:
- (a) refers to and repeats paragraphs 62, 65, 67, 69, 71, 73, 76 and 231 above; and
  - (b) otherwise, does not admit the allegations in paragraph 232.
233. In answer to paragraph 233 of the Amended Joint Statement of Claim, DSH:
- (a) refers to and repeats paragraph 232 above; and
  - (b) otherwise does not admit the allegations in paragraph 233.
234. In answer to paragraph 234 of the Amended Joint Statement of Claim, DSH:
- (a) refers to and repeats paragraphs 227, 228 and 230 to 232 above; and
  - (b) otherwise does not admit the allegations in paragraph 234.
235. In answer to paragraph 235 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraph 83 above; and
- (b) otherwise does not admit the allegations in paragraph 235.

236. In answer to paragraph 236 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraphs 232 to 235 above; and
- (b) otherwise does not admit the allegations in paragraph 236.

237. In answer to paragraph 237 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraphs 73, 76 and 229 above; and
- (b) otherwise does not admit the allegations in paragraph 237.

238. In answer to paragraph 238 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraphs 230 to 237 above;
- (b) otherwise denies the allegations in paragraph 238.

#### ***D.1.1.1 Due Diligence Defence***

238A. DSH says further that the Prospectus was subject to a detailed due diligence process.

#### **Particulars**

The due diligence process included the following steps and had the following features:

- the due diligence process was designed and monitored by independent solicitors, Minter Ellison, and was set out in a *Due Diligence Planning Memorandum*;
- pursuant to the Due Diligence Planning Memorandum, a Due Diligence Committee was established to: (i) supervise the preparation of the Prospectus and to ensure (as far as possible) that it complied with the content requirements of the CA; and (ii) plan, implement and oversee the Due Diligence Program, being all necessary due diligence investigations, enquiries and procedures to satisfy the Due Diligence Objectives.
- the Due Diligence Committee met 13 times;



- specific due diligence enquiry responsibilities were allocated to members of the Committee based on their expertise and knowledge. Financial and accounting due diligence was allocated to the Investigating Accountant, DCF;
- each director completed a Director Questionnaire and each member of senior management completed a Management Questionnaire confirming that to the best of his or her knowledge after due enquiry, the prospectus did not contain any statement that was misleading or deceptive (including by omission) or untrue and all forward-looking statements in the Prospectus are based on reasonable grounds;
- each statement included in the Prospectus was allocated to a director or member of Senior Management for verification and sign-off;
- Minter Ellison provided each member of the committee and other person involved in the verification process with a memorandum explaining the verification process, including that a verifying person would be required to provide independent documentation (as far as possible) to establish the accuracy and completeness of the statement. Where this was not possible, the verifying person was required to be satisfied that the level of verification was appropriate and had to refer areas of doubt to the Due Diligence Committee;
- Minter Ellison conducted a random review of verified statements, to ensure the level of verification was appropriate;
- at the conclusion of due diligence enquiries and at the same time as the conclusion of the verification process, the following documentation and reports were collated:
  - A completed Director Questionnaire from each director;

- A completed Management Questionnaire, R228 Checklist and a management sign-off certificate from each member of Senior Management;
- A legal opinion, a final legal due diligence report, and a verification report from independent solicitor, Minter Ellison;
- A Prospectus content and due diligence process sign off, a final accounting due diligence report, and an investigating accountant's report on historical and forecast financial information, from DCF, as the investigating accountant;
- A tax third party opinion for inclusion in the Prospectus and a final tax due diligence report from a tax adviser.

238B. In the premises of paragraph 238A above, DSH:

- (c) made all inquiries that were reasonable in the circumstances; and
- (d) after doing so, believed on reasonable grounds that statements made in the Prospectus were not misleading or deceptive, and there was no material omission from the Prospectus relating to the Pro Forma Historical Information, the Forecast Financial information, the Prospectus Inventory Information, the Prospectus Warranty Sign-on liability Information, the Prospectus Doubtful Debts Provision Information or the Deferred Expenses Information.

238C. By reason of the matters pleaded in paragraphs 238A and 238B above, DSH is not liable under s 729 of the CA.

#### **D.1.2. FY14 Financial Statements**

239. In answer to paragraph 239 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraphs 136, 144, 151 to 154, 163 to 167, 170 to 181, 188 to 192, 193 to 201, 202 to 207, 211, 212, 214 to 218; and
- (b) otherwise does not admit the allegations in paragraph 239.

240. In answer to paragraph 240 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraph 239 above; and
- (b) otherwise does not admit the allegations in paragraph 240.

241. In answer to paragraph 241 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraphs 239 and 240 above; and
- (b) otherwise does not admit the allegations in paragraph 241.

#### **D.1.3. DSH's FY14 Express Representation and FY14 Implied Representation**

242. In answer to paragraph 242 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraphs 94 and 239 to 241 above; and
- (b) otherwise does not admit the allegations in paragraph 242.

243. In answer to paragraph 243 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraphs 95, 239 to 242 above;
- (b) does not plead to the allegations against Abboud or Potts; and
- (c) otherwise does not admit the allegations in paragraph 243.

#### **D.1.4. FY14 ASX Announcement & Results Briefing**

244. In answer to paragraph 244 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraph 239 and parts C.3.1, C.3.3, C.3.4, C.3.5, C.3.6, C.3.7, C.3.8, C.4, C.5, C.7, C.9 above; and
- (b) otherwise does not admit the allegations in paragraph 244.

#### **D.1.5. FY15 Financial Statements**

245. In answer to paragraph 245 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats parts C.3.1, C.3.2, C.3.3, C.3.4, C.3.5, C.3.6, C.3.7, C.3.8, C.3.10, C.9 and paragraphs 136 to 144 above; and
- (b) otherwise does not admit the allegations in paragraph 245.

246. In answer to paragraph 246 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraph 245 above; and
- (b) otherwise does not admit the allegations in paragraph 246.

247. In answer to paragraph 247 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraphs 245 and 246 above; and
- (b) otherwise does not admit the allegations in paragraph 247.

#### **D.1.6. DSH's FY15 Express Representation and FY15 Implied Representation**

248. In answer to paragraph 248 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraphs 107 and 245 to 247 above; and
- (b) otherwise does not admit the allegations in paragraph 248.

249. In answer to paragraph 249 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraphs 108 and 245 to 248 above;
- (b) does not plead to the allegations against Abboud or Potts; and
- (c) otherwise does not admit the allegations in paragraph 249.

#### **D.1.7. FY15 ASX Announcement & Results Briefing**

250. In answer to paragraph 250 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraph 245 and parts C.3.1, C.3.2, C.3.3, C.3.4, C.3.5, C.3.6, C.3.7, C.3.8 and C.9 above; and
- (b) otherwise does not admit the allegations in paragraph 250.

### **D.2. D.2 DSH'S CONTRAVENTION OF SECTION 1041E OF THE CA**

#### **D.2.1. The Prospectus**

251. In answer to paragraph 251 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats parts C and D.1.1 above;
- (b) otherwise does not admit the allegations in paragraph 251.

252. In answer to paragraph 252 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats part C above;
- (b) otherwise does not admit the allegations in paragraph 252.

253. In answer to paragraph 253 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats part C above;
- (b) otherwise does not admit the allegations in paragraph 253.

#### **D.2.2. FY14 Financial Statements**

254. In answer to paragraph 254 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats parts C and D.1.2 above;
- (b) otherwise does not admit the allegations in paragraph 254.

255. In answer to paragraph 255 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats part C above;
- (b) otherwise does not admit the allegations in paragraph 255.

256. In answer to paragraph 256 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats part C above;
- (b) otherwise does not admit the allegations in paragraph 256.

#### **D.2.3. DSH's FY14 Express Representation and FY14 Implied Representation**

257. In answer to paragraph 257 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats parts C and D.1.3 above;
- (b) refers to and repeats paragraph 254 above; and
- (c) otherwise does not admit the allegations in paragraph 257.

258. In answer to paragraph 258 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats parts C.2, C.3, C.4, C.5, C.7, C.9 and D.1.3 above;
- (b) refers to and repeats paragraph 255 above; and

(c) otherwise does not admit the allegations in paragraph 258.

259. In answer to paragraph 259 of the Amended Joint Statement of Claim, DSH:

(a) refers to and repeats parts C and D.1.3 above;

(b) refers to and repeats paragraphs 243 above;

(c) does not plead to allegations against Abboud or Potts; and

(d) otherwise does not admit the allegations in paragraph 259.

260. DSH does not admit the allegations in paragraph 260.

#### **D.2.4. FY14 ASX Announcement & Results Briefing**

261. In answer to paragraph 261 of the Amended Joint Statement of Claim, DSH:

(a) refers to and repeats parts C and D.1.4 above;

(b) refers to and repeats paragraph 244 above; and

(c) otherwise does not admit the allegations in paragraph 261.

262. In answer to paragraph 262 of the Amended Joint Statement of Claim, DSH:

(a) refers to and repeats part C above;

(b) refers to and repeats paragraph 255 above; and

(c) otherwise does not admit the allegations in paragraph 262.

263. DSH does not admit the allegations in paragraph 263.

#### **D.2.5. FY15 Financial Statements**

264. In answer to paragraph 264 of the Amended Joint Statement of Claim, DSH:

(a) refers to and repeats parts C and D.1.5 above;

(b) refers to and repeats paragraph 254 above; and

(c) otherwise does not admit the allegations in paragraph 264.

265. In answer to paragraph 265 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats part C above;
- (b) does not plead to allegations against Abboud or Potts; and
- (c) otherwise does not admit the allegations in paragraph 265.

266. DSH does not admit the allegations in paragraph 266.

**D.2.6. DSH's FY15 Express Representation and FY15 Implied Representation**

267. In answer to paragraph 267 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats part D.1.6 above;
- (b) refers to and repeats paragraphs 107 and 264 above; and
- (c) otherwise does not admit the allegations in paragraph 267.

268. In answer to paragraph 268 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraph 265 above;
- (b) refers to and repeats Part C above; and
- (c) otherwise does not admit the allegations in paragraph 268.

269. In answer to paragraph 269 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats part D.1.6 above;
- (b) refers to and repeats paragraphs 108, 264 and 265 above;
- (c) does not plead to allegations against Abboud or Potts; and
- (d) otherwise does not admit the allegations in paragraph 269.

270. DSH does not admit the allegations in paragraph 270.

**D.2.7. FY15 ASX Announcement & Results Briefing**

271. In answer to paragraph 271 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats parts C and D.1.7 above;
- (b) refers to and repeats paragraph 250 and 261; and

(c) otherwise does not admit the allegations in paragraph 271.

272. In answer to paragraph 272 of the Amended Joint Statement of Claim, DSH:

(a) refers to and repeats paragraphs 250 and 265 above; and

(b) otherwise does not admit the allegations in paragraph 272.

273. DSH does not admit the allegations in paragraph 273.

### **D.3. DSH'S CONTINUOUS DISCLOSURE CONTRAVENTIONS**

274. DSH admits the allegations in paragraph 274 of the Amended Joint Statement of Claim.

275. DSH admits the allegations in paragraph 275 of the Amended Joint Statement of Claim.

276. DSH admits the allegations in paragraph 276 of the Amended Joint Statement of Claim.

277. DSH admits the allegations in paragraph 277 of the Amended Joint Statement of Claim.

278. DSH admits the allegations in paragraph 278 of the Amended Joint Statement of Claim.

279. In answer to paragraph 279 of the Amended Joint Statement of Claim, DSH:

(a) refers to and repeats sections B.1 and D.1 above; and

(b) otherwise denies the allegations in paragraph 279.

280. In answer to paragraph 280 of the Amended Joint Statement of Claim, DSH:

(a) refers to and repeats paragraphs 152 to 154 above; and

(b) otherwise does not admit the allegations at paragraph 280.

281. In answer to paragraph 281 of the Amended Joint Statement of Claim, DSH:

(a) refers to and repeats paragraphs 152 to 154 above; and

(b) otherwise does not admit the allegations at paragraph 281.

282. In answer to paragraph 282 of the Amended Joint Statement of Claim, DSH:

(a) repeats paragraphs 252, 255, 258, 259, 262, 265, 268, 269 and 272; and

(b) otherwise denies the allegations in paragraph 282.



283. In answer to paragraph 283 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraphs 279 to 282 above; and
- (b) otherwise denies the allegations in paragraph 283.

284. In answer to paragraph 284 of the Amended Joint Statement of Claim, DSH:

- (a) refers to and repeats paragraphs 279 to 283 above; and
- (b) otherwise denies the allegations in paragraph 284.

#### **D.4. MR ABOUD'S CONTRAVENTIONS**

285. DSH does not plead to paragraph 285 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

286. DSH does not plead to paragraph 286 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

##### **D.4.1. FY14 Financial Statements and DSH's FY14 Express Representation**

287. DSH does not plead to paragraph 287 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

288. DSH does not plead to paragraph 288 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

289. DSH does not plead to paragraph 289 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

290. DSH does not plead to paragraph 290 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

291. DSH does not plead to paragraph 291 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

292. DSH does not plead to paragraph 292 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

##### **D.4.2. Directors' FY14 Implied Representation**

293. DSH does not plead to paragraph 293 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

- 294. DSH does not plead to paragraph 294 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 295. DSH does not plead to paragraph 295 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 296. DSH does not plead to paragraph 296 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

**D.4.3. FY14 ASX Announcement & Results Briefing**

- 297. DSH does not plead to paragraph 297 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 298. DSH does not plead to paragraph 298 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 299. DSH does not plead to paragraph 299 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 300. DSH does not plead to paragraph 300 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 301. DSH does not plead to paragraph 301 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 302. DSH does not plead to paragraph 302 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 303. DSH does not plead to paragraph 303 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

**D.4.4. FY15 Financial Statements and DSH's FY15 Express Representation**

- 304. DSH does not plead to paragraph 304 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 305. DSH does not plead to paragraph 305 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 306. DSH does not plead to paragraph 306 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

- 307. DSH does not plead to paragraph 307 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 308. DSH does not plead to paragraph 308 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 309. DSH does not plead to paragraph 309 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

**D.4.5. Directors' FY15 Implied Representation**

- 310. DSH does not plead to paragraph 310 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 311. DSH does not plead to paragraph 311 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 312. DSH does not plead to paragraph 312 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 313. DSH does not plead to paragraph 313 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

**D.4.6. FY15 ASX Announcement & Results Briefing**

- 314. DSH does not plead to paragraph 314 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 315. DSH does not plead to paragraph 315 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 316. DSH does not plead to paragraph 316 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 317. DSH does not plead to paragraph 317 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 318. DSH does not plead to paragraph 318 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 319. DSH does not plead to paragraph 319 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

320. DSH does not plead to paragraph 320 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

**D.5. MR POTTS' CONTRAVENTIONS**

321. DSH does not plead to paragraph 321 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

322. DSH does not plead to paragraph 322 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

**D.5.1. FY14 Financial Statements and DSH's FY14 Express Representation**

323. DSH does not plead to paragraph 323 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

324. DSH does not plead to paragraph 324 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

325. DSH does not plead to paragraph 325 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

326. DSH does not plead to paragraph 326 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

327. DSH does not plead to paragraph 327 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

328. DSH does not plead to paragraph 328 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

**D.5.2. Directors' FY14 Implied Representation**

329. DSH does not plead to paragraph 329 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

330. DSH does not plead to paragraph 330 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

331. DSH does not plead to paragraph 331 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

332. DSH does not plead to paragraph 332 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

#### **D.5.3. FY14 ASX Announcement & Results Briefing**

- 333. DSH does not plead to paragraph 333 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 334. DSH does not plead to paragraph 334 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 335. DSH does not plead to paragraph 335 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 336. DSH does not plead to paragraph 336 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 337. DSH does not plead to paragraph 337 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 338. DSH does not plead to paragraph 338 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 339. DSH does not plead to paragraph 339 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

#### **D.5.4. FY15 Financial Statements and DSH's FY15 Express Representation**

- 340. DSH does not plead to paragraph 340 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 341. DSH does not plead to paragraph 341 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 342. DSH does not plead to paragraph 342 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 343. DSH does not plead to paragraph 343 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 344. DSH does not plead to paragraph 344 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 345. DSH does not plead to paragraph 345 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

**D.5.5. Directors' FY15 Implied Representation**

- 346. DSH does not plead to paragraph 346 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 347. DSH does not plead to paragraph 347 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 348. DSH does not plead to paragraph 348 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 349. DSH does not plead to paragraph 349 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

**D.5.6. FY15 ASX Announcement & Results Briefing**

- 350. DSH does not plead to paragraph 350 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 351. DSH does not plead to paragraph 351 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 352. DSH does not plead to paragraph 352 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 353. DSH does not plead to paragraph 353 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 354. DSH does not plead to paragraph 354 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 355. DSH does not plead to paragraph 355 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.
- 356. DSH does not plead to paragraph 356 of the Amended Joint Statement of Claim as it does not contain any allegation against DSH.

**E. CAUSATION, LOSS AND DAMAGE**

- 357. In answer to paragraph 357 of the Amended Joint Statement of Claim, DSH:
  - (a) admits that the plaintiffs acquired interests in DSH Shares; and
  - (b) otherwise does not admit the allegations in paragraph 357.

358. In answer to paragraph 358 of the Amended Joint Statement of Claim, DSH:
- (a) admits that the market in which DSH shares were traded was regulated by the ASX Listing Rules and s674(2) of the *Corporations Act 2001*;
  - (b) admits that the provisions of ss728, 279, 1041E and 1041H of the *Corporations Act 2001* were in force when shares in DSH were traded in the market;
  - (c) says, in answer to sub-paragraph (d) that it admits that the price of DSH 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 part C; and
  - (e) otherwise denies the allegations in paragraph 358.
359. DSH denies the allegations in paragraph 359 of the Amended Joint Statement of Claim.
360. DSH denies the allegations in paragraph 360 of the Amended Joint Statement of Claim.
361. DSH denies the allegations in paragraph 361 of the Amended Joint Statement of Claim.
362. DSH denies the allegations in paragraph 362 of the Amended Joint Statement of Claim.
363. DSH denies the allegations in paragraph 363 of the Amended Joint Statement of Claim.
364. DSH does not admit the allegations in paragraph 364 of the Amended Joint Statement of Claim.
365. In answer to paragraph 365 of the Amended Joint Statement of Claim, DSH:
- (a) denies the allegations in paragraph 365; and
  - (b) further or in the alternative, says that if it is established that DSH contravened ss 674(2) of the *Corporations Act 2001* (which is not admitted), DSH relies on s1317S of the *Corporations Act 2001* and says that it should be relieved from liability on the basis that it acted honestly and, having regard to all the circumstances of the case, it ought fairly to be excused of the alleged contraventions.
366. DSH does not plead to the allegations in paragraph 366 of the Amended Joint Statement of Claim because that paragraph contains no allegations against DSH.

## **F. CLAIM AGAINST DTT**

*Paragraphs 366 to 375 deliberately not used.*

### **F.1. BACKGROUND**

376. DSH admits the allegations in paragraph 376 of the Amended Joint Statement of Claim.

377. DSH admits the allegations in paragraph 377 of the Amended Joint Statement of Claim.

378. DSH admits the allegations in paragraph 378 of the Amended Joint Statement of Claim.

379. DSH admits the allegations in paragraph 379 of the Amended Joint Statement of Claim.

380. DSH admits the allegations in paragraph 380 of the Amended Joint Statement of Claim.

381. DSH admits the allegations in paragraph 381 of the Amended Joint Statement of Claim.

382. DSH admits the allegations in paragraph 382 of the Amended Joint Statement of Claim.

383. DSH admits the allegations in paragraph 383 of the Amended Joint Statement of Claim.

384. DSH admits the allegations in paragraph 384 of the Amended Joint Statement of Claim.

385. DSH admits the allegations in paragraph 385 of the Amended Joint Statement of Claim.

386. DSH admits the allegations in paragraph 386 of the Amended Joint Statement of Claim.

### **F.2. ACCOUNTING AND AUDITING FRAMEWORK**

387. DSH admits the allegations in paragraph 387 of the Amended Joint Statement of Claim.

388. DSH admits the allegations in paragraph 388 of the Amended Joint Statement of Claim.

389. DSH admits the allegations in paragraph 389 of the Amended Joint Statement of Claim.

390. DSH admits the allegations in paragraph 390 of the Amended Joint Statement of Claim.

391. DSH admits the allegations in paragraph 391 of the Amended Joint Statement of Claim.

### **F.3. AUDITING STANDARDS**

#### **F.3.1. ASA 200**

392. DSH admits the allegations in paragraph 392 of the Amended Joint Statement of Claim.



**F.3.2. ASA 210**

393. DSH admits the allegations in paragraph 393 of the Amended Joint Statement of Claim.

**F.3.3. ASA 240**

394. DSH admits the allegations in paragraph 394 of the Amended Joint Statement of Claim.

**F.3.4. ASA 260**

395. DSH admits the allegations in paragraph 395 of the Amended Joint Statement of Claim.

396. DSH admits the allegations in paragraph 396 of the Amended Joint Statement of Claim.

**F.3.5. ASA 315**

397. DSH admits the allegations in paragraph 397 of the Amended Joint Statement of Claim.

398. DSH admits the allegations in paragraph 398 of the Amended Joint Statement of Claim.

**F.3.6. ASA 320**

399. DSH admits the allegations in paragraph 399 of the Amended Joint Statement of Claim.

400. DSH admits the allegations in paragraph 400 of the Amended Joint Statement of Claim.

**F.3.7. ASA 330**

401. DSH admits the allegations in paragraph 401 of the Amended Joint Statement of Claim.

**F.3.8. ASA 450**

402. DSH admits the allegations in paragraph 402 of the Amended Joint Statement of Claim.

403. DSH admits the allegations in paragraph 403 of the Amended Joint Statement of Claim.

404. DSH admits the allegations in paragraph 404 of the Amended Joint Statement of Claim.

**F.3.9. ASA 500**

405. DSH admits the allegations in paragraph 405 of the Amended Joint Statement of Claim.

**F.3.10. ASA 530**

406. DSH admits the allegations in paragraph 406 of the Amended Joint Statement of Claim.

**F.3.11. ASA 540**

407. DSH admits the allegations in paragraph 407 of the Amended Joint Statement of Claim.

**F.3.12. ASA 700**

408. DSH admits the allegations in paragraph 408 of the Amended Joint Statement of Claim.

**F.3.13. ASA 705**

409. DSH admits the allegations in paragraph 409 of the Amended Joint Statement of Claim.

**F.4. REASONABLE AUDITOR**

410. DSH does not plead to paragraph 410 because it contains no allegations against DSH.

**F.5. DTT's AUDIT REPORTS**

**F.5.1. The FY13 Audit Report**

411. DSH admits the allegations in paragraph 411 of the Amended Joint Statement of Claim.

412. DSH admits the allegations in paragraph 412 of the Amended Joint Statement of Claim.

413. DSH admits the allegations in paragraph 413 of the Amended Joint Statement of Claim.

414. DSH admits the allegations in paragraph 414 of the Amended Joint Statement of Claim.

**F.5.2. DTT's FY13 Representations**

415. DSH admits the allegations in paragraph 415 of the Amended Joint Statement of Claim.

416. DSH admits the allegations in paragraph 416 of the Amended Joint Statement of Claim.

**F.5.3. The FY14 Audit Report**

417. DSH admits the allegations in paragraph 417 of the Amended Joint Statement of Claim.

418. DSH admits the allegations in paragraph 418 of the Amended Joint Statement of Claim.

419. DSH admits the allegations in paragraph 419 of the Amended Joint Statement of Claim.

**F.5.4. DTT's FY14 Representations**

420. DSH admits the allegations in paragraph 420 of the Amended Joint Statement of Claim.

421. DSH admits the allegations in paragraph 421 of the Amended Joint Statement of Claim.

**F.5.5. The FY15 Audit Report**

422. DSH admits the allegations in paragraph 422 of the Amended Joint Statement of Claim.

423. DSH admits the allegations in paragraph 423 of the Amended Joint Statement of Claim.

424. DSH admits the allegations in paragraph 424 of the Amended Joint Statement of Claim.

**F.5.6. DTT's FY15 Representations**

425. DSH admits the allegations in paragraph 425 of the Amended Joint Statement of Claim.

426. DSH admits the allegations in paragraph 426 of the Amended Joint Statement of Claim.

**F.6. DTT's Audit Conduct**

**F.6.1. FY13 Audit in relation to inventory provisioning**

427. In answer to paragraph 427 of the Amended Joint Statement of Claim, DSH:

(a) repeats Part C.2 above; and

(b) otherwise does not admit the allegations in paragraph 427.

428. DSH admits the allegations in paragraph 428 of the Amended Joint Statement of Claim.

429. DSH does not admit the allegations in paragraph 429 of the Amended Joint Statement of Claim.

430. DSH does not admit the allegations in paragraph 430 of the Amended Joint Statement of Claim.

431. DSH does not admit the allegations in paragraph 431 of the Amended Joint Statement of Claim.

**F.6.2. Materiality in the FY13 Audit and implications for Warranty Sign On Liability**

***F.6.2.1. Failure to properly determine materiality in the FY13 Audit***

432. DSH admits the allegations in paragraph 432 of the Amended Joint Statement of Claim.

433. DSH admits the allegations in paragraph 433 of the Amended Joint Statement of Claim.

434. DSH admits the allegations in paragraph 434 of the Amended Joint Statement of Claim.

435. DSH does not admit the allegations in paragraph 435 of the Amended Joint Statement of Claim.

436. DSH does not admit the allegations in paragraph 436 of the Amended Joint Statement of Claim.

437. DSH does not admit the allegations in paragraph 437 of the Amended Joint Statement of Claim.

***F.6.2.2.2 Failure to adjust for Warranty Sign On Liability***

438. DSH admits the allegations in paragraph 438 of the Amended Joint Statement of Claim.

439. DSH does not admit the allegations in paragraph 439 of the Amended Joint Statement of Claim.

440. DSH does not admit the allegations in paragraph 440 of the Amended Joint Statement of Claim.

441. DSH admits the allegations in paragraph 441 of the Amended Joint Statement of Claim.

442. DSH does not admit the allegations in paragraph 442 of the Amended Joint Statement of Claim.

443. DSH does not admit the allegations in paragraph 443 of the Amended Joint Statement of Claim.

**F.6.3. Effect of DTT's failure in carrying out the FY13 Audit**

444. DSH does not admit the allegations in paragraph 444 of the Amended Joint Statement of Claim.

**F.6.4. FY14 Audit in relation to inventory provisions**

445. DSH does not admit the allegations in paragraph 445 of the Amended Joint Statement of Claim.

446. DSH admits the allegations in paragraph 446 of the Amended Joint Statement of Claim.

447. DSH does not admit the allegations in paragraph 447 of the Amended Joint Statement of Claim.

448. DSH does not admit the allegations in paragraph 448 of the Amended Joint Statement of Claim.

449. DSH does not admit the allegations in paragraph 449 of the Amended Joint Statement of Claim.

**F.6.5. FY14 Audit in relation to the accounting treatment of Switched Invoice Rebates, Volume Rebates and O&A Rebates**

450. DSH does not admit the allegations in paragraph 450 of the Amended Joint Statement of Claim.

451. DSH admits the allegations in paragraph 451 of the Amended Joint Statement of Claim.

452. DSH does not admit the allegations in paragraph 452 of the Amended Joint Statement of Claim.

453. DSH does not admit the allegations in paragraph 453 of the Amended Joint Statement of Claim.

454. DSH does not admit the allegations in paragraph 454 of the Amended Joint Statement of Claim.

**F.6.6. Effect of DTT's failures in carrying out the FY14 Audit**

455. DSH does not admit the allegations in paragraph 455 of the Amended Joint Statement of Claim.

**F.6.7. FY15 Audit in relation to inventory provisions**

456. DSH does not admit the allegations in paragraph 456 of the Amended Joint Statement of Claim.

457. DSH admits the allegations in paragraph 457 of the Amended Joint Statement of Claim.

458. DSH does not admit the allegations in paragraph 458 of the Amended Joint Statement of Claim.

459. DSH does not admit the allegations in paragraph 459 of the Amended Joint Statement of Claim.

460. DSH does not admit the allegations in paragraph 460 of the Amended Joint Statement of Claim.

**F.6.8. FY15 Audit in relation to the accounting treatment of Switched Invoice Rebates, Volume Rebates and O&A Rebates**

- 461. DSH does not admit the allegations in paragraph 461 of the Amended Joint Statement of Claim.
- 462. DSH admits the allegations in paragraph 462 of the Amended Joint Statement of Claim.
- 463. DSH does not admit the allegations in paragraph 463 of the Amended Joint Statement of Claim.
- 464. DSH does not admit the allegations in paragraph 464 of the Amended Joint Statement of Claim.
- 465. DSH does not admit the allegations in paragraph 465 of the Amended Joint Statement of Claim.

**F.6.9. Effect of DTT's FY15 failures**

- 466. DSH does not admit the allegations in paragraph 466 of the Amended Joint Statement of Claim.

**F.7. DTT's CONTRAVENTIONS**

**F.7.1. DTT's FY13 Contraventions**

- 467. DSH admits the allegations in paragraph 467 of the Amended Joint Statement of Claim.
- 468. DSH admit the allegations in paragraph 468 of the Amended Joint Statement of Claim.
- 469. DSH does not admit the allegations in paragraph 469 of the Amended Joint Statement of Claim.
- 470. DSH does not admit the allegations in paragraph 470 of the Amended Joint Statement of Claim.
- 471. DSH does not admit the allegations in paragraph 471 of the Amended Joint Statement of Claim.
- 472. DSH does not admit the allegations in paragraph 472 of the Amended Joint Statement of Claim.
- 473. DSH admits the allegations in paragraph 473 of the Amended Joint Statement of Claim.

- 474. DSH does not admit the allegations in paragraph 474 of the Amended Joint Statement of Claim.
- 475. DSH admits the allegations in paragraph 475 of the Amended Joint Statement of Claim.
- 476. DSH does not admit the allegations in paragraph 476 of the Amended Joint Statement of Claim.
- 477. DSH does not admit the allegations in paragraph 477 of the Amended Joint Statement of Claim.
- 478. DSH does not admit the allegations in paragraph 478 of the Amended Joint Statement of Claim.

**F.7.2. DTT's FY14 Contraventions**

- 479. DSH admits the allegations in paragraph 479 of the Amended Joint Statement of Claim.
- 480. DSH admits the allegations in paragraph 480 of the Amended Joint Statement of Claim.
- 481. DSH does not admit the allegations in paragraph 481 of the Amended Joint Statement of Claim.
- 482. DSH does not admit the allegations in paragraph 482 of the Amended Joint Statement of Claim.
- 483. DSH does not admit the allegations in paragraph 483 of the Amended Joint Statement of Claim.
- 484. DSH does not admit the allegations in paragraph 484 of the Amended Joint Statement of Claim.
- 485. DSH admits the allegations in paragraph 485 of the Amended Joint Statement of Claim.
- 486. DSH does not admit the allegations in paragraph 486 of the Amended Joint Statement of Claim.
- 487. DSH admits the allegations in paragraph 487 of the Amended Joint Statement of Claim.
- 488. DSH does not admit the allegations in paragraph 488 of the Amended Joint Statement of Claim.
- 489. DSH does not admit the allegations in paragraph 489 of the Amended Joint Statement of Claim.

490. DSH does not admit the allegations in paragraph 490 of the Amended Joint Statement of Claim.

### **F.7.3. DTT's FY15 Contraventions**

491. DSH admits the allegations in paragraph 491 of the Amended Joint Statement of Claim.

492. DSH admits the allegations in paragraph 492 of the Amended Joint Statement of Claim.

493. DSH does not admit the allegations in paragraph 493 of the Amended Joint Statement of Claim.

494. DSH does not admit the allegations in paragraph 494 of the Amended Joint Statement of Claim.

495. DSH does not admit the allegations in paragraph 495 of the Amended Joint Statement of Claim.

496. DSH does not admit the allegations in paragraph 496 of the Amended Joint Statement of Claim.

497. DSH admits the allegations in paragraph 497 of the Amended Joint Statement of Claim.

498. DSH does not admit the allegations in paragraph 498 of the Amended Joint Statement of Claim.

499. DSH admits the allegations in paragraph 499 of the Amended Joint Statement of Claim.

500. DSH does not admit the allegations in paragraph 500 of the Amended Joint Statement of Claim.

501. DSH does not admit the allegations in paragraph 501 of the Amended Joint Statement of Claim.

502. DSH does not admit the allegations in paragraph 502 of the Amended Joint Statement of Claim.

## **F.8. CAUSATION, LOSS AND DAMAGE**

### **F.8.1. FY13 Causation**

503. DSH does not admit the allegations in paragraph 503 of the Amended Joint Statement of Claim.



504. DSH denies the allegations in paragraph 504 of the Amended Joint Statement of Claim.

505. DSH denies the allegations in paragraph 505 of the Amended Joint Statement of Claim.

**F.8.2. FY14 Causation**

506. DSH does not admit the allegations in paragraph 506 of the Amended Joint Statement of Claim.

507. DSH does not admit the allegations in paragraph 507 of the Amended Joint Statement of Claim.

508. DSH denies the allegations in paragraph 508 of the Amended Joint Statement of Claim.

**F.8.3. FY15 Causation**

509. DSH does not admit the allegations in paragraph 509 of the Amended Joint Statement of Claim.

510. DSH does not admit the allegations in paragraph 510 of the Amended Joint Statement of Claim.

511. DSH denies the allegations in paragraph 511 of the Amended Joint Statement of Claim.

**F.8.4. Causation based on reliance**

512. DSH denies the allegations in paragraph 512 of the Amended Joint Statement of Claim.

**F.8.5. Causation based on Abboud's and Pott's reliance on DTT's contraventions**

513. DSH does not admit the allegations in paragraph 513 of the Amended Joint Statement of Claim.

**F.8.6. Loss caused by DTT**

514. DSH denies the allegations in paragraph 514 of the Amended Joint Statement of Claim.

515. DSH denies the allegations in paragraph 515 of the Amended Joint Statement of Claim.

**F. COMMON QUESTIONS**

516. DSH does not plead to paragraphs 516 to 528 as those paragraphs contain no allegations against it.

## **G. PROPORTIONATE LIABILITY**

### **G.1. Apportionable claims**

517. In further answer to the Amended Joint Statement of Claim, DSH says that if (which is denied) DSH contravened s 1041H of the CA or s 12 DA of the ASIC Act or s 18 of the ACL, and is liable to the Plaintiffs or Group Members for any loss or damage which resulted from any such contravention, then:

- (a) each of the claims of the Plaintiffs and Group Members against DSH for alleged contraventions of s 1041H of the CA or s 12 DA of the ASIC Act or s 18 of the ACL is an apportionable claim within the meaning of (respectively) s 1041L of the CA, s 12GP of the ASIC Act and s 87CB of the *Competition and Consumer Act 2010* (Cth) (**CCA**) (**Apportionable Claims**); and
- (b) by reason of the matters pleaded below, each of Potts, Abboud, DSH, the Other DSH Directors, DTT and DCF is a concurrent wrongdoer in respect of such loss or damage within the meaning of 1041L of the CA, s 12GP of the ASIC Act and s 87CB of the CCA.

### **G.2. Proportionate liability - Abboud, Potts and DTT**

518. If the Plaintiffs establish that:

- (a) DSH engaged in conduct in respect of the FY14 Financial Statements and/or the FY15 Financial Statements which was misleading or deceptive in contravention of the CA, the ASIC Act or the ACL (as pleaded in paragraphs 239 to 250 of the Amended Joint Statement of Claim), which is not admitted;
- (b) Potts engaged in conduct in respect of the FY14 Financial Statements and/or the FY15 Financial Statements which was misleading or deceptive in contravention of the CA, the ASIC Act or the ACL (as pleaded in paragraphs 321, 322, 323 to 325, 329, 333 to 336, 340 to 342, 346, 350 to 353 of the Amended Joint Statement of Claim);
- (c) Abboud engaged in conduct in respect of the FY14 Financial Statements and/or the FY15 Financial Statements which was misleading or deceptive in contravention of the CA, the ASIC Act or the ACL (as pleaded in paragraphs 285 to 289, 293, 297 to 300, 304 to 306, 310, 314 to 317 of the Amended Joint Statement of Claim);

- (d) DTT engaged in conduct in respect of the, FY14 Financial Statements and/or the FY15 Financial Statements which was misleading or deceptive in contravention of the CA, the ASIC Act or the ACL (as pleaded in paragraphs 479, 481, 483, 491, 493, 495 of the Amended Joint Statement of Claim);
- (e) the Plaintiffs or the Group Members have suffered loss or damage as a result of any of the Apportionable Claims in respect of the FY2014 Financial Statements or the FY2015 Financial Statements (or the associated ASX Announcements or Results Briefings) (as pleaded at paragraphs 357 to 366 and 506 to 514 of the Amended Joint Statement of Claim) which is denied,

then each of DSH, Potts, Abboud and DTT is a person whose acts or omissions caused the loss allegedly suffered by the Plaintiffs and/or Group Members which is the subject of their claim, and therefore, each is a concurrent wrongdoer within the meaning of s 1041L of the CA, s 12GP of the ASIC Act and s 87CB of the CCA.

519. By reason of the matters pleaded at paragraph 517 to 518 above, and pursuant to s 1041L of the CA, s 12GP of the ASIC Act and s 87CB of the CCA, any liability (which is denied) of DSH to the Plaintiffs and/or Group Members is to be limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the extent of DSH's responsibility, and the extent of Abboud's, Potts' and DTT's responsibility for such loss or damage.

### **G.3. Proportionate liability - Other DSH Directors**

520. In the period from 25 October 2013, the directors of DSH in addition to Abboud and Potts were:

- (a) Phillip John Cave (**Cave**) (from 25 October 2013 until 28 February 2015, when he ceased to be a director of DSH); and
- (b) William Paul Renton Wavish (**Wavish**) (from 25 October 2013 until 25 March 2015, when he ceased to be a director of DSH)
- (c) Lorna Kathleen Raine (**Raine**) (from 25 October 2013 until 4 January 2016, when she ceased to be a director of DSH);
- (d) Robert Ishak (**Ishak**) (from 25 October 2013 until 4 January 2016, when he ceased to be a director of DSH);

(the persons in paragraphs (a)-(d) are referred to as the **Other Original DSH Directors**)

521. Robert Murray (**Murray**) was a director of DSH from 12 August 2014 until 4 January 2016, when he ceased to be a director of DSH and Jamie Clifford Tomlinson (**Tomlinson**) was a director of DSH from 10 April 2015 until 4 January 2016, when he ceased to be a director of DSH (referred to as **Subsequent DSH Directors**).
522. For the purpose only of this proportionate liability defence, and without admission, DSH repeats paragraphs 239-250, 287-289, 293, 297-300, 304-306, 310, 314-317 and 323-325, 329, 333-336, 340-342, 346, 350-353 of the Amended Joint Statement of Claim as allegations against the Other Original DSH Directors.
523. If the matters referred to in paragraph 522 above (which are the subject of denials and non-admissions pleaded above) are established, then
- (a) in relation to the FY14 Financial Statements and the FY14 ASX Announcement & Results Briefing:
- (i) on or about 18 August 2014, each of the Other Original DSH Directors and Murray authorised, or participated in authorising, the making and lodgement with ASX by DSH of the FY14 Financial Statements and the FY14 ASX Announcement & Results Briefing;
- (ii) further or alternatively, on or about 18 August 2014 and at all material times thereafter, each of the Other Original DSH Directors and Murray took no, or alternatively no adequate, steps to cause DSH to withdraw or otherwise correct the FY14 Financial Statements and the FY14 ASX Announcement & Results Briefing;
- (iii) by reason of the matters pleaded in subparagraphs (i) and (ii) above, each of the Other Original DSH Directors and Murray engaged in conduct in relation to a financial product within the meaning of s.1041H of the *Corporations Act*, and/or in trade or commerce in relation to financial services within the meaning of s.12DA of the *ASIC Act*, and/or in trade or commerce within the meaning of s.4 of the *ACL*;
- (iv) by reason of the matters pleaded in paragraphs 239-244 of the Amended Joint Statement of Claim, and the matters pleaded in subparagraphs (i)-(iii) above, each of the Other Original DSH Directors and Murray contravened s.1041H of the *Corporations Act*, s.12DA of the *ASIC Act*, and/or s.18 of the *ACL*; and

- (v) the Plaintiffs and/or Group Members have suffered loss or damage by reason of, or as a result of, the contraventions of the Other Original DSH Directors (and Murray) pleaded in subparagraph (iv) above; and
- (b) in relation to the FY15 Financial Statements and the FY15 ASX Announcement & Results Briefing:
- (i) on or about 18 August 2015, each of the Other Original DSH Directors (except Cave and Wavish) and the Subsequent DSH Directors authorized, or participated in authorising the making and lodgement with ASX by DSH of the FY15 Financial Statements and the FY15 ASX Announcement & Results Briefing;
  - (ii) on or about 18 August 2015 and at all material times thereafter, each of the Other Original DSH Directors (except Cave and Wavish) and the Subsequent DSH Directors took no, or alternatively no adequate, steps to cause DSH to withdraw or otherwise correct the FY15 Financial Statements or the FY15 ASX Announcement & Results Briefing;
  - (iii) by reason of the matters pleaded in subparagraphs (i) and (ii) above, each of the Other Original DSH Directors (except Cave and Wavish) and the Subsequent DSH Directors engaged in conduct in relation to a financial product within the meaning of s.1041H of the Corporations Act, and/or in trade or commerce in relation to financial services within the meaning of s.12DA of the ASIC Act, and/or in trade or commerce within the meaning of s.4 of the ACL;
  - (iv) by reason of the matters pleaded in paragraphs 245-247 of the Amended Joint Statement of Claim, and the matters pleaded in subparagraphs (i)-(iii) above, each of the Other Original DSH Directors (except Cave and Wavish) and the Subsequent DSH Directors contravened s.1041H of the Corporations Act, s.12DA of the ASIC Act, and/or s.18 of the ACL; and
  - (v) the Plaintiffs and/or Group Members have suffered loss or damage by reason of, or as a result of, the contraventions of the Other Original DSH Directors (except Cave and Wavish) and the Subsequent DSH Directors pleaded in subparagraph (iv) above; and.

524. By reason of the matters pleaded at paragraph 517 and 523 above, and pursuant to s 1041L of the CA, s 12GP of the ASIC Act and s 87CB of the CCA, any liability (which is denied) of DSH to the Plaintiffs and/or Group Members is to be limited to an amount

reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the extent of DSH's responsibility, and the extent of the Other Original DSH Directors and Subsequent DSH Directors responsibility for such loss or damage.

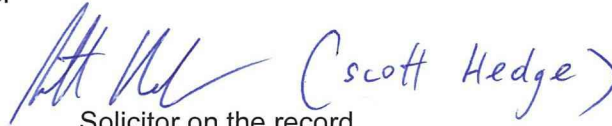
**SIGNATURE OF LEGAL REPRESENTATIVE**

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature

Capacity

Date of signature

 (Scott Hedge)

Solicitor on the record

13 March 2019