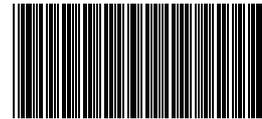




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Form 3A/B
Rule 6.2

AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2018/00052431

FILING DETAILS

Filed for	Plaintiff[s]
Legal representative	Robert Guy Johnston
Legal representative reference	
Telephone	02 8274 9581
Your reference	C1561

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Amended Statement of Claim (e-Services), along with any other documents listed below, were filed by the Court.

Amended Statement of Claim (Further Amended Joint Statement of Claim.pdf)

[attach.]

Form 3A (version 7)

UCPR 6.2

FURTHER AMENDED JOINT STATEMENT OF CLAIM

Filed pursuant to leave granted by orders made by Justice Ball on ~~7 December 2018~~

24 April 2019

COURT DETAILS

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

TITLE OF PROCEEDINGS

Proceeding 2017/294069

First plaintiff	Haliburton Charles David Findlay
Second plaintiff	Marian Jennifer Denny Findlay
First defendant	DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)
Number of defendants	457 (See the Schedule for full list of defendants)

Proceeding 2018/52431

First plaintiff	Epaminondas Mastoris
Second plaintiff	Lena Mastoris
First defendant	DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)
Number of defendants	457 (See the Schedule for full list of defendants)

TYPE OF CLAIM

Representative Proceeding under Part 10 of the *Civil Procedure Act 1995* (NSW); contraventions of the *Corporations Act 2001* (Cth).

RELIEF CLAIMED

- 1 An order that the defendants pay to the plaintiffs and Group Members:
 - (a) Compensation pursuant to ss 1041I and 1325 of the *Corporations Act* 2001 (Cth);
 - (b) Compensation pursuant to s 236 of the Australian Consumer Law and/or s 12GF of the *Australian Securities and Investments Commission Act* 2001 (Cth);
 - (c) An award of damages for Group Members pursuant to s 177(1) of the *Civil Procedure Act* 2005 (NSW);
 - (d) Interest;
 - (e) Costs and interest on costs.
- 2 Such other order or orders that the Court considers appropriate.

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NARRATIVE SUMMARY OF THE CLAIM

- 1 This statement of claim is filed on behalf of the plaintiffs in proceedings 2017/294069 (**the Findlay proceedings**) and 2018/52431 (**the Mastoris proceedings**) (collectively, the **plaintiffs**). The plaintiffs and the group members whom they represent (collectively, the **Group Members**) each suffered losses through their acquisition of shares in DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation) (**DSH**).
- 2 The defendants in these proceedings are DSH and two of its directors during 2015, Mr Nicholas Abboud (**Mr Abboud**) and Mr Michael Thomas Potts (**Mr Potts**).
- 3 DSH traded as Dick Smith, the well-known Australian 'high-street' and online electronics retailer. On 4 January 2016 DSH was placed into voluntary administration by its directors and on 25 July 2016 it was placed into liquidation.
- 4 DSH was a public company which listed on the ASX in December 2013. Prior to the listing Dick Smith was owned by Woolworths and in late 2012 it was acquired by Anchorage Capital Partners Pty Ltd (**Anchorage**), a private equity company.
- 5 Anchorage controlled Dick Smith for a period of just over one year and then in November 2013 made a public offering of shares following the publication of a Prospectus. The Prospectus made various representations to the effect that new management of Dick Smith installed by Anchorage after it acquired Dick Smith had transformed Dick Smith into a successful and profitable business (see paragraph 73 below). In support of those

representations, the Prospectus provided historical “pro-forma” financial accounts for the Dick Smith business for the financial year ended 30 June 2013 (**FY13**) and for the first quarter of the 2014 financial year (**1Q14**) and a reconciliation between the FY13 statutory and pro-forma accounts (see sections B.1.3 to B.1.6 below). DSH represented through the Prospectus that those results demonstrated substantial improvements in Dick Smith’s gross margins, balance sheet and forecast profits for financial year ended 29 June 2014 (**FY14**) (the “Transformation Representations” – see section B.1.7 below and the “Growth and Profit Representations” – see section B.1.8). Those representations were a significant marketing feature of the Prospectus which were likely to and did induce investors and potential investors to invest in DSH.

- 6 The Prospectus was misleading because it stated that the pro-forma financial results for FY13 and 1Q14 were prepared in accordance with Australian Accounting Standards (see paragraph 62 below) when they were not. Those financial results were not prepared consistently with Australian Accounting Standards and especially AASB 102: Inventory, which required DSH to reduce the value of inventory it owned by raising provisions against the recorded value of that inventory to ensure that it was recorded at the lower of cost and realisable value. A materially greater level of inventory provision was required than was reflected in the FY13 and 1Q14 results included in the Prospectus. This, together with other accounting practices that were inconsistent with Australian Accounting Standards (see sections C.4, C.5 and C.6), had the consequence of materially overstating the value of inventory reported in DSH’s balance sheet, overstating the reported rate and amount of gross profit and net profit and overstating reported shareholders’ equity. Together the results had the effect of artificially inflating the share price of DSH following DSH’s listing on the ASX.
- 7 Had DSH prepared its financial accounts included in the Prospectus consistently with the Australian Accounting Standards, its pro-forma accounts for FY13 and 1Q14 and its forecast results for FY14 would have been no better than the results and forecasts for those periods recorded in Annexure A to this pleading. In those circumstances, two consequences would have followed. First, there would have been no basis for DSH to represent in the Prospectus that there had been a transformation in its business as demonstrated by the pro-forma financial results included in the Prospectus. Secondly, the financial results for FY13 and 1Q14 would not have supported the marketing of DSH to potential investors in the initial public offering (**IPO**) at \$2.20 per share and the IPO would not have proceeded in December 2013 or at an offer price of \$2.20. Consequently, none of the plaintiffs or group members in the *Mastoris* or *Findlay* proceedings would have acquired shares in DSH. Therefore, none of the

plaintiffs or group members in either proceedings would have suffered any loss or damage through the acquisition of DSH shares.

- 8 The Prospectus, whose contents are pleaded in section B.1 below, was issued for the purposes of Chapter 6D of the *Corporations Act 2001* (Cth) (**CA**) and was a disclosure document within the meaning of the CA. Publication of the Prospectus conveying the representations that it did was misleading and deceptive for the reasons summarised above and pleaded at section D.1.1 below and contravened ss 728 and 1041E of the CA.
- 9 The IPO was successful because of the misrepresentations in the Prospectus and Dick Smith listed on the Australian Stock Exchange on 4 December 2013 at a price of \$2.20 per share.
- 10 Throughout the entire period of its listing on the ASX, DSH's approach to valuing and provisioning for its inventory remained inconsistent with the requirements of the Australian Accounting Standards. As was the case with the financial accounts presented in the Prospectus, contrary to AASB 102 at each end of financial year reporting date post the IPO, DSH failed to report the value of inventory at the lower of cost and net realisable value; and properly provision against, or write down, the value of its inventory. As a result, at each end of financial year reporting date a significant and material under-provision was recorded against inventory, DSH overstated its total equity, net assets and reported profits and did not fairly present DSH's financial performance. See section C.2.
- 11 From at least May 2014 and throughout 2015 the management of DSH pursued a policy of maximising rebates given to DSH by vendors and suppliers (see section C.3.1). These included 'Over and Above Rebates' (which were purportedly rebates relating to promotional support of products supplied to DSH for sale) and 'Volume Rebates' (which were purportedly rebates for DSH agreeing to purchase and sell large volumes of the suppliers' products). DSH also developed a practice of directing or requesting suppliers to cancel previous invoices that had been issued without rebates and then reissue them at a higher price with rebates applied against the increased cost of the goods ("Switched Invoice Rebates"). See sections C.3.2, C.3.3 and C.3.4.
- 12 Furthermore, DSH did not have in place a system for the reliable planning, tracking and recording of rebates accrued and received from vendors and suppliers. See section C.3.10 below.
- 13 Throughout the same period, DSH's accounting for the rebates described in the preceding paragraph was not consistent with Australian Accounting Standards. Those practices, together with DSH's accounting practices for inventory, had the effect of inflating DSH's gross

margins and profits and reported equity as recorded in its financial statements for the 2014 and 2015 years beyond what they would have been had DSH prepared its accounts consistently with Australian Accounting Standards. It also meant that the financial statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group. Those accounting practices for rebates, pleaded in sections C.3.2 to C.3.8 below and as further particularised in the two accounting reports prepared by the plaintiffs' expert, Michael Potter (dated 24 September 2018 (**First Potter Report**) and 16 October 2018 (**Second Potter Report**)) included:

- (a) booking certain rebates in DSH's financial statements in 2015 directly as an increase in profit (as a reduction in marketing expenses or a reduction in Cost of Sales), prior to both the sale of the product and the receipt of the marketing support or in circumstances where no rebate actually existed;
- (b) booking certain rebates in DSH's financial statements in 2014 and 2015 as a reduction in Cost of Sales when the rebates were not attributable to such cost; and
- (c) booking certain rebates in DSH's financial statements in 2014 and 2015 as accounts receivables when it was not probable or it was at least uncertain that the rebate would be earned, paid and where the value of the rebate could not reliably be measured.

- 14 DSH's rebate maximisation practice and accounting practices for rebates had the effect of providing an additional means by which DSH was able to record purported profit in FY14 and the financial year ended 28 June 2015 (**FY15**) that DSH would not otherwise have been able to record as earned in those years – if it had complied with Australian Accounting Standards.
- 15 During this period, DSH's objective to maximise rebates obtainable from suppliers was a significant driver of purchasing decisions within DSH. Purchasing decisions were made by DSH on the basis of the rebates that could be obtained from suppliers and not solely on the basis of anticipating the goods that DSH's customers actually wanted. This led throughout FY15 and until DSH went into administration in 2016 to an increase in inventory which became increasingly aged and obsolete and therefore difficult to sell. It also had the effect of increasing DSH's recorded profit without adequate regard to the potential effect of the purchases on existing or future levels of provision required against inventory. See paragraph 154 below.
- 16 As pleaded in section C.2, the rebates practices exacerbated DSH's existing inventory provisioning problems.

- 17 In November 2015, DSH was required to write off the value of its stock by approximately \$60 million (see paragraph 142 below).
- 18 Had DSH prepared its financial accounts for FY14 and FY15 in accordance with Australian Accounting Standards, its results would have been no better than the results presented in Annexure B to this pleading.
- 19 DSH, Mr Abboud and Mr Potts represented that DSH's financial accounts published after DSH's listing on the ASX were prepared in accordance with the Australian Accounting Standards and gave a true and fair view of the financial position and performance of DSH and its controlled entities (**the DSH Group**). The representations were made in respect of DSH's published financial statements for FY14 and FY15. Each of those financial statements was accompanied by a directors' declaration that, in each director's opinion, the statements were in accordance with the CA — including as to compliance with accounting standards and gave a true and fair view of the financial position and performance of DSH and the DSH Group. See section B.2 below.
- 20 By the directors' declarations, Mr Abboud and Mr Potts also made implied representations — including that their opinions expressed in the declarations had a reasonable basis, were the product of the exercise of reasonable care and skill and a matter to which each had turned his mind after informing himself as to the financial affairs of the company. For the reasons pleaded in sections D.4 and D.5 below, that was not the case and as a consequence the implied representations arising from Mr Abboud's and Mr Potts' directors' declarations were misleading or deceptive in contravention of ss 1041H and/or 1041E of the CA and/or s 12DA of the *Australian Securities and Investments Commission Act 2001 (Cth)* (**ASIC Act**) and/or s 18 of the Australian Consumer Law.
- 21 Further, DSH represented, through the publication of the directors' declarations, that Mr Abboud and Mr Potts held the opinions pleaded in the preceding paragraph and that those opinions had a reasonable basis, were the product of reasonable care and skill and were a matter to which each had turned his mind after informing himself as to the financial affairs of the company which their opinions were based upon. This constituted misleading or deceptive conduct by DSH in contravention of ss 1041H and/or 1041E of the CA and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law, as pleaded in sections D.1 and D.2 below.
- 22 By reason of DSH's accounting practices pleaded in Part C below, the publication by DSH of each of its financial statements for FY14 and FY15 was misleading or deceptive conduct in

contravention of ss 1041E and/or 1041H of the CA and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law. Contrary to the representations made by DSH and its directors, the accounts were not prepared in accordance with Australian Accounting Standards and did not give a true and fair view of the financial position and performance of DSH and the DSH Group (because they artificially inflated DSH's reported profit and overstated the total equity and net assets of DSH). Each of DSH, Mr Abboud and Mr Potts contravened ss 1041H and/or 1041E of the CA and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law in causing the accounts to be published. See section D.1, D.2, D.4 and D.5 below.

23 ASX announcements and results briefings made by DSH, and authorised by Mr Abboud and Mr Potts around the time its financial statements were published for DSH's financial statements for FY14 and FY15, were also misleading or deceptive, and their publication also contravened ss 1041H and/or 1041E of the CA and/or s 12DA of the ASIC Act or s 18 of the Australian Consumer Law. The relevant ASX announcements and results briefings were:

(a) an announcement to the ASX on 19 August 2014 in relation to the FY14 Financial Statements together with a presentation titled 'FY 2014 Results Briefing';

(b) an announcement to the ASX on 18 August 2015 in relation to the FY15 Financial Statements together with a presentation titled 'FY2015 Results Briefing'.

24 Further, for the reasons pleaded in section D.3 below, DSH's publication of its FY14 financial report and FY15 financial report together with the associated ASX announcements and results briefings published by DSH resulted in a contravention by DSH of its continuous disclosure obligations because those reports and announcements omitted material information which was not generally available to investors and could reasonably be expected to have had a material effect on the price or value of shares in DSH.

24A Deloitte was retained by Dick Smith Sub-holdings Pty Limited (**DSSH**) and later DSH to audit the financial statements of DSSH for FY13, and DSH for FY14 and FY15. David White (**Mr White**) was the lead audit partner for each of Deloitte's audits. In conducting its audits, rebates and inventory issues were identified as matters of key and high focus for Deloitte.

24B In carrying out its audits, and in giving its audit opinions, Deloitte made representations that it had conducted its audits in accordance with applicable auditing standards. Deloitte also represented that it had obtained sufficient and appropriate evidence to carry out its audits and that, in its opinion, the financial statements of DSSH for FY13, and DSH for FY14 and FY15 were in accordance with the CA, including giving a true and fair view of DSSH's and DSH's

financial position and performance respectively, and complied with the Australian Accounting Standards and the *Corporations Regulations 2001*. Deloitte further represented that these representations were the product of Deloitte conducting its audits in accordance with Deloitte's auditing obligations, including the Australian Auditing Standards, that they were the product of Deloitte having exercised reasonable care and skill in performing the audits, and that there were reasonable grounds for making the representations. The representations were made by Deloitte and by Mr White.

24C For the reasons pleaded in Part C the accounting treatment, practices and decisions made by DSSH concerning the provisioning of inventory and DSH concerning both rebates and the provisioning of inventory meant that its accounts were not prepared in accordance with the Australian Accounting Standards. They led to the financial statements of DSSH for FY13 and DSH for FY14 and FY15 not giving a true and fair view of DSH's financial position and performance. Deloitte's failure to identify these matters and its representations to the contrary, was the result of Deloitte:

- (a) failing to conduct its audits in accordance with applicable auditing standards;
- (b) failing to exercise reasonable care and skill; and
- (c) failing to have reasonable grounds for its opinions.

24D The representations Deloitte made summarised in paragraph 24B above and pleaded in Section F.5 below were therefore misleading or deceptive in contravention of s 1041H of the CA and/or s 18 of the Australian Consumer Law and/or s 12DA of the ASIC Act. Further, to the extent that Deloitte's representations were representations that its audit services were of a particular standard or quality, within the meaning of s 29(1)(b) of the Australian Consumer Law and/or within the meaning of s 12DB(1)(a) of the ASIC Act, those representations were therefore false or misleading, in contravention of those provisions.

24E Further, by issuing and publishing each of Deloitte's Audit Reports, Mr White made statements or disseminated information, namely the representations summarised in paragraph 24B above and pleaded in Section F.5 below, which were false in a material particular or materially misleading, which were likely to induce the plaintiffs and Group Members to acquire shares in DSH or, in the alternative, which were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH shares on the ASX. Mr White ought reasonably to have known that the representations were false in a material particular or materially misleading at the each of Deloitte's Audit Reports were issued, for the reasons pleaded in Section F.7 below. As the lead audit partner, Mr White authorised the issuance of

Deloitte's Audit Reports for the FY13, FY14 and FY15 years and thereby contravened s 1041E of the CA.

- 24F If and to the extent that Mr Abboud and Mr Potts relied on Deloitte's representations in seeking approval by the board of DSH for the publication of the financial statements for FY14 and FY15, they would not have done so had Deloitte and Mr White not made the representations as alleged. The plaintiffs' case as to causation against Deloitte is pleaded in Section F.8 below.
- 25 The plaintiffs in the Mastoris proceedings purchased shares in DSH at different times in the period between the listing of DSH and the end of 2015. The plaintiffs in the Findlay proceedings purchased shares in DSH in 2015 and lost their investment when DSH went into administration in January 2016. These are representative proceedings in which the plaintiffs seek to recover compensation on their own behalf and on behalf of other shareholders who purchased DSH shares between December 2013 and when DSH went into administration in January 2016.

Structure of the pleading

- 26 The pleading is in seven major parts:
- (a) Part A – Parties and Background
 - (b) Part B – The Representations
 - (c) Part C – Required Accounting Adjustments
 - (d) Part D – Contraventions
 - (e) Part E – Causation, Loss and Damage
 - (ea) Part F - Claim against Deloitte
 - (f) Part G – Common Questions.
- 27 Part A – Parties and Background addresses the following topics:
- (a) in section A.1 (paragraphs 33 – 37), Part 10 of the *Civil Procedure Act 1995* (NSW);
 - (b) in section A.2 (paragraphs 38 – 45), the parties to the proceedings; and

- (c) in section A.3 (paragraphs 46 – 56), the background of the Dick Smith business and the DSH IPO.

28 Part B – The Representations addresses the following topics:

- (a) in section B.1 (paragraphs 57 – 84), the representations made by DSH in the Prospectus; and
- (b) in section B.2 (paragraphs 85 – 110), the representations made by DSH after its listing, including financial statements, declarations and announcements.

29 Part C – Required Accounting Adjustments addresses the following topics:

- (a) in section C.1 (paragraphs 111 – 134), DSH's accounting obligations;
- (b) in section C.2 (paragraphs 135 – 151), DSH's inventory practices the necessary accounting adjustments required to properly account for DSH's inventory provisioning;
- (c) in section C.3 (paragraphs 152 – 189), DSH's rebate practices and the necessary accounting adjustments required to properly account for various types of rebates received by DSH;
- (d) in sections C.4 (paragraphs 193 – 201), C.5 (paragraphs 202 – 207), C.6 (paragraphs 208 – 210), C.7 (paragraphs 211 – 213), C.8 (paragraphs 214 – 217) and C.9 (paragraphs 219 – 222), various other financial adjustments that affected DSSH's and DSH's financial statements either (or both) before and after the Prospectus; and
- (e) in section C.10 (paragraphs 223 – 226), the effect on the accounting of DSSH's and DSH's of making the accounting adjustments required in order to comply with the Australian Accounting Standards.

30 Part D – Contraventions addresses the following topics:

- (a) in section D.1 (paragraphs 227 – 250), DSH's misleading or deceptive conduct;
- (b) in section D.2 (paragraphs 251 – 273), DSH's contraventions of s 1041E of the CA;
- (c) in section D.3 (paragraphs 274 – 284), DSH's continuous disclosure contraventions;
- (d) in section D.4 (paragraphs 285 – 320), Mr Abboud's contraventions; and
- (e) in section D.5 (paragraphs 321 – 356), Mr Potts' contraventions.

- 31 Part E (paragraphs 357 – 366) details the plaintiffs’ and Group Members’ causation, loss and damage.
- 31A Part F – Claim against Deloitte addresses the following topics:
- (a) in section F.1 (paragraphs 376 - 386), background to the claim against Deloitte;
 - (b) in sections F.2 and G.3 (paragraphs 387 - 409), Deloitte’s auditing obligations;
 - (c) in section F.4 (paragraph 410), the definition of Reasonable Auditor;
 - (d) in section F.5 (paragraphs 411 - 426), representations Deloitte made in its audits that give rise to the breaches alleged;
 - (e) in section F.6 (paragraphs 427 - 466), Deloitte’s conduct in carrying out the audits of the financial statements of DSSH for FY13, and DSH for FY14 and FY15;
 - (f) in section F.7 (paragraphs 467 - 502), Deloitte’s contravening conduct;
 - (g) in section F.8 (paragraphs 503 - 515), the plaintiffs’ and Group Members’ causation, loss and damage by reason of Deloitte’s contravening conduct.
- 32 Part G (paragraphs 516 – 528) details the common questions of fact or law arising in these proceedings.

A. PARTIES AND BACKGROUND

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

33 The Findlays and Mastorises bring each of their respective proceedings on their own behalf and on behalf of represented persons pursuant to Part 10 of the *Civil Procedure Act 1995* (NSW).

34 The group members in the Findlay proceedings (**Findlay Group Members**) are persons who:

- (a) during the period commencing on 16 February 2015 and concluding on 3 January 2016 acquired an interest in ordinary shares in DSH (**DSH Shares**);
- (b) as at 14 February 2018 had not signed a funding agreement with ICP Capital Pty Ltd and Investor Claim Partner Pty Ltd; and
- (c) were not:
 - (i) a related party (as defined by s 228 of the CA) of DSH;
 - (ii) a related body corporate (as defined by s 50 of the CA) of DSH;
 - (iii) an associated entity (as defined by s 50AAA of the CA) of DSH;
 - (iv) a director, officer, or close associate (as defined in s 9 of the CA) of DSH; or
 - (v) a judge or the Chief Justice of the Supreme Court of New South Wales or a Justice or the Chief Justice of the High Court of Australia;
- (d) suffered loss or damage by, or which resulted from, the conduct of DSH and/or Mr Abboud and/or Mr Potts and/or Deloitte pleaded below.

35 As at the date of the commencement of the Findlay proceedings the Findlay Group Members comprised seven or more persons.

36 The group members in the Mastoris proceedings (**Mastoris Group Members**) are persons who:

- (a) acquired an interest in fully paid DSH Shares:

- (i) during the period from 14 November 2013 to 15 February 2015 inclusive (**First Acquisition Period**); or
 - (ii) during the period from 16 February 2015 to 3 January 2016 inclusive (**Second Acquisition Period**), provided that they had as at 14 February 2018 signed a funding agreement with ICP Capital Pty Ltd and Investor Claim Partner Pty Ltd; and
- (b) were not during the First Acquisition Period or the Second Acquisition Period (together, the **Relevant Period**), and were not as at 14 February 2018, any of the following:
- (i) a related party (as defined by s 228 of the CA) of DSH;
 - (ii) a related body corporate (as defined by s 50 of the CA) of DSH;
 - (iii) an associated entity (as defined by s 50AAA of the CA) of DSH;
 - (iv) a director, officer, or close associate (as defined in s 9 of the CA) of DSH; or
 - (v) a judge or the Chief Justice of the Supreme Court of New South Wales or a Justice or the Chief Justice of the High Court of Australia; and
- (c) are not:
- (i) Haliburton Charles David Findlay or Marian Jennifer Denny Findlay (the plaintiffs in the Findlay proceedings); or
 - (ii) any person who as at 14 February 2018 was only a client of Bannister Law or who only had signed a Litigation Funding Agreement with Vannin Capital, in respect of claims against DSH; and
- (d) have suffered loss or damage by reason of the conduct of DSH and/or Mr Abboud and/or Mr Potts pleaded below.

37 As at the date of the commencement of the Mastoris proceedings the Mastoris Group Members comprised seven or more persons.

A.2. THE PARTIES

A.2.1. The plaintiffs in the Findlay proceedings

38 The Findlays purchased and sold interests in their joint names in DSH Shares during 2015 as follows:

- (a) 20 February 2015 – purchased 7,500 shares;
- (b) 28 August 2015 – sold 3,500 shares;
- (c) 28 September 2015 – purchased 2,000 shares;
- (d) 5 October 2015 – purchased 2,000 shares; and
- (e) 28 October 2015 – purchased 2,000 shares.

A.2.2. The plaintiffs in the Mastoris proceedings

39 The Mastorises purchased and sold interests in DSH Shares during the Relevant Period on the ASX as follows:

- (a) 17 December 2013 – jointly purchased 950 shares;
- (b) 28 October 2015 – jointly purchased 600 shares;
- (c) 29 October 2015 – jointly sold 1,550 shares; and
- (d) 29 October 2015 – Lena Mastoris only purchased 2,000 shares.

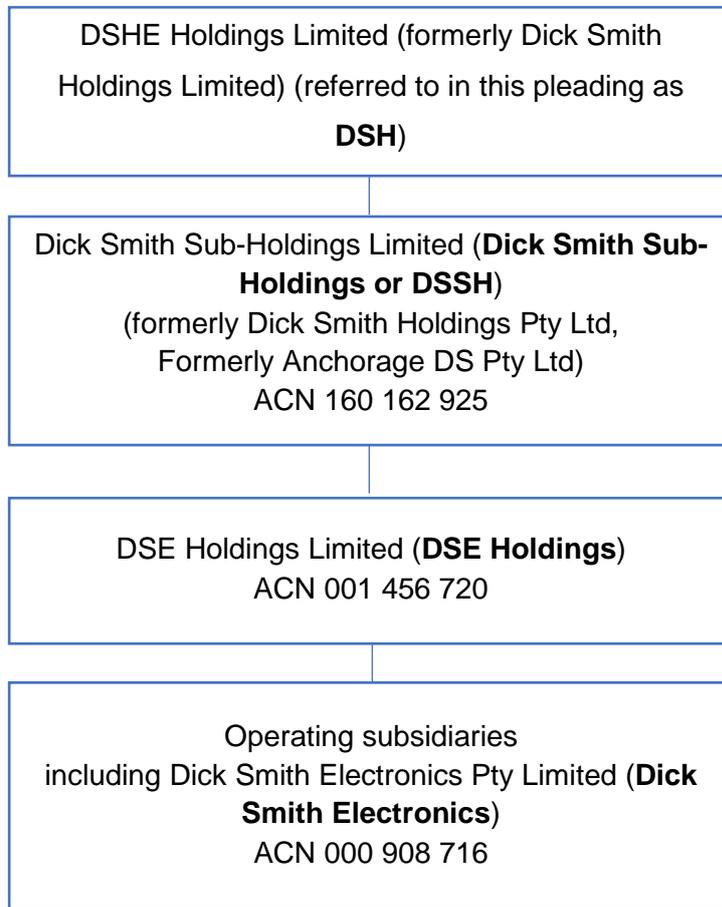
A.2.3. The first defendant in both proceedings: DSH

40 At all material times DSH:

- (a) was and is a company registered pursuant to the CA and is capable of being sued; and
- (b) was:
 - (i) the consolidated reporting entity for the DSH Group;
 - (ii) a person for the purposes of ss 728, 729(1), 1041E and 1041H of the CA; and
- (c) was on and from 4 December 2013:

- (i) a corporation listed on a financial market operated by ASX Limited (**ASX**);
 - (ii) had on issue 236,511,364 ordinary shares which were:
 - (A) listed and traded on the ASX under the code “DSH”;
 - (B) “ED Securities” within the meaning of s 111AE of the CA;
 - (C) “quoted ED Securities” within the meaning of s 111AM of the CA;
 - (iii) a “listed disclosing entity” within the meaning of s 111AL(1) of the CA;
 - (iv) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**); and
 - (v) obliged by ss 111AP(1) and/or 674(1) of the CA and/or ASX Listing Rule 3.1 to, once it became aware of any information concerning DSH that a reasonable person would expect to have a material effect on the price or value of DSH Shares, tell the ASX that information immediately (unless ASX Listing Rule 3.1A applied);
- (d) carried on business itself and through the DSH Group as a retailer of consumer electronics, entertainment, computer products and related accessories; and

- (e) was the parent company of the DSH Group comprising itself and its trading subsidiaries, which DSH controlled, as follows:



Particulars

Page 134 of a prospectus issued and lodged with ASIC by Dick Smith Holdings dated 21 November 2013.

- 41 On 4 January 2016, DSH was placed into voluntary administration by resolution of its directors.
- 42 On 25 July 2016, Joseph Hayes and Jason Preston of McGrath Nicol were appointed as the liquidators of DSH.
- 43 Prior to entering into liquidation, DSH traded from approximately 332 stores located mostly in Australia and via its on-line website.

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

44 The second defendant, Mr Abboud:

- (a) was the Managing Director and Chief Executive Officer of DSH from on or around 25 October 2013 to 4 January 2016;
- (b) was a director of DSH from on or around 25 October 2013 to 4 January 2016;
- (c) was, as Chief Executive Officer, a person who at all times between 25 October 2013 and 4 January 2016:
 - (i) made, or participated in making, decisions that affected the whole or a substantial part, of the business of DSH and the DSH Group;
 - (ii) had the capacity to affect significantly DSH and the DSH Group's financial standing; and
- (d) is and was at all material times a person for the purposes of ss 728, 729, 1041E and 1041H of the CA.

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

45 The third defendant, Mr Potts:

- (a) was the Finance Director and Chief Financial Officer of DSH from on or around 25 October 2013 to 4 January 2016;
- (b) was a director of DSH from on or around 12 August 2014 to 4 January 2016;
- (c) was, as the Finance Director and Chief Financial Officer, a person who at all times between 25 October 2013 and 4 January 2016:
 - (i) made, or participated in making, decisions that affected the whole or a substantial part, of the business of DSH and the DSH Group;
 - (ii) had the capacity to affect significantly DSH and the DSH Group's financial standing;
- (d) was the Company Secretary of DSH from on or around 25 October 2013 to 12 August 2014; and

- (e) is and was at all material times a person for the purposes of ss 728, 729, 1041E and 1041H of the CA.

A.2.6. The fourth to 457th defendants

45A At all material times, the fourth to 457th defendants trading as Deloitte Touche Tohmatsu (**Deloitte**):

- (a) were and are natural persons able to sue and be sued;
- (b) were an Australian partnership and a member firm of the network of independent member firms affiliated with Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee;
- (c) conducted business within Australia as accountants and auditors under the partnership names “Deloitte Touche Tohmatsu” and “Deloitte”;
- (d) were the suppliers of services, including audit, tax and advisory services, for a fee;
- (e) held themselves out to be, inter alia, specialist auditors and accountants, who had professional expertise and competence in the provision of auditing and accounting services;
- (f) included among its partners and employees practising in Australia persons who were registered company auditors, including Mr White, each of whom was a person for the purposes of:
 - (i) sections 1041E and 1041H of the CA;
 - (ii) sections 12DA and 12DB of the ASIC Act; and
 - (iii) sections 18 and 29 of the Australian Consumer Law; and
- (g) were the auditors of DSH and its controlled entities.

45B Mr White was the lead auditor for each of the audits for FY13, FY14 and FY15 and signed the Audit Reports for each of these years on behalf of himself and on behalf of Deloitte.

A.3. BACKGROUND

46 The business ultimately conducted by DSH was founded in 1968 by Richard “Dick” Smith AO.

- 47 In the period from about 1981 to 1983, Woolworths Ltd acquired the Dick Smith business.
- 48 By about 2012, Woolworths conducted the Dick Smith business in DSE Holdings, and its subsidiaries.
- 49 During 2012, Woolworths undertook a sale campaign in relation to the Dick Smith business.
- 50 On 26 September 2012, Dick Smith Sub-Holdings (formerly named Dick Smith Holdings Pty Ltd and Anchorage DS Pty Ltd), entered into a share sale agreement with Woolworths pursuant to which Dick Smith Sub-Holdings acquired all of the issued shares in DSE Holdings (**Acquisition**).
- 51 Upon Acquisition, Dick Smith Sub-Holdings was 98% owned by Anchorage Capital Partners Pty Ltd and 2% by LMA Investments Pty Ltd.
- 52 On 25 October 2013, DSH was incorporated as an Australian Public Company with the intention of raising capital through an IPO of its shares (**DSH IPO**).
- 53 On 14 November 2013, DSH lodged with ASIC and issued a prospectus dated 14 November 2013 (**First Prospectus**).
- 54 On 21 November 2013, DSH lodged with ASIC and issued a replacement prospectus dated 21 November 2013 (the **Replacement Prospectus**).
- 55 In this pleading, a reference to the **Prospectus** is a reference to both the First Prospectus and the Replacement Prospectus and where references to page numbers or sections of the Prospectus are given they refer to page numbers and sections of the Replacement Prospectus and the corresponding pages and sections of the First Prospectus.
- 56 On 4 December 2013, DSH:
- (a) acquired all of the issued shares in Dick Smith Sub-Holdings;
 - (b) became the holding company of the DSH Group and thereafter conducted the Dick Smith business; and
 - (c) was admitted to the official list of the ASX and commenced trading with a listing price of \$2.20 per share.

B. THE REPRESENTATIONS

B.1. THE PROSPECTUS REPRESENTATIONS

B.1.1. The Legal Status of the Prospectus

57 The Prospectus was:

- (a) issued for the purposes of Chapter 6D of the CA;
- (b) a disclosure document within the meaning of the CA;
- (c) issued in relation to the offer of DSH Shares for the purposes of s 709(1) of the CA;
- (d) subject to the requirements of s 710(1) of the CA, such that it was required to contain all the information that investors and their professional advisers would reasonably require to make an informed assessment of, inter alia, the assets and liabilities, financial position and performance, profits and losses and prospects of DSH;
- (e) lodged with ASX in connection with an application for admission to the official list and quotation of DSH Shares on the ASX, together with an Appendix 1A (**ASX Listing Application and Agreement**) and "Information Form and Checklist" (**Pre-Quotation Disclosure**) as required by ASX Listing Rule 1.7, which:
 - (i) confirmed that all information that a reasonable person would expect to have a material effect on the price or value of DSH Shares was included in or provided with the Pre-Quotation Disclosure (as required by Item 40 of the Information Form and Checklist); and
 - (ii) by deed poll warranted that the information and documents required by the Appendix 1A, including the information and documents referred to in the Information Form and Checklist "*are (or will be) true and correct*" (as required by cl 4 of Appendix 1A); and
- (f) was (together with the other documents comprising the Pre-Quotation Disclosure), from a time no later than the time when DSH was admitted to the official list of the ASX, publicly available to the market of potential investors in DSH Shares.

58 The content of the Prospectus was approved by the board of DSH on or about 13 November 2013.

Particulars

The Prospectus states that “the issue of this Prospectus has been authorized by each Director. Each Director has consented to the lodgement of this Prospectus and the issue of this prospectus and has not withdrawn that consent”, para 10.15.

The Prospectus contains a “Chairman’s Letter” stating that the offer made in the Prospectus was made on behalf of all directors, including Abboud.

Minutes of a meeting of the board of directors of DSH held on or about 13 November 2013.

- 59 The issue of the Prospectus was authorised by DSH and each of its directors.

Particulars

The particulars to the paragraph above are repeated.

- 60 Prior to the authorisation of the issue of the Prospectus, DSH and its directors undertook a process of verifying the statements contained in the Prospectus. The verification process was recorded via a Verification Matrix (The Project Yellow – Allocation table and Verification notes for Prospectus (the **Verification Matrix**)) which recorded the person who had responsibility for the verification of each statement in the Prospectus and the basis for that verification.

Particulars

Boxed-up Prospectus DSE.00339260.

Verification Matrix DSE.000235957.

B.1.2. Financial Information Basis Representation

- 61 The Prospectus contained a summary of historical and forecast financial information of DSH being:

- (a) pro forma historical financial information, comprising:
 - (i) pro forma historical consolidated income statements for the financial year ended 26 June 2011 (**FY11**), the financial year ended 24 June 2012 (**FY12**), FY13 and 1Q14, together with a reconciliation to the FY13 statutory consolidated income statement; and

- (ii) pro forma consolidated balance sheet as at 30 June 2013 together with a reconciliation to the statutory historical consolidated balance sheet as at 30 June 2013,

(the **Pro Forma Historical Information**); and

- (b) forecast financial information, comprising:

- (i) pro forma forecast consolidated income statement for FY14, together with a reconciliation to the FY14 statutory forecast consolidated income statement; and

- (ii) pro forma forecast consolidated cash flow statement,

(the **Forecast Financial Information**).

62 DSH represented that the information described in the preceding paragraph:

- (a) had been prepared in accordance with the recognition and measurement principles described in Australian Accounting Standards (including Australian Accounting Interpretations) and the summarised accounting policies of DSH set out in Section 11 of the Prospectus (where “Australian Accounting Standards” was defined in the Glossary in Section 12 of the Prospectus); and

- (b) that the statutory forecast income statement had been prepared on a basis consistent with how DSH's statutory financial statements would be prepared for future financial periods,

(the **Financial Information Basis Representation**).

Particulars

Prospectus Section 5.2, page 52; Section 5.3, page 53; Section 5.3.2, page 54; Section 12, page 152; inside front cover.

63 The Financial Information Basis Representation was verified by Mr Potts as set out in the Verification Matrix.

Particulars

Boxed-up Prospectus and Verification Matrix, as excerpted in Annexure C, FI46, FI47, FI96.

B.1.3. FY13 Performance Representations

64 The Prospectus stated that:

- (a) the historical financial information for the 3 years ending 30 June 2013 included in the Prospectus was derived from:
 - (i) DSSH's Financial Report for the 10 months period ending 30 June 2013; and
 - (ii) the unaudited accounting records of DSSH for the period from 28 June 2010 to 26 November 2012; and
- (b) the Pro Forma Historical Information based upon it was prepared in accordance with the Financial Information Basis Representation.

Particulars

Prospectus, page 53; Section 5.2, page 52; Section 5.3, page 53; Section 5.3.2, page 54; Section 12, page 152; inside front cover.

65 The Prospectus included the following statements for FY13:

- (a) pro forma sales of \$1,280.4 million;
- (b) pro forma gross profit of \$303.6 million;
- (c) pro forma gross margin of 23.7%;
- (d) pro forma Cost of Doing Business (**CODB**) margin of 21.9%;
- (e) pro forma EBITDA of \$23.4 million;
- (f) EBITDA margin of 1.8%;
- (g) pro forma EBIT of \$10.9 million;
- (h) EBIT margin of 0.9%;
- (i) pro forma profit before tax of \$9.5 million;
- (j) pro forma NPAT of \$6.7 million;
- (k) capital expenditure of \$5.4 million; and

(l) the Financial Information Basis Representation,

(each and collectively, the **FY13 Performance Representations**).

Particulars

Prospectus, pages 12, 55 and 57; Section 5.2, page 52; Section 5.3, page 53; Section 5.3.2, page 54; Section 12, page 152; inside front cover.

66 The FY13 Performance Representations were verified by Mr Potts as set out in the Verification Matrix.

Particulars

Boxed-up Prospectus and Verification Matrix, as excerpted in Annexure C, IO359, IO365, IO371, IO377, IO383, FI46, FI47, FI96, FI124, FI170.

B.1.4. FY13 Balance Sheet Representations

67 The Prospectus included the following statements and representations concerning the assets of Dick Smith Sub-Holdings as at 30 June 2013:

(a) Statutory:

(i) Receivables – \$10.4 million;

(ii) Inventories – \$168.5 million;

(iii) Deferred Tax Assets – \$42.9 million; and

(iv) Retained Profits – \$140.2 million;

(b) Inventories were stated at “*lower of cost and net realisable value. Costs include the purchase price of goods as well as transport, handling and other costs directly attributable to the acquisition of inventories less any applicable rebates and settlement discounts. Net realisable value represents the estimated selling price for inventories less all estimated costs of completion and costs necessary to make the sale.*”

(collectively, the **FY13 Balance Sheet Representations**).

Particulars

Prospectus, page 60; Section 5.2, page 52; Section 5.3, page 53; Section 5.3.2, page 54; Section 12, page 152; inside front cover; page 149.

- 68 The FY13 Balance Sheet Representations were verified by Mr Potts as set out in the Verification Matrix.

Particulars

Boxed-up Prospectus and Verification Matrix, as excerpted in Annexure C, FI46, FI47, FI96, FI220, XA18.

B.1.5. Obsolete Stock Representation

- 69 The Prospectus stated that management had driven a significant transformation of the Dick Smith Business after Woolworths' divestment and had "*Significantly reduced Dick Smith's level of obsolete stock*" (the **Obsolete Stock Representation**).

Particulars

Prospectus, page 47.

- 70 The Obsolete Stock Representation was verified by Mr Merola as set out in the Verification Matrix.

Particulars

Boxed-up Prospectus and Verification Matrix as excerpted in Annexure C, CO689.

B.1.6. 1Q14 Representations

- 71 The Prospectus included the following statements and representations as to Dick Smith Sub-Holdings' 1Q14 results:
- (a) the 1Q14 results represented the first period of financial performance that was not materially impacted by the strategic decisions and operational execution of the previous management team;
 - (b) historical pro forma results for 1Q14 demonstrated a significantly improved financial performance;

(c) Dick Smith Sub-Holdings' 1Q14 pro forma results were:

- (i) Sales of \$273.3 million;
- (ii) Gross profit of \$68.4 million;
- (iii) Gross margin of 25.0%;
- (iv) CODB of \$56.7 million;
- (v) CODB margin of 20.8%;
- (vi) EBITDA of \$11.6 million;
- (vii) EBITDA margin of 4.3%;
- (viii) EBIT of \$9.0 million;
- (ix) EBIT margin of 3.3%; and
- (x) Capital expenditure of \$2.7 million,

(the **1Q14 Representations**).

Particulars

Prospectus, page 66; Section 5.2, page 52; Section 5.3, page 53; Section 5.3.2, page 54; Section 12, page 152; inside front cover.

72 The 1Q14 Representations were verified by Mr Potts.

Particulars

Boxed-up Prospectus and Verification Matrix, as excerpted in Annexure C, FI46, FI47, FI96, FI356, FI359, FI360.

B.1.7. The Transformation Representations

73 The Prospectus included the following statements:

- (a) *“Dick Smith has undergone a significant transformation under the leadership of Managing Director and CEO, Nick Abboud. Nick and his management team have driven a comprehensive program of strategic, customer, operational and cultural initiatives which, supported by the enthusiasm and commitment of the store and store support*

teams, have already delivered substantial improvements to financial performance, and have positioned the Company for future growth. It is expected that these programs will continue to deliver additional financial benefits in the coming years. The transformation and growth initiatives underpin Dick Smith's forecast growth to an expected pro forma EBITDA of \$71.8 million in FY2014. The Directors believe that the significant increase in the underlying profitability of Dick Smith and the sustainability of the increase have been evidenced in our strong 1Q2014 results."

Particulars

Prospectus, page 2.

- (b) *"As part of the transformation program, Nick has established a platform for the future growth of the business based on four main initiatives: growing the store network, expanding our omni-channel offering, driving growth in our mobility category and expanding our private label offering."*

Particulars

Prospectus, page 2.

- (c) *"In the period since the Acquisition, the new management team, led by Nick Abboud, has driven a rapid transformation of Dick Smith through the implementation of a comprehensive program of strategic, customer, operational and cultural initiatives, which have already delivered substantial improvements to financial performance and have positioned the Company for ongoing future growth."*

Particulars

Prospectus, page 6.

- (d) *"Dick Smith's new and experienced management team, led by Nick Abboud, has driven a significant transformation of the business through a comprehensive program of strategic, customer, operational and cultural initiatives. This program has already delivered substantial improvements to financial performance, as evidenced in the 1Q2014 results. It is expected that these programs will continue to deliver additional financial benefits in the coming years. Pro forma EBITDA is forecast to grow to \$71.8 million in FY2014 from \$23.4 million in FY2013."*

Particulars

Prospectus, page 8.

- (e) *“The transformation and growth initiatives underpin Dick Smith’s forecast growth to an expected pro forma EBITDA of \$71.8 million in FY2014. The Directors believe that the significant increase in the underlying profitability of Dick Smith and the sustainability of the increase have been evidenced in the 1Q2014 results. It is expected that this transformation program will continue to deliver additional financial benefits in the coming years.”*

Particulars

Prospectus, page 12.

- (f) *“Since the Acquisition, Nick Abboud and his new senior management team have substantially transformed Dick Smith, revitalising all areas of the business and repositioning Dick Smith for ongoing future growth. By June 2013, the major transformation initiatives had been implemented and Dick Smith centred its focus on the next stage of its growth agenda. Anchorage is a turnaround-focused investor and therefore, upon successful implementation of the major transformation initiatives, began to consider alternatives to reduce its investment and create an ownership structure that would better enable Dick Smith to achieve its growth objectives”.*

Particulars

Prospectus, page 32.

- (g) *“At the time of the Acquisition, Dick Smith was experiencing declining profitability. Following the Acquisition, the Dick Smith management team, led by Nick Abboud, rapidly implemented a comprehensive transformation program, positioning the business for sustainable growth. The program covered all areas of the business and addressed revenues, gross profits, costs and the balance sheet, as well as customer experience and internal culture. New management talent was also added to the business to complement the existing management team, to bring additional retail and transformation expertise and to provide management the capacity to progress multiple transformation and growth initiatives in parallel. Nick Abboud and the management team, with over 200 years of cumulative retail experience, also drove an internal cultural shift towards a customer-centric focus, a bias to action and accountability for results.”*

Particulars

Prospectus, page 33.

- (h) *“The FY2014 pro forma forecast represents the Directors’ expectations for the first full year of Dick Smith’s financial performance under the new management team. The Directors believe that 1Q2014 is the first actual reporting period under the new management team that reflects the impact of the transformation program undertaken and is not impacted by the strategic decisions and operational execution of the previous management team and owner.”*

Particulars

Prospectus, page 52.

- (i) Management of DSH had undertaken the following major initiatives as part of a transformation program and had already delivered the following benefits under the transformation program:

Stores and staff	Initiatives	Benefits realised
	<ul style="list-style-type: none"> ■ Rolled out new store key performance indicator (“KPI”) dashboards to all stores ■ Implemented new staff incentive model linked to KPI dashboards ■ Implemented new staff rostering processes and staffing policies ■ Implemented “Serve Forward” staff training program for in-store staff focused on customer service and empathy ■ Improved in-store markdown policies ■ Developed strong alliances with major landlords ■ Improved recruiting profiles and policies 	<ul style="list-style-type: none"> ■ Improved store labour efficiency and profitability ■ Improved in-store customer experience ■ Improved gross margins through better promotion management

	Initiatives	Benefits realised
Suppliers and buying	<ul style="list-style-type: none"> ■ Developed strategic relationships with key suppliers ■ Renegotiated a number of supplier agreements (e.g. pricing and terms) ■ Revamped range and mix of brands and products, and increased focus on mobility and private label ■ Developed new pricing and promotional practices in collaboration with suppliers ■ Opened new Hong Kong sourcing office and re-tendering of sourcing costs ■ Improved buyer disciplines and accountability ■ Improved collaboration between buying and operations 	<ul style="list-style-type: none"> ■ Store-in-store relationships with Apple and Samsung ■ Mutually beneficial supplier agreements on commercially competitive terms ■ Improved gross margins from pricing and product mix ■ Clarity on range and price strategies ■ Access to latest products and brands

	Initiatives	Benefits realised
Marketing	<ul style="list-style-type: none"> ■ Developed new marketing program ■ Implemented 'Dick Live Daily Deals' ■ Renegotiated marketing supplier agreements ■ Conducted extensive customer research and engagement 	<ul style="list-style-type: none"> ■ Substantial increase in marketing volumes, efficiency and 'share of voice', including greater frequency of catalogues and increased number of days of television commercials ■ Improved collaboration with suppliers

	Initiatives	Benefits realised
Inventory management and supply chain	<ul style="list-style-type: none"> ■ Undertook significant clearance of aged and obsolete stock ■ Improved stock management and ordering practices ■ Upgraded store replenishment system ■ Streamlined and right sized distribution network ■ Optimised freight movements including adding direct to store and direct to customer shipping ■ Optimised staffing to reflect new inventory levels 	<ul style="list-style-type: none"> ■ Significant reduction in aged and obsolete stock ■ Reduction in freight and inventory handling costs ■ Reduction in 'out of stocks'

	Initiatives	Benefits realised
Omni-channel	<ul style="list-style-type: none"> ■ Migrated website to new digital platform allowing greater flexibility, functionality, efficiency and customer experience 	<ul style="list-style-type: none"> ■ Improved visitation and sales through improved pricing, convenience, attachment and delivery functionality

	Initiatives	Benefits realised
Other	<ul style="list-style-type: none"> ■ Renegotiated all key contracts and procurement agreements ■ Addressed excess space issues 	<ul style="list-style-type: none"> ■ Sustained lower and more flexible cost base

Particulars

Prospectus, pages 33-35, Table 4.1.3.1.

- (j) *“In Australia, these initiatives have already delivered significant improvements to Dick Smith’s financial performance (detailed further in Section 5). The Directors believe that the significant increase in the underlying profitability of Dick Smith and the sustainability of the increase have been evidenced in the 1Q2014 results. In Australia, Dick Smith is*

now positioned for growth and has already commenced implementation of its growth plan (described in more detail in Section 4.4).”

Particulars

Prospectus, page 35.

(each of (a) to (j) collectively, the **Transformation Representations**).

- 74 The Transformation Representations conveyed to investors that:
- (a) the DSH business had been successfully transformed by management and the Board of DSH into a more profitable operation than it was when it was owned by Woolworths;
 - (b) the transformation was reflected in the 1Q14 financial results;
 - (c) the transformation had already delivered improvements in financial performance, as demonstrated by the 1Q14 financial results; and
 - (d) the transformation could be expected to deliver additional financial benefits in the coming years.
- 75 The Transformation Representations were verified by the directors, Mr Potts, Mr David Cooke, Ms Marcella Davis, Mr Neil Merola, Mr John Skellern and Mr Michael Dykes.

Particulars

Boxed-up Prospectus and Verification Matrix, as excerpted in Annexure C, CL19, CL20, CL21, CL22, CL23, CL24, CL25, CL30, IO48, IO49, IO50, IO51, IO52, IO53, IO54, IO185, IO186, IO187, IO188, IO189, IO190, IO191, IO192, IO193, IO194, IO195, IO196, IO197, IO198, IO390, IO391, IO392, IO393, IO394, CO82, CO83, CO84, CO85, CO86, CO87, CO88, CO89, CO97, CO98, CO99, CO100, CO101, CO102, CO103, CO104, CO105, CO106, CO107, CO108, CO109, CO110, CO111, CO112, CO113, CO114, FI13, FI13A, CO127, CO128, CO129, CO130, CO131, CO132, CO133, CO134, CO135, CO136, CO137, CO138, CO139, CO140, CO141, CO142, CO143, CO144, CO148, CO149, CO150, CO151, CO152, CO153, CO154, CO155, CO156, CO157, CO158, CO159, CO160, CO161, CO162, CO163, CO164, CO165, CO166, CO176, CO177, CO178, CO179, CO180, CO181, CO182, CO183, CO184, CO185, CO186, CO189, CO190, CO191, CO192, CO193, CO194, CO195, CO196, CO197, CO198, CO199, CO200, CO204, CO205, CO206, CO207, CO208, CO209, CO210, CO211, CO212,

CO220, CO221, CO222, CO223, CO224, CO226, CO227, CO228, CO229, CO230, CO231.

B.1.8. The Growth and Forecast Representations

76 The Prospectus included the following statements about DSH's forecast growth and profits:

- (a) sales for the six months ending 29 December 2013 (**1H14**) were forecast to be 52% of FY14 forecast sales of \$1,226.0 million (being \$637.52 million) and sales in the six months ending 29 June 2014 (**2H14**) were forecast to be 48% of FY14 forecast sales;
- (b) Pro Forma EBITDA for 1H14 was forecast to be 56% of FY14 forecast EBITDA of \$71.8 million (being \$40.2 million), and EBITDA in 2H14 was forecast to be 44% of FY14 EBITDA;
- (c) *"FY2014 pro forma forecast EBITDA takes into account expected profitability improvements from the transformation program. Management believes that the expected seasonality of FY2014 EBITDA in terms of the proportion of EBITDA earned in each half year will be more representative of Dick Smith's seasonality of earnings going forward. This reflects the impact of the transformation program, in particular, the benefits of operating cost reductions which are spread relatively evenly through the financial year"*;

Particulars

Prospectus, page 65.

- (d) FY14 results were forecast, in comparison to FY13 results, to be:

	FY13		FY14		
	Pro forma		Pro forma		Statutory
	\$m	% of sales	\$m	% of sales	\$m
Sales	1,280.4		1,226.0		1,226.0
Gross Profit	303.6	23.7	307.8	25.1	307.8
CODB	(280.1)	21.9	(236)	19.2	(261.2)
EBITDA	23.4	1.8	71.8	5.9	46.6
NPAT	6.7		40.0		11.5

Particulars

Prospectus, pages 8, 12, 55, 57, 68, 69.

- (e) *“The transformation and growth initiatives underpin Dick Smith’s forecast growth to an expected pro forma EBITDA of \$71.8 million in FY2014. The Directors believe that the significant increase in the underlying profitability of Dick Smith and the sustainability of the increase have been evidenced in the 1Q2014 results. It is expected that this transformation program will continue to deliver additional financial benefits in the coming years.”;*

Particulars

Prospectus, page 12.

- (f) the major drivers of the forecast increase in pro forma EBITDA between FY13 and FY14 were stated to include:

- (i) *“Corporate/Procurement efficiencies and marketing rebates*

A number of improvement initiatives were driven in key head office functional areas. Dick Smith management has increased the efficiency of media expenditure, substantially increasing media volumes and share of voice, and also increased marketing collaboration with suppliers. Lease agreements for corporate offices were also renegotiated, as were all major corporate supply agreements.”

- (ii) *“Increase in gross profit*

Pro forma gross margin is forecast to increase from 23.7% in FY2013 to 25.1% in FY2014 as a result of a wide range of pricing, supplier and range mix initiatives, as well as improvements to buying and stock management practices. Agreements with major suppliers have been renegotiated and new buying disciplines introduced to improve planning and increase accountability for stock levels and discounting. New pricing and promotion practices were developed in collaboration with suppliers, and improvements were made to in-store markdown procedures. Dick Smith’s range was revamped to focus on higher margin products and brands, and a new direct sourcing office was established in Hong Kong to enable more efficient purchasing, particularly for private label products and accessories. In addition, the roll out of new stores is forecast to contribute to an increase in gross profit in FY2014. Despite the forecast increase in gross margin in FY2014, the gross profit contribution of existing stores in dollar terms is expected to be lower than in FY2013 due to higher sales in FY2013 as a result of increased promotional and inventory clearance activity (see Section 5.4.2)”; and

Particulars

Prospectus, page 59.

- (g) that each of the forecast results were prepared in accordance with Australian Accounting Standards,

Particulars

Prospectus Section 5.3, pages 53-54; inside front cover.

(each and together, the **Growth and Forecast Representations**).

- 77 The Growth and Forecast Representations were verified by Mr Potts, Mr John Skellern, Mr Neil Merola and Mr David Cooke.

Particulars

Boxed-up Prospectus and Verification Matrix, as excerpted in Annexure C, FI46, FI47, FI96, FI308, FI310, FI311, IO197, IO198, IO359, IO365, IO371, IO377, IO383, IO390, IO391, IO392, IO393, IO394, FI124, FI170, FI415, FI447, FI198, FI199, FI200, FI209A2, FI209A3, FI210, FI210A, FI211, FI211A, FI212, FI212A, FI213, FI214, FI215.

- 78 The Growth and Forecast Representations were made and approved for publication on the basis of the verification pleaded in the preceding paragraph.
- 79 The Transformation Representations and the Growth and Forecast Representations were a significant and integral marketing feature of the Prospectus which were likely to be material to the decision of potential investors to invest in DSH.

B.1.9. Financial Covenants Representations

- 80 The Prospectus stated:

“Dick Smith entered into a facility agreement with GE Commercial Corporation (Australia) Pty Ltd and GE Commercial Finance NZ (together, the “Lender”) on 26 November 2012 under which revolving facilities have been provided since that date. Dick Smith has agreed to enter into an amendment and restatement deed with the Lender to amend and restate that facility agreement on 22 October 2013. Under the amended facility agreement, the Lender will make available an aggregate amount of A\$75 million under a revolving working capital facility (“New Facility”), which will reduce

to A\$65 million effective from 1 February 2014. The New Facility has a term of three years from the date the New Facility becomes effective (which is expected to occur immediately following completion of the Offer).”

Particulars

Prospectus, page 73.

81 The facility agreement referred to in paragraph 80 above included the following at clause 8.3:

“8.3. Financial undertakings

Each obligor must:

- (a) ensure that, at all times, the leverage ratio of the reporting group (calculated on a rolling 12 months basis by reference to the previous 12 month period) is less than 2.50:1; and*
- (b) ensure that, at all times during each period set out below, the adjusted leverage ratio of the reporting group (calculated on a rolling 12 months basis by reference to the previous 12 month period) is less than:*
 - (i) 6.00:1 from and including the amendment date to and including 31 December 2013;*
 - (ii) 5.25:1 from and including 1 January 2014 to and including 31 March 2014;*
 - (iii) 4.80:1 from and including 1 April 2014 to and including 30 June 2014;*
 - (iv) 5.00:1 for the financial year ending 30 June 2015; and*
 - (v) 4.75:1 for the financial year ending 30 June 2016; and*
- (c) ensure that, at all times, the fixed charge coverage ratio of the reporting group (calculated on a rolling 12 months basis by reference to the previous 12 month period) is not less than 1.25:1 at all times; and*
- (d) ensure that there will be no revolving loan drawings outstanding for a period of not less than 5 consecutive calendar days in each of its financial years (provided however that this covenant shall be satisfied if in respect of any 5 consecutive calendar days in a financial year, the company has cash in a bank account in an amount exceeding the then amount outstanding); and*

(e) *not, without the prior written consent of GE Capital enter into any new licence or operating lease (other than a lease of real property) for equipment if the aggregate of:*

(i) *all payments under that new licence or operating lease; and*

(ii) *all payments under all licences and operating leases existing immediately prior to the time of such new license or operating lease being entered into,*

is or would be greater than A\$4,000,000 (or its equivalent in any other currency) in any 12- month period for reporting group.”

82 The Prospectus stated a summary of clause 8.3 as pleaded above.

Particulars

Prospectus, page 74 (Table 5.14.3.1).

83 The Prospectus stated:

(a) *“Dick Smith expects to remain in compliance with these undertakings [including the undertakings in 8.3 setout above]”; and*

(b) *“Management believes that the financial covenants are appropriate and will be complied with in FY2014 based on the FY2014 forecasts and the significantly transformed performance of Dick Smith in FY2014 relative to that of FY2013.”*

(the **Financial Covenants Representations**).

Particulars

Prospectus, page 74.

84 The Financial Covenants Representations were verified by Mr Potts.

Particulars

Boxed-up Prospectus and Verification Matrix, as excerpted in Annexure C, FI46, FI47, FI96, FI607, FI617, FI618.

B.2. POST-PROSPECTUS REPRESENTATIONS

B.2.1. August 2014 – FY14 Financial Statements

85 On 19 August 2014, DSH published and lodged with the ASX its annual report and the consolidated financial report of DSH for FY14 (the **FY14 Financial Statements**).

86 The FY14 Financial Statements represented that:

- (a) statutory EBITDA was \$43.9 million and pro forma EBITDA was \$74.4 million; and
- (b) statutory NPAT was \$19.8 million and pro forma NPAT was \$42.1 million.

Particulars

FY14 Financial Statements at pages 2, 3, 29 and 30.

87 The consolidated statement of profit or loss included in the FY14 Financial Statements represented that:

- (a) DSH's Cost of Sales = (\$919,602,000);
- (b) DSH's Gross Profit = \$308,002,000;
- (c) DSH's Marketing and Sales Costs = (\$130,544,000);
- (d) DSH's Statutory NPAT = \$19,826,000.

Particulars

FY14 Financial Statements at page 49.

88 The consolidated statement of financial position included in the FY14 Financial Statements represented that:

- (a) Trade and other payables = \$46,688,000;
- (b) Inventories = \$253,814,000.

Particulars

FY14 Financial Statements at page 50.

89 The FY14 Financial Statements included a declaration by the directors of DSH that in their opinion, the FY14 Financial Statements were in accordance with the CA, including as to compliance with accounting standards and gave a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

FY14 Financial Statements at page 47.

90 The declaration pleaded above at paragraph 89 was signed by the Chairman of the Board of DSH on behalf of himself and the other directors of DSH, including Mr Abboud and Mr Potts.

91 The FY14 Financial Statements included a statement that the consolidated financial statements of DSH for the financial year ended 29 June 2014 were general purpose financial statements which had been prepared in accordance with the CA, accounting standards and interpretations, and complied with other requirements of the law.

Particulars

FY14 Financial Statements at pages 53-54.

B.2.1.1. Directors' FY14 Representations

92 By making the declaration pleaded above at paragraph 89, Mr Abboud and Mr Potts represented to investors and potential investors in DSH that each was of the opinion that the FY14 Financial Statements were in accordance with the CA, including as to compliance with accounting standards, and gave a true and fair view of the financial position and performance of DSH and the DSH Group (the **Directors' FY14 Express Representation**).

93 Further, by making each of the representations pleaded above at paragraph 92, Mr Abboud and Mr Potts represented to investors and potential investors in DSH that the opinion held by each of them was:

- (a) held on a reasonable basis and was the product of the application of reasonable care and skill by each relevant director;
- (b) a matter to which each relevant director had turned his mind, having informed himself as to the financial affairs of the company to the extent necessary to form an opinion as to the truth and fairness of the accounts;

- (c) formed after each relevant director had read and understood the financial statements and considered whether the financial statements were consistent with his own knowledge of DSH and DSH Group's financial position and financial performance; and
- (d) formed after each relevant director had taken a diligent and intelligent interest in the information available to him or which he might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group,
- (each and together, the **Directors' FY14 Implied Representation**).

Particulars

The Directors' FY14 Implied Representation was implied by reasons of:

- *the declaration pleaded at paragraphs 89 and 90;*
- *the representation pleaded at paragraph 92;*
- *the terms of the FY14 Financial Statements; and*
- *the obligations imposed on companies and company directors in relation to the preparation of financial reports under chapter 2M of the CA and as interpreted by the courts.*

B.2.1.2. DSH's FY14 Representations

94 By making the statements pleaded above at paragraphs 89 and 91, DSH represented to investors and potential investors in DSH that:

- (a) the consolidated financial statements of DSH for the financial year ended 29 June 2014 had been prepared in accordance with the CA, accounting standards and interpretations, and complied with other requirements of the law; and
- (b) Mr Abboud and Mr Potts were of the opinion that the 2014 Financial Statements were in accordance with the CA, including as to compliance with accounting standards, and gave a true and fair view of the financial position and performance of DSH and the DSH Group,

(each and together, **DSH's FY14 Express Representation**).

95 Further, by making the representations pleaded above at paragraph 94, DSH represented to investors and potential investors in DSH that each of the directors' opinions pleaded in the preceding paragraph were opinions:

- (a) held on a reasonable basis and the product of the application of reasonable care and skill by each of the relevant directors;
- (b) which each of the relevant directors had turned his mind to, having informed himself as to the financial affairs of the company to the extent necessary to form an opinion as to the truth and fairness of the accounts;
- (c) formed after each of the relevant directors had read and understood the financial statements and considered whether the financial statements were consistent with his own knowledge of DSH and DSH Group's financial position and financial performance; and
- (d) formed after each of the relevant directors had taken a diligent and intelligent interest in the information available to him or which he might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group,

(each and together, **DSH's FY14 Implied Representation**).

Particulars

DSH's FY14 Implied Representation was implied by reasons of:

- *the declaration pleaded at paragraph 89 and 90;*
- *the representation pleaded at paragraph 94;*
- *the terms of the FY14 Financial Statements;*
- *the obligations imposed on companies and company directors in relation to the preparation of financial reports under chapter 2M of the CA and as interpreted by the courts.*

B.2.2. FY14 ASX Announcement & Results Briefing

96 On or about 19 August 2014, DSH, Mr Abboud and Mr Potts, caused to be made to the ASX:

- (a) an ASX Announcement dated 19 August 2014: *Dick Smith Beats FY14 Prospectus NPAT by 5.3%*;

(b) *Dick Smith FY2014 Results Briefing*, Nick Abboud Managing Director and CEO, Michael Potts, Finance Director and CFO dated 19 August 2014; and

(c) the Directors' Report in the FY14 Financial Statements,

(together and separately, the **FY14 ASX Announcement & Results Briefing**).

97 The FY14 ASX Announcement & Results Briefing made various positive statements about the financial position and performance of DSH.

Particulars

Statements by DSH:

- *“EBITDA \$74.4m, beating Prospectus by 3.6%, despite challenging market conditions.”*
- *“NPAT \$42.1m, 5.3% above Prospectus forecast.”*
- *“The Company’s strong growth and trading focus delivered results ahead of Prospectus forecasts.”*
- *“Gross margin was consistent with the Prospectus, improving 140bp to 25.1% in the year (FY13:23.7%).”*
- *“Cost of doing business (CODB) improved 290bp to 19.0% (FY13:21.9%), which was 20bp ahead of the Prospectus.”*
- *“Dick Smith is well placed to deliver further strong profit growth in FY15.”*
- *“Pro forma gross margin of 25.1% was in-line with the Prospectus forecast... This represents a concerted focus on profitable sales growth, particularly in New Zealand, and further growth in the Company’s accessories and private brand sales.”*
- *“Pro forma EBITDA of \$74.4 million was a 3.6% improvement on the Prospectus forecast. This was primarily due to pro forma cost of doing business (CODB) being 20 basis points lower than the Prospectus forecast on cost savings achieved in the second half of the year, particularly the New Zealand Support Office restructure and further supply chain efficiencies in both countries.”*

- *“The balance sheet at year end shows the Company is in a healthy financial position with no drawn debt.”*
- *“Net assets increased by \$10.4 million to \$166.9 million.”*
- *The increase in inventory levels to \$253.8 million reflects the opening of net 54 new stores during the year and a healthier stock position. The quality and ageing of the stock has also improved significantly during the year.”*
- *“The Board believes the Company is well placed to deliver further strong growth in 2015.”*

Statements by Mr Abboud:

- *“The strength and quality of the result is testimony to the successful and significant transformation the Dick Smith business has undertaken during the past 18 months.”*
- *“Our focus on continuously improving cost efficiencies is unwavering. We anticipate our CODB to sales ratio to decline with structural improvements in supply chain and the New Zealand restructure as well as reduced procurement across all facets of the business and lower support office costs.”*
- *“...Dick Smith is well positioned for another year of strong performance.”*

Statements by Mr Potts and Mr Abboud:

- *“Strong balance sheet, with no debt, reflecting strong cash generation.”*
- *“Gross Margin...25% is a sustainable base.”*
- *“CODB...continued focus on productivity improvements delivered 20bp Prospectus beat. Procurement savings, supply chain and corporate efficiencies delivers 290bp improvements y-y.”*
- *“CODB reduction initiatives...Transformation results achieved expectations.”*
- *“Inventory at sustainable levels...clean inventory with clearance stock 40% lower year on year.”*
- *“All [debt] covenants met during the year.”*

- *“Sustained gross margin likely, with private label benefiting from 40% product range uplift.”*

B.2.3. August 2015 – FY15 Financial Statements

- 98 On 17 August 2015, DSH published and lodged with the ASX its annual report and the consolidated financial statements of DSH for FY15 (the **FY15 Financial Statements**).
- 99 The FY15 Financial Statements represented that EBITDA was \$71,900,000 and \$79,800,000 “underlying”.
- 100 The consolidated statement of profit or loss included in the FY15 Financial Statements represented that DSH’s:
- (a) Cost of Sales = (\$992,828,000);
 - (b) Gross Profit = \$326,842,000;
 - (c) Marketing and Sales Costs = (\$112,935,000); and
 - (d) NPAT = \$37,905,000 and \$43,400,000 “underlying”.
- 101 The consolidated statement of financial position included in the FY15 Financial Statements represented that:
- (a) Trade and other receivables = \$53,323,000; and
 - (b) Inventories = \$293,044,000.
- 102 The FY15 Financial Statements included a statement that the consolidated financial statements of DSH for the financial year ended 28 June 2015 were general purpose financial statements which had been prepared in accordance with the CA, accounting standards and interpretations, and complied with other requirements of the law.

Particulars

Annual Report, Notes to the Consolidated Financial Statements at page 56, dated 17 August 2015.

- 103 The FY15 Financial Statements included a declaration by the directors of DSH that in their opinion, the FY15 Financial Statements were in accordance with the CA, including as to

compliance with accounting standards and gave a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

Annual Report, Directors' declaration at page 50, dated 17 August 2015.

104 The declaration pleaded above at paragraph 103 was signed by the Chairman of the Board of DSH on behalf of himself and the other directors of DSH, including Mr Abboud and Mr Potts.

B.2.3.1. Directors' FY15 Representations

105 By making the declaration pleaded above at paragraph 103, Mr Abboud and Mr Potts represented to investors and potential investors in DSH that each was of the opinion that the FY15 Financial Statements were in accordance with the CA, including as to compliance with accounting standards, and gave a true and fair view of the financial position and performance of DSH and the DSH Group (the **Directors' FY15 Express Representation**).

106 Further, by making each of the representations pleaded above at paragraph 105, Mr Abboud and Mr Potts represented to investors and potential investors in DSH that the opinion held by each of them was:

- (a) held on a reasonable basis and was the product of the application of reasonable care and skill by each relevant director;
- (b) a matter to which each relevant director had turned his mind, having informed himself as to the financial affairs of the company to the extent necessary to form an opinion as to the truth and fairness of the accounts;
- (c) formed after each relevant director had read and understood the financial statements and considered whether the financial statements were consistent with his own knowledge of DSH and DSH Group's financial position and financial performance; and
- (d) formed after each relevant director had taken a diligent and intelligent interest in the information available to him or which he might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group,

(each and together, **the Directors' FY15 Implied Representation**).

Particulars

The Directors' FY15 Implied Representation was implied by reasons of:

- *the declaration pleaded at paragraph 103 and 104;*
- *the representation pleaded at paragraph 105;*
- *the terms of the FY15 Financial Statements;*
- *the obligations imposed on companies and company directors in relation to the preparation of financial reports under chapter 2M of the CA and as interpreted by the courts.*

B.2.3.2. DSH's FY15 Representations

107 By making the statements pleaded above at paragraphs 102 and 103, DSH represented to investors and potential investors in DSH that:

- (a) the consolidated financial statements of DSH for the financial year ended 28 June 2015 had been prepared in accordance with the CA, accounting standards and interpretations, and complied with other requirements of the law; and
- (b) Mr Abboud and Mr Potts were of the opinion that the FY15 Financial Statements were in accordance with the CA, including as to compliance with accounting standards, and gave a true and fair view of the financial position and performance of DSH and the DSH Group,

(each and together, **DSH's FY15 Express Representation**).

108 Further, by making the representations pleaded above at paragraph 107, DSH represented to investors and potential investors in DSH that each of the directors' opinions pleaded in the preceding paragraph were opinions:

- (a) held on a reasonable basis and the product of the application of reasonable care and skill by each of the relevant directors;
- (b) which each of the relevant directors had turned his mind to, having informed himself as to the financial affairs of the company to the extent necessary to form an opinion as to the truth and fairness of the accounts;

- (c) formed after each of the relevant directors had read and understood the financial statements and considered whether the financial statements were consistent with his own knowledge of DSH and DSH Group's financial position and financial performance; and
- (d) formed after each of the relevant directors had taken a diligent and intelligent interest in the information available to him or which he might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group,
- (each and together, **DSH's FY15 Implied Representation**).

Particulars

DSH's FY15 Implied Representation was implied by reasons of:

- *the declaration pleaded at paragraph 103 and 104;*
- *the representation pleaded at paragraph 107;*
- *the terms of the FY15 Financial Statements; and*
- *the obligations imposed on companies and company directors in relation to the preparation of financial reports under chapter 2M of the CA and as interpreted by the courts.*

B.2.4. FY15 ASX Announcement & Results Briefing

- 109 On or about 18 August 2015, DSH, Mr Abboud and Mr Potts, caused to be released to the ASX a document dated 18 August 2015 entitled *ASX Announcement FY2015 NPAT of \$43.4m reflects solid 2H 2015 performance* and a document dated 18 August 2015 entitled *Dick Smith FY2015 Results Briefing Nick Abboud Managing Director and CEO, Michael Potts Finance Director and CFO* (together, the **FY15 ASX Announcement & Results Briefing**).
- 110 The FY15 ASX Announcement & Results Briefing made various positive statements about the financial position and performance of DSH.

Particulars

Statements by DSH:

- **"Growth Strategy delivered solid underlying performance and a strong result in Australia"**.

- **“EBITDA up 7.3% (FY2015: \$79.8 million v FY2014 \$74.4 million).**
- **“NPAT \$43.4 million, up 3.1% (FY2014: \$42.1 million)”.**
- **“Gross margin for the year was 24.8% of sales”.**
- DSH “continues to drive cost efficiencies, with Cost of Doing Business (CODB) decreasing 32bp to 18.7% of sales in 2015.”
- DSH “employed a disciplined approach to promotional activity.”
- DSH’s “balance sheet remains strong.”

Statements by Mr Abboud:

- *“We are pleased to have delivered another solid underlying profit performance in this our second year as a list company. Second half NPAT increased 6.3% reflecting improved leverage, with Earnings before Interest, Tax, Depreciations and Amortisation (EBITDA) up 7.4%.”*
- *“We are pleased with the Australian sales performance, which was achieved in the face of an increasingly competitive environment that saw more promotional activity than the prior year. This reaffirms that the Dick Smith’s Growth Strategy is working and reinforced our ongoing commitment to providing value and convenience to our customers.”*

Statements by Mr Potts and Mr Abboud:

- *“Financial highlights – Growth Strategy delivering.”*
- *“Gross profit up 6.1% & gross margin 24.8%”.*
- *“EBITDA up 7.3% to \$78.9m on CODB down 32bp to 18.7%”.*
- *“NPAT \$43.4m, up 3.1%”.*
- *“Growth strategy momentum accelerates and delivers results.”*
- *“Profit and Loss – strong 2H 2015 performance.”*
- *“2015 Sales Performance – driving profitable growth.”*

- *“CODB – benefits gained, more to be realised.”*
- *“Balance sheet – Positioning for sustainable growth.”*
- *“Clean inventory, with increase reflecting timing of buying”.*
- *“Higher inventory reflects conscious decision to benefit from advantageous trading terms and favourable exchange rate.”*
- *“Increase in sundry receivables on improved supplier terms.”*
- *“FY2016 Outlook – sustainable growth.”*

C. REQUIRED ACCOUNTING ADJUSTMENTS

C.1. DSH'S ACCOUNTING OBLIGATIONS

111 At all material times, DSH was required by ss 286, 292 and 296 of the CA to prepare financial reports for a financial year in compliance with the accounting standards (as defined in s 9 of the CA), including:

- (a) Australian Accounting Standard *AASB 3 Business Combinations* (**AASB 3**);
- (b) Australian Accounting Standard *AASB 101 Presentation of Financial Statements* (**AASB 101**);
- (c) Australian Accounting Standard *AASB 102 Inventories* (**AASB 102**);
- (d) Australian Accounting Standard *AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors* (**AASB 108**);
- (e) Australian Accounting Standard *AASB 112 Income Taxes* (**AASB 112**);
- (f) Australian Accounting Standard *AASB 116 Property, Plant and Equipment* (**AASB 116**);
- (g) Australian Accounting Standard *AASB 118 Revenue* (**AASB 118**);
- (h) Australian Accounting Standard *AASB 132 Financial Instruments* (**AASB 132**);
- (i) Australian Accounting Standard *AASB 136 Impairment of Assets* (**AASB 136**);
- (j) Australian Accounting Standard *AASB 139 Financial Instruments: Recognition and Measurement* (**AASB 139**); and
- (k) Australian Accounting Standard *AASB 1031 Materiality* (**AASB 1031**).

112 Further, at all material times, DSH was required by ss 297 and 305 of the CA 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). In order to comply with that requirement DSH was required to prepare financial reports which complied with the Australian Accounting Standards Board pronouncement *Framework for the preparation and Presentation of Financial Statements* (**AASB Framework**).

113 In complying with the accounting standards, DSH was required to act in accordance with those standards as they existed from time to time, including but not limited to the accounting standards set out in paragraphs 114 to 134 below.

C.1.1. AASB 101

114 In complying with AASB 101, DSH was required to prepare financial statements which presented fairly the financial position, financial performance and cash flows of DSH (and if consolidated financial statements were required for the DSH Group, then of the DSH Group).

Particulars

AASB 101, paragraph 15.

115 In preparing the financial statements as described in the preceding paragraph, DSH was required to faithfully represent the effects of transactions, other events and conditions in accordance with the definitions and recognition criteria for assets, liabilities, income, and expenses set out in the AASB Framework.

Particulars

AASB 101, paragraph 15.

116 In preparing the financial statements as described in the preceding two paragraphs, DSH was required to:

- (a) recognise assets only when it was probable that future economic benefits would flow to it which could be measured reliably; and

Particulars

AASB 101, paragraph 15.

AASB Framework, paragraph 89.

- (b) select and present financial information neutrally — meaning that financial information was not slanted, weighted, emphasised, de-emphasised, or otherwise manipulated to increase the probability it would be received favourably or unfavourably by users of that information.

Particulars

AASB 101, paragraph 15.

AASB Framework Appendix, Chapter 3, QC12 and QC14-15.

117 Also in complying with AASB 101, DSH was required:

- (a) to disclose in a summary of significant accounting policies the measurement basis (or bases) used in preparing its financial statements, and the other accounting policies used that were relevant to an understanding of the financial statements; and

Particulars

AASB 101, paragraph 117.

- (b) to disclose, in a summary of significant accounting policies or other notes, the judgements (apart from those involving estimations for uncertainty within the meaning of AASB 101 paragraph 125) that management made in the process of applying DSH's accounting policies and that had the most significant effect on the amounts recognised in the financial statements.

Particulars

AASB 101, paragraph 122.

118 Also in complying with AASB 101, DSH was required when preparing its financial statements to:

- (a) make an assessment of DSH's ability to continue as a going concern; and
- (b) when management was aware of material uncertainties related to events or conditions that might cast significant doubt upon DSH's ability to continue as a going concern, to disclose those uncertainties.

Particulars

AASB 101, paragraph 25.

C.1.2. AASB 102

119 In complying with AASB 102, DSH was required to determine the costs of purchase of inventories by, among other things:

- (a) adding the purchase price, import duties and other taxes (other than those subsequently recoverable by the entity from the taxing authorities), and transport, handling and other costs directly attributable to the acquisition of finished goods, materials and services;
- (b) deducting trade discounts, rebates and other similar items in determining the costs of purchase;
- (c) excluding storage costs (unless they were necessary in the production process before a further production stage) and instead recognising those costs as an expense; and
- (d) excluding administrative overheads that did not contribute to bringing inventories to their present location and condition, and instead recognising those overheads as an expense.

Particulars

AASB 102, paragraphs 11, 15 and 16.

120 Also in complying with AASB 102, DSH was required to recognise the carrying amount of inventories as an expense in the period in which revenue from the sale of that inventory was recognised - thereby matching the expense or any saving of expense relating to inventory to the period in which that inventory was sold and revenue for the sale was recognised.

Particulars

AASB 102, paragraph 34.

121 Also in complying with AASB 102, DSH was required when measuring the cost of inventories:

- (a) to only take into consideration rebates that DSH was entitled to receive as a reduction in the purchase price of inventories, and not deduct from the cost of inventories rebates that specifically and genuinely refund selling expenses;
- (b) to only deduct rebates in excess of selling expenses from the cost of inventories if the rebate represented the reimbursement of a specific, incremental, and identifiable cost incurred by DSH in selling a supplier's products; and

- (c) where there was a binding agreement that required a supplier to pay a rebate provided DSH completed a specific cumulative level of purchases or remain a customer for a specified period of time:
 - (i) to recognise the rebate as a reduction of the cost of purchases provided the rebate was probable and reliably measurable; and
 - (ii) to measure the rebate based on the amount expected to be received in relation to the underlying transactions that had occurred during the reporting period and that resulted in progress by DSH toward achieving the specified requirements for receiving the rebate.

Particulars

AASB 102, paragraph 11.

Australian Accounting Standards Board "Rejected Issue – Removed from the UIG Agenda, Inventory Rebates and Settlement Discounts (September 2005)".

- 122 Also in complying with AASB 102, DSH was required to record its inventory at the lower of cost and 'net realisable value' (defined as being the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale).

Particulars

AASB 102, paragraphs 6 and 9.

- 123 Also in complying with AASB 102, DSH was required to:
- (a) that a write down of inventory value should be recognised as an expense against gross profit in the statement of profit or loss; and
 - (b) that DSH's financial statements disclose the carrying amount of inventories carried at fair value less costs to sell.

Particulars

AASB 102, paragraphs 34 and 36(c).

C.1.3. AASB 108

124 In complying with AASB 108, DSH was required — in the absence of an Australian Accounting Standard that specifically applied to a transaction, other event, or condition — to use management's judgement in developing and applying an accounting policy that resulted in financial statements that:

- (a) represented faithfully the financial position, financial performance, and cash flows of DSH (and if consolidated financial statements were required for the DSH Group, then of the DSH Group);
- (b) reflected the economic substance of the transaction, other event, or condition, 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.

Particulars

AASB 108, paragraph 10.

125 In making the judgement described in the preceding paragraph, DSH and DSH's management were required to refer to and consider the applicability of:

- (a) first, the requirements in Australian Accounting Standards dealing with similar and related issues; and
- (b) second, the definitions, recognition criteria and measurement concepts for assets, liabilities, income and expenses in the AASB Framework.

Particulars

AASB 108, paragraph 11.

126 In making the judgement described in the preceding two paragraphs, DSH and DSH's management were required to refer to and consider the requirement to select and present financial information neutrally—meaning that financial information was not slanted, weighted, emphasised, de-emphasised, or otherwise manipulated to increase the probability it would be received favourably or unfavourably by users of that information.

Particulars

AASB 108, paragraph 11.

C.1.4. AASB 132 and AASB 139

127 AASB 132 defined a financial asset as, inter alia, a contractual right to receive cash or another financial asset from another entity, or to exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity.

Particulars

AASB 132, paragraph 11.

128 AASB 132 defined a contractual right as, inter alia, an agreement between two or more parties that has clear economic consequences that the parties have little, if any, discretion to avoid.

Particulars

AASB 132, paragraph 13.

129 In complying with AASB 139, DSH was required to assess at the end of each reporting period whether there was objective evidence that a financial asset was impaired.

Particulars

AASB 139, paragraph 58.

130 Also in complying with AASB 139, where there was objective evidence that an impairment loss on a receivable had been incurred, DSH was required to:

- (a) assess the loss as the difference between the carrying amount and the present value of estimated future cashflows; and
- (b) recognise the loss in the profit and loss.

Particulars

AASB 139, paragraph 63.

C.1.5. AASB Framework

131 In complying with the AASB Framework, DSH was required to define an asset as a resource controlled by DSH as a result of past events and from which future economic benefits are expected to flow to DSH.

Particulars

AASB Framework, paragraph 49(a).

132 In complying with the AASB Framework, DSH was required to recognise an item (including an asset, liability or income) when:

- (a) it is probable that any future economic benefit associated with the item will flow to or from the entity; and
- (b) the item has a cost or value that can be measured with reliability.

Particulars

AASB Framework, paragraphs 82-91.

133 In complying with the AASB Framework, DSH was required in assessing whether an item meets the definition of an asset, liability or equity, to give attention to underlying substance and economic reality and not merely its legal form.

Particulars

AASB Framework, paragraph 51.

134 In complying with the AASB Framework, DSH was required to present in its financial statements information which was relevant to users of those statements and which would:

- (a) enable users of the financial statements to make decisions regarding providing resources to DSH; and
- (b) enable users of the financial statements to assess DSH's future net cash inflows; and
- (c) assist users of the financial statements to estimate the value of DSH.

Particulars

AASB Framework, paragraph 71 and Chapter 1 paragraphs OB2, OB3, OB4 and OB7.

C.2. INVENTORY

135 At all material times [DSSH and](#), from at least Acquisition, DSH recorded inventories by classifying individual stock keeping units (**SKUs**) as:

- (a) 'Active';
- (b) 'End of Life' [\(from June 2014\)](#);
- (c) 'Quit';
- (d) 'No re-order'; and
- (e) 'Discontinued'.

Particulars

Dick Smith Buyers Manual, Section 4.8.

[Deloitte Memo 5411a dated 18 September 2013 \[DEL.002.1629\]](#)

Deloitte Memo 'Inventory obsolescence memo' dated 26 July 2014.

The plaintiffs rely on the particulars set out in the Expert Report of Wayne Basford dated 1 December 2017 at paragraph 128.

First Potter Report at paragraph 8.45.

136 From FY14, DSH also recorded inventories with a further category known as "Non PLU".

Particulars

First Potter Report at paragraph 8.35.

137 DSSH and DSH made provisions for inventory as follows:

- (a) during FY13 and FY14, DSH applied fixed percentages in relation to each category, without reference to the quality of individual stock items beyond the status they had been assigned;

Particulars

First Potter Report at paragraph 8.35.

- (b) from FY15, DSH performed a detailed line by line calculation for each individual SKU which purported to take into account:
 - (i) the months' cover of SKUs in the Active and End of Life categories; and
 - (ii) the age of SKUs in the Discontinued, No re-order and Quit categories.

Particulars

First Potter Report at paragraph 8.35-8.63.

138 On or about 25 September 2015, DSH engaged consultants to investigate stock levels and undertake a review of inventory within DSH.

Particulars

As against the first defendant the plaintiffs rely on the admissions at paragraph 69 of the Third Amended Commercial List Statement filed by DHS in proceeding 2017/81927 (Company's 3ACLS).

Affidavit of Michael Antony Holtzer sworn 11 November 2017.

139 The consultants reported their findings to DSH on or about 27 October 2015 in a written report. The report concluded, inter alia, as follows:

- (a) DSH was carrying too much stock;
- (b) the stock mix was poor (i.e. there was too much poor or obsolete stock);
- (c) the stock mix had got progressively worse during 2015;
- (d) lower levels of remaining good stock were having to work harder to support sales; and
- (e) even amongst the good stock there was a lot of excess and slow moving inventory.

Particulars

As against the first defendant the plaintiffs rely on the admissions made at paragraph 73 of the Company's 3ACLS.

Affidavit of Michael Antony Holtzer sworn 11 November 2017.

"Dick Smith Holdings Inventory Paper" prepared in October 2015.

140 The consultants identified approximately \$190 million of problem stock.

Particulars

“Dick Smith Holdings Inventory Paper”, pages 3, 7, 8, 11 and 12.

Emails between Michael Holtzer and Mr Potts dated 26 November 2015 and attachment, “Dick Smith analysis.docx”.

Affidavit of Michael Antony Holtzer sworn 11 November 2017, paragraph 76.

141 The report advised that the consultants believed that the stock could be sold for approximately \$120 million, resulting in a potential impairment of approximately \$60 million.

Particulars

Dick Smith Holdings Inventory Paper APO.002.001.0088 at page APO.002.001.0099.

142 On 30 November 2015, DSH announced to the ASX that the Board had determined that “stock holdings remain above management’s preferred levels” and a “non-cash impairment of \$60 million (pre-tax) is required.”

Particulars

ASX Announcement dated 30 November 2015.

Further, as against the first defendant the plaintiffs rely on the admissions at paragraph 84 of the Company’s 3ACLS.

143 Levels of poor quality, obsolete and inactive stock had significantly accumulated prior to the retainer of the consultants pleaded in paragraph 138 above.

Particulars

Affidavit of Michael Anthony Holtzer sworn 11 November 2017 at paragraphs 38-39, 45-47, 49, 50, 52-53, 55, 59-60, 63-64, 66, 71 and 75-76.

Affidavit of Andrew John Powell affirmed 13 November 2017 at paragraphs 15-20, 26, 33, 36-45, 49-50, 52-53, 55, 60, 62-64, 67-70, 74 and 77-80.

Expert Report of Holly Felder Etlin dated 1 December 2017 at paragraphs 9 and 100-108 and exhibits 4-5 and 7-10.

- 144 At all material times, when recording and making provisions for inventory, [DSSH and DSH](#):
- (a) did not consider or adequately consider whether inventory was saleable in the future at a value at or above cost;
 - (b) did not consider or adequately consider whether it held excess inventory which was unlikely to be realised at or above its cost;
 - (c) did not analyse or adequately analyse or otherwise consider the number of weeks cover (or months cover, as the case was) it held for each SKU, and did not make an assessment or an adequate assessment of whether that amount of stock was likely to be saleable at or above its cost, given the nature of the product and the months' cover;
 - (d) did not calculate net realisable value when provisioning Active or End of Life inventory because it applied a lookback method, rather than considering the likely realisable value based on future sales;
 - (e) did not take into account or adequately take into account future price reductions required to dispose of excess inventory categorised as Active or End of Life;
 - (f) did not maintain an inventory system which enabled it to produce a report which accurately stated the age of inventory for each SKU or the number of weeks' or months' cover for each SKU;
 - (g) recorded ageing of inventory based on the last date each SKU was purchased, with all items in that SKU being recorded as being aged from that date; and
 - (h) did not consider or adequately take into account whether SKUs were appropriately categorised.

Particulars

First Potter Report, paragraphs 8.6-8.13, 8.22, 8.27-8.30, 8.46-8.47, 8.54, 8.57-8.60 and 8.81.

Further, and with respect to (a) to (e) and FY15, the plaintiffs also rely on the particulars set out in the Expert Report of Wayne Basford dated 1 December 2017 at paragraphs 15-26 and 130-157.

Further, and with respect to (f) and (g), see Deloitte, Project Yellow Review at page 48.

Further, and with respect to (h), see Mills Affidavit dated 30 November 2017 at paragraphs 229-230.

145 By recording and making provisions for inventory as pleaded above, the provisioning for inventory did not comply with AASB 102 because it did not:

- (a) take into consideration whether inventory was saleable in the future at or above its cost;
- (b) take into consideration the impact of holding levels of excess inventory; and
- (c) record inventory at the lower of the inventory cost or its net realisable value.

146 DSSH and DSH failed to provide for inventory and thereby overstated the carrying value of inventory in at least the following amounts in the following financial periods:

Period	Underprovision (cumulative)
FY13	\$22.9 million
1Q14	\$28.5 million
FY14	\$30.0 million
FY15	\$36.3 million

Particulars

First Potter Report at Chapter 8, especially at paragraph 8.96.

147 In overstating the carrying value of 'Inventories' as pleaded above, and/or understating the provision against 'Inventories', the financial statements reported by DSSH and DSH in respect of FY13, 1Q14, FY14 and FY15:

- (a) overstated the total equity and net assets of DSH;
- (b) facilitated DSH reporting a higher value of 'Inventories' and consequently higher total equity in the consolidated statement of financial position than DSH would have reported had it complied with AASB 102;
- (c) did not present fairly DSH's and the DSH Group's financial performance;
- (d) did not represent faithfully the effect of its inventory levels according to the definitions set out in the AASB Framework because the selection and presentation of the financial information relating to the inventory was not neutral in the sense required by the AASB Framework; and

(e) was not prepared in accordance with Australian Accounting Standards.

148 In failing to write down the carrying value of 'Inventories' as an expense against gross profit (as referred to in paragraph 123 above), the financial statements reported by DSSH and DSH in respect of FY13, 1Q14, FY14 and FY15:

(a) overstated the reported gross profit, EBITDA and net profit reported in the consolidated statement of profit or loss;

(b) reported gross profit, EBITDA and net profit of an amount higher than it should have reported had it complied with AASB 102;

(c) did not present fairly DSH's and the DSH Group's financial performance;

(d) did not disclose the carrying amount of inventories carried at fair value less costs to sell;

(e) did not faithfully represent the effect of its carrying value of inventory levels according to the definitions set out in the AASB Framework because the selection and presentation of the financial information relating to the carrying value of the inventory was not neutral in the sense required by the AASB Framework; and

(f) were not prepared in accordance with Australian Accounting Standards.

149 By reason of the matters pleaded in paragraphs 135 to 148 above, the Pro Forma Historical Information in relation to FY13 and 1Q14 did not comply with Australian Accounting Standards and did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

150 By reason of the matters pleaded in paragraphs 135 to 148 above, the FY14 Financial Statements did not comply with Australian Accounting Standards and did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

151 By reason of the matters pleaded in paragraphs 135 to 148 above, the FY15 Financial Statements did not comply with Australian Accounting Standards and did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

C.3. REBATES

C.3.1. The Rebate Maximization Practice and Its Consequences

152 From about May 2014, DSH embarked upon a policy or practice of maximising its ability to record rebates of a kind which, under the accounting classification and methodology adopted by DSH, facilitated the reporting of increased profit and gross profit margin by recording, in the current period profit and loss account:

- (a) a reduction of marketing and promotions expense; and/or
- (b) a lowering the cost of goods sold,

whether or not the inventory to which the rebates related had been sold in that period (the **Rebate Maximisation Practice**).

Particulars

Affidavit of Christopher David Borg sworn 4 December 2017 at paragraphs 34-38, 47, 61-63 and 89-96.

Affidavit of Carl John Bonham affirmed 8 March 2018 at paragraphs 10-17.

Affidavit of Michael Antony Holtzer sworn 11 November 2017 at paragraph 24.

Section 439A Report at page 48.

As against the first defendant the plaintiffs rely on the admissions made at paragraphs 30 and 38 of the Company's 3ACLS.

Finace and Audit Committee (FAC) Minutes and papers from meeting on 12 August 2014.

Evidence of Mr Abboud: transcript dated 6 October 2016 at pages 493-500.

Evidence of Ms Lorna Raine (Ms Raine): transcript dated 5 September 2016 at page 39.

Evidence of Mr William Paul Renton Wavish (Mr Wavish): transcript dated 6 September 2016 at page 126.

153 The Rebate Maximisation Practice manifested itself through the following conduct by DSH management in relation to buying practices and rebates:

- (a) the purchase of some products by DSH from some suppliers, or the establishment of a system of buying some products from some suppliers, who offered greater rebates on those products in circumstances where those products were either in excess of DSH's requirements or customer demand, or contrary to prudent inventory management practice, and were (or due to the accumulation of such inventory would become) more difficult to sell without discounting;
- (b) requests by DSH to suppliers to issue or to re-issue invoices whereby, instead of the invoice quoting the price otherwise applicable in respect of the inventory purchased, the invoice inflated the price of the inventory by an amount equal to the rebate requested and also allowed a rebate or subsidy, such that the net cash amount payable after the allowance for rebates or subsidies remained the same;
- (c) requests by DSH to suppliers that those invoices which included an allowance for rebates or subsidies were to describe them, either within the invoice or separately, as relating to advertising, marketing or promotional subsidies, rebates or allowances; and
- (d) DSH purchasing some stock based on decisions which focused upon and prioritised the maximisation of rebates, rather than catering for current or likely future customer demand and rather than focusing upon whether the stock so purchased would be saleable at an appropriate margin within an appropriate time.

Particulars

The plaintiffs rely on the particulars set out in the Expert Report of Holly Felder Etlin dated 1 December 2017 at paragraphs 100-108.

First Potter Report at paragraphs 7.105-7.143 and 8.1-8.31.

Affidavit of Christopher David Borg sworn 4 December 2017 at paragraphs 34-38, 47, 61-63, 80 and 89-96.

Affidavit of Carl John Bonham affirmed 8 March 2018 at paragraphs 10-20 and 28-30.

Affidavit of Michael Antony Holtzer sworn 11 November 2017 at paragraphs 10-12 and 24.

Section 439A Report at page 48.

As against the first defendant the plaintiffs rely on the admissions made at paragraphs 30-36 of the Company's 3ACLS.

FAC Minutes and papers from meetings on 12 August 2014 and 24 November 2015.

Evidence of Mr Abboud: transcript dated 6 October 2016 pages 493-500.

Evidence of Ms Raine: transcript dated 5 September 2016 at pages 39-40.

Evidence of Mr Wavish: transcript dated 6 September 2016 at page 126.

154 The Rebate Maximisation Practice:

- (a) from about June 2014, provided an additional means by which DSH was able to record profit in FY14 that DSH would not otherwise have been able to record as earned in FY14;
- (b) provided an additional source of profit in FY15 that DSH would not otherwise have been able to record as earned in FY15;
- (c) contributed to DSH buying some stock during FY15 and FY16 which was purchased without sufficient regard to customer demand and inventory months' cover;
- (d) contributed in FY15 to an increase in the carrying value of inventory and to an increase in accumulating aged and lower-demand stock; and
- (e) inflated DSH's recorded profit without adequate regard to the potential effect of the purchases on existing or future levels of provision required against inventory,

(the **Rebate Maximisation Consequences**).

Particulars

The plaintiffs rely on the particulars set out in the Expert Report of Holly Felder Etlin dated 1 December 2017 at paragraphs 100-108 and Exhibits 4-5 and 7-10.

First Potter Report at chapter 7 and especially paragraphs 7.6-7.14, 7.109-7.129 7.195-7.196, 7.199-7.200, 7.202.2 and 8.1-8.31, and at Appendix 33.

Affidavit of Christopher David Borg sworn 4 December 2017 at paragraphs 34-38, 47, 61-63, 80 and 89-96.

Affidavit of Carl John Bonham affirmed 8 March 2018 at paragraphs 10-17.

Affidavit of Michael Antony Holtzer sworn 11 November 2017 at paragraphs 10-12, 52 and 66.

Affidavit of Andrew John Powell affirmed 13 November 2017 at paragraphs 36-39, 44-46, 49, 60, 62 and 68.

Section 439A Report at page 48.

As against the first defendant the plaintiffs rely on the admissions made at paragraph 35-36 of the Company's 3ACLS.

FAC Minutes and papers from meetings on 12 August 2014 and 24 November 2015.

Evidence of Mr Abboud: transcript dated 4 October 2016 at pages 493-500.

Evidence of Ms Raine: transcript dated 5 September 2016 at page 39.

Evidence of Mr Wavish: transcript dated 6 September 2016 at page 126.

C.3.2. Accounting Treatment of Switched Invoice Rebates

155 During the 2015 financial year, DSH requested suppliers to issue or to re-issue invoices whereby, instead of the invoice quoting the price otherwise applicable in respect of the inventory purchased, the invoice inflated the price of the inventory by an amount equal to the rebate requested and also allowed a rebate or subsidy, such that the net cash amount payable after the allowance for rebates or subsidies remained the same (**Switched Invoice Rebates**).

Particulars

As against the first defendant, the plaintiffs rely on the admissions made at paragraph 37 of the Company's 3ACLS.

First Potter Report at paragraphs 7.105-7.129 and Appendix 16.

156 In the FY15 Financial Statements, DSH recorded the Switched Invoice Rebates received during the relevant accounting period for those statements as either:

- (a) reductions in 'Marketing and sales costs' in the FY15 Financial Statements; and/or
- (b) reductions in 'Cost of Sales'.

Particulars

In respect of the FY15 Financial Statements, and as against the first defendant the plaintiffs rely on the admissions made at paragraphs 38-39 of the Company's 3ACLS.

First Potter Report at paragraphs 7.105, 7.111 and 7.209.

157 Further, DSH recorded some Switched Invoice Rebates in the FY15 Financial Statements as:

- (a) reductions in 'Marketing Costs' immediately upon being negotiated with suppliers, notwithstanding that DSH did not incur marketing and sales promotion costs in connection with the goods the subject of the rebate in the period covered by that financial statement; and/or
- (b) reductions in 'Cost of Sales' immediately upon being negotiated with suppliers, notwithstanding that DSH did not sell the goods the subject of the rebate in the period covered by that financial statement.

Particulars

In respect of the FY15 Financial Statements and as against the first defendant the plaintiffs rely on the admissions made at paragraph 38-39 of the Company's 3ACLS.

First Potter Report at paragraphs 7.105-7.143.

158 The recording of the Switched Invoice Rebates in this way:

- (a) had the effect of reducing the 'Marketing Costs' and 'Cost of Sales' reported in the statements of profit or loss – thereby also increasing the reported EBITDA and net profit;
- (b) had the effect of creating a risk that the value of 'Inventories' reported in the statements of financial position might be inflated and not saleable at or above 'cost', thus overstating the total equity of DSH;
- (c) occurred in circumstances where the purported economic benefits of the Switched Invoice Rebates were illusory because no rebate actually existed; and
- (d) did not record or reflect the economic substance of the transaction.

Particulars

In respect of the period after at least July 2014, and as against the first defendant, the plaintiffs rely on the admissions made at paragraph 40 of the Company's 3ACLS.

First Potter Report at paragraphs 7.105-7.143.

- 159 The accounting treatment of the Switched Invoice Rebates pleaded above did not comply with AASB 101 because:
- (a) it did not present fairly DSH and the DSH Group's financial performance;
 - (b) it did not represent faithfully the effect of the Switched Invoice Rebates according to the definitions set out in the AASB Framework because the selection and presentation of the financial information relating to those rebates was not neutral in the sense required by the AASB Framework and/or did not reflect the economic substance of the transaction nor was it a genuine reporting of the transaction; and/or
 - (c) there was no disclosure in the FY15 Financial Statements of the matters pleaded above in paragraphs 155 to 158 — such matters being significant accounting policies relevant to understanding the financial statements.
- 160 The accounting treatment of the Switched Invoice Rebates pleaded above also did not comply with AASB 102 because, and insofar as, reductions in 'Cost of Sales' for inventory:
- (a) were not matched to the period in which that inventory was sold;
 - (b) were not genuinely attributable to such costs; and/or
 - (c) were not recorded as a reduction in the purchase price of inventories.
- 161 The accounting treatment of the Switched Invoice Rebates pleaded above also did not comply with AASB 108 because, insofar as an Australian Accounting Standard did not specifically apply to the Switched Invoice Rebates, an accounting policy was not developed and applied which resulted in financial statements that:
- (a) reflected the economic substance of the Switched Invoice Rebates and not merely their legal form; and
 - (b) were:
 - (i) neutral;

- (ii) prudent; and
- (iii) complete in all material respects.

162 By reason of the matters pleaded in paragraphs 155 to 161, the FY15 Financial Statements did not comply with Australian Accounting Standards and did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

In respect of the FY15 Financial Statements, and as against the first defendant, the plaintiffs rely on the admissions made at paragraphs 52 and 67 of the Company's 3ACLS.

First Potter Report at paragraph 7.130.

C.3.3. Accounting treatment of Volume Rebates

163 From at least May 2014 and continuing throughout 2015, DSH entered into agreements with suppliers to receive discounts and rebates from those suppliers in exchange for agreeing to purchase and sell large volumes of the suppliers' products (**Volume Rebates**).

164 In each of the FY14 Financial Statements and FY15 Financial Statements, DSH incorrectly recorded some of the Volume Rebates agreed during the relevant accounting period as O&A Rebates, such that they were recorded as:

- (a) reductions in 'Marketing Costs' in the FY14 Financial Statements and 'Marketing and sales costs' in the FY15 Financial Statements; and/or
- (b) reductions in 'Cost of Sales',

regardless of whether the inventory to which the rebates related had been sold in that financial period.

Particulars

In respect of the period after at least July 2014, and as against the first defendant, the plaintiffs rely on the admissions made at paragraph 38-39 of the Company's 3ACLS.

First Potter Report at paragraphs 7.93-7.104.

165 The recording of the Volume Rebates in this way had the effect of:

- (a) reducing the 'Cost of Sales' reported in the statements of profit or loss – thereby also increasing the reported EBITDA and net profit;
- (b) overstating the value of 'Inventories' reported in the statements of financial position, thus overstating the total equity of DSH;

Particulars

In respect of the FY15 Financial Statements, and as against the first defendant, the plaintiffs rely on the admissions at paragraph 40 of the Company's 3ACLS.

First Potter Report at paragraphs 7.102-7.103.

- (c) profits being reported before the inventory to which the profit related had been sold;
- (d) enabling DSH to inflate its profits for the period by artificially bringing forward profits from future periods.

Particulars

First Potter Report at paragraphs 7.102-7.103.

166 The accounting treatment of the Volume Rebates pleaded above did not comply with AASB 101 because:

- (a) it did not present fairly DSH's and the DSH Group's financial performance;
- (b) it did not represent faithfully the effect of the Volume Rebates according to the definitions set out in the AASB Framework because the selection and presentation of the financial information relating to those rebates was not neutral in the sense required by the AASB Framework and/or did not reflect the economic substance of the transaction nor was it a genuine reporting of the transaction; and/or
- (c) there was no disclosure in the FY14 Financial Statements and FY15 Financial Statements of the matters pleaded above in paragraphs 163 to 165 — such matters being significant accounting policies relevant to understanding the financial statements.

Particulars

First Potter Report at paragraph 3.5.3 and Chapter 6.

167 Further, the accounting treatment of the Volume Rebates pleaded above did not comply with AASB 102 because and insofar as:

- (a) it recognised some Volume Rebates as accounts receivable, despite it not being probable or despite it being at least uncertain, that the rebate would be earned, paid, and would flow to DSH so it could be measured reliably;
- (b) reductions in 'Cost of Sales' for inventory were not matched to the period in which that inventory was sold; and
- (c) the Volume Rebates were:
 - (i) recognised when they were not probable and reliably measurable; and/or
 - (ii) not measured based on the amount expected to be received in relation to the underlying transactions that had occurred during the reporting period and that resulted in progress by DSH toward achieving the specified requirements for receiving the rebate.

168 The accounting treatment of Volume Rebates pleaded above also did not comply with AASB 108 because insofar as an Australian Accounting Standard did not specifically apply to the Volume Rebates, an accounting policy was not developed and applied which resulted in financial statements that:

- (a) reflected the economic substance of the Volume Rebates and not merely their legal form; and
- (b) were:
 - (i) neutral;
 - (ii) prudent; and
 - (iii) complete in all material respects.

169 By reason of the matters pleaded in paragraphs 163 to 168, each of the FY14 Financial Statements and FY15 Financial Statements did not comply with Australian Accounting Standards and did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

First Potter Report at paragraphs 3.39-3.42, 3.53, 3.54, 7.96, 7.101, 7.103 and 7.209.

In respect of the FY15 Financial Statements, and as against the first defendant, the plaintiffs further rely on the admissions at paragraphs 52 and 67 of the Company's 3ACLS.

C.3.4. Accounting treatment of O&A Rebates

170 From at least May 2014 and continuing throughout 2015, DSH obtained other rebates, ad hoc and individually negotiated, from suppliers and service providers – being neither Switched Invoice Rebates nor Volume Rebates and referred to in this Statement of Claim as 'Over and Above' rebates (**O&A Rebates**).

171 The O&A Rebates consisted of a number of different categories, including:

- (a) rebates from suppliers outside the standard agreements between suppliers and DSH;
- (b) rebates from suppliers of DSH's own brand goods and some other branded goods;
- (c) rebates relating to promotional support of products supplied to DSH for sale; and
- (d) rebates (by way of cash payment or credit) in consideration for the extension of contracts with service providers.

172 In each of the FY14 Financial Statements and FY15 Financial Statements, DSH recorded the O&A Rebates received during the relevant accounting period for those statements as either:

- (a) reductions in 'Marketing Costs'; and/or
- (b) reductions in 'Cost of Sales'.

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

173 In FY14, DSH made journal entries which had the effect of transferring income from CODB to the Cost of Goods Sold without proper justification.

Particulars

In FY14, DSH made a gross profit transfer of \$22.1m from "Costs of Doing Business" to "Cost of Goods Sold": First Potter Report at paragraphs 7.44-7.68.

174 In FY15, DSH made journal entries which had the effect of transferring income from CODB to the Cost of Goods Sold without proper justification.

Particulars

In FY15, DSH made a gross profit transfer of \$63.5m from “Costs of Doing Business” to “Cost of Goods Sold”: First Potter Report at paragraphs 7.44-7.68.

As against the first defendant, the plaintiffs rely on the admissions made at paragraph 38-39 of the Company’s 3ACLS.

175 The effects of the transfers pleaded in paragraphs 173 and 174 were to overstate DSH’s reported gross profit and gross profit margin and to understate DSH’s “Cost of Goods Sold” expense.

Particulars

First Potter Report at paragraphs 7.44-7.68.

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

176 Further, DSH recorded some O&A Rebates in each of the FY14 Financial Statements and FY15 Financial Statements as:

- (a) reductions in ‘Marketing Costs’ immediately upon being negotiated with suppliers, notwithstanding that DSH did not incur marketing and sales promotions costs directly related to the goods the subject of the rebate in the period covered by that financial statement; and/or
- (b) reductions in ‘Cost of Sales’ immediately upon being negotiated with suppliers, notwithstanding that DSH did not sell the goods the subject of the rebate in the period covered by that financial statement.

Particulars

First Potter Report at paragraphs 7.69-7.92.

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

177 Further, in the FY14 Financial Statements, DSH double counted O&A Rebates by:

- (a) “pulling forward” O&A Rebates in the amount of \$4.1 million originally forecast for June 2014 into May 2014, so that the entire amount of the June 2014 rebate was accounted for in May 2014;
- (b) counting the O&A Rebate of \$4.1 million again in June 2014, so that DSH effectively “double counted” the amount of the O&A Rebate in both May and June 2014.

Particulars

First Potter Report at paragraphs 7.69-7.92.

178 Further, DSH incorrectly recorded the amount of \$3.155 million as an O&A Rebate in its FY14 Financial Statements, despite:

- (a) that income in fact being referable to suppliers attending at, or sponsoring a specific event (being the ‘Exchange’ conference held on 29 and 30 July 2014), and not income in the nature of a rebate or a refund of genuine marketing expenses incurred;
- (b) the conference did not take place until late July 2014 (being during FY15, rather than FY14); and
- (c) evidence of certain suppliers indicated that their decision to attend the conference was contingent on DSH providing marketing support during the period subsequent to July 2014 (being during FY15, rather than during FY14).

Particulars

Second Potter Report at paragraphs 3.16-3.20.

179 Further, in FY14, DSH incorrectly recorded rebates for certain Toshiba products at 5% rather than 3%, such that it over recorded rebates in the amount of \$169,611, the effect of which was to incorrectly:

- (a) increase DSH’s reported FY14 NPAT by \$118,727; and
- (b) increase DSH’s reported FY14 net assets by \$118,727.

Particulars

Second Potter Report at Chapter 10.

C.3.8. Recording rebates when recovery was not probable

180 Further, DSH recorded some O&A Rebates as accounts receivable, despite it not being probable that the future economic benefits would flow to DSH or that the receivable had a cost or value that could be measured reliably.

Particulars

First Potter Report at paragraphs 7.144-7.194.

181 The recording of the O&A Rebates in this way had the effect of:

- (a) reducing the 'Marketing Costs' and 'Cost of Sales' reported in the statements of profit or loss – thereby also increasing the reported EBITDA and net profit;
- (b) overstating the value of 'Inventories' reported in the statements of financial position, thus overstating the total equity of DSH;

Particulars

In respect of the FY15 Financial Statements, and as against the first defendant, the plaintiffs rely on the admissions made at paragraph 40 of the Company's 3ACLS.

First Potter Report at paragraphs 3.47-3.54 and 7.209.

- (c) profit being recorded before the inventory to which the profit related had been sold; and
- (d) DSH reporting increased profits for the period by incorrectly recognising profits from future periods relating to unsold inventory.

Particulars

First Potter Report at paragraphs 3.47-3.54 and 7.209.

C.3.9. O&A Rebates and Accounting Standards

182 The accounting treatment of the O&A Rebates pleaded in paragraphs 170 to 181 above did not comply with AASB 101 because:

- (a) it did not present fairly DSH's and the DSH Group's financial performance;

- (b) it recognised some O&A rebates as accounts receivable, despite it not being probable that the rebate would be earned, paid, and would flow to DSH so it could be measured reliably;
- (c) it did not represent faithfully the effect of the O&A Rebates according to the definitions set out in the AASB Framework because the selection and presentation of the financial information relating to those rebates was not neutral in the sense required by the AASB Framework and/or did not reflect the economic substance of the transaction nor was it a genuine reporting of the transaction; and/or
- (d) there was no disclosure in the FY14 Financial Statements and FY15 Financial Statements of the matters pleaded above in paragraphs 170 to 181 — such matters being significant accounting policies relevant to understanding the financial statements.

Particulars

First Potter Report at paragraph 3.53 and Chapter 6.

Second Potter Report, Chapter 3,

183 The accounting treatment of the O&A Rebates pleaded above also did not comply with AASB 102 because and insofar as reductions in 'Cost of Sales' of inventory:

- (a) were not matched to the period in which that inventory was sold;
- (b) were not genuinely attributable to such costs;
- (c) included rebates that purported to refund selling expenses;
- (d) included excess rebates of purported selling expenses that were not the reimbursement of a specific, incremental, and identifiable cost incurred by DSH in selling a supplier's products;
- (e) were recognised when they were not probable and reliably measurable; and/or
- (f) were not measured based on the amount expected to be received in relation to the underlying transactions that had occurred during the reporting period and that resulted in progress by DSH toward achieving the specified requirements for receiving the rebate.

Particulars

Section 439A Report at pages 43-44 and 48.

First Potter Report at paragraphs 3.28-3.36 and 3.34-3.50 and Chapter 6.

184 The accounting treatment of the O&A Rebates pleaded above also did not comply with AASB 108 because insofar as an Australian Accounting Standard did not specifically apply to the O&A Rebates, an accounting policy was not developed and applied which resulted in financial statements that:

- (a) reflected the economic substance of the O&A Rebates and not merely their legal form; and
- (b) were:
 - (i) neutral;
 - (ii) prudent; and
 - (iii) complete in all material respects.

185 The accounting treatment of the O&A rebates pleaded in paragraph 178 above did not comply with AASB 118 because:

- (a) the revenue associated with rendering the service in respect of which the rebate allegedly accrued (the Exchange conference) was not recognised at the stage of completion of the transaction at the end of the reporting period; and
- (b) the revenue from the event should have only been recognised once the event took place (and not beforehand).

Particulars

Second Potter Report at Chapter 3.

186 The accounting treatment of the O&A Rebates pleaded in paragraph 180 above did not comply with AASB 132 and AASB 139 because:

- (a) rebate items were recorded in “trade and other receivables” which did not meet the definition of a financial asset, in that:
 - (i) they were not a contractual right to receive cash or a financial asset; and
 - (ii) they were not the subject of an agreement that had clear economic consequences and that the parties had little discretion to avoid;

- (b) an assessment had been undertaken in or about June 2015 as to the recoverability of the O&A Rebates and they were labelled “At risk”;
- (c) the O&A Rebates should have been assessed as impaired and a determination made that it was not probable that any future economic benefit of the O&A Rebates would flow to DSH; and
- (d) the value of the O&A Rebates was not written off in the FY15 Financial Statements.

Particulars

First Potter Report at paragraphs 7.144-7.181.

187 By reason of the matters pleaded in the preceding paragraphs 170 to 186, each of the FY14 Financial Statements and FY15 Financial Statements did not comply with Australian Accounting Standards and did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

In respect of the FY15 Financial Statements, and as against the first defendant, the plaintiffs rely on the admissions made at paragraph 52 and 67 of the Company's 3ACLS.

First Potter Report at paragraphs 3.53-3.57 and Chapter 7; Second Potter Report at Chapter 11.

C.3.10. Lack of system to reliably track and record rebates

188 Further, from at least the time the Rebate Maximisation Practice developed, DSH did not have a system in place for the reliable planning, tracking, and recording of rebates accrued and received from vendors and suppliers.

Particulars

From about or around April 2014, for the purpose of monitoring compliance with O&A rebates targets, regular meetings of Merchandise Managers and Category Buyers were convened by John Skellern (DSH's Director of Commercial, Property, Procurement, and Supply Chain) during which O&A targets and amounts agreed with suppliers were recorded and maintained on a whiteboard in Mr Skellern's office.

At those meetings, John Skellern would ask buyers to state a number as the O&A rebate they were obtaining, and if he did not like the number the buyer responded with then he was prone to yell, snort, or swear at the buyer, bang his fist on the table, and ask the buyer to state a number higher than they had originally stated.

The whiteboard on which O&A targets and amounts agreed with suppliers were recorded was disturbed by people leaning on it, or by the whiteboard marker slipping, changing the numbers on it.

The numbers on the whiteboard in Mr Skellern's office were recorded without Mr Skellern obtaining any form of record or proof that they were accurate, and without any discussion of the terms on which the rebate on which the rebate was agreed to be paid.

Mr Skellern told DSH's Financial Controller, Nigel Mills, to stay away from the O&A accrual process.

DSH's management's (including Messrs Abboud and Potts) response to discrepancies and gaps that developed between recorded and actual rebates was to seek to reconcile the differences over time by obtaining more rebates in the future.

Affidavit of Michael Antony Holtzer sworn 11 November 2017 at paragraphs 7-32.

Affidavit of Nigel Rodney Mills sworn 30 November 2017 at paragraphs 118, 119, 130-149, 153, 154, 163-172, 175, 181, 183, 203-207, 217, 275, 298 and 299.

Affidavit of Christopher David Borg sworn 4 December 2017 at paragraphs 54-60.

Affidavit of Darren John Freeman affirmed 27 November 2017 at paragraphs 34-81.

Affidavit of Carl John Bonham affirmed 8 March 2018 at paragraphs 8-20.

189 The effect of the matters pleaded in the preceding paragraph was that, from at least the time the Rebate Maximisation Practice developed, DSH did not have a system in place which would enable it to reliably determine and record:

- (a) its profits from rebates;
- (b) the economic effect of rebate arrangements on the company's financial position;

- (c) whether a contractual arrangement had been entered into with a supplier with respect to a particular rebate arrangement; and/or
- (d) the contractual terms of a rebate arrangement where a contractual agreement to receive a rebate existed.

190 By reason of the matters pleaded in paragraphs 188 to 189 above, DSH could not comply with AASB 132 and 139 in the preparation of its FY14 Financial Statements and FY15 Financial Statements because it had insufficient reliable information on which to assess and determine:

- (a) whether individual rebate items met the definition of a financial asset, in that:
 - (i) they were a contractual right to receive cash or a financial asset; and
 - (ii) they were the subject of an agreement that had clear economic consequences and that the parties had little discretion to avoid;
- (b) whether it was probable that any future economic benefit from a rebate item would flow to DSH;
- (c) whether, at the end of each reporting period, there was objective evidence that a rebate item was impaired; and
- (d) the value of an impairment loss on any rebate item.

Particulars

AASB 132, paragraph 11, 13.

AASB 139, paragraph 58, 63.

191 By reason of the matters pleaded in paragraphs 188 to 189 above, DSH could not comply with AASB 102 in the preparation of its FY14 Financial Statements and FY15 Financial Statements because it had insufficient reliable information on which to assess and determine whether:

- (a) rebate items recognised as a reduction in the 'Cost of Sales' of inventory were matched to the period in which that inventory was sold;
- (b) rebate items recognised as a reduction in the 'Cost of Sales' of inventory excluded rebates that specifically and genuinely refunded selling expenses;

- (c) rebate items recognised as a reduction in the 'Cost of Sales' of inventory were reimbursements of a specific, incremental, and identifiable cost incurred by DSH in selling a supplier's products; and/or
- (d) where there was a binding agreement that required a supplier to pay a rebate provided DSH completed a specific cumulative level of purchases or remained a customer for a specified period of time:
 - (i) the rebate income was probable and reliably measurable; and
 - (ii) the rebate was measured based on the amount expected to be received in relation to the underlying transactions that had occurred during the reporting period and that resulted in progress by DSH toward achieving the specified requirements for receiving the rebate.

Particulars

AASB 102, paragraph 10-11.

Australian Accounting Standards Board "Rejected Issue – Removed from the UIG Agenda, Inventory Rebates and Settlement Discounts (September 2005).

- 192 By reason of the matters pleaded in paragraphs 188 to 191 above, DSH could not comply with AASB 101 or the AASB Framework in the preparation of its FY14 Financial Statements and FY15 Financial Statements because it had insufficient reliable information on which to assess and determine:
- (a) whether rebate items were recorded in the accounts in a manner which presented fairly DSH's and the DSH Group's financial performance;
 - (b) whether rebate items were recognised as accounts receivable only when it was probable that future economic benefits would flow to DSH from the rebate item which could be measured reliably;
 - (c) whether rebate items were recognised in a manner which was neutral — meaning that financial information was not slanted, weighted, emphasised, de-emphasised, or otherwise manipulated to increase the probability it would be received favourably or unfavourably by users of that information;
 - (d) whether rebate items were recognised in a manner which would enable users of the financial statements to make decisions regarding providing resources to DSH; and

- (e) whether rebates items were recognised in a manner which would enable users of the financial statements to assess DSH's future net cash inflows and assist users of the financial statements to estimate the value of DSH.

Particulars

AASB 101, paragraph 15.

AASB Framework, paragraph 82-91.

AASB Framework Appendix, Chapter 3, QC12 and QC14-15.

AASB Framework, paragraph 71 and Chapter 1 paragraphs OB2, OB3, OB4 and OB7.

C.4. WARRANTY SIGN ON LIABILITY

- 193 In March 2013, on or after the Acquisition, DSSH recognised a warranty sign-on liability of approximately \$2.1 million (**Warranty Sign On Liability**).

Particulars

Second Potter Report at paragraph 5.5.

Deloitte Project Yellow Report at page 52.

- 194 During FY13, DSSH wrote back the warranty liability in the amount of approximately \$0.4 million (\$359,195.13) against the Cost of Sales as follows:
- (a) \$143,678.93 on 9 April 2013; and
 - (b) \$215,517.00 on 5 May 2013.

Particulars

Second Potter Report at paragraphs 5.3, 5.8 and 5.9.

- 195 During FY14, DSH wrote back the warranty liability in the amount of approximately \$0.6 million (\$634,580.64) against the Cost of Sales as follows:
- (a) \$622,607.24 on 2 August 2013; and
 - (b) \$11,973.39 on 16 October 2013.

Particulars

Second Potter Report at paragraphs 5.3, 5.13 and 5.14.

- 196 During FY14, DSH wrote back the warranty liability in the amounts referred to in the preceding paragraph and a further amount of approximately \$1.1 million (\$1,089,599.24) against the Cost of Sales on 26 June 2014.

Particulars

Second Potter Report at paragraphs 5.3, 5.13 to 5.16.

- 197 The effect of “writing back” these amounts against the Cost of Sales was to increase net profit by the amount of the write back.
- 198 As at March 2013, the Warranty Sign On Liability should not have been recognised or should have been recognised as having a value of \$nil.

Particulars

Second Potter Report at paragraphs 5.19 and 5.29.

- 199 Further, DSSH’s and DSH’s financial statements were misstated by recording a liability in respect of the warranty liability and, over later periods including FY13 and FY14, writing back that liability.
- 200 Further, by recording and then progressively writing it back against the Cost of Sales, DSH’s FY13 and FY14 reported NPAT were greater than would have been the case had the liability not been recorded in the first instance (and the unwinding of the liability not been recorded over the course of FY13 and FY14).
- 201 The approach described in paragraphs 193 and 200 above did not comply with:
- (a) AASB 3;

Particulars

The accounting treatment of the Warranty Sign On Liability did not comply with AASB 3 because it recognised the Warranty Sign On Liability as a liability with a (non-zero) value in FY13 and FY14 whereas the fair value of the Warranty Sign On Liability in FY13 and FY14 was \$nil.

AASB 3, paragraphs 10, 15 and 18.

Deloitte Project Yellow Review at page 52.

Second Potter Report at paragraphs 5.18-5.34.

(b) AASB 101; or

Particulars

The accounting treatment of the Warranty Sign On Liability did not comply with AASB 101 because it did not present fairly DSSH, DSH and the DSH Group's financial position and performance:

- *it recognised the Warranty Sign On Liability as a liability in FY13 and FY14, despite it having already been settled and DSH retaining no residual liability following the Acquisition;*
- *it wrote back the liability over FY13 and FY14, with the effect of inflating DSH's reported NPAT in FY13 and FY14, despite the liability having no value; and*
- *it did not represent faithfully the Warranty Sign On Liability according to the definitions and recognition criteria set out in the AASB Framework because there could be no "outflow of resources embodying economic benefits" resulting from the settling of the Warranty Sign On Liability.*

AASB 101, paragraph 15.

AASB Framework, paragraph 91.

Second Potter Report at paragraphs 5.18-5.34.

(c) the AASB Framework.

Particulars

AASB Framework, paragraph 91.

C.5. DOUBTFUL DEBTS PROVISION

202 In FY13, DSSH recognised provisions for “Other Creditors” of approximately \$2.1 million (\$2,129,217), the fair value of which was \$nil.

Particulars

Second Potter Report at paragraphs 6.3-6.8 and 6.19-6.26.

203 In FY14, DSH recognised provisions for “Other Creditors” of approximately \$0.3 million (\$274,102), the fair value of which was \$nil.

Particulars

Second Potter Report at paragraphs 6.3-6.8 and 6.19-6.26.

204 In FY14, DSH wrote off an amount of \$2.4 million in respect of “Other creditors” whilst simultaneously raising a provision for a doubtful debt in the same amount, the effect of which was to replace the original liability with another while resulting in no change to DSH’s reported net assets.

Particulars

Second Potter Report at paragraphs 6.3, 6.4 and 6.11.

205 Through a series of journal entries made between about 2 July 2014 and 11 July 2014, relating to FY14, DSH wrote off \$2.2 million of the doubtful debts provision, leaving a balance of about \$0.2 million.

Particulars

Second Potter Report at paragraphs 6.5 and 6.12.

206 The effect of this accounting was that:

- (a) DSSH’s liabilities were inflated by \$2.1 million for FY13, as the fair value of this liability should have been \$Nil;
- (b) DSSH’s expenses were therefore overstated by \$2.1 million for FY13;
- (c) DSH’s liabilities were, initially, inflated by \$0.3 million in FY14, as the fair value of this liability should have been \$Nil;

- (d) DSH's expenses were therefore, initially, overstated by \$0.3 million in FY14; and
- (e) by 'writing back' the amount of \$2.2 million in respect of the provision for doubtful debts for FY14 in respect of debts (or alleged debts) to be written off in FY14, DSH's expenses were understated by \$2.2 million in FY14.

207 By reason of the matters in paragraphs 202 to 206 above, DSH's financial statements were not prepared in accordance with the Australian Accounting Standards, namely:

- (a) AASB 3;

Particulars

The accounting treatment of the provisions did not comply with AASB 3 because it recognised the provisions as liabilities with a (non-zero) value in FY13 and FY14 whereas the fair value of the liabilities in FY13 and FY14 was \$nil.

AASB 3, paragraphs 16 and 18.

Second Potter Report at paragraphs 6.16-6.26.

- (b) AASB 101; and

Particulars

The accounting treatment of the provisions pleaded above did not comply with AASB 101 because it did not present fairly DSSH, DSH and the DSH Group's financial position and performance:

- *it recognised the provisions as liabilities in FY13 and FY14, despite their fair value being \$nil;*
- *it wrote off the provisions in May 2014, rather than at the time that that adjustment was necessary, namely when the liabilities were first recognised and the provisions first raised;*
- *in simultaneously raising a provision for a doubtful debt in the same amount as the provisions written off, it gave the impression that there has been no diminution in DSH's net assets, and no incurring of additional (net) expenses, which did not fairly represent the true position as the liabilities written-off had a fair value of \$nil; and*

- *it did not represent faithfully the provisions according to the definitions and recognition criteria set out in the AASB Framework because there could be no “outflow of resources embodying economic benefits” resulting from the settling of the liabilities, which had a fair value of \$nil.*

AASB 101, paragraph 15.

AASB Framework, paragraph 91.

Second Potter Report at paragraphs 6.16-6.26.

- (c) the AASB Framework.

Particulars

AASB Framework, paragraph 91.

C.6. DEFERRED EXPENSES

208 In the 1Q14 financial accounts presented in the Prospectus, DSH did not include certain expenses of approximately \$1.6 million (before tax) which had been incurred in that period.

Particulars

First Potter Report at Section 9.

Further particulars may be provided following discovery, subpoenas and evidence.

209 The effect of this accounting was that:

- DSH’s expenses in the 1Q14 period were understated and did not record certain expenses which were incurred during that period; and
- DSH’s Net Profit in the 1Q14 period was overstated by approximately \$1.6 million.

210 By reason of the matters in paragraphs 208 and 209 above, DSH’s financial statements were not prepared in accordance with the Australian Accounting Standards, namely AASB 101.

Particulars

The accounting treatment of the expenses did not comply with AASB 101 because it did not present fairly DSH and the DSH Group’s financial position and performance:

- *it did not record the expenses in the period in which they were incurred (being 1Q14), the effect of which was to inflate DSH's reported profit in 1Q14;*
- *it did not adopt 'accrual accounting', in that the expenses were not recorded as being incurred in the period to which the expenses related; and*
- *it did not represent faithfully the expenses according to the definitions and recognition criteria set out in the AASB Framework in that it did not properly match costs with revenues, which involves the simultaneous or combined recognition of revenues and expenses that result directly and jointly from the same transactions or other events.*

AASB 101, paragraphs 15 and 27-28.

AASB Framework, paragraphs 94-98.

First Potter Report at Chapter 9.

C.7. CAPITALISATION OF WAGES

211 In FY14, DSH recorded wages and salaries as an expense.

212 Also in FY14, DSH capitalised \$2.7 million of wages and salaries (previously recorded as an expense) into property, plant and equipment, comprised as follows:

- (a) \$0.7 million in 1Q14; and
- (b) \$2.7 million over FY14.

Particulars

Second Potter Report at paragraphs 8.2-8.8.

213 This capitalisation of wages and salaries was contrary to the Australian Accounting Standards, namely:

- (a) AASB 116;

Particulars

The accounting treatment of the wages and salaries did not comply with AASB 116 because the wages and salaries were costs in the nature of overheads

(relating to Finance, Supply Chain, Online, Executive, IT, Human Resources, and Planning) that should not have been capitalised as they:

- *were not costs “directly attributable to bringing [an] asset to the location and condition necessary for it to be capable of operating in the manner intended by management”; and*
- *were costs of a type expressly prohibited from being capitalised into property, plant and equipment, being either:*
 - *costs of operating a new facility;*
 - *costs of introducing a new product or service (including costs of advertising and promotional activities);*
 - *costs of conducting business in a new location or with a new class of customer (including costs of staff training); or*
 - *administration and other general overhead costs.*

AASB 116, paragraphs 7, 12, 16, 17, 19 and 20.

Second Potter Report at paragraphs 8.10-8.19.

(b) AASB 101; and

Particulars

The accounting treatment of the wages and salaries did not comply with AASB 101 because it did not present fairly DSH and the DSH Group’s financial position and performance for the reasons set out in the preceding paragraph.

AASB 101, paragraph 15.

Second Potter Report at paragraphs 8.10-8.19.

In the alternative to paragraph (a) above, if it was appropriate to capitalise the wages and salaries costs (which is denied), the accounting treatment of the wages and salaries did not comply with AASB 101 because:

- *the costs were not incremental costs that would not be incurred in subsequent years (when the relevant project finished) or costs of the type*

that would be allocated to a new project that would enable the cost to be capitalised;

- *no adjustment was made to DSH's pro-forma FY14 NPAT on the basis that the wages and salaries would be incurred in future years;*
- *therefore, it did not present fairly DSH and the DSH Group's financial position and performance; and*
- *as a result, the FY14 Financial Statements did not enable existing and potential investors to assess future net cash flows or to estimate the value of the entity.*

AASB 101, paragraph 15.

AASB Framework, paragraphs 72 and Chapter 1, paragraphs OB2, OB3, OB4 and OB7.

Second Potter Report at paragraphs 8.10-8.19.

- (c) the AASB Framework.

Particulars

The AASB Framework, paragraphs 71, OB2-OB4 and OB7.

C.8. ONEROUS LEASES

214 In FY14, DSH released a provision of \$4.1 million (**Onerous Lease Provision**) described as "release of onerous lease provisions".

215 The effect of the release of the Onerous Lease Provision was to improve DSH's reported NPAT in its FY14 reported statutory results.

216 However, the release of the Onerous Lease Provision was one-off in nature, and therefore DSH should have:

- (a) reduced its reported pro-forma FY14 NPAT by \$4.1 million relating to the Onerous Lease Provision; and/or

- (b) disclosed that \$4.1 million of the statutory FY14 NPAT of \$19.8 million (20.7%) and the reported pro-forma FY14 NPAT of \$42.1 million (9.7%) was attributable to a one-off, non-recurring item.

Particulars

Second Potter Report at Chapter 7.

- 217 DSH failed to take the steps in paragraph 216 above.
- 218 By reason of the matters in paragraphs 214 to 217 to above, DSH's financial statements were not prepared in accordance with the Australian Accounting Standards, namely:
- (a) AASB 101; and

Particulars

The accounting treatment of the Onerous Lease Provision did not comply with AASB 101 because it did not present fairly DSH and the DSH Group's financial position and performance for the reasons set out in the next subparagraph.

AASB 101, paragraph 15.

Second Potter Report at paragraphs 7.7-7.16.

- (b) the AASB Framework.

Particulars

The accounting treatment of the Onerous Lease Provision did not comply with the AASB Framework because the FY14 Financial Statements:

- *did not disclose that the reported results were materially assisted by a one-off, non-recurring item, namely the release of the Onerous Lease Provision; and*
- *as a result, the FY14 Financial Statements did not:*
 - *present information that is relevant to existing and potential investors;*

- *enable existing and potential investors to make decisions regarding providing resources to the entity (including providing capital);*
- *enable existing and potential investors to assess future net cash flows; and*
- *enable existing and potential investors to estimate the value of the entity.*

AASB Framework, paragraphs 72 and Chapter 1, paragraphs OB2, OB3, OB4 and OB7.

Second Potter Report at paragraphs 7.7-7.16.

C.9. DEED OF RELEASE PAYMENT

219 Pursuant to a deed of release DSH entered into with Star Track, DSH paid Star Track approximately \$1.4 million (\$1.351 million).

Particulars

Deloitte report to the FAC for the year ended 28 June 2015 at page 7.

220 This payment to Star Track should have been included in DSH's expenses in FY15 because that is when the expense was occurred, but instead it was deferred to the financial year ending June 2016 (**FY16**).

221 The effect of deferring the expense in this way was to improve DSH's reported FY15 NPAT, and to understate DSH's FY15 expenses by \$1.4 million (being the before tax value of the additional expense of \$1.351 million).

Particulars

Second Potter Report at paragraph 9.10.

222 By reason of the matters in paragraphs 219 to 221 above, DSH's financial statements were not prepared in accordance with the Australian Accounting Standards, namely:

- (a) AASB 101; and

Particulars

The accounting treatment of the deed of release payment did not comply with AASB 101 because it did not present fairly DSH and the DSH Group's financial position and performance:

- *it did not record the expense in the period in which it was incurred (being FY15), the effect of which was to inflate DSH's reported statutory NPAT in FY15;*
- *it did not represent faithfully the deed of release payment according to the definitions and recognition criteria set out in the AASB Framework because, in failing to recognise the expense in the period in which it was incurred, the FY15 Financial Statements did not faithfully represent "the effects of transactions" as the expense should have been recorded in FY15 rather than in FY16.*

AASB 101, paragraph 15.

AASB Framework, paragraph 91.

Second Potter Report at paragraphs 9.7-9.13.

(b) the AASB Framework.

Particulars

AASB Framework, paragraph 91.

C.10. RESTATEMENT OF FY14 AND FY15 FINANCIAL STATEMENTS

223 Contrary to the FY14 Financial Statements, and by reason of the matters pleaded in sections C.2, C.3, C.4, C.5, C.6, C.7 and C.8, the financial position and performance of DSH for FY14 was no better than that stated in Annexure B (as that annexure applies to FY14).

Particulars

First Potter Report at Section 11 and Second Potter Report at Section 11.

224 Contrary to the FY15 Financial Statements, and by reason of the matters pleaded in sections C.2, C.3 and C.9, the financial position and performance of DSH for FY15 was no better than that stated in Annexure B (as that annexure applies to FY15).

Particulars

First Potter Report at Section 11 and Second Potter Report at Section 11.

225 The adjustments to the FY14 Financial Statements set out in Annexure B (as that annexure applies to FY14) and referred to in paragraph 223 above were “material” under the terms of AASB 1031.

Particulars

First Potter Report at Section 11 and Second Potter Report at paragraphs 11.14-11.17.

226 The adjustments to the FY15 Financial Statements set out in Annexure B (as that annexure applies to FY15) and referred to in paragraph 224 above were “material” under the terms of AASB 1031.

Particulars

First Potter Report at Section 11 and Second Potter Report at paragraphs 11.14-11.17.

D. CONTRAVENTIONS

D.1. DSH'S MISLEADING OR DECEPTIVE CONDUCT

D.1.1. The Prospectus

227 Contrary to the Financial Information Basis Representation, the Pro Forma Historical Information insofar as it related to FY13 and 1Q14 and the Forecast Financial Information were not prepared in accordance with the recognition and measurement principles described in Australian Accounting Standards (including Australian Accounting Interpretations) and the summarised accounting policies of DSH set out in Section 11 of the Prospectus (where "Australian Accounting Standards" was defined in the Glossary in Section 12 of the Prospectus).

Particulars

Paragraphs 144 to 149, 193 to 201, 202 to 207 and 208 to 210 above are repeated.

First Potter Report at paragraphs 3.3-3.54, Section 6 (especially paragraphs 6.4-6.117), Section 8 (especially paragraphs 8.98-8.101) and Section 9 (especially paragraphs 9.7-9.8).

Second Potter Report at paragraphs 2.5-2.6, Section 5 (especially paragraphs 5.26-5.33) and Section 6 (especially paragraphs 6.16-6.25).

228 Contrary to the:

- (a) FY13 Performance Representations;
- (b) FY13 Balance Sheet Representations;
- (c) 1Q14 Representations;
- (d) the Pro Forma Historical Information insofar as it related to FY13 and 1Q14; and
- (e) Financial Information Basis Representation,

the financial position and performance of Dick Smith (as defined in Prospectus, Section 12), Dick Smith Sub-Holdings and DSH was not as stated in the Prospectus and was materially inferior to that represented.

Particulars

Paragraphs 144 to 149, 193 to 201, 202 to 207 and 208 to 210 above are repeated.

The financial position and performance of Dick Smith and DSH in respect of financial periods covered by the pleaded representations was no better than that stated in Annexure A being the FY13 and 1Q14 results for DSH, prepared consistently with Australian Accounting Standards (from the First Potter Report at Section 11 and the Second Potter Report at Section 11).

229 Contrary to the:

- (a) Growth and Forecast Representations; and
- (b) Financial Information Basis Representation,

the forecast financial position and performance and prospects of Dick Smith and DSH was not as stated in the Prospectus.

Particulars

*The forecast financial position and performance of Dick Smith and DSH in respect of the financial periods covered by the pleaded representations was no better than the “high” scenario stated in the Report of Michael Potter dated 29 October 2018 (**Third Potter Report**) at 8.35.*

230 The Prospectus did not disclose:

- (a) the matters pleaded at section C.2 concerning inventory and inventory management practices as they were at the time of the Prospectus (**Prospectus Inventory Information**);
- (b) the matters pleaded at section C.4 concerning the Warranty Sign On Liability as it was at the time of the Prospectus (**Prospectus Warranty Sign On Liability Information**);
- (c) the matters pleaded at section C.5 concerning the doubtful debts provisions as they were at the time of the Prospectus (**Prospectus Doubtful Debts Provision Information**); and
- (d) the matters pleaded at section C.6 concerning deferred expenses (**Deferred Expenses Information**).

231 The Prospectus did not disclose:

- (a) that the Financial Information and Dick Smith Sub-Holdings' reported and pro forma results for the period to 30 June 2013 given in the Prospectus were dependent upon:
 - (i) the non-compliance with the Financial Information Basis Representation;
 - (ii) the Prospectus Inventory Information;
 - (iii) the Prospectus Warranty Sign On Liability Information; and
 - (iv) the Prospectus Doubtful Debts Provision Information;
- (b) the effect on the reported and pro forma results for the period to 30 June 2013 of each of:
 - (i) the non-compliance with the Financial Information Basis Representation;
 - (ii) the Prospectus Inventory Information;
 - (iii) the Prospectus Warranty Sign On Liability Information; and
 - (iv) the Prospectus Doubtful Debts Provision Information.

232 By reason of that non-disclosure, each of:

- (a) the Financial Information Basis Representation (see paragraph 62 above);
 - (b) the FY13 Performance Representations (see paragraph 65 above);
 - (c) the FY13 Balance Sheet Representations (see paragraph 67 above);
 - (d) the Obsolete Stock Representation (see paragraph 69 above);
 - (e) the 1Q14 Representations (paragraph 71 above);
 - (f) the Transformation Representations (see paragraph 73 above); and
 - (g) the Growth and Forecast Representations (see paragraph 76 above),
- were misleading or deceptive in contravention of s 728 of the CA.

233 To the extent that the representations identified in paragraph 232 above were about future matters, they were made without reasonable grounds and are deemed by ss 728(2) and 769C of the CA to have been misleading.

234 By reason of each the matters set out in paragraphs 230 to 232 above, each of the following representations were misleading or deceptive and in contravention of s 728 of the CA:

- (a) the FY13 Financial Statements and the Pro Forma Historical Information insofar as it relates to FY13 and 1Q14, because they did not give a true and fair view of the financial position and performance of Dick Smith, DSH, DSSH or the DSH Group and for the reasons pleaded in paragraphs 227 and 228 above;
- (b) the 1Q14 results for Dick Smith Sub-Holdings, because they did not give a true and fair view of the financial position and performance of DSH, DSSH or the DSH Group;
- (c) the FY13 Performance Representations, because they did not present fairly or represent faithfully the financial position, financial performance and cashflows of Dick Smith, DSSH, DSH or the DSH Group;
- (d) the Forecast Financial Information, because it did not give a true and fair view of the forecast financial position and future performance of Dick Smith, DSSH, DSH or the DSH Group; and
- (e) the 1Q14 Representations.

Particulars

Paragraphs 227 and 228 above are repeated.

235 The Financial Covenants Representations were statements about future matters within the meaning of ss 728(2) and 769C of the CA which were misleading because DSH did not have reasonable grounds to make the Financial Covenants Representations.

Particulars

The Financial Covenants Representations were based, in part, upon the Pro Forma Historical Information for FY13 and 1Q14 and the Forecast Financial Information.

First Potter Report at paragraphs 10.40-10.59.

Second Potter Report at paragraphs 11.7-11.13.

The Financial Information, including the Forecast Financial Information, did not accord with the Financial Information Basis Representation for the reasons pleaded in paragraphs 227 to 229.

The Forecast Financial Information was materially misstated and flawed in the ways pleaded in paragraphs 227 to 229 and 230 to 234.

The Financial Covenants Representations were given Boxed-up Prospectus reference FI607 and were verified by Mr Potts without amendment, without any supporting documents referred to in the Verification Matrix with the basis of verification and description of source documents given as “Statement of belief” and nothing more.

236 By reason of the matters pleaded in paragraphs 232 to 235, the Financial Covenants Representations were misleading and deceptive in contravention of s 728 of the CA.

237 The Transformation Representations and the Growth and Forecast Representations were misleading and deceptive in contravention of s 728 of the CA.

Particulars

The pro forma financial performance of Dick Smith for FY13 was no better than a net loss after tax of \$8.0 million.

The pro forma financial performance of Dick Smith for 1Q14 was no better than a net profit after tax of \$0.3 million.

The gross profit margin for FY13 for Dick Smith was not 23.7% but was 21.9% and the gross profit margin for 1Q14 was not 25.0% but was 22.7%.

The transformation program had not:

- *delivered substantial improvements to the financial performance of Dick Smith;*
- *resulted in a significant increase in the underlying profitability of Dick Smith;*
- *delivered a sustainable increase in underlying profitability evidenced in strong 1Q14 results;*
- *delivered substantial improvements to financial performance;*
- *delivered a significant transformation of the business evidenced in 1Q14 results;*

- *positioned the business for sustainable growth.*

Second Potter Report at Tables 23, 25 and 26.

Although the major aspects and majority of initiatives of the DSH management team, led by Mr Abboud, had been implemented by the end of 1Q14, they had failed to deliver financial performance much better than break even, and a gross profit margin materially less than assumed in the Forecast Financial Information, which provided an inadequate basis upon which to found the Transformation Representations.

For the reasons pleaded in paragraphs 63, 66, 68, 70, 72, 75, 77 and 84, the pleaded representations in the Prospectus were made without reasonable grounds because they were made in reliance upon:

- *mere statements of belief or assertions as recorded in the Verification Matrix; and/or*
- *under the false assumption that a statement about a future matter was a “statement of fact”; and/or*
- *statements otherwise unsupported by any information providing any ground for the making of the statement; and*
- *a process wherein statements of belief which were assigned to the board for verification were not verified by the Board but where a director, Mr Ishak, reviewed a random selection (made by him) of three statements per page of the verification version of the Prospectus and checked that the applicable corresponding source document appeared to verify the statement, following which the Due Diligence Committee approved the Prospectus: Minutes of Project Yellow Due Diligence Committee Meeting No 11.*

238 In the premises, and by reason of the matters pleaded above in paragraphs 230 to 237 above, the Prospectus offered securities under a disclosure document containing misleading or deceptive statements within the meaning of, and in contravention of, s 728 of the CA.

D.1.2. FY14 Financial Statements

239 The issuance and publication by DSH of the FY14 Financial Statements was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA because those FY14 Financial Statements:

- (a) did not disclose the Rebate Maximisation Practice, the Rebate Maximisation Consequences as they related to FY14, and the effect of that practice on DSH's financial performance and financial position pleaded above in section C.3.1;
- (b) did not disclose the accounting treatment of the Volume Rebates and its effect pleaded above in section C.3.3;
- (c) did not disclose the accounting treatment of the O&A Rebates and its effect pleaded above in sections C.3.4, C.3.5, C.3.6, C.3.7 and C.3.8;
- (d) did not disclose each of the matters pleaded above in section C.3.10 with respect to the reliability of DSH's recorded profits and financial statements generally;
- (e) did not disclose each of the matters pleaded above in paragraphs 136 and 144 with respect to the recording and provisioning of DSH's inventory;
- (f) did not disclose the Warranty Sign On Liability matters pleaded at section C.4 above, as it was at the time of the FY14 Financial Statements;
- (g) did not disclose the doubtful debts provisions pleaded at section C.5 above, as they were at the time of the FY14 Financial Statements;
- (h) did not disclose the capitalisation of wages matters pleaded at section C.7, as they were at the time of the FY14 Financial Statements; and/or
- (i) did not disclose the onerous lease provision matters pleaded at section C.8 above, as they were at the time of the FY14 Financial Statements.

Particulars

Sections C.2, C.3.3, C.3.4, C.3.5, C.3.6, C.3.7, C.3.8, C.4, C.5, C.7 and C.8 are repeated.

The amounts by which the FY14 Financial Statements:

- *overstated inventories;*
- *understated Cost of Sales; and*
- *overstated EBITDA, net profit and total equity,*

are summarised in the First Potter Report at Chapter 11 and the Second Potter Report at Chapter 11.

- 240 The issuance and publication by DSH of the FY14 Financial Statements was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because the FY14 Financial Statements were not prepared in accordance with Australian Accounting Standards.

Particulars

Paragraph 239 is repeated.

- 241 The issuance and publication by DSH of the FY14 Financial Statements was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA , s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because the FY14 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

Paragraphs 239 to 240 are repeated.

The amounts by which the FY14 Financial Statements:

- *overstated inventories;*
- *understated Cost of Sales; and*
- *overstated EBITDA, net profit and total equity.*

are summarised in the First Potter Report at Chapter 11 and the Second Potter Report at Chapter 11.

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

- 242 DSH's FY14 Express Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because the consolidated financial statements of DSH for the financial year ended 29 June 2014 had not been prepared in accordance with the CA, nor with accounting standards and interpretations.

Particulars

Section D.1.2 is repeated.

243 DSH's FY14 Implied Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because insofar as the representations pleaded at paragraph 94(b) were based on an opinion:

- (a) the opinion was not held on a reasonable basis and was not the product of the application of reasonable care and skill by either Mr Abboud or Mr Potts;
- (b) the opinion was not a matter to which either Mr Abboud or Mr Potts had turned his mind, having informed himself as to the financial affairs of the company to the extent necessary to form an opinion as to the truth and fairness of the accounts;
- (c) the opinion was not formed after either Mr Abboud or Mr Potts had read and understood the financial statements and considered whether the financial statements were consistent with his own knowledge of DSH's and the DSH Group's financial position and financial performance; or
- (d) the opinion was not formed after either Mr Abboud or Mr Potts had taken a diligent and intelligent interest in the information available to him or which he might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group.

Particulars

The facts, matters and circumstances pleaded and particularised at paragraph 239 above were also present and occurred at the time DSH made DSH's FY14 Implied Representation.

Further as against all the defendants:

- *Mr Abboud and Mr Potts had not adequately considered the appropriate accounting treatment of the inventory, including in light of AASB 101, 102 and 108 and whether the accounting treatment would give a true and fair view of DSH's financial position and performance.*
- *Given the effect of the accounting treatment as pleaded above in sections C.2 and C.3, Mr Abboud and Mr Potts had not obtained accounting advice*

specifically directed at whether those effects meant the accounting treatment was in accordance with AASB 101, 102 and/or 108 and/or gave a true and fair view of DSH's financial position and performance.

- *At all material times, Mr Abboud and Mr Potts did not have sufficient information to form the opinion that the inventory was accounted for by DSH in accordance with the Australian Accounting Standards and in a way that gave a true and fair view of the financial position and performance of DSH and the DSH Group.*

D.1.4. FY14 ASX Announcement & Results Briefing

244 The issuance and publication by DSH of the FY14 ASX Announcement & Results Briefing was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law of the CA because it:

- (a) did not disclose the matters pleaded and particularised in paragraphs 239(a) to (i) above;
- (b) did not disclose the fact DSH's growth, profit, and strength were the result of the matters pleaded and particularised in paragraphs 239(a) to (i) above;
- (c) did not disclose the Rebate Maximisation Practice and the Rebate Maximisation Consequences as pleaded above in section C.3.1;
- (d) represented that an increase in sundry receivables was related to improved supplier terms, without disclosing the matters pleaded above with respect to the Volume Rebates and the O&A Rebates in sections C.3.3, C.3.4, C.3.5, C.3.6, C.3.7 and C.3.8 above;
- (e) did not disclose that the reported net profit and EBITDA were achieved by reason of the accounting practices in sections C.4, C.5, C.7 and C.9 above, which practices were not in accordance with Australian Accounting Standards; and/or
- (f) did not disclose that the FY14 Financial Statements from which the reported EBITDA and net profit were taken did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

The amounts by which the FY14 ASX Announcement & Results Briefing overstated the EBITDA and net profit are summarised in the First Potter Report at Chapter 11 and the Second Potter Report at Chapter 11.

D.1.5. FY15 Financial Statements

245 The issuance and publication by DSH of the FY15 Financial Statements was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because those FY15 Financial Statements:

- (a) did not disclose the Rebate Maximisation Practice, the Rebate Maximisation Consequences as they related to FY15 and the effect of those practices on DSH's financial performance and financial position pleaded above in section C.3.1;
- (b) did not disclose the accounting treatment of the Switched Invoice Rebates and its effect pleaded above in section C.3.2;
- (c) did not disclose the accounting treatment of the Volume Rebates and its effect pleaded above in section C.3.3;
- (d) did not disclose the accounting treatment of the O&A Rebates and its effect pleaded above in sections C.3.4, C.3.5, C.3.6, C.3.7 and C.3.8;
- (e) did not disclose each of the matters pleaded above in section C.3.10 with respect to the reliability of DSH's recorded profits and financial statements generally;
- (f) did not disclose each of the matters pleaded above in paragraphs 136 and 144 with respect to the recording and provisioning of DSH's inventory; and/or
- (g) did not disclose the deed of release payment pleaded above in section C.9.

Particulars

Sections C.2, C.3.2, C.3.3, C.3.4, C.3.5, C.3.6, C.3.7, C.3.8 and C.9 are repeated.

The amounts by which the FY15 Financial Statements:

- *overstated and failed to make provision in respect of inventories;*
- *understated Cost of Sales; and*
- *overstated EBITDA, net profit and total equity,*

are summarised in the First Potter Report at Chapter 11 and the Second Potter Report at Chapter 11.

246 The issuance and publication by DSH of the FY15 Financial Statements was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because the FY15 Financial Statements were not prepared in accordance with Australian Accounting Standards.

Particulars

Paragraph 245 is repeated.

247 The issuance and publication by DSH of the FY15 Financial Statements was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because the FY15 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

Paragraphs 245 to 246 are repeated.

The amounts by which the FY15 Financial Statements:

- *overstated and failed to make provision in respect of inventories;*
- *understated Cost of Sales; and*
- *overstated EBITDA, net profit and total equity,*

are summarised in the First Potter Report at Chapter 11 and the Second Potter Report at Chapter 11

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

248 DSH's FY15 Express Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because the consolidated financial statements of DSH for the financial year ended 28 June 2015 had not been prepared in accordance with the CA, nor with accounting standards and interpretations.

Particulars

Paragraphs 245 to 247 are repeated.

249 DSH's FY15 Implied Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because insofar as the representations pleaded at paragraph 107(b) were based on an opinion:

- (a) the opinion was not held on a reasonable basis and was not the product of the application of reasonable care and skill by either Mr Abboud or Mr Potts;
- (b) the opinion was not a matter to which either Mr Abboud or Mr Potts had turned his mind, having informed himself as to the financial affairs of the company to the extent necessary to form an opinion as to the truth and fairness of the accounts;
- (c) the opinion was not formed after either Mr Abboud or Mr Potts had read and understood the financial statements and considered whether the financial statements were consistent with his own knowledge of DSH's and the DSH Group's financial position and financial performance; or
- (d) the opinion was not formed after either Mr Abboud or Mr Potts had taken a diligent and intelligent interest in the information available to him or which he might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group.

Particulars

As against the first defendant the plaintiffs rely on the admissions at paragraph 48, 52 and 63 of the Company's 3ACLS.

Further as against all the defendants:

- *Mr Abboud and Mr Potts had not adequately considered the appropriate accounting treatment of the rebate practices and inventory, including in light of AASB 101, 102 and 108 and whether the accounting treatment would give a true and fair view of DSH's financial position and performance.*
- *Given the effect of the accounting treatment as pleaded above in sections C.2 and C.3, Mr Abboud and Mr Potts had not obtained accounting advice specifically directed at whether those effects meant the accounting treatment was in accordance with AASB 101, 102 and/or 108 and/or gave a true and fair view of DSH's financial position and performance.*

- *At all material times, Mr Abboud and Mr Potts did not have sufficient information to form the opinion that the inventory was accounted for by DSH in accordance with the Australian Accounting Standards and in a way that gave a true and fair view of the financial position and performance of DSH and the DSH Group.*
- *At all material times, Mr Abboud and Mr Potts did not have sufficient information to form the opinion that the Switched Invoice Rebates and/or the Volume Rebates and/or the O&A Rebates were accounted for by DSH in accordance with the Australian Accounting Standards and in a way that gave a true and fair view of the financial position and performance of DSH and the DSH Group.*
- *At all material times, Mr Abboud and Mr Potts did not have sufficient information to form the opinion that there was a basis for the O&A Rebates, Volume Rebates and/or Switched Invoice Rebates to be recognised in the accounts of DSH immediately upon being negotiated with suppliers and in any event before the goods the subject of the rebate were sold or support, the subject of the rebate, was received.*
- *Members of the DSH board, including Mr Abboud and Mr Potts, received the Deloitte Report to the FAC dated 6 August 2014 that reported O&A Rebates were to be recognised within costs of sales (on the basis of management's advice that O&A Rebates were essentially a contribution to the selling cost of the inventory being cleared) and recommended management undertake an annual review to determine whether deferral of income derived from O&A Rebates was required.*
- *Mr Abboud and Mr Potts ought to have been aware that no adequate testing had been undertaken by management to determine that O&A Rebates were essentially a contribution to the selling cost of the inventory being cleared or to determine whether deferral of income derived from O&A Rebates was required. See Mr Abboud's evidence: transcript dated 6 October 2016 at page 500.*
- *Mr Abboud and Mr Potts ought to have been aware that rebates initially accounted for as a cost of doing business were subsequently, at least in part, transferred to cost of goods sold without any analysis of whether or not the goods had been sold.*
- *Mr Abboud and Mr Potts, as members or attendees at FAC meetings, ought to have known that income derived from rebates relating to stock purchases held in*

inventory at the year end or promotions in the following financial year should be deferred to the following year.

- *Mr Abboud and Mr Potts were each present at or aware of the meetings convened by John Skellern, and the maintenance of the whiteboard to record O&A Rebates.*
- *Mr Abboud and Mr Potts were each aware of shortcomings in and problems with DSH's planning, tracking, and recording of rebates accrued and received from vendors and suppliers, including:*
 - *the matters set out in the particulars to paragraph 188 above as to the meetings convened by John Skellern and the recording of rebates and targets on a whiteboard in Mr Skellern's office, which meetings were sometimes attended by Mr Abboud and Mr Potts;*
 - *in the case of Mr Abboud, the existence of discrepancies between the rebates recorded on Mr Skellern's whiteboard and those entered into DSH's AS400 systems;*
 - *in the case of Mr Abboud, Mr Abboud's practice of reviewing or signing-off on purchase orders and rebates;*
 - *in the case of Mr Potts, Mr Potts' involvement in the preparation of a "position paper" on O&A Rebates for Deloitte in about May and June 2014 and the matters discussed therein;*
 - *in the case of Mr Potts, the lack of "support" from vendors confirming that O&A accruals were genuine in around August 2014;*
 - *the observations made by Deloitte as to DSH's recording of rebates in its report to the FAC for FY14 and discussion at the FAC meeting on 12 August 2014, at which meeting Mr Abboud and Mr Potts were present;*
 - *in the case of Mr Abboud, the recording of rebate targets on a whiteboard at leadership team meetings convened by Mr Abboud from about September 2014;*
 - *the "black hole" that Mr Abboud said existed around rebates recorded by buyers and what was able to be claimed by the company, and his*

observation about a “lack of visibility over O&A rebates” in around December 2014 (Holtzer Affidavit, paragraph 9);

- *in the case of Mr Potts, attempts by Tomer Bar-Ami to put in place a system for the recording of rebates in about January 2015;*
 - *in the case of Mr Potts, the concerns expressed to Mr Potts by Michael Holtzer between about January and March 2015 in relation to DSH’s reporting and accounting treatment of rebates as recorded in the Holtzer Affidavit;*
 - *that any “disciplines” Mr Potts tried to put in place in respect of inventory control were “overridden by Mr Abboud”; and*
 - *in the case of Mr Potts, the systems proposed by Software Paradigms International Australia Pty Ltd (SPI) in early 2015 to improve DSH’s recording and tracking of rebates were put on hold in May 2015 and not implemented by DSH.*
- *Mr Abboud and Mr Potts were each aware of DSH’s failure to write down inventory, its purchase of excess inventory and its method of recording and making provision for inventory as pleaded in sections C.2 and C.3.1 above. In the alternative, they ought to have been aware of those matters, by virtue of their positions as officers and directors of DSH, given their duties pursuant to sections 286, 296, 297 and 344 of the Corporations Act and by reason of their involvement in and oversight over DSH’s decisions concerning its rebate and inventory practices and accounting practices in relation thereto as set out above and as detailed in the affidavits of Mr Holtzer, Mr Powell and Mr Bonham and in the evidence given by Mr Abboud and Mr Potts in their public examinations by the liquidators of DSH.*

D.1.7. FY15 ASX Announcement & Results Briefing

250 The issuance and publication by DSH of the FY15 ASX Announcement & Results Briefing was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because it:

- (a) did not disclose the matters pleaded and particularised in paragraphs 245(a) to (g);

- (b) did not disclose the fact DSH's growth, profit, and strength were the result of the matters pleaded and particularised in paragraphs 245(a) to (g);
- (c) represented that higher inventory reflected a conscious decision to benefit from advantageous trading terms and favourable exchange rate without disclosing the Rebate Maximisation Practice, the Rebate Maximisation Consequences as they related to FY15 and the effect of those practices as pleaded above in section C.3.1;
- (d) represented that an increase in sundry receivables was related to improved supplier terms without disclosing the Switched Invoice Rebates, the Volume Rebates, and the O&A Rebates in sections C.3.2, C.3.3, C.3.4, C.3.5, C.3.6, C.3.7 and C.3.8 above;
- (e) did not disclose that the reported net profit and EBITDA were achieved by reason of the accounting practices pleaded in section C.9, which practices were not in accordance with Australian Accounting Standards; and/or
- (f) did not disclose that the FY15 Financial Statements from which the reported EBITDA and net profit were taken did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

The amounts by which the FY15 ASX Announcement & Results Briefing overstated the EBITDA and net profit are summarised in the First Potter Report at Chapter 11 and the Second Potter Report at Chapter 11.

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

D.2.1. The Prospectus

251 By issuing and publishing the Prospectus, DSH made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Section D.1.1 is repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH;

Particulars

Investors or potential investors in DSH's securities were likely to rely upon the information contained in and the representations conveyed by the Prospectus in deciding whether to invest in DSH Shares.

- (c) were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

The Prospectus was disclosed to the secondary market via ASX before quotation of DSH Shares commenced.

252 When DSH issued and published the Prospectus, DSH ought reasonably to have known it was false in a material particular or materially misleading because:

- (a) the directors of DSH and Mr Potts ought to have known that the Prospectus Inventory Information and Deferred Expenses Information could materially impact upon DSH's financial statements and results in the Prospectus;
- (b) DSH was under a duty, pursuant to s 286 of the CA, to keep written financial records that correctly recorded and explained its transactions and financial position and performance, and that would enable true and fair financial statements to be prepared and audited;
- (c) each director of DSH was under a duty, pursuant to s 344 of the CA, to take all reasonable steps to comply with or secure DSH's compliance with s 286 of the CA;
- (d) the directors of DSH were under a duty, pursuant to ss 296 and 297 of the CA, to form an opinion as to whether DSH's financial statements complied with the accounting standards and gave a true and fair view of the financial position and performance of DSH before making any declaration pursuant to s 295 of the CA;
- (e) the directors of DSH were under a duty to have sufficient financial literacy so as to understand the basis upon which the financial statements were prepared, including the accounting treatment of rebates and decisions as to whether to recognise impairments to inventory;
- (f) the directors of DSH had access to accounting advice in relation to the preparation of the Prospectus, including advice in relation to:

- (i) accounting standards;
 - (ii) the requirements and application of each of those standards with respect to the accounting treatment of rebates; and
 - (iii) the impairment of inventory;
- (g) the directors of DSH and Mr Potts had access to and were aware, or ought to have been aware, of the content of the Deloitte Project Yellow Report, including as to the limitations of DSH's inventory ageing system;
- (h) in discharging their duties pleaded in the subparagraphs above, the directors of DSH ought to have been aware (after properly informing each of themselves and making proper enquiries, and applying each of their own knowledge about DSH's and the DSH Group's business, financial position, and financial performance) of the matters in (a) to (g) above, and that the Prospectus did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

253 In the premises, DSH contravened s 1041E of the CA by issuing and publishing the Prospectus.

D.2.2. FY14 Financial Statements

254 By issuing and publishing the FY14 Financial Statements, DSH made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Section D.1.2 is repeated.

- (b) were likely to induce, directly or indirectly the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

Investors or potential investors in DSH's securities were likely to rely upon financial statements, the corresponding directors' declaration and the representations it conveyed therein in deciding whether to invest in those securities.

DSH's financial statements could not be issued and published to the market through the ASX without the director's declaration.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

The reporting by DSH of EBITDA, net profit and total equity at levels higher than what would have been the case (had the FY14 Financial Statements been prepared in compliance with the accounting standards and gave a true and fair view of the financial position and performance of DSH) was likely to have the effect of increasing, maintaining or stabilising the value of DSH Shares from what they otherwise would have been.

255 When DSH issued and published the FY14 Financial Statements, DSH ought reasonably to have known they were false in a material particular or materially misleading because:

- (a) the directors of DSH ought to have known about the O&A Rebates and DSH's accounting treatment of them;
- (b) the directors of DSH ought to have known that the accounting treatment of rebates could materially impact upon DSH's financial statements and results;
- (c) the directors of DSH ought to have been aware of the Rebate Maximisation Practice and the Rebate Maximisation Consequences as they related to FY14;
- (d) the directors of DSH ought to have known about the matters pleaded above in section C.2 with respect to DSH's inventory, and that such conduct could materially impact upon DSH's financial statements and results;
- (e) the directors of DSH ought to have been aware of the matters relating to DSH's inventory pleaded above in paragraphs 139 and 143;
- (f) DSH was under a duty, pursuant to s 286 of the CA, to keep written financial records that correctly recorded and explained its transactions (which included the Volume Rebates and the O&A Rebates) and financial position and performance, and that would enable true and fair financial statements to be prepared and audited;
- (g) each director of DSH was under a duty, pursuant to s 344 of the CA, to take all reasonable steps to comply with or secure DSH's compliance with s 286 of the CA;

- (h) the directors of DSH were under a duty, pursuant to ss 296 and 297 of the CA, to form an opinion as to whether DSH's financial statements complied with the accounting standards and gave a true and fair view of the financial position and performance of DSH before making any declaration pursuant to s 295 of the CA;
- (i) the directors of DSH were under a duty to understand the basis upon which the financial statements were prepared, including the accounting treatment of rebates and decisions as to whether to recognise impairments to inventory;
- (j) the directors of DSH had access to accounting advice in relation to the preparation of DSH's financial statements, including advice in relation to:
 - (i) accounting standards;
 - (ii) the requirements and application of each of those standards with respect to the accounting treatment of rebates; and
 - (iii) the impairment of inventory;
- (k) in discharging their duties pleaded in the subparagraphs above, the directors of DSH ought to have been aware (after properly informing each of themselves and making proper enquiries, and applying each of their own knowledge about DSH and the DSH Group's business, financial position and financial performance) of the matters in (a) to (e) above, and that the FY14 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group;
- (l) the directors of DSH and Mr Potts had access to and were aware, or ought to have been aware, of the content of the Deloitte Project Yellow Report, including as to the limitations of DSH's inventory ageing system;
- (m) further, the directors of DSH ought to have been aware of the effect of the accounting treatments of rebates pleaded in Part C.3 above on DSH's gross profit, EBITDA, and net profit; and
- (n) the directors of DSH ought to have been aware that the failure by DSH to write down the value of its inventory prior to publishing the FY14 Financial Statements:
 - (i) was not in accordance with Australian Accounting Standards; and
 - (ii) meant the FY14 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group;.

256 In the premises, DSH contravened s 1041E of the CA by issuing and publishing the FY14 Financial Statements.

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

257 By making each of DSH's FY14 Express Representation and DSH's FY14 Implied Representation, DSH made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Section D.1.3 is repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 254(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

The particulars at paragraph 254(c) are repeated.

258 When DSH made DSH's FY14 Express Representation, DSH ought reasonably to have known it was false in a material particular or materially misleading because DSH ought to have known that the consolidated financial statements of DSH for FY14 had not been prepared in accordance with the CA, nor with accounting standards and interpretations, for the reasons pleaded in paragraph 255 and sections C.2, C.3, C.4, C.5, C.7 and C.9 above.

259 When DSH made DSH's FY14 Implied Representation, DSH ought reasonably to have known it was false in a material particular, or materially misleading because, in light of the matters pleaded and particularised above in paragraph 243, the opinion pleaded at paragraph 94(b):

- (a) was not held on a reasonable basis and was not the product of the application of reasonable care and skill by either Mr Abboud or Mr Potts;

- (b) was not a matter to which either Mr Abboud or Mr Potts had turned his mind, having informed himself as to the financial affairs of the company to the extent necessary to form an opinion as to the truth and fairness of the accounts;
- (c) was not formed after either Mr Abboud or Mr Potts had read and understood the financial statements and considered whether the financial statements were consistent with his own knowledge of DSH's and the DSH Group's financial position and financial performance; or
- (d) was not formed after either Mr Abboud or Mr Potts had taken a diligent and intelligent interest in the information available to him or which he might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group.

Particulars

The facts, matters and circumstances pleaded at paragraph 255 above were also present and occurred at the time DSH made DSH's FY14 Implied Representation.

260 In the premises, DSH contravened s 1041E of the CA by making DSH's FY14 Implied Representation.

D.2.4. FY14 ASX Announcement & Results Briefing

261 By issuing the FY14 ASX Announcement & Results Briefing, DSH made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Section D.1.4 is repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

Investors or potential investors in DSH's securities were likely to rely upon DSH's ASX announcements and results briefings about its financial performance in deciding whether to invest in DSH securities.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

Positive statements made by DSH in the FY14 ASX Announcement & Results Briefing that were based on the FY14 Financial Statements and that did not disclose the matters pleaded in paragraph 244 were likely to have the effect of increasing, maintaining or stabilising the price of DSH Shares from what they would otherwise have been had the FY14 Financial Statements been prepared in compliance with the accounting standards and gave a true and fair view of the financial position and performance of DSH and the information pleaded at paragraph 244 been disclosed.

262 When DSH issued the FY14 ASX Announcement & Results Briefing, DSH ought reasonably to have known it was false in a material particular or materially misleading because it reported the financial results from, or pro forma financial information based on, DSH's FY14 Financial Statements which DSH ought to have known were false in a material particular or materially misleading for the reasons pleaded in paragraph 255.

263 In the premises, DSH contravened s 1041E of the CA by issuing the FY14 ASX Announcement & Results Briefing.

D.2.5. FY15 Financial Statements

264 By issuing and publishing the FY15 Financial Statements, DSH made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Section D.1.5 is repeated.

- (b) were likely to induce, directly or indirectly the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 254(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

The reporting by DSH of EBITDA, net profit and total equity at levels higher than what would have been the case (had the FY15 Financial Statements been prepared in compliance with the accounting standards and gave a true and fair view of the financial position and performance of DSH) was likely to have the effect of increasing, maintaining or stabilising the value of DSH Shares from what they otherwise would have been.

Further particulars may be provided following discovery and evidence.

- 265 When DSH issued and published the FY15 Financial Statements, DSH ought reasonably to have known they were false in a material particular or materially misleading because:
- (a) the directors of DSH ought to have known about the Rebate Maximisation Practices and the Rebate Maximisation Consequences;
 - (b) the directors of DSH ought to have known about the Switched Invoice Rebates and DSH's accounting treatment of them;
 - (c) the directors of DSH ought to have known about the Volume Rebates and DSH's accounting treatment of them;
 - (d) the directors of DSH ought to have known about the O&A Rebates and DSH's accounting treatment of them;
 - (e) the directors of DSH ought to have known that the accounting treatment of rebates could materially impact upon DSH's financial statements and results;
 - (f) Messrs Abboud and Potts knew or ought to have known, and the other directors of DSH ought to have known, that DSH did not have a system for the reliable planning, tracking, and recording of rebates accrued and received from vendors and suppliers;
 - (g) the directors of DSH ought to have known that the effect of DSH not having a system for the reliable planning, tracking, and recording of rebates accrued and received from vendors and suppliers was as pleaded in section C.3.10 above;

- (h) the directors of DSH ought to have been aware of the matters relating to DSH's inventory pleaded above in paragraphs 139 and 143; and
- (i) the directors of DSH ought to have been aware that the failure by DSH to write down the value of its inventory prior to the publishing the FY15 Financial Statements:
 - (i) was not in accordance with Australian Accounting Standards; and
 - (ii) meant the FY15 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

266 In the premises, DSH contravened s 1041E of the CA by issuing and publishing the FY15 Financial Statements.

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

267 By making each of DSH's FY15 Express Representation and DSH's FY15 Implied Representation, DSH made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Section D.1.6 is repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 254(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

The particulars at paragraph 264(c) are repeated.

268 When DSH made DSH's FY15 Express Representation, DSH ought reasonably to have known it was false in a material particular or materially misleading because DSH ought to have known that the consolidated financial statements of DSH for the financial year ended

28 June 2015 had not been prepared in accordance with the CA, nor with accounting standards and interpretations, for the reasons pleaded in paragraph 265 above.

269 When DSH made DSH's FY15 Implied Representation, DSH ought reasonably to have known it was false in a material particular, or materially misleading because, in light of the matters pleaded above in paragraph 265, the opinion pleaded at paragraph 107(b):

- (a) was not held on a reasonable basis and was not the product of the application of reasonable care and skill by either Mr Abboud or Mr Potts;
- (b) was not a matter to which either Mr Abboud or Mr Potts had turned his mind, having informed himself as to the financial affairs of the company to the extent necessary to form an opinion as to the truth and fairness of the accounts;
- (c) was not formed after either Mr Abboud or Mr Potts had read and understood the financial statements and considered whether the financial statements were consistent with his own knowledge of DSH's and the DSH Group's financial position and financial performance; or
- (d) was not formed after either Mr Abboud or Mr Potts had taken a diligent and intelligent interest in the information available to him or which he might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group.

Particulars

The facts, matters and circumstances pleaded at paragraph 265 above were also present and occurred at the time DSH made DSH's FY15 Implied Representation.

270 In the premises, DSH contravened s 1041E of the CA by making DSH's FY15 Implied Representation.

D.2.7. FY15 ASX Announcement & Results Briefing

271 By issuing the FY15 ASX Announcement & Results Briefing, DSH made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Section D.1.7 is repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 261(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

Positive statements made by DSH in the FY15 ASX Announcement & Results Briefing that were based on the FY15 Financial Statements and that did not disclose the matters pleaded in paragraph 250 were likely to have the effect of increasing, maintaining or stabilising the price of DSH Shares from what they would otherwise have been had the FY15 Financial Statements been prepared in compliance with the accounting standards and gave a true and fair view of the financial position and performance of DSH and the information pleaded at paragraph 250 been disclosed.

272 When DSH issued the FY15 ASX Announcement & Results Briefing, DSH ought reasonably to have known it was false in a material particular or materially misleading because it reported the financial results from DSH's FY15 Financial Statements which DSH ought to have known were false in a material particular or materially misleading for the reasons pleaded and particularised in paragraphs 250 and 265.

273 In the premises, DSH contravened s 1041E of the CA by issuing the FY15 ASX Announcement & Results Briefing.

D.3. DSH'S CONTINUOUS DISCLOSURE CONTRAVENTIONS

274 At all material times, DSH was a listed disclosing entity subject to ASX Listing Rule 3.1 and ss 111AP and 674 of the CA.

- 275 By ASX Listing Rule 3.1, once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must tell ASX that information.
- 276 By ASX Listing Rule 19.2, an entity must comply with the listing rules as interpreted in accordance with their spirit, intention and purpose, by looking beyond form to substance and in a way that best promotes the principles on which the listing rules are based.
- 277 By ASX Listing Rule 19.3, expressions that are not specifically defined in the listing rules, but are given a particular meaning in the CA, have the same meaning in the listing rules.
- 278 By ASX Listing Rule 19.12:
- (a) an entity becomes aware of information if, and as soon as, an officer of the entity has, or ought reasonably to have, come into possession of the information in the course of performance of their duties as an officer of that entity; and
 - (b) information includes matters of supposition and other matters that are insufficiently definite to warrant disclosure to the market and matters relating to the intentions, or likely intentions, of a person.
- 279 Upon and from the commencement of its listing on the ASX, DSH ought to have disclosed that:
- (a) its Prospectus, published prior to its listing on the ASX, contained misleading statements, for the reasons pleaded in sections B.1 and D.1 above; and
 - (b) the financial position and performance of Dick Smith and DSH in respect of financial periods covered by the pleaded representations was no better than that stated in Annexure A, being the FY13 and 1Q14 results for DSSH prepared consistently with Australian Accounting Standards.
- 280 At the time of release of DSH's FY14 Financial Statements and the issuing of the FY14 ASX Announcement & Results Briefing, and thereafter, DSH ought to have disclosed:
- (a) the correct financial position and performance and the correct pro forma financial performance;
 - (b) that the level of rebates recorded in June 2014 of \$29.6 million was materially in excess of budgeted rebates for June 2014 of \$6.9 million and the level of rebates recorded in

FY14 of \$98.1 million was materially in excess of budgeted rebates for FY14 of \$72.9 million;

- (c) the declining rate of budgeted first margin gross profit (ie before accounting for rebates) from July 2012, being 17.6% in FY13, to June 2014, being 15.2% in FY14 with quarterly first gross margins in FY14 of 17.6%, 17.0%, 15.7% and 10.7% for each of the four quarters of FY14;
- (d) the difficulty or impossibility for DSH to measure accurately the ageing and months' cover for each SKU and inventory generally due to the limitation in its inventory system and that there was no reliable data available regarding the ageing of inventory;
- (e) further, or in the alternative to paragraph (d) above, the increasing level of inventory months' cover: June 2013 being 4.7 months and June 2014 being 5.6 months;
- (f) the extent to which expenses had been capitalised in FY14;
- (g) the Rebate Maximisation Practice; and
- (h) the Rebate Maximisation Consequences, as they related to FY14.

Particulars

First Potter Report at Chapters 8 and 11.

Second Potter Report at Chapters 8 and 11.

Third Potter Report at paragraph 9.31-9.48, 9.66-9.75 and 9.77-9.101.

Project Yellow Report at page 48.

281 At the time of release of DSH's FY15 Financial Statements and the issue of the FY15 ASX Announcement & Results Briefing, and thereafter, DSH ought to have disclosed:

- (a) the correct financial position and performance and the correct pro forma financial performance;
- (b) that the level of rebates recorded in FY15 of \$126.3 million was materially in excess of budgeted rebates for FY15 of \$66.6 million;
- (c) the declining rate of budgeted first margin gross profit (i.e. before accounting for rebates) from 15.2% in FY14 to 12.9% in FY15;

- (d) the difficulty or impossibility for DSH to measure accurately the ageing and months' cover for each SKU and inventory generally due to the limitation in its inventory system and that there was no reliable data available regarding the ageing of inventory;
- (e) further, or in the alternative to paragraph (d) above, the increasing level of inventory months' cover: June 2014 being 5.6 months and June 2015 being 8.1 months;
- (f) the extent to which expenses had been capitalised in FY15;
- (g) the Rebate Maximisation Practice; and
- (h) the Rebate Maximisation Consequences.

Particulars

First Potter Report at Chapters 8 and 11.

Second Potter Report at Chapters 8 and 11

Third Potter Report at paragraphs 9.49-9.75 and 9.77-9.101.

Project Yellow Report at page 48.

282 At all material times, the matters pleaded above in paragraphs 279, 280 and 281 each and collectively constituted information which:

- (a) was not generally available within the meaning of s 674(2)(c)(i) of the CA;
- (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of shares in DSH;
- (c) for the purposes of s 677 of the CA, would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of shares in DSH;
- (d) DSH had within the meaning of s 674(2) of the CA; and
- (e) ought reasonably have come into the possession of an officer of DSH in the course of the performance of his or her duties as an officer of DSH.

Particulars

The plaintiffs repeat paragraphs 252, 255, 258, 259, 262, 265, 268, 269 and 272.

283 By reason of the matters pleaded above in paragraph 282, and pursuant to ASX Listing Rule 3.1, DSH became obliged to, but failed to, inform the ASX about each of the matters pleaded above in paragraphs 279, 280 and 281 immediately upon it becoming aware of those matters.

284 By reason of the matters pleaded above in paragraphs 279 to 283, DSH contravened s 674(2) of the CA.

D.4. MR ABBOUD'S CONTRAVENTIONS

285 Mr Abboud:

- (a) authorised the issue and publication of each of the FY14 Financial Statements and FY15 Financial Statements;
- (b) made each of the Directors' FY14 Express Representation, Directors' FY14 Implied Representation, Directors' FY15 Express Representation and Directors' FY15 Implied Representation;
- (c) caused each of the FY14 ASX Announcement & Results Briefing and FY15 ASX Announcement & Results Briefing to be issued and published; and
- (d) presented the results briefings forming part of the FY14 ASX Announcement & Results Briefing and FY15 ASX Announcement & Results,

286 By reason of his conduct pleaded in the preceding paragraph, Mr Abboud, on each of these occasions, engaged in conduct:

- (a) in relation to an offer of securities under a disclosure document, within the meaning of Chapter 6D of the CA;
- (b) in relation to a financial product or a financial service within the meaning of Part 7.1 of the CA;
- (c) in trade or commerce in relation to financial services within the meaning of s 12DA of the ASIC Act; and/or
- (d) in trade or commerce within the meaning of s 4 of the Australian Consumer Law.

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

287 Mr Abboud had knowledge of the contents of the FY14 Financial Statements and DSH's FY14 Express Representation therein.

Particulars

The FY14 Financial Statements were provided to the Board of DSH prior to its meeting on 18 August 2014: Board Papers for 18 August 2014.

The FY14 Financial Statements were presented, discussed, and adopted by the Board of DSH on 18 August 2014: Minutes of meeting of the Board of DSH dated 18 August 2014 at page 2.

The Directors' Declaration that accompanied the FY14 Financial Statements was signed by the Chairman of DSH on behalf of Mr Abboud.

288 Mr Abboud authorised the issue and publication of the FY14 Financial Statements and DSH's FY14 Express Representation therein.

Particulars

Minutes of meeting of the Board of DSH dated 18 August 2014.

The Directors' Declaration that accompanied the FY14 Financial Statements was signed by the Chairman of DSH on behalf of Mr Abboud.

289 Mr Abboud's conduct pleaded in the preceding paragraph was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law, because he authorised the issue and publication of the FY14 Financial Statements and DSH's FY14 Express Representation therein which were misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law for the reasons pleaded and particularised above in sections D.1.2 and D.1.3.

290 Further, in authorising the issue and publication of the FY14 Financial Statements and DSH's FY14 Express Representation therein, Mr Abboud made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Sections D.1.2 and D.1.3 are repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 254(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

The particulars at paragraph 254(c) are repeated.

291 When Mr Abboud authorised the issue and publication of the FY14 Financial Statements and DSH's FY14 Express Representation therein, he ought reasonably to have known that the statements, or dissemination of information, were false in a material particular or materially misleading for the reasons pleaded and particularised above in paragraph 255.

292 In the premises, Mr Abboud contravened s 1041E of the CA.

D.4.2. Directors' FY14 Implied Representation

293 Mr Abboud's making of the Directors' FY14 Implied Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because the opinion pleaded at paragraph 92 held by him:

- (a) was not held on a reasonable basis and was not the product of the application of reasonable care and skill by Mr Abboud;
- (b) was not a matter to which Mr Abboud had turned his mind, having informed himself as to the financial affairs of the company to the extent necessary to form an opinion as to the truth and fairness of the accounts;
- (c) was not formed after Mr Abboud had read and understood the financial statements and considered whether the financial statements were consistent with his knowledge of DSH's and the DSH Group's financial position and financial performance; or

- (d) was not formed after Mr Abboud had taken a diligent and intelligent interest in the information available to him or which he might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group.

Particulars

The particulars at paragraph 243 are repeated.

294 Further, when Mr Abboud made the Directors' FY14 Implied Representation, he made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Paragraph 239 is repeated.

- (b) were likely to induce, directly or indirectly the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 254(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on the ASX.

Particulars

The particulars at paragraph 254(c) are repeated.

295 Mr Abboud ought reasonably to have known that the Directors' FY14 Implied Representation was false in a material particular or materially misleading for the reasons pleaded and particularised in paragraphs 255 and 259, and because the Directors' FY14 Implied Representation was a representation of his own opinion.

296 In the premises, Mr Abboud contravened s 1041E of the CA.

D.4.3. FY14 ASX Announcement & Results Briefing

297 Mr Abboud had knowledge of the contents of the FY14 ASX Announcement & Results Briefing.

Particulars

The text of the FY14 ASX Announcement & Results Briefing was provided to the Board of DSH prior to its meeting on 18 August 2014: Board Papers for 18 August 2014.

- 298 Mr Abboud authorised the issue and publication of the FY14 ASX Announcement & Results Briefing.

Particulars

Minutes of meeting of the Board of DSH dated 18 August 2014.

- 299 Further, the 'FY2014 Results Briefing' which formed part of the FY14 ASX Announcement & Results Briefing was presented by Mr Abboud and Mr Potts.
- 300 Mr Abboud's conduct pleaded in the preceding two paragraphs was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because he authorised the issue and publication of the FY14 ASX Announcement & Results Briefing which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law for the reasons pleaded and particularised at paragraph 244 above.
- 301 Further, when Mr Abboud authorised the issue and publication, and presented the FY14 ASX Announcement & Results Briefing, Mr Abboud made statements, or disseminated information, which:
- (a) were false in a material particular or materially misleading;

Particulars

Paragraph 244 is repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 261(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

Positive statements made by Mr Abboud in the FY14 ASX Announcement & Results Briefing that were based on the FY14 Financial Statements and that did not disclose the matters pleaded in paragraph 244 were likely to have the effect of increasing, maintaining or stabilising the price of DSH Shares from what they would otherwise have been had the FY14 Financial Statements been prepared in compliance with the accounting standards and gave a true and fair view of the financial position and performance of DSH and the information pleaded at paragraph 244 been disclosed.

302 When Mr Abboud authorised the issue and publication, and presented the FY14 ASX Announcement & Results Briefing, Mr Abboud ought reasonably to have known that the statements, or dissemination of information, were false in a material particular or materially misleading because they reported the financial results from DSH's FY14 Financial Statements which DSH ought to have known were false in a material particular or materially misleading for the reasons pleaded and particularised in paragraph 255.

303 In the premises, Mr Abboud contravened s 1041E of the CA.

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

304 Mr Abboud had knowledge of the contents of the FY15 Financial Statements and DSH's FY15 Express Representation therein.

Particulars

The FY15 Financial Statements were provided to the Board of DSH prior to its meeting on 17 August 2015: Board Papers for 17 August 2015.

The FY15 Financial Statements were presented, discussed, and adopted by the Board of DSH on 17 August 2015: Minutes of meeting of the Board of DSH dated 17 August 2015 at pages 2-3.

The Directors' Declaration that accompanied the FY15 Financial Statements was signed by the Chairman of DSH on behalf of Mr Abboud.

305 Mr Abboud authorised the issue and publication of the FY15 Financial Statements and DSH's FY15 Express Representation therein.

Particulars

Minutes of meeting of the Board of DSH dated 17 August 2015 at pages 2-3.

The Directors' Declaration that accompanied the FY15 Financial Statements was signed by the Chairman of DSH on behalf of Mr Abboud.

- 306 Mr Abboud's conduct pleaded in the preceding paragraph was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because he authorised the issue and publication of the FY15 Financial Statements and DSH's FY15 Express Representation therein which were misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law for the reasons pleaded and particularised above in sections D.1.5 and D.1.6.
- 307 Further, in authorising the issue and publication of the FY15 Financial Statements and DSH's FY15 Express Representation therein, Mr Abboud made statements, or disseminated information, which:
- (a) were false in a material particular or materially misleading;

Particulars

Sections D.1.5 and D.1.6 are repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 254(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

The particulars at paragraph 264(c) are repeated.

- 308 When Mr Abboud authorised the issue and publication of the FY15 Financial Statements and DSH's FY15 Express Representation therein, he ought reasonably to have known that the

statements, or dissemination of information, were false in a material particular or materially misleading for the reasons pleaded above in paragraph 265.

309 In the premises, Mr Abboud contravened s 1041E of the CA.

D.4.5. Directors' FY15 Implied Representation

310 Mr Abboud's making of the Directors' FY15 Implied Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because the opinion pleaded at paragraph 105 held by him was not:

- (a) held on a reasonable basis and was not the product of the application of reasonable care and skill by Mr Abboud;
- (b) a matter to which Mr Abboud had turned his mind, having informed himself as to the financial affairs of the company to the extent necessary to form an opinion as to the truth and fairness of the accounts;
- (c) formed after Mr Abboud had read and understood the financial statements and considered whether the financial statements were consistent with his knowledge of DSH's and the DSH Group's financial position and financial performance; or
- (d) formed after Mr Abboud had taken a diligent and intelligent interest in the information available to him or which he might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group.

Particulars

The particulars at paragraph 269 are repeated.

311 Further, when Mr Abboud made the Directors' FY15 Implied Representation, he made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Paragraph 310 is repeated.

- (b) were likely to induce, directly or indirectly the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 254(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

The particulars at paragraph 264(c) are repeated.

- 312 Mr Abboud ought reasonably to have known that the Directors' FY15 Implied Representation was false in a material particular or materially misleading for the reasons pleaded and particularised in paragraphs 265 and 269, and because the Directors' FY15 Implied Representation was a representation of his own opinion.
- 313 In the premises, Mr Abboud contravened s 1041E of the CA.

D.4.6. FY15 ASX Announcement & Results Briefing

- 314 Mr Abboud had knowledge of the contents of the FY15 ASX Announcement & Results Briefing.

Particulars

The text of the FY15 ASX Announcement & Results Briefing was provided to the Board of DSH prior to its meeting on 17 August 2015: Board Papers for 17 August 2015.

- 315 Mr Abboud authorised the issue and publication of the FY15 ASX Announcement & Results Briefing.

Particulars

Minutes of meeting of the Board of DSH dated 17 August 2015 at pages 2-3.

- 316 Further, the 'FY2015 Results Briefing' which formed part of the FY15 ASX Announcement & Results Briefing was presented by Mr Abboud and Mr Potts.
- 317 Mr Abboud's conduct pleaded in the preceding two paragraphs was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because he authorised the issue and publication of the FY15 ASX Announcement & Results Briefing which was misleading or deceptive, or

likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law for the reasons pleaded and particularised at paragraph 250 above.

318 Further, when Mr Abboud authorised the issue and publication, and presented the FY15 ASX Announcement & Results Briefing, Mr Abboud made statements, or disseminated information, which:

(a) were false in a material particular or materially misleading;

Particulars

Paragraph 250 is repeated.

(b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 261(b) are repeated.

(c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

Positive statements made by Mr Abboud in the FY15 ASX Announcement & Results Briefing that were based on the FY15 Financial Statements and that did not disclose the matters pleaded in paragraph 250 were likely to have the effect of increasing, maintaining or stabilising the price of DSH Shares from what they would otherwise have been had the FY15 Financial Statements been prepared in compliance with the accounting standards and gave a true and fair view of the financial position and performance of DSH and the information pleaded at paragraph 250 been disclosed.

319 When Mr Abboud authorised the issue and publication, and presented the FY15 ASX Announcement & Results Briefing, Mr Abboud ought reasonably to have known that the statements, or dissemination of information, were false in a material particular or materially misleading because it reported the financial results from DSH's FY15 Financial Statements which DSH ought to have known were false in a material particular or materially misleading for the reasons pleaded and particularised in paragraphs 250 and 265.

320 In the premises, Mr Abboud contravened s 1041E of the CA.

D.5. MR POTTS' CONTRAVENTIONS

321 Mr Potts:

- (a) authorised the issue and publication of each of the FY14 Financial Statements and FY15 Financial Statements;
- (b) made each of the Directors' FY14 Express Representation, Directors' FY14 Implied Representation, Directors' FY15 Express Representation and Directors' FY15 Implied Representation;
- (c) caused each of the FY14 ASX Announcement & Results Briefing and FY15 ASX Announcement & Results Briefing to be issued and published; and
- (d) presented the Results Briefings forming part of the FY14 ASX Announcement & Results Briefing and FY15 ASX Announcement & Results.

322 By reason of his conduct pleaded in the preceding paragraph, Mr Potts, on each of those occasions, engaged in conduct:

- (a) in relation to an offer of securities under a disclosure document, within the meaning of Chapter 6D of the CA;
- (b) in relation to a financial product or a financial service within the meaning of Part 7.1 of the CA;
- (c) in trade or commerce in relation to financial services within the meaning of s 12DA of the ASIC Act; and/or
- (d) in trade or commerce within the meaning of s 4 of the Australian Consumer Law.

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

323 Mr Potts had knowledge of the contents of the FY14 Financial Statements and DSH's FY14 Express Representation therein.

Particulars

The FY14 Financial Statements were provided to the Board of DSH prior to its meeting on 18 August 2014: Board Papers for 18 August 2014.

The FY14 Financial Statements were presented, discussed, and adopted by the Board of DSH on 18 August 2014: Minutes of meeting of the Board of DSH dated 18 August 2014.

The Directors' Declaration that accompanied the FY14 Financial Statements was signed by the Chairman of DSH on behalf of Mr Potts.

- 324 Mr Potts authorised the issue and publication of the FY14 Financial Statements and DSH's FY14 Express Representation therein.

Particulars

Minutes of meeting of the Board of DSH dated 18 August 2014.

The Directors' Declaration that accompanied the FY14 Financial Statements was signed by the Chairman of DSH on behalf of Mr Potts.

- 325 Mr Potts' conduct pleaded in the preceding paragraph was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because he authorised the issue and publication of the FY14 Financial Statements and DSH's FY14 Express Representation therein which were misleading or deceptive or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law for the reasons pleaded and particularised above in sections D.1.2 and D.1.3.
- 326 Further, in authorising the issue and publication of the FY14 Financial Statements and DSH's FY14 Express Representation therein, Mr Potts made statements, or disseminated information, which:
- (a) were false in a material particular or materially misleading;

Particulars

Sections D.1.2 and D.1.3 are repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 254(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

The particulars at paragraph 254(c) are repeated.

- 327 When Mr Potts authorised the issue and publication of the FY14 Financial Statements and DSH's FY14 Express Representation therein, he ought reasonably to have known that the statements, or dissemination of information, were false in a material particular or materially misleading for the reasons pleaded and particularised above in paragraph 255.
- 328 In the premises, Mr Potts contravened s 1041E of the CA.

D.5.2. Directors' FY14 Implied Representation

- 329 Mr Potts' making of the Directors' FY14 Implied Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because the opinion pleaded at paragraph 92 held by him:
- (a) was not held on a reasonable basis and was not the product of the application of reasonable care and skill by Mr Potts;
 - (b) was not a matter to which Mr Potts had turned his mind, having informed himself as to the financial affairs of the company to the extent necessary to form an opinion as to the truth and fairness of the accounts;
 - (c) was not formed after Mr Potts had read and understood the financial statements and considered whether the financial statements were consistent with his knowledge of DSH's and the DSH Group's financial position and financial performance; or
 - (d) was not formed after Mr Potts had taken a diligent and intelligent interest in the information available to him or which he might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group.

Particulars

The particulars at paragraph 243 are repeated.

330 Further, when Mr Potts made the Directors' FY14 Implied Representation, he made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Paragraph 239 is repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 254(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

The particulars at paragraph 254(c) are repeated.

331 Mr Potts ought reasonably to have known that the Directors' FY14 Implied Representation was false in a material particular or materially misleading for the reasons pleaded and particularised in paragraphs 255 and 259, and because the Directors' FY14 Implied Representation was a representation of his own opinion.

332 In the premises, Mr Potts contravened s 1041E of the CA.

D.5.3. FY14 ASX Announcement & Results Briefing

333 Mr Potts had knowledge of the contents of the FY14 ASX Announcement & Results Briefing.

Particulars

The text of the FY14 ASX Announcement & Results Briefing was provided to the Board of DSH prior to its meeting on 18 August 2014: Board Papers for 18 August 2014.

334 Mr Potts authorised the issue and publication of the FY14 ASX Announcement & Results Briefing.

Particulars

Minutes of meeting of the Board of DSH dated 18 August 2014.

- 335 Further, the 'FY2014 Results Briefing' which formed part of the FY14 ASX Announcement & Results Briefing was presented by Mr Abboud and Mr Potts.
- 336 Mr Potts' conduct pleaded in the preceding two paragraphs was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because he authorised the issue and publication of the FY14 ASX Announcement & Results Briefing which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law for the reasons pleaded and particularised in paragraph 244 above.
- 337 Further, when Mr Potts authorised the issue and publication, and presented the FY14 ASX Announcement & Results Briefing, Mr Potts made statements, or disseminated information, which:
- (a) were false in a material particular or materially misleading;

Particulars

Paragraph 244 above is repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 261(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

Positive statements made by Mr Potts in the FY14 ASX Announcement & Results Briefing that were based on the FY14 Financial Statements and that did not disclose the matters pleaded in paragraph 244 were likely to have the effect of increasing, maintaining or stabilising the price of DSH Shares from what they

would otherwise have been had the FY14 Financial Statements been prepared in compliance with the accounting standards and gave a true and fair view of the financial position and performance of DSH and the information pleaded at paragraph 244 been disclosed.

338 When Mr Potts authorised the issue and publication, and presented the FY14 ASX Announcement & Results Briefing, Mr Potts ought reasonably to have known that the statements, or dissemination of information, were false in a material particular or materially misleading because it reported the financial results from DSH's FY14 Financial Statements which DSH ought to have known were false in a material particular or materially misleading for the reasons pleaded and particularised in paragraph 255.

339 In the premises, Mr Potts contravened s 1041E of the CA.

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

340 Mr Potts had knowledge of the contents of the FY15 Financial Statements and DSH's FY15 Express Representation therein.

Particulars

The FY15 Financial Statements were provided to the Board of DSH prior to its meeting on 17 August 2015: Board Papers for 17 August 2015.

The FY15 Financial Statements were presented, discussed, and adopted by the Board of DSH on 17 August 2015: Minutes of meeting of the Board of DSH dated 17 August 2015 at pages 2-3.

The Directors' Declaration that accompanied the FY15 Financial Statements was signed by the Chairman of DSH on behalf of Mr Potts.

341 Mr Potts authorised the issue and publication of the FY15 Financial Statements and DSH's FY15 Express Representation therein.

Particulars

Minutes of meeting of the Board of DSH dated 17 August 2015 at pages 2-3.

The Directors' Declaration that accompanied the FY15 Financial Statements was signed by the Chairman of DSH on behalf of Mr Potts.

342 Mr Potts' conduct pleaded in the preceding paragraph was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because he authorised the issue and publication of the FY15 Financial Statements and DSH's FY15 Express Representation therein which were misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law for the reasons pleaded and particularised above in sections D.1.5 and D.1.6.

343 Further, in authorising the issue and publication of the FY15 Financial Statements and DSH's FY15 Express Representation therein, Mr Potts made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Sections D.1.5 and D.1.6 are repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 254(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

The particulars at paragraph 264(c) are repeated.

344 When Mr Potts authorised the issue and publication of the FY15 Financial Statements and DSH's FY15 Express Representation therein, he ought reasonably to have known that the statements, or dissemination of information, were false in a material particular or materially misleading for the reasons pleaded above in paragraph 265.

345 In the premises, Mr Potts contravened s 1041E of the CA.

D.5.5. Directors' FY15 Implied Representation

346 Mr Potts' making of the Directors' FY15 Implied Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because the opinion pleaded at paragraph 105 held by him was not:

- (a) held on a reasonable basis and was not the product of the application of reasonable care and skill by Mr Potts;
- (b) a matter to which Mr Potts had turned his mind, having informed himself as to the financial affairs of the company to the extent necessary to form an opinion as to the truth and fairness of the accounts;
- (c) formed after Mr Potts had read and understood the financial statements and considered whether the financial statements were consistent with his knowledge of DSH's and DSH the Group's financial position and financial performance; or
- (d) formed after Mr Potts had taken a diligent and intelligent interest in the information available to him or which he might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group.

Particulars

The particulars at paragraph 269 are repeated.

347 Further, when Mr Potts made the Directors' FY15 Implied Representation, he made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Paragraph 346 is repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 254(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

The particulars at paragraph 264(c) are repeated.

- 348 Mr Potts ought reasonably to have known that the Directors' FY15 Implied Representation was false in a material particular or materially misleading for the reasons pleaded and particularised in paragraphs 265 and 269, and because the Directors' FY15 Implied Representation was a representation of his own opinion.
- 349 In the premises, Mr Potts contravened s 1041E of the CA.

D.5.6. FY15 ASX Announcement & Results Briefing

- 350 Mr Potts had knowledge of the contents of the FY15 ASX Announcement & Results Briefing.

Particulars

The text of the FY15 ASX Announcement & Results Briefing was provided to the Board of DSH prior to its meeting on 17 August 2015: Board Papers for 17 August 2015.

- 351 Mr Potts authorised the issue and publication of the FY15 ASX Announcement & Results Briefing.

Particulars

Minutes of meeting of the Board of DSH dated 17 August 2015 at pages 2-3.

- 352 Further, the 'FY2015 Results Briefing' which formed part of the FY15 ASX Announcement & Results Briefing was presented by Mr Abboud and Mr Potts.
- 353 Mr Potts' conduct pleaded in the preceding two paragraphs was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law because he authorised the issue and publication of the FY15 ASX Announcement & Results Briefing which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law for the reasons pleaded and particularised in paragraph 250 above.

354 Further, when Mr Potts authorised the issue and publication, and presented the FY15 ASX Announcement & Results Briefing, Mr Potts made statements, or disseminated information, which:

- (a) were false in a material particular or materially misleading;

Particulars

Paragraph 250 above is repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH; and

Particulars

The particulars at paragraph 261(b) are repeated.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH Shares on ASX.

Particulars

Positive statements made by Mr Potts in the FY15 ASX Announcement & Results Briefing that were based on the FY15 Financial Statements and that did not disclose the matters pleaded in paragraph 250 were likely to have the effect of increasing, maintaining or stabilising the price of DSH Shares from what they would otherwise have been had the FY15 Financial Statements been prepared in compliance with the accounting standards and gave a true and fair view of the financial position and performance of DSH and the information pleaded at paragraph 250 been disclosed.

355 When Mr Potts authorised the issue and publication, and presented the FY15 ASX Announcement & Results Briefing, Mr Potts ought reasonably to have known that the statements, or dissemination of information, were false in a material particular or materially misleading because it reported the financial results from DSH's FY15 Financial Statements which DSH ought to have known were false in a material particular or materially misleading for the reasons pleaded and particularised in paragraphs 250 and 265.

356 In the premises, Mr Potts contravened s 1041E of the CA.

E. CAUSATION, LOSS AND DAMAGE

357 The plaintiffs and Group Members acquired interests in DSH Shares.

Particulars

With respect to the plaintiffs, paragraphs 38 and 39 are repeated.

358 The plaintiffs and Group Members acquired their interests in DSH Shares in a market:

- (a) regulated by ss 728 and 729 of the CA;
- (b) regulated by the ASX Listing Rules and s 674 of the CA;
- (c) regulated by ss 1041E and 1041H of the CA;
- (d) where the price or value of DSH Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and ss 674, 728, 1041E and 1041H of the CA; and
- (e) where matters pleaded and particularised in sections C.2 to C.9 had not been disclosed, each of which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of DSH Shares.

359 But for the conduct pleaded in sections B.1, C.2, C.4, C.5 and C.6 and the contraventions pleaded above in sections D.1.1 and D.2.1:

- (a) the Prospectus would not have been issued;
- (b) DSH would not have made the offer to subscribe for shares to the public;
- (c) the DSH IPO would not have proceeded and DSH would not have been listed or quoted on ASX; and
- (d) in the premises, the plaintiffs and Group Members would not have acquired interests in DSH Shares.

Particulars

Report of Rowan Johnston dated 30 October 2018.

360 Further, or in the alternative, had the shares in DSH been listed and quoted:

- (a) the contraventions of the CA (or any one or a combination of them) pleaded above caused the shares acquired on the DSH IPO to be acquired at a price substantially greater than:
 - (i) their true value; or
 - (ii) the market price that would have prevailed but for the pleaded contraventions; and
- (b) from the moment of quotation, the contraventions of the CA (or any one or a combination of them) pleaded above caused the market price of the DSH Shares traded on ASX to be substantially greater than:
 - (iii) their true value; or
 - (iv) the market price that would have prevailed but for the pleaded contraventions.

Particulars

Report of Frank Torchio, dated 31 October 2018.

Report of Michael Potter, dated 29 October 2018.

- 361 Further, or in the alternative, after 19 February 2014, the contraventions of the CA (or any one or a combination of them) pleaded above caused the market price of the DSH Shares traded on ASX to be substantially greater than:
- (a) their true value; or
 - (b) the market price that would have prevailed but for the pleaded contraventions.

Particulars

Report of Frank Torchio, dated 31 October 2018.

Report of Michael Potter, dated 29 October 2018.

- 362 The plaintiffs and Group Members would not have purchased DSH Shares at the prevailing market price at the time of purchase if they had been aware of the pleaded contraventions of the CA.

Particulars

Further particulars will be supplied following procedural directions as to the order of determination of the issues in these proceedings

363 In the alternative, in the absence of the contraventions of the CA (or any one or a combination of them) pleaded above, the plaintiffs and Group Members would not have suffered loss by reason of their purchase of DSH Shares at a price substantially greater than:

- (a) their true value; or
- (b) the market price that would have prevailed but for the pleaded contraventions.

Particulars

Report of Frank Torchio, dated 31 October 2018.

Report of Michael Potter, dated 29 October 2018.

364 The misleading statements and information conveyed through the Prospectus and each of the FY14 Financial Statements and FY15 Financial Statements were not corrected by the publication by DSH of its results for the half year 2014 or the half year 2015.

365 The plaintiffs and Group Members have suffered loss and damage by, or which resulted from, the pleaded contraventions (or any one or combination of the contraventions).

Particulars

The loss suffered by the plaintiffs and Group Members is:

- *to be determined at the trial of these proceedings on behalf of the plaintiffs and all Group Members on a no-transaction basis, for the reasons pleaded at paragraph 359 above, on the basis that DSH would not have been listed on the ASX and therefore none of the plaintiffs or Group Members would ever have acquired an interest in DSH Shares in which case the plaintiffs and Group Members' damages should be determined as the difference between the price at which they acquired their interest in DSH Shares plus the amount paid for any brokerage or transaction costs and any value obtained from the sale of that interest, taking into account any benefit received via dividends; or*

- *on the basis that the contraventions beginning with the publication of the Prospectus were continuing and caused or contributed to the share price of DSH to be artificially inflated, in which case the plaintiffs' and Group Members' damages should be determined as:*
 - *the difference between the price at which they acquired their interest in DSH Shares and the true value of that interest (the difference will be proved in the evidence), making allowance for any sales of interests in DSH Shares; or*
 - *the difference between the price at which they acquired their interest in DSH Shares and the market price that would have prevailed but for the pleaded contraventions (that difference will be proved in the evidence), making allowance for any sales of interests in DSH Shares.*

366 The plaintiffs and Group Members claim the relief set out in this statement of claim.

367 [Not used / moved]

368 [Not used / moved]

369 [Not used / moved]

370 [Not used / moved]

371 [Not used / moved]

372 [Not used / moved]

373 [Not used / moved]

374 [Not used / moved]

375 [Not used / moved]

F. CLAIM AGAINST DELOITTE

F.1. BACKGROUND

376 On or about 3 December 2012, Deloitte was retained by DSSH (then known as Dick Smith Holdings Pty Limited), to audit DSSH's financial report for the 10-month period ended 30 June 2013 (the **FY13 Retainer**).

Particulars

The FY13 Retainer was in writing and was comprised of:

- (a) *the letter of engagement dated 3 December 2012 from Deloitte, and signed by Mr White on behalf of Deloitte, to the Board of Directors of DSSH, care of Tim Fawaz (the **FY13 Engagement Letter**) (DEL.002.001.0143); and*
- (b) *Deloitte's Standard Terms and Conditions.*

377 It was a term of the FY13 Retainer that, in performing the audit of the FY13 Financial Statements (the **FY13 Audit**), Deloitte would:

- (a) conduct its audit pursuant to the CA;
- (b) conduct its audit in accordance with the applicable auditing standards (the **Auditing Standards**);
- (c) perform procedures to obtain audit evidence about the amounts and disclosures in DSSH's financial report;
- (d) evaluate the appropriateness of DSSH's accounting policies;
- (e) evaluate the reasonableness of accounting estimates made by DSSH's management;
- (f) evaluate the overall presentation of DSSH's financial report;
- (g) communicate with DSSH in writing concerning any significant deficiencies in internal control relevant to the audit of DSSH's financial report that Deloitte identified during the audit;
- (h) express an opinion on DSSH's financial report and report to the members of DSSH in the format outlined in the example Independent Auditor's Report as per Appendix A to the FY13 Engagement Letter.

Particulars

FY13 Engagement Letter, pages 1 and 2.

378 Mr White was the lead audit partner for the FY13 Audit.

Particulars

FY13 Engagement Letter was signed by Mr White at page 4. Working paper 2302 "Dick Smith – Board report template RELEASE" (FY13 Board Report) (DEL.002.001.1211) was signed by Mr White as "Lead Audit Partner" at page 2.

379 On or about 13 December 2013, Deloitte was retained by DSH to audit the FY14 Financial Statements (the **FY14 Retainer**).

Particulars

The FY14 Retainer was in writing and was comprised of:

- (a) the letter of engagement dated 13 December 2013 from Deloitte and signed by Mr White on behalf of Deloitte to Bill Wavish of DSH (the **FY14 Engagement Letter**) (DSE.300.001.5768); and*
- (b) Deloitte's Standard Terms and Conditions.*

380 It was a term of the FY14 Retainer that, in performing the audit of the FY14 Financial Statements (the **FY14 Audit**), Deloitte would:

- (a) conduct its audit pursuant to the CA;
- (b) conduct its audit in accordance with the Auditing Standards;
- (c) perform procedures to obtain audit evidence about the amounts and disclosures in the FY14 Financial Statements;
- (d) evaluate the appropriateness of DSH's accounting policies;
- (e) evaluate the reasonableness of accounting estimates made by DSH's management;
- (f) evaluate the overall presentation of the FY14 Financial Statements;
- (g) communicate with DSH in writing concerning any significant deficiencies in internal control relevant to the audit of the FY14 Financial Statements that Deloitte identified during the audit;

- (h) express an opinion on the FY14 Financial Statements and report to the members of DSH in the format outlined in the example Independent Auditor's Report as per Appendix A to the FY14 Engagement Letter.

Particulars

FY14 Engagement Letter, page 2.

- 381 Mr White was the lead audit partner for the FY14 Audit.

Particulars

FY14 Engagement Letter was signed by Mr White at page 5. Report by Deloitte entitled "Report to the Finance and Audit Committee for the year ended 29 June 2014" and dated 6 August 2014 (FY14 FAC Report) (DSE.003.047.7218) was signed by Mr White as "Lead Audit Partner" at page 2.

- 382 On or about 13 November 2014, Deloitte was retained by DSH to audit the FY15 Financial Statements (the **FY15 Retainer**).

Particulars

The FY15 Retainer was in writing and was comprised of:

- (a) *the letter of engagement dated 13 November 2014 from Deloitte and signed by Mr White on behalf of Deloitte to Bill Wavish of DSH (the **FY15 Engagement Letter**) (DSE.002.011.1055); and*
- (b) *Deloitte's Standard Terms and Conditions.*

- 383 It was a term of the FY15 Retainer that, in performing the audit of the FY15 Financial Statements (**FY15 Audit**), Deloitte would:

- (a) conduct its audit pursuant to the CA;
- (b) conduct its audit in accordance with the Auditing Standards;
- (c) perform procedures to obtain audit evidence about the amounts and disclosures in the FY15 Financial Statements;
- (d) evaluate the appropriateness of DSH's accounting policies;
- (e) evaluate the reasonableness of accounting estimates made by DSH's management;
- (f) evaluate the overall presentation of the FY15 Financial Statements;

- (g) communicate with DSH in writing concerning any significant deficiencies in internal control relevant to the audit of the FY15 Financial Statements that Deloitte identified during the audit;
- (h) express an opinion on the FY15 Financial Statements and report to the members of DSH in the format outlined in the example Independent Auditor's Report as per Appendix A to the FY15 Engagement Letter.

Particulars

FY15 Engagement Letter, page 2.

384 Mr White was the lead audit partner for the FY15 Audit.

Particulars

FY15 Engagement Letter was signed by Mr White at page 5. Report by Deloitte entitled "Report to the Finance and Audit Committee for the year ended 28 June 2015" and dated 6 August 2015 (FY15 FAC Report) (DSE.003.035.7799) was signed by Mr White as "Lead Audit Partner" on page 2.

385 It was a term of each of the FY13 Retainer, the FY14 Retainer and the FY15 Retainer that Deloitte would exercise reasonable skill, care and diligence in the performance of services as auditor, including in performing (respectively) the FY13 Audit, the FY14 Audit and the FY15 Audit.

Particulars

Clause 3.1 of the Deloitte's Standard Terms and Conditions (DSE.300.001.2024).

386 DSSH (in FY13) and DSH (in FY14 and FY15) appointed Deloitte as its auditor for the purposes of CA, Chapter 2M, Division 6 and in compliance with its obligations under s 301 of the CA.

F.2. ACCOUNTING AND AUDITING FRAMEWORK

387 Deloitte was required by s 307A of the CA to conduct the FY13 Audit, the FY14 Audit and the FY15 Audit in accordance with the Auditing Standards in force under s 336 of the CA, including:

- (a) Auditing Standard ASA 200 *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards (ASA 200)*;

- (b) Auditing Standard ASA 210 *Agreeing the Terms of Audit Engagements* (**ASA 210**);
- (c) Auditing Standard ASA 240 *The Auditor's Responsibilities Relating to Fraud in an Audit of a Financial Report* (**ASA 240**);
- (d) Auditing Standard ASA 260 *Communication with Those Charged with Governance* (**ASA 260**);
- (e) Auditing Standard ASA 315 *Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment* (**ASA 315**);
- (f) Auditing Standard ASA 320 *Materiality in Planning and Performing an Audit* (**ASA 320**);
- (g) Auditing Standard ASA 330 *The Auditor's Responses to Assessed Risks* (**ASA 330**);
- (h) Auditing Standard ASA 450 *Evaluation of Misstatements Identified during the Audit* (**ASA 450**);
- (i) Auditing Standard ASA 500 *Audit Evidence* (**ASA 500**);
- (j) Auditing Standard ASA 530 *Audit Sampling* (**ASA 530**);
- (k) Auditing Standard 540 *Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures* (**ASA 540**);
- (l) Auditing Standard ASA 700 *Forming an Opinion and Reporting on a Financial Report* (**ASA 700**); and
- (m) Auditing Standard ASA 705 *Modifications to the Opinion in the Independent Auditor's Report* (**ASA 705**).

388 In conducting the FY13 Audit, the FY14 Audit and the FY15 Audit, Deloitte was required by s 307 of the CA to form an opinion about, inter alia:

- (a) whether the full year financial statements were in accordance with the CA, including s 296 (compliance with accounting standards) and s 297 (true and fair view);
- (b) whether Deloitte had been given all information, explanation and assistance necessary for the conduct of the relevant audit; and
- (c) whether DSH had kept financial records sufficient to enable the full year financial statements to be prepared and audited.

389 In conducting the FY13 Audit, the FY14 Audit and the FY15 Audit, pursuant to s 308 of the CA:

- (a) Deloitte was required to report to the members of DSSH and DSH on whether Deloitte was of the opinion that the full year financial statements were in accordance with the CA, including s 296 (compliance with accounting standards) and s 297 (true and fair view) and, if not of such opinion, to say why;
- (b) if Deloitte was of the opinion that the full year financial statements did not comply with an accounting standard, Deloitte's report was required, to the extent practicable to do so, to quantify the effect that non-compliance had on the full year financial statements, and if not practicable to quantify the effect fully, to say why; and
- (c) Deloitte was required in its report to describe any defect or irregularity in the full year financial statements, and any deficiency, failure or shortcoming in respect of the matters referred to above.

390 In conducting the FY13 Audit, the FY14 Audit and the FY15 Audit, Pursuant to s 310 of the CA Deloitte:

- (a) had a right of access at all reasonable times to the books of DSSH and DSH; and
- (b) could require any officer of DSSH and DSH to give Deloitte information, explanations or other assistance for the purposes of the FY13 Audit, the FY14 Audit or the FY15 Audit, so long as such request was reasonable.

391 Mr White was obliged, pursuant to s 307A(2) of the CA, to ensure that the audit for each of FY13, FY14 and FY15 was conducted in accordance with the auditing standards.

F.3. AUDITING STANDARDS

F.3.1. ASA 200

392 In complying with ASA 200, Deloitte was required:

- (a) as the basis for Deloitte's opinion, to obtain reasonable assurance about whether the financial report as a whole was free from material misstatement, whether due to fraud or error;

Particulars

ASA 200, paragraph 5.

- (b) in obtaining reasonable assurance, to obtain a high level of assurance by obtaining sufficient appropriate audit evidence to reduce audit risk (that is, the risk that Deloitte express an inappropriate opinion when the financial report was materially misstated) to an acceptably low level;

Particulars

ASA 200, paragraph 5.

- (c) to exercise professional judgment and maintain professional scepticism, being an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of the audit evidence, throughout the planning and performance of the audits;

Particulars

ASA 200, paragraphs 7 and 13(l).

- (d) to form an opinion on the financial report based on conclusions drawn from the audit evidence obtained, with the form of opinion expressed depending upon the applicable financial reporting framework and any applicable law or regulation;

Particulars

ASA 200, paragraphs 7 and 8.

- (e) to have the overall objectives of obtaining reasonable assurance about whether the financial report as a whole was free from material misstatement, whether due to fraud or error, thereby enabling Deloitte to express an opinion on whether the financial report was prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the financial report, and communicate as required by the Auditing Standards, in accordance with Deloitte's findings;

Particulars

ASA 200, paragraph 11.

- (f) to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated;

Particulars

ASA 200, paragraphs 15, A18-A22.

- (g) in obtaining reasonable assurance, to obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable Deloitte to draw reasonable conclusions on which to base Deloitte's opinion; and

Particulars

ASA 200, paragraph 17.

- (h) to comply with all Auditing Standards relevant to the audit.

Particulars

ASA 200, paragraphs 18-20.

F.3.2. ASA 210

393 In complying with ASA 210, Deloitte was required to determine whether the financial reporting framework to be applied in the preparation of the financial report was acceptable.

Particulars

ASA 210, paragraph 6.

F.3.3. ASA 240

394 In complying with ASA 240, irrespective of Deloitte's assessment of the risks of management override of controls, Deloitte was required to test the appropriateness of journal entries recorded in the general ledger, and in designing and performing audit procedures for such tests to:

- (a) make enquiries of individuals involved in the financial reporting process about inappropriate or unusual activity relating to the processing of journal entries and other adjustments;
- (b) select journal entries and other adjustments made at the end of a reporting period; and
- (c) consider the need to test journal entries and other adjustments throughout the period.

Particulars

ASA 240, paragraph 32, A41-A44.

F.3.4. ASA 260

395 In complying with ASA 260, Deloitte:

- (a) was required to communicate with those charged with governance Deloitte's views about significant qualitative aspects of DSSH's and DSH's accounting practices, significant difficulties, if any, encountered during the audit, significant matters, if any, arising from the audit that were discussed or subject to correspondence with management and written representations requested by Deloitte, and other matters, if any, arising from the audit that, in Deloitte's professional judgment, were significant to the oversight of the financial reporting process;

Particulars

ASA 260, paragraph 16.

- (b) may have discussed matters with DSSH and DSH management in the ordinary course of the audits, including matters required by ASA 260 to be communicated with those charged with governance; and

Particulars

ASA 260, paragraph A32.

- (c) before communicating matters with those charged with governance, may have discussed them with management of DSSH and DSH, unless that was inappropriate; with such initial discussions clarifying facts and issues and giving management an opportunity to provide further information and explanations.

Particulars

ASA 260, paragraph A33.

396 At all relevant times, ASA 260 provided that, if the auditor encounters significant difficulties, including but not limited to the matters at ASA 260 paragraph A18, in some circumstances such difficulties may constitute a scope limitation that leads to a modification of the auditor's opinion.

Particulars

ASA 260, paragraph A18.

F.3.5. ASA 315

397 In complying with ASA 315, Deloitte was required to:

- (a) perform risk assessment procedures to provide a basis for the identification and assessment of risks of material misstatement at the financial report and assertion levels;

Particulars

ASA 315, paragraph 5.

- (b) include, as part of the risk assessment procedures, enquiries of management and of others within DSSH and DSH who in Deloitte's judgment may have information that was likely to assist in identifying risks of material misstatement due to fraud or error, analytical procedures, and observation and inspection;

Particulars

ASA 315, paragraph 6; paragraphs A6-A11 (FY13 Audit and FY14 Audit); paragraphs A6- A18 (FY15 Audit).

- (c) where Deloitte intended to use information obtained from Deloitte's previous experience with DSSH and DSH, determine whether changes have occurred since the previous audit that may affect its relevance to the current audit;

Particulars

ASA 315, paragraph 9.

- (d) obtain an understanding of DSSH's and DSH's selection and application of accounting policies, including the reasons for changes thereto, and evaluate whether DSSH's and DSH's accounting policies were appropriate for its business and consistent with the applicable financial reporting framework and accounting policies used in the relevant industry;

Particulars

ASA 315, paragraph 11(c).

- (e) obtain an understanding of internal controls relevant to the audit, and evaluate the design of those controls and determine whether they had been implemented, by performing procedures in addition to enquiry of DSSH's and DSH's personnel; and

Particulars

ASA 315, paragraphs 12-14, 18, and 20-22.

- (f) identify and assess the risks of material misstatement at the financial report level and the assertion level for classes of transactions, account balances and disclosures, in order to provide a basis for designing and performing further audit procedures.

Particulars

ASA 315, paragraphs 25-26.

- 398 In complying with ASA 315, when performing the FY14 and FY15 Audit, Deloitte was required to consider whether information obtained was relevant to identifying risks of material misstatement.

Particulars

ASA 315, paragraph 8.

The fourth defendant was the engagement partner for the review of DSH's half-year financial report for the 26 weeks ended 29 December 2013.

F.3.6. ASA 320

- 399 At all material times, ASA 320 provided that:

- (a) the auditor's determination of materiality is a matter of professional judgment and is affected by the auditor's perception of the financial information needs of users of the financial report, and it was reasonable for the auditor to assume that users make reasonable economic decisions on the basis of the information in the financial report;
- (b) performance materiality means the amount or amounts set by the auditor at less than materiality for the financial report as a whole to reduce to an appropriately low level the probability that the aggregate of uncorrected and undetected misstatements exceeds materiality for the financial report as a whole; and

- (c) if applicable, performance materiality also refers to the amount or amounts set by the auditor at less than the materiality level or levels for particular classes of transactions, account balances or disclosures.

Particulars

ASA 320, paragraphs 4 and 9.

400 In complying with ASA 320, Deloitte was required:

- (a) to have the objective of applying the concept of materiality appropriately in planning and performing the audit;

Particulars

ASA 320, paragraph 8.

- (b) when establishing the overall audit strategy, to determine materiality for the financial report as a whole;

Particulars

ASA 320, paragraph 10.

- (c) if applying a benchmark as a starting point in determining materiality for the financial report as a whole, to consider the nature of DSSH and DSH, where DSSH and DSH were in their life cycles and the industry and economic environment in which DSSH and DSH operated;

Particulars

ASA 320, paragraph A3.

- (d) when applying a percentage to a chosen benchmark, take account of the relationship between the percentage and the chosen benchmark, such that a percentage applied to profit before tax from continuing operations will normally be higher than a percentage applied to total revenue;

Particulars

ASA 320, paragraph A7.

- (e) if, in the specific circumstances of DSSH and DSH, there were one or more particular classes of transactions, account balances or disclosures for which misstatements of lesser amounts than materiality for the financial report as a whole could reasonably be expected to influence the economic decisions of users taken on the basis of the financial report, to also determine the materiality level or levels to be applied to those particular classes of transactions, account balances or disclosures;

Particulars

ASA 320, paragraph 10.

- (f) to determine performance materiality for purposes of assessing the risks of material misstatement and determining the nature, timing and extent of further audit procedures;

Particulars

ASA 320, paragraph 11.

- (g) to revise materiality for the financial report as a whole (and, if applicable, the materiality level or levels for particular classes of transactions, account balances or disclosures) in the event of becoming aware of information during the audit that would have caused Deloitte to have determined a different amount (or amounts) initially; and

Particulars

ASA 320, paragraph 12.

- (h) if Deloitte concluded that a lower materiality for the financial report as a whole (and, if applicable, materiality level or levels for particular classes of transactions, account balances or disclosures) than that initially determined was appropriate, to determine whether it was necessary to revise performance materiality, and whether the nature, timing and extent of the further audit procedures remained appropriate.

Particulars

ASA 320, paragraph 13.

F.3.7. ASA 330

401 In complying with ASA 330, Deloitte was required to:

- (a) have the objective of obtaining sufficient appropriate audit evidence regarding the assessed risks of material misstatement, through designing and implementing appropriate responses to those risks;

Particulars

ASA 330, paragraph 3.

- (b) design and implement overall responses to address the assessed risks of material misstatement at the financial report level, and design and perform further audit procedures whose nature, timing and extent were based on and were responsive to the assessed risks of material misstatement at the assertion level;

Particulars

ASA 330, paragraphs 5-7, A1, A4, A19.

- (c) design and perform tests of controls so as to obtain sufficient appropriate audit evidence regarding the operating effectiveness of such controls if Deloitte's assessment of risks of material misstatement at the assertion level included an expectation that the controls were operating effectively (that is, Deloitte intended to rely on the operating effectiveness of controls in determining the nature, timing and extent of substantive procedures) or substantive procedures alone could not provide sufficient appropriate audit evidence at the assertion level;

Particulars

ASA 330, paragraphs 8-10, 16 and 17.

- (d) design and perform substantive procedures for each material class of transactions, account balance and disclosure, irrespective of the assessed risks of material misstatement;

Particulars

ASA 330, paragraph 18.

- (e) consider whether external confirmation procedures were to be performed as substantive audit procedures;

Particulars

ASA 330, paragraph 19.

- (f) if Deloitte had determined that an assessed risk of material misstatement at the assertion level was a significant risk, perform substantive procedures that were specifically responsive to that risk;

Particulars

ASA 330, paragraph 21.

- (g) perform audit procedures to evaluate whether the overall presentation of the financial report was in accordance with the applicable financial reporting framework;

Particulars

ASA 330, paragraph 24.

- (h) based on the audit procedures performed and the audit evidence obtained, evaluate before the conclusion of the audit whether the assessments of the risks of material misstatement at the assertion level remained appropriate and conclude whether sufficient appropriate audit evidence had been obtained; and

Particulars

ASA 330, paragraphs 25-26.

- (i) if Deloitte had not obtained sufficient appropriate audit evidence as to a material financial report assertion, attempt to obtain further audit evidence and, if Deloitte was unable to obtain sufficient appropriate audit evidence, to express a qualified opinion or disclaim an opinion on the financial report.

Particulars

ASA 330, paragraph 27.

F.3.8. ASA 450

402 In auditing any pro forma financial information in respect of FY14 and FY15, Deloitte was also required to comply with Auditing Standard ASA 450.

Particulars

CA, s 307A; ASA 450, paragraph Aus 0.2

403 At all material times, ASA 450 provided that:

- (a) misstatement means a difference between the reported amount, classification, presentation, or disclosure of a financial report item and the amount, classification, presentation, or disclosure that is required for the item to be in accordance with the applicable financial reporting framework. Misstatements can arise from error or fraud; and
- (b) when the auditor expresses an opinion on whether the financial report is presented fairly, in all material respects, or gives a true and fair view, misstatements also include those adjustments of amounts, classifications, presentation, or disclosures that, in the auditor's judgement, are necessary for the financial report to be presented fairly, in all material respects, or to give a true and fair view.

Particulars

ASA 450, paragraph 4.

404 In complying with ASA 450, Deloitte was required to:

- (a) have the objective of evaluating the effect of identified misstatements on the audit and the effect of uncorrected misstatements, if any, on the financial report;

Particulars

ASA 450, paragraph 3.

- (b) accumulate misstatements identified during the audit, other than those that are clearly trivial;

Particulars

ASA 450, paragraph 5.

- (c) determine whether the overall audit strategy and audit plan needed to be revised if:
 - (i) the nature of identified misstatements and the circumstances of their occurrence indicated that other misstatements may exist that, when aggregated with misstatements accumulated during the audit, could be material; or

- (ii) the aggregate of misstatements accumulated during the audit approaches materiality determined in accordance with ASA 320;

Particulars

ASA 450, paragraph 6.

- (d) if, at Deloitte's request, management examined a class of transactions, account balances or disclosures and corrected misstatements that were detected, perform additional audit procedures to determine whether misstatements remain;

Particulars

ASA 450, paragraph 7.

- (e) communicate, unless prohibited by law or regulation, on a timely basis all misstatements accumulated during the audit with the appropriate level of management and request management to correct those misstatements;

Particulars

ASA 450, paragraph 8.

- (f) if management refused to correct some or all of the misstatements communicated by Deloitte, obtain an understanding of management's reasons for not making the corrections and take that understanding into account when evaluating whether the financial report as a whole was free from material misstatement;

Particulars

ASA 450, paragraph 9.

- (g) prior to evaluating the effect of uncorrected misstatements, reassess materiality determined in accordance with ASA 320 to confirm whether it remained appropriate in the context of DSSH's and DSH's actual financial results;

Particulars

ASA 450, paragraph 10.

- (h) determine whether uncorrected misstatements are material, individually or in aggregate, and in making that determination, consider:

- (i) the size and nature of the misstatements, both in relation to particular classes of transactions, account balances or disclosures and the financial report as a whole, and the particular circumstances of their occurrence; and
- (ii) the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial report as a whole;

Particulars

ASA 450, paragraph 11.

- (i) communicate with those charged with governance uncorrected misstatements and the effect that they, individually or in aggregate, may have on the opinion in Deloitte's report, unless prohibited by law or regulation. That communication was required to identify material uncorrected misstatements individually, and Deloitte was required to request that uncorrected misstatements be corrected;

Particulars

ASA 450, paragraph 12.

- (j) also communicate with those charged with governance the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial report as a whole; and

Particulars

ASA 450, paragraph 13.

- (k) request a written representation from management and, where appropriate, those charged with governance whether they believed the effects of uncorrected misstatements are immaterial, individually and in aggregate, to the financial report as a whole. A summary of such items was required to be included in or attached to the written representation.

Particulars

ASA 450, paragraph 14.

F.3.9. ASA 500

405 In complying with ASA 500, Deloitte was required to:

- (a) have the objective of designing and performing audit procedures in such a way as to enable Deloitte to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base Deloitte's opinion;

Particulars

ASA 500, paragraph 4.

- (b) design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence, so as to support Deloitte's opinion and report; and

Particulars

ASA 500, paragraphs 6, A1-A25.

- (c) when using information produced by DSSH and DSH, evaluate whether the information was sufficiently reliable for Deloitte's purposes, including, as necessary in the circumstances, obtaining audit evidence about the accuracy and completeness of the information and evaluating whether the information was sufficiently precise and detailed for Deloitte's purposes.

Particulars

ASA 500, paragraphs 7, 9, A26-A33, A49-A51.

F.3.10. ASA 530

406 In complying with ASA 530, Deloitte was required to:

- (a) have the objective, when using audit sampling, to provide a reasonable basis for Deloitte to draw conclusions about the population from which the sample was selected;

Particulars

ASA 530, paragraph 4.

- (b) when designing an audit sample, consider the purpose of the audit procedure and the characteristics of the population from which the sample was drawn, determine a sample size sufficient to reduce sampling risk to an acceptably low level, and select items for the sample in such a way that each sampling unit in the population had a chance of selection;

Particulars

ASA 530, paragraph 6-8, A4-A13.

- (c) perform audit procedures, appropriate to the purpose, on each item selected;

Particulars

ASA 530, paragraph 9.

- (d) investigate the nature and cause of any deviations or misstatements identified, and evaluate their possible effect on the purpose of the audit procedure and on other areas of the audit;

Particulars

ASA 530, paragraph 12, A17.

- (e) when Deloitte considered a misstatement or deviation discovered in a sample to be an anomaly, obtain a high degree of certainty that such misstatement was not representative of the population; and

Particulars

ASA 530, paragraph 13.

- (f) evaluate the results of the sample and whether the use of audit sampling had provided a reasonable basis for conclusions about the population that had been tested.

Particulars

ASA 530, paragraph 15, A21-A23.

F.3.11. ASA 540

407 In complying with ASA 540, Deloitte was required to:

- (a) have the objective of obtaining sufficient appropriate audit evidence about whether accounting estimates, including fair value accounting estimates, in the financial report, whether recognised or disclosed, were reasonable in the context of the applicable financial reporting framework;

Particulars

ASA 540, paragraph 6.

- (b) in order to provide a basis for the identification and assessment of the risks of material misstatement for accounting estimates, obtain an understanding of how DSSH and DSH made the accounting estimates, and an understanding of the data on which they were based, including the method used in making the accounting estimate, the assumptions underlying the accounting estimates, and whether and how ~~DDSH~~DSSH and DSH had assessed the effect of estimation uncertainty;

Particulars

ASA 540, paragraph 8.

- (c) evaluate the degree of estimation uncertainty associated with an accounting estimate, and determine whether any of those accounting estimates that had been identified as having high estimation uncertainty gave rise to significant risks;

Particulars

ASA 540, paragraph 10-11, A45-A51.

- (d) based on the assessed risks of material misstatement, determine whether management had appropriately applied the requirements of the applicable financial reporting framework relevant to the accounting estimate, and whether the methods for making the accounting estimates were appropriate and had been applied consistently, and whether changes, if any, in accounting estimates or in the method for making them from the prior period were appropriate in the circumstances;

Particulars

ASA 540, paragraph 12, A52-A58.

- (e) respond to the assessed risks of material misstatement by undertaking one or more of the steps outlined in paragraph 13 of ASA 540, taking account of the nature of the accounting estimate;

Particulars

ASA 540, paragraphs 13 and A59-A95.

- (f) for accounting estimates that gave rise to significant risks, in addition to other substantive procedures performed, evaluate whether the significant assumptions used by DSSH and DSH were reasonable; and

Particulars

ASA 540, paragraph 15.

- (g) evaluate, based on the audit evidence, whether the accounting estimates in the financial report were either reasonable in the context of the applicable financial reporting framework, or were misstated.

Particulars

ASA 540, paragraph 18.

F.3.12. ASA 700

408 In complying with ASA 700, Deloitte was required to evaluate whether the financial report was prepared, in all material respects, in accordance with the requirements of the applicable financial reporting framework.

Particulars

ASA 700, paragraph 12.

F.3.13. ASA 705

409 In complying with ASA 705, Deloitte was required to:

- (a) express a qualified opinion when Deloitte, having obtained sufficient appropriate audit evidence, concluded that misstatements, individually or in the aggregate, were material, but not pervasive, to the financial report, or Deloitte was unable to obtain sufficient appropriate audit evidence on which to base the opinion, but Deloitte concluded that the possible effects on the financial report of undetected misstatements, if any, could be material but not pervasive;

Particulars

ASA 705, paragraph 7.

- (b) disclaim an opinion when Deloitte was unable to obtain sufficient appropriate audit evidence on which to base the opinion, and Deloitte concluded that the possible effects on the financial report of undetected misstatements, if any, could be both material and pervasive; and when, in circumstances involving multiple uncertainties, Deloitte concluded that, notwithstanding having obtained sufficient appropriate audit evidence regarding each of the individual uncertainties, it was not possible to form an opinion on the financial report due to the interaction of the uncertainties and their possible cumulative effect on the financial report;

Particulars

ASA 705, paragraph 9-10.

- (c) if there was a material misstatement of the financial report that related to specific amounts in the financial report (including quantitative disclosures), include in the basis for modification paragraph a description and quantification of the financial effects of the misstatement, unless impracticable, and if it was not practicable to quantify the financial effects, to state so in the basis for modification paragraph; and

Particulars

ASA 705, paragraph 17.

- (d) when Deloitte expected to modify the opinion in Deloitte's report, communicate with those charged with governance the circumstances that led to the expected modification and the proposed wording of the modification.

Particulars

ASA 705, paragraph 28.

F.4. REASONABLE AUDITOR

410 In the pleadings that follow, references to a “**Reasonable Auditor**” means an auditor acting in accordance with the obligations pleaded above at Parts F.2 and F.3 and acting with the degree of skill and care of a professional person providing professional services in the position of Deloitte.

F.5. DELOITTE’S AUDIT REPORTS

F.5.1. The FY13 Audit Report

411 Following its performance of the FY13 Audit, Deloitte prepared an Independent Auditor’s Report to the Members of DSSH (the **FY13 Audit Report**).

Particulars

Independent Auditor’s Report to the Members of Dick Smith Sub-holdings Pty Ltd signed by Mr White on behalf of Deloitte on or around 23 October 2013.

412 On 31 October 2013, DSSH published and lodged with ASIC its consolidated financial report for the 10-month period ended 30 June 2013 (the **FY13 Financial Statements**).

413 The FY13 Audit Report was included in the FY13 Financial Statements.

Particulars

Commencing page 5 of the FY13 Financial Statements.

414 Deloitte authorised the inclusion of the FY13 Audit Report in the FY13 Financial Statements and thereby issued and published the FY13 Audit Report upon the issuance and publication of the FY13 Financial Statements.

Particulars

Deloitte authorised the inclusion of the FY13 Audit Report in the FY13 Financial Statements on or before 23 October 2013, being the date upon which the FY13 Audit Report was signed (see page 6 of the FY13 Financial Statements).

Deloitte’s authorisation was implied by its provision of the signed FY13 Audit Report to DSSH on or before 23 October 2013, in circumstances where the FY13 Audit Report constituted Deloitte’s report to the members of DSSH on the FY13 Financial Statements in purported fulfilment of its obligations under both s 308 of the CA and the FY13 Engagement Letter (see particulars to paragraph 377 above) and the requirement for DSSH to report to members in accordance with s 314 of the CA.

F.5.2. Deloitte's FY13 Representations

415 In the FY13 Audit Report, Deloitte represented that:

- (a) Deloitte had conducted an audit of DSSH's FY13 Financial Statements in accordance with the Auditing Standards;
- (b) Deloitte believed the audit evidence it had obtained in carrying out the FY13 Audit was sufficient and appropriate to provide a basis for its audit opinion;
- (c) Deloitte was of the opinion that the FY13 Financial Statements were in accordance with the CA, including:
 - (i) giving a true and fair view of the Group's financial position as at 30 June 2013 and of its performance for the period ended on that date; and
 - (ii) complying with the Australian Accounting Standards and the Corporations Regulations 2001,

(collectively, **Deloitte's FY13 Express Representations**).

Particulars

FY13 Audit Report, pages 5-6 of the FY13 Financial Statements.

416 In making Deloitte's FY13 Express Representations, Deloitte impliedly represented to investors and potential investors in DSSH that:

- (a) those representations were the product of Deloitte having conducted the FY13 Audit in accordance with Deloitte's auditing obligations as pleaded above at Parts F.2 and F.3;
- (b) those representations were the product of Deloitte having exercised reasonable care and skill in performing the FY13 Audit; and
- (c) there were reasonable grounds for the making those representations,

(collectively, **Deloitte's FY13 Implied Representations**).

Particulars

Deloitte's FY13 Implied Representations were implied by reason of:

- (a) *the terms of the FY13 Audit Report;*

- (b) *Deloitte's FY13 Express Representations;*
- (c) *the obligations imposed by law on Deloitte in relation to the FY13 Audit as pleaded above at Parts F.2 and F.3 and interpreted by the courts;*
- (d) *Deloitte holding itself out to the world as specialist auditors and accountants with professional expertise and competence in the provision of auditing and accounting services.*

F.5.3. The FY14 Audit Report

417 Following its performance of the FY14 Audit, Deloitte prepared an Independent Auditor's Report to the Members of DSH (the **FY14 Audit Report**).

Particulars

Independent Auditor's Report to the Members of Dick Smith Holdings Limited signed by Mr White on behalf of Deloitte on or about 18 August 2014.

418 The FY14 Audit Report was included in the FY14 Financial Statements.

Particulars

Commencing page 45 of the FY14 Financial Statements.

419 Deloitte authorised the inclusion of the FY14 Audit Report in the FY14 Financial Statements and thereby issued and published the FY14 Audit Report upon the issuance and publication of the FY14 Financial Statements.

Particulars

Deloitte authorised the inclusion of the FY14 Audit Report in the FY14 Financial Statements on or before 18 August 2014, being the date upon which the FY14 Audit Report was signed (see page 46 of the FY14 Financial Statements, published in the Dick Smith Annual Report 2014).

Deloitte's authorisation was implied by its provision of the FY14 Audit Report to DSH on or before 18 August 2014, in circumstances where the FY14 Audit Report constituted Deloitte's report to the members of DSH on the FY14 Financial Statements in purported fulfilment of its obligations under both s 308 of the CA and the FY14 Engagement Letter (see particulars to paragraph 380 above) and the requirement for DSH to report to members in accordance with s 314 of the CA.

F.5.4. Deloitte's FY14 Representations

420 In the FY14 Audit Report Deloitte represented that:

- (a) Deloitte had conducted an audit of DSH's FY14 Financial Statements in accordance with the Auditing Standards;
- (b) Deloitte believed the audit evidence it had obtained in carrying out the FY14 Audit was sufficient and appropriate to provide a basis for its audit opinion;
- (c) Deloitte was of the opinion that the FY14 Financial Statements were in accordance with the CA, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 29 June 2014 and of its performance for the year ended on that date; and
 - (ii) complying with Australian Accounting Standards and the Corporations Regulations 2001,

(collectively, **Deloitte's FY14 Express Representations**).

Particulars

FY14 Audit Report, pages 45-46 of the FY14 Financial Statements.

421 In making Deloitte's FY14 Express Representations, Deloitte impliedly represented to investors and potential investors in DSH that:

- (a) those representations were the product of Deloitte having conducted the FY14 Audit in accordance with Deloitte's auditing obligations as pleaded above at Parts F.2 and F.3;
- (b) those representations were the product of Deloitte having exercised reasonable care and skill in performing the FY14 Audit; and
- (c) there were reasonable grounds for the making those representations,

(collectively, **Deloitte's FY14 Implied Representations**).

Particulars

Deloitte's FY14 Implied Representations were implied by reason of:

- (a) *the terms of the FY14 Audit Report;*

- (b) *Deloitte's FY14 Express Representations;*
- (c) *the obligations imposed by law on Deloitte in relation to the FY14 Audit as pleaded above at Parts F.2 and F.3 and interpreted by the courts;*
- (d) *Deloitte holding itself out to the world as specialist auditors and accountants with professional expertise and competence in the provision of auditing and accounting services.*

F.5.5. The FY15 Audit Report

422 Following its performance of the FY15 Audit, Deloitte prepared an Independent Auditor's Report to the Members of DSH (the **FY15 Audit Report**).

Particulars

Independent Auditor's Report to the Members of Dick Smith Holdings Limited signed by Mr White on behalf of Deloitte on or about 17 August 2015.

423 The FY15 Audit Report was included in the FY15 Financial Statements.

Particulars

Commencing page 48 of the FY15 Financial Statements.

424 Deloitte authorised the inclusion of the FY15 Audit Report in the FY15 Financial Statements and thereby issued and published the FY15 Audit Report upon the issuance and publication of the FY15 Financial Statements.

Particulars

Deloitte authorised the inclusion of the FY15 Audit Report in the FY15 Financial Statements on or before 17 August 2015, being the date upon which the FY15 Audit Report was signed (see page 49 of the FY15 Financial Statements, published in the Dick Smith Annual Report 2015).

Deloitte's authorisation was implied by its provision of the FY15 Audit Report to DSH on or before 17 August 2015, in circumstances where the FY15 Audit Report constituted Deloitte's report to the members of DSH on the FY15 Financial Statements in purported fulfilment of its obligations under both s 308 of the CA and the FY15 Engagement Letter (see particulars to paragraph 383 above) and the requirement for DSH to report to members in accordance with s 314 of the CA.

F.5.6. Deloitte's FY15 Representations

425 In the FY15 Audit Report, Deloitte represented that:

- (a) Deloitte had conducted an audit of DSH's FY15 Financial Statements in accordance with the Auditing Standards;
- (b) Deloitte believed the audit evidence it had obtained in carrying out the FY15 Audit was sufficient and appropriate to provide a basis for its audit opinion;
- (c) Deloitte was of the opinion that the FY15 Financial Statements were in accordance with the CA, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 28 June 2015 and of its performance for the year ended on that date; and
 - (ii) complying with the Australian Accounting Standards and the Corporations Regulations 2001,

(collectively, **Deloitte's FY15 Express Representations**).

Particulars

FY15 Audit Report, pages 48-49 of the FY15 Financial Statements, published in the Dick Smith Annual Report 2015.

426 In making Deloitte's FY15 Express Representations, Deloitte impliedly represented to investors and potential investors in DSH that:

- (a) those representations were the product of Deloitte having conducted the FY15 Audit in accordance with Deloitte's auditing obligations as pleaded above at Parts F.2 and F.3;
- (b) those representations were the product of Deloitte having exercised reasonable care and skill in performing the FY15 Audit; and
- (c) there were reasonable grounds for making those representations,

(collectively, **Deloitte's FY15 Implied Representations**).

Particulars

Deloitte's FY15 Implied Representations were implied by reason of:

- (a) *the terms of the FY15 Audit Report;*

- (b) *Deloitte's FY15 Express Representations;*
- (c) *the obligations imposed by law on Deloitte in relation to the FY15 Audit as pleaded above at Parts F.2 and F.3 and interpreted by the courts; and*
- (d) *Deloitte holding itself out to the world as specialist auditors and accountants with professional expertise and competence in the provision of auditing and accounting services.*

F.6. DELOITTE'S AUDIT CONDUCT

F.6.1. FY13 Audit in relation to inventory provisioning

427 By the time of the delivery to DSSH of the FY13 Audit Report, Deloitte knew or ought to have known of DSSH's failure to write down, or make a provision, allowance or impairment against, the carrying value of inventory and DSSH's inventory management and accounting practices [\(together, Inventory Practices and Effects\)](#) as pleaded above at Part C.2 [in respect of FY13](#) ~~(together, Inventory Practices and Effects)~~, because:

- (a) Deloitte was provided with documents and information as to DSSH's Inventory Practices and Effects in the course of the FY13 Audit;

Particulars

Working paper 5411a "Memo Dick Smith Inventory Valuation" (and the documents and information referred to therein, see at page5) (DEL.002.001.1629).

- (b) Deloitte identified DSSH's inventory provisions as an area of focus in the FY13 Audit;

Particulars

Working Paper 1812 "Listing of all Significant Risks & Areas of Focus" (DEL.002.001.0578) identifies "inventory" as a significant risk.

- (c) Deloitte had been the auditor of Woolworths Group Limited, an ASX listed entity with the listing code "WOW" (**WOW**), while the Dick Smith business had been operated as a WOW subsidiary and Deloitte was therefore familiar with and aware of the inventory ageing system used in the DSH Group and its limitations, including that it did not reliably record the age of any SKU within inventory; and

(d) a Reasonable Auditor carrying out the FY13 Audit, having been provided with the documents to which Deloitte had access, and having been made aware of DSSH's accounting treatment of inventory as set out above at (a)-(c), would have:

- (i) recognised that inventory provisioning was an area of high risk for DSSH, given that the nature of the consumer electronics market is such that there is an ongoing risk of inventory obsolescence;
- (ii) designed and implemented an appropriate testing strategy in respect of management's assumptions and methodology with respect to inventory provisioning in order to ascertain the nature and extent of any material misstatement in the carrying value of inventory;
- (iii) requested, to the extent necessary, if any, further information to ascertain the Inventory Practices and Effects;
- (iv) evaluated whether DSSH's management's assumptions and methodology with respect to inventory provisioning were appropriate, including considering whether DSSH's failure to write down inventory and DSSH's inventory management and accounting practices were in accordance with the Australian Accounting Standards; and
- (v) having taken the steps set out in sub-paragraphs (i)-(iv) above as further particularised below, concluded that the Inventory Practices and Effects were as pleaded above at Part C.2, [in respect of FY13](#).

Particulars

A Reasonable Auditor would in the course of the FY13 Audit have:

- (a) *determined the assumptions and methodology used by DSSH to assess whether a provision should be made to reduce the carrying value of inventory to the lower of cost or the net realisable value of the inventory;*
- (b) *taken steps to understand the basis and application of DSSH's assumptions and methodology used to determine inventory provisions;*

- (c) *determined the appropriateness of DSSH's inventory provisioning methodology, and the appropriateness of the assumptions used in that methodology, through adequate testing and the application of the requisite degree of professional scepticism called for in the circumstances, in order to ascertain, and report on, whether the application of the assumptions and methodology provided an appropriate measure of the cost of DSSH's inventory as required by AASB 102;*
- (d) *determined the process by which DSSH undertook its analysis used in the provisioning process (whether based on age, future sales or re-order profile), and would have determined the controls and processes adopted by DSSH to ensure the accuracy of the analysis;*
- (e) *determined whether or not to rely on the controls and checks operated by DSSH, exercising the requisite level of professional scepticism called for in the circumstances. If the Reasonable Auditor chose to rely on such controls he or she would have tested the operations of those controls through an appropriately sized sample. If the auditor chose not to rely on such controls, he or she would have selected a sample of inventory items for testing to determine whether, based on that sample, he or she could conclude that DSSH's estimation of the amount of the provision to reduce inventory to the lower of cost and net realisable value was appropriate;*
- (f) *if the Reasonable Auditor concluded that the provisioning was materially inadequate, requested management to recalculate the provision on a basis consistent with AASB 102 or calculated, using the data available, the Reasonable Auditor's own estimate and adjustment to the carrying value and, if material, requested that adjustment to be made. In so doing, the Reasonable Auditor would take into account the following factors:*
 - (i) *the ageing of SKUs or, if no reliable report on the ageing of SKUs was available, estimating the ageing of SKUs using available data such as purchases and sales data;*
 - (ii) *discounts on SKUs and discounts below costs;*
 - (iii) *the nature of SKUs and whether they have been superseded or newer models were available;*
 - (iv) *weeks or months cover for SKUs; and*

(v) *trends within the industry including changes in technology products and the competitive landscape;*

(g) *insofar as such audit work identified any deficiencies in the provisioning process or methodology undertaken by DSSH, reported such matters to those charged with governance, including the FAC or the Board of DSSH.*

428 The FY13 Audit Report did not conclude or express the opinion that the Inventory Practices and Effects:

- (a) needed to be disclosed in the financial reports of DSSH;
- (b) meant the FY13 Financial Statements did not give a true and fair view of the financial position and performance of DSSH and the DSH Group;
- (c) meant that the FY13 Financial Statements had not been prepared in accordance with the Australian Accounting Standards;
- (d) caused the FY13 Financial Statements to be materially misstated.

429 This was despite the fact that, for the reasons pleaded above at Part C.2 [in respect of FY13](#), the Inventory Practices and Effects:

- (a) needed to be disclosed in the financial reports of DSSH;
- (b) meant the FY13 Financial Statements did not give a true and fair view of the financial position and performance of DSSH and the DSH Group;
- (c) meant the FY13 Financial Statements were not prepared in accordance with the Australian Accounting Standards; and
- (d) caused the FY13 Financial Statements to be materially misstated.

430 Notwithstanding the matters pleaded at Part C.2 [in respect of FY13](#), which Deloitte knew or ought to have known for the reasons pleaded and particularised above at paragraph 427, Deloitte:

- (a) failed to obtain a sufficient understanding of the assumptions and methodology applied by DSSH management in determining inventory provisions, including by failing to apply an adequate level of professional scepticism to the information produced by DSSH, and the assumptions and methodology applied by management in determining inventory provisions in the FY13 Financial Statements (ASA 200, paragraphs 7, 15, A18-A22; ASA 540, paragraphs 8, 18);
- (b) having determined that there was a significant risk of material misstatement in respect of inventory provisions in the FY13 Financial Statements, failed to perform substantive procedures that are specifically responsive to that risk, including for the purpose of obtaining sufficient appropriate audit evidence in respect of the assumptions and methodology applied by management in determining inventory provisions in the FY13 Financial Statements (ASA 330 paragraphs 21, A1, A4, A19; ASA 500 paragraphs 6, A1-A3, A10, A14-A15);
- (c) failed to design and implement adequate testing of the age of stock and the appropriateness of the obsolescence percentages by reference to stock turnover, volume of stock on hand, and broader industry factors in order to obtain reasonable assurance as to whether the Inventory Practices and Effects complied with Australian Accounting Standards (ASA 330 paragraph 21, A1, A4, A19);
- (d) [by reason of the failures pleaded in sub-paragraphs \(a\)-\(c\) above](#) failed to gather sufficient appropriate audit evidence in order to enable Deloitte to express an opinion on whether the assumptions and methodology applied by management in determining the provision in respect of inventory in the FY13 Financial Statements complied with AASB 102, in circumstances where Deloitte had identified inventory provisioning as a key area of risk in the FY13 Audit (ASA 200 paragraphs 5, 7, 17; ASA 330 paragraphs 3, 5-7, ASA 540 paragraphs 6, 13, 15);
- (e) by reason of having failed to obtain sufficient appropriate audit evidence in respect of the assumptions and methodology applied by management in determining inventory provisions in the FY13 Financial Statements so as to reduce audit risk to an acceptably low level:

- (i) failed to obtain reasonable assurance about whether the FY13 Financial Statements as a whole were free from material misstatement, whether due to fraud or error (ASA 200 paragraph 5 and 17);
 - (ii) was unable to draw reasonable conclusions on which to base the auditor's opinion on whether the FY13 Financial Statements were prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY13 Financial Statements in accordance with the auditor's findings (ASA 200 paragraphs 11 and 17);
- (f) in circumstances where Deloitte had not obtained sufficient appropriate audit evidence in respect of DSSH's provisioning for inventory in the FY13 Financial Statements, failed to express a modified opinion on the FY13 Financial Statements (ASA 330 paragraphs 26-27; ASA 260 paragraph A18; ASA 705 paragraphs 7, 9-10);
- (g) failed properly to apply the requirements of AASB 102 to such audit evidence as Deloitte obtained in assessing the issue of whether the inventory provisions in the FY13 Financial Statements complied with AASB 102 (ASA 200 paragraph 11);
- (h) failed to perform adequate audit procedures to evaluate whether the overall presentation of the financial report was in accordance with the applicable financial reporting framework (ASA 330 paragraph 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 paragraph 25).
- (i) failed to require management to account for the carrying value of inventory in accordance with Australian Accounting Standards;
- (j) failed to quantify or estimate the extent of the misstatement in the FY13 Financial Statements as a result of the Inventory Practices and Effects; and / or
- (k) did not express the opinion pleaded above at paragraph 428.

431 In the premises, Deloitte failed to act as a Reasonable Auditor.

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 When designing procedures for the FY13 Audit, Deloitte knew or ought to have known that DSH was intending to list on the ASX in the near future.

Particulars

The FY13 Board Report states at page 16: “We understand that as part of the proposed IPO structure, the Company will be acquired by a newly created holding company and that a tax consolidated group will be formed...”

- 433 The fact that DSH was intending to list on the ASX in the near future was relevant to the determination of materiality for the FY13 Audit.

Particulars

An auditor’s determination of materiality is affected by the auditor’s perception of the financial information needs of users of the financial statements being audited: ASA 320 paragraphs 4 and A3. In circumstances where an IPO is contemplated in the near future, the users of an audit report would include prospective investors in the entity being audited in an IPO. Accordingly, the fact of an upcoming IPO would be relevant to the determination of materiality.

Further particulars will be provided with the plaintiffs’ expert evidence.

- 434 In performing the FY13 Audit, Deloitte set materiality at \$6 million and performance materiality at \$5.4 million.

Particulars

*1710 “Materiality Worksheet – Group & AU (including component considerations)”
(DEL.002.001.0540)*

- 435 A Reasonable Auditor carrying out the FY13 Audit would have determined materiality at a figure at least as low as \$1.5 million.

Particulars

A Reasonable Auditor carrying out the FY13 Audit would have:

- (a) considered a number of possible benchmarks for materiality, including profit before tax, EBITDA, revenue, net assets and total assets, and concluded that multiple benchmarks ought be considered in determining materiality in all the circumstances;*
- (b) recognised the nature of the FY13 Audit as a ‘high risk’ engagement in circumstances where DSSH had recently undergone a restructure, and where an initial public offering was contemplated, and adopted a percentage at the bottom end of the acceptable range for the chosen benchmark;*

(c) recognised that DSSH's business had a number of inherent risks from an auditing perspective, given the nature of the consumer electronics market and the ongoing risk of inventory obsolescence in that industry, and adopted a percentage at the bottom end of the acceptable range for the chosen benchmark.

Further particulars may be provided after discovery and evidence.

436 In setting materiality at \$6 million, and performance materiality at \$5.4 million, in conducting the FY13 Audit, Deloitte:

- (a) failed to adequately consider the financial information needs of the users of the FY13 Audit Report, namely prospective investors in DSH upon the company's initial public offering (ASA 320 paragraph 4);
- (b) failed to adequately consider the nature of DSSH, and its upcoming initial public offering (ASA 320 paragraph A3);
- (c) failed to adequately consider the industry and economic environment in which DSSH operated, namely the electronics consumer market (ASA 320 paragraph A3);
- (d) failed to determine an appropriate percentage to be applied to Deloitte's chosen benchmark in circumstances where DSSH was a retailer of consumer electronic goods; where DSSH had recently been the subject of a restructure of its business; and where an initial public offering was contemplated in the near future (ASA 320 paragraph A7).

437 In the premises, Deloitte failed to act as a Reasonable Auditor.

F.6.2.2. Failure to adjust for Warranty Sign On Liability

438 In conducting the FY13 Audit, Deloitte identified that the Warranty Sign On Liability in FY13 ought to have been ascribed a fair value of "nil", as pleaded in Part C.4, and included an adjustment for the Warranty Sign On Liability in its schedule of unadjusted differences.

Particulars

FY13 Board Report, pages 7 and 19. As pleaded at paragraph 193 to 194, DSSH recognised a warranty sign-on liability of approximately \$2.1 million in March 2013, and wrote back the warranty liability in the amount of approximately \$0.4 million during FY13. Accordingly, Deloitte included a \$1.7 million adjustment in its schedule of unadjusted differences.

439 A Reasonable Auditor carrying out the FY13 Audit, would have required management to account for the recognition of the Warranty Sign On Liability in accordance with the Australian Accounting Standards.

Particulars

As pleaded in paragraph 435, a Reasonable Auditor would have determined materiality to be at a figure at least as low as \$1.5 million and, therefore, recognised that the Warranty Sign On Liability was material and therefore required an adjustment to be made in the FY13 Financial Statements.

The particulars to paragraph 435 are repeated.

440 For the reasons pleaded above at Part C.4, DSSH's recognition of \$1.7 million of the Warranty Sign On Liability:

- (a) meant the FY13 Financial Statements did not give a true and fair view of the financial position and performance of DSSH and the DSH Group;
- (b) meant that the FY13 Financial Statements did not comply with the Australian Accounting Standards; and
- (c) caused the FY13 Financial Statements to be materially misstated.

441 The FY13 Audit Report did not conclude or express the opinion that DSSH's recognition of \$1.7 million of the Warranty Sign On Liability:

- (a) meant the FY13 Financial Statements did not give a true and fair view of the financial position and performance of DSSH and the DSH Group;
- (b) meant the FY13 Financial Statements did not comply with the Australian Accounting Standards;
- (c) caused the FY13 Financial Statements to be materially misstated.

442 Notwithstanding the matters pleaded at Part C.4 which Deloitte knew or ought to have known in light of its identification of the Warranty Sign On Liability in the course of the FY13 Audit as pleaded in paragraph 438 and the fact that a Reasonable Auditor would determine materiality as pleaded in paragraph 435, Deloitte:

- (a) did not require management to account for the recognition of the Warranty Sign On Liability in accordance with Australian Accounting Standards;

- (b) did not quantify or estimate the extent of the misstatement in the FY13 Financial Statements by reason of the recognition of the Warranty Sign On Liability; and /or
- (c) did not express the opinion pleaded above at paragraph 441.

443 In the premises, Deloitte failed to act as a Reasonable Auditor.

F.6.3. Effect of Deloitte's failures in carrying out the FY13 Audit

444 Deloitte's failures in carrying out the FY13 Audit, as set out above at paragraphs 430 to 431, 436 to 437 and 442 to 443, both individually and cumulatively meant that Deloitte:

- (a) did not conduct the FY13 Audit in accordance with the Auditing Standards;
- (b) did not conduct the FY13 Audit in accordance with Deloitte's auditing obligations as pleaded above at Part F.2;
- (c) did not exercise reasonable care and skill in performing the FY13 Audit;
- (d) did not have reasonable grounds for believing that the audit evidence Deloitte obtained to carry out the FY13 Audit was sufficient and appropriate to provide a basis for its audit opinion;
- (e) did not have reasonable grounds for the opinion that the FY13 Financial Statements were in accordance with the CA, including:
 - (i) giving a true and fair view of the Group's financial position as at 30 June 2013 and of its performance for the period ended on that date; and
 - (ii) complying with the Australian Accounting Standards and the Corporations Regulations 2001.

F.6.4. FY14 Audit in relation to inventory provisions

445 By the time of delivery to DSH of the FY14 Audit Report, Deloitte knew or ought to have known of DSH's Inventory Practices and Effects [as pleaded in Part C.2 in respect of FY14](#), because:

- (a) Deloitte was provided with documents and information as to DSH's Inventory Practices and Effects in the course of the FY14 Audit;

Particulars

See working paper 23403 "Inventory Obsolescence Memo" (DEL.001.001.4003) demonstrating Deloitte's understanding of DSH's methodology for stock obsolescence at year end.

- (b) Deloitte was previously made aware of and had had regard to DSH's inventory provisioning;

Particulars

20 May 2014 email from DSH to Deloitte, attaching a position paper on inventory provisions (DSE.002.016.5847, DSE.002.016.5849).

FY14 FAC Report, page 10, section 3.2.

Minutes of the FAC meeting of 12 August 2014 (DSE.003.047.0973).

The particulars to paragraph 427 are repeated.

- (c) Deloitte identified DSH's inventory provisions as a key area of focus in the FY14 Audit;

Particulars

FY14 FAC Report, page 10, section 3.2.

*Deloitte presentation to DSH entitled "External audit strategy for the financial year ending 29 June 2014" dated January 2014 (**FY14 Audit Strategy Presentation**), page 9 (DSE.003.056.1846).*

- (d) Deloitte had performed the statutory audit for DSSH for the 10 month period ended 30 June 2013 and had, immediately prior to conducting the FY13 Audit, been the auditor of WOW while the Dick Smith business had been operated as a WOW subsidiary and Deloitte was therefore familiar with and aware of the inventory ageing system used in the DSH Group and its limitations including that it did not reliably record the age of any SKU within inventory; and
- (e) a Reasonable Auditor carrying out the FY14 Audit, having been provided with the documents to which Deloitte had access, and having been made aware of DSH's accounting treatment of inventory as set out above at (a)-(d), would have:

- (i) recognised that inventory provisioning was an area of high risk for DSH, given that the nature of the consumer electronics market is such that there is an ongoing risk of inventory obsolescence;
- (ii) designed and implemented an appropriate testing strategy in respect of management's assumptions and methodology with respect to inventory provisioning in order to ascertain the nature and extent of any material misstatement in the carrying value of inventory;
- (iii) requested, to the extent necessary, if any, further information to ascertain the Inventory Practices and Effects;
- (iv) evaluated whether DSH's management's assumptions and methodology with respect to inventory provisioning were appropriate, including considering whether DSH's failure to write down inventory and DSH's inventory management and accounting practices were in accordance with the Australian Accounting Standards;
- (v) concluded that the Inventory Practices and Effects were as pleaded above at Part C.2 [in respect of FY14](#).

Particulars

A Reasonable Auditor would have, in the course of the FY14 Audit, taken the steps particularised at paragraph 427 above.

446 The FY14 Audit Report did not conclude or express the opinion that the Inventory Practices and Effects:

- (a) needed to be disclosed in the financial reports of DSH;
- (b) meant the FY14 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group;
- (c) meant that the FY14 Financial Statements did not comply with the Australian Accounting Standards;
- (d) caused the FY14 Financial Statements to be materially misstated.

447 This was despite the fact that, for the reasons pleaded above at Part C.2 [in respect of FY14](#), the Inventory Practices and Effects:

- (a) needed to be disclosed in the financial reports of DSH;
- (b) meant the FY14 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group;
- (c) meant that the FY14 Financial Statements did not comply with the Australian Accounting Standards; and
- (d) caused the FY14 Financial Statements to be materially misstated.

448 Notwithstanding the matters pleaded at Part C.2 [in respect of FY14](#), which Deloitte knew or ought to have known for the reasons pleaded and particularised above at paragraph 445, Deloitte:

- (a) failed to obtain an adequate understanding of the application of accounting policies by DSH in respect of inventory provisioning, sufficient to evaluate whether those policies were appropriate for its business and consistent with the applicable financial reporting framework (ASA 315 paragraph 11);
- (b) failed to obtain a sufficient understanding of the assumptions and methodology applied by DSH management in determining inventory provisions, including by failing to apply an adequate level of professional scepticism to the information produced by DSH, and the assumptions and methodology applied by management in determining inventory provisions in the FY14 Financial Statements (ASA 200, paragraphs 7, 15, A18-A22; ASA 540, paragraphs 8, 18);
- (c) failed to perform appropriate risk assessment procedures (including enquiries of DSH personnel, analytical procedures and observation and inspection) sufficient to provide a basis for the identification and assessment of risks of material misstatement at the financial report level, and to provide a basis for designing and performing further audit procedures in respect of inventory provisions (ASA 315 paragraphs 5-6, 25-26; ASA 540 paragraphs 10-12);
- (d) having determined that there was a significant risk of material misstatement in respect of inventory provisions in the FY14 Financial Statements, failed to perform substantive procedures that are specifically responsive to that risk, including for the purpose of obtaining sufficient appropriate audit evidence in respect of the assumptions and methodology applied by management in determining inventory provisions in the FY14 Financial Statements (ASA 330 paragraphs 21, A1, A4, A19; ASA 500 paragraphs 6, A1-A3, A10, A14-A15);

- (e) failed to design and implement adequate testing of the age of stock and the appropriateness of the obsolescence percentages by reference to stock turnover, volume of stock on hand, and broader industry factors in order to obtain reasonable assurance as to whether the Inventory Practices and Effects complied with Australian Accounting Standards (ASA 330 paragraph 21, A1, A4, A19);
- (f) by reason of the failures pleaded in sub-paragraphs (a)-(e) above failed to gather sufficient appropriate audit evidence in order to enable Deloitte to express an opinion on whether the assumptions and methodology applied by management in determining the provision in respect of inventory in the FY14 Financial Statements complied with AASB 102, in circumstances where Deloitte had identified inventory provisioning as a key area of risk in the FY14 Audit (ASA 200 paragraphs 5, 7, 17; ASA 330 paragraphs 3, 5-7, ASA 540 paragraphs 6,13, 15);
- (g) by reason of having failed to obtain sufficient appropriate audit evidence in respect of the assumptions and methodology applied by management in determining inventory provisions in the FY14 Financial Statements so as to reduce audit risk to an acceptably low level:
 - (i) failed to obtain reasonable assurance about whether the FY14 Financial Statements as a whole were free from material misstatement, whether due to fraud or error (ASA 200 paragraph 5 and 17);
 - (ii) was unable to draw reasonable conclusions on which to base the auditor's opinion on whether the FY14 Financial Statements were prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY14 Financial Statements in accordance with the auditor's findings (ASA 200 paragraphs 11 and 17);
- (h) in circumstances where Deloitte had not obtained sufficient appropriate audit evidence in respect of DSH's provisioning for inventory in the FY14 Financial Statements, failed to express a modified opinion on the FY14 Financial Statements (ASA 330 paragraphs 26-27; ASA 260 paragraph A18; ASA 705 paragraphs 7, 9-10);
- (l) failed properly to apply the requirements of AASB 102 to such audit evidence as Deloitte obtained in assessing the issue of whether the inventory provisions in the FY14 Financial Statements complied with AASB 102 (ASA 200 paragraph 11);

- (m) failed to perform adequate audit procedures to evaluate whether the overall presentation of the financial report was in accordance with the applicable financial reporting framework (ASA 330 paragraph 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 paragraph 25);
- (n) failed to require management to account for the carrying value of inventory in accordance with Australian Accounting Standards;
- (o) failed to quantify or estimate the extent of the misstatement in the FY14 Financial Statements as a result of the Inventory Practices and Effects; and / or
- (p) did not express the opinion pleaded above at paragraph 446.

449 In the premises, Deloitte failed to act as a Reasonable Auditor.

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

450 By the time of delivery to DSH of the FY14 Audit Report, Deloitte knew or ought to have known that DSH's accounting treatment of ~~Switched Invoice Rebates, Volume Rebates and O&A Rebates~~ was as pleaded above at Part C.3 [in respect of FY14](#) because:

- (a) Deloitte was provided with documents and information as to DSH's accounting treatment of ~~Switched Invoice Rebates, Volume Rebates and O&A Rebates~~ in the course of the FY14 Audit;

Particulars

Email from Damien Cork of Deloitte to Mr Potts, copied to Nigel Mills of DSH and to Mr White of Deloitte, sent on Monday 26 May 2014, entitled 'Dick Smith: O&A Rebates' (DSE.003.054.4114)

Email from Mr Potts to Mr White of Deloitte, copied to Damien Cork of Deloitte, sent on Friday 6 June 2014, entitled 'RE:O&A' (DSE.003.054.0824), attaching two papers, entitled:

- *'Position Paper – Vendor Rebates – Profit/Loss and Balance Sheet Recognition, dated 28 May 2014 and prepared by Nigel Mills of DSH' (DSE.003.054.0826)*

- 'Vendor Rebates – O&A' (DSE.003.054.0826)

Email from Damien Cork of Deloitte to Mr Potts, copied to Nigel Mills of DSH and to Mr White of Deloitte, sent on Tuesday 10 June 2014, entitled "RE: O&A" (DSE.003.053.9575).

- (b) Deloitte was previously made aware of and had regard to the accounting treatment of rebates by DSH;

Particulars

FY14 Audit Strategy Presentation, page 11.

FY14 FAC Report, section 3.3, page 11.

- (c) Deloitte identified DSH's accounting treatment of rebates as a key area of focus in the FY14 Audit;

Particulars

FY14 FAC Report, section 3.3. See also working paper 23303 "Memo Vendor receivables and disputed claims" (DEL.001.001.3973), which identifies rebates as a significant risk, and O&A rebates as the riskiest type of rebate.

- (d) a Reasonable Auditor carrying out the FY14 Audit, having been provided with the documents to which Deloitte had access, and having been made aware of DSH's accounting treatment of rebates as set out above at (a)-(c), would have:
- (i) designed and implemented an appropriate testing strategy in respect of management's assumptions and methodology with respect to rebates;
 - (ii) requested, to the extent necessary, if any, further information to ascertain the accounting treatment of the ~~Switched Invoice Rebates~~, Volume Rebates and O&A Rebates;
 - (iii) evaluated whether DSH's accounting treatment of ~~Switched Invoice Rebates~~, Volume Rebates and O&A Rebates was appropriate, including considering whether the accounting treatment was in accordance with Australian Accounting Standards; and

- (iv) concluded that the accounting treatment and its effects were as pleaded in Part C.3 [in respect of FY14](#).

Particulars

A Reasonable Auditor would have, in the course of the FY14 Audit:

- (a) *obtained a sufficient understanding of the different categories of rebates and the basis and application of the accounting treatment of the ~~Switched Invoice Rebates~~, Volume Rebates and O&A Rebates;*
- (b) *obtained sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable Deloitte to draw reasonable conclusions on which to base its opinion, as required by ASA 200 paragraph 17;*
- (c) *considered the relevance and reliability of the information to be used as audit evidence, as required by ASA 500 paragraph 7;*
- (d) *when using information provided by DSH, evaluated whether the information was sufficiently reliable for Deloitte's purposes, as required by ASA 500 paragraph 9;*
- (e) *applied an adequate level of professional scepticism when considering the validity of DSH's arrangements in respect of the ~~Switched Invoice Rebates~~, Volume Rebates and O&A Rebates, particularly in light of the informality of the relevant arrangements;*
- (f) *determined whether it was necessary to disclose in the FY14 Financial Statements the different categories of rebates and the accounting treatment of the ~~Switched Invoice Rebates~~, Volume Rebates and O&A Rebates, by reason of the fact that these were significant accounting policies relevant to understanding the financial statements;*
- (g) *determined whether the accounting treatment of the ~~Switched Invoice Rebates~~, Volume Rebates and O&A Rebates complied with Australian Accounting Standards by:*
- (i) *obtaining a sufficient understanding of the different categories of rebates and the processes for dealing with rebates;*
- (ii) *ascertaining the level of risk relating to the accounting treatment of rebates;*

- (iii) *having regard to the level of risk, designing testing work to consider an appropriately sized sample that takes account of the different providers of rebates;*
- (iv) *obtaining, in respect of the rebates within that sample, evidence of the nature of any marketing and promotional support, the terms and conditions of such support, or whether those terms and conditions had been fulfilled, in order to form a view whether it was appropriate for such rebates to be taken up in profits in the reporting period;*
- (v) *making enquiries of management as to whether the services to be provided in exchange for the rebate had been fully provided by DSH; and*
- (vi) *considering whether there was a basis for relying on the systems and processes used to determine whether rebates were included in profits;*
- (h) *performed testing on those accounts affected by the ~~Switched Invoice Rebates~~, Volume Rebates and O&A Rebates to gain reasonable assurance the rebates were accounted for as represented by management and attempted to quantify or estimate any misstatement in the event that management refused or failed to alter the accounting treatment adopted by DSH to conform with the correct accounting treatment pleaded in Part C.3 [in respect of FY14](#).*

451 The FY14 Audit Report did not conclude or express the opinion that the accounting treatment of the ~~Switched Invoice Rebates~~, Volume Rebates and/or O&A Rebates:

- (a) needed to be disclosed in the financial reports of DSH;
- (b) meant the FY14 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group;
- (c) meant that the FY14 Financial Statements did not comply with the Australian Accounting Standards;
- (d) caused the FY14 Financial Statements to be materially misstated.

452 This was despite the fact that, for the reasons pleaded above at Part C.3 [in respect of FY14](#), the accounting treatment of the ~~Switched Invoice Rebates~~, Volume Rebates and/or O&A Rebates:

- (a) needed to be disclosed in the financial reports of DSH;

- (b) meant the FY14 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group;
- (c) meant that the FY14 Financial Statements did not comply with the Australian Accounting Standards; and
- (d) caused the FY14 Financial Statements to be materially misstated.

453 Notwithstanding the matters pleaded at Part C.3 [in respect of FY14](#), which Deloitte knew or ought to have known for the reasons pleaded and particularised above at paragraph 450, Deloitte:

- (a) failed to obtain an understanding of the application of accounting policies by DSH in respect of rebates, sufficient to evaluate whether those policies were appropriate for its business and consistent with the applicable financial reporting framework (ASA 315 paragraph 11);
- (b) failed to obtain a sufficient understanding of the accounting treatment of the ~~Switched Invoice Rebates~~, Volume Rebates and O&A Rebates (ASA 200, paragraphs 7, 15, A18-A22);
- (c) failed adequately to evaluate whether the accounting treatment of the ~~Switched Invoice Rebates~~, Volume Rebates and/or O&A Rebates was consistent with the applicable financial reporting framework and accounting policies used in the relevant industry (ASA 315 paragraph 11);
- (d) failed adequately to perform audit procedures so as to evaluate whether the overall presentation of the FY14 Financial Statements, including in respect of the accounting treatment of the ~~Switched Invoice Rebates~~, Volume Rebates and/or O&A Rebates was in accordance with the applicable financial reporting framework (ASA 330 paragraph 24);
- (e) failed properly to apply the requirements of AASB 101, AASB 102 and/or AASB 108 [to such audit evidence as Deloitte obtained in assessing the issue of whether the accounting treatment of the Volume Rebates and O&A Rebates in the FY14 Financial Statements complied with AASB 101, AASB 102 and/or AASB 108](#) (ASA 200 paragraph 8; ASA 210 paragraph 6; ASA 700 paragraph 12);

- (f) failed to perform appropriate risk assessment procedures (including enquiries of DSH personnel, analytical procedures and observation and inspection) sufficient to provide a basis for the identification and assessment of risks of material misstatement at the financial report level, and to provide a basis for designing and performing further audit procedures (ASA 315 paragraphs 5-6, paragraphs 25-26);
- (g) failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in respect of the recording, calculation and recognition of rebates in the FY14 Financial Statements (ASA 500 paragraphs 4, 6, A1- A25);
- (h) failed to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement (one of the key areas of risk identified by Deloitte being the recording of rebates in the FY14 Financial Statements), through designing and implementing appropriate responses to those risks (ASA 330 paragraphs 3, 5-7);
- (i) by reason of having failed to obtain sufficient appropriate audit evidence in respect of the recording of rebates so as to reduce audit risk to an acceptably low level:
 - (i) failed to obtain reasonable assurance about whether the FY14 Financial Statements as a whole were free from material misstatement, whether due to fraud or error (ASA 200 paragraph 5); and
 - (ii) was unable to draw reasonable conclusions on which to base the auditor's opinion on whether the FY14 Financial Statements were prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY14 Financial Statements in accordance with the auditor's findings (ASA 200 paragraphs 11, 17);
- (j) in circumstances where Deloitte had not obtained sufficient appropriate audit evidence in respect of the recording of rebates in the FY14 Financial Statements, failed to express a modified opinion on the FY14 Financial Statements (ASA 330 paragraphs 26-27; ASA 705 paragraphs 7, 9-10);
- (k) failed to perform adequate audit procedures to evaluate whether the overall presentation of the financial report was in accordance with the applicable financial reporting framework (ASA 330 paragraph 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 paragraph 25);

- (l) did not require management to account for ~~Switched Invoice Rebates~~, Volume Rebates or O&A Rebates in accordance with Australian Accounting Standards;
- (m) did not quantify or estimate the extent of the misstatement in the FY14 Financial Statements as a result of the accounting treatment of rebates; and / or
- (n) did not express the opinion pleaded above at paragraph 451.

454 In the premises, Deloitte failed to act as a Reasonable Auditor.

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

455 Deloitte's failures in carrying out the FY14 Audit, as set out above at paragraphs 448 to 449 and 453 to 454, both individually and cumulatively meant that Deloitte:

- (a) did not conduct the audit of DSH's FY14 Financial Statements in accordance with the Auditing Standards;
- (b) did not conduct the FY14 Audit in accordance with Deloitte's auditing obligations as pleaded above at Part F.2;
- (c) did not exercise reasonable care and skill in performing the FY14 Audit;
- (d) did not have reasonable grounds for believing that the audit evidence Deloitte obtained to carry out the FY14 Audit was sufficient and appropriate to provide a basis for its audit opinion; and
- (e) did not have reasonable grounds for the opinion that the FY14 Financial Statements were in accordance with the CA, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 28 June 2014 and of its performance for the year ending on that date; and
 - (ii) complied with the Australian Accounting Standards and the Corporations Regulations 2001.

F.6.7. FY15 Audit in relation to inventory provisions

456 By the time of delivery to DSH of the FY15 Audit Report, Deloitte knew or ought to have known of the Inventory Practices and Effects [as pleaded in Part C.2 in respect of FY15](#), because:

- (a) Deloitte was provided with documents and information as to DSH's Inventory Practices and Effects;

Particulars

The particulars to paragraph 445(a) above are repeated.

20 May 2014 email from DSH to Deloitte, attaching a position paper on inventory provisions (DSE.002.016.5847, DSE.002.016.5849)

- (b) Deloitte was previously made aware of and had had regard to DSH's inventory provisioning;

Particulars

The particulars to paragraph 445(b) above are repeated.

FY14 FAC Report , section 3.2.

See also Deloitte working paper 23403 "Inventory Obsolescence Memo" (DEL.001.001.4003) demonstrating Deloitte's understanding of DSH's methodology for stock obsolescence at year end.

- (c) Deloitte identified DSH's inventory provisions as a key area of focus in the FY15 Audit;

Particulars

Deloitte presentation to DSH entitled "External audit strategy for the year ending 28 June 2015" (FY15 Audit Strategy Presentation) (DSE.003.043.8812), page 8.

FY15 FAC Report, page 9.

- (d) a Reasonable Auditor in the position of Deloitte, carrying out the FY15 Audit, having been provided with the documents to which Deloitte had access, and having been made aware of DSH's accounting treatment of inventory as set out above at (a)-(c), would have:

- (i) recognised that inventory provisioning was an area of high risk for DSH, given that the nature of the consumer electronics market is such that there is an ongoing risk of inventory obsolescence;

- (ii) designed and implemented an appropriate testing strategy in respect of management's assumptions and methodology with respect to inventory provisioning in order to ascertain the nature and extent of any material misstatement in the carrying value of inventory;
- (iii) requested, to the extent necessary, if any, further information to ascertain the Inventory Practices and Effects;
- (iv) evaluated whether DSH's management's assumptions and methodology with respect to inventory provisioning were appropriate, including considering whether DSH's failure to write down inventory and DSH's inventory management and accounting practices were in accordance with the Australian Accounting Standards;
- (v) concluded that the Inventory Practices and Effects were as pleaded above at Part C.2 [in respect of FY15](#).

Particulars

A Reasonable Auditor would have, in the course of the FY14 Audit, taken the steps particularised at paragraph 427 above.

457 The FY15 Audit Report did not conclude or express the opinion that the Inventory Practices and Effects:

- (a) needed to be disclosed in the financial reports of DSH;
- (b) meant the FY15 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group;
- (c) meant that the FY15 Financial Statements did not comply with the Australian Accounting Standards;
- (d) caused the FY15 Financial Statements to be materially misstated.

458 This was despite the fact that, for the reasons pleaded above at Part C.2 [in respect of FY15](#), the Inventory Practices and Effects:

- (a) needed to be disclosed in the financial reports of DSH;

- (b) meant the FY15 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group;
- (c) meant that the FY15 Financial Statements did not comply with the Australian Accounting Standards; and
- (d) caused the FY15 Financial Statements to be materially misstated.

459 Notwithstanding the matters pleaded at Part C.2 [in respect of FY15](#), which Deloitte knew or ought to have known for the reasons pleaded above at paragraph 456, Deloitte:

- (a) failed to obtain an adequate understanding of the application of accounting policies by DSH in respect of inventory provisioning, sufficient to evaluate whether those policies were appropriate for its business and consistent with the applicable financial reporting framework (ASA 315 paragraph 11);
- (b) failed to obtain a sufficient understanding of the assumptions and methodology applied by DSH management in determining inventory provisions, including by failing to apply an adequate level of professional scepticism to the information produced by DSH, and the assumptions and methodology applied by management in determining inventory provisions in the FY15 Financial Statements (ASA 200, paragraphs 7, 15, A18-A22; ASA 540, paragraphs 8, 18);
- (c) failed to perform appropriate risk assessment procedures (including enquiries of DSH personnel, analytical procedures and observation and inspection) sufficient to provide a basis for the identification and assessment of risks of material misstatement at the financial report level, and to provide a basis for designing and performing further audit procedures in respect of inventory provisions (ASA 315 paragraphs 5-6, 25-26; ASA 540 paragraphs 10-12);
- (d) having determined that there was a significant risk of material misstatement in respect of inventory provisions in the FY15 Financial Statements, failed to perform substantive procedures that are specifically responsive to that risk, including for the purpose of obtaining sufficient appropriate audit evidence in respect of the assumptions and methodology applied by management in determining inventory provisions in the FY15 Financial Statements (ASA 330 paragraphs 21, A1, A4, A19; ASA 500 paragraphs 6, A1-A3, A10, A14-A15);

- (e) failed to design and implement adequate testing of the age of stock and the appropriateness of the obsolescence percentages by reference to stock turnover, volume of stock on hand, and broader industry factors in order to obtain reasonable assurance as to whether the Inventory Practices and Effects complied with Australian Accounting Standards (ASA 330 paragraph 21, A1, A4, A19);
- (f) [by reason of the failures pleaded in sub-paragraphs \(a\)-\(e\) above](#) failed to gather sufficient appropriate audit evidence in order to enable Deloitte to express an opinion on whether the assumptions and methodology applied by management in determining the provision in respect of inventory in the FY15 Financial Statements complied with AASB 102, in circumstances where Deloitte had identified inventory provisioning as a key area of risk in the FY15 Audit (ASA 200 paragraphs 5, 7, 17; ASA 330 paragraphs 3, 5-7, ASA 540 paragraphs 6, 13, 15);
- (g) by reason of having failed to obtain sufficient appropriate audit evidence in respect of the assumptions and methodology applied by management in determining inventory provisions in FY15 Financial Statements so as to reduce audit risk to an acceptably low level:
 - (i) failed to obtain reasonable assurance about whether the FY15 Financial Statements as a whole were free from material misstatement, whether due to fraud or error (ASA 200 paragraph 5 and 17);
 - (ii) was unable to draw reasonable conclusions on which to base the auditor's opinion on whether the FY15 Financial Statements were prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY15 Financial Statements in accordance with the auditor's findings (ASA 200 paragraphs 11 and 17);
- (h) in circumstances where Deloitte had not obtained sufficient appropriate audit evidence in respect of DSH's provisioning for inventory in the FY15 Financial Statements, failed to express a modified opinion on the FY15 Financial Statements (ASA 330 paragraphs 26-27; ASA 260 paragraph A18; ASA 705 paragraphs 7, 9-10);
- (q) failed properly to apply the requirements of AASB 102 to such audit evidence as Deloitte obtained in assessing the issue of whether the inventory provisions in the FY15 Financial Statements complied with AASB 102 (ASA 200 paragraph 11);

- (r) failed to perform adequate audit procedures to evaluate whether the overall presentation of the financial report was in accordance with the applicable financial reporting framework (ASA 330 paragraph 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 paragraph 25);
- (s) did not require management to account for the carrying value of inventory in accordance with Australian Accounting Standards;
- (t) did not quantify or estimate the extent of the misstatement in the FY15 Financial Statements as a result of the Inventory Practices and Effects; and / or
- (u) did not express the opinion pleaded above at paragraph 457.

460 In the premises, Deloitte failed to act as a Reasonable Auditor.

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

461 By the time of delivery to DSH of the FY15 Audit Report, Deloitte knew or ought to have known that DSH's accounting treatment of Switched Invoice Rebates, Volume Rebates and O&A Rebates was as pleaded above at Part C.3 [in respect of FY15](#) because:

- (a) Deloitte was previously made aware of and had regard to to DSH's accounting treatment of Switched Invoice Rebates, Volume Rebates and O&A Rebates;

Particulars

The particulars to paragraphs 450(a) and 450(b)above are repeated.

- (b) Deloitte identified DSH's accounting treatment of rebates as a key area of focus in the FY15 Audit;

Particulars

FY15 Audit Strategy Presentation, page 8.

FY15 FAC Report, page 10.

Working paper 23303 "Memo – Vendor receivables and disputed claims" (DEL.001.002.1449) page 5, identifying that O&A rebates were an area of "significant risk" in the FY15 Financial Statements.

- (c) a Reasonable Auditor in the position of Deloitte, carrying out the FY15 Audit, having been provided with the documents to which Deloitte had access, and having been made aware of DSH's accounting treatment of rebates as set out above at (a)-(b), would have:
- (i) designed and implemented an appropriate testing strategy in respect of management's assumptions and methodology with respect to rebates;
 - (ii) requested, to the extent necessary, if any, further information to ascertain the accounting treatment of the Switched Invoice Rebates, Volume Rebates and O&A Rebates;
 - (iii) evaluated whether DSH's accounting treatment of Switched Invoice Rebates, Volume Rebates and O&A Rebates was appropriate, including considering whether the accounting treatment was in accordance with the Australian Accounting Standards;
 - (iv) concluded that the accounting treatment and its effects were as pleaded in Part C.3 [in respect of FY15](#).

Particulars

A Reasonable Auditor would have, in the course of the FY15 Audit, taken the steps particularised at paragraph 450 above.

- 462 The FY15 Audit Report did not conclude or express the opinion that the accounting treatment of the Switched Invoice Rebates, Volume Rebates and/or O&A Rebates:
- (a) needed to be disclosed in the financial reports of DSH;
 - (b) meant the FY15 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group;
 - (c) meant that the FY15 Financial Statements did not comply with the Australian Accounting Standards;
 - (d) caused the FY15 Financial Statements to be materially misstated.
- 463 This was despite the fact that, for the reasons pleaded above at Part C.3 [in respect of FY15](#), the accounting treatment of the Switched Invoice Rebates, Volume Rebates and/or O&A Rebates:

- (a) needed to be disclosed in the financial reports of DSH;
- (b) meant the FY15 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group;
- (c) meant that the FY15 Financial Statements did not comply with the Australian Accounting Standards; and
- (d) caused the FY15 Financial Statements to be materially misstated.

464 Notwithstanding the matters pleaded at Part C.3 [in respect of FY15](#), which Deloitte knew or ought to have known for the reasons pleaded and particularised above at paragraph 461, Deloitte:

- (a) failed to obtain an understanding of the application of accounting policies by DSH in respect of rebates, sufficient to evaluate whether those policies were appropriate for its business and consistent with the applicable financial reporting framework (ASA 315 paragraph 11);
- (b) failed to obtain a sufficient understanding of the accounting treatment of the Switched Invoice Rebates, Volume Rebates and O&A Rebates (ASA 200, paragraphs 7, 15, A18-A22);
- (c) failed adequately to evaluate whether the accounting treatment of the Switched Invoice Rebates, Volume Rebates and/or O&A Rebates was consistent with the applicable financial reporting framework and accounting policies used in the relevant industry (ASA 315 paragraph 11);
- (d) failed adequately to perform audit procedures so as to evaluate whether the overall presentation of the FY15 Financial Statements, including in respect of the accounting treatment of the Switched Invoice Rebates, Volume Rebates and/or O&A Rebates was in accordance with the applicable financial reporting framework (ASA 330 paragraph 24);
- (e) failed properly to apply the requirements of AASB 101, AASB 102 and/or AASB 108 [to such audit evidence as Deloitte obtained in assessing the issue of whether the accounting treatment of the Switched Invoice Rebates, Volume Rebates and O&A Rebates in the FY15 Financial Statements complied with AASB 101, AASB 102 and/or AASB 108](#) (ASA 200 paragraph 8; ASA 210 paragraph 6; ASA 700 paragraph 12);

- (f) failed to perform appropriate risk assessment procedures (including enquiries of DSH personnel, analytical procedures and observation and inspection) sufficient to provide a basis for the identification and assessment of risks of material misstatement at the financial report level, and to provide a basis for designing and performing further audit procedures (ASA 315 paragraphs 5-6, paragraphs 25-26);
- (g) failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in respect of the recording, calculation and recognition of rebates in the FY15 Financial Statements, and in order to obtain reasonable assurance whether the accounting treatment of the Switched Invoice Rebates, Volume Rebates and O&A Rebates complied with Australian Accounting Standards (ASA 500 paragraphs 4, 6, A1- A25);
- (h) failed to determine an appropriate approach to sampling to reduce sampling risk to an acceptably low level (ASA 530 paragraph 7, A10-A11);
- (i) failed adequately to perform audit procedures on each item selected as part of the audit sample conducted in carrying out the FY15 Audit (ASA 530 paragraph 9), including failing to test a random, systematic or haphazard selection or a representative sample of entries in DSH's accounts, and failing to test samples based on larger value items (ASA 530 paragraph A13);
- (j) failed to test the appropriateness of journal entries recorded in the general ledger (ASA 240 paragraphs 32, A41-A44);
- (k) failed to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement (one of the key areas of risk identified by Deloitte being the recording of rebates in the FY15 Financial Statements), through designing and implementing appropriate responses to those risks (ASA 330 paragraphs 3, 5-7);
- (l) by reason of having failed to obtain sufficient appropriate audit evidence in respect of the recording of rebates so as to reduce audit risk to an acceptably low level:
 - (i) failed to obtain reasonable assurance about whether the FY15 Financial Statements as a whole were free from material misstatement, whether due to fraud or error (ASA 200 paragraph 5); and
 - (ii) was unable to draw reasonable conclusions on which to base the auditor's opinion on whether the FY15 Financial Statements were prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on

the FY15 Financial Statements in accordance with the auditor's findings (ASA 200 paragraphs 11, 17);

- (m) in circumstances where Deloitte had not obtained sufficient appropriate audit evidence in respect of the recording of rebates in the FY15 Financial Statements, failed to express a modified opinion on the FY15 Financial Statements (ASA 330 paragraphs 26-27; ASA 705 paragraphs 7, 9-10);
- (n) failed to perform adequate audit procedures to evaluate whether the overall presentation of the financial report was in accordance with the applicable financial reporting framework (ASA 330 paragraph 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 paragraph 25);
- (o) did not require management to account for Switched Invoice Rebates, Volume Rebates and O&A Rebates in accordance with Australian Accounting Standards;
- (p) did not quantify or estimate the extent of the misstatement in the FY15 Financial Statements as a result of the accounting treatment of rebates; and / or
- (q) did not express the opinion pleaded above at paragraph 462.

465 In the premises, Deloitte failed to act as a Reasonable Auditor.

F.6.9. Effect of Deloitte's FY2015 failures

466 Deloitte's failures in carrying out the FY15 Audit, as set out above at paragraphs 459 to 460 and 464 to 465, both individually and cumulatively, meant that Deloitte:

- (a) did not conduct an audit of DSH's FY15 Financial Statements in accordance with the Auditing Standards;
- (b) did not conduct the FY15 Audit in accordance with Deloitte's auditing obligations as pleaded above at Part F.2;
- (c) did not exercise reasonable care and skill in performing the FY15 Audit;
- (d) did not have reasonable grounds for believing that the audit evidence Deloitte obtained to carry out the FY15 Audit was sufficient and appropriate to provide a basis for its audit opinion;

- (e) did not have reasonable grounds for the opinion that the FY15 Financial Statements were in accordance with the CA, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 28 June 2015 and of its performance for the year ended on that date; and
 - (ii) complying with the Australian Accounting Standards and the Corporations Regulations 2001.

F.7. DELOITTE'S CONTRAVENTIONS

F.7.1. Deloitte's FY13 Contraventions

467 By authorising the inclusion of the FY13 Audit Report in the FY13 Financial Statements and thereby publishing the FY13 Audit Report, and by making Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations, Deloitte, on one or more or all of those occasions, engaged in conduct:

- (a) in relation to a financial product or a financial service within the meaning of s 1041H of the CA; and/or
- (b) in trade or commerce within the meaning of section 18 of the Australian Consumer Law; and/or
- (c) in trade or commerce and in relation to financial services within the meaning of s 12DA of the ASIC Act.

468 Further, or in the alternative, by authorising the inclusion of the FY13 Audit Report in the FY13 Financial Statements and thereby publishing the FY13 Audit Report, and by making Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations, Deloitte, on one or more or all of those occasions, made representations:

- (a) in connection with the supply of services, being the services supplied by Deloitte in performing the FY13 Audit, that those services were of a particular standard or quality, within the meaning of s 29(1)(b) of the ACL; and/or
- (b) in connection with the supply of financial services, being the services supplied by Deloitte in performing the FY13 Audit, that those services were of a particular standard or quality, within the meaning of s 12DB(1)(a) of the ASIC Act.

Particulars

The services being supplied by Deloitte were its services as auditor of DSSH.

Deloitte's FY13 Express Representations, being representations that Deloitte had conducted the FY13 Audit in accordance with, inter alia, applicable Auditing Standards, were representations regarding the standard or quality of Deloitte's services as an auditor in respect of the FY13 Audit engagement.

Deloitte's FY13 Implied Representations, being representations that Deloitte had exercised reasonable care and skill in performing the FY13 Audit, were representations regarding the standard or quality of Deloitte's services as an auditor in respect of the FY13 Audit engagement.

469 Deloitte's FY13 Express Representations were misleading or deceptive in contravention of s 1041H of the CA, s 18 of the Australian Consumer Law and/or s 12DA of the ASIC Act, because, for the reasons pleaded at paragraphs 430 to 431, 436 to 437 and/or 442 to 443, the FY13 Audit was not conducted in accordance with the Auditing Standards.

Particulars

Parts F.6.1, F.6.2 and F.6.3 are repeated.

470 Deloitte's FY13 Express Representations were false or misleading, in contravention of s 29(1)(a) of the Australian Consumer Law and/or s 12DB(1)(b) of the ASIC Act, because, for the reasons pleaded at paragraphs 430 to 431, 436 to 437 and/or 442 to 443, the FY13 Audit was not conducted in accordance with the Auditing Standards.

Particulars

Parts F.6.1, F.6.2 and F.6.3 are repeated.

471 Deloitte's FY13 Implied Representations were misleading or deceptive in contravention of s 1041H of the CA, s 18 of the Australian Consumer Law and/or s 12DA of the ASIC Act, because, for the reasons pleaded at paragraph 444:

- (a) Deloitte's FY13 Express Representations were not the product of Deloitte having conducted its FY13 Audit in accordance with Deloitte's auditing obligations as pleaded above at Parts F.2;
- (b) Deloitte's FY13 Express Representations were not the product of Deloitte having exercised reasonable care and skill in performing the FY13 Audit;

- (c) there were no reasonable grounds for making Deloitte's FY13 Express Representations.

Particulars

Parts F.6.1, F.6.2 and F.6.3 are repeated.

- 472 Deloitte's FY13 Implied Representations were false or misleading, in contravention of s 29(1)(b) of the Australian Consumer Law and/or s 12DB(1)(a) of the ASIC Act, because, for the reasons pleaded at paragraph 444, the FY13 Audit was not performed with reasonable care and skill.

Particulars

Parts F.6.1, F.6.2 and F.6.3 are repeated.

- 473 Mr White authorised the issuance and the publication of the FY13 Audit Report.

Particulars

Mr White's authorisation is implied from his acceptance of his role as the lead auditor of the FY13 Audit, and from his signing of the FY13 Audit Report, addressed to the members of DSSH.

- 474 By authorising the issuing and publishing of the FY13 Audit Report, Mr White made statements, or disseminated information, being Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations, which:

- (a) were false in a material particular or materially misleading;

Particulars

Parts F.6.1, F.6.2 and F.6.3 are repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH following the initial public offering of DSH shares;

Particulars

The plaintiffs and Group Members were likely to become aware of Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations, being statements made, or information disseminated by, Mr White, in the following way:

- (a) *by obtaining the FY13 Audit Report through ASIC's website or by otherwise obtaining a copy of the FY13 Audit Report from ASIC;*
- (b) *by obtaining the FY13 Audit Report from DSH;*
- (c) *by obtaining DSSH's FY13 Financial Statements;*
- (d) *by their financial advisors obtaining the FY13 Audit Report (whether from ASIC or DSH) or DSSH's FY13 Financial Statements;*
- (e) *by stockbrokers obtaining the FY13 Audit Report (whether from ASIC or DSH) or DSSH's FY13 Financial Statements.*

Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations were likely to be, and were, material to the plaintiffs and Group Members, being persons interested in acquiring shares in DSH, following the initial public offering of DSH shares.

For example, persons interested in acquiring shares in DSH were likely to be induced to do so by Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations, which were to the effect that:

- (a) *the FY13 Financial Statements were the subject of an audit carried out in accordance with the Auditing Standards;*
- (b) *Deloitte was of the opinion that the FY13 Financial Statements were prepared in accordance with the CA, including:*
 - (i) *giving a true and fair view of the Group's financial position as at 30 June 2013 and of its performance for the period ended on that date, and*
 - (ii) *complying with Australian Accounting Standards and the Corporations Regulations 2001; and*
- (c) *that opinion was:*
 - (i) *the product of Deloitte having conducted the FY13 Audit in accordance with Deloitte's auditing obligations;*
 - (ii) *the product of Deloitte having exercised reasonable care and skill in performing the FY13 Audit; and*
 - (iii) *based on reasonable grounds.*

Further particulars may be provided after evidence.

- (c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH shares on the ASX, following the initial public offering of DSH shares.

Particulars

The particulars to paragraphs 504 and 505 below are repeated.

Further particulars may be provided following discovery and evidence.

- 475 Mr White authorised the issuing and publishing of the FY13 Audit Report which contained representations, namely Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations.

Particulars

The particulars to paragraphs 415, 416 and 473 are repeated.

- 476 Mr White ought reasonably to have known that those representations were false in a material particular or materially misleading because:
 - (a) Mr White was an experienced auditor;
 - (b) Mr White knew and understood the Auditing Standards;
 - (c) Mr White read and signed the FY13 Audit Report;
 - (d) Mr White was the lead audit partner in charge of the FY13 Audit;
 - (e) as the lead audit partner, Mr White had access to Deloitte's audit file for the FY13 Audit, including all of Deloitte's working papers and all information provided to Deloitte as part of the FY13 Audit, including the information pleaded at paragraph 427 above;
 - (f) as the lead audit partner, Mr White had a responsibility to supervise those persons assisting him with the FY13 Audit;
 - (g) those persons assisting Mr White with the audit had an obligation to provide him with all information and take all steps necessary for him to ensure, pursuant to his obligations under s 307A(2) of the CA, that the audit was conducted in accordance with the Auditing Standards;

- (h) as lead audit partner, Mr White was obliged to ensure that the FY13 Audit was conducted in accordance with the Auditing Standards under s 307(2) of the CA;
- (i) had Mr White discharged his duty to ensure that the FY13 Audit was conducted in accordance with the Auditing Standards, he would have ascertained that the Inventory Practices and Effects were as pleaded in Part C.2 [in respect of FY13](#) for the reasons pleaded at paragraph 427;
- (j) had Mr White discharged his duty to ensure that the FY13 Audit was conducted in accordance with the Auditing Standards, he would therefore have formed the view that the FY13 Financial Statements were not prepared in accordance with the Australian Accounting Standards;
- (k) by reason of the matters pleaded in sub-paragraphs (a)-(j) above, Mr White ought reasonably to have known that the FY13 Financial Statements were not prepared in accordance with the Australian Accounting Standards and, therefore, that Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations were false in a material particular or materially misleading.

477 Further or in the alternative, Mr White ought to have known that Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations were false in a material particular or materially misleading because:

- (a) Mr White was an experienced auditor;
- (b) Mr White knew and understood the Auditing Standards;
- (c) Mr White read and signed the FY13 Audit Report;
- (d) Mr White was the lead audit partner in charge of the FY13 Audit;
- (e) as the lead audit partner, Mr White had access to Deloitte's audit file for the FY13 Audit, including all of Deloitte's working papers and all information provided to Deloitte as part of the FY13 Audit, including the information pleaded at paragraph 427 above;
- (f) as the lead audit partner, Mr White had a responsibility to supervise those persons assisting him with the FY13 Audit;

- (g) those persons assisting Mr White with the audit had an obligation to provide him with all information and take all steps necessary for him to ensure, pursuant to his obligations under s 307A(2) of the CA, that the audit was conducted in accordance with the Auditing Standards;
- (h) Mr White ought reasonably to have tested and reviewed the audit processes followed by Deloitte in respect of the FY13 Audit;
- (i) by reason of the matters pleaded in sub-paragraphs (a)-(h) above and by reason of his role in relation to the FY13 Audit, and his significant expertise and experience as an auditor, Mr White ought reasonably to have known of the deficiencies in Deloitte's conduct of the FY13 Audit as pleaded at paragraphs 430, 431, 436, 437, 442 and 443 above;
- (j) by reason of the matters pleaded in sub-paragraph (i) above, Mr White ought reasonably to have known that the FY13 Audit was not conducted in accordance with the Auditing Standards and therefore that:
 - (i) Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations were not the product of Deloitte having conducted the FY13 Audit in accordance with Deloitte's auditing obligations as pleaded above at Parts F.2 and F.3;
 - (ii) those representations were not the product of Deloitte having exercised reasonable care and skill in performing the FY13 Audit; and
 - (iii) there were not reasonable grounds for making Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations.

478 By reason of the matters pleaded in paragraphs 473 to 477, Mr White contravened s 1041E of the CA by authorising the issuance and publication of the FY13 Audit Report.

F.7.2. Deloitte's FY14 Contraventions

479 By authorising the inclusion of the FY14 Audit Report in the FY14 Financial Statements and thereby publishing the FY14 Audit Report, and by making Deloitte's FY14 Express Representations and Deloitte's FY14 Implied Representations, Deloitte, on one or more or all of those occasions, engaged in conduct:

- (a) in relation to a financial product or a financial service within the meaning of s 1041H of the CA; and/or
- (b) in trade or commerce within the meaning of section 18 of the Australian Consumer Law; and/or
- (c) in trade or commerce and in relation to financial services within the meaning of s 12DA of the ASIC Act.

480 Further, or in the alternative, by authorising the inclusion of the FY14 Audit Report in the FY14 Financial Statements and thereby publishing the FY14 Audit Report, and by making Deloitte's FY14 Express Representations and Deloitte's FY14 Implied Representations, Deloitte, on one or more or all of these occasions, made representations:

- (a) in connection with the supply of services, being the services supplied by Deloitte in performing the FY14 Audit, that those services were of a particular standard or quality, within the meaning of s 29(1)(b) of the ACL; and/or
- (b) in connection with the supply of financial services, being the services supplied by Deloitte in performing the FY14 Audit, that those services were of a particular standard or quality, within the meaning of s 12DB(1)(a) of the ASIC Act.

Particulars

The services being supplied by Deloitte were its services as auditor of DSH.

Deloitte's FY14 Express Representations, being representations that Deloitte had conducted the FY14 Audit in accordance with, inter alia, applicable Auditing Standards, were representations regarding the standard or quality of Deloitte's services as an auditor in respect of the FY14 Audit engagement.

Deloitte's FY14 Implied Representations, being representations that Deloitte had exercised reasonable care and skill in performing the FY14 Audit, were representations regarding the standard or quality of Deloitte's services as an auditor in respect of the FY14 Audit engagement.

481 Deloitte's FY14 Express Representations were misleading or deceptive in contravention of s 1041H of the CA, s 18 of the Australian Consumer Law and/or s 12DA of the ASIC Act, because, for the reasons pleaded at paragraphs 448 to 449 and/or 453 to 454 the FY14 Audit was not conducted in accordance with the Auditing Standards.

Particulars

Parts F.6.4, F.6.5 and F.6.6 are repeated.

482 Deloitte's FY14 Express Representations were false or misleading, in contravention of s 29(1)(a) of the Australian Consumer Law and/or s 12DB(1)(b) of the ASIC Act, because, for the reasons pleaded at paragraphs 448 to 449 and/or 453 to 454, the FY14 Audit was not conducted in accordance with the Auditing Standards.

Particulars

Parts F.6.4, F.6.5 and F.6.6 are repeated.

483 Deloitte's FY14 Implied Representations were misleading or deceptive in contravention of s 1041H of the CA, s 18 of the Australian Consumer Law and/or s 12DA of the ASIC Act, because, for the reasons pleaded at paragraph 455:

- (a) Deloitte's FY14 Express Representations were not the product of Deloitte having conducted its FY14 Audit in accordance with Deloitte's auditing obligations as pleaded above at Parts F.2;
- (b) Deloitte's FY14 Express Representations were not the product of Deloitte having exercised reasonable care and skill in performing the FY14 Audit;
- (c) there were no reasonable grounds for making Deloitte's FY14 Express Representations.

Particulars

Parts F.6.4, F.6.5 and F.6.6 are repeated.

484 Deloitte's FY14 Implied Representation was false or misleading, in contravention of s 29(1)(b) of the Australian Consumer Law and/or s 12DB(1)(a) of the ASIC Act, because, for the reasons pleaded at paragraphs 455, the FY14 Audit was not performed with reasonable care and skill.

Particulars

Parts F.6.4, F.6.5 and F.6.6 are repeated.

485 Mr White authorised the issuance and the publication of the FY14 Audit Report.

Particulars

Mr White's authorisation is implied from his acceptance of his role as the lead auditor of the FY14 Audit, and from his signing of the FY14 Audit Report, addressed to the members of DSH.

486 By authorising the issuing and publishing of the FY14 Audit Report, Mr White made statements, or disseminated information, being Deloitte's FY14 Express Representations and Deloitte's FY14 Implied Representations, which:

- (a) were false in a material particular or materially misleading;

Particulars

Parts F.6.4, F.6.5 and F.6.6 are repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH;

Particulars

The plaintiffs and Group Members were likely to become aware of Deloitte's FY14 Express Representations and Deloitte's FY14 Implied Representations, being statements made, or information disseminated by, Mr White, in the following way:

- (a) *by obtaining the FY14 Audit Report through ASIC's website or by otherwise obtaining a copy of the FY14 Audit Report from ASIC;*
- (b) *by obtaining the FY14 Audit Report from DSH;*
- (c) *by obtaining the FY14 Financial Statements;*
- (d) *by their financial advisors obtaining the FY14 Audit Report (whether from ASIC or DSH) or the FY14 Financial Statements;*
- (e) *by stockbrokers obtaining the FY14 Audit Report (whether from ASIC or DSH) or the FY14 Financial Statements.*

Deloitte's FY14 Express Representations and Deloitte's FY14 Implied Representations were likely to be, and were, material to the plaintiffs and Group Members, being persons interested in acquiring shares in DSH, following the initial public offering of DSH shares.

For example, persons interested in acquiring shares in DSH were likely to be induced to do so by Deloitte's FY14 Express Representations and Deloitte's FY14 Implied Representations, which were to the effect that:

(a) the FY14 Financial Statements were the subject of an audit carried out in accordance with the Auditing Standards;

(b) Deloitte was of the opinion that the FY14 Financial Statements were prepared in accordance with the CA, including:

(i) giving a true and fair view of the DSH Group's financial position as at 29 June 2014 and of its performance for the period ended on that date, and

(ii) complying with Australian Accounting Standards and the Corporations Regulations 2001; and

(c) that opinion was:

(i) the product of Deloitte having conducted the FY14 Audit in accordance with Deloitte's auditing obligations;

(ii) the product of Deloitte having exercised reasonable care and skill in performing the FY14 Audit; and

(iii) based on reasonable grounds.

Further particulars may be provided after evidence.

(c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH shares on the ASX, following the initial public offering of DSH shares.

Particulars

The particulars to paragraphs 507 and 508 below are repeated.

Further particulars may be provided following discovery and evidence.

487 Mr White authorised the issuing and publishing of the FY14 Audit Report which contained representations, namely Deloitte's FY14 Express Representations and Deloitte's FY14 Implied Representations.

Particulars

The particulars to paragraphs 420, 421 and 485 are repeated.

- 488 Mr White ought reasonably to have known that those representations were false in a material particular or materially misleading because:
- (a) Mr White was an experienced auditor;
 - (b) Mr White knew and understood the Auditing Standards;
 - (c) Mr White read and signed the FY14 Audit Report;
 - (d) Mr White was the lead audit partner in charge of the FY14 Audit;
 - (e) as the lead audit partner, Mr White had access to Deloitte's audit file for the FY14 Audit, including all of Deloitte's working papers and all information provided to Deloitte as part of the FY14 Audit, including the information pleaded at paragraphs 445 and 450 above;
 - (f) as the lead audit partner, Mr White had a responsibility to supervise those persons assisting him with the FY14 Audit;
 - (g) those persons assisting Mr White with the audit had an obligation to provide him with all information and take all steps necessary for him to ensure, pursuant to his obligations under s 307A(2) of the CA, that the audit was conducted in accordance with the Auditing Standards;
 - (h) as lead audit partner, Mr White was obliged to ensure that the FY14 Audit was conducted in accordance with the Auditing Standards under s 307(2) of the CA;
 - (i) had Mr White discharged his duty to ensure that the FY14 Audit was conducted in accordance with the Auditing Standards, he would have ascertained that:
 - (i) the Inventory Practices and Effects were as pleaded in Part C.2 [in respect of FY14](#) for the reasons pleaded at paragraph 445;
 - (ii) DSH's accounting treatment of Switched Invoice Rebates, Volume Rebates and O&A Rebates was as pleaded above at Part C.3 [in respect of FY14](#) for the reasons pleaded at paragraph 450;

- (j) had Mr White discharged his duty to ensure that the FY14 Audit was conducted in accordance with the Auditing Standards, he would therefore have formed the view that the FY14 Financial Statements were not prepared in accordance with the Australian Accounting Standards;
- (k) by reason of the matters pleaded in sub-paragraphs (a)-(j) above, Mr White ought reasonably to have known that the FY14 Financial Statements were not prepared in accordance with the Australian Accounting Standards and, therefore, that Deloitte's FY14 Express Representations and Deloitte's FY14 Implied Representations were false in a material particular or materially misleading.

489 Further or in the alternative, Mr White ought to have known that Deloitte's FY14 Express Representations and Deloitte's FY14 Implied Representations were false in a material particular or materially misleading because:

- (a) Mr White was an experienced auditor;
- (b) Mr White knew and understood the Auditing Standards;
- (c) Mr White read and signed the FY14 Audit Report;
- (d) Mr White was the lead audit partner in charge of the FY14 Audit;
- (e) as the lead audit partner, Mr White had access to Deloitte's audit file for the FY14 Audit, including all of Deloitte's working papers and all information provided to Deloitte as part of the FY14 Audit, including the information pleaded at paragraphs 445 and 450 above;
- (f) as the lead audit partner, Mr White had a responsibility to supervise those persons assisting him with the FY14 Audit;
- (g) those persons assisting Mr White with the audit had an obligation to provide him with all information and take all steps necessary for him to ensure, pursuant to his obligations under s 307A(2) of the CA, that the audit was conducted in accordance with the Auditing Standards;
- (h) Mr White ought reasonably to have tested and reviewed the audit processes followed by Deloitte in respect of the FY14 Audit;

- (i) by reason of the matters pleaded in sub-paragraphs (a)-(h) and by reason of his role in relation to the FY14 Audit, and his significant expertise and experience as an auditor, Mr White ought reasonably to have known of the deficiencies in Deloitte's conduct of the FY14 Audit as pleaded at paragraphs 448 to 449 and 453 to 454 above;
- (j) by reason of the matters pleaded in sub-paragraph (i) above, Mr White ought reasonably to have known that the FY14 Audit was not conducted in accordance with the Auditing Standards and therefore that:
 - (i) Deloitte's FY14 Express Representations and Deloitte's FY14 Implied Representations were not the product of Deloitte having conducted the FY14 Audit in accordance with Deloitte's auditing obligations as pleaded above at Parts F.2 and F.3;
 - (ii) those representations were not the product of Deloitte having exercised reasonable care and skill in performing the FY14 Audit; and
 - (iii) there were not reasonable grounds for making Deloitte's FY14 Express Representations and Deloitte's FY14 Implied Representations.

490 By reason of the matters pleaded in paragraphs 485 to 489, Mr White contravened s 1041E of the CA by authorising the issuance and publication of the FY14 Audit Report.

F.7.3. Deloitte's FY15 Contraventions

491 By authorising the inclusion of the FY15 Audit Report in the FY15 Financial Statements and thereby publishing the FY15 Audit Report, and by making Deloitte's FY15 Express Representations and Deloitte's FY15 Implied Representations, Deloitte, on one or more or all of those occasions, engaged in conduct:

- (a) in relation to a financial product or a financial service within the meaning of s 1041H of the CA; and/or
- (b) in trade or commerce within the meaning of section 18 of the Australian Consumer Law; and/or
- (c) in trade or commerce and in relation to financial services within the meaning of s 12DA of the ASIC Act.

492 Further, or in the alternative, by authorising the inclusion of the FY15 Audit Report in the FY15 Financial Statements and thereby publishing the FY15 Audit Report, and by making Deloitte's

FY15 Express Representations and Deloitte's FY15 Implied Representations Deloitte, on one or more or all of these occasions, made representations:

- (a) in connection with the supply of services, being the services supplied by Deloitte in performing the FY15 Audit, that those services were of a particular standard or quality, within the meaning of s 29(1)(b) of the ACL; and/or
- (b) in connection with the supply of financial services, being the services supplied by Deloitte in performing the FY15 Audit, that those services were of a particular standard or quality, within the meaning of s 12DB(1)(a) of the ASIC Act.

Particulars

The services being supplied by Deloitte were its services as auditor of DSH.

Deloitte's FY15 Express Representations, being representations that Deloitte had conducted the FY15 Audit in accordance with, inter alia, applicable Auditing Standards, were representations regarding the standard or quality of Deloitte's services as an auditor in respect of the FY15 Audit engagement.

Deloitte's FY15 Implied Representations, being representations that Deloitte had exercised reasonable care and skill in performing the FY15 Audit, were representations regarding the standard or quality of Deloitte's services as an auditor in respect of the FY15 Audit engagement.

493 Deloitte's FY15 Express Representations were misleading or deceptive in contravention of s 1041H of the CA, s 18 of the Australian Consumer Law and/or s 12DA of the ASIC Act, because, for the reasons pleaded at paragraphs 459 to 460 and/or 464 to 465, the FY15 Audit was not conducted in accordance with the Auditing Standards.

Particulars

Parts F.6.7, F.6.8 and F.6.9 are repeated.

494 Deloitte's FY15 Express Representations were false or misleading in contravention of s 29(1)(b) of the Australian Consumer Law and/or s 12DB(1)(a) of the ASIC Act, because, for the reasons pleaded at paragraphs 459 to 460 and/or 464 to 465, the FY15 Audit was not conducted in accordance with the Auditing Standards.

Particulars

Parts F.6.7, F.6.8 and F.6.9 are repeated.

495 Deloitte's FY15 Implied Representations were misleading or deceptive in contravention of s 1041H of the CA, s 18 of the Australian Consumer Law and/or s 12DA of the ASIC Act, because, for the reasons pleaded at paragraph 466:

- (a) Deloitte's FY15 Express Representations were not the product of Deloitte having conducted its FY15 Audit in accordance with Deloitte's auditing obligations as pleaded above at Parts F.2;
- (b) Deloitte's FY15 Express Representations were not the product of Deloitte having exercised reasonable care and skill in performing the FY15 Audit; and/or
- (c) there were no reasonable grounds for making Deloitte's FY15 Express Representations.

Particulars

Parts F.6.7, F.6.8 and F.6.9 are repeated.

496 Deloitte's FY15 Implied Representation was false or misleading, in contravention of s 29(1)(b) of the Australian Consumer Law and/or s 12DB(1)(a) of the ASIC Act, because, for the reasons pleaded at paragraph 466, the FY15 Audit was not performed with reasonable care and skill.

Particulars

Parts F.6.7, F.6.8 and F.6.9 are repeated.

497 Mr White authorised the issuance and the publication of the FY15 Audit Report.

Particulars

Mr White's authorisation is implied from his acceptance of his role as the lead auditor of the FY15 Audit, and from his signing of the FY15 Audit Report, addressed to the members of DSH.

498 By authorising the issuing and publishing of the FY15 Audit Report, Mr White made statements, or disseminated information, being Deloitte's FY15 Express Representations and Deloitte's FY15 Implied Representations, which:

- (a) were false in a material particular or materially misleading;

Particulars

Parts F.6.7, F.6.8 and F.6.9 are repeated.

- (b) were likely to induce, directly or indirectly, the plaintiffs and Group Members to acquire shares in DSH;

Particulars

The plaintiffs and Group Members were likely to become aware of Deloitte's FY15 Express Representations and Deloitte's FY15 Implied Representations, being statements made, or information disseminated by, Mr White, in the following way:

- (a) *by obtaining the FY15 Audit Report through ASIC's website or by otherwise obtaining a copy of the FY15 Audit Report from ASIC;*
- (b) *by obtaining the FY15 Audit Report from DSH;*
- (c) *by obtaining the FY15 Financial Statements;*
- (d) *by their financial advisors obtaining the FY15 Audit Report (whether from ASIC or DSH) or the FY15 Financial Statements;*
- (e) *by stockbrokers obtaining the FY15 Audit Report (whether from ASIC or DSH) or the FY15 Financial Statements.*

Deloitte's FY15 Express Representations and Deloitte's FY15 Implied Representations were likely to be, and were, material to the plaintiffs and Group Members, being persons interested in acquiring shares in DSH, following the initial public offering of DSH shares.

For example, persons interested in acquiring shares in DSH were likely to be induced to do so by Deloitte's FY15 Express Representations and Deloitte's FY15 Implied Representations, which were to the effect that:

- (a) *the FY15 Financial Statements were the subject of an audit carried out in accordance with the Auditing Standards;*
- (b) *Deloitte was of the opinion that the FY15 Financial Statements were prepared in accordance with the CA, including:*
 - (i) *giving a true and fair view of the DSH Group's financial position as at 28 June 2015 and of its performance for the period ended on that date, and*

(ii) *complying with Australian Accounting Standards and the Corporations Regulations 2001; and*

(c) *that opinion was:*

(i) *the product of Deloitte having conducted the FY15 Audit in accordance with Deloitte's auditing obligations;*

(ii) *the product of Deloitte having exercised reasonable care and skill in performing the FY15 Audit; and*

(iii) *based on reasonable grounds.*

Further particulars may be provided after evidence.

(c) further, or in the alternative to paragraph (b), were likely to have the effect of increasing, maintaining or stabilising the price for trading in DSH shares on the ASX, following the initial public offering of DSH shares.

Particulars

The particulars to paragraphs 510 and 511 below are repeated.

Further particulars may be provided following discovery and evidence.

499 Mr White authorised the issuing and publishing of the FY15 Audit Report which contained representations, namely Deloitte's FY15 Express Representations and Deloitte's FY15 Implied Representations.

Particulars

The particulars to paragraphs 425, 426 and 497 are repeated.

500 Mr White ought reasonably to have known that those representations were false in a material particular or materially misleading because:

(a) Mr White was an experienced auditor;

(b) Mr White knew and understood the Auditing Standards;

(c) Mr White read and signed the FY15 Audit Report;

(d) Mr White was the lead audit partner in charge of the FY15 Audit;

- (e) as the lead audit partner, Mr White had access to Deloitte's audit file for the FY15 Audit, including all of Deloitte's working papers and all information provided to Deloitte as part of the FY15 Audit, including the information pleaded at paragraphs 456 and 461 above;
- (f) as the lead audit partner, Mr White had a responsibility to supervise those persons assisting him with the FY15 Audit;
- (g) those persons assisting Mr White with the audit had an obligation to provide him with all information and take all steps necessary for him to ensure, pursuant to his obligations under s 307A(2) of the CA, that the audit was conducted in accordance with the Auditing Standards;
- (h) as lead audit partner, Mr White was obliged to ensure that the FY15 Audit was conducted in accordance with the Auditing Standards under s 307(2) of the CA;
- (i) had Mr White discharged his duty to ensure that the FY15 Audit was conducted in accordance with the Auditing Standards, he would have ascertained that:
 - (i) the Inventory Practices and Effects were as pleaded in Part C.2 [in respect of FY15](#) for the reasons pleaded at paragraph 456;
 - (ii) DSH's accounting treatment of Switched Invoice Rebates, Volume Rebates and O&A Rebates was as pleaded above at Part C.3 [in respect of FY15](#) for the reasons pleaded at paragraph 461;
- (j) had Mr White discharged his duty to ensure that the FY15 Audit was conducted in accordance with the Auditing Standards, he would therefore have formed the view that the FY15 Financial Statements were not prepared in accordance with the Australian Accounting Standards;
- (k) by reason of the matters pleaded in sub-paragraphs (a)-(j) above, Mr White ought reasonably to have known that the FY15 Financial Statements were not prepared in accordance with the Australian Accounting Standards and, therefore, that Deloitte's FY15 Express Representations and Deloitte's FY15 Implied Representations were false in a material particular or materially misleading.

501 Further or in the alternative, Mr White ought to have known that Deloitte's FY15 Express Representations and Deloitte's FY15 Implied Representations were false in a material particular or materially misleading because:

- (a) Mr White was an experienced auditor;
- (b) Mr White knew and understood the Auditing Standards;
- (c) Mr White read and signed the FY15 Audit Report;
- (d) Mr White was the lead audit partner in charge of the FY15 Audit;
- (e) as the lead audit partner, Mr White had access to Deloitte's audit file for the FY15 Audit, including all of Deloitte's working papers and all information provided to Deloitte as part of the FY15 Audit, including the information pleaded at paragraphs 456 and 461 above;
- (f) as the lead audit partner, Mr White had a responsibility to supervise those persons assisting him with the FY15 Audit;
- (g) those persons assisting Mr White with the audit had an obligation to provide him with all information and take all steps necessary for him to ensure, pursuant to his obligations under s 307A(2) of the CA, that the audit was conducted in accordance with the Auditing Standards;
- (h) Mr White ought reasonably to have tested and reviewed the audit processes followed by Deloitte in respect of the FY15 Audit;
- (i) by reason of the matters pleaded in sub-paragraphs (a)-(h) above and his role in relation to the FY15 Audit, and his significant expertise and experience as an auditor, Mr White ought reasonably to have known of the deficiencies in Deloitte's conduct of the FY15 Audit as pleaded at paragraphs 459 to 460 and 464 to 465 above;
- (j) by reason of the matters pleaded in sub-paragraph (i) above, Mr White ought reasonably to have known that the FY15 Audit was not conducted in accordance with the Auditing Standards and therefore that:
 - (i) Deloitte's FY15 Express Representations and Deloitte's FY15 Implied Representations were not the product of Deloitte having conducted the FY15 Audit in accordance with Deloitte's auditing obligations as pleaded above at Parts F.2 and F.3;

- (ii) those representations were not the product of Deloitte having exercised reasonable care and skill in performing the FY15 Audit; and
- (iii) there were not reasonable grounds for making Deloitte's FY15 Express Representations and Deloitte's FY15 Implied Representations.

502 By reason of the matters pleaded in paragraphs 497 to 501, Mr White contravened s 1041E of the CA by authorising the issuance and publication of the FY15 Audit Report.

F.8. CAUSATION, LOSS AND DAMAGE

F.8.1. FY13 Causation

503 But for Deloitte's conduct pleaded in Parts F.6.1 and F.6.2 (Deloitte's FY13 Audit conduct) and the contraventions pleaded in Part F.7.1 (Deloitte's and Mr White's contraventions in respect of the FY13 Audit), Deloitte would have communicated to DSSH's management and those charged with governance the fact that:

- (a) DSSH's inventory provisioning was as pleaded above in Part C.2 [in respect of FY13](#); and
- (b) DSSH's writing back of the Warranty Sign On Liability in FY13 was as pleaded above in Part C.4 [in respect of FY13](#).

Particulars

ASA 450 paragraph 8 required Deloitte to communicate the matters pleaded in Parts C.2 and C.4 [in respect of FY13](#) to the appropriate level of management of DSSH on a timely basis, because each of those matters gave rise to material misstatements in the FY13 Financial Statements for the reasons pleaded in Parts C.2 and C.4 [in respect of FY13](#) respectively. Deloitte was further required to request management to correct the material misstatements arising out of the matters pleaded in Parts C.2 and C.4 [in respect of FY13](#).

504 Had Deloitte communicated the matters pleaded in paragraph 503 to ~~DDSH's~~DSSH's management and those charged with governance, then either:

(a) the FY13 Financial Statements would have been corrected so as to reflect the financial position and performance of DSH as at 30 June 2013, unaffected by the matters pleaded in Parts C.2 and C.4 in FY13, and, consequentially, the financial results for 1Q14 would have been corrected to reflect the financial position and performance of DSH as at 29 September 2013, unaffected by the matters pleaded in Part C.2 and C.4 in 1Q14, in which case:

(i) the ~~1Q14-FY13~~ pro forma and statutory financials would have been corrected by reference to the financial position and performance of DSH as at 30 June 2013, unaffected by the matters pleaded in Parts C.2 and C.4 in FY13;

~~(ii)~~(ii) the 1Q14 pro forma financials would have been corrected by reference to the financial position and performance of DSH as at 29 September 2013, unaffected by the matters pleaded in Part C.2 and C.4 in 1Q14;

~~(iii)~~(iii) the Prospectus would not have been issued;

~~(iv)~~(iv) DSH would not have made the offer to subscribe for shares to the public;

~~(v)~~(v) the DSH IPO would not have proceeded and DSH would not have been listed or quoted on the ASX; and

~~(vi)~~(vi) in the premises the plaintiffs and the Group Members would not have acquired interests in DSH Shares; or

Particulars

Further particulars may be provided after the completion of evidence.

(b) the FY13 Financial Statements would not have been corrected so as to reflect financial position and performance of DSH as at 30 June 2013, unaffected by the matters pleaded in Parts C.2 and C.4 in FY13, in which case:

(i) Deloitte would have issued a qualified audit opinion in the FY13 Audit Report;

(ii) the Prospectus would not have been issued;

(iii) DSH would not have made the offer to subscribe for shares to the public;

- (iv) The DSH IPO would not have proceeded and DSH would not have been listed or quoted on the ASX; and
- (v) in the premises the plaintiffs and the Group Members would not have acquired interests in DSH Shares.

Particulars

If management failed to correct the material misstatements raised by Deloitte, Deloitte would have been required to communicate the uncorrected misstatements and the effect that they, individually or in aggregate, may have had on Deloitte's audit opinion to those charged with governance: ASA 450 paragraph 12. See also ASA 705 paragraph 28.

If management and those charged with governance failed to correct one, a combination of, or all of the misstatements arising from the Inventory Practices and Effects and the Warranty Sign On Liability in the FY13 Financial Statements, Deloitte would have issued a qualified audit opinion, in accordance with ASA 705 paragraph 7(a), given that each of the Inventory Practices and Effects and the Warranty Sign On Liability individually resulted in material misstatements in the FY13 Financial Statements for the reasons pleaded above in Parts C.2 and C.4 [in respect of FY13](#) respectively.

The FY13 Audit Report would, in those circumstances, have included a section entitled "Basis for Qualified Opinion", which would set out a description and quantification of the financial effects of the misstatement(s), unless impracticable. If it were not practicable to quantify the financial effects of the misstatement(s), Deloitte would so state in the "Basis for Qualified Opinion" section (ASA 705 paragraph 17). Further, in those circumstances, the Opinion Paragraph would include the matters set out in paragraph 23 of ASA 705.

The description and quantification of the financial effects of the misstatement(s) appearing in the "Basis for Qualified Opinion" section of the FY13 Audit Report would depend upon whether management and those charged with governance corrected misstatements arising from one, some or all of the Inventory Practices and Effects and the Warranty Sign On Liability, following Deloitte's communication of the misstatements in relation to these matters to management and those charged with governance.

DSH would not have been listed in circumstances where Deloitte issued a modified audit opinion: see ASX Listing Rules: r 1.1, condition 9 (requiring an entity to satisfy either the profit test in r 1.2 or the assets test in r 1.3 in order to be admitted to the official list as an ASX Listing); r 1.2.3 (requiring an entity to provide an audit report that does not contain a modified opinion in order to satisfy the profit test); r 1.3.5 (requiring the provision of an audit report that does not contain a modified opinion in order to satisfy the assets test, unless the ASX agrees otherwise).

Further, if Deloitte had issued a modified audit opinion, the market would have been alerted to the shortcomings in the FY13 Financial Statements pleaded above at Parts C.2 and C.4 [in respect of FY13](#) as these matters would have been set out in the “Basis for Qualified Opinion” section of the FY13 Audit Report, and DSH would not have been listed: Report of Rowan Johnston dated 30 October 2018.

Further particulars may be provided after the completion of evidence.

505 In the alternative to the scenarios pleaded in paragraph 504, had the shares in DSH been listed and quoted following Deloitte communicating the matters pleaded in paragraph 503 to ~~DDSH's~~ [DSSH's](#) management and those charged with governance:

[\(a\) either the FY13 Financial Statements and 1Q14 financial results would have been corrected by DSSH \(as pleaded above in paragraph 504\(a\)\) or Deloitte would have issued a qualified audit opinion \(as pleaded in paragraph 504\(b\)\); and](#)

~~(a)~~[\(b\)](#) the shares acquired on the DSH IPO to have been acquired at:

- (i) the shares' true value, or
- (ii) the market price that would have prevailed but for the contraventions of the CA, the ASIC Act and the Australian Consumer Law (or any one or a combination of them) pleaded above in Part F.7.1 (Deloitte's and Mr White's contraventions in respect of the FY13 Audit),

being a price substantially less than the price at which DSH shares were acquired on the DSH IPO; and

~~(b)~~[\(c\)](#) from the moment of quotation, the market price of the DSH Shares traded on the ASX would have been:

- (i) the shares' true value, or

- (ii) the market price that would have prevailed but for the contraventions of the CA, the ASIC Act and the Australian Consumer Law (or any one or a combination of them) pleaded above in Part F.7.1 (Deloitte's and Mr White's contraventions in respect of the FY13 Audit),

being a price substantially less than the market price of the DSH Shares traded on the ASX from the moment of quotation.

Particulars

Had Deloitte and Mr White not committed the pleaded contraventions in respect of the FY13 Audit, the market would have been alerted to the shortcomings in the FY13 Financial Statements pleaded above at Parts C.2 and C.4, whether because the FY13 Financial Statements [and 1Q14 financial results](#) were corrected by DSSH (as pleaded above in paragraph 504(a)), or because Deloitte issued a qualified audit opinion which disclosed those shortcomings (as pleaded in paragraph 504(b)).

In either circumstance, had DSH been listed, its shares would have been acquired at, and from the moment of quotation would have traded at, either the shares' true value or the market price that would have prevailed but for Deloitte's contraventions in respect of the FY13 Audit, as pleaded in Part F.7.1.

Further particulars may be provided after the completion of evidence.

F.8.2. FY14 Causation

506 Further or in the alternative, but for Deloitte's conduct pleaded in Parts F.6.4 and F.6.5 (Deloitte's FY14 Audit conduct), and the contraventions pleaded in Part F.7.2 (Deloitte's and Mr White's contraventions in respect of the FY14 Audit), Deloitte would have communicated to DSH's management and those charged with governance the fact that:

- (a) DSH's Inventory Practices and Effects were as pleaded above in Part C.2 [in respect of FY14](#); and
- (b) DSH's rebate accounting practices were as pleaded above in Part C.3 [in respect of FY14](#).

Particulars

ASA 450 paragraph 8 required Deloitte to communicate the matters pleaded in Parts C.2 and C.3 [in respect of FY14](#) to the appropriate level of DSH management on a

timely basis, because each of those matters gave rise to material misstatements in the FY14 Financial Statements for the reasons pleaded in Parts C.2 and C.3 [in respect of FY14](#) respectively. Deloitte was further required to request management to correct the material misstatements arising out of the matters pleaded in Parts C.2 and C.3 [in respect of FY14](#).

507 Had Deloitte communicated the matters pleaded in paragraph 506 to DSH's management and those charged with governance, then either:

- (a) the FY14 Financial Statements would have been corrected so as to reflect the financial position and performance of DSH as at 29 June 2014, unaffected by the matters pleaded in Parts C.2 and C.3 in FY14, in which case the market price of the DSH Shares traded on the ASX from on or around 18 August 2014 (being the date of publication of the FY14 Audit Report in the FY14 Financial Statements) would have reflected:
 - (i) the shares' true value; or
 - (ii) the market price that would have prevailed but for Deloitte's contraventions of the CA, the ASIC Act and the Australian Consumer Law (or any one or a combination of them) pleaded above in Part F.7.2 (Deloitte's and Mr White's contraventions in respect of the FY14 Audit); or
- (b) the FY14 Financial Statements would not have been corrected so as to reflect the financial position and performance of DSH as at 29 June 2014, unaffected by the matters pleaded in Parts C.2 and C.3 in FY14, in which case Deloitte would have issued a qualified audit opinion in the FY14 Audit Report, alerting the market to the material misstatements in the FY14 Financial Statements pleaded above at Parts C.2 and C.3 [in respect of FY14](#), in which case the market price of the DSH Shares traded on the ASX from on or around 18 August 2014 (being the date of publication of the FY14 Audit Report in the FY14 Financial Statements) would have reflected:
 - (i) the shares' true value; or
 - (ii) the market price that would have prevailed but for Deloitte's contraventions of the CA, the ASIC Act and the Australian Consumer Law (or any one or a combination of them) pleaded above in Part F.7.2 (Deloitte's and Mr White's contraventions in respect of the FY14 Audit).

Particulars

If management failed to correct the material misstatements raised by Deloitte, Deloitte would have been required to communicate the uncorrected misstatements and the effect that they, individually or in aggregate, may have had on Deloitte's audit opinion to those charged with governance: ASA 450 paragraph 12. See also ASA 705 paragraph 28.

If management and those charged with governance failed to correct either or both of the misstatements arising from the Inventory Practices and Effects and the rebate accounting practices in the FY14 Financial Statements, Deloitte would have issued a qualified audit opinion, in accordance with ASA 705 paragraph 7(a), given that each of the Inventory Practices and Effects and the rebate accounting practices individually resulted in material misstatements in the FY14 Financial Statements for the reasons pleaded above in Parts C.2 and C.3 [in respect of FY14](#) respectively.

As to the contents of the qualified audit opinion, the particulars to paragraph 504 are repeated.

Further particulars may be provided after the completion of evidence, including as to the market price at which DSH Shares would have traded on the ASX from on or around 18 August 2014, but for Deloitte's contraventions.

508 In the premises, from the date of the publication of Deloitte's FY14 Audit Report in the FY14 Financial Statements, Deloitte's and Mr White's contraventions of the CA, the ASIC Act and the Australian Consumer Law (or any one or a combination of them) pleaded above in Part F.7.2 caused the market price of the DSH Shares traded on ASX to be substantially greater than:

- (a) their true value, or
- (b) the market price that would have prevailed but for the pleaded contraventions.

Particulars

Further particulars may be provided after the completion of evidence.

F.8.3. FY15 Causation

509 Further or in the alternative, but for the conduct pleaded in Parts F.6.7 and F.6.8 (Deloitte's FY15 Audit conduct), and the contraventions pleaded in Part F.7.3 (Deloitte's and Mr White's

contraventions in respect of the FY15 Audit), Deloitte would have communicated to DSH's management and those charged with governance the fact that:

- (a) DSH's Inventory Practices and Effects were as pleaded above in Part C.2 [in respect of FY15](#); and
- (b) DSH's rebate accounting practices were as pleaded above in Part C.3 [in respect of FY15](#).

Particulars

The particulars to paragraph 506 are repeated.

510 Had Deloitte communicated the matters pleaded in paragraph 509 to DSH's management and those charged with governance, then either:

- (a) the FY15 Financial Statements would have been corrected so as to reflect the financial position and performance of DSH as at 28 June 2015, unaffected by the matters pleaded in Parts C.2 and C.3 in FY15, in which case the market price of the DSH Shares traded on the ASX from on or around 17 August 2015 (being the date of publication of the FY15 Audit Report in the FY15 Financial Statements) would have reflected:
 - (i) the shares' true value; or
 - (ii) the market price that would have prevailed but for Deloitte's contraventions of the CA, the ASIC Act and the Australian Consumer Law (or any one or a combination of them) pleaded above in Part F.7.3 (Deloitte's contraventions in respect of the FY15 Audit); or
- (b) the FY15 Financial Statements would not have been corrected so as to reflect the financial position and performance of DSH as at 28 June 2015, unaffected by the matters pleaded in Parts C.2 and C.3 in FY15, in which case Deloitte would have issued a qualified audit opinion in the FY15 Audit Report, alerting the market to the material misstatements in the FY15 Financial Statements pleaded above at Parts C.2 and C.3 [in respect of FY15](#), in which case the market price of the DSH Shares traded on the ASX from on or around 17 August 2015 (being the date of publication of the FY15 Audit Report in the FY15 Financial Statements) would have reflected:
 - (i) the shares' true value; or

- (ii) the market price that would have prevailed but for Deloitte's contraventions of the CA, the ASIC Act and the Australian Consumer Law (or any one or a combination of them) pleaded above in Part F.7.3 (Deloitte's and Mr White's contraventions in respect of the FY15 Audit).

Particulars

The particulars to paragraph 507 are repeated.

Further particulars may be provided after the completion of evidence.

511 In the premises, from the date of the publication of Deloitte's FY15 Audit Report in the FY15 Financial Statements, Deloitte's and Mr White's contraventions of the CA, the ASIC Act and the Australian Consumer Law (or any one or a combination of them) in respect of the FY15 Audit pleaded above in Part F.7.3 caused the market price of the DSH Shares traded on ASX to be substantially greater than:

- (a) the shares' true value, or
- (b) the market price that would have prevailed but for the pleaded contraventions.

Particulars

Further particulars may be provided after the completion of evidence.

F.8.4. Causation based on reliance

512 The plaintiffs and Group Members would not have purchased DSH shares at the prevailing market price at the time of purchase if they had been aware of Deloitte's and Mr White's contraventions of the CA, the ASIC Act and the Australian Consumer Law (or any one or a combination of them) pleaded above at Part F.7.

Particulars

Further particulars may be provided after the completion of evidence.

F.8.5. Causation based on Abboud and Potts' reliance on Deloitte's contraventions

513 Further, or in the alternative, for the purposes of this claim against Deloitte only, the plaintiffs repeat the allegations made by Mr Abboud and Mr Potts in their Cross-Claims filed on 27 August 2018 in the Findlay proceedings and say that if and to the extent Mr Abboud and Mr Potts establish:

- (a) that Deloitte made the representations pleaded in their Cross-Claim to them;
- (b) that those representations were misleading or deceptive in breach of s 1041H of the CA, s 18 of the Australian Consumer Law and/or s 12DA of the ASIC Act, and/or were false or misleading in breach of s 29(1)(b) of the Australian Consumer Law and/or s 12DB(1)(a) of the ASIC Act for the reasons set out in their Cross-Claims;
- (c) Mr Abboud and Mr Potts relied on those representations in making the resolutions to approve the issue of the FY14 Financial Statements and the FY15 Financial Statements, and in making the directors' declarations which accompanied those reports; and
- (d) Mr Abboud and Mr Potts would not have joined in making the resolutions to approve the issue of the FY14 Financial Statements and the FY15 Financial Statements, and/or in making the directors' declarations which accompanied those reports,

then those representations that were made by Deloitte to Mr Abboud and Mr Potts caused the plaintiffs and the Group Members to suffer loss and damage.

F.8.6. Loss caused by Deloitte

514 In the absence of Deloitte's and Mr White's contraventions of the CA, the ASIC Act and the Australian Consumer Law (or any one or a combination of them) pleaded above at Part F.7, for the reasons pleaded at Parts F.8.1, F.8.2, F.8.3, F.8.4 and/or F.8.5, the plaintiffs and Group Members would not have suffered loss by reason of their purchase of DSH shares at a price substantially greater than:

- (a) their true value, or
- (b) the market price that would have prevailed but for Deloitte's and Mr White's pleaded contraventions.

Particulars

The particulars to Parts F.8.1, F.8.2, F.8.3, F.8.4 and F.8.5 are repeated.

515 In the premises, the plaintiffs and Group Members have suffered loss and damage by, or which resulted from, the contraventions pleaded at Part F.7.

Particulars

The loss suffered by the plaintiffs and Group Members is:

- *to be determined at the trial of these proceedings on behalf of the plaintiffs and all Group Members on a no-transaction basis, for the reasons pleaded at paragraph 504 above, on the basis that DSH would not have been listed on the ASX and therefore none of the plaintiffs or Group Members would ever have acquired an interest in DSH Shares in which case the plaintiffs and Group Members' damages should be determined as the difference between the price at which they acquired their interest in DSH Shares plus the amount paid for any brokerage or transaction cost and any value obtained from the sale of that interest, taking into account any benefit received via dividends; or*
- *on the basis that the contraventions beginning with the publication of the Prospectus were continuing and caused or contributed to the share price of DSH to be artificially inflated, in which case the plaintiffs' and Group Members' damages should be determined as:*
 - *the difference between the price at which they acquired their interest in DSH Shares and the true value of that interest (the difference will be proved in the evidence), making allowance for any sales of interests in DSH Shares; or*
 - *the difference between the price at which they acquired their interest in DSH Shares and the market price that would have prevailed but for the pleaded contraventions (that difference will be proved in the evidence), making allowance for any sales of interests in DSH Shares.*

G. COMMON QUESTIONS

516 The following common questions of fact or law arise in the proceeding:

- (aa) whether the FY13 Financial Statements were prepared in accordance with Australian Accounting Standards;
- (ab) whether the FY13 Financial Statements gave a true and fair view of the financial position and performance of DSSH;
- (ac) whether, in conducting the FY13 Audit, Deloitte failed to act as a Reasonable Auditor;
- (a) whether DSH contravened s 728 of the CA in issuing and publishing the Prospectus;
- (b) whether the Prospectus would have been issued and the offer to issue shares in DSH would have been made had the financial statements prepared by DSH at the time of the Prospectus been prepared in accordance with Australian Accounting Standards;
- (c) whether the FY14 Financial Statements were prepared in accordance with Australian Accounting Standards;
- (d) whether the FY14 Financial Statements gave a true and fair view of the financial position and performance of DSH and the DSH Group;
- (da) whether, in conducting the FY14 Audit, Deloitte failed to act as a Reasonable Auditor;
- (e) whether the FY15 Financial Statements were prepared in accordance with Australian Accounting Standards;
- (f) whether the FY15 Financial Statements gave a true and fair view of the financial position and performance of DSH and the DSH Group;
- (g) whether, in conducting the FY15 Audit, Deloitte failed to act as a Reasonable Auditor;.

517 Whether DSH contravened ss 1041H and/or 1041E of the CA and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law in:

- (a) issuing and publishing the FY14 Financial Statements including the declaration pleaded at paragraph 89;
- (b) making DSH's FY14 Express Representation and DSH's FY14 Implied Representation;

- (c) making the FY14 ASX Announcement & Results Briefing;
- (d) issuing and publishing the FY15 Financial Statements including the declaration pleaded at paragraph 103;
- (e) making DSH's FY15 Express Representation and DSH's FY15 Implied Representation; and/or
- (f) making the FY15 ASX Announcement & Results Briefing.

518 Whether each of Mr Abboud and Mr Potts contravened ss 1041H and/or 1041E of the CA and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law in:

- (a) authorising the issuing and publishing the FY14 Financial Statements, including the declaration pleaded at paragraph 89;
- (b) making the Directors' FY14 Express Representation and the Directors' FY14 Implied Representation;
- (c) authorising the issuing and publication of the FY14 ASX Announcement & Results Briefing;
- (d) presenting the Results Briefing (forming part of the FY14 ASX Announcement & Results Briefing).
- (e) authorising the issuing and publishing the FY15 Financial Statements, including the declarations pleaded at paragraph 103;
- (f) making the Directors' FY15 Express Representation and the Directors' FY15 Implied Representation;
- (g) authorising the issuing and publication of the FY15 ASX Announcement & Results Briefing;
- (h) presenting the Results Briefing (forming part of the FY15 ASX Announcement & Results Briefing).

519 Whether DSH contravened s 674(2) of the CA by reason of DSH's failure to disclose the matters pleaded above in paragraphs 279, 280 and 281.

520 Whether Deloitte contravened s 1041H of the CA and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law in:

- (a) making Deloitte's FY13 Express Representations;
- (b) making Deloitte's FY13 Implied Representations;
- (c) making Deloitte's FY14 Express Representations;
- (d) making Deloitte's FY14 Implied Representations;
- (e) making Deloitte's FY15 Express Representations; and / or
- (f) making Deloitte's FY15 Implied Representations.

521 Whether Deloitte contravened s 12DB(1)(b) of the ASIC Act and/or s 29(1)(a) of the Australian Consumer Law in:

- (a) making Deloitte's FY13 Express Representations;
- (b) making Deloitte's FY13 Implied Representations;
- (c) making Deloitte's FY14 Express Representations;
- (d) making Deloitte's FY14 Implied Representations;
- (e) making Deloitte's FY15 Express Representations; and / or
- (f) making Deloitte's FY15 Implied Representations.

522 Whether Mr White contravened s 1041E of the CA in:

- (a) authorising the issuing and publishing of the FY13 Audit Report;
- (b) making Deloitte's FY13 Express Representations;
- (c) making Deloitte's FY13 Implied Representations;
- (d) authorising the issuing and publishing of the FY14 Audit Report;
- (e) making Deloitte's FY14 Express Representations;
- (f) making Deloitte's FY14 Implied Representations;

- (g) authorising the issuing and publishing of the FY15 Audit Report;
- (h) making Deloitte's FY15 Express Representations; and/or
- (i) making Deloitte's FY15 Implied Representations.

523 Whether Mr Abboud and/or Mr Potts relied on representations made by Deloitte in:

- (a) authorising the issuing and publishing the FY14 Financial Statements, including the declaration pleaded at paragraph 89;
- (b) making the Directors' FY14 Express Representation and the Directors' FY14 Implied Representation;
- (c) authorising the issuing and publication of the FY14 ASX Announcement & Results Briefing;
- (d) presenting the Results Briefing (forming part of the FY14 ASX Announcement & Results Briefing).
- (e) authorising the issuing and publishing the FY15 Financial Statements, including the declarations pleaded at paragraph 103;
- (f) making the Directors' FY15 Express Representation and the Directors' FY15 Implied Representation;
- (g) authorising the issuing and publication of the FY15 ASX Announcement & Results Briefing;
- (h) presenting the Results Briefing (forming part of the FY15 ASX Announcement & Results Briefing).

524 Whether the plaintiffs and Group Members have suffered loss or damage as a result of the contraventions by DSH, Mr Abboud, Mr Potts and/or Deloitte (or any of them).

525 The correct measure of compensation payable to the plaintiffs and Group Members.

526 Whether a reasonably accurate assessment can be made of the total amount to which Group Members will be entitled under an award of damages in an aggregate amount.

527 Whether the Court can, and should, make an award of damages in an aggregate amount for Group Members pursuant to s 177(1) of the Civil Procedure Act 2005 (NSW).

528 The quantum of compensation payable to the plaintiffs and Group Members.

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 claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiffs that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Name and Capacity

Ian Dallen, solicitor on record for the plaintiffs in proceedings 2017/294069

Date of signature

18 April 2019

Signature



Name and Capacity

Robert Johnston, solicitor on record for the plaintiffs in proceedings 2018/52431

Date of signature

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- You will be in default in these proceedings.
- The court may enter judgment against you without any further notice to you.

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.

- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim**, by filing a defence and/or making a cross-claim.
- 2 If money is claimed, and you believe you owe the money claimed**, by:
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed**, by:
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Law Courts Building, 184 Phillip Street, Sydney NSW 2000 Australia
Postal address	Supreme Court of NSW, GPO Box 3, Sydney NSW 2001 Australia
Telephone	1300 679 272

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

Plaintiffs in 2017/294069

Haliburton Charles David Findlay, first plaintiff

Marian Jennifer Denny Findlay, second plaintiff

Defendants (both proceedings)

DSHE Holdings Limited (receivers and managers appointed) (in liquidation)

ACN 166 237 841, first defendant

Nicholas Abboud, second defendant

Michael Thomas Potts, third defendant

Plaintiffs in 2018/52431

Epaminondas Mastoris, first plaintiff

Lena Mastoris, second plaintiff

FURTHER DETAILS ABOUT PLAINTIFFS in 2017/294069

First Plaintiff

Name Haliburton Charles David Findlay

Address

[REDACTED]

[REDACTED]

Second Plaintiff

Name Marian Jennifer Denny Findlay

Address

[REDACTED]

[REDACTED]

Legal representative for plaintiffs

Name Ian Dallen

Practising certificate number 23097

Firm Corrs Chambers Westgarth

Address c/- Corrs Chambers Westgarth, Level 9, 8 Chifley

8-12 Chifley Square

Sydney NSW 2000

Telephone 02 9210 6243

Fax 02 9210 6611
Email ian.dallen@corrs.com.au

FURTHER DETAILS ABOUT PLAINTIFFS in 2018/52431

First Plaintiff

Name Epaminondas Mastoris
Address [REDACTED]
[REDACTED]

Second Plaintiff

Name Lena Mastoris
Address [REDACTED]
[REDACTED]

Legal representative for plaintiffs

Name Robert Johnston
Practising certificate number 9240
Firm Johnson Winter & Slattery
Address Level 25, 20 Bond Street
Sydney NSW 2000

Telephone 02 8274 9581
Fax 02 8274 9500
Email robert.johnston@jws.com.au

DETAILS ABOUT DEFENDANTS

First Defendant

Name DSHE Holdings Limited (receivers and managers appointed) (in liquidation)
ACN 166 237 841

Address 2 Davidson Street
Chullora NSW 2190

Second Defendant

Name Nicholas Abboud

Address [REDACTED]
[REDACTED]

Third Defendant

Name Michael Thomas Potts

Address [REDACTED]
[REDACTED]

Fourth to 457th Defendants

Names David White and the others listed in Annexure A trading as Deloitte Touche Tohmatsu (ABN 74 490 121 060)

Address Level 9, 225 George Street
Sydney NSW 2000

ANNEXURE A – Restated FY13 and 1Q14 financials

Restated pro-forma FY13 and 1Q14 profit and loss statements

(\$ million)	Restated pro-forma FY13 profit and loss	Restated pro-forma 1Q14 profit and loss
Sales	1,280.4	273.3
Less: Cost of Sales	(1,000.1)	(211.2)
Gross Profit	280.3	62.1
Less: Cost of doing business	(278.0)	(58.7)
EBITDA	2.4	3.5
Depreciation and amortisation	(12.5)	(2.7)
EBIT	(10.1)	0.8
Net interest expense	(1.4)	(0.3)
Profit before tax	(11.5)	0.5
Income tax (expense)/benefit	3.5	(0.1)
NPAT	(8.0)	0.3

Second Potter Report, Tables 25 and 26

Restated pro-forma and statutory FY13 balance sheet

(\$ million)	Restated statutory FY13 balance sheet	Restated pro-forma FY13 balance sheet
Assets		
Cash and equivalents	52.9	19.3
Trade and other receivables	10.4	10.4
Inventories	147.9	145.6
Plant and equipment	60.3	60.3
All other assets	56.3	54.7
Total assets	327.8	290.3
Liabilities	184.0	186.5
Net assets	143.8	103.8

Second Potter Report, Tables 27 and 28

Pro-forma FY14 forecast profit and loss statement adjusted

(\$ million)		Restated pro-forma 1Q14 forecast profit and loss
Sales		1,226.0
Adjusted gross profit		278.8
<i>Adjusted gross profit margin</i>		<i>22.7%</i>
CODB		(236.0)
EBITDA		42.8
Depreciation and amortisation		(13.1)
EBIT		29.7
Net interest expense		(1.4)
Profit before tax		28.3
Income tax expense		(8.5)
NPAT		19.8

Second Potter Report, Table 39

Restated operating metrics

(\$ million)				
Description	FY11	FY12	FY13	1Q14
Sales	1,281.1	1,369.5	1,280.4	273.3
Sales growth on pcp	-	6.9%	(6.5%)	(10.6%)
Pro-forma adjusted sales			1,177.8	273.3
Pro-forma adjusted sales growth on pcp			-	(2.2%)
Gross margin (impairment adjusted)	26.2%	24.8%	21.9%	22.7%
CODB margin	23.3%	22.4%	21.7%	21.5%
EBITDA margin	2.8%	2.4%	0.2%	1.3%
EBIT margin	1.9%	1.5%	(0.8%)	0.3%
Continuing stores (period end)	320	325	323	327

Second Potter Report, Table 23

ANNEXURE B – Restated FY14 and FY15 financials

Restated statutory profit and loss statements

(\$ million)	Restated statutory FY14 profit and loss	Restated statutory FY15 profit and loss
Sales	1,227.6	1,319.7
Less: Cost of Sales	(950.5)	(1,062.6)
Gross Profit	277.1	257.1
Less: Cost of doing business	(257.1)	(214.9)
EBITDA	20.8	42.7
Depreciation and amortisation	(12.9)	(14.8)
EBIT	7.9	27.8
Net interest expense	(2.3)	(3.7)
Profit before tax	5.6	24.2
Income tax (expense)/benefit	(1.9)	(6.7)
NPAT	3.7	17.4

Second Potter Report, Tables 31 and 36

Restated pro-forma and 'underlying' profit and loss statements

(\$ million)	Restated pro-forma FY14 profit and loss	Restated 'underlying' FY15 profit and loss
Sales	1,227.6	1,319.7
Less: Cost of Sales	(950.5)	(1,062.6)
Gross Profit	277.1	257.1
Less: Cost of doing business	(225.8)	(205.1)
EBITDA	51.3	52.0
Depreciation and amortisation	(12.8)	(14.9)
EBIT	38.5	37.1
Net interest expense	(1.4)	(3.7)
Profit before tax	37.1	33.4
Income tax (expense)/benefit	(11.1)	(9.5)
NPAT	21.9	23.9

Second Potter Report, Tables 32 and 37

Restated statutory balance sheets

(\$ million)	Restated statutory FY14 balance sheet	Restated statutory FY15 balance sheet
Assets		
Cash and equivalents	43.2	51.5
Trade and other receivables	37.0	22.1
Inventories	223.8	256.7
Plant and equipment	76.1	
All other assets	42.0	130.1
Total assets	422.1	460.3
Liabilities	284.0	340.5
Net assets	138.1	119.8

Second Potter Report, Tables 33 and 38

ANNEXURE C – Verification Tables

Verification Table, as referred to in paragraph 63

Statement No	Statement	Basis of verification and description of source document(s)
FI46	The Financial Information has been prepared in accordance with the recognition and measurement principles described in Australian Accounting Standards (including the Australian Accounting Interpretations)	Statement of belief
FI47	and the summarised accounting policies of Dick Smith as set out in Appendix 1.	Internal cross reference
FI96	The statutory forecast income statement has been prepared on a basis consistent with how Dick Smith's statutory financial statements will be prepared for future financial periods.	Statement of intention

Verification Table, as referred to in paragraph 66

Statement No	Statement	Basis of verification and description of source document(s)
IO359	The content of the <i>Sales</i> line in the table on pg 12	Statement of fact based on Financials pack (page A4)
IO365	The content of the Gross profit line in the table on pg 12	Statement of fact based on Financials pack (page A4)
IO371	The content of the EBITDA line in the table on pg 12	Statement of fact based on Financials pack (page A4)
IO377	The content of the EBIT line in the table on pg 12	Statement of fact based on Financials pack (page A4)
IO383	The content of the NPAT line in the table on pg 12	Statement of fact based on Financials pack (page A4)
FI46	The Financial Information has been prepared in accordance with the recognition and measurement principles described in Australian Accounting Standards (including the Australian Accounting Interpretations)	Statement of belief
FI47	and the summarised accounting policies of Dick Smith as set out in Appendix 1.	Internal cross reference
FI96	The statutory forecast income statement has been prepared on a basis consistent with how Dick Smith's statutory financial statements will be prepared for future	Statement of intention

Statement No	Statement	Basis of verification and description of source document(s)
	financial periods.	
FI124	The content of Table 5.4.1.1	Statement of fact – Financials pack (pages A2, A4, E2, R and S)
FI170	The content of Table 5.4.3.1	Statement of fact – Financials pack (pages A2, A3, E2, H1, T1 and X)

Verification Table, as referred to in paragraph 68

Statement No	Statement	Basis of verification and description of source document(s)
FI46	The Financial Information has been prepared in accordance with the recognition and measurement principles described in Australian Accounting Standards (including the Australian Accounting Interpretations)	Statement of belief
FI47	and the summarised accounting policies of Dick Smith as set out in Appendix 1.	Internal cross reference
FI96	The statutory forecast income statement has been prepared on a basis consistent with how Dick Smith's statutory financial statements will be prepared for future financial periods.	Statement of intention
FI220	The content of Table 5.5.1.1	Statement of fact – Financials pack (pages E5 and P9)
XA18	Inventories note (k) on page 149	Statement of fact based on DS Sub financial report (page 21)

Verification Table, as referred to in paragraph 70

Statement No	Statement	Basis of verification and description of source document(s)
CO689	<i>Significantly reduced Dick Smith's level of obsolete stock</i>	Statement of fact based on Reduction of stocks

Verification table, as referred to in paragraph 72

Statement No	Statement	Basis of verification and description of source document(s)
FI46	The Financial Information has been prepared in accordance with the recognition and measurement principles described in Australian Accounting Standards (including the Australian Accounting Interpretations)	Statement of belief
FI47	and the summarised accounting policies of Dick Smith as set out in Appendix 1.	Internal cross reference
FI96	The statutory forecast income statement has been prepared on a basis consistent with how Dick Smith's statutory financial statements will be prepared for future financial periods.	Statement of intention
FI356	The content of Table 5.10.2.1	Statement of fact – Financials pack (pages A2, R and S)
FI359	As a result, the 1Q2014 results represent the first period of financial performance which has not been materially impacted by the strategic decisions and operational execution of the previous management team.	Statement of belief
FI360	Dick Smith's historical pro forma results for 1Q2014 demonstrate a significantly improved financial performance, as further transformation initiatives were implemented during the period and the collective benefit of the implemented initiatives delivered improved performance.	Statement of belief

Verification Table, as referred to in paragraph 75

Statement No	Statement	Basis of verification and description of source document(s)
CL19	<i>Dick Smith has undergone a significant transformation under the leadership of Managing Director and CEO, Nick Abboud.</i>	Statement of belief – Board Matter
CL20	<i>Nick and his management team have driven a comprehensive program of strategic, customer, operational and cultural initiatives</i>	Statement of belief – Board Matter
CL21	<i>which, supported by the enthusiasm and commitment of the store and store support teams, have already delivered substantial improvements to financial performance,</i>	Statement of fact based on FY14 financial projections (pro forma)
CL22	<i>and have positioned the Company for</i>	Statement of belief – Board

Statement No	Statement	Basis of verification and description of source document(s)
	<i>future growth.</i>	Matter
CL23	<i>It is expected that these programs will continue to deliver additional financial benefits in the coming years.</i>	Statement of belief – Board Matter
CL24	<i>The transformation and growth initiatives underpin Dick Smith’s forecast growth to an expected pro forma EBITDA of \$71.8 million in FY2014.</i>	Statement of belief – Board Matter based on (i) FY14 financial projections (pro forma) and (ii) Financial pack (page A2)
CL25	<i>The Directors believe that the significant increase in the underlying profitability of Dick Smith and the sustainability of the increase have been evidenced in our strong 1Q2014 results</i>	Statement of fact based on FY14 financial projections (pro forma)
CL30	<i>As part of the transformation program, Nick has established a platform for the future growth of the business based on four main initiatives: growing the store network, expanding our omni-channel offering, driving growth in our mobility category and expanding our private label offering.</i>	Statement of belief – Board Matter based on The Story of Dick Smith (page 74)
IO48	<i>In the period since the Acquisition, the new management team,</i>	Statement of fact – management emails dated 30 October 2013
IO49	<i>led by Nick Abboud,</i>	Statement of fact – self evident (see IO44)
IO50	<i>has driven a rapid transformation of Dick Smith</i>	Statement of belief – Board Matter
IO51	<i>through the implementation of a comprehensive program of strategic,</i>	Statement of belief – Board Matter
IO52	<i>customer, operational</i>	Statement of belief – Board Matter
IO53	<i>and cultural initiatives,</i>	Statement of belief – Board Matter
IO54	<i>which have already delivered substantial improvements to financial performance and have positioned the Company for ongoing future growth</i>	Statement of belief – Board Matter
IO185	<i>Dick Smith’s new</i>	Statement of fact – Self evident (see IO48)
IO186	<i>and experienced management team,</i>	Statement of fact – Self evident (see IO48)
IO187	<i>led by Nick Abboud,</i>	Statement of fact – Letter of Offer (Abboud)

Statement No	Statement	Basis of verification and description of source document(s)
IO188	<i>has driven a significant transformation of the business</i>	Statement of belief – Board Matter
IO189	<i>through a comprehensive program</i>	Statement of belief – Board Matter
IO190	<i>of strategic,</i>	Statement of belief – Board Matter
IO191	<i>customer,</i>	Statement of belief – Board Matter
IO192	<i>operational</i>	Statement of belief – Board Matter
IO193	<i>and cultural initiatives.</i>	Statement of belief – Board Matter
IO194	<i>This program has already delivered substantial improvements to financial performance,</i>	Statement of fact based on Financials pack
IO195	<i>as evidenced in the 1Q2014 results.</i>	Statement of fact based on Financials pack (page A2)
IO196	<i>It is expected that these programs will continue to deliver additional financial benefits in the coming years.</i>	Statement of belief – Board Matter
IO197	<i>Pro forma EBITDA is forecast to grow to \$71.8 million in FY2014</i>	Statement of fact - Financials pack (page A2)
IO198	<i>from \$23.4 million in FY2013.</i>	Statement of fact - Financials pack (page A2)
IO390	<i>The transformation and growth initiatives underpin Dick Smith's forecast growth</i>	Statement of belief – Board Matter
IO391	<i>to an expected pro forma EBITDA of \$71.8 million in FY2014.</i>	Statement of fact based on Financials pack (page A2)
IO392	<i>The Directors believe that the significant increase in the underlying profitability of Dick Smith</i>	Statement of belief – Board Matter
IO393	<i>and the sustainability of the increase have been evidenced in the 1Q2014 results.</i>	Statement of belief – Board Matter
IO394	<i>It is expected that this transformation program will continue to deliver additional financial benefits in the coming years.</i>	Statement of belief – Board Matter
CO82	<i>Since the Acquisition, Nick Abboud and his new senior management team have substantially transformed Dick Smith,</i>	Statement of belief – Board Matter
CO83	<i>revitalising all areas of the business</i>	Statement of belief – Board Matter

Statement No	Statement	Basis of verification and description of source document(s)
CO84	<i>and repositioning Dick Smith for ongoing future growth.</i>	Statement of belief – Board Matter
CO85	<i>By June 2013, the major transformation initiatives had been implemented</i>	Statement of belief – Board Matter
CO86	<i>and Dick Smith centred its focus on the next stage of its growth agenda.</i>	Statement of belief – Board Matter
CO87	<i>Anchorage is a turnaround-focused investor</i>	Statement based on Anchorage News
CO88	<i>and therefore, upon successful implementation of the major transformation initiatives, began to consider alternatives to reduce its investment</i>	Statement of belief – Board Matter
CO89	<i>and create an ownership structure that would better enable Dick Smith to achieve its growth objectives.</i>	Statement of belief – Board Matter
CO97	<i>At the time of the Acquisition, Dick Smith was experiencing declining profitability.</i>	Without prior period financial statements which attest to Dick Smith's declining profitability, this is a statement of belief
CO98	<i>Following the Acquisition, the Dick Smith management team, led by Nick Abboud,</i>	Statement of fact – Self evident
CO99	<i>rapidly implemented a comprehensive transformation program,</i>	Statement of belief – Board Matter
CO100	<i>positioning the business for sustainable growth.</i>	Statement of belief – Board Matter
CO101	<i>The program covered all areas of the business</i>	Statement of belief – Board Matter
CO102	<i>and addressed revenues,</i>	Statement of belief – Board Matter
CO103	<i>gross profits,</i>	Statement of belief – Board Matter
CO104	<i>costs and the balance sheet,</i>	Statement of belief – Board Matter
CO105	<i>as well as customer experience</i>	Statement of belief – Board Matter
CO106	<i>and internal culture.</i>	Statement of belief – Board Matter
CO107	<i>New management talent was also added to the business</i>	Statement of fact – Self evident
CO108	<i>to complement the existing management team,</i>	Statement of fact – Self evident

Statement No	Statement	Basis of verification and description of source document(s)
CO109	<i>to bring additional retail</i>	Statement of fact based on internal cross reference, section 7.1
CO110	<i>and transformation expertise</i>	Statement of fact based on internal cross reference, section 7.1
CO111	<i>and to provide management the capacity to progress multiple transformation and growth initiatives in parallel.</i>	Statement of belief – Board Matter
CO112	<i>Nick Abboud and the management team, with over 200 years of cumulative retail experience,</i>	Statement of fact based on personal analysis Internal cross reference, section 7.1
CO113	<i>also drove an internal cultural shift towards a customer-centric focus,</i>	Statement of belief – Board Matter
CO114	<i>a bias to action and accountability for results.</i>	Statement of belief – Board Matter
FI13	<i>The FY2014 pro forma forecast represents the Directors' expectations for the first full year of Dick Smith's financial performance under the new management team.</i>	Statement of fact – Self evident
FI13A	<i>The Directors believe that 1Q2014 is the first actual reporting period under the new management team that reflects the impact of the transformation program undertaken and is not impacted by the strategic decisions and operational execution of the previous management team and owner.</i>	Statement of belief
CO127	<i>An overview of the major initiatives under the transformation program, including the benefits already delivered and the benefits that the company believes are still to be realised, is set out below</i>	Internal cross reference
CO128	<i>4.1.3.1 Figure: Dick Smith's transformation strategy</i>	Title
CO129	<i>Examples of initiatives, Benefits realised, Benefits still to be realised</i>	Title
CO130	<i>Stores and staff</i>	Title
CO131	■ <i>Rolled out new store key performance indicator ("KPI") dashboards to all stores</i>	Statement of fact based on Operations dashboard
CO132	■ <i>Implemented new staff incentive model linked to KPI dashboards</i>	Statement of fact based on Staff commissions
CO133	■ <i>Implemented new staff rostering processes</i>	Statement of fact based HR strategy

Statement No	Statement	Basis of verification and description of source document(s)
CO134	<i>and staffing policies</i>	Statement of fact based on HR strategy
CO135	■ <i>Implemented “Serve Forward” staff training program for in-store staff focused on customer service</i>	Statement of fact based on Serve forward
CO136	<i>and empathy</i>	Statement of fact based on Serve forward
CO137	■ <i>Improved in-store markdown policies</i>	Statement of fact based on The Story of Dick Smith (page 31)
CO138	■ <i>Developed strong alliances with major landlords</i>	Statement of fact based on Landlord alliances email. Amended in Nov 7.
CO139	■ <i>Improved recruiting profiles</i>	Statement of fact based on HR strategy
CO140	<i>and policies</i>	Statement of fact based on HR strategy
CO141	■ <i>Improved store labour efficiency</i>	Statement of fact – (i) Operations dashboard, (ii) HR strategy, and (ii) Staff commissions
CO142	<i>and profitability</i>	Statement of fact – (i) Operations dashboard, (ii) HR strategy, and (ii) Staff commissions
CO143	■ <i>Improved in-store customer experience</i>	Statement of fact based on Perception Survey
CO144	■ <i>Improved gross margins through better promotion management</i>	Statement of fact – (i) Scan management and (ii) Margin review. Amended in Nov 7.
CO148	<i>Suppliers and buying</i>	Title
CO149	■ <i>Developed strategic relationships with key suppliers</i>	Statement of fact/observation based on agreements with Apple and Samsung (note agreements are confidential) and Apple store presence and Samsung SIS stores
CO150	■ <i>Renegotiated a number of supplier agreements (e.g. pricing and terms)</i>	Statement of fact based on (i) The Story of Dick Smith (page 69), (ii) Apple reseller agreement dated 6 September 2011, (iii) Apple reseller agreement (iv) Samsung agreement dated 30 January 2004, and (v) Samsung

Statement No	Statement	Basis of verification and description of source document(s)
		agreement dated 1 January 2013. Amended in Nov 7.
CO151	■ <i>Revamped range</i>	Statement of belief – Board Matter based on SKU count
CO152	<i>and mix of brands and products,</i>	Statement of belief – Board Matter based on SKU count and Brand count
CO153	<i>and increased focus on mobility and private label</i>	Statement of fact based on The Story of Dick Smith (page 69) and DS private label yearly spreadsheet dated 2013
CO154	■ <i>Developed new pricing and promotional practices in collaboration with suppliers</i>	Statement of fact based on The Story of Dick Smith (page 31)
CO155	■ <i>Opened new Hong Kong sourcing office</i>	Statement of fact based on (i) Headcount summary – all countries dated 15 October 2013, and (ii) The Story of Dick Smith (page 67)
CO156	<i>and re-tendering of sourcing costs</i>	Statement of fact based on Inside Scoop spring editions (page 15)
CO157	■ <i>Improved buyer disciplines and accountability</i>	Statement of fact – (i) Scan managements and (ii) assertion by Neil Merola
CO158	■ <i>Improved collaboration between buying and operations</i>	Statement of belief
CO159	■ <i>Store-in-store relationships with Apple</i>	Statement of fact based on Apple store presence
CO160	<i>and Samsung</i>	Statement of fact based on Samsung SIS stores
CO161	■ <i>Mutually beneficial supplier agreements on commercially competitive terms</i>	Statement of belief – Board Matter
CO162	■ <i>Improved gross margins</i>	Statement of fact – Margin review
CO163	<i>from pricing</i>	Statement of fact – SKU count
CO164	<i>and product mix</i>	Statement of belief- Board Matter
CO165	■ <i>Clarity on range and price strategies</i>	Statement of belief- Board Matter
CO166	■ <i>Access to latest products and brands</i>	Statement of fact/observation based on (i) SKU count, (ii) Brand count, and (iii) Perception Survey

Statement No	Statement	Basis of verification and description of source document(s)
CO176	<i>Marketing</i>	Title
CO177	■ <i>Developed new marketing program</i>	Statement of Fact based on The Story of Dick Smith (pages 34 and 35)
CO178	■ <i>Implemented 'Dick Live Daily Deals'</i>	Statement of fact based on 'Dick Live' photo
CO179	■ <i>Renegotiated marketing supplier agreements</i>	Statement of fact based on Deloitte review (page 31)
CO180	■ <i>Conducted extensive customer research and engagement</i>	Statement of fact based on Perception Survey
CO181	■ <i>Substantial increase in marketing volumes,</i>	Statement of fact based on Deloitte review (page 31)
CO182	<i>efficiency</i>	Statement of fact based on Deloitte review (page 31)
CO183	<i>and 'share of voice',</i>	Statement of fact based on Deloitte review (page 31)
CO184	<i>including greater frequency of catalogues</i>	Statement of fact based on Deloitte review (page 31)
CO185	<i>and increased number of days of television commercials</i>	Statement of fact based on Deloitte review (page 31)
CO186	■ <i>Improved collaboration with suppliers</i>	Statement of fact based on Deloitte review (page 31) and The Story of Dick Smith (page 31)
CO189	<i>Inventory and supply chain management</i>	Title
CO190	■ <i>Undertook significant clearance of aged and obsolete stock</i>	Statement of fact – Reduction of stocks
CO191	■ <i>Improved stock management</i>	Statement of fact based on inventory management system
CO192	<i>and ordering practices</i>	Statement of fact based on Order to buy system
CO193	■ <i>Upgraded store replenishment system</i>	Statement of fact – SAS forecasting tool
CO194	■ <i>Streamlined and right sized distribution network</i>	Statement of fact – (i) The Story of Dick Smith (page 41), and (ii) Email from Guthrie
CO195	■ <i>Optimised freight movements including adding direct to store</i>	Statement of fact based on (i) Deloitte review (page 28), (ii) Contracts with Temando and Startrack and (iii) Distribution agreements with distributors (informal agreements)

Statement No	Statement	Basis of verification and description of source document(s)
CO196	<i>and direct to customer shipping</i>	Statement of fact/observation based on contract with Temando (direct to customer freighting)
CO197	■ <i>Optimised staffing to reflect new inventory levels</i>	Statement of fact/observation based on HR strategy
CO198	■ <i>Significant reduction in aged and obsolete stock</i>	Statement of fact – Reduction of stocks
CO199	■ <i>Reduction in freight and inventory handling costs</i>	Statement of fact based on Deloitte review (page 28, page 31)
CO200	■ <i>Reduction in ‘out of stocks’</i>	Statement of fact based on Reduction of stocks
CO204	<i>Omni-channel</i>	Title
CO205	■ <i>Migrated website to new digital platform allowing greater flexibility,</i>	Statement of fact based on Platform presentation
CO206	<i>functionality,</i>	Statement of fact based on Platform presentation
CO207	<i>efficiency</i>	Statement of fact based on Platform presentation
CO208	<i>and customer experience</i>	Statement of belief based on Conversion chart
CO209	■ <i>Improved visitation and sales through improved pricing,</i>	Statement of belief – Board Matter. Amended in Nov 7.
CO210	<i>convenience,</i>	Statement of belief – Board Matter
CO211	<i>attachment</i>	Statement of belief – Board Matter
CO212	<i>and delivery functionality</i>	Statement of belief – Board Matter
CO220	<i>Other</i>	Title
CO221	■ <i>Renegotiated all key contracts and procurement agreements</i>	Statement of fact – Contracts with Temando and Startrack as examples of key contracts
CO222	■ <i>Addressed excess space issues</i>	Statement of fact based on email from Guthrie
CO223	■ <i>Sustained lower</i>	Statement of belief – Board Matter
CO224	<i>and more flexible cost base</i>	Statement of belief – Board Matter
CO226	<i>In Australia, these initiatives have already</i>	Statement of belief – Board

Statement No	Statement	Basis of verification and description of source document(s)
	<i>delivered significant improvements to Dick Smith's financial performance</i>	Matter
CO227	<i>(detailed further in Section 5).</i>	Internal cross reference
CO228	<i>The Directors believe that the significant increase in the underlying profitability of Dick Smith and the sustainability of the increase have been evidenced in the 1Q2014 results.</i>	Statement of belief – Board Matter
CO229	<i>In Australia, Dick Smith is now positioned for growth</i>	Statement of belief – Board Matter
CO230	<i>and has already commenced implementation of its growth plan</i>	Statement of belief – Board Matter based on (i) New stores listing, and (ii) DS Private label yearly 2013
CO231	<i>(described in more detail in Section 4.4).</i>	Internal cross reference

Verification Table, as referred to in paragraph 77

Statement No	Statement	Basis of verification and description of source document(s)
FI46	The Financial Information has been prepared in accordance with the recognition and measurement principles described in Australian Accounting Standards (including the Australian Accounting Interpretations)	Statement of belief
FI47	and the summarised accounting policies of Dick Smith as set out in Appendix 1.	Internal cross reference
FI96	The statutory forecast income statement has been prepared on a basis consistent with how Dick Smith's statutory financial statements will be prepared for future financial periods.	Statement of intention
FI308	The content of Table 5.9.1.1, so far as concerns Pro forma forecast.	Statement of fact – Financials pack (pages 15 of A1 and page E4)
FI310	FY2014 pro forma forecast EBITDA takes into account expected profitability improvements from the transformation program.	Statement of belief
FI311	Management believes that in FY2014, the seasonality of EBITDA represents a split between interim periods which is more indicative of future management operating conditions.	Statement of belief

Statement No	Statement	Basis of verification and description of source document(s)
IO197	Pro forma EDITDA is forecast to grow to \$71.8 million in FY2014	Statement of fact based on Financials pack (page A2)
IO198	From \$23.4 million in FY2013	Statement of fact based on Financials pack (page A10)
IO359	The content of the <i>Sales</i> line in the table on pg 12	Statement of fact based on Financials pack (page A4)
IO365	The content of the <i>Gross profit</i> line in the table on pg 12	Statement of fact based on Financials pack (page A4)
IO371	The content of the <i>EBITDA</i> line in the table on pg 12	Statement of fact based on Financials pack (page A4)
IO377	The content of the <i>EBIT</i> line in the table on pg 12	Statement of fact based on Financials pack (page A4)
IO383	The content of the <i>NPAT</i> line in the table on pg 12	Statement of fact based on Financials pack (page A4)
IO390	<i>The transformation and growth initiatives underpin Dick Smith's forecast growth</i>	Statement of belief – Board Matter
IO391	<i>to an expected pro forma EBITDA of \$71.8 million in FY2014</i>	Statement of fact based on Financials pack (page A2, A10)
IO392	<i>The Directors believe that the significant increase in the underlying profitability of Dick Smith</i>	Statement of belief – Board Matter
IO393	<i>and the sustainability of the increase have been evidenced in the 1Q2014 results.</i>	Statement of belief – Board Matter
IO394	<i>It is expected that this transformation program will continue to deliver additional financial benefits in the coming years.</i>	Statement of belief – Board Matter
FI124	The content of Table 5.4.1.1	Statement of fact – Financials pack (pages A2, A4, E2, R and S)
FI170	The content of Table 5.4.3.1	Statement of fact – Financials pack (pages A2, A3, E2, H1, T1 and X)
FI415	The content of Table 5.10.4.1	Statement of fact – Financials pack (pages E2 and R)
FI447	The content of Table 5.11.2.1, including forecast	Statement of fact – Financials pack (pages E2 and A2)
FI198	<i>A number of improvement initiatives were driven in key head office functional areas.</i>	Statement of belief
FI199	<i>Dick Smith management has increased the efficiency of media expenditure, substantially increasing media volumes and share of voice, and also increased</i>	Statement of fact – The Story of Dick Smith (page 34)

Statement No	Statement	Basis of verification and description of source document(s)
	<i>marketing collaboration with suppliers.</i>	
FI200	<i>Lease agreements for corporate offices were also renegotiated, as were all major corporate supply agreements.</i>	Statement of fact – Kayn lease agreement. Amended in Nov 7.
FI209A2	<i>Pro forma gross margin is forecast to increase from 23.7% in FY2013 to 25.1% in FY2014</i>	Statement of fact – Financials pack (pages A2 and A10)
FI209A3	<i>as a result of a wide range of pricing, supplier and range mix initiatives, as well as improvements to buying and stock management practices.</i>	Statement of belief
FI210	<i>Agreements with major suppliers have been renegotiated</i>	Statement of fact based on The Story of Dick Smith (page 69)
FI210A	<i>and new buying disciplines introduced to improve planning and increase accountability for stock levels and discounting.</i>	Statement of belief
FI211	<i>New pricing and promotion practices were developed in collaboration with suppliers,</i>	Statement of fact based on The Story of Dick Smith (page 31)
FI211A	<i>and improvements were made to in-store markdown procedures.</i>	Statement of fact based on The Story of Dick Smith (page 69)
FI212	<i>Dick Smith's range was revamped to focus on higher margin products and brands,</i>	Statement of belief based on (i) SKU count, (ii) Brand count, and (iii) DS private label yearly
FI212A	<i>and a new direct sourcing office was established in Hong Kong to enable more efficient purchasing,</i>	Statement of fact – self-evident based on (i) Headcount summary – all countries dated 15 October 2013, and (2) The Story of Dick Smith (page 67)
	<i>particularly for private label products and accessories.</i>	
FI213	<i>In addition, the roll out of new stores is forecast to contribute to an increase in gross profit in FY2014.</i>	Statement of fact based on financials pack (page B) and Deloitte review (page 24)
FI214	<i>Despite the forecast increase in gross margin in FY2014, the gross profit contribution of existing stores in dollar terms is expected to be lower than in FY2013</i>	Statement of fact – Financials pack (page B)
FI215	<i>due to higher sales in FY2013 as a result of increased promotional and inventory clearance activity</i>	Statement of fact – (i) The Dick Smith Story (page 34), and (ii) Reduction of stocks

Verification Table, as referred to in paragraph 84

Statement No	Statement	Basis of verification and description of source document(s)
FI46	The Financial Information has been prepared in accordance with the recognition and measurement principles described in Australian Accounting Standards (including the Australian Accounting Interpretations)	Statement of belief
FI47	and the summarised accounting policies of Dick Smith as set out in Appendix 1.	Internal cross reference
FI96	The statutory forecast income statement has been prepared on a basis consistent with how Dick Smith's statutory financial statements will be prepared for future financial periods.	Statement of intention
FI607	<i>Dick Smith expects to remain in compliance with these undertakings</i>	Statement of belief
FI617	<i>Management believes that the financial covenants are appropriate</i>	Statement of belief
FI618	<i>and will be complied with in FY2014 based on the FY2014 forecasts and the significantly transformed performance of Dick Smith in FY2014 relative to that of FY2013</i>	Statement of belief

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ANNEXURE E – 5th to 457th Defendants

5. Brett Douglas Streatfeild
6. Sneza Pelusi
7. James Patrick Hickey
8. Alastair Banks
9. Tara Cathy Hili
10. Paul Jeremy Klein
11. Frank Scott Farrali
12. Christopher Donald Noble
13. Alec Paul Bash Insky
14. George Nicholas Kyriakakis
15. Roan Rolles Fryer
16. Stuart Johnston
17. Kaylene O'Brien
18. Craig Patrick O'Hagan
19. Leanne Karamfiles
20. Neil Graham Smith
21. Demostanies Krallis
22. David John Lombe
23. Christian John Biermann
24. Jonathan Paul
25. Michael James Clarke
26. Roger Jeffrey
27. Rachel Andrea Foley-Lewis
28. Franco Claudio Santucci
29. Michelle Robyn Hartman
30. Matthew Christopher Saines

31. Francis Thomas
32. Robert Basker
33. Alan Eckstein
34. Donal Graham
35. Andrew Raymond Hill
36. Patrick McLay
37. Paul Bernal Liggins
38. David Ocello
39. Paul Scott Holman
40. Paul RobertWiebusch
41. Murray Peck
42. Julie Michelle Stanley
43. John Bland
44. Timothy Carberry
45. Alvaro Ramos
46. Graeme John Adams
47. Suzanne Archbold
48. Tim Richards
49. Timothy Geoffrey Maddock
50. Xenia Delaney
51. Reuben Saayman
52. Ronaldus Lambertus Van Beek
53. Liesbet Ann Juliette Spanjaard
54. Christopher John Richardson
55. Martin Harry Read
56. Mark Reuter
57. Stuart Thomas Ciocarelli
58. Paul Wayne Hockridge

59. Vikas Khanna
60. Paul Thomas Carr
61. Weng Yen Ching
62. Rodger Stewart Muir
63. Mark Cover
64. Robert Hillard
65. Michael John Lynn
66. Gaile Anthea Pearce
67. Isabelle Emilienne Lefevre
68. Phillip Andrew Roberts
69. Stuart Alexander Rodger
70. Paul Leonard Wensor
71. Claudio Cimetta
72. Simon Tarte
73. Stephen Charles Gustafson
74. Geoffrey William Cowen
75. Geoffrey Gill
76. Steven John Simionato
77. Jason John Handel
78. Declan O'Callaghan
79. Michael Andrew Kissane
80. Kurt Proctor-Parker
81. Richard Davies Wanstall
82. Johan Simon Duivenvoorde
83. Benjamin John Shields
84. John Meacock
85. Ian Michael Turner
86. David Harradine

87. Muhunthan Kanagaratnam
88. Marc Philipp
89. Kamlee Anne Coorey
90. Hugh William Mosley
91. Paul Masters
92. David Shane Egan
93. Alison Margaret Brown
94. Stavroula Papadatos
95. Damien Tampling
96. Alexandra Jane Spark
97. Monica Ellen Campigli
98. Craig Peter Mitchell
99. Robert John McConnel
100. Alyson Rodi
101. Andrew Charles Price
102. Mark Hadassin
103. Anthony James Robinson
104. Garry Ian Millhouse
105. Ashley Graham Miller
106. Craig Stephen Smith
107. Margaret Lynne Pezzullo
108. Adam Barringer
109. Campbell James Jackson
110. Jason Charles Crawford
111. Kevin Michael Russo
112. Adele Christine Watson
113. Neil Anthony Brown
114. Gordon James Thring

115. Brett William Greig
116. Steven James Shirliff
117. Robert Donald Collie
118. Spyros Kotsopoulos
119. Austin John Scott
120. Jenny Lyn Wilson
121. Peter John Bars
122. Elizma Bolt
123. Stephen Thomas Harvey
124. Fiona Lea Cahill
125. Jonathan Mark Schneider
126. Michael McNulty
127. Katherine Louise Howard
128. Juliet Elizabeth Bourke
129. Peter Gerard Forrester
130. Carl Jonathan Gerrard
131. Jody Michelle Burton
132. Rachel Frances Smith
133. Peter Martin Rupp
134. Helen Elena Fisher
135. Geoffrey Ronald Sincock
136. Nicholas Harwood
137. John Clement Malcom Randall
138. Todd Kayle Fielding
139. Geoffrey Bruce Stalley
140. Russell Bradley Norman Mason
141. Paul Leon Rubinstein
142. Andrew Ignatius Muir

143. Lisa Barry
144. Alfred Alan Nehama
145. Michael Paul Stibbard
146. Paul Childers
147. Angelo Karelis
148. Sarah Caroline Woodhouse
149. Richard John Hughes
150. Christopher Robert Masterman
151. Robin Poison
152. Megan Joy Field
153. Christopher Guy Nunns
154. Clare Helen Harding
155. Simon Cook
156. Stephen Carl Tarling
157. Leslie Coleman
158. Samuel James Vorweg
159. Helen Hamilton-James
160. Coert Grobbelaar Du Plessis
161. Stephen George Stavrou
162. Steven Christopher Cunico
163. Mark Ekkel
164. Soulla McFall
165. Leigh Matthew Pieroni
166. Mark Colin Woodley
167. Stephen James Healey
168. Sandeep Chadha
169. Margaret Clare Bower
170. Anna Victoria Crawford

171. Robert Howard Dowling
172. Greg Janes
173. Colin Mckay Methven Scott
174. Richard Mark Simes
175. Dharmalingum Shunmugam Chithiray
176. Nicole Marie Vignaroli
177. John Giannakopoulos
178. Vaughan Neil Strawbridge
179. Judith Anne Donovan
180. Nicole Wakefield
181. Paula Teresa Capaldo
182. Michael Rath
183. Karen Rachel Stein
184. Brett Todd
185. Julian Craig Dolby
186. Robert Kim Arvai
187. Catherine Jane Hill
188. Richard Michael Thomas
189. Timothy John Gullifer
190. Peter James Pagonis
191. Michael Damon Cantwell
192. Joseph Frank Galea
193. Nicolette Louise Ivory
194. John Leotta
195. Darren James Hall
196. Stephen Huppert
197. Elma Von Vielligh-Louw
198. Michael Anthony Kennedy

199. Stuart James Alexander
200. YiMeiTsang
201. Christopher Wilson
202. Joshua David Tanchel
203. Tendal Sitenisiyo Mkwanzani
204. Richard Nigel Raphael
205. Jacqueline Ann Clarke
206. Rodney James Whitehead
207. Heather Park
208. John Lethbridge Greig
209. Adrian Charles O'Dea
210. Grant Cameron
211. Gregory Couttas
212. Steven Allan Hernyl
213. Gary John McLean
214. Jonathan Ma
215. Suzie Gough
216. Mark Douglas Ian Allsop
217. Jennifer Anne Exner
218. Ryan Quintin Hansen
219. Jamie Brian Hamilton
220. David Mark Hill
221. Jason Bruce Dunnachie
222. John Christopher McCourt
223. Gerhard Vorster
224. David John Boyd
225. Andrew Kingsley Johnstone-Burt
226. Dwayne Barrie Sleep

227. David Black
228. Gerard Michael Meade
229. Francis Patrick O'Toole
230. Tony Garrett
231. Danny Rezek
232. Mark Goldsmith
233. David Watkins
234. Patrick Broughan
235. Jeremy Drumm
236. Michael John Whyte
237. Mark Andrew Stretton
238. Weng Wee Ching
239. Robert Malcolm Spittle
240. Marisa Orbea
241. Frances Rita Borg
242. David Barrie Brown
243. David Sherwin McCloskey
244. Philip Walter Teale
245. Jan Hein Alexander Alpert
246. Katherine Anne Milesi
247. Kevin Kiazim Nevrous
248. Andrew Paul Annand
249. Carl Richard Harris
250. Philip Malcolm Moore Hardy
251. Derek Rodney Bryan
252. Gregory Gyorgy Janky
253. David John Redhill
254. Guillaume Johannes Swiegers

255. Peter Ronald Ryan
256. Brennan Ursula
257. Fiona Dawn Craig
258. Sarah Lane
259. George Stathos
260. Richard Adam Young
261. Marc Hofmann
262. Brad Joel Pollock
263. Mark Justin Kuzma
264. Warren Green
265. Stuart Osborne
266. Garry Lance Bourke
267. Andrew Vaughn Griffiths
268. Adam Powick
269. Margaret Dreyer
270. Timothy Bryce Norman
271. David McCarthy
272. Neil Pereira
273. Michael Robert Gastevich
274. Elizabeth Ann Brown
275. Lakshman Kumar Gunaratnam
276. Monish Paul
277. Alexander Collinson
278. Bruce John Williamson
279. Luke Bramwell Houghton
280. Aldrin Anthony De Zilva
281. Neil McLeod
282. Gerard Lucien Belleville

283. Michael Kaplan
284. Mark David Irving
285. Alison Lorna White
286. Haiderali Hussein Hussein
287. Martyn Charles Barrett Strickland
288. Caroline Jane Bennet
289. Christopher Robert Campbell
290. Gary Peter Doran
291. Mark Steven Wright
292. Peter Matruglio
293. John Koutsogiannis
294. Selvvyn Peter D'Souza
295. Keith William Skinner
296. Clive Charles Alan Mottershead
297. Karen Lynette Green
298. Jason Mark Thorne
299. Andrew Stuart Christopher Reid
300. Mark Richard Weaver
301. Matthew Robert Broadfoot
302. Michael Mauro De Palo
303. Peter Arthur Caldwell
304. Tracey Con Dous
305. Shelley Rae Nolan
306. Ian Grant Levi
307. Grant Arthur Hyde
308. Timothy Francis Nugent
309. Andrea Csontos
310. Geoffrey Colin Lamont

311. Christopher John Nicoloff
312. Craig Maxwell Bryan
313. Peter Madden
314. Jeremy Jurriaan Walton Cooper
315. Neil Robert Cussen
316. Robert Southern
317. Andy Peck
318. Colin Radford
319. Hendri Mentz
320. Robert Nguyen
321. Shinji Tsutsui
322. Philippa Simone Dexter
323. Timothy Fleming
324. Cynthia Hook
325. James Campbell Down
326. Kate McDonald
327. Stephen John Coakley
328. Keith Francis Jones
329. Serg Duchini
330. Stephen James Reid
331. Max Andreas Persson
332. Graham Mott
333. Anthony John Viel
334. David Joseph Murray
335. Richard Antony Jamieson
336. Bradley James Burt
337. Anthony Goroslav Buntic
338. Paul Gerard Fogarty

339. Jamie Christopher Gatt
340. Geoffrey Ian Roberts
341. Melissa Jayne Cabban
342. Matthew Fraser
343. Thomas Fredrick Viljoen
344. Julie Christine Crisp
345. Paul Bernard Riley
346. Salvatore Algeri
347. Ross Ian Jerrard
348. Avi Sharabi
349. Ian Geoffrey Sanders
350. Dale McCauley
351. Iain Maxwell Gerrard
352. David Hobbis
353. Scott Conrad Bailey
354. Stephen Gregory Brown
355. Ian Ross Harper
356. Shashi Vicknekumeran Sivayoganathan
357. Jowita Gartlan
358. Mark Ingham
359. Viswa Phani Kumar Padiseti
360. Ian Charles Thatcher
361. Ian Andrew Trevorah
362. Dennis Leslie Moth
363. Jacques Louis Van Rhyn
364. Paul Swinhoe
365. Greg Fitzgerald
366. Steven Alexander Hallam

367. Stuart Lynn Black
368. Stephen Woosnam
369. Andrew John Culley
370. Stephen James Ferris
371. Timothy Arbuckie
372. David Amis Rumbens
373. Matthew James Williams
374. Jason Frederick Bender
375. Patrick Lane
376. Martin Paul Langridge
377. Caithlin Mary McCabe
378. Simon Alexander Wallace-Smith
379. Adrian Clyde Batty
380. Tapan Parekh
381. Masaaki Mark Nakamura
382. Roger Geoffrey McBain
383. Graeme John Hodge
384. RickShaw
385. Marina Ruth Stuart
386. Tom Christopher Imbesi
387. Eric Angelucci
388. Harvey Christophers
389. John Kingsley Rawson
390. Mark Richard Sercombe
391. Phillip Kravaritis
392. Gary Christie
393. Wayne Edward Walker
394. John Womack

395. Peter Grainger
396. Samantha Louise Lewis
397. Ashley Jonathon King
398. Peter Francis Williams
399. Alexander Aitken
400. Timothy Gordon Biggs
401. Ian McCall
402. Johannes Laubscher Venter
403. Roberto Dimonte
404. Alan Gordon Weeks
405. Ian John Breedon
406. Peter Michael Roberson
407. Michael David Nelson
408. Lindsay James Stanton
409. Craig Paul Johnson
410. Timothy Riordan
411. Anthony James Cipriano
412. Phil Hopwood
413. Dai-Trang Le Duncanson
414. David Jonathan Graham
415. Andre Spnovic
416. William Harold Wardrop
417. David Erskine Thompson
418. David Kyffin Willington
419. Stephen Mark Holdstock
420. Dean John Grandy
421. Harold Scott Payne
422. Jean-Marie Abi-Ghanem

423. Fraser Ross
424. Roberto Krizman
425. Caroline McGlashan
426. William Robert McAinsh
427. Osamu Uchimura
428. Glendon Moss Sanford
429. Simon James Lester
430. Stephen James Jones
431. Kristen Jay Wydell
432. John Guthrie Hood
433. Paul Martin Radici
434. Frank Klasic
435. Mark John Pittorino
436. David Anthony Cooper
437. Matthew Sheerin
438. Tony Brain
439. Henry John Kidd
440. Matt Gerald Tengu Whitesky Kuperholz
441. Gordon Pattison
442. Branko Panich
443. Julian Christopher Cheng
444. David William Pring
445. Peter Andre Jovic
446. Craig Goldberg
447. Bruce Robert Dungey
448. Dean Robert Edward Kingsley
449. David Alan Watson
450. Bernard Spencer Gild

- 451. Graham John Newton
- 452. Dwight Murray Hooper
- 453. Michael Rosendorfer
- 454. Richard Roy Porter
- 455. John George Azarias
- 456. Donna Maree Carey
- 457. Christopher Paul Cass