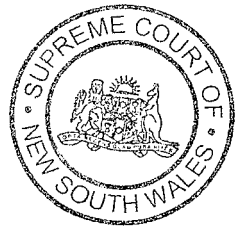


FILED
28 SEP 2017



STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Class Action Panel
Registry	Sydney
Case number	2017/180459 2017/294069

TITLE OF PROCEEDINGS

First plaintiff	Haliburton Charles David Findlay
Second plaintiff	Marian Jennifer Denny Findlay
First defendant	DSHE Holdings Ltd ACN 166 237 841 (receivers and managers appointed) (in liquidation)
Number of defendants	3
	See the Schedule for full list of defendants

FILING DETAILS

Filed for	Plaintiffs
Legal representative	Bannister Law (firm)
Legal representative reference	7040
Contact name and telephone	Charles Bannister (02) 8999 2888
Contact email	charles@bl.com.au

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 s 1041I and s 1325 of the *Corporations Act* 2001 (Cth);
 - (b) Interest;
 - (c) Costs and interest on costs.
- 2 Such other order or orders that the Court considers appropriate.

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I. INTRODUCTION

Summary of case

1. The defendants in these proceedings are DSE Holdings Ltd ACN 166 237 841 (receivers and managers appointed) (in liquidation) (**DSH**) and two of its directors during 2015, Mr Nicholas Abboud (**Mr Abboud**) and Mr Michael Thomas Potts (**Mr Potts**).
2. 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.
3. 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, a private equity company.
4. Anchorage controlled Dick Smith for a period of just over one year, and then in November 2013 issued a public offering of shares following the publication of a Prospectus.
5. From December 2013 Anchorage sold the majority of its interest in Dick Smith to the shareholders of the newly formed publicly listed company DSH and from then on Anchorage ceased to control DSH. Anchorage sold the remainder of its shareholding in September 2014.
6. The plaintiffs bought 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 in 2015.
7. 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. These included what were described as 'Over and Above Rebates' (which were purportedly rebates relating to promotional support of products supplied to DSH for sale) and 'Scan Rebates' (which were reportedly 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.
8. During this period the desire to maximise rebates obtainable from suppliers drove the purchasing decisions of the managers of DSH. Purchasing decisions were made by DSH management on the basis of the rebates that could be obtained from suppliers and not on the basis of goods that DSH's customers actually wanted.

9. This led throughout 2015 to an increase in inventory which became increasingly aged and obsolete and therefore difficult to sell. Because DSH's buying practices were directed at maximising rebates and because the rebates required further purchases of the suppliers' stock, the excess inventory problem was exacerbated throughout 2015.
10. In November 2015, as a result of DSH's buying practices and the accumulation of poor quality stock throughout 2015, DSH was required to write off the value of its stock by approximately \$60 million.
11. Throughout 2015, DSH adopted accounting practices and made accounting decisions that were not in accordance with the Australian Accounting Standards. Those practices and decisions concerned the following:
- (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 2015 as a reduction in cost of sales when the rebates were not attributable to such cost;
 - (c) booking certain rebates in DSH's financial statements in 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; and
 - (d) failing to write down the value of DSH's inventory.
12. The effect of (a)-(c) above was to artificially inflate DSH's reported profit in the financial statements published by DSH in 2015.
13. The effect of (d) above was that DSH's financial statement published in August 2015 significantly overstated the total equity and net assets of DSH.
14. DSH, Mr Abboud and Mr Potts represented that DSH's financial accounts 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 the following financial statements, which are the subject of this proceeding:
- (a) The financial report which included the consolidated condensed financial statements of DSH for the half year ended 28 December 2014, dated 16 February 2015 (**the 2015 Half Year Financial Statements**); and

- (b) The financial report which included the consolidated financial statements of DSH for the full year ended 28 June 2015, dated 17 August 2015 (**the 2015 Full Year Financial Statements**).
15. Each of the 2015 Half Year Financial Statements and 2015 Full Year Financial Statements included an accompanying directors' declaration that, in each director's opinion, the statements were in accordance with the *Corporations Act* 2001 (Cth) (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.
16. By the directors' declarations, Mr Abboud and Mr Potts also made implied representations — including that their opinions expressed in the declaration 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 Parts VII, XI and XII 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 section 1041E and/or 1041H of the CA.
17. Further, DSH represented, through the publication of the directors' declarations, that Mr Abboud and Mr Potts held the opinions pleaded in paragraph 15 above 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 section 1041E and/or 1041H of the CA, as pleaded in Part IX and X below.
18. By reason of the accounting treatment of rebates, the publication by DSH of the 2015 Half Year Financial Statements and the 2015 Full Year Financial Statements was misleading or deceptive conduct in contravention of sections 1041E and 1041H of the CA. Further, by reason of the failure to write down the value of inventory the publication by DSH of the 2015 Full Year Financial Statements was misleading or deceptive conduct in contravention of sections 1041E and 1041H of the CA. This is because the accounts 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). Both DSH and Mr Abboud and Mr Potts contravened s 1041E and s1041H in causing the accounts to be published. This is pleaded in Parts IX-XII below.
19. ASX announcements and results briefings made by DSH, and authorised by Mr Abboud and Mr Potts around the time its financial statements were published were also misleading or deceptive, and their publication also contravened sections 1041E and/or 1041H of the CA,

for the reasons pleaded in Parts IX and X below. The relevant ASX announcements and results briefings were:

- (a) an announcement to the ASX on 17 February 2015 in relation to the 2015 Half Year Financial Statements together with a presentation titled '1H 2015 Results Briefing' (together, the **17 February 2015 ASX Announcement & Results Briefing**); and
- (b) an announcement to the ASX on 18 August 2015 in relation to the 2015 Full Year Financial Statements together with a presentation titled 'FY2015 Results Briefing' (together, the **18 August 2015 ASX Announcement & Results Briefing**).

Structure of the pleading

- 20. Part II of the pleading details Part 10 of the *Civil Procedure Act 1995* (NSW). Part III of the pleading details the parties to the proceedings. Part IV of the pleading details DSH's accounting obligations. Part V of the pleading details DSH's receipt of rebates and rebate maximisation policy. Part VI of the pleading details the financial statements, declarations and announcements that give rise to the breaches alleged.
- 21. Part VII of the pleading details DSH's accounting treatment of rebates, the effect of the accounting treatment and why it did not comply with the Australian Accounting Standards or give a true and fair view of the financial position and performance of DSH and the DSH Group. Part VIII of the pleading details DSH's failure to write down its inventory and why this was not in compliance with the Australian Accounting Standards or why, as a consequence, DSH's financial statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group.
- 22. Part IX of the pleading details DSH's misleading or deceptive conduct. Part X details DSH's contravention of s 1041E of the CA.
- 23. Part XI of the pleading details Mr Abboud's contraventions and Part XII details Mr Potts' contraventions.
- 24. Part XIII details the plaintiffs' causation, loss and damage. Part XIV details the common questions of fact or law arising in these proceedings.

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

- 25. The plaintiffs bring this proceeding on their own behalf and on behalf of represented persons pursuant to Part 10 of the *Civil Procedure Act 1995* (NSW).
- 26. The '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; and
 - (b) suffered loss or damage by, or which resulted from, the conduct of DSH and/or Mr Abboud and/or Mr Potts pleaded below,
- (the **Group Members**).

27. As at the date of the commencement of this proceeding the Group Members comprised seven or more persons.

III. THE PARTIES

The plaintiffs: the Findlays

28. The plaintiffs are Haliburton Charles David Findlay and Marian Jennifer Denny Findlay. They acquired interests in their joint names in ordinary shares of DSH during 2015 as follows:
- (a) 20/2/2015 – purchased 7,500 shares;
 - (b) 28/9/2015 – purchased 2,000 shares;
 - (c) 5/10/2015 – purchased 2,000 shares; and
 - (d) 28/10/2015 – purchased 2,000 shares.

The first defendant: DSH

29. 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 DSH and the DSH Group;
 - ii. a person for the purposes of ss 1041E and 1041H of the CA; and
 - (c) carried on business itself and through the DSH Group as a retailer of electronics, entertainment, and computer products and related accessories.
30. On 4 January 2016, DSH was placed into voluntary administration by resolution of its directors.
31. On 25 July 2016, Joseph Hayes and Jason Preston of McGrath Nicol were appointed as the liquidators of DSH.
32. Prior to entering into liquidation, DSH traded from approximately 332 stores located mostly in Australia and via its on-line website.

The second defendant: Mr Abboud

33. The second defendant, Mr Abboud:

- (a) was the 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 1041E and 1041H of the CA.

The third defendant: Mr Potts

34. 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 1041E and 1041H of the CA.

IV. DSH'S ACCOUNTING OBLIGATIONS

35. At all material times, DSH:

- (a) 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:
 - i. Australian Accounting Standard *AASB 101 Presentation of Financial Statements* (**AASB 101**);
 - ii. Australian Accounting Standard *AASB 102 Inventories* (**AASB 102**); and
 - iii. Australian Accounting Standard *AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors* (**AASB 108**); and
- (b) was required by ss 286, 302 and 304 of the CA to prepare financial reports for a half-year in compliance with the accounting standards (as defined in s 9 of the CA) including:
 - i. AASB 101;
 - ii. AASB 102; and
 - iii. AASB 108.

36. 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 and half-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).

AASB 101

37. 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.

38. 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 Australian Accounting Standards Board Framework for the Preparation and Presentation of Financial Statements (**the AASB Framework**).

Particulars

AASB 101 paragraph 15.

39. 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.

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.

40. 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.

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.

AASB 102

41. In complying with AASB 102, DSH was required to determine the costs of purchase of inventories by:
- (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; and
 - (b) deducting trade discounts, rebates and other similar items in determining the costs of purchase.

Particulars

AASB 102 paragraph 11.

42. 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.

Particulars

AASB 102 paragraph 34.

43. Also in complying with AASB 102, DSH was required:
- (a) when measuring the cost of inventories, to only take into consideration rebates that had been received 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 excess rebates 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

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

AASB 108

44. 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) complete in all material respects.

Particulars

AASB 108 paragraph 10.

45. 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.

46. 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.

V. DSH'S RECEIPT OF REBATES

47. From at least May 2014 and continuing throughout 2015, DSH Group obtained rebates from some suppliers of DSH's own brand goods and some suppliers of other branded goods as follows:
- (a) the supplier was directed or requested by DSH to cancel previously issued invoices that had been issued without rebates;
 - (b) the supplier was directed or requested to issue new invoices, relating to the same goods as in the previous invoice, showing a rebate and an equivalent increase in the cost of goods;
 - (c) in some cases, the supplier was directed or requested to issue subsequent invoices on a similar basis, i.e. with a rebate and a higher price for the goods;
 - (d) all in circumstances where the economic substance of the transaction between DSH and the supplier was such that no rebate existed,

(Switched Invoice Rebates).

48. Further, and also 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 (**Scan Rebates**).
49. The Scan Rebates consisted of a number of different categories, including:
- (a) rebates from suppliers outside the standard agreements between the suppliers and DSH; and
 - (b) rebates from suppliers of DSH's own brand goods and some other branded goods.

50. Further, 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 Scan Rebates, and referred to in this Statement of Claim as 'Over and Above' rebates (**O&A Rebates**).
51. 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.

Particulars

Management set budgets and targets for DSH's buying team that encouraged and incentivised the buyers to maximise rebates, including O&A Rebates. The rebates were individually obtained by buyers from suppliers. See Mr Abboud's evidence: transcript dated 4 October 2016 at pg 501-502. See Mr Potts' evidence: transcript dated 5 October 2016 at pg 396.

52. From at least May 2014 and throughout 2015, DSH developed a practice whereby its and DSH Group's employees:
- (a) purchased 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 focussing upon whether the stock so purchased would be saleable at an appropriate margin within an appropriate time; and
 - (b) entered into or extended contracts with suppliers and service providers on DSH and DSH Group's behalf based on decisions which focussed on whether rebates would be obtained or maximised, rather than whether entering into or extending those contracts was in the best interests of DSH or the DSH Group,
- (the **Rebate-maximisation practices**).

Particulars

As against the first defendant the plaintiffs rely on the admissions made by the first defendant in the proceedings DSHE Holdings Ltd ACN 166 237 841 (receivers and managers appointed) (in liquidation) v Abboud & Ors

2017/81927 (the Company's proceedings) at paragraph 30, 31, 33 and 34 of DSH's Commercial List Statement filed in the Company's proceedings.

53. The Rebate-maximisation practices:

- (a) were a key source of profit for DSH;
- (b) resulted in DSH buying poor quality stock during 2015 which was not attractive to customers and was difficult to sell;
- (c) in turn, led to an increase in inventory levels during 2015 and an accumulation of ageing and poor quality stock; and
- (d) inflated DSH's recorded profit.

Particulars

As to (a), accrued rebates in the 2015 financial year were \$38,600,000, being approximately 72% of DSH's reported profit before income tax, approximately 57% of DSH's reported EBITDA, and more than DSH's reported net profit of \$37,002,000.

As to (a) to (d), against the first defendant the plaintiffs rely on the admissions made by the first defendant in the Company's proceedings at paragraph 35-36 of DSH's Commercial List Statement filed in the Company's proceedings.

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

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

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

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

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

February 2015

54. On 16 February 2015, DSH published and lodged with the ASX the consolidated financial report of DSH for the half year ended 28 December 2014 (**the 2015 Half Year Financial Statements**).

55. The 2015 Half Year Financial Statements represented that EBITDA was \$44.706 million.

56. The condensed consolidated statement of profit or loss included in the 2015 Half Year Financial Statements represented that:
- (a) DSH's Cost of sales = (\$522,100,000);
 - (b) DSH's Gross Profit = \$171,700,000;
 - (c) DSH's Marketing and selling costs = (\$58,536,000);
 - (d) DSH's Net profit = \$25,204,000.
57. The condensed consolidated statement of financial position included in the 2015 Half Year Financial Statements represented that:
- (a) Trade and other receivables = \$79,590,000;
 - (b) Inventories = \$335,843,000;
 - (c) Total Current Assets = \$444,670,000;
 - (d) Total Equity = \$179,055,000.
58. The information included in the 2015 Half Year Financial Statements pleaded in the preceding three paragraphs demonstrated that:
- (a) a reduction in the items labelled 'Marketing and selling costs' or 'Costs of sales' in the statement of profit or loss leads to a corresponding increase in the item labelled 'Net profit'; and
 - (b) an overstatement of the item labelled 'Inventories' in the consolidated statement of financial position leads to an equivalent overstatement in the item labelled 'Total Equity'.
59. The 2015 Half Year Financial Statements included a declaration by the directors of DSH that, in their opinion, the 2015 Half Year 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

*2015 Half Year Financial Statements, Directors' declaration at page 6, dated
16 February 2015.*

60. The declaration pleaded above at paragraph 59 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.

Directors' 2015 Half Year Representations

61. By making the declaration about their opinion pleaded at paragraph 59, Mr Abboud and Mr Potts, intended to and did communicate and represent to investors and potential investors in DSH that each was of the opinion that the 2015 Half Year 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.
62. Further, by making the representation pleaded at paragraph 61, Mr Abboud and Mr Potts, intended to and did communicate and represent to investors and potential investors in DSH that, the opinion held by each of them:
- (a) was held on a reasonable basis and was the product of the application of reasonable care and skill by each relevant director;
 - (b) was 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) was 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) was 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' 2015 Half Year Implied Representation**).

Particulars

The Directors' 2015 Half Year Implied Representation was implied by reasons of:

- i. the declaration pleaded at paragraph 59 and 60;*
- ii. the representation pleaded at paragraph 61;*
- iii. the terms of the 2015 Half Year Financial Statements;*
- iv. the obligations imposed on company directors in relation to the preparation of financial reports under chapter 2M of the CA and as interpreted by the courts.*

DSH's 2015 Half Year Representations

63. By making the declaration pleaded above at paragraph 59, DSH intended to and did communicate and represent to investors and potential investors in DSH that each of Mr Abboud and Mr Potts were of the opinion that the 2015 Half Year 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.
64. Further, by making the representations pleaded above at paragraph 63, DSH intended to and did communicate and represent 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 directors;
 - (b) to which each of the directors 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 of the 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 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 2015 Half Year Implied Representation**).

Particulars

DSH's 2015 Half Year Implied Representation was implied by reasons of:

- i. the declaration pleaded at paragraph 59 and 60;*
- ii. the representation pleaded at paragraph 63;*
- iii. the terms of the 2015 Half Year Financial Statements;*
- iv. 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.*

17 February ASX Announcement & Results Briefing

65. On or about 17 February 2015, DSH, Mr Abboud and Mr Potts, caused the 17 February 2015 ASX Announcement & Results Briefing to be made to the ASX.
66. The 17 February 2015 ASX Announcement & Results Briefing made various positive statements about the financial position and performance of DSH and the DSH Group.

Particulars

Statements by DSH

- (a) *“the Company’s Growth Strategy momentum accelerates and delivers results”;*
- (b) *“EBITDA up 7.1% (1H 2015: \$44.7 million vs. 1H 2014: \$41.7 million)”;*
- (c) *“NPAT \$25.2 million, up 0.8%”;*
- (d) *“Dick Smith continues to drive cost efficiencies, resulting in Cost of Doing Business (CODB) decreasing 41bp to 18.3% sales in 1H 2015.”;*
- (e) *“Dick Smith’s strategy is to profitable grow sales by providing consumers with the product they want at competitive prices from locations and platforms convenient to them. This is being achieved by giving consumers access to an unparalleled network of 385 stores throughout Australian and New Zealand and online purchasing experience via multiple platforms.”;*
- (f) *“The Company continues to focus on driving cost efficiencies throughout the business.”*
- (g) *“Dick Smith’s balance sheet remains strong.”; and*
- (h) *“Inventory was tightly managed throughout the half. The increase in inventory levels during 1h 2015 strongly positions the Company for sustainable growth.”*

Statements by Mr Abboud

- (i) *“Our result this half reaffirms that our Growth Strategy is performing strongly. We delivered profitable comparable and total sales growth, despite challenging market conditions. We expect further strong*

performance from our Growth Strategy and anticipate approximately 10% total sales growth in 2015.”;

- (j) *“Our growth strategy is based on the premise that we will ensure we are competitive in the marketplace but we will also focus on identifying new target customer groups not currently being catered for by the market.”; and*
- (k) *“Dick Smith is well placed to deliver further strong sales and profit growth over the next 18 months. We have a solid Growth Strategy and a track record to date of delivering both sales and cost reduction targets outlined in our strategy.”*

Statements by Mr Potts and Mr Abboud

- (l) *“Growth strategy momentum accelerates and delivers results.”*
- (m) *“Profit and Loss – Australia performing well.”*
- (n) *“Balance Sheet – Positioning for sustainable growth.”*
- (o) *“Growth Strategy – strong performance in focus areas.”*
- (p) *“FY2015 Outlook – sustainable growth.”*
- (q) *“EBITDA up 7.1% to \$44.7m”*
- (r) *“NPAT \$25.2m, up 0.8%”*

August 2015

- 67. On 17 August 2015, DSH published and lodged with the ASX its annual report and the consolidated financial statements of DSH for the financial year ended 28 June 2015 (**the 2015 Full Year Financial Statements**).
- 68. The 2015 Full Year Financial Statements represented that EBITDA was \$79,800,000.
- 69. The consolidated statement of profit or loss included in the 2015 Full Year Financial Statements represented that:
 - (a) DSH’s Cost of sales = (\$992,828,000);
 - (b) DSH’s Gross Profit = \$326,842,000;
 - (c) DSH’s Marketing and sales costs = (\$112,935,000);
 - (d) DSH’s Net profit = \$37,905,000.

70. The consolidated statement of financial position included in the 2015 Full Year Financial Statements represented that:
- (a) Trade and other receivables = \$53,323,000;
 - (b) Inventories = \$293,044,000;
 - (c) Total Current Assets = \$389,979,000;
 - (d) Total Equity = \$169,147,000.
71. The information included in the 2015 Full Year Financial Statements pleaded in the preceding three paragraphs demonstrated that:
- (a) a reduction in the items labelled 'Marketing and sales costs' or 'Costs of sales' in the statement of profit or loss leads to a corresponding increase in the item labelled 'Net profit'; and
 - (b) an overstatement of the item labelled 'Inventories' in the consolidated statement of financial position leads to an equivalent overstatement in the item labelled 'Total Equity'.
72. The 2015 Full Year Financial Statements included a declaration by the directors of DSH that, in their opinion, the 2015 Full Year 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.

73. The declaration pleaded above at paragraph 72 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.

Directors' 2015 Full Year Representations

74. By making the declaration pleaded above at paragraph 72, Mr Abboud and Mr Potts intended to and did communicate and represent to investors and potential investors in DSH that each was of the opinion that the 2015 Full Year 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.
75. Further, by making the representation pleaded above at paragraph 74, Mr Abboud and Mr Potts intended to and did communicate and represent to investors and potential investors in DSH that, their opinion:

- (a) was held on a reasonable basis and was the product of the application of reasonable care and skill by each relevant director;
 - (b) was 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) was 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) was 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' 2015 Full Year Implied Representation**).

Particulars

The Directors' 2015 Full Year Implied Representation was implied by reasons of:

- i. the declaration pleaded at paragraph 72 and 73;*
- ii. the representation pleaded at paragraph 74;*
- iii. the terms of the 2015 Full Year Financial Statements;*
- iv. 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.*

DSH's 2015 Full Year Representations

76. By making the declaration pleaded above at paragraph 72, DSH intended to and did communicate and represent to investors and potential investors in DSH that Mr Abboud and Mr Potts were of the opinion that the 2015 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.
77. Further, by making the representations pleaded above at paragraph 76, DSH intended to and did communicate and represent 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 2015 Full Year Implied Representation**).

Particulars

DSH's 2015 Full Year Implied Representation was implied by reasons of:

- i. the declaration pleaded at paragraph 72 and 73;*
- ii. the representation pleaded at paragraph 74;*
- iii. the terms of the 2015 Full Year Financial Statements;*
- iv. 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.*

18 August ASX Announcement & Results Briefing

- 78. On or about 18 August 2015, DSH, Mr Abboud and Mr Potts, caused the 18 August 2015 ASX Announcement & Results Briefing to be made to the ASX.
- 79. The 18 August 2015 ASX Announcement & Results Briefing made various positive statements about the financial position and performance of DSH.

Particulars

Statements by DSH

- (a) *"EBITDA: \$79.8 million; Net Profit After Tax (NPAT) was \$43.4 million."*
- (b) *DSH's "Growth Strategy delivered solid underlying performance and a strong result in Australia" and "continues to resonate."*
- (c) *DSH had "delivered another solid underlying profit performance."*

- (d) DSH *“continues to drive cost efficiencies, with Cost of Doing Business (CODB) decreasing 32bp 10 18.7% of sales in 2015.”*
- (e) DSH *“employed a disciplined approach to promotional activity.”*
- (f) DSH’s *“balance sheet remains strong.”*

Statements by Mr Abboud

- (g) *“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.”*
- (h) *“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

- (i) *“Financial highlights – Growth Strategy delivering.”*
- (j) *“Growth strategy momentum accelerates and delivers results.”*
- (k) *“Profit and Loss – strong 2H 2015 performance.”*
- (l) *“2015 Sales Performance – driving profitable growth.”*
- (m) *“CODB – benefits gained, more to be realised.”*
- (n) *“Balance sheet – Positioning for sustainable growth.”*
- (o) *“Higher inventory reflects conscious decision to benefit from advantageous trading terms and favourable exchange rate.”*
- (p) *“Increase in sundry receivables on improved supplier terms.”*
- (q) *“FY2016 Outlook – sustainable growth.”*
- (r) *“EBITDA up 7.3% to \$79.8m”*
- (s) *“NPAT \$43.4m, up 3.1%”*

VII. DSH'S ACCOUNTING TREATMENT OF REBATES

Accounting treatment of Switched Invoice Rebates

80. In each of the 2015 Half Year Financial Statements and 2015 Full Year Financial Statements, DSH recorded the Switched Invoice Rebates received during the relevant accounting period for those statements as either:
- (a) reductions in 'Marketing and selling costs' in the 2015 Half Year Financial Statements and 'Marketing and sales costs' in the 2015 Full Year Financial Statements (hereafter each referred to as **Marketing costs**); or
 - (b) reductions in 'Cost of sales'.

Particulars

As against the first defendant the plaintiffs rely on the admissions made by the first defendant in the Company's proceedings at paragraph 38-39 of DSH's Commercial List Statement filed in the Company's proceedings.

81. Further, DSH recorded some Switched Invoice Rebates in each of the 2015 Half Year Financial Statements and 2015 Full Year 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 in connection with the goods the subject of the rebate in the period covered by that financial statement; and
 - (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.
82. 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 overstating the value of 'Inventories' reported in the statements of financial position, thus overstating the total equity of DSH; and
 - (c) occurred in circumstance where the purported economic benefits of the Switched Invoice Rebates were illusory because no rebate actually existed.

Particulars

As against the first defendant the plaintiffs rely on the admissions made by the first defendant in the Company's proceedings at paragraph 40 of DSH's Commercial List Statement filed in the Company's proceedings.

83. By reason of the matters pleaded in the preceding three paragraphs, each of the 2015 Half Year Financial Statements and 2015 Full Year Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

As against the first defendant the plaintiffs rely on the admissions made by the first defendant in the Company's proceedings at paragraph 52 and 67 of DSH's Commercial List Statement filed in the Company's proceedings.

84. The accounting treatment of the Switched Invoice Rebates pleaded above did not comply with AASB 101 because:
- (a) it did not fairly present DSH and the DSH Group's financial performance;
 - (b) it did not faithfully represent 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 2015 Half Year Financial Statements and the 2015 Full Year Financial Statements of the matters pleaded above in paragraphs 47 and 80 to 83 — such matters being significant accounting policies relevant to understanding the financial statements.
85. 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 received as a reduction in the purchase price of inventories.
86. The accounting treatment of the Switched Invoice Rebates pleaded above also did not comply with AASB 108 because and insofar as an Australian Accounting Standard did not specifically apply to the Switched Invoice Rebates, and 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 were
- (b) neutral;
- (c) prudent; and
- (d) complete in all material respects.

Accounting treatment of Scan Rebates

87. In each of the 2015 Half Year Financial Statements and 2015 Full Year Financial Statements, DSH recorded the Scan Rebates received during the relevant accounting period for those statements as a reduction in 'Cost of sales'.

Particulars

As against the first defendant the plaintiffs rely on the admissions made by the first defendant in the Company's proceedings at paragraph 38-39 of DSH's Commercial List Statement filed in the Company's proceedings.

88. DSH recorded some Scan Rebates in each of the 2015 Half Year Financial Statements and 2015 Full Year Financial Statements as reductions in 'Cost of sales' immediately upon being negotiated with suppliers notwithstanding that the goods the subject of the rebate were not sold in the period covered by that financial statement.
89. DSH recorded some Scan Rebates as accounts receivable, despite it not being probable or at least it being uncertain, that the rebate would be earned, paid, and would flow to DSH so it could be measured reliably.

Particulars

A number of the Scan Rebates recognised in DSH's accounts were subsequently disputed by vendors on the basis that the vendor had not agreed the rebate, or that the rebate was predicated on contingencies that had not been satisfied.

90. The recording of the Scan 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

As against the first defendant the plaintiffs rely on the admissions made by the first defendant in the Company's proceedings at paragraph 40 of DSH's Commercial List Statement filed in the Company's proceedings.

- (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.
91. By reason of the matters pleaded in the preceding four paragraphs, each of the 2015 Half Year Financial Statements and 2015 Full Year Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

As against the first defendant the plaintiffs further rely on the admissions made by the first defendant in the Company's proceedings at paragraph 52 and 67 of DSH's Commercial List Statement filed in the Company's proceedings.

92. The accounting treatment of the Scan Rebates pleaded above did not comply with AASB 101 because:
- (a) it did not fairly present DSH and the DSH Group's financial performance;
 - (b) it recognised some Scan 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;
 - (c) it did not faithfully represent the effect of the Scan 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 2015 Half Year Financial Statements and 2015 Full Year Financial Statements of the matters pleaded above in paragraphs 48, 49, and 87 to 91 — such matters being significant accounting policies relevant to understanding the financial statements.
93. Further, the accounting treatment of the Scan Rebates pleaded above did not comply with AASB 102 because and insofar as:

- (a) reductions in 'Cost of sales' for inventory were not matched to the period in which that inventory was sold; and
 - (b) the Scan 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.
94. The accounting treatment of Scan Rebates pleaded above also did not comply with AASB 108 because and insofar as an Australian Accounting Standard did not specifically apply to the Scan Rebates, and an accounting policy was not developed and applied which resulted in financial statements that:
- (a) reflected the economic substance of the Scan Rebates and not merely their legal form; and were
 - (b) neutral;
 - (c) prudent; and
 - (d) complete in all material respects.

Accounting treatment of O&A Rebates

95. In each of the 2015 Half Year Financial Statements and 2015 Full Year Financial Statements, DSH recorded the O&A Rebates received during the relevant accounting period for those statements as either:
- (a) reductions in 'Marketing costs'; or
 - (b) reductions in 'Cost of sales'.

Particulars

As against the first defendant the plaintiffs rely on the admissions made by the first defendant in the Company's proceedings at paragraph 38-39 of DSH's Commercial List Statement filed in the Company's proceedings.

96. Further, DSH recorded some O&A Rebates in each of the 2015 Half Year Financial Statements and 2015 Full Year 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
 - (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.
97. Further, DSH recorded some O&A Rebates as accounts receivable, despite it not being probable or despite it being at least it being uncertain, that the rebate would be earned, paid, and would flow to DSH so it could be measured reliably.

Particulars

A number of the O&A Rebates recognised in DSH's accounts were subsequently disputed by vendors on the basis that the vendor had not agreed the rebate, or that the rebate was predicated on contingencies that had not been satisfied.

98. 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

As against the first defendant the plaintiffs rely on the admissions made by the first defendant in the Company's proceedings at paragraph 40 of DSH's Commercial List Statement filed in the Company's proceedings.

- (c) profit being reported before the inventory to which the profit related had been sold; and
 - (d) enabling DSH to inflate its profits for the period by artificially bringing forward profits from future periods.
99. By reason of the matters pleaded in the preceding four paragraphs, each of the 2015 Half Year Financial Statements and 2015 Full Year Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

As against the first defendant the plaintiffs further rely on the admissions made by the first defendant in the Company's proceedings at paragraph 52 and 67 of DSH's Commercial List Statement filed in the Company's proceedings.

100. The accounting treatment of the O&A Rebates pleaded above did not comply with AASB 101 because:
- (a) it did not fairly present DSH and the DSH Group's financial performance;
 - (b) it recognised some O&A rebates as accounts receivable, despite it not being probable or at least it being uncertain, that the rebate would be earned, paid, and would flow to DSH so it could be measured reliably;
 - (c) it did not faithfully represent 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 2015 Half Year Financial Statements and 2015 Full Year Financial Statements of the matters pleaded above in paragraphs 50, 51 and 95 to 99 — such matters being significant accounting policies relevant to understanding the financial statements.
101. 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' for inventory:
- (a) were not matched to the period in which that inventory was sold;
 - (b) were not 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.

102. The accounting treatment of the O&A Rebates pleaded above also did not comply with AASB 108 because and insofar as an Australian Accounting Standard did not specifically apply to the O&A Rebates, and 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 were
 - (b) neutral;
 - (c) prudent; and
 - (d) complete in all material respects.
103. On or about 7 December 2015, the Board of DSH resolved to change its accounting policy by ceasing to record O&A Rebates as a reduction in 'Marketing and sales costs' or 'Cost of sales' and by recording the Rebates as a reduction in the value of 'Inventories'.

Particulars

Minutes of meeting of the Board of DSH dated 7/12/2015.

VIII. DSH'S FAILURE TO WRITE DOWN ITS INVENTORY

104. The plaintiffs repeat paragraphs 52 and 53 above.
105. As a result of Rebate-maximisation practices:
- (a) DSH was not able to significantly reduce its inventory level after the Christmas holiday period in 2014/5;
 - (b) DSH carried those higher inventory levels through the early months of 2015 and beyond;
 - (c) stock that was not attractive to customers increased significantly in the period from January 2015 to December 2015;
 - (d) there was a growing component of "end of life" inventory by mid-2015 and the stock became increasingly aged throughout 2015;
 - (e) during 2015, inventory days increased as stock aged;
 - (f) notwithstanding that the income received from rebates had already been booked to the relevant financial statements as a reduction in 'Cost of sales', DSH was increasingly

unable to sell the relevant product and, in some case, therefore never received the actual discount or rebate payment from the supplier.

Particulars

As against the first defendant the plaintiffs rely on the admissions made by the first defendant in the Company's proceedings at paragraph 41, 42, 43, 45, 46 and 58 of DSH's Commercial List Statement filed in the Company's proceedings.

106. By August 2015, a high proportion of stock held by DSH was not being actively sold.
107. 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 made by the first defendant in the Company's proceedings at paragraph 69 of DSH's Commercial List Statement filed in the Company's proceedings.

108. The consultants reported their findings to DSH on or about 26 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;
 - (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 by the first defendant in the Company's proceedings at paragraph 73 of DSH's Commercial List Statement filed in the Company's proceedings.

109. The report identified approximately \$190,000,000 of problem stock, divided as follows:

Obsolete	\$5m
Aged End of Life	\$73m
Recent End of Life	\$26m

Active stock with no sales	\$13m
Extreme Excess (over 1 year)	\$74m
Total	\$190m

110. The report advised that the consultants believed that the stock could be sold for approximately \$120,000,000, resulting in a potential impairment of approximately \$60,000,000.

Particulars

Further particulars will be provided after discovery.

111. 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

- i. ASX Announcement dated 30 November 2015.*
 - ii. Further, as against the first defendant the plaintiffs rely on the admissions made by the first defendant in the Company’s proceedings at paragraph 84 of DSH’s Commercial List Statement filed in the Company’s proceedings.*
112. Levels of poor quality, obsolete and inactive stock had significantly accumulated prior to the retainer of the consultants pleaded in paragraph 107 above, including prior to the conclusion of the financial reporting period covered in the 2015 Full Year Financial Statements.
113. Notwithstanding the matters pleaded in paragraphs 104 to 112 above, DSH failed to write down the value of its inventory prior to publishing the 2015 Full Year Financial Statements.
114. This was not in compliance with Australian Accounting Standards, in particular AASB 102, because:
- (a) the value of ‘Inventories’ in the consolidated statement of financial position was not adjusted notwithstanding the accumulation of inactive stock during 2015; and
 - (b) in accordance with AASB 102, the carrying value of ‘Inventories’ should have been reduced in the 2015 Full Year Financial Statements.
115. In overstating the carrying value of ‘Inventories’ as pleaded above, the 2015 Full Year Financial Statements reported by DSH:

- (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 fairly present DSH and the DSH Group's financial performance;
- (d) did not faithfully represent 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.

116. Further, AASB 102 required:

- (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).

117. In failing to write down the carrying value of 'Inventories' as an expense against gross profit, the 2015 Full Year Financial Statements:

- (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 fairly present DSH 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.

118. By reason of the matters pleaded in paragraphs 104 to 117 above, the 2015 Full Year Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

IX. DSH'S MISLEADING OR DECEPTIVE CONDUCT

119. By:

- (a) issuing and publishing the 2015 Half Year Financial Statements;
- (b) making the representations pleaded at paragraph 63;
- (c) making DSH's 2015 Half Year Implied Representation;
- (d) causing the 17 February 2015 ASX Announcement & Results Briefing to be issued and published;
- (e) issuing and publishing the 2015 Full Year Financial Statements;
- (f) making the representations pleaded at paragraph 74;
- (g) making DSH's 2015 Full Year Implied Representation; and/or
- (h) causing the 18 August 2015 ASX Announcement & Results Briefing to be issued and published,

DSH, on one or more or all of these occasions, engaged in conduct in relation to a financial product or a financial service within the meaning of s 1041H of the CA.

(A) 2015 Half Year Financial Statements

120. The issuance and publication by DSH of the 2015 Half Year Financial Statements was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA because those 2015 Half Year Financial Statements:

- (a) did not disclose the accounting treatment of the Switched Invoice Rebates and its effects pleaded above in paragraphs 80 to 86;
- (b) did not disclose the accounting treatment of the Scan Rebates and its effects pleaded above in paragraphs 87 to 94;
- (c) did not disclose the accounting treatment of the O&A Rebates and its effects pleaded above in paragraphs 95 to 103; and/or
- (d) did not disclose the Rebate-maximisation practices and the effect of those practices on DSH's financial performance and financial position pleaded above in paragraphs 52-53 and 105-106.

Particulars

The amount by which the 2015 Half-Year Financial Statements:

- (i) understated marketing and selling costs;*
- (ii) understated cost of sales; and*
- (iii) overstated EBITDA, net profits and total equity*

will be identified in the plaintiffs' evidence.

121. The issuance and publication by DSH of the 2015 Half Year Financial Statements was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA because the 2015 Half Year Financial Statements were not prepared in accordance with Australian Accounting Standards.

Particulars

Part VII is repeated.

The amount by which the 2015 Half-Year Financial Statements:

- (i) understated marketing and selling costs;*
- (ii) understated cost of sales; and*
- (iii) overstated EBITDA, net profits and total equity*

will be identified in the plaintiffs' evidence.

122. The issuance and publication by DSH of the 2015 Half Year Financial Statements was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA because the 2015 Half Year Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

Parts VII is repeated.

The amount by which the 2015 Half-Year Financial Statements:

- (i) understated marketing and selling costs;*
- (ii) understated cost of sales; and*
- (iii) overstated EBITDA, net profits and total equity*

will be identified in the plaintiffs' evidence.

(B) DSH's 2015 Half Year Implied Representations

123. DSH's 2015 Half Year Implied Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA because insofar as the representation pleaded at paragraph 63 was 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 and 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 made by the first defendant in the Company's proceedings at paragraph 48, 52, 63 and 67 of DSH's Commercial List Statement filed in the Company's proceedings.

Further as against all the defendants,

- i. Mr Abboud and Mr Potts had not adequately considered the appropriate accounting treatment of the rebate practices, 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.*
- ii. Given the effect of the accounting treatment as pleaded above in Part VII, 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.*

- iii. *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 Scan 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's Group.*
- iv. *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, Scan 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.*
- v. *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.*
- vi. *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 4 October 2016, pg 500.*
- vii. *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.*
- viii. *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.*
- ix. *Further particulars may be provided after discovery and evidence.*

(C) 17 February 2015 ASX Announcement & Results Briefing

124. The issuance and publication by DSH of the 17 February 2015 ASX Announcement & Results Briefing was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA because it:

- (a) did not disclose the matters pleaded and particularised in paragraph 120(a)-(d);
- (b) did not disclose the fact DSH's growth, profit, and strength were substantially the result of the matters pleaded and particularised in paragraph 120(a)-(d);
- (c) represented that inventory was tightly managed when that was not the case due to the Rebate-maximisation practices and the effect of those practices as pleaded above in paragraphs 52-53 and 105-106, including that the Rebate-maximisation practices caused DSH to accumulate inventory that was poor and/or difficult to sell;
- (d) did not disclose that the reported net profit and EBITDA were achieved by reason of the accounting practices pleaded in Part VII above, which practices were not in accordance with Australian Accounting Standards; and/or
- (e) did not disclose that the 2015 Half Year 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

Part VII is repeated.

The amount by which the 17 February 2015 ASX Announcement & Results Briefing overstated the EBITDA and net profit will be identified in the plaintiffs' evidence.

(D) 2015 Full Year Financial Statements

125. The issuance and publication by DSH of the 2015 Full Year Financial Statements was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA because those 2015 Full Year Financial Statements:

- (a) did not disclose the accounting treatment of the Switched Invoice Rebates and its effect pleaded above in paragraphs 80 to 86;
- (b) did not disclose the accounting treatment of the Scan Rebates and its effect pleaded above in paragraphs 87 to 94;
- (c) did not disclose the accounting treatment of the O&A Rebates and its effect pleaded above in paragraphs 95 to 103; and/or

- (d) did not disclose the Rebate-maximisation practices and the effect of those practices on DSH's financial performance and financial position pleaded above in paragraphs 52-53 and 105-106.

Particulars

The amount by which the 2015 Full Year Financial Statements:

- (i) *understated marketing and selling costs;*
- (ii) *understated cost of sales;*
- (iii) *overstated EBITDA, net profit and total equity.*

will be identified in the plaintiffs' evidence.

126. The issuance and publication by DSH of the 2015 Full Year Financial Statements was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA because the 2015 Full Year Financial Statements were not prepared in accordance with Australian Accounting Standards.

Particulars

Parts VII and VIII are repeated.

The amount by which the 2015 Full Year Financial Statements:

- (i) *understated marketing and selling costs;*
- (ii) *understated cost of sales;*
- (iii) *overstated EBITDA, net profit and total equity.*

will be identified in the plaintiffs' evidence.

127. The issuance and publication by DSH of the 2015 Full Year Financial Statements was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA because the 2015 Full Year Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group.

Particulars

Parts VII and VIII are repeated.

The amount by which the 2015 Full Year Financial Statements:

- (i) *understated marketing and selling costs;*
- (ii) *understated cost of sales;*
- (iii) *overstated EBITDA, net profit and total equity.*

will be identified in the plaintiffs' evidence.

(E) **DSH's 2015 Full Year Implied Representation**

128. DSH's 2015 Full Year Implied Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA because insofar as the representation pleaded at paragraph 74 was 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 and 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 123 above were also present and occurred at the time DSH made DSH's 2015 Full Year Implied Representation.

Further as against all the defendants,

- i. *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.*
- ii. *Given the effect of the accounting treatment as pleaded above in Part VIII, 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.*
- iii. *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's Group.

iv. Further particulars may be provided after discovery and evidence.

(F) 18 August 2015 ASX Announcement & Results Briefing

129. The issuance and publication by DSH of the 18 August 2015 ASX Announcement & Results Briefing was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA because it:

- (a) did not disclose the matters pleaded and particularised in paragraph 125(a)-(d);
- (b) did not disclose the fact DSH's growth, profit, and strength were the result of the matters pleaded and particularised in paragraph 125(a)-(d);
- (c) represented that higher inventory reflected a conscious decision to benefit from advantageous trading terms and favourable exchange rate, when that was not the case due to the Rebate-maximisation practices and the effect of those practices as pleaded above in paragraphs 52-53 and 105-106, including that the Rebate-maximisation practices caused DSH to accumulate inventory that was poor and/or difficult to sell;
- (d) represented that an increase in sundry receivables was related to improved supplier terms, when that was not the case due to the matters pleaded above with respect to the Switched Invoice Rebates, the Scan Rebates, and the O&A Rebates in Parts V and VII above;
- (e) did not disclose that the reported net profit and EBITDA were achieved by reason of the accounting practices pleaded in Part VII above, which practices were not in accordance with Australian Accounting Standards; and/or
- (f) did not disclose that the 2015 Full Year 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 amount by which the 18 August 2015 ASX Announcement & Results Briefing overstated the EBITDA and net profit will be identified in the plaintiffs' evidence.

X. DSH'S CONTRAVENTION OF SECTION 1041E OF THE CA

(A) 2015 Half Year Financial Statements

130. By issuing and publishing the 2015 Half Year Financial Statements, DSH made statements, or disseminated information, which:

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

Particulars

Paragraphs 120 to 122 are 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 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 Australian Stock Exchange without the Director's Declaration.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

The reporting by DSH of EBITDA, net profit and total equity at levels higher than what would have been the case (had the 2015 Half Year 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 the value of DSH shares from what they otherwise would have been.

Further particulars may be provided following discovery and evidence.

131. When DSH issued and published the 2015 Half Year 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;
- (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 Scan 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) 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 Switched Invoice Rebates, the Scan 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. AASB 101, AASB 102, AASB 108;
 - 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):
 - i. of the Switched Invoice Rebates, the Scan Rebates, the O&A Rebates;
 - ii. of the accounting treatments of rebates pleaded in Part VII above;

- iii. that the accounting treatments of rebates pleaded in Part VII above were not in accordance with AASB 101, AASB 102, or AASB 108; and
 - iv. that the 2015 Half Year Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group.
- (l) further, the directors of DSH ought to have been aware of the effect of the accounting treatments of rebates pleaded in Part VII above on DSH's gross profit, EBITDA, and net profit, including:
- i. that the purported economic benefits of the Switched Invoice Rebates were illusory because no rebate actually existed;
 - ii. that the accounting treatment of the Scan Rebates inflated DSH's recorded profits by bringing forward significant profits from future periods;
 - iii. that the accounting treatment of the O&A Rebates inflated DSH's recorded profits by bringing forward significant profits from future periods;
 - iv. that the Rebate-maximisation practices inflated DSH's recorded profits at the expense of DSH accumulating inventory that was poor and/or difficult to sell,
- because it would have been apparent to any reasonable person who had undertaken the steps that each of the directors was required to undertake in order to discharge the duties pleaded above.

Particulars

- I. *As to (a)*
- i. *The Rebate-maximisation practices or aspects thereof were reported to the directors of DSH, including Mr Abboud and Mr Potts in each of the Deloitte Reports for the year ending 29 June 2014 and half year ending 28 December 2014.*
 - ii. *The Rebate-maximisation practices or aspects thereof were indicated by forecasting documents prepared and received by various members of the board of DSH in 2013, including Mr Abboud and Mr Potts that showed rebates were forecasted to increase and consequently DSH's EBITDA was forecasted to increase.*
 - 1. *Project Yellow: Review of Financial Information 7 November 2013.*
 - 2. *Minutes of Project Yellow Due Diligence Committee meeting.*

iii. *Members of the board of DSH admitted awareness of the Rebate-maximisation practices or aspects thereof.*

1. *See Ms Raine's evidence: transcript dated 5 September 2016 at pg 39.*
2. *See Mr Wavish's evidence: transcript dated 6 September 2016 at pg 126.*
3. *See Mr Robert Ishak's (Mr Ishak) evidence: transcript dated 27 September 2016 at pg 286-287; transcript dated 4 October 2016 at pg 320.*
4. *See Mr Phillip John Cave's (Mr Cave) evidence: transcript dated 4 October 2016 at 351.*
5. *See Mr Abboud's evidence: transcript dated 4 October 2016 at pg 493 and 494.*
6. *See Mr Potts' evidence: transcript dated 5 October 2016 at pg 391-392.*
7. *See Mr Tomlinson's (Mr Tomlinson) evidence: transcript dated 7 September 2016 at pg 17, 20-24.*
8. *See Mr Robert Murray's (Mr Murray) evidence: transcript dated 26 September 2016 at pg 190 and 218-219.*

iv. *Mr Abboud and Mr Potts ought to have been aware of the Rebate-maximisation practice because it was implemented at their instigation and/or with their approval.*

1. *See Mr Abboud's evidence: transcript dated 4 October 2016 at pg 501-502.*

v. *Mr Abboud and Mr Potts ought to have been aware of the Rebate-maximisation practice because it was discussed at FAC meetings Mr Abboud and Mr Potts attended. See FAC Minutes of meetings on 12 August 2014.*

vi. *Persons occupying the positions within DSH that Mr Abboud and Mr Potts did, exercising due care and skill would have been aware of the Rebate-maximisation practices.*

vii. *Further particulars may be provided after discovery and evidence.*

II. *As to (b)-(d):*

i. *Members of the board of DSH admitted awareness of how, or aspects of how, O&A Rebates, Scan Rebates and/or Switched Invoice Rebates were accounted for by DSH.*

1. *See Ms Raine's evidence: transcript dated 5 September 2016 at pg 40, 44-45, 56, 77-78.*
2. *See Mr Wavish's evidence: transcript dated 6 September 2016 at pg 100.*

3. *See Mr Tomlinson's evidence: transcript dated 7 September 2016 at pg 14, 23, 30, 31, 32 and 39.*
 4. *See Mr Murray's evidence: transcript dated 26 September 2016 at 192, 206-207, 248-249.*
 5. *See Mr Ishak's evidence: transcript dated 27 September 2016 at pg 287, 294-296; transcript dated 4 October 2017 at pg 329, 331.*
 6. *See Mr Cave's evidence: transcript dated 4 October 2016 at pg 363.*
 7. *See Mr Abboud's evidence: transcript dated 7 October 2016 at pg 516-517.*
 8. *See Mr Pott's evidence: transcript dated 5 October 2016 at pg 386-390, 403 and 422.*
- ii. *How the O&A Rebates, Scan Rebates and Switched Invoice Rebates were accounted for was apparent from the board papers provided for board meetings to members of DSH's board throughout 2014 and 2015 and was discussed at meetings of the board from at least August 2014 to February 2015.*
 - iii. *The accounting treatment of O&A Rebates, Scan Rebates and/or Switched Invoice Rebates was recorded in management reports and correspondence that were reviewed, approved and/or received by various members of the board of DSH.*
 1. *Position paper by Nigel Mills, DSH's Finance Manager dated 28 May 2014.*
 2. *Further particulars may be provided after discovery and evidence.*
 - iv. *Persons occupying the positions within DSH that Mr Abboud and Mr Potts held, exercising due care and skill would have been aware of the accounting treatments of O&A Rebates, Scan Rebates and/or Switched Invoice Rebates.*
- III. *As to (e), (k) and (l):*
- i. *The effects set out would have been apparent to persons occupying the positions within DSH that Mr Abboud and Mr Potts did, exercising due care and skill, particularly from the 2015 Half Year Financial Statements and the 2015 Full Year Financial Statements.*
 - ii. *Forecasting documents prepared and/or received by various members of the board of DSH, including Mr Abboud and Mr Potts in 2013 showed the accounting treatment of the O&A Rebates, Scan Rebates and/or Switched Invoice Rebates would have some, if not all, the effects set out.*

1. *Project Yellow: Review of Financial Information 7 November 2013.*
 2. *Minutes of Project Yellow Due Diligence Committee meeting.*
 - iii. *The effects set out were discussed in the Board meeting on 21 October 2014 and reference was made to the UK retailer, Tesco, which had overstated income from rebates.*
 - iv. *Members of the board admitted awareness that DSH's accounting treatment of the O&A Rebates, Scan Rebates and/or Switched Invoice Rebates would have some of the effects set out.*
 1. *See Mr Abboud's evidence: transcript dated 4 October 2017 at pg 486.*
 2. *See Mr Murray's evidence: transcript dated 26 September 2016 at pg 191.*
 3. *See Mr Tomlinson's evidence: transcript dated 7 September 2016 at pg 30, 31 and 32.*
 4. *See Mr Potts' evidence: transcript dated 5 October 2016 at pg 394.*
 - v. *The particulars at paragraphs 123 are repeated.*
 - vi. *Further particulars may be provided after discovery and evidence.*
132. In the premises, DSH contravened section 1041E of the CA by issuing and publishing the 2015 Half Year Financial Statements.

(B) DSH's 2015 Half Year Implied Representations

133. By making DSH's 2015 Half Year Implied Representations, DSH made statements, or disseminated information, which:
- (a) were false in a material particular or materially misleading;

Particulars

Paragraph 123 is repeated.

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

Particulars

The particulars at paragraph 130(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

The particulars at paragraph 130(c) are repeated.

134. When DSH made DSH's 2015 Half Year Implied Representation, DSH ought reasonably to have known it was false in a material particular, or materially misleading because:
- (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 and 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

Paragraphs 123 and 131 are repeated.

135. In the premises, DSH contravened section 1041E of the CA by making DSH's 2015 Half Year Implied Representation.
- (C) **17 February 2015 ASX Announcement & Results Briefing**
136. By issuing the 17 February 2015 ASX Announcement & Results Briefing, DSH made statements, or disseminated information, which:
- (a) were false in a material particular or materially misleading; and

Particulars

Paragraph 124 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 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 (b), were likely to increase the value of DSH shares.

Particulars

Positive statements made by DSH in the 17 February 2015 ASX Announcement & Results Briefing that were based on the 2015 Half Year Financial Statements and that did not disclose the matters pleaded in paragraph 124 were likely to have the effect of increasing the price of DSH shares from what they would otherwise have been had the 2015 Half Year 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 124 been disclosed.

137. When DSH issued the 17 February 2015 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 2015 Half Year 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 124 and 131.
138. In the premises, DSH contravened section 1041E of the CA by issuing the 17 February 2015 ASX Announcement & Results Briefing.

(D) 2015 Full Year Financial Statements

139. By issuing and publishing the 2015 Full Year Financial Statements, DSH made statements, or disseminated information, which:
- (a) were false in a material particular or materially misleading; and

Particulars

Paragraphs 125 to 127 are repeated.

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

Particulars

The particulars at paragraph 130(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

The reporting by DSH of EBITDA, net profit and total equity at levels higher than what would have been the case (had the 2015 Full Year 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 the value of DSH shares from what they otherwise would have been.

Further particulars may be provided following discovery and evidence.

140. When DSH issued and published the 2015 Full Year Financial Statements, DSH ought reasonably to have known they were false in a material particular or materially misleading for the reasons pleaded and particularised in paragraph 131, and further because the directors of DSH:

- (a) ought to have been aware of the matters relating to DSH's inventory pleaded above in paragraphs 105, 106, 108, and 112;
- (b) ought to have been aware that the failure by DSH to write down the value of its inventory prior to the publishing the 2015 Full Year Financial Statements:
 - (i) was not in accordance with Australian Accounting Standards; and
 - (ii) meant the 2015 Full Year Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group;

Particulars

The facts, matters and circumstances pleaded and particularised at paragraph 123, 131 and 128 above were also present and occurred at the time DSH made the 2015 Full Year Financial Statements.

Further, as to paragraph 131(a):

- i. *The Rebate-maximisation practices or aspects thereof were reported to the directors of DSH, including Mr Abboud and Mr Potts in the Deloitte Report for the year ending 28 June 2015.*

Further, as to paragraph 140(a):

- i. *Various members of the board of DSH admitted awareness at various time periods of inventory levels being higher than forecasted, anticipated or planned and failing to fall to projected levels.*

1. *From July to December 2014: See Mr Potts' evidence: transcript dated 5 October 2016 at pg 400.*
 2. *In December 2014: See Mr Murray's evidence: transcript dated 26 September 2016 at pg 193.*
 3. *In January 2015: See Mr Wavish's evidence: transcript dated 6 September 2016 at pg 124, 132, 134; Mr Potts' evidence: transcript dated 5 October 2016 at pg 381, 434, 437; Mr Abboud's evidence: transcript dated 4 October 2016 at pg 503, transcript dated 7 October 2016 at pg 518, 529, 548, 550, 557.*
 4. *In April 2015: See Ms Raine's evidence: transcript dated 5 September 2016 at 65, 80, 82.*
 5. *In May 2015: See Ms Raine's evidence: transcript dated 5 September 2016 at 83, 86 and 87.*
 6. *From July to September 2015: See Mr Potts' evidence: transcript dated 6 October 2016 at pg 462-463.*
 7. *In August 2015: See Mr Murray's evidence: transcript dated 26 September 2016 at pg 248.*
 8. *In October 2015: See Mr Tomlinson's evidence: transcript dated 7 September 2016 at pg 14.*
- ii. *The projected and actual net inventory levels recorded in trading updates provided to the DSH board members, including Mr Abboud and Mr Potts, as part of the board papers for board meetings from August 2014 to December 2015 demonstrated inventory levels were higher than forecasts, failing to fall to projected levels and that inventory days were increasing.*
 - iii. *Discussions at the FAC meetings by members of FAC in 2015 identified the inventory levels had not reduced in accordance with projections.*
 - iv. *The inventory levels in January 2015 remained at levels in excess of the levels of inventory in January 2014.*
 - v. *The inventory levels remained high throughout the first half of 2015, reducing to approximately \$293 million by the end of June 2015 before continuing to increase thereafter.*
 - vi. *Mr Potts admitted awareness of the decline in comparable sales in physical retail stores in 2014: See Mr Potts' evidence: transcript dated 5 October 2016 at pg 410-411.*
 - vii. *As CFO, Mr Potts received correspondence and reports concerning overstocks and overspends from at least 17 September 2014.*

- viii. *As CEO, Mr Abboud received correspondence and reports concerning overstocks and overspends from at least 17 September 2014.*
- ix. *Persons occupying the positions within DSH that Mr Abboud and Mr Potts did, exercising due care and skill, 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 would have been aware of the inventory levels and/or aged stock as described in Part VIII.*
- x. *Further particulars may be provided after discovery and evidence.*

Further, as to paragraph 140(b)

- i. *Persons occupying the positions within DSH that Mr Abboud and Mr Potts did, exercising due care and skill, 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 would have realised throughout 2015 that material impairments were necessary to rectify the elevated inventory levels and/or increasing aged stock of DSH as described in Part VIII.*
- ii. *The particulars at paragraph 128 are repeated.*
- iii. *Further particulars may be provided after discovery and evidence.*

141. In the premises, DSH contravened section 1041E of the CA by issuing and publishing the 2015 Full Year Financial Statements.

(E) DSH's 2015 Full Year Implied Representations

142. By making DSH's 2015 Full Year Implied Representations, DSH made statements, or disseminated information, which:

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

Particulars

Paragraph 128 is repeated.

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

Particulars

The particulars at paragraph 130(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

The particulars at paragraph 139(c) are repeated.

143. When DSH made DSH's 2015 Full Year 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 131 and paragraph 140, the opinion pleaded at paragraph 76:
- (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 and 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 and particularised at paragraph 140 above were also present and occurred at the time DSH made DSH's 2015 Full Year Implied Representation.

144. In the premises, DSH contravened section 1041E of the CA by making DSH's 2015 Full Year Implied Representation.

(F) 18 August 2015 ASX Announcement & Results Briefing

145. By issuing the 18 August 2015 ASX Announcement & Results Briefing, DSH made statements, or disseminated information, which:
- (a) were false in a material particular or materially misleading; and

Particulars

Paragraph 129 above is repeated.

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

Particulars

The particulars at paragraph 136(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

Positive statements made by DSH in the 18 August 2015 ASX Announcement & Results Briefing that were based on the 2015 Full Year Financial Statements and that did not disclose the matters pleaded in paragraph 129 were likely to have the effect of increasing the price of DSH shares from what they would otherwise have been had the 2015 Full Year 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 129 been disclosed.

146. When DSH issued the 18 August 2015 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 2015 Full Year 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 129 and 140.
147. In the premises, DSH contravened section 1041E of the CA by issuing the 18 August 2015 ASX Announcement & Results Briefing.

XI. MR ABOUD'S CONTRAVENTIONS

148. By:
- (a) authorising the issue and publication of the 2015 Half Year Financial Statements;
 - (b) making the representations pleaded at paragraph 61 and the Directors' 2015 Half Year Implied Representation;
 - (c) authorising the issue and publication of the 17 February 2015 ASX Announcement & Results Briefing;

- (d) presenting the Results Briefing (forming part of the 17 February 2015 ASX Announcement & Results Briefing);
- (e) authorising the issue and publication of the 2015 Half Year Financial Statements.
- (f) making the representation pleaded at paragraph 74 and the Directors' 2015 Full Year Implied Representation;
- (g) authorising the issue and publication of the 18 August 2015 ASX Announcement & Results Briefing; and/or
- (h) presenting the Results Briefing (forming part of the 18 August 2015 ASX Announcement & Results Briefing),

Mr Abboud, on one or more or all of these occasions, engaged in conduct in relation to a financial product or a financial service within the meaning of s 1041H of the CA.

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

149. Mr Abboud had knowledge of the contents of the 2015 Half Year Financial Statements.

Particulars

The 2015 Half Year Financial Statements were provided to the Board of DSH prior to its meeting of the Board of DSH on 16 February 2015: Board Papers for 16 February 2015.

The 2015 Half Year Financial Statements were presented, discussed, and adopted by the Board of DSH on 16 February 2015: Minutes of meeting of the Board of DSH dated 16 February 2015 at page 2.

150. Mr Abboud authorised the issue and publication of the 2015 Half Year Financial Statements.

Particulars

Minutes of meeting of the Board of DSH dated 16 February 2015 at page 2;

Directors Report to the 2015 Half Year Financial Statements (at pages 1-2).

The Directors' Declaration that accompanied the 2015 Half Year Financial Statements was signed by the Chairman of DSH on behalf of Mr Abboud.

151. 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, because he authorised the issue and publication of the 2015 Half Year Financial Statements which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA for the reasons pleaded and particularised above in paragraphs 120 to 122.

152. Further, when Mr Abboud authorised the issue and publication of the 2015 Half Year Financial Statements, he made statements, or disseminated information, which:

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

Particulars

Paragraphs 120 to 122 are repeated.

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

Particulars

The particulars at paragraph 130(b) are repeated.

(c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

The particulars at paragraph 130(c) are repeated.

153. Mr Abboud ought reasonably to have known that the 2015 Half Year Financial Statements were false in a material particular or materially misleading for the reasons pleaded and particularised in paragraph 131.

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

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

155. Mr Abboud's making of the Directors' 2015 Half Year Implied Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the CA because the opinion pleaded at paragraph 61 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 and 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 her or which he or she might with fairness have

demanded from the executives or other employees and agents of DSH and the DSH Group.

Particulars

Paragraphs 123 and 131 are repeated.

156. Further, when Mr Abboud made the Directors' 2015 Half Year Implied Representation, he made statements, or disseminated information, which:

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

Particulars

Paragraph 155 is repeated.

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

Particulars

The particulars at paragraph 130(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

The particulars at paragraph 130(c) are repeated.

157. Mr Abboud ought reasonably to have known that the Directors' 2015 Half Year Implied Representation was false in a material particular or materially misleading for the reasons pleaded and particularised in paragraph 131 and because the Directors' 2015 Half Year Implied Representation was a representation of his own opinion.

Particulars

Paragraph 155 is repeated.

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

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

159. Mr Abboud had knowledge of the contents of the 17 February 2015 ASX Announcement & Results Briefing.

Particulars

The text of the 17 February 2015 ASX Announcement & Results Briefing was provided to the Board of DSH prior to its meeting of the Board of DSH on 16 February 2015: Board Papers for 16 February 2015.

160. Mr Abboud authorised the issue and publication of the 17 February 2015 ASX Announcement & Results Briefing.

Particulars

Minutes of meeting of the Board of DSH dated 16 February 2015 at page 2.

161. Further, the '1H 2015 Results Briefing' which formed part of the 17 February 2015 ASX Announcement & Results Briefing was presented by Mr Abboud and Mr Potts.
162. 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 because he authorised the issue and publication of the 17 February 2015 ASX Announcement & Results Briefing which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA for the reasons pleaded and particularised in paragraph 124 above.
163. Further, when Mr Abboud authorised the issue and publication, and presented the 17 February 2015 ASX Announcement & Results Briefing, he made statements, or disseminated information, which:

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

Particulars

Paragraph 124 is repeated.

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

Particulars

The particulars at paragraph 136(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

Positive statements made by Mr Abboud in the 17 February 2015 ASX Announcement & Results Briefing that were based on the 2015 Half Year Financial Statements and that did not disclose the matters pleaded in paragraph 124 were likely to have the effect of increasing the price of DSH

shares from what they would otherwise have been had the 2015 Half Year 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 124 been disclosed.

164. When Mr Abboud authorised the issue and publication, and presented the 17 February 2015 ASX Announcement & Results Briefing, he ought reasonably to have known it was false in a material particular or materially misleading because it reported the financial results from DSH's 2015 Half Year 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 124 and 131.

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

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

166. Mr Abboud had knowledge of the contents of the 2015 Full Year Financial Statements.

Particulars

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

The 2015 Full Year 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.

167. Mr Abboud authorised the issue and publication of the 2015 Full Year Financial Statements.

Particulars

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

The Directors' Declaration that accompanied the 2015 Full Year Financial Statements was signed by the Chairman of DSH on behalf of Mr Abboud.

168. 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, because he authorised the issue and publication of the 2015 Full Year Financial Statements which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA for the reasons pleaded and particularised above in paragraphs 125 to 127.

169. Further, in authorising the issue and publication of the 2015 Full Year Financial Statements, Mr Abboud made statements, or disseminated information, which:

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

Particulars

Paragraphs 125 to 127 are repeated.

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

Particulars

The particulars at paragraph 130(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

The particulars at paragraph 139(c) are repeated.

170. When Mr Abboud authorised the issue and publication of the 2015 Full Year Financial Statements, 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 140.

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

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

172. Mr Abboud's making of the Directors' 2015 Full Year Implied Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the CA because the opinion pleaded at paragraph 74 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 and 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 her or which he or she might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group.

Particulars

The particulars at paragraph 143 are repeated.

173. Further, when Mr Abboud made the Directors' 2015 Full Year Implied Representation, he made statements, or disseminated information, which:
- (a) were false in a material particular or materially misleading;

Particulars

Paragraph 172 is repeated.

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

Particulars

The particulars at paragraph 130(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

The particulars at paragraph 139(c) are repeated.

174. Mr Abboud ought reasonably to have known that the Directors' 2015 Full Year Implied Representation was false in a material particular or materially misleading for the reasons pleaded and particularised in paragraphs 140 and 143.
175. In the premises, Mr Abboud contravened s 1041E of the CA.
- (F) **Sections 1041H and 1041E in relation to the 18 August 2015 ASX Announcement & Results Briefing**
176. Mr Abboud had knowledge of the contents of the 18 August 2015 ASX Announcement & Results Briefing.

Particulars

The text of the 18 August 2015 ASX Announcement & Results Briefing was provided to the Board of DSH prior to its meeting of the Board of DSH on 17 August 2015: Board Papers for 17 August 2015.

177. Mr Abboud authorised the issue and publication of the 18 August 2015 ASX Announcement & Results Briefing.

Particulars

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

178. Further, the 'FY2015 Results Briefing' which formed part of the 18 August 2015 ASX Announcement & Results Briefing was presented by Mr Abboud and Mr Potts.
179. 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, because he authorised the issue and publication of the 18 August 2015 ASX Announcement & Results Briefing which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA for the reasons pleaded and particularised at paragraph 129 above.
180. Further, when Mr Abboud authorised the issue and publication, and presented the 18 August 2015 ASX Announcement & Results Briefing, Mr Abboud made statements, or disseminated information, which:
- (a) were false in a material particular or materially misleading; and

Particulars

Paragraph 129 is repeated.

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

Particulars

The particulars at paragraph 136(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

Positive statements made by Mr Abboud in the 18 August 2015 ASX Announcement & Results Briefing that were based on the 2015 Full Year Financial Statements and that did not disclose the matters pleaded in paragraph 129 were likely to have the effect of increasing the price of DSH shares from what they would otherwise have been had the 2015 Full Year 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 129 been disclosed.

181. When Mr Abboud authorised the issue and publication, and presented the 18 August 2015 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 2015 Full Year 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 129 and 140.

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

XII. MR POTTS' CONTRAVENTIONS

183. By:

- (a) authorising the issue and publication of the 2015 Half Year Financial Statements;
- (b) making the representation pleaded at paragraph 61 and the Directors' 2015 Half Year Implied Representation;
- (c) authorising the issue and publication of the 17 February 2015 ASX Announcement & Results Briefing;
- (d) presenting the Results Briefing (forming part of the 17 February 2015 ASX Announcement & Results Briefing);
- (e) authorising the issue and publication of the 2015 Half Year Financial Statements;
- (f) making the representation pleaded at paragraph 74 and the Directors' 2015 Full Year Implied Representation;
- (g) authorising the issue and publication of the 18 August 2015 ASX Announcement & Results Briefing; and/or
- (h) presenting the Results Briefing (forming part of the 18 August 2015 ASX Announcement & Results Briefing),

Mr Potts, on one or more or all of these occasions, engaged in conduct in relation to a financial product or a financial service within the meaning of s 1041H of the CA.

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

184. Mr Potts had knowledge of the contents of the 2015 Half Year Financial Statements.

Particulars

The 2015 Half Year Financial Statements were provided to the Board of DSH prior to its meeting of the Board of DSH on 16 February 2015: Board Papers for 16 February 2015.

The 2015 Half Year Financial Statements were presented, discussed, and adopted by the Board of DSH on 16 February 2015: Minutes of meeting of the Board of DSH dated 16 February 2015 at page 2.

185. Mr Potts authorised the issue and publication of the 2015 Half Year Financial Statements.

Particulars

Minutes of meeting of the Board of DSH dated 16 February 2015 at page 2;

Directors Report to the 2015 Half Year Financial Statements (at pages 1-2).

The Directors' Declaration that accompanied the 2015 Half Year Financial Statements was signed by the Chairman of DSH on behalf of Mr Potts.

186. 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, because he authorised the issue and publication of the 2015 Half Year Financial Statements which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA for the reasons pleaded and particularised above in paragraphs 120 to 122.

187. Further, when Mr Potts authorised the issue and publication of the 2015 Half Year Financial Statements, he made statements, or disseminated information, which:

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

Particulars

Paragraphs 120 to 122 are repeated.

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

Particulars

The particulars at paragraph 130(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

The particulars at paragraph 130(c) are repeated.

188. Mr Potts ought reasonably to have known that the 2015 Half Year Financial Statements were false in a material particular or materially misleading for the reasons pleaded and particularised in paragraph 131.

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

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

190. Mr Potts' making of the Directors' 2015 Half Year Implied Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the CA because the opinion pleaded at paragraph 61 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 and 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 her or which he or she might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group.

Particulars

Paragraphs 123 and 131 are repeated

191. Further, when Mr Potts made the Directors' 2015 Half Year Implied Representation, he made statements, or disseminated information, which:
- (a) were false in a material particular or materially misleading;

Particulars

Paragraph 190 is repeated.

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

Particulars

The particulars at paragraph 130(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

The particulars at paragraph 130(c) are repeated.

192. Mr Potts ought reasonably to have known that the Directors' 2015 Half Year Implied Representation was false in a material particular or materially misleading for the reasons pleaded and particularised in paragraph 131 and because the Directors' 2015 Half Year Implied Representation was a representation of his own opinion.

Particulars

Paragraph 190 is repeated.

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

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

194. Mr Potts had knowledge of the contents of the 17 February 2015 ASX Announcement & Results Briefing.

Particulars

The text of the 17 February 2015 ASX Announcement & Results Briefing was provided to the Board of DSH prior to its meeting of the Board of DSH on 16 February 2015: Board Papers for 16 February 2015.

195. Mr Potts authorised the issue and publication of the 17 February 2015 ASX Announcement & Results Briefing.

Particulars

Minutes of meeting of the Board of DSH dated 16 February 2015 at page 2.

196. Further, the '1H 2015 Results Briefing' which formed part of the 17 February 2015 ASX Announcement & Results Briefing was presented by Mr Abboud and Mr Potts.
197. 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, because he authorised the issue and publication of the 17 February 2015 ASX Announcement & Results Briefing which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA for the reasons pleaded and particularised in paragraph 124 above.
198. Further, when Mr Potts authorised the issue and publication, and presented the 17 February 2015 ASX Announcement & Results Briefing, he made statements, or disseminated information, which:
- (a) were false in a material particular or materially misleading; and

Particulars

Paragraph 124 is repeated.

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

Particulars

The particulars at paragraph 136(b) are repeated.

- (c) Further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

Positive statements made by Mr Potts in the 17 February 2015 ASX Announcement & Results Briefing that were based on the 2015 Half Year Financial Statements and that did not disclose the matters pleaded in paragraph 124 were likely to have the effect of increasing the price of DSH shares from what they would otherwise have been had the 2015 Half Year 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 124 been disclosed.

199. When Mr Potts authorised the issue and publication, and presented the 17 February 2015 ASX Announcement & Results Briefing, he ought reasonably to have known it was false in a material particular or materially misleading because it reported the financial results from DSH's 2015 Half Year 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 124 and 131.

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

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

201. Mr Potts had knowledge of the contents of the 2015 Full Year Financial Statements.

Particulars

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

The 2015 Full Year 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.

202. Mr Potts authorised the issue and publication of the 2015 Full Year Financial Statements.

Particulars

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

The Directors' Declaration that accompanied the 2015 Full Year Financial Statements was signed by the Chairman of DSH on behalf of Mr Potts.

203. Mr Potts' conduct pleaded in the preceding was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA, because he authorised the issue and publication of the 2015 Full Year Financial Statements which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA for the reasons pleaded and particularised above in paragraphs 125 to 127.

204. Further, in authorising the issue and publication of the 2015 Full Year Financial Statements, Mr Potts made statements, or disseminated information, which:

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

Particulars

Paragraphs 125 to 127 are repeated.

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

Particulars

The particulars at paragraph 130(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

The particulars at paragraph 139(c) are repeated.

205. When Mr Potts authorised the issue and publication of the 2015 Full Year Financial Statements, 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 140.

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

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

207. Mr Potts' making of the Directors' 2015 Full Year Implied Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the CA because the opinion pleaded at paragraph 74 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 and 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 her or which he or she might with fairness have demanded from the executives or other employees and agents of DSH and the DSH Group.

Particulars

The particulars at paragraph 143 are repeated.

208. Further, when Mr Potts made the Directors' 2015 Full Year Implied Representation, he made statements, or disseminated information, which:

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

Particulars

Paragraph 207 is repeated.

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

Particulars

The particulars at paragraph 130(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

The particulars at paragraph 139(c) are repeated.

209. Mr Potts ought reasonably to have known that the Directors' 2015 Full Year Implied Representation was false in a material particular or materially misleading for the reasons pleaded and particularised in paragraphs 140 and 143, and because the Directors' 2015 Half Year Implied Representation was a representation of his own opinion.

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

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

211. Mr Potts had knowledge of the contents of the 18 August 2015 ASX Announcement & Results Briefing.

Particulars

The text of the 18 August 2015 ASX Announcement & Results Briefing was provided to the Board of DSH prior to its meeting of the Board of DSH on 17 August 2015: Board Papers for 17 August 2015.

212. Mr Potts authorised the issue and publication of the 18 August 2015 ASX Announcement & Results Briefing.

Particulars

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

213. Further, the 'FY2015 Results Briefing' which formed part of the 18 August 2015 ASX Announcement & Results Briefing was presented by Mr Abboud and Mr Potts.

214. 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, because he authorised the issue and publication of the 18 August 2015 ASX Announcement & Results Briefing which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the CA for the reasons pleaded and particularised in paragraph 129 above.

215. Further, when Mr Potts authorised the issue and publication, and presented the 18 August 2015 ASX Announcement & Results Briefing, Mr Potts made statements, or disseminated information, which:

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

Particulars

Paragraph 129 above is repeated.

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

Particulars

The particulars at paragraph 136(b) are repeated.

- (c) further, or in the alternative to (b), were likely to increase the value of DSH shares.

Particulars

Positive statements made by Mr Potts in the 18 August 2015 ASX Announcement & Results Briefing that were based on the 2015 Full Year Financial Statements and that did not disclose the matters pleaded in paragraph 129 were likely to have the effect of increasing the price of DSH shares from what they would otherwise have been had the 2015 Full Year 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 129 been disclosed.

216. When Mr Potts authorised the issue and publication, and presented the 18 August 2015 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 2015 Full Year 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 129 and 140.
217. In the premises, Mr Potts contravened s 1041E of the CA.

XIII. CAUSATION, LOSS AND DAMAGE

218. On or after 16 February 2015, the plaintiffs and Group Members acquired interests in DSH shares.

Particulars

The plaintiffs acquired interests in DSH as follows:

- (i) 20/2/2015 – purchased 7,500 shares
- (ii) 28/9/2015 – purchased 2,000 shares
- (iii) 5/10/2015 – purchased 2,000 shares
- (iv) 28/10/2015 – purchased 2,000 shares

Particulars of the acquisitions of shares by Group Members will be provided in accordance with directions to be made by the Court.

219. The plaintiffs and Group Members acquired their interests in DSH shares in a market:
- (a) regulated by the ASX Listing Rules and s 674(2) of the CA;
 - (b) regulated by sections 1041E and 1041H of the CA;
 - (c) 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(2), 1041E and 1041H of the CA;
 - (d) where matters pleaded and particularised in Parts V, VII-VIII 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.
220. After 16 February 2015, 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.
221. Further, or in the alternative, after 17 August 2015 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.
222. Further, or in the alternative, in their decision to acquire interests in DSH shares the plaintiffs and some Group Members relied on:
- (a) the 2015 Half Year Financial Statements and the 2015 Full Year Financial Statements;
 - (b) the declarations pleaded at paragraph 59 and 72;
 - (c) the representations pleaded at paragraph 61, 63, 74, 76 and the Directors' 2015 Half Year Implied Representation, DSH's 2015 Half Year Implied Representation, the Directors' 2015 Full Year Implied Representation and DSH's 2015 Full Year Implied Representation;
 - (d) the 17 February 2015 ASX Announcement & Results Briefing and the 18 August 2015 ASX Announcement & Results Briefing.

223. 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:

- (i) *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); or*
 - (ii) *alternatively, 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).*
224. 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.

225. The plaintiffs and Group Members claim the relief set out in this statement of claim.

XIV. COMMON QUESTIONS

226. The following common questions of fact or law arise in the proceeding:
- (a) whether the 2015 Half Year Financial Statements were prepared in accordance with the Australian Accounting Standards;
 - (b) whether the 2015 Half Year Financial Statements gave a true and fair view of the financial position and performance of DSH and the DSH Group;
 - (c) whether the 2015 Full Year Financial Statements were prepared in accordance with the Australian Accounting Standards;
 - (d) whether the 2015 Full Year Financial Statements gave a true and fair view of the financial position and performance of DSH and the consolidated entity.
227. Whether DSH contravened s 1041H and/or s 1041E of the CA in:
- (a) issuing and publishing the 2015 Half Year Financial Statements including the declaration pleaded at paragraph 59;

- (b) making the representation pleaded at paragraph 63 and DSH's 2015 Half Year Implied Representation;
 - (c) making the 17 February 2015 ASX Announcement & Results Briefing;
 - (d) issuing and publishing the 2015 Full Year Financial Statements including the declaration pleaded at paragraph 72;
 - (e) making the representation at paragraph 76 and DSH's 2015 Full Year Implied Representation;
 - (f) making the 18 August 2015 ASX Announcement & Results Briefing.
228. Whether each of Mr Abboud and Mr Potts contravened s 1041E and/or s 1041H of the CA in:
- (a) authorising the issuing and publishing the 2015 Half Year Financial Statements, including the declaration pleaded at paragraph 59;
 - (b) making the representation pleaded at paragraph 62 and the Directors' 2015 Half Year Implied Representation;
 - (c) authorising the issuing and publication of the 17 February 2015 ASX Announcement & Results Briefing;
 - (d) presenting the Results Briefing (forming part of the 17 February 2015 ASX Announcement & Results Briefing);
 - (e) authorising the issuing and publishing the 2015 Full Year Financial Statements, including the declarations pleaded at paragraph 73;
 - (f) making the representations pleaded at paragraph 75 and the Directors' 2015 Full Year Implied Representation;
 - (g) authorising the issuing and publication of the 18 August 2015 ASX Announcement & Results Briefing;
 - (h) presenting the Results Briefing (forming part of the 18 August 2015 ASX Announcement & Results Briefing).
229. Whether the plaintiffs and Group Members have suffered loss or damage as a result of the contraventions by DSH (or any of them).
230. The correct measure of compensation payable to the plaintiffs and Group Members.
231. The quantum of compensation payable to each of the plaintiffs and Group Members.

SIGNATURE OF LEGAL REPRESENTATIVE

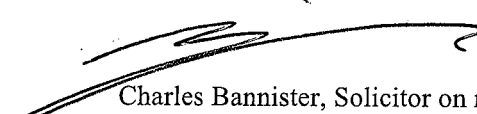
I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

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

Date of signature


Charles Bannister, Solicitor on record
28 September 2017

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

AFFIDAVIT VERIFYING

Name Haliburton Charles David Findlay
Address 192 Rock Lodge Road Jerrawa NSW 2582
Occupation Retired
Date 8 September 2017

I affirm:

- 1 I am the first plaintiff.
- 2 I believe that the allegations of fact in the statement of claim are true.

AFFIRMED at Suite 1, Level 2, 155 Castlereagh Street Sydney 2000

Signature of deponent



Name of witness Diane Gail Chapman

Address of witness Suite 1, Level 2, 155 Castlereagh Street Sydney NSW 2000

Capacity of witness New South Wales Solicitor #60754

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

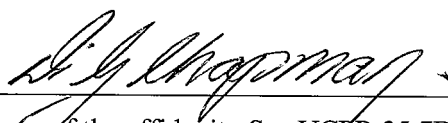
- 1 I saw the face of the deponent.

I have confirmed the deponent's identity using the following identification document:

New South Wales Driver's License 2921JY

Identification document relied on (may be original or certified copy)†

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

SCHEDULE

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

Plaintiffs

Haliburton Charles David Findlay, first plaintiff
Marian Jennifer Denny Findlay, second plaintiff

Defendants

DSHE Holdings Ltd ACN 166 237 841 (receivers
and managers appointed) (in liquidation), first
defendant
Nicholas Abboud, second defendant
Michael Thomas Potts, third defendant

FURTHER DETAILS ABOUT THE PLAINTIFFS

First plaintiff

Name Haliburton Charles David Findlay
Address 192 Rock Lodge Road Jerrawa NSW 2582

Name Marian Jennifer Denny Findlay
Address 192 Rock Lodge Road Jerrawa NSW 2582

Legal representative for plaintiffs

Name Charles Bannister
Practising certificate number 7040
Firm Bannister Law
Address Suite 1, Level 2
155 Castlereagh Street
Sydney, NSW 2000
Telephone (02) 8999 2888

Fax (02) 8088 0731
Email charles@bl.com.au

DETAILS ABOUT DEFENDANTS

First defendant

Name DSHE Holdings Ltd ACN 166 237 841 (receivers and managers appointed) (in liquidation)

Company Address 2 Davidson Street
Chullora NSW 2190

Liquidators address: Messrs Joseph Hayes and Jason Preston
Liquidators of DSHE Holding Ltd ACN 166 237 841 (receivers and managers appointed) (in liquidation)
c/- McGrath Nicol
Level 12, 20 Martin Place
Sydney NSW 2000

Second defendant

Name Nicholas Abboud

Address 15 Hopetoun Avenue
Mosman NSW 2088

Third defendant

Name Michael Thomas Potts

Address 1 Norman Street
Five Dock NSW 2046

AFFIDAVIT VERIFYING

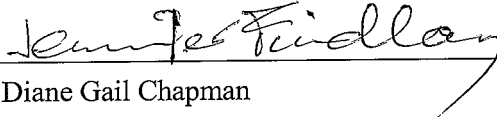
Name Marian Jennifer Denny Findlay
Address 192 Rock Lodge Road Jerrawa NSW 2582
Occupation Retired
Date 8 September 2017

I affirm:

- 1 I am the first plaintiff.
- 2 I believe that the allegations of fact in the statement of claim are true.

AFFIRMED at Suite 1, Level 2, 155 Castlereagh Street Sydney 2000

Signature of deponent



Name of witness

Diane Gail Chapman

Address of witness

Suite 1, Level 2, 155 Castlereagh Street Sydney NSW 2000

Capacity of witness

New South Wales Solicitor #60754

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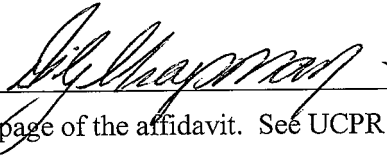
- 1 I saw the face of the deponent.

I have confirmed the deponent's identity using the following identification document:

New South Wales Driver's License 4725JS

Identification document relied on (may be original or certified copy) [†]

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

SCHEDULE

PARTY DETAILS

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Plaintiffs

Haliburton Charles David Findlay, first plaintiff

Marian Jennifer Denny Findlay, second plaintiff

Defendants

DSHE Holdings Ltd ACN 166 237 841 (receivers and managers appointed) (in liquidation), first defendant

Nicholas Abboud, second defendant

Michael Thomas Potts, third defendant

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Address 192 Rock Lodge Road Jerrawa NSW 2582

Name Marian Jennifer Denny Findlay
Address 192 Rock Lodge Road Jerrawa NSW 2582

Legal representative for plaintiffs

Name Charles Bannister
Practising certificate number 7040
Firm Bannister Law
Address Suite 1, Level 2
155 Castlereagh Street
Sydney, NSW 2000
Telephone (02) 8999 2888

Fax (02) 8088 0731
Email charles@bl.com.au

DETAILS ABOUT DEFENDANTS

First defendant

Name DSHE Holdings Ltd ACN 166 237 841 (receivers and managers appointed) (in liquidation)
Company Address 2 Davidson Street
Chullora NSW 2190

Liquidators address: Messrs Joseph Hayes and Jason Preston
Liquidators of DSHE Holding Ltd ACN 166 237 841 (receivers and managers appointed) (in liquidation)
c/- McGrath Nicol
Level 12, 20 Martin Place
Sydney NSW 2000

Second defendant

Name Nicholas Abboud
Address 15 Hopetoun Avenue
Mosman NSW 2088

Third defendant

Name Michael Thomas Potts
Address 1 Norman Street
Five Dock NSW 2046