

**STATEMENT OF CLAIM**

FILED

16 FEB 2018



**COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2018/52431

**TITLE OF PROCEEDINGS**

First Plaintiff	Epaminondas Mastoris
Second Plaintiff	Lena Mastoris
First Defendant	DSHE Holdings Limited (receivers and managers appointed) (in liquidation) ACN 166 237 841
Second Defendant	Nicholas Abboud
Third Defendant	Michael Thomas Potts

**FILING DETAILS**

Filed for	Epaminondas Mastoris and Lena Mastoris, Plaintiffs
Legal representative	Robert Johnston, Johnson Winter & Slattery
Legal representative reference	B8399
Contact name and telephone	Robert Johnston 02 8274 9581
Contact email	robert.johnston@jws.com.au

**TYPE OF CLAIM**

Other (Commercial List)

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## RELIEF CLAIMED

The Plaintiffs claim on their own behalf and on behalf of all Group Members:

1. An order that the First Defendant pay statutory compensation to the Plaintiffs and Group Members pursuant to s 729 of the *Corporations Act 2001* (Cth) in respect of the loss or damage suffered by them because of the First Defendant's contraventions of s 728(1) of the *Corporations Act 2001* (Cth);
2. An order, pursuant to s 1317HA of the *Corporations Act 2001* (Cth), that the First Defendant compensate the Plaintiffs and Group Members for the damage suffered by them which resulted from the First Defendant's contraventions of s 674(2) of the *Corporations Act 2001* (Cth);
3. An order that each of the Defendants pay to the Plaintiffs and Group Members statutory compensation pursuant to:
  - (a) s 1041I of the *Corporations Act 2001* (Cth);
  - (b) s 12GF of the *Australian Securities and Investments Commission Act 2001* (Cth); and/or
  - (c) s 236 of the *Australian Consumer Law*,In respect of the loss or damage suffered by them by the Defendants' misleading or deceptive conduct in contravention of s 1041H of the *Corporations Act*, s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) and/or s 18 of the *Australian Consumer Law*;
4. Interest pursuant to s 100 of the *Civil Procedure Act 2005* (NSW);
5. Costs.

## PLEADINGS AND PARTICULARS

### A. PARTIES

#### A.1 The Plaintiffs and Group Members

1. The Plaintiffs commence this proceeding as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) on their own behalves, and on behalf of all persons who or which:
  - a. acquired an interest in fully paid ordinary shares in the Respondent (**Dick Smith Holdings, and DSH Shares**):

- (i) during the period from 14 November 2013 to 14 February 2015 inclusive (**First Acquisition Period**); or
    - (ii) during the period from 15 February 2015 to 3 January 2016 inclusive (**Second Acquisition Period**), provided that they have as at 14 February 2018 signed a funding agreement with ICP Capital Pty Ltd and Investor Claim Partner Pty Ltd; and
  - b. were not during the First Acquisition Period or Second Acquisition Period (together, **Relevant Period**), and are not as at 14 February 2018, any of the following:
    - (i) a related party (as defined by section 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of DSH;
    - (ii) a related body corporate (as defined by section 50 of the Corporations Act of DSH;
    - (iii) an associated entity (as defined by section 50AAA of the Corporations Act of DSH;
    - (iv) a director, officer, or close associate (as defined in section 9 of the Corporations Act of DSH; or
    - (v) a judge or the Chief Justice of the Supreme Court of New South Wales or a Justice or the Chief Justice of the High Court of Australia; and
  - c. are not:
    - (i) Halliburton Charles David Findlay and Marian Jennifer Denny Findlay, (the Plaintiffs in Supreme Court of NSW proceedings 2017/294609); or
    - (ii) any person who as at 14 February 2018 is a client of Bannister Law or who has signed a Litigation Funding Agreement with Vannin Capital, in respect of claims against Dick Smith Holdings; and
  - d. have suffered loss or damage by reason of the conduct of Dick Smith Holdings pleaded in the Statement of Claim (**Group Members**).
2. The Plaintiffs make the allegations in the in Annexure A.

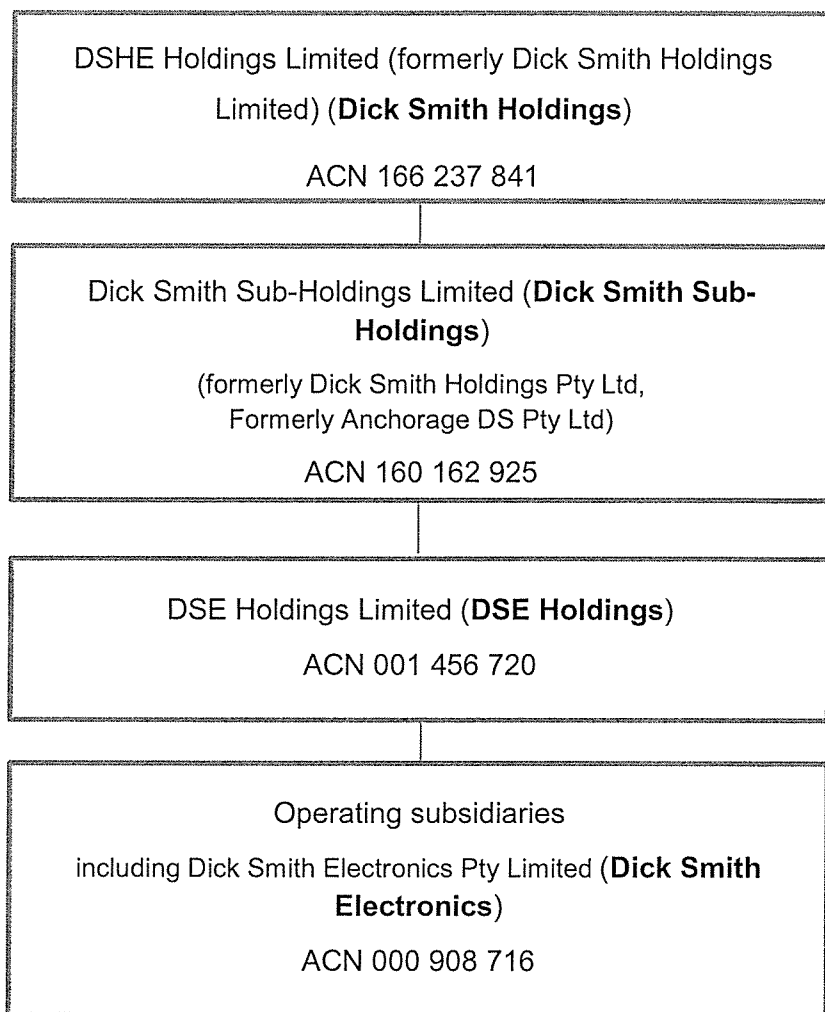
3. At the date of the commencement of this proceeding, there are seven or more persons who have claims against Dick Smith Holdings in respect of the matters set out in this Statement of Claim.

## **A.2 The First Defendant**

4. At all material times Dick Smith Holdings was:
- a. a company incorporated under the Corporations Act.
  - b. a person within the meaning of section 728(1) and section 1041E of the Corporations Act;
  - c. a person within the meaning of section 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
  - d. a person within the meaning of section 18 of the Australian Consumer Law, set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**), as applicable pursuant to:
    - (i) section 131 of the CCA;
    - (ii) section 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);
    - (iii) section 28 of the *Fair Trading Act 1987* (NSW);
    - (iv) section 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
    - (v) section 16 of the *Fair Trading Act 1989* (Qld);
    - (vi) section 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
    - (vii) section 19 of the *Fair Trading Act 2010* (WA);
    - (viii) section 14 of the *Fair Trading Act 1987* (SA); and/or
    - (ix) section 27 of the *Consumer Affairs and Fair Trading Act* (NT),  
(individually, or together, the **Australian Consumer Law**);
  - e. on and from 14 November 2013, obliged by section 728 of the Corporations Act not to offer securities under a disclosure document if there was a misleading or deceptive statement in the disclosure document or an omission from the disclosure document of information required by section 710 of the Corporations Act;

- f. on and from 4 December 2013:
- (i) a corporation listed on a financial market operated by the Australian Securities Exchange (**ASX**);
  - (ii) had on issue ordinary shares (**Securities**) which were:
    - (A) listed and traded on the ASX under the code “DSH”;
    - (B) “*ED Securities*” within the meaning of section 111AE of the Corporations Act;
    - (C) “*quoted ED Securities*” within the meaning of section 111AM of the Corporations Act;
  - (iii) a “*listed disclosing entity*” within the meaning of section 111AL(1) of the Corporations Act;
  - (iv) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
  - (v) obliged by sections 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it became aware of any information concerning Dick Smith Holdings that a reasonable person would expect to have a material effect on the price or value of Dick Smith Holdings’ Securities, tell the ASX that information immediately (unless ASX Listing Rule 3.1A applied);
  - (vi) was the parent company of the DSE Group comprising itself and its trading subsidiaries, which Dick Smith Holdings controlled, as follows (**DSE Group**):





### Particulars

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

- g. carried on a business by itself, and through the DSE Group, as a retailer of entertainment, communications, computer and electronics products and accessories.
- 5. By reason of the matters referred to in paragraph 4, at all material times:
  - a. from on and after 14 November 2013, section 728 of the Corporations Act applied to Dick Smith Holdings; and
  - b. from on and after 4 December 2013, section 674(2) of the Corporations Act applied to Dick Smith Holdings.

### A.3 DSE Group's Reporting Obligations

6. At all material times, Dick Smith Sub-Holdings and/or Dick Smith Holdings was required by sections 286, 292 and 296 of the Corporations Act to prepare financial reports for a financial year that complied with accounting standards, including:
  - a. Australian Accounting Standard AASB 3 Business Combinations (**AASB 3**);
  - b. Australian Accounting Standard AASB 101 Presentation of Financial Statements (**AASB 101**);
  - c. Australian Accounting Standard AASB 102 Inventories (**AASB 102**);
  - d. Australian Accounting Standard AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors (**AASB 108**);
  - e. Australian Accounting Standard AASB 116 Property, Plant and Equipment (**AASB 116**);
  - f. Australian Accounting Standard AASB 118 Revenue (**AASB 118**);
  - g. Australian Accounting Standard AASB 132 Financial Instruments: Presentation (**AASB 132**);
  - h. Australian Accounting Standard AASB 136 Impairment of Assets (**AASB 136**);
  - i. Australian Accounting Standard AASB 137 Provisions, Contingent Liabilities and Contingent Assets (**AASB 137**);
  - j. Australian Accounting Standard AASB 139 Financial Instruments: Recognition and Measurement (**AASB 139**); and
  - k. Australian Accounting Standard AASB 1031 Materiality (**AASB 1031**).
7. At all material times, Dick Smith Sub-Holdings and/or Dick Smith Holdings was required by sections 286, 302 and 304 of the Corporations Act to prepare financial reports for a half-year that complied with accounting standards, including those standards referred to in paragraph 6.
8. At all material times, Dick Smith Sub-Holdings and/or Dick Smith Holdings was required by section 297 of the Corporations Act to prepare financial statements and notes for a financial year that:
  - a. gave a true and fair view of the financial position and performance of the Dick Smith Sub-Holdings and/or Dick Smith Holdings; and

- b. if consolidated financial statements were required, gave a true and fair view of the financial performance of the DSE Group.

**B. THE SECOND AND THIRD DEFENDANTS**

9. Nicholas Abboud (**Abboud**):

- a. Was at all material times, a director and shareholder of LMA Investments Pty Ltd. LMA Investments Pty Ltd held, at all material times, shares in Dick Smith Sub-Holdings as trustee for the NL Abboud Trust;
- b. was from on or about 26 November 2012, a director of Dick Smith Sub-Holdings;
- c. was from on or about November 2012 to 4 January 2016, the Managing Director and Chief Executive Officer of Dick Smith Sub-Holdings;
- d. was from its formation, on or about 25 October 2013, a director of Dick Smith Holdings;
- e. was from its formation, on or about 25 October 2013, to on or about 4 January 2016, the managing director and chief executive officer of Dick Smith Holdings.

10. Michael Potts (**Potts**):

- a. was from on or about 10 October 2013 to on or about 12 August 2014 the company secretary of Dick Smith Sub-Holdings;
- b. was from on or about September 2013 to on or about 4 January 2016, the finance director and chief financial officer of Dick Smith Sub-Holdings;
- c. was from on or about 25 October 2013 to on or about 12 August 2014, the company secretary of Dick Smith Holdings;
- d. was from on or about 12 August 2014, a director of Dick Smith Holdings;
- e. was from on or about 25 October 2013 to on or about 4 January 2016, the finance director and chief financial officer of Dick Smith Holdings.

(together **Dick Smith Directors** or **Officers**)

11. By reason of the matters pleaded in paragraphs 9 to 10:

- a. Any information which was, prior to the incorporation of Dick Smith Holdings, in the possession of any Dick Smith Director or Officer was information of which Dick Smith Holdings was aware (as awareness is

defined in ASX Listing Rule 19.12) from the time they became Dick Smith Directors or Officers; and

- b. Any information which any Dick Smith Director or Officers became aware of following the incorporation of Dick Smith Holdings or which would reasonably have come into his or her possession in the course of performance of his or her respective duties was information of which Dick Smith Holdings was aware (as awareness is defined in ASX Listing Rule 19.12);

## **C. BACKGROUND**

- 12. The business ultimately conducted by Dick Smith Holdings was founded in 1968 by Richard "Dick" Smith AO (**Dick Smith Business**).
- 13. In the period from about 1981 to 1983, Woolworths Ltd (**Woolworths**) acquired the Dick Smith Business.
- 14. By about 2012, Woolworths conducted the Dick Smith Business in DSE Holdings, and its subsidiaries.
- 15. During 2012, Woolworths determined to:
  - a. close 73 "Dick Smith" branded stores;
  - b. sell the Dick Smith Business; and

### **Particulars**

*Prospectus, p32.*

- c. recognise restructuring provisions and impairment losses totalling \$420m for FY2012.

### **Particulars**

*Note 33 to Woolworths FY2012 Financial Accounts at page 191.*

- 16. During 2012, Woolworths undertook a sale campaign in relation to the Dick Smith Business.

## **D. THE ACQUISITION**

### **D.1 Share Sale Agreement**

- 17. On 26 September 2012, Dick Smith Sub-Holdings (formerly named Dick Smith Holdings Pty Ltd and Anchorage DS Pty Ltd), entered into a share sale agreement

with Woolworths (**Share Sale Agreement**) pursuant to which Dick Smith Sub-Holdings acquired all of the issued shares in DSE Holdings (**Acquisition**).

**Particulars**

*The Share Sale Agreement was in writing.*

18. At the time of the Acquisition, Dick Smith Sub-Holdings was a wholly owned subsidiary of Anchorage Capital Partners Pty Ltd (**Anchorage**).
19. Attached to the Share Sale Agreement were the following additional agreements all entered into on or around 26 September 2012:
  - a. A "Transitional Service Agreement" between Woolworths and Dick Smith Electronics Pty Ltd (ACN 001 456 720) (a wholly owned subsidiary of DSE Holdings).

**Particulars**

*Share Sale Agreement, Attachment 4.*

- b. A "Forgiveness and Release Deed" between Woolworths and DSE Holdings (**Forgiveness and Release Deed**).

**Particulars**

*Share Sale Agreement, Attachment 9.*

- c. The "Anchorage Exit Payment Deed" between Woolworths and Dick Smith Sub-Holdings (**Anchorage Exit Payment Deed**).

**Particulars**

*Share Sale Agreement, Attachment 11.*

20. It was an express term of the Share Sale Agreement that:
  - a. on completion:
    - (i) Woolworths must sell and Dick Smith Sub-Holdings must buy all of the issued shares in DSE Holdings;
    - (ii) in consideration of the sale to Dick Smith Sub-Holdings of the Sale Shares, Dick Smith Sub-Holdings must pay Woolworths the "Purchase Price" comprising:
      - (A) the sum of \$5m (**Initial Payment**); and

- (B) any amount payable by Dick Smith Sub-Holdings to Woolworths pursuant to the Anchorage Exit Payment Deed;

**Particulars**

*Share Sale Agreement, Clause 4.1.*

- b. on completion of the Share Sale Agreement, Dick Smith Sub-Holdings must procure payment by Dick Smith Electronics to Woolworths of the sum defined as the "Completion Net Amount";

**Particulars**

*Share Sale Agreement, Clause 6.1.*

- c. the "Completion Net Amount" comprised adjustments in respect of the "Estimated Working Capital Amount" (up to a maximum of \$14m) and the "Estimated Net Debt" (up to a maximum of \$6m) (**Completion Net Amount**);

**Particulars**

*Share Sale Agreement, Clause 6.1(d)*

- d. on completion of the Share Sale Agreement, Dick Smith Sub-Holdings must procure payment by Dick Smith Electronics to Woolworths of further adjustments in respect of:
- (i) "Working Capital", up to a maximum of \$14m; and
  - (ii) "Net Debt", without any maximum;
- such amount defined as the "Net Amount" (**Net Amount**);

**Particulars**

*Share Sale Agreement, Clauses 6.2(a)(i) and 6.2(a)(ii).*

- e. Dick Smith Sub-Holdings guaranteed the repayment by Dick Smith Electronics to Woolworths of the "Intercompany Loan Amount", being the sum of \$15m, on 28 June 2013.

**Particulars**

*Share Sale Agreement, Clause 7.*

21. It was an express term of the Forgiveness and Release Deed that immediately prior to completion of the Share Sale Agreement (which occurred on 26 November 2012

(**Completion**)) Woolworths would forgive all amounts then owing to it by Dick Smith Electronics, excluding the following amounts:

- a. \$15 million;
- b. all amounts owing in the normal course of trading on arms' length terms in respect of inventory procured through Woolworth's Hong Kong sourcing office;
- c. the Completion Net Amount; and
- d. the Net Amount.

#### **Particulars**

*Forgiveness and Release Deed, clause 2.2.*

22. It was an express term of the Anchorage Exit Payment Deed that:

- a. Dick Smith Sub-Holdings must pay to Woolworths "Earn Out Amounts";
- b. "Earn Out Amounts" comprised "Net Exit Proceeds" Dick Smith Sub-Holdings may receive through the offer of shares in Dick Smith Holdings through an Initial Public Offering and subsequently on the secondary market calculated by reference to the following formula:
  - (i) 50% of the "Net Equity Proceeds" above an amount equal to \$40m plus two times the "Cash Injection Amount", and below an amount equal to \$200m plus two times the "Cash Injection Amount"; and
  - (ii) 25% of the "Net Equity Proceeds" above an amount equal to \$200m plus two times the "Cash Injection Amount".

#### **Particulars**

*Anchorage Exit Payment Deed, clause 2.*

23. On 26 November 2012, at Completion, Dick Smith Sub-Holdings:

- a. acquired all of the issued shares in DSE Holdings; and
- b. paid Woolworths the Initial Payment.

24. By 11 February 2013, Dick Smith Sub-Holdings had paid \$21.2 million in respect of the Completion Net Amount and Net Amount comprised of:

- a. \$9.4 million paid prior to 1 January 2013; and
- b. \$11.8 million paid on 11 February 2013.

### Particulars

*Letter from Tim Fawaz, CFO to Woolworths dated 1 February 2013.*

25. On 15 May 2013, Dick Smith Sub-Holdings and Woolworths agreed to vary and/or terminate the Share Sale Agreement, including as to the payment of the Purchase Price, with the effect that Dick Smith Sub-Holdings would pay to Woolworths:
- a. the Intercompany Loan Amount in the amount of \$15 million in June 2013;
  - b. an additional amount of \$50 million in June 2013 (**Second Payment**); and
  - c. a further sum of \$24 million (**Deferred Payment**) to be paid in six equal monthly instalments commencing July 2013 (the **May 2013 Woolworths Agreement**).

### Particulars

*(i) Prospectus, section 10.6.2.*

*(ii) The precise terms of the May 2013 Woolworths Agreement are presently unknown to the Plaintiffs. Further particulars, and any associated allegations arising out of the terms of that variation, may be added to this Statement of Claim when the Plaintiffs obtain a copy of the agreements which effected the May 2013 Woolworths Agreement.*

*(iii) Minutes of a meeting of the Board of Directors on 8 May 2013, p.3.*

## D.2 Acquisition Accounting

26. Immediately prior to the Acquisition, Woolworths recognised the book value of the assets of the Dick Smith business at \$307.2 million comprised of the following:
- a. Inventories at \$209.6 million;
  - b. Plant and Equipment at \$50.6 million;
  - c. Trade and Other Receivables at \$16.6 million;
  - d. Cash and Cash Equivalents at \$22.1 million;
  - e. Other Current Assets at \$3.6 million;
  - f. Deferred Tax Asset at \$4.7 million;

### Particulars

*Dick Smith Sub-Holdings general ledger accounts (NAT) as at 25 November 2012, including:*



- (i) *In relation to Inventories, NAT 1320, 1322, 1324, 1326, 1329, 1333, 1339, 1360, 1370, 1390, 1393, 2171;*
  - (ii) *In relation to Plant and Equipment, NAT 1203, 1610, 1611, 1615, 1616, 1629, 1630, 1635, 1636, 1643, 1644, 1670, 1678, 2172;*
  - (iii) *In relation to Trade and Other Receivables, NAT 1085, 1086, 1088, 1096, 1097, 1110, 1120-1222, 1126, 1139, 1156, 1230, 1237, 1240, 1270, 1273, 1277, 1282, 1294, 1494, 1496, 1497, 1501, 1502, 1534, 1536, 1577, 1586, 1588, 1597, 2161, 2267;*
  - (iv) *In relation to Cash and Cash Equivalents, NAT 894-897, 938, 939, 1012, 1013, 1019, 1022, 1023, 1027, 1029, 1032-1034, 1047, 1048, 1050, 1051, 1054, 1055, 1058, 1080, 1102, 1103, 1146, 1050-1052, 1291;*
  - (v) *In relation to Other Current Assets, NAT 1192, 1194, 1208, 1210, 1211, 1214, 1220, 1394;*
  - (vi) *In relation to Deferred Tax Asset, NAT 1840.*
27. On Acquisition, Dick Smith Sub-Holdings recognised the book value of the assets of the Dick Smith business at \$537.8 million comprised of the following:
- a. Inventories at \$370.6 million;
  - b. Plant and Equipment at \$119.4 million;
  - c. Trade and Other Receivables at \$29.2 million;
  - d. Cash and Cash Equivalents at \$12.6 million;
  - e. Other Current Assets at \$1.6 million;
  - f. Deferred Tax Asset at \$4.4 million.

#### **Particulars**

*Dick Smith Sub-Holdings Financial Report for the 10 month period ending 30 June 2013, p 37.*

28. On Acquisition, Dick Smith Sub-Holdings recognised the fair value of the assets of the Dick Smith business at \$462.5 million comprised of the following:
- a. Inventories at \$312.1 million;
  - b. Plant and Equipment at \$64.7 million;
  - c. Trade and Other Receivables at \$29.2 million;
  - d. Cash and Cash Equivalents at \$12.6 million;

- e. Other Current Assets at \$1.6 million;
- f. Deferred Tax Asset at \$42.3 million.

**Particulars**

*Dick Smith Sub-Holdings Financial Report for the 10 month period ending 30 June 2013, p 37.*

29. In addition, on Acquisition Dick Smith Sub-Holdings recognised the fair values for certain assets, referred to in paragraph 28 above, after recognising certain adjustments and provisions against the assets as follows:
- a. Provisions for Inventories of around \$51.2 million;
  - b. Provisions for Depreciation and Impairment: Plant & Equip of around \$77.8 million;
  - c. Provisions for Doubtful Debts: Trade and Other Receivables of around \$5.4 million.

**Particulars**

(i) *Dick Smith Sub-Holdings Financial report for the 10 month period ending 30 June 2013, p 26.*

(ii) *Dick Smith Sub-Holdings general ledger accounts as at 25 November 2012, including:*

- *In relation to Provisions for Inventories, NAT 1326, 1329, 1330, 1333, 1339, 1348;*
- *In relation to Provisions for Depreciation and Impairment: Plant & Equip, NAT 1611, 1616, 1629, 1635, 1644, 1671, 1673, 1675, 1677, 1678, 2172;*
- *In relation to Provisions for Doubtful Debts, NAT 1120, 1121, 1122, 1126.*

(iii) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

30. By reason of the matters referred to in paragraphs 26 and 28 above, on Acquisition Dick Smith Sub-Holdings recognised the fair value of:
- a. Inventories at \$102.5 million more than Woolworths' book value immediately prior to the Acquisition;
  - b. Plant and Equipment at \$14.1 million more than Woolworths' book value immediately prior to the Acquisition;

- c. Trade and Other Receivables at \$12.6 million more than Woolworths' book value immediately prior to the Acquisition;
  - d. Cash and Cash Equivalents at \$9.5 million less than Woolworths' book value immediately prior to the Acquisition;
  - e. Other Current Assets at \$2.0 million less than Woolworths' book value immediately prior to the Acquisition; and
  - f. Deferred Tax Asset at \$37.6 million more than Woolworths' book value immediately prior to the Acquisition.
31. By reason of the matters referred to in paragraph 30 above, Dick Smith Sub-Holdings recognised:
- a. assets acquired at \$155.3 million more than Woolworths' book value immediately prior to the Acquisition; and
  - b. a discount on acquisition of \$145.8 million in Other Income for the period ending 30 June 2013 that was substantially attributable to the upward revaluation of assets at Acquisition, including in respect of inventories and plant and equipment.

#### **Particulars**

*(i) Dick Smith Sub-Holdings Financial Reports for the 10 months period ending 30 June 2013, pp. 24 and 38.*

*(ii) Further particulars may be provided following discovery and/or upon completion of the Plaintiffs' expert evidence.*

32. The matters referred to in paragraphs 26 to 31 are referred to herein as the **Acquisition Accounting Information**.

#### **E. EVENTS FOLLOWING THE ACQUISITION**

33. On 25 October 2013, Dick Smith Holdings was incorporated as an Australian Public Company with the intention of raising capital through a public offering of its shares (**DSH IPO**).
34. The purpose of the DSH IPO was to fund the acquisition of shares in Dick Smith Sub-Holdings by Dick Smith Holdings from its existing shareholders, which were, as at November 2013:
- a. Anchorage, which owned 98% of the shares in Dick Smith Sub-Holdings; and

- b. LMA Investments Pty Ltd:
    - (i) owned 2% of the shares in Dick Smith Sub-Holdings;
    - (ii) was controlled by Mr Nick Abboud, the Chief Executive Officer of Dick Smith Holdings and the DSE Group.
35. On about 13 November 2013, Dick Smith Holdings entered into a Sale Deed (**Sale Deed**).
36. The Sale Deed:
- a. was a deed poll in favour of all Dick Smith Sub-Holdings shareholders immediately prior to settlement;
  - b. provided that Dick Smith Holdings offered to acquire all of the shares in Dick Smith Sub-Holdings for consideration calculated as being the Offer Price multiplied by the number of shares on issue following the DSH IPO, plus \$15 million.

#### Particulars

(i) *Prospectus, p 134.*

(ii) *Further particulars may be provided once the Plaintiffs obtains a copy of the Sale Deed.*

37. On 21 November 2013, Dick Smith Holdings issued and lodged with ASIC the Prospectus.
38. The Prospectus offered for sale to the public 156.6 million of the 236.5 million DSH Shares that were to be on issue at the completion of the DSH IPO (the **Offer**).

#### Particulars

*Prospectus, p 4.*

39. The Offer was oversubscribed and the sum of \$344.5 million was raised to fund the purchase by Dick Smith Holdings of 156.6 million shares in Dick Smith Sub-Holdings from its existing shareholders.
40. The funds raised by the Offer were applied as follows:

Sources of funds	\$m	%	Uses of funds	\$m	%
Gross proceeds of the IPO	344.5	82.4	Payment to Anchorage	358.1	85.6
Cash at bank	46.5	11.1	Employee awards	1.4	0.3

New Debt	27.2	6.5	Cost of the IPO	21.0	5.0
			Retained cash at bank	13.0	3.1
			Deferred payment to Woolworths	24.0	5.7
			Establishment costs of new debt	0.7	0.2
<b>Total sources of funds</b>	<b>418.2</b>	<b>100</b>	<b>Total uses of funds</b>	<b>418.2</b>	<b>100</b>

### Particulars

(i) *Prospectus, pp 15, 109*

(ii) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

41. On 4 December 2013 Dick Smith Holdings:
  - a. acquired all of the issued shares in Dick Smith Sub-Holdings;
  - b. became the holding company of the Dick Smith Group and thereafter conducted the Dick Smith Business; and
  - c. was admitted to the official list of the ASX and commenced trading with a listing price of \$2.20 per share.
42. In September 2014, Anchorage sold its remaining 47.3 million shares in Dick Smith Holdings, at which time the shares were trading above \$2.20.

### Particulars

*The Dick Smith Group Report to Creditors pursuant to section 439A of the Corporations Act 2001 (**s439A Report**), p 22.*

43. On 4 January 2016, Dick Smith Holdings was placed into voluntary administration (**Administration**) and receivership.
44. On 25 July 2016, Joseph Hayes and Jason Preston of McGrath Nicol were appointed liquidators of Dick Smith Holdings.

## F. THE PROSPECTUS

45. The Prospectus was:
  - a. issued for the purposes of Chapter 6D of the Corporations Act;

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

46. Dick Smith Holdings was a person making an offer of securities under the Prospectus within the meaning of section 728 and section 729 (1) of the Corporations Act.

#### **F.1 The Key Offer Statistics**

47. The Prospectus stated that the "*Key Offer Statistics*" in respect of the DSH IPO included:
- a. Offer Price – \$2.20 per share;

- b. total number of shares to be issued under the offer – 156.6 million;
- c. number of shares held by Anchorage at completion of the offer – 47.3 million;
- d. total number of shares on issue at completion of the offer – 236.5 million;
- e. market capitalisation – \$520.3 million;
- f. enterprise value – \$533.8 million; and
- g. enterprise value/pro forma forecast FY2014 EBITDA – 7.4 times and Indicative Price Range/pro forma forecast FY2014 NPAT per share (times) – 13.0 times (**Indicative Price Range Representations**).

#### **Particulars**

*Prospectus, p 4.*

## **F.2 2013 Financial Representations**

48. The Prospectus stated that the historical financial information for the 3 years ending 30 June 2013 included in the Prospectus was derived from:
- a. Dick Smith Sub-Holdings Financial Report for the 10 months period ending 30 June 2013 (**DSSH 2013 Financial Statements**); and
  - b. the unaudited accounting records of Dick Smith Sub-Holdings for the period from 28 June 2010 to 26 November 2012.

#### **Particulars**

*Prospectus, p 53.*

49. The Prospectus included the following statements (each a **2013 Performance Representation**):
- a. Pro Forma Gross Profit for the 2013 Financial Year was \$303.6 million;
  - b. Pro Forma Gross Margin for the 2013 Financial Year was 23.7%; and
  - c. Pro Forma EBITDA for the 2013 Financial Year was \$23.4 million.

#### **Particulars**

*Prospectus, pp 12, 57, and 60.*

50. The Prospectus included the following statements concerning the assets of Dick Smith Holdings as at 30 June 2013 (each a **2013 Balance Sheet Representation**):

- a. Statutory and (Pro Forma) Total Current Assets of \$241.2 million (\$207.7 million);
- b. Statutory and (Pro Forma) Total Non-Current Assets of \$103.2 million (\$99.2 million);
- c. Statutory and (Pro Forma) Total Liabilities of \$187.9 million (\$190.4 million);
- d. Statutory and (Pro Forma) Total Equity of \$156.5 million (\$116.5 million); and
- e. Statutory:
  - (i) Receivables - \$10.4 million;
  - (ii) Inventories - \$168.5 million;
  - (iii) Net Property Plant and Equipment - \$60.3 million
  - (iv) Deferred Tax Assets - \$42.9 million; and
  - (v) Retained profits - \$140.2 million.

**Particulars**

*Prospectus, p 60.*

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

**Particulars**

*Prospectus, p 149.*

- g. Fixtures and equipment were stated at *"cost less accumulated depreciation and accumulated impairment losses."* Impairment losses are calculated by reference to the 'recoverable amount' which is stated as *"the higher of fair value less costs to sell, and value in use."*

**Particulars**

*Prospectus, p149.*



### F.3 Obsolete Stock Representation

51. The Prospectus stated that management had driven a significant transformation of the Dick Smith Business after Woolworths divestment and had “*Significantly reduced Dick Smith’s level of obsolete stock, and put in place new buying processes to better manage stock levels going forward*” (**Obsolete Stock Representation**).

#### Particulars

*Prospectus, p 47.*

### F.4 1Q2014 Representations

52. The Prospectus included the following statements as to Dick Smith Sub-Holdings’ first quarter 2014 (**1Q2014**) results (**1Q2014 Results**) (each a **1Q2014 Performance Representation**):
- a. The 1Q2014 Results represented the first period of financial performance that was not materially impacted by the strategic decisions and operational execution of the previous management team;
  - b. Historical pro forma results for 1Q2014 demonstrated a significantly improved financial performance;
  - c. Dick Smith Sub-Holdings’ 1Q2014 pro forma results were:
    - (i) Sales of \$273.3 million;
    - (ii) Gross Profit of \$68.4 million;
    - (iii) Gross Margin of 25.0%;
    - (iv) EBITDA of \$11.6 million.

#### Particulars

*Prospectus, p 66.*

### F.5 Transformation Representations

53. The Prospectus included the following statements (each a **Transformation Representation**):
- a. “*Dick Smith has undergone a significant transformation under the leadership of Managing Director and CEO, Nick Abboud. Nick and his management team have driven a comprehensive program of strategic, customer, operational and cultural initiatives which, supported by the enthusiasm and commitment of the store and store support teams, have*

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

**Particulars**

*Prospectus, p 2.*

- b. *"As part of the transformation program, Nick has established a platform for the future growth of the business based on four main initiatives: growing the store network, expanding our omni-channel offering, driving growth in our mobility category and expanding our private label offering. Under this growth program, we have already opened five new stores in FY2014 and plan to open 11 more this financial year, taken over the operation of David Jones' consumer electronics departments, launched our new multi-carrier mobile offering, and opened our first mobility-focused Move store concept."*

**Particulars**

*Prospectus, p 2.*

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

**Particulars**

*Prospectus, p 6.*

- d. *"Dick Smith's new and experienced management team, led by Nick Abboud, has driven a significant transformation of the business through a comprehensive program of strategic, customer, operational and cultural initiatives. This program has already delivered substantial improvements to financial performance, as evidenced in the 1Q2014 results. It is expected that these programs will continue to deliver additional financial benefits in*

*the coming years. Pro forma EBITDA is forecast to grow to \$71.8 million in FY2014 from \$23.4 million in FY2013."*

**Particulars**

*Prospectus, p 8.*

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

**Particulars**

*Prospectus, p 32.*

- f. *"At the time of the Acquisition, Dick Smith was experiencing declining profitability. Following the Acquisition, the Dick Smith management team, led by Nick Abboud, rapidly implemented a comprehensive transformation program, positioning the business for sustainable growth."*

**Particulars**

*Prospectus, p 33.*

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

**Particulars**

*Prospectus, p 52.*

**F.6 Growth & Forecast Representations**

54. The Prospectus included:

a. the following statements (each a **Growth Representation**):

- (i) Sales for 1H2014 were forecast to be \$637.5m;
- (ii) Pro Forma EBITDA for 1H2014 was forecast to be \$40.2 million;

**Particulars**

*Prospectus, pp 55 and 65.*

- (iii) FY2014 results were forecast, in comparison to FY2013 results, to be:

	FY2013		FY2014	
	\$m	% of sales	\$m	% of sales
Sales	1,280.4		1,226.0	
COGS	976.8	76.3	918.2	74.1
Gross Profit	303.6	23.7	307.8	25.1
CODB	(280.1)	21.9	(236)	19.2
EBITDA	23.4	1.8	71.8	5.9

**Particulars**

*Prospectus, pp 8, 12, 57.*

- (iv) *"The Directors believe that the significant increase in the underlying profitability of Dick Smith and the sustainability of the increase have been evidenced in the 1Q2014 results. It is expected that this transformation program will continue to deliver additional financial benefits in the coming years."*

**Particulars**

*Prospectus, p 12.*

- (v) the major drivers of the forecast increase in pro forma EBITDA between FY2013 and FY2014 were stated to include:

- (A) *"Corporate/Procurement efficiencies and marketing rebates*

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

*also renegotiated, as were all major corporate supply agreements.”*

(B) *“Increase in gross profit*

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

**Particulars**

*Prospectus, pp 58 - 59.*

- b. An implied statement that each of the Growth Representations would be achieved on the basis of results reported in accordance with Accounting Standards (also a **Growth Basis Representation**).

**F.7 Compliance Representations**

- 55. The Prospectus stated (each a **Prospectus Compliance Representation**):

- a. *"The Historical Financial Information for FY2011, FY2012, FY2013 and 1Q2014 included in this Prospectus has been prepared and presented in accordance with the recognition and measurement principles presented in Australian Accounting Standards, except where otherwise stated."*

**Particulars**

*Prospectus, Important Notice IP2.*

- b. *"The Financial Information has been prepared in accordance with the recognition and measurement principles described in Australian Accounting Standards..."*

**Particulars**

*Prospectus, p 53.*

**G. PROSPECTUS MATERIAL FACTS**

**G.1 Sales**

Sales Trend

56. During the period FY2012 and FY2013, Dick Smith Sub-Holdings had experienced diminishing profitability, in that:
- a. Dick Smith Sub-Holdings' pro forma sales decreased from \$1,369.5m in FY2012 to \$1,280.4m in FY2013, a decrease of 6.5%;
  - b. The Prospectus forecast a further decrease of 4.3% to \$1,226.0m in FY2014, despite the Transformation Representations; and
  - c. Pro forma first quarter sales were also in decline for at least 2 years prior to the date of the Prospectus, summarised as follows:

		%
	\$m	Decrease
Total 1Q12 pro forma sales	332.0	
Total 1Q13 pro forma sales	311.8	6
Total 1Q14 pro forma sales	273.3	9

**Particulars**

*Monthly Management Reports for 1Q2012, 1Q2013 and 1Q2014*

57. The management accounts for Dick Smith Holdings for July, August and September FY2014, recorded:

- a. Total sales were \$5.4 million or 1.9% below budget;
- b. Retail sales were \$11.6 million or 4.4% below budget (with Australian retail sales down 4.3%);
- c. Commercial sales were \$7 million or 78.6% above budget;
- d. August retail sales were \$8.4 million or 10.0% below budget (with Australian retail sales down 10.1%);
- e. Pro forma sales declined by \$38.5 million or 12.3% on the first three months of FY2013; and
- f. Pro forma retail sales declined by \$43.5 million or 14.7% on the first three months of FY2013 (with Australian retail sales down 13.6%).

#### **Particulars**

*Dick Smith Holdings Monthly Management Financial Reports (**Monthly Management Reports**) - July, August, and Sept. 2013 and 2014.*

58. By November 2013 the Monthly Management Reports for Dick Smith Holdings for the first 5 months of FY2014 recorded:
- a. Total sales were 1.6% below budget;
  - b. Retail sales were 4.1% below budget;
  - c. Online sales were 3.1% below budget;
  - d. David Jones sales were 2.1% below budget;
  - e. Commercial sales were \$21.3m (153%) up on budget;
  - f. First and second margins were below budget in dollar and percentage terms for every month of 1H2014 with one exception; and
  - g. First, second and third margins were below 1H2013 results in dollar terms.

#### **Particulars**

*(i) 27 November 2013, Board Minutes.*

*(ii) First, second and third margins are defined in the Report by Deloitte headed Project Yellow dated 7 November 2013 (**Deloitte Project Yellow Review**) at page 36.*

59. The Prospectus did not disclose the matters set out in paragraphs 56 to 58 above (**Sales Trend Information**).

## Sales Accounting

60. At all material times from Acquisition, Dick Smith Sub-Holdings and/or Dick Smith Holdings acted as an agent for third parties by selling inventory on behalf of those third parties (**Agency Sales**).
61. At all material times from Acquisition, Dick Smith Holdings and/or Dick Smith Sub-Holdings reported sales revenue by adopting the following approach (**Sales Accounting Approach**):
- a. included Agency Sales on a gross basis in reported sales revenue and not limit reported sales revenue to the commissions earned by Dick Smith Sub-Holdings on such sales;
  - b. reported sales revenue without removing discounts on sales and instead included such discounts in cost of sales; and
  - c. reported sales revenue without making deductions for "sales discrepancy" charge backs recorded in NAT and instead included such discrepancies in cost of sales.

### **Particulars**

- (i) *Management Representation Letter of Dick Smith (NZ) Limited, Appendix B, 19 Dec. 2013.*
  - (ii) *Management Representation Letter of Dick Smith Holdings, Appendix B, 17 Aug. 2015.*
  - (iii) *NAT 3219, 3251, 5029-5031, 5049, 5051-5053, 5055, 5056, 5067, 5069, 5077, 5079, 5081, 5084, 5087, 5088, 5101, 5107, 5124, 5128, 5129 and 5156.*
  - (iv) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*
62. The DSSH 2013 Financial Statements and the accounts for July, August and September FY2014 (the **Prospectus Accounts**) were prepared by adopting the Sales Accounting Approach.
63. The Sales Accounting Approach was contrary to Australian Accounting Standards.

### **Particulars**

- (i) *AASB 102, paragraph 34.*
- (ii) *AASB118, paragraphs 8, 9 & 10.*



(iii) *Further particulars will be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

64. By adopting the Sales Accounting Approach, Dick Smith Holdings and/or Dick Smith Sub-Holdings reported sales revenue in the Prospectus Accounts at levels higher than would have been reported had the Sales Accounting Approach not been adopted.

#### Particulars

*Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

65. The Prospectus did not disclose the matters referred to in paragraphs 60 to 64 above (**Sales Accounting Information**).

#### Sales Mix

66. At all material times in the period from Acquisition until the Prospectus was issued, Dick Smith Sub Holding's percentage of sales that were attributable to retail sales, commercial operations and other sources were as follows:

Month	Retail		Commercial		Other		Total	
	\$m	% pcp	\$m	% pcp	\$m	% pcp	\$m	% pcp
Dec 12	207.7	(-3.3)	3.2	(-37.2)	4.1	+64.5	215.0	(-3.3)
Jan 13	85.3	(-8.8)	2.1	(-44.1)	1.3	+58.7	88.7	(-9.6)
Feb 13	107.5	(-2.4)	2.3	(-46.9)	1.6	(-15.1)	111.4	(-4.3)
Mar 13	79.7	(-11.9)	2.7	(-26.5)	1.3	(-10.9)	83.7	(-12.5)
Apr 13	84.8	(-7.1)	1.6	(-59.2)	1.0	(-45.2)	87.4	(-10.0)
May 13	84.6	(-12.2)	2.3	(-55.8)	1.2	(-33.7)	88.1	(-14.8)
Jun 13	105.1	+7.0	10.1	+19.7	1.7	(-34.5)	116.9	+7.0
Jul 13	80.6	(-19.1)	3.8	(-7.0)	1.7	+8.7)	86.1	(-18.3)
Aug 13	76.2	(-16.1)	5.7	+67.9	1.4	+19.3	83.3	(-12.7)
Sept 13	95.9	(-5.0)	6.5	+68.3	1.5	+22.6	103.9	(-2.0)
Oct 13	74.0	(-13.5)	3.2	+22.8	3.6	+219	80.8	(-9.5)
Nov 13	80.2	(-10.5)	9.8	+296	6.0	+227	96.0	+1.9

67. By reason of the matters referred to in paragraph 66:
- like for like retail sales were in decline in all months after Acquisition except June 2013; and
  - commercial sales were masking the decline in like for like retail sales from August 2013 to November 2013.

#### Particulars

*Monthly Management Reports – December 2012 to November 2013.*

68. The Prospectus did not disclose any of the matters referred to in paragraphs 66 and 67 above (**Retail Sales Information**).

## **G.2 Rebates**

69. At all material times from Acquisition, Dick Smith Sub-Holdings and/or Dick Smith Holdings obtained rebates, some which were ad hoc and individually negotiated, from suppliers and service providers and accounted for the rebates in a manner that did not decrease the price of acquisition of the good and services (**O&A Rebates**).

70. The O&A Rebates included:

- a. rebates from suppliers outside the standard terms that existed with suppliers including
  - (i) rebates from suppliers of Dick Smith own brand goods;
  - (ii) rebates relating to promotional sales support;
- b. rebates relating to physical fixtures and fittings provided by suppliers for the marketing of goods in store; and
- c. rebates (by way of cash payment or credit) in consideration for the extension of contracts with service providers.

71. From Acquisition and at all material times, Dick Smith Sub-Holdings and/or Dick Smith Holdings adopted a practice whereby they:

- a. purchased stock based on decisions which focused upon and prioritised the maximisation of the O&A Rebates, rather than catering for current or likely future customer demand and focusing upon whether the stock so purchased would be saleable at an appropriate margin within an appropriate time; and
- b. entered into or extended arrangements with suppliers and service providers based on decisions which focused on whether rebates would be obtained or maximised, rather than whether entering into or extending those contracts was in the best interests of Dick Smith Sub-Holdings or the DSE Group,  
  
(the **Rebate-Maximisation Policy**).

72. Implementation of the Rebate-Maximisation Policy resulted in:

- a. Dick Smith Sub-Holdings and/or Dick Smith Holdings purchasing poor quality stock which was not attractive to customers and that was difficult to sell; and
- b. an increase in inventory levels and an accumulation of ageing and poor quality stock; and

#### Particulars

- (i) *s439A Report, page 48.*
  - (ii) *Commercial List Statement filed in Supreme Court of New South Wales proceedings number 017/81927 brought by Dick Smith Holdings against Abboud & others (**Dick Smith Proceedings**) – paragraphs 35 & 36.*
  - (iii) *FAC Minutes and papers from meetings on 12 August 2014 and 24 November 2015.*
  - (iv) *Evidence of Abboud: transcript dated 6 October 2016 page 493-500.*
  - (v) *Evidence of Ms Lorna Raine: transcript dated 5 September 2016 at page 39.*
  - (vi) *Evidence of Mr William Wavish: transcript dated 6 September 2016 at page 126.*
- c. the accrual of income for O&A arrangements with vendors in circumstances where:
    - (i) arrangements did not convey a legal right to receive cash or a legal right of set off against amounts owing to vendors;
    - (ii) arrangements involved uplifting the cost of inventories purchased including through reissue of invoices;
    - (iii) arrangements related to fixtures and fittings including fixtures and fittings that remained the property of vendors;
    - (iv) arrangements involved future transactions and events such as inventory purchases, advertising or promotional activities; and
    - (v) arrangements were not sufficiently supported by documentary evidence or records.

#### Particulars

- (i) *s439A Report, pages 43-44 and 48.*
- (ii) *Deloitte Project Yellow Review, p 31.*

*(iii) Further particulars may be provided following discovery and/or upon completion of the Plaintiffs' expert evidence.*

73. From Acquisition and at all material times, Dick Smith Sub-Holdings and/or Dick Smith Holdings accounted for O&A Rebates, including in the Prospectus Accounts, by recognizing O&A Rebates:
- a. immediately upon the O&A Rebate being negotiated with the supplier;
  - b. as an increase in "Other Receivables" in circumstances where the rebates were non-contractual in nature, and despite it being uncertain that the rebate would be earned and paid, such that it could be measured reliably;
  - c. as a reduction in 'Cost of Sales' on the basis that any excess over the marketing expense was related to goods sold, notwithstanding that the goods the subject of the rebate may not be identifiable;
  - d. as a reduction in 'Marketing costs' within "Cost of Doing Business", notwithstanding that each company 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;
  - e. as an increase in "plant and equipment"; and/or
  - f. as an increase in inventories,
- (Rebate Accounting Approach).**

#### **Particulars**

*(i) Dick Smith Proceedings Commercial List Statement paragraphs 30, 31, 33, 34, 38 & 39.*

*(ii) Further particulars may be provided following discovery and/or upon completion of the Plaintiffs' expert evidence.*

74. The effect of the Rebate Accounting Approach was that Dick Smith Holdings and/or Dick Smith Sub-Holdings:
- a. reported:
    - (i) "Other Receivables" at higher levels, to the extent that the O&A rebates recognised in receivables were non-contractual, improbable or could not be reliably measured;
    - (ii) Plant and Equipment at higher levels, to the extent that O&A rebates recognised in plant and equipment did not qualify as items

of plant and equipment with probable future economic benefits that would flow to Dick Smith Holdings and/or Dick Smith Sub-Holdings and/or did not have a cost that could be measured reliably;

- (iii) 'Inventories' at higher levels to the extent that O&A rebates were recognised by revaluing inventories above cost;
- (iv) 'Cost of Sales' at lower levels to the extent that the O&A rebates recognised in Cost of Sales were not directly attributable to the costs of purchase of inventories and therefore the carrying amount of inventories when sold;
- (v) 'Marketing Expenses' and 'Cost of Doing Business' at lower levels; and
- (vi) Gross Profit, EBITDA, and Total Equity at higher levels;

than Dick Smith Holdings and/or Dick Smith Sub-Holdings would have reported had the Rebate Accounting Approach not have been adopted;

b. recognised Gross Profit, EBITDA and NPAT:

- (i) from the sale of 'marketing assets' or marketing services rather than the sale of goods and without separate disclosure of the accounting policy or the amount for this category of revenue;
- (ii) from exchanges of goods and services without separate disclosure of the amount of revenue involved;
- (iii) in respect of future transactions and events including future purchases of inventories rather than present transactions and events;
- (iv) in respect of unenforceable agreements or unreliable estimates of the economic benefits that would flow to the Dick Smith Sub-Holdings and/or Dick Smith Holdings;
- (v) in the absence of proper records; and
- (vi) in circumstances where the realisation of economic benefits from the assets attributed to O&A rebates was not probable; and

c. reported profits at levels in excess of those that would have been reported if the Rebate Accounting Approach had not been adopted.

### **Particulars**

- (i) Dick Smith Holdings' Commercial List Statement paragraph 40.*
- (ii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

75. The Rebate Accounting Approach:

- a. failed to comply with Australian Accounting Standards;
- b. enabled Dick Smith Sub-Holdings to report Gross Profit, EBITDA and NPAT at higher amounts than should have been reported had it complied with Australian Accounting Standards.

### **Particulars**

- (i) AASB 101, paragraphs 15, 17, 32, 55, 97, 117, 122.*
- (ii) AASB 102, paragraphs 9, 10, 11, 15, 16.*
- (iii) AASB 108, paragraphs 7, 10, 11.*
- (iv) AASB 116, paragraphs 7, 15-19, 30.*
- (v) AASB 118, paragraphs 20, 26, 35.*
- (vi) AASB 132, paragraphs 11, 13, AG4.*
- (vii) AASB 139, paragraph 14.*
- (viii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

76. The Prospectus did not disclose the existence of:

- a. the Rebate-Maximisation Policy;
- b. the Rebate Accounting Approach; or
- c. any of the matters referred to in paragraphs 69 to 75.

**(O & A Rebate Information).**

77. The Prospectus Accounts and the Growth Representations were prepared and made on the basis of the Rebate Accounting Approach.

### **Particulars**

- (i) Dick Smith Proceedings Commercial List Statement paragraphs 38 & 39.*

(ii) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

78. The Growth Representations of forecast EBITDA of \$71.8 million was based in part on \$19.4 million flowing from O & A Rebates in FY2014.

**Particulars**

*Deloitte Project Yellow Review, p 18, p 31.*

79. The effect of the Rebate Accounting Approach and the matters referred to in paragraphs 69 to 78 above, was that the Prospectus Accounts and the Growth Representations:
- a. reported and/or forecast:
    - (i) Gross Profit, EBITDA and NPAT at levels materially higher;
    - (ii) costs of sales and/or costs of doing business at levels materially lower;
    - (iii) other receivables at levels materially higher;
    - (iv) equity at levels materially higher,than that which would have been reported and/or forecast had the Rebate Accounting Approach not been adopted;
  - b. did not fairly present the financial performance and financial position of Dick Smith Sub-Holdings; and
  - c. did not limit the recognition of financial assets to circumstances where the entity was a party to a contract.

**Particulars**

*Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

80. The Prospectus did not disclose any of the matters referred to in paragraphs 69 to 79 above (**FY2014 Forecast Rebate Information**).

**G.3 Inventories**

81. At all material times from Acquisition, Dick Smith Holdings and/or Dick Smith Sub-Holdings was required by Australian Accounting Standards to:

- a. measure the cost of inventories at Acquisition without including provisions for inventories in the nature of valuation allowances such as provision for obsolescence;

**Particulars**

*AASB 3, paragraph B41.*

- b. measure the cost of inventories using costs of purchase comprised of:
- (i) the purchase price;
  - (ii) plus, import duties and other taxes (other than those subsequently recoverable from taxing authorities such as GST);
  - (iii) plus, transport, handling and other costs directly attributable to the acquisition of goods;
  - (iv) less, trade discounts, rebates and other similar items related to the purchase; and
  - (v) without inflation factors or uplifts for obsolescence;

**Particulars**

*AASB 102, paragraph 11.*

- c. exclude from the cost of inventories and recognise as expenses in the period incurred:
- (i) storage costs unrelated to production;
  - (ii) administrative overheads that do not contribute to bringing inventories to their present location and condition; and
  - (iii) selling costs;

**Particulars**

*AASB 102, paragraph 16.*

- d. measure inventories at reporting dates at the lower of cost and NRV where:
- (i) estimates of net realisable value are based on the most reliable evidence available at the time estimates are made;
  - (ii) a new assessment of net realisable value is made in each period; and



- (iii) writedowns to net realisable value are made item by item (by SKU) for an electronics goods retailer;

**Particulars**

*AASB 102, paragraphs 9, 29, 30 and 33.*

- e. recognise as an expense at reporting dates the carrying amount of inventories when sold in the period the revenue from the sale is recognised where the carrying amount is either:

- (i) the cost of inventories in the books; or
- (ii) the net realisable value of inventories in the books;

**Particulars**

*AASB 102, paragraph 34.*

- f. recognise as an expense:

- (i) the amount of any writedown of inventories to NRV in the period the write-down occurs net of any reversals in NRV of inventories previously written down; and
- (ii) all losses of inventories in the period the loss occurs; and

**Particulars**

*AASB 102, paragraph 34.*

- g. disclose each of the following:

- (i) accounting policies adopted in measuring inventories including the cost formula used, for example, weighted average cost;
- (ii) the carrying amount of inventories carried at fair value less costs to sell;
- (iii) the amount recognised as an expense for any writedown of inventories to net realisable value;
- (iv) the amount of any reversal of any writedown to net realisable value that was recognised as a reduction in the amount of inventories recognised as an expense;
- (v) the circumstances that led to the reversal of a writedown of inventories to net realisable value; and

- (vi) the carrying amount of inventories pledged as security for liabilities.

**Particulars**

*AASB 102, paragraphs 36(a), 36(c), 36(e), 36(f), 36(g), 36(h).*

82. At all material times from Acquisition, Dick Smith Holdings and/or Dick Smith Sub-Holdings did not maintain inventory records to enable it or its external auditors to accurately identify the age of inventory items on each stock keeping unit (**SKU**).

**Particulars**

*Deloitte, Project Yellow Review p 48.*

*Management Stock Obsolescence Reports issued over the period Dec. 2012 to Dec. 2015.*

83. At all material times from Acquisition, Dick Smith Holdings and/or Dick Smith Sub-Holdings recorded ageing of inventory based on the last date each SKU was purchased, with all items in that SKU subsequently being recorded as being aged from that date.

**Particulars**

*Deloitte, Project Yellow Review p 48.*

84. By reason of the matters referred to in paragraphs 82 and 83, the Prospectus did not include any inventory ageing analysis.

**Particulars**

*Deloitte, Project Yellow Review p 48.*

85. At all material times from Acquisition, Dick Smith Holdings and/or Dick Smith Sub-Holdings accounted for inventories by:

- a. classifying individual SKUs as 'active' and 'non-active' where non-active meant items being exited or deranged comprised of:
  - (i) Quit stock - obsolete inventory;
  - (ii) No-reorder stock - inventory the supplier no longer allows to be ordered; and
  - (iii) Discontinued - inventory that is being discontinued from range at the option of Dick Smith Holdings and/or Dick Smith Sub-Holdings;

- b. measuring inventories at the lower of cost and net realisable value by using the active and non-active classifications to calculate the amount needed as provision for obsolescence, in aggregate, at period end;
- c. reclassifying SKUs on an ad hoc basis from the non-active classification to active stock;
- d. reclassifying SKUs on an ad hoc basis from quit stock to no-reorder or discontinued stock; and
- e. splitting individual SKUs into active and non-active and allocating most of the units to the active classification.

### **Particulars**

*(i) Dick Smith Buyers Manual, Section 4.8 No Reorder, Discontinued and Quit.*

*(ii) Deloitte Project Yellow Review p 48.*

*(iii) Management Stock Obsolescence Reports issued over the period Dec. 2012 to Dec. 2015.*

*(iv) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

86. As at 30 June 2013, inventory stated by Dick Smith Holdings to have a gross value of \$192.7 million before provisions and cost adjustments included:
- a. approximately \$42.6 million (22%) that was classified as "non-active", comprised of no-reorder \$15 million, discontinued \$26 million and quit \$1 million;
  - b. more than \$19.1 million (10%), which had been acquired from Woolworths at 26 November 2012;
  - c. 3,282 Australian SKUs (58%) in the non-active category comprised of 233 no-re-order SKUs (4%), 1,483 discontinued SKUs (26%), and 1,566 Quit SKUs (28%);
  - d. 2,870 Australian SKUs (50%) with a value of approximately \$19 million (12%) that had not been purchased for over six months, of which:
    - (i) \$7 million was classified as active inventory; and
    - (ii) \$12 million was classified as non-active inventory.

### Particulars

(i) *Deloitte, Project Yellow Review p 48.*

(ii) *Management Stock Obsolescence Report as at 29 June 2013.*

(iii) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

87. Between July and October 2013, the value of Dick Smith Sub-Holdings' "non-active" stock on hand was as follows:

July	:	\$39m	(20%)
August	:	\$39m	(18%)
September	:	\$44m	(21%)
October	:	\$44m	(17%)

### Particulars

(i) *s439A Report, Figure 12, page 49.*

(ii) *Figure 12 – Sourcedata.xlsx.*

88. At all material times following Acquisition Dick Smith Holdings and/or Dick Smith Sub-Holdings accounted for the obsolescence of inventories in the following manner  
**(Inventory Obsolescence Approach):**

- a. initially recognising the cost of inventories at above purchase cost;
- b. raising obsolesce and/or valuation provisions against inventories to bring the net balance initially recognised back to purchase cost;
- c. writing back the obsolescence and/or valuation provisions as income through cost of sales thereby reducing cost of sales on an ad hoc basis;
- d. classifying inventories as described at paragraph 85 in order to calculate the obsolescence provision at period end;
- e. without, systematically measuring the NRV of individual SKUs based on the real age of inventories; and
- f. thereby, not ensuring that inventories were measured at the lower of cost and NRV.

### Particulars

(i) *Deloitte Project Yellow Review, p 56.*

(ii) *Dick Smith Sub-Holdings Financial Report for the 10 month period ending 30 June 2013, p 26.*

(iii) *Management Stock Obsolescence Reports issued over the period Dec. 2012 to Dec. 2015.*

(iv) *DJ\_sale\_agreement.pdf and DJ\_stock\_markdown.pdf.*

(v) *Deloitte Report to the Finance and Audit Committee for the year ended 28 June 2015.*

(vi) *NAT 1326, 1329, 1330, 1332, 1333, 1336, 1339, 1346, 1348, 3296.*

(vii) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

89. The Inventory Obsolescence Approach did not comply with Australian Accounting Standards.

**Particulars**

(i) *AASB 3, paragraph B41*

(ii) *AASB 102, paragraphs 9, 10, 11, 15 and 34*

90. By 30 June 2013, obsolescence and valuation provisions for inventories had decreased from around \$51.2 million at Acquisition to around \$14.1 million. This decrease arose from writing back the provisions in the 7 months after 26 November 2012 by around \$37.1 million thereby reducing Cost of Sales by around \$37.1 million and increasing Gross Profit, EBITDA and NPAT.

**Particulars**

(i) *Deloitte Project Yellow Review, p 48.*

(ii) *Dick Smith Sub-Holdings Financial Reports for the 10 months ending 30 June 2013, p 26.*

91. On a date(s) presently unknown to the Plaintiffs during 1Q2014, the primary ledger account for the obsolescence provision was written back (released) by \$4.4 million thereby reducing Costs of Sales and increasing Gross Profit, EBITDA and NPAT.

**Particulars**

(i) *Deloitte Project Yellow Review, p 43.*

(ii) *NAT 1333 Provision for Obsolescence.*

92. As a result of the matters pleaded in paragraphs 90 and 91, the Prospectus Accounts were not prepared and presented in accordance with the Australian Accounting Standards.

**Particulars**

- (i) AASB 102 paragraphs 9 and 34.
- (ii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.

93. During 1Q2014, a further provision for obsolescence ledger account was created based on uplifting purchase invoice costs by 1%. This approach did not comply with Australian Accounting Standards.

**Particulars**

- (i) NAT 1332 Prov - Obsolescence Uplift 1%.
- (ii) AASB 102, paragraphs 10, 11 and 15.
- (iii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.

94. During October 2013, inventories purchased from David Jones were recorded as having:
- a. a cost of \$18 million despite the purchase price paid being around \$12.5 million; and
  - b. a related provision for obsolescence account was created with a balance of approximately \$5.5 million.

**Particulars**

- (i) DJ\_sale\_agreement.pdf and DJ\_stock\_markdown.pdf.
- (ii) NAT 1346 Prov David Jones Con Stk Obsol.

95. By the end of 1H2014, the provision account for David Jones' inventories had either been written back as income or transferred to the primary ledger account for the obsolescence provision to cover a shortfall in that account arising from other write backs.

**Particulars**

- (i) NAT 1346 Prov David Jones Con Stk Obsol.

(ii) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

96. The approach adopted in paragraphs 94 and 95 did not comply with Australian Accounting Standards.

#### **Particulars**

(i) *AASB 102, paragraphs 9 and 34.*

(ii) *Further particulars will be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

97. The effect of the Inventory Obsolescence Approach and the matters referred to in paragraphs 81 to 96 above, was that the Prospectus Accounts and the Growth Representations:

- a. reported and/or forecast:
  - (i) Gross Profit, EBITDA and NPAT at levels materially higher;
  - (ii) costs of sales at levels materially lower;
  - (iii) value of inventories at levels materially higher;
  - (iv) equity at levels materially higher,than that which would have been reported and/or forecast had the Inventory Obsolescence Approach not have been adopted;
- b. did not fairly present the financial performance and financial position of Dick Smith Sub-Holdings and Dick Smith Holdings; and
- c. did not disclose the carrying amount of inventories at lower of cost or NRV.

#### **Particulars**

(i) *As a result of the matters pleaded in paragraph 97 the Prospectus Accounts and the Growth Representations were not prepared and presented in accordance with the Australian Accounting Standards.*

(ii) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

98. The Prospectus did not disclose any of the matters referred to in paragraphs 82 to 96 above (**Prospectus Inventory Information**).

#### **G.4 Non Disclosed Adjustments**

##### Onerous Leases Provision

99. On Acquisition, an onerous leases provision of around \$13.8 million was raised for excess lease space for stores and unprofitable stores (**Onerous Leases Provision**). As at 30 June 2013, the remaining onerous leases provision was \$12.4 million and it was expected to unwind over 8 years.

**Particulars**

*(i) Deloitte, Project Yellow Review p 42.*

*(ii) NAT 2297 Prov for Onerous Leases – NC.*

*(iii) NAT 2298 Prov Onerous Lease – Current.*

100. After Acquisition, the Onerous Leases Provision was written back as income against costs of doing business (**Onerous Leases Adjustment**) as follows:

- a. \$1.4 million for June 2013 and FY2013;
- b. \$0.6 million for 1Q2014; and
- c. \$8.6 million for the two year period to 30 June 2015.

**Particulars**

*NAT 6017 Onerous Lease Writeback.*

101. The approach adopted in paragraphs 99 and 100 did not comply with Australian Accounting Standards.

**Particulars**

*(i) AASB 137, paragraphs 66-69.*

*(ii) NAT 2172 Provision for Impairment – PPE*

*(iii) Further particulars will be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

Receivables Provisions

102. On Acquisition, Dick Smith Sub-Holdings recognised provisions for doubtful debts of \$5.4 million, including a provision for other receivables relating to amounts due from vendors (**Doubtful Debts Provision**).

**Particulars**

*NAT 1120 Prov D/Debts Trade; NAT 1121 Prov D/Debts Finance Contracts;  
NAT 1122 Prov D/Debts Non Trade; NAT 1126 Prov D/Debts Other Receivable.*



103. On or around 30 June 2013, Dick Smith Sub-Holdings also recognised a provision of at least \$3.8 million in Current Liabilities for disputed vendor claims (**Disputed Claims Provision**). In April 2014, the Disputed Claims Provision was increased by \$2.4 million via the transfer of an aged creditor into the account.

**Particulars**

- (i) NAT 2169 Prov for Disputed Vnd Claims.*
- (ii) NAT 2271 Wages Clearing Preceda Woolwor*
- (iii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

104. After Acquisition, the Doubtful Debts Provision and Disputed Claims Provision were written back as income against costs of doing business (**Receivables Provision Adjustment**) as follows:

- a. \$1.0 million for 1H2014;
- b. \$5.0 million for FY2014.

**Particulars**

- (i) NAT 5037 Doubtful Debts Prov Non Trade.*
- (ii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

105. The approach adopted in paragraphs 102 to 104 did not comply with Australian Accounting Standards.

**Particulars**

- (i) AASB 3, paragraph B41.*
- (ii) AASB 101, paragraphs 15-17 and 32.*
- (iii) AASB 137, paragraph 14.*
- (iv) Further particulars will be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

Warranty Sign On Liability

106. On Acquisition, Dick Smith Sub-Holdings recognised a warranty sign-on liability of around \$2.1 million (**Warranty Sign On Liability**).

### Particulars

*(i) NAT 2001 Warranty Sign On Rebate.*

*(ii) Deloitte, Project Yellow Review p 52.*

107. After Acquisition, the Warranty Sign On Liability was written back as income against cost of sales (**Warranty Sign On Liability Adjustments**) as follows:

- a. \$0.4 million for FY2013;
- b. \$0.2 million for 1Q2014;
- c. \$0.3 million for 1H2014;
- d. \$1.6 million for FY2014.

### Particulars

*(i) NAT 7133 Warranty Rebate and NAT 7440 Other General.*

*(ii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

108. The approach adopted in paragraphs 106 and 107 did not comply with Australian Accounting Standards.

### Particulars

*(i) Deloitte, Project Yellow Review p 52.*

*(ii) AASB 101, paragraphs 15, 49 and 51.*

*(iii) Further particulars will be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

### Capitalisation of Employee and Other Costs

109. After Acquisition, Dick Smith Sub-Holdings and/or Dick Smith Holdings capitalised certain employee and other costs into the cost of assets (**Capitalisation of Costs Approach**).

### Particulars

*(i) Internal Document, Accounting Paper AASB 102 – Inventories: Other Costs.*

*(ii) NAT 4111 Recovery – Wages On Costs; NAT 4155 Recovery – Wages Gross Salary; and NAT 7431 Recovery – CODB.*

*(iii) In relation to Inventories: NAT 1358 Prov for AASB 102 Cost DC FRT.*

*(iv) In relation to Plant and Equipment: NAT 1203 Prepaid Plant New Stores WIP.*

(v) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

110. After Acquisition, the Capitalisation of Costs Approach resulted in the increasing deferral of expense recognition for gross wages and salaries as follows:

- a. \$1.1 million (1.8%) for FY2013;
- b. \$0.9 million (4.3%) for 1Q2014;
- c. \$1.7 million (3.6%) for 1H2014;
- d. \$4.0 million (4.4%) for FY2014;
- e. \$4.2 million (8.6%) for 1H2015;
- f. \$8.1 million (8.4%) for FY2015.

#### **Particulars**

(i) *NAT 4110 Gross Salaries (ex Hol Pay) an NAT 4155 Recovery – Wages Gross Salary.*

(ii) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

111. The Capitalisation of Costs Approach did not comply with Australian Accounting Standards.

#### **Particulars**

(i) *AASB 102, paragraphs 10, 11, 15, 16 and 34.*

(ii) *AASB 116, paragraphs 15, 16, 19 and 201.*

(iii) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

#### **Breakages and Cost Adjustments**

112. In the month of June 2013, Dick Smith Sub-Holdings recognised inventory expenses for breakages and cost adjustments of \$1.5 million.

113. On a date(s) presently unknown to the Plaintiffs during 1Q2014, Dick Smith Sub-Holdings recorded breakages and cost adjustments of \$1.4 million as a reduction in the cost of sales (**Breakages and Cost Adjustments**).

### Particulars

*(i) NAT 3249 Cost Adjustment - First Margin; and NAT 3260 Write Offs of Breakages.*

*(ii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

114. The approach adopted in paragraphs 112 and 113 did not comply with Australian Accounting Standards.

### Particulars

*(i) AASB 101, paragraph 27.*

*(ii) Further particulars will be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

### Conclusion

115. The effect of the Onerous Leases Adjustment, Receivables Provision Adjustment, Warranty Sign-On Liability Adjustments, Capitalisation of Costs Approach, Breakages and Cost Adjustments (collectively, the **Adjustment Approach**) and the matters referred to in paragraphs 99 to 114 above, was that the Prospectus Accounts and the Growth Representations:

a. Reported and/or forecast:

- (i) Gross Profit, EBITDA and NPAT at levels materially higher;
- (ii) costs of sales and/or costs of doing business at levels materially lower;
- (iii) assets at levels materially higher;
- (iv) equity at levels materially higher,

than that which would have been reported and/or forecast had the Adjustment Approach not been adopted (**Adjustments Information**); and

b. did not fairly present the financial performance and financial position of Dick Smith Sub-Holdings and Dick Smith Holdings.

### Particulars

*(i) As a result of the matters pleaded in paragraph 115 the Prospectus Accounts and the Growth Representations were not prepared and presented in accordance with the Australian Accounting Standards.*

(ii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.

## G.5 Liquidity and Capital Adequacy

### Woolworths Payment Information

116. Prior to Acquisition, Woolworths supplied the Dick Smith Business with funding for working capital.
117. Pursuant to the Share Sale Agreement and/or the May 2013 Woolworths Agreement, Dick Smith Sub-Holdings was indebted to Woolworths for the Acquisition (**Woolworths Indebtedness**).
118. Pursuant to the Share Sale Agreement and/or the May 2013 Woolworths Agreement, the Woolworths Indebtedness was repaid by Dick Smith Sub-Holdings and/or Dick Smith Holdings (**Woolworths Capital Payments**) as follows:

	Amount	Date
	\$m	
Initial Payment	5.0	Nov 2012
Completion Net Amount	9.4	Nov/Dec 2012
Net Amount	11.8	Feb 2013
Inter Company Loan	15.0	May 2013
Second Payment	50.0	May 2013
Deferred Payments	24.0	H1 2014
	<u>\$115.2</u>	

119. Immediately prior to the Acquisition, on or about 31 August 2012, Anchorage provided Dick Smith Sub-Holdings with working capital in the sum of approximately \$10 million.
120. The Woolworths Capital Payments were funded either in whole or in significant part by Dick Smith Sub-Holdings and Dick Smith Holdings with the exception of the Completion Net Amount which was paid by draw down on a financing facility provided by GE Capital at or around Acquisition (**GE Facility**) (**Woolworths Payment Information**).

### Particulars

(i) FY13 Stat Accounts, p.11; and 1H14 Stat Accounts, p.12.

(ii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.

121. The Prospectus did not disclose the Woolworths Payment Information.

### Historical Equity and Cash Flow Position.

122. The Prospectus recorded that:

- a. Dick Smith Sub Holding's equity at 30 June 2013 was on a statutory and (pro forma) basis to be \$156.5m (\$116.5m); and

**Particulars**

*Prospectus, p.60.*

- b. Dick Smith Sub-Holdings had negative cash flows from operating activities of \$40.8 million for H2 2013, with receipts from customers being \$641.4 million and payment to suppliers and employees being \$682.0 million.

**Particulars**

*FY13 stat accounts, p.11; and 1H13 stat accounts, p.12.*

- 123. The completion of the Offer also caused Dick Smith Holdings to incur further cash outflows, including:
  - a. \$21 million relating to expenses associated with the Prospectus; and
  - b. a \$15 million payment to Anchorage, described in the Prospectus as cash excess in Dick Smith Holdings.

**Particulars**

*Prospectus, pp. 134 and 156*

- 124. The matters referred to in paragraphs 116 to 123 (**Historical Cash Flow Information**) were not disclosed in the Prospectus.

**G.6 Undisclosed Material Facts**

- 125. The Prospectus did not disclose the:
  - a. Acquisition Accounting Information (see paragraph 32);
  - b. Sales Trend Information (see paragraph 54);
  - c. Sales Accounting Information (see paragraph 65);
  - d. Retail Sales Information (see paragraph 68);
  - e. O & A Rebate Information (see paragraph 76);
  - f. Prospectus Inventory Information (see paragraph 98);
  - g. Adjustments Information (see paragraph 115);
  - h. Woolworths Payment Information (see paragraph 120); and
  - i. Historical Cash flow information (see paragraph 124).

(together the **General Prospectus Information**).

126. The Prospectus did not disclose:

- a. that Dick Smith Sub-Holdings' reported results for the period to 30 June 2013 were dependent upon each of the:
  - (i) Sales Accounting Approach (see paragraph 61);
  - (ii) Rebate-Maximisation Policy (see paragraph 71);
  - (iii) Rebate Accounting Approach (see paragraph 73); and
  - (iv) Inventory Obsolescence Approach (see paragraph 88);
- b. the effect on the reported results for the period to 30 June 2013 of each of the matters referred to in sub-paragraph a. above set out above,

(each, and together, the **FY2013 Results Information**).

127. Each of the:

- a. Acquisition Accounting Information (see paragraph 32);
- b. Sales Accounting Information (see paragraph 65);
- c. O & A Rebate Information (see paragraph 76);
- d. Prospectus Inventory Information (see paragraph 98);
- e. Adjustments Information (see paragraph 115); and
- f. FY2013 Results Information,

was a material qualification that had to accompany the 2013 Performance Representations if those representations were not to be misleading or deceptive.

128. Each of the:

- a. Acquisition Accounting Information (see paragraph 32);
- b. O & A Rebate Information (see paragraph 76);
- c. Prospectus Inventory Information (see paragraph 98);
- d. Adjustments Information (see paragraph 115);
- e. Woolworths Payment Information (see paragraph 120); and
- f. FY2013 Results Information,

was a material qualification that had to accompany the 2013 Balance Sheet Representations if those representations were not to be misleading or deceptive.

129. The Prospectus did not disclose:

- a. that the 1Q2014 Results had been prepared by reference to, and based upon, the:
  - (i) Sales Accounting Approach;
  - (ii) Rebate-Maximisation Policy;
  - (iii) Rebate Accounting Approach; and
  - (iv) Inventory Obsolescence Approach.
- b. the effect on the reported results for the 1Q2014 of each of the matters referred to in sub-paragraph a. above, (each, and together, the **1Q2014 Results Information**).

130. Each of the:

- a. Acquisition Accounting Information (see paragraph 32);
- b. Sales Accounting Information (see paragraph 65);
- c. O & A Rebate Information (see paragraph 76);
- d. Prospectus Inventory Information (see paragraph 98);
- e. Adjustments Information (see paragraph 115); and
- f. 1Q2014 Results Information,

was a material qualification that had to accompany the 1Q2014 Performance Representations if those representations were not to be misleading or deceptive.

131. The Prospectus did not disclose:

- a. that the Growth Representations were based upon:
  - (i) the Sales Accounting Approach;
  - (ii) Rebate-Maximisation Policy;
  - (iii) Rebate Accounting Approach; and
  - (iv) Inventory Obsolescence Approach.
- b. the FY2014 Forecast Rebate Information;
- c. the reliance on the matters referred to in sub-paragraph a. above by Dick Smith Holdings in making the Growth Representations  
(each, and together, the **FY2014 Performance Information**).



132. The FY2014 Performance Information was a material qualification that had to accompany the Growth Representations if those representations were not to be misleading or deceptive.
133. Each of the:
- a. General Prospectus Information;
  - b. FY2013 Results Information;
  - c. 1Q2014 Results Information; and
  - d. FY2014 Performance Information,
- were material qualifications that had to accompany the Transformation Representations if those representations were not to be misleading or deceptive.
134. By reason of the matters set out in paragraphs 125 to 133 above, the Prospectus Accounts did not give a true and fair view of the financial position and performance of Dick Smith Holdings, Dick Smith Sub-Holdings and the DSE Group.

## **H. THE POST PROSPECTUS REPRESENTATIONS**

### **H.1 2014 Half Yearly Results**

135. On 19 February 2014, Dick Smith Holdings:
- a. made an announcement to the ASX;
  - b. published a 1H2014 Results Briefing; and
  - c. published a Half Year Financial Report for the 26 Weeks ended 29 December 2013 (together referred to as the **2014 Half Year Results**).
136. The 2014 Half Yearly Results made the following statements (each a **2014 Half Yearly Results Representation**):
- a. robust sales of \$637m in line with the Prospectus forecast of around \$637.5m;
  - b. Australian like for like sales growth of 1.4% attributed to the level of discounting in 1H2013;
  - c. Pro forma gross profit of \$160.9m, with gross margin of 25.3% better than the Prospectus FY2014 forecast of 25.1%;
  - d. Pro forma EBITDA of \$41.7m being \$1.4m (4%) higher than the Prospectus forecast of \$40.2m; and

- e. Dick Smith Holdings had a strong balance sheet with no debt reflecting strong cash generation and improved inventory quality.
137. The 2014 Half Yearly Results made the following statements (each a **2014 Half Yearly Compliance Representation**):

- a. *"The attached financial statements and notes thereto are in accordance with the Corporations Act 2001, including compliance with accounting standards and giving a true and fair view of the financial position and performance of the company and the consolidated entity"; and*

**Particulars**

*2014 Half Year Financial Report, Directors' Declaration, p 7.*

- b. *"These condensed consolidated financial statements have been prepared using the same accounting policies as used in the annual financial statements of Dick Smith Sub-Holdings Pty Limited for the period ended 30 June 2013, except for the adoption of amending standards mandatory for annual reports beginning on or after 1 July 2013. These accounting policies are consistent with Australian Accounting Standards and with International Financial Reporting Standards."*

**Particulars**

*2014 Half Year Financial Report, p 14.*

## **H.2 2014 Yearly Results**

138. On 19 August 2014, Dick Smith Holdings:
- a. made an announcement to the ASX;
  - b. published a FY2014 Results Briefing; and
  - c. published its Annual Report,
- (together referred to as the **FY2014 Results**).
139. The 2014 Yearly Results made the following statements (each a **2014 Yearly Results Representation**):
- a. *"Dick Smith beats FY14 Prospectus NPAT by 5.3%";*
  - b. The company's strong strategy and trading focus delivered results ahead of the Prospectus forecasts;
  - c. Total sales grew 4.2% to \$1,227.6m, 0.1% ahead of the Prospectus;

- d. Q4 FY14 total sales grew 10.2%;
- e. Australian like for like sales up 0.8%, +4.0% in Q4 FY14;
- f. Q4 FY14 Australian total sales grew 15.4%;
- g. Cost of sales were \$919.6m, with gross profit of \$308.0m;
- h. EBITDA \$74.4m, beating Prospectus by 3.6%;
- i. Gross margin was consistent with the Prospectus, improving 140bp to 25.1% in the year (FY13: 23.7%);
- j. Cost of doing business (**CODB**) improved 290bp to 19.0% (FY13: 21.9%), which was 20bp ahead of the Prospectus;
- k. Pro forma EBITDA was \$74.4 million, 3.6% ahead of Prospectus;
- l. Dick Smith's balance sheet remains strong, with no debt at 29 June 2014, Trade and Other Receivables were \$46.7m, Inventories \$253.8m, Total Current Assets were \$335.9m and Total Equity was \$166.9m;
- m. *"Dick Smith is well place to deliver further strong profit growth in FY15. Sales are expected to continue to benefit LFL sales growth ... We anticipate our CODB to sales ratio to decline... Dick Smith's result demonstrates that we can achieve sales growth and improve margins... Dick Smith is well positioned for another year of strong performance."*

140. The 2014 Yearly Results included the following statement (each a **2014 Annual Report Compliance Representation**):

- a. *"The financial statements are general purpose financial statements which have been prepared in accordance with the Corporations Act 2011 (Cth), Accounting Standards and Interpretations, and comply with other requirements of the law"; and*
- b. *"The Group has adopted all of the new and revised standards and Interpretations issued by the Accounting Standards Board (AASB) that are relevant to their operations and effective for the current year."*

#### **Particulars**

*2014 Annual Report, pp 53-54.*

### **H.3 2015 Half Yearly Results**

141. On 17 February 2015, Dick Smith Holdings:

- a. made an announcement to the ASX;
  - b. published a 1H2015 Results Briefing; and
  - c. published a half-year financial report for the 26 weeks ended 28 December 2014 (together referred to as the **2015 Half Yearly Results**).
142. The 2015 Half Yearly Results made the following statements (each a **2015 Half Yearly Results Representation**):
- a. The Company's Growth Strategy momentum accelerates and delivers results;
  - b. Total sales up 8.9% (1H 2015: \$693.8m v 1H2014: \$637.0m);
  - c. Comparable sales up 2.0% with Australia up 4.0%;
  - d. Cost of sales were \$522.1m, with gross profit of \$171.7m;
  - e. Marketing and selling costs were \$58.5m;
  - f. EBITDA up 7.1% (1H2015: \$44.7m v 1H2014: \$41.7m);
  - g. CODB decreasing 41bp to 18.3% of sales in 1H2015;
  - h. Dick Smith's balance sheet remains strong, with no debt as at 28 December 2014;
  - i. Inventory was tightly managed throughout the half. The increase in inventory levels during 1H2015 (to \$335.8m) strongly positions the Company for sustainable growth; and
  - j. Trade and Other Receivables were \$79.6m, Total Current Assets were \$444.7m and Total Equity was \$179.1m.

143. The 2015 Half Yearly Results included the following statements (each a **2015 Half Yearly Compliance Representation**):

- a. *"The attached financial statements and notes thereto are in accordance with the Corporations Act 2001, including compliance with accounting standards and giving a true and fair view of the financial position and performance of the Group".*

#### **Particulars**

*2015 Half Yearly Results, Directors' Declaration, p 6.*

- b. *"These condensed consolidated financial statements have been prepared using the same accounting policies as used in the annual financial*

*statements of Dick Smith Holdings Limited for the year ended 29 June 2014....These accounting policies are consistent with Australian Accounting Standards..."*

#### **Particulars**

*2015 Half Yearly Results, p 11.*

#### **H.4 2015 Yearly Results**

144. On 18 August 2015, Dick Smith Holdings:
- a. made an announcement to the ASX;
  - b. published a FY2015 Results Briefing; and
  - c. published its 2015 Annual Report,
- (together referred to as the **2015 Yearly Results**).
145. The 2015 Yearly Results made the following statements (each a **2015 Yearly Results Representation**) being:
- a. Growth Strategy delivered solid underlying performance;
  - b. Total sales up 7.5% (FY2015: \$1,319.7m v FY2014: \$1,227.6m);
  - c. Gross profit \$326.8m and marketing and selling costs \$112.9m;
  - d. A second year of solid performance as the Company's Growth Strategy continues to resonate with CODB decreasing 32bp to 18.3% of sales in 2015;
  - e. EBITDA up 7.3% (FY2015: \$79.8m v 1 FY2014: \$74.4m);
  - f. Balance sheet remains strong with Net Debt at 28 June 2015 of \$41.0m and trade receivables of \$53.3m, total Current Assets of \$390.0m and Total Equity of \$169.1m;
  - g. The higher inventory at June 2015 of \$293.0m (compared to 2014) reflects new store requirements, the continued expansion of our Private Label brands, the positioning of the Company for future growth and the timing of year end, with one additional 'tax-time' sales day in the new year.

#### **Particulars**

*2015 Annual Report, p 66.*

146. The 2015 Annual Report stated (each a **2015 Annual Report Compliance Representation**):

- a. *"The attached financial statements and notes thereto are in accordance with the Corporations Act...including compliance with accounting standards and giving a true and fair view of the financial position and performance of the Company and the consolidated entity"; and*

**Particulars**

*2015 Annual Report, p 50.*

- b. *"These financial statements are general purpose financial statements which have been prepared in accordance with the Corporations Act...Accounting Standards and Interpretations, and comply with other requirements of the law."*

**Particulars**

*2015 Annual Report, p 56.*

**I. POST PROSPECTUS MATERIAL FACTS**

**I.1 Post Prospectus Sales**

Agency Sales

147. The Plaintiffs repeat paragraphs 61 and 63 above.
148. Dick Smith Holdings adopted the Agency Sales Accounting Approach in the preparation of each of the:
- a. 2014 Half Year Results;
  - b. 2014 Yearly Results;
  - c. 2015 Half Yearly Results; and
  - d. 2015 Yearly Results (the **Post Prospectus Accounts**).

Sales Mix

149. The Plaintiffs repeat paragraphs 66 and 67 above.
150. Further:
- a. in FY2015, sales of \$421m had negative gross margin;

**Particulars**

*S439 Report, page 47.*

- b. in FY2015, sales of \$42m by David Jones concession stores, had negative gross margin; and

## **Particulars**

*S439 Report, page 47.*

- c. in the calendar years 2014 and 2015, revenue from existing stores fell by a total of \$113m (or 10% of total sales).

## **Particulars**

*(i) S439A Report, p 47.*

*(ii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

### **I.2 Post Prospectus Rebates**

- 151. The Plaintiffs repeat paragraphs 69 to 75 above.
- 152. Dick Smith Holdings adopted the Rebate Accounting Approach in the preparation of each of the Post Prospectus Accounts.

### **I.3 Post Prospectus Inventories**

- 153. The Plaintiffs repeat paragraphs 81 above.
- 154. Dick Smith Holdings adopted the Inventory Obsolescence Approach in the preparation of each of the Post Prospectus Accounts.

### **I.4 Undisclosed Material Facts**

#### **2014 Half Yearly Results**

- 155. The 2014 Half Yearly Results were prepared by adopting the:
  - a. Rebate Accounting Approach;
  - b. Sales Accounting Approach;
  - c. Inventory Obsolesce Approach;
  - d. Onerous Leases Adjustment;
  - e. Receivables Provision Adjustment;
  - f. Warranty Sign On Liability Adjustments; and
  - g. Capitalisation of Costs Approach.
- 156. The adoption of the matters referred to in paragraph 155 had the effect of:
  - a. increasing reported Gross Profit and reducing the reported Costs of Doing Business with the result of increasing reported EDITDA and NPAT;

- b. overstating the value of inventories, with the effect of overstating the level of equity;
- c. enabling Dick Smith Holdings to report Gross Profit, EBITDA and NPAT at levels in excess of what should have been reported had those matters not have been adopted; and
- d. enabling Dick Smith Holdings to report a value of inventories and equity in excess of what should have been reported had those matters not have been adopted.

### **Particulars**

*Particulars may be provided following the preparation of the Plaintiffs' expert evidence.*

157. The 2014 Half Yearly Results did not disclose the existence of the:
- a. Acquisition Accounting Information (see paragraph 32);
  - b. Sales Trend Information (see paragraph 59);
  - c. Sales Accounting Approach (see paragraph 61);
  - d. Retail Sales Information (see paragraph 68);
  - e. O & A Rebate Information (see paragraph 76);
  - f. Inventory Obsolescence Approach (see paragraph 88);
  - g. Prospectus Inventory Information (see paragraph 98);
  - h. Post Prospectus Debt Information (see paragraph 183); or
  - i. matters referred to in paragraphs 155 to 156,
- (each, and together, the **2014 Half Yearly Results Information**).
158. The 2014 Half Yearly Results Information was material information that had to accompany the 2014 Half Yearly Results Representations if those representations were not to be misleading or deceptive, or be likely to mislead or deceive.
159. By reason of the matters set out in paragraphs 155 to 158 above, the 2014 Half Yearly Results did not give a true and fair view of the financial position and performance of Dick Smith Holdings and the DSE Group.

### **2014 Yearly Results**

160. The 2014 Yearly Results were prepared by adopting the:



- a. Rebate Accounting Approach;
  - b. Sales Accounting Approach;
  - c. Inventory Obsolesce Approach;
  - d. Onerous Leases Adjustment;
  - e. Receivables Provision Adjustment;
  - f. Warranty Sign On Liability Adjustment; and
  - g. Capitalisation of Costs Approach.
161. The adoption of the matters referred to in paragraph 160 had the effect of:
- a. increasing reported Gross Profit and reducing the reported Costs of Doing Business with the result of increasing reported EDITDA and NPAT;
  - b. overstating the value of inventories, with the effect of overstating the level of equity;
  - c. enabling Dick Smith Holdings to report Gross Profit, EBITDA and NPAT at levels in excess of what should have been reported had those matters not have been adopted; and
  - d. enabling Dick Smith Holdings to report a value of inventories and equity in excess of what should have been reported had those matters not have been adopted.

### **Particulars**

*Particulars may be provided following the preparation of the Plaintiffs' expert evidence.*

162. The 2014 Yearly Results did not disclose the existence of the:
- a. Acquisition Accounting Information (see paragraph 32);
  - b. Sales Trend Information (see paragraph 59);
  - c. Sales Accounting Approach (see paragraph 61);
  - d. Retail Sales Information (see paragraph 68);
  - e. O & A Rebate Information (see paragraph 76);
  - f. Inventory Obsolescence Approach (see paragraph 88);
  - g. Prospectus Inventory Information (see paragraph 98);
  - h. Post Prospectus Debt Information (see paragraph 183); or

- i. matters referred to in paragraphs 160 and 161,  
(each, and together, the **2014 Yearly Results Information**).
163. The 2014 Yearly Results Information was material information that had to accompany the 2014 Yearly Results Representations if those representations were not to be misleading or deceptive, or be likely to mislead or deceive.
164. By reason of the matters set out in paragraphs 160 to 163 above, the 2014 Yearly Results did not give a true and fair view of the financial position and performance of Dick Smith Holdings.

### **2015 Half Yearly Results**

165. The 2015 Half Yearly Results were prepared by adopting the:
- a. Rebate Accounting Approach;
  - b. Sales Accounting Approach;
  - c. Inventory Obsolesce Approach;
  - d. Onerous Leases Adjustment; and
  - e. Capitalisation of Costs Approach;
166. The adoption of the matters referred to in paragraph 165 had the effect of:
- a. increasing reported Gross Profit and reducing the reported Costs of Doing Business with the result of increasing reported EDITDA and NPAT;
  - b. overstating the value of inventories, with the effect of overstating the level of equity;
  - c. enabling Dick Smith Holdings to report Gross Profit, EBITDA and NPAT at levels in excess of what should have been reported had those matters not have been adopted; and
  - d. enabling Dick Smith Holdings to report a value of inventories and equity in excess of what should have been reported had those matters not have been adopted.

### **Particulars**

*Particulars may be provided following the preparation of the Plaintiffs' expert evidence.*

167. The 2015 Half Yearly Results did not disclose the existence of the:
- a. Acquisition Accounting Information (see paragraph 32);

- b. Sales Trend Information (see paragraph 59);
  - c. Sales Accounting Approach (see paragraph 61);
  - d. Retail Sales Information (see paragraph 68);
  - e. O & A Rebate Information (see paragraph 76);
  - f. Inventory Obsolescence Approach (see paragraph 88);
  - g. Prospectus Inventory Information (see paragraph 98);
  - h. Post Prospectus Debt Information (see paragraph 183); or
  - i. matters referred to in paragraphs 165 to 166,
- (each, and together, the **2015 Half Yearly Results Information**).
168. The 2015 Half Yearly Results Information was material information that had to accompany the 2015 Half Yearly Results Representations if those representations were not to be misleading or deceptive, or be likely to mislead or deceive.
169. By reason of the matters set out in paragraphs 165 to 168, the 2015 Half Yearly Results did not give a true and fair view of the financial position and performance of Dick Smith Holdings and the DSE Group.

### **2015 Yearly Results**

170. The 2015 Yearly Results were prepared by adopting the:
- a. Rebate Accounting Approach;
  - b. Sales Accounting Approach;
  - c. Inventory Obsolesce Approach;
  - d. Onerous Leases Adjustment;
  - e. Capitalisation of Costs Approach; and
  - f. Other Cost of Sales Income Adjustments.
171. The adoption of the matters referred to in paragraph 170 had the effect of:
- a. increasing reported Gross Profit and reducing the reported Costs of Doing Business with the result of increasing reported EDITDA and NPAT;
  - b. overstating the value of inventories, with the effect of overstating the level of equity;

- c. enabling Dick Smith Holdings to report Gross Profit, EBITDA and NPAT at levels in excess of what should have been reported had those matters not have been adopted; and
- d. enabling Dick Smith Holdings to report a value of inventories and equity in excess of what should have been reported had those matters not have been adopted.

### **Particulars**

*Particulars may be provided following the preparation of the Plaintiffs' expert evidence.*

172. The 2015 Yearly Results did not disclose the existence of the:
- a. Acquisition Accounting Information (see paragraph 32);
  - b. Sales Trend Information (see paragraph 59);
  - c. Sales Accounting Approach (see paragraph 61);
  - d. Retail Sales Information (see paragraph 68);
  - e. O & A Rebate Information (see paragraph 76);
  - f. Inventory Obsolescence Approach (see paragraph 88);
  - g. Prospectus Inventory Information (see paragraph 98);
  - h. Post Prospectus Debt Information (see paragraph 183); or
  - i. matters referred to in paragraphs 170 to 171 above,
- (together the **2015 Yearly Results Information**).
173. The 2015 Yearly Results Information was material information that had to accompany the 2015 Yearly Results Representations if those representations were not to be misleading or deceptive, or be likely to mislead or deceive.
174. By reason of the matters set out in paragraphs 170 to 173, the 2015 Yearly Results did not give a true and fair view of the financial position and performance of Dick Smith Holdings.

### **I.5 Post Prospectus Debt**

175. During December 2013, the GE Facility was drawn down by at least \$27.2 million in December 2013.
176. The GE Facility was repaid to a zero balance by 29 December 2013.

177. The GE Facility was drawn down in each month from January 2014, to May 2014, inclusive to a level greater than \$35 million.
178. The GE Facility was repaid to a zero balance prior to 29 June 2014.
179. In about June 2014, the GE Facility was replaced with a facility provided by Westpac (**Westpac Facility**).
180. The Westpac Facility was reported as being drawn down in June 2014 and remained drawn in each month from July 2014 to November 2014 to a level greater than \$44 million.
181. The Westpac Facility was repaid to a zero balance prior to 28 December 2014.
182. The Westpac Facility remained drawn in each month from January 2015 to May 2014 to a level greater than \$45 million until it was repaid prior to 30 June 2015.
183. By reason of the matters referred to in paragraphs 175 to 182, Dick Smith Sub-Holdings and/or Dick Smith Holdings adopted a practice of repaying debt to a zero balance in the period immediately prior to the dates on which the Post Prospectus Accounts were released, and then drawing down on that debt in the period immediately after the relevant Post Prospectus Accounts were released (**Post Prospectus Debt Information**).

**J. WHAT DICK SMITH HOLDINGS OUGHT REASONABLY TO HAVE KNOWN**

**J.1 What Abboud and/or Potts ought reasonably to have known or ought reasonably to, by making inquiries, obtained at the Prospectus date**

*J.1.1 The General Prospectus Information*

Acquisition Accounting Information

184. At all material times up to and including the date of the Prospectus, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the Acquisition Accounting Information, by virtue of:
- a. the matters pleaded at paragraphs 9 and 10;
  - b. the respective duties required to be fulfilled by Abboud and Potts in performing the positions pleaded at paragraphs 9 and 10;
  - c. their knowledge of, and role in, the implementation by Dick Smith Sub-Holdings of its accounting practice, policies, approaches and procedures; and
  - d. their knowledge of, at least, the:

- (i) Dick Smith Sub-Holdings general ledger accounts (NAT) as at 25 November 2012; and
- (ii) Dick Smith Sub-Holdings Financial Report for the 10 month period ending 30 June 2013.

### **Particulars**

- (i) *The Dick Smith Sub-Holdings Financial Report for the 10 month period ending 30 June 2013 was submitted by the directors of Dick Smith Sub-Holdings, including Abboud (p 1) and contains a Director's Declaration signed by the Chairman of the Board of DSH on behalf of himself and the other directors of DSH, including Abboud (p 7).*
- (ii) *Abboud and/or Potts' knowledge of the Dick Smith Sub-Holdings general ledger accounts (NAT) as at 25 November 2012 is to be inferred from their positions.*
- (iii) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

### Sales Trend Information

185. At all material times up to and including the date of the Prospectus, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the Sales Trend Information, by virtue of:
- a. the matters pleaded at paragraphs 9 and 10;
  - b. the respective duties required to be fulfilled by Abboud and Potts in their performance of the positions pleaded at paragraphs 9 and 10;
  - c. their knowledge of, and role in, the implementation by Dick Smith Sub-Holdings of its accounting practice, policies approaches and procedures; and
  - d. their knowledge of, at least, the information:
    - (i) in the Monthly Management Reports July, August, and Sept. 2013 and 2014;
    - (ii) presented by Potts at the 27 November 2013 Board Meeting regarding the first five months of FY2014 at which Abboud was present; and
    - (iii) on page 36 of the Deloitte Project Yellow Review.

### **Particulars**

*(i) Abboud and Potts' knowledge of the Monthly Management Reports July, August, and Sept. 2013 and 2014 is to be inferred from their positions.*

*(ii) 27 November 2013 Board Minutes.*

*(iii) The Deloitte, Project Yellow Report, is addressed to the Directors of Dick Smith Holdings as at 7 November 2013, which includes Abboud.*

*(iv) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

### **Sales Accounting Information**

186. At all material times up to and including known or ought reasonably to have the date of the Prospectus, Abboud and Potts ought reasonably to have, by making inquiries, obtained the Sales Accounting Information, by virtue of:

- a. the matters pleaded at paragraphs 9 and 10;
- b. the respective duties required to be fulfilled by Abboud and Potts' in their performance of the positions pleaded at paragraphs 9 and 10;
- c. their knowledge of, and role in, the implementation by Dick Smith Sub-Holdings of its accounting practice, policies approaches and procedures; and
- d. their knowledge of, at least:
  - (i) the Prospectus Accounts (the DSSH 2013 Financial Statements and the accounts for July, August and September FY2014); and
  - (ii) the preparation of the Prospectus Accounts.

### **Particulars**

*(i) The Plaintiffs repeat the particulars at paragraph 184 with respect to the Dick Smith Sub-Holdings Financial Report for the 10 month period ending 30 June 2013.*

*(ii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

### **Retail Sales Information**

187. At all material times up to and including the date of the Prospectus, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the Retail Sales Information, by virtue of:
- a. the matters pleaded at paragraphs 9 and 10;
  - b. the respective duties required to be fulfilled by Abboud and Potts in their performance of the positions pleaded at paragraphs 9 and 10;
  - c. their knowledge of, and role in, the implementation by Dick Smith Sub-Holdings of its accounting practice, policies approaches and procedures; and
  - d. their knowledge of, at least, the information in the Monthly Management Reports – December 2012 to November 2013.

**Particulars**

- (i) *Abboud and Potts' knowledge of the Monthly Management Reports – December 2012 to November 2013 is to be inferred from their positions.*
- (ii) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

O & A Rebate Information

188. At all material times up to and including the date of the Prospectus, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the O & A Rebate Information, by virtue of:
- a. the matters pleaded at paragraphs 9 and 10;
  - b. the respective duties required to be fulfilled by Abboud and Potts in their performance of the positions pleaded at paragraphs 9 and 10;
  - c. their knowledge of, and role in, the implementation by Dick Smith Sub-Holdings of its accounting practice, policies approaches and procedures; and
  - d. their knowledge of, at least, the information discussed at the FAC meetings on 12 August 2014 and 24 November 2015.

**Particulars**

- (i) *FAC Minutes and papers from 12 August 2014, at which Abboud and Potts were present.*



(ii) *FAC Minutes and papers from 24 November 2015, at which Abboud and Potts were present.*

(iii) *Evidence of Abboud: transcript dated 6 October 2016 page 493-500.*

(iv) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

#### Prospectus Inventory Information

189. At all material times up to and including the date of the Prospectus, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the Prospectus Inventory Information, by virtue of:
- a. the matters pleaded at paragraphs 9 and 10;
  - b. the respective duties required to be fulfilled by Abboud and Potts in their performance of the positions pleaded at paragraphs 9 and 10;
  - c. their knowledge of, and role in, the implementation by Dick Smith Sub-Holdings of its accounting practice, policies approaches and procedures; and
  - d. their knowledge of, at least, the information in the:
    - (i) Deloitte, Project Yellow Review;
    - (ii) Dick Smith Sub-Holdings Financial Reports for the 10 months ending 30 June 2013, p 26;
    - (iii) NAT 1333 Provision for Obsolescence and NAT 1332 Prov - Obsolescence Uplift 1%; and  
NAT 1346 Prov David Jones Con Stk Obsol.

#### **Particulars**

(i) *The Applicants repeat the particulars at paragraph 184 with respect to the Dick Smith Sub-Holdings Financial Reports for the 10 months ending 30 June 2013.*

(ii) *The Applicants repeat the Particulars at paragraph 185 with respect to the Deloitte, Project Yellow Report.*

(iii) *Abboud and/or Potts' knowledge of the Dick Smith Sub-Holdings general ledger accounts (NAT) is to be inferred from their positions.*

(iv) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

### Adjustments Information

190. At all material times up to and including the date of the Prospectus, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the Adjustments Information, by virtue of:
- a. the matters pleaded at paragraphs 9 and 10;
  - b. the respective duties required to be fulfilled by Abboud and Potts in their performance of the positions pleaded at paragraphs 9 and 10; and
  - c. their knowledge of, and role in, the implementation by Dick Smith Sub-Holdings of its accounting practice, policies approaches and procedures; and
  - d. their knowledge of, at least, the information:
    - (i) in the following Dick Smith general ledger accounts:
      - (A) NAT 2297 Prov for Onerous Leases – NC;
      - (B) NAT 2298 Prov Onerous Lease – Current;
      - (C) NAT 6017 Onerous Lease Writeback;
      - (D) NAT 1120 Prov D/Debts Trade;
      - (E) NAT 1121 Prov D/Debts Finance Contracts;
      - (F) NAT 1122 Prov D/Debts Non Trade;
      - (G) NAT 1126 Prov D/Debts Other Receivable;
      - (H) NAT 2169 Prov for Disputed And Claims;
      - (I) NAT 5037 Doubtful Debts Prov Non Trade;
      - (J) NAT 2001 Warranty Sign On Rebate;
      - (K) NAT 7133 Warranty Rebate;
      - (L) NAT 1358 Prov for AASB 102 Cost DC FRT;
      - (M) NAT 3249 Cost Adjustment - First Margin; and
      - (N) NAT 3260 Write Offs of Breakages \$1.9m.
- in the Internal Document, Accounting Paper AASB 102 – Inventories: Other Costs.

### **Particulars**

- (i) Abboud and/or Potts' knowledge of the Dick Smith Sub-Holdings general ledger accounts (NAT) is to be inferred from their positions.*
- (ii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

### **Woolworths Payment Information and Historical Cash Flow Information**

191. At all material times up to and including the date of the Prospectus, Abboud ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the Woolworths Payment Information and the Historical Cash Flow Information, by virtue of:
- a. the matters pleaded at paragraph 9; and
  - b. the respective duties required to be fulfilled by Abboud in his performance of his position pleaded at paragraph 9.

### **Particulars**

- (i) Abboud became Chief Executive Officer of Dick Smith Sub-Holdings upon acquisition and was involved with Anchorage prior to the acquisition of Dick Smith Sub-Holdings.*
- (ii) Abboud controlled LMA Investments Pty Ltd which owned 2% of the shares in Dick Smith Sub-Holdings.*
- (iii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

192. By reason of the matters pleaded at paragraphs 184 to 191, at all material times up to and including the date of the Prospectus, Abboud and/or Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the General Prospectus Information.

### ***J.1.2 FY2013 Results Information***

193. At all material times, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the FY2013 Results Information, by virtue of:
- a. the matters pleaded at paragraphs 9 and 10;
  - b. the respective duties required to be fulfilled by Abboud and Potts in the performance of the positions referred to at paragraphs 9 and 10;

- c. the matters pleaded at paragraphs 186 (Sales Accounting Information), 188 (O & A Rebate Information), and 189 (Prospectus Inventory Information); and,
- d. Abboud and Potts' knowledge:
  - (i) of the information contained in the Prospectus;
  - (ii) of the information contained in Dick Smith Sub-Holdings' reported results for the period to 30 June 2013;

### **Particulars**

- (i) *The Prospectus states that "the issue of this Prospectus has been authorized by each Director. Each Director has consented to the lodgment of this Prospectus and the issue of this prospectus and has not withdrawn that consent", para 10.15.*
- (ii) *The Prospectus contains a "Chairman's Letter" stating that the offer made in the Prospectus was made on behalf of all directors, including Abboud.*
- (iii) *Abboud's authorisation and/or participation in the authorisation of the Prospectus is to be inferred from his position as the Managing Director and CEO of each of Dick Smith Sub-Holdings and Dick Smith Holdings.*
- (iv) *Potts' authorisation and/or participation in the authorisation of the Prospectus is to be inferred from his position as the Finance Director, Chief Financial Officer and Company Secretary of Dick Smith Sub-Holdings, and Finance Director, Chief Financial Officer and Company Secretary of Dick Smith Holdings.*
- (v) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

#### **J.1.3 The 1Q2014 Results Information**

194. At all material times, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the 1Q2014 Results Information, by virtue of:
- a. the matters pleaded at paragraphs 9 and 10;
  - b. the respective duties required to be fulfilled by Abboud and Potts in the performance of the positions referred to at paragraphs 9 and 10;

- c. the matters pleaded at paragraphs 184 (Acquisition Accounting Information), 186 (Sales Accounting Information), 188 (O & A Rebate Information), and 189 (Prospectus Inventory Information); and
- d. Abboud and Potts' knowledge of the information contained in the Prospectus.

### **Particulars**

- (i) The Applicants repeat the particulars at paragraph 193 with respect to the Prospectus.*
- (ii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

#### **J.1.4 The FY2014 Performance Information**

195. At all material times, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the FY2014 Performance Information, by virtue of:
- a. the matters pleaded at paragraphs 9 and 10;
  - b. the respective duties required to be fulfilled by Abboud and Potts in the performance of the positions referred to at paragraphs 9 and 10;
  - c. the matters pleaded at paragraphs 186 (Sales Accounting Information) , 188 (O & A Rebate Information), and 189 (Prospectus Inventory Information); and
  - d. Abboud and Potts' knowledge:
    - (i) of the information contained in the Growth Representations in the Prospectus;
    - (ii) of the FY2014 Forecast Rebate Information; and
    - (iii) the Deloitte, Project Yellow Review, p 18.

### **Particulars**

- (i) The Applicants repeat the particulars at paragraph 185 with respect to the Deloitte, Project Yellow Review.*
- (ii) The Applicants repeat the particulars at paragraph 193 with respect to the Prospectus.*

(iii) *The Applicants repeat the particulars at paragraph 188 with respect to the FY2014 Rebate Forecast Information in so far as it relates to the O & A Rebate Information.*

(iv) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

**J.2 What Abboud and Potts ought reasonably to have known after the Prospectus date**

2014 Half Yearly Results Information

196. At all material times, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the 2014 Half Yearly Results Information, by virtue of:

- a. the matters pleaded at paragraphs 186 (Sales Accounting Information), 188 (O & A Rebate Information), 189 (Prospectus Inventory Information); and 190 (Adjustments Information); and
- b. the matters pleaded at paragraphs 9 and 10;
- c. the respective duties required to be fulfilled by Abboud and Potts in the performance of the positions referred to at paragraphs 9 and 10; and
- d. Abboud and Potts' knowledge:
  - (i) of the 2014 Half Yearly Results, including the:
  - (ii) the 19 February 2014 announcement to the ASX;
  - (iii) the 1H2014 Results Briefing; and
  - (iv) the Half Year Financial Report for the 26 Weeks ended 29 December 2013.

**Particulars**

(i) *The Dick Smith Holdings Half Year Financial Report for the 26 Weeks ended 29 December 2013 was submitted by the directors of Dick Smith Holdings, including Abboud (p 1) contains a Director's Declaration signed by the Chairman of the Board of Dick Smith Holdings 'on behalf of the directors', including Abboud (p 7);*

(ii) *Abboud was quoted in the ASX Announcement dated 19 February 2014;*

(iii) *Abboud and Potts are identified co-author and/or co-presenter of the 1H2014 Results Briefing dated 19 February 2014;*

*(iv) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

#### 2014 Yearly Results Information

197. At all material times, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the 2014 Yearly Results Information, by virtue of:

- a. the matters pleaded at paragraphs 186 (Sales Accounting Information), 188 (O & A Rebate Information), and 189 (Prospectus Inventory Information); and 190 (Adjustments Information);
- b. the matters pleaded at paragraphs 9 and 10;
- c. the respective duties required to be fulfilled by Abboud and Potts in the performance of the positions referred to at paragraphs 9 and 10; and
- d. Abboud and Potts' knowledge:
  - (i) of the 2014 Yearly Results, including the:
    - (A) 19 August 2014 announcement to the ASX;
    - (B) the 2014 Results Briefing; and
    - (C) the 2014 Annual Report.

#### **Particulars**

*(i) The 2014 Annual Report contains a "Chairman's and CEO Letter" signed by Abboud, stating that the 2014 Annual Report was presented by the Board of Dick Smith Holdings, including Abboud and Potts (p 1) and contains a Directors' Declaration, signed by the Chairman on behalf of all directors, including Abboud and Potts.*

*(ii) Abboud was quoted in the ASX Announcement dated 19 August 2014.*

*(iii) Abboud and Potts are identified co-author and/or co-presenter of the 2014 Results Briefing dated 19 August 2014.*

*(iv) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

#### 2015 Half Yearly Results Information

198. At all material times, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the 2015 Half Yearly Results Information, by virtue of:
- a. the matters pleaded at paragraphs 184 to 191;
  - b. the matters pleaded at paragraphs 9 and 10;
  - c. the respective duties required to be fulfilled by Abboud and Potts in the performance of the positions referred to at paragraphs 9 and 10; and
  - d. Abboud and Potts' knowledge:
    - (i) of the 2015 Half Yearly Results, including the:
      - (A) 17 February 2015 announcement to the ASX;
      - (B) 1H2015 Results Briefing; and
      - (C) half-year financial report for the 26 weeks ended 28 December 2014;

#### **Particulars**

- (i) *The half year financial report for the 26 Weeks ended 28 December 2014 was submitted on behalf of all directors, including Abboud and Potts, and contained a directors' declaration signed by the chairman on behalf of all directors, including Abboud and Potts.*
- (ii) *Abboud was quoted in the ASX Announcement dated 17 February 2015.*
- (iii) *Abboud and Potts are identified as co-author and/or co-presenter of the 1H2015 Results Briefing dated 17 February 2015.*
- (iv) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

#### **2015 Yearly Results Information**

199. At all material times, Abboud and Potts ought reasonably to have known or ought reasonably to have, by making inquiries, obtained the 2015 Yearly Results Information, by virtue of:
- a. the matters pleaded at paragraphs 184 to 191;
  - b. the matters pleaded at paragraphs 9 and 10;
  - c. the respective duties required to be fulfilled by Abboud and Potts in the performance of the positions referred to at paragraphs 9 and 10; and



- d. Abboud and Potts knowledge of the 2015 Yearly Results, including:
  - (i) the 18 August 2015 announcement to the ASX;
  - (ii) the FY2015 Results Briefing; and
  - (iii) the 2015 Annual Report.

#### **Particulars**

- (i) *The 2015 Annual Report contained a "Chairman's and CEO's Letter" signed by Abboud and a Directors' Declaration, signed by the Chairman on behalf of all directors, including Abboud and Potts.*
- (ii) *Abboud was quoted in the ASX Announcement dated 18 August 2015.*
- (iii) *Abboud and Potts are identified as co-author and/or co-presenter of the FY2015 Results Briefing dated 18 August 2015.*
- (iv) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

#### **J.3 What Dick Smith Holdings ought reasonably to have known or ought reasonably to have, by making inquiries, obtained at the Prospectus date**

200. By reason of the matters pleaded in paragraphs 184 to 195 at all material times up to and including the date of the Prospectus, Dick Smith Holdings:
- a. ought reasonably to have known or ought reasonably to have, by making inquiries, obtained; or
  - b. was aware (within the meaning of ASX Listing Rule 19.12) of:
    - (i) the General Prospectus Information;
    - (ii) the FY2013 Results Information;
    - (iii) the 1Q2014 Results Information; and
    - (iv) the FY2014 Performance Information.

#### **J.4 What Dick Smith Holdings ought reasonably to have known or obtained after the Prospectus date**

201. By reason of the matters pleaded in paragraphs 196 to 199 at all material times after the date of the Prospectus, Dick Smith Holdings:
- a. ought reasonably to have, by making inquiries, obtained; or
  - b. was aware (within the meaning of ASX Listing Rule 19.12) of:

- (i) 2014 Half Yearly Results Information;
- (ii) 2014 Yearly Results Information;
- (iii) 2015 Half Yearly Results Information; and
- (iv) 2015 Yearly Results Information.

## **K. PROSPECTUS CONTRAVENTIONS**

### **K.1 Section 728 Contravention**

202. The Prospectus was:
- a. an offer of securities within the meaning of section 706 of the Corporations Act;
  - b. a prospectus within the meaning of section 710 of the Corporations Act; and
  - c. a disclosure document within the meaning of section 728 of the Corporations Act.
203. Dick Smith Holdings was a person making an offer of securities under the Prospectus (namely the Offer) within the meaning of section 728 and section 729(1) Table, Item 1 of the Corporations Act.
204. By reason of the matters referred to in paragraphs 125 to 134 the Indicative Price Range Representations constituted misleading or deceptive statements in that Dick Smith Holdings did not have reasonable grounds for making the pro forma forecast FY2014 EBITDA and pro forma FY2014 NPAT, within the meaning of section 728(2) of the Corporations Act.
205. By reason of the matters referred to in paragraphs 71 and 72, and 82 to 87, the Obsolete Stock Representation constituted a misleading or deceptive statement.
206. By reason of the matters referred to in paragraphs 125 to 127 and 134, the 2013 Performance Representations constituted a misleading or deceptive statement.
207. By reason of the matters referred to in paragraphs 125 to 128 and 134, the 2013 Balance Sheet Representations constituted a misleading or deceptive statement.
208. By reason of the matters referred to in paragraphs 128 to 130, and 134 above the 1Q2014 Performance Representations constituted a misleading or deceptive statement.
209. By reason of the matters referred to in paragraphs 133 and 134 above, the Transformation Representations constituted a misleading or deceptive statement.

210. By reason of the matters referred to in paragraphs 131 to 134 above, the Growth Representations constituted a misleading or deceptive statement.
211. By reason of the matters referred to in paragraphs 62 to 65, 73 to 76, 94 to 98 and/or 99 to 115 the Prospectus Compliance Representations constituted a misleading or deceptive statement, within the meaning of section 728(1)(a)(i) of the Corporations Act.
212. Each of the:
- a. General Prospectus Information;
  - b. FY2013 Results Information;
  - c. 1Q2014 Results Information;
  - d. FY2014 Performance Information;
- (each, and together, being **Material Prospectus Information**) constituted material that investors and their professional advisors would reasonably require to make an informed assessment of the assets and liabilities, financial position and performance, profits and losses and prospects of Dick Smith Holdings.
213. By reason of the matters referred to in paragraph 212, Dick Smith Holdings was obliged to disclose the Material Prospectus Information in the Prospectus.

#### **Particulars**

*section 728(1)(b), Corporations Act.*

214. By reason of the matters referred to in paragraphs 131 to 132 above:
- a. there were no reasonable grounds for the Growth Representations; and/or
  - b. the Growth Basis Representations were misleading or deceptive, or likely to mislead or deceive.

#### **Particulars**

*(i) The Growth Representations pleaded in sub-paragraph 54 (a) were based upon:*

- *the Sales Accounting Approach, which was contrary to Australian Accounting Standards, in particular AASB 118, paragraphs 8, 9 and 10;*
- *the Rebate-Maximisation Policy, which was contrary to Australian Accounting Standards, in particular;*

- *the Rebate Accounting Approach, which was contrary to Australian Accounting Standards, in particular AASB 102, 116, 118, 132 and 139;*
- *the Inventory Obsolescence Approach, which did not comply with Australian Accounting Standards, in particular AASB 102; and*
- *the Accounting Approach.*

215. By reason of the matters referred to in:

- a. the following paragraphs in relation to the following statements or representations (each a **Prospectus Misleading Statement**):
  - (i) paragraph 204 in relation to the Indicative Price Range Representations;
  - (ii) paragraphs 205 in relation to the Obsolete Stock Representation;
  - (iii) paragraph 206 in relation to the 2013 Performance Representations;
  - (iv) paragraph 207 in relation to the 2013 Balance Sheet Representations;
  - (v) paragraph 208 in relation to the 1Q2014 Performance Representations;
  - (vi) paragraph 209 in relation to the Transformation Representations;
  - (vii) paragraph 210 and 214 in relation to the Growth Representations; and
  - (viii) paragraph 211 in relation to the Prospectus Compliance Representations.
- b. paragraphs 212 and 213 in relation to the omission of the Material Prospectus Information (each omission being a **Prospectus Omission**),

the Prospectus contravened section 728(1) of the Corporations Act (each a **Prospectus Contravention**).

216. Each of the Prospectus Contraventions was a continuing contravention, which continued on and from the date of the Prospectus in that:

- a. the Material Prospectus Information was not disclosed to the ASX (or to persons who had acquired DSH Shares pursuant to the offer made in the Prospectus) at any time before the Administration; and

- b. each of the Prospectus Misleading Statements was not corrected or qualified at any time before the Administration.

## **K.2 Continuous disclosure breaches in respect of the Material Prospectus Information**

217. The Material Prospectus Information was information:
- a. which the Dick Smith Directors or Officers ought to have known or reasonably to have, by making inquiries, obtained;
  - b. by reason of the matters pleaded in sub-paragraph a. above, Dick Smith Holdings had (within the meaning of section 674(2) of the Corporations Act) and was aware of at all material times (within the meaning of ASX Listing Rule 19.12);
  - c. that was not generally available within the meaning of section 674(2)(c)(i) and section 676 of the Corporations Act; and
  - d. that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of DSH Shares within the meaning of section 674(2)(c)(ii) of the Corporations Act.
218. Pursuant to ASX Listing Rule 3.1, Dick Smith Holdings became, at all material times after the commencement of quotation of DSH Shares on the ASX, obliged to tell the ASX the Material Prospectus Information.
219. Dick Smith Holdings did not communicate any of the Post Prospectus Material Information to the ASX before the Administration.
220. By reason of the matters referred to in paragraphs 216, and 217 to 219, Dick Smith Holdings contravened section 674(2) of the Corporations Act (each a **Continuous Disclosure Contravention**).

## **K.3 Misleading or deceptive conduct and section 1041E liability in relation to the Prospectus Misleading Statements**

221. By maintaining, and failing to correct or qualify, each of the Prospectus Misleading Statements (as pleaded in paragraph 216(a), Dick Smith Holdings engaged in conduct:
- a. in relation to financial products (being DSH Shares), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - b. in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act;

- c. likely to induce persons in Australia to subscribe for or purchase financial products (being DSH Shares); and/or
- d. in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.
222. By reason of the matters pleaded in paragraphs 204 to 214, 216(b) and 221, Dick Smith Holdings engaged in conduct that was misleading or deceptive or likely to mislead or deceive.
223. By reason of the matters referred to in paragraphs 221 to 222, Dick Smith Holdings' conduct, in failing to correct or qualify each of the Prospectus Misleading Statements, was in contravention of:
- a. section 1041H(1) of the Corporations Act;
- b. section 12DA(1) of the ASIC Act; and/or
- c. section 18 of the Australian Consumer Law
- a contravention of any of those sections being a Misleading Conduct Contravention.
224. As at the dates on which the Misleading Conduct Contraventions were made and throughout the remainder of the relevant period, by reason of the matters pleaded in paragraphs 9 to 10 and 184 to 195 the Dick Smith Directors or Officers ought reasonably to have known or ought reasonably to have, by making inquiries, obtained that each of the statements or the information it conveyed was false in a material particular or was materially misleading.

#### **Particulars**

*Further particulars may be provided following the completion of discovery and before the initial trial.*

225. By reason of the matters pleaded in paragraph 200, as at the dates on which the Misleading Conduct Contraventions were made and throughout the remainder of the relevant period, Dick Smith Holdings ought reasonably to have known or ought reasonably to have, by making inquiries, obtained that each of the statements or the information it conveyed was false in a material particular or was materially misleading.

#### **Particulars**

*Further particulars may be provided following the completion of discovery and before the initial trial.*

226. By reason of the matters set out in paragraphs 224 and 225, by making the Prospectus Misleading Statements, Dick Smith Holdings contravened section 1041E of the Corporations Act.

## **L. POST-PROSPECTUS CONTRAVENTIONS**

### **L.1 Continuous Disclosure**

227. Each of:

- a. 2014 Half Yearly Results Information;
- b. 2014 Yearly Results Information;
- c. 2015 Half Yearly Results Information; and
- d. 2015 Yearly Results Information

(together being **Post Prospectus Material Information**), was information:

- (i) which the Dick Smith Directors or Officers ought reasonably to have known or ought reasonably by making inquiries, to have obtained at all material times;
- (ii) which by reason of the matters pleaded in sub-paragraph (i), Dick Smith Holdings had (within the meaning of section 674(2) of the Corporations Act) and was aware of at all material times (within the meaning of ASX Listing Rule 19.12);
- (iii) that was not generally available within the meaning of section 674(2)(c)(i) and section 676 of the Corporations Act; and
- (iv) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of DSH Shares within the meaning of section 674(2)(c)(ii) of the Corporations Act.

228. Pursuant to ASX Listing Rule 3.1, Dick Smith Holdings became obliged to tell the ASX the Post Prospectus Material Information immediately once it had that information.

229. Dick Smith Holdings did not communicate any of the Post Prospectus Material Information to the ASX before the Administration.

230. By reason of the matters referred to in paragraphs 227 to 229 above, Dick Smith Holdings contravened section 674(2) of the Corporations Act (each a **Continuous Disclosure Contravention**).

## **L.2 Misleading or Deceptive Conduct Contraventions**

231. Preparing and publishing each of the:

- a. 2014 Half Yearly Results;
- b. 2014 Annual Results;
- c. 2015 Half Yearly Results; and
- d. 2015 Annual Results,

was conduct engaged in by Dick Smith Holdings:

- (i) in relation to financial products (being DSH Shares), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (ii) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act;
- (iii) likely to induce persons in Australia to subscribe for or purchase financial products (being DSH Shares); and/or
- (iv) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.

232. By making and/or failing to correct or qualify the 2014 Half Yearly Results Representations (or any of them) in the circumstances referred to in paragraphs 155 to 159 above, Dick Smith Holdings engaged in conduct that was misleading or deceptive or likely to mislead or deceive.

233. By making and/or failing to correct or qualify the 2014 Half Yearly Compliance Representations (or any of them) in the circumstances referred to in paragraphs 63, 75, 89, 96, 105, 108 and 111, Dick Smith Holdings engaged in conduct that was misleading or deceptive or likely to mislead or deceive.

234. By making and/or failing to correct or qualify the 2014 Results Representations (or any of them) in the circumstances referred to in paragraphs 160 to 164 above, Dick Smith Holdings engaged in conduct that was misleading or deceptive or likely to mislead or deceive.

235. By making and/or failing to correct or qualify the 2014 Annual Report Compliance Representations (or any of them) in the circumstances referred to in paragraphs 63, 75, 89, 96, 105, 108, 111, Dick Smith Holdings engaged in conduct that was misleading or deceptive or likely to mislead or deceive.



236. By making and/or failing to correct or qualify the 2015 Half Yearly Results Representations (or any of them) in the circumstances set out in paragraphs 165 to 169 above, Dick Smith Holdings engaged in conduct which was misleading or deceptive or likely to mislead or deceive.
237. By making and/or failing to correct or qualify the 2015 Half Yearly Compliance Representations (or any of them) in the circumstances referred to in paragraphs 63, 75, 89, 96, 105, 108, and 111 Dick Smith Holdings engaged in conduct that was misleading or deceptive or likely to mislead or deceive.
238. By making and/or failing to correct or qualify the 2015 Results Representations (or any of them) in the circumstances set out in paragraphs 170 to 174, Dick Smith Holdings engaged in conduct which was misleading or deceptive or likely to mislead or deceive.
239. By making and/or failing to correct or qualify the 2015 Annual Report Compliance Representations (or any of them) in the circumstances referred to in paragraphs 63, 75, 89, 96, 105, 108, 111 Dick Smith Holdings engaged in conduct that was misleading or deceptive or likely to mislead or deceive.
240. By reason of the matters referred to in:
- a. paragraph 232 in relation to the 2014 Half Yearly Results Representations;
  - b. paragraph 233 in relation to the 2014 Half Yearly Compliance Representations;
  - c. paragraph 234 in relation to the 2014 Yearly Results Representations;
  - d. paragraph 235 in relation to the 2014 Annual Report Compliance Representations;
  - e. paragraph 236 in relation to the 2015 Half Yearly Results Representations; and
  - f. paragraph 237 in relation to the 2015 Half Yearly Compliance Representations;
  - g. paragraph 238 in relation to the 2015 Yearly Results Representations,
  - h. paragraph 239 in relation to the 2015 Annual Report Compliance Representations,

Dick Smith Holdings' conduct in making the representations was misleading and deceptive or likely to mislead and deceive in contravention of:

- i. section 1041H(1) of the Corporations Act;
  - j. section 12DA(1) of the ASIC Act; and/or
  - k. section 18 of the Australian Consumer Law,
- a so engaged in a Misleading Conduct Contravention.

241. Further or alternatively:

- a. the 2014 Half Yearly Results Representations;
- b. the 2014 Half Yearly Compliance Representations;
- c. the 2014 Yearly Results Representations;
- d. the 2014 Annual Report Compliance Representations;
- e. the 2015 Half Yearly Results Representations;
- f. the 2015 Half Yearly Compliance Representations;
- g. the 2015 Yearly Results Representations; and
- h. the 2015 Annual Report Compliance Representations,

was a statement, or conveyed information, that was likely

- (i) to induce persons in Australia to apply for financial products, namely Dick Smith Shares;
- (ii) to induce persons in Australia to acquire financial products, namely Dick Smith Shares; and
- (iii) to have the effect of increasing, maintaining or stabilising the price for trading in financial products on a financial market operated in Australia, namely Dick Smith Shares.

242. Each of the Misleading Conduct Contraventions was:

- a. false in a material particular; or
- b. materially misleading.

### **Particulars**

*(i) The Plaintiffs refer to the matters set out above.*

*(ii) Further particulars may be provided following the completion of discovery and before the initial trial.*

243. As at the dates on which the representations the subject of the Misleading Conduct Contraventions were made and throughout the remainder of the Relevant Period:

- a. the Dick Smith Directors or Officers ought to have known the statements or the information they conveyed were false in a material particular or were materially misleading;
- b. by reason of the matters pleaded in sub-paragraph a above, Dick Smith Holdings ought to have known that each of the statements or the information they conveyed were false in a material particular or was materially misleading.

#### **Particulars**

*Further particulars may be provided following the completion of discovery and before the initial trial.*

244. By reason of the matters set out in paragraphs 241 above, by making the representations or alternatively by disseminating information conveyed by those representations, Dick Smith Holdings contravened section 1041E of the Corporations Act.

#### **M. MISLEADING OR DECEPTIVE CONDUCT BY ABBOUD**

##### **M.1.1 2014 Half Yearly Results**

245. On or about 19 February 2014, Abboud authorised, or participated in authorising, the making and lodgement with ASX by Dick Smith Holdings of the 2014 Half Yearly Results in the form, or in substantially the form, in which they were lodged with the ASX, including the inclusion therein of each of the:

- a. 2014 Half Yearly Results Representation; and/or
- b. 2014 Half Yearly Compliance Representation.

#### **Particulars**

(i) *Abboud's authorisation and/or participation is to be inferred from his position as the Managing Director and CEO of each of Dick Smith Sub-Holdings and Dick Smith Holdings.*

(ii) *Abboud was quoted in the ASX Announcement Dated 19 February 2014.*

(iii) *Abboud was identified as a co-author and/or co-presenter of the 1H2014 Results Bbriefing dated 19 February 2014.*

(iv) *The half year financial report for the 26 Weeks ended 29 December 2013 was submitted on behalf of all directors, including Abboud, and contained a directors' declaration signed by the chairman on behalf of all directors, including Abboud.*

(v) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*

246. Further, or in the alternative to paragraph 245, on or about 19 February 2014 and at all material times thereafter, Abboud took no, or alternately no adequate, steps to cause Dick Smith Holdings to withdraw or otherwise correct the:

- a. 2014 Half Yearly Results Representation; and/or
- b. 2014 Half Yearly Compliance Representation.

247. By reason of the matters pleaded in paragraphs 245 and 246 above, Abboud engaged in conduct:

- a. in relation to a financial product within the meaning of section 1041H of the Corporations Act;
- b. in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
- c. in trade or commerce within the meaning of section 4 of the Australian Consumer Law.

248. By reason of the matters pleaded in paragraphs 245 to 247 and 232 to 233 above, Abboud contravened:

- a. section 1041H of the Corporations Act;
  - b. section 12DA of the ASIC Act; and/or
  - c. section 18 of the Australian Consumer Law
- and so engaged in a Misleading Conduct Contravention.

#### *M.1.2 2014 Yearly Results*

249. On or about 19 August 2014, Abboud authorised, or participated in authorising, the making and lodgement with ASX by Dick Smith Holdings of the 2014 Yearly Results in the form, or in substantially the form, in which they were lodged with the ASX, including the inclusion therein of each of the:

- a. 2014 Yearly Results Representation; and/or

- b. 2014 Annual Report Compliance Representation.

**Particulars**

- (i) *Abboud's authorisation and/or participation is to be inferred from his position as the Managing Director and CEO of each of Dick Smith Sub-Holdings and Dick Smith Holdings.*
- (ii) *Abboud was quoted in the ASX Announcement dated 19 August 2014.*
- (iii) *Abboud was identified as a co-author and/or co-presenter of the FY2014 Results Briefing dated 19 August 2014.*
- (iv) *The 2014 Annual Report contained a "Chairman's and CEO's Letter" signed by Abboud, stating that the 2014 Annual Report was presented by the Board of Dick Smith Holdings, including Abboud.*
- (v) *The 2014 Annual Report contained a Directors' Declaration, signed by the Chairman on behalf of all directors, including Abboud.*
- (vi) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiffs' expert evidence.*
250. Further, or in the alternative to paragraph 249, on or about 19 February 2014 and at all material times thereafter Abboud took no, or alternately no adequate, steps to cause Dick Smith Holdings to withdraw or otherwise correct the:
- a. 2014 Yearly Results Representation; and/or
- b. 2014 Annual Report Compliance Representation.
251. By reason of the matters pleaded in paragraphs 249 and 250, Abboud engaged in conduct:
- a. in relation to a financial product within the meaning of section 1041H of the Corporations Act;
- b. in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
- c. in trade or commerce within the meaning of section 4 of the Australian Consumer Law.
252. By reason of the matters pleaded in paragraphs 249 to 251 and 234 to 235 above, Abboud contravened:
- a. section 1041H of the Corporations Act;

- b. section 12DA of the ASIC Act; and/or
  - c. section 18 of the Australian Consumer Law,
- and so engaged in a Misleading Conduct Contravention.

*M.1.3 2015 Half Yearly Results*

253. On or about 17 February 2015, Abboud authorised, or participated in authorising, the making and lodgement with ASX by Dick Smith Holdings of the 2015 Half Yearly Results in the form, or in substantially the form, in which they were lodged with the ASX, including the inclusion therein of each of the:
- a. 2015 Half Yearly Results Representation; and/or
  - b. 2015 Half Yearly Compliance Representation.

**Particulars**

- (i) Abboud's authorisation and/or participation is to be inferred from his position as the Managing Director and CEO of each of Dick Smith Sub-Holdings and Dick Smith Holdings.*
  - (ii) Abboud was quoted in the ASX Announcement Dated 17 February 2015.*
  - (iii) Abboud was identified as a co-author and/or co-presenter of the 1H2015 Results Briefing dated 17 February 2015.*
  - (iv) The half year financial report for the 26 Weeks ended 28 December 2014 was submitted on behalf of all directors, including Abboud, and contained a directors' declaration signed by the chairman on behalf of all directors, including Abboud.*
  - (v) Further particulars may be provided following discovery and/or upon the completion of the Plaintiffs' expert evidence.*
254. On or about 17 February 2015 and at all material times thereafter Abboud took no, or alternately no adequate, steps to cause Dick Smith Holdings to withdraw or otherwise correct the:
- a. 2015 Half Yearly Results Representation; and/or
  - b. 2015 Half Yearly Compliance Representation.
255. By reason of the matters pleaded in paragraphs 253 and 254 above, Abboud engaged in conduct:

- a. in relation to a financial product within the meaning of section 1041H of the Corporations Act;
  - b. in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
  - c. in trade or commerce within the meaning of section 4 of the Australian Consumer Law.
256. By reason of the matters pleaded in paragraphs 253 to 255 and 236 to 237 above, Abboud contravened:
- a. section 1041H of the Corporations Act;
  - b. section 12DA of the ASIC Act; and/or
  - c. section 18 of the Australian Consumer Law,
- and so engaged in a Misleading Conduct Contravention.

*M.1.4 2015 Yearly Results*

257. On or about 18 August 2015, Abboud authorised, or participated in authorising, the making and lodgement with ASX by Dick Smith Holdings of the 2015 Yearly Results in the form, or in substantially the form, in which they were lodged with the ASX, including the inclusion therein of each of the:
- a. 2015 Yearly Results Representation; and/or
  - b. 2015 Annual Report Compliance Representation.

**Particulars**

- (i) *Abboud's authorisation and/or participation is to be inferred from his position as the Managing Director and CEO of each of Dick Smith Sub-Holdings and Dick Smith Holdings.*
- (ii) *Abboud was quoted in the ASX Announcement Dated 18 August 2015.*
- (iii) *Abboud was identified as a co-author and/or co-presenter of the FY2015 Results Briefing dated 18 August 2015.*
- (iv) *The 2015 Annual Report contained a "Chairman's and CEO's Letter" signed by Abboud.*
- (v) *The 2015 Annual Report contained a Directors' Declaration, signed by the Chairman on behalf of all directors, including Abboud.*

*(vi) Further particulars may be provided following discovery and/or upon the completion of the Plaintiffs' expert evidence.*

258. On or about 18 August 2015 and at all material times thereafter Abboud took no, or alternately no adequate, steps to cause DSH to withdraw or otherwise correct the:
- a. 2015 Yearly Results Representation; and/or
  - b. 2015 Annual Report Compliance Representation.
259. By reason of the matters pleaded in paragraphs 257 and 258 above, Abboud engaged in conduct:
- a. in relation to a financial product within the meaning of section 1041H of the Corporations Act;
  - b. in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
  - c. in trade or commerce within the meaning of section 4 of the Australian Consumer Law.
260. By reason of the matters pleaded in paragraphs 257 to 259 and 238 to 239 above, Abboud contravened:
- a. section 1041H of the Corporations Act;
  - b. section 12DA of the ASIC Act; and/or
  - c. section 18 of the Australian Consumer Law,
- and so engaged in Misleading Conduct Contravention.

## **N. MISLEADING OR DECEPTIVE CONDUCT BY POTTS**

### ***N.1.1 2014 Half Year Results***

261. On or about 19 February 2014, Potts participated in authorising, the making and lodgement with ASX by Dick Smith Holdings of the 2014 Half Yearly Results in the form, or in substantially the form, in which they were lodged with the ASX, including the inclusion therein of each of the:
- a. 2014 Half Yearly Results Representation; and/or
  - b. 2014 Half Yearly Compliance Representation.

### **Particulars**

- (i) Potts' participation is to be inferred from his position as: the Finance Director, Chief Financial Officer and Company Secretary of Dick Smith Sub-Holdings;*



*and Finance Director, Chief Financial Officer and Company Secretary of Dick Smith Holdings.*

*(ii) Potts was identified as a co-author and/or co-presenter of the 1H2014 Results Briefing.*

*(iii) Further particulars may be provided following discovery and/or upon the completion of the Plaintiffs' expert evidence.*

262. Further, or in the alternative to paragraph 261, on or about 19 February 2014 and at all material times thereafter Potts took no, or alternately no adequate, steps to cause Dick Smith Holdings to withdraw or otherwise correct the:
- a. 2014 Half Yearly Results Representation; and/or
  - b. 2014 Half Yearly Compliance Representation.
263. By reason of the matters pleaded in paragraphs 261 and 262, Potts engaged in conduct:
- a. in relation to a financial product within the meaning of section 1041H of the Corporations Act;
  - b. in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
  - c. in trade or commerce within the meaning of section 4 of the Australian Consumer Law.
264. By reason of the matters pleaded in paragraphs 261 to 263 and 232 to 233, Potts contravened:
- a. section 1041H of the Corporations Act;
  - b. section 12DA of the ASIC Act; and/or
  - c. section 18 of the Australian Consumer Law,
- and so engaged in a Misleading Conduct Contravention.

#### *N.1.2 2014 Yearly Results*

265. On or about 19 August 2014, Potts authorised, or participated in authorising, the making and lodgement with ASX by Dick Smith Holdings of the 2014 Yearly Results in the form, or in substantially the form, in which they were lodged with the ASX, including the inclusion therein of each of the:
- a. 2014 Yearly Results Representation; and/or

- b. 2014 Annual Report Compliance Representation.

**Particulars**

- (i) Potts' authorisation and/or participation is to be inferred from his position as: Finance Director and Chief Financial Officer of Dick Smith Sub-Holdings; and Director, Finance Director and Chief Financial Officer of Dick Smith Holdings.*
- (ii) Potts was identified as a co-author and/or co-presenter of the FY2014 Results Briefing*
- (iii) The 2014 Annual Report contained a "Chairman's and CEO's Letter" stating that the 2014 Annual Report was presented by the Board of Dick Smith Holdings, including Potts.*
- (iv) The 2014 Annual Report contained a Directors' Declaration, signed by the Chairman on behalf of all directors, including Potts.*
- (v) Further particulars may be provided following discovery and/or upon the completion of the Plaintiffs' expert evidence.*

266. Further, or in the alternative to paragraph 265, on or about 19 February 2014 and at all material times thereafter Potts took no, or alternately no adequate, steps to cause Dick Smith Holdings to withdraw or otherwise correct the:

- a. 2014 Yearly Results Representation; and/or
- b. 2014 Annual Report Compliance Representation.

267. By reason of the matters pleaded in paragraphs 265 and 266, Potts engaged in conduct:

- a. in relation to a financial product within the meaning of section 1041H of the Corporations Act;
- b. in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
- c. in trade or commerce within the meaning of section 4 of the Australian Consumer Law.

268. By reason of the matters pleaded in paragraphs 265 to 267 and 234 to 235 above, Potts contravened:

- a. section 1041H of the Corporations Act;
- b. section 12DA of the ASIC Act; and/or

- c. section 18 of the Australian Consumer Law,  
and so engaged in a Misleading Conduct Contravention.

*N.1.3 2015 Half Yearly Results*

269. On or about 17 February 2015, Potts authorised, or participated in authorising, the making and lodgement with ASX by Dick Smith Holdings of the 2015 Half Yearly Results in the form, or in substantially the form, in which they were lodged with the ASX, including the inclusion therein of each of the:
- a. 2015 Half Yearly Results Representation; and/or
  - b. 2015 Half Yearly Compliance Representation.

**Particulars**

- (i) Potts' authorisation and/or participation is to be inferred from his position as: Finance Director and Chief Financial Officer of Dick Smith Sub-Holdings; and Director, Finance Director and Chief Financial Officer of Dick Smith Holdings.*
  - (ii) Potts was identified as a co-author and/or co-presenter of the 1H2015 Results Briefing dated 17 February 2015.*
  - (iii) The half year financial report for the 26 Weeks ended 28 December 2014 was submitted on behalf of all directors, including Potts, and contained a directors' declaration signed by the chairman on behalf of all directors, including Potts.*
  - (iv) Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*
270. Further, or in the alternative to paragraph 269, on or about 17 February 2014 and at all material times thereafter Potts took no, or alternately no adequate, steps to cause Dick Smith Holdings to withdraw or otherwise correct the:
- a. 2015 Half Yearly Results Representation; and/or
  - b. 2015 Half Yearly Compliance Representation.
271. By reason of the matters pleaded in paragraphs 269 and 270, Potts engaged in conduct:
- a. in relation to a financial product within the meaning of section 1041H of the Corporations Act;
  - b. in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

- c. in trade or commerce within the meaning of section 4 of the Australian Consumer Law.
272. By reason of the matters pleaded in paragraphs 269 to 271 and 236 to 237 above, Potts contravened:
- a. section 1041H of the Corporations Act;
  - b. section 12DA of the ASIC Act; and/or
  - c. section 18 of the Australian Consumer Law,
- and so engaged in a Misleading Conduct Contravention.

*N.1.4 2015 Yearly Results*

273. On or about 18 August 2015, Potts authorised, or participated in authorising, the making and lodgement with ASX of the 2015 Yearly Results in the form, or in substantially the form, in which they were lodged with the ASX, including the inclusion therein of each of the:
- a. 2015 Yearly Results Representation; and/or
  - b. 2015 Annual Report Compliance Representation.

**Particulars**

- (i) *Potts' authorisation and/or participation is to be inferred from his position as: Finance Director and Chief Financial Officer of Dick Smith Sub-Holdings; and Director, Finance Director and Chief Financial Officer of Dick Smith Holdings.*
  - (ii) *Potts was identified as a co-author and/or co-presenter of the FY2014 Results Briefing dated 18 August 2015.*
  - (iii) *The 2015 Annual Report contained a Directors' Declaration, signed by the Chairman on behalf of all directors, including Potts.*
  - (iv) *Further particulars may be provided following discovery and/or upon the completion of the Plaintiff's expert evidence.*
274. Further, or in the alternative to paragraph 273, on or about 18 August 2015 and at all material times thereafter Potts took no, or alternately no adequate, steps to cause Dick Smith Holdings to withdraw or otherwise correct the:
- a. 2015 Yearly Results Representation; and/or
  - b. 2015 Annual Report Compliance Representation.

275. By reason of the matters pleaded in paragraphs 273 and 274 above, Potts engaged in conduct:
- a. in relation to a financial product within the meaning of section 1041H of the Corporations Act;
  - b. in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
  - c. in trade or commerce within the meaning of section 4 of the Australian Consumer Law.
276. By reason of the matters pleaded in paragraphs 273 to 275 and 238 to 239, Potts contravened:
- a. section 1041H of the Corporations Act;
  - b. section 12DA of the ASIC Act; and/or
  - c. section 18 of the Australian Consumer Law,
- and so engaged in a Misleading Conduct Contravention.

## **O. CAUSATION, LOSS AND DAMAGE**

### **O.1 Prospectus Subscribers**

#### *O.1.1 Introduction*

277. The Plaintiffs and some Group Members acquired interests in DSH Shares by subscribing for shares pursuant to DSH IPO, made pursuant to the Prospectus.

#### **Particulars**

- (i) *The Particulars of the Plaintiffs' claim are set out in the points of claim attached hereto.*
- (ii) *Particulars of acquisitions by group members will be provided after the trial of the Plaintiffs' claim and determination of the common questions.*

#### *O.1.2 Market based causation for DSH IPO purchasers*

278. To the extent that the Plaintiffs and Group Members acquired their interests in DSH Shares by subscribing for shares pursuant to DSH IPO, they acquired DSH Shares in a market:
- a. regulated by, inter alia, Chapter 6D of the Corporations Act;
  - b. where the Offer Price of DSH Shares under the Prospectus (\$2.20 per share) would reasonably be expected by potential investors in DSH Shares

to have been reasonably determined by Vocation to represent a fair market value for DSH Shares, based on all information required to be contained in the Prospectus and Replacement Prospectus in accordance with section 710 of the Corporations Act;

- c. where material Information had not been disclosed, which a reasonable person would expect had it been disclosed, would have had a material effect on the determination of a fair market offer price for DSH Shares, namely the Material Prospectus Information; and
- d. where misleading or deceptive statements or representations had been made, and misleading or deceptive conduct had been engaged in by the making and/or failure to correct or qualify such misleading or deceptive statements or representations, that a reasonable person would expect to have a material effect on the determination of a fair market offer price, namely the making and failure to correct or qualify the Prospectus Misleading Statements.

279. Had the Prospectus

- a. not contained the Prospectus Misleading Statements (or any of them); and/or
  - b. not omitted the material the subject of the Prospectus Omissions,
- then the Plaintiffs and Group Members would not have subscribed for DSH Shares at the Offer Price of \$2.20 per share.

**Particulars**

*Any offer of DSH Shares would have been for an offer price materially less than the Offer Price of \$2.20 per share.*

**O.1.3 Reliance**

280. Further, or alternatively, in making the decision to acquire interests in DSH Shares pursuant to the DSH IPO, the Plaintiffs and some Group Members:

- a. would not have acquired DSH Shares in the volumes that they were acquired, or at all, if the Prospectus Contraventions had not occurred; and/or
- b. acquired their interests in DSH Shares at the DSH IPO Offer Price and in the volumes in reliance upon some or all of the Prospectus Misleading Statements, and without knowledge of the Material Prospectus Information.

O.1.4 *No transaction*

281. Further or alternatively, had the Prospectus

- a. not contained the Prospectus Misleading Statements (or any of them);  
and/or
- b. not omitted the material the subject of the Prospectus Omissions,  
the transactions contemplated by the Prospectus would not have occurred in the  
way in which they occurred or at all.

**Particulars**

- (i) *Dick Smith Holdings would been valued on a basis which took into account the Prospectus Material Information and the falsity of the Prospectus Misleading Statements,*
- (ii) *Alternatively, any offer of DSH Shares would have been completely different to the Offer.*

O.1.5 *Loss and damage*

282. By reason of the matters set out in paragraphs 278 to 279 and/or 280 and/or 281, to the extent that the Plaintiffs and Group Members acquired their interests in DSH Shares by subscribing for shares pursuant to DSH IPO, the Plaintiffs and Group Members suffered loss and damage resulting from the Prospectus Contraventions and/or Abboud's Prospectus Contraventions and/or Potts' Prospectus Contraventions.

**Particulars**

- (i) *Particulars of the Plaintiffs' loss are set out in the points of claim attached hereto.*
- (ii) *Particulars concerning the loss of the Group Members will be provided following the completion of the determination of the Plaintiffs' claim and the common questions.*

**O.2 Shares Purchased on the secondary market**

O.2.1 *Introduction*

283. The Plaintiffs and some Group Members acquired interests in DSH Shares on the secondary market operated by ASX.

## Particulars

(i) *The Particulars of the Plaintiffs' claim are set out in the points of claim attached hereto.*

(ii) *Particulars of acquisitions by group members will be provided after the trial of the Plaintiffs' claim and determination of the common questions.*

### O.2.2 Market-based causation

284. To the extent that the Plaintiffs and Group Members acquired their interests in DSH Shares on the secondary market, they acquired that interest in a market of investors and potential investors in DSH Shares:

- a. operated by the ASX;
- b. regulated by the ASX Listing Rule 3.1 and section 674(2) of the Corporations Act;
- c. where the price or value of DSH Shares would reasonably be expected to have been informed or affected by information disclosed to ASX, either upon the commencement of quotation of DSH Shares on the ASX (in accordance with the ASX Listing Rule 1.7) or after the quotation of DSH Shares on the ASX (in accordance with ASX Listing Rule 3.1 and section 674(2) of the Corporations Act;
- d. where material Information had not been disclosed, which a reasonable person would expect had it been disclosed, would have had a material effect on the price or value of DSH Shares, namely:
  - (i) the Material Prospectus Information;
  - (ii) the 2014 Half Yearly Results Information;
  - (iii) the 2014 Yearly Results Information;
  - (iv) the 2015 Half Yearly Results Information;
  - (v) the 2015 Yearly Results Information; and
- e. where misleading or deceptive statements or representations had been made, and misleading or deceptive conduct had been engaged in by the making and/or failure to correct or qualify such misleading or deceptive statements or representations, that a reasonable person would expect to have a material effect on the price or value of DSH Shares, namely the making and failure to correct or qualify the:



- (i) Prospectus Misleading Statements, namely the:
  - (A) Indicative Price Range Representations;
  - (B) 2013 Performance Representations;
  - (C) 2013 Balance Sheet Representations;
  - (D) Obsolete Stock Representation;
  - (E) 1Q2014 Performance Representations;
  - (F) Transformation Representations;
  - (G) Growth Representations.
  - (H) Prospectus Compliance Representations;
- (ii) 2014 Half Yearly Results Representations.
- (iii) 2014 Half Yearly Compliance Representations.
- (iv) 2014 Yearly Results Representations.
- (v) 2014 Annual Report Compliance Representations.
- (vi) 2015 Half Yearly Results Representations.
- (vii) 2015 Half Yearly Compliance Representations.
- (viii) 2015 Yearly Results Representations.
- (ix) 2015 Annual Report Compliance Representations.

285. The Prospectus Contraventions, the Continuous Disclosure Contraventions and the Misleading Conduct Contraventions (or any one or combination of them) caused the market price of the DSH Shares to be, or materially contributed to the market price of DSH Shares being, substantially greater than:

- a. their true value; and/or
- b. the market price that would have prevailed but for the Prospectus Contraventions, the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions.

### *O.2.3 Reliance*

286. Further, and in the alternative, in the decision to acquire interests in DSH Shares, the Plaintiffs and some group members:

- a. would not have acquired DSH Shares at the volumes and for the prices that they were acquired, or at all, if the Prospectus Contraventions, the

Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions had not occurred;

b. acquired their interests in DSH Shares at prices and in the volumes that they were acquired in reliance upon some or all of the following representations:

- (i) the Prospectus Misleading Statements, namely the:
  - (A) Indicative Price Range Representations;
  - (B) 2013 Performance Representations;
  - (C) 2013 Balance Sheet Representations;
  - (D) Obsolete Stock Representation;
  - (E) 1Q2014 Performance Representations;
  - (F) Transformation Representations;
  - (G) Growth Representations;
  - (H) Prospectus Compliance Representations;
- (ii) 2014 Half Yearly Results Representations.
- (iii) 2014 Half Yearly Compliance Representations.
- (iv) 2014 Yearly Results Representations.
- (v) 2014 Annual Report Compliance Representations.
- (vi) 2015 Half Yearly Results Representations.
- (vii) 2015 Half Yearly Compliance Representations.
- (viii) 2015 Yearly Results Representations.
- (ix) 2015 Annual Report Compliance Representations.

#### *O.2.4 Loss and damage*

287. By reason of the matters set out in paragraphs 284 to 285 and/or 286, to the extent that the Plaintiffs and Group Members acquired their interests in DSH Shares on the secondary market operated by ASX, the Plaintiffs and Group Members suffered loss and damage resulting from the:

- a. Prospectus Contraventions; and/or
- b. Continuous Disclosure Contraventions; and/or

- c. Misleading Conduct Contraventions.

**Particulars**

- (i) *Particulars of the Plaintiffs' loss are set out in Annexure A attached hereto.*
- (ii) *Particulars concerning the loss of the Group Members will be provided following the completion of the determination of the Plaintiffs' claim and the common questions.*

**P. Common Questions**

288. The following common questions of fact or law arise in the proceeding:

- a. whether the Prospectus was prepared in accordance with the Australian Accounting Standards;
- b. whether the Prospectus gave a true and fair view of the financial position and performance of Dick Smith Holdings;
- c. whether the 2014 Half Year Financial Statements were prepared in accordance with the Australian Accounting Standards;
- d. whether the 2014 Half Year Financial Statements gave a true and fair view of the financial position and performance of Dick Smith Holdings;
- e. whether the 2015 Half Year Financial Statements were prepared in accordance with the Australian Accounting Standards;
- f. whether the 2015 Half Year Financial Statements gave a true and fair view of the financial position and performance of Dick Smith Holdings;
- g. whether the 2015 Full Year Financial Statements were prepared in accordance with the Australian Accounting Standards; and
- h. whether the 2015 Full Year Financial Statements gave a true and fair view of the financial position and performance of Dick Smith Holdings and the consolidated entity.
- i. Whether Dick Smith Holdings contravened Section 728 of the Corporations Act in making the Prospectus Contraventions.
- j. Whether Dick Smith Holdings contravened Section 674 (2) of the Corporations Act in making the Continuous Disclosure Contraventions.
- k. Whether in relation to each of the:
  - (i) 2014 Half Yearly Results;

- (ii) 2014 Annual Results;
- (iii) 2015 Half Yearly Results; and
- (iv) 2015 Annual Results,

by making the Misleading Conduct Contraventions, Dick Smith Holdings, Abboud and or Potts contravened:

- (A) section 1041H(1) of the Corporations Act;
- (B) section 12DA(1) of the ASIC Act; and/or
- (C) section 18 of the Australian Consumer Law Section 674(2).

## ANNEXURE A – PLEADINGS AND PARTICULARS OF THE PLAINTIFFS' INDIVIDUAL ISSUES

A1. The Plaintiffs acquired interests in DSH Shares during the Relevant Period on the ASX as outlined in the following table:

DATE OF PURCHASE	Number of DSH Securities	Average price per share (\$)	Amount paid (not incl. brokerage) (\$)
17/12/2013	950 (Jointly)	2.07	952.07
28/10/2015	600 (Jointly)	0.91	546.00
29/10/2015	2,000 (Lena Mastoris only)	0.7950	1,590.00

A2. The Plaintiffs disposed of its interest in DSH Shares acquired during the Relevant Period as outlined in the following table:

DATE OF SALE	Number of DSH Securities	Average price per share (\$)	Trade value (not incl. brokerage) (\$)
29/10/2015	1,550 (Jointly)	0.7925	1,228.38

A3. The Plaintiffs:

- (a) would not have acquired interests in DSH Shares, as set out in paragraph A1, if the Plaintiffs had known the information the subject of the contraventions of section 674(2) of the Corporations Act pleaded in this Statement of Claim (or any of them);
- (b) relied directly on some or all of the following Representations:
  - i. the 2014 Half Yearly Results Representations;
  - ii. the 2014 Half Yearly Compliance Representations;
  - iii. the 2014 Yearly Results Representations
  - iv. the 2014 Annual Report Compliance Representations;
  - v. the 2015 Half Yearly Results Representations;
  - vi. the 2015 Half Yearly Compliance Representations;

- vii. the 2015 Yearly Results Representations; and
- viii. the 2015 Annual Report Compliance Representations.

in deciding to acquire, hold and/or not dispose of interests in DSH Shares

**Particulars**

*Particulars of the Plaintiffs' reliance on any of the Representations will be provided prior to trial.*

- A4. If Dick Smith Holdings, Abboud and Potts had not engaged in the Contravening Conduct, the Plaintiffs would not have acquired some or any of the Plaintiffs' interests in DSH shares and would instead have retained or acquired other investments or assets for which the price was not inflated.

**Particulars**

*Particulars of any alternative investments or assets that the Plaintiffs would have retained or acquired will be provided prior to trial.*

- A5. The Plaintiffs suffered loss or damage by acquiring DSH Shares in the Relevant Period.

**Particulars**

*Further particulars in relation to the Plaintiffs' losses will be provided prior to trial.*

## SCHEDULE OF DEFINED TERMS

Defined Term	Paragraph
1 Q2014	52
1 Q2014 Performance Representation	52
1 Q2014 Results	52
1 Q2014 Results Information	129(b)
2013 Balance Sheet Representation	50
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AASB 132	6(g)
AASB 3	6(a)
AASB 101	6(b)
AASB 102	6(c)
AASB 1031	6(k)
AASB 108	6(d)
AASB 116	6(e)
AASB 118	6(f)
AASB 136	6(h)
AASB 137	6(i)
AASB 139	6(j)
Abboud	9
Abboud's 2014 Half Yearly Contraventions	255(c)
Abboud's 2014 Yearly Results Contraventions	259(c)

Defined Term	Paragraph
Abboud's 2015 Half Yearly Results Contravention	263(c)
Abboud's 2015 Yearly Results Contraventions	267(c)
Abboud's Prospectus Contraventions	250(d)
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Dick Smith Directors or Officers	10
Dick Smith Electronics	4(f)(vi)
Dick Smith Holdings	1(a)
Dick Smith Proceedings	72(b)(ii)
Dick Smith Sub-Holdings	4(f)(vi)
Disputed Claims Provision	103
Doubtful Debts Provision	102
DSE Group	4(f)(vi)
DSE Holdings	4(f)(vi)



Defined Term	Paragraph
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Forgiveness and Release Deed	19(b)
FY2013 Results Information	126
FY2014 Forecast Rebate Information	80
FY2014 Performance Information	131
FY2014 Results	138
GE Facility	120
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Group Members	1(c)
Growth Basis Representation	54(b)
Growth Representation	54(a)
Historical Cash Flow Information	124
Indicative Price Range Representations	47(g)
Initial Payment	20(a)(ii)(A)
Inventory Obsolescence Approach	88
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May 2013 Woolworths Agreement	25(c)
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Potts' 2014 Yearly Results Contraventions	281
Potts' 2015 Half Yearly Contraventions	285(c)

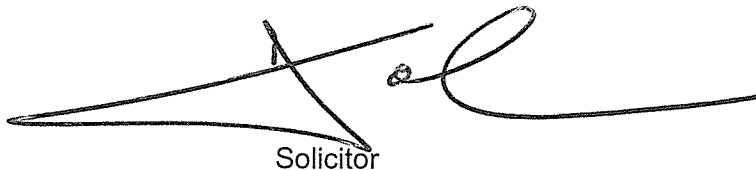
Defined Term	Paragraph
Potts' 2015 Yearly Contraventions	289(c)
Potts' Prospectus Contraventions	272(d)
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Prospectus	4(f)(vi)
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Prospectus Compliance Representation	55
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Prospectus Inventory Information	98
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Prospectus Omission	215(b)
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### 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

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a cursive 'al' and a long horizontal stroke.

Capacity

Solicitor

Date of signature

16 February 2018

### 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](http://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](http://www.ucprforms.justice.nsw.gov.au) or at any NSW court registry.

#### **REGISTRY ADDRESS**

Street address	Law Courts Building, Queens Square, 184 Phillip St. Sydney NSW 2000
Postal address	Supreme Court of NSW, GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

**AFFIDAVIT VERIFYING**

Name Robert Guy Johnston

Address Level 25, 20 Bond Street, Sydney NSW 2000

Occupation Solicitor

Date 16 February 2018

I say on oath:

- 1 I am the Solicitor for the Plaintiffs.
- 2 I believe that the allegations of fact in the statement of claim are true.

SWORN at Sydney

Signature of deponent

Name of witness

Address of witness

Capacity of witness Solicitor



Thomas Richard Barry  
Level 25, 20 Bond Street, Sydney NSW 2000

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.
- 2 I have known the deponent for at least 12 months.

Signature of witness



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

## PARTY DETAILS

### PARTIES TO THE PROCEEDINGS

#### Plaintiffs

Epaminondas Mastoris, First Plaintiff

Lena Mastoris, Second Plaintiff

#### Defendants

DSHE Holdings Limited (receivers and managers appointed) (in liquidation)  
ACN 166 237 841, First Defendant

Nicholas Abboud, Second Defendant

Michael Thomas Potts, Third Defendant

### FURTHER DETAILS ABOUT PLAINTIFFS

#### First Plaintiff

Name Epaminondas Mastoris  
Address 16 Balliol Common  
Sunbury VIC 3429

#### Second Plaintiff

Name Lena Mastoris  
Address 16 Balliol Common  
Sunbury VIC 3429

#### Legal representative for plaintiffs

Name Robert Johnston  
Practising certificate number 9240  
Firm Johnson Winter & Slattery  
Address Level 25, 20 Bond Street  
Sydney NSW 2000  
Telephone 02 8274 9581

Fax 02 8274 9500  
Email robert.johnston@jws.com.au

**DETAILS ABOUT DEFENDANTS**

**First Defendant**

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

**First Defendant**

Name Nicholas Abboud  
Address 15 Hopetoun Avenue  
Mosman NSW 2088

**First Defendant**

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