

THIRD DEFENDANT'S COMMERCIAL LIST RESPONSE TO THE STATEMENT OF CLAIM

COURT DETAILS

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

FILED

- 9 APR 2018



TITLE OF PROCEEDINGS

First plaintiff	Epaminondas Mastoris
Second plaintiff	Lena Mastoris



First defendant	DSHE Holdings Ltd ACN 166 237 841 (receivers and managers appointed) (in liquidation)
Number of defendants	3

FILING DETAILS

Filed for	Michael Potts , Third Defendant
Legal representative	Tobin Meagher, Clayton Utz
Legal representative reference	135/18481/80173502
Contact name and telephone	Lauren Stewart, +61 2 9353 5686
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A. NATURE OF DISPUTE

1. The Plaintiffs sue on their own behalf and on behalf of other persons who acquired an interest in fully paid ordinary shares from 14 November 2013 onwards (subject to various exclusions in paragraphs 1(b)-(c) of the Statement of Claim), and who allegedly suffered loss or damage by reason of the conduct of DSH pleaded in the Statement of Claim.
2. The Third Defendant (**Potts**) was, at all material times from DSH's formation on 25 October 2013, a director of DSH and the chief financial officer of DSH.
3. The Plaintiffs allege, as against Potts, that he engaged in misleading or deceptive conduct by authorising the publication of DSH's 2014 Half Year Results, 2014 Yearly Results, 2015 Half Yearly Results and 2015 Yearly Results (referred to as the Post Prospectus Accounts). The Plaintiffs allege that, by reason of various matters pleaded in the Statement of Claim, the Post Prospectus Accounts did not comply with Australian Accounting Standards and did not give a true and fair view of the financial position and performance of DSH and the DSH Group.
4. The Plaintiffs allege that they and the Group Members suffered loss as a result of the alleged misleading conduct, either by reason of what is described as "market-based causation" or by reason of (in the case of the Plaintiffs and some Group Members) their alleged reliance on the Post Prospectus Accounts and various representations allegedly conveyed by those accounts.
5. Potts denies that he has any liability to the Plaintiffs or the Group Members in respect of the Post Prospectus Accounts, either on the basis pleaded in the Statement of Claim or at all.

B. ISSUES LIKELY TO ARISE

1. Potts agrees that the questions identified by the Plaintiffs in subparagraphs 288(c)-(h) and (k) of the Statement of Claim are likely to arise in the proceedings (but notes that subparagraph 288(k)(iv)(C) erroneously contains a reference to "section 674(2)" which is no part of the claim against Potts).
2. Potts says that further issues likely to arise are whether, if he engaged in misleading or deceptive conduct in contravention of the *Corporations Act 2001* (Cth) (**Corporations Act**) (which is denied):
 - (a) Potts ought fairly to be excused for the contravention and/or relieved wholly or partly from any liability to which he would otherwise be subject; and
 - (b) any liability which Potts may have to the Plaintiffs should be reduced to reflect the proportion of the Plaintiffs' loss that the Court considers just having regard to the extent of his responsibility for that loss, and the extent of any other concurrent wrongdoer for that same loss.

C. SECOND DEFENDANT'S RESPONSES TO CONTENTIONS

The Second Defendant, Michael Potts, responds as follows to the allegations in the Statement of Claim filed 16 February 2018. (Unless otherwise indicated, defined terms in the Statement of Claim have the same meaning where used below.)

For ease of reference, this List Response adopts the headings used in the Statement of Claim. Those headings are for convenience only and the use of such headings is not intended to admit any of the defined terms used in those headings, unless those matters are otherwise expressly admitted below.

A. PARTIES

A.1 The Plaintiffs and Group Members

1. In response to paragraph 1 of the Statement of Claim, the Second Defendant (**Potts**):
 - (a) does not admit the allegations in subparagraphs 1(a)-(c); and
 - (b) denies the allegations in subparagraph 1(d) of the Statement of Claim so far as they concern Potts.
2. In response to paragraph 2 of the Statement of Claim, Potts:
 - (a) does not admit subparagraphs A1 - A3 of Annexure A to the Statement of Claim; and
 - (b) denies the allegations in subparagraphs A4 and A5 of Annexure A to the Statement of Claim so far as they concern him, and
 - (c) otherwise does not plead to those paragraphs so far as concerns the conduct of DSHE Holdings Ltd (**DSH**) and Abboud.
3. Potts does not admit paragraph 3 of the Statement of Claim.

A.2 The First Defendant

4. Potts admits paragraph 4 of the Statement of Claim.
5. Potts admits paragraph 5 of the Statement of Claim.

A.3 DSE Group's Reporting Obligations

6. Potts admits paragraph 6 of the Statement of Claim and relies upon Australian Accounting Standards AASB 3, AASB 101, AASB 102, AASB 108, AASB 116, AASB 118, AASB 132, AASB 136, AASB 137, AASB 139 and AASB 1031 for their full terms and effect.
7. Potts admits paragraph 7 of the Statement of Claim.

8. Potts admits paragraph 8 of the Statement of Claim.

B. THE SECOND AND THIRD DEFENDANTS

9. Potts does not plead to paragraph 9 of the Statement of Claim, as that paragraph does not contain any allegations against him.
10. Potts admits paragraph 10 of the Statement of Claim.
11. Potts does not admit paragraph 11 of the Statement of Claim in so far as that paragraph is pleaded against him.

C. BACKGROUND

12. Potts admits paragraph 12 of the Statement of Claim.
13. Potts admits paragraph 13 of the Statement of Claim.
14. Potts admits paragraph 14 of the Statement of Claim.
15. Potts admits paragraph 15 of the Statement of Claim.
16. Potts admits paragraph 16 of the Statement of Claim.

D. THE ACQUISITION

D.1 Share Sale Agreement

17. In response to paragraph 17 of the Statement of Claim, Potts:
- (a) admits that Dick Smith Sub-Holdings (then named Anchorage DS Pty Ltd) entered into the Share Sale Agreement with Woolworths on 26 September 2012; and
 - (b) relies upon the Share Sale Agreement for its full terms and effect.
18. Potts denies paragraph 18 of the Statement of Claim and says that at the time of Acquisition, Dick Smith Sub-Holdings was 98% owned by Anchorage and 2% by LMA Investments Pty Ltd.
19. In response to paragraph 19 of the Statement of Claim, Potts:
- (a) admits that the Transitional Service Agreement was entered into between Woolworths and Dick Smith Electronics Pty Limited but says that Dick Smith Electronics Pty Limited had an ACN of 000 908 716;
 - (b) denies subparagraph 19(b) and says that the Forgiveness and Release Deed was entered into between Woolworths and Dick Smith Electronics Pty Limited (ACN 000 908 716);

- (c) admits that the Anchorage Exit Payment Deed was entered into between Woolworths and Dick Smith Sub-Holdings (then named Anchorage DS Pty Ltd); and
 - (d) otherwise does not admit paragraph 19 of the Statement of Claim.
- 20. In response to paragraph 20 of the Statement of Claim, Potts:
 - (a) relies upon the Share Sale Agreement for its full terms and effect; and
 - (b) otherwise does not admit paragraph 20.
- 21. In response to paragraph 21 of the Statement of Claim, Potts:
 - (a) admits that completion of the Share Sale Agreement occurred on 26 November 2012;
 - (b) relies upon the Forgiveness and Release Deed for its full terms and effect; and
 - (c) otherwise does not admit paragraph 21 of the Statement of Claim.
- 22. In response to paragraph 22 of the Statement of Claim, Potts:
 - (a) relies upon the Anchorage Exit Payment Deed for its full terms and effect; and
 - (b) otherwise does not admit paragraph 22 of the Statement of Claim.
- 23. Potts admits paragraph 23 of the Statement of Claim.
- 24. Potts does not admit paragraph 24 of the Statement of Claim.
- 25. Potts does not admit paragraph 25 of the Statement of Claim.

D.2 Acquisition Accounting

- 26. Potts does not admit paragraph 26 of the Statement of Claim.
- 27. Potts does not admit paragraph 27 of the Statement of Claim.
- 28. Potts does not admit paragraph 28 of the Statement of Claim.
- 29. Potts does not admit paragraph 29 of the Statement of Claim.
- 30. Potts does not admit paragraph 30 of the Statement of Claim.
- 31. In response to paragraph 31 of the Statement of Claim, Potts:
 - (a) does not admit subparagraph (a); and

- (b) as to subparagraph (b), admits that the financial report of Dick Smith Sub-holdings Pty Limited for the 10 month period ended 30 June 2013 recognised a discount arising on acquisition of \$145.848m, and otherwise does not admit that subparagraph.

32. Potts does not plead to paragraph 32 as it contains no allegation against him.

E. EVENTS FOLLOWING THE ACQUISITION

- 33. Potts admits paragraph 33 of the Statement of Claim.
- 34. Potts admits paragraph 34 of the Statement of Claim.
- 35. Potts admits paragraph 35 of the Statement of Claim.
- 36. Potts admits paragraph 36 of the Statement of Claim.
- 37. Potts admits paragraph 37 of the Statement of Claim.
- 38. Potts admits paragraph 38 of the Statement of Claim.
- 39. Potts admits paragraph 39 of the Statement of Claim.
- 40. In response to paragraph 40 of the Statement of Claim, Potts:
 - (a) says that the "Total sources of funds" as stated in the Prospectus was \$418.3m;
 - (b) says that the "Total uses of funds" as stated in the Prospectus was \$418.3m;
 - (c) otherwise admits paragraph 40 of the Statement of Claim.

Particulars

Prospectus, pages 15 and 109.

- 41. Potts admits paragraph 41 of the Statement of Claim.
- 42. Potts admits paragraph 42 of the Statement of Claim.
- 43. Potts admits paragraph 43 of the Statement of Claim.
- 44. Potts admits paragraph 44 of the Statement of Claim.

F. THE PROSPECTUS

- 45. Potts admits paragraph 45 of the Statement of Claim.
- 46. Potts admits paragraph 46 of the Statement of Claim.

F.1 The Key Offer Statistics

47. Potts admits paragraph 47 of the Statement of Claim.

F.2 2013 Financial Representations

48. In response to paragraph 48 of the Statement of Claim, Potts:

- (a) says that the Prospectus stated that the pro forma historical financial information in section 5 of the Prospectus had been derived from:
 - (i) the audited financial statements of Dick Smith Sub-Holdings Pty Limited for the period from Acquisition to 30 June 2013; and
 - (ii) the unaudited accounting records of DSE Holdings Pty Limited for the period from 28 June 2010 to 26 November 2012; and
- (b) otherwise denies paragraph 48 of the Statement of Claim.

49. Potts admits paragraph 49 of the Statement of Claim.

50. Potts admits paragraph 50 of the Statement of Claim.

F.3 Obsolete Stock Representation

51. Potts admits paragraph 51 of the Statement of Claim.

F.4 1Q2014 Representations

52. Potts admits paragraph 52 of the Statement of Claim.

F.5 Transformation Representations

53. Potts admits paragraph 53 of the Statement of Claim.

F.6 Growth & Forecast Representations

54. In response to paragraph 54 of the Statement of Claim, Potts:

- (a) as to subparagraph 54(a)(i), says that the Prospectus stated that sales for FY2014 were forecast to be \$1,226.0m, and that the forecast seasonality of sales in FY2014 was 52% in 1H2014 and 48% in 2H2014, and otherwise does not admit that subparagraph;
- (b) as to subparagraph 54(a)(ii), says that the Prospectus stated that the Pro Forma EBITDA for FY2014 was forecast to be \$71.8m, and that the forecast seasonality of EBITDA for FY2014 was 56% in 1H2014 and 44% in 2H2014, and otherwise does not admit that subparagraph;

- (c) as to subparagraph 54(a)(iii), says that:
 - (i) the Prospectus did not contain the dollar value and percentage of sales figures for COGS; and
 - (ii) based on the figures in the FY2014 forecast COGS was 74.9% of sales;
 and otherwise does not admit subparagraph 54(a)(iii);
- (d) admits subparagraphs 54(a)(iv)-(v); and
- (e) does not admit subparagraph 54(b).

F.7 Compliance Representations

55. Potts admits paragraph 55 of the Statement of Claim.

G. PROSPECTUS MATERIAL FACTS

G.1 Sales

Sales Trend

56. In response to paragraph 56 of the Statement of Claim, Potts:

- (a) admits the matters pleaded in subparagraph 56(a);
- (b) admits that 1Q2014 pro forma sales were \$273.3m;
- (c) says that the Prospectus forecast a further pro forma decrease of 4.2% in FY2014, and in addition the Prospectus:
 - (i) stated that there were substantial changes to the operations of DSH during the 12 months prior to the DSH IPO (including that prior to Acquisition Woolworths closed 73 stores), and as such the Prospectus provided adjusted comparative pro forma sales in FY2013 to reflect what Dick Smith management believed was a more comparable basis when analysing the FY2014 pro forma forecast sales;
 - (ii) the pro forma adjusted sales recognition provided the following figures:
 - A. \$1,280.4 FY2013 pro forma historical sales;
 - B. \$99.5 adjustment for promotional and inventory clearance activity;
 - C. \$3.1 adjustment for store closures and FX impact;
 - D. \$1,177.8 FY2013 pro forma adjusted historical sales; and

- E. \$1,226.0 FY2014 pro forma forecast sales;
- (iii) stated that the adjustment in paragraph (ii) above reflected:
 - A. management's estimate of the sales impact of the increased promotional activity that occurred prior to the Acquisition (\$39.3 million of the \$99.5 million adjustment); and
 - B. the inventory clearance activity undertaken prior to and subsequent to the Acquisition to clear aged and obsolete stock (\$60.2 million of the \$99.5 million adjustment);
- (iv) stated that management believed that the increase in promotional activity, which was focused primarily on clearance sales, did not represent a level of clearance activity that would be incurred in a normal operating environment;

Particulars

Prospectus page 56.

- (d) otherwise does not admit paragraph 56 of the Statement of Claim.
- 57. Potts does not admit paragraph 57 of the Statement of Claim.
- 58. Potts does not admit paragraph 58 of the Statement of Claim.
- 59. In response to paragraph 59 of the Statement of Claim, Potts:
 - (a) repeats paragraphs 56-58 of this List Response; and
 - (b) otherwise does not plead to paragraph 59 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus.

Sales Accounting

- 60. Potts does not admit paragraph 60 of the Statement of Claim.
- 61. Potts does not admit paragraph 61 of the Statement of Claim.
- 62. Potts does not admit paragraph 62 of the Statement of Claim.
- 63. Potts denies paragraph 63 of the Statement of Claim, and further says that DSH's auditor Deloitte Touche Tohmatsu (**Deloitte**) reported to DSH that the reporting of agency sales on a gross rather than net basis was immaterial and had no net income statement impact.

Particulars

Deloitte Report to the Board for the period ended 30 June 2013 dated 17 October 2013 (**Deloitte FY2013 Board Report**), pp. 4, 20.

Deloitte Report to the Finance and Audit Committee for the half-year ended 29 December 2013 dated 4 February 2014 (the **HY2014 FAC Report**), pp. 4, 19, 27.

Deloitte Report to the Finance and Audit Committee for the year ended 29 June 2014 dated 6 August 2014 (the **FY2014 FAC Report**), pp. 22, 28.

Deloitte Report to the Finance and Audit Committee for the half year ended 28 December 2014 dated 11 February 2015 (the **HY2015 FAC Report**), pp. 4, 18, 23.

Deloitte Report to the Finance and Audit Committee for the year ended 28 June 2015 dated 6 August 2015 (the **FY2015 FAC Report**), p. 23.

64. In response to paragraph 64 of the Statement of Claim, Potts:

- (a) repeats paragraphs 60-63 above; and
- (b) otherwise does not plead to paragraph 64 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged deficiency in the Prospectus Accounts.

65. In response to paragraph 65 of the Statement of Claim, Potts:

- (a) repeats paragraphs 60-64 above; and
- (b) otherwise does not plead to paragraph 65 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus.

Sales Mix

66. Potts does not admit paragraph 66 of the Statement of Claim.

67. Potts does not admit paragraph 67 of the Statement of Claim.

68. In response to paragraph 68 of the Statement of Claim, Potts:

- (a) repeats paragraphs 66-67 of this List Response, and
- (b) otherwise does not plead to paragraph 68 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus.

G.2 Rebates

69. In response to paragraph 69 of the Statement of Claim, Potts:

- (a) admits that that at all material times from Acquisition, Dick Smith Sub-Holdings and/or Dick Smith Holdings obtained rebates, some of which were ad hoc and individually negotiated, from suppliers and service providers;
- (b) says that the practice of obtaining such rebates from suppliers commenced at the time when the Dick Smith business was under the management Woolworths Limited and Anchorage Capital Partners;
- (c) says that in the case of O&A rebates, the accounting treatment which was adopted by management of DSH in preparing Post Prospectus Accounts involved such rebates being recognised immediately in the P&L, either as a Cost of Doing Business, or as a Cost of Sales which derived the Gross Margin, depending on the purpose for which the O&A rebate was allowed to DSH (the **O&A Rebate Accounting Treatment**);

Particulars

Email from Damien Cork of Deloitte to Potts, copied to Nigel Mills of DSH and to David White of Deloitte, sent on Monday 26 May 2014, and headed "Dick Smith: O&A Rebates".

Email from Potts to David White of Deloitte, copied to Damien Cork of Deloitte, sent on Friday 6 June 2014 and headed "RE:O&A", attaching two papers, headed:

- "Position Paper – Vendor Rebates – Profit/Loss and Balance Sheet Recognition, dated 28 May 2014 and prepared by Nigel Mills of DSH"
- "Vendor Rebates – O&A"

- (d) otherwise denies paragraph 69 of the Statement of Claim.

70. In response to paragraph 70 of the Statement of Claim, Potts:

(a) admits that the rebates which DSH obtained from suppliers from time to time included rebates as generally described in each of subparagraphs 70(a)-(c) of the Statement of Claim; and

(b) otherwise does not admit paragraph 70 of the Statement of Claim.

71. Potts denies paragraph 71 of the Statement of Claim.

72. Potts denies paragraph 72 of the Statement of Claim.

73. In response to paragraph 73 of the Statement of Claim, Potts repeats paragraph 69 above and otherwise denies paragraph 73, and further says that the accounting treatment of rebates which was adopted by DSH in the Post Prospectus Accounts was reviewed and approved by DSH's auditor, Deloitte, as being in accordance with Australian Accounting Standards, as follows:

(a) in respect of the financial statements of DSH for the half year ended 29 December 2013 (the **HY2014 Report**), Deloitte:

(i) identified the accounting treatment of supplier rebates as a "key area of focus" in the course of its review of the HY2014 Report (the **HY2014 Review**); and

(ii) reported, at the end of the HY2014 Review, that as at "29 December 2013 there was \$4.4 million of provisions raised for doubtful and disputed rebate claims of which we have identified unadjusted differences of \$0.5 million."

Particulars

HY2014 FAC Report, p. 5.

(b) in respect of the financial statements of DSH for the year ended 29 June 2014 (the **FY2014 Report**), Deloitte:

(i) identified the accounting treatment of supplier rebates as a "key area of focus and audit response" in the course of its audit of the FY2014 Report (the **FY2014 Audit**);

Particulars

FY2014 FAC Report, section 3.3.

(ii) performed the following procedures in the course of the FY2014 Audit in respect of the accounting treatment of supplier rebates:

A. discussing the rebates with key members of DSH management;

B. analysing the various types of rebates recognised;

C. confirming the key controls associated with the completeness and validity of the recording of rebate revenues;

- D. performing substantive testing on a sample of rebates recorded in the year;
- E. assessing the provision for any disputed claims which were expected to be granted by the vendors; and
- F. assessing whether any rebates represented amounts which should be deferred;

Particulars

Deloitte presentation to DSH headed "External audit strategy for the financial year ending 29 June 2014", dated 16 January 2014 (the **FY2014 Audit Strategy Presentation**), p. 11.

FY2014 FAC Report, p. 11.

- (iii) requested, was provided with and reviewed papers prepared by DSH management which explained the O&A Rebate Accounting Treatment that was adopted in the FY2014 Report;

Particulars

Email from Damien Cork of Deloitte to Potts, copied to Nigel Mills of DSH and to David White of Deloitte, sent on Monday 26 May 2014, and headed "Dick Smith: O&A Rebates".

Email from Potts to David White of Deloitte, copied to Damien Cork of Deloitte, sent on Friday 6 June 2014 and headed "RE:O&A", attaching two papers, headed:

- "Position Paper – Vendor Rebates – Profit/Loss and Balance Sheet Recognition, dated 28 May 2014 and prepared by Nigel Mills of DSH"
- "Vendor Rebates – O&A"

- (iv) reported, at the end of the FY2014 Audit, that Deloitte concurred with the O&A Rebate Accounting Treatment which had been adopted by management of DSH in preparing the FY2014 Report;

Particulars

FY2014 FAC Report, p. 11.

- (c) in respect of the financial statements of DSH for the half year ended 28 December 2014 (the **HY2015 Report**), which adopted the O&A Rebate Accounting Treatment that had been approved by Deloitte in the course of the FY2014 Audit, Deloitte:

- (i) identified the accounting treatment of supplier rebates as a "key area of focus and review response" in the course of its review of the HY2015 Report (the **HY2015 Review**);

Particulars

HY2015 FAC Report, section 3.2a.

- (ii) performed the following procedures in the course of the HY2015 Review in respect of the accounting treatment of supplier rebates:
 - A. analysing the various types of rebates recognised;
 - B. reviewing the rebates receivable as at 28 December 2014;
 - C. assessing whether any rebates represented amounts which should be deferred; and
 - D. analysing the gross margin, net advertising costs and overall costs of doing business as a percentage of sales to determine whether the recognition of rebates was reasonable and reflected the fundamental economic nature of the activities;

Particulars

HY2015 FAC Report, pp. 8 and 9.

- (iii) reported, at the end of the HY2015 Review, that nothing had come to its attention that the manner in which rebates were recognised in the HY2015 Report was not appropriate;

Particulars

HY2015 FAC Report, p. 9.

- (d) in respect of the financial statements of DSH for the year ended 28 June 2015 (the **FY2015 Report**), which adopted the O&A Rebate Accounting Treatment that had been approved by Deloitte in the course of the FY2014 Audit, Deloitte:
 - (i) identified the accounting treatment of supplier rebates as a "key area of focus and audit response" in the course of its audit of the FY2015 Report (the **FY2015 Audit**);

Particulars

FY2015 FAC Report, pp. 10-11.

- (ii) performed the following procedures in the course of the FY2015 Audit in respect of the accounting treatment of supplier rebates:

- A. analysing the various types of rebates recognised, by assessing the nature and the classification of the rebates;
- B. performing a walkthrough of the process for classifying rebates;
- C. understanding the key controls associated with the completeness and validity of the recording of rebate income;
- D. critically evaluating management's methodologies in capturing, calculating and recognising rebates received and receivable, including the underlying key assumptions;
- E. testing the controls in place to ensure that they are operating effectively throughout the year;
- F. detailed testing of a sample of rebates recognised throughout the year by tracing to supporting documentation, with a focus on rebates accrued as at 28 June 2015;
- G. assessing the completeness and accuracy of the provision for any disputed claims with suppliers;
- H. assessing whether any supplier rebates represented amounts which should be deferred; and
- I. analysing the gross margin, net advertising costs and overall costs of doing business as a percentage of sales to determine whether the recognition of rebates was reasonable and reflected the fundamental economic nature of the activities;

Particulars

Deloitte presentation to DSH headed "External audit strategy for the year ending 28 June 2015", dated 18 November 2014 (the **FY2015 Audit Strategy Presentation**), p. 8.

FY2015 FAC Report, pp. 10 and 11.

(iii) reported, at the conclusion of the FY2015 Audit, that:

- A. Deloitte concurred with the O&A Rebate Accounting Treatment which was adopted in the FY2015 Report;
- B. DSH's processes, reconciliations and supporting evidence for O&A Rebates had significantly improved compared to the previous financial year ending 29 June 2014, with those rebates accrued in the accounts being based on

supporting evidence provided by the buyers and reviewed by finance before accruals were raised;

- C. based on the procedures performed by Deloitte, Deloitte had not identified any unadjusted differences in respect of supplier rebates in the FY2015 Report; and
- D. Deloitte concurred with the allocation by DSH management of a portion of the O&A Rebates in cost of sales where the rebates exceed the underlying promotional costs.

Particulars

FY2015 FAC Report, pp. 10 and 11.

- 74. Potts denies paragraph 74 of the Statement of Claim and repeats paragraph 73 above.
- 75. Potts denies paragraph 75 of the Statement of Claim and repeats paragraph 73 above.
- 76. In response to paragraph 76 of the Statement of Claim, Potts:
 - (a) repeats paragraphs 69-75 above; and
 - (b) otherwise does not plead to paragraph 76 of the Statement of Claim as it contains no allegations against him.
- 77. Potts denies paragraph 77 of the Statement of Claim.
- 78. Potts does not plead to paragraph 78 of the Statement of Claim as:
 - (a) it contains no allegations against him; and
 - (b) no claim is made against him in relation to the Growth Representations in the Prospectus.
- 79. Potts denies paragraph 79 of the Statement of Claim.
- 80. In response to paragraph 80 of the Statement of Claim, Potts:
 - (a) repeats paragraphs 69-79 of this List Response; and
 - (b) otherwise does not plead to paragraph 80 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus.

G.3 Inventories

81. Potts does not admit paragraph 81 of the Statement of Claim, and relies on AASB 3 and AASB 102 for their full terms and effect.
82. Potts denies paragraph 82 of the Statement of Claim.
83. Potts does not admit paragraph 83 of the Statement of Claim.
84. In response to paragraph 84 of the Statement of Claim, Potts:
 - (a) repeats paragraphs 82 and 83 above;
 - (b) otherwise does not plead to paragraph 84 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus.
85. Potts does not admit paragraph 85 of the Statement of Claim.
86. Potts does not admit paragraph 86 of the Statement of Claim.
87. Potts does not admit paragraph 87 of the Statement of Claim.
88. Potts denies paragraph 88 of the Statement of Claim and says further that the assumptions and methodology used by DSH management in determining inventory provisions in the Post Prospectus Accounts, and the amount of the inventory provisions in those accounts, were reviewed and approved by Deloitte, as follows:
 - (a) in respect of the HY2014 Report, Deloitte:
 - (i) identified inventory provisions as a key area of focus in the course of the HY2014 Review;
 - (ii) reviewed the provisions for inventory obsolescence and shrinkage in the HY2014 report for changes to the calculation methodology from the year ended 30 June 2013;
 - (iii) observed that the methodology used to calculate the provision for inventory obsolescence had been evolving as the restructure of the business continued and that the provision was based on an overall percentage calculation with reference to the category of inventory on hand as well as any additional specific provisions;

- (iv) reported that, whilst nothing came to Deloitte's attention as a result of its review that lead them to believe the provision in the HY2014 Report was materially misstated, Deloitte recommended that management continue to refine the methodology to include additional factors and assumptions which would increase the accuracy of the calculation;

Particulars

HY2014 FAC Report, sections 1.2 and 3.5.

- (b) in respect of the FY2014 Report, Deloitte:
 - (i) identified inventory provisions as a key area of focus and audit response in the course of the FY2014 Audit;

Particulars

FY2014 FAC Report, section 3.2.

- (ii) performed the following procedures in the course of the FY2014 Audit in respect of the inventory provisions:
 - A. reviewing the inventory costing and provisioning methodologies adopted as required under AASB 102 *Inventories*;
 - B. reviewing management's evolving provision methodologies and providing guidance as to the appropriateness of the methodology for both pre- and post- acquisition inventory balances;

Particulars

FY2014 Audit Strategy Presentation, p. 8.

- (iii) reported, at the conclusion of the FY2014 Audit, that:
 - A. DSH's methodology used to calculate the provision for inventory obsolescence had been evolving as more historical data was available under the restructured business model;
 - B. as at 29 June 2014 a process was undertaken to assess the inventory obsolescence provision based on various factors, and that this process had included the investigation of major product lines with the buying team to understand the expected future sell through and potential future write-downs;
 - C. Deloitte had reviewed both the assumptions and the methodology which were to be applied by management in the financial year ending 28 June

2015 in determining inventory provisions (the **2015 Inventory Provisions Methodology**);

- D. Deloitte concurred with the 2015 Inventory Provisions Methodology;
- E. Deloitte had also reviewed the calculation methodology in relation to provision for shrinkage and concurred with the assumptions adopted by DSH management;

Particulars

FY2014 FAC Report, p.10.

- (c) in respect of the HY2015 Report, Deloitte:
 - (i) identified the inventory provisions in HY2015 Report as a "key area of focus and review response" in the course of the HY2015 Review;

Particulars

HY2015 FAC Report, section 3.3b.

- (ii) reported, at the conclusion of the HY2015 Review, that:
 - A. the inventory provisions had been calculated and recorded in the HY2015 Report on the basis of the 2015 Inventory Provisions Methodology, subject to a refinement whereby aged stock items which were selling at significant positive margins were provided for, which resulted in an adjustment of \$1.26m;
 - B. there was a level of uncertainty as to whether the inventory balances no longer provided for as a result of the amendment referred to in paragraph A. above would be sold above cost, and consequently Deloitte had included in its summary of unadjusted differences a judgmental error of \$1.26m;
 - C. the unadjusted difference referred to in paragraph B. above could not, either individually or in aggregate with other unadjusted differences identified in the course of the HY2015 Review, have a material effect on the HY2015 Report;

Particulars

HY2015 FAC Report, pp. 4 and 11.

- (d) in respect of the FY2015 Report, Deloitte:
 - (i) identified the inventory provisions in the FY2015 Report as a "key area of focus and audit response" in the course of the FY2015 Audit;

Particulars

FY2015 FAC Report, section 3.2.

- (ii) performed the following procedures in the course of the FY2015 Audit in respect of inventory provisions:
 - A. testing of controls around the inventory obsolescence, reconciliation, review and approvals process;
 - B. reviewing the inventory costing and provisioning methodologies adopted as required under AASB 102 *Inventories*;
 - C. using data analytics to analyse reports developed by management to track actual selling prices for stock sold;
 - D. reviewing management's assessment of provisions based on this information and other evidence as to the appropriateness of the percentages provided on stock lines;

Particulars

The FY2015 Audit Strategy Presentation, p. 8.

- (iii) reported, at the conclusion of the FY2015 Audit, that;
 - A. the 2015 Inventory Provisions Methodology had been adopted in the FY2015 Report, subject to the refinement referred to in paragraph (c)(ii) above;
 - B. Deloitte had assessed the assumptions and methodology applied by DSH in the FY2015 Report, and concurred with the revised methodology; and
 - C. the overall costs which had been recognised in the total cost of inventory under Accounting Standard AASB 102 *Inventories* were appropriate.

Particulars

FY2015 FAC Report, pp. 5 and 9.

- 89. Potts denies paragraph 89 of the Statement of Claim and repeats paragraph 88 above.
- 90. Potts does not admit paragraph 90 of the Statement of Claim.
- 91. Potts does not admit paragraph 91 of the Statement of Claim.
- 92. In response to paragraph 92 of the Statement of Claim, Potts:
 - (a) repeats paragraphs 90 and 91 above; and
 - (b) otherwise does not plead to paragraph 92 as it contains no allegations against him.

93. In response to paragraph 93 of the Statement of Claim, Potts:

- (a) admits that for management and pricing purposes there was an uplift of purchase invoicing by 1%;
- (b) denies that the uplift referred to in paragraph (a) above resulted in accounts that did not comply with Australian Accounting Standards and says that:
 - (i) at the conclusion of the HY2014 Review, Deloitte reported that:
 - A. management had implemented a provision for uplift of 1% in FY2014 as a tool to build up the obsolescence provision on purchases of inventory;
 - B. management made an adjustment to the system to automatically provide 1% on all purchases or inventory; and
 - C. a true up calculation was then made to adjust the inventory provision to the required balance and release any excess amount at balance sheet date to profit and loss.

Particulars

HY2014 FAC Report, section 3.5.

- (ii) at the conclusion of the FY2014 Audit, Deloitte reported that:
 - A. the 1% provision was recorded for management purposes only;
 - B. the 1% provision had the effect of grossing up both the inventory cost and the inventory provision which are presented in the financial statements as one line item; and
 - C. there was no impact on the inventory reported externally;

Particulars

FY2014 FAC Report, section 3.2.

- (c) otherwise does not admit paragraph 93 of the Statement of Claim.

94. Potts does not admit paragraph 94 of the Statement of Claim.

95. In response to paragraph 95 of the Statement of Claim, Potts:

- (a) admits that the provision account for David Jones' inventories was either written back as income or transferred to the primary ledger account for the obsolescence provision, but does not admit that this was done by the end of 1H2014; and

- (b) denies that this was done to cover a shortfall in that account arising from other write backs.

96. Potts denies paragraph 96 of the Statement of Claim.

97. Potts denies paragraph 97 of the Statement of Claim.

98. In response to paragraph 98 of the Statement of Claim, Potts:

- (a) repeats paragraphs 82-96 of this List Response; and
- (b) otherwise does not plead to paragraph 98 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus.

G.4 Non Disclosed Adjustments

Onerous Leases Provision

99. Potts does not admit paragraph 99 of the Statement of Claim.

100. Potts does not admit paragraph 100 of the Statement of Claim.

101. Potts denies paragraph 101 of the Statement of Claim, and further says that:

- (a) under AASB 137 *Provisions, Contingent Liabilities and Contingent Assets*, where the costs of meeting a contract exceed the future economic benefits derived from it, the total amount of the loss should be recognised as an onerous contract;
- (b) at the conclusion of its audit of the financial report for the 10 month period ended 30 June 2013 (**FY2013 Report**), Deloitte reported that:
 - (i) while onerous contracts and leases were a key audit risk, this was a risk which had been appropriately considered and addressed in the FY2013 Report;
 - (ii) one of the fair value adjustments in respect of leases in the FY2013 Report included an adjustment of \$13.4m in relation to onerous leases which were identified on acquisition;
 - (iii) management had identified several stores and other leases which were considered onerous as the costs of meeting the contract exceeded the future economic benefits derived from it, including stores with excess lease space, an under-utilised distribution centre and stores with poor or negative trading performance;

- (iv) in respect of such stores, Deloitte concurred with management's calculation of the onerous lease provision;
- (v) while Deloitte identified an unadjusted difference of some \$689,244 in respect of the provision for onerous leases at acquisition date, this did not, either individually or in aggregate with other unadjusted differences identified by Deloitte, have a material effect on the FY2013 Report;

Particulars

Deloitte FY2013 Board Report, sections 1.2, 2.1, 2.3 and Appendix A.

- (c) it was appropriate for DSH to consider in subsequent periods whether the relevant leases continued to be onerous and, where a provision was no longer required, it was appropriate to release such amount to profits;
- (d) in relation to the HY2014 Report, Deloitte reported that:
 - (i) DSH identified several store and other leases which are considered onerous. These include stores with excess lease space, an under-utilised distribution centre as well as stores with poor or negative trading performance;
 - (ii) in relation to excess lease space they noted that nothing had come to their attention that caused them to believe that the excess lease provision and assumptions were not appropriate at 29 December 2013;
 - (iii) in relation to poorly performing stores Deloitte stated that in the HY2014 period 3 stores totalling \$1.8 million were written back due to significantly improved store performance and an additional provision was recognised in relation to Dunedin, New Zealand. Deloitte reviewed this calculation based on the relevant inputs and assumptions and no findings were noted;

Particulars

HY2014 FAC Report, page 14.

- (e) in relation to the FY2014 Report, Deloitte reported that a "focus area" for Deloitte in the course of the FY2014 Audit had been "onerous leases" and Deloitte had "no matter to report" in relation to them.

Particulars

FY2014 FAC Report, page 28.

Receivables Provisions

- 102. Potts does not admit paragraph 102 of the Statement of Claim.
- 103. Potts does not admit paragraph 103 of the Statement of Claim.
- 104. Potts does not admit paragraph 104 of the Statement of Claim.
- 105. Potts denies paragraph 105 of the Statement of Claim.

Warranty Sign On Liability

- 106. In response to paragraph 106 of the Statement of Claim, Potts:
 - (a) says that Deloitte, at the conclusion of its audit of the FY2013 Report, reported to the Board of DSH that:
 - (i) "Other adjustments relate primarily to an unearned revenue liability raised in respect of The Warranty Group sign-on bonus. Management ascribed a fair value of \$2.1 million to this liability at acquisition, however due to the requirements of AASB 3 we have assessed the fair value of this as \$nil. This adjustment has been included on the schedule of unadjusted differences in Appendix A.;"
 - (ii) the unadjusted difference referred to in paragraph (i) above did not, either individually or in aggregate with other unadjusted differences identified by Deloitte, have a material effect on the FY2013 Report;

Particulars

Deloitte FY2013 Board Report, section 2.5 and Appendix A.

- (b) otherwise does not admit paragraph 106 of the Statement of Claim.
- 107. Potts does not admit paragraph 107 of the Statement of Claim.
 - 108. Potts denies paragraph 108 of the Statement of Claim, repeats paragraph 106 above, and further says that:
 - (a) at the conclusion of the HY2014 Review, Deloitte reported that it had identified an overstatement of warranty sign-on fee recognised on acquisition and an overstatement of warranty, but that these overstatements did not, either individually or in aggregate with other unadjusted differences, have a material effect on the HY2014 Report;
 - (b) at the conclusion of the FY2014 Audit, Deloitte reported that:
 - (i) included in the statutory and pro forma results were a number of one-off items which included the release of The Warranty Group sign-on fee;

- (ii) in FY2014 management renegotiated its warranty service agreement with The Warranty Group;
- (iii) DSH had previously received a sign on fee of \$2.5m which was being amortised over the period of the warranty service agreement;
- (iv) on renegotiation of this agreement, the unamortised portion of this fee (\$1.7m) was released to profit or loss; and
- (v) these on-off adjustments complied with relevant Australian Accounting Standards.

Particulars

FY2014 FAC Report, section 3.1

Capitalisation of Employee and Other Costs

109. In response to paragraph 109 of the Statement of Claim, Potts:

- (a) admits that, after Acquisition, DSH capitalised certain employee and other costs into the cost of assets; and
- (b) otherwise does not admit paragraph 109 of the Statement of Claim.

110. Potts does not admit paragraph 110 of the Statement of Claim.

111. Potts denies paragraph 111 of the Statement of Claim, and says that Deloitte approved the capitalisation of certain employee and other costs into the cost of assets as being in accordance with Australian Accounting Standards, as follows:

- (a) at the conclusion of its audit of the FY2013 Report, Deloitte reported that:
 - (i) 10.2% of salaries and wages in relation to store picking and packing costs incurred by staff in unloading the stock and filling the shelves, which amounted to \$2m, had been capitalised into the cost of inventories;
 - (ii) Management had performed an analysis to determine the approximate amount of time which is spent by staff in stock filling, which had resulted in the 10.2% figure; and
 - (iii) Deloitte concurred with the principles behind the supply chain costs recognised in inventory;

Particulars

Deloitte June 2013 Board Report, p. 8.

- (b) at the conclusion of the HY2014 Review, Deloitte reported that:

- (i) 10.2% of salaries and wages in relation to store picking and packing costs incurred by staff in unloading the stock and filling the shelves, which amounted to \$3.4m, had been capitalised into the cost of inventories;
- (ii) there had been no change to the assumptions used by management in respect of paragraph (i) above, and nothing had come to Deloitte's attention in the course of the HY2014 Review to indicate that these assumptions did not remain appropriate;

Particulars

HY2014 FAC Report, section 3.4.

- (c) at the conclusion of the FY2014 Audit, Deloitte reported that:
 - (i) in the FY2014 Report the following costs were capitalised into the cost of inventories:
 - A. 10.2% of salaries and wages in relation to store picking and packing costs incurred by staff in unloading the stock and filling the shelves, which amounted to \$8.6m; and
 - B. the buying team costs, which amounted to \$4.4m;
 - (ii) in respect of staff picking and packing costs, there had been no changes in the assumptions used by management, and Deloitte concurred that this treatment remained appropriate;
 - (iii) Deloitte had audited the calculations and estimates made by management and concurred with the inventory costing adjustments recognised in the FY2014 Report;

Particulars

FY2014 FAC Report, p. 9.

- (d) at the conclusion of the HY2015 Review, Deloitte reported that:
 - (i) in the HY2015 Report the following costs were capitalised into the cost of inventories:
 - A. 10.2% of salaries and wages in relation to store picking and packing costs incurred by staff in unloading the stock and filling the shelves, which amounted to \$8.8m; and
 - B. 90% of the buying team Costs, which amounted to \$8.8m;

- (ii) the allocation of the buying team costs had increased from 60% at FY2014 to 90% at HY2015, in order "to better reflect the time spent by the buying team on its core activities";
- (iii) Deloitte had reviewed the change in assumptions and concluded that they were not unreasonable;

Particulars

HY2015 FAC Report, p. 10.

- (e) at the conclusion of the FY2015 Audit, Deloitte reported that:
 - (i) in the FY2015 Report the following costs were capitalised into the cost of inventories:
 - A. 10.2% of salaries and wages in relation to store picking and packing costs incurred by staff in unloading the stock and filling the shelves, which amounted to \$9.1m; and
 - B. 90% of the buying team costs, which amounted to \$9.3m;
 - (ii) as noted in the HY2015 FAC Report, the allocation of the buying team costs had increased from 60% in FY2014 to 90% in FY2015, in order "to better reflect the time spent by the buying team on its core activities";
 - (iii) Deloitte was satisfied that the overall costs recognised in inventory in the FY2015 Report were appropriate.

Particulars

FY2015 FAC Report, p. 8.

Breakages and Cost Adjustments

- 112. Potts does not admit paragraph 112 of the Statement of Claim.
- 113. Potts does not admit paragraph 113 of the Statement of Claim.
- 114. Potts denies paragraph 114 of the Statement of Claim.

Conclusion

- 115. In response to paragraph 115, Potts:
 - (a) repeats paragraphs 99-114 above;
 - (b) otherwise does not plead to paragraph 115 as:

- (i) it contains no allegations against him; and
- (ii) no claim is made against him in relation to any alleged deficiency in respect of the Prospectus Accounts or the Growth Representations.

G.5 Liquidity and Capital Adequacy

Woolworths Payment Information

116. Potts does not admit paragraph 116 of the Statement of Claim.

117. In response to paragraph 117 of the Statement of Claim, Potts:

- (a) repeats paragraphs 17 and 25 above;
- (b) relies on the Share Sale Agreement for its full terms and effect; and
- (c) otherwise does not admit paragraph 117 of the Statement of Claim.

118. In response to paragraph 118 of the Statement of Claim, Potts:

- (a) repeats paragraphs 17 and 25 above;
- (b) relies on the Share Sale Agreement for its full terms and effect; and
- (c) otherwise does not admit paragraph 118 of the Statement of Claim.

119. Potts does not admit paragraph 119 of the Statement of Claim.

120. Potts does not admit paragraph 120 of the Statement of Claim.

121. In response to paragraph 121 of the Statement of Claim, Potts:

- (a) repeats paragraphs 116-120 above; and
- (b) otherwise does not plead to paragraph 121 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus.

Historical Equity and Cash Flow Position

122. In response to paragraph 122 of the Statement of Claim, Potts:

- (a) admits subparagraph 122(a); and

(b) denies subparagraph 122(b).

123. Potts admits paragraph 123 of the Statement of Claim.

124. Potts denies paragraph 124 of the Statement of Claim.

G.6 Undisclosed Material Facts

125. In response to paragraph 125 of the Statement of Claim, Potts:

- (a) repeats paragraphs 32, 59, 65, 68, 76, 98, 115, 120 and 124 above; and
- (b) otherwise does not plead to paragraph 125 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus.

126. In response to paragraph 126 of the Statement of Claim, Potts:

- (a) repeats paragraphs 61, 71, 73 and 88 above, and denies subparagraph 126(a); and
- (b) otherwise does not plead to paragraph 126 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus.

127. In response to paragraph 127 of the Statement of Claim, Potts:

- (a) repeats paragraphs 32, 65, 76, 98, 115 and 126 above; and
- (b) otherwise does not plead to paragraph 127 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus or any alleged deficiency in the 2013 Performance Representations.

128. In response to paragraph 128 of the Statement of Claim, Potts:

- (a) repeats paragraphs 32, 76, 98, 115, 120 and 126 above; and
- (b) otherwise does not plead to paragraph 128 as:

- (i) it contains no allegations against him; and
- (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus or any alleged deficiency in the 2013 Balance Sheet Representations.

129. In response to paragraph 129 of the Statement of Claim, Potts:

- (a) repeats paragraphs 61, 71, 73 and 88 above, and denies subparagraph 129(a); and
- (b) otherwise does not plead to paragraph 129 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus.

130. In response to paragraph 130 of the Statement of Claim, Potts:

- (a) repeats paragraphs 32, 65, 76, 98, 115 and 129 above; and
- (b) otherwise does not plead to paragraph 130 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus or any alleged deficiency in the 1Q2014 Performance Representations.

131. In response to paragraph 131 of the Statement of Claim, Potts:

- (a) repeats paragraphs 61, 71, 73 and 88 above, and denies subparagraph 131(a);
- (b) repeats paragraphs 69-80 above, and denies the Forecast Rebate Information pleaded in subparagraph 131(b);
- (c) denies subparagraph 131(c); and
- (d) otherwise does not plead to paragraph 131 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus or any alleged deficiency in the Growth Representations.

132. In response to paragraph 132 of the Statement of Claim, Potts:

- (a) repeats paragraph 131 above and denies the FY2014 Performance Information; and
- (b) otherwise does not plead to paragraph 132 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus or any alleged deficiency in the Growth Representations.

133. In response to paragraph 133 of the Statement of Claim, Potts:

- (a) repeats paragraphs 125, 126, 129 and 131 above; and
- (b) otherwise does not plead to paragraph 133 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus or any alleged deficiency in the Transformation Representations.

134. In response to paragraph 134 of the Statement of Claim, Potts:

- (a) repeats paragraphs 125-133 above; and
- (b) otherwise does not plead to paragraph 134 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus or any alleged deficiency in the Prospectus Accounts.

H. THE POST PROSPECTUS REPRESENTATIONS

H.1 2014 Half Yearly Results

135. Potts admits paragraph 135 of the Statement of Claim, and relies upon the 19 February 2014 ASX Announcement, the 1H2014 Results Briefing and the HY2014 Report for their full terms and effect.

136. In response to paragraph 136 of the Statement of Claim, Potts:

- (a) says in response to subparagraph 136(b) that the Australian like for like sales growth attributed to the level of discounting in 1H2013 was (1.3)%; and
- (b) otherwise admits paragraph 136 of the Statement of Claim.

137. Potts admits paragraph 137 of the Statement of Claim, and further says that:

- (a) he held the opinions stated in the declaration pleaded in paragraph 137(a) of the Statement of Claim (the **HY2014 Directors' Declaration**) as at the date of that declaration;
- (b) in forming the opinions stated in the HY2014 Directors' Declaration, Potts relied on:
 - (i) the contents of Deloitte's HY2014 FAC Report; and
 - (ii) Deloitte's representation to the Finance and Audit Committee (**FAC**) at the meeting on 5 February 2014 that Deloitte expected to issue an unqualified review report on its review of the HY2014 Report, being a report which stated, inter alia, that based on the HY2014 Review, Deloitte had not become aware of any matter that made it believe that the HY2014 Report was not in accordance with the Corporations Act, including:
 - A. giving a true and fair view of DSH's financial position as at 29 December 2013 and of its performance for the half-year ended on that date, and
 - B. complying with Accounting Standard AASB 134 *Interim Financial Reporting* and the *Corporations Regulations 2001* (Cth) (**Corporations Regulations**);

Particulars

Minutes of FAC Meetings held on 5 February 2014.

- (c) on the date of the HY2014 Directors' Declaration, Deloitte issued an unqualified review report in relation to the HY2014 Report, which made statements to the effect of those pleaded in paragraph (b) above.

Particulars

Independent Auditor's Review Report to the Members of DSH dated 18 February 2014 (**HY2014 Review Report**).

H.2 2014 Yearly Results

138. Potts admits paragraph 138 of the Statement of Claim, and relies upon the 19 August 2014 ASX Announcement, the FY2014 Results Briefing and the FY2014 Report for their full terms and effect.

139. In response to paragraph 139 of the Statement of Claim, Potts:

- (a) denies subparagraph 139(b);

- (b) denies subparagraph 139(m) and says that the 19 August 2014 ASX Announcement contained a statement that *"Dick Smith is well placed to deliver further strong profit growth in FY15. Sales are expected to benefit from continued 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"*; and
- (c) otherwise admits paragraph 139 of the Statement of Claim

140. Potts admits paragraph 140 of the Statement of Claim.

H.3 2015 Half Yearly Results

141. Potts admits paragraph 141 of the Statement of Claim, and relies upon the 17 February 2015 ASX Announcement, the 1H2015 Results Briefing and the HY2015 Report for their full terms and effect.

142. Potts admits paragraph 142 of the Statement of Claim.

143. Potts admits paragraph 143 of the Statement of Claim, and further says that:

- (a) he held the opinions stated in the declaration pleaded in paragraph 143(a) of the Statement of Claim (the **HY2015 Directors' Declaration**) as at the date of that declaration;
- (b) in forming the opinions stated in the HY2015 Directors' Declaration, Potts relied on:
 - (i) the contents of Deloitte's HY2015 FAC Report; and
 - (ii) Deloitte's statement to the Board at the meeting on 16 February 2015 that Deloitte would be issuing an unqualified review report on its review of the HY2015 Report, being a report which stated, inter alia, that based on the HY2015 Review Deloitte had not become aware of any matter that made it believe that the HY2015 Report was not in accordance with the Corporations Act, including:
 - A. giving a true and fair view of DSH's financial position as at 28 December 2014 and of its performance for the 26 weeks then ended, and
 - B. complying with Accounting Standard AASB 134 *Interim Financial Reporting* and the Corporations Regulations.

Particulars

Minutes of Board Meeting held on 16 February 2015, "Adoption of the half year accounts for the period 28 December 2014".

- (c) on the date of the HY2015 Directors' Declaration, Deloitte issued an unqualified review report in relation to the HY2015 Report, which made statements to the effect of those pleaded in paragraph (b) above.

Particulars

Independent Auditor's Review Report to the Members of DSH dated 16 February 2015 (**HY2015 Review Report**).

H.4 2015 Yearly Results

144. Potts admits paragraph 144 of the Statement of Claim, and relies upon the 18 August 2015 ASX Announcement, the FY2015 Results Briefing and the FY2015 Report for their full terms and effect.
145. In response to paragraph 145 of the Statement of Claim, Potts:
- (a) as to subparagraph 145(d), says that the 18 August 2015 ASX Announcement contained a statement that DSH "continued to drive cost efficiencies, with cash Cost of Doing Business (CODB) decreasing 32bp to 18.7% of sales in 2015"; and
 - (b) otherwise admits paragraph 145.
146. Potts admits paragraph 146 of the Statement of Claim.

I. POST PROSPECTUS MATERIAL FACTS

I.1 Post Prospectus Sales

Agency Sales

147. In response to paragraph 147 of the Statement of Claim, Potts repeats paragraphs 61 and 63 above.
148. In response to paragraph 148 of the Statement of Claim, Potts:
- (a) repeats paragraphs 61-63 above; and
 - (b) otherwise does not admit the allegations contained in that paragraph.

Sales Mix

149. In response to paragraph 149 of the Statement of Claim, Potts repeats paragraphs 66 and 67 above.

150. In response to paragraph 150 of the Statement of Claim, Potts:

- (a) denies subparagraphs 150(a) and 150(b); and
- (b) does not admit subparagraph 150(c).

I.2 Post Prospectus Rebates

151. In response to paragraph 151 of the Statement of Claim, Potts repeats paragraphs 69-75 above.

152. Potts denies paragraph 152 of the Statement of Claim and repeats paragraphs 69 and 73 above.

I.3 Post Prospectus Inventories

153. In response to paragraph 153 of the Statement of Claim, Potts repeats paragraph 81 above.

154. Potts denies paragraph 154 of the Statement of Claim, and repeats paragraph 88 above.

I.4 Undisclosed Material Facts

2014 Half Yearly Results

155. In response to paragraph 155 of the Statement of Claim, Potts:

- (a) denies subparagraph 155(a) and repeats paragraphs 69 and 73 above;
- (b) denies subparagraph 155(c) and repeats paragraphs 88-89 above; and
- (c) does not admit subparagraphs 155(b) and (d)-(g) and repeats paragraphs 61-63, 99-101, 104-105, 107-108 and 109-111 above.

156. Potts denies paragraph 156 of the Statement of Claim and says that:

- (a) the HY2014 Report was reviewed by Deloitte;
- (b) in the course of the HY2014 Review, Deloitte made, inter alia, the statements pleaded at paragraphs 63, 73(a), 88(a), 93(b), 101(d), 108(a) and 111(b) above;
- (c) at the conclusion of the HY2014 Review, Deloitte reported that based on the HY2014 Review, Deloitte had not become aware of any matter that made it believe that the HY2014 Report was not in accordance with the Corporations Act, including:
 - (i) giving a true and fair view of DSH's financial position as at 29 December 2013 and of its performance for the half-year ended on that date; and

- (ii) complying with Accounting Standard AASB 134 *Interim Financial Reporting* and the Corporations Regulations.

Particulars

HY2014 Review Report, p. 5.

157. In response to paragraph 157 of the Statement of Claim, Potts:

- (a) admits that the 2014 Half Yearly Results did not contain statements to the effect of those pleaded in paragraphs 32, 59, 61, 68, 76, 88, 98, 155, 156 or 183 of the Statement of Claim;
- (b) repeats paragraphs 32, 59, 61, 68, 76, 88, 98, 155 and 156 above, and paragraph 183 below; and
- (c) otherwise denies paragraph 157 of the Statement of Claim.

158. Potts denies paragraph 158 of the Statement of Claim, and repeats paragraph 156 above.

159. Potts denies paragraph 159 of the Statement of Claim, and repeats paragraphs 156-158 above.

2014 Yearly Results

160. In response to paragraph 160 of the Statement of Claim, Potts:

- (a) denies subparagraph 160(a) and repeats paragraphs 69 and 73 above; and
- (b) denies subparagraph 160(c) and repeats paragraphs 88-89 above; and
- (c) does not admit subparagraphs 160(b) and (d)-(g) and repeats paragraphs 61-63, 99-101, 104-105, 107-108 and 109-111 above.

161. Potts denies paragraph 161 of the Statement of Claim and says that:

- (a) the FY2014 Report was audited by Deloitte;
- (b) in the course of the FY2014 Audit, Deloitte made, inter alia, the statements pleaded at paragraphs 63, 73(b), 88(b), 93(b), 101(e), 108(b) and 111(c) above; and
- (c) at the conclusion of the FY2014 Audit, Deloitte reported that:

“In our opinion: (a) the financial report of Dick Smith Holdings Limited is in accordance with the Corporations Act 2001, including: (i) giving a true and fair view of the consolidated entity’s financial position as at 29 June 2014 and of its performance for the year ended on that date; and (ii) complying with Australian Accounting Standards and the Corporations Regulations 2001; and (b) the

consolidated financial statements also comply with International Financial Reporting Standards as disclosed in Note 2".

Particulars

Independent Auditor's Report to the Members of DSH dated 18 August 2014
(FY2014 Audit Report).

162. In response to paragraph 162 of the Statement of Claim, Potts:

- (a) admits that the 2014 Yearly Results did not contain statements to the effect of those pleaded in paragraphs 32, 59, 61, 68, 76, 88, 98, 160, 161 or 183 of the Statement of Claim;
- (b) repeats paragraphs 32, 59, 61, 68, 76, 88, 98, 160 and 161 above, and paragraph 183 below;
- (c) otherwise denies the allegations in paragraph 162 of the Statement of Claim.

163. Potts denies paragraph 163 of the Statement of Claim, and repeats paragraph 161 above.

164. Potts denies paragraph 164 of the Statement of Claim, and repeats paragraphs 160-163 above.

2015 Half Yearly Results

165. In response to paragraph 165 of the Statement of Claim, Potts:

- (a) denies subparagraph 165(a) and repeats paragraphs 69 and 73 above; and
- (b) denies subparagraph 165(c) and repeats paragraphs 88-89 above; and
- (c) does not admit subparagraphs 165(b) and (d)-(e), and repeats paragraphs 61-63, 99-101 and 109-111 above.

166. Potts denies paragraph 166 of the Statement of Claim and says that:

- (a) the HY2015 Report was reviewed by Deloitte;
- (b) in the course of the HY2015 Review, Deloitte made, inter alia, the statements pleaded at paragraphs 63, 73(c), 88(c) and 111(d) above; and
- (c) at the conclusion of the HY2015 Review, Deloitte reported that based on the HY2015 Review, Deloitte had not become aware of any matter that made it believe that the HY2015 Report was not in accordance with the Corporations Act, including:
 - (i) giving a true and fair view of DSH's financial position as at 29 December 2013 and of its performance for the half-year ended on that date; and

- (ii) complying with Accounting Standard AASB 134 *Interim Financial Reporting* and the Corporations Regulations.

Particulars

HY2015 Review Report, p. 3.

167. In response to paragraph 167 of the Statement of Claim, Potts:

- (a) admits that the 2015 Half Yearly Results did not contain statements to the effect of those pleaded in paragraphs 32, 59, 61, 68, 76, 88, 98, 165, 166 or 183 of the Statement of Claim;
- (b) repeats paragraphs 32, 59, 61, 68, 76, 88, 98, 165 and 166 above, and paragraph 183 below;
- (c) otherwise denies the allegations in paragraph 167 of the Statement of Claim.

168. Potts denies paragraph 168 of the Statement of Claim, and repeats paragraph 166 above.

169. Potts denies paragraph 169 of the Statement of Claim, and repeats paragraphs 165-168 above.

2015 Yearly Results

170. In response to paragraph 170 of the Statement of Claim, Potts:

- (a) denies subparagraph 170(a) and repeats paragraphs 69 and 73 above;
- (b) denies subparagraph 170(c) and repeats paragraphs 88-89 above;
- (c) does not admit subparagraphs 170(b) and (d)-(e), and repeats paragraphs 61-63, 99-101, 109-111 above; and
- (d) in response to subparagraph 170(f), says that the term "Other Cost of Sales Income Adjustments" is not defined in the Statement of Claim, and as such the meaning of that term is unknown, and otherwise does not admit subparagraph 170(f).

171. Potts denies paragraph 171 of the Statement of Claim and further says that:

- (a) the FY2015 Report was audited by Deloitte;
- (b) in the course of the FY2015 Audit, Deloitte made, inter alia, the statements pleaded at paragraphs 63, 73(d), 88(d) and 111(e) above; and
- (c) at the conclusion of the FY2015 Audit, Deloitte reported that:

"In our opinion: (a) the financial report of Dick Smith Holdings Limited is in accordance with the Corporations Act 2001, including: (i) giving a true and fair view

of the consolidated entity's financial position as at 28 June 2015 and of its performance for the year ended on that date; and (ii) complying with Australian Accounting Standards and the Corporations Regulations 2001; and (b) the consolidated financial statements also comply with International Financial Reporting Standards as disclosed in Note 2".

Particulars

Independent Auditor's Report to the Members of DSH dated 17 August 2015 (FY2015 Audit Report).

172. In response to paragraph 172 of the Statement of Claim, Potts:

- (a) admits that the 2015 Yearly Results did not contain statements to the effect of those pleaded in paragraphs 32, 59, 61, 68, 76, 88, 98, 170, 171 or 183 of the Statement of Claim;
- (b) repeats paragraphs 32, 59, 61, 68, 76, 88, 98, 170 and 171 above, and paragraph 183 below; and
- (c) otherwise denies the allegations in paragraph 172 of the Statement of Claim.

173. Potts denies paragraph 173 of the Statement of Claim, and repeats paragraph 171 above.

174. Potts denies paragraph 174 of the Statement of Claim, and repeats paragraphs 170-173 of this List Response.

I.5 Post Prospectus Debt

175. Potts does not admit paragraph 175 of the Statement of Claim.

176. Potts admits paragraph 176 of the Statement of Claim.

177. Potts does not admit paragraph 177 of the Statement of Claim.

178. Potts admits paragraph 178 of the Statement of Claim.

179. Potts admits paragraph 179 of the Statement of Claim.

180. Potts does not admit paragraph 180 of the Statement of Claim.

181. Potts admits paragraph 181 of the Statement of Claim.

182. Potts does not admit paragraph 182 of the Statement of Claim.

183. In response to paragraph 183 of the Statement of Claim, Potts:

- (a) repeats paragraphs 175-182 above; and
- (b) otherwise does not admit paragraph 183 of the Statement of Claim.

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. In response to paragraph 184 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;
- (b) admits that he was aware, from the date of the approval of the FY2013 Report, of the contents of the FY2013 Report;
- (c) repeats paragraphs 26-31 above (regarding the alleged Acquisition Accounting Information);
- (d) otherwise does not admit paragraph 184 of the Statement of Claim insofar as it contains allegations against Potts; and
- (e) does not plead to paragraph 184 insofar as it contains allegations against Abboud.

Sales Trend Information

185. In response to paragraph 185 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;
- (b) admits that he was aware, as at the date of the Prospectus, of:
 - (i) the contents of in the Monthly Management Reports for September 2013, but otherwise denies that he was aware, as at the date of the Prospectus, of the information pleaded in subparagraph 185(d)(i);
 - (ii) the information referred to in subparagraph 185(d)(ii)-(iii); and
 - (iii) the contents of the final due diligence report of the investigating accountant, Deloitte Corporate Finance Pty Limited (the **Investigating Accountant's Report**), but otherwise does not admit subparagraph 185(d)-(iii);
- (c) repeats paragraphs 56-59 above (regarding the alleged Sales Trend Information);

- (d) otherwise does not admit paragraph 185 of the Statement of Claim insofar as it contains allegations against Potts; and
- (e) does not plead to paragraph 185 insofar as it contains allegations against Abboud.

Sales Accounting Information

186. In response to paragraph 186 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;
- (b) admits that he was aware, as at the date of the Prospectus, of the contents of the Prospectus Accounts;
- (c) repeats paragraphs 60-65 above (regarding the alleged Sales Accounting Information);
- (d) denies that he ought reasonably to have known or ought reasonably to have obtained the alleged Sales Accounting Information (which is denied);
- (e) otherwise does not admit paragraph 186 of the Statement of Claim insofar as it contains allegations against Potts; and
- (f) does not plead to paragraph 186 insofar as it contains allegations against Abboud.

Retail Sales Information

187. In response to paragraph 187 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;
- (b) says that he commenced with DSH from on or about September 2013 and therefore denies that he had knowledge of the Monthly Management Accounts prior to this date;
- (c) admits that he was aware, in the period up to the date of the Prospectus, of the contents of the Monthly Management Accounts for September 2013, but does not admit that he had knowledge of the contents of the Monthly Management Accounts for October 2013 and denies that he had knowledge of the contents of the Monthly Management Accounts for November 2013 as at the date of the Prospectus;
- (d) repeats paragraphs 66-68 above (regarding the alleged Retail Sales Information);
- (e) otherwise does not admit paragraph 187 of the Statement of Claim insofar as it contains allegations against Potts; and
- (f) does not plead to paragraph 187 insofar as it contains allegations against Abboud.

O & A Rebate Information

188. In response to paragraph 188 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;
- (b) repeats paragraphs 69-76 above (regarding the alleged O & A Rebate Information);
- (c) denies that he ought reasonably to have known or ought reasonably to have obtained the alleged O & A Rebate Information (which is denied);
- (d) as to subparagraph 188(d), denies that he knew, as at the date of the Prospectus, of the discussions which occurred at FAC meetings held after the date of the Prospectus;
- (e) otherwise does not admit paragraph 188 of the Statement of Claim insofar as it contains allegations against Potts; and
- (f) does not plead to paragraph 188 insofar as it contains allegations against Abboud.

Prospectus Inventory Information

189. In response to paragraph 189 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;
- (b) admits that he was aware, as at the date of the Prospectus, of the contents of the Investigating Accountant's Report and the FY2013 Report;
- (c) repeats paragraphs 82-98 above (regarding the alleged Prospectus Inventory Information);
- (d) denies that he ought reasonably to have known or ought reasonably to have obtained the alleged Prospectus Inventory Information (which is denied);
- (e) otherwise does not admit paragraph 189 of the Statement of Claim insofar as it contains allegations against Potts; and
- (f) does not plead to paragraph 189 insofar as it contains allegations against Abboud.

Adjustments Information

190. In response to paragraph 190 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;
- (b) repeats paragraphs 99-115 above (regarding the alleged Adjustments Information);

- (c) denies that he ought reasonably to have known or ought reasonably to have obtained the alleged Adjustments Information (which is denied);
- (d) otherwise does not admit paragraph 190 of the Statement of Claim insofar as it contains allegations against Potts; and
- (e) does not plead to paragraph 190 insofar as it contains allegations against Abboud.

Woolworths Payment Information and Historical Cash Flow Information

191. Potts does not plead to paragraph 191 as it contains no allegation against him.

192. In response to paragraph 192 of the Statement of Claim, Potts:

- (a) repeats paragraphs 184-191 above;
- (b) otherwise denies paragraph 192 of the Statement of Claim insofar as it contains allegations against Potts; and
- (c) does not plead to paragraph 192 insofar as it contains allegations against Abboud.

J.1.2 FY2013 Results Information

193. In response to paragraph 193 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;
- (b) admits that he was aware of the contents of the FY2013 Report and of the Prospectus, as from the date each of those documents was issued;
- (c) repeats paragraphs 186, 188 and 189 above (regarding the alleged Sales Accounting Information, O&A Rebate Information and Prospectus Inventory Information);
- (d) denies that he ought reasonably to have known or ought reasonably to have obtained the alleged FY2013 Results Information (which is denied), and repeats paragraph 126 above;
- (e) otherwise does not admit paragraph 193 of the Statement of Claim insofar as it contains allegations against Potts; and
- (f) does not plead to paragraph 193 insofar as it contains allegations against Abboud.

J.1.3 The 1Q2014 Results Information

194. In response to paragraph 194 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;

- (b) admits that he was aware, as at the date of the Prospectus, of the contents of the Prospectus;
- (c) repeats paragraphs 184, 186, 188 and 189 above (regarding the alleged Acquisition Accounting Information, Sales Accounting Information, O&A Rebate Information and Prospectus Inventory Information);
- (d) denies that he ought reasonably to have known or ought reasonably to have obtained the alleged 1Q2014 Results Information (which is denied), and repeats paragraph 129 above;
- (e) otherwise does not admit paragraph 194 of the Statement of Claim insofar as it contains allegations against Potts; and
- (f) does not plead to paragraph 194 insofar as it contains allegations against Abboud.

J.1.4 The FY2014 Performance Information

195. In response to paragraph 195 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;
- (b) admits that he was aware, as at the date of the Prospectus, of the contents of the Prospectus and of the Investigating Accountant's Report;
- (c) denies that he had knowledge of the alleged FY2014 Forecast Rebate Information (which is denied), and repeats paragraphs 69-80 above;
- (d) repeats paragraphs 186, 188 and 189 above (regarding the alleged Sales Accounting Information, O&A Rebate Information and Prospectus Inventory Information);
- (e) denies that he ought reasonably to have known or ought reasonably to have obtained the alleged FY2014 Performance Information (which is denied), and repeats paragraph 131 above;
- (f) otherwise does not admit paragraph 195 of the Statement of Claim insofar as it contains allegations against Potts; and
- (g) does not plead to paragraph 195 insofar as it contains allegations against Abboud.

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

2014 Half Yearly Results Information

196. In response to paragraph 196 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;

- (b) admits that he had knowledge of the matters pleaded in subparagraph 196(d) of the Statement of Claim;
- (c) repeats paragraphs 186, 188, 189 and 190 above (regarding the alleged Sales Accounting Information, O&A Rebate Information, Prospectus Inventory Information and Adjustments Information);
- (d) says that he was aware, at the time of the issue of the 2014 Half Yearly Results, of the matters pleaded in paragraph 156 above;
- (e) denies that he ought reasonably to have known or ought reasonably to have obtained the alleged 2014 Half Yearly Results Information (which is denied), and repeats paragraphs 155-157 above;
- (f) otherwise does not admit paragraph 196 of the Statement of Claim insofar as it contains allegations against Potts; and
- (g) does not plead to paragraph 196 insofar as it contains allegations against Abboud.

2014 Yearly Results Information

197. In response to paragraph 197 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;
- (b) admits that he had knowledge of the matters pleaded in subparagraph 197(d) of the Statement of Claim;
- (c) repeats paragraphs 186, 188, 189 and 190 above (regarding the alleged Sales Accounting Information, O&A Rebate Information, Prospectus Inventory Information and Adjustments Information);
- (d) says that he was aware, at the time of the issue of the 2014 Yearly Results, of the matters pleaded in paragraph 161 above;
- (e) denies that he ought reasonably to have known or ought reasonably to have obtained the alleged 2014 Yearly Results Information (which is denied), and repeats paragraphs 160-162 above;
- (f) otherwise does not admit paragraph 197 of the Statement of Claim insofar as it contains allegations against Potts; and
- (g) does not plead to paragraph 197 insofar as it contains allegations against Abboud.

2015 Half Yearly Results Information

198. In response to paragraph 198 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;
- (b) admits that he had knowledge of the matters pleaded in subparagraph 198(d) of the Statement of Claim;
- (c) repeats paragraphs 184-191 above;
- (d) says that he was aware, at the time of the issue of the 2015 Half Yearly Results, of the matters pleaded in paragraph 166 above;
- (e) denies that he ought reasonably to have known or ought reasonably to have obtained the alleged 2015 Half Yearly Results Information (which is denied), and repeats paragraphs 165-167 above;
- (f) otherwise does not admit paragraph 198 of the Statement of Claim insofar as it contains allegations against Potts; and
- (g) does not plead to paragraph 198 insofar as it contains allegations against Abboud.

2015 Yearly Results Information

199. In response to paragraph 199 of the Statement of Claim, Potts:

- (a) admits the matters pleaded at paragraph 10 of the Statement of Claim;
- (b) admits that he had knowledge of the matters pleaded in subparagraph 199(d) of the Statement of Claim;
- (c) repeats paragraphs 184-191 above;
- (d) says that he was aware, at the time of the issue of the 2015 Yearly Results, of the matters pleaded in paragraph 171 above;
- (e) denies that he ought reasonably to have known or ought reasonably to have obtained the alleged 2015 Yearly Results Information (which is denied), and repeats paragraphs 170-172 above;
- (f) otherwise does not admit paragraph 199 of the Statement of Claim insofar as it contains allegations against Potts; and
- (g) does not plead to paragraph 199 insofar as it contains allegations against Abboud.

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. In response to paragraph 200 of the Statement of Claim, Potts:

- (a) repeats paragraphs 184-195 above; and
- (b) otherwise does not plead to paragraph 200 as it contains no allegations against him.

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

201. In response to paragraph 201 of the Statement of Claim, Potts:

- (a) repeats paragraphs 196-199 above; and
- (b) otherwise does not plead to paragraph 201 as it contains no allegations against him.

K. PROSPECTUS CONTRAVENTIONS

K.1 Section 728 Contravention

202. Potts admits paragraph 202 of the Statement of Claim.

203. Potts admits paragraph 203 of the Statement of Claim.

204. In response to paragraph 204 of the Statement of Claim, Potts:

- (a) repeats paragraphs 125-134 above; and
- (b) otherwise does not plead to paragraph 204 as it contains no allegations against him.

205. In response to paragraph 205 of the Statement of Claim, Potts:

- (a) repeats paragraphs 71-72 and 82-87 above; and
- (b) otherwise does not plead to paragraph 205 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to the Obsolete Stock Representation.

206. In response to paragraph 206 of the Statement of Claim, Potts:

- (a) repeats paragraphs 125-127 and 134 above; and
- (b) otherwise does not plead to paragraph 206 as:

- (i) it contains no allegations against him; and
- (ii) no claim is made against him in relation to the 2013 Performance Representations.

207. In response to paragraph 207 of the Statement of Claim, Potts:

- (a) repeats paragraphs 125-128 and 134 above; and
- (b) otherwise does not plead to paragraph 207 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to the 2013 Balance Sheet Representations.

208. In response to paragraph 208 of the Statement of Claim, Potts:

- (a) repeats paragraphs 128-130 and 134 above; and
- (b) otherwise does not plead to paragraph 208 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to the 1Q2014 Performance Representations.

209. In response to paragraph 209 of the Statement of Claim, Potts:

- (a) repeats paragraphs 133 and 134 above; and
- (b) otherwise does not plead to paragraph 209 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to the Transformation Representations.

210. In response to paragraph 210 of the Statement of Claim, Potts:

- (a) repeats paragraphs 131-134 above; and
- (b) otherwise does not plead to paragraph 210 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to the Growth Representations.

211. In response to paragraph 211 of the Statement of Claim, Potts:

- (a) repeats paragraphs 62-65, 73-76, 94-98 and 99-115 above; and
- (b) otherwise does not plead to paragraph 211 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to the Prospectus Compliance Representations.

212. In response to paragraph 212 of the Statement of Claim, Potts:

- (a) repeats paragraphs 125-131 above; and
- (b) otherwise does not plead to paragraph 212 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus.

213. In response to paragraph 213 of the Statement of Claim, Potts:

- (a) repeats paragraph 212 above; and
- (b) otherwise does not plead to paragraph 213 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure to disclose matters in the Prospectus.

214. In response to paragraph 214 of the Statement of Claim, Potts:

- (a) repeats paragraphs 131-132 above; and
- (b) otherwise does not plead to paragraph 214 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to the Growth Representations or the Growth Basis Representations.

215. In response to paragraph 215 of the Statement of Claim, Potts:

- (a) repeats paragraphs 204-214 above; and
- (b) otherwise does not plead to paragraph 215 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure by the Prospectus to comply with the Corporations Act.

216. Potts does not plead to paragraph 216 of the Statement of Claim as:

- (a) it contains no allegations against him; and
- (b) no claim is made against him in relation to any alleged failure by the Prospectus to comply with the Corporations Act.

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

217. In response to paragraph 217 of the Statement of Claim, Potts:

- (a) repeats paragraphs 192-195 and 212 above;
- (b) denies that he ought to have known or reasonably to have obtained the alleged Material Prospectus Information; and
- (c) otherwise does not plead to paragraph 217 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged failure by DSH to disclose the alleged Material Prospectus Information.

218. Potts does not plead to paragraph 218 of the Statement of Claim as:

- (a) it contains no allegations against him; and
- (b) no claim is made against him in relation to any alleged failure by DSH to disclose the alleged Material Prospectus Information.

219. Potts does not plead to paragraph 219 of the Statement of Claim as:

- (a) it contains no allegations against him; and
- (b) no claim is made against him in relation to any alleged failure by DSH to disclose the alleged Post Prospectus Material Information.

220. In response to paragraph 220 of the Statement of Claim, Potts:

- (a) repeats paragraphs 216-219 above; and
- (b) otherwise does not plead to paragraph 220 as it contains no allegations against him.

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

221. Potts does not plead to paragraph 221 of the Statement of Claim as:

- (a) it contains no allegations against him; and
- (b) no claim is made against him in relation to any alleged Prospectus Misleading Statement.

222. In response to paragraph 222 of the Statement of Claim, Potts:

- (a) repeats paragraphs 204-214, 216 and 221 above; and
- (b) otherwise does not plead to paragraph 222 as it contains no allegations against him.

223. In response to paragraph 223 of the Statement of Claim, Potts:

- (a) repeats paragraphs 221-222 above; and
- (b) otherwise does not plead to paragraph 223 as it contains no allegations against him.

224. In response to paragraph 224 of the Statement of Claim, Potts:

- (a) admits paragraph 10 of the Statement of Claim;
- (b) repeats paragraphs 184-195 above;
- (c) denies that he ought reasonably to have known or ought reasonably to have ascertained that each of the statements or the information conveyed by the Prospectus was false in a material particular or was materially misleading; and
- (d) otherwise does not plead to paragraph 224 insofar as it contains allegations against Abboud or DSH.

225. In response to paragraph 225 of the Statement of Claim, Potts:

- (a) repeats paragraph 200 above; and
- (b) otherwise does not plead to paragraph 225 as it contains no allegations against him.

226. In response to paragraph 226 of the Statement of Claim, Potts:

- (a) repeats paragraphs 224 and 225 above; and
- (b) otherwise does not plead to paragraph 226 as:
 - (i) it contains no allegations against him; and
 - (ii) no claim is made against him in relation to any alleged Prospectus Misleading Statement.

L. POST-PROSPECTUS CONTRAVENTIONS

L.1 Continuous Disclosure

227. In response to paragraph 227 of the Statement of Claim, Potts:

- (a) repeats paragraphs 196-199 above;
- (b) denies that he ought reasonably to have known or ought reasonably to have obtained the alleged Post Prospectus Material Information (which is denied); and
- (c) otherwise does not plead to paragraph 227 as it contains no allegations against him.

228. In response to paragraph 228 of the Statement of Claim, Potts:

- (a) denies the alleged Post Prospectus Material Information; and
- (b) otherwise does not plead to paragraph 228 as it contains no allegations against him.

229. In response to paragraph 229 of the Statement of Claim, Potts:

- (a) denies the alleged Post Prospectus Material Information; and
- (b) otherwise does not plead to paragraph 229 as it contains no allegations against him.

230. In response to paragraph 230 of the Statement of Claim, Potts:

- (a) repeats paragraphs 227-229 above; and
- (b) otherwise does not plead to paragraph 230 as it contains no allegations against him.

L.2 Misleading or Deceptive Conduct Contraventions

231. Potts does not plead to paragraph 231 of the Statement of Claim as it contains no allegations against him.

232. Potts denies paragraph 232 of the Statement of Claim, and repeats paragraphs 155-159 above.

233. Potts denies paragraph 233 of the Statement of Claim, and repeats paragraphs 63, 75, 89, 96, 105, 108 and 111 above.
234. Potts denies paragraph 234 of the Statement of Claim, and repeats paragraphs 160-164 above.
235. Potts denies paragraph 235 of the Statement of Claim, and repeats paragraphs 63, 75, 89, 96, 105, 108 and 111 above.
236. Potts denies paragraph 236 of the Statement of Claim, and repeats paragraphs 165-169 above.
237. Potts denies paragraph 237 of the Statement of Claim, and repeats paragraphs 63, 75, 89, 96, 105, 108 and 111 above.
238. Potts denies paragraph 238 of the Statement of Claim, and repeats paragraphs 170-174 above.
239. Potts denies paragraph 239 of the Statement of Claim, and repeats paragraphs 63, 75, 89, 96, 105, 108 and 111 above.
240. Potts denies paragraph 240 of the Statement of Claim, and repeats paragraphs 232-239 above.
241. Potts does not plead to paragraph 241 of the Statement of Claim as:
- (a) it contains no allegations against him; and
 - (b) no claim is made against him for contravention of s.1041E of the Corporations Act.
242. In response to paragraph 242 of the Statement of Claim, Potts repeats paragraphs 232-241 above, and otherwise does not plead to paragraph 242 as:
- (a) it contains no allegations against him; and
 - (b) no claim is made against him for contravention of s.1041E of the Corporations Act.
243. In response to paragraph 243 of the Statement of Claim, Potts:
- (a) repeats paragraphs 232-239 above;
 - (b) denies subparagraph 243(a) of the Statement of Claim insofar it contains allegations against Potts; and
 - (c) otherwise does not plead to paragraph 243 insofar as it contains allegations against DSH or Abboud.
244. Potts does not plead to paragraph 244 of the Statement of Claim as:
- (a) it contains no allegations against him; and

- (b) no claim is made against him for contravention of s.1041E of the Corporations Act.

M. MISLEADING OR DECEPTIVE CONDUCT BY ABBODD

M.1.1 2014 Half Yearly Results

245. In response to paragraph 245 of the Statement of Claim, Potts:

- (a) repeats paragraph 261 below; and
- (b) otherwise does not plead to paragraph 245 as it contains no allegations against him.

246. Potts does not plead to paragraph 246 of the Statement of Claim as it contains no allegations against him.

247. Potts does not plead to paragraph 247 of the Statement of Claim as it contains no allegations against him.

248. In response to paragraph 248 of the Statement of Claim, Potts:

- (a) repeats paragraphs 232-233 above and 245-247 above; and
- (b) otherwise does not plead to paragraph 248 as it contains no allegations against him.

M.1.2 2014 Yearly Results

249. In response to paragraph 249 of the Statement of Claim, Potts:

- (a) repeats paragraph 265 below; and
- (b) otherwise does not plead to paragraph 249 as it contains no allegations against him.

250. Potts does not plead to paragraph 250 of the Statement of Claim as it contains no allegations against him.

251. Potts does not plead to paragraph 251 of the Statement of Claim as it contains no allegations against him.

252. In response to paragraph 252 of the Statement of Claim, Potts:

- (a) repeats paragraphs 234-235 and 249-251 above; and
- (b) otherwise does not plead to paragraph 252 as it contains no allegations against him.

M.1.3 2015 Half Yearly Results

253. In response to paragraph 253 of the Statement of Claim, Potts:

- (a) repeats paragraph 269 below; and
- (b) otherwise does not plead to paragraph 253 as it contains no allegations against him.

254. Potts does not plead to paragraph 254 of the Statement of Claim as it contains no allegations against him.

255. Potts does not plead to paragraph 255 of the Statement of Claim as it contains no allegations against him.

256. In response to paragraph 256 of the Statement of Claim, Potts:

- (a) repeats paragraphs 236-237 and 253-255 above; and
- (b) otherwise does not plead to paragraph 256 as it contains no allegations against him.

M.1.4 2015 Yearly Results

257. In response to paragraph 257 of the Statement of Claim, Potts:

- (a) repeats paragraph 273 below; and
- (b) otherwise does not plead to paragraph 257 as it contains no allegations against him.

258. Potts does not plead to paragraph 258 of the Statement of Claim as it contains no allegations against him.

259. Potts does not plead to paragraph 259 of the Statement of Claim as it contains no allegations against him.

260. In response to paragraph 260 of the Statement of Claim, Potts:

- (a) repeats paragraphs 238-239 and 257-259 above; and
- (b) otherwise does not plead to paragraph 260 as it contains no allegations against him.

N. MISLEADING OR DECEPTIVE CONDUCT BY POTTS

N.1.1 2014 Half Yearly Results

261. In response to paragraph 261 of the Statement of Claim, Potts:

- (a) admits that on or about 19 February 2014, DSH caused the 2014 Half Yearly Results to be made and lodged with the ASX;

- (b) admits, subject to the matter pleaded in paragraph 136(a) above, that by the HY2014 Results, DSH made the 2014 Half Yearly Results Representations and the 2014 Half Yearly Compliance Representation;
- (c) says that:
 - (i) DSH made and lodged the 2014 Half Yearly Results with the ASX following the passing of a resolution by the DSH directors to adopt the HY2014 Report and to authorise the Company Secretary to release the HY2014 Report to the ASX; and
 - (ii) Potts voted in favour of that resolution;

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Minutes of Board Meeting held on 18 February 2014, "Adoption of the half year accounts".

- (d) says that in voting in favour of the resolution referred to in paragraph (c) above, Potts was aware of the matters pleaded in paragraph 156 above, and held the opinions pleaded in paragraph 137 above; and
 - (e) otherwise denies paragraph 261 of the Statement of Claim.
262. In response to paragraph 262 of the Statement of Claim, Potts:
- (a) repeats paragraph 261 above;
 - (b) admits that from 19 February 2014 onwards, he did not take any steps to cause DSH to withdraw the 2014 Half Yearly Results Representations or the 2014 Half Yearly Compliance Representation; and
 - (c) otherwise denies paragraph 262 of the Statement of Claim.
263. Potts denies paragraph 263 of the Statement of Claim, and repeats paragraphs 261-262 above.
264. Potts denies paragraph 264 of the Statement of Claim, and repeats paragraphs 232-233 and 261-263 above.

N.1.2 2014 Yearly Results

265. In response to paragraph 265 of the Statement of Claim, Potts:
- (a) admits that on or about 19 August 2014, DSH caused the 2014 Yearly Results to be made and lodged with the ASX;
 - (b) admits that by the 2014 Yearly Results, DSH made the 2014 Annual Report Compliance Representation and made the 2014 Yearly Results Representations, with the exception of

those representations pleaded in subparagraphs 139 (b) and (m) of the Statement of Claim, in respect of which Potts repeats paragraph 139 above;

(c) says that:

- (i) DSH made and lodged the 2014 Yearly Results with the ASX following the passing of a resolution by the DSH directors to adopt the FY2014 Report and to authorise the Company Secretary to release the FY2014 Report to the ASX; and
- (ii) Potts voted in favour of that resolution;

Particulars

Minutes of the meeting of the Board of DSH held on 18 August 2014,
"Adoption of full year accounts".

(d) says that in voting in favour of the resolution referred to in paragraph (c) above, Potts:

- (i) was aware of the matters pleaded in paragraph 161 above;
- (ii) held the opinion that the FY2014 Report was in accordance with the Corporations Act, including that it complied with the Australian Accounting Standards and gave a true and fair view of the financial position and performance of DSH and the DSH Group;

Particulars

Director's declaration, dated 18 August 2014, FY2014 Report, page
47.

(iii) formed the opinion referred to in paragraph (ii) above, in reliance on:

- A. Deloitte's FY2014 FAC Report;
- B. Deloitte's representation to the Board at the meeting on 18 August 2014 that Deloitte "gave clearance on the accounts"; and

Particulars

Minutes of Board Meeting held on 18 August 2014.

- C. Deloitte's FY2014 Audit Report.

(e) otherwise denies paragraph 265 of the Statement of Claim.

266. In response to paragraph 266 of the Statement of Claim, Potts:

- (a) repeats paragraph 265 above;

- (b) admits that from 19 August 2014 he did not take any steps to cause DSH to withdraw the 2014 Yearly Results Representations or the 2014 Annual Report Compliance Representation (insofar as those representations were made, and Potts repeats paragraph 139 above); and
- (c) otherwise denies paragraph 266 of the Statement of Claim.

267. Potts denies paragraph 267 of the Statement of Claim, and repeats paragraphs 265 and 266 above.

268. Potts denies paragraph 268 of the Statement of Claim, and repeats paragraphs 234-235 and 265-267 above.

N.1.3 2015 Half Yearly Results

269. In response to paragraph 269 of the Statement of Claim, Potts:

- (a) admits that on or about 17 February 2015, DSH caused the 2015 Half Yearly Results to be made and lodged with the ASX;
- (b) admits that, by the 2015 Half Yearly Results, DSH made the 2015 Half Yearly Results Representations and the 2015 Half Yearly Compliance Representation;
- (c) says that:
 - (i) DSH made and lodged the 2015 Half Yearly Results with the ASX following the passing of a resolution by the DSH directors to adopt the HY2015 Report and to authorise the Company Secretary to release the HY2015 Report to the market via the ASX and DSH's website; and
 - (ii) Potts voted in favour of that resolution;

Particulars

Minutes of Board Meeting held on 16 February 2015, "Adoption of the half year accounts for the period 28 December 2014".

- (d) says that in voting in favour of the resolution referred to in paragraph (c) above, Potts was aware of the matters pleaded in paragraph 166 above, and held the opinions pleaded in paragraph 143 above; and
- (e) otherwise denies paragraph 269 of the Statement of Claim.

270. In response to paragraph 270 of the Statement of Claim, Potts:

- (a) repeats paragraph 269 above;

(b) admits that from 17 February 2015 he did not take any steps to cause DSH to withdraw the 2015 Half Yearly Results Representations or the 2015 Half Yearly Compliance Representation; and

(c) otherwise denies paragraph 270 of the Statement of Claim.

271. Potts denies paragraph 271 of the Statement of Claim, and repeats paragraphs 269 and 270 above.

272. Potts denies paragraph 272 of the Statement of Claim, and repeats paragraphs 236-237 and 269-271 above.

N.1.4 2015 Yearly Results

273. In response to paragraph 273 of the Statement of Claim, Potts:

(a) admits that on or about 18 August 2015, DSH caused the 2015 Yearly Results to be made and lodged with the ASX;

(b) repeats paragraph 145 above and otherwise admits that by the 2015 Yearly Results, DSH made the 2015 Annual Report Compliance Representation and made the 2015 Yearly Results Representations;

(c) says that:

(i) DSH made and lodged the 2015 Yearly Results with the ASX following the passing of a resolution by the DSH directors to adopt the 2015 Annual Results, and to authorise the Company Secretary to release those documents to the ASX; and

(ii) Potts voted in favour of that resolution;

Particulars

Minutes of the meeting of the Board of DSH held on 17 August 2015,
"Adoption of full year accounts".

(d) says that in voting in favour of the resolution referred to in paragraph (c) above, Potts:

(i) was aware of the matters pleaded in paragraph 171 above;

(ii) held the opinion that the FY2015 Report was in accordance with the Corporations Act, including that it complied with the Australian Accounting Standards and gave a true and fair view of the financial position and performance of DSH and the DSH Group;

Particulars

Director's Declaration, dated 17 August 2015, FY2014 Report, page 50.

(iii) formed the opinions referred to in paragraph (ii) above, in reliance on:

- A. Deloitte's FY2015 FAC Report;
- B. Deloitte's representation to the Board at its meeting on 17 August 2015 that Deloitte "gave clearance on the accounts";

Particulars

Minutes of the meeting of the Board of DSH held on 17 August 2015,
"Adoption of full year accounts".

- C. Deloitte's FY2015 Audit Report;

(e) otherwise denies paragraph 273 of the Statement of Claim.

274. In response to paragraph 274 of the Statement of Claim, Potts:

- (a) repeats paragraph 273 above;
- (b) admits that from 18 August 2015 onwards he did not take any steps to cause DSH to withdraw the 2015 Yearly Results Representations or the 2015 Annual Report Compliance Representation (insofar as those representations were made, and Potts repeats paragraph 145 above); and
- (c) otherwise denies paragraph 274 of the Statement of Claim.

275. Potts denies paragraph 275 of the Statement of Claim, and repeats paragraphs 273 and 274 above.

276. Potts denies paragraph 276 of the Statement of Claim, and repeats paragraphs 238-239 and 273-275 above.

O. CAUSATION, LOSS AND DAMAGE

O.1 Prospectus Subscribers

O.1.1 Introduction

277. Potts does not admit paragraph 277 of the Statement of Claim.

O.1.2 Market based causation for DSH IPO purchasers

278. Potts does not plead to paragraph 278 of the Statement of Claim as:

- (a) it contains no allegations against him; and
- (b) no claim is made against him in respect of any alleged deficiency in the Prospectus.

279. Potts does not plead to paragraph 279 of the Statement of Claim as it contains no allegations against him.

- (a) it contains no allegations against him; and
- (b) no claim is made against him in respect of the alleged Prospectus Misleading Statements or the alleged Prospectus Omissions.

O.1.3 Reliance

280. Potts does not plead to paragraph 280 of the Statement of Claim as:

- (a) it contains no allegations against him; and
- (b) no claim is made against him in respect of the alleged Prospectus Contraventions or the alleged Prospectus Misleading Statements or any alleged failure to disclose the Material Prospectus Information in the Prospectus.

O.1.4 No transaction

281. Potts does not plead to paragraph 281 of the Statement of Claim as:

- (a) it contains no allegations against him; and
- (b) no claim is made against him in respect of the alleged Prospectus Misleading Statements or the alleged Prospectus Omissions.

O.1.5 Loss and damage

282. In response to paragraph 282 of the Statement of Claim, Potts:

- (a) says that the Statement of Claim does not contain any allegations in respect of, or any definition of, the alleged "Potts' Prospectus Contraventions" referred to in paragraph 282, and does not contain any allegation that Potts contravened, or was involved in a contravention of, any provision of the Corporations Act by reason of the issue of the Prospectus; and
- (b) otherwise does not plead to paragraph 282 as it contains no allegations against him.

O.2 Shares Purchased on the secondary market

O.2.1 Introduction

283. Potts does not admit paragraph 283 of the Statement of Claim.

O.2.2 Market-based causation

284. In response to paragraph 284 of the Statement of Claim, Potts:

- (a) does not admit that the Plaintiff and Group Members acquired interests in DSH Shares on the secondary market;
- (b) admits that the market in which DSH Shares were traded was operated by the ASX;
- (c) admits that the market in which DSH Shares were traded was regulated by the ASX Listing Rules, including ASX Listing Rule 3.1;
- (d) admits that at all material times the provisions of the Corporations Act which were in force included subsection 674(2);
- (e) does not plead to subparagraphs 284(d)(i) and (e)(i) of the Statement of Claim, as those paragraphs contain no allegations against him; and
- (f) otherwise denies paragraph 284 of the Statement of Claim.

285. In response to paragraph 285 of the Statement of Claim, Potts:

- (a) does not plead to the allegations in that paragraph insofar as they concern the alleged Prospectus Contraventions and the alleged Continuous Disclosure Contraventions, as there is no claim against Potts in respect of those alleged Contraventions; and
- (b) otherwise denies paragraph 285 of the Statement of Claim.

O.2.3 Reliance

286. In response to paragraph 286 of the Statement of Claim, Potts:

- (a) does not plead to subparagraph 286(a) of the Statement of Claim, insofar as that paragraph concerns the alleged Prospectus Contraventions and the alleged Continuous Disclosure Contraventions, as there is no claim against Potts in respect of those alleged Contraventions;
- (b) does not plead to subparagraph 286(b) of the Statement of Claim insofar as that paragraph concerns the alleged Prospectus Misleading Statements referred to in

subparagraph 286(b)(i) , as there is no claim against Potts in respect of the alleged Prospectus Misleading Statements;

- (c) does not admit that the Plaintiffs or the Group Members acquired DSH Shares, or that they relied upon any of the matters alleged in subparagraphs 286(b)(ii)-(ix) of the Statement of Claim; and
- (d) otherwise denies paragraph 286 of the Statement of Claim.

O.2.4 Loss and damage

287. In response to paragraph 287 of the Statement of Claim, Potts:

- (a) repeats paragraphs 284-286 above;
- (b) does not plead to paragraph 287 insofar as it concerns the alleged Prospectus Contraventions or the alleged Continuous Disclosure Contraventions referred to in subparagraphs 287(a)-(b), as there is no claim against Potts in respect of those alleged contraventions; and
- (c) otherwise denies paragraph 287 of the Statement of Claim.

P. COMMON QUESTIONS

288. Potts does not plead to paragraph 288 of the Statement of Claim as it contains no allegations against him.

Q. DEFENCES

Q.1 Relief pursuant to Corporations Act, s.1318

289. In further answer to the whole of the Statement of Claim, Potts says that, if it is established that he engaged in misleading or deceptive conduct in contravention of the Corporations Act, the ASIC Act and/or the Australian Consumer Law (**ACL**) as pleaded in paragraphs 261- 276 of the Statement of Claim (which is denied), he acted honestly and, having regard to all the circumstances of the case, he ought fairly be excused for the contravening conduct pursuant to s.1318 of the Corporations Act.

Q.2 Proportionate Liability – Apportionable Claims

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

- (a) each of the claims of the Plaintiffs and Group Members against Potts in respect of such loss or damage is an apportionable claim within the meaning of (respectively) s.1041L of the Corporations Act, s.12GP of the ASIC Act and s.87CB of the *Competition and Consumer Act 2010* (Cth) (**CCA**); and
- (b) by reason of the matters pleaded in paragraphs 291-342 below, each of Potts, Abboud, DSH, the Other DSH Directors and Deloitte is a concurrent wrongdoer in respect of such loss or damage, within the meaning of s.1041L of the Corporations Act, s.12GP of the ASIC Act and s.87CB of the CCA.

Q.2.1 Proportionate Liability - DSH and Abboud

291. If the Plaintiffs establish that:

- (a) Potts engaged in conduct in respect of any of the 2014 Half Yearly Results, the 2014 Yearly Results, the 2015 Half Yearly Results and/or the 2015 Yearly Results which was misleading or deceptive conduct in contravention of the Corporations Act, the ASIC Act or the ACL (as pleaded in paragraphs 261-276, which is denied);
- (b) Abboud engaged in conduct in respect of any of the 2014 Half Yearly Results, the 2014 Yearly Results, the 2015 Half Yearly Results and/or the 2015 Yearly Results which was misleading or deceptive conduct in contravention of the Corporations Act, the ASIC Act or the ACL (as pleaded in paragraphs 245-260);
- (c) DSH engaged in conduct in respect of any of the 2014 Half Yearly Results, the 2014 Yearly Results, the 2015 Half Yearly Results and/or the 2015 Yearly Results which was misleading or deceptive conduct in contravention of the Corporations Act, the ASIC Act or the ACL (as pleaded in paragraphs 231-244 of the Statement of Claim);
- (d) the Plaintiffs or the Group Members have suffered loss or damage as a result of any of the alleged Misleading Conduct Contraventions in respect of the 2014 Half Yearly Results, the 2014 Yearly Results, the 2015 Half Yearly Results and/or the 2015 Yearly Results (as pleaded in paragraphs 284-287 of the Statement of Claim, which is denied);

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

292. By reason of the matters pleaded in paragraphs 290-291 above, and pursuant to s.1041L of the Corporations Act, s.12GP of the ASIC Act and/or s.87CB of the CCA, any liability (which is denied) of Potts to the Plaintiffs and/or Group Members is to be limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the

extent of Potts' responsibility, and the extent of Abboud's and DSH's responsibility, for such loss or damage.

Q.2.2 Proportionate Liability – Other DSH Directors

293. In the period from 25 October 2013 to 3 January 2016, the directors of DSH were:

- (a) Potts;
- (b) Abboud;
- (c) Robert Murray (from 12 August 2014 until 4 January 2016, when he ceased to be a director of DSH);
- (d) Lorna Kathleen Raine (from 25 October 2013 until 4 January 2016, when she ceased to be a director of DSH);
- (e) Robert Ishak (from 25 October 2013 until January 2016, when he ceased to be a director of DSH);
- (f) Jamie Clifford Tomlinson (**Tomlinson**) (from 10 April 2015 until 4 January 2016, when he ceased to be a director of DSH);
- (g) Phillip John Cave (**Cave**) (from 25 October 2013 until 28 February 2015, when he ceased to be a director of DSH); and
- (h) William Paul Renton Wavish (**Wavish**) (from 25 October 2013 until 25 March 2015, when he ceased to be a director of DSH).

(the persons in paragraphs (c)-(h) are referred to as the **Other DSH Directors**)

294. For the purpose only of this proportionate liability defence, and without admission, Potts repeats paragraphs 231-240, 245-276 and 284-287 of the Statement of Claim.

295. If the matters referred to in paragraph 294 above (which are the subject of denials and non-admissions pleaded above) are established, then:

- (a) in relation to the 2014 Half Yearly Results:
 - (i) on or about 19 February 2014, each of the Other DSH Directors (except Tomlinson) authorised, or participated in authorising, the making and lodgement with ASX by DSH 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 2014 Half Yearly Results Representations and the 2014 Half Yearly Compliance Representation;

- (ii) further or alternatively, on or about 19 February 2014 and at all material times thereafter, each of the Other DSH Directors (except Tomlinson) took no, or alternatively no adequate, steps to cause DSH to withdraw or otherwise correct the 2014 Half Yearly Results Representations and the 2014 Half Yearly Compliance Representation;
 - (iii) by reason of the matters pleaded in subparagraphs (i) and (ii) above, each of the Other DSH Directors (except Tomlinson) engaged in conduct in relation to a financial product within the meaning of s.1041H of the Corporations Act, and/or in trade or commerce in relation to financial services within the meaning of s.12DA of the ASIC Act, and/or in trade or commerce within the meaning of s.4 of the ACL;
 - (iv) by reason of the matters pleaded in paragraphs 232-233 of the Statement of Claim, and the matters pleaded in subparagraphs (i)-(iii) above, each of the Other DSH Directors (except Tomlinson) contravened s.1041H of the Corporations Act, s.12DA of the ASIC Act, and/or s.18 of the ACL, and so engaged in a Misleading Conduct Contravention; and
 - (v) the Plaintiffs and Group Members have suffered loss or damage by reason of, or as a result of, the Misleading Conduct Contraventions of the Other DSH Directors (except Tomlinson) pleaded in subparagraph (iv) above;
- (b) in relation to the 2014 Yearly Results:
- (i) on or about 19 August 2014, each of the Other DSH Directors (except Tomlinson) authorised, or participated in authorising, the making and lodgement with ASX by DSH 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 2014 Yearly Results Representations and the 2014 Annual Report Compliance Representation;
 - (ii) further or alternatively, on or about 19 August 2014 and at all material times thereafter, each of the Other DSH Directors (except Tomlinson) took no, or alternatively no adequate, steps to cause DSH to withdraw or otherwise correct the 2014 Yearly Results Representations and the 2014 Annual Report Compliance Representation;
 - (iii) by reason of the matters pleaded in subparagraphs (i) and (ii) above, each of the Other DSH Directors (except Tomlinson) engaged in conduct in relation to a financial product within the meaning of s.1041H of the Corporations Act, and/or in trade or commerce in relation to financial services within the meaning of s.12DA of the ASIC Act, and/or in trade or commerce within the meaning of s.4 of the ACL;

- (iv) by reason of the matters pleaded in paragraphs 234-235 of the Statement of Claim, and the matters pleaded in subparagraphs (i)-(iii) above, each of the Other DSH Directors (except Tomlinson) contravened s.1041H of the Corporations Act, s.12DA of the ASIC Act, and/or s.18 of the ACL, and so engaged in a Misleading Conduct Contravention; and
 - (v) the Plaintiffs and Group Members have suffered loss or damage by reason of, or as a result of, the Misleading Conduct Contraventions of the Other DSH Directors (except Tomlinson) pleaded in subparagraph (iv) above;
- (c) in relation to the 2015 Half Yearly Results:
- (i) on or about 17 February 2015, each of the Other DSH Directors (except Tomlinson) authorised, or participated in authorising, the making and lodgement with ASX by DSH 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 2015 Half Yearly Results Representations and the 2015 Half Yearly Compliance Representation;
 - (ii) on or about 17 February 2015 and at all material times thereafter, each of the Other DSH Directors (except Tomlinson) took no, or alternatively no adequate, steps to cause DSH to withdraw or otherwise correct the 2015 Half Yearly Results Representations and the 2015 Half Yearly Compliance Representation;
 - (iii) by reason of the matters pleaded in subparagraphs (i) and (ii) above, each of the Other DSH Directors (except Tomlinson) engaged in conduct in relation to a financial product within the meaning of s.1041H of the Corporations Act, and/or in trade or commerce in relation to financial services within the meaning of s.12DA of the ASIC Act, and/or in trade or commerce within the meaning of s.4 of the ACL;
 - (iv) by reason of the matters pleaded in paragraphs 236-237 of the Statement of Claim, and the matters pleaded in subparagraphs (i)-(iii) above, each of the Other DSH Directors (except Tomlinson) contravened s.1041H of the Corporations Act, s.12DA of the ASIC Act, and/or s.18 of the ACL, and so engaged in a Misleading Conduct Contravention; and
 - (v) the Plaintiffs and Group Members have suffered loss or damage by reason of, or as a result of, the Misleading Conduct Contraventions of the Other DSH Directors (except Tomlinson) pleaded in subparagraph (iv) above;
- (d) in relation to the 2015 Yearly Results:
- (i) on or about 18 August 2015, each of the Other DSH Directors (except Cave and Wavish) authorised, or participated in authorising, the making and lodgement with

ASX by DSH 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 2015 Yearly Results Representations and the 2015 Annual Report Compliance Representation;

- (ii) on or about 18 August 2015 and at all material times thereafter, each of the Other DSH Directors (except Cave and Wavish) took no, or alternatively no adequate, steps to cause DSH to withdraw or otherwise correct the 2015 Yearly Results Representations and the 2015 Annual Report Compliance Representation;
- (iii) by reason of the matters pleaded in subparagraphs (i) and (ii) above, each of the Other DSH Directors (except Cave and Wavish) engaged in conduct in relation to a financial product within the meaning of s.1041H of the Corporations Act, and/or in trade or commerce in relation to financial services within the meaning of s.12DA of the ASIC Act, and/or in trade or commerce within the meaning of s.4 of the ACL;
- (iv) by reason of the matters pleaded in paragraphs 238-239 of the Statement of Claim, and the matters pleaded in subparagraphs (i)-(iii) above, each of the Other DSH Directors (except Cave and Wavish) contravened s.1041H of the Corporations Act, s.12DA of the ASIC Act, and/or s.18 of the ACL, and so engaged in a Misleading Conduct Contravention; and
- (v) the Plaintiffs and Group Members have suffered loss or damage by reason of, or as a result of, the Misleading Conduct Contraventions of the Other DSH Directors (except Cave and Wavish) pleaded in subparagraph (iv) above.

296. By reason of the matters pleaded in paragraph 294 to 295 above:

- (a) each of the Other DSH Directors is a person whose acts or omissions caused the loss allegedly suffered by the Plaintiffs and/or Group Members which is the subject of their claim, and therefore each is a concurrent wrongdoer within the meaning of s.1041L of the Corporations Act, s.12GP of the ASIC Act and s.87CB of the CCA; and
- (b) pursuant to s.1041L of the Corporations Act, s.12GP of the ASIC Act and/or s.87CB of the CCA, any liability (which is denied) of Potts to the Plaintiffs and/or Group Members is to be limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the extent of Potts' responsibility, and the extent of the responsibility of each of the Other DSH Directors, for such loss or damage.

Q.2.3 Proportionate Liability – Deloitte

297. At all material times, Deloitte:

- (a) was appointed as auditor by DSH; and
- (b) had, and held itself out as having, professional or expert competence in providing auditing and accounting services.

298. Deloitte performed:

- (a) the HY2014 Review;
- (b) the FY2014 Audit;
- (c) the HY2015 Review; and
- (d) the FY2015 Audit.

299. Pursuant to s 307A of the Corporations Act, Deloitte was required to conduct each of the HY2014 Review, the FY2014 Audit, the HY2015 Review and the FY2015 Audit in accordance with the auditing standards in force under s 336 of the Corporations Act (the **Auditing Standards**).

300. In respect of the HY2014 Review, Deloitte was required:

- (a) to report to the members of DSH on whether Deloitte became aware of any matter in the course of the HY2014 Review that made Deloitte believe that the HY2014 Report did not comply with Part 2M.3 Div 2 of the Corporations Act (including s 304 (compliance with accounting standards) and s 305 (true and fair view)); and
- (b) to describe in such report any such matter referred to in paragraph (a) above, and say why such matter made Deloitte believe that the HY2014 Report did not comply with Part 2M.3 Div 2 of the Corporations Act.

Particulars

Corporations Act, s 309.

301. In respect of the FY2014 Audit, Deloitte was required:

- (a) to report to the members of DSH on whether Deloitte was of the opinion that the FY2014 Report was in accordance with the Corporations Act (including s 296 (compliance with accounting standards) and s 297 (true and fair view)) and, if not of such opinion, to say why;

- (b) if Deloitte was of the opinion that the FY2014 Report did not comply with an accounting standard, to quantify, to the extent practicable to do so, the effect that such non-compliance had on the FY2014 Report and, if not practicable to quantify the effect fully, to say why; and
- (c) to describe, in its report to members, any defect or irregularity in the FY2014 Report.

Particulars

Corporations Act, s 308.

302. In respect of the HY2015 Review, Deloitte was required:

- (a) to report to the members of DSH on whether Deloitte became aware of any matter in the course of the HY2015 Review that made Deloitte believe that the HY2015 Report did not comply with Part 2M.3 Div 2 of the Corporations Act (including s 304 (compliance with accounting standards) and s 305 (true and fair view)); and
- (b) to describe in such report any such matter referred to in paragraph (a) above, and say why such matter made Deloitte believe that the HY2015 Report did not comply with Part 2M.3 Div 2 of the Corporations Act.

Particulars

Corporations Act, s 309.

303. In respect of the FY2015 Audit, Deloitte was required:

- (a) to report to the members of DSH on whether Deloitte was of the opinion that the FY2015 Report was in accordance with the Corporations Act (including s 296 (compliance with accounting standards) and s 297 (true and fair view)) and, if not of such opinion, to say why;
- (b) if Deloitte was of the opinion that the FY2015 Report did not comply with an accounting standard, to quantify, to the extent practicable to do so, the effect that such non-compliance had on the FY2015 Report and, if not practicable to quantify the effect fully, to say why; and
- (c) to describe, in its report to members, any defect or irregularity in the FY2015 Report.

Particulars

Corporations Act, s 308.

HY2014 Review

304. In the course of the HY2014 Review, Deloitte performed the work, and expressed the opinions, in respect of:
- (a) the accounting treatment of rebates in the HY2014 Report, referred to in paragraph 73(a) above;
 - (b) the inventory provisions in the HY2014 Report, referred to in paragraph 88(a) above;
 - (c) the accounting for agency sales in the HY2014 Report, referred to in paragraph 63 above;
 - (d) the accounting for the inventory purchased from David Jones in the HY2014 Report, referred to in paragraph 93(b)(i) above;
 - (e) the onerous leases provision in the HY2014 Report, referred to in paragraph 101(d) above;
 - (f) the accounting for the Warranty Sign On Liability in the HY2014 Report, referred to in paragraph 108(a) above; and
 - (g) the accounting for certain employee and other costs in the HY2014 Report, referred to in paragraph 111(b) above.
305. At the conclusion of the HY2014 Review, Deloitte issued the HY2014 Review Report to the members of DSH.
306. The HY2014 Review Report was included in the HY2014 Report, which was published and lodged with the ASX on or about 19 February 2014 and which formed part of the "2014 Half Year Results" pleaded in paragraph 135 of the Statement of Claim.
307. By issuing the HY2014 Review Report, Deloitte represented that:
- (a) based on the HY2014 Review, Deloitte had not become aware of any matter that made it believe that the HY2014 Report was not in accordance with the Corporations Act, including:
 - (i) giving a true and fair view of DSH's financial position as at 29 December 2013 and of its performance for the 26 weeks then ended; and
 - (ii) complying with Accounting Standard AASB 134 *Interim Financial Reporting* and the Corporations Regulations;

Particulars

The representation was express and was set out on page 1 of the HY2014 Review Report.

- (b) Deloitte had a reasonable basis for the representation in paragraph (a) above, and this representation was the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in conducting the HY2014 Review.

Particulars

The representation was implied from the express representation in paragraph (a) above; from the express statement in the HY2014 Review Report that Deloitte had conducted its review in accordance with the Auditing Standard on Review Engagements ASRE 2410 *Review of a Financial Report Performed by the Independent Auditor of the Entity*; and from the matters pleaded in paragraphs 297-300 above.

(the Deloitte HY2014 Representations)

308. The Deloitte HY2014 Representations constituted:

- (a) conduct by Deloitte in trade or commerce within the meaning of s. 18 of the ACL;
- (b) further or in the alternative, conduct in relation to a financial product or a financial service within the meaning of s. 1041H of the Corporations Act; and
- (c) further or in the alternative, conduct in relation to financial services within the meaning of s. 12DA of the ASIC Act.

309. For the purpose only of this proportionate liability defence, Potts repeats paragraphs 60-64, 69-75, 81-89, 93-96, 99-111 and 135-159 of the Statement of Claim (which are subject to the denials and non-admissions pleaded in paragraphs 60-64, 69-75, 81-89, 93-96, 99-111 and 135-159 above).

310. If the Plaintiffs establish the matters referred to in paragraph 309 above, then:

- (a) in preparing the HY2014 Report, DSH adopted:
 - (i) the Rebate Accounting Approach;
 - (ii) the Sales Accounting Approach;
 - (iii) the Inventory Obsolescence Approach;
 - (iv) the Onerous Leases Adjustment;

- (v) the Receivables Provision Adjustment;
 - (vi) the Warranty Sign On Liability Adjustment; and
 - (vii) the Capitalisation of Costs Approach;
- (b) each of the matters referred to in paragraphs (a)(i)-(vii) above did not comply with Australian Accounting Standards;
- (c) the adoption of the matters in paragraphs (a)(i)-(vii) above had the effect of enabling DSH to report, in the HY2014 Report, Gross Profit, EBITDA, NPAT, the value of inventories and equity, at levels in excess of what should have been reported had those matters not been adopted;
- (d) the HY2014 Report did not disclose the existence of:
- (i) the Acquisition Accounting Information;
 - (ii) the Sales Trend Information;
 - (iii) the Sales Accounting Approach;
 - (iv) the Retail Sales Information;
 - (v) the O & A Rebate Information;
 - (vi) the Inventory Obsolescence Approach;
 - (vii) the Prospectus Inventory Information;
 - (viii) the Post Prospectus Debt Information; or
 - (ix) the matters referred to in paragraphs (a)-(c) above;
- which was information that had to accompany the HY2014 Report if it was not to be misleading or deceptive, or likely to mislead or deceive; and
- (e) by reason of the matters in paragraphs (a)-(d) above, the HY2014 Report:
- (i) did not comply with Australian Accounting Standards; and
 - (ii) did not give a true and fair view of the financial position and performance of DSH and the DSE Group as at 29 December 2013.

311. If the Plaintiffs establish the matters referred to in paragraph 310 above (which are denied), then Deloitte:

- (a) failed to become aware, in the course of conducting the HY2014 Review, that the HY2014 Report was prepared on the basis of the matters pleaded in paragraph 310(a) above; and/or
- (b) failed to appreciate or to report that the matters pleaded in paragraph 310(a) above did not comply with Australian Accounting Standards, and resulted in Gross Profit, EBITDA, NPAT, the value of inventories and NPAT being overstated in the HY2014 Report; and/or
- (c) failed to appreciate or report that the HY2014 Report did not disclose the matters in paragraph 310(d) above, or that such non-disclosure and the matters in paragraphs (a)-(b) above meant that the HY2014 Report did not give a true and fair view of the financial position and performance of DSH and the DSH Group;

and Deloitte thereby failed to exercise reasonable skill and care, and failed to comply with Auditing Standards, in conducting the HY2014 Review, in that:

- (d) Deloitte failed to obtain an adequate understanding of DSH and its environment, including its internal control as it relates to the preparation of financial reports (including in respect of the matters referred to in paragraphs 310(a) and 310(d) above), sufficient to plan and conduct the HY2014 Review (ASRE 2410 paragraphs 13 and A11); and/or
- (e) Deloitte failed adequately to make enquiries or to perform analytical and other review procedures to enable Deloitte to conclude whether, on the basis of the procedures performed, anything had come to their attention that caused Deloitte to believe that the HY2014 Report (including in respect of the matters referred to in paragraphs 310(a) and 310(d) above) was not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 paragraph 16); and/or
- (f) insofar as Deloitte, in the course of the HY2014 Review, identified any of the matters referred to in paragraph 310(a) above as an area where a material adjustment might have to be made to the HY2014 Report, Deloitte failed to make additional enquiries or perform other procedures sufficient to enable Deloitte to conclude whether, on the basis of the procedures performed, anything had come to Deloitte's attention that caused Deloitte to believe that the HY2014 Report (including in respect of the matters referred to in paragraphs 310(a) and 310(d) above) was not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 paragraph 20).

312. By reason of the matters pleaded in paragraphs 310–311 above, Deloitte, in issuing the HY2014 Review Report and thereby making the Deloitte HY2014 Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s.

18 of the ACL or alternatively s. 1041H of the Corporations Act or alternatively s. 12DA of the ASIC Act.

Particulars

If the matters in paragraphs 310-311 above are established, then, contrary to the representation pleaded in paragraph 307(b) above, Deloitte did not have a reasonable basis for the representation in paragraph 307(a) above, and the representation in paragraph 307(a) above was not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in conducting the HY2014 Review.

FY2014 Audit

313. In the course of the FY2014 Audit, Deloitte performed the work, and expressed the opinions, in respect of:
- (a) the accounting treatment of rebates in the FY2014 Report, referred to in paragraph 73(b) above;
 - (b) the inventory provisions in the FY2014 Report, referred to in paragraph 88(b) above;
 - (c) the accounting for agency sales in the FY2014 Report, referred to in paragraph 63 above;
 - (d) the accounting for the inventory purchased from David Jones in the FY2014 Report, referred to in paragraph 93(b)(ii) above;
 - (e) the onerous leases provision in the FY2014 Report, referred to in paragraph 101(e) above;
 - (f) the accounting for the Warranty Sign On Liability in the FY2014 Report, referred to in paragraph 108(b) above; and
 - (g) the accounting for certain employee and other costs in the FY2014 Report, referred to in paragraph 111(b) above.
314. At the conclusion of the FY2014 Audit, Deloitte issued the FY2014 Audit Report to the members of DSH.
315. The FY2014 Audit Report was included in the FY2014 Report, which was published and lodged with the ASX on or about 19 August 2014 and which formed part of the "FY2014 Results" pleaded in paragraph 138 of the Statement of Claim.

316. By issuing the FY2014 Audit Report, Deloitte represented that:

- (a) Deloitte was of the opinion that the financial report of DSH for the period ended 29 June 2014 was in accordance with the Corporations Act, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 29 June 2014 and of its performance for the year ended on that date, and
 - (ii) complying with Australian Accounting Standards and the Corporations Regulations;
- (b) Deloitte had a reasonable basis for the opinion in paragraph (a) above, and this opinion was the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in conducting the FY2014 Audit.

(the **Deloitte FY2014 Representations**)

Particulars

The representation in paragraph (a) above was express and was contained in the FY2014 Audit Report.

The representation in paragraph (b) above was implied from: the representation in paragraph (a) above; Deloitte's express statement in the FY2014 Audit Report that the FY2014 Audit had been conducted in accordance with Auditing Standards; and from the matters pleaded in paragraphs 297-299 and 301 above.

317. The Deloitte FY2014 Representations constituted:

- (a) conduct by Deloitte in trade or commerce within the meaning of s. 18 of the ACL;
- (b) further or in the alternative, conduct in relation to a financial product or a financial service within the meaning of s. 1041H of the Corporations Act; and
- (c) further or in the alternative, conduct in relation to financial services within the meaning of s. 12DA of the ASIC Act.

318. If the Plaintiffs establish the matters referred to in paragraph 309 above, then:

- (a) in preparing the FY2014 Report, DSH adopted:
 - (i) the Rebate Accounting Approach;
 - (ii) the Sales Accounting Approach;
 - (iii) the Inventory Obsolescence Approach;
 - (iv) the Onerous Leases Adjustment;

- (v) the Receivables Provision Adjustment;
 - (vi) the Warranty Sign On Liability Adjustment; and
 - (vii) the Capitalisation of Costs Approach;
- (b) each of the matters referred to in paragraphs (a)(i)-(vii) above did not comply with Australian Accounting Standards;
- (c) the adoption of the matters in paragraphs (a)(i)-(vii) above had the effect of enabling DSH to report, in the FY2014 Report, Gross Profit, EBITDA, NPAT, the value of inventories and equity, at levels in excess of what should have been reported had those matters not been adopted;
- (d) the FY2014 Report did not disclose the existence of:
- (i) the Acquisition Accounting Information;
 - (ii) the Sales Trend Information;
 - (iii) the Sales Accounting Approach;
 - (iv) the Retail Sales Information;
 - (v) the O & A Rebate Information;
 - (vi) the Inventory Obsolescence Approach;
 - (vii) the Prospectus Inventory Information;
 - (viii) the Post Prospectus Debt Information; or
 - (ix) the matters referred to in paragraphs (a)-(c) above;
- which was information that had to accompany the FY2014 Report if it was not to be misleading or deceptive, or likely to mislead or deceive; and
- (e) by reason of the matters in paragraphs (a)-(d) above, the FY2014 Report:
- (i) did not comply with Australian Accounting Standards; and
 - (ii) did not give a true and fair view of the financial position and performance of DSH and the DSE Group as at 29 June 2014.

319. If the Plaintiffs establish the matters referred to in paragraph 318 above (which are denied), then Deloitte:

- (a) failed to become aware, in the course of conducting the FY2014 Audit, that the FY2014 Report was prepared on the basis of the matters pleaded in paragraph 318(a) above; and/or
- (b) failed to appreciate or to report that the matters pleaded in paragraph 318(a) above did not comply with Australian Accounting Standards, and resulted in Gross Profit, EBITDA, NPAT, the value of inventories and NPAT being overstated in the FY2014 Report; and/or
- (c) failed to appreciate or report that the FY2014 Report did not disclose the matters in paragraph 318(d) above, or that such non-disclosure and the matters in paragraphs (a)-(b) above meant that the FY2014 Report did not give a true and fair view of the financial position and performance of DSH and the DSH Group;

and Deloitte thereby failed to exercise reasonable skill and care, and failed to comply with Auditing Standards, in conducting the FY2014 Audit, in that:

- (d) Deloitte failed to obtain an adequate understanding of the DSH business and its environment, including its internal control as it relates to the preparation of financial reports, sufficient to plan and conduct the FY2014 Audit (ASA 315, paragraphs 11, 27, 28); and/or
- (e) Deloitte failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in respect of the matters pleaded in paragraphs 318(a) and 318(d) above (ASA 500 paragraphs 4-6, A1-A3, A10, A14-A15); and/or
- (f) Deloitte failed to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement (including in respect of the recording of rebates, the inventory provisions and the capitalisation of costs in the FY2014 Report), through designing and implementing appropriate responses to those risks (ASA 330 paragraphs 3, 5-7); and/or
- (g) by reason of having failed to obtain sufficient appropriate audit evidence so as to reduce audit risk to an acceptably low level, Deloitte failed to obtain reasonable assurance about whether the FY2014 Report as a whole was free from material misstatement, whether due to fraud or error (ASA 200 paragraph 5 and 17) and was unable to draw reasonable conclusions on which to base Deloitte's opinion on whether the FY2014 Report was prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY2014 Report in accordance with Deloitte's findings (ASA 200 paragraphs 11 and 17); and/or

- (h) Deloitte failed to obtain an adequate understanding of the application of accounting policies adopted by DSH in respect of the matters pleaded in paragraphs 318(a) and 318(d) above, sufficient to evaluate whether those policies were appropriate for its business and consistent with the applicable financial reporting framework (ASA 315 paragraph 11); and/or
 - (i) Deloitte failed to obtain an adequate understanding of DSH's internal controls in respect of the recording of rebates or the provisioning for inventory or of the activities undertaken by DSH to monitor such controls (ASA 315 paragraphs 11-15, 18, 20-22); and/or
 - (j) Deloitte failed to design and perform tests of controls in relation to the recording of rebates and inventory provisioning so as to obtain sufficient appropriate audit evidence regarding the operating effectiveness of such controls (ASA 330 paragraphs 8-10, 16); and/or
 - (k) Deloitte, having determined that there was a significant risk of material misstatement in respect of the recording of rebates, the inventory provisions and the capitalisation of costs in the FY2014 Report, failed to perform substantive procedures that are specifically responsive to that risk (ASA 330 paragraph 21); and/or
 - (l) Deloitte failed to perform adequate audit procedures to evaluate whether the overall presentation of the FY2014 Report was in accordance with the applicable financial reporting framework (ASA 330 paragraph 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 paragraph 25); and/or
 - (m) in circumstances where Deloitte had not obtained sufficient appropriate audit evidence in respect of the matters pleaded in paragraphs 318(a) and 318(d) above, Deloitte failed to express a qualified opinion or disclaim an opinion on the FY2014 Report (ASA 330 paragraphs 26-27).
320. By reason of the matters pleaded in paragraphs 318–319 above, Deloitte, in issuing the FY2014 Audit Report and thereby making the Deloitte FY2014 Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s. 18 of the ACL or alternatively s. 1041H of the Corporations Act or alternatively s. 12DA of the ASIC Act.

Particulars

If the matters in paragraphs 318–319 above are established, then, contrary to the representation pleaded in paragraph 316(b) above, Deloitte did not have a reasonable basis for the opinion pleaded in paragraph 316(a) above, and that opinion was not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in conducting the FY2014 Audit.

HY2015 Review

321. In the course of the HY2015 Review, Deloitte performed the work, and expressed the opinions, in respect of:
- (a) the accounting treatment of rebates in the HY2015 Report, referred to in paragraph 73(c) above;
 - (b) the inventory provisions in the HY2015 Report, referred to in paragraph 88(c) above;
 - (c) the accounting for agency sales in the HY2015 Report, referred to in paragraph 63 above; and
 - (d) the accounting for certain employee and other costs in the HY2015 Report, referred to in paragraph 111(d) above.
322. At the conclusion of the HY2015 Review, Deloitte issued the HY2015 Review Report to the members of DSH.
323. The HY2015 Review Report was included in the HY2015 Report, which was published and lodged with the ASX on or about 17 February 2015 and which formed part of the "2015 Half Yearly Results" pleaded in paragraph 141 of the Statement of Claim.
324. By issuing the HY2015 Review Report, Deloitte represented that:
- (a) based on the HY2015 Review, Deloitte had not become aware of any matter that made it believe that the HY2015 Report was not in accordance with the Corporations Act, including:
 - (i) giving a true and fair view of DSH's financial position as at 28 December 2014 and of its performance for the 26 weeks then ended; and
 - (ii) complying with Accounting Standard AASB 134 *Interim Financial Reporting* and the Corporations Regulations;

Particulars

The representation was express and was set out in the HY2015 Review Report.

- (b) Deloitte had a reasonable basis for the representation in paragraph (a) above, and this representation was the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in conducting the HY2015 Review.

Particulars

The representation was implied from the express representation in paragraph (a) above; from the express statement in the HY2015 Review Report that Deloitte had conducted its review in accordance with the Auditing Standard on Review Engagements ASRE 2410 *Review of a Financial Report Performed by the Independent Auditor of the Entity*, and from the matters pleaded in paragraphs 297-299 and 302 above.

(the Deloitte HY2015 Representations)

325. The Deloitte HY2015 Representations constituted:

- (a) conduct by Deloitte in trade or commerce within the meaning of s. 18 of the ACL;
- (b) further or in the alternative, conduct in relation to a financial product or a financial service within the meaning of s. 1041H of the Corporations Act; and
- (c) further or in the alternative, conduct in relation to financial services within the meaning of s. 12DA of the ASIC Act.

326. If the Plaintiffs establish the matters referred to in paragraph 309 above, then:

- (a) in preparing the HY2015 Report, DSH adopted:
 - (i) the Rebate Accounting Approach;
 - (ii) the Sales Accounting Approach;
 - (iii) the Inventory Obsolescence Approach;
 - (iv) the Onerous Leases Adjustment; and
 - (v) the Capitalisation of Costs Approach;
- (b) each of the matters referred to in paragraphs (a)(i)-(v) above did not comply with Australian Accounting Standards;
- (c) the adoption of the matters in paragraphs (a)(i)-(v) above had the effect of enabling DSH to report, in the HY2015 Report, Gross Profit, EBITDA, NPAT, the value of inventories and equity, at levels in excess of what should have been reported had those matters not been adopted;
- (d) the HY2015 Report did not disclose the existence of:
 - (i) the Acquisition Accounting Information;
 - (ii) the Sales Trend Information;

- (iii) the Sales Accounting Approach;
- (iv) the Retail Sales Information;
- (v) the O & A Rebate Information;
- (vi) the Inventory Obsolescence Approach;
- (vii) the Prospectus Inventory Information;
- (viii) the Post Prospectus Debt Information; or
- (ix) the matters referred to in paragraphs (a)-(c) above;

which was information that had to accompany the HY2015 Report if it was not to be misleading or deceptive, or likely to mislead or deceive; and

- (e) by reason of the matters in paragraphs (a)-(d) above, the HY2015 Report:
 - (i) did not comply with Australian Accounting Standards; and
 - (ii) did not give a true and fair view of the financial position and performance of DSH and the DSE Group as at 28 December 2014;

327. If the Plaintiffs establish the matters referred to in paragraph 326 above (which are denied), then Deloitte:

- (a) failed to become aware, in the course of conducting the HY2015 Review, that the HY2015 Report was prepared on the basis of the matters pleaded in paragraph 326(a) above; and/or
- (b) failed to appreciate or to report that the matters pleaded in paragraph 326(a) above did not comply with Australian Accounting Standards, and resulted in Gross Profit, EBITDA, NPAT, the value of inventories and NPAT being overstated in the HY2015 Report; and/or
- (c) failed to appreciate or report that the HY2015 Report did not disclose the matters in paragraph 326(d) above, or that such non-disclosure and the matters in paragraphs (a)-(b) above meant that the HY2015 Report did not give a true and fair view of the financial position and performance of DSH and the DSH Group;

and Deloitte thereby failed to exercise reasonable skill and care, and failed to comply with Auditing Standards, in conducting the HY2015 Review, in that:

- (d) Deloitte failed to obtain an adequate understanding of DSH and its environment, including its internal control as it relates to the preparation of financial reports (including in respect

of the matters referred to in paragraphs 326(a) and 326(d) above), sufficient to plan and conduct the HY2015 Review (ASRE 2410 paragraphs 13 and A11); and/or

- (e) Deloitte failed adequately to make enquiries or to perform analytical and other review procedures to enable Deloitte to conclude whether, on the basis of the procedures performed, anything had come to their attention that caused Deloitte to believe that the HY2015 Report (including in respect of the matters referred to in paragraphs 326(a) and 326(d) above) was not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 paragraph 16); and/or
- (f) insofar as Deloitte, in the course of the HY2015 Review, identified any of the matters referred to in paragraph 326(a) above as an area where a material adjustment might have to be made to the HY2015 Report, Deloitte failed to make additional enquiries or perform other procedures sufficient to enable Deloitte to conclude whether, on the basis of the procedures performed, anything had come to Deloitte's attention that caused Deloitte to believe that the HY2015 Report (including in respect of the matters referred to in paragraphs 326(a) and 326(d) above) was not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 paragraph 20).

328. By reason of the matters pleaded in paragraphs 326–327 above, Deloitte, in issuing the HY2015 Review Report and thereby making the Deloitte HY2015 Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s. 18 of the ACL, or alternatively s. 1041H of the Corporations Act, or alternatively s. 12DA of the ASIC Act.

Particulars

If the matters in paragraphs 326–327 above are established, then, contrary to the representation pleaded in paragraph 324(b) above, Deloitte did not have a reasonable basis for the representation in paragraph 324(a) above, and the representation in paragraph 324(a) above was not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in conducting the HY2015 Review.

FY2015 Audit

329. In the course of the FY2015 Audit, Deloitte performed the work, and expressed the opinions, in respect of:

- (a) the accounting treatment of rebates in the FY2015 Report, referred to in paragraph 73(d) above;
- (b) the inventory provisions in the FY2015 Report, referred to in paragraph 88(d) above;

- (c) the accounting for agency sales in the FY2015 Report, referred to in paragraph 63 above; and
 - (d) the accounting for certain employee and other costs in the FY2015 Report, referred to in paragraph 111(e) above.
330. At the conclusion of the FY2015 Audit, Deloitte issued the FY2015 Audit Report to the members of DSH.
331. The FY2015 Audit Report was included in the FY2015 Report, which was published and lodged with the ASX on or about 18 August 2015 and which formed part of the "2015 Yearly Results" pleaded in paragraph 144 of the Statement of Claim.
332. By issuing the FY2015 Audit Report, Deloitte represented that:
- (a) Deloitte was of the opinion that the financial report of DSH for the period ended 28 June 2015 was in accordance with the Corporations Act, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 28 June 2015 and of its performance for the year ended on that date, and
 - (ii) complying with Australian Accounting Standards and the Corporations Regulations;
 - (b) Deloitte had a reasonable basis for the opinion in paragraph (a) above, and this opinion was the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in conducting the FY2015 Audit.

(the Deloitte FY2015 Representations)

Particulars

The representation in paragraph (a) above was express and was contained in the FY2015 Audit Report.

The representation in paragraph (b) above was implied from: the representation in paragraph (a) above; Deloitte's express statement in the FY2015 Audit Report that the FY2015 Audit had been conducted in accordance with Auditing Standards; and from the matters pleaded in paragraphs 297-299 and 303 above.

333. The Deloitte FY2015 Representations constituted:
- (a) conduct by Deloitte in trade or commerce within the meaning of s. 18 of the ACL;
 - (b) further, or in the alternative, conduct in relation to a financial product or a financial service within the meaning of s. 1041H of the Corporations Act; and

- (c) further, or in the alternative, conduct in relation to financial services within the meaning of s. 12DA of the ASIC Act.

334. If the Plaintiffs establish the matters referred to in paragraph 309 above, then:

- (a) in preparing the FY2015 Report, DSH adopted:
 - (i) the Rebate Accounting Approach;
 - (ii) the Sales Accounting Approach;
 - (iii) the Inventory Obsolescence Approach;
 - (iv) the Onerous Leases Adjustment; and
 - (v) the Capitalisation of Costs Approach;
- (b) each of the matters referred to in paragraphs (a)(i)-(v) above did not comply with Australian Accounting Standards;
- (c) the adoption of the matters in paragraphs (a)(i)-(v) above had the effect of enabling DSH to report, in the FY2015 Report, Gross Profit, EBITDA, NPAT, the value of inventories and equity, at levels in excess of what should have been reported had those matters not been adopted;
- (d) the FY2015 Report did not disclose the existence of:
 - (i) the Acquisition Accounting Information;
 - (ii) the Sales Trend Information;
 - (iii) the Sales Accounting Approach;
 - (iv) the Retail Sales Information;
 - (v) the O & A Rebate Information;
 - (vi) the Inventory Obsolescence Approach;
 - (vii) the Prospectus Inventory Information;
 - (viii) the Post Prospectus Debt Information; or
 - (ix) the matters referred to in paragraphs (a)-(c) above;

which was information that had to accompany the FY2015 Report if it was not to be misleading or deceptive, or likely to mislead or deceive; and

- (e) by reason of the matters in paragraphs (a)-(d) above, the FY2015 Report:
 - (i) did not comply with Australian Accounting Standards; and
 - (ii) did not give a true and fair view of the financial position and performance of DSH and the DSE Group as at 28 June 2015.

335. If the Plaintiffs establish the matters referred to in paragraph 334 above (which are denied), then Deloitte:

- (a) failed to become aware, in the course of conducting the FY2015 Audit, that the FY2015 Report was prepared on the basis of the matters pleaded in paragraph 334(a) above; and/or
- (b) failed to appreciate or to report that the matters pleaded in paragraph 334(a) above did not comply with Australian Accounting Standards, and resulted in Gross Profit, EBITDA, NPAT, the value of inventories and NPAT being overstated in the FY2015 Report; and/or
- (c) failed to appreciate or report that the FY2015 Report did not disclose the matters in paragraph 334(d) above, or that such non-disclosure and the matters in paragraphs (a)-(b) above meant that the FY2015 Report did not give a true and fair view of the financial position and performance of DSH and the DSH Group;

and Deloitte thereby failed to exercise reasonable skill and care, and failed to comply with Auditing Standards, in conducting the FY2015 Audit, in that:

- (d) Deloitte failed to obtain an adequate understanding of the DSH business and its environment, including its internal control as it relates to the preparation of financial reports, sufficient to plan and conduct the FY2015 Audit (ASA 315, paragraphs 11, 27, 28); and/or
- (e) Deloitte failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in respect of the matters pleaded in paragraphs 334(a) and 334(d) above (ASA 500 paragraphs 4-6, A1-A3, A10, A14-A15); and/or
- (f) Deloitte failed to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement (including in respect of the recording of rebates, the inventory provisions and the capitalisation of costs in the FY2015 Report), through designing and implementing appropriate responses to those risks (ASA 330 paragraphs 3 and 5-7); and/or
- (g) by reason of having failed to obtain sufficient appropriate audit evidence so as to reduce audit risk to an acceptably low level, Deloitte failed to obtain reasonable assurance about whether the FY2015 Report, as a whole, was free from material misstatement, whether

due to fraud or error (ASA 200 paragraph 5 and 17) and was unable to draw reasonable conclusions on which to base Deloitte's opinion on whether the FY2015 Report was prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY2015 Report in accordance with Deloitte's findings (ASA 200 paragraphs 11 and 17); and/or

- (h) Deloitte failed to obtain an adequate understanding of the application of accounting policies adopted by DSH in respect of the matters pleaded in paragraphs 334(a) and 334(d) above, sufficient to evaluate whether those policies were appropriate for its business and consistent with the applicable financial reporting framework (ASA 315 paragraph 11); and/or
- (i) Deloitte failed to obtain an adequate understanding of DSH's internal controls in respect of the recording of rebates or the provisioning for inventory or of the activities undertaken by DSH to monitor such controls (ASA 315 paragraphs 11-15, 18, 20-22); and/or
- (j) Deloitte failed to design and perform tests of controls in relation to the recording of rebates and inventory provisioning so as to obtain sufficient appropriate audit evidence regarding the operating effectiveness of such controls (ASA 330 paragraphs 8-10, 16); and/or
- (k) Deloitte, having determined that there was a significant risk of material misstatement in respect of the recording of rebates, the inventory provisions and the capitalisation of costs in the FY2015 Report, failed to perform substantive procedures that are specifically responsive to that risk (ASA 330 paragraph 21); and/or
- (l) Deloitte failed to perform adequate audit procedures to evaluate whether the overall presentation of the FY2015 Report was in accordance with the applicable financial reporting framework (ASA 330 paragraph 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 paragraph 25); and/or
- (m) in circumstances where Deloitte had not obtained sufficient appropriate audit evidence in respect of the matters pleaded in paragraphs 334(a) and 334(d) above, Deloitte failed to express a qualified opinion or disclaim an opinion on the FY2015 Report (ASA 330 paragraphs 26-27).

336. By reason of the matters pleaded in paragraphs 334–335 above, Deloitte, in issuing the FY2015 Audit Report and thereby making the Deloitte FY2015 Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s. 18 of the ACL, or alternatively s. 1041H of the Corporations Act, or alternatively s. 12DA of the ASIC Act.

Particulars

If the matters in paragraphs 334–335 above are established, then, contrary to the representation pleaded in paragraph 332(b) above, Deloitte did not have a reasonable basis for the opinion pleaded in paragraph 332(a) above, and that opinion was not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in conducting the FY2015 Audit.

Loss and Damage

337. For the purposes only of this proportionate liability defence, and without any admission, Potts repeats paragraphs 283-287 of the Statement of Claim (which are the subject of the denials and non-admissions pleaded in paragraphs 283-287 above).
338. If the matters referred to in paragraph 337 above are established, then the allegedly misleading conduct of Potts in causing DSH:

- (a) to publish the HY2014 Report and thereby to make the 2014 Half Yearly Results Representations and the 2014 Half Yearly Compliance Representations, including the representation that the HY2014 Report was prepared in accordance with Australian Accounting Standards and gave a true and fair view of the financial position and performance of DSH and the DSH Group as at 29 December 2013;
- (b) to publish the FY2014 Report and thereby to make the 2014 Yearly Results Representations and the 2014 Annual Report Compliance Representations, including the representation that the FY2014 Report was prepared in accordance with Australian Accounting Standards and gave a true and fair view of the financial position and performance of DSH and the DSH Group as at 29 June 2014;
- (c) to publish the HY2015 Report and thereby to make the 2015 Half Yearly Results Representations and the 2015 Half Year Compliance Representations, including the representation that the HY2015 Report was prepared in accordance with Australian Accounting Standards and gave a true and fair view of the financial position and performance of DSH and the DSH Group as at 28 December 2014; and
- (d) to publish the FY2015 Report and thereby to make the 2015 Yearly Results Representations and the 2015 Annual Report Compliance Representations, including the representation that the FY2015 Report was prepared in accordance with Australian Accounting Standards and gave a true and fair view of the financial position and performance of DSH and the DSH Group as at 28 June 2015;

caused the market price of DSH Shares to be, or materially contributed to the market price of DSH Shares being, substantially greater than their true value and/or the market price that would have applied but for that misleading conduct, and thereby caused loss and damage to the Plaintiffs and those Group Members who acquired interests in DSH Shares on the secondary market operated by the ASX.

339. If the matters in paragraph 338 are established (which are denied), then it follows that the misleading conduct of Deloitte in:

- (a) issuing the HY2014 Review Report and making the Deloitte HY2014 Representations;
- (b) issuing the FY2014 Review Report and making the Deloitte FY2014 Representations;
- (c) issuing the HY2015 Review Report and making the Deloitte HY2015 Representations;
- (d) issuing the FY2015 Review Report and making the Deloitte FY2015 Representations;

caused the market price of DSH Shares to be, or materially contributed to the market price of DSH Shares being, substantially greater than their true value and/or the market price that would have applied but for that misleading conduct, and thereby caused loss and damage to the Plaintiffs and those Group Members who acquired interests in DSH Shares on the secondary market operated by the ASX.

340. Further, or in the alternative, if the matters referred to in paragraph 337 above are established, then the Plaintiffs and some Group Members acquired their interests in DSH Shares at the prices and in the volumes that they were acquired, in reliance on the reports and the representations referred to in paragraph 338(a)-(d) above, and thereby suffered loss and damage as the result of Potts' alleged misleading conduct in causing DSH to issue those reports and thereby make those representations.

341. If the matters referred to in paragraph 340 above are established (which is denied), then the Plaintiffs and the Group Members referred to in paragraph 340 above also acquired their interests in DSH Shares, at the prices and in the volumes that they were acquired, in reliance on Deloitte's reports and the representations referred to in paragraph 339(a)-(d) above, and thereby suffered loss and damage as the result of Deloitte's misleading conduct in issuing those reports and thereby making those representations.

342. By reason of the matters pleaded in paragraphs 297-341 above, if it is established (which is denied) that Potts is liable to the Plaintiffs or the Group Members for any loss or damage, then:

- (a) each of Potts and Deloitte is a person whose acts or omissions caused the loss allegedly suffered by the Plaintiffs and/or Group Members which is the subject of their claim, and therefore each is a concurrent wrongdoer within the meaning of s.1041L of the Corporations Act, s.12GP of the ASIC Act and s. 87CB of the CCA; and
- (b) pursuant to s.1041L of the Corporations Act, s.12GP of the ASIC Act and/or s. 87CB of the CCA, any liability (which is denied) of Potts to the Plaintiffs or Group Members for any such loss is to be limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the extent of Potts' responsibility, and the extent of the responsibility of Deloitte, for that loss or damage.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

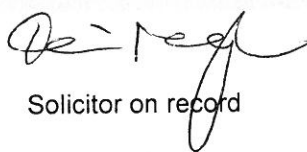
None.

E. MEDIATION STATEMENT

The parties have not attempted mediation. The Second Defendant is willing to proceed to mediation at an appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

Signature



Capacity

Solicitor on record

Date of signature

9 April 2018