

Ball 5 7/2

**4TH TO 457TH DEFENDANTS' DEFENCE TO THE
PLAINTIFFS' SECOND FURTHER AMENDED JOINT STATEMENT
OF CLAIM**

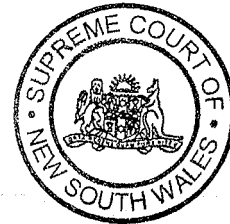
COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial List
Registry	Sydney
Case number	2017/294069 & 2018/52431

FILED

5 FEB 2020

S.G.



TITLE OF PROCEEDINGS

Proceeding 2017/294069

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

Proceeding 2018/52431

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

FILING DETAILS

Filed for	David White t/as Deloitte Touche Tohmatsu (a firm) (ABN 74 490 121 060) & Ors, 4 th to 457 th Defendants / 1 st to 454 th Cross-Defendants on the Second and Third Cross-Claim
Filed in relation to	Plaintiffs' <u>Second</u> Further Amended Joint Statement of Claim
Legal representative	Angela Pearsall, Clifford Chance
Legal representative reference	21-40693186
Contact name and telephone	Angela Pearsall / Naomi Griffin, [REDACTED]
Contact email	[REDACTED]

PLEADINGS AND PARTICULARS

NOTE AS TO TERMINOLOGY AND PRIVILEGE

The 4th to 457th Defendants' (Deloitte) plead to the Plaintiffs' Second Further Amended Joint Statement of Claim filed ~~26 April 2019~~ 7 January 2020 (**Plaintiffs' Claim**) as follows, adopting the definitions therein unless otherwise stated. Headings and subheadings adopted in the Plaintiffs' Claim are repeated for ease of reference only.

Where, in this Commercial List Cross-Claim Response, Deloitte do not expressly plead to a paragraph, the position of Deloitte in relation to the allegation(s) within that paragraph is that Deloitte do not admit the allegation(s). Admissions made in this Defence are for the purpose of this proceeding only and not because any or all of the Defendants know or believe those matters to be true or false.

Nothing in this Defence should be taken to amount to an express or implied waiver of any privilege against self-incrimination or privilege against self-exposure to penalty belonging to Deloitte (or any one of them) or to any of their partners, directors, officers or employees.

NARRATIVE SUMMARY OF THE CLAIM

The fourth defendant does not plead to paragraphs 1 to 25 as they are not a proper pleading and, if taken other than as a submission, would be vague, embarrassing and liable to be struck out.

Paragraphs 26 to 32 purport to outline the structure of the Plaintiffs' Claim, and contain no allegation against the fourth defendant and so the fourth defendant does not plead to those paragraphs.

A. PARTIES AND BACKGROUND

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

33. As to paragraph 33, Deloitte:
 - (a) admit that Proceeding No 2017/294069 and Proceeding No 2018/52431 have each been commenced as a representative proceeding; and
 - (b) otherwise, do not admit the paragraph.
34. As to paragraph 34, Deloitte:
 - (a) deny that it caused any loss or damage to the Findlay Group Members; and
 - (b) otherwise, do not admit the paragraph.
35. Deloitte do not admit the paragraph.

36. As to paragraph 36, Deloitte:

- (a) deny that it caused any loss or damage to the Mastoris Group Members; and
- (b) otherwise, do not admit the paragraph.

37. Deloitte do not admit paragraph 37.

A.2. THE PARTIES

A.2.1. The plaintiffs in the Findlay proceedings

38. Deloitte do not admit paragraph 38.

A.2.2. The plaintiffs in the Mastoris proceedings

39. Deloitte do not admit paragraph 39.

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

40. Deloitte admit paragraph 40.

41. Deloitte admit paragraph 41.

42. Deloitte admit paragraph 42.

43. As to paragraph 43, Deloitte:

- (a) admit that prior to entering liquidation DSH traded from stores located mostly in Australia and via its on-line website; and
- (b) otherwise, do not admit the paragraph.

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

44. Deloitte admit paragraph 44.

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

45. As to paragraph 45, Deloitte:

- (a) say that Michael Potts (**Potts**) was appointed as finance director on or about September 2013 or October 2013, noting DSH was registered on 25 October 2013; and
- (b) otherwise, admit paragraph 45.

A.2.6. The fourth to 457th defendants

45A As to paragraph 45A Deloitte:

- (a) as to subparagraph 45A(a):
 - (i) say that the only proper persons who the Plaintiffs' Claim may be brought against are those persons who were partners as at the dates at which the relevant events giving rise to the claims in the proceedings occurred; and
 - (ii) otherwise, admit the subparagraph;
- (b) as to subparagraph 45A(b):
 - (i) admit that they are (or were, as applicable) partners in an Australian partnership trading as Deloitte Touche Tohmatsu (**DTT**);
 - (ii) say that the membership of DTT changed from time to time and, accordingly, do not admit that all named Defendants were partners at all material times;
 - (iii) say that any conduct engaged in by any of the Defendants in respect of DTT's audit of:
 1. DSSH's FY13 Financial Statements (**FY13 Audit**);
 2. DSH's FY14 Financial Statements (**FY14 Audit**);
 3. DSH's FY15 Financial Statements (**FY15 Audit**),
 (together the **DTT Engagements**), was conducted by them in the ordinary course of the business of DTT and/or with the authority of DTT's partners at the relevant time; and
 - (iv) otherwise, deny the subparagraph;
- (c) as to subparagraphs 45A(c):
 - (i) admit that, as partners of DTT, they conducted business in Australia as providers of (amongst other things) accounting, audit, tax and financial advisory services, trading under the name "Deloitte Touche Tohmatsu"; and
 - (ii) otherwise, deny the subparagraph;

- (d) as to subparagraph 45A(d):
 - (i) admit that, as partners of DTT, were engaged in the supply of services, including (amongst other things) audit, tax and financial advisory services, in most cases for a fee; and
 - (ii) otherwise, deny the subparagraph;
- (e) admit subparagraph 45A(e);
- (f) subject to the qualification that all references to the *Australian Consumer Law (ACL)* are references to the ACL (NSW), Deloitte admit subparagraph 45A(f);
- (g) as to subparagraph 45A(g), Deloitte:
 - (i) say that, for the purposes of Pt 2M.4 of the Corporations Act, the firm trading as DTT was DSSH's and DSH's (as relevant) appointed auditor for, relevantly, the following financial periods:
 1. 10-month period ending 30 June 2013;
 2. 1 July 2013 to 29 June 2014; and
 3. 30 June 2014 to 28 June 2015,
 - (ii) and that the lead auditor (for the purposes of s 324AF of the Corporations Act) during those financial periods was David Robert White (i.e. the Fourth Defendant);
 - (iii) otherwise, deny the subparagraph; and
- (h) note that in the interests of economy, in the balance of this Defence, Deloitte have not repeated the contentions in subparagraphs 45A(a) to 45A(g), but that the whole of this Defence is subject to Deloitte's position that the membership of DTT changed from time to time; and
- (i) otherwise, deny the paragraph.

45B. Deloitte admit paragraph 45B.

A.3. BACKGROUND

46. Deloitte admit paragraph 46.

47. Deloitte admit paragraph 47.

48. Deloitte admit paragraph 48.

49. Deloitte admit paragraph 49.

- 50. Deloitte admit paragraph 50.
- 51. Deloitte admit paragraph 51.
- 52. Deloitte admit paragraph 52.
- 53. Deloitte admit paragraph 53.
- 54. Deloitte admit paragraph 54.
- 55. Deloitte note the reference to the 'Prospectus' in the Plaintiffs' Claim at paragraph 55.
- 56. Deloitte admit paragraph 56.

B. THE REPRESENTATIONS

B.1. THE PROSPECTUS REPRESENTATIONS

B.1.1. The Legal Status of the Prospectus

- 57. As to paragraph 57, Deloitte:
 - (a) rely on ss 709 and 710 of the Corporations Act for their full meaning and effect; and
 - (b) otherwise, admit the paragraph.
- 58. Deloitte admit paragraph 58.
- 59. As to paragraph 59, Deloitte:
 - (a) say that on or about 13 November 2013, the board of DSH resolved that the Prospectus be approved for lodgement with ASIC and the ASX; and
 - (b) otherwise, do not admit the paragraph.
- 60. Deloitte do not admit paragraph 60.

B.1.2. Financial Information Basis Representation

- 61. As to paragraph 61, Deloitte:
 - (a) rely on the whole of the Prospectus for its full content and meaning; and
 - (b) otherwise, admit the paragraph.
- 62. Deloitte admit paragraph 62.
- 63. Deloitte admit paragraph 63.

B.1.3. FY13 Performance Representations

64. As to paragraph 64, Deloitte:

- (a) rely on the whole of the Prospectus for its full content and meaning; and
- (b) otherwise, do not admit the paragraph.

65. In answer to paragraph 65, Deloitte:

- (a) say that the matters statements set out in paragraph (a) – (l) (inclusive) were included in the Prospectus; and
- (b) otherwise, do not admit the paragraph.

66. As to paragraph 66, Deloitte:

- (a) say that Potts verified the statements set out at paragraphs 65(a) to 65(j);
- (b) say that Potts verified the statement that the Pro Forma Historical Financial information for FY13 had been prepared in accordance with the recognition and measurement principles described in the Australian Accounting Standards (including the Australian Accounting Interpretations) and the summarised accounting policies of DSH as set out in Section 11 of the Prospectus; and
- (c) otherwise, do not admit the paragraph.

B.1.4. FY13 Balance Sheet Representations

67. Deloitte admit paragraph 67.

68. Deloitte admit paragraph 68.

B.1.5. Obsolete Stock Representation

69. Deloitte admit paragraph 69.

70. Deloitte admit paragraph 70.

B.1.6. 1Q14 Representations

71. As to paragraph 71, Deloitte:

- (a) rely on the whole of the Prospectus for its full content and meaning; and
- (b) otherwise, admit the paragraph.

72. Deloitte admit paragraph 72.

B.1.7. The Transformation Representations

- 73. Deloitte admit paragraph 73, save that the tables at 73(i) have as the heading of the second column, "Examples of Initiatives" and not "Initiatives" as pleaded in paragraph 73(i).
- 74. Deloitte do not admit paragraph 74.
- 75. Deloitte admit paragraph 75.

B.1.8. The Growth and Forecast Representations

- 76. As to paragraph 76, Deloitte:
 - (a) as to subparagraph (a),
 - (i) say that the Prospectus stated that:
 - (A) for FY14, total pro forma sales were forecast to be \$1,226.0 million, representing a 4.2% decline on FY13 pro forma sales;
 - (B) like for like sales on a pro forma adjusted basis were forecast to decline by 2.5% in FY14;
 - (C) for the forecast of like for like sales, it was assumed that product and category mix would continue to be weighted toward private label brands consistent with previous periods.

Particulars

Prospectus, page 70

- (ii) otherwise, admit subparagraph 76(a);
- (b) admit subparagraph 76(b);
- (c) as to subparagraph 76(c):
 - (i) say that the Prospectus stated that *"FY2014 pro forma forecast EBITDA takes into account expected profitability improvements from the transformation program. Management believes that the expected seasonality of FY2014 EBITDA in terms of the proportion of EBITDA earned in each half year will be more representative of Dick Smith's seasonality of earnings going forward. This reflects the impact of the transformation program, in particular, the benefits of operating cost reductions which are spread relatively evenly through the financial year."*

Particulars

Prospectus, page 65

- (ii) otherwise do not admit subparagraph 76(c);
- (d) admit subparagraph 76(d);
- (e) admit subparagraph 76(e);
- (f) admit subparagraph 76(f);
- (g) as to subparagraph 76(g):
 - (i) say that the Prospectus stated that:
 - (A) *"certain financial data included in this presentation is "non-IFRS financial information" under Regulatory Guide 230 Disclosing non-IFRS financial information, published by ASIC. The non-IFRS financial measures do not have a standardised meanings prescribed by Australian Accounting Standards and, therefore, may not be comparable to similarly titled measures presented by other entities, nor should they be construed as an alternative to other financial measures determined in accordance with Australian Accounting Standards.";*
 - (B) *"The Financial Information has been prepared in accordance with the recognition and measurement principles described in Australian Accounting Standards (including the Australian Accounting Interpretations)";*
 - (3) *"Investors should be aware that certain financial data included in the below table is "non-IFRS financial information" under Regulatory Guide 230 'Disclosing non-IFRS financial information' published by ASIC."*

Particulars

Prospectus, Front cover, pages 53 to 57

- (ii) otherwise admit subparagraph 76(g).
77. Deloitte admit paragraph 77.
78. As paragraph 78, Deloitte:
- (a) admit that the verification of the statements made in the Prospectus was a pre-condition to the approval of the Prospectus for publication; and

(b) otherwise, do not admit the paragraph.

79. Deloitte do not admit paragraph 79.

B.1.9. Financial Covenants Representations

80. Deloitte admit paragraph 80.

81. Deloitte admit paragraph 81.

82. Deloitte do not admit paragraph 82.

83. As to paragraph 83, Deloitte:

(a) as to subparagraph (a):

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

(ii) otherwise, do not admit subparagraph 83(a); and

(b) admit subparagraph 83(b).

84. Deloitte admit paragraph 84.

B.2. POST-PROSPECTUS REPRESENTATIONS

B.2.1. August 2014 - FY14 Financial Statements

85. As to paragraph 85, Deloitte:

(a) rely on the FY14 Financial Statements for their full content and meaning; and

(b) otherwise, admit the paragraph.

86. Deloitte admit paragraph 86.

87. Deloitte admit paragraph 87.

88. Deloitte do not admit paragraph 88.

89. Deloitte admit paragraph 89.

90. Deloitte admit paragraph 90.

91. Deloitte do not admit paragraph 91.

B.2.1.1. Directors' FY14 Representations

92. Deloitte do not admit paragraph 92.

93. Deloitte do not admit paragraph 93.

B.2.1.2. DSH's FY14 Representations

94. Deloitte do not admit paragraph 94.

95. Deloitte do not admit paragraph 95.

B.2.2. FY14 ASX Announcement & Results Briefing

96. Deloitte do not admit paragraph 96.

97. Deloitte do not admit paragraph 97.

B.2.3. August 2015 - FY15 Financial Statements

98. As to paragraph 98, Deloitte:

- (a) rely on the FY15 Financial Statements for their full content and meaning; and
- (b) otherwise admit the paragraph.

99. As to paragraph 99 Deloitte:

- (a) say that the FY15 Financial Statement stated that the 2015 statutory EBITDA was \$71.9 million and the 2015 underlying/pro forma EBITDA was \$79.8 million; and
- (b) otherwise, admit the paragraph.

100. Deloitte do not admit paragraph 100.

101. Deloitte admit paragraph 101.

102. Deloitte admit paragraph 102.

103. As to paragraph 103, Deloitte:

- (a) rely on the FY15 Financial Statements and the Directors' declaration for their full content and meaning; and
- (b) otherwise, admit the paragraph.

104. Deloitte admit paragraph 104.

B.2.3.1. Directors' FY15 Representations

105. Deloitte do not admit paragraph 105.

106. Deloitte do not admit paragraph 106.

B.2.3.2. DSH's FY15 Representations

107. Deloitte do not admit paragraph 107.

108. Deloitte do not admit paragraph 108.

B.2.4. FY15 ASX Announcement & Results Briefing

109. Deloitte do not admit paragraph 109.

110. Deloitte do not admit paragraph 110.

C. REQUIRED ACCOUNTING ADJUSTMENTS**C.1. DSH'S ACCOUNTING OBLIGATIONS**

111. As to paragraph 11, Deloitte:

- (a) rely on Australian Accounting Standards AASB 3, AASB 101, AASB 102, AASB 108, AASB 112, AASB 116, AASB 118, AASB 132, AASB 136, AASB 139 and AASB 1031 for their full meaning and effect; and
- (b) otherwise, admit the paragraph.

112. As to paragraph 112, Deloitte:

- (a) admit the first sentence in paragraph 112; and
- (b) otherwise, do not admit the paragraph.

113. As to paragraph 113, Deloitte:

- (a) repeat paragraph 111 above; and
- (b) otherwise, do not admit the paragraph.

C.1.1. AASB 101

114. As to each of paragraphs 114, Deloitte:

- (a) rely on AASB 101 for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

115. As to each of paragraphs 115, Deloitte:

- (a) rely on AASB 101 for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

116. As to each of paragraphs 116, Deloitte:

- (a) rely on AASB 101 for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

117. As to each of paragraphs 117, Deloitte:

- (a) rely on AASB 101 for its full meaning and effect; and

- (b) otherwise, do not admit the paragraph.

118. As to each of paragraphs 118, Deloitte:

- (a) rely on AASB 101 for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

C.1.2. AASB 102

119. As to paragraph 119, Deloitte:

- (a) rely on AASB 102 for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

120. As to paragraph 120, Deloitte:

- (a) rely on AASB 102 for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

121. As to paragraph 121, Deloitte:

- (a) rely on AASB 102 for its full meaning and effect;
- (b) otherwise, do not admit the paragraph.

122. As to paragraph 122, Deloitte:

- (a) rely on AASB 102 for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

123. As to paragraph 123, Deloitte:

- (a) rely on AASB 102 for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

C.1.3. AASB 108

124. Deloitte do not admit paragraph 124.

125. As to paragraph 125, Deloitte:

- (a) rely on AASB 108 for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

126. Deloitte do not admit paragraph 126.

C.1.4. AASB 132 and AASB 139

127. As to paragraph 127, Deloitte:

- (a) rely on AASB 132 and AASB 139 for their full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

128. As to paragraph 128, Deloitte:

- (a) rely on AASB 132 and AASB 139 for their full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

129. As to paragraph 129, Deloitte:

- (a) rely on AASB 132 and AASB 139 for their full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

130. As to paragraph 130, Deloitte:

- (a) rely on AASB 132 and AASB 139 for their full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

C.1.5. AASB Framework

131. Deloitte deny paragraph 131.

132. Deloitte deny paragraph 132.

133. Deloitte deny paragraph 133.

134. Deloitte deny paragraph 134.

C.2. INVENTORY

135. Deloitte do not admit paragraph 135.

136. Deloitte do not admit paragraph 136.

137. Deloitte do not admit paragraph 137.

138. Deloitte do not admit paragraph 138.

139. Deloitte do not admit paragraph 139.

140. Deloitte do not admit paragraph 140.

141. Deloitte do not admit paragraph 141.

142. Deloitte do not admit paragraph 142.

143. Deloitte do not admit paragraph 143.

- 144. Deloitte do not admit paragraph 144.
- 145. Deloitte do not admit paragraph 145.
- 146. Deloitte do not admit paragraph 146.
- 147. Deloitte do not admit paragraph 147.
- 148. Deloitte do not admit paragraph 148.
- 149. Deloitte do not admit paragraph 149.
- 150. Deloitte do not admit paragraph 150.
- 151. Deloitte do not admit paragraph 151.

C.3. REBATES

C.3.1. The Rebate Maximisation Practice and Its Consequences

- 152. Deloitte do not admit paragraph 152.
- 153. Deloitte do not admit paragraph 153.
- 154. Deloitte do not admit paragraph 154.

C.3.2. Accounting Treatment of Switched Invoice Rebates

- 155. Deloitte do not admit paragraph 155.
- 156. Deloitte do not admit paragraph 156.
- 157. Deloitte do not admit paragraph 157.
- 158. Deloitte do not admit paragraph 158.
- 159. Deloitte do not admit paragraph 159.
- 160. Deloitte do not admit paragraph 160.
- 161. Deloitte do not admit paragraph 161.
- 162. Deloitte do not admit paragraph 162.

C.3.3. Accounting Treatment of Volume Rebates

- 163. Deloitte do not admit paragraph 163.
- 164. Deloitte do not admit paragraph 164.
- 165. Deloitte do not admit paragraph 165.
- 166. Deloitte do not admit paragraph 166.
- 167. Deloitte do not admit paragraph 167.

168. Deloitte do not admit paragraph 168.

169. Deloitte do not admit paragraph 169.

C.3.4. Accounting Treatment of O&A Rebates

170. Deloitte do not admit paragraph 170.

171. Deloitte do not admit paragraph 171.

172. Deloitte do not admit paragraph 172.

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

173. Deloitte do not admit paragraph 173.

174. Deloitte do not admit paragraph 174.

175. Deloitte do not admit paragraph 175.

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

176. Deloitte do not admit paragraph 176.

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

177. Deloitte do not admit paragraph 177.

178. Deloitte do not admit paragraph 178.

179. Deloitte do not admit paragraph 179.

C.3.8. Recording rebates when recovery was not probable

180. Deloitte do not admit paragraph 180.

181. Deloitte do not admit paragraph 181.

C.3.9. O&A Rebates and Accounting Standards

182. Deloitte do not admit paragraph 182.

183. Deloitte do not admit paragraph 183.

184. Deloitte do not admit paragraph 184.

185. Deloitte do not admit paragraph 185.

186. Deloitte do not admit paragraph 186.

187. Deloitte do not admit paragraph 187.

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

- 188. Deloitte do not admit paragraph 188.
- 189. Deloitte do not admit paragraph 189.
- 190. Deloitte do not admit paragraph 190.
- 191. Deloitte do not admit paragraph 191.
- 192. Deloitte do not admit paragraph 192.

C.4. WARRANTY SIGN ON LIABILITY

- 193. Deloitte do not admit paragraph 193.
- 194. Deloitte do not admit paragraph 194.
- 195. Deloitte do not admit paragraph 195.
- 196. Deloitte do not admit paragraph 196.
- 197. Deloitte do not admit paragraph 197.
- 198. Deloitte do not admit paragraph 198.
- 199. Deloitte do not admit paragraph 199.
- 200. Deloitte do not admit paragraph 200.
- 201. Deloitte do not admit paragraph 201.

C.5. DOUBTFUL DEBTS PROVISION

- 202. Deloitte do not admit paragraph 202.
- 203. Deloitte do not admit paragraph 203.
- 204. Deloitte do not admit paragraph 204.
- 205. Deloitte do not admit paragraph 205.
- 206. Deloitte do not admit paragraph 206.
- 207. Deloitte do not admit paragraph 207.

C.6. DEFERRED EXPENSES

- 208. Deloitte do not admit paragraph 208.
- 209. Deloitte do not admit paragraph 209.
- 210. Deloitte do not admit paragraph 210.

C.7. CAPITALISATION OF WAGES

- 211. Deloitte admit paragraph 211.
- 212. Deloitte do not admit paragraph 212.
- 213. Deloitte do not admit paragraph 213.

C.8. ONEROUS LEASES

- 214. Deloitte do not admit paragraph 214.
- 215. Deloitte do not admit paragraph 215.
- 216. Deloitte do not admit paragraph 216.
- 217. Deloitte do not admit paragraph 217.
- 218. Deloitte do not admit paragraph 218.

C.9. DEED OF RELEASE PAYMENT

- 219. As to paragraph 219, Deloitte:
 - (a) refer to Deloitte's report to the FAC for the year ended 28 June 2015 for its full content and meaning; and
 - (b) otherwise, do not admit the paragraph.
- 220. Deloitte do not admit paragraph 220.
- 221. Deloitte do not admit paragraph 221.
- 222. Deloitte do not admit paragraph 222.

C.10. RESTATEMENT OF FY14 AND FY15 FINANCIAL STATEMENTS

- 223. Deloitte do not admit paragraph 223.
- 224. Deloitte do not admit paragraph 224.
- 225. Deloitte do not admit paragraph 225.
- 226. Deloitte do not admit paragraph 226.

D. CONTRAVENTIONS**D.1. DSH'S MISLEADING OR DECEPTIVE CONDUCT****D.1.1. The Prospectus**

- 227. Deloitte do not admit paragraph 227.
- 228. Deloitte do not admit paragraph 228.

- 229. Deloitte do not admit paragraph 229.
- 230. Deloitte do not admit paragraph 230.
- 231. Deloitte do not admit paragraph 231.
- 232. Deloitte do not admit paragraph 232.
- 233. Deloitte do not admit paragraph 233.
- 234. Deloitte do not admit paragraph 234.
- 235. Deloitte do not admit paragraph 235.
- 236. Deloitte do not admit paragraph 236.
- 237. Deloitte do not admit paragraph 237.
- 238. Deloitte deny paragraph 238.

D.1.2. FY14 Financial Statements

- 239. Deloitte do not admit paragraph 239.
- 240. Deloitte do not admit paragraph 240.
- 241. Deloitte do not admit paragraph 241.

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

- 242. Deloitte do not admit paragraph 242.
- 243. Deloitte do not admit paragraph 243.

D.1.4. FY14 ASX Announcement & Results Briefing

- 244. Deloitte do not admit paragraph 244.

D.1.5. FY15 Financial Statements

- 245. Deloitte do not admit paragraph 245.
- 246. Deloitte do not admit paragraph 246.
- 247. Deloitte do not admit paragraph 247.

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

- 248. Deloitte do not admit paragraph 248.
- 249. Deloitte do not admit paragraph 249.

D.1.7. FY15 ASX Announcement & Results Briefing

- 250. Deloitte do not admit paragraph 250.

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

D.2.1. The Prospectus

- 251. Deloitte do not admit paragraph 251.
- 252. Deloitte do not admit paragraph 252.
- 253. Deloitte do not admit paragraph 253.

D.2.2. FY14 Financial Statements

- 254. Deloitte do not admit paragraph 254.
- 255. Deloitte do not admit paragraph 255.
- 256. Deloitte do not admit paragraph 256.

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

- 257. Deloitte do not admit paragraph 257.
- 258. Deloitte do not admit paragraph 258.
- 259. Deloitte do not admit paragraph 259.
- 260. Deloitte do not admit paragraph 260.

D.2.4. FY14 ASX Announcement & Results Briefing

- 261. Deloitte do not admit paragraph 261.
- 262. Deloitte do not admit paragraph 262.
- 263. Deloitte do not admit paragraph 263.

D.2.5. FY15 Financial Statements

- 264. Deloitte do not admit paragraph 264.
- 265. Deloitte do not admit paragraph 265.
- 266. Deloitte do not admit paragraph 266.

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

- 267. Deloitte do not admit paragraph 267.
- 268. Deloitte do not admit paragraph 268.
- 269. Deloitte do not admit paragraph 269.
- 270. Deloitte do not admit paragraph 270.

D.2.7. FY15 ASX Announcement & Results Briefing

271. Deloitte do not admit paragraph 271.

272. Deloitte do not admit paragraph 272.

273. Deloitte do not admit paragraph 273.

D.3. DSH'S CONTINUOUS DISCLOSURE CONTRAVENTIONS

274. Deloitte admit paragraph 274.

275. As to paragraph 275, Deloitte:

- (a) rely on the ASX Listing Rules for their full meaning and effect; and
- (b) otherwise admit the paragraph.

276. As to paragraph 276, Deloitte:

- (a) rely on the ASX Listing Rules for their full meaning and effect; and
- (b) otherwise admit the paragraph.

277. As to paragraph 277, Deloitte:

- (a) rely on the ASX Listing Rules for their full meaning and effect; and
- (b) otherwise admit the paragraph.

278. As to paragraph 278, Deloitte:

- (a) rely on the ASX Listing Rules for their full meaning and effect; and
- (b) otherwise admit the paragraph.

279. Deloitte do not admit paragraph 279.

280. Deloitte do not admit paragraph 280.

281. Deloitte do not admit paragraph 281.

282. Deloitte do not admit paragraph 282.

283. Deloitte do not admit paragraph 283.

284. Deloitte do not admit paragraph 284.

D.4. MR ABBOUD'S CONTRAVENTIONS

285. Deloitte do not admit paragraph 285.

286. Deloitte do not admit paragraph 286.

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

- 287. Deloitte do not admit paragraph 287.
- 288. Deloitte do not admit paragraph 288.
- 289. Deloitte do not admit paragraph 289.
- 290. Deloitte do not admit paragraph 290.
- 291. Deloitte do not admit paragraph 291.
- 292. Deloitte do not admit paragraph 292.

D.4.2. Directors' FY14 Implied Representation

- 293. Deloitte do not admit paragraph 293.
- 294. Deloitte do not admit paragraph 294.
- 295. Deloitte do not admit paragraph 295.
- 296. Deloitte do not admit paragraph 296.

D.4.3. FY14 ASX Announcement & Results Briefing

- 297. Deloitte do not admit paragraph 297.
- 298. Deloitte do not admit paragraph 298.
- 299. Deloitte do not admit paragraph 299.
- 300. Deloitte do not admit paragraph 300.
- 301. Deloitte do not admit paragraph 301.
- 302. Deloitte do not admit paragraph 302.
- 303. Deloitte do not admit paragraph 303.

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

- 304. Deloitte do not admit paragraph 304.
- 305. Deloitte do not admit paragraph 305.
- 306. Deloitte do not admit paragraph 306.
- 307. Deloitte do not admit paragraph 307.
- 308. Deloitte do not admit paragraph 308.
- 309. Deloitte do not admit paragraph 309.

D.4.5. Directors' FY15 Implied Representation

- 310. Deloitte do not admit paragraph 310.
- 311. Deloitte do not admit paragraph 311.
- 312. Deloitte do not admit paragraph 312.
- 313. Deloitte do not admit paragraph 313.

D.4.6. FY15 ASX Announcement & Results Briefing

- 314. Deloitte do not admit paragraph 314.
- 315. Deloitte do not admit paragraph 315.
- 316. Deloitte do not admit paragraph 316.
- 317. Deloitte do not admit paragraph 317.
- 318. Deloitte do not admit paragraph 318.
- 319. Deloitte do not admit paragraph 319.
- 320. Deloitte do not admit paragraph 320.

D.5. MR POTTS' CONTRAVENTIONS

- 321. Deloitte do not admit paragraph 321.
- 322. Deloitte do not admit paragraph 322.

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

- 323. Deloitte do not admit paragraph 323.
- 324. Deloitte do not admit paragraph 324.
- 325. Deloitte do not admit paragraph 325.
- 326. Deloitte do not admit paragraph 326.
- 327. Deloitte do not admit paragraph 327.
- 328. Deloitte do not admit paragraph 328.

D.5.2. Directors' FY14 Implied Representation

- 329. Deloitte do not admit paragraph 329.
- 330. Deloitte do not admit paragraph 330.
- 331. Deloitte do not admit paragraph 331.
- 332. Deloitte do not admit paragraph 332.

D.5.3. FY14 ASX Announcement & Results Briefing

- 333. Deloitte do not admit paragraph 333.
- 334. Deloitte do not admit paragraph 334.
- 335. Deloitte do not admit paragraph 335.
- 336. Deloitte do not admit paragraph 336.
- 337. Deloitte do not admit paragraph 337.
- 338. Deloitte do not admit paragraph 338.
- 339. Deloitte do not admit paragraph 339.

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

- 340. Deloitte do not admit paragraph 340.
- 341. Deloitte do not admit paragraph 341.
- 342. Deloitte do not admit paragraph 342.
- 343. Deloitte do not admit paragraph 343.
- 344. Deloitte do not admit paragraph 344.
- 345. Deloitte do not admit paragraph 345.

D.5.5. Directors' FY15 Implied Representation

- 346. Deloitte do not admit paragraph 346.
- 347. Deloitte do not admit paragraph 347.
- 348. Deloitte do not admit paragraph 348.
- 349. Deloitte do not admit paragraph 349.

D.5.6. FY15 ASX Announcement & Results Briefing

- 350. Deloitte do not admit paragraph 350.
- 351. Deloitte do not admit paragraph 351.
- 352. Deloitte do not admit paragraph 352.
- 353. Deloitte do not admit paragraph 353.
- 354. Deloitte do not admit paragraph 354.
- 355. Deloitte do not admit paragraph 355.
- 356. Deloitte do not admit paragraph 356.

E. CAUSATION, LOSS AND DAMAGE

357. Deloitte do not admit paragraph 357.

358. As to paragraph 358, Deloitte:

- (a) admit that the market in which DSH shares were traded was regulated by the ASX Listing Rules and s 674(2) of the Corporations Act;
- (b) admit that the provisions of ss728, 279, 1041E and 1041H of the Corporations Act were in force when shares in DSH were traded in the market;
- (c) as to subparagraph (d) admit that the price of DSH shares would reasonably be expected to have been informed or affected by material information disclosed to the ASX and by other publicly available information amongst other factors affecting the price at which those shares were traded;
- (d) repeat their response to Part C above; and
- (e) otherwise, deny the paragraph.

359. Deloitte deny paragraph 359.

360. Deloitte deny paragraph 360.

361. Deloitte deny paragraph 361.

362. Deloitte deny paragraph 362.

363. Deloitte deny paragraph 363.

364. Deloitte do not admit paragraph 364.

365. Deloitte deny paragraph 365.

366. Deloitte deny that the plaintiffs and Group Members are entitled to the relief referred to in paragraph 366 or at all.

F. CLAIM AGAINST DTT

367. [not used]

368. [not used]

369. [not used]

370. [not used]

371. [not used]

372. [not used]

373. [not used]

374. [not used]

375. [not used]

F.1. BACKGROUND

376. As to paragraph 376, Deloitte:

- (a) repeat their response to paragraph 45A above;
- (b) rely on the terms of the FY13 Retainer for their full meaning and effect; and
- (c) otherwise, admit the paragraph.

377. As to paragraph 377, Deloitte:

- (a) rely on the terms of the FY13 Retainer for their full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

378. Deloitte admit paragraph 378.

379. As to paragraph 379, Deloitte:

- (a) repeat their response to paragraph 45A above;
- (b) rely on the terms of the FY14 Retainer for their full meaning and effect; and
- (c) otherwise, admit the paragraph.

380. As to paragraph 380, Deloitte:

- (a) rely on the FY14 Retainer for their full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

381. Deloitte admit paragraph 381.

382. As to paragraph 382, Deloitte:

- (a) repeat their response to paragraph 45A above;
- (b) rely on the terms of the FY15 Retainer for their full meaning and effect; and
- (c) otherwise, admit the paragraph.

383. As to paragraph 383, Deloitte:

- (a) rely on the FY15 Retainer for their full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

384. Deloitte admit paragraph 384.

385. As to paragraph 385, Deloitte:

- (a) rely on the 2013 Retainer, the 2014 Retainer and the 2015 Retainer for their full meaning and effect; and
- (b) otherwise, admit the paragraph.

386. As to paragraph 386, Deloitte:

- (a) say that, for the purpose of Pt 2M.4 of the Corporations Act, the firm trading as DTT was DSSH's and DSH's appointed auditor for, relevantly, the following financial periods:
 - (i) 10-month period ending 30 June 2013;
 - (ii) 1 July 2013 to 29 June 2014; and
 - (iii) 30 June 2014 to 28 June 2015,
- (b) rely on Chapter 2M of the Corporations Act for its full meaning and effect; and
- (c) otherwise, do not admit the paragraph.

F.2. ACCOUNTING AND AUDITING FRAMEWORK

387. As to paragraph 387, Deloitte:

- (a) rely on s 307A of the Corporations Act for its full meaning and effect; and
- (b) rely on all applicable/relevant auditing standards issued by the Auditing and Assurance Standards Board (**AUASB**) for their full meaning and effect to the extent that they were in force and in the form in which they existed at the time;
- (c) say that all applicable/relevant auditing standards issued by the AUASB include mandatory provisions and/or guidance according to their terms; and
- (d) otherwise, do not admit the paragraph.

388. As to paragraph 388, Deloitte:

- (a) rely on s 307 of the Corporations Act for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

389. As to paragraph 389, Deloitte:

- (a) rely on s 308 of the Corporations Act for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

390. As to paragraph 390, Deloitte:

- (a) rely on s 310 of the Corporations Act for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

391. As to paragraph 391, Deloitte:

- (a) rely on s 307A of the Corporations Act for its full meaning and effect; and
- (b) otherwise, do not admit the paragraph.

F.3. AUDITING STANDARDS

F.3.1. ASA 200

392. As to paragraph 392, Deloitte:

- (a) repeat their response to paragraph 387; and
- (b) otherwise, do not admit the paragraph.

F.3.2. ASA 210

393. As to paragraph 393, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

F.3.3. ASA 240

394. As to paragraph 394, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

F.3.4. ASA 260

395. As to paragraph 395, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

396. As to paragraph 396 Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

F.3.5. ASA 315

397. As to paragraph 397, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

398. As to paragraph 398, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

F.3.6. ASA 320

399. As to paragraph 399, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

400. As to paragraph 400, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

F.3.7. ASA 330

401. As to paragraph 401, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

F.3.8. ASA 450

402. As to paragraph 402, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

403. As to paragraph 403, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

404. As to paragraph 404, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

F.3.9. ASA 500

405. As to paragraph 405, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

F.3.10. ASA 530

406. As to paragraph 406, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

F.3.11. ASA 540

407. As to paragraph 407, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

F.3.12. ASA 700

408. As to paragraph 408, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

F.3.13. ASA 705

409. As to paragraph 409, Deloitte:

- (a) repeat their response at paragraph 392 above; and
- (b) otherwise, do not admit the paragraph.

F.4. REASONABLE AUDITOR

410. As to paragraph 410, Deloitte:

- (a) repeat their responses to Parts F.2 and F.3 above; and
- (b) otherwise do not admit the paragraph.

F.5. DELOITTE's AUDIT REPORTS

F.5.1. The FY13 Audit Report

411. As to paragraph 411, Deloitte:

- (a) say that the Independent Auditor's Report to the Members of DSSH was issued on 22 October 2013 (**FY13 Audit Report**);
- (b) otherwise, admit the paragraph.

Particulars

FY13 Audit Report

412. Deloitte admit paragraph 412.

413. Deloitte admit paragraph 413.

414. As to paragraph 414, Deloitte:

- (a) repeat paragraph 411(a) above;
- (b) admit that Deloitte authorised the inclusion of the FY13 Audit Report in the FY13 Financial Statements; and
- (c) otherwise, do not admit the paragraph.

F.5.2. Deloitte's FY13 Representations

415. As to paragraph 415, Deloitte:

- (a) say that each of Nicholas Abboud (**Abboud**) and Tim Fawaz (**Fawaz**) (in his capacity as Chief Financial Officer of DSSH) provided a management representation letter to DTT dated 23 October 2013 as to matters concerning the FY13 Report (**FY13 Management Representation Letter**);
- (b) say that, on 22 October 2013, each of DSSH's directors (**DSSH Directors**) gave a declaration pursuant to s 295(5) of the Corporations Act as to the FY13 Financial Statements (**FY13 Directors Declaration**);
- (c) rely on the FY13 Management Representation Letter, the FY13 Directors Declaration for their full content and meaning;
- (d) say that, after the giving of the FY13 Management Representation Letter and the FY13 Directors Declaration, the First Cross-Defendant (as lead auditor) signed the FY13 Audit Report, in his name and in the name of DTT pursuant to s 324AB(3) of the Corporations Act;

- (e) say that the FY13 Audit Report was divided into, relevantly, three sections: "Directors' Responsibility for the Financial Report"; "Auditor's Responsibility"; and "Opinion";
- (f) say that under the heading "Directors' Responsibility for the Financial Report", the FY13 Audit Report stated that the directors of DSSH were responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards and the Corporations Act. The responsibility including establishing and maintaining internal control relevant to the preparation and fair presentation of the financial report that is free from material misstatement. In Note 2, the directors also stated, in accordance with AASB 101 that the consolidated financial statements comply with IFRS;
- (g) under the heading "*Auditor's Responsibility*", the FY13 Audit Report stated, *inter alia*, that:
 - (i) DTT's responsibility was to express an opinion on the financial report based on their audit. DTT conducted their audit in accordance with Australian Auditing Standards. Those standards required that DTT comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report was free from material misstatement;
 - (ii) an audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to DSSH's preparation and fair presentation of the financial report, in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of DSSH's internal control;
 - (iii) an audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the DSSH directors, as well as evaluating the overall presentation of the financial report; and

- (iv) DTT believed that the audit evidence that they had obtained was sufficient and appropriate to provide a basis for their audit opinion;
 - (h) under the heading "Opinion", the FY13 Audit Report stated, *inter alia*, that in DTT's opinion:
 - (i) the FY13 Financial Statement was in accordance with the Corporations Act, including:
 - (A) giving a true and fair view of the consolidated entity's financial position as at 30 June 2013 and of its performance for the year ended on that date; and
 - (B) complying with Australian Accounting Standards and the Corporations Regulations; and
 - (ii) the FY13 Financial Statement also complies with IFRS as disclosed in Note 2;
 - (i) will rely at trial on the FY13 Audit Report and FY13 Financial Statement for their full content and meaning;
 - (j) otherwise, deny the paragraph.
416. As to paragraph 416, Deloitte:
- (a) repeat paragraph 415 above; and
 - (b) otherwise, deny the paragraph.
- F.5.3. The FY14 Audit Report**
417. As to paragraph 417, Deloitte:
- (a) rely on the FY14 Audit Report for its full content and meaning; and
 - (b) otherwise, admit the paragraph.
418. Deloitte admit paragraph 418.
419. As to paragraph 419, Deloitte:
- (a) admit that Deloitte authorised the inclusion of the FY14 Audit Report in the FY14 Financial Statements; and
 - (b) otherwise, do not admit the paragraph.

F.5.4. Deloitte's FY14 Representations

420. As to paragraph 420, Deloitte:

- (a) say that, on 18 August 2014, each of Abboud and Potts provided a management representation letter to DTT dated 18 August 2014 as to matters concerning the FY14 Financial Statement (**FY14 Management Representation Letter**);
- (b) say that, on 18 August 2014, each of Abboud and Potts gave a declaration pursuant to s 295A of the Corporations Act (**FY14 CEO / CFO Declaration and Assurance**) for the year ended 29 June 2014;
- (c) say that, on 18 August 2014, the DSH Directors gave a declaration pursuant to s 295(5) of the Corporations Act as to the FY14 Financial Statement (**FY14 Directors Declaration**);
- (d) rely on the FY14 Management Representation Letter, the FY14 CEO / CFO Declaration and Assurance and the FY14 Directors Declaration for their full content and meaning;
- (e) say that, after the giving of the FY14 Management Representation Letter, the FY14 CEO / CFO Declaration and Assurance and the FY14 Directors Declaration, the First Cross-Defendant (as lead auditor) signed the FY14 Audit Report, in his name and in the name of DTT pursuant to s 324AB(3) of the Corporations Act;
- (f) say that the FY14 Audit Report was divided into, relevantly, three sections: "Directors' Responsibility for the Financial Report"; "Auditor's Responsibility"; and "Opinion";
- (g) say that under the heading "Directors' Responsibility for the Financial Report", the FY14 Audit Report stated that the directors of DSH were responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards and the Corporations Act and for such internal control as the directors determine necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error. In Note 2, the directors also stated, in accordance with AASB 101 that the consolidated financial statements comply with IFRS;

- (h) under the heading "Auditor's Responsibility", the FY14 Audit Report stated, *inter alia*, that:
 - (i) DTT's responsibility was to express an opinion on the financial report based on their audit. DTT conducted their audit in accordance with Australian Auditing Standards. Those standards required that DTT comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report was free from material misstatement;
 - (ii) an audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to DSH's preparation of the financial report that gives a true and fair view, in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of DSH's internal control;
 - (iii) an audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the DSH directors, as well as evaluating the overall presentation of the financial report; and
 - (iv) DTT believed that the audit evidence that they had obtained was sufficient and appropriate to provide a basis for their audit opinion;
- (i) under the heading "Opinion", the FY14 Audit Report stated, *inter alia*, that in DTT's opinion:
 - (i) the FY14 Financial Statement was in accordance with the Corporations Act, including:
 - 1. 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
 - 2. complying with Australian Accounting Standards and the Corporations Regulations; and

- (ii) the FY14 Financial Statement also complies with IFRS as disclosed in Note 2;
 - (j) says that any relevant representation made in the FY14 Audit Report was a representation of opinion;
 - (k) will rely at trial on the FY14 Audit Report and FY14 Financial Statement for its full content and meaning;
 - (l) otherwise, deny the paragraph.
421. As to paragraph 421, Deloitte:
- (a) repeat paragraph 420 above; and
 - (b) otherwise, deny the paragraph.

F.5.5. The FY15 Audit Report

422. As to paragraph 422, Deloitte:
- (a) rely on the FY15 Audit Report for its full content and meaning; and
 - (b) otherwise, admit the paragraph.
423. Deloitte admit paragraph 423.
424. As to paragraph 424, Deloitte:
- (a) admit that Deloitte authorised the inclusion of the FY15 Audit Report in the FY15 Financial Statements; and
 - (b) otherwise, do not admit the paragraph.

F.5.6. Deloitte's FY15 Representations

425. As to paragraph 425, Deloitte:
- (a) say that, on 17 August 2015, each of Abboud and Potts provided a management representation letter to DTT dated 17 August 2015 as to matters concerning the FY15 Financial Statement (**FY15 Management Representation Letter**);
 - (b) say that, on 17 August 2015, each of Abboud and Potts gave a declaration pursuant to s 295A of the Corporations Act (**FY15 CEO / CFO Declaration and Assurance**) for "the half year ended 28 December 2014" (which Deloitte says was intended to refer to the "year ended 28 June 2015");

- (c) say that, on 17 August 2015, the DSH Directors gave a declaration pursuant to s 295(5) of the Corporations Act as to the FY15 Financial Statement (**FY15 Directors Declaration**);
- (d) rely on the FY15 Management Representation Letter, FY15 CEO / CFO Declaration and Assurance and the FY15 Directors Declaration for their full content and meaning; and
- (e) say that, after the giving of the FY15 Management Representation Letter, the FY15 CEO / CFO Declaration and Assurance and the FY15 Directors Declaration the First Cross-Defendant (as lead auditor) signed the FY15 Audit Report, in his name and in the name of DTT pursuant to s 324AB(3) of the Corporations Act;
- (f) say that the FY15 Audit Report was divided into, relevantly, three sections: "Directors' Responsibility for the Financial Report"; "Auditor's Responsibility"; and "Opinion";
- (g) say that under the heading "Directors' Responsibility for the Financial Report", the FY15 Audit Report stated that the directors of DSH were responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards and the Corporations Act and for such internal control as the directors determine necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error. In Note 2, the directors also stated, in accordance with AASB 101 that the consolidated financial statements comply with IFRS;
- (h) under the heading "Auditor's Responsibility", the FY15 Audit Report stated, *inter alia*, that:
 - (i) DTT's responsibility was to express an opinion on the financial report based on their audit. DTT conducted their audit in accordance with Australian Auditing Standards. Those standards required that DTT comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report was free from material misstatement;
 - (ii) an audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The

procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to DSH's preparation of the financial report that gives a true and fair view, in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of DSH's internal control;

- (iii) an audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the DSH directors, as well as evaluating the overall presentation of the financial report; and
 - (iv) DTT believed that the audit evidence that they had obtained was sufficient and appropriate to provide a basis for their audit opinion;
 - (i) under the heading "Opinion", the FY15 Audit Report stated, *inter alia*, that in DTT's opinion:
 - (i) the FY15 Financial Statement was in accordance with the Corporations Act, including:
 - (A) 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
 - (B) complying with Australian Accounting Standards and the Corporations Regulations; and
 - (ii) the FY15 Financial Statement also complies with IFRS as disclosed in Note 2;
 - (j) will rely at trial on the FY15 Audit Report and FY15 Financial Statement for their full content and meaning; and
 - (k) otherwise, deny the paragraph.
426. As to paragraph 426, Deloitte:
- (a) repeat paragraph 425 above; and
 - (b) otherwise, deny the paragraph.

F.6. Deloitte's Audit Conduct

F.6.1. FY13 Audit in relation to inventory provisioning

- 427. Deloitte do not admit paragraph 427.
- 428. As to paragraph 428, Deloitte:
 - (a) repeat paragraph 415, above; and
 - (b) otherwise, admit the paragraph as to the content of the FY13 Audit Report but do not otherwise thereby admit the matters asserted as a matter of fact.
- 429. Deloitte deny paragraph 429.
- 430. Deloitte deny paragraph 430.
- 431. Deloitte deny paragraph 431.

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

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

- 432. Deloitte do not admit paragraph 432.
- 433. Deloitte do not admit paragraph 433.
- 434. Deloitte admit paragraph 434.
- 435. Deloitte do not admit paragraph 435.
- 436. Deloitte deny paragraph 436.
- 437. Deloitte deny paragraph 437.

F.6.2.2.2 Failure to adjust for Warranty Sign On Liability

- 438. Deloitte admit paragraph 438.
- 439. Deloitte do not admit paragraph 439.
- 440. Deloitte do not admit paragraph 440.
- 441. Deloitte admit paragraph 441.
- 442. As to paragraph 442, Deloitte:
 - (a) admit subparagraphs 442(a) and 442(c); and
 - (b) otherwise deny the paragraph.
- 443. Deloitte deny paragraph 443.

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

444. Deloitte deny paragraph 444.

F.6.4. FY14 Audit in relation to inventory provisions

445. Deloitte do not admit paragraph 445.

446. As to paragraph 446, Deloitte:

- (a) repeat paragraph 420, above; and
- (b) otherwise, admit the paragraph as to the content of the FY14 Audit Report but do not otherwise thereby admit the matters asserted as a matter of fact.

447. Deloitte deny paragraph 447.

448. Deloitte deny paragraph 448.

449. Deloitte deny paragraph 449.

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

450. Deloitte deny paragraph 450.

451. As to paragraph 451, Deloitte:

- (a) repeat paragraph 420, above; and
- (b) otherwise, admit the paragraph as to the content of the FY14 Audit Report but do not otherwise thereby admit the matters asserted as a matter of fact.

452. Deloitte deny paragraph 452.

453. Deloitte deny paragraph 453.

454. Deloitte deny paragraph 454.

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

455. Deloitte deny paragraph 455.

F.6.7. FY15 Audit in relation to inventory provisions

456. Deloitte do not admit paragraph 456.

457. As to paragraph 457, Deloitte:

- (a) repeat paragraph 425 above; and
- (b) otherwise, admit the paragraph as to the content of the FY15 Audit Report but do not otherwise thereby admit the matters asserted as a matter of fact.

458. Deloitte deny paragraph 458.

459. Deloitte deny paragraph 459.

460. Deloitte deny paragraph 460.

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

461. Deloitte deny paragraph 461.

462. As to paragraph 462, Deloitte:

- (a) repeat paragraph 425 above; and
- (b) otherwise, admit the paragraph as to the content of the FY15 Audit Report but do not otherwise thereby admit the matters asserted as a matter of fact.

463. Deloitte deny paragraph 463.

464. Deloitte deny paragraph 464.

465. Deloitte deny paragraph 465.

F.6.9. Effect of Deloitte's FY15 failures

466. Deloitte deny paragraph 466.

F.7. DELOITTE's CONTRAVENTIONS

F.7.1. Deloitte's FY13 Contraventions

467. As to paragraph 467, Deloitte:

- (a) say that, at all material times, if they were conducting themselves in relation to a "financial service" within the meaning of s 1041H of the Corporations Act and/or "financial services" within the meaning of s 12DA of the ASIC Act (which in each case is denied), then that service was an "exempt service" within the meaning of the Corporations Regulations; and

Particulars

Corporations Regulations, r 7.1.29

Corporations Act, s 766A(2)

ASIC Act, s 5(3)

- (b) otherwise, deny the paragraph.

468. As to paragraph 468, Deloitte:

- (a) say that, at all material times, if they were conducting themselves in relation to “financial services” within the meaning of s 12DB of the ASIC Act (which in each case is denied), then that service was an “exempt service” within the meaning of the Corporations Regulations; and

Particulars

Corporations Regulations, r 7.1.29

Corporations Act, s 766A(2)

ASIC Act, s 5(3)

- (b) otherwise, deny the paragraph.

469. Deloitte deny paragraph 469.

470. Deloitte deny paragraph 470.

471. Deloitte deny paragraph 471.

472. Deloitte deny paragraph 472.

473. Deloitte do not admit paragraph 473.

474. Deloitte deny paragraph 474.

475. Deloitte do not admit paragraph 475.

476. Deloitte deny paragraph 476.

477. Deloitte deny paragraph 477.

478. Deloitte deny paragraph 478.

F.7.2. Deloitte’s FY14 Contraventions

479. As to paragraph 479 Deloitte:

- (a) say that, at all material times, if they were conducting themselves in relation to a “financial service” within the meaning of s 1041H of the Corporations Act and/or “financial services” within the meaning of s 12DA of the ASIC Act (which in each case is denied), then that service was an “exempt service” within the meaning of the Corporations Regulations; and

Particulars*Corporations Regulations, r 7.1.29**Corporations Act, s 766A(2)**ASIC Act, s 5(3)*

(b) otherwise, deny the paragraph.

480. As to paragraph 480 Deloitte:

(a) say that, at all material times, if they were conducting themselves in relation to “financial services” within the meaning of s 12DB of the ASIC Act (which in each case is denied), then that service was an “exempt service” within the meaning of the Corporations Regulations; and

Particulars*Corporations Regulations, r 7.1.29**Corporations Act, s 766A(2)**ASIC Act, s 5(3)*

(b) otherwise, deny the paragraph.

481. Deloitte deny paragraph 481.

482. Deloitte deny paragraph 482.

483. Deloitte deny paragraph 483.

484. Deloitte deny paragraph 484.

485. Deloitte do not admit paragraph 485.

486. Deloitte deny paragraph 486.

487. Deloitte do not admit paragraph 487.

488. Deloitte deny paragraph 488.

489. Deloitte deny paragraph 489.

490. Deloitte deny paragraph 490.

F.7.3. Deloitte’s FY15 Contraventions

491. As to paragraph 491, Deloitte:

(a) say that, at all material times, if they were conducting themselves in relation to a “financial service” within the meaning of s 1041H of the Corporations Act

and/or “financial services” within the meaning of s 12DA of the ASIC Act (which in each case is denied), then that service was an “exempt service” within the meaning of the Corporations Regulations; and

Particulars

Corporations Regulations, r 7.1.29

Corporations Act, s 766A(2)

ASIC Act, s 5(3)

(b) otherwise, deny the paragraph.

492. As to paragraph 492, Deloitte:

(a) say that, at all material times, if they were conducting themselves in relation to “financial services” within the meaning of s 12DB of the ASIC Act (which in each case is denied), then that service was an “exempt service” within the meaning of the Corporations Regulations; and

Particulars

Corporations Regulations, r 7.1.29

Corporations Act, s 766A(2)

ASIC Act, s 5(3)

(b) otherwise, deny the paragraph.

493. Deloitte deny paragraph 493.

494. Deloitte deny paragraph 494.

495. Deloitte deny paragraph 495.

496. Deloitte deny paragraph 496.

497. Deloitte do not admit paragraph 497.

498. Deloitte deny paragraph 498.

499. Deloitte do not admit paragraph 499.

500. Deloitte deny paragraph 500.

501. Deloitte deny paragraph 501.

502. Deloitte deny paragraph 502.

F.8. CAUSATION, LOSS AND DAMAGE

F.8.1. FY13 Causation

- 503. Deloitte deny paragraph 503.
- 504. Deloitte do not admit paragraph 504.
- 505. Deloitte do not admit paragraph 505.

F.8.2. FY14 Causation

- 506. Deloitte deny paragraph 506.
- 507. Deloitte do not admit paragraph 507.
- 508. Deloitte deny paragraph 508.

F.8.3. FY15 Causation

- 509. Deloitte deny paragraph 509.
- 510. Deloitte do not admit paragraph 510.
- 511. Deloitte deny paragraph 511.

F.8.4. Causation based on reliance

- 512. Deloitte do not admit paragraph 512.

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

- 513. As to paragraph 513, Deloitte:
 - (a) repeat and rely on their defences to the Cross-Claims filed by Mr Abboud and Mr Potts on 18 March 2019; and
 - (b) otherwise, do not admit the paragraph.

F.8.6. Loss caused by Deloitte

- 514. Deloitte deny paragraph 514.
- 515. Deloitte deny paragraph 515.

F. COMMON QUESTIONS

- 516. Deloitte do not plead to paragraphs 516 to 528 and will make submissions as to appropriate common questions for determination at an appropriate time.

G. OTHER DEFENCES

In further or alternative answer to the whole of the Plaintiffs' Claim, Deloitte plead as follows:

517. The FY13 Retainer, the FY14 Retainer and the FY15 Retainer (together, the **Retainers**) each provided that each of the DTT Engagements would be conducted on the basis that:

- (a) the directors acknowledged and understood that they had the responsibility:
 - (i) for the preparation of the financial report and the interim financial report (as relevant) which were the subject of the Retainers (**Financial Statements**) that gave a true and fair view in accordance with Australian Accounting Standards and the Corporations Act;
 - (ii) for such internal control as the directors determined was necessary to enable the preparation of the Financial Statements that are free from material misstatement, whether due to fraud or error; and
 - (iii) to provide DTT with:
 - (A) access to all information of which the directors and management were aware that was relevant to the preparation of the Financial Statements such as records, documentation and other matters;
 - (B) additional information that DTT may request from the directors and management for the purpose of the DTT Engagements; and
 - (C) unrestricted access to persons within the entity from whom DTT determined it necessary to obtain evidence;
- (b) DSSH or DSH (as relevant) was responsible for, amongst other things, providing DTT with accurate and complete information and all information that was relevant to the services to be provided under the Retainers.

G.1. Conduct of directors and management

518. Deloitte refer to their paragraphs 44 and 45 of the Plaintiffs' Claim and their response thereto, and say that at all material times the directors of DSSH or DSH (as relevant) were responsible for the preparation and fair presentation of the Financial Statements in accordance with Accounting Standards (including the Australian Accounting Standards) and the Corporations Act, and such responsibility included establishing and maintaining internal control relevant to the preparation and fair

presentation of a financial report that was free from material misstatement, whether due to fraud or error, selecting and applying appropriate accounting policies; and making accounting estimates that were reasonable in the circumstances.

Particulars

Corporations Act Chapter 2M, Part 2M.3

519. By letter dated on or about 18 August 2014 (in connection with the consolidated financial statements of DSH and its controlled entities for the year ended 28 June 2014) and on or about 17 August 2015 (in connection with the consolidated financial statements of DSH and its controlled entities for the year ended 29 June 2015) each of Abboud and Potts gave a declaration pursuant to s 295A of the Corporations Act **(CEO / CFO Declarations)**:
- (a) which was provided to the Board prior to the Board approving DSH's financial statements;
 - (b) which included statements to the effect that, to the best of each of their knowledge:
 - (i) the financial records of DSH had been properly maintained in accordance with s 286 of the Corporations Act;
 - (ii) the financial statements and the accompanying notes complied with the appropriate accounting standards;
 - (iii) the financial statements and accompanying notes gave a true and fair view of the financial position and performance of DSH for the financial year;
 - (iv) DSH had complied with all other matters prescribed by the Corporations Regulations in relation to the financial statements and notes;
 - (v) the financial report was founded on a sound system of risk management and internal compliance and control;
 - (vi) DSH's risk management and internal compliance and control system was operating efficiently and effectively in all material aspects; and
 - (c) upon the entire terms of which Deloitte rely for their full content and meaning.
520. On 23 October 2013, 18 August 2014, and 17 August 2015, the directors of DSSH or DSH (as relevant) made, declarations in the FY13 Audit Report **(2013 Directors' Declarations)** FY2014 Audit Report **(FY 2014 Directors' Declarations)**, and in the

FY2015 Audit Report (**FY 2015 Directors' Declarations**) respectively (**Directors' Declarations**):

- (a) to the effect that:
 - (i) in the directors' opinion, there were reasonable grounds to believe that DSSH or DSH (as relevant) and the consolidated entity would be able to pay its debts as and when they became due and payable;
 - (ii) in the directors' opinion, the financial statement and notes attached thereto were in accordance with the Corporations Act, including compliance with accounting standards and giving a true and fair view of the financial position and performance of DSSH or DSH (as relevant) and the consolidated entity; and
 - (iii) in the directors' opinion, the financial statements and notes attached thereto were in compliance with the International Financial Reporting Standards as stated in Note 2 of the financial statements; and
- (b) upon the entire terms of which Deloitte rely for their full content and meaning.

521. By letter dated 23 October 2013, in respect of the FY13 Audit, 18 August 2014, in respect of the FY14 Audit, and 17 August 2015, in respect of the FY15 Audit, Abboud and Fawaz (in respect of the 23 October 2013 letter) and Abboud and Potts (in respect of the 18 August 2014 letter and the 17 August 2015 letter) provided a representation letter to DTT (together, the **Management Representation Letters**):

- (a) for the purpose of DTT expressing an opinion as to whether the relevant financial report gave a true and fair view in accordance with the Australian Accounting Standards and the Corporations Act;
- (b) in which Abboud and Fawaz (in respect of FY2013) and Abboud and Potts (in respect of FY2014 and FY2015) each confirmed to DTT, among other matters, that:
 - (i) they had fulfilled their responsibilities as set out in the relevant audit engagement (as to which in particular see paragraph 517 above), for the preparation of the financial report in accordance with Australian Accounting Standards and the Corporations Act, in particular that the financial report gave a true and fair view in accordance therewith;

- (ii) they had provided DTT with:
 - (A) access to all information of which they were aware was relevant to the preparation of the relevant financial report such as records, documentation and other matters;
 - (B) additional information DTT had requested from them for the purpose of the audit;
 - (C) unrestricted access to the persons within the entity from whom DTT determined it necessary to obtain audit evidence;
 - (D) all information required by the Corporations Act and all requested information, explanations and assistance for the purposes of the audit;
- (iii) all transactions had been recorded in the accounting records and were reflected in the financial report;
- (iv) they were responsible for the design, implementation and maintenance of internal control to prevent and detect fraud;
- (v) significant assumptions used by them in making accounting estimates, including those measured at fair value, were reasonable;
- (vi) the effects of uncorrected misstatements (in the case of the FY13 Audit and the FY14 Audit) or unadjusted misstatements and disclosure deficiencies (in the case of the FY15 Audit) were immaterial, individually and in aggregate, to the financial report as a whole, and a summary of such items was attached to the relevant representation letter;
- (vii) the selection and application of accounting policies as described in the notes in the financial report were appropriate;
- (viii) liabilities, both actual and contingent, had been properly recorded and, where appropriate, adequately disclosed in the financial report;
- (ix) they had communicated to DTT all deficiencies in internal control of which they were aware;
- (x) in respect of FY2014 and FY2015, they had considered the requirements of Accounting Standard AASB 136 *Impairment of Assets* when assessing the impairment of assets and in ensuring that no assets were stated in excess of their recoverable amount, and that

they had communicated to DTT all indicators of impairment and where those existed, they had conducted appropriate impairment testing on the relevant asset;

- (xi) in respect of the FY14 Audit and the FY15 Audit, they had no plans to abandon lines of product or other plans or intentions that would result in any excess or obsolete inventory, and no inventory was stated in an amount in excess of net realisable value;
- (xii) in respect of the FY14 Audit and the FY15 Audit, where assets and liabilities were recorded at their fair value, the value attributed to these assets and liabilities was, in the opinion of directors and management, the fair value; and they were responsible for the reasonableness of any significant assumptions underlying the valuation, including consideration of whether they appropriately reflected their intent and ability to carry out specific courses of action;
- (xiii) in respect of the FY 2014 Audit, they had raised a liability as at 29 June 2014 for management's best estimate of costs associated with existing leases on underperforming stores prior to the actual lease expiration date, including outstanding penalties and make good costs; they were reviewing the performance of those stores on a regular basis and it was their intention to exit those stores within the next 12 months;
- (xiv) in respect of the FY2014 Audit and the FY2015 Audit, DSH and its consolidated entities had not breached any covenants on its financing facility during any of the periods reported and did not expect to breach any covenants in future periods; and they had fully disclosed to DTT all covenants and information related to how they determined their compliance with the terms of the covenants;
- (xv) in respect of the FY2014 Audit and the FY2015 Audit, they had performed a detailed review of the amount and nature of rebates received or owed from suppliers during the relevant year ended; the rebates recognised in this period had been appropriately recognised and presented in the financial statements in accordance with Australian Accounting Standards; in particular they confirmed that the over and above rebates recognised as receivables as at:

(A) in the case of the FY2014 Report, 29 June 2014 totalling \$16.9 million;

(B) in the case of the FY2015 Report, 28 June 2015 totalling \$32.5 million;

were recoverable in full from the vendors; in addition those amounts related to additional support received from vendors to market or clear products in the relevant year ended and were not to be deferred and recognised in future periods.

(c) upon the entire terms of which Deloitte rely for their full content and meaning.

522. For the purposes of this defence to the Plaintiffs' Claim only and without admission, Deloitte:

- (a) repeat sections C.2. to C.10. of the Plaintiffs' Claim;
- (b) say that, if the allegations in the Plaintiffs' claim are made out, then each of Abboud and Potts knew of the facts and matters asserted in C.2. to C.10. of the Plaintiffs' Claim;
- (c) say that if the allegations in the Plaintiffs' claim are made out, then by reason of the matters set out in subparagraph (a) above, or alternatively subparagraph (b) above:
 - (i) the CEO/CFO Declarations pleaded in paragraph 519 above;
 - (ii) the Directors Declarations pleaded in paragraph 520 above;
 - (iii) the Management Representation Letters pleaded in paragraph 521 above; and

were misleading or deceptive or likely to mislead or deceive;

- (d) say that each of the matters pleaded in subparagraph (a) above, or alternatively subparagraph (b) above, was:
 - (i) a matter that ought to have been disclosed to DTT pursuant to the terms of DTT's Retainers;
 - (ii) a matter of the type which Abboud and/or Potts and/or Fawaz (as relevant) represented had been disclosed to DTT in Management Representation Letters;

- (iii) a matter of the type that a reasonable director or officer of a company in the position of Abboud and/or Potts and/or Fawaz (as relevant) would have disclosed to DTT;
 - (iv) a matter of the type that a reasonable auditor in the position of DTT would have expected would have been, in the circumstances, disclosed; and
 - (e) say that neither Abboud nor Potts nor Fawaz (as relevant) disclosed any of the matters set out in subparagraph (a) above, or alternatively subparagraph (b) above, to DTT:
 - (i) at the time Abboud and/or Potts and/or Fawaz (as relevant) became aware of each of those matters; or
 - (ii) alternatively, at a reasonable time after becoming aware of each of those matters; or
 - (iii) alternatively, at all.
523. If and to the extent Abboud and/or Potts and/or DSH is liable pursuant to the Plaintiffs' Claim in respect of loss caused to the Plaintiffs, then in light of:
- (a) the following allegations, if and to the extent they are made out:
 - (i) the Plaintiffs' allegations in the Plaintiffs' Claim against Abboud;
 - (ii) the Plaintiffs' allegations in the Plaintiffs' Claim against Potts;
 - (iii) the Plaintiffs' allegations in the Plaintiffs' Claim against DSH;
 - (iv) the allegations made by the plaintiffs in Proceeding No 2017/81938 (the **Bank Case**) against Abboud;
 - (v) the allegations made by the plaintiffs in the Bank Case against Potts;
 - (vi) the allegations made by the plaintiff in Proceedings No 2017/81927 (the **Company Case**) against Abboud;
 - (vii) the allegations made by the plaintiff in the Company Case against Potts;
 - (viii) the allegations made by the plaintiff in the Company Case against the non-executive directors of DSH, Murray, Raine, Ishak, Tomlinson, Wavish and Cave (the **NEDs**);
 - (b) further or alternatively the matters alleged in paragraphs 517 to 522 above;

then Abboud and/or Potts and/or Fawaz and/or the NEDs (as applicable):

- (c) engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, within the meaning of s 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the ACL; and/or
- (d) breached his duty to DSSH and/or DSH to discharge his duties as a director and/or officer (as applicable) with reasonable care and diligence.

524. For the purposes of this defence, Deloitte:

- (a) say that the acts of Abboud and/or Potts and/or the other directors of DSSH or DSH at the relevant times (**Other Directors**) and/or Fawaz are attributable to DSSH or DSH (as relevant); and
- (b) in the premises of subparagraph (a), the contraventions of the individuals referred to in that subparagraph are contraventions of DSSH and DSH (as relevant).

G.2. Proportionate liability

525. In respect of each claim alleged against Deloitte in the Plaintiffs' Claim that is an apportionable claim for the purposes of s 34 of the CLA, s 1041L of the Corporations Act, s12GP of the ASIC Act and s87CB of the Competition and Consumer Act (**CCA**) (**Apportionable Claims**), if Deloitte is liable to the Plaintiffs in respect of any of the Apportionable Claims, then for the reasons set out at paragraph 523 above, Abboud is a person whose acts or omissions caused the loss allegedly suffered by the Plaintiffs which is the subject of the Plaintiffs' Claim, and therefore:

- (a) Abboud is a "concurrent wrongdoer" within the meaning of s 34 of the CLA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 87CB of the CCA;
- (b) Deloitte's liability (if any) to the Plaintiffs is, by that reason, limited by s 35 of the CLA, s 1041N of the Corporations Act, 87CD of the CCA and s 12GR of the ASIC Act, to an amount reflecting that proportion of the damage or loss claimed that the Court considers is just having regard to the extent of Abboud's responsibility for that damage or loss.

526. Further or in the alternative, if Deloitte is liable to the Plaintiffs in respect of any of the Apportionable Claims, then for the reasons set out at paragraph 523 above, Potts is a person whose acts or omissions caused the loss allegedly suffered by the Plaintiffs which is the subject of the Plaintiffs' Claim, and therefore:

- (a) Potts is a “concurrent wrongdoer” within the meaning of s 34 of the CLA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 87CB of the CCA;
- (b) Deloitte’s liability (if any) to the Plaintiffs is, by that reason, limited by s 35 of the CLA, s 1041N of the Corporations Act, 87CD of the CCA and s 12GR of the ASIC Act, to an amount reflecting that proportion of the damage or loss claimed that the Court considers is just having regard to the extent of Potts’ responsibility for that damage or loss.

527. Further or in the alternative, if Deloitte is liable to the Plaintiffs in respect of any of the Apportionable Claims, then by reason of:

- (a) the matters alleged against the NEDs by the Plaintiff in the Company Case; and
- (b) the matters stated in paragraph 520 above (in respect of the Directors’ Declarations);

each of the Other Directors is a person whose acts or omissions caused the loss allegedly suffered by the Plaintiffs which is the subject of the Plaintiffs’ Claim, and therefore:

- (c) each of the Other Directors (as relevant) is a “concurrent wrongdoer” within the meaning of s 34 of the CLA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 87CB of the CCA;
- (d) Deloitte’s liability (if any) to the Plaintiffs is, by that reason, limited by s 35 of the CLA, s 1041N of the Corporations Act, s 87CD of the CCA and s 12GR of the ASIC Act, to an amount reflecting that proportion of the damage or loss claimed that the Court considers is just having regard to the extent of the Other Directors’ responsibility for that damage or loss.

528. Further or in the alternative, if Deloitte is liable to the Plaintiffs in respect of any of the Apportionable Claims that relate to FY2013, then by reason of the matters in paragraphs 523 above, Fawaz is a person whose acts or omissions caused the loss allegedly suffered by the Plaintiffs which is the subject of the Plaintiffs’ Claim, and therefore:

- (a) Fawaz is a “concurrent wrongdoer” within the meaning of s 34 of the CLA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 87CB of the CCA in respect of any loss suffered by the Plaintiffs in relation to FY2013;

- (b) Deloitte's liability (if any) to the Plaintiffs is, by that reason, limited by s 35 of the CLA, s 1041N of the Corporations Act, s 87CD of the CCA and s 12GR of the ASIC Act, to an amount reflecting that proportion of the damage or loss claimed that the Court considers is just having regard to the extent of Fawaz's responsibility for that damage or loss.

529. Further or in the alternative, if Deloitte is liable to the Plaintiffs in respect of any of the Apportionable Claims, then by reason of the matters in paragraph 523 and 524 above, DSH and DSSH (as relevant) is each a person whose acts or omissions caused the loss allegedly suffered by the Plaintiffs which is the subject of the Claim, and therefore:

- (a) DSH and DSSH are each a "concurrent wrongdoer" within the meaning of s 34 of the CLA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 87CB of the CCA in respect of any loss suffered by the Plaintiffs;
- (b) Deloitte's liability (if any) to the Plaintiffs is, by that reason, limited by s 35 of the CLA, s 1041N of the Corporations Act, s 87CD of the CCA and s 12GR of the ASIC Act, to an amount reflecting that proportion of the damage or loss claimed that the Court considers is just having regard to the extent of DSSH's or DSH's (as relevant) responsibility for that damage or loss.

G. 3. Limitation of liability – accountants' scheme / retainer

530. In further or alternative answer to the Plaintiffs' Claim, without admission and for the purposes of this defence only, Deloitte:

- (a) say that if, which is denied, Deloitte are liable for any of the loss alleged in the Plaintiffs' Claim, that liability is limited in accordance with:
 - (i) the Institute of Chartered Accountants in Australia (NSW) Scheme approved under the *Professional Standards Act 1994* (NSW) (**Professional Standards Act**) commencing on 8 October 2007 (as extended);
 - (ii) the Institute of Chartered Accountants in Australia (Victoria) Scheme approved under the *Professional Standards Act 2003* (Vic) (**Professional Standards Act (Vic)**) commencing on 8 October 2007 (as extended);
 - (iii) the Institute of Chartered Accountants in Australia (NSW) Scheme approved under the *Professional Standards Act* commencing on 8 October 2013;

- (iv) the Institute of Chartered Accountants in Australia (VIC) Scheme approved under the Professional Standards Act (Vic) commencing on 8 October 2013;
 - (v) the Chartered Accountants Australia and New Zealand Professional Standards Scheme (NSW) (including as amended) approved under the Professional Standards Act commencing on 8 October 2014; or
 - (vi) the Chartered Accountants Australia and New Zealand Professional Standards Scheme (Victoria) (including as amended) approved under the Professional Standards Act (Vic) commencing on 8 October 2014.
- (b) say that, if which is denied, Deloitte (if and to the extent that the schemes pleaded in paragraph (a) above do not apply) is liable for any loss alleged in the Plaintiffs' Claim, that liability is limited in accordance with the FY13 Retainer, FY14 Retainer and FY15 Retainer, including but not limited to cl 12 of the Standard Terms and Conditions that form part of the FY13 Retainer and cl 13 of the Standard Terms and Conditions that form part of the FY14 Retainer and the FY15 Retainer.

G.4. Relief from liability – Corporations Act

531. Further or in the alternative, in ~~reliance on privilege against self-incrimination or privilege against exposure to penalty~~ answer to the whole of the Plaintiffs' Claim, Deloitte says that if they are liable to the Plaintiffs or the Findlay Group Members or the Mastoris Group Members by reason of the facts and matters alleged in the Plaintiffs' Claim (which is denied), then Deloitte acted honestly and having regard to all the circumstances of the case, ought fairly to be excused from any such liability (in whole, or in the alternative, in part), Deloitte does not at this time assert a positive defence based on s 1317S (by reason of s 1041(4)), or s 1318 of the Corporations Act. but reserves its right to do so at an appropriate time.

G.5. Civil Liability Act

532. Further or in the alternative, in answer to the whole of the Plaintiffs' Claim, Deloitte:
- (a) say that if (which is not admitted) the claims made by the Plaintiffs in the Plaintiffs' Claim are claims for harm resulting from negligence within the meaning of s 5A of the Civil Liability Act (CLA);

then:

- (b) in respect of the claims in the Plaintiffs' Claim, it is not appropriate for the scope of the Deloitte's liability to extend to the harm the Plaintiffs allegedly suffered within the meaning of s 5D(1) of the CLA.

533. Further or in the alternative, in answer to the whole of the Plaintiffs' Claim, Deloitte say that if (which is denied) any relevant risk of harm existed and was not insignificant in respect of the matters alleged in the Plaintiffs' Claim, then in respect of all claims to which Part 1A of the CLA applies:

- (a) the risk of harm was obvious within the meaning of s 5F of the CLA;
- (b) the Plaintiffs are presumed to have been aware of the risk of harm, by reason of s 5G of the CLA; and
- (c) the risk of harm was inherent, within the meaning of s 5I of the CLA.

534. Further or in the alternative, in performing the FY13 Retainer, the FY14 Retainer and the FY15 Retainer, Deloitte acted in a manner that (at the time the services were provided) was widely accepted in Australia by peer professional opinion as competent professional practice within the meaning of s 5O(1) of the CLA and accordingly are not liable for any loss or damage alleged in the Plaintiffs' Claim.

535. Deloitte refer to and repeat their defences to the Cross-Claims of each of DSH, Abboud and Potts in this proceeding.

SIGNATURE OF LEGAL REPRESENTATIVE

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

Signature



Name

Angela Louise Pearsall, Clifford Chance

Capacity

Solicitor on the record

Date of signature

4 February 2020

PARTY DETAILS

PLAINTIFFS TO PROCEEDING No. 2017/294069

Haliburton Charles David Findlay, First Plaintiff

Marian Jennifer Denny Findlay, Second Plaintiff

PLAINTIFFS TO PROCEEDING No. 2018/52431

Epaminondas Mastoris, First Plaintiff

Lena Mastoris, Second Plaintiff

DEFENDANTS TO PROCEEDINGS Nos. 2017/294069 and 2018/52431

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

Nicholas Abboud, Second Defendant / Second Cross-Claimant

Michael Potts, Third Defendant / Third Cross-Claimant

David Robert White & Ors t/as Deloitte Touche Tohmatsu (ABN 74 490 121 060), 4th to 457th Defendants (as listed in Schedule 1) / 1st to 454th Cross-Defendants

SCHEDULE 1 – 5th TO 457th DEFENDANTS

Defendant No.	Name
5.	Brett Douglas Streatfeild
6.	Sneza Pelusi
7.	James Patrick Hickey
8.	Alastair Banks
9.	Tara Cathy Hili
10.	Paul Jeremy Klein
11.	Frank Scott Farrali
12.	Christopher Donald Noble
13.	Alec Paul Bash Insky
14.	George Nicholas Kyriakakis
15.	Roan Rolles Fryer
16.	Stuart Johnston
17.	Kaylene O'Brien
18.	Craig Patrick O'Hagan
19.	Leanne Karamfiles
20.	Neil Graham Smith
21.	Demostanies Krallis
22.	David John Lombe
23.	Christian John Biermann
24.	Jonathan Paul
25.	Michael James Clarke
26.	Roger Jeffrey
27.	Rachel Andrea Foley-Lewis
28.	Franco Claudio Santucci
29.	Michelle Robyn Hartman
30.	Matthew Christopher Saines
31.	Francis Thomas
32.	Robert Basker
33.	Alan Eckstein
34.	Donal Graham
35.	Andrew Raymond Hill
36.	Patrick McLay
37.	Paul Bernal Liggins
38.	David Ocello
39.	Paul Scott Holman
40.	Paul Robert Wiebusch
41.	Murray Peck
42.	Julie Michelle Stanley
43.	John Bland

44. Timothy Carberry
45. Alvaro Ramos
46. Graeme John Adams
47. Suzanne Archbold
48. Tim Richards
49. Timothy Geoffrey Maddock
50. Xenia Delaney
51. Reuben Saayman
52. Ronaldus Lambertus Van Beek
53. Liesbet Ann Julliette Spanjaard
54. Christopher John Richardson
55. Martin Harry Read
56. Mark Reuter
57. Stuart Thomas Ciocarelli
58. Paul Wayne Hockridge
59. Vikas Khanna
60. Paul Thomas Carr
61. Weng Yen Ching
62. Rodger Stewart Muir
63. Mark Cover
64. Robert Hillard
65. Michael John Lynn
66. Gaile Anthea Pearce
67. Isabelle Emilienne Lefevre
68. Phillip Andrew Roberts
69. Stuart Alexander Rodger
70. Paul Leonard Wensor
71. Claudio Cimetta
72. Simon Tarte
73. Stephen Charles Gustafson
74. Geoffrey William Cowen
75. Geoffrey Gill
76. Steven John Simionato
77. Jason John Handel
78. Declan O'Callaghan
79. Michael Andrew Kissane
80. Kurt Proctor-Parker
81. Richard Davies Wanstall
82. Johan Simon Duivenvoorde
83. Benjamin John Shields
84. John Meacock

85.	Ian Michael Turner
86.	David Harradine
87.	Muhunthan Kanagaratnam
88.	Marc Philipp
89.	Kamlee Anne Coorey
90.	Hugh William Mosley
91.	Paul Masters
92.	David Shane Egan
93.	Alison Margaret Brown
94.	Stavroula Papadatos
95.	Damien Tampling
96.	Alexandra Jane Spark
97.	Monica Ellen Campigli
98.	Craig Peter Mitchell
99.	Robert John McConnel
100.	Alyson Rodi
101.	Andrew Charles Price
102.	Mark Hadassin
103.	Anthony James Robinson
104.	Garry Ian Millhouse
105.	Ashley Graham Miller
106.	Craig Stephen Smith
107.	Margaret Lynne Pezzullo
108.	Adam Barringer
109.	Campbell James Jackson
110.	Jason Charles Crawford
111.	Kevin Michael Russo
112.	Adele Christine Watson
113.	Neil Anthony Brown
114.	Gordon James Thring
115.	Brett William Greig
116.	Steven James Shirliff
117.	Robert Donald Collie
118.	Spyros Kotsopoulos
119.	Austin John Scott
120.	Jenny Lyn Wilson
121.	Peter John Bars
122.	Elizma Bolt
123.	Stephen Thomas Harvey
124.	Fiona Lea Cahill
125.	Jonathan Mark Schneider

126.	Michael McNulty
127.	Katherine Louise Howard
128.	Juliet Elizabeth Bourke
129.	Peter Gerard Forrester
130.	Carl Jonathan Gerrard
131.	Jody Michelle Burton
132.	Rachel Frances Smith
133.	Peter Martin Rupp
134.	Helen Elena Fisher
135.	Geoffrey Ronald Sincock
136.	Nicholas Harwood
137.	John Clement Malcom Randall
138.	Todd Kayle Fielding
139.	Geoffrey Bruce Stalley
140.	Russell Bradley Norman Mason
141.	Paul Leon Rubinstein
142.	Andrew Ignatius Muir
143.	Lisa Barry
144.	Alfred Alan Nehama
145.	Michael Paul Stibbard
146.	Paul Childers
147.	Angelo Karelis
148.	Sarah Caroline Woodhouse
149.	Richard John Hughes
150.	Christopher Robert Masterman
151.	Robin Poison
152.	Megan Joy Field
153.	Christopher Guy Nunns
154.	Clare Helen Harding
155.	Simon Cook
156.	Stephen Carl Tarling
157.	Leslie Coleman
158.	Samuel James Vorweg
159.	Helen Hamilton-James
160.	Coert Grobbelaar Du Plessis
161.	Stephen George Stavrou
162.	Steven Christopher Cunico
163.	Mark Ekkel
164.	Soulla McFall
165.	Leigh Matthew Pieroni
166.	Mark Colin Woodley

167.	Stephen James Healey
168.	Sandeep Chadha
169.	Margaret Clare Bower
170.	Anna Victoria Crawford
171.	Robert Howard Dowling
172.	Greg Janes
173.	Colin McKay Methven Scott
174.	Richard Mark Simes
175.	Dharmalingum Shunmugam Chithiray
176.	Nicole Mari Vignaroli
177.	John Giannakopoulos
178.	Vaughan Neil Strawbridge
179.	Judith Anne Donovan
180.	Nicole Wakefield
181.	Paula Teresa Capaldo
182.	Michael Rath
183.	Karen Rachel Stein
184.	Brett Todd
185.	Julian Craig Dolby
186.	Robert Kim Arvai
187.	Catherine Jane Hill
188.	Richard Michael Thomas
189.	Timothy John Gullifer
190.	Peter James Pagonis
191.	Michael Damon Cantwell
192.	Joseph Frank Galea
193.	Nicolette Louise Ivory
194.	John Leotta
195.	Darren James Hall
196.	Stephen Huppert
197.	Elma Von Vielligh-Louw
198.	Michael Anthony Kennedy
199.	Stuart James Alexander
200.	YiMeiTsang
201.	Christopher Wilson
202.	Joshua David Tanchel
203.	Tendal Sitenisiyo Mkwanzani
204.	Richard Nigel Raphael
205.	Jacqueline Ann Clarke
206.	Rodney James Whitehead
207.	Heather Park

208.	John Lethbridge Greig
209.	Adrian Charles O'Dea
210.	Grant Cameron
211.	Gregory Couttas
212.	Steven Allan Hernyl
213.	Gary John McLean
214.	Jonathan Ma
215.	Suzie Gough
216.	Mark Douglas Ian Allsop
217.	Jennifer Anne Exner
218.	Ryan Quintin Hansen
219.	Jamie Brian Hamilton
220.	David Mark Hill
221.	Jason Bruce Dunnachie
222.	John Christopher McCourt
223.	Gerhard Vorster
224.	David John Boyd
225.	Andrew Kingsley Johnstone-Burt
226.	Dwayne Barrie Sleep
227.	David Black
228.	Gerard Michael Meade
229.	Francis Patrick O'Toole
230.	Tony Garrett
231.	Danny Rezek
232.	Mark Goldsmith
233.	David Watkins
234.	Patrick Broughan
235.	Jeremy Drumm
236.	Michael John Whyte
237.	Mark Andrew Stretton
238.	Weng Wee Ching
239.	Robert Malcolm Spittle
240.	Marisa Orbea
241.	Frances Rita Borg
242.	David Barrie Brown
243.	David Sherwin McCloskey
244.	Philip Walter Teale
245.	Jan Hein Alexander Alpert
246.	Katherine Anne Milesi
247.	Kevin Kiazm Nevrous
248.	Andrew Paul Annand

249.	Carl Richard Harris
250.	Philip Malcolm Moore Hardy
251.	Derek Rodney Bryan
252.	Gregory Gyorgy Janky
253.	David John Redhill
254.	Guillaume Johannes Swiegers
255.	Peter Ronald Ryan
256.	Brennan Ursula
257.	Fiona Dawn Craig
258.	Sarah Lane
259.	George Stathos
260.	Richard Adam Young
261.	Marc Hofmann
262.	Brad Joel Pollock
263.	Mark Justin Kuzma
264.	Warren Green
265.	Stuart Osborne
266.	Garry Lance Bourke
267.	Andrew Vaughn Griffiths
268.	Adam Powick
269.	Margaret Dreyer
270.	Timothy Bryce Norman
271.	David McCarthy
272.	Neil Pereira
273.	Michael Robert Gastevich
274.	Elizabeth Ann Brown
275.	Lakshman Kumar Gunaratnam
276.	Monish Paul
277.	Alexander Collinson
278.	Bruce John Williamson
279.	Luke Bramwell Houghton
280.	Aldrin Anthony De Zilva
281.	Neil McLeod
282.	Gerard Lucien Belleville
283.	Michael Kaplan
284.	Mark David Irving
285.	Alison Lorna White
286.	Haiderali Hussein Hussein
287.	Martyn Charles Barrett Strickland
288.	Caroline Jane Bennet
289.	Christopher Robert Campbell

290.	Gary Peter Doran
291.	Mark Steven Wright
292.	Peter Matruglio
293.	John Koutsogiannis
294.	Selvvyn Peter D'Souza
295.	Keith William Skinner
296.	Clive Charles Alan Mottershead
297.	Karen Lynette Green
298.	Jason Mark Thorne
299.	Andrew Stuart Christopher Reid
300.	Mark Richard Weaver
301.	Matthew Robert Broadfoot
302.	Michael Mauro De Palo
303.	Peter Arthur Caldwell
304.	Tracey Con Dous
305.	Shelley Rae Nolan
306.	Ian Grant Levi
307.	Grant Arthur Hyde
308.	Timothy Francis Nugent
309.	Andrea Csontos
310.	Geoffrey Colin Lamont
311.	Christopher John Nicoloff
312.	Craig Maxwell Bryan
313.	Peter Madden
314.	Jeremy Jurriaan Walton Cooper
315.	Neil Robert Cussen
316.	Robert Southern
317.	Andy Peck
318.	Colin Radford
319.	Hendri Mentz
320.	Robert Nguyen
321.	Shinji Tsutsui
322.	Philippa Simone Dexter
323.	Timothy Fleming
324.	Cynthia Hook
325.	James Campbell Down
326.	Kate McDonald
327.	Stephen John Coakley
328.	Keith Francis Jones
329.	Serg Duchini
330.	Stephen James Reid

331.	Max Andreas Persson
332.	Graham Mott
333.	Anthony John Viel
334.	David Joseph Murray
335.	Richard Antony Jamieson
336.	Bradley James Burt
337.	Anthony Goroslav Buntic
338.	Paul Gerard Fogarty
339.	Jamie Christopher Gatt
340.	Geoffrey Ian Roberts
341.	Melissa Jayne Cabban
342.	Matthew Fraser
343.	Thomas Fredrick Viljoen
344.	Julie Christine Crisp
345.	Paul Bernard Riley
346.	Salvatore Algeri
347.	Ross Ian Jerrard
348.	Avi Sharabi
349.	Ian Geoffrey Sanders
350.	Dale McCauley
351.	Iain Maxwell Gerrard
352.	David Hobbis
353.	Scott Conrad Bailey
354.	Stephen Gregory Brown
355.	Ian Ross Harper
356.	Shashi Vicknekumeran Sivayoganathan
357.	Jowita Gartlan
358.	Mark Ingham
359.	Viswa Phani Kumar Padiseti
360.	Ian Charles Thatcher
361.	Ian Andrew Trevorah
362.	Dennis Leslie Moth
363.	Jacques Louis Van Rhyn
364.	Paul Swinhoe
365.	Greg Fitzgerald
366.	Steven Alexander Hallam
367.	Stuart Lynn Black
368.	Stephen Woosnam
369.	Andrew John Culley
370.	Stephen James Ferris
371.	Timothy Arbuckie

372.	David Arnis Rumbens
373.	Matthew James Williams
374.	Jason Frederick Bender
375.	Patrick Lane
376.	Martin Paul Langridge
377.	Caithlin Mary McCabe
378.	Simon Alexander Wallace-Smith
379.	Adrian Clyde Batty
380.	Tapan Parekh
381.	Masaaki Mark Nakamura
382.	Roger Geoffrey McBain
383.	Graeme John Hodge
384.	RickShaw
385.	Marina Ruth Stuart
386.	Tom Christopher Imbesi
387.	Eric Angelucci
388.	Harvey Christophers
389.	John Kingsley Rawson
390.	Mark Richard Sercombe
391.	Phillip Kravaritis
392.	Gary Christie
393.	Wayne Edward Walker
394.	John Womack
395.	Peter Grainger
396.	Samantha Louise Lewis
397.	Ashley Jonathon King
398.	Peter Francis Williams
399.	Alexander Aitken
400.	Timothy Gordon Biggs
401.	Ian McCall
402.	Johannes Laubscher Venter
403.	Roberto Dimonte
404.	Alan Gordon Weeks
405.	Ian John Breedon
406.	Peter Michael Roberson
407.	Michael David Nelson
408.	Lindsay James Stanton
409.	Craig Paul Johnson
410.	Timothy Riordan
411.	Anthony James Cipriano
412.	Phil Hopwood

413.	Dai-Trang Le Duncanson
414.	David Jonathan Graham
415.	Andre Spnovic
416.	William Harold Wardrop
417.	David Erskine Thompson
418.	David Kyffin Willington
419.	Stephen Mark Holdstock
420.	Dean John Grandy
421.	Harold Scott Payne
422.	Jean-Marie Abi-Ghanem
423.	Fraser Ross
424.	Roberto Krizman
425.	Caroline McGlashan
426.	William Robert McAinsh
427.	Osamu Uchimura
428.	Glendon Moss Sanford
429.	Simon James Lester
430.	Stephen James Jones
431.	Kristen Jay Wydell
432.	John Guthrie Hood
433.	Paul Martin Radici
434.	Frank Klasic
435.	Mark John Pittorino
436.	David Anthony Cooper
437.	Matthew Sheerin
438.	Tony Brain
439.	Henry John Kidd
440.	Matt Gerald Tengu Whitesky Kuperholz
441.	Gordon Pattison
442.	Branko Panich
443.	Julian Christopher Cheng
444.	David William Pring
445.	Peter Andre Jovic
446.	Craig Goldberg
447.	Bruce Robert Dungey
448.	Dean Robert Edward Kingsley
449.	David Alan Watson
450.	Bernard Spencer Gild
451.	Graham John Newton
452.	Dwight Murray Hooper
453.	Michael Rosendorfer

- 454. Richard Roy Porter
- 455. John George Azarias
- 456. Donna Maree Carey
- 457. Christopher Paul Cass