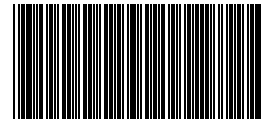




Filed: 5 April 2019 5:46 PM



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Commercial List Statement

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2017/00347082

TITLE OF PROCEEDINGS

First Plaintiff	Nakali Pty Limited ACN 062473830
First Defendant	SURFSTITCH GROUP LIMITED ACN 602288004

FILING DETAILS

Filed for	Nakali Pty Limited, Plaintiff 1
Legal representative	Joseph Scarcella
Legal representative reference	
Telephone	02 8247 9639
Your reference	C1058

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Commercial List Statement (Amended Commercial List Statement - 5.4.2019.pdf)

[attach.]

AMENDED COMMERCIAL LIST STATEMENT**COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity Division
List	Commercial (Representative Proceeding)
Registry	Sydney
Case number	2017/00347082

TITLE OF PROCEEDINGS

Plaintiff	Nakali Pty Limited ACN 062 473 830
First Defendant	SurfStitch Group Limited (Subject to deed of company arrangement) ACN 602 288 004
Second Defendant	<u>Chubb Insurance Australia Limited ABN 23 001 642 020 CAN 001 642 020 (formerly Ace Insurance Limited)</u>
Number of defendants if more than 2	2

FILING DETAILS

Filing for	Nakali Pty Limited, Plaintiff
Filed in relation to	Plaintiff's claim
Legal representative	Joseph Scarcella, Johnson Winter & Slattery
Legal representative reference	C1058
Contact name and telephone	Joseph Scarcella, (02) 8247 9639
Contact email	joseph.scarcella@jws.com.au

A. NATURE OF DISPUTE

NB: Capitalised terms have the same meaning as in the Plaintiffs' Contentions below.

1. The **Plaintiffs Plaintiff** originally commenced these proceedings as a representative proceeding pursuant to Part 13A of the *Civil Proceedings Act* 2011 (QLD) on their behalf and on behalf of other persons (**Group Members**) who:
 - a) acquired an interest in ordinary shares in the First Defendant (**SRF**) by purchasing SRF's ordinary shares on the financial market operated by the Australian Securities Exchange (**ASX**) at some time during the periods:
 - i. commencing on 27 August 2015 and concluding on 24 February 2016 and were still holding some or all of those shares in SRF on 25 February 2016, 3 May 2016 or 9 June 2016;
 - ii. commencing on 25 February 2016 and concluding on 2 May 2016 and were still holding some or all of those shares in SRF on 3 May 2016 or 9 June 2016; and/or
 - iii. commencing on 3 May 2016 and concluding on 8 June 2016 and were still holding some or all of those shares in SRF on 9 June 2016; and
 - b) suffered loss or damage by or resulting from the contraventions of SRF and/or the second defendant pleaded below.
2. As at the date of the commencement of this proceeding, seven or more Group Members have claims against SRF and/or the second defendant.

3. The proceeding contains further allegations against the second defendant as to his involvement in the contraventions identified in (1) above or as further pleaded below.
4. The First Defendant held a “claims made” Directors and Officers Liability Insurance Policy with Chubb Insurance Company which transferred its insurance business to Chubb as outlined in paragraphs [14A – 14F] above. At the time of preparing this amended commercial list statement, so far as the Plaintiff can discern from disclosure of the first defendant’s insurance policies provided pursuant to Hammerschlag J’s orders of 4 August 2017 in the Supreme Court of New South Wales representative class proceeding 2017/193375, another Directors and Officers Liability Insurance Policy with Chubb was in place, however, the precise details of that policy and the applicable coverage, are presently unknown to the ~~Plaintiffs~~ Plaintiff and after disclosure, the ~~Plaintiffs~~ Plaintiff will amend this commercial list statement accordingly.
5. The ~~Plaintiffs~~ Plaintiff seeks declarations and orders requiring Chubb to pay it an amount equal to the maximum amount available under the Policy (and any other relevant policy) in respect of the loss and damage to the ~~Plaintiffs~~ Plaintiff and Group Members caused by the First Defendant’s contraventions of the *Corporations Act 2001 (Cth)*.

B. ISSUES LIKELY TO ARISE

The issues likely to arise, and are questions of law or fact common to the claims of the Group Members are as follows:

1. Whether SRF contravened ss 1041H(1) of the *Corporations Act 2001* (Cth) and s12DA(1) of the *ASIC Act 2001* (Cth) by reason of the EBITDA ASX Releases (as defined in paragraph 27 of the Plaintiffs' Contentions below).
2. Whether SRF contravened ss 674(2), 1041H(1) of the *Corporations Act* and s 12DA(1) of the *ASIC Act 2001* (Cth) by not disclosing the Material EBITDA Information (as defined in paragraph 69 of the Plaintiffs' Contentions) during the First Relevant Period (as defined in paragraph 69 of the Plaintiffs' Contentions).
3. Whether SRF contravened ss 1041H(1) of the *Corporations Act 2001* (Cth) and s 12DA(1) of the *ASIC Act 2001* (Cth) by reason of the 1H FY16 Financial Report (as defined in paragraph 54 of the Plaintiffs' Contentions).
4. Whether SRF contravened ss 674(2), 1041H(1) of the *Corporations Act 2001* (Cth) and s 12DA(1) of the *ASIC Act 2001* (Cth) by not disclosing the Material Revenue Information (as defined in paragraph 83 of the Plaintiffs' Contentions) during the Second Relevant Period (as defined in paragraph 83 of the Plaintiffs' Contentions).
5. Whether SRF contravened ss 1041H(1) of the *Corporations Act 2001* (Cth) and s 12DA(1) of the *ASIC Act 2001* (Cth) by reason of the ASX announcements made on 25 February 2016 (as pleaded in paragraphs 56 and 57 of the Plaintiffs' Contentions).

6. Whether SRF contravened ss 1041H(1) of the *Corporations Act 2001* (Cth) and s 12DA(1) of the *ASIC Act 2001* (Cth) by reason of the Revised EBITDA ASX Release (as defined in paragraph 60 of the Plaintiffs' Contentions).
7. Whether SRF contravened ss 674(2), 1041H(1) of the *Corporations Act 2001* (Cth) and s 12DA(1) of the *ASIC Act 2001* (Cth) by not disclosing the Material Revised EBITDA Information (as defined in paragraph 102 of the Plaintiffs' Contentions) during the Third Relevant Period (as defined in paragraph 102 of the Plaintiffs' Contentions).
8. Whether the Second Defendant is obliged to pay an amount equal to the total amount that the First Defendant would be ordered to pay the Plaintiffs and Group Members, whether by virtue of section 4 of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) or otherwise.

C. PLAINTIFFS' CONTENTIONS

This claim in this proceeding is made in reliance on the following facts:

The Plaintiffs and Group Members

1. The **Plaintiffs Plaintiff** acquired ordinary shares in the **First** Defendant (**SRF**) by purchasing those shares on the financial market operated by the Australian Securities Exchange (**ASX**) on the dates, in the amounts and at the cost set out in Schedule A to this ~~Statement of Claim~~ **Plaintiffs' Contentions**.
2. The **Plaintiffs Plaintiff** continue to own the ordinary shares in the Defendant that they acquired as pleaded in paragraph 1 above.
3. The **Plaintiffs Plaintiff** originally brought ~~bring~~ these proceedings as a representative proceeding pursuant to Part 13A of the *Civil Proceedings Act 2011* (Qld) on their behalf and on behalf of other persons (**Group Members**) who:

- a. acquired an interest in ordinary shares in SRF by purchasing SRF's ordinary shares on the financial market operated by the Australian Securities Exchange (**ASX**) at some time during the periods:
 - i. commencing on 27 August 2015 and concluding on 24 February 2016 and were still holding some or all of those shares in SRF on 25 February 2016, 3 May 2016 or 9 June 2016;
 - ii. commencing on 25 February 2016 and concluding on 2 May 2016 and were still holding some or all of those shares in SRF on 3 May 2016 or 9 June 2016; and/or
 - iii. commencing on 3 May 2016 and concluding on 8 June 2016 and were still holding some or all of those shares in SRF on 9 June 2016; and
- b. suffered loss or damage by or resulting from the contraventions of SRF pleaded below.

3A These proceedings were subsequently transferred to the Supreme Court of NSW.

4. At the date of the commencement of this proceeding, seven or more Group Members have claims against SRF and/or the second defendant.

The First Defendant

5. SRF is a duly incorporated corporation and is able to be sued in its corporate name and style.
6. At all material times, SRF was:
 - a. a listed disclosing entity within the meaning of s 111AC of the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. a corporation included in the official list of the financial market operated by the ASX; and

- c. subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**).
7. During the period commencing on 27 August 2015 and concluding on 9 June 2016, SRF's ordinary shares traded on the ASX at the prices set out in Schedule B to this ~~Statement of Claim~~ Plaintiffs' Contentions.
8. SRF is and was at all material times the owner of 100 per cent of the issued shares in SurfStitch Holdings Pty Limited (**SHPL**).
9. SHPL is and was at all material times the owner of 100 per cent of the issued shares in:
 - a. Garage Entertainment Aust Pty Limited (**Garage**);
 - b. SurfStitch Pty Limited (**SPL**);
 - c. Rollingyouth Pty Limited (**Rollingyouth**);
 - d. SurfStitch USA Inc (**SSUI**); and
 - e. Magicseaweed Limited (**Magicseaweed**).
10. Rollingyouth is and was at all material times the owner of 100 per cent of the issued shares in Rollingyouth USA Inc (**RYUI**).
11. Magicseaweed is and was at all material times the owner of 100 per cent of the issued shares in Metcentral Limited (**Metcentral**).
12. The entities referred to in paragraphs 5 to 11 (inclusive) above are referred to collectively in this ~~Statement of Claim~~ Plaintiffs' Contentions as the **SurfStitch Group**.
13. Mr Justin Cameron (**Mr Cameron**) was:
 - a. the Chief Executive Officer and a director of SRF from on or about 13 October 2014 to on or about 9 March 2016;

- b. a director of SHPL from on or about 6 August 2014 to on or about 9 March 2016;
 - c. a director of Garage from on or about 11 November 2015 to on or about 9 March 2016;
 - d. a director of SPL from on or about 13 October 2014 to on or about 9 March 2016;
 - e. a director of Rollingyouth from on or about 21 May 2015 to on or about 9 March 2016;
 - f. a director of Magicseaweed from on or about 21 May 2015 to on or about 9 March 2016;
 - g. a director of Metcentral from on or about 21 May 2015 to on or about 9 March 2016; and
 - h. the Managing Director of the SurfStitch Group from on or about 13 October 2014 to on or about 9 March 2016.
14. At all material times, Mr Lex Pedersen (**Mr Pedersen**) was and is:
- a. a director of SRF; and
 - b. a director of other companies within the SurfStitch Group, including SHPL, Garage, SPL and Rollingyouth.

The Second Defendant (The First Defendant's Insurer)

14A The Second Defendant, Chubb Insurance Australia Limited (formerly Ace Insurance Limited, ABN 23 001 642 020 ACN 001 642 020) (**Chubb**), was at all times a body corporate capable of being sued in its corporate name and style.

14B. By order of Gleeson J dated 12 October 2016 (**Gleeson J Orders**) in Federal Court Proceeding NSD660/2016 the insurance business of Chubb Insurance

Company of Australia Limited ABN 69 003 710 647 ACN 003 710 647
(Chubb Insurance Company) was transferred to Chubb (Transfer).

14C. The Transfer took effect from 1 November 2016.

Particulars

- i. The Transfer took effect pursuant to a scheme of transfer under Part III Division 31, Section 17F of the Insurance Act 1973 (Cth) outlined in the scheme marked 'A' annexed to the Gleeson J Orders (Transfer Scheme).
- ii. The Transfer Scheme included definitions, among others that:
 - A. The Effective Date means the 1 November 2016;
 - B. Insurance Liabilities means all claims, losses, liabilities, costs or expenses of any kind, including those which are prospective or contingent and the amount of which is not ascertained or ascertainable, in conducting the Insurance Business;
 - C. Insurance Contracts means all contracts of insurance and inwards reinsurance issued or entered into by or on behalf of [Chubb Insurance Company] as an insurer in the conduct of the Insurance Business Prior to the Effective Date, but not including New Zealand Contracts;
 - D. Insurance Business means the insurance business (within the meaning of that expression in the Insurance Act 1973 (Cth) carried on by [Chubb Insurance Company] in Australia; and
 - E. Insurance Business means the insurance business (within the meaning of that expression in the Insurance Act 1973 (Cth) carried on by [Chubb Insurance Company] in Australia.

(clause 1.1)
 - F. A copy of the Gleeson J Orders is in the possession of the solicitors for the Plaintiff and may be inspected by appointment.

14D. The Transfer Scheme included terms to the effect that:

- (a) from the Effective Date, Chubb Insurance Company would transfer to Chubb any and all Insurance Liabilities that have or may in the future arise in respect of the Insurance Contracts (**Assumed Liabilities**); and
- (b) that Chubb will assume and will take over and indemnify and keep Chubb Insurance Company indemnified from and against all Assumed Liabilities and all claims in connection with the Assumed Liabilities; and
- (c) Chubb Insurance Company will be released and discharged from its obligations under or in connection with the Assumed Liabilities.

(clauses 5.1 and 5.2).

14E. On 17 May 2018 Chubb Insurance Company filed a form 520 Declaration of Solvency with the Australian Securities and Investments Commission pursuant to section 494 (1) and (2) of the *Corporations Act*.

14F. On 18 June 2018, the sole shareholder of Chubb Insurance Company (Chubb Insurance Australia Limited, or Chubb) resolved that:

- (a) Chubb Insurance Company be voluntarily wound up pursuant to section 491(1) and (2) of the *Corporations Act*;
- (b) David John Frank Lombe (**Chubb Liquidator**) be appointed as the liquidator of Chubb Insurance Company pursuant to section 495(1) of the *Corporations Act*;
- (c) the Chubb Liquidator be authorised to exercise all or any powers conferred upon him pursuant to sections 506 and 477 of the *Corporations Act* and to distribute in whole or in part to Chubb

Insurance Australia Limited, or Chubb in specie any part of the assets of Chubb Insurance Company should the liquidator so desire.

Particulars

At all relevant times, the sole shareholder of Chubb Insurance Company was Chubb Insurance Australia Limited, or Chubb.

Continuous Disclosure Obligations

15. At all material times, SRF was required to immediately tell the ASX any information that a reasonable person would expect to have a material effect on the price or value of SRF's securities if, and as soon as, an officer of SRF has, or ought reasonably to have, come into possession of that information in the course of the performance of their duties as an officer of SRF.

Particulars

ASX Listing Rules, r 3.1, definition of "aware".

16. At all material times, SRF was required to notify the ASX of information in accordance with the ASX Listing Rules if SRF had information that the ASX Listing Rules required SRF to notify the market operator and that information was not generally available and was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of SRF's ordinary shares.

Particulars

Corporations Act 2001 (Cth) (Corporations Act), s 674.

Financial Reporting Obligations

17. At all material times, SRF was required:
- a. to keep written financial records that:

- i. correctly record and explain its transactions and financial position and performance; and
- ii. enable true and fair financial statements to be prepared and audited;

Particulars

Corporations Act, s 286.

- b. to prepare a financial report for each half-year (**Half Year Financial Report**);

Particulars

Corporations Act, s 302.

- c. to ensure that the Half Year Financial Report complied with accounting standards which required the Half Year Financial Report to present fairly the financial position, financial performance and cash flows of an entity;

Particulars

(1). Corporations Act, s 304.

(2). AASB 101, Presentation of Financial Statements, [15].

- d. to lodge the Half Year Financial Report with the Australian Securities and Investments Commission (**ASIC**); and

Particulars

Corporations Act, s 320.

- e. to provide a copy of the Half Year Financial Report the ASX.

Particulars

ASX Listing Rules, r 4.2A.

Financial Year 2016 Forecasts of EBITDA of \$15 million to \$18 million

18. On or about 27 August 2015, SRF released to the ASX an announcement titled “Consolidated FY2015 total sales up 30% to A\$199.4 million with EBITDA of A\$7.7 million, up 51% on prospectus guidance. FY EBITDA growth expectations of 100%+”. This announcement stated in part:
- a. FY2016 outlook is for strong double-digit growth to continue in FY16 as the Group benefits from a full year’s run rate of FY15 initiatives; and
 - b. EBITDA in particular is expected to have a stronger second half in FY16 as the rebranding and strategic plan gain further traction, with full year FY16 EBITDA ranging between A\$15-A\$18 million (growth of 100%+).
19. On or about 27 August 2015, SRF released to the ASX a presentation titled “SURFSTITCH GROUP FY2015 FULL YEAR RESULTS”. This presentation stated in part:
- a. “Confirm today comfortable with consensus FY16 EBITDA of A\$15-A\$18m (growth of 100%+)”;
 - b. strong double-digit revenue to continue;
 - c. EBITDA for FY16, with an expected stronger second half, will range between consensus estimates of A\$15-18m (growth of 100%+); and
 - d. projections and other forward-looking statements with respect to the financial condition, results of operations, business and prospects of SRF are based on current expectations.
20. On or about 23 October 2015, SRF released to the ASX a presentation titled “SURFSTITCH GROUP MORGANS QUEENSLAND CONFERENCE 2015 23 OCTOBER 2015”. This presentation stated in part:
- a. FY16 guidance strong double-digit revenue growth to continue;

- b. EBITDA for FY16, with an expected stronger second half, will range between consensus estimates of A\$15-18m (growth of 100%+);
 - c. we expect strong double-digit revenue growth to continue with EBITDA growth of 100%+ in FY2016; and
 - d. projections and other forward-looking statements with respect to the financial condition, results of operations, business and prospects of SRF are based on current expectations.
- 21. On or about 10 November 2015, SRF released to the ASX Mr Howard McDonald's address at SRF's Annual General Meeting titled "Annual General Meeting Chairman's Address Howard McDonald". This address stated in part:
 - a. the FY16 outlook is strong for double digit revenue growth to continue in FY16 as the Group benefits from a full year's run of FY15 initiatives; and
 - b. EBITDA in particular is expected to have a stronger second half in FY16 as the rebranding and strategic plan gain further traction, with full year FY16 EBITDA ranging between A\$15-A\$18 million (growth of 100%+).
- 22. On or about 10 November 2015, SRF released to the ASX Mr Cameron's presentation at SRF's Annual General Meeting titled "ANNUAL GENERAL MEETING 10 NOVEMBER 2015". This presentation stated in part:
 - a. reaffirm FY2016 guidance of A\$15-18m EBITDA (growth of 100%+) following continued double-digit revenue growth momentum; and
 - b. projections and other forward-looking statements with respect to the financial condition, results of operations, business and prospects of SRF are based on current expectations.

23. On or about 12 November 2015, SRF released to the ASX an announcement titled “SurfStitch Group announces the acquisitions of Garage Entertainment and Production”. This announcement stated in part:
- a. SurfStitch Group reaffirms its FY16 guidance of A\$15-18 million in EBITDA, representing 100%+ pcp growth; and
 - b. projections and other forward-looking statements with respect to the financial condition, results of operations, business and prospects of SRF are based on current expectations.
24. On or about 12 November 2015, SRF released to the ASX a presentation titled “~~ACQUISITION~~ ACQUISITION OF GARAGE ENTERTAINMENT & PRODUCTION”. This presentation stated in part:
- a. reaffirm FY2016 guidance of A\$15-\$18m EBITDA (growth of 100%+) leveraging continued double-digit revenue growth momentum; and
 - b. projections and other forward-looking statements with respect to the financial condition, results of operations, business and prospects of SRF are based on current expectations.
25. On or about 25 November 2015, SRF released to the ASX an announcement titled “SurfStitch Group announces the acquisition of Surf Hardware International and Institutional Placement”. This announcement stated in part:
- a. reaffirms FY16E guidance of A\$15-\$18 million EBITDA for the business, excluding SHI, and provides FY16E guidance of A\$18-22 million EBITDA, including the contribution of SHI Holdings Pty Limited (**SHI**) on a full year pro forma basis;
 - b. SurfStitch Group reaffirms that the business, excluding SHI, is on track to achieve the earnings guidance provided at the full year result, and again at its AGM, of \$A15-18 million EBIDTA;

- c. SurfStitch Group provides FY16E guidance of A\$18-22 million EBITDA, including the contribution of SHI on a full year pro forma basis; and
 - d. projections and other forward-looking statements with respect to the financial condition, results of operations, business and prospects of SRF are based on current expectations.
26. On or about 3 December 2015, SRF released to the ASX an announcement titled “SurfStitch Group Completes Acquisition of Surf Hardware International”. This announcement stated in part:
- a. SurfStitch Group also announced that there will be no changes to its full year pro forma FY16E EBITDA guidance issued on 25 November 2015. As previously announced, SurfStitch Group guided to A\$18-22 million FY16 EBITDA, including the contribution of SHI on a full year pro forma basis; and
 - b. projections and other forward-looking statements with respect to the financial condition, results of operations, business and prospects of SRF are based on current expectations.
27. The releases to the ASX pleaded in paragraphs 18 to 26 (inclusive) above are referred to in this ~~Statement of Claim~~ Plaintiffs’ Contentions as the **EBITDA ASX Releases**.

The December 2015 Agreements between the SurfStitch Group and the TCI Group

The TCI Group

28. Coastalcoms Pty Limited (**Coastalcoms**) is and was at all material times:
- a. a direct subsidiary of Coastalwatch Holdings Pty Limited (**Coastalwatch Holdings**); and

Particulars

Coastalwatch Holdings owns, and at all material times has owned, 100 per cent of the issued share capital in Coastalcoms.

- b. an indirect subsidiary of Three Crowns Investments Pty Limited (**TCI**).

Particulars

TCI owns, and at all material times has owned, 100 per cent of the issued share capital in Coastalwatch Holdings.

- 29. Coastalwatch Pty Limited (**Coastalwatch**) is and was at all material times a direct subsidiary of Crown Financial Pty Limited (**Crown**).

Particulars

Crown owns, and at all material times has owned, 100 per cent of the issued share capital in Coastalwatch.

- 30. The entities referred to in paragraphs 28 and 29 above, and their other related entities, are referred to collectively in this ~~Statement of Claim~~ Plaintiffs' Contentions as the **TCI Group**.

App Branding Licence

- 31. On or about 22 December 2015, SRF and TCI entered into, or purported to enter into, a written agreement titled "App Branding Licence" (**App Branding Licence**).
- 32. The App Branding Licence was executed by Mr Cameron and Mr Pedersen on behalf of SRF.
- 33. The App Branding Licence contained the following express terms:
 - a. TCI would remove all existing branding from certain software applications and rebrand those applications with brands owned by members of the SurfStitch Group;

Particulars

App Branding Licence, clause 2.1(a).

- b. TCI would provide certain ongoing services in relation to the software applications throughout the term of the App Branding Licence;

Particulars

App Branding Licence, clause 2.1(b).

- c. SRF would provide TCI with certain advertising and distribution services;

Particulars

App Branding Licence, clauses 2.1(c)(1) and 3.

- d. SRF would pay an amount of A\$2 million (excluding goods and services tax (**GST**) to TCI.

Particulars

App Branding Licence, clauses 2.1(c)(2) and 4.

The Copyright Licences

- 34. On or about 22 December 2015, the following written agreements were entered into, or purportedly entered into:
 - a. a copyright licence between Metcentral and Coastalwatch, executed by Mr Cameron and Mr Pedersen on behalf of Metcentral (**Metcentral Copyright Licence**);
 - b. a copyright licence between RYUI and Coastalwatch, executed by Mr Cameron and Mr Pedersen on behalf of RYUI (**RYUI Copyright Licence**);

- c. a copyright licence between SSUI and Coastalwatch, executed by Mr Cameron and Mr Pedersen on behalf of SSUI (**SSUI Copyright Licence**);
- d. a copyright licence between Garage and Coastalwatch, executed by Mr Cameron and Mr Pedersen on behalf of Garage (**Garage Copyright Licence**); and
- e. a copyright license between SPL and Coastalwatch, executed by Mr Cameron and Mr Pedersen on behalf of SPL (**SPL Copyright Licence**)

(together, **the Copyright Licences**).

35. It was an express term of the Copyright Licences that Coastalwatch pay fees to members of the SurfStitch Group as follows:

- a. The Metcentral Copyright Licence required Coastalwatch to pay Metcentral fees of GBP 2,500,000 (excluding value added tax) within 120 days of Metcentral giving an invoice for those fees;

Particulars

Metcentral Copyright Licence, clause 3.1.

- b. The RUYI Copyright Licence required Coastalwatch to pay RUYI fees of US\$4,250,000 (excluding GST) within 120 days of RUYI giving an invoice for those fees;

Particulars

RUYI Copyright Licence, clause 3.1.

- c. The SSUI Copyright Licence required Coastalwatch to pay SSUI fees of US\$2,000,000 (excluding GST) within 120 days of SSUI giving an invoice for those fees;

Particulars

SSUI Copyright Licence, clause 3.1.

- d. The Garage Copyright Licence required Coastalwatch to pay Garage fees of A\$4,000,000 (excluding GST) within 120 days of Garage giving an invoice for those fees; and

Particulars

Garage Copyright Licence, clause 3.1.

- e. The SPL Copyright Licence required Coastalwatch to pay SPL fees of A\$2,250,000 (excluding GST) within 120 days of SPL giving an invoice for those fees.

Particulars

Garage Copyright Licence, clause 3.1.

- 36. The payments referred to in paragraph 35 above are referred to collectively in this ~~Statement of Claim~~ Plaintiffs' Contentions as the **Copyright Licence Fees**.
- 37. Each of the Copyright Licences required each party to ensure that any payments under the relevant Copyright Licence were set off against any amounts owing by the SurfStitch Group to the TCI Group or by the TCI Group to the SurfStitch Group, as the case may be.

Particulars

Clause 3.4 of each of the Copyright Licences.

The IP Heads of Agreement

- 38. On or about 21 December 2015, SRF, and each of the parties to the Copyright Licences (being Metcentral, RYUI, SSUI, Garage, and SPL), TCI and Coastalwatch entered into a heads of agreement (**IP Heads of Agreement**).

39. The IP Heads of Agreement contained the following express terms:

- a. that each of the parties to the IP Heads of Agreement would use all reasonable endeavours to enter into a formal legally binding agreement containing detailed provisions reflecting the basic commercial terms in the IP Heads of Agreement and other provisions that were mutually acceptable to the parties on or before 30 March 2016;

Particulars

IP Heads of Agreement, clause 1.

- b. Coastalwatch would grant to SRF and its related bodies corporate a 10 year licence in respect of certain camera and forecasting services for a licence fee of A\$8.5 million;

Particulars

IP Heads of Agreement, clause 2(a).

- c. TCI or its related bodies corporate would grant to SRF and its related bodies corporate a 10 year licence to use certain content and videos for a licence fee of A\$12 million (together with the licence pleaded in paragraph 39(b) above, **TCI Licence Agreements**);

Particulars

IP Heads of Agreement, clause 2(b).

- d. the terms of the TCI Licence Agreements would commence, and the licence fees under those agreements would be payable, on the later of 15 July 2016 and the date on which the agreements were entered into;

Particulars

IP Heads of Agreement, clauses 2(c) and (a).

- e. the TCI Licence Agreements would include terms that the amounts payable under those licence agreements would be fully set off against

amounts payable under the Copyright Licences such that no cash was to be payable under either the TCI Licence Agreements or the Copyright Licences;

Particulars

IP Heads of Agreement, clause 2.1(f).

- f. if after 30 March 2016 a member of the SurfStitch Group took any step to enforce payment of the fees payable under the Copyright Licences, then an offset for the licence fees would be created such that any steps to enforce payment under the Copyright Licences other than through a set off was required to cease;

Particulars

IP Heads of Agreement, clause 2.2(b).

- g. unless otherwise agreed by the parties, the IP Heads of Agreement would terminate if the parties did not enter into an optional agreement containing, inter alia, the TCI Licence Agreements on or before 30 March 2016;

Particulars

IP Heads of Agreement, clause 4.4.

- h. the Copyright Licences would terminate automatically if the IP Heads of Agreement was terminated in the manner pleaded in paragraph 39(g) above;

Particulars

IP Heads of Agreement, clause 4.5

- i. if the Copyright Licences were terminated in the manner pleaded in paragraph 39(h) above, any obligation to pay licence fees under those

agreements was terminated and Coastalwatch was forever released from that obligation.

Particulars

IP Heads of Agreement, clause 4.5.

The Acquisition Heads of Agreement

40. On or about 21 December 2015, SRF and TCI entered into a heads of agreement dated 21 December 2015 (**Acquisition Heads of Agreement**).
41. The Acquisition Heads of Agreement contained the following express terms:
 - a. each of the parties to the Acquisition Heads of Agreement would use all reasonable endeavours to agree the form of a formal legally binding agreement containing detailed provisions reflecting the basic commercial terms in the Acquisition Heads of Agreement and other provisions that were mutually acceptable to the parties on or before 20 May 2016;

Particulars

Acquisition Heads of Agreement, clause 2.

- b. that SRF or one or more of its wholly owned subsidiaries would acquire from members of the TCI Group certain assets, including:
 - i. the camera and forecasting services the subject of the licence pleaded in paragraph 39(b) above and the content of the videos the subject of the licence pleaded in paragraph 39(c) above; and
 - ii. the App Branding Licence, the Copyright Licences, and the TCI Licence Agreements (insofar as members of the TCI Group were concerned);

Particulars

Acquisition Heads of Agreement, preamble and clause 3.

- c. that SRF or one of its wholly owned subsidiaries would pay A\$8 million plus the written down value of the plant and equipment (up to a maximum of A\$350,000) and an adjustment (after tax) for the employee entitlements of transferring employees as consideration for the assets pleaded in paragraph 41(b) above; and

Particulars

Acquisition Heads of Agreement, clause 3.

- d. that the offer by SRF or one of its wholly own subsidiaries to acquire the assets pleaded in paragraph 41(b) above would be made on or before 20 May 2016 and be capable of acceptance the period from 15 August 2016 to 31 August 2016.

Particulars

Acquisition Heads of Agreement, clause 2.

- 42. The effect of the transactions contemplated by the Acquisition Heads of Agreement (if implemented) would be:
 - a. SRF or one of its wholly owned subsidiaries would acquire the assets pleaded in paragraph 41(b) above;
 - b. by reason of that acquisition, the subject matter of the TCI Licence Agreements and the Licence Agreements would be acquired (in the case of the TCI Licence Agreements by assignment) by SRF or one of its wholly owned subsidiaries;
 - c. in the event that the subject matter of one of the TCI Licence Agreements or one of the TCI Licence Agreements was acquired (in the case of the TCI Licence Agreements by assignment) by the counterparty to that agreement, that TCI Licence Agreement would

involve no payment of any amount under it because the same entity would be the subject of all rights and reciprocal obligations under the agreement;

- d. in the alternative, if the subject matter of one of the TCI Licence Agreements or one of the TCI Licence Agreement was acquired (in the cause of the TCI Licence Agreements by assignment) by a wholly owned subsidiary of SRF that was not the counterparty to that agreement, that TCI Licence Agreement would involve only an intra-group transfer of funds within the SurfStitch Group; and
- e. in the event of either of the circumstances set out in paragraph 42(c) and 42(d) above, no funds would be required to be paid by the SurfStitch Group as a whole in respect of the TCI Licence Agreements.

The effect of the agreements between the SurfStitch Group and TCI Group

- 43. The effect of the contractual arrangements put in place by the App Branding Licence, the Copyright Licences, the IP Heads of Agreement, the Acquisition Heads of Agreement was that:
 - a. SRF would be able to recognise as revenue approximately A\$20.5 million payable under the Copyright Licences in the 2016 financial year;
 - b. no cash amount would in fact be payable by any member of the SurfStitch Group or the TCI Group under the Copyright Licences or the TCI Licence Agreements; and
 - c. TCI would receive an amount of A\$2 million (excluding GST) and certain advertising and distribution services pursuant to the App Branding Licence.

The February 2016 Agreements between the SurfStitch Group and the TCI Group

44. On or about 13 February 2016, the SurfStitch Group companies and TCI Group companies that were parties to the IP Heads of Agreement and the Acquisition Heads of Agreement terminated or purported to terminate those agreements.

Particulars

The termination or purported termination was pursuant to a letter from SRF to TCI signed by Mr Cameron on behalf of SRF and its related bodies corporate that were parties to the Copyright Licences and Mr Sundell on behalf of TCI and its related bodies corporate that were parties to the Copyright Licences.

The App Branding Variation Deed

45. On or about 16 February 2016, TCI and SRF entered or purported to enter into a deed that varied the App Branding Licence, which was executed by Mr Cameron and Mr Pedersen on behalf of SRF (**App Branding Variation Deed**).
46. The App Branding Variation Deed contained the following express terms:
- a. a variation of the App Branding Licence such that TCI would provide certain additional services in respect of users of the software application who became members of the “Swell Boardriders Program”;

Particulars

App Branding Variation Deed, clause 1 of Schedule 1.

- b. a variation of the App Branding Licence such that SRF would pay to TCI:

- i. A\$500,000 in relation to the first 6,200 members of the Swell Boardriders Program who downloaded certain software applications and accessed certain content; and
- ii. an additional A\$8 for each member of the Swell Boardriders Program in addition to the 6,200 members specified in paragraph 46(b)(i) above who downloaded certain software application and accessed certain content (clause 1.6 and the definition of “Premium Fees” in Schedule 1);

Particulars

App Branding Variation Deed, clause 1.6 and the definition of “Premium Fees” in Schedule 1.

- c. a variation to the App Branding Licence such that the term of app licence granted to SRF was reduced from 10 years two years, with no corresponding reduction in fees payable by SRF to TCI (definition of “App Licence Term” in Schedule 1).

Particulars

App Branding Variation Deed, definition of “App Licence Term” in Schedule 1.

The Copyright Licence Variations

47. On or about 16 February 2016, the following deeds were entered or purportedly entered into:
 - a. a deed purporting to vary the Metcentral Copyright Licence (**Metcentral Variation**) signed by Mr Cameron and Mr Pedersen on behalf of Metcentral;
 - b. a deed purporting to vary the RYUI Copyright Licence (**RYUI Variation**) signed by Mr Cameron and Mr Pedersen on behalf of RYUI;

- c. a deed purporting to vary the SSUI Copyright Licence (**SSUI Variation**) signed by Mr Cameron and Mr Pedersen on behalf of SSUI;
 - d. a deed purporting to vary the Garage Copyright Licence (**Garage Variation**) signed by Mr Cameron and Mr Pedersen on behalf of Garage;
 - e. a deed purporting to vary the SPL Copyright Licence (**SPL Variation**) signed by Mr Cameron and Mr Pedersen on behalf of SPL
- (together, the **Copyright Licence Variations**).

48. The effect of the Copyright Licence Variations included to vary each of the Copyright Licences such that the licence fees payable under those agreements were payable in ten annual instalments no later than 30 April of each year during the duration of each agreement.

The Software Licensing Agreement

49. On or about 16 February 2016, Coastalcoms and SHPL entered into or purported to enter into a Software Licensing Agreement (**Software Licensing Agreement**), which was executed by Mr Cameron and Mr Pedersen on behalf of SHPL.
50. The Software Licensing Agreement contained the following express terms:
- a. Coastalcoms granted to SHPL, and agreed to procure that a TCI Group Member (as defined in the agreement) would grant to SHPL, a non-exclusive, non-transferable and irrevocable licence to use certain software and documentation for certain purposes and to make copies of the software for certain purposes;

Particulars

Software Licensing Agreement, clause 2.1(a).

- b. SHPL would pay Coastalcoms a licence fee of US\$9,250,000 (excluding GST) in ten annual instalments on 31 March each year; and

Particulars

Software Licensing Agreement, clause 4.1.

- c. SHPL would pay Coastalcoms an annual module fee of US\$17,500 (excluding GST).

Particulars

Software Licensing Agreement, clause 4.2.

The Store Hosting Agreement

- 51. On or about 16 February 2016, Coastalwatch and SHPL entered into or purported to enter into a Store Hosting Agreement (**Store Hosting Agreement**), which was executed by Mr Cameron and Mr Pedersen on behalf of SHPL.

- 52. The Store Hosting Agreement contained the following express terms:

- a. Coastalwatch would host, or procure that a TCI Group Member (as defined in the agreement) would host hyperlink to the SurfStitch Store (as defined in the agreement) on certain websites;

Particulars

Store Hosting Agreement, clause 2(a).

- b. SHPL would provide content for placement on certain websites;

Particulars

Store Hosting Agreement, clause 3(a).

- c. SHPL would pay to Coastalwatch a fee of A\$8 million in 10 annual instalments on 31 March each year (clause 4.2); and

Particulars

Store Hosting Agreement, clause 4.2.

- d. SHPL would pay Coastalwatch a fee of at least A\$800,000 in 10 annual instalments on 16 February each year (clause 3.2(a)(2) and 4.1).

Particulars

Store Hosting Agreement, clauses 3.2(a)(2) and 4.1.

The effect of the Software Licencing Agreement and the Store Hosting Agreement

53. The effect of the contractual arrangements put in place by the Software Licensing Agreement and the Store Hosting Agreement was to require companies within the SurfStitch Group to pay US\$9.7 million and at least A\$8.8 million to companies within the TCI Group.

Interim Financial Report

54. On or about 25 February 2016, SRF released to the ASX the Half Year Report for SRF and its subsidiaries for the six months ending 31 December 2015 (**1H FY16 Financial Report**). The 1H FY16 Financial Report stated in part:
- a. revenue for SRF and its subsidiaries for the six months ending 31 December 2015 was \$144,886,000;
 - b. gross profit for SRF and its subsidiaries for the six months ending 31 December 2015 was \$69,685,000; and
 - c. profit before tax for SRF and its subsidiaries for the six months ending 31 December 2015 was \$3,328,000.
55. SRF recognised in the 1H FY16 Financial Report approximately \$20.3 million of revenue from the entry into the agreements pleaded in paragraphs 31 to 43 (inclusive) above

56. On or about 25 February 2016, SRF released to the ASX an announcement titled “Consolidated 1H FY2016 total pro forma sales up 40% to A\$144.9 million with pro forma EBITDA of A\$13.9 million”. This announcement stated in part:
- a. while integration costs related to rebranding and acquisitions, including the recent acquisitions of Garage Entertainment & Production and Surf Hardware International, continued in 1H FY2016, the Group delivered A\$13.9 million in pro forma EBITDA and net profit after tax of A\$5.7m;
 - b. a 363% increase in consolidated 1H FY2016 EBITDA from consolidated 1H FY2015 pro forma EBITDA;
 - c. given the pace of change and long term opportunities presented to the business, Management and the Board believe it is no longer prudent to focus on a defined EBITDA range. Instead, EBITDA growth will be flexed based on investment around the Global content strategy.
57. On or about 25 February 2016, SRF released to the ASX a presentation titled “SURFSTITCH GROUP 1H FY2016 FULL YEAR RESULTS”. This presentation stated in part:
- a. pro forma EBITDA of A\$13.9m and NPAT of \$5.7m benefiting from scale and evolving content initiatives;
 - b. given the pace of change and long term opportunities presented to the business, Management and the Board believe it is no longer prudent to focus on a defined EBITDA range;
 - c. instead, EBITDA growth will be flexed based on investment around the Global content strategy.

CEO's Resignation

58. On or about 10 March 2016, Mr Cameron resigned as SRF's Chief Executive Officer and Managing Director.
59. On or about 10 March 2016, SRF released to the ASX an announcement titled "SurfStitch Group Company Update". This announcement stated in part:
- a. Mr Cameron has submitted an email to the Chairman stating his resignation from all positions with the Group with immediate effect;
 - b. Mr Cameron has tendered his resignation during the initial fixed two year period and before his employment contract permits; and
 - c. the Company has no update further to the recent release of its 1H16 interim results and continued to pursue a number of exciting investment opportunities consistent with its global content strategy.

Financial Year 2016 Forecasts of EBITDA of \$2 million to \$3 million

60. On or about 3 May 2016, SRF released to the ASX an announcement titled "SurfStitch Group Company Update" (**Revised EBITDA ASX Release**). This announcement stated in part:
- a. SurfStitch Group Limited has today provided an update on its trading performance for the second half of FY2016 and its outlook for the remainder of the year ended 30 June 2016;
 - b. since the half year results in February, revenue growth has continued at strong double digit levels across all the Group's markets. However, trading conditions in general have been more challenging across its key markets resulting in the need for higher advertising costs and impacting gross margins;
 - c. following the surprise departure of former CEO Mr Cameron, as announced on 10 March 2016, a reorganisation of the Company's management structure was required. In addition, due to the

management's focus on implementing the transformation program, integration of the companies acquired over the last 12 months has been slower than anticipated. This has resulted in benefits in 2H FY2016 being lower than anticipated;

- d. taking these factors into account and following a thorough appraisal of all SurfStitch businesses, the Company anticipates that pro-forma EBITDA for the year ending 30 June 2016 will be between A\$2 million and A\$3 million; and
- e. further detail around the Company's strategy and progress will be communicated at the full year results in August 2016.

**Reversal of \$20.3 million in Interim Financial Report and Financial Year 2016
Forecasts of EBITDA of Negative \$17.3 million to Negative \$18.3 million**

- 61. On or about 9 June 2016, SRF released to the ASX an announcement titled "SurfStitch Group Company Update". This announcement stated in part:
 - a. as a result of events in 2H FY 2016, SRF has formed the view that it should record an amendment in 2H FY2016 to its treatment of a transaction that occurred in 1H FY2016. The transaction related to the grant of a perpetual licence to a third party using the Company's content contained in its subsidiaries – SurfStitch, Garage Entertainment, Rolling Youth and MagicSeaweed;
 - b. in 2H FY2016, the Company entered into a set of agreements with the same party effective 15 March 2016 for the provision of various services including access to software and hosting the SurfStitch online store, and which extended the payment terms of the perpetual licence agreement;
 - c. an in-depth review of the business has been undertaken including these subsequent contracts. As a result of this review and recent information that has come to hand, the Company believe in substance an amendment to the original contract has occurred in 2H FY2016;

- d. the effect of this is that \$20.3 million of revenue will be reserved and reflected in the full year results; and
- e. other than as set out above, there is no variation to the update relating to trading conditions in 2H FY2016 announced on 3 May 2016. However, the impact of the above charge means the Company now advises that pro-forma EBITDA for FY2016 is likely to be a loss, in the range of \$17.3 million to \$18.3 million.

Annual Financial Report

- 62. On or about 30 August 2016, SRF released to the ASX the annual financial report for SRF and its subsidiaries for the financial year ending 30 June 2016 (**FY16 Financial Report**). This report stated in part (as was the case):
 - a. EBITDA for the financial year ending 30 June 2016 was negative \$18.8 million;
 - b. EBITDA for the financial year ending 30 June 2016 was a 345% decrease on pro forma EBITDA for the financial year ending 30 June 2015;
 - c. statutory EBITDA for the financial year ending 30 June 2016 was negative \$139.1 million;
 - d. profits before tax for the financial year ending 30 June 2016 was negative \$18.9 million; and
 - e. statutory profits before tax for the financial year ending 30 June 2016 was negative \$155.2 million.
- 63. On or about 30 August 2016, SRF released to the ASX an announcement titled “SurfStitch Group FY16 Financial Results” and a presentation titled “SHAREHOLDER PRESENTATION”. This announcement and presentation stated in part:
 - a. EBITDA for the financial year ending 30 June 2016 was negative \$18.8 million;

- b. net profits after tax for the financial year ending 30 June 2016 was negative \$19.3 million;
- c. statutory EBITDA for the financial year ending 30 June 2016 was negative \$139.1 million;
- d. statutory loss before tax for the financial ending 30 June 2016 was \$155.2 million; and
- e. ambitious growth targets set for FY16.

Contraventions by SRF

EBITDA ASX Releases

- 64. SRF represented publicly with each of the EBITDA ASX Releases pleaded in paragraphs 18 to 24 (inclusive) above that:
 - a. SRF expected SRF's EBITDA for the financial year ending 30 June 2016 would be between A\$15 million and A\$18 million; and/or
 - b. SRF expected an increase in excess of 100 per cent for EBITDA for the financial year ending 30 June 2016 compared to EBITDA for the financial year ending 30 June 2015.
- 65. SRF represented publicly with each of the EBITDA ASX Releases pleaded in paragraphs 25 and 26 above that:
 - a. SRF expected SRF's EBITDA for the financial year ending 30 June 2016 would be between A\$15 million and A\$18 million, excluding SHI; and/or
 - b. SRF expected an increase in excess of 100 per cent for EBITDA for the financial year ending 30 June 2016 compared to EBITDA for the financial year ending 30 June 2015, excluding SHI.
- 66. Each of the representation pleaded in paragraph 64 and 65 above were:
 - a. continuing until on or about 3 May 2016;

- b. conduct by SRF in Australia in relation to a financial product within the meaning of s 1041H of the Corporations Act;
- c. conduct by SRF in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
- d. misleading or deceptive or likely to mislead or deceive in that:
 - i. the forecasted EBITDA for SRF for the financial year ending 30 June 2016 was overstated;
 - ii. the representations were with respect to a future matter; and
 - iii. made without reasonable grounds.

Particulars

- (1). Entry into the agreements pleaded in paragraphs 31 to 43 (inclusive) above which allowed SRF to recognise as revenue approximately \$20.5 million payable under the Copyright Licences in the 2016 financial year when no cash would be payable by any member of the TCI Group to any member of the SurfStitch Group under the Copyright Licences.
 - (2). SRF's EBITDA for the financial year ending 30 June 2016 was approximately negative \$18.8 million.
 - (3). SRF's EBITDA for the financial year ending 30 June 2016 was a 345 per cent decrease in EBITDA from the financial year ending 30 June 2015.
 - (4). Further particulars to be provided following discovery.
- e. further or in the alternative, misleading or deceptive or likely to mislead or deceive in that SRF did not expect EBITDA for the

financial year ending 30 June 2016 to be between \$15 million and \$18 million.

Particulars

- (1). The members of the board of directors of SRF, and further or alternatively Mr Cameron and Mr Pederson, did not hold the relevant expectation.
- (2). SRF's expectation as to its EBITDA for the financial year ending 30 June 2016 is evidenced by, or can be inferred from:
 - (a) entry into the agreements pleaded in paragraphs 31 to 43 (inclusive) above which allowed SRF to recognise as revenue approximately \$20.5 million payable under the Copyright Licences in the 2016 financial year when no cash would be payable by any member of the TCI Group to any member of the SurfStitch Group under the Copyright Licences;
 - (b) SRF's EBITDA for the financial year ending 30 June 2016 was approximately negative \$18.8 million;
 - (c) SRF's EBITDA for the financial year ending 30 June 2016 was a 345 per cent decrease in EBITDA from the financial year ending 30 June 2015.

(2). Further particulars to be provided following discovery.

67. In the premises, SRF has contravened s 1041H(1) of the Corporations Act.

68. In the premises, SRF has contravened s 12DA(1) of the ASIC Act.

Non-Disclosure of Lower EBITDA

69. During the period commencing on 27 August 2015 and concluding 2 May 2016 (**the First Relevant Period**), an officer or officers of SRF had, or ought reasonably to have, come into possession of information that SRF's EBITDA for the financial year ending 30 June 2016 would be, or would be expected to be, significantly less than between \$A15 million and \$18 million (**Material EBIDTA Information**).

Particulars

- (1). The relevant officers of SRF included Mr Cameron and/or Mr Pedersen.
 - (2). The agreements pleaded in paragraphs 31 to 43 (inclusive) above which allowed SRF to recognise as revenue approximately \$20.5 million payable under the Copyright Licences in the 2016 financial year when no cash would be payable by any member of the TCI Group to any member of the SurfStitch Group under the Copyright Licences.
 - (3). SRF's ASX announcement on 3 May 2016 pleaded in paragraph 60 above.
 - (4). SRF's EBITDA for the financial year ending 30 June 2016 was approximately negative \$18.8 million.
 - (5). Further particulars to be provided following discovery.
70. The Material EBITDA Information was information:
- a. not generally available during the First Relevant Period;
 - b. concerning SRF that a reasonable person would have expected to have a material effect on the price or value of SRF;

- c. that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of SRF's ordinary shares; and
 - d. that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of SRF's ordinary shares.
- 71. During the First Relevant Period, SRF was required by r 3.1 of the ASX Listing Rules to inform the ASX immediately of the Material EBITDA Information.
- 72. SRF did not inform the ASX of the Material EBITDA Information during the First Relevant Period.
- 73. In the premises, during the First Relevant Period, SRF has contravened s 674(2) of the Corporations Act.
- 74. Further or in the alternative, SRF did not disclose the Material EBITDA Information during the First Relevant Period.
- 75. SRF's non-disclosure of the Material EBITDA Information during the First Relevant Period represented publicly that:
 - a. SRF expected SRF's EBITDA for the financial year ending 30 June 2016 would be between A\$15 million and A\$18 million; and/or
 - b. SRF expected an increase in excess of 100 per cent for EBITDA for the financial year ending 30 June 2016 compared to EBITDA for the financial year ending 30 June 2015.
- 76. The representation pleaded in paragraph 75 above was:
 - a. continuing during the First Relevant Period;
 - b. conduct by SRF in Australia in relation to a financial product within the meaning of s 1041H of the Corporations Act;

- c. conduct by SRF in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
- d. misleading or deceptive or likely to mislead or deceive in that:
 - i. the forecasted EBITDA for SRF for the financial year ending 30 June 2016 was overstated;
 - ii. the representations were with respect to a future matter; and
 - iii. made without reasonable grounds;

Particulars

The ~~Plaintiffs~~ Plaintiff repeats the particulars to paragraph 66(d) above.

- e. further or in the alternative, misleading or deceptive or likely to mislead or deceive in that the representations were false.

Particulars

The ~~Plaintiffs~~ Plaintiff repeats the particulars to paragraph 66(e) above.

77. In the premises, SRF has contravened s 1041H(1) of the Corporations Act.

78. In the premises, SRF has contravened s 12DA(1) of the ASIC Act.

1H FY16 Financial Report

79. The 1H FY16 Financial Report represented publicly that:

- a. revenue for SRF and its subsidiaries for the six months ending 31 December 2015 was \$144,886,000;
- b. gross profit for SRF and its subsidiaries for the six months ending 31 December 2015 was \$69,685,000; and

- c. profit before tax for SRF and its subsidiaries for the six months ending 31 December 2015 was \$3,328,000.

80. The representation pleaded in paragraph 79 above was:

- a. continuing until on or about 9 June 2016;
- b. conduct by SRF in Australia in relation to a financial product within the meaning of s 1041H of the Corporations Act;
- c. conduct by SRF in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
- d. misleading or deceptive or likely to mislead or deceive in that revenue, gross profit and profit before tax had been overstated by approximately \$20.3 million.

Particulars

- (1). SRF's ASX announcement on 9 June 2016 pleaded in paragraph 61 above.
- (2). Further particulars to be provided following discovery.

81. In the premises, SRF has contravened s 1041H(1) of the Corporations Act.

82. In the premises, SRF has contravened s 12DA(1) of the ASIC Act.

Non-Disclosure of Overstated Revenue and Profits

83. During the period commencing on 25 February 2015 and concluding 8 June 2016 (**the Second Relevant Period**), an officer or officers of SRF had, or ought reasonably to have, come into possession of information that the 1H FY16 Financial Report had overstated SRF's revenue, gross profit and profit before tax by approximately \$20.3 million (**Material Revenue Information**).

Particulars

- (1). The relevant officers of SRF included Mr Cameron and/or Mr Pedersen.
- (2). The agreements pleaded in paragraphs 31 to 43 (inclusive) above which allowed SRF to recognise as revenue approximately \$20.5 million payable under the Copyright Licences in the 2016 financial year when no cash would be payable by any member of the TCI Group to any member of the SurfStitch Group under the Copyright Licences.
- (3). SRF's ASX announcement on 3 May 2016 pleaded in paragraph 60 above.
- (4). The FY16 Financial Report.
- (5). Further particulars to be provided following discovery.

84. The Material Revenue Information was information:

- a. not generally available during the Second Relevant Period;
- b. concerning SRF that a reasonable person would have expected to have a material effect on the price or value of SRF;
- c. that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of SRF's ordinary shares; and
- d. that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of SRF's ordinary shares.

85. During the Second Relevant Period, SRF was required by r 3.1 of the ASX Listing Rules to inform the ASX immediately of the Material Revenue Information.

86. SRF did not inform the ASX of the Material Revenue Information during the Second Relevant Period.
87. In the premises, during the Second Relevant Period, SRF has contravened s 674(2) of the Corporations Act.
88. Further or in the alternative, SRF did not disclose the Material Revenue Information during the Second Relevant Period.
89. SRF's non-disclosure of the Material Revenue Information during the Second Relevant Period represented publicly that:
- a. revenue for SRF and its subsidiaries for the six months ending 31 December 2015 was \$144,886,000;
 - b. gross profit for SRF and its subsidiaries for the six months ending 31 December 2015 was \$69,685,000; and
 - c. profit before tax for SRF and its subsidiaries for the six months ending 31 December 2015 was \$3,328,000.
90. The representation pleaded in paragraph 89 above was:
- a. continuing during the Second Relevant Period;
 - b. conduct by SRF in Australia in relation to a financial product within the meaning of s 1041H of the Corporations Act;
 - c. conduct by SRF in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
 - d. misleading or deceptive or likely to mislead or deceive in that the representations were false in that revenue, gross profits and profits before tax for SRF and its subsidiaries for the six months ending 31 December 2015 was overstated.

Particulars

The ~~Plaintiffs~~ Plaintiff repeats the particulars to paragraph 80 above.

91. In the premises, SRF has contravened s 1041H(1) of the Corporations Act.
92. In the premises, SRF has contravened s 12DA(1) of the ASIC Act.

25 February 2016 ASX announcements

93. The ASX announcements pleaded at paragraph 56 above represented publicly that:
- a. EBITDA for SRF for the six months ending 31 December 2015 was A\$13.9 million;
 - b. EBITDA for SRF for the six months ending 31 December 2015 had increased 363 per cent from pro forma EBITDA for SRF for the six months ending 31 December 2014; and
 - c. SRF's net profit after tax was A\$5.7 million.
94. The ASX announcements pleaded at paragraph 57 above represented publicly that:
- a. EBITDA for SRF for the six months ending 31 December 2015 was A\$13.9 million; and
 - b. SRF's net profit after tax was A\$5.7 million.
95. The representations pleaded in paragraphs 93 and 94 above were:
- a. continuing during the Second Relevant Period;
 - b. conduct by SRF in Australia in relation to a financial product within the meaning of s 1041H of the Corporations Act;
 - c. conduct by SRF in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
 - d. misleading or deceptive or likely to mislead or deceive in that the representations were false in that EBITDA and net profits after tax for SRF for the six months ending 31 December 2014 were overstated.

Particulars

The ~~Plaintiffs~~ Plaintiff repeats the particulars to paragraph 80 above.

96. In the premises, SRF has contravened s 1041H(1) of the Corporations Act.
97. In the premises, SRF has contravened s 12DA(1) of the ASIC Act.

Misleading or Deceptive Revised EBITDA ASX Release

98. SRF represented with the Revised EBITDA ASX Release that SRF anticipated that pro-forma EBITDA for the year ending 30 June 2016 would be between A\$2 million and A\$3 million.
99. The representation pleaded in paragraph 98 above was:
 - a. continuing until on or about 9 June 2016;
 - b. conduct by SRF in Australia in relation to a financial product within the meaning of s 1041H of the Corporations Act;
 - c. conduct by SRF in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
 - d. misleading or deceptive or likely to mislead or deceive in that:
 - i. the forecasted EBITDA for SRF for the financial year ending 30 June 2016 was overstated;
 - ii. the representations were with respect to a future matter; and
 - iii. made without reasonable grounds.

Particulars

- (1). SRF's EBITDA for the financial year ending 30 June 2016 was negative \$18.8 million.
- (2). SRF's ASX announcement on 9 June 2016 pleaded in paragraph 61 above.

(3). The FY16 Financial Report.

(4). Further particulars to be provided following discovery.

100. In the premises, SRF has contravened s 1041H(1) of the Corporations Act.

101. In the premises, SRF has contravened s 12DA(1) of the ASIC Act.

Non-Disclosure of Overstated Revised EBITDA

102. During the period commencing on 3 May 2016 and concluding 8 June 2016 (**the Third Relevant Period**), an officer or officers of SRF had, or ought reasonably to have, come into possession of information that SRF's EBITDA for the financial year ending 30 June 2016 would be, or would be expected to be, significantly less than between \$A2 million and A\$3 million (**Material Revised EBITDA Information**).

Particulars

(1). SRF's EBITDA for the financial year ending 30 June 2016 was negative \$18.8 million.

(2). SRF's ASX announcement on 9 June 2016 pleaded in paragraph 61 above.

(3). The FY16 Financial Report.

(4). Further particulars to be provided following discovery.

103. The Material Revised EBITDA Information was information:

- a. not generally available during the Third Relevant Period;
- b. concerning SRF that a reasonable person would have expected to have a material effect on the price or value of SRF;
- c. that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of SRF's ordinary shares;
and

- d. that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of SRF's ordinary shares.
104. During the Third Relevant Period, SRF was required by r 3.1 of the ASX Listing Rules to inform the ASX immediately of the Material Revised EBITDA Information.
105. SRF did not inform the ASX of the Material Revised EBITDA Information during the Third Relevant Period.
106. In the premises, during the Third Relevant Period, SRF has contravened s 674(2) of the Corporations Act.
107. Further or in the alternative, SRF did not disclose the Material Revised EBITDA Information during the Third Relevant Period.
108. SRF's non-disclosure of the Material Revised EBITDA Information during the Third Relevant Period represented publicly that SRF's EBITDA for the financial year ending 30 June 2016 would be expected to be between A\$2 million and A\$3 million.
109. The representation pleaded in paragraph 108 above was:
- a. continuing during the Third Relevant Period;
 - b. conduct by SRF in Australia in relation to a financial product within the meaning of s 1041H of the Corporations Act;
 - c. conduct by SRF in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
 - d. misleading or deceptive or likely to mislead or deceive in that:
 - i. the forecasted EBITDA for SRF for the financial year ending 30 June 2016 was overstated;
 - ii. the representations were with respect to a future matter; and

- iii. made without reasonable grounds.

Particulars

The ~~Plaintiffs~~ Plaintiff repeats the particulars to paragraph 99(d) above.

110. In the premises, SRF has contravened s 1041H(1) of the Corporations Act.

111. In the premises, SRF has contravened s 12DA(1) of the ASIC Act.

The contraventions caused loss to the ~~Plaintiffs~~ and Group Members

112. The ~~Plaintiffs~~ Plaintiff and Group Members acquired their respective interests in SRF's ordinary shares in a market:

- a. regulated by the ASX Listing Rules, the Corporations Act and the ASIC Act, including in particular r 4.1 of the ASX Listing Rules, ss 674 and 1041H of the Corporations Act, and s 12DA of the ASIC Act;
- b. where the price of SRF's ordinary shares would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules, the Corporations Act and the ASIC Act; and
- c. where the price of SRF's ordinary shares would reasonably be likely to have been informed or affected by information disclosed in contravention of the ASX Listing Rules, the Corporations Act and the ASIC Act.

113. On and from the time of, and in consequence of, each of the contraventions pleaded above, the market price of SRF's ordinary shares was greater than:

- a. their true value; and/or
- b. the market price that would have prevailed but for the contraventions.

Particulars

(Particulars will be provided after serving the ~~Plaintiffs~~ Plaintiff's expert evidence.

114. The ~~Plaintiffs~~ Plaintiff and Group Members have suffered loss and damage by reason of each of the contraventions pleaded above.

Particulars

- (1). The ~~Plaintiffs~~ Plaintiff and Group Members in their decision to acquire interests in SRF's ordinary shares:
 - (a) believed that the price of SRF's ordinary shares on the ASX as at the date of acquisition reflected all information that a reasonable person would expect to have a material effect on the price or value of SRF's ordinary shares; and
 - (b) relying on that belief purchased or obtained an interest in SRF's ordinary shares.
- (2). Further or alternatively, the First Plaintiff relied upon the EBITDA ASX Releases pleaded paragraphs 20 to 23 (inclusive) above in purchasing ordinary shares in SRF on 25 November 2015 and 29 December 2015.
- (3). The loss and damage suffered by the ~~Plaintiffs~~ Plaintiff and Group Members will be calculated by reference to:
 - (a) the difference between the price at which it or they acquired an interest in SRF's ordinary shares and the true value of that interest as at the date of purchase; or
 - (b) the difference between the price at which it or they acquired an interest in SRF's ordinary shares and the market value but for SRF's contravention as at the date of purchase; and

- (c) in the case of the ~~Plaintiffs~~ Plaintiff and some Group Members, in addition to any one or more of (a) and (b), the loss of the opportunity to achieve income or capital gain by use of the funds that were used to purchase SRF's shares.
- (4). Further particulars will be provided after serving the ~~Plaintiffs'~~ Plaintiff's expert evidence.

INSURANCE CLAIMS

115. By no later than around 30 September 2014, SRF and Chubb entered into a contract of insurance described as a Directors and Officers Liability Insurance Policy.

Particulars

- (i) The contract of insurance is referred to in correspondence dated 15 June 2016 from SRF to the "Financial Lines Claims Manager", Chubb which was disclosed to the plaintiff pursuant to the orders of Hammerschlag J on 4 August 2017 in Supreme Court of New South Wales representative class proceeding 2017/193375;
- (ii) The aforementioned correspondence describes a "Directors and Officers Liability Insurance Policy held by SRF for the period 30 September 2014 to 31 March 2016;
- (iii) The defendants have not disclosed any documents concerning a policy for a the period 30 September 2014 to 31 March 2016 nor disclosed or acknowledged that such a policy even exists;
- (iv) Further particulars will be provided after disclosure and this CLS will be amended if necessary to plead facts and matters relevant to any policy in addition to the Policy pleaded immediately below.
116. Notwithstanding the contract of insurance pleaded in the preceding paragraph, the defendants, at the time of this pleading, have disclosed documents revealing a second contract of insurance which covered the

period 31 March 2015 to 31 March 2016 and which was subsequently extended to cover the period between 31 March 2016 and 31 March 2017 (the D&O Policy).

Particulars

- (i) The D&O Policy is a written contract comprising documents entitled “General Terms and Conditions” and included Endorsement, “Directors and Officers Liability Coverage Section, Policy Wording” and included Schedules and Endorsements and bearing policy number 93552246;
- (ii) The Declaration to the D&O Policy records that a prior policy bearing the same policy number “93552246” for the “policy period 31 March 2015 to 31 March 2016” was terminated when the policy for the period 31 March 2016 to 31 March 2017 was bound;
- (iii) Further particulars will be provided after disclosure.

117. In the D&O Policy, Chubb agreed, subject to the other terms of the D&O Policy to insure SRF and the directors and officers of SRF against all Loss (as defined in the D&O Policy) resulting from any Claim (as defined in the D&O Policy) first made against SRF during the Policy Period (as defined in the D&O Policy) and reported either during the currency of the D&O Policy or during the Extended Reporting Period (as defined in the D&O Policy).

Particulars

- (i) The D&O Policy provided that Chubb “shall pay, on behalf of an Organisation, Loss on account of any Securities Claim first made during the Policy Period or if exercised, during the Extended Reporting Period, for a Wrongful Act occurring during the

Policy Period: Insuring Clause 1C entitled “Entity Securities Coverage”;

- (ii) The D&O Policy provided that Chubb “shall pay, on behalf of each Insured Person, Loss for which the Insured Person is not indemnified by an Organisation on account of any D&O Claim first made during the Policy Period or, if exercised, during the Extended Reporting Period, for a Wrongful Act occurring before or during the Policy Period”: Insuring Clause 1A entitled “Directors and Officers Liability Coverage”;
- (iii) “Insured Person” was defined in the D&O Policy as meaning, relevantly, any person who “was” a “Director or Officer of an Organisation”: Clause 3 “Definitions”;
- (iv) “Policy Period” was recorded in Item 3 of the Declarations to the D&O Policy to be from 4:00pm on 31 March 2016 to 4:00pm on 31 March 2017;
- (v) The “Extended Reporting Period” was recorded in Item 3 of the Schedule to the D&O Policy as (a), for “100% of the annual premium for an additional 365 days”; or (b) “Nil additional premium for 90 days” however the copy of the D&O Policy disclosed pursuant to Hammerschlag J’s orders of 4 August 2017 in Supreme Court of New South Wales representative class proceeding 2017/193375, does not reveal which option was adopted by SurfStitch;
- (vi) “D&O Claim” was defined in the D&O Policy as meaning, relevantly, “(a) a written demand for monetary damages or non-pecuniary relief” and “(b) a civil proceeding” against an Insured Person, individually or otherwise, for a Wrongful Act, including any appeal therefrom”: Clause 3 “Definitions”;
- (vii) “Organisation” was defined in the D&O Policy as meaning the “organisation designated in item 6” of the Schedule and “any Subsidiary or any one of them”. The organisation designated in item 6 was “SurfStitch Group Limited”: Clause 3 “Definitions”;
- (viii) “Insured” was defined in the D&O Policy as meaning, relevantly, the Organisation: Clause 3 “Definitions”;

- (ix) “Loss” was defined in the D&O Policy as meaning “the amount which the Insured becomes legally obligated to pay on account of any covered Claim including, but not limited to... (c) awards of damages or orders made by any court or tribunal to pay compensation including any statutory compensation orders whether made under Part 9.4B of the Corporations Act (Cth) 2001 or otherwise; (d) judgments; (e) sums payable due to any settlements to which [Chubb] has consented (f) awards of claimant’s costs (g) pre-judgment and post-judgment interest (h) punitive, exemplary or multiplied damages, aggravated damages... unless [Chubb] is legally prohibited from paying such damages... in the jurisdiction in which the Claim is determined: Clause 3 “Definitions”;
- (x) “Claim” was defined in the D&O Policy as meaning “(a) with respect to Insuring Clauses 1A... only: a D&O Claim”; (b) With respect to Insuring Clause 1.C only: a Securities Claim”: Clause 3 “Definitions”;
- (xi) “Securities Claim” was defined in the D&O Policy as meaning, relevantly “(a) a written demand for monetary damages or non-pecuniary relief” and “(b) civil proceeding... against [SurfStitch] for a Wrongful Act, including any appeal therefrom”: Clause 3 “Definitions”;
- (xii) “Wrongful Act” was defined in the D&O Policy as meaning “any act or omission, including but not limited to any error, misstatement, misleading statement, neglect, breach of trust, breach of warranty of authority or breach of duty committed, attempted or allegedly committed or attempted (a) with respect to Insuring Clauses 1A... only: by an Insured Person individually or otherwise in his Insured Capacity, or any matter claimed against such Insured Person solely by reason of his serving in such Insured Capacity; (b) with respect to Insuring Clause 1.C only: by any Insured with respect to the purchase or sale of, or offer to purchase or sell, any securities issued by an Organisation; or the ownership of securities of an Organisation: Clause 3 “Definitions”;

118. The D&O Policy provided that the limit of liability for each Loss (as defined) and for each Policy Period (as defined) was \$15,000,000 with a

Dedicated Additional Limit of Liability for Directors and Officers (in the aggregate) of \$1,000,000.

119. The D&O Policy provided that the applicable deductible amounts for Insuring Clause 1.A was “Nil” and for Insuring Clause 1.C was \$100,000.

Particulars

D&O Policy, Schedule, Item 3.

120. During the Policy Period or, alternatively, during the currency of the Extended Reporting Period, one or more written demands were made against the Second Defendant, each of which constituted a “Claim” for the purposes of the D&O Policy.

Particulars

- (i) On 28 June 2017 the summons and CLS relating to Supreme Court of New South Wales representative class proceeding 2017/193375 were filed in this court.

121. Further to the preceding paragraph, during the Policy Period or, alternatively, during the currency of the Extended Reporting Period, SRF gave written notice of circumstances to Chubb which could give rise to a Claim (as defined) under the D&O Policy.

Particulars

- (i) The D&O Policy provided that “the Insureds shall give to [Chubb] written notice of any Claim as soon as practicable and, in any event, no later than the expiration of the Extended Reporting Period. If, during the Policy Period or Extended Reporting Report, an Insured becomes aware of circumstances which could give rise to a Claim and gives written notice of such circumstances to the Company then any Claims subsequently arising from such circumstances shall be considered to

have been made during the Policy Period or the Extended Period [sic] in which the circumstances were first reported to [Chubb]. The Insureds shall give to [Chubb] such information and co-operation as it may reasonably require, including but not limited to a description of the Claim or circumstances, the nature of the alleged Wrongful Act, the nature of the alleged or potential loss, the names of actual or potential claimants, and the manner in which the Insured first became aware of the Claim or circumstances...: Clause 10 “Reporting and Notice”;

- (ii) On 15 June 2016, SurfStitch wrote to Chubb, such correspondence recording that the “purpose of this letter is to provide notification of circumstances that may give rise to claims under the Policy” being Policy Number 93552246 (ie, the D&O Policy). The copy of this correspondence disclosed pursuant to Hammerschlag J’s orders of 4 August 2017 in Supreme Court of New South Wales representative class proceeding 2017/193375, is heavily redacted;
- (iii) On 13 February 2017, Surfstitch wrote to Chubb, such correspondence referring to the 15 June 2016 letter in the preceding paragraph and recording that “the purpose of this letter is to update you as to the circumstances set out in the previous letter” and this “letter also constitutes notification of new circumstances pursuant to the “Reporting and Notice” clause of the Policy (Clause 10)”. The copy of this correspondence disclosed pursuant to Hammerschlag J’s orders of 4 August 2017 in Supreme Court of New South Wales representative class proceeding 2017/193375 is heavily redacted;
- (iv) Further particulars will be given after disclosure.

122. Further or in the alternative to the preceding paragraph, in the premises of paragraph 121:

- (a) SRF gave notice in writing to Chubb of facts that might give rise to a claim against it as soon as was practicable and, in any event,

no later than the expiration of the Extended Policy Period or before the Policy expired;

- (b) the facts so notified will be further particularised when the un-redacted versions of the notifications are disclosed; and
- (c) by operation of section 40(3) of the *Insurance Contract Act 1984* (Cth), Chubb is not relieved of liability under the D&O Policy in respect of the Claims, by reason only that the Claims were made after the expiration of the Policy Period.

123. In the event that the defendants were to incur a judgment debt in favour of the Plaintiff and Group Members in respect to the loss and damage pleaded above:

- (a) such payments will constitute a Loss (as defined in the D&O Policy) to an Insured resulting from one or more of the Claims referred to above; and
- (b) Chubb will be obliged by the D&O Policy to pay the First Defendant an amount equal to the amount that it is ordered to pay to the Plaintiff and Group Members, save to the extent that doing so would require Chubb to have paid a total of more than \$15million under the D&O Policy.

124. In the premises of the preceding paragraph:

- (a) the Court should declare that Chubb is obliged by the D&O Policy to pay the First Defendant an amount equal to such amount as each of them is ordered to pay the Plaintiff and Group Members, save to the extent that doing so would require Chubb to

have paid a total of more than \$15million under the D&O Policy;
and

- (b) by operation of s 4 of the *Civil Liability (Third Party Claims Against Insurers) Act 2017 (NSW)*, the Plaintiff and Group Members are entitled to an order requiring Chubb to pay them an amount equal to such total amount as the First Defendant may be ordered to pay them, save to the extent that doing so would require Chubb to have paid a total of more than \$15million under the D&O Policy.

ENTITLEMENT TO RELIEF

125. By reason of the matters pleaded above, the First Defendant is obliged to provide compensation pursuant to section 1317HA of the Corporations Act.
126. Further or in the alternative, the First Defendant is obliged to pay damages pursuant to section 1041I of the Corporations Act.
127. Further or in the alternative, the First Defendant is obliged to pay damages pursuant to section 12GF of the ASIC Act.
128. By reason of the matters pleaded in paragraphs above, the Plaintiff and each Group Member are entitled to an order that Chubb pay them an amount commensurate to the amounts ordered to be paid pursuant to an order under s 1317HA or s 1041I of the Corporations Act against the First Defendant to the limit of any policy of insurance between the First Defendant and Chubb.
129. Pursuant to statute and common law, the Plaintiff and the Group Members are entitled to be paid interest and costs.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO REFEREE

1. There are no questions appropriate for referral to a referee.

E. MEDIATION

1. The parties have not attempted mediation. The Plaintiff is willing to attend mediation at the appropriate time.

SIGNATURE

A handwritten signature in blue ink, appearing to read "Johnson Waters & Kelly" with a stylized flourish at the end.

Signature of legal representative

Capacity: Solicitor for the ~~Plaintiffs~~ Plaintiff

Date of Signature: 5 April 2019

SCHEDULE A

Purchaser	Date of purchase / transfer	Number of SRF's ordinary shares	Price per ordinary share	Brokerage and other charges	GST on brokerage	Amount paid including brokerage
First Plaintiff	23 November 2015	5,000	\$2.12	\$27.23	\$2.72	\$10,629.95
First Plaintiff	29 December 2015	5,000	\$1.89	\$18.14	\$1.81	\$9,469.95
Second and Third Plaintiffs	3 May 2016	25,000	\$0.4925	\$123.13	\$12.31	\$12,447.94
Plaintiff	27 April 2016	2,250	\$1.07	Further particulars may be provided prior to trial	Further particulars may be provided prior to trial	Further particulars may be provided prior to trial
Plaintiff	3 May 2016	3,000	\$0.48	Further particulars may be provided prior to trial	Further particulars may be provided prior to trial	Further particulars may be provided prior to trial
Plaintiff	3 May 2016	3,250	\$0.45	Further particulars may be provided prior to trial	Further particulars may be provided prior to trial	Further particulars may be provided prior to trial
Plaintiff	5 May 2016	3,500	\$0.56	Further particulars may be provided prior to trial	Further particulars may be provided prior to trial	Further particulars may be provided prior to trial
Plaintiff	10 May 2016	3,250	\$0.52	Further particulars may be provided prior to trial	Further particulars may be provided prior to trial	Further particulars may be provided prior to trial
Plaintiff	6 June 2016	3,250	\$0.41	Further particulars	Further particulars	Further particulars

				may be provided prior to trial	may be provided prior to trial	may be provided prior to trial
Plaintiff	15 June 2016	7,500	\$0.27	Further particulars may be provided prior to trial	Further particulars may be provided prior to trial	Further particulars may be provided prior to trial

SCHEDULE B

Date	Opening	High	Low	Close
27-Aug-15	\$1.65	\$1.87	\$1.65	\$1.82
31-Aug-15	\$1.78	\$1.83	\$1.78	\$1.82
1-Sep-15	\$1.82	\$1.83	\$1.76	\$1.80
2-Sep-15	\$1.79	\$1.79	\$1.76	\$1.77
3-Sep-15	\$1.77	\$1.80	\$1.70	\$1.77
4-Sep-15	\$1.72	\$1.72	\$1.68	\$1.68
7-Sep-15	\$1.70	\$1.75	\$1.67	\$1.72
8-Sep-15	\$1.71	\$1.72	\$1.68	\$1.68
9-Sep-15	\$1.69	\$1.69	\$1.64	\$1.67
10-Sep-15	\$1.68	\$1.70	\$1.66	\$1.70
11-Sep-15	\$1.71	\$1.72	\$1.66	\$1.70
14-Sep-15	\$1.66	\$1.72	\$1.63	\$1.66
15-Sep-15	\$1.66	\$1.66	\$1.66	\$1.66
16-Sep-15	\$1.66	\$1.71	\$1.66	\$1.67
17-Sep-15	\$1.70	\$1.70	\$1.66	\$1.69
18-Sep-15	\$1.70	\$1.75	\$1.70	\$1.73
21-Sep-15	\$1.72	\$1.72	\$1.67	\$1.70
22-Sep-15	\$1.71	\$1.75	\$1.70	\$1.75
23-Sep-15	\$1.71	\$1.78	\$1.71	\$1.74
24-Sep-15	\$1.72	\$1.76	\$1.72	\$1.73
25-Sep-15	\$1.74	\$1.75	\$1.67	\$1.68
28-Sep-15	\$1.68	\$1.72	\$1.66	\$1.68
29-Sep-15	\$1.67	\$1.74	\$1.64	\$1.74
30-Sep-15	\$1.65	\$1.70	\$1.60	\$1.63

Date	Opening	High	Low	Close
1-Oct-15	\$1.64	\$1.64	\$1.53	\$1.58
2-Oct-15	\$1.58	\$1.58	\$1.55	\$1.58
5-Oct-15	\$1.57	\$1.58	\$1.44	\$1.51
6-Oct-15	\$1.51	\$1.53	\$1.38	\$1.40
7-Oct-15	\$1.40	\$1.55	\$1.40	\$1.51
8-Oct-15	\$1.52	\$1.67	\$1.51	\$1.67
9-Oct-15	\$1.70	\$1.77	\$1.68	\$1.75
12-Oct-15	\$1.77	\$1.77	\$1.72	\$1.72
13-Oct-15	\$1.71	\$1.71	\$1.63	\$1.66
14-Oct-15	\$1.66	\$1.66	\$1.61	\$1.64
15-Oct-15	\$1.70	\$1.70	\$1.65	\$1.68
16-Oct-15	\$1.68	\$1.69	\$1.67	\$1.69
19-Oct-15	\$1.69	\$1.70	\$1.65	\$1.70
20-Oct-15	\$1.70	\$1.70	\$1.60	\$1.68
21-Oct-15	\$1.68	\$1.71	\$1.68	\$1.69
22-Oct-15	\$1.71	\$1.71	\$1.65	\$1.67
23-Oct-15	\$1.67	\$1.71	\$1.67	\$1.71
26-Oct-15	\$1.69	\$1.73	\$1.68	\$1.73
27-Oct-15	\$1.73	\$1.73	\$1.71	\$1.73
28-Oct-15	\$1.71	\$1.72	\$1.69	\$1.72
29-Oct-15	\$1.71	\$1.74	\$1.70	\$1.72
30-Oct-15	\$1.72	\$1.77	\$1.72	\$1.77
2-Nov-15	\$1.76	\$1.78	\$1.75	\$1.78
3-Nov-15	\$1.75	\$1.77	\$1.75	\$1.76
4-Nov-15	\$1.76	\$1.77	\$1.75	\$1.75

Date	Opening	High	Low	Close
5-Nov-15	\$1.76	\$1.78	\$1.71	\$1.78
6-Nov-15	\$1.78	\$1.78	\$1.66	\$1.66
9-Nov-15	\$1.65	\$1.77	\$1.65	\$1.71
10-Nov-15	\$1.69	\$1.78	\$1.68	\$1.78
11-Nov-15	\$1.82	\$1.91	\$1.82	\$1.91
12-Nov-15	\$1.95	\$2.02	\$1.95	\$1.99
13-Nov-15	\$1.99	\$2.00	\$1.93	\$1.94
16-Nov-15	\$1.98	\$2.01	\$1.93	\$1.95
17-Nov-15	\$1.98	\$1.99	\$1.90	\$1.90
18-Nov-15	\$1.95	\$1.97	\$1.86	\$1.94
19-Nov-15	\$1.96	\$1.98	\$1.93	\$1.93
20-Nov-15	\$1.95	\$1.99	\$1.93	\$1.97
23-Nov-15	\$2.00	\$2.13	\$2.00	\$2.09
24-Nov-15	\$2.11	\$2.12	\$2.04	\$2.06
25-Nov-15				\$2.06
26-Nov-15	\$2.10	\$2.11	\$1.95	\$2.00
27-Nov-15	\$2.01	\$2.02	\$1.97	\$1.98
30-Nov-15	\$1.98	\$2.04	\$1.97	\$2.03
1-Dec-15	\$2.06	\$2.06	\$1.98	\$1.98
2-Dec-15	\$2.03	\$2.05	\$1.98	\$2.00
3-Dec-15	\$2.02	\$2.02	\$1.98	\$2.00
4-Dec-15	\$1.98	\$2.03	\$1.96	\$1.99
7-Dec-15	\$2.02	\$2.02	\$1.92	\$1.94
8-Dec-15	\$1.94	\$1.98	\$1.92	\$1.92
9-Dec-15	\$1.96	\$1.96	\$1.90	\$1.95

Date	Opening	High	Low	Close
10-Dec-15	\$1.95	\$1.97	\$1.87	\$1.90
11-Dec-15	\$1.87	\$1.92	\$1.87	\$1.89
14-Dec-15	\$1.87	\$1.90	\$1.86	\$1.90
15-Dec-15	\$1.89	\$1.96	\$1.87	\$1.95
16-Dec-15	\$1.95	\$1.97	\$1.94	\$1.95
17-Dec-15	\$1.96	\$1.97	\$1.93	\$1.95
18-Dec-15	\$1.95	\$1.97	\$1.94	\$1.94
21-Dec-15	\$1.94	\$1.94	\$1.86	\$1.88
22-Dec-15	\$1.88	\$1.93	\$1.87	\$1.89
23-Dec-15	\$1.89	\$1.91	\$1.87	\$1.89
24-Dec-15	\$1.94	\$1.94	\$1.87	\$1.88
25-Dec-15				\$1.88
28-Dec-15				\$1.88
29-Dec-15	\$1.88	\$1.89	\$1.86	\$1.88
30-Dec-15	\$1.89	\$1.94	\$1.88	\$1.93
31-Dec-15	\$1.94	\$1.94	\$1.87	\$1.90
1-Jan-16				\$1.90
4-Jan-16	\$1.89	\$1.94	\$1.89	\$1.90
5-Jan-16	\$1.90	\$1.90	\$1.82	\$1.85
6-Jan-16	\$1.86	\$1.87	\$1.85	\$1.86
7-Jan-16	\$1.86	\$1.86	\$1.82	\$1.84
8-Jan-16	\$1.82	\$1.82	\$1.70	\$1.80
11-Jan-16	\$1.72	\$1.81	\$1.72	\$1.77
12-Jan-16	\$1.77	\$1.81	\$1.74	\$1.80
13-Jan-16	\$1.82	\$1.84	\$1.75	\$1.80

Date	Opening	High	Low	Close
14-Jan-16	\$1.76	\$1.76	\$1.70	\$1.74
15-Jan-16	\$1.67	\$1.73	\$1.65	\$1.72
18-Jan-16	\$1.71	\$1.71	\$1.65	\$1.67
19-Jan-16	\$1.67	\$1.69	\$1.67	\$1.67
20-Jan-16	\$1.67	\$1.70	\$1.64	\$1.68
21-Jan-16	\$1.67	\$1.69	\$1.65	\$1.67
22-Jan-16	\$1.68	\$1.73	\$1.68	\$1.69
25-Jan-16	\$1.72	\$1.82	\$1.72	\$1.77
26-Jan-16				\$1.77
27-Jan-16	\$1.80	\$1.80	\$1.73	\$1.76
28-Jan-16	\$1.76	\$1.80	\$1.70	\$1.76
29-Jan-16	\$1.76	\$1.83	\$1.72	\$1.83
1-Feb-16	\$1.84	\$1.84	\$1.75	\$1.76
2-Feb-16	\$1.76	\$1.80	\$1.71	\$1.74
3-Feb-16	\$1.75	\$1.81	\$1.74	\$1.76
4-Feb-16	\$1.76	\$1.78	\$1.70	\$1.77
5-Feb-16	\$1.74	\$1.77	\$1.72	\$1.75
8-Feb-16	\$1.75	\$1.75	\$1.67	\$1.70
9-Feb-16	\$1.71	\$1.71	\$1.65	\$1.65
10-Feb-16	\$1.65	\$1.66	\$1.59	\$1.64
11-Feb-16	\$1.63	\$1.66	\$1.61	\$1.63
12-Feb-16	\$1.63	\$1.68	\$1.60	\$1.64
15-Feb-16	\$1.66	\$1.71	\$1.64	\$1.66
16-Feb-16	\$1.70	\$1.71	\$1.65	\$1.68
17-Feb-16	\$1.70	\$1.71	\$1.68	\$1.68

Date	Opening	High	Low	Close
18-Feb-16	\$1.71	\$1.81	\$1.71	\$1.79
19-Feb-16	\$1.75	\$1.75	\$1.68	\$1.68
22-Feb-16	\$1.70	\$1.73	\$1.60	\$1.70
23-Feb-16	\$1.75	\$1.75	\$1.71	\$1.71
24-Feb-16	\$1.75	\$1.75	\$1.66	\$1.73
25-Feb-16	\$1.79	\$1.79	\$0.99	\$1.14
26-Feb-16	\$1.18	\$1.23	\$1.03	\$1.07
29-Feb-16	\$1.15	\$1.27	\$1.11	\$1.24
1-Mar-16	\$1.25	\$1.25	\$1.16	\$1.18
2-Mar-16	\$1.20	\$1.24	\$1.18	\$1.18
3-Mar-16	\$1.20	\$1.23	\$1.20	\$1.22
4-Mar-16	\$1.23	\$1.26	\$1.22	\$1.24
7-Mar-16	\$1.23	\$1.26	\$1.20	\$1.20
8-Mar-16	\$1.21	\$1.25	\$1.17	\$1.17
9-Mar-16	\$1.21	\$1.23	\$1.18	\$1.19
10-Mar-16	\$1.44	\$1.45	\$1.29	\$1.32
11-Mar-16	\$1.35	\$1.44	\$1.34	\$1.40
14-Mar-16	\$1.40	\$1.42	\$1.39	\$1.40
15-Mar-16	\$1.41	\$1.42	\$1.35	\$1.37
16-Mar-16	\$1.38	\$1.38	\$1.33	\$1.38
17-Mar-16	\$1.39	\$1.40	\$1.35	\$1.38
18-Mar-16	\$1.38	\$1.42	\$1.35	\$1.35
21-Mar-16	\$1.37	\$1.39	\$1.34	\$1.39
22-Mar-16	\$1.39	\$1.40	\$1.34	\$1.39
23-Mar-16	\$1.40	\$1.40	\$1.38	\$1.40

Date	Opening	High	Low	Close
24-Mar-16	\$1.38	\$1.42	\$1.37	\$1.41
25-Mar-16				\$1.41
28-Mar-16				\$1.41
29-Mar-16	\$1.40	\$1.41	\$1.39	\$1.40
30-Mar-16	\$1.39	\$1.39	\$1.33	\$1.37
31-Mar-16	\$1.34	\$1.40	\$1.32	\$1.39
1-Apr-16	\$1.38	\$1.39	\$1.36	\$1.37
4-Apr-16	\$1.37	\$1.39	\$1.36	\$1.37
5-Apr-16	\$1.37	\$1.37	\$1.36	\$1.36
6-Apr-16	\$1.37	\$1.37	\$1.35	\$1.36
7-Apr-16	\$1.37	\$1.37	\$1.35	\$1.37
8-Apr-16	\$1.36	\$1.37	\$1.34	\$1.35
11-Apr-16	\$1.34	\$1.37	\$1.32	\$1.37
12-Apr-16	\$1.34	\$1.37	\$1.34	\$1.37
13-Apr-16	\$1.37	\$1.38	\$1.35	\$1.36
14-Apr-16	\$1.37	\$1.38	\$1.33	\$1.34
15-Apr-16	\$1.34	\$1.35	\$1.33	\$1.33
18-Apr-16	\$1.33	\$1.35	\$1.28	\$1.30
19-Apr-16	\$1.28	\$1.28	\$1.20	\$1.21
20-Apr-16	\$1.23	\$1.24	\$1.15	\$1.18
21-Apr-16	\$1.19	\$1.23	\$1.19	\$1.23
22-Apr-16	\$1.22	\$1.24	\$1.14	\$1.15
25-Apr-16				\$1.15
26-Apr-16	\$1.17	\$1.17	\$1.02	\$1.10
27-Apr-16	\$1.10	\$1.12	\$1.05	\$1.06

Date	Opening	High	Low	Close
28-Apr-16	\$1.07	\$1.10	\$1.05	\$1.08
29-Apr-16	\$1.07	\$1.09	\$1.05	\$1.05
2-May-16	\$1.05	\$1.05	\$1.03	\$1.04
3-May-16	\$0.44	\$0.55	\$0.42	\$0.48
4-May-16	\$0.47	\$0.57	\$0.45	\$0.54
5-May-16	\$0.56	\$0.59	\$0.54	\$0.57
6-May-16	\$0.58	\$0.59	\$0.55	\$0.57
9-May-16	\$0.58	\$0.59	\$0.52	\$0.55
10-May-16	\$0.55	\$0.55	\$0.52	\$0.54
11-May-16	\$0.53	\$0.54	\$0.52	\$0.54
12-May-16	\$0.53	\$0.54	\$0.51	\$0.54
13-May-16	\$0.52	\$0.56	\$0.52	\$0.55
16-May-16	\$0.55	\$0.56	\$0.53	\$0.53
17-May-16	\$0.53	\$0.54	\$0.52	\$0.52
18-May-16	\$0.52	\$0.53	\$0.50	\$0.50
19-May-16	\$0.50	\$0.50	\$0.46	\$0.48
20-May-16	\$0.49	\$0.49	\$0.45	\$0.45
23-May-16	\$0.47	\$0.47	\$0.45	\$0.45
24-May-16	\$0.45	\$0.46	\$0.44	\$0.44
25-May-16	\$0.45	\$0.48	\$0.45	\$0.46
26-May-16	\$0.46	\$0.46	\$0.45	\$0.45
27-May-16	\$0.45	\$0.47	\$0.45	\$0.47
30-May-16	\$0.46	\$0.49	\$0.46	\$0.48
31-May-16	\$0.48	\$0.49	\$0.47	\$0.48
1-Jun-16	\$0.47	\$0.48	\$0.45	\$0.45

Date	Opening	High	Low	Close
2-Jun-16	\$0.45	\$0.46	\$0.43	\$0.46
3-Jun-16	\$0.45	\$0.45	\$0.39	\$0.43
6-Jun-16	\$0.43	\$0.43	\$0.41	\$0.41
7-Jun-16				\$0.41
8-Jun-16				\$0.41
9-Jun-16	\$0.30	\$0.35	\$0.25	\$0.32