Form 1

Practice Note No. SC Eq 3

AMENDED COMMERCIAL LIST RESPONSE

(Amended pursuant to the Orders of the Honourable Justice Stevenson made on 9 February 2018)

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2017/00193375

TITLE OF PROCEEDINGS

Plaintiff	**TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund**
First defendant	**SurfStitch Group Limited ACN 602 288 004**
Second defendant	**Justin Peter Cameron**

FILING DETAILS

Filed for	**Justin Peter Cameron** Second Defendant
Filed in relation to	Plaintiff's claim
Legal representative	Zaven Mardirossian, Arnold Bloch Leibler
Legal representative reference	011904771
Contact name and telephone	Zaven Mardirossian 61 3 9229 9635
Contact email	zmardirossian@abl.com.au

COMMERCIAL LIST RESPONSE

Subject to any express admissions made below, this Commercial List Response has been prepared so as to preserve any claims for privilege, including the privilege against self-exposure to a penalty, to which the Second Defendant is entitled and otherwise should not be taken to constitute a waiver of any privilege to which the Second Defendant is entitled.

The Second Defendant also reserves all rights and privileges he has to amend, or seek leave to amend, this Commercial List Response at a later stage of this proceeding to plead matters in response to allegations in the Plaintiff's Contentions that the Second Defendant has, in this Commercial List Response, not admitted or otherwise pleaded to on the basis that doing so may expose him to a penalty.

A. NATURE OF DISPUTE

The Plaintiff has brought proceedings against an ASX-listed company (First Defendant) and that company's former Chief Executive Officer (Second Defendant) in respect of alleged contraventions of statutory reporting requirements (in particular, in relation to the company's financial position) in the period from October 2015 to June 2016.

B. ISSUES LIKELY TO ARISE

1. Whether the First Defendant or the Second Defendant breached various statutory reporting obligations as alleged by the Plaintiff.
2. Whether the Second Defendant was involved in any breach by the First Defendant of various statutory reporting obligations as alleged by the Plaintiff.
3. Whether any of the alleged breaches of statutory reporting obligations affected the price at which shares in the First Defendant were, or would have been, bought and sold.
4. Whether the Plaintiff and Group Members suffered loss or damage as alleged by the Plaintiff.
5. The quantification of any damages to which the Plaintiff or a Group Member is entitled.

6. Whether any liability of the Second Defendant should be reduced on account of proportionate liability or by reason of him having acted honestly and reasonably.

C. SECOND DEFENDANT'S RESPONSE TO PLAINTIFF'S CONTENTIONS

A. PARTIES

A.1 The Plaintiff and Group Members

1 Paragraph 1 makes no allegation against the Second Defendant (**Cameron**) and he does not plead to it.

2 Cameron admits the allegations in paragraph 2.

3 Cameron does not know and therefore does not admit the allegations in paragraph 3.

4 Cameron does not know and therefore does not admit the allegations in paragraph 4.

5 Cameron does not plead to paragraph 5 as it contains no allegations against him.

6 Cameron does not know and therefore does not admit the allegations in paragraph 6.

A.2 SurfStitch

7 Cameron:

(a) admits the allegations in paragraphs 7(a), (g), (h) and (i) and says further that:

(i) at all material times since at least 16 December 2014, SurfStitch has been the parent company of a group of companies (**Group**); and

(ii) on 24 August 2017 the directors of SurfStitch appointed administrators of SurfStitch under Part 5.3A of the *Corporations Act 2001*; and

(b) admits the allegations in paragraphs 7(b), (c), (d), (e) and (f) in relation to the period from 16 December 2014 to 25 May 2017, otherwise denies the allegations in those paragraphs and says further that SurfStitch was suspended from the ASX Official Quotation on 26 May 2017.

8 Cameron:

(a) admits that from the Listing Date until 25 May 2017 there existed investors and potential investors in SurfStitch Securities on the ASX; and

(b) otherwise denies the allegations in paragraph 8.

A.3 The Second Defendant

9 Cameron:

(a) admits the allegations in paragraph 9(a);

(b) admits the allegations in paragraph 9(b) in relation to the period from 16 December 2014 to the time of his resignation at 9:09 pm on 9 March 2016; and

(c) otherwise denies the allegations in paragraph 9(b).

B. SURFSTITCH REPORTING REQUIREMENTS

B.1 Corporations Act reporting requirements

10 Cameron:

(a) admits the allegations in paragraph 10 in relation to the period from 16 December 2014 to 25 May 2017 in respect of those accounting standards in force under s 334 of the *Corporations Act 2001* at the relevant time;

(b) otherwise denies the allegations in paragraph 10; and

(c) refers to and repeats paragraph 7(b) above.

B.2 Accounting Standards

11 Cameron admits the allegations in paragraph 11.

12 Cameron:

(a) does not admit the allegations in paragraph 12(a); and

(b) admits the allegations in paragraph 12(b).

13 Cameron:

(a) admits the allegations in paragraph 13(a);

(b) repeats 12(b) above, otherwise denies the allegations in paragraph 13(b) of the Plaintiff's Contentions and says further that the Framework states that it:

(i) applies to annual reporting periods beginning on or after 1 July 2014 (page 8 of the Framework); and

(ii) is not an Australian Accounting Standard and hence does not define standards for any particular measurement or disclosure issue (paragraph 2 of the Framework);

(c) admits that the Framework states:

(i) the definition of income encompasses both revenue and gains (paragraph 74 of the Framework); and

(ii) income is recognised in the income statement when an increase in future economic benefits related to an increase in an asset or a decrease of a liability has arisen that can be measured reliably (paragraph 92 of the Framework); and

(d) otherwise denies the allegations in paragraph 13(c) and will rely upon the full text of the Framework at trial.

14 Cameron:

(a) does not admit the allegations in paragraph 14(a);

(b) says further that AASB 118 applies to annual reporting periods beginning on or after 1 January 2005 (paragraph Aus1.2 of AASB 118); and

(c) admits the allegations in paragraph 14(b), save that he says the statement in AASB 118 referred to in paragraph 14(b)(ii) does not include the words "pursuant to which those royalties were payable".

15 Cameron:

(a) does not admit the allegations in paragraph 15(a);

(b) admits the allegations in paragraph 15(b) save that he says:

(i) the definition in AASB 136 referred to in paragraph 15(b)(i) includes, at the end of the definition, the word "thereon"; and

(ii) the definition in AASB 136 referred to in paragraph 15(b)(ii) refers to "groups of assets", not "a group of assets";

(c) admits the allegations in paragraph 15(c)(i) to (iv);

(d) denies the allegations in paragraph 15(c)(v); and

(e) says further that at all material times AASB 136 provided that an impairment loss was not required to be recognised immediately in profit or loss if the asset was carried at revalued amount in accordance with another Standard (paragraph 60).

B.3 ASX Listing Requirements

16 Cameron:

(a) admits the allegations in paragraph 16 save that he denies the allegations in paragraph 16(c)(iii); and

(b) says further that, by its terms, Rule 4.5 of the ASX Listing Rules applies to an entity established (as opposed to registered) in Australia.

C. SURFSTITCH'S BUSINESS

17 Cameron:

(a) admits that entities within the Group carried on business as online retailers of action sports goods, including:

(i) in the Asia Pacific Region;

(ii) in Australia; and

(iii) through the website surfstitch.com; and

(b) otherwise denies the allegations in paragraph 17.

18 Cameron:

(a) admits the allegations in paragraph 18(a);

(b) denies the allegations in paragraph 18(b); and

(c) says further that SHPL or one of its subsidiaries purchased a company or business in the United States that had commenced operating as an online retailer of branded action sports goods in the United States prior to the acquisition.

19 Cameron:

(a) admits the allegations in paragraph 19(a);

(b) denies the allegations in paragraph 19(b); and

(c) says further that SHPL or one of its subsidiaries purchased shares in SSL, which was a company that had commenced operating as an online retailer of branded actions sports good in Europe prior to the acquisition.

20 Cameron:

(a) admits the allegations in paragraphs 20(a) and (b);

(b) denies the allegations in paragraph 20(c); and

(c) says further that SurfStitch or one of its subsidiaries purchased shares in Magic Seaweed and Rollingyouth, which were companies with existing businesses as producers of online media content.

21 Cameron:

(a) admits that in May 2015 SurfStitch:

(i) had a strategy of operating a destination online site for consumers to connect with things related to action sports (ASX announcement 13 May 2015, page 2); and

(ii) expected the acquisitions of Magicseaweed and Stab Magazine would reduce the Group's reliance on external marketing channels (ASX announcement 13 May 2015, page 2);

(b) admits that in August 2015, SurfStitch:

(i) had a strategy of operating a destination online site for action sports and youth lifestyle content and online retail (FY2015 Financial Report, page 8);

(ii) considered there were both financial and improved brand recognition implications of capturing customers through content-rich media engagement and linking with them all the way through purchase (27 August 2015 Announcement, page 6); and

(iii) announced that it would consolidate six platforms (Surfstitch.com, Surfdome.com, Swell.com, Stabmag.com, magicseaweed.com and theLens) into one ecommerce website under the brand name SWELL (27 August 2015 Announcement, page 6);

(c) otherwise denies the allegations in paragraph 21; and

(d) says further that:

(i) he will rely at trial on the full text of the documents referred to in this paragraph 21 of his Commercial List Response; and

(ii) after his resignation referred to in paragraph 9(b) above, SurfStitch changed its strategy by, *inter alia*, deciding it was not necessary to own media businesses, deciding not to proceed with the re-branding referred to in sub-paragraph (b)(iii) above, and the Group selling each of:

(A) the Garage Entertainment business comprising Garage Entertainment Aust. Pty Ltd and TMG Media Pty Ltd;

(B) the business and assets of Rollingyouth Pty Ltd trading as STAB Magazine;

(C) the business and assets of Magicseaweed Limited and Metcentral Limited; and

(D) SSL.

Particulars

SurfStitch ASX announcement 16 November 2016, *SurfStitch Group 2016 Annual General Meeting*, pages 4 and 5 (CEO's address)

SurfStitch ASX announcement 19 April 2017, *Market Update: Sale of Garage Entertainment*, page 1

SurfStitch ASX announcement 8 September 2017, *Market Update: Sale of STAB Magazine*, page 1

SurfStitch ASX announcement 19 September 2017, *Market Update: Sale of Magicseaweed*, page 1

SurfStitch ASX announcement 12 October 2017, *Market Update: Sale of Surfdome Shop Limited,* page 1

D. AUGUST 2015 ANNOUNCEMENTS

22 Cameron:

(a) admits that on or about 27 August 2015 SurfStitch announced:

(i) pro forma revenue for FY2015 was $199.4 million (FY2015 Financial Report, page 6);

(ii) pro forma EBITDA for FY2015 was $7.7 million (FY2015 Financial Report, page 6);

(iii) it expected EBITDA for FY2016 to range between consensus estimates of $15 million and $18 million (27 August 2015 Announcement, page 7 and slide 22); and

(iv) it expected EBITDA to have a stronger second half in FY2016 as a rebranding and strategic plan gained further traction (27 August 2015 Announcement, page 7 and slide 22);

(b) otherwise denies the allegations in paragraph 22; and

(c) says further that:

(i) as part of those announcements, SurfStitch also stated words to the effect that each of the statements referred to in sub-paragraphs (a)(iii) and (a)(iv) above:

(A) was not a guarantee of future performance;

(B) involved known and unknown risks, uncertainties and other factors, many of which are outside the control of SurfStitch;

(C) may vary materially from actual results, performance or achievements;

(D) should not be unduly relied on;

(E) was current only as at the date of the announcement;

(27 August 2015 Announcement, page 8)

(F) was based on current expectations;

(G) involved risk and uncertainty because it related to events and depended on circumstances that may or may not occur in the future;

(H) may differ materially from actual results because of a number of factors;

(I) may not actually be achieved because of underlying assumptions that could prove inaccurate or incorrect;

(J) should not be construed as a profit forecast or profit estimate;

(K) should not be unduly relied on by investors or other recipients;

(L) was not subject to any undertaking by SurfStitch to update or revise (publicly or otherwise) the statement, whether as a result of new information, future events or other circumstances; and

(M) did not constitute an invitation or inducement to any person to subscribe for or otherwise acquire securities in SurfStitch; and

(27 August 2015 Announcement, slide 30)

(ii) he will rely at trial on the full text of the announcements; and

(d) says further that at all material times the statements referred to in sub-paragraphs (a)(iii) and (a)(iv) above and subsequent ASX announcements by SurfStitch regarding its financial performance were based on internal forecasting by the Group that involved the following:

(i) in or around June 2015, each business within the Group prepared a 12-month financial forecast;

(ii) SurfStitch's Financial Team (SurfStitch's Chief Financial Officer Karen Birner and SurfStitch's Regional Finance Managers) then:

(A) consolidated the 12-month forecast of each business within the Group; and

(B) prepared a 12-month forecast for the Group's operating and management expenses,

to produce a 12-month financial forecast for the Group;

(iii) SurfStitch's Executive Team (comprising Cameron, Lex ~~Pederson~~ Pedersen, Justin Stone, Karen Birner and Mark Storey) reviewed and approved the consolidated forecast;

(iv) every month, the Managing Director of each business within the Group reviewed updated financial reports relating to their business and advised the Financial Team of any changes they thought should be made to the financial forecast for their business;

(v) when the Group acquired a business, the Financial Team and the Executive Team reviewed the consolidated forecast in light of the acquisition; and

(vi) in preparing, reviewing and approving internal forecasts, the relevant officers, employees and agents of the Group had regard to financial and other information relating to the Group such as:

(A) previous years' financial performance;

(B) trends in the financial performance of previous years;

(C) sales figures;

(D) revenue growth;

(E) sales margins;

(F) marketing activities and investment by the Group; and

(G) market information that the Group became aware of.

E. OCTOBER 2015 ANNOUNCEMENT

E.1 October 2015 Conduct

23 Cameron:

(a) admits that on 23 October 2015, SurfStitch made an announcement to the ASX in which it stated words to the effect that it expected EBITDA for FY2016 to range between consensus estimates of $15 million and $18 million (pages 13 and 24);

(b) otherwise denies the allegations in paragraph 23; and

(c) says further that:

(i) as part of that announcement SurfStitch also stated (page 24) words to the effect that the statement referred to in sub-paragraph (a) above:

(A) was based on current expectations;

(B) involved risk and uncertainty because it related to events and depended on circumstances that may or may not occur in the future;

(C) may differ materially from actual results because of a number of factors;

(D) may not actually be achieved because of underlying assumptions that could prove inaccurate or incorrect;

(E) should not be construed as a profit forecast or profit estimate;

(F) should not be unduly relied on by investors or other recipients;

(G) was not subject to any undertaking by SurfStitch to update or revise (publicly or otherwise) the statement, whether as a result of new information, future events or other circumstances; and

(H) did not constitute an invitation or inducement to any person to subscribe for or otherwise acquire securities in SurfStitch; and

(ii) he will rely at trial on the full text of the announcement.

24 Cameron:

(a) refers to and repeats paragraphs 22 and 23 above; and

(b) denies the allegations in paragraph 24 of the Plaintiff's Contentions.

25 Cameron:

(a) refers to and repeats paragraphs 22 and 23 above;

(b) admits that prior to 25 February 2016 SurfStitch did not withdraw the statements referred to in paragraph 23 above; and

(c) otherwise denies the allegations in paragraph 25 of the Plaintiff's Contentions.

26 Cameron:

(a) refers to and repeats paragraph 23 above;

(b) admits that the statements by SurfStitch referred to in paragraph 23 above were made in trade or commerce;

(c) admits that the statements by SurfStitch referred to in paragraph 23 above were in relation to financial products within the meaning of s 763A(1)(a) and s 764A(1)(a) of the *Corporations Act 2001* and s 12BAA of the *ASIC Act 2001*;

(d) admits that the statement by SurfStitch referred to in paragraph 23(a) above was made by SurfStitch with respect to a future matter;

(e) says that the statement referred to in paragraph 23(a) above was made on the basis of forecasting conducted in accordance with the process pleaded in paragraph 22(d) above;

(f) says that there were reasonable grounds for making the statement referred to in paragraph 23(a) above; and

Particulars

Cameron repeats the matters pleaded in paragraphs 22(d) and 23(c) above.

The reasonable grounds include:

(i) The expected EBITDA range of between $15 million and $18 million was calculated based on an assumption that revenue growth for FY2016 would be consistent with revenue growth for FY2015.

(ii) SurfStitch was in a growth phase and had achieved significant revenue growth over previous years.

(iii) SurfStitch had been experiencing sales growth for FY2016 up to and including 23 October 2015.

(iv) There was a significant consumer trend globally towards online retail at the expense of bricks and mortar retailers.

(v) Major action sports companies such as Billabong and Quiksilver were no longer able to financially support their retail distribution chains, with the result that small surf and action sports retailers were ceasing business.

(vi) The Group's sales represented only about 1% of global action sports sales, and so there was significant potential for future sales growth.

Further particulars may be provided at a later date.

(g) otherwise denies the allegations in paragraph 26 of the Plaintiff's Contentions.

E.2 True State of Affairs in October 2015

27 Cameron:

(a) refers to and repeats paragraphs 22, 23 and 26(e) and (f) above;

(b) admits that, as at 23 October 2015, there was a risk that the Group would achieve EBITDA in FY2016 that differed materially from the range of $15 million to $18 million;

(c) admits that, as at 23 October 2015, SurfStitch purchased inventory based on its expectation referred to in paragraph 22(a)(iii); and

(d) otherwise denies the allegations in paragraph 27 of the Plaintiff's Contentions.

E.3 October Continuous Disclosure

28 Cameron:

(a) refers to and repeats paragraphs 22, 23 and 26(e) and (f) above;

(b) admits that SurfStitch had the information referred to in paragraph 27(b) above by no later than 23 October 2015;

(c) otherwise denies the allegations in paragraph 28 of the Plaintiff's Contentions; and

(d) says further that SurfStitch disclosed the information referred to in paragraph 27(b) above in its announcement on 23 October 2015 (page 24).

29 Cameron:

(a) refers to and repeats paragraph 28 above; and

(b) denies the allegations in paragraph 29 of the Plaintiff's Contentions.

30 Cameron:

(a) admits that on and from 23 October 2015 he knew the information referred to in paragraph 27(b) above;

(b) otherwise denies the allegations in paragraph 30 of the Plaintiff's Contentions;

(c) alternatively, says that he did not contravene s 674(2A) of the *Corporations Act 2001* because, in accordance with s 674(2B) of that Act, he:

(i) took all steps that were reasonable in the circumstances to ensure that SurfStitch complied with its obligations under s 674(2) of that Act; and

Particulars

Cameron repeats the matters pleaded in paragraphs 22(d), 23 and 26(e) and (f) above, and further says that he relied on the conduct of Surfstitch management pleaded in paragraph 22(d) above and believed that the forecasts were reasonable having regard to the matters pleaded in paragraph 26(f) above.

(ii) after doing so, believed on reasonable grounds that SurfStitch was complying with its obligations under s 674(2) of that Act; and

(d) refers to and repeats paragraphs 22, 26, 27, 28 and 29 above.

E.4 October Representations – not false and misleading

31 Cameron:

(a) denies the allegations in paragraph 31(a) and (c);

(b) does not admit the allegations in paragraph 31(b); and

(c) refers to and repeats paragraphs 22, 26, 27 and 28 above.

32 Cameron:

(a) denies the allegations in paragraph 32; and

(b) refers to and repeats paragraph 31 above.

E.5 October Representations – not misleading and deceptive

33 Cameron:

(a) denies the allegations in paragraph 33; and

(b) refers to and repeats paragraphs 22, 26, 27 and 28 above.

E.6 Cameron's Involvement

34 Cameron:

(a) admits that he was a member of the Board of Directors of SurfStitch which approved the ASX announcement referred to in paragraph 23(a) above;

(b) otherwise denies the allegations in paragraph 34; and

(c) refers to and repeats paragraphs 23 and 24 above.

35 Cameron:

(a) refers to and repeats paragraph 30(a) above;

(b) otherwise denies the allegations in paragraph 35; and

(c) refers to and repeats paragraphs 22, 27, 28, 31 and 33 above.

36 Cameron:

(a) denies the allegations in paragraph 36; and

(b) refers to and repeats paragraphs 34 and 35 above.

E.7 Market effects

37 Cameron:

(a) denies the allegations in paragraph 37; and

(b) refers to and repeats paragraphs 28, 29, 31, 32 and 33 above.

F. NOVEMBER 2015

F.1 November 2015 Conduct

38 Cameron:

(a) admits that on 10 November 2015, he gave a presentation at the Annual General Meeting of SurfStitch and stated words to the effect that SurfStitch reaffirmed that it expected EBITDA for FY2016 to range between $15 million and $18 million (CEO Presentation, page 10);

(b) admits that on 12 November 2015, SurfStitch made an announcement to the ASX in which it stated words to the effect that (page 1):

(i) it had entered into definitive agreements to acquire Garage for a total consideration of $15 million on 11 November 2015; and

(ii) it reaffirmed that it expected EBITDA of between $15 million and $18 million for FY2016;

(c) otherwise denies the allegations in paragraph 38; and

(d) says further that:

(i) as part of the announcements referred to in sub-paragraphs (a) and (b) above SurfStitch also stated (pages 22 and 4 respectively) words to the effect that each of the statements referred to in sub-paragraphs (a) and (b)(ii) above:

(A) was based on current expectations;

(B) involved risk and uncertainty because it related to events and depended on circumstances that may or may not occur in the future;

(C) may differ materially from actual results because of a number of factors;

(D) may not actually be achieved because of underlying assumptions that could prove inaccurate or incorrect;

(E) should not be construed as a profit forecast or profit estimate;

(F) should not be unduly relied on by investors or other recipients;

(G) was not subject to any undertaking by SurfStitch to update or revise (publicly or otherwise) the statement, whether as a result of new information, future events or other circumstances; and

(H) did not constitute an invitation or inducement to any person to subscribe for or otherwise acquire securities in SurfStitch; and

(ii) he will rely at trial on the full text of the announcements.

39 Cameron:

(a) admits that on 25 November 2015 SurfStitch made an announcement to the ASX in which it stated words to the effect that (page 1):

(i) it had entered into definitive agreements to acquire 100% of the shares of SHI;

(ii) it reaffirmed that it expected EBITDA for FY2016 of between $15 million and $18 million excluding SHI; and

(iii) it expected EBITDA for FY2016 of between $18 million and $22 million including the contribution of SHI on a full year pro forma basis;

(b) otherwise denies the allegations in paragraph 39; and

(c) says further that:

(i) as part of that announcement SurfStitch also stated (page 7) words to the effect that each of the statements referred to in sub-paragraphs (a)(ii) and (iii) above:

(A) was based on current expectations;

(B) involved risk and uncertainty because it related to events and depended on circumstances that may or may not occur in the future;

(C) may differ materially from actual results because of a number of factors;

(D) may not actually be achieved because of underlying assumptions that could prove inaccurate or incorrect;

(E) should not be construed as a profit forecast or profit estimate;

(F) should not be unduly relied on by investors or other recipients;

(G) was not subject to any undertaking by SurfStitch to update or revise (publicly or otherwise) the statement, whether as a

result of new information, future events or other circumstances; and

(H) did not constitute an invitation or inducement to any person to subscribe for or otherwise acquire securities in SurfStitch; and

(ii) he will rely at trial on the full text of the announcement.

40 Cameron:

(a) refers to and repeats paragraph 39 above; and

(b) otherwise denies the allegations in paragraph 40 of the Plaintiff's Contentions.

41 Cameron:

(a) refers to and repeats paragraphs 39 and 40 above;

(b) admits that prior to 25 February 2016 SurfStitch did not withdraw the statements referred to in paragraphs 38(a), 38(b)(ii), 39(a)(ii) and 39(a)(iii) above (**November EBITDA Statements**); and

(c) otherwise denies the allegations in paragraph 41 of the Plaintiff's Contentions.

42 Cameron:

(a) refers to and repeats paragraph 39 above;

(b) admits that the November EBITDA Statements were made by SurfStitch in trade or commerce;

(c) admits that the November EBITDA Statements were made in relation to financial products within the meaning of s 766A(1)(a) and s 766B(1) of the *Corporations Act 2001* and s 12BAA of the *ASIC Act 2001*;

(d) admits that the November EBITDA Statements were made by SurfStitch with respect to a future matter;

(e) says that the November EBITDA Statements were made on the basis of forecasting conducted in accordance with the process pleaded in paragraph 22(d) above;

(f) says that there were reasonable grounds for making the November EBITDA Statements; and

Particulars

Cameron repeats the matters pleaded in paragraphs 22(d), 38(c) and 39(d) above.

The reasonable grounds include those set out in the particulars to paragraph 26(f) above. In addition, SurfStitch continued to experience sales growth in FY2016 up to and including 10, 12 and 25 November 2015.

Further particulars may be provided at a later date.

(g) otherwise denies the allegations in paragraph 42 of the Plaintiff's Contentions.

F.2 The true state of affairs in November 2015

43 Cameron:

(a) refers to and repeats paragraphs 22 and 27(b) above;

(b) admits that, as at each of 10 November 2015, 12 November 2015 and 25 November 2015, there was a risk that the Group would achieve EBITDA in FY2016 that differed materially from:

(i) the range of between $15 million and $18 million excluding SHI; and

(ii) the range of between $18 million and $22 million including the contribution of SHI on a full year pro forma basis;

(c) otherwise denies the allegations in paragraph 43(a), (b) and (c) of the Plaintiff's Contentions; and

(d) does not admit or otherwise plead to the allegations in paragraph 43(d) of the Plaintiff's Contentions on the basis that doing so may expose him to a penalty.

F.3 November Continuous Disclosure

44 Cameron:

(a) refers to and repeats paragraphs 22, 38 and 39 above;

(b) admits that SurfStitch had the information referred to in paragraph 43(b) above as at each of 10 November 2015, 12 November 2015 and 25 November 2015;

(c) does not admit or otherwise plead to the allegations in paragraphs 44(a) and (b) in so far as they relate to the matters alleged in paragraph 43(d) of the Plaintiff's Contentions on the basis that doing so may expose him to a penalty;

(d) otherwise denies the allegations in paragraph 44 of the Plaintiff's Contentions; and

(e) says further that SurfStitch disclosed the information referred to in paragraph 43(b) above in ASX announcements on:

(i) 10 November 2015 (CEO Presentation, page 22);

(ii) 12 November 2015 (page 4); and

(iii) 25 November 2015 (page 7).

45 Cameron:

(a) refers to and repeats paragraphs 22 and 44(e) above;

(b) does not admit or otherwise plead to the allegations in paragraph 45(a)(ii) on the basis that doing so may expose him to a penalty; and

(c) otherwise denies the allegations in paragraph 45 of the Plaintiff's Contentions.

46 Cameron:

(a) admits that on and from each of 10 November 2015, 12 November 2015 and 25 November 2015 he knew the information referred to in paragraph 43(b) above;

(b) does not admit or otherwise plead to the allegations in paragraphs 46(b) and (c) in so far as they relate to the matters alleged in paragraph 43(d) of the Plaintiff's Contentions on the basis that doing so may expose him to a penalty;

(c) otherwise denies the allegations in paragraph 46 of the Plaintiff's Contentions;

(d) subject to sub-paragraph (e) below, says further that he did not contravene s 674(2A) of the *Corporations Act 2001* because, in accordance with s 674(2B) of that Act, he:

(i) took all steps that were reasonable in the circumstances to ensure that SurfStitch complied with its obligations under s 674(2) of that Act; and

Particulars

Subject to sub-paragraph (e) below, Cameron repeats the matters pleaded in paragraphs 22(d) and 42(e) and (f) and 43(b) above, and further says that he relied on the conduct of Surfstitch management pleaded in paragraph 22(d) above and believed that the forecasts were reasonable having regard to the matters pleaded in paragraph 42(f) above.

(ii) after doing so, he believed on reasonable grounds that SurfStitch was complying with its obligations under s 674(2) of that Act;

(e) makes no assertion in sub-paragraph (d) above in relation to the matters pleaded in paragraph 43(d) of the Plaintiff's Contentions and maintains the privilege he asserts in respect of those matters; and

(f) refers to and repeats paragraphs 22, 42, 43, 44 and 45 above.

F.4 November Representations – not false and misleading

47 Cameron:

(a) denies the allegations in paragraph 47(a) and (c);

(b) does not admit the allegations in paragraph 47(b); and

(c) refers to and repeats paragraphs 22, 43 and 44 above.

48 Cameron:

(a) denies the allegations in paragraph 48; and

(b) refers to and repeats paragraph 47 above.

F.5 November Representations – not misleading and deceptive

49 Cameron:

(a) denies the allegations in paragraph 49; and

(b) refers to and repeats paragraphs 22, 43 and 44 above.

F.6 Involvement of Cameron – November

50 Cameron:

(a) admits that he caused SurfStitch to make the statement referred to in paragraph 38(a) above in his capacity as Chief Executive Officer and Managing Director of SurfStitch;

(b) admits that he was a member of the Board of Directors of SurfStitch which approved the ASX announcements referred to in paragraphs 38(b) and 39(a) above;

(c) otherwise denies the allegations in paragraph 50; and

(d) refers to and repeats paragraphs 38, 39 and 40 above.

51 Cameron:

(a) refers to and repeats paragraph 46(a) above;

(b) does not admit or otherwise plead to the allegations in paragraph 51(a) in so far as they relate to the matters alleged in paragraph 43(d) of the Plaintiff's Contentions on the basis that doing so may expose him to a penalty;

(c) otherwise denies the allegations in paragraph 51; and

(d) refers to and repeats paragraphs 22, 43, 44, 47 and 49 above.

52 Cameron:

(a) denies the allegations in paragraph 52; and

(b) refers to and repeats paragraphs 50 and 51 above.

F.7 Market effects

53 Cameron:

(a) denies the allegations in paragraph 53; and

(b) refers to and repeats paragraphs 44, 45, 47, 48 and 49 above.

G. FEBRUARY 2016

G.1 February 2016 Conduct

54 Cameron:

(a) admits that on 25 February 2016, at the time of releasing SurfStitch's 1H2016 financial results, SurfStitch made an announcement to the ASX in which it stated that:

(i) given the pace of change and long-term opportunities presented to the business, SurfStitch's management and board believed it was no longer prudent to focus on a defined EBITDA range; and

(ii) instead, EBITDA growth would be flexed based on investment around the global content strategy;

(February Announcement, page 6)

(b) admits that by the statements referred to in paragraph 54(a) above, SurfStitch announced to the ASX that it was not reaffirming that it expected EBITDA for FY2016 of:

(i) between $15 million and $18 million excluding SHI; and

(ii) between $18 million and $22 million including the contribution of SHI on a full year pro forma basis;

(c) admits that on 25 February 2016 SurfStitch made an announcement to the ASX in which it stated words to the effect that:

(i) in its 1H2016 Interim Financial Report that day, it had reported 1H2016 pro forma sales of $144.9 million; and

(ii) in 1H2016 it delivered $13.9 million in pro forma EBITDA;

(February Announcement, page 1)

(d) admits that SurfStitch's 1H2016 Interim Financial Report included:

(i) words and figures to the effect that the Group's profit from continuing operations for 1H2016 was $959,000 (rounded to the nearest one thousand dollars) (page 5);

(ii) words to the effect that in the opinion of the directors of SurfStitch the condensed financial statements and notes set out on pages 5 to 31 of the 1H2016 Interim Financial Report were in accordance with the *Corporations Act 2001*, including giving a true and fair view of the Group's financial position as at 31 December 2015 and of its performance for the financial period ended on that date (page 32); and

(iii) words to the effect that based on a review by KPMG, which was not an audit, KPMG had not become aware of any matter that made them believe that the interim financial report of SurfStitch was not in accordance with the *Corporations Act 2001*, including giving a true and fair view of the Group's financial position as at 31 December 2015 and of its performance for the financial period ended on that date (page 34);

(e) otherwise denies the allegations in paragraph 54; and

(f) says further that:

(i) as part of the announcement referred to in sub-paragraphs (a) and (c) above, SurfStitch also stated words to the effect that (page 7):

(A) all numbers in the announcement outside of Statutory numbers were unaudited; and

(B) the financial information in the announcement included non-IFRS information which had not been specifically audited in accordance with Australian Accounting Standards;

(ii) SurfStitch's 1H2016 Interim Financial Report also included words to the effect that (page 11):

(A) the condensed financial statements had been prepared in accordance with IAS 34 Interim Financial Reporting and did not include all the information required for a complete set of IFRS financial statements;

(B) in preparing the condensed financial statements, management had made judgments, estimates and assumptions that affect the application of the Group's accounting policies and the reported amounts of assets, liabilities, income and expenses, and actual results may differ from those estimates; and

(C) a number of the Group's accounting policies and disclosures require measurement of fair values, for both financial and non-financial assets and liabilities; and

(iii) he will rely at trial on the full text of SurfStitch's announcement and 1H2016 Interim Financial Report.

55 Cameron:

(a) refers to and repeats paragraph 54 above; and

(b) otherwise denies the allegations in paragraph 55 of the Plaintiff's Contentions.

56 Cameron:

(a) refers to and repeats paragraph 54 above;

(b) says that on 3 May 2016 SurfStitch made the announcement referred to in paragraph 70 below;

(c) otherwise admits that prior to 9 June 2016 SurfStitch did not withdraw the statements referred to in paragraph 54 above; and

(d) otherwise denies the allegations in paragraph 56 of the Plaintiff's Contentions.

57 Cameron:

(a) refers to and repeats paragraph 54 above;

(b) admits that the statements by SurfStitch referred to in paragraph 54 above were made in trade or commerce;

(c) admits that the statements by Surfstitch referred to in paragraph 54 above were in relation to financial products within the meaning of s 763A(1)(a) and s 764A(1)(a) of the *Corporations Act 2001* and s 12BAA of the *ASIC Act 2001*; and

(d) otherwise denies the allegations in paragraph 57 of the Plaintiff's Contentions.

G.2 True state of affairs at 25 February 2016

58 Cameron:

(a) refers to and repeats paragraphs 22, 27 and 43 above;

(b) does not admit or otherwise plead to the allegations in:

(i) paragraph 58(a) in so far as they relate to the matters alleged in paragraph 43(d) of the Plaintiff's Contentions; and

(ii) paragraph 58(b) to (e),

on the basis that doing so may expose him to a penalty;

(c) admits that, as at 25 February 2016, there was a risk that the Group would achieve EBITDA in FY2016 that differed materially from the range of $15 million to $18 million; and

(d) otherwise denies the allegations in paragraph 58(a) and 58(f) to (i).

G.3 February continuous disclosure

59 Cameron:

(a) refers to and repeats paragraphs 22, 28, 44 and 58 above;

(b) does not admit or otherwise plead to the allegations in paragraph 59 in so far as they relate to the matters alleged in paragraphs 43(d) and 58(b) to (e) of the Plaintiff's Contentions on the basis that doing so may expose him to a penalty; and

(c) otherwise denies the allegations in paragraph 59 of the Plaintiff's Contentions.

60 Cameron:

(a) refers to and repeats paragraphs 28(d) and 44(e) above;

(b) does not admit or otherwise plead to the allegations in paragraph 60 in so far as they relate to the matters alleged in paragraphs 43(d) and 58(b) to (e) of the Plaintiff's Contentions on the basis that doing so may expose him to a penalty; and

(c) otherwise denies the allegations in paragraph 60 of the Plaintiff's Contentions.

61 Cameron:

(a) admits that on and from 25 February 2016 he knew the information referred to in paragraphs 27(b) and 43(b) above;

(b) does not admit or otherwise plead to the allegations in paragraph 61 in so far as they relate to the matters alleged in paragraphs 43(d) and 58(b) to (e) of the Plaintiff's Contentions on the basis that doing so may expose him to a penalty;

(c) otherwise denies the allegations in paragraph 61 of the Plaintiff's Contentions;

(d) subject to sub-paragraph (e) below, says further that he did not contravene s 674(2A) of the *Corporations Act 2001* because, in accordance with s 674(2B) of that Act, he:

(i) took all steps that were reasonable in the circumstances to ensure that SurfStitch complied with its obligations under s 674(2) of that Act; and

Particulars

Subject to sub-paragraph (e) below, Cameron repeats the matters pleaded in paragraphs 22(d), 26(f) and 42(f) above, and further says that at all material times he relied on the conduct of Surfstitch management pleaded in paragraph 22(d) above, relied on the preparation of the 1H2016 financial results by SurfStitch's Finance Team and its auditor (KPMG), and believed that the information published to the market in the 1H2016 financial results was reasonable, including in relation to the 1H2016 Revenue, 1H2016 Reported EBITDA and 1H2016 Reported Profit.

(ii) after doing so, he believed on reasonable grounds that SurfStitch was complying with its obligations under s 674(2) of that Act;

(e) makes no assertion in sub-paragraph (d) above in relation to the matters pleaded in paragraph 43(d) and 58(b) to (e) of the Plaintiff's Contentions and maintains the privilege he asserts in respect of those matters; and

(f) refers to and repeats paragraphs 22, 27, 28, 29, 44, 45 and 46 above.

G.4 February Representations – not false and misleading

62 Cameron:

(a) denies the allegations in paragraph 62(a) and (c);

(b) does not admit the allegations in paragraph 62(b); and

(c) refers to and repeats paragraphs 22, 27, 28, 43, 44, 54, 55, 58 and 59 above.

63 Cameron:

(a) denies the allegations in paragraph 63; and

(b) refers to and repeats paragraph 62 above.

G.5 February Representations – not misleading and deceptive conduct

64 Cameron:

(a) denies the allegations in paragraph 64; and

(b) refers to and repeats paragraphs 54, 55, 58, 59 and 60 above.

G.6 Involvement of Cameron – February

65 Cameron:

(a) does not admit or otherwise plead to the allegations in paragraph 65 in so far as they relate to the matters alleged in paragraphs 43(d) and 58(b) to (e) of the Plaintiff's Contentions on the basis that doing so may expose him to a penalty;

(b) admits that he caused SurfStitch to make the statements referred to in paragraph 54(d)(ii) above in his capacity as Chief Executive Officer and Managing Director of SurfStitch;

(c) admits that he was a member of the Board of Directors of SurfStitch which approved the ASX announcement referred to in paragraph 54 above;

(d) otherwise denies the allegations in paragraph 65; and

(e) refers to and repeats paragraphs 23, 24, 38, 39, 40, 54 and 55 above.

66 Cameron:

(a) does not admit or otherwise plead to the allegations in paragraph 66 in so far as they relate to the matters alleged in paragraphs 43(d) and 58(b) to (e) of the Plaintiff's Contentions on the basis that doing so may expose him to a penalty;

(b) otherwise denies the allegations in paragraph 66; and

(c) refers to and repeats paragraphs 22, 27, 28, 30(a), 31, 33, 43, 44, 46(a), 47, 49, 58, 59, 60 and 62 above.

67 Cameron:

(a) denies the allegations in paragraph 67; and

(b) refers to and repeats paragraphs 65 and 66 above.

G.7 Market effect

68 Cameron:

(a) denies the allegations in paragraph 68; and

(b) refers to and repeats paragraphs 28, 29, 31, 32, 33, 44, 45, 47, 48, 49, 59, 60, 62, 63 and 64 above.

H. DISCLOSURES

H.1 February disclosure

69 Cameron:

(a) admits paragraphs 69(e) in so far as it recites the ASX closing price for SurfStitch Securities on 24, 25 and 26 February 2016;

(b) otherwise does not admit the allegations in paragraph 69; and

(c) refers to and repeats paragraphs 22, 27, 28, 43, 44 and 54 above.

H.2 May disclosure

70 Cameron:

(a) admits that SurfStitch's ASX announcement contains the words pleaded in paragraph 70 of the Plaintiff's Contentions;

(b) says that he will rely at trial on the full text of SurfStitch's ASX announcement on 3 May 2016; and

(c) otherwise admits the allegations in paragraph 70.

71 Cameron:

(a) admits that the statement by SurfStitch referred to in paragraph 70(a) of the Plaintiff's Contentions related to:

(i) the Group's 1H2016 EBITDA, to which the statements referred to in paragraphs 23(a) and 38(a) above also related; and

(ii) the Group's EBITDA, to which the statements referred to in paragraph 54(a) above also related;

(b) says that the ASX closing price for Surfstitch Securities on 2 May 2016 was $1.035;

(c) otherwise admits paragraph 71(e) of the Plaintiff's Contentions in so far as it recites the ASX closing price for SurfStitch Securities on 2 and 3 May 2016;

(d) otherwise does not admit the allegations in paragraph 71 of the Plaintiff's Contentions;

(e) refers to and repeats paragraphs 22, 23, 24, 27, 28, 38, 39, 40, 43, 44, 54, 55 and 58 above; and

(f) says further that the information the subject of the statement by SurfStitch referred to in paragraph 70(a) of the Plaintiff's Contentions:

(i) was not known to him at the time of his resignation referred to in paragraph 9(b) above; and

(ii) related to the period of time following that resignation.

H.3 June disclosure

72 Cameron:

(a) admits the allegations in paragraph 72(a);

(b) admits that in the June 2016 Announcement SurfStitch stated to the effect that (page 1):

(i) an in-depth review of the business had been undertaken;

(ii) $20.3 million of revenue would be reversed and reflected in the full year results; and

(iii) SurfStitch now advised that pro-forma EBITDA for FY2016 was likely to be a loss, in the range of $17.3 million to $18.3 million;

(c) otherwise denies the allegations in paragraph 72; and

(d) says further that he will rely at trial on the full text of the June 2016 Announcement.

73 Cameron:

(a) admits that the statement by SurfStitch referred to in paragraph 72(b)(iii) above related to:

(i) the Group's FY2016 EBITDA, to which the statements referred to in paragraphs 23(a), 38(a), 38(b)(ii), 39(a)(ii) and 39(a)(iii) above also related; and

(ii) the Group's EBITDA, to which the statements referred to in paragraph 54(a) above also related;

(b) says that the ASX closing price for Surfstitch Securities was $0.405 on 6 June 2016 and $0.335 on 10 June 2016;

(c) otherwise admits paragraph 73(e)(i) of the Plaintiff's Contentions in so far as it recites the ASX closing price for SurfStitch Securities on 9 and 14 June 2016;

(d) otherwise denies the allegations in paragraph 73 of the Plaintiff's Contentions;

(e) refers to and repeats paragraphs 22, 23, 24, 27, 28, 38, 39, 40, 43, 44, 54, 55 and 58 above; and

(f) says further that the information the subject of the statement by SurfStitch referred to in paragraph 72(b) above:

(i) was not known to him at the time of his resignation referred to in paragraph 9(b) above; and

(ii) related to the period of time following that resignation.

I. LOSS

I.1 Acquisition Subgroup

74 Cameron does not know and therefore does not admit the allegations in paragraph 74.

I.2 Market-based Causation

75 Cameron:

(a) admits that the Surfstitch Securities were listed on the ASX and subject to the obligations referred to in paragraph 75(b);

(b) does not know and therefore does not admit that:

(i) the Plaintiff and any Acquisition Subgroup Members acquired SurfStitch Securities in the period beginning on 23 October 2015 and ending on 9 June 2016; and

(ii) thereafter retained any such SurfStitch Securities;

(c) otherwise denies the allegations in paragraph 75; and

(d) refers to and repeats paragraphs 8, 29, 32, 33, 45, 48, 49, 60, 63 and 64 above.

I.3 Acquisition Subgroup Members – Individual Reliance

76 Cameron does not know and therefore does not admit the allegations in paragraph 76.

I.4 Acquisition Subgroup – inflation losses

77 Cameron:

(a) refers to and repeats paragraph 75(b) above;

(b) otherwise denies the allegations in paragraph 77;

(c) refers to and repeats paragraphs 27, 28, 43, 44, 58 and 59 above; and

(d) says further that if:

(i) the Plaintiff or any Group Member suffered any loss as alleged (which is denied);

(ii) the Plaintiff or Group Member (as the case may be) sold any SurfStitch Securities in the period beginning on 23 October 2015 and ending on 9 June 2016; and

(iii) the price at which the Plaintiff or Group Member (as the case may be) sold those SurfStitch Securities (in this paragraph 77, **Sale Price**) was greater than it would otherwise have been by reason of any of the matters alleged in the Plaintiff's Contentions (in this paragraph 77, **Uninflated Price**) (which is denied),

then the loss of the Plaintiff or Group Member (as the case may be) was reduced by the amount by which the Sale Price exceeded the Uninflated Price.

I.5 Retention Subgroup

78 Cameron does not know and therefore does not admit the allegations in paragraph 78.

I.6 Retention Subgroup – Individual Reliance – Compliance Assumption

79 Cameron does not know and therefore does not admit the allegations in paragraph 79.

I.7 Retention Subgroup – Individual Reliance - Representations

80 Cameron does not know and therefore does not admit the allegations in paragraph 80.

I.8 Retention Subgroup – Loss and Damage

81 Cameron:

(a) denies the allegations in paragraph 81; and

(b) refers to and repeats paragraphs 29, 32 and 33 above.

82 Cameron:

(a) denies the allegations in paragraph 82;

(b) refers to and repeats paragraphs 29, 32, 33 and 81 above; and

(c) says further that if the Plaintiff or any Group Member:

(i) purchased SurfStitch Securities prior to 23 October 2015 (which is not admitted); and

(ii) did not sell any SurfStitch Securities on or prior to 9 June 2016 at a price (in this paragraph 82, **Sale Price**) that would have been greater than it would otherwise have been by reason of any of the matters alleged in the Plaintiff's Contentions (in this paragraph 82, **Uninflated Price**) (which is denied),

then the difference between the Uninflated Price and the Sale Price is not a loss suffered by the Plaintiff or Group Member (as the case may be).

83 Cameron:

(a) denies the allegations in paragraph 83; and

(b) refers to and repeats paragraphs 45, 48 and 49 above.

84 Cameron:

(a) denies the allegations in paragraph 84; and

(b) refers to and repeats paragraphs 45, 48, 49, 82(c) and 83 above.

J. RELIEF

85 Cameron:

(a) denies the allegations in paragraph 85;

(b) refers to and repeats paragraphs 22 and 69 to 84 above;

(c) subject to sub-paragraph (d) below, says further that if it appears to the Court that he has, or may have, contravened s 674 of the *Corporations Act 2001* (which is denied), he ought to be relieved from liability under s 1317S of the

Corporations Act 2001 on the basis that he acted honestly and, having regard to all the circumstances, ought fairly to be excused for the contravention; and

Particulars

Cameron repeats the matters pleaded in paragraphs 22(d), 26(f), 30(c), 42(f), 46(d) and 61(d) above.

(d) makes no assertion in sub-paragraph (c) above in relation to the matters pleaded in paragraph 43(d) and 58(b) to (e) of the Plaintiff's Contentions and maintains the privilege he asserts in respect of those matters.

86 Cameron:

(a) denies the allegations in paragraph 86;

(b) refers to and repeats paragraphs 22 and 69 to 84 above;

(c) subject to sub-paragraph (d) below, says further that if it appears to the Court that he has, or may have, contravened s 1041E or s 1041H of the *Corporations Act 2001* (which is denied), then pursuant to s 1041I(4) of the *Corporations Act 2001*, he ought to be relieved from liability under s 1317S of the *Corporations Act 2001* on the basis that he acted honestly and, having regard to all the circumstances, ought fairly to be excused for the contravention; and

(d) makes no assertion in sub-paragraph (c) above in relation to the matters pleaded in paragraph 43(d) and 58(b) to (e) of the Plaintiff's Contentions and maintains the privilege he asserts in respect of those matters.

87 If Cameron is liable to the Plaintiff or any Group Member in respect of damage or loss under any claim made in the Plaintiff's Contentions (which is denied) then:

(a) the claim is an apportionable claim under ~~s 34 of the *Civil Liability Act 2002*,~~ s 1041L of the *Corporations Act 2001* insofar as Cameron's liability arises from a contravention of s 1041H of the *Corporations Act 2001*, s 12GP of the *Australian Securities and Investments Commission Act 2001* insofar as Cameron's liability arises from a contravention of s 12DA of the *Australian Securities and Investments Commission Act 2001* and s 87CB of the

Competition and Consumer Act 2010 insofar as Cameron's liability arises from a contravention of s 18 of the *Australian Consumer Law*~~(as applicable)~~;

(b) each of the following persons is, in relation to the claim, a concurrent wrongdoer under ~~s 34 of the *Civil Liability Act 2002*,~~ s 1041L of the *Corporations Act 2001*, s 12GP of the *Australian Securities and Investments Commission Act 2001* and s 87CB of the *Competition and Consumer Act 2010* (as applicable) on the following bases:

(i) SurfStitch — on the basis alleged in the Plaintiff's Contentions (which are denied);

(ii) each of the following persons — on the basis that the person engaged in conduct that, if the Plaintiff's Contentions are correct (which is denied) contravened 1041H of the *Corporations Act 2001*, s 12DB of the *Australian Securities and Investments Commission Act 2001* or s 18 of the *Australian Consumer Law* and therefore liable under s 1041I or s 1317HA of the *Corporations Act 2001*, s 12GF of the *Australian Securities and Investments Commission Act 2001* or s 236 of the *Competition and Consumer Act 2010* to compensate the Plaintiff or Group Member (as the case may be) for the damage or loss that is the subject of the Plaintiff's claim against Cameron:

- ~~contravened; or~~
- ~~further or alternatively, made the person a person involved within the meaning of s 1041I of the *Corporations Act 2001*, s 12GF of the *Australian Securities and Investments Commission Act 2001* or s 236 of the *Competition and Consumer Act 2010* in a contravention by SurfStitch or Cameron of,~~

~~s 674(2), s 674(2A), s 1041E or s 1041H of the *Corporations Act 2001*, s 12DB of the *Australian Securities and Investments Commission Act 2001* or s 18 or s 29(1)(b) of the *Australian Consumer Law* and therefore liable under s 1041I or s 1317HA of the *Corporations Act 2001*, s 12GF of the *Australian Securities and Investments Commission Act 2001* or s 236 of the *Competition and Consumer Act 2010* to compensate the Plaintiff or Group Member (as~~

~~the case may be) for the damage or loss that is the subject of the Plaintiff's claim against Cameron:~~

(A) Lex Pedersen (SurfStitch's Managing Director and President SWELL (USA) at all material times) and Justin Stone (SurfStitch's Managing Director, Europe at all material times) — who each:

(1) was part of SurfStitch's Executive Team at all material times;

(2) was a member of the Board of Directors of SurfStitch which approved the contents of the announcements and financial reports of SurfStitch referred to in the Plaintiff's Contentions; ~~and~~

(3) at all material times, approved each of the internal financial forecasts for the region for which they were responsible (which was the USA for Lex Pedersen and Europe for Justin Stone), which were used to prepare SurfStitch's announcements regarding future financial performance (including EBITDA) referred to in the Plaintiff's Contentions; and

~~(3)~~(4) to the extent that Cameron is held to have made each of the October Representations, November Representations and February Representations (as defined in the Commercial List Statement), which is denied, each of the October Representations, November Representations and February Representations were also made by each of Pedersen and Stone.

~~(B) Karen Birner (SurfStitch's Chief Financial Officer and Company Secretary at all material times) — who:~~

~~(1) was part of SurfStitch's Executive Team at all material times;~~

~~(2) at all material times, had primary responsibility within the Group for:~~

~~I. financial matters, including financial reporting and forecasting;~~

~~II. compliance with ASX reporting and disclosure; and~~

~~III. working with SurfStitch's auditor, KPMG (a partnership), and ensuring that they had the information required to carry out their work for SurfStitch, including the matters alleged in paragraphs 43(d) and 58(b) to (i) of the Plaintiff's Contentions, if any of those alleged matters are true (which is denied, not admitted or admitted as set out above);~~

~~(3) at all material times, was involved in preparing (together with the Regional Managing Directors) each of the Group's internal financial forecasts, which were used to prepare SurfStitch's announcements regarding future financial performance (including EBITDA) referred to in the Plaintiff's Contentions; and~~

~~(4) prepared the contents of the financial reports of SurfStitch referred to in the Plaintiff's Contentions;~~

~~(C)~~(B) Howard McDonald (Chairman and Director of SurfStitch at all material times) and Stephen Goddard and Jane Huxley (Directors of SurfStitch at all material times) — who each:

(1) was a member of SurfStitch's Audit, Risk and Compliance Committee at all material times and therefore responsible within SurfStitch for matters relating to SurfStitch's audit and compliance with reporting obligations; ~~and~~

(2) was a member of the Board of Directors of SurfStitch which approved the contents of the announcements and financial reports of SurfStitch referred to in the

Plaintiff's Contentions, including the statement referred to in paragraph 54(d)(ii) above, and, in the case of Mr McDonald, gave a final approval as Chairman of each ASX announcement at all material times; and

~~(2)~~(3) to the extent that Cameron is held to have made each of the October Representations, November Representations and February Representations (as defined in the Commercial List Statement), which is denied, each of the October Representations, November Representations and February Representations were also made by each of McDonald, Goddard and Huxley.

~~(D) KPMG (SurfStitch's auditor at all material times) and Julie Cleary (the partner of KPMG primarily responsible for work for the Group at all material times) — who each:~~

~~(1) approved the contents of SurfStitch's 1H2016 Interim Financial Report; and~~

~~(2) made the statement referred to in paragraph 54(d)(iii) above; and~~

~~(E) Three Crowns Investments Pty Ltd, Coastalwatch Pty Ltd, CoastalComs Pty Ltd, Kim Sundell and any other related parties of Three Crowns Investments Pty Ltd referred to in the Plaintiff's Contentions — who each entered into, or were involved in the negotiation of, the TCI Arrangements or the Further TCI Arrangements, if any of the matters alleged by the Plaintiff regarding the TCI Arrangement and the Further TCI Arrangements are true (which is denied, not admitted or admitted as set out above and subject to the privilege claims set out above); and~~

~~Particulars~~

~~Further particulars of paragraph 87(b) may be provided at a later date.~~

(c) Cameron's liability is limited under ~~s 35 of the *Civil Liability Act 2002*,~~ s 1041N of the *Corporations Act 2001*, s 12GR of the *Australian Securities and Investments Commission Act 2001* and s 87CD of the *Competition and Consumer Act 2010* (as applicable) to an amount reflecting that proportion of the damage or loss claimed that the Court considers just having regard to Cameron's responsibility for the damage or loss, and the Court may give judgment against Cameron for not more than that amount.

D. QUESTIONS APPROPRIATE FOR REFERRAL

The Second Defendant is not aware of any questions which are appropriate for referral.

E. MEDIATION STATEMENTS

The Second Defendant is willing to proceed to mediation at an appropriate time. ~~Under the Orders made by His Honour Justice Hammerschlag in the proceeding on 1 September 2017, the Plaintiff and the Second Defendant are to attend, subject to the availability of a mediator, a court-managed mediation by no later than 17 November 2017.~~

SIGNATURE

Signature of legal representative

Capacity	Solicitor for the Second Defendant
Date of signature	~~16 October 2017~~ 12 February 2018