

Practice Note No. SC Eq 3

COMMERCIAL LIST STATEMENT**COURT DETAILS**

Court

Supreme Court of New South Wales

Division

Equity Division

List

Commercial

Registry

Sydney

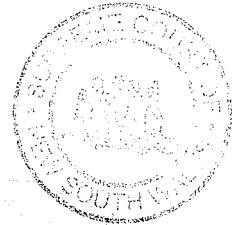
Case Number

2017/193375

FILED

28 JUN 2017

T.K.

**TITLE OF PROCEEDINGS**

First plaintiff

TW McConnell Pty Ltd ACN 000 217 890 as trustee for McConnell Superannuation Fund

Number of plaintiffs (if more than 2)

First Defendant

SurfStitch Group Limited ACN 602 288 004

Second Defendant

Justin Peter Cameron

Number of defendants if more than 2

In the matter of

SurfStitch Group Limited ACN 602 288 004**FILING DETAILS**

Filing for

The Plaintiff

Filed in relation to

Plaintiff's claim

Legal representative

Glenn McGowan QC, Gadens Lawyers

Legal representative reference

GYM:21605811

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TABLE OF CONTENTS

	Page
A. Nature of dispute	3
B. Issues likely to arise	3
C. Plaintiff's Contentions	5
ANNEXURE A	62
ANNEXURE B	63
D. Questions appropriate for referral to referee	66
E. Mediation	66

A. NATURE OF DISPUTE

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

1. The proceeding concerns allegations arising out of:
 - (a) breach by SurfStitch of its obligation to notify the ASX of information:
 - (i) of which it was aware; and
 - (ii) that was material to the price or value of its ordinary shares;
 - (b) Cameron's involvement in the breaches in (a);
 - (c) statements made or information disseminated by SurfStitch and/or Cameron that were or was false in a material particular, or materially misleading ;
 - (d) conduct by SurfStitch and/or Cameron that was misleading and deceptive, or that was likely to mislead or deceive,
 - (e) Cameron's involvement in the breaches in (c) and (d),
being conduct that resulted in the ordinary shares of SurfStitch trading on the market operated by the ASX at a price higher than their true value, alternatively the prices at which the shares otherwise would have traded.

B. ISSUES LIKELY TO ARISE

The issues likely to arise are as follows:

1. Whether and if so at what time(s) SurfStitch had, within the meaning of the ASX Listing Rules:
 - (a) the October Information;
 - (b) the November Information; and/or
 - (c) the February Information.

2. Whether, and if so from what dates, SurfStitch contravened section 674(2) of the *Corporations Act* by not immediately telling the ASX:
 - (a) the October Information;
 - (b) the November Information; and/or
 - (c) the February Information.
3. Whether Cameron was involved in the contraventions in 2 within the meaning of section 674(2A) of the *Corporations Act*.
4. Whether SurfStitch and/or Cameron by making or at any time failing to correct or qualify:
 - (a) the October Representations, being the:
 - (i) October Express Representation; and
 - (ii) October Implied Representations;
 - (b) the November Representations, being the:
 - (i) 10 November Statement;
 - (ii) 12 November Statement;
 - (iii) November FY2016 EBITDA Upgrade; and
 - (iv) November Implied Representations; and/or
 - (c) the February Representations, being the:
 - (i) February Express Representations; and
 - (ii) February Implied Representations;

contravened sections 1041E and/or 1041H of the *Corporations Act*, section 12DA of the *ASIC Act*, and/or section 18 of the *ACL*.
5. Whether Cameron was involved in the contraventions by SurfStitch in 4 above, within the meaning of section 1041I of the *Corporations Act*, section 12GF of the *ASIC Act* and/or section 236 of the *ACL*.
6. Whether any and if so which contraventions by SurfStitch and/or Cameron had the effect that traded prices for SurfStitch Securities were, during the Inflation Period,

higher than their true value, alternatively the prices at which the shares otherwise would have traded, and if so the timing and extent of that inflation.

7. If any contraventions by SurfStitch and/or Cameron had an effect as described in 6:
- (a) whether compensation is recoverable by the Plaintiff and the Acquisition Subgroup Members;
 - (b) whether compensation is recoverable by the Plaintiff and the Retention Subgroup Members; and
 - (c) the measure of compensation recoverable by the Plaintiff and Group Members.

C. PLAINTIFF'S CONTENTIONS

TABLE OF CONTENTS

	Page
A. Parties	
<i>A.1 The Plaintiff and Group Members</i>	<i>7</i>
<i>A.2 SurfStitch</i>	<i>7</i>
<i>A.3 The Second Defendant</i>	<i>8</i>
B. SurfStitch Reporting Requirements	9
<i>B.1 Corporations Act reporting requirements</i>	<i>9</i>
<i>B.2 Accounting Standards</i>	<i>10</i>
<i>B.3 ASX Listing Requirements</i>	<i>13</i>
C. SurfStitch's Business	14
D. August 2015 Announcements	16
E. October 2015 Forecast and Contraventions	18
<i>E.1 October 2015 Conduct</i>	<i>18</i>
<i>E.2 True State of Affairs in October 2015</i>	<i>19</i>
<i>E.3 October Continuous Disclosure Contravention</i>	<i>21</i>
<i>E.4 October Representations – false and misleading statements</i>	<i>22</i>
<i>E.5 October Representations – misleading and deceptive conduct</i>	<i>23</i>
<i>E.6 Cameron's Involvement – October Contraventions</i>	<i>24</i>
<i>E.7 Market effects of October contraventions</i>	<i>25</i>
F. November Contraventions	26
<i>F.1 November 2015 Conduct</i>	<i>26</i>

F.2	<i>The true state of affairs in November 2015</i>	29
F.3	<i>November Continuous Disclosure Contravention</i>	32
F.4	<i>November Representations – false and misleading statements</i>	33
F.5	<i>November Representations - misleading and deceptive conduct</i>	34
F.6	<i>Involvement of Cameron – November Contraventions</i>	35
F.7	<i>Market effects of November contraventions</i>	36
G.	February 2016 Contraventions	37
G.1	<i>February 2016 Conduct</i>	37
G.2	<i>True state of affairs at 25 February 2016</i>	39
G.3	<i>February Continuous Disclosure Contravention</i>	42
G.4	<i>February Representations – false and misleading statements</i>	43
G.5	<i>February Representations – misleading and deceptive conduct</i>	44
G.6	<i>Involvement of Cameron – February Contraventions</i>	45
G.7	<i>Market effect of the February Contraventions</i>	46
H.	Corrective Disclosures	47
H.1	<i>February partial disclosure</i>	47
H.2	<i>May partial disclosure</i>	48
H.3	<i>June 2016 disclosure</i>	50
I.	Contravening Conduct caused Group Members' Loss	52
I.1	<i>Acquisition Group</i>	52
I.2	<i>Market-based Causation</i>	52
I.3	<i>Acquisition Subgroup Members – Individual Reliance</i>	54
I.4	<i>Acquisition Subgroup – inflation losses</i>	55
I.5	<i>Retention Subgroup</i>	56
I.6	<i>Retention Subgroup – Individual Reliance – Compliance Assumption</i>	57
I.7	<i>Retention Subgroup – Individual Reliance – Representations</i>	58
I.8	<i>Retention Subgroup – Loss and Damage</i>	58
J.	Entitlement to Relief	60

NOTE AS TO TERMINOLOGY

The following conventions are used in referring to financial results:

- (a) FY2015, FY2016, etc refer to the financial years ended 30 June 2015, 30 June 2016, etc;

- (b) 1H and 2H refer to the first half and second half of the relevant financial year respectively;
- (c) 1Q, 2Q etc, refer to the first quarter, second quarter etc. of the relevant financial year; and
- (d) references to dollar sums are approximations, and in the case of million-dollar amounts, are approximated to the first decimal point.

Defined terms are summarised in Annexure B.

A. PARTIES

A.1 The Plaintiff and Group Members

1. The Plaintiff commences this proceeding as a representative party pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) on its own behalf and on behalf of the Group Members.
2. At all material times the Plaintiff was a company incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**).
3. At all material times the Plaintiff was the trustee of the McConnell Superannuation Fund, and sues in its capacity as trustee.
4. The Plaintiff and the persons it represents (**Group Members**) are persons who:
 - (a) on any of 25 February 2016, 3 May 2016 or 9 June 2016 held an interest in shares in SurfStitch Group Limited (ACN 602 288 004) (**SurfStitch**) acquired before those dates; and
 - (b) are alleged to have suffered loss and damage by reason of the matters set out in these Contentions.

5. In these Contentions the period beginning on 23 October 2015 and ending on 9 June 2016 is described as the **Inflation Period**.
6. As at the date of the commencement of this proceeding, there are seven or more persons who have claims against the defendants in respect of the matters set out in these Contentions.

A.2 SurfStitch

7. At all material times since at least 16 December 2014 (**Listing Date**), SurfStitch:
 - (a) has been and is a company incorporated under the *Corporations Act*;
 - (b) has been and is a corporation listed on a financial market operated by the Australian Securities Exchange (**ASX**);

Particulars

SurfStitch was incorporated on 13 October 2014 and listed on the market operated by the ASX on 16 December 2014.

- (c) had and has on issue ordinary shares (**SurfStitch Securities**) which were and are:
 - (i) traded on the ASX under the designation “SRF”;
 - (i) ED securities within the meaning of s 111AE of the *Corporations Act*;
 - (ii) quoted ED securities within the meaning of s 111AM of the *Corporations Act*; and
 - (iii) financial products within the meaning of the *Corporations Act*;
- (d) was and is a listed disclosing entity within the meaning of s 111AL(1) of the *Corporations Act*;
- (e) was and is subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);

- (f) has been and is by reason of:
 - (i) the matters in sub-paragraphs (a) to (e) above, and
 - (i) sections 111AP(1) and/or 674(1) of the *Corporations Act*,
an entity to which section 674(2) of the *Corporations Act* applied and applies;
 - (g) was and is a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - (h) has been and is a person within the meaning of:
 - (i) sections 1041E and 1041H of the *Corporations Act*;
 - (ii) section 12DA of the *ASIC Act*; and
 - (iii) section 18 of the *Australian Consumer Law (New South Wales)* (**ACL**),
 - (i) has been the holding company of SurfStitch Holding Pty Ltd (**SHPL**).
8. At all material times, there existed a market of investors and potential investors in SurfStitch Securities on the ASX (**Market**).

A.3 The Second Defendant

9. The second defendant (**Cameron**):
- (a) is a natural person;
 - (b) was, from no later than the Listing Date until 10 March 2016:
 - (i) a director; and
 - (ii) the chief executive officer,
of SurfStitch.

B. SURFSTITCH REPORTING REQUIREMENTS

B.1 Corporations Act reporting requirements

10. At all material times, SurfStitch was required:
- (a) pursuant to sections 111AO(1), 292 and 302 of the *Corporations Act*, to prepare an annual and half-year financial report;
 - (b) pursuant to sections 296 and 304 of the *Corporations Act*, to prepare its annual and half-year financial reports in accordance with the accounting standards made by the Australian Accounting Standards Board (**AASB**); and
 - (c) pursuant to sections 297 and 305 of the *Corporations Act*, to prepare its annual and half-year financial reports so that they gave a true and fair view of its financial position and performance.

B.2 Accounting Standards

11. At all material times:
- (a) AASB 101 “Presentation of Financial Reports”;
 - (b) AASB 118 “Revenue”; and
 - (c) AASB 136 “Impairment of Assets”,
- were accounting standards made by the AASB pursuant to section 334 of the *Corporations Act* and in force during the whole of the Inflation Period.
12. At all material times AASB 101:
- (a) was the accounting standard employed to determine the manner in which SurfStitch prepared its financial statements;
 - (b) required that, or to the effect that:
 - (i) financial statements shall present fairly the financial position, financial performance and cash flows of an entity;

- (ii) fair presentation required the faithful representation of the effects of transactions, other events and conditions in accordance with the definitions and recognition criteria for assets, liabilities income and expenses set out in the *Framework for the Preparation and Presentation of Financial Statements (Framework)*.

Particulars

AASB 101, paragraph 15.

13. At all material times, the Framework:
- (a) was published by the AASB;
 - (b) was, by reason of the matters set out in sub-paragraph 12(b)(ii) above, a document the terms of which SurfStitch was required to comply with in the preparation of its financial reports;
 - (c) stated that, or to the effect that, *inter alia*:
 - (i) for the purposes of the preparation of financial statements, income encompassed revenue;
 - (ii) revenue should be recognised in an entity's income statement if it was probable that an increase in future economic benefits related to an increase in an asset had arisen that could be measured reliably.

Particulars

Framework, paragraphs 83, 85, 92 and 93.

14. At all material times AASB 118 "Revenue":
- (a) was the applicable accounting standard employed to determine how and when SurfStitch recognised revenue; and
 - (b) stated that, or to the effect that, *inter alia*:
 - (i) revenue arising from use by others of entity assets yielding royalties shall be recognised when:
 - A. it is probable that the economic benefits associated with the transaction will flow to the entity; and

B. the amount of the revenue can be measured reliably,

Particulars

AASB 118, paragraph 29.

- (ii) royalties were to be recognised on an accrual basis in accordance with the substance of the relevant agreement pursuant to which those royalties were payable.

Particulars

AASB 118, paragraph 30.

15. At all material times, AASB 136 “Impairment of Assets”:

- (a) was the applicable accounting standard that SurfStitch was required to employ to determine the procedure that it applied to ensure that its assets were carried at no more than their recoverable amount;
- (b) defined:
- (i) *carrying amount* as the amount at which an asset is recognised after deducting any accumulated depreciation and accumulated impairment losses;
- (ii) a *cash generating unit (CGU)* as the smallest identifiable group of assets that generates cash inflows that are largely independent of the cash inflows from other assets or a group of assets; and
- (iii) *recoverable amount* of an asset or cash-generating unit as the higher of its fair value less costs of disposal, and its value in use;

Particulars

AASB 136, paragraph 6.

- (c) required that or to the effect that, *inter alia*:
- (i) a CGU to which goodwill had been allocated be tested for impairment annually or whenever there was an indication that the unit may be impaired;

- (ii) the testing described in (i) was to be carried out by comparing the carrying amount of the CGU, including the goodwill, with the recoverable amount of the CGU;
- (iii) if the carrying amount of the CGU exceeded the recoverable amount of the unit, the entity was required to recognise an impairment loss equal to the difference between the carrying amount and the recoverable amount;
- (iv) any such impairment loss was to be allocated to reduce the carrying amount of the assets of the CGU in the following order:
 - A. *first*, to reduce the carrying amount of any goodwill allocated to the CGU; and
 - B. *then*, to the other assets of the CGU pro-rata on the basis of the carrying amount of each asset in the CGU;
- (v) the impairment loss in (iii) was required to be recognised immediately in the profit or loss statements of the entity.

Particulars

AASB 136, paragraphs 60, 90 and 104.

B.3 ASX Listing Requirements

16. At all material times:
- (a) the ASX was a market operator of a listing market, namely the ASX's financial market, in relation to SurfStitch Securities for the purposes of section 674(1) of the *Corporations Act*;
 - (b) the listing market operated by the ASX was a financial market within the meaning of section 767A of the *Corporations Act*;
 - (c) as to financial reporting:
 - (i) Rule 4.2A.1 and 4.2B of the ASX Listing Rules provided that an entity established in Australia was required to give to the ASX its half-year financial report:

- A. immediately the half-year report was ready to be given to the ASX;
or
 - B. no later than the time it lodged its half-year report with the Australian Securities and Investments Commission (ASIC); and
 - C. in any event, no later than 2 months after the end of the relevant accounting period;
- (ii) Rule 4.3A of the ASX Listing Rules provided that following the end of the financial year an entity established in Australia was required to give to the ASX the information set out in Appendix 4E of the Listing Rules;
- (iii) Rule 4.5 of the ASX Listing Rules provided that an entity registered in Australia was required to give the ASX a copy of its annual financial report:
- A. when it lodged its annual financial report with ASIC; and
 - B. in any event, no later than 3 months after the end of the accounting period;
- (d) as to continuous disclosure:
- (i) Rule 3.1 of the ASX Listing Rules provided that once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must, unless the exceptions in ASX Listing Rule 3.1A apply, immediately tell the ASX that information; and
 - (ii) Rule 19.12 of the ASX Listing Rules provided that an entity becomes aware of information if, and as soon as, an officer of the entity has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.

C. SURFSTITCH'S BUSINESS

17. Since at least 16 December 2014, SurfStitch carried on business as an online retailer of third party produced and branded action sports goods by various wholly owned subsidiaries (**Commerce Business**) in the Asia Pacific region (**Asia Pacific Business**), including Australia, through its website surfstitch.com.

18. In or about September 2014, SHPL, or one of its subsidiaries:

- (a) purchased a business conducted in the United States known as "Swell";
- (b) commenced operation of the Commerce Business in the United States (**North America Business**) using its wholly owned subsidiary SurfStitch US Inc, and the business name Swell.

Particulars

SurfStitch operated the North America Business through the website swell.com

19. In or about December 2014, SHPL, or one of its wholly owned subsidiaries:

- (a) purchased all of the issued shares of SurfDome Shop Limited (**SSL**); and
- (b) commenced operation of the Commerce Business in Europe (**Europe Business**) using SSL.

Particulars

SurfStitch operated the Europe Business through website surfdome.com

20. On or about 13 May 2015, SurfStitch:

- (a) agreed to purchase (by itself or a subsidiary) all of the issued shares of:
 - (i) Magicseaweed Limited (**Magic Seaweed**); and
 - (ii) Rollingyouth Pty Ltd (**Rollingyouth**).

Particulars

Magic Seaweed operated the surf forecasting and content hosting website magicseaweed.com.

Rollingyouth and its United States subsidiary, Rollingyouth US Inc, operated a business that traded under the name "Stab" and the online surf magazine website stabmag.com.

- (b) published, and released to the Market, an announcement in which it:
 - (i) announced the purchase of Magic Seaweed and Rollingyouth; and
 - (ii) stated that or to the effect that, *inter alia*:
 - A. by “leveraging relevant content to attract and retain a rapidly evolving and increasingly sophisticated customer base, SurfStitch aims to significantly enhance customer engagement levels throughout its family of e-Commerce platforms”;
 - B. the acquisitions of Magic Seaweed and Stab “will deliver incremental synergies as content on both sites will be anchored to drive sales to SurfStitch and will promote recency and repeat visitation across all platforms.”

Particulars

Announcement published and released to the ASX by SurfStitch on or about 13 May 2015 titled “SurfStitch Group announces the acquisitions of Magicseaweed and Stab Magazine and Capital Raising” (**13 May 2015 Announcement**);

- (c) commenced to carry on business, through Magic Seaweed and Rollingyouth, as a producer of action sports movies and other related media content (**Content Business**).
21. From in or about May 2015, SurfStitch adopted a strategy for its business of integrating its Commerce Business and Content Business (**Content Strategy**) that:
- (a) involved “capturing customers through [the Content Business] and linking them all the way through purchase” from the Commerce Business;
 - (b) was planned to lead to rebranding each of the Commerce Business and Content Business under the business name “SWELL”; and
 - (c) had as one of its intended purposes, the reduction of advertising and marketing expenses for the Commerce Business.

Particulars

The Plaintiff refers to:

- (i) the 13 May 2015 Announcement, page 2; and
- (ii) the announcement published and released to the ASX by SurfStitch on or about 27 August 2015 and entitled "Consolidated FY2015 total sales up 30% to A\$199.4 million with EBITDA of A\$7.7 million, up 51% on prospectus guidance. FY16 EBITDA growth expectations of 100%" (**27 August 2015 Announcement**).

Further particulars may be provided following discovery

D. AUGUST 2015 ANNOUNCEMENTS

22. On or about 27 August 2015 SurfStitch and Cameron, at the time of releasing SurfStitch's financial report for FY 2015 (**FY 2015 Financial Report**), stated to the Market that or to the effect that:

- (a) in FY 2015 SurfStitch had achieved underlying pro-forma:
 - (i) revenue of \$199.4m; and
 - (ii) earnings before interest, tax, depreciation and amortisation (**EBITDA**) of \$7.7m;

Particulars

The statements in sub paragraph 22(a) were express and made in the:

- (i) FY 2015 Financial Report (pages 6 and 12);
- (ii) 27 August 2015 Announcement (page 10);
- (iii) a presentation published and released to the ASX entitled "SurfStitch Group: FY2015 Full Year Results" (**27 August 2015 Presentation**) (page 12); and
- (iv) conference call convened between Cameron and analysts reporting on the SurfStitch business (**August 2015 Conference Call**).

So far as the Plaintiff is able to say prior to discovery:

- (i) at all material times SurfStitch calculated EBITDA as the sum of statutory earnings before interest and tax, depreciation and amortisation, and share-based payments;
- (ii) the FY 2015 Financial Report reflected results for the period 13 October 2014 (ie. the date on which SurfStitch was incorporated) to 30 June 2015; and
- (iii) the "pro-forma" results announced on 27 August 2015 reflected "the full year effect of the operating structure that

was put in place at the time of the [initial public offering of SurfStitch Securities] and excludes one-time costs associated with the IPO-Listing and subsequent capital raising; acquisition and integration of new operations; corporate restructure and divestiture in redundant infrastructure” (FY2015 Annual Report, page 6).

- (b) for FY 2016 SurfStitch forecast:
- (i) EBITDA of between \$15m and \$18m (**August FY2016 EBITDA Forecast**);
 - (ii) EBITDA to “have a stronger second half in FY16” by comparison with 2H2015 as SurfStitch integrated the Europe Business, and the Content Business.

Particulars

The August FY 2016 EBITDA Forecast was express and made in the:

- (i) 27 August 2015 Announcement (page 7);
- (ii) 27 August 2015 Presentation (page 22);
- (iii) 27 August 2015 Conference Call.

E. OCTOBER 2015 FORECAST AND CONTRAVENTIONS

E.1 October 2015 Conduct

23. On 23 October 2015, in an announcement published and released to the ASX, SurfStitch and Cameron repeated and thereby affirmed the August FY 2016 EBITDA Forecast (**October Express Representation**).

Particulars

The October Express Representation was express and contained in a presentation released and published to the ASX by SurfStitch titled “SurfStitch Group Morgans Queensland Conference 2015” (page 13).

24. By the October Express Representation, SurfStitch and Cameron represented to the Market that:

- (a) SurfStitch had undertaken all necessary and reasonable investigations before making any statement or representation as to the state of its business and accounts and had satisfied itself on reasonable grounds following those investigations that the public statements were substantially accurate and not misleading or deceptive in any respect;
- (b) no information had come to the attention of SurfStitch or Cameron that:
 - (i) was likely to be material to the investment decisions of investors, and that investors would expect to be disclosed, but which had not been disclosed; or
 - (ii) meant that there was any material risk that SurfStitch would not achieve the August FY 2016 EBITDA Forecast;

(together **October Implied Representations**).

25. At no time prior to 25 February 2016 did SurfStitch take any or any adequate steps to withdraw or qualify any of the:

- (a) October Express Representation; or
- (b) October Implied Representations;

(together **October Representations**) which were accordingly continuing representations.

26. The October Representations were:

- (a) conduct in trade or commerce;
- (b) in relation to:
 - (i) a financial product within the meaning of sub-sections 763A(1)(a) and 764A(1)(a) of the *Corporations Act*, namely SurfStitch Securities; and
 - (ii) in the premises in (i) – a financial service within the meaning of:
 - A. sub-sections 766A(1)(a) and 766B(1) of the *Corporations Act* and
 - B. sub-section 12BAB(1)(a) of the *ASIC Act*; and

- (c) as to the August FY2016 EBITDA Forecast, made in relation to future matters within the meaning of:
- (i) section 769C of the *Corporations Act*;
 - (ii) section 12BB of the *ASIC Act*; and
 - (iii) section 4 of the *ACL*;
- (d) information that a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities.

Particulars

The matters in (d) are to be inferred from the matters in paragraphs 37, 69, 71 and 73 below.

Further particulars may be provided following discovery and the receipt of expert reports.

E.2 True State of Affairs in October 2015

27. By no later than 23 October 2015:

- (a) the purchase of Magic Seaweed and Rollingyouth:
 - (i) was not generating net revenues in an amount likely to enable SurfStitch to achieve the August FY 2016 EBITDA Forecast; and
 - (ii) was directing management resources away from the core Commerce Business.

Particulars

The Plaintiff refers to:

- (i) the statement on page 1 of the announcement published and released to the ASX by SurfStitch on 3 May 2016 (**3 May 2016 Announcement**) that “due to management’s focus on implementing the transformation program, integration of the companies acquired over the last 12 months has been slower than anticipated”;
- (ii) the statement on page 9 of SurfStitch’s financial report for FY2016 (**FY 2016 Financial Report**) that the decline in FY2016 of underlying earning was in part due to “unrealised synergies from new acquisitions”.

Further particulars may be provided following discovery.

- (b) SurfStitch had begun:

- (i) purchasing inventory in a value materially greater than it otherwise would have done, had it not provided the August FY 2016 EBITDA Forecast;
- (ii) engaging in material price discounting;
- (iii) by reason of the matters in sub-paragraphs (i) and (ii) – experiencing a material increase in variable costs; and
- (iv) by reason of the matters in sub-paragraphs (i) to (iii) – experiencing a material decline in retail margins;

Particulars

The Plaintiff refers to the statements on page 5 of the presentation published and released to the ASX on 30 August 2016 (**FY 2016 Presentation**) that, in order to achieve the ambitious growth targets for FY2016, SurfStitch:

- (i) was required to purchase inventory to meet those targets;
- (ii) was required to engage in material discounting to clear excess inventory;
- (iii) experienced a fall in retail margins of greater than 600 basis points; and
- (iv) experienced an increase in variable costs in line with the increased volumes of inventory.

Further particulars may be provided following discovery.

- (c) by reason of the matters in (a) and (b) it was likely, alternatively there was a material risk, that SurfStitch would achieve in FY2016:
 - (i) no EBITDA growth, or a loss; alternatively
 - (ii) EBITDA materially less than its August FY2016 EBITDA Forecast of \$15m to \$18m;

(together, severally, and in any combination, **October Information**).

Particulars

So far as the Plaintiff is able to say prior to discovery, the matters in subparagraph (c) are to be inferred from the matters in subparagraphs (a) and (b) above.

Further particulars may be provided following discovery.

E.3 October Continuous Disclosure Contravention

28. The October Information was information that:

- (a) SurfStitch had (within the meaning of section 674(2) of the *Corporations Act*) by no later than 23 October 2015;

Particulars

The information related to the actual performance of SurfStitch's business in 1Q2016. Further, senior management ought reasonably to have had the information because:

- (i) SurfStitch had made announcements to the Market concerning its FY2016 EBITDA forecast; and
- (ii) the October Information affected the continued reliability of those announcements.

Further particulars may be provided following discovery.

- (b) was not generally available within the meaning of s 674(2)(c)(i) of the *Corporations Act*;
- (c) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of SurfStitch Securities within the meaning of s 674(2)(c)(ii) of the *Corporations Act*; and
- (d) in the premises in (a) to (c), by the operation of Listing Rule 3.1, SurfStitch was obliged to tell the ASX by no later than 23 October 2015.

29. SurfStitch:

- (a) did not tell the ASX the October Information at any time prior to 25 February 2016;
- (b) in the premises in (a), contravened ASX Listing Rule 3.1; and
- (c) in the premises in (a) and (b), contravened s 674(2) of the *Corporations Act*;
(October Continuous Disclosure Contravention).

30. On and from 23 October 2015, Cameron:

- (a) knew the matters set out in paragraph 27;
- (b) knew the matters set out in paragraph 28(a) to (c) inclusive;
- (c) knew the matters set out in paragraph 29(a); and

- (d) in the premises in (a) to (c) inclusive, was involved in SurfStitch's October Continuous Disclosure Contravention within the meaning of section 674(2A) of the *Corporations Act*.

E.4 October Representations – false and misleading statements

31. The October Representations:

- (a) were, by reason of the matters in paragraph 27 above, false in a material particular or materially misleading;
- (b) were statements or information that were or was likely to:
- (i) induce persons in this jurisdiction to dispose of or acquire SurfStitch Securities; and/or
- (ii) have the effect of increasing, reducing, maintaining or stabilising the price of trading in SurfStitch Securities;

Particulars

The matters in (b) are to be inferred from the matters in paragraphs 37, 69, 71 and 73 below.

Further particulars may be provided following discovery and the receipt of expert reports.

- (c) by reason of the matters in paragraph 27 and 28(a), were made when SurfStitch and/or Cameron knew or ought reasonably to have known that the representations were materially misleading.
32. By reason of the matters in paragraph 31 above, by making the October Representations SurfStitch and Cameron made statements, or disseminated information, that were or was false in a material particular or materially misleading within the meaning of:
- (a) section 1041E(1) of the *Corporations Act*;
- (b) section 12DB(1)(a) of the *ASIC Act*; further or alternatively
- (c) section 29(1)(b) of the *ACL*;

(together and severally, **October False Statement Contraventions**).

E.5 October Representations – misleading and deceptive conduct

33. Further or in the alternative, by reason of the matters in paragraphs 27 and 28(a) above, SurfStitch and Cameron:

- (a) did not by 23 October 2015, have reasonable grounds for maintaining the August FY 2016 EBITDA Forecast;
- (b) by reason of the matters in (a) did not have reasonable grounds for the October Representations within the meaning of:
 - (i) section 769C of the *Corporations Act*;
 - (ii) section 12BB of the *ASIC Act*; further or alternatively
 - (iii) section 4 of the *ACL*;
- (c) in the premises, by:
 - (i) making the October Representations, alternatively
 - (ii) not correcting the August FY 2016 EBITDA Forecast;
 engaged in conduct that was misleading or deceptive or that was likely to mislead and deceive in contravention of:
 - A. section 1041H(1) of the *Corporations Act*;
 - B. section 12DA(1) of the *ASIC Act*; further or alternatively
 - C. section 18 of the *ACL*;

(together and severally, **October Misleading Conduct Contraventions**).

E.6 Cameron's Involvement – October Contraventions

34. Further or in the alternative, Cameron
- (a) caused SurfStitch to make the October Representations; and
 - (b) at all material times, was acting in his capacity as chief executive officer and managing director of SurfStitch in undertaking the conduct in (a).

35. At all material times, Cameron was aware of:
- (a) the October Information;
 - (b) the matters set out in:
 - (i) paragraph 31; and
 - (ii) sub-paragraphs 33(a) and (b).
36. By reason of the matters in paragraphs 34 and 35, Cameron was:
- (a) involved in each of the:
 - (i) October False Statement Contraventions; and
 - (ii) October Misleading Conduct Contraventions,
within the meaning of:
 - A. section 1041I of the *Corporations Act*; and/or
 - B. section 12GF of the *ASIC Act*; and/or
 - C. section 236 of the *ACL*;
 - (b) in the premises, liable to compensate the Plaintiff and Group Members for loss and damage suffered as a result of the said contraventions.

E.7 Market effects of October contraventions

37. In the period from 23 October 2015 to the end of the Inflation Period, the:
- (a) October Continuous Disclosure Contravention;
 - (b) October False Statement Contraventions; further or alternatively,
 - (c) October Misleading Conduct Contraventions,
- (together and severally, **October Contravening Conduct**) caused the traded price for SurfStitch's Securities to be materially higher during the Inflation Period than:
- (i) its true price; or
 - (ii) the price that would have existed if the October Contravening Conduct had not occurred;
- (October Inflation).**

Particulars

The October Inflation is to be inferred from:

- (i) the characteristics of the Market set out in paragraph 75 below;
- (ii) the fact that the October Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities as alleged in sub-paragraph 28(c) above;
- (iii) the fact that the October Representations were representations that a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities as alleged in paragraph 31 above; and
- (iv) the movements in the traded price of SurfStitch Securities following the February Partial Disclosure, May Partial Disclosure, and June Disclosure, as set out in paragraphs 69, 71 and 73 below.

Further particulars will be provided following discovery and the receipt of expert reports.

F. NOVEMBER 2015 CONTRAVENTIONS

F.1 November 2015 Conduct

38. On:

- (a) 10 November 2015, at the time of its Annual General Meeting, SurfStitch and Cameron repeated and thereby affirmed the August FY2016 EBITDA Forecast (**10 November AGM Statements**);

Particulars

The 10 November AGM Statements were express and were made in:

- (i) an address by Cameron to the Annual General Meeting of SurfStitch;
- (ii) an address by Mr Howard McDonald, at the time a director and the chairman of the board of SurfStitch, to the Annual General Meeting of SurfStitch, a copy of which was released and published to the ASX by SurfStitch on 10 November 2015;
- (iii) a presentation published and released by SurfStitch to the ASX on or about 10 November 2015 titled "CEO's Presentation".

(b) 12 November 2015, SurfStitch and Cameron announced to the Market that, or to the effect that:

- (i) on 11 November 2015 SurfStitch had entered into “definitive agreements to acquire Garage Entertainment Pty Aust (*sic.*) Ltd and TMG Pty Ltd [collectively, **Garage**] for a total consideration of A\$15 million”;
- (ii) SurfStitch reaffirmed the August FY2016 EBITDA Forecast (**12 November Statement**).

Particulars

The 12 November Statement was express and made in:

- (i) an announcement published and released to the ASX by SurfStitch on 12 November 2015; and
- (ii) a conference call held between Mr Cameron and a number of analysts on 12 November 2015, in a manner likely to bring the things said during that call to the attention of the market of investors and potential investors in SurfStitch Securities.

39. On 25 November 2015, SurfStitch and Cameron announced to the Market that or to the effect that:

- (a) SurfStitch had entered into definitive agreements to acquire 100% of the shares of SHI Holdings Pty Ltd (**SHI**);

Particulars

SHI was a global designer, marketer and distributor of water board sports products and accessories.

- (b) SurfStitch reaffirmed the August FY2016 EBITDA Forecast, excluding SHI; and further
- (c) SurfStitch anticipated EBITA for FY2016, including the contribution of SHI on a full year pro forma basis, of \$18m to \$22m (**November FY2016 EBITDA Upgrade**).

Particulars

The November FY2016 EBITDA Upgrade was express and contained in:

- (i) an announcement published and released to the ASX by SurfStitch on 25 November 2015; and

- (ii) a conference call held between Mr Cameron and a number of analysts on 25 November 2015, in a manner likely to bring the things said during that call to the attention of the market of investors and potential investors in SurfStitch Securities.

40. By the:

- (a) 10 November AGM Statements;
 - (b) 12 November Statement; further and alternatively,
 - (c) November FY2016 EBITDA Upgrade
- (together and separately, **November Express Representations**),

SurfStitch and Cameron represented to the Market that:

- (i) SurfStitch had undertaken all necessary and reasonable investigations before making any statement or representation as to the state of its business and accounts and had satisfied itself on reasonable grounds following those investigations that the public statements were substantially accurate and not misleading or deceptive in any respect;
- (ii) no information had come to the attention of SurfStitch or Cameron that:
 - A. was likely to be material to the investment decisions of investors, and that investors would expect to be disclosed, but which had not been disclosed; or
 - B. meant that there was any material risk that SurfStitch would not achieve the August FY2016 EBITDA Forecast, alternatively the November FY2016 EBITDA Upgrade;

(together **November Implied Representations**).

41. At no time prior to 25 February 2016 did SurfStitch or Cameron take any or any adequate steps to withdraw any of the:

- (a) November Express Representations; and
- (b) November Implied Representations,

(together **November Representations**) and they were accordingly continuing representations.

42. The November 2015 Representations were:
- (a) conduct in trade or commerce;
 - (b) in relation to:
 - (i) a financial product within the meaning of sub-sections 763A(1)(a) and 764A(1)(a) of the *Corporations Act*, namely SurfStitch Securities;
 - (ii) in the premises – a financial service within the meaning of:
 - A. sub-sections 766A(1)(a) and 766B(1) of the *Corporations Act*; and
 - B. sub-section 12BAB(1)(a) of the *ASIC Act*;
 - (c) as to the 10 November AGM Statements, 12 November Statement and November FY2016 EBITDA Upgrade, made in relation to future matters; and
 - (d) information that a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities.

Particulars

The matters in (d) are to be inferred from the matters alleged in paragraph 53, 69, 71 and 73 below.

Further particulars may be provided following discovery and the receipt of expert reports.

F.2 The true state of affairs in November 2015

43. By 10 November 2015, alternatively 12 November 2015, alternatively 25 November 2015:
- (a) the matters the subject of the October Information were continuing;
 - (b) revenue earned since 1 July 2015 from SurfStitch's usual operating activities was materially less than was required in that period to make it probable that SurfStitch would achieve the:
 - (i) August FY2016 EBITDA Forecast; alternatively

- (ii) November FY2016 EBITDA Upgrade;

Particulars

So far as the Plaintiff is able to say prior to discovery, the matters in sub-paragraph (b) are to be inferred from:

- (i) the matters in sub-paragraph (a);
- (ii) the statement on page 5 of the FY2016 Presentation that “[a]chieving planned sales growth proved challenging, material price discounting was used to clear excess inventory”; and
- (iii) the fact that there had been a material increase in SurfStitch’s trade and receivables, accounted for in a material part by a delay in the remission of revenue by third party payment online payment systems, in relation to which the Plaintiff refers to:
 - (a) SurfStitch’s 1H 2016 interim financial report (**1H2015 Interim Financial Report**) in which it reported trade and receivables of \$27,170,000, compared with the FY 2015 Financial Report in which SurfStitch reported trade and receivables of \$1,980,000 (page 57); and
 - (b) the earnings call held by SurfStitch between Mr Cameron and a number of analysts on 25 February 2016, during which Mr Cameron identified delayed receipt of payments for merchandise made through Pay Pal as a material contributor to the increase in trade and receivables.

Further particulars may be provided following discovery.

- (c) by reason of the matters in (a) and (b) it was likely, alternatively there was a material risk, that SurfStitch would achieve in FY2016:
- (i) no EBITDA growth or a loss; or
 - (ii) in any event, EBITDA materially less than its:
 - A. August FY 2016 EBITDA Forecast of \$15m to \$18m; alternatively
 - B. November FY2016 EBITDA Upgrade of \$18m to \$22m.

Particulars

So far as the Plaintiff is able to say prior to discovery the matters in subparagraph (c) are to be inferred from:

- (i) the matters in sub-paragraphs (a) and (b) above; and
- (ii) the matters in sub-paragraph (d) below.

Further particulars may be provided following discovery.

- (d) in or about early November 2015, on a date known to SurfStitch but not currently known to the Plaintiff, SurfStitch:

- (i) had begun negotiations with Three Crowns Investments Pty Ltd (**TCI**) for SurfStitch or one or more of its subsidiaries, and TCI or a related party, to enter an arrangement or arrangements under which:
- A. SurfStitch would licence certain “media assets” to TCI in return for certain fees or royalties that SurfStitch intended to recognise as revenue in its 1H16 or FY2016 financial results; but
 - B. SurfStitch, separately from and subsequently to the arrangement in (A), would enter a “contra” arrangement or arrangements with TCI requiring SurfStitch to pay to TCI, in accounting periods after FY2016, payments equivalent to the payments made or recognised from TCI in FY2016;
- with the effect that the “contra” arrangements would offset each other (**TCI Arrangements**);

Particulars

So far as the Plaintiff is able to say prior to discovery, the negotiations had commenced prior to 26 November 2015 and by 26 November 2015 had resulted in an arrangement described in an email from Cameron to Mr Kim Sundell, a director of TCI, sent on 26 November in which Cameron recorded that:

- (i) subsidiaries of SurfStitch would enter into licensing agreements with TCI or a related party to TCI in consideration for payments to SurfStitch in FY 2016;
- (ii) TCI or a related party would enter into licensing agreements with SurfStitch or a wholly owned subsidiary of SurfStitch in consideration for payments from SurfStitch in FY 2017;
- (iii) the arrangements in (i) and (ii) “*would be a broad contra contract with no cash outlay.*”

Further particulars may be provided following discovery.

- (ii) SurfStitch’s purpose in the negotiations in (i) was or included the purpose of enabling SurfStitch to recognise as revenue in its 1H2016 financial results the fees or royalties ostensibly payable by TCI; and

(iii) unless SurfStitch were able to recognise as revenue in its 1H2016 financial results the fees or royalties ostensibly payable by TCI under the TCI Arrangements, SurfStitch:

- A. was unlikely to meet its November FY2016 EBITDA Upgrade; alternatively
- B. was likely to achieve EBITDA in FY2016 that was a negative result (loss), or at least materially less than its August FY2016 EBITDA Forecast;

(together, separately, and in any combination, **November Information**).

Particulars

The matters in (ii) and (iii) are to be inferred from the “contra” (or “revolving door”) nature of the TCI Arrangements and the recognition of revenue in respect of the TCI Arrangements in SurfStitch’s 1H2016 financial results.

Further particulars may be provided following discovery.

F.3 November Continuous Disclosure Contravention

44. The November Information was information that:

- (a) SurfStitch had (within the meaning of section 674(2) of the *Corporations Act 2001*) by no later than 10 November 2015, alternatively 12 November 2015, alternatively 25 November 2015;

Particulars

As to the information in sub-paragraphs 43(a) to (c), the information related to the actual performance of SurfStitch’s business in 1H2016. Further, senior management ought reasonably to have had the information because:

- (i) SurfStitch had made announcements to the Market concerning its FY2016 EBITDA guidance; and
- (ii) the November Information affected the continued reliability of those announcements.

As to the information in sub-paragraph 43(d), the information concerned the conduct of SurfStitch’s CEO, being a member of its senior management.

- (b) was not generally available within the meaning of s674(2)(c)(i) of the *Corporations Act*;

- (c) was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of SurfStitch Securities within the meaning of section 674(2)(c)(ii) of the *Corporations Act*; and
- (d) in the premises in sub-paragraphs (a) to (c), by the operation of Listing Rule 3.1, was information that SurfStitch became obliged to tell the ASX by no later than 10 November 2015, alternatively 12 November 2015, alternatively 25 November 2015.

45. SurfStitch:

- (a) did not tell the ASX the:
 - (i) information in sub-paragraphs 43(a) to (c) above any time prior to 25 February 2016;
 - (ii) information in sub-paragraph 43(d) any time prior to 9 June 2016;
- (b) in the premises in (a), contravened Listing Rule 3.1; and
- (c) in the premises in (a) and (b) contravened section 674(2) of the *Corporations Act*;

(November Continuous Disclosure Contraventions).

46. On and from 10 November 2015, alternatively 12 November 2015, alternatively 25 November 2015, Cameron:

- (a) knew the matters set out in paragraph 43;
- (b) knew the matters set out in sub-paragraphs 44(a) to (c) inclusive;
- (c) knew the matters set out in paragraph 45(a); and
- (d) in the premises in (a) to (c) inclusive, was involved in SurfStitch's November Continuous Disclosure Contravention within the meaning of section 674(2A) of the *Corporations Act*.

F.4 November Representations – false and misleading statements

47. Further or in the alternative, the November Representations:
- (a) were, by reason of the matters in paragraph 43 above, false in a material particular or materially misleading;
 - (b) were statements or information that were or was likely to:
 - (i) induce persons in this jurisdiction to dispose of or acquire SurfStitch Securities; and/or
 - (ii) have the effect of increasing, reducing, maintaining or stabilising the price of trading in SurfStitch Securities;

Particulars

The matters in (b) are to be inferred from the matters alleged in paragraph 53, 69, 71 and 73 below.

Further particulars may be provided following discovery and the receipt of expert reports.

- (c) by reason of the matters in paragraphs 43 and 44(a) above, were made when SurfStitch and Cameron knew or ought reasonably to have known, alternatively did not care, that the representations were materially misleading.
48. By reason of the matters in paragraph 47 above, SurfStitch and Cameron made statements or disseminated information that were or was false in a material particular, or materially misleading, within the meaning of:
- (a) section 1041E(1) of the *Corporations Act*;
 - (b) section 12DB of the *ASIC Act*; further or alternatively
 - (c) section 29(1)(b) of the *ACL*;
- (together and severally, **November False Statement Contraventions**).

F.5 November Representations – misleading and deceptive conduct

49. Further or in the alternative, by reason of the matters in paragraphs 43 and 44(a) above, SurfStitch and Cameron:

- (a) did not by 10 November 2015, alternatively 12 November 2015, alternatively 25 November 2015, have reasonable grounds for maintaining:
 - (i) the August FY 2016 EBITDA Forecast, alternatively
 - (ii) the November FY 2016 EBITDA Upgrade;
- (b) by reason of the matters in (a) did not have reasonable grounds for the November Representations within the meaning of:
 - (i) section 769C of the *Corporations Act*;
 - (ii) section 12BB of the *ASIC Act*; further or alternatively
 - (iii) section 4 of the *ACL*;
- (c) in the premises, by:
 - (i) making the November Representations, alternatively
 - (ii) not correcting the August FY 2016 EBITDA Forecast;

engaged in conduct that was misleading or deceptive or was likely to mislead and deceive in contravention of:

 - A. section 1041H(1) of the *Corporations Act*;
 - B. section 12DA(1) of the *ASIC Act*; further or alternatively
 - C. section 18 of the *ACL*;

(together and severally, **November Misleading Conduct Contraventions**).

F.6 Involvement of Cameron - November Contraventions

50. Further or in the alternative, Cameron:
- (a) caused SurfStitch to make the November Representations; and
 - (b) at all material times, was acting in his capacity as chief executive officer and managing director of SurfStitch in undertaking the conduct in sub-paragraph (a) above.
51. At all material times, Cameron was aware of:
- (a) the November Information;

- (b) the matters set out in:
 - (i) paragraph 47; and
 - (ii) sub-paragraphs 49(a) and (b);

52. By reason of the matters in paragraphs 50 and 51 above, Mr Cameron:

- (a) was involved in each of the:
 - (i) November False Statement Contraventions; and
 - (ii) November Misleading Conduct Contraventions,
within the meaning of:
 - A. section 1041I of the *Corporations Act*; and/or
 - B. section 12GF of the *ASIC Act*; and/or
 - C. section 236 of the *ACL*;
- (b) in the premises, is liable to compensate the Plaintiff and Group Members for loss and damage suffered as a result of the said contraventions.

F.7 Market effects of November contraventions

53. In the period from 10 November 2015, alternatively 12 November 2015, alternatively 25 November 2015, to the end of the Inflation Period, the:

- (a) November Continuous Disclosure Contraventions;
 - (b) November False Statement Contraventions; further or alternatively
 - (c) November Misleading Conduct Contraventions;
- (together and severally **November Contravening Conduct**) caused the traded price for SurfStitch's Securities to be materially higher during the Inflation Period than:
- (i) its true price; or
 - (ii) the price that would have existed if the November Contravening Conduct had not occurred;

(November Inflation).

Particulars

The November Inflation is to be inferred from:

- (i) the characteristics of the Market for SurfStitch Securities set out in paragraph 75 below;
- (ii) the fact that the November Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities as alleged in paragraph 44(c) above; and
- (iii) the fact that each of the November Representations were representations that a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities as alleged in paragraph 47 above;
- (iv) the movements in the traded price of SurfStitch Securities following the February Partial Disclosure, May Partial Disclosure, and June Disclosure, as set out in paragraphs 69, 71 and 73 below.

Further particulars may be provided following discovery and the receipt of expert reports.

G. FEBRUARY 2016 CONTRAVENTIONS

G.1 February 2016 Conduct

54. On 25 February 2016, SurfStitch and Cameron, at the time of releasing SurfStitch's 1H2016 financial results:

- (a) stated to the Market that SurfStitch believed it was "no longer prudent to focus on a defined EBITDA range. Instead, EBITDA growth will be flexed based on investment around the [Content Strategy]" (**February Partial Disclosure**);

Particulars

ASX Announcement dated 25 February 2016 "*Consolidated 1H 2016 total pro forma sales up 40% to A\$144.9 million with pro forma EBITDA of A\$13.9 million*" (**February Announcement**).

- (b) by the February Partial Disclosure, partially corrected or withdrew the:
 - (i) August FY2016 EBITDA Forecast; and
 - (ii) November FY 2016 EBITDA Upgrade;
- (c) stated to the Market that in 1H2016 SurfStitch had achieved:
 - (i) total revenue of \$144.9m (**1H2016 Reported Revenue**);
 - (ii) EBITDA of \$13.9m (**1H2016 Reported EBITDA**);

(iii) statutory profit of \$959,000 (**1H2016 Reported Profit**);

Particulars

1H 2016 Interim Financial Report.

(d) stated that SurfStitch's 1H 2016 Interim Financial Report was prepared in accordance with:

(i) *inter alia*, the requirements of sections 302, 304 and 305 of the *Corporations Act*; and

(ii) Accounting Standards AASB 101, 118 and 136.

(together and severally **February Express Representations**).

55. By the conduct in the preceding paragraph, SurfStitch and Cameron represented to the Market that:

(a) SurfStitch had undertaken all necessary and reasonable investigations before making any statement or representation as to the state of its business and accounts and had satisfied itself on reasonable grounds following those investigations that the public statements were substantially accurate and not misleading or deceptive in any respect; and

(b) no information had come to the attention of SurfStitch or Cameron that was likely to be material to the investment decisions of investors and that investors would expect to be disclosed, but which had not been disclosed;

(together **February Implied Representations**).

56. At no time prior to 9 June 2016 did SurfStitch or Cameron take any or any adequate steps to withdraw any of the:

(a) February Express Representations;

(b) February Implied Representations;

(together **February Representations**) which were accordingly continuing representations.

57. The February Representations were:
- (a) made in trade or commerce;
 - (b) made in relation to:
 - (i) a financial product within the meaning of sub-sections 763A(1)(a) and 764A(1)(a) of the *Corporations Act*, namely SurfStitch Securities;
 - (ii) in the premises – a financial service within the meaning of:
 - A. sub-section 766A(1)(a) and 766B(1) of the *Corporations Act*; and
 - B. sub-section 12BAB(1)(a) of the *ASIC Act*; and
 - (c) information that a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities.

Particulars

The matters in (c) are to be inferred from the matters alleged in paragraphs 68, 69, 71 and 73 below.

Further particulars may be provided following discovery and the receipt of expert reports.

G.2 True state of affairs at 25 February 2016

58. By no later than 25 February 2016:
- (a) the matters in paragraphs 27 and 43 were continuing;
 - (b) SurfStitch by itself or its subsidiaries had entered the TCI Arrangements;

Particulars

So far as the Plaintiff is able to say prior to discovery, the TCI Arrangements were made on or about 22 December 2015, and included the following elements:

- (i) a TCI related entity, being Coastalwatch Pty Ltd (**Coastalwatch**) agreed to pay various subsidiaries of SurfStitch a total of approximately \$20.5 million in consideration for licences to use the various media assets owned by those subsidiaries (**Copyright Licence Agreements**);

- (ii) the payment in (i) was to be made 120 days from the delivery by the relevant subsidiary of SurfStitch of an invoice for the relevant portion of the consideration;
 - (iii) a Heads of Agreement document (**December HOA**) by which SurfStitch and various of its subsidiaries undertook to use all reasonable endeavours to enter into a further and binding agreement by which:
 - A. SurfStitch or one of its directly owned subsidiaries would pay TCI and Coastalwatch a total of approximately \$20.5 million;
 - B. the amounts in sub-paragraph A would be payable not earlier than 15 July 2016;
 - C. any amounts payable by TCI under any agreements entered into pursuant to the December HOA would be fully set off against amounts payable under the Copyright Licence Agreements, such that no cash was payable under those contemplated agreements or the Copyright Licence Agreements.
- (c) SurfStitch's 1H2016 financial results included recognition of approximately \$20.5m in revenue in respect of the TCI Arrangements;
- (d) after the balance date for the 1H2016 financial results but before 25 February 2016:
 - (i) SurfStitch and TCI agreed to vary the Copyright License Agreements (**Copyright Amendment Deeds**) to the effect that the amounts payable to SurfStitch by Coastalwatch pursuant to the Copyright License Agreements would be payable in ten (10) annual instalments no later than 30 April of each year during the duration of each agreement;
 - (ii) SurfStitch and TCI terminated the December HOA;
 - (iii) SHPL and Coastalcoms Pty Ltd (**Coastalcoms**), a subsidiary of Coastalwatch, entered an agreement (**Software Licensing Agreement**), an effect of which was that SHPL would pay Coastalcoms a licence fee of USD 9,525,000 in ten (10) annual instalments on 31 March each year, until the expiry of that agreement;
 - (iv) SHPL and Coastalwatch entered an agreement, an effect of which was that SHPL would pay Coastalwatch a total of AUD 8.8 million over ten (10)

years, with one tenth of the total amount being payable each year of the agreement (**Store Hosting Agreement**);

(together the **Further TCI Arrangements**);

Particulars

So far as the plaintiff is able to say prior to discovery:

- (i) The Copyright Amendment Deeds were:
 - (a) in writing; and
 - (b) dated 16 February 2016.
 - (ii) SurfStitch purported to terminate the December HOA by a letter from SurfStitch to TCI dated 13 February 2016, signed by Cameron;
 - (iii) The Software Licencing Agreement was:
 - (a) in writing; and
 - (b) dated 16 February 2016;
 - (iv) the Store Hosting Agreement was:
 - (a) in writing; and
 - (b) dated 16 February 2016.
- (e) an effect of the Further TCI Arrangements was that:
- (i) revenue recognised by SurfStitch in 1H 2016 in respect of the Copyright Licence Agreements would now accrue in later reporting periods;
 - (ii) any revenue to SurfStitch pursuant to the Copyright Licence Agreements would be offset by amounts due from SurfStitch to Coastalcoms and Coastalwatch pursuant to the Software Licensing Agreement and the Store Hosting Agreement;
- (f) by reason of the matters in sub-paragraphs (b) to (e) and by the operation of accounting standards AASB 101 and 118, SurfStitch was not entitled:
- (i) at 31 December 2015; alternatively
 - (ii) at 25 February 2016;
- to recognise revenue in relation to the TCI Arrangements or the Further TCI Arrangements in its 1H 2016 Interim Financial Report or at all;

Particulars

It was not probable that SurfStitch would gain any future economic benefit from the TCI Arrangements or the Further TCI Arrangements within the meaning of:

- (i) AASB 101, especially at paragraph 15;
 - (ii) AASB 118, especially at paragraph 33; and
 - (iii) the Framework, especially at paragraphs 83 and 94.
- (g) in the premises, SurfStitch's:
- (i) EBITDA for the 1H 2016 was in fact:
 - A. a loss of approximately \$6.6m; alternatively
 - B. an amount materially less than the 1H 2016 Reported EBITDA;
 - (ii) revenue for 1H 2016 was in fact:
 - A. approximately \$124m; alternatively,
 - B. an amount materially less than the 1H 2016 Reported Revenue;
 - (iii) statutory profit was in fact:
 - A. a loss of approximately \$19m; alternatively,
 - B. an amount materially less than the 1H 2016 Reported Profit;
- (h) by reason of the matters in sub-paragraphs (a) to (g), it was likely, alternatively there was a material risk, that SurfStitch would achieve no EBITDA growth in FY2016, or an EBITDA loss;

Particulars

So far as the Plaintiff is able to say prior to discovery the matters in subparagraph (h) are to be inferred from the matters in subparagraphs (a) and (g) above and the eventual FY2016 financial results.

Further particulars may be provided following discovery.

- (i) by reason of the matters in sub-paragraphs (a) to (h) above:
 - (i) there were indications (within in the meaning of paragraph 90 of AASB136) that one or more of SurfStitch's CGUs was impaired;
 - (ii) the value in use of one or more of SurfStitch's CGUs had reduced in a material amount;
 - (iii) by reason of the matters in (ii), the recoverable amount of one or more of SurfStitch's CGUs was less than the carrying amount of that unit or units;

- (iv) in the premises, SurfStitch was required by the accounting standards to reduce the carrying value of that CGU by reducing the carrying amount of the goodwill allocated to the CGUs;

(together, severally, and in any combination **February Information**).

Particulars

The indications in (i)(i) are to be inferred from the circumstance that in July 2016, following a review of the CGUs conducted by SurfStitch in July 2016, SurfStitch recognised an impairment of goodwill of for FY2016 for all CGUs of \$89m (FY 2016 Financial Report, page 82).

Further particulars will be provided following discovery and receipt of expert accounting reports.

G.3 February continuous disclosure contravention

59. The February Information was information that:

- (a) SurfStitch had (within the meaning of section 674(2) of the *Corporations Act 2001*) by no later than 25 February 2016;

Particulars

The information related to the actual performance of SurfStitch's business in 1H2016 and agreements negotiated by its senior management and actually entered into before 25 February 2016.

- (b) was not generally available within the meaning of section 674(2)(c)(i) of the *Corporations Act*;
- (c) was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of SurfStitch Securities within the meaning of section 674(2)(c)(ii) of the *Corporations Act*; and
- (d) by the operation of Listing Rule 3.1, was information that SurfStitch became obliged to tell the ASX by no later than 25 February 2016.

60. SurfStitch

- (a) did not tell the ASX the February Information at any time prior to 9 June 2016;
- (b) in the premises in (a), contravened Listing Rule 3.1; and

- (c) in the premises in (a) and (b), contravened section 674(2) of the *Corporations Act*;

(February Continuous Disclosure Contravention).

61. On and from 25 February 2016 Cameron:
- (a) knew the matters set out in paragraph 58;
 - (b) knew the matters set out in sub-paragraphs 59(a) to (c) inclusive;
 - (c) knew the matters set out in sub-paragraph 60(a); and
 - (d) in the premises in (a) to (c) inclusive, was involved in SurfStitch's February Continuous Disclosure Contravention within the meaning of section 674(2A) of the *Corporations Act*.

G.4 February Representations – false and misleading statements

62. Further and in the alternative the February Representations:
- (a) were, by reason of the matters in paragraphs 58 and 59(a) above, false in a material particular or materially misleading;
 - (b) were statements or information that were or was likely to:
 - (i) induce persons in this jurisdiction to dispose of or acquire SurfStitch Securities; and/or
 - (ii) have the effect of increasing, reducing, maintaining or stabilising the price of trading in SurfStitch Securities;

Particulars

The matters in (b) are to be inferred from the matters alleged in paragraphs 68, 69, 71 and 73 below.

Further particulars may be provided following discovery and the receipt of expert reports.

- (c) by reason of the matters in paragraph 59(a), were made when SurfStitch and Cameron knew or ought reasonably to have known that the representations were materially misleading.

63. By reason of the matters in paragraph 62 above, SurfStitch and Cameron made statements or disseminated information that were or was false in a material particular, or materially misleading within the meaning of:
- (a) section 1041E(1) of the *Corporations Act*; alternatively
 - (b) section 12DB of the *ASIC Act*; further or alternatively
 - (c) section 29(1)(b) of the *ACL*;
- (together and severally, **February False Statement Contraventions**).

G.5 February Representations – misleading and deceptive conduct

64. Further or in the alternative, by reason of the matters in paragraphs 58, 59(a) and 60(a) above, SurfStitch and Cameron, by making the February Representations, engaged in conduct that was misleading or deceptive or that was likely to mislead and deceive in contravention of:
- (i) section 1041H(1) of the *Corporations Act*;
 - (ii) section 12DA(1) of the *ASIC Act*; further or alternatively
 - (iii) section 18 of the *ACL*;
- (together and severally, **February Misleading Conduct Contraventions**).

G.6 Involvement of Cameron – February Contraventions

65. Further or in the alternative, Cameron:
- (a) caused SurfStitch to make the February Representations;
 - (b) caused SurfStitch to enter each of the:
 - (i) TCI Arrangement; and
 - (ii) Further TCI Arrangement,
 - (c) at all material times, was acting in his capacity as chief executive officer and managing director of SurfStitch in undertaking the conduct in sub-paragraph (a)

and (b) above.

66. At all material times, Cameron was aware of:

- (a) the February Information; and
- (b) the matters set out in
 - (i) paragraphs 59(a) and 60(a); and
 - (ii) paragraph 62 above.

67. By reason of the matters in paragraphs 65 and 66 above, Cameron:

- (a) was a person involved in each of the:
 - (i) February False Statement Contraventions; and
 - (ii) February Misleading Conduct Contraventions,
 within the meaning of:
 - A. section 1041I of the *Corporations Act*; and/or
 - B. section 12GF of the *ASIC Act*; and/or
 - C. section 236 of the *ACL*;
- (b) is liable to compensate the Plaintiff and Group Members for loss damage suffered as a result of the contraventions.

G.7 Market effect of the February contraventions

68. In the period from 25 February 2016 to the end of the Inflation Period, the:

- (a) February Continuous Disclosure Contraventions;
- (b) February False Statement Contraventions; further or alternatively,
- (c) February Misleading Conduct Contraventions,

(together and severally **February Contravening Conduct**) caused the traded price for SurfStitch's Securities to be materially higher during the Inflation Period than:

- (i) its true price; or

- (ii) the price that would have existed if the February Contravening Conduct had not occurred;

(February Inflation).

Particulars

The February Inflation is to be inferred from:

- (i) the characteristics of the Market for SurfStitch Securities set out in paragraph 75 below;
- (ii) the fact that the February Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities as alleged in paragraph 59(c) above; and
- (iii) the fact that each of the February Representations were representations that a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities as alleged in paragraph 62 above;
- (iv) the movements in the traded price of SurfStitch Securities following the June Disclosure, as set out in paragraphs 69, 71 and 73 below.

The Plaintiff further says that the February Partial Disclosure was a partial and inadequate correction of the August FY2016 EBITDA Forecast, November Statement, and November FY2016 EBITDA Upgrade, as set out in section H.1 below.

H. CORRECTIVE DISCLOSURES

H.1 February partial disclosure

69. The information the subject of the February Partial Disclosure:

- (a) related to the subject matter of the October Information and the November Information;

Particulars

The February Express Representations concerned the EBITDA that SurfStitch anticipated that it would earn in FY2016.

- (b) was information that a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities;
- (c) operated to partly correct the information available to the Market concerning the subject matter of the October Information and the November Information;

Particulars

The February Partial Disclosure partially corrected the October Information and November Information by withdrawing a defined range of EBITDA in FY2016.

Further particulars may be provided following discovery.

- (d) to the extent that it corrected the said information, caused:
- (i) persons who held SurfStitch Securities to lower the price at which they were willing to dispose of the SurfStitch Securities; and
 - (ii) persons who were considering acquiring SurfStitch Securities to lower the price at which they were willing to purchase the SurfStitch Securities.

Particulars

The effect is to be inferred from the character of the Market for SurfStitch Securities as set out in paragraph 75 below and the change in the traded price for SurfStitch Securities following the release of the February Partial Disclosure.

Further particulars will be provided following discovery and the receipt of expert reports.

- (e) by reason of the matters in (d), caused the price at which SurfStitch Securities traded to:
- (i) decline from:
 - A. a closing price of \$1.73 on 24 February 2016, to a closing price of \$1.14 on 25 February 2016 (a decline of approximately 44%); and
 - B. a closing price of \$1.14 on 25 February 2016, to a closing price of \$1.07 on 26 February 2016 (a decline of approximately 6.15%); and
 - (ii) by the movements in (i), partially correct from the inflation effects of the October Inflation and November Inflation.

Particulars

The correction was only partial because the express representations in paragraphs 54(c) and (d) above, and the implied representation in paragraph 55 above caused the market to retain an inflated understanding of the actual performance and inflated expectations as to SurfStitch's likely results for FY2016.

H.2 May partial disclosure

70. On 3 May 2016, SurfStitch stated to the Market that, or to the effect that, it anticipated that “pro-forma EBITDA for the year ending June 2016 will be between A\$2 million and A\$3 million” (**May Partial Disclosure**);

Particulars

The May Partial Disclosure was express and contained in an announcement that SurfStitch published and released to the ASX on 3 May 2016.

71. The information the subject of the May Partial Disclosure:
- (a) related to the subject matter of the:
 - (i) October Representations;
 - (ii) November Representations; and
 - (iii) February Representations;

Particulars

The May Partial Disclosure concerned the EBITDA that SurfStitch anticipated that it would earn in FY2016.

- (b) was information that a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities;
- (c) operated to partly correct the information available to the Market concerning the subject matter of the October Information, the November Information and the February Information;

Particulars

The May Partial Disclosure partially corrected the October Information and November Information by forecasting an EBITDA range materially less than either the August FY 2016 EBITDA Forecast, or the November FY2016 EBITDA Upgrade.

The correction was partial because, by 3 May 2016, SurfStitch knew or ought reasonably to have known that it was likely, alternatively there was a material risk, that it would achieve no EBITDA growth for FY2016, alternatively would incur an EBITDA loss. The Plaintiff refers to and repeats paragraph 58(h) above and the particulars to that paragraph.

Further particulars may be provided following discovery.

- (d) to the extent that it corrected the said information, caused:
 - (i) persons who held SurfStitch Securities to lower the price at which they were willing to dispose of the SurfStitch Securities; and
 - (ii) persons who were considering acquiring SurfStitch Securities to lower the price at which they were willing to purchase the SurfStitch Securities.

Particulars

The effect is to be inferred from the character of the Market as set out in paragraph 75 below and the change in the traded price following the release of the May Partial Disclosure.

Further particulars will be provided following discovery and the receipt of experts' reports.

- (e) by reason of the matters in (d), caused the price at which SurfStitch Securities traded to:
 - (i) decline from a closing price of \$1.03 on 2 May 2016, to a closing price of \$0.48 on 3 May 2016 (a decline of approximately 53.4%); and
 - (ii) by the movement in (i), partially corrected from the inflation effects of the October Inflation, November Inflation and February Inflation.

Particulars

The effect is to be inferred from the character of the Market for SurfStitch Securities as set out in paragraph 75 below and the change in the traded price for SurfStitch Securities following the release of the May Partial Disclosure.

Further particulars will be provided following discovery and the receipt of expert reports.

H.3 June disclosure

72. On 9 June 2016, SurfStitch:
- (a) published and released to the ASX an announcement titled "SurfStitch Group Company Update" (**June 2016 Announcement**);
 - (b) stated that or to the effect that, *inter alia*:
 - (i) it had undertaken an "in depth review" of the TCI Arrangements and Further TCI Agreements;

- (ii) the effect of that review was that \$20.3m revenue recognised in the 1H 2016 Interim Financial Report would be “reversed and reflected in the full year results”; and
 - (iii) the impact of the matters in sub-paragraphs (i) and (ii) was that SurfStitch “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”;
- (together the **June Disclosure**).

Particulars

The June Disclosure was express and contained in the June 2016 Announcement.

73. The information the subject of the June Disclosure:

- (a) related to the subject matter of the:
 - (i) October Representations; and/or
 - (ii) November Representations; and/or
 - (iii) February Representations;

Particulars

The June Disclosure concerned the:

- (i) EBITDA that SurfStitch anticipated that it would earn in FY2016;
 - (ii) revenue, EBITDA and profit that it was entitled to recognise for 1H2016; and
 - (iii) goodwill allocated to its CGUs.
- (b) was information that a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities;
 - (c) operated to partly correct the information available to the Market concerning the subject matter of the October Information, the November Information and the February Information;

Particulars

The June Disclosure corrected the October Information, November Information and February Information because it disclosed that:

- (i) it was likely that SurfStitch would incur an EBITDA loss in the range of \$17.3 m to \$18.3m in FY2016;

- (ii) SurfStitch was entitled to recognise revenue in its 1H2016 Interim Financial Report approximately \$20.3m less than the 1H2016 Reported Revenue;
- (iii) because of the reduction in revenue, there was an indication that one or more of SurfStitch's CGUs was impaired within the meaning of AASB136.

Further particulars may be provided following discovery.

- (d) to the extent that it corrected the said information, caused:
 - (i) persons who held SurfStitch Securities to lower the price at which they were willing to dispose of the SurfStitch Securities; and
 - (ii) persons who were considering acquiring SurfStitch Securities to lower the price at which they were willing to purchase the SurfStitch Securities.

Particulars

The effect is to be inferred from the character of the Market as set out in paragraph 75 below and the change in the traded price following the release of the June Disclosure.

Further particulars will be provided following discovery and the receipt of expert reports.

- (e) by reason of the matters in (d), caused the price at which SurfStitch Securities traded to:
 - (i) decline from a closing price of:
 - A. \$0.40 on 6 June 2016 to a closing price of \$0.32 on 9 June 2016 (a decline of approximately 20%); and
 - B. \$0.33 on 10 June 2016, to a closing price of \$0.28 on 14 June 2016 (a decline of approximately 16%)
 - (ii) by the movements in (i), partially correct from the inflation effects of the October Inflation, November Inflation and February Inflation.

I. CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS

I.1 Acquisition Subgroup

74. The Plaintiff and some Group Members (together **Acquisition Subgroup Members**):

- (a) acquired interests in SurfStitch Securities during the Inflation Period (**Period Shares**); and
- (b) on any of 25 February 2016, 3 May 2016 or 9 June 2016 still held the Period Shares acquired earlier in the Inflation Period.

Particulars

Particulars of the Plaintiff's acquisitions, including during the Inflation Period are set out in Annexure A.

Particulars of acquisitions of SurfStitch Securities by other Acquisition Subgroup Members will be provided after the trial of the common questions or otherwise as the Court may direct.

I. 2 Market-based Causation

75. The Plaintiff and Acquisition Subgroup Members acquired and thereafter retained their Period Shares in the Market, being a market of investors or potential investors in SurfStitch Securities:

- (a) operated by the ASX;
- (b) regulated by, inter alia, the ASX Listing Rules and sections 674(2), 1041H and 1041E of the *Corporations Act*;
- (c) where SurfStitch had the obligations set out in paragraphs 10 to 16 above;
- (d) in which the price at which SurfStitch Securities were trading quickly adjusted to reflect all material information concerning those securities that was disclosed by SurfStitch in accordance with the ASX Listing Rules and sections 674(2), 1041E and 1041H of the *Corporations Act*; and

Particulars

The Market during the Inflation Period was comprised of all then current investors and potential investors in SurfStitch Securities on the ASX.

- (e) where:
 - (i) by reason of the:
 - A. October Continuous Disclosure Contravention;

- B. November Continuous Disclosure Contraventions; further or alternatively
 - C. February Continuous Disclosure Contravention, information that a reasonable person would expect to have a material effect on the price or value of SurfStitch Securities had not been disclosed to the Market; and
- (ii) by reason of the:
- A. October False Statement Contraventions;
 - B. October Misleading Conduct Contraventions;
 - C. November False Statement Contraventions;
 - D. November Misleading Conduct Contraventions;
 - E. February False Statement Contraventions; further or alternatively
 - F. February Misleading Conduct Contraventions;
- (together **Misleading Conduct**) misleading or deceptive information had been released to the Market that a reasonable person would expect to have an effect on the price or value of SurfStitch Securities;
- (together **Contravening Conduct**).

1.3 Acquisition Subgroup Members – Individual Reliance

76. Further or alternatively to the preceding paragraph, the Plaintiff and Acquisition Subgroup Members acquired and thereafter retained Period Shares in reliance upon one or more of the:
- (a) October Representations;
 - (b) November Representations; and
 - (c) February Representations;
- (together and severally the **Representations**).

Particulars

As to the Plaintiff:

- (i) Ralph McConnell (**Mr McConnell**), a director of the Plaintiff, was responsible for decisions regarding the acquisition, retention and disposal of investments by the Plaintiff.
- (ii) At all material times, Mr McConnell employed a share trading platform that gave him notifications of, and provided him access to, announcements released to the ASX that concerned securities in which he had invested, or was considering investing.
- (iii) In determining to purchase the SurfStitch Securities acquired during the Inflation Period, Mr McConnell:
 - (a) read and relied on each of the:
 - (i) October Express Representation;
 - (ii) 10 November AGM Statements;
 - (iii) 12 November Statement;
 - (iv) November FY2016 EBITDA Upgrade; and
 - (v) February Express Representations;
 each of which contributed in a material respect to the decision by the Plaintiff to purchase the SurfStitch Securities acquired during the Inflation Period; and
 - (b) assumed that SurfStitch had complied with its regulatory obligations, including those in the Listing Rules, and sections 674(2), 1041E and 1041H of the *Corporations Act*.

Particulars of reliance for individual Acquisition Subgroup Members will be provided following the trial of common questions.

1.4 Acquisition Subgroup – inflation losses

77. The Plaintiff and Acquisition Subgroup Members:

- (a) at the time of acquiring Period Shares paid an inflated purchase price;

Particulars

Particulars of the quantum of:

- i. the October Inflation from 23 October 2015,
- ii. the November Inflation from 10, alternatively 12, alternatively 25 November 2015,
- iii. the February Inflation from 25 February 2016

and the residues of those inflation amounts remaining after the partial corrections on 25 February, 3 May and 9 June 2016 will be provided following the receipt of expert reports.

- (b) for Period Shares purchased before 25 February 2016:

- (i) still held the shares while the October Information, the November Information and/or the February Information (as the case may be) became information that SurfStitch had, but did not disclose; and
 - (ii) in the premises in (i), held the shares while the value that would be attributed to them by an informed market (**True Value**) declined but was not detectable; and
- (c) by still holding on any of 25 February 2016, 3 May 2016 or 9 June 2016 Period Shares acquired earlier in the Inflation Period, suffered loss and damage as the February Partial Disclosure, the May Partial Disclosure and/or the June Disclosure (as the case may be) caused the removal of inflation from the trading price of the Period Shares.

Particulars

The Plaintiff refers to and repeats the particulars as to removal of the October Inflation and November Inflation from 25 February 2016 set out in paragraphs 69 and 71 above and the particulars as to removal of the February Information from 9 June 2016 as set out in paragraph 73 above. Further particulars as to the quantum of inflation in the traded price from time to time will be provided following the receipt of expert reports.

The loss suffered by the Plaintiff and Acquisition Subgroup Members (together and severally, **Acquisition Claimants**) is the greater of:

- (i) the difference between the price at which each Acquisition Claimant acquired Period Shares and the value of the Period Shares “left in hand” at trial, or as realised upon a sale of those SurfStitch Securities following the:
 - (a) February Partial Disclosure;
 - (b) May Partial Disclosure; and/or
 - (c) June Disclosure. **(“Left in Hand” loss);**
- (ii) alternatively, the amount of the difference in (i) attributable to the correction of information effected by the Contravening Conduct, net of market movements or unrelated movements in the price at which SurfStitch Securities traded (traded price) (**Peak Inflation loss**); or
- (iii) alternatively, Peak Inflation loss on Period Shares, less any inflation recovered upon a sale of any SurfStitch Securities during the Inflation Period (**Net Inflation loss**);

- (iv) alternatively, the difference between the price at which they acquired their interest in SurfStitch Securities during the Inflation Period and the price at which the Securities would have traded at that time had the Contravening Conduct not occurred (*Potts v Miller loss*);
- (v) alternatively, for the Plaintiff and those Acquisition Claimants who, but for the Contravening Conduct, would have retained or acquired an alternative investment, the difference, at the date of hearing, between their actual position as a result of having acquired an interest in SurfStitch Securities during the Inflation Period and the position in which they would have been had they made or retained the alternative investment (“**No Transaction**” loss);

Particulars of the Plaintiff’s loss will be provided following receipt of expert reports.

Particulars of the individual losses of Group Members will be provided following the trial of common questions or as the Court may direct.

1.5 Retention Subgroup

78. Further or in the alternative to the preceding Section, the Plaintiff and some Group Members (together **Retention Subgroup Members**):
- (a) acquired interests in SurfStitch Securities prior to the Inflation Period (**Pre-period Shares**); and
 - (b) retained the Pre-period Shares after 23 October 2015.

Particulars

The plaintiff refers to and repeats the particulars to paragraph 77 above.

1.6 Retention Subgroup – Individual Reliance – Compliance Assumption

79. The Plaintiff and Retention Subgroup Members retained their Pre-period Shares as a result of holding and acting upon the assumption, being an assumption generally made in the Market for SurfStitch Securities and on which they were entitled to act, that the prices at which the Securities traded represented the market price in a market:

- (a) that had been informed of all material information concerning SurfStitch that was required to be disclosed by it in accordance with the ASX Listing Rules and sections 674(2), 1041E and 1041H of the *Corporations Act*; and
- (b) in which SurfStitch had not made any statements or representations that were likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of SurfStitch Securities, but that were false or misleading in a material particular, or misleading or deceptive or likely to mislead or deceive, or;

Particulars

Investors and potential investors in securities on the ASX, including SurfStitch Securities, are generally aware that there is a complex and comprehensive regulatory regime including, inter alia, the ASX Listing Rules and sections 674(2), 1041E and 1041H of the *Corporations Act*, which has as one of its purposes to ensure that the market is promptly informed of all information which is relevant to the price at which securities are traded.

Particulars of the Plaintiff's Pre-period Shares are set out in Annexure A to these Contentions. The Plaintiff, by its director Mr McConnell, decided to retain its Pre-period Shares after SurfStitch made the October Express Representations because Mr McConnell:

- (i) considered that the information in the October Express Representation was positive as to the prospects of SurfStitch, and might cause the price of SurfStitch Securities to increase, or at least not decline;
- (ii) assumed that SurfStitch had undertaken proper enquiries as to the variables affecting its forecasts, and had determined as a result that the forecast was reliable; and
- (iii) assumed that SurfStitch had released to the Market all information that it had that was material to the price of its securities and was required by law or by the ASX Listing Rules to be disclosed, and had not engaged in conduct that was false or misleading.

Particulars for the Retention Subgroup Members will be provided following the determination of the common questions or otherwise as the Court may direct.

1.7 Retention Subgroup – Individual Reliance – Representations

80. Further or alternatively to the preceding paragraph, the Plaintiff and Retention Subgroup Members retained an interest in Pre-period Shares after 23 October 2015, in reliance upon one or more of the:

- (a) October Representations;
 - (b) November Representations; and
 - (c) February Representations;
- (together and severally the **Representations**).

Particulars

The Plaintiff refers to and repeats the particulars to paragraph 76 above.

1.8 Retention Subgroup – Loss and Damage

81. But for the October Contravening Conduct the Plaintiff and Retention Subgroup Members would have disposed of their Pre-period Shares before the November Contravening Conduct occurred.

Particulars

If SurfStitch had:

- (i) informed the Market of the October Information at the time it was obliged to; and
- (ii) not made the October Representations,

then Mr McConnell, within a short time after 23 October and in any event before 10 November 2015, would have caused the Plaintiff to:

- A. dispose of most or all of its Pre-period Shares;
- B. not acquire any further SurfStitch Securities; and
- C. invested the proceeds from 'A' in other securities listed on the ASX;

and would thereby have suffered loss of the October Inflation amount, but avoided the further losses suffered in and from 25 February 2016 and attributable to the November Information and February Information.

Particulars relating to the individual Retention Subgroup Members will be provided following the trial of common questions or otherwise as the Court may direct.

82. In the premises in the preceding paragraph, by reason of the October Contravening Conduct the Plaintiff and Retention Subgroup Members lost the opportunity to avoid:
- (a) the reductions in True Value resulting from the November Information and the February Information; and

- (b) the losses resulting from the February Partial Disclosure, the May Partial Disclosure and the June Disclosure, so far as those disclosures related to the subject matter of the November Information and the February Information.

Particulars

Particulars of the quantum of the November Inflation and the February Inflation, reflecting the further reductions in True Value associated with the November Information and the February Information respectively, will be provided following receipt of expert reports.

83. Further or in the alternative, but for the November Contravening Conduct the Plaintiff and Retention Subgroup members would have disposed of their Pre-period Shares before the February Contravening Conduct occurred.

Particulars

In the event that SurfStitch had:

- (i) informed the Market of the November Information at the time it was obliged to do so; and
- (ii) not made the November Representations,

Mr McConnell, within a short time after 25 November 2015 and in any event before 25 February 2016, would have caused the Plaintiff to:

- A. dispose of all, or a material number, of the SurfStitch Securities it then held;
- B. not acquire any further SurfStitch Securities; and
- C. invest the proceeds from the disposal in "A" in other securities listed on the ASX.

and would have suffered loss of the October Inflation and November Inflation amounts, but avoided the further losses attributable to the February Information.

Particulars relating to individual Retention Subgroup Members will be provided following the trial of common questions or otherwise as the Court may direct.

84. In the premises in the preceding paragraph, by reason of the November Contravening Conduct the Plaintiff and Retention Subgroup Members lost the opportunity to avoid:
- (a) the reductions in True Value resulting from the February Information; and

- (b) the losses resulting from the May Partial Disclosure and the June Disclosure, so far as those disclosures related to the subject matter of the February Information.

Particulars

Particulars of the quantum of the February Inflation, reflecting the further reductions in true value associated with the November Information and the February Information respectively, will be provided following receipt of expert reports.

J. ENTITLEMENT TO RELIEF

85. By reason of the matters in paragraphs 69 to 84 above, SurfStitch and/or Cameron are obliged pursuant to section 1317HA of the *Corporations Act* to compensate the Plaintiff and Group Members for the damage that resulted from the contravention of section 674(2).
86. Further or in the alternative, by reason of the matters set out in paragraphs 69 to 84 above, the Plaintiff and each of the Group Members may recover the amount of the loss and damage suffered by them from SurfStitch and/or Cameron pursuant to:
- (a) section 1041I of the *Corporations Act*; and
 - (b) section 12GF of the *ASIC Act*; and
 - (c) section 236 of the *ACL*.

AND THE PLAINTIFF CLAIMS, for itself and on behalf of the Group Members, the relief set out in the Summons.

**ANNEXURE A –
PARTICULARS OF THE PLAINTIFF'S SHAREHOLDINGS
IN SURFSTITCH SECURITIES
DURING THE INFLATION PERIOD**

The Plaintiff acquired an interest in SurfStitch Securities as outlined in the following table:

Date of Purchase	Number of SurfStitch Securities	Average price per share (\$)	Amount paid (not incl. brokerage) (\$)	Brokerage (\$)	GST on brokerage (\$)	Amount paid (incl. brokerage) (\$)
2/02/2015	9,325	1.070	9,997.70	19.95	1.81	10,017.65
27/04/2015	2,900	1.750	5,094.95	19.95	1.81	5,114.90
2/07/15	2,800	1.810	5,087.95	19.95	1.81	5,107.90
7/07/15	2,700	1.880	5,095.95	19.95	1.81	5,115.90
26/11/2015	2,450	2.070	5,091.45	19.95	1.81	5,111.40
7/01/2016	1,360	1.850	2,535.95	19.95	1.81	2,555.90
21/03/2016	1,860	1.370	2,568.15	19.95	1.81	2,588.10

The Plaintiff disposed of its interest in SurfStitch Securities acquired during the Inflation Period as outlined in the following table:

Date of Sale	Number of SurfStitch Securities	Average price per share (\$)	Trade value (not incl. brokerage) (\$)	Brokerage (\$)	GST on brokerage (\$)	Net proceeds (incl. brokerage) (\$)
5/06/2015	2,900	1.720	4,968.05	19.95	1.81	4,948.10
30/06/2015	2,871	1.774	5,073.98	19.95	1.81	5,056.03

ANNEXURE B – DEFINED TERMS

1.	Term	Page
2.	"Left in Hand" Loss	56
3.	"No Transaction" loss	57
4.	10 November AGM Statements	26
5.	12 November Statement	27
6.	13 May 2015 Announcement	16
7.	1H2015 Interim Financial Report	30
8.	1H2016 Reported EBITDA	37
9.	1H2016 Reported Profit	38
10.	1H2016 Reported Revenue	37
11.	27 August 2015 Announcement	17
12.	27 August 2015 Presentation	17
13.	3 May 2016 Announcement	20
14.	AASB	10
15.	ACL	9
16.	Acquisition Claimants	56
17.	Acquisition Subgroup Members	52
18.	Asia Pacific Business	15
19.	ASIC	14
20.	ASIC Act	9
21.	ASX	8
22.	ASX Listing Rules	8
23.	August 2015 Conference Call	17
24.	August FY2016 EBITDA Forecast	17
25.	Cameron	9
26.	CGU	12
27.	Coastalcoms	40
28.	Coastalwatch	39
29.	Commerce Business	15
30.	Content Business	16
31.	Content Strategy	16
32.	Contravening Conduct	54
33.	Copyright Amendment Deeds	40
34.	Copyright License Agreements	39
35.	Corporations Act	7
36.	December HOA	40
37.	EBITDA	17
38.	Europe Business	15
39.	February Misleading Conduct Contraventions	45

1.	Term	Page
40.	February Announcement	37
41.	February Continuous Disclosure Contravention	44
42.	February Contravening Conduct	46
43.	February Express Representations	38
44.	February False Statement Contraventions	45
45.	February Implied Representations	38
46.	February Inflation	47
47.	February Information	43
48.	February Partial Disclosure	37
49.	February Representations	39
50.	Framework	11
51.	Further TCI Agreements	41
52.	FY 2015 Financial Report	17
53.	FY 2016 Financial Report	20
54.	FY 2016 Presentation	21
55.	Garage	27
56.	Group Members	7
57.	Inflation Period	8
58.	June 2016 Announcement	50
59.	June Disclosure	51
60.	Listing Date	8
61.	Magic Seaweed	15
62.	Market	9
63.	May Partial Disclosure	49
64.	Misleading Conduct	54
65.	Mr McConnell	55
66.	Net inflation loss	56
67.	North America Business	15
68.	November Continuous Disclosure Contraventions	33
69.	November Contravening Conduct	36
70.	November Express Representations	28
71.	November False Statement Contraventions	34
72.	November FY2016 EBITDA Upgrade	27
73.	November Implied Representations	28
74.	November Inflation	36
75.	November Information	32
76.	November Misleading Conduct Contraventions	35
77.	November Representations	29
78.	October Continuous Disclosure Contravention	22

1.	Term	Page
79.	October Contravening Conduct	25
80.	October Express Representation	18
81.	October False Statement Contraventions	24
82.	October Implied Representations	19
83.	October Inflation	25
84.	October Information	21
85.	October Misleading Conduct Contraventions	24
86.	October Representations	19
87.	Peak Inflation loss	56
88.	Period Shares	53
89.	Potts v Miller loss	57
90.	Pre-Period Shares	57
91.	Representations	54 & 59
92.	Retention Subgroup Members	57
93.	Rollingyouth	15
94.	SHI	27
95.	SHPL	9
96.	Software Licensing Agreement	40
97.	SSL	15
98.	Store Hosting Agreement	41
99.	SurfStitch	7
100.	SurfStitch Securities	8
101.	TCI	31
102.	TCI Arrangements	31
103.	True Value	56

D. QUESTIONS APPROPRIATE FOR REFERRAL TO REFEREE

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

E. MEDIATION

3. The parties have not attempted mediation. The plaintiff is willing to attend mediation at the appropriate time.

SIGNATURE



Signature of legal representative

Capacity *solicitor on record.*

Date of Signature *28 June 2017*