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Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	VID561/2017
File Title:	ALISON COURT v SPOTLESS GROUP HOLDINGS LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

SEAL OF THE FEDERAL COURT OF AUSTRALIA

Sia Lagos

Dated: 24/02/2020 3:01:38 PM AEDT Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 17
Rule 8.05(1)(a)

<u>THIRD</u> FURTHER AMENDED STATEMENT OF CLAIM

(Filed pursuant to the orders of Murphy J made on ~~20 September 2018, as amended on 11 October 2018~~ <u>21 February 2020</u>)

VID561/2017

Federal Court of Australia

District Registry:

Division: General

ALISON COURT

Applicant

SPOTLESS GROUP HOLDINGS LIMITED (ACN 154 229 562)

Respondent

TABLE OF CONTENTS (~~SECOND~~ <u>THIRD</u> FURTHER UPDATED)

This ~~Second~~ <u>Third</u> Further Amended Statement of Claim is arranged as follows:

Filed on behalf of	Alison Court, Applicant		
Prepared by	Ben Hardwick		
Law firm	Slater & Gordon Limited		
Tel	(03) 9949 8758	Fax	(03) 9600 0290
Email	Ben.Hardwick@slatergordon.com.au		
Address for service	Slater & Gordon Limited, 485 La Trobe Street, Melbourne, VIC, 3000		

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A. NOTES AS TO TERMINOLOGY

In this ~~Second~~ Third Further Amended Statement of Claim, the following conventions are used in referring to financial results:

a) FY15, FY16 refer to the financial years ended 30 June 2015 and 30 June 2016, etc.;

b) 1H, 2H refer to the first half and the second half of the relevant financial year (1H15 being the six-month period ended 31 December 2014; and 2H15 being the six-month period ended 30 June 2015, etc.);

c) 1Q, 2Q, 3Q and 4Q refer to the first, second, third and fourth quarters of a financial year (1Q15 being the three-month period ended 30 September 2014, 2Q15 being the three-month period ended 30 December 2014, etc.); and

d) the financial results of the Respondent (**Spotless**) and the members of the consolidated group of which it is the head entity are referred to as the financial results of Spotless.

The defined terms used in this ~~Second~~ Third Further Amended Statement of Claim are summarised in Annexure C.

B. PARTIES

1. Alison Court (the **Applicant**) brings this proceeding as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on her own behalf and on behalf of the Group Members.

2. The Applicant and the persons whom she represents (**Group Members**) are persons who:

   2.1. acquired:

      (a) an interest in ordinary shares in Spotless (**SPO Shares**); or

(b) long exposure to SPO Shares by entering into equity swap confirmations in respect of ordinary shares in Spotless (**SPO Equity Swaps**),

during the period from 25 August 2015 to the close of trade on 1 December 2015 inclusive (the **Relevant Period**).

Particulars

The Applicant acquired SPO Shares in the Relevant Period. Particulars of the Applicant's shareholdings are set out in Annexure A to this ~~Second~~ Third Further Amended Statement of Claim.

Particulars of the shareholdings of the Group Members who acquired SPO Shares will be provided following the trial of the common questions.

Particulars of Group Members who acquired SPO Equity Swaps will be provided following the trial of the common questions.

2.2. suffered loss or damage by reason of the matters set out in this ~~Second~~ Third Further Amended Statement of Claim; and

2.3. are not:

(a) directors or officers or a close associate (as defined in s 9 of the *Corporations Act 2001* (Cth) (the ***Corporations Act***)) of Spotless; or

(b) a related party (as defined in s 228 of the *Corporations Act*) of Spotless; or

(c) a related body corporate (as defined in s 50 of the *Corporations Act*) of Spotless; or

(d) an associated entity (as defined in s 50AAA of the *Corporations Act*) of Spotless; or

(e) a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia.

3. As at the date of this proceeding, there are seven or more persons who have claims against Spotless in respect of the matters set out in this ~~Second~~ Third Further Amended Statement of Claim.

4. At all material times from 23 May 2014 Spotless:

4.1. was and is a company incorporated under the *Corporations Act*;

4.2. was and is a corporation listed on a financial market, the Australian Securities Exchange (the **ASX**), operated by ASX Limited;

4.3. had and has on issue ordinary shares (that is, SPO Shares) which were and are:

(a) traded on the ASX under the designation “SPO”;

(b) ED securities within the meaning of s 111AE of the *Corporations Act*;

(c) quoted ED securities within the meaning of s 111AM of the *Corporations Act*;

(d) a financial product within the meaning of s 763A(1)(a) and s 764A(1)(a) of the *Corporations Act* and s 12BAA(1)(a) and (7)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**);

4.4. was and is a listed disclosing entity within the meaning of s 111AL(1) of the *Corporations Act*;

4.5. was and is subject to and bound by the Listing Rules of the ASX (the **ASX Listing Rules**);

4.6. was and is a corporation within the meaning of the *Competition and Consumer Act 2010* (the **CCA**) (paragraphs (b) or (d) of the definition in s 4 of the *CCA*);

4.6A was and is a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the CCA, as applicable pursuant to:

(a) s 131 of the CCA;

(b) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);

(c) s 28 of the *Fair Trading Act 1987* (NSW);

(d) s 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);

(e) s 16 of the *Fair Trading Act 1989* (Qld);

(f) s 6 of the *Australian Consumer Law (Tasmania) Act* 2010 (Tas);

(g) s 19 of the *Fair Trading Act 2010* (WA);

(h) s 14 of the *Fair Trading Act 1987* (SA); and/or

(i) s 27 of the *Consumer Affairs and Fair Trading Act* (NT),

as in force after 1 January 2011 (individually, or together, the **ACL**); and

4.7. submitted financial statements on a consolidated basis for the group of companies of which it was the parent.

C. PRELIMINARY MATTERS

5. In issuing the SPO Shares, Spotless dealt in a financial product within the meaning of s 766C(1)(b) of the *Corporations Act* and s 12BAB(7)(b) of the *ASIC Act*, and thereby provided a financial service within the meaning of s 766B(1)(b) of the *Corporations Act* and s 12BAB(1)(b) of the *ASIC Act* (the **Dealing Service**).

6. In operating the ASX, ASX Limited has at all material times provided a financial service within the meaning of s 12BAB(1)(f) of the *ASIC Act* (the **ASX Service**).

7. The ACL applies to the conduct of Spotless as a law of each of the Commonwealth, and the States and Territories referred to in paragraph 4.6A, by virtue of each of the provisions identified in subparagraphs 4.6A(a) to (i).

8. [Not used]

9. [Not used]

10. [Not used]

D. APPLICATION OF SECTION 674(2) OF THE *CORPORATIONS ACT* TO SPOTLESS

11. At all material times ASX Limited was a market operator of a listing market, namely the ASX, in relation to Spotless for the purposes of s 674(1) of the *Corporations Act*.

12. At all material times Rule 3.1 of the ASX Listing Rules applied to Spotless.

13. At all material times 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.

14. At all material times Rule 19.3 of the ASX Listing Rules and s 677 of the *Corporations Act* had the effect that, for the purposes of Rule 3.1 of the ASX Listing Rules, a reasonable person would be taken to expect information to have a material effect on the price or value of an entity's securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to acquire or dispose of the entity's securities.

15. At all material times Rule 19.12 of the ASX Listing Rules provided that an entity becomes aware of information if an officer 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.

16. During the Relevant Period, the officers of Spotless within the meaning of s 9 of the *Corporations Act* and Rule 19.12 of the ASX Listing Rules included, but were not limited to, the following persons:

    16.1. Margaret Jackson (Chair);

    16.2. Diane Grady (non-executive director);

    16.3. Garry Hounsell (non-executive director);

    16.4. Nick Sherry (non-executive director);

    16.5. Rob Koczkar (non-executive director);

16.6. Geoff Hutchinson (non-executive director);

16.7. Bruce Dixon (Chief Executive Officer and Managing Director) (until 20 November 2015) (**Dixon**);

16.8. Martin Sheppard (Chief Executive Officer and Managing Director) (from 23 November 2015) (**Sheppard**);

(paragraphs 16.1 to 16.8, together the **Board of Directors**);

16.9. Danny Agnoletto (Chief Financial Officer);

16.9A. Vita Pepe (Chief Operating Officer) (until early September 2015);

16.10. Dana Nelson (Chief Operating Officer) (from early September 2015);

16.11. Paul Morris (Company Secretary);

16.12. Rowan Wilkie (General Manager – Finance) (until September 2014);

16.13. Jacob Gunzburg (Group Financial Controller, until October 2015) (General Manager – Finance, from October 2015);

16.14. Peter Lotz (Head of Group Services & Infrastructure);

16.15. David Willett (CEO – AE Smith);

16.16. Richard Robins (General Manager – Laundry Services);

16.17. Richard Sweetnam (General Manager, Finance Laundry Services);

16.18. Rob Rutter (General Manager – B&I AU / Education);

16.19. Darren Boyd (General Manager – AE Smith / Laundries / BD);

16.20. Craig Sutherland (General Manager – Government);

16.21. Grant Stubbs (General Manager – Resources);

16.22. David McKaskill (General Manager – Defence);

16.23. Simon Lipscombe (General Manager – NZ);

16.24. Catriona Larritt (Divisional General Manager – Health, Laundries & Business Development);

16.25. Russell Montgomery (KPI Development Manager);

16.26. Paul Waterson (Head of Integration / Projects),

(paragraphs 16.1 to 16.26, together the **Officers**).

17. At all material times s 674(2) of the *Corporations Act* applied to Spotless by reason of:

17.1. the matters set out in paragraphs 4, and 11 to 16 above; and

17.2. ss 111AP(1) or 674(1) of the *Corporations Act*.

18. At all material times, there existed:

18.1 a market of investors and potential investors in the SPO Shares on the ASX (**SPO Shares Market**); and

18.2 a market of investors and potential investors in SPO Equity Swaps, priced by reference to the price for SPO Shares on the ASX (**SPO Equity Swaps Market).**

E. ACCOUNTING OBLIGATIONS OWED BY SPOTLESS

19. At all material times, Spotless was obliged pursuant to:

19.1. s 292 of the *Corporations Act* to prepare a financial report for each financial year;

19.2. s 296 of the *Corporations Act* to prepare a financial report for each financial year that was compliant with the accounting standards made by the Australian Accounting Standards Board (**AASB**) pursuant to s 334 of the *Corporations Act* (**AASB Accounting Standards**);

19.2A sub-s 295(2) of the *Corporations Act* to prepare consolidated financial statements on behalf of itself and its controlled entities;

19.2B sub-s 295(3) of the *Corporations Act* to provide notes to each financial statement for a financial year that contained:

(a) disclosures required by the regulations;

(b) notes required by accounting standards; and

(c) any other information necessary to give a true and fair view;

19.3. s 297 of the *Corporations Act* to prepare financial statements and notes for a financial year that gave a true and fair view of its financial position and performance and that of the consolidated group of which it was the parent;

19.4. s 299A of the *Corporations Act* to prepare a directors' report for each financial year that contained information that members of Spotless would reasonably require in order to make an informed assessment of Spotless' operations, financial position and its prospects for future years;

19.5 s 302 of the *Corporations Act* to prepare half-year financial reports;

19.6 sub-s 303(3) of the *Corporations Act* to provide notes to each financial statement for a half year that contained:

(a) disclosures required by the regulations;

(b) notes required by accounting standards; and

(c) any other information necessary to give a true and fair view;

19.7 s 304 of *Corporations Act* to prepare a financial report for each half year that was compliant with the AASB Accounting Standards; and

19.8 s 305 of the *Corporations Act* to prepare financial statements and notes for a half-year that gave a true and fair view of its financial position and performance and that of the consolidated group of which it was the parent.

19A. At all material times the following AASB Accounting Standards, inter alia, applied to Spotless:

19A.1 AASB 101 Presentation of Financial Statements;

19A.2 AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors;

19A.3 AASB 134 Interim Financial Reporting; and

19A.4 AASB 137 Contingent Liabilities and Contingent Assets,

(together **Relevant AASB Accounting Standards**).

19B. At all material times AASB 101 provided, inter alia:

19B.1 in paragraph 7, that an item in a financial statement will be material if its omission or misstatement could influence the economic decisions of users of the financial statements;

19B.2 in paragraph 15, that financial statements shall present fairly the financial position, financial performance and cash flows of an entity and that fair presentation requires 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 as set out in the Framework for the Preparation and Presentation of Financial Statements (**AASB Framework**);

19B.3 in paragraph 29, that an entity shall present separately each material class of similar items and that an entity shall present separately items of a dissimilar nature or function unless they are immaterial; and

19B.4 in paragraph 125, that an entity shall disclose information about the assumptions it makes about the future, and other major sources of estimation uncertainty at the end of the reporting period, that have a significant risk of resulting in a material adjustment to the carrying amounts of assets and liabilities within the next financial year and that in respect of those assets and liabilities, the notes shall include details of:

(a) their nature; and

(b) their carrying amount as at the end of the reporting period.

19C. At all material times AASB 108 provided, inter alia:

19C.1 in paragraph 5, that an item in a financial statement will be material if its omission or misstatement could influence the economic decisions of users of the financial statements; and

19C.2 in paragraph 29, that where a voluntary change in accounting policy has an effect on the current period the entity should disclose the nature of the change.

19D. At all material times AASB 134 provided, inter alia, in paragraph 23, that in deciding how to recognise, measure, classify, or disclose an item for interim financial reporting purposes, materiality shall be assessed in relation to the interim period financial data.

19E. At all material times AASB 137 provided, inter alia:

19E.1 in paragraph 23, that for the purpose of that standard, an event is regarded as probable if the event is more likely than not to occur, that is, the probability that the event will occur is greater than the probability that it will not;

19E.2 in paragraph 31, an entity shall not recognise a contingent asset;

19E.3 in paragraph 35, if it has become virtually certain that an inflow of economic benefits will arise, the asset and the related income are recognised in the financial statements of the period in which the change occurs while if an inflow of economic benefits has become probable, an entity discloses the contingent asset; and

19E.4 in paragraph 89, where an inflow of economic benefits is probable, an entity shall disclose a brief description of the nature of the contingent assets at the end of the reporting period, and, where practicable, an estimate of their financial effect.

19F. At all material times the AASB Framework, provided:

19F.1 in paragraph 49(a), that an asset is a resource controlled by an entity as a result of past events and from which future economic benefits are expected to flow to the entity;

19F.2 in paragraph 89, that an asset is recognised in the balance sheet when it is probable that the future economic benefits will flow to the entity and the asset has a cost or value that can be measured reliably;

19F.3 in paragraph 90, that an asset is not recognised in the balance sheet when expenditure has been incurred for which it is considered improbable that economic benefits will flow to the entity beyond the current accounting period; that instead, such a transaction results in the recognition of an expense in the income statement.

19G. At all material times Spotless reported:

19G.1 on a consolidated basis for itself and its controlled entities;

19G.2 headline earnings as earnings before interest, tax, depreciation and amortisation (**EBITDA**); and

19G.3 net profit as net profit after tax (**NPAT**).

F. SPOTLESS' BUSINESS

20. At all material times Spotless:

20.1. carried on business as a provider of outsourced facility management, catering and food and cleaning services in the following sectors in Australia and New Zealand:

(a) private and government entities involved in the provision of social infrastructure services (referred to by Spotless as **Health, Education & Government**);

(b) large and medium-sized companies, operators of airports and airline terminals and operators of function centres and large stadia (referred to by Spotless as **Commercial & Leisure**); and

(c) defence forces and resources companies (referred to by Spotless as **Base & Township**).

20.2. carried on business as a provider of linen and laundry services in Australia and New Zealand to hospitals, aged care facilities, hotels and corporate customers (which sector was referred to by Spotless as **Laundry & Linen**).

Particulars

Spotless ASX announcement entitled "Prospectus" dated 28 April 2014, page 8 (**Prospectus**).

G1. REORGANISATION OF SPOTLESS IN 2012

21. In August 2012 Spotless Group Limited was acquired by Pacific Industrial Services Pty Ltd ACN 154 229 562, which is owned by a consortium of investors, predominantly comprised of Pacific Equity Partners and its coinvestors (together, **PEP**), and which became known as Spotless Group Holdings Limited on 24 April 2014 (the **2012 Acquisition**).

22. Following the 2012 Acquisition:

    22.1. a new senior management team was appointed, headed by ~~Bruce~~ Dixon as Chief Executive Officer (the **CEO**);

    22.2. the business of Spotless was reorganised, including through:

    (a) a decrease in overheads by a reduction in employees in administrative or management roles by approximately 790 full-time equivalent positions, the majority of which reduction occurred by December 2012;

    (b) the re-tendering of procurement contracts (with an average length of two to five years) which secured an aggregate 7% saving on the applicable cost base of FY12 procurement expenditure, and a reduction in the number of suppliers of products and services by greater than 30%;

    (c) decentralising the business development division to be focused on and assigned to particular customer sectors rather than discrete services and products; and

    (d) [Not used]

    (e) identification and intentional exiting of loss-making contracts,

    (the **2012 Reorganisation**).

Particulars

Prospectus, pages 33, 34 and 65.

Spotless Earnings Call to the FY16 Results, transcript dated 24 August 2016, page 10 (the **FY16 Conference Call**).

22A. As a result of the 2012 Reorganisation, Spotless' business development division was reduced from historical staffing levels to "*just a handful of people*" (the **2012 Business Development Cuts**).

Particulars

The Applicant refers to the FY16 Conference Call, page 10.

22B. As a result of the 2012 Reorganisation, the scope of work expected from the Spotless' business development division had expanded, such that it was expected to work on renewing and winning contracts across entire customer sectors, rather than discrete services or product offerings as had formerly been the case (the **2012 Business Development Role Expansion**).

Particulars

The Applicant refers to the Prospectus, page 11.

G2. APRIL 2015 BUSINESS DEVELOPMENT DIVISION REORGANISATION

22C. In around April 2015, Spotless' business development division was reorganised to:

22C.1 reduce the number of personnel in the division, by:

(a) reducing the bidding team from 26 to 18 'bidding resources';

(b) reducing the analyst team to one person; and

(c) reducing the number of personnel in the bid management and writing team such that there were fewer permanent staff and increased reliance upon contractors;

22C.2 further decentralise the division including by transferring bid managers and bid writers into the individual sectors; and

22C.3 change the focus of the division's work to contract renewals and extensions over pursuing new client opportunities, in all sectors except Government, Resources and Health,

(the **April 2015 Business Development Changes**).

Particulars

The Applicant refers to:

(i) SPT.003.003.9037 at 9046;

(ii) SPT.009.005.5998;

(iii) SPT.009.010.4834; and

(iv) SPT.020.113.6678.

G3. OCTOBER 2015 BUSINESS DEVELOPMENT DIVISION REORGANISATION

22D. In around October 2015, Spotless' business development division was further reorganised to:

22D.1. increase the division's number of staff from 18 persons to 21 persons by the end of calendar year 2015;

22D.2. re-centralise the division's bidding team under a central report, rather than being embedded in the individual sectors where they reported to sector General Managers; and

22D.3. increase the emphasis on the bidding process and rigour around pricing.

Particulars

The Applicant refers to:

(i) SPT.009.005.5998; and

(ii) SPT.020.065.7192.

H. SPOTLESS' 2014 ASX LISTING

23. On 28 April 2014 Spotless lodged, and released to potential investors, the Prospectus, which related to its initial public offering of fully paid ordinary shares at a price of $1.60 per share (the **IPO**).

24. The Prospectus stated that Spotless forecast:

24.1. FY14 Statutory EBITDA of $179.4 million;

24.2. FY15 Statutory EBITDA of $301.4 million;

24.3. FY14 Pro Forma Adjusted NPAT of $111.0 million;

24.4. FY15 Pro Forma Adjusted NPAT of $141.8 million.

Particulars

Prospectus, page 11.

25. On 23 May 2014 Spotless was listed on the ASX on a conditional and deferred settlement basis. From 28 May 2014 the SPO Shares would trade on an unconditional but deferred settlement basis, with normal settlement trading expected to commence on 30 May 2014.

Particulars

Spotless ASX announcement entitled "Spotless Group Holdings Limited, Admission to Official List" dated 23 May 2014.

Spotless ASX announcement entitled "Satisfaction of conditions for conditional market" dated 28 May 2014.

26. Under a relationship deed entered into between Spotless and PEP:

26.1. PEP had the right to nominate:

(a) two directors to the Board of Directors while PEP held at least 25% of issued SPO Shares;

(b) one director to the Board of Directors while PEP held at least 10% of issued SPO Shares;

26.2. confidentiality arrangements governed access to Spotless' information by PEP, pursuant to which PEP had the right to access confidential information held by Spotless.

Particulars

Prospectus, page 154, 192.

I. SPOTLESS' FY14 RESULTS

27. On 25 August 2014 Spotless published and lodged with the ASX:

27.1. a document entitled "Spotless Group Holdings Limited, Appendix 4E, Preliminary final report for the year ended 30 June 2014" (the **FY14 Preliminary Final Report**);

27.2. a document entitled "Spotless exceeds FY2014 prospectus forecast" (the **FY14 Results Announcement**); and

27.3. a document entitled "Spotless Group Holdings Limited - FY14 Results Presentation" (the **FY14 Results Presentation**),

(together, the **FY14 Results**).

27A The FY14 Results stated that they were prepared in accordance with AASB Accounting Standards and complied with other requirements of the law.

Particulars

FY14 Preliminary Final Report, p 67.

28. The FY14 Results stated that:

28.1. Spotless' Statutory EBITDA for FY14 was $185.9 million; and

28.2. Spotless' Pro Forma Adjusted NPAT for FY14 $113.9 million,

(the **FY14 Reported Earnings**).

Particulars

FY14 Preliminary Final Report, page 7.

FY14 Results Announcement, page 1.

FY14 Results Presentation, page 4.

29. The FY14 Results also disclosed that Spotless' other non-current assets balance as at 30 June 2014 was $15.9 million.

Particulars

FY14 Preliminary Final Report, page 34.

J. ACQUISITIONS

30. During FY15 Spotless made a number of acquisitions of laundries businesses including:

30.1. on 17 September 2014 Spotless acquired 100% of the share capital of laundry business Aladdin Holdings Pty Ltd (**Aladdin Laundries**);

30.2. on 26 September 2014 Spotless acquired 100% of the share capital of laundry business International Linen Services Pty Ltd (**ILS**),

(together, the **FY15 Laundries Acquisitions**).

Particulars

Spotless ASX announcement, entitled "Appendix 4E and FY15 Financial Statements" dated 25 August 2015, page 58.

31. On 27 October 2014 Spotless held its Annual General Meeting (**AGM**) at which an address was given by its Chair, Margaret Jackson (the **2014 AGM Address**), in which Spotless stated that the FY15 Laundries Acquisitions:

31.1. were immediately EPS accretive;

31.2. were examples of Spotless' commitment to allocating capital to opportunities that generate the best returns for shareholders.

Particulars

Spotless ASX announcement entitled "Address by Margaret Jackson, Chairman, Spotless Annual General Meeting 2014" dated 27 October 2014.

32. On 27 February 2015 Spotless acquired an air-conditioning and mechanical services provider named "AE Smith" (the **AE Smith Acquisition**), in respect of which the company stated that:

32.1. the acquisition would enhance Spotless' integrated service offering to customers, increase in-house delivery and improve margins;

32.2. the acquisition provided Spotless with a platform for growth into technical services across a range of sectors including health, government, industrial and commercial;

32.3. the acquisition built on Spotless' strategy of acquiring high quality, market leading businesses; and

32.4. AE Smith, together with Spotless, had excellent growth opportunities.

Particulars

Spotless ASX announcement entitled "Spotless Acquires Australia's leading air-conditioning and mechanical services provider – AE Smith" dated 2 February 2015, page 1 (**AE Smith Conditional Announcement**).

Spotless ASX announcement entitled "Spotless completes acquisition of AE Smith" dated 27 February 2015 (**AE Smith Acquisition Announcement**).

33. On 26 August 2015 Spotless acquired 100% of the share capital of laundry businesses Errolon Pty Ltd and Monteon Pty Ltd as well as the assets of Three Rings Pty Ltd, collectively known as "Prime Laundry" (the **Prime Laundry Acquisition**).

Particulars

FY16 Preliminary Final Report, page 97.

K. PEP SELL-DOWN

34. Following the IPO, and the exercise of an over-allocation option in the subsequent days, PEP owned 43.3% of the SPO Shares, all of which were subject to escrow restrictions (the **PEP Restricted** SPO Shares).

Particulars

Prospectus, pages 165 - 168.

35. On 13 November 2014 Spotless published and lodged with the ASX a document entitled "Condition satisfied for partial escrow release" (the **First Escrow Release Announcement**), in which it stated that:

35.1. at the close of trade on that day, the volume weighted average trading price of SPO Shares over a period of 20 consecutive trading days was 20% higher than the final price at which shares were acquired in the IPO; and

35.2. as a consequence, 25% of the PEP Restricted SPO Shares were released from escrow.

36. On 1 December 2014 Spotless published and lodged with the ASX a document entitled “Sell down by PEP Shareholders” (the **First Sell Down Announcement**) in which the company stated that it had been informed that PEP had agreed to sell the shares released from escrow on 13 November 2014 in an underwritten block trade (the **First Block Trade**).

37. On 5 December 2014 PEP lodged a ‘Notice of change of interests of substantial holder’ which specified that:

    37.1. the First Block Trade was completed on 4 December 2014; and

    37.2. PEP’s relevant interest in the SPO Shares now amounted to 33.83% of SPO Shares on issue.

38. On 23 March 2015 Spotless published and lodged with the ASX a document entitled “Condition satisfied for partial escrow release” (the **Second Escrow Release Announcement**), in which it stated that:

    38.1. at the close of trade on that day, the volume weighted average trading price of the SPO Shares over a period of 20 consecutive trading days since the release of Spotless’ results for the half year ending 31 December 2014 was 20% higher than the final price at which shares were acquired in the IPO; and

    38.2. as a consequence, a further 25% of the PEP Restricted SPO Shares were released from escrow.

39. On 24 March 2015 Spotless published and lodged with the ASX a document entitled “Sell down by PEP Fund Entities and Coinvestment Shareholders” (the **Second Sell Down Announcement**), in which it stated that it had been informed that PEP had agreed to sell the shares released from escrow on 23 March 2015 in an underwritten block trade (the **Second Block Trade**).

40. On 31 March 2015 PEP lodged a ‘Notice of change of interests of substantial holder’ which specified that:

    40.1. the Second Block Trade was completed on 27 March 2015; and

    40.2. PEP’s relevant interest in the SPO Shares now amounted to 18.93% of SPO Shares on issue.

41. On 25 August 2015 Spotless published and lodged with the ASX a document entitled “Partial escrow release” (the **Third Escrow Release Announcement**), in which it confirmed that, as the financial results for the year ending 30 June 2015 had been released, the remaining SPO Shares that had been subject to escrow arrangements were now no longer subject to those restrictions. This included the remaining PEP Restricted SPO Shares.

42. On 26 August 2015 Spotless published and lodged with the ASX a document entitled “Sell down by PEP Shareholders and Coinvestment Shareholders” (the **Third Sell Down Announcement**), in which it stated that it had been informed that PEP had agreed to sell the shares released from escrow on 25 August in an underwritten block trade (the **Third Block Trade**).

Particulars

Further details of the Third Block Trade are set out in an article by Sarah Thompson entitled “Macquarie to Take Pacific Equity Partners Out of Spotless Group at $1.80 a Share”, *The Australian Financial Review*, dated 25 August 2015.

43. On 1 September 2015 PEP lodged a ‘Notice of ceasing to be a substantial holder’ which specified that:

43.1. the Third Block Trade was completed on 31 August 2015;

43.2. PEP was no longer a substantial holder of any SPO Shares.

L. CHANGE IN CEO AND SENIOR MANAGEMENT

44. On 23 April 2015 Spotless published and lodged with the ASX a document entitled “Spotless Board announces succession planning process”, in which it stated that:

44.1. it had been informed by the CEO, Dixon, that he wished to retire from full-time executive duties at the end of 2015;

44.2. Dixon would step down as Spotless CEO on 31 December 2015;

44.3. Spotless would be conducting a wide-ranging executive search,

(the **Change in CEO**).

45. On 11 August 2015 Spotless published and lodged with the ASX a document entitled “Voluntary escrow arrangements”, in which it stated that 7.8 million SPO

Shares held by certain management shareholders would be released from escrow following publication of its results for the period ending 30 June 2015.

46. On 18 August 2015 Spotless published and lodged with the ASX a document entitled "Spotless appoints Martin Sheppard as new Chief Executive Officer", in which it stated that:

46.1. Sheppard, then a Senior Partner at KPMG, had been appointed to the role of Chief Executive Officer and Managing Director of Spotless;

46.2. Sheppard would be commencing as CEO by no later than 1 December 2015.

46A. On 27 August 2015 Spotless published and lodged with the ASX a document entitled "Ceasing to be a substantial holder", in which it stated that, on 25 August 2015 the following substantial holders of SPO Shares had sold down the below listed amount of shares:

46A.1 B R Dixon Investments Pty Ltd – 537,077 shares;

46A.2 Bruce Robert Dixon – 5,752,325 shares;

46A.3 Pepe Corp Pty Ltd as trustee for the Vita Pepe Superannuation Fund – 4,632,515 shares;

46A.4 Michelle Dixon and Paul Waterson as trustees for the Waterson Dixon Superannuation Fund – 185,301 shares;

46A.5 Paul Waterson – 1,996,513;

46A.6 Rowan Wilkie – 195,891 shares;

46A.7 Vita Pepe – 9,799,293 shares; and

46A.8 Dana Nelson – 951,931 shares.

46B. On 25 August 2015 the share price for SPO shares opened at $1.80 per share, reached an intra-day high of $2.02 per share, and closed at $1.85 per share.

47. On 31 August 2015 Dixon lodged a 'Change of Directors Interest Notice' (the **Dixon Sell Down Notice**) which indicated that he had sold 6.3 million SPO Shares on 26

and 27 August 2015 for consideration totaling $12.2 million and an average price of $1.94 per Share.

48. Dixon's disposal of those SPO Shares on 26 and 27 August 2015 represented 50% of his holdings of the SPO Shares subject to escrow arrangements and 100% of the holdings that he was eligible to sell at that time.

Particulars

Dixon Sell Down Notice, pages 1 - 2.

Prospectus, page 19.

49. In or around:

49.1. September 2015, Rowan Wilkie retired as Spotless' General Manager of Finance;

49.1. September 2015, Richard Sweetnam retired as Spotless' General Manager, Finance – Laundries;

49.3. 17 September 2015, Vita Pepe retired as Spotless' Chief Operating Officer;

49.4. October 2015, Paul Waterson retired as Spotless' Head of Integration / Projects;

49.5. 20 November 2015 Dixon retired as Spotless CEO; and

49.6. December 2015, Russell Montgomery retired as Spotless' KPI Development Manager.

Particulars

ASX announcement entitled 'Appendix 4E and the FY16 Financial Statements', dated 24 August 2016 (**FY16 Preliminary Financial Report**) page 20.

The Applicant also refers to:

(i) Spotless ASX Release entitled "2015 Annual Report", dated 18 September 2015 (**FY15 Annual Report**), page 22;

(ii) https://www.linkedin.com/in/rowan-wilkie-9a3aa831;

(iii) https://www.linkedin.com/in/richard-sweetnam-52634b2;

(iv) https://www.linkedin.com/in/paul-waterson-3764b515; and

(v) https://www.linkedin.com/in/russel-montgomery-82226876.

50. On 23 November 2015 Sheppard formally commenced as Spotless CEO.

Particulars

FY16 Preliminary Financial Report, page 20.

51. On 25 November 2015 Spotless' Board of Directors met and identified several areas of concern with respect to Spotless' budget for FY16 (**FY16 Budget**).

Particulars

Spotless ASX Announcement entitled "Response to ASX aware query" dated 4 December 2015, (**ASX Aware Query Response**) page 1.

The Applicant also refers to SPT.020.091.2001 at _0004.

52. At the request of Spotless' Board of Directors, management undertook a reforecasting analysis for FY16 which was presented to the Board on 1 December 2015, ultimately reflected in the corrective disclosures on 2 December 2015 and 9 December 2015 described below.

Particulars

ASX Aware Query Response, page 1.

The Applicant also refers to:

(i) SPT.020.091.2001 at _0004; and

(ii) SPT.009.012.6666.

53. On 17 December 2015 Spotless announced the appointment of Nigel Chadwick to the role of Chief Financial Officer, effective from 18 January 2016, following the resignation of Mr Danny Agnoletto from that position.

Particulars

Spotless ASX announcement entitled "Spotless announces CFO appointment" dated 17 December 2015.

M. SPOTLESS' 1H15 RESULTS

54. On 24 February 2015 Spotless published and lodged with the ASX:

54.1. a document entitled "Spotless Group Holdings Limited, Appendix 4D, Half year report for the period ended 31 December 2014" (the **1H15 Report**);

54.2. a document entitled "Spotless delivers strong 1H15 result, reaffirms full year prospectus forecasts" (the **1H15 Results Announcement**); and

54.3. a document entitled "Spotless Group Holdings Limited - December 2014 (1H15) Results Presentation" (the **1H15 Results Presentation**),

(together, the **1H15 Results**).

54A The 1H15 Results stated that they were prepared in accordance with AASB Accounting Standards and complied with other requirements of the law.

Particulars

1H15 Report, p 21.

55. The 1H15 Results stated that:

55.1. Spotless' EBITDA for 1H15 was $137.1 million; and

55.2. Spotless' NPAT for 1H15 was $60.2 million,

(the **1H15 Reported Earnings**).

Particulars

1H15 Report, page 4.

1H15 Results Announcement, page 1.

1H15 Results Presentation, page 6.

56. The 1H15 Results also disclosed that Spotless' other non-current assets balance at 31 December 2014 was $25.2 million.

Particulars

1H15 Report, page 13.

N. SPOTLESS' FY15 RESULTS

57. On 25 August 2015 Spotless published and lodged with the ASX:

57.1. a document entitled "Spotless Group Holdings Limited, Appendix 4E, Preliminary final report for the year ended 30 June 2015" (the **FY15 Preliminary Final Report**);

57.2. a document entitled "Spotless FY15 results exceed prospectus forecast" (the **FY15 Results Announcement**); and

57.3. a document entitled "30 June 2015 Results Presentation" (the **FY15 Results Presentation**)

(together, the **FY15 Results**).

58. The FY15 Results stated that:

58.1. Spotless' EBITDA for FY15 was $316.4 million;

58.2. Spotless' NPAT for FY15 was $142.8 million; and

58.3. Spotless' adjusted NPAT for FY15 was $150.2 million,

(the **FY15 Reported Earnings**).

Particulars

FY15 Preliminary Final Report, page 6.

FY15 Results Announcement, page 1.

FY15 Results Presentation, page 5.

59. The FY15 Results also stated that Spotless' "*increase in EBITDA was driven by strong growth across the Group and the continued positive impact of cost savings and efficiency programs*".

Particulars

FY15 Results Presentation, page 15.

O. CAPITALISATION OF PRE-CONTRACT COSTS

60. The FY15 Results described an accounting policy pursuant to which Spotless:

  60.1. capitalised pre-contract costs, being costs necessarily incurred in relation to securing new and existing contracts (**Pre-Contract Costs**), as ”other non-current assets” on its balance sheet (**Capitalised Pre-Contract Costs**); but,

  60.2. only did so to the extent that it was probable that the contract would be secured (or the costs recovered), and

  60.3. upon notification that Spotless was unsuccessful in securing the contract, immediately expensed the Capitalised Pre-Contract Costs in full to the profit and loss statement,

(the **Costs Capitalisation Policy**).

Particulars

FY15 Preliminary Final Report, page 39.

61. The FY15 Results stated that the financial statements were prepared and presented on the basis of, amongst other things, the Costs Capitalisation Policy.

Particulars

FY15 Preliminary Final Report, page 39.

62. The FY15 Results further stated that they were prepared in accordance with AASB Accounting Standards and complied with other requirements of the law.

Particulars

Preliminary Final Report, page 38, 67

63. At all relevant times, the AASB defined “probable” in its glossary of terms as “more likely than not”.

Particulars

AASB Glossary of Defined Terms Updated 30 September 2015.

64. The FY15 Results also disclosed that Spotless' other non-current assets balance at 30 June 2015 was $49.0 million.

Particulars

FY15 Preliminary Final Report, page 34.

P. THE TRUE POSITION WITH RESPECT TO CAPITALISED PRE-CONTRACT COSTS

P.1 Application of Costs Capitalisation Policy

65. In order to determine, prepare and present its financial statements in accordance with the Costs Capitalisation Policy and the Relevant AASB Accounting Standards, Spotless was required to form a view as to whether it was "probable" (meaning "more likely than not") that each relevant contract would be secured (or the costs otherwise recovered) as at:

65.1. [Not used] ~~the date the costs were incurred; alternatively~~

65.2. the reporting date; alternatively

65.3. the date of issue of the financial statements.

66. At all relevant times, the probability of Spotless securing a contract was influenced by (but not limited to) the following matters:

66.1. the number of competing bidders;

66.2. the stage of the tender process, including whether the tender process was open to the market, had been confined to a shortlist of bidders, or a preferred tenderer had been selected;

66.3. whether Spotless was the incumbent provider;

66.4. whether the incumbent provider was a competing bidder for the tender;

66.5. the capacity of Spotless to meet the requirements of the tender relative to the respective capacities of the competing bidders;

66.6. the experience of Spotless in providing the same services, or services of a similar nature to those required by the tender, relative to the experience of competing bidders;

66.7. any past business relationships between Spotless, or competing bidders, with the entity offering the tender; and

66.8. the resourcing and capacity of Spotless' business development division.

P.2 Immigration and DoI Contracts

66A. In FY13, FY14 or FY15, Spotless submitted tender bids for contracts with the Commonwealth Department of Immigration and Border Protection described within Spotless as "DAIC (Immigration)", "Immigration 2", "Immigration (Onshore)" and "Immigration (SRSS)" (together the **Immigration Contracts**).

Particulars

The Applicant refers to:

(i) SPT.009.019.8062;

(ii) SPT.011.007.0028;

(iii) paragraph 72.1 of Spotless' Defence to the Further Amended Statement of Claim (**DFASOC**);

(iv) paragraph 1.2 of the letter from Spotless' solicitors to the Applicant's solicitors dated 12 January 2018.

66B. Spotless incurred costs on its bids for the Immigration Contracts of approximately \$5.5 million in FY13 and FY14 (**Pre-FY15 Immigration Contracts Bid Costs**) and approximately $0.1 million in FY15 (**FY15 Immigration Contracts Bid Costs**) (together the **Immigration Contracts Bid Costs**).

Particulars

The Applicant repeats the particulars to paragraph 66A.

66C. Prior to 30 June 2015, Spotless had been notified that it was unsuccessful in its bids for the Immigration Contracts.

Particulars

The Applicant refers to SPT.003.004.3856.

67. In ~~or around~~ April 2015 Spotless, together with eight other bidders, submitted a tender bid for a contract with the Commonwealth Department of Immigration and Border Protection for the provision of garrison and welfare services for the Manus Island and Nauru offshore processing centres (the **DoI Contract**).

68. Broadspectrum (Australia) Pty Ltd (formerly Transfield Services (Australia) Pty Ltd) (**Broadspectrum**) was the incumbent provider of garrison and welfare services to the Department of Immigration and Border Protection in the Manus Island and Nauru offshore processing centres, and was one of the other bidders for the DoI Contract.

Particulars

Transfield ASX Announcement entitled "FY15 Full Year Results Investor Presentation" dated 27 August 2015 pages 3, 8 and 13.

69. In the period prior to 25 August 2015 market analysts reported that they expected that as a result of the benefits of incumbency during the tender process, Broadspectrum would secure the ~~DOI~~ DoI Contract.

Particulars

The Applicant refers to:

(i) an article by Dow Jones Newswires entitled "Australia's Transfield Undervalued, Says Macquarie – Market Talk" *Dow Jones International News*, dated 4 May 2015;

(ii) an article by Kylar Loussikian entitled "Transfield Set for Renewal of Manus, Nauru Detention Contracts" *The Australian*, dated 1 September 2015;

(iii) an analyst report by Macquarie Research entitled "Transfield Services Reiterating the Case" dated 1 May 2015, in which the analyst stated that "*there are likely to be other bidders, but our sense is that Transfield's positioning remains good given reportedly good performance and its knowledge of the operations of a complex and sensitive contract*", page 2.

70. On or about 31 August 2015 Broadspectrum published an announcement to the ASX stating that it had been notified that it was the preferred tenderer for the DoI Contract (the **Broadspectrum Announcement**).

Particulars

Transfield ASX announcement entitled "Transfield Services selected as the preferred tenderer for Department of Immigration and Border Protection contract" dated 31 August 2015.

71. Spotless incurred costs of approximately $1~~7~~ million on its bid for the DoI Contract (the **DoI Bid Costs**).

Particulars

The Applicant refers to SPT.011.007.0028 (cell G31).

72. Spotless incurred approximately $0.9 million ~~all or most~~ of the DoI Bid Costs in FY15 (**FY15 DoI Bid Costs**) and approximately $0.1 million prior to FY15 (**Pre-FY15 DoI Bid Costs**).

Particulars

The Applicant refers to SPT.011.007.0028 (cells G18 and G33).

P.3 Rio Tinto Contract

73. In September 2015 Spotless, together with at least four other bidders, submitted a tender bid for a ten-year contract with Rio Tinto to provide facility services to all of its sites in the Pilbara region (the **Rio Tinto Contract**).

Particulars

Spotless ASX announcement entitled "1H17 Results Investor Presentation" dated 28 February 2017, page 9.

Analyst Report by Deutsche Bank entitled "Offshore Peer Result – Implications for SPO" dated 17 April 2015.

Article by Mark Beyer entitled “Shortlist to run Rio facilities”, *Business News*, dated 26 November 2015.

The Applicant also refers to:

(i) SPT.003.006.2678; and

(ii) paragraph 73.1 of the DFASOC.

74. During 2015 a weakening global iron ore price increased pressures on iron ore miners including Rio Tinto to reduce their operating costs.

Particulars

Rio Tinto ASX Announcement entitled “2015 Half Year Results Presentation” dated 6 August 2015, page 29.

Rio Tinto ASX Announcement entitled “2015 Full Year Results” dated 11 February 2016, pages 5 and 15.

Article by Trefis Team entitled “Rio Tinto 1H 2015 Earnings Preview; Strong Production Volume & Cost Reduction Initiatives” *Forbes*, dated 4 August 2015.

The Applicant also refers to SPT.020.114.6789.

75. By no later than February 2015 mining companies operating in Australia favoured a practice of releasing tenders for facilities management contracts on a regional, rather than a mine site-specific, basis.

Particulars

The Applicant refers to statements made by ~~Bruce~~ Dixon in the Earnings Call to the 1H15 Results, transcript dated 24 February 2015 (**1H15 Conference Call**) that: *“Rather than mine by mine, [mining companies] are now doing regions. So the process is bigger and longer and more complex, but the dollars are far greater. … it’s been slower because the work is getting bigger or the tendering is getting larger.”*

The Applicant also refers to SPT.009.006.5985.

76. The Rio Tinto Contract would consolidate existing contracts currently worth approximately $50 million in revenue per annum to Spotless together with contracts held by other service providers into a contract worth a total of $400 million in revenue per annum.

Particulars

Spotless ASX announcement entitled "1H17 Results Investor Presentation" dated 28 February 2017, page 9.

Analyst Report by Macquarie Research entitled "All eyes on Rio Contract" dated 22 October 2015, page 1.

77. Other bidders for the Rio Tinto Contract included:

77.1. other incumbent providers, including ISS Facility Services and ESS Support Services Worldwide;

77.2. Sodexo, one of the world's largest facilities management companies and an emerging competitor to Spotless in Australia; and

77.3. Broadspectrum.

Particulars

The Applicant refers to:

(i) SPT.009.006.5985;

(ii) SPT.003.006.2678 at 2681; and

(iii) paragraph 77.1 of the DFASOC.

78. ISS Facility Services, ESS Support Services Worldwide and Sodexo had been identified by Spotless as its three major global competitors in the resources market.

Particulars

FY14 Results Presentation, page 8.

79. Sodexo was awarded some significant infrastructure and energy contracts during 2014 and early 2015, including for facilities management at BHP's Groote Eylandt site.

Particulars

Analyst report by Deutsche Bank entitled "Offshore Peer Result – Implications for SPO" dated 9 July 2014.

The Applicant also refers to the Analyst report by Deutsche Bank entitled “Offshore Peer Result – Implications for SPO” dated 17 April 2015.

80. In or about April 2015 Sodexo publicly stated a willingness to reduce prices in response to invitations to do so from customers.

Particulars

Analyst report by Deutsche Bank entitled “Offshore Peer Result – Implications for SPO” dated 17 April 2015.

The Applicant also refers to:

(i) SPT.009.021.5371 at _0002; and

(ii) SPT.009.014.0450.

81. By 25 August 2015 Rio Tinto had not announced a shortlist of preferred bidders.

82. Spotless incurred costs of approximately $2 million on its bid for the Rio Tinto Contract (**Rio Tinto Bid Costs**).

Particulars

Second Trading Update, page 4.

82A. Spotless incurred approximately $350,000~~a material proportion~~ of the Rio Tinto Bid Costs in FY15 (**FY15 Rio Tinto Bid Costs**).

Particulars

The Applicant refers to SPT.011.007.0028.

P.4 [Not used]

83. [Not used]

84. [Not used]

~~**Particulars**~~

Q. **FY15 RESULTS CONTRAVENTION**

85. On:

85.1 25 August 2015 being the date of publication and lodgment with the ASX of the FY15 Results; and

85.2 30 June 2015 being the reporting date in respect of the FY15 Results; ~~and~~

85.3 [Not used] ~~each of the dates prior to 30 June 2015 on which Spotless incurred costs in relation to the DoI Contract,~~

it was not probable that Spotless would be awarded the DoI Contract.

Particulars

The Applicant refers to and repeats paragraphs 65 - 70 above.

Spotless had not historically serviced the immigration sector, and in this regard the Applicant refers to an analyst report by UBS entitled "Spotless Group Holdings: Version 2.0 has growth appeal at a reasonable price" dated 1 July 2014.

The Applicant also refers to:

(i) SPT.003.004.3856;

(ii) SPT.009.019.7033.

(iii) SPT.003.002.6410 at 6490; and

(iv) SPT.003.007.4677 at 4757.

86. By reason of the matters pleaded in paragraphs 65, 72 and 85 above, the Costs Capitalisation Policy and the Relevant AASB Accounting Standards required that the FY15 DoI Bid Costs be recorded as an operating expense in the profit and loss statement in FY15 rather than capitalised as an "other non-current asset" on its balance sheet in FY15, and the Pre-FY15 DoI Bid Costs be written off and expensed in the profit and loss statement in FY15 rather than retained as an "other non-current asset" on the balance sheet.

Particulars

FY15 Preliminary Final Report, page 39.

The Applicant also refers to SPT.030.001.0001.

87. Notwithstanding the foregoing, Spotless capitalised the FY15 DoI Bid Costs in the FY15 Results, or to the extent that part of the FY15 DoI Bid Costs were incurred prior to FY15, retained them as an "other non-current asset" on the balance sheet in the FY15 Results.

Particulars

Spotless ASX announcement entitled "Market update" dated 9 December 2015 (**Second Trading Update**), page 4.

The Applicant also refers to:

(i) SPT.011.007.0028;

(ii) SPT.029.002.6804;

(iii) SPT.003.002.6410 at 6490; and

(iv) SPT.011.007.3396.

87A. Spotless did not record the Pre-FY15 Immigration Contracts Bid Costs as an expense in its profit and loss statement in FY13 or FY14, but rather capitalised them as an "other non-current asset" on the balance sheet, and as at 1 July 2015 they remained on the balance sheet.

Particulars

The Applicant refers to and repeats the particulars to paragraphs 66A and 66C.

87B. By reason of the matters pleaded in paragraphs 66B, 66C and 87A above, alternatively, paragraphs 65, 72 and 85 above, the Costs Capitalisation Policy and the Relevant AASB Accounting Standards required that:

87B.1 the Pre-FY15 Immigration Contracts Bid Costs be written off and expensed in the profit and loss statement in FY15 rather than retained as an "other non-current asset" on the balance sheet; and

87B.2 the FY15 Immigration Contracts Bid Costs be recorded as an operating expense in the profit and loss statement in FY15 rather than capitalised as an "other non-current asset" on its balance sheet in FY15.

Particulars

The Applicant refers to and repeats the particulars to paragraph 86.

87C. Notwithstanding the foregoing, Spotless capitalised the FY15 Immigration Contracts Bid Costs in the FY15 Results, and retained the Pre-FY15 Immigration Contracts Bid Costs as an “other non-current asset” on the balance sheet in the FY15 Results.

Particulars

The Applicant refers to and repeats the particulars to paragraph 87.

88. On:

88.1 25 August 2015 being the date of publication and lodgment with the ASX of the FY15 Results; <u>and</u>

88.2 30 June 2015 being the reporting date in respect of the FY15 Results; ~~and~~

88.3 <u>[Not used]</u> ~~each of the dates prior to 30 June 2015 on which Spotless incurred costs in relation to the Rio Tinto Contract,~~

it was not probable that Spotless would be awarded the Rio Tinto Contract.

Particulars

The Applicant refers to and repeats paragraphs 73 - 81 above.

The Applicant also refers to:

(i) paragraph 140A;

(ii) SPT.020.065.5388;

(iii) SPT.020.065.5369;

(iv) SPT.002.004.4549; and

(v) SPT.002.004.4547.

89. By reason of the matters pleaded in paragraphs 65 and 88 above, the Costs Capitalisation Policy and the Relevant AASB Accounting Standards required that

the Rio Tinto Bid Costs that were incurred in FY15 be recorded as an operating expense in the profit and loss statement in FY15 rather than capitalised as an "other non-current asset" on its balance sheet in FY15.

89A. Notwithstanding the foregoing, Spotless capitalised the FY15 Rio Tinto Bid Costs in the FY15 Results.

Particulars

Second Trading Update, page 4.

The Applicant also refers to:

(i) SPT.011.007.0028; and

(ii) paragraph 89A.2 of the DFASOC.

90. [Not used]

90A. [Not used]

91. The capitalisation or retention as an asset on the balance sheet in FY15 of:

91.1. the DoI Bid Costs and the Immigration Contracts Bid Costs resulted in the wrongful overstatement of:

(a) FY15 EBITDA by approximately $6.6 million;

(b) FY15 NPAT by approximately $4.6 million; and

(c) other non-current assets in FY15 by approximately $6.6 million;

91.2. the FY15 Rio Tinto Bid Costs resulted in the wrongful overstatement of:

(a) FY15 EBITDA by approximately $350,000;

(b) FY15 NPAT by approximately $250,000; and

(c) other non-current assets in FY15 by approximately $350,000,

91.3. [Not used]

(together, the **FY15 Results Overstatements**).

Particulars

FY16 Preliminary Financial Report, page 79.

The Applicant refers to and relies upon paragraphs 60 to 89A above and the particulars thereto.

92. As at 30 June 2015 and 25 August 2015 Spotless knew:

92.1. it was not probable that it would secure the DoI Contract; further, and alternatively,

92.2. it was not probable it would secure the Rio Tinto Contract; further, and alternatively,

92.3. it was unsuccessful in its bids for the Immigration Contracts.

Particulars

As to sub-paragraph 92.1, Spotless' knowledge is to be inferred from the matters set out at paragraphs 65 – 66, 67 – 70 and 85 and the particulars thereto.

As to sub-paragraph 92.2, Spotless' knowledge is to be inferred from the matters set out at paragraphs 65, 66, 73 – 81 and 88 and the particulars thereto

As to sub-paragraph 92.3 Spotless' knowledge is to be inferred from the matters set out at paragraphs 65 – 66C and the particulars thereto.

93. [Not used]

94. By reason of the matters pleaded in paragraph 92, Spotless knew of the FY15 Results Overstatements.

95. Absent the FY15 Results Overstatements, the FY15 Results would have stated that:

95.1. Spotless' FY15 EBITDA was approximately $309.5 million;

95.2. Spotless' FY15 NPAT was approximately $138 million; and

95.3. Spotless' FY15 other non-current assets were approximately $42 million.

96. The matters set out at paragraphs 65 - 95 above constituted the true position with respect to Capitalised Pre-Contract Costs as at 25 August 2015.

97. By reason of the matters pleaded in paragraph 57 - 58, Spotless represented that:

97.1. its FY15 EBITDA and NPAT were $316.4 million and $142.8 million respectively;

97.2. further or alternatively, its FY15 EBITDA and NPAT, determined on the basis of, amongst other things, the Costs Capitalisation Policy, were $316.4 million and $142.8 million respectively,

(individually or together, the **FY15 Results Representation**).

98. [Not used] ~~By reason of the matters pleaded in paragraphs 85 - 97:~~

98.1. ~~In contravention of s 297 of the *Corporations Act*, the FY15 Preliminary Financial Report did not give a true and fair view of Spotless' financial position and performance;~~

98.2. ~~In contravention of s 299A of the *Corporations Act*, Spotless' Directors' Report for FY15, contained in the FY15 Preliminary Final Report, did not contain information that members of Spotless would reasonably require to make an informed assessment of Spotless' financial position or its prospects for future years; and~~

98.3. ~~the FY15 Results Representation was misleading or deceptive or likely to mislead or deceive because, in truth:~~

~~(a) Spotless' FY15 EBITDA and NPAT were approximately $309.5 million $138 million respectively;~~

~~(b) further or alternatively, Spotless' FY15 EBITDA and NPAT, properly determined on the basis of, amongst other things, the Costs Capitalisation Policy, were approximately $309.5 million and $138 million respectively.~~

99. [Not used] ~~In the FY15 Results Spotless stated that:~~

99.1. ~~in the opinion of the CEO and Chief Financial Officer (the **CFO**), the financial statements gave a true and fair view of its financial position and performance (the **CEO/CFO Opinion**);~~

99.2. ~~the opinions of the CEO and CFO were formed on the basis of a sound system of risk management and internal control which was operating effectively (the **CEO/CFO Express Statement**);~~

99.3. ~~in the opinion of the Directors, the financial statements and notes thereto gave a true and fair view of its financial position as at 30 June 2015 and its performance in FY15 (the **Directors' Opinion**); and~~

99.4. ~~the Board considered that each of the Directors brought an objective and independent judgement to the Board's deliberations and that each of the Directors made a valuable contribution to Spotless through the skills they brought to the Board and their understanding of Spotless' business.~~

~~Particulars~~

~~FY15 Preliminary Final Report, pages 27, 32 and 67.~~

100. [Not used] ~~By making the statements in paragraphs 99.1 and 99.2, Spotless impliedly represented that the CEO/CFO Opinion was based upon reasonable grounds and was the product of an exercise of due care and skill (the **CEO/CFO Implied Representation**).~~

101. [Not used] ~~By making the statements in paragraphs 99.3 and 99.4, Spotless impliedly represented that the Directors' Opinion was based upon reasonable grounds and was the product of an exercise of due care and skill (the **Directors' Implied Representation**).~~

102. [Not used] ~~The CEO/CFO Express Statement was misleading or deceptive or likely to mislead or deceive because, in truth, having regard to the FY15 Results Overstatements, Spotless did not in fact have a sound system of risk management and internal control which was operating effectively.~~

103. [Not used] ~~In respect of the CEO/CFO Implied Representation, there were not reasonable grounds for the CEO/CFO Opinion, and it was not the product of an exercise of due care and skill by the CEO and CFO, because:~~

103.1. ~~of the FY15 Results Overstatements; further or alternatively~~

103.2. ~~if the CEO or the CFO had knowledge of the FY15 Results Overstatements, of that knowledge; or~~

103.3. ~~if the CEO and the CFO did not have knowledge of the FY15 Results Overstatements, of the fact that if they had made reasonable enquiries and exercised due care and skill, as they ought to have, they, alternatively a reasonable person in their position, would have ascertained that it was not probable that Spotless would win the DoI Contract, and the Rio Tinto Contract.~~

~~Particulars~~

~~The reasonable enquiries and exercises of due care and skill that ought to have been made include:~~

~~(i) enquiring of the Spotless employee(s) responsible for the bids as to the status of the bids and the tender process;~~

~~(ii) considering, and if necessary, enquiring of the Spotless employees responsible for the bids and/or the entity that released the tender as to, the identity of the incumbent service providers;~~

~~(iii) enquiring of the Spotless employee(s) responsible for the bids and/or the entity that released the tender as to the number of bidders;~~

~~(iv) enquiring of the Spotless employee(s) responsible for the bids and/or the entity that released the tender as to the identity or likely identity of other bidders;~~

~~(v) enquiring of the Spotless employee(s) responsible for the bids as to, and considering for themselves, having regard to the likely identity of other bidders, and any public statements by the other likely bidders, the likely competitiveness of Spotless' bid in comparison to those of other likely bidders;~~

~~(vi) considering, and for the purpose, making necessary enquiries as to the size, capacity, experience and any business relationships of Spotless with the entity that released the tender, relative to the other likely bidders;~~

~~(vii) enquiring of the Spotless employee(s) responsible for the bids as to their assessment of the probability of Spotless' bid being successful;~~

~~(viii) applying an impartial mind to their assessment of the probability of Spotless' bids being successful.~~

~~The Applicant also refers to and repeats the particulars to paragraph 92.~~

104. [Not used] ~~By reason of the matters pleaded in the preceding paragraph, the CEO/CFO Implied Representation was false, and misleading or deceptive or likely to mislead or deceive.~~

105. [Not used] ~~In respect of the Directors' Implied Representation, there were not reasonable grounds for the Directors' Opinion, and it was not the product of an exercise of due care and skill by the Directors, because:~~

105.1. ~~of the FY15 Results Overstatements; further or alternatively~~

105.2. ~~if the Directors (or any of them) had knowledge of the FY15 Results Overstatements, of that knowledge; or~~

105.3. ~~if none of the Directors had knowledge of the FY15 Results Overstatements, of the fact that if they had made reasonable enquiries and exercised due care and skill, as they ought to have, they, alternatively a reasonable person in their position, would have ascertained that it was not probable that Spotless would win the DoI Contract, and the Rio Tinto Contract.~~

~~Particulars~~

~~As to the CEO, the particulars of sub-paragraph 103.3 are repeated.~~

~~As to the other Directors, the reasonable enquiries and exercises of due care and skill that ought to have been made include:~~

~~(i) enquiring of the CEO and CFO as to the basis upon which the assessment had been made, and by whom, that it was probable that each of the DoI Contract, and the Rio Tinto Contract, would be won by Spotless;~~

~~(ii) applying an impartial and enquiring mind to their assessment of the sufficiency of the basis identified by the CEO and CFO.~~

~~The Applicant also refers to:~~

~~(i) SPT.003.004.3856;~~

~~(ii) SPT.009.019.7033;~~

~~(iii) SPT.003.002.6410 at 6490;~~

~~(iv) SPT.003.002.0275;~~

~~(v) SPT.003.002.0277;~~

~~(vi) SPT.002.004.4549; and~~

~~(vii) SPT.002.006.1162.~~

106. [Not used] ~~By reason of the matters alleged in the preceding paragraph, the Directors' Implied Representation was false, and misleading or deceptive or likely to mislead or deceive.~~

107. [Not used] ~~By publishing the FY15 Results, including stating the CEO/CFO Opinion and the Directors' Opinion, Spotless provided a statement of opinion, or a report of a statement of opinion, that was intended, or could reasonably be regarded as having been intended, to influence investors or potential investors in the SPO Shares in making a decision in relation to the SPO Shares.~~

108. [Not used] ~~By reason of the matters pleaded in the preceding paragraph, Spotless provided financial product advice within the meaning of s 766B(1) of the *Corporations Act* and s 12BAB(5) of the *ASIC Act*, and provided a financial service within the meaning of s 766A(1) of the *Corporations Act* and s 12BAB(1) of the *ASIC Act* (the **FY15 Advice Service**).~~

109. [Not used] ~~The publication of the FY15 Results, including the making of each of the FY15 Results Representation, the CEO/CFO Express Statement, the CEO/CFO Implied Representation and the Directors' Implied Representation was:~~

109.1. ~~conduct engaged in by Spotless in relation to a financial product, namely the SPO Shares, within the meaning of s 1041H(1) and (2)(b)(ii) of the *Corporations Act*;~~

109.2. ~~conduct engaged in by Spotless in relation to a financial service, namely the Dealing Service or the FY15 Advice Service, within the meaning of s 1041H(1) of the *Corporations Act*;~~

109.3. ~~a service supplied by Spotless in relation to a financial product, namely the SPO Shares, and was therefore the provision of a financial service, within the meaning of s 12BAB(1)(g) of the *ASIC Act* (the **FY15 Other Service**);~~

109.4. ~~conduct engaged in by Spotless in trade or commerce within the meaning of s 12BA(1) of the *ASIC Act* and s 2(1) of the *ACL*;~~

109.5. ~~conduct engaged in by Spotless in relation to a financial service, namely the Dealing Service, the FY15 Advice Service, the FY15 Other Service or the ASX Service, within the meaning of s 12DA(1) of the *ASIC Act*; and~~

109.6. ~~consequently, in contravention of:~~

~~(a) s 1041H(1) of the *Corporations Act;*~~

~~(b) s 12DA(1) of the *ASIC Act;* and/or~~

~~(c) s 18 of the *ACL*,~~

~~(together, the **FY15 Results Contravention**).~~

QA. FY16 BUDGET AND RELATED BOARD MEETINGS

109A. On 19 June 2015, at a board meeting, the Board approved Spotless' budget for FY16 (**June FY16 Budget**) which forecasted that:

109A.1. Spotless' FY16 EBITDA would be $345.8 million;

109A.2. Spotless' FY16 revenue would be $3,532.9 million and

109A.3. Spotless' FY16 NPAT would be $139.9 million.

Particulars

The Applicant refers to:

(i) SPT.003.002.6410 at 6474; and

(ii) SPT.003.001.9257.

109B. On 18 August 2015, a preliminary revised FY16 budget (the **Revised FY16 Budget**) was provided to the Board in advance of the Board Meeting on 24 August 2015 (**August Board Meeting**), which forecasted that:

109B.1. Spotless' FY16 EBITDA would be $363.3 million (increased from $345.8 million);

109B.2. Spotless' FY16 revenue would be $3,532.9 million; and

109B.3. Spotless' FY16 NPAT would be $152.7 million (increased from $139.9 million).

Particulars

The Applicant refers to SPT.003.007.4677 at 4757.

109C. At the August Board Meeting, the Board:

109C.1. noted the Revised FY16 Budget;

109C.2. approved the FY16 outlook statement that "*subject to economic conditions, we expect continued growth and that FY16 NPAT will materially exceed the FY15 result of $142.8 million*" and, in doing so, relied upon the Revised FY16 Budget.

Particulars

The Applicant refers to SPT.003.006.0574 at 0581 and 0583.

R. ANNOUNCEMENTS MADE BY SPOTLESS IN AUGUST 2015

110. On 25 August 2015 Spotless stated in the FY15 Results Presentation and FY15 Results Announcement that:

110.1. Spotless had strong business development performance;

110.2. Spotless had a strong pipeline of contract opportunities, including in the base and township sector;

110.3. Spotless' increase in EBITDA in FY15 was driven by strong growth across the group and the continued positive impact of cost savings and efficiency programs;

110.4. Pro forma FY15 EBITDA exceeded June 2014 and Prospectus guidance by 25.5% and 5.0% respectively with strong growth across both Facility Services as well as Laundry and Linen divisions;

110.5. Spotless was well positioned to continue its growth through, amongst other things:

(a) market leadership in outsourced services with diverse sector and service exposures;

(b) a proven track record in retaining existing clients and winning new work;

(c) expanded services offering enabling deeper self-delivery and access to a broader customer base;

110.6. Spotless had been gaining resources market share in a contracting market, and recent contract wins in the Base & Township sector would increase its revenue in FY16;

110.7. Subject to economic conditions, it expected the FY16 results to materially exceed the FY15 Results;

110.8. Margins remained in line with its global peers, and it saw further upside in margins as it improved its processes and looked for efficiencies in the new businesses being integrated;

110.9. It had a track record of organic growth.

Particulars

FY15 Results Presentation, pages 7, 15, 17, 22, 23, 25.

The Applicant also refers to the FY15 Results Announcement, page 2.

111. On 25 August 2015 in a conference call between ~~Bruce~~ Dixon, the then CEO of Spotless, Danny Agnoletto, the then CFO of Spotless, and a number of analysts (**FY15 Conference Call**), Dixon and Agnoletto stated that:

111.1. subject to economic conditions, Spotless expected the FY16 results to materially exceed the FY15 Results;

111.2. the FY16 result was expected to increase materially from FY15 in respect of revenue, EBITDA and NPAT;

111.3. Spotless was confident on the current consensus FY16 NPAT;

111.4. Spotless had "*really solid momentum coming into the next year*"; and

111.5. the turnaround in financial performance achieved by Spotless since listing was "*sustainable*", and there were "*more efficiencies to be hedged*".

Particulars

FY15 Conference Call.

111A. On 25 August 2015, current broker consensus for FY16 NPAT for Spotless was between $161 million and $161.5 million (**FY16 NPAT Consensus**).

Particulars

Current consensus FY16 NPAT was reported on FactSet and by analysts as $161.5 million and by Bloomberg Finance LP as $161 million.

Analyst report by UBS entitled "Incremental Growth in FY16 with Acquisitions Likely" dated 25 August 2015, pages 1, 2 and 4.

Analyst Report by Deutsche Bank entitled "FY15 result – Strong result, material growth expected for FY16" dated 25 August 2015, page 8.

112. By the statements made in the FY15 Results Presentation, the FY15 Results Announcement, and the FY15 Conference Call (together with the FY16 NPAT Consensus) on 25 August 2015, Spotless represented that:

112.1. the FY16 results would materially exceed the FY15 results in respect of revenue, EBITDA and NPAT (the **FY16 Growth Representation**); and

112.2. it was confident that FY16 NPAT of between $161 million and $161.5 million would be achieved (the **Consensus FY16 NPAT Representation**),

(individually or together, the **August 2015 Guidance Representations**).

113. In making the August 2015 Guidance Representations, Spotless:

113.1. provided a statement of opinion, or a report of a statement of opinion, that was intended, or could reasonably be regarded as having been intended, to influence investors or potential investors in the SPO Shares in making a decision in relation to the SPO Shares;

113.2. consequently, provided financial product advice within the meaning of s 766B(1) of the *Corporations Act* and s 12BAB(5) of the *ASIC Act*, and provided a financial service within the meaning of s 766A(1) of the *Corporations Act* and s 12BAB(1) of the *ASIC Act* (the **FY16 Advice Service**);

113.3. supplied a service in relation to a financial product, namely the SPO Shares, and therefore provided a financial service, within the meaning of s 12BAB(1)(g) of the *ASIC Act* (the **FY16 Other Service**);

113.4. engaged in conduct in relation to a financial product, namely the SPO Shares, within the meaning of s 1041H(1) and (2)(b)(ii) of the *Corporations Act*;

113.5. engaged in conduct in relation to a financial service, namely the Dealing Service or the FY16 Advice Service, within the meaning of s 1041H(1) of the *Corporations Act*;

113.6. engaged in conduct in trade or commerce within the meaning of s 12BA(1) of the *ASIC Act* and s 2(1) of the *ACL*;

113.7. engaged in conduct in relation to a financial service, namely the Dealing Service, the FY16 Advice Service, the FY16 Other Service or the ASX Service, within the meaning of s 12DA(1) of the *ASIC Act*.

S. THE TRUE POSITION AS AT 25 AUGUST 2015

S.1 Expensing of bid costs

114. As at 25 August 2015, because it had capitalised or retained as an asset on its balance sheet the costs the subject of the FY15 Results Overstatements, in FY16 Spotless would be required to expense:

114.1. the DoI Bid Costs and the Immigration Contracts Bid Costs to its profit and loss statement, which would have the effect of reducing 1H16 EBITDA by approximately $6.6 million; and

114.2. the FY15 Rio Tinto Bid Costs to its profit and loss statement, which would have the effect of reducing 1H16 EBITDA by approximately $350,000.

114.3. [Not used]

Particulars

The Applicant refers to and repeats the particulars to paragraphs 60, 63 - 66C, 85, 88, 91, 92 and 94 above.

114A. [Not used]

114B. Prior to 25 August 2015, Spotless determined to cease the Costs Capitalisation Policy and in its place to immediately expense all Pre-Contract Costs to the profit and loss statement when incurred, with effect from 1 July 2015, as a result of which an additional $7.0 million in Pre-Contract Costs would be required to be recorded as an expense in the profit and loss statement in FY16 compared to FY15.

Particulars

The Applicant refers to:

(i) SPT.003.007.4677 at 4757; and

(ii) paragraph 83.3 of the DFASOC.

S.1A Budget setting process

114C. The June FY16 Budget was prepared without proper or adequate consultation with Spotless' Divisional General Managers, further and alternatively, without proper or adequate consultation with Spotless' Sector General Managers, as to its achievability.

Particulars

The Applicant refers to:

(i) On 5 May 2015, Russel Montgomery (KPI Development Manager) emailed divisional general managers directing changes to the sector budgets, which included:

(a) directing FY16 budgeted EBITDA for individual sectors; and

(b) increasing EBITDA by set amounts in 'unidentified' business development, cost reductions, workers compensation savings and changes to corporate costs resulting in changes that reduce residual costs by $3.874

million (SPT.009.010.4593, SPT.009.009.0447, SPT.009.008.1191 and SPT.009.009.8160).

(ii) On 5 May 2015, Paul Waterson (then Divisional General Manager, Laundries, Defence, Resources) emailed sector general managers about the changes referred to in the preceding particular, and:

(a) stated that they were made in order to enable Spotless to meet its full year target for FY16;

(b) stated that a number of sectors had included low amounts of 'unidentified' new business and Spotless "had to" increase the EBITDA ask for those sectors;

(c) stated that the PPP and Defence sectors were asked to find an additional $500k profit each; and

(d) recognised that these changes would bring challenges (SPT.009.009.0447 and SPT.009.009.0448).

(iii) By email dated 25 May 2015, Russel Montgomery directed changes to Spotless' sectors' contract profitability files, including to:

(a) adjust revenue figures to a level directed by him; and

(b) increase EBITDA to a level directed by him (SPT.011.001.0313, SPT.009.007.7451 and SPT.011.006.2579).

(iv) On 25 May 2015, Jason Feng (Divisional Commercial Manager) described the numbers referred to in the spreadsheet attached to SPT.011.001.0313 as being "put together on the fly".

(v) On 25 May 2015, following an exchange between Russel Montgomery and Richard Sweetnam (General Manager, Finance – Laundry Services) about the achievability of the adjustments referred to in SPT.011.006.2579, Montgomery said to Sweetnam "just come back with the final numbers needed as per the attachment".

(vi) Monthly phasings for sector budgets were required to be set, and then updated, to ensure that the first quarter for FY16 was achievable, with the result that the forecast for the remainder of FY16 was more difficult to achieve (SPT.020.136.0111, SPT.020.001.3568, SPT.020.001.3534).

114D. The June FY16 Budget forecast:

114D.1. a depreciation expense of $86.9 million in FY16, a $22.3 million (35%) increase on the depreciation expense forecast to be incurred in FY15;

114D.2. an amortisation expense of $17.6 million in FY16, a $4.5 million (35%) increase on the amortisation expense forecast to be incurred in FY15;

114D.3. a net interest expense of $37.9 million, a $5.8 million (18%) increase on the net interest expense forecast to be incurred in FY15,

(together the **FY16 June D&A and Interest Forecast**).

Particulars

The Applicant refers to SPT.003.002.6410 at 6474, 6484 and 6489

114E. The Revised FY16 Budget, relied upon for the FY16 guidance, was prepared:

114E.1. on the basis that Spotless would incur $7.8 million in additional costs overall as a result of the change in bid costs policy referred to at 114B but that downgrading sector EBITDA forecasts to reflect those costs was not an option; and

114E.2. without proper or adequate consultation with Spotless' Divisional General Managers, further and alternatively, without proper or adequate consultation with Spotless' Sector General Managers, as to its achievability.

Particulars

The Applicant refers to:

(i) The Board Pack for the August Board Meeting did not include a comprehensive budget. The Board Pack instead stated that management would work on monthly phasing with an updated schedule to be provided to the Board once finalised. Management recommended that the Board 'note' the upwards adjustments to the June FY16 Budget, with approval to be sought once a comprehensively updated budget be provided to the Board consistent with what was provided at the Board meeting held on 18 June 2015 (SPT.003.007.4677 at 4758).

(ii) On 19 August 2015, sector general managers were notified by email of the need for individual sectors to revise their FY16 budgets, with revised budget files requested by 24 August 2015 (the day of the August Board Meeting)

(SPT.009.004.5383). In that same email, Russel Montgomery directed changes to the sector budgets to incorporate $7.8 million in bid costs spread across the sectors, itemised in the attachment to the email (SPT.009.004.5384).

(iii) On 20 August 2015, Dana Nelson (Group Divisional Manager/Chief Operating Officer) emailed sector general managers (among others) stating that the revised budget numbers referred to in the preceding particular had “an uplift in ebitda” and gave a direction to sector general managers that “downgrading sector ebitda is not an option” (SPT.009.014.6224).

(iv) On 24 August 2015, Dana Nelson emailed Grant Stubbs (General Manager, Resources) stating that the revised proposed budget for the Resources sector (which showed a decreased EBITDA) would not get approved and directed that the Resources sector produce a plan to bridge the gap (SPT.020.001.7509).

(v) On 20 August 2015 and 24 August 2015, David McKaskill (General Manager, Defence) emailed Dana Nelson and Russel Montgomery (KPI Development Manager) (the 24 August email only) raising concerns about the achievability of the Defence budget, and stating in the 20 August 2015 email: “the Defence team will work hard to make whatever Budget is set…..but we can’t lose sight of reality.” (SPT.020.001.4579; SPT.009.018.2029).

(vi) On 24 August 2015, Stephen McIntyre (General Manager, PPP) emailed Russel Montgomery and Dana Nelson raising concerns about the achievability of the PPP budget (SPT.009.018.2034).

(vii) On 10 July 2015, Paul Waterson (Divisional General Manager, Laundries, Defence, Resources) emailed Glen Dymond (Divisional Commercial Manager of the Defence, Resources, Government and PPP sectors) directing him to ensure that the phasing for at least the first 2-3 months of FY16 was set so that the budget was achievable in that period (SPT.009.017.4804).

(viii) On 11 August 2015, Dana Nelson emailed Russell Montgomery stating that “they” needed to ensure that Spotless’ budget was phased such that the first quarter was achievable (SPT.020.001.8516).

114F. The Revised FY16 Budget did not amend the FY16 June D&A and Interest Forecast.

S.2 Laundry & Linen businesses

114G. The June FY16 Budget included an FY16 forecast of:

114G.1. $327.4 million in revenue, comprising:

(a) $11.6 million from new business;

(b) $5.9m million from a contract titled “HBL” (the **HBL Contract**);

(c) $17.5 million from Prime Laundries; and

114G.2. $97.4 million in EBITDA, comprising:

(a) $3.2 million from new business;

(b) $1.5 million from the HBL Contract;

(c) $5.9m million from Prime Laundries,

for the Laundries sector (the **Laundries FY16 Forecast**).

Particulars

The Applicant refers to:

(i) SPT.020.109.1236; and

(ii) SPT.020.109.1235.

114H. The Laundries FY16 Forecast did not materially change at the time of the Revised FY16 Budget.

Particulars

The Applicant refers to SPT.009.009.4364.

115. By 25 August 2015 Spotless had signed the agreement to acquire Prime Laundry.

Particulars

The Applicant refers to and repeats the particulars to paragraph 33.

The Applicant also refers to:

(i) SPT.020.145.7095; and

(ii) SPT.020.145.7094.

116. [Not used]

116A. As at 25 August 2015, earnings from Prime Laundry were approximately 23% lower than Spotless had budgeted for with the effect that the FY16 budgeted revenue and EBITDA for Prime Laundry was unlikely to be achieved.

Particulars

The Applicant refers to:

(i) SPT.003.002.7059;

(ii) SPT.003.002.7058;

(iii) SPT.020.091.2001 at _0051;

(iv) SPT.011.006.6988;

(v) SPT.009.012.6583; and

(vi) SPT.009.012.6582.

117. By no later than 25 August 2015 Spotless had commenced integrating the FY15 Laundries Acquisitions with its existing laundries business (**Laundries Integration Plan**).

Particulars

FY15 Preliminary Final Report, page 57.

118. As part of the Laundries Integration Plan, Spotless closed two laundry facilities, one of which had been operated by Aladdin Laundries and the other by ILS, and merged those facilities into its existing laundry facilities in North Rocks and Dudley Park.

Particulars

The Applicant refers to statements made by Spotless in the Second Trading Update that: *"integration plans [which] involved closing two* *sites and redirecting volume to two existing facilities"* had contributed to a $15 million reduction in FY16 EBITDA, page 5.

119. As a result of the FY15 Laundries Acquisitions there had been at least a 15% or 15,000 ton increase in Spotless' laundry processing volumes (**Laundries Volume Increase**).

Particulars

2014 AGM Address, page 4.

Analyst Report by Deutsche Bank entitled "AGM confirms Company is on track to meet prospectus forecasts", dated 27 October 2014 page 8.

119A. The FY15 Laundries Acquisitions contributed linen items which were heavier than Spotless had expected by 13% for ILS and 11% for Aladdin, and continued to do so as at 25 August 2015.

Particulars

The Applicant refers to:

(i) SPT.020.066.6872;

(ii) SPT.020.066.6871; and

(iii) SPT.020.091.2001 at _0050 and _0051.

120. The FY15 Laundries Acquisitions contributed a different customer product mix to that previously processed through Spotless' existing laundry facilities, and continued to do so as at 25 August 2015.

Particulars

Second Trading Update, page 5.

The Applicant also refers to:

(i) SPT.020.091.2001 at _0050;

(ii) SPT.020.066.6872; and

(iii) SPT.020.066.6871.

121. Under the Laundries Integration Plan, the Laundries Volume Increase (comprised in part of the different product mix mentioned in the preceding paragraph ~~above~~ and the higher weight of the linen mentioned in paragraph 119A) was to be accommodated by Spotless' existing laundry facilities.

Particulars

This is to be inferred from the matters set out at paragraphs 118 - 120 above.

The Applicant also refers to:

(i) SPT.020.066.6872; and

(ii) SPT.020.091.2001 at _0050.

122. The Laundries Integration Plan:

122.1. underestimated the timeframe within which the consolidated facilities could process the increased volumes and weights and different product mix at a rate consistent with meeting customer expectations; ~~and~~

122.2. underestimated the timeframe within which equipment could be re-deployed between the integrated facilities and the timeframe for delivery of new equipment for integrated facilities; and

122.3. consequently, as at August 2015 Spotless was not in a position to successfully implement the Laundries Integration Plan within a timeframe which would ensure that it could meet customer demands without incurring further costs.

Particulars

The ~~a~~Applicant refers to statements made by ~~Martin~~ Sheppard, the CEO, when referring to the acquisitions at 1H16 Results that: "*I guess the learnings are, I think the learnings are, don't be overly optimistic about what you can deliver in a short period of time. And also just recognise that if you do a lot in a short period of time, you can [get] indigestion*" as quoted in an article published by Jarard

Lynch entitled "Spotless Still Open for Acquisitions", *Australian Financial Review* dated 24 February 2015.

The Applicant also refers to:

(i) SPT.020.066.6872;

(ii) SPT.020.147.3620;

(iii) SPT.020.066.3546;

(iv) SPT.020.139.7506;

(v) SPT.009.017.5110; and

(vi) SPT.020.091.2001 at _0050 and _0051.

123. As a result of the matters alleged in paragraphs 117 and 122 above, by no later than 25 August 2015, Spotless:

123.1 was and would continue to experience reduced productivity; and

123.2. was and would be required to employ staff to complete shifts outside of ordinary business hours, resulting in it incurring greater overtime wage costs.

Particulars

The fact that overtime costs would be incurred is to be inferred from:

(i) Sheppard's comments on 9 December 2015 that: "*these businesses are very sensitive to labour costs, so if you start adding extra shifts and weekend shifts you will incur a very heavy labour cost"*, as quoted in an article published by Jared Lynch entitled "Spotless Burning Overtime", CEO says profit downgrade will come out in the wash", *Sydney Morning Herald*, dated 9 December 2015;

(ii) the Second Trading Update, at page 5, in which Spotless stated that: *"a difference in customer product mix and increased volume have caused operating challenges and* *resulted in higher than expected overtime to ensure Spotless continues to meet customer expectations".*

The Applicant also refers to and repeats the particulars to paragraph 122.

123A. The Laundries Integration Plan underestimated the wage rates of the FY15 Laundries Acquisitions, resulting in increased wage costs.

Particulars

The Applicant refers to SPT.020.091.2001 at _0050 and _0051.

124. As at 25 August 2015 the laundry businesses, including those acquired by the FY15 Laundries Acquisitions, had underlying performance issues (**Laundry Performance Issues**).

Particulars

Second Trading Update, 9 December 2015, page 5.

The Applicant also refers to:

(i) The Laundries division Board report for February 2015 reported that revenue and EBITDA were below budget, including by reason of new business revenue and volumes not being achieved and under-achieved productivity targets. In that same report, the outlook for the remainder of FY15 was below forecast, including by reason of new business not being anticipated to be achieved (SPT.020.115.7319 and SPT.020.115.7318)

(ii) The Laundries division Board report for March 2015 reported that revenue and EBITDA were below budget, including by reason of new business revenue not being achieved and under-achieved productivity targets. In that same report, the outlook for the remainder of FY15 was below forecast, including by reason of new business not being anticipated to be achieved, loss of work in Western Australia and delayed projects in New Zealand, New South Wales and South Australia (SPT.009.008.3410 and SPT.009.008.3411).

(iii) The Laundries division Board report for April 2015 reported that revenue and EBITDA were below budget, including by reason of new business revenue and volumes not being achieved and under-achieved productivity targets. In that same report, the outlook for the remainder of FY15 was below forecast, including by reason of new business not being anticipated to be achieved and lower volumes (SPT.020.155.4230 and SPT.020.155.4229).

(iv) The Laundries division Board report for May 2015 reported that revenue and EBITDA were below budget, including by reason of new business revenue and volumes not being achieved and under-achieved productivity targets. In that same report, the outlook for the next month was under forecast for EBITDA and revenue, including by reason of lower volumes, a new business shortfall and continuing productivity issues (SPT.009.017.8776 and SPT.009.017.8775).

(v) The Laundries division Board report for June 2015 reported that revenue and EBITDA were below budget, including by reason of new business revenue and volumes not being achieved and under-achieved productivity targets. In that same report, the outlook for the next month was under forecast for EBITDA and revenue including by reason of lower volumes and yields (SPT.009.007.1706 and SPT.009.007.1705).

(vi) The Laundries division Board report for July 2015 reported that revenue and EBITDA were below budget, including by reason of lower than expected volumes and yields. In that same report, the outlook for the next month was under forecast for EBITDA and revenue including by reason of volume and yield shortfalls (SPT.020.145.7095 and SPT.020.145.7094).

(vii) On 5 March 2015, following an email exchange between Vita Pepe (Chief Operating Officer) and Catriona Larritt (Divisional General Manager – Health, Laundries, & Business Development) in relation to the Laundries sector results, Pepe stated that the Laundries sector had gone backwards and both Pepe and Larritt should have picked it up (SPT.009.011.6884).

(viii) On 23 March 2015, in an email exchange between Paul Waterson (Divisional General Manager, Laundries, Defence, Resources) and Richard Sweetnam (General Manager, Finance – Laundry Services) concerning the Laundries sector results, Waterson referred to the Laundries sector going backwards by $5.6m EBITDA per year in underlying business excluding one offs. Waterson then emailed again correcting the earlier email, stating that the deterioration was $7.08m EBITDA per year (SPT.020.122.9219).

(ix) On 8 May 2015, Richard Robins (General Manager – Laundry Services) sent an email to various Spotless employees concerning the Laundries monthly forecast, stating that the Laundries sector was “fighting the back end of [its] aggressive forecast” and that the reforecast “continue[d] to be under pressure”. Robins also stated that a series of “one offs” were being worked on to “mitigate the gap” (SPT.020.139.7506).

(x) On 30 June 2015, James Seetho (Commercial Manager, Laundries, NSW/ACT) sent an email to various Spotless employees concerning the Laundries NSW weekly forecast, and stating that operationally Laundries NSW was trending below forecast. Seetho also stated that Laundries NSW were looking at bridging the gap through initiatives such as capitalisation of labour (SPT.020.139.4870).

(xi) On 24 July 2015, Richard Robins sent an email to various Spotless employees concerning the Laundries forecast, stating that the weekly forecast for the Laundries sector continued to slip due to productivity and integration issues (SPT.020.147.7731).

(xii) A draft report into the performance of the Laundries sector dated 16 October 2015, prepared by Darren Boyd (Group General Manager AE Smith / Laundries / Business Development), identified a number of problems with the underlying performance of the sector, including by reason of productivity issues and reduced margins resulting from market conditions and pricing pressure in particular in the garment sector which had shown a decline over the previous 3 years (SPT.020.066.6800 and SPT.020.066.6799).

(xiii) In FY15, the Laundries sector achieved EBITDA of $83.1 million against a budget of $90.3 million (SPT.042.001.0156 at _0006, SPT.003.002.6410 at 6476 and SPT.003.006.0569 at 0644).

125. As at 25 August 2015, as a result of the FY15 Laundry Acquisitions, the acquisition of Prime Laundry, the Laundries Volume Increase, the Laundries Integration Plan and the Laundry Performance Issues, Spotless would incur increased depreciation charges due, in part, to the requirement to make ongoing capital expenditure on laundry machinery maintenance and replacement of linen stock.

Particulars

These matters are to be inferred from the facts pleaded in paragraphs 117 – 121.

The Applicant also refers to SPT.003.002.6410 at 6484.

125A. As at 25 August 2015, ongoing delays in the HBL Contract negotiations meant that it was unlikely that Spotless would achieve earnings from the HBL Contract in FY16 as referred to in paragraphs 114G.1(b) and 114G.2(b).

Particulars

The Applicant refers to:

(i) SPT.020.155.4617;

(ii) SPT.020.110.5521;

(iii) SPT.020.155.4230;

(iv) SPT.003.002.6410 at 6470;

(v) SPT.020.145.7095; and

(vi) SPT.020.066.6800.

125B. The Laundries sector business development department was subject to the Business Development Failures (referred to at paragraph 140A below).

125C. As a result of the matters set out in paragraphs 116A and 119A – 125B above, as at 25 August 2015, it was unlikely that Spotless would achieve the Laundries FY16 Forecast.

S.3 AE Smith

126. As at 25 August 2015 Spotless was in the process of integrating the AE Smith business into its current operations.

Particulars

This is to be inferred from the elapse of time from 27 February 2015 being the date of the AE Smith Acquisition Announcement and 25 August 2015.

FY15 Results Announcement, page 3.

127. Prior to the AE Smith Acquisition, Spotless did not offer air-conditioning and mechanical services as part of its offering to customers, and had previously subcontracted for the delivery of these services.

Particulars

AE Smith Conditional Announcement, page 1.

127A. The June FY16 Budget included an FY16 forecast of:

127A.1 $341.17 million in revenue, $50 million of which was to be contributed by new business;

127A.2 $18.97 million in EBITDA, $5 million of which was to be contributed by new business (with the likelihood of winning that new business assessed by Spotless to be 100%),

for AE Smith (the **AE Smith FY16 Forecast**).

Particulars

The Applicant refers to:

(i) SPT.009.016.3180;

(ii) SPT.009.016.3179;

(iii) SPT.011.006.1486; and

(iv) SPT.011.006.1485.

127B. The AE Smith FY16 Forecast relied on integration benefits which would contribute at least $9 million in EBITDA in FY16, comprising $7 million EBITDA sub-contractor synergies and $2 million EBITDA synergies from the integration with Asset Services (the **AE Smith Integration Benefits**).

Particulars

The Applicant refers to:

(i) SPT.009.015.5713; and

(ii) SPT.009.015.5712.

127C. In order to achieve the AE Smith Integration Benefits, Spotless relied on an integration plan which involved:

127C.1 AE Smith integrating Spotless' Asset Services Division;

127C.2 AE Smith integrating Spotless' TGS Electronics (**TGS-E**) Division;

127C.3 securing 4 Brownfield sites by June 2016, amounting to FY16 forecast EBITDA of $4 million, together with FY16 forecast $1 million EBITDA from 'blue sky' projects; and

127C.4 utilising self-delivery of AE Smith services in place of sub-contracted work across its sectors.

Particulars

The Applicant refers to:

(i) SPT.009.015.5713;

(ii) SPT.009.015.5712;

(iii) SPT.020.068.3549;

(iv) SPT.020.068.3547;

(v) SPT.020.065.0070;

(i) SPT.020.066.2566; and

(ii) Spotless ASX announcement entitled "Spotless acquires Australia's leading air-conditioning and mechanical services provider – AE Smith" dated 2 February 2015.

127D. The AE Smith FY16 Forecast did not materially change at the time of the Revised FY16 Budget.

Particulars

The Applicant refers to SPT.020.066.2709.

127E. As at 25 August 2015:

127E.1 The Asset Services Division had underperformance issues which were continuing;

127E.2 TGS-E had poorly controlled financial performance, resulting in underperformance issues which were continuing;

127E.3 Spotless had not secured, properly timed, sized or quantified, any of the 4 Brownfield sites which were to contribute $4 million EBITDA in FY16;

127E.4 Spotless's other sectors were not using AE Smith for provision of air-conditioning or other services at the level anticipated by Spotless;

127E.5 AE Smith were not focusing on opportunities for self-delivery within the wider Spotless business, and instead its objectives were to deliver for its current customer base;

127E.6 Spotless had not undertaken any due diligence of, and did not have a plan for, what sub-contracted work could be delivered by AE Smith; and

127E.7 AE Smith's business development department was subject to the Business Development Failures (referred to at paragraph 140A below).

Particulars

In relation to paragraph 127E.1, the Applicant refers to:

(i) The January and February 2015 Board reports for AE Smith identify low overall state profitability for Asset Services (SPT.020.044.9175 and SPT.020.044.9174, SPT.020.044.8606 and SPT.020.044.8605).

(ii) In an email dated 10 April 2015 from Lucy Cordone (Contract Manager, WA Housing) to Michael Leggett (Senior Contracts Manager), Cordone states that she suspects that Asset Services is not making money because of service issues, namely the lack of after hours service, the limited services provided by the trades and price. As part of the same email string, on 14 April 2015, Craig Southerland (General Manager – Government) replied that he had heard that Asset Services were losing a large amount of money (SPT.009.017.3893).

(iii) In an email dated 1 June 2015 from David Willet (AE Smith, Chief Executive Officer) to Paul Waterson (then, Divisional General Manager, Laundries, Defence, Resources) Willet links quality issues at Asset Service to the lack of quality staff (SPT.020.070.1483).

(iv) By email dated 2 June 2015, Joanna Yi (position unknown to the Applicant) identified that Asset Services "is in loss about half a million" (SPT.020.069.7026).

(v) By email dated 7 August 2015, David Willet tells Darren Boyd (General Manager, AE Smith / Laundries / Business

Development) that Asset Services is running at a loss of $200k per month (SPT.020.066.3199).

In relation to paragraph 127E.2, the Applicant refers to:

(i) The January and February 2015 Board reports for AE Smith identify that financial performance at TGS was poorly controlled (SPT.020.044.9175 and SPT.020.044.9174, SPT.020.044.8606 and SPT.020.044.8605).

(ii) By email dated 8 April 2015, Peter Lotz (Chief Information Officer / Head of Group Services & Infrastructure) wrote to Vita Pepe (Chief Operating Officer) identifying that TGS was making a loss of circa $150k per month and identifying a number of issues with the performance of the TGS business relating to financial performance controls, such as overdue debt, invoicing and poor system configuration and labour management (SPT.009.019.6935).

(iii) By email dated 9 June 2015, Chelsea Briggs (Commercial Manager, TechGuard Security) wrote to Vita Pepe identifying that the May result for TGS had failed to achieve forecast. In the same email string, by email dated 9 June 2015, Donna Freer (General Manager, Security Integration) wrote to Dana Nelson stating that there was no way to fix the company unless all of the unprofitable contracts were exited and there was significant downsizing (SPT.020.006.6593).

In relation to the balance of paragraph 127E, the Applicant refers to:

(i) SPT.020.044.9175;

(ii) SPT.020.044.9174;

(iii) SPT.020.066.2565;

(iv) SPT.020.070.1483; and

(v) SPT.020.065.0070.

128. As a result of the matters set out in paragraph 127E above, as at 25 August 2015 Spotless had:

128.1. unreasonably optimistic assumptions as to the extent of the AE Smith Integration Benefits;

128.2. an unreasonably short timeframe for achieving the AE Smith Integration Benefits in FY16; and/or

128.3. unrealistic expectations regarding AE Smith's ability to win new contracts.

129. As a result of the matters set out in paragraph~~s~~ 128 above, as at 25 August 2015, it was unlikely that Spotless would achieve:

129.1. the synergy benefits from the AE Smith Integration Benefits in FY16; and

129.2. the AE Smith FY16 Forecast.

S.4 Investment in business development and new contract wins

130. Spotless' ability to renew contracts with existing clients, as well as to win contracts with new clients, was fundamental to its business, growth and profitability.

Particulars

FY15 Preliminary Final Report, page 5.

131. The contracts that Spotless intended to renew with existing clients, as well as the contracts it sought to win from new clients were usually subject to a competitive process involving rival bidders.

Particulars

FY15 Preliminary Final Report, page 5.

132. Spotless' business development division was central to its ability to win new contracts and renew existing contracts in all sectors, including, but not limited to, the Commercial & Leisure division and the Base & Township division.

Particulars

This is to be inferred from statements in:

(i) FY16 Preliminary Final Report, page 14.

(ii) Spotless ASX announcement entitled "FY16 Results Presentation" dated 24 August 2016 (the **FY16 Results Presentation**), pages 11, 31;

(iii) Analyst Report published by Canaccord Genuity entitled "1H17 Results preview; weak half expected" dated 20 February 2017, page 1.

133. [Not used]

134. [Not used]

135. In FY14 the win rate by revenue for new contracts achieved by Spotless was 27%.

Particulars

FY16 Results Presentation, page 11.

135A. In FY15, Spotless had a target win rate by revenue for new business of 40%.

Particulars

The Applicant refers to SPT.003.001.9227 at 9266.

135B. Spotless' FY15 Budget forecast probability weighted new business:

135B.1. EBITDA of $25.8 million; and

135B.2. revenue of $319.3 million.

Particulars

The Applicant refers to SPT.042.001.0156.

135C. Spotless' FY15 Budget forecast for new business did not include new business opportunities which had not yet been identified by Spotless (described by Spotless as 'unidentified' or 'other' new business) (**Unidentified New Business**).

Particulars

The Applicant refers to SPT.042.001.0156.

136. In FY15 the win rate by revenue for new contracts achieved by Spotless was:

136.1. each week from March to June (inclusive), consistently under the target win rate of 40%;

136.2. 20% for FY15 for all contracts; and

136.3. 36% for FY15, excluding the DoI Contract and the Immigration Contracts.

Particulars

As to paragraph 136.1, the Applicant refers to:

(i) SPT.003.004.3807;

(ii) SPT.003.004.3792

(iii) SPT.003.004.2358;

(iv) SPT.003.004.2357

(v) SPT.003.003.8756;

(vi) SPT.003.003.8755;

(vii) SPT.003.003.8041;

(viii) SPT.003.003.8040;

(ix) SPT.003.003.6758;

(x) SPT.003.003.6757;

(xi) SPT.003.003.4535;

(xii) SPT.003.003.4534;

(xiii) SPT.003.003.4430;

(xiv) SPT.003.003.4429;

(xv) SPT.003.003.3591;

(xvi) SPT.003.003.3590;

(xvii) SPT.020.070.5211;

(xviii) SPT.020.070.5206

(xix) SPT.003.002.8959;

(xx) SPT.003.002.8944;

(xxi) SPT.003.002.8006;

(xxii) SPT.003.002.8005

(xxiii) SPT.003.003.0585;

(xxiv) SPT.003.003.0584;

(xxv) SPT.003.002.5279;

(xxvi) SPT.003.002.5278;

(xxvii) SPT.003.002.5993;

(xxviii) SPT.003.002.5980;

(xxix) SPT.003.002.1721;

(xxx) SPT.003.002.1706

(xxxi) SPT.003.002.0107;

(xxxii) SPT.003.002.0106

(xxxiii) SPT.003.002.3601;

(xxxiv) SPT.003.002.3600; and

(xxxv) SPT.020.111.1177.

As to paragraphs 136.2 and 136.3, the Applicant refers to the FY16 Results Presentation, page 11.

136A. In FY15, Spotless did not achieve anticipated earnings from new business.

Particulars

The Applicant refers to SPT.009.004.9252.

136B. In the June FY16 Budget, Spotless' probability weighted forecast for new business was:

136B.1. EBITDA of $32.7 million; and

136B.2. revenue of $319.0 million, (**June FY16 New Business Forecast**)

which included at least EBITDA of $12.5 million for ‘probability weighted’ Unidentified New Business (**June FY16 Unidentified New Business Forecast**).

Particulars

The Applicant refers to:

(i) SPT.003.002.6410 at 6475;

(ii) SPT.003.002.0277; and

(iii) SPT.003.002.0275.

136C. Spotless assessed the likelihood of winning the unidentified new business which formed the June FY16 Unidentified New Business at 40%.

Particulars

The Applicant refers to:

(i) SPT.003.002.0277; and

(ii) SPT.003.002.0275.

136D. In April and May 2015, Spotless’ Sector General Managers were directed to:

136D.1. include Unidentified New Business; and

136D.2. assess the likelihood of achieving new business at no less than 40-45% overall, including for Unidentified New Business,

in their sector budgets.

Particulars

The Applicant refers to:

(i) SPT.009.009.0447;

(ii) SPT.009.009.0448;

(iii) SPT.009.015.5093;

(iv) SPT.020.001.4160; and

(v) SPT.020.006.8333.

136E. The June FY16 Budget forecast for new business was phased such that forecasted monthly EBITDA and revenue for new business was heavily skewed towards 2H, with new business forecasts skewed towards 2H in all sectors other than the Laundries sector and USG.

Particulars

The Applicant refers to:

(i) SPT.020.091.2001 at _0004;

(ii) SPT.020.001.3568;

(iii) SPT.009.018.2097;

(iv) SPT.009.018.2095;

(v) SPT.009.018.0053;

(vi) SPT.009.010.4427;

(vii) SPT.009.010.4425;

(viii) SPT.009.018.2129;

(ix) SPT.009.018.2128;

(x) SPT.009.016.9037;

(xi) SPT.009.016.9036;

(xii) SPT.009.007.5428;

(xiii) SPT.009.007.5426;

(xiv) SPT.009.017.5890;

(xv) SPT.009.017.5888;

(xvi) SPT.009.017.0489;

(xvii) SPT.009.017.0487;

(xviii) SPT.009.007.7262;

(xix) SPT.009.007.7261;

(xx) SPT.027.001.1586;

(xxi) SPT.020.065.5370;

(xxii) SPT.020.065.5369;

(xxiii) SPT.027.001.1612;

(xxiv) SPT.027.001.1613;

(xxv) SPT.027.001.1617;

(xxvi) SPT.027.001.1619;

(xxvii) SPT.020.111.3217;

(xxviii) SPT.020.111.3216;

(xxix) SPT.020.001.3089;

(xxx) SPT.020.001.3087;

(xxxi) SPT.009.016.3965;

(xxxii) SPT.009.016.3963;

(xxxiii) SPT.009.008.8376;

(xxxiv) SPT.009.008.8375;

(xxxv) SPT.027.001.1586;

(xxxvi) SPT.020.001.7575; and

(xxxvii) SPT.020.001.7573.

136F. At the time of the Revised FY16 Budget, the June FY16 New Business Forecast and the June FY16 Unidentified New Business Forecast remained unchanged.

Particulars

The Applicant refers to SPT.003.007.4677 at 4758.

136G. As at 25 August 2015, Spotless had a target win rate by revenue for new business of 45% for FY16, which it had increased from 40% in FY15.

Particulars

The Applicant refers to SPT.003.007.4677 at 4710.

136H. As at 25 August 2015, Spotless identified that its win rate by revenue for new business for FY16 up to and including 6 August 2015 was 38%.

Particulars

The Applicant refers to SPT.003.007.4677 at 4710.

137. As at 25 August 2015 Spotless was unable to mitigate the loss of any one contract bid, or a delay in a contract coming to the market for tender, due to a scarcity of alternative new contract opportunities.

Particulars

Article by Jared Lynch entitled “Spotless shares dive as resources expansion falters” *The Sydney Morning Herald*, 2 December 2015, in which a spokeswoman from Spotless stated that: *“[t]here have been some large opportunities but there are definitely less of those opportunities and those large opportunities take a long lead time, so when they get delayed or deferred, you don’t have an opportunity to replace it readily with another contract*”.

The Applicant also refers to SPT.020.111.0311.

138. [Not used]

139. [Not used]

140. [Not used]

140A. As a result of the 2012 Business Development Cuts and the 2012 Business Development Role Expansion, further and alternatively the April 2015 Business

Development Changes, Spotless' business development division was under-resourced and fragmented (the **Business Development Failures**).

Particulars

Prospectus, page 11.

The Applicant also refers to:

(i) SPT.020.001.4329;

(ii) SPT.020.111.4098;

(iii) SPT.009.006.0342;

(iv) SPT.009.005.5998;

(v) SPT.009.005.5997;

(vi) SPT.020.065.2517; and

(vii) SPT.020.065.2518 at _0005.

141. As at 25 August 2015, as a result of the Business Development Failures:

141.1. Spotless' ability to win and renew contracts during FY16 was inhibited, including in respect of the Rio Tinto contract with annual revenue assessed by Spotless to be $400 million; and

141.2. Spotless' ability to proactively identify Unidentified New Business was inhibited

Particulars

To be inferred from statements made by Sheppard in relation to the impact of the under investment in business development prior to the Change in CEO in the FY16 Conference Call Transcript:

(i) *"[w]e have deliberately and transparently drawn out the slowdown in the organic growth in the presentation and we have alluded to that, you could also see that through the half year numbers. And that's a direct result of the business* *under-investing in business development capability and that's why the organic business has grown* (sic) *back – has slid a bit….*" ,page 8;

(ii) *"[n]ow we're injecting new capability, that cohort of people are actively in the market and we're already seeing a richer pipeline and better opportunities, which we're encouraged by*" , page 8.

In the period following the Change in CEO, Spotless invested in business development and innovation to drive organic growth:

(i) FY16 Conference Call transcript, page 6;

(ii) 1H17 Results Investor Presentation, page 15.

The investment in business development undertaken following the Change in CEO achieved positive outcomes for win rates for large, long dated contracts in priority growth sectors and increased the size of Spotless' pipeline:

(i) 1H17 Results Presentation, page 30.

The Applicant otherwise refers to and repeats the particulars to paragraph 140A.

142. [Not used]

142.1. [Not used]

142A. By reason of the matters pleaded at paragraphs 130 – 141, including:

142A.1. the inclusion of $32.7 million EBITDA for New Business in the June FY16 Budget (increased from $25.8 million forecasted in FY15, which was not achieved), $12.5 million of which was Unidentified New Business (in circumstances where no Unidentified New Business was included in the FY15 budget) with the likelihood of winning the Unidentified New Business being assessed at 40%, as referred to in paragraphs 135B, 136B and 136C;

142A.2. the heavy skew towards 2H in FY16 in Spotless' forecast for new business, as referred to in paragraph 136E;

142A.3. Spotless' failure to achieve anticipated earnings from new business in FY15, as referred to in paragraph 136A;

142A.4. Spotless' missed target win rate by revenue for new contracts of 40% in FY15, achieving a win rate by revenue of 20% across all contracts, and Spotless' increased target win rate by revenue for new contracts in FY16 to 45%, as referred to in paragraphs 136 and 136G;

142A.5. Spotless' failure to achieve the target win rate by revenue for FY16 of 45%, up to and including 4 August 2015, as referred to at paragraph 136H; and

142A.6. the Business Development Failures, which impacted upon Spotless' ability to identify new opportunities and win new contracts, as referred to in paragraph141,

it was unlikely that Spotless would achieve the June FY16 New Business Forecast (which remained unchanged as at 25 August 2015).

S.5 Contract renewals

143. During FY14, Spotless renewed 63% of the contracts which came up for renewal by number, representing 75% of the total available revenue from contract renewals for that year.

Particulars

Second Trading Update, page 9.

143A. In FY15, Spotless' target renewal rate for contract renewals by revenue was 90%.

Particulars

The Applicant refers to SPT.003.007.4677 at 4710.

144. During FY15, Spotless renewed 78% of the contracts which came up for renewal by number, including a contract for the provision of food services at the Melbourne

Cricket Ground, representing 91% of the total available revenue from contract renewals for that year.

Particulars

Second Trading Update, page 9.

During FY15 Spotless renewed $950 million worth of contracts (FY15 Results Presentation, page 4) from a total pool of revenue available of approximately $1.05 billion.

145. The FY15 Results benefited from an unusually high number of large individual contract renewals in that year.

Particulars

Second Trading Update, page 9.

145A. In FY16, Spotless' target win rate for contract renewals by revenue was 95%.

Particulars

The Applicant refers to SPT.003.007.4677 at 4710.

146. As at 25 August 2015 it was likely that:

146.1. Spotless would not achieve a similarly high number of large renewals in FY16 as the company achieved in FY15; ~~and~~

146.2. Spotless would not meet its target renewal rate of 95% by revenue for FY16 for contract renewals; and

146.3. the percentage of revenue achieved from the available contracts coming up for renewal would fall closer to the historical levels indicated by FY14.

Particulars

The Applicant refers to and repeats paragraphs 143 - 145.

Second Trading Update, page 9.

On 24 February 2016 Sheppard stated that: "*what we suffered from was probably off the back of some really good contract ones* [sic]*, in truth we were a bit bullish in terms of our outlook and under the ASX rules we have pulled it back*", as quoted in an article published by

Damon Kitnes entitled "Spotless adjusts after paying the price for bullish aims" *The Australian*, 24 February 2016.

S.6 [Not used]

147. [Not used]

148. [Not used]

149. [Not used]

150. [Not used]

151. [Not used]

S.7 Base & Township sector

152. When Spotless published the Prospectus in April 2014 it stated that it did not currently hold a market-leading position in the Base & Township division, but expected to be able to gain market share by winning contracts with new customers that were currently being serviced by competitors.

Particulars

Prospectus, page 61.

152A. By no later than February 2015, mining companies were slowing their rate of providing feedback on bids and deferring their decisions regarding new business.

Particulars

The Applicant refers to:

(i) SPT.011.006.3724;

(ii) SPT.011.006.3723;

(iii) SPT.009.017.3846;

(iv) SPT.009.017.3845;

(v) SPT.011.006.2835;

(vi) SPT.011.006.2834

(vii) SPT.009.008.8404;

(viii) SPT.009.008.8403; and

(ix) SPT.011.007.2397.

153. By no later than February 2015, growth in the Australian resources sector was slowing with mining companies scaling back their level of activity and operations, including through reduced employment across all sites, with consequential impact on the facilities management sector.

Particulars

The Applicant refers to a statement made by ~~Bruce~~ Dixon during the 1H15 Conference Call that: "*It's obvious the market is really tough in the FM* [facilities management] *space*", page 5.

The Applicant also refers to:

(i) SPT.011.006.3724;

(ii) SPT.011.006.3723;

(iii) SPT.009.017.3846;

(iv) SPT.009.017.3845;

(v) SPT.011.006.2835;

(vi) SPT.011.006.2834;

(vii) SPT.009.008.8404;

(viii) SPT.011.007.2397;

(ix) SPT.011.007.2396; and

(x) SPT.009.010.5227.

153A. The June FY16 Budget included an FY16 forecast of:

153A.1. $312.4 million in revenue, $63 million of which was to be contributed by new business;

153A.2. $26.1 million in EBITDA, $5 million of which was to be contributed by new business,

for the Base & Township sector (the **Base & Township FY16 Forecast**).

Particulars

The Applicant refers to:

(i) SPT.003.002.6468;

(ii) SPT.009.018.2095; and

(iii) SPT.009.018.2097.

153B. On the morning of 25 August 2015, Base & Township were advised that their final FY16 revenue forecast was $312.4 million and FY16 EBITDA forecast was $24.8 million (the **August Base & Township FY16 Forecast**).

Particulars

The Applicant refers to SPT.009.009.4548.

154. As at 25 August 2015 there had been a general slowdown in the resources sector during the prior 14 months.

Particulars

The Applicant refers to statements made in the FY15 Results Presentation, that: "*[b]ase and Township pro forma Sales Revenue decreased by 4.0% from June 2014 primarily due to the general slowdown in the Resources sector during the year*", page 26.

The Applicant also refers to:

(i) SPT.011.006.3724;

(ii) SPT.011.006.3723;

(iii) SPT.009.017.3846;

(iv) SPT.009.017.3845;

(v) SPT.011.006.2835;

(vi) SPT.011.006.2834;

(vii) SPT.009.008.8404;

(viii) SPT.009.008.8403;

(ix) SPT.011.007.2397;

(x) SPT.011.007.2396; and

(xi) SPT.009.010.5227.

155. By no later than 25 August 2015 mining companies operating in Australia were seeking to achieve cost savings and were testing the market for facilities management services, such that there was pressure on facilities management contract margins.

Particulars

The Applicant refers to statements made by Dixon that [g]*iven miners are looking at cost savings and there's pressure on margins, they are testing the market*", as quoted in an article published by Tim Binsted entitled "Spotless grabs miners" *The Australian Financial Review* dated 28 October 2014.

The Applicant also refers to:

(i) SPT.011.006.3724;

(ii) SPT.011.006.3723;

(iii) SPT.009.017.3846;

(iv) SPT.009.017.3845;

(v) SPT.011.006.2835;

(vi) SPT.011.006.2834;

(vii) SPT.009.008.8404;

(viii) SPT.011.007.2397;

(ix) SPT.011.007.2396;

(x) SPT.009.008.8403;

(xi) SPT.009.010.5226; and

(xii) SPT.009.010.5227.

155A. As at 25 August 2015, excluding the Rio Tinto contract, which it was not probable it would win, Spotless' Resources sector's new business pipeline was insufficient to meet its FY16 new business EBITDA forecast of approximately $5 million.

Particulars

The Applicant refers to:

(i) SPT.020.065.5370;

(ii) SPT.020.065.5369;

(iii) SPT.020.075.1817;

(iv) SPT.020.001.2761; and

(v) SPT.020.001.2762.

156. As at 25 August 2015:

156.1A Spotless had achieved below budget results for revenue and EBITDA in its Resources sector each month for the period February to June 2015 (inclusive) and below budget results for revenue for July 2015;

156.1B Spotless' existing contracts had been adversely impacted by the matters pleaded in paragraphs 153 – 155 above resulting in reduced revenue and/or EBITDA;

156.1C Spotless' existing contracts would likely continue to be adversely impacted by the matters pleaded in paragraphs 153 – 155 above resulting in reduced revenue and/or EBITDA;

156.1. Spotless was less likely to win and renew the same level of contracts for facilities management of mine sites in the Resources sector for FY16 as compared to FY15;

156.2. to the extent that Spotless was able to win or renew contracts in FY16, it was likely that those contracts would ~~only~~ be won or renewed at significantly reduced margins; and

156.3. the Base & Township sector's business development department was subject to the Business Development Failures.

Particulars

The Applicant refers to and repeats paragraphs 79 - 80, 130 - 132, 140A - 141, 152 - 155, and the particulars thereto.

Also to be inferred from statements in the 1H17 Results Investor Presentation, that: "*prior year contract losses and margin pressure negatively impacted Resources"*, page 3.

The Applicant also refers to:

(i) SPT.011.006.2835;

(ii) SPT.009.008.8404;

(iii) SPT.011.007.2397;

(iv) SPT.009.010.5227; and

(v) SPT.020.001.2762.

156A. As a result of the matters set out in paragraph 156 above, as at 25 August 2015, it was unlikely that Spotless would achieve the Base & Township FY16 Forecast or, alternatively, the August Base & Township FY16 Forecast.

S.8 One-off impact of factors affecting FY15 financial performance

157. Spotless' FY15 financial performance benefited from the following one-off factors:

157.1. the incorrect capitalisation or retention as an asset on the balance sheet in FY15 of the DoI Bid Costs, the Immigration Contracts Bid Costs and the

FY15 Rio Tinto Bid Costs, which would have to be recorded as operating expenses for FY16.

Particulars

The Applicant refers to and repeats paragraphs 91 and 114 above and the particulars thereto.

157.2. an unusually high number of large renewals, which resulted in contract renewals worth approximately $950 million in revenue from a total available pool of $1.05 billion.

Particulars

The Applicant refers to and repeats paragraph 144 - 146 above.

157.3. [Not used]

157.4. the net positive impact for FY15 EBITDA of between approximately $52.9 million, and $44.9 million of one-off financial adjustments (recurring and non-recurring), of which between approximately $29.5 million and $39.5 million were non-recurring in FY16.

Particulars

FY15 Annual Report, dated 18 September 2015, page 58.

FY16 Results Presentation, page 26.

The Applicant also refers to:

(i) In a document provided to the board on 1 December 2015 entitled “Reforecast Pack (1 Dec 2015)” it identifies $29.6m in ‘one off allocations’ (SPT.002.004.8446 at .8449 and .8452). Those one-off allocations are itemised in the same document (at .8454)

(ii) In an email dated 15 September 2015, Danny Agnoletto (Chief Financial Officer) requests a copy of a summary produced of the “unders and overs we used in FY15 by month” for the purpose of comparing it to August 2015. On the same date, Jacob Gunzberg (Group Financial Controller) responds by email attaching a copy of a spreadsheet, entitled “June YTD Adjustments.xlsx” which is then forwarded on by Danny Agnoletto to Dana Nelson (Chief Operating Officer) with the message “as discussed” (SPT.002.006.2904). That attached spreadsheet identifies $44.9m in "EBITDA Adjustments", of which $12.2 million are labelled "in-year" and $32.6m are labelled "difference" (SPT.002.006.2906). The non-recurring one-offs are itemised in that spreadsheet in the cells comprising the "difference" calculation.

(iii) On 19 November 2015, Dana Nelson emailed Danny Agnoletto referring to the same spreadsheet, stating "I think we need to be clear how much of the FY16 adjustments were real one offs and how much is recurring. The summary (provide by Jake) [sic] calls out 45M in FY15 – with 12.2M recurring. On that basis we have 32.8M that were FY15 one off's/benefits [sic]" (SPT.002.006.2902).

(iv) By email on 19 October 2015, Darren Boyd (General Manager – Laundries) provided a "draft report on Laundries" to Richard Robins (General Manager - Laundry Services) (SPT.020.066.6799). The attached report identified the "cumulated effect of the one off initiatives within the FY 2015 EBITDA result" at laundries was $8.0 million (SPT.020.066.6800 at _0003). The same report states that "[t]he only repeatable one offs that are achievable in 2016 are the Simba supplier rebate and the ongoing management capitalisation which has been identified separately in the table above", and that "the Simba rebate will not be at the same value as 2015" (at _0004). The report identified that the "Gap" in one-offs between the "Revised Forecast " and the "Budget" was $6.9 million in EBITDA (at _0004). Those one-off initiatives are itemised in the same document (at _0002).

(v) The above-pleaded range of $29.6 million and $39.5 million comprises the amount identified at particular (i) above, totalling $29.6 million, and the amounts pleaded at (ii) ($32.6 million), and (iv) ($6.9 million), totalling $39.5 million.

(vi) SPT.011.001.0414 (an email attaching the document referred to in the particular immediately below).

(vii) SPT.011.001.0415 (an earlier version of document SPT.002.006.2906 identified in particular (ii) above, dated 20 July 2015).

157A. The matters pleaded at paragraphs 157.1 and 157.4 meant that:

157A.1 the FY15 EBITDA was inflated by net positive one off items of approximately between $52.9 million and $44.9 million;

157A.2 the underlying FY15 EBITDA excluding the net contribution of all one-offs, recurring and non-recurring, was approximately between $263 million and $271 million;

157A.3 the underlying FY15 EBITDA excluding the net contribution of all one-offs non-recurring in FY16 was approximately between $276 million and $286 million

157A.4 the underlying FY15 NPAT excluding the net contribution of all one-offs (recurring and non-recurring) was approximately between $105.8 million and $111.4 million; and

157A.5 the underlying FY15 NPAT excluding the net contribution of all one-offs non-recurring in FY16 was approximately between $115.2 million and $122.1 million.

157B. In the FY16 June Budget, Spotless accounted for $15.4 million in one-off adjustments to EBITDA, when reducing its FY15 Result for the purpose of forecasting its FY16 performance.

Particulars

The Applicant refers to SPT.003.002.6468.

157C. In the FY16 Revised Budget, Spotless accounted for $18.6 million in one-off adjustments to EBITDA when reducing its FY15 Result for the purpose of forecasting its FY16 performance.

Particulars

The Applicant refers to:

(i) SPT.003.007.4183; and

(ii) SPT.003.007.4184.

157D. By reason of the matters pleaded at paragraphs and 157.4 and 157A – 157B, Spotless failed to account for:

159D.1 between $24.1 million and $14.0 million in non-recurring one-offs in the June FY16 Budget; and

159D.2 between $20.9 million and $11.0 million in non-recurring one-off adjustments in the Revised FY16 Budget, which it relied upon to forecast its FY16 forecast.

158. The matters pleaded in the preceding four paragraphs meant that the FY15 Results benefited from abnormally high levels of profit and was not a reliable base from which to forecast material growth in EBITDA or NPAT in FY16.

159. As at 25 August 2015, it was unlikely that Spotless would be able to compensate, at an earnings level, for the lack of significant one off events in FY16 through organic growth or acquisitions.

Particulars

The Applicant refers to and repeats the matters set out in paragraphs 114 –156A.

S.9 Likely FY16 financial performance

160. By reason of the matters pleaded at paragraphs 114 – 159, as at 25 August 2015 it was unlikely that:

160.1. Spotless' FY16 results would materially exceed the FY15 Results in respect of EBITDA and NPAT;

160.2. Spotless would achieve the Revised FY16 Budget forecasts pleaded at paragraphs 109B.1 to 109B.3; and

160.3. Spotless would achieve the FY16 NPAT Consensus.

Particulars

The Applicant refers to paragraphs 114 - 159 above and the particulars therein.

161. The matters set out above at paragraphs 114 - 160 above constituted the true position as at 25 August 2015.

162. As at 25 August 2015 Spotless knew of the matters set out at paragraphs 114 – 115; 116A – 121; 124 – 125; 126 – 127E; 130 – 132; 135 – 137; 140A; 143 – 145A; 152 – 156; 157.1 – 157.2; 157.4 – 157C above.

Particulars

Spotless' knowledge of the matters set out in in the above paragraphs is to be inferred from the material pleaded in those paragraphs and the particulars thereto.

T. AUGUST 2015 MISLEADING AND DECEPTIVE CONDUCT

163. The August 2015 Guidance Representations concerned future matters, namely Spotless' financial performance in FY16, accordingly the Applicant refers to and relies upon s 769C of the *Corporations Act,* s 12BB of the *ASIC Act* and s 4 of the *ACL*.

164. The August 2015 Guidance Representations were misleading or deceptive, or likely to mislead or deceive, because they omitted reference to and were silent in relation to certain matters of which Spotless had the knowledge set out in paragraphs 114 – 116A; 118; 119A – 121; 124 – 125; 127A – 127E; 130 – 132; 135 – 137; 140A; 143 – 145A; 152 – 156; 156.1 – 156.2; 157.4 – 157C.

165. Spotless did not have reasonable grounds for the August 2015 Guidance Representations, by reason of its knowledge of the matters set out in paragraphs 114 – 115; 116A – 121; 124 – 125; 126 – 127E; 130 – 132; 135 – 137; 140A; 143 – 145A; 152 – 156; 157.1 – 157.2; 157.4 – 157C, and the true position set out at paragraphs 114 - 161 above.

166. Consequently, by making the August 2015 Guidance Representations, Spotless engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:

166.1. s 1041H(1) of the *Corporations Act*;

166.2. s 12DA(1) of the ASIC Act; and/or

166.3. s 18 of the *ACL.*

(the **August 2015 Misleading and Deceptive Conduct Contravention**).

167. Spotless took no steps to withdraw or qualify the August 2015 Guidance Representations until the release of its ASX Announcement on 2 December 2015 entitled "Trading Update" (**First Trading Update**) and, accordingly, the 25 August Guidance 2015 Representations were continuing representations throughout the

whole of the period from 25 August 2015 until immediately prior to the release of the First Trading Update on 2 December 2015.

U. AUGUST 2015 CONTINUOUS DISCLOSURE CONTRAVENTIONS

168. Further or alternatively to the contraventions pleaded above, on 25 August 2015, or alternatively at a point between 25 August 2015 and 1 December 2015, the following information had or ought reasonably to have come into the possession of the Officers of Spotless in the course of the performance of their respective duties, namely:

168.1. the matters pleaded in paragraphs 91, 114, 114A – 114D, 122 – 123, 124 – 125, 125C, 128 – 129, 136 – 139A, 140A – 141, 142 and 156 – 160 above;

168.2. that it was unlikely that Spotless' FY16 Results in respect of EBITDA and NPAT would materially exceed the FY15 Results in respect of EBITDA and NPAT;

168.3. that it was likely that Spotless' earnings would be materially lower than the FY16 NPAT Consensus;

(individually or together, the **August 2015 Information**).

Particulars

The Applicant refers to and repeats the particulars to paragraphs 91, 92, 94, 161 and 162 above and says further that:

(i) for the same reasons that it is to be inferred that Spotless knew the matters pleaded in paragraphs 91, 114, 114A – 114D, 122 – 123, 124 – 125, 128 – 129, 136 – 139A, 140A – 141, 142, 156 – 160.

(ii) the Officers ought reasonably to have come into possession of the information in the course of the performance of their respective duties because they ought to have ascertained the information from their knowledge of the facts pleaded in paragraphs 114 – 115, 116A – 121, 124 – 125, 126 – 127E, 130 – 132, 135 – 137, 140A, 143 – 145A, 152 – 156, 157.1 – 157.2, 157.4 – 157C.

As to sub-paragraph 168.3, the Applicant also says:

(iii) as to the market's expectations, the Applicant refers to the FY16 NPAT Consensus;

(iv) as a listed disclosing entity, Spotless ought to have been monitoring analyst commentary regarding its likely FY16 financial performance.

169. By reason of the matters set out in the preceding paragraph, on 25 August 2015, or alternatively at a point between 25 August 2015 and 1 December 2015, Spotless was aware of, for the purposes of ASX Listing Rules 3.1 and 19.12, and had for the purposes of s 674(2)(b) of the *Corporations Act,* the August 2015 Information.

170. In the circumstances, the August 2015 Information was:

170.1. information that a reasonable person would expect to have a material effect on the price or value of the SPO Shares;

170.2. information that would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to acquire or dispose of the SPO Shares; and

170.3. not generally available, within the meaning of s 676 of the *Corporations Act*.

171. Spotless was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* on 25 August 2015, alternatively at a point between 25 August 2015 and 1 December 2015, to immediately tell the ASX the August 2015 Information.

172. In contravention of ASX Listing Rule 3.1, Spotless did not tell the ASX the August 2015 Information at any time prior to 2 December 2015.

Particulars

The notification was in writing and contained in the First Trading Update, the ASX Aware Query Response, and the Second Trading Update.

173. By reason of the matters pleaded in paragraphs 168 – 172 above, Spotless contravened s 674(2) of the *Corporations Act* (the **August 2015 Continuous Disclosure Contravention**).

V. ANNOUNCEMENTS MADE BY SPOTLESS IN OCTOBER 2015

174. On 22 October 2015 at its AGM, and in a document released to the ASX that day entitled “Address by Margaret Jackson AC, Chairman Spotless Annual General

Meeting 2015" (the **2015 AGM Address**), Spotless repeated the FY16 Growth Representation.

(the **October 2015 Guidance Representations**).

Particulars

2015 AGM Address, page 5.

W. THE TRUE POSITION AS AT 22 OCTOBER 2015

175. As at 22 October 2015 the matters pleaded in paragraphs 114 - 160 were in existence and were continuing.

175A. By 22 October 2015, Spotless had:

175A.1. performed a review of the assumptions underpinning the Laundries FY16 Forecast; and

175A.2. concluded that there was likely to be a shortfall of $13.5 million, alternatively $11.5 million, to the FY16 forecast for EBITDA for the Laundries division (being $97.4 million).

Particulars

The Applicant refers to SPT.020.066.6800.

175B. A further revised FY16 budget (the **Further Revised FY16 Budget**) was provided to the Board for approval at the Board Meeting on 22 October 2015 (**October Board Meeting**), which maintained the forecasts of:

175B.1. Spotless' FY16 EBITDA would be $363.3 million;

175B.2. Spotless' FY16 revenue would be $3,532.9 million; and

175B.3. Spotless' FY16 NPAT would be $152.7 million.

Particulars

The Applicant refers to SPT.003.006.0569 at 0643.

175C. In the Further Revised FY16 Budget, Spotless' probability weighted forecast for new business for FY16 was:

175C.1. EBITDA of $41.2 million (increased from $32.7 million in the June FY16 Budget and Revised FY16 Budget); and

175C.2. revenue of $319.0 million.

Particulars

The Applicant refers to SPT.003.006.0569 at 0647.

175D. The Further Revised FY16 Budget forecast for new business included probability weighted EBITDA for Unidentified New Business of $17.9 million (increased from $12.5 million in the June FY16 Budget and Revised FY16 Budget).

Particulars

The Applicant refers to SPT.002.006.1162 at 1164.

175E. Spotless assessed the likelihood of winning the Unidentified New Business referred to in the preceding paragraph at 41% (increased from 40% in the June FY16 Budget and Revised FY16 Budget).

Particulars

The Applicant refers to SPT.002.006.1162 at 1164.

175F. The increase of $8.5 million in the probability weighted EBITDA forecast for FY16 for new business referred to in paragraph 175C offset underperformance in Spotless' individual sectors.

Particulars

The Applicant refers to SPT.042.001.0300.

175G. The Further Revised FY16 Budget forecast:

175G.1. a depreciation expense of $86.7 million in FY16, a $21.6 million (33%) increase on the depreciation expense incurred in FY15;

175G.2. an amortisation expense of $17.9 million in FY16, a $4.6 million (35%) increase on the amortisation expense incurred in FY15; and

175G.3. a net interest expense of $37.9 million, a $6.5 million (21%) increase on the net interest expense forecast to be incurred in FY15,

(together, the **FY16 October D&A and Interest Forecast**).

Particulars

The Applicant refers to SPT.003.006.0569 at 0648 and 0650.

175H. Further to paragraphs 160 and 175, by reason of the matters pleaded at 175A to 175G, as at 22 October 2015, it was unlikely that:

175H.1. Spotless' FY16 results would materially exceed the FY15 Results in respect of EBITDA and NPAT;

175H.2. Spotless would achieve the further Revised FY16 Budget forecasts pleaded at 175B.1 – 17B.3; and

175H.3. Spotless would achieve the FY16 NPAT Consensus.

176. [Not used]

177. The matters pleaded at paragraphs 175 – 17~~6~~5H above constituted the true position as at 22 October 2015.

178. As at 22 October 2015 Spotless continued to ~~knew~~ know the matters set out in paragraphs 162 above, and further, knew the matters set out in paragraphs 175 – 175H.

Particulars

The Applicant refers and repeats the particulars to paragraph 162 and 175 – 175H above.

X. OCTOBER 2015 MISLEADING AND DECEPTIVE CONDUCT

179. In making the October 2015 Guidance Representations, Spotless:

179.1. provided a statement of opinion, or a report of a statement of opinion, that was intended, or could reasonably be regarded as having been intended, to influence investors or potential investors in the SPO Shares in making a decision in relation to the SPO Shares, and therefore provided financial product advice within the meaning of s 766B(1) of the *Corporations Act* and s 12BAB(5) of the *ASIC Act*, and provided a financial service within the meaning of s 766A(1) of the *Corporations Act* and s 12BAB(1) of the *ASIC Act* (the **October Advice Service**);

179.2. supplied a service in relation to a financial product, namely the SPO Shares, and therefore provided a financial service, within the meaning of s 12BAB(1)(g) of the *ASIC Act* (the **October Other Service**);

179.3. engaged in conduct in relation to a financial product, namely the SPO Shares, within the meaning of s 1041H(1) and (2)(b)(ii) of the *Corporations Act*;

179.4. engaged in conduct in relation to a financial service, namely the Dealing Service or the October Advice Service, within the meaning of s 1041H(1) of the *Corporations Act*;

179.5. engaged in conduct in trade or commerce within the meaning of s 12BA(1) of the *ASIC Act* and s 2(1) of the *ACL*;

179.6. engaged in conduct in relation to a financial service, namely the Dealing Service, the October Advice Service, the October Other Service or the ASX Service, within the meaning of s 12DA(1) of the *ASIC Act*.

180. The October 2015 Guidance Representations concerned future matters, namely Spotless' financial performance in FY16, accordingly the Applicant refers to and relies on s 769C of the *Corporations Act*, s 12BB of the ASIC Act and s 4 of the *ACL*.

181. The October 2015 Guidance Representations made by Spotless were misleading or deceptive, or likely to mislead or deceive, because the October 2015 Guidance Representations omitted reference to and were silent in relation to the matters of which Spotless had knowledge set out in paragraphs 114 – 116A; 118; 119A – 121; 124 – 125; 127A – 127E; 130 – 132; 135 – 137; 140A; 143 – 145A; 152 – 156; 156.1 – 156.2; 157.4 – 157C and 175 – 175G above.

182. Spotless did not have reasonable grounds for the October 2015 Guidance Representations, by reason of its knowledge of the matters set out in paragraphs 114 – 116A; 118; 119A – 121; 124 – 125; 127A – 127E; 130 – 132; 135 – 137;

140A; 143 – 145A; 152 – 156; 156.1 – 156.2; 157.4 – 157C and 175 – 175G above, and the true position set out at paragraphs 114 - 161 and 175 – 175H~~7~~ above.

183. Consequently, by making the October 2015 Guidance Representations, Spotless engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:

183.1. s 1041H(1) of the *Corporations Act*;

183.2. s 12DA(1) of the ASIC Act; and/or

183.3. s 18 of the *ACL*.

(the **October 2015 Misleading and Deceptive Conduct Contraventions**).

184. Spotless took no steps to withdraw or qualify the October 2015 Guidance Representations until the release of the First Trading Update on 2 December 2015 and, accordingly, the October 2015 Guidance Representations were continuing representations throughout the period from 22 October 2015 until immediately prior to the release of the First Trading Update on 2 December 2015.

Y. OCTOBER 2015 CONTINUOUS DISCLOSURE CONTRAVENTIONS

185. Further or alternatively to the contraventions pleaded above, on 22 October 2015, or alternatively at a point between 22 October 2015 and 1 December 2015, the following information had or ought reasonably to have come into the possession of the Officers in the course of the performance of their respective duties, namely:

185.1. the matters pleaded in paragraphs 91, 114, 114A – 114D, 122 – 123, 124 – 125, 125C, 128 – 129, 136 – 136A, 140A – 141, 142A, 156 – 160 and 175 – 175H above;

185.2. that it was unlikely that Spotless' FY16 Results would materially exceed the FY15 results in respect of EBITDA and NPAT;

185.3. that it was likely that its earnings would be materially lower than the FY16 NPAT Consensus;

(individually or together, the **October 2015 Information**).

Particulars

As to sub-paragraphs 185.1 and 185.2, the Applicant refers to and repeats the particulars to paragraphs 91, 92, 94, 162 and 178 above and says further that:

(i) it is to be inferred that the Officers knew the matters pleaded in paragraphs 91, 114, 114A – 114D, 122 – 123, 124 – 125, 125C, 128 – 129, 136 – 136A, 140A – 141, 142A, 156 – 160 and 175 – 175H for the same reasons that it is to be inferred that Spotless knew those matters; further or alternatively

(ii) the Officers ought reasonably to have come into possession of the information in the course of the performance of their respective duties because they ought to have ascertained the information from their knowledge of the facts pleaded in paragraphs 114 – 115, 116A – 121, 124 – 125, 126 – 127E, 130 – 132, 135 – 137, 140A, 143 – 145A, 152 – 156, 157.1 – 157.2, 157.4 – 157C and 175 – 175H above

As to sub-paragraph 185.3:

(i) as to the market's expectations, the Applicant refers to the FY16 NPAT Consensus;

(ii) as a listed disclosing entity, Spotless ought to have been monitoring analyst commentary regarding its likely FY16 financial performance.

186. By reason of the matters pleaded in the preceding paragraph, on 22 October 2015, alternatively at a point between 22 October 2015 and 1 December 2015, Spotless was aware of, for the purposes of ASX Listing Rules 3.1 and 19.12, and had for the purposes of s 674(2)(b) of the *Corporations Act*, the October 2015 Information.

187. In the circumstances, the October 2015 Information was:

187.1. information that a reasonable person would expect to have a material effect on the price or value of the SPO Shares;

187.2. information that would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to acquire or dispose of the SPO Shares; and

187.3. not generally available.

188. Spotless was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* on 22 October 2015, alternatively at a point between 22 October and 1 December 2015, immediately to tell the ASX the October 2015 Information.

189. In contravention of ASX Listing Rule 3.1, Spotless did not tell the ASX the October 2015 Information at any time prior to 2 December 2015.

Particulars

The notification was in writing and contained in the First Trading Update; the ASX Aware Query Response and the Second Trading Update.

190. By reason of the matters pleaded in paragraphs 185 - 189 above, Spotless contravened s 674(2) of the *Corporations Act* (the **October 2015 Continuous Disclosure Contravention**).

Z. COMPLIANCE REPRESENTATION CONTRAVENTION

191. Further or alternatively, at all times during the Relevant Period, the following information had or ought reasonably to have come into the possession of the Officers of Spotless in the course of the performance of their respective duties, namely:

191.1. at the times when it made the 25 August 2015 Representations it lacked reasonable grounds for doing so;

191.2. at the times when it made the 22 October 2015 Representations it lacked reasonable grounds for doing so; and

191.3. it had not complied with its obligations under s 674(2) of the *Corporations Act*,

(individually or together, the **Non-Compliance Information**).

Particulars

The Applicant refers to and repeats the particulars to paragraphs 165 and 182 above.

Further particulars will be provided following the completion of expert evidence.

192. By reason of the matters pleaded in the preceding paragraph, on 25 August 2015, or alternatively at a point between 25 August 2015 and 1 December 2015, Spotless was aware for the purposes of ASX Listing Rules 3.1 and 19.12, and had for the purposes of s 674(2)(b) the Non-Compliance Information, which was:

192.1. information that a reasonable person would expect to have a material effect on the price or value of the SPO Shares;

192.2. information that would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to acquire or dispose of the SPO Shares; and

192.3. not generally available.

193. By reason of the matters pleaded in paragraphs 4 and 191 - 192, Spotless was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* immediately to notify the ASX of the Non-Compliance Information on and from the time when Spotless became aware of it.

194. In contravention of ASX Listing Rule 3.1, Spotless did not notify the ASX of the Non-Compliance Information at any time during the Relevant Period.

195. By reason of the matters pleaded in paragraphs 191 - 194 above, Spotless contravened s 674(2) of the *Corporations Act*.

196. Further or alternatively, during the Relevant Period, Spotless represented that:

196.1. it complied with its obligations under the *Corporations Act*;

196.2. it complied with its obligations under the ASX Listing Rules;

196.3. further or alternatively, it had undertaken all necessary and reasonable investigations before making representations as to the state of its business and accounts and had satisfied itself on reasonable grounds following those investigations that its public statements were substantially accurate and not misleading or deceptive in any respects,

(together, the **Compliance Representation**).

Particulars

The Compliance Representation was partly express and partly implied.

Insofar as it was express, it was in writing and contained in:

(i) the Corporate Governance Statement contained in the FY15 Preliminary Final Report, page 30;

(ii) the Directors' Declaration accompanying the FY15 Preliminary Final Report, page 67; and

(iii) the statement in the FY15 Preliminary Final Report that the "*Board considers qualitative principles of materiality for the purpose of determining 'independence' on a case-by-case basis*", page 27.

Insofar as it was implied, it was implied from:

(i) the fact Spotless was listed on the ASX;

(ii) Spotless' obligations pursuant to the ASX Listing Rules 3.1, 4.3A and 4.3D and s 674(2) of the *Corporations Act*;

(iii) Spotless' practice of publishing documents to the market via the ASX announcements platform;

(iv) the fact that Spotless made statements in documents it caused to be published and released to the market via the ASX announcements platform such that Spotless knew or ought to have known that investors and potential investors may rely on statements in those documents in deciding whether or not to acquire or retain SPO Shares (or any interest in them); and

(v) the absence of a statement by Spotless during the Relevant Period to the effect that it had not complied with the obligations referred to in (ii) above.

197. In making the Compliance Representation, Spotless:

197.1. provided a statement of opinion, or a report of a statement of opinion, that was intended, or could reasonably be regarded as having been intended, to influence investors or potential investors in the SPO Shares in making a decision in relation to the SPO Shares, and therefore provided financial product advice within the meaning of s 766B(1) of the *Corporations Act* and s 12BAB(5) of the *ASIC Act*, and provided a financial service within the meaning of s 766A(1) of the *Corporations Act* and s 12BAB(1) of the *ASIC Act* (the **Compliance Advice Service**);

197.2. supplied a service in relation to a financial product, namely the SPO Shares, and therefore provided a financial service, within the meaning of s 12BAB(1)(g) of the *ASIC Act* (the **Compliance Other Service**);

197.3. engaged in conduct in relation to a financial product, namely the SPO Shares, within the meaning of s 1041H(1) and (2)(b)(ii) of the *Corporations Act*;

197.4. engaged in conduct in relation to a financial service, namely the Dealing Service or the Compliance Advice Service, within the meaning of s 1041H(1) of the *Corporations Act*;

197.5. engaged in conduct in trade or commerce within the meaning of s 12BA(1) of the *ASIC Act* and s 2(1) of the *ACL*;

197.6. engaged in conduct in relation to a financial service, namely the Dealing Service, the Compliance Advice Service, the Compliance Other Service or the ASX Service, within the meaning of s 12DA(1) of the *ASIC Act*.

198. By reason of the matters set out in paragraphs 191 - 197 above, the Compliance Representation was not true in that throughout the Relevant Period Spotless failed to comply with s 674(2) of the *Corporations Act* and ASX Listing Rule 3.1.

199. By reason of the matters set out in paragraphs 197 - 198 above, by making the Compliance Representation, Spotless engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:

199.1. s 1041H of the *Corporations Act*;

199.2. s 12DA(1) of the *ASIC Act*; and/or

199.3. s 18 of the *ACL.*

(together with paragraph 198 above, the **Compliance Representation Contravention**)**.**

AA. MARKET EFFECTS

200. During the Relevant Period, the SPO Shares Market was a market:

200.1. which was regulated by, amongst other things, the ASX Listing Rules and ss 674(2) and 1041H of the *Corporations Act*; and

200.2. in which the price at which SPO Shares were trading on the ASX (the **Traded Price**) quickly adjusted to reflect all material information concerning Spotless that was disclosed by it in accordance with the ASX Listing Rules and ss 674(2) and 1041H of the *Corporations Act* or that otherwise became publicly available.

200.3. For the reasons set out in paragraphs 200.1 and 200.2 above, one or more of:

~~(a) the FY15 Results Contravention;~~

(b) the August 2015 Misleading and Deceptive Conduct Contravention;

(c) the October 2015 Misleading and Deceptive Conduct Contravention;

(d) the August 2015 Continuous Disclosure Contravention;

(e) the October 2015 Continuous Disclosure Contravention;

(f) the Compliance Representation Contravention

(individually or in any combination, the **Contravening Conduct**) caused the Traded Price for SPO Shares to be materially higher during the Relevant Period than:

(i) its true price; further or alternatively

(ii) the price that would have prevailed if the Contravening Conduct had not occurred.

Particulars

That the Contravening Conduct caused Spotless' share price to be higher during the Relevant Period than it would have been had it not occurred is to be inferred from:

(i) the characteristics of the market for SPO Shares set out in paragraph 200 above;

(ii) the fact that each of ~~the CEO/CFO Express Statement, the CEO/CFO Implied Representation, the Directors Implied Representation~~, the FY15 Results Representation, August 2015 Guidance Representations, the October 2015 Guidance Representations and the Compliance Representations were representations that would reasonably be expected to have a material effect on the price of SPO Shares;

(iii) the fact that the August 2015 Information, the October 2015 Information and the Non-Compliance Information was information that, if disclosed, would reasonably be expected to have a material effect on the price of SPO Shares;

(iv) the fact that the August 2015 Information, the October 2015 Information and the Non-Compliance Information was information that, if disclosed, would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to acquire or dispose of the SPO Shares; and

(v) the movements in the Traded Price of SPO Shares following Spotless' release of the First Trading Update, the ASX Aware Query Response and the Second Trading Update as set out in paragraphs 208, 214 and 219 below.

201. By reason of the matters set out in paragraph~~s~~ 200 above, at the times during the Relevant Period when the Applicant and the Group Members who acquired interests in SPO Shares acquired such interests in SPO Shares, the price of the SPO Shares they acquired had been artificially inflated by the Contravening Conduct.

Particulars

Particulars of the Applicant's holdings of SPO Shares are set out in Annexure A.

Particulars of the Group Members' holdings of SPO Shares will be provided, so far as possible, prior to the trial of their individual claims following the determination of the common questions.

201A. During the Relevant Period, the SPO Equity Swaps Market was a market which traded on the basis that the SPO Shares Market had the features pleaded in paragraph 200.

201B. By reason of the matters set out in paragraphs 200 to 201A above, at all times during the Relevant Period when the Group Members who entered into SPO Equity Swaps entered into such SPO Equity Swaps, they did so at a time when:

201B.1 the price of SPO Shares had been artificially inflated by the Contravening Conduct;

201B.2 the SPO Equity Swaps had been defined by reference to a price of SPO Shares which was artificially inflated at the time the swap transaction was initiated; and

201B.3 by reason of the matters pleaded in paragraphs 201B.1 and 201B.2, the value of future cashflows to be received by the equity amount receiver pursuant to the SPO Equity Swap by reference to the performance of SPO Shares was diminished and/or the value of cashflows to be paid by the equity amount receiver in return was inflated.

Particulars

Particulars of Group Members' holdings of SPO Equity Swaps will be provided prior to the trial of their individual claims following the determination of the common questions.

BB. RELIANCE

202. Further or alternatively to paragraphs 200 to 201, the Applicant and some of the Group Members acquired interests in SPO Shares during the Relevant Period as a result of holding and acting upon the assumption, being an assumption generally made in the SPO Shares Market and on which they were entitled to act, that the price at which they acquired the interest represented the market price in a market:

202.1. that had been informed of all material information concerning Spotless that was required to be disclosed by it in accordance with the ASX Listing Rules and ss 674(2) and 1041H of the *Corporations Act*; and

202.2. in which Spotless 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 SPO Shares, but that were misleading or deceptive or likely to mislead or deceive.

Particulars

Investors and potential investors in securities on the ASX, including SPO Shares, are generally aware that there is a complex and comprehensive regulatory regime including, amongst other things, the ASX Listing Rules and ss 674(2) 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 Applicant's holding and reliance upon the assumption set out in this paragraph will be provided prior to trial. Particulars of the Group Members who also held and relied upon the assumption set out in this paragraph will be provided following the determination of the common questions.

202A. Further or alternatively to paragraphs 201A to 201B, some of the Group Members acquired interests in SPO Equity Swaps during the Relevant Period as a result of holding and acting upon the assumption, being an assumption generally made in the SPO Equity Swaps Market and on which they were entitled to act, that the price at which they entered into SPO Equity Swaps was set by reference to the market price for SPO Shares in a market with the features pleaded in sub-paragraphs 202.1 and 202.2.

203. Further or alternatively to paragraph 202, the Applicant and some of the Group Members acquired an interest in SPO Shares or SPO Equity Swaps during the Relevant Period in reliance upon one or more of:

203.1. the FY15 Results Representation;

203.2. [Not used] ~~the CEO/CFO Express Statement;~~

203.3. [Not used] ~~the CEO/CFO Implied Representation;~~

203.4. [Not used] ~~the Directors' Implied Representation;~~

203.5. the August 2015 Guidance Representations;

203.6. the October 2015 Guidance Representations; and

203.7. the Non-Compliance Representation,

(together and severally the **Representations**).

Particulars

Particulars of the Applicant's reliance on any of the Representations will be provided prior to trial.

Particulars of reliance for those Group Members who relied upon any of the Representations in the decision to acquire SPO Shares, or the decision to enter into SPO Equity Swaps will be provided following the determination of the common questions.

CC. CHANGE OF POSITION

204. Further to paragraphs 200 – 201 above, further or alternatively paragraphs 202 and 203 above, if Spotless had not engaged in the Contravening Conduct, the Applicant and each of the Group Members who acquired SPO Shares:

204.1. would have acquired their interests in the SPO Shares at a lower price; or

204.2. alternatively, would not have acquired some or any of their interests in the SPO Shares and would instead have retained or acquired other investments or assets for which the price was not inflated.

Particulars

Particulars of any alternative investments or assets that the Applicant would have retained or acquired will be provided prior to trial.

Particulars of the Group Members who would have retained or acquired alternative investments will be provided following the determination of the common questions.

204A. Further to paragraphs 201A to 201B above, further or alternatively paragraphs 202A and 203 above, if Spotless had not engaged in the Contravening Conduct, each of the Group Members who entered into SPO Equity Swaps:

204A.1 would have done so by reference to a price for SPO Shares which was lower; or

204A.2 alternatively, would not have entered into SPO Equity Swaps and would instead have retained or acquired other investments or assets for which the price was not inflated.

Particulars

Particulars of the Group Members who would have retained or acquired alternative investments will be provided following the determination of the common questions.

DD. CORRECTIVE DISCLOSURE: FIRST TRADING UPDATE

205. On 2 December 2015 Spotless published and lodged with the ASX the First Trading Update, in which it stated that:

205.1. its FY16 EBITDA would be flat year on year;

Particulars

The statement was corrective of the August 2015 Guidance Representations to the effect that the FY16 results would materially exceed the FY15 results; and to the effect that the FY16 EBITDA result would materially increase from the FY15 EBITDA result: the Applicant refers to paragraph 112.1.

205.2. excluding one-off charges, its FY16 NPAT would be flat year on year; and

Particulars

The statement was corrective of the August 2015 Guidance Representations to the effect that the FY16 results would materially exceed the FY15 results and to the effect that the FY16 NPAT result would materially increase from the FY15 NPAT result: the Applicant refers to paragraph 112.1.

The statement was also corrective of the August 2015 Guidance Representations endorsing the consensus FY16 NPAT figure of $161.5 million: the Applicant refers to paragraph 112.2.

205.3. its FY16 NPAT would be 10% below that of FY15.

Particulars

The Applicant repeats the particulars to paragraph 205.2 above.

(together, the **FY16 Profit Downgrade**).

206. The information contained in the First Trading Update:

206.1. was information that a reasonable person would expect to have a material effect on the price or value of SPO Shares;

206.2. related to the subject matter of the Representations;

206.3. related to the subject matter of the August 2015 Information, the October 2015 Information and the Non-Compliance Information;

206.4. operated to correct or partly correct the information available to the market concerning the subject matter of the Representations;

206.5. operated to correct or partly correct the information available to the market concerning the subject matter of the August 2015 Information, the October 2015 Information and the Non-Compliance Information;

206.6. by correcting or partly correcting the said information, influenced persons who commonly invest in securities by causing:

(a) persons who held SPO Shares to reduce the price at which they were willing to dispose of the SPO Shares; and

(b) persons who were considering acquiring SPO Shares to reduce the price at which they were willing to purchase the SPO Shares;

Particulars

The said effect is to be inferred from the character of the market for SPO Shares as set out in paragraph 200 above and the change in the Traded Price following the release of the First Trading Update.

Further particulars will be provided following the receipt of expert evidence.

206.7. consequently, caused the price at which SPO Shares traded to adjust downward toward the Traded Price which would have existed if the Contravening Conduct had not occurred;

206.8 consequently caused the value of SPO Equity Swaps to be adjusted downwards by reference to the performance which underlying SPO Shares would have experienced on the basis of the Traded Price which would have existed if the Contravening Conduct had not occurred.

207. On 1 December 2015 the closing price of SPO Shares was $2.20 per share.

208. Following the First Trading Update on 2 December 2015 the price of SPO Shares:

208.1. on 2 December 2015 fell to a low of $1.25 and closed at $1.325;

208.2. on 3 December 2015 fell to a low of $1.255 and closed at $1.295;

208.3. on 4 December 2015 fell to a low of $1.222 and closed at $1.235.

Particulars

The price history of SPO Shares for the Relevant Period is set out in Annexure B.

209. The release of the First Trading Update:

209.1. caused the market to adjust the Traded Price downward to correct or partly correct the effects of the Contravening Conduct; and

209.2. consequently, had a material adverse effect on the Traded Price of SPO Shares;

209.3 consequently had a material adverse effect on the value of SPO Equity Swaps entered into prior to the First Trading Update.

EE. CORRECTIVE DISCLOSURE: ASX AWARE QUERY

210. On 3 December 2015 the ASX wrote to Spotless requesting an explanation of the grounds on which it maintained the FY16 guidance at the 22 October 2015 AGM, given the content of the First Trading Update (the **ASX Aware Query**).

211. On 4 December 2015, shortly after the close of trade on the ASX, Spotless published and lodged with the ASX the ASX Aware Query Response, in which it:

211.1. stated that it considered the information released in the First Trading Update to be information that a reasonable person would expect to have a material effect on the price or value of its securities;

211.2. disclosed the details of the material set out in paragraph 176 above;

211.3. disclosed that on 25 November 2015, following a business update presented by management, the board noted that there were concerns about:

(a) contributions from the new business conversions;

(b) the fact that the current FY16 Budget reflected EBITDA performance from new business to be heavily skewed to the second half;

(c) the fact that Spotless had been notified that it had not been successful on a large township opportunity in the resources industry (in respect of which Spotless is an incumbent provider to the relevant client);

211.4. stated that immediately following the meeting on 25 November 2015 the Board requested management undertake a full reforecasting analysis for FY16 to establish whether the FY16 guidance remained accurate;

211.5. stated that at 7.30am (Melbourne time) on 1 December 2015 the completed reforecasting analysis was provided to the Board, at which time, the company's officers first became aware with a reasonable degree of certainty that the likely FY16 result would be materially different to the FY16 guidance.

Particulars

ASX Aware Query Response.

212. The information contained in the ASX Aware Query Response:

212.1. was information that a reasonable person would expect to have a material effect on the price or value of SPO Shares;

212.2. related to the subject matter of the Representations;

212.3. related to the subject matter of the August 2015 Information, the October 2015 Information and the Non-Compliance Information;

212.4. operated to correct or partly correct the Representations;

212.5. operated to correct or partly correct the information available to the market concerning the subject matter of the August 2015 Information, the October 2015 Information and the Non-Compliance Information;

212.6. by correcting or partly correcting the said information, influenced persons who commonly invest in securities by causing:

(a) persons who held SPO Shares to reduce the price at which they were willing to dispose of SPO Shares; and

(b) persons who were considering acquiring the SPO Shares to reduce the price at which they were willing to purchase SPO Shares;

Particulars

The said effect is to be inferred from the character of the market for SPO Shares as set out in paragraph 200 above and the change in the Traded Price following the release of the ASX Aware Query Response.

Further particulars will be provided following the receipt of expert evidence.

212.7. consequently, caused the price at which SPO Shares traded to adjust downward toward the Traded Price which would have existed if the Contravening Conduct had not occurred;

212.8 consequently caused the value of SPO Equity Swaps to be adjusted downwards by reference to the performance which underlying SPO Shares would have experienced on the basis of the Traded Price which would have existed if the Contravening Conduct had not occurred.

213. On 4 December 2015 the closing price of SPO Shares was $1.235 per share.

214. Following the ASX Aware Query Response on 4 December 2015 the price of SPO Shares:

214.1. on 7 December 2015 fell to a low of $1.04 and closed at $1.065; and

214.2. on 8 December 2015 traded at a low of $1.07 and closed at $1.145.

Particulars

The price history of SPO Shares for the Relevant Period is set out in Annexure B.

215. The release of Spotless' ASX Aware Query Response:

215.1. caused the market to adjust the Traded Price downward to correct or partly correct the effects of the Contravening Conduct; and

215.2. consequently, had a material adverse effect on the Traded Price of SPO Shares;

215.3 consequently had a material adverse effect on the value of SPO Equity Swaps entered into prior to the release of Spotless' ASX Aware Query Response.

FF. CORRECTIVE DISCLOSURE: SECOND TRADING UPDATE

216. On 9 December 2015 Spotless published and lodged with the ASX the Second Trading Update, in which it described the effect on FY16 EBITDA of certain items, including:

216.1. a reduction of $15 million attributable to individually significant costs, of which:

(a) $7 million was attributable to the requirement that it expense the DoI Bid Costs;

(b) $2 million was attributable to the requirement that it expense the Rio Tinto Bid Costs; and

(c) $5 million was attributable to a change in the practice of capitalising Small Bid Costs for tenders not yet awarded at the balance date;

216.2. a reduction of $20 million attributable to acquisition integration issues and underperformance (of which $15 million was in respect of Laundry & Linen and $5 million was in respect of AE Smith);

216.3. a reduction of approximately $10 million relative to consensus EBITDA prior to the First Trading Update attributable to new business and changed conditions primarily affecting the Base & Township and Commercial & Leisure sectors;

Particulars

Second Trading Update.

The statement was corrective of the August 2015 Guidance Representations to the effect that the FY16 results would materially exceed the FY15 results and to the effect that the FY16 NPAT and EBITDA results would materially increase from the FY15 NPAT and EBITDA results; the Applicant refers to paragraph 112.1, and to the fact that, absent other information, details of a change in EBITDA imply a consequent change in NPAT.

The statement was also corrective of the August 2015 Guidance Representations endorsing the consensus FY16 NPAT figure of $161.5 million; the Applicant refers to paragraph 112.2, and to the fact that, absent other information, details of a change in EBITDA imply a consequent change in NPAT.

217. The information contained in the Second Trading Update:

217.1. was information that a reasonable person would expect to have a material effect on the price or value of the SPO Shares;

217.2. related to the subject matter of the Representations;

217.3. related to the subject matter of the August 2015 Information, the October 2015 Information and the Non-Compliance Information;

217.4. operated to correct or partly correct the information available to the market;

217.5. operated to correct or partly correct the information available to the market concerning the subject matter of the August 2015 Information, the October 2015 Information and the Non-Compliance Information;

217.6. by correcting or partly correcting the said information, influenced persons who commonly invest in securities by causing:

(a) persons who held the SPO Shares to reduce the price at which they were willing to dispose of the SPO Shares; and

(b) persons who were considering acquiring the SPO Shares to reduce the price at which they were willing to purchase the SPO Shares;

Particulars

The said effect is to be inferred from the character of the market for SPO Shares as set out in paragraph 200 above and the change in the Traded Price following the release of the Second Trading Update.

Further particulars will be provided following the receipt of expert evidence.

217.7. consequently, caused the price at which SPO Shares traded to adjust downward toward the Traded Price which would have existed if the Contravening Conduct had not occurred;

217.8 consequently caused the value of SPO Equity Swaps to be adjusted downwards by reference to the performance which underlying SPO Shares would have experienced on the basis of the Traded Price which would have existed if the Contravening Conduct had not occurred.

218. On 8 December 2015 the closing price of SPO Shares was $1.145 per share.

219. Following the Second Trading Update on 9 December 2015 the price of SPO Shares:

219.1. on 9 December 2015 fell to a low of $1.097 and closed at $1.10;

219.2. on 10 December 2015 fell to a low of $1.09 and closed at $1.14; and

219.3. on 11 December 2015 traded at a low of $1.15 and closed at $1.155.

Particulars

The price history of SPO Shares for the Relevant Period is set out in Annexure B.

220. The release of the Second Trading Update:

220.1. caused the market to adjust the Traded Price downward to correct or partly correct the effects of the Contravening Conduct; and

220.2. consequently, had a material adverse effect on the Traded Price of the SPO Shares;

220.3 consequently had a material adverse effect on the value of SPO Equity Swaps entered into prior to the release of the Second Trading Update.

GG. LOSS AND DAMAGE

221. At the time that Spotless published the First Trading Update on 2 December 2015:

221.1 the Applicant and some Group Members were holding some or all of the interest in the SPO Shares acquired by them during the Relevant Period; and

221.2 some Group Members had not exited SPO Equity Swaps entered into by them during the Relevant Period.

222. At the time that Spotless published the ASX Aware Query Response on 4 December 2015:

222.1 the Applicant and some Group Members continued to hold some or all of the interest in the SPO Shares acquired by them during the Relevant Period; and

222.2 some Group Members had not exited SPO Equity Swaps entered into by them during the Relevant Period.

223. At the time that Spotless published the Second Trading Update on 9 December 2015:

223.1 the Applicant and some Group Members continued to hold some or all of the interest in the SPO Shares acquired by them during the Relevant Period; and

223.2 some Group Members had not exited SPO Equity Swaps entered into by them during the Relevant Period.

224. By reason of the Contravening Conduct, the Applicant and each of the Group Members have suffered loss or damage.

Particulars

The loss suffered by the Applicant and the Group Members who acquired interests in SPO Shares is the greater of:

(a) the difference between the price at which they acquired their interest in SPO Shares during the Relevant Period and the price at which SPO Shares would have traded at that time had the Contravening Conduct not occurred (**Price Inflation**). Particulars of the Price Inflation will be provided following the completion of expert evidence; and

(b) alternatively, the difference between the price at which the Group Members acquired an interest in SPO Shares during the Relevant Period and the value of the interest as "left in hand" or as realised upon a sale of those SPO Shares following the publication of:

(i) the First Trading Update on 2 December 2015; and/or

(ii) the ASX Aware Query Response on 4 December 2015; and/or

(iii) the Second Trading Update on 9 December 2015,

net of the movement (if any) of the Traded Price of SPO Shares which did not reflect the market corrections as pleaded; and

(c) alternatively, for days during the Relevant Period and thereafter where the traded price of SPO Shares fell as a result of the disclosure of information which had not previously been disclosed because of the Contravening Conduct, the quantum of that fall; and

(d) alternatively, for the Applicant and those Group Members who would have, but for the Contravening Conduct, 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 SPO Shares during the Relevant Period and the position in which they would have been had they made the alternative investment.

The loss suffered by the Group Members who entered into SPO Equity Swaps will be particularised at the time of trial of their individual claims, following determination of the common issues.

225. By reason of the matters set out in paragraphs 200 - 224 above, the Applicant and each of the Group Members may recover the amount of the loss and damage suffered by them from Spotless pursuant to:

225.1. s 1041I of the *Corporations Act,*

225.2. s 12GF of the *ASIC Act*; and/or

225.3. s 236 of the *ACL.*

226. Further or alternatively, by reason of the matters set out in paragraphs 200 - 224 above, Spotless is liable pursuant to s 1317HA of the *Corporations Act* to compensate the Applicant and the Group Members for the damage that resulted from its contravention of s 674(2) of the *Corporations Act*.

AND THE APPLICANT CLAIMS for herself and on behalf of the Group Members the relief set out in her Further Amended Originating Application.

DATED: ~~22 October 2018~~ 21 February 2020

Signed by Benedict Tobin Hardwick
Lawyer for the Applicant

This ~~second~~ third further amended pleading was prepared by Melanie Szydzik of counsel and settled by Peter Collinson QC.

ANNEXURE A – PARTICULARS OF THE APPLICANT'S SHAREHOLDINGS IN SPOTLESS DURING THE RELEVANT PERIOD

The Applicant acquired an interest in SPO Shares as outlined in the following table:

Date of Purchase	Number of Spotless shares	Average price per share ($)	Amount paid (not incl. brokerage) ($)
16/11/2015	1,000	2.05	2,050.00

The Applicant sold the above interest in SPO Shares as outlined in the following table:

Date of Sale	Number of Spotless shares	Average price per share ($)	Amount received (not incl. brokerage) ($)
07/08/2017	1,000	1.15	1,115.00

ANNEXURE B – SPOTLESS’ SHARE PRICE HISTORY DURING THE RELEVANT PERIOD

(as provided by the ASX)

Date	Open ($)	High ($)	Low ($)	Close ($)	Volume
25-Aug-15	1.8	2.02	1.8	1.85	16,037,793
26-Aug-15	1.8	1.9	1.795	1.85	2.51E+08
27-Aug-15	1.9	1.96	1.89	1.96	28,914,487
28-Aug-15	1.99	2.01	1.965	1.995	16,915,321
31-Aug-15	1.995	2.02	1.975	1.99	17,124,303
1-Sep-15	1.98	1.995	1.91	1.935	19,980,684
2-Sep-15	1.84	1.885	1.83	1.865	6,809,086
3-Sep-15	1.94	1.95	1.86	1.885	7,477,515
4-Sep-15	1.855	1.865	1.78	1.815	11,556,180
7-Sep-15	1.83	1.86	1.795	1.84	7,420,236
8-Sep-15	1.86	1.872	1.825	1.85	10,562,711
9-Sep-15	1.88	1.907	1.87	1.9	4,381,206
10-Sep-15	1.87	1.9	1.867	1.88	6,725,218
11-Sep-15	1.88	1.92	1.875	1.91	4,505,634
14-Sep-15	1.935	1.985	1.912	1.97	12,888,679
15-Sep-15	1.98	1.985	1.905	1.94	9,034,539
16-Sep-15	1.935	1.995	1.935	1.99	9,419,835
17-Sep-15	2.03	2.05	2.01	2.04	12,754,631

Date	Open ($)	High ($)	Low ($)	Close ($)	Volume
18-Sep-15	2.04	2.09	2.02	2.09	29,183,722
21-Sep-15	2.01	2.06	2.01	2.06	5,392,148
22-Sep-15	2.09	2.12	2.055	2.07	5,881,771
23-Sep-15	2.06	2.09	2.02	2.03	6,608,444
24-Sep-15	2.03	2.07	2.03	2.07	6,782,173
25-Sep-15	2.07	2.08	2.04	2.05	4,603,610
28-Sep-15	2.08	2.14	2.05	2.1	1,306,3072
29-Sep-15	2.07	2.105	2.06	2.07	11,625,168
30-Sep-15	2.07	2.17	2.07	2.15	8,591,183
1-Oct-15	2.15	2.27	2.13	2.25	9,937,411
2-Oct-15	2.22	2.25	2.185	2.21	6,417,053
5-Oct-15	2.2	2.23	2.16	2.2	3,755,933
6-Oct-15	2.2	2.24	2.17	2.2	3,318,191
7-Oct-15	2.19	2.19	2.15	2.18	4,848,369
8-Oct-15	2.19	2.21	2.14	2.16	3,257,405
9-Oct-15	2.2	2.21	2.17	2.19	3,563,940
12-Oct-15	2.16	2.19	2.15	2.16	3,640,585
13-Oct-15	2.16	2.19	2.16	2.17	3,036,148
14-Oct-15	2.15	2.22	2.15	2.19	3,651,463
15-Oct-15	2.21	2.22	2.17	2.19	2,559,303
16-Oct-15	2.24	2.26	2.21	2.22	9,932,259

Date	Open ($)	High ($)	Low ($)	Close ($)	Volume
19-Oct-15	2.22	2.24	2.18	2.19	3,701,824
20-Oct-15	2.19	2.22	2.17	2.19	2,357,601
21-Oct-15	2.16	2.175	2.12	2.17	3,239,023
22-Oct-15	2.15	2.16	2.08	2.1	4,825,042
23-Oct-15	2.15	2.16	2.13	2.15	5,620,273
26-Oct-15	2.17	2.17	2.1	2.12	4,077,106
27-Oct-15	2.13	2.17	2.13	2.14	3,437,709
28-Oct-15	2.14	2.18	2.13	2.14	3,331,765
29-Oct-15	2.15	2.17	2.135	2.15	2,345,051
30-Oct-15	2.12	2.16	2.12	2.15	2,667,650
2-Nov-15	2.16	2.17	2.125	2.13	3,622,194
3-Nov-15	2.14	2.18	2.12	2.17	2,062,271
4-Nov-15	2.18	2.2	2.14	2.16	3,352,670
5-Nov-15	2.15	2.18	2.13	2.15	2,514,272
6-Nov-15	2.15	2.17	2.12	2.16	2,014,988
9-Nov-15	2.15	2.17	2.12	2.13	2,559,124
10-Nov-15	2.11	2.11	2.06	2.08	3,957,344
11-Nov-15	2.08	2.12	2.08	2.11	2,352,239
12-Nov-15	2.1	2.14	2.085	2.11	3,195,199
13-Nov-15	2.08	2.1	2.08	2.08	3,975,197
16-Nov-15	2.06	2.08	2.04	2.06	3,360,637

Date	Open ($)	High ($)	Low ($)	Close ($)	Volume
17-Nov-15	2.07	2.12	2.04	2.12	8,200,114
18-Nov-15	2.09	2.19	2.08	2.18	5,732,550
19-Nov-15	2.2	2.2	2.16	2.19	4,695,192
20-Nov-15	2.19	2.2	2.18	2.19	3,616,465
23-Nov-15	2.19	2.22	2.15	2.2	3,469,462
24-Nov-15	2.2	2.205	2.18	2.18	2,576,068
25-Nov-15	2.2	2.2	2.16	2.16	3,111,362
26-Nov-15	2.18	2.24	2.175	2.21	5,516,803
27-Nov-15	2.25	2.25	2.16	2.18	3,545,194
30-Nov-15	2.17	2.17	2.15	2.16	9,714,647
1-Dec-15	2.17	2.2	2.14	2.2	7,532,648
2-Dec-15	1.485	1.545	1.25	1.325	80,531,690
3-Dec-15	1.27	1.4	1.255	1.295	47,886,115
4-Dec-15	1.26	1.29	1.22	1.235	25,742,017
7-Dec-15	1.25	1.265	1.04	1.065	44,428,415
8-Dec-15	1.1	1.16	1.07	1.145	64,006,193
9-Dec-15	1.175	1.24	1.097	1.1	37,655,552
10-Dec-15	1.135	1.16	1.09	1.14	23,357,011
11-Dec-15	1.155	1.19	1.15	1.155	13,346,430

ANNEXURE C – LIST OF DEFINED TERMS USED IN THE ~~SECOND~~ THIRD FURTHER AMENDED STATEMENT OF CLAIM

1H15 Conference Call is defined in paragraph 75

1H15 Report is defined in sub-paragraph 54.1

1H15 Reported Earnings is defined in paragraph 55

1H15 Results is defined in paragraph 54

1H15 Results Announcement is defined in sub-paragraph 54.2

1H15 Results Presentation is defined in sub-paragraph 54.3

2012 Acquisition is defined in paragraph 21

2012 Business Development Cuts is defined in paragraph 22A

2012 Business Development Role Expansion is defined in paragraph 22B

2012 Reorganisation is defined in sub-paragraph 22.2

2014 AGM Address is defined in paragraph 31

2015 AGM Address is defined in paragraph 174

AASB is defined in sub-paragraph 19.2 ~~62~~

AASB Accounting Standards is defined in sub-paragraph 19.2

AASB Framework is defined in sub-paragraph 19B.2

ACL is defined in sub-paragraph 4.6A ~~10~~

AE Smith Acquisition is defined in paragraph 32

AE Smith Acquisition Announcement is defined in paragraph 32

AE Smith Conditional Announcement is defined in paragraph 32

AE Smith FY16 Forecast is defined in paragraph 127A

AE Smith Integration Benefits is defined in paragraph 127B

AGM is defined in paragraph 31

Aladdin Laundries is defined in sub-paragraph 30.1

Applicant is defined in paragraph 1

April 2015 Business Development Changes is defined in paragraph 22C

ASIC Act is defined in sub-paragraph 4.3

ASX is defined in sub-paragraph 4.2

ASX Aware Query is defined in paragraph 210

ASX Aware Query Response is defined in paragraph 51

ASX Listing Rules is defined in sub-paragraph 4.5

ASX Service is defined in paragraph 6

August Base & Township FY16 Forecast is defined in paragraph 153B

August Board Meeting is defined in paragraph 109B

August 2015 Continuous Disclosure Contravention is defined in paragraph 173

August 2015 Guidance Representations is defined in paragraph 112

August 2015 Information is defined in paragraph 168

August 2015 Misleading and Deceptive Conduct Contravention is defined in paragraph 166

Base & Township is defined in sub-paragraph 20.1

Base & Township FY16 Forecast is defined in paragraph 153A

Board of Directors is defined in paragraph 16

Broadspectrum is defined in paragraph 68

Broadspectrum Announcement is defined in paragraph 70

Business Development Cuts is defined in paragraph 138

Business Development Failures is defined in paragraph 140A

Capitalised Pre-Contract Costs is defined in sub- paragraph 60.1

Change in CEO is defined in paragraph 44

CCA is defined in sub-paragraph 4.6

CEO is defined in sub-paragraph 22.1

CFO is defined in sub-paragraph 99,1

~~**CEO/CFO Express Statement** is defined in sub-paragraph 99.2~~

~~**CEO/CFO Implied Representation** is defined in paragraph 100~~

~~**CEO/CFO Opinion** is defined in sub-paragraph 99.1~~

Commercial & Leisure is defined in sub-paragraph 20.1

Compliance Advice Service is defined in sub-paragraph 197.1

Compliance Other Service is defined in sub-paragraph 197.2

Compliance Representation is defined in paragraph 196

Compliance Representation Contravention is defined in paragraph 199

Consensus FY16 NPAT Representation is defined in sub-paragraph 112.2

Contravening Conduct is defined in sub-paragraph 200.3

Corporations Act is defined in sub-paragraph 2.3

Costs Capitalisation Policy is defined in paragraph 60

Dealing Service is defined in paragraph 5

DFASOC is defined in paragraph 66A

~~**Directors' Implied Representation** is defined in paragraph 101~~

~~**Directors' Opinion** is defined in sub-paragraph 99.3~~

Dixon is defined in paragraph 16.7

Dixon Sell Down Notice is defined in paragraph 47

DoI Bid Costs is defined in paragraph 71

DoI Contract is defined in paragraph 67

EBIT is earnings before interest and taxes

EBITA is earnings before interest, taxes and amortisation

EBITDA is earnings before interest, taxes, depreciation and amortisation, and is defined in sub-paragraph 19G.2

EPS is earnings per share

First Block Trade is defined in paragraph 36

First Escrow Release Announcement is defined in paragraph 35

First Sell Down Announcement is defined in paragraph 36

First Trading Update is defined in paragraph 167

Further Revised FY16 Budget is defined in paragraph 175B

FY14 Preliminary Final Report is defined in sub-paragraph 27.1

FY14 Reported Earnings is defined in paragraph 28

FY14 Results is defined in paragraph 27

FY14 Results Announcement is defined in sub-paragraph 27.2

FY14 Results Presentation is defined in sub-paragraph 27.3

FY15 Conference Call is defined in paragraph 111

~~**FY15 Advice Service** is defined in paragraph 108~~

FY15 Annual Report is defined in paragraph ~~148~~ 49

FY15 DoI Bid Costs is defined in paragraph 72~~1~~

FY15 Immigration Contracts Bid Costs is defined in paragraph 66B

FY15 Rio Tinto Bid Costs is defined in paragraph 82A

FY15 Laundries Acquisitions is defined in paragraph 30

FY15 Other Service is defined in sub-paragraph 109.3

FY15 Preliminary Final Report is defined in sub-paragraph 57.1

FY15 Reported Earnings is defined in paragraph 58

FY15 Results is defined in paragraph 57

FY15 Results Announcement is defined in sub-paragraph 57.2

~~**FY15 Results Contravention** is defined in paragraph 109~~

FY15 Results Overstatements is defined in paragraph 91

FY15 Results Presentation is defined in sub-paragraph 57.3

FY15 Results Representation is defined in paragraph 97

FY16 Advice Service is defined in sub-paragraph 113.2

FY16 Budget is defined in paragraph 51

FY16 Conference Call is defined in paragraph 22

FY16 Growth Representation is defined in sub-paragraph 112.1

FY16 June D&A and Interest Forecast is defined in paragraph 114D

FY16 NPAT Consensus is defined in paragraph 111A

FY16 October D&A and Interest Forecast is defined in paragraph 175G

FY16 Other Service is defined in paragraph 113.3

FY16 Preliminary Financial Report is defined in paragraph 49

FY16 Profit Downgrade is defined in paragraph 205

FY16 Results Presentation is defined in paragraph 132~~72~~

Group Members is defined in paragraph 2

HBL Contract is defined in paragraph 114G

Health, Education & Government is defined in paragraph 20

ILS is defined in sub-paragraph 30.2

Immigration Contracts is defined in paragraph 66A

Immigration Contracts Bid Costs is defined in paragraph 66B

IPO is defined in paragraph 23

June FY16 Budget is defined in paragraph 109A

June FY16 New Business Forecast is defined in paragraph 136B

June FY16 Unidentified New Business Forecast is defined in paragraph 136B

Laundries FY16 Forecast is defined in paragraph 114G

Laundries Integration Plan is defined in paragraph 117

Laundries Volume Increase is defined in paragraph 119

Laundry & Linen is defined in paragraph 20

Laundry Performance Issues is defined in paragraph 124

Non-Compliance Information is defined in paragraph 191

NPAT is net profit after tax

October 2015 Continuous Disclosure Contravention is defined in paragraph 190

October 2015 Guidance Representations is defined in paragraph 174

October 2015 Information is defined in paragraph 185

October 2015 Misleading and Deceptive Conduct Contravention is defined in paragraph 183

October Advice Service is defined in sub-paragraph 179.1

October Board Meeting is defined in paragraph 175B

October Other Service is defined in sub-paragraph 179.2

Officers is defined in paragraph 16

PEP is defined in paragraph 21

PEP Restricted SPO Shares is defined in paragraph 34

Pre-Contract Costs is defined in sub-paragraph 60.1

Pre-FY15 DoI Bid Costs is defined in paragraph 72

Pre-FY15 Immigration Contracts Bid Costs is defined in paragraph 66B

Price Inflation is defined in paragraph 224

Prime Laundry Acquisition is defined in paragraph 33

Prospectus is defined in sub-paragraph 20.2

Relevant Period is defined in paragraph 2

Representations is defined in paragraph 203

Relevant AASB Accounting Standards is defined in paragraph 19A

Revised FY16 Budget is defined at paragraph 109B

Rio Tinto Bid Costs is defined in paragraph 82

Rio Tinto Contract is defined in paragraph 73

Second Block Trade is defined in paragraph 39

Second Escrow Release Announcement is defined in paragraph 38

Second Sell Down Announcement is defined in paragraph 39

Second Trading Update is defined in paragraph 87

Sheppard is defined in paragraph 16.8

SPO Affected Market is defined in paragraph 18

SPO Equity Swaps is defined in sub-paragraph 2.1(b)

SPO Equity Swaps Market is defined in sub-paragraph 18.2

SPO Shares is defined in sub-paragraph 2.1(a)

SPO Shares Market is defined in sub-paragraph 18.1

Spotless is Spotless Group Holdings Limited, the Respondent

TGS-E is defined in paragraph 127C.2

Third Block Trade is defined in paragraph 42

Third Escrow Release Announcement is defined in paragraph 41

Third Sell Down Announcement is defined in paragraph 42

Traded Price is defined in paragraph 200

Unidentified New Business is defined in paragraph 135C

Certificate of lawyer

I Benedict Tobin Hardwick certify to the Court that, in relation to the further amended statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~22 October 2018~~ 21 February 2020

Signed by Benedict Tobin Hardwick
Lawyer for the Applicant