

Amended Statement of claim

(Amended on 23 August 2019 pursuant to leave granted by the Honourable Justice Beach on 20 August 2019)

VID 1131 of 2018

Federal Court of Australia

District Registry: Victoria

Division: General

NORMAN LESLIE WILLS and JANE ANNE DANAHER (AS TRUSTEES FOR THE MINTY TIN SUPERANNUATION FUND)

Applicants

WOOLWORTHS GROUP LTD (FORMERLY WOOLWORTHS LTD) (ACN 000 014 675)

Respondent

TABLE OF CONTENTS

A. The Applicants and Group Members	3
B. WOW	4
B.1 The market disclosure regime governing WOW.....	4
B.2 Directors and Officers of WOW.....	5
B.2.1 The Executive and Officers.....	5
B.2.2 The Board.....	8
B.3 WOW's Business.....	10
B.4 WOW's Strategic Plan and FY15 Budget.....	11
B.5 The market context within which WOW operated.....	16
B.6 Price Perception	19
C. Events from 29 May to 30 June 2014	21
D. Events from 1 July to 28 August 2014	35
E. 29 August 2014 – FY15 Earnings Guidance	40

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F. Events from 29 August to 22 September 2014	51
G. Events from 22 September to 3 November 2014	56
H. Events from 3 November to 27 November 2014	69
I. FY15 Earnings Guidance Assumptions	77
J. February 2015 Downgrade.....	80
K. 6 May Presentation	84
L. FY15 Guidance Representation Contravention.....	89
M. Guidance Information Contravention.....	93
N. Guidance Options Information Contravention.....	95
O. February Growth Information Contravention	96
P. February Growth Representation Contravention.....	96
Q. Contraventions Caused Loss	99
R. Loss or Damage Suffered by the Applicants and Group Members	101
Glossary of Defined Terms	103

A. The Applicants and Group Members

1. The applicants commence this proceeding as representative parties pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on behalf of themselves and all persons who:

- (a) entered into a contract to acquire an interest in ordinary shares in the respondent (**WOW** and **WOW Shares** respectively) on or after 29 August 2014 and before 6 May 2015 (**Relevant Period**); and
- (b) suffered loss or damage by, or which resulted from, the conduct of WOW as pleaded below; and
- (c) are not any of the following as at the date of commencement of this proceeding:
 - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of WOW;
 - (ii) a related body corporate (as defined by s 50 of the *Corporations Act*) of WOW;
 - (iii) an associated entity (as defined by s 50AAA of the *Corporations Act*) of WOW;
 - (iv) an officer or a close associate (as defined by s 9 of the *Corporations Act*) of WOW; or
 - (v) a Justice, Registrar, District Registrar or Deputy District Registrar of the Federal Court of Australia or the High Court of Australia,

(Group Members).

2. The applicants entered into contracts to acquire interests in WOW Shares on the Australian Securities Exchange (**ASX**) during the Relevant Period.

Particulars

The applicants entered into contracts to acquire WOW Shares on the following dates:

Date	No. of Shares
8-Sep-14	1,535

29-Oct-14	765
24-Dec-14	580
2-Mar-15	320

3. As at the date of the commencement of this proceeding, there are more than seven Group Members.

B. WOW

B.1 The market disclosure regime governing WOW

4. WOW is and was at all material times:
- (a) a company carrying on a business of, *inter alia*, the retail sale of general merchandise, home improvement goods, food, liquor and petrol throughout Australia;
 - (b) a corporation registered under the *Corporations Act* and capable of being sued;
 - (c) a corporation listed on the ASX, the ordinary shares of which are and were:
 - (i) trading on the ASX under the designation 'WOW'; and
 - (ii) ED securities for the purposes of s 111AE of the *Corporations Act*;
 - (d) subject to and bound by the ASX Listing Rules (***Listing Rules***);
 - (e) a listed disclosing entity within the meaning of s 111AL(1) of the *Corporations Act*; and
 - (f) operating using a financial year of 1 July to 30 June for reporting purposes.
5. At all material times, the ASX was a market operator of a listing market, namely the ASX's financial market, in relation to WOW for the purposes of s 674(1) of the *Corporations Act*.
6. At all material times, Rule 3.1 of the *Listing Rules* applied to WOW.
7. At all material times Rule 3.1 of the *Listing Rules* provided that once an entity is, or becomes, aware of any information concerning the entity 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 any of the exceptions in *Listing Rule* 3.1A apply, tell the ASX that information immediately.

8. At all times during the Relevant Period, Rule 19.12 of the *Listing Rules* provided that an entity becomes aware of information if, and as soon as, an officer of the entity has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.
9. At all material times, s 674(2) of the *Corporations Act* applied to WOW by reason of:
 - (a) the matters alleged in paras [4] to [6] above; and
 - (b) ss 111AP(1) and/or 674(1) of the *Corporations Act*.

B.2 Directors and Officers of WOW

B.2.1 The Executive and Officers

9A. Mr Tjeerd Jegen (**Jegen**) was at all material times during the Relevant Period until 12 April 2015:

- (a) the Managing Director of Supermarkets for WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule* 19.12.

9B. Mr Grant O'Brien (**O'Brien**) was at all material times during the Relevant Period:

- (a) the Chief Executive Officer of WOW;
- (b) a director of WOW; and
- (c) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule* 19.12.

9C. Mr David Marr (**Marr**) was at all material times during the Relevant Period:

- (a) the Chief Financial Officer of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule* 19.12.

9D. Mr Brad Banducci (**Banducci**) was at all material times during the Relevant Period from 1 March 2015:

- (a) the Managing Director of Supermarkets for WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9E. Mr Michael Gabriel (**Gabriel**) was at all material times during the Relevant Period:

- (a) the General Manager – Corporate Finance of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9F. Ms Mari Kourie (**Kourie**) was at all material times during the Relevant Period:

- (a) the Group Performance and Planning Manager; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9G. Mr Alex Dower (**Dower**) was at all material times during the Relevant Period:

- (a) the Commercial Director – Supermarkets of WOW;
- (b) a member of WOW's Supermarkets Leadership Team; and
- (c) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9H. Mr Martyn Roberts (**Roberts**) was at all material times during the Relevant Period:

- (a) the Finance Director – Supermarkets of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9I. Ms Nancy Lam (**Lam**) was at all material times during the Relevant Period:

- (a) the Finance Manager, Commercial – Supermarkets of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9J. Mr Alex Harper (**Harper**) was at all material times during the Relevant Period:

- (a) the Finance Manager, Corporate – Supermarkets of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9K. Mr Geoff Bryant (**Bryant**) was at all material times during the Relevant Period:

- (a) the General Finance Manager – Supermarkets of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9L. Mr Richard Torrens (**Torrens**) was at all material times during the Relevant Period:

- (a) the Finance Manager – Strategy, Planning & Analysis – Supermarkets of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9M. Mr Paul van Meurs (**van Meurs**) was at all material times during the Relevant Period:

- (a) the Investor Relations Manager of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9N. Mr Nathan Rossetto (**Rossetto**) was at all material times during the Relevant Period:

- (a) the Corporate Finance Manager of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9O. Ms Louisa Robinson (**Robinson**) was at all material times during the Relevant Period:

- (a) the National Planning & Analysis Manager of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9P. By reason of the matters pleaded in paras [9A] to [9O], any information of which any of:

- (a) Jegen;

- (b) O'Brien;
- (c) Marr;
- (d) Banducci;
- (e) Gabriel;
- (f) Kourie;
- (g) Dower;
- (h) Roberts;
- (i) Lam;
- (i) Harper;
- (k) Bryant;
- (l) Torrens;
- (m) van Meurs;
- (n) Rossetto; and/or
- (o) Robinson.

(together, **WOW Officers**) became aware, or which ought reasonably to have come into his or her possession in the course of the performance of his or her respective duties as an officer of WOW, was information of which WOW was aware (as awareness is defined in *Listing Rule 19.12*).

B.2.2 The Board

9Q. Ms Jillian Broadbent (**Broadbent**) was at all material times during the Relevant Period:

- (a) a director of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9R. Mr Michael Ullmer (**Ullmer**) was at all material times during the Relevant Period:

- (a) a director of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9S. Mr Scott Perkins (**Perkins**) was at all material times during the Relevant Period from 1 September 2014:

- (a) a director of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9T. Ms Carla Hrdlicka (**Hrdlicka**) was at all material times during the Relevant Period:

- (a) a director of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9U. Ms Christine Cross (**Cross**) was at all material times during the Relevant Period:

- (a) a director of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9V. Mr Alan Mackay (**Mackay**) was at all material times during the Relevant Period:

- (a) a director of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9W. Mr Ralph Waters (**Waters**) was at all material times during the Relevant Period:

- (a) a director of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9X. Mr Ian Macfarlane (**Macfarlane**) was at all material times during the Relevant Period until 31 March 2015:

- (a) a director of WOW; and
- (b) an officer of WOW within the meaning of s 9 of the *Corporations Act* and *Listing Rule 19.12*.

9Y. By reason of the matters pleaded in paras [9B] and [9Q] to [9X], any information of which any of:

- (a) O'Brien;
- (b) Broadbent;
- (c) Ullmer;
- (d) Perkins;
- (e) Hrdlicka;
- (f) Cross;
- (g) Mackay;
- (h) Waters; and/or
- (i) Macfarlane.

(together, **WOW Board**) became aware, or which ought reasonably to have come into his or her possession in the course of the performance of his or her respective duties as an officer of WOW, was information of which WOW was aware (as awareness is defined in *Listing Rule 19.12*).

B.3 WOW's Business

9Z. At all material times:

- (a) a significant portion of WOW's Net Profit After Tax (**NPAT**) was generated from its supermarket business (**Supermarkets**); and/or
- (b) WOW's performance was "largely reliant on Supermarkets performance"; and
- (c) a portion of WOW's NPAT was generated from its other businesses, which included the Big W business – a chain of discount department stores (**Big W**) and the Masters Home Improvement business – a chain of home improvement stores (**Masters**).

Particulars

As to subparagraph (a), the applicants rely upon:

- (a) the document entitled '2012 Annual Report – Woolworths Limited' where O'Brien's 'Managing Director's Report – The Results in Brief' states the Australian Food and Liquor divisional EBIT contribution to

be \$2,817.2 million vs. Total Group EBIT result of \$2,956.7 million (after Consumer Electronics Provision) (MIN.900.005.0001);

(b) the document entitled ‘2013 Annual Report – Woolworths Limited’ where O’Brien’s ‘Managing Director’s Report – The Results in Brief’ states the Australian Food and Liquor divisional EBIT contribution to be \$3,061.6 million (before significant items) vs. Total Group EBIT result of \$3,655.7 million (before significant items) (MIN.900.005.0189);

(c) the document entitled ‘2014 Annual Report – Woolworths Limited’ where O’Brien’s ‘Managing Director’s Report – The Results in Brief’ states the Australian Food, Liquor and Petrol divisional EBIT contribution to be \$3,368.0 million vs. Total Group EBIT result of \$3,775.2 million (before significant items) (MIN.500.001.0124); and

(d) on 28 February 2014, in a document entitled ‘Refreshing Woolworths’ corporate strategy to maintain our retail leadership: Kitchen Cabinet #2 pre-read document’ (WOW.507.015.9454; WOW.507.015.9455) and emailed by Marr on 3 March 2014, WOW stated that:

(i). “Our largest contributor to economic profit is Australian supermarkets”; and

(ii). “Australian supermarkets contributes well over 100% of the group’s total economic profit”.

As to subparagraph (b), the applicants rely upon the document entitled ‘FY STIP gateway modelling (DM)’ dated 16 July 2014 and attached to email from Kourie to Marr dated 16 July 2014 with subject: “Re: Stip gateway” (WOW.507.019.4375; WOW.507.019.4380).

B.4 WOW’s Strategic Plan and FY15 Budget

9AA. From November 2011, WOW’s:

(a) longer term plan was to deliver “sustainable” future growth and enhance shareholder value; and

(b) strategic priorities, to achieve its longer term plan, were to:

(i) “extend and defend leadership in food and liquor”;

- (ii) “act on our portfolio to maximise shareholder value”;
- (iii) “maintain our track record of building new growth businesses”; and
- (iv) “put in place the enablers for the era of the customer”.

(the **Four Strategic Pillars**).

Particulars

The Board Paper entitled ‘Refreshing Woolworths’ Corporate strategy to maintain our Retail Leadership – March 2014’, provided to the WOW Board via the Board Portal and addressed by O’Brien and Emma Gray (Group General Manager, Strategy Development) at the meeting of the WOW Board held on 25 March 2014 (WOW.201.019.0011).

The document entitled ‘2012 Annual Report – Woolworths Limited’ (MIN.900.005.0001).

The document entitled ‘2013 Annual Report – Woolworths Limited’ (MIN.900.005.0189).

The document entitled ‘2014 Annual Report – Woolworths Limited’ (MIN.500.001.0124).

9AB. Prior to 29 May 2014, WOW formulated a strategic financial plan for FY15-17 (**Financial Plan**) that:

- (a) was “ambitious”;
- (b) embodied the Four Strategic Pillars;
- (c) in respect of Supermarkets, was underpinned by:
 - (i) a vision to “be Australia’s most trusted and chosen brand while providing value across the store”; and
 - (ii) a strategic priority to offer “unbeatable value”; and
- (d) was predicated on its budget for the 2015 financial year (the **FY15 Budget**).

Particulars

The document entitled ‘FY15-FY17 Financial Plan, Woolworths Board Pre-read, 29-30 May 2014’ (WOW.201.013.0115).

The document entitled ‘FY15-FY17 Financial Plan, Woolworths Board On the day pack, 29-30 May 2014’ (WOW.507.016.6912; WOW.507.016.6913).

9AC. The Financial Plan and FY15 Budget, budgeted WOW achieving:

- (a) during FY15, in respect of the overall Group:
- (i) “Strong EBIT and NPAT growth underpinned by good sales and solid GP and cost management”;
 - (ii) “Sales up 6.8% (normalised) driven by Food, Liquor and Petrol (FLP) growth of 6.4%... - Strong Comp Growth of 4.2% with FLP comp of 4.4%”;
 - (iii) “GP margin growth of 21bps driven by... Improved shrink offset by price investment to maintain value positioning”; and
 - (iv) “NPAT increasing 7.7% exceeding current consensus of c.7.0%. Risk adjusted NPAT growth of circa 7.0%”;
- (b) during FY16/FY17, in respect of the overall Group:
- (i) “continuing strong growth”;
 - (ii) “Sales up 7.0% (normalised) per annum driven by FLP growth of 6.2%... – Strong Comp growth of >4.2% with FLP comp of ~4.3%”;
 - (iii) “NPAT increasing 8.6% in FY16 and 9.3% in FY17”; and
 - (iv) “FY15 budget reflects strong EBIT growth across core businesses. Group EBIT growing 7.7%, ahead Sales growth of 6.8%, and strengthening in FY16 & FY17”;
- (c) during FY15, in respect of Supermarkets:
- (i) “Market share growth, moving from 38.6% to 38.8%”;
 - (ii) “\$160m GP uplift from Pricing and Promotions”;
 - (iii) “\$360m incremental sales from new categories & formats”;
 - (iv) “\$659m increase in own brand sales”;
 - (v) “Brand tracker improvements”:
 - A. “Price perception gap of +5 over Coles”;
 - B. “NPS promotor score gap of +2 over Coles”; and
 - C. “‘Great place to buy fresh food’ perception gap +5 over Coles”;

- (vi) sales increasing by 5.8% (or 3.88% in comparable terms) from \$34,127 million to \$36,114 million;
 - (vii) gross profit increasing by 5.8% from \$10,151 million to \$10,735 million;
 - (viii) EBIT increasing by 8% from \$2,658 million to \$2,870 million; and
 - (ix) CODB increasing by 5% from \$7,493 million to \$7,865 million;
- (d) during FY16/FY17, in respect of Supermarkets:
- (i) market share growth, moving to 39.10% in FY16 and 39.53% in FY17;
 - (ii) sales increasing to \$38,285 million in FY16 and \$40,575 million in FY17;
 - (iii) gross profit increasing to \$11,410 million in FY16 and \$12,131 million in FY17; and
 - (iv) EBIT increasing to \$3,160 million in FY16 and \$3,480 million in FY17;
- (e) during FY15, in respect of Big W:
- (i) 1.4% increase in sales from \$4,218 million to \$4,277 million;
 - (ii) gross profit increasing 2.3% from \$1,406 million to \$1,438 million;
 - (iii) a 15.9% increase in EBIT from \$150 million to \$174 million;
 - (iv) a reduction of 5.18 in average days stock on hand (DSOH) from 107.03 to 101.85;
 - (v) a plan for EBIT growth to be driven in FY15 by shrinkage improvement, with the shrinkage improvement expected to deliver \$10 million to gross profit; and
 - (vi) an allowance for provision to write off aged/slow moving stock in the sum of \$29 million;
- (f) during FY16/FY17, in respect of Big W:
- (i) sales increasing to \$4,366 million in FY16 and \$4,456 million in FY17;
 - (ii) gross profit increasing to \$1,529 million in FY16 and \$1,586 million in FY17;

- (iii) EBIT increasing to \$248 million in FY16 and \$286 million in FY17; and
- (iv) a further reduction in average DSOH of 4.77 in FY16 and 5.00 in FY17; and
- (g) during FY15, in respect of Masters:
 - (i) “strong improvement in store profitability”;
 - (ii) a 53% increase in sales from \$769 million to \$1,177 million;
 - (iii) a comp sales increase of 9.4%;
 - (iv) a 59.8% increase in gross profit from \$259 million to \$414 million;
 - (v) a 0.2% increase in EBIT from -\$198 million to -\$197 million; and
 - (vi) a 47.8% increase in EBIT (excluding Hydrox Property) from \$29 million to \$43 million.

Particulars

The document entitled ‘FY15-FY17 Financial Plan, Woolworths Board Pre-read, 29-30 May 2014’ (WOW.201.013.0115).

The document entitled ‘FY15-FY17 Financial Plan, Woolworths Board On the day pack, 29-30 May 2014’ (WOW.507.016.6912; WOW.507.016.6913).

9AD. The Financial Plan and FY15 Budget were prepared in the following manner:

- (a) each business unit prepared a “bottom up” budget;
- (b) O’Brien and Marr conducted a “top down” analysis of the budgets provided by the business units, having regard to market expectations and conditions;
- (c) O’Brien and Marr worked with each business unit to settle divisional budgets and then consolidated them to form the group budget; and
- (d) Marr did not have a practice of reviewing or using working documents that were prepared by business units.

Particulars

Affidavit of Moira Leonie Saville sworn 17 June 2019 (Saville Affidavit) at [57(c)] and [57(d)].

B.5 The market context within which WOW operated

9AE. At all material times, the Australian Supermarkets Industry, as a segment of the Australian Food Retail Market, was consolidated and highly competitive.

Particulars

Particulars will be provided following expert evidence.

9AF. At all material times, WOW's competitive position within the Australian Supermarkets Industry was influenced by:

- (a) external market influences that were outside of WOW's control, namely:
 - (i) Australian economic growth;
 - (ii) Australian Gross Domestic Product growth;
 - (iii) Australian population growth;
 - (iv) Australian wage growth;
 - (v) Australian unemployment rates;
 - (vi) Australian expenditure on food;
 - (vii) the rate of food inflation; and
 - (viii) competitor performance; and
 - (b) internal influences that were within WOW's control, namely the quality of WOW's retail offer which comprised its:
 - (i) product (including range, variety and the quality of fresh food);
 - (ii) pricing (including shelf-price, promotions, Key Value Items (KVI) and pricing strategy - Hi-Lo or Every Day Low Prices (EDLP));
 - (iii) process (including staffing levels, service wait time, store cleanliness, store lay-out, and product in-stock availability);
 - (iv) place (including store location, convenience, parking and ease of access); and
 - (v) people (including staff attitude, culture and knowledge).
- (Retail Offer).**

Particulars

Particulars will be provided following expert evidence.

9AG. At all material times, WOW's capacity to drive NPAT growth was limited by its capacity to:

- (a) increase market share; and/or
- (b) reduce costs; and/or
- (c) increase prices.

9AH. At all material times:

- (a) a reduction in costs to:
 - (i) processes;
 - (ii) promotions;
 - (iii) store labour;
 - (iv) stock levels; and/or
 - (v) store maintenance and refurbishments.

with all other things being equal, would have the effect of adversely affecting WOW's Retail Offer and thereby negatively impact WOW's competitive position within the Australian Supermarkets Industry and its market share; and

- (b) an increase in prices would only provide a short-term increase to NPAT growth and would adversely affect WOW's Retail Offer and thereby negatively impact WOW's competitive position within the Australian Supermarkets Industry and its market share.

Particulars

On 14 October 2014, McKinsey & Company (**McKinsey**) advised O'Brien that "We cannot allow the death spiral that we saw Coles in under Fletcher – higher prices, less traffic, pressure on costs and customer experience leading to less traffic and putting prices to sustain EBIT. Coles is experiencing a reinforcing loop – more volume creating room for both price investment and EBIT growth..." (WOW.503.008.8877).

On 28 October 2014, Chris Bradley from McKinsey sent an email to Jegen and Dower and others expressing (inter alia) concern about "efforts on pricing and

store labour” resulting in “even worse sales momentum” and a “fear” about the risk of “dirtier stores with more gaps on shelf” if initiatives are not managed properly (WOW.501.007.1883).

On 25 November 2014, Angus Dawson from McKinsey sent an email to O'Brien expressing (inter alia) concern about “delivering the half through short-term measures to lift the supers result vs. longer-term problems” and WOW needing to ensure “that the short-term measures do not effectively “ratchet” up the baseline forcing more measures next year. This is the Coles death spiral of last decade” (WOW.503.006.1245).

Further particulars will be provided following expert evidence.

9AI. By reason of the matters in paras [9AG] and [9AH] above, at all material times, in order to achieve sustainable NPAT growth WOW needed to increase its market share.

9AJ. At all material times, the quality of WOW’s Retail Offer and WOW’s competitive position within the Australian Supermarkets Industry could be, and was, measured by reference to key metrics including:

- (a) market share;
- (b) comparable sales growth rate;
- (c) number of transactions;
- (d) number of units per transaction;
- (e) brand health tracking, including:
 - (i) customer satisfaction surveys; and
 - (ii) a customer satisfaction index (for example, its ‘net promoter score’);
- (f) actual pricing position; and
- (g) pricing perception vs competitors.

Particulars

Particulars will be provided following expert evidence.

The documents entitled ‘Trade Reviews’ for the periods FY14 Weeks 45-52 and FY15 Weeks 1-52 as sent to O'Brien and Marr (among others) (see for example: WOW.507.020.6819; WOW.501.006.7028).

The documents entitled 'Woolworths Supermarkets Brand Health Tracking – Monthly Dashboard' as sent to Jegen and Dower (among others) (see for example: WOW.507.014.1605; WOW.501.003.8511).

9AK. At all material times, Coles was WOW's main competitor to Supermarkets.

B.6 Price Perception

9AL. At all material times, a decrease in WOW's price perception relative to Coles (**Relative Price Perception**) would have the effect that, all other factors remaining substantially the same:

- (a) WOW's sales in Supermarkets would be adversely affected and decrease;
- (b) WOW's NPAT contribution from Supermarkets would be adversely affected and decrease; and
- (c) WOW's NPAT would be adversely affected and decrease.

Particulars

The document entitled 'Woolworths Learning & Development: Leadership 20:20, Retail Strategy' and sent by email to Marr and others on 14 March 2014, WOW stated, "Preference follows perception; For price driven segments behaviour can change materially within a 1%pt price perception band" (WOW.507.016.0796; WOW.507.016.0797).

On 19 October 2014, Mr James Goth (Chief Strategy Officer of WOW) sent an email to O'Brien and Marr with suggested changes to CEO report: "Our prices rose across most of our categories in Q1 FY15 versus the Q1 FY14, and as a consequence volumes fell, in some cases quite sharply" (WOW.503.008.0271; WOW.503.008.0272).

Further particulars will be provided following expert evidence.

9AM. At all material times, WOW's Relative Price Perception could be increased by WOW conducting:

- (a) price investments; and
- (b) associated marketing expenditure to promote those price investments.

Particulars

Particulars will be provided following expert evidence.

9AN. At all material times in the Australian Supermarkets Industry customers' response to price investment and resulting improvement in Relative Price Perception, sales and NPAT would take between approximately six and nine months.

Particulars

The document entitled 'Woolworths Food Group – Strategy Presentation Financial Implications – April 2015' which stated, "Our own experience suggests 6-9 months lag between price moves and customer response in occasions" (WOW.511.008.0962).

The document entitled 'Executing our F15 Supers Plan' dated 13 November 2014 which stated, "We're fundamentally constrained by declining customer perception of service and price—this means we have to rely on more fundamental initiatives (rather than short term tactics) which will take some time to come to fruition. We have laid out some early markers of success to ensure we're getting there." (WOW.506.006.9366; WOW.506.006.9368).

Further particulars will be provided following expert evidence.

9AO. At all material times in the Australian Supermarkets Industry, pending customers' response to price investment and resulting improvement in Relative Price Perception, the effect of price investment, in the absence of offsetting savings on costs of business, would be a further decrease in NPAT.

Particulars

Particulars will be provided following expert evidence.

9AP. At all material times during the Relevant Period, the WOW Officers and WOW Board were aware or ought to have been aware (within the meaning of Listing Rule 19.12), of the matters identified in paras [9Z] and [9AE] to [9AO] above (the **Supermarkets Industry Information**).

Particulars

The WOW Officers and WOW Board ought to have become aware of the matters identified in paras [9Z] and [9AE] to [9AO] in the course of the performance of their duties.

Further and alternatively, from 14 October 2014, O'Brien was actually aware of the matters identified in para [9AH] and the particulars subjoined are referred to.

Further and alternatively, from 28 October 2014, Jegen and Dower were actually aware of the matters identified in para [9AH] and the particulars subjoined are referred to.

Further and alternatively, from 19 October 2014, O'Brien and Marr were actually aware of the matters identified in para [9AL] and the particulars subjoined are referred to.

C. Events from 29 May to 30 June 2014

9AQ. On 29 May 2014, the WOW Board:

- (a) approved the Financial Plan and FY15 Budget; and
- (b) set the FY15 Budget as WOW's targets for performance.

Particulars

Minutes of the Meeting of the WOW Board held on 29 May 2014 (WOW.201.015.0054).

9AR. By 29 May 2014:

- (a) Australian economic growth was slowing;
- (b) Australian Gross Domestic Product (GDP) growth was slowing;
- (c) Australian population growth was slowing;
- (d) Australian wage growth was slowing;
- (e) Australian unemployment rates were subdued and expected to rise;
- (f) retail spending had become "tepid" and growth in retail spending was "concerning" and in decline;
- (g) the rate of growth of expenditure in the Australian Supermarkets Industry was slowing;
- (h) after a significant period of growth, food inflation plateaued in 2011 (specifically in the categories of packaged food, non-perishables and core grocery);

- (i) Coles had improved, and was continuing to improve, its competitive position vis a vis WOW from the position it held during and prior to 2011;
- (j) Aldi had improved, and was continuing to improve, its competitive position vis a vis WOW from the position it held during and prior to 2011;
- (k) Costco had improved, and was continuing to improve, its competitive position vis a vis WOW from the position it held during and prior to 2011;
- (l) Metcash, a wholesale distribution and marketing company supplying to Australian supermarket retailers, sales stalled in 2011 and profitability went into decline from 2013, and accelerated decline in 2014 due to a significant investment to reduce pricing;
- (m) Foodworks, an independent Australian food retailer, had moderate sales growth from 2011;
- (n) specialty food store sales (including bakeries, fresh fruit and vegetable stores, butchers and seafood stores), as an aggregate, had a period of sales decline in 2011-13 but had stabilised and returned to growth in 2013-15;
- (o) WOW's market share in the Australian Supermarkets Industry was in decline since 2011;
- (p) Kmart had improved, and was continuing to improve, its competitive position vis a vis Big W; and
- (q) Bunnings had improved, and was continuing to improve, its competitive position vis a vis Masters.

(External Indicators).

Particulars

As to the matters pleaded in subparagraph (a) above, the applicants rely upon:

- (a) on 24 January 2014, in a document entitled 'F15 Budget – Kick off Session' and presented by Kourie and others, WOW stated that: "Economic growth remains sluggish at c.2.5%" (WOW.601.008.5351); and
- (b) further particulars will be provided following expert evidence.

As to the matters pleaded in subparagraph (b) above, the applicants rely upon:

- (a) on 24 January 2014, in a document entitled 'F15 Budget – Kick off Session' and presented by Kourie and others, WOW stated that, "GDP growth expected at around 2.5% to 2.7% over next 2 years" (WOW.601.008.5351);
- (b) on 28 February 2014, in a document entitled 'Refreshing Woolworths' corporate strategy to maintain our retail leadership, Kitchen Cabinet #2 pre-read document' and emailed by Marr, WOW stated that: "The momentum in the markets we currently play in is slowing due to GDP growth slowing, consumers saving more and spend shifting towards services" (WOW.507.015.9454; WOW.507.015.9455); and
- (c) further particulars will be provided following expert evidence.

As to the matters pleaded in subparagraph (c) above, particulars will be provided following expert evidence.

As to the matters pleaded in subparagraph (d) above, particulars will be provided following expert evidence.

As to the matters pleaded in subparagraph (e) above, the applicants rely upon:

- (a) on 24 January 2014, in a document entitled 'F15 Budget – Kick off Session' and presented by Kourie and others, WOW stated that: "Rising unemployment rates expected over 6%" (WOW.601.008.5351);
- (b) on 3 April 2014, in a document entitled 'FY15 CEO/CFO Budget Update – discussion' emailed to Marr, WOW stated, "Unemployment expected to remain subdued over the medium term" (WOW.507.016.5070; WOW.507.016.5071); and
- (c) further particulars will be provided following expert evidence.

As to the matters pleaded in subparagraph (f) above, the applicants rely upon:

- (a) on 28 February 2014, in a document entitled 'Refreshing Woolworths' corporate strategy to maintain our retail leadership: Kitchen Cabinet #2 pre-read document' and emailed by Marr (WOW.507.015.9454; WOW.507.015.9455), WOW stated that:

- (i). the “Context” to “Era III: 2010-2013” included “Tepid retail spending”; and
- (ii). “The market context has deteriorated” and showed “Growth in retail spending” as “concerning” and in decline;
- (b) on 3 April 2014, in a document entitled ‘FY15 CEO/CFO Budget Update – discussion’ emailed to Marr, WOW stated “Food Retailing growth expected at around 3.2% in FY14-15, with a decline thereafter to 2.7% in FY15-16, and 2.0% in FY16-17” (WOW.507.016.5070; WOW.507.016.5071); and
- (c) further particulars will be provided following expert evidence.

As to the matters pleaded in subparagraph (g) above, particulars will be provided following expert evidence.

As to the matters pleaded in subparagraph (h) above, the applicants rely upon:

- (a) on 24 January 2014, in a document entitled ‘F15 Budget – Kick off Session’ and presented by Kourie and others, WOW stated that: “Inflation to remain contained, holding at around 2.5% through 2014/2015 (Budget inflation assumption)” (WOW.601.008.5351);
- (b) on 28 February 2014, in a document entitled ‘Refreshing Woolworths’ corporate strategy to maintain our retail leadership: Kitchen Cabinet #2 pre-read document’ and emailed by Marr (WOW.507.015.9454; WOW.507.015.9455), WOW stated that:
 - (i). the “Context” to “Era III: 2010-2013” included “Largely deflationary pricing”; and
 - (ii). “The market context has deteriorated” and showed “Food price inflation” as “concerning” and in decline;
- (c) on 3 April 2014, in a document entitled ‘FY15 CEO/CFO Budget Update – discussion’ emailed to Marr, WOW stated “CPI expected to remain within 2 to 3 % range” (WOW.507.016.5070; WOW.507.016.5071); and
- (d) further particulars will be provided following expert evidence.

As to the matters pleaded in subparagraph (i) above, the applicants rely upon:

(a) on 28 February 2014, in a document entitled 'Refreshing Woolworths' corporate strategy to maintain our retail leadership: Kitchen Cabinet #2 pre-read document' and emailed by Marr (WOW.507.015.9454; WOW.507.015.9455), WOW stated that:

(i). the "Context" to "Era III: 2010-2013" included "Coles... resurgent"; and

(ii). "The market context has deteriorated" and showed "Coles comps" as "concerning" and described as being "great"; and

(b) further particulars will be provided following expert evidence.

As to the matters pleaded in subparagraph (j) above, the applicants rely upon:

(a) on 28 February 2014, in a document entitled 'Refreshing Woolworths' corporate strategy to maintain our retail leadership: Kitchen Cabinet #2 pre-read document' and emailed by Marr (WOW.507.015.9454; WOW.507.015.9455), WOW stated that:

(i). the "Context" to "Era III: 2010-2013" included "Aldi accelerates growth"; and

(ii). "The market context has deteriorated" and showed the "Number of Aldi stores" as "concerning" and increasing;

(b) on 21 March 2014, in a document entitled 'Refreshing Woolworths' corporate strategy to maintain our retail leadership: Kitchen Cabinet #3' and emailed by Harper to Roberts and others (WOW.507.028.2676; WOW.507.028.2752), WOW stated that:

(i). "Aldi and Costco share of grocery is expected to grow from 5% to 8% by FY19";

(ii). "Discounters could capture up to 12% of the market by FY19, not only capturing part of our fair share but also putting pressure on our margins. We could lose \$1bn and more of EBIT under this scenario"; and

(iii). "the discounter growth potential in Australia remains high";

(c) on 11 April 2014, in a document entitled 'Reaching full potential in food in Australia (draft for discussion)' and emailed to O'Brien, Marr, Jegen and others (WOW.507.020.1484; WOW.507.020.1483), WOW stated that:

(i). "While discounters most significantly attack our budget customers, they take share from each customer segment (Exhibit 1). Given this context, we expect discounters to continue to grow their share of the grocery market to reach 8-12% by 2019. If they gained 12% share – we would lose \$3.3b in sales and \$0.6b in EBIT contribution (assuming 40% of their growth comes from us). Our loss in EBIT may be even higher if we choose to fund price investment to hold share – each 1% pt reduction in price, results in EBIT loss of \$0.3b."; and

(ii). "Aldi takes Woolworths sales from all customer segments";
and

(d) further particulars will be provided following expert evidence.

As to the matters pleaded in subparagraph (k) above, the applicants rely upon:

(a) on 21 March 2014, in a document entitled 'Refreshing Woolworths' corporate strategy to maintain our retail leadership: Kitchen Cabinet #3' and emailed by Harper to Roberts and others (WOW.507.028.2752; WOW.507.028.2676), WOW stated that:

(i). "Aldi and Costco share of grocery is expected to grow from 5% to 8% by FY19";

(ii). "Discounters could capture up to 12% of the market by FY19, not only capturing part of our fair share but also putting pressure on our margins. We could lose \$1bn and more of EBIT under this scenario"; and

(iii). "the discounter growth potential in Australia remains high";
and

(b) further particulars will be provided following expert evidence.

As to the matters pleaded in subparagraphs (l) to (o) above, particulars will be provided following expert evidence.

As to the matters pleaded in subparagraph (p) above, the applicants rely upon:

- (a) the document entitled 'Refreshing Woolworths' corporate strategy to maintain our retail leadership – Kitchen Cabinet #2 pre-read document' dated 28 February 2014 that stated Coles and Kmart are "resurgent" (WOW.507.015.9454; WOW.507.015.9455);
- (b) the document entitled 'Refreshing Woolworths' corporate strategy to maintain our retail leadership – Kitchen Cabinet #5 pre-read document' dated 15 April 2014 that stated "Kmart delivered 200% EBIT growth since 2009, while the rest of the market has been flat at best" (WOW.507.018.1193); and
- (c) the document entitled 'FY15-FY17 Financial Plan – Woolworths Board – Pre-read' dated 29-30 May 2014 which was provided to the WOW Board via the Board Portal and stated "Kmart the brand with momentum and leading on price perception" (WOW.201.013.0115).

As to the matters pleaded in subparagraph (q) above, particulars will be provided following expert evidence.

The WOW Officers and WOW Board ought reasonably to have become aware of the External Indicators in the course of the performance of their duties.

9AS. By 29 May 2014, WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12), and it was the fact that:

- (a) WOW was developing a revised Corporate Strategy, which required change across all divisions;
- (b) WOW's risk profile had changed substantially between 2013 and 2014, with high to very high inherent risks identified in the following areas for 2014:
 - (i) "Change Management", being the risk of "Failure to manage and deliver change programs appropriately";
 - (ii) "Customer Service Quality and Process Failure", being the risk of "Failure to deliver a high quality customer experience / high quality supporting internal business processes";
 - (iii) "Customer Value Proposition", being the risk of "Inability to identify and understand our customers' needs and deliver a product/service that is of value and aligned to their expectations";

- (iv) “Strategy and Competition”, being the risk that “Strategy is not clearly defined or executed and fails to adequately address competition risks”;
 - (v) “Finance”, being the risk of “Failure to achieve financial performance and provide accurate reporting”;
 - (vi) “Corporate Responsibility”, being the risk of “Failure to operate or be perceived to operate as a responsible organisation”; and
 - (vii) “Macro-economic environment”, being the risk of “Unfavourable economic conditions”;
- (c) WOW Group revenue and margin growth had slowed over a three year period;
 - (d) WOW Group capital intensity had increased over a three year period;
 - (e) historically, much of WOW’s market momentum had come from price inflation and Consumer Price Index (CPI) growth significantly slowed over a three year period;
 - (f) historically, WOW had relied upon space growth to drive sales volume growth in its core retail brands, including Supermarkets and Big W, however sales productivity had slowed;
 - (g) Supermarkets had experienced in May 2014:
 - (i) slowing sales momentum;
 - (ii) “noticeably softer sales”;
 - (iii) sales growth and comparable sales growth that were below year to date trends and unfavourable to budget; and
 - (iv) transaction growth decline;
 - (h) in Supermarkets WOW had recognised that it needed to conduct “a far more aggressive ‘Value’ launch very soon”;
 - (i) Supermarkets had experienced a gradual decline in its Net Promoter Score across the financial year;
 - (i) in Supermarkets WOW was behind Coles in Relative Price Perception; and

- (k) in Supermarkets WOW was more expensive than Aldi and needed to be within 10% of Aldi prices to limit Aldi's growth,

(the May Internal Indicators).

Particulars

As to the matters pleaded in subparagraph (a) above, the applicants rely upon:

- (a) the document entitled 'Refreshing Woolworths' corporate strategy to maintain our retail leadership' (WOW.507.026.0113); and
- (b) on 11 April 2014, in a document entitled 'Reaching full potential in food in Australia (draft for discussion)' and emailed to O'Brien, Marr, Jegen and others (WOW.507.020.1483; WOW.507.020.1484), WOW stated that: "to be successful, we need to cut costs AND improve our customer offer at the same time."

As to the matters pleaded in subparagraph (b) above, the applicants rely upon the document entitled "2014 Risk Profiling Pre-reading for the Management Board offsite" and emailed to O'Brien, Marr, Jegen and other WOW Officers on 1 May 2014 (WOW.507.010.6354; WOW.507.010.6473).

As to the matters pleaded in subparagraph (c) above, the applicants rely upon:

- (a) the document entitled 'Refreshing Woolworths' corporate strategy to maintain our retail leadership: Kitchen Cabinet #2 pre-read document' and emailed by Marr on 28 February 2014 (WOW.507.015.9454; WOW.507.015.9455), in which WOW stated that:
- (i). "over the last 3 years, revenue and margin growth have slowed, while capital intensity has increased"; and
- (ii). "EBIT profit growth has slowed because of slowing sales and margin growth"; and
- (b) the document entitled 'Refreshing Woolworths' corporate strategy to maintain our retail leadership: Kitchen Cabinet #2 pre-read document' and emailed by Marr on 28 February 2014 (WOW.507.015.9454; WOW.507.015.9455), in which WOW stated that:
- (i). "We have benefited historically from market momentum and M&A, with much of the market momentum coming from price

inflation” and showed CPI growth in decline in “Era III (2010-13)”; and

(ii). “Competitive pressure on pricing constrains margin growth”.

As to the matters pleaded in subparagraph (d) above, the applicants rely upon the document entitled ‘Refreshing Woolworths’ corporate strategy to maintain our retail leadership: Kitchen Cabinet #2 pre-read document’ and emailed by Marr on 28 February 2014 (WOW.507.015.9454; WOW.507.015.9455), in which WOW stated that, “over the last 3 years, revenue and margin growth have slowed, while capital intensity has increased”.

As to the matters pleaded in subparagraph (e) above, the applicants rely upon the document entitled ‘Refreshing Woolworths’ corporate strategy to maintain our retail leadership: Kitchen Cabinet #2 pre-read document’ and emailed by Marr on 28 February 2014 (WOW.507.015.9454; WOW.507.015.9455), in which WOW stated that, “We have benefited historically from market momentum and M&A, with much of the market momentum coming from price inflation” and showed CPI growth in decline in “Era III (2010-13)”.

As to the matters pleaded in subparagraph (f) above, the applicants rely upon the document entitled ‘Refreshing Woolworths’ corporate strategy to maintain our retail leadership: Kitchen Cabinet #2 pre-read document’ and emailed by Marr on 28 February 2014 (WOW.507.015.9454; WOW.507.015.9455), in which:

(a) WOW stated that “In the core retail brands, we have relied on space growth to drive sales volume growth” and showed:

(i). “Organic space growth Growth from extra store space” in decline in “Era III (2010-13)”;

(ii). “Real comps growth Same-store real sales growth” in decline in “Era I (2000-05)”, “Era II (2005-10)” and “Era III (2010-13)”; and

(iii). “Real organic revenue growth CAGR” in decline in “Era I (2000-05)”, “Era II (2005-10)” and “Era III (2010-13)”;

(b) WOW stated “On average, we are investing more in every unit of space, while the sales productivity of that space has flattened”; and

- (c) WOW stated “Across divisions we’ve increased capital, while sales, GP (except Dan Murphy’s and Big W) and CODB are flat in Era III”.

As to the matters pleaded in subparagraph (g) above, the applicants rely upon:

- (a) CEO Board Report dated April 2014 which was provided to the WOW Board via the Board Portal (WOW.201.013.0310);
- (b) CFO Report – May 2014, which was emailed to the WOW Board on 25 June 2014 (WOW.507.015.6758; WOW.507.015.6779);
- (c) an email from Jegen to Dower (among others) with subject ‘Fwd: Sales Daily Summary – Supermarkets’ dated 18 May 2014 (WOW.507.010.0211);
- (d) Monday Trade Meeting Minutes, dated 12 May 2014, and emailed to Jegen, Roberts and others, which stated “Concern of lack of transaction growth sited as a considerable risk to an already challenging target” (WOW.507.010.7111; WOW.507.010.7112); and
- (e) Monday Trade Meeting Minutes, dated 19 May 2014, and emailed to Jegen, Roberts and others, which referred to “declining base line trends” and listed “transaction growth decline // grocery in deflation // instore promotion unit sales decline” as “stated issues for baseline”, and which also stated “It was also felt that we may be losing customers who are moving to competitors with a stronger ‘Value’ image following the budget tax increases” (WOW.507.010.7121; WOW.507.010.7122).

As to the matters pleaded in subparagraph (h) above, the applicants rely upon an email to Dower with subject “Re: This week performance and forecast” dated 25 May 2014 (WOW.507.013.3790).

As to the matters pleaded in subparagraph (i) above, the applicants rely upon:

- (a) the document entitled ‘Corporate Scorecard – Aus Supermarket’ (WOW.507.014.3010; WOW.507.014.3057);
- (b) the document entitled ‘Woolworths Supermarkets Brand Health Tracking – Monthly Dashboard – April 2014’ that stated “Coles has continued to improve its relative Brand NPS position to Woolworths” containing a graph showing WOW’s negative NPS trend relative to

Coles (WOW -5 NPS Score vs. Coles) (WOW.507.014.1561; WOW.507.014.1563); and

- (c) the document entitled 'Woolworths Supermarkets Brand Health Tracking – Monthly Dashboard – May 2014' that stated "Coles has maintained a 3 month running lead over Woolworths on brand NPS" containing a graph showing WOW's negative NPS trend relative to Coles (WOW -5 NPS Score vs. Coles) (WOW.507.014.1603; WOW.507.014.1605).

As to the matters pleaded in subparagraph (j) above, the applicants rely upon:

- (a) the document entitled 'Supermarkets Brand Tracker Dashboard – April 2014' (WOW.507.014.1561; WOW.507.014.1563); and
- (b) the document entitled 'Supermarkets Brand Tracker Dashboard – May 2014' (WOW.507.014.1603; WOW.507.014.1605).

As to the matters pleaded in subparagraph (k) above, the applicants rely upon a document entitled 'Reaching full potential in food in Australia (draft for discussion)' and emailed to O'Brien, Marr, Jegen and others on 11 April 2014 (WOW.507.020.1483; WOW.507.020.1484), in which WOW stated that: "As customers continue to expect value, we need to minimise the price gap between our national brands and Aldi brands, estimated to be at 10% for primary/foreground and 20% for background items. Global experience suggests that being within 10% of Aldi prices on branded/NBE will limit discounter growth."

Further and alternatively, the WOW Officers and WOW Board ought reasonably to have become aware of the May Internal Indicators in the course of the performance of their duties.

9AT. Further and alternatively, by 30 June 2014, WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12), and it was the fact, that:

- (a) on 27 February 2014, it had received advice that strategies to improve WOW's gross profit position by the end of FY14 by increasing prices in Supermarkets "need to be carefully considered" as they would have "longer term perception and strategic" implications; and

- (b) notwithstanding the advice referred to in subparagraph (a), and the Supermarkets Industry Information, WOW increased its prices in Supermarkets in Q4 FY14.

(the FY14 Increased Prices Information)

Particulars

As to the matters pleaded in subparagraph (a) above, the applicants rely upon the email from Andrew Cohen of Bain & Company to Dower and another dated 27 February 2014 (BAI.001.001.3388).

As to the matters pleaded in subparagraph (b) above, the applicants rely upon:

- (a) the document entitled ‘150224 commentary for diagnostic poster v5’ and emailed from Angus Dawson of McKinsey to O’Brien and Marr on 25 February 2015 (WOW.503.004.4086), which stated:

- (i). “the ongoing price growth... kicked in from October [2013]”;
(ii). “by the time we get to the last quarter of FY14 we’re quite negative on our volume, and prices start to go up quite aggressively relative to Coles... much of this is driven by rising shelf prices... but we also lost leadership on promotions. And that’s the way we delivered our result in the second half of FY14, which we were open about with the Board”; and
(iii). “we had relied on temporary price increases to hit profit”;

- (b) the document entitled ‘Growing Smarter Review – Phase 3, SteerCo #7’ and emailed from Bain & Company to Jegen, Dower, Roberts and others on 17 August 2014 (BAI.001.001.4431; BAI.001.001.4432), which stated:

- (i). “At 1 June 2014, the basket index was 100.2, implying \$15M investment to comply with old policy”; and
(ii). “Between 1 June and 10 July, our overall basket position deteriorated vs. Coles, increasing to 101.7 (equivalent to an annualised investment of \$330M to move in line with the old price policy)”;

- (c) the document entitled ‘Price Update’ and emailed to Banducci on 1 March 2015, which stated “We became uncompetitive in May 2014

with year-end price rises, and haven't recovered since" (WOW.506.004.5376; WOW.506.004.5378);

- (d) the document entitled 'Supermarkets Diagnostic (Value Lens)' and emailed from Solly Brown of McKinsey to O'Brien, Marr and others on 17 February 2015, which stated "We became uncompetitive in May 2014 with year-end price rises, and haven't recovered since" (WOW.503.005.7676; WOW.503.005.7752);
- (e) the document entitled 'Customer-led growth in Supermarkets to reach Full Potential, Board Pre-read' and provided to the WOW Board via the Board Portal, which stated, "Comparable price per item growth was more than double in H1FY15 compared to the previous year. Looking at our total basket price index we can see prices relative to Coles started going up in March 2014 and kept going up from there" (WOW.201.012.0074); and
- (f) the fact that the WOW Officers and WOW Board ought reasonably to have been aware of the increasing prices in Supermarkets in the course of the performance of their duties.

9AU. Further and alternatively, by 29 May 2014, WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12), and it was the fact, that:

- (a) WOW's Retail Offer lagged behind its competitors, and in particular, Coles; and
- (b) accordingly, in order to drive sustainable growth, WOW was required to invest money in its Retail Offer,

(the Retail Offer Information).

Particulars

The applicants rely upon the matters particularised in para [9AS(g) to (k)].

On 11 April 2014, in a document entitled 'Reaching full potential in food in Australia (draft for discussion)' and emailed to O'Brien, Marr, Jegen and others (WOW.507.020.1483; WOW.507.020.1484), WOW stated that, "to be successful, we need to cut costs AND improve our customer offer at the same time".

Further particulars will be provided following expert evidence.

The WOW Officers and WOW Board ought reasonably to have become aware of the Retail Offer Information in the course of the performance of their duties.

D. Events from 1 July to 28 August 2014

9AV. During July 2014, WOW had formulated a revised FY15 Supermarkets Budget, which budgeted WOW achieving:

- (a) sales increasing from \$33,971 million to \$36,114 million;
- (b) gross profit increasing from \$10,152 million to \$10,847 million;
- (c) CODB reducing from 21.42% of sales to 21.34% of sales; and
- (d) EBIT increasing from \$2,875 million to \$3,142 million,

(the Revised Supermarkets Budget).

Particulars

Spreadsheet titled 'Group Key Factors Forecast Aug 14' and emailed to Marr and other WOW Officers on 17 September 2014 (WOW.507.049.6392; WOW.507.049.6393).

9AW. On 16 July 2014, the WOW Board agreed:

- (a) FY15 guidance of 4-7% NPAT growth (FY15 Earnings Guidance); and
- (b) to communicate guidance publicly at the AGM in November 2014 and not at the FY14 results announcement in August 2014.

Particulars

Minutes of the Meeting of the WOW Board held on 14-16 July 2014 (WOW.201.015.0003)

9AX. By no later than 16 July 2014, WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12), and it was the fact, that as at 16 July 2014:

- (a) Supermarkets continued to experience significant underperformance in sales;
- (b) Supermarkets failed to recover from the uncompetitive price position at a total basket level that it held at the end of FY14 vis a vis Coles;
- (c) Supermarkets continued to trail behind Coles in Relative Price Perception;

- (d) the “underlying health of [WOW] company didn't improve’ in that WOW ‘didn't really improve on service, fresh perception, price perception and [WOW] didn't tackle [its] ageing fleet”.
- (e) Big W was experiencing problems with aged / slow moving stock worth \$180 million;
- (f) the Big W business deteriorated during FY14 and WOW posted a significant reduction on FY13 results; and
- (g) Masters was not able to improve its results in the Home Improvement business by the end of FY14 and therefore WOW would not be able to report results similar to FY13 in respect of that business.

(the July Internal Indicators).

Particulars

The May Internal Indicators and the particulars thereof are repeated.

As to the matters pleaded in subparagraph (a) above, the applicants rely upon:

- (a) the matters particularised in para [9AS(c), (f) and (g)];
- (b) the email from Jegen to Roberts and Matthew Havens dated 30 January 2015 (WOW.501.002.0342);
- (c) on 30 May 2014, in a document entitled ‘Australian Supermarkets – Fast Start Presentation’ and emailed by Bryant to Jegen and others (WOW.507.010.0725; WOW.507.010.0727), WOW stated that:
 - (i). “H1 plans require a significant step up from current performance driven by strong marketing, commercial and MOR plans...”;
 - (ii). “Q1 sales targets are ambitious relative to current trading levels and customer sentiment”; and
 - (iii). “If current run rate continues the trade plan analysis shows a H1 sales gap of \$170m. This assumes a significantly lower performance in Grocery than budgeted.”; and

(d) WOW had experienced the following sales results in Supermarkets for July 2014 which was provided each week to O'Brien and Marr:

(i). Week 1: \$671.8 million (+\$3.0 million vs forecast and +\$4.4 million vs budget) (WOW.507.017.3674; WOW.507.017.3678);

(ii). Week 2: \$674.4 million (-\$7.5 million vs forecast and budget) (WOW.507.014.5993; WOW.507.014.5996);

(iii). Week 3: \$686.2 million (-\$1.2 million vs forecast and -\$8.2 million vs budget) (WOW.507.010.2106; WOW.507.010.2108); and

(iv). Week 4: \$673.7 million (-\$10.1 million vs forecast and -\$11.8 million vs budget) (WOW.507.020.6795; WOW.507.020.6805).

As to the matters pleaded in subparagraph (b) above, the applicants rely upon the matters particularised in paras [9AS(i) to (j)] and [9AT];

As to the matters pleaded in subparagraph (c) above, the applicants rely upon:

(a) the matters particularised in para [9AS(j)];

(b) the document entitled 'Supermarket Brand Tracker Dashboard – June 2014' (WOW.507.014.1589; WOW.507.014.1591);

(c) on 5 June 2014, in a document entitled 'Woolworths Value Workshop Takeout's' and sent to Jegen and others, WOW stated "We have a perception issue" and "There is a flight away from Woolworths, as we are not positioned as a value retailer especially among the segments that matter (budget/switchers)" (WOW.507.036.4399; WOW.507.036.4400);

(d) on 10 June 2014, in an email chain between Tony Phillips (Chief Marketing Officer) and Jegen, Mr Phillips stated to Jegen that "... their [Coles] value perception has picked up a considerable number of switchers at this time of low consumer confidence. My thoughts are we can't just do EDLP [Every Day Low Prices campaign] and better selected specials to combat. That's the cost of entry and goes [sic] not differentiate us" (WOW.507.036.1029);

- (e) on 19 June 2014, O'Brien provided Jegen his performance review and stated "Not Feeling so good about... Deliver of Value perception improvementits our archilles [sic] heal and needs to be fixed" (WOW.507.023.0444); and
- (f) on 28 June 2014 in a document entitled 'Regaining leadership in Fresh and Value' and emailed by Jegen to O'Brien (WOW.507.022.4866; WOW.507.022.4867), WOW stated that:
- (i). "Customer perception of Woolworths prices has been in decline since soon after the launch of [Coles] "Down Down" [campaign]";
 - (ii). "The sales impact of our declining price perception became clearly evident as consumer confidence dropped at the time of the federal budget announcement. As customer's sought value, we lost in excess of \$3M and 300K customers a week following the budget announcement"; and
 - (iii). "Despite a \$37m investment in MSED since launch, there has been no improvement in our value perceptions."

As to the matters pleaded in subparagraph (d) above, the applicants rely upon the email from Jegen to Roberts and Matthew Havens dated 30 January 2015 (WOW.501.002.0342).

As to the matters pleaded in subparagraph (e) above, the applicants rely upon:

- (a) the email to Marr dated 2 September 2014, which stated "Aged and Slow moving stock now down to \$125m at retail (vs. \$180m in June)" (WOW.502.006.1209);
- (b) the CEO Report – April 2014, provided to the WOW Board via the Board Portal and presented at the meeting held 29-30 May 2014 (WOW.201.019.0176), which:
- (i). contained an "Inventory – FY14 Forecast" of 108.3 days stock on hand for General Merchandise, up 4.4 days from the prior year; and

- (ii). stated, “Big W (up 3.1 days or 2.2 days excluding incremental indent), impacted by higher than planned inventory levels given the subdued trading throughout [sic] the year”:
- (c) the Big W Board Report – May 2014, emailed to O’Brien on 13 June 2014 (WOW.507.021.6960; WOW.507.021.6946), which stated “Days stock on hand was 108.4 days, 6.1 days over budget and 3.8 days up on last year (2.6 days when excluding incremental indent on a 13 month rolling average basis). This was driven by sales shortfall and higher average inventory levels vs budget and last year.”; and
- (d) the CEO Report – May 2014, emailed to the WOW Board on 25 June 2014 (WOW.507.015.6758; WOW.507.015.6779), which:
- (i). contained an “Inventory – FY14 Forecast” of 109.3 days stock on hand for General Merchandise, up 5.3 days from the prior year; and
- (ii). stated, “Big W (up 4.1 days or 3.2 days excluding incremental indent), impacted by higher than planned inventory levels given the subdued trading throughout [sic] the year”.

As to the matters pleaded in subparagraph (f) above, the applicants rely upon the CEO Report – June 2014, provided to the WOW Board via the Board Portal and presented at the meeting held on 14-16 July 2014, in which O’Brien stated, “the Big W business deteriorated during the year [FY14] and will post a significant reduction on last year [FY13]” (WOW.201.014.0125).

As to the matters pleaded in subparagraph (g) above, the applicants rely upon the CEO Report – June 2014, provided to the WOW Board via the Board Portal and presented at the meeting held on 14-16 July 2014, in which O’Brien stated, “We were not able to improve our results in the Home Improvement business and will therefore not be able to report a number similar to last year [FY13]” (WOW.201.014.0125).

Further and alternatively, the WOW Officers and WOW Board otherwise ought to have become aware of the July Internal Indicators in the course of the performance of their duties.

9AY. By no later than 16 July 2014, WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12), and it was the fact, that:

- (a) the lower end of the FY15 Earnings Guidance of 4% NPAT growth required WOW to achieve 96.4% of the NPAT in its FY15 Budget; and
- (b) “should Supermarkets achieve 95% of budget and all other divisions achieve 100% of budget. Group NPAT growth is likely to be c.3.9% - below the NPAT gateway [FY15 Earnings Guidance]”.

(the Budget Impact Information).

Particulars

The document entitled ‘FY STIP gateway modelling (DM)’ dated 16 July 2014 and attached to email from Kourie to Marr dated 16 July 2014 with subject: “Re: Stip gateway” (WOW.507.019.4375; WOW.507.019.4380).

The WOW Officers and WOW Board ought reasonably to have become aware of the Budget Impact Information in the course of the performance of their duties.

Further and alternatively, WOW Officers (Kourie and Marr) were actually aware of the Budget Impact Information on and from 16 July 2014 and the particular (a) is repeated.

GE. 29 August 2014 – FY15 Earnings Guidance

10. ~~WOW’s Net Profit After Tax (NPAT) for the 2014 financial year (FY14) was \$2,451.7 million (FY14 NPAT).~~

Particulars

29 August 2014 Results Presentation (defined below) at p.2 (MIN.500.001.0001).

10A. On 28 August 2014, the WOW Board:

- (a) discussed whether to include FY15 Earnings Guidance in the media release and presentation materials for the FY14 results announcement on 29 August 2014; and

- (b) agreed to give the FY15 Earnings Guidance at the FY14 results announcement on 29 August 2014, but to indicate that WOW was reviewing whether to continue giving guidance in FY16.

Particulars

Minutes of the Meeting of the WOW Board held on 28 August 2014 (WOW.201.005.0005).

- 10B. The WOW Board agreed to give the FY15 Earnings Guidance at the FY14 results announcement on 29 August 2014 without an updated or revised Financial Plan and FY15 Budget being presented to the Board.

Particulars

Minutes of the Meeting of the WOW Board held on 28 August 2014 (WOW.201.005.0005).

11. On 29 August 2014, WOW:
- (a) lodged with the ASX and publicly released a presentation entitled “Woolworths Limited – Company Results Full Year Ended 29 June 2014” (**29 August 2014 Results Presentation**) (MIN.500.001.0001); and
- (b) gave a presentation to investment analysts concerning the FY14 Full Year Results (**29 August 2014 Analyst Presentation**) (MIN.500.001.0047);
- (together, the **29 August 2014 Announcements**).
12. In each of the 29 August 2014 Announcements, WOW issued the FY15 Earnings Guidance~~provided guidance for the 2015 financial year (FY15) NPAT (FY15 NPAT) of 4-7% above the FY14 NPAT (FY15 Earnings Guidance).~~

Particulars

29 August 2014 Results Presentation (MIN.500.001.0001) at p.39.

Transcript of 29 August 2014 Analyst Presentation (MIN.500.001.0047) at p.16.

- 12A. By no later than 29 August 2014, WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12), and it was the fact, that as at 29 August 2014, WOW:

- (a) in Supermarkets continued to experience significant underperformance in sales and was tracking behind FY15 Budget and FY15 Earnings Guidance;
- (b) in Supermarkets had failed to recover from the uncompetitive price position at a total basket level that it held at the end of FY14 vis a vis Coles;
- (c) in Supermarkets continued to trail behind Coles in Relative Price Perception;
- (d) in Supermarkets was expected by 31 December 2014 (1H14) to be between \$170 million and \$220 million behind FY15 Budget;
- (e) in Supermarkets, market share growth was behind both Coles and Aldi;
- (f) in Big W was experiencing problems with aged / slow moving stock and the WOW Board had been informed by Marr that "Big W stock clearance will result in budget misses continuing for the next few months";
- (g) in Big W was experiencing underperformance in sales and was tracking behind FY15 Budget; and/or
- (h) in Masters was experiencing volatility, underperformance in sales and was tracking behind FY15 Budget,

(the August Internal Indicators).

Particulars

The May Internal Indicators and the July Internal Indicators and the particulars thereof are repeated.

As to the matters pleaded in subparagraph (a) above, the applicants rely upon:

(a) the matters particularised in paras [9AS(c), (f) and (g)] and [9AX(a)];
and

(b) WOW had experienced the following sales results for August 2014 which was provided each week to O'Brien and Marr:

(i). Week 5: \$682.5 million (-\$6.3 million vs forecast and -\$10.1 million vs budget) (WOW.507.014.6274; WOW.507.014.6285);

(ii). Week 6: \$666.8 million (-\$12.3 million vs forecast and -\$20.3 million vs budget) (WOW.507.014.6306; WOW.507.014.6318);

- (iii). Week 7: \$680.2 million (-\$13.4 million vs forecast and -\$16.8 million vs budget) (WOW.507.014.6338; WOW.507.014.6350); and
- (iv). Week 8: \$671.6 million (-\$16.2 million vs forecast and -\$19.9 million vs budget) (WOW.507.014.6370; WOW.507.014.6372).

As to the matters pleaded in subparagraph (b) above, the applicants rely upon the matters particularised in paras [9AS(i) to (k)], [9AT] and [9AX(c) to (d)].

As to the matters pleaded in subparagraph (c) above, the applicants rely upon:

- (a) the matters particularised in paras [9AS(j)] and [9AX(c)];
- (b) the document entitled 'Supermarket Brand Tracker Dashboard – July 2014' (WOW.507.014.1575; WOW.507.014.1577); and
- (c) on or around 31 July 2014, O'Brien made handwritten comments on the 'Australian Supermarkets Quarterly Outlook' presentation (WOW.001.001.0179):
- (i). "products more expensive, Coles are using it like a stick to beat us - we do \$1 bread but we hide it";
- (ii). "Been talking about this for months" regarding key areas for improvement;
- (iii). "not achieving this and its below the target" regarding comp growth of 3.3%;
- (iv). "every Qtr we get a list of initiatives that will fix grocery and it never happens";
- (v). WOW is "loosing [sic] ground" on the metric "has the best price across my total shop"; and
- (vi). "Not achieving this - it's below the target" regarding the statement "Our current run rate indicates comp growth of 3.3%".

As to the matters pleaded in subparagraph (d) above, the applicants rely upon:

- (a) Minutes of Weekly Supermarkets Trading Meeting dated 6 August 2014 (WOW.507.014.3309; WOW.507.014.3310); and

(b) an email from Roberts to Jegen with subject 'Gap Closing Plan' dated 13 August 2014 (WOW.507.017.6103).

As to the matters pleaded in subparagraph (e) above, the applicants rely upon the document entitled 'Australian Supermarkets Board Report – June 2014', provided to the WOW Board via the Board Portal and noted at the meeting held on 14-16 July 2014, which stated, "Woolworths market share growth behind both Coles and Aldi" (WOW.201.014.0111).

As to the matters pleaded in subparagraph (f) above, the applicants rely upon:

(a) the matters particularised in para [9AX(e)];

(b) the Big W Board Report – July 2014, emailed to O'Brien on 15 August 2014 (WOW.507.021.7023; WOW.507.021.7038), which recorded:

(i). "EBIT impacted by GP miss due to clearance of aged / slow moving inventory..."; and

(ii). "Days stock on hand was 107.2 days, +1.3 days on last year. This was driven by lower sales on last year, and higher 13 month average inventory compared to last year"; and

(c) on 28 August 2014, the WOW Board was informed by Marr that "Big W stock clearance will result in budget misses continuing for the next few months": Minutes of the WOW Board meeting dated 28 August 2014 (WOW.201.002.0157).

As to the matters pleaded in subparagraph (g) above, the applicants rely upon:

(a) the WOW CFO Report – August 2014 (WOW.201.004.0021) which recorded:

(i). "General Merchandise EBIT loss of (\$5.7m) was -\$7.2m below last year and -\$7.5m unfavourable to budget, largely driven by weak sales result..."; and

(ii). "Big W sales decreased 5.1% on last year and were 4.0% below budget";

(b) WOW had experienced the following sales results in Big W for August 2014 which was provided each week to 'Weekly Trade Review Group' which included O'Brien, Marr and Jegen (among others):

- (i). Week ending 3 August 2014: -2.22% to budget (WOW.507.007.9208; WOW.507.007.9209);
 - (ii). Week ending 10 August 2014: -3.58% to budget (WOW.507.007.9221; WOW.507.007.9222);
 - (iii). Week ending 17 August 2014: -2.01% to budget (WOW.507.007.9224; WOW.507.007.9225);
 - (iv). Week ending 24 August 2014: -5.16% to budget (WOW.507.007.9226; WOW.507.007.9227); and
 - (v). Week ending 31 August 2014: -12.16% to budget (WOW.501.009.3940; WOW.501.009.3941); and
- (c) WOW had experienced the following sales results for Big W in the August 2014 'Group Key Factor Report' which was provided to Marr and other WOW Officers (WOW.507.049.6392; WOW.507.049.6393): -\$14.5 million to budget.

As to the matters pleaded in subparagraph (h) above, the applicants rely upon:

- (a) the WOW CFO Report – August 2014 (WOW.201.004.0021) which recorded:
 - (i). "Home Improvement EBIT loss of \$22.1m was disappointing with Masters EBIT loss of \$23.3m being \$7.7m unfavourable to budget, impacted by a sales shortfall to budget as well as heavy clearance markdowns which impacted gross margins."; and
 - (ii). "Sales were \$15.7m below budget, with Masters \$15.6m below budget. Masters comparable sales for the month were -7.2%, with the customer number trend remaining negative in August.";
- (b) on 28 August 2014, the WOW Board was informed of "Recent performance; volatility; drop-off in sales at the end of the year": Minutes of the WOW Board meeting dated 28 August 2014 (WOW.201.005.0005);
- (c) WOW had experienced the following sales results in Masters for August 2014 which was provided each week to

'Weekly Trade Review Group' which included O'Brien, Marr and Jegen (among others):

- (i). Week ending 3 August 2014: -8.10% to budget (WOW.507.007.9208; WOW.507.007.9209);
 - (ii). Week ending 10 August 2014: -13.96% to budget (WOW.507.007.9221; WOW.507.007.9222);
 - (iii). Week ending 17 August 2014: -18.48% to budget (WOW.507.007.9224; WOW.507.007.9225);
 - (iv). Week ending 24 August 2014: -19.37% to budget (WOW.507.007.9226; WOW.507.007.9227); and
 - (v). Week ending 31 August 2014: -18.25% to budget (WOW.501.009.3940; WOW.501.009.3941); and
- (d) WOW had experienced the following sales results for Masters in the August 2014 'Group Key Factor Report' which was provided to Marr and other WOW Officers (WOW.507.049.6392; WOW.507.049.6393): -\$15.6 million to budget.

Further and alternatively, the WOW Officers and WOW Board otherwise ought to have become aware of the August Internal Indicators in the course of the performance of their duties.

12B. By reason of:

- (a) the Supermarkets Industry Information;
- (b) the External Indicators;
- (c) the May Internal Indicators;
- (d) the FY14 Increased Prices Information;
- (e) the Retail Offer Information;
- (f) the July Internal Indicators;
- (g) the Budget Impact Information; and/or
- (h) the August Internal Indicators.

at the time the Financial Plan and FY15 Budget were approved by the WOW Board in May 2014, alternatively, at the time the Financial Plan and FY15 Budget were relied

upon by the WOW Board in July and August 2014, WOW was aware or ought to have been aware (within the meaning of *Listing Rule* 19.12), and it was the fact, that it would not be possible, alternatively, it would be unlikely, for WOW to meet the FY15 Budget and/or the Financial Plan (the **Unachievable Financial Plan and FY15 Budget Information**).

Particulars

The particulars to paras [9AP], [9AR], [9AS], [9AT], [9AU], [9AX], [9AY] and [12A] are repeated.

Further particulars will be provided following expert evidence.

The WOW Officers and WOW Board ought reasonably to have been aware of the Unachievable Financial Plan and FY15 Budget Information in the performance of their duties.

12C. By reason of:

- (a) the Supermarkets Industry Information;
- (b) the External Indicators;
- (c) the May Internal Indicators;
- (d) the FY14 Increased Prices Information;
- (e) the Retail Offer Information;
- (f) the July Internal Indicators;
- (g) the Budget Impact Information; and/or
- (h) the August Internal Indicators.

as at 29 August 2014 (being the time the FY15 Earnings Guidance was lodged with the ASX and publicly released), WOW was aware (within the meaning of *Listing Rule* 19.12), and it was the fact, that it would not be possible, alternatively, it would be unlikely, for WOW to achieve the FY15 Earnings Guidance and achieve its longer term plan of achieving sustainable growth (the **Unachievable FY15 Earnings Guidance Information**).

Particulars

The particulars to paras [9AP], [9AR], [9AS], [9AT], [9AU], [9AX], [9AY] and [12A] are repeated.

Further particulars will be provided following expert evidence.

The WOW Officers and WOW Board ought reasonably to have been aware of the Unachievable FY15 Earnings Guidance Information in the performance of their duties.

12D. Further and alternatively, the FY15 Earnings Guidance was lodged with the ASX and publicly released by WOW at a time when WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12), and it was the fact, that:

- (a) there was no financial model used to inform or provide the basis for the FY15 Earnings Guidance;
 - (b) further or alternatively to (a) above, to the extent financial modelling existed, that financial modelling was not reviewed or relied upon by Marr or the WOW Board;
 - (c) the FY15 Earnings Guidance was calculated on the basis of:
 - (i) reliance upon the FY15 Budget and Financial Plan when, because of [9AX(d)] above and/or the Unachievable Financial Plan and FY15 Budget Information there were no reasonable grounds to do so;
 - (ii) making risk adjustments to the budgeted NPAT contained within the Financial Plan and FY15 Budget which, in respect of Supermarkets, only constituted a 0.5% reduction in Supermarkets' sales with a consequent \$31 million reduction to the budgeted group EBIT of \$4,080 million;
 - (iii) extrapolating WOW's FY14 growth in circumstances where FY14 had "a large number of cyclical/first time/last time benefits"; and
 - (iv) 'expected consensus';
 - (d) WOW's Board agreed to give FY15 Earnings Guidance at the FY14 results announcement on 29 August 2014 without an updated or revised Financial Plan and FY15 Budget being presented to the Board; and
 - (e) the FY15 Earnings Guidance calculation was "flawed",
- (the Insufficient Basis for FY15 Earnings Guidance Information).

Particulars

As to the matters pleaded in subparagraph (a) above, the applicants rely upon:

- (a) the Saville Affidavit at [81]: “I am informed by Mr David Marr and believe that: (a) there was no financial model used to inform or provide the basis of the FY15 earnings guidance beyond that referred to in sub-category 1.8 below”; and
- (b) the fact that in subcategory 1.8 of the Saville Affidavit, no financial modelling documents are identified; and
- (c) the fact that WOW has not discovered or produced any financial modelling documents.

As to the matters pleaded in subparagraph (b) above, the applicants rely upon the Saville Affidavit at [57(d)], [57(e)], [81] and [83] which suggest that the only ‘working documents’ reviewed by Marr were “‘bottom up’ budgets” prepared by business units for the purpose of the “separate and distinct” budget process.

As to the matters pleaded in subparagraph (c) above, the applicants rely upon:

- (a) the following statement made by Jegen during the 29 August 2014 Analyst Presentation (p.6 of transcript): “Last year was a record for us. We’ve never grown our market share as fast as we’ve grown in FY2014.” (MIN.500.001.0047);
- (b) the document entitled ‘FY15-FY17 Financial Plan, Woolworths Board On the day pack, 29-30 May 2014’ (WOW.507.016.6912; WOW.507.016.6913);
- (c) the statements in the email from Jegen to Roberts and Matthew Havens dated 30 January 2015 that (WOW.501.002.0342):
 - (i). in calculating the FY15 Earnings Guidance, WOW had “just extrapolat[ed] [its] FY14 growth % and expect[ed] a higher comp% in the future” and this “was flawed”; and
 - (ii). “We need to clearly highlight that comp sales is always a comparison with the previous year and that in FY14 we had a large number of cyclical/first time/last time benefits”;

- (d) the document entitled 'FY15 Budget – FY15 growth and consensus on FY14 actuals', emailed from van Meurs to Kourie on 14 July 2014 (WOW.507.056.0425; WOW.507.056.0426):
- (e) on 25 November 2014, McKinsey advised O'Brien that "Our FY14 number was also helped by some successes in marketing that we have not repeated so far this year - so we haven't helped ourselves. We now don't have the headroom we thought we would have..." (WOW.503.008.8877); and
- (f) the document entitled '150224 commentary for diagnostic poster v5' and emailed from Angus Dawson of McKinsey to O'Brien and Marr on 25 February 2015, which stated "So when I step back from all of this, what I conclude is that actually where we felt very good about the results of the business going all the way back into the first half of FY14, underneath it the health of business wasn't nearly as good" (WOW.503.004.4085; WOW.503.004.4086).

As to the matters pleaded in subparagraph (d) above, the applicants rely upon the matters particularised in para [10B].

As to the matters pleaded in subparagraph (e) above, the applicants rely upon the statement in the email from Jegen to Roberts and Matthew Havens dated 30 January 2015 that in calculating the FY15 Earnings Guidance, WOW had "just extrapolat[ed] [its] FY14 growth % and expect[ed] a higher comp% in the future" and this "was flawed" (WOW.501.002.0342).

Further and alternatively, the WOW Officers and WOW Board ought reasonably to have become aware of the Insufficient Basis for FY15 Earnings Guidance Information in the course of the performance of their duties.

12E. Further and alternatively, by no later than 29 August 2014, WOW was aware (within the meaning of Listing Rule 19.12) and it was the fact, that WOW Officers and members of the WOW Board did not have confidence in the ability of the management of Supermarkets to achieve FY15 Earnings Guidance (the **August No Confidence Information**).

Particulars

On 17 August 2014, Jegen sent an email to Supermarkets management, "we have not been able to hit our budgeted sales target...we have not

demonstrated that we are in control of even landing our sales forecast” (WOW.507.013.4976).

On 17 August 2014, O’Brien sent an email to Jegen and explained that “the entire Supermarkets team needs to take a big step up in performance and now in respect to sales and profit.” (WOW.507.025.2420).

On 17 August 2014, O’Brien emailed Marr and stated that he does not have that “confident feeling” and that the finance leaders need to be clear to management about any miss to budget (WOW.507.019.4646).

F. Events from 29 August to 22 September 2014

12F. On 22 September 2014, WOW lodged with the ASX and publicly released its Annual Report for FY14 (FY14 Annual Report) (MIN.500.001.0124).

12G. By the FY14 Annual Report, WOW repeated the FY15 Earnings Guidance.

Particulars

FY14 Annual Report (MIN.500.001.0124) at p.34.

12H. Further and alternatively, by no later than 22 September 2014, WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12), and it was the fact, that:

- (a) Supermarkets continued to experience underperformance in sales and track behind FY15 Budget and FY15 Earnings Guidance;
- (b) Supermarkets had failed to recover from the uncompetitive price position at a total basket level that it held at the end of FY14 vis a vis Coles;
- (c) Supermarkets continued to trail behind Coles in Relative Price Perception;
- (d) Big W continued to experience problems with aged / slow moving stock;
- (e) Big W continued to experience underperformance in sales and was tracking behind FY15 Budget; and/or
- (f) Masters was experiencing underperformance in sales and was tracking behind FY15 Budget,

(the September Internal Indicators).

Particulars

The May Internal Indicators, the July Internal Indicators and the August Internal Indicators and the particulars thereof are repeated.

As to the matters pleaded in subparagraph (a) above, the applicants rely upon:

(a) the matters particularised in paras [9AS(c), (f) and (g)], [9AX(a)] and [12A(a)]; and

(b) WOW had experienced the following Supermarkets sales results for September 2014 which were provided each week to O'Brien and Marr:

(i). Week 9: \$683.7 million (-\$9.7 million vs forecast and -\$24.8 million vs budget) (WOW.501.009.4511; WOW.501.009.4516);

(ii). Week 10: \$662.4 million (-\$13.6 million vs forecast and -\$7.5 million vs budget) (WOW.501.009.0659; WOW.501.009.0661);

(iii). Week 11: \$659.8 million (-\$12.7 million vs forecast and -\$18.2 million vs budget) (WOW.501.008.7215; WOW.501.008.7221); and

(iv). Week 12: \$651.2 million (-\$11.0 million vs forecast and -\$15.6 million vs budget) (WOW.501.008.0510; WOW.501.008.0512).

As to the matters pleaded in subparagraph (b) above, the applicants rely upon the matters particularised in paras [9AS(i) to (j)], [9AT], [9AX(c) to (d)] and [12A(c)].

As to the matters pleaded in subparagraph (c) above, the applicants rely upon:

(a) the matters particularised in paras [9AS(j)], [9AX(c)] and [12A(c)]; and

(b) the document entitled 'Supermarket Brand Tracker Dashboard – August 2014' (WOW.501.008.8521; WOW.501.008.8523).

As to the matters pleaded in subparagraph (d) above, the applicants rely upon:

(a) the matters particularised in paras [9AX(e)] and [12A(f)];

- (b) on 25 November 2014 Angus Dawson of McKinsey sent an email to O'Brien that stated "Big W and Masters are clearly a drag on profit result... You should seriously consider using the arrival of Alastair to clear the decks in Big W and aggressively write down inventory. You're running out of time to use this window." (WOW.503.006.1245);
- (c) the fact that by 22 December 2014, Marr was presented options for writing down inventory in the sum of \$184.2 million and \$145.6 million (WOW.502.004.2188; WOW.502.004.2190; and WOW.502.004.2191); and
- (d) the fact that prior to 11 January 2015, WOW had engaged Deloitte to conduct "a detailed stock review" and Deloitte had provided a "recommendation to take an Extraordinary write down for redundant stock in Big W": see email from O'Brien to Waters and Marr dated 11 January 2015 (WOW.503.006.0549).

As to the matters pleaded in subparagraph (e) above, the applicants rely upon:

- (a) the matters particularised in para [12A(g)];
- (b) on 2 September 2014 Marr sent an email to Mr Tim Fawaz that stated "even allowing for the clearance activity, we're in a materially worse spot than expected" (WOW.502.006.1209); and
- (c) WOW had experienced the following sales results in Big W for September 2014 which was provided each week to 'Weekly Trade Review Group' which included O'Brien, Marr and Jegen (among others):
- (i). Week ending 7 September 2014: +2.99% to budget (WOW.501.009.0710; WOW.501.009.0711);
- (ii). Week ending 14 September 2014: -10.81% to budget (WOW.501.008.7129; WOW.501.008.7130); and
- (iii). Week ending 21 September 2014: -7.21% to budget (WOW.501.008.0581; WOW.501.008.0582).

As to the matters pleaded in subparagraph (f) above, the applicants rely upon:

- (a) the matters particularised in para [12A(h)]; and

(b) WOW had experienced the following sales results in Masters for September 2014 which was provided each week to 'Weekly Trade Review Group' which included O'Brien, Marr and Jegen (among others):

(i). Week ending 7 September 2014: -8.02% to budget (WOW.501.009.0710; WOW.501.009.0711);

(ii). Week ending 14 September 2014: -16.29% to budget (WOW.501.008.7129; WOW.501.008.7130); and

(iii). Week ending 21 September 2014: -17.90% to budget (WOW.501.008.0581; WOW.501.008.0582).

Further and alternatively, the WOW Officers and WOW Board ought reasonably to have become aware of the September Internal Indicators in the course of the performance of their duties.

12I. Further and alternatively, by reason of:

(a) the Supermarkets Industry Information;

(b) the External Indicators;

(c) the May Internal Indicators;

(d) the FY14 Increased Prices Information;

(e) the Retail Offer Information;

(f) the July Internal Indicators;

(g) the Budget Impact Information;

(h) the August Internal Indicators; and/or

(i) the September Internal Indicators.

by no later than 22 September 2014, WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12), and it was the fact, that it would not be possible, alternatively, it would be unlikely, for WOW to achieve the FY15 Earnings Guidance and achieve its longer term plan of achieving sustainable growth (the **September Unmaintainable FY15 Earnings Guidance Information**).

Particulars

The particulars to paras [9AP], [9AR], [9AS], [9AT], [9AU], [9AX], [9AY], [12A] and [12H] are repeated.

Further particulars will be provided following expert evidence.

The WOW Officers and WOW Board ought reasonably to have become aware of the September Unmaintainable FY15 Earnings Guidance Information in the performance of their duties.

- 12J. Further and alternatively, by no later than 22 September 2014, WOW was aware (within the meaning of Listing Rule 19.12), and it was the fact, that WOW Officers and members of the WOW Board did not have confidence in the ability of the management of Supermarkets to achieve FY15 Earnings Guidance (the **September No Confidence Information**).

Particulars

The August No Confidence Information and the particulars thereof are repeated.

On 15 September 2014, Jegen sent an email to Dower and Phillips describing performance in the Supermarkets business as “Truly terrible sales. But also very poor forecasting.” (WOW.501.008.7704).

On 28 September 2014, O’Brien sent an email to Jegen attaching a note (WOW.503.008.5196; WOW.503.008.5197) stating:

- (a) “This note sets out my serious concerns in respect to your management of the Woolworths Supermarkets Division over recent months. Failure to properly manage key aspects of the division's performance have [sic] resulted in missed targets and a complete loss of momentum in the business that realistically will take some time to rectify”; and
- (b) “the forecasting and the accountability that should go with it are laughable for your division and you should be embarrassed by it.”

G. Events from 22 September to 3 November 2014

12K. By 23 October 2014, WOW:

- (a) was aware that its performance was tracking behind its FY15 Budget and FY15 Earnings Guidance; and
- (b) devised a new plan to achieve its FY15 Budget and FY15 Earnings Guidance (Delivery Plan).

Particulars

The document entitled 'Supermarkets Performance Analysis and Delivery Plan – Update Document' dated 23/24 October 2014 (WOW.506.008.0623; WOW.506.008.0625).

12L. The Delivery Plan budgeted WOW achieving:

- (a) sales increasing from \$33,971 million in FY14, to \$35,530 million in FY15;
- (b) gross profit increasing from \$10,152 million in FY14, to \$10,702 million in FY15;
- (c) COBD reducing from 21.42% of sales in FY14, to 21.20% of sales in FY15;
and
- (d) EBIT increasing from \$2,875 million in FY14, to \$3,170 million in FY15.

Particulars

The document entitled 'Supermarkets Performance Analysis and Delivery Plan – Update Document' dated 23/24 October 2014 (WOW.506.008.0623; WOW.506.008.0625).

12M. On 23 October 2014, the WOW Board:

- (a) resolved that no change to the FY15 Earnings Guidance was required; and
- (b) agreed that, on the basis that there would be no change to the FY15 Earnings Guidance, and no reason to believe that their "Fuel For Growth" program would change analysts' consensus estimates in relation to the FY15 Earnings Guidance, there was nothing to disclose to the market in relation to strategy.

Particulars

Minutes of the Meeting of the WOW Board held on 23 and 24 October 2014 (WOW.201.005.0137).

12N. By 23 October 2014 (alternatively, 28 October 2014), WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12) and it was the fact, that:

- (a) the targets within the Delivery Plan exceeded WOW's actual run rate to date;
- (b) WOW's advisors, McKinsey, had expressed concerns about the achievability of the Delivery Plan;
- (c) WOW's Retail Offer had fallen further behind that of its competitors, and in particular, Coles; and/or
- (d) WOW was proposing to remove approximately \$420 million in costs from Supermarkets;

accordingly, it would not be possible, alternatively, it would be unlikely, for WOW to achieve the Delivery Plan and/or its FY15 Earnings Guidance and achieve its longer term plan of achieving sustainable growth (the **Unachievable Delivery Plan Information**).

Particulars

As to the matters pleaded in subparagraph (a) above, the applicants rely upon the document entitled 'Supermarkets Performance Analysis and Delivery Plan – Update Document' dated 23/24 October 2014 (WOW.506.008.0623; WOW.506.008.0625).

As to the matters pleaded in subparagraph (b) above, the applicants rely upon:

- (a) on 28 October 2014, an email from McKinsey to Jegen (among others) advising: "I understand the need to hit Nov/Dec numbers as we can't back-load everything to H2 and we need to demonstrate early traction. However, the current approach to getting the short term numbers may not be as effective as possible. I write this note to you to give you some ideas on getting the balance right, based on my own observations as well as input I've received from a number of senior trusted folks in your supers team... Implicit in this advice is an observation (whether you believe it is fair or not) that you are at risk on these dimensions, for example - rapid attempts to delete lines

which actually done too fast will cost you a lot of money... - efforts on pricing and store labour which may result in even worse sales momentum if they are not laser targeted ” (WOW.501.007.1883); and

- (b) on 25 November 2014, O’Brien received an email from McKinsey that stated, “Delivering the half through short-term measures to lift the supers result vs. longer-term problems. Here the balance is clearly between the downside of revising guidance which hurts management credibility and organisational morale and taking short-term measures causing damage to the customer franchise” (WOW.503.006.1245).

As to the matters pleaded in subparagraph (c) above, the applicants rely upon the document entitled ‘Woolworths Supermarkets Brand Health Tracking, Monthly Dashboard September 2014’ as sent to Roberts (among others) (WOW.506.007.8894; WOW.506.007.8895).

As to the matters pleaded in subparagraph (d) above, the applicants rely upon:

- (a) the document entitled ‘Supermarkets Performance Analysis and Delivery Plan – Update Document’ dated 23/24 October 2014 (WOW.506.008.0623; WOW.506.008.0625);
- (b) on 9 October 2014, Harper sent an email to Goth and Roberts (among others) and stated, “The most significant is that the saving amount in the budget is larger than previously thought because it includes a large shrink task as well. This results in EBIT contribution of FFG being neutral to negative vs the budget with current price reinvestment numbers. The implication is, as Martyn put it, that Fuel for Growth is more like Fuel for Budget, with all savings being reinvested in trying to achieve the budget.” (WOW.506.008.4480);
- (c) on 11 October 2014, O’Brien sent an email to Jeggen and Banducci (among others) and stated “I will be asking each of you what you will be putting into place to bring October in on budget - in the main you have no choice but to switch the cost tap off hard and fast. I am not interested in “new” forecasts that will miraculously deliver the 1/2 year result I want to see the results of your response to this situation now ... and that means in the October result.” (WOW.501.007.8196); and

(d) on or about 29 October 2014, a note from McKinsey that stated (MCK.609.001.1918; MCK.609.001.1922):

(i). "Context has changed since we conceived FFG back in June/July with the emergence of the FY15 budget challenges. First, the scope has broadened: we need to recognize that COGS and upstream shrink need to be visible in the same forum if we are going to manage this in a coherent way. Second, the FY15 goal is now very large and a much bigger focus with \$400m in-year impact."

(ii). "Impact of Supers recovery plan, when put on same basis as FFG numbers is that the in-year ask has risen from \$93m to ~\$300m"; and

(iii). "I don't think we are on the same page around what support will be needed given your ambition relative to the underlying trajectory of the business. Especially true if FY15 now needs to bank \$300m vs. \$93m. This expectations gap is already corrosive, and will become toxic over time"

Further and alternatively, the WOW Officers and WOW Board ought reasonably to have become aware of the Unachievable Delivery Plan Information in the course of the performance of their duties.

13. On 3 November 2014, WOW participated in a conference call of investment analysts to discuss its first quarter sales results for FY15 and re-affirmed the FY15 Earnings Guidance (**Woolworths Ltd Q1 2015 Sales Call**).

Particulars

Woolworths Ltd Q1 2015 Sales Call Transcript (MIN.500.001.0360) at p.8.

- 13A. Further and alternatively, by no later than 3 November 2014, WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12), and it was the fact, that:

- (a) Supermarkets continued to experience underperformance in sales and track behind FY15 Budget and FY15 Earnings Guidance;
- (b) Supermarkets had failed to recover from the uncompetitive price position at a total basket level that it held at the end of FY14 vis a vis Coles;

- (c) Supermarkets continued to trail behind Coles in Relative Price Perception;
- (d) Big W continued to experience problems with aged / slow moving stock;
- (e) Big W continued to experience underperformance in sales and was tracking behind FY15 Budget; and/or
- (f) Masters continued to experience underperformance in sales and was tracking behind FY15 Budget.

(the 3 November Internal Indicators).

Particulars

The May Internal Indicators, the July Internal Indicators, the August Internal Indicators and the September Internal Indicators and the particulars thereof are repeated.

As to the matters pleaded in subparagraph (a) above, the applicants rely upon the following matters:

(a) the matters particularised in paras [9AS(c), (f) and (g)], [9AX(a)], [12A(a)] and [12H(a)];

(b) WOW had experienced the following Supermarkets' sales results for September 2014 which were provided each week to O'Brien and Marr:

(i). Week 13: \$659.2 million (-\$23.0 million vs forecast and -\$26.6 million vs budget) (WOW.501.008.4171; WOW.501.008.4173);

(c) WOW had experienced the following Supermarkets' sales results for October 2014 which were provided each week to O'Brien and Marr:

(i). Week 14: \$666.5 million (-\$18.0 million vs forecast and -\$25.1 million vs budget) (WOW.501.007.5042; WOW.501.007.5048);

(ii). Week 15: \$668.5 million (+\$1.0 million vs forecast but -\$25.4 million vs budget) (WOW.501.007.7686; WOW.501.007.7686);

- (iii). Week 16: \$662.8 million (-\$6.5 million vs forecast and -\$25.0 million vs budget) (WOW.501.007.0454; WOW.501.007.0461); and
- (iv). Week 17: \$677.0 million (-\$4.9 million vs forecast and -\$17.7 million vs budget) (WOW.501.007.2629; WOW.501.007.2630);
- (d) WOW had experienced the following Supermarkets' sales results for November 2014 which were provided each week to O'Brien and Marr:
- (i). Week 18: \$675.5 million (-\$19.8 million vs budget) (WOW.501.006.7021; WOW.501.006.7028);
- (e) on 7 October 2014, Dower received an email which stated "The latest forecast is not good at all, with \$18.4m risks to our -\$99.2m position for the qtr. This takes us to -\$117.6m for the qtr." (WOW.504.003.2779);
- (f) on 7 October 2014, Dower received a further email which stated "This is disastrous – yet another challenge and promise not met by the team. Will you update Tjeerd? If not I will". (WOW.504.003.2779);
- (g) on 10 October 2014, Marr sent an email to Gabriel which stated that the EBIT target for getting back to budget would be "stretching given Q1 performance... the current trading and profit performance is very concerning and we need to action urgently" (WOW.502.005.7587); and
- (h) on 11 October 2014, O'Brien sent an email to Jegen and others stating, "All of us are paid to deliver to the budgets that we signed up to at the beginning of the year (and we have since confirmed in guidance to our shareholders at the FY14 profit result). ... you have no choice but to switch the cost tap off hard and fast. ... No one is exempt from this..... no-one no business has permission from me to miss their budget. ... This is a huge hole we have to dig ourselves out from." (WOW.501.007.8196).

As to the matters pleaded in subparagraph (b) above, the applicants rely upon the matters particularised in paras [9AS(i) to (k)], [9AT], [9AX(c) to (d)], [12A(c)] and [12H(c)].

As to the matters pleaded in subparagraph (c) above, the applicants rely upon the following matters:

- (a) the matters particularised in paras [9AS(j)], [9AX(c)], [12A(c)] and [12H(c)];
- (b) the document entitled ‘Supermarket Brand Tracker Dashboard – September 2014’ (WOW.506.007.8894; WOW.506.007.8895);
- (c) the document entitled ‘150224 commentary for diagnostic poster v5’ that stated during October and November 2014, “alarm bells started ringing... our comps actually fell in a way that was well below what we were expecting” (email commentary poster sent by Angus Dawson of McKinsey to O’Brien and Marr) (WOW.503.004.4335; WOW.503.004.4336);
- (d) on 14 October 2014, McKinsey advised O’Brien that (WOW.503.008.8877):
 - (i). “we are well behind and will need to invest to close the gap”;
 - (ii). “we are going [sic] unwind the pricing premium as that is borrowing from the future as seen in our customer perceptions on value”; and
 - (iii). “we cannot allow the death spiral that we saw Coles in under Fletcher – higher prices, less traffic, pressure on costs and customer experience leading to less traffic and putting prices to sustain EBIT. Coles is experiencing a reinforcing loop – more volume creating room for both price investment and EBIT growth...”; and
- (e) on 23 October 2014, during the meeting of the WOW Board:
 - (i). the Australian Supermarkets Board Report was presented, by which WOW recorded that its “Market share has declined in the quarter, mainly due to Grocery due to a decrease in price perception” (WOW.501.007.6289; WOW.501.007.6290);

(ii). Jegen advised the WOW Board that:

- A. “Supermarkets missed the Q1 FY15 EBIT budget by \$29m. This was largely driven by a Sales shortfall of \$205m... Market share declined slightly vs. Q1 FY14” (WOW.201.005.0137);
- B. “plans have been put in place to address this disappointing result as outlined in the report, including: ... to undertake price investment and price campaign launched to reset core price perceptions” (WOW.201.005.0137); and
- C. “segmentation of the customer base has clearly demonstrated that budget customers have a perception that Woolworths is not price competitive, and that is why the “Everyday” cluster comp sales of 1.6% underperforms the division YOY comp sales of 2.3%... this will be addressed by ensuring the Primary Basket Price Index is 99% comparable to Coles’ prices”. (WOW.201.005.0137);

(iii). O’Brien presented his briefing for September 2014 which stated that:

- A. “Our prices rose across most of our categories in Q1FY15 versus the Q1FY14, and as a consequence volumes fell.” (WOW.503.007.9035; WOW.503.007.9036); and
- B. one of the two major impacts affecting the quarter was “Underperformance in Supermarkets, particularly in Aug/Sept. This was mainly due to the trade plan not delivering vs last year, leaving us well short on Sales and EBIT (short of our EBIT budget by \$29m for the qtr), and also due to not being competitive enough on some KVI shelf prices over the last 3 months,

further eroding price perception measures”
(WOW.503.007.9036; WOW.201.005.0137).

As to the matters pleaded in subparagraph (d) above, the applicants rely upon the following matters:

- (a) the matters particularised in paras [9AX(e)], [12A(f)] and [12H(d)];
- (b) the Big W Board Report – September 2014, emailed to Marr on 16 October 2014 (WOW.507.051.3665; WOW.507.051.3677), which recorded:
 - (i). DSOH (days) of 108.1 vs budgeted of 106.5; and
 - (ii). “DSOH was in line with last year, driven by lower sales”;
- (c) the CFO Report - October 2014 and provided to the WOW Board via the Board Portal (WOW.201.007.0041), which recorded that “BIG W inventory days are expected to increase 0.6 days or decrease 0.3 days excluding incremental indent”;
- (d) on 25 November 2014 Angus Dawson of McKinsey sent an email to O’Brien that stated “Big W and Masters are clearly a drag on profit result... You should seriously consider using the arrival of Alastair to clear the decks in Big W and aggressively write down inventory. You’re running out of time to use this window.” (WOW.503.006.1245);
- (e) the fact that by 22 December 2014, Marr was presented options for writing down inventory in the sum of \$184.2 million and \$145.6 million (WOW.502.004.2188, WOW.502.004.2190, and WOW.502.004.2191); and
- (f) the fact that prior to 11 January 2015, WOW had engaged Deloitte to conduct “a detailed stock review” who provided a “recommendation to take an Extraordinary write down for redundant stock in Big W” (see email from O’Brien to Waters and Marr dated 11 January 2015 (WOW.503.006.0549)).

As to the matters pleaded in subparagraph (e) above, the applicants rely upon the following matters:

- (a) the matters particularised in paras [12A(g)] and [12H(e)]:
- (b) the CFO Report - September 2014 and provided to the WOW Board via the Board Portal (WOW.201.005.0038), which recorded that:
- (i). “General Merchandise EBIT of \$2.9m was \$10.1m (-78.0%) below last year and \$9.3m unfavourable to budget (-76.6%), with a weak sales result in Big W...”; and
 - (ii). “Big W sales decreased 4.9% on last year and were 6.6% below budget...”;
- (c) the CFO Report for October 2014 (WOW.502.004.7027; WOW.502.004.7028) which recorded that:
- (i). “General Merchandise EBIT was \$4.7m (-44.9%) below last year and \$8.6m (-59.5%) unfavourable to budget, with a weak sales result in Big W...”; and
 - (ii). “Big W sales decreased 5.6% on last year and were 8.3% below budget...”;
- (d) WOW had experienced the following sales results in Big W for September 2014 which was provided each week to ‘Weekly Trade Review Group’ which included O’Brien, Marr and Jegen (among others):
- (i). Week ending 28 September 2014: -5.50% to budget (WOW.501.008.3502; WOW.501.008.3503);
- (e) WOW had experienced the following sales results for Big W in the September 2014 ‘Group Key Factor Report’ which was provided to Marr and other WOW Officers (WOW.507.050.7699; WOW.507.050.7700): -\$19.7 million to budget;
- (f) WOW had experienced the following sales results in Big W for October 2014 which was provided each week to ‘Weekly Trade Review Group’ which included O’Brien, Marr and Jegen (among others):

- (i). Week ending 5 October 2014: -2.73% to budget (WOW.501.007.4711; WOW.501.007.4712);
 - (ii). Week ending 12 October 2014: -6.13% to budget (WOW.501.007.7659; WOW.501.007.7660);
 - (iii). Week ending 19 October 2014: -10.77% to budget (WOW.507.051.4533; WOW.507.051.4534); and
 - (iv). Week ending 26 October 2014: -12.39% to budget (WOW.501.007.2584; WOW.501.007.2585);
- (g) WOW had experienced the following sales results for Big W in the October 2014 'Group Key Factor Report' which was provided to Marr and other WOW Officers (WOW.507.041.5659; WOW.507.041.5660): -\$25.5 million to budget; and
- (h) WOW had experienced the following sales results in Big W for November 2014 which was provided each week to 'Weekly Trade Review Group' which included O'Brien, Marr and Jegen (among others):
- (i). Week ending 2 November 2014: -4.14% to budget (WOW.501.006.6320; WOW.501.006.6321).

As to the matters pleaded in subparagraph (f) above, the applicants rely upon the following matters:

- (a) the matters particularised in paras [12A(h)] and [12H(f)];
- (b) the CFO Report for September 2014 (WOW.201.005.0038) which recorded that:
 - (i). "The EBIT loss of \$16.7m was \$5.0m higher than last year (Masters \$6.3m higher) and \$8.6m unfavourable to budget (Masters \$8.0m unfavourable)."; and
 - (ii). "Sales were \$9.3m below budget, with Masters \$13.2m below budget.";

- (c) the CFO Report for October 2014 (WOW.201.007.0041) which recorded that:
- (i). “The EBIT loss of \$13.4m was \$3.8m higher than last year (Masters \$3.3m higher) and \$6.1m unfavourable to budget (Masters \$5.6m unfavourable).”; and
 - (ii). “Sales were \$35.1m...\$5.1m (-3.2%) below budget, with Masters \$16.5m below budget.”;
- (d) WOW had experienced the following sales results in Masters for September 2014 which was provided each week to ‘Weekly Trade Review Group’ which included O’Brien, Marr and Jegen (among others):
- (i). Week ending 28 September 2014: -16.94% to budget (WOW.501.008.3502; WOW.501.008.3503);
- (e) WOW had experienced the following sales results for Masters in the September 2014 ‘Group Key Factor Report’ which was provided to Marr and other WOW Officers (WOW.507.050.7699; WOW.507.050.7700): -\$13.16 million to budget;
- (f) WOW had experienced the following sales results in Masters for October 2014 which was provided each week to ‘Weekly Trade Review Group’ which included O’Brien, Marr and Jegen (among others):
- (i). Week ending 5 October 2014: -9.29% to budget (WOW.501.007.4711; WOW.501.007.4712);
 - (ii). Week ending 12 October 2014: -14.02% to budget (WOW.501.007.7659; WOW.501.007.7660);
 - (iii). Week ending 19 October 2014: -19.86% to budget (WOW.501.007.0320; WOW.501.007.0321); and
 - (iv). Week ending 26 October 2014: -19.23% to budget (WOW.501.007.2584; WOW.501.007.2585);
- (g) WOW had experienced the following sales results for Masters in the October 2014 ‘Group Key Factor Report’ which was provided to Marr

and other WOW Officers (WOW.507.041.5659; WOW.507.041.5660): -\$16.5 million to budget; and

(h) WOW had experienced the following sales results in Masters for November 2014 which was provided each week to 'Weekly Trade Review Group' which included O'Brien, Marr and Jegen (among others):

(i). Week ending 2 November 2014: -18.78% to budget (WOW.501.006.6320; WOW.501.006.6321).

Further and alternatively, the WOW Officers and WOW Board ought reasonably to have become aware of the 3 November Internal Indicators in the course of the performance of their duties.

13B. Further and alternatively, by reason of:

- (a) the Supermarkets Industry Information;
- (b) the External Indicators;
- (c) the May Internal Indicators;
- (d) the FY14 Increased Prices Information;
- (e) the Retail Offer Information;
- (f) the July Internal Indicators;
- (g) the Budget Impact Information;
- (h) the August Internal Indicators;
- (i) the September Internal Indicators;
- (j) the 3 November Internal Indicators; and/or
- (k) the Unachievable Delivery Plan Information,

by no later than 3 November 2014, WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12), and it was the fact, that it would not be possible, alternatively, it would be unlikely, for WOW to achieve the FY15 Earnings Guidance and achieve its longer term plan of achieving sustainable growth (the **3 November Unmaintainable FY15 Earnings Guidance Information**).

Particulars

The particulars to paras [9AP], [9AR], [9AS], [9AT], [9AU], [9AX], [9AY], [12A], [12H], [12N] and [13A] are repeated.

Further particulars will be provided following expert evidence.

The WOW Officers and WOW Board ought reasonably to have been aware of the 3 November Unmaintainable FY15 Earnings Guidance Information in the performance of their duties.

- 13C. Further and alternatively, by no later than 3 November 2014, WOW was aware (within the meaning of Listing Rule 19.12), and it was the fact, that WOW Officers and members of the WOW Board did not have confidence in the ability of the management of Supermarkets to achieve FY15 Earnings Guidance (the **3 November No Confidence Information**).

Particulars

The August No Confidence Information and the September No Confidence Information and the particulars thereof are repeated.

On 28 September 2014, O'Brien sent an email to Jegen stating:

"This note sets out my serious concerns in respect to your management of the Woolworths Supermarkets Division over recent months. Failure to properly manage key aspects of the division's performance have resulted in missed targets and a complete loss of momentum in the business that realistically will take some time to rectify...."; and

"...the forecasting and the accountability that should go with it are laughable for your division and you should be embarrassed by it."
(WOW.503.008.5196; WOW.503.008.5197).

H. Events from 3 November to 27 November 2014

14. On 27 November 2014, WOW lodged with the ASX and publicly released:
- (a) an address by ~~Ralph~~ Waters, Chairman of WOW, restating and reaffirming the FY15 Earnings Guidance (MIN.500.001.0380); and

- (b) an address by Grant O'Brien, CEO of WOW, reaffirming the FY15 Earnings Guidance (MIN.500.001.0375),

(separately and together, the **AGM Statements**).

14A. Further and alternatively, by no later than 27 November 2014, WOW was aware (within the meaning of Listing Rule 19.12), and it was the fact, that:

- (a) Supermarkets continued to experience underperformance in sales and track behind FY15 Budget and FY15 Earnings Guidance;
- (b) Supermarkets had failed to recover from the uncompetitive price position at a total basket level that it held at the end of FY14 vis a vis Coles;
- (c) Supermarkets continued to trail behind Coles in Relative Price Perception;
- (d) Big W continued to experience problems with aged / slow moving stock;
- (e) Big W continued to experience underperformance in sales and was tracking behind FY15 Budget; and/or
- (f) Masters continued to experience underperformance in sales and was tracking behind FY15 Budget,

(the 27 November Internal Indicators).

Particulars

The May Internal Indicators, the July Internal Indicators, the August Internal Indicators, the September Internal Indicators and the 3 November Internal Indicators and the particulars thereof are repeated.

As to the matters pleaded in subparagraph (a) above, the applicants rely upon the following matters:

- (a) the matters particularised in paras [9AS(c), (f) and (g)], [9AX(a)], [12A(a)], [12H(a)] and [13A(a)]; and
- (b) WOW had experienced the following Supermarkets' sales results for November 2014 which was provided each week to O'Brien and Marr:
- (i). Week 19: \$682.7 million (-\$3.3 million v forecast and -\$15.3 million vs budget) (WOW.501.005.5393; WOW.501.005.5400);

- (ii). Week 20: \$684.1 million (+\$9.0 million v forecast and -\$6.2 million vs budget) (WOW.501.005.7425; WOW.501.005.7427); and
- (iii). Week 21: \$689.6 million (-\$5.5 million v forecast and -\$13.4 million vs budget) (WOW.501.006.2240; WOW.501.006.2242).

As to the matters pleaded in subparagraph (b) above, the applicants rely upon the matters particularised in paras [9AS(i) to (j)], [9AT], [9AX(c) to (d)], [12A(c)] [12H(c) and [13A(c)].

As to the matters pleaded in subparagraph (c) above, the applicants rely upon the following matters:

- (a) the matters particularised in paras [9AS(j)], [9AX(c)], [12A(c)], [12H(c)] and [13A(c)];
- (b) the document entitled ‘Supermarket Brand Tracker Dashboard – October 2014’ (WOW.506.007.1008; WOW.506.007.1010);
- (c) the document entitled ‘150224 commentary for diagnostic poster v5’ that stated during October and November 2014, “alarm bells started ringing... our comps actually fell in a way that was well below what we were expecting” (email commentary poster sent by Angus Dawson of McKinsey to O’Brien and Marr) (WOW.503.004.4335; WOW.503.004.4336);
- (d) on 14 November 2014, an ‘Australian Supermarkets’ presentation was emailed to Jegen from Torrens, WOW’s Finance Manager (Strategy, Planning and Analysis – Supermarkets) which stated that “weak performance [in October] is attributable to a price perception deficit compared to our key competitors” (WOW.501.005.3736; WOW.501.005.3737);
- (e) on or around 18 November 2014, in a ‘Supermarkets Leadership Update’ entitled ‘FY15 Sales and EBIT delivery plan’, WOW recorded that:
- (i). ‘Prices out of line vs. competition, following-on from Q4 FY14’; and

- (ii). WOW's price perception had deteriorated over the quarter (WOW.501.005.7989; WOW.501.005.7990, see also version to O'Brien WOW.501.005.3581; WOW.501.005.3582):
- (f) on 25 November 2014, McKinsey advised O'Brien that (WOW.503.006.1245): "1. Delivering the half through short-term measures to lift the supers result vs. longer-term problems. Here the balance is clearly between the downside of revising guidance which hurts management credibility and organisational morale and taking short-term measures causing damage to the customer franchise. I am very worried about the effect of labour coming out of stores at the level it has"; and
- (g) on 26 November 2014, during the meeting of the WOW Board:
- (i). O'Brien's CEO's briefing for October 2014 was presented, whereby O'Brien informed the WOW Board, among other things, that (WOW.503.007.2931; WOW.503.007.2962):
- A. WOW had experienced "underperformance" in Supermarkets "which was affected by our poor price position and perception and a trade plan which didn't match last year"; and
- B. to "get supermarkets back on track for the full year...will be no small task and will require significant improvement on our run rate at the end of October.";
- (ii). a 'Supermarkets Performance Analysis and Delivery Plan' was presented, which stated that (WOW.501.005.3581; WOW.501.005.3582):
- A. "We must improve our price perception – particularly with budget customers";
- B. "Coles is winning most on price perception";
- C. "Our prices were out of line against target in Q1 FY15..."; and

D. “\$154m gross investment in pricing will be required in FY15 to retrieve price perception assuming minimal further competitor price moves”; and

(iii). an ‘Australian Supermarkets’ document was presented which stated that “Disappointing sales performance is attributable to a price perception deficit against our key competitors, cycling a strong trade plan last year and weaker performance of the older stores in our network... Price perception continues to trail behind Coles and Aldi, however brand tracker measures show some improvement in the period” (WOW.503.007.2931; WOW.503.007.3469).

As to the matters pleaded in subparagraph (d) above, the applicants rely upon the following matters:

- (a) the matters particularised in paras [9AX(e)], [12A(f)], [12H(d)] and [13A(d)];
- (b) the Big W Board Report – September 2014, emailed to Marr on 16 October 2014 (WOW.507.051.3665; WOW.507.051.3677), which recorded:
 - (i). DSOH (days) of 108.1 vs budgeted of 106.5; and
 - (ii). “DSOH was in line with last year, driven by lower sales”.
- (c) the CFO Report – October 2014 and provided to the WOW Board via the Board Portal (WOW.201.007.0041), which recorded that “BIG W inventory days are expected to increase 0.6 days or decrease 0.3 days excluding incremental indent”;
- (d) the CFO Report for November 2014 (WOW.503.006.6396; WOW.503.006.6406) recorded that “BIG W inventory days are expected to increase 1.8 days”;
- (e) on 25 November 2014 Angus Dawson of McKinsey sent an email to O’Brien that stated “Big W and Masters are clearly a drag on profit result... You should seriously consider using the arrival of Alastair to clear the decks in Big W and aggressively write down inventory. You’re running out of time to use this window.” (WOW.503.006.1245);

- (f) the fact that by 22 December 2014, Marr was presented options for writing down inventory in the sum of \$184.2 million and \$145.6 million (WOW.502.004.2188, WOW.502.004.2190, and WOW.502.004.2191); and
- (g) the fact that prior to 11 January 2015, WOW had engaged Deloitte to conduct “a detailed stock review” who provided a “recommendation to take an Extraordinary write down for redundant stock in Big W”: see email from O’Brien to Waters and Marr dated 11 January 2015 (WOW.503.006.0549).

As to the matters pleaded in subparagraph (e) above, the applicants rely upon the following matters:

- (a) the matters particularised in paras [12A(g)], [12H(e)] and [13A(e)];
- (b) on 25 November 2014, McKinsey advised O’Brien that “Delivering a group result that is based on a big cross-subsidy from Supers vs. resetting the other Big W in particular. Big W and Masters are clearly a drag on the profit result for the first half and for FY15” (WOW.503.006.1245);
- (c) the CFO Report for November 2014 (WOW.503.006.6396; WOW.503.006.6406) recorded that:
- (i). “General Merchandise EBIT was \$6.6m (-30.8%) below last year and \$19.2m (-56.3%) unfavourable to budget...”; and
- (ii). “Big W sales decreased 5.5% on last year and were 7.0% below budget...”;
- (d) WOW had experienced the following sales results in Big W for November 2014 which was provided each week to ‘Weekly Trade Review Group’ which included O’Brien, Marr and Jegen (among others):
- (i). Week ending 2 November 2014: -4.14% to budget (WOW.501.006.6320; WOW.501.006.6321);
- (ii). Week ending 9 November 2014: -7.19% to budget (WOW.501.005.5429; WOW.501.005.5430);

- (iii). Week ending 16 November 2014: -6.69% to budget (WOW.501.005.7311; WOW.501.005.7312);
- (iv). Week ending 23 November 2014: -3.48% to budget (WOW.501.006.2048; WOW.501.006.2049); and
- (v). Week ending 30 November 2014: -10.23% to budget (WOW.501.005.9194; WOW.501.005.9195); and
- (e) WOW had experienced the following sales results for Big W in the November 2014 'Group Key Factor Report' which was provided to Marr and other WOW Officers (WOW.507.041.5657 and WOW.507.041.5658): -\$27.4 million to budget.

As to the matters pleaded in subparagraph (f) above, the applicants rely upon the following matters:

- (a) the matters particularised in paras [12A(h)], [12H(f)] and [13A(f)];
- (b) on 25 November 2014, McKinsey advised O'Brien that "Delivering a group result that is based on a big cross-subsidy from Supers vs. resetting the other Big W in particular. Big W and Masters are clearly a drag on the profit result for the first half and for FY15" (WOW.503.006.1245);
- (c) the CFO Report for November 2014 (WOW.503.006.6396; WOW.503.006.6406) recorded that:
 - (i). "Home Improvement EBIT loss was \$8.2m unfavourable to budget driven by Masters (-\$7.2m)"; and
 - (ii). "Sales were... \$4.7m (-2.8%) below budget (Masters -\$16.6m, HTH +\$11.9m).";
- (d) WOW had experienced the following sales results in Masters for November 2014 which was provided each week to 'Weekly Trade Review Group' which included O'Brien, Marr and Jegen (among others):
 - (i). Week ending 2 November 2014: -18.78% to budget (WOW.501.006.6320; WOW.501.006.6321);
 - (ii). Week ending 9 November 2014: -16.20% to budget (WOW.501.005.5429; WOW.501.005.5430);

- (iii). Week ending 16 November 2014: -19.94% to budget (WOW.501.005.7311; WOW.501.005.7312);
- (iv). Week ending 23 November 2014: -18.89% to budget (WOW.501.006.2048; WOW.501.006.2049); and
- (v). Week ending 30 November 2014: -14.80% to budget (WOW.501.005.9194; WOW.501.005.9195); and
- (e) WOW had experienced the following sales results for Masters in the November 2014 'Group Key Factor Report' which was provided to Marr and other WOW Officers (WOW.507.041.5657; WOW.507.041.5658): -\$16.6 million to budget.

Further and alternatively, the WOW Officers and WOW Board ought reasonably to have become aware of the 27 November Internal Indicators in the course of the performance of their duties.

14B. Further and alternatively, by reason of:

- (a) the Supermarkets Industry Information;
- (b) the External Indicators;
- (c) the May Internal Indicators;
- (d) the FY14 Increased Prices Information;
- (e) the Retail Offer Information;
- (f) the July Internal Indicators;
- (g) the Budget Impact Information;
- (h) the August Internal Indicators;
- (i) the September Internal Indicators;
- (j) the Unachievable Delivery Plan Information;
- (k) the 3 November Internal Indicators; and/or
- (l) the 27 November Internal Indicators.

by no later than 27 November 2014, WOW was aware (within the meaning of Listing Rule 19.12), and it was the fact, that it would not be possible, alternatively, it would be unlikely, for WOW to achieve the FY15 Earnings Guidance and achieve its longer term

plan of achieving sustainable growth (the **27 November Unmaintainable FY15 Earnings Guidance Information**).

Particulars

The particulars to paras [9AP], [9AR], [9AS], [9AT], [9AU], [9AX], [9AY], [12A], [12H], [12N], [13A] and [14A] are repeated.

Further particulars will be provided following expert evidence.

The WOW Officers and WOW Board ought reasonably to have been aware of the 27 November Unmaintainable FY15 Earnings Guidance Information in the performance of their duties.

14C. Further and alternatively, on 27 November 2014, WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12) and it was the fact, that the delivery plan to achieve FY15 Earnings Guidance was not realistic (the **27 November Unrealistic FY15 Earnings Guidance Information**).

Particulars

On 19 November 2014, Gabriel sent Marr an email attaching a 'Weekly EBIT update' which recorded, "Is the forecast realistic?: No" (WOW.502.004.8336; WOW.502.004.8337).

D-I. FY15 Earnings Guidance Assumptions

15. The FY15 Earnings Guidance was based, *inter alia*, upon the following assumptions:
- (a) that WOW did not need to make substantial price reductions (known as "price investments") and associated promotional expenditure in FY15 in order to remain competitive on price and improve Relative Price Perception, and/or did not need to make investments in other elements of WOW's Retail Offer to remain competitive (First FY15 Guidance Assumption); and
 - (b) that the FY15 Earnings Guidance could be achieved without adversely affecting the ability of WOW to deliver on its longer term plans to achieve sustainable growth and the associated enhance shareholder value through a focus on the Four Strategic Pillars creation (Second FY15 Guidance Assumption); and

~~(c) that the metrics being used by WOW for the purposes of its FY15 strategy, including on pricing, labour and stock availability:~~

- ~~(i) were correct;~~
- ~~(ii) were suitable for the business; and~~
- ~~(iii) would not adversely affect WOW's competitiveness,~~

~~(Third FY15 Guidance Assumption).~~

Particulars

The First FY15 Guidance Assumption is evidenced and implied by:

- (a) the following statement made by O'Brien ~~the CEO of WOW~~ on a conference call with investment analysts on 17 June 2015 (p.3 of transcript) (MIN.500.001.1095): "At our first profit results announcement in – first-half profit results announcement in February, we clearly stated that we would do whatever it takes to win back the trust of our customers. Since then, we've been investing in lowering prices and improving our offer to customers.";*
- (b) the following statement made by Waters ~~the Chairman of WOW~~ on a conference call with investment analysts on 17 June 2015 (p.6 of transcript) (MIN.500.001.1095): "Well, just going back to the guidance, of course we regret making the guidance... The main reason we regret that guidance was that it constrained management through December and January, when they needed flexibility to invest into the market that they felt they didn't have because they were captive to their own guidance.";*
- (c) the following statement on page 1 of the 27 February 2015 Results Presentation (defined below) (MIN.500.001.0515): "While there is a clear path to meet the guidance provided of NPAT of 4-7% in FY15, we have decided to provide ourselves with additional flexibility to make the necessary investments to deliver on our long term plans and the associated shareholder value creation. These investments will impact H2'15 results and as a result we are amending guidance.";*
- (d) the following statement on page 3 of the 27 February 2015 Results Announcement (defined below) (MIN.500.001.0488): "While there is a*

clear path to meet the guidance provided of net profit after tax of 4-7% in FY15, we have decided to provide ourselves with additional flexibility to make the necessary investments to deliver on our long term plans and the associated shareholder value creation. These investments will impact second half FY15 results and as a result we are amending guidance... The investment in Australian Supermarkets will span all aspects of the customer offer and will be funded in part by a pipeline of cost savings in excess of \$500 million, which we are currently building...”; and

- (e) *the following statement made by O'Brien ~~the CEO of WOW~~ in the 27 February 2015 Analyst Presentation (defined below) (p.3 of transcript) (MIN.500.001.0463): “Of course, price is the primary driver and over the past few years customers’ prioritisation of price has been accelerating. So we’re taking action. We’ve been building a pipeline of more than AUD500 million of cost savings to invest lower prices.”.*

The Second FY15 Guidance Assumption is evidenced and implied by:

- (a) *the following statement on page 1 of the 27 February 2015 Results Presentation (defined below) (MIN.500.001.0515): “While there is a clear path to meet the guidance provided of NPAT of 4-7% in FY15, we have decided to provide ourselves with additional flexibility to make the necessary investments to deliver on our long term plans and the associated shareholder value creation. These investments will impact H2’15 results and as a result we are amending guidance.”; and*
- (b) *the following statement on page 3 of the 27 February 2015 Results Announcement (defined below) (MIN.500.001.0488): “While there is a clear path to meet the guidance provided of net profit after tax of 4-7% in FY15, we have decided to provide ourselves with additional flexibility to make the necessary investments to deliver on our long term plans and the associated shareholder value creation. These investments will impact second half FY15 results and as a result we are amending guidance... The investment in Australian Supermarkets will span all aspects of the customer offer and will be funded in part*

by a pipeline of cost savings in excess of \$500 million, which we are currently building...”.

~~The **Third FY15 Guidance Assumption** is evidenced and implied by the **Wrong Metrics Information** (defined below) disclosed on 6 May 2015.~~

~~Further particulars may be provided following discovery and prior to trial.~~

The Supermarkets Industry Information is repeated.

E.J. February 2015 Downgrade

16. On 27 February 2015, WOW:
- (a) lodged with the ASX and publicly released a presentation entitled “Woolworths Limited – Company Results Half Year Ended 4 January 2015” (**27 February 2015 Results Presentation**) (MIN.500.001.0515);
 - (b) lodged with the ASX and publicly released an announcement entitled “Woolworths Limited – Half Year Profit and Dividend Announcement for the 27 Weeks ended 4 January 2015” (**27 February 2015 Results Announcement**) (MIN.500.001.0488); and
 - (c) gave a presentation to investment analysts concerning the FY15 Half Year Results (**27 February 2015 Analyst Presentation**) (MIN.500.001.0463).
17. By ~~4 December~~ 29 August 2014, alternatively, 22 September 2014, alternatively, 3 November 2014, alternatively, 27 November 2014, WOW was aware, or ought to have been aware (within the meaning of *Listing Rule* 19.12), and it was the fact, that:
- (a) significant further investment in price, associated promotional expenditure, and other elements of WOW’s Retail Offer was necessary to deliver sustainable growth but at the expense of achieving FY15 Earnings Guidance on WOW’s long term plans and the associated shareholder value creation (the **Necessary Further Investment**); ~~and/or~~
 - (b) cost savings measures could be implemented to achieve FY15 Earnings Guidance but at the expense of WOW achieving sustainable growth (the **Guidance Maintenance Information**) ~~taking into account the Necessary Further Investment required a downward revision of the FY15 Earnings Guidance (the **Necessary Further Investment Information**).~~

(collectively, the **Guidance Options Information**).

Particulars

The Applicants rely upon the following matters:

(a) On 17 June 2015, Waters the Chairman of WOW stated on a conference call with investment analysts that (p.6 of transcript) (MIN.500.001.1095): “Well, just going back to the guidance, of course we regret making the guidance... The main reason we regret that guidance was that it constrained management through December and January, when they needed flexibility to invest into the market that they felt they didn’t have because they were captive to their own guidance.”.

(b) WOW Officers were actually aware of the Guidance Options Information by reason of the following:

(i). on 11 September 2014, Jegen was provided with a presentation that was to be presented the following day which recorded that (WOW.501.008.9477; WOW.501.008.9478):

A. WOW had "Five imperatives to win the price agenda":

B. "Total price investment \$360M" was required; and

C. "Three choices exist short-term, each requiring a GP and perception trade-off";

(ii). on 19 September 2014, Jegen sent an email to Roberts and Goth that stated (WOW.501.008.1605):

"I don't agree with the conclusion. We will not halt any further price reductions. That is not the right answer to this.

It might be that we want to hit the bottom line with \$30 odd million as it is the right thing to do.

So conclusion is that we have to agree what priority price investments have vs. available funding first.

If the guidance is that we need funding for all our price investments then we need to choose what we would like to prioritise re our pricing investment for FY15 and clearly can't do it all as planned.

In my view we can de-prioritise our competitive response and just lead with the rocks, align Aldi prop to Woolies prop and keep primary basket where it is.

So pls don't jump to the conclusion that we have to halt all price investments. That is not what I believe we should recommend."

(c) WOW Officers ought reasonably to have been aware of the Guidance Options Information by reason of:

- (i). the Supermarkets Industry Information;
- (ii). the External Indicators;
- (iii). the May Internal Indicators;
- (iv). the FY14 Increased Prices Information;
- (v). the Retail Offer Information;
- (vi). the July Internal Indicators;
- (vii). the Budget Impact Information;
- (viii). the August Internal Indicators;
- (ix). the September Internal Indicators;
- (x). the 3 November Internal Indicators;
- (xi). the Unachievable Delivery Plan Information; and/or
- (xii). the 27 November Internal Indicators.

from the respective times alleged.

(d) Further particulars may be provided following discovery and prior to trial.

18. By the 27 February 2015 Results Presentation, 27 February 2015 Results Announcement and 27 February 2015 Analyst Presentation WOW ~~disclosed:~~

- (a) partly disclosed the Necessary Further Investment Information Guidance Options Information;
- (b) partly disclosed that by reason of the Necessary Further Investment Information Guidance Options Information:
 - (i) the First FY15 Guidance Assumption was erroneous;
 - (ii) the Second FY15 Guidance Assumption was erroneous; and
 - (iii) therefore, that the FY15 Earnings Guidance had been unreliable; ~~and~~
- (ba) partly disclosed the Guidance Information (defined in para [28] below); and
- (c) disclosed that accordingly, a downward revision to the FY15 Earnings Guidance was required towards the lower end of the current analyst NPAT growth forecast range for FY15 of 1.8-6.6% (the February 2015 Downgrade).

Particulars

The disclosures were express and implied and the applicants rely upon:

- (a) 27 February 2015 Results Presentation (MIN.500.001.0515) at p.2.
- (b) 27 February 2015 Results Announcement (MIN.500.001.0488) at p.3.
- (c) 27 February 2015 Analyst Presentation (MIN.500.001.0463) at pp.3, 6, 8 and 10.

18A. By no later than 27 February 2015, WOW was aware or ought to have been aware (within the meaning of Listing Rule 19.12) that:

- (a) there would be no immediate NPAT growth; and
- (b) WOW's Retail Offer and competitive position would take time to improve and would negatively impact its FY15 and FY16 results,

(the February Growth Information).

Particulars

The Supermarkets Industry Information, the External Indicators, the May Internal Indicators, the FY14 Increased Prices Information, the Retail Offer Information, the July Internal Indicators, the Budget Impact Information, the August Internal Indicators, the September Internal Indicators, the 3 November

Internal Indicators, the Unachievable Delivery Plan Information and the 27 November Internal Indicators, and the particulars thereof, are repeated.

The WOW Officers and WOW Board ought reasonably to have become aware of the February Growth Information in the course of the performance of their duties.

Further particulars will be provided following expert evidence.

19. Following:

- (a) the partial disclosure of the Necessary Further Investment Information the Guidance Options Information; and
- (b) the disclosure of the February 2015 Downgrade,
the price of WOW Shares declined significantly.

Particulars

The price of WOW Shares:

- (a) *declined from a closing price of \$33.95 on 26 February 2015 to a closing price of \$30.71 on 27 February 2015; and*
- (b) *declined further to a closing price of \$29.29 on the following trading day, 2 March 2015.*

F.K. 6 May Presentation

20. On 6 May 2015, WOW lodged with the ASX and publicly released:

- (a) an announcement entitled “Woolworths Limited – Q3 Sales ending 5 April 2015” (6 May Announcement) (MIN.500.001.1087);
- (b) lodged with the ASX and publically released a presentation entitled “Woolworths Investor Strategy Day” (6 May Presentation Slides) (MIN.500.001.0939);
- (c) lodged with the ASX and publically released two media releases entitled:
 - (i) “Lean Retail Model to drive three-year growth plans”; and
 - (ii) “Woolworths Food Group’s plan to get customers to put us first”,
(6 May Media Releases); and

- (d) ~~conducted a deliberately deferred providing clarification of the reasons for the February 2015 Downgrade until its Q3 2015 Sales Call and Investor Strategy Day held on 6 May 2015 (6 May Presentation) (MIN.500.001.0827).~~

Particulars

~~The CEO Supermarket Review, defined below, occurred in January 2015, prior to the February 2015 Downgrade. The CEO Supermarket Review confirmed the Wrong Metrics Information. In the 27 February 2015 Results Announcement (at p.3), WOW stated “[w]e will provide further details of our plans at the Investor Strategy Day which is being scheduled for May 6 in Sydney”. During the 27 February 2015 Analyst Presentation, the CEO, Mr O’Brien, advised that further details of WOW’s strategy would be provided at the Investor Strategy Day (at p.4 of the transcript). It is therefore to be inferred that WOW, through its CEO, determined that the further detail, including the Wrong Metrics Information, would be withheld until 6 May 2015.~~

21. In its 6 May Announcement, 6 May Presentation Slides, 6 May Media Releases and 6 May Presentation, WOW stated that:

(a) ~~in January 2015, WOW undertook, under the supervision of its Managing Director and CEO, a review of its supermarket business (CEO Supermarket Review);~~

(b) ~~the metrics that had been used by WOW, including on pricing, labour and stock availability:~~

(i) ~~were wrong; were no longer suitable for the business; and were affecting WOW’s competitiveness; and~~

(ii) ~~would not be corrected in the near term nor in sufficient time so as to avoid adversely affecting WOW’s sales in Q3 2015; and~~

~~(Wrong Metrics Information)~~

(c) ~~therefore the Third FY15 Guidance Assumption had been erroneous and the FY15 Earnings Guidance had been unreliable.~~

(a) “At the half year 2015 results, we informed the market that Australian Food and Liquor sales in December and January were disappointing. While February and March showed some improvement as we commenced the

actions announced in February, April was more subdued and there is still much to do”.

- (b) “As will be demonstrated through the Investor Strategy Day presentation today, the new leadership teams in Australian Food and Liquor have clear plans in place to restore sales momentum and extend our market leading position.”.
- (c) “Australian Food and Liquor sales for the quarter were \$10.6 billion, an increase of 2.3% on the previous year or 1.7% Easter adjusted. Comparable store sales for the quarter increased 0.7% or 0.2% Easter adjusted”.
- (d) “we have lost focus on our customers and this needs to be addressed with some urgency”.
- (e) “What needs to be done is clear but it will take time to build customer trust and regain sales momentum”.
- (f) it needed to “Neutralise Coles and contain Aldi on pricing”.
- (g) “Our performance in year to February” had:
 - (i) “Price per item” “Rising by more than competition” and a “priority” now was to “Improve relative pricing”.
 - (ii) “Items per basket” “Declining by more than competition”, and
 - (iii) “Shopping occasions” had “Marginal growth but significantly below competitors”.
- (h) its “Priorities” now were to:
 - (i) “Improve relative pricing”.
 - (ii) “Be rewarded by customers as they put more items in their baskets”, and
 - (iii) “Be rewarded by customers moving shopping occasions to us”.
- (i) it expected the customer response to improved pricing in (h)(ii) above to be a “Relatively fast response”, but for the response in (h)(iii) it “Will take longer to earn back trust”.
- (j) it had “Put 58,000 hours back in stores at times when stores busiest”.

- (k) it also needed to:
- (i) “Invest a further 63,000 hours in stores next year”;
 - (ii) “Dramatically improve on-shelf availability, starting with promotional SKUs and meat”;
 - (iii) “Rapidly address customer experience basics – trolleys, signage, gates, lighting, etc”; and
 - (iv) “Rebalance store openings with refurbishments”;
- (l) “We are on a 3 year journey to get our customers to put us 1st”;
- (m) “we are currently at our most competitive prices we have been since January of 2014”;
- (n) “we’re at our best price point relative to our major competitors.. we have been for 15-16 months, back to January of 2014. So we’re not in a bad place, I’m not about to tell you the size of the price gap but I can tell you that it’s less than 100 basis points.”;
- (o) “So we’ve seen some lift from the price investment and the service or reinstalment of labour hours into the store but it’s not our intended intention that it be resolved within the quarter. We see that moving forward for the balance of this financial year and into the next financial year.”;
- (p) “it will take some while to get some sales momentum flowing back into the business”;
- (q) “So look our stores aren’t good enough. That’s the simple state of affairs. Our stores aren’t good enough... Our availability isn’t where it needs to be either”;
- (r) “In simple terms, the stores have got old and tired. Our teams can feel that and customers feel that.”;
- (s) “So as we look forward at FY16, FY17 and FY18, we’ve got to make sure we have a program of process change so that we can get back to providing fantastic service, get queue lengths down at checkouts, serve our customers quickly on service desks and have great availability and long life perishables, fruit and veg predominately.”;
- (t) “In the recent times, the last six to eight months, there was significant amount of team taken out of our stores. I think people who have shopped our stores

saw that. Our customers certainly told that and, as I said before, we took some urgent steps to put some straight back in. We've got plans to address that further in the first half of FY16.”;

(u) “I think it takes a while to gain momentum. So if you don't have momentum it takes you a while to get there.”;

(v) “In answer to the question why do we find ourselves here is we did take our eye off the customer to a degree. We took for granted that our results orientated culture would bring the customer along with us and it didn't”; and

(w) “We've very deliberately backed away from refurbishments, and from a sales perspective that has had an impact, no question about it. Particularly from a comp sales perspective...”;

Particulars

Transcript of the 6 May Presentation at pp. 4, 39, 100 and 102.

As to the matters pleaded in subparagraphs (a) - (c) above, the applicants rely upon the 6 May Announcement at p. 2 (MIN.500.001.1087).

As to the matters pleaded in subparagraphs (d) – (l) above, the applicants rely upon the 6 May Presentation Slides at pp. 19, 29, 30, 31 and 50 (MIN.500.001.0939).

As to the matters pleaded in subparagraph (m) above, the applicants rely upon:

(a) the 6 May Presentation Slides at p. 29 (MIN.500.001.0939); and

(b) transcript of the 6 May Presentation at pp. 14 and 24 (MIN.500.001.0827).

As to the matters pleaded in subparagraphs (n) – (w) above, the applicants rely upon the transcript of the 6 May Presentation at pp. 4, 11, 21, 23, 28, 29, 34, 38, 39 and 99 (MIN.500.001.0827).

21A. By reason of the statements made in the 6 May Announcement, 6 May Presentation Slides, 6 May Media Releases and the 6 May Presentation pleaded in para [21] above, WOW fully disclosed and/or the Affected Market (defined in para [23] below) inferred:

(a) the Guidance Options Information;

(b) the Guidance Information (referred to in para [28]);

- (c) the unreliability of the FY15 Earnings Guidance;
- (d) the unreliability of the February 2015 Downgrade; and/or
- (e) the February Growth Information.

Particulars

Particulars will be provided following expert evidence.

22. Following the disclosures in the 6 May Announcement, 6 May Presentation Slides, 6 May Media Releases and the 6 May Presentation of the Wrong Metrics Information, the price of WOW Shares declined significantly.

Particulars

The price of WOW Shares:

- (a) *declined from a closing price of \$29.63 on 5 May 2015 to a closing price of \$28.14 on 6 May 2015; and*
- (b) *declined further to a closing price of \$27.57 on 7 May 2015.*

G.L. FY15 Guidance Representation Contravention

23. On 29 August 2014, ~~22 September 2014,~~ 3 November 2014 and 27 November 2014, by ~~making and repeating the FY15 Earnings Guidance in the 29 August 2014 Announcements, Woolworths Ltd Q1 2015 Sales Call and the AGM Statements,~~ WOW represented to its intended audience, which relevantly included investors and potential investors in WOW Shares (**Affected Market**), that:

- (a) it expected to achieve NPAT of between \$2,459.7 million and \$2,623.3 million in FY15; and

Particulars

~~The representation was express and conveyed in each of the 29 August 2014 Announcements, Woolworths Ltd Q1 2015 Sales Call and AGM Statements.~~

- (aa) it could achieve the FY15 Earnings Guidance and NPAT of between \$2,459.7 million and \$2,623.3 million in FY15 while:

- (i) delivering its longer term plans to achieve sustainable growth and enhanced shareholder value through a focus on the Four Strategic Pillars; and
 - (ii) remaining competitive on price; and
- (b) it had reasonable grounds to expect that it would achieve NPAT of between \$2,459.7 million and \$2,623.3 million in FY15;
- (individually and together, the “**FY15 Guidance Representation**”).

Particulars

The representation referred to in subparagraph (a) above was partly express and partly implied. Insofar as it was express and implied it was conveyed in each of the 29 August 2014 Announcements (MIN.900.003.0001; MIN.500.001.0047), FY14 Annual Report (MIN.500.001.0124), Woolworths Ltd Q1 2015 Sales Call (MIN.500.001.0360) and AGM Statements (MIN.500.001.0375; MIN.500.001.0380) by the reference to 4-7% NPAT growth on FY14 NPAT.

The representation referred to in subparagraph (aa) above was partly express and partly implied. Insofar as it was express and implied it was conveyed in:

- (a) the following statements made by O'Brien (in relation to (i) and (ii)) and Jegen (in relation to (iii)) during the 29 August 2014 Analyst Presentation (MIN.500.001.0047):
 - (i) “What's driving that result continues to be the four strategic priorities that I've been talking about now for three years. It's virtually the three year anniversary of the four priorities and they're as important to our business today and will be as they've ever been.”;
 - (ii) “We remain wed to the strategic priorities that have driven our business for the last three years. There is much more to do in respect to fully leveraging those priorities and you'll see evidence of that as we move forward.”; and
 - (iii) “... we measure every single week 4000 prices. That's significantly more robust than any reporting I've seen done in the media what you're referring to. And on those 4000 prices

every single week we're the lowest price supermarket in Australia, and have ever been and will be.”;

(b) the following statements made by O'Brien in the CEO Address to the 2014 Annual General Meeting held on 27 November 2014 (MIN.500.001.0375):

(i) “It is clear that the Strategic Priorities we laid down in November 2011 are delivering sustainable growth in our business.”;

(ii) “We have made good progress in our core Food and Liquor business and we are investing in opportunities for future growth, especially Online.”;

(iii) “Our Company is, and has always been, a long term growth company.”; and

(iv) “Today, I have every confidence that our strategy will continue to deliver growth and solid shareholder returns, with consistent, reliable financial performance.”; and

(c) the following statements made by O'Brien in the Woolworths Ltd Q1 2015 Sales Call (MIN.500.001.0360):

(i) “we've got the right sort of prices in our food business from an actual competitiveness point of view”;

(ii) “We've got to make sure our prices are right, and they are.”;
and

(iii) “[it's] true to say that whether it be foreground or background pricing we're in good shape. And the 'Cheap Cheap' campaign has Tjeerd and his team making sure that that's the case and consistently the case.”;

The representation referred to in subparagraph (b) above was implied by reason of the fact that WOW published its expected NPAT result in company documents released to the market by means of the ASX company announcements platform and WOW knew or ought to have known that investors and potential investors in WOW Shares may rely upon the

statements and forecasts in those documents in making decisions about whether to acquire or retain WOW Shares.

24. The FY15 Guidance Representation was a continuing representation from 29 August 2014 until 27 February 2015.
25. In so far as the FY15 Guidance Representation was a representation as to a future matter or future matters, WOW had no reasonable basis for making it, and the applicants rely on:
- (a) s 12BB(1) of the *ASIC Act*;
 - (b) s 769C of the *Corporations Act*; and/or
 - (c) s 4 of the *Australian Consumer Law (ACL)*.

Particulars

The Applicants repeat:

- (a) *the Unachievable FY15 Earnings Guidance Information;*
- (b) *the Insufficient Basis for FY15 Earnings Guidance Information;*
- (c) *the August No Confidence Information;*
- (d) *the September Unmaintainable FY15 Earnings Guidance Information;*
- (e) *the September No Confidence Information;*
- (f) *the 3 November Unmaintainable FY15 Earnings Guidance Information;*
- (g) *the 3 November No Confidence Information;*
- (h) *the 27 November Unmaintainable FY15 Earnings Guidance Information;*
- (i) *the 27 November Unrealistic FY15 Earnings Guidance Information;*
- (j) *the Guidance Options Information; and/or*
- (k) *the February Growth Information.*

~~*the matters pleaded in paras [17], [18] and [21] above.*~~

26. The FY15 Guidance Representation, from 29 August 2014 to 27 February 2015, was misleading or deceptive or likely to mislead or deceive.

Particulars

The applicants repeat the matters pleaded in paras [2517], [18] and [21] above.

27. In the premises, by making and/or maintaining the FY15 Guidance Representation, WOW engaged in conduct 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*,
- (FY15 Guidance Representation Contravention).**

H.M. Guidance Information Contravention

28. By reason of:
- (a) the Unachievable FY15 Earnings Guidance Information, the Insufficient Basis for FY15 Earnings Guidance Information, the August No Confidence Information and/or the Guidance Options Information, by no later than 29 August 2014;
 - (b) further and alternatively, the September Unmaintainable FY15 Earnings Guidance Information and/or the September No Confidence Information, by no later than 22 September 2014;
 - (c) further and alternatively, the 3 November Unmaintainable FY15 Earnings Guidance Information and/or the 3 November No Confidence Information, by no later than 3 November 2014;
 - (d) further and alternatively, the 27 November Unmaintainable FY15 Earnings Guidance Information and/or the 27 November Unrealistic FY15 Earnings Guidance Information, by no later than 27 November 2014.

~~the matters pleaded and particularised in paras [17] and/or [21] above, by no later than 1 December 2014, or alternatively 2 January 2015,~~ WOW was aware or ought to have been aware, (within the meaning of *Listing Rule* 19.12), and it was the fact, that it did not have a reasonable basis for the FY15 Earnings Guidance (**Guidance Information**).

Particulars

The applicants repeat the particulars to para [25].

29. The Guidance Information was at all times between 29 August 2014 (alternatively 22 September 2014, alternatively 3 November 2014, alternatively 27 November 2014) ~~1 December 2014 (alternatively 2 January 2015)~~ and 6 May 2015~~27 February 2015~~, information concerning WOW:
- (a) that was not generally available within the meaning of s 676 of the *Corporations Act*;
 - (b) that a reasonable person would expect to have a material effect on the price or value of WOW Shares within the meaning of *Listing Rule 3.1* and s 674 of the *Corporations Act*;
 - (c) that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of WOW Shares within the meaning of s 677 of the *Corporations Act*;
 - (d) which affected the assessment of the performance of WOW and the likely future performance of WOW; and
 - (e) that was material to the assessment of the value of WOW and the appropriate price for WOW Shares.
30. WOW did not tell the ASX the full Guidance Information at any time prior to 6 May 2015 ~~27 February 2015~~.
31. By reason of the matters pleaded in paras [28] to [30] above, WOW contravened s 674(2) of the *Corporations Act* by not informing the ASX of the Guidance Information by 29 August 2014 (alternatively 22 September 2014, alternatively 3 November 2014, alternatively 27 November 2014) ~~1 December 2014, or alternatively 2 January 2015~~ (**Guidance Information Contravention**).
32. The Guidance Information Contravention was a continuing contravention until 6 May 2015~~27 February 2015~~.

I.N. Necessary Further Investment Guidance Options Information Contravention

33. The ~~Necessary Further Investment Guidance Options~~ Information was, at all times between 29 August 2014 (alternatively 22 September 2014, alternatively 3 November 2014, alternatively 27 November 2014)~~1 December 2014~~ and 6 May 2015~~27 February 2015~~, information concerning WOW:
- (a) that was not generally available within the meaning of s 676 of the *Corporations Act*;
 - (b) that a reasonable person would expect to have a material effect on the price or value of WOW Shares within the meaning of *Listing Rule* 3.1 and s 674 of the *Corporations Act*;
 - (c) that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of WOW Shares within the meaning of s 677 of the *Corporations Act*;
 - (d) which affected the assessment of the performance of WOW and the likely future performance of WOW; and
 - (e) that was material to the assessment of the value of WOW and the appropriate price for WOW Shares.
34. WOW did not tell the ASX the ~~Necessary Further Investment~~ full Guidance Options Information at any time prior to 6 May 2015~~27 February 2015~~.
35. By reason of the matters pleaded in paras [33] and [34] above, WOW contravened s 674(2) of the *Corporations Act* by not informing the ASX of the ~~Necessary Further Investment~~ Guidance Options Information by 29 August 2014 (alternatively 22 September 2014, alternatively 3 November 2014, alternatively 27 November 2014)~~1 December 2014~~ (**Necessary Further Investment Guidance Options Information Contravention**).
36. The ~~Necessary Further Investment~~ Guidance Options Information Contravention was a continuing contravention until 6 May 2015~~27 February 2015~~.

O. February Growth Information Contravention

36A. The February Growth Information was, at all times between 27 February and 6 May 2015, information concerning WOW:

- (a) that was not generally available within the meaning of s 676 of the *Corporations Act*;
- (b) that a reasonable person would expect to have a material effect on the price or value of WOW Shares within the meaning of *Listing Rule 3.1* and s 674 of the *Corporations Act*;
- (c) that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of WOW Shares within the meaning of s 677 of the *Corporations Act*;
- (d) which affected the assessment of the performance of WOW and the likely future performance of WOW; and
- (e) that was material to the assessment of the value of WOW and the appropriate price for WOW Shares.

36B. WOW did not tell the ASX the February Growth Information at any time prior to 6 May 2015.

36C. By reason of the matters pleaded in paras [18A] and [36A] to [36B] above, WOW contravened s 674(2) of the *Corporations Act* by not informing the ASX of the February Growth Information by 27 February 2015 (**February Growth Information Contravention**).

36D. The February Growth Information Contravention was a continuing contravention until 6 May 2015.

P. February Growth Representation Contravention

36E. On 27 February 2015, by the February 2015 Downgrade, WOW represented to the Affected Market that:

- (a) it expected to achieve NPAT growth towards the lower end of the current analyst NPAT growth forecast range for FY15 of 1.8-6.6%; and

- (b) it could achieve NPAT growth towards the lower end of the current analyst NPAT growth forecast range for FY15 of 1.8-6.6% while delivering its longer term plans to achieve sustainable growth and enhanced shareholder value through a focus on the Four Strategic Pillars; and
- (c) it had reasonable grounds to expect that it would achieve NPAT growth towards the lower end of the current analyst NPAT growth forecast range for FY15 of 1.8-6.6%.

(individually and together, the “February Growth Representation”).

Particulars

The representation referred to in subparagraph (a) above was partly express and partly implied. Insofar as it was express and implied it was conveyed in each of the 27 February 2015 Results Presentation (MIN.500.001.0515), 27 February 2015 Results Announcement (MIN.500.001.0488) and 27 February 2015 Analyst Presentation (MIN.500.001.0463).

The representation referred to in subparagraph (b) above was partly express and partly implied. Insofar as it was express and implied it was conveyed in each of the 27 February 2015 Results Presentation (MIN.500.001.0515), 27 February 2015 Results Announcement (MIN.500.001.0488) and 27 February 2015 Analyst Presentation (MIN.500.001.0463).

The representation referred to in subparagraph (c) above was implied by reason of the fact that WOW published its expected NPAT result in company documents released to the market by means of the ASX company announcements platform and WOW knew or ought to have known that investors and potential investors in WOW Shares may rely upon the statements and forecasts in those documents in making decisions about whether to acquire or retain WOW Shares.

36F. The February Growth Representation was a continuing representation from 27 February 2015 until 6 May 2015.

36G. In so far as the February Growth Representation was a representation as to a future matter or future matters, WOW had no reasonable basis for making it, and the applicants rely on:

- (a) s 12BB(1) of the ASIC Act;

(b) s 769C of the *Corporations Act*; and/or

(c) s 4 of the *ACL*.

Particulars

The applicants repeat the February Growth Information.

36H. The February Growth Representation, from 27 February 2015 to 6 May 2015, was misleading or deceptive or likely to mislead or deceive.

Particulars

The applicants repeat the matters pleaded in para [36G].

36I. In the premises, by making and/or maintaining the February Growth Representation, WOW engaged in conduct 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*.

(February Growth Representation Contravention).

J. Wrong Metrics Information Contravention

~~37. By reason of the matters pleaded and particularised in para [21] above, by no later than 2 January 2015, WOW was aware, within the meaning of *Listing Rule 19.12*, of the Wrong Metrics Information.~~

~~38. The Wrong Metrics Information was, at all times between 2 January 2015 and 6 May 2015, information concerning WOW:~~

~~a. that was not generally available within the meaning of s 676 of the *Corporations Act*;~~

~~b. that a reasonable person would expect to have a material effect on the price or value of WOW Shares within the meaning of *Listing Rule 3.1* and s 674 of the *Corporations Act*;~~

~~c. that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of WOW Shares within the meaning of s 677 of the *Corporations Act*;~~

- d. ~~which affected the assessment of the performance of WOW and the likely future performance of WOW; and~~
- e. ~~that was material to the assessment of the value of WOW and the appropriate price for WOW Shares.~~

- 39. ~~WOW did not tell the ASX the Wrong Metrics Information at any time prior to 6 May 2015.~~
- 40. ~~By reason of the matters pleaded in paras [37] to [39] above, WOW contravened s 674(2) of the *Corporations Act* by not informing the ASX of the Wrong Metrics Information by 2 January 2015 (**Wrong Metrics Information Contravention**).~~
- 41. ~~The Wrong Metrics Information Contravention was a continuing contravention until 6 May 2015.~~

K-Q. Contraventions Caused Loss

- 42. During the Relevant Period, the applicants and Group Members each entered into contracts to acquire an interest in WOW Shares in the Affected Market, being:
 - (a) a market regulated by, *inter alia*, ss 674(2) and 1041H of the *Corporations Act*, Rule 3.1 of the *Listing Rules*, s 12DA of the *ASIC Act*, and s 18 of the *ACL*;
 - (b) a market in which the FY15 Guidance Representation and/or February Growth Representation had been made, and in which a reasonable person would expect the FY15 Guidance Representation and/or February Growth Representation to have a material effect on the price of WOW Shares;
 - (c) further or alternatively to para (b), a market to which the Guidance Information, the ~~Necessary Further Investment Guidance Options~~ Information and the ~~Wrong Metrics Information February Growth Information~~ had not been disclosed and in which a reasonable person would expect the disclosure of that information to have a material effect on the price or value of WOW Shares; and
 - (d) a market in which the decreases in the price of WOW Shares referred to in:
 - (i) para [19] above were a result of the release to the market of information which had not been previously revealed because of the FY15 Guidance Representation Contravention, Guidance Information

Contravention and ~~Necessary Further Investment~~ Guidance Options Information Contravention (or any of them); and

- (ii) para [22] above were a result of the release to the market of information which had not been previously revealed because of the ~~Wrong Metrics Information Contravention~~ FY15 Guidance Representation Contravention, Guidance Information Contravention, Guidance Options Information Contravention, February Growth Information Contravention and February Growth Representation Contravention.

43. During the Relevant Period, the FY15 Guidance Representation Contravention, Guidance Information Contravention, ~~Necessary Further Investment~~ Guidance Options Information Contravention, February Growth Information Contravention and February Growth Representation Contravention and ~~Wrong Metrics Information Contravention~~ (together, the **Contraventions**) each caused the market price for WOW Shares to be substantially greater than:
- (a) their true value; and/or
 - (b) the market price that would have prevailed but for the Contraventions (or any of them).
44. Further or in the alternative to paras [42] and [43], in the decision to acquire interests in WOW Shares the applicants relied directly on the FY15 Guidance Representation and the February Growth Representation.
45. Further or in the alternative to paras [42] and [43], in the decision to acquire interests in WOW Shares some Group Members relied directly on the FY15 Guidance Representation and/or the February Growth Representation.
46. Further or in the alternative, the FY15 Guidance Representation and/or the February Growth Representation materially contributed to the decision of some Group Members to purchase WOW Shares.

L.R. Loss or Damage Suffered by the Applicants and Group Members

47. The applicants have suffered loss and damage in relation to their interests in WOW Shares by and resulting from the Contraventions (or any one or combination of the Contraventions).

Particulars

The loss suffered by the applicants will be calculated by reference to:

- (a) *the difference between the price at which they acquired their interests in WOW Shares during the Relevant Period and the true value of those interests; or*
- (b) *alternatively, the difference between the price at which they acquired their interests in WOW Shares during the Relevant Period and the market price that would have prevailed had the Contraventions not occurred; or*
- (c) *alternatively, on the days during the Relevant Period when the traded price of WOW Shares fell as a result of the disclosure of information the subject of the Contraventions, the quantum of that fall; or*
- (d) *alternatively, on the days after the Relevant Period when the traded price of WOW Shares fell as a result of the disclosure of information the subject of the Contraventions, the quantum of that fall.*

Particulars of the applicants' losses will be provided at the time of service of their evidence-in-chief and expert quantum evidence.

48. Group Members have suffered loss or damage in relation to their interests in WOW Shares by and resulting from the Contraventions (or any one or combination of the Contraventions).

Particulars

The losses suffered by Group Members will also be calculated in accordance with the particulars subjoined to para [47] above but are not particularised in this Statement of Claim. Particulars in relation to Group Members' losses will be obtained and provided following opt out, the determination of the applicants' claim and identified common issues at an initial trial and if and

when it is necessary for a determination to be made of the individual claims of those Group Members.

49. The applicants claim the relief specified in the application on their own behalf and on behalf of Group Members.

Date: 23 August 2019 ~~10-September-2018~~



Signed by Steven Foale
Lawyer for the Applicants

This pleading was prepared by Bernard Quinn and Robert Craig and Dion Fahey of Counsel.

GLOSSARY OF DEFINED TERMS

<u>Term</u>	<u>Paragraph Reference</u>	<u>Page Reference</u>
<u>29 August 2014 Analyst Presentation</u>	<u>11(b)</u>	<u>41</u>
<u>29 August 2014 Announcements</u>	<u>11</u>	<u>41</u>
<u>29 August 2014 Results Presentation</u>	<u>11(a)</u>	<u>41</u>
<u>3 November Internal Indicators</u>	<u>13A</u>	<u>59-60</u>
<u>3 November No Confidence Information</u>	<u>13C</u>	<u>69</u>
<u>3 November Unmaintainable FY15 Earnings Guidance Information</u>	<u>13B</u>	<u>68</u>
<u>27 November Internal Indicators</u>	<u>14A</u>	<u>70</u>
<u>27 November Unmaintainable FY15 Earnings Guidance Information</u>	<u>14B</u>	<u>76-7</u>
<u>27 November Unrealistic FY15 Earnings Guidance Information</u>	<u>14C</u>	<u>77</u>
<u>27 February 2015 Analyst Presentation</u>	<u>16(c)</u>	<u>80</u>
<u>27 February 2015 Results Announcement</u>	<u>16(b)</u>	<u>80</u>
<u>27 February 2015 Results Presentation</u>	<u>16(a)</u>	<u>80</u>
<u>6 May Announcement</u>	<u>20(a)</u>	<u>84</u>
<u>6 May Media Releases</u>	<u>20(c)</u>	<u>84</u>
<u>6 May Presentation</u>	<u>20(d)</u>	<u>85</u>
<u>6 May Presentation Slides</u>	<u>20(b)</u>	<u>84</u>
<u>ACL</u>	<u>25(c)</u>	<u>92</u>
<u>Affected Market</u>	<u>23</u>	<u>89</u>
<u>AGM Statements</u>	<u>14</u>	<u>69-70</u>
<u>ASX</u>	<u>2</u>	<u>3</u>
<u>August Internal Indicators</u>	<u>12A</u>	<u>41-2</u>
<u>August No Confidence Information</u>	<u>12E</u>	<u>50</u>
<u>Banducci</u>	<u>9D</u>	<u>6</u>

<u>Term</u>	<u>Paragraph Reference</u>	<u>Page Reference</u>
<u>Big W</u>	<u>9Z(c)</u>	<u>10</u>
<u>Broadbent</u>	<u>9Q</u>	<u>8</u>
<u>Bryant</u>	<u>9K</u>	<u>7</u>
<u>Budget Impact Information</u>	<u>9AY</u>	<u>40</u>
<u>Contraventions</u>	<u>43</u>	<u>100</u>
<u>Corporations Act</u>	<u>1(c)(i)</u>	<u>3</u>
<u>Cross</u>	<u>9U</u>	<u>9</u>
<u>Delivery Plan</u>	<u>12K(b)</u>	<u>56</u>
<u>Dower</u>	<u>9G</u>	<u>6</u>
<u>DSOH</u>	<u>9AC(e)(iv)</u>	<u>14</u>
<u>External Indicators</u>	<u>9AR</u>	<u>21-2</u>
<u>February 2015 Downgrade</u>	<u>18(c)</u>	<u>83</u>
<u>February Growth Information</u>	<u>18A</u>	<u>83</u>
<u>February Growth Information Contravention</u>	<u>36C</u>	<u>96</u>
<u>February Growth Representation</u>	<u>36E</u>	<u>96-7</u>
<u>February Growth Representation Contravention</u>	<u>36I</u>	<u>98</u>
<u>Financial Plan</u>	<u>9AB</u>	<u>12</u>
<u>First FY15 Guidance Assumption</u>	<u>15(a)</u>	<u>77</u>
<u>Four Strategic Pillars</u>	<u>9AA</u>	<u>11-2</u>
<u>FY14</u>	<u>10</u>	<u>40</u>
<u>FY14 Annual Report</u>	<u>12F</u>	<u>51</u>
<u>FY14 Increased Prices Information</u>	<u>9AT</u>	<u>32-3</u>
<u>FY14 NPAT</u>	<u>10</u>	<u>40</u>
<u>FY15 Budget</u>	<u>9AB(d)</u>	<u>12</u>
<u>FY15 Earnings Guidance</u>	<u>9AW</u>	<u>35</u>

<u>Term</u>	<u>Paragraph Reference</u>	<u>Page Reference</u>
<u>FY15 Guidance Representation</u>	<u>23</u>	<u>89-90</u>
<u>FY15 Guidance Representation Contravention</u>	<u>27</u>	<u>93</u>
<u>Gabriel</u>	<u>9E</u>	<u>6</u>
<u>Group Members</u>	<u>1</u>	<u>3</u>
<u>Guidance Information</u>	<u>28</u>	<u>93</u>
<u>Guidance Information Contravention</u>	<u>31</u>	<u>94</u>
<u>Guidance Maintenance Information</u>	<u>17(b)</u>	<u>80</u>
<u>Guidance Options Information</u>	<u>17</u>	<u>80-1</u>
<u>Guidance Options Information Contravention</u>	<u>35</u>	<u>95</u>
<u>Harper</u>	<u>9J</u>	<u>7</u>
<u>Hrdlicka</u>	<u>9T</u>	<u>9</u>
<u>Insufficient Basis for FY15 Earnings Guidance Information</u>	<u>12D</u>	<u>48</u>
<u>Jegen</u>	<u>9A</u>	<u>5</u>
<u>July Internal Indicators</u>	<u>9AX</u>	<u>35-6</u>
<u>Kourie</u>	<u>9F</u>	<u>6</u>
<u>Lam</u>	<u>9I</u>	<u>6</u>
<u>Listing Rules</u>	<u>4(d)</u>	<u>4</u>
<u>Macfarlane</u>	<u>9X</u>	<u>9</u>
<u>Mackay</u>	<u>9V</u>	<u>9</u>
<u>Marr</u>	<u>9C</u>	<u>5</u>
<u>Masters</u>	<u>9Z(c)</u>	<u>10</u>
<u>May Internal Indicators</u>	<u>9AS</u>	<u>27-9</u>
<u>McKinsey</u>	<u>9AH</u>	<u>17</u>
<u>Necessary Further Investment</u>	<u>17(a)</u>	<u>80</u>
<u>NPAT</u>	<u>9Z(a)</u>	<u>10</u>

<u>Term</u>	<u>Paragraph Reference</u>	<u>Page Reference</u>
<u>O'Brien</u>	<u>9B</u>	<u>5</u>
<u>Perkins</u>	<u>9S</u>	<u>9</u>
<u>Relative Price Perception</u>	<u>9AL</u>	<u>19</u>
<u>Relevant Period</u>	<u>1(a)</u>	<u>3</u>
<u>Retail Offer</u>	<u>9AF</u>	<u>16</u>
<u>Retail Offer Information</u>	<u>9AU</u>	<u>34</u>
<u>Revised Supermarkets Budget</u>	<u>9AV</u>	<u>35</u>
<u>Roberts</u>	<u>9H</u>	<u>6</u>
<u>Robinson</u>	<u>9O</u>	<u>7</u>
<u>Rossetto</u>	<u>9N</u>	<u>7</u>
<u>Saville Affidavit</u>	<u>9AD</u>	<u>15</u>
<u>Second FY15 Guidance Assumption</u>	<u>15(b)</u>	<u>77</u>
<u>September Internal Indicators</u>	<u>12H</u>	<u>51</u>
<u>September No Confidence Information</u>	<u>12J</u>	<u>55</u>
<u>September Unmaintainable FY15 Earnings Guidance Information</u>	<u>12I</u>	<u>54</u>
<u>Supermarkets</u>	<u>9Z(a)</u>	<u>10</u>
<u>Supermarkets Industry Information</u>	<u>9AP</u>	<u>20</u>
<u>Torrens</u>	<u>9L</u>	<u>7</u>
<u>Ullmer</u>	<u>9R</u>	<u>8</u>
<u>Unachievable Delivery Plan Information</u>	<u>12N</u>	<u>57</u>
<u>Unachievable Financial Plan and FY15 Budget Information ...</u>	<u>12B</u>	<u>46-7</u>
<u>Unachievable FY15 Earnings Guidance Information</u>	<u>12C</u>	<u>47</u>
<u>van Meurs</u>	<u>9M</u>	<u>7</u>
<u>Waters</u>	<u>9W</u>	<u>9</u>
<u>Woolworths Ltd Q1 2015 Sales Call</u>	<u>13</u>	<u>59</u>

<u>Term</u>	<u>Paragraph Reference</u>	<u>Page Reference</u>
<u>WOW</u>	<u>1(a)</u>	<u>3</u>
<u>WOW Board</u>	<u>9Y</u>	<u>10</u>
<u>WOW Officers</u>	<u>9P</u>	<u>7-8</u>
<u>WOW Shares</u>	<u>1(a)</u>	<u>3</u>

Certificate of lawyer

I Steven Mark Foale certify to the Court that, in relation to the Amended Statement of Claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 23 August 2019 ~~10 September 2018~~

A handwritten signature in black ink, appearing to read 'Steven Foale', written in a cursive style.

Signed by Steven Foale
Lawyer for the Applicants