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Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	VID758/2019
File Title:	WETDAL PTY LTD AS TRUSTEE FOR THE BLUECO TWO SUPERANNUATION FUND & ANOR v ESTIA HEALTH LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

SEAL OF THE FEDERAL COURT OF AUSTRALIA

AUSTRALIA

Warwick Soden

Dated: 11/11/2019 4:51:49 PM AEDT

Registrar

Important Information

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

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Amended Statement of claim

(*filed pursuant to paragraph 1 of the orders of Middleton J dated 4 November 2019*)

No. VID 758 of 2019

Federal Court of Australia

District Registry: Victoria

Division: General

Wetdal Pty Ltd (ACN 145 536 661) as trustee for the BlueCo Two Superannuation Fund & Anor (in accordance with the attached Schedule)

Applicants

Estia Health Limited (ACN 160 986 201)

Respondent

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A PRELIMINARY

A.1 The Applicants and the Group Members

1. This proceeding is commenced as a group proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the First Applicant on behalf of the BlueCo Two Superannuation Fund and by the Second Applicant on his own behalf, and by both Applicants on behalf of all other persons who or which:

   (a) at some time during the period from 12 August 2015 to 9.52AM on 6 October 2016 inclusive (**Relevant Period**):

      (i) acquired an interest in ordinary fully-paid shares in Estia Health Ltd (**Estia Shares**); or

      (ii) acquired long exposure to Estia Shares by entering into equity swap confirmations in respect of Estia Shares (**Estia Equity Swaps**); and

(b) have suffered loss or damage by or resulting from the conduct of the Respondent (**Estia**) pleaded in this Statement of Claim; and

(c) were not during any part of the Relevant Period, and are not as at the date of this Statement of Claim, any of the following:

(i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of Estia;

(ii) a related body corporate (as defined by s 50 of the Corporations Act) of Estia;

(iii) an associated entity (as defined by s 50AAA of the Corporations Act) of Estia;

(iv) an officer or a close associate (as defined by s 9 of the Corporations Act) of Estia; or

(v) a judge or the Chief Justice of the Federal Court of Australia or a Justice or the Chief Justice of the High Court of Australia,

(**Group Members**).

2. The Applicants acquired interests in Estia Shares during the Relevant Period.

Particulars

i) The Applicants entered into contracts to acquire Estia Shares on the following dates:

A) First Applicant (Wetdal Pty Ltd ATF BlueCo Two Superannuation Fund)

Date	**Trade Type**	**Volume**	**Price Per Security**	**Transaction Value**
22 March 2016	Buy	800	$6.00	$4,819.95
2 June 2016	Buy	800	$5.39	$4,331.95
30 August 2016	Buy	800	$3.81	$3,067.95
1 September 2016	Buy	1,000	$3.50	$3,516.35

B) Second Applicant (Ronald John Renton)

Date	**Trade Type**	**Volume**	**Price Per Security**	**Transaction Value**
14 September 2016	Buy	3,500	$3.17	$11,095.00

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

A.2 Estia

4. Estia is and at all material times was:

   (a) a company registered pursuant to the Corporations Act and capable of being sued;

   (b) a person within the meaning of s 1041H of the Corporations Act;

   (c) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);

   (d) a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:

      (i) s 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);

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

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

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

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

      (vi) s 14 of the *Fair Trading Act 1987* (SA);

      (vii) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT); and/or

      (viii) s 27 of the *Consumer Affairs and Fair Trading Act* (NT);

   (individually, or together, **Australian Consumer Law**).

5. At all material times, Estia was:

   (a) included in the official list of the financial market operated by the Australian Securities Exchange (**ASX**);

(b) an entity, the securities of which are ED securities for the purposes of s 111AE of the Corporations Act;

(c) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;

(d) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**); and

(e) obliged by ss 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it is, or becomes, aware of any information concerning Estia that a reasonable person would expect to have a material effect on the price or value of Estia Shares, tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply) (**Continuous Disclosure Obligations**).

6. At all material times, Estia was prohibited pursuant to:

(a) section 1041H of the Corporations Act and s 12DA of the ASIC Act, from engaging in conduct in relation to Estia Shares (being a financial product within the meaning of the Corporations Act and ASIC Act); and

(b) section 18 of the Australian Consumer Law, from engaging in conduct in trade or commerce;

that was misleading or deceptive or likely to mislead or deceive.

A.3 Relevant Estia personnel

7. Paul Gregersen (**Gregersen**) was, from 17 November 2014 to 16 September 2016, Estia's Managing Director and Chief Executive Officer.

8. Joe Genova (**Genova**) was, from 27 October 2014 to 29 August 2016, Estia's Chief Financial Officer.

9. Steven Boggiano (**Boggiano**) was:

(a) from 13 July 2015 to 30 June 2016, Estia's Director of Strategy;

(b) from 1 July 2016 to 29 August 2016, Estia's Chief Strategy Officer;

(c) from 29 August 2016 to the end of the Relevant Period, Estia's Acting Chief Financial Officer.

10. Norah Barlow (**Barlow**) was:

(a) from 17 November 2014 to the end of the Relevant Period, a non-executive director of Estia;

(b) from 16 September 2016 to the end of the Relevant Period, Estia's Acting Chief Executive Officer.

11. By reason of the matters pleaded at paragraphs 7 to 10, information of which any of Gregersen, Genova, Boggiano and/or Barlow (each being **Estia Officers**) became aware, or which ought reasonably to have come into their possession in the course of the performance of their respective duties as an officer of Estia was information of which Estia was aware (within the meaning of aware in ASX Listing Rule 19.12).

B ESTIA'S BUSINESS

B.1 Introduction

12. At all material times prior to and during the Relevant Period, Estia was a provider of residential aged care services in Australia, with facilities and operating places across the States of Victoria, South Australia, New South Wales and Queensland.

B.2 RADs

13. At all material times from 1 July 2014, and during the Relevant Period, residents entering Estia's residential aged care facilities who met the applicable means test (**Full-Paying Residents**) were:

(a) required to make an accommodation payment to assist with the capital costs of maintaining and upgrading aged care facilities; and

(b) could elect to make such accommodation payment in the form of:

(i) a Refundable Accommodation Deposit (**RAD**);

(ii) a Daily Accommodation Payment (**DAP**); or

(iii) a combination of both a RAD and a DAP; and

(c) had 28 days after entering care to decide which payment option they would use, failing which choice they must pay in the form of a DAP.

Particulars

i) Estia Prospectus dated <u>24 November</u> ~~3 December~~ 2014, pp.8, 38-39;

ii) Aged Care Act 1997 (Cth), s 52F.3(b), (e).

14. At all material times from 1 July 2014, and during the Relevant Period, RADs were:

(a) a lump sum payment made by a new Full-Paying Resident to an approved aged care facility provider in accordance with an accommodation agreement required to be entered into under the *Aged Care Act 1997* (Cth) (**AC Act**);

(b) refundable upon the new Full-Paying Resident leaving the care of that aged care facility provider (either by death or by transfer to another aged care provider), less any amounts permitted to be deducted from it under the AC Act;

(c) to be held by the aged care facility provider and used only for permitted uses specified in s 52N.1(2) of the AC Act, save that the aged care facility provider was permitted to retain any income derived from the RAD.

Particulars

i) AC Act, Part 3A.2 (s 52F.2 and Div 52J), Part 3A.3;

ii) Estia Prospectus dated <u>24 November</u> ~~3 December 2014~~, pp.38-39.

15. At all material times, DAPs were calculated as the maximum permissible interest rate set quarterly by the Australian Government multiplied by the RAD amount advertised by the residential aged care facility provider, divided by 365 (days).

16. Prior to the Relevant Period, Estia disclosed to the market of prospective investors in Estia Shares, that RADs:

(a) were a capital payment made by an incoming resident to the aged care provider;

(b) when refunded, were normally replaced with another RAD from an incoming Full-Paying Resident, typically of a higher amount;

(c) were able to be priced by aged care providers (including Estia) themselves (subject to the need to obtain regulatory approval for prices above $550,000), based on factors including the location and quality of the facility, the nature of the place offered (e.g. single room with ensuite bathroom vs multi-bed shared room), and the level and quality of services offered at the facility and resident demand; and

(d) were a key source of value for aged care providers (including Estia) because:

(i) any income (e.g. interest) generated from the RAD was retained by the provider;

(ii) when an incoming resident pays a RAD that is higher than the RAD refunded to an outgoing resident, it generates additional non-taxable cash flow for the provider (available to be used for the regulated permitted uses); and

(iii) they provide a source of interest free capital for expansion or debt repayment;

Particulars

i) Estia Prospectus dated 24 November ~~3 December~~ 2014, pp.38-39.

17. Prior to the Relevant Period, Estia disclosed to the market of prospective investors in Estia Shares that Estia's ability to meet its growth targets was dependent on its ability to identify and acquire suitable facilities, and that its acquisition strategy would be dependent on factors including the level of RADs held by Estia to fund such acquisitions.

Particulars

i) Estia Prospectus dated 24 November ~~3 December~~ 2014, p.111.

18. At all material times, prior to and during the Relevant Period, Estia operated its business on the basis that:

(a) RADs had the features pleaded in sub-paragraphs 16(a)-(d), and

(b) Estia's growth strategy was dependent on the level of RADs held by Estia to fund acquisitions of additional facilities; and

(c) RADs were a material driver of Estia's profitability.

B.3 Operating Revenue and ACFI

19. At all material times prior to and during the Relevant Period, residential aged care providers (including Estia) generated approximately 70% of their operating revenue from Australian Government funding (based on the care needs of residents and residents' assets and income) and the remaining 30% from residents.

Particulars

i) Estia Prospectus dated 24 November 2014, pp.9, 36

20. At all material times prior to and during the Relevant Period, the amount of funding which residential aged care providers (including Estia) derived from the Australian Government was worked out on a per-resident basis, and had two components:

    (a) a basic subsidy, worked out by conducting an Aged Care Assessment (**ACA**) where the care needs of the resident were assessed by the provider using the Aged Care Funding Instrument (**ACFI**), and then submitted to the Australian government for funding; and

    (b) a primary supplement, for specific additional support services required by particular residents.

Particulars

i) Estia Prospectus dated 24 November 2014, pp.36-37.

21. At all material times prior to and during the Relevant Period, a particular aged care resident's ACA could be reassessed by a provider using the ACFI, in accordance with Part 2.4 of the AC Act, if the resident's care needs changed significantly or the resident enters a new aged care service, but any such reassessment would need to be submitted to the Australian Government for approval of any funding increase.

Particulars

i) Estia Prospectus dated 24 November 2014, pp.36-37;
ii) AC Act, Part 2.4, ss 27.4(3) and 27.4(5).

B.4 Estia's 2015 acquisitions

22. At the time of Estia's initial public offering between 24 November and 3 December 2014, Estia owned, or had contracted to buy, 44 aged care facilities, with a total of 3,613 operating residential aged care places (**Beds**).

Particulars

i) *Estia Prospectus dated 24 November 2014, p.43.*

23. In or about February 2015, Estia acquired (with effect from May 2015) one aged care facility in Adelaide, South Australia, adding 80 Beds to Estia's portfolio and bringing Estia's total facilities to 45 with a total of 3,693 Beds.

Particulars

i) *Estia ASX Announcement "Half Year Results – Estia Health – 1H FY2015" dated 19 February 2015, p.1.*

24. In or about May 2015, Estia acquired four aged care facilities, adding 469 Beds to Estia's portfolio and bringing Estia's total facilities to 49, with a total of 4,127 Beds.

Particulars

i) *ASX Announcement, "Estia Acquires 4 New Aged Care Facilities" dated 5 May 2015.*

25. In or about July 2015, Estia acquired four aged care facilities in Victoria, adding 323 Beds to Estia's portfolio and bringing Estia's total facilities to 53, with 4,393 Beds.

Particulars

i) *ASX Announcement, "Estia Acquires 4 Aged Care Facilities in Victoria" dated 30 July 2015.*

26. In or about December 2015, Estia acquired Kennedy Health Care Group (**Kennedy**) comprising 8 facilities and 959 Beds, bringing Estia's total facilities to 66, with 5,690 Beds.

Particulars

i) *ASX Announcement, "Estia Health Acquires Kennedy Health Care Group" dated 7 December 2015.*

C RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES

C.1 24 November 2014 - Prospectus

27. On 24 November 2014, Estia (together with Estia SaleCo Ltd) issued, lodged with the Australian Securities and Investments Commission and publicly released a Prospectus in respect of the initial public offering of Estia Shares (**Prospectus**), which Prospectus was subsequently lodged with ASX on 3 December 2014 as part of Estia's pre-quotation disclosure.

28. In the Prospectus, Estia stated:

(a) Estia was established on 31 July 2014 via the merger of three residential aged care businesses, and as a combined group was positioned to benefit from its increased scale and access to capital, and will continue to invest in improving and growing its portfolio of facilities to meet the growing demand for residential aged care services (p.4);

(b) following completion of the offer contained in the Prospectus, Estia believed it would be well-positioned to benefit from opportunities to expand its existing facilities, build new facilities or acquire facilities to meet increasing demand for residential aged care services (p.4);

(c) on completion of the offer contained in the Prospectus, Estia would have no drawn debt and access to a number of funding sources, including the opportunity to increase the number and value of RADs, which sources Estia may use to fund its growth strategy (p.4);

(d) Estia's growth strategy was to continue to grow its earnings via:

(i) implementing best-practice operating procedures at existing and newly acquired facilities in order to increase occupancy and revenue;

(ii) acquiring single facilities or portfolios that meet Estia's acquisition criteria;

(iii) expanding and/or improving its existing facilities ("brownfield expansion");

(iv) developing new facilities in markets where acquisitions are not available or do not fit Estia's requirements and brownfield expansion is unable to meet the growing demand for services ("greenfield expansion");

(v) pursuing opportunities for strategic alliances or other corporate partnerships for the purpose of acquiring interests in, or jointly operating residential aged care facilities,

(p.10);

(e) Estia expected to fund its growth strategy from, in addition to operating earnings, a number of available capital sources including:

(i) capital inflows from RADs, in circumstances where Estia's current average advertised RAD was $310,000 as compared to the industry average RAD of $355,000, providing potential upside if management is able to move towards industry average RAD values; and

(ii) debt facilities, in circumstances where following completion of the offer in the Prospectus Estia expected to have $150 million of undrawn debt facilities in place (which would be used to the extent required to fund certain contracted acquisitions disclosed in the Prospectus but which were expected to complete after completion of the offer),

(p.10),

(f) Estia's pro forma FY15 forecasts were:

(i) revenue of $296.4M (an increase from $219M in FY14)

(ii) EBITDA of $70.2M (an increase from $46.9M in FY14);

(iii) EBIT of $60.6M (an increase from $38.4M in FY14); and

(iv) NPAT of $42.6M,

(p.12) (**Prospectus FY15 Forecasts**);

(g) residential aged care was an attractive and growing industry with a number of favourable attributes, including that:

(i) there was a fragmented industry structure creating opportunities for consolidation by larger providers with access to capital and the management skills and experience to operate large residential aged care facilities; and

(ii) there was access to interest free capital, in the form of RADs, which can be used to fund growth,

(p.13);

(h) Estia's management team was experienced in growing and successfully managing expansion of residential aged care businesses, and Estia had a history of expanding the number of places and facilities operated, this growth being achieved via acquisitions, expansion of existing facilities and development of new facilities (p.15);

(i) Estia had a conservative capital structure (including that as at 31 August 2014, 44% of places at Estia's facilities carried an accommodation bond or RAD), and this would support, inter alia, Estia's future growth (p.16);

(j) Estia's growth strategy included:

(i) to aspire to operate 10,000 places over time;

(ii) to supplement organic growth with acquisitions, brownfield developments, corporate partnerships and greenfield developments;

(iii) Estia's portfolio and the opportunities available for growth were expected to assist in securing capital to fund Estia's growth strategy, including the ability to increase the size of its RAD pool;

(iv) to increase the number of residents that are charged a RAD (following 1 July 2014), which, together with Estia's minimum advertised RAD price of $245,000, provided a substantial potential source of capital funding for regulated permitted purposes over time (including aged care facility acquisitions, brownfield developments and greenfield developments),

(pp.52, 54); and

(k) Estia had a track record of growing through acquisition, and believed there was a large pipeline of opportunities for it to continue to grow via acquisitions and generate returns (p.55).

29. In the Prospectus, Estia also stated:

(a) Estia regularly reviewed residents' care needs to ensure they are accurately assessed and documented, and improved documentation and compliance standards at recently acquired facilities may lead to some residents' care needs being reassessed, and the amount of Australian Government Funding received by Estia for services provided, changing (p.53); and

(b) historically, improved compliance standards had resulted in an increase in the basic subsidy received per occupied bed day (**ACFI Uplift**) by Estia between the first and sixth months of Estia ownership (from $130 to $149) (pp.53-54).

C.2 19 February 2015 – 1H15 ~~Pro Forma~~ Results

30. On 19 February 2015, Estia lodged with ASX and publicly released:

(a) an announcement entitled "Estia 1H FY2015 ~~Pro Forma~~ Results";

(b) an "Interim Condensed Consolidated Financial Report for the period ended 31 December 2014 ~~2015~~"; and

(c) a presentation entitled "Estia Health – Half Year Results 1H FY2015 (**1H15 Results Presentation**).

31. In the 1H15 Results Presentation, Estia stated that:

(a) Estia was on track to meet Prospectus pro forma NPAT, EBIT and revenue for FY2015 (p.1);

(b) Estia had strong cash flow with net RADs at $30.7M (pp.1, 4);

(c) Estia had successfully integrated 43 facilities into 8 networks, had successfully centralised key support functions in Melbourne, put a new leadership team in place (by recruiting support function leaders and by having State based and acquisition focussed operation leaders) and had fully implemented its IT systems across the group (pp.3, 22);

(d) Estia had achieved in 1H15:

(i) an average ACFI per occupied place day of $166 (compared to the Prospectus pro forma 1H15 forecast of $167);

(ii) a proportion of places bonded (penetration) of 46.8% (compared to the Prospectus pro forma 1H15 forecast of 46.9%); and

(iii) net RAD receipts of $30.7M (compared to the Prospectus 1H15 pro forma forecast of $18.1M),

(p.4);

(e) Estia's results were in line with the Prospectus FY15 Forecasts, and it was on track to meet them (pp.8, 22); and

(f) the payment preference in 1H15 in respect of the 176 new residents entering Estia's aged care facilities between 1 July 2014 and 31 December 2014 was:

(i) in respect of 116 of the 176 new residents, “RAD only”, the average accommodation charge for such persons being $314,409 (worked out by dividing the total RADs by the number of residents who agreed to pay RAD only);

(ii) in respect of 3 of the 176 new residents, “DAP only”, the average accommodation charge for such persons being $390,000 (worked out by dividing the total DAPs agreed by the number of residents who agreed to pay DAP only); and

(iii) in respect of 57 of the 176 new residents, a “combination” between RADs and DAPs, the average accommodation charge for such persons being $350,153 (worked out by dividing the value of the RAD paid plus the value of the DAP agreed by the number of residents who had agreed to pay combination),

(p.11).

C.3 12 August 2015 – FY15 Results

32. On 12 August 2015, Estia:

(a) lodged with ASX and publicly released:

(i) an announcement entitled “Estia Health Unaudited Full Year 2015 Results” (**FY15 Results Announcement**); and

(ii) a presentation entitled “Full Year Results – Estia Health – FY2015” (**FY15 Results Presentation**); and

(b) convened a call with market analysts, in which it presented and spoke to the FY15 Results Presentation (**FY15 Results Call**), in a manner likely to bring things said during it to the attention of the market of investors and potential investors in Estia Shares.

Particulars of (b)

i) The participants in the FY15 Results Call were: Gregersen and Genova (for Estia) and the following analysts: Shavarsh Bedrossian (UBS Securities Australia Ltd), George Gabriel (Wilson HTM Group Ltd), Andrew Goodsall (UBS Securities Australia Ltd), John Stavliotis (Morgan Stanley (Australia) Ltd), and Zara Lyons (CLSA Australia Pty Ltd);

ii) *The FY15 Results Call was transcribed, and the transcription was published by Factset CallStreet, LLC (**FY15 Results Transcript**).*

33. In the FY15 Results Presentation, Estia stated that:

(a) Estia had achieved in FY15:

(i) revenue of $297.5M (100.4% of the Prospectus Forecast of $296.4M);

(ii) EBITDA of $69.7M (99.3% of the Prospectus Forecast of $70.2M);

(iii) EBIT of $61.8M (102% of the Prospectus Forecast of $60.6M); and

(iv) NPAT of $44.6M (104.7% of the Prospectus Forecast of $42.6M),

(pp.2, 9);

(b) Estia had achieved in FY15:

(i) an average ACFI per occupied place day of $170 (compared to the Prospectus FY15 pro forma forecast of $170);

(ii) a proportion of places bonded (penetration) of 60.4% (compared to the Prospectus FY15 pro forma forecast of 48.6%); and

(iii) net RAD receipts of $88.5M (compared to the Prospectus pro forma FY15 forecast of $32.7M),

(p.3);

(c) the payment preference in FY15 in respect of the 735 new residents entering Estia's aged care facilities between 1 July 2014 and 30 June 2015 was:

(i) in respect of 630 of the 735 new residents (85.7%), "RAD only", the average accommodation charge for such persons being $348,656 (worked out by dividing the total RADs by the number of residents who agreed to pay RAD only);

(ii) in respect of 32 of the 735 new residents (4.3%), "DAP only", the average accommodation charge for such persons being $255,714 (worked out by dividing the total DAPs agreed by the number of residents who agreed to pay DAP only); and

(iii) in respect of 73 of the 735 new residents (10%), a "combination" between RADs and DAPs, the average accommodation charge for such persons being $339,326 (worked out by dividing the value of the RAD paid plus the value of the DAP agreed by the number of residents who had agreed to pay combination),

(p.11).

(d) Estia had, as at 30 June 2015, 48 facilities with a total of 4,010 Beds (p.17);

(e) Estia's medium term growth strategy of achieving 10,000 places (Beds) by FY 2020 involved:

(i) acquisition led growth of single-sites (500-1,000 places per annum) and one medium/large sized group in the period to FY2020; and

(ii) organic growth of 300+ places (Beds) in "brownfield areas" in the period to FY2020, and 500-1,000 places (Beds) in "greenfield areas" in the period to FY2020; and

(f) Estia's forecast FY16 NPAT growth rate would be over 20% (pp.2, 25) (which implied forecast FY16 NPAT would be over $53.5M) (**FY16 Guidance**).

34. In the FY15 Results Call:

(a) Genova stated that net cash from RADs was driven by consumer preference in RADs as an accommodation payment, which preference resulted in a net RAD receipt of $88.5M, which is 55% above Prospectus and consistent with the RAD Penetration increase to 60.4%, and this excess cash had supported Estia's overall growth that is being utilised for acquisitions during the year (FY15 Results Transcript, p.3);

(b) Gregersen stated that across Estia's high quality portfolio, Estia had seen a significant increase in consumers choosing to pay by RAD, or a preference for the RAD ahead of a daily payment, and the RAD goes towards the balance sheet, whereas the DAP is reported as income (FY15 Results Transcript, p.4);

(c) Gregersen stated that Estia anticipated that the RAD/DAP mix it was seeing now was likely to continue, as Estia had a churn of residence going forward, and it was very clear that consumers had a preference for RAD (FY15 Results Transcript, p.8);

(d) Gregersen stated that Estia had seen 98% and 95% of people paying part or wholly with the RAD, and Estia was moving very close to what may be a theoretical maximum of 65% (RAD penetration), given the ratio between non-concessional (that is, Full-Paying Residents) and concessional residents (FY15 Results Transcript, p.15).

C.4 7 December 2015 – Kennedy acquisition and updated FY16 guidance

35. On 7 December 2015, Estia:

(a) lodged with ASX and publicly released:

(i) an announcement entitled "Estia Health Acquires Kennedy Health Care Group" (**December 2015 Announcement**); and

(ii) a presentation entitled "Delivering on FY2020 Strategy" (**December 2015 Presentation**); and

(b) convened a call with market analysts, in which it presented and spoke to the December 2015 Presentation (**December 2015 Call**), in a manner likely to bring things said during it to the attention of the market of investors and potential investors in Estia Shares.

Particulars of (b)

i) The participants in the December 2015 Call were: Gregersen and Genova (for Estia) and the following analysts: Shavarsh Bedrossian (UBS Securities Australia Ltd), Craig Collie (Macquarie Securities (Australia) Ltd), George Gabriel (Wilson HTM Group Ltd), Zara Lyons (CLSA Australia Pty Ltd), John Stavliotis (Morgan Stanley (Australia) Ltd) and Martyn Jacobs (Patersons Securities Ltd);

*ii) The December 2015 Call was transcribed, and the transcription was published by Factset CallStreet, LLC (**December 2015 Transcript**).*

36. In the December 2015 Announcement and the December 2015 Presentation, Estia stated:

(a) Estia had acquired Kennedy, comprising 8 facilities and 959 operational places, bringing Estia's total operating places (Beds) by the end of FY16 to 5,690 (p.1, Slides 2, 6);

(b) Estia had acquired 1,690 new operating places in FY16, for a total price of $399.4M, funded through a combination of existing debt facilities and the issuance of approximately $50 million in Estia Shares (p.1, Slide 2);

(c) Estia was updating its anticipated pro forma NPAT growth for FY16 from more than 20% to more than 25% above that of FY15 (**Increased FY16 Guidance**) (pp.1-2, Slide 2) (which implied forecast FY16 NPAT would be at least approximately $56M);

(d) Estia's medium term growth strategy remained to target 10,000 places (Beds) by FY2020, which involved:

(i) acquisition led growth of single-sites (500-1,000 places per annum) and one medium/large sized group in the period to FY2020; and

(ii) organic growth of 300+ places (Beds) in "brownfield areas" in the period to FY 2020, and 500-1,000 places (Beds) in "greenfield areas" in the period to FY 2020,

(Slide 5);

(e) by the end of FY17, Estia anticipated organic growth of 300 places (Beds), such that Estia would have 5,990 places (Beds) (Slide 10);

(f) the acquisition of Kennedy was immediately EPS accretive because Estia's ACFI per occupied place per day was $170, whereas Kennedy's was $152, and Estia could generate up to $6M EBIT improvement from ACFI Uplift on an annualised basis (Slide 13); and

(g) after the Kennedy acquisition Estia on 1 February 2016, Estia would have $70M of undrawn debt available, and drawn debt facilities of $330M (Slide 16).

37. In the December 2015 Call:

(a) Genova stated that as Estia had demonstrated in the past, Estia had been able to increase ACFI through its diligent and automated processes around assessing care needs in a timely manner and ensuring the ACFI is aligned with the care needs that are being delivered. And therefore, Estia will see an opportunity to increase Kennedy's ACFI in line with Estia's current operations in terms of its rates per day (December 2015 Transcript, p.4);

(b) Genova stated that Kennedy's RAD penetration was lower than the Estia values (being about 26% in FY16 across all 1,690 Beds acquired in FY16 to date) with an average RAD held of $190,000, but Estia saw this as providing upside within the portfolio to increase RAD penetration and RAD pricing, and increase RAD cashflows (December 2015 Transcript, pp.4-5 and 6);

(c) Gregersen stated that the acquisition of Kennedy was immediately EPS accretive, and Estia retained funding available to look at other opportunities in the market, but as Estia crunched its numbers it saw a greater than 25% growth on its FY15 pro forma NPAT (December 2015 Transcript, p.5);

(d) Gregersen stated that Estia was settling the cash elements of the Kennedy acquisition 50% upon completion (in January 2016), 25% in July 2016 and 25% in September 2016, so that Estia retained the opportunity to continue to grow by acquisition in the coming six months (December 2015 Transcript, p.8);

(e) Gregersen stated that there was a window of acquisition through till the middle of 2018, and thereafter as RAD prices come down (because of the second churn on average in residents) Estia would see a recalibration in pricing to remain attractive going forward, such that Estia's capability to move quickly with organic development would become more important (December 2015 Transcript, pp.9-10);

(f) Genova stated that it was the additional acquisitions since the initial guidance given in August 2015 that had led to the increase by 5% in NPAT guidance (7 December 2015 Transcript, p.11); and

(g) Gregersen stated that the EBITDA upside of the Kennedy acquisition invariably comes from correctly assessing the care needs of residents, and the reality was that you only have to assess care needs in the first 30 days they come in, and thereafter you have an opportunity to repeat that every six or 12 months. As Estia rolls out its systems and reassesses the Kennedy residents, it expects to pick up any unclaimed subsidies through that process (7 December 2015 Transcript, p.13).

C.5 18-19 February 2016 – 1H16 Results

38. On 18 February 2016, Estia:

(a) lodged with ASX and publicly released:

(i) an announcement entitled "Estia Health FY2016 Half Year Results" (**1H16 Results Announcement**);

(ii) a presentation entitled "Half Year Results: Estia Health Ltd 1H FY2016" (**1H16 Results Presentation**);

(iii) an announcement entitled "Appendix 4D: Results for announcement to the market for the half year ended 31 December 2015"; and

(iv) its Consolidated Interim Financial Report for the Half Year ended 31 December 2015; and

(b) convened a call with market analysts, in which it presented and spoke to the 1H16 Results Presentation (**1H16 Results Call**), in a manner likely to bring things said during it to the attention of the market of investors and potential investors in Estia Shares.

Particulars of (b)

i) The participants in the 1H16 Results Call were: Gregersen and Genova (for Estia) and the following analysts: Shavarsh Bedrossian (UBS Securities Australia Ltd), David Low (Deutsche Bank AG (Australia), Zara Lyons (CLSA Australia Pty Ltd), Craig Collie (Macquarie Securities (Australia) Ltd), John Stavliotis (Morgan Stanley (Australia) Ltd), William Dunlop (Merrill Lynch Equities (Australia) Ltd, George Gabriel (Wilson HTM Group Ltd), Andrew Goodsall (UBS Securities Australia Ltd) and Martyn Jacobs (Patersons Securities Ltd);

*ii) The 1H16 Results Call was transcribed, and the transcription was published by Factset CallStreet, LLC (**1H16 Results Transcript**).*

39. In the 1H16 Results Announcement and the 1H16 Results Presentation, Estia stated that:

(a) Estia had achieved in 1H16:

(i) revenue of $196.2M, up 43% over 1H15 (and compared to the pro forma 1H16 forecast of $168.8M);

(ii) pro forma EBITDA of $39.7M, up 20% over 1H15 (and compared to the pro forma 1H16 forecast of $41.9M);

(iii) pro forma EBIT of $34M, up 19% over 1H15 (compared to the pro forma 1H16 forecast of $37.2M);

(iv) pro forma NPAT of $23.0M, up 16% over 1H15 (and compared to the pro forma 1H16 forecast of $26.3M),

(p.1, Slides 7,10, 29);

(b) Estia had achieved in 1H16:

(i) an average ACFI per occupied place day of $176-$184 (compared to the 1H15 pro forma actual of $151-$167);

(ii) a proportion of places bonded (penetration) of 59.6% (compared to the 1H15 pro forma actual of 46.8%); and

(iii) net RAD receipts of $33.8M (compared to the 1H15 pro forma actual of $30.7M),

(Slide 4);

(c) Estia had, as at 31 December 2015, 69 facilities with a total of 5,921 Beds (p.1, Slide 6);

(d) the payment preference in 1H16 in respect of the 386 new residents entering Estia's aged care facilities between 1 July 2015 and 31 December 2015 was:

(i) in respect of 336 of the 386 new residents (87.0%), "RAD only", the average accommodation charge for such persons being $368,943 (worked out by dividing the total RADs by the number of residents who agreed to pay RAD only);

(ii) in respect of 19 of the 386 new residents (4.9%), "DAP only", the average accommodation charge for such persons being $229,922 (worked out by dividing the total DAPs agreed by the number of residents who agreed to pay DAP only); and

(iii) in respect of 31 of the 386 new residents (8.1%), a "combination" between RADs and DAPs, the average accommodation charge for such persons being $324,987 (worked out by dividing the value of the RAD paid plus the value of the DAP agreed by the number of residents who had agreed to pay combination),

(Slide 12);

(e) Estia's medium term growth strategy of achieving 10,000 places (Beds) by FY 2020 involved:

(i) acquisition led growth of single-sites (500-1,000 places per annum) and one medium/large sized group in the period to FY2020; and

(ii) organic growth of 300+ places (Beds) in "brownfield areas" in the period to FY2020, and 500-1,000 places (Beds) in "greenfield areas" in the period to FY2020,

but the government signalling of policy reform supported the strategy of switching from acquisition-led growth to growth through development, and Estia's current development plans ~~to~~ deliver 7,027 <u>of the 10,000 </u>Beds ~~by FY 2020~~ (Slides 18, 21, 27);

(f) Estia had a strong organic growth pipeline with more than 1,100 net new Beds to be delivered before the end of FY 2020, and Estia had repeatedly talked about switching from being acquisition-led to growing through organic development as it approached FY2020, and its detailed plans reinforced its commitment to this strategy (pp.1-3);

(g) Estia's forecast for FY16 was EBITDA of greater than $95M and NPAT of greater than $56M (**Reaffirmed Increased FY16 Guidance**) (p.1, Slides 7, 31);

(h) Estia was able to "*forecast with high degrees of certainty in our sector*" (**Express Forecasting Reliability Statement**) (p. 2); and

(i) as at 31 December 2015, Estia had:

(i) net debt of $100.7M and undrawn facilities of $103.5M to fund its ongoing operations and future growth (p.2);

(ii) an overall RAD penetration of around 60% of residents, and anticipated further significant cash growth from the penetration and value of RADs received over the next 18 months which will be used to reduce net debt, (p.2).

40. In the 1H16 Results Call:

(a) Gregersen stated that successful integration had driven superior returns, and Estia's approach was all about reassessing resident needs, lifting revenue through both volume and price, through the occupancy, the accommodation and pricing (1H16 Results Call, p.3);

(b) Gregersen stated that when Estia looks forward and thinks about the integration of Kennedy Healthcare, the metrics, those key metrics are very, very similar to where we started with Padman and Cookcare, an occupancy overall of 88.4% and an ACFI of $163. So, as Estia look forward over the next 18 months, we plan to deliver similar returns with Kennedy (1H16 Results Call, p.4);

(c) Genova stated that in relation to FY16 guidance, Estia maintained its position in terms of growth, in terms of FY16 NPAT growth of over 25% of approximately $56 million (1H16 Results Call, p.10);

(d) Gregersen stated that Estia had seen virtually no movement in the proportion of people paying RADs, DAPs in combinations, and had seen a slight shift in preference between 1H15 and 2H15, but 1H16 had been consistent with 2H15; typically people are choosing RADs because Estia typically offer the first or second best choice of accommodation in the neighbourhood, and he did not see any short-term changes within that pattern (1H16 Results Call, pp.4, 19);

(e) Genova stated that Estia's RAD proportion and penetration had hovered around 60%, and the preferences had not changed very much either and were relatively consistent to what Estia had at 30 June 2015, but the expectation based on what Estia was seeing from the residents coming into Estia's facilities with a shift in terms of RAD to combination would still result in positive growth in RADs overall (1H16 Results Call, pp.7, 12);

C.6 19 April 2016 – Update

41. On 19 April 2016, Estia lodged with ASX and publicly released an announcement entitled "Inside Estia April 2016" (**April 2016 Presentation**).

42. In the April 2016 Presentation, Estia stated:

(a) by way of FY16 year to date update (prepared by Boggiano), that the integration of Estia's acquisitions "*remains on track*" (Slide 42); and

(b) in relation to FY16 (prepared by Genova), that for FY16 Estia was forecasting:

(i) EBITDA of greater than \$95M (as compared to the FY15 pro forma EBITDA of \$69.7M);

(ii) NPAT of greater than \$56M (as compared to the FY15 pro forma NPAT of \$44.6M),

(Slide 68),

(**Further Reaffirmed Increased FY16 Guidance**).

C.7 29 August 2016 – FY16 Results – corrective disclosure

43. On 29 August 2016, Estia:

(a) lodged with ASX and publicly released:

(i) an announcement entitled "Estia Health FY2016 Full Year Results" (**FY16 Results Announcement**);

(ii) a presentation entitled "Full Year Results: Estia Health Ltd for the period ended 30 June 2016" (**FY16 Results Presentation**);

(iii) an announcement entitled "Appendix 4E: Results for announcement to the market: preliminary final report for the year ended 30 June 2016";

(iv) its Annual Financial Report for the Year ended 30 June 2016; and

(b) convened a call with market analysts and institutional investors, in which it presented and spoke to the FY16 Results Presentation (**FY16 Results Call**), in a manner likely to bring things said during it to the attention of the market of investors and potential investors in Estia Shares,

(together **29 August 2016 Publications**).

Particulars of (b)

i) The participants in the FY16 Results Call were: Gregersen and Genova (for Estia); William Dunlop (Merrill Lynch Equities (Australia) Ltd, Zara Lyons (CLSA Australia Pty Ltd), Andrew Goodsall (UBS Securities Australia Ltd), David Low (Deutsche Bank AG (Australia), Tim Hannon (Newgate Capital Partners), John Stavliotis (Morgan Stanley (Australia) Ltd), David Stanton (CLSA Australia Pty Ltd and Aidan Brooksby (SG Hiscock & Co Ltd);

*ii) The FY16 Results Call was transcribed, and the transcription was published by Factset CallStreet, LLC (**FY16 Results Transcript**).*

44. In the 29 August 2016 Publications, Estia stated that:

(a) in FY16, it had achieved:

(i) revenue of $446.5M (up 50%);

(ii) "underlying EBITDA" of $92.7M (up 31%), but 2.4% below guidance; and

(iii) "underlying NPAT" of $51.8M (up 16%), but 7.5% below guidance,

(p.1, Slide 3);

(b) underlying NPAT was impacted by additional depreciation resulting from positive independent revaluations of purchased homes at the year-end, and higher than anticipated finance costs due to the timing of operating cash flows and cash investments in organic development program (p.1, Slide 7);

(c) in FY16:

(i) Estia had achieved net RAD receipts of $76.4M, which were used to fund growth, with an average incoming RAD of $362,800 and an average outgoing RAD of $252,800 (pp.1-2, Slides 3, 10); and

(ii) three quarters (76%) of new residents were electing to pay via RADs, as compared to 85.7% in FY15, this shift being due to the Kennedy portfolio's payment preference mix (p.3, Slide 10);

(d) the integration of Kennedy was tracking in line with plan, and had been immediately EPS accretive with an $8.2M EBITDA contribution in FY16 (p.2, Slide 13);

(e) over the past 12 months, Estia had completed its shift to an organic-led growth strategy, and Boggiano was now replacing Genova as CFO, and would oversee a cost-reduction program as Estia adapted to future changes in federal government aged care funding (pp.2-3);

(f) Estia anticipated that FY17 EBITDA would be at least 13% ahead of underlying FY16 EBITDA (**FY17 Guidance**) (p.4, Slide 19) (implying FY17 EBITDA of at least $104.75M), but with higher interest expense ($11-13M) and higher depreciation ($17-20M); and

(g) Estia had net debt of $223.7M (drawn facilities less available cash), and undrawn debt facilities of $76.5M as at the end of FY16, and expected to have a net leverage ratio of <2.5x at the end of FY17 (Slide 9).

C.8 Price effect of the 29 August 2016 Publications

45. Following the release of the 29 August 2016 Publications the price of Estia Shares fell significantly.

Particulars

i) On 29 August 2016, the price of Estia shares declined from a closing price of $4.654 on 26 August 2016 to a closing price of $3.878, on a volume of 12,422,276;

ii) On 30 August 2016, the price of Estia Shares further declined to a closing price of $3.2917, on a volume of 15,604,380;

iii) On 31 August 2016, the price of Estia Shares further declined to a closing price of $2.8057, on a volume of 12,311,657;

iv) On 1 September 2016, the price of Estia Shares further declined to a closing price of $2.7323, on a volume of 6,913,908;

v) On 2 September 2016, the price of Estia Shares further declined to a closing price of $2.5692, on a volume of 9,845,342;

vi) On 5 September 2016, the price of Estia Shares further declined to a closing price of $2.2674, on a volume of 18,972,291;

vii) Further particulars may be provided.

C.9 6 October 2016 – Further corrective disclosure

46. On 5 October 2016, Estia requested that Estia Shares be placed in trading halt pending the release of an announcement by Estia.

47. On 6 October 2016, Estia lodged with ASX and publicly released an announcement entitled "Market Update" (**October 2016 Announcement**).

48. In the October 2016 Announcement Estia stated:

(a) Estia had commenced a strategic review of operations with an emphasis on cost reductions and improved efficiencies (p.1);

(b) Estia was revising the FY17 Guidance, and now expected underlying EBITDA for FY17 to be between $86M and $90M (**Downgraded FY17 Guidance**) (p.1);

(c) the main reasons for the reduction from previous guidance are:

(i) lower projected occupancy growth rates, resulting in a reduced contribution of approximately $5.5M for FY17;

(ii) reappraisal of Estia's anticipated non-labour operating expenses in FY17, which it now expected to be approximately $11.7M higher than originally forecast,

(p.1);

(d) Estia proposed to change how it defined underlying EBITDA in response to market feedback, and would in future exclude all items of a one-off nature, and gains or losses on acquisitions and divestments, given that its strategy going forward for the foreseeable future would be based around organic growth (p.2)

(e) given Estia's strategy going forward would, for the foreseeable future, be based around organic growth and optimising returns from Estia's current suite of assets a number of costs relating to acquisitions and integrations which were excluded from underlying EBITDA in FY2016 would be included in underlying EBITDA from FY2017;

(f) the strategic review would be focussed on taking costs out of the business and improving margins further, and Estia had already initiated changes to its management team and anticipated further changes in the coming weeks as Estia strengthened management so they could concentrate on the efficient operation of Estia's core businesses and integrate systems across the group. The former CFO [that is, Genova] was no longer working with Estia, and Boggiano was continuing in his role as acting CFO; and

(g) Estia had paid $41M in cash to the vendors of Kennedy, following which Estia held cash of $11.7M and had undrawn capacity under its debt facilities, which matured in December 2018, of $43.5M, but the Kennedy vendors had agreed to subscribe for $15M of Estia Shares under the Dividend Reinvestment Program, the proceeds of which would be used for working capital purposes (p.3).

C.10 Price effect of the October 2016 Announcement

49. Following the release of the October 2016 Announcement the price of Estia Shares fell significantly.

Particulars

i) On 6 October 2016, the price of Estia Shares declined from a closing price of $3.121 on 4 October 2016 to a closing price of $3.027, on a volume of 3,232,234;

ii) On 7 October 2016, the price of Estia Shares further declined to a closing price of $2.5641, on a volume of 3,367,892;

iii) On 10 October 2016, the price of Estia Shares further declined to a closing price of $2.4528, on a volume of 1,986,245;

iv) On 11 October 2016, the price of Estia Shares further declined to a closing price of $2.30, on a volume of 1,637,336;

v) Further particulars may be provided.

D ESTIA'S CONDUCT

D.1 12 August 2015 representations, and continuing conduct

50. On 12 August 2015, Estia represented to the market of investors and potential investors in Estia Shares and Estia Swaps (**Affected Market**) that:

(a) in excess of:

(i) 85% of new Full-Paying Residents entering Estia's aged care facilities in FY15 had entered into an agreement to pay and would pay, or had paid, an accommodation payment in the form of RAD only; and

(ii) 95% of new Full-Paying Residents entering Estia's aged care facilities in FY15 had entered into an agreement to pay and would pay, or had paid, an accommodation payment which had a RAD component;

(b) the RAD payment preference metric published by Estia (as referred to in (a) above) (such percentage being the **RAD Metric**) was a meaningful guide to what RAD inflows Estia could reasonably be expected to achieve in future financial periods; and

(c) by reason of the number of ~~proportion of new~~ Full-Paying Residents entering Estia's aged care facilities who were electing to pay a RAD as a proportion of the number of all Full-Paying Residents entering Estia's aged care facilities, Estia was likely to continue to experience growth in RAD inflows which would be available to it as an interest free source of capital to fund Estia's growth strategy,

(each being an **August 2015 RAD Representation**).

Particulars

i) The representations pleaded in sub-paragraph (a) were partly express and partly implied:

A) To the extent they were express, refer to the FY15 Results Presentation (p.11), and the statements pleaded in sub-paragraph 33(c) and sub-paragraph 34(b), above;

B) To the extent they were implied, they are to be implied from the express statements referred to in (A) above, and the fact Estia did not qualify or correct the statements pleaded in sub-paragraph 31(f);

ii) The representation pleaded in sub-paragraph (b) was implied from the representation pleaded in sub-paragraph (a) above, in the context in which it was found, and in circumstances where Estia also made the statements in the FY15 Results Presentation (as pleaded in sub-paragraphs 33(c) to (f)) and in the FY15 Results Call (as pleaded at sub-paragraphs 34(a)to 34(d));

iii) The representation pleaded in sub-paragraph (c) was implied from the representations pleaded in sub-paragraph (a) above, and from the making by Estia of (and its failure to correct or qualify any of) the statements concerning RADs and Estia's growth strategy made in the Prospectus (as pleaded in sub-paragraphs 28(c) to 28(e), 28(g) to 28(k)), in the 1H15 Results Presentation (as pleaded in sub-paragraph 31(f)), in the FY15 Results Presentation (as pleaded in sub-paragraphs 33(c) to (f) and in the FY15 Results Call (as pleaded at sub-paragraphs 34(a)to 34(d)).

51. On 12 August 2015, Estia represented to the Affected Market that Estia would achieve NPAT growth of in excess of 20% in FY16 (**Express FY16 Guidance Representation)**.

Particulars

> i) *The Express FY16 Guidance Representation was express, and sub-paragraph 33(f) is repeated.*

52. On 12 August 2015, Estia represented to the Affected Market that Estia had reasonable grounds for making each of the August 2015 RAD Representations and the Express FY16 Guidance Representation (**August 2015 Basis Representation**).

Particulars

> i) *The August 2015 Basis Representation was implied, and is to be implied from the making by Estia of each of the August 2015 Basis Representation and the Express FY16 Guidance Representation, and the omission by Estia to say anything which qualified or contradicted those representations.*

53. On 12 August 2015, Estia represented to the Affected Market that:

    (a) Estia was able, from the information available to it, to provide a reasonably reliable guide as to the NPAT growth that Estia would experience in future financial periods (**Guidance Reliability Representation**);

    (b) there was no information known to Estia which created a material risk that guidance given by Estia was unreliable (**Guidance No Material Risk Representation**),

each being an **Implied Guidance Representation**).

Particulars

> i) *Each of the Implied Guidance Representations was implied, and is to be implied from the making by Estia of the August 2015 Basis Representation and the August 2015 Express FY16 Guidance Representation, and the omission by Estia to say anything which qualified or contradicted that representation.*

54. On 12 August 2015, Estia represented to the Affected Market that Estia's financial performance was to be underpinned by an acquisition-led growth strategy (**Growth Strategy Representation**).

Particulars

> i) *The Growth Strategy Representation was partly express and partly implied;*
>
> ii) *To the extent it was express, sub-paragraph 33(e) is repeated;*
>
> iii) *To the extent it was implied, (ii) above is repeated and it follows from what was there said that of the 6,000 Beds*

necessary to get to the FY2020 target of 10,000 Beds, only 800-1,300 (13.3-21.6%) was to come from organic growth; whereas 4700-5200 (79-86%) was to come from acquisition.

55. Estia did not say anything to modify, qualify or contradict:

(a) the August 2015 RAD Representations, at any time between 12 August 2015 and the end of the Relevant Period;

(b) the Express FY16 Guidance Representation, at any time between 12 August 2015 and 7 December 2015, on which date it gave the Increased FY16 Guidance (and thereby favourably modified the Express FY16 Guidance Representation, as pleaded in paragraph 57 below);

(c) the August 2015 Basis Representation, at any time between 12 August 2015 and the end of the Relevant Period;

(d) the Implied Guidance Representations, at any time between 12 August 2015 and 18 February 2016, when by reason of the Express Forecasting Reliability Statement, the Implied Guidance Representations were modified by being rendered partially express, but save for that were unmodified, unqualified and uncontradicted by Estia during the Relevant Period;

(e) the Growth Strategy Representation, at any time between 12 August 2015 and 7 December 2015, on which date it gave the Modified Growth Strategy Representation, as pleaded in paragraph 60 below.

56. By reason of the matters pleaded in paragraph 55, Estia continued to make each of:

(a) the August 2015 RAD Representations, from 12 August 2015 until the end of the Relevant Period;

(b) the Express FY16 Guidance Representation, from 12 August 2015 until 7 December 2015, on which date it gave the Increased FY16 Guidance (and thereby favourably modified the Express FY16 Guidance Representation, as pleaded in paragraph 57 below);

(c) the August 2015 Basis Representation, at all times between 12 August 2015 and the end of the Relevant Period;

(d) the Implied Guidance Representations, at all times after 12 August 2015 and during the Relevant Period, and impliedly repeated those representations on:

(i) 7 December 2015 when it gave the Increased FY16 Guidance (and thereby favourably modified the Express FY16 Guidance Representation, as pleaded in paragraph 57 below);

(ii) 18 February 2016, when it gave the Reaffirmed Increased FY16 Guidance (and thereby repeated, and favourably modified, the Express FY16 Guidance Representation, as pleaded in paragraph 57 below); and

(iii) 19 April 2016, when it gave the Further Reaffirmed Increased FY16 Guidance (and thereby repeated, and favourably modified, the Express FY16 Guidance Representation, as pleaded in paragraph 57 below).

D.2 7 December 2015 representations, and continuing conduct

57. On 7 December 2015, Estia represented to the Affected Market that Estia was expecting to achieve NPAT growth of in excess of 25% in FY16 (**Express Increased FY16 Guidance Representation)**.

Particulars

i) The Express Increased FY16 Guidance Representation was express, and paragraphs 36(c) and 37(c) are repeated.

58. On 7 December 2015, Estia represented to the Affected Market that Estia had reasonable grounds for making the Express Increased FY16 Guidance Representation (**December 2015 Basis Representation**).

Particulars

i) The ~~August~~ <u>December</u> 2015 Basis Representation was implied, and is to be implied from the making by Estia of each of the August 2015 RAD Representations and the Express FY16 Guidance Representation, and the omission by Estia to say anything which qualified or contradicted those representations, <u>together with the making by Estia of the Express Increased FY16 Guidance Representation.</u>

59. On 7 December 2015, Estia impliedly repeated to the Affected Market each of the Implied Guidance Representations, and represented that they were applicable to the Increased FY16 Guidance (and the Express Increased FY16 Guidance Representation).

Particulars

i) The repetition of each the Implied Guidance Representations was implied, and is to be implied from the making by Estia of the Express Increased FY16 Guidance Representation, and the December 2015 Basis Representation, and the omission by Estia to say anything which negatively qualified or contradicted either those representations, or the FY16 Guidance Representation and August 2015 Basis Representation.

60. On 7 December 2015, Estia represented to the Affected Market that Estia's financial performance was to be underpinned by an acquisition-led growth strategy until at least the middle of 2018 (**Modified Growth Strategy Representation**).

Particulars

i) The Modified Growth Strategy Representation was partly express and partly implied;

ii) To the extent it was express, sub-paragraphs 36(d) and 37(e) are repeated, in circumstances where the Growth Strategy Representation had been made as pleaded in paragraph 54 above;

iii) To the extent it was implied, particular (ii) above is repeated. It follows from what was there said that of the 6,000 Beds necessary to get to the FY2020 target of 10,000 Beds, only 800-1,300 (13.3-21.6%) was to come from organic growth; whereas 4700-5200 (79-86%) was to come from acquisition, and that the acquisition led growth was to continue until mid-2018.

61. Estia:

(a) expressly repeated the Express Increased FY16 Guidance Representation, and impliedly repeated the December 2015 Basis Representation on:

(i) 18 February 2016, when it gave the Reaffirmed Increased FY16 Guidance; and

(ii) 19 April 2016, when it gave the Further Reaffirmed Increased FY16 Guidance; and

(b) impliedly repeated the Modified Growth Strategy Representation on 18 February 2016, when it made the statement referred to at paragraph 39(e) without qualifying or expressly stating that it would shift to an organic-led growth strategy earlier than the middle of 2018.

Particulars of (b)

i) *Statement by Gregersen on 18 February 2016 that: "And turning to slide 18 which again is familiar to you all. Our medium-term growth strategy geared towards 10,000 places by financial year 2020, delivered through acquisition and organic growth. Those 10,000 places we think are important to deliver greater synergies through our approach of building concentration in the networks." (1H16 Results Transcript, page 8);*

ii) *Statement by Gregersen on 18 February 2016 that: "We said that – we've always said there's been a window of opportunity with acquisition, particularly for those single sites in the first four years post implementation of the reforms on July 1, 2014. So we expect to continue looking for single sites, but that will phase out and we'll see a strengthening of the organic program. And we are confident that we remain on track towards a target of 10,000 places by financial year 2020." (1H16 Results Transcript, page 10).*

62. Estia did not say anything to materially modify, qualify or contradict:

(a) the Express Increased FY16 Guidance Representation at any time between 7 December 2015 and 29 August 2016;

(b) the December 2015 Basis Representation at any time between 7 December 2015 and 29 August 2016, or alternatively the end of the Relevant Period;

(c) the Implied Guidance Representations (as applicable to the Express Increased FY16 Guidance Representation and the December 2016 Basis Representation Guidance), at any time between 7 December 2015 and 29 August 2016, or alternatively the end of the Relevant Period;

(d) the Modified Growth Strategy Representation at any time between 7 December 2015 and 29 August 2016 (notwithstanding the statements made by Estia on 18 February 2016, and sub-paragraph 61(b) is repeated).

Particulars of (d)

i) *Particulars (i) and (ii) to paragraph 61(b) are repeated.*

63. By reason of the matters pleaded in paragraph 61 and 62, Estia continued to make:

(a) the Express Increased FY16 Guidance Representation at all times from 7 December 2015 until 29 August 2016;

(b) the December 2015 Basis Representation at all times from 7 December 2015 until 29 August 2016, or alternatively the end of the Relevant Period;

(c) the Implied Guidance Representations (as applicable to the Express Increased FY16 Guidance Representation and the December 2016 Basis Representation Guidance), at all times between 7 December 2015 and 29 August 2016, or alternatively the end of the Relevant Period; and

(d) the Modified Growth Strategy Representation at all times between 7 December 2015 and 29 August 2016.

D.3 18 February 2016 representations, and continuing conduct

64. On 18 February 2016, Estia represented to the Affected Market that:

(a) in excess of:

(i) 87% of new Full-Paying Residents entering Estia's aged care facilities in 1H16 had entered into an agreement to pay and would pay, or had paid, an accommodation payment in the form of RAD only; and

(ii) 95% of new Full-Paying Residents entering Estia's aged care facilities in 1H16 had entered into an agreement to pay and would pay, or had paid, an accommodation payment which had a RAD component; and

(b) the RAD payment preference metric published by Estia, as referred to in (a) above (such percentage being the RAD Metric) was a meaningful guide to what RAD inflows Estia could reasonably be expected to achieve in future financial periods; and

(c) by reason of the number of ~~proportion of new~~ Full-Paying Residents entering Estia's aged care facilities who were electing to pay a RAD as a proportion of the number of all Full-Paying Residents entering Estia's aged care facilities, Estia was likely to continue to experience growth in RAD inflows which would be available to it as an interest free source of capital to fund Estia's growth strategy,

(each being a **February 2016 RAD Representation**).

Particulars

i) The representations pleaded in sub-paragraph (a) were partly express and partly implied;

A. *To the extent they were express, refer to the 1H16 Results Presentation (slide 13), and the statements pleaded in sub-paragraph 39(d) above;*

B. *To the extent they were implied, they are to be implied from the express statements referred to in (A) above, and the fact Estia did not qualify or correct the statement pleaded in sub-paragraph 39(d);*

ii) *The representation pleaded in sub-paragraph (b) was implied from the representation pleaded in sub-paragraph (a) above, in the context in which it was found, and in circumstances where Estia also made the statements in the 1H16 Results Announcement and 1H16 Results Presentation (as pleaded in sub-paragraphs 39(d), (e), (h) and the 1H16 Results Transcript (as pleaded in sub-paragraphs 40(c) and (d)) and in circumstances where Estia also previously made the statements in the FY15 Results Presentation (as pleaded in sub-paragraphs 33(c) to (f)) and in the FY15 Results Call (as pleaded at sub-paragraphs 34(a) to 34(d));*

iii) *The representation pleaded in sub-paragraph (b) (being a repetition of the August 2015 RAD Representation pleaded in sub-paragraph 50(b) above) was implied from the representations pleaded in sub-paragraph (a) above, and from the making by Estia of (and its failure to correct or qualify any of) the statements concerning RADs and Estia's growth strategy made in the Prospectus (as pleaded in paragraphs 28(c) to 28(e) and 28(g) to 28(k)), the 1H15 Results Presentation (as pleaded in sub-paragraph 31(f)), or the FY15 Results Presentation (as pleaded in sub-paragraphs 33(c) to (f)), the FY15 Results Call (as pleaded in sub-paragraphs 34(a) to 34(d)) or the 1H16 Results Announcement and 1H16 Results Presentation (as pleaded in sub-paragraphs 39(d), (e), (h) and the 1H16 Results Transcript (as pleaded in sub-paragraphs 40(c) and (d)).*

65. Estia did not say anything to modify, qualify or contradict the February 2016 RAD Representations, at any time between 18 February 2016 and the end of the Relevant Period.

66. By reason of the matters pleaded in paragraph 65, Estia continued to make each of the February 2016 RAD Representations, from 18 February 2016 until the end of the Relevant Period.

D.4 29 August 2016 representations, and continuing conduct

67. On 29 August 2016, Estia represented to the Affected Market that Estia was expecting to achieve FY17 EBITDA of at least 13% ahead of underlying FY16 EBITDA (**Express FY17 Guidance Representation**).

Particulars

i) *The Express FY17 Guidance Representation was express, and paragraphs 43 and 44(f) are repeated.*

68. On 29 August 2016, Estia represented to the Affected Market that Estia had reasonable grounds for making the Express FY17 Guidance Representation (**August 2016 Basis Representation**).

Particulars

i) *The August 2016 Basis Representation was implied, and is to be implied from the making by Estia of the Express FY17 Guidance Representation, and the omission by Estia to say anything which qualified or contradicted those representations.*

69. On 29 August 2016, Estia impliedly repeated to the Affected Market each of the Implied Guidance Representations, and represented that they were applicable to the FY17 Guidance (and the Express FY17 Guidance Representation).

Particulars

i) *The repetition of each the Implied Guidance Representations was implied, and is to be implied from the making by Estia of the FY17 Guidance Representation, and the August 2016 Basis Representation, and the omission by Estia to say anything which negatively qualified or contradicted either those representations, and the statements pleaded in sub-paragraph 44(b) which conveyed (in the context of the 29 August 2016 Publications as a whole) that the reason Estia had not met the FY16 Guidance were factors which had been taken into account by Estia promptly, and in determining the FY17 Guidance.*

70. Estia did not say anything to modify, qualify or contradict:

(a) the Express FY17 Guidance Representation;

(b) the August 2016 Basis Representation; or

(c) the Implied Guidance Representations (as applicable to the Express FY17 Guidance Representation and the August 2016 Basis Representation),

at any time between 29 August 2016, and the end of the Relevant Period.

71. By reason of the matters pleaded in paragraph 70, Estia continued to make each of the Express FY17 Guidance Representation, the August 2016 Basis Representation and the Implied Guidance Representations (as applicable to the Express FY17 Guidance

Representation and the August 2016 Basis Representation), from 29 August 2016 until the end of the Relevant Period.

E THE TRUE POSITION

E.1 The true RAD position as at 12 August 2015

72. In FY15, Estia derived the equivalent of a full RAD from significantly fewer than 630 new Full-Paying Residents in Estia's aged care facilities.

Particulars

On the assumption that all of Estia's RAD cash inflows in FY15 were all from RAD payments made by Estia's new Full-Paying Residents who had entered Estia's aged care facilities in FY15, then the following analysis applies:

i) *Estia's FY15 RAD cash inflows were $160,215,000: Estia FY15 Financial Statements, p.61;*

ii) *Estia's average incoming RAD in FY15 was $348,656~~700~~: FY15 Investor Presentation, p.11;*

iii) *(i) divided by (ii) equals 459.5.*

On the alternative assumption that Estia's RAD cash inflows in each six month period were all from RAD payments made by Full-Paying Residents who had entered Estia's aged care facilities in the six month period prior, the following analysis applies:

iv) *Estia's RAD cash inflows for 2HFY15 were $97,381,287: (Estia's FY15 RAD cash inflows were $160,215,387: Estia FY15 Financial Statements, p.61. Estia's 1HFY15 RAD cash inflows were $62,833,100: Estia 1HFY15 Financial Statements, p11. $97,381,900 is arrived at by subtracting $62,833,100 from $160,215,000);*

v) *Estia's RAD cash inflows for 1HFY16 were $96,523,205: Estia 1HFY16 Financial Statements, p.10;*

vi) *accordingly the total RAD cash inflows derived from residents entering Estia facilities during FY15 and electing to pay a RAD were likely to be approximately $193,904,492, being iv) plus v) above;*

vii) *Estia's average incoming RAD price from Full-RAD Paying Residents entering Estia facilities during FY15 was likely to be approximately $358,799 (being the average of $348,656: FY15 Investor Presentation, p.11 and $368,943: Estia 1HFY16 Investor Presentation, p 12); and*

viii) *vi) divided by vii) equals 540.4.*

The two analyses above adopt assumptions at each extreme end of the six month payment window, and yield a range between

459.5 and 540.4. Any number within this range is significantly fewer than 630. Given that residents were able to pay a RAD at any time within the six months window, the precise number of equivalent new Full-Paying Residents who paid the equivalent of a full RAD in FY15 is likely to fall within the above range but in any event, will be particularised following discovery.

73. By reason of the matters pleaded in paragraph 72, in FY15 significantly less than 85.7% of Estia's new Full-Paying Residents had paid, or had agreed to pay and would pay, the equivalent of a full RAD.

Particulars

i) *Estia disclosed that 735 new residents had entered Estia's aged care facilities in FY15;*

ii) *Particular (iii) to paragraph 72 is repeated;*

iii) *The ratio of 459.5 to 735 is 62.5%. The ratio of 540.4 to 735 is 73.5%.*

74. By reason of the matters pleaded in paragraphs 72 to 73, as at 12 August 2015 it was not the case that:

(a) there was strong evidence that Estia's customers had a preference for making their accommodation payment in the form of a RAD; and/or

(b) by reason of the proportion of new Full-Paying Residents entering Estia's aged care facilities who were electing to pay RADs, Estia was likely to continue to experience growth in RAD inflows which would be available to it as an interest free source of capital to fund Estia's growth strategy.

75. Further, or alternatively, by reason of the matters pleaded in paragraphs 72 to 73:

(a) the RAD Metric was not a meaningful guide to what RAD inflows Estia could reasonably be expected to achieve in future financial periods at all, and/or in the absence of concurrent express disclosure of the matters pleaded in paragraphs 72 to 73; and

(b) by reason of (a) above, it was not the case that by reason of the number of ~~proportion of new~~ Full-Paying Residents entering Estia's aged care facilities who were electing to pay a RAD as a proportion of the number of all Full-Paying Residents entering Estia's aged care facilities, Estia was likely to continue to experience growth in RAD inflows which would be available to it as an interest free source of capital to fund Estia's growth strategy.

E.2 The unreasonableness of Estia's FY16 Guidance and Increased FY16 Guidance

E.2.1 Estia's earnings assumptions

76. As at 12 August 2015, the achievability of Estia's FY16 Guidance depended on the following assumptions (**FY16 Earnings Assumptions**):

(a) that Estia would be able to achieve an ACFI Uplift at new facilities acquired by Estia during FY16, in line with Estia's historical performance in integrating acquired facilities; and

(b) that the achievement of an ACFI Uplift at such facilities would generate earnings during FY16.

Particulars

i) The matters pleaded at paragraph 36(c), 36(f), 37(a), 37(c), 37(d), 37(f) and 37(g) are referred to and repeated;

ii) December 2015 Presentation, Slide 13;

iii) Statement by Genova on 29 August 2016 that "in terms of the cash flow 2016 is [sic] the difference is the accrual that we had to make at the end of the year for the Kennedy portfolio, which has yet to be paid and assessed by the revenue authorities. So we have about an A$8 million – A$7 million accrual at the end of the year, and that's the difference between what's gone to the P&L versus what's gone to the cash flow" (December 2015 Transcript, page 12);

iv) Statement by UBS in an analyst report released 29 August 2016 that: "change in auditor accounting practice for ACFI accrual was unexpected and explained a large part of the $2m miss at EBITDA…auditors asked that the ACFI reclassification (largely in connection with Kennedy which had not been reclassified for >6mths) which Estia had submitted to the Commonwealth for the latter part of FY16 not be recognised until the Commonwealth accepted the upgrades and they were 'deemed to be collectable' (UBS, "FY16 Result - Picking through the miss on guidance", 29 August 2016).

77. Further, or alternatively, as at 7 December 2015, the achievability of Estia's Increased FY16 Guidance depended on the following assumptions (**FY16 Increased Earnings Assumptions**):

(a) that Estia would be able to achieve an ACFI Uplift at the new facilities acquired by Estia during FY16 (including, in particular, the Kennedy facilities); and

(b) that the achievement of an ACFI Uplift at such facilities (including, in particular, the Kennedy facilities) would generate earnings during FY16;

Particulars

i) *The particulars to paragraph 76 are repeated.*

E.2.2 Estia's New Operating Structure, and its effect on Estia's earnings assumptions

78. At all material times on and after 12 August 2015, the achievability of each of the FY16 Earnings Assumptions and the FY16 Increased Earnings Assumptions depended upon an assumption that Estia's historical performance in integrating acquired residential aged care facilities would be replicated for aged care facilities newly acquired by Estia in FY16 (**Continuing Historical Integration Pattern Assumption**).

Particulars

i) *The matters pleaded at sub-paragraph 29(b), 31(c), and paragraphs 36 and 37 are repeated;*

ii) *Statement by Genova on 7 December 2015 that: "Firstly, in ACFI, as we've demonstrated in the past, we've been able to increase ACFI through our diligent process and automated processes around assessing care needs in a timely manner and ensuring the ACFI is aligned with the care needs that are being delivered. And therefore, as you see below, we will see an opportunity to increase ACFI in line with our current operations in terms of our rates per day…The further opportunity around EPS is the ability to further integrate the businesses within the Estia portfolio. This is largely coming through from the integration plan around systems. We show integration through the ACFI improvement as recently just discussed" (December 2015 Transcript, p.4);*

iii) *Statement by Gregersen on 17 February 2016, that: "when we calculate through our post investment review, the return on capital for Padman and Cookcare, it's coming out above 25%, which we think is a great result, and as I say, testament to the hard work of the Estia family. When we look forward and we think about the integration of Kennedy Healthcare, the metrics, those key metrics are very, very similar to where we started with Padman and Cookcare, an occupancy overall of 88.4% and an ACFI of $163. (1H16 Results Transcript, pp. 3, 4);*

iv) *It may be inferred from the above statements, together with the fact that Estia repeated and confirmed its FY16 Guidance on 18 February 2016, that the Continuing Historical Integration Pattern Assumption was an assumption underpinning the FY16 Guidance.*

79. By in or about December 2015, Estia had developed and implemented a new system and management structure (the **New Operating Structure**) which had the following features:

(a) it had been developed primarily as a cost saving measure;

(b) it was different to the traditional regional based model; and

(c) it removed the accountability of individual homes within the Estia ~~G~~group.

Particulars

i) CEO's Address to the Estia AGM on 23 November 2016, at pp.3, 5;

ii) Estia "Strategic Review Update" dated 23 November 2016 pp.1-2.

80. Further, at all material times on and after the time when Estia determined to develop and implement the New Operating Structure (which time is presently unknown to the Applicants, but was prior to December 2015), by reason of the matters pleaded in sub-paragraphs 79(a)-(c) the New Operating Structure had the following features:

(a) it did not employ the right people, with the right skills, in the right positions;

(b) it reduced the focus on financial performance and quality of care;

(c) it did not provide adequate or appropriate levels of responsibility to regional managers for budget, quality, staffing, organisational culture, and occupancy levels.

81. At all material times on and after the time when Estia determined to develop and implement the New Operating Structure (which time is presently unknown to the Applicants, but was prior to December 2015), the New Operating Structure was:

(a) untested in Estia's business; and

(b) by reason of the matters pleaded in sub-paragraphs 79(a)-(c) and/or 80(a)-(c), materially different to the operating structure under which Estia had operated historically when integrating newly acquired aged care facilities and obtaining ACFI Uplifts in respect of residents in those facilities.

82. At all material times on and after the time when Estia determined to develop and implement the New Operating Structure (which time is presently unknown to the Applicants, but was prior to December 2015):

(a) the Continuing Historical Integration Pattern Assumption ceased to be valid;

(b) by reason of the matters pleaded in sub-paragraph (a), each of the FY16 Earnings Assumptions and the FY16 Increased Earnings Assumptions also ceased to be valid; ~~and~~

(c) the achievability of each of the FY16 Guidance and (from 7 December 2015) the FY16 Increased Guidance depended upon an assumption that Estia's New Operating Structure would be as effective as its previous operating structure, and would save costs (**New Operating Structure Efficacy Assumption**)~~,~~; and

(d) by reason of the matters pleaded at paragraphs 79 to 81, the New Operating Structure Efficacy Assumption lacked reasonable grounds.

83. By reason of the matters pleaded in paragraphs 80 to 82:

(a) on and from the time when Estia determined to develop and implement the New Operating Structure (which time is presently unknown to the Applicants, but was prior to December 2015), Estia ceased to have reasonable grounds for maintaining the FY16 Guidance; and

(b) on and from 7 December 2015, Estia did not have reasonable grounds for the Increased FY16 Guidance.

E.2.3 The likelihood of ACFI Uplifts, the timing of the Kennedy acquisition, and its effect on Estia's earnings assumptions

84. At all material times after Estia agreed to acquire Kennedy (which date is not presently known to the Applicants, but was prior to 7 December 2015), the achievability of ~~each of the FY16 Earnings Assumptions and~~ the FY16 Increased Earnings Assumptions depended upon assumptions that:

(a) a significant number of residents in Kennedy's facilities had increased care needs relative to Kennedy's assessment of those needs, which would result in an ACFI Uplift when Estia conducted a reassessment of the ACAs of those residents (**Likely Kennedy ACFI Uplift Assumption**); and/or

(b) there was sufficient time between when Estia took possession of the Kennedy Facilities and 30 June 2016 for Estia to conduct a reassessment of the Kennedy residents' ACAs, ~~and~~ submit ACFI Uplift requests to the Australian Government for approval (as pleaded in paragraph 21), and for such approval to be both granted and result in accrual of a right for Estia to be paid increased basic subsidies in respect of those residents (**Likely Kennedy ACFI Uplift Timing Assumption**).

Particulars for (b)

i) Particular (iv) to paragraph 76(b) is repeated.

84A Prior to the Kennedy Acquisition, Estia had not:

(a) acquired a group of Kennedy's size (as pleaded in paragraph 26 above); or

(b) sought to simultaneously integrate 8 separate facilities comprising 959 beds under the New Operating Structure, or at all.

84B. Excluding those Kennedy residents whose ACAs were liable to be reassessed at will, from the date it acquired Kennedy on 8 February 2016, Estia had a less than two month statutory window within which to reassess the ACAs of the residents occupying the 959 Kennedy beds, if Estia was to be able to achieve any available ACFI Uplift in respect of those residents in FY16.

Particulars

AC Act, section 27-4(5).

As Estia acquired Kennedy on 8 February 2016, the reassessment window was between 16 February 2016 (being the date 7 days after 8 February) and 9 April 2016 (being the date 2 months after 8 February 2016): AC Act, section 27-4(5)(a) and (b). That window comprised only 39 business days.

84C. If Estia did not conduct a reassessment of Kennedy residents' ACAs within the time referred to in paragraph 84B, or if upon reassessment it transpired that residents' existing ACAs remained accurate, no ACFI Uplift could be realised in respect of Kennedy residents in FY16.

85. At all material times after Estia agreed to acquire Kennedy (which date is not presently known to the Applicants, but was prior to 7 December 2015), Estia did not have reasonable grounds for the Likely Kennedy ACFI Uplift Assumption.

Particulars

i) *Paragraphs 84A to 84C are repeated.*

ii) *The Likely Kennedy ACFI Uplift Assumption was based on Estia's assessment of its past performance in achieving ACFI Uplifts at other acquired facilities;*

iii) *Until such time as Estia had progressed towards integration of Kennedy, and conducted reassessment of ACAs across a wide range of residents occupying the 959 Kennedy Beds, it could not reasonably say whether Kennedy had misclassified the aged care needs of some or all of its residents, or the aged care needs of residents had increased since the date of their last ACA, so as to potentially result in ACFI Uplifts in respect* *of such residents in FY16 (and the completion of the Kennedy acquisition did not occur until 8 February 2016).*

86. At all material times after Estia agreed to acquire Kennedy (which date is not presently known to the Applicants, but was prior to 7 December 2015), Estia did not have reasonable grounds for the Likely Kennedy ACFI Uplift Timing Assumption.

Particulars

i) Paragraphs 84A to 85 are repeated.

ii) In circumstances where the completion of the Kennedy acquisition only occurred on 8 February 2016), there remained only approximately 4.5 months in FY16 for Estia to undertake or complete ACA reassessments, and obtain Australian Government approval of any ACFI Uplifts, if the benefit of those ACFI Uplifts was to flow through to Estia's FY16 financial results;

iii) If Estia could not conduct a re-assessment for all Kennedy residents ~~within 2 months of the date of completion of the Kennedy acquisition~~within the 39 business day period between 16 February and 9 April 2016, it would only be able to reassess where a resident's ACA classification had been in place for more than 12 months or a resident's care needs changed significantly. It was not reasonable, having regard to the New Operating Structure, to consider that Estia could conduct ACA reassessments for all 959 Kennedy Beds and submit them for approval to the Australian Government within the 4.5 months remaining in FY16 to enable the benefit of ACFI uplifts to flow through to Estia's FY16 financial results.

87. By reason of the matters pleaded in paragraphs 84 to 86, on and from 7 December 2015, Estia did not have reasonable grounds for the Increased FY16 Guidance.

E.3 The true RAD position as at 18 February 2016

88. In 1H16, Estia derived the equivalent of a full RAD from significantly fewer than 336 new Full-Paying Residents in Estia's aged care facilities.

Particulars

On the assumption that all of Estia's RAD cash inflows in 1HFY16 were all from RAD payments made by Estia's new Full-Paying Residents who had entered Estia's aged care facilities in 1HFY16, then the following analysis applies:

i) Estia's FY16 RAD cash inflows were $220,799,000: Estia FY16 Annual Report, p. 57;

ii) Estia's average incoming RAD in FY16 was $362,800: Estia FY16 Annual Report, p. 10;

iii) i) divided by ii) equals 608;

iv) Assuming that RADs were received in FY16 in the proportions of net RAD receipts disclosed as per the 1H16 Results Presentation and the FY16 Results Presentation (namely, net RAD receipts of $33.4m and $42.6m in 1HFY16 and 2HFY16 respectively (1H16 Results Presentation, pp. 4 and 13 and FY16 Results Presentation, pp. 3, 8 and 10), then 44% of the 608 were attributable to 1H16 (265), and the balance (343) to 2H16;

v) Estia disclosed that the number of RADs held by it at the end of FY16 had decreased relative to the number of RADs held by it at the end of 1H16: 1H16 Results Presentation, p. 12, c.f. 1H17 Results Presentation, pp. 4 and 7. This is despite Estia having disclosing net RAD receipts of $33.4m and $42.6m in 1H16 and 2H16 respectively: 1H16 Results Presentation, pp. 4 and 13 and FY16 Results Presentation, pp. 3, 8 and 10;

~~vi) The precise number of equivalent new Full-Paying Residents who paid the equivalent of a full RAD in 1H16 will be particularised following discovery.~~

On the alternative assumption that Estia's RAD cash inflows in each six month period were all from RAD payments made by Full-Paying Residents who had entered Estia's aged care facilities in the six month period prior, the following analysis applies:

vii) Estia's RAD cash inflows for 2HFY16 were $124,275,795. (Estia's FY15 RAD cash inflows were $220,799,000: Estia FY16 Annual Report, p. 29. Estia's 1HFY16 RAD cash inflows were $96,523,205: Estia 1HFY16 Financial Statements, p.10. $124,275,795 is arrived at by subtracting $96,523,205 from $220,799,000);

viii) Estia's RAD cash inflows for 1HFY17 were $133,394,000: Estia 1HFY17 Financial Statements, p.10;

ix) accordingly, the total RAD cash inflows derived from residents entering Estia facilities during FY16 and electing to pay a RAD were likely to be approximately $257,669,795, being vii) plus viii) above;

x) Estia's average incoming RAD price from Full-RAD Paying Residents entering Estia facilities during FY16 was likely to be approximately $369,850 (being the average of $362,800: FY16 Investor Presentation, p.10 and $376,900: Estia 1HFY17 Investor Presentation, p 4); and

xi) ix) divided by x) equals 696.7;

xii) Assuming that RADs were received in FY16 in the proportions of net RAD receipts disclosed as per the 1H16 Results Presentation and the FY16 Results Presentation (namely, net RAD receipts of $33.4m and $42.6m in 1H16 and 2H16 respectively (1H16 Results Presentation, pp. 4 and 13 and FY16 Results Presentation, pp. 3, 8 and 10), then 44% of the 696.7 was attributable to 1H16 (306.5), and the balance (390.2) to 2H16;

xiii) Estia disclosed that the number of RADs held by it at the end of FY16 had decreased relative to the number of RADs held by it at the end of 1H16: 1H16 Results Presentation, p. 12; c.f. 1H17 Results Presentation, pp. 4 and 7. This is despite Estia having disclosing net RAD receipts of $33.4m and $42.6m in 1H16 and 2H16 respectively: 1H16 Results Presentation, pp. 4 and 13 and FY16 Results Presentation, pp. 3, 8 and 10;

The two analyses above adopt assumptions at each extreme end of the six month payment window, and yield a range between 265 and 306.5. Any number within this range is significantly fewer than 336. Given that residents are able to pay a RAD at any time within the 6 months window, the precise number of equivalent new Full-Paying Residents who paid the equivalent of a full RAD in 1HFY16 is likely to fall within the above range but in any event, will be particularised following discovery.

89. By reason of the matters pleaded in paragraph 88 ~~87~~, in 1H16 significantly less than 87% of Estia's new Full-Paying Residents had paid, or had agreed to pay and would pay, the equivalent of a full RAD.

Particulars

i) Estia disclosed that 386 new residents had entered Estia's aged care facilities in 1H16;

ii) Particulars (iii) and (iv) to paragraph 88 are repeated;

iii) The ratio of 265 to 386 is 68.6%, which is significantly less than 87%; the ratio of 306.5 to 386 is 79.4%, which is significantly less than 87%.

iv) The precise proportion of Estia's new Full-Paying Residents that had paid, or had agreed to pay and would pay, the equivalent of a full RAD will be particularised following discovery.

90. By reason of the matters pleaded in paragraphs 88 to 89, in 1H16 it was not the case that:

(a) there was strong evidence that Estia's residents had a preference for making their accommodation payment in the form of a RAD; or

(b) by reason of the proportion of new-residents entering Estia's aged care facilities who were electing to pay RADs, Estia was likely to continue to experience growth in RAD inflows which would be available to it as an interest free source of capital to fund Estia's growth strategy.

91. Further, or alternatively, by reason of the matters pleaded in paragraphs 88 to 89:

(a) the RAD Metric was not a meaningful guide to what RAD inflows Estia could reasonably be expected to achieve in future financial periods at all, and/or in the absence of concurrent express disclosure of the matters pleaded in paragraphs 88 to 89; and

(b) by reason of (a) above, it was not the case that by reason of the number of ~~proportion of new~~ Full-Paying Residents entering Estia's aged care facilities who were electing to pay a RAD as a proportion of the number of all Full-Paying Residents entering Estia's aged care facilities, Estia was likely to continue to experience growth in RAD inflows which would be available to it as an interest free source of capital to fund Estia's growth strategy.

E.4 Estia's growth strategy

92. As at:

(a) 12~~7~~ August 2015, by reason of the matters pleaded in paragraphs 72 to 74;

(b) alternatively, 7 December 2015, by reason of:

(i) the matters pleaded in paragraphs 72 to 74; and/or

(ii) the New Operating Structure and the matters pleaded in paragraphs 79 to 80;

(c) alternatively 18 February 2016, by reason of:

(i) the matters pleaded in paragraphs 72 to 74 and 88 to 90; and/or

(ii) the New Operating Structure and the matters pleaded in paragraphs 79 to 80;

there was a material risk, and/or it was unlikely that Estia would be able to continue with an acquisition-led growth strategy beyond FY16, or until the middle of 2018.

Particulars

i) As to sub-paragraphs (a), (b)(i) and (c)(i), paragraphs 74 and (from 18 February 2016) 90 are repeated;

ii) As to sub-paragraph (b)(ii) and (c)(ii), in circumstances where the Kennedy acquisition resulted in a significant increase in *the total number of Beds under Estia's management, and the New Operating Structure was untested, it could not reasonably be thought that Estia would be in a position to acquire and integrate further facilities within the short to medium term, as a period of consolidation would be necessary in order for Estia to integrate Kennedy, and it was not possible to say at that time that such integration was successful, or could be successfully replicated.*

93. Further, or alternatively, as at 7 December 2015, alternatively 18 February 2016 following the acquisition of Kennedy, Estia had substantially shifted its growth strategy from acquisition-led growth to organic growth.

Particulars

i) *Paragraph 44(e) is repeated. If, by 29 August 2016, Estia had completed its shift to organic growth over the past twelve months, then that process must have substantially progressed by the time of the Kennedy acquisition.*

E.5 The true position as at 29 August 2016, and the unreasonableness of Estia's FY17 Guidance

94. As at ~~29 August 2016~~ a date presently unknown to the Applicant shortly after 16 September 2016, Estia had ~~determined to~~ commenced a detailed strategic review with an emphasis on cost reductions and improved efficiencies (**Strategic Review**).

Particulars

i) *October 2016 Announcement, p.1. The best particulars the Applicants can provide are that the Strategic Review was commenced "following the appointment of Norah Barlow as Acting CEO", and it is to be inferred it commenced promptly upon that appointment.*

95. The objectives of the Strategic Review included:

(a) assessing Estia's operations, including its management structure, business systems, reporting framework, asset base and capital structure; and

(b) initiating actions aimed at optimising Estia's performance and ensuring it was best placed to capture opportunities inherent in the business.

Particulars

i) *CEO's address to the Estia AGM, dated 23 November 2016 at pp.3, 5.*

95A. As at 6 October 2016 (within about 3 weeks of its commencement) the Strategic Review (which was then ongoing) had resulted in Estia identifying that it needed to revise the FY17 Guidance and issue the Downgraded FY17 Guidance, for the reasons pleaded in paragraph 48(c).

95B. As at 29 August 2016, Estia was yet to review the efficacy of the New Operating Structure in the manner the subject of the Strategic Review (as pleaded in paragraphs 94 to 95), or at all.

96. At all material times on and after:

(a) 29 August 2016, by reason of:

(i) the matters pleaded in paragraphs 79 to 82; and

(ii) the matters pleaded in paragraphs 95A to 95B;

(b) alternatively the date pleaded in paragraph 94, by reason of:

(i) the matters pleaded in paragraphs 79 to 82; and

(ii) the fact that the New Operating Structure was from the date pleaded in paragraph 94 subject to the Strategic Review pleaded in paragraphs 94 to 95; and

(iii) the matters pleaded in paragraphs 95A to 95B,

Estia did not have reasonable grounds for the FY17 Guidance.

F CONTINUOUS DISCLOSURE CONTRAVENTIONS

F.1 Information concerning RADs

97. By the start of the Relevant Period, Estia had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) the following information:

(a) the matters pleaded in paragraphs 72 to 73 (and from 18 February 2016 paragraphs 88 to 89);

(b) there was no strong evidence that Estia's customers had a preference for making their accommodation payment in the form of a RAD;

(c) the RAD Metric was not a meaningful guide to what RAD inflows Estia could reasonably be expected to receive; and

(d) Estia was not likely to continue to experience material growth in the proportion of Estia customers paying RADs only,

(**RAD Information**).

Particulars

i) Estia Officers, namely Gregersen, Genova and/or Boggiano ought reasonably to have been aware of the matters pleaded in paragraphs 13 to 17, as RADs and the regulatory framework surrounding them were features of Estia's business which were of significance to its strategy and profitability, as pleaded in paragraph 18;

ii) Estia Officers, namely Gregersen, Genova and/or Boggiano ought reasonably to have been aware of the matters pleaded in paragraphs 28(i), 34(d), 39(i)~~(ii)~~ above, from the date of publication of each of the publications there pleaded;

iii) Estia Officers, namely Gregersen, Genova and/or Boggiano ought reasonably to have been aware of the matters pleaded in paragraphs 72 and 73 (and, from 18 February 2016, the matters pleaded in paragraphs 88 to 89), as these were calculations that a reasonably competent person with management of a residential aged care provision business ought to have undertaken;

iv) By reason of (i) to (iii) above, Estia Officers, namely Gregersen, Genova and/or Boggiano, ought reasonably to have come into possession of the RAD Information, as it was reasonably to be inferred by a reasonably competent person with management of a residential aged care provision business who was aware of the information referred to in (ii) to (iv) above;

v) Estia Officers, namely Gregersen, Genova and/or Boggiano, ought reasonably to have come into possession of the RAD Information by reason of the knowledge that they had, or ought to have come into possession of via Estia's management systems.

F.2 Information concerning the New Operating Structure

98. By the date when Estia determined to develop and implement the New Operating Structure, Estia had (within the meaning of s 674(2) of the Corporations Act) and was

aware of (within the meaning of ASX Listing Rule 19.12) the matters pleaded in paragraphs 79, 81 and 82(c) (**New Operating Structure Information**).

Particulars

i) Estia Officers, namely Gregersen, Genova and/or Boggiano, had actual knowledge of Estia's New Operating Structure as pleaded in paragraph 79, and its features, because they had management oversight of its development and implementation;

ii) Estia Officers, namely Gregersen, Genova and/or Boggiano, ought reasonably to have come into possession of the matters pleaded in paragraph 81, because these matters were true and would have been known to a reasonably competent person with management of a residential aged care provision business implementing the New Operating System;

iii) Estia Officers, namely Gregersen, Genova and/or Boggiano, ought reasonably to have come into possession of the to the matters pleaded in paragraph 82(c), because these matters were true and would have been known to a reasonably competent person with management of a residential aged care provision business implementing the New Operating System, and developing earnings guidance for such a business.

F.3 Information concerning the FY16 Guidance

99. By the following dates, Estia had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12):

(a) by the date when Estia determined to develop and implement the New Operating Structure, information that Estia would likely achieve FY16 NPAT materially lower than the FY16 Guidance, which was not reliable; and/or

(b) by 7 December 2015, information that Estia would likely achieve FY16 NPAT materially lower than the Increased FY16 Guidance, which was not reliable,

(**FY16 Guidance Information**).

Particulars

i) Estia Officers, namely Gregersen, Genova and/or Boggiano ought reasonably to have known of the matters pleaded in sub-paragraphs 82(a) to (b), and would have been known to a reasonably competent person with management of a residential aged care provision business implementing the New Operating System, and developing earnings guidance for such a business (and the particulars to paragraph 98 are repeated);

> ii) *Estia Officers, namely Gregersen, Genova and/or Boggiano ought reasonably to have known of the matters pleaded in paragraph 84, as those matters would have been known to a reasonably competent person with management of a residential aged care provision business who ought also to have had knowledge of the matters pleaded in paragraphs 20 to 21;*
>
> iii) *By reason of the matters set out in (i) and (ii) above, Estia Officers, namely Gregersen, Genova and/or Boggiano, ought reasonably to have come into possession of the FY16 Guidance Information in the course of their respective duties.*

F.4 Information concerning the Growth Strategy

100. By 7 December 2015, Estia had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) information that it was ~~un~~likely, or there was a material risk that Estia, would not be able to continue with an acquisition-led growth strategy until mid-2018 (**Growth Strategy Information**).

Particulars

> i) *Estia Officers, namely Gregersen, Genova and/or Boggiano ought reasonably to have known of the matters pleaded in paragraphs 92 and/or 93 as a reasonably competent person with management of a residential aged care provision business implementing the New Operating System, and integrating the Kennedy sites would have come into possession of this information.*

F.5 Information concerning the FY17 Guidance

101. By ~~29 August 2016,~~ the date referred to in paragraph 94, Estia had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) information that Estia was conducting the Strategic Review (**Strategic Review Information**).

Particulars

> i) *Estia Officers, namely Gregersen, Boggiano and/or Barlow, had actual knowledge of Estia's Strategic Review and its features, because they had management oversight of its design and conduct.*

102. By 29 August 2016, or alternatively the date referred to in paragraph 94, Estia had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) information that the FY17 Guidance was not reliable (**FY17 Guidance Information**).

Particulars

~~*i) The particulars to paragraphs 98 and 101 are repeated in respect of Gregersen (until 16 September 2016) and Boggiano and/or Barlow;*~~

~~*ii) Estia Officers, namely Gregersen (until 16 September 2016) and Boggiano and/or Barlow ought reasonably to have come into possession of the FY17 Guidance Information by reason of the knowledge that they had, or ought to have come into possession of the New Operating Structure Information, and the Strategic Review Information.*~~

i) *Paragraphs 81, 95A, 95B, 97 and 98 are repeated.*

ii) *As at and from 29 August 2016, Estia Officers, namely Gregersen (until 16 September 2016) Boggiano and/or Barlow:*

a. *were or ought reasonably to have been aware of the matters pleaded in paragraph 81 by reason of their respective management positions within Estia, and the fact that a reasonably competent person with management of a residential aged care provision business would have known that the New Operating Structure was untested in Estia's business, and by reason of its features, materially different to the operating structure under which Estia had operated historically;*

b. *were or ought reasonably to have been aware that of the matters pleaded in paragraph 95B, given that a reasonably competent person with management of a residential aged care provision business would have known that the New Operating Structure had not been reviewed;*

c. *were or ought reasonably to have been aware of the RAD Information (as pleaded and particularised in paragraph 97);*

d. *were or ought reasonably to have been aware of the New Operating Structure Information (as pleaded and particularised in paragraph 98);*

e. *by reason of the matters set out in (a)-(d) above, were, or ought reasonably to have been, aware of the FY17 Guidance Information.*

iii) *Further or alternatively, as at and from the date referred to in paragraph 94, Boggiano and Barlow were or ought to have been aware of the Strategic Review Information, and by reason thereof were, or ought reasonably to have become, aware of the FY17 Guidance Information.*

F.6 Continuous Disclosure Contraventions

103. Each of:

(a) the RAD Information;

(b) the New Operating Structure Information;

(c) the FY16 Guidance Information;

(d) the Growth Strategy Information

(e) the Strategic Review Information; and

(f) the FY17 Guidance Information

(each being **Material Information**), was information:

(g) that, from the dates Estia was aware of it (as pleaded respectively in paragraphs 97 to 102) until the end of the Relevant Period, or alternatively 29 August 2016, was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and

(h) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Estia Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.

104. Pursuant to ASX Listing Rule 3.1, Estia became obliged to tell the ASX the Material Information on and from the date that Estia had, or obtained that information, as pleaded in paragraphs 97 to 102.

105. Estia did not communicate any of the Material Information to the ASX before the end of the Relevant Period, or alternatively 29 August 2016.

106. In the circumstances set out in paragraphs 103 to 105, Estia contravened subsection 674(2) of the Corporations Act (**Continuous Disclosure Contraventions**).

G MISLEADING OR DECEPTIVE CONDUCT

G.1 Misleading Conduct Contraventions from 12 August 2015

107. The making of each of the August 2015 RAD Representation, ~~Express FY16 Guidance Representation, August 2015 Basis Representation, Implied Guidance Representations~~ and Growth Strategy Representation (together, **August 2015 Representations**) was conduct engaged in by Estia:

(a) in trade or commerce; and

(b) in relation to Estia Shares.

108. As at and from 12 August 2015, Estia did not have reasonable grounds for making and maintaining the August 2015 Representations, by reason of, in the case of:

(a) the August 2015 RAD Representation, the circumstances set out in paragraphs 72 to 74;

(b) ~~the Express FY16 Guidance Representation, the August 2015 Basis Representation and the Implied Guidance Representations, the circumstances set out in paragraphs 76 to 87~~;

(c) the Growth Strategy Representation, the circumstances set out in paragraph 92(a) ~~and/or 93~~.

Particulars

i) Each of the August 2015 Representations was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.

109. By reason of the matters pleaded in paragraph 108 in relation to each of the August 2015 Representations, Estia contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each a **Misleading Conduct Contravention**).

G.2 Misleading Conduct Contraventions from 7 December 2015

110. The making of each of the Express Increased FY16 Guidance Representation, the December 2015 Basis Representation and the Modified Growth Strategy Representation (together, **December 2015 Representations**) was conduct engaged in by Estia:

(a) in trade or commerce; and

(b) in relation to Estia Shares.

111. As at and from 7 December 2015, Estia did not have reasonable grounds for making and maintaining the December 2015 Representations, by reason of, in the case of:

(a) the Express Increased FY16 Guidance Representation, the circumstances set out in paragraphs 77 to 87;

(b) the December 2015 Basis Representation, the circumstances set out in paragraphs 76 to 87;

(c) the Modified Growth Strategy Representation, the circumstances set out in paragraphs 92(b) and/or 93.

Particulars

i) Each of the December 2015 Representations was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.

112. By reason of the matters pleaded in paragraph 111, in relation to the December 2015 Representations, Estia contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each being a Misleading Conduct Contravention).

G.3 Misleading Conduct Contraventions from 18 February 2016

113. The making of February 2016 RAD Representation and the repetition of the Modified Growth Strategy Representation was conduct engaged in by Estia:

(a) in trade or commerce; and

(b) in relation to Estia Shares.

114. As at and from 18 February 2016, Estia did not have reasonable grounds for making and maintaining:

(a) the February 2016 RAD Representation, by reason of the circumstances set out in paragraphs 88 to 90;

(b) the Modified Growth Strategy Representation, by reason of the circumstances set out in paragraphs 92(c) and/or 93.

Particulars

i) The February 2016 RAD Representation and the Modified Growth Strategy Representation were representations as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.

115. By reason of the matters pleaded in particular 114, in relation to the February 2016 RAD Representation, Estia contravened s 1041H of the Corporations Act and/or s 12DA of

the ASIC Act and/or s 18 of the Australian Consumer Law (each being a Misleading Conduct Contravention**.**

G.4 Misleading Conduct Contraventions from 29 August 2016

116. The making of each of the Express FY17 Guidance Representation and the August 2016 Basis Representation (together, **August 2016 Representations**) was conduct engaged in by Estia:

(a) in trade or commerce; and

(b) in relation to Estia Shares.

117. As at and from 29 August 2016, <u>or alternatively the date referred to in paragraph 94,</u> Estia did not have reasonable grounds for making and maintaining the August 2016 Representations, by reason of, in the case of:

(a) the Express FY17 Guidance Representation, the circumstances set out in paragraphs 94 to 96;

(b) the August 2016 Basis Representation, the circumstances set out in paragraphs 94 to 96;

Particulars

i) Each of the August 2016 Representations was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.

118. By reason of the matters pleaded in paragraph 117, in relation to the August 2016 Representations, Estia contravened section 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each being a Misleading Conduct Contravention).

H CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS

H.1 Acquisition of Estia Shares

119. During the Relevant Period, the Applicants and the Group Members acquired interests in Estia Shares.

Particulars

i) Paragraph 2 is repeated.

ii) Particulars of acquisitions by Group Members will be provided after the trial of the Applicants' claims.

H.2 Market-based causation

H.2.1 Estia Shares

120. The Applicants and the Group Members acquired their interests in Estia Shares in a market of investors or potential investors in Estia Shares:

(a) operated by the ASX;

(b) regulated by, inter alia, the ASX Listing Rules and s 674(2) of the Corporations Act;

(c) where Estia had the obligations pleaded in paragraphs 5 to 6;

(d) where the price or value of Estia Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and s 674(2) of the Corporations Act;

(e) where:

(i) material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of Estia Shares (namely the Material Information);

(ii) misleading or deceptive conduct had been engaged in (namely the conduct the subject of the Misleading Conduct Contraventions) that a reasonable person would expect to have a material effect on the price or value of Estia Shares, in that if they had not been made no investors or potential investors in Estia Shares would have been in a position to read or rely upon them.

121. In the Relevant Period, the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions (and each of them) (**Market Contraventions**) caused the market price of Estia Shares to be, or materially contributed to the market price of Estia Shares being, substantially greater than:

(a) their true value; and/or

(b) the market price that would have prevailed but for the Market Contraventions;

from the respective dates that those Market Contraventions commenced, as pleaded in this Statement of Claim.

Particulars

Particulars will be provided at the time of service of the Applicants' opinion evidence in chief.

122. The declines in the price of Estia Shares pleaded in paragraphs 45 and 49 above was caused or materially contributed to by:

(a) the market's reaction to the information released to the ASX in the 29 August 2016 Publications and the October 2016 Announcement; and

(b) the Market Contraventions.

Particulars

Particulars will be provided at the time of service of the Applicants' opinion evidence in chief.

123. Further, or alternatively, if Estia had:

(a) disclosed to the market the Material Information at any time in the Relevant Period; and/or

(b) not engaged in the conduct the subject of the Misleading Conduct Contraventions,

the price of Estia Shares (and Estia Equity Swaps) would have fallen substantially.

Particulars

Particulars will be provided at the time of service of the Applicants' opinion evidence in chief.

H.2.2 Estia Equity Swaps

124. During the Relevant Period, the market for Estia Equity Swaps was a market that traded on the basis that the market for Estia Shares had the features pleaded in paragraph 120 above.

125. By reason of the matters pleaded in paragraphs 120 to 124 above, at all times during the Relevant Period when Group Members who entered into Estia Equity Swaps entered into such Estia Equity Swaps, they did so at a time when:

(a) the market price of Estia Shares was substantially greater than:

(i) their true value; and/or

(ii) the market price that would have prevailed but for the Market Contraventions;

(b) the Estia Equity Swaps had been defined by reference to the price of Estia Shares which had the features described in sub-paragraph (a);

(c) by reason of the matters pleaded in sub-paragraphs (a) and (b), the value of the future cashflows to be received by the equity amount receiver pursuant to the Estia Equity Swaps by reference to the performance of Estia Shares was diminished and/or the value of the cashflows to be paid by the equity amount receiver in return was inflated.

Particulars

Particulars will be provided at the time of service of the Applicants' opinion evidence in chief, or prior to the trial of the individual claims of Group Members following the determination of the common questions.

H.3 Reliance

126. Further, or in the alternative, in the decision to acquire Estia Shares, the Second Applicant and some Group Members:

(a) would not have acquired Estia Shares at the prices and in the volumes they were acquired (and/or entered into Estia Equity Swaps), if the Material Information had been disclosed to them and/or the ASX, the non-disclosure of which for the reasons pleaded in paragraphs 103 to 106 constituted contravening conduct; and/or

(b) acquired Estia Shares at the prices and in the volumes they were acquired (and/or entered into Estia Equity Swaps) in reliance upon some or all of the following representations (and/or Estia not having corrected or qualified such representations):

(i) the August 2015 Representations (or any of them);

(ii) the December 2015 Representations (or any of them);

(iii) the February 2016 RAD Representation;

(iv) the August 2016 Representations (or either of them),

which, for the reasons pleaded in paragraphs 109, 112, 115 and 118 constituted contravening conduct.

Particulars

The Second Applicant would not have acquired Estia Shares at the price and volume referred to in paragraph 2 had the Material Information been disclosed to the ASX and the fact that they were not corrected or qualified prior to the Second Applicant acquiring Estia Shares.

The identity of all those Group Members which or who relied directly on any or all of the representations referred to in sub-paragraph (b) are not known with the current state of the Applicants' knowledge and cannot be ascertained unless and until those advising the Applicants take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims. Those instructions will be obtained (and particulars of the identities of those Group Members will be provided) following opt-out, the determination of the Applicants' claim and identification of 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.

H.4 Loss and damage

127. The Applicants and the Group Members suffered loss and damage resulting from the Market Contraventions.

Particulars

The loss suffered by the Applicants is:

1. *the difference between the price at which each Applicant acquired its interest in the shares and the true value of that interest;*
2. *alternatively, the difference between the price at which each Applicant acquired its interest in the shares and whatever is 'left in hand', or has been realised upon a sale;*
3. *alternatively, the difference between the price at which each Applicant acquired its interest in the shares and whatever is 'left in hand', or has been realised upon a sale modified to take into account any part of the movement in the market price of the shares which did not 'result from' the contravening conduct;*
4. *alternatively, the difference between the price at which each Applicant acquired its interest in the shares and the price that would have prevailed but for the Market Contraventions;*

5. *in addition to the loss in 1, 2, 3 and 4, the loss of the opportunity to achieve a reasonable rate of return on the monies used to purchase the interest in the shares.*

Further particulars will be provided at the time of service of the Applicants' opinion evidence in chief.

Particulars of the losses of Group Members are not known with the current state of the Applicants' knowledge and cannot be ascertained unless and until those advising the Applicants take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the losses of those Group Members will be 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.

Date: ~~15 July~~ <u>11 November</u> 2019

Signed by Timothy Michael Luke Finney
Lawyer for the Applicants

This pleading was prepared by W.A.D. Edwards <u>and S Hooper</u> of counsel.

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Certificate of lawyer

I, Timothy Michael Luke Finney, certify to the Court that, in relation to the 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: ~~15 July~~ 11 November 2019

Signed by Timothy Michael Luke Finney
Lawyer for the Applicants

Schedule

No. VID 758 of 2019

Federal Court of Australia

District Registry: Melbourne

Division: General

Wetdal Pty Ltd (ACN 145 536 661) ATF BlueCo Two Superannuation Fund

First Applicant

Ronald John Renton

Second Applicant

Estia Health Limited (ACN 160 986 201)

Respondent