



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID379/2020

IN THE MATTER OF THE PAS GROUP LIMITED (ADMINISTRATORS APPOINTED) ACN 169 477 463

MARTIN FRANCIS FORD, STEPHEN GRAHAM LONGLEY AND DAVID LAURENCE MCEVOY IN THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS OF THE SECOND TO TWENTIETH PLAINTIFFS AND OTHERS NAMED IN THE SCHEDULE
Plaintiff

ORDER

JUDGE: JUSTICE O'CALLAGHAN

DATE OF ORDER: 09 June 2020

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

Electronic provision of notices to creditors

1 Pursuant to section 447A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the Insolvency Practice Schedule (Corporations) (**IPSC**), if, pursuant to any provision in any of Part 5.3A of the Corporations Act, Part 5.3A of the Corporations Regulations 2001 (Cth), the IPSC, or the *Insolvency Practice Rules (Corporations) 2016* (**IPR**), the First Plaintiffs are required to provide any notification to creditors during the administration of each of the Second to Twentieth Plaintiffs which is not covered by the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020*, the applicable notice requirements will be satisfied if the First Plaintiffs give such notice by taking the following steps:

(a) where the First Plaintiffs:

(i) have an email address for a creditor, by notifying each such creditor of the relevant matter via email;



- (ii) do not have an email address for a creditor but have a postal address for that creditor (or have received notification of non-delivery of a notice sent by email in accordance with (a)(i) above), by notifying each such creditor in writing of the relevant matter via post; and
- (b) by publishing notice of the relevant matter on the website maintained by the First Plaintiffs at <https://insolvency.pwc.com.au/groupEntityCases/the-pasgroup-ltd-and-associated-entities-all-administrators-appointed/casePage> **(the Administration Website)**.

Committee of inspection

- 2 Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, Divisions 60, 75, and 80 of the IPSC and Division 75 of the IPR are to operate as if:
- (a) the requirement in sections 80-10 and 80-15 of the IPSC for the creditors of a company to resolve that a committee of inspection be formed and to appoint members of the committee of inspection, be dispensed with;
 - (b) a single committee of inspection be formed in respect of the Second Plaintiff to operate as the committee of inspection for each of the Second to Twentieth Plaintiffs;
 - (c) section 60-10 of the IPSC was modified to read, in respect of each of the Second to Twentieth Plaintiffs, as follows:
 - (1) *A determination, specifying remuneration that an external administrator of the PAS Group Companies (other than an external administrator in a members' voluntary winding up) is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration, may be made:*
 - (aa) *by agreement between the external administrator and the PAS Group Committee of Inspection in relation to any and/or each of the PAS Group Companies;*



- (a) *by resolution of the creditors; or*
- (b) *if there is a committee of inspection and a determination is not made under paragraph (a) or paragraph (aa) – by the committee of inspection; or*
- (c) *if a determination is not made under paragraphs (aa), (a), or (b) – by the Court.*

In this section, the following capitalised terms have the meaning set out below:

PAS Group Companies means each of the Second to Twentieth Plaintiffs to Federal Court of Australia Proceeding No VID 379 of 2020.

PAS Group Committee of Inspection means the committee of inspection appointed to The PAS Group Limited (Administrators Appointed) by resolution of creditors passed on 11 June 2020.

Response to information requests

- 3 Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, section 70-1(2)(a) of the IPR is to operate in relation to each of the Second to Twentieth Plaintiffs as if:
- (a) the words “5 business days after receiving the request” be read as “10 business days after receiving the request”; and
 - (b) the First Plaintiffs may provide the information, report or document requested by a creditor by publishing that information, report or document on the Administration Website, and by referring the creditor to that website.

Extension of time for the exercise of rights in relation to property

- 4 Pursuant to section 443B(8) and 447A(1) of the Corporations Act and section 90-15 of the IPSC, Part 5.3A of the Corporations Act is to operate in relation to each of the Second to Twentieth Plaintiffs as if:



- (a) the First Plaintiffs' personal liability under sections 443A(1)(c) and 443B(2) of the Corporations Act begins on 23 June 2020, such that the First Plaintiffs are not personally liable for any liability with respect to any property leased, used or occupied by any of the Second to Twentieth Plaintiffs (including amounts payable pursuant to any leases entered into by any of the Second to Twentieth Plaintiffs), from any lessors, in the period from 29 May 2020 to 22 June 2020 (inclusive); and
- (b) the words "Within five business days after the beginning of the administration" in section 443B(3) of the Corporations Act instead read "By no later than the day the company ceases to be under administration".

Commonwealth Bank of Australia Facility Agreements

5 Pursuant to s 447A(1) of the Corporations Act and section 90-15 of the IPSC, Part 5.3A of the Corporations Act is to operate as if s 443A(1) of the Corporations Act provides that:

- (a) to the extent that:
 - (i) the First Plaintiffs incur any liability under section 443A(1) of the Corporations Act for debts to the Commonwealth Bank of Australia (**CBA**) in connection with the:
 - (A) multi-option facility agreement dated 19 January 2017 (as amended) between the CBA and the Second to Twentieth Plaintiffs; and
 - (B) merchant facility agreement between the CBA and the Second to Twentieth Plaintiffs,

(together, the **Facility Agreements**), and;
 - (ii) those debts were incurred by the First Plaintiffs in the performance and exercise of their functions and powers as joint and several administrators of the Second to Twentieth Plaintiffs;



the First Plaintiffs shall not be personally liable for such debts to the extent that the property of the Second to Twentieth Plaintiffs is insufficient to satisfy the debts and liabilities incurred by the Plaintiffs in connection with the Facility Agreements.

Relief from certain procedural requirements

- 6 Pursuant to r 1.34 of the *Federal Court Rules 2011 (Cth)* and r 1.3 of the *Federal Court (Corporations) Rules 2000 (Cth)* (**Corporations Rules**), compliance with the requirements of rule 2.4(2) of the Corporations Rules be dispensed with and in lieu thereof the First Plaintiffs upload each of the records of a search of the records maintained by ASIC in relation to each of the Second to Twentieth Plaintiffs on the Administration Website.

Notification of this application

- 7 The First Plaintiffs must take all reasonable steps to cause notice of these orders to be given, within two business days of the making of these orders, to:
- (a) the creditors (including persons or entities claiming to be creditors) of each of the Second to the Twentieth Plaintiffs, in the following manner:
 - (i) where the First Plaintiffs have an email address for a creditor, by notifying each such creditor, via email, of the making of the orders and providing a link to the Administration Website where the creditor may download the orders and the Originating Process;
 - (ii) where the First Plaintiffs do not have an email address for a creditor but have a postal address for that creditor (or have received notification of on-delivery of a notice sent by email in accordance with (a)(i) above), by notifying each such creditor, via post, of the making of the orders and providing a link to the Administration Website where the creditor may download the orders and the Originating Process; and
 - (iii) placing scanned, sealed copies of the Originating Process and the orders on the Administration Website; and



(b) ASIC.

Further and other relief

- 8 Any person who can demonstrate a sufficient interest, including any person who leases property to the Second to Twentieth Plaintiffs, has liberty to apply to vary or discharge any orders made pursuant to paragraphs 1 to 7 above, on 3 business days' written notice being given to the First Plaintiffs and the Associate to Justice O'Callaghan.
- 9 The First Plaintiffs have liberty to apply on 1 business day's written notice to the Court in relation to any variation of these orders or any other matter generally arising in the administrations of any or all of the Second to Twentieth Plaintiffs.
- 10 The First Plaintiffs' costs of the application are to be treated as costs in the administrations of each of the Second to Twentieth Plaintiffs, jointly and severally.
- 11 These orders be entered forthwith.

OTHER MATTERS

- 12 By not later than 10.00am on 10 June 2020, the First Plaintiffs are to publish a notice of:
 - (a) the First Plaintiffs' proposal to form a single committee of inspection in respect of the Second Plaintiff, which is to operate as if it is the committee of inspection for each of the Second to Twentieth Plaintiffs (in accordance with Order 2(b) above);
 - (b) the First Plaintiffs' recommendation that the creditors of the Third to Nineteenth Plaintiffs should not establish a committee of inspection;
 - (c) the proposed identity of the members of that single committee of inspection; and
 - (d) creditors' entitlement to seek election to the single committee of inspection,



on the Administration Website, and send the notice to all creditors of each of the second to twentieth plaintiffs in respect of which they have an email address.

Date that entry is stamped: 9 June 2020

Sia Lagos
Registrar



Schedule

No. VID 379 of 2020

Federal Court of Australia

District Registry: Victoria

Division: General

IN THE MATTER OF THE PAS GROUP LIMITED (ADMINISTRATORS APPOINTED) ACN 169 477 463 & ORS

Plaintiffs

| | |
|--------------------|--|
| Second Plaintiff: | The PAS Group Limited (Administrators Appointed) ACN 169 477 463 |
| Third Plaintiff: | AFG Retail Pty Limited (Administrators Appointed) ACN 133 613 251 |
| Fourth Plaintiff: | Black Pepper Brands Pty Limited (Administrators Appointed) ACN 112 065 559 |
| Fifth Plaintiff: | Bondi Bather Pty Limited (Administrators Appointed) ACN 620 985 864 |
| Sixth Plaintiff: | Chestnut Apparel Pty Limited (Administrators Appointed) ACN 112 091 522 |
| Seventh Plaintiff: | Designworks Clothing Company Pty Limited (Administrators Appointed) ACN 117 343 807 |
| Eighth Plaintiff: | Designworks Holdings Pty Limited (Administrators Appointed) ACN 113 900 057 |
| Ninth Plaintiff: | Fiorelli Licensing Pty Limited (Administrators Appointed) ACN 122 295 827 |



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| Tenth Plaintiff: | JETS Swimwear Pty Limited (Administrators Appointed) ACN 068 819 581 |
| Eleventh Plaintiff: | Metpas Pty Ltd (Administrators Appointed) ACN 127 957 653 |
| Twelfth Plaintiff: | PAS Finance Pty Ltd (Administrators Appointed) ACN 169 478 291 |
| Thirteenth Plaintiff: | PASCO Group Pty Ltd (Administrators Appointed) ACN 117 244 943 |
| Fourteenth Plaintiff: | PASCO Operations Pty Ltd (Administrators Appointed) ACN 112 078 547 |
| Fifteenth Plaintiff: | Review Australia Pty Limited (Administrators Appointed) ACN 122 295 836 |
| Sixteenth Plaintiff: | The Capelle Group Pty Limited (Administrators Appointed) ACN 121 867 641 |
| Seventeenth Plaintiff: | The Hopkins Group Aust Pty Limited (Administrators Appointed) ACN 119 023 273 |
| Eighteenth Plaintiff: | World Brands Pty Ltd (Administrators Appointed) ACN 075 219 135 |
| Nineteenth Plaintiff: | Yarra Trail Holdings Pty Limited (Administrators Appointed) ACN 110 901 561 |
| Twentieth Plaintiff: | Yarra Trail Pty Limited (Administrators Appointed) ACN 110 902 102 |