

IN THE SUPREME COURT OF NEW SOUTH WALES

No 2014 / 376655

DIVISION: EQUITY

REGISTRY: SYDNEY

CORPORATIONS LIST

IN THE MATTER OF **RETAIL ADVENTURES PTY LIMITED (IN LIQUIDATION)**

ACN 135 890 845

Sperling Enterprises Pty Ltd

ACN 001 882 364

Plaintiff

Retail Adventures Pty Limited (In Liquidation)

ACN 135 890 845

First Defendant

Vaughan Neil Strawbridge, John Lethbridge Greig and David John Frank Lombe

in their capacities as joint and several liquidators of the First Defendant

Second Defendant

AFFIDAVIT OF VAUGHAN NEIL STRAWBRIDGE

On 27 February 2015, I, Vaughan Neil Strawbridge, Chartered Accountant and Registered Liquidator of Level 2, Grosvenor Place, 225 George Street, Sydney NSW 2000 say on oath:

1. I am one of the three joint and several liquidators (the **Liquidators**) of Retail Adventures Pty Limited (In Liquidation) ACN 135 890 845 (**RAPL**). My fellow Liquidators are John Lethbridge Greig and David John Frank Lombe. I am authorised by Messrs Greig and Lombe to make this affidavit on behalf of the Liquidators.
2. Prior to our appointment as Liquidators of RAPL, Messrs Greig, Lombe and I were the joint and several administrators (**Administrators**) of RAPL having been appointed by the directors of RAPL on 26 October 2012.

Filed on behalf of: The First and Second Defendants

Prepared by:

Herbert Smith Freehills

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Attention: Mark Clifton

3. I, along with Messrs Greig and Lombe, am a partner in the Restructuring Services Group of Deloitte Touche Tohmatsu. I am a Chartered Accountant and a Registered Liquidator and I have practised for more than 17 years as an accountant specialising in insolvency related matters.
4. The following facts are within my personal knowledge as joint and several Administrator or Liquidator of RAPL except as otherwise stated. Where matters are deposed to based on my information and belief, I have set out the basis of that information and belief and I believe those matters to be true.
5. Exhibited to me at the time of making this affidavit is a bundle of documents marked '**VNS1**' which I refer to in this affidavit by reference to their page and tab numbers.

STEPS TAKEN IN THE LIQUIDATION TO DATE

6. The liquidation of RAPL commenced on 3 February 2014 following the expiry of a stay of the order made by Robb J on 23 December 2013 in Supreme Court of New South Wales Proceedings No. 2013/275631 (**Section 600A Proceedings**) that RAPL be wound up. The Court also ordered that the winding up of RAPL was to operate as if section 446A of the *Corporations Act 2001* (Cth) (**Act**) applied and RAPL was taken to have passed a resolution under section 491 of the Act that it be wound up voluntarily.
7. The steps taken in the liquidation to date by the Liquidators are described in the minutes of:
 - (a) the first meeting of the committee of inspection of RAPL held on 27 March 2014;
 - (b) the second meeting of the committee of inspection of RAPL held on 13 May 2014;
 - (c) the third meeting of the committee of inspection of RAPL held on 11 June 2014; and
 - (d) the fourth meeting of the committee of inspection of RAPL, held on 29 and 30 July 2014.
8. Exhibited at pages 19 to 40 (**tabs 1 – 4**) of VNS1 are true copies of the minutes of the first to fourth meetings of the committee of inspection of RAPL (**Minutes**).



9. As described in the Minutes, the steps taken by the Liquidators in the liquidation to date include:
- (a) pursuing a voidable security claim pursuant to section 588FE of the Act in respect of certain intercompany loans under which RAPL borrowed \$77.6 million from its parent company, Retail Adventures Holdings Pty Ltd (**RAHPL**);
 - (b) investigating and pursuing the recovery of payments made to a number of creditors identified to be preferential within the meaning of section 588FA of the Act including payments to entities associated with Ms Janet Heather Cameron, a director of RAPL;
 - (c) investigating and pursuing insolvent trading claims against the director, Ms Cameron, and former directors of RAPL pursuant to sections 588G and 588M of the Act;
 - (d) applying to the Supreme Court of New South Wales for the issue of examination summonses and orders for production of documents against Ms Cameron and former directors of RAPL, the trustee of the Jan Cameron Trust, Bicheno Investments Pty Limited (**Bicheno**), certain advisors to RAPL and Bicheno and RAPL's insurers, pursuant to sections 596A and 596B of the Act;
 - (e) receiving and reviewing a large volume of documents produced by the recipients of the orders for production and preparing for the conduct of the examinations; and
 - (f) negotiating and completing the settlement of the various claims referred to in paragraph 11 below.
10. Since the fourth meeting of the committee of inspection, the steps undertaken by the Liquidators have included:
- (a) continuing to investigate and pursue outstanding preference claims;
 - (b) applying to the Supreme Court of New South Wales for the issue of an examination summons and orders for production of documents against a creditor of RAPL in respect of a preference claim;
 - (c) negotiating and entering into settlement agreements with certain creditors in relation to preference claims against them;



- (d) issuing letters to creditors requesting the submission of formal proofs of debt in the liquidation of RAPL;
- (e) carrying out the process of adjudicating on those formal proofs of debt and where necessary communicating with creditors requesting additional information to enable the Liquidators to complete their adjudication;
- (f) communicating with creditors in relation to the application which is the subject of these proceedings and identifying a creditor to represent the interests of creditors of RAPL who do not have funding agreements with IMF Bentham Limited (**IMF**).

SETTLEMENT OF CLAIMS

11. Since the commencement of the liquidation, the Liquidators have recovered the following amounts for the benefit of creditors:

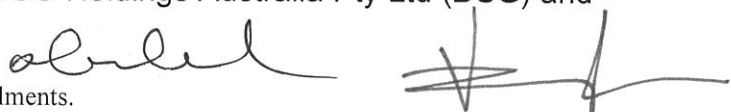
Description	\$000's
Section 588FE proceedings	\$3,950
Recovery of costs of Section 600A Proceedings	\$1,050
Insolvent trading claim	\$12,500
Related party preferences	\$1,340
Other preferences	\$3,441 ¹
Total	\$22,281

12. In paragraphs 13 to 35 below I set out further details of each of these recoveries.

Section 588FE proceedings

13. Between May 2010 and May 2012, RAPL borrowed \$77.6 million from its parent company, RAHPL. RAHPL obtained those funds via back to back intercompany loans from RAHPL's parent entity, DSG Holdings Australia Pty Ltd (**DSG**) and

¹ Includes \$287,500.00 which is payable by future instalments.



Bicheno which held all of the shares in DSG in its capacity as trustee of the Jan Cameron Trust.

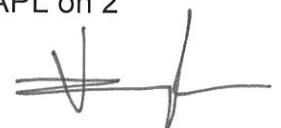
14. The Liquidators formed the view that \$49.77 million of this amount could be voidable pursuant to section 588FE of the Act on the basis that these loans were originally advanced on an unsecured basis and then later secured pursuant to a deed dated 1 July 2011, a time at which the Liquidators formed the view that RAPL may have been insolvent.
15. During the administration which preceded the liquidation of RAPL, the Administrators engaged in a sale process for RAPL's assets. The result of that sale process was that the Administrators entered into an agreement for the sale of RAPL's assets to DSG on 11 February 2013 for an aggregate purchase price after adjustments of approximately \$43.8 million (**Sale Agreement**).
16. Under the Sale Agreement, the purchase price payable by DSG to RAPL was provisionally offset against the secured loans from DSG to RAHPL and RAHPL to RAPL. The Sale Agreement provided that if any part of the security granted by RAPL to RAHPL in respect of any of the intercompany loans was found to be voidable, DSG would be required to make a cash payment to RAPL to the extent that the purchase price exceeded the amount of the secured debt (**Cash Portion**). The obligation to pay the Cash Portion was secured by a General Security Agreement over DSG (**DSG GSA**).
17. On 10 April 2014, the Liquidators filed a Statement of Claim in the Supreme Court of New South Wales against RAHPL in which RAPL sought orders declaring the security granted in respect of \$49.77 million of the RAHPL intercompany loans to be void. DSG was subsequently joined as a defendant to those proceedings.
18. During May and June of 2014, the Liquidators engaged in settlement discussions with Ms Cameron and her related entities in respect of the section 588FE proceedings and ultimately the Liquidators agreed to a settlement subject to the approval of the committee of inspection of RAPL.
19. On 11 June 2014, the committee of inspection of RAPL passed a resolution approving the Liquidators entry into the settlement (**June Settlement**).



20. The details of the June Settlement are set out in the Liquidators' circular to creditors dated 1 July 2014, a true copy of which is exhibited at pages 41 to 45 (**tab 5**) of VNS1 (**July Circular**).
21. As set out in the July Circular, on 11 June 2014 the Liquidators received \$3.95 million in settlement of the section 588FE proceedings. In addition as part of the June Settlement:
- (a) the Liquidators discontinued the section 588FE proceedings against RAHPL and DSG;
 - (b) DSG, Ms Cameron and Bicheno agreed to withdraw all claims in the liquidation of RAPL and not participate in any distributions made by the Liquidators to creditors of RAPL;
 - (c) the Liquidators were not prevented from pursuing insolvent trading claims against the directors of RAPL;
 - (d) the Liquidators agreed not to pursue DSG and Bicheno for insolvent trading;
 - (e) DSG's debt in RAHPL and security over RAHPL were assigned to RAPL; and
 - (f) The DSG GSA was assigned by RAPL to Bicheno.
22. At the same time as the June Settlement, the Liquidators also received \$1.05 million from Bicheno to settle a preference claim against an unrelated creditor which held an indemnity from Bicheno. This creditor also agreed not to prove in the liquidation of RAPL or participate in any distribution to creditors.
23. The withdrawal of claims in the liquidation by DSG, Bicheno and Ms Cameron had the effect of reducing the total creditor pool by approximately \$38.4 million.

Recovery of costs of section 600A proceedings

24. As part of the June Settlement, Bicheno also agreed to pay a total of \$1.05 million in satisfaction of costs orders in favour of the Plaintiffs and RAPL relating to:
- (a) the Section 600A Proceedings, in which two of the creditors of RAPL who are funded by IMF (**Funded Creditors**) successfully sought to set aside the resolution passed at the Second Creditors Meeting of RAPL on 2

September 2013 that RAPL execute the deed of company arrangement proposed by Ms Cameron; and

- (b) New South Wales Court of Appeal Proceedings No. 2014/22696, being the subsequent unsuccessful appeal by Bicheno from the judgment in the Section 600A Proceedings (**Section 600A Appeal**).

Insolvent trading claim and related party preferences

25. As a result of the investigations undertaken during the administration and liquidation of RAPL, the Liquidators formed the view that there was a potential claim pursuant to 588G of the Act against Ms Cameron and former directors of RAPL for insolvent trading (**Insolvent Trading Claim**).
26. Additionally, the Liquidators formed the view that there was a potential claim under section 588FA of the Act against entities associated with Ms Cameron to recover preferential payments received by those entities (**Related Party Preference Claim**).
27. In July 2014, the Liquidators reached a settlement with these parties in relation to both the Insolvent Trading Claim and the Related Party Preference Claim subject to the approval of the committee of inspection (**July Settlement**).
28. The terms of the July Settlement were approved by the committee of inspection of RAPL at its fourth meeting held on 29 and 30 July 2014.
29. The details of the July Settlement are set out in the Liquidators' circular to creditors dated 4 August 2014, a true copy of which is exhibited at pages 46 to 49 (**tab 6**) of VNS1 (**August Circular**).
30. As disclosed in the August Circular, funds of \$13.84 million were received as a result of the July Settlement, comprising:
- (a) \$12.5 million for the Insolvent Trading Claim; and
- (b) \$1.34 million for the Related Party Preference Claim.
31. The July Settlement resolved all claims against Ms Cameron, the former directors of RAPL and the associated entities of Ms Cameron, all of whom also agreed not to participate in any distribution in the liquidation of RAPL.

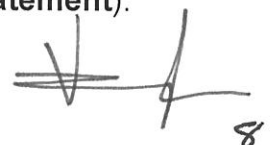



Other preference Claims

32. The Liquidators have entered into settlement agreements with other creditors identified by the Liquidators as having received preferential payments from RAPL within the meaning of section 588FA of the Act.
33. As a result of the settlement of these claims, the Liquidators have received amounts totalling \$3,153,680.92 and expect to receive further payments of:
- (a) \$150,000 on or before 1 May 2015; and
 - (b) a total of \$137,500 payable in monthly instalments of \$12,500 up to 31 December 2015.
34. Except for one case in which a preferential payment of \$41,180.92 was repaid in full, all settlements of preference claims had been on the basis that the relevant creditor must not prove in the liquidation for the amount of the settlement or for any other debt or claim against RAPL.
35. In one other case, a preference claim by the Liquidators against a creditor which is subject to a deed of company arrangement was admitted by the deed administrators of the creditor for \$363,533.63. That amount has been set off against the creditor's outstanding debt in the liquidation of RAPL of \$202,631.61 leaving a net debt owing by the creditor of \$160,902.02. The Liquidators expect to receive only a nominal distribution on this debt under the relevant deed of company arrangement.

FINANCIAL POSITION OF LIQUIDATION

36. Exhibited at pages 50 to 62 (**tab 7**) of VNS1 is a true copy of the Presentation of Accounts and Statement for RAPL lodged by the Liquidators with the Australian Securities and Investments Commission (**ASIC**) for the period from 3 February 2014 to 2 August 2014 (**Liquidators' Accounts**).
37. As disclosed in the Liquidators' Accounts, the funds available to the Liquidators at the commencement of the liquidation which were transferred from the Administrators' account totalled \$1,214,217.19.
38. Exhibited at page 63 (**tab 8**) of VNS1 is a true copy of a summary statement of receipts and payments in the liquidation of RAPL for the period from the commencement of the liquidation to 16 February 2015 (**Summary Statement**).

39. As disclosed in the Summary Statement, the total amount held by the Liquidators in respect of the liquidation of RAPL as at 16 February 2015 was \$20,371,707.93.

CREDITOR POSITION OF RAPL

40. For the purposes of the Second Meeting of Creditors in the administration of RAPL which was held on 2 September 2013, the Administrators received informal proofs of debt with a combined value of \$113,766,389.80, of which the Administrators admitted \$83,234,656.59 for voting purposes.
41. Of this amount, the Administrators received proofs of debt with a combined value of \$37,727,050.21 from DSG and Bicheno of which the Administrators admitted \$34,986,958.18 for voting purposes.
42. Exhibited at page 64 (**tab 9**) of VNS1 is a true copy of a spreadsheet summarising the informal proofs of debt received and admitted for the purpose of voting at the Second Meeting of Creditors (**Voting Analysis**).
43. The Voting Analysis also discloses that:
- (a) of the total creditors, Funded Creditors lodged 82 proofs of debt with a combined value of \$21,064,839.93 of which the Administrators admitted \$18,271,816.66. The Funded Creditors were represented at the Second Meeting of Creditors by Mr Scott Hedge of CBP Lawyers and are represented in the Voting Analysis by the table headed 'SH proxies';
 - (b) all 82 of the SH proxies were voted against the resolution that RAPL execute the deed of company arrangement proposed by Ms Cameron;
 - (c) in total, 152 creditors of RAPL voted against the resolution that RAPL execute the deed of company arrangement. These creditors had lodged proofs of debt with a combined value of \$65,957,062.13 of which the Administrators admitted \$34,490,655.09 for voting purposes.
44. On 1 December 2014, the Liquidators sent letters to the creditors of RAPL requesting the submission of formal proofs of debt by 16 December 2014 (**December Letters**). The December Letters were tailored to the following categories of creditors in order to provide guidance in relation to the types of claims which the Liquidators considered may be available to each creditor and the supporting information which should be provided by the relevant creditor:
- (a) Non-landlord creditors of RAPL;

- (b) Landlord creditors other than landlords whose lease had been surrendered or disclaimed;
 - (c) Landlord creditors whose lease with RAPL had been surrendered by RAPL; and
 - (d) Landlord creditors whose lease with RAPL had been disclaimed by the Administrators or the Liquidators pursuant to either section 443B or 568 of the Act.
45. The December Letters also informed creditors that:
- (a) the Liquidators had been informed by IMF that the Funded Creditors intended to make the application which is the subject of these proceedings and which was subsequently filed on 23 December 2014; and
 - (b) the timing of the payment of the Liquidators' proposed interim distribution to creditors of RAPL referred to in the August Circular would be dependent on:
 - (i) the determination of the Funded Creditors' application;
 - (ii) the timing of the lodgment by creditors and adjudication by the Liquidators of formal proofs of debt; and
 - (iii) receipt of approval of the Australian Taxation Office to the payment of the interim distribution.
46. Exhibited at pages 65 to 116 (**tabs 10-13**) of VNS1 are true copies of the December Letters. The December Letters also attached a letter from CBP Lawyers dated 28 November 2014 containing additional information with respect to the proposed application by the Funded Creditors, a true copy of which is exhibited at pages 117 to 118 (**tab 14**) of VNS1.
47. As at 25 February 2015, the Liquidators had received 507 formal proofs of debt claiming a total amount of \$127,411,195.
48. The following table contains a summary of the formal proofs of debt received from:
- (a) Funded Creditors; and
 - (b) creditors of RAPL who have not entered into a Funding Agreement with IMF (**Non-Funded Creditors**):




Description	Number	Amount Claimed
<u>Funded Creditors</u>		
Trade Creditors	100	\$23,610,475
Landlord	9	\$1,488,384
<u>Non-Funded Creditors</u>		
Landlord	135	\$73,128,556
Non-landlord	245	\$28,042,019
Public Liability Claimants	17	\$1,100,579
Total	507	\$127,411,195

49. Exhibited at page 119 (**tab 15**) of VNS1 is a true copy of a schedule setting out the consolidated creditor position of RAPL, including the formal and informal proofs of debt submitted as at 25 February 2015 and persons identified as creditors of RAPL in the report as to affairs (**RATA**) lodged with ASIC in respect of RAPL (**Summary Creditor Schedule**).
50. Exhibited to me at the time of making this affidavit and marked "**Confidential Exhibit VNS2**" is a detailed list of creditors of RAPL who:
- are disclosed in the RATA as creditors of RAPL and have not subsequently assigned their claims or agreed not to prove in the liquidation of RAPL; or
 - have lodged an informal proof of debt in the administration or liquidation of RAPL; or
 - have lodged a formal proof of debt in the liquidation of RAPL (**Detailed Creditor Schedule**).
51. As the Detailed Creditor Schedule contains information concerning proofs of debt and claims against RAPL which had not been adjudicated by the Liquidators, I

respectfully request that the Court make an order that the contents of VNS2 be kept confidential to the solicitors and counsel for the parties in these proceedings.

52. As disclosed in the Summary Creditor Schedule, of the formal proofs of debt received as at 25 February 2015, the Liquidators have:
- (a) admitted 178 creditors for \$13,656,492;
 - (b) rejected 15 creditors for \$2,187,019;
 - (c) admitted 32 creditors in part for \$4,956,613 and rejected the balance of \$1,855,963;
 - (d) yet to adjudicate on 282 proofs of debt totalling \$104,408,777.
53. I have yet to receive formal proofs of debt from a significant number of creditors who submitted informal proofs of debt in the administration of RAPL. If these creditors submit formal proofs of debt corresponding to their informal proofs of debt in response to the Liquidators' formal dividend notice pursuant to Corporations Regulation 5.6.48 when issued prior to payment of the proposed interim dividend, the total value of creditor claims which have yet to be adjudicated by the Liquidators would increase to \$139,257,546 (**Unadjudicated Claims**). If all of the Unadjudicated Claims admitted in full, the total creditor pool of RAPL would be \$157,870,651.
54. RAPL also has an additional prospective liability to the ATO for a GST bad debt adjustment based on GST input tax credits on admitted claims. This liability is unable to be finally determined until a final dividend is paid to creditors but the Liquidators anticipate that it may be in the vicinity of \$5 million. Incorporating this amount, the total creditor pool of RAPL would be \$162,870,651.
55. I have not included in the Unadjudicated Claims, persons who are disclosed as creditors of RAPL in the RATA but who have yet to lodge an informal or formal proof of debt and who are not otherwise excluded from doing so by reason of a subsequent assignment of their debt or agreement not to participate in the liquidation. If all of these persons lodge formal proofs of debt and those proofs of debt are admitted by the Liquidators, that would increase the total creditor pool by a further \$6,281,194. I have also not included these creditors for the purposes of the calculations contained in paragraphs 64 to 66 below.



56. I am unable, at this stage, to estimate the final amount for which the Unadjudicated Claims may ultimately be admitted. As indicated in the Summary Creditor Schedule, the Liquidators are:
- (a) in the process of adjudicating 70 formal proofs of debt with a value of \$16,713,483;
 - (b) have requested further information from creditors in respect of 57 formal proofs of debt with a value of \$61,440,894; and
 - (c) have not yet commenced adjudication of 155 proofs of debt with a value of \$26,618,731.
57. Of the total Unadjudicated Claims of \$157,870,651, an amount of \$94,158,290 relates to claims or potential claims by landlords. The vast majority of these claims are claims for damages for breach of contract including loss of future rent. I anticipate that the final amount for which the landlord creditors are admitted may differ materially from this amount once allowance is made for:
- (a) the discounting of amounts claimed in respect of lost future rent; and
 - (b) the obligation of landlords to mitigate their loss.
58. The proof of debt claims of landlord creditors have increased significantly since the Second Meeting of Creditors of RAPL from \$38,629,743 as set out in the Voting Analysis at tab 9 of VNS1 to \$96,101,824 as a result of both informal and formal proofs of debt received since the date of that meeting. This is in part due to the administration and receivership of DSG in July 2014 and subsequent closure of all of DSG stores, its head office and distribution centre. In a number of cases RAPL remains liable under its lease of the relevant premises either because the landlord did not agree to release RAPL upon the assignment or surrender of RAPL's lease or because the landlord had not yet agreed to an assignment or surrender of RAPL's lease.
59. The increase in landlord claims is likely to have a material impact on the Liquidators' estimated cents in the dollar return to creditors of RAPL. In the August Circular (**tab 6** of VNS1) the Liquidators estimated that the distribution of the proceeds of the July Settlement totaling \$13.84 million as an interim distribution would result in a dividend of approximately 15 cents in the dollar assuming total creditor claims of \$88 million. If all of the Unadjudicated Claims


were ultimately admitted in full, the dividend to creditors would reduce to approximately 8.8 cents in the dollar.

PROPOSED INTERIM DISTRIBUTION

60. In the August Circular, the Liquidators advised creditors of their intention to distribute the proceeds of the July Settlement (\$13.84 million) as an interim distribution to creditors. Since that date, the Liquidators have recovered further funds from the settlement of preference claims against other creditors and are now in a better position to estimate the funds which will be required to complete the liquidation. As a consequence, it is the Liquidators' current intention to increase the amount of the interim distribution to around \$17 million (inclusive of any amount which may be payable to IMF in accordance with orders made in these proceedings).
61. On 29 January 2015, the Liquidators also received notice from the Australian Taxation Office pursuant to sub-section 260-45(3) of Schedule 1 to the *Taxation Administration Act 1993* of the amount which the Commissioner of Taxation considers is enough to discharge any outstanding tax related liabilities of RAPL. Accordingly, the Liquidators now have the requisite approval from the ATO to proceed with the interim distribution.
62. The Liquidators' current intention is to send the Notice to Creditors to Submit Formal Proofs of Debt pursuant to Corporations Regulation 5.6.48 on 2 April 2015 which would enable the Liquidators to declare and pay an interim dividend on or before 5 June 2015, subject to the Court's determination of these proceedings. In the event that the proceedings are not finally determined by 5 June 2015, I would consider proceeding with the interim distribution but withholding sufficient funds to enable me to give effect to the orders of the Court as finally made.

ANALYSIS OF IMPACT OF THE ORDERS SOUGHT BY THE PLAINTIFF

63. Based on information provided by IMF, I understand that the amounts which are payable by the Funded Creditors to IMF pursuant to the Revised Funding Agreement exhibited at pages 76-108 of exhibit PH-1 to the affidavit of Paul Rainford sworn on 18 December 2014 (**IMF Funding Agreement**) are:

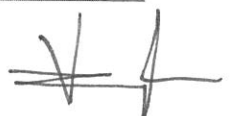
- (a) IMF's Project Costs payable pursuant to clause 12.1.1 of the IMF Funding Agreement and which do not relate to the Section 600A Proceedings and Section 600A Appeal, amounting to \$434,386.84 as at 20 February 2015;
- (b) IMF's Project Management Fee payable pursuant to clause 12.1.2 of the IMF Funding Agreement amounting to \$211,903.38 as at 20 February 2015 (being 20% of IMF's total Project Costs of \$1,059,516.89 comprising the Project Costs of \$434,386.84 referred to in paragraph 63(a) plus \$603,687.05 being the legal costs already recovered by IMF in respect of the Section 600A Proceedings and Section 600A Appeal plus GST recovered by IMF pursuant to clause 12.4 of the IMF Funding Agreement of \$21,443);
- (c) GST on IMF's Project Management Fee payable pursuant to clause 12.1.3 of the IMF Funding Agreement amounting to \$21,190.34 as at 20 February 2015;
- (d) an amount calculated in accordance with clause 12.1.4(b) of the IMF Funding Agreement on the basis of 20% of \$12.5 million being the amount recovered by the Liquidators in respect of the Liquidators' claim under section 588M of the Act without any funding of the Liquidator by IMF (**Insolvent Trading Base Fee**);
- (e) an amount calculated in accordance with clause 12.1.4(c) of the IMF Funding Agreement on the basis of 35% of other recoveries by the Liquidators and on the assumption that in all cases the date of the distribution to creditors occurs more than 18 months after the date of commencement of the relevant IMF Funding Agreement (**Other Recoveries Base Fee**);
- (f) an amount calculated in accordance with clause 11.3 of the IMF Funding Agreement on the basis of 5% of the total dividend payable to the Funded Creditors (**Appeal Fee**) and payable in respect of the Section 600A Appeal; and
- (g) GST on the Insolvent Trading Base Fee, Other Recoveries Base Fee and Appeal Fee payable pursuant to clause 12.1.3 of the IMF Funding Agreement which is calculated at rate based on parameters agreed



between IMF and the Australian Taxation Office and is estimated to be 1.733%.

64. For the purposes of this application, I have calculated the amount which would be payable to IMF based on a total creditor pool of \$162,870,651 which assumes that all Unadjudicated Claims (including Unadjudicated Claims of the Funded Creditors) are admitted in full. This would result in the Funded Creditors accounting for \$31,156,103 of a total creditor pool of \$162,870,651. For comparison purposes, I have also calculated the amount which would be payable to IMF based on a total creditor pool of, respectively, \$120,000,000 and \$140,000,000. I have undertaken these calculations for comparison purposes only and they do not indicate any opinion of the Liquidators as to the likely final level of creditors. My calculations are set out in the table below and are based on a total distribution of \$17 million:

IMF Payment (as at 20 February 2015)	Total Creditor pool of \$162,870,651	Total Creditor pool of \$140 million	Total Creditor pool of \$120 million
Project Costs	\$434,387	\$434,387	\$434,387
Project Management Fee	\$211,903	\$211,903	\$211,903
GST on Project Management Fee	\$21,190	\$21,190	\$21,190
Insolvent Trading Base Fee	\$478,234	\$556,359	\$649,085
Other Recoveries Base Fee	\$301,287	\$350,506	\$408,924
Appeal Fee	\$162,600	\$189,162	\$220,689
GST on IMF Base Fees and Appeal Fee	\$16,327	\$18,994	\$22,160
Total	\$1,625,928	\$1,782,502	\$1,968,339

65. Based on my calculations in paragraph 62 above, I have calculated the impact of the orders being made or not made on the respective cents in the dollar dividend returns to creditors in the following table:

	Total Creditor pool of \$162,870,651	Total Creditor pool of \$140 million	Total Creditor pool of \$120 million
Orders made	9.44	10.87	12.53
Orders not made	10.44	12.14	14.17

66. In the following table, I have calculated the net dividend which would be received by the Funded Creditors after payment of amounts due to IMF under the IMF Funding Agreement, if the orders are not made:

	Total Creditor pool of \$162,870,651	Total Creditor pool of \$140,000,000	Total Creditor pool of \$120,000,000
Dividend paid to creditors	10.44	12.14	14.17
Less portion of dividend payable to IMF by Funded Creditors	5.22	5.72	6.32
percentage of dividend payable to IMF by Funded Creditors	50.0%	47.1%	44.6%
Net Dividend received by Funded Creditors	5.22	6.42	7.85

NOTIFICATION TO CREDITORS OF RAPL OF THIS APPLICATION

67. The Liquidators notified the creditors of RAPL of the Funded Creditors' intention to make the application which is the subject of these proceedings in the December Letters which are exhibited at tabs 10 to 13 of VNS1.
68. The Liquidators did not receive any enquiries from creditors of RAPL in response to the notification contained in the December Letters.
69. On 3 February 2015, the Liquidators sent a Circular to Creditors (**3 February Circular**) informing them that:

- (a) these proceedings had been commenced on 23 December 2014;

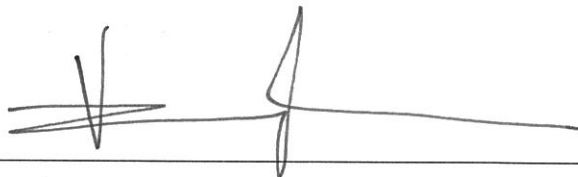
- (b) the Liquidators had identified a Non-Funded Creditor who was willing to be appointed as a representative defendant in the proceedings to represent the interests of all Non-Funded Creditors; and
- (c) the Liquidators would be seeking orders from the Court at the first Court hearing date on 16 February 2015 that that creditor be joined as a representative defendant in the proceedings and that its costs be paid as costs of the liquidation.

- 70. Exhibited at page 120 (**tab 16**) of VNS1 is a true copy of the 3 February Circular.
- 71. The Liquidators have not received any enquiries from creditors in response to the 3 February Circular.
- 72. On 20 February 2015, the Liquidators sent a further circular to creditors (**20 February Circular**) advising creditors of:
 - (a) the orders made by the Court on 16 February 2015; and
 - (b) that any individual creditor that wished to be heard in connection with the Funded Creditors' application should attend the directions hearing on 30 March 2015.
- 73. Exhibited at pages 121 to 122 (**tab 17**) of VNS1 is a true copy of the 20 February Circular.
- 74. The Liquidators have not received any enquiries from creditors in response to the 20 February Circular.

SWORN at

Sydney

Signature of deponent



Name of witness

VERONICA LOUISE MORLAND

Address of witness

c/o HERBERT SMITH FREEHILLS, 161 CASTLEREAGH ST, SYDNEY, NSW, 2000.

Capacity of witness

Solicitor of the Supreme Court of New South Wales

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.