NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged**:**	Interlocutory process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 3
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Date of Lodgment:	12/09/2024 12:15:38 PM AEST
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File Number:	NSD927/2024
File Title:	IN THE MATTER OF PF GROUP HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) ACN 622 776 765 & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Interlocutory Hearing
Time and date for hearing:	17/09/2024, 10:30 AM
Place:	Please check Daily Court List for details

Place of hearing: 184 Phillip Street, Sydney NSW 2000

Registrar

Important Information

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.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 3 Interlocutory process

(rules 2.2, 15A.4, 15A.8 and 15A.9)

No. NSD 927 of 2024

Federal Court of Australia

District Registry: New South Wales

Division: General

IN THE MATTER OF PF GROUP HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 776 765) AND PF MANAGEMENT HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 782 512)

ADAM COLLEY, DERRICK VICKERS, ANDREW SCOTT AND STEPHEN LONGLEY (IN THEIR CAPACITIES AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS OF PF GROUP HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 776 765) AND PF MANAGEMENT HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 782 512)

Plaintiffs

A. DETAILS OF APPLICATION

This application is made under section 447A(1) of the *Corporations Act 2001* (Cth) ("**Corporations Act**").

On the facts stated in the supporting affidavits of Andrew John Scott sworn on 12 September 2024, the Plaintiffs seek the following orders:

1. An order that this interlocutory application be returnable *instanter* and *ex parte*.

2. An order, pursuant to section 447A(1) of the Corporations Act, that Part 5.3A of the Corporations Act is to operate in relation to each of PF Group Holdings Pty Ltd (Administrators Appointed) ACN 622 776 765 and PF Management Holdings Pty Ltd (Administrators Appointed) ACN 622 782 512 ("**Companies**") as if section 439A(6) provided that the period for convening the second meeting of creditors of each of the Companies ("**Second Meetings**") be extended (from 18 September 2024) to 7 February 2025.

Filed on behalf of (name & role of party) The Applicants

Prepared by (name of person/lawyer) Donna Wacker / Alexandra Zhu

Law firm (if applicable) Clifford Chance

Tel (02) 8922 8566 Fax

Email donna.wacker@cliffordchance.com / alexandra.zhu@cliffordchance.com

Address for service (include state and postcode) Clifford Chance, Level 24, 10 Carrington Street, Sydney NSW 2000

3. An order, pursuant to s 447A(1) of the Corporations Act, that Part 5.3A of the Corporations Act is to operate in relation to each of the Companies such that, notwithstanding s 439A(2) of the Act, the Second Meetings may be held together or separately any time during the period during, or within five business days after the end of, the convening period as extended in paragraph 2 above, notwithstanding the provisions of s 439A(2) of the Act.

4. An order that the plaintiffs, within seven business days of making these Orders, are to take all reasonable steps to give notice of these orders to the Companies' creditors (including the persons claiming to be creditors), by means of a circular:

    a. to be published on the website maintained by the administrators in respect of the administration of the Companies;

    b. to be sent by email transmission to creditors for whom the plaintiffs have current email address; and

    c. to be sent by ordinary post to creditors for whom the plaintiffs have only a postal address.

5. An order, pursuant to s 447A(1) of the Corporations Act, that Part 5.3A of the Corporations Act is to operate such that the requirement on the plaintiffs to issue notices under s 75-225(1) and s 75-15 of the *Insolvency Practice Rules (Corporations) 2016* (Cth) be modified such that notice of the Second Meetings will be validly given to any creditors by, not less than five business days prior to the date of the proposed meetings:

    a. giving such notice electronically by email sent to the email address of any creditor (including persons claiming to be creditors) of the Companies for whom or which the plaintiffs hold an email address; or

    b. sending such notice to the postal address or facsimile number, or otherwise as provided for by the Act or the *Corporations Regulations 2001* (Cth), to any creditors not being a creditor referred to in sub-para (a); and

    c. causing such notice to be published in ASIC Published Notices website located at: https://publishednotices.asic.gov.au/.

6. An order that the following parties have liberty to apply on giving all other interested parties not less than 3 business days' notice:

   a. any person who can demonstrate sufficient interest (including any creditor of the Companies) for the purpose of modifying or discharging paragraphs 2 and 3 above; and

   b. the plaintiffs, for the purpose of seeking any further extension of the convening period.

7. Until further order, and until no later than 7 February 2026, pursuant to sections 37AF(1)(b)(i) and (ii) of the *Federal Court of Australia Act 1976* (Cth), on the ground stated in section 37AG(1)(a) of the Federal Court of Australia Act, being that the order is necessary to prevent prejudice to the proper administration of justice, the Confidential Affidavit of Andrew John Scott dated 12 September 2024 and Confidential Exhibit AJS-4 be kept confidential and be prohibited from disclosure to any person other than the Judge hearing the Interlocutory Process, and by the Judge's staff and assistants, and the Plaintiffs, their staff and legal representatives.

8. An order that the costs of and incidental to this application be costs in the voluntary administration of the Companies and be paid out of the assets of the Companies.

9. Any other orders this Court deems fit in the circumstances.

Date: 12 September 2024

.....
Donna Louise Wacker
Lawyer for the Plaintiffs
(by her employed solicitor, Alexandra Zhu)

This application will be heard by the Federal Court of Australia (NSW Registry) at Level 17, Law Courts Building, 184 Phillip Street, Queens Square, SYDNEY NSW 2000 at *am/*pm on September 2024.

B. NOTICE TO RESPONDENT(S) (IF ANY)

N/A

C. FILING

This interlocutory process is filed by Clifford Chance for the Plaintiffs.

D. SERVICE

The Plaintiffs' address for service is:

Attention: Donna Wacker/Alexandra Zhu
C/- Clifford Chance
Level 24, Brookfield Place
10 Carrington Street
SYDNEY NSW 2000.

It is not intended to serve a copy of this interlocutory process on any person.

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
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Form 59
Rule 29.02(1)

Affidavit

No. NSD927/2024

Federal Court of Australia

District Registry: New South Wales

Division: General

IN THE MATTER OF PF GROUP HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 776 765) AND PF MANAGEMENT HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 782 512)

ADAM COLLEY, DERRICK VICKERS, ANDREW SCOTT AND STEPHEN LONGLEY (IN THEIR CAPACITIES AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS OF PF GROUP HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 776 765) AND PF MANAGEMENT HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 782 512)

Plaintiffs

Affidavit of:	**Andrew John Scott**
Address:	c/- PricewaterhouseCoopers, One International Towers Sydney Watermans Quay, Barangaroo NSW 2000
Occupation:	Registered Liquidator
Date:	12 September 2024

Contents

Filed on behalf of	The Plaintiffs
Prepared by	Donna Wacker / Alexandra Zhu
Law firm	Clifford Chance
Tel	(02) 8922 8566
Email	donna.wacker@cliffordchance.com / alexandra.zhu@cliffordchance.com
Address for service	Clifford Chance, Level 24, 10 Carrington Street, Sydney NSW 2000

I, **ANDREW JOHN SCOTT**, of care of PricewaterhouseCoopers, One International Towers Sydney, Watermans Quay, Barangaroo NSW 2000 swear:

Overview

My Role and Earlier Affidavits in these Proceedings

1. I am the third named plaintiff in these proceedings, and a partner of PwC.

2. I have previously sworn affidavits on 16 July 2024 and on 17 July 2024 in support of the originating process dated 16 July 2024, and on 12 September 2024 in support of the Application ("**Confidential Affidavit**").

3. The Confidential Affidavit exhibits copies of documents referred to in this affidavit but not exhibited hereto because they contain sensitive information in relation to the Administrators' Sale Process (as defined below) and should remain confidential to ensure the integrity of that Sale Process and to prevent prejudice to the proper administration of justice.

4. Exhibited and marked "AJS-3" is a bundle of documents to which I refer in this affidavit ("**Exhibit AJS-3**"). I also refer to the exhibit referred to in the First Scott Affidavit at Exhibit AJS-1, and to the confidential exhibit referred to in the Confidential Affidavit at Confidential Exhibit AJS-4.

5. I make this affidavit in support of the orders sought by me and my fellow appointees in the interlocutory process filed together with this affidavit pursuant to section 447A(1) of the *Corporations Act 2001* (Cth) ("**Act**") permitting the further extension of the period within which the second meetings of creditors of the Companies ("**Second Meetings**") must be convened, together with consequential relief including an order for the Confidential Affidavit and Confidential Exhibit AJS-4 to be kept confidential.

6. Capitalised terms in this affidavit have the meaning given in the First Scott Affidavit unless otherwise stated.

Developments in the Administration since the First Extension to the Convening Period

7. The background to the appointment of joint and several voluntary administrators to the Companies and a description of the business of the Panthera Group are set out at paragraphs 9 to 26 of First Scott Affidavit.

8. On or about 18 July 2024, the Honourable Justice Shariff made orders in these proceedings which had the effect of extending the convening period within which the Second Meetings needed to be convened to 18 September 2024. A true copy of the orders and reasons can be found at pages 2 to 17 of Exhibit AJS-3 ("**July 2024 Orders**").

9. Since the date of the July 2024 Orders, there has been a development in relation to a wholly-owned subsidiary of the Companies, Panthera Finance Pty Ltd (**"PFPL"**) (namely a prosecution was commenced by CAV against PFPL, as detailed at paragraphs 10 to 14 below). This development has created an additional layer of complexity in the Administrators' sale process ("**Administrators' Sale Process**") and has resulted in a longer due diligence and negotiation period than envisaged in the indicative timeline set out at paragraph 42 of the First Scott Affidavit.

The CAV Proceeding

10. On or about 12 March 2020, the Australian Competition and Consumer Commission ("**ACCC**") obtained a judgment against PFPL in the Federal Court of Australia from the Honourable Justice Jagot ("**ACCC Judgment**"). I understand that the ACCC Judgment involved PFPL and the ACCC filing a joint submission and statement of agreed facts and findings of breaches of the *Australian Consumer Law* s 50 in relation to three debtors / consumers (but otherwise no findings in relation to *"systemic issues"* within PFPL). A true copy of the ACCC Judgment can be found at pages 18 to 71 of Exhibit AJS-3.

11. Following the ACCC Judgment, I understand that CAV commenced an investigation into PFPL in or around June 2022.

12. On or about 23 July 2024, CAV filed a charge sheet and summons with the Magistrates Court of Victoria. The charge sheet and summons commenced what I refer to in this affidavit as the "**CAV Proceeding**". A true copy of the charge sheet and summons have been included at pages 2 to 10 of Confidential Exhibit AJS-4.

13. On or about 19 August 2024, a first mention hearing was held before a magistrate in the CAV Proceeding. Various procedural orders were made, including scheduling the next committal mention hearing for 11 November 2024.

14. To the best of my understanding, there is no prescribed timeline in which the Magistrates Court of Victoria is required to hear the CAV Proceeding and/or render a judgment. Accordingly, it is not possible to predict when the CAV Proceeding will proceed to a final hearing.

The Administrators' Sale Process

15. At paragraphs 42 to 44 of the First Scott Affidavit, I noted, in effect that:

    (a) the Administrators' Sale Process was expected to culminate in final negotiations with preferred bidders, with executed transaction documents by Friday, 13 September 2024;

    (b) the sale process was expected to take approximately eight weeks;

(c) depending on the nature of bids received, further time might be required to fully negotiate any bids received; and

(d) having regard to the above matters, I respectfully requested that this Honourable Court grant me and my co-appointees an extension of the convening period for the Second Meetings to Wednesday, 18 September 2024.

Progress of the Administrators' Sale Process Since the First Scott Affidavit

16. Since the First Scott Affidavit, the key actions taken in the Administrators' Sale Process have been as follows:

Stage 1 of the Sale Process

(a) On or about 22 July 2024, a Stage 1 Process Letter was issued to 21 participants in the Administrators' sale process ("**Stage 1 Process Letter**"). The Stage 1 Process Letter outlined the following indicative timetable:

Key event	**Timing**
Stage 1 materials circulated to approved bidders	From Monday, 22 July 2024
Submission of non-binding indicative offers ("**NBIO**")	Due by 4:00pm AEST on Monday, 5 August 2024
Short-listed parties notified	From Monday, 5 August 2024
Stage 2 data room and Q&A function opens to short-listed parties	From Monday, 5 August 2024
Due diligence sessions with Panthera Group's management team	From Tuesday, 6 August 2024
Transaction documents uploaded to data room	W/C Monday, 12 August 2024
Submission of Final Offer and marked up transaction documents	**Friday, 31 [sic] August 2024**

A true copy of one of the Stage 1 Process Letters sent to a participant (with the participant's name redacted) in the Administrators' Sale Process can be found at pages 72 to 80 of Exhibit AJS-3.

(b) On or about 22 July 2024, an information memorandum was also made available to the 21 participants in the Administrators' Sale Process. A true copy of the information memorandum referred to above has been included at pages 11 to 58 of Confidential Exhibit AJS-4.

(c) Between 12 July 2024 and 9 August 2024, non-disclosure agreements were entered into by the Companies and the 21 participants in the Administrators' Sale Process. These 21 participants were admitted to the Data Room (defined below) when it was

opened. True copies of each of the non-disclosure agreements have been included at pages 59 to 298 of Confidential Exhibit AJS-4.

(d) On or about 22 July 2024 a data room containing information and documents referrable to the Administrators' Sale Process called the "Project Cat – Data Room" was created ("**Data Room**"). By about 9 August 2024, the 21 participants had been admitted to the Data Room.

17. As noted from paragraph 10 above, the CAV Proceeding was commenced on or about 23 July 2024. Since about that date:

(a) In anticipation of receiving enquiries from participants to the Administrators' Sale Process in relation to the CAV Proceeding, with the assistance of PFPL and its legal advisor (Clayton Utz), the Administrators prepared and uploaded to the Data Room a short summary of PFPL's engagement with the ACCC and CAV (including in relation to the CAV Proceeding). A true copy of the summary document has been included at pages 299 to 302 of Confidential Exhibit AJS-4.

(b) I, my co-appointees and our staff received enquiries, to varying degrees, from all the participants in the Administrators' Sale Process regarding the CAV Proceeding (i.e. some participant's enquiries were more detailed than others).

(c) The nature of the enquiries broadly related to the status of the proceedings, the submissions made by the parties in relation to the proceedings, the strategy being contemplated by the directors and management of PFPL to resolve the matter, the views of PFPL directors and management on the likely outcome of the proceedings, and requests to view correspondence between CAV and PFPL in relation to the matter and proceedings.

(d) It was apparent from the discussions held with participants to the Administrators' Sale Process that the CAV Proceeding impacted:

(i) The time spent by potential bidders in the due diligence process as they familiarised themselves with CAV's engagement with PFPL (and the Panthera Group more broadly) and factored the implications of the CAV Proceeding into their assessment of the Companies' assets.

(ii) For certain potential bidders, the decision to remain in / continue to participate in the Administrators' Sale Process.

Non-binding indicative offers

18. On or about 5 August 2024, ten (10) NBIOs were received from various participants to the Administrators' Sale Process. These NBIOs included:

    (a) offers for the acquisition of the shares / assets of either or both of the Companies; and

    (b) offers for the acquisition of the shares / assets of the *"ARL Collect"* business (i.e. ARL Collect Pty Ltd and its wholly-owned subsidiaries) ("**ARL Collect**") and select assets of other subsidiary companies. True copies of each of the NBIOs referred to above have been included at pages 303 to 372 of Confidential Exhibit AJS-4.

19. In addition, a separate NBIO was received in respect of the proposed acquisition of the shares / assets of the *"Gedda"* business (i.e. United Finance Group Pty Ltd and its wholly-owned subsidiaries) ("**Gedda**").

20. It was apparent from the NBIOs received that the CAV Proceeding had an impact on the transaction structure being proposed by certain bidders.

Stage 2 of the Sale Process

21. From about 9 August 2024, a Stage 2 Process Letter was sent to seven (7) participants who remained in the Administrators' Sale Process (i.e. seven of the ten NBIO bidders) seeking, among other things, reconfirmation of their bids by 23 August 2024. A true copy of one of the Stage 2 Process Letter sent to a participant (with the participant's name redacted) in the Administrators' Sale Process can be found at pages 81 to 87 of Exhibit AJS-3.

22. The Stage 2 Process Letter was not sent to the party who submitted an NBIO in relation to the Gedda business as this bid, being for a downstream group of wholly-owned subsidiaries, was being overseen by the directors of the Gedda entities (who are not in Administration) and therefore was a process being run in parallel to the Administrators' Sale Process.

23. On or about 23 August 2024, emails were sent to the remaining seven (7) participants in the Administrators' Sale Process with further guidance / proposed next steps for the process and a revised indicative timetable. True copies of the emails (without their attachments) have been included at pages 373 to 425 of Confidential Exhibit AJS-4. The timetable was revised to account for:

    (a) Additional time needed by bidders to familiarise themselves with, and assess the implications of, the CAV Proceeding on their reconfirmed bids.

    (b) Panthera Group management presentations occurring over a two week period rather than the one week period allocated in the original indicative timeline.

(c) Delays in providing draft term sheets to bidders following the initial due diligence period.

(d) The revised indicative timetable referred to above is replicated below:

Key event	Timing
Draft Term Sheet provided to bidders	Friday, 23 August 2024
Submission of a bid reconfirmation in the form of a marked-up Term Sheet	Friday, 30 August 2024
Draft Sale Agreement made available in the data room	w/c Monday, 2 September 2024
Final offers and marked up Sale Agreement	Due by 4.00pm (AEST) on Thursday, 12 September 2024

Reconfirmed bids and term sheets

24. On or about 30 August 2024, five of the seven remaining participants in the Administrators' Sale Process submitted term sheets reconfirming their proposed bids and transaction structures for the sale and purchase of the Companies and/or the Companies' assets (including their shares in certain of the Subsidiaries). True copies of each of the term sheets referred to above have been included at pages 426 at 463 of Confidential Exhibit AJS-4.

25. From my review of the term sheets referred to in paragraph 24 above, the proposed transaction structures involve the purchase of shares and/or assets at the level below PF Management Holdings. Some of the proposals also contemplate a transaction involving a deed of company arrangement ("**DOCA**"). It is possible that other proposed transaction structures could change and target either or both of the Companies via a DOCA and/or share sale as due diligence and negotiations evolve and the sale and purchase agreement and sale mechanisms are considered in greater detail.

<u>Other considerations connected to the Administrators' Sale Process</u>

26. The Administrators are also mindful that:

(a) The sale process might not proceed in the timeline contemplated in paragraph 23(d) above given the number and complexity of the reconfirmed bids received.

(b) Even if the timeline in paragraph 23(d) is achieved and a single preferred bidder is identified, the timeline only contemplates the period up to the exchange of marked-up sale documents – further negotiations around the terms, structure, and mechanism of the transaction with the preferred bidder could take additional time meaning that execution of the final sale agreement might take several weeks.

(c) Further to the above, there may also be an interim period between execution and completion of a sale agreement, the duration of which is currently unknown, but could add further additional weeks to the timeline.

(d) In my view, it is also possible that other stakeholders could put forward a DOCA proposal in relation to the Companies once there is greater certainty on the outcome of the Administrators' Sale Process (i.e. to deal with any residual assets of the Companies not included in the preferred offer).

(e) There of course is always the possibility that the sale process might not result in a transaction at all.

27. In respect of paragraphs 26(a) and 26(b) above, further extensions to the sale process timeline would impact the Administrators' ability to appropriately report to creditors on the key terms of the preferred offer and the estimated outcomes for creditors within the timeframes provided under the current convening period ending on 18 September 2024 particularly as, under the latest sale process timeline, final offers and marked-up sale agreements are not due until 12 September 2024 (and the Administrators' report would need to be issued by 17 September 2024).

28. In respect of paragraph 26(c) above, if the Second Meetings of Creditors were to proceed under the current convening period deadlines, there may be an outcome where the Companies are placed into liquidation while the sale transaction is still to be completed. The Administrators are concerned that, given the regulated/licensed nature of the Panthera Group's business, various contractual arrangements including leases for office premises, tax sharing agreements across the group, and a Deed of Cross Guarantee between group entities, there could be unintended consequences of a liquidation of the Companies that flow downstream and negatively impact the Subsidiary entities including those that are part of the sale transaction.

29. In respect of paragraph 26(e) above, while the Administrators are confident that a transaction will be concluded for the sale of shares and/or assets, an alternative 'contingency scenario' may be needed in the event a transaction does not occur. A potential contingent scenario might be that the Administrators are required to wind down the business of the Panthera Group for the ultimate benefit of its creditors. If this scenario eventuated, in my view it would be preferable to conduct an orderly wind down either in Administration, or under a DOCA, rather than in a liquidation to preserve the value of the group's key assets, being its purchased debtor ledgers, and to avoid the potential crystallisation of liabilities that might arise upon liquidation.

30. At this stage, the Administrators have determined it is not in the interest of creditors to incur additional costs and legal fees to undertake detailed planning and legal due diligence for this contingent scenario while the sale process has strong prospects of an outcome.

31. Having regard to the current status of the Administrators' Sale Process and the matters raised in paragraphs 26 to 30, in my view, it would be in the best interests of the

stakeholders of the Companies for the optionality of a DOCA to be retained as it will allow the Administrators to explore with the remaining sale process participants and/or other stakeholders various structures for maximising the outcome of the Administrators' Sale Process and/or the administrations of the Companies more generally.

Relief Sought / Additional Time Requested

32. In addition to the CAV Proceeding, at paragraph 26 I have highlighted other contingent issues that could impact the time needed to conclude the Administrators' Sale Process.

33. As noted in paragraph 14 above, while the expected timing for the resolution of the CAV Proceeding is uncertain, in the Administrators' view, the further extension to the convening period currently being sought will provide sufficient time for the remaining participants in the Administrators' Sale Process to finalise their due diligence and submit their final offer for the purchase of the Companies and/or the Companies' assets (including their shares in certain Subsidiaries) and the proposed sale transaction document(s) and sale mechanism(s).

34. In summary, in the Administrators' view, additional time to that currently provided for by the convening period ending on 18 September 2024 is needed to:

    (a) finalise negotiations with the preferred bidders remaining in the Administrators' Sale Process (currently five (5) parties);

    (b) assess final offers received from the preferred bidders (currently due by 12 September 2024);

    (c) execute a sale agreement that reflects the final offer ultimately accepted by the Administrators;

    (d) complete the transaction as contemplated by the sale agreement ultimately executed by the Administrators and the successful bidder; and

    (e) provide a contingency for unexpected events that could arise in the Administrators' Sale Process and/or in the administration of the Companies generally.

35. I also note the following:

    (a) I understand that the Federal Court of Australia generally does not have sitting dates in the ordinary Court term between the last week of December until the first week of the following February;

    (b) convening a meeting of creditors during the December 2024 – January 2025 period may mean that some stakeholders / participants will be on leave;

    (c) to reduce the likelihood that further costs would need to be incurred for any further extensions of time, a longer extension of time may be preferable in the circumstances

(noting that the Administrators otherwise intend to call the Second Meeting at the earliest opportunity and would not use the full convening period available unless it was necessary and in the best interests of creditors to do so).

36. With respect to the timing of this application, the Administrators have needed to first determine a realistic timeframe to complete the Administrators' Sales Process (which, as noted in this affidavit, has changed several times to accommodate developments in the process including the CAV Proceeding), and have been involved in daily discussions with the PwC M&A team, the Administrators' lawyers, and with the management team of the Panthera Group (who have also been necessarily occupied in running the business) regarding the proposed transaction structures, which inform the period of the extension sought in this application. I have also required the PwC M&A team's input into this affidavit (who have been necessarily occupied with the Administrators' Sales Process), particularly in regard to the steps that are still required to be completed.

37. Having regard to the above matters, the Administrators respectfully request that this Honourable Court grant a further extension of the convening period for the Second Meetings to Friday, 7 February 2025.

The Companies' Creditors

38. At paragraph 45 of the First Scott Affidavit, I set out the direct/actual creditor position of the Companies. As at the date of this affidavit, to my knowledge the direct/actual creditor position of the Companies has not changed.

39. At paragraphs 46 to 48 of the First Scott Affidavit, I set out the position of the Companies' contingent creditors. As at the date of this affidavit, the contingent creditor position has not materially changed.

<u>No Prejudice to Creditors</u>

40. In my view and based on my investigations to date, a further extension to the convening period for the Second Meetings would be in the best interests of the Companies' creditors for the reasons I explain further below.

41. I do not consider there to be any prejudice to the Companies' creditors if the orders sought are made, noting in particular that Brookfield (in its capacity as a secured creditor) does not object to the proposed extension of time (see paragraph 42(a) below) and I am not aware of any other secured creditors, owners or lessors of property used by the Companies, or employees of the Companies whose rights would be affected by the continuation of the statutory moratorium, if orders were made which had the effect of extending the period of voluntary administration.

Support For / No Objection to the Extension

42. On or about 10 September 2024, the Administrators (either themselves, or via their solicitors, Clifford Chance) contacted the following persons who are, or who claim to be, creditors of the Companies to inform them of the Administrators' intention to seek the further extension to the convening period referred to in paragraph 36 above and to ask them to confirm whether they had any objection to that course being taken, namely:

(a) Brookfield (noting that in paragraph 41 above, Brookfield does not object to the relief sought by this application);

(b) HJK Investments Pty Ltd (the vehicle of Jamie Hough, in its capacity as a claimed, director creditor of the Companies); and

(c) Mathew Hough (in his capacity as a claimed, director creditor of the Companies).

True copies of the correspondence issued to the above stakeholders (via Clifford Chance to their solicitors) can be found at pages 88 to 102 of Exhibit AJS-3.

43. As at the time of swearing this affidavit, I am not aware of any opposition to this application.

Reporting to Creditors

44. I note the following matters in paragraphs 45 to 50 below (as similarly noted from paragraph 52 of the First Scott Affidavit).

45. When convening the Second Meetings, I am required by section 75-225(3) of the *Insolvency Practice Rules (Corporations) 2016* (Cth) ("**Rules**") to provide the creditors with notice of the Second Meetings, a report about the Companies' business, property, affairs and financial circumstances, and a statement setting out the following:

(a) my opinion about whether it would be in the creditors' best interests for:

(i) either or both of the Companies to execute a DOCA;

(ii) the administration to end; or

(iii) either or both of the Companies to be wound up,

and my reasons for that opinion; and

(b) whether there are any transactions that appear to me to be voidable transactions in respect of which money, property or other benefits may be recoverable by a liquidator under Part 5.7B of the Act; and

(c) if a DOCA is proposed, the details of the proposed deed.

46. Given the matters set out above in respect of the CAV Proceeding and the Administrators' Sale Process and the fact that the Administrators' Sale Process remains in progress with

a number of financially and technically credible participants who may be prepared to make a binding offer for the sale and purchase of the Companies and/or their assets (including via a DOCA) it is difficult for me, at the present time, to form an opinion on what will be in creditors' best interests, and to report meaningfully on that opinion and the resulting financial position of the Companies having regard to the preferred offer or offers.

47. I am required to convene the Second Meetings by not less than five business days' notice to the creditors, which must be accompanied by my report and statement. In order for this deadline to be met, I am therefore required to finalise and despatch a notice of meeting, report and statement by close of business on 17 September 2024, to ensure that the notice, report and statement is received by the Companies' creditors in time.

48. If no extension is granted, I would be placed in the position that the Second Meetings would proceed, but I would be required to make a recommendation based on an incomplete sale process in respect of the Companies and/or their assets. In these circumstances, I would most likely adjourn the meetings until the necessary work and investigations explained herein can be undertaken. This would require me to in effect convene two sets of Second Meetings, and to prepare two sets of reports and statements to creditors, which would result in substantial and avoidable expenditure of creditor funds.

49. In my view, it would be in the best interests of the Companies' creditors for the extension of the convening period to allow the Administrators' Sale Process to reach a conclusion (which may include one or more DOCA proposals emerging, which may be advantageous to creditors and represent a better outcome in due course than liquidation, or at least to enable me to be in a position to provide creditors with information concerning the sale and/or DOCA proposal in order for them to make a more informed decision as to the future of the Companies and/or their businesses and assets (including their shareholdings in the Subsidiaries)). The extension of time sought by this application would also allow the Administrators to attend to the workstreams referred to in paragraph 50 below.

50. The key areas of work still to be undertaken and completed by the Administrators, their staff, and the PwC M&A team include the following:

(a) Administrators' Sale Process – including tasks associated with the milestones and activities described in the indicative timeframe tabled in paragraph 22 above.

(b) Valuation of the assets/shares of the Companies and underlying businesses by an independent valuer.

(c) Engaging with tax advisers to review the Companies' and wider group's tax obligations in connection with the proposed sale transaction (including considerations stemming from the different sale structures being contemplated).

(d) Working with our solicitors and the Subsidiaries' solicitors regarding the Sale and Purchase Agreement and associated payment mechanisms that are contemplated by the proposals under consideration.

(e) Potentially undertake contingency planning and due diligence in the event the sale process is unsuccessful.

(f) Investigations – continuing the investigation work program to reach preliminary conclusions sufficient to report to creditors as described from paragraph 45 above and provide a comparison *"liquidation scenario"* outcome (i.e. to compare against any DOCA proposals received).

(g) Second meetings of creditors of the Companies (i.e. the Second Meetings) – including tasks associated with:

(i) convening the Second Meetings;

(ii) reporting to creditors as described from paragraph 45 above including preparing a detailed remuneration approval report;

(iii) holding the Second Meetings, including receiving and reviewing proof of debt and proxy forms for the purpose of the meetings; and

(iv) preparing and lodging the minutes of the Second Meetings.

(h) Ongoing engagement with the Subsidiaries' directors and management (and external advisors where relevant) on an *"as needed"* basis, and in particular in connection with matters relating to the Administrators' Sale Process.

(i) Ongoing attendance to general enquiries and administrative matters as they arise (or as required in accordance with the Administrators' statutory obligations).

Notices to Creditors

51. Since the date of the First Scott Affidavit, I have caused my staff to issue notices to creditors of the Companies from time to time on the website maintained by PwC in respect of the administrations of the Companies (at the link referred to directly below -- https://insolvency.pwc.com.au/groupEntityCases/pf-group-holdings-pty-ltd/casePage).

Length of Extension

52. In the circumstances set out above and noting the matters in paragraph 35 above, I estimate that an extension to Friday, 7 February 2025 is required for me (and my co-appointees) to be in a position to:

(a) complete the Administrators' Sale Process and determine the final offer(s) from bidder(s) that are in a form that can be put to the Companies' creditors (and depending

on the nature of the final offers received, identify whether such offers would require implementation through a share sale by either of the Companies or through a DOCA) and negotiate such offers;

(b) provide my report on the business, affairs and financial circumstances of the Companies under section 75-225(3)(a) of the Rules; and

(c) make my recommendation to the Companies' creditors as to the most suitable option for the Companies under section 75-225(3)(b) of the Rules.

53. I base this on:

(a) my own views of the amount of time that is likely to be required by the remaining participants in the Administrators' Sale Process to complete their due diligence, including taking into account the CAV Proceeding, and to negotiate a final offer including the relevant sale transaction document(s) and sale mechanism(s);

(b) the complexity of the affairs of the Companies and the Subsidiaries (including but not limited to the complexity that has been added by the CAV Proceeding);

(c) my own experience of the administrations of the Companies to date; and

(d) my own experience of matters such as this generally and the time which I expect will be required to complete the relevant workstreams listed above.

54. I anticipate that the requested extension to Friday, 7 February 2025 will be sufficient for me to complete each of the tasks identified in paragraph 44 to 50 above. However, and as noted in paragraph 35(c) above, in the event that my co-appointees and I are able to complete the remaining tasks in a shorter timeframe, I (and my co-appointees) intend to convene the Second Meeting earlier than the end of the requested extended period.

55. I request this Honourable Court make the orders sought in the originating process.

ASIC Notification of this Application

56. On or about 10 September 2024, I instructed Clifford Chance to email ASIC at legal.document.service@asic.gov.au to notify ASIC of this further application for orders for a further extension of the convening period to 7 February 2025. On 11 September 2024, ASIC responded and acknowledged receipt of Clifford Chance's email. A true copy of the correspondence referred to above can be found at pages 103 to 105 of Exhibit AJS-3.

57. I intend to provide ASIC with further notice of any orders made by this Honourable Court in respect of this application.

Sworn by the deponent)
at Sydney)
in New South Wales)
on 12 September 2024)
Before me:)

Signature of deponent

Alexandra Zhu
An Australian legal practitioner within the meaning of the *Legal Profession Uniform Law* (NSW)

This document was signed in countersign and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Exhibit Certificate

No. NSD 927 of 2024

Federal Court of Australia

District Registry: New South Wales

Division: General

IN THE MATTER OF PF GROUP HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 776 765) AND PF MANAGEMENT HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 782 512)

ADAM COLLEY, DERRICK VICKERS, ANDREW SCOTT AND STEPHEN LONGLEY (IN THEIR CAPACITIES AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS OF PF GROUP HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 776 765) AND PF MANAGEMENT HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 782 512)

Plaintiffs

This is the exhibit marked "AJS-3" now produced and shown to Andrew John Scott at the time of swearing his affidavit on 12 September 2024 before me:

Alexandra Zhu
An Australian legal practitioner within the meaning
of the *Legal Profession Uniform Law* (NSW)

This document was signed in countersign and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

FEDERAL COURT OF AUSTRALIA

Colley, in the matter of PF Group Holdings Pty Ltd (Administrators Appointed) [2024] FCA 792

File number(s):	NSD 927 of 2024
Judgment of:	**SHARIFF J**
Date of judgment:	18 July 2024
Catchwords:	**CORPORATIONS** – application for extension of time to convene second meeting of creditors – ss 439A and 447A of the *Corporations Act 2001* (Cth) – administrators appointed – discretion exercised to extend time to convene second meeting of creditors
Legislation:	*Corporations Act 2001* (Cth) ss 435A, 436C, s 439A, 447A
Cases cited:	*ABC Learning Centres Ltd, in the matter of ABC Learning Centres Ltd; application by Walker (No 5)* [2008] FCA 1947 *ABC Learning Centres Ltd, in the matter of ABC Learning Centres Ltd; an application by Walker (No 7)* [2009] FCA 454 *Albarran, in the matter of Bonza Aviation Pty Ltd (Administrators Appointed)* [2024] FCA 575 *Algeri, in the matter WBHO Australia Pty Ltd (Administrator Appointed) (No 2)* [2022] FCA 234 *Carter, in the matter of SFM Australasia Pty Ltd (Administrators Appointed) ACN 105 317 333 (No 2)* [2009] FCA 419 *Clubb (administrator), in the matter of Town Tavern Blacktown Pty Limited (administrators appointed) (receivers and managers appointed)* [2024] FCA 405 *Crawford, in the matter of North Queensland Heavy Haulage Services Pty Ltd (Administrators Appointed)* [2017] FCA 635 *Deputy Commissioner of Taxation v Scottsdale Homes No 3 Pty Ltd (No 2)* [2009] FCA 190 *Ex parte Vouris; in the matter of Marrickville Bowling & Recreation Club Ltd (under Administration)* [2008] FCA 622 *Fincorp Group Holdings Pty Ltd & Ors* [2007] NSWSC 363 *Fitzgerald, in the matter of Primebroker Securities Limited*

(Administrator Appointed) (Receivers and Managers Appointed) [2008] FCA 1247

Hall, in the matter of Australian Capital Reserve Limited (Administrators Appointed) [2007] FCA 1328

In the matter of BBY Limited [2015] NSWSC 974 at [7]; *Gothard, in the matter of Jewel of India Holdings Pty Ltd (Administrators Appointed)* [2019] FCA 1289

LED Builders Pty Ltd (Administrators Appointed), in the matter of LED Builders Pty Ltd (Administrators Appointed) and Ors [2008] NSWSC 633

Lombe re Australian Discount Retail Pty Ltd [2009] NSWSC 110

Lombe, in the matter of Babcock & Brown Ltd (Administrators Appointed) [2009] FCA 349

Mighty River International v Hughes [2018] HCA 38; (2018) 265 CLR 480

Quinlan, in the matter of Halifax Investment Services Pty Ltd (Administrators Appointed) [2018] FCA 1891

Re Octaviar Limited (Administrators Appointed) (Receivers and Managers Appointed (ACN 107 863 436) [2008] QSC 272

Re Riviera Group Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) [2009] NSWSC 585; 72 ACSR 352

Silvia, in the matter of Austcorp Group Limited (Administrators Appointed) [2009] FCA 636

Silvia, in the matter of Austcorp Group Ltd (Administrators Appointed) [2009] FCA 636

Sims, in the matter of Destra Corporation Ltd [2008] FCA 2002

Stewart, in the matter of Kleins Franchising Pty Ltd (Administrators Appointed) (ACN 007 348 236) [2008] FCA 721

Stimpson, in the matter of Eagle Boys Dial-A-Pizza Australia Pty Ltd (Administrators Appointed) v Eagle Boys Dial-A-Pizza Australia Pty Ltd (Administrators Appointed) [2016] FCA 935

Uni-Aire Security Pty Ltd (Administrators Appointed) ACN 085 430 619, in the matter of Uni-Aire Security Pty Ltd (Administrators Appointed) ACN 085 430 619 [2006] FCA 1423

Worrell, in the matter of Storm Financial Ltd (Receivers and Managers Appointed) [2009] FCA 70

Division: General Division

Registry:	New South Wales
National Practice Area:	Commercial and Corporations
Sub-area:	Corporations and Corporate Insolvency
Number of paragraphs:	46
Date of hearing:	18 July 2024
Counsel for the Plaintiff:	Mr M L Rose
Solicitor for the Plaintiff:	Clifford Chance

ORDERS

NSD927 of 2024

IN THE MATTER OF PF GROUP HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 776 765) AND PF MANAGEMENT HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 782 512)

ADAM COLLEY, DERRICK VICKERS, ANDREW SCOTT AND STEPHEN LONGLEY (IN THEIR CAPACITIES AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS OF PF GROUP HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 776 765) AND PF MANAGEMENT HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 782 512)
Plaintiff

ORDER MADE BY: **SHARIFF J**

DATE OF ORDER: **18 JULY 2024**

THE COURT ORDERS THAT:

1. The originating process dated 16 July 2024 be returnable *instanter* and *ex parte*.
2. Pursuant to s 439A(6) of the *Corporations Act 2001* (Cth) (the **Act**), that the period within which the plaintiffs must convene the second meeting of creditors in respect of each of PF Group Holdings Pty Ltd (Administrators Appointed) ACN 622 776 765 and PF Management Holdings Pty Ltd (Administrators Appointed) ACN 622 782 512 (the **Companies**) under s 439A of the Act (**Second Meetings**) be extended to 18 September 2024.
3. Pursuant to s 447A(1) of the Act, that Part 5.3A of the Act is to operate in relation to each of the Companies such that, notwithstanding s 439A(2) of the Act, the Second Meetings may be held together or separately any time during the period during, or within five business days after the end of, the convening period as extended in Order 2 above.
4. The plaintiffs, within seven business days of making these Orders, are to take all reasonable steps to give notice of the Orders to the Companies' creditors (including the persons claiming to be creditors), by means of a circular:

(a) to be published on the website maintained by the administrators in respect of the administration of the Companies;

(b) to be sent by email transmission to creditors for whom the plaintiffs have current email address; and

(c) to be sent by ordinary post to creditors for whom the plaintiffs have only a postal address.

5. Pursuant to s 447A(1) of the Act, that Part 5.3A of the Act is to operate such that the requirement on the plaintiffs to issue notices under s 75-225(1) and s 75-15 of the *Insolvency Practice Rules (Corporations) 2016* (Cth) be modified such that notice of the Second Meetings will be validly given to any creditors by, not less than five business days prior to the date of the proposed meetings:

(a) giving such notice electronically by email sent to the email address of any creditor (including persons claiming to be creditors) of the Companies for whom or which the plaintiffs hold an email address; or

(b) sending such notice to the postal address or facsimile number, or otherwise as provided for by the Act or the *Corporations Regulations 2001* (Cth), to any creditors not being a creditor referred to in sub-para (a); and

(c) causing such notice to be published in ASIC Published Notices website located at: https://publishednotices.asic.gov.au/.

6. The following parties have liberty to apply on giving all other interested parties not less than 3 business days' notice:

(a) any person who can demonstrate sufficient interest (including any creditor of the Companies) for the purpose of modifying or discharging Orders 2 and 3 above; and

(b) the plaintiffs, for the purpose of seeking any further extension of the convening period.

7. The costs of and incidental to this application be costs in the voluntary administration of the Companies and be paid out of the assets of the Companies.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

SHARIFF J:

INTRODUCTION

1 On 26 June 2024, the plaintiffs were appointed as joint and several voluntary administrators (together, the **Administrators**) of **PF Group Holdings** Pty Ltd (Administrators Appointed) ACN 622 776 765 and **PF Management Holdings** Pty Ltd (Administrators Appointed) ACN 622 782 512 (together, the **Companies**), pursuant to s 436C of the *Corporations Act 2001* (Cth) (the **Act**).

2 Following the appointment of the Administrators, the first meeting of the Companies' creditors was held on 8 July 2024. By operation of s 439A of the Act, the second meeting of the Companies' creditors must occur by 24 July 2024, unless the time for the convening of that meeting is extended by an order of the Court.

3 By an originating process filed on 16 July 2024, the Administrators seek an order pursuant to s 439A(6) of the Act permitting the extension of the convening period within which the second meeting of the Companies' creditors must be convened to 24 September 2024. The Administrators also seek other ancillary orders, including an order allowing for the electronic notification of creditors pursuant to s 447A of the Act. I heard the application in my capacity as Commercial and Corporations Duty Judge on 18 July 2024.

4 In support of the application, the Administrators relied on:

(a) the affidavit of Mr Andrew Scott (one of the co-appointees), sworn on 16 July 2024, together with exhibit AJS-1;

(b) a further affidavit of Mr Scott, sworn on 17 July 2024, together with its annexures.

5 Mr Rose of Counsel, who appeared for the Administrators, also filed a helpful written outline of submissions, to which I have had regard.

6 The essential reasons for the extension of time are that the Administrators require further time to facilitate and conclude a sale process that is presently being conducted by them, including to allow time for any deed of company arrangement (**DOCA**) to be proposed, and to allow further investigations and other work to continue to provide a more fulsome report to the Companies' creditors.

7 For the reasons which follow, I am satisfied that the time for convening the second meeting of the Companies' creditors should be extended to 18 September 2024.

BACKGROUND

The Companies' business and assets

8 The Companies are the parent companies of 22 Australian and New Zealand subsidiaries (together, the **Panthera Group**). Five of these subsidiaries are dormant. All of the subsidiaries except one are wholly-owned subsidiaries of the Companies.

9 The Panthera Group is headquartered in Brisbane and is one of Australia's largest debt buyer and debt collection businesses. It currently employs approximately 200 people across three offices in Brisbane, Melbourne and Echuca.

10 The Panthera Group's operations include debt ledger acquisition and debt collection companies, a credit recovery company for businesses and government agencies, and formerly, a consumer finance provider for non-conforming borrowers, which is now in a collect out phase.

11 From about 2020, certain entities in the Panthera Group have been the subject of investigations (and in some cases, fines) from the Australian Competition and Consumer Commission and Consumer Affairs Victoria.

12 On 16 January 2024, and prior to the Administrators' appointment, PricewaterhouseCoopers (**PwC**) (the firm of which each of the Administrators is a partner) was engaged by BSI PF Lender LP (**Brookfield**), the secured creditor of the Companies, to undertake an investigative accountant's review of the Panthera Group. That engagement ran over an eight-week period, culminating in the production of an investigative accountant's report. As Mr Scott explains, the purpose of that engagement was, amongst other things, to review the financial performance and covenant compliance of the Panthera Group, to review and comment on the Panthera Group's non-core businesses and potential options being considered by management for those businesses, and to provide comment on options available to Brookfield for enforcement.

13 Following that review, on 26 June 2024, the Administrators were appointed by Brookfield as voluntary administrators of the Companies. This occurred on the basis that Brookfield asserted that there had been events of default that had occurred and were continuing, and, on that basis, it exercised its statutory right to place the Companies into administration. Notwithstanding

PwC's prior involvement as investigative accountants, the plaintiffs have declared their independence as to their appointment as Administrators.

14 Since the time of their appointment, the Administrators have conducted extensive investigations into the affairs of the Companies. The Administrators caused resolutions to be passed by PF Management Holdings, in its capacity as the shareholder of both PF Management Group Pty Ltd and United Finance Group Pty Ltd, with the effect of removing Messrs Jamie Hough and Mathew Hough as the directors of those companies and replacing them with Mr Frank Terranova (the Panthera Group's Chief Financial Officer). Mr Scott explains that the Administrators considered that those appointments were in the best interests of the Companies as Messrs Hough and Hough were engaged in long standing and significant disputes with each other, and as such, were unable effectively, efficiently and properly to govern those Companies' affairs. Following Mr Terranova's appointment, he in turn caused Messrs Hough and Hough to be replaced by himself at the level of each other Australian subsidiary in the Panthera Group, and for Mr Ryan Shaw to be appointed as an independent director at the level of each Australian subsidiary in the Panthera Group.

15 On or about 28 June 2024, the Administrators caused to be issued their initial notice to the creditors of the Companies, and on 8 July 2024, the first creditors' meetings of the Companies were held both virtually and at the offices of the Panthera Group in Brisbane.

The Companies' creditors

16 Based on his and his co-appointees' investigations to date, Mr Scott explains that the Companies have the following claims against them by creditors, or persons claiming to be creditors.

Secured creditors

17 Brookfield is the secured creditor of the Panthera Group, holding a number of securities over companies within the Panthera Group, including each of the Companies.

18 As at 26 June 2024, Brookfield claimed (via its proof of debt submitted ahead of the first meetings of creditors of the Companies) that the value of its secured debt in respect of the Companies was approximately $151,129,486.

19 As Mr Scott explains, although the Administrators have not formally adjudicated on proofs of debt or claims at this stage, he considers on present information that this amount represents a

fair estimate of the principal, interest, and costs that are owed by the Companies to Brookfield as at 26 June 2024.

Ordinary unsecured creditors

20 Based on the Administrators' investigations to date, and based on the debts claimed (but not admitted at this stage by the Administrators) by creditors, other than Brookfield, PF Group Holdings has claims against it by:

(a) the Australian Securities and Investments Commission (**ASIC**), in the sum of $310;

(b) Jamie Hough/HJK Investments Pty Ltd in the sum of $187,523.78; and

(c) Mathew Hough, in the sum of $194,074.38.

21 There are no other claims made by persons claiming to be creditors against PF Management Holdings at this time.

Contingent creditors

22 Mr Scott explains that, in his view, the Companies may have claims against them by approximately 257 contingent creditors, in circumstances in which the Companies are each, together with their subsidiaries, parties to an ASIC Deed of Cross Guarantee dated 25 May 2023. Mr Scott further explains that:

(a) approximately 207 of these contingent creditors are employees of the subsidiaries and four of these contingent creditors are contractors to the subsidiaries;

(b) approximately 21 of these contingent creditors are trade creditors of the subsidiaries;

(c) approximately 21 of these contingent creditors are providers of rented or hired goods to the subsidiaries and have registered security interests on the Personal Property Securities Register against the relevant subsidiaries; and

(d) four of those contingent creditors are lessors of premises leased by Panthera Finance Pty Ltd and ARL Collect Pty Ltd (also used by the Panthera Group).

APPLICABLE PRINCIPLES

23 The relevant legislative scheme was recently outlined by Halley J in *Clubb (administrator), in the matter of Town Tavern Blacktown Pty Limited (administrators appointed) (receivers and managers appointed)* [2024] FCA 405 at [22]-[26]:

> Part 5.3A of the Act concerns the administration of a company's affairs with a view to

> executing a deed of company arrangement.
>
> The object of Pt 5.3A is to maximise the chance of a company continuing in existence, or, if that is not possible, obtain a better return for the company's creditors and members than would result from an immediate winding up: s 435A of the Act.
>
> Section 439A(2) of the Act provides that a subsequent meeting of the creditors must be held within 5 business days before, or within 5 business days after, the end of the convening period. The convening period is 20 business days beginning on the day the administration commences (assuming it is a business day, if not, the next business day) unless the administration begins in December or less than 25 days before Good Friday, in which case it is 25 business days: s 439A(5) of the Act.
>
> The Court has power to extend the convening period: s 439A(6) of the Act. In exercising that power the Court is to have regard to the objects set out in s 435A of the Act: *Algeri, in the matter of WBHO Australia Pty Ltd (Admins apptd) (No 2)* [2022] FCA 234 at [16] (Beach J).

24 See also *Crawford, in the matter of North Queensland Heavy Haulage Services Pty Ltd (Administrators Appointed)* [2017] FCA 635 at [18]-[20] (Markovic J).

25 The principles applicable to an application for an extension under s 439A(6) of the Act are well established: *Mighty River International v Hughes* [2018] HCA 38; (2018) 265 CLR 480 at [72]-[73] (Nettle and Gordon JJ). The function of the Court on such an application is to:

> … strike an appropriate balance between, on the one hand, the expectation that administration will be a relatively speedy and summary matter and, on the other, the requirement that undue speed should not be allowed to prejudice sensible and constructive actions directed towards maximising the return for creditors and any return for shareholders: *Re Diamond Press Australia Pty Ltd* [2001] NSWSC 313 at [10] per Barrett J.

26 In exercising the discretion as to whether to extend the time for the convening of the second meeting of creditors, the authorities establish that various factors may be relevant: see *Re Riviera Group Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed)* [2009] NSWSC 585; 72 ACSR 352 at [13] (Austin J); *Silvia, in the matter of Austcorp Group Limited (Administrators Appointed)* [2009] FCA 636 at [18] (Lindgren J); *Stimpson, in the matter of Eagle Boys Dial-A-Pizza Australia Pty Ltd (Administrators Appointed) v Eagle Boys Dial-A-Pizza Australia Pty Ltd (Administrators Appointed)* [2016] FCA 935 at [8]-[10]; *Algeri, in the matter WBHO Australia Pty Ltd (Administrator Appointed) (No 2)* [2022] FCA 234 at [15]-[17]. These factors include:

(a) the size and scope of the business: ***Lombe**, in the matter of Babcock & Brown Ltd (Administrators Appointed)* [2009] FCA 349; *Worrell, in the matter of Storm Financial Ltd (Receivers and Managers Appointed)* [2009] FCA 70; *ABC Learning Centres Ltd,*

in the matter of ABC Learning Centres Ltd; application by Walker (No 5) [2008] FCA 1947;

(b) complex corporate group structure and intercompany loans: *Lombe*; *Re Octaviar Limited (Administrators Appointed) (Receivers and Managers Appointed (ACN 107 863 436)* [2008] QSC 272; *LED Builders Pty Ltd (Administrators Appointed), in the matter of LED Builders Pty Ltd (Administrators Appointed) and Ors* [2008] NSWSC 633; *Hall, in the matter of Australian Capital Reserve Limited (Administrators Appointed)* [2007] FCA 1328;

(c) lack of access to corporate financial records: *Sims, in the matter of Destra Corporation Ltd* [2008] FCA 2002; *Fincorp Group Holdings Pty Ltd & Ors* [2007] NSWSC 363;

(d) the time needed to execute an orderly process of disposal of assets: *Carter, in the matter of SFM Australasia Pty Ltd (Administrators Appointed) ACN 105 317 333 (No 2)* [2009] FCA 419; *ABC Learning Centres Ltd, in the matter of ABC Learning Centres Ltd; an application by Walker (No 7)* [2009] FCA 454;

(e) the time needed for thorough assessment of a proposal for a deed of company arrangement: *Silvia, in the matter of Austcorp Group Ltd (Administrators Appointed)* [2009] FCA 636;

(f) where the extension will allow sale of the business as a going concern: *Lombe re Australian Discount Retail Pty Ltd* [2009] NSWSC 110; *Stewart, in the matter of Kleins Franchising Pty Ltd (Administrators Appointed) (ACN 007 348 236)* [2008] FCA 721; *Uni-Aire Security Pty Ltd (Administrators Appointed) ACN 085 430 619, in the matter of Uni-Aire Security Pty Ltd (Administrators Appointed) ACN 085 430 619* [2006] FCA 1423;

(g) more generally, that additional time is likely to enhance the return for unsecured creditors: *Deputy Commissioner of Taxation v Scottsdale Homes No 3 Pty Ltd (No 2)* [2009] FCA 190; *Fitzgerald, in the matter of Primebroker Securities Limited (Administrator Appointed) (Receivers and Managers Appointed)* [2008] FCA 1247; *Ex parte Vouris; in the matter of Marrickville Bowling & Recreation Club Ltd (under Administration)* [2008] FCA 622.

27 As recently observed by Jackman J in *Albarran, in the matter of Bonza Aviation Pty Ltd (Administrators Appointed)* [2024] FCA 575 at [12]:

> An extension of the administration period to facilitate either (or both of): (a) the sale

> of the business of the company as a going concern, so as to maximise the value of the company's assets; or (b) the progression and assessment of a DOCA proposal that may provide a better return to creditors than a winding-up, are central instances in which it will generally be appropriate for the court to extend the convening period. An additional factor in favour of extending the convening period is the need for creditors to have sufficient information at the second meeting to allow them to exercise their decision as to the future of the company in as informed a manner as possible.

THE ADMINISTRATORS' SUBMISSIONS

28 The Administrators submit that it is necessary that the convening period be extended to provide them with further time to enable the sale process presently being conducted in respect of the Companies' assets to continue, with a view to seeking to maximise the chances of the Companies, or as much as possible of their business, continuing in existence, or if that is not possible, seeking to achieve a better return for the Companies' creditors and members than would result from an immediate winding up of the Companies. The Administrators submit that an extension of the convening period will also allow them time to continue and to finalise their investigations into the affairs of the Companies, and more completely to report to the Companies' creditors.

Time is needed to allow the sale campaign to complete

29 Mr Scott has explained that prior to the Administrators' appointment, in about February 2024, Grant Samuel was engaged by PF Management Holdings to undertake a dual track sale process to test interest in a whole of business transaction or, alternatively, to sell individual parts of the Panthera Group's business. Shortly after their appointment, the Administrators considered the information and documents that were prepared for the purposes of, and the potential bidders that were identified out of, that sale process. Although some of the materials prepared in that sale process were of utility, to ensure that the Companies and/or their assets would be marketed as widely as possible with a view to maximising their sale price, the Administrators considered that a new sale process was necessary and appropriate.

30 In that context, and with the assistance of PwC's mergers and acquisitions team, the Administrators commenced a two-stage sale process following an initial call for expressions of interest involving:

(a) the provision of key materials including information memoranda and financial models to allow interested parties to formulate a non-binding indicative offer; and

(b) access to a comprehensive data room for short-listed parties to conduct detailed due diligence,

which in the Administrators' view would have the best chance of maximising the sale value of the Companies and/or their assets.

31 That sales process is primarily focused on a whole of business sale, although as Mr Scott observes, the Administrators also intend to consider and if possible to deal with other proposals if received.

32 The Administrators' sale process commenced on 5 July 2024, at which time the Administrators caused to be published in the *Australian Financial Review* an advertisement calling for expressions of interest in respect of a 100% sale of the Companies' shares in, or a recapitalisation of, the Panthera Group.

33 Since that date, the Administrators have been in contact with the 11 interested parties previously involved in the Grant Samuel sale process, five of whom contacted the Administrators seeking to lodge an expression of interest in the Administrators' sale process (two of these parties are Messrs Jamie Hough and Mathew Hough). The remaining six of those interested parties were contacted by the Administrators or their staff given their previous interest in the Grant Samuel sale process.

34 Mr Scott further observes that, as at 12 July 2024, there were approximately 16 new interested parties who have expressed interest in the Administrators' sale process who had not previously been involved in the Grant Samuel sale process. Mr Scott deposes to the Administrators' intention to liaise with the interested parties referred to above to confirm their funding capacity and transaction experience (with interested parties' responses being assessed, on a case-by-case basis, by the Administrators before a decision will be made as to whether particular interested parties will be invited to participate further in the Administrators' sale process).

35 The Administrators contemplate that the Administrators' sale process will require until 13 September 2024 to complete, based on the following indicative timeline:

Key event	**Timing**
Stage 1	
Confidentiality agreements circulated	Underway
Stage 1 Materials circulated to approved bidders	Monday, 22 July 2024
Due date for submission of non-binding indicative offers	4:00pm (AEST) on Monday, 5 August 2024

Stage 2	
Short-listed parties notified	Monday, 5 August 2024
Stage 2 data room and Q&A function opens to short-listed parties	Monday, 5 August 2024
Due diligence sessions with the Panthera Group's management team	From Tuesday, 6 August 2024
Transaction documents uploaded to data room	W/C Monday, 12 August 2024
Submission of final offer and marked up transaction documents	Friday, 31 August 2024
Final negotiations with preferred bidder(s) and execute transaction documents	Friday, 13 September 2024

36 I was informed by Counsel for the Administrators that the abovementioned timeline has been disclosed to the interested parties.

37 Mr Scott's opinion is that the Administrators' sale process is likely to take approximately eight weeks before proposals will be received from potential bidders that are likely to be in a form that can be put to the Companies' creditors.

The need for more time to report to creditors

38 As Mr Scott further explains, at this early stage, it has been difficult for him to form an opinion on what will be in creditors' best interests, and to report meaningfully or in any depth on that opinion and the financial position of the Companies. It is his view that in the absence of the extension sought, the Administrators would be required to make a recommendation to creditors based on an incomplete sale process in respect of the Companies and/or their assets, which would likely require that the second meetings be adjourned until the necessary work and investigations could be undertaken, which in turn would lead to a substantial and avoidable expenditure of creditor funds.

Notice to creditors and potential detriment

39 Creditors were notified of the Administrators' consideration of whether an extension of the convening period might be required at the first meetings of creditors, held on 8 July 2024.

40 On or about 11 July 2024, the Administrators have notified each of Brookfield and Messrs Hough and Hough (and their corporate vehicles) to inform them of the Administrators' intention to seek the eight-week extension to the convening period referred to above and to

enquire as to whether they had any objection to that course being taken. Notice of this application has also been given to ASIC.

41 The Administrators were not informed of any opposition to the application.

CONSIDERATION

42 Having regard to the statements of principle above, and the circumstances of the Companies, I am satisfied that it is appropriate that an extension of the convening period be granted.

43 I am satisfied that the objects of s 435A of the Act are best served by the extension sought, and the extension sought will provide time for any sale to occur and a DOCA to be entered into, if that need arises. I am also satisfied that the extension will allow time for the Administrators to meaningfully report to creditors on the affairs of the Companies, in advance of the second meetings of creditors.

44 I am satisfied that:

(a) this application for the extension of the convening period is made before the convening period expires, and it is the first application;

(b) the extension sought is for a reasonable period of eight weeks. I consider that this period is reasonable given:

(i) the need to conduct further investigations into the affairs of the Companies, particularly where those affairs are intermingled and ongoing;

(ii) in particular, the need for further time to allow the possible sale or recapitalisation of the Companies' assets to be achieved, and the likely timeframes for that to occur; and

(iii) the need generally for the Administrators to continue to carry out their investigations;

(c) creditors will not be materially prejudiced by the extension;

(d) the orders proposed make provision for any person who can demonstrate sufficient interest to apply to the Court for modification of those orders; and

(e) there is no winding-up application on foot in respect of the Companies.

45 The Administrators also seek orders providing for the electronic provision of reports and other documents to the Companies' creditors. Orders in the nature of those sought by the Administrators (insofar as it concerns electronic notification) in this application have been

made in a number of cases: see, eg, *In the matter of BBY Limited* [2015] NSWSC 974 at [7]; *Gothard, in the matter of Jewel of India Holdings Pty Ltd (Administrators Appointed)* [2019] FCA 1289; and *Quinlan, in the matter of Halifax Investment Services Pty Ltd (Administrators Appointed)* [2018] FCA 1891. I am satisfied that these orders are appropriate in that they will fulfil the objective of notifying as many creditors of the Companies' as quickly and cheaply as possible and will conserve the limited assets of the Companies for the benefit of creditors.

DISPOSITION

46 For the above reasons, I will make the orders that are sought.

I certify that the preceding forty-six (46) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Shariff.

Associate: L Pickering

Dated: 18 July 2024

FEDERAL COURT OF AUSTRALIA

Australian Competition and Consumer Commission v Panthera Finance Pty Ltd [2020] FCA 340

File number:	NSD 1162 of 2019
Judge:	**JAGOT J**
Date of judgment:	12 March 2020
Date of publication of reasons:	13 March 2020
Catchwords:	**CONSUMER LAW** – where respondent admitted contraventions of *Australian Consumer Law* – where respondent contacted consumers pursuing payment of alleged debt – where consumers were not liable for alleged debt – undue harassment – false or misleading representations – agreed pecuniary penalties – application granted **HUMAN RIGHTS** – Privacy – interlocutory application – where suppression orders sought for individuals that have provided affidavit evidence – where orders seek to prevent the disclosure of confidential information – commercial sensitivity of information is an appropriate basis for making a suppression or non-publication order – application granted
Legislation:	*Australian Securities and Investments Commission Act 2001* (Cth) *Competition and Consumer Act 2010* (Cth) ss 155AAA, 155AAA(21), Sch 2 (*Australian Consumer Law*) ss 29, 29(1)(m), 50, 50(1), 224(1)(a)(ii), 224(3) item 2, 246(1), 246(2), 246(2)(b) *Federal Court of Australia Act 1976* (Cth) ss 21, 37AF, 37AF(1)(a), 37AG(1), 37AG(1)(a) *Federal Court Rules 2011* (Cth) rr 2.32(1)(b), 2.32(3)(a) *Privacy Act 1988* (Cth) s 21V
Cases cited:	*Ainsworth v Criminal Justice Commission* [1992] HCA 10; (1992) 175 CLR 564 *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2018] HCA 3; (2018) 262 CLR 157 *Australian Competition and Consumer Commission v ACM*

	Group Ltd (No 2) [2018] FCA 1115 *Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd* [2015] FCA 330 *Australian Competition and Consumer Commission v Jetstar Airways Pty Ltd (No 2)* [2017] FCA 205 *Australian Competition and Consumer Commission v Sontax Australia (1988) Pty Ltd* [2011] FCA 1202 *Australian Competition and Consumer Commission v Yazaki Corporation* [2018] FCAFC 73; (2018) 262 FCR 243 *Australian Competition & Consumer Commission v McCaskey* [2000] FCA 1037; (2000) 104 FCR 8 *Australian Competition & Consumer Commission v Maritime Union of Australia* [2001] FCA 1549; (2001) 114 FCR 472 *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; (2015) 258 CLR 482 *Forster v Jododex Australia Pty Ltd* [1972] HCA 61; (1972) 127 CLR 421 *Markarian v The Queen* [2005] HCA 25; (2005) 228 CLR 357 *Motorola Solutions Inc v Hytera Communications Corporation Ltd (No 2)* [2018] FCA 17
Date of hearing:	12 March 2020
Registry:	New South Wales
Division:	General Division
National Practice Area:	Commercial and Corporations
Sub-area:	Regulator and Consumer Protection
Category:	Catchwords
Number of paragraphs:	60
Counsel for the Applicants:	Ms N Sharp SC with Ms V Brigden
Solicitor for the Applicants:	Australian Government Solicitor
Counsel for the Respondent:	Mr M Hodge QC with Mr M Clarke
Solicitor for the Respondent:	Burns & Associates Solicitors

ORDERS

NSD 1162 of 2019

BETWEEN:	**AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** First Applicant
	RAMI GREISS the holder of a delegation dated 23 September 2014 from the Australian Securities and Investments Commission pursuant to section 102 of the *Australian Securities and Investments Commission Act 2001* (Cth) in relation to alleged contraventions of that Act Second Applicant
AND:	**PANTHERA FINANCE PTY LTD ACN 147 634 482** Respondent
JUDGE:	**JAGOT J**
DATE OF ORDER:	**12 MARCH 2020**

IN RELATION TO CONFIDENTIALITY THE COURT NOTES THAT:

1. In these orders the following terms have the following meanings:

Confidential Consumer Information	means information contained in any document lodged or filed in the Court consisting of the: (i) name; (ii) date of birth; (iii) home or work addresses; (iv) phone numbers; (v) email addresses; (vi) credit card details; (vii) bank account details; (viii) credit history details; and (ix) employer or place of work; of Witness A, Witness B, Witness C, Witness D, MH and DD.

IN RELATION TO CONFIDENTIALITY THE COURT ORDERS THAT:

2. Pursuant to s 37AF of the *Federal Court of Australia Act 1976* (Cth) (the **Court Act**), and on the ground that this order is necessary to prevent prejudice to the proper administration of justice:

   (a) the persons referred to by the pseudonyms set out in the Confidential Appendix to these orders may only be referred to in the context of or in connection with these proceedings by those pseudonyms; and

   (b) the names of Witness A, Witness B, Witness C, Witness D, MH and DD be confidential for the purposes of rr 2.32(1)(b) and 2.32(3)(a) of the *Federal Court Rules 2011* (Cth).

3. Pursuant to s 37AF of the Court Act, and on the ground that this order is necessary to prevent prejudice to the proper administration of justice, publication and/or disclosure of the Confidential Consumer Information is prohibited, except that:

   (a) the Confidential Consumer Information may be disclosed to:

      (i) the Court, including the Registrar mediator assigned to this matter;

      (ii) the parties to this proceeding;

      (iii) the legal representatives of the parties to this proceedings;

      (iv) paralegals, litigation support personnel, computers services personnel and secretarial or administrative staff employed by or engaged by the persons in paragraphs 3(a)(i) to 3(a)(iii); and

   (b) this order does not prevent the applicant (the **ACCC**) or an ACCC official (within the meaning of s 155AAA(21) of the *Competition and Consumer Act 2010* (Cth) (the **CCA**)) from disclosing Confidential Consumer Information to any entity or person to whom disclosure of "protected information" within the meaning of s 155AAA(21) of the CCA would be permitted pursuant to s 155AAA of the CAA.

4. Orders 2 and 3 above operate for five years from the date of this order.

5. The parties have liberty to apply on 7 days' notice.

IN RELATION TO THE CONTRAVENTIONS THE COURT DECLARES THAT:

6. The respondent (**Panthera**) used undue harassment in connection with the supply or possible supply of goods or services, or the payment for goods or services, in respect of 3 consumers, by:

   (a) between 22 September 2017 and 9 October 2017 and between 29 June 2018 and 14 July 2018, repeatedly contacting Witness A in pursuit of payment of a debt and repeatedly requiring Witness A to provide proof that she was not liable for the debt;

   (b) on two occasions between early January and February 2017, requiring Witness B to provide a fraud report to prove that he was not liable for the debt;

   (c) between 4 August 2014 and 4 April 2018, repeatedly contacting Witness C in pursuit of payment of a debt and repeatedly requiring Witness C to provide proof that she was not liable for the debt; and

   (d) continuing to pursue the debt after Witnesses A, B and C had disputed liability for the debt, in a manner contrary to provisions 13(a), (d), (e), (f) (g) and in some instances (i) of the ACCC-ASIC Debt Collection Guidelines for collectors and creditors,

   in circumstances where:

   (a) Panthera was aware that Witnesses A, B and C had disputed liability for the debt; and

   (b) Witnesses A, B and C were not in fact liable for the debts,

   and thereby contravened s 50(1) of the *Australian Consumer Law* (the **ACL**) in relation to each consumer.

7. On 4 April 2017, Panthera, in trade or commerce, in connection with the supply or possible supply of goods or services, made a false or misleading representation concerning the exclusion or effect of a right in contravention of s 29(1)(m) of the ACL, by representing to Witness B that he needed to make a payment to Panthera of $100 in order to have a default listing removed from his credit file, in circumstances where:

   (a) the default listing was inaccurate; and

(b) the consumer had a right to have the default listing removed free of charge, pursuant to s 21V of the *Privacy Act 1988* (Cth).

IN RELATION TO THE CONTRAVENTIONS THE COURT ORDERS THAT:

8. Within 30 days of the date of this order, Panthera pay to the Commonwealth of Australia pecuniary penalties totalling $500,000 as follows:

   (a) $125,000 in respect of each contravention of s 50(1) of the ACL in relation to the 3 consumers referred to in the declaration at 6 above; and

   (b) $125,000 in respect of the contravention of s 29(1)(m) of the ACL, referred to in the declaration at 7 above.

IN RELATION TO THE CONTRAVENTIONS THE COURT ORDERS BY CONSENT THAT:

9. Pursuant to s 246(2)(b) of the ACL, Panthera continue to maintain a compliance program for three years from the date of this order, which must have a specific focus on ensuring compliance with ss 29 and 50 of the ACL, and Panthera's processes for dealing with consumers who dispute liability for a debt.

10. Panthera make a contribution to the ACCC's costs in the amount of $100,000, to be paid within 30 days of the date of this order.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

Confidential Appendix

REDACTED

REASONS FOR JUDGMENT

JAGOT J:

Summary

1 These reasons for judgment explain why I made declarations and orders as proposed by the parties concerning contraventions of ss 29(1)(m) (false or misleading representation) and 50(1) (undue harassment) of the *Australian Consumer Law* (the **ACL**) in Sch 2 to the *Competition and Consumer Act 2010* (Cth) (the **CCA**).

2 The proposed declarations concern the admitted unlawful conduct of the respondent (**Panthera**) as follows:

(1) in the specific periods detailed below between 4 August 2014 and 14 July 2018, Panthera engaged in undue harassment of three consumers, referred to as Witnesses A, B and C, while seeking payment of debts from those consumers, in circumstances where the consumers did not in fact owe the debts; and

(2) on 4 April 2017 Panthera made a false or misleading representation concerning the existence, exclusion or effect of a right in relation to Witness B.

3 The proposed orders involve the imposition of pecuniary penalties on Panthera totalling $500,000 in respect of the admitted contraventions, being three contraventions of s 50(1) (undue harassment) and one contravention of s 29(1)(m) (false or misleading representation) of the ACL.

Use of pseudonyms

4 I was satisfied that orders should also be made under s 37AF(1)(a) of the *Federal Court of Australia Act 1976* (Cth) (the **Court Act**) suppressing the names of the witnesses who were the subjects of Panthera's unlawful conduct.

5 As the applicant (the **ACCC**) noted in its submissions s 37AF(1)(a) of the Court Act grants the Court the power to make suppression or non-publication orders in relation to information tending to reveal the identity of or otherwise concerning any witness (or any person who is related or otherwise associated with a witness) in a proceeding before the Court.

6 Section 37AG(1) sets out the grounds on which the Court may make a suppression order. The ACCC sought the suppression orders on the ground that they are necessary to prevent prejudice to the proper administration of justice, pursuant to s 37AG(1)(a) of the Court Act.

7 In *Motorola Solutions Inc v Hytera Communications Corporation Ltd (No 2)* [2018] FCA 17 at [6] (***Motorola***) Perram J summarised the principles applicable to the making of suppression orders as follows:

> (1) the [Court Act]contains Part VAA which relates to suppression and non-publication orders;
>
> (2) the power of the Court to make such orders is contained in s 37AF and the grounds for making them are to be found in s 37AG which includes within it that 'the order is necessary to prevent prejudice to the proper administration of justice': s 37AG(1)(a);
>
> (3) such an order is not lightly to be made. It must be necessary to prevent prejudice to the proper administration of justice and not merely desirable: see *Hogan v Australian Crime Commission* [2010] HCA 21; (2010) 240 CLR 651 at 666 [39]; *Australian Competition and Consumer Commission v Valve Corporation (No 5)* [2016] FCA 741 at [8] per Edelman J;
>
> (4) the Court may make any other order necessary to give effect to the primary order: s 37AF(2) of the [Court Act].
>
> (5) the order, once made, must remain in place no longer than is reasonably necessary to achieve its purpose: s 37AJ(2); and
>
> (6) the Court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice (s 37AE) but no balancing exercise need be carried out between the utility of the order and the interest which open justice assumes under the [Court Act]: *Australian Competition and Consumer Commission v Air New Zealand (No 12)* [2013] FCA 533 at [21].

8 The ACCC described its proposed orders (collectively, the **Proposed Confidentiality Orders**) in these terms:

> **Proposed Order 1** requires the use of pseudonyms in respect of consumers who have provided affidavits in the proceedings, and individuals related to those consumers;
>
> **Proposed Order 2** seeks to prevent the disclosure of Confidential Consumer Information;
>
> **Proposed Order 3** provides that Orders 1 and 2 will be operative for a period of five years only.
>
> (Original emphasis.)

9 The ACCC noted that:

> The matters set out in the Concise Statement in respect of Witnesses A, B and C traverse matters relating to financial standing, debt, identity verification and potential identity fraud or theft. The ACCC has filed affidavits from the witnesses, which have not been read in the proceeding (and as a result of agreement being reached between the parties as to relevant facts, are not expected to be read in the proceeding.) The affidavits filed on behalf of each witness contain personal and sensitive information, such as personal email addresses and phone numbers, residential addresses, credit card details and credit history details.

10 As to the Court's power to make the Proposed Confidentiality Orders, the ACCC submitted that:

(1) the Proposed Confidentiality Orders relate to people who are:

(a) witnesses in these proceedings (being Witnesses A, B, C and D); or

(b) related to or otherwise associated with Witnesses in these proceedings (being, MH and DD); and

(2) as a result, the Proposed Orders 1 and 2, fall within the scope of s 37AF(1)(a) of the Court Act as they relate to the disclosure of information tending to reveal the identity of or otherwise concerning any witness (or any person who is related or otherwise associated with a witness) in a proceeding before the Court.

11 As to the necessity to make the Proposed Confidentiality Orders, the ACCC submitted that:

(1) Proposed Orders 1 and 2 be made on the ground that they are necessary to prevent prejudice to the proper administration of justice, pursuant to s 37AG(1)(a) of the Court Act; and

(2) if not made:

(a) there is significant risk that the Witnesses will suffer harm as a result of their willingness to provide evidence in court proceedings; and

(b) there is a significant risk that if the ACCC is not successful in obtaining orders to the effect of Proposed Orders 1 and 2, consumers will be less willing to provide evidence for the ACCC in consumer protection matters which would severely hamper the ACCC's ability to discharge its function in enforcing consumer protection provisions of the ACL.

12 As to the Court's discretion to make the Proposed Confidentiality Orders, the ACCC submitted:

(1) the ACCC relies on the willingness of individuals, such as Witnesses A, B, C and D, to give evidence in proceedings of this nature to discharge its function in enforcing the ACL;

(2) the ACCC is concerned that there may be a risk that consumers will be unwilling to assist the ACCC in future matters by giving evidence in proceedings, if by doing so, their identities are publicly disclosed and their personal details (including contact information and credit card details) become publicly available;

(3) refusal by consumers to provide evidence, would severely hamper the ACCC's ability to discharge its function in enforcing the ACL, resulting in prejudice to the administration of justice;

(4) publication of the Witnesses' names and contact information may expose them to unwanted media contact and attention, which is likely to result in them suffering stress and possible harassment as a result of their willingness to provide evidence in court proceedings;

(5) the Confidential Consumer Information contemplated by Proposed Order 2 consists of the type of unique information that enables a specific individual to be identified or contacted. Disclosure of this kind of information puts the individual at risk of having their personal information misused;

(6) the Court often redacts information of the kind contemplated by Proposed Order 2 in its published reasons for judgment, suggesting an acknowledgment that disclosure of these types of information is undesirable; and

(7) in *Motorola* at [8], Perram J noted that this Court, in a number of cases, has found that commercial sensitivity of information is an appropriate basis for making a suppression or non-publication order.

13 The ACCC submitted that the Proposed Confidentiality Orders should be made in the exercise of the Court's discretion as it has demonstrated that Proposed Orders 1 and 2 are necessary, and not merely convenient, to prevent prejudice to the proper administration of justice. Further, the five year currency period contemplated by Proposed Order 3, is no longer than is reasonably necessary to prevent prejudice. The ACCC said this period is sufficient to allow media interest and publicity in this matter to die down and allows a period for the currency of some of the Confidential Consumer Information to lapse, such as credit card and drivers licence details.

14 According to the ACCC the Proposed Confidentiality Orders do not unduly affect the public interest in open justice. This is because:

(1) the use of pseudonyms does not overly impact the public's right to engage with these proceedings; and

(2) the Confidential Consumer Information is contained in affidavit materials that, because they have not been formally read, are not generally accessible to the public in any event.

15 I accepted the ACCC's submissions to the above effect. The Proposed Confidentiality Orders were made as they are necessary to prevent prejudice to the proper administration of justice.

Joint submissions, agreed facts and admissions

16 The parties jointly filed a document which contains agreed submissions, facts and admissions by Panthera (the **Joint Document**). A copy of that document is attached at Annexure A to these reasons for judgment. Words and phrased defined in the Joint Document take the same meaning in these reasons for judgment. The following facts and submissions are taken from the Joint Document.

Overview of the key facts

Statutory provisions

17 Section 50(1) of the ACL provides that a person must not use physical force, or undue harassment or coercion, in connection with, relevantly, the payment for goods or services.

18 Section 29(1)(m) of the ACL provides that a person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

19 I accept the submissions of the parties to the effect that the ACL applies rather than the *Australian Securities and Investments Commission Act 2001* (Cth), the latter of which is concerned with the provision of financial services. The same conclusion was reached in relation to debt collection activities in relation to goods and services not themselves being

financial services in *Australian Competition and Consumer Commission v ACM Group Ltd (No 2)* [2018] FCA 1115 at [217]-[225].

Witness A

20 Panthera has admitted that between 22 September 2017 and 9 October 2017 and between 29 June 2018 and 14 July 2018, Panthera engaged in undue harassment of Witness A, in contravention of s 50(1) of the ACL, by:

(1) repeatedly contacting Witness A as set out in [13] of the Joint Document;

(2) repeatedly requiring Witness A to provide proof that she was not liable for the Origin Debt, as set out in [11], [20] and [21] of the Joint Document; and

(3) continuing to pursue the Origin Debt after Witness A had disputed liability as set out in [11] of the Joint Document, in a manner contrary to provisions 13(a), (d), (e), (f), (g) and in some instances (i) of the ACCC-ASIC Debt Collection Guidelines for collectors and creditors (the **Guidelines**),

in circumstances where:

(1) Panthera was aware that Witness A had disputed liability for the Origin Debt; and

(2) Witness A was not in fact liable for the Origin Debt.

Witness B

21 Panthera has admitted that between early January 2017 and 4 April 2017, Panthera engaged in undue harassment of Witness B, in contravention of s 50(1) of the ACL, by:

(1) requiring Witness B to provide a fraud report as proof that he was not liable for the Telstra Debt, as set out in [29] of the Joint Document; and

(2) continuing to pursue the Telstra Debt after Witness B had disputed liability as set out in [29] of the Joint Document, in a manner contrary to provisions 13(a), (d), (e), (f), (g) and in some instances (i) of the Guidelines,

in circumstances where:

(1) Panthera was aware that Witness B disputed liability for the Telstra Debt, as set out in [27] of the Joint Document; and

(2) Witness B was not in fact liable for the Telstra Debt.

22 Panthera has also admitted that on 4 April 2017 it made a false or misleading representation concerning the existence, exclusion or effect of a right, in contravention of s 29(1)(m) of the ACL, as set out in paragraph 34 of the Joint Document, by representing that Witness B was required to pay at least $100 to Panthera to have a default listing removed from his credit history in circumstances where:

(1) the default listing was inaccurate; and

(2) Witness B had a right to have the default listing removed free of charge, pursuant to s 21V of the *Privacy Act 1988* (Cth).

Witness C

23 Panthera has admitted that between 4 August 2014 and 4 April 2018, it engaged in undue harassment of Witness C, in contravention of s 50(1) of the ACL, by:

(1) repeatedly contacting Witness C as set out in [44] of the Joint Document, in pursuit of payment of the AGL Debt;

(2) repeatedly requiring Witness C to provide proof that she was not liable for the AGL Debt, as set out in [42], [47] and [52] of the Joint Document;

(3) continuing to pursue the debt after Witness C had disputed liability for the AGL Debt as set out in [40] of the Joint Document, in a manner contrary to provisions 13(a), (d), (e), (f), (g) and in some instances (i) of the Guidelines;

in circumstances where:

(1) Panthera was aware that Witness C had disputed liability for the debt; and

(2) Witness C was not in fact liable for the debt.

24 It may readily be concluded that Panthera's repeated and intrusive conduct as disclosed in the Joint Document constituted the undue harassment of each of Witness A, B and C. In circumstances where each of the Witnesses denied being the debtor and any liability to pay the debt Panthera repeatedly and over relatively significant periods effectively insisted that the Witnesses disprove their liability. In the circumstances I accept that Panthera's conduct was such as to "intimidate or demoralise, tire out or exhaust a debtor, rather than merely to convey the demand for recovery": *Australian Competition & Consumer Commission v Maritime Union of Australia* [2001] FCA 1549; (2001) 114 FCR 472 at [60] citing *Australian*

Competition & Consumer Commission v McCaskey [2000] FCA 1037; (2000) 104 FCR 8 at [48].

Agreed orders

25 In *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; (2015) 258 CLR 482 at [46] (***Commonwealth v Director***) the High Court said:

> …there is an important public policy involved in promoting predictability of outcome in civil penalty proceedings and that the practice of receiving and, if appropriate, accepting agreed penalty submissions increases the predictability of outcome for regulators and wrongdoers. As was recognised in *Allied Mills* and authoritatively determined in *NW Frozen Foods*, such predictability of outcome encourages corporations to acknowledge contraventions, which, in turn, assists in avoiding lengthy and complex litigation and thus tends to free the courts to deal with other matters and to free investigating officers to turn to other areas of investigation that await their attention.

26 At [58] the High Court said:

> Subject to the court being sufficiently persuaded of the accuracy of the parties' agreement as to facts and consequences, and that the penalty which the parties propose is an appropriate remedy in the circumstances thus revealed, it is consistent with principle and, for the reasons identified in *Allied Mills*, highly desirable in practice for the court to accept the parties' proposal and therefore impose the proposed penalty. To do so is no different in principle or practice from approving an infant's compromise, a custody or property compromise, a group proceeding settlement or a scheme of arrangement.

27 At [60] and [61] the High Court noted the relevance of the fact that submissions were being advanced by a specialist regulator able to offer "informed submissions as to the effects of contravention on the industry and the level of penalty necessary to achieve compliance", albeit that such submissions will be considered on the merits in the ordinary way.

28 The Joint Document records that these principles are not confined to agreed submissions on pecuniary penalties but apply equally to agreement on other forms of relief.

The proposed declarations

29 The parties submitted that the facts necessary to found the proposed declarations had been admitted and it is appropriate for the declarations to be made for these reasons:

(1) the Court has a wide discretionary power to make declarations under s 21 of the Court Act;

(2) the preconditions for declaratory relief, as explained by the High Court (*Forster v Jododex Australia Pty Ltd* [1972] HCA 61; (1972) 127 CLR 421, [437]-[438] and *Ainsworth v Criminal Justice Commission* [1992] HCA 10; (1992) 175 CLR 564, [581]-[582]), are made out, being:

(a) There is a real and not a hypothetical question:

(i) There is a direct and important question as to whether Panthera's conduct towards each of Witness A, B and C contravened the provisions of the ACL;

(b) The applicant has a real interest in raising it:

(i) The ACCC has an obvious interest, as the statutory regulator discharging its functions in the public interest, in bringing the proceedings; and

(c) There is a proper contradictor and real consequences:

(i) Panthera, as the entity declared to have contravened the law, has an interest in opposing the relief. This remains so notwithstanding its admissions and agreement.

30 Further:

> …the declarations are desirable and appropriate because they will record the Court's disapproval of the conduct, vindicate the concerns of relevant consumers, assist the ACCC in carrying out the duties conferred on it by the CCA, assist in clarifying the law and make clear to other would-be contravenors that such conduct is unlawful.

Compliance program

31 It was submitted that it is appropriate to require Panthera to continue to maintain a compliance program as sought by consent in the Proposed Orders. Section 246(2)(b) of the ACL empowers the Court to make such orders and the pre-conditions enlivening that power are met in the present case as :

(1) the Proposed Orders are sought by the regulator in relation to a person who has contravened provisions of Chapter 3 of the ACL: s 246(1); and

(2) the Proposed Orders have the purpose of ensuring that Panthera does not engage in the same conduct, or similar or related conduct, for a period not exceeding 3 years: s 246(2).

32 Having regard to the principles expressed in *Australian Competition and Consumer Commission v Sontax Australia (1988) Pty Ltd* [2011] FCA 1202 at [36], the proposed compliance program:

(1) has a clear nexus to the contravening conduct. The order requires Panthera to continue to maintain a compliance program, with particular emphasis on:

(a) ensuring compliance with ss 29 and 50 of the ACL; and

(b) providing guidance on the proper process for dealing with consumers who dispute liability for a debt;

(2) will ensure a company-wide awareness of responsibilities and obligations in relation to the contravening conduct or similar or related conduct by requiring Panthera to continue to maintain compliance measures designed to minimise the risk of similar conduct occurring in the future; and

(3) is in the public interest as Panthera should continue to implement such a system having regard to the wrongdoing in the present case and, in particular, the fact that the conduct in respect of Witness A and C occurred over a lengthy period of time and involved multiple instances of contact.

Pecuniary penalties

Objects

33 Pursuant to s 224(1)(a)(ii) of the ACL, if the Court is satisfied that a person has contravened a provision of Part 3-1 of the ACL (which includes ss 29 and 50), the Court may order the person to pay such pecuniary penalty, in respect of each act or omission by the person to which it applies, as the Court determines to be appropriate.

34 The appropriateness of the penalties proposed are explained by reference to the central object of imposing penalties, namely the need to secure deterrence, and the assessment of an appropriate penalty for each contravention.

35 Civil penalties are "primarily if not wholly protective in promoting the public interest in compliance": *Commonwealth v Director* [55], and see also [59] and [110].

General deterrence

36 The High Court has said that the principal object of deterrence is achieved if the pecuniary penalty has the necessary "sting or burden" to secure "the specific and general deterrent effects that are the raison d'etre of its imposition": *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2018] HCA 3; (2018) 262 CLR 157 at [116].

37 The parties jointly submitted that there is a need for general deterrence in the present case as:

> 1. …debt collection and recovery is a growing industry in Australia. It involves the purchase of 'bad' debts by recovery agencies, such as Panthera, at heavily discounted prices. Recovery agencies then seek to recover some or all of the debt, for the purpose of generating a profit on the original purchase price of the debt. Debt recovery often involves frequent and repeated contact with members of the community, many of whom may be suffering financial hardship or disadvantage...;
>
> 2. …the conditions in which the relevant conduct occurred are likely to continue to exist. That is, it is likely that some consumers who are contacted by a debt recovery agency will deny liability for a debt, in circumstances where they are in fact not liable for the debt. As a result, there remains the potential for business gains and consumer harms from conduct of a similar kind…;
>
> 3. …debt recovery agencies should be left in no doubt that a strong compliance program, sufficient to pick up and address conduct of the present kind, is not optional. If the burden of a penalty is seen to be less than the cost or effort of such a program, businesses may be tempted to prefer to absorb the risk of being caught over careful compliance with the ACL…;
>
> 4. …the protections against Unfair Practices contained in Part 3-1 of the ACL are an important part of Australia's consumer protection framework…; and
>
> 5. …the penalties imposed in the present case can be expected to be of interest to affected consumers, the public more broadly and to the debt recovery sector generally.

Specific deterrence

38 The parties submitted that the penalties must be sufficiently high to deter Panthera from engaging in like conduct in the future. In particular:

(1) Panthera is the second largest debt recovery agency operating in Australia;

(2) Panthera's financial information shows it is a large corporation (in terms of revenue) and is very profitable; and

(3) the fact that Panthera has made admissions and agreed to the relief set out in these submissions should properly be reflected in any penalty, but does not overcome the

need for specific deterrence as a significant factor: *Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd* [2015] FCA 330, [79].

Multiple contraventions

39 According to the Joint Document the parties seek the imposition of penalties in respect of four separate contraventions on the basis that each of the contraventions is sufficiently distinct to be distinguishable rather than occurring as part of the same conduct: *Australian Competition and Consumer Commission v Yazaki Corporation* [2018] FCAFC 73; (2018) 262 FCR 243 at [217]-[224] (***Yazaki***); *Australian Competition and Consumer Commission v Jetstar Airways Pty Ltd (No 2)* [2017] FCA 205 at [13]-[17]. As the Joint Document put it:

> The conduct giving rise to the s 50(1) (undue harassment) contraventions in respect of each of Witness A, B and C arises over different time periods, in respect of different consumers and is engaged in by different Panthera representatives. The false or misleading representation in relation to Witness B is factually separate to the conduct giving rise to the undue harassment contravention in respect of Witness B.

40 Further, according to the Joint Document:

(1) the contraventions are not so inextricably interrelated that they should be viewed as one multi-faceted "course of conduct": *Yazaki* at [234];

(2) the totality principle requires the Court to make a "final check" of the penalties to be imposed, considered as a whole, to ensure the cumulative total of the penalties is "just and appropriate" and not too low or too high; and

> the penalty sought in respect of each contravention adequately reflects the nature and circumstances of the conduct giving rise to each contravention. As a result, the parties agree that no totality reduction is required.

Determining the pecuniary penalties

Maximum penalty

41 Careful attention to the maximum penalty is required: *Markarian v The Queen* [2005] HCA 25; (2005) 228 CLR 357.

42 Before 1 September 2018 the maximum penalty for contraventions by a company of a provision in Part 3-1 of the ACL was $1.1 million: item 2 of s 224(3). This maximum applies to each of the four contraventions.

Relevant factors

43 Section 224(2) of the ACL provides that in determining the appropriate pecuniary penalty, the Court must have regard to all relevant matters including:

> (a) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission; and
>
> (b) the circumstances in which the act or omission took place; and
>
> (c) whether the person has previously been found by a court in proceedings under Chapter 4 or this Part to have engaged in any similar conduct.

44 The parties submitted that the following penalties would have the appropriate deterrent effect:

Witness	**Contravention**	**Penalty**
Witness A	1 x s 50(1)	$125,000
Witness B	1 x s 50(1)	$125,000
	1 x s 29(1)(m)	$125,000
Witness C	1 x s 50(1)	$125,000
	Total	**$500,000**

45 The parties referred to the following considerations to support these proposed penalties as having a sufficient deterrent effect:

(1) Panthera is a large and profitable company. It is the second largest debt recovery agency operating in Australia. As a result, a significant penalty is necessary in order to achieve specific deterrence;

(2) the proposed penalties are necessary and sufficient:

> (a) to remind other debt collection companies of the importance of ensuring that they do not unduly harass or mislead customers in the course of their collection activities; and
>
> (b) to encourage them to comply with the Guidelines when dealing with consumers;

(3) the penalties reflect that the conduct arose in respect of the three Witnesses, at different times during a period of approximately four years, and resulted in stress and inconvenience to the Witnesses; and

(4) the penalties make proper allowance for the following considerations:

> (a) ACCC does not allege that Panthera's conduct was systemic;

(b) Panthera received a total of $100 from the Witnesses as a result of the conduct; and

(c) Panthera has made admissions and cooperated with the ACCC.

The nature, extent and duration of the conduct

46 Panthera's conduct caused inconvenience and stress to all three consumers over weeks (Witness A), months (Witness B) and years (Witness C), and created a risk that they would pay money that they did not owe to Panthera. The conduct was confined to three customers and is not alleged to be systemic. In this regard, it is relevant that Panthera made over 19 million contacts in the financial year to 30 June 2019 and the contraventions relate to three customers only and arose from failures to comply with Panthera's own internal governance systems.

The relevant circumstances of the conduct

47 Panthera's conduct was deliberately engaged in, but arose from a breakdown in Panthera's usual systems. Further:

> …there is no evidence to suggest that senior management was involved in or had knowledge of the conduct. Rather, the conduct appears to have arisen as the result of the actions of several relatively low level employees who failed to follow Panthera's policies and procedures.

The loss or damage caused by the conduct

48 Panthera's conduct caused Witness B to pay $100 when he was not required to do so. Panthera's conduct did not cause Witnesses A and C any direct financial loss. Panthera's conduct did cause harm to each of Witness A, B and C. Panthera's conduct caused inconvenience and stress to each Witness. Specifically:

> Witness [sic] A and B were put to the inconvenience of attending a police station to obtain a fraud report. Witness [sic] A and C were required to provide detailed personal information to Panthera over a significant period of time, in circumstances where they had repeatedly denied liability for the debt. Panthera's conduct resulted in Witness B suffering delay in obtaining a car loan and Witness C not being able to obtain a mortgage or mobile phone.

The size of the contravenor and its financial position

49 According to the Joint Document:

(1) Panthera is a private company limited by shares that is incorporated in Australia;

(2) Panthera was established in 2010 and is the second largest debt recovery agency operating in Australia;

(3) Panthera employs the equivalent of 400 full time employees;

(4) in the financial year to 30 June 2019 Panthera had 855,865 distinct customers;

(5) Panthera made over 19 million total contacts in the year to 30 June 2019 with an average daily contact count of 52,057; and

(6) Panthera reported net profits of more than:

(a) $23 million in 2015-16;

(b) $22 million in 2016-17;

(c) $19 million in 2017-18; and

(d) $32 million in 2018-19.

Prior similar conduct and culture

50 As the Joint Document put it:

(1) Panthera has not previously been found to have contravened the ACL;

(2) Panthera takes compliance with the ACL seriously, and has policies and procedures in place for its business which are covered by an ISO quality management systems standard accreditation (9001:2015); and

(3) the contravening conduct occurred inconsistently with those internal policies and procedures.

51 Further as the Joint Document discloses at [116] as a result of this matter Panthera has increased its compliance reviews, including the level of monitoring of collectors' calls and records, to ensure that levels of compliance and quality are above industry standards and has recently employed an experienced General Manager of Risk and Compliance to oversee and improve its compliance systems.

Co-operation

52 According to the Joint Document:

(1) Panthera has co-operated with the ACCC by making substantive admissions, agreeing to the making of appropriate orders (including as to a proposed penalty), and joined in the making of the Joint Document; and

(2) Panthera also appropriately engaged with the ACCC during the ACCC's investigation and agreed to participate in mediation at an early stage in these proceedings.

53 The parties submitted that a meaningful discount for co-operation is appropriate and the proposed penalties factor in such a discount.

Other decisions:

54 The Joint Document stated:

> …although similar contraventions should incur similar penalties, the differing circumstances of individual cases mean that a penalty in one case cannot dictate the penalty in a later case; as a result, comparisons with previous penalties will rarely be useful…

55 While the parties identified some cases as being of possible assistance at [122]-[124] of the Joint Document the parties also acknowledged that the facts and circumstances of the present case were not directly comparable to those cases. At best the cases do not undermine the conclusion I have reached that the agreed pecuniary penalties are within the range of appropriate penalties for these contraventions.

Costs

56 Panthera has agreed to contribute $100,000 towards the ACCC's costs of the proceeding.

Conclusions

57 Having considered the terms of the Joint Document, important aspects of which are summarised above, I consider that it is appropriate to make the declarations and orders and to impose the pecuniary penalties sought by the parties. The Joint Document discloses the careful consideration which has been given by the parties, one of which is the ACCC, a specialist regulator, to the appropriate declarations, orders and pecuniary penalties. I am satisfied that it is in the interests of justice to make the declarations and orders and to impose the pecuniary penalties as sought by the parties.

58 In particular, I am satisfied that the proposed pecuniary penalties provide the necessary "sting" in terms of both specific deterrence of Panthera in terms of any future contravening conduct and general deterrence of those engaged in similar debt collection activities as Panthera. The industry is one in which the risk of non-compliance is real if systematic endeavours are not taken to ensure and implement a culture of compliance with the ACL. The risks of harm to the community from debt collection activities which do not comply with

the requirements of the ACL and the Guidelines is real and has the specific potential to impact on members of society who may be vulnerable to exploitation. It is essential to impose a penalty on Panthera of sufficient size to ensure that those in this industry know that they cannot treat the risk of non-compliance as a mere cost of doing business. The penalties to which contravenors will be exposed will be substantial having regard to the maximum penalties which can be imposed and the importance of achieving general deterrence objectives in this industry given its size and the risks of non-compliance inherent in businesses of this kind.

59 I am satisfied that the agreement which has been reached between the parties reflects an outcome which has been carefully considered and gives due weight to the primary goal of promoting the public interest in compliance with the ACL in this industry.

60 The declarations and orders sought will be made accordingly.

I certify that the preceding sixty (60) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Jagot.

Associate:

Dated: 13 March 2020

ANNEXURE A

JOINT SUBMISSIONS AND STATEMENT OF AGREED FACTS

PART I INTRODUCTION

1. This document comprises submissions made jointly by the parties, agreed facts pursuant to section 191(3)(a) of the ***Evidence Act 1995*** (Cth), and admissions by the respondent (**Panthera**).

2. By the **Originating Application** and **Concise Statement** dated 23 July 2019, the applicants (the Australian Competition and Consumer Commission (**ACCC**) and Rami Greiss) alleged that Panthera engaged in conduct that contravened ss 21(1)(a) (unconscionable conduct), 29(1)(m) (false or misleading representation), 50(1) (undue harassment) and 50(1) (coercion) of the *Australian Consumer Law* (**ACL**). The applicants alternately alleged contraventions of the corresponding provisions of the *Australian Securities and Investments Commissions Act 2001* (Cth) (**ASIC Act**).

3. Panthera admits that it has contravened ss 29(1)(m) (false or misleading representation) and 50(1) (undue harassment) of the ACL, as set out below. Panthera denies and the applicants do not press the balance of the allegations.

4. Facts agreed between the parties, and the matters admitted by Panthera, are set out in these submissions. The Court may rely upon Panthera's admissions, and the facts agreed pursuant to 191(3)(a) of the Evidence Act, to pronounce judgment and make orders.[1]

5. In summary, Panthera admits that:

   5.1. In the specific periods detailed below between 4 August 2014 and 14 July 2018, it engaged in undue harassment of three consumers, referred to as Witnesses A, B

[1] *Federal Court Rules* r 22.07. See also: *ACCC v Jurlique International Pty Ltd* (2007) ATPR ¶42-146 at 46,087.

and C, while seeking payment of debts from those consumers, in circumstances where the consumers did not in fact owe the debts; and

5.2. On 4 April 2017 it made a false or misleading representation concerning the existence, exclusion or effect of a right in relation to Witness B.

6. On the basis of the agreed facts and admissions set out in these submissions, the parties jointly seek the declarations and orders set out in the accompanying **Proposed Orders**. The Proposed Orders include orders seeking the imposition of pecuniary penalties totalling **$500,000**, in respect of the admitted contraventions, being three contraventions of s 50(1) (undue harassment) and one contravention of s 29(1)(m) (false or misleading representation) of the ACL.

7. The parties recognise that the grant of such relief remains at the discretion of the Court. These submissions explain why the parties contend that relief to be appropriate.

PART II AGREED FACTS AND ADMISSIONS

A. Agreed Facts

(a) Witness A

8. In about August 2017, Panthera acquired a debt from Origin Energy Electricity Ltd in the amount of $378.50 for the supply of electricity to an address in New South Wales (**Origin Debt**).

9. Panthera incorrectly identified Witness A as the person who owed the Origin Debt by having a 'skip trace' performed. Witness A had a similar name to the person who owed the debt but had never lived at the addresses Panthera had on file. Panthera subsequently pursued the debt from Witness A. Panthera believed that Witness A owed the debt when it began pursuing the debt from Witness A. While Witness A disputed liability for the debt, throughout its contact with Witness A Panthera mistakenly continued to assume Witness A owed the debt.

10. Witness A was not liable for the Origin Debt, had never held an account with Origin and had never lived in New South Wales.

11. On 22 September 2017, a telephone conversation took place between a Panthera representative and Witness A. In that conversation, Witness A disputed liability for the debt, stated that she had never lived in New South Wales and had never held an account with Origin. The Panthera representative told Witness A that she needed to provide a police report to Panthera.

12. Panthera was aware from 22 September 2017, that Witness A had disputed liability for the Origin Debt.

13. Between 22 September 2017 and 14 July 2018, Panthera contacted, or attempted to contact, Witness A on the following occasions, in relation to the debt:

    13.1. email from manager@pantherafinance.com.au to Witness A on 22 September 2017 at 2:19pm;

    13.2. two telephone calls on 27 September 2017 at unknown times, which Witness A did not answer, but in response to which she returned the telephone call and spoke with a Panthera representative later that day at 7:34pm;

    13.3. a telephone call on 28 September 2017 at an unknown time, which Witness A did not answer;

    13.4. two telephone calls on 4 October 2017 at unknown times, which Witness A did not answer;

    13.5. a telephone call on 7 October 2017, which Witness A did not answer;

    13.6. two telephone calls on 9 October 2017 at unknown times, which Witness A did not answer, but in response to which she returned the telephone call and spoke with a Panthera representative later that day at 6:29pm;

    13.7. email from resolutions@pantherafinance.com.au to Witness A on 29 June 2018 at 10:47am;

    13.8. email from resolutions@pantherafinance.com.au to Witness A on 10 July 2018 at 9:03am;

    13.9. email from ‘Resolutions’ to Witness A on 14 July 2018 at 10:43am.

14. On or around 23 September 2017, Witness A attended a police station for the purposes of filing a police report, as she had been advised to do during the phone call with Panthera on 22 September 2017. The officer at the police station informed Witness A that she was not able to file a police report as this was not a police matter and that she

needed to lodge a report with the Australian Cybercrime Online Reporting Network (**ACORN**).

15. On 24 September 2017, Witness A lodged an online report with ACORN.

16. On 24 September 2017, Witness A sent an email to Panthera advising that she had attempted to report a case of identity theft to the police, had submitted a complaint to ACORN and provided Panthera with the reference number of her ACORN complaint.

17. During the telephone call on 27 September 2017, Witness A informed the Panthera representative that she had never lived in New South Wales, that she had attempted to file a police report and had provided an ACORN reference number to Panthera by email. Witness A also informed the Panthera Representative during the call that she had never received Centrelink payments in her life. This was a reference to the fact that the bills relating to the Origin Debt that Panthera provided to Witness A, recorded Centrelink deductions being made.

18. On 9 October 2017, a Panthera representative telephoned Witness A on two occasions but Witness A did not answer. Later the same day, Witness A returned the call to Panthera. During the telephone call on 9 October 2017, the Panthera representative asked Witness A whether she had sent in her police report. Witness A said that she had, and referred the representative to her email to Panthera providing the ACORN reference number. Panthera then marked Witness A's file for management review which caused collection activity to cease.

19. On 13 June 2018, Witness A sent an email to Panthera stating that a Detective Senior Constable of police (whose phone number she provided) had advised that the person liable for the Origin Debt had the same name as Witness A, but that Panthera had been pursuing the wrong person, that the debtor still resided at the New South Wales address to which the electricity was supplied, and provided the debtor's driver licence number and date of birth.

20. On 29 June 2018, a Panthera representative asked Witness A to supply an electricity bill for the period between 17 January 2013 and 8 October 2014, or if unavailable, a gas bill, bank statement or tenancy agreement during that period. This contact occurred in

error. On the same day, Witness A sent an email in reply querying the need for additional information.

21. On 10 and 14 July 2018, a Panthera representative sent emails to Witness A which stated that Panthera still required documentation to confirm Witness A's residential address during the service period, and that if Panthera did not receive the information collection activity may proceed.

22. On 16 July 2018, Witness A sent Panthera two personal notices of assessment from the Australian Taxation Office and a private health insurance statement because she did not have the information they requested.

(b) Witness B

23. In about December 2016, Panthera acquired a debt from Telstra Corporation Limited (**Telstra**) in the amount of $657.10 for the supply of mobile broadband internet services (**Telstra Debt**).

24. Information supplied to Panthera from Telstra identified Witness B as the person who owed the Telstra Debt. Panthera subsequently pursued the debt from Witness B. Panthera believed that Witness B owed the debt when it began pursuing the debt from Witness B. While Witness B disputed liability for the debt, throughout its contact with Witness B Panthera mistakenly continued to assume Witness B owed the debt.

25. Witness B was not liable for the Telstra Debt as he was not the holder of the relevant Telstra account.

26. In or around late December 2016, Witness B received a letter Panthera sent on 21 December 2016 containing a notice of assignment of the Telstra Debt, which stated that Witness B needed to pay the Telstra Debt in full to Panthera.

27. Witness B and/or his financial advisor informed Panthera representatives that Witness B was not liable for the Telstra Debt, and that Witness B believed the Telstra account was created fraudulently on at least the following occasions:

27.1. in or about early January 2017,

27.2. on 20 January 2017;

27.3. 31 January 2017; and

27.4. on 4 April 2017.

28. From at least early January 2017, Panthera was aware that Witness B disputed liability for the Telstra Debt.

29. On 20 January and 31 January 2017, Panthera representatives told Witness B that he needed to file a "fraud report" in order to establish that he was not liable for the Telstra Debt.

30. On or about 6 February 2017, Witness B made a fraud report with police in relation to the Telstra Debt.

31. On 17 February 2017, a police officer informed Panthera that she was "*looking into fraud*" in relation to the account giving rise to the Telstra Debt.

32. On or around 17 February 2017, a Panthera manager made the commercial determination that Panthera would not recover the Telstra Debt from Witness B and changed the file status to "unrecoverable".

33. In about late March 2017, Witness B became aware that a default had been listed on his credit file with respect to the Telstra Debt. That default listing had been placed by Telstra on 17 or 18 November 2016.

34. On 4 April 2017, a Panthera representative spoke to Witness B's representative and stated that Panthera was aware of Witness B's dispute and was investigating it, offered to negotiate a payment in order to secure the removal of the default listing and represented that Witness B would need to make a payment of at least $100 to Panthera in order for the default listing to be removed.

(c) Witness C

35. In about May 2014, Panthera acquired a debt from AGL APG Holdings Pty Limited (**AGL**) in the amount of $2,413.34 for the supply of energy services (**AGL Debt**). The

AGL Debt related to energy services provided to an address in Maribyrnong, Victoria (**Maribyrnong Address**), between 15 June 2012 and 30 April 2013 (**Service Period**).

36. Information supplied to Panthera from AGL identified Witness C as the person who owed the AGL Debt. Panthera subsequently pursued this debt from Witness C. Panthera believed that Witness C owed the debt when it began pursuing the debt from Witness C. While Witness C disputed liability for the debt, throughout its contact with Witness C Panthera mistakenly continued to assume Witness C owed the debt.

37. Witness C had previously rented a house at the Maribyrnong Address, between 19 June 2010 and 18 June 2012. Witness C's lease for the Maribyrnong Address formally ended on 18 June 2012. Witness C moved out of the Maribyrnong Address two to three weeks earlier.

38. In about July 2014, Witness C received a letter from Panthera demanding payment for the AGL Debt.

39. Witness C was not liable for the AGL Debt. Witness C's lease for the Maribyrnong Address formally ended three days into the Service Period.

40. Between July 2014 and October 2014 Witness C repeatedly informed Panthera representatives that the AGL account giving rise to the AGL Debt was not hers and/or that she did not live at the Address during the Service Period, on the following occasions:

    40.1. 21 July 2014;

    40.2. twice on 23 July 2014;

    40.3. twice on 28 July 2014;

    40.4. twice on 4 August 2014;

    40.5. 11 August 2014;

    40.6. 15 August 2014;

    40.7. 20 August 2014,

40.8. 11 September 2014; and

40.9. 21 October 2014.

41. From at least 21 July 2014, Panthera was aware that Witness C disputed liability for the AGL Debt.

42. On 21 July 2014, a Panthera representative spoke to Witness C over the telephone and stated that Witness C would need to provide proof that she was not liable for the AGL Debt.

43. On 23 July 2014, Witness C provided a letter from her former real estate agent to Panthera stating that Witness C's official vacate date for the Maribyrnong Address was 18 June 2012, being three days into the Service Period for the AGL Debt. As set out at paragraph 37 above, Witness C had actually vacated the Maribyrnong Address two to three weeks earlier but this was not something she told Panthera specifically. On 29 July 2014 Witness C also provided an email from AGL stating that Witness C was not responsible for an electricity account but the email provided a different account number.

44. Between 4 August 2014 and 4 April 2018, Panthera contacted or attempted to contact Witness C a total of 47 times in pursuit of payment of the AGL Debt. This contact consisted of four letters, 11 phone calls, 21 voicemail messages, two email messages and nine sms messages.

45. On 14 December 2015 Panthera listed a default on Witness C's credit file after sending the required notices. Witness C first became aware of the default listing on her credit file in mid-2016 when she and her husband applied for finance to purchase a house.

46. On 25 October 2017, Witness C's husband telephoned Panthera and again disputed that Witness C was liable for the AGL Debt. During this call Witness C's husband identified that:

46.1. the AGL bills provided by Panthera in relation to the AGL Debt, were addressed to a 'Mr' with the same name as Witness C, but that Witness C is his wife, and

46.2. the Service Period for the AGL Debt commenced three days before Witness C's official vacate date of the Maribyrnong Address.

47. During that telephone call, the Panthera representative stated that if Witness C wanted to prove she was not liable for the AGL Debt, she would need to provide 100 points of primary evidence which were the fraud requirements for AGL, which could include:

    47.1. a lease or tenancy agreement (the Panthera Representative noted that Witness C had already provided this),

    47.2. certificate of the title or the contract of sale or another document showing where Witness C was living during the Service Period, which could be the rates notices or other bills for the address where Witness C was living during the Service Period,

    47.3. a driver's licence or other identification, and

    47.4. utility bills for the address where Witness C was living during the Service Period.

48. The Panthera representative also stated during that call that Witness C could provide secondary evidence in the form of a statutory declaration, landline phone bill or a bank statement.

49. During the call, the Panthera Representative indicated that she thought it would be "extremely difficult" for Witness C to prove to AGL that she was not liable for the AGL Debt.

50. On 7 February 2018, Witness C made a statutory declaration stating that she did not open the account the subject of the AGL Debt. On 2 April 2018, , Witness C's husband provided a copy of the statutory declaration to Panthera.

51. On 4 April 2018 Panthera notified Witness C that Panthera was prepared to accept a 50% discount in return for payment of the AGL Debt, and asked for payment of that amount. This communication was sent to Witness C as part of an automated campaign before Panthera reviewed the 2 April 2018 email attaching the statutory declaration.

52. Panthera again asked Witness C's husband for further documents by email on 26 and 30 April 2018, after Panthera had received a copy of Witness C's statutory declaration denying liability for the AGL Debt. The default was removed from Witness C's credit file on or about 21 May 2018.

(d) ACCC-ASIC Debt Collection Guidelines

53. The ACCC and ASIC jointly publish the ACCC-ASIC Debt Collection Guidelines for collectors and creditors (**Guidelines**). The Guidelines are intended to assist debt collectors in ensuring collection activities are compliant with the Commonwealth consumer protection laws but do not have statutory force. At all relevant times, Panthera was aware of the Guidelines. At all relevant times, provision 13 of the Guidelines stated:

> **13. If Liability is disputed**
>
> (a) Collection activity (including credit report listing) should be suspended if a person contacted about a debt claims that:
>
> - they are not the alleged debtor
> - the debt was never incurred, or
> - the debt has been paid or otherwise settled
> - and you have not already confirmed their identity and liability.
>
> (b) If collection activity is continued without properly investigating claims that a debt is not owed, including whether a debt is statute-barred, there is considerable risk of breaching the law.
>
> **Assignment**
>
> (c) If you are considering assigning a debt, and the debt is in dispute, you should think carefully about providing additional information to the assignee.
>
> **Identity of debtor is disputed**
>
> (d) A person must not be pursued for a debt unless there are reasonable grounds for asserting that the person is liable for the debt.
>
> …
>
> (e) Reasonable steps should be taken to ensure that the person contacted or attempting to be contacted is the alleged debtor. If the identity of the debtor cannot be established with sufficient certainty (because they deny their identity and you do not have any other supporting evidence to the contrary) all contact with that person should cease. Failure to do so may risk breaching the Privacy Act. See part 2, section 8, Privacy obligations to the debtor and third parties.
>
> **Quantum of or liability for a debt is disputed**
>
> (f) If the debtor's liability for the debt cannot be established when challenged, collection activity should cease. A letter to the debtor should be considered advising that collection activity has ceased and the circumstances (if any) in which collection activity may be resumed in the future.

(g) It is misleading to state or imply that the debtor must prove they are not liable for the debt. In legal proceedings, proof of the debt lies with the person alleging the debt is owed to them.

(h) If the parties are unable to resolve a dispute about liability for a debt or the amount owed, you may have an obligation to advise the debtor of internal or external dispute resolution processes available— see further under part 2, sections 22, *Resolving debtor complaints and disputes* and 24, *The role of independent external dispute resolution schemes*.

(i) Subject to the next paragraph, further communication with a debtor, after the debtor has clearly denied liability and/or stated an intention to defend any legal proceedings brought against them, is not appropriate. In these circumstances, you have the option of starting legal proceedings if you choose to pursue the debt.

(j) However, further communication in writing may be appropriate after a denial of liability:

- to clarify the basis of the creditor's or collector's claim and the consequences of legal action being taken
- to advise the debtor of the creditor's or collector's intention to start legal proceedings, and the steps involved
- to put a genuine proposal to the debtor for settlement of the debt.

Further communication is also appropriate when it is subsequently authorised or requested by the debtor.

(k) Further communication with the debtor about any other debt, or any part of a debt that is not denied remains appropriate.

(l) If a court judgment is obtained for a debt for which liability had been denied, you are entitled to start or resume communication with the debtor for that judgment debt (assuming the judgment has not been set aside).

B. Admissions

54. Panthera admits the following contraventions of the ACL.

(e) Witness A:

55. Between 22 September 2017 and 9 October 2017 and between 29 June 2018 and 14 July 2018, Panthera engaged in undue harassment of Witness A, in contravention of s 50(1) of the ACL, by:

55.1. repeatedly contacting Witness A as set out in paragraph 13 above,

55.2. repeatedly requiring Witness A to provide proof that she was not liable for the Origin Debt, as set out in paragraphs 11, 20 and 21 above;

55.3. continuing to pursue the debt after Witness A had disputed liability for the Origin Debt as set out in paragraph 11 above, in a manner contrary to provisions 13(a), (d), (e), (f), (g) and in some instances (i) of the Guidelines;

in circumstances where:

55.4. Panthera was aware that Witness A had disputed liability for the debt, and

55.5. Witness A was not in fact liable for the debt.

(f) Witness B:

56. Between early January 2017 and 4 April 2017, Panthera engaged in undue harassment of Witness B, in contravention of s 50(1) of the ACL, by:

56.1. requiring Witness B to provide a fraud report as proof that he was not liable for the Telstra Debt, as set out in paragraph 29 above;

56.2. continuing to pursue the debt after Witness B had disputed liability for the Telstra Debt as set out in paragraph 29 above, in a manner contrary to provisions 13(a), (d), (e), (f), (g) and in some instances (i) of the Guidelines;

in circumstances where:

56.3. Panthera was aware that Witness B disputed liability for the debt, as set out in paragraph 27 above, and

56.4. Witness B was not in fact liable for the debt.

57. On 4 April 2017 Panthera made a false or misleading representation concerning the existence, exclusion or effect of a right, in contravention of s29(1)(m) of the ACL, as set out in paragraph 34 above, by:

57.1. representing that Witness B was required to pay at least $100 to Panthera to have a default listing removed from his credit history,

in circumstances where:

57.2. the default listing was inaccurate, and

57.3. Witness B had a right to have the default listing removed free of charge, pursuant to s21V of the *Privacy Act 1988* (Cth).

(g) Witness C

58. Between 4 August 2014 and 4 April 2018, it engaged in undue harassment of Witness C, in contravention of s 50(1) of the ACL, by:

58.1. repeatedly contacting Witness C as set out in paragraph 44 above, in pursuit of payment of the AGL Debt;

58.2. repeatedly requiring Witness C to provide proof that she was not liable for the AGL Debt, as set out in paragraphs 42, 47 and 52 above;

58.3. continuing to pursue the debt after Witness C had disputed liability for the AGL Debt as set out in paragraph 40 above, in a manner contrary to provisions 13(a), (d), (e), (f), (g) and in some instances (i) of the Guidelines;

in circumstances where:

58.4. Panthera was aware that Witness C had disputed liability for the debt; and

58.5. Witness C was not in fact liable for the debt.

PART III ORDERS BY AGREEMENT

59. The proper approach to civil regulatory orders which are sought on an agreed basis is that explained in ***Commonwealth v Director****, Fair Work Building Industry Inspectorate* (2015) 258 CLR 482. The High Court there reaffirmed the practice of acting upon agreed penalty submissions, as explained in ***NW Frozen Foods*** *Pty Ltd v Australian Competition and Consumer Commission* (1996) 71 FCR 285 and *Minister for Industry, Tourism and Resources v* ***Mobil Oil*** *Australia Pty Ltd* (2004) ATPR 41,993.

60. The plurality emphasised, at [46], the '*important public policy involved in promoting predictability of outcome in civil penalty proceedings*' which '*assists in avoiding lengthy and complex litigation and thus tends to free the courts to deal with other matters and to free investigating officers to turn to other areas of investigation that await their attention.*' Their Honours went on to state, at [58]:

> Subject to the court being sufficiently persuaded of the accuracy of the parties' agreement as to facts and consequences, and that the penalty which the parties propose is an appropriate remedy in the circumstances thus revealed, it is consistent with principle and … highly desirable in practice for the court to accept the parties' proposal and therefore impose the proposed penalty.

61. A further reason for courts acting upon such submissions is that they are advanced by a specialist regulator able to offer '*informed submissions as to the effects of contravention on the industry and the level of penalty necessary to achieve compliance*', albeit that such submissions will be considered on the merits in the ordinary way: see [60]-[61].

62. These principles are not confined to agreed submissions on pecuniary penalties but apply equally to agreement on other forms of relief. The High Court's conclusions as to the desirability of acting upon agreed penalty submissions were made in the context of its broader recognition that civil penalties were but one of numerous forms of relief which regulators could choose and pursue as a civil litigant in civil proceedings including by making submissions as to that relief (see [24], [57]-[59], [63], [103], [107]). This is consistent with the long-standing judicial support for agreed positions on declarations, injunctions and the like in civil regulatory proceedings, having regard the public interests explained in *NW Frozen Foods*.[2]

PART IV DECLARATIONS OF CONTRAVENTIONS

63. The contraventions are established by the facts and admissions set out in these submissions. For the following reasons, it is appropriate to make declarations as to those contraventions as set out in the Proposed Orders.

64. The Court has a wide discretionary power to make declarations under s 21 of the *Federal Court of Australia Act 1976* (Cth). The preconditions for declaratory relief, as explained by the High Court,[3] are made out:

    64.1. *There is a real and not a hypothetical question*: There is a direct and important question as to whether Panthera's conduct towards each of Witness A, B and C contravened the provisions of the ACL.

[2] See eg *ACCC v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405, [72], [75]; *ACCC v* ***Real Estate Institute*** *of Western Australia Inc* (1999) 161 ALR 79, [1], [20]-[21], [29]; *ACCC v Target Australia Pty Ltd* (2001) ATPR 41-840, [24]; *ACCC v Virgin Mobile Australia Pty Ltd (No 2)* [2002] FCA 1548, [2]; *ACCC v Construction, Forestry, Mining and Energy Union* [2007] ATPR 42-140, [4] (***ACCC v CFMEU***).

[3] See *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421, 437-438 and *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 581–582. As to their application in the context of declarations of civil contraventions see *ASIC v* ***Axis International*** *Management Pty Ltd* (2009) 178 FCR 485, [26]-[43].

64.2. *The applicant has a real interest in raising it*: The ACCC has an obvious interest, as the statutory regulator discharging its functions in the public interest, in bringing the proceedings.

64.3. *There is a proper contradictor and real consequences*: Panthera, as the entity declared to have contravened the law, has an interest in opposing the relief. This remains so notwithstanding its admissions and agreement.[4]

65. The utility of declarations that set out the particular liability found, and the basis for the penalties ordered, is recognised by the High Court and Full Federal Court, and in the great majority of civil penalty cases at primary judge level.[5] In this case, the declarations are desirable and appropriate because they will record the Court's disapproval of the conduct, vindicate the concerns of relevant consumers, assist the ACCC in carrying out the duties conferred on it by the CCA, assist in clarifying the law, and make clear to other would-be contravenors that such conduct is unlawful.[6]

PART V COMPLIANCE PROGRAM

66. It is appropriate to require Panthera to continue to maintain a compliance program as sought by consent in the Proposed Orders. To ensure compliance in such ways secures a fundamental purpose of the statutory regime: see eg *NW Frozen*, 294.

67. Section 246(2)(b) of the ACL empowers the Court to make such orders and the preconditions enlivening that power are met in the present case. *First*, it is sought by the regulator in relation to a person who has contravened provisions of Chapter 3 of the ACL: s 246(1). *Second*, it has the purpose of ensuring that Panthera does not engage in the same conduct, or similar or related conduct, for a period not exceeding 3 years: s 246(2).

4 *ACCC v **MSY Technology** Pty Ltd* (2012) 201 FCR 378, [30]-[33].

5 See the helpful summary in *Axis International*, [26]-[43] and, more generally, *Rural Press Limited v ACCC* (2003) 216 CLR 53, [95] and *Australian Softwood Forests Pty Ltd v Attorney-General (NSW); Ex Relatione Corporate Affairs Commission* (1981) 148 CLR 121,125, 144-5; *Tobacco Institute of Australia Ltd v Australian Federation of Consumer Organisations Inc (No 2)* (1993) 41 FCR 89, 97-9, 106, 107; *Stuart v CFMEU* (2010) 185 FCR 308, [35], [94]; and *MSY Technology*, [35].

6 See generally *Axis International*, [26]-[31] and [42]; *ACCC v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405, [77]-[79]; *ACCC v CFMEU*, [6] (and the cases there cited).

68. The Court has recognised a number of considerations as being applicable to the discretion to grant such an order: see generally *ACCC v Sontax Australia* (1988) Pty Ltd [2011] FCA 1202, [36]. By reference to the considerations there summarised by Gordon J, the proposed order is desirable in the present case because:

68.1. It has a clear nexus to the contravening conduct. The order requires Panthera to continue to maintain a compliance program, with particular emphasis on (a) ensuring compliance with ss 29 and 50 of the ACL and (b) providing guidance on the proper process for dealing with consumers who dispute liability for a debt. These issues are the subject of the wrongdoing in the present case.

68.2. It will ensure a company-wide awareness of responsibilities and obligations in relation to the contravening conduct or similar or related conduct by requiring Panthera to continue to maintain compliance measures designed to minimise the risk of similar conduct occurring in the future.

68.3. It is in the public interest that Panthera continue to implement such a system having regard to the wrongdoing in the present case and, in particular, the fact that the conduct in respect of Witness A and C occurred over a lengthy period of time and involved multiple instances of contact.

PART VI PECUNIARY PENALTIES

69. Pursuant to section 224(1)(a)(ii) of the ACL, if the Court is satisfied that a person has contravened a provision of Part 3-1 of the ACL (which includes ss 29 and 50), the Court may order the person to pay such pecuniary penalty, in respect of each act or omission by the person to which it applies, as the Court determines to be appropriate.

70. As explained, *Commonwealth v Director* highlights the desirability of imposing the agreed pecuniary penalties, subject to the Court being satisfied that they are appropriate. Their appropriateness is explained below by addressing in turn:

70.1. the central object of imposing penalties, namely the need to secure deterrence; and

70.2. the assessment of an appropriate penalty for each contravention.

A. The central purpose – ensuring deterrence

71. **The requirement for a penalty of appropriate deterrent value:** In *Commonwealth v Director*, the High Court emphasised that the primary purpose of civil penalties is to secure deterrence; in contrast to criminal sentences, they are not concerned with

retribution and rehabilitation, but are '*primarily if not wholly protective in promoting the public interest in compliance*': [55], and see also [59] and [110].

72. The High Court affirmed and applied a long line of authority including the well-known statements of French J, as his Honour then was, in *Trade Practices Commission v CSR Ltd* (1991) ATPR 41-076, 52,152 (***TPC v CSR***). His Honour there referred to the '*primacy of the deterrent purpose in the imposition of penalty*' and described deterrence, both specific and general, as the '*principal, and I think probably the only, object of the penalties*'. Accordingly, the various penalty factors were to be considered in setting a penalty of '*appropriate deterrent value*'.

73. The High Court has more recently applied *Commonwealth v Director* in explaining that the effectiveness of the '*principal object*' of deterrence will depend upon a pecuniary penalty having the necessary '*sting or burden*' to secure '*the specific and general deterrent effects that are the raison d'etre of its imposition*': *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* (2018) 262 CLR 157, [116] (***ABCC v CFMEU***). [7]

74. The primacy of deterrence has likewise been emphasised in various ways in relation to breaches of the ACL. For example:

    74.1. The Full Federal Court has explained the need to ensure that the penalty in such cases '*is not such as to be regarded by that offender or others as an acceptable cost of doing business*' and will deter them from '*the cynical calculation involved in weighing up the risk of penalty against the profits to be made from contravention*': ***Singtel Optus*** *Pty Ltd v ACCC* (2012) 287 ALR 24, [62].

    74.2. The High Court, applying the observations in *Singtel Optus*, has referred to the '*primary role*' of deterrence in assessing the appropriate penalty for contraventions where commercial profit is the driver of the contravening conduct: *ACCC v* ***TPG Internet*** *Pty Ltd* (2013) 250 CLR 640, [64]-[66].

    74.3. The Full Federal Court has emphasised that the '*critical importance of effective deterrence must inform the assessment of the appropriate penalty*': *ACCC v*

[7] For recent applications of the principle see *ACCC v* ***Birubi*** *Art Pty Ltd (in liq) (No 3)* [2019] FCA 996 at [16] – [19]; *ACCC v* ***Cornerstone*** *Investment Aust Pty Ltd (in liq) (No 5)* [2019] FCA 1544 at [41]; *Secretary, Department of Health v* ***Peptide Clinics*** *Australia Pty Ltd* (2019) 137 ACSR 494 at [29].

Reckitt *Benckiser (Australia) Pty Ltd* (2016) 340 ALR 25, [153]. The Court explained that '*the greater the risk of consumers being misled and the greater the prospect of gain to the contravener, the greater the sanction required, so as to make the risk/benefit equation less palatable to a potential wrongdoer and the deterrence sufficiently effective in achieving voluntary compliance*': [151] and, more generally, [57], [148]-[153], [164], [176].

(h) General deterrence considerations in the present case:

75. A number of matters point to the need for a penalty that will deter other businesses which may be minded to contravene in a similar way.

76. *First*, debt collection and recovery is a growing industry in Australia. It involves the purchase of 'bad' debts by recovery agencies, such as Panthera, at heavily discounted prices. Recovery agencies then seek to recover some or all of the debt, for the purpose of generating a profit on the original purchase price of the debt. Debt recovery often involves frequent and repeated contact with members of the community, many of whom may be suffering financial hardship or disadvantage. As such, the potential impact of undue harassment or misrepresentations to consumers in that industry (and the associated financial gain) are significant. Any perception that penalties attaching to such gains could be absorbed as a mere cost of doing business would give rise to the potential for very widespread and significant harms to consumers. This requires a strong deterrent message which will prevent any cynical profit/risk calculus: *Singtel Optus*, [61]-[64]; *Reckitt*, [149]-[153]; *Peptide Clinics*, [29]; *Cornerstone*, [41]; *Birubi*, at [17]

77. *Second,* and more specifically to the present case, the conditions in which the relevant conduct occurred are likely to continue to exist. That is, it is likely that some consumers who are contacted by a debt recovery agency will deny liability for a debt, in circumstances where they are in fact not liable for the debt. As a result, there remains the potential for business gains and consumer harms from conduct of a similar kind.

78. *Third*, debt recovery agencies should be left in no doubt that a strong compliance program, sufficient to pick up and address conduct of the present kind, is not optional. If the burden of a penalty is seen to be less than the cost or effort of such a program, businesses may be tempted to prefer to absorb the risk of being caught over careful compliance with the ACL. Such an approach would, in turn, give contravening

companies an advantage over those which *do* take on the proper costs of compliance: see eg *Reckitt*, [152].

79. Panthera has an existing compliance program shaped around the Guidelines that it continues to improve. The contraventions were isolated instances where Panthera's policies and procedures were not followed by its staff, despite the fact that all staff receive training, both initially and ongoing. In the financial year ending 30 June 2019, Panthera made over 19 million contacts in the course of its debt recovery operations.

80. *Fourth*, the protections against Unfair Practices contained in Part 3-1 of the ACL are an important part of Australia's consumer protection framework. They have formed part of the CCA for many years. Members of the community are entitled to expect that corporations will act in accordance with the standards of conduct set out in Part 3-1.

81. *Fifth*, the penalties imposed in the present case can be expected to be of interest to affected consumers, the public more broadly and to the debt recovery sector generally. Accordingly, the imposition of appropriate deterrent penalties in the present case will validate the behaviour and efforts of compliant businesses and send a warning to non-compliant ones.

(i) Specific deterrence considerations in the present case:

82. A penalty must be sufficiently high to deter Panthera from engaging in like conduct in the future. Penalties should reflect an adequate level of burden, such that any potential contravener would seek to avoid the risk of penalty altogether, rather than factoring in a penalty as an acceptable cost of doing business.[8]

83. Panthera is the second largest debt recovery agency operating in Australia. Panthera's financial information, set out at paragraph 111 below, shows it is a large corporation (in terms of revenue) and is very profitable. As such, Panthera's corporate size and profitability require a significant penalty in order to achieve specific deterrence.

[8] *ABCC v CFMEU* at [116]; *Peptide Clinics* at [29]; *Cornerstone* at [41]; *Birubi* at [17]

84. The fact that Panthera has made admissions and agreed to the relief set out in these submissions should properly be reflected in any penalty, but does not overcome the need for specific deterrence as a significant factor: *ACCC v Coles Supermarkets Australia Pty Limited* [2015] FCA 330, [79] (***Coles Supermarkets***).

B. Imposing penalties for multiple contraventions

85. Each of the undue harassment contraventions and the misrepresentation contravention gives rise to a separate contravention of the ACL. The parties seek that penalties be imposed in respect of four separate contraventions.

86. Each of the contraventions is sufficiently distinct to be distinguishable rather than occurring as part of the same conduct: *ACCC v **Yazaki** Corporation* [2018] FCAFC 73, [217]-[224]; *Australian Competition and Consumer Commission v Jetstar Airways Pty Ltd (No 2)* [2017] FCA 205, [13]-[17].[9] The conduct giving rise to the s 50(1) (undue harassment) contraventions in respect of each of Witness A, B and C arises over different time periods, in respect of different consumers and is engaged in by different Panthera representatives. The false or misleading representation in relation to Witness B is factually separate to the conduct giving rise to the undue harassment contravention in respect of Witness B.

87. The contraventions are not so inextricably interrelated that they should be viewed as one multi-faceted 'course of conduct': *Yazaki,* [234]. The question whether certain contraventions should be treated as being truly a single course of conduct is a factual enquiry to be made having regard to all of the circumstances of the case. It is a 'tool of analysis' which can, but need not, be used in any given case: *Construction, Forestry, Mining and Energy Union v Cahill* (2010) 194 IR 461, [39]-[42]; *Yazaki*, [234]-[235]; *ACCC v **Cement Australia** Pty Ltd* [2017] FCAFC 159, [421]-[424]; *Singtel Optus*, [53].

[9] For the application of the same principle in other regimes see eg *Australian Energy Regulator v **Snowy Hydro** Limited (No 2)* [2015] FCA 58, [107]; *Minister for Immigration and Border Protection v Hallmark Computer Pty Ltd* (2016) 334 ALR 677, [28]; *Peptide Clinics* at [33].

88. The totality principle requires the Court to make a 'final check' of the penalties to be imposed, considered as a whole, to ensure the cumulative total of the penalties is 'just and appropriate,'[10] and not too low or too high. The parties submit that the penalty sought in respect of each contravention adequately reflects the nature and circumstances of the conduct giving rise to each contravention. As a result, the parties agree that no totality reduction is required.

89. As noted above, the primary objective of civil penalties is to secure deterrence, with the effect that the 'proportionality principle' does not apply in a civil penalties context.[11] As a result, the parties submit that the 'proportionality principle' has no role to play in assessing the appropriateness of the penalties sought in this instance and, as such, no further reduction is required.

C. Determining an appropriate penalty for each contravention

90. A number of principles guide the determination of an appropriate penalty amount. These are explained briefly, followed by a consideration of the proposed penalty amounts having regard to all the circumstances of the present contraventions.

(j) Principles to be applied in setting a penalty of 'appropriate deterrent value'

91. ***Statutory maximum***: In ***Markarian*** *v The Queen* (2005) 228 CLR 357, [31], the High Court held that *'careful attention to maximum penalties will almost always be required, first because the legislature has legislated for them; secondly, because they invite comparison between the worst possible case and the case before the court at the time; and thirdly, because in that regard they do provide, taken and balanced with all of the other relevant factors, a yardstick.'* The same considerations apply in relation to civil penalties: *Reckitt*, [154]-[155]; *Flight Centre*, [55]; *Peptide Clinics*, [31]; *Birubi*, [69] – [71].

[10] See eg *ACCC v Safeway Stores Pty Ltd* (1995) ATPR 41-375 at 40,169; *ACCC v EnergyAustralia Pty Ltd* [2014] ATPR 42-469 at [101]-[102]; See also *Peptide Clinics* at [34].

[11] See *Commonwealth v Director, Fair Work Building Industry Inspectorate* (2015) 258 CLR 482 at [55] – [59]; *ABCC v Pattinson* [2019] FCA 1654.

92. Prior to 1 September 2018, the maximum penalty for contraventions by a company of a provision in Part 3-1 of the ACL was $1.1 million: item 2 of s 224(3). This $1.1 million maximum applies separately to each of Panthera's four contraventions, thus giving rise to a total maximum penalty of $4.4 million.

93. ***Identifying the various factors:*** Section 224(2) of the ACL requires the Court to have regard to '*all relevant matters*' in determining the appropriate penalty. It specifies a number of (non-exhaustive) statutory factors: the nature and extent of the wrongdoing, any loss or damage suffered, the circumstances of the wrongdoing and any Court findings as to prior similar conduct. Numerous other relevant factors have been identified and applied. For the most part these have their genesis in the 'French factors' set out in *TPC v CSR*. In the consumer law context, a modified form of that list has been found to be helpful: see *Singtel Optus*, [37]; *Coles Supermarkets*, [8]. It includes the size of the contravener, whether the wrongdoing was deliberate or covert, the involvement (or not) of senior management, whether the contravener has a culture of compliance and any relevant prior conduct.

94. ***Synthesising the factors:*** The reasoning process in deriving a penalty figure having regard to the various relevant factors is conventionally described as one of '*instinctive synthesis'*, as explained by the High Court in *Markarian*. The High Court there held that the process requires a weighing together of all relevant factors, rather than a sequential, mathematical process (such as starting from some pre-determined figure and making incremental additions or subtractions for each separate factor). It emphasised further the importance of ensuring the reasoning process is transparent.

95. This approach has been applied consistently in the civil penalty context: see eg *Coles Supermarkets*, [6]; *Cornerstone*, [43] to [45]; *Birubi*, [78]. While it remains available, it is relevant to note a qualification. In *Commonwealth v Director* at [56] the High Court identified unique features of the instinctive synthesis conducted in criminal sentencing. In that context the synthesis involves not only the facts and circumstances of the wrongdoing, but also the competing sentencing considerations (retribution, rehabilitation, etc) and the various sentencing options (ranging from recognisance orders through to imprisonment). These latter aspects of the synthesis are not present in relation to civil penalties.

(k) The principles applied – the proposed penalties have appropriate deterrent value

96. The parties submit that, having regard to the particular circumstances of this case, the following penalties will have appropriate deterrent effect in respect of each of the admitted contraventions:

Witness	**Contravention**	**Penalty**
Witness A	1 x s 50(1)	$125,000
Witness B	1 x s 50(1)	$125,000
	1 x s 29(1)(m)	$125,000
Witness C	1 x s 50(1)	$125,000
	Total	**$500,000**

97. The reasons why the proposed penalties would be an appropriate deterrent can be summarised briefly as follows:

97.1. *First*, Panthera is a large and profitable company. It is the second largest debt recovery agency operating in Australia. As a result, a significant penalty is necessary in order to achieve specific deterrence.

97.2. *Second*, the proposed penalties are necessary and sufficient (a) to remind other debt collection companies of the importance of ensuring that they do not unduly harass or mislead customers in the course of their collection activities; and (b) to encourage them to comply with the Guidelines when dealing with consumers.

97.3. *Third*, the proposed penalties reflect the nature and seriousness of the conduct. That is, the penalties reflect that the conduct arose in respect of three individual consumers, at different times during a period of approximately four years, and resulted in stress and inconvenience to the affected consumers.

97.4. *Fourth*, the penalties make proper allowance for the following considerations: (a) ACCC does not allege that Panthera's conduct was systemic; (b) Panthera received a total of $100 from the consumers as a result of the conduct; and (c) Panthera has made admissions and cooperated with the ACCC.

98. Taking these matters into account, the parties submit that the proposed penalties are appropriate and within the reasonable range of penalties that ought to be ordered by the

Court. A more detailed discussion of the factors which inform these matters is set out below.

(i) Nature, extent and duration of the conduct

99. Panthera's conduct caused inconvenience and stress to all three consumers and created a risk that they would pay money that they did not owe to Panthera.

100. The duration of the contravening conduct in respect of Witnesses A and C occurred over the following periods:

100.1. Witness A: between 22 September 2017 and 9 October 2017 (approximately two weeks) and between 29 June 2018 and 14 July 2018 (approximately two weeks) and arose from 12 separate instances of attempted contact by Panthera.

100.2. Witness C: between 4 August 2014 and 4 April 2018 (approximately 3 years and 9 months) and arose from 47 separate instances of contact from Panthera.

101. In respect of Witness B, Panthera's conduct occurred over a period of approximately 3.5 months. However, Panthera's conduct resulted in Witness B paying $100 to Panthera in order to have the default listing removed from Witness B's credit report, in circumstances where Witness B (a) did not owe the debt giving rise to the default, and (b) had a statutory right to have the default removed free of charge.

102. Panthera's contravening conduct which is the subject of the Court's consideration is confined: it relates to 3 consumers only, and the ACCC does not allege systemic conduct. However, the ACCC is concerned as to how Panthera dealt with these individual consumers, who did not in fact owe the debts that were being pursued by Panthera. While Panthera did not know that fact, the consumers had clearly put Panthera on notice that they disputed the debts.

103. The proposed penalties reflect the relatively limited scope of the conduct.

(ii) Relevant circumstances, including deliberateness and the role of management

104. Panthera's conduct was deliberately engaged in, but arose from a breakdown in Panthera's usual systems. The ACCC accepts that Panthera's conduct was not deliberately designed to contravene the ACL. However, it was designed to illicit

payment of a debt from each of Witnesses A, B and C, in circumstances where they had disputed liability for the debt.

105. It is also appropriate to note that there is no evidence to suggest that senior management was involved in or had knowledge of the conduct. Rather, the conduct appears to have arisen as the result of the actions of several relatively low level employees who failed to follow Panthera's policies and procedures.

106. The proposed penalties reflect the non-involvement of senior management in the contraventions.

(iii) Loss or damage caused by the conduct

107. Panthera's conduct caused Witness B to pay $100 when he was not required to do so. Panthera's conduct did not cause Witnesses A and C any direct financial loss.

108. Nonetheless, Panthera's conduct did cause harm to each of Witness A, B and C. Panthera's conduct caused inconvenience and stress to each Witness. Witness A and B were put to the inconvenience of attending a police station to obtain a fraud report. Witness A and C were required to provide detailed personal information to Panthera over a significant period of time, in circumstances where they had repeatedly denied liability for the debt. Panthera's conduct resulted in Witness B suffering delay in obtaining a car loan and Witness C not being able to obtain a mortgage or mobile phone.

(iv) Size of contravener and financial position

109. Panthera is a private company limited by shares that is incorporated in Australia. Panthera was established in 2010 and is the second largest debt recovery agency operating in Australia. Its related entities have operated in the debt purchase and collection business since 2005. Panthera employs the equivalent of 400 full time employees.

110. In the financial year to 30 June 2019 Panthera had 855,865 distinct customers. It made over 19 million total contacts in the year with an average daily contact count of 52,057.

111. In the financial years ending June 2016 to June 2019, Panthera reported financial information as follows:

Financial year	**Total revenue**	**Net profit**
2015-16	$46,787,345	$23,181,310
2016-17	$54,022,479	$22,016,936
2017-18	$63,353,082	$19,951,385
2018-19	$85,507,375	$32,732,061

112. These figures demonstrate that Panthera is a large corporation and very profitable company. While the financial resources of a respondent do not warrant the imposition of a higher penalty than would otherwise be appropriate,[12] to have the necessary deterrent effect a penalty must be imposed at a level that serves to maintain the sting or burden of a penalty.[13] The parties agree that the proposed penalties adequately strike this balance.

(v) Prior similar conduct and culture of compliance with ACL

113. Panthera has not previously been found to have contravened the ACL.

114. Panthera takes compliance with the ACL seriously, and has policies and procedures in place for its business which are covered by an ISO quality management systems standard accreditation (9001:2015). The contravening conduct occurred inconsistently with those internal policies and procedures.

115. In addition, Panthera:

115.1. is a member of the Australian Financial Complaints Authority, the Australian Collectors and Debt Buyers Association and a founding member of the National Hardship Register;

115.2. maintains a learning and development team who deliver compliance training to all staff relating to Panthera's policies and obligations under the law. The training is provided initially and on an ongoing basis;

12 *Coles Supermarkets*, [34].

13 *ABCC v CFMEU* (2018) 262 CLR 157, [116].

115.3. maintains a risk and compliance team which includes a quality assurance team. The quality assurance team monitors operations to measure compliance and identify shortcomings;

115.4. maintains a resolutions team. The staff of the resolutions team have specific training to resolve disputes with consumers including those who dispute liability for debts when contacted by Panthera; and

115.5. employs a two dedicated financial counsellor liaison officers, who manage individual cases of hardship and engage with financial counselling groups.

116. Since the ACCC's contact with Panthera in relation to this matter, Panthera has increased its compliance reviews, including the level of monitoring of collectors' calls and records, to ensure that levels of compliance and quality are above industry standard. Panthera has also recently employed an experienced General Manager of Risk and Compliance, Patrick Brown to oversee and improve Panthera's compliance systems.

(vi) Cooperation

117. Cooperation with authorities in the course of investigations and subsequent proceedings can properly reduce the penalty that would otherwise be imposed. The reduction reflects the fact that such cooperation: increases the likelihood of cooperation in future cases in a way that furthers the object of the legislation; frees up the regulator's resources, thereby increasing the likelihood that other contraveners will be detected and brought to justice, and facilitates the course of justice: see e.g. *Commonwealth v Director*, [46]; *NW Frozen Foods* at 293-294; *Mobil Oil* at [55].

118. Panthera has cooperated with the ACCC by making substantive admissions, agreeing to the making of appropriate orders (including as to a proposed penalty), and joined in the making of these submissions. Panthera also appropriately engaged with the ACCC during the ACCC's investigation and agreed to participate in mediation at an early stage in these proceedings.

119. In the circumstances a meaningful discount for cooperation is appropriate. The proposed penalties factor in such a discount.

(vii) Other decisions

120. The Full Court has repeatedly emphasised that, although similar contraventions should incur similar penalties, the differing circumstances of individual cases mean that a penalty in one case cannot dictate the penalty in a later case; as a result, comparisons with previous penalties will rarely be useful: *Singtel Optus*, [60]; *Flight Centre*, [69]; *Yazaki*, [237]; NW *Frozen Foods* at 295-6. Insofar as any comparison with other respondents in other cases may be undertaken, what is sought is not numerical consistency, but the consistent application of principle.[14] Additionally, it should be noted that the 'parity' label often used in this context is a misnomer and inapt, as it is a criminal sentencing principle applied to ensure fairness of sentences as between co-offenders for the same offence: see eg *Flight Centre*, [70].

121. The penalty sought in this case involves the proper application of appropriate principles. To the limited extent it can be compared with other decisions it can be seen to be broadly comparable. The following cases illustrate this point, noting the very substantial differences which make such comparisons fraught.

122. *ACCC v **ACM** Group Limited (No 3)* [2018] FCA 2059: A penalty of $750,000 was imposed for contraventions of ss 50(1)(b) (undue harassment), 50(1)(b) (coercion) and 21(1)(a) of the ACL, in respect of two consumers, CT and JR. ACM was a debt recovery agency, who purchased debts at a significantly reduced price and sought to recover them from consumers at a profit. The conduct giving rise to the s 50(1)(b) (undue harassment) contravention in respect of CR took place over a four year period and consisted of approximately 20 letters of demand and 40 phone calls. The conduct giving rise to the 50(1)(b) (coercion) contravention in respect of JR, arose during a single phone call. The s 21(1)(a) contravention arose due to a combination of the undue harassment and coercion, and associated misleading and deceptive conduct that was found to contravene s 18. The contraventions arose in circumstances where ACM knew both CR and JR were subject to particular vulnerabilities. ACM had previously been

[14] *McDonald v Australian Building and Construction Commissioner* (2011) 2020 IR 467 at [23]-[25], applying the comparable principle laid out by the High Court in the sentencing context in *Hili v The Queen* (2010) 242 CLR 520, [48]-[49], reiterated since in *R v Pham* (2015) 256 CLR 550, [28]-[29].

found to have contravened the similar consumer protections provisions of the *ASIC Act*. ACM contested both liability and penalty. Having regard to these factors, the parties submit that the conduct considered in *ACM* was all together more serious than in the present case.

123. *ACCC v* ***ABG Pages*** *Pty Ltd* [2018] FCA 764: A penalty of $300,000 was imposed on the corporate respondent and $40,000 on a knowingly concerned individual, for contraventions of ss 21, 22, 29(1)(d), 29(1)(h), 29(1)(i), 29(1)(m), 50 (undue harassment). The conduct giving rise to the contraventions arose over an approximately five year period and related to ABG Pages' high pressure and aggressive sales tactics of online advertising. The conduct was found to give rise to systemic unconscionable conduct. Three undue harassment contraventions were made out in respect of three consumers, and arose from 933, 13 and 205 instances of contact respectively. The contact with each consumer occurred over a period of approximately 12 months in each instance. ABG's revenue during the relevant period (2011 to 2016) was between $349,938 and $961,019. The parties submit that the conduct considered in *ABG Pages* was significantly more serious that in the present case. However, the penalty reflects that ABG had a much smaller corporate size than Panthera.

124. *ACCC v* ***Harrison*** *(No 2)* [2017] FCA 182: A penalty of $200,000 was imposed on the corporate respondents and $50,000 on a knowingly concerned individual, for contraventions of ss 21 and 50 (undue harassment) of the ACL. The Harrison group companies traded in telecommunication services. Undue harassment contraventions arose in respect of four consumers, from pressure to pay fees, where fees were not required to be paid. The s 21 contravention arose from the Harrison Group's systemic practice of transferring contracts between its corporate group and included the undue harassment. Actual financial loss was established in respect of most consumers. The contravening companies were small, with modest profitability. Business revenue was approximately $80,000 - $100,000 per month (between about $1 million and $1.2 million per year), with profit between $100,000 and $120,000 per year. The conduct was serious, deliberate, arose from actions of senior management and extended over a number of years. The parties submit that (a) the conduct considered in *Harrison* is analogous but more serious than the present case, and (b) the penalty amount reflects that he Harrison Group was significantly smaller and less profitable than Panthera.

PART VII COSTS

125. Panthera has agreed to contribute $100,000 towards the ACCC's costs of the proceeding.

126. It is agreed the costs contribution will be paid within 30 days of the Court's order.

[redacted]

Via email: [redacted]

Private & Confidential

25 July 2024

Panthera Finance Group – Process Letter

Dear [redacted]

Thank you for signing and returning the Confidentiality Deed in relation to PF Group Holdings Pty Ltd (ACN 662 776 765) (Administrators Appointed) ("**PFGH**") and PF Management Holdings Pty Ltd (ACN 662 782 512) (Administrators Appointed) ("**PFMH**") (the "**Companies**).

1. Process summary

On 26 June 2024, Andrew Scott, Adam Colley, Stephen Longley and Derrick Vickers of PwC Australia (the "**Administrators**") were jointly and severally appointed as voluntary administrators of the Companies. The Companies are parent entities of the operating subsidiaries of Panthera Finance Group which includes (but is not limited to) Panthera Finance Pty Ltd (ACN 147 634 482), ARL Collect Pty Ltd (ACN 103 234 653) and United Loan Solutions Pty Ltd (ACN 611 343 572) (trading as Gedda Money). For the purposes of this Process Letter, we refer to:

(i) each of the subsidiaries of the Companies as a "**Group Company**"; and
(ii) the Companies and the Group Companies together as the "**Panthera Group**" or the "**Group**".

The Administrators are now seeking offers for a sale of 100% of the Companies' interest in (by way of a share sale), or a recapitalisation of, the Group or for a sale of the Group's assets (the "**Transaction**") through a two-stage process ("**Sale Process**").

This Process Letter sets out the required format of, and timing for submission of, your non-binding indicative offer ("**NBIO**") should you decide to participate in the Sale Process. Interested parties are being provided with:

(i) an Information Memorandum;
(ii) a Financial Model;
(iii) Supporting Data Packs; and
(iv) this Sale Process Letter,

(collectively '**the Stage 1 Materials**').

Offer(s) which:

- maximise value for the creditors of the Companies; and
- minimise execution risk, including limited conditionality and certainty on consideration,

will be prioritised over offers that the Administrators consider will deliver less value for creditors of the Companies and/or are more conditional and less certain in terms of their execution and completion.

You should consider these objectives in preparing and submitting your NBIO.

BSI PF Lender LP (an affiliated fund of Brookfield Asset Management) as the secured creditor of the Companies is supportive of the Sale Process, is familiar with the assets and business of the Group, and is prepared to discuss financing an acquisition for an interested buyer or to discuss terms to roll forward some or all of the existing secured debt of the Group.

2. *Transaction timetable*

Key event	**Timing**
Stage 1 materials circulated to approved bidders	From Monday, 22 July 2024
Submission of NBIO	**4:00pm AEST on Monday, 5 August 2024**
Short-Listed Parties notified	From Monday, 5 August 2024
Stage 2 data room and Q&A function opens to Short-Listed Parties	From Monday, 5 August 2024
Due diligence sessions with Panthera Group's management team	From Tuesday, 6 August 2024
Transaction documents uploaded to data room	W/C Monday, 12 August 2024
Submission of Final Offer and marked up transaction documents	**Friday, 31 August 2024**

3. *Transaction structure*

The Administrators are willing to consider any of the below Transaction structures.

Share sale / deed of company arrangement structures (**Preferred Structure**)

(i) Holding Company DOCA: A deed of company arrangement in relation to PFGH and/or PFMH (including an application under s444GA of the *Corporations Act 2001* (Cth) for the transfer of the shares in PFGH or PFMH) ("**Holding Company DOCA**").

Business and assets sale structures (**Alternative Structures**):

(ii) A sale of all of the business and assets of the Group via:
- a sale of the shares held by PFGH in PFMH; or
- a sale of the shares held by PFMH in PF Management Group Pty Ltd (ACN 622 786 001) and/or United Finance Group Pty Ltd (ACN 115 665 024),

whether by deed of company arrangement or via the Administrators exercising their power of sale in respect of the assets of either or both of the Companies.

(iii) The Administrators may also consider the following alternative transaction structures, including but not limited to offers for the sale of the business and assets of certain Group Companies or divisions of the Group or a sale of certain assets of the Group – noting that these alternatives would also require, among other things, the consent and cooperation of the directors of any relevant Group Companies.

Any Holding Company DOCA (or any other transaction structure involving a deed of company arrangement) will require creditor approval at the second meeting of the creditors for the relevant Companies (and therefore, may require additional time to complete relative to an Alternative Structure not involving a deed of company arrangement).

Irrespective of the transaction structure, any sale will occur on an *"as is, where is"* basis with no representations or warranties to be provided by the Administrators in respect of the acquired business or assets.

4. Submission of non-binding indicative offer

Interested parties are invited to submit an NBIO in writing on or before **4:00pm AEST on Monday, 5 August 2024** to the Administrators (see contact details below) ("**Stage 1**").

The NBIO must contain the following information:

a) **Transaction Structure –** The proposed transaction structure for the Transaction.

b) **Consideration**

Namely:

- the total cash consideration payable, in Australian dollars, for the Group and/or assets intended to be acquired under your proposed transaction structure;
- the valuation basis and assumptions applied in determining your offer price; and
- any material assumptions or circumstances which would cause you to vary the price or conditions of your NBIO.

The consideration payable for the Transaction should be provided as a single value, not a value range. Should you provide a range, the Administrators will take the bottom end as the bid value for the purposes of short-listing parties. The total consideration payable should reflect your best and final NBIO.

c) **Rationale and Strategy**

Namely:

- your strategic rationale for your interest in the Group (or the division(s) / asset(s) you intend to acquire);
- your plans for the Group's head office premises and each support office premises; and
- your plans for the Group's employees and your proposed treatment of employee entitlements for these employees.

d) **Identification –** The name and contact details of the investing/acquiring legal entity, indicating its shareholders and directors and to the extent applicable, the ultimate parent entity or owners or controllers of the investing/acquiring legal entity. Unless you indicate otherwise, you will be taken to have represented that you are acting alone and not participating as part of a consortium, and have not entered into any agreement, undertaking or understanding with any other person in relation to the Transaction or its outcome.

e) **Funding –** Confirmation of source(s) of funding and whether funding is readily available for this investment/acquisition. Where financing is proposed to be from third parties, outline of the process and approvals required to secure this funding (as well as any other relevant conditions precedent to that funding).

f) **Timing –** Confirmation of your ability to meet the transaction timetable as outlined above (under cl. 2).

g) **Due diligence –** A description of your key due diligence focus areas and requirements and confirmation this can completed within the timetable outlined in the transaction timetable above (under cl. 2).

h) **Conditions –** The principal terms and conditions to which any final offer would be subject to, including any material conditions precedent, applicable regulatory conditions (e.g. FIRB, ACCC, etc) which you envisage would or may be required to complete the Transaction.

i) **Approvals –** A description of the internal and/or external approvals obtained in submitting your NBIO and the method and timing to obtain those approvals.

j) **Advisers –** A list of any external advisers (including accountants, bankers and any legal counsel) which you have engaged or would anticipate engaging to complete the Transaction.

k) **Other –** Any other matters of which the Administrators should be aware in assessing your NBIO (for example, any constraints upon your ability to proceed to a prompt completion of the Transaction).

l) **Contact –** The name and contact details of the person who can answer any questions we may have regarding your NBIO.

The Administrators will consider any requests for further information for the purposes of developing an NBIO on a case-by-case basis.

5. *Final Offers*

Following the conclusion of Stage 1, the Administrators will review and make an assessment of the NBIOs submitted, following which, and depending on the NBIOs submitted, a limited number of prospective purchasers ("**Short-Listed Parties**") will be invited to conduct further due diligence and progress towards a final and legally binding offer ("**Final Offer**") ("**Stage 2**").

The Administrators have complete discretion in determining whether you will progress to Stage 2 and the extent of any due diligence during Stage 2. NBIOs with the highest consideration (among the NBIOs received) may not necessarily progress to Stage 2 and the Administrators will consider a range of other factors, including but not limited to, the Administrators' assessment of the execution and completion risk in connection with a proposal and the overall benefits to the Companies, the Group and their key stakeholders.

Short-Listed Parties will be given access to the following information in Stage 2:

- a Stage 2 process letter;
- further due diligence materials provided via an online data room with Q&A functionality; and
- a presentation from senior management in Brisbane and site visit(s).

It is anticipated that some materials which are commercially sensitive, such as the key commercial terms of supplier contracts, vendor and customer names and certain employee-related details, will be made available to one or more preferred bidders via a "black box" (at the full and unfettered discretion of the Administrators).

Further details and a re-confirmed timetable for Final Offers will be provided to Short-Listed Parties at the commencement of Stage 2 (but at this stage, the Administrators are targeting final negotiations with preferred bidder(s) and execution of transaction documents by Friday, 13 September 2024).

6. *Contact details*

The Administrators' sale team will be your principal point of contact throughout the Sale Process and in accordance with the terms of the Confidentiality Deed. In no circumstances should any approach be made to any of the directors, management, employees, other advisers, customers, suppliers, or landlords of the Group without the express written consent of the Administrators.

By proceeding with your involvement in the Sale Process, you are taken to have read, understood and accepted the terms and conditions contained in this Process Letter and the Confidentiality Deed. You are also taken to have agreed that the undertakings and releases given by you in this Process Letter are given for the benefit of, and are held on trust for and enforceable by, the Administrators and their respective affiliates and representatives even though those relevant affiliates, representatives and other third parties may not be a party to this Process Letter.

This Process Letter, the procedures outlined herein, and all documentation prepared in pursuance of the Transaction shall be governed by and construed in accordance with the laws of New South Wales, Australia.

The Administrators' sale team include the following key contact persons:

Kosta Kangelaris	**Jack Pell**	**Nick Voukelatos**
Partner	Director	Director
PwC Mergers & Acquisitions	PwC Mergers & Acquisitions	PwC Mergers & Acquisitions
+61 404 371 979	+61 415 789 875	+61 406 781 755
kosta.kangelaris@au.pwc.com	jack.pell@au.pwc.com	nick.voukelatos@au.pwc.com

7. Other terms and conditions

To the maximum extent permitted by law, you release the Group and the Administrators (and their respective advisers, affiliates, officers and employees) from any and all liability in respect of any information furnished orally or in writing to you in connection with the Transaction (including, but not limited to any information or commentary that may be provided to you by any officer, director, shareholder, employee, agent, representative, adviser or consultant of the Group or the Administrators). The Group and the Administrators do not make and will not be regarded as having made any representation or warranty, express or implied, with respect to the accuracy, completeness or reliability of any such information. No information disclosed by or on behalf of the Administrators should be regarded as complete, accurate, audited or independently verified. By submitting an NBIO or Final Offer, you acknowledge and agree that you are relying solely on your own independent due diligence investigations and evaluation of the Companies, the Group and the Transaction.

The Administrators have engaged Clifford Chance as legal adviser ("**Advisers**") in relation to the Sale Process. The Advisers are not acting for you and any information that you receive in connection with the Sale Process is not to be taken as constituting the giving of legal or other advice to you by the Advisers, nor to constitute you as a client of any of the Advisers.

All documents submitted to the Administrators in relation to the Transaction will become the property of the Administrators on lodgement. Any specific intellectual property rights existing in the submitted documents should be clearly identified by you and will remain your property. However, by lodging documents with the Administrators, you license the Administrators to, without limitation, copy, adapt, disclose or to do anything else to the intellectual property contained in the submitted documents for the purposes of the Transaction.

By submitting documents to the Administrators, you warrant to the Administrators that the information contained in your documents is true, accurate and complete on the date of lodgement, and may be relied upon by the Administrators. You must advise the Administrators promptly of any material changes, perceived errors, ambiguities or discrepancies in any documents submitted to the Administrators.

Neither this Process Letter nor the disclosure of any information to you shall constitute an offer to sell or an invitation to purchase the business and assets of the Companies or any other member of the Group. An offer in respect of one or both of the Companies and/or the Group (or any member of the Group and/or any of the assets or business of the Group) may be accepted by the Administrators only if and when final and legally binding documents giving effect to the Transaction have been executed by you.

The Administrators reserve the right, at their sole discretion and without any obligation to provide any notice or reason therefore, at any time and in any respect, to modify, suspend or cancel the procedure set out in this Process Letter (including the timetable), to terminate discussions with one or more parties or exclude any party from the process, to accept or reject any proposal, to enter into discussions with any party with respect to the Transaction (on an exclusive basis or otherwise), to enable interested parties to enter the Sale Process at any time, require further information of any party or to take any other action in respect of the Sale Process as the Administrators consider appropriate.

You will bear all of the costs and expenses of your due diligence investigation and evaluation of the Companies, the Group, their respective business and assets, and the Transaction and of the preparation and submission of any NBIO and subsequent legal documentation, including any fees and disbursements of your advisers which shall not be indemnified or reimbursed if you fail to make an offer or your offer is rejected by the Administrators for whatever reason.

The disclosure of any Confidential Information (as defined in the Confidentiality Deed) to you, as well as the existence and the terms of this Process Letter, are subject to the terms of the Confidentiality Deed, the terms of which are not modified or varied by this Process Letter.

You are also reminded that the Confidential Information (as defined in the Confidentiality Deed) should not be disclosed to any person other than on the terms set out in the Confidentiality Deed or with the prior written consent of the Administrators. Any such disclosure, or alleged disclosure, may lead the Administrators to take immediate legal action and to terminate immediately any discussions being held with you without prior notice or indemnification. Management, staff, customers, suppliers, landlords or other persons connected with the Group must not be communicated with by you or on your behalf in connection with any matter contemplated under this Process Letter without the Administrators' prior consent.

You must notify the Administrators in advance of any discussions with a government agency, semi-governmental agency, regulator or stock exchange in connection with any matter contemplated under this Process Letter.

You must not (and you must ensure that your representatives do not) engage in any collusive tendering, anti-competitive conduct or other similar conduct with any person in relation to the Sale Process or engage in any conduct which may, or does, give rise to a conflict of interest (or potential conflict of interest) in relation to the Sale Process.

Any direct or indirect breach of the terms and conditions in this Process Letter may result in your exclusion from the Sale Process.

You acknowledge and agree that, notwithstanding any other terms of this Process Letter:

(i) the Administrators are performing this document, to the extent of any obligations they have under it, solely in their capacity as the joint and several voluntary administrators of the Companies and in no other capacity;

(ii) the Administrators are not personally liable for, and do not accept or assume any Liability for any Loss or Liability to you or any of your respective affiliates, directors, officers, employees, agents, contractors or advisers in respect of this document or the transactions contemplated by it;

(iii) the Administrators:

(A) are not liable to make any payment, or satisfy any other obligation, under this document; and

(B) have no Liability to you or any other person,

except to the extent of their right of indemnity out of, and lien over, the assets of the Companies;

(iv) if the extent of the amount for which the Administrators are actually indemnified in respect of any personal Liability under or in connection with this document is insufficient to satisfy in full that personal Liability, you:

(A) waive your rights and forever release, and discharge the Administrators from all residual personal Liability under or in connection with this document; and

(B) covenant not to make a Claim or seek to recover any shortfall against the Administrators personally, including by bringing proceedings against the Administrators;

(v) no Claim may be brought against the Administrators in their personal capacity in respect of, or incidental to, this document or any document, matter or thing relating to it;

(vi) the Administrators make no representations or warranties in relation to any matter whatsoever in their personal capacity;

(vii) the Administrators make no representation or warranty and assume no responsibility for:

(A) the legality, validity, effectiveness, adequacy or enforceability of this document;

(B) the financial condition of the Companies or any other person; or

(C) the accuracy of any statements (whether written or oral) made in connection with this document or any other document;

and any representations and warranties implied by law are excluded to the maximum extent permitted by law;

(viii) the limitations of liability above:

(A) will continue notwithstanding the Administrators ceasing to act as administrators of any Company;

(B) will operate as a waiver of any claims in tort and restitution as well as under the law of contract; and

(C) will be in addition to, and not in substitution for, any right of indemnity or relief otherwise available to the Administrators.

(ix) for the purposes of the above limitations of liability:

(A) *"**Claim**"* means, in relation to a person, any claim, allegation, cause of action, proceeding, Liability, suit or demand made against a person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

(B) *"**Liability**"* means, in relation to any person, any liability or obligation however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

(C) *"**Loss**"* includes any loss, damage, Liability or obligation, compensation, fine, penalty charge, payment, costs or expense (including legal cost and expense on a full indemnity basis however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

We thank you again for the interest that you have expressed in the Group and look forward to working with you on this Transaction.

Yours faithfully

Andrew Scott, Adam Colley, Stephen Longley and Derrick Vickers
Administrators

[redacted]

Via email: [redacted]

Private & Confidential

9 August 2024

Panthera Finance Group – Stage Two Sale Process Letter

Dear [redacted]

Thank you for submitting your non-binding indicative offer (**"NBIO"**) in relation to PF Group Holdings Pty Ltd (ACN 662 776 765) (Administrators Appointed) ("**PFGH**") and PF Management Holdings Pty Ltd (ACN 662 782 512) (Administrators Appointed) ("**PFMH**") (the "**Companies**"). The Companies are parent entities of the operating subsidiaries of Panthera Finance Group which includes (but is not limited to) Panthera Finance Pty Ltd (ACN 147 634 482), ARL Collect Pty Ltd (ACN 103 234 653) and United Loan Solutions Pty Ltd (ACN 611 343 572) (trading as Gedda Money). For the purposes of this Process Letter, we refer to:

(i) each of the subsidiaries of the Companies as a "**Group Company**"; and
(ii) the Companies and the Group Companies together as the "**Panthera Group**" or the "**Group**".

Capitalised terms in this letter have the meaning given in the Stage One Process Letter dated in or around July 2024 unless otherwise stated.

Andrew Scott, Adam Colley, Stephen Longley and Derrick Vickers of PwC Australia ("**the Administrators**") are pleased to invite you to participate in the next stage ("**Stage Two**") of the sale process for the acquisition and/or recapitalisation of the Group and/or the Group's assets ("**the Transaction**"), being conducted through a multi-staged process ("**Sale Process**").

The purpose of Stage Two is to enable you ("**the Prospective Purchaser**") to submit a final and legally binding offer for the Transaction in the form of a long form sale agreement capable of execution ("**Final Offer**"). This process letter (the "**Stage Two Process Letter**") informs you about the process for disclosure and the scope of information that will be made available to you in Stage Two.

Interested parties are invited to submit a **bid reconfirmation with a marked up term sheet ("Reconfirmation") on Friday 23 August 2024**, and a **Final Offer on or before 4pm AEST on Thursday, 5 September 2024** to the Administrators' sale team (see contact details below). Notwithstanding this deadline, the Administrators expressly reserve the right to deal with any party, on any terms in their absolute discretion, including any party that provides a Final Offer ahead of the timeframes referred to above which is capable of acceptance.

The information contained in this letter is provided on a strictly confidential basis for the sole purpose of facilitating the transaction and constitutes "Confidential Information" for the purpose of the confidentiality deed you have entered into with the Companies / the Group in connection with this Sale Process (the "**Confidentiality Deed**").

1. Timetable

The key, indicative dates for Stage Two are as follows:

Key event	**Timing**
Data Room and Q&A function opens to short-listed parties	Friday, 9 August 2024
Management meeting	Week commencing Monday, 12 August 2024
Draft Term Sheet uploaded to the Data Room	Week commencing Monday, 12 August 2024
Draft sale agreement(s) uploaded to the Data Room	Week commencing Monday, 19 August 2024
Submission of Reconfirmation in the form of a Term Sheet	Friday, 23 August 2024
Submission of Final Offers and marked-up transaction documents	By 4pm AEST on Thursday, 5 September 2024

2. Transaction Structure

As previously noted, to the extent that your proposed transaction structure may involve a deed of company arrangement in respect of either of the Companies, the Administrators would require creditor approval at the Second Meeting of Creditors of the relevant Company (or Companies).

Irrespective of the transaction structure, any sale will occur on an "as is, where is" basis with no representations or warranties to be provided by the Administrators in respect of the acquired business or assets.

3. Reconfirmation

You will be required to reconfirm your NBIO on Friday, 23 August 2024 by way of submission of a marked-up term sheet ("**Term Sheet"**). The Administrator will review and consider your Term Sheet and, at their absolute discretion, determine whether the Prospective Purchaser will continue with the Stage Two due diligence process.

An electronic copy of the Term Sheet will be provided in the Data Room during the week commencing Monday, 12 August 2024. The draft term sheet will reflect the key terms under which the Administrator intends to enter into the transaction.

As part of your Reconfirmation, the Administrators require that the Prospective Purchaser demonstrates that they have secured committed funds with drawdown available at closing.

4. Final offers and transaction documentation

All Final Offers will take the form of a long form sale agreement capable of execution. During the due diligence period you will be provided with an electronic copy of a proposed, draft sale agreement prepared by the

Administrators' legal adviser (Clifford Chance) outlining the terms under which the Administrators may propose to enter into a potential transaction with the Prospective Purchaser.

You and your advisors will have the opportunity to participate in pre-negotiation sessions, in order to discuss your marked-up Term Sheet, with such terms to be reflected in your proposed sale agreement. These sessions will be organised in due course and subject to the Administrators and the Prospective Purchaser's availability.

5. Data Room and Q&A

You will have the opportunity to review confidential information in relation to the Group in an online virtual data room (the "**Data Room**").

For the avoidance of doubt, all information included in the Data Room is subject to the terms of the Confidentiality Deed.

Note, this will be the same Data Room where Stage 1 Materials were accessed. For any additional participants required for Stage Two to obtain access to the Data Room, please complete the Excel form accompanying this letter and provide this list of contact information (including name, email address, phone number, position and organisation) for all required participants to:

Paige Perry	paige.perry@au.pwc.com	+61 468 534 450
Monica Mercuri	monica.r.mercuri@au.pwc.com	+61 422 291 161

Each participant will receive login information by email. It is anticipated that access to the Data Room will be on a 24 hour, 7 days a week basis for the allotted due diligence period outlined in the Timetable section of this letter, although there may be periods where the Data Room is unavailable due to events beyond the Administrators' control. Please note that the Administrators retain the right, at their sole and absolute discretion and at any time, to amend the contents of the Data Room or its opening period or to stop or restrict access. A more detailed Data Room Terms of Access document will be provided in the data room to all parties.

You will also have the opportunity to submit written questions through the Q&A function in the Data Room which will be open for the allotted duration outlined in the Timetable section of this letter. You will be permitted to submit a maximum of 20 questions per day. The Administrators retain the right to answer or not answer, at their sole discretion and at any time, any written questions submitted during the Q&A process. Further information regarding the Q&A process is outlined in the Data Room Terms of Access document found in the Data Room.

6. Management meeting

You will be invited to attend an on-site management meeting (the "**Management Meeting**") at the Group's Brisbane Head Office (555 Coronation Drive, Toowong QLD 4066), or via video conference facilities. The Management Meeting will be facilitated by the Group's executive management team, the Administrators and their sale team.

The dates and logistics of the Management Meeting will be agreed with you shortly.

Please provide the following information to the Administrators' sale team by email at least 72 hours in advance of the Management Meeting:

- Name, title and organisation of each attendee (maximum seven attendees); and
- Questions and topics that you wish to address during the Management Meeting.

7. Black Box Information

The Administrators reserve the right to withhold or redact commercially sensitive information (the "**Black Box Information**") from the Data Room material during the Stage Two due diligence period. The preferred bidder(s) selected at the end of Stage Two will be advised if, and when, the Black Box Information will be made available.

8. Contact details

The Administrators' sale team will be your principal point of contact throughout the Sale Process and in accordance with the terms of the Confidentiality Deed. In no circumstances should any approach be made to any of the directors, management, employees, other advisers, customers, suppliers or landlords of the Group without the express written consent of the Administrators.

By continuing with your involvement in the Sale Process, you are taken to have read, understood and accepted the terms and conditions contained in the initial Stage One Process Letter dated in or around July 2024, this Stage Two Process Letter and the Confidentiality Deed. You are also taken to have agreed that the undertakings and releases given by you in this Stage Two Process Letter are given for the benefit of, and are held on trust for and enforceable by, the Administrators and their respective affiliates and representatives even though those relevant affiliates, representatives and other third parties may not be a party to this Stage Two Process Letter.

This Stage Two Process Letter, the procedures outlined herein, and all documentation prepared in pursuance of the Transaction shall be governed by and construed in accordance with the laws of New South Wales, Australia.

The Administrators' sale team:

Kosta Kangelaris	**Nick Voukelatos**	**Paige Perry**
Partner	Director	Manager
PwC Mergers & Acquisitions	PwC Mergers & Acquisitions	PwC Mergers & Acquisitions
+61 404 371 979	+61 406 781 755	+61 468 534 450
kosta.kangelaris@au.pwc.com	nick.voukelatos@au.pwc.com	paige.perry@au.pwc.com

9. Discussions with third parties

If approval from or notification to any government agency of regulatory body (e.g. ASIC, ACCC or FIRB) is required prior to completion of Transaction, you are expected to make your application(s) to those agencies or bodies promptly following receipt of this letter. However, before making any such application (or contacting or approaching any such agency or body), you must obtain the Administrators' written consent to do so, which consent may be withheld in the Administrators' absolute discretion and without providing any reason.

No approach may be made by you or any of your advisers or representatives to any of the Group's shareholders, employees, officers, contractors, customers or suppliers, other than as may be specifically allowed under the

Confidentiality Deed (or with the prior written consent of the Administrators). Any communication in relation to the Transaction must be with the Administrators and their sale team.

10. Other terms and conditions

To the maximum extent permitted by law, you release the Group and the Administrators (and their respective advisers, affiliates, officers and employees) from any and all liability in respect of any information furnished orally or in writing to you in connection with the Transaction (including, but not limited to any information or commentary that may be provided to you by any officer, director, shareholder, employee, agent, representative, adviser or consultant of the Group or the Administrators). The Group and the Administrators do not make and will not be regarded as having made any representation or warranty, express or implied, with respect to the accuracy, completeness or reliability of any such information. No information disclosed by or on behalf of the Administrators should be regarded as complete, accurate, audited or independently verified. By submitting an NBIO or Final Offer, you acknowledge and agree that you are relying solely on your own independent due diligence investigations and evaluation of the Companies, the Group and the Transaction.

The Administrators have engaged Clifford Chance as legal adviser ("**Advisers**") in relation to the Sale Process. The Advisers are not acting for you and any information that you receive in connection with the Sale Process is not to be taken as constituting the giving of legal or other advice to you by the Advisers, nor to constitute you as a client of any of the Advisers.

All documents submitted to the Administrators in relation to the Transaction will become the property of the Administrators on lodgement. Any specific intellectual property rights existing in the submitted documents should be clearly identified by you and will remain your property. However, by lodging documents with the Administrators, you license the Administrators to, without limitation, copy, adapt, disclose or to do anything else to the intellectual property contained in the submitted documents for the purposes of the Transaction.

By submitting documents to the Administrators, you warrant to the Administrators that the information contained in your documents is true, accurate and complete on the date of lodgement, and may be relied upon by the Administrators. You must advise the Administrators promptly of any material changes, perceived errors, ambiguities or discrepancies in any documents submitted to the Administrators.

Neither this Stage Two Process Letter nor the disclosure of any information to you shall constitute an offer to sell or an invitation to purchase the business and assets of the Companies or any other member of the Group. An offer in respect of one or both of the Companies and/or the Group (or any member of the Group and/or any of the assets or business of the Group) may be accepted by the Administrators only if and when final and legally binding documents giving effect to the Transaction have been executed by you.

The Administrators reserve the right, at their sole discretion and without any obligation to provide any notice or reason therefore, at any time and in any respect, to modify, suspend or cancel the procedure set out in this Stage Two Process Letter (including the timetable), to terminate discussions with one or more parties or exclude any party from the process, to accept or reject any proposal, to enter into discussions with any party with respect to the Transaction (on an exclusive basis or otherwise), to enable interested parties to enter the Sale Process at any time, require further information of any party or to take any other action in respect of the Sale Process as the Administrators consider appropriate.

You will bear all of the costs and expenses of your due diligence investigation and evaluation of the Companies, the Group, their respective business and assets, and the Transaction and of the preparation and submission of any

NBIO, Term Sheet and subsequent legal documentation, including any fees and disbursements of your advisers which shall not be indemnified or reimbursed if you fail to make an offer or your offer is rejected by the Administrators for whatever reason.

The disclosure of any Confidential Information (as defined in the Confidentiality Deed) to you, as well as the existence and the terms of this Process Letter, are subject to the terms of the Confidentiality Deed, the terms of which are not modified or varied by this Process Letter.

You are also reminded that the Confidential Information (as defined in the Confidentiality Deed) should not be disclosed to any person other than on the terms set out in the Confidentiality Deed or with the prior written consent of the Administrators. Any such disclosure, or alleged disclosure, may lead the Administrators to take immediate legal action and to terminate immediately any discussions being held with you without prior notice or indemnification. Management, staff, customers, suppliers, landlords or other persons connected with the Group must not be communicated with by you or on your behalf in connection with any matter contemplated under this Process Letter without the Administrators' prior consent.

You must notify the Administrators in advance of any discussions with a government agency, semi-governmental agency, regulator or stock exchange in connection with any matter contemplated under this Stage Two Process Letter.

You must not (and you must ensure that your representatives do not) engage in any collusive tendering, anti-competitive conduct or other similar conduct with any person in relation to the Sale Process or engage in any conduct which may, or does, give rise to a conflict of interest (or potential conflict of interest) in relation to the Sale Process.

Any direct or indirect breach of the terms and conditions in this Stage Two Process Letter may result in your exclusion from the Sale Process.

You acknowledge and agree that, notwithstanding any other terms of this Stage Two Process Letter:

(i) the Administrators are performing this document, to the extent of any obligations they have under it, solely in their capacity as the joint and several voluntary administrators of the Companies and in no other capacity;

(ii) the Administrators are not personally liable for, and do not accept or assume any Liability for any Loss or Liability to you or any of your respective affiliates, directors, officers, employees, agents, contractors or advisers in respect of this document or the transactions contemplated by it;

(iii) the Administrators:
  (A) are not liable to make any payment, or satisfy any other obligation, under this document; and
  (B) have no Liability to you or any other person,
  except to the extent of their right of indemnity out of, and lien over, the assets of the Companies;

(iv) if the extent of the amount for which the Administrators are actually indemnified in respect of any personal Liability under or in connection with this document is insufficient to satisfy in full that personal Liability, you:
  (A) waive your rights and forever release, and discharge the Administrators from all residual personal Liability under or in connection with this document; and

(B) covenant not to make a Claim or seek to recover any shortfall against the Administrators personally, including by bringing proceedings against the Administrators;

(v) no Claim may be brought against the Administrators in their personal capacity in respect of, or incidental to, this document or any document, matter or thing relating to it;

(vi) the Administrators make no representations or warranties in relation to any matter whatsoever in their personal capacity;

(vii) the Administrators make no representation or warranty and assume no responsibility for:

(A) the legality, validity, effectiveness, adequacy or enforceability of this document;

(B) the financial condition of the Companies or any other person; or

(C) the accuracy of any statements (whether written or oral) made in connection with this document or any other document;

and any representations and warranties implied by law are excluded to the maximum extent permitted by law;

(viii) the limitations of liability above:

(A) will continue notwithstanding the Administrators ceasing to act as administrators of any Company;

(B) will operate as a waiver of any claims in tort and restitution as well as under the law of contract; and

(C) will be in addition to, and not in substitution for, any right of indemnity or relief otherwise available to the Administrators;

(ix) for the purposes of the above limitations of liability:

(A) ***"Claim"*** means, in relation to a person, any claim, allegation, cause of action, proceeding, Liability, suit or demand made against a person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

(B) ***"Liability"*** means, in relation to any person, any liability or obligation however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

(C) ***"Loss"*** includes any loss, damage, Liability or obligation, compensation, fine, penalty charge, payment, costs or expense (including legal cost and expense on a full indemnity basis however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

We thank you again for the interest that you have expressed in the Group and look forward to working with you on this Transaction.

Yours faithfully,

Andrew Scott, Adam Colley, Stephen Longley and Derrick Vickers
Administrators

Zhu, Alexandra (L&DR-SYD)

From: Poncini, Adriano (GFM-PER)
Sent: Tuesday, 10 September 2024 5:43 PM
To: Tom Schinckel
Cc: Ben Emblin; Cameron Cheetham; Gillgren, Mark (GFM-PER); Wacker, Donna (L&DR-HK); Zhu, Alexandra (L&DR-SYD); Poncini, Adriano (GFM-PER)
Subject: Panthera | Proposed Convening Period Extension
Attachments: 20240910 - CC Letter to Brookfield (1).pdf

Dear Tom

Please find our letter of today's date **attached**.

Available to discuss.

Kind regards

Adriano Poncini
Senior Associate
Clifford Chance
+61 447 064 179
adriano.poncini@cliffordchance.com

CLIFFORD CHANCE

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By Email Only

Confidential

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50 Bridge Street
SYDNEY NSW 2000
tom.schinckel@corrs.com.au

Our ref: 22-41076872
Direct Dial: +61892625532
E-mail: adriano.poncini@cliffordchance.com

10 September 2024

Dear Tom

PF Group Holdings Pty Ltd (Administrators Appointed) (ACN 622 776 765) ("PF Group Holdings") & PF Management Holdings Pty Ltd (Administrators Appointed) (ACN 622 782 512) ("PF Management Holdings") (together, the "Companies")

Background

1. As you know, we act for Andrew Scott, Adam Colley, Derrick Vickers and Stephen Longley (in their capacities as the Joint and Several Voluntary Administrators of the Companies) ("**Administrators**").

2. As you know:

   (a) On 26 June 2024, the Companies were placed into voluntary administration.

   (b) The Companies are the parent entities of a number of wholly-owned subsidiaries ("**Subsidiaries**"). Together, the Companies and these Subsidiaries constitute the Panthera Group ("**Panthera Group**").

   (c) On 16 July 2024, the Administrators applied to the Court to extend the date by which the Administrators must convene second creditors' meetings in respect of the Companies.

   (d) On 18 July 2024, the Honourable Justice Shariff made the requested Orders in accordance with section 439A of the *Corporations Act 2001* (Cth)

("**Corporations Act**"), and the convening period was extended to end on **Wednesday, 18 September 2024**.

(e) The Administrators have progressed their sale process ("**Sale Process**") to the point where the number of prospective purchasers has been short-listed to a few parties and term sheets are being negotiated for the sale and/or recapitalisation of certain of the Companies' assets (including the Subsidiaries and/or the business and assets of the Subsidiaries) with each of those parties.

Proposed Further Extension of Convening Period

3. The Administrators consider that a further extension of the convening period is necessary to provide additional time to progress the Sale Process and appropriately report to creditors on the options available to them at the second creditors' meetings of the Companies. In their view, and in line with previous advice, the Administrators believe that a further extension of the convening period will be in the best interests of the Companies' creditors as it will allow the Administrators to negotiate the best available sale and/or recapitalisation proposal in respect of the Companies and/or their assets and by extension, this will maximise the realisable value of the Companies and/or their assets.

4. The main reasons why the Sale Process has taken longer than expected to date include:

(a) On or about 23 July 2024, Consumer Affairs Victoria ("**CAV**") commenced criminal proceedings against Panthera Finance Pty Ltd ("**PFPL**") in the Melbourne Magistrates Court ("**CAV Proceeding**"). In the Administrators' view, the CAV Proceeding has added to the time and complexity of the Sale Process.

(b) Management presentations to short-listed parties extended over a two-week period rather than the initially envisaged one-week period. This delayed the delivery of draft term sheets to the short-listed parties.

(c) Due diligence queries and the time taken to clarify the substantive details of the term sheets/offers received from the short-listed parties to date have taken longer than expected.

5. The Administrators and their staff are endeavouring to advance the Sale Process as quickly as practicable given the complexity of the offers received and desire to exchange and complete a transaction before the end of the calendar year, however, they recognise this may not be possible. While it is difficult to estimate the exact length of

time that may be required to complete the Sale Process, in determining the further extension period the Administrators have also had regard to the following:

(a) the amount of time that is likely to be required to manage the CAV Proceeding and its impact on due diligence together with any additional due diligence requirements prior to entering into a binding transaction;

(b) the complexity of the affairs of the Companies and the Subsidiaries noting that short-listed parties have put forward structures that potentially carry materially different timeframes to complete a transaction;

(c) the Federal Court of Australia generally does not have sitting dates between the last week of December until the first week of February;

(d) convening a meeting of creditors during the December 2024 – January 2025 period may mean that some stakeholders / participants will be away; and

(e) a strong desire to minimise the need for, and costs associated with, any further extensions of the convening period arising from further delays in the Sale Process and/or for other reasons currently not known.

6. For the reasons noted above, the Administrators intend to seek an extension of the convening period to **Friday, 7 February 2025**.

7. The Administrators wish to stress that their intention is to call the second creditors' meetings as soon as practicable once the Sale Process has reached a sufficient level of certainty such that the Administrators can report to creditors on the most likely outcome scenario(s). However, at this stage of the Sale Process, they are not able to provide a reasonable estimate of the time to be in this position.

8. The Administrators also note that, until the Sale Process has been completed, maintaining the option for any party to put forward a deed of company arrangement proposal is also in the interests of the Companies' creditors (noting that the only available alternative at the second meetings is for the Administrators to recommend that creditors vote to wind the Companies up).

Notice of Intention to Make Application For Convening Period Extension

9. Having regard to the above, the Administrators intend to apply to the Court for an extension of the convening period to **Friday, 7 February 2025**.

10. Having regard to the above, we wish to give you notice of the Administrators' intention to make the application referred to above and given your client's interest in the administrations of the Companies, we would be grateful if you would please, by no later than **5:00pm (AEST) on Wednesday, 11 September 2024**, tell us if your client has any objection to the proposed extension of time referred to above.

Yours faithfully

Clifford Chance

Clifford Chance

Zhu, Alexandra (L&DR-SYD)

From: Poncini, Adriano (GFM-PER)
Sent: Tuesday, 10 September 2024 5:49 PM
To: jim@jcl.com.au
Cc: Gillgren, Mark (GFM-PER); Wacker, Donna (L&DR-HK); Zhu, Alexandra (L&DR-SYD); Poncini, Adriano (GFM-PER)
Subject: Panthera | Proposed Convening Period Extension
Attachments: 20240910 - CC Letter to James Conomos (1).pdf

Dear James

Please find our letter of today's date **attached**.

Available to discuss.

Kind regards

Adriano Poncini
Senior Associate
Clifford Chance
+61 447 064 179
adriano.poncini@cliffordchance.com

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E-mail: adriano.poncini@cliffordchance.com

10 September 2024

By Email Only

Confidential

JCL Partners
Level 4, 179 Turbot Street
BRISBANE QLD 4000

jim@jcl.com.au

Att: Mr James Conomos

Dear James

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Clifford Chance

Zhu, Alexandra (L&DR-SYD)

From: Poncini, Adriano (GFM-PER)
Sent: Tuesday, 10 September 2024 5:47 PM
To: Ian Dorey; tom.young@klgates.com
Cc: Gillgren, Mark (GFM-PER); Wacker, Donna (L&DR-HK); Zhu, Alexandra (L&DR-SYD); Poncini, Adriano (GFM-PER)
Subject: Panthera | Proposed Extension to Convening Period
Attachments: 20240910 - CC Letter to K&L Gates (1).pdf

Dear Ian / Tom

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Adriano Poncini
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By Email Only

Confidential

K&L Gates
Level 16, Central Plaza Two
66 Eagle Street
BRISBANE QLD 4000

10 September 2024

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8. The Administrators also note that, until the Sale Process has been completed, maintaining the option for any party to put forward a deed of company arrangement proposal is also in the interests of the Companies' creditors (noting that the only available alternative at the second meetings is for the Administrators to recommend that creditors vote to wind the Companies up).

Notice of Intention to Make Application For Convening Period Extension

9. Having regard to the above, the Administrators intend to apply to the Court for an extension of the convening period to **Friday, 7 February 2025**.

10. Having regard to the above, we wish to give you notice of the Administrators' intention to make the application referred to above and given your client's interest in the administrations of the Companies, we would be grateful if you would please, by no later than **5:00pm (AEST) on Wednesday, 11 September 2024**, tell us if your client has any objection to the proposed extension of time referred to above.

Yours faithfully

Clifford Chance

Clifford Chance

Zhu, Alexandra (L&DR-SYD)

From: Suzie Davies <Suzie.Davies@asic.gov.au>
Sent: Wednesday, 11 September 2024 8:43 AM
To: Poncini, Adriano (GFM-PER); Legal.Document.Service
Cc: Yvan Dang; Wacker, Donna (L&DR-HK); Zhu, Alexandra (L&DR-SYD); Gillgren, Mark (GFM-PER)
Subject: [EXT] RE: Panthera | PF Group Holdings Pty Ltd (Administrators Appointed) (ACN 662 776 765) & PF Management Holdings Pty Ltd (Administrators Appointed) (ACN 622 782 512) [SEC=OFFICIAL]

Dear Adriano

Thank you for your email.

Can you please confirm the outcome of the application to further extend the convening period after the matter is heard.

Kind Regards

Suzie Davies
Investigator, Registered Liquidators
Enforcement & Compliance
Australian Securities and Investments Commission
Level 5, 100 Market Street, Sydney, 2000
Tel: +61 2 9911 2109
suzie.davies@asic.gov.au

Please note: I work Monday (9am - 2pm), Tuesday, Wednesday and Thursday

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From: Adriano.Poncini@CliffordChance.com <Adriano.Poncini@CliffordChance.com>
Sent: Tuesday, September 10, 2024 8:03 PM
To: Legal.Document.Service <Legal.Document.Service@asic.gov.au>
Cc: Yvan Dang <Yvan.Dang@asic.gov.au>; Suzie Davies <Suzie.Davies@asic.gov.au>; Donna.Wacker@CliffordChance.com; Alexandra.Zhu@CliffordChance.com; Mark.Gillgren@CliffordChance.com; Adriano.Poncini@CliffordChance.com
Subject: RE: Panthera | PF Group Holdings Pty Ltd (Administrators Appointed) (ACN 662 776 765) & PF Management Holdings Pty Ltd (Administrators Appointed) (ACN 622 782 512)

Dear Sir / Madam

Clarifying that the date of the proposed extension is to 7 February 202**5**.

Kind regards

Adriano Poncini
Senior Associate
Clifford Chance
+61 447 064 179
adriano.poncini@cliffordchance.com

From: Poncini, Adriano (GFM-PER) <Adriano.Poncini@CliffordChance.com>
Sent: Tuesday, September 10, 2024 8:00 PM
To: legal.document.service@asic.gov.au
Cc: Yvan Dang <Yvan.Dang@asic.gov.au>; Suzie Davies <Suzie.Davies@asic.gov.au>; Wacker, Donna (L&DR-HK) <Donna.Wacker@CliffordChance.com>; Zhu, Alexandra (L&DR-SYD) <Alexandra.Zhu@CliffordChance.com>; Gillgren, Mark (GFM-PER) <Mark.Gillgren@CliffordChance.com>; Poncini, Adriano (GFM-PER) <Adriano.Poncini@CliffordChance.com>
Subject: Panthera | PF Group Holdings Pty Ltd (Administrators Appointed) (ACN 662 776 765) & PF Management Holdings Pty Ltd (Administrators Appointed) (ACN 622 782 512)

Dear Sir / Madam

We act for the Administrators (defined below).

On or about 18 July 2024, the Administrators obtained orders extending the convening period for the second meetings of the creditors of PF Group Holdings Pty Ltd (Administrators Appointed) (ACN 662 776 765) and PF Management Holdings Pty Ltd (Administrators Appointed) to 18 September 2024.

The Administrators intend to apply to the Federal Court of Australia for a further extension of the convening period to 7 February 202**5** (and anticipate that a hearing will be scheduled late this week / early next week).

Please contact us if you have any questions.

Kind regards

Adriano Poncini
Senior Associate
Clifford Chance
+61 447 064 179
adriano.poncini@cliffordchance.com

From: Zhu, Alexandra (L&DR-SYD) <Alexandra.Zhu@CliffordChance.com>
Sent: Monday, July 15, 2024 5:22 PM
To: legal.document.service@asic.gov.au
Cc: Yvan Dang <Yvan.Dang@asic.gov.au>; Suzie Davies <Suzie.Davies@asic.gov.au>; Wacker, Donna (L&DR-HK) <Donna.Wacker@CliffordChance.com>; Poncini, Adriano (GFM-PER) <Adriano.Poncini@CliffordChance.com>
Subject: PF Group Holdings Pty Ltd (Administrators Appointed) (ACN 662 776 765) and PF Management Holdings Pty Ltd (Administrators Appointed) (ACN 622 782 512)

Dear ASIC

We act for Adam Colley, Andy Scott, Stephen Longley and Derrick Vickers, in their capacities as the joint and several voluntary administrators of PF Group Holdings Pty Ltd (Administrators Appointed) (ACN 662 776 765) and PF Management Holdings Pty Ltd (Administrators Appointed) (ACN 622 782 512) (**Administrators**).

As ASIC is aware, the Administrators were appointed on 26 June 2024 and as such, the end of the convening period within the meaning of section 439A of the *Corporations Act 2001* (Cth) is Wednesday, 24 July 2024.

We recognise that formal notice is not required, however in the interest of disclosure, the Administrators intend to apply to the Federal Court of Australia for an extension of the convening period by a period of eight weeks to Wednesday, 18 September 2024.

Kind regards

Alexandra Zhu
Senior Associate
Clifford Chance
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Brookfield Place
10 Carrington Street
Sydney NSW 2000
Mobile: +61 434 110 877
alexandra.zhu@cliffordchance.com
Pronouns: She/Her