

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/06/2020 9:29:58 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID379/2020
File Title:	IN THE MATTER OF THE PAS GROUP LIMITED (ADMINISTRATORS APPOINTED)
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 5/06/2020 5:21:51 PM AEST

Registrar

Important Information

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

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



ORIGINATING PROCESS

No. VID of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

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

**MARTIN FRANCIS FORD, STEPHEN GRAHAM LONGLEY, AND DAVID LAURENCE
MCEVOY, IN THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY
ADMINISTRATORS OF THE SECOND TO TWENTIETH PLAINTIFFS NAMED IN
SCHEDULE 1**

First Plaintiffs

A. DETAILS OF APPLICATION

This application is made under sections 443B(8) and 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the Insolvency Practice Schedule (Corporations), being Schedule 2 to the Corporations Act (**IPSC**).

On the facts stated in the supporting affidavit of Stephen Longley sworn June 2020, the Plaintiffs seeks the follow orders:

Electronic provision of notices to creditors

- 1 An order pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that if, pursuant to any provision in any of Part 5.3A of the Corporations Act, Part 5.3A of the *Corporations Regulations 2001* (Cth), the IPSC, or the *Insolvency Practice Rules (Corporations) 2016 (IPR)*, the First Plaintiffs are required to provide any notification to creditors during the administration of each of the Second to Twentieth Plaintiffs which is not covered by the *Corporations (Coronavirus Economic Response)*

Filed on behalf of: The Plaintiffs

Prepared by: Leon Zwier

Ref:

Law firm: **ARNOLD BLOCH LEIBLER**

Tel: 9229 9999 Fax: 9229 9900

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Address for service: Level 21, 333 Collins Street, Melbourne, VIC 3000]



Determination (No. 1) 2020, the applicable notice requirements will be satisfied if the First Plaintiffs give such notice by taking the following steps:

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

Committee of inspection

2 An order pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that Divisions 60, 75, and 80 of the IPSC and Division 75 of the IPR are to operate as if:

- (a) the requirement in sections 80-10 and 80-15 of the IPSC for the creditors of a company to resolve that a committee of inspection be formed and to appoint members of the committee of inspection, be dispensed with;
- (b) a single committee of inspection be formed in respect of the Second to Twentieth Plaintiffs;
- (c) section 60-10 of the IPSC was modified to read, in respect of each of the Second to Twentieth Plaintiffs, as follows:
 - (1) *A determination, specifying remuneration that an external administrator of the PAS Group Companies (other than an external administrator in a members' voluntary winding up) is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration, may be made:*



- (aa) *by agreement between the external administrator and the ~~PAS~~ Group Committee of Inspection in relation to any and/or each of the PAS Group Companies;*
- (a) *by resolution of the creditors; or*
- (b) *if there is a committee of inspection and a determination is not made under paragraph (a) or paragraph (aa) - by the committee of inspection; or*
- (c) *if a determination is not made under paragraphs (aa), (a), or (b) – by the Court.*

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

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

PAS Group Committee of Inspection means the committee of inspection appointed by creditors of the PAS Group Companies by resolution of creditors passed on 11 June 2020.

Response to information requests

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

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

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



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

Commonwealth Bank of Australia Facility Agreements

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

- (a) to the extent that:
- (i) the First Plaintiffs incur any liability under section 443A(1) of the Corporations Act for debts to the Commonwealth Bank of Australia (**CBA**) in connection with the:
- (A) multi-option facility agreement dated 19 January 2017 (as amended) between the CBA and the Second to Twentieth Plaintiffs; and
- (B) merchant facility agreement between the CBA and the Second to Twentieth Plaintiffs,
- (together, the **Facility Agreements**), and;
- (ii) those debts were incurred by the First Plaintiffs in the performance and exercise of their functions and powers as joint and several administrators of the Second to Twentieth Plaintiffs;

the First Plaintiffs shall not be personally liable for such debts to the extent that the property of the Second to Twentieth Plaintiffs is insufficient to satisfy the



debts and liabilities incurred by the Plaintiffs in connection with the Facility Agreements.

Relief from certain procedural requirements

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

Notification of this application

7 An order that the First Plaintiffs must take all reasonable steps to cause notice of these orders to be given, within two business days of the making of these orders, to:

(a) the creditors (including persons or entities claiming to be creditors) of each of the Second to the Twentieth Plaintiffs, in the following manner:

(i) where the First Plaintiffs have an email address for a creditor, by notifying each such creditor, via email, of the making of the orders and providing a link to the Administration Website where the creditor may download the orders and the Originating Process;

(ii) where the First Plaintiffs do not have an email address for a creditor but have a postal address for that creditor (or have received notification of non-delivery of a notice sent by email in accordance with (a)(i) above), by notifying each such creditor, via post, of the making of the orders and providing a link to the Administration Website where the creditor may download the orders and the Originating Process; and

(iii) placing scanned, sealed copies of the Originating Process and the orders on the Administration Website; and

(b) ASIC.

Further and other relief

8 An order that any person who can demonstrate a sufficient interest has liberty to apply to vary or discharge any orders made pursuant to paragraphs 1 to 7 above, on 3



business days' written notice being given to the Plaintiffs and the Associate to the relevant judge.

- 9 An order that the First Plaintiffs have liberty to apply on 1 business day's written notice to the Court in relation to any variation of these orders or any other matter generally arising in the administrations of any or all of the Second to Twentieth Plaintiffs.
- 10 An order that the First Plaintiffs' costs of the application are to be treated as costs in the administrations of each of the Second to Twentieth Plaintiffs, jointly and severally.
- 11 An order that these orders be entered forthwith.
- 12 Such further or other orders as the Court deems fit.

DATE: 4 June 2020

.....
 Leon Zwier
ARNOLD BLOCH LEIBLER
 Solicitors for the plaintiff

This application will be heard by the Federal Court of Australia, 305 William Street, Melbourne
 at on .

B. NOTICE TO DEFENDANT

TO: N/A

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the Plaintiffs.



Note: Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable.

D. FILING

Date of filing:

.....
 An officer acting with the authority of the
DISTRICT REGISTRAR

This originating process is filed by Arnold Bloch Leibler of Level 21, 333 Collins Street, Melbourne, VIC, 3000, solicitors for the Plaintiffs.

E. SERVICE

The plaintiff's address for service is

C/- Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne, VIC, 3000

It is intended to serve a copy of this originating process on each defendant and on any person listed below:

**Schedule**

No. VID of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

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

- Second Plaintiff: The PAS Group Limited (Administrators Appointed) ACN 169 477 463
- Third Plaintiff: AFG Retail Pty Limited (Administrators Appointed) ACN 133 613 251
- Fourth Plaintiff: Black Pepper Brands Pty Limited (Administrators Appointed) ACN 112 065 559
- Fifth Plaintiff: Bondi Bather Pty Limited (Administrators Appointed) ACN 620 985 864
- Sixth Plaintiff: Chestnut Apparel Pty Limited (Administrators Appointed) ACN 112 091 522
- Seventh Plaintiff: Designworks Clothing Company Pty Limited (Administrators Appointed) ACN 117 343 807
- Eighth Plaintiff: Designworks Holdings Pty Limited (Administrators Appointed) ACN 113 900 057
- Ninth Plaintiff: Fiorelli Licensing Pty Limited (Administrators Appointed) ACN 122 295 827
- Tenth Plaintiff: JETS Swimwear Pty Limited (Administrators Appointed) ACN 068 819 581
- Eleventh Plaintiff: Metpas Pty Ltd (Administrators Appointed) ACN 127 957 653
- Twelfth Plaintiff: PAS Finance Pty Ltd (Administrators Appointed) ACN 169 478 291



Thirteenth Plaintiff: PASCO Group Pty Ltd (Administrators Appointed) ACN 117
244 943

Fourteenth Plaintiff: PASCO Operations Pty Ltd (Administrators Appointed)
ACN 112 078 547

Fifteenth Plaintiff: Review Australia Pty Limited (Administrators Appointed)
ACN 122 295 836

Sixteenth Plaintiff: The Capelle Group Pty Limited (Administrators Appointed)
ACN 121 867 641

Seventeenth Plaintiff: The Hopkins Group Aust Pty Limited (Administrators
Appointed) ACN 119 023 273

Eighteenth Plaintiff: World Brands Pty Ltd (Administrators Appointed) ACN 075
219 135

Nineteenth Plaintiff: Yarra Trail Holdings Pty Limited (Administrators Appointed)
ACN 110 901 561

Twentieth Plaintiff: Yarra Trail Pty Limited (Administrators Appointed) ACN 110
902 102

Date: 4 June 2020