

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-CIV-21964-CMA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP., et al.,

Defendants.

**OBJECTION TO RECEIVER’S PROPOSED
DENIAL OF RECEIVERSHIP CLAIM BY CLAIMANT LIAM
BAILEY AND CHRISTOPHER PALMER AS RECEIVERS AND
MANAGERS APPOINTED FOR THE PIE FACE GROUP OF COMPANIES**

Pursuant to the Court’s Order [DE 322] dated December 2, 2022, Claimant Liam Bailey and Christopher Palmer as Receivers and Managers Appointed for the Pie Face Group of Companies (collectively, “Bailey/Palmer”), through their undersigned counsel, file this Objection in support of their Proof of Claim Form (the “Claim”) and in opposition to the proposed denial of the Claim by Jonathan Perlman, as Receiver (the “Receiver”) over TCA Fund Management Group Corp., TCA Global Credit Fund GP, Ltd., TCA Global Credit Fund, LP, TCA Global Credit Fund, Ltd., TCA Global Credit Master Fund, LP, and TCA Global Lending Corp. (collectively, the “Receivership Entities” or “TCA”).

A. Summary of Bailey/Palmer’s Claim

A copy of Bailey/Palmer’s Claim (with exhibits/“annexures”) is attached as **Exhibit A**.¹ On March 17, 2023, the Receiver filed his Creditor Claim Status Report [DE 342], in which he

¹ Bailey/Palmer submitted their Claim timely and *pro se*. Bailey/Palmer subsequently retained the undersigned to file this Objection and handle all further claim matters on their behalf.

recommended that the Court disallow, or deny, the subject Claim.² The Receiver's specific analysis regarding Bailey/Palmer and the Claim is on pages 8-10 of the Receiver's Creditor Claim Status Report, and is limited in nature for the primary reason on page 10 that "[t]he Receiver does not deny the right of the Pie Face Receivers to seek indemnification under the contract if a judgment is ever rendered, the Receiver only recommends that this claim be disallowed as part of the First Interim Distribution and not paid out while there is no active recovery or enforcement action from the ATO." (Emphasis in original).

Bailey/Palmer were privately appointed receivers and managers of three companies in the "Pie Face" group of Australian companies (collectively, the "Pie Face Entities") in late 2016 by the secured creditor of those companies, TCA Global Credit Master Fund, LP (one of the Receivership Entities).³ Typically for such appointments in Australia, the secured entity (TCA Global Credit Master Fund, LP) signed separate written indemnity agreements on similar terms

² Claimants such as Bailey/Palmer had 30 days from March 17, 2023 (*i.e.*, the Creditor Claim Status Report) to file an objection disputing the Receiver's recommendation to disallow the Claim. However, the Receiver never served the Creditor Claim Status Report on Bailey/Palmer. It was only when Bailey/Palmer subsequently retained the undersigned that the undersigned pulled the Creditor Claim Status Report from PACER. Therefore, the Receiver denied Bailey/Palmer the right to the full 30 days to prepare and file this Objection, and Bailey/Palmer, through the undersigned, had to prepare and file same on an expedited basis.

³ Copies of the Deeds of Appointment and Indemnity were attached as part of the Claim and therefore are attached as part of **Exhibit A**. After the initial three appointments, there was a fourth company over which Bailey/Palmer were appointed. Bailey/Palmer were forced to seek relief in an Australian Court to extend TCA Global Credit Master Fund, LP's security over a fourth entity after the TCA director (Robert Press) improperly created a new entity not subject to TCA Global Credit Master Fund, LP's security and established assets in that entity in violation of the terms of the underlying TCA Loan & Security Agreement. The Receiver did not mention this fact in his Creditor Claim Status Report, so Bailey/Palmer are noting it for the record. In addition, the Receiver stated in his Creditor Claim Status Report [DE 342 at 9] that United Petroleum Limited repudiated the sale of the central kitchen facility, but this is incorrect; TCA Global Credit Master Fund, LP repudiated the sale.

with Bailey/Palmer, in which TCA Global Credit Master Fund, LP agreed to indemnify Bailey/Palmer personally for and against: (i) “any debts or liabilities incurred in continuing to trade the business of the Company, including, but not limited to, any amounts payable for wages, superannuation, rent, the purchase of goods or services and commonwealth and state taxes” (clause 9.1(d) of Indemnity); and (ii) “any other costs, expenses or charges that they incur as an incidence of their appointment” (clause 9.1(e) of Indemnity).⁴ The Receiver does not dispute any of this.

In the course of the Australian receiverships, the Pie Face Entities incurred various debts/liabilities, which remain unpaid, to the Australian Taxation Office (the “ATO”) for: (i) goods and services tax (known in Australia as “GST”); (ii) money withheld from employee’s wages on account of their tax obligations (known as “pay-as-you go” or “PAYG” withholding); (iii) money withheld from employees under Australia’s compulsory superannuation guarantee system; and (iv) ATO interest and administration charges. As of the Claim, the total debt/liability owed by Bailey/Palmer, or the subject claim amount, is AUD \$3,040,130 (or more than USD \$2,000,000). Again, the Receiver does not dispute any of this.

The Pie Face Entities may have somewhere between no assets or up to only AUD \$160,000 in assets, with claims for legal fees and remuneration exceeding that amount even if recovered. This means that the Pie Face Entities do, and will, not have sufficient assets to pay the total ATO debt/liability.

Under Australian company law, section 419(1), of the *Australian Corporations Act 2001*, which is available online and an online printout of which is attached as **Exhibit B**, imposes personal liability on receivers/managers (such as Bailey/Palmer) and provides:

⁴ Copies of the Indemnities were attached as part of the Claim and therefore are attached as part of **Exhibit A**.

A receiver, or any other authorised person, who, whether as agent for the corporation concerned or not, enters into possession or assumes control of any property of a corporation for the purpose of enforcing any security interest is, notwithstanding any agreement to the contrary, but without prejudice to the person's rights against the corporation or any other person, liable for debts incurred by the person in the course of the receivership, possession or control for services rendered, goods purchased or property hired, leased (including a lease of goods that gives rise to a PPSA security interest in the goods), used or occupied.

Under this Australian law, which is the governing law of the Indemnities, Bailey/Palmer are personally liable for all ATO debts/liabilities incurred in the course of the Australian receiverships that were undisputedly for TCA Global Credit Master Fund, LP's benefit. Bailey/Palmer's statutory liability to the ATO for the total ATO debt is considered "debts or liabilities incurred in continuing to trade the business of the Company, including . . . [for] superannuation . . . and commonwealth . . . taxes" (clause 9.1(d) of Indemnity). Again, the Receiver does not dispute any of this.

The ATO has issued Statements of Account to Bailey/Palmer demanding immediate payment.⁵ However, the ATO has not sued Bailey/Palmer personally as of this filing.

B. Legal Standard for Claims: Equity and Ultimately Judicial Good Conscience

A federal receivership is primarily governed by a Court's equitable discretion. *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992); *see also Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006) ("In this range of cases the federal courts exercise the traditional, common law powers of equity."). "Sitting in equity, the district court is a 'court of conscience.'" *CFTC v. PrivateFX Global One*, 778 F. Supp. 2d 775, 779 (S.D. Tex. 2011). In exercising its discretion, the Court should not simply defer to the Receiver's proposed recommendation. *See*

⁵ Copies of the ATO-issued Statements of Account were attached as part of the Claim and therefore are attached as part of **Exhibit A**.

SEC v. Detroit Mem'l Partners, LLC, No. 1:13-cv-1817, 2016 U.S. Dist. LEXIS 154474, at *34 (N.D. Ga. Nov. 8, 2016) (granting objection to receiver's classification scheme and noting the Court's role is to "do equity"). As further discussed below, principles of equity and judicial good conscience mandate that Bailey/Palmer's Claim be treated on par with the claims that the Receiver has already approved, including TCA's victimized investors and other claimants who are owed money from TCA (including pre-receivership Australian counsel, Taylor David, as further discussed below).

C. Bailey/Palmer's Claim Is an Actual, Present Liability under Australian Law

Generally speaking, the ATO has not enforced all ATO debts following the COVID-19 pandemic, but recently the ATO has been ramping up its recovery efforts. The fact that the ATO has not yet sued, or obtained judicial relief against, Bailey/Palmer does not make their Claim contingent or an unliquidated claim for damages, as the Receiver contends.

Attached as **Exhibit C** is a legal opinion letter from an Australian law firm (Stanton & Stanton), stating that the total ATO debt/liability owed by Bailey/Palmer is an actual, present liability under Australian law and therefore is not contingent.⁶ Under Australian law, which governs the Indemnities at issue, Bailey/Palmer are personally liable the moment the debt occurs. The liability and loss here are actual and current, and there is nothing contingent about it.

As discussed above, it is undisputed that TCA Global Credit Master Fund, LP had Bailey/Palmer appointed as receivers and managers for solely its own financial benefit, which created the total ATO debt/liability, and such has increased over time doing work for TCA Global Credit Master Fund, LP's benefit. Had Bailey/Palmer retired their work earlier, the total ATO

⁶ The undersigned has removed the enclosure (*i.e.*, the Claim Form/Claim) to the legal opinion letter because it has been already attached as **Exhibit A**.

debt/liability would have been reduced but that did not happen because TCA Global Credit Master Fund, LP instructed, and continued to instruct, Bailey/Palmer to perform asset recoveries for its benefit.

It is inequitable for the Receiver to disallow the Claim when TCA Global Credit Master Fund, LP continually asked Bailey/Palmer to do the very work that resulted in, and created, the Claim. It is even more inequitable considering Bailey/Palmer are personally liable for the Claim. That is why indemnities are obtained from the appointer (here, TCA Global Credit Master Fund, LP) in Australia as a condition of accepting an appointment as a receiver and manager.

The Indemnities themselves, which, again, the Receiver does not dispute, expressly provide that TCA Global Credit Master Fund, LP is responsible for paying Bailey/Palmer for any “debts,” “liabilities,” and/or “amounts payable” that they incur. There is no express language in the Indemnities requiring an enforcement or recovery action by anyone (including the ATO) as a condition precedent to trigger the Indemnities. However, the Receiver is improperly reading such a requirement into the Indemnities. It is elementary under both Florida and Australian law that a Court cannot read additional language into undisputed and unambiguous language in contracts.

Notwithstanding the above, the subject claim amount of AUD \$3,040,130 is an amount certain and therefore is a liquidated amount that has been subjected to actual, or a method of, computation by the ATO in its Statements of Account. The Receiver’s characterizing the Claim as contingent or unliquidated is incorrect for this reason too.⁷

⁷ As discussed below, bankruptcy law can be relevant in federal receiverships. It is worth noting that the Bankruptcy Code, which the Receiver (a respected bankruptcy lawyer) and his firm (a respected bankruptcy firm) are certainly familiar with, defines a “claim” as a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” 11 U.S.C. § 101(4) (emphasis added).

In addition, in late 2019 through early 2020 before commencement of the TCA Receivership, TCA Global Credit Master Fund, LP, through its Australian counsel Taylor David, intended to fund the ATO debt/liability and stated to Bailey/Palmer that Taylor David would handle attempting to resolve the ATO debt/liability – at a hopeful discount – with the ATO itself. Taylor David drafted a letter for Bailey/Palmer to send to the ATO in the hopes of negotiating a reduced debt amount, but Bailey/Palmer objected to parts of the letter, including that the letter stated that Taylor David represented Bailey/Palmer, when Taylor David did not represent them and undisputedly represented TCA Global Credit Master Fund, LP. The draft letter was never finalized by Taylor David and never sent to the ATO, and Taylor David – in continued violation of the Indemnities by TCA Global Credit Master Fund, LP – told Bailey/Palmer on June 8, 2020 (*i.e.*, after the Receiver’s May 11, 2020 appointment over TCA Global Credit Master Fund, LP) that TCA Global Credit Master Fund, LP would do nothing further regarding the ATO debt/liability, including not making any partial or full payment, until the ATO further pursued Bailey/Palmer for the debt/liability.

It appears that such conduct/communications by TCA Global Credit Master Fund, LP in early June 2020 violated the Receiver’s Appointment Order [DE 5] because TCA Global Credit Master Fund, LP was in receivership at that time and only the Receiver at that time had the authority to act and communicate on behalf of TCA Global Credit Master Fund, LP. Bailey/Palmer did not know about the Receivership at that time. It remains to be seen if Taylor David did. Obviously, TCA Global Credit Master Fund, LP and its pre-receivership people did. Copies of relevant emails regarding the above issues are attached as **Composite Exhibit D** and were attached as part of the Claim.

It appears that the Receiver has decided to continue to take this same flawed, and inequitable, approach. Upon information and belief, this work by Taylor David is part of the Australian legal work on TCA Global Credit Master Fund, LP's behalf that Taylor David has billed for in its own submitted claim, which the Receiver has accepted paying [DE 342 at 14].

D. Bailey/Palmer Previously Contributed AUD \$923,000 (or USD \$685,709.20) for the Ultimate Benefit of the Receivership Estate

The Court must determine whether it is equitable to reject Bailey/Palmer's Claim under the circumstances where Bailey/Palmer previously transferred AUD \$923,000 (USD \$685,709.20) to TCA Global Credit Master Fund, LP. A chart of the itemized transfers from Bailey/Palmer to TCA Global Credit Master Fund, LP by date, by amount in AUD, by amount in USD, and the conversion/exchange rate as of the transfer date is below:

	Payment Date	Amount (AUD)	Exchange Rate	Amount (USD)
	10/12/17	\$500,000	0.782228	\$391,114
	4/27/18	\$198,000	0.7149	\$141,550.20
	9/7/18	\$225,000	0.6802	\$153,045
Total	N/A	\$923,000	N/A	\$685,709.20

In other words, but for these transfers by Bailey/Palmer, the Receivership Estate would have had USD \$685,709.20 less for the Receiver to ultimately secure and/or recover to thereafter pay allowed receivership claimants and/or the Estate's expenses, including the Receiver's Fee Applications. Similarly, an argument can be made that the claims against the Receivership Estate were reduced by Bailey/Palmer's pre-receivership transfers. Obviously, the total amount that Bailey/Palmer previously transferred to TCA Global Credit Master Fund, LP (more than USD \$685,000) significantly exceeds the anticipated distribution amount that Bailey/Palmer are seeking

(more than USD \$461,000). Copies of the subject Bailey/Palmer payments to TCA Global Credit Master Fund, LP that ultimately benefitted the Receivership Estate is attached as **Composite Exhibit E**.

This District previously recognized that a claimant has a viable receivership claim where pre-receivership payments or transfers benefit the estate. One example was where claims against a receivership estate were reduced by pre-receivership payments/transfers made by the claimant. In *FTC v. IAB Mktg. Assocs., LP*, No. 12- 61830-CIV, 2013 U.S. Dist. LEXIS 136502, at *5-6 (S.D. Fla. Sept. 19, 2013), after IAB entered receivership, North Dallas Bank and Trust (NDBT) “could no longer deduct the chargebacks from IAB’s accounts,” even though it “was still required by banking regulations to honor chargebacks and return the requested funds.” *Id.* at *6. Thus, the receiver in that case moved for the Court’s permission to “pay NDBT for these chargebacks because doing so would [] be equitable.” *Id.* Judge Scola agreed, holding that “NDBT is unique: no other creditor or Defendant has incurred direct liability through reimbursing consumers. Reimbursing NDBT in turn for these payments that it has already made and that it was required to make is equitable.” *Id.*

Many years before Judge Scola’s decision, the New York Bankruptcy Court in *In re Frigitemp Corp.*, 34 B.R. 1000 (Bankr. S.D.N.Y. 1983), *aff’d* 753 F.2d 230 (2d Cir. 1985), reached a similar conclusion.⁸ In that case, Frigitemp’s bankruptcy trustee sought to avoid certain transfers to creditors. *Id.* at 1003. The Court found that Frigitemp’s bank, Hancock Bank, was “neither an insider like [a member of the board] nor a financially unsophisticated trade creditor.” *Id.* at 1008-11. The bank and the debtor had an agreement under which the bank would cover overdrafts and

⁸ “When fashioning a fair and reasonable decision, courts often look to analogous principles found in bankruptcy and other non-federal receivership cases.” *SEC v. Mgmt. Solutions, Inc.*, No. 2:11-cv-01165-BSJ, 2013 U.S. Dist. LEXIS 21552, at *11 (D. Utah Feb. 15, 2013).

deduct the overdrawn amounts from future deposits. *Id.* at 1018. The trustee, seeking to avoid those deductions, “creatively argue[d] that [the Bank’s] overdraft practices were the equivalent of conventional short term loans,” and that the bank was “selling a commodity like any other [trade creditor].” *Id.* at 1018-20. The Court disagreed. The bank was not in the business of making loans, and the overdraft agreement was simply a “routine” way for the bank to manage its relationship with the debtor. *Id.* at 1018. The Court found that overdraft protection is a “necessary banking service[]” that should be protected “in recognition of [its] critical place in commercial transactions.” *Id.* at 1020; *see also Laws v. United Mo. Bank, N.A.*, 98 F.3d 1047, 1051 (8th Cir. 1996) (holding that a bank’s routine advances on uncollected deposits was not an avoidable preference recoverable by the trustee because a contrary rule “might cause banks to terminate a service that is invaluable to today’s economy”); *see also Pereira v. Summit Bank*, No. 94-Civ-1565, 2001 U.S. Dist. LEXIS 1712, at *26 (S.D.N.Y. Feb. 21, 2001) (stating that, “[a]bsent a departure from its normal course of behavior in dealing with a customer, a bank generally enjoys a protected right to reduce indebtedness incurred from extension of provisional credit”); *Sklar v. Susquehanna Bank (In re Global Prot. USA, Inc.)*, 546 B.R. 546, 617 (Bankr. D.N.J. 2016) (“[T]he April advances . . . were intended to be short term loans to cover ‘cash flow shortfalls’ of the company. Appellant was not a trade creditor of the Debtor. Nor can it be said that this transaction was in the ordinary course of the Debtor’s or Appellant’s business affairs.”).

The same overall logic applies here. TCA Global Credit Master Fund, LP agreed that it was responsible to indemnify Bailey/Palmer for the work they performed and the debts/liabilities they incurred, all of which was for TCA Global Credit Master Fund, LP’s ultimate benefit and all of which Bailey/Palmer are personally liable. The Receiver does not dispute this. (DE 342 at 8, 10). In short, this Court should protect this indemnification process (which is punitive against

Bailey/Palmer personally under Australian law), like the above-cited Courts did regarding other processes in which the claimants were legally obligated to fund payments, such as overdrafts and chargebacks in the banking industry and bankcard processing industry. In fact, some Courts have deemed such obligatory liabilities as superior to others including victimized investors or consumers. *See, e.g., FTC v. World Travel Vacation Brokers, Inc.*, No. 87-C-8449, 1991 U.S. Dist. LEXIS 17890, at *5 (N.D. Ill. Dec. 6, 1991) (holding that a bank did not violate a receivership's temporary restraining order on assets by repaying investor chargebacks as required by contractual obligations); *FTC v. Transcon. Warranty, Inc.*, No. 09-C-2927, 2009 U.S. Dist. LEXIS 119381, at *14 (N.D. Ill. Dec. 22, 2009) (noting that a bank, responsible for covering chargebacks, "may have an interest in the reserve account superior to that of Transcontinental's other creditors (including injured consumers)").

A receiver's task is to do equity, and there is absolutely no equity here in denying Bailey/Palmer any recovery.

E. Worst Case Scenario, Bailey/Palmer's Distribution Amount Can Be Held in Reserve by the Receiver

As demonstrated above, Bailey/Palmer's Claim is currently, and fully, viable. The Court should deem it an allowed receivership claim entitling Bailey/Palmer to a prompt first distribution of more than \$461,000 (the estimated distribution amount based on the full claim amount of \$3,040,130). However, if the Court is not inclined at this time to deem the Claim an allowed receivership claim, both the Receiver's and Bailey/Palmer's respective interests can be mutually protected by escrowing in reserve for the time being Bailey/Palmer's anticipated distribution amount (again, more than \$461,000) and if necessary for the duration of the receivership until a final distribution occurs. *See SEC v. McGinn, Smith & Co.*, 1:10-cv-457 (GLS/CFH), 2016 WL 6459795, at *2 (N.D.N.Y. Oct. 31, 2016) ("The Receiver also proposes to establish a reserve fund

for claims initially deemed by him as disputed, contingent, or unliquidated. These claims are excluded from this interim distribution. However, the Receiver will file a subsequent motion notifying the court of the disputed claims and allow those investors to file objections, which the court will ultimately rule on. Funds will be reserved for these claims throughout the procedure for disputed claims.”) (citations omitted); *CFTC v. Equity Financial Group, LLC*, Civil No. 04-1512-RBK-AMD, 2005 WL 2864781, at *2 (D.N.J. Sep. 26, 2005) (“The Receiver will reserve the Net Distribution Amount for claims that have not yet been determined to be allowable. Should this Court determine that some or all of an investor’s claim amount should be disallowed, then the Receiver shall distribute the Net Distribution Amount corresponding to the portion of the claim which was allowed and shall transfer the Net Distribution Amount corresponding to the disallowed portion of that claim from reserved funds back to general receivership funds.”).⁹

This reserve will allow more time to see if (i) the ATO sues Bailey/Palmer in Australia; (ii) there is a settlement or negotiated reduction between the ATO and Bailey/Palmer; or (iii) judicial relief by an Australian Court (such as a bank account garnishment, seizure of assets, or other relief) is entered in the ATO’s favor against Bailey/Palmer. If any of these conditions occurs, the Receiver would need to promptly pay the Claim. Obviously, the amount sought in the lawsuit, the amount issued against Bailey/Palmer by an Australian Court, or the negotiated/reduced amount would dictate what the claim amount would then be; for example, a negotiated reduction to AUD \$2.5 million would reduce the Claim from AUD \$3,040,130 to AUD \$2.5 million.

This worst-case scenario or “wait and see” approach is a potential reasonable alternative under the circumstances. However, the Receiver and the Court should know, and appreciate, the

⁹ It is routine for SEC receivers in this District to reserve funds for disputed claims. Some representative prior Motions/Orders from prior SEC receiverships in this District are attached as **Composite Exhibit F**.

following realities and probabilities with the ATO in Australia. First, ATO enforcement litigation is often “rubber stamped” by an Australian Court. Second, the Receiver’s expectation of, and reliance on, a likely future ATO settlement is simply wrong. In certain circumstances, there could be a negotiated reduction, or remission, of administrative penalties and penalty interest on an ordinary, unsecured, unpaid debt. However, this is not an option for the principal debt itself or interest owing on priority debt such as superannuation. Also, reduction/remission of penalty interest and administrative penalties is discretionary, unknown, uncertain, and unappealable. Finally, such remission/reduction requests to the ATO are typically made at the conclusion of the appointment when the extent of the liability is certain, meaning the Claim with the Receiver should be determined, and paid by the Receiver, first.

F. Conclusion

For the reasons stated, Bailey/Palmer respectfully request that the Court overrule the Receiver’s recommendation to disallow the subject Claim and that the Court instead give Bailey/Palmer an allowed claim. Pursuant to the Order dated December 2, 2022, Bailey/Palmer in the first instance is filing this Objection. After filing this Objection, and pursuant to the December 2, 2022 Order, Bailey/Palmer will have 30 days to attempt to resolve this matter with the Receiver. If we are unsuccessful, and likewise pursuant to the December 2, 2022 Order, an evidentiary hearing will then be scheduled.

WHEREFORE, Bailey/Palmer respectfully request that the Court deem their Claim as an allowed claim in the receivership subject to a first distribution payment of more than \$461,000. If the Court is not inclined to do such, the Court should not disallow/deny the Claim but should order the Receiver to escrow Bailey/Palmer’s distribution amount (again, more than \$461,000) in reserve until a final distribution occurs to allow more time to see if (i) the ATO sues Bailey/Palmer in

Australia; (ii) there is a settlement or negotiated reduction between the ATO and Bailey/Palmer; or (iii) judicial relief by an Australian Court (such as a bank account garnishment, seizure of assets, or other relief) is entered in the ATO's favor against Bailey/Palmer.

Dated: April 17, 2023

Respectfully submitted,

SALLAH ASTARITA & COX, LLC
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/s/Patrick J. Rengstl
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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

s:/Patrick J. Rengstl
Patrick J. Rengstl

EXHIBIT A

CASE NO. 20-CIV-21964-CMA

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA	
SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. TCA FUND MANAGEMENT GROUP CORP., et al.,	CASE NO. 20-CIV-21964-CMA
<u>CREDITOR PROOF OF CLAIM FORM</u>	
DEADLINE FOR FILING THIS PROOF OF CLAIM FORM IS JANUARY 31, 2023.	
This Proof of Claim Form must be received by the Receiver by <u>January 31, 2023</u> , at: TCA Receivership 100 S.E. 2nd Street, 44th Floor Miami, FL 33131	
<u>Failing to submit a proper Proof of Claim form by January 31, 2023, will result in a waiver of your right to make a Claim and a waiver of your right to participate in any Distribution of funds.</u>	
CREDITOR INFORMATION: Name: Pie Face Group of Companies (Receivers and Managers Appointed) Name of Person Submitting Form (if uot Claimant): Liam Bailey Creditor's Address (where notices may be sent): C/- O'Brien Palmer, Level 9, 66 Clarence Street, Sydney NSW 2000 Australia Telephone: <u>+61 2 9232 3322</u> _____ Email: <u>lbailey@obp.com.au</u> _____ <input checked="" type="checkbox"/> Check here if you agree to receive future notices by e-mail instead of U.S. Mail.	CLAIM AMOUNT: A. Total Amount Claimed AUD \$ <u>3,040,130.00</u>

CASE NO. 20-CIV-21964-CMA

In support of this claim, I am sending the following documents that are all documents in my possession supporting the Claim. (Describe as necessary the documents you attach. If you need more room, you may attach additional pages).

☐ **By checking this box, I am relying on documents I have previously sent to the Receiver. (If you check this box, you do not need to send the Receiver the same documents you sent before).**

[Describe supporting documents:] See attached statement and annexures

Certification of Truthfulness

I, the undersigned, certify under penalty of perjury that (a) all information provided in this Proof of Claim and any attachments is true; and (b) that the named Claimant owns this Claim and is authorized to make this Claim.

Signed under penalty of perjury this 19th day of January, 2023.

Signature: 

**Printed Name of Claimant: Liam Bailey and Christopher Palmer as Receivers
For Pie Face Group of Companies
(Receivers and Managers Appointed)**

**Name and Title of Person Signing
(if other than Claimant): Liam Bailey (Receiver)**

[If you are the Claimant, date the form, sign on "Signature" line and print your name where indicated.]

[If you are signing the Proof of Claim on the named Claimant's behalf, date the form, sign on "Signature" line, print the Claimant's name, and print your name and title or relationship to the Claimant. State any basis for your authorization to sign on Claimant's behalf and attach any power of attorney or other relevant authorization.]

IN THE MATTER OF
TCA GLOBAL CREDIT MASTER FUND (RECEIVER APPOINTED) ("TCA")

And

DEBT CLAIMED BY PIE FACE GROUP OF COMPANIES
(RECEIVERS AND MANAGERS APPOINTED)

STATEMENT IN SUPPORT OF PROOF OF DEBT

DATED 9 NOVEMBER 2022

1.0 AMOUNT OF DEBT CURRENTLY CLAIMED

	Pie Face P/L (\$)	Pie Face Franchising P/L (\$)	Pie Face Australia Franchising P/L (\$)	TOTAL (AUD\$)
AUSTRALIAN TAXATION OFFICE				
Goods and Services Tax ("GST")	180,045	41,059	15,395	236,499
PAYG Withholding ("PAYG")	1,407,737	-	-	1,407,737
Interest Charge (GST & PAYG)	695,792	21,044	7,883	724,718
	2,283,574	62,103	23,278	2,368,954
Superannuation Guarantee Charge ("SGC")	494,035	-	-	494,035
Interest Charge (SGC)	29,215	-	-	29,215
Administration Charge (SGC)	13,763	-	-	13,763
	537,013	-	-	537,013
SUBTOTAL	2,820,587	62,103	23,278	2,905,967
				-
O'BRIEN PALMER				
Outstanding Remuneration	<u>134,163</u>	-	-	<u>134,163</u>
	-	-	-	-
TOTAL (AUD\$)	2,954,749	62,103	23,278	3,040,130

2.0 EVIDENCE IN SUPPORT OF THE AMOUNT CLAIMED

2.1 Summary of the Receivership

Attached as **Annexure 1** is a Statement of Facts, Matters and Circumstances ("**the Statement**") dated 8 June 2022 which summarises the events that transpired during the receivership including communications with TCA and its Australian solicitors regarding monies owed to the Australian Taxation Office ("**ATO**"). I comment as follows:

- (i) Companies forming part of the Pie Face Group had been under external administration when TCA agreed to lend monies and take security over group assets. They were trading at a loss and had cash flow issues. Our suspicion was that if due diligence was conducted, it was limited at best. Accordingly there were significant risks associated with the loans.
- (ii) Paragraph 2.12 of the Statement refers to heads of agreement that were entered into with the approval of TCA on 30 April 2018 for the sale of a kitchen facility operated by the group. The proceeds from the sale would have been sufficient to discharge trade-on debts including that of the ATO and provide a return to TCA. However, in or about July 2018, TCA instructed us not to proceed to settlement as it was now dissatisfied with the terms of the agreement and that it intended to liaise directly with the purchaser and a customer with the aim of renegotiating the terms.

In effect, TCA repudiated the agreement leaving open the possibility of legal action being taken by the purchaser for the recovery of damages. As it turned out, the attempts by TCA to obtain a better outcome proved abortive. It is fortuitous that the purchaser has since been liquidated without commencing action in respect of the repudiated contract. In the meantime, the debt to the ATO continued to accrue.

- (iii) TCA was aware of the deteriorating position in relation to the ATO exposure. Paragraphs 3.1 to 3.17 of the Statement summarises communications with TCA and its Australian solicitors subsequent to 17 April 2019. Attached hereto as **Annexure 2** are the email exchanges. We repeatedly sought a cash advance to cover the ATO debt pointing out that early payment would not only limit the interest component but also facilitate the possible acceptance of an application to the ATO for the remission of the interest in its entirety.

Importantly, it is clear from the emails (refer to paragraphs 3.3, 3.8, 3.16 and 3.17 in the Statement) that TCA raised no issues as to our conduct of the receivership and that it accepted liability for the debts owed to the ATO.

2.2 Deeds of Appointment and Indemnity

Attached and marked accordingly are Deeds of Appointment and Indemnity for the following entities:

- (i) **Annexure 3** - ACN 087 384 736 Pty Ltd (formerly known as Pie Face Pty Ltd) ("**Pie Face**") dated 31 October 2016.
- (ii) **Annexure 4** - ACN 121 495 243 Pty Ltd (formerly known as Pie Face Franchising Pty Ltd) ("**PFF**") dated 6 December 2016.

- (iii) **Annexure 5** - ACN 111 409 860 Ltd (formerly known as Pie Face Holdings Pty Ltd) dated 6 December 2016.

I comment as follows:

- (a) Pursuant to clause 9.1 of each Deed, TCA indemnified us in respect of debts or liabilities incurred in continuing to trade the businesses, our remuneration and any other costs, expenses or charges that we may incur.
- (b) The table in section 1 above shows money owed by ACN 604 927 835 Pty Ltd (formerly known as Pie Face Australia Franchising Pty Ltd ("**PFAF**"). As stated in paragraph 1.4 of the Statement, we were appointed Receivers of that Company by order of the Court. The circumstances that led to the appointment were that the directors incorporated PFAF without the knowledge and consent of TCA. Thus its assets and undertaking were not secured in TCA's favour. On the instructions of TCA, an application was made to the Court. We maintain, that TCA is liable to cover this portion of the ATO debt. In any event, it is clear from the emails referred to on paragraphs 3.3, 3.8, 3.16 and 3.17 of the Statement that TCA accepted liability for the amounts owed by PFAF and thus ourselves.

2.3 Debts owed to the ATO

Attached and marked accordingly are the latest statements of account for the following entities:

- (i) **Annexure 6** - Pie Face showing an amount due of \$2,283,573.68 as at 3 October 2022.
- (ii) **Annexure 7** - PFF showing an amount due of \$62,103.50 as at 3 October 2022.
- (iii) **Annexure 8** - PFAF showing an amount due of \$23,277.77 as at 3 October 2022.

Also attached as **Annexure 9** is a schedule extracted from information supplied by the ATO as at 25 May 2022 showing an amount due of \$537,013 in respect of SGC.

I comment as follows:

Personal Liability

- (a) As Receivers, we are personally liable for debts that we incur. This liability arises by virtue of the operation of section 419(1) of the *Australian Corporations Act 2001* which states as follows:

"A receiver, or any other authorised person, who, whether as agent for the corporation concerned or not, enters into possession or assumes control of any property of a corporation for the purpose of enforcing any security interest is, notwithstanding any agreement to the contrary, but without prejudice to the person's rights against the corporation or any other person, liable for debts incurred by the person in the course of the receivership, possession or control for services rendered, goods purchased or property hired, leased (including a lease of goods that gives rise to a PPSA security interest in the goods), used or occupied".

The exposure for personal liability is the reason receivers obtain an indemnity from their appointor prior to accepting an appointment.

GST and PAYG

- (b) The statements of account for GST and PAYG are in the name of the respective companies. This is the only way it can be reported to the ATO. It is not possible for the statements to issue in our names. We can if required provide you with copies of documents we lodge with the ATO quarterly that contain information of the net GST received and the PAYG deducted for that quarter.

Interest on GST and PAYG

- (c) The statements of account for GST and PAYG include interest. As stated in the attached emails to TCA, it is possible to make application to the ATO for the interest charges to be remitted. The simple basis of any such application is that for reasons beyond our control, ie the actions of TCA and then the receivership of TCA, we were unable to effect payment. We have made enquiries of professionals experienced in this area who have advised that the chances of an application being successful in these circumstances are high, especially if prompt payment can be made of the principle debt. In this regard, I refer to paragraphs 3.8 to 3.16 of the Statement which summarises communications with Taylor David in so far as they pertained to a proposal to be put to the ATO.

SGC

- (d) In relation to the SGC, superannuation deductions are required by statute to be paid to the employees' super fund trustee by the 28th day after quarter end. For the reasons set out in the Statement, the cash flow did not allow for the payments to be made each quarter. The figure of \$494,035 represents the unpaid superannuation deductions which are now payable to the ATO which in turn distributes the monies to the trustees of the employees' superannuation fund. As an aside, the interest component seems remarkably low but it is the figure provided by the ATO. We have tried without success to obtain from the ATO a formal statement of account. We will continue with our efforts. If necessary, we can provide you with the documents which support the figures shown in the schedule.

No Action to Date Taken by the ATO

- (e) To date the ATO has taken no action to recover the monies that are owed apart from issuing statements of account. The reason for the lack of action is that the ATO at the direction of the Government temporarily abandoned its collection policies as the effects of the COVID-19 pandemic took hold. The country was in lockdown for some considerable time with businesses being financially supported by the Government. The concern was that there would be a significant number of insolvencies if the ATO aggressively pursued debt. More recently, the Government of the day was concerned about the effects of ATO recovery action on its prospects of being re-elected. Now that the election is well and truly over and a new Government installed, the ATO is in the process of ramping up its recovery action.

2.4 Unpaid Remuneration

As stated in section 2.2(a), pursuant to clause 9.1 of the Deeds of Appointment and Indemnity, TCA indemnified us in respect to payment of our remuneration.

Attached as **Annexure 10** is an invoice dated 24 October 2022 which shows an amount payable of \$134,162 inclusive of GST. You will note therefrom that the time charge for the period is \$167,703 inclusive of GST in respect of which the amount of \$33,541 inclusive of GST has been written off. Accompanying the invoice is a summary of the time charge for the entire period of the receivership. The summary also shows monies drawn and paid together with the quantum of time charge written off.

2.5 Potential Settlement – Japanese IP

As set out in section 4 of the Statement, the legal proceedings in relation to the Japanese IP have reached an in principle settlement, although the timing and result remains uncertain at this time.

- (i) Currently, royalties received in respect of the Japanese IP, in the amount of \$153,614.42 AUD, are held on trust for United. A lien has been asserted over these funds pending resolution of the litigation pertaining to the transfer of the Japanese IP and the outcome of the cross-claim filed by United seeking payment of the royalties.
- (ii) On the assumption that the settlement now proceeds as foreshadowed, the \$160,000 will be recovered, resulting in payment of legal fees in the amount of \$86,000 and a net realisation of \$74,000 for the Receivership.
- (iii) If the settlement does not proceed, the matter will be litigated with the worst outcome being that judgement will be entered in favour of United. It is likely that a cost order would follow in respect of which a further claim under our indemnity would be made.

It is our current legal advice that the most likely outcome is that the matter will settle within the next 2 months in line with the expectation outlined in (ii) above.

3.0 PAYMENT OF THE ADMITTED AMOUNT

Payment of the amount admitted should be directed to the following account:

Account Name:	O'Brien Palmer Liquidator's General Account
Bank:	Commonwealth Bank of Australia
BSB:	062 – 000
Account Number:	[REDACTED]
SWIFT:	CTBAAU2S



LIAM BAILEY
RECEIVER

Attachments	Annexure No.
Statement of Facts, Matters and Circumstances	1
Email exchanges with TCA and Taylor David	2
Deed of Appointment and Indemnity for Pie Face	3
Deed of Appointment and Indemnity for PFF	4
Deed of Appointment and Indemnity for PFH	5
ATO Statement of Account for Pie Face as at 3 October 2022	6
ATO Statement of Account for PFF as at 3 October 2022	7
ATO Statement of Account for PFAF as at 3 October 2022	8
Schedule extracted from information supplied by the ATO	9
Invoice and summary of time charge	10

ANNEXURE “1”

STATEMENT OF FACTS, MATTERS & CIRCUMSTANCES

**ACN 087 384 736 PTY LTD (FORMERLY KNOWN AS PIE FACE PTY LTD)
(RECEIVERS & MANAGERS APPOINTED; IN LIQUIDATION)
&
ACN 121 495 243 (FORMERLY KNOWN AS PIE FACE FRANCHISING PTY LTD)
(RECEIVERS & MANAGERS APPOINTED; IN LIQUIDATION)
&
ACN 604 927 835 PTY LTD (FORMERLY KNOWN AS PIE FACE FRANCHISING
AUSTRALIA PTY LTD)
(RECEIVERS & MANAGERS APPOINTED; IN LIQUIDATION)
&
ACN 111 409 860 PTY LTD (FORMERLY KNOWN AS PIE FACE HOLDINGS LTD)
(RECEIVERS & MANAGERS APPOINTED; IN LIQUIDATION)

(COLLECTIVELY KNOWN AS “THE PIE FACE GROUP”)**

OUTSTANDING TAXATION LIABILITIES

8 JUNE 2022

1.0 APPOINTMENT DETAILS

- 1.1 On 31 October 2016, Christopher Palmer (“**Palmer**”) was appointed as Receiver & Manager of ACN 087 348 736 Pty Ltd Formerly known as Pie Face Pty Ltd (“**Pie Face**”) by the Company’s secured creditor, TCA Global Credit Master Fund LP (“**TCA**”).
- 1.2 On 28 November 2016, Liam Bailey (“**Bailey**”) was appointed as Joint & Several Receiver & Manager of PF. Bailey’s appointment was triggered by his registration as a Registered Liquidator by ASIC on that date.
- 1.3 On 6 December 2016, Palmer and Bailey were appointed by TCA as Receivers of ACN 121 495 243 Pty Ltd (Formerly known as Pie Face Franchising Pty Ltd) (“**PFF**”) and ACN 111 409 860 Ltd (Formerly known as Pie Face Holdings Pty Ltd) (“**PFH**”).
- 1.4 On 12 December 2016, Palmer and Bailey were appointed as Receivers of ACN 604 927 835 Pty Ltd (Formerly known as Pie Face Franchising Australia Pty Ltd) (“**PFFA**”) by order of the NSW Supreme Court, for the benefit of TCA.
- 1.5 TCA is part of a group of companies based in Florida that provided secured lending and advisory services predominantly in the US, Canada, Western Europe and Australia.
- 1.6 The companies referred to in points 1.1 to 1.4 form part of a corporate group generally referred to as the Pie Face Group, together with a number of other related entities. PFH is the parent company and holds the shares of all of the subsidiary companies. By way of general comment, the various companies loosely traded as a pooled entity. It did not maintain a proper separation between the various entities within the Group, nor did it maintain separate proper accounts, books or records.

2.0 THE RECEIVERSHIP OF THE PIE FACE GROUP

- 2.1 The Receivers have dealt with the assets the subject of TCA’s security jointly under their collective appointments, noting that TCA held cross-collateralised security over

all of the Pie Face companies to which the Receivers were appointed and that TCA never expected to be repaid all of its secured debts in full.

- 2.2 PFF nominally acted as franchisor for approximately 40 franchise stores, located primarily in Sydney, Melbourne and Brisbane .
- 2.3 Pie Face also operated a number of stores for the reason no franchisor was willing to take control of them as they had traded unprofitably.
- 2.4 Pie Face owned and operated a central kitchen facility at Camellia, NSW ("**the CKF**"). The CKF made the products sold throughout the franchise network. The head office was also located i above the CKF.
- 2.5 PFH held intellectual property rights in Australia and throughout Asia. In Japan, Pie Face was traded by a Japanese company which paid royalties to PFH through a Japanese service company known as Pie Face Japan GK.
- 2.6 On appointment, the Receivers attended to the following tasks:
 - (i) All stores owned and operated by Pie Face were closed.
 - (ii) The franchise network was maintained to the maximum extent possible.
 - (iii) The CKF continued to trade under supervision.
 - (iv) New customers for the CKF were sought and signed.
 - (v) An information memorandum was prepared for the sale of the business of the Pie Face Group as a going concern. In an attempt to maximise its value, TCA determined that the Receivers should trade the business for 3 months in order to demonstrate that the business could be traded profitably following changes made by the Receivers.
- 2.7 In or about December 2016, the business was offered for sale, The response was poor with only three offers received.
- 2.8 On 11 April 2017, a heads of agreement was enetered into with United Petroleum Limited ("**United**") to acquire the IP and the franchise network ("**the HOA**"). The relevant provisions of the HOA were as follows:
 - (i) The purchase price was \$2.0M.
 - (ii) A deposit of \$200,000 was paid to the Receivers by United.
 - (iii) The Receivers undertook to continue to trade the CKF for a minimum of 18 weeks. The amount of \$198,000 from the purchase price was to be paid to the Receivers to be held in escrow in order to indemnify them for the costs of trading the CKF.
 - (iv) United were required to enter into a guaranteed supply agreement with Pie Face for the continuing supply of goods for a minimum period of 12 Months.

- (v) United took first right of refusal to acquire the CKF within 18 months of the sale settling.
 - (vi) In the event that United granted a guaranteed supply agreement to a future purchaser of the CKF such that the price obtained on its sale increased, then United was entitled to a commission on the sale of the CKF of 15% of the purchase price
- 2.9 On 30 June 2017, formal agreements were executed to give effect to the HOA.
- 2.10 The Receivers continued to trade the business of the CKF and to facilitate the transfer of the assets sold to United. The business was trading at a loss which meant accumulated cash funds were gradually being diminished whilst at the same time the monies owed to the Australian Taxation Office ("**ATO**") were increasing, the non payment of which was in part funding on-going operations rather than having TCA advance working capital contributions.
- 2.11 In or about October 2017, an information memorandum was prepared and the CKF was then offered for sale.
- 2.12 On 30 April 2018 and with the approval of TCA, heads of agreement were entered into with Munch Food Co Pty Ltd ("**Munch**") to acquire the CKF. The relevant provisions were as follows:
- (i) Munch would acquire the assets and stock owned by Pie Face for \$500,000 plus the value of the stock on hand (Estimated to be \$300,000).
 - (ii) If United entered into a guaranteed supply agreement with Munch, then Munch would pay to Pie Face a commission of 7 cents per pie for a period of 24 months. The estimated value of was \$850,000 over 24 months unless sales increased.
 - (iii) The business and assets of the CKF were licensed to Munch for use until the formal sale agreement was executed and the transaction settled. The anticipated period for this was 2 months. Under the licence agreement, the Receivers retained the lease of the CKF premises and the employees. The licence fee was the gross costs incurred by the Receivers in maintaining the lease and providing employee services to Munch.
- 2.13 At the time, the expectation was that the proceeds from the sale would be sufficient to discharge existing trade-on debts including monies owed to the ATO and also to provide a return to TCA.
- 2.14 In or about 30 June 2018, United advised that it would not enter into a guaranteed supply agreement with Munch, but may continue to obtain supply from the CKF under Munch's control.
- 2.15 As a result of United's decision, TCA instructed the Receivers not to settle the transaction with Munch as it was dissatisfied with the terms of the agreement. As such, TCA effectively repudiated the agreement with Munch. The Receivers were instructed by TCA to maintain the licence agreement with Munch whilst TCA directly renegotiated a deal with both Munch and United.

- 2.16 Initially, Munch paid the licence fee on a regular basis. However, payments became sporadic and were not for the full amounts owed. Payments from Munch later ceased. As stated above and on instruction from TCA, the Receivers maintained the *status quo*, by in part continuing to pay the costs of the CKF pending a new agreement being reached by TCA with Munch and United. On express instruction, the Receivers made no attempt to enforce the significant debts now owed by Munch.
- 2.17 On instruction from TCA, the Receivers ceased enforcement of the claim against United in respect of the Japanese IP.
- 2.18 On 17 April 2019, the Receivers notified TCA that it had been contacted by the ATO in respect of the outstanding tax lodgements. On instruction from TCA, the Business Activity Statements which provide particulars of tax debts ("**BAS**") had not been lodged pending settlement of the sale of the assets, the reason being that lodgement would then crystallise the tax debts.
- 2.19 On 2 May 2019, TCA advised that a tri-partied agreement had been reached between TCA, United and Munch. TCA instructed the Receivers to prepare a heads of agreement. United quickly rejection any notion that such an agreement had been reached.
- 2.20 Thereafter, the licence agreement was terminated and the CKF was shut down. The employees were terminated and the premises from which the CKF traded were surrendered to the landlord ("**Billbergia**").
- 2.21 On 16 May 2019, the proceedings to enforce TCA's rights against United in respect of the Japanese IP were enlivened.
- 2.22 On or about 23 May 2019, Billbergia threatened to commence proceedings to recover unpaid rent. The unpaid rent was paid shortly thereafter.
- 2.23 On or about 29 May 2019, TCA instructed the receivers to engage the services of Millburn Investments to review the accounts of the receivership and the numerous BAS that had yet to be lodged with the ATO.
- 2.24 On 13 June 2019, the Receivers wrote to TCA advising that Billbergia considered the Receivers liable for the on-going rent of the CKF premises as the plant and equipment remained on site. Billbergia also advised that it would not permit the Receivers to remove the plant and equipment from the premises without first providing a \$200,000 security deposit.
- 2.25 Between 13 June 2019 and 22 July 2019, the Receivers worked to resolve the dispute with Billbergia whilst at the same time, TCA continued to negotiate a workable deal with Munch and Billbergia.
- 2.26 On 23 July 2019, TCA instructed the Receivers to take no action in relation to the plant and equipment.
- 2.27 On 15 August 2019, Millburn Investments advised the Receivers that on 1 August 2019, TCA had issued instructions for it to cease working on the review of the accounts and the outstanding lodgements.
- 2.28 On 20 August 2019, Munch advised the Receivers that Billbergia had entered into a lease of the CKF premises with United and had provided United with control of the

plant and equipment taken to have been abandoned by the Receivers on instruction from TCA.

- 2.30 On 31 August 2019, the Receivers lodged all outstanding BAS statements with the ATO.
- 2.31 On 24 September 2019, United issued a demand to the Receivers for payment of royalties received from PF Japan. The Receivers responded by asserting a lien over the monies held pending resolution of the interpleader proceedings and the broader issues relating to the transfer of the Japanese IP.
- 2.32 The dispute between the Receivers and United in relation to the Japanese IP remains unresolved.
- 2.33 The Receivers were under instruction to take no further action in relation to recovering monies owed by Munch under the licence agreement, which were calculated to be in excess of \$2.1M. It is relevant to note the following:
 - (i) The Director of Munch, Mr Peter Tedesco ("**Tedesco**") and his advisor, Mr Darren Vardy of SV Partners Caringbah ("**Vardy**"), advised that if the debt owed by Munch were to be enforced, then Munch would have a significant offsetting claim against the Receivers for failing to settle the heads of agreement. The offset claim has not been quantified nor has the basis of that claim been articulated.
 - (ii) Under the licence agreement, Tedesco provided a personal guarantee for Munch's liabilities to the Receivers.
 - (iii) Messrs Tedesco and Vardy claimed that Mr Tedesco was impecunious.
 - (iv) On 20 April 2020, Munch was wound up by order of the Supreme Court of New South Wales.
 - (v) On 14 January 2021, Mr Tedesco presented a petition for his bankruptcy and Mr Richard Moretti of Revive Financial was appointed as Trustee of his bankrupt estate.

3.0 COMMUNICATIONS BETWEEN TCA & THE RECEIVERS REGARDING THE ATO DEBT

- 3.1 As stated above, in an email sent 17 April 2019, TCA was advised that the ATO was chasing outstanding lodgements and that they need to be prepared and lodged at which time the debt would crystallize.
- 3.2 In an email sent 23 April 2019, TCA was asked to confirm that it will honour its obligations pursuant to the Deed of Indemnity. There was no response to that request.
- 3.3 In an email sent 2 May 2019, TCA indicated that once the transaction with United is closed and the tax liability known, it would work on a solution.
- 3.4 In an email sent 8 May 2019, TCA was again asked to confirm that it will provide the necessary funding to discharge the tax liability. Advice was also sought as to what action should be taken against Munch to recover monies owed by it.

- 3.5 Beginning 7 June 2019 , there were numerous exchanges with TCA dealing primarily with matters to be dealt with to bring the Receivership to an end. In a telephone conversation on 12 July 2019, the TCA representative indicated that pursuing Munch would not be helpful.
- 3.6 On 9 October 2019, an email was sent to TCA advising of receipt of assessments from the ATO for amounts totalling \$1.891M. TCA was also advised of a further debt of about \$501,000 relating to superannuation liabilities. A request was made for TCA to transfer sufficient funds to discharge the assessed debts by the due dates.
- 3.7 On 15 October 2019, an email was sent to TCA requesting advice as to when the required funds would be received.
- 3.8 On 17 October 2019, TCA responded advising that negotiations should be undertaken with the ATO to minimise the debt and in this regard TCA would seek advice from its Australian solicitor, Taylor David, a Brisbane based firm.
- 3.9 On 17 October 2019, a response was sent to TCA confirming that we would liaise with Taylor David and that consideration should be given to instructing a person in Sydney for advice about how best to proceed.
- 3.10 On 4 November 2019, an email was sent to TCA advising that despite numerous attempts we had not yet discussed the matter to Taylor David as they were awaiting instructions. At the same time, we sought advice as when TCA would transfer the funds.
- 3.11 On 5 November 2019. TCA advised that Taylor David had been instructed to approach the ATO and that monies would not be advanced until a payment plan or a settlement had been reached with the ATO.
- 3.12 On 20 Novemebr 2019, signed ATO forms titled "Nomination of a legal representative to act on behalf of a non-individual entity"were forwarded to Taylor David.
- 3.13 On 10 January 2020, Tayor David advised that they were working to provide draft submissions to the ATO by 17 January 2020.
- 3.14 On 3 February 2020, Tayor David advised they hoped to provide the draft submission by 5 February 2020.
- 3.15 On 14 February 2020, Taylor David advised they expect to provide the submission by 18 February 2020 at the latest.
- 3.16 On 24 March 2020, Taylor David circulated a draft letter addressed to the ATO to TCA and the Receivers. We responded immediately raising issues in relation to the draft and declining consent for its issuance to the ATO.
- 3.17 In the weeks that followed, the Receivers continued to liaise with Taylor David. On 9 June 2020. an email response was sent Taylor David who had advised on 8 June 2020 that they had discussed the draft submission to the ATO with TCA who had indicated that in light of the current economic environment, it was minded to wait and see if the ATO intended to pursue the outstanding liabilities before considering any settlement amount.

4.0 PROCEEDINGS WITH UNITED -THE JAPANESE IP

- 4.1 On 2 September 2019, JHK Legal filed an interpleader application with the Supreme Court of Victoria to resolve the impasse between the Receivers and United over the transfer of the Japanese IP, the release of funds held in escrow by JHK and the application of Japanese Royalties paid to the Receivers by the Japanese franchise operator. Stanton & Stanton represent the Receivers in these proceedings.
- 4.2 On or about 7 October 2019, the amount of \$160,000, being the escrow funds of \$175,000 less \$15,000 legal fees incurred by JHK, were paid into the Supreme Court of Victoria.
- 4.3 Since October 2019, we have been engaged in continuing negotiations with United and Duskin Co Ltd, the joint venture partner of Pie Face Japan GK in the Japanese business, in order to complete the transfer of the Japanese IP. Duskin's consent to the transfer of the IP was required and that consent has been withheld owing to concerns that Duskin had about being in a joint venture arrangement with United. The negotiations have been complicated by;
- (i) the death of George Svinos, the CFO of United;
 - (ii) the refusal of United to provide financial information required by Duskin prior to Duskin being willing to consent to the transfer of the IP; and
 - (iii) the advent of COVID; and
 - (iv) the commencement of a vexatious cross claim by United to obtain control of royalty payments made by Duskin to us as Receivers, over which a lien was asserted pending completion of the continuing litigation.
- 4.4 In October 2020, the Receivers instructed that the matter be brought to trial as the matter was not being addressed in good faith by United. Although a timetable for the trial and the counter claim filed by United was established, that timetable has been deferred on numerous occasions in light of;
- (i) continuing complications arising due to COVID lockdowns; and
 - (ii) apparent progress in negotiations between Duskin and United.
- 4.5 The necessary consent of the parties has now been achieved in principle and we are undertaking the tasks necessary to facilitate the transfer of the Japanese IP to united in a manner agreeable to Duskin. It is anticipated that the proceedings will soon be dismissed with parties bearing their own costs.
- 4.6 We anticipate legal fees becoming payable to Stanton & Stanton of \$75,000, resulting in a net recovery of \$85,000.

5.0 THE RECEIVERSHIP OF TCA

- 5.1. On 11 May 2020, the US Securities and Exchange Commission filed a Complaint in the United States District Court of Florida against certain entities in the TCA Group of companies for violation of the Securities Act, Securities Exchange Act and the Investment Advisers Act. On that day, the court appointed Jonathan E. Pearleman as Receiver of those entities including TCA.
- 5.2.1 It was alleged in the Complaint that the defendant companies engaged in deceptive conduct in violation of sections contained in the beforementioned Acts. It was also alleged in the Complaint that since 2010 and continuing through to at least November

2019, that one of the entities fraudulently engaged in two different revenue recognition practices that artificially inflated the revenue and the assets of TCA.

6.0 EVIDENCE IN SUPPORT OF THIS STATEMENT

- 6.1 Evidence in support of all matters raised within this statement can be made readily available upon request.
- 6.2 Some of the evidence in support of this statement is considered of such critical importance that it has been attached to the Statement of Proof of Debt.

ANNEXURE "2"

Chris Palmer

From: Chris Palmer
Sent: Wednesday, 17 April 2019 9:43 AM
To: 'Wes McKnight'
Cc: Liam Bailey
Subject: FW: Pie Face Remaining Assets, Tax Liabilities and Munch Operations
Importance: High

Wes,

We received a letter from the Australian Taxation Office ("ATO") a couple of days ago saying it has a query. We have not yet made contact. It is possible that the query may relate to outstanding lodgements. In this regard, it was agreed with Donna Silverman that the lodgements would not be made pending settlement of the transaction with Munch, the reason being that once the lodgements were made the tax debts would crystalize. At the time, it was considered that the proceeds from the sale would be more than sufficient to cover the debts and enable a return to TCA.

If it now becomes necessary to submit the lodgements, the ATO will not long after demand payment in which case we will need to rely on TCA providing funding pursuant to its indemnity. In saying that, I assume that our reliance on the indemnity is not misplaced for TCA has in the past provided funding whenever it has been requested.

No doubt you are trying to wrap up a deal with Munch and UP so as to limit TCA's exposure and hopefully provide a return. Timing will be the key. I just don't know how much more time we have.

We will deal with the ATO enquiry and advise accordingly. In the meantime, you might like to give some thought as to how we are going to deal with the consequences of submitting the lodgements should that become necessary.

On a related issue, we are continuing to pay wages and as I said in an earlier email, this has the effect of reducing cash at bank and further increasing the tax liability. We are reviewing the option of informing Munch that we no longer intend to pay wages. This will have the effect of either:

- (i) forcing Munch to pay wages, or
- (ii) result in Munch terminating the licence agreement in which case the employees would be terminated & paid out. Trading would therefore cease. At the same time, a claim could be issued against Munch for payment of monies due under the Licence Agreement.

The advantage is that the remaining cash would be preserved to meet portion of the tax debt. If Munch agrees to pay wages, then that would be a good outcome for it gives you time to complete negotiations. On the other hand, termination of the licence agreement could have a serious effect on your negotiations, the particulars of which are unknown to us.

Please advise as to your attitude to the option of ceasing to pay wages.

Kind Regards,

Chris Palmer
PARTNER



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From: Wes McKnight [mailto:wmcknight@tcacap.com]
Sent: Tuesday, 16 April 2019 8:29 AM
To: Chris Palmer <CPalmer@obp.com.au>; Liam Bailey <LBailey@obp.com.au>
Subject: RE: Pie Face remaining assets

Thank you

Wes McKnight
Managing Director



T. 212-321-0430
M.972-370-4780
wmcknight@tcacap.com

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Suite 17A
New York, New York
10017
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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Monday, April 15, 2019 5:19 PM
To: Wes McKnight <wmcknight@tcacap.com>; Liam Bailey <LBailey@obp.com.au>
Subject: RE: Pie Face remaining assets

Wes,

We have not had contact with UP for some time now nor do we intend to make contact. If for some strange reason they contact us, then we will of course comply with your request.

Kind Regards,

Chris Palmer
PARTNER



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From: Wes McKnight [<mailto:wmcknight@tcacap.com>]
Sent: Tuesday, 16 April 2019 8:12 AM
To: Chris Palmer <CPalmer@obp.com.au>; Liam Bailey <LBailey@obp.com.au>
Subject: Pie Face remaining assets

Chris and Liam,

Please do not have any conversations with UP related to the remaining assets for Pie Face. I am negotiating on behalf of the TCA shareholders and obtaining a fair value. I'll provide details when I have them.

Thank you
Wes

Wes McKnight
Managing Director

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Chris Palmer

From: Chris Palmer
Sent: Tuesday, 23 April 2019 10:49 AM
To: 'Wes McKnight'
Cc: 'Bob Press'; Liam Bailey
Subject: RE: Pie Face Remaining Assets, Tax Liabilities and Munch Operations

Wes,

I refer to my email below and note that no response has been received. I therefore presume that we are to continue paying wages (thus reducing cash at bank, increasing the tax liability and increasing the debt due by Munch).

It will shortly be 11 months since TCA intervened in the sale process in an attempt to sweeten the deal. During that time, we have complied with TCA instructions to restrict our involvement to basically maintaining the status quo. Not being informed of the status of negotiations has been frustrating to say the least. Are you able to provide us with any indication as to the state of your negotiations and in particular when a deal might be agreed upon? I presume that if a deal can be struck, then we will need to be involved.

In an earlier email, I indicated that at some stage we would run out of cash. That time is rapidly approaching. I estimate that we hold enough cash to pay wages for another 3 weeks. Unless TCA advances funds or Munch agrees to comply with the Licence Agreement by paying wages, we will have no option but to terminate and pay out the staff. We would in the ordinary course advise Munch of the time frame and seek to have it commit to paying wages. Please advise why we should not do so. Alternatively and if need be, will TCA advance funds to pay wages?

There is no update on the position of the outstanding taxation lodgements. However, there seems little doubt those lodgements will need to be made in the short term. Please confirm that TCA will honour its obligations pursuant to the Deed of Indemnity to meet those liabilities.

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

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From: Chris Palmer
Sent: Wednesday, 17 April 2019 9:43 AM
To: 'Wes McKnight' <wmcknight@tcacap.com>
Cc: Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Remaining Assets, Tax Liabilities and Munch Operations
Importance: High

Wes,

We received a letter from the Australian Taxation Office ("ATO") a couple of days ago saying it has a query. We have not yet made contact. It is possible that the query may relate to outstanding lodgements. In this regard, it was agreed with Donna Silverman that the lodgements would not be made pending settlement of the transaction with Munch, the reason being that once the lodgements were made the tax debts would crystalize. At the time, it was considered that the proceeds from the sale would be more than sufficient to cover the debts and enable a return to TCA.

If it now becomes necessary to submit the lodgements, the ATO will not long after demand payment in which case we will need to rely on TCA providing funding pursuant to its indemnity. In saying that, I assume that our reliance on the indemnity is not misplaced for TCA has in the past provided funding whenever it has been requested.

No doubt you are trying to wrap up a deal with Munch and UP so as to limit TCA's exposure and hopefully provide a return. Timing will be the key. I just don't know how much more time we have.

We will deal with the ATO enquiry and advise accordingly. In the meantime, you might like to give some thought as to how we are going to deal with the consequences of submitting the lodgements should that become necessary.

On a related issue, we are continuing to pay wages and as I said in an earlier email, this has the effect of reducing cash at bank and further increasing the tax liability. We are reviewing the option of informing Munch that we no longer intend to pay wages. This will have the effect of either:

- (i) forcing Munch to pay wages, or
- (ii) result in Munch terminating the licence agreement in which case the employees would be terminated & paid out. Trading would therefore cease. At the same time, a claim could be issued against Munch for payment of monies due under the Licence Agreement.

The advantage is that the remaining cash would be preserved to meet portion of the tax debt. If Munch agrees to pay wages, then that would be a good outcome for it gives you time to complete negotiations. On the other hand, termination of the licence agreement could have a serious effect on your negotiations, the particulars of which are unknown to us.

Please advise as to your attitude to the option of ceasing to pay wages.

Kind Regards,

Chris Palmer
PARTNER



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From: Wes McKnight [<mailto:wmcknight@tcacap.com>]

Sent: Tuesday, 16 April 2019 8:29 AM

To: Chris Palmer <CPalmer@obp.com.au>; Liam Bailey <LBailey@obp.com.au>

Subject: RE: Pie Face remaining assets

Thank you

Wes McKnight
Managing Director

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M.972-370-4780
wmcknight@tcacap.com

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From: Chris Palmer <CPalmer@obp.com.au>

Sent: Monday, April 15, 2019 5:19 PM

To: Wes McKnight <wmcknight@tcacap.com>; Liam Bailey <LBailey@obp.com.au>

Subject: RE: Pie Face remaining assets

Wes,

We have not had contact with UP for some time now nor do we intend to make contact. If for some strange reason they contact us, then we will of course comply with your request.

Kind Regards,

Chris Palmer
PARTNER



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Sent: Tuesday, 16 April 2019 8:12 AM

To: Chris Palmer <CPalmer@obp.com.au>; Liam Bailey <LBailey@obp.com.au>

Subject: Pie Face remaining assets

Chris and Liam,

Please do not have any conversations with UP related to the remaining assets for Pie Face. I am negotiating on behalf of the TCA shareholders and obtaining a fair value. I'll provide details when I have them.

Thank you
Wes

Wes McKnight
Managing Director

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Chris Palmer

From: Wes McKnight <wmcknight@tcacap.com>
Sent: Thursday, 2 May 2019 8:31 AM
To: Chris Palmer
Cc: Bob Press; Liam Bailey
Subject: RE: Pie Face - Urgent Response Required Re Maintenance of the CKF

Chris,

I spoke to Peter and Darren. The plan is for Darren to draft a Heads of Agreement. The Heads of Agreement will need to include but not limited to the following items:

Full release of Pie Face Japan: UP takes it as is and releases the escrow funds
Sale of equipment from receiver in the amount of \$450,000
Takeover employee payroll as of May 6th
The HOA must be executed by 5pm on Friday or Peter will notify employees of the last day.
Hold harmless

Munch anticipated terms:

- Sale of Assets to UP \$50,001 AUD (Excludes leased / rented equipment)
- Raw materials: cost as of closing date (Paid to Munch) Est. ~\$150K
- Finished Goods: Sale Price of goods (5% discount based on sales price) 10% is more than the margin; therefore, I reduced. (Paid to Munch) Est. ~\$400K
- Leasehold improvements \$300,000 (Paid to Munch)
- Price increase retro to Dec as agreed by UP \$150,000 - \$200,000 (Paid to Munch)
- Transition of 3 months:
 - Peter Tedesco will provide training for operating the factory for a period of three months. This includes up to 20 hrs of dedicated scheduled time per week. Peter maybe available for additional hours at no cost depending on schedule. Peter wants to assist in the transition he just doesn't want to work or be committed for 60 hours a week.
 - For consideration UP will allow Munch to occupy the facility for 3 months at no charge. Munch will have the ability to rent the facility for 3 months and the conclusion of the first 3 months with one month rental agreements in the amount of \$10,000. Munch will not occupy the property for more than 6 months following the execution of this agreement.

I have discussed with Peter and Darren to have the funds received from UP held in escrow. Once the transaction is closed and I know the tax liability I will work on a solution. I have talked with Peter about a plan to keep him operating post-closing.

Please confirm with JHK the position they take on the termination. George from UP has threatened me with legal action if I pull the supply with UP. I want to make sure if we have to terminate the employees that JHK will stand behind the termination from May 2018.

Please expect a call from Darren.

I have an event I need to attend at my daughters school but will be available later tonight.

Thank you
Wes

From: Chris Palmer <CPalmer@obp.com.au>
Sent: Wednesday, May 1, 2019 4:08 PM

To: Wes McKnight <wmcknight@tcacap.com>
Cc: Bob Press <bpress@tcacap.com>; Liam Bailey <LBailey@obp.com.au>
Subject: RE: Pie Face - Urgent Response Required Re Maintenance of the CKF

Thanks Wes. If either Munch or UP are to make the payroll payments, then the monies inclusive of the tax deductions need to be forwarded to us. Ideally there should also be a component to cover accruing annual leave. We would also like some funds to help cover redundancy payments (if needed) but they may balk at that.

Please keep me updated.

Kind Regards,

Chris Palmer
PARTNER



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From: Wes McKnight [mailto:wmcknight@tcacap.com]
Sent: Thursday, 2 May 2019 6:55 AM
To: Chris Palmer <CPalmer@obp.com.au>
Cc: Bob Press <bpress@tcacap.com>; Liam Bailey <LBailey@obp.com.au>
Subject: RE: Pie Face - Urgent Response Required Re Maintenance of the CKF

They are both calling me in 35 min. Ideally, UP will make the payroll payments. Let me talk with them to discuss.

From: Chris Palmer <CPalmer@obp.com.au>
Sent: Wednesday, May 1, 2019 3:48 PM
To: Wes McKnight <wmcknight@tcacap.com>
Cc: Bob Press <bpress@tcacap.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face - Urgent Response Required Re Maintenance of the CKF
Importance: High

Wes,

I refer to my email below and note that as yet as response has not been received.

As far as I know, neither Vardy nor Tedesco have given an indication as to the attitude of Munch to the possible termination of the staff. The exchange with Vardy was verbal. Munch will be formally advised this morning of what is likely to occur. I note from your email to Liam last night that you are hoping to speak to Vardy and Tedesco. Presumably you will raise this issue with them.

We are also considering whether or not notice should also be given to UP.

Please respond to my emails.

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
Sent: Wednesday, 1 May 2019 3:41 PM
To: Bob Press <bpress@tcacap.com>; 'Wes McKnight' <wmcknight@tcacap.com>
Cc: Liam Bailey <LBailey@obp.com.au>
Subject: Pie Face - Urgent Response Required Re Maintenance of the CKF
Importance: High

Bob and Wes,

I refer to my recent emails regarding our ability to keep funding the payment of wages. In brief, we have insufficient cash to pay wages, termination entitlements and tax deductions.

By way of explanation, the work force comprises both permanent and casual staff. We understand the period of notice for casual staff varies from 1 to 2 weeks whilst no notice needs to be given to casual staff. Most of the employees are casual.

Given the quantum of cash on hand, we now need to give notice to the permanent staff. I suspect that will have a dramatic effect on the trading operation which will then lead to most of the casual staff being terminated.

Attached is a schedule showing the present position. It has been prepared on the basis that on Friday this week, all permanent staff are given 1 weeks' notice and all casual staff are terminated next Friday. Those staff requiring 2 weeks' notice will be paid 1 week in lieu. The calculation shows a nominal shortfall in cash. The calculation is not exact as there are a number of underlying issues that are variable. For example, we can terminate the casual staff immediately thus eliminating the shortfall.

The License Agreement with Munch will need to be terminated. Assuming that notice is enforced, production will cease and UP will receive no further supply without first doing a deal with ourselves. There also remains the issue of the substantial claims that exist against both Munch and UP.

We are not privy to the negotiations between TCA, UP and Munch, and are therefore unaware of the consequences of terminating this Licence Agreement with Munch and the resulting cessation of supply to UP. Hopefully Wes you are on top of this given that we have been excluded from these discussions for quite some time now.

Notwithstanding, we do not have the cash to continue to pay wages and cannot allow that liability to continue to accrue.

Darren Vardy representing Munch has been informed of the possibility of the foregoing being put into effect. He is yet to advise of the attitude of Munch.

This day was always going to come given the period of time which has lapsed since the Munch transaction was due settle and the attitude that Munch has adopted in meeting the costs incurred in running the CKF.

The bottom line is that given we will very shortly run out of cash, the alternative options are that;

- 1 Munch agrees to advance monies to fund or meet ongoing gross operational costs; or
- 2 TCA advances monies to meet ongoing gross operational costs ; or

Please advise by 3.00 PM Australian time, Thursday 2 May 2019 as to the attitude of TCA to the foregoing. In the absence of an acceptable response from either Munch or TCA, we will have no option but to proceed to terminate staff as set out above in the most advantageous manner, as well as the termination of the occupation of the Company's leased premises and cancellation of insurance policies in place required to facilitate ongoing trade.

Please do not hesitate to contact me to discuss the foregoing.

Kind Regards,

Chris Palmer
PARTNER



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Chris Palmer

From: Chris Palmer
Sent: Wednesday, 8 May 2019 8:32 AM
To: 'Wes McKnight'
Cc: 'Bob Press'; Liam Bailey
Subject: Taxation Liabilities , TCA Indemnity and Munch Debt

Wes,

I refer to my earlier email today.

In my email sent 17 April 2019, I advised that the ATO had a query. We finally made contact with the ATO and as suspected it is chasing outstanding lodgements. They are prepared and shortly they will need to be lodged. The debt will then crystalize.

In your email sent 2 May 2019, you indicated that once the transaction with UP is closed and the tax liability is known, you would work on a solution. Now that the solicitors for UP have advised that their client will not purchase the CKF, we need to resolve the matter.

In my email sent 23 April 2019, I asked TCA to confirm that it will honour its obligations pursuant to the Deed of Indemnity. There was no response to that request.

Unless you can find another solution, I again ask TCA to confirm that will provide the necessary funding to discharge the tax liability. The amount required will need to be calculated as there will probably be realisations from finished goods and plant & equipment. The shortfall will be substantial. If it is easier, you could consider making instalment advances.

Then there is the issue of the significant debt due by Munch. In the ordinary course, we would issue a letter of demand and await its response. In this regard, you are aware that Munch is claiming that the actions of TCA in intervening in the sale process had the effect of repudiating the Heads of Agreement and as a result it suffered loss and damage. These claims have not yet been particularised but it's hard to imagine that the quantum of any such claim would exceed to the debt owed. Don't forget that the debt is guaranteed by Peter Tedesco. Munch has indicated that it is liaising with TCA. Is that correct and if so please advise as to how you wish us to proceed?

It would be appreciated if you could respond by Friday 10 May 2019.

Kind Regards,

Chris Palmer
PARTNER



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Chris Palmer

From: Chris Palmer
Sent: Wednesday, 9 October 2019 4:17 PM
To: Carlos Sandino
Cc: Wes McKnight; 'Jacquelyn Gogin'; Liam Bailey; Sandra Ciganda; Justin Dragicevic
Subject: FW: Pie Face Tax Liabilities
Attachments: ATO - PFF RBA Statement - 01.07.2019 to 28.09.2019.pdf; ATO - PF RBA Statement - 01.07.2019 to 28.09.2019.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Carlos,

I refer to the email from Liam Bailey sent 30 September 2019 which attached a statement of chronology and a summary of outstanding issues in the Pie Face Receivership. In particular, I refer to paragraph 2.2 of that statement which relates to outstanding tax liabilities.

I also refer to the Deeds of Indemnity for Pie Face Pty Ltd and Pie Face Franchising Pty Ltd signed on 31 October 2016 and 6 December 2016, respectively. In particular, I refer to clause 9.1(d) of the Deeds, which states, "*The Appointor hereby indemnifies the Receiver and the Additional Receiver for and against...any debts or liabilities incurred in continuing to trade the business of the Company including, but not limited to, any amounts payable for wages, superannuation, rent, the purchase of goods or services and commonwealth and state taxes.*"

As foreshadowed, we have now received assessments for two (2) of the entities that are summarised in the table below:

Entity Name	ACN	Period of Liability	Amount Owing to ATO (AUD \$)
Pie Face Franchising Pty Ltd	121 495 243	31/10/2016 to 28/09/2019	49,858.48
Pie Face Pty Ltd	087 384 736	31/10/2016 to 28/09/2019	1,841,146.19
TOTAL			1,891,004.67

Attached are copies of the assessments, which relate to unpaid Pay As You Go tax deductions and Goods and Services Tax. Further assessments are expected in relation to unpaid superannuation withheld. The current estimate for that exposure is approximately \$501,000.

I make two (2) comments in relation to the assessments already received:

- (1) Payment of the liabilities by the due date will bring to a halt General Interest Charges which form part of the assessments. In addition, payment by the due date may possibly facilitate a positive response to a submission for remission of General Interest Charges already incurred, the amount of which is not insignificant. In this regard, it might be beneficial to seek specialist tax advice in order that the best possible case can be put to the ATO. In the ordinary course, I would obtain that advice. Please advise as to whether I am authorised to proceed or will you seek your own tax advice. If tax advice is to be obtained, then I suggest that you urgently issue appropriate instructions.
- (2) It is fortunate that at this time, there is a favourable exchange rate, which means that on conversion, the amount to be advanced would approximate USD \$1,272,000.

Please note that we are still awaiting receipt of an assessment for Pie Face Holdings Pty Ltd. The expectation is that the liability will be nil except for any penalties that may be charged. An assessment for the amount of approximately \$18,700 has been received in respect of Pie Face Australia Franchising Pty Ltd. That assessment relates to Pay As You Go tax and Goods and Services Tax. The assessment is presently being reviewed. There is no present liability for superannuation in relation to Pie Face Holdings Pty Limited and Pie Face Australia Franchising Pty Ltd.

I therefore request that you make arrangements to transfer sufficient funds to our Receivers & Managers account by the due date of **21 October 2019** in order discharge the liability as set out in the table above. If it transpires that a

submission is made for remission of General Interest Charges, then payment of that proportion of the assessments will be withheld pending determination of the submission by the ATO.

If you wish to discuss the foregoing, then do not hesitate to contact either Liam Bailey or myself.

Kind Regards,

Chris Palmer
PARTNER



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Chris Palmer

From: Chris Palmer
Sent: Tuesday, 15 October 2019 9:09 AM
To: Carlos Sandino
Cc: Wes McKnight; 'Jacquelyn Gogin'; Liam Bailey
Subject: FW: Pie Face Tax Liabilities
Attachments: ATO - PFF RBA Statement - 01.07.2019 to 28.09.2019.pdf; ATO - PF RBA Statement - 01.07.2019 to 28.09.2019.pdf

Dear Carlos,

I refer to my email below.

Please advise when the funds will be transferred for the payment of the tax liability. I reiterate that early payment may more readily facilitate a successful submission for remittance of General Interest Charges which approximate AUS\$260,000.

Please give me the courtesy of a response and as always I am available to discuss the matter if you so wish.

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
Sent: Wednesday, 9 October 2019 4:17 PM
To: Carlos Sandino <csandino@tcacap.com>
Cc: Wes McKnight <wmcknight@tcacap.com>; 'Jacquelyn Gogin' <jgogin@tcacap.com>; Liam Bailey <LBAiley@obp.com.au>; Sandra Ciganda <sciganda@obp.com.au>; Justin Dragicevic <JDragicevic@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

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I refer to the email from Liam Bailey sent 30 September 2019 which attached a statement of chronology and a summary of outstanding issues in the Pie Face Receivership. In particular, I refer to paragraph 2.2 of that statement which relates to outstanding tax liabilities.

I also refer to the Deeds of Indemnity for Pie Face Pty Ltd and Pie Face Franchising Pty Ltd signed on 31 October 2016 and 6 December 2016, respectively. In particular, I refer to clause 9.1(d) of the Deeds, which states, "*The Appointor hereby indemnifies the Receiver and the Additional Receiver for and against...any debts or liabilities incurred in continuing to trade the business of the Company including, but not limited to, any amounts payable for wages, superannuation, rent, the purchase of goods or services and commonwealth and state taxes.*"

As foreshadowed, we have now received assessments for two (2) of the entities that are summarised in the table below:

Entity Name	ACN	Period of Liability	Amount Owing to ATO (AUD \$)
Pie Face Franchising Pty Ltd	121 495 243	31/10/2016 to 28/09/2019	49,858.48
Pie Face Pty Ltd	087 384 736	31/10/2016 to 28/09/2019	1,841,146.19
TOTAL			1,891,004.67

Attached are copies of the assessments, which relate to unpaid Pay As You Go tax deductions and Goods and Services Tax. Further assessments are expected in relation to unpaid superannuation withheld. The current estimate for that exposure is approximately \$501,000.

I make two (2) comments in relation to the assessments already received:

- (1) Payment of the liabilities by the due date will bring to a halt General Interest Charges which form part of the assessments. In addition, payment by the due date may possibly facilitate a positive response to a submission for remission of General Interest Charges already incurred, the amount of which is not insignificant. In this regard, it might be beneficial to seek specialist tax advice in order that the best possible case can be put to the ATO. In the ordinary course, I would obtain that advice. Please advise as to whether I am authorised to proceed or will you seek your own tax advice. If tax advice is to be obtained, then I suggest that you urgently issue appropriate instructions.
- (2) It is fortunate that at this time, there is a favourable exchange rate, which means that on conversion, the amount to be advanced would approximate USD \$1,272,000.

Please note that we are still awaiting receipt of an assessment for Pie Face Holdings Pty Ltd. The expectation is that the liability will be nil except for any penalties that may be charged. An assessment for the amount of approximately \$18,700 has been received in respect of Pie Face Australia Franchising Pty Ltd. That assessment relates to Pay As You Go tax and Goods and Services Tax. The assessment is presently being reviewed. There is no present liability for superannuation in relation to Pie Face Holdings Pty Limited and Pie Face Australia Franchising Pty Ltd.

I therefore request that you make arrangements to transfer sufficient funds to our Receivers & Managers account by the due date of **21 October 2019** in order discharge the liability as set out in the table above. If it transpires that a submission is made for remission of General Interest Charges, then payment of that proportion of the assessments will be withheld pending determination of the submission by the ATO.

If you wish to discuss the foregoing, then do not hesitate to contact either Liam Bailey or myself.

Kind Regards,

Chris Palmer
PARTNER



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Chris Palmer

From: Carlos Sandino <csandino@tcacap.com>
Sent: Thursday, 17 October 2019 7:15 AM
To: Chris Palmer
Cc: Jacquelyn Gogin; Chad Gear
Subject: RE: Pie Face Tax Liabilities

Hi Chris,

I think we need to negotiate with the ATO so as to minimize the tax liability. I'd like to have Chad with Taylor David involved and provide guidance in the matter.

I think it's probably best to utilize a tax accountant with prior experience dealing with these matter approach the ATO. I assume that in your trade you have experience in dealing with these type of matters/settlements. Chad can surely provide a contact person to serve as a liaison with the government if needed.

Also, I'd like to get number that TCA can settle out your account for. I know you've extended offers before with a discount. I'm wondering what would be your best number to settle TCA's invoices with OBP?

I appreciate your feedback.

Thanks,

Carlos Sandino
Managing Director of Corporate Restructuring
TCA Fund Management Group

T.786-323-1650
csandino@tcacap.com

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Suite 101
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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Monday, October 14, 2019 6:10 PM
To: Carlos Sandino <csandino@tcacap.com>
Cc: Wes McKnight <wmcknight@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

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Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
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Cc: Wes McKnight <wmcknight@tcacap.com>; 'Jacquelyn Gogin' <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>; Sandra Ciganda <sciganda@obp.com.au>; Justin Dragicevic <JDragicevic@obp.com.au>
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			(AUD \$)
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TOTAL			1,891,004.67

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- (2) It is fortunate that at this time, there is a favourable exchange rate, which means that on conversion, the amount to be advanced would approximate USD \$1,272,000.

Please note that we are still awaiting receipt of an assessment for Pie Face Holdings Pty Ltd. The expectation is that the liability will be nil except for any penalties that may be charged. An assessment for the amount of approximately \$18,700 has been received in respect of Pie Face Australia Franchising Pty Ltd. That assessment relates to Pay As You Go tax and Goods and Services Tax. The assessment is presently being reviewed. There is no present liability for superannuation in relation to Pie Face Holdings Pty Limited and Pie Face Australia Franchising Pty Ltd.

I therefore request that you make arrangements to transfer sufficient funds to our Receivers & Managers account by the due date of **21 October 2019** in order discharge the liability as set out in the table above. If it transpires that a submission is made for remission of General Interest Charges, then payment of that proportion of the assessments will be withheld pending determination of the submission by the ATO.

If you wish to discuss the foregoing, then do not hesitate to contact either Liam Bailey or myself.

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

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Chris Palmer

From: Chris Palmer
Sent: Thursday, 17 October 2019 8:26 AM
To: 'Carlos Sandino'
Cc: Jacquelyn Gogin; Chad Gear; Liam Bailey
Subject: RE: Pie Face Tax Liabilities

Hi Carlos,

Thank you so much for your email and yes, I would be pleased to liaise with Chad.

I suspect there may will be little room to negotiate with the ATO in so far as the claims relate to tax withheld. I am not sure about the GST component but there should be scope to seek remission of interest.

As I suggested in my email of 9 October 2019, it would be wise to instruct a person experienced in these matters to make the appropriate submission to the ATO. We can make contact with such a person in Sydney but if you prefer Chad to take charge of that, then I have no problem and will provide every assistance. Please advise how you wish to proceed.

Finally, I need to review the position in relation to our invoices and will come back to you shortly.

Kind Regards,

Chris Palmer
PARTNER



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From: Carlos Sandino [mailto:csandino@tcacap.com]
Sent: Thursday, 17 October 2019 7:15 AM
To: Chris Palmer <CPalmer@obp.com.au>
Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>
Subject: RE: Pie Face Tax Liabilities

Hi Chris,

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I appreciate your feedback.

Thanks,

Carlos Sandino
Managing Director of Corporate Restructuring
TCA Fund Management Group



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From: Chris Palmer <CPalmer@obp.com.au>

Sent: Monday, October 14, 2019 6:10 PM

To: Carlos Sandino <csandino@tcacap.com>

Cc: Wes McKnight <wmcknight@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>

Subject: FW: Pie Face Tax Liabilities

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Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer

Sent: Wednesday, 9 October 2019 4:17 PM

To: Carlos Sandino <csandino@tcacap.com>

Cc: Wes McKnight <wmcknight@tcacap.com>; 'Jacquelyn Gogin' <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>; Sandra Ciganda <sciganda@obp.com.au>; Justin Dragicevic <JDragicevic@obp.com.au>

Subject: FW: Pie Face Tax Liabilities

Dear Carlos,

I refer to the email from Liam Bailey sent 30 September 2019 which attached a statement of chronology and a summary of outstanding issues in the Pie Face Receivership. In particular, I refer to paragraph 2.2 of that statement which relates to outstanding tax liabilities.

I also refer to the Deeds of Indemnity for Pie Face Pty Ltd and Pie Face Franchising Pty Ltd signed on 31 October 2016 and 6 December 2016, respectively. In particular, I refer to clause 9.1(d) of the Deeds, which states, "*The Appointor hereby indemnifies the Receiver and the Additional Receiver for and against...any debts or liabilities incurred in continuing to trade the business of the Company including, but not limited to, any amounts payable for wages, superannuation, rent, the purchase of goods or services and commonwealth and state taxes.*"

As foreshadowed, we have now received assessments for two (2) of the entities that are summarised in the table below:

Entity Name	ACN	Period of Liability	Amount Owing to ATO (AUD \$)
Pie Face Franchising Pty Ltd	121 495 243	31/10/2016 to 28/09/2019	49,858.48
Pie Face Pty Ltd	087 384 736	31/10/2016 to 28/09/2019	1,841,146.19
TOTAL			1,891,004.67

Attached are copies of the assessments, which relate to unpaid Pay As You Go tax deductions and Goods and Services Tax. Further assessments are expected in relation to unpaid superannuation withheld. The current estimate for that exposure is approximately \$501,000.

I make two (2) comments in relation to the assessments already received:

- (1) Payment of the liabilities by the due date will bring to a halt General Interest Charges which form part of the assessments. In addition, payment by the due date may possibly facilitate a positive response to a submission for remission of General Interest Charges already incurred, the amount of which is not insignificant. In this regard, it might be beneficial to seek specialist tax advice in order that the best possible case can be put to the ATO. In the ordinary course, I would obtain that advice. Please advise as to whether I am authorised to proceed or will you seek your own tax advice. If tax advice is to be obtained, then I suggest that you urgently issue appropriate instructions.
- (2) It is fortunate that at this time, there is a favourable exchange rate, which means that on conversion, the amount to be advanced would approximate USD \$1,272,000.

Please note that we are still awaiting receipt of an assessment for Pie Face Holdings Pty Ltd. The expectation is that the liability will be nil except for any penalties that may be charged. An assessment for the amount of approximately \$18,700 has been received in respect of Pie Face Australia Franchising Pty Ltd. That assessment relates to Pay As You Go tax and Goods and Services Tax. The assessment is presently being reviewed. There is no present liability for superannuation in relation to Pie Face Holdings Pty Limited and Pie Face Australia Franchising Pty Ltd.

I therefore request that you make arrangements to transfer sufficient funds to our Receivers & Managers account by the due date of **21 October 2019** in order discharge the liability as set out in the table above. If it transpires that a submission is made for remission of General Interest Charges, then payment of that proportion of the assessments will be withheld pending determination of the submission by the ATO.

If you wish to discuss the foregoing, then do not hesitate to contact either Liam Bailey or myself.

Kind Regards,

Chris Palmer
PARTNER



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Chris Palmer

From: Chris Palmer
Sent: Monday, 4 November 2019 11:05 AM
To: 'Carlos Sandino'
Cc: 'Chad Gear'; Jacquelyn Gogin; Liam Bailey
Subject: FW: Pie Face Tax Liabilities
Attachments: 20191104111619294.pdf

Hi Carlos,

I refer to recent emails regarding the above matter and in particular those sent 17 October 2019 and 25 October 2019 (2) in respect of which no responses have been received.

Chad sent me an email on Thursday 31 October 2019 asking whether I have time to discuss the tax liabilities. I responded in the affirmative and in addition left a message on his mobile. We have not yet spoken.

Attached is another statement from the Australian Taxation Office ("ATO") seeking payment of the amount of AUS\$1,852,450.35 in respect of Pie Face Pty Ltd (087 384 736). You will note that the debt, if paid by 18 November 2019, has increased by approximately AUS\$11,300 from that disclosed in the statement attached to my email sent 9 October 2019.

Please urgently advise as to:

- (i) whether you intend to instruct Chad or myself to instruct an appropriate person to make a submission to the ATO;
- (ii) when you expect to advance monies in order that the tax liability can be paid at least in part if not in full.

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
Sent: Friday, 25 October 2019 9:58 AM

To: 'Carlos Sandino' <csandino@tcacap.com>
Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Carlos,

I refer to my email below.

I spoke to Chad this morning who advised that he has not been instructed to brief an appropriate person to make the submission to the ATO in relation to the tax liabilities.

Please confirm that you intend to instruct Chad in which case I will not make contact with the person I had in mind.

In my opinion, an early submission may bring about the best outcome.

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

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From: Chris Palmer
Sent: Thursday, 17 October 2019 8:26 AM
To: 'Carlos Sandino' <csandino@tcacap.com>
Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: RE: Pie Face Tax Liabilities

Hi Carlos,

Thank you so much for your email and yes, I would be pleased to liaise with Chad.

I suspect there may will be little room to negotiate with the ATO in so far as the claims relate to tax withheld. I am not sure about the GST component but there should be scope to seek remission of interest.

As I suggested in my email of 9 October 2019, it would be wise to instruct a person experienced in these matters to make the appropriate submission to the ATO. We can make contact with such a person in Sydney but if you prefer Chad to take charge of that, then I have no problem and will provide every assistance. Please advise how you wish to proceed.

Finally, I need to review the position in relation to our invoices and will come back to you shortly.

Kind Regards,

Chris Palmer
PARTNER



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From: Carlos Sandino [<mailto:csandino@tcacap.com>]

Sent: Thursday, 17 October 2019 7:15 AM

To: Chris Palmer <CPalmer@obp.com.au>

Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>

Subject: RE: Pie Face Tax Liabilities

Hi Chris,

I think we need to negotiate with the ATO so as to minimize the tax liability. I'd like to have Chad with Taylor David involved and provide guidance in the matter.

I think it's probably best to utilize a tax accountant with prior experience dealing with these matter approach the ATO. I assume that in your trade you have experience in dealing with these type of matters/settlements. Chad can surely provide a contact person to serve as a liaison with the government if needed.

Also, I'd like to get number that TCA can settle out your account for. I know you've extended offers before with a discount. I'm wondering what would be your best number to settle TCA's invoices with OBP?

I appreciate your feedback.

Thanks,

Carlos Sandino
Managing Director of Corporate Restructuring
TCA Fund Management Group



T.786-323-1650
csandino@tcacap.com

19950 West Country Club Drive
Suite 101
Aventura, Florida
33180
tcacap.com

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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Monday, October 14, 2019 6:10 PM
To: Carlos Sandino <csandino@tcacap.com>
Cc: Wes McKnight <wmcknight@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Dear Carlos,

I refer to my email below.

Please advise when the funds will be transferred for the payment of the tax liability. I reiterate that early payment may more readily facilitate a successful submission for remittance of General Interest Charges which approximate AUS\$260,000.

Please give me the courtesy of a response and as always I am available to discuss the matter if you so wish.

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
Sent: Wednesday, 9 October 2019 4:17 PM
To: Carlos Sandino <csandino@tcacap.com>
Cc: Wes McKnight <wmcknight@tcacap.com>; 'Jacquelyn Gogin' <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>; Sandra Ciganda <sciganda@obp.com.au>; Justin Dragicevic <JDragicevic@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Dear Carlos,

I refer to the email from Liam Bailey sent 30 September 2019 which attached a statement of chronology and a summary of outstanding issues in the Pie Face Receivership. In particular, I refer to paragraph 2.2 of that statement which relates to outstanding tax liabilities.

I also refer to the Deeds of Indemnity for Pie Face Pty Ltd and Pie Face Franchising Pty Ltd signed on 31 October 2016 and 6 December 2016, respectively. In particular, I refer to clause 9.1(d) of the Deeds, which states, "*The Appointor hereby indemnifies the Receiver and the Additional Receiver for and against...any debts or liabilities incurred in continuing to trade the business of the Company including, but not limited to, any amounts payable for wages, superannuation, rent, the purchase of goods or services and commonwealth and state taxes.*"

As foreshadowed, we have now received assessments for two (2) of the entities that are summarised in the table below:

Entity Name	ACN	Period of Liability	Amount Owing to ATO (AUD \$)
Pie Face Franchising Pty Ltd	121 495 243	31/10/2016 to 28/09/2019	49,858.48
Pie Face Pty Ltd	087 384 736	31/10/2016 to 28/09/2019	1,841,146.19
TOTAL			1,891,004.67

Attached are copies of the assessments, which relate to unpaid Pay As You Go tax deductions and Goods and Services Tax. Further assessments are expected in relation to unpaid superannuation withheld. The current estimate for that exposure is approximately \$501,000.

I make two (2) comments in relation to the assessments already received:

- (1) Payment of the liabilities by the due date will bring to a halt General Interest Charges which form part of the assessments. In addition, payment by the due date may possibly facilitate a positive response to a submission for remission of General Interest Charges already incurred, the amount of which is not insignificant. In this regard, it might be beneficial to seek specialist tax advice in order that the best possible case can be put to the ATO. In the ordinary course, I would obtain that advice. Please advise as to whether I am authorised to proceed or will you seek your own tax advice. If tax advice is to be obtained, then I suggest that you urgently issue appropriate instructions.
- (2) It is fortunate that at this time, there is a favourable exchange rate, which means that on conversion, the amount to be advanced would approximate USD \$1,272,000.

Please note that we are still awaiting receipt of an assessment for Pie Face Holdings Pty Ltd. The expectation is that the liability will be nil except for any penalties that may be charged. An assessment for the amount of approximately \$18,700 has been received in respect of Pie Face Australia Franchising Pty Ltd. That assessment relates to Pay As

You Go tax and Goods and Services Tax. The assessment is presently being reviewed. There is no present liability for superannuation in relation to Pie Face Holdings Pty Limited and Pie Face Australia Franchising Pty Ltd.

I therefore request that you make arrangements to transfer sufficient funds to our Receivers & Managers account by the due date of **21 October 2019** in order discharge the liability as set out in the table above. If it transpires that a submission is made for remission of General Interest Charges, then payment of that proportion of the assessments will be withheld pending determination of the submission by the ATO.

If you wish to discuss the foregoing, then do not hesitate to contact either Liam Bailey or myself.

Kind Regards,

Chris Palmer
PARTNER



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Chris Palmer

From: Carlos Sandino <csandino@tcacap.com>
Sent: Tuesday, 5 November 2019 11:15 AM
To: Chris Palmer
Cc: Chad Gear; Jacquelyn Gogin; Liam Bailey
Subject: RE: Pie Face Tax Liabilities

Hi Chris,

1. Chad has been instructed to approach the ATO as to a possible discounted settlement.
2. Monies wouldn't be advanced until we have a payment plan/settlement with the ATO.

I will follow up with Chad to ensure the ATO is approached ASAP.

THanks,

Carlos Sandino
Managing Director of Corporate Restructuring
TCA Fund Management Group



T.786-323-1650
csandino@tcacap.com

19950 West Country Club Drive
Suite 101
Aventura, Florida
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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Sunday, November 3, 2019 7:05 PM
To: Carlos Sandino <csandino@tcacap.com>
Cc: Chad Gear <c.gear@taylor-david.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Carlos,

I refer to recent emails regarding the above matter and in particular those sent 17 October 2019 and 25 October 2019 (2) in respect of which no responses have been received.

Chad sent me an email on Thursday 31 October 2019 asking whether I have time to discuss the tax liabilities. I responded in the affirmative and in addition left a message on his mobile. We have not yet spoken.

Attached is another statement from the Australian Taxation Office ("ATO") seeking payment of the amount of AUS\$1,852,450.35 in respect of Pie Face Pty Ltd (087 384 736). You will note that the debt, if paid by 18 November 2019, has increased by approximately AUS\$11,300 from that disclosed in the statement attached to my email sent 9 October 2019.

Please urgently advise as to:

- (i) whether you intend to instruct Chad or myself to instruct an appropriate person to make a submission to the ATO;
- (ii) when you expect to advance monies in order that the tax liability can be paid at least in part if not in full.

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
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To: 'Carlos Sandino' <csandino@tcacap.com>
Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Carlos,

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Please confirm that you intend to instruct Chad in which case I will not make contact with the person I had in mind.

In my opinion, an early submission may bring about the best outcome.

Kind Regards,

Chris Palmer
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From: Chris Palmer
Sent: Thursday, 17 October 2019 8:26 AM
To: 'Carlos Sandino' <csandino@tcacap.com>
Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: RE: Pie Face Tax Liabilities

Hi Carlos,

Thank you so much for your email and yes, I would be pleased to liaise with Chad.

I suspect there may will be little room to negotiate with the ATO in so far as the claims relate to tax withheld. I am not sure about the GST component but there should be scope to seek remission of interest.

As I suggested in my email of 9 October 2019, it would be wise to instruct a person experienced in these matters to make the appropriate submission to the ATO. We can make contact with such a person in Sydney but if you prefer Chad to take charge of that, then I have no problem and will provide every assistance. Please advise how you wish to proceed.

Finally, I need to review the position in relation to our invoices and will come back to you shortly.

Kind Regards,

Chris Palmer
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From: Carlos Sandino [mailto:csandino@tcacap.com]
Sent: Thursday, 17 October 2019 7:15 AM
To: Chris Palmer <CPalmer@obp.com.au>
Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>
Subject: RE: Pie Face Tax Liabilities

Hi Chris,

I think we need to negotiate with the ATO so as to minimize the tax liability. I'd like to have Chad with Taylor David involved and provide guidance in the matter.

I think it's probably best to utilize a tax accountant with prior experience dealing with these matter approach the ATO. I assume that in your trade you have experience in dealing with these type of matters/settlements. Chad can surely provide a contact person to serve as a liaison with the government if needed.

Also, I'd like to get number that TCA can settle out your account for. I know you've extended offers before with a discount. I'm wondering what would be your best number to settle TCA's invoices with OBP?

I appreciate your feedback.

Thanks,

Carlos Sandino
Managing Director of Corporate Restructuring
TCA Fund Management Group

T.786-323-1650
csandino@tcacap.com



19950 West Country Club Drive
Suite 101
Aventura, Florida
33180
tcacap.com

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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Monday, October 14, 2019 6:10 PM
To: Carlos Sandino <csandino@tcacap.com>
Cc: Wes McKnight <wmcknight@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Dear Carlos,

I refer to my email below.

Please advise when the funds will be transferred for the payment of the tax liability. I reiterate that early payment may more readily facilitate a successful submission for remittance of General Interest Charges which approximate AUS\$260,000.

Please give me the courtesy of a response and as always I am available to discuss the matter if you so wish.

Kind Regards,

Chris Palmer
PARTNER



Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
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From: Chris Palmer

Sent: Wednesday, 9 October 2019 4:17 PM

To: Carlos Sandino <csandino@tcacap.com>

Cc: Wes McKnight <wmcknight@tcacap.com>; 'Jacquelyn Gogin' <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>; Sandra Ciganda <sciganda@obp.com.au>; Justin Dragicevic <JDragicevic@obp.com.au>

Subject: FW: Pie Face Tax Liabilities

Dear Carlos,

I refer to the email from Liam Bailey sent 30 September 2019 which attached a statement of chronology and a summary of outstanding issues in the Pie Face Receivership. In particular, I refer to paragraph 2.2 of that statement which relates to outstanding tax liabilities.

I also refer to the Deeds of Indemnity for Pie Face Pty Ltd and Pie Face Franchising Pty Ltd signed on 31 October 2016 and 6 December 2016, respectively. In particular, I refer to clause 9.1(d) of the Deeds, which states, "*The Appointor hereby indemnifies the Receiver and the Additional Receiver for and against...any debts or liabilities incurred in continuing to trade the business of the Company including, but not limited to, any amounts payable for wages, superannuation, rent, the purchase of goods or services and commonwealth and state taxes.*"

As foreshadowed, we have now received assessments for two (2) of the entities that are summarised in the table below:

Entity Name	ACN	Period of Liability	Amount Owing to ATO (AUD \$)
Pie Face Franchising Pty Ltd	121 495 243	31/10/2016 to 28/09/2019	49,858.48
Pie Face Pty Ltd	087 384 736	31/10/2016 to 28/09/2019	1,841,146.19
TOTAL			1,891,004.67

Attached are copies of the assessments, which relate to unpaid Pay As You Go tax deductions and Goods and Services Tax. Further assessments are expected in relation to unpaid superannuation withheld. The current estimate for that exposure is approximately \$501,000.

I make two (2) comments in relation to the assessments already received:

- (1) Payment of the liabilities by the due date will bring to a halt General Interest Charges which form part of the assessments. In addition, payment by the due date may possibly facilitate a positive response to a submission for remission of General Interest Charges already incurred, the amount of which is not insignificant. In this regard, it might be beneficial to seek specialist tax advice in order that the best possible case can be put to the ATO. In the ordinary course, I would obtain that advice. Please advise as to whether I am authorised to proceed or will you seek your own tax advice. If tax advice is to be obtained, then I suggest that you urgently issue appropriate instructions.
- (2) It is fortunate that at this time, there is a favourable exchange rate, which means that on conversion, the amount to be advanced would approximate USD \$1,272,000.

Please note that we are still awaiting receipt of an assessment for Pie Face Holdings Pty Ltd. The expectation is that the liability will be nil except for any penalties that may be charged. An assessment for the amount of approximately \$18,700 has been received in respect of Pie Face Australia Franchising Pty Ltd. That assessment relates to Pay As You Go tax and Goods and Services Tax. The assessment is presently being reviewed. There is no present liability for superannuation in relation to Pie Face Holdings Pty Limited and Pie Face Australia Franchising Pty Ltd.

I therefore request that you make arrangements to transfer sufficient funds to our Receivers & Managers account by the due date of **21 October 2019** in order discharge the liability as set out in the table above. If it transpires that a submission is made for remission of General Interest Charges, then payment of that proportion of the assessments will be withheld pending determination of the submission by the ATO.

If you wish to discuss the foregoing, then do not hesitate to contact either Liam Bailey or myself.

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

SYDNEY

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Chris Palmer

From: Chris Palmer
Sent: Wednesday, 20 November 2019 2:15 PM
To: Chad Gear
Cc: Carlos Sandino; Jacquelyn Gogin; 'Greg Grunert'; Liam Bailey
Subject: FW: Pie Face Tax Liabilities
Attachments: 20191120161055929.pdf; 20191120161038472.pdf

Hi Chad,

Thank you for your email.

Attached are the signed Nomination to Act Forms.

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

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From: Bayley Plaskett
Sent: Wednesday, 20 November 2019 2:09 PM
To: Chris Palmer <CPalmer@obp.com.au>
Subject:

Kind Regards,

Bayley Plaskett
RECEPTIONIST



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Chris Palmer

From: Chad Gear <c.gear@taylor-david.com>
Sent: Friday, 10 January 2020 10:48 AM
To: Chris Palmer
Cc: Carlos Sandino; Jacquelyn Gogin; Greg Grunert; Liam Bailey
Subject: RE: Pie Face Tax Liabilities

Hi Chris

Thank you, and you too.

Scott Taylor and I had a discussion with Carlos and Jackie late last year.

We are working to provide draft submissions to the ATO (for your instructions) by 17 January 2020.

Yours faithfully,


Chad Gear | Partner
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 616 | Main Telephone +61 7 322 99 800
c.gear@taylor-david.com | www.taylor-david.com

Brisbane | Melbourne | Perth



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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Wednesday, 8 January 2020 10:36 AM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

I trust you had an enjoyable XMAS and New Year.

I have received two statements from the ATO in relation to the tax liabilities, one for \$1,872,125 in relation to ACN 087 384 736, the other for \$50,859 in relation to ACN 121 495 243.

I assume therefore that an agreement has not yet been reached with the ATO.

Can you please advise as to the current status.

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

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From: Chris Palmer
Sent: Wednesday, 20 November 2019 2:15 PM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; 'Greg Grunert' <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

Thank you for your email.

Attached are the signed Nomination to Act Forms.

Kind Regards,

Chris Palmer
PARTNER



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Chris Palmer

From: Chad Gear <c.gear@taylor-david.com>
Sent: Monday, 3 February 2020 9:09 AM
To: Chris Palmer
Cc: Carlos Sandino; Jacquelyn Gogin; Greg Grunert
Subject: RE: Pie Face Tax Liabilities

Hi Chris

My apologies for the delay responding. I expect to have a draft to you for your review by Wednesday.

Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 616 | Main Telephone +61 7 322 99 800
c.gear@taylor-david.com | www.taylor-david.com

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TAYLOR DAVID
LAWYERS



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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Friday, 31 January 2020 8:25 AM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

I refer to my email below in respect of which no response has been received.

Can you please advise when the submissions will be ready.

Kind Regards,

Chris Palmer
PARTNER



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Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
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From: Chris Palmer
Sent: Thursday, 23 January 2020 4:05 PM
To: 'Chad Gear' <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

When do you expect to provide draft submissions to the ATO?

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
Sent: Friday, 10 January 2020 10:49 AM
To: 'Chad Gear' <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: RE: Pie Face Tax Liabilities

Thanks Chad.

Kind Regards,

Chris Palmer
PARTNER



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From: Chad Gear [<mailto:c.gear@taylor-david.com>]
Sent: Friday, 10 January 2020 10:48 AM
To: Chris Palmer <CPalmer@obp.com.au>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
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Scott Taylor and I had a discussion with Carlos and Jackie late last year.

We are working to provide draft submissions to the ATO (for your instructions) by 17 January 2020.

Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers

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Best Lawyers

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From: Chris Palmer <CPalmer@obp.com.au>

Sent: Wednesday, 8 January 2020 10:36 AM

To: Chad Gear <c.gear@taylor-david.com>

Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>

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I assume therefore that an agreement has not yet been reached with the ATO.

Can you please advise as to the current status.

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

SYDNEY

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Telephone +61 2 9232 3322 | Facsimile +61 2 9232 3388

BATHURST

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From: Chris Palmer
Sent: Wednesday, 20 November 2019 2:15 PM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; 'Greg Grunert' <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

Thank you for your email.

Attached are the signed Nomination to Act Forms.

Kind Regards,

Chris Palmer
PARTNER



SYDNEY

Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
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Chris Palmer

From: Greg Grunert <g.grunert@taylor-david.com>
Sent: Friday, 14 February 2020 11:22 AM
To: Chris Palmer; Chad Gear
Cc: Carlos Sandino; Jacquelyn Gogin; Liam Bailey
Subject: RE: Pie Face Tax Liabilities

Hi Chris

I expect to have the draft to you by this afternoon or Monday morning at the latest.

Yours faithfully,

Greg Grunert | Associate
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 623 | Main Telephone +61 7 322 99 800 | Facsimile +61 7 322 99 833
g.grunert@taylor-david.com | www.taylor-david.com

Brisbane | Melbourne | Perth

TAYLOR DAVID
LAWYERS



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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Friday, 14 February 2020 10:18 AM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

Any update as to when you expect to complete the draft submission?

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

SYDNEY

Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
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From: Chris Palmer
Sent: Friday, 7 February 2020 6:53 AM
To: 'Chad Gear' <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: RE: Pie Face Tax Liabilities

Hi Chad,

Thanks for the update.

Kind Regards,

Chris Palmer
PARTNER



SYDNEY
Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
Telephone +61 2 9232 3322 | Facsimile +61 2 9232 3388

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From: Chad Gear [mailto:c.gear@taylor-david.com]
Sent: Friday, 7 February 2020 12:37 AM
To: Chris Palmer <CPalmer@obp.com.au>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>
Subject: RE: Pie Face Tax Liabilities

Hi Chris

My apologies for the delay, but we are still working on the submissions to the ATO. I am hoping to have them to you tomorrow or Monday for instructions.

Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers


Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 616 | Main Telephone +61 7 322 99 800
c.gear@taylor-david.com | www.taylor-david.com

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From: Chris Palmer <CPalmer@obp.com.au>

Sent: Monday, 3 February 2020 11:56 AM

To: Chad Gear <c.gear@taylor-david.com>

Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>

Subject: RE: Pie Face Tax Liabilities

Thanks Chad.

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

SYDNEY

Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
Telephone +61 2 9232 3322 | Facsimile +61 2 9232 3388

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From: Chad Gear [<mailto:c.gear@taylor-david.com>]
Sent: Monday, 3 February 2020 9:09 AM
To: Chris Palmer <CPalmer@obp.com.au>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>
Subject: RE: Pie Face Tax Liabilities

Hi Chris

My apologies for the delay responding. I expect to have a draft to you for your review by Wednesday.

Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 616 | Main Telephone +61 7 322 99 800
c.gear@taylor-david.com | www.taylor-david.com

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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Friday, 31 January 2020 8:25 AM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

I refer to my email below in respect of which no response has been received.

Can you please advise when the submissions will be ready.

Kind Regards,

Chris Palmer
PARTNER



SYDNEY

Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
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From: Chris Palmer
Sent: Thursday, 23 January 2020 4:05 PM
To: 'Chad Gear' <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

When do you expect to provide draft submissions to the ATO?

Kind Regards,

Chris Palmer
PARTNER



SYDNEY

Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
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From: Chris Palmer
Sent: Friday, 10 January 2020 10:49 AM
To: 'Chad Gear' <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>
Subject: RE: Pie Face Tax Liabilities

Thanks Chad.

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

SYDNEY

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From: Chad Gear [mailto:c.gear@taylor-david.com]
Sent: Friday, 10 January 2020 10:48 AM
To: Chris Palmer <CPalmer@obp.com.au>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>
Subject: RE: Pie Face Tax Liabilities

Hi Chris

Thank you, and you too.

Scott Taylor and I had a discussion with Carlos and Jackie late last year.

We are working to provide draft submissions to the ATO (for your instructions) by 17 January 2020.

Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers


Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 616 | Main Telephone +61 7 322 99 800
c.gear@taylor-david.com | www.taylor-david.com

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From: Chris Palmer <CPalmer@obp.com.au>

Sent: Wednesday, 8 January 2020 10:36 AM

To: Chad Gear <c.gear@taylor-david.com>

Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>

Subject: FW: Pie Face Tax Liabilities

Hi Chad,

I trust you had an enjoyable XMAS and New Year.

I have received two statements from the ATO in relation to the tax liabilities, one for \$1,872,125 in relation to ACN 087 384 736, the other for \$50,859 in relation to ACN 121 495 243.

I assume therefore that an agreement has not yet been reached with the ATO.

Can you please advise as to the current status.

Kind Regards,

Chris Palmer
PARTNER

 **O'BRIEN
PALMER**
INSOLVENCY & BUSINESS ADVISORY

SYDNEY

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From: Chris Palmer
Sent: Wednesday, 20 November 2019 2:15 PM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; 'Greg Grunert' <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

Thank you for your email.

Attached are the signed Nomination to Act Forms.

Kind Regards,

Chris Palmer
PARTNER

 **O'BRIEN
PALMER**
INSOLVENCY & BUSINESS ADVISORY

SYDNEY

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Chris Palmer

From: Chad Gear <c.gear@taylor-david.com>
Sent: Tuesday, 24 March 2020 12:53 PM
To: Chris Palmer
Cc: Liam Bailey; Greg Grunert
Subject: Pie Face Pty Ltd (Receiver & Manager Appointed) - Matter: 81577
Attachments: Ltr to DCT (Submission on Tax)-F34926.docx

Dear Chris

I hope you are well?

Please find **attached** a draft letter for you review. Would you please let us know whether it is in order to circulate to you and TCA for instructions in relation to those parts highlighted in yellow.

Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 616 | Main Telephone +61 7 322 99 800
c.gear@taylor-david.com | www.taylor-david.com

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10 May 2022

Deputy Commissioner of Taxation
PO Box 9102
Albury NSW 2640

Contact:	Greg Grunert
Direct line:	07 3227 1623
E-mail:	g.grunert@taylor-david.com
Partner Responsible:	Chad Gear
Our ref:	CG:GG:81657
Your ref:	19:4319

Australian Taxation Office
PO Box 3373
Penrith NSW 2740

Without prejudice

Dear Deputy Commissioner

A.C.N. 087 384 736 Pty Ltd (formerly known as Pie Face Pty Ltd)
A.C.N. 121 495 243 Pty Ltd (formerly known as Pie Face Franchising Pty Ltd)

We act for:

- (a) ACN 087 384 736 Pty Ltd (formerly known as Pie Face Pty Ltd) (In Liquidation) (Receivers and Managers Appointed) ABN 18 087 384 736 (**Pie Face**);
 - (b) ACN 121 495 243 Pty Ltd (formerly known as Pie Face Franchising Pty Ltd) (In Liquidation) (Receivers and Managers Appointed) ABN 80 121 495 243 (**Pie Face Franchising**);
 - (c) ACN 604 927 835 Pty Ltd (formerly Pie Face Australia Franchising Pty Ltd) (In Liquidation) (Receivers and Managers Appointed) ABN 38 604 927 835 (**Pie Face Australia Franchising**);
- (together, the **Pie Face Group**),
- (d) Messrs Liam Bailey (**Bailey**) and Christopher Palmer (**Palmer**) (together, the **Receivers**) as joint and several receivers and managers of Pie Face and Pie Face Franchising.

We are instructed as follows.

1. Notice of appointment

- 1.1. Please find **enclosed** the following signed nominations for Taylor David Lawyers to act on behalf for the above companies in relation to these matters.

2. Background

The following is provided by way of general background:

- 2.1. The Pie Face Group of companies operated a complex structure of food service and franchise businesses including:
 - (a) Pie Face (which was franchised to approximately 40 franchise stores by the franchising entities);
 - (b) A central kitchen facility at Camellia, NSW (the CKF). The CKF made the products sold throughout the franchise network of the Pie Face Group; and
 - (c) A licence agreement with a Japanese company which traded as "Pie Face" in Japan.
- 2.2. The Receivers were appointed by TCA Global Credit Fund (TCA) as set out below pursuant to a cross-collateralised security agreement held by TCA.

Pie Face

- 2.3. On 31 October 2016, Palmer was appointed as receiver and manager of Pie Face;
- 2.4. On 28 November 2016, Bailey was appointed as joint and several receiver and manager of Pie Face; and
- 2.5. On 18 November 2016, Sule Arnautovic was appointed as liquidator of Pie Face under Division 1 of Part 5.5 of the *Corporations Act 2001* (Cth) (Act).

Pie Face Franchising

- 2.6. On 6 December 2016, Bailey and Palmer were appointed as joint and several receivers and managers of Pie Face Franchising; and
- 2.7. On 17 February 2017, Neil Robert Cussen was appointed as liquidator of Pie Face Franchising under Division 1 of Part 5.4 of the Act following winding up proceedings commenced by you in Federal Court of Australia New South Wales proceeding no. NSD70 of 2017.

Pie Face Australia Franchising

- 2.8. On 9 December 2016, Bailey and Palmer were appointed as joint and several receivers and managers of Pie Face Australia Franchising.

ATO Liabilities

- 2.9. Our clients currently have the following outstanding liabilities owed to ATO in the sum of [XX]:
 - (a) Pie Face: \$1,880,325.60, comprised of:
 - (i) [Liam / Chris – are you able to provide us with a breakdown of how this amount is calculated? It would be quite useful if that breakdown could provide (for the period since your appointment as Receivers and Managers), to the extent that these classifications are relevant:
 - A. GST amounts?

- B. SGC amounts?
 - C. General Interest Charge amounts?
 - D. Other (company tax) amounts?]
- (b) Pie Face Franchising: \$50,859.54, comprised of:
- (i) [Liam / Chris – as above].
- (c) Pie Face Franchising Australia: \$19,042.77, comprised of:
- (i) [Liam / Chris – as above].

3. Matters attended to since appointment

- 3.1. Since their appointments, the Receivers have, at the direction of TCA, attended to, amongst others, the following tasks:
- (a) Dealing with the assets of the Pie Face Group companies collectively;
 - (b) Closing all stores owned and operated by Pie Face;
 - (c) Ensuring that the franchise network was maintained to the maximum extent possible;
 - (d) Facilitating the sale of various Pie Face Group assets;
 - (e) Dealing with numerous disputes concerning Pie Face Group's intellectual property; and
 - (f) Dealing with numerous disputes concerning the Pie Face Group's leases.
- 3.2. In or around April 2017, Pie Face entered into an agreement with United Petroleum Limited (**United**) for the sale of certain assets of the Pie Face Group. That agreement included a term that Pie Face, specifically CKF, guarantee supply of products to United for 12 months.
- 3.3. At the conclusion of the 12-month period, on or about 30 April 2018, at the direction of TCA, the Receivers looked to alternative means to continue to supply United. The Receivers eventually entered into a heads of agreement (**HOA**) with Munch Food Co Pty Ltd (**Munch**), pursuant to which:
- (a) Munch would acquire assets and stock owned by Pie Face at a significant discount;
 - (b) If United entered into a guaranteed supply agreement with Munch, Munch would remit to Pie Face a commission of 7 cents per pie for 24 months.
 - (c) The business and assets of CKF would be licenced to Munch. The relevant lease, premises and employees all to remain with the Receivers until a formal sale of CKF was concluded.
- 3.4. Initially, Munch paid the licence fee on a regular basis such that the Receivers had funds in the administration to meet the various ATO obligations however the payments increasingly became sporadic.
- 3.5. On instruction from TCA and in order to maintain the status quo, the Receivers continued to pay the costs of the CKF pending settlement of the HOA or a revised deal. At the direction of

TCA, the Receivers did not enforce the debts owed by Munch such that any available funds were eventually exhausted.

- 3.6. As a result of the ongoing dispute with Munch and other third parties, the Receivers are presently not in funds and not in a position to remit payment of [TBA] without first making demand of TCA pursuant to the relevant indemnity. TCA has however indicated to the Receivers that it is unwilling to indemnify the Receivers for the entirety of the ATO Debt as it disputes that the ATO is entitled to such amounts.
- 3.7. The Receivers therefore hold concerns that they will face difficulty receiving payment in full such that they will be personally liable for the balance of the ATO Debt. These concerns are further exacerbated in circumstances where TCA is a company registered in the British Virgin Islands.

4. Proposal

- 4.1. As a result, the Receivers have recently reached an in-principle agreement with TCA under which TCA will indemnify the Receivers in the amount of [TBA] only. Accordingly, on a commercial basis only, the Receivers offer to resolve the ATO Debt in full and final satisfaction, on the following basis:
 - (a) The Receivers pay to the ATO the sum of [TBA] (**Settlement Sum**);
 - (b) Upon receipt of the Settlement Sum, the ATO forever releases the Receivers from the ATO Debt.
 - (c) Each party otherwise bears their own costs.
- 4.1. The above offer is open for acceptance until **5:00pm (AEST) on TBA March 2020**, failing which it will lapse and become incapable of acceptance.
- 4.2. Communication of acceptance of the above offer must be made in writing and communicated to our office.
- 4.3. In the event the ATO intends to commence recovery proceedings, we are instructed they would seek to join TCA to any such proceedings.
- 4.4. In our view, the above proposal is in the interests of all stakeholders when the costs of prolonged and potentially multi-jurisdictional court proceedings are taken into account.
- 4.5. Please do not hesitate to call (07) 3227 1623 to discuss the above matters further.

Yours faithfully

Chad Gear
Partner
Taylor David Lawyers

Chris Palmer

From: Liam Bailey
Sent: Tuesday, 24 March 2020 1:51 PM
To: Chad Gear; Chris Palmer
Cc: Greg Grunert; Justin Dragicevic
Subject: RE: Pie Face Pty Ltd (Receiver & Manager Appointed) - Matter: 81577

Dear Chad

I refer to your proposed correspondence to be issued to the ATO which was sent to Chris Palmer and I for review.

Respectfully, the letter is, to our mind, flawed and cannot be sent. Our reasons for forming this view are:

1. We the Receivers have not reached any such in-principle agreement with TCA under which we have agreed to any limits on our indemnity as stated in paragraph 3.6
2. Furthermore, paragraph 3.6 implies that we the Receivers agree with TCA's position that the ATO is not entitled to the entirety of the liability as we have calculated it. This is again not the case, nor have you provided any rationale for TCA in forming this view.
3. Paragraph 4.1 implies that the Receivers agree that the settlement sum will be the limit of TCA's exposure under the indemnity. This is also not agreed. By way of interest, can you advise what settlement sum you would be proposing to put to the ATO and what payment terms are being considered?
4. The letter shifts the burden of responsibility for the liabilities in the appointment to us as the Receivers. Whilst we may be technically liable, we have acted strictly in accordance with TCA's instructions and remain fully indemnified for any liabilities accruing as a result of the appointment.
5. Taylor David should disclose that they also act on behalf of TCA.

In summary, the proposed correspondence to the ATO is not acceptable in order to deal with the liability to the ATO or to prescribe limits on TCA's indemnity that it provided us on appointment. Would you please reconsider the approach taken in the letter. We remain available to discuss this with you.

We will send by way of separate email the information you require to complete paragraph 2.9.

Kind Regards,

Liam Bailey
PARTNER



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From: Chad Gear <c.gear@taylor-david.com>
Sent: Tuesday, 24 March 2020 12:53 PM
To: Chris Palmer <CPalmer@obp.com.au>
Cc: Liam Bailey <LBAiley@obp.com.au>; Greg Grunert <g.grunert@taylor-david.com>
Subject: Pie Face Pty Ltd (Receiver & Manager Appointed) - Matter: 81577

Dear Chris

I hope you are well?

Please find **attached** a draft letter for you review. Would you please let us know whether it is in order to circulate to you and TCA for instructions in relation to those parts highlighted in yellow.

Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers

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Direct Line +61 7 322 71 616 | Main Telephone +61 7 322 99 800
c.gear@taylor-david.com | www.taylor-david.com

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LAWYERS



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Remittances to legal firms are being targeted by cyber-criminals. If you intend to remit monies by Electronic Funds Transfer or otherwise deposit money to our account, we invite you to call our office on +61 7 3229 9800 to confirm bank details verbally prior to remitting any funds. Bank account details we provide to you will not change. We will never send an email, SMS or telephone you to advise you of a change of bank account (unless requested by you to do same). We will never ask you to call an alternative telephone number, other than our main office number to verify bank account details. Should you receive any email, SMS, telephone call or other communication requesting a change of bank account for EFT remittance, please disregard it and contact us immediately at +61 7 3229 9800.

Chris Palmer

From: Chris Palmer
Sent: Tuesday, 9 June 2020 8:48 AM
To: Greg Grunert
Cc: Chad Gear; Carlos Sandino; Jacquelyn Gogin; Liam Bailey
Subject: FW: Pie Face Pty Ltd; A.C.N. and Outstanding Tax Liabilities.

Dear Greg,

Thank you for your email below. Whilst it is not our preferred option, we have no difficulty with the approach being adopted. However, it is incumbent upon us to point out the following:

1. In our opinion, it is extremely unlikely the ATO will not pursue the debts although given the current climate, it is impossible to predict when that might occur;
2. In the meantime, interest will continue to accumulate which admittedly, will be a component of the debts likely to be remitted.
3. The current exchange rate may not remain as favourable in the future.
4. Costs continue to be incurred.

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

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From: Greg Grunert [mailto:g.grunert@taylor-david.com]
Sent: Monday, 8 June 2020 9:57 AM
To: Chris Palmer ; Chad Gear
Cc: Liam Bailey
Subject: Pie Face Pty Ltd; A.C.N. 087 384 736; and Munch Food Co Pty Ltd - Matter: 81577

Dear Chris

We have since had an opportunity to discuss the draft submissions with TCA.

TCA has indicated that in light of the current economic climate, it is minded to wait and see if the ATO intends to pursue the outstanding amounts before considering any settlement amount. Given that approach, you may wish to seek separate advice.

Please call if you wish to discuss. We will otherwise await further news as to contact from the ATO, so that we can obtain instructions from TCA to resolve the matter moving forward.

Yours faithfully,


Greg Grunert | Associate
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 623 | Main Telephone +61 7 322 99 800 | Facsimile +61 7 322 99 833
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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Wednesday, 27 May 2020 12:39 PM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face -- ATO Tax liabilities

Hi Chad.

On or about 9 October 2019, I sent an email to TCA seeking a transfer of monies to meet assessments issued by the ATO.

I do not consider that there is a need at this stage to prepare a chronology of all subsequent communications relevant to the matter of the outstanding liabilities. Suffice to say that nigh on 8 months have now passed and a submission is yet to be lodged. In saying that, I appreciate that from time to time you may have difficulty in obtaining instructions from TCA and of course more recently, we have all had to endure the disruption caused by the pandemic.

You provided a draft submission on 24 March 2020. Our concerns with the draft were articulated in an email from Liam sent the same day. We are yet to see a second version.

As you can appreciate, we would like to see this matter brought to a head.

I understood from Greg that you were hoping to make contact with TCA towards the end of last month.

Please advise as to the status of the submission.

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
Sent: Thursday, 7 May 2020 2:11 PM
To: 'Greg Grunert' <g.grunert@taylor-david.com>
Cc: Chad Gear <c.gear@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>
Subject: Pie Face -- ATO Tax liabilities

Hi Greg,

I refer to our telephone conversation on 21 April 2020 and ask whether you have now been able to obtain instructions from TCA in relation to the submissions.

You early advice would be appreciated.

Kind Regards,

Chris Palmer
PARTNER



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ANNEXURE “3”



Deed of Appointment and Indemnity

Date: 31st October 2016

TCA Global Credit Master Fund, LP

Christopher John Palmer

Liam Thomas Bailey

ERA Legal

Level 15, 45 Clarence Street
SYDNEY NSW 2000

Level 4, 459 Little Collins
Street
MELBOURNE VIC 3000

Telephone 1300 138 458
Facsimile 1300 305 458
Reference 160006

www.eralegal.com.au



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Deed of Appointment and Indemnity

Parties

1. **TCA Global Credit Master Fund, LP** an investment fund registered in the Cayman Islands as represented by its general partner, TCA Global Credit Fund, GP, Ltd, a corporation organised and existing under the laws of the Cayman Islands, with its principal place of business at 69 D. Roy's Drive, George Town Grand Cayman KY1-1102, Cayman Islands (**the Appointor**)
2. **Christopher John Palmer** of c/- O'Brien Palmer Insolvency & Business Advisory, Level 14, 9 Hunter Street, Sydney NSW 2000 (**the Receiver**)
3. **Liam Thomas Bailey** of c/- O'Brien Palmer Insolvency & Business Advisory, Level 14, 9 Hunter Street, Sydney NSW 2000 (**the Additional Receiver**)

Recitals

- A. On the Grant Date, the Company granted the Security to Macquarie.
- B. On the Assignment Date and by agreement with the Company, Macquarie assigned the Security and all of its right, title and interest in the Security to the Appointor.
- C. The Company is in default of its obligations pursuant to the Security by reason, inter alia, of having committed the Specific Defaults.
- D. Pursuant to the Empowering Provisions, the Appointor is entitled to appoint a receiver or receiver and manager of all of part of the property of the Company subject to the Security.
- E. The Receiver is a registered liquidator, and is not otherwise prevented from accepting appointment as receiver or receiver and manager of property of the Company pursuant to section 418 of the Corporations Act.
- F. The Additional Receiver has sought registration as a liquidator and, subject to his registration being confirmed, is not otherwise prevented from accepting appointment as receiver or receiver and manager of property of the Company pursuant to section 418 of the Corporations Act.
- G. The Appointor wishes to appoint the Receiver and, upon meeting the Condition Precedent, the Additional Receiver, as the receiver and manager of the Affected Property, and the Receiver and Additional Receiver have agreed to accept those appointments, on the terms and conditions of this deed.



Operative Agreement

1. Definitions

- 1.1 The terms defined in Schedule A to this document shall be construed according to the definitions in that Schedule.
- 1.2 This clause does not derogate from other methods used to define terms in this agreement including, without limitation, definitions included in parentheses within the body of the agreement.
-

2. Interpretation

- 2.1 In this deed, unless the contrary intention appears:
- (a) Words importing the singular number include the plural and vice versa. Any gender includes the other genders. Any reference to a person includes a reference to a body corporate, firm, authority, government or governmental agency.
 - (b) A reference to legislation or to a legislative provision includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments, modifications or re-enactments of that legislation or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision.
 - (c) Any clause headings in, and index to, this deed are for reference purposes only and do not in any way influence or affect the meaning of this deed.
 - (d) A reference to any deed, agreement, licence, document or other instrument (including this deed) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time.
 - (e) A reference to any party to this deed or to any other deed, agreement, licence, document or other instrument required under this deed or for the purposes of this agreement includes that party's executors, administrators, substitutes, successors and permitted assigns.
 - (f) Where under or pursuant to this deed or anything done under this deed, the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing must be done on or by the next Business Day.
 - (g) Where under or pursuant to this deed or anything done under this deed, the day on or by which any act, matter or thing is to be done is the 29th, 30th or 31st day of any month in which such a day does not occur, such act, matter or thing must be done on the last day of that month.
 - (h) References to clauses are references to clauses of this deed.
-



- (i) A reference to winding up or bankruptcy includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in the Corporations Act) and being placed under official management, and to the circumstances and events giving rise to or contributing to such condition or matters.
- (j) All currency references are to Australian dollars.
- (k) All references to time is to Sydney, Australia time.
- (l) The contra proferentem rule will not apply. The identity of the party responsible for drafting this deed shall not affect the construction or interpretation of this deed.

3. Recitals

- 3.1 The Recitals to this deed are true and correct and are binding on the parties.

4. Appointment

- 4.1 Pursuant to the Security the Appointor hereby appoints, and the Receiver hereby accepts the appointment of, the Receiver as the receiver and manager of the Affected Property, effective as and from the Effective Date.
- 4.2 Subject to the Condition Precedent being met, the Appointor hereby appoints, and the Additional Receiver accepts the appointment of, the Additional Receiver as receiver and manager of the Affected Property, effective as and from the date upon which the Condition Precedent is met.
- 4.3 Upon the appointment of the Additional Receiver as receiver and manager of the Company pursuant to clause 4.2 above, the Receiver and the Additional Receiver will act jointly and severally as the receivers of the Affected Property.
- 4.4 The Appointor warrants that the Security is valid and enforceable and that the Appointor has the power thereunder to appoint the Receiver and, subject to the Condition Precedent being met, the Additional Receiver in accordance with this deed.

5. Property to be received

- 5.1 If the Affected Property does not comprise all of the assets and undertaking of the Company then, for the avoidance of doubt, the Receiver and / or the Additional Receiver are appointed in respect of the Affected Property only, and not the rest of the assets and undertaking of the Company.

6. Authority of Appointor's delegates

- 6.1 If the Appointor is a body corporate then the Receiver and the Additional Receiver are entitled to rely on any direction or authorisation purportedly given on the Appointor's behalf by any Authorised Officer of the Appointor.



7. Agency

- 7.1 To the extent allowed by the Security and by law the Receiver and / or the Additional Receiver are the agents of the Company and the Company alone is responsible for the Receiver's and Additional Receiver's acts and defaults.

8. Remuneration

- 8.1 The Receiver and the Additional Receiver will charge their standard hourly rates and those of their staff for all work done in connection with their appointments hereunder. The Receiver and the Additional Receiver will only deploy such resources as are necessary in order to discharge their obligations pursuant to the appointment made hereunder and will not engage any resources in excess of those reasonably required to enable them to discharge such obligations.
- 8.2 The Receiver and the Additional Receiver will render to the Company and the Appointor from time to time their tax invoices for their remuneration and out-of-pocket expenses incurred from time to time. Subject to clause 8.4, the Company will pay any such tax invoices in full within fourteen days of their receipt and, if it fails to do so, then the Appointor will pay any unpaid balance on demand.
- 8.3 Any provision in any Security or in any legislation which provides for the payment of the fees and remuneration of the Receiver and the Additional Receiver as a percentage of the assets realised or on any other basis is hereby expressly negated to the extent permitted by law.
- 8.4 Should a dispute arise as to the reasonableness of any invoice rendered by the Receiver and / or the Additional Receiver then the dispute is to be referred to the President for the time being of the Australian Restructuring Insolvency and Turnaround Association (**ARITA**) who shall appoint a senior member of the ARITA to assess the reasonableness of the Receiver and the Additional Receiver's invoice. The parties will accept any determination made by the delegate of the ARITA.

9. Indemnity

- 9.1 The Appointor hereby indemnifies the Receiver and the Additional Receiver for and against:
- (a) any loss suffered by them in consequence of the Appointor's breach of the warranty in clause 4.4; and
 - (b) any monetary award made against them, including an award of legal costs, in court proceedings in which they are involved as an incidence of their appointment;
 - (c) the payment of their remuneration;
 - (d) any debts or liabilities incurred in continuing to trade the business of the Company including, but not limited to, any amounts payable for wages, superannuation, rent, the purchase of goods or services and commonwealth and state taxes; and



- (e) any other costs, expenses or charges that they incur as an incidence of their appointment.
- 9.2 In the performance and exercise of their functions and powers, the Receiver and the Additional Receiver must each:
 - (a) act honestly; and
 - (b) exercise the degree of care and diligence that a reasonable person in the position of the Receiver and / or the Additional Receiver would exercise in the circumstances.
- 9.3 The Receiver and the Additional Receiver will not be entitled to the indemnity set out in clause 9.1 in respect of any liability arising out of any fraudulent, dishonest or grossly negligent act or omission by the Receiver and / or the Additional Receiver.
- 9.4 This clause shall survive and remain effective after the termination of this deed or the retirement of either or both of the Receiver and Additional Receiver.

10. Retirement

- 10.1 The Appointor may retire the Receiver or the Additional Receiver from their appointment at any time by providing written notice to the Receiver or the Additional Receiver or both of them, of the Appointor's intention to retire them from their appointment (a **Notice of Retirement**).
- 10.2 The Receiver and the Additional Receiver will as soon as reasonably practicable after receiving a Notice of Retirement from the Appointor, do all acts and things necessary to retire from his / their appointment as receiver and manager of the Affected Property and shall, upon payment to them of all amounts owing to them for remuneration, out of pocket expenses and disbursements, relinquish any lien that they have over the Affected Property.
- 10.3 The Receiver and Additional Receiver may retire from their appointment in the event that:
 - (a) Any party to this deed is subject to a winding up or becomes bankrupt; or
 - (b) The Appointor fails to pay any amounts due pursuant to clause 8.2 within 28 days of a demand being made; or
 - (c) The Appointor has engaged in, or engages in, fraudulent or dishonest conduct in relation to any matter arising in connection with the Security or the appointment of the Receiver and Additional Receiver.



11. GST

- 11.1 All payments are exclusive of GST.
- 11.2 A Recipient must pay to the Supplier any GST payable on a Taxable Supply. The Recipient must pay the GST when the payment becomes payable or when the Supplier issues a Tax Invoice, whichever is later.
- 11.3 If a party (**the Claimant**) acquires a Taxable Supply for which it is entitled to reimbursement by the other party, the reimbursement amount is reduced by the Input Tax Credit to which the Claimant is entitled.
- 11.4 The Supplier must issue an adjustment notice immediately it becomes aware of an adjustment event in respect of a Taxable Supply. Within 14 days after the Supplier issues an adjustment notice:
- (a) the Recipient must pay the Supplier any increase in the GST Amount;
 - (b) the Supplier must pay the Recipient any decrease in the GST Amount.
- 11.5 If:
- (a) one party (**the Payer**) must pay a GST Amount;
 - (b) a penalty, interest or additional tax (**the Extra Liability**) is imposed in respect of the GST Amount because of default of another party (**the Defaulter**); and
 - (c) the Payer provides to the Defaulter proof of the Extra Liability;
- the Defaulter must pay the amount of the Extra Liability to the Payer within fourteen days after the Payer provides that proof to the Defaulter.

12. Statutes not abrogate deed

- 12.1 Unless its application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this deed so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to any party under this deed.

13. Severability and survival of covenants

- 13.1 If any provision of this deed is, or at any time becomes, prohibited by, or unlawful under, any applicable law, regulation or other condition actually applied or otherwise becomes void or unenforceable, it will be severed from this deed and rendered ineffective so far as is possible without modifying the remaining provisions of this deed.
- 13.2 The remaining provisions will, to the extent permitted by the relevant law, regulation or other condition, continue in full force and effect.



14. Further assurances

- 14.1 Each party must take all necessary steps, execute all documents and do all other acts and things as may be reasonably requested in writing by another party to give effect to the provisions of this deed.

15. Acknowledgement

- 15.1 Each of the parties acknowledge and agree that they have not entered into this document in reliance upon or as a result of any statement or any conduct of any kind or on behalf of any other party but have entered into this document fully and voluntarily upon their own information and investigation and have taken independent legal advice as to the nature, effect and extent of this document and has independently satisfied themselves in respect of all matters in connection with this deed.

16. Whole agreement

- 16.1 This deed records the entire agreement between the parties and supersedes all previous negotiations and undertakings in relation to its subject matter.

17. Delivery

- 17.1 Delivery of this deed shall be deemed to have been given on the date that the deed is executed by the Receiver and the Additional Receiver.

18. Variation and waiver

- 18.1 No modification, amendment or variation of this deed shall be binding unless it is in writing and duly executed by or on behalf of each party. No waiver of a right to enforce a provision of this deed shall be effective unless made in accordance with this clause.
- 18.2 Neither the failure of any party to enforce any of the provisions of this deed at any time, nor the granting of any time or indulgence, will be construed as a waiver of the right of that party to enforce that or any other provision of this deed.

19. Counterparts

- 19.1 This deed may be executed in any number of counterparts all of which, when taken together, will constitute one and the same instrument.
- 19.2 Satisfactory evidence of execution of this deed shall include evidence by facsimile or email of execution by the relevant party and in such case the executing party undertakes to produce the original as soon as reasonably practicable thereafter.



20. Notices

20.1 Agreed manners in which notices may be given

- (a) Any notice or other communication of any nature which is given in connection with this deed:
- (b) must be in writing;
- (c) is sufficient if given by any attorney, director, secretary, officer or other duly authorised person, or solicitor, of a party;
- (d) will, subject only to clause 20.3, be deemed to have been duly given, if it is:
 - (i) delivered or served by hand at the address of that party shown in this deed (or as most recently notified in writing) (**the Address**); or
 - (ii) delivered or served by courier to the Address; or
 - (iii) posted by pre-paid post to the Address; or
 - (iv) sent by facsimile to the facsimile number of that party shown in this deed (or as most recently notified in writing); or
 - (v) sent by email to the email address of that party shown in this deed (or as most recently notified in writing, in which regard an email address shall be deemed to be notified in writing if it is used by a party to send an email to another party or a representative of another party).

20.2 Hyperlinked documents

- (a) If an email sent under this clause contains a link to a document or documents available for download at the time the email is sent and for a reasonable time thereafter, or a link to a web page via which such documents can be downloaded, the documents will be deemed to have been delivered as if the documents had been attached to the email.

20.3 Timing for deemed delivery of notices

- (a) Notices given in accordance with clause 20.3 will be deemed to be given:
- (b) *in the case of delivery by hand or courier*: upon delivery to the Address (and, if the Address is not accessible, upon the notice being affixed by adhesive tape or other means to an entry to the Address);
- (c) *in the case of prepaid post*: on the third Business Day after the date of posting;
- (d) *in the case of delivery by email*: within one hour of the time of sending, unless within 48 hours the sender's computer receives an automatically generated message



indicating that the message was not successfully transmitted, in which case the notice shall not be considered to have been given by email;

- (e) *in the case of delivery by facsimile*: on receipt by the sender of a transmission report confirming successful transmission of the facsimile,
- (f) provided always that if delivery occurs:
- (g) later than 5.00pm at the place of delivery on a Business Day, then the notice is deemed to have been given and served at 9.00am on the next Business Day.
- (n) on a day which is not a Business Day at the place of delivery, then the notice shall be deemed to have been given and served at 9.00am on the first Business Day after delivery.

21. Governing Law and Submission to Jurisdiction

- 21.1 This deed will be governed by the laws of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.

Signature Liam Thomas Bailey

Print name Liam Thomas Bailey



Schedule A – Defined Terms

Additional Receiver	The person referred to at Item 3 of the Reference Schedule.
Affected Property	That property referred to at Item 10 of the Reference Schedule.
Appointor	The person referred to at Item 1 of the Reference Schedule (or, if more than one person is referred to, those persons jointly and each of them severally).
Authorised Officer	<p>An Authorised Officer of a body corporate includes:</p> <ol style="list-style-type: none">1. a director, secretary or manager (of any class) of that body corporate, or a person acting in any of those offices; and2. a person appointed in writing by that body corporate to exercise a right of that person pursuant to this agreement.
Business Day	Any day except a Saturday or a Sunday or other public holiday.
Company	The company referred to at Item 4 of the Reference Schedule.
Condition Precedent	The registration by the Australian Securities Investments Commission of the Additional Receiver as a liquidator.
Corporations Act	<i>Corporations Act 2001</i> (Cth).
Effective Date	The date noted at Item 9 of the Reference Schedule or, if no date is specified, the date and time of execution of this deed.
Empowering Provisions	Those provisions referred to at Item 8 of the Reference Schedule.
Execution Date	The date that this agreement is executed by all parties which shall be presumed, absent evidence to the contrary, to be the date noted on the front page of this agreement.
Grant Date	The date noted at Item 6 of the Reference Schedule.
GST	A tax, duty, levy, charge or deduction, imposed by GST Law and any related interest, penalties, fines or other charges.
GST Law	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth.) or any other act imposing a good and services tax in Australia.
Macquarie	Macquarie Capital Group Limited (ABN 54 096 705 109).
Receiver	The person referred to at Item 2 of the Reference Schedule.



Recipient	A person who receives a Taxable Supply under this agreement.
Reference Schedule	Schedule B hereto.
Security	The instrument described at Item 5 of the Reference Schedule.
Specific Defaults	Those matters described at Item 7 of the Reference Schedule.
Supplier	A person who supplies a Taxable Supply under this agreement.
Taxable Supply	A taxable supply (within the meaning of GST Law) made under this agreement.



Schedule B – Reference Schedule

1. **Appointor**
The secured creditor who is appointing the Receiver
TCA Global Credit Master Fund, LP an investment fund registered in the Cayman Islands as represented by its general partner, TCA Global Credit Fund, GP, Ltd, a corporation organised and existing under the laws of the Cayman Islands, with its principal place of business at 69 D. Roy's Drive, George Town Grand Cayman KY1-1102, Cayman Islands
2. **Receiver**
The identity of the person who is appointed as receiver or receiver and manager of the Affected Property
Christopher John Palmer c/- O'Brien Palmer Insolvency & Business Advisory, Level 14, 9 Hunter Street, Sydney NSW 2000
3. **Additional Receiver**
The identity of the person to be appointed as receiver and manager of the Affected Property upon the Condition Precedent being met
Liam Thomas Bailey of c/- O'Brien Palmer Insolvency & Business Advisory, Level 14, 9 Hunter Street, Sydney NSW 2000
4. **Company**
The company to which the Receiver is being appointed
Pie Face Pty Limited (ACN 087 384 736)
5. **Security**
The security originally relied upon in appointing the Receiver
Specific Security Deed between Macquarie and the Company dated 21 March 2014

General Security Deed between Macquarie and the Company dated 21 March 2014

Deed of Assignment between the Appointor and Macquarie dated 11 December 2014

PPSR Registration No. 201403210076624

PPSR Registration No. 201403210077221
6. **Grant Date**
The date upon which the Security was granted
21 March 2014
7. **Specific Defaults**
The specific events of default relied upon by the Appointor in appointing the Receiver
The events referred to in clauses 15.1(a), 15(s) and 15.1(c) of Senior Secured Bridge Loan Facility Agreement between Macquarie and the Company dated 21 March 2014, each being an Event of Default pursuant to the Specific Security Deed between Macquarie and the Company dated 21 March 2014 and the General Security Deed between Macquarie and the Company dated 21 March 2014



8. Empowering Provisions

The clauses of the Security and/or the Appointment Document which give the Appointor the power to appoint the Receiver

Clause 7.1 Specific Security Deed between Macquarie and the Company dated 21 March 2014

Clause 7.1 General Security Deed between Macquarie and the Company dated 21 March 2014

9. Effective Date

The date and time from which the Receiver's appointment is to be effected (leave blank for immediate effect)

31 October 2016

10. Affected Property

The property to which the Receiver is appointed

All property affected by the Security.

ANNEXURE “4”



Deed of Appointment and Indemnity

Date: 6th DECEMBER 2016

TCA Global Credit Master Fund, LP

Christopher John Palmer

Liam Thomas Bailey

ERA Legal

Level 15, 45 Clarence Street
SYDNEY NSW 2000

Level 4, 459 Little Collins
Street
MELBOURNE VIC 3000

Telephone 1300 138 458
Facsimile 1300 305 458
Reference 160006

www.eralegal.com.au



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Deed of Appointment and Indemnity

Parties

1. **TCA Global Credit Master Fund, LP** an investment fund registered in the Cayman Islands as represented by its general partner, TCA Global Credit Fund, GP, Ltd, a corporation organised and existing under the laws of the Cayman Islands, with its principal place of business at 69 D. Roy's Drive, George Town Grand Cayman KY1-1102, Cayman Islands (**the Appointor**)
2. **Christopher John Palmer** of c/- O'Brien Palmer Insolvency & Business Advisory, Level 14, 9 Hunter Street, Sydney NSW 2000 (**the Receiver**)
3. **Liam Thomas Bailey** of c/- O'Brien Palmer Insolvency & Business Advisory, Level 14, 9 Hunter Street, Sydney NSW 2000 (**the Additional Receiver**)

Recitals

- A. On the Grant Date, the Company granted the Security to Macquarie.
- B. On the Assignment Date and by agreement with the Company, Macquarie assigned the Security and all of its right, title and interest in the Security to the Appointor.
- C. The Company is in default of its obligations pursuant to the Security by reason, inter alia, of having committed the Specific Defaults.
- D. Pursuant to the Empowering Provisions, the Appointor is entitled to appoint a receiver or receiver and manager of all of part of the property of the Company subject to the Security.
- E. The Receiver is a registered liquidator, and is not otherwise prevented from accepting appointment as receiver or receiver and manager of property of the Company pursuant to section 418 of the Corporations Act.
- F. The Additional Receiver has sought registration as a liquidator and, subject to his registration being confirmed, is not otherwise prevented from accepting appointment as receiver or receiver and manager of property of the Company pursuant to section 418 of the Corporations Act.
- G. The Appointor wishes to appoint the Receiver and, upon meeting the Condition Precedent, the Additional Receiver, as the receiver and manager of the Affected Property, and the Receiver and Additional Receiver have agreed to accept those appointments, on the terms and conditions of this deed.



Operative Agreement

1. Definitions

- 1.1 The terms defined in Schedule A to this document shall be construed according to the definitions in that Schedule.
- 1.2 This clause does not derogate from other methods used to define terms in this agreement including, without limitation, definitions included in parentheses within the body of the agreement.
-

2. Interpretation

- 2.1 In this deed, unless the contrary intention appears:
- (a) Words importing the singular number include the plural and vice versa. Any gender includes the other genders. Any reference to a person includes a reference to a body corporate, firm, authority, government or governmental agency.
 - (b) A reference to legislation or to a legislative provision includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments, modifications or re-enactments of that legislation or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision.
 - (c) Any clause headings in, and index to, this deed are for reference purposes only and do not in any way influence or affect the meaning of this deed.
 - (d) A reference to any deed, agreement, licence, document or other instrument (including this deed) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time.
 - (e) A reference to any party to this deed or to any other deed, agreement, licence, document or other instrument required under this deed or for the purposes of this agreement includes that party's executors, administrators, substitutes, successors and permitted assigns.
 - (f) Where under or pursuant to this deed or anything done under this deed, the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing must be done on or by the next Business Day.
 - (g) Where under or pursuant to this deed or anything done under this deed, the day on or by which any act, matter or thing is to be done is the 29th, 30th or 31st day of any month in which such a day does not occur, such act, matter or thing must be done on the last day of that month.
 - (h) References to clauses are references to clauses of this deed.



- (i) A reference to winding up or bankruptcy includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in the Corporations Act) and being placed under official management, and to the circumstances and events giving rise to or contributing to such condition or matters.
- (j) All currency references are to Australian dollars.
- (k) All references to time is to Sydney, Australia time.
- (l) The contra proferentem rule will not apply. The identity of the party responsible for drafting this deed shall not affect the construction or interpretation of this deed.

3. Recitals

- 3.1 The Recitals to this deed are true and correct and are binding on the parties.

4. Appointment

- 4.1 Pursuant to the Security the Appointor hereby appoints, and the Receiver hereby accepts the appointment of, the Receiver as the receiver and manager of the Affected Property, effective as and from the Effective Date.
- 4.2 Subject to the Condition Precedent being met, the Appointor hereby appoints, and the Additional Receiver accepts the appointment of, the Additional Receiver as receiver and manager of the Affected Property, effective as and from the date upon which the Condition Precedent is met.
- 4.3 Upon the appointment of the Additional Receiver as receiver and manager of the Company pursuant to clause 4.2 above, the Receiver and the Additional Receiver will act jointly and severally as the receivers of the Affected Property.
- 4.4 The Appointor warrants that the Security is valid and enforceable and that the Appointer has the power thereunder to appoint the Receiver and, subject to the Condition Precedent being met, the Additional Receiver in accordance with this deed.

5. Property to be received

- 5.1 If the Affected Property does not comprise all of the assets and undertaking of the Company then, for the avoidance of doubt, the Receiver and / or the Additional Receiver are appointed in respect of the Affected Property only, and not the rest of the assets and undertaking of the Company.

6. Authority of Appointor's delegates

- 6.1 If the Appointor is a body corporate then the Receiver and the Additional Receiver are entitled to rely on any direction or authorisation purportedly given on the Appointor's behalf by any Authorised Officer of the Appointor.



7. Agency

- 7.1 To the extent allowed by the Security and by law the Receiver and / or the Additional Receiver are the agents of the Company and the Company alone is responsible for the Receiver's and Additional Receiver's acts and defaults.

8. Remuneration

- 8.1 The Receiver and the Additional Receiver will charge their standard hourly rates and those of their staff for all work done in connection with their appointments hereunder. The Receiver and the Additional Receiver will only deploy such resources as are necessary in order to discharge their obligations pursuant to the appointment made hereunder and will not engage any resources in excess of those reasonably required to enable them to discharge such obligations.
- 8.2 The Receiver and the Additional Receiver will render to the Company and the Appointor from time to time their tax invoices for their remuneration and out-of-pocket expenses incurred from time to time. Subject to clause 8.4, the Company will pay any such tax invoices in full within fourteen days of their receipt and, if it fails to do so, then the Appointor will pay any unpaid balance on demand.
- 8.3 Any provision in any Security or in any legislation which provides for the payment of the fees and remuneration of the Receiver and the Additional Receiver as a percentage of the assets realised or on any other basis is hereby expressly negated to the extent permitted by law.
- 8.4 Should a dispute arise as to the reasonableness of any invoice rendered by the Receiver and / or the Additional Receiver then the dispute is to be referred to the President for the time being of the Australian Restructuring Insolvency and Turnaround Association (**ARITA**) who shall appoint a senior member of the ARITA to assess the reasonableness of the Receiver and the Additional Receiver's invoice. The parties will accept any determination made by the delegate of the ARITA.

9. Indemnity

- 9.1 The Appointor hereby indemnifies the Receiver and the Additional Receiver for and against:
- (a) any loss suffered by them in consequence of the Appointor's breach of the warranty in clause 4.4; and
 - (b) any monetary award made against them, including an award of legal costs, in court proceedings in which they are involved as an incidence of their appointment;
 - (c) the payment of their remuneration;
 - (d) any debts or liabilities incurred in continuing to trade the business of the Company including, but not limited to, any amounts payable for wages, superannuation, rent, the purchase of goods or services and commonwealth and state taxes; and



- (e) any other costs, expenses or charges that they incur as an incidence of their appointment.
- 9.2 In the performance and exercise of their functions and powers, the Receiver and the Additional Receiver must each:
 - (a) act honestly; and
 - (b) exercise the degree of care and diligence that a reasonable person in the position of the Receiver and / or the Additional Receiver would exercise in the circumstances.
- 9.3 The Receiver and the Additional Receiver will not be entitled to the indemnity set out in clause 9.1 in respect of any liability arising out of any fraudulent, dishonest or grossly negligent act or omission by the Receiver and / or the Additional Receiver.
- 9.4 This clause shall survive and remain effective after the termination of this deed or the retirement of either or both of the Receiver and Additional Receiver.

10. Retirement

- 10.1 The Appointor may retire the Receiver or the Additional Receiver from their appointment at any time by providing written notice to the Receiver or the Additional Receiver or both of them, of the Appointor's intention to retire them from their appointment (a **Notice of Retirement**).
- 10.2 The Receiver and the Additional Receiver will as soon as reasonably practicable after receiving a Notice of Retirement from the Appointor, do all acts and things necessary to retire from his / their appointment as receiver and manager of the Affected Property and shall, upon payment to them of all amounts owing to them for remuneration, out of pocket expenses and disbursements, relinquish any lien that they have over the Affected Property.
- 10.3 The Receiver and Additional Receiver may retire from their appointment in the event that:
 - (a) Any party to this deed is subject to a winding up or becomes bankrupt; or
 - (b) The Appointor fails to pay any amounts due pursuant to clause 8.2 within 28 days of a demand being made; or
 - (c) The Appointor has engaged in, or engages in, fraudulent or dishonest conduct in relation to any matter arising in connection with the Security or the appointment of the Receiver and Additional Receiver.



11. GST

- 11.1 All payments are exclusive of GST.
- 11.2 A Recipient must pay to the Supplier any GST payable on a Taxable Supply. The Recipient must pay the GST when the payment becomes payable or when the Supplier issues a Tax Invoice, whichever is later.
- 11.3 If a party (**the Claimant**) acquires a Taxable Supply for which it is entitled to reimbursement by the other party, the reimbursement amount is reduced by the Input Tax Credit to which the Claimant is entitled.
- 11.4 The Supplier must issue an adjustment notice immediately it becomes aware of an adjustment event in respect of a Taxable Supply. Within 14 days after the Supplier issues an adjustment note:
- (a) the Recipient must pay the Supplier any increase in the GST Amount;
 - (b) the Supplier must pay the Recipient any decrease in the GST Amount.
- 11.5 If:
- (a) one party (**the Payer**) must pay a GST Amount;
 - (b) a penalty, interest or additional tax (**the Extra Liability**) is imposed in respect of the GST Amount because of default of another party (**the Defaulter**); and
 - (c) the Payer provides to the Defaulter proof of the Extra Liability;
- the Defaulter must pay the amount of the Extra Liability to the Payer within fourteen days after the Payer provides that proof to the Defaulter.

12. Statutes not abrogate deed

- 12.1 Unless its application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this deed so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to any party under this deed.

13. Severability and survival of covenants

- 13.1 If any provision of this deed is, or at any time becomes, prohibited by, or unlawful under, any applicable law, regulation or other condition actually applied or otherwise becomes void or unenforceable, it will be severed from this deed and rendered ineffective so far as is possible without modifying the remaining provisions of this deed.
- 13.2 The remaining provisions will, to the extent permitted by the relevant law, regulation or other condition, continue in full force and effect.



14. Further assurances

- 14.1 Each party must take all necessary steps, execute all documents and do all other acts and things as may be reasonably requested in writing by another party to give effect to the provisions of this deed.

15. Acknowledgement

- 15.1 Each of the parties acknowledge and agree that they have not entered into this document in reliance upon or as a result of any statement or any conduct of any kind or on behalf of any other party but have entered into this document fully and voluntarily upon their own information and investigation and have taken independent legal advice as to the nature, effect and extent of this document and has independently satisfied themselves in respect of all matters in connection with this deed.

16. Whole agreement

- 16.1 This deed records the entire agreement between the parties and supersedes all previous negotiations and undertakings in relation to its subject matter.

17. Delivery

- 17.1 Delivery of this deed shall be deemed to have been given on the date that the deed is executed by the Receiver and the Additional Receiver.

18. Variation and waiver

- 18.1 No modification, amendment or variation of this deed shall be binding unless it is in writing and duly executed by or on behalf of each party. No waiver of a right to enforce a provision of this deed shall be effective unless made in accordance with this clause.
- 18.2 Neither the failure of any party to enforce any of the provisions of this deed at any time, nor the granting of any time or indulgence, will be construed as a waiver of the right of that party to enforce that or any other provision of this deed.

19. Counterparts

- 19.1 This deed may be executed in any number of counterparts all of which, when taken together, will constitute one and the same instrument.
- 19.2 Satisfactory evidence of execution of this deed shall include evidence by facsimile or email of execution by the relevant party and in such case the executing party undertakes to produce the original as soon as reasonably practicable thereafter.



20. Notices

20.1 Agreed manners in which notices may be given

- (a) Any notice or other communication of any nature which is given in connection with this deed:
- (b) must be in writing;
- (c) is sufficient if given by any attorney, director, secretary, officer or other duly authorised person, or solicitor, of a party;
- (d) will, subject only to clause 20.3, be deemed to have been duly given, if it is:
 - (i) delivered or served by hand at the address of that party shown in this deed (or as most recently notified in writing) (**the Address**); or
 - (ii) delivered or served by courier to the Address; or
 - (iii) posted by pre-paid post to the Address; or
 - (iv) sent by facsimile to the facsimile number of that party shown in this deed (or as most recently notified in writing); or
 - (v) sent by email to the email address of that party shown in this deed (or as most recently notified in writing, in which regard an email address shall be deemed to be notified in writing if it is used by a party to send an email to another party or a representative of another party).

20.2 Hyperlinked documents

- (a) If an email sent under this clause contains a link to a document or documents available for download at the time the email is sent and for a reasonable time thereafter, or a link to a web page via which such documents can be downloaded, the documents will be deemed to have been delivered as if the documents had been attached to the email.

20.3 Timing for deemed delivery of notices

- (a) Notices given in accordance with clause 20.3 will be deemed to be given:
- (b) *in the case of delivery by hand or courier*: upon delivery to the Address (and, if the Address is not accessible, upon the notice being affixed by adhesive tape or other means to an entry to the Address);
- (c) *in the case of prepaid post*: on the third Business Day after the date of posting;
- (d) *in the case of delivery by email*: within one hour of the time of sending, unless within 48 hours the sender's computer receives an automatically generated message



indicating that the message was not successfully transmitted, in which case the notice shall not be considered to have been given by email;

- (e) *in the case of delivery by facsimile*: on receipt by the sender of a transmission report confirming successful transmission of the facsimile,
- (f) provided always that if delivery occurs:
- (g) later than 5.00pm at the place of delivery on a Business Day, then the notice is deemed to have been given and served at 9.00am on the next Business Day.
- (h) on a day which is not a Business Day at the place of delivery, then the notice shall be deemed to have been given and served at 9.00am on the first Business Day after delivery.

21. Governing Law and Submission to Jurisdiction

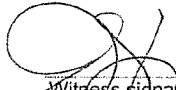
- 21.1 This deed will be governed by the laws of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.



Execution

Executed as a deed

Signed, sealed and delivered on behalf of
TCA GLOBAL CREDIT MASTER FUND, LP
by its general partner TCA Global Credit Fund,
GP, Ltd:


Witness signature
Jacquelyn Gogin
Witness name



Signature

Robert Press
Print name

Director
Office held

Signed, sealed and delivered by
CHRISTOPHER JOHN PALMER:


Witness signature

Christopher John Palmer
Witness name



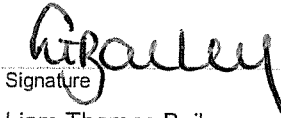
Signature

Christopher John Palmer
Print name

Signed, sealed and delivered by LIAM
THOMAS BAILEY:


Witness signature

Liam Thomas Bailey
Witness name



Signature

Liam Thomas Bailey
Print name



Schedule A – Defined Terms

Additional Receiver	The person referred to at Item 3 of the Reference Schedule.
Affected Property	That property referred to at Item 10 of the Reference Schedule.
Appointor	The person referred to at Item 1 of the Reference Schedule (or, if more than one person is referred to, those persons jointly and each of them severally).
Authorised Officer	<p>An Authorised Officer of a body corporate includes:</p> <ol style="list-style-type: none">1. a director, secretary or manager (of any class) of that body corporate, or a person acting in any of those offices; and2. a person appointed in writing by that body corporate to exercise a right of that person pursuant to this agreement.
Business Day	Any day except a Saturday or a Sunday or other public holiday.
Company	The company referred to at Item 4 of the Reference Schedule.
Condition Precedent	The registration by the Australian Securities Investments Commission of the Additional Receiver as a liquidator.
Corporations Act	<i>Corporations Act 2001</i> (Cth).
Effective Date	The date noted at Item 9 of the Reference Schedule or, if no date is specified, the date and time of execution of this deed.
Empowering Provisions	Those provisions referred to at Item 8 of the Reference Schedule.
Execution Date	The date that this agreement is executed by all parties which shall be presumed, absent evidence to the contrary, to be the date noted on the front page of this agreement.
Grant Date	The date noted at Item 6 of the Reference Schedule.
GST	A tax, duty, levy, charge or deduction, imposed by GST Law and any related interest, penalties, fines or other charges.
GST Law	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth.) or any other act imposing a good and services tax in Australia.
Macquarie	Macquarie Capital Group Limited (ABN 54 096 705 109).
Receiver	The person referred to at Item 2 of the Reference Schedule.



Recipient	A person who receives a Taxable Supply under this agreement.
Reference Schedule	Schedule B hereto.
Security	The instrument described at Item 5 of the Reference Schedule.
Specific Defaults	Those matters described at Item 7 of the Reference Schedule.
Supplier	A person who supplies a Taxable Supply under this agreement.
Taxable Supply	A taxable supply (within the meaning of GST Law) made under this agreement.



Schedule B – Reference Schedule

1. **Appointor**
The secured creditor who is appointing the Receiver
TCA Global Credit Master Fund, LP an investment fund registered in the Cayman Islands as represented by its general partner, TCA Global Credit Fund, GP, Ltd, a corporation organised and existing under the laws of the Cayman Islands, with its principal place of business at 69 D. Roy's Drive, George Town Grand Cayman KY1-1102, Cayman Islands
2. **Receiver**
The identity of the person who is appointed as receiver or receiver and manager of the Affected Property
Christopher John Palmer c/- O'Brien Palmer Insolvency & Business Advisory, Level 14, 9 Hunter Street, Sydney NSW 2000
3. **Additional Receiver**
The identity of the person to be appointed as receiver and manager of the Affected Property upon the Condition Precedent being met
Liam Thomas Bailey of c/- O'Brien Palmer Insolvency & Business Advisory, Level 14, 9 Hunter Street, Sydney NSW 2000
4. **Company**
The company to which the Receiver is being appointed
Pie Face Franchising Pty Limited (ACN 121 495 243)
5. **Security**
The security originally relied upon in appointing the Receiver
Specific Security Deed between Macquarie and the Company dated 21 March 2014

General Security Deed between Macquarie and the Company dated 21 March 2014

Deed of Assignment between the Appointor and Macquarie dated 11 December 2014

PPSR Registration No. 201403210077127

PPSR Registration No. 201403210077437
6. **Grant Date**
The date upon which the Security was granted
21 March 2014
7. **Specific Defaults**
The specific events of default relied upon by the Appointor in appointing the Receiver
The events referred to in clauses 15.1(a), 15(s) and 15.1(c) of Senior Secured Bridge Loan Facility Agreement between Macquarie and the Company dated 21 March 2014, each being an Event of Default pursuant to the Specific Security Deed between Macquarie and the Company dated 21 March 2014 and the General Security Deed between Macquarie and the Company dated 21 March 2014



8. Empowering Provisions

The clauses of the Security and/or the Appointment Document which give the Appointor the power to appoint the Receiver

Clause 7.1 Specific Security Deed between Macquarie and the Company dated 21 March 2014

Clause 7.1 General Security Deed between Macquarie and the Company dated 21 March 2014

9. Effective Date

The date and time from which the Receiver's appointment is to be effected (leave blank for immediate effect)

10. Affected Property

The property to which the Receiver is appointed

All property affected by the Security.

ANNEXURE "5"



Deed of Appointment and Indemnity

Date: 6th DECEMBER 2016

TCA Global Credit Master Fund, LP

Christopher John Palmer

Liam Thomas Bailey

ERA Legal

Level 15, 45 Clarence Street
SYDNEY NSW 2000

Level 4, 459 Little Collins
Street
MELBOURNE VIC 3000

Telephone 1300 138 458
Facsimile 1300 305 458
Reference 160006

www.eralegal.com.au



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Deed of Appointment and Indemnity

Parties

1. **TCA Global Credit Master Fund, LP** an investment fund registered in the Cayman Islands as represented by its general partner, TCA Global Credit Fund, GP, Ltd, a corporation organised and existing under the laws of the Cayman Islands, with its principal place of business at 69 D. Roy's Drive, George Town Grand Cayman KY1-1102, Cayman Islands (**the Appointor**)
2. **Christopher John Palmer** of c/- O'Brien Palmer Insolvency & Business Advisory, Level 14, 9 Hunter Street, Sydney NSW 2000 (**the Receiver**)
3. **Liam Thomas Bailey** of c/- O'Brien Palmer Insolvency & Business Advisory, Level 14, 9 Hunter Street, Sydney NSW 2000 (**the Additional Receiver**)

Recitals

- A. On the Grant Date, the Company granted the Security to Macquarie.
- B. On the Assignment Date and by agreement with the Company, Macquarie assigned the Security and all of its right, title and interest in the Security to the Appointor.
- C. The Company is in default of its obligations pursuant to the Security by reason, inter alia, of having committed the Specific Defaults.
- D. Pursuant to the Empowering Provisions, the Appointor is entitled to appoint a receiver or receiver and manager of all of part of the property of the Company subject to the Security.
- E. The Receiver is a registered liquidator, and is not otherwise prevented from accepting appointment as receiver or receiver and manager of property of the Company pursuant to section 418 of the Corporations Act.
- F. The Additional Receiver has sought registration as a liquidator and, subject to his registration being confirmed, is not otherwise prevented from accepting appointment as receiver or receiver and manager of property of the Company pursuant to section 418 of the Corporations Act.
- G. The Appointor wishes to appoint the Receiver and, upon meeting the Condition Precedent, the Additional Receiver, as the receiver and manager of the Affected Property, and the Receiver and Additional Receiver have agreed to accept those appointments, on the terms and conditions of this deed.



Operative Agreement

1. Definitions

- 1.1 The terms defined in Schedule A to this document shall be construed according to the definitions in that Schedule.
- 1.2 This clause does not derogate from other methods used to define terms in this agreement including, without limitation, definitions included in parentheses within the body of the agreement.
-

2. Interpretation

- 2.1 In this deed, unless the contrary intention appears:
- (a) Words importing the singular number include the plural and vice versa. Any gender includes the other genders. Any reference to a person includes a reference to a body corporate, firm, authority, government or governmental agency.
 - (b) A reference to legislation or to a legislative provision includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments, modifications or re-enactments of that legislation or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision.
 - (c) Any clause headings in, and index to, this deed are for reference purposes only and do not in any way influence or affect the meaning of this deed.
 - (d) A reference to any deed, agreement, licence, document or other instrument (including this deed) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time.
 - (e) A reference to any party to this deed or to any other deed, agreement, licence, document or other instrument required under this deed or for the purposes of this agreement includes that party's executors, administrators, substitutes, successors and permitted assigns.
 - (f) Where under or pursuant to this deed or anything done under this deed, the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing must be done on or by the next Business Day.
 - (g) Where under or pursuant to this deed or anything done under this deed, the day on or by which any act, matter or thing is to be done is the 29th, 30th or 31st day of any month in which such a day does not occur, such act, matter or thing must be done on the last day of that month.
 - (h) References to clauses are references to clauses of this deed.
-



- (i) A reference to winding up or bankruptcy includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in the Corporations Act) and being placed under official management, and to the circumstances and events giving rise to or contributing to such condition or matters.
- (j) All currency references are to Australian dollars.
- (k) All references to time is to Sydney, Australia time.
- (l) The contra proferentem rule will not apply. The identity of the party responsible for drafting this deed shall not affect the construction or interpretation of this deed.

3. Recitals

- 3.1 The Recitals to this deed are true and correct and are binding on the parties.

4. Appointment

- 4.1 Pursuant to the Security the Appointor hereby appoints, and the Receiver hereby accepts the appointment of, the Receiver as the receiver and manager of the Affected Property, effective as and from the Effective Date.
- 4.2 Subject to the Condition Precedent being met, the Appointor hereby appoints, and the Additional Receiver accepts the appointment of, the Additional Receiver as receiver and manager of the Affected Property, effective as and from the date upon which the Condition Precedent is met.
- 4.3 Upon the appointment of the Additional Receiver as receiver and manager of the Company pursuant to clause 4.2 above, the Receiver and the Additional Receiver will act jointly and severally as the receivers of the Affected Property.
- 4.4 The Appointor warrants that the Security is valid and enforceable and that the Appointor has the power thereunder to appoint the Receiver and, subject to the Condition Precedent being met, the Additional Receiver in accordance with this deed.

5. Property to be received

- 5.1 If the Affected Property does not comprise all of the assets and undertaking of the Company then, for the avoidance of doubt, the Receiver and / or the Additional Receiver are appointed in respect of the Affected Property only, and not the rest of the assets and undertaking of the Company.

6. Authority of Appointor's delegates

- 6.1 If the Appointor is a body corporate then the Receiver and the Additional Receiver are entitled to rely on any direction or authorisation purportedly given on the Appointor's behalf by any Authorised Officer of the Appointor.



7. Agency

- 7.1 To the extent allowed by the Security and by law the Receiver and / or the Additional Receiver are the agents of the Company and the Company alone is responsible for the Receiver's and Additional Receiver's acts and defaults.

8. Remuneration

- 8.1 The Receiver and the Additional Receiver will charge their standard hourly rates and those of their staff for all work done in connection with their appointments hereunder. The Receiver and the Additional Receiver will only deploy such resources as are necessary in order to discharge their obligations pursuant to the appointment made hereunder and will not engage any resources in excess of those reasonably required to enable them to discharge such obligations.
- 8.2 The Receiver and the Additional Receiver will render to the Company and the Appointor from time to time their tax invoices for their remuneration and out-of-pocket expenses incurred from time to time. Subject to clause 8.4, the Company will pay any such tax invoices in full within fourteen days of their receipt and, if it fails to do so, then the Appointor will pay any unpaid balance on demand.
- 8.3 Any provision in any Security or in any legislation which provides for the payment of the fees and remuneration of the Receiver and the Additional Receiver as a percentage of the assets realised or on any other basis is hereby expressly negated to the extent permitted by law.
- 8.4 Should a dispute arise as to the reasonableness of any invoice rendered by the Receiver and / or the Additional Receiver then the dispute is to be referred to the President for the time being of the Australian Restructuring Insolvency and Turnaround Association (**ARITA**) who shall appoint a senior member of the ARITA to assess the reasonableness of the Receiver and the Additional Receiver's invoice. The parties will accept any determination made by the delegate of the ARITA.

9. Indemnity

- 9.1 The Appointor hereby indemnifies the Receiver and the Additional Receiver for and against:
- (a) any loss suffered by them in consequence of the Appointor's breach of the warranty in clause 4.4; and
 - (b) any monetary award made against them, including an award of legal costs, in court proceedings in which they are involved as an incidence of their appointment;
 - (c) the payment of their remuneration;
 - (d) any debts or liabilities incurred in continuing to trade the business of the Company including, but not limited to, any amounts payable for wages, superannuation, rent, the purchase of goods or services and commonwealth and state taxes; and



- (e) any other costs, expenses or charges that they incur as an incidence of their appointment.
- 9.2 In the performance and exercise of their functions and powers, the Receiver and the Additional Receiver must each:
 - (a) act honestly; and
 - (b) exercise the degree of care and diligence that a reasonable person in the position of the Receiver and / or the Additional Receiver would exercise in the circumstances.
- 9.3 The Receiver and the Additional Receiver will not be entitled to the indemnity set out in clause 9.1 in respect of any liability arising out of any fraudulent, dishonest or grossly negligent act or omission by the Receiver and / or the Additional Receiver.
- 9.4 This clause shall survive and remain effective after the termination of this deed or the retirement of either or both of the Receiver and Additional Receiver.

10. Retirement

- 10.1 The Appointor may retire the Receiver or the Additional Receiver from their appointment at any time by providing written notice to the Receiver or the Additional Receiver or both of them, of the Appointor's intention to retire them from their appointment (a **Notice of Retirement**).
- 10.2 The Receiver and the Additional Receiver will as soon as reasonably practicable after receiving a Notice of Retirement from the Appointor, do all acts and things necessary to retire from his / their appointment as receiver and manager of the Affected Property and shall, upon payment to them of all amounts owing to them for remuneration, out of pocket expenses and disbursements, relinquish any lien that they have over the Affected Property.
- 10.3 The Receiver and Additional Receiver may retire from their appointment in the event that:
 - (a) Any party to this deed is subject to a winding up or becomes bankrupt; or
 - (b) The Appointor fails to pay any amounts due pursuant to clause 8.2 within 28 days of a demand being made; or
 - (c) The Appointor has engaged in, or engages in, fraudulent or dishonest conduct in relation to any matter arising in connection with the Security or the appointment of the Receiver and Additional Receiver.



11. GST

- 11.1 All payments are exclusive of GST.
- 11.2 A Recipient must pay to the Supplier any GST payable on a Taxable Supply. The Recipient must pay the GST when the payment becomes payable or when the Supplier issues a Tax Invoice, whichever is later.
- 11.3 If a party (**the Claimant**) acquires a Taxable Supply for which it is entitled to reimbursement by the other party, the reimbursement amount is reduced by the Input Tax Credit to which the Claimant is entitled.
- 11.4 The Supplier must issue an adjustment notice immediately it becomes aware of an adjustment event in respect of a Taxable Supply. Within 14 days after the Supplier issues an adjustment note:
- (a) the Recipient must pay the Supplier any increase in the GST Amount;
 - (b) the Supplier must pay the Recipient any decrease in the GST Amount.
- 11.5 If:
- (a) one party (**the Payer**) must pay a GST Amount;
 - (b) a penalty, interest or additional tax (**the Extra Liability**) is imposed in respect of the GST Amount because of default of another party (**the Defaulter**); and
 - (c) the Payer provides to the Defaulter proof of the Extra Liability;
- the Defaulter must pay the amount of the Extra Liability to the Payer within fourteen days after the Payer provides that proof to the Defaulter.

12. Statutes not abrogate deed

- 12.1 Unless its application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this deed so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to any party under this deed.

13. Severability and survival of covenants

- 13.1 If any provision of this deed is, or at any time becomes, prohibited by, or unlawful under, any applicable law, regulation or other condition actually applied or otherwise becomes void or unenforceable, it will be severed from this deed and rendered ineffective so far as is possible without modifying the remaining provisions of this deed.
- 13.2 The remaining provisions will, to the extent permitted by the relevant law, regulation or other condition, continue in full force and effect.



14. Further assurances

- 14.1 Each party must take all necessary steps, execute all documents and do all other acts and things as may be reasonably requested in writing by another party to give effect to the provisions of this deed.

15. Acknowledgement

- 15.1 Each of the parties acknowledge and agree that they have not entered into this document in reliance upon or as a result of any statement or any conduct of any kind or on behalf of any other party but have entered into this document fully and voluntarily upon their own information and investigation and have taken independent legal advice as to the nature, effect and extent of this document and has independently satisfied themselves in respect of all matters in connection with this deed.

16. Whole agreement

- 16.1 This deed records the entire agreement between the parties and supersedes all previous negotiations and undertakings in relation to its subject matter.

17. Delivery

- 17.1 Delivery of this deed shall be deemed to have been given on the date that the deed is executed by the Receiver and the Additional Receiver.

18. Variation and waiver

- 18.1 No modification, amendment or variation of this deed shall be binding unless it is in writing and duly executed by or on behalf of each party. No waiver of a right to enforce a provision of this deed shall be effective unless made in accordance with this clause.
- 18.2 Neither the failure of any party to enforce any of the provisions of this deed at any time, nor the granting of any time or indulgence, will be construed as a waiver of the right of that party to enforce that or any other provision of this deed.

19. Counterparts

- 19.1 This deed may be executed in any number of counterparts all of which, when taken together, will constitute one and the same instrument.
- 19.2 Satisfactory evidence of execution of this deed shall include evidence by facsimile or email of execution by the relevant party and in such case the executing party undertakes to produce the original as soon as reasonably practicable thereafter.



20. Notices

20.1 Agreed manners in which notices may be given

- (a) Any notice or other communication of any nature which is given in connection with this deed:
- (b) must be in writing;
- (c) is sufficient if given by any attorney, director, secretary, officer or other duly authorised person, or solicitor, of a party;
- (d) will, subject only to clause 20.3, be deemed to have been duly given, if it is:
 - (i) delivered or served by hand at the address of that party shown in this deed (or as most recently notified in writing) (**the Address**); or
 - (ii) delivered or served by courier to the Address; or
 - (iii) posted by pre-paid post to the Address; or
 - (iv) sent by facsimile to the facsimile number of that party shown in this deed (or as most recently notified in writing); or
 - (v) sent by email to the email address of that party shown in this deed (or as most recently notified in writing, in which regard an email address shall be deemed to be notified in writing if it is used by a party to send an email to another party or a representative of another party).

20.2 Hyperlinked documents

- (a) If an email sent under this clause contains a link to a document or documents available for download at the time the email is sent and for a reasonable time thereafter, or a link to a web page via which such documents can be downloaded, the documents will be deemed to have been delivered as if the documents had been attached to the email.

20.3 Timing for deemed delivery of notices

- (a) Notices given in accordance with clause 20.3 will be deemed to be given:
- (b) *in the case of delivery by hand or courier*: upon delivery to the Address (and, if the Address is not accessible, upon the notice being affixed by adhesive tape or other means to an entry to the Address);
- (c) *in the case of prepaid post*: on the third Business Day after the date of posting;
- (d) *in the case of delivery by email*: within one hour of the time of sending, unless within 48 hours the sender's computer receives an automatically generated message



indicating that the message was not successfully transmitted, in which case the notice shall not be considered to have been given by email;

- (e) *in the case of delivery by facsimile*: on receipt by the sender of a transmission report confirming successful transmission of the facsimile,
- (f) provided always that if delivery occurs:
- (g) later than 5.00pm at the place of delivery on a Business Day, then the notice is deemed to have been given and served at 9.00am on the next Business Day.
- (h) on a day which is not a Business Day at the place of delivery, then the notice shall be deemed to have been given and served at 9.00am on the first Business Day after delivery.

21. Governing Law and Submission to Jurisdiction


- 21.1 This deed will be governed by the laws of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.



Execution

Executed as a deed

Signed, sealed and delivered on behalf of
TCA GLOBAL CREDIT MASTER FUND, LP
by its general partner TCA Global Credit Fund,
GP, Ltd:


Witness signature
Jacquelyn Gogin
Witness name



Signature

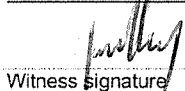
Robert Press

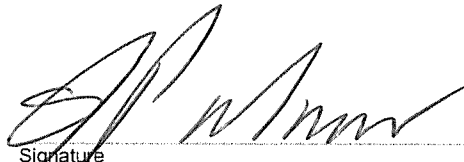
Print name

Director

Office held

Signed, sealed and delivered by
CHRISTOPHER JOHN PALMER:


Witness signature
Tim Kelly
Witness name

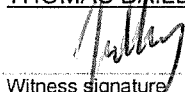


Signature

Christopher John Palmer

Print name

Signed, sealed and delivered by LIAM
THOMAS BAILEY:


Witness signature
Tim Kelly
Witness name



Signature

Liam Thomas Bailey

Print name



Schedule A – Defined Terms

Additional Receiver	The person referred to at Item 3 of the Reference Schedule.
Affected Property	That property referred to at Item 10 of the Reference Schedule.
Appointor	The person referred to at Item 1 of the Reference Schedule (or, if more than one person is referred to, those persons jointly and each of them severally).
Authorised Officer	<p>An Authorised Officer of a body corporate includes:</p> <ol style="list-style-type: none">1. a director, secretary or manager (of any class) of that body corporate, or a person acting in any of those offices; and2. a person appointed in writing by that body corporate to exercise a right of that person pursuant to this agreement.
Business Day	Any day except a Saturday or a Sunday or other public holiday.
Company	The company referred to at Item 4 of the Reference Schedule.
Condition Precedent	The registration by the Australian Securities Investments Commission of the Additional Receiver as a liquidator.
Corporations Act	<i>Corporations Act 2001</i> (Cth).
Effective Date	The date noted at Item 9 of the Reference Schedule or, if no date is specified, the date and time of execution of this deed.
Empowering Provisions	Those provisions referred to at Item 8 of the Reference Schedule.
Execution Date	The date that this agreement is executed by all parties which shall be presumed, absent evidence to the contrary, to be the date noted on the front page of this agreement.
Grant Date	The date noted at Item 6 of the Reference Schedule.
GST	A tax, duty, levy, charge or deduction, imposed by GST Law and any related interest, penalties, fines or other charges.
GST Law	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth.) or any other act imposing a good and services tax in Australia.
Macquarie	Macquarie Capital Group Limited (ABN 54 096 705 109).
Receiver	The person referred to at Item 2 of the Reference Schedule.



Recipient	A person who receives a Taxable Supply under this agreement.
Reference Schedule	Schedule B hereto.
Security	The instrument described at Item 5 of the Reference Schedule.
Specific Defaults	Those matters described at Item 7 of the Reference Schedule.
Supplier	A person who supplies a Taxable Supply under this agreement.
Taxable Supply	A taxable supply (within the meaning of GST Law) made under this agreement.



Schedule B – Reference Schedule

1. **Appointor**
The secured creditor who is appointing the Receiver
TCA Global Credit Master Fund, LP an investment fund registered in the Cayman Islands as represented by its general partner, TCA Global Credit Fund, GP, Ltd, a corporation organised and existing under the laws of the Cayman Islands, with its principal place of business at 69 D. Roy's Drive, George Town Grand Cayman KY1-1102, Cayman Islands
2. **Receiver**
The identity of the person who is appointed as receiver or receiver and manager of the Affected Property
Christopher John Palmer c/- O'Brien Palmer Insolvency & Business Advisory, Level 14, 9 Hunter Street, Sydney NSW 2000
3. **Additional Receiver**
The identity of the person to be appointed as receiver and manager of the Affected Property upon the Condition Precedent being met
Liam Thomas Bailey of c/- O'Brien Palmer Insolvency & Business Advisory, Level 14, 9 Hunter Street, Sydney NSW 2000
4. **Company**
The company to which the Receiver is being appointed
Pie Face Holdings Pty Limited (ACN 111 409 860)
5. **Security**
The security originally relied upon in appointing the Receiver
Specific Security Deed between Macquarie and the Company dated 21 March 2014

General Security Deed between Macquarie and the Company dated 21 March 2014

Deed of Assignment between the Appointor and Macquarie dated 11 December 2014

PPSR Registration No. 201403210076774

PPSR Registration No. 201403210077297
6. **Grant Date**
The date upon which the Security was granted
21 March 2014
7. **Specific Defaults**
The specific events of default relied upon by the Appointor in appointing the Receiver
The events referred to in clauses 15.1(a), 15(s) and 15.1(c) of Senior Secured Bridge Loan Facility Agreement between Macquarie and the Company dated 21 March 2014, each being an Event of Default pursuant to the Specific Security Deed between Macquarie and the Company dated 21 March 2014 and the General Security Deed between Macquarie and the Company dated 21 March 2014



8. Empowering Provisions

The clauses of the Security and/or the Appointment Document which give the Appointor the power to appoint the Receiver

Clause 7.1 Specific Security Deed between Macquarie and the Company dated 21 March 2014

Clause 7.1 General Security Deed between Macquarie and the Company dated 21 March 2014

9. Effective Date

The date and time from which the Receiver's appointment is to be effected (leave blank for immediate effect)

10. Affected Property

The property to which the Receiver is appointed

All property affected by the Security.

ANNEXURE "6"



Australian Government
Australian Taxation Office



A.C.N. 087 384 736 PTY LTD
GPO BOX 3385
SYDNEY NSW 2001

RECEIVED
11 OCT 2022

BY:

Statement period 01 Jul 22 to 03 Oct 22
Australian business number 18 087 384 736/8
Date of issue 06 October 2022
Statement number 19
Our reference 7133336581189
Internet: www.ato.gov.au Account enquiries: 13 28 66

**Integrated Client Account
Statement of Account**

Overdue amount as at 03 October 2022
You are required to pay this amount immediately.
General interest charge (GIC) may be accruing.

\$2,283,573.68 DR

Amounts not yet due

\$0.00

Transaction list - This statement shows transactions for the period **01 July 2022 to 03 October 2022** (inclusive).

Process date	Effective date	Description of transaction	Debit \$	Credit \$	Balance \$
01 Jul 22		OPENING BALANCE			2,236,851.70 DR
01 Aug 22	01 Aug 22	General interest charge calculated from 01 Jul 22 to 31 Jul 22	15,248.40		2,252,100.10
01 Sep 22	01 Sep 22	General interest charge calculated from 01 Aug 22 to 31 Aug 22	15,352.35		2,267,452.45
03 Oct 22	03 Oct 22	General interest charge calculated from 01 Sep 22 to 02 Oct 22	16,121.23		2,283,573.68
03 Oct 22		CLOSING BALANCE			2,283,573.68 DR

Melinda Smith
Deputy Commissioner of Taxation

Please see over for important information about your statement

E04447-S00001-F255661

NAT73365

71092.100071-12-2021

Page 1 of 2

NAT 71568-10.2016

JS 38063

Australian Taxation Office

PAYMENT SLIP - 60

A.C.N. 087 384 736 PTY LTD

ABN 18 087 384 736/00008

Amount paid \$

Australian Taxation Office
Locked Bag 1793
PENRITH NSW 1793

PRN 008 18087 384 736 3760



*171 008180873847363760

<18087384736>008< >

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600<

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Statement transactions

This statement only lists those transactions that we processed on your account for the period shown. Any transactions processed earlier that are due and payable within this period are included in the opening balance. This statement may not cover all your dealings with us. For example, you may have amounts outstanding in relation to other accounts or current legal, release or dispute actions. You can find out the current balance of your account and details of other accounts by calling us on the numbers listed below.

Explanation of terms

The process date is the date that we processed a particular transaction.

The effective date is the date we use for the calculation of general interest charge and other penalties or interest. It is also the due date of any liabilities.

Payment requirements for large business

If you are a 'large' withholder for PAYG withholding, or your GST turnover is \$20 million or more, you must send your payments to the Tax Office electronically. Electronic payments can be made using BPAY, direct debit or direct credit.

General interest charge (GIC)

Where any amount is not paid by the due date, GIC accrues on the outstanding balance until the entire amount has been paid. Interest is calculated on a daily compounding basis. GIC is currently imposed at a rate of 9.31% per annum (reviewed every three months). The GIC is tax deductible in the year that it is incurred.

GIC remission – You can request remission of GIC. We may remit the GIC if satisfied that the delay was due to circumstances beyond your control and you took reasonable steps to lessen the effects of those circumstances. We may also remit GIC in other circumstances where this would be fair and reasonable.

What you need if you phone us

We need to know we are talking to the right person before we can discuss your tax affairs. We will ask for details only you or someone you have authorised would know. An authorised person is someone who you have previously told us can act on your behalf. If you can, please have your tax file number or Australian business number with you.

How to contact us

For an explanation of your account:

Individuals - phone us on **13 28 61** (8.00am – 6.00pm Monday to Friday).

Businesses - phone us on **13 28 66** (8.00am – 6.00pm Monday to Friday).

To make an arrangement to pay you can contact our automated self help 24 hours per day, seven days a week on **13 28 65**.

If you do not speak English and need help from us phone the Translating and Interpreting Service on **13 14 50**.

If you have a hearing or speech impairment phone the National Relay Service on **13 36 77**.

If calling from overseas - phone us on **+61 2 6216 1111** (8.00am - 5.00pm (AEST) Monday to Friday).

Page 2 of 2

HOW TO PAY

Your payment reference number (PRN) is: 008180873847363760

BPAY®



Billers code: 75556

Ref: 008180873847363760

Telephone & Internet Banking – BPAY®

Contact your bank or financial institution to make this payment from your cheque, savings, debit or credit card account.
More info: www.bpay.com.au

CREDIT OR DEBIT CARD

Pay online with your credit or debit card at
www.governmenteasypay.gov.au/PayATO

To pay by phone, call the Government EasyPay service on **1300 898 089**.

A card payment fee applies.

OTHER PAYMENT OPTIONS

For other payment options, visit www.ato.gov.au/paymentoptions

ANNEXURE “7”



Australian Government
Australian Taxation Office



A.C.N. 121 495 243 PTY LTD
C/- OBRIEN PALMER
GPO BOX 3385
SYDNEY NSW 2001

RECEIVED
13 OCT 2022

BY:

Statement period 01 Jul 22 to 03 Oct 22
Australian business number 80 121 495 243/7
Date of issue 06 October 2022
Statement number 11
Our reference 7133339038434
Internet: www.ato.gov.au Account enquiries: 13 28 66

**Integrated Client Account
Statement of Account**

Overdue amount as at 03 October 2022
You are required to pay this amount immediately.
General interest charge (GIC) may be accruing.

\$62,103.50 DR

Amounts not yet due \$0.00

Transaction list - This statement shows transactions for the period **01 July 2022 to 03 October 2022** (inclusive).

Process date	Effective date	Description of transaction	Debit \$	Credit \$	Balance \$
01 Jul 22		OPENING BALANCE			60,832.88 DR
01 Aug 22	01 Aug 22	General interest charge calculated from 01 Jul 22 to 31 Jul 22	414.69		61,247.57
01 Sep 22	01 Sep 22	General interest charge calculated from 01 Aug 22 to 31 Aug 22	417.51		61,665.08
03 Oct 22	03 Oct 22	General interest charge calculated from 01 Sep 22 to 02 Oct 22	438.42		62,103.50
03 Oct 22		CLOSING BALANCE			62,103.50 DR

Melinda Smith
Deputy Commissioner of Taxation

Please see over for important information about your statement

E05643-S00001-F255661

NAT73365

71092.100071-12-2021

Page 1 of 2

NAT 71568-10.2016

JS 38063

Australian Taxation Office

PAYMENT SLIP - 60

A.C.N. 121 495 243 PTY LTD

ABN 80 121 495 243/00007

Amount paid \$

Australian Taxation Office
Locked Bag 1793
PENRITH NSW 1793

PRN 007 80121 495 243 7160



*171 007801214952437160

IMPORTANT INFORMATION ABOUT YOUR STATEMENT**Statement transactions**

This statement only lists those transactions that we processed on your account for the period shown. Any transactions processed earlier that are due and payable within this period are included in the opening balance. This statement may not cover all your dealings with us. For example, you may have amounts outstanding in relation to other accounts or current legal, release or dispute actions. You can find out the current balance of your account and details of other accounts by calling us on the numbers listed below.

Explanation of terms

The process date is the date that we processed a particular transaction.

The effective date is the date we use for the calculation of general interest charge and other penalties or interest. It is also the due date of any liabilities.

Payment requirements for large business

If you are a 'large' withholder for PAYG withholding, or your GST turnover is \$20 million or more, you must send your payments to the Tax Office electronically. Electronic payments can be made using BPAY, direct debit or direct credit.

General interest charge (GIC)

Where any amount is not paid by the due date, GIC accrues on the outstanding balance until the entire amount has been paid. Interest is calculated on a daily compounding basis. GIC is currently imposed at a rate of 9.31% per annum (reviewed every three months). The GIC is tax deductible in the year that it is incurred.

GIC remission – You can request remission of GIC. We may remit the GIC if satisfied that the delay was due to circumstances beyond your control and you took reasonable steps to lessen the effects of those circumstances. We may also remit GIC in other circumstances where this would be fair and reasonable.

What you need if you phone us

We need to know we are talking to the right person before we can discuss your tax affairs. We will ask for details only you or someone you have authorised would know. An authorised person is someone who you have previously told us can act on your behalf. If you can, please have your tax file number or Australian business number with you.

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Businesses - phone us on **13 28 66** (8.00am – 6.00pm Monday to Friday).

To make an arrangement to pay you can contact our automated self help 24 hours per day, seven days a week on **13 28 65**.

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If you have a hearing or speech impairment phone the National Relay Service on **13 36 77**.

If calling from overseas - phone us on **+61 2 6216 1111** (8.00am - 5.00pm (AEST) Monday to Friday).

Page 2 of 2

HOW TO PAY

Your payment reference number (PRN) is: 007801214952437160

BPAY®

Billers code: 75556

Ref: 007801214952437160

Telephone & Internet Banking – BPAY®

Contact your bank or financial institution to make this payment from your cheque, savings, debit or credit card account.

More info: www.bpay.com.au

CREDIT OR DEBIT CARD

Pay online with your credit or debit card at www.governmenteasypay.gov.au/PayATO

To pay by phone, call the Government EasyPay service on **1300 898 089**.

A card payment fee applies.

OTHER PAYMENT OPTIONS

For other payment options, visit www.ato.gov.au/paymentoptions

ANNEXURE “8”



Australian Government
Australian Taxation Office



A.C.N. 604 927 835 PTY LTD
GPO BOX 3385
SYDNEY NSW 2001

RECEIVED
12 OCT 2022

BY:

Statement period 01 Jul 22 to 03 Oct 22
Australian business number 38 604 927 835/2
Date of issue 06 October 2022
Statement number 11
Our reference 7133338568788
Internet: www.ato.gov.au Account enquiries: 13 28 66

**Integrated Client Account
Statement of Account**

Overdue amount as at 03 October 2022
You are required to pay this amount immediately.
General interest charge (GIC) may be accruing.

\$23,277.77 DR

Amounts not yet due

\$0.00

Transaction list - This statement shows transactions for the period **01 July 2022 to 03 October 2022** (inclusive).

Process date	Effective date	Description of transaction	Debit \$	Credit \$	Balance \$
01 Jul 22		OPENING BALANCE			22,801.52 DR
01 Aug 22	01 Aug 22	General interest charge calculated from 01 Jul 22 to 31 Jul 22	155.43		22,956.95
01 Sep 22	01 Sep 22	General interest charge calculated from 01 Aug 22 to 31 Aug 22	156.49		23,113.44
03 Oct 22	03 Oct 22	General interest charge calculated from 01 Sep 22 to 02 Oct 22	164.33		23,277.77
03 Oct 22		CLOSING BALANCE			23,277.77 DR

Melinda Smith
Deputy Commissioner of Taxation

Please see over for important information about your statement

E05523-S00001-F255661

NAT73365

71092.100071-12-2021

Page 1 of 2

NAT 71568-10.2016

JS 38063

Australian Taxation Office

PAYMENT SLIP - 60

A.C.N. 604 927 835 PTY LTD

ABN 38 604 927 835/00002

Amount paid \$

Australian Taxation Office
Locked Bag 1793
PENRITH NSW 1793

PRN 002 38604 927 835 1360



*171 002386049278351360

<38604927835>002< >

< 000000>

600<

>

IMPORTANT INFORMATION ABOUT YOUR STATEMENT

Statement transactions

This statement only lists those transactions that we processed on your account for the period shown. Any transactions processed earlier that are due and payable within this period are included in the opening balance. This statement may not cover all your dealings with us. For example, you may have amounts outstanding in relation to other accounts or current legal, release or dispute actions. You can find out the current balance of your account and details of other accounts by calling us on the numbers listed below.

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If calling from overseas - phone us on **+61 2 6216 1111** (8.00am - 5.00pm (AEST) Monday to Friday).

Page 2 of 2

HOW TO PAY

Your payment reference number (PRN) is: 002386049278351360

BPAY®

Billers code: 75556

Ref: 002386049278351360

Telephone & Internet Banking – BPAY®

Contact your bank or financial institution to make this payment from your cheque, savings, debit or credit card account.

More info: www.bpay.com.au

CREDIT OR DEBIT CARD

Pay online with your credit or debit card at www.governmenteasypay.gov.au/PayATO

To pay by phone, call the Government EasyPay service on **1300 898 089**.

A card payment fee applies.

OTHER PAYMENT OPTIONS

For other payment options, visit www.ato.gov.au/paymentoptions

ANNEXURE “9”

TFN: 43410039

537,013.44

ANNEXURE "10"



24 October 2022

Jonathan E. Perlman Esq
Receiver
100SE 2nd Street
Suite 4400
Miami, Florida 33131

**RE: PIE FACE GROUP OF COMPANIES (RECEIVERS & MANAGERS APPOINTED)
RECEIVERS' REMUNERATION FOR THE PERIOD
Total Unbilled Remuneration for the Period 1 February 2020 to 19 October 2022**

Description	Amount
TCA Indemnity for Receivers' Remuneration	\$ 167,703.25
LESS: Write-Off of Remuneration	\$ 33,540.65
TOTAL	AUD\$ 134,162.60
TCA Pays (0.63/\$1)	USD\$ 84,004.82

PAYMENT OPTIONS

Electronic Funds Transfer:

Account Name: O'Brien Palmer Liquidator's General Account
Bank: Commonwealth Bank of Australia
BSB: 062 – 000
Account Number: [REDACTED]
SWIFT: CTBAAU2S

PIE FACE GROUP OF COMPANIES (RECEIVERS & MANAGERS APPOINTED)	
Work in Progress ("WIP")	
WIP Incurred - 01.02.2020 to 19.10.2022 (excluding GST)	260,401.55
GST	26,040.16
Total WIP Incurred (including GST)	286,441.71
Remuneration Billed	
Remuneration Billed - 01.02.2020 to 19.10.2022 (excluding GST)	107,944.05
GST	10,794.41
Total Remuneration Billed (including GST)	118,738.46
Unbilled Remuneration	
Unbilled Remuneration - 01.02.2020 to 19.10.2022 (excluding GST)	152,457.50
GST	15,245.75
Total Unbilled Remuneration (including GST)	167,703.25
Remuneration To Be Written-Off	
Remuneration To Be Written-Off - 01.02.2020 to 19.10.2022 (excluding GST) (20%)	30,491.50
GST	3,049.15
Total Remuneration To Be Written-Off (including GST)	33,540.65
TOTAL REMUNERATION PAYABLE BY TCA (AUD)	134,162.60
TCA Pays (USD(0.63/\$1))	84,004.82

EXHIBIT B



Commonwealth Consolidated Acts

[\[Index\]](#) [\[Table\]](#) [\[Search\]](#) [\[Search this Act\]](#) [\[Notes\]](#) [\[Noteup\]](#) [\[Previous\]](#) [\[Next\]](#) [\[Download\]](#) [\[Help\]](#)

CORPORATIONS ACT 2001 - SECT 419

Liability of controller

(1) A [receiver](#), or any other authorised [person](#), who, whether as agent for the corporation concerned or not, enters into possession or assumes control of any [property](#) of a corporation for the purpose of enforcing any [security interest](#) is, notwithstanding any [agreement](#) to the contrary, but without prejudice to the [person's rights](#) against the corporation or any other [person](#), liable for debts incurred by the [person](#) in the course of the [receivership](#), possession or control for services rendered, goods purchased or [property](#) hired, leased (including a lease of goods that gives rise to a [PPSA security interest](#) in the goods), used or occupied.

(2) [Subsection](#) (1) does not constitute the [person](#) entitled to the [security interest](#) a mortgagee in possession.

(3) Where:

(a) a [person](#) (in this [subsection](#) called the *controller*) enters into possession or assumes control of [property](#) of a corporation; and

(b) the controller purports to have been properly appointed as a [receiver](#) in respect of that [property](#) under a power contained in an [instrument](#), but has not been properly so appointed; and

(c) civil proceedings in an [Australian court](#) arise out of an act alleged to have been done by the controller;

[the court](#) may, if it is satisfied that the controller believed on reasonable grounds that the controller had been properly so appointed, [order](#) that:

(d) the controller be relieved in whole or in part of a [liability](#) that the controller has incurred but would not have incurred if the controller had been properly so appointed; and

(e) a [person](#) who purported to appoint the controller as [receiver](#) be liable in respect of an act, matter or thing in so far as the controller has been relieved under [paragraph](#) (d) of [liability](#) in respect of that act, matter or thing.

EXHIBIT C

Our Reference	LQ:EK:19195
Principal	Laura Quarrell

6 April 2023

Mr Christopher Palmer & Mr Liam Bailey
O'Brien Palmer Insolvency & Business Advisory
Level 9, 66 Clarence Street
SYDNEY NSW 2000

By Email: lbailey@obp.com.au
CC: cpalmer@obp.com.au
jdragicevic@obp.com.au
Wilson@stantonandstanton.com

Dear Chris and Liam

TAX LIABILITIES OF THE PIE FACE GROUP OF COMPANIES | LETTER OF ADVICE

We refer to our earlier correspondence and confirm your instructions to provide you with an advice in relation to the Integrated Client Account Statement of Accounts issued by the Australian Taxation Office (ATO).

A. Instructions

1. We confirm receipt of a number of Integrated Client Account Statement of Accounts (**Notices**) issued by the ATO to the following entities of which you are appointed as the Receivers and Managers of:
 - 1.1 ACN 087 384 736 Pty Ltd (formerly known as Pie Face Pty Ltd);
 - 1.2 ACN 604 927 835 Pty Ltd (formerly known as Pie Face Australia Franchising Pty Ltd);
and
 - 1.3 ACN 121 495 243 Pty Ltd (Pie Face Franchising).
2. Each of these Notices are annexed to the Proof of Debt issued by you (in your capacity as Receivers of the above entities) dated 19 January 2023. A copy of the Proof of Debt is **enclosed**.
3. Each of the Notices set out an overdue amount owing to the ATO, and indicate the accrual of general interest charges on the account as a result of the overdue amount.
4. We understand your instructions that none of the Notices have been deferred and a stay has not been obtained from an Australian Court in relation to the Notices.

StantonandStanton.com
ABN 51 120 110 358

a. Level 5, Challis House
4 Martin Place
Sydney NSW 2000

p. +612 8920 1344
e. info@StantonandStanton.com

B. Law in Australia in relation to Tax Debts

1. In accordance with Section 44(1) of the *Taxation Administration Act 1996 No. 97*, a 'tax debt' is defined as following:
 - 1.1 'If the whole or part of tax payable by a taxpayer is not paid to the Chief Commissioner as required by a notice of assessment, the amount unpaid is a debt payable to the Chief Commissioner by the taxpayer.'
 - 1.2 'A debt payable by a taxpayer to the Chief Commissioner is a tax debt.'
2. In *Hall v Poolman* [2007] NSWSC 1330 at [110], the Court held that:

"If the legislature clearly says that a tax debt is payable at a certain time, neither the Court nor a company director can disregard that statutory imperative by an appeal to commercial reality. Absent an agreement by the commissioner to defer payment, it is not commercial reality to treat a present liability, statutorily imposed, as if it does not exist."

"If the company obtains neither a deferment nor a stay, the director must take account of the fact that the debt, as a matter of law and commercial reality, is not a contingent liability and remains presently payable."
3. In accordance with Section 419 of the *Corporations Act 2001* (Cth), Receivers are personally liable for debts incurred in the course of their receivership.
4. For the reasons set out above, each of the Notices are presently due and payable to the ATO by our Clients (in their capacity as Receivers and Managers) and are not contingent liabilities. In addition, they are continuing to accrue general interest charges by the ATO.

Yours faithfully

Stanton & Stanton



Laura Quarrell

Principal

Laura@stantonandstanton.com

Encl.

EXHIBIT D

Chris Palmer

From: Carlos Sandino <csandino@tcacap.com>
Sent: Thursday, 17 October 2019 7:15 AM
To: Chris Palmer
Cc: Jacquelyn Gogin; Chad Gear
Subject: RE: Pie Face Tax Liabilities

Hi Chris,

I think we need to negotiate with the ATO so as to minimize the tax liability. I'd like to have Chad with Taylor David involved and provide guidance in the matter.

I think it's probably best to utilize a tax accountant with prior experience dealing with these matter approach the ATO. I assume that in your trade you have experience in dealing with these type of matters/settlements. Chad can surely provide a contact person to serve as a liaison with the government if needed.

Also, I'd like to get number that TCA can settle out your account for. I know you've extended offers before with a discount. I'm wondering what would be your best number to settle TCA's invoices with OBP?

I appreciate your feedback.

Thanks,

Carlos Sandino
Managing Director of Corporate Restructuring
TCA Fund Management Group

T.786-323-1650
csandino@tcacap.com

19950 West Country Club Drive
Suite 101
Aventura, Florida
33180
tcacap.com



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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Monday, October 14, 2019 6:10 PM
To: Carlos Sandino <csandino@tcacap.com>
Cc: Wes McKnight <wmcknight@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Dear Carlos,

I refer to my email below.

Please advise when the funds will be transferred for the payment of the tax liability. I reiterate that early payment may more readily facilitate a successful submission for remittance of General Interest Charges which approximate AUS\$260,000.

Please give me the courtesy of a response and as always I am available to discuss the matter if you so wish.

Kind Regards,

Chris Palmer
PARTNER



SYDNEY

Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
Telephone +61 2 9232 3322 | Facsimile +61 2 9232 3388

BATHURST

103 Piper Street, Bathurst NSW 2795 | PO Box 2153, Bathurst NSW 2795
Telephone +61 2 6338 2650 | Facsimile +61 2 9232 3388

obp.com.au

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O'Brien Palmer makes no express or implied representation or warranty that this electronic communication, or any attachment, is free from computer viruses or other defects or conditions which could damage or interfere with the recipient's data, hardware or software. We have taken precautions to minimise the risk of transmitting software viruses, but we advise that you carry out your own virus checks on any attachments to this message. This communication and any attachment may have been modified or otherwise interfered with in the course of transmission.

From: Chris Palmer
Sent: Wednesday, 9 October 2019 4:17 PM
To: Carlos Sandino <csandino@tcacap.com>
Cc: Wes McKnight <wmcknight@tcacap.com>; 'Jacquelyn Gogin' <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>; Sandra Ciganda <sciganda@obp.com.au>; Justin Dragicevic <JDragicevic@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Dear Carlos,

I refer to the email from Liam Bailey sent 30 September 2019 which attached a statement of chronology and a summary of outstanding issues in the Pie Face Receivership. In particular, I refer to paragraph 2.2 of that statement which relates to outstanding tax liabilities.

I also refer to the Deeds of Indemnity for Pie Face Pty Ltd and Pie Face Franchising Pty Ltd signed on 31 October 2016 and 6 December 2016, respectively. In particular, I refer to clause 9.1(d) of the Deeds, which states, "The Appointor hereby indemnifies the Receiver and the Additional Receiver for and against...any debts or liabilities incurred in continuing to trade the business of the Company including, but not limited to, any amounts payable for wages, superannuation, rent, the purchase of goods or services and commonwealth and state taxes."

As foreshadowed, we have now received assessments for two (2) of the entities that are summarised in the table below:

Entity Name	ACN	Period of Liability	Amount Owing to ATO
-------------	-----	---------------------	---------------------

			(AUD \$)
Pie Face Franchising Pty Ltd	121 495 243	31/10/2016 to 28/09/2019	49,858.48
Pie Face Pty Ltd	087 384 736	31/10/2016 to 28/09/2019	1,841,146.19
TOTAL			1,891,004.67

Attached are copies of the assessments, which relate to unpaid Pay As You Go tax deductions and Goods and Services Tax. Further assessments are expected in relation to unpaid superannuation withheld. The current estimate for that exposure is approximately \$501,000.

I make two (2) comments in relation to the assessments already received:

- (1) Payment of the liabilities by the due date will bring to a halt General Interest Charges which form part of the assessments. In addition, payment by the due date may possibly facilitate a positive response to a submission for remission of General Interest Charges already incurred, the amount of which is not insignificant. In this regard, it might be beneficial to seek specialist tax advice in order that the best possible case can be put to the ATO. In the ordinary course, I would obtain that advice. Please advise as to whether I am authorised to proceed or will you seek your own tax advice. If tax advice is to be obtained, then I suggest that you urgently issue appropriate instructions.
- (2) It is fortunate that at this time, there is a favourable exchange rate, which means that on conversion, the amount to be advanced would approximate USD \$1,272,000.

Please note that we are still awaiting receipt of an assessment for Pie Face Holdings Pty Ltd. The expectation is that the liability will be nil except for any penalties that may be charged. An assessment for the amount of approximately \$18,700 has been received in respect of Pie Face Australia Franchising Pty Ltd. That assessment relates to Pay As You Go tax and Goods and Services Tax. The assessment is presently being reviewed. There is no present liability for superannuation in relation to Pie Face Holdings Pty Limited and Pie Face Australia Franchising Pty Ltd.

I therefore request that you make arrangements to transfer sufficient funds to our Receivers & Managers account by the due date of **21 October 2019** in order discharge the liability as set out in the table above. If it transpires that a submission is made for remission of General Interest Charges, then payment of that proportion of the assessments will be withheld pending determination of the submission by the ATO.

If you wish to discuss the foregoing, then do not hesitate to contact either Liam Bailey or myself.

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

SYDNEY

Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
Telephone +61 2 9232 3322 | Facsimile +61 2 9232 3388

BATHURST

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Chris Palmer

From: Chris Palmer
Sent: Thursday, 17 October 2019 8:26 AM
To: 'Carlos Sandino'
Cc: Jacquelyn Gogin; Chad Gear; Liam Bailey
Subject: RE: Pie Face Tax Liabilities

Hi Carlos,

Thank you so much for your email and yes, I would be pleased to liaise with Chad.

I suspect there may will be little room to negotiate with the ATO in so far as the claims relate to tax withheld. I am not sure about the GST component but there should be scope to seek remission of interest.

As I suggested in my email of 9 October 2019, it would be wise to instruct a person experienced in these matters to make the appropriate submission to the ATO. We can make contact with such a person in Sydney but if you prefer Chad to take charge of that, then I have no problem and will provide every assistance. Please advise how you wish to proceed.

Finally, I need to review the position in relation to our invoices and will come back to you shortly.

Kind Regards,

Chris Palmer
PARTNER



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From: Carlos Sandino [mailto:csandino@tcacap.com]
Sent: Thursday, 17 October 2019 7:15 AM
To: Chris Palmer <CPalmer@obp.com.au>
Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>
Subject: RE: Pie Face Tax Liabilities

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Thanks,

Carlos Sandino
Managing Director of Corporate Restructuring
TCA Fund Management Group



T.786-323-1650
csandino@tcacap.com

19950 West Country Club Drive
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33180
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From: Chris Palmer <CPalmer@obp.com.au>

Sent: Monday, October 14, 2019 6:10 PM

To: Carlos Sandino <csandino@tcacap.com>

Cc: Wes McKnight <wmcknight@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>

Subject: FW: Pie Face Tax Liabilities

Dear Carlos,

I refer to my email below.

Please advise when the funds will be transferred for the payment of the tax liability. I reiterate that early payment may more readily facilitate a successful submission for remittance of General Interest Charges which approximate AUS\$260,000.

Please give me the courtesy of a response and as always I am available to discuss the matter if you so wish.

Kind Regards,

Chris Palmer
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Cc: Wes McKnight <wmcknight@tcacap.com>; 'Jacquelyn Gogin' <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>; Sandra Ciganda <sciganda@obp.com.au>; Justin Dragicevic <JDragicevic@obp.com.au>

Subject: FW: Pie Face Tax Liabilities

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I also refer to the Deeds of Indemnity for Pie Face Pty Ltd and Pie Face Franchising Pty Ltd signed on 31 October 2016 and 6 December 2016, respectively. In particular, I refer to clause 9.1(d) of the Deeds, which states, "*The Appointor hereby indemnifies the Receiver and the Additional Receiver for and against...any debts or liabilities incurred in continuing to trade the business of the Company including, but not limited to, any amounts payable for wages, superannuation, rent, the purchase of goods or services and commonwealth and state taxes.*"

As foreshadowed, we have now received assessments for two (2) of the entities that are summarised in the table below:

Entity Name	ACN	Period of Liability	Amount Owing to ATO (AUD \$)
Pie Face Franchising Pty Ltd	121 495 243	31/10/2016 to 28/09/2019	49,858.48
Pie Face Pty Ltd	087 384 736	31/10/2016 to 28/09/2019	1,841,146.19
TOTAL			1,891,004.67

Attached are copies of the assessments, which relate to unpaid Pay As You Go tax deductions and Goods and Services Tax. Further assessments are expected in relation to unpaid superannuation withheld. The current estimate for that exposure is approximately \$501,000.

I make two (2) comments in relation to the assessments already received:

- (1) Payment of the liabilities by the due date will bring to a halt General Interest Charges which form part of the assessments. In addition, payment by the due date may possibly facilitate a positive response to a submission for remission of General Interest Charges already incurred, the amount of which is not insignificant. In this regard, it might be beneficial to seek specialist tax advice in order that the best possible case can be put to the ATO. In the ordinary course, I would obtain that advice. Please advise as to whether I am authorised to proceed or will you seek your own tax advice. If tax advice is to be obtained, then I suggest that you urgently issue appropriate instructions.
- (2) It is fortunate that at this time, there is a favourable exchange rate, which means that on conversion, the amount to be advanced would approximate USD \$1,272,000.

Please note that we are still awaiting receipt of an assessment for Pie Face Holdings Pty Ltd. The expectation is that the liability will be nil except for any penalties that may be charged. An assessment for the amount of approximately \$18,700 has been received in respect of Pie Face Australia Franchising Pty Ltd. That assessment relates to Pay As You Go tax and Goods and Services Tax. The assessment is presently being reviewed. There is no present liability for superannuation in relation to Pie Face Holdings Pty Limited and Pie Face Australia Franchising Pty Ltd.

I therefore request that you make arrangements to transfer sufficient funds to our Receivers & Managers account by the due date of **21 October 2019** in order discharge the liability as set out in the table above. If it transpires that a submission is made for remission of General Interest Charges, then payment of that proportion of the assessments will be withheld pending determination of the submission by the ATO.

If you wish to discuss the foregoing, then do not hesitate to contact either Liam Bailey or myself.

Kind Regards,

Chris Palmer
PARTNER



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Chris Palmer

From: Chris Palmer
Sent: Monday, 4 November 2019 11:05 AM
To: 'Carlos Sandino'
Cc: 'Chad Gear'; Jacquelyn Gogin; Liam Bailey
Subject: FW: Pie Face Tax Liabilities
Attachments: 20191104111619294.pdf

Hi Carlos,

I refer to recent emails regarding the above matter and in particular those sent 17 October 2019 and 25 October 2019 (2) in respect of which no responses have been received.

Chad sent me an email on Thursday 31 October 2019 asking whether I have time to discuss the tax liabilities. I responded in the affirmative and in addition left a message on his mobile. We have not yet spoken.

Attached is another statement from the Australian Taxation Office ("ATO") seeking payment of the amount of AUS\$1,852,450.35 in respect of Pie Face Pty Ltd (087 384 736). You will note that the debt, if paid by 18 November 2019, has increased by approximately AUS\$11,300 from that disclosed in the statement attached to my email sent 9 October 2019.

Please urgently advise as to:

- (i) whether you intend to instruct Chad or myself to instruct an appropriate person to make a submission to the ATO;
- (ii) when you expect to advance monies in order that the tax liability can be paid at least in part if not in full.

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
Sent: Friday, 25 October 2019 9:58 AM

To: 'Carlos Sandino' <csandino@tcacap.com>
Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Carlos,

I refer to my email below.

I spoke to Chad this morning who advised that he has not been instructed to brief an appropriate person to make the submission to the ATO in relation to the tax liabilities.

Please confirm that you intend to instruct Chad in which case I will not make contact with the person I had in mind.

In my opinion, an early submission may bring about the best outcome.

Kind Regards,

Chris Palmer
PARTNER



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Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>
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Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>

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TOTAL			1,891,004.67

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If you wish to discuss the foregoing, then do not hesitate to contact either Liam Bailey or myself.

Kind Regards,

Chris Palmer
PARTNER



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Chris Palmer

From: Carlos Sandino <csandino@tcacap.com>
Sent: Tuesday, 5 November 2019 11:15 AM
To: Chris Palmer
Cc: Chad Gear; Jacquelyn Gogin; Liam Bailey
Subject: RE: Pie Face Tax Liabilities

Hi Chris,

1. Chad has been instructed to approach the ATO as to a possible discounted settlement.
2. Monies wouldn't be advanced until we have a payment plan/settlement with the ATO.

I will follow up with Chad to ensure the ATO is approached ASAP.

THanks,

Carlos Sandino
Managing Director of Corporate Restructuring
TCA Fund Management Group



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csandino@tcacap.com

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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Sunday, November 3, 2019 7:05 PM
To: Carlos Sandino <csandino@tcacap.com>
Cc: Chad Gear <c.gear@taylor-david.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Carlos,

I refer to recent emails regarding the above matter and in particular those sent 17 October 2019 and 25 October 2019 (2) in respect of which no responses have been received.

Chad sent me an email on Thursday 31 October 2019 asking whether I have time to discuss the tax liabilities. I responded in the affirmative and in addition left a message on his mobile. We have not yet spoken.

Attached is another statement from the Australian Taxation Office ("ATO") seeking payment of the amount of AUS\$1,852,450.35 in respect of Pie Face Pty Ltd (087 384 736). You will note that the debt, if paid by 18 November 2019, has increased by approximately AUS\$11,300 from that disclosed in the statement attached to my email sent 9 October 2019.

Please urgently advise as to:

- (i) whether you intend to instruct Chad or myself to instruct an appropriate person to make a submission to the ATO;
- (ii) when you expect to advance monies in order that the tax liability can be paid at least in part if not in full.

Kind Regards,

Chris Palmer
PARTNER



SYDNEY

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From: Chris Palmer

Sent: Friday, 25 October 2019 9:58 AM

To: 'Carlos Sandino' <csandino@tcacap.com>

Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>

Subject: FW: Pie Face Tax Liabilities

Hi Carlos,

I refer to my email below.

I spoke to Chad this morning who advised that he has not been instructed to brief an appropriate person to make the submission to the ATO in relation to the tax liabilities.

Please confirm that you intend to instruct Chad in which case I will not make contact with the person I had in mind.

In my opinion, an early submission may bring about the best outcome.

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
Sent: Thursday, 17 October 2019 8:26 AM
To: 'Carlos Sandino' <csandino@tcacap.com>
Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: RE: Pie Face Tax Liabilities

Hi Carlos,

Thank you so much for your email and yes, I would be pleased to liaise with Chad.

I suspect there may will be little room to negotiate with the ATO in so far as the claims relate to tax withheld. I am not sure about the GST component but there should be scope to seek remission of interest.

As I suggested in my email of 9 October 2019, it would be wise to instruct a person experienced in these matters to make the appropriate submission to the ATO. We can make contact with such a person in Sydney but if you prefer Chad to take charge of that, then I have no problem and will provide every assistance. Please advise how you wish to proceed.

Finally, I need to review the position in relation to our invoices and will come back to you shortly.

Kind Regards,

Chris Palmer
PARTNER



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From: Carlos Sandino [mailto:csandino@tcacap.com]
Sent: Thursday, 17 October 2019 7:15 AM
To: Chris Palmer <CPalmer@obp.com.au>
Cc: Jacquelyn Gogin <jgogin@tcacap.com>; Chad Gear <c.gear@taylor-david.com>
Subject: RE: Pie Face Tax Liabilities

Hi Chris,

I think we need to negotiate with the ATO so as to minimize the tax liability. I'd like to have Chad with Taylor David involved and provide guidance in the matter.

I think it's probably best to utilize a tax accountant with prior experience dealing with these matter approach the ATO. I assume that in your trade you have experience in dealing with these type of matters/settlements. Chad can surely provide a contact person to serve as a liaison with the government if needed.

Also, I'd like to get number that TCA can settle out your account for. I know you've extended offers before with a discount. I'm wondering what would be your best number to settle TCA's invoices with OBP?

I appreciate your feedback.

Thanks,

Carlos Sandino
Managing Director of Corporate Restructuring
TCA Fund Management Group

T.786-323-1650
csandino@tcacap.com



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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Monday, October 14, 2019 6:10 PM
To: Carlos Sandino <csandino@tcacap.com>
Cc: Wes McKnight <wmcknight@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Dear Carlos,

I refer to my email below.

Please advise when the funds will be transferred for the payment of the tax liability. I reiterate that early payment may more readily facilitate a successful submission for remittance of General Interest Charges which approximate AUS\$260,000.

Please give me the courtesy of a response and as always I am available to discuss the matter if you so wish.

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
Sent: Wednesday, 9 October 2019 4:17 PM
To: Carlos Sandino <csandino@tcacap.com>
Cc: Wes McKnight <wmcknight@tcacap.com>; 'Jacquelyn Gogin' <jgogin@tcacap.com>; Liam Bailey <L.Bailey@obp.com.au>; Sandra Ciganda <sciganda@obp.com.au>; Justin Dragicevic <JDragicevic@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Dear Carlos,

I refer to the email from Liam Bailey sent 30 September 2019 which attached a statement of chronology and a summary of outstanding issues in the Pie Face Receivership. In particular, I refer to paragraph 2.2 of that statement which relates to outstanding tax liabilities.

I also refer to the Deeds of Indemnity for Pie Face Pty Ltd and Pie Face Franchising Pty Ltd signed on 31 October 2016 and 6 December 2016, respectively. In particular, I refer to clause 9.1(d) of the Deeds, which states, "*The Appointor hereby indemnifies the Receiver and the Additional Receiver for and against...any debts or liabilities incurred in continuing to trade the business of the Company including, but not limited to, any amounts payable for wages, superannuation, rent, the purchase of goods or services and commonwealth and state taxes.*"

As foreshadowed, we have now received assessments for two (2) of the entities that are summarised in the table below:

Entity Name	ACN	Period of Liability	Amount Owing to ATO (AUD \$)
Pie Face Franchising Pty Ltd	121 495 243	31/10/2016 to 28/09/2019	49,858.48
Pie Face Pty Ltd	087 384 736	31/10/2016 to 28/09/2019	1,841,146.19
TOTAL			1,891,004.67

Attached are copies of the assessments, which relate to unpaid Pay As You Go tax deductions and Goods and Services Tax. Further assessments are expected in relation to unpaid superannuation withheld. The current estimate for that exposure is approximately \$501,000.

I make two (2) comments in relation to the assessments already received:

- (1) Payment of the liabilities by the due date will bring to a halt General Interest Charges which form part of the assessments. In addition, payment by the due date may possibly facilitate a positive response to a submission for remission of General Interest Charges already incurred, the amount of which is not insignificant. In this regard, it might be beneficial to seek specialist tax advice in order that the best possible case can be put to the ATO. In the ordinary course, I would obtain that advice. Please advise as to whether I am authorised to proceed or will you seek your own tax advice. If tax advice is to be obtained, then I suggest that you urgently issue appropriate instructions.
- (2) It is fortunate that at this time, there is a favourable exchange rate, which means that on conversion, the amount to be advanced would approximate USD \$1,272,000.

Please note that we are still awaiting receipt of an assessment for Pie Face Holdings Pty Ltd. The expectation is that the liability will be nil except for any penalties that may be charged. An assessment for the amount of approximately \$18,700 has been received in respect of Pie Face Australia Franchising Pty Ltd. That assessment relates to Pay As You Go tax and Goods and Services Tax. The assessment is presently being reviewed. There is no present liability for superannuation in relation to Pie Face Holdings Pty Limited and Pie Face Australia Franchising Pty Ltd.

I therefore request that you make arrangements to transfer sufficient funds to our Receivers & Managers account by the due date of **21 October 2019** in order discharge the liability as set out in the table above. If it transpires that a submission is made for remission of General Interest Charges, then payment of that proportion of the assessments will be withheld pending determination of the submission by the ATO.

If you wish to discuss the foregoing, then do not hesitate to contact either Liam Bailey or myself.

Kind Regards,

Chris Palmer
PARTNER



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Chris Palmer

From: Chris Palmer
Sent: Wednesday, 20 November 2019 2:15 PM
To: Chad Gear
Cc: Carlos Sandino; Jacquelyn Gogin; 'Greg Grunert'; Liam Bailey
Subject: FW: Pie Face Tax Liabilities
Attachments: 20191120161055929.pdf; 20191120161038472.pdf

Hi Chad,

Thank you for your email.

Attached are the signed Nomination to Act Forms.

Kind Regards,

Chris Palmer
PARTNER



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From: Bayley Plaskett
Sent: Wednesday, 20 November 2019 2:09 PM
To: Chris Palmer <CPalmer@obp.com.au>
Subject:

Kind Regards,

Bayley Plaskett
RECEPTIONIST



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Chris Palmer

From: Chad Gear <c.gear@taylor-david.com>
Sent: Friday, 10 January 2020 10:48 AM
To: Chris Palmer
Cc: Carlos Sandino; Jacquelyn Gogin; Greg Grunert; Liam Bailey
Subject: RE: Pie Face Tax Liabilities

Hi Chris

Thank you, and you too.

Scott Taylor and I had a discussion with Carlos and Jackie late last year.

We are working to provide draft submissions to the ATO (for your instructions) by 17 January 2020.

Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 616 | Main Telephone +61 7 322 99 800
c.gear@taylor-david.com | www.taylor-david.com

Brisbane | Melbourne | Perth

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Best Lawyers

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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Wednesday, 8 January 2020 10:36 AM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

I trust you had an enjoyable XMAS and New Year.

I have received two statements from the ATO in relation to the tax liabilities, one for \$1,872,125 in relation to ACN 087 384 736, the other for \$50,859 in relation to ACN 121 495 243.

I assume therefore that an agreement has not yet been reached with the ATO.

Can you please advise as to the current status.

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
Sent: Wednesday, 20 November 2019 2:15 PM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; 'Greg Grunert' <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

Thank you for your email.

Attached are the signed Nomination to Act Forms.

Kind Regards,

Chris Palmer
PARTNER



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Chris Palmer

From: Chad Gear <c.gear@taylor-david.com>
Sent: Monday, 3 February 2020 9:09 AM
To: Chris Palmer
Cc: Carlos Sandino; Jacquelyn Gogin; Greg Grunert
Subject: RE: Pie Face Tax Liabilities

Hi Chris

My apologies for the delay responding. I expect to have a draft to you for your review by Wednesday.

Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 616 | Main Telephone +61 7 322 99 800
c.gear@taylor-david.com | www.taylor-david.com

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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Friday, 31 January 2020 8:25 AM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

I refer to my email below in respect of which no response has been received.

Can you please advise when the submissions will be ready.

Kind Regards,

Chris Palmer
PARTNER



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Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
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From: Chris Palmer
Sent: Thursday, 23 January 2020 4:05 PM
To: 'Chad Gear' <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

When do you expect to provide draft submissions to the ATO?

Kind Regards,

Chris Palmer
PARTNER



SYDNEY
Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
Telephone +61 2 9232 3322 | Facsimile +61 2 9232 3388

BATHURST
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Sent: Friday, 10 January 2020 10:49 AM
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Scott Taylor and I had a discussion with Carlos and Jackie late last year.

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Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 616 | Main Telephone +61 7 322 99 800
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Subject: FW: Pie Face Tax Liabilities

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I have received two statements from the ATO in relation to the tax liabilities, one for \$1,872,125 in relation to ACN 087 384 736, the other for \$50,859 in relation to ACN 121 495 243.

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Can you please advise as to the current status.

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
Sent: Wednesday, 20 November 2019 2:15 PM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; 'Greg Grunert' <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

Thank you for your email.

Attached are the signed Nomination to Act Forms.

Kind Regards,

Chris Palmer
PARTNER



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Chris Palmer

From: Greg Grunert <g.grunert@taylor-david.com>
Sent: Friday, 14 February 2020 11:22 AM
To: Chris Palmer; Chad Gear
Cc: Carlos Sandino; Jacquelyn Gogin; Liam Bailey
Subject: RE: Pie Face Tax Liabilities

Hi Chris

I expect to have the draft to you by this afternoon or Monday morning at the latest.

Yours faithfully,

Greg Grunert | Associate
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 623 | Main Telephone +61 7 322 99 800 | Facsimile +61 7 322 99 833
g.grunert@taylor-david.com | www.taylor-david.com

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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Friday, 14 February 2020 10:18 AM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

Any update as to when you expect to complete the draft submission?

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

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From: Chris Palmer
Sent: Friday, 7 February 2020 6:53 AM
To: 'Chad Gear' <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: RE: Pie Face Tax Liabilities

Hi Chad,

Thanks for the update.

Kind Regards,

Chris Palmer
PARTNER

 **O'BRIEN
PALMER**
INSOLVENCY & BUSINESS ADVISORY

SYDNEY
Level 9, 66 Clarence Street, Sydney NSW 2000 | GPO Box 3385, Sydney NSW 2001
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From: Chad Gear [mailto:c.gear@taylor-david.com]
Sent: Friday, 7 February 2020 12:37 AM
To: Chris Palmer <CPalmer@obp.com.au>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>
Subject: RE: Pie Face Tax Liabilities

Hi Chris

My apologies for the delay, but we are still working on the submissions to the ATO. I am hoping to have them to you tomorrow or Monday for instructions.

Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers


Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 616 | Main Telephone +61 7 322 99 800
c.gear@taylor-david.com | www.taylor-david.com

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From: Chris Palmer <CPalmer@obp.com.au>

Sent: Monday, 3 February 2020 11:56 AM

To: Chad Gear <c.gear@taylor-david.com>

Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>

Subject: RE: Pie Face Tax Liabilities

Thanks Chad.

Kind Regards,

Chris Palmer
PARTNER



INSOLVENCY & BUSINESS ADVISORY

SYDNEY

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From: Chad Gear [<mailto:c.gear@taylor-david.com>]

Sent: Monday, 3 February 2020 9:09 AM

To: Chris Palmer <CPalmer@obp.com.au>

Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>

Subject: RE: Pie Face Tax Liabilities

Hi Chris

My apologies for the delay responding. I expect to have a draft to you for your review by Wednesday.

Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 616 | Main Telephone +61 7 322 99 800
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From: Chris Palmer <CPalmer@obp.com.au>

Sent: Friday, 31 January 2020 8:25 AM

To: Chad Gear <c.gear@taylor-david.com>

Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>

Subject: FW: Pie Face Tax Liabilities

Hi Chad,

I refer to my email below in respect of which no response has been received.

Can you please advise when the submissions will be ready.

Kind Regards,

Chris Palmer
PARTNER



SYDNEY

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Subject: RE: Pie Face Tax Liabilities

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Subject: RE: Pie Face Tax Liabilities

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Taylor David Lawyers


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Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>

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I assume therefore that an agreement has not yet been reached with the ATO.

Can you please advise as to the current status.

Kind Regards,

Chris Palmer
PARTNER

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From: Chris Palmer
Sent: Wednesday, 20 November 2019 2:15 PM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Carlos Sandino <csandino@tcacap.com>; Jacquelyn Gogin <jgogin@tcacap.com>; 'Greg Grunert' <g.grunert@taylor-david.com>; Liam Bailey <L.Bailey@obp.com.au>
Subject: FW: Pie Face Tax Liabilities

Hi Chad,

Thank you for your email.

Attached are the signed Nomination to Act Forms.

Kind Regards,

Chris Palmer
PARTNER

 **O'BRIEN
PALMER**
INSOLVENCY & BUSINESS ADVISORY

SYDNEY

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Chris Palmer

From: Chad Gear <c.gear@taylor-david.com>
Sent: Tuesday, 24 March 2020 12:53 PM
To: Chris Palmer
Cc: Liam Bailey; Greg Grunert
Subject: Pie Face Pty Ltd (Receiver & Manager Appointed) - Matter: 81577
Attachments: Ltr to DCT (Submission on Tax)-F34926.docx

Dear Chris

I hope you are well?

Please find **attached** a draft letter for you review. Would you please let us know whether it is in order to circulate to you and TCA for instructions in relation to those parts highlighted in yellow.

Yours faithfully,


Chad Gear | Partner
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
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c.gear@taylor-david.com | www.taylor-david.com

Brisbane | Melbourne | Perth



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10 May 2022

Deputy Commissioner of Taxation
PO Box 9102
Albury NSW 2640

Contact:	Greg Grunert
Direct line:	07 3227 1623
E-mail:	g.grunert@taylor-david.com
Partner Responsible:	Chad Gear
Our ref:	CG:GG:81657
Your ref:	19:4319

Australian Taxation Office
PO Box 3373
Penrith NSW 2740

Without prejudice

Dear Deputy Commissioner

A.C.N. 087 384 736 Pty Ltd (formerly known as Pie Face Pty Ltd)
A.C.N. 121 495 243 Pty Ltd (formerly known as Pie Face Franchising Pty Ltd)

We act for:

- (a) ACN 087 384 736 Pty Ltd (formerly known as Pie Face Pty Ltd) (In Liquidation) (Receivers and Managers Appointed) ABN 18 087 384 736 (**Pie Face**);
 - (b) ACN 121 495 243 Pty Ltd (formerly known as Pie Face Franchising Pty Ltd) (In Liquidation) (Receivers and Managers Appointed) ABN 80 121 495 243 (**Pie Face Franchising**);
 - (c) ACN 604 927 835 Pty Ltd (formerly Pie Face Australia Franchising Pty Ltd) (In Liquidation) (Receivers and Managers Appointed) ABN 38 604 927 835 (**Pie Face Australia Franchising**);
- (together, the **Pie Face Group**),
- (d) Messrs Liam Bailey (**Bailey**) and Christopher Palmer (**Palmer**) (together, the **Receivers**) as joint and several receivers and managers of Pie Face and Pie Face Franchising.

We are instructed as follows.

1. Notice of appointment

- 1.1. Please find **enclosed** the following signed nominations for Taylor David Lawyers to act on behalf for the above companies in relation to these matters.

2. Background

The following is provided by way of general background:

- 2.1. The Pie Face Group of companies operated a complex structure of food service and franchise businesses including:
 - (a) Pie Face (which was franchised to approximately 40 franchise stores by the franchising entities);
 - (b) A central kitchen facility at Camellia, NSW (the CKF). The CKF made the products sold throughout the franchise network of the Pie Face Group; and
 - (c) A licence agreement with a Japanese company which traded as "Pie Face" in Japan.
- 2.2. The Receivers were appointed by TCA Global Credit Fund (TCA) as set out below pursuant to a cross-collateralised security agreement held by TCA.

Pie Face

- 2.3. On 31 October 2016, Palmer was appointed as receiver and manager of Pie Face;
- 2.4. On 28 November 2016, Bailey was appointed as joint and several receiver and manager of Pie Face; and
- 2.5. On 18 November 2016, Sule Arnautovic was appointed as liquidator of Pie Face under Division 1 of Part 5.5 of the *Corporations Act 2001* (Cth) (Act).

Pie Face Franchising

- 2.6. On 6 December 2016, Bailey and Palmer were appointed as joint and several receivers and managers of Pie Face Franchising; and
- 2.7. On 17 February 2017, Neil Robert Cussen was appointed as liquidator of Pie Face Franchising under Division 1 of Part 5.4 of the Act following winding up proceedings commenced by you in Federal Court of Australia New South Wales proceeding no. NSD70 of 2017.

Pie Face Australia Franchising

- 2.8. On 9 December 2016, Bailey and Palmer were appointed as joint and several receivers and managers of Pie Face Australia Franchising.

ATO Liabilities

- 2.9. Our clients currently have the following outstanding liabilities owed to ATO in the sum of [XX]:
 - (a) Pie Face: \$1,880,325.60, comprised of:
 - (i) [Liam / Chris – are you able to provide us with a breakdown of how this amount is calculated? It would be quite useful if that breakdown could provide (for the period since your appointment as Receivers and Managers), to the extent that these classifications are relevant:
 - A. GST amounts?

- B. SGC amounts?
 - C. General Interest Charge amounts?
 - D. Other (company tax) amounts?]
- (b) Pie Face Franchising: \$50,859.54, comprised of:
- (i) [Liam / Chris – as above].
- (c) Pie Face Franchising Australia: \$19,042.77, comprised of:
- (i) [Liam / Chris – as above].

3. Matters attended to since appointment

- 3.1. Since their appointments, the Receivers have, at the direction of TCA, attended to, amongst others, the following tasks:
- (a) Dealing with the assets of the Pie Face Group companies collectively;
 - (b) Closing all stores owned and operated by Pie Face;
 - (c) Ensuring that the franchise network was maintained to the maximum extent possible;
 - (d) Facilitating the sale of various Pie Face Group assets;
 - (e) Dealing with numerous disputes concerning Pie Face Group's intellectual property; and
 - (f) Dealing with numerous disputes concerning the Pie Face Group's leases.
- 3.2. In or around April 2017, Pie Face entered into an agreement with United Petroleum Limited (**United**) for the sale of certain assets of the Pie Face Group. That agreement included a term that Pie Face, specifically CKF, guarantee supply of products to United for 12 months.
- 3.3. At the conclusion of the 12-month period, on or about 30 April 2018, at the direction of TCA, the Receivers looked to alternative means to continue to supply United. The Receivers eventually entered into a heads of agreement (**HOA**) with Munch Food Co Pty Ltd (**Munch**), pursuant to which:
- (a) Munch would acquire assets and stock owned by Pie Face at a significant discount;
 - (b) If United entered into a guaranteed supply agreement with Munch, Munch would remit to Pie Face a commission of 7 cents per pie for 24 months.
 - (c) The business and assets of CKF would be licenced to Munch. The relevant lease, premises and employees all to remain with the Receivers until a formal sale of CKF was concluded.
- 3.4. Initially, Munch paid the licence fee on a regular basis such that the Receivers had funds in the administration to meet the various ATO obligations however the payments increasingly became sporadic.
- 3.5. On instruction from TCA and in order to maintain the status quo, the Receivers continued to pay the costs of the CKF pending settlement of the HOA or a revised deal. At the direction of

TCA, the Receivers did not enforce the debts owed by Munch such that any available funds were eventually exhausted.

- 3.6. As a result of the ongoing dispute with Munch and other third parties, the Receivers are presently not in funds and not in a position to remit payment of [TBA] without first making demand of TCA pursuant to the relevant indemnity. TCA has however indicated to the Receivers that it is unwilling to indemnify the Receivers for the entirety of the ATO Debt as it disputes that the ATO is entitled to such amounts.
- 3.7. The Receivers therefore hold concerns that they will face difficulty receiving payment in full such that they will be personally liable for the balance of the ATO Debt. These concerns are further exacerbated in circumstances where TCA is a company registered in the British Virgin Islands.

4. Proposal

- 4.1. As a result, the Receivers have recently reached an in-principle agreement with TCA under which TCA will indemnify the Receivers in the amount of [TBA] only. Accordingly, on a commercial basis only, the Receivers offer to resolve the ATO Debt in full and final satisfaction, on the following basis:
 - (a) The Receivers pay to the ATO the sum of [TBA] (**Settlement Sum**);
 - (b) Upon receipt of the Settlement Sum, the ATO forever releases the Receivers from the ATO Debt.
 - (c) Each party otherwise bears their own costs.
- 4.1. The above offer is open for acceptance until **5:00pm (AEST) on TBA March 2020**, failing which it will lapse and become incapable of acceptance.
- 4.2. Communication of acceptance of the above offer must be made in writing and communicated to our office.
- 4.3. In the event the ATO intends to commence recovery proceedings, we are instructed they would seek to join TCA to any such proceedings.
- 4.4. In our view, the above proposal is in the interests of all stakeholders when the costs of prolonged and potentially multi-jurisdictional court proceedings are taken into account.
- 4.5. Please do not hesitate to call (07) 3227 1623 to discuss the above matters further.

Yours faithfully

Chad Gear
Partner
Taylor David Lawyers

Chris Palmer

From: Liam Bailey
Sent: Tuesday, 24 March 2020 1:51 PM
To: Chad Gear; Chris Palmer
Cc: Greg Grunert; Justin Dragicevic
Subject: RE: Pie Face Pty Ltd (Receiver & Manager Appointed) - Matter: 81577

Dear Chad

I refer to your proposed correspondence to be issued to the ATO which was sent to Chris Palmer and I for review.

Respectfully, the letter is, to our mind, flawed and cannot be sent. Our reasons for forming this view are:

1. We the Receivers have not reached any such in-principle agreement with TCA under which we have agreed to any limits on our indemnity as stated in paragraph 3.6
2. Furthermore, paragraph 3.6 implies that we the Receivers agree with TCA's position that the ATO is not entitled to the entirety of the liability as we have calculated it. This is again not the case, nor have you provided any rationale for TCA in forming this view.
3. Paragraph 4.1 implies that the Receivers agree that the settlement sum will be the limit of TCA's exposure under the indemnity. This is also not agreed. By way of interest, can you advise what settlement sum you would be proposing to put to the ATO and what payment terms are being considered?
4. The letter shifts the burden of responsibility for the liabilities in the appointment to us as the Receivers. Whilst we may be technically liable, we have acted strictly in accordance with TCA's instructions and remain fully indemnified for any liabilities accruing as a result of the appointment.
5. Taylor David should disclose that they also act on behalf of TCA.

In summary, the proposed correspondence to the ATO is not acceptable in order to deal with the liability to the ATO or to prescribe limits on TCA's indemnity that it provided us on appointment. Would you please reconsider the approach taken in the letter. We remain available to discuss this with you.

We will send by way of separate email the information you require to complete paragraph 2.9.

Kind Regards,

Liam Bailey
PARTNER



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From: Chad Gear <c.gear@taylor-david.com>
Sent: Tuesday, 24 March 2020 12:53 PM
To: Chris Palmer <CPalmer@obp.com.au>
Cc: Liam Bailey <LBailey@obp.com.au>; Greg Grunert <g.grunert@taylor-david.com>
Subject: Pie Face Pty Ltd (Receiver & Manager Appointed) - Matter: 81577

Dear Chris

I hope you are well?

Please find **attached** a draft letter for you review. Would you please let us know whether it is in order to circulate to you and TCA for instructions in relation to those parts highlighted in yellow.

Yours faithfully,

Chad Gear | Partner
Taylor David Lawyers

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TAYLORDAVID
LAWYERS



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Chris Palmer

From: Chris Palmer
Sent: Tuesday, 9 June 2020 8:48 AM
To: Greg Grunert
Cc: Chad Gear; Carlos Sandino; Jacquelyn Gogin; Liam Bailey
Subject: FW: Pie Face Pty Ltd; A.C.N. and Outstanding Tax Liabilities.

Dear Greg,

Thank you for your email below. Whilst it is not our preferred option, we have no difficulty with the approach being adopted. However, it is incumbent upon us to point out the following:

1. In our opinion, it is extremely unlikely the ATO will not pursue the debts although given the current climate, it is impossible to predict when that might occur;
2. In the meantime, interest will continue to accumulate which admittedly, will be a component of the debts likely to be remitted.
3. The current exchange rate may not remain as favourable in the future.
4. Costs continue to be incurred.

Kind Regards,

Chris Palmer
PARTNER



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From: Greg Grunert [mailto:g.grunert@taylor-david.com]
Sent: Monday, 8 June 2020 9:57 AM
To: Chris Palmer ; Chad Gear
Cc: Liam Bailey
Subject: Pie Face Pty Ltd; A.C.N. 087 384 736; and Munch Food Co Pty Ltd - Matter: 81577

Dear Chris

We have since had an opportunity to discuss the draft submissions with TCA.

TCA has indicated that in light of the current economic climate, it is minded to wait and see if the ATO intends to pursue the outstanding amounts before considering any settlement amount. Given that approach, you may wish to seek separate advice.

Please call if you wish to discuss. We will otherwise await further news as to contact from the ATO, so that we can obtain instructions from TCA to resolve the matter moving forward.

Yours faithfully,


Greg Grunert | Associate
Taylor David Lawyers

Level 27, 10 Eagle Street | Brisbane QLD 4000, Australia
Direct Line +61 7 322 71 623 | Main Telephone +61 7 322 99 800 | Facsimile +61 7 322 99 833
g.grunert@taylor-david.com | www.taylor-david.com

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From: Chris Palmer <CPalmer@obp.com.au>
Sent: Wednesday, 27 May 2020 12:39 PM
To: Chad Gear <c.gear@taylor-david.com>
Cc: Greg Grunert <g.grunert@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>
Subject: FW: Pie Face -- ATO Tax liabilities

Hi Chad.

On or about 9 October 2019, I sent an email to TCA seeking a transfer of monies to meet assessments issued by the ATO.

I do not consider that there is a need at this stage to prepare a chronology of all subsequent communications relevant to the matter of the outstanding liabilities. Suffice to say that nigh on 8 months have now passed and a submission is yet to be lodged. In saying that, I appreciate that from time to time you may have difficulty in obtaining instructions from TCA and of course more recently, we have all had to endure the disruption caused by the pandemic.

You provided a draft submission on 24 March 2020. Our concerns with the draft were articulated in an email from Liam sent the same day. We are yet to see a second version.

As you can appreciate, we would like to see this matter brought to a head.

I understood from Greg that you were hoping to make contact with TCA towards the end of last month.

Please advise as to the status of the submission.

Kind Regards,

Chris Palmer
PARTNER



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From: Chris Palmer
Sent: Thursday, 7 May 2020 2:11 PM
To: 'Greg Grunert' <g.grunert@taylor-david.com>
Cc: Chad Gear <c.gear@taylor-david.com>; Liam Bailey <LBailey@obp.com.au>
Subject: Pie Face -- ATO Tax liabilities

Hi Greg,

I refer to our telephone conversation on 21 April 2020 and ask whether you have now been able to obtain instructions from TCA in relation to the submissions.

Your early advice would be appreciated.

Kind Regards,

Chris Palmer
PARTNER



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EXHIBIT E

Commonwealth Bank
Commonwealth Bank of Australia



CommBiz Transaction Group

Transaction ID: F710129717603

Description: TCA Sec Divi

Status: Awaiting Authorisation

Total amount: \$500,000.00

Type: International Money Transfer

1 debit, 1 credit

Purpose:

Processing date: 12/10/2017

Date

Status History

12/10/2017 09:16:55 AM

Confirmed - Liam Bailey

Debit from: PIE FACE PTY LTD RECEIVERS & MAN APP-asset sales

Account Number

Amount

██████████0975

\$500,000.00

Pay to: TCA Global Credit Master Fund LP

Account Number	Bank Name	Branch	Bank Code	City Country
██████████5058 7801	ABN AMRO CHANNEL ISLANDS LIMITED	ST PETER PORT GUERNSEY CI	BIC MEESGGSPX XX NCC 609165 CH 364504	ST PETER PORT Guernsey
(via intermediary bank)	DEUTSCHE BANK TRUST COMPANY AMERICAS		BIC BKTRUS33XX X FV 021001033	NEW YORK NY United States

Payment details for beneficiary

Pie Face Secured Creditor Dividend

Aug - 12/10/17



CHEQUE REQUISITION

**A.C.N. 087 384 736 Pty Ltd
(Receivers and Managers Appointed)**

A.C.N. 087 384 736

Account Pie Face (R&M) - Asset Sales
Bank: Commonwealth Bank of Australia
BSB: 062000
Account No: [REDACTED] 0975
Cheque No:
Date: 12/10/2017
Amount: 500,000.00
Payee: TCA Global Credit Master Fund
19950 West Country Club Drive
AVENTURA FLORIDA 33180
USA
Nature of Payment/Memo Return to Secured Creditor

Payment detail:

Description	GST Code	Net \$	GST \$	Total \$
Contributions (Asset Realisations)	FRE	500,000.00	0.00	500,000.00
Totals:		500,000.00	0.00	500,000.00

Requested By: Liam Bailey

Authorised By: Aut - 12/10/17

Signatory: Christopher John Palmer

Cashbook Entry By: Liam Bailey

Ref No: 165563

Date: 12/10/2017

Commonwealth Bank
Commonwealth Bank of Australia



CommBiz Transaction Group

Transaction ID: F804279392573

Description: PFace Distri

Status: Authorised

Total amount: \$198,000.00

Type: International Money Transfer

1 debit, 1 credit

Purpose:

Processing date: 27/04/2018

Date

Status History

27/04/2018 10:22:22 AM

Confirmed - Liam Bailey

27/04/2018 10:23:30 AM

Authorised - Liam Bailey

Debit from: PIE FACE PTY LTD RECEIVERS & MANAGERS APPOINTED -

Account Number

Amount

0669

\$198,000.00

Exchange rate

Value Date	Rate Valid As At	Payment Amount	Rate	Amount
27/04/2018	27/04/2018 10:16:15 AM	USD 141,550.20	0.7149	\$198,000.00

Pay to: TCA Global Credit Master Fund LP

Account Number	Bank Name	Branch	Bank Code	City Country
0001	ABN AMRO CHANNEL ISLANDS LIMITED	ST PETER PORT GUERNSEY CI	BIC MEESGGSPX XX NCC 609165 CH 364504	ST PETER PORT Guernsey
(via intermediary bank)	DEUTSCHE BANK TRUST COMPANY - AMERICAS		BIC BKTRUS33XX X FW 021001033	NEW YORK NY United States

Payment details for beneficiary

IBAN GB42MEES60916550 5 87801

Aug - 27/4/18



CHEQUE REQUISITION

**A.C.N. 087 384 736 Pty Ltd
(Receivers and Managers Appointed)**

A.C.N. 087 384 736

Account Pie Face - Escrow
Bank: Commonwealth Bank of Australia
BSB: 06200
Account No: [REDACTED] 0669
Cheque No:
Date: 26/04/2018
Amount: 198,000.00
Payee: TCA Global Credit Master Fund
19950 West Country Club Drive
AVENTURA FLORIDA 33180

Nature of
Payment/Memo

Payment detail:

Description	GST Code	Net \$	GST \$	Total \$
Secured Creditors (Fixed): Claims (Fixed Charge Creditors)		198,000.00	0.00	198,000.00
Totals:		198,000.00	0.00	198,000.00

Requested By: Matthew Riedy

Authorised By: Argueley - 27/4/18

Signatory: Christopher John Palmer

Cashbook Entry By: Matthew Riedy

Ref No: 601020

Date: 26/04/2018

CommonwealthBank
Commonwealth Bank of Australia



CommBiz Transaction Group

Transaction ID: F809076476717

Description: P Face Dist

Status: Processed

Total amount: \$225,000.00

Type: International Money Transfer

1 debit, 1 credit

Purpose:

Processing date: 07/09/2018

Date

Status History

07/09/2018 08:47:43 AM

Confirmed - Liam Bailey

07/09/2018 08:48:29 AM

Authorised - Liam Bailey

Debit from: PIE FACE PTY LTD RECEIVERS & MAN APP-asset sales

Account Number

Amount

██████████0975

\$225,000.00

Exchange rate

Value Date	Rate Valid As At	Payment Amount	Rate	Amount
07/09/2018	07/09/2018 08:45:13 AM	USD 153,045.00	0.6802	\$225,000.00

Pay to: TCA Global Credit Master Fund LP

Account Number	Bank Name	Branch	Bank Code	City Country
██████████2001	ABN AMRO CHANNEL ISLANDS LIMITED	ST PETER PORT GUERNSEY CI	BIC MEESGGSPX XX NCC 609165 CH 364504	ST PETER PORT Guernsey
(via intermediary bank)	DEUTSCHE BANK TRUST COMPANY - AMERICAS		BIC BKTRUS33XX X FW 021001033	NEW YORK United States

Payment details for beneficiary

IBANGB42MEES60916550 5 87801

Aug - 7/9/18



CHEQUE REQUISITION

**A.C.N. 087 384 736 Pty Ltd
(Receivers and Managers Appointed)**

A.C.N. 087 384 736

Account Pie Face (R&M) - Asset Sales
Bank: Commonwealth Bank of Australia
BSB: 062000
Account No: [REDACTED] 0975
Cheque No: EFT
Date: 07/09/2018
Amount: 225,000.00
Payee: TCA Global Credit Master Fund
19950 West Country Club Drive
AVENTURA FLORIDA 33180 USA
Nature of Payment/Memo Return of funds to secured creditor

Payment detail:

Description	GST Code	Net \$	GST \$	Total \$
Secured Creditors (Fixed): Claims (Fixed Charge Creditors)		225,000.00	0.00	225,000.00
Totals:		225,000.00	0.00	225,000.00

Requested By: Justin Dragicevic

Authorised By: Aug - 7/9/18

Signatory: Christopher John Palmer

Cashbook Entry By: Justin Dragicevic

Ref No: 607460

Date: 07/09/2018

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Palm Beach Division)

Case No. 9:19-CV-80633-ROSENBERG

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO.,
et al.,

Defendants,

H.S. MANAGEMENT GROUP LLC, et al.,

Relief Defendants.

**RECEIVER'S UNOPPOSED MOTION TO
APPROVE CLAIMS PROCEDURE FOR DISTRIBUTIONS**

Jeffrey C. Schneider, not individually, but solely in his capacity as the Court-Appointed Receiver (the "Receiver") for Natural Diamonds Investment Co., Eagle Financial Diamond Group, Inc., and Argyle Coin, LLC (collectively, the "Receivership Entities"), moves this Court to approve a claims procedure for distributions in this receivership.

I. INTRODUCTION

This Court appointed the Receiver to, *inter alia*, marshal and safeguard the assets of the Receivership Entities and to take whatever actions were necessary for the protection of investors. [D.E. 20]. The Receiver's eventual goal was, of course, to distribute those assets to victims with allowed claims (the "Distributions"). Because most of the assets have been marshalled at this juncture, it is the Receiver's opinion that Distributions should be made in the near future. Thus, the Receiver seeks this Court's approval of the Receiver's proposed plan for Distributions.

II. THE RECEIVER'S PROPOSED DISTRIBUTION PROCEDURE

A. Pro Rata Distribution Method and Proposed Claim Form

In general, the Receiver believes that the most equitable approach for the Distributions is to send each known qualified investor/claimant a *pro rata* amount based on the claimant's proportionate share of the total amount invested by or owed to all claimants.¹ The claim amount for each claimant will be a *net* claim amount, which represents all amounts invested by the claimant subtracted by all amounts received by that claimant before the receivership was initiated.

The Receiver has identified three types of claimants who will potentially file claims in the receivership estate: (i) investors in the Receivership Entities; (ii) diamond owners who gave their pieces of jewelry to one of the principals of the Receivership Entities and who did not, for whatever reason, receive their pieces back, either because they were stolen or used as collateral for loans from third parties; and (iii) possible creditors of the Receivership Entities. To determine who among the foregoing is entitled to receive a Distribution, the Receiver proposes to use the proof of claim form that is attached as **Exhibit A**.

The proposed claim form includes, among other things: (i) the amount of the investment in (or owed by) the Receivership Entities; and (ii) the amount of any pre-receivership payments or items of value received by the claimant from the Receivership Entities (the "Returned Amounts"). The Receiver will also use the claim forms to determine the total dollar amount of all investments into, and other claims against, the Receivership Entities (the "Claims Total"). The Receiver will then determine a percentage that corresponds to each claimant's share of the Claims Total (the

¹ "*Pro rata*" means that each claimant with an allowed claim will receive the following: the total amount to be distributed multiplied by a fraction, the numerator of which is the claimant's allowed claim and the denominator of which is the total of all allowed claims.

“Claim Percentage”).²

Based on the foregoing, the Receiver recommends that each claimant receive a *pro rata* percentage of the proposed distribution amount, based on the following formula: the amount of the *net* allowed claim divided by the total amount of filed claims multiplied by the proposed distribution amount.

As of March 31, 2021, the Receiver currently has approximately \$1,652,551.53 in cash in the receivership estate. The Receiver is also holding a number of pieces of jewelry that he recovered from third parties. In the Receiver’s view, it does not make economic sense to make an interim distribution of the cash and then a second distribution after the jewelry has been monetized, so the Receiver wishes to sell the jewelry in his possession while simultaneously distributing, and analyzing, proof of claim forms, after which he can make one distribution of all amounts in his possession. The Receiver will file a motion to approve that distribution after all claim forms have been received and the Receiver knows the universe of investor claimants versus non-investor claimants. In that motion, in making recommendations for the *pro rata* distributions, the Receiver may differentiate between classes of investor and non-investor claimants or creditors, such that the distributions are made on a *pro rata* basis within those classes.

The Receiver had contemplated recommending that claimants that received Returned Amounts not be permitted to receive distributions until investors that did not receive Returned Amounts are caught up to those investors who did. This form of distribution is referred to as the “rising tide” method. However, the Receiver believes that the more practical, more efficient, more equitable, more expedited, and less costly approach is to simply net out all transfers and, therefore,

² For example, if the Investment Claim Total were \$30 million, and John Smith invested \$3 million, then John Smith’s Claim Percentage would be 10% of the Claims Total.

treat such Returned Amounts as principal reduction payments. Otherwise, it would be a hardship on those investors who received Returned Amounts because they may not be permitted to receive any distributions from the Receiver. It would also be very costly to manage and confirm the “rising tide” method because many claimants may have received relatively small amounts over time and it requires a complete reconstruction of every dollar into, and out of, the various bank accounts of the Receivership Entities. It would also be difficult to utilize this method with the potentially different classes of claimants.

Finally, the Receiver seeks an end date for the acceptance of proof of claim forms (the “Claims Bar Date”). The Receiver proposes a Claims Bar Date of ninety (90) days after the proof of claim forms have been distributed by the Receiver and posted on the Receiver’s website (located at www.naturaldiamondsreceivership.com). The exact Claims Bar Date will be prominently displayed on both the Receiver’s website and the proof of claim form.

B. Proposed Procedure for Objecting to Claims

The Receiver also seeks to establish a procedure for handling potential objections to claims (the “Objections Procedure”):

- (i) When filing the motion for distribution, the Receiver will simultaneously file objections and/or counterclaims to claims (or parts thereof);
- (ii) The motion for distribution, objections, and/or counterclaims will be served on the claimants at the address identified on the claim form by U.S. Mail (or airmail, for foreign claimants);
- (iii) The holders of “allowed claims”³ will be paid upon an Order from this Court granting the motion for distribution. Payments will be made by check and

³ “Allowed claims” will likely include: (1) claimants who filed claims to which the Receiver has no objection; (2) claimants who responded to the Receiver’s objection and whose claim has been resolved in accordance with the Receiver’s recommended treatment or through settlement; (3) claimants who did not respond to the Receiver’s objection who thus consent to their claim being treated in accordance with the Receiver’s recommended treatment in the Objection; and (4) claimants who filed late claims to which the Receiver has no objection.

must be cashed within ninety (90) calendar days, absent which the uncashed checks will be deemed “unclaimed funds” available for distribution to other investors and the claim will be deemed waived (unless exigent circumstances exist);

- (iv) The holders of claims to which the Receiver has objected and/or counterclaimed will have forty-five (45) calendar days from the date of service of the objections and/or counterclaims within which to cure the deficiency and/or to respond to the objection or counterclaim. Such written responses must be served by email (naturaldiamondsreceivership@klsg.com) or U.S. Mail on the Receiver, c/o Ana Salazar, Receivership Administrator, at Levine Kellogg Lehman Schneider + Grossman LLP, 201 South Biscayne Boulevard, 22nd Floor, Miami, FL 33131. If a claimant cures the deficiency or otherwise settles with the Receiver, the Receiver will deem the claimant a holder of an allowed claim and will immediately pay the claimant his or her distribution amount without further Order from this Court. If a claimant does not cure, the claimant’s claim will be subject to the Objections Procedure as a “disputed claim.”⁴ Also, if a claimant does not respond within the time provided, the Receiver’s objections and/or counterclaims will be deemed sustained and adjudicated with prejudice, and the claim will be treated in accordance with the Receiver’s objections and/or counterclaims. The Receiver will file periodic status reports with this Court as to claimants who have cured (and who have been paid their distribution amount), claimants who have responded but have not adequately cured (*i.e.*, “disputed claims”), and claimants who have not responded (and whose claim will be treated in accordance with the Receiver’s objections);
- (v) After a response is served on the Receiver, the claimant and the Receiver will have sixty (60) calendar days to engage in “good faith” discussions to attempt to resolve the issues or to obtain any additional information that may be needed to file dispositive motions regarding the objections and/or counterclaims. Pursuant to the executed proof of claim forms, claimants will have already submitted to the jurisdiction of this Court for purposes of any objections and/or counterclaims; therefore, any discovery and/or dispositive motions will be resolved by this Court in a summary proceeding; and
- (vi) At the conclusion of the foregoing period, the Receiver will file a status report regarding any pending objections or counterclaims and a proposed procedure for handling such remaining “disputed claims.”

⁴ “Disputed claims” will, therefore, likely include claimants who timely responded to the Receiver’s objection and/or counterclaim and who disagree with the Receiver’s recommended treatment, and claimants who did not cure their deficiencies.

C. Proposed Procedure for Reserves

The Receiver also seeks to set a reserve for the Receiver to use to pay for the ongoing costs of administering the estate and for handling “disputed claims.” The Receiver does not wish for technical objections—because, for example, the claim form lacks supporting documentation, lacks a signature, or lacks proof of identity—to delay distributions to holders of “allowed claims.” Therefore, the Receiver proposes that he be permitted to immediately pay holders of “allowed claims” their *pro-rata* share of each distribution, so long as the Receiver maintains a reserve to be potentially utilized for payments to claims to which the Receiver has objected pending resolution of such objections. The Receiver would use his discretion to set the reserve and determine the amount. Again, before making the distribution, the Receiver will be filing a motion for distribution which will identify the claims he is recommending allowing, the classes of those claims and respective *pro rata* percentages, and the claims to which he objects.

III. CERTIFICATION

The Receiver has conferred with the Securities and Exchange Commission and it has no objection to this Motion. A proposed Order granting this Motion is attached as **Exhibit B**.

WHEREFORE, the Receiver respectfully requests that this Court grant this Motion and provide any other relief that is just and proper.

Dated: May 5, 2021

Respectfully submitted,

**LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN LLP**
Counsel for the Receiver
201 South Biscayne Boulevard, 22nd Floor
Miami, Florida 33131
Telephone: (305) 403-8788
Facsimile: (305) 403-8789

By: /s/ Stephanie Reed Traband
STEPHANIE REED TRABAND
Florida Bar No. 0158471
Primary: srt@lklsg.com
Secondary: ar@lklsg.com

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2021, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who do not receive such.

By: /s/ Stephanie Reed Traband
Stephanie Reed Traband

SERVICE LIST

Counsel for Securities and Exchange Commission:

Amie Riggle Berlin, Esq.
Linda S. Schmidt, Esq.
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800, Miami, Florida 33131
Email: berlina@sec.gov

Counsel for Harold Seigel, Jonathan Seigel, and H.S. Management Group LLC:

Ellen M. Kaplan, Esq.
Law Office of Ellen M. Kaplan P.A.
9900 W Sample Rd, Fl 3, Coral Springs, Florida 33065
Email: ellenkaplanesq@aol.com

Counsel for Gold 7 of Miami, LLC:

Aaron Resnick, Esq.
Law Offices of Aaron Resnick, P.A.
100 Biscayne Boulevard, Suite 1607, Miami, Florida 33132

E-mail: aresnick@thefirmmiami.com

Counsel for Winners Church, Frederick Shipman, and Whitney Shipman:

Carl Schoeppl, Esq.

Terry A.C. Gray, Esq.

Schoeppl Law, P.A.

4651 North Federal Highway, Boca Raton, Florida 33431

Email: carl@schoeppllaw.com; tgray@schoeppllaw.com

Jose Aman, pro se

E-mail: joseaman123@gmail.com

EXHIBIT A

PROOF OF CLAIM FORM

JEFFREY C. SCHNEIDER, RECEIVER

NATURAL DIAMONDS INVESTMENT CO., EAGLE FINANCIAL DIAMOND GROUP, INC., AND ARGYLE COIN, LLC

(collectively, the "Receivership Entities")

SECURITIES AND EXCHANGE COMMISSION V. NATURAL DIAMONDS INVESTMENT CO., ET AL.

CASE NO. 19-80633-CIV-ROSENBERG/REINHART

A court authorized this notice. This is not a solicitation from a lawyer.

As you have been previously informed, the Honorable Judge Robin L. Rosenberg of the United States District Court for the Southern District of Florida issued an Order Appointing Receiver that named Jeffrey C. Schneider as the Receiver (the "Receiver") for the Receivership Entities. The Receiver will ultimately, subject to Court approval, distribute the Receivership Entities' assets to investors and other creditors of the Receivership Entities holding allowed claims. The receivership court has since issued an Order approving this Proof of Claim form and fixing the deadline for submitting this claim form.

In order to be eligible to receive a distribution from the Receiver, you must submit this Proof of Claim form, along with the requested documentation, on or before **5:00 p.m. Eastern Standard Time on _____, 2021 (the "CLAIMS BAR DATE")**: (1) to Ana Salazar, Claims Administrator, Levine Kellogg Lehman Schneider + Grossman LLP, 201 S. Biscayne Blvd., 22nd Floor, Miami, FL 33131, or (2) to naturaldiamondsreceivership@lklsg.com.

IMPORTANT INFORMATION TO READ PRIOR TO SUBMITTING THIS PROOF OF CLAIM FORM

1. IF (I) YOU INVESTED MONEY WITH THE RECEIVERSHIP ENTITIES PRIOR TO MAY 13, 2019; OR (II) YOU PROVIDED DIAMONDS OR JEWELRY TO A PRINCIPAL OF THE RECEIVERSHIP ENTITIES AND YOU DID NOT RECEIVE YOUR DIAMONDS OR JEWELRY BACK; OR (III) YOU OTHERWISE HAVE A DEBT THAT IS UNPAID BY THE RECEIVERSHIP ENTITIES, YOU MAY BE ENTITLED TO SHARE IN THE DISTRIBUTIONS.
2. ANY PERSON OR ENTITY SUBMITTING THIS PROOF OF CLAIM FORM SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA PRESIDING OVER THE RECEIVERSHIP CASE FOR ALL PURPOSES INCLUDING, WITHOUT LIMITATION, AS TO ANY CLAIMS, OBJECTIONS, DEFENSES OR COUNTERCLAIMS THAT COULD BE ASSERTED BY THE RECEIVER AGAINST THE HOLDER OF SUCH CLAIM ARISING OUT OF OR RELATING TO ANY DEALINGS OR BUSINESS TRANSACTED WITH THE RECEIVERSHIP ENTITIES. CLAIMANTS FURTHER WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO SUCH CLAIMS, OBJECTIONS, DEFENSES OR COUNTERCLAIMS.
3. IF THIS COMPLETED PROOF OF CLAIM FORM IS NOT RECEIVED BY THE CLAIMS BAR DATE, YOU WILL BE FOREVER BARRED FROM ASSERTING ANY CLAIM IN THE RECEIVERSHIP AND YOU WILL NOT BE ELIGIBLE TO RECEIVE ANY DISTRIBUTIONS FROM THE RECEIVER.

ALL QUESTIONS MUST BE ANSWERED COMPLETELY TO PROCESS YOUR CLAIM

(PLEASE PRINT)

1. _____

Full name of person completing this form, along with any previous, maiden, or other names.

2. _____

If this form is being completed by an entity, the full names of all of the entity's officers, directors, managing agents, shareholders, and direct or indirect beneficiaries.

3. _____

Current address, telephone number, and email address of person completing this form.

From this point forward, the term "you" shall refer to the individual or entity referred to above.

4. Using the tabulation sheets below, please provide information regarding your total investment in the Receivership Entities, identifying the date of the investment contract, the dates on which your investments were made, the amounts, and the payee for each such payment. Attach copies of all contracts, checks, bank statements, credit card statements, wire transfer confirmations, or other documents relating to your answer.

Investment Amount	Investment Contract Date	Method of Payment*	Paid To	Amount Paid
\$				

* CC = Credit Card CK = Check WT = Wire Transfer

5. Did you (or anyone on your behalf) ever receive a refund from the Receivership Entities of any or the investment(s) identified above?

_____ Yes _____ No

6. Did you (or anyone on your behalf) ever receive any other proceeds, or anything of value, either as a distribution, interest payment, or for any other reason, regarding the investment(s) identified above?

_____ Yes _____ No

7. If you answered "Yes" to either questions 5 or 6 above, please provide the following information for each payment or item of value that you (or anyone on your behalf) received, and attach copies of all checks, bank statements, wire transfer confirmations, or other documents relating to your answers:

	<u>Date</u>	<u>Amount</u>	<u>Payor/Payee of check or wire or item of value received</u>
A.	_____	_____	_____
B.	_____	_____	_____
C.	_____	_____	_____

If additional returns and/or amounts were received, please attach a separate sheet identifying those amounts, the dates received, and the payor and payee of the check(s) or wire transfers or the item(s) of value received.

8. If you received any other money or items of value from any other sources, such as an attorney trust account or a third party, at any point in time, please identify the amount you received, from whom, the date on which you received it, and the reason you received such amount (and please attach copies of all checks, bank statements, wire transfer confirmations, and other documents relating to your answer):

9. Please identify any and all recoveries, whether monetary or otherwise, that you received from any person or entity other than the Receivership Entities that relate to your investment in the Receivership Entities. Such recoveries would include, but not be limited to, refunds that you received from agents, recoveries from claims and/or lawsuits that you threatened or filed, or any other source. For each recovery, provide the date you received the recovery, from whom, and the total amount received:

10. If you provided diamonds or other jewelry to a principal of the Receivership Entities and have not received those items back, please provide the following: documentation showing the price or value of the piece; proof of that purchase; a description of the piece, such as a GIA certificate; the date you purchased it; the date you provided it to a principal of the Receivership Entities; any receipt or acknowledgment of same; and any correspondence with that principal (or those principals).

11. Please identify with specificity the nature and status of any lawsuits, arbitrations, or actions that you have filed, demands that you have made, or other proceedings that you have commenced, against any person or entity, relating in any way to your investment with the Receivership Entities including against (i) financial institutions; (ii) employees, officers, directors, representatives, or shareholders of the Receivership Entities; (iii) brokers or agents; (iv) attorneys for the Receivership Entities; or (iv) any other person or entity:

In addition, please provide:

Name and location of Court in which the action was filed: _____

Case number of such action: _____

Name of the attorney and/or firm who filed such action: _____

12. If you were not an investor in the Receivership Entities, or did not provide diamonds or jewelry to a principal of the Receivership Entities, please indicate how you claim an interest in any distributions (and attach all documents supporting such interest):

13. Unless already indicated above, if you received anything of value, from anyone, at any time, relating to your investment in the Receivership Entities, please identify what you received, from whom, and the date on which you received it (and attach all documents relating to same):

14. Did you help to recruit other investors to invest in any of the Receivership Entities?

_____ Yes _____ No

15. If the answer is "Yes" to question 14, and you received a commission or other payment (or item of value) as a result of those efforts, please identify the amount (or item of value) you received, from whom, and the date you received it, along with the investor(s) you helped to secure:

16. _____
The individual(s) with whom you dealt at the Receivership Entities.

17. Please identify with specificity any other information you believe may assist the Receiver in his efforts to locate assets for the benefit of investors and/or creditors of the Receivership Entities:

IN ADDITION TO THE DOCUMENTS DESCRIBED ABOVE, PLEASE PROVIDE ANY OTHER MATERIALS THAT ARE RELATED TO YOUR CLAIM, INCLUDING BUT NOT LIMITED TO COPIES OF CANCELLED CHECKS, BANK ACCOUNT STATEMENTS, STATEMENTS FROM THE RECEIVERSHIP ENTITIES, WIRE TRANSFER CONFIRMATIONS, OR ANY OTHER DOCUMENTS REGARDING YOUR CLAIM.

SEND THIS PROOF OF CLAIM FORM TO:

Ana Salazar

Claims Administrator

Levine Kellogg Lehman Schneider + Grossman LLP

201 S. Biscayne Blvd., 22nd Floor, Miami, FL 33131

OR BY EMAIL TO:

naturaldiamondsreceivership@lklsg.com

OATH REQUIRED OF ALL CLAIMANTS:¹

I HEREBY CERTIFY under penalty of perjury that all of the foregoing information contained on this Proof of Claim Form is true and correct.

Signature of Claimant or authorized Representative

Sworn to and subscribed before me this ____ day of _____, 2021. Such person did take an oath and: *(Notary must check applicable box).*

- ☐ is/are personally known to me.
- ☐ produced a current _____ driver's license as identification.
- ☐ produced _____ as identification.

{Notary Seal must be affixed}

SIGNATURE OF NOTARY

Name of Notary (Typed, Printed or Stamped)

Commission Number: _____

My Commission Expires: _____

¹ Pursuant to 18 U.S.C. § 1001, false statements or representations on this claim form may subject the claimant to fine or imprisonment, or both.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Palm Beach Division)

Case No. 9:19-CV-80633-ROSENBERG

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO.,
et al.,

Defendants,

H.S. MANAGEMENT GROUP LLC, et al.,

Relief Defendants.

**ORDER GRANTING RECEIVER'S UNOPPOSED MOTION TO
APPROVE CLAIMS PROCEDURE FOR DISTRIBUTIONS**

THIS CAUSE came before the Court upon the Receiver's Unopposed Motion to Approve Claims Procedure for Distributions (the "Motion") [DE ____]. Having reviewed the Motion and the record in this case, and being otherwise advised in the premises, the Court finds the Motion is in the best interests of the Receivership Estate. Accordingly, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Receiver's Motion is **GRANTED**.
2. The proof of claim form attached to the Motion as Exhibit A is **APPROVED**. The claim form shall be distributed to all known potential claimants by U.S. Mail (or air mail for foreign claimants) and posted on the Receivership website at: www.naturaldiamondsreceivership.com.

3. The distribution procedures are also approved. The distributions to holders of allowed claims shall be a pro rata percentage of the total distribution amount, based on the following formula: the amount of the net allowed claim divided by the total amount of filed claims multiplied by the total distribution amount.

4. The Receiver shall set a Claims Bar Date of ninety (90) days after the proof of claim forms have been distributed by the Receiver and posted on the Receiver's website.

5. As soon as reasonably practicable after the Claims Bar Date, the Receiver shall file a motion to approve a distribution to holders of allowed claims, which may differentiate between various classes of investors and/or non-investor creditors. The motion shall be served on the claimants at the address identified on the claim form.

6. The Receiver shall simultaneously file objections and/or counterclaims to claims (or parts thereof), following the Objections Procedure outlined below:

(i) The holders of allowed claims will be paid upon an Order from this Court granting the motion for distribution. Payments will be made by check and must be cashed within ninety (90) calendar days, absent which the uncashed checks will be deemed "unclaimed funds" available for distribution to other investors and the claim will be deemed waived (unless exigent circumstances exist);

(ii) The holders of claims to which the Receiver has objected and/or counterclaimed will have forty-five (45) calendar days from the date of service of the objections and/or counterclaims within which to cure the deficiency and/or to respond to the objection or counterclaim. Such written responses must be served by email (naturaldiamondsreceivership@lklsg.com) or U.S. Mail on the Receiver, c/o Ana Salazar, Receivership Administrator, at Levine Kellogg Lehman Schneider + Grossman LLP, 201 South Biscayne Boulevard, 22nd Floor, Miami, FL 33131. If a claimant cures the deficiency or otherwise settles with the Receiver, the Receiver will deem the claimant a holder of an allowed claim and will immediately pay the claimant his or her distribution amount without further Order from this Court. If a claimant does not cure, the claimant's claim will be deemed a "disputed claim." Also, if a claimant does not respond within the time provided, the Receiver's objections and/or counterclaims will be deemed sustained and adjudicated with prejudice, and

the claim will be treated in accordance with the Receiver's objections and/or counterclaims. The Receiver will file periodic status reports with this Court as to claimants who have cured (and who have been paid their distribution amount), claimants who have responded but have not adequately cured (*i.e.*, "disputed claims"), and claimants who have not responded (and whose claim will be treated in accordance with the Receiver's objections);

- (iii) After a response is served on the Receiver, the claimant and the Receiver will have sixty (60) calendar days to engage in "good faith" discussions to attempt to resolve the issues or to obtain any additional information that may be needed to file dispositive motions regarding the objections and/or counterclaims. Any discovery and/or dispositive motions will be resolved by this Court in a summary proceeding; and
- (iv) At the conclusion of the foregoing period, the Receiver will file a status report regarding any pending objections or counterclaims and a proposed procedure for handling any remaining "disputed claims."

7. The Receiver is authorized to use his discretion to set a reserve and the amount of any such reserve to be used for the ongoing costs of administering the estate and for handling "disputed claims."

DONE and ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida on this ____ day of May, 2021.

ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

Copies to Counsel of Record

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 9:19-CV-80633-ROSENBERG**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO.,
et al.,

Defendants,

H.S. MANAGEMENT GROUP LLC, et al.,

Relief Defendants.

**ORDER GRANTING RECEIVER'S UNOPPOSED
MOTION TO APPROVE CLAIMS PROCEDURE FOR DISTRIBUTIONS**

THIS CAUSE came before the Court upon the Receiver's Unopposed Motion to Approve Claims Procedure for Distributions (the "Motion") [DE 293]. Having reviewed the Motion and the record in this case, and being otherwise advised in the premises, the Court finds the Motion is in the best interests of the Receivership Estate. Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Receiver's Motion is **GRANTED**.
2. The proof of claim form attached to the Motion as Exhibit A is **APPROVED**. The claim form shall be distributed to all known potential claimants by U.S. Mail (or air mail for foreign claimants) and posted on the Receivership website at: www.naturaldiamondsreceivership.com.
3. The distribution procedures are also approved. The distributions to holders of allowed claims shall be a pro rata percentage of the total distribution amount, based on the

following formula: the amount of the net allowed claim divided by the total amount of filed claims multiplied by the total distribution amount.

4. The Receiver shall set a Claims Bar Date of ninety (90) days after the proof of claim forms have been distributed by the Receiver and posted on the Receiver's website.

5. As soon as reasonably practicable after the Claims Bar Date, the Receiver shall file a motion to approve a distribution to holders of allowed claims, which may differentiate between various classes of investors and/or non-investor creditors. The motion shall be served on the claimants at the address identified on the claim form.

6. The Receiver shall simultaneously file objections and/or counterclaims to claims (or parts thereof), following the Objections Procedure outlined below:

(i) The holders of allowed claims will be paid upon an Order from this Court granting the motion for distribution. Payments will be made by check and must be cashed within ninety (90) calendar days, absent which the uncashed checks will be deemed "unclaimed funds" available for distribution to other investors and the claim will be deemed waived (unless exigent circumstances exist);

(ii) The holders of claims to which the Receiver has objected and/or counterclaimed will have forty-five (45) calendar days from the date of service of the objections and/or counterclaims within which to cure the deficiency and/or to respond to the objection or counterclaim. Such written responses must be served by email (naturaldiamondsreceivership@lklsg.com) or U.S. Mail on the Receiver, c/o Ana Salazar, Receivership Administrator, at Levine Kellogg Lehman Schneider + Grossman LLP, 201 South Biscayne Boulevard, 22nd Floor, Miami, FL 33131. If a claimant cures the deficiency or otherwise settles with the Receiver, the Receiver will deem the claimant a holder of an allowed claim and will immediately pay the claimant his or her distribution amount without further Order from this Court. If a claimant does not cure, the claimant's claim will be deemed a "disputed claim." Also, if a claimant does not respond within the time provided, the Receiver's objections and/or counterclaims will be deemed sustained and adjudicated with prejudice, and the claim will be treated in accordance with the Receiver's objections and/or counterclaims. The Receiver will file periodic status reports with this Court as to claimants who have cured (and who have been paid their distribution amount), claimants who have responded but have not adequately cured (*i.e.*,

“disputed claims”), and claimants who have not responded (and whose claim will be treated in accordance with the Receiver’s objections);

- (iii) After a response is served on the Receiver, the claimant and the Receiver will have sixty (60) calendar days to engage in “good faith” discussions to attempt to resolve the issues or to obtain any additional information that may be needed to file dispositive motions regarding the objections and/or counterclaims. Any discovery and/or dispositive motions will be resolved by this Court in a summary proceeding; and
- (iv) At the conclusion of the foregoing period, the Receiver will file a status report regarding any pending objections or counterclaims and a proposed procedure for handling any remaining “disputed claims.”

7. The Receiver is authorized to use his discretion to set a reserve and the amount of any such reserve to be used for the ongoing costs of administering the estate and for handling “disputed claims.”

DONE and ORDERED in Chambers at West Palm Beach, Florida on this 27th day of May, 2021.



ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

Copies to Counsel of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 10-CV-80737-HURLEY/HOPKINS
(Consolidated with Case No. 10-CV-80738-HURLEY/HOPKINS for the Receivership)

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,
Plaintiff,

v.
TRADE-LLC, et al.,
Defendants,

v.
BD LLC, et al.,
Relief Defendants.

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

TRADE-LLC, et al.,

Defendants,

BD LLC, et al.,

Relief Defendants.

RECEIVER'S UNOPPOSED MOTION
TO (1) APPROVE CLAIMS PROCEDURE FOR
DISTRIBUTIONS; (2) ESTABLISH PROCEDURE BY WHICH TO
OBJECT TO CLAIMS; AND (3) ESTABLISH PROCEDURE FOR RESERVES

Jeffrey C. Schneider, not individually, but solely in his capacity as receiver (the "Receiver") for Trade-LLC, BD LLC, TWTT-LLC, CMJ Capital LLC, and Center Richmond LLC (collectively, the "Receivership Entities" or "Trade"), moves this Court to (1) approve the claims procedure for distributions in this receivership; (2) establish the procedure by which he

can object to the proofs of claim submitted in this receivership; and (3) establish the procedure for setting reserves.

A. Introduction

Pursuant to the Order Appointing Receiver [DE 12] dated June 23, 2010, the Receiver is obligated to take possession of Trade's assets for the benefit of defrauded investors and to take whatever other steps are necessary for the investors' protection. The Receiver's goal, of course, is to quickly and efficiently distribute those assets to investors with allowed claims (and to certain non-investor creditor(s)) (the "Distributions").

On March 31, 2011, the Receiver mailed approximately 1,500 proof of claim forms to Trade's known investors and creditors. To date, the Receiver has received 1,014 completed proof of claim forms. The Receiver has analyzed the proof of claim forms.

By this Motion, the Receiver is requesting Court approval for a specific procedure for responding to the proof of claim forms and for making distributions of funds to Trade's investors and creditors. To that end, the Receiver has determined that, in order to equitably accomplish distributions to investors and creditors, this Court should: (1) approve the proposed procedure for the Distributions delineated below; (2) establish the proposed procedure by which the Receiver can object to claims delineated below; and (3) establish the proposed procedure for setting reserve funds delineated below.

B. The Receiver's Proposed Distribution Procedure

In general, the Receiver believes that the most equitable approach for the Distributions is to send each investor or creditor a pro-rata¹ amount based on the investor's or creditor's proportionate share of the total amounts invested by or owed to all investors and creditors in

¹ "Pro-rata" means that each claimant with an allowed claim receives a distribution, the amount of which is calculated as follows: the amount to be distributed to all claimants multiplied by a fraction, the numerator of which is the amount of the claimant's allowed claim and the denominator of which is the total of all allowed claims.

Trade. The claim amount for each investor will be a net claim amount, which represents all amounts invested by that investor subtracted by all amounts received by that investor regarding investments pre-receivership or post-receivership.

This Court previously approved the Receiver's proposed proof of claim form [DE 88 and 98]. The proof of claim form includes, among other things: (1) the amount of the investment in (or amount owed by) Trade (the "Initial Investment"); and (2) the amounts of any pre-receivership or post-receivership payments received by the investor or creditor regarding Trade (whether in the form of return of principal, payment of alleged profits, payment of alleged interest, or payments by the investment clubs for services as ECM's,² compensation consultants, brokers, or the equivalent) ("Returned Amounts"). At the same time, the Receiver will determine the total dollar amount of all investments into, and other claims against, Trade (the "Investment Claim Total").

Using the proof of claim forms to compile the necessary information submitted by investors and creditors, the Receiver will determine a percentage that corresponds to each investor's (or creditor's) share of the Investment Claim Total (the "Investment Claim Percentage").³

Because the Receiver is netting claim amounts, each investor's or creditor's Investment Claim Percentage will be adjusted by the amounts received by such investor or creditor by way of Returned Amounts. In other words, if the proof of claim form reveals that an investor or creditor has received Returned Amounts, that investor's or creditor's share in a Distribution will be reduced (*i.e.*, netted) by such amounts.

² "ECM's" refer to investors who received additional funds from the clubs for bringing in additional investors.

³ For example, if the Investment Claim Total were \$50 million, and John Smith invested \$5 million, then John Smith's Investment Claim Percentage would be 10% of the Investment Claim Total.

Based on the above, the Receiver is recommending that each claimant receive a fixed percentage of their allowed claim from the proposed distribution amount, based on the following formula: the amount of the net allowed claim divided by the total amount of filed claims multiplied by the proposed distribution amount.

The Receiver currently has approximately \$7 million in the receivership estate. The Receiver anticipates making a first interim distribution of \$5.5 million to holders of allowed claims. Therefore, the Receiver recommends that each claimant with an allowed claim receive a fixed percentage of their allowed claim from the proposed \$5.5 million distribution amount, based on the following formula: the amount of the claimant's net allowed claim divided by the total amount of filed claims multiplied by \$5.5 million (the proposed distribution amount). The Receiver will be filing the motion to approve the first interim distribution as soon as possible.

The Receiver had contemplated recommending to this Court that claimants that received Returned Amounts not be permitted to receive distributions to the extent of their Returned Amounts until those investors who did not receive Returned Amounts are caught up to those investors who did. This form of distribution is also referred to as the "rising tide method." However, the Receiver believes that the more practical, more efficient, more equitable, more expedited, and less costly approach is to simply net out all transfers and, therefore, to treat such Returned Amounts as net principal reduction payments and permit all claimants with allowed claims to be eligible to receive distributions made by the Receiver. Otherwise, it would be a hardship on those investors who received Returned Amounts because they may not be permitted to receive any portion of the upcoming first distribution. It would also be unwieldy and costly to manage and confirm the "rising tide method," because many investors received relatively small amounts over time, often through the conduit of Trade's several investment clubs.

**C. The Receiver's Proposed Distribution Procedure
for Cash Flow Financial Investors ("CFF")**

As stated previously, the Commodity Futures Trading Commission (the "CFTC") has filed an action against CFF (one of Trade's larger investment clubs) and others. In that action, Phillip Stenger was appointed Receiver for CFF. The Receiver had several calls with Mr. Stenger, his legal counsel, and the lawyers from the CFTC and the Securities and Exchange Commission (the "SEC"). At the CFTC's request, now that a Receiver has been appointed for CFF, the Receiver recommends to make a distribution to CFF's investors by directly paying Mr. Stenger as the CFF Receiver. There are several reasons to do this, including to avoid duplication of efforts, to limit expenses, and to accelerate distributions to all investors. The primary reason, however, is that CFF did not transfer *all* of the investor funds that it received to Trade but only a small portion; specifically, CFF transferred approximately (and only) \$8 million of approximately \$40-plus million received from investors to Trade. Mr. Stenger, therefore, will pursue the other funds and, therefore, should be the disbursing agent for *all* CFF funds. (Any CFF investors that directly invested in Trade will, as set forth below, be part of *this* receivership.)

The amount paid to Mr. Stenger, as the CFF Receiver, will be a fixed amount based on the net amount of money that CFF transferred to Trade. Mr. Stenger, as the CFF Receiver, has submitted a proof of claim with a net claim amount of approximately \$6 million, which represents the net CFF funds that were transferred to Trade. Mr. Stenger intends on, in turn, distributing that money – along with other funds that he currently has or recovers in the future – to CFF investors as part of the CFF receivership. This procedure ensures that Mr. Stenger and the Receiver do not duplicate efforts, which would only increase the expenses to the victims.

This procedure also ensures that CFF investors are dealt with in one proceeding rather than two, which again will help to minimize the expenses.

Having said that, the current pool of victims in the Trade receivership includes the CFF investors, who submitted claims totaling approximately \$34 million of the approximate \$50 million claimed to be owed. Assuming this Court grants this Motion, the CFF investors will receive distributions from the CFF Receiver instead of from this receivership. As a result, the Receiver anticipates that the total amount claimed to be owed in *this* receivership will be reduced from approximately \$50 million to approximately \$16 million⁴ once the CFF investors are essentially removed from the equation to be dealt with as part of the CFF receivership, which figure will then be increased by the amount of the CFF Receiver's claim in this case (approximately \$6 million).⁵ In other words, the Receiver anticipates that the total amount claimed to be owed in *this* receivership, at the end of the day, will be approximately \$22 million (*i.e.*, the Investment Claim Total as defined above).

Through multiple postings on the Receiver's website, as well as posting this Motion there, the Receiver has notified, and will continue to notify, CFF investors of this proposed procedure. The Receiver has also provided contact information for Mr. Stenger and/or his counsel in case the CFF investors have any questions regarding the CFF receivership or this process. The Receiver anticipates further collaboration and cooperation with Mr. Stenger and his team as this receivership and the CFF receivership unfold.

⁴ These investors would include investors in New Life Club, Jool Club, Family and Friends Private Investment Club, and Trade directly.

⁵ If a CFF investor invested through both CFF and another club (and/or Trade directly), the investor's investment through CFF will be handled by the CFF Receiver (Mr. Stenger) and the investor's investment through the other club (and/or Trade) will be handled by the Receiver.

Therefore, subject to the CFF Receiver's claim being allowed in this receivership in the upcoming motion for interim distribution, all CFF investor claims should be discharged in this receivership and transferred to the CFF receivership.

D. The Receiver's Proposed Procedure for Objecting to Claims

The Receiver also seeks to establish a procedure for filing and determining objections to claims in accordance with the following (the "Objections Procedure"):

- (i) At the time of filing his motion(s) for distribution, the Receiver will simultaneously file objections and/or counterclaims to claims (or parts thereof), or a request for an extension of time to file any such objections and/or counterclaims, if additional information is needed;
- (ii) The motion(s) for distribution, the objections, and/or counterclaims will be served on the claimants by the Receiver at the address on the claim form submitted by the claimant, by U.S. Mail (foreign claimants will be served by DHL);
- (iii) The holders of "allowed claims"⁶ will be paid by the Receiver upon an Order from this Court granting the recommended distribution. Payments by the Receiver will be made by check and must be cashed within ninety (90) calendar days, absent which the check will be voided, the uncashed checks will be deemed "unclaimed funds" available for distribution to other investors and creditors, and the claim will be deemed expunged and waived. The Receiver will be authorized to withhold issuing checks for future distributions to claimants who have not cashed checks from a prior distribution;
- (iv) The holders of claims to which the Receiver has objected, in whole or in part, and/or counterclaimed, will have forty-five (45) calendar days from the date of service of the objections and/or counterclaims within which to cure the deficiency and/or to respond to the Receiver in writing. Such written responses will be served by facsimile, email, or U.S. Mail on the Receiver at his office, c/o Ana Salazar, Receivership Administrator, at Levine Kellogg Lehman Schneider + Grossman LLP, 201 South Biscayne Boulevard, 34th Floor, Miami, FL 33131. If a claimant adequately and

⁶ "Allowed claims" will likely include: (1) the claimants who timely filed claims to which the Receiver has no objections, and thus did not file objections; (2) the claimants who timely responded to the Receiver's objection and/or counterclaim, but whose claim has been resolved in accordance with the Receiver's recommended treatment in the Objection or through settlement; (3) the claimants who did not timely respond to the Receiver's objection and/or counterclaim, but whose claim shall be allowed in accordance with the Receiver's recommended treatment in the Objection; and (4) the claimants who filed late claims to which the Receiver has no objections.

timely cures the deficiency or objection, or otherwise settles with the Receiver, the Receiver will deem the claimant a holder of an allowed claim and will immediately pay the claimant his or her distribution amount without further Order from this Court. If a claimant responds and does not adequately cure, the claimant's claim will be subject to the Objection Procedure as a "disputed claim."⁷ If a claimant does not respond within the time provided, the Receiver's objections and/or counterclaims will be deemed sustained and adjudicated with prejudice, and the claim will be treated in accordance with the Receiver's objections and/or counterclaims. The Receiver will file periodic status reports with this Court as to claimants who have cured (and who have been paid their distribution amount), claimants who have responded but have not adequately cured (*i.e.*, "disputed claims"), and claimants who have not responded in any manner (and whose claim will be treated in accordance with the Receiver's objections and/or counterclaims)⁸;

- (v) After a response is served in writing on the Receiver, the claimant and the Receiver will have ninety (90) calendar days to conduct any necessary discovery and file any dispositive motions in regards to the objections and/or counterclaims for the "disputed claim." Pursuant to the executed proof of claim forms, claimants have already submitted to the exclusive jurisdiction of this Court, and have waived the right to a jury trial, for purposes of any objections and/or counterclaims; therefore, any necessary discovery and/or dispositive motions in regards to objections and/or counterclaims will be conducted and resolved by this Court in a summary proceeding. All depositions will be conducted at the Receiver's office: Levine Kellogg Lehman Schneider + Grossman LLP, 201 South Biscayne Boulevard, 34th Floor, Miami, FL 33131;
- (vi) At the conclusion of the foregoing discovery period (or, if extended, such extended period), the Receiver will provide the Court with a status report(s) regarding the objections and/or counterclaims, and also move for a Scheduling Order detailing the process for adjudication by this Court of any objections and/or counterclaims at issue for "disputed claims"; and
- (vii) The Receiver will determine late claims on a case-by-case basis.

The Receiver has reviewed the majority of the submitted proof of claim forms. More than half of them have some type of deficiency which the Receiver believes can be easily cured

⁷ "Disputed claims" will, therefore, include the claimants who timely responded to the Receiver's objection and/or counterclaim but who disagree with the Receiver's recommended treatment or claimants who did not cure their deficiencies.

⁸ "Disallowed claims" will likely include the claimants who did not timely respond to the Receiver's objection and/or counterclaim, and whose claims should be disallowed in accordance with the Receiver's recommended treatment in the Objection.

by the claimant, such as signing the claim form or providing proof of identity. Some investors did not include the bank records confirming their investment, but most of these deficiencies regarding the claim amount were cured by the Receiver, who assembled the bank records to track each investor's investment. In short, the Receiver is hopeful that the cure period contained in the foregoing process will result in very few "disputed claims."

E. The Receiver's Proposed Procedure for Reserves

The Receiver also seeks to establish a procedure for setting reserves for the Receiver to use to pay for the ongoing costs of administering the estate, for litigation, and for "disputed claims" (until such time as such "disputed claims" are "allowed" or "disallowed"). The Receiver does not wish for any objections (*i.e.*, because the proof of claim lacks supporting documentation, lacks a signature, lacks proof of identity, or for some other reason) to delay distributions to holders of "allowed claims." Therefore, the Receiver proposes that he be permitted to immediately pay holders of "allowed claims" their pro-rata share of each distribution, so long as the Receiver maintains in a segregated account (*i.e.*, a reserve) the percentage that would otherwise be paid to claims to which the Receiver has objected, pending a resolution on the Receiver's objection to such claims in accordance with the above Objections Procedure. Again, the Receiver will be filing a motion for first interim distribution in short order, which will list the claims he is recommending to allow and the claims to which he objects.

The reserve shall also include funds earmarked, in the Receiver's discretion, to pay for litigation and the ongoing costs of administering the receivership estate. Because the Receiver currently has approximately \$7 million in the receivership estate, and because the Receiver anticipates a first distribution of \$5.5 million, the Receiver anticipates setting an initial reserve of approximately \$1.5 million.

F. Certification

The Receiver has conferred with the SEC and the CFTC regarding this Motion. Neither has an objection to this Motion. Moreover, the Receiver has conferred with the Defendants, who also have no objection.

For this Court's convenience, a proposed Order granting this Motion is attached as Exhibit A.

WHEREFORE, the Receiver respectfully requests that this Court: (1) approve the above claims procedure for distributions in this receivership; (2) establish the above procedure by which he can object to proofs of claim; and (3) establish the above procedure for setting reserves.

Dated: August 17, 2011.

Respectfully submitted,

Levine Kellogg Lehman
Schneider + Grossman LLP
Counsel for the Receiver
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Miami, Florida 33131
Telephone: (305) 403-8788
Facsimile: (305) 403-8789

By: s:/Patrick J. Rengstl
Patrick J. Rengstl, Esq.
FL Bar No. 0581631

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s:/Patrick J. Rengstl
Patrick J. Rengstl, Esq.

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SERVICE LIST

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 10-CV-80737-HURLEY/HOPKINS
(Consolidated with Case No. 10-CV-80738-HURLEY/HOPKINS for the Receivership)

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

TRADE-LLC, et al.,

Defendants,

v.

BD LLC, et al.,

Relief Defendants.

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

TRADE-LLC, et al.,

Defendants,

BD LLC, et al.,

Relief Defendants.

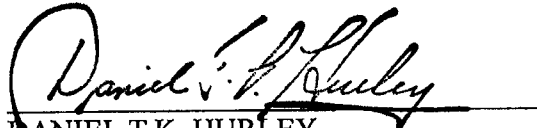
**ORDER GRANTING RECEIVER'S UNOPPOSED
MOTION TO (1) APPROVE CLAIMS PROCEDURE FOR
DISTRIBUTIONS; (2) ESTABLISH PROCEDURE BY WHICH
TO OBJECT TO CLAIMS; AND (3) ESTABLISH PROCEDURE FOR RESERVES**

THIS CAUSE is before the Court upon the Receiver's Unopposed Motion to (1)
Approve Claims Procedure for Distributions; (2) Establish Procedure by Which to Object to

Claims; and (3) Establish Procedure for Reserves [DE 130] (the "Motion"). Having carefully reviewed the Motion, it is hereby **ORDERED AND ADJUDGED**:

The Motion [DE 130] is **GRANTED**. The claims and distribution procedures as proposed by the Receiver in the Motion are hereby approved in all respects. The claims objection procedures as proposed by the Receiver in the Motion are hereby approved in all respects. The procedures for the establishment of reserves as proposed by the Receiver in the Motion are hereby approved in all respects.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, on this 22nd day of Aug, 2011.


DANIEL T.K. HURLEY
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 05-20863-CIV-MOORE

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

PENSION FUND OF AMERICA L.C.
PFA ASSURANCE GROUP, LTD.,
PFA INTERNATIONAL, LTD.,
CLAREN TPA, LLC,
LUIS M. CORNIDE, and
ROBERT DE LA RIVA,

Defendants.

**RECEIVER'S MOTION FOR APPROVAL OF: (i) DISTRIBUTION PLAN FOR
PROCEEDS OF CIVIL PENALTY AND DISGORGEMENT FUNDS RECOVERED
BY SEC FROM HSBC BANK, USA, N.A., (ii) EXTENSION OF DEADLINE FOR
SUBMISSION OF PROOFS OF CLAIM; AND (iii) PROCEDURE FOR
DETERMINATION OF OBJECTIONS TO CLAIMS BY RECEIVER AND
ESTABLISHMENT OF RESERVES FOR DISPUTED CLAIMS**

Thomas G. Schultz, not individually, but solely in his capacity as court-appointed receiver (the "Receiver") for Pension Fund of America, L.C., PFA Assurance Group, Ltd., PFA International Ltd., Claren TPA, LLC, Shadow Creek Investments, LLC and Atlantic Realty Ventures, LLC (collectively, the "Receivership Entities"), by his attorneys, hereby moves this Court for the entry of an order approving:

(i) a distribution plan for the proceeds of civil penalty and disgorgement funds totaling \$10,500,560.00 (the "Civil Penalty and Disgorgement Funds") recovered by the Securities and Exchange Commission ("SEC") from HSBC Bank USA, N.A. ("HSBC");

(ii) a sixty (60) day extension until February 4, 2008 of the deadline for the submission of proofs of claim by investors and other receivership creditors (currently fixed by prior order of the Court as December 4, 2007); and

(iii) procedures for the determination of objections to claims by the Receiver and the establishment of reserves for disputed claims pending the final allowance or disallowance of such claims.

The Receiver states as follows:

I. SUMMARY OF PRIOR COURT APPROVED SETTLEMENTS WITH HSBC, VILLALOBOS AND DE LA RIVA PARTIES AND PREVIOUSLY APPROVED DISTRIBUTION PLAN FOR THE PROCEEDS OF THOSE SETTLEMENTS

1. On August 10, 2007, this Court entered Orders (D.E. Nos. 621, 622 and 623) (the “Final Settlement Orders”) finally approving the terms and conditions of settlements among the Receiver and the Cordova litigation settlement class¹, on the one hand, and HSBC and its related parties, Jose Villalobos and related parties and Juan and Amanda De La Riva, on the other hand. These settlement orders are now final and no longer subject to rehearing or appeal.

2. The Final Settlement Orders, among other things, approved the terms of the distribution plan (“Plan of Allocation”) for the distribution by the Receiver of the proceeds of those settlements and certain other designated receivership assets, and a claims filing procedure

¹ The Cordova class action litigation is pending before this Court under Case No. 05-21169-CIV-Moore/Garber. The Court in its August 10, 2007 Orders certified a Settlement Class for settlement purposes only in the Cordova litigation. Based upon the settlement with HSBC, the Cordova litigation remains pending against Luis Cornide, Robert De La Riva and various other financial institution defendants, including Lehman Brothers, Inc., Merrill Lynch & Co., Inc., Raymond James Financial Services, Inc., Oliva Investments Group, Inc., and SunTrust, Inc. (the “Financial Institution Defendants”).

by creditors of the receivership, including Cordova Settlement Class Members², and trade creditors with allowed claims. The distribution plan and the claims filing procedure may be summarized as follows:

A. The previously approved distribution plan for the proceeds of the settlements approved by the Court in its August 10, 2007 Orders

3. The distribution plan (“Plan of Allocation”) of the proceeds of the HSBC, Villalobos and De La Riva settlements and certain other receivership assets consisting of 85% of the net equity upon sale of the former residences of Luis Cornide and Robert De La Riva is attached as Exhibit “1” to each of the Final Settlement Orders.

4. These settlement proceeds are estimated to total between a minimum of \$20.5 million (the net proceeds of the HSBC, Villalobos and De La Riva settlements), and up to another \$3 million to \$4.5 million from the net equity of the former residences of Luis Cornide and Robert De La Riva upon the sale of those residences and the negotiation of agreements with the Internal Revenue Service. These proceeds will be distributed by the Receiver in two tiers on a pro-rata basis³ to claimants with allowed claims in each tier. The first tier (Tier 1), which shall

² “Settlement Class Members” means all Persons who purchased, sold, held and/or retained investments in trust plans and/or other securities from PFA during the period between January 1, 1999 and March 31, 2005, inclusive. Excluded from the Settlement Class are (a) any Defendant named in the Complaint (or any previous complaints), including any and all subsidiaries, affiliates, alter-ego entities, and/or immediate family members thereof; (b) PFA, PFA Assurance, PFA International, Claren TPA, including any and all subsidiaries, affiliates and/or alter-ego entities thereof; (c) all officers, directors, employees or agents (and their immediate family members) of the entities and individuals described in subsections (a) and (b); (d) all employees, agents and/or brokers (and their immediate family members) who sold or solicited the sale of investments in PFA or PFA Assurance; (e) any person, firm, trust, officer, director or any individual or entity in which any of the individuals or entities described in subsections (a) through (d) above has a controlling interest or which is affiliated with any such individuals or entities; and, (f) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

³ “Pro-rata” means that each claimant with an allowable claim in the applicable Tier receives a distribution the amount of which is calculated as follows: the amount to be distributed to all

receive one-half of the settlement proceeds, consists of Settlement Class Members and other PFA investors with allowable claims who did not receive pre-receivership distributions. The estimated allowed amount of claims in this Tier is \$30 million but could increase or decrease based upon the final allowed amount of filed claims. The second tier (Tier 2), which shall receive the other half of the settlement proceeds, consists of all Settlement Class Members with allowed claims, including Instituto Prevision de Militar (“IPM”), Instituto Guatemalteco de Seguridad Social (“IGSS”), and trade creditors (whose claims are estimated not to exceed \$150,000). The estimated total of allowed claims in Tier 2 is \$37.150 million, but could also increase or decrease based upon the final allowed amount of filed claims.

B. Claims filing procedures

5. The Final Settlement Orders also approved procedures related to the filing of claims with the Receiver by Settlement Class Members and other receivership creditors. The Orders provided that the Receiver would be responsible for reviewing and, if appropriate, filing objections to the validity and amount of filed claims. The Orders further provided that the objections would be determined by the Court under procedures to be recommended by the Receiver and approved by the Court. The Receiver sets forth below the claims objection procedures he recommends that the Court approve.

6. Pursuant to the terms of the Final Settlement Orders, the Claims Administrator (Garden City Group) mailed on October 5, 2007, written claim forms developed by the Receiver and Class Counsel (and approved as to form by the Court) to all known Settlement Class Members and other creditors. The current deadline for the filing of the claims is December 4,

claimants in the applicable Tier, multiplied by a fraction the numerator of which is the amount of the claimant’s allowed claim and the denominator of which is the total of all allowed claims in the applicable Tier.

2007 under the procedures established by the Orders. For the reasons set forth in Section III of this Motion, the Receiver with the consent of the PFA Steering Committee is requesting that the claims filing deadline be extended until February 4, 2008.

II. SUMMARY OF SEC SETTLEMENT WITH HSBC AND PLAN OF DISTRIBUTION BY RECEIVER OF CIVIL PENALTY AND DISGORGEMENT PROCEEDS OF THAT SETTLEMENT

A. The SEC/HSBC Settlement

7. On September 19, 2007, the SEC commenced an action in this Court against HSBC alleging violations of 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3) based upon its role in the PFA debacle. That action (Case No. 07-22469-CIV-SEITZ/MCALILEY) was assigned to Judge Patricia A. Seitz⁴. On that same date, HSBC, without admitting or denying the allegations of the Complaint, consented to the entry of a pre-negotiated Final Judgment. The Final Judgment, a true copy of which is attached hereto as Exhibit “1”, was entered by Judge Seitz on September 25, 2007.

8. Pursuant to the terms of the Final Judgment, HSBC has paid to the Clerk of this Court the sum of \$10,500,560.00 (“Civil Penalty and Disgorgement Funds”), representing a civil penalty of \$10 million and related disgorgement of profits together with interest of \$500,560.00.

9. The Final Judgment, in relevant part, provides that the SEC by motion could propose a plan to distribute the Civil Penalty and Disgorgement Funds to the victims of the PFA fraud pursuant to the Fair Funds provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246.

⁴ On September 20, 2007, the SEC filed with Judge Seitz a Notice of the Pendency of this receivership case as a related action pursuant to Local Rule 3.8

10. The SEC thereupon filed a motion with the Court (Judge Seitz) seeking authority for the transfer to and distribution by the Receiver of the Civil Penalty and Disgorgement Funds. On October 29, 2007, Judge Seitz entered an order, a true copy of which is attached hereto as Exhibit “2” (the “Transfer Order”), authorizing the transfer of the Funds to the Receiver for distribution only to defrauded investors (Settlement Class Members). The Receiver proposes to distribute those Funds as set forth in paragraph 12 below, and the SEC has no objection to this proposed procedure. As set forth in the Transfer Order, the SEC conditioned its consent for the distribution of the Funds by the Receiver upon the requirement that the Funds be distributed only to investors to the extent of their allowed claims who were injured by the PFA fraud and not to trade creditors and other parties excluded from the definition of Settlement Class Members as set forth in Footnote 2 supra. (e.g. agents and brokers who solicited the sale of investments in PFA).

B. The Plan for the Distribution by the Receiver of the Civil Penalty and Disgorgement Funds from the SEC/HSBC Settlement

11. The PFA Steering Committee was established pursuant to this Court’s June 22, 2005 Case Management Order (D.E. No. 83). The Steering Committee is chaired by the Receiver, and includes as members undersigned counsel for the Receiver, co-counsel for the class in the Cordova Litigation and IPM, the largest single creditor of the receivership estate, through its counsel. The Steering Committee has approved the Distribution Plan set forth in paragraph 12 below.

12. The Receiver, with the consent of the SEC and the PFA Steering Committee, proposes to distribute the Civil Penalty and Disgorgement Funds on a pro-rata basis (the amount of the Civil Penalty and Disgorgement Funds multiplied by a fraction the numerator of which is the amount of the Claimant’s Allowed Claim and the denominator of which is the total of all

Allowed Claims) to all Settlement Class Members (including IPM and IGSS), who hold “Allowed Claims.” “Allowed Claims” shall mean (i) the amount allowed by the Court after objection by or settlement with the Receiver, or (ii) the amount set forth in the Claimant’s Proof of Claim if no objection is interposed thereto by the Receiver.

13. The parties excluded from sharing in the Civil Penalty and Disgorgement Funds shall be trade creditors⁵ and those parties excluded from the definition of Settlement Class Members in Footnote 2 supra.

III. REQUEST FOR EXTENSION OF CLAIMS FILING DEADLINE AND RECOMMENDED PROCEDURES FOR DETERMINATION OF OBJECTIONS TO CLAIMS AND/OR COUNTERCLAIMS BY RECEIVER AND RESERVES FOR DISPUTED CLAIMS

A. Request for Extension of Claims Filing Deadline

14. The Receiver with the consent of the PFA Steering Committee requests that the Court extend until February 4, 2008 the deadline for Settlement Class Members and all other creditors of the Receivership Entities, including trade creditors, to file proofs of claim with the Claims Administrator (Garden City Group).

15. The basis for the requested extension is that as of November 16, 2007, only 779 claim forms have been received by Garden City Group. A total of 5,750 claim forms were transmitted by first class mail by Garden City Group on October 5, 2007 to all known Settlement Class Members, trade creditors and other potential claimants. The Receiver believes that the delay in the filing of claims may be due to the fact that the majority of claimants live in Central and South America where mail delivery from the United States may be delayed beyond the time

⁵ Again, PFA trade creditors are estimated to total no more than \$150,000. These creditors shall receive a pro-rata share of the Tier 2 distribution of the proceeds of the previously approved settlements.

frames applicable in the United States. Neither the Receiver nor the other members of the PFA Steering Committee wishes to prematurely cut off the rights of these creditors to file proofs of claim (subject, of course, to the right of the Receiver to object to claims).

B. Claims Objection Procedures

16. The Receiver recommends that the following procedures be approved by the Court with respect to objections to claims and/or counterclaims to be asserted by the Receiver:

(i) The Receiver (with the aid of his attorneys, staff and accountants) will file by April 4, 2008, objections and/or counterclaims to claims (or parts of them). If additional information regarding the claim is required, the Receiver may request an extension of time to file any objections and/or counterclaims.

(ii) The objections and/or counterclaims along with a summary of the terms delineating the objection procedure in the form of Exhibit "3" hereto, will be served on the claimants by the Receiver by DHL at the address on the claim form submitted to the receivership. The objections and a copy of Exhibit "3" hereto, will be served in English and either Spanish or Portuguese, as appropriate, on the claimant.

(iii) The holders of claims to which Receiver has objected, in whole or in part, and/or counterclaimed, will have sixty (60) days from the date of service of the objections and/or counterclaims within which to respond in writing to the Receiver's objections and/or counterclaims. Such responses will be served on the Receiver at his office, c/o Yohami Lam Guerra, Tew Cardenas LLP, Four Seasons Tower 15th Floor, 1441 Brickell Avenue, Miami, FL 33131, or by e-mail at pfaclaims@tewlaw.com. If a claimant does not respond within the time provided, the objections and/or counterclaims will be deemed sustained and adjudicated with

prejudice, and the claim will be treated in accordance with the Receiver's objections and/or counterclaims.

(iv) By virtue of the Proof of Claim forms approved by the Court for execution and delivery to the Receiver, claimants submit to the exclusive jurisdiction of this Court for purposes of any objections to claims and/or counterclaims, and waive the right to jury trial. Therefore, a determination of the objections and/or counterclaims, and issues with respect to discovery and dispositive motions, may be determined by this Court in a summary procedure.⁶

(v) After a response is served on the Receiver, the claimant and the Receiver will have ninety (90) days to conduct any necessary discovery and/or file dispositive motions with regard to the objections and/or counterclaims. The Receiver also proposes that any depositions (with the exclusion of telephonic depositions), be conducted at the offices of the Receiver's law firm, Tew Cardenas LLP, and that all discovery disputes be adjudicated in a summary fashion by the Court.

(vi) At the conclusion of the foregoing discovery period (or, if extended, such extended period), the Receiver will provide the Court with a Status Report regarding the objections and/or counterclaims and also move for a Scheduling Order which details the process for adjudication by this Court of the objections and/or counterclaims at issue.

(vii) The Receiver reserves the right if circumstances warrant to request that the above time periods be shortened or lengthened.

⁶ This Court, in this case, has already determined that summary procedures, as opposed to plenary proceedings under the Federal Rules of Civil Procedure, are authorized (see D.E. Nos. 262 and 332).

**C. Establishment of Reserves for Disputed or Unfiled Claims
Pending Final Allowance or Disallowance of Such Claims**

17. The Receiver does not wish for any objections or counterclaims (i.e., because the claim was untimely, excessive, lacks supporting documentation, was made by an insider or broker, or for some other reason) to delay distributions to the holders of Allowed Claims. Accordingly, the Receiver proposes that he be permitted to pay holders of Allowed Claims their pro-rata share of any distribution to be made by the Receiver pending final allowance or disallowance of such disputed claims, so long as the Receiver maintains in a segregated account (i.e. a reserve), the percentage amount that would otherwise have been paid to a claimant whose claim has either been objected to and/or counterclaimed to by the Receiver, pending an adjudication of the Receiver's objection and/or counterclaim to such claim (or any settlement thereof by the parties). The Receiver reserves the right to request that the Court in a summary fashion reduce what would otherwise be the required amount of a reserve for a disputed claim under the above formula (pending determination of such claim) if the Receiver believes that the claim as filed is clearly excessive or otherwise subject to disallowance or counterclaim.⁷

WHEREFORE, the Receiver respectfully requests that this Court enter an order in the form of Exhibit "4" hereto, granting the requested relief, and for such other and further relief as is just and proper.

⁷ The Receiver will negotiate with the members of the Steering Committee and, if necessary, file an appropriate motion with the Court, with respect to the necessity, if any, to establish reserves for claims that have not been timely filed by claimants where the records of PFA reflect an indebtedness to such claimants.

CERTIFICATION

The Receiver has conferred with counsel for the SEC and is authorized to represent that the SEC has no objection to the relief requested in this Motion.

Dated: November 30, 2007.

Respectfully submitted,

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By: /s/ David M. Levine
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via *Electronic Mail* (unless otherwise noted) to all parties on the attached service list this 30th day of November, 2007.

/s/ David M. Levine
DAVID M. LEVINE

SECURITIES AND EXCHANGE COMMISSION VS. PENSION FUND OF AMERICA, ET AL
CASE No. 05-20863-CIV-MOORE

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435117

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 05-20863-CIV-MOORE/GARBER

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

PENSION FUND OF AMERICA, L.C., et al.,

Defendants.

**ORDER GRANTING MOTION FOR APPROVAL OF DISTRIBUTION PLAN,
EXTENSION OF CLAIMS FILING DEADLINE, AND OBJECTION PROCEDURES**

THIS MATTER is before the Court upon the Receiver's Motion for Approval of: (i) Distribution Plan for Proceeds of Civil Penalty and Disgorgement Funds Recovered by SEC from HSBC Bank, USA, N.A.; (ii) extension of Deadline for Submission of Proofs of Claim; and (iii) Procedure for Determination of Objections to Claims by Receiver and Establishment of Reserves for Disputed Claims (dkt # 633). The Court notes that no Responses were filed in opposition to this Motion, and the Receiver certifies that the SEC has no objection to the relief requested.

UPON CONSIDERATION of the Motion, the record, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

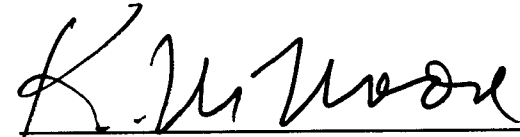
1. The Receiver is authorized to distribute the Civil Penalty and Disgorgement Funds totaling \$10,500,560.00 received by the SEC from HSBC on a pro-rata basis to Settlement Class Members as defined in the Motion holding allowed claims.
2. The deadline for the submission of proofs of claim by Settlement Class Members

and other creditors of the Receivership (including trade creditors) is extended to February 4, 2008.

3. The claims objection procedures as proposed by the Receiver in the Motion are hereby approved in all respects.

4. The procedures for the establishment and determination of reserves for disputed or unfiled claims as proposed by the Receiver in the Motion are hereby approved in all respects.

DONE and ORDERED in Chambers at Miami, Florida, this 20th day of December, 2007.


K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

cc: All counsel of record