

REPORT TO CREDITORS

MB Australia Pty Ltd (In Liquidation)
ACN 115 512 993 ('the Company')
Formerly trading as Max Brenner Australia

29 October 2021

Liquidators: Andrew Sallway
Helen Newman

Contact for Queries: Bill Todd
Contact Phone: 02 8221 2228
Contact Email: Bill.Todd@bdo.com.au

MEETING OF CREDITORS

MEETING DATE: 12 November 2021

MEETING TIME: 11:00am (AEDT)



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ABBREVIATIONS USED

Abbreviation	Description
ABL	Arnold Bloch Leibler, solicitors for the Wentworth Group including in the Doody Street Litigation
AEDT	Australian Eastern Daylight Time
AFSA	Australian Financial Security Authority
ARITA	Australian Restructuring Insolvency & Turnaround Association
Assets	Assets of the Company which were sold to Opera pursuant to the Sale Agreement
ASIC	Australian Securities & Investments Commission
ATO	Australian Taxation Office
BAS	Business Activity Statement
BDO	BDO Business Restructuring Pty Ltd
CAANZ	Chartered Accountants Australia and New Zealand
Citadel	Citadel Group Properties Pty Ltd
CLS	Commercial List Statement in the Doody Street Litigation
CFA	Claims Funding Australia
Directors	Tamir Haikin and Lilach Haikin
Doody Street Litigation	Proceeding commenced by the Liquidators in the Supreme Court of New South Wales against defendants including the Wentworth Group in relation to various transactions between the Company and Wentworth Group including the transfer the Property to Citadel
EOS	Estimated Outcome Statement
FEG	Fair Entitlement Guarantee
Funder	Commonwealth of Australia (acting through the Attorney-General's Department)
GST	Goods and Services Tax
Liquidators	Andrew Sallway and Helen Newman
Mothership Proceedings	A single proceeding commenced by the Liquidators in the Supreme Court of

	New South Wales in respect of multiple unfair preference claims and unreasonable related party transaction claims.
Opera	Max Brenner Australia Pty Limited, formerly known as Opera Developments Pty Ltd and formerly known as MB Chocolate Pty Ltd
PILN	Payment in Lieu of Notice
PPSR	Personal Property Securities Register
Property	The property located at 15-21 Doody Street, Alexandria, NSW
SGC	Superannuation Guarantee Charge
the Act	Corporations Act 2001 (Cth)
the Company	MB Australia Pty Ltd (In Liquidation) ACN 115 512 993
Wentworth Group or the Secured Creditor	Citadel Group Holdings Pty Ltd, Citadel Group Properties Pty Ltd, RS Family Holdings Pty Limited, Zajasam Pty Limited and Wentworth Capital Group Pty Ltd

ATTACHMENTS

Annexure	Description
A	Notice of Meeting
B	Proof of Debt
C	Proxy Form
D	Estimated Outcome Statement
E	Receipts and Payments
F	Remuneration Report
G	ARITA Creditor Information Sheet
H	Summary of Key Terms of the CFA Funding Agreement

1. EXECUTIVE SUMMARY

We refer to our Initial Notification to Creditors dated 14 November 2018, in which we advised you of our appointment and your rights as a creditor in the liquidation.

The purpose of this report is to provide you with:

- Notice of a meeting of Creditors;
- An update on the progress of the liquidation;
- Information in relation to a request by the Liquidators for an approval by creditors for the Liquidators to enter into a funding agreement with CFA for the Mothership Proceedings to enable the Liquidators to progress the Mothership Proceedings;
- Information in relation to a request by the Liquidators for approval of the retrospective remuneration and prospective remuneration of the Liquidators; and
- Advice on the likelihood of a dividend being paid in the liquidation.

Meeting of creditors

- A meeting of creditors will be held via webinar on 12 November 2021 at 11:00AM (AEDT). We enclose the Notice of Meeting of Creditors (Annexure A), Formal Proof of Debt (Annexure B) and Proxy Form (Annexure C).
- Due to the COVID-19 pandemic and consistent with the government policy on gatherings, it is not appropriate to hold a physical meeting of Creditors. Accordingly the meeting will be held as a webinar. Details of the meeting can be obtained by contacting Bill Todd of this office.
- Creditors voting by proxy are required to complete and return the proxy form by 4:00PM (AEDT) on 11 November 2021 to Bill Todd of this office at Bill.Todd@bdo.com.au.

Investigations

- Following our investigations into the transfer of the Property, the Liquidators have commenced the Doody Street Litigation with funding provided by the Commonwealth of Australia (acting through the Attorney-General's Department).
- We commenced Mothership Proceedings against 10 defendants. We have settled, or have reached agreements to settle, four of these claims. The remaining six defendants are still parties to the Mothership Proceedings. At the upcoming meeting of creditors we are seeking an approval for the Liquidators to enter into a funding agreement with CFA to progress the Mothership Proceedings.

Return to creditors

- Any dividend to priority and unsecured creditors of the Company is subject to further successful recoveries in the liquidation from the Mothership Proceedings and/ or the Doody Street Litigation.
- The estimated range of returns to creditors is as follows:
 - Priority (employee) creditors: 0 cents in the dollar to 100 cents in the dollar
 - Unsecured creditors: 0 cents in the dollar to 46 cents in the dollar

Remuneration

- We will be seeking approval of our additional remuneration for the following periods:
 - 1 January 2021 to 15 October 2021 for \$344,288 (excluding GST and disbursements); and
 - 16 October 2021 to 30 June 2022 for \$150,000.00 (excluding GST and disbursements).

2. INVESTIGATIONS AND RECOVERY ACTIONS

2.1 Voidable Transactions

A liquidator has available certain actions pursuant to the Act, to recover funds that have been paid prior to their appointment.

We have conducted investigations into the Company's affairs to identify any potential recovery actions available to the Liquidators.

2.1.1 Unfair Preferences

We provide the following update on unfair preferences claims:

Party		Claim Status
Australian Taxation Office	\$1,618,601.00	Confidential settlement payment was received on 2 December 2019.
Queensland Office of State Revenue	\$117,583.00	Confidential settlement payment was received on 1 October 2019.
Revenue NSW	\$357,623.00	Confidential settlement has been agreed in principle. Payment is expected to be made in November 2021.
SBA Music	\$38,000.00	Settlement has been agreed in principle. Payment is expected to be made in November 2021.
Bee Dee Bags	\$26,680.50	Confidential settlement payment was received 26 July 2021.
Sunstate Ceiling	\$57,882.77	Settlement has been agreed. Confidential payment is to be received in instalments.
Veolia	\$55,759.04	Confidential settlement payment was received on 2 July 2021.
Australasian Food Group	\$766,638.12	Confidential settlement payment was received on 22 October 2021.
Scott's Refrigerated Logistics	\$293,386.99	Subject to the Mothership Proceedings.
Anita Gelato	\$71,368.15	Subject to the Mothership Proceedings.
The Fire Company	\$2,479,700.78	Subject to the Mothership Proceedings.
Chimney Cake	\$337,723.76	Subject to the Mothership Proceedings.
Benchmark Patisserie	\$2,705,941.17	Subject to the Mothership Proceedings.
Arie Haikin	\$633,028.00	Subject to the Mothership Proceedings.
Wolf Peretz	\$170,000.00	Subject to the Mothership Proceedings.

Mothership Proceedings

We obtained leave of the Court on 24 June 2021 to commence Mothership Proceedings against a number of the defendants noted in the table above.

The parties that we have reached settlements with have been, or will shortly be, removed from the Mothership Proceedings.

Funding for Mothership Proceedings

Given the lack of funds in the liquidation of the Company, the Liquidators require funding to continue to progress the Mothership Proceeding in a substantive manner.

During the last six months we approached a number of parties including a litigation funding firm called Claims Funding Australia.

CFA, in conjunction with the Commonwealth of Australia (acting through the Attorney-General's Department), have now agreed to fund the Mothership Proceedings. This is subject to approval of creditors or the Court pursuant to section 477(2B) of the Act and the finalisation of the legal terms of funding with CFA and the Commonwealth of Australia.

Please find at **Annexure H** a summary of the key terms of the funding agreement proposed to be entered into between the Liquidators and CFA (subject to approval by creditors or the Court).

Next Steps

The Mothership Proceedings are next listed for directions on 1 November 2021. At that directions hearing, we anticipate that we will seek orders for the Liquidators to serve their lay and expert evidence in chief by a date in mid-December 2021.

If creditors have any information which would assist our investigations, it is requested that this is provided to the Liquidators in writing.

2.1.2 Unreasonable Director Related Transactions

We have identified unreasonable director related transactions relating to payments made to Tamir Haikin totalling \$1,402,359.42. We have lodged a claim in the Director's bankruptcy for this amount.

There are a further five parties where the Liquidators have identified payments made that are unreasonable director-related transactions. They are as follows:

- Wolf Peretz - \$170,000
- Arie Haikin - \$633,028
- Mad Design Australia Pty Limited (formerly known as The Fire Company Pty Limited) - \$2,479,700.78
- Chimney Cake Company Pty Limited - \$248,494.37
- Anita Gelato - \$71,368.15

We have commenced proceedings against these parties as part of the Mothership Proceedings.

If creditors have any information which would assist our investigations into the Unreasonable Director Related Transactions, we request that this information is provided to the Liquidators in writing.

2.2 Doody Street Litigation

Since our last report to creditors we have progressed the claim in relation to the transfer of the Property to Wentworth. Please see below key actions since the last report to Creditors.

Area	Work Completed to date
Commercial List Statement/Amended Summons	<ul style="list-style-type: none"> ▶ Our Amended Summons and the Commercial List Statement were served on Wentworth on 17 February 2021. Various documents referred to in the statement were produced to ABL on 15 March 2021. ▶ We were required to seek leave to proceed against the Directors as they are currently declared bankrupt. The application for leave to proceed was filed on 30 March 2021. On 6 April 2021 orders were made granting leave to proceed against the Directors. ▶ On 13 April 2021, the Liquidators filed the Further Amended Summons and on 14 April 2021, the Liquidators filed the statement with the Court. The defendants named in the Further Amended Summons include the Wentworth Group. ▶ On 30 June 2021 Wentworth filed their commercial list response. The Liquidators wrote to Wentworth on 6 July 2021 requesting particulars of their Commercial List Response. This is yet to be addressed by Wentworth. ▶ The proceedings were stood over until 10 September 2021 to allow both parties to attend mediation on 3 September 2021.
Mediation	<ul style="list-style-type: none"> ▶ Mediation was attended by Wentworth, the Liquidators, their respective lawyers and the Funder on 3 September 2021. ▶ We were unable to agree on a settlement amount.
Next Steps	<ul style="list-style-type: none"> ▶ A directions hearing is scheduled for 29 October 2021. ▶ It is expected that the Liquidators will be required to serve lay “Evidence in Chief” by mid November 2021 and expert “Evidence in Chief” by January 2022. ▶ It is expected the Liquidators will receive and review the evidence served by Wentworth during March 2022 and the proceedings will be set down for hearing in mid-2022.

Funding of the Doody Street Litigation

The Commonwealth of Australia (acting through the Attorney-General’s Department) has funded the examinations and investigations to date in relation to the Doody Street Litigation and certain other unfair preference claims. This was approved at the meeting of creditors held on 19 September 2019 in accordance with section 477(2B) of the Act. The scope of agreed work under that Funding Agreement included the following (as previously disclosed to creditors):

- Public Examinations;
- Investigations into the financial affairs of the Company;
- Legal advice about potential claims available to the Company and/or the Liquidators; and
- Taking others steps that are reasonably necessary to undertake the above work and preserve assets.

On 14 May 2020 and 9 December 2020, the Liquidators and the Funder agreed to amend the Funding Agreement, including an increase in the amount funded, for the purpose of investigations into the financial affairs of the Company (including public examinations) and taking other steps in relation to asset preservation (including to protect the position of creditors following receipt of the lapsing notice).

At the meeting of creditors held on 29 January 2021, creditors passed the resolution for the Liquidators to enter into an additional funding agreement with Commonwealth of Australia (acting through the Attorney-General's Department) pursuant to Section 477 (2B) of Corporations Act.

This funding has been utilised to progress the Doody Street Litigation.

2.3 Insolvent Trading

The law imposes a duty upon directors not to permit a company to incur debts while it is insolvent in specified circumstances. Personal liability can be imposed upon directors of a company who breach this duty unless they are able to rely upon one of the available defences.

The Liquidators believe that the Company traded whilst insolvent from 30 June 2016 if not earlier and have lodged a claim in the Bankrupts' Estates for \$21,984,265.42 each.

2.4 Directors' Personal Position

On 23 December 2019 Tamir and Lilach Haikin were declared bankrupt pursuant to a debtors' petition. The Directors Bankruptcy reference is NSW 4497/19/2.

We have undertaken real property searches and have identified that the Directors were the joint owners of two (2) properties in New South Wales. We are aware that these properties have been sold and were subject to registered mortgages and numerous caveats. To the best of the Liquidators' knowledge, no surplus was available to the Directors.

Based on our searches, the Directors are not the current owners of any property in Australia.

2.5 Reports to ASIC

We have submitted our report to ASIC pursuant to Section 533 of the Act on 23 July 2021.

This report is required to be submitted by liquidators to ASIC when a company is being wound-up and offences have been committed by directors.

We reported to ASIC that the Directors had breached their duties and traded the Company whilst insolvent. ASIC have requested that the Liquidators prepare a supplementary report to ASIC on breaches committed by the Directors. We intend to lodge that report in November 2021.

3. CREDITORS

Employee (Priority Claims)

We have previously advised creditors of an increase to the outstanding employee superannuation following an updated proof of debt received from the ATO on 18 September 2019 in the amount of \$9,124,646.72. We have since liaised with the Company's pre-appointment superannuation fund, REST Industry Super, obtaining records detailing all employee contributions made since 2014. On 23 February 2021, the Liquidators wrote to the ATO reconciling all contributions made by the Company. It is our view that the outstanding shortfall of SGC to be \$2.1m (before interest, penalties and other associated charges). As at the date of this report, we are working to reconcile the superannuation paid to employees with the ATO. Once the reconciliation has been completed we will continue to liaise with the ATO on providing an updated proof of debt for their outstanding amounts relating to the SGC.

We have completed our verification of outstanding employee entitlements under the FEG scheme. Monies have now been paid to employees by FEG, FEG now stands in the place of the respective employees for their priority, should a dividend be paid. FEG has distributed entitlements to 365 employees in the amount of \$1,974,833.25, there will be no further increase to FEG's claim for employee entitlements as the timeframe for employees to claim with FEG has now ended.

Based on the information available to us, we estimate the Company has the following outstanding employee entitlements:

	Claims to Date (\$)	Liquidators' Estimate (\$)
Wages and allowances (including bonuses)	1,070,960.00	1,070,960.00
Superannuation (including SGC)	9,288,097.85	2,867,807.83
Leave (annual leave, leave loading and long service leave)	797,121.00	797,121.00
Redundancy and PILN	1,149,318.00	1,149,318.00
Total employee entitlements (Including FEG Advanced Amounts)	12,305,496.85	5,885,206.83

Unsecured Creditors

Unsecured creditors have lodged 72 proofs of debt totalling \$17,522,287. This excludes claims by:

- The ATO for \$1,922,533 for unpaid taxation liabilities (excluding SGC);
- The Bankruptcy Trustee of the Directors for an amount of \$55,400,490.88; and
- The Wentworth Group for \$32,917,366 (comprising several proofs of debt).

On 25 March 2021, the Bankruptcy Trustee issued the Liquidators with an updated Proof of Debt in the amount of \$55,400,490.88. Previously the Directors' Proof of Debt was in the amount of \$25,742,561.56. The Liquidators are yet to formally adjudicate on the updated claim.

We have not formally adjudicated on any of the claims received or verified any of the information contained in the books and records to date.

4. LIKELIHOOD OF DIVIDEND

Please refer to the Estimated Outcome Statement enclosed at **Annexure D**.

Below is a summary of the expected return for each class of creditors, in a high and low liquidation scenario.

Liquidation Return	High (c/\$)	Low (c/\$)
Secured Creditor	46.4 cents	0.0 cents
Employees (Preferential Creditors)	100.0 cents	0.0 cents
Unsecured Creditors	46.4 cents	0.0 cents

Any return to creditors of the Company is contingent on substantial recoveries from the claims discussed in section 2 of this report.

5. RECEIPTS AND PAYMENTS

Please refer to **Annexure E** for a summary of receipts and payments as at 15 October 2021.

6. COSTS OF THE LIQUIDATION

Liquidators Remuneration

To date, creditors and the Court have approved the Liquidators' remuneration to 31 December 2020 in the amount of \$860,921.25.

At the upcoming meeting of creditors to be held on 12 November 2021 the Liquidators will be seeking approval for the below periods:

- Retrospective remuneration for the period 1 January 2021 to 15 October 2021 in the amount of \$344,288; and
- Future remuneration for the period 16 October 2021 to 30 June 2022 in the amount of \$150,000.

A significant portion of the retrospective and future remuneration will be funded by the Attorney General's Department and CFA. A summary of these indemnities is provided on the following page.

Creditor Approval

Attached at **Annexure F** is a detailed report on our remuneration, called a Remuneration Approval Report. Included in this report are further details on our fees.

We are unable to pay our remuneration without the approval of creditors or the Court. In addition, we are only able to pay our fees if there are sufficient funds in the Liquidation.

Funding and Indemnities

Name	Nature of Indemnity or Funding	Amount Drawn to Date
Attorney Generals' Department	<p>The agreed work includes the following:</p> <ul style="list-style-type: none"> • Public Examinations; • Investigations into the financial affairs of the Company; • Legal advice about potential claims available to the Company and/or the Liquidators; • Taking others steps that are reasonably necessary to undertake the above work and preserve assets; • The Doody Street Litigation. <p>The Attorney General's Department has also agreed to provide the Liquidators with an indemnity for adverse costs orders in the Mothership Proceedings.</p>	<p>This funding agreement has been used to pay part of the Liquidators' remuneration (including remuneration the subject of the previous approval and remuneration the subject of the current request for approval), fees and disbursements.</p> <p>This funding agreement will include the Liquidators' remuneration for future remuneration approvals.</p>
CFA	<p>The proposed funding agreement between the Liquidators and CFA is to provide funding for costs related to the Mothership Proceedings.</p> <p>The costs include the Liquidators' remuneration as well as others expenses such as legal fees.</p>	<p>This funding agreement will be used to pay \$31,211.00 of my remuneration for the period 1 June 2021 to 15 October 2021.</p> <p>This indemnity will fund the Liquidators' remuneration for future remuneration approvals.</p>
Opera	<p>Creditors will recall that Opera purchased the Company's business from the Liquidators.</p> <p>Opera provided an indemnity to the Liquidators in respect of any trading expenses incurred during the Liquidation. The indemnity also funded the fees and disbursements of the Liquidators and their legal costs in respect of trading the business during the negotiation and completion of the Sale Agreement.</p> <p>This indemnity has been used to pay part of the Liquidators' past remuneration, fees and disbursements.</p>	<p>This indemnity has been used to pay remuneration totalling \$331,119.75 (excluding GST) for the period 1 July 2019 to 30 June 2020.</p> <p>I do not anticipate relying on this indemnity in the future.</p>

7. MEETING OF CREDITORS

A meeting of creditors has been convened as follows:

Meeting Details	
Date	Friday, 12 November 2021
Time	11:00am (AEDT)
Attendance	Via Webinar

Due to the COVID-19 pandemic and consistent with the government policy on gatherings, it is not appropriate to hold a physical meeting of Creditors. Accordingly the meeting will be held as a webinar. Login details to attend the meeting can be obtained by contacting Bill Todd of this office.

Further meeting information, including notice of meeting and details of the information you are required to provide if you plan to attend the meeting are attached as **Annexure A**. To participate in this meeting, you may need to:

- Submit a proof of debt and information to substantiate your claim, if you have not already done so.
- Appoint a person - a “proxy” or person authorised under a power of attorney - to vote on your behalf at the meeting. This may be necessary if you are unable to attend the meeting, or if the creditor is a company.
- Appoint the chairperson of the meeting as your proxy and direct the chairperson how you wish your vote to be cast. If you choose to do this, the chairperson must cast your vote as directed.

Proof of debt and proxy forms are included with the notice of meeting. To facilitate the conduct of the meeting, completed proof of debt and, if applicable, proxy forms must be returned to our office by post, fax or email by 11 November at **4:00PM (AEDT)**.

Should you have any queries in relation to the meeting please do not hesitate to contact Bill Todd of our office on 02 8221 2228 or via email Bill.Todd@bdo.com.au.

8. MATTERS OUTSTANDING

We will proceed with the liquidation, including:

- Hold the next meeting of creditors on 12 November 2021;
- Prepare a supplementary report to ASIC;
- Continue the Mothership Proceedings;
- Continue the Doody Street Litigation;
- Subject to the availability of funds, prepare and distribute a dividend to Employees (Preferential Creditors) (or to FEG in relation to amounts advanced to priority (employee) creditors); and
- Prepare further reports to creditors.



9. FURTHER INFORMATION

ARITA provides information to assist creditors with understanding liquidations and insolvency. This information, including details of your rights as a creditor, is available from ARITA's website at arita.com.au. Attached at **Annexure G** is the ARITA Guide for Creditors.

ASIC provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at www.asic.gov.au.

10. DISCLAIMER

BDO, (its affiliates - present or future), Andrew Sallway and Helen Newman, employees and agents ('the Liquidators') hereby advise that:

- a) When preparing this report and the accompanying documents, the Liquidators have relied on the available books and records, financial accounts and other documentation pertaining to the Company's affairs.
- b) When preparing this report and the accompanying documents, the Liquidators have relied on the advice of the Company's officers and/or senior management.
- c) The Liquidators have not conducted an audit of the books and records, financial accounts and other documentation pertaining to the Company's affairs.
- d) Whilst the Liquidators have endeavoured to verify the accuracy or otherwise of the records, the financial accounts and other documentation pertaining to the Company's affairs and the advice of the Company's officers, the Liquidators give no warranty as to the accuracy, completeness or reliability of same.
- e) The Liquidators undertake no responsibility arising in any way whatsoever to any person for errors or omissions however caused by way of this report, or accompanying documents.

11. ELECTRONIC COMMUNICATION

BDO is committed to reducing its impact of our administrations on the environment. One way you can help contribute to our efforts is to agree to accept all communications from us electronically, by email.

If you would like to receive all communications electronically, please send an email to Bill.Todd@bdo.com.au. The request will remain active until you provide us with further instructions to the contrary.

Please alert us if you change your email or postal address.



12. COMMITMENT TO CLIENT SERVICE

BDO conducts files to the highest ethical and professional standards.

BDO adheres to the codes of conduct prescribed by CAANZ, AFSA, ARITA and INSOL.

If creditors have any questions, queries or complaints concerning the conduct of this administration please direct them to this office.

If you are dissatisfied with a decision made by the appointee, you may ask the appointee to review their decision or explain their reasons. If you are still not satisfied it may be necessary for an application to court to have the decision reviewed. In this instance it is recommended that you seek your own independent legal advice.

In the event that you are not satisfied with our handling of your query you may refer your complaint to the Company Auditors and Liquidators Disciplinary Board.

In an effort to improve our standards and the quality of information that you receive, we welcome your feedback. You can submit feedback anonymously in writing to this office.

If you would like further information on the range of services offered by BDO, please visit our website at www.bdo.com.au. Alternatively, you can contact this office on 02 9251 4100.

We would welcome any information which creditors feel may be of assistance in the conduct of the liquidation.

If you have any queries with respect to this liquidation and the enclosed documents, please do not hesitate to contact Bill Todd of our office on 02 8221 2228.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Andrew Sallway', written in a cursive style.

Andrew Sallway
Joint & Several Liquidator

‘ANNEXURE A’

Insolvency Practice Rules (Corporation) 2016

Corporations Act 2001

NOTICE OF MEETING OF CREDITORS

MB AUSTRALIA PTY LTD (IN LIQUIDATION)

ACN 115 512 993

('the Company')

NOTICE IS GIVEN that a meeting of the creditors will be held on Friday, 12 November 2021 at 11:00am (AEDT) via webinar.

The purpose of this meeting is:

1. To approve the remuneration of the Liquidators, their partners and staff for the period 1 January 2021 to 15 October 2021 on a time basis up to a maximum amount of \$344,288.00 exclusive of GST and disbursements; and
2. To approve the remuneration of the Liquidators, their partners and staff for the period 16 October 2021 to 30 June 2022 on a time basis in the amount of \$150,000.00 exclusive of GST and disbursements.
3. To approve that the Liquidators can enter into a further funding agreement pursuant to Section 477(2B) of the Corporations Act.

Telephone conference facilities can be made available for creditors at the meeting. Creditors who wish to attend are requested to contact Bill Todd of this office on telephone number (02) 8221 2228, 48 hours prior to the meeting for login details to be provided. Creditors will not be entitled to vote at the meeting unless they have lodge particulars of their claim against the Company with us prior to the commencement of the meeting.

DATED this the 29th day of October 2021.



Andrew Sallway
Joint and Several Liquidator

‘ANNEXURE B’

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

**MB AUSTRALIA PTY LTD (IN LIQUIDATION)
ACN 115 512 993 (THE COMPANY)**

To the Liquidators of

MB AUSTRALIA PTY LTD (IN LIQUIDATION) ACN 115 512 993

1. This is to state that the company was on 17 October 2018, and still is, justly and truly indebted to (insert full name and address of the creditor¹)

for (insert amount of claim in words)

	dollars and	
		cents

Particulars of the debt are (give details of claim²):

Date	Consideration (state how the debt arose)	Amount \$ ¢	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following³:

3. ⁴I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied. I am the creditor, employed by the creditor, and/or the creditor's agent duly authorised in writing to make this statement.

Signed

Dated

Confirmation of postal/contact details of Creditor

Address		
City	State	Postcode
Phone	Email	

Correspondence by email

Do you consent to this office electing to send correspondence regarding the company to the above email address? Yes

Notes:

1. Insert the full name and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
2. Insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form:

Date	Drawer	Acceptor	Amount	Due Date
			\$ ¢	

3. Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the date of", "moneys advanced in respect of the Bill of Exchange." Include details of vouchers substantiating payment.
4. Do not complete section three if this proof is made by the creditor personally.

FOR OFFICE USE ONLY

Received	Admitted to Vote for	Admitted to rank for dividend
	\$ ¢	\$ ¢

‘ANNEXURE C’

APPOINTMENT OF PROXY

MB AUSTRALIA PTY LTD (IN LIQUIDATION) ACN 115 512 993

I/We (name of signatory).....of (creditor name).....
of (creditor address) _____

a creditor of MB AUSTRALIA PTY LTD

appoint (name of person to hold proxy) _____

of (address of proxy) _____

or in his or her absence (name alternative proxy) _____

of (address of alternative proxy) _____

as my/our proxy to vote at the creditors meeting to be held on Friday, 12 November 2021 at 11:00am (AEDT) via webinar, or at any adjournment of that meeting as follows:

I/We authorise my/our proxy to vote as special proxy as specified below.

RESOLUTIONS	For	Against	Abstain
<p>1. Liquidators' Remuneration</p> <p>To approve the remuneration of the Liquidators, their partners and staff for the period 1 January 2021 to 15 October 2021 on a time basis fixed in the amount of \$344,288 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2020 and 1 July 2021. Such remuneration may be drawn as funds become available.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>2. Liquidators' Remuneration</p> <p>To approve the remuneration of the Liquidators, their partners and staff for the period 16 October 2021 to 22 June 2022 on a time basis in the amount of \$150,000.00 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2021 that may be increased at 1 July each year. Such remuneration may be drawn as funds become available. The Liquidator reserves the right to convene a further meeting of creditors should the level of remuneration need to be increased.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>3. Approval of Funding Agreement</p> <p>To approve the Liquidators to enter into a funding agreement with Claims Funding Australia pursuant to Section 477 (2B) of the Corporations Act.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I/We authorise my/our proxy to vote as a general proxy on resolutions other than those specified above.

Signed

Dated

‘ANNEXURE D’

MB Australia Pty Ltd (In Liquidation)

Estimated Outcome Statement

	Low	High
Circulating assets		
Cash at Bank on appointment	-	-
Stock	270,360	270,360
Total Circulating Assets	270,360	270,360
Remuneration and Costs (Circulating)		
Administrators' Lien Claim	(270,360)	(270,360)
Liquidators' Remuneration (Circulating)	(183,357)	(183,357)
Liquidators' Costs (Circulating)	-	-
Legal Fees (Circulating)	-	-
Net Circulating Assets Available	(183,357)	(183,357)
Priority Creditors		
Wages	1,070,960	1,070,960
Superannuation	3,020,651	2,867,808
Annual and Long Service Leave	797,121	797,121
Retrenchment (PILN and Redundancy)	1,149,318	1,149,318
Total Priority Creditors	6,038,050	5,885,207
Surplus/(shortfall) in circulating assets	(6,038,050)	(5,885,207)
Estimated Return to Priority Creditors (c/\$)	-	-
Circulating assets available for creditors	Nil	Nil
Non-Circulating assets		
Plant and Equipment and Fixed Assets	1	1
Total Non-Circulating Assets	1	1
Remuneration and Costs (Non-Circulating)		
Legal Fees (Non-circulating)	(26,000)	(26,000)
Liquidators' Remuneration (Non-circulating)	(34,269)	(34,269)
Total Costs Attributable to Non-Circulating Assets	(60,269)	(60,269)
Surplus Non-Circulating assets available	(60,268)	(60,268)
Secured Creditor		
Secured Creditor Claim: Wentworth Group	32,917,366	32,917,366
Estimated return to secured creditor (c/\$)	0.0	0.0
Total Assets available to creditors	Nil	Nil
Potential recoveries		
Bank Guarantees and Turnover Rent Adjustment	42,876	42,876
Preference Payments	1,410,700	5,900,761
Insolvent Trading Claim	-	-
Director Related Transaction	55,100	551,000
Doody Street Litigation (net of costs)	-	17,500,000
Total Recoveries Available for Distribution	1,508,676	23,994,637
Petitioning Creditor Costs	(216,884)	(216,884)
Administrators' lien claim (shortfall)	(117,477)	(117,477)
Estimated Liquidator and Legal Fees	(4,280,914)	(4,483,366)
Less: Liquidator and Legal Fees Funded by the Purchaser	703,680	703,680
Available for Priority Creditors	-	19,880,589
Priority Creditors		
Wages	1,070,960	1,070,960
Superannuation (incl penalties and interest)	3,020,651	2,867,808
Annual and Long Service Leave	797,121	797,121
Retrenchment (PILN and Redundancy)	1,149,318	1,149,318
Total Priority Creditors	6,038,050	5,885,207
Surplus/(shortfall) in Recoveries	(6,038,050)	13,995,382
Estimated Return to Priority Creditors (c/\$)	-	100.0
Unsecured creditors		
Trade Creditors	17,522,287	17,522,287
Statutory Creditors	1,922,533	1,922,533
Secured Creditor Shortfall	32,917,366	10,723,014
Related Party Creditors	25,742,562	-
Total Unsecured Creditors	78,104,748	30,167,834
Estimated Return to Unsecured creditors (c/\$)	-	46.4

Notes:

- Amounts reported above are exclusive of GST
- The former Administrators have a lien for The Costs from stock at appointment
- The Uncommercial Transaction is net of costs

‘ANNEXURE E’

Summary of Receipts & Payments

17 October 2018 to 15 October 2021

Receipts	Amount (\$)
Bank Guarantee	16,365.53
Contributions	954,317.54
Dividends Recoverable	13,878.37
Litigation Funding	1,050,162.83
GST Paid	138,500.55
Hire Purchase Refund	6,089.76
Interest Income	3,024.12
Lease Costs Refund	215.00
Legal Recoveries	1,130,000.00
Sales	1,236,921.13
Stock/Inventory on Hand	308,860.44
TOTAL Receipts	4,858,335.27

Payments	Amount (\$)
Administrators Lien	392,275.55
Allowances	2,900.39
Appointee Disbursements	40,756.45
Appointee Fees	476,041.23
Assignment Costs	6,912.78
Bank Charges	16,664.84
Broker Fees	6,088.50
Cleaning Expenses	25,656.64
Contributions	85,000.00
FOI Application Fee	60.00
Freight Outwards	5,641.61
GST Paid	54,983.00
Hire Purchase Lease Equipment	65,418.59
Insurance	21,123.39
IT Expense	8,179.05
IT Expenses	31,876.02
Legal Disbursements	312,131.52
Legal Fees	1,599,625.59
Meeting Costs	6,899.20
Merchant Fees	19,767.96
Motor Vehicle Expenses	41.00
PAYG Control	44,436.00
Petitioning Creditor Costs	216,884.43
Policy Fees	21.75
Purchases (GST Free)	68,420.03
Purchases (GST Inclusive)	192,387.66
Refund of Delivery Sales	29,481.15
Rent & Rates	382,380.85
Repairs & Maintenance	32,031.62
Security Expenses	627.00
Stamp Duty	1,033.24
Stock/Inventory on Hand	30,000.00
Store Expenses	1,057.91
Subcontractors	8,440.00
Superannuation	23,369.30
Utilities	20,472.05
Valuation Costs	7,150.00
Wages & Salaries	366,963.32
TOTAL Payments	4,603,199.62

‘ANNEXURE F’



REMUNERATION REQUEST APPROVAL REPORT

MB AUSTRALIA PTY LTD (IN LIQUIDATION)
ACN 115 512 993 ('the Company')

Part 1: Declaration

We, Andrew Sallway and Helen Newman have undertaken a proper assessment of this remuneration claim for our appointment as Liquidator of the Company in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed in the conduct of the liquidation.

Part 2: Executive Summary

To date, \$860,921.25 in remuneration has been approved. This remuneration report details approval sought for the following fees:

Period	Remuneration Report Reference	Amount (excl. GST and disbursements)
Past remuneration approved		\$860,921.25
Resolution 1: 1 January 2021 to 15 October 2021	(A & B)	\$344,288.00
Resolution 2: 16 October 2021 to 30 June 2022	(C)	\$150,000.00
Total approval sought		\$494,288.00
Total cost of liquidation		\$1,355,209.25

Indemnities

The indemnified amounts are discussed in Part 9 of the Remuneration Request Approval Report.

Time incurred attending to handover tasks with McGrath Nicol (Former Voluntary Administrators)

Prior to our appointment, the Liquidators provided an undertaking to the Supreme Court of Queensland agreeing not to seek to recover any remuneration relating to handover tasks with the former Voluntary Administrators. During the Liquidation, we have incurred fees totalling \$9,291.50 attending to handover tasks with the former Voluntary Administrators. This time has been written off and is **not** included in our remuneration claim.

Part 3: Details of Remuneration

The basis of calculating the remuneration claims are summarised in the following schedules:

Resolution	Detailed ¹	Summary ²
Resolution 1: 1 January 2021 to 15 October 2021	Schedule A	Schedule B
Resolution 2: 16 October 2021 to 30 June 2022	Schedule C	N/A

Notes:

1. Detailed schedules provide descriptions of the tasks performed within each task area, matching the amounts shown in the summary schedules.
2. Summary schedules provide detail of the time charged to each major task area by staff members working on the Liquidation for the relevant period, which is the basis of each claim

Part 4: Statement of Remuneration Claim

Creditors are being asked to pass the following resolutions at the upcoming creditors meeting:

Resolution [1]: ‘To approve the remuneration of the Liquidators, their partners and staff for the period 1 January 2021 to 15 October 2021 on a time basis fixed in the amount of \$344,288.00 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2020 and 1 July 2021. Such remuneration may be drawn as funds become available.’

Resolution [2]: ‘To approve the remuneration of the Liquidators, their partners and staff for the period 16 October 2021 to 30 June 2022 on a time basis in the amount of \$150,000.00 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2021 that may be increased at 1 July each year. Such remuneration may be drawn as funds become available. The Liquidator reserves the right to convene a further meeting of creditors should the level of remuneration need to be increased.’

Total Remuneration Reconciliation

At this point in time, we estimate that the total remuneration for this Liquidation will be \$1,355,209.25, excluding GST. This includes the current approval amount being sought of \$494,288.00.

As creditors are aware, at the meeting of creditors held on 29 January 2021, the resolutions for the Liquidators’ remuneration for the following periods was proposed:

- 1 July 2020 to 31 December 2020; and
- 1 January 2021 to 31 December 2021.

Both resolutions were not passed by creditors. Therefore, the Liquidators applied to the Court to seek approval for the Liquidators’ remuneration for the period 1 July 2020 to 31 December 2020 in the amount of \$93,619. This amount differs from the remuneration sought in our report to creditors dated 14 January 2021 in the amount of \$94,886.50. The reduction in the Liquidators’ remuneration claim of \$1,267.50 we regarded as appropriate to write-off having regard to the nature of the work performed, the complexity of the work performed, and the time taken to complete the relevant work.

Matters that have been undertaken resulting in the remuneration following 31 December 2020 include:

- Issued the Report to Creditors Dated 14 January 2021;
- Convened the Meeting of Creditors on 29 January 2021;
- Reconciling the Company's super contributions in adjudicating upon the ATO's SGC claim;
- Reviewing the proofs of debt lodged by the Secured Creditor;
- Applied to the court for approval of remuneration for the period 1 July 2020 to 31 December 2020;
- Progressed investigations in respect to voidable transactions and insolvent trading;
- Attended a mediation for the Uncommercial Transaction Claim;
- Further progressed investigations into the transfer of the Doody Street Property;
- Commenced Mothership Proceedings;
- Settled Unfair Preferences;
- General communications with creditors; and
- Prepared this report to creditors.

Further detail of the work completed has been included in **Schedules A and B**.

Additionally, we also seek approval for our future remuneration to progress the liquidation for the period 16 October 2021 to 30 June 2022 in the amount of \$150,000. An explanation of tasks remaining to be completed, including our estimated costs to complete those tasks, to support our current remuneration approval request is included in **Schedule C**.

In preparing this remuneration approval report, we have made our best estimate at what we believe the liquidation will cost to complete and we do not anticipate that we will have to ask creditors to approve any further remuneration. However, should the liquidation not proceed as expected, we will advise creditors and we may seek approval of further remuneration and provide details on why the remuneration has changed.

Although we have proposed \$150,000 to progress the liquidation for the next 9 months, matters that may affect the progress and the cost of the Liquidation include:

- Further pursuit of identified preference payments and voidable transactions;
- Additional time that may be required to resolve the Doody Street Litigation;
- Complications with adjudications of proofs of debt lodged by Creditors; and
- The dividend process.

Part 5: Likely impact on dividends

The Corporations Act 2001 sets the order for payment of claims against the Company and it provides for remuneration of the liquidation to be paid in priority to other claims. This ensures that when there are sufficient funds, the Liquidators receives payment for the work done to recover assets, investigate the Company's affairs, report to creditors and ASIC and distribute any available funds. Even if creditors

approve our remuneration, this does not guarantee that we will be paid, as we are only paid if sufficient assets are recovered.

Any dividend to creditors will also be impacted by the amount of recoveries that we are able to recover and the amount of creditor claims that are admitted to participate in any dividend, including any claims by priority creditors such as employees.

At this stage our estimated return to creditors is as follows:

Liquidation Return	High (c/\$)	Low (c/\$)
Secured Creditor	46.4 cents	0.0 cents
Employees (Preferential Creditors)	100.0 cents	0.0 cents
Unsecured Creditors	46.4 cents	0.0 cents

Part 6: Statement of Disbursements Claim

Disbursements are divided into three types:

1. Externally provided professional services - these are recovered at costs. An example of an externally provided professional service disbursement is legal fees;
2. Externally provided non-professional costs such as travel accommodation and search fees - these are recovered at costs; and
3. Internal disbursements such as ASIC Industry Funding Levy Coverage, advertising, photocopying, printing and postage and travel costs. These disbursements, if charged to the Administration, would generally be charged at costs; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

At the time of writing no disbursements have been charged in this matter.

Future disbursements provided by our firm will be charged to the administration on the following basis:

Internal disbursements	Basis
Externally provided professional services	At Cost
Externally provided non-professional services	At Cost
ASIC Industry Funding Levy Coverage	
- Flat fee	\$160
- Fee per metric event	\$185
Advertising	At Cost
Printing	At Cost
Travel	At Cost
Staff vehicle use	\$0.75 per km

Part 7: Report on Progress of the Liquidation

Andrew Sallway, Helen Newman and Nicholas Martin were appointed Joint and Several Liquidators of the Company on 17 October 2018 pursuant to an order by the Supreme Court of Queensland. On 4 August 2020, Nicholas Martin ceased as a Joint and Several Liquidator of the Company.

We are continuing the recoveries from voidable transactions mentioned in this report including Director Related Transaction, Insolvent Trading, Uncommercial Transactions and Preference Payments. We will update creditors should further findings arise.

Part 8: Summary of Receipts and Payments

A summary of the receipts and payments is attached as **Annexure E** to our creditors report.

Part 9: Remuneration funded from External Sources

Name	Nature of indemnity or funding	Amount Drawn to Date
Attorney Generals' Department	<p>The agreed work includes the following:</p> <ul style="list-style-type: none"> Public Examinations; Investigations into the financial affairs of the Company; Legal advice about potential claims available to the Company and/or the Liquidators; Taking others steps that are reasonably necessary to undertake the above work and preserve assets; The Doody Street Litigation. <p>The Attorney General's Department has also agreed to provide the Liquidators with an indemnity for adverse costs orders in the Mothership Proceedings.</p>	<p>This funding agreement has been used to pay part of the Liquidators' remuneration (including remuneration the subject of the previous approval and remuneration the subject of the current request for approval), fees and disbursements.</p> <p>This funding agreement will include the Liquidators' remuneration for future remuneration approvals.</p>
CFA	<p>The proposed funding agreement between the Liquidators and CFA is to provide funding for costs related to the Mothership Proceedings.</p> <p>The costs include the Liquidators' remuneration as well as others expenses such as legal fees.</p>	<p>This funding agreement will be used to pay \$31,211.00 of my remuneration for the period 1 June 2021 to 15 October 2021.</p> <p>This indemnity will fund the Liquidators' remuneration for future remuneration approvals.</p>
Opera	<p>Creditors will recall that Opera purchased the Company's business from the Liquidators.</p> <p>Opera provided an indemnity to the Liquidators in respect of any trading expenses incurred during the Liquidation. The indemnity also funded the fees and disbursements of the Liquidators and their legal costs in respect of trading the business during the negotiation and completion of the Sale Agreement.</p>	<p>This indemnity has been used to pay remuneration totalling \$331,119.75 (excluding GST) for the period 1 July 2019 to 30 June 2020.</p> <p>I do not anticipate relying on this indemnity in the future.</p>

Name	Nature of indemnity or funding	Amount Drawn to Date
	This indemnity has been used to pay part of the Liquidators' past remuneration, fees and disbursements.	

Part 10: Remuneration Methods

There are four basic methods that can be used to calculate the remuneration charged by an Insolvency Practitioner. They are:

- **Time based / hourly rates**

This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.

- **Fixed Fee**

The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a Practitioner will finalise an administration for a fixed fee.

- **Percentage**

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

- **Contingency**

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

Method chosen

Given the nature of this liquidation, we propose that our remuneration be calculated on time based / hourly rates. This is because:

- This method reflects our practice of assigning staff at the appropriate level to conduct the necessary work. Individuals are required to record the nature of the work performed at intervals of six minutes. This method ensures creditors are only charged for work that is performed and provides complete transparency; and
- Fixed fee and percentage method are inappropriate as we are unable to estimate with certainty the total amount of fees necessary to complete all tasks required in this administration. In addition, we are required to perform a number of tasks which do not relate to the realisation of assets, e.g., statutory obligations, responding to creditor queries, and reporting to ASIC.

It is proposed that the remuneration of the Liquidators is calculated on an hourly basis at the hourly fees charged by BDO current at the time the costs are incurred.



Attached is a table which details BDO Rates as at 1 July 2020 and 1 July 2021 together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take.

Part 11: Queries/Information Sheets

The above information is provided to assist creditors consider the appropriateness of the remuneration claim that is being made.

Creditors should feel free to contact the Liquidators' office to seek further information concerning the remuneration claim if they so need.

ASIC have produced an Information Sheet entitled "Approving fees: a guide for creditors" that can be downloaded from the ARITA website (<http://www.arita.com.au>), the ASIC website (www.asic.gov.au) or alternatively a copy can be obtained if you contact this office.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Andrew Sallway', written in a cursive style.

Andrew Sallway
Joint and Several Liquidator

Schedule A: Description of Work completed

Resolution 1: 1 January 2021 to 15 October 2021

	General Description	Includes
Administration 191.70 Hrs \$86,275.00	Planning / Review	Attended to all statutory requirements Liaised with our solicitors on progress of liquidation Internal meetings on the status of liquidation External meetings with our solicitors External meetings with current and potential funders
	Correspondence	General correspondence with third parties Liaised with third party regarding mail out of creditors report
	Document Maintenance / File Review / Checklist	File of documents File reviews Update checklists
	Banking	Bank account reconciliations Payments made to third parties Prepared monthly invoices for FEG funding
	ASIC Forms & Other Statutory Lodgements	Corresponded with ASIC regarding statutory forms Completed BAS lodgements Corresponded with FEG regarding funding
Creditors 114.70 Hrs \$47,654.50	Creditor Enquiries	Telephone conversations with creditors Receive and follow up creditor enquiries via telephone, email and post Review and prepare correspondence to creditors and their representatives via email and post
	Processing proofs of	Receive and file PODs

	debt	<p>Correspond with the ATO regarding POD</p> <p>Update creditor claims on the file and MYOB</p> <p>Reviewing the proofs of debts issued by the ATO, the Wentworth Group of Companies and the Bankruptcy Trustee on behalf of the Estate of the Directors</p>
	Creditor Report	<p>Prepared report to creditors dated 14 January 2021</p> <p>Prepared report to creditors dated 19 May 2021</p> <p>Prepared Liquidators' remuneration report</p>
	Creditors' Meeting	<p>Convened and held the meeting of creditors on 29 January 2021</p> <p>Prepared meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors and notice of meeting</p> <p>Reviewed and approved proofs and proxies, attendance register etc. at the meeting</p> <p>Responded to stakeholder queries and questions immediately following meeting</p> <p>Prepare and lodge the minutes of the meeting with the Australian Investments & Securities Commission (ASIC)</p>
	Remuneration Application	<p>Liaising with solicitors in preparation of affidavit</p> <p>Review and amendment of Liquidator's time entries and narrations</p> <p>Providing necessary supporting documentation for affidavit</p> <p>Review the affidavit for the application to court for remuneration</p> <p>Assisting Solicitors in compiling supporting information and providing further detail for application</p> <p>Assisting Solicitors with any ad hoc queries</p>
<p>Employees</p> <p>44.20 Hrs</p> <p>\$16,902.00</p>	Employee Enquiries	<p>Responded to ongoing employee queries including entitlements and superannuation</p> <p>Reviewed and withdrew application from Administrative Appeals Tribunal</p>

	<p>Superannuation Guarantee</p>	<p>Liased with the Company’s pre-appointment superannuation fund, REST Industry Super, for a reconciliation of employer contributions</p> <p>Reconciled ATO proof of debt with pre-appointment SGC contributions</p> <p>Issued the ATO with a request for an amended Proof of Debt</p>
<p>Investigations 392.50 Hrs \$193,456.50</p>	<p>Conducting investigation</p>	<p>Review Legal Advice about potential claims available to the Company and/or the Liquidators</p> <p>Meetings with the Funder to discuss progress of litigation</p> <p>Prepare monthly reports to the Funder</p> <p>Discussions with solicitors regarding uncommercial transaction claim</p> <p>Discussions with solicitors and the Funder on the security for costs requested by the Secured Creditor</p> <p>Reviewing Amended and Commercial List Statement</p> <p>Review affidavit to finalise application under Section 6 (3) of the Jurisdiction of Courts (Cross-Vesting) Act 1987</p> <p>Application to seek leave against the Directors</p> <p>Commencement of the Mothership Proceedings</p> <p>Liaising with the Bankruptcy Trustee of the Director regarding progress of Bankruptcy and replacement of Trustee</p> <p>Further investigations into Company’s books and records for additional potential unfair preference claims</p> <p>Further investigations of additional Director Related transactions following review of Company books and records</p> <p>530B Notice issued to Directors’ pre-appointment legal adviser</p> <p>Further review of Secured Creditors’ claims</p> <p>Lodged with ASIC a report pursuant to Section 533 of the Corporations Act</p> <p>Finalise Investigations File Note</p>
	<p>ASIC reporting</p>	<p>Prepared statutory investigation reports</p> <p>Liaise with ASIC</p>



Schedule B: Summary of Work Completed

Resolution 1: Liquidators' Remuneration for the Period from 1 January 2021 to 15 October 2021

Staff	Staff Position	Hourly Rate	Total		Administration		Creditors		Employees		Investigations	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Andrew Sallway	Partner (Appointee)	710.00	52.60	37,346.00	10.90	7,739.00	-	-	1.00	710.00	40.70	28,897.00
Andrew Sallway	Partner (Appointee)	665.00	54.00	35,910.00	19.00	12,635.00	5.00	3,325.00	1.50	997.50	28.50	18,952.50
Ben Carney	Manager	500.00	9.30	4,650.00	9.30	4,650.00	-	-	-	-	-	-
Ben Carney	Manager	465.00	11.80	5,487.00	11.80	5,487.00	-	-	-	-	-	-
Tom Whitmarsh	Senior Manager	545.00	144.70	78,861.50	20.30	11,063.50	5.50	2,997.50	4.10	2,234.50	114.80	62,566.00
Tom Whitmarsh	Manager	465.00	160.50	74,632.50	30.60	14,229.00	42.90	19,948.50	0.20	93.00	86.80	40,362.00
Bill Todd	Accountant	370.00	70.00	25,900.00	25.10	9,287.00	9.40	3,478.00	7.80	2,886.00	27.70	10,249.00
Bill Todd	Accountant	345.00	31.30	10,798.50	13.90	4,795.50	-	-	0.30	103.50	17.10	5,899.50
Ben Gan	Accountant	345.00	197.50	68,137.50	41.50	14,317.50	51.90	17,905.50	27.20	9,384.00	76.90	26,530.50
Daniel Maras	Graduate Accountant	220.00	2.60	572.00	2.60	572.00	-	-	-	-	-	-
James Hajjar	Undergraduate Accountant	235.00	3.80	893.00	1.70	399.50	-	-	2.10	493.50	-	-
James Hajjar	Undergraduate Accountant	220.00	5.00	1,100.00	5.00	1,100.00	-	-	-	-	-	-
Total			743.10	344,288.00	191.70	86,275.00	114.70	47,654.50	44.20	16,902.00	392.50	193,456.50
GST				34,428.80								
Total (Incl. GST)				378,716.80								
Average hourly rate				463.31								

Schedule C: Description of Anticipated Work

Resolution 2: 16 October 2021 to 30 June 2022

	General Description	Includes
Administration \$20,000	Planning / Review	Attend to all statutory requirements Discuss the status of liquidation
	Correspondence	General correspondence with third parties
	Document Maintenance / File Review / Checklist	File of documents File reviews Update checklists Complete monthly BAS statements
	Banking	Bank account reconciliations Correspond with St George and NAB regarding specific transactions and account details Prepare invoices for FEG funding
	ASIC Forms	Correspond with ASIC regarding statutory forms Correspond with FEG regarding funding
Creditors \$20,000	Creditor Enquiries	Telephone conversations with creditors Receive and follow up creditor enquiries via telephone, email and post Review and prepare correspondence to creditors and their representatives via email and post
	Processing proofs of debt	Prepare correspondence to potential creditors inviting lodgement of POD Receive and file PODs Correspond with the ATO regarding POD

		Update creditor claims on MYOB
	Creditor Report	Finalise report to creditors Prepare and finalise Liquidators' remuneration report
	Creditor Meeting	Convene and hold meeting of creditors on 12 November 2021 Prepare meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors and notice of meeting Review and approve proofs and proxies, attendance register etc. at the meeting Respond to stakeholder queries and questions immediately following meeting Prepare and lodge the minutes of the meeting with the ASIC
Employees \$10,000	Employee Enquiries	Respond to ongoing employee queries
Investigations \$70,000	Conducting investigation	Continue discussions with parties whom have received preferential payments Issue additional preference claims to creditors (if deemed commercial) Issue letters of demand to parties whom have received payments deemed to be director related transactions Consult solicitors on next steps in progressing uncommercial transaction claim Commence legal proceedings against outstanding preferential claims (if required) Attend mediation for Uncommercial Transaction Claim (if required) Issue monthly reports to Funder Prepare investigation file for Solvency Report Prepare insolvent trading claim against the Directors

		<ul style="list-style-type: none"> Public examinations (if further required) Attend to signed transcripts of the Directors Investigations into the financial affairs of the Company Continue to liaise with the Directors' Bankruptcy Trustee on progress of Bankruptcy
	ASIC reporting	<ul style="list-style-type: none"> Prepare statutory investigation reports Lodge supplementary report with ASIC Liaise with ASIC
Dividend \$30,000 (If applicable)	Dividend	<ul style="list-style-type: none"> Preparation of correspondence to creditors advising of intention to declare dividend Advertisement of intention to declare dividend Obtain clearance from ATO to allow distribution of company's assets Preparation of dividend calculation Preparation of correspondence to creditors announcing declaration of dividend Advertise announcement of dividend Preparation of distribution Preparation of dividend file

Business Restructuring - Corporate Rates as at 1 July 2020

Title	Description	Hourly Rate (excl GST)
Partner	Registered Liquidator- Partner bringing specialist skills to administration or insolvency task.	665
Associate Director	Minimum of twelve years insolvency experience, at least five years at manager level, qualified accountant and capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in own right.	615
Senior Manager	More than 7 years' insolvency experience, more than 3 years as a manager, qualified accountant. Answerable to the appointee but otherwise responsible for all aspects of administration. Experienced at all levels and considered very competent. Control staff and their training.	510
Manager	6-7 years, qualified accountant, with well-developed technical and commercial skills. Should be constantly alert to opportunities to meet clients' needs and to improve the clients' future operation either by revenue enhancement or by reducing costs and improving efficiency. Controls 2-4 staff.	465
Assistant Manager	4-6 years, CA program (CA) complete. Will have had conduct of minor administrations and experience in control of 1-3 staff. Assists planning and control of medium to larger jobs.	425
Senior Accountant	2-4 years, CA (or equivalent) would normally be commenced during this period. Required to control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs.	385
Accountant	1-2 years, CA (or equivalent) would normally be commenced during this period. Required to control the fieldwork on small jobs and responsible for assisting complete fieldwork on medium to large jobs.	345
Graduate Accountant	0-1 years, Trainee undertaking a degree with an accounting major. Required to assist in day-to-day fieldwork under supervision of more senior staff.	220
Undergraduate Accountant	HSC or equivalent, plans to undertake at least part-time degree/diploma. Required to assist in administration and day-to-day fieldwork under supervision of more senior staff.	220
Executive Assistant/ Personal Assistant	Appropriate computer skills including machine usage	220

Note: Office rates charged by BDO are subject to change.

Business Restructuring - Corporate Rates as at 1 July 2021

Title	Description	Hourly Rate (excl GST)
Partner	Registered Liquidator- Partner bringing specialist skills to administration or insolvency task.	710
Associate Director	Minimum of twelve years insolvency experience, at least five years at manager level, qualified accountant and capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in own right.	615
Senior Manager	More than 7 years' insolvency experience, more than 3 years as a manager, qualified accountant. Answerable to the appointee but otherwise responsible for all aspects of administration. Experienced at all levels and considered very competent. Control staff and their training.	545
Manager	6-7 years, qualified accountant, with well-developed technical and commercial skills. Should be constantly alert to opportunities to meet clients' needs and to improve the clients' future operation either by revenue enhancement or by reducing costs and improving efficiency. Controls 2-4 staff.	500
Assistant Manager	4-6 years, CA program (CA) complete. Will have had conduct of minor administrations and experience in control of 1-3 staff. Assists planning and control of medium to larger jobs.	460
Senior Accountant - Experienced	2-4 years, CA (or equivalent) would normally be commenced during this period. Required to control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs.	410
Accountant	1-2 years, CA (or equivalent) would normally be commenced during this period. Required to control the fieldwork on small jobs and responsible for assisting complete fieldwork on medium to large jobs.	370
Graduate Accountant	0-1 years, Trainee undertaking a degree with an accounting major. Required to assist in day-to-day fieldwork under supervision of more senior staff.	300
Undergraduate Accountant	HSC or equivalent, plans to undertake at least part-time degree/diploma. Required to assist in administration and day-to-day fieldwork under supervision of more senior staff.	235
Executive Assistant/ Personal Assistant	Appropriate computer skills including machine usage	235

Note: Office rates charged by BDO are subject to change.

‘ANNEXURE G’

Creditor Information Sheet

Offences, Recoverable Transactions and Insolvent Trading



Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

Recoverable Transactions

Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and,
- any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Unfair Loan

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

Arrangements to avoid employee entitlements

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

Unreasonable payments to directors

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

Voidable charges

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

Insolvent trading

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.

‘ANNEXURE H’

Indicative Term Sheet

Litigation Funding Arrangement between the Parties in relation to the Claims

A. Parties

Claims Funding Australia Pty Ltd ACN 158 551 967 atf the Claims Funding Australia Discretionary Trust
(Litigation Funder)

Helen Newman and Andrew Sallway as joint and several Liquidators of MB Australia Pty Ltd (in liquidation)
 ACN 115 512 993 **(Liquidators)**

&

MB Australia Pty Ltd (in liquidation) ACN 115 512 993 **(MBA)**

B. Key Terms

The Litigation Funder provides the following indicative key terms for the provision of litigation funding to the Claimants in relation to the Claims, subject to the Conditions outlined at **Section C** below:

Heading	Terms
1. Claimants	Means the Liquidators and MBA.
2. Defendants	Means one or more of the following: <ul style="list-style-type: none"> • Australasian Food Group Pty Ltd trading as Peter's Ice Cream; • Scott's Refrigerated Logistics Pty Ltd as trustee for the ScottsRL Unit Trust; • Bee Dee Bags Pty Limited; • SBA Music Pty Ltd; • Sunstate Ceilings Pty Ltd; • Benchmark Patisserie Pty Ltd; • Arie Haikin; • Wolf Peretz; • Mad Design Australia Pty Ltd; • The Chimney Cake Company Pty Ltd; • Anita Gelato Pty Ltd.
3. Claims	<ul style="list-style-type: none"> • Means the claims the Claimants have or may have against some or all of the Defendants, including but not limited to unfair preferences and unreasonable director-related transactions claims as articulated in the Statement of Claim filed in the Proceedings on 8 July 2021.
4. Proceedings	<ul style="list-style-type: none"> • Means the court proceedings commenced in the Supreme Court of New South Wales Proceeding No. 178927 of 2021.
5. Funding Agreement	<ul style="list-style-type: none"> • Means the litigation funding agreement between the Claimants and the Litigation Funder, incorporating the key terms of this indicative term sheet.
6. Date of Commencement	<ul style="list-style-type: none"> • The date on which the Funding Agreement is signed by the Claimants or is signed by the Litigation Funder, whichever is later.

	Heading	Terms
7.	Effective Date	<ul style="list-style-type: none"> Means 1 June 2021.
8.	Commonwealth Indemnity Agreement	<ul style="list-style-type: none"> Means the indemnity agreement between the Claimants and the Commonwealth for the provision of adverse costs funding, including for security for costs, in the Proceedings.
9.	Lawyers	<ul style="list-style-type: none"> Hogan Lovells (or any other lawyers appointed by the Claimants with the prior approval of the Litigation Funder).
10.	Counsel	<ul style="list-style-type: none"> James Hutton of 11 Wentworth Chambers and Ryan Jameson of Banco Chambers (or any other counsel appointed by the Lawyers with the prior approval of the Litigation Funder).
11.	Costs	<ul style="list-style-type: none"> Means 75% of the Lawyers' costs, 75% of the Liquidators' costs and 100% of the Disbursements reasonably incurred in prosecuting the Claims on or after the Date of Commencement.
12.	Contingent Costs	<ul style="list-style-type: none"> The amount of any costs payable to the Lawyers and/or the Liquidators from the Recovery Sum, which become payable at Resolution. For the avoidance of doubt, the Contingent Costs include 25% of the Lawyers' costs and 25% of the Liquidators' costs.
13.	Past Costs	<ul style="list-style-type: none"> Means 75% of the Lawyers' costs, 75% of the Liquidators' costs and 100% of the Disbursements reasonably incurred in prosecuting the Claims between the Effective Date and the Date of Commencement that remain unfunded.
14.	Disbursements	<ul style="list-style-type: none"> Means all disbursements reasonably incurred by the Lawyers and/or the Liquidators in prosecuting the Claims on or after the Date of Commencement. For the avoidance of doubt, Disbursements includes: <ul style="list-style-type: none"> Counsel and Court fees; and expert and lay witness expenses.
15.	Funding	<ul style="list-style-type: none"> From the Date of Commencement, the Litigation Funder will pay: <ul style="list-style-type: none"> the Past Costs; and the Costs incurred and invoiced on a monthly basis thereafter.
16.	Adverse Costs and Security for Costs	<ul style="list-style-type: none"> The Commonwealth is providing the Claimants with adverse costs funding, including for security for costs, pursuant to the Commonwealth Indemnity Agreement.
17.	Funder's Costs	<ul style="list-style-type: none"> Means the amount of expenditure incurred by the Litigation Funder in connection with the Funding Agreement, including: <ul style="list-style-type: none"> the Costs paid or payable by the Litigation Funder (including GST); any Past Costs paid or payable by the Litigation Funder (including GST); and the Litigation Funder obtaining its own legal advice in relation to the Proceedings (including GST).
18.	GST	<ul style="list-style-type: none"> The Claimants will pay to the Litigation Funder, on request, any input tax credit to which the Claimants are entitled in respect of the payment (by the Litigation Funder) of the GST component of any tax invoices rendered by the Lawyers or the Liquidators.

Heading		Terms										
19.	Recovery Sum	<ul style="list-style-type: none"> Means the amount or amounts, or the value of goods or services, received on account of a settlement, judgment or order in respect of the Claims and/or the Proceedings, including any interest and any amounts received on account of costs. 										
20.	Resolution	<ul style="list-style-type: none"> Means when all or any part of the Recovery Sum is received by the Claimants or the Lawyers on their behalf, and where the Recovery Sum is received in parts, a Resolution occurs each time a part is received. 										
21.	Commission	<ul style="list-style-type: none"> Means an amount payable to the Litigation Funder calculated in the following manner: <table border="1" data-bbox="603 741 1426 1352"> <thead> <tr> <th>If Resolution occurs with:</th> <th>The Commission shall be calculated as the following percentage of the Recovery Sum:</th> </tr> </thead> <tbody> <tr> <td>After the Date of Commencement, but on or before the date that is nine months after the filing of the Proceedings</td> <td>20%</td> </tr> <tr> <td>After the date that is nine months after the filing of the Proceedings, but on or before the date that is twelve months after the filing of the Proceedings</td> <td>22.5%</td> </tr> <tr> <td>After the date that is twelve months after the filing of the Proceeding, but before the first day of the trial of the Proceedings</td> <td>25%</td> </tr> <tr> <td>On or after the first day of the trial of the Proceedings</td> <td>30%</td> </tr> </tbody> </table> 	If Resolution occurs with:	The Commission shall be calculated as the following percentage of the Recovery Sum:	After the Date of Commencement, but on or before the date that is nine months after the filing of the Proceedings	20%	After the date that is nine months after the filing of the Proceedings, but on or before the date that is twelve months after the filing of the Proceedings	22.5%	After the date that is twelve months after the filing of the Proceeding, but before the first day of the trial of the Proceedings	25%	On or after the first day of the trial of the Proceedings	30%
If Resolution occurs with:	The Commission shall be calculated as the following percentage of the Recovery Sum:											
After the Date of Commencement, but on or before the date that is nine months after the filing of the Proceedings	20%											
After the date that is nine months after the filing of the Proceedings, but on or before the date that is twelve months after the filing of the Proceedings	22.5%											
After the date that is twelve months after the filing of the Proceeding, but before the first day of the trial of the Proceedings	25%											
On or after the first day of the trial of the Proceedings	30%											
22.	Appeal Commission	<ul style="list-style-type: none"> If the Litigation Funder funds any appeal, or defence of an appeal, from a final judgment, the Litigation Funder will recover from the Recovery Sum an Appeal Commission equal to an additional 5% of the Recovery Sum. 										
23.	Priority for Distribution of Recovery Sum	<ul style="list-style-type: none"> The Recovery Sum will be distributed in the following order of priority: <ul style="list-style-type: none"> The first priority payment will be to: <ul style="list-style-type: none"> the Litigation Funder for the Funder's Costs, the Commission and any Appeal Commission; and the Commonwealth for any payments made by the Commonwealth under the Commonwealth Indemnity Agreement (to the extent that they have not been repaid or returned to the Commonwealth). The second priority payment will be to the Lawyers and the Liquidators for the Contingent Costs. The balance of the Recovery Sum remaining will be paid to the Claimants. 										

C. Conditions

Funding is conditional upon:

- a) conclusion of the formal Funding Agreement which will contain additional standard terms and will be made available for review upon in-principle (that is, non-binding) agreement to these indicative terms;
- b) the Claimants receiving approval to enter into the formal Funding Agreement with the Litigation Funder pursuant to section 477(2B) of the *Corporations Act 2001* (Cth); and
- c) the Commonwealth providing the Claimants with adverse costs funding, including for security for costs. Alternatively, evidence that the Liquidators hold sufficient funds in the liquidation of MBA to satisfy any adverse costs order, including any security for costs.

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