

AFFIDAVIT OF ANDREW SALLWAY DATED 15 DECEMBER 2021

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	General
Registry	Sydney
Case number	2019/377096

TITLE OF PROCEEDINGS

Plaintiff	Andrew Sallway and Helen Newman in their capacity as liquidators of MB Australia Pty Ltd (In Liquidation) ACN 115 512 993
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FILING DETAILS

Filed for	Andrew Sallway and Helen Newman in their capacity as liquidators of MB Australia Pty Ltd (In Liquidation) ACN 115 512 993, plaintiff
Legal representative	Scott Harris, Hogan Lovells
Legal representative reference	755814.000002
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AFFIDAVIT

Name Andrew Sallway
 Address Level 11, 1 Margaret Street, Sydney NSW 2000
 Occupation Liquidator
 Date 15 December 2021

I affirm:

1. I am a registered liquidator and a partner of BDO Business Restructuring Pty Ltd ("**BDO**"). I am a member of Chartered Accountants Australia & New Zealand, the Australian Restructuring Insolvency & Turnaround Association and INSOL International. I have more than 20 years' experience as an insolvency practitioner. In my time as a registered liquidator, I have acted on numerous voluntary administrations, receiverships and liquidations across several industries.
2. I am a joint and several liquidator of MBA Australia Pty Ltd (In Liquidation) ("**MBA**"), together with Helen Newman (together "**Liquidators**").
3. I make this affidavit in support of the interlocutory process filed by the Liquidators in this proceeding seeking a determination, pursuant to sections 60-5 and 60-10 of Schedule 2 (*Insolvency Practice Schedule (Corporations)*) ("**IPS**") of the *Corporations Act 2001* (Cth) ("**Corporations Act**"), for the remuneration that the Liquidators have incurred for necessary work properly performed in relation to the liquidation of MBA during the period from 1 January 2021 to 15 October 2021 (the "**Remuneration Claim Period**") in the sum of \$341,590 plus GST ("**Remuneration Claim Amount**").
4. I make this affidavit from my own knowledge except where otherwise stated. Where I refer to matters of information, I believe the information to be true.
5. Shown to me at the time of swearing this affidavit is a paginated bundle of documents marked "**Exhibit AS-4**" and a paginated bundle of documents marked "**Confidential Exhibit AS-5**". References by me to page numbers throughout this affidavit are references to pages in Exhibit AS-4, unless otherwise expressly referred to as references to pages in Confidential Exhibit AS-5.
6. I refer to Exhibit AS-4 and note:
 - (a) at pages **1 to 2** is an index of the documents comprising Exhibit AS-4; and

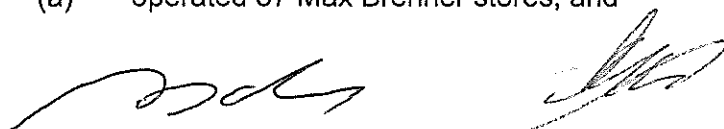


- (b) at pages **457 to 474** and pages **476 to 493** are two redacted documents, being the two documents defined in paragraphs 104 and 105 respectively of this affidavit as "Schedule A" and "Detailed Summary by Staff Member Spreadsheet" ("**Redacted Documents**"). The Redacted Documents have been redacted to remove information which refers to confidential and legally privileged communications and documents (I refer to the basis of the redactions at paragraph 107 of this affidavit).
7. Confidential Exhibit AS-5 comprises unredacted copies of the Redacted Documents, namely Schedule A (at pages **2 to 19** of Confidential Exhibit AS-5) and the Detailed Summary by Staff Member Spreadsheet (at pages **20 to 37** of Confidential Exhibit AS-5). To the extent that the documents in Confidential Exhibit AS-5 make reference to legal advice being sought and obtained by the Liquidators during the course of the Remuneration Claim Period, or documents created for the sole or dominant purpose of pending or existing litigation, I do not intend to waive the Liquidators' client legal privilege which attaches to those documents or references contained therein, which client legal privilege I continue to assert over those documents. I also do not waive any claim for confidentiality by disclosing the documents.
8. Further, in this affidavit generally, I make various references to legal advice being sought and obtained by the Liquidators during the course of the Remuneration Claim Period. This has been done to enable the Court to understand the nature, scope and extent of the work performed by the Liquidators during the Remuneration Claim Period. I do not intend to waive the Liquidators' client legal privilege which attaches to any relevant communications or documents, which client legal privilege I continue to assert over those communications. I also do not waive any claim for confidentiality by disclosing the documents.

MBA

Operations of MBA

9. MBA operated chocolate cafés that traded as "Max Brenner" from leased premises across Australia pursuant to a license to use the "Max Brenner" brand given by Strauss Group Limited, a company registered in Israel, and subsequently by its assignee, Max Brenner Industries Ltd, a company registered in Israel. As at the date of the appointment of administrators to MBA (the details of which are included at paragraph 12 of this affidavit), MBA:
- (a) operated 37 Max Brenner stores; and



- (b) managed its operations from its head office located at 15-21 Doody Street Alexandria (the "**Doody Street Property**").
10. From 30 March 2012 to 5 December 2017, MBA was the registered proprietor of the Doody Street Property. On 5 December 2017, pursuant to the transactions referred to in paragraphs 24 to 31 of this affidavit, MBA transferred the Doody Street Property to Citadel Group Properties Pty Ltd as trustee for the Citadel Group Properties Unit Trust ("**Citadel**"). A historical search of the records maintained by NSW Land Registry Services in respect of the Doody Street Property is at pages **3 to 4**
11. MBA was controlled and ultimately owned by Tamir Haikin and Lilach Haikin. In particular:
- (a) the directors of MBA are Tamir Haikin and Lilach Haikin ("**Directors**"). An extract of a search of the records maintained by the Australian Securities and Investments Commission ("**ASIC**") in respect of MBA dated 14 December 2021 is at pages **5 to 32** ("**ASIC Search**"); and
- (b) the sole shareholder of MBA is MB Australia 2000 Pty Ltd ("**MB Australia 2000**") (see the ASIC Search at pages 10 to 11). The Directors each own 50% of the shares in MB Australia 2000. An extract of a search of the records maintained by ASIC in respect of MB Australia 2000 dated 14 December 2021 is at pages **33 to 47**.

Liquidation of MBA

12. Helen Newman, Nicholas Martin and I were appointed as liquidators of MBA by orders made on 17 October 2018 ("**Liquidators' Date of Appointment**") by the Honourable Justice Dalton in the Supreme Court of Queensland ("**Orders**"). A copy of the Orders is at page **48** and a copy of her Honour's judgment is at pages **50 to 55** ("**Judgment**").
13. Prior to the appointment of the Liquidators, on 30 September 2018, the directors of MBA resolved that Barry Kogan, Kathy Sozou and Jason Preston of McGrath Nicol be appointed as voluntary administrators of MBA ("**Administrators**") (I refer to the ASIC Search at pages **15** and **30**). The appointment of the Administrators ceased on 17 October 2018 when the Supreme Court of Queensland dismissed an application by the Administrators to adjourn a winding up application in respect of MBA and made the Orders (I refer to the Orders at page **48**).

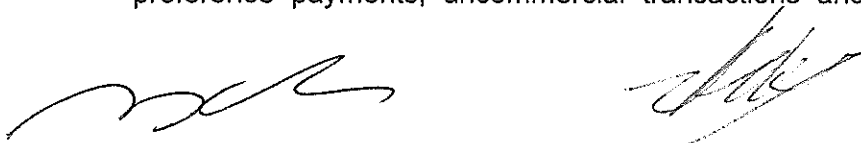


14. On 4 August 2020, Nicholas Martin ceased to act as liquidator of MBA (I refer to the ASIC Search at page 11 and the ASIC Form 505 dated 10 August 2020 at pages 56 to 57).
15. On 19 October 2018, Peter Gothard and Stephen Parbery were appointed as receivers and managers of certain assets of MBA by Wentworth Capital Group Pty Ltd ("**Wentworth**") (I refer to the ASIC Search at page 15). On 17 April 2020, Peter Gothard and Stephen Parbery ceased to act as receivers and managers of those assets of MBA (I refer to the ASIC Search at page 11).

Liquidators' ongoing investigations and recovery action

Background Investigations

16. As referred to in paragraph 10 of this affidavit and pursuant to the transactions referred to in more detail in paragraphs 24 to 31 of this affidavit, MBA transferred its interest in the Doody Street Property to Citadel on 5 November 2017 for consideration of \$40,000,000 ("**Doody Street Property Transfer**").
17. In the Judgment, the Honourable Justice Dalton indicated that a reason for denying the Administrators' application to adjourn the winding up application and making the Orders was the need for the circumstances giving rise to the Doody Street Property Transfer, at a potential undervalue of \$20,000,000, to be properly investigated by a liquidator. I refer to paragraph 50 of the Judgment at page 53.
18. During the course of the liquidation to date (and including during the Remuneration Claim Period), I have therefore spent a significant amount of time reviewing and investigating the transactions that gave rise to the Doody Street Property Transfer, considering and seeking legal advice in respect of the courses of action that may be available to the Liquidators and/or MBA in respect of those transactions, and progressing a claim on behalf of MBA in relation to those transactions.
19. Based on my investigations, I also formed the view that the Liquidators should undertake investigations, and where appropriate progress claims for the benefit of creditors, in relation to at least the following affairs of MBA:
 - (a) potential claims for insolvent trading against the Directors;
 - (b) the rights of action available to the Liquidators for the benefit of creditors, such as, for instance, those in relation to potential voidable transactions for unfair preference payments, uncommercial transactions and unreasonable director



related transactions, including (without limitation) in relation to the Doody Street Property Transfer and the matters the subject of the Mothership Proceedings and the Revenue NSW Proceedings (as defined in paragraphs 56 and 67 respectively of this affidavit); and

(c) the conduct of the Directors in the context of their director duties.

20. On 28 November 2019, the Liquidators made an application to this Court for:

(a) orders for production of documents pursuant to section 68 of the *Civil Procedure Act 2005* (NSW) ("**Orders for Production**"); and

(b) orders for the issue of summonses for public examinations pursuant to ss 596A and 596B of the Corporations Act ("**Summonses for Examination**").

21. On 5 December 2019, this Court made orders issuing the Orders for Production and Summonses for Examination.

22. The Orders for Production and Summonses for Examination in this proceeding were necessary in order to assist the Liquidators conduct these investigations. Public examinations were conducted in March and April of 2020 ("**Public Examinations**") pursuant to the Summonses for Examination.

Doody Street Property

23. As noted in paragraph 18 above, a significant aspect of my investigations to date has been the transfer by MBA of its most valuable asset, the Doody Street Property, to Citadel for consideration of \$40,000,000. I summarise the circumstances in which the Doody Street Property Transfer occurred according to my investigations to date in paragraphs 24 to 31 of this affidavit.

24. In or about July 2016, MBA borrowed \$3,000,000 ("**RSFH \$3m Loan**") from RS Family Holdings Pty Ltd as trustee for the Ruth Simon Family Trust ("**RSFH**"). The RSFH \$3m Loan was repayable in full on 3 January 2017.

25. As at March 2017:

(a) the Doody Street Property was valued at \$62,000,000 by Urbis on the instructions of Mr Haikin, one of the directors of MBA. I refer to an extract of this valuation at pages **58 to 69** and

- (b) National Australia Bank Limited had from time to time advanced in excess of \$40,000,000 to MBA (which was secured by a mortgage registered on the title to the Doody Street Property).
26. On or about 6 March 2017:
- (a) MBA, Mr Haikin and Ms Haikin borrowed \$800,000 ("**Wentworth \$800K Loan**") from Wentworth;
- (b) MBA granted a call option to Zajasam Pty Ltd as trustee for The Take Two Trust ("**Zajasam**") and RSFH or their nominees, to purchase the Doody Street Property for \$40,000,000 ("**March 2017 Call Option**"). The March 2017 Call Option included an undertaking that, if the March 2017 Call Option was exercised, the parties would enter into a further put and call option for MBA to repurchase the Doody Street Property or the purchaser to put the Doody Street Property to MBA; and
- (c) MBA and other related parties granted a general security deed in favour of Wentworth ("**Wentworth GSD**"), which secured, inter alia, all moneys and amounts that MBA or certain related parties of MBA might become liable for at any time to Wentworth or Citadel Group Holdings Pty Ltd as trustee for Citadel Group Holdings Unit Trust (which is the sole shareholder of Citadel) ("**Citadel Holdings**").
27. On 23 March 2017, MBA and other related parties granted a further general security deed in favour of RSFH and Zajasam, which secured, inter alia, all moneys and amounts that MBA or certain related parties of MBA might become liable for at any time to Zajasam or RSFH, and the performance of the obligations of those parties under the March 2017 Call Option and any sale and put and call option exercised pursuant to the terms of the March 2017 Call Option.
28. In the period from 6 March 2017 to 24 November 2017:
- (a) there were multiple documented amendments and extensions to the March 2017 Call Option; and
- (b) Urbis prepared two further valuation reports on the instructions of Mr Haikin which valued the Doody Street Property for mortgage purposes at \$60,000,000 as at 27 June 2017 and at \$60,000,000 again as at 28 September 2017. Extracts of the 27 June 2017 and 28 September 2017 valuations are at pages **70 to 81** and **82 to 92** respectively.

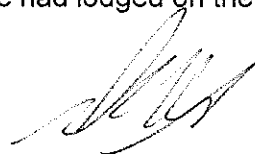


29. On or shortly after 24 November 2017:
- (a) the March 2017 Call Option was exercised, and Citadel purchased the Doody Street Property for consideration of \$40,000,000 by a contract for sale of land dated 24 November 2017 ("**Land Sale Agreement**"), notwithstanding the earlier valuations at or over \$60,000,000;
 - (b) Citadel, MBA and other related parties entered into a put and call option for MBA to acquire the shares in Citadel (which would own the Doody Street Property on completion of the Land Sale Agreement) or for Citadel Holdings to put the shares in Citadel to MBA ("**November 2017 Put and Call Option**");
 - (c) MBA and other related parties granted a general security deed in favour of Citadel and Citadel Holdings, which secured, inter alia, all moneys and amounts that MBA or certain related parties of MBA might become liable for at any time to Citadel or Citadel Holdings, and the performance of the obligations of those parties under the March 2017 Call Option, the Land Sale Agreement, the November 2017 Put and Call Option, and any sale agreement entered into pursuant to the terms of the November 2017 Put and Call Option; and
 - (d) Wentworth lent a further \$8,000,000 to MBA, Mr Haikin and Ms Haikin pursuant to an amendment and restatement of the Wentworth \$800K Loan.
30. MBA did not exercise the call option under the November 2017 Put and Call Option, and I believe that the November 2017 Put and Call Option terminated immediately upon entry into the deed based on the terms of the deed.
31. Completion of the transaction contemplated by the Land Sale Agreement completed on or around 5 December 2017 when MBA transferred the Doody Street Property to Citadel for consideration of \$40,000,000.

Doody Street Property Proceeding

Commencement

32. On 18 November 2020, the Liquidators commenced proceeding 328334 of 2020 ("**Doody Street Property Proceeding**") in the Supreme Court of NSW ("**Court**") against various parties including (amongst others) those parties to the transactions referred to in paragraph 24 and paragraphs 26 to 31 of this affidavit. The Doody Street Property Proceeding was initially commenced in order that the Liquidators could seek orders extending the operation of a caveat that we had lodged on the title to the Doody

Street Property to protect the interests that the creditors of MBA may have in the Doody Street Property as a result of the potential claims I had identified through my investigations to date. The caveat was allowed to lapse consensually, prior to the Remuneration Claim Period, on the basis of certain undertakings given by Citadel to the Court in the orders made on 14 December 2020 referred to in the following paragraph.

33. On 14 December 2020, in addition to the consent orders reflecting the undertakings of Citadel referred to in paragraph 32 above, the Court ordered, by consent, that the Doody Street Property Proceeding be transferred to the Commercial List and that the Liquidators file and serve a Commercial List Statement in relation to the final relief sought with respect to the Doody Street Property by 5 February 2021. A copy of those orders is at page **94 to 96**.
34. On 12 February 2021, the Court made orders, by consent, that the Liquidators serve a draft Further Amended Summons and draft Commercial List Statement in relation to the final relief sought with respect to the Doody Street Property by 16 February 2021. A copy of those orders is at page **98 to 100**.
35. On 18 February 2021:
 - (a) the Court made orders, by consent, adjourning the Doody Street Property Proceeding to 26 February 2021. A copy of those orders is at page **102 to 104**;
 - (b) the Liquidators served on Citadel a draft Further Amended Summons and Commercial List Statement in the Doody Street Property Proceeding pursuant to the orders made on 12 February 2021.
36. The draft Further Amended Summons named as defendants:
 - (a) Citadel, Wentworth, RSFH, Zajasam, Citadel Holdings, Jamie Schwarz (a director of Citadel Holdings and Citadel Properties) and Glenn Wein (a director of Zajasam, Wentworth, Citadel Holdings and Citadel Properties) ("**Wentworth Defendants**"); and
 - (b) the Directors, who were (and still are) undischarged bankrupts, and various related entities of MBA.

Leave Application

37. The Directors were joined as defendants to the Doody Street Property Proceeding having regard to the nature of certain causes of action and relief sought by the

Liquidators in the Doody Street Property Proceeding. However, since the Directors were undischarged bankrupts, this required the Liquidators to make an application to the Federal Court of Australia or the Federal Circuit Court of Australia under section 53(3)(b) of the *Bankruptcy Act 1966* (Cth) ("**Bankruptcy Act**") for leave to join the Directors, as undischarged bankrupts, to the Doody Street Property Proceeding ("**Leave Application**").

38. On 26 February 2021, the Court:
- (a) made orders, by consent, adjourning the Doody Street Property Proceeding to 19 March 2021; and
 - (b) noted that the Liquidators were intending to make the Leave Application. A copy of those orders is at pages **106 to 109**.
39. On 19 March 2021, the Liquidators filed the Leave Application in the Federal Court of Australia. On 29 March 2021, the Liquidators filed an amended Leave Application to add the trustee of the bankrupt estates of the Directors as a party to the proceeding.
40. On 6 April 2021, the Federal Court of Australia made orders granting the Liquidators leave to join the Directors, as undischarged bankrupts, to the Doody Street Property Proceeding further to the Leave Application. A copy of those orders is at pages **110 to 112**.

Finalising and service of Further Amended Summons and Commercial List Statement

41. On 9 April 2021, the Court:
- (a) ordered, by consent, that the Liquidators be granted leave to file by 13 April 2021 a Further Amended Summons and Commercial List Statement in substantially the form served on Citadel on 18 February 2021; and
 - (b) noted that on 6 April 2021, the Liquidators were granted leave by the Federal Court of Australia under section 58(3)(b) of the *Bankruptcy Act* to join the Directors to the Doody Street Property Proceeding. A copy of those orders is at pages **114 to 117**.
42. On or about 13 April 2021, the Liquidators served on the Wentworth Defendants the Further Amended Summons and Commercial List Statement in the Doody Street Property Proceeding. Between around 14 April 2021 and 19 April 2021, the Liquidators served on the other defendants in the Doody Street Property Proceeding the Further Amended Summons and Commercial List Statement.




Security for costs

43. During late 2020 and through the first three months of the Remuneration Claim Period, the issue of security for costs, which had been requested by the Wentworth Defendants, was the subject of extensive correspondence between the Liquidators' solicitors and the Wentworth Defendants' solicitors. As a result of those communications, on 28 April 2021, the Court ordered, by consent, that the Liquidators provide certain information to the Wentworth Defendants in relation to the issue of security for costs the Doody Street Property Proceeding by 4pm on 28 April 2021 and for the Wentworth Defendants to file and serve any motion for security for costs by 4:00pm on 7 May 2021. A copy of those orders is at **pages 118 to 121**.
44. On 10 May 2021, the Wentworth Defendants filed in the Doody Street Property Proceeding a notice of motion seeking orders pursuant to rule 42.21 of the *Uniform Civil Procedure Rules 2005* (NSW) ("**UCPR**") that the Liquidators give the Wentworth Defendants security for their costs of the Doody Street Property Proceeding ("**Security for Costs Application**").
45. During the period 10 May 2021 to 10 June 2021, the Liquidators engaged in extensive discussions and negotiation with the Attorney-General's Department (as defined in paragraph 71 of this affidavit) and the Wentworth Defendants in relation to the FEG Funding Agreement (as defined in paragraph 71 of this affidavit) in order to address issues raised in the Security for Costs Application with a view to resolving the Security for Costs Application. As a result of those extensive negotiations:
- (a) various amendments to the FEG Funding Agreement, which already provided for an indemnity to the Liquidators for adverse costs orders in the Doody Street Property Proceeding, were agreed with the Attorney-General's Department;
 - (b) the Attorney-General's Department agreed to give certain undertakings in favour of the Wentworth Defendants; and
 - (c) the Liquidators agreed to give certain undertakings in favour of the Wentworth Defendants.
46. Accordingly, on 10 June 2021, the Court made orders, by consent, dismissing the Security for Costs Application and for the Wentworth Defendants to file and serve a Commercial List Response. A copy of those orders is at **pages 122 to 125**.

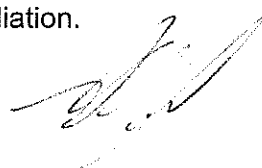
Cross-Vesting Application




47. In the course of discussions regarding the Leave Application, it became apparent that, since the relief sought in the Doody Street Property Proceedings arguably affected the property of the bankrupt estates of the Directors, in the absence of orders pursuant to section 6(3) of the *Jurisdiction of Courts (Cross-vesting) Act 1987* (NSW) ("**Cross-Vesting Act**"), the Doody Street Property Proceedings should be brought and determined in the Federal Court of Australia. Therefore, on 14 May 2021, the Liquidators filed in the Doody Street Property Proceeding a notice of motion ("**Cross-Vesting Application**") seeking orders pursuant to section 6 of the Cross-Vesting Act that the Doody Street Property Proceeding either be:
- (a) determined by the Court; or
 - (b) transferred to the Federal Court of Australia.
48. On 11 June 2021, the Court heard the Cross-Vesting Application and made orders pursuant to section 6(3) of the Cross-Vesting Act that the Doody Street Property Proceeding be heard by the Court. A copy of those orders is at pages **126 to 128**.

Commercial List Response and Mediation

49. On or about 30 June 2021, the Wentworth Defendants served on the Liquidators their Commercial List Response in the Doody Street Property Proceeding.
50. On 15 July 2021, the Court made orders, by consent, adjourning the Doody Street Property Proceeding to 3 September 2021 and noting that the Liquidators and Wentworth Defendants had agreed to attend a private mediation with such mediation to occur by 27 August 2021 ("**Doody Street Mediation**"). A copy of those orders is at pages **130 to 133**.
51. On or about 19 July 2021, the Liquidators and Wentworth Defendants agreed to schedule the Doody Street Mediation for 24 August 2021. The Doody Street Mediation was ultimately rescheduled to 3 September 2021 in the hope that, by that date, the lockdown restrictions in place across Greater Sydney due to COVID-19 (**Lockdown**) would be eased to such an extent to enable the Liquidators and the Wentworth Defendants to attend the Doody Street Mediation in person.
52. On 3 September 2021, the Liquidators and the Wentworth Defendants attended the Doody Street Mediation. The Liquidators and the Wentworth Defendants attended the Doody Street Mediation remotely, as the Lockdown remained in place and prevented an in-person mediation. The parties did not reach an agreement to settle the Doody Street Property Proceeding at the Doody Street Mediation.



Further work post-mediation

53. On 14 September 2021, the Court made orders for the Liquidators to serve their lay evidence in chief in the Doody Street Property Proceeding by 22 October 2021 and for the parties to have leave to make returnable on 29 October 2021 any motion, including for pre-evidence disclosure. A copy of those orders is at page **134 to 137**.
54. During the period 14 September 2021 to 15 October 2021, the Liquidators and our solicitors, Hogan Lovells:
- (a) commenced and substantially progressed preparation of the Liquidators' lay evidence in chief in the Doody Street Property Proceeding; and
 - (b) commenced work on preparing the Liquidators' expert evidence in chief on the solvency of MBA, which, during that period of time was and at the time of affirming this affidavit still is expected to be a key fact in issue between the Liquidators and the Wentworth Defendants in the Doody Street Property Proceeding (and, in addition, between the Liquidators and all but one of the Mothership Defendants in the Mothership Proceeding (as defined in paragraph 56 of this affidavit)).

Mothership Proceeding

55. During the course of my investigations as Liquidator, I had identified various transactions entered into by MBA in the period prior to the appointment of the Administrators which I considered may constitute voidable transactions pursuant to section 588FF of the Corporations Act. I continued to investigate and consider those transactions, and enter into correspondence with the relevant counterparties to those transactions, during the early part of the Remuneration Claim Period.
56. Having regard to the deadline in section 588FF(3) of the Corporations Act for the commencement of any such proceedings (being 29 June 2021), on 22 June 2021:
- (a) by Originating Process the Liquidators commenced proceeding 178927 of 2021 in the Court ("**Mothership Proceeding**") seeking relief in relation to various voidable transaction claims against the twelve defendants named in the Originating Process ("**Mothership Defendants**") pursuant to section 588FF of the Corporations Act;
 - (b) the Liquidators also filed an Interlocutory Process seeking orders pursuant to rule 6.19 of the UCPR for orders to leave to join each of the twelve defendants to the Mothership Proceeding ("**Mothership Application**"), including on the basis that

separate proceedings against each of them would give rise to a common question of fact (being the solvency of MBA).

57. The Mothership Defendants comprised:
- (a) trade creditors of MBA, and MBA's former solicitor, against whom unfair preference claims were made by the Liquidators pursuant to sections 588FA, 588FC, 588FE and 588FF of the Corporations Act (being the first to seventh Mothership Defendants); and
 - (b) entities and individuals who had, at various times, been 'related entities' of MBA as defined by section 9 of the Corporations Act, against whom unreasonable director-related transaction, uncommercial transaction and related-entity unfair preference claims were made by the Liquidators pursuant to sections 588FA, 588FB, 588FC, 588FDA, 588FE and 588FF of the Corporations Act (being the eighth to twelfth Mothership Defendants).
58. On 22 June 2021, the Court made orders for substituted and short service of the Originating Process and Interlocutory Process, together with the supporting affidavit and its exhibit, on each of the Mothership Defendants. A copy of those orders is at pages **138 to 140**.
59. On 24 June 2021, the Mothership Application was heard on a final basis by the Court and:
- (a) leave was granted to the Liquidators to join to the Originating Process eleven of the twelve Mothership Defendants pursuant to rule 6.19 of the UCPR;
 - (b) the Mothership Proceeding was dismissed as against the seventh Mothership Defendant; and
 - (c) an order was made for the Liquidators to file and serve a Statement of Claim by 4:00pm on 8 July 2021.
- A copy of those orders is at pages **142 to 146**.
60. The Liquidators served their Statement of Claim in the Mothership Proceeding on the remaining Mothership Defendants (other than the eighth Mothership Defendant) on 8 July 2021, and on the eighth Mothership Defendant on 27 July 2021.
61. From about 15 July 2021 to about 23 July 2021, the Liquidators were engaged in without prejudice discussions with the third Mothership Defendant in relation to the

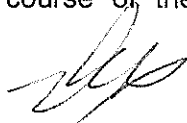


settlement of the Liquidators' claim in the Mothership Proceeding against the third Mothership Defendant, and agreed terms of settlement with the third Mothership Defendant on or about 23 July 2021. The Mothership Proceeding was dismissed as against the third Mothership Defendant on 28 July 2021.

62. On 16 August 2021, the Court ordered the Liquidators to provide pre-evidence disclosure to each of the remaining Mothership Defendants on the issue of solvency by 4:00 on 30 August 2021 and for the remaining Mothership Defendants to file and serve any Defences by 4:00pm by 22 September 2021. A copy of those orders is at pages **148 to 151**.
63. On 30 August 2021, the Liquidators provided, electronically, disclosure of approximately 139 megabytes of documents to each of the remaining Mothership Defendants at that time in compliance with the orders made in the Mothership Proceeding on 16 August 2021.
64. Each of the remaining Mothership Defendants filed and served their Defences by 22 September 2021, with the exception of the tenth Mothership Defendant. On 27 September 2021, the Court ordered, by consent, the tenth Mothership Defendant to file and serve its Defence by 5 October 2021 and the Liquidators to file and serve any Reply to the Defences of the second, sixth, eighth, ninth, eleventh and twelfth Mothership Defendants by 4:00pm on 14 October 2021. A copy of those orders is at pages **152 to 155**.
65. At various times during the course of the period from around mid-August 2021 to the end of the Remuneration Claim Period, the Liquidators engaged in without prejudice discussions with, from time to time, the first, second, fourth and fifth Mothership Defendant in relation to the settlement of the Liquidators' claim in the Mothership Proceeding against those Mothership Defendants. As at the end of the Remuneration Claim Period, negotiations with each of those Mothership Defendants were well-progressed, but not finalised. Settlement terms have since been agreed with each of those Mothership Defendants after the Remuneration Claim Period.

Revenue NSW Proceeding

66. During the course of my investigations as Liquidator, in addition to the matters the subject of the Mothership Proceeding, I had identified various transactions entered into by MBA with Revenue NSW in the period prior to the appointment of the Administrators, which I considered may constitute voidable transactions pursuant to section 588FF of the Corporations Act. I had, during the course of the liquidation prior to the

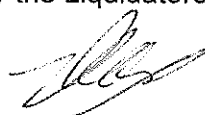


Remuneration Claim Period, engaged in various unsuccessful without prejudice discussions, including through solicitors, with Revenue NSW to seek to settle the relevant claims.

67. Since settlement negotiations had not been successful, on 29 June 2021 (being the last day on which such a claim could be commenced pursuant to section 588F(3) of the Corporations Act), the Liquidators commenced proceeding 186181 of 2021 in the District Court of NSW against Revenue NSW ("**Revenue NSW Proceeding**") by Statement of Claim in relation to voidable transaction claims arising pursuant to section 588FF of the Corporations Act.
68. On 2 August 2021, Revenue NSW filed a Defence to the Liquidators' Statement of Claim in the Revenue NSW Proceeding.
69. On 28 September 2021, the District Court of NSW made orders for the Liquidators and Revenue NSW to participate in an informal settlement conference by 15 October 2021 ("**Revenue NSW Settlement Conference**"). A copy of those orders is at pages **156 to 158**.
70. On 15 October 2021, the Liquidators and Revenue NSW attended the Settlement Conference at which they reached an in-principle agreement for settlement of the Revenue NSW Proceeding.

Funding Agreements

71. In connection with the causes of action referred to in paragraphs 32 to 65 of this affidavit, the Liquidators have entered into the following funding arrangements ("**Funding Agreements**"):
 - (a) a funding agreement with the Commonwealth of Australia (acting through the Attorney-General's Department) ("**Attorney-General's Department**") originally dated 26 September 2019 as amended from time to time, under which the Attorney-General's Department agreed to indemnify the Liquidators and MBA for certain agreed work in the liquidation relating to the Doody Street Property Proceeding ("**FEG Funding Agreement**") (amendments to which were executed during the Remuneration Claim Period on around 1 February 2021, 26 March 2021 and 4 June 2021);
 - (b) a funding agreement with Claims Funding Australia Pty Limited atf the Claims Funding Australia Discretionary Trust ("**CFA**") made on or around 19 November 2021, under which CFA agreed to indemnify the Liquidators and MBA in respect



of their remuneration and certain disbursements for certain agreed work in the liquidation relating to the Mothership Proceeding ("**CFA Funding Agreement**") (a summary of the key terms of the CFA Agreement were provided at Annexure H of the Liquidators' report to creditors dated 29 October 2021 ("**October 2021 Report to Creditors**"), a copy of which is at pages **160 to 211**) (pages **207 to 211**); and

- (c) an indemnity agreement given by the Attorney-General's Department dated 19 November 2021, under which the Attorney-General's Department agreed to indemnify the Liquidators and MBA for any adverse costs orders made in the Mothership Proceedings ("**FEG Indemnity Agreement**") (as referred to in the summary of the terms of the CFA Funding Agreement provided at Annexure H of the October 2021 Report to Creditors (pages **207 to 211**)).

72. In this regard:

- (a) the entry into the FEG Funding Agreement was approved by creditors for the purposes of section 477(2B) of the Corporations Act at a meeting of creditors held on 19 September 2019 (as referred to in the report to creditors dated 4 September 2019 at pages **324 to 396**);
- (b) the amendment of the FEG Funding Agreement to increase the scope of agreed work and the amount to be funded by the Attorney-General's Department was approved by creditors for the purposes of section 477(2B) of the Corporations Act at a meeting of creditors held on 29 January 2021 ("**January 2021 Meeting of Creditors**") (as referred to in the report to creditors dated 14 January 2021 at pages **397 to 443**); and
- (c) the entry into the CFA Funding Agreement and the FEG Indemnity Agreement was approved by creditors for the purposes of section 477(2B) of the Corporations Act at a meeting of creditors held on 12 November 2021 ("**November 2021 Meeting of Creditors**") (as referred to in the October 2021 Report to Creditors at pages **160 to 211** and the minutes of the meeting at pages **445 to 456**) (I refer to this meeting further in paragraphs 85 to 94 of this affidavit).

Key focusses during the Remuneration Claim Period

73. Further to the issues referred to above, the key focusses of the liquidation during the Remuneration Claim Period have been as follows:



- (a) continuing the Liquidators' investigations into the transactions giving rise to the Doody Street Property Transfer, which has included:
 - (i) continuing to review MBA's books and records;
 - (ii) reviewing the documents produced pursuant to the Orders for Production;
 - (iii) reviewing the information obtained pursuant to the Public Examinations;
 - (iv) considering documents relevant to the valuation of the Doody Street Property; and
 - (v) seeking detailed legal advice in relation to the potential causes of action available to the Liquidators and/or MBA in relation to the Doody Street Property Transfer;

- (b) progressing the Doody Street Property Proceeding for the benefit of creditors of MBA, which has included:
 - (i) instructing our solicitors in relation to the preparation and finalising of the Further Amended Summons and the Commercial List Statement filed by the Liquidators in the Doody Street Property Proceeding;
 - (ii) seeking and considering detailed legal advice, and instructing our solicitors, in relation to the Leave Application, to ensure that the Doody Street Property Proceeding could be commenced against the Directors (amongst the other defendants), including reviewing and affirming the supporting affidavit;
 - (iii) seeking and considering detailed legal advice, and instructing our solicitors, in relation to the Cross-Vesting Application, including reviewing and affirming the supporting affidavit;
 - (iv) seeking and considering detailed legal advice, and instructing our solicitors, in relation to the Security for Costs Application brought by the Wentworth Defendants;
 - (v) engaging in extensive negotiations with the Attorney-General's Department and the Wentworth Defendants to resolve the Security for Costs Application consensually, including negotiating and agreeing negotiating and agreeing an amendment agreement to the FEG Funding



Agreement and undertakings to be issued to the Wentworth Defendants by the Liquidators and the Attorney-General's Department;

- (vi) reviewing and seeking detailed legal advice in relation to the Commercial List Response filed in the Doody Street Property Proceeding;
 - (vii) extensively preparing for the Doody Street Mediation, which included a substantial analysis of the loss incurred by MBA in connection with the transactions the subject of the Doody Street Property Proceeding and engaging with our solicitor and Counsel to prepare a 24 page without prejudice position paper;
 - (viii) attending the one-day Doody Street Mediation session;
 - (ix) instructing our solicitors in relation to the preparation of the Liquidators' lay evidence in chief in the Doody Street Property Proceeding (the preparation of which was substantially completed during the Remuneration Claim Period); and
 - (x) commencing work in relation to the engagement of expert witnesses in the Doody Street Property Proceeding, including collating relevant documents and engaging in discussions with our potential witnesses;
- (c) continuing the Liquidators' investigations into the transactions the subject of the Mothership Proceeding, which included:
- (i) continuing to review MBA's books and records;
 - (ii) issuing demands to certain of the potential defendants; and
 - (iii) seeking detailed legal advice in relation to the potential causes of action available to the Liquidators and/or MBA in relation to the transactions the subject of the Mothership Proceeding;
- (d) commencing the Mothership Proceeding for the benefit of creditors of MBA, which included:
- (i) seeking and considering detailed legal advice provided by our solicitors and Counsel in relation to the prospects of success of the Mothership Application and the Mothership Proceeding generally;
 - (ii) instructing our solicitors in relation to the preparation and finalising of the Statement of Claim filed in the Mothership Proceeding and of the




- Mothership Application, including reviewing and affirming the supporting affidavit;
- (iii) seeking and considering detailed legal advice in relation to the Defences filed in the Mothership Proceeding;
 - (iv) collating and serving on the Mothership Defendants approximately 139 megabytes of electronic documents by way of pre-evidence disclosure on the issue of the solvency of MBA;
 - (v) progressing settlement discussions (including seeking legal advice where required) with five of the Mothership Defendants, which led to settlement terms being agreed with one Mothership Defendant during the Remuneration Claim Period and settlement terms being agreed with the remaining four Mothership Defendants after the Remuneration Claim Period;
- (e) corresponding with prospective expert witnesses and our solicitors in relation to the engagement of expert witnesses to provide expert evidence (including solvency evidence) in the Doody Street Property Proceeding and the Mothership Proceeding;
- (f) continuing to engage in without prejudice settlement negotiations with Revenue NSW in relation to the transactions the subject of the Revenue NSW Proceeding;
- (g) commencing the Revenue NSW Proceeding for the benefit of creditors of MBA, which included:
- (i) instructing our solicitors in relation to the preparation and finalising of the Statement of Claim filed in the Revenue NSW Proceeding;
 - (ii) reviewing and seeking detailed legal advice in relation to the Defence filed in the Revenue NSW Proceeding
 - (iii) preparing for and attending the Settlement Conference with Revenue NSW, at which settlement terms for the settlement of the Revenue NSW Proceeding were agreed;
- (h) in relation to the FEG Funding Agreement (in addition to the work referred to in sub-paragraph (b)(v) above concerning the Security for Costs Application), negotiating and agreeing with the Attorney-General's Department amendment agreements dated 1 February 2021 and 26 March 2021 to clarify and update the



scope of work following commencement of the substantive Doody Street Property Proceeding;

- (i) for the purpose of the Mothership Proceeding, extensively negotiating the terms of the CFA Funding Agreement and the FEG Indemnity Agreement with CFA and the Attorney-General's Department;
- (j) preparing monthly progress reports to the Attorney-General's Department in relation to the matters the subject of the FEG Funding Agreement; and
- (k) preparing and lodging a statutory investigation report pursuant to section 533 of the Corporations Act, which comprises an ASIC standard form report of 22 pages and which was lodged with ASIC on 23 July 2021 ("**Section 533 Report**") (the preparation of which also includes the drafting of a supporting internal memorandum of approximately 21 pages plus supporting documents, which is not lodged with ASIC), and commencing work on a supplementary report requested by ASIC;
- (l) undertaking an extensive reconciliation of all superannuation contributions made by MBA prior to the Liquidators' appointment, including by liaising with MBA's pre-appointment superannuation fund, REST Industry Super ("**REST**"), for the purposes of reviewing and assessing an updated proof of debt lodged in the liquidation by the Australian Taxation Office ("**ATO**").

74. Additional, more general issues that have been addressed in the liquidation during the Remuneration Claim Period include:

- (a) attending to on-going creditor, employee and third party enquiries;
- (b) reviewing and attending to proofs of debt, including in particular, existing and updated proofs of debt lodged by RSFH and Wentworth;
- (c) preparing update reports to creditors, including reports dated:
 - (i) 14 January 2021, by which I updated creditors on investigations and other developments in the liquidation, and gave notice to creditors of the January 2021 Meeting of Creditors (a copy of which is at pages **397 to 443**) (the preparation of this report largely took place prior to the Remuneration Claim Period although it was finalised and issued during the Remuneration Claim Period); and



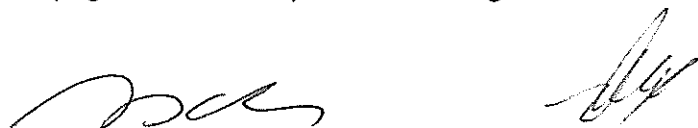

- (ii) 29 October 2021, by which I updated creditors on investigations and other developments in the liquidation and gave notice to creditors of the November 2021 Meeting of Creditors including the Liquidators' intention at that meeting to seek the approval of creditors for the CFA Funding Agreement, the Liquidators remuneration for the period commencing on 1 January 2021 and ending on 15 October 2021 and the Liquidators' future remuneration for the period commencing 16 October 2021 and ending on 30 June 2022 (a copy of which is at pages **160 to 211**);
- (d) preparing for and attending the January 2021 Meeting of Creditors, including preparing minutes of the meeting and attending to lodgment with ASIC;
- (e) attending to the Liquidators' previous application made on 6 July 2021 for a determination of the Court in relation to our remuneration incurred in the period from 1 July 2020 to 31 December 2020 ("**Previous Remuneration Application**"); and
- (f) other reporting to ASIC and the ATO.

75. A detailed narrative of the work undertaken during the Remuneration Claim Period is set out in paragraph 101 of this affidavit.

Previous remuneration determinations by creditors

76. The Liquidators have previously sought the approval of creditors to the Liquidators' remuneration at various meetings of creditors convened throughout the liquidation. In particular, in respect of the period up to 30 June 2020:

- (a) on 14 November 2018 the Liquidators issued a report to creditors (a copy of which is at pages **212 to 262**) in which we gave notice of a meeting to be held on 30 November 2018, at which creditors would be asked to consider resolutions approving the Liquidators' remuneration:
 - (i) for the period from 17 October 2018 to 11 November 2018 in the amount of \$226,741.25 (excluding GST and disbursements); and
 - (ii) for the period from 12 November 2018 to 17 January 2019 in the amount of \$75,000 (excluding GST and disbursements);
- (b) On 17 January 2019 the Liquidators issued a report to creditors (a copy of which is at pages **264 to 323**) in which we gave notice of a meeting to be held on 4



February 2019, at which creditors would be asked to consider resolutions approving the Liquidators' remuneration:

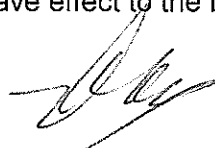
- (i) for the period from 12 November 2018 to 17 January 2019 in an additional amount of \$40,343 (excluding GST and disbursements) (in addition to the remuneration referred to in subparagraph (a)(ii) above); and
 - (ii) for the period from 18 January 2019 to 30 June 2019 in the amount of \$50,000 (excluding GST and disbursements);
- (c) On 4 September 2019, the Liquidators issued a report to creditors (a copy of which is at pages **324 to 396**) in which we gave notice of a meeting to be held on 19 September 2019, at which creditors would be asked to consider resolutions approving the Liquidators' remuneration:
- (i) for the period 18 January 2019 to 30 June 2019 in the amount of \$115,920.50 (excluding GST and disbursements) (in addition to the remuneration referred to in subparagraph (b)(ii) above);
 - (ii) for the period 1 July 2019 to 31 July 2019 in the amount of \$9,297.50 (excluding GST and disbursements); and
 - (iii) for the period 1 August 2019 to 30 June 2020 in the amount of \$250,000 (excluding GST and disbursements).

77. Each of those resolutions was approved by creditors at the relevant meeting of creditors.

78. On 14 January 2021, the Liquidators issued a report to creditors (a copy of which is at pages **397 to 443**) in which we gave notice of the January 2021 Meeting of Creditors, at which creditors would be asked to consider resolutions approving the Liquidators' remuneration:

- (a) for the period 1 July 2020 to 31 December 2020 in the amount of \$94,866.50 (excluding GST and disbursements); and
- (b) for the period from 1 January 2021 to 31 December 2021 in the amount of \$250,000 (excluding GST and disbursements).

79. These resolutions were not approved by creditors at the January 2021 Meeting of Creditors. Each of the creditors who voted against those resolutions are, along with MBA, parties to the relevant transactions that gave effect to the Doody Street Property



Transfer, and against whom relief is sought in the Doody Street Property Proceeding (as referred to in paragraph 94 of this affidavit).


80. Accordingly, by way of notice of motion filed in these proceedings on 6 July 2021, the Liquidators made the Previous Remuneration Application. The amount of the Liquidators' remuneration for which a determination was sought in the Previous Remuneration Application was \$93,619 (plus GST), being a slight reduction from the amount included in the report to creditors dated 14 January 2021 as a result of further appropriate write-downs identified by the Liquidators, and the Liquidators did not seek orders relating to their future anticipated remuneration for the period from 1 January 2021 to 31 December 2021.
81. On 19 July 2021, the Court made orders that, pursuant to section 60-10 of Schedule 2 of the Corporations Act, the Liquidators were entitled to receive remuneration for work performed in relation to the external administration of MBA for the period 1 July 2020 to 31 December 2020 in the sum of \$93,619 (plus GST).
82. To date, creditors and the Court have approved the Liquidators' total remuneration during the period from the Liquidators' Date of Appointment to 31 December 2020 in the amount of \$860,921.25 plus GST. Of this amount:
- (a) as referred to in paragraph 6 of the October 2021 Report to Creditors (a copy which is at pages **160 to 211**, see page 170), an amount of \$331,119.75 (excluding GST) was paid pursuant to an indemnity given to the Liquidators by Max Brenner Australia Pty Limited (formerly known as Opera Developments Pty Ltd, formerly known as MB Chocolate Pty Ltd) in connection with the on-going trading of the Max Brenner business during the liquidation; and
 - (b) pursuant to the FEG Funding Agreement, the Attorney-General's Department has agreed to indemnify the Liquidators for agreed work undertaken by the Liquidators up to 31 December 2020 in the amount of \$92,140.50 (excluding GST).

Remuneration determination sought in relation to the Remuneration Claim Period

83. Pursuant to section 60-10(c) of the IPS, I respectfully seek a determination of the Court approving the costs incurred in respect of necessary work properly performed by BDO (the Liquidators' firm) during the Remuneration Claim Period for the Remuneration Claim Amount.



84. On 29 October 2021, the Liquidators issued the October 2021 Report to Creditors. The October 2021 Report to Creditors provided notice that the Liquidators would be seeking approval of their remuneration during the November 2021 Meeting of Creditors. The October 2021 Report to Creditors attached a copy of a remuneration request approval report ("**Remuneration Request Approval Report**") for the consideration of the creditors in the sum of \$344,288 (exclusive of GST and disbursements). At pages **160 to 211** is a copy of the October 2021 Report to Creditors and at pages **188 to 203** is a copy of the Remuneration Request Approval Report enclosed within it.
85. On 12 November 2021, the Liquidators held the November 2021 Meeting of Creditors. A copy of the minutes of meeting of the November 2021 Meeting of Creditors is at pages **445 to 456**.
86. During the November 2021 Meeting of Creditors, I tabled resolutions for the approval of the Liquidators' remuneration as follows:
- (a) the remuneration of the Liquidators for the Remuneration Claim Period on a time basis, fixed in the amount of \$344,288 and exclusive of disbursements ("**Resolution 1**"); and
 - (b) the anticipated future remuneration of the Liquidators for the period from 16 October 2021 to 22 June 2022, on a time basis in the amount of \$150,000 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2021 and that may be increased at 1 July each year ("**Resolution 2**").
87. Given that the November 2021 Meeting of Creditors was held virtually due to restrictions imposed by the COVID-19 pandemic, I advised creditors that all resolutions would be conducted by way of poll.
88. With respect to Resolution 1:
- (a) 12 creditors with debts admitted for voting purposes in the aggregate sum of \$11,874,122 voted in favour; and
 - (b) six creditors with debts admitted for voting purposes in the aggregate sum of \$22,572,142 voted against.
89. Resolution 1, therefore, did not pass in accordance with section 75-115(4) of the *Insolvency Practice Rules (Corporations) 2016* (Cth) ("**Rules**").



90. Given that Resolution 1 did not pass, I determined not to put Resolution 2 to creditors at the meeting. I am not, at the present time, seeking a determination from the Court in respect of any of the prospective remuneration referred to in Resolution 2.
91. The October 2021 Report to Creditors also provided notice that the Liquidators would be seeking approval of creditors pursuant to section 477(2B) of the Corporations Act to the entry into of the CFA Funding Agreement ("**Funding Agreement Resolution**"). During the course of the November 2021 Meeting of Creditors, I advised creditors that the wording of the Funding Agreement Resolution would be amended to include approval of the FEG Indemnity Agreement, in addition to the CFA Funding Agreement. With respect to the Funding Agreement Resolution:
- (a) ten creditors with debts admitted for voting purposes in the aggregate sum of \$4,980,833 voted in favour;
 - (b) six creditors with debts admitted for voting purposes in the aggregate sum of \$22,572,421 voted against; and
 - (c) two creditors with debts admitted for voting purposes in the aggregate sum of \$6,893,288 had completed a special proxy form prior to the November 2021 Meeting of Creditors in which they voted in favour of the Funding Agreement Resolution, but who did not attend the November 2021 Meeting of Creditors and so were unable to vote on the amended Funding Agreement Resolution, and so who I took to have abstained from voting.
92. The Funding Agreement Resolution was passed upon the exercise of my casting vote pursuant to section 75-115(3) of the Rules.
93. A detailed summary of the outcome of the polls held in respect of Resolution 1 and the Funding Agreement Resolution appear in the minutes of the meeting at pages **445 to 456**.
94. Each of the six creditors who voted against Resolution 1 and the Funding Agreement Resolution are, along with MBA, parties to the relevant transactions that gave effect to the Doody Street Property Transfer, and relief is sought against these parties in the Doody Street Property Proceeding. They comprise:
- (a) Citadel;
 - (b) Citadel Holdings;
 - (c) Wentworth;



- (d) RSFH; and
 - (e) the Directors (Tamir Haikin and Lilach Haikin) (although their vote was being exercised by Wentworth pursuant to a power of attorney granted by the Directors in favour of Wentworth in the Wentworth GSD. I refer to the minutes at pages **453 and 454**).
95. Each of Citadel, Citadel Holdings, Wentworth and RFSH:
- (a) did not vote against any resolutions approving the remuneration of the Liquidators for periods prior to 1 July 2020 put to creditors at meetings held on 30 November 2018, 4 February 2019 and 19 September 2019, and had abstained from voting on any such resolutions at such meetings; and
 - (b) voted against resolutions approving the remuneration of the Liquidators for the period 1 July 2020 to 31 December put to creditors at the January 2021 Meeting of Creditors (as deposed to in paragraph 79 of this affidavit).
96. At the date of this affidavit, no profit-making disbursements have been charged in this matter for the Remuneration Claim Period.
97. The actual Liquidators' time costs incurred for the Remuneration Claim Period were in the amount of \$352,395.50. I initially wrote down the Liquidators' total time costs by an amount of \$8,107.50 to \$344,288 because I regarded it as appropriate to write-off that amount having regard to the nature of the work performed, the complexity of the work performed, and the time taken to complete the relevant work, further to the review process described in paragraph 103 of this affidavit.
98. Although the Liquidators' remuneration recorded for the Remuneration Claim Period was \$352,395.50 (excluding GST), and the amount of the remuneration sought pursuant to Resolution 1 was \$344,288 (excluding GST), I only now seek a remuneration determination in the amount of the Remuneration Claim Amount. The difference of \$2,698 (as against the amount of remuneration for which approval was sought pursuant to Resolution 1) represents an amount of remuneration which is not claimed because I now regard it as appropriate to write-off this amount having regard to the nature of the work performed, the complexity of the work performed, and the time taken to complete the relevant work, further to the review process described in paragraph 103 of this affidavit.
99. Pursuant to the relevant Funding Agreements:



- (a) the amount for which the Attorney-General's Department has agreed to indemnify the Liquidators for the agreed work undertaken by the Liquidators during the Remuneration Claim Period is in the sum of \$68,460 (excluding GST); and
 - (b) the amount for which CFA has agreed to indemnify the Liquidators for the agreed work undertaken by the Liquidators during the Remuneration Claim Period is in the sum of \$31,211 (excluding GST) (as referred to on page 12 of the October 2021 Report to Creditors, appearing at page 171),
- (together "**Indemnity Amounts**").

100. The Indemnity Amounts are included in the Remuneration Claim Amount.

Necessary work properly performed during the Remuneration Claim Period

Nature of work performed

101. I have undertaken an assessment of the work performed during the Remuneration Claim Period as summarised at paragraph 102 to 103 of this affidavit. During the Remuneration Claim Period, the Liquidators, together with our staff acting under my direct instruction and supervision, undertook tasks in relation to the liquidation of MBA which included the following:

- (a) reviewing MBA's books and records in relation to the Doody Street Property Transfer;
- (b) considering documents relating to the valuation of the Doody Street Property;
- (c) in relation to the Doody Street Property Proceeding:
 - (i) seeking detailed ongoing legal advice in relation to the potential causes of action available to the Liquidators and/or MBA in relation to the Doody Street Property Transfer;
 - (ii) instructing our solicitors in relation to the preparation of the Further Amended Summons and Commercial List Statement;
 - (iii) considering advice from our solicitors on the requirement for orders under section 58(3)(b) of the Bankruptcy Act to commence the Doody Street Property Proceeding against the Directors in light of the nature of certain causes of action pursued and relief sought in the Doody Street Property Proceeding;



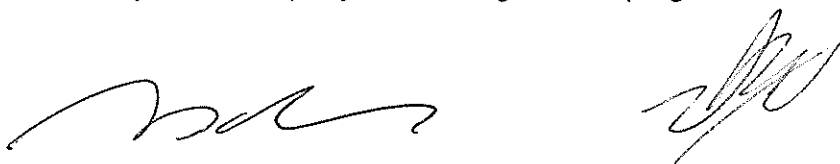

- (iv) instructing our solicitors in relation to the preparing of the Originating Process and supporting affidavit for the Leave Application, and reviewing and affirming the supporting affidavit (comprising 14 pages with an exhibit comprising 432 pages);
- (v) considering advice from our solicitors and Counsel on the requirement for orders under section 6 of the Cross-Vesting Act for the Doody Street Property Proceeding to be determined by the Court ;
- (vi) instructing our solicitors in relation to the preparing of the notice of motion and supporting affidavit for the Cross-Vesting Application, and reviewing and affirming the supporting affidavit (comprising 11 pages with an exhibit comprising 234 pages);
- (vii) attending the hearing of the Cross-Vesting Application on 11 June 2021;
- (viii) reviewing and considering advice from our solicitors in relation to the Commercial List Response filed in the Doody Street Property Proceeding by the Wentworth Defendants;
- (ix) considering advice from our solicitors in relation to the Security for Costs Application and the Wentworth Defendants' prospects of obtaining orders for security for costs in the Doody Street Property Proceeding in light of the FEG Funding Agreement;
- (x) extensively negotiating an amendment to the FEG Funding Agreement with the Attorney-General's Department and the Wentworth Defendants, and the terms of separate undertakings to be issued by the Liquidators and the Attorney-General's Department to the Wentworth Defendants, for the purposes of resolving the Security for Costs Application consensually;
- (xi) preparing for the Doody Street Mediation on 3 September 2021, including undertaking a detailed analysis of the loss incurred by MBA in connection with the transactions the subject of the Doody Street Property Proceeding, engaging with our solicitors to prepare a 24 page without prejudice position paper, and conducting various investigations and enquiries;
- (xii) attending the one-day Doody Street Mediation on 3 September 2021;



- (xiii) instructing our solicitors in relation to the preparation of the Liquidators' lay evidence in chief, comprising a six volume documentary bundle consisting of 3,950 pages; and
 - (xiv) liaising with our solicitors in relation to at least 13 procedural or directions hearings, including for the purposes of agreeing orders by consent for those hearings with the defendants;
- (d) reviewing MBA's books and records in relation to the transactions the subject of the Mothership Proceeding and issuing letters of demand to certain of the potential defendants in relation to the underlying transactions;
- (e) in relation to the Mothership Proceeding:
- (i) seeking detailed ongoing legal advice in relation to the potential causes of action available to the Liquidators and/or MBA in relation to the transactions the subject of the Mothership Proceeding;
 - (ii) instructing our solicitors in relation to the preparation of the Mothership Application and the Statement of Claim in the Mothership Proceeding;
 - (iii) reviewing and affirming the affidavit made in support of the Mothership Application (comprising 43 pages with an exhibit comprising 1,169 pages);
 - (iv) considering detailed advice from our solicitors and Counsel in relation to the prospects of success of the Mothership Application and the Mothership Proceeding generally;
 - (v) reviewing and considering advice from our solicitors in relation to each of the Defences served in the Mothership Proceeding;
 - (vi) collating and producing documents in relation to the issue of solvency to the remaining Mothership Defendants on 30 August 2021, pursuant to the orders for pre-evidence disclosure made by the Court in the Mothership Proceeding on 16 August 2021, comprising 139 megabytes of electronic material;
 - (vii) instructing our solicitors, and considering advice from our solicitors, in relation to the settlement negotiations with the first to fifth Mothership Defendants, and in relation to the settlement terms agreed with the third Mothership Defendant;



- (f) instructing our solicitors in relation to, and collating key financial documents for, the engagement of experts to provide reports comprising the Liquidators' expert evidence in chief in the Doody Street Property Proceeding and the Mothership Proceeding, including in relation to the question of solvency of MBA;
- (g) attending at least two conferences with the Liquidators' prospective expert witnesses in the Doody Street Property Proceeding and the Mothership Proceeding;
- (h) in relation to the Revenue NSW Proceeding:
 - (i) instructing our solicitors in relation to the preparation of the Statement of Claim in the Revenue NSW Proceeding;
 - (ii) reviewing and considering advice from our solicitors in relation to the Defence filed in the Revenue NSW Proceeding by Revenue NSW;
 - (iii) preparing for and attending the Settlement Conference with Revenue NSW;
- (i) preparing updated estimated outcome statements in relation to the liquidation, including two for provision to creditors, one for provision to the Attorney-General's Department in relation to the Doody Street Property Proceeding, and one for the Liquidators' own review and reference;
- (j) negotiating the CFA Funding Agreement with CFA and negotiating the FEG Indemnity Agreement with the Attorney-General's Department including:
 - (i) attending at least four conferences with CFA and the Attorney-General's Department in relation to the CFA Funding Agreement and the FEG Indemnity Agreement;
 - (ii) considering advice from, and instruction, our solicitors in relation to the negotiation of the CFA Funding Agreement and the FEG Indemnity Agreement; and
 - (iii) responding to numerous email queries received from CFA regarding various issues pertaining to the Mothership Proceedings;
- (k) engaging in discussions with the Attorney-General's Department in relation to the Doody Street Property Proceeding and the progress of the liquidation;



- (l) preparing a total of nine (one per month) reports to the Attorney-General's Department for the purposes of the FEG Funding Agreement;
- (m) engaging in discussions with CFA in relation to the Mothership Proceeding and the progress of the liquidation;
- (n) preparing and lodging the Section 533 Report;
- (o) commencing work on a supplemental report to the Section 533 Report requested by ASIC;
- (p) undertaking an extensive reconciliation of all superannuation contributions made by MBA prior to the Liquidators' appointment, including by liaising with MBA's pre-appointment superannuation fund, REST, for the purposes of reviewing and assessing an updated proof of debt lodged in the liquidation by the ATO;
- (q) preparing, arranging and lodging statutory forms, including ASIC Form 501 (External Administrators' lodgment of minute) in respect of the January 2021 Meeting of Creditors;
- (r) completing and lodging a total of nine (one per month) business activity statements ("**BAS**") with the ATO;
- (s) reviewing, preparing and attending to creditor enquiries by way of telephone conversations, emails and post, including:
 - (i) corresponding with various creditors with regards to their claims in the liquidation;
 - (ii) reviewing demands for payment received from certain creditors and responding; and
 - (iii) providing various general updates in relation to progress of the liquidation on request from certain creditors;
- (t) processing of proofs of debt, including:
 - (i) receiving and reviewing proofs of debt , including seeking legal advice in relation to the proofs of debt previously lodged in the liquidation by Wentworth, RFSH and Citadel and instructing our solicitors to engage in further correspondence with those parties' solicitors in respect of the proofs;



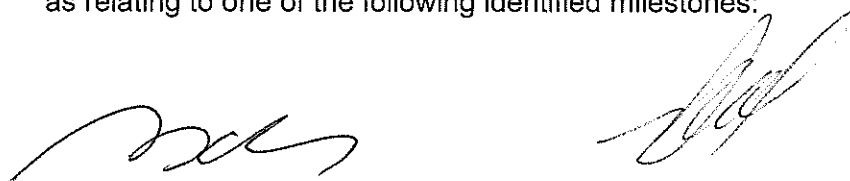
- (ii) updating creditor claims on the matter file and within MYOB; and
 - (iii) corresponding with the ATO regarding proofs of debt;
- (u) preparing reports to creditors, including:
 - (i) report to creditors dated 17 January 2021 (the majority of the preparation of which took place prior to the Remuneration Claim Period even though it was issued after the Remuneration Claim Period) (a copy of which is at pages **264 to 323**); and
 - (ii) the October 2021 Report to Creditors (a copy of which is at pages **160 to 211**).
- (v) preparing for and attending the January 2021 Meeting of Creditors;
- (w) attending to the Previous Remuneration Application, including:
 - (i) instructing our solicitors in relation to the preparation of the Previous Remuneration Application;
 - (ii) liaising with our solicitors to prepare the supporting evidence in support of the Previous Remuneration Application;
 - (iii) reviewing and affirming two supporting affidavits made in support of the Previous Remuneration Application, being an initial affidavit (comprising 27 pages, an exhibit comprising 420 pages and a confidential exhibit comprising 13 pages) and a further affidavit of service (comprising six pages and five annexures);
 - (iv) arranging for notice of the application to be sent by post and email to all creditors of MBA that have previously attended a meeting of creditors in the liquidation and MBA's shareholder; and
 - (v) attending the virtual hearing of the Previous Remuneration Application on 19 July 2021;
- (x) responding to ongoing employee enquiries, including enquiries related to employee entitlements and superannuation (including attending at least 13 telephone calls with former employees and/or the ATO and engaging in at least 23 email exchanges with former employees, including ongoing updates to Ms Yael Kaminski Weiller, the representative of certain former employees);



- (y) attending to superannuation guarantee matters, including (in addition to the reconciliation exercise referred to above):
 - (i) commencing preparing ATO form NAT9599 (a form requested by the ATO to reconcile superannuation guarantee shortfalls with late payment offsets);
 - (ii) engaging in communications with the ATO concerning the form NAT9599; and
 - (iii) undertaking detailed calculations across 19 quarterly periods to complete the form NAT9599;
- (z) banking related activities, including:
 - (i) bank account reconciliations;
 - (ii) making payments to third parties, including Hogan Lovells, NetSuite (provider of the Liquidators' online accounting software) and Law In Order (mail-out of forms relating to the previous remuneration application);
- (aa) planning and reviewing, including in relation to:
 - (i) attending to statutory requirements, such as ASIC filing requirements and monthly BAS returns;
 - (ii) liaising with solicitors on progress of liquidation; and
 - (iii) internal meetings in relation to the status of the liquidation; and
- (bb) document maintenance, including:
 - (i) filing of documents;
 - (ii) conducting file reviews; and
 - (iii) updating checklists, including the internal checklists maintained by the Liquidators to ensure all lodgements are up to date and lodged.

Classification and summary of remuneration

102. The work performed by BDO during the Remuneration Claim Period can be classified as relating to one of the following identified milestones:



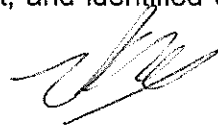
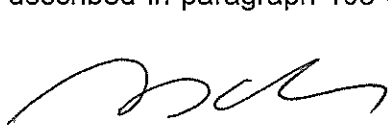
- (a) **Administration**, which captured work directly related to document maintenance/checklists, bank accounts, administration not falling within one of the other milestones, attending to insurance matters, planning and reviews, certain statutory reporting including to the ATO, and attending to the Previous Remuneration Application;
 - (b) **Creditors**, which captured work directly related to general creditor enquiries, creditors meetings, preparation of all necessary reports to creditors and processing proofs of debt;
 - (c) **Employees**, which captured work directly related to employee enquiries and employee entitlements, including the reconciliation exercise in respect of MBA's previous superannuation contributions; and
 - (d) **Investigation**, which captured work directly related to liaison with ASIC, preparing ASIC investigation reports, conducting investigations and work relating to the Doody Street Property Proceeding, the Mothership Proceeding and the Revenue NSW Proceeding.
103. The work was performed by BDO staff members, and time was recorded against each of those milestones in the following way:
- (a) each staff member, including myself and my partners, are required to maintain a computerised time sheet on a daily basis. Time spent on various matters is recorded in that time sheet, in the usual course of business, in six-minute units;
 - (b) in accordance with firm policy, all professional staff are required to record time against a matter and one of the milestones coded to the matter, manually adding a narrative that provides a short description of the work undertaken in respect of that time entry;
 - (c) some of the milestones also have sub-categories or coded "tasks" to which work in respect of that milestone could be attributed and in that case a time entry;
 - (d) once the time sheets are entered into the computer, I and/or one of my managers responsible for the file determine whether the time recorded against a certain matter is reasonably commensurate to the nature of the work performed. If the time billed for a certain task is not reasonable then the computerised time entry is amended accordingly based on our expertise and experience in the industry;



- (e) in some cases, where the senior staff on the file considered that it was appropriate to provide further breakdown of the task for the purposes of the remuneration reports prepared for the engagement, this was done manually by senior staff with reference to the narratives used for each time entry; and
 - (f) prior to finalisation of each remuneration report, the detailed time narrations are extracted into an excel spreadsheet and I and/or a manager responsible for the file review the entries made and make adjustments for incorrect entries by way of coding work done, and where necessary re-allocating time to tasks as and where required, using our knowledge and experience gained through the liquidation of MBA.
104. In order to demonstrate, in an efficient and cost-effective way, the work performed by the Liquidators in the Remuneration Claim Period, I have caused to have prepared remuneration schedules for the Remuneration Claim Period ("**Remuneration Schedules**"), which comprises:
- (a) a description of the work completed in the Remuneration Claim Period by reference to the staff member performing the work, the number of hours and remuneration charged for each milestone and each sub-category within each milestone ("**Schedule A**"); and
 - (b) a summary of the work completed in the Remuneration Claim Period by reference to the number of hours and remuneration charged by each staff member for each milestone ("**Schedule B**").
- A redacted copy of Schedule A is at pages **457 to 474**. A copy of Schedule B is at page **475**.
105. I also caused to be created a spreadsheet which contains an expanded version of Schedule B ("**Detailed Summary by Staff Member Spreadsheet**"). The Detailed Summary by Staff Member Spreadsheet contains a summary of the work completed by reference to the number of hours and remuneration charged by each staff member for each sub-category within each milestone. A redacted copy of the Detailed Summary by Staff Member Spreadsheet is at page **476 to 493**.
106. Unredacted copies of Schedule A and the Detailed Summary by Staff Member Spreadsheet appear at pages **2 to 19** and **20 to 37** respectively of Confidential Exhibit AS-5.




107. The redacted copies of Schedule A and the Detailed Summary by Staff Member Spreadsheet appearing at pages **457 to 474** and pages **476 to 493** respectively have been redacted to remove narrations which refer to confidential communications and documents brought into existence for the dominant, if not sole, purpose of either:
- (a) enabling the Liquidators to obtain, or our lawyers and Counsel to give, legal advice or provide legal services; or
 - (b) for use in the Doody Street Property Proceeding, the Mothership Proceeding and/or the Revenue NSW Proceeding (which were either contemplated or commenced at the relevant time).
108. The Remuneration Schedules and the Detailed Summary by Staff Member Spreadsheet were created in the following ways:
- (a) first, the detailed time narrations in the BDO computerised time entry system were extracted into excel. The extraction extended to approximately 1,168 rows. The narrations were sorted into milestones and into sub-categories or tasks in the way described in paragraphs 102 to 103 above. This was done by BDO partners and staff, specifically prepared by Bill Todd, reviewed by Tom Whitmarsh and approved by me. Those staff members then drafted and reviewed the description of the work relating to each milestone and sub-category, based on a review of the detailed time narrations; and
 - (b) secondly, each of the milestones and sub-categories within those milestones was separated so as to identify the amount of hours spent and remuneration charged for each milestone and sub-category within that milestone. From there, the Remuneration Schedules and Detailed Summary by Staff Member Spreadsheet were generated. This work was prepared by Bill Todd, reviewed by Tom Whitmarsh and approved by me.
109. Remuneration schedules in a similar form to those included as Schedule A and Schedule B appeared in the Liquidators' remuneration report included with the October 2021 Report to Creditors. However, the versions of Schedule A and Schedule B appearing at pages **457 to 474** and **475** respectively have different subtotals for the remuneration allocated to each milestone from those appearing in the October 2021 Report to Creditors. This is because after the November 2021 Meeting of Creditors, and in preparation for this application, the Liquidators undertook a further line by line analysis of the time entries during the Remuneration Claim Period in the manner described in paragraph 103 of this affidavit, and identified certain time entries which



were more appropriately allocated to different milestones from those to which they were allocated in the October 2021 Report to Creditors. I note that this exercise has not affected the calculation of the total Remuneration Claim Amount (and the total Remuneration Claim Amount has reduced from that referred to in the October 2021 Report to Creditors as a result of the write-downs referred to in paragraph 98 of this affidavit).

Difficulties during the Remuneration Claim Period

110. During the Remuneration Claim Period, there were difficulties in the liquidation of MBA which added significantly to its complexity and cost. Specifically, difficulties arising during the Remuneration Claim Period included:

- (a) the Liquidators were required to engage extensively with our solicitors and Counsel in relation to:
 - (i) their detailed legal advice concerning the causes of action and forms of relief available in the Doody Street Property Proceeding, our ability to commence the Doody Street Property Proceeding against the Directors, and the need to seek leave to proceed against the Directors given their bankruptcy; and
 - (ii) the collation of the supporting evidence in respect of the Leave Application, including engaging with the trustees of the bankrupt estates of both Directors, and reviewing and affirming the same;
 - (iii) their detailed legal advice concerning the need to bring the Cross-Vesting Application in order that the Liquidators could have certainty going forward regarding the proper forum for the determination of the Doody Street Property Proceeding;
 - (iv) the collation of the supporting evidence in respect of the Cross-Vesting Application, including instructing our solicitors to seek consent from the Commonwealth Attorney-General's office and the NSW Attorney-General's office, and reviewing and affirming the same;
- (b) as a result of the Wentworth Defendants making the Security for Costs Application, the Liquidators were required to:



- (i) engage solicitors to provide further legal advice concerning the potential exposure to security for costs and the Wentworth Defendants' prospects of successfully seeking security for costs;
 - (ii) engage in extensive negotiations with the Attorney-General's Department and the Wentworth Defendants to seek to resolve the Security for Costs Application consensually, which include negotiation amendments to the FEG Funding Agreement and the terms of undertakings to be issued by the Liquidators personally and by the Attorney-General's Department;
- (c) the Liquidators were required to prepare extensively, and engage solicitors and Counsel to prepare extensively, for the Doody Street Mediation, which included:
 - (i) a detailed and substantial analysis of the loss incurred by MBA in respect of the transactions the subject of the Doody Street Property Proceeding; and
 - (ii) the preparation of a 24 page without prejudice position paper;
- (d) the Liquidators were required collate, prepare and produce (and engage with our solicitors where appropriate in relation to the collation, preparation and production of):
 - (i) in the Doody Street Property Proceeding, the Liquidators' lay evidence in chief (comprising a six volume documentary bundle consisting of 3,950 pages); and
 - (ii) in the Mothership Proceeding, documents relating to the solvency of MBA by way of pre-evidence disclosure (comprising 139 megabytes of electronic material);
- (e) the Liquidators were required to engage solicitors to prepare the Mothership Proceeding and Mothership Application on an urgent basis, having regard to the impending expiry of the limitation period in section 588FF(3) Corporations Act;
- (f) as a result of the number of defendants in the Mothership Proceeding, the Liquidators and their solicitors were required to engage with various advisers, which has made case management more complex and time-consuming than may otherwise be the case;
- (g) the Liquidators were required to engage in extensive negotiations for the funding of the Mothership Proceeding by CFA (and by the Attorney-General's Department



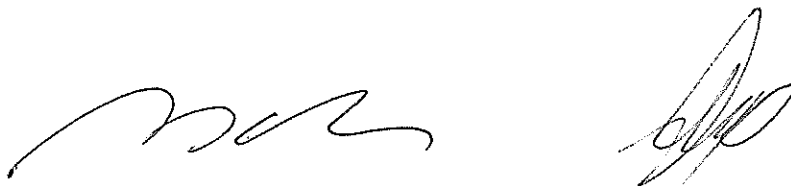
in respect of the FEG Indemnity Agreement) in order to secure funding of that action for the benefit of creditors;

- (h) as a result of certain of the Wentworth Defendants voting against the resolution to approve the remuneration of the Liquidators for the period 1 June 2020 to 31 December 2020 tabled at the January 2021 Meeting of Creditors, the Liquidators were required to make the Previous Remuneration Application; and
- (i) the Liquidators have been required to undertake an extensive and complex reconciliation exercise in respect of MBA's previous superannuation contributions going back to 2014, which has required frequent engagement with the ATO and REST throughout the Remuneration Claim Period.

Recoveries and proceeds during the Remuneration Claim Period

Recoveries during the liquidation

111. During the liquidation of MBA, the following realisations and recoveries have been made. Of these realisations, a total of \$30,215 have been made during the Remuneration Claim Period, which comprises \$30,000 of recoveries in respect of unfair preference claims and \$215 by way of a refund of lease costs:

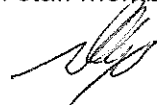


Cash at bank	\$0.00
Debtors	\$0.00
Plant and equipment	\$1.00
Motor Vehicles	\$1.00
Stock	\$270,360.44
Dividend Received (Elite)	\$13,878.37
Hire purchase refund	\$6,089.76
Lease costs refund	\$215.00
Return of Bank Guarantee	\$16,365.53
Recoveries (Preferences)	<u>\$1,130,000.00</u>
Total assets and recoveries:	\$1,436,911.10

112. At page **494** is a summary of receipts taken and payments made by MBA during the entire liquidation up to 14 December 2021.
113. At page **495** is a summary of receipts taken and payments made by MBA during the Remuneration Claim Period only.

Reasonableness of the remuneration sought


114. A summary of the work done in the Remuneration Claim Period, and a summary of the fees incurred in respect of Remuneration Claim Period, is set out in paragraph 101 of this affidavit.
115. The standard rates charged by BDO partners and staff during the Remuneration Claim Period are disclosed in Schedule B under the column headed "Hourly Rate" at page **475**. The hourly rates for each staff members increased on 1 July 2021 as set out in Schedule B.
116. I believe that the rates are reasonable, based on:
- (a) the experience of each staff member;
 - (b) the work actually performed in relation to the appointment;
 - (c) the complexity of the work performed by each staff member;

- (d) the responsibility of each staff member in relation to the work performed by them;
 - (e) the costs incurred by our firm in performing the work in relation to our appointments;
 - (f) the risks undertaken by our firm in allowing us to accept the appointments and conducting the work in relation to our appointments; and
 - (g) the rates charged are generally comparable to or lower than other insolvency specialist firms in Sydney.
117. During the course of the liquidation, I structured the team of staff assisting in the liquidation in what I regarded, from experience, to be the most cost-effective manner. Where possible, less senior (and cheaper) staff were used to undertake particular streams of work with a view to saving costs. However, a great deal of the work that was required to be undertaken could only be undertaken by staff of a particular seniority and skill-set, particularly due to factors such as the complexities surrounding the various court proceedings (which are set out at paragraph 110 of this affidavit).
118. I have undertaken a review of the claimed remuneration, including the nature of the work performed and the time spent in performing those tasks and based on my experience I believe that the amounts claimed are reasonable and properly reflect the substantial amount of work undertaken during the Remuneration Claim Period. This is particularly the case given that:
- (a) a portion of the total remuneration incurred during the Remuneration Claim Period is not being claimed (in respect of which see paragraph 98 of this affidavit); and
 - (b) a portion of the Remuneration Claim Amount is being indemnified pursuant to the Funding Agreements (in respect of which see paragraph 99 of this affidavit).
119. In the circumstances, and based on all of the matters set out in this affidavit, I believe that the Remuneration Claim Amount for the liquidation remuneration incurred during the Remuneration Claim Period is fair and reasonable and was necessarily incurred in the discharge of the Liquidators' duties.

Form 16 Notice

120. In accordance with Rule 9.2 of the *Supreme Court (Corporations) Rules 1999* (NSW), I intend to serve a Form 16 notice of my intention to apply for the orders sought in the proposed amended application, together with a copy of this affidavit on each of the



creditors of MBA and each member of MBA whose shareholding represents at least 10% of the issued capital of MBA.

Affirmed at Sydney

on 15 December 2021

Signature of deponent



Name of witness

Zachary Forrai

Address of witness

Level 17, 20 Martin Place, Sydney NSW 2000

Capacity of witness

Solicitor

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

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

Signature of witness



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