

Form 59
Rule 29.02(1)

Affidavit

No. NSD 464 of 2020

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS

VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD HUGHES, IN THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) AND THE THIRD TO FORTIETH PLAINTIFFS NAMED IN SCHEDULE 1

First Plaintiffs

AND OTHERS NAMED IN THE SCHEDULE

Plaintiffs

Affidavit of: Salvatore Algeri
Address: 447 Collins Street, Melbourne, VIC 3000
Occupation: Registered Liquidator and Chartered Accountant
Date: 22 May 2020

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1.	Affidavit of Salvatore Algeri in support of application for orders under sections 443B(8) and 447A of the <i>Corporations Act 2001</i> (Cth) and section 90-15 of Schedule 2 - the Insolvency Practice Schedule (Corporations) sworn on 22 May 2020.	1- 52	

Filed on behalf of (name & role of party) The Plaintiffs
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[Version 3 form approved 02/05/2019]

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2.	Exhibit "SA-1", being a bundle of documents exhibited to the deponent.	-	-

I, Salvatore Algeri, of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**), of 447 Collins Street, Melbourne, VIC 3000, Registered Liquidator and Chartered Accountant, say on oath:

1. I am a partner in the Financial Advisory Group and the National Deloitte Restructuring Leader of the professional services firm trading as Deloitte. I am a Chartered Accountant and a Registered Liquidator and I practise as an accountant specialising in corporate restructuring and insolvency related matters, with key experience in the consumer business, retail and transport sectors.
2. I am one of the four joint and several voluntary administrators of each of the Second to Fortieth Plaintiffs (together, the **Virgin Companies**), together with Mr Vaughan Strawbridge, Mr John Greig and Mr Richard Hughes (together, **the Administrators** and each an **Administrator**). Mr Strawbridge, Mr Greig and Mr Hughes are also partners of Deloitte. I am authorised by Mr Strawbridge, Mr Greig and Mr Hughes to make this affidavit on behalf of the Administrators. Where I depose below to the view or views of the Administrators, they are the views which I and each of Mr Strawbridge, Mr Greig and Mr Hughes hold at the date of swearing this affidavit.
3. I make this affidavit on behalf of the Plaintiffs and in support of the Administrators' application made by way of an interlocutory process dated 22 May 2020. The application seeks, pursuant to sections 443B(8) and 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**), a further extension of time, to the period which begins after 16 June 2020, within which the Administrators must give notice, pursuant to section 443B of the Corporations Act, before incurring personal liability for property leased, used or occupied by the Virgin Companies in respect, only, of a specific class of property, namely aircraft and other aviation equipment of the Virgin Companies that is subject to operating and finance leasing arrangements (**Aircraft Leases**). Pursuant to Order 9 of the orders made by the Court on 24 April 2020 (**24 April Order**), there was an initial extension of such period to 26 May 2020 and, as set out above, the Administrators now seek to extend that period further to the period which begins after 16 June 2020 (**Further Extension Order**), but to limit the ambit of the (further) order to Aircraft Leases.

4. In making this affidavit, I refer to and rely upon the affidavit of Mr Strawbridge dated 23 April 2020 and its exhibit marked "VNS-1" (**First Strawbridge Affidavit**), the affidavit of Mr Strawbridge dated 11 May 2020 (**Second Strawbridge Affidavit**) and its exhibit marked "VNS-2" (**Exhibit VNS-2**) and the affidavit of Cassandra Suzann Adams dated 15 May 2020 and its annexures (**Adams Affidavit**), which were previously filed and relied on by the Plaintiffs in the proceedings.
5. Exhibited to me at the time of making this affidavit is a bundle of documents, to which I make reference in this affidavit marked "**SA-1**" (**Exhibit SA-1**). A reference to a Tab in this affidavit is to a tab in Exhibit SA-1, unless otherwise stated.
6. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information I and staff members at Deloitte have obtained through my role as an Administrator of the Second to Fortieth Plaintiffs, which I believe to be true.
7. Of the Administrators, I (and my staff at Deloitte) have had primary carriage of the ongoing dealings with the lessors and financiers of the Aircraft Leases during the course of the administration of the Virgin Companies.

BACKGROUND

8. The business conducted by the corporate group of which the Virgin Companies are part (**Business**) was described in paragraphs [12]-[13] of the First Strawbridge Affidavit. As set out more fully in paragraphs [65]-[72] of the First Strawbridge Affidavit, the Administrators sought the 24 April Order in circumstances where we were not able, within the five business day period permitted by sections 443B(2) and (3) of the Corporations Act, to form a view on whether it was necessary or desirable in the interests of preserving the value of the Business, to exercise rights in respect of the significant number of arrangements involving the lease, use, possession or occupation by the Virgin Companies of property owned, finances or leased by third parties (including Aircraft Leases). The Administrators estimated at that time that, having regard, among other things, to the scale of the Business and operations of the Virgin Companies, the quantity of such property or the significant liabilities associated with that property, they would require until 26 May 2020 to do so.
9. The Administrators have identified 142 aircraft and engines in the Virgin Companies' fleet that are the subject of Aircraft Leases. There are certain lessors and financiers of multiple aircraft and aircraft engines, such that there are approximately 73 such lessor and financier parties in total.

10. Following the making of the 24 April Order, the Administrators formed the view that causing the Virgin Companies to remain in possession of the aircraft and engines subject to the Aircraft Leases was in the interests of the Virgin Companies, their creditors and their other stakeholders for the reasons set out at paragraphs [94]-[96] of Second Strawbridge Affidavit.
11. The Administrators have been unwilling to take on the personal liability mandated by section 443B(2) of the Corporations Act in relation to the significant debts and obligations that would be imposed by continuing to use the leased engines and aircraft (given that there is an aggregate monthly liability under the Aircraft Leases of in excess of \$40 million), particularly in circumstances where the COVID-19 travel restrictions have reduced the revenue generated by the Business' operating fleet to an insignificant sum (as explained at paragraph [93] of the Second Strawbridge Affidavit).

LIMITATION OF THE APPLICATION TO AIRCRAFT LEASES

12. In relation to leased property subject to the 24 April Order that is not aircraft or engines, including real property leases to which the Virgin Companies are party, the Administrators have been able to undertake and advance their investigations and, where applicable, engage in discussions and negotiations with the relevant lessor counterparties within the period contemplated in the 24 April Order such that they do not seek to extend the operation of the 24 April Order to any class or category of leased property, other than the Aircraft Leases.

ENGAGEMENT WITH AIRCRAFT LESSORS SINCE THE 24 APRIL ORDER

13. The Administrators and our staff at Deloitte have, since our appointment, undertaken a significant amount of work to identify and engage in discussions with the aircraft lessors and financiers, and their representatives (collectively defined in the Second Strawbridge Affidavit at paragraph [91] as **Aircraft Lessors**), as to the Aircraft Leases, the potential for ongoing use of the aircraft the subject of the Aircraft Leases, and other issues (including the liens asserted by Adelaide Airport, Avalon Airport and Perth Airport over certain aircraft).
14. On 27 April 2020, the Administrators issued a circular to creditors of the Virgin Companies, including the Aircraft Lessors, which summarised the orders made by Middleton J on 24 April 2020, including the 24 April Order. A copy of that circular is exhibited at **Tab 1**.
15. At 12pm on 29 April 2020, I attended a multi-party telephone/audio visual teleconference which took place between representatives of Deloitte, a large number of Aircraft Lessors

represented by King & Wood Mallesons, Clayton Utz and King & Wood Mallesons which had over 100 persons in attendance. The purpose of this call was for the Administrators to provide the Aircraft Lessors represented by King & Wood Mallesons with a general update on the administration and at which meeting we introduced the concept of a protocol (**Aircraft Protocol**) in relation to the ongoing possession, maintenance and preservation of, and, where applicable, usage of the aircraft and engines by the Virgin Companies.

16. On 1 May 2020 the Administrators circulated the first draft of the Aircraft Protocol to each Aircraft Lessor. Exhibited at **Tab 2** is a copy of one of the circulars that I prepared and caused to be issued by email to each of the Aircraft Lessors on 1 May 2020 in relation to, among other things, the Aircraft Protocol, which enclosed the form of the document and informed the Aircraft Lessors that the Administrators envisaged agreeing and signing the document prior to the expiry of the period of operation of the 24 April Order (on 26 May 2020).
17. Given the large number of Aircraft Lessors, and the time expected to agree customised terms with each Aircraft Lessor, a generic approach was adopted to share a common Aircraft Protocol document which addressed critical areas of interest that were common for all Aircraft Lessors. These areas of interest included payment for use of aircraft and engines, ongoing maintenance and insurance coverage for aircraft and engines, physical inspections of aircraft and engines, location of aircraft and engines, including several engines and other aircraft parts “off-wing” in maintenance or storage, provision of technical records (digital and physical) and redelivery terms for aircraft and engines which are surplus to Virgin Companies’ ongoing fleet requirements. In addition, a common Aircraft Protocol document assisted in maintaining consistent treatment of all Aircraft Lessors and was also intended to assist in expediting executing the bilateral Aircraft Protocol documents with all Aircraft Lessors.
18. With the exception of two parties, each of the Aircraft Lessors has retained solicitors to act for it in relation to the administrations of the Virgin Companies, including in relation to negotiating the form of the Aircraft Protocol.
19. In general, correspondence with the Aircraft Lessors’ solicitors has been undertaken by the Administrators’ solicitors (Clayton Utz), though the other Administrators and staff members at Deloitte are often copied on that correspondence and have participated in teleconferences and video conferences with the Aircraft Lessors, their legal and in many cases technical representatives, and the Administrators’ solicitors at Clayton Utz. Of the

73 Aircraft Lessors, different teams or groups of partners and lawyers within the firms identified below act for various Aircraft Lessors:

- (a) King & Wood Mallesons act for approximately 70% of the Aircraft Lessors;
- (b) K&L Gates act for approximately 10% of the Aircraft Lessors;
- (c) Minter Ellison act for approximately 8% of the Aircraft Lessors,
- (d) Norton Rose Fulbright act for approximately 4% of the Aircraft Lessors;
- (e) Gilbert & Tobin act for approximately 3% of the Aircraft Lessors; and
- (f) Ashurst and Allen & Overy each act for approximately 2% of the Aircraft Lessors.

20. I am informed by Graeme Tucker, a partner of Clayton Utz, and believe, that Clayton Utz have exchanged in a very substantial volume of correspondence with the representatives of the Aircraft Lessors (much of which I was copied on) and have also attended numerous video conferences and telephone calls with them. The feedback, comments and requested amendments to the Aircraft Protocol provided by the solicitors retained by the Aircraft Lessors has been constructive in assisting Clayton Utz, the Administrators and our staff to understand the general positions adopted by many Aircraft Lessors and to prepare a common form of the Aircraft Protocol document.
21. Exhibited at **Tab 3** is an email dated 1 May 2020 from Kate Casellas of Clayton Utz to a number of recipients at King & Wood Mallesons, on which I was copied, attaching the form of the draft Aircraft Protocol referred to at paragraph 16. I believe, on the basis that I was copied on the relevant emails and have reviewed their contents and attachments, that a substantially similar email was sent by Kate Casellas of Clayton Utz on the same day to Gilbert + Tobin, Ashurst, Minter Ellison, Norton Rose Fulbright, K&L Gates and Allen & Overy.
22. A draft of the version of the Aircraft Protocol then under negotiation with the Aircraft Lessors was exhibited at Tab 12 of Exhibit VNS-2. The key terms of the Aircraft Protocol included at that time:
- (a) a limitation of the Administrators' personal liability in relation to the Aircraft Leases and any debts incurred by reason of entry into the Aircraft Protocol;
 - (b) a standstill by the relevant Aircraft Lessors in relation to certain rights under the Aircraft Leases;
 - (c) an extension of the time periods for repossession of the aircraft under the Cape Town Convention (where applicable);

- (d) an undertaking by the Administrators to use reasonable endeavours to identify as soon as practicable whether the aircraft or engines are surplus to the Virgin Companies' business requirements and to notify the Aircraft Lessors as soon as reasonably practicable after such a determination is made (to enable them to repossess their aircraft and engines and to remarket them);
- (e) the provision of information to the Aircraft Lessors;
- (f) payment by the Administrators of a usage charge for the aircraft and engines that are being used by the Virgin Companies at a specified rate (with the Aircraft Lessors of the aircraft and engines that are not in use not being entitled to such payments);
- (g) certain undertakings by those Virgin Companies that are lessees in relation to usage of the aircraft and engines;
- (h) undertakings to maintain the registration of the Aircraft with the Civil Aviation Safety Authority (**CASA**);
- (i) provision for the maintenance of the aircraft and engines by the lessees;
- (j) maintenance by the lessees of insurances over the aircraft and engines; and
- (k) detailed schedules in respect of:
 - i. the relevant Aircraft Lessor's details and details of their property;
 - ii. the mechanics for calculating the usage charges which the relevant lessee will make to the Aircraft Lessor where an aircraft or engine is used for a commercial revenue flight during the period between the commencement of the Aircraft Protocol (once agreed) and 31 August 2020;
 - iii. a regime for the provision of the information which the lessees agree to provide to the Aircraft Lessor by posting that information to the Secure Website or making available for inspection;
 - iv. detailed undertakings by the lessees in relation to usage of the aircraft and engines;
 - v. covenants by the lessees in respect of aircraft maintenance, including compliance with a maintenance program for the aircraft that is in accordance with the relevant airframe manufacturer's maintenance program and has been approved in accordance with CASA regulation subpart 42.J, including any variations to the program that have been approved in accordance with those regulations in a manner consistent with compliance at the

commencement of the Administration and reflecting the COVID-19 Restrictions; and

- vi. covenants by the lessees in respect of the maintenance of relevant insurances for the Aircraft Lessor's property (and which coverage for the whole fleet was renewed on 14 May 2020).
23. The draft Aircraft Protocol proposed limited recourse and a standstill of rights which required a deferral of lease/finance payments during the administration period, and that the Administrators' personal liability for these deferred payments be excluded. The basis of this proposal is the current and forecast liquidity position of the Virgin Companies and the inability of the Virgin Companies to effectively utilise the leases and financed assets in the restricted COVID-19 environment.
 24. As at the date of this affidavit, the restrictions imposed by the COVID-19 pandemic continue to substantially impact the Virgin Companies' ability to generate earnings, with revenue dropping substantially from pre-COVID-19 levels. The Virgin Companies currently generate approximately \$25 million in gross revenue from aircraft use per month (before associated direct costs including fuel, wages, landing charges, navigation charges and air services fees).
 25. The unrestricted cash available to the Administrators continues to be used to meet any shortfall in direct costs and is also applied to meet other aircraft preservation costs including maintenance, insurance, storage and overheads. Accordingly, there continues to be no surplus available to meet lease and finance costs payable to the Aircraft Lessors during the administration period which, under the terms of the Aircraft Leases (described at paragraph 11). In addition, the Administrators do not currently envisage a circumstance (at least, over the course of the next 2-3 months) that will enable any meaningful change to the utilisation of the Aircraft Lessors' fleet to generate significant additional revenue during the administration period.
 26. Under the Aircraft Protocol, Aircraft Lessors also agree to refrain from exercising their rights under the Cape Town Convention for a period which is longer than the Cape Town Convention timeframe of 60 calendar days. This was requested by the Administrators because the proposed sale or restructure transaction for the Virgin Companies is currently expected to complete no earlier than the end of August 2020. The 60-calendar day period for the Cape Town Convention from the date of the Administrators' appointment ends on 19 June 2020, albeit subject to voluntary extension by a Lessor. The Aircraft Protocol document addresses this timing mismatch, so that when binding offers for the sale or restructure of the Business and assets of the Virgin Companies

(currently expected on 12 June 2020) are received, the Administrators will be in a position to provide bidders with greater comfort as to the availability of the aircraft fleet available to the Virgin Companies on an ongoing basis.

27. Repossession of aircraft by Aircraft Lessors during this critical stage of negotiations on any sale or restructure, and / or the ability of Aircraft Lessors to repossess aircraft on an unrestricted basis, would be detrimental to the Administrators' ability to complete a successful transaction for the sale or restructure of the Business and assets of the Virgin Companies.
28. On 6 May 2020, I prepared and caused to be issued by email to each Aircraft Lessor a pro forma letter (a redacted example copy of which is exhibited at **Tab 4**):
 - (a) informing the Aircraft Lessor that it had been granted access to a dataroom containing information with respect to its asset(s) (**Dataroom**). The Dataroom is hosted via a virtual media sharing platform which gives the Aircraft Lessors access to key documentation, including current maintenance records from April 2020, which are updated on an on-going basis as and when Virgin's maintenance team are practicably able to make this information available, enabling the Aircraft Lessors to verify that their assets are being appropriately maintained; and
 - (b) inviting the Aircraft Lessor to make arrangements with the Administrators in relation to physical inspections of the relevant aircraft, engines and accompanying electronic records. I have been informed by Mukhtader Mohammed of Deloitte, and believe, that 26 inspections had been carried out as at 21 May 2020 and another 12 inspections are scheduled to be carried before 24 May 2020. Time slots for further inspections are also being agreed with representatives of the Aircraft Lessors.
29. The Interlocutory Process filed by the Administrators on 11 May 2020 (**11 May 2020 IP**) sought, among other things, relief in relation to liability for future agreements, including agreements on the terms of, or substantially in accordance with, the Aircraft Protocol.
30. On 11 May 2020, Edwina Irwin of Deloitte sent an email to the Aircraft Lessors, on which I was copied, informing them of the 11 May 2020 IP, including the proposed limitation of liability in relation to future agreements on the terms of or substantially in accordance with the Aircraft Protocol. A redacted copy of that email is exhibited at **Tab 5**. Paragraphs [25] to [34] and annexures M to Q of the Adams Affidavit refer to and reproduce correspondence passing between Clayton Utz and King & Wood Mallesons and Norton Rose Fulbright, in relation to the Aircraft Protocol and the relief sought in the 11 May 2020 IP.

31. On 14 May 2020, I prepared and caused to be issued by email to each Aircraft Lessor a pro forma letter (a redacted example copy of which is exhibited at **Tab 6**), to address certain questions, comments and issues raised by Aircraft Lessors in relation to the Aircraft Protocol. Among other things, I informed the Aircraft Lessors in the letter that:
- (a) the terms of the Aircraft Protocol are "*required to progress the sale/recapitalisation of the business for the benefit of all creditors, including aircraft lessors and financiers*";
 - (b) beyond the costs of the care and preservation of the aircraft fleet for the anticipated sale/recapitalisation, the Administrators are unable to meet other costs, including monthly lease and finance costs (other than as contemplated in the Aircraft Protocol for aircraft being used); and
 - (c) under the Aircraft Protocol Aircraft Lessors agree to withhold exercising their rights of repossession for a period greater than the 60 calendar day timeframe under the Cape Town Convention, in order to avoid disruption to the proposed transaction for the sale or restructure of the Business.
32. On 15 May 2020, the Court made orders that the Administrators would not be personally liable to repay any debts or liabilities incurred in relation to any future agreement on the terms of, or substantially in accordance with, the Aircraft Protocol to the extent that the assets of the particular Virgin Company or Virgin Companies party to it are insufficient to satisfy such debts and liabilities (**Future Agreements Order**).
33. On the same date, on 15 May 2020, in response to questions of common or general application which were being raised by Aircraft Lessors in bilateral discussions with them, the Administrators caused to be uploaded to the Data Room a document entitled 'Virgin Australia - Lessor Q&A' (**Lessor Q&A**), a copy of which is exhibited at **Tab 7**.
34. On 18 May 2020, the Administrators issued a circular to the Aircraft Lessors updating them on the progress of the Sale Process (as that term is defined in the Second Strawbridge Affidavit). A copy of that circular is exhibited at **Tab 8**.
35. On 21 May 2020, the Administrators caused to be issued a circular to the Aircraft Lessors, a copy of which is exhibited at **Tab 9**, emphasising the desired timeframe within which to finalise negotiations on the Aircraft Protocol and notifying them of our intention to apply for the Further Section 443B Extension Order. On the same day, Clayton Utz sent an email attaching the circular to the legal representatives of the Aircraft Lessors. Exhibited at **Tab 10** is a copy of the email from Kate Casellas to a number of recipients at K&L Gates, on which I was copied, together with its attachment (behind the same Tab). I believe, on the basis that I was copied on the relevant emails and have reviewed

their contents and attachments, that a substantially similar suite of correspondence was sent by email by Kate Casellas and Steven Mackay of Clayton Utz on the same date to various solicitors of King & Wood Mallesons, Gilbert + Tobin, Ashurst, Minter Ellison and Norton Rose Fulbright.

36. In addition to the steps mentioned above, since the time the initial version of the Aircraft Protocol was first circulated, the Administrators have attended numerous teleconferences and audio visual conferences with the Aircraft Lessors and/or their representatives in which the Aircraft Protocol was discussed, including on 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19 and 20 May 2020 (often with multiple conferences on each of those days).
37. By way of further example of the scale of the engagement with the Aircraft Lessors, one such conference, which I attended, took place at 9pm on 19 May 2020 between Clayton Utz, King & Wood Mallesons, Deloitte and the Aircraft Lessors represented by King & Wood Mallesons, with over 100 persons in attendance. At the end of the call, an opportunity was provided to the Aircraft Lessors (directly) to ask me any questions they may have in relation to the Aircraft Protocol, or the administrations of the Virgin Companies more broadly.

PRESENT STATUS OF THE AIRCRAFT PROTOCOL

38. As at the date of this affidavit I believe that negotiations with the Aircraft Lessors have been advanced to the point where indicative in-principle agreement has been reached with lessors representing the vast majority of the Virgin Companies' fleet which are subject to lease or financing arrangements. We have had feedback from the Aircraft Lessors on the draft Aircraft Protocol and we are working constructively with them to finalise the agreements as soon as possible.
39. The delays in reaching final agreement on the Aircraft Protocol, which have meant that the negotiations have not concluded within the time period contemplated in the 24 April Order (being up to 26 May 2020), have, based on my observations, largely been attributable to:
 - (a) the large number of Aircraft Lessors (73) with whom we are negotiating. Even where a single law firm has been retained to act for multiple Aircraft Lessors, instructions must be taken from each individual Aircraft Lessor, slowing down the speed with which the negotiations can be progressed. In addition, there are components of the agreement that cannot be negotiated by a single firm and require bilateral discussions;

- (b) the location of Aircraft Lessors across multiple different time zones meaning that, at times, their representatives have had some delays in being in a position to respond substantively on an urgent basis or to obtain prompt or immediate instructions;
- (c) the relatively complex and commercially unique terms of the Aircraft Protocol, and the challenges facing all of the negotiating parties, particularly in the context of the COVID-19 pandemic more generally;
- (d) negotiations on the form and scope of the Administrators' limitation of liability and/or personal liability;
- (e) the fact that a number of Aircraft Lessors and Financiers have sought specific amendments to the Aircraft Protocol, while others have sought substantively similar amendments albeit in different form or approach. The Administrators (with staff at Deloitte and our solicitors at Clayton Utz) have attempted to synchronise and address the Aircraft Lessors' requested amendments, to the greatest extent possible, by way of consistent drafting and amendment to the principal framework of the draft Aircraft Protocol, in the interests of administrative convenience and to promote a consistent approach with the Aircraft Lessors;
- (f) the negotiation and preparation of Aircraft Lessor-specific bespoke amendments to the schedules to the Aircraft Protocol;
- (g) credit committee approval requirements and/or internal approval protocols which a number of Aircraft Lessors need to follow in respect of the negotiations. Even if broad agreement on the most recent version of the Aircraft Protocol is reached by 26 May 2020, as hoped, the time required to follow internal approval requirements and to finally negotiate specific issues being raised by Lessors or Financiers may still prevent those parties from being able to formally confirm that version of the Aircraft Protocol Agreement is in agreed form and can be executed by 26 May 2020; and
- (h) the commercial scale of the negotiations, having regard to both the capital value of the aircraft and equipment and the scale of the ongoing liabilities arising under the Aircraft Leases.

STATUS OF THE SALE PROCESS

40. As outlined in the Second Strawbridge Affidavit at paragraph [51], the Administrators have received a number of expressions of interest in relation to the assets and business of the Virgin Companies. It remains the view of the Administrators that the continued trading of the Virgin Companies' business as a going concern during the administration period, with a view to achieving a sale or restructure of the Business and assets of the

Virgin Companies through a deed of company arrangement maximises the chances of the Business continuing in existence or may result in a better return to creditors than an immediate winding up.

41. It also remains the Administrators' view (consistent with that expressed by Mr Strawbridge at paragraphs [94]-[96] of the Second Strawbridge Affidavit) that:
- (a) it is necessary to retain an operational fleet of leased and/or financed aircraft to permit the Business to continue operating as a going concern (to the extent possible) through the administration process; and
 - (b) it would promote the successful recapitalisation and/or sale of the Business on a going concern basis to retain all aircraft and engines that are the subject of the Aircraft Leases (whether they are being currently used or are in storage) as:
 - i. it would permit an acquirer of the Business and assets of the Virgin Companies to recommence operations following a relaxation of the COVID-19 restrictions from a moving start rather than a standing start; and
 - ii. the cost and time associated with the acquisition, financing and mobilisation of new aircraft would, for a number of reasons, make a sale impractical.
42. The Sale Process and timeline was outlined in the Second Strawbridge Affidavit at paragraph [48]. Non-binding indicative offers in respect of the Business and/or assets of the Virgin Companies were due to be provided on 15 May 2020. The Administrators have received non-binding indicative offers and are presently working with a shortlist of interested parties on the next intensive phase of the Sale Process, including facilitating virtual meetings, presentation and "Q&A" opportunities and "roadshows" between the interested parties and management personnel of the Virgin Companies and sharing more detailed financial and operational information with the interested parties, and facilitating meetings between the interested parties and as many Aircraft Financiers, Aircraft Lessors, real property landlords, suppliers, unions and other key stakeholders of the Business as can be managed in the timeframe.
43. Final binding offers are now due to be provided to the Administrators by 12 June 2020. Accordingly, as at the date of this affidavit, the Administrators are not in a position to determine which of the Aircraft Leases any prospective purchaser may wish to continue.

RATIONALE FOR FURTHER EXTENSION ORDER

44. If the Further Extension Order is not made, given that:

- (a) the Administrators are unwilling under any circumstances to take on personal liability under the Aircraft Leases; and
- (b) the Aircraft Protocol, which deals with, among other things, the proposed limitations on the Administrators' personal liability has not yet been entered into with most of the Aircraft Lessors,

the Administrators will be left with no choice but to issue, immediately upon the expiry of the period stated in the 24 April Order (26 May 2020), notices to each Aircraft Lessor pursuant to section 443B(3) of the Corporations Act indicating that the Administrators do not propose to exercise rights in relation to the relevant aircraft and engines. For the reasons set out in this affidavit and in the Second Strawbridge Affidavit, the Administrators consider that this course of action would be contrary to the interests of the Virgin Companies, their creditors and their other stakeholders. In particular, it would be highly disruptive to the Sale Process at a critical time, given that binding offers are due to be provided to the Administrators on 12 June 2020.

45. The Further Extension Order would allow an additional three week period (until 16 June 2020) within which to seek to agree the Aircraft Protocol with the Aircraft Lessors. The negotiations are at an advanced stage and I remain hopeful that all or a large majority of the Aircraft Lessors will agree within that period to enter into the Aircraft Protocol. It is expected that some notices will be given by the Administrators to certain Aircraft Lessors pursuant to section 443B(3) of the Corporations Act indicating that the Administrators do not propose to exercise rights in relation to the relevant aircraft and engines, and this possibility is envisaged by the Aircraft Protocol, but the affected Aircraft have not as of the date of this affidavit been finally determined (and the Administrators expect that this will only occur with the input of the shortlisted bidders at the conclusion of the Sale Process).
46. The three week extension sought will allow, it is hoped, sufficient time for:
- (a) the finalisation of Aircraft Lessor-specific bespoke amendments to the schedules to the Aircraft Protocol (many of which, such as with respect to particular usage charges, need to be negotiated with individual Aircraft Lessors located in multiple jurisdictions and different time zones);
 - (b) the process of credit committee approvals and/or internal approval protocols which a number of Aircraft Lessors need to follow in respect of the negotiations; and
 - (c) practical steps to be taken for the execution of the various Aircraft Protocol documents (given that there are in excess of 73 separate versions of the Aircraft

Protocol under negotiation, which will need to be duly executed on behalf of each of Aircraft Lessors by a total of 96 individual signatories located in multiple jurisdictions and different time zones, following which the Administrators will need to sign each document on behalf of the relevant Virgin Companies and then exchange the signed counterparts).

47. I and my fellow Administrators do not consider that the Aircraft Lessors of aircraft and equipment that would be used in accordance with the Aircraft Protocol will be materially prejudiced by the making of the proposed orders. While no payments are being made to Aircraft Lessors in the interim, as soon as an Aircraft Lessor's Aircraft Protocol has been signed, the lessor's entitlement to the usage charges set out in the Aircraft Protocol will start. While the sale negotiations are confidential and, given the sensitive nature of that process I cannot disclose the intentions or any indicative non-binding terms proposed by any interested party, as long as the Sale Process is continuing, there is a prospect that the purchaser may want to retain existing leases, or enter into new leases with, the Aircraft Lessors, which will reduce the Aircraft Lessors' potential claims as creditors of the Virgin Companies. If a sale or restructure of the Virgin Companies by way of deed of company arrangement can be achieved, there will also be an opportunity for Aircraft Lessors to renegotiate the lease or financing terms with the successful bidder, including addressing accrued unpaid rentals, costs or the replacement of letters of credit presented during the administration.
48. In addition, I believe that agreement in the form of the Aircraft Protocol is also in the interests of Aircraft Lessors because:
- (a) it will enhance the prospect of the ongoing use, by the Virgin Companies, of as many leased aircraft as possible following a sale of the Business or a recapitalisation through a deed of company arrangement; and
 - (b) the Administrators will attend to payment of the agreed levels of maintenance, insurance and certain usage charges for aircraft the subject of any agreed Aircraft Protocol in circumstances where, if the Administrators were forced to abandon that property due to an inability to reach agreement with the relevant Aircraft Lessor because of concerns about the personal liability of the Administrators, those costs would need to be borne by the Aircraft Lessors themselves. The Administrators have, during the administration period, already caused the Virgin Companies to incur expenses in respect of the maintenance, insurance of aircraft in expectation of agreement in the form of the Aircraft Protocol being reached with the Aircraft Lessors.

49. Finally, Order 11 of the orders made by the Court on 24 April 2020 provides that "*any person who can demonstrate a sufficient interest has liberty to apply to vary or discharge any orders made pursuant to paragraphs 2 to 9 above, on 1 business day's written notice being given to the Plaintiffs and to the Associate to Justice Middleton.*" As at the date of this affidavit, I am not aware that any person, including any Aircraft Lessor, has sought to vary the 24 April Order. In addition, none of the Aircraft Lessors has sought to exercise any right of return in respect of any aircraft or engine.

SWEARING OF THIS AFFIDAVIT

50. I have not been able to swear this affidavit in proper form at the time that I have signed it due to the measures I have taken to minimise the spread of COVID-19.

51. I have been informed by Kassandra Suzann Adams, as the proposed witness to this affidavit, and believe, that the relaxation of formality with respect to the unsworn nature of this affidavit does not diminish the need for me to satisfy myself that the contents of this affidavit are true and correct. I have satisfied myself that that is the case.

52. I will formally swear this affidavit when circumstances allow and will instruct Clayton Utz to file the sworn version with the Court.

Sworn by the deponent
at Melbourne
in Victoria
on 22 May 2020
Before me:

)
)
)
)
) Signature of Salvatore Algeri
)

.....
Signature of witness
Kassandra Suzann Adams, solicitor.

SCHEDULE

Federal Court of Australia
District Registry: New South Wales
Division: General

No. NSD 464 of 2020

IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS**Plaintiffs**

- First Plaintiffs: Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity as joint and several voluntary administrators of the Second to Thirty-ninth Plaintiffs
- Second Plaintiff: Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226
- Third Plaintiff: Virgin Australia International Operations Pty Ltd (Administrators Appointed) ACN 155 859 608
- Fourth Plaintiff: Virgin Australia International Holdings Pty Ltd (Administrators Appointed) ACN 155 860 021
- Fifth Plaintiff: Virgin Australia International Airlines Pty Ltd (Administrators Appointed) ACN 125 580 823
- Sixth Plaintiff: Virgin Australia Airlines (SE Asia) Pty Ltd (Administrators Appointed) ACN 097 892 389
- Seventh Plaintiff: Virgin Australia Airlines Holdings Pty Ltd (Administrators Appointed) ACN 093 924 675
- Eighth Plaintiff: VAH Newco No.1 Pty Ltd (Administrators Appointed) ACN 160 881 345
- Ninth Plaintiff: Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008
- Tenth Plaintiff: Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965
- Eleventh Plaintiff: VA Borrower 2019 No. 1 Pty Ltd (Administrators Appointed) ACN 633 241 059

Twelfth Plaintiff:	VA Borrower 2019 No. 2 Pty Ltd (Administrators Appointed) ACN 637 371 343
Thirteenth Plaintiff:	Virgin Tech Pty Ltd (Administrators Appointed) ACN 101 808 879
Fourteenth Plaintiff:	Short Haul 2018 No. 1 Pty Ltd (Administrators Appointed) ACN 622 014 831
Fifteenth Plaintiff:	Short Haul 2017 No. 1 Pty Ltd (Administrators Appointed) ACN 617 644 390
Sixteenth Plaintiff:	Short Haul 2017 No. 2 Pty Ltd (Administrators Appointed) ACN 617 644 443
Seventeenth Plaintiff:	Short Haul 2017 No. 3 Pty Ltd (Administrators Appointed) ACN 622 014 813
Eighteenth Plaintiff:	VBNC5 Pty Ltd (Administrators Appointed) ACN 119 691 502
Nineteenth Plaintiff:	A.C.N. 098 904 262 Pty Ltd (Administrators Appointed) ACN 098 904 262
Twentieth Plaintiff:	Virgin Australia Regional Airlines Pty Ltd (Administrators Appointed) ACN 008 997 662
Twenty-first Plaintiff:	Virgin Australia Holidays Pty Ltd (Administrators Appointed) ACN 118 552 159
Twenty-second Plaintiff:	VB Ventures Pty Ltd (Administrators Appointed) ACN 125 139 004
Twenty-third Plaintiff:	Virgin Australia Cargo Pty Ltd (Administrators Appointed) ACN 600 667 838
Twenty-fourth Plaintiff:	VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741
Twenty-fifth Plaintiff:	VA Hold Co Pty Ltd (Administrators Appointed) ACN 165 507 157
Twenty-sixth Plaintiff:	VA Lease Co Pty Ltd (Administrators Appointed) ACN 165 507 291
Twenty-seventh Plaintiff:	Virgin Australia 2013-1 Issuer Co Pty Ltd (Administrators Appointed) ACN 165 507 326

Twenty-eighth Plaintiff:	737 2012 No.1 Pty. Ltd (Administrators Appointed) ACN 154 201 859
Twenty-ninth Plaintiff:	737 2012 No. 2 Pty Ltd (Administrators Appointed) ACN 154 225 064
Thirtieth Plaintiff:	Short Haul 2016 No. 1 Pty Ltd (Administrators Appointed) ACN 612 766 328
Thirty-first Plaintiff:	Short Haul 2016 No. 2 Pty Ltd (Administrators Appointed) ACN 612 796 077
Thirty-second Plaintiff:	Short Haul 2014 No. 1 Pty Ltd (Administrators Appointed) ACN 600 809 612
Thirty-third Plaintiff:	Short Haul 2014 No. 2 Pty Ltd (Administrators Appointed) ACN 600 878 199
Thirty-fourth Plaintiff:	VA Regional Leaseco Pty Ltd (Administrators Appointed) ACN 127 491 605
Thirty-fifth Plaintiff:	VB 800 2009 Pty Ltd (Administrators Appointed) ACN 135 488 934
Thirty-sixth Plaintiff:	VB Leaseco No 2 Pty Ltd (Administrators Appointed) ACN 142 533 319
Thirty-seventh Plaintiff:	VB LH 2008 No. 1 Pty Ltd (Administrators Appointed) ACN 134 280 354
Thirty-eighth Plaintiff:	VB LH 2008 No. 2 Pty Ltd (Administrators Appointed) ACN 134 288 805
Thirty-ninth Plaintiff:	VB PDP 2010-11 Pty Ltd (Administrators Appointed) ACN 140 818 266
Fortieth Plaintiff:	Tiger International Number 1 Pty Ltd (Administrators Appointed) ACN 606 131 944