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Details of Filing

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File Title: APPLICATION IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 7/08/2020 10:45:43 AM AEST

Registrar

Important Information

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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: Vaughan Neil Strawbridge
Address: 9 Grosvenor Place, 225 George Street, Sydney, New South Wales
Occupation: Registered Liquidator and Chartered Accountant
Date: 7 August 2020

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1	Affidavit of Vaughan Neil Strawbridge in support of application for orders under sections 447A(1) of the <i>Corporations Act 2001</i> (Cth) and s 90-15 of Schedule 2 - the <i>Insolvency Practice Schedule (Corporations)</i> sworn on 7 August 2020	All	1 - 12
2	Exhibit "VNS-5", being a bundle of documents exhibited to this affidavit by the deponent.	8	3

Filed on behalf of (name & role of party) The Plaintiffs
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 (include state and postcode)

I, Vaughan Neil Strawbridge, of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**), at Level 9 Grosvenor Place, 225 George Street, Sydney, New South Wales, Registered Liquidator and Chartered Accountant, say on oath:

1. I am a partner in the Financial Advisory Group of the professional services firm trading as Deloitte. I am a Chartered Accountant and a Registered Liquidator and I have practised for more than 25 years as an accountant specialising in insolvency related matters in Australia, Thailand and the United Kingdom.
2. I am one of the four joint and several voluntary administrators of each of the Second to Fortieth Plaintiffs (**Virgin Companies**), together with Mr Salvatore Algeri, Mr John Greig and Mr Richard Hughes (together, the **Administrators** and each an **Administrator**). Mr Algeri, Mr Greig and Mr Hughes are also partners of Deloitte. Messrs Algeri, Greig, Hughes and I are also the joint and several administrators of each of VAH Newco No. 2 Pty Ltd ACN 160 881 354 (in liquidation) (Administrators Appointed) (**VAH Newco 2**) and VB Investco Pty Ltd ACN 101 961 095 (in liquidation) (Administrators Appointed) (**VB Investco**), the proposed Forty-First Plaintiff and Forty-Second Plaintiff respectively. Together, I refer to the Second to Fortieth Plaintiffs, VAH Newco 2 and VB Investco as the **Virgin Companies**.
3. I am authorised by Mr Algeri, 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 view(s) which each of I, Mr Algeri, Mr Greig and Mr Hughes hold at the date of swearing this affidavit.
4. 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 Virgin Companies, which I believe to be true.
5. This is the eighth affidavit that I have sworn in these proceedings.
6. I refer to and rely upon my:
 - (a) affidavit of 23 April 2020 (**First Affidavit**);
 - (b) supplementary affidavit of 24 April 2020 (**Second Affidavit**);
 - (c) affidavit of 11 May 2020 (**Third Affidavit**);
 - (d) supplementary affidavit of 11 May 2020 (**Fourth Affidavit**);
 - (e) supplementary affidavit of 15 May 2020 (**Fifth Affidavit**),
 - (f) affidavit of 2 July 2020 (**Sixth Affidavit**); and

(g) affidavit of 9 July 2020 (**Seventh Affidavit**),
each filed in the proceedings.

7. I also refer to the affidavits of David Michael Orr dated 29 July 2020 (**First Orr Affidavit**) and 6 August 2020 (**Second Orr Affidavit**).
8. Exhibited to me at the time of making this affidavit is a bundle of documents to which I make reference in this affidavit marked "VNS-5" (**Exhibit VNS-5**). A reference to a Tab in this affidavit is to a tab in Exhibit VNS-5 unless otherwise stated.
9. I make this affidavit in support of the relief sought by the Plaintiffs in the Interlocutory Process filed in these proceedings on 7 August 2020 (**Application**), namely, orders under sections 439A(6) and 447A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule (Corporations)*, being Schedule 2 to the Corporations Act (**IPSC**).

VAH Newco No. 2 Pty Ltd and VB Investco Pty Ltd

Appointment of Administrators

10. On 26 April 2019, Mr Hughes (being one of the Administrators) was appointed as the liquidator of each of VAH Newco 2 and VB Investco pursuant to section 491(1) of the Corporations Act.
11. On 30 July 2020, pursuant to orders made by Justice Middleton in Federal Court of Australia Proceedings number NSD 818 of 2020 (**MVL Orders**):
 - (a) leave was granted for the Administrators (including Mr Hughes) to be appointed as joint and several administrators of each of VAH Newco 2 and VB Investco; and
 - (b) the winding up of each of VAH Newco 2 and VB Investco was stayed until further order.
12. On 3 August 2020, in accordance with the MVL Orders, the Administrators were appointed as joint and several administrators of VAH Newco 2 and VB Investco pursuant to section 436B of the Corporations Act. Exhibited at **Tabs 1 and 2 of Exhibit VNS-5** are copies of the Form 505 documents lodged with ASIC on 3 August 2020 giving notice of the appointment of the Administrators.
13. The Administrators seek to join VAH Newco 2 and VB Investco to these proceedings such that they will be subject to the proposed orders sought in the Application, will be subject to the proposed orders contained in the application filed by the First Plaintiffs in the proceedings on 29 July 2020 in respect of the Halo Platform which the

Administrators are using to assist with the administration of the Virgin Companies, and to additional orders that may be sought in the proceedings in any future applications.

FURTHER EXTENSION OF THE CONVENING PERIOD

Background

14. I refer to the orders of the Court dated 13 May 2020 in the proceedings (**13 May Orders**), pursuant to which the period within which the second meetings of creditors (**Second Meetings**) for the purposes of section 439A(5)(b) of the Corporations Act must be convened (**Convening Period**) was extended to 18 August 2020. I also refer to my Third Affidavit, which sets out the basis on which that extension of the Convening Period was sought, including the reasons set out in paragraph 59 of that affidavit.
15. The Administrators seek orders that the Convening Period be further extended for a period of 13 days, to 31 August 2020.

Basis for application to extend convening period

16. Pursuant to section 439A of the Corporations Act and section 75-225 of the Insolvency Practice Rules 2016 (**IPR**), at the Second Meetings, the creditors will consider the Administrators' report and recommendations as to whether or not it would be in the creditors' interests that:
 - (a) the Virgin Companies execute a DOCA;
 - (b) the administrations should end (with control of the Virgin Companies be returned to their directors); or
 - (c) the Virgin Companies be wound up.
17. In summary, for the following reasons, the Administrators are of the opinion that it would be in the best interests of the Virgin Companies' creditors for there to be a short extension of the Convening Period (including the deadline by which the Administrators must convene the Second Meetings):
 - (a) the proposed further extension will enable the Administrators to provide creditors with a longer period in which to consider the Administrators' report pursuant to section 75-225 of the IPR (**Report**), which is likely to be lengthy and detailed given the size and complexity of the affairs of the Virgin Companies (see paragraph 20 below); and
 - (b) the extension will allow additional time for creditors to register on and become familiar with the Halo Platform (as described in the First and Second Affidavits of

David Michael Orr)) and to lodge their proofs of debt and proxy forms (see paragraph 30 below).

Second Meetings and Report to Creditors

18. Pursuant to the Application, the Administrators have sought additional orders to facilitate the use of the Halo Platform for the Second Meetings. These orders include orders that creditors:
 - (a) be required to lodge particulars of a debt or claim by 5.00pm, 5 business days prior to the date of the Second Meetings (and that creditors be prevented from amending or replacing any proof of debt after that date, except with the written consent of the Administrators); and
 - (b) be required to lodge an appointment of proxy and / or an appointment of attorney by 5.00pm, 3 business days prior to the date of the Second Meetings (and that creditors be prevented from amending or replacing any appointment of proxy form, appointment of attorney details or any vote lodged on the Halo Platform after that date, except with the written consent of the Administrators).
19. Pursuant to the IPR, the Report is required to be provided at least 5 business days prior to the Second Meetings being held.
20. As at the date of this affidavit the preparation of the Report is already very far advanced, but it remains a significantly time consuming and complex task. The complexity arises from the number of companies in administration at one time, the sheer numbers of disparate interest groups whose details need to be described and considered in the Report (such as employees, union representatives, bondholders, lessors and financiers, trade creditors, Government, overseas creditors and customers) and the degree to which the assets, liabilities and interests of those companies interact, including by reason of the ASIC Deeds of Cross-Guarantee to which some (but not all) companies are party and the guarantee obligations given by some companies in respect of the obligations of other companies in the group. The Report will address the Administrators' sale process which culminated in the sale and implementation deed concluded between the Virgin Companies and Bain Capital, as well as the implications of that transaction for creditors.
21. Following entry into the transaction with Bain Capital, discussions have been ongoing between Bain Capital and its representatives and a range of contractual counterparties and stakeholders, in order for the Transaction to complete. On 5 August 2020, Virgin Australia Holdings Limited made an announcement to the Australian Securities Exchange on 5 August 2020 in respect of its plan for a stronger, more profitable and

competitive restructured group. A copy of that announcement is exhibited at **Tab 3 of Exhibit VNS-5**. That plan reflects the intense work which has been and remains to be undertaken by the Virgin Companies, the Administrators and the Bain Capital team, and our advisors to design and implement a restructure of the business and operations of the Virgin Companies so that they will be viable following exit from voluntary administration. While Bain Capital's discussions with key stakeholders and contractual counterparties of the Virgin Companies are substantially progressed, the relatively short extension of the Convening Period sought would also assist in enabling further negotiations with contractual counterparties and stakeholders to be finalised in advance of the Second Meetings.

22. If the Report is issued on the fifth business day before the Second Meetings, the orders sought in relation to the time by which lodgement of proofs of debt and proxy and attorney forms are required would provide creditors of the Virgin Companies' with little time to consider the Report before the proposed cut-off dates. In circumstances where an extension is granted, however, the Administrators intend to issue the Report 8 business days prior to the Second Meetings.

COMMITTEE OF INSPECTION

23. Pursuant to the 24 April Orders and the 13 May Orders, the Court ordered that one committee of inspection be formed in respect of the Virgin Companies (other than VAH Newco 2 and VB Investco, which did not have administrators appointed at the time) (**Committee of Inspection**).
24. On 12 May 2020, the creditors resolved that 36 creditors of the Virgin Companies are members of the Committee of Inspection (see paragraph 23 of the Sixth Affidavit).
25. I presided at a meeting of the Committee of Inspection held on 31 July 2020 at 11.00am (**31 July Meeting**). At the 31 July Meeting, there were 32 members of the Committee of Inspection in attendance. I informed the Committee of Inspection that the Administrators would make an application to the Court seeking the relief sought in the Application. No objection to that course was made by any member of the Committee of Inspection at the meeting.

CORRESPONDENCE WITH LAWYERS FOR BANK OF NEW YORK MELLON

26. On 28 July 2020 my solicitors, Clayton Utz, received a letter from Corrs Chambers Westgarth, Perth (**CCW**) who act for Bank of New York Mellon (**BoNY**). A copy of that letter is exhibited at **Tab 4 of Exhibit VNS-5**. BoNY is the trustee named in the indentures dated 17 October 2016 and 7 November 2019 governing the USD note issuance by Virgin Australia Holdings Limited. In their letter CCW say "*We would urge*

your client to re-consider the timing of the second meeting of creditors and the publication of the notice of meeting and the report to creditors and request that your client provide an absolute minimum of 10 business days between the issue of the notice of meeting (and the report to creditors) and the meeting so that all creditors are given a proper opportunity to consider and vote on any resolutions". Following receipt of the letter from CCW, my solicitors sent a short email to CCW, a copy of which is exhibited at **Tab 5 of Exhibit VNS-5**. Jeremy Hollingsworth of BoNY attended the meeting of the Committee of Inspection on 31 July 2020 at which the Administrators' intention to seek an extension of the convening period was considered by the Committee.

27. At 1.30pm on 4 August 2020 I also attended a telephone conference with Mr Hollingsworth and his solicitors (CCW and Allen & Overy LLP) at which I explained the Administrators' intention to seek a short extension of the convening period for the principal purpose of allowing creditors more time to consider the Report.
28. While the Administrators do not consider that they can seek extensions of the convening period solely because the statutory timeframe does not align with a creditor's internal voting or administrative timetable, I believe that the extension of the convening period sought in this application will address, in large part, the timing concerns raised by BoNY. Further, while BoNY is the trustee named in the indenture for the USD Notes, the Administrators have, for some time, been working with their US lawyers (Akin Gump Strauss Hauer & Feld LLP) to facilitate voting by the USD Noteholders directly through the Depository Trustee Company (**DTC**) process which is referred to in 28 July 2020 letter from CCW. In anticipation of the Second Meetings and in connection with the upcoming voting process for USD Noteholders the Administrators have established a USD Senior Note Voting Record Date of 7 August 2020 at 5:00 pm New York time. Exhibited at **Tab 6 of Exhibit VNS-5** is a copy of an email dated 3 August 2020 from my US lawyers, Akin Gump, to BoNY and its solicitors, attaching a notice of a USD Senior Note Voting Record Date of 7 August 2020 at 5:00 pm New York time. This notice was posted to Deloitte's Virgin Australia dedicated webpage, distributed to 342 parties who have registered with Akin Gump as a noteholder, custodian or other noteholder representative, distributed to all noteholders that have registered on the Halo Platform and filed on the docket in the Virgin Australia Chapter 15 proceedings in the United States. It is the Administrators' intention to commence the DTC process with the distribution of ballots prior to the release of the 75-225 Report. This will enable the nominee-intermediary to forward the ballots to the beneficial owners of the notes in advance of the release of the 75-225 Report, maximizing the time the beneficial owners have to consider the report and expeditiously return the ballots. The Administrators

designed this phased approach to ensure greater voting participation by the USD Noteholders.

NOTEHOLDERS CONSULTATIVE COMMITTEE

29. I presided at a meeting of the Noteholders Consultative Committee (**NCC**) held on 6 August 2020 at 10.30am (**NCC Meeting**). At the NCC Meeting, I informed the NCC that the Administrators would make an application to the Court seeking the relief sought in the Application. No objection or concerns to that course was made by any member of the NCC.

NO PREJUDICE TO CREDITORS

30. Given the scale and complexity of the administrations of the Virgin Companies, the Administrators are of the view that any limited prejudice that might be caused to creditors (including employees and real and personal property lessors) by a 13 day extension of the statutory moratorium provided by Part 5.3A of the Corporations Act is greatly outweighed by the benefits to creditors conferred by the additional time available to:
- (a) review and consider the Report and consider how a vote as to the future of the Virgin Companies should be exercised; and
 - (b) utilise the Halo Platform to lodge proofs of debt and proxy forms and thereby ensure they are able to participate at the Second Meetings.
31. In the Administrators' opinion, the period sought for the extension is for the shortest period possible to deliver those benefits and no specific prejudice will be suffered by the creditors of the Virgin Companies if the Convening Period is extended. In addition, as noted in my Seventh Affidavit at paragraph 21, Bain Capital assumed economic risk for the business conducted by the Virgin Companies on and from 1 July 2020 and are funding the ongoing trading of the business. Accordingly, the net assets realised before that date for the benefit of creditors have been preserved. In that context, a modest extension of the convening period (as is sought) will not expose the Virgin Companies to any additional financial risk. The Virgin Companies are funded to meet all trading liabilities throughout any extension of the convening period.
32. As mentioned in paragraphs 25 and 29 above, the proposed application to extend the Convening Period was approved by the Committee of Inspection and the NCC did not raise any objection.

SWEARING OF THIS AFFIDAVIT

- 33. 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.
- 34. 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.
- 35. 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 Sydney)
in New South Wales)
on 7 August 2020)
Before me:)

.....
Signature of deponent

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

SCHEDULE 1

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 each of the Second to Fortieth 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