

1 March 2018

Our Ref: MDG_457365.0003r7

CIRCULAR TO CREDITORS, EMPLOYEES AND GROUP MEMBER CLAIMANTS

Dear Sir/Madam

**RE: SurfStitch Group Limited ACN 602 288 004 (SGL)
SurfStitch Holdings Pty Limited ACN 601 114 603 (SHPL)
(Both Administrators Appointed) (collectively the Companies)**

John Park, Quentin Olde and Joseph Hansell were appointed Administrators of SurfStitch Group Limited and SurfStitch Holdings Pty Limited on 24 August 2017 pursuant to Section 436A of the *Corporations Act 2001 (Cth)* (**the Act**).

This Circular should be read in conjunction with the Circular dated 6 December 2017 (**December Circular**). We adopt the definitions used in the December Circular.

This Circular provides an update on the Administrators' application under section 600H of the Act and the progress of the administrations of the Companies to date.

1. Administrators' Court Application

On 11 December 2017, the Administrators applied to the Supreme Court of New South Wales, seeking among other things, orders:

- to extend the convening period for the second meeting of creditors under section 439A(1) of the Act to 31 March 2018; and
- under Section 600H of the Act to permit the Group Member Claimants to vote at the second meeting of creditors of SGL (**SGL Second Meeting**).

As set out in our Circular dated 21 December 2017, on 11 December 2017, Justice Black made orders extending the convening period to 31 March 2018.

On 19 February 2018, Justice Brereton heard the Administrators' application under Section 600H of the Act. On 22 February 2018, his Honour made orders:

- allowing Group Member Claimants and any person with a subordinate claim (as defined in section 563A(2) of the Act) to vote at meetings in the external administration of SGL, including the SGL Second Meeting if:
 - they are able to establish they have a claim; and
 - they lodge particulars or proofs of that claim by the time specified in the notice convening the SGL Second Meeting;
- setting out the manner in which the Administrators are to give notice of the SGL Second Meeting to Group Member Claimants;
- confirming that any person with a subordinate claim may request a copy of the notice convening the SGL Second Meeting or the Report to Creditors. The request is to be in writing and made of the Administrators; and
- confirming that creditors cannot resolve that SGL execute a deed of company arrangement (if one is proposed) that contemplates payment to Subordinate Claimants before payment is made to other creditors and employees unless first approved by those other creditors and employees. This is to ensure the priority creditors and employees enjoy over Subordinate Claimants is preserved unless they agree otherwise.

Creditors and Group Member Claimants should refer to the ***attached** Court Order for details of all orders handed down. We draw attention to a minor cross-referencing error in Order 2(f)(iv)(1). That Order cross-refers to order 5, it should instead refer to Order 2(e). We are seeking to have this corrected.

2. Next Steps

The Administrators continue to engage with interested parties in respect of a realisation or recapitalisation of the Companies' business, to clarify aspects of the parties' proposals and to negotiate their terms. Following this, the Administrators will convene the second meeting of the Companies' creditors, to determine the Companies' futures.

The Administrators propose to issue the notice convening the second meeting of the Companies' creditors under section 439A(1) of the Act and their Report to Creditors pursuant to section 439A(3) of the Act (**Report to Creditors**) in the coming weeks and prior to 31 March 2018. This will include informal proof of debt and proxy forms and information on how creditors, including Group Member Claimants, can lodge their claims for the purposes of voting at the SGL Second Meeting.

The Administrators will give notice:

- to creditors who are not potential Subordinate Claimants by email or post or fax and by notice on the *Insolvency Notices* website; and
- to Group Member Claimants in accordance with Justice Brereton's orders (as described in 1 above) by email or post or fax, on the ASX announcements platform, on the FTI creditors' portal and by advertisement in the AFR.

3. Contact Details

Should creditors or any potential Subordinate Claimants such as the Group Member Claimants have any concerns or feedback about the matters raised in this Circular, please direct your queries as follows:

- **Subordinated Claimants** (including Group Member Claimants):
Link Market Services on srf@linkmarketservices.com.au or 1300 853 809.
- **Creditors** (other than Subordinated Claimants):
Paris Parasadi on surfstitch_enquiries@fticonsulting.com or (07) 3225 4900.

Yours faithfully
FTI Consulting



Joseph Hansell
Administrator



Issued: 28 February 2018 1:13 PM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2017/00372217

TITLE OF PROCEEDINGS

First Plaintiff	John Richard Park, Quentin James Olde and Joseph Ronald Hansell in their capacity as joint and several administrators of in Surfstitch Group Limited (Administrators appointed) and Surfstitch Holdings Pty Ltd (Administrators appointed)
Second Plaintiff	Surfstitch Holdings Pty Limited (Administrators appointed)
Corporation subject of the proceeding	Surfstitch Group Limited (Administrators Appointed) ACN 602288004 and Surfstitch Holdings Pty Limited (Administrators appointed) ACN 601114603

DATE OF JUDGMENT/ORDER

Date made or given	22 February 2018
Date entered	22 February 2018

TERMS OF JUDGMENT/ORDER

THE COURT ORDERS THAT:

- (1) Pursuant to Corporations Act, s 600H(1)(b):
- (a) all persons who:
- (i) acquired an interest in SGL's shares in the period from: (1) 27 August 2015 to 24 February 2016 (inclusive) and who still held those shares on 25 February 2016, 3 May 2016 or 9 June 2016; (2) 25 February 2016 to 2 May 2016 (inclusive) and who still held those shares on 3 May 2016 or 9 June 2016; or (3) 3 May 2016 to 9 June 2016 (inclusive) and who still held those shares on 8 June 2016; (ii) acquired an interest in SGL's shares in the period 23 October 2015 to 9 June 2016 and still held those shares on any of 25 February 2016, 3 May 2016 or 9 June 2016; or (iii) acquired an interest in SGL's shares prior to 23 October 2015 and retained those shares after 23 October 2015, (together, "Group Member Claimants"); and
- (b) any person who may have a subordinate claim within the meaning of section 563A(2) of the Corporations Act ("Potential Subordinate Claimant") who is not a Group Member Claimant and who is able to establish a claim against SurfStitch Group Limited ("SGL") in accordance with Corporations Regulations 2001, cl 5.6.23; is entitled to vote at a meeting during the external administration of SGL, including the second meeting of creditors referred to in Corporations Act, s 439A ("the Second Meeting"), in their capacity as a creditor of SGL.
- (2) Pursuant to Corporations Act, s 447A(1), the operation of Corporations Act, ss 439A(3), (4) and 449E(7) in relation to SGL is modified, in connection with the giving of notice convening the Second Meeting to Potential Subordinate Claimants, so that the administrators are required only to:
- (a) send the notice convening the Second Meeting required by s 439A(3) ("the Notice")

accompanied by the report and statements prescribed in s 439A(4) ("the Report") to all Group Member Claimants in the manner set out in paras (b) to (g) below;

(b) for the purposes of notifying the Group Member Claimants referred to in para (a), the Administrators are to identify the Group Member Claimants through the process set out in paragraph 38 of the affidavit of Joseph Ronald Hansell sworn 7 December 2017;

(c) for the Group Member Claimants who are group members in the proceedings *TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v SurfStitch Group Limited ACN 602 288 004 (Administrators Appointed)*, before the New South Wales Supreme Court (proceedings number 2017/193375), the Administrators are to send the Notice and the Report to Gadens Lawyers, the solicitors acting for the representative litigant in those proceedings, by email to glenn.mcgowan@gadens.com, at least 5 business days before the Second Meeting;

(d) for the Group Member Claimants who are group members in the proceedings *Nakali Pty Ltd ACN 062 473 830 v SurfStitch Group Limited ACN 602 288 004 (Administrators Appointed) and Anor*, before the New South Wales Supreme Court (proceedings number 2017/347082), the Administrators are to send the Notice and the Report to Johnson Winter & Slattery Lawyers, the solicitors acting for the representative litigant in those proceedings, by email to joseph.scarcella@jws.com.au, at least 5 business days before the Second Meeting;

(e) for the Group Member Claimants for whom the Administrators have an email address, the Administrators are to send the Notice and the Report to those Group Member Claimants by email at that address, at least 5 business days before the Second Meeting;

(f) for any Group Member Claimant who is not referred to in para (e), the Administrators are to send, by post or fax, at least 10 business days before the Second Meeting:

- (i) the Notice;
- (ii) an informal proof of debt form;
- (iii) a form of proxy; and
- (iv) a circular which sets out (1) the website maintained by the Administrators from which the Report, the report referred to in section 449E(7)(a) and any other document provided to a creditor referred to in order 5 is available for download, (2) a statement that such material can be sent to the creditor by post on written request free of charge and (3) a statement that such material is available for inspection at SGL's head office at Burleigh Heads or the Administrators' offices in Sydney.

(g) the Administrators are to publish, at least 5 business days before the Second Meeting:

- (i) the Notice, on the platform maintained by the Australian Securities Exchange; and
- (ii) the Notice and the Report, on the website maintained by the Administrators in respect of the administration of SGL: <http://www.fticonsulting-asia.com/cip/SurfStitch-group-limited>; and
- (iii) the Notice, in an advertisement in *The Australian Financial Review* newspaper for one day.

(3) Pursuant to Corporations Act, s 447D, the Administrators would be justified, in accordance with s 600H(1)(a), in not giving the Notice or the Report to other Potential Subordinate Claimants, who are not Group Member Claimants, unless such person asks the Administrators in writing for a copy of the Notice and/or Report.

(4) Pursuant to Corporations Act, s 447D, the Administrators would be justified in rejecting for the purposes of voting at the Second Meeting the claim of any Potential Subordinate Claimant which has not been admitted by the Administrator and particulars or formal proof of which has not been by the time and date set out in the Notice as the time and date by which proofs of debt and proxies for the meeting, are to be submitted.

(5) Pursuant to Corporations Act, s 447A, the operation of Corporations Act, ss 439C(a) in relation to SGL is modified, so that the creditors may not resolve that the company execute a deed of company arrangement which contemplates a distribution to Potential Subordinate Claimants before all other debts payable by and claims against SGL are satisfied, unless and until the resolution has first been approved by the creditors other than the Potential Subordinate Claimants.

(6) Within 5 business days of the making of these orders, the Administrators are to take all reasonable steps to give notice of the orders to the Companies' creditors (including the Group Member Claimants) by means of a circular:

(a) for the creditors other than the Potential Subordinate Claimants, sent by email transmission to creditors for whom the Administrators have a current email address and by ordinary post to

creditors for whom the Administrators have only a postal address; and
(b) for Group Member Claimants, in the manner described in Order 2(c), (d), (e) and (f) above.

(7) The Plaintiffs' costs and the costs of the intervener Nakali Pty Limited of and incidental to this application be costs and expenses in the administration.

SEAL AND SIGNATURE



Signature D Eden (LS)
Capacity Chief Clerk
Date 28 February 2018

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

