



Our ref: PGW:DC:DM:vk

17 November 2020

CIRCULAR TO CREDITORS

Dear Sir/Madam

FLUSH FITNESS PTY LIMITED (IN LIQUIDATION) A.C.N. 119 435 504 (Company) ATF FLUSH FITNESS BUSINESS TRUST

On 13 January 2017, while I was a partner of the firm Pitcher Partners, I was appointed as Administrator of the Company. At the second meeting of creditors held on 12 May 2017, the creditors resolved that the Company be placed into liquidation and I was appointed as Liquidator. On 28 February 2020, I left Pitcher Partners and joined DW Advisory effective 1 March 2020. I remain the sole Liquidator of the Company.

A virtual meeting of creditors will be held on Tuesday, 1 December 2020 at 11:00am.

I provide the below update on the progress of the liquidation since my last report to creditors dated 14 October 2020. This report should be read in conjunction with my previous circulars and reports to creditors, a copy of which are available upon request.

1. Update on the progress of liquidation

a) Consignment stock

After my appointment as external administrator, I engaged an agent to sell the Company's Six Pack Fitness inventory on a consignment basis. All consignment stock has now been sold and the proceeds of sale payable to the Company is \$56,114, plus GST. To date I have collected \$23,386, plus GST, and the remainder is collectible within the next three months.

b) Priority unsecured creditors

I estimate priority creditor claims to be as follows:

| Claim | Amount (\$) |
|-----------------------|--------------------|
| Superannuation | 219,222 |
| Wages | 15,815 |
| Annual leave | 101,484 |
| Pay in Lieu of Notice | 12,307 |
| Redundancy | 153,028 |
| Long Service Leave | 19,384 |
| TOTAL | 521,240 |



The Attorney General's Department (formerly known as the Department of Jobs and Small Business) advanced funds totalling \$271,162.97 to twenty-seven former employees under the Fair Entitlements Guarantee (**FEG**) scheme. The Attorney General's Department is now treated as a priority unsecured creditor in place of all employees where those entitlements were advanced under FEG.

Where there are sufficient funds to enable a dividend in respect of priority unsecured creditors, section 556 of the *Corporations Act 2001* (**the Act**) sets out the following order for distribution of the available funds:

- Firstly, unpaid wages and superannuation;
- Secondly, leave of absence (annual leave and long service leave); and
- Lastly, retrenchment payments (pay in leave of notice and redundancy).

c) Ordinary unsecured creditors

I estimate ordinary unsecured creditor claims to be as follows:

| Claim | Amount (\$) |
|----------------------------------|-------------------|
| Trade Creditors | 9,383,660 |
| Australian Taxation Office | 2,088,620 |
| Deficiency from lease agreements | 108,601 |
| Related party claims | To be confirmed |
| Contingent creditors | 3,028,799 |
| TOTAL | 14,609,680 |

d) Liquidator's Investigations

On 13 February 2019, I made an application to the Court to seek approval of the Court, for me, in my capacity as Liquidator of the Company, to enter into a litigation funding agreement with The Commonwealth of Australia (acting through the Attorney General's Department). The Court provided approval on 26 February 2019 and I subsequently entered into the litigation funding agreement. The funding agreement provides me with funding to undertake the following work:

- Obtaining an independent expert report on the solvency of the Company, including an opinion on the date of insolvency of the Company;
- Obtaining legal advice on the merits of various voidable transaction claims, an insolvent trading claim against the Mr Steven Hines (**the Director**), and a breach of duties claim against the Director.
- Conducting public examinations of relevant parties in respect of my investigations.

On 14 August 2020, I made a further application to seek the approval of the Court for me, in my capacity as Liquidator of the Company, to enter into an Amendment Deed with The Commonwealth of Australia to amend the terms of the approved funding agreement. Approval was granted by the Court on 31 August 2020 and I subsequently entered into the Amendment Deed on 2 September 2020. The Amendment Deed, in addition to the funding of costs set out above, provides me with an adverse costs cover in the event that any adverse costs orders are made against me by the Court in respect of any proceedings commenced for domestic unfair preference claims.

In my last report to creditors, I reported that I had lodged a report with the Australian Securities and Investments Commission (**ASIC**) pursuant to section 533(1) of the Act regarding potential misconduct identified. While the ASIC has requested that I complete a supplementary report under section 533(2) of the Act, the ASIC has confirmed that the supplementary report should be provided after I have completed my investigations.

e) Unfair preference claims

As at the date of my last report to creditors, I had instructed solicitors to advise on and pursue potential unfair preference payments to domestic creditors totalling \$2.1 million.

At the time of my last report to creditors, I had reached settlement with two creditors for the amount of \$395,000. Since my last report to creditors, I have:

- Reached a settlement with a domestic creditor for \$100,000. The amount of the claim was approximately \$600,000 and the settlement was reached after consideration of the defences raised by the creditor, which would have reduced the claim to approximately \$130,000.
- Commenced legal proceedings against three domestic creditors for potential unfair preferences totalling approximately \$280,000. I have finalised and served my evidence in respect of one of the claims and I am presently reviewing the defences filed by the remaining parties.
- Issued legal demands and draft statement of claims against eight overseas creditors in respect of claims totalling approximately USD2 million.
- Held settlement discussions and accepted settlement offers from two overseas creditors. The settlements were reached after consideration of the defences raised by the creditors as well as the costs of pursuing further litigation. The amount of the two claims totalled approximately USD600,000 and after taking into account any valid defences, the total claims would be reduced to approximately USD74,000. The two claims were settled for the total amount of USD44,000.
- I do not anticipate any further recoveries in relation to unfair preference claims against the overseas creditors.

f) Insolvent trading claim

I have identified a potential insolvent trading claim against the Steven Hines, the Company's sole director (Director), for \$6.3 million.

On 21 November 2018, the Director filed a debtor's petition for bankruptcy. I have notified the bankruptcy trustee of my potential claim in the Bankrupt Estate. Based on the information received from the bankruptcy trustee, I understand that it is unlikely that there will be dividend payable to unsecured creditors of the Bankrupt Estate, as the major asset in the bankruptcy is over-encumbered and subject to a substantial claim lodged by Westpac Bank.

As at the date of appointment of the external administrator, the Director had a director and officers insurance policy, which I understand may be available to meet a significant portion of a successful claim for insolvent trading. I am continuing to liaise with the insurer to complete my review of the insurance coverage.

2. Likelihood of a dividend

At this stage, there are insufficient funds to enable a dividend to priority unsecured creditors and ordinary unsecured creditors in the liquidation. However, the prospect of a dividend is dependent upon a successful and material recovery from the unfair preference claim and insolvent trading claim.

Subject to the resolution of the ongoing issues identified in this circular, it is estimated that the winding up is likely to be completed by December 2021.

3. Receipts and Payments

A summary of the receipts and payments for the period from 12 May 2017 to 6 November 2020 prepared as at 9 November 2020 shows a balance held of \$103,765. Of the funds held, \$18,499.25 relates to litigation funding received from The Commonwealth of Australia in respect to my remuneration, which has not been drawn. A summary of my receipts and payments is attached to my remuneration approval report.

4. Cost of the liquidation

I am seeking approval of my retrospective remuneration of \$80,640 plus GST for the period from 1 October 2019 to 31 October 2020. Of this amount, \$16,051 plus GST relates to work under the litigation funding agreement and the balance of \$64,589 relates to work not subject to the funding agreement. I am also seeking prospective approval of my internal disbursements in the amount of \$2,500 plus GST for the period from 1 March 2020 to finalisation of the liquidation.

Attached at **Appendix A** is a detailed report on my remuneration, called a Remuneration Approval Report. I am unable to pay my remuneration without the approval of creditors or the Court.

5. Meeting of creditors

A meeting of creditors to consider this update and my remuneration will be held as follows:

Date: Tuesday, 1 December 2020
Time: 11:00AM
Address: Due to the threat of COVID-19 and consistent with government policy on gatherings, a virtual meeting of creditors will be held. Creditors are expected to attend by electronic means, and no physical meeting is provided.

To participate in the decision meeting, you may need to:

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

To facilitate the conduct of the meeting, completed proof of debt and, if applicable, proxy forms must be returned to our office by post, fax or email by 5.00pm on Monday, 30 November 2020.

As noted above, due to the threat of COVID-19, and consistent with government policy on gatherings, a virtual meeting of creditors will be held. Creditors are expected to attend by electronic means, and no physical place of meeting will be provided.

All creditors attending the virtual meeting will be required to advise this office by no later than 5.00pm on Monday, 30 November 2020.

If you are unwell or unable to attend the virtual meeting and wish to vote at the meeting, you can appoint the chairperson of the meeting as your proxy and direct the chairperson how you wish your vote to be cast.

Attached at **Appendix B** is a notice of meeting, including proof of debt and proxy forms.

6. What to do next

You should:

- read the circular to creditors and the remuneration approval report
- decide whether you are going to attend the meeting, and
- complete and your proof of debt, and if required, proxy by 5.00pm on Monday, 30 November 2020.

You can access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au/ (search for "insolvency information sheets").

Otherwise, please contact my office should you require further information. There is also information on my firm's website: www.dwadvisory.com.au/.

Yours faithfully



Daniel Cooksley
For and on behalf of
PAUL G WESTON
Liquidator
Flush Fitness Pty Limited (In Liquidation)

Appointment date: 12 May 2017
Contact name: Vicky Kwong
Contact number: 02 9234 0444
Email: vicky@dwadvisory.com.au

APPENDICES

Appendix A – Liquidator's Remuneration Approval Report

Appendix B – Notice of meeting, proxy form and proof of debt form

APPENDIX A

Remuneration Approval Report

Flush Fitness Pty Limited (In Liquidation) A.C.N. 119 435 504 (“the Company”)

This remuneration approval report provides you with the information you need to be able to make an informed decision regarding the approval of my remuneration for undertaking the liquidation of the Company.

This report has the following information included:

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What do you need to do next?

You should read this report and the other documentation that I have sent you and then attend the meeting of creditors in order to voice your opinion by casting your vote on the resolutions put to the meeting. The meeting will also give you an opportunity to ask any questions that you may have.

Alternatively, you are also able to appoint a representative to attend on your behalf by lodging a proxy form. Lodging a specific proxy form allows you to specify how your proxy must vote. Lodging a general proxy form allows your representative to choose how your vote is exercised.

Information about the meeting of creditors is provided in the attached report to creditors.

If you have any questions, or need any assistance with understanding the materials I have sent to you, please contact Vicky Kwong on (02) 9234 0444 or email vicky@dwadvisory.com.au.

Part 1: Declaration

I, Paul Weston of DW Advisory, have undertaken a proper assessment of this remuneration claim for my appointment as Liquidator of the Company in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed is in respect of necessary work, properly performed in the conduct of the liquidation.

Part 2: Executive Summary

My remuneration totalling \$626,813.50 plus GST has been approved and paid in the Voluntary Administration of the Company. No further remuneration approval will be sought for time costs incurred during the Voluntary Administration.

To date, remuneration totalling \$434,418.00 plus GST has been approved and paid in this liquidation.

I estimate my total remuneration for my appointment as Liquidator to be between \$600,000 and \$655,000 plus GST. In my last remuneration report dated 14 October 2019, I estimated my total remuneration as Liquidator to be between \$494,000 and \$655,000 plus GST. This remuneration claim is in line with the estimates previously provided to creditors.

Remuneration currently claimed is summarised below:

| Period – Creditor’s voluntary liquidation | Report Reference | Amount (excl. GST) |
|--|-------------------------|---|
| Past Remuneration Claim: 12 May 2017 to 4 March 2018 5 March 2018 to 30 September 2019 Total Past Remuneration Approved | | \$290,065.00 \$144,353.00 \$434,418.00 |
| Current Remuneration Claim: Resolution 1: 1 October 2019 to 31 October 2020 | 3.2, Sch A | \$80,640.00 |
| TOTAL | | \$515,058.00 |

Please refer to section reference detailed in the above table for full details of the calculation and composition of the remuneration approval sought.

Internal disbursements currently claimed and previously approved are summarised below:

| Period | Report Reference | Amount (excl. GST) |
|--|-------------------------|---------------------------|
| Current Internal Disbursements Claim: Resolution 2: 1 March 2020 to the finalisation of the liquidation | 4.1 | \$2,500.00 |
| TOTAL* | | \$2,500.00 |
| * Approval for the future disbursements sought is based on an estimate of the disbursements necessary to the completion of the liquidation. Should additional disbursements be necessary beyond what is contemplated, further approval may be sought from creditors. | | |

Part 3. Remuneration

3.1 Remuneration claim resolutions

I will be seeking approval of the following resolution to approve my retrospective remuneration. Details to support this resolution is included in section 3.2 and in the attached Schedule A.

Resolution 1: 1 October 2019 to 31 October 2020

“That the remuneration of the Liquidator for the period from 1 October 2019 to 31 October 2020, calculated at the hourly rates of Pitcher Partners Sydney BRI Group Pty Ltd as at 1 July 2019 until 29 February 2020 and DW Advisory from 1 March 2020 as attached to the remuneration report dated 17 November 2020, is determined in the sum of \$80,640 plus GST of \$8,064 and the Liquidator is authorised to draw such remuneration as required.”

3.2 Details of remuneration

The basis of calculating the remuneration claim is summarised below and the details of the major tasks performed, and the costs associated with each of those major tasks is contained in Schedule A.

Resolution 1: 1 October 2019 to 31 October 2020

The below table sets out the time charged to each major task area by staff members working on the Liquidation for the period from 1 October 2019 to 31 October 2020 which is the basis of the Resolution 1 claim. More detailed descriptions of the tasks performed within each task area, matching the amounts below, are contained in Schedule A.

| Name | Position | \$ / hour (ex GST) | Total Actual Hours | Total \$ | Task Area | | | | | | | | |
|--|---------------------|-----------------------|--------------------------|------------------|------------|-----------------|-------------|------------------|---------------|------------------|----------------|------------------|--|
| | | | | | Assets | | Creditors | | Investigation | | Administration | | |
| | | | | | Hrs | \$ | Hrs | \$ | Hrs | \$ | Hrs | \$ | |
| | | 01-Jul-19 | | | | | | | | | | | |
| | | 01-Jul-20 | | | | | | | | | | | |
| Paul Weston (Pitcher Partners) | Appointee/Partner | \$ 595 | 9.7 | 5,771.50 | - | | 2.6 | 1,547.00 | 3.8 | 2,261.00 | 3.3 | 1,963.50 | |
| Paul Weston (DW Advisory) | Appointee/Principal | \$ 595 | 11.4 | 6,783.00 | 0.2 | 119.00 | 0.6 | 357.00 | 7.6 | 4,522.00 | 3.0 | 1,785.00 | |
| Daniel Cooksley (DW Advisory) | Principal | \$ 595 | 7.2 | 4,284.00 | - | | 0.1 | 59.50 | 6.8 | 4,046.00 | 0.3 | 178.50 | |
| Daniel Cooksley (DW Advisory) | Principal | \$ 570 | 26.2 | 14,934.00 | - | | 1.8 | 1,026.00 | 23.7 | 13,509.00 | 0.7 | 399.00 | |
| Daniel Matta (Pitcher Partners) | Client Director | \$ 540 | 17.8 | 9,612.00 | 0.1 | 54.00 | 2.0 | 1,080.00 | 12.9 | 6,966.00 | 2.8 | 1,512.00 | |
| Daniel Matta (DW Advisory) | Associate | \$ 490 | 19.3 | 9,457.00 | 0.6 | 294.00 | 1.0 | 490.00 | 10.2 | 4,998.00 | 7.5 | 3,675.00 | |
| Vicky Kwong (DW Advisory) | Manager | \$ 400 | 31.8 | 12,720.00 | 3.0 | 1,200.00 | 2.9 | 1,160.00 | 14.4 | 5,760.00 | 11.5 | 4,600.00 | |
| Vicky Kwong (Pitcher Partners) | Assistant Manager | \$ 360 | 23.9 | 8,604.00 | 0.7 | 252.00 | 9.5 | 3,420.00 | 9.5 | 3,420.00 | 4.2 | 1,512.00 | |
| Glen Hornhardt (Pitcher Partners) | Analyst 2 | \$ 300 | 1.1 | 330.00 | - | | - | | - | | 1.1 | 330.00 | |
| Paola Calvano (Pitcher Partners) | Cadet | \$ 300 | 2.0 | 600.00 | - | | - | | - | | 2.0 | 600.00 | |
| Dilasha Prasad (Pitcher Partners) | Accountant | \$ 255 | 14.9 | 3,799.50 | - | | 10.6 | 2,703.00 | - | | 4.3 | 1,096.50 | |
| Matthew Rorie (Pitcher Partners) | Cadet | \$ 180 | 0.6 | 108.00 | - | | 0.2 | 36.00 | - | | 0.4 | 72.00 | |
| Winnie Wong (Pitcher Partners) | Cadet | \$ 180 | 1.7 | 306.00 | - | | - | | - | | 1.7 | 306.00 | |
| Administration (Pitcher Partners) | | \$ 130 | 18.7 | 2,431.00 | - | | 12.2 | 1,586.00 | 0.7 | 91.00 | 5.8 | 754.00 | |
| Administration (DW Advisory) | | \$ 125 | 7.2 | 900.00 | 0.1 | 12.50 | 5.0 | 625.00 | 0.8 | 100.00 | 1.3 | 162.50 | |
| TOTAL | | | 193.5 | 80,640.00 | 4.7 | 1,931.50 | 48.5 | 14,089.50 | 90.4 | 45,673.00 | 49.9 | 18,946.00 | |
| <i>Average Hourly Rate (Excluding GST)</i> | | | | 416.74 | | 410.96 | | 290.51 | | 505.23 | | 379.68 | |
| GST on TOTAL | | | | 8,064.00 | | | | | | | | | |
| TOTAL (Including GST) | | | | 88,704.00 | | | | | | | | | |

3.3 Total remuneration reconciliation

My remuneration as Voluntary Administrator totalling \$626,813.50 plus GST has been approved and paid.

At this point in time, the total remuneration for my appointment as Liquidator is estimated to be between \$600,000 and \$655,000 plus GST. This remuneration claim is in line with estimates previously provided to creditors.

In preparing this remuneration approval report, I have made my best estimate for my time costs to complete the liquidation. I am not seeking approval of my prospective remuneration at this time. However, I will advise creditors and I may seek approval of further remuneration in the future and provide details on why the remuneration has changed. Matters that may affect the progress and the cost of the liquidation, include:

- the amount of creditor involvement in the administration
- the commencement or continuation of any legal proceedings
- the requirement to hold creditors' meetings
- requirement to have my remuneration approved by the Court, if not approved by creditors

3.4 Likely impact on dividends

The Corporations Act 2001 ("the Act") sets the order for payment of claims against the Company and it provides for remuneration of the Liquidators to be paid in priority to other claims. This ensures that when there are sufficient funds, the Liquidators receive payment for the work done to recover assets, investigate the Company's affairs, report to creditors and Australian Securities and Investments Commission ("ASIC") and distribute any available funds. Even if creditors approve my remuneration, this does not guarantee that I will be paid, as I am only paid if sufficient assets are recovered.

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

Dividend estimates are outlined in the attached statutory report to creditors.

Part 4: Remuneration recoverable from external sources

I have received the following remuneration from external sources:

| Name | Nature | Amount (excl. GST) |
|--|---|--------------------|
| Department of Jobs and Small Business | Verification services provided in relation to the Fair Entitlements Guarantee | \$12,240.00 |
| The Commonwealth (via the Attorney General's Department) | Litigation funding for Liquidator's remuneration and disbursements | \$34,493.20 |
| | TOTAL | \$46,733.20 |

Part 5: Disbursements

Disbursements are divided into three types:

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

I have undertaken a proper assessment of disbursements claimed for Pitcher Partners and DW Advisory, in accordance with the law and applicable professional standards. I am satisfied that the disbursements claimed are necessary and proper.

5.1 Future basis of disbursements

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

| Disbursements | Type of disbursement | Rate (Excl GST) |
|--------------------------------|----------------------|--------------------------|
| Advertising | External | At Cost |
| ASIC user pays fee | External | At Cost per metric |
| Courier | External | At Cost |
| Faxes | | |
| Local | Internal | \$1.00 per page |
| National | Internal | \$1.50 per page |
| Initial file stationary | Internal | \$100.00 |
| Photocopying & binding | Internal | \$0.60 per page |
| Postage | External | At Cost |
| Printing | | |
| Internal | Internal | \$0.60 per page |
| External | External | At Cost |
| Searches | External | At Cost |
| Stationery | External | At Cost |
| Storage | External | At Cost |
| Telephone | Internal | Cost + 40% |
| Travel | | |
| Taxis | External | At Cost |
| Motor vehicle mileage (if any) | Internal | ATO standard rate per km |

Scale applicable for the financial year ending 30 June 2020 and 30 June 2021.

At the upcoming meeting of creditors convened for **Tuesday, 1 December 2020**, I will be seeking creditor approval for payment of my internal disbursements at the above rates where there may be an element of profit or advantage as follows:

Resolution 2

“That the internal disbursements claimed by the Liquidator’s firm where there may be an element of profit or advantage for the period from 1 March 2020 to the finalisation of the liquidation, calculated at the rates detailed in the remuneration report dated 17 November 2020, are approved up to a capped amount of \$2,500.00 plus GST of \$250.00, and the Liquidator can draw the disbursements from available funds as incurred or as funds become available.”

Part 6: Report on Progress of the Administration

Please refer to the attached Liquidator’s circular for an update on the progress of the liquidation.

Part 7: Summary of Receipts and Payments

A summary of the receipts and payments for the period from 12 May 2017 to 6 November 2020 is at Schedule B of this remuneration report and shows a balance held of \$103,765.

Part 8: Queries

If you have any queries in relation to the information in this report, please contact our staff:

Contact Name: Vicky Kwong
Contact Number: (02) 9234 0444
Email: vicky@dwadvisory.com.au

You can also access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au (search for “insolvency information sheets”).

Dated this 17th day of November 2020

Yours faithfully



Daniel Cooksley
For and on behalf of
PAUL G WESTON
Liquidator
Flush Fitness Pty Limited (In Liquidation)

Schedule A – Description of Work Completed

The below table provides a description of the work undertaken in each major task area for the period from 1 October 2020 to 31 October 2020.

Resolution 1: “That the remuneration of the Liquidator for the period from 1 October 2019 to 31 October 2020, calculated at the hourly rates of Pitcher Partners Sydney BRI Group Pty Ltd as at 1 July 2019 until 29 February 2020 and DW Advisory from 1 March 2020 as attached to the remuneration report dated 17 November 2020, is determined in the sum of \$80,640 plus GST of \$8,064 and the Liquidator is authorised to draw such remuneration as required.”

| Task Area | General Description | Includes |
|--|-----------------------------|---|
| <p>Assets 4.7 Hrs \$1,931.50 (excl. GST) \$2,124.65 (incl. GST)</p> | Debtors | <ul style="list-style-type: none"> Corresponded with debtors regarding settlement issues Reviewed report from Liquidator of a debtor in liquidation to determine the likelihood of recovery Received and reviewed queries from former customers regarding discharge of PPSR registration Obtained updates regarding consignment stock and calculated amount owing under consignment agreement Liaised with debtor regarding remittance for sale of consignment stock Reviewed terms of consignment agreement |
| <p>Creditors 48.5 Hrs \$14,089.50 (excl. GST) \$15,498.45 (incl. GST)</p> | Unsecured Creditor | <ul style="list-style-type: none"> Attended to creditor queries and correspondence Maintained creditor register |
| | Dealing with Proofs of Debt | <ul style="list-style-type: none"> Received and filed proofs of debt |
| | Reports | <ul style="list-style-type: none"> Prepared, reviewed and issued reports to creditors Prepared, reviewed and issued remuneration reports to creditors Prepared, reviewed and issued circular to creditors regarding application to Court regarding amendment deed |
| | Meetings | <ul style="list-style-type: none"> Prepared notice of meeting, proxy forms and advertisement for meeting of creditors Prepared meeting file, including agenda and draft minutes, certificate of posting, attendance register Attended meeting of creditors Prepared and lodged minutes of the meeting of creditors |
| <p>Investigation 90.4 Hrs \$45,673.00 (excl. GST) \$50,240.30 (incl. GST)</p> | Conducting Investigation | <ul style="list-style-type: none"> Reviewed correspondence to management liability insurer regarding potential insolvent trading claim Liaised with insurer regarding obtaining copies of policies and schedules Liaised with solicitors and litigation funder regarding status of litigation Finalised investigation workpapers and collated information for solicitors Conducted further investigations in respect of voidable transaction claims, including reconstructing accounts Obtained and reviewed books and records for further supporting documentation in respect of voidable transaction claims |

| | | |
|---|----------------------|--|
| | Litigation | <ul style="list-style-type: none"> • Liaised with solicitors regarding status of litigation • Reviewed legal advice regarding prospects of insolvent trading and voidable transaction claims and other avenues of investigation • Held meeting with solicitors regarding strategy and status of claims • Reviewed settlement offers received and discussed with solicitors • Attended to settlement issues including finalisation of settlement deeds • Monitored receipt of settlement funds • Reviewed draft letters of demands, originating process, supporting affidavits and statement of claims prepared by solicitors • Held discussions with solicitors regarding the letters of demand, originating process, supporting affidavits and statement of claims • Held settlement discussions with parties regarding voidable transaction claims • Executed affidavits in relation to voidable transaction claims and other litigation matters |
| | Funding issues | <ul style="list-style-type: none"> • Liaised with litigation funder regarding status of litigation • Liaised with litigation funder and solicitors regarding changes to the funding deed • Made application to Court regarding amendment deed with litigation funder • Finalised and executed amendment deed |
| Administration 49.9 Hrs \$18,946.00 (excl. GST) \$20,840.60 (incl. GST) | File Maintenance | <ul style="list-style-type: none"> • Filed documents • Reviewed general correspondence • Updated creditor lists for return to sender responses and change of address • Printed and collated documents relating to litigation matters • Prepared case progress memorandums • Sought legal advice and set up information barrier upon change on firms • Prepared and lodged updated Declaration of Independence, Relevant Relationships and Indemnities |
| | Planning / Review | <ul style="list-style-type: none"> • Held internal planning and review meetings to discuss the progress of the liquidation Updated task listings |
| | Administer Bank A/c | <ul style="list-style-type: none"> • Prepared receipt vouchers • Prepared payment requisitions • Reviewed invoices and payment transactions • Prepared bank reconciliations |
| | ASIC/Court Reporting | <ul style="list-style-type: none"> • Prepared and lodge ASIC forms (e.g. Form 5602, minutes) |
| | ATO Reporting | <ul style="list-style-type: none"> • Prepared and lodged monthly BAS |
| TOTAL 193.50 Hrs \$80,640.00 (excl. GST) \$88,704.00 (incl. GST) | | |

Schedule B – Summary of Receipts and Payments

Flush Fitness Pty Limited (In Liquidation)
ATF Flush Fitness Business Trust
Liquidator's Summary of Receipts and Payments
For the period from 12 May 2017 to 6 November 2020
Prepared as at 9 November 2020

| Receipts | \$ |
|--|------------------|
| Accounts receivable (pre-appointment) | 285,082 |
| Bank payment for Liquidator's remuneration | 98,677 |
| Cash transferred from the Administrator | 319,180 |
| GST Received/Refund | 67,961 |
| Interest income | 3,967 |
| Litigation funding | 205,502 |
| NZ tax refund | 327,108 |
| Plant and equipment | 114,194 |
| Rebates | 793 |
| Refunds | 869 |
| Reimbursement of debt collection costs | 1,119 |
| Sales (Post-appointment) | 454,086 |
| Settlement of claim | 555,437 |
| Stock / inventory | 535,682 |
| Total Receipts | 2,969,655 |
| | |
| Payments | |
| Administration costs | 622 |
| Administrator's disbursements | 1,119 |
| Administrator's remuneration | 626,814 |
| Bank charges | 556 |
| Commission | 17,020 |
| Debt collection costs | 3,926 |
| Disposal of obsolete stock | 6,410 |
| Filing fees | 14,582 |
| Freight | 6,947 |
| GST paid and PAYG withholding | 280,692 |
| Hire and leasing | 14,762 |
| Insurance | 27,062 |
| IT expenses | 10,814 |
| Labour | 475 |
| Lease payments | 7,983 |
| Legal disbursements | 81,064 |
| Legal fees | 454,750 |
| Liquidator's remuneration | 431,879 |
| Meeting room hire | 1,256 |
| Merchant fees | 151 |
| Motor vehicle expenses | 6,395 |
| Other auctioneer expenses | 17,807 |

| | |
|----------------------------------|------------------|
| Payroll tax | 4,643 |
| Regulatory fees | 626 |
| Rent and rates | 214,218 |
| Repairs and maintenance | 24,329 |
| Repayment of third party funding | 60,660 |
| Secured creditors | 334,753 |
| Security expenses | 509 |
| Settlement costs | 88,000 |
| Staff expenses | 99 |
| Storage costs | 724 |
| Sundry expenses | 9,357 |
| Superannuation | 15,793 |
| Suppliers | 20,287 |
| Tax compliance costs | 21,025 |
| Telephone and fax | 5,803 |
| Utilities | 2,254 |
| Valuation expenses | 3,000 |
| Wages and salaries | 46,724 |
| Total payments | 2,865,890 |
| | |
| Balance held | 103,765 |

Schedule C – Schedule of Hourly Rates

| Position | Rate (not incl GST) \$ | GST \$ | Total Rate (incl GST) \$ | Description – guide only |
|---------------------------|-----------------------------------|-------------------|-------------------------------------|--|
| Principal/ Appointee | 595.00 | 59.50 | 654.50 | Registered Liquidator/Trustee – bringing specialist skills to the administration or insolvency task. |
| Associate | 490.00 | 49.00 | 539.00 | Extensive insolvency experience, at least five years at manager level, tertiary qualified and capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in their own right |
| Manager 1 | 460.00 | 46.00 | 506.00 | More than 7 years insolvency experience, likely more than 3 years as manager, tertiary qualified. Answerable to the appointee but otherwise responsible for all aspects of administration. Experienced at all levels and considered very competent. Controls staff and on the job training. |
| Manager 2 | 400.00 | 40.00 | 440.00 | 6-7 years insolvency experience, likely tertiary qualified, with well-developed technical and commercial skills. Answerable to the appointee but otherwise responsible for all aspects of administration. Experienced at all levels and considered very competent. Controls staff and on the job training. |
| Supervisor | 350.00 | 35.00 | 385.00 | 4-6 years insolvency experience. Likely tertiary qualified or significant experience. Will have had conduct of minor administrations and experience in control of staff. Assists planning and control of medium to larger administrations. |
| Senior 1 | 320.00 | 32.00 | 352.00 | 2-4 years insolvency experience. Likely tertiary qualified or nearing completion. Assists planning and control of small to medium jobs as well as performing some of the more difficult work on larger administrations. |
| Senior 2 | 280.00 | 28.00 | 308.00 | 1-2 years insolvency experience. Likely tertiary course underway or near complete. Required to control the fieldwork on small jobs and is responsible for assisting complete fieldwork on medium to large administrations. |
| Intermediate 1 | 230.00 | 23.00 | 253.00 | Less than 2 years insolvency experience. Likely graduate with little or no professional experience. Required to assist in day-to-day fieldwork under supervision of more senior staff. |
| Intermediate 2 | 200.00 | 20.00 | 220.00 | 0-1 years experience, graduate studying CA or CPA programme. Required to control the fieldwork on small administrations and assists the completion of fieldwork on medium to large jobs under the supervision of more senior staff. |
| Secretary | 200.00 | 20.00 | 220.00 | Appropriate skills including machine usage. |
| Clerk / Administration | 125.00 | 12.50 | 137.50 | Non-qualified but passed HSC. Classification would depend on experience, salary and complexity of work to be conducted. |

Notes:

- (i) the Firm maintains its time records in a computerised system;
- (ii) the classifications above do not cover professional staff who are not studying tertiary degree courses majoring in accounting/law or have attained like qualifications. DW Advisory recognises that in this category there are some people who are highly skilled and believes it is not possible to give a description which will adequately cover all situations. The Firm therefore decides what is the relevant and appropriate charge-out rate.

Some people may be employed on a contract basis and may not necessarily have specialist insolvency experience. In this regard contractors are charged in accordance with their classification based on their academic qualifications and experience; and

- (iii) these categories are a guide only. Individual circumstances will dictate category of staff and hourly rates.

APPENDIX B

NOTICE OF MEETING OF CREDITORS OF COMPANY

Flush Fitness Pty Limited (In Liquidation) A.C.N. 119 435 504 (the Company) ATF Flush Fitness Business Trust

On 13 January 2017, Mr Paul Weston was appointed as Administrator of the Company. At the meeting of creditors held on 12 May 2017, creditors resolved that the Company be placed into liquidation and Mr Weston was appointed as Liquidator.

Notice is given that a meeting of the creditors of the Company will be held as follows:

- Date:** Tuesday, 1 December 2020
- Time:** 11:00 AM
- Address:** Due to the threat of COVID-19 and consistent with government policy on gatherings, a virtual meeting of creditors will be held. Creditors are expected to attend by electronic means, and no physical meeting is provided.

Agenda

The purpose of the meeting is to:

1. To receive and consider the Liquidator's Report to Creditors.
2. To consider and, if thought fit, approve the retrospective remuneration of the Liquidator for the period from 1 October 2019 to 31 October 2020.
3. To consider and, if thought fit, approve the internal disbursements of the Liquidator.
4. Any other business that may be lawfully brought forward.

Attending and voting at the meeting

Creditors are invited to attend the meeting, however they are not entitled to participate and vote at a meeting unless:

- **Proof of debt for voting purposes:** They have lodged with the Liquidator particulars of the debt or claim and the claim has been admitted, wholly or in part, by the Liquidator. If a proof of debt for voting purposes has already been lodged, they do not need to do so again. Refer to Note 1 for further guidance on entitlement to vote.
- **Proxies or attendance:** They are either present in person or by electronic facilities (if being made available) or validly represented by proxy, attorney or an authorised person under s250D of the Corporations Act 2001 ("**the Act**"). If a corporate creditor or represented, a proxy form, power of attorney or evidence of appointment of a company representative pursuant to Section 250D of the Act must be validly completed and provided to the Liquidator at or before the meeting.

A proxy is only valid for a particular meeting and will need to be resubmitted even if previously provided.

To enable sufficient time to review, proofs of debt and proxies (or document authorising the representation) should be submitted to Vicky Kwong at vicky@dwadvisory.com.au or DW Advisory, GPO Box 7021, Sydney NSW 2000 by no later than 5:00 PM on 30 November 2020. If you choose to return these documents by post, please allow sufficient time for the documents to be received prior to the due date.

Electronic facilities

The meeting of creditors will be held virtually via Zoom and teleconference facilities are also available. To access those facilities, you need to provide a statement by email to vicky@dwadvisory.com.au no later **5.00pm on Monday, 30 November 2020**, which sets out:

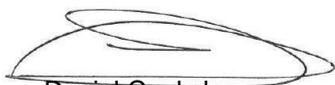
- The name of the person or the proxy or attorney (if any);
- An address to which notices to the person, proxy or attorney may be sent;
- The method of contacting the person, proxy or attorney for the meeting.

On receipt of this statement, you will be provided with instructions on how to access the facilities for the meeting.

Should creditors have any queries please contact Vicky Kwong of this office by email vicky@dwadvisory.com.au or telephone (02) 9234 0444.

Any creditor wishing to participate in the meeting by telephone must advise my office of the details requested above by no later than 5.00pm on Monday, 30 November 2020.

Dated this 17th day of November 2020



Daniel Cookstey
For and on behalf of
PAUL G WESTON
Liquidator
Flush Fitness Pty Limited (In Liquidation)

| | |
|--------------------------|--|
| Appointment Date: | 12 May 2017 |
| Contact Name: | Vicky Kwong |
| Contact Number: | 02 9234 0444 |
| Email: | vicky@dwadvisory.com.au |

Note 1: Entitlement to vote and completing proofs

IPR (Corp) 75 85 Entitlement to vote at meetings of creditors

- (1) A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
- (2) Subject to subsections (3), (4) and (5), each creditor is entitled to vote and has one vote.
- (3) A person is not entitled to vote as a creditor at a meeting of creditors unless:
 - (a) his or her debt or claim has been admitted wholly or in part by the external administrator; or
 - (b) he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
 - (i) those particulars; or
 - (ii) if required—a formal proof of the debt or claim.
- (4) A creditor must not vote in respect of:
 - (a) an unliquidated debt; or
 - (b) a contingent debt; or
 - (c) an unliquidated or a contingent claim; or
 - (d) a debt the value of which is not established; unless a just estimate of its value has been made.
- (5) A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
 - (a) treat the liability to him or her on the instrument or security of a person covered by subsection (6) as a security in his or her hands;
 - (b) estimate its value;
 - (c) for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
- (6) A person is covered by this subsection if:
 - (a) the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor; and
 - (b) the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and
 - (c) the person is not an insolvent under administration or a person against whom a winding up order is in force.

IPR (Corp) 75-110 Voting on resolutions

- (1) For the purposes of determining whether a resolution is passed at a meeting of creditors of a company, the value of a creditor of the company who:
 - (a) is a related creditor (within the meaning of subsection 75-41(4) of the Insolvency Practice Schedule (Corporations)), for the purposes of the vote, in relation to the company; and
 - (b) has been assigned a debt; and
 - (c) is present at the meeting personally, by telephone, by proxy or attorney; and
 - (d) is voting on the resolution;is to be worked out by taking the value of the assigned debt to be equal to the value of the consideration that the related creditor gave for the assignment of the debt.

APPOINTMENT OF PROXY

**Flush Fitness Pty Limited (In Liquidation) A.C.N. 119 435 504 (the Company)
ATF Flush Fitness Business Trust**

I/We

.....

of

a creditor of the Company hereby appoint

.....

or, in his or her absence

.....

as my/our *general/*special proxy to vote at the meeting of creditors to be held on Tuesday, 1 December 2020 at 11:00am or at any adjournment of that meeting.

*(i) This proxy is to be used as a **general proxy** to vote on all matters arising at the meeting.

OR

*(ii) This proxy is to be used as a **special proxy** to vote on the following resolutions as specified.

- | | | |
|---|--------------------------------|--|
| 1 | <u>for*</u> <u>against*</u> | “That the remuneration of the Liquidator for the period from 1 October 2019 to 31 October 2020, calculated at the hourly rates of Pitcher Partners Sydney BRI Group Pty Ltd as at 1 July 2019 until 29 February 2020 and DW Advisory from 1 March 2020 as attached to the remuneration report dated 17 November 2020, is determined in the sum of \$80,640 plus GST of \$8,064 and the Liquidator is authorised to draw such remuneration as required.” |
| 2 | <u>for*</u> <u>against*</u> | “That the internal disbursements claimed by the Liquidator’s firm where there may be an element of profit or advantage for the period from 1 March 2020 to the finalisation of the liquidation, calculated at the rates detailed in the remuneration report dated 17 November 2020, are approved up to a capped amount of \$2,500.00 plus GST of \$250.00, and the Liquidator can draw the disbursements from available funds as incurred or as funds become available.” |

***IMPORTANT: CROSS OUT WHICHEVER IS INAPPLICABLE**

DATED this day of 2020

.....
(name of creditor)

.....
(signature)

.....
(capacity of person signing)

.....
(contact number)

CERTIFICATE OF WITNESS

(This certificate is to be completed only if the person giving the proxy is blind or incapable of writing. The signature of the creditor, contributory, debenture holder or member must not be witnessed by the person nominated as proxy)

I of
(Name) (Address)

.....
.....

certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him or her before he or she signed or marked the instrument.

Dated.....

.....
(Signature of Witness)

Description
.....

Place of residence
.....
.....

FORM 535

subregulation 5.6.49(2)
Corporations Act 2001

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidator of **Flush Fitness Pty Limited (In Liquidation) A.C.N. 119 435 504 ("the Company") ATF Flush Fitness Business Trust**. This is to state that the company was on 13 January 2017, and still is, justly and truly indebted to:

.....
.....

full name, ABN and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for dollars and cents

Particulars of the debt are:

| Date | Consideration <i>(state how the debt arose)</i> | Amount \$ | Remarks <i>(include details of voucher substantiating payment)</i> |
|------|--|--------------|---|
|------|--|--------------|---|

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

.....
.....

(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

| Date | Drawer | Acceptor | Amount \$ | Due Date |
|------|--------|----------|--------------|----------|
|------|--------|----------|--------------|----------|

2. Signed by (select option):

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

Signature: Dated:.....

Name: Occupation:

Address:

| RECEIVE REPORTS BY EMAIL | Yes | No |
|---|--------------------------|--------------------------|
| Do you wish to receive all future reports and correspondence from our office via email? | <input type="checkbox"/> | <input type="checkbox"/> |
| Email:..... | | |