

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 6 April 2018**

2017/00193375-001 / Summons: TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v SURFSTITCH GROUP LIMITED

1. Orders made and leave granted in accordance with the Short Minutes of Order, initialled by Stevenson J, dated today and placed with the papers.

2. Vacate the directions listing before me on 30 April 2018 and list the matter for directions at 9.30am on 3 May 2018.

SHORT MINUTES OF ORDER

A. The Court notes that the Australian Securities and Investments Commission has produced documents to the Court pursuant to a subpoena addressed to it and dated 9 March 2018 ("ASIC Subpoena Documents").

B. The Court notes that KPMG has produced documents to the Court pursuant to a subpoena addressed to it and dated 9 March 2018 ("KPMG Subpoena Documents").

C. The Court made orders on 29 March 2018 that provided for access to the ASIC Subpoena Documents.

Access to documents

1. Pursuant to s 440D of the Corporations Act 2001 (Cth), the plaintiff be granted leave to proceed against the first defendant (SurfStitch) for the limited purpose of enabling SurfStitch by its administrators to provide to the plaintiff the documents listed in Schedule A hereto.

2. On or before 27 April 2018 SurfStitch by its administrators provide to the plaintiff the documents listed in Schedule A hereto.

3. The plaintiff's legal representatives be at liberty to disclose the books of the Defendant or copies of them obtained pursuant to Order 2 above to the following persons, provided that those persons have first signed an undertaking in the form set out in Schedule B hereto:

(a) International Litigation Partners No. 17 Pte (ILP), the litigation funder of the Plaintiff;

(b) any other shareholder of SurfStitch who may become a representative party in the proceeding; and

(c) any expert witness, expert consultant or service provider (including but not limited to an accountant) engaged in or for the proceedings.

4. The plaintiff pay SurfStitch's reasonable costs of the production of the documents in Schedule A hereto.

Subpoenas

5. Subject to orders 6 to 9 below, the Court grants leave to those of the legal representatives of the parties named in Schedule C hereto who give to the Court an undertaking in writing duly signed in the form set out in Schedule D and Schedule G, to inspect the ASIC Subpoena Documents.

6. Should any of the plaintiff, SurfStitch or the second defendant (Cameron) intend to tender any of the documents in Schedule F herein or any part of them or to use them or any part of them in examination or cross-examination of any witness at the trial of this proceeding, and intending to use that material, give written notice to the legal representatives for Lex Pederson no later than 7 days prior to that intended use.

ASIC subpoena

7. By 4:00 pm on 6 April 2018, the Persons Affected (as defined in the orders of the Court made on 29 March 2018 (29 March Orders)) must give to SurfStitch such of the ASIC Subpoena Documents set out in Schedule E and Schedule F hereto, and over which the Persons Affected:

(a) do not maintain a claim of privilege;

(b) maintain a claim of privilege in part; or

(c) have not otherwise made an application pursuant to order 6 of the 29 March Orders (Access Objection Application),

for the purpose of SurfStitch making any claim restricting the plaintiff's access to those documents on the grounds of a claim of client legal privilege over any, or any part of those documents.

8. By 13 April 2018, any Person Affected that has filed an Access Objection Application must file and serve:

(a) a list of the ASIC Subpoena Documents over which they maintain a claim of privilege in whole or in part (Persons Affected Privilege Lists);

(b) copies of those of the ASIC Subpoena Documents over which they maintain a claim of privilege in part, in which those parts of the documents over which the claim of privilege is maintained are masked (Persons Affected Redacted Documents);

(c) a list of the ASIC Subpoena Documents that are otherwise subject to an Access Objection Application (Persons Affected Objection Lists).

9. Order 10 of the 29 March Orders is vacated.

10. By 16 April 2018, SurfStitch, the second defendant, and the Persons Affected must give to the legal representatives of the plaintiff and file with the Registry such of the ASIC Subpoena Documents that are not:

(a) identified in the ASIC Privilege Lists (as defined in the 29 March Orders), Persons Affected Privilege List or Persons Affected Objection Lists;

(b) ASIC Redacted Documents (as defined in the 29 March Orders) or Persons Affected Redacted Documents;

KPMG subpoena

11. By 4:00 pm on 6 April 2018, KPMG give to SurfStitch the KPMG Subpoena Documents, for the purpose of making any claim restricting the plaintiff's access to those documents on the grounds of a claim of privilege over any, or any part of, those documents.

12. By 4:00 pm on 12 April 2018, SurfStitch give to Cameron such of the KPMG Subpoena Documents over which it:

(a) does not maintain a claim of privilege; and

(b) maintains a claim of privilege in part, in which those parts of the documents over which the claim of privilege is maintained are masked.

13. By 20 April 2018, SurfStitch and Cameron must each file and serve:

(a) a list of the KPMG Subpoena Documents over which they maintain a claim of privilege in whole or in part (KPMG Privilege Lists); and

(b) copies of those of the KPMG Subpoena Documents over which they maintain a claim of privilege in part, in which those parts of the documents over which the claim of privilege is maintained are masked (KPMG Redacted Documents).

14. By 23 April 2018, the defendants must produce to the Registry, and give to the plaintiff such of the KPMG Subpoena Documents that are not:

(a) identified in the KPMG Privilege Lists; or

(b) KPMG Redacted Documents.

Privilege applications

15. By 27 April 2018,

(a) the defendants file and serve any affidavit in support of any claim of privilege in relation to the ASIC Subpoena Documents or KPMG Subpoena Documents that:

(i) exhibits to the affidavit the ASIC Redacted Documents and KPMG Redacted Documents; and

(ii) specifies, with respect to each document over which a claim of privilege is maintained, or in the case of the ASIC Redacted Documents and KPMG Redacted Documents those parts of the documents over which a claim of privilege is maintained, the basis or bases of the relevant claim of privilege.

(b) the Persons Affected file and serve any affidavit in support of any:

(i) Access Objection Application;

(ii) claim of privilege in relation to the ASIC Subpoena Documents,

that:

(iii) exhibits to the affidavit the Persons Affected Redacted Documents; and

(iv) specifies, with respect to:

(A) each document over which a claim of privilege is maintained;

(B) in the case of the Persons Affected Redacted Documents, those parts of the documents over which a claim of privilege is maintained; and

(C) each document in the Persons Affected Objection Lists,

the basis or bases of each claim.

16. By 30 April 2018, the plaintiff file and serve a list of:

(a) those documents in the ASIC Privilege Lists, KPMG Privilege Lists, Persons Affected Privilege Lists;

(b) the ASIC Redacted Documents, KPMG Redacted Documents; or

(c) those documents in the Persons Affected Objection Lists,

in relation to which it maintains a challenge to the claim for privilege or objection to access.

Other matters

17. Any:

(a) Access Objection Application filed by the Persons Affected;

(b) claim for privilege maintained by the defendants or Persons Affected over any of the ASIC Subpoena Documents or KPMG Subpoena Documents, and in relation to which the plaintiff maintains a challenge,

be listed before Justice Stevenson in the week commencing 30 April 2018.

18. The parties have liberty to apply on 48 hours' notice.

19. Costs reserved.

2017/00193375-001 / Summons: TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v SURFSTITCH GROUP LIMITED

This matter is listed for Directions on 3 May 2018 9:30 AM before the Supreme Court - Civil at Supreme Court Sydney.

The following hearing dates are vacated:

30 Apr 2018 09:30 AM

Reason: By Consent

Justice J Stevenson

Signed

Date

Form 43 (version 3)
UCPR 36.11

SHORT MINUTES OF ORDER

COURT DETAILS

Court	Supreme Court
Division	Equity
List	Commercial
Registry	Sydney
Case number	2017/00193375

TITLE OF PROCEEDINGS

Plaintiff	TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund
First Defendant	SurfStitch Group Limited (Administrators Appointed) ACN 602 288 004
Second Defendant	Justin Peter Cameron

DATE OF ORDER

Date made or given	6 April 2018
Date entered	

OTHER MATTERS

- A. The Court notes that the Australian Securities and Investments Commission has produced documents to the Court pursuant to a subpoena addressed to it and dated 9 March 2018 (**ASIC Subpoena Documents**).
- B. The Court notes that KPMG has produced documents to the Court pursuant to a subpoena addressed to it and dated 9 March 2018 (**KPMG Subpoena Documents**).
- C. The Court made orders on 29 March 2018 that provided for access to the ASIC Subpoena Documents.

TERMS OF ORDER MADE BY THE COURT

Access to documents

1. Pursuant to s 440D of the *Corporations Act* 2001 (Cth), the plaintiff be granted leave to proceed against the first defendant (**SurfStitch**) for the limited purpose of enabling SurfStitch by its administrators to provide to the plaintiff the documents listed in Schedule A hereto.

2. On or before 27 April 2018 SurfStitch by its administrators provide to the plaintiff the documents listed in Schedule A hereto.
3. The plaintiff's legal representatives be at liberty to disclose the books of the Defendant or copies of them obtained pursuant to Order 2 above to the following persons, provided that those persons have first signed an undertaking in the form set out in Schedule B hereto:
 - (a) International Litigation Partners No. 17 Pte (**ILP**), the litigation funder of the Plaintiff;
 - (b) any other shareholder of SurfStitch who may become a representative party in the proceeding; and
 - (c) any expert witness, expert consultant or service provider (including but not limited to an accountant) engaged in or for the proceedings.
4. The plaintiff pay SurfStitch's reasonable costs of the production of the documents in Schedule A hereto.

Subpoenas

5. Subject to orders 6 to 9 below, the Court grants leave to those of the legal representatives of the parties named in Schedule C hereto who give to the Court an undertaking in writing duly signed in the form set out in Schedule D and Schedule G, to inspect the ASIC Subpoena Documents.
6. Should any of the plaintiff, SurfStitch or the second defendant (**Cameron**) intend to tender any of the documents in Schedule F herein or any part of them or to use them or any part of them in examination or cross-examination of any witness at the trial of this proceeding, and intending to use that material, give written notice to the legal representatives for Lex Pederson no later than 7 days prior to that intended use.

ASIC subpoena

7. By 4:00 pm on 6 April 2018, the Persons Affected (as defined in the orders of the Court made on 29 March 2018 (**29 March Orders**)) must give to SurfStitch such of the ASIC Subpoena Documents set out in Schedule E and Schedule F hereto, and over which the Persons Affected:
 - (a) do not maintain a claim of privilege;
 - (b) maintain a claim of privilege in part; or
 - (c) have not otherwise made an application pursuant to order 6 of the 29 March Orders (**Access Objection Application**),
 for the purpose of SurfStitch making any claim restricting the plaintiff's access to those documents on the grounds of a claim of client legal privilege over any, or any part of those documents.
8. By 13 April 2018, any Person Affected that has filed an Access Objection Application must file and serve:

- (a) a list of the ASIC Subpoena Documents over which they maintain a claim of privilege in whole or in part (**Persons Affected Privilege Lists**);
 - (b) copies of those of the ASIC Subpoena Documents over which they maintain a claim of privilege in part, in which those parts of the documents over which the claim of privilege is maintained are masked (**Persons Affected Redacted Documents**);
 - (c) a list of the ASIC Subpoena Documents that are otherwise subject to an Access Objection Application (**Persons Affected Objection Lists**).
9. Order 10 of the 29 March Orders is vacated.
10. By 16 April 2018, SurfStitch, the second defendant, and the Persons Affected must give to the legal representatives of the plaintiff and file with the registry such of the ASIC Subpoena Documents that are not:
- (a) identified in the ASIC Privilege Lists (as defined in the 29 March Orders), Persons Affected Privilege List or Persons Affected Objection Lists;
 - (b) ASIC Redacted Documents (as defined in the 29 March Orders) or Persons Affected Redacted Documents;

KPMG subpoena

11. By 4:00 pm on 6 April 2018, KPMG give to SurfStitch the KPMG Subpoena Documents, for the purpose of making any claim restricting the plaintiff's access to those documents on the grounds of a claim of privilege over any, or any part of, those documents.
12. By 4:00 pm on 12 April 2018, SurfStitch give to Cameron such of the KPMG Subpoena Documents over which it:
- (a) does not maintain a claim of privilege; and
 - (b) maintains a claim of privilege in part, in which those parts of the documents over which the claim of privilege is maintained are masked.
13. By 20 April 2018, SurfStitch and Cameron must each file and serve:
- (a) a list of the KPMG Subpoena Documents over which they maintain a claim of privilege in whole or in part (**KPMG Privilege Lists**); and
 - (b) copies of those of the KPMG Subpoena Documents over which they maintain a claim of privilege in part, in which those parts of the documents over which the claim of privilege is maintained are masked (**KPMG Redacted Documents**).
14. By 23 April 2018, the defendants must produce to the registry, and give to the plaintiff such of the KPMG Subpoena Documents that are not:

- (a) identified in the KPMG Privilege Lists; or
- (b) KPMG Redacted Documents.

Privilege applications

15. By 27 April 2018,

- (a) the defendants file and serve any affidavit in support of any claim of privilege in relation to the ASIC Subpoena Documents or KPMG Subpoena Documents that:
 - (i) exhibits to the affidavit the ASIC Redacted Documents and KPMG Redacted Documents; and
 - (ii) specifies, with respect to each document over which a claim of privilege is maintained, or in the case of the ASIC Redacted Documents and KPMG Redacted Documents those parts of the documents over which a claim of privilege is maintained, the basis or bases of the relevant claim of privilege.
- (b) the Persons Affected file and serve any affidavit in support of any:
 - (i) Access Objection Application;
 - (ii) claim of privilege in relation to the ASIC Subpoena Documents, that:
 - (iii) exhibits to the affidavit the Persons Affected Redacted Documents; and
 - (iv) specifies, with respect to:
 - (A) each document over which a claim of privilege is maintained;
 - (B) in the case of the Persons Affected Redacted Documents, those parts of the documents over which a claim of privilege is maintained; and
 - (C) each document in the Persons Affected Objection Lists, the basis or bases of each claim.

16. By 30 April 2018, the plaintiff file and serve a list of:

- (a) those documents in the ASIC Privilege Lists, KPMG Privilege Lists, Persons Affected Privilege Lists;
 - (b) the ASIC Redacted Documents, KPMG Redacted Documents; or
 - (c) those documents in the Persons Affected Objection Lists,
- in relation to which it maintains a challenge to the claim for privilege or objection to access.

Other matters

17. Any:

- (a) Access Objection Application filed by the Persons Affected;
- (b) claim for privilege maintained by the defendants or Persons Affected over any of the ASIC Subpoena Documents or KPMG Subpoena Documents, and in relation to which the plaintiff maintains a challenge,

be listed before Justice Stevenson in the week commencing 30 April 2018.

18. The parties have liberty to apply on 48 hours' notice.

19. Costs reserved.



Gadens
Solicitors for the plaintiff

.....

Arnold Bloch Leibler
Solicitors for the second defendant

.....

King & Wood Mallesons
Solicitors for the first defendant

SEAL AND SIGNATURE

- Court seal
- Signature
- Capacity
- Date

NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

Other matters

17. Any:

- (a) Access Objection Application filed by the Persons Affected;
- (b) claim for privilege maintained by the defendants or Persons Affected over any of the ASIC Subpoena Documents or KPMG Subpoena Documents, and in relation to which the plaintiff maintains a challenge,

be listed before Justice Stevenson in the week commencing 30 April 2018.

18. The parties have liberty to apply on 48 hours' notice.

19. Costs reserved.

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Gadens
Solicitors for the plaintiff

..... *Arnold Bloch Leibler*

Arnold Bloch Leibler
Solicitors for the second defendant

.....

King & Wood Mallesons
Solicitors for the first defendant

SEAL AND SIGNATURE

Court seal
Signature
Capacity
Date

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- 17. Any:
 - (a) Access Objection Application filed by the Persons Affected;
 - (b) claim for privilege maintained by the defendants or Persons Affected over any of the ASIC Subpoena Documents or KPMG Subpoena Documents, and in relation to which the plaintiff maintains a challenge,

be listed before Justice Stevenson in the week commencing 30 April 2018.
- 18. The parties have liberty to apply on 48 hours' notice.
- 19. Costs reserved.

.....
 Gadens
 Solicitors for the plaintiff

MB. DA SAVILLE

.....
 Arnold Bloch Leibler
 Solicitors for the second defendant

King & Wood Mallesons
 Solicitor for the first defendant

SEAL AND SIGNATURE

Court seal
 Signature
 Capacity
 Date

NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

[Include the following section if the document is to be provided to the Registrar for sealing under UCPR 36.12.]

PERSON PROVIDING DOCUMENT FOR SEALING UNDER UCPR 36.12

Name	TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund
Filed in relation to	plaintiff's claim
Legal representative	Gadens
Legal representative reference	GYM:21605811
Contact name and telephone	Glenn McGowan QC (03) 9252 2587
Contact email	<u>Glenn.McGowan@Gadens.com</u>

SCHEDULE A

In this schedule:

Coastalcoms means Coastalcoms Pty Ltd, an indirect subsidiary of TCI (as defined below).

Coastalwatch means Coastalwatch Pty Ltd, a direct subsidiary of Crown Financial Pty Ltd.

Document has the meaning ascribed to that term by the *Evidence Act 1995* (NSW).

Further TCI Arrangements means the arrangements constituted by:

- (a) a deed dated 16 February 2016 and entered into between TCI and SurfStitch (as defined below);
- (b) five deeds dated 16 February 2016 and entered into by Coastalwatch, on the one hand, and, variously, each of the SurfStitch Copyright Licence Counterparties (as defined below) on the other;
- (c) an agreement dated 16 February 2016 titled “Software Licensing Agreement” entered into by Coastalcoms and SHPL (as defined below);
- (d) an agreement dated 16 February 2016 titled “Store Hosting Agreement” entered into by Coastalwatch and SHPL.

FY2016 means the financial year of SurfStitch ending on 30 June 2016.

Garage means Garage Entertainment Australia Pty Ltd.

Garage Licence Agreement means the agreement or agreements entered into in or about September 2015 between Garage on the one hand, and RYAU and RYUS (as defined below) on the other, by which Garage agreed to pay RYAU and RYUS an aggregate of approximately AUD 9,100,000.

Garage Licence Fee means the approximately AUD 9,100,000 that Garage agreed to pay to RYAU and RYUS under the Garage Licence Agreement.

Metcentral means Metcentral Limited, a wholly owned subsidiary of Magicseaweed Limited (**Magicseaweed**).

Project Florence Due Diligence Report means the report titled “*Project Florence – Financial reporting and accounting due diligence*” prepared by SurfStitch’s group financial officer for the board of directors of SurfStitch attached to an email from Karen Birner to members of the board of SurfStitch dated 8 November 2015.

RYAU means Rollinyouth Australia Pty Ltd, until about 8 September 2017 a subsidiary of SurfStitch.

RYUS means Rollinyouth US Inc., a wholly owned subsidiary of RYAU.

SHI means SHI Holdings Pty Ltd.

SHPL means SurfStitch Holdings Pty Ltd, a direct subsidiary of SurfStitch.

SHPL Loan Agreement means a loan given, or proposed to be given, by SHPL to Garage to pay the Garage Licence Fee.

SurfStitch means SurfStitch Group Limited.

TCI means Three Crowns Investments Pty Ltd.

TCI Arrangements means the arrangement constituted by:

- (a) a licence dated 22 December 2015 titled “App Branding Licence” and entered into by SurfStitch and TCI;
- (b) five copyright licences, each dated 22 December 2015, and entered into between Coastalwatch on the one hand, and variously:
 - (i) Metcentral;
 - (ii) RYUS;
 - (iii) SurfStitch USA Inc.
 - (iv) Garage; and
 - (v) SurfStitch Pty Ltd, a subsidiary of SurfStitch;
 on the other hand (together **SurfStitch Copyright Licence Counterparties**).
- (c) a document dated 21 December titled “Heads of Agreement: IP licences to be granted to SurfStitch”, entered into by TCI and Coastalwatch on the one hand, and the SurfStitch Copyright Licence Counterparties on the other;
- (d) a document dated 21 December 2015 titled “Heads of Agreement” entered into by SurfStitch and TCI.

Documents

Management Accounts	
1.	Unredacted versions of the documents with the following Document IDs and discovered by SurfStitch pursuant to orders made on 4 August 2017: <ul style="list-style-type: none"> (i) SGL.999.005.0001; and (ii) SGL.999.005.0273.
Financial Forecasts	
2.	All documents used or relied on in the preparation of the financial forecast for SurfStitch for FY2016 (2016 Budget) attached to the email from Karen Birner (Birner) to various board members of SurfStitch, and Julie Cleary and Gerald Barry of KPMG, dated 24

	August 2015.
3.	<p>The forecasts produced by the subsidiaries of or business units operated by SurfStitch in FY2016 in accordance with the month-end accounting process referred to in the emails from Birner to various officers and employees of SurfStitch dated:</p> <p>(i) 19 June 2015 at 11:09 pm; and/or</p> <p>(ii) 11 September 2015 at 10:04 am</p> <p>(together Monthly Forecasts)</p>
4.	All documents that refer to, describe, discuss or analyse the 2016 Budget or Monthly Forecasts.
5.	<p>Without limiting number 3 above, all reports, memoranda, analysis or correspondence that refer to, describe, discuss or analyse the effect on revenue earned by SurfStitch in FY2016 of synergies from the acquisition by SurfStitch (or its relevant subsidiaries) of the following companies:</p> <p>(i) RYAU;</p> <p>(ii) Garage;</p> <p>(iii) Magicseaweed;</p> <p>(iv) SHI.</p>
6.	All reports, memoranda, analysis or correspondence that refer to, describe, discuss or analyse decisions by SurfStitch, or any of its subsidiaries, to engage in price discounting of products that it, or they, sold in FY2016
TCI Arrangements and Further TCI Arrangements	
7.	All documents that refer to, describe, discuss or analyse the application, or proposed application, by SurfStitch or any of its subsidiaries of revenue recognition criteria (as described in any relevant accounting standards published by the Australian Accounting Standards Board) (Accounting Standards) to the TCI Arrangements and/or Further TCI Arrangements, or revenue associated with those arrangements.
Garage Licence Agreement	
8.	Documents (including without limitation emails, letters, file notes or any other record of communications between any officers of SurfStitch or of one more of its subsidiaries) that refer to, describe, discuss or analyse the Garage Licence Fee referred to in the Project Florence Due Diligence report, including but not limited to the application or proposed application of revenue recognition criteria required by Accounting Standards or other accounting treatment of the said fee.

Accounting documents	
9.	All documents that refer to, describe, discuss or analyse impairment testing of goodwill undertaken by SurfStitch in FY2016
Meeting minutes	
10.	To the extent that they have not been produced, all minutes of meetings of the directors of SurfStitch held in the months January to August 2016 inclusive.
11.	To the extent that they have not been produced, all documents provided to directors of SurfStitch for consideration at any meeting of the directors of SurfStitch held in FY2016.
12.	To the extent that they have not been produced, all minutes of meetings of the Audit, Compliance and Risk Committee of the board of SurfStitch held in FY2016.

SCHEDULE B

CONFIDENTIALITY UNDERTAKING – NOTICE OF MOTION DOCUMENTS

In this undertaking:

Court means the Supreme Court of New South Wales.

Plaintiff means TW McConnell Pty Limited ACN 000 217 890 as trustee for the McConnell Superation Fund.

Proceedings means New South Wales Supreme Court proceedings with plaintiff TW McConnell and defendants SurfStitch Group Limited and Justin Cameron with proceeding number 2017/193375.

SurfStitch means the first defendant, SurfStitch Group Limited (Administrators Appointed) (ACN 602 288 004)

1. I, [*name*], of [*address*], undertake to SurfStitch and the Court that, subject to Court order or unless required by law, I will not without the prior written consent of SurfStitch disclose, directly or indirectly documents, identified by the Plaintiff's solicitors or counsel as confidential (being documents identified by SurfStitch as confidential and notified as such to the Plaintiff's solicitors) (**Confidential Documents**) or their contents or substance (**Confidential Information**) to any person or body other than:
 - (a) solicitors and counsel acting for the Plaintiff in the Proceedings; or
 - (b) an officer of this Court or as otherwise directed by an order of this Court.
2. I undertake to clearly mark any annexure to any report that I produce that contains Confidential Documents or Confidential Information as 'confidential' and to only disclose those annexures to persons referred to in 1(a) and (b).
3. I further undertake to SurfStitch that, within 28 days of the conclusion of the Proceedings (including any appeal), I will destroy all copies of the Confidential Documents and upon request from King & Wood Mallesons provide written confirmation to King & Wood Mallesons of the endeavours undertaken by me to destroy the Confidential Documents.
4. I acknowledge that my obligations under this Confidentiality Undertaking are in addition to any other obligation, express or implied, that I may have to SurfStitch or the Court.
5. I agree that I will immediately inform SurfStitch if I disclose, without authorisation consistent with this undertaking, any Confidential Documents or Confidential Information.
6. The above undertakings and agreement are subject to any Court order and any disclosure required by law.
7. Nothing in this Confidentiality Undertaking prevents the use of a Confidential Document or Confidential Information for the purpose of the Proceeding, provided that it is used in accordance with this Confidentiality Undertaking.

SCHEDULE C

Persons for the plaintiff who will need to see the documents in Schedule A

1. Lachlan Armstrong QC
2. Tim Chalke
3. Glenn McGowan QC
4. Patrick Walsh
5. Phillip O'Brien
6. Matthew Lunney
7. Rebecca Di Rago

Person for the first defendant who will need to see the documents in Schedule A

1. Michael Izzo
2. Moira Saville
3. Tim Klineberg
4. Alison Hammond
5. Carone Huang

SCHEDULE D**CONFIDENTIALITY UNDERTAKING – SUBPOENA DOCUMENTS**

In this undertaking:

ASIC Subpoena Documents means the documents produced by the Australian Securities Commission to the Court pursuant to a subpoena addressed to it and dated 9 March 2018.

Court means the Supreme Court of New South Wales.

Plaintiff means TW McConnell Pty Limited ACN 000 217 890 as trustee for the McConnell Superannuation Fund.

Proceedings means New South Wales Supreme Court proceedings with plaintiff TW McConnell and defendants SurfStitch Group Limited and Justin Cameron with proceeding number 2017/193375.

Schedule A Documents such of the ASIC Subpoena Documents as appear in Schedule A of the orders made on 23 March 2018.

SurfStitch means the first defendant, SurfStitch Group Limited (Administrators Appointed) (ACN 602 288 004)

1. I, [*name*], of [*address*], undertake to Justin Peter Cameron (**Cameron**) and the Court that, subject to Court order or unless required by law, I will not without the prior written consent of Cameron:
 - (a) make any use of the information in the Schedule A Documents for any purpose other than for the purposes of these proceedings;
 - (b) disclose, directly or indirectly the Schedule A Documents or their contents or substance (**Schedule A Information**) to any person or body other than:
 - (i) those solicitors and counsel acting for the Plaintiff or SurfStitch as are set out in Schedule B to the orders made in this proceeding on 23 March 2018; or
 - (ii) solicitors and counsel for the second defendant; or
 - (iii) an officer of this Court or as otherwise directed by an order of this Court.
2. I further undertake that, within 28 days of the conclusion of the Proceedings (including any appeal), I will destroy all copies of the Schedule A Documents and upon request from Arnold Bloch Leibler provide written confirmation to Arnold Bloch Leibler of the endeavours undertaken by me to destroy the Schedule A Documents.
3. I acknowledge that my obligations under this confidentiality undertaking are in addition to any other obligation, express or implied, that I may have to the Court.

4. The above undertakings and agreement are subject to any Court order and any disclosure required by law.
5. Nothing in this confidentiality undertaking prevents the use of a Schedule A Document or Schedule A Information for the purpose of the Proceedings, provided that it is used in accordance with this Confidentiality Undertaking.

Dated:

Signed:

SCHEDULE E

Documents of the TCI Parties and contained on the USB drive marked "USB 4"

Doc ID	Title	Main Date
TCI.001.001.7776	EXECUTED Project Snowy - Letter regarding condition precedent 18.04.2016.pdf	18/04/2016
TCI.001.002.0085	ASX Announcement - SurfStitch Group Company Update.pdf	10/03/2016
TCI.001.002.2447	Fwd: Project Snowy: licence agreements for execution [CU-Legal.FID1914281]	21/12/2015
TCI.001.002.3550	RE: Project Snowy: revised agreements and deed [CU-Legal.FID1914281]	10/02/2016
TCI.001.002.4186	FW: Project Snowy: documents [CU-Legal.FID1914281]	13/02/2016
TCI.001.002.4321	RE: Project Snowy: documents [CU-Legal.FID1914281]	13/02/2016
TCI.001.002.4323	Execution version Project Snowy - Variation deed.pdf	13/02/2016
TCI.001.002.4333	Execution version Project Snowy - SurfStitch Store Hosting Agreement.pdf	13/02/2016
TCI.001.002.4350	Execution version Project Snowy - Software licensing agreement.pdf	13/02/2016
TCI.001.002.6511	EXECUTED Project Snowy - letter regarding condition precedent 18.04.2016.PDF	18/04/2016
TCI.001.002.6542	redated letter.pdf	18/04/2016
TCI.001.004.1293	Coastalwatch letter re surfstitch attached	16/02/2016
TCI.001.004.1294	coastalwatch letter for surfstitch auditors.pdf	15/02/2016
TCI.001.004.3866	Head scratching	18/03/2016
TCI.001.004.3867	Project Snowy - letter regarding condition precedent.docx	18/03/2016
TCI.001.004.4153	Re: Contracts as discussed	2/02/2016
TCI.001.004.4186	executed HOA TCI surfstitch content licences 211215.pdf	21/12/2015
TCI.001.004.4194	Surfstich Deal	28/01/2016
TCI.001.004.4389	Discussion	15/12/2015
TCI.001.004.4491	Re: Project Snowy revised update	11/12/2015
TCI.001.004.4573	Re: Confidential Commercial in Confidence	7/12/2015

TCI.001.004.4611	Re: Confidential Commercial in Confidence	4/12/2015
TCI.001.004.4622	Commercial in Confidence: Suggested way forward	4/12/2015
TCI.001.004.4702	Re: Shared Inventory	2/12/2015
TCI.001.004.4712	Re: Shared Inventory	30/11/2015
TCI.001.004.4716	Re: Shared Inventory	30/11/2015
TCI.001.004.4722	Shared Inventory	29/11/2015
TCI.001.004.4794	Fwd: Thanks for lunch	17/11/2015
TCI.001.004.4837	RE: CW	5/11/2015
TCI.001.001.7776	EXECUTED Project Snowy - Letter regarding condition precedent 18.04.2016.pdf	18/04/2016
n/a	Transcript of Joakim Sundell	19/05/2017
n/a	Transcript of David Wooldridge	18/07/2017

SCHEDULE F**Documents of Mr Lex Pedersen and contained on the USB marked "USB 5"**

Doc ID	Title	Main Date
n/a	Transcript of the Examination of Mr Lex Pedersen	2/03/2017
n/a	Transcript of the Examination of Mr Lex Pedersen	13/12/2017

SCHEDULE G
CONFIDENTIALITY UNDERTAKING

In this undertaking:

ASIC Subpoena Documents means the documents produced by the Australian Securities Commission to the Court pursuant to a subpoena addressed to it and dated 9 March 2018.

Court means the Supreme Court of New South Wales.

Plaintiff means TW McConnell Pty Limited ACN 000 217 890 as trustee for the McConnell Superannuation Fund.

Proceedings means New South Wales Supreme Court proceedings with plaintiff TW McConnell and defendants SurfStitch Group Limited and Justin Cameron with proceeding number 2017/193375.

Schedule F Documents such of the ASIC Subpoena Documents as appear in Schedule F of the orders made on 29 March 2018.

SurfStitch means the first defendant, SurfStitch Group Limited (Administrators Appointed) (ACN 602 288 004)

1. I, [*name*], of [*address*], undertake to Lex Pedersen (**Pedersen**) and the Court that, subject to Court order or unless required by law, I will not without the prior written consent of Pedersen:
 - (a) make any use of the information in the Schedule F Documents for any purpose other than for the purposes of these proceedings;
 - (b) disclose, directly or indirectly the Schedule F Documents or their contents or substance (**Schedule F Information**) to any person or body other than:
 - (i) those solicitors and counsel acting for the Plaintiff or SurfStitch as are set out in Schedule B to the orders made in this proceeding on 23 March 2018; or
 - (ii) solicitors and counsel for the second defendant; or
 - (iii) an officer of this Court or as otherwise directed by an order of this Court.
2. I further undertake that, within 28 days of the conclusion of the Proceedings (including any appeal), I will destroy all copies of the Schedule F Documents and upon request from Holding Redlich provide written confirmation to Holding Redlich of the endeavours undertaken by me to destroy the Schedule F Documents.
3. I acknowledge that my obligations under this confidentiality undertaking are in addition to any other obligation, express or implied, that I may have to the Court.
4. The above undertakings and agreement are subject to any Court order and any disclosure required by law.

5. Nothing in this confidentiality undertaking prevents the use of a Schedule F Document or Schedule F Information for the purpose of the Proceedings, provided that it is used in accordance with this Confidentiality Undertaking.

Dated:

Signed: