

## ANNEXURE D

SUPREME COURT OF NEW SOUTH WALES PROCEEDINGS 2017/193375 & 2017/347082

### SurfStitch Shareholders' Class Actions

### NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTIONS

### NOTICE OF RIGHT TO OPT OUT

**IMPORTANT: This notice contains important information that may affect your legal rights. You should read this notice carefully. If there is anything in it that you do not understand, you should seek legal advice immediately.**

**PLEASE NOTE - THIS NOTICE MAY REQUIRE YOU TO TAKE URGENT ACTION TO PRESERVE YOUR RIGHTS. YOU SHOULD NOT DELAY CONSIDERING THE TERMS OF THIS NOTICE**

#### A. About this Notice

1. The Supreme Court of New South Wales (**Court**) has ordered this Notice be given to persons who held an interest in shares in SurfStitch Group Limited (Subject to Deed of Company Arrangement) ACN 602 288 004 (ASX code: SRF) (**SurfStitch**) on any of 25 February 2016, 3 May 2016, or 9 June 2016.
2. This notice relates to two class actions brought against SurfStitch, being proceedings numbered:
  - (a) 2017/193375 (**McConnell Proceeding**); and
  - (b) 2017/347082 (**Nakali Proceeding**),(together, **SurfStitch Class Actions**).
3. You have been identified as a potential group member in the SurfStitch Class Actions.
4. This notice provides information regarding:
  - (a) a proposed settlement of the SurfStitch Class Actions (**Class Actions Settlement**);
  - (b) the compensation that is potentially available to group members in the SurfStitch Class Actions;
  - (c) the procedures by which group members might claim compensation either in the Class Action settlement or under the Surfstitch Deed of Company Arrangement mentioned above (**DoCA**).

#### B. Summary of proposed settlement

5. You are receiving this notice because you are recorded as having been a shareholder in Surfstitch on the dates set out above. As such you may be a "Group Member" in the Class Actions. You may also be entitled to submit a proof to be admitted as an "Admitted Subordinated Creditor" under the Surfstitch DoCA.
6. Under the DoCA there is a sum of cash plus certain "Convertible Notes" available to Admitted Subordinated Creditors. Separately, as a result of the Class Actions Settlement there is a sum of cash available to persons who establish in accordance with the "settlement distribution

scheme" (**SDS**) that they suffered loss and who choose to become Continuing Group Members or CGMs.

7. You can only make a claim under the Class Actions Settlement if you establish in accordance with the SDS that you suffered loss and choose to become a Continuing Group Member in the Class Actions. The process for this is described below. If you make such a claim then you will also be giving a direction to the DoCA Administrator to pay into the Class Action Settlement fund (called the CAS Pool) any cash or Convertible Notes that you might become entitled to if you claim under the DoCA. The CAS Pool will also hold the proceeds of the class action settlement of \$6.5 million. A portion of any cash or Notes in the CAS Pool will be used to pay the legal costs and funders' commission incurred in running the Class Actions. The Supreme Court will decide what portion is reasonable to be deducted from the CAS Pool to pay those costs and commission.
8. If you cease to be a Group Member in the SurfStitch Class Actions (by "**opting out**", as described below) you may still be able to submit a proof to be admitted as an Admitted Subordinate Creditor under the Surfstitch DoCA. The Administrator of the DoCA will decide whether you are admitted
9. Accordingly, each Group Member will need to decide whether you want to make a claim for compensation under the Class Action Settlements, or under the DoCA, or both. You have no obligation to make either or both claims. You can make both, either, or none.

*Likely compensation*

10. The compensation fund available under the Class Action Settlement and the cash and Notes available under the DoCA are finite. They will be shared between the persons eligible to claim on each "pool", in proportion to the value of each claimant's claims. The amount of compensation due to any claimant cannot be calculated until the claims made against each pool are known.
11. The table below summarises at a high level the options available to current Group Members, and identifies the approximate maximum potential sum that might be available for compensation as a result of the combined operation of the Class Action Settlement and the DoCA. In deciding whether to "opt out" of the Class Action Settlement (whether or not you separately submit a proof under the DoCA) it is important to keep in mind two things:
  - (a) if you signed a funding agreement with one of the funders (that is, you are a **funded group member**) then even if you opt out of the Class Action Settlement, you may be required under the funding agreement to pay to your funder a portion of any recoveries under the DoCA on account of costs and commission;
  - (b) If you did not sign a funding agreement with one of the funders (that is, you are an **unfunded group member**) then if you opt out of the Class Action Settlement but recover compensation under the DoCA you will not be required to pay anything to a funder or a plaintiff on account of costs or commission.
12. It is important to understand that the plaintiffs are seeking orders that whatever cash and Convertible Notes are in (or paid into) the CAS Pool should be used first to reimburse the legal costs and pay the funders' commission. The Court will determine the value of costs and commission that will be deducted from the CAS Pool in an amount that it considers reasonable. If the Court determines that the reasonable amount for costs and commission is:
  - (a) an amount materially less than \$6.5m then the unfunded group members are more likely to be better off in registering to participate in the Class Actions Settlement (rather than opting out of the Class Actions and only proving in the DoCA). As noted above, whether the unfunded group members will be better off, and to what extent, cannot be fully determined until the registration and proof processes are complete because it

depends on a variety of factors, including the number of people who decide to prove under the DoCA, the number of people who remain in the class action, and the amount of costs and commission approved by the Court;

- (b) the amount sought by the plaintiffs (being, up to \$6 million in costs and an up to 30% commission), the costs and commission will be greater than the Chubb cash payment of \$6.5m which will be paid into the CAS Pool. In that scenario, unfunded group members would be financially better off to opt out of the Class Actions Settlement and prove in the DoCA (assuming that the Deed Administrators accept their proof).
13. In considering these two scenarios, it is important to bear in mind that:
- (a) the Court will not approve the legal costs or funders' commission unless it is satisfied that they are fair and reasonable and may approve them in a lower amount than what is sought by the plaintiffs and funders; and
- (b) the Court will only approve the settlement of the Surfstitch Class Actions if satisfied that is fair and reasonable from the perspective of group members who elect to register and thereby stay in the class actions.
14. If you are an unfunded group member you may wish to get independent advice, or examine the Class Actions Settlement agreement and the DoCA to make your own calculation.
15. The table below summarises the plaintiffs' best estimate of the available funds, your options, and identifies the consequences of each option for you:

<b>Summary of DoCA funds</b>		
<b>Item</b>	<b>DoCA only</b>	<b>Estimated range</b>
A	- Cash (estimated available)	\$2.7 - \$3m
	- Convertible Notes* (current projected value)	\$6m - \$19.9m
<b>Summary of Class Action Settlement</b>		
<b>Item</b>	<b>Pool of funds</b>	<b>Estimated range</b>
B	CAS Pool - Cash from Chubb Payment	\$6.5m
	- Any cash from DoCA allocated to CGMs	\$unknown** (potential maximum \$2.7m to \$3m)
	- Any Convertible Notes from DoCA allocated to CGMs	\$unknown** (potential maximum \$6m - \$19.9m)
	Less (i) Funders' commission (subject to Court approval)	(\$unknown)^ [20-30% commission sought]

	<i>(ii) Plaintiffs' costs (subject to Court approval)</i>	<i>(\$unknown)^ [up to \$6m sought]</i>
	<i>(iii) SDS Administrator's fees &amp; costs</i>	<i>\$(unknown) [estimated at \$200,000]</i>
<b>Group Members' Options</b>		
	<b>Submit proof under DoCA</b>	<b>Decline to submit proof under DoCA</b>
<b>Become a Continuing Group Member (CGM)</b>	<i>Can claim on CAS Pool<sup>^^</sup> Administrator will consider claim under DoCA</i>	<i>Can claim on CAS Pool</i>
<b>Opt out</b>	<i>Administrator will consider claim under DoCA</i>	<i>No claims survive</i>
<b>Do nothing</b>	<i>Administrator will consider claim under DoCA</i>	<i>No claims survive</i>

\* There is an additional pool of Convertible Notes, with a potential value of \$1.5m to \$5m, available under the DoCA to persons who were SurfStitch shareholders at 24 August 2017. Some of those persons are likely to be Group Members. The figures above do not include any part of these additional funds and may be conservative to that extent.

\*\* The value of the Cash and Convertible Notes that will flow to the CAS Pool will depend on the number of group members who choose to register to the Class Actions Settlement and become CGMs, and the total value of their claims.

<sup>^</sup> Subject to approval by the Court.

<sup>^^</sup> Subject to establishing loss in accordance with the SDS

17. The following sections of this Notice explain the DoCA, the Class Actions Settlement, and the rights of Group Members. It is important that you read this Notice carefully.

### Background

18. The SurfStitch Class Actions are funded:
- (a) in the case of the McConnell Proceeding – by International Litigation Partners No. 17 Pte Ltd (**ILP**); and
  - (b) in the case of the Nakali Proceeding – by Vannin Capital Operations Ltd (**Vannin**), (together the **Funders**).
19. On 24 August 2017, following the filing of the SurfStitch Class Actions, the directors of SurfStitch and its subsidiary SurfStitch Holdings Pty Ltd (**SHPL**) resolved to appoint administrators to those companies.
20. On 18 April 2018, two deeds of company arrangement were signed:
- (a) the first relates to Surfstitch (**SGL DoCA**) and is with a New Zealand company called Ezibuy Holdings Limited (**Ezibuy**). The SGL DoCA records the terms on which the "Deed Fund" (as defined in the SGL DoCA) is distributed to those group members with

admitted claims against SurfStitch. More details about the SGL DoCA are set out in Part D below;

- (b) the second relates to SHPL (**SHPL DoCA**) and is with Ezibuy, Alceon Retail Bidco Pty Ltd and Alceon Retail Holdco Pty Ltd. The SHPL DOCA provides, among other things, for Convertible Notes (as defined in the SHPL DoCA) to be issued to the SGL Admitted Subordinate Claimants and the SGL Shareholders (as those terms are defined in the SHPL DOCA),

(together the **DoCAs**).

21. It is a term of the SGL DoCA that the Court must approve the settlement of the SurfStitch Class Actions against SurfStitch on terms consistent with the SGL DoCA (**DoCA Settlement**).
22. In August 2018, the DoCA Administrators of SurfStitch sent you a notice (**First Notice**) about an application by the plaintiffs in the SurfStitch Class Actions for settlement approval of the proceeding (**First Settlement Approval Application**). You can access a copy of that notice by visiting <http://www.gadenssurfstitchclassaction.com.au> or by contacting the solicitors for the plaintiff in the McConnell Proceeding using the details in Part I below. The First Notice includes a description of the claims made by the plaintiffs in the McConnell Proceeding and Nakali Proceeding.
23. In March 2019, while the First Settlement Approval Application was pending, the Court (at the plaintiffs' application) ordered that Chubb Insurance Australia Limited (**Chubb**) be joined to the SurfStitch Class Actions as a defendant. At all relevant times, SurfStitch held a policy of insurance with Chubb that the plaintiffs say responds to the claims made in the SurfStitch Class Actions against SurfStitch and Justin Peter Cameron (**Cameron**), the former CEO of SurfStitch.
24. Following mediation in June 2019 and September 2019, the parties to the SurfStitch Class Actions, the Funders and DoCA Administrators of the SGL DoCA and SHPL DoCA (together the **DoCA Administrators**) agreed terms for the settlement of the claims against SurfStitch, Cameron and Chubb (**Class Action Settlement**). This settlement is recorded in the settlement agreement dated 24 September 2019 (**Settlement Agreement**) and is subject to approval by the Court.

## **B. Why are you receiving this notice now?**

25. The purpose of this Notice is to inform you that:
  - (a) on **16 December 2019**, the Court will be asked to approve the DoCA Settlement and Class Action Settlement. If approved, the settlements will affect the legal rights of group members;
  - (b) you may have a right to participate in the DoCA Settlement and Class Action Settlement;
  - (c) you have a right to object, or make submissions in relation, to the Class Action Settlement;
  - (d) you have the right to opt out of the SurfStitch Class Actions;
  - (e) if you opt out of the SurfStitch Class Actions, you will not be entitled to participate in the Class Action Settlement, but your rights (if any) under the SGL DoCA and the SHPL DoCA will **not be affected**; and
  - (f) in order to participate in the Class Action Settlement, you must register to do so by following the steps in Part H below.

**THE DEADLINE FOR DECIDING WHETHER TO PARTICIPATE IN OR OBJECT TO THE CLASS ACTION SETTLEMENT IS 4PM AEDT ON 11 DECEMBER 2019**

**C. DoCA Settlement and Class Action Settlement – further detail**

*Key terms of the DoCAs*

26. A summary of the relevant terms of the DoCAs appears in Part C of the First Notice. You can get copies of the DoCAs by contacting the solicitors for the plaintiffs using the details in Part H below.
27. Under the SGL DoCA, Admitted Subordinated Claimants (as defined in the SGL DoCA, and who can be expected to be largely if not wholly comprised of group members) will be entitled, in accordance with the terms of the SGL DoCA (and subject to payment of priority claims, and the SurfStitch DoCA Administrators' remuneration and expenses), to a *pro rata* share of an amount of cash (likely to be between \$2.7 million to \$3 million) (**Cash Distribution**).
28. Under the SHPL DoCA, 15 million convertible notes (each with a face value of \$1) (**Convertible Notes**) will be distributed by the SHPL DoCA Administrators on a *pari passu* basis as follows:
  - (a) 80% of the Convertible Notes to the SGL Admitted Subordinate Claimants (as defined in the SHPL DoCA); and
  - (b) 20% of the Convertible Notes to the SGL Shareholders (as defined in the SHPL DoCA).
29. The Cash Distribution is an estimate of the amount likely to be available for payment to Admitted Subordinated Claimants under the SGL DoCA, after the Deed Administrators have made all other payments that are required to be made in priority to those claims (eg, payments of the Deed Administrators' costs and remuneration).
30. To make a claim on the cash and convertible notes available in the SGL DoCA, it will be necessary for group members to lodge a proof with the DoCA Administrators. If the Court approves the proposed settlement, and you are a group member in the SurfStitch Class Actions, the DoCA Administrators will contact you to tell you how to lodge a proof of debt. There is nothing in the terms of the DoCAs which compels the DoCA Administrators to accept a proof of debt submitted by a group member. The DoCA Administrators have not, to date, formally admitted the claims of the group members under the DoCAs.
31. Court approval of the Class Action Settlement is required for the SGL DoCA to be effectuated. If the Court does not approve the Class Action Settlement, the SGL DoCA may be terminated by the Court and SurfStitch may be placed into liquidation.
32. If the SGL DoCA terminates, group members will still be able to prove as creditors in any liquidation of SurfStitch and, if admitted by the liquidators, will be entitled to share in the distribution of the assets of SurfStitch available to creditors in accordance with the *Corporations Act 2001* (Cth).
33. Claims admitted by the SurfStitch liquidators in any liquidation of SurfStitch will also be entitled to receive Convertible Notes under the SHPL DoCA – performance and effectuation of the SHPL DOCA is **not** conditional on the Class Action Settlement.
34. Group members who receive a distribution in any liquidation process, and who have not signed a funding agreement with one or other of the Funders, will **not** be liable for any legal or funding costs associated with the SurfStitch Class Actions.

*Class Action Settlement*

35. The terms of the proposed Class Action Settlement (other than the proposed settlement sum) are confidential between the parties to the Settlement Agreement, and shall remain confidential unless the Court otherwise orders or as required by law.
36. Under the Class Action Settlement, Chubb has agreed to pay **\$6.5 million** (inclusive of interest, taxes and legal costs) to settle the claims against SurfStitch, Cameron, and Chubb. That money is **in addition** to the Cash Distribution and Convertible Notes to which group members **may** be entitled under the terms of DoCAs.
37. Group members may be entitled to participate in both the:
- (a) Class Action Settlement (being, the \$6.5 million that Chubb has agreed to pay); and
  - (b) the Cash Distribution and Convertible Notes in accordance with the terms of the DoCAs.

**D. Application for Court approval**

38. On **16 December 2019**, the plaintiffs will ask the Court to approve the DoCA Settlement and Class Action Settlement.
39. To be entitled to participate in the Class Action Settlement, group members must **register** with the solicitors for the plaintiffs by **11 DECEMBER 2019 (Continuing Group Members)**. Details of how to register are in Part H below.
40. The registration form to participate in the Class Action Settlement also operates as a direction to the DoCA Administrators to pay any Cash Distribution and transfer Convertible Notes to which a group members become entitled pursuant to the DoCAs:
- (a) in the case of any Cash Distribution – to the administrator of the fund established pursuant to the Class Action Settlement (**SDS Administrator**), or as he directs; and
  - (b) in the case of the Convertible Notes – to the SDS Administrator, or as he directs.
41. As part of their application for approval of the Class Action Settlement, the plaintiffs will seek approval of a scheme (**Settlement Distribution Scheme** or **SDS**) for the distribution of the proceeds of the settlement of the SurfStitch Class Actions (being the \$6.5 million from Chubb), together with any Cash Distribution and Convertible Notes provided to the SDS Administrator by the DoCA Administrators in accordance with the Court's orders and the Settlement Agreement (together the **CAS Pool**). A copy of the SDS will be made available on Gadens' website on <http://www.gadenssurfstitchclassaction.com.au/> on or before 22 November 2019.
42. If the Court approves the DoCA Settlement and Class Action Settlement, then:
- (a) the DoCA Administrators of the SGL DoCA will be able (in due course) to effectuate the SGL DoCA, pursuant to which all group members will be taken to have released SurfStitch from all Claims (as defined in the SGL DoCA) which they have or claim to have against SurfStitch; and
  - (b) pursuant to the Class Action Settlement, those group members who do not opt out will be taken to have released SurfStitch, Cameron and Chubb from all liability in respect of any claim or liability of any kind arising out of the subject matter of the SurfStitch Class Actions, or the negotiations for, vote in relation to, or entry into the DoCAs.

Note that the Settlement Agreement preserves the rights of those group members who do not opt out of the SurfStitch Class Actions to commence a proceeding against the former auditors of SurfStitch or any other person who is not a party to the Settlement Agreement, whether

arising out of the subject matter of the SurfStitch Class Actions, the DoCAs, or in relation to the affairs of SGL or SHLP generally. Group members who opt out also have this right.

**E. Are you a group member?**

43. You are a **group member** in the SurfStitch Class Actions if you meet the below definitions for either or both the McConnell Proceedings and Nakali Proceedings.

*Group member in McConnell Proceedings*

44. You are a group member in the McConnell Proceedings if you:
- (a) held an interest in SurfStitch shares on any (or all) of 25 February 2016, 3 May 2016, or 9 June 2016 (provided that you acquired your holdings prior to those date/dates); and
  - (b) suffered loss and damage as the result of the conduct of SurfStitch and/or Cameron, as alleged in the claim filed in the McConnell Proceedings.
45. You are not a group member in the McConnell Proceedings if you acquired SurfStitch shares after 9 June 2016.
46. If you have entered into a litigation funding agreement with ILP, you are a “McConnell Funded Group Member”.
47. If you have any queries about this notice or whether you are a group member in the McConnell Proceedings, you should contact Gadens at [vic-surfstitch@gadens.com](mailto:vic-surfstitch@gadens.com) or seek your own legal advice without delay.

*Group member in Nakali Proceedings*

48. You are a group member in the Nakali Proceedings if you:
- (a) acquired SurfStitch shares on the ASX at some time during the periods:
    - (i) between 27 August 2015 and 24 February 2016, and were still holding some or all of those shares on 25 February 2016, 3 May 2016 or 9 June 2016;
    - (ii) between 25 February 2016 and 2 May 2016 and were still holding some or all of those shares on 3 May 2016 or 9 June 2016; and/or
    - (iii) between 3 May 2016 and 8 June 2016 and were still holding some or all of those shares on 9 June 2016; and
  - (b) suffered loss and damage as the result of the conduct of SurfStitch, as alleged in the claim filed in the Nakali Proceedings.
49. You are not a group member in the Nakali Proceedings if you acquired SurfStitch shares either before 27 August 2015 or on or after 9 June 2016.
50. If you have entered into a litigation funding agreement with Vannin, you are a “Nakali Funded Group Member”.
51. If you have any queries about this notice or whether you are a group member in the Nakali Proceedings, you should contact JWS by email [surfstitch@jws.com.au](mailto:surfstitch@jws.com.au) or seek your own legal advice without delay.



## F. Legal Costs and Common Fund Order

52. To fund the SurfStitch Class Actions, the plaintiffs and some group members entered into litigation funding agreements with either ILP or Vannin (**Funded Group Members**). The terms of the funding agreements include that:
- (a) the Funders would pay the costs incurred in conducting the SurfStitch Class Actions, including any adverse costs orders;
  - (b) at the conclusion of the SurfStitch Class Actions (whether by settlement or judgment), the Funders will receive, in priority to the Funded Group Members, as a first priority of that person's share of the settlement or judgment amount:
    - (i) reimbursement of that person's share of the amounts paid by the Funder under the funding agreements (which includes legal costs and disbursements); and
    - (ii) a commission, being a percentage of that person's share of the settlement or judgment amount, which would vary for each group member depending on how many shares in SurfStitch they held;
  - (c) the Funded Group Members have an ongoing obligation to pay the amounts referred to in paragraph 52 (b)(i) and (ii) to the Funders from any settlement or judgment amount received by that person, and this survives any termination of that person's funding agreement.
53. As part of the Class Action Settlement approval, the plaintiffs intend to seek orders which, if made, will have the effect that each group member who registers to participate in the Class Action Settlement, including group members who have not entered into a litigation funding agreement with ILP or Vannin, will pay:
- (a) a share of the plaintiffs' and Funders' legal costs on a *pro rata* basis (which to this point have been paid by the Funders – an amount of up to \$6m is expected to be sought by the plaintiffs) (**Reimbursement Order**); and
  - (b) a commission to be shared equally between the Funders (**Common Fund Order**) - the rate of the Common Fund Order will be set by the Court at a "reasonable" rate and the Funders may seek a Common Fund Order of between 20%-30% given the difficult circumstances of these cases.
54. Subject to Court Approval, the costs and commission approved by the Court as fair and reasonable will be deducted from any cash and (in the case of the Funders' commission) the Convertible Notes forming part of the CAS Pool otherwise payable to Continuing Group Members.
55. At this stage the Administrators'/Plaintiffs' best estimate that, if all or most group members participate in the proposed settlement, there will be available for distribution to group members, prior to deductions of the costs and commission sought by the plaintiffs:
- (a) from the DoCA, and assuming there are no, or a limited number of Admitted Subordinated Claimants other than group members who make a claim on the DoCA fund:
    - (i) approximately **\$2.7m to \$3m** in cash;
    - (ii) Convertible Notes under the SHPL DoCA with a face value of **\$12m** (80% x 15 million = 12million convertible notes, with a face value of \$1.00); plus
  - (b) from the Chubb Payment, **\$6.5m**;

(which constitutes the **CAS Pool**),

56. Subject to Court approval, the plaintiffs will seek orders that the following amounts be deducted from the CAS Pool prior to any distribution to group members:
- (a) a Common Fund Order to be set by the Court at a “reasonable” rate (combination of cash and convertible notes) - the Funders may seek a Common Fund Order of between 20% - 30% given the difficult circumstances of these cases.
  - (b) approximately **\$5 to \$6m** in legal costs from the cash available in the CAS Pool;

If the Court approves those deductions, the amount for distribution to CGMs (cash and convertible notes) will vary depending on the number of registrants, opt out numbers, and the Plaintiff's approved costs.

57. If the Common Fund Order is not made, then the Funded Group Members may still be liable to pay the plaintiffs' costs incurred up to the execution of the Settlement Agreement, together with the plaintiffs' costs of obtaining Court approval for the Class Action Settlement, subject to Court approval of those costs.
58. Whatever orders the Court makes with regard to the funding arrangements, group members **will not** be required to pay any amounts to ILP, Vannin, Gadens or JWS other than as a deduction from any distribution that they are entitled to receive from the CAS Pool (and under no circumstances will the amount exceed those entitlements). That is, no group member will be left “out-of-pocket” as a result of such orders.
59. Full details of the proposed Common Fund Order can be viewed on Gadens' website <http://www.gadenssurfstitchclassaction.com.au/>, or a copy can be provided on request by email to [vic-surfstitch@gadens.com](mailto:vic-surfstitch@gadens.com).

*Evidence as to legal costs*

60. The Court has appointed a referee to provide it a report as to reasonableness of the plaintiffs' costs. The plaintiffs will also file evidence in support of their application for the Reimbursement Order and Common Fund Order. The referee's report, and the plaintiffs' evidence:
- (a) they will be made available to group members on request made to Gadens by email [vic-surfstitch@gadens.com](mailto:vic-surfstitch@gadens.com) or JWS by email [surfstitch@jws.com.au](mailto:surfstitch@jws.com.au).
  - (b) will be confidential in whole or in part (or subject to an application that it be kept confidential) and group members will need to sign a confidentiality undertaking before being granted access to it.
61. The referee's report and the plaintiffs' evidence is due to be filed on **22 November 2019**. More information about the evidence will be available from that date on the Gadens' website at <http://www.gadenssurfstitchclassaction.com.au/>.

**G. What do I need to do?**

62. If you fit the definition of a group member in either of the SurfStitch Class Actions, you should choose from **one** of the following options below.

*Option 1 - Register to participate in the Class Action Settlement*

63. If you wish to participate in the Class Action Settlement you must complete and return the '**Group Member Registration and DOCA Authorisation**' (**Annexure A**) attached to this Notice to Gadens or JWS at one of the addresses in Part H below by **4:00pm AEDT on 11 DECEMBER 2019**.
64. The Annexure A form includes the directions to the DoCA Administrators set out in Part D above (see at paragraph 40 ).
65. If you register to participate in the Class Action Settlement, and if the settlement is approved by the Court, you will be bound by the releases in the Settlement Agreement. You may be entitled to lodge a proof of debt under the DoCAs which will be adjudicated by the DoCA Administrators in accordance with the DoCAs.

*Option 2 – Do nothing*

66. If you do nothing, you:
- (a) will remain a group member in the SurfStitch Class Actions; but
  - (b) will not be entitled to make a claim in the Class Action Settlement from the CAS Pool. You may, however, still lodge a proof of debt with the DoCA Administrators for assessment under the DoCAs. Whether or not you lodge such a proof, you will be bound by the releases provided by the DoCAs (this is a consequence of the terms of the DoCAs and the operation of the *Corporations Act 2001* (Cth)); and
  - (c) if the Court approves the Class Action Settlement, will be bound by the releases in the Settlement Deed and associated Court orders. If you signed a funding agreement with one of the Funders, you may also still have contractual obligations to make payments to the Funders.

*Option 3 – Opt Out*

67. If you wish to opt out of the SurfStitch Class Actions, you must complete the '**Notice of Opting Out**' (**Annexure B**) attached to this Notice and file it with the Court and serve a copy on Gadens or JWS at one of the addresses in Part H below **before 4:00pm AEDT on 11 DECEMBER 2019**.

If you opt out, you:

- (a) may be entitled to lodge a proof of debt under the DoCAs which will be adjudicated by the DoCA Administrators in accordance with the DoCAs. You will still be bound by the releases provided for by the DoCA. If you signed a funding agreement with one of the Funders, you may also still have contractual obligations to make payments to the Funder; but
- (b) will be taken to have opted out of the SurfStitch Class Actions for all purposes, and will not be entitled to participate in the Class Action Settlement or any subsequent claim that the plaintiffs and group members might make against the former auditors of SurfStitch, or any other third party (although you are free to pursue any such claims yourself if available). Any such claims in these proceedings are subject to further investigations; and
- (c) will not be bound by the releases in the Settlement Agreement.

*Option 4 – Objection to Class Action Settlement*

68. If you wish to object to the Class Action Settlement or to any of the orders sought by the plaintiffs, you may do so. However, if you object, you will be asking the Court not to approve the entire Class Action Settlement of group members' claims (and not just your own claim). If you wish to object to the Class Action Settlement, you should: (a) complete and file with the Court the attached '**Notice of Objection to Settlement Approval**' (**Annexure C**), and serve it on Gadens or JWS at the addresses in Part H below by **4:00pm AEDT on 11 DECEMBER 2019**; and if you wish to do so, you are also entitled to:
- (a) file written submissions and other materials in support of your objection with the Court by 4pm **AEDT on 11 DECEMBER 2019** stating that you wish to oppose the settlement and providing reasons why; and
  - (b) appear (or send a lawyer to appear) at the approval hearing on **16 December 2019**, when the Court will consider whether to approve the Class Action Settlement. The hearing will be held at Law Court Building, 184 Philip Street, Sydney NSW 2000. You or your representatives should be in a position to explain to the Court at the approval hearing **why** you consider that the Class Action Settlement should not be approved and/or why the orders sought by the plaintiffs should not be made.
69. If you choose Option 4, you should also complete either the '**Notice of Opting Out**' (**Annexure B**) or the '**Group Member Registration and DOCA Authorisation**' (**Annexure A**), depending on what you want to do if your objection is overruled by the Court.

**IMPORTANT: If you think you might wish to oppose the Class Action Settlement, you should obtain independent legal advice promptly.**

**H. Where to send notices**

70. The Plaintiffs' solicitors respective contact details are as follows:

Glenn McGowan QC  
 Partner and Chief Counsel  
 Gadens Lawyers  
 Level 25, 600 Bourke Street, Melbourne VIC 3000  
 GPO Box 48, Melbourne VIC 3001  
 or by email to [vic-surfstitch@gadens.com](mailto:vic-surfstitch@gadens.com)

Joseph Scarcella  
 Partner  
 Johnson Winter & Slattery  
 Level 25, 20 Bond Street, Sydney NSW 2000  
 GPO Box 9831 Sydney  
 or by email to [surfstitch@jws.com.au](mailto:surfstitch@jws.com.au)

71. If you choose to opt out of or object to the Class Action Settlement, please remember to file the '**Notice of Opting Out**' (**Annexure B**) and/or '**Notice of Objection to Settlement Approval**' (**Annexure C**) with the Registry of the Supreme Court of NSW at 184 Phillip St, Sydney NSW 2000.

**I. How to get more information***Inspect Copies of Documents*

72. You may inspect copies of the relevant documents filed in connection with the SurfStitch Class Actions and the DoCAs:
- (a) during business hours at the Melbourne office of Gadens at Level 25, 600 Bourke Street, Melbourne;
  - (b) during business hours at the Sydney office of JWS at Level 25, 20 Bond Street, Sydney; or
  - (c) at the Registry of the Supreme Court of New South Wales at Law Court Building, 184 Philip Street, Sydney.

*If you have further questions about this Notice*

73. If you are unclear about whether you are a group member, or have any questions about this Notice, you may contact
- (a) Gadens on 03 9252 2555 or by email at [vic-surfstich@gadens.com](mailto:vic-surfstich@gadens.com); or
  - (b) JWS on 02 8274 9555 or by email at [surfstitch@jws.com.au](mailto:surfstitch@jws.com.au).
74. Alternatively, you can seek independent legal advice.
75. The Court cannot answer questions about the process or provide legal advice.



## ANNEXURE A

### SUPREME COURT OF NEW SOUTH WALES PROCEEDINGS 2017/193375 & 2017/347082

#### SURFSTITCH SHAREHOLDERS' CLASS ACTIONS

#### GROUP MEMBER REGISTRATION AND DOCA AUTHORISATION

The group member named below:

- (a) registers as a group member in proceeding 2017/193375 (being the **McConnell** proceeding) and/or proceeding 2017/347082 (being the **Nakali** proceeding) (**CGM**);
- (b) in the case of any cash to which the CGM becomes entitled pursuant to the terms of the SGL DoCA (**CGM DoCA Cash**) – authorises and directs the Deed Administrators to pay their CGM DoCA Cash to the SDS Administrator (or as he directs) and the CGM DoCA Cash will form part of the CAS Pool;
- (c) in the case of any Convertible Notes to which the CGM becomes entitled pursuant to the terms of the SHPL DoCA because the CGM is admitted as a SGL Admitted Subordinated Claimant (**CGM Notes**) – authorises and directs the Deed Administrators to allocate the CGM Notes to the SDS Administrator (or as he directs) and the CGM Notes will form part of the CAS Pool;
- (d) if the CGM has signed a funding agreement with International Litigation Partners No. 17 Pte Ltd (**ILP**), or Vannin Capital Operations Limited (**Vannin**), in the case of the Convertible Notes to which the CGM becomes entitled pursuant to the terms of the SHPL DoCA because the CGM was a SGL Shareholder within the meaning of the SHPL DoCA (**CGM Shareholder Notes**) – authorises and directs the Deed Administrators to allocate to the solicitors for the plaintiff so many of the CGM Shareholder Notes that represent:
  - (i) the funders' share as determined by the Court;
  - (ii) in the event that the Court declines to make the orders sought in paragraph 21 of the Plaintiff's motion filed 23 October 2019, the entitlement of ILP or Vannin under the agreement signed by the group member with the relevant funder;-
- (e) in the case of any cash to which the CGM becomes entitled and which is sourced from the Chubb Payment (**CGM Chubb Cash**) – authorises and directs the SDS Administrator to pay the funders' share of the CGM Chubb Cash to the funders (to be shared equally between the funders);
- (f) in the case of the CGM DoCA Cash – authorises and directs the SDS Administrator to pay the funders' share of the CGM DoCA Cash to the funders (to be shared equally between the funders); and

- (g) in the case of the CGM Notes – authorises and directs the SDS Administrator to allocate the funders’ share of the CGM Notes to the funders or as they direct (to be shared equally between the funders).

The above directions take effect upon approval of the settlement of the McConnell Proceeding and Nakali Proceeding by the Court. Unless otherwise defined, terms used in this notice have the same meaning as in the Orders of the Court dated 12 November 2019 and 12 November 2019, copies of which are **attached**.

Name of group member: .....

Name of person completing form (print) .....

If the group member is a company, partnership, trust or business name, state the title/authority of the person to act for the group member (eg., *director, partner*): .....

Contact tel: .....

Contact email: .....

Contact address: .....

*Signed:* .....

Date: .....2019

If you wish to register to participate in any distribution of compensation from the settlement proceeds from the class action (being the CAS Pool), you must complete and return this form to:

1. Gadens Lawyers at [vic-surfstitch@gadens.com](mailto:vic-surfstitch@gadens.com) or GPO Box 48, Melbourne VIC 3001;  
or
2. Johnson Winter & Slattery at [surfstitch@jws.com.au](mailto:surfstitch@jws.com.au) or GPO Box 9831 Sydney NSW 2001

and ensure that it is received **by 4:00pm on AEDT 11 December 2019**.

Failure to complete this form will **not** affect your rights (if any) under the Surfstitch Group Limited Deed of Company Arrangement (SGL DoCA) or the Surfstitch Holdings Pty Limited Deed of Company Arrangement (SHPL DoCA).





# NSW Online Registry

## Courts and Tribunals

### Your case information

TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v SURFSTITCH GROUP LIMITED - OPEN (2017/00193375)

File form	Proceedings	Filed documents	Court dates	Judgments & orders	Subpoenaed items list
Request copy of judgment/order					
Date	Listing for	Presiding officer	Heard at:		
12 Nov 19		Justice M Ball			
Hide full orders					
<b>2017/00193375-001 Summons: TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v SURFSTITCH GROUP LIMITED</b>					
<b>Order Listing management - adjournments / Adjourned/Relisted (general) no status change made on 12 Nov 19 for proceeding 2017/00193375-001</b>					
This matter is listed for Motion (Commercial List) on 16 December 2019 10:00 AM before the Supreme Court - Civil at Supreme Court Sydney.					
Estimated duration: 5 Minutes					
The following hearing dates are vacated:					
06 Dec 2019 09:15 AM					
Reason: By Consent					
Other Reason: Motion now listed on 16 December 2019 before Ball J					
HH makes orders in terms of short minutes of order initialled and dated today's date.					
Short Minutes of Order					
Leave to file amended notice of motion					
1. The plaintiff is granted leave to file an amended notice of motion in the form sent to the Court on 8 November 2019 (amended notice of motion).					
Evidence					
2. Evidence filed in support of the application for approval of the settlement in Nakali Pty Limited v SurfStitch Group Limited (Subject to Deed of Company Arrangement) and Ors (2017/347082) (Nakali Proceeding) be evidence in this application and vice versa.					
Opt out					
3. Pursuant to s.162(1) of the Civil Procedure Act 2005 (CPA), the date by which group members may opt out of this proceeding is fixed as 4:00pm on 11 December 2019 (Participation Deadline).					
4. Pursuant to ss.162(1) and 183 of the CPA, any group member wishing to opt out of the proceeding must, before the Participation Deadline, file a completed 'Notice of Opting Out' in the form set out in Annexure B to the plaintiff's amended notice of motion (Opt Out Notice) in the registry of the Supreme Court of New South Wales and serve a copy on the solicitors for the plaintiff (Gadens) or the solicitors for the plaintiff in the Nakali Proceeding (being Johnson Winter & Slattery).					
5. If the solicitors for any party to the proceeding receive an Opt Out Notice, or a notice purporting to be an Opt Out Notice, on or before the Participation Deadline:					
(a) the solicitors will file any such notice with the registry of the Court within seven (7) days of the receipt of the said notice; and					
(b) for the purposes of paragraphs 3 and 4 above the notice will be treated as an Opt Out Notice received by the Court at the time that it was received by the relevant solicitors.					
6. The solicitors for the parties be granted leave to inspect the Court file and to copy any Opt Out Notices, or purported Opt Out Notices, provided by group members.					
Registration of continuing group members (CGMs)					
7. Pursuant to s.183 of the CPA, any group member wishing to participate in the settlement of the proceeding must by the Participation Deadline deliver to Gadens or JWS a completed 'Group Member Registration and DOCA Authorisation' form in the form set out in Annexure A to the plaintiff's amended notice of motion (CGM Form) (and group members who so register shall be the CGMs).					
8. Any group member who neither opts out, nor submits a CGM Form, shall remain a group member in the proceeding and be bound by any settlement approved pursuant to this application, but shall not, without further order of the Court, be entitled to participate in the distribution of, or make any claim against, the monies recovered as part of the said settlement.					
Notice to potential group members					
9. Pursuant to ss.162(1) and 175(1)(a) and (4) of the CPA, the content of the notices to potential group members set out in:					
(a) Annexure D to the plaintiff's amended notice of motion (Personal Notice) as amended by deleting the second sentence in paragraph 9; and					
(b) Annexure E to the plaintiff's amended notice of motion (Newspaper Notice);					

Date ▲ Listing for ▲ Presiding officer ▲ Heard at:  
 be approved (together and severally) The Notice of Proposed Settlement,

10. Pursuant to ss.175(4) and 176 of the CPA, the Notice of Proposed Settlement be given to potential group members:

(a) by Gadens, within 3 business days after the date of this order:

- (i) where Gadens has an email address for a potential group member – sending the Personal Notice to the email address of the potential group member;
- (ii) where Gadens does not have an email address but has a postal address for a potential group member – by sending the Personal Notice by ordinary pre-paid post to the postal address of the potential group member; and
- (iii) causing the Personal Notices to be uploaded to the Gadens websites; and
- (iv) causing the Newspaper Notice to be published in one (1) weekday edition of The Australian newspaper.

(b) by the Registrar of the Supreme Court of New South Wales, within 3 business days of the date of this order – causing the Personal Notice to be:

- (i) posted on the Court's website; and
- (ii) available for inspection in each registry of the Court.

11. By 4:00pm on 13 December 2019, Gadens shall file and serve an affidavit deposing to:

- (a) compliance with order 10 above; and
- (b) the responses (if any) received from potential group members.

Directions for further hearing

12. Save for any affidavit or written submissions in respect of which confidentiality orders are obtained in accordance with order 15, on or before 22 November 2019 the plaintiff file and serve (including by service on the Contradictor) any affidavit(s) and written submissions on which it proposes to rely in support of the application for approval of the settlement of this proceeding in accordance with this notice of motion (Settlement Approval Application).

13. By 4:00pm on 29 November 2019:

- (a) the defendants file and serve any affidavit and written submissions in respect of the Settlement Approval Application;
- (b) the Contradictor (to the extent that he wishes to object to the proposed settlement or any term of the Settlement Distribution Scheme (as defined at paragraph 18(b) of the plaintiff's amended notice of motion) file and serve any written submissions in support of their objection; and

14. By 4:00 pm on 11 December 2019 any group member seeking to raise any objection to the proposed settlement or any term of the Settlement Distribution Scheme, file and serve any written submissions in support of their objection together with a 'Notice of Objection to Settlement Approval' in the form which is Annexure C to the plaintiff's amended notice of motion.

Confidential materials

15. On or before 22 November 2019 the plaintiff file any confidential affidavit and/or confidential submissions on which it intends to rely in respect of the plaintiff's Settlement Approval Application and in relation to which it intends to seek a confidentiality order.

16. In relation to any confidential affidavit and/or confidential submissions on which the plaintiff proposes to rely in support of the Settlement Approval Application, the plaintiff is directed to, on or before 6 December 2019:

- (a) provide to the Associate to the presiding judge the original and one copy of any such affidavit and/or submissions in an envelope marked with the details of the proceeding and a notation that it is a "Confidential [Affidavit or Submissions] for Purposes of the Settlement Approval Application – not to be opened other than by order of the Court or a Judge"; and
- (b) to serve copies of such material on the Contradictor.

Other matters

17. On the date of this order, the Deed Administrators are to provide Gadens with the contact details in its possession for shareholders of SurfStitch Group Limited (Subject to Deed of Company Arrangement) ACN 602 288 004 on any of 25 February 2016, 3 May 2016, or 9 June 2016, to enable dispatch of the Personal Notice by Gadens on behalf of the Plaintiffs.

Adjournment

18. The balance of the Plaintiff's amended notice of motion filed 8 November 2019, being the Settlement Approval Application, be heard/listed for hearing at 10.00am on 16 December 2019.

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

**2017/00193375-014 Notice of Motion Civil - TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v TBD**

**Order Listing management / Adjourned/Relisted (general) no status change made on 12 Nov 19 for proceeding 2017/00193375-014**

This matter is listed for Motion (Commercial List) on 16 December 2019 10:00 AM before the Supreme Court - Civil at Supreme Court Sydney.  
 Estimated duration: 5 Minutes



## NSW Online Registry

Courts and Tribunals

### Your case information

Nakali Pty Limited v SURFSTITCH GROUP LIMITED - OPEN (2017/00347082)

File form	Proceedings	Filed documents	Court dates	Judgments & orders	Subpoenaed items list
Request copy of judgment/order					
Date	Listing for	Presiding officer	Heard at:		
12 Nov 19		Justice M Ball			
Hide full orders					
<b>2017/00347082-001 Summons: Nakali Pty Limited v SURFSTITCH GROUP LIMITED</b>					
<b>Order Listing management - adjournments / Adjournd/Relisted (general) no status change made on 12 Nov 19 for proceeding 2017/00347082-001</b>					
This matter is listed for Motion (Commercial List) on 16 December 2019 10:00 AM before the Supreme Court - Civil at Supreme Court Sydney.					
Estimated duration: 5 Minutes					
The following hearing dates are vacated:					
06 Dec 2019 09:15 AM					
Reason: By Consent					
Other Reason: Motion now listed before Ball J on 16 Dec 2019					
HH makes orders in terms of short minutes of order initialled and dated today's date.					
Short Minutes of Order					
Leave to file amended notice of motion					
1. The plaintiff is granted leave to file an amended notice of motion in the form sent to the Court on 8 November 2019 (amended notice of motion).					
Evidence					
2. Evidence filed in support of the application for approval of the settlement in TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v SurfStitch Group Limited (Subject to Deed of Company Arrangement) and Ors (2017/00193375) (McConnell Proceeding) be evidence in this application and vice versa.					
Opt out					
3. Pursuant to s.162(1) of the Civil Procedure Act 2005 (CPA), the date by which group members may opt out of this proceeding is fixed as 4:00pm on 11 December 2019 (Participation Deadline).					
4. Pursuant to ss.162(1) and 183 of the CPA, any group member wishing to opt out of the proceeding must, before the Participation Deadline, file a completed 'Notice of Opting Out' in the form set out in Annexure B to this notice of motion (Opt Out Notice) in the registry of the Supreme Court of New South Wales and serve a copy on the solicitors for the plaintiff (Johnson Winter & Slattery) or the solicitors for the plaintiff in the McConnell Proceeding (being Gadens).					
5. If the solicitors for any party to the proceeding receive an Opt Out Notice, or a notice purporting to be an Opt Out Notice, on or before the Participation Deadline:					
(a) the solicitors will file any such notice with the registry of the Court within seven (7) days of the receipt of the said notice; and					
(b) for the purposes of paragraphs 3 and 4 above the notice will be treated as an Opt Out Notice received by the Court at the time that it was received by the relevant solicitors.					
6. The solicitors for the parties be granted leave to inspect the Court file and to copy any Opt Out Notices, or purported Opt Out Notices, provided by group members.					
Registration of continuing group members (CGMs)					
7. Pursuant to s.183 of the CPA, any group member wishing to participate in the settlement of the proceeding must by the Participation Deadline deliver to JWS or Gadens a completed 'Group Member Registration and DOCA Authorisation' form in the form set out in Annexure [A] to the plaintiff's amended notice of motion (CGM Form) (and group members who so register shall be the CGMs).					
8. Any group member who neither opts out, nor submits a CGM Form, shall remain a group member in the proceeding and be bound by any settlement approved pursuant to this application, but shall not, without further order of the Court, be entitled to participate in the distribution of, or make any claim against, the monies recovered as part of the said settlement.					
Notice to potential group members					
9. Pursuant to ss.162(1) and 175(1)(a) and (4) of the CPA, the content of the notices to potential group members set out in:					
(a) Annexure D to the plaintiff's amended notice of motion (Personal Notice) as amended by deleting the second sentence of paragraph 9; and					
(b) Annexure E to the plaintiff's amended notice of motion (Newspaper Notice);					
be approved (together and severally the Notice of Proposed Settlement)					

Date	Listing for	Presiding officer	Heard at:
	<p>10. Pursuant to ss.175(4) and 176 of the CPA, the Notice of Proposed Settlement be given to potential group members:</p> <p>(a) by Gadens, within 3 business days after the date of this order:</p> <p>(i) where Gadens has an email address for a potential group member – sending the Personal Notice to the email address of the potential group member;</p> <p>(ii) where Gadens does not have an email address but has a postal address for a potential group member – by sending the Personal Notice by ordinary pre-paid post to the postal address of the potential group member; and</p> <p>(iii) causing the Personal Notices to be uploaded to the Gadens websites; and</p> <p>(iv) causing the Newspaper Notice to be published in one (1) weekday edition of The Australian newspaper.</p> <p>(b) by the Registrar of the Supreme Court of New South Wales, within 3 business days of the date of this order – causing the Personal Notice to be:</p> <p>(i) posted on the Court's website; and</p> <p>(ii) available for inspection in each registry of the Court.</p> <p>11. By 4:00pm on 13 December 2019, Gadens shall file and serve an affidavit deposing to:</p> <p>(a) compliance with order 10 above; and</p> <p>(b) the responses (if any) received from potential group members.</p> <p>Directions for further hearing</p> <p>12. Save for any affidavit or written submissions in respect of which confidentiality orders are obtained in accordance with order 15, on or before 22 November 2019 the plaintiff file and serve (including by service on the Contradictor) any affidavit(s) and written submissions on which it proposes to rely in support of the application for approval of the settlement of this proceeding in accordance with this notice of motion (Settlement Approval Application).</p> <p>13. By 4:00pm on 29 November 2019:</p> <p>(a) the defendants file and serve any affidavit and written submissions in respect of the Settlement Approval Application;</p> <p>(b) the Contradictor (to the extent that he wishes to object to the proposed settlement or any term of the Settlement Distribution Scheme (as defined below at paragraph 18(b) of the plaintiff's amended notice of motion) file and serve any written submissions in support of their objection; and</p> <p>14. By 4:00 pm on 11 December 2019 any group member seeking to raise any objection to the proposed settlement or any term of the Settlement Distribution Scheme, file and serve any written submissions in support of their objection together with a 'Notice of Objection to Settlement Approval' in the form which is Annexure [C] to the plaintiff's amended notice of motion.</p> <p>Confidential materials</p> <p>15. On or before 22 November 2019 the plaintiff file any confidential affidavit and/or confidential submissions on which it intends to rely in respect of the plaintiff's Settlement Approval Application and in relation to which it intends to seek a confidentiality order.</p> <p>16. In relation to any confidential affidavit and/or confidential submissions on which the plaintiff proposes to rely in support of the Settlement Approval Application, the plaintiff is directed to, on or before 6 December 2019:</p> <p>(a) provide to the Associate to the presiding judge the original and one copy of any such affidavit and/or submissions in an envelope marked with the details of the proceeding and a notation that it is a "Confidential [Affidavit or Submissions] for Purposes of the Settlement Approval Application – not to be opened other than by order of the Court or a Judge"; and</p> <p>(b) to serve copies of such material on the Contradictor.</p> <p>Other matters</p> <p>17. On the date of this order, the Deed Administrators are to provide Gadens with the contact details in its possession for shareholders of SurfStitch Group Limited (Subject to Deed of Company Arrangement) ACN 602 288 004 on any of 25 February 2016, 3 May 2016, or 9 June 2016, to enable dispatch of the Personal Notice by Gadens on behalf of the Plaintiffs.</p> <p>Adjournment</p> <p>18. The balance of the Plaintiff's amended notice of motion filed 8 November 2019, being the Settlement Approval Application, be heard/listed for hearing at 10:00am on 16 December 2019.</p> <p>19. The parties have liberty to apply on 48 hours' notice.</p>		
	<p><b>2017/00347082-005 Notice of Motion Civil - Nakall Pty Limited v Chubb Insurance Australia Limited</b></p> <p><b>Order Listing management / Adjourned/Relisted (general) no status change made on 12 Nov 19 for proceeding 2017/00347082-005</b></p> <p>This matter is listed for Motion (Commercial List) on 16 December 2019 10:00 AM before the Supreme Court - Civil at Supreme Court Sydney.</p> <p>Estimated duration: 5 Minutes</p> <p>HH makes orders in terms of short minutes of order initialled and dated today's date.</p> <p>Short Minutes of Order</p> <p>Leave to file amended notice of motion</p> <p>1. The plaintiff is granted leave to file an amended notice of motion in the form sent to the Court on 8 November 2019 (amended notice of motion).</p> <p>Evidence</p> <p>2. Evidence filed in support of the application for approval of the settlement in TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v SurfStitch Group Limited (Subject to Deed of Company Arrangement) and Ors (2017/00193375) (McConnell Proceeding) be evidence in this application and vice versa.</p> <p>Opt out</p> <p>3. Pursuant to s.162(1) of the Civil Procedure Act 2005 (CPA), the date by which group members may opt out of this proceeding is fixed as 4:00pm on 11 December 2019 (Participation Deadline).</p>		



Date	Listing for	Presiding officer	Heard at:
Adjournment			
18. The balance of the Plaintiff's amended notice of motion filed 8 November 2019, being the Settlement Approval Application, be heard/listed for hearing at 10:00am on 16 December 2019.			
19. The parties have liberty to apply on 48 hours' notice.			

## ANNEXURE B

### NOTICE OF OPTING OUT

(filed pursuant to directions made by  
his Honour Justice Ball on 12 November 2019)

#### COURT DETAILS

Court	Supreme Court
Division	Equity
List	Commercial (Representative Proceeding)
Registry	Sydney
Case number	2017/193375 and 2017/347082

#### TITLE OF PROCEEDINGS

Plaintiff	<b>TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund</b>
First Defendant	<b>SurfStitch Group Limited (Subject to Deed of Company Arrangement) ACN 602 288 004</b>
Second Defendant	<b>Justin Peter Cameron</b>
Third Defendant	<b>Chubb Insurance Australia Limited ABN 23 001 642 020, ACN 001 642 020</b>

#### TITLE OF PROCEEDINGS

Plaintiff	<b>Nakali Pty Limited ACN 062 473 830</b>
First Defendant	<b>SurfStitch Group Limited (Subject to Deed of Company Arrangement) ACN 602 288 004</b>
Second Defendant	<b>Chubb Insurance Australia Limited ABN 23 001 642 020, ACN 001 642 020</b>

## NOTICE OF OPTING OUT

The group member named below *opts out* of proceeding 2017/193375 (being the McConnell proceeding) and proceeding 2017/347082 (being the Nakali proceeding).

Name of group member: .....

Name of person completing form (print) .....

If the group member is a company, partnership, trust or business name, state the title/authority of the person to act for the group member (eg., *director, partner*): .....

Contact tel: .....

Contact email: .....

Contact address: .....

*Signed:* .....

Date: .....2019

NB: only complete this form if you want to opt out of the class actions. If you opt out you will retain all of your rights (if any) under the Surfstitch Group Limited Deed of Company Arrangement and Surfstitch Holdings Pty Limited Deed of Company Arrangement, but you will not be entitled to claim a share of the settlement proceeds in the class actions.

If you have signed a funding agreement and you choose to opt out, you may remain liable under your agreement to reimburse your funder for legal and funding costs relating to the class action from any amount you receive under the DoCA.

You must complete and file this notice with the Registry of the Supreme Court of NSW at 184 Phillip St, Sydney NSW 2000 and serve a copy on:

1. Gadens Lawyers at [vic-surfstitch@gadens.com](mailto:vic-surfstitch@gadens.com) or GPO Box 48, Melbourne VIC 3001;  
or
2. Johnson Winter & Slattery at [surfstitch@jws.com.au](mailto:surfstitch@jws.com.au) or GPO Box 9831 Sydney NSW 2001

and ensure that it is received **by 4:00pm on AEDT 11 December 2019**.

If you are not sure what you want to do you should read the Notice of Proposed Settlement at <http://www.gadenssurfstitchclassaction.com.au> and seek independent legal advice.



ANNEXURE C

NOTICE OF OBJECTION TO SETTLEMENT APPROVAL

(filed pursuant to directions made by his Honour Justice Ball on 12 November 2019)

COURT DETAILS

Table with 2 columns: Field (Court, Division, List, Registry, Case number) and Value (Supreme Court, Equity, Commercial (Representative Proceeding), Sydney, 2017/193375 and 2017/347082)

TITLE OF PROCEEDINGS

Table with 2 columns: Party (Plaintiff, First Defendant, Second Defendant, Third Defendant) and Name (TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund, SurfStitch Group Limited (Subject to Deed of Company Arrangement) ACN 602 288 004, Justin Peter Cameron, Chubb Insurance Australia Limited ABN 23 001 642 020, ACN 001 642 020)

TITLE OF PROCEEDINGS

Table with 2 columns: Party (Plaintiff, First Defendant, Second Defendant) and Name (Nakali Pty Limited ACN 062 473 830, SurfStitch Group Limited (Subject to Deed of Company Arrangement) ACN 602 288 004, Chubb Insurance Australia Limited ABN 23 001 642 020, ACN 001 642 020)

NOTICE OF OBJECTION TO SETTLEMENT APPROVAL

The group member named below gives notice that an objection is made to the proposed settlement of proceeding 2017/193375 (being the McConnell proceeding) and proceeding 2017/347082 (being the Nakali proceeding).

Name of group member: .....

Name of person completing form (print) .....

If the group member is a company, partnership, trust or business name, state the title/authority of the person to act for the group member (eg., director, partner): .....

Contact tel: .....

Contact email: .....

Contact address: .....

Objection is made to the proposed settlement Yes No

Objection is made to the Common Fund Order sought by the Plaintiffs Yes No

Objection is made – other Yes No

[Please detail basis of objection]

.....  
.....  
.....  
.....  
.....  
.....  
.....

Signed: .....

Date: .....2019

Note:

- 1. Only complete this form if you want to object to the proposed settlement of the class actions. Note that you will be asking the Court to not approve the settlement of all group members' claims and not just your own claim.
- 2. Written submissions and any other material in support of your objection(s) must be attached to this notice and filed with the Supreme Court of NSW at 184 Phillip St, Sydney NSW 2000 and served on:
  - (a) Gadens Lawyers at vic-surfstitch@gadens.com or GPO Box 48, Melbourne VIC 3001; or
  - (b) Johnson Winter & Slattery at surfstitch@jws.com.au or GPO Box 9831 Sydney NSW 2001

and ensure that it is received before 4:00pm on AEDT 11 December 2019.

3. You may appear (or send a lawyer to appear) at the Settlement Approval Hearing on **16 December 2019**, and explain why you consider the settlement should not be approved and/or why the orders sought by the plaintiffs should not be made.
4. If you are not sure what you want to do you should read the Notice of Proposed Settlement at <http://www.gadenssurfstitchclassaction.com.au> and seek independent legal advice.