

IN THE SUPREME COURT OF WESTERN AUSTRALIA

COR 35 OF 2010

IN THE MATTER OF GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (ACN 083 825 405)  
(IN LIQUIDATION)

EX PARTE

**GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (ACN 083 825 405) (IN LIQUIDATION) IN  
ITS CAPACITY AS RESPONSIBLE ENTITY OF THE MANAGED INVESTMENT SCHEMES LISTED  
IN SCHEDULE 1**

First Plaintiff

**GREAT SOUTHERN OLIVES COMPANY LIMITED (ACN 121 381 208) (IN LIQUIDATION)**

Second Plaintiff

**GREAT SOUTHERN OLIVE HOLDINGS PTY LIMITED (ACN 111 092 374) (IN LIQUIDATION)**

Third Plaintiff

**ANDREW JOHN SAKER**

Fourth Plaintiff

**MARTIN BRUCE JONES**

Fifth Plaintiff

**DARREN GORDON WEAVER**

Sixth Plaintiff

**JAMES HENRY STEWART**

Seventh Plaintiff

**JAMES THACKRAY**

First Defendant

**TONY MCGRATH**

Second Defendant

**COLIN NICOL**

Third Defendant

**THE GROWERS LISTED IN SCHEDULE 8 OF THE APPLICATION**

Fourth Defendants

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**AFFIDAVIT OF PHILLIP CAPICCHIANO IN OPPOSITION TO THE PLAINTIFFS INTERLOCUTORY  
PROCESS AND IN SUPPORT OF THE FOURTH DEFENDANTS INTERLOCUTORY PROCESS**

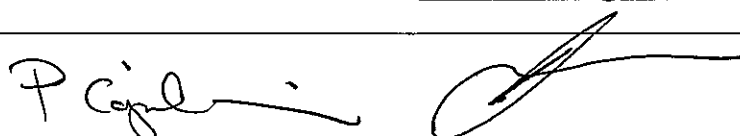
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Date of document:  
Filed on behalf of:  
Prepared by:  
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May 2010  
Fourth Defendants

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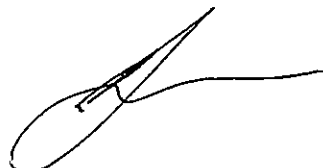
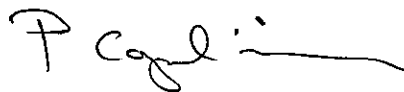


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I, **PHILLIP CAPICCHIANO** of Level 13, 350 Collins Street, Melbourne, Victoria, 3000, make oath and say that:

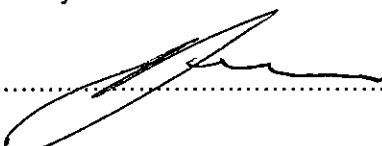
1. I am one of the fourth defendants in this matter and am an investor in the 2006 Organic Olive Project. At the time of my investment, I was a business development manager in the employment of Great Southern Plantation Limited and was an authorised representative of Great Southern Securities Pty Ltd (**GSS**).
2. I am also an executive member of the Great Southern Growers Group known as "Save My Trees". There are over 7,000 growers registered with the group. Of these, over 500 are growers in the Great Southern Olive Schemes.
3. Along with Paul Sweeney, who is also on the committee of Save My Trees, I am a member of the committee of inspection of Great Southern Managers Australia Ltd (**GSMAL**).
4. The Save My Trees committee includes advisors, accountants, insolvency practitioners, agriculturally trained people and business owners. It is a broad based representative group for growers in Great Southern managed investment schemes and is well placed to obtain and represent growers views. The committee is in constant communication with growers by its website and email.
5. I refer to the affidavit of Robert Allen Burns sworn 23 April 2010 in this proceeding setting out the role played by the Save My Trees group in representing growers in Great Southern managed investment scheme matters.
6. As an investor in the 2006 Organic Olive Project, I have a sublease over an olive lot at Avon Valley. My sublease has a term of 20 years of which 4 years will have expired on 15 June 2010. Under my lease I am entitled to the olive harvest proceeds from my lot after 30 June 2010 of which I must pay to the sublessor 10% for rent and 30% for management fees each year.
7. As a member of a managed investment scheme I rely upon the responsible entity of the scheme, GSMAL, to manage my interest in conjunction with the interests of other scheme investors.



8. My sublease is subservient to a head lease; that head lease is registered lease number J784210 at Landgate.
9. I consider that my sublease is a valuable proprietary right. It enables me to enjoy an income stream for the remaining 16 years.
10. My recollection is that at the time of my investment GSS produced a model which was given to financial advisers to demonstrate likely cash flows from their investments. The basic model showed a return to growers of three times the amount of their investment.
11. While that cash flow may not now be attainable, I still expect to receive positive cash flow. Because of this I consider that my proprietary rights have value.
12. From my involvement as an employee of Great Southern and subsequently as a financial adviser and member of the Save My trees executive, my recollection is that the amount invested by growers in the Great Southern Olive Schemes, excluding the part of the scheme based in New South Wales, is \$160 million. The amount expended by the Great Southern Landowners in purchasing the land on which these schemes are conducted was approximately \$40 million.
13. I note that the liquidators of GSMAL are also liquidators of the company which owns the land over which I hold the sublease. I have no confidence that the liquidators are able to discharge the fiduciary duties which GSMAL owes me as responsible entity in dealing with themselves as liquidators of the landlord companies. I am concerned that the liquidators want permission to terminate the head lease in circumstances where the events complained of occurred while the receiver/manager and they were in control of GSMAL.
14. It is my interest and the interest of the other growers that our rights be protected in a similar way that the rights of the growers in the Timbercorp schemes have been protected by having the proceeds of any sale of the olive assets held in a fund to be apportioned between the growers and landlords in accordance with a legal proceeding to determine the nature and value of their respective rights.

**SWORN** by the said **PHILLIP CAPICCHIANO**  
 at Melbourne in the State of Victoria  
 this 5<sup>th</sup> day of May 2010

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 ) P Capicchiano  
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Before me:.....  


**MICHAEL JOSEPH FERNON**  
 of Clarendon Lawyers Pty Ltd  
 Level 17, Rialto North Tower  
 525 Collins St, Melbourne Victoria 3000  
 an Australian Legal Practitioner within the  
 meaning of the *Legal Profession Act 2004*