

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

**GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (ACN 083 825 405)
(IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)
INCLUDING IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 2 TO THE
FURTHER AMENDED ORIGINATING PROCESS**

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

**GREAT SOUTHERN OLIVE PROCESSING PTY LTD
(ACN 128 547 437) (IN LIQUIDATION)**

Eighth Plaintiff

JAMES GERARD THACKRAY

First Defendant

ANTHONY GREGORY MCGRATH

Second Defendant

COLIN MCINTOSH NICOL AND SIMON ANDREW READ

Third Defendants

**THE GROWERS LISTED IN SCHEDULE 8 OF THE
FURTHER AMENDED ORIGINATING PROCESS**

Fourth Defendants

**RESPONSE TO PLAINTIFFS' REQUESTS FOR FURTHER & BETTER PARTICULARS DATED 30
NOVEMBER 2010 & 21 JANUARY 2011**

Case Manager	Le Miere J	
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THE FOURTH DEFENDANTS LISTED IN THE APPEARANCES DATED 12 APRIL AND 12 MAY 2010 (the **Represented Growers**) provide the following responses to the plaintiffs' requests for further and better particulars dated 30 November 2010 and 21 January 2011 (each in respect of the Represented Growers' Defence and Counterclaim dated 30 August 2010 (the **Represented Growers' pleading**)):

Capitalised terms carry the same meaning as in the plaintiffs' Statement of claim, unless the contrary intention appears.

REQUEST DATED 30 November 2010

Paragraph 79(a)

1. To the request in respect of paragraph 79(a) of the Represented Growers' pleading, they respond as follows:
 - (a) The word "viable" is to be given its ordinary meaning – i.e. practicable or workable or possible.
 - (b) The word "profitably" is to be given its ordinary meaning – i.e. gainfully or advantageously or usefully or in a manner that yields profit.
 - (c) The facts and matters relied upon for the allegations that each Olive Scheme was viable and could have been operated profitably to its conclusion are the income projections contained in the Receivers' circular to Growers dated December 2009.

Further and better particulars of the viability and profitability of the Olive Schemes will be provided following discovery and preparation of expert material.

Sub-paragraphs 1(d)(i) to (vii) of the Request are not proper requests for particulars. The Represented Growers object to these on the basis that they are requests for evidence and in the nature of interrogatories. The Represented Growers expect to provide the plaintiffs with expert evidence as to the viability and profitability of the Olive Schemes in the course of completing all interlocutory steps (and following discovery).

Furthermore, as requests for particulars, they are oppressive.

Under cover of those objections, the Represented Growers respond as follows:

(d)(i) – the date of conclusion of each Olive Scheme is as follows:

- 2005 Organic – 2026
- 2006 Organic – 2026
- 2007 Organic – 2027
- 2007 Diversified – 2027

- 2008 Diversified – 2028

(d)(ii) – the allegation is that the Olive Schemes could have operated profitably for the Growers. The requests in sub-paragraphs 1(d)(ii)(C) and (D) are not proper requests in respect of the pleaded allegation.

(d)(iii) – Each Olive Scheme could have been operated profitably individually.

(d)(iv) – The Represented Growers refer to the Receiver's circular dated December 2009.

(d)(v) – Possible means by which negative cash flows could be funded include by borrowing against GSMAL's interests in the relevant Head Leases and/or future crops (following amendments to Scheme constitutions) and/or by seeking and obtaining extra contributions from Growers.

(d)(vi) – The alleged viability/profitability is: on a cash basis; on a cash basis of accounting; post payment of scheme taxes and payment of Grower taxes.

The Represented Growers are unable to provide further particulars of amortisation, depreciation or finance costs prior to the completion of all interlocutory steps, including discovery and exchange of expert evidence.

(d)(vii) – This request is a request for evidence and is oppressive. The represented Growers expect to provide the plaintiffs with expert evidence as to the viability and profitability of the Olive Schemes in the course of completing all interlocutory steps (and following discovery).

To the extent that this is a proper request (which is disputed) the Represented Growers, are unable to provide further particulars prior to discovery and exchange of expert evidence.

Paragraph 96

2. To the request in respect of paragraph 96 of the Represented Growers' pleading, they respond as follows:

(a) The Liquidators were under duties to:

- i. advertise extensively for a replacement responsible entity;
- ii. investigate and inform themselves about the existence of a market for replacement responsible entities for agribusiness managed investment schemes;
- iii. approach firms in the business of (among other things) assuming the role of responsible entities for agribusiness managed investments schemes;
- iv. market the Olive Schemes to such firms; and

- v. negotiate the replacement by one such firm of GSMAL's role as responsible entity for the Olive Schemes.
- (b) The request at sub-paragraph (b) is not a proper request. The request is not for a particular of the allegation at 96 of the Represented Growers' pleading. If anything, the request is in the nature of an interrogatory.
- (c) The request at sub-paragraph (c) is not a proper request. The request is not for a particular of the allegation at paragraph 96 of the Represented Growers' pleading. If anything, the request is in the nature of an interrogatory.

Paragraph 102(a)

- 3. To the request in respect of paragraph 102(a) of the Represented Growers' pleading, they respond as follows:
 - (a) The phrase "*preserve the Olive Schemes*" means to arrange for the completion of the Olive Schemes, and not to wind up the Olive Schemes;
 - (b) The Olive Schemes could have been preserved by:
 - i the appointment of a replacement responsible entity (the Represented Growers otherwise repeat the particulars at paragraph 2(a) above);
 - ii amending GSMAL's constitution to allow it to lend against GSMAL's interests in the relevant Head Lease and/or to seek extra contributions from Growers; and
 - iii funding any cash short falls by either lending against the Head Lease and/or raising funds from Growers.
 - (c) The Represented Growers repeat the particulars given at 2(a) above.
 - (d) Each of the above steps ought to have been taken prior to the marketing of the Olive Properties free of the Head Leases and any of the Growers' interests.

Paragraph 102(d)

- 4. To the request in respect of paragraph 102(d) of the Represented Growers' pleading, they respond as follows:
 - (a) The Represented Growers allege that the steps set out at 2(a) above, if taken, would have attracted a replacement responsible entity.
 - (b) The steps set out at 2(a) above constitute adequate steps to attract a replacement responsible entity.

- (c) GSMAL and/or the Liquidators failed to take any steps or alternatively failed to take any adequate steps to attract a replacement responsible entity by reason of their failure to take the steps set out in 2(a) above.

Paragraph 102(f)

- 5. To the request in respect of paragraph 102(f) of the Represented Growers' pleading, they respond as follows:
 - (a) The matter that should have been disclosed to any prospective replacement responsible entity was the existence of valuable assets that GSMAL held on behalf of the Growers in the form of rights under the Head Leases. These were not disclosed by GSMAL or the Liquidators.
 - (b) Failure of GSMAL or the Liquidators to disclose the matter set out in sub-paragraph (a) meant that any disclosure to prospective replacement responsible entities was inadequate. Had the matter set out in sub-paragraph (a) been disclosed, the disclosure would have been adequate in this respect. The Represented Growers are unable to confirm that the disclosure was otherwise adequate, prior to the completion of all interlocutory steps (including discovery and exchange of expert evidence).
 - (c) GSMAL and/or the Liquidators failed to make any or alternatively any adequate disclosure to prospective replacement responsible entities by reason of their failure to disclose the matter set out in sub-paragraph (a) above.

Paragraph 103

- 6. To the request in respect of paragraph 103 of the Represented Growers' pleading, they respond as follows:
 - (a) The fact or matters relied upon for the allegation that a replacement responsible entity could have been found are:
 - i the existence of a market for replacement responsible entities for agribusiness managed investment schemes; and
 - ii the profitability or viability of the Olive Schemes.
 - (b) The Represented Growers allege that amendments to the constitutions of each Scheme were necessary to attract a responsible entity. The form of the amendments alleged to be necessary are those appearing as Schedule 2 to the 6 May 2010 interlocutory process filed by the Represented Growers. The effect of the amendment would be to grant GSMAL power to surrender its assets, including its leases granted by GSOC/GSOH, on behalf of Growers.

The Represented Growers may provide particulars of further necessary amendments of Scheme documents following the completion of all interlocutory steps (including discovery and exchange of expert evidence).

(c) The meaning of the phrase “the Olive Schemes would have been completed in the ordinary course” is that the Olive Schemes would have continued to be conducted through to their completion dates listed at 1(d)(i) above. The facts or matters relied upon are those set out above in the response relating to paragraph 79(a).

(d) The facts or matters relied upon are those set out above in the response relating to paragraph 79(a).

REQUEST DATED 21 January 2011

Paragraph 16

7. To the request in relation to paragraph 16 of the Represented Growers’ pleading, they respond as follows:

Paragraph 16 is a non-admission of the allegation that each Head Lease obliged GSMAL to perform certain conduct. This is an appropriate traverse in the factual circumstances as the Represented Growers understand them, given that:

- (a) the Represented Growers have not yet had access to each Head Lease; and
- (b) in any event, the Head Leases that the Represented Growers have reviewed do not contain any obligation on the part of GSMAL to perform the conduct alleged in paragraph 16(d) of the Statement of claim (but contain an obligation on the part of the Owner to do so).

Given the above, and that paragraph 16 contains no positive allegation, the Represented Growers are unable to provide particulars of the non admission, and say that the request is not a proper request for particulars of their non admission.

The Represented Growers have amended paragraph 16 to read: “*Subject to production of each Head Lease at trial and reference to its full terms and effect, they admit that each Head Lease obliged GSMAL to perform the conduct alleged in sub-paragraphs 16(a) to (c), (e) and (f)*”.

Paragraph 17

8. To the request in respect of paragraph 17 of the Represented Growers’ pleading, they respond as follows:

Paragraph 17 is a non-admission of the allegation that each Head Lease provides that the Owner is entitled to terminate the Head Lease following the default of the obligations pleaded in

paragraph 16 and certain other conditions. This is an appropriate traverse in the factual circumstances as the Represented Growers understand them, given that:

- (a) the Represented Growers have not yet had access to each Head Lease; and
- (b) in any event, the Head Leases that the Represented Growers have reviewed do not contain any obligation on the part of GSMAL to perform the conduct alleged in paragraph 16(d) of the Statement of Claim.

Given the above, and that paragraph 17 contains no positive allegation, the Represented Growers are unable to provide particulars of the non admission, and say that the request is not a proper request for particulars of their non admission.

The Represented Growers have amended paragraph 17 to read: "*Subject to production of each Head Lease at trial and reference to its full terms and effect, they admit paragraph 17 save for the reference to paragraph 16(d)*".

Paragraph 39

- 9. To the request in respect of paragraph 39 of the Represented Growers' pleading, they respond as follows:

Paragraph 39 is a non admission of the allegation that no Grower (as that term is defined in the Statement of Claim – i.e. not only the Represented Growers) contributed funds towards the maintenance of any Olive Property. This is an appropriate traverse in the factual circumstances as the Represented Growers understand them, given that they do not yet have access to the records of the Liquidators or Receivers and Managers.

The request for particulars of funds contributed towards the maintenance of any Olive Property by any Represented Grower is not a proper request for particulars that flows from the non admission of the alleged fact. If anything, the request is in the nature of an interrogatory or notice to admit.

Paragraph 47

- 10. To the request in respect of paragraph 47 of the Represented Growers' pleading, they respond as follows:

The Represented Growers refer to their responses below in respect of paragraphs 48, 49, 58 and 59 of the Represented Growers' pleading.

Paragraph 48

- 11. To the request in respect of paragraph 48 of the Represented Growers' pleading, they respond as follows:

- (a) Paragraph 48(a) has been amended.
- (b) Paragraph 48(b) has been amended.
- (c) Paragraph 6 of the 27 May 2010 Orders of the Honourable Justice Le Miere provide for the application of the proceeds of the sale of the Olive Properties to be paid into a Fund pending determination of the Rights Proceeding (as those terms are defined in the Orders).

Paragraph 6(b) of the orders provides that, prior to the establishment of the Fund, the Liquidators were entitled to deduct from the proceeds of sale of the Olive Properties their reasonable costs and expenses referable to the operation, preservation or realisation of any Sale Asset (as defined – includes the Olive Properties).

Paragraph 7(b) of the Orders provides that the Liquidators may pay from the Fund their remuneration so far as it is referable to the operation, preservation or realisation of any Sale Asset (as defined).

It is not controversial that the Olive Properties have been sold and the Fund established by the Liquidators.

The Orders speak for themselves. The Represented Growers are unable to provide further particulars.

If the allegation in the Statement of claim is meant to convey that the Liquidators have incurred expenditure in the preservation of the Olive Properties beyond that which they are entitled to draw from the proceeds of sale under the Orders, this ought to be made clear

Paragraph 49

12. To the request in respect of paragraph 49 of the Represented Growers' pleading, they respond as follows:

- (a) Paragraph 49(a) has been amended.
- (b) Paragraph 6(c) of the 27 May Orders provides that, prior to the establishment of the Fund, the Liquidators were entitled to deduct from the proceeds of sale of the Olive Properties the Receivers and Managers' costs, expenses and remuneration referable to the preservation and realisation of any Sale Asset (as defined – includes the Olive Properties).

If the allegation in the Statement of Claim is meant to convey that the Receivers and Managers have incurred expenditure in the preservation of the Olive Properties beyond that which the Liquidators are entitled to draw from the proceeds, this ought to be made clear.

Paragraph 51

13. To the request in respect of paragraph 51 of the Represented Growers' pleading, they respond as follows:
- (a) The request at sub-paragraph (a) is not a proper request. The Represented Growers do not allege that each Head Lease contains terms providing for the amount of expenditure required to comply with the Head Leases.
 - (b) Paragraph 51(a) has been amended. The first plaintiff was not required to incur the Incurred Expenditure (as defined in the Statement of Claim), by reason of the Liquidators and Receivers and Managers having already incurred the Liquidators Expenditure and Receivers Expenditure (as defined in the Represented Growers' pleading).
 - (c) The Represented Growers refer to their response at sub-paragraph (a) above. For the same reasons, sub-paragraph (c) is not a proper request.

Paragraph 54(a)

14. To the request in respect of paragraph 54(a) of the Represented Growers' pleading, they respond as follows:
- (a) The failures and/or defaults alleged in paragraph 47 of the Statement of Claim have not been admitted. If there were any failures and/or defaults (which is not admitted), the fact that they were cured by the payment of the Incurred Expenditure (as defined in the Represented Growers' pleading) is to be inferred from the facts of the Liquidator Expenditure (insofar as it is admitted), the Receivers Expenditure (insofar as it is admitted) and the fact that the Olive Properties were by, the date of the Asset Sale Agreements, in marketable condition and were indeed sold.
 - (b) The request at sub-paragraph (b) is not a proper request for particulars of the Represented Growers' pleading. The Represented Growers do not allege that each Head Lease contains terms providing for the amount of expenditure required to comply with the Head Lease.

Paragraph 54(b)

15. To the request in respect of paragraph 54(b) of the Represented Growers' pleading, they respond as follows:

By reason of the Liquidators and Receivers and Managers paying the Incurred Expenditure (as defined in the Represented Growers' pleading), there was no need for the first plaintiff to do so in order to comply with the Head Leases. As such, any failure to by the first plaintiff to pay the Incurred Expenditure did not constitute a default under the Head Leases.

Paragraph 58

16. To the request in respect of paragraph 58 of the Represented Growers' pleading, they respond as follows:
- (a) They repeat paragraph 14(a) above.
 - (b) As the Liquidator Expenditure and Receiver Expenditure had been incurred by the date of the (not admitted) service of the default notices, this amount was not outstanding under the Head Lease.

Paragraph 59

17. To the request in respect of paragraph 59 of the Represented Growers' pleading, they respond as follows:
- (a) As noted in the response in relation to paragraph 58 above, as at the time of the (not admitted) service of the default notices, the Liquidator Expenditure and Receiver Expenditure were not amounts outstanding under the Head Lease. Accordingly, the defaults stated in the default notices were not, as at 29 March 2010, continuing defaults.
 - (b) As noted in (a) above, there were no continuing defaults to remedy upon the alleged service of the default notices. As such, there were no agricultural or climatic conditions which prevented GSMAL from remedying the defaults identified in each 25 February Notice.
 - (c) The Represented Growers do not understand the request in respect of paragraph 59(c). They otherwise repeat the above sub-paragraphs.

Paragraph 60

18. To the request in respect of paragraph 60 of the Represented Growers' pleading, they respond as follows:

The request is not for a particular of the allegation at paragraph 60 of the Represented Growers' pleading.

The Represented Growers otherwise repeat their responses in respect of paragraph 59.

Paragraph 66(e)

19. To the request in respect of paragraph 66(e) of the Represented Growers' pleading, they respond as follows:

That GSOC or GSOH were, was, are or is unable to issue further notices of default under any Head Lease, for so long as any default pleaded in paragraph 54 was continuing, arises by

reason of the fact that there was no default as pleaded in paragraph 54. The Represented Growers refer to their response regarding paragraph 54 above.

Further, that GSOC or GSOH is unable to issue further notices of default under any Head Lease arises by reason of the fact that the Head Leases have been assigned, terminated, surrendered or otherwise dealt with pursuant to paragraph 2 of the 27 May 2010 Orders.

Paragraph 76

20. To the request in respect of paragraph 76 of the Represented Growers' pleading, they respond as follows:

Paragraph 76 is a non-admission of the allegation that no Grower (as that term is defined in the Statement of Claim – i.e. not only the Represented Growers) cured or offered to cure GSMAL's alleged defaults under the Head Leases. This is an appropriate traverse in the factual circumstances as the Represented Growers understand them, given that:

- (a) they do not yet have access to the records of the Liquidators or Receivers and Managers (especially in respect of non-represented Growers); and
- (b) they do not admit the alleged defaults were in existence at the time.

The Represented Growers are unable to provide further particulars at this stage.

Paragraph 77

21. To the request in respect of paragraph 77 of the Represented Growers' pleading, they respond as follows:

Paragraph 77 is a non admission of the allegation that no Grower (as that term is defined in the Statement of Claim – i.e. not only the Represented Growers) was willing or able to remedy the default pleaded in paragraph 54 or fund the Maintenance Expenditure. This is an appropriate traverse in the factual circumstances as the Represented Growers understand them, given that:

- (a) they do not have access to the records or circumstances of non-represented Growers;
- (b) they do not yet have access to the records of the Liquidators or Receivers and Managers;
and
- (c) they do not admit the defaults pleaded in paragraph 54.

The Represented Growers are unable to provide further particulars at this stage.

Paragraph 80

22. To the request in respect of paragraph 80 of the Represented Growers' pleading, they respond as follows:

Paragraph 80 is a non admission of the allegation that any application by GSMAL for relief against forfeiture from the termination of any Head Lease would only be granted upon the conditions that GSMAL remedied outstanding defaults under Head Leases and provided adequate assurance that there would not be further defaults. This is an appropriate traverse given that the Represented Growers do not admit that there were outstanding defaults under the Head Lease.

Further the request is not for a particular of the non admission of the allegation. If anything, it is a request for submission.

Paragraph 81

23. To the request in respect of paragraph 81 of the Represented Growers' pleading, they respond as follows:

Paragraph 81 is a non admission of the allegation that any application by any Grower for relief against forfeiture as sublessee (under the *Property Law Act 1969 (WA)*) from the termination of any Head Lease would only be granted upon the conditions that the Grower remedied outstanding defaults under Head Leases and provided adequate assurance that there would not be further defaults. As noted in the response regarding paragraph 80, this is an appropriate traverse given that the Represented Growers do not admit that there were outstanding defaults under the Head Lease.

Further the request is not for a particular of the non admission of the allegation. If anything, it is a request for submission.

Paragraph 82

24. To the request in respect of paragraph 82 of the Represented Growers' pleading, they respond as follows:

They repeat their responses in relation to paragraphs 19(b) and 54(b) (and 80 and 81).

Paragraph 83

25. To the request in respect of paragraph 83 of the Represented Growers' pleading, they respond as follows:

Paragraph 83 is a denial that satisfaction of the requirement that GSMAL or a Grower provide assurance that there would be no further defaults under each Head Lease pleaded at

paragraphs 80(b) and 81(b) would have required GSMAL/the Grower to have funding as alleged at paragraph 51 (defined term Working Capital).

Paragraph 51 of the Statement of claim, which sets out the Working Capital requirements alleged by the plaintiffs, is not particularised. As it presently stands, it is a bare assertion of figures, without any explanation of the basis upon which they have been calculated.

In those circumstances, it is entirely appropriate that the Represented Growers deny (rather than simply not admit) the allegation – since they are likely to lead evidence at trial of what they allege was required to carry the Schemes through to completion.

They are unable to particularise this denial prior to the plaintiffs particularising their allegations in paragraph 51 regarding the Working Capital requirements.

Paragraph 87

26. To the request in respect of paragraph 87 of the Represented Growers' pleading, they respond as follows:

- (a) The Liquidators were unable to seek a direction from a court of competent jurisdiction that they were justified in terminating each respective Head Lease because GSMAL was not in breach of the Head Lease at the time of the relevant default notices. The Represented Growers repeat their responses regarding paragraphs 54, 58 and 63 above.
- (b) For the reasons given in sub-paragraph (a) above, the Liquidators were also unable to cause the Owners to terminate each applicable Head Lease.
- (c) This honourable Court is *functus officio* in respect to any application under s.511 for declarations that the Liquidators are or were justified in terminating the Head Leases by reason that the 27 May 2010 orders provide for the termination of the Head Leases and the conducting of the Rights Proceeding, and the Rights Proceeding is not an application under s.511.

Paragraph 96

27. To the request in respect of paragraph 96(a) of the Represented Growers' pleading, they respond as follows:

Paragraph 96 is an allegation that, for the reasons given in paragraphs 99 to 105 of the Represented Growers' pleading, if the Liquidators had of complied with their duties to the Growers a replacement responsible entity would have been located to conduct the Olive Schemes.

The Represented Growers object to the request on the ground that the majority of the requested information is disclosed in paragraphs 99 to 105 of the Represented Growers' pleading, and

that which is not is not properly the subject of a request for particulars but, rather, legal submission. Furthermore, the request is oppressive given the nature of the allegation made by the Represented Growers.

Under cover of that objection, the Represented Growers respond as follows:

- (a) The obligations owed by the Liquidators to the Growers are set out in paragraph 99 of the Represented Growers' pleading. They are:
 - i pursuant to s.601FC(1)(c) of the Act, to act in the best interests of the Growers and, if there is a conflict between the Growers' interests and their own interests, give priority to the Growers' interests; and
 - ii to act in a responsible way in respect of the Head Leases because the Liquidators are liquidators of a trustee that was and remains a trustee *vis-à-vis* the Growers.
- (b) The breaches of the alleged duties by the Liquidators are set out in the sub-paragraphs to paragraph 102 of the Represented Growers' pleading.
- (c) The Represented Growers allege at paragraph 102(f) that the Liquidators breached their duties to the Growers by failing to take any or any adequate steps to attract a replacement responsible entity. Such steps include those set out at paragraph 2(a) above.
- (d) The Represented Growers will lead evidence at the trial as to the fees that a replacement responsible entity would have been willing to accept in consideration for acting as responsible entity in the Olive Schemes and any amendments to the constitutions or other scheme documents required to effect those payments. Further particulars of those fees and amendments will be provided when available.
- (e) The Represented Growers refer to an repeat sub-paragraph (d) above.
- (f) The Represented Growers do not allege that the Liquidators had duties to the Growers inconsistent with s.545 of the *Corporations Act 2001*.
- (g) The Represented Growers repeat the response in relation to sub-paragraph (f) above.

Paragraph 97

28. To the request in respect of paragraph 97 of the Represented Growers' pleading, they respond as follows:

The request is not for a particular of the allegation and denial at paragraph 97.

The relevant allegation in the plaintiffs' Statement of claim is that, for so long as the Head Leases were not terminated, GSMAL is entitled to rent payments (net harvest proceeds) and insurance premium from each Grower.

In response, the Represented Growers repeat the positive allegation in paragraph 96 that had the Liquidators complied with their duties to the Growers, a replacement responsible entity would have been located and conducted the Olive Schemes, and otherwise deny the plaintiffs' allegation.

The Represented Growers do not allege that so long as any Head Lease was not terminated, no Grower would have been required to pay any rent or insurance premium. Rather, for the reasons given in paragraph 96 (i.e. the Liquidators' duty to install a replacement responsible entity), they deny that GSMAL would have been entitled to rent (net harvest proceeds) and insurance premium from each Grower.

Paragraph 98(a)

29. To the request in respect of paragraph 98(a) of the Represented Growers' pleading, they respond as follows:

The request for each fact relied upon to support the allegation that the Head Lease is Scheme Property of the lessor and/or the lessee is not for a particular of the allegation at paragraph 98(a) of the Represented Growers' pleading (which has been amended). The Represented Growers allege that GSMAL's interests in the Head Leases existed until the 27 May Orders for the benefit of the scheme members (i.e. Growers). There is no allegation that these interests are Scheme Property of the lessor and/or lessee.

Similarly, there is no allegation that GSOC and/or GSOH hold the Scheme Property on trust for the Growers. Accordingly, the request for each fact relied upon to support that allegation is not for a particular of the allegation at paragraph 98(a) of the Represented Growers' pleading.

Paragraph 98(d)

30. To the request in respect of paragraph 98(d) of the Represented Growers' pleading, they respond as follows:

The "successful claimants" includes all Growers

Paragraph 98(f) and (g)

31. To the request in respect of paragraph 98(f) and (g) of the Represented Growers' pleading, they respond as follows

These requests are for expert evidence and legal submissions. Particulars of the effect of the established valuation principles will be provided following completion of all interlocutory steps (including discovery and the exchange of expert evidence).

Paragraph 99

32. To the request in respect of paragraph 99 of the Represented Growers' pleading, they respond as follows:

The meaning of "to act in a responsible way" (an expression used in case law) in respect of the Head Leases is to protect its own interests under the Head Leases, which were held for the benefit of the Growers. The actions required by GSMAL to "act in a responsible way" with respect to the Head Leases includes:

- (a) not breaching the Head Lease (no breach being admitted);
- (b) curing any breaches of the Head Lease that did occur (such occurrence not admitted);
- (c) not taking any steps to terminate the Head Leases; and
- (d) resisting any attempts by the relevant Owner to terminate the Head Lease.

Paragraph 100

33. To the request in respect of paragraph 100 of the Represented Growers' pleading, they respond as follows:

The meaning of "to act in a responsible way" in respect of the Head Leases is to preserve the interests of GSMAL under the Head Leases (which were held for the benefit of the Growers). The actions required by the Liquidators to "act in a responsible way" with respect to the Head Leases includes:

- (e) ensuring that GSMAL did not breach the Head Lease (no breach being admitted);
- (f) curing any breaches of the Head Lease by GSMAL that did occur (such occurrence not admitted);
- (g) not taking any steps to terminate the Head Leases; and
- (h) resisting any attempts by the relevant Owner to terminate the Head Lease.

Paragraph 102(g)

34. To the request in respect of paragraph 102(g) of the Represented Growers' pleading, they respond as follows:

The Represented Growers expect to be able to provide particulars of expressions of interest received from prospective responsible entities following the completion of all interlocutory steps (including discovery).

Paragraph 102(h)

35. To the request in respect of paragraph 102(h) of the Represented Growers' pleading, they respond as follows:
- (a) The disclosure to the Growers ought to have taken place by post, electronic mail or at a meeting of Growers. The disclosure to the Growers ought to have taken place at the time of or shortly following the Liquidators taking steps to attract a replacement responsible entity. The disclosure to the Growers ought to have included statements informing the Growers that GSMAL held valuable rights under the Head Leases, for the benefit of Growers, and that any termination of GSMAL's rights under the Head Leases would prejudice the Growers.
 - (b) GSMAL and the Liquidators failed to make any or any adequate disclosure to the Growers by reason of their failure to make the disclosure described in sub-paragraph (a). Further particulars of the disclosures made to Growers will be provided following the completion of all interlocutory steps (including discovery).

Paragraph 102(i)

36. To the request in respect of paragraph 102(i) of the Represented Growers' pleading, they respond as follows:
- (a) The "purpose of the Olive Schemes" is the production and sale of the olive products throughout the life of each Scheme, as set out in paragraph 1(d)(i) above.
 - (b) GSMAL and the Liquidators failed to consider whether the purposes of the Olive Schemes could be accomplished for the purposes of s.601NC(1)(b):
 - i by failing to adequately investigate and consider whether the purposes of the Olive Schemes could be accomplished by a replacement responsible entity;
 - ii at the time that they assumed control of GSMAL as responsible entity of the Olive Schemes (i.e. 2 March 2010).

Paragraph 102(j)

37. To the request in respect of paragraph 102(j) of the Represented Growers' pleading, they respond as follows:

The basis of the duties of GSMAL and the Liquidators to procure the calling of a meeting of Growers is the duty to Growers, (under s.601FD(c)) alleged in paragraphs 99 and 100 of the Represented Growers' pleadings, to act in their best interests. That is, it was in the Growers' best interests for a meeting of Growers to be held to consider the winding up of the scheme in light of the fact that GSMAL held valuable interests under Head Leases for the benefit of Growers that would have been prejudiced by the winding up of GSMAL.

Paragraph 102(k)

38. To the request in respect of paragraph 102(k) of the Represented Growers' pleading, they respond as follows:

The duties of GSMAL and the Liquidators to undertake (or undertake adequately) the tasks alleged in paragraphs 102(a) to (i) arise as a natural consequence of their statutory duty to act in the best interests of Growers (under s.601FD(c)) and, if there is a conflict between the Growers' interests and its/their own interests, to give priority to the Growers' interests.

Paragraph 102(l)

39. To the request in respect of paragraph 102(l) of the Represented Growers' pleading, they respond as follows:

- (a) The phrases "acting in the best interests" (of Growers) and "responsibly" are to be given their natural meaning. The Represented Growers do not consider that they can provide further particulars of what is meant by these phrases. Reference should be made to ss.601FC(1)(c) and 601FD(c) and case law.
- (b) The duties alleged to be owed by GSMAL and the Liquidators are to act in the best interests of the Growers and responsibly with respect to the Head Lease. As is particularised at paragraphs 99 and 100 of the Represented Growers' pleadings, these arise by virtue of the ss.601FC(1)(c) and 601FD(1)(c) of the *Corporations Act 2001*. The Represented Growers do not consider they can provide further particulars of what duties are owed by GSMAL and the Liquidators to act in the best interests of the Growers and responsibly in respect of the Head Leases.

Paragraph 102(m)

40. To the request in respect of paragraph 102(m) of the Represented Growers' pleading, they respond as follows:

- (a) The Liquidators had a conflict of duties by virtue of their duties to the Growers alleged in the Represented Growers' pleading and their:
 - i duties as liquidators of GSMAL to the creditors of GSMAL; and

- ii duties as liquidators of GSOC and GSOH to the creditors of GSOC and GSOH.
- (ab) Further to (a) above, the Liquidators had a conflict of duties by virtue of their duties as liquidators of GSMAL to the creditors of GSMAL and their duties as liquidators of GSOC and GSOH to the creditors of GSOC and GSOH.
- (b) The Liquidators' duties to appoint a special purpose liquidator to take steps to procure a replacement responsible entity arose as a consequence of:
- i the fact that the procurement of a replacement responsible entity was in the Growers' best interests;
 - ii the Liquidators' duty to act in the best interests of Growers, and to prefer Growers' interests in the case of conflict between Growers' interests and their own;
 - iii the fact that the procurement of a replacement responsible entity was not in the best interests of the creditors of GSMAL, GSOC or GSOH; and
 - iv the Liquidators' duties as liquidators of GSMAL, GSOC and GSOH to their creditors.

Paragraph 104

41. To the request in respect of paragraph 104 of the Represented Growers' pleading, they respond as follows:
- (a) Paragraph 104(a) of the Represented Growers' pleading has been amended.
 - (b) The fact or matters relied upon for the allegation that "as the Olive Schemes have allegedly been wound up ... and the assets have now been sold, a replacement responsible entity cannot now be located and the Head Leases cannot now be terminated" are the plaintiffs' allegations that the Olive Schemes have been wound up, the Head Leases terminated pursuant to the 27 May 2010 Order and the assets of the Olive Schemes sold as provided for by the 27 May 2010 Orders.

Paragraph 105

42. To the request in respect of paragraph 105 of the Represented Growers' pleading, they respond as follows:

The request for facts or matters to "establish" the allegation that a replacement responsible entity could have been located and performed the conduct alleged in paragraph 105 is not a proper request for particulars, but rather a request for evidence.

Under cover of that objection, the Represented Growers say:

- (a) That a replacement responsible entity could have been located is to be inferred from the existence of a market for replacement responsible entities and the viability of the Olive Schemes.
- (b) That a replacement responsible entity could have cured any alleged breaches is to be inferred from the fact at sub-paragraph (a) and that the Liquidators/Receivers were able, following the Liquidators' Expenditure and the Receivers' Expenditure, to sell the Scheme Properties to the market.
- (c) That a replacement responsible entity could have made any required application for relief from forfeiture is to be inferred in all the circumstances, including the fact at sub-paragraph (a) above.

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