

NOTICE OF FILING

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APPOINTED) ACN 125 167 133
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Important Information

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Form 59

Rule 29.02(1)

Affidavit

Federal Court of Australia

No WAD 41 of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133 and others according to the Schedule.

Plaintiffs

Realtek Semiconductor Corporation

Defendant

Affidavit of: Martin Bruce Jones
Address: Level 7, 235 St Georges Terrace, Perth WA 6000
Occupation: Chartered Accountant and Registered Liquidator
Date: 5 March 2025

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Filed on behalf of (name & role of party) Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133, Plaintiffs

Prepared by (name of person/lawyer) Michael Barrett and Eden Bird

Law firm (if applicable) Thomson Geer

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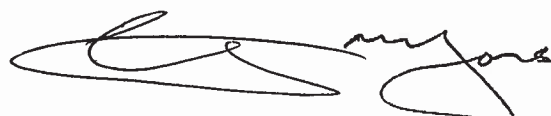
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Address for service (include state and postcode) Level 29, Central Park Tower, 152-158 St Georges Terrace, Perth WA 6000

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I, MARTIN BRUCE JONES, care of Level 7, 235 St Georges Terrace, Perth in the State of Western Australia, Chartered Accountant and Registered Liquidator, make oath and say as follows:

1. I have previously sworn four affidavits in this proceeding on 17 February 2025 (**First Affidavit**), 20 February 2025 (**Second Affidavit**), 25 February 2025



(Third Affidavit) and 27 February 2025 (Fourth Affidavit). Terms defined in those affidavits are used in this affidavit.

Status of the DOCA proposals

2. In my previous affidavits, I exhibited two iterations of the Syndicate Proposal dated 7 and 17 February 2025 and the Realtek Proposal dated 24 February 2025.
3. Realtek has now revised its proposal by letter dated 28 February 2025. Annexed and marked "**MBJ-35**" is a copy of this letter and its covering email.
4. Despite foreshadowing a further revision to its proposal in correspondence and telephone calls between solicitors, the Syndicate has not yet submitted any revision.

Status of the administration and its funding

5. As I deposed to in my earlier affidavits, the funding available to the Administrators from the Syndicate under the funding term sheet dated 18 November 2024 (**Syndicate Funding Agreement**) expired on 28 February 2025. Annexed and marked "**MBJ-36**" is a copy of the Syndicate Funding Agreement (which is also annexure "MBJ-24" to my Second Affidavit).
6. Around the time of the filing of the Originating Process in this matter on Monday, 17 February 2025, we approached the Syndicate regarding the prospect of extending this funding to 28 March 2025, the date to which we initially sought to extend the period in which the Meeting could be reconvened. No response has been received from the Syndicate. Annexed and marked "**MBJ-37**" is a copy of the email to the Syndicate to this effect.
7. On Friday, 21 February 2025, the Honourable Justice O'Sullivan made Orders in respect of the Plaintiffs' application for orders pursuant to s442C of the Act, permitting the Administrators to dispose of assets the subject of the Realtek Security pursuant to the terms of an Asset Sale Agreement with an SPV associated with the Syndicate.
8. As I have previously deposed, following those events, on Monday, 24 February 2025, the solicitors acting for Realtek sent us the Realtek Proposal. A copy of the Realtek Proposal was provided by my solicitors to the solicitors for the Syndicate shortly after its receipt on 24 February 2025.

A handwritten signature in black ink, appearing to be 'M. Jones', is written over a large, faint, circular stamp or watermark. The signature is written in a cursive style.

9. At this time, we had not received any confirmation from the Syndicate that it would fund the administrations following 28 February 2025. Hence, we advised Realtek that if we were to seek a further extension of time to properly consider the Realtek Proposal and prepare a further supplementary report to creditors because of the Realtek Proposal having been received since we had already reported to creditors (as we did in our Supplementary Report to Creditors dated 17 February 2025) we would need Realtek to provide funding for costs of the Administration after 28 February 2025.

Annexed and marked "MBJ-38" is a bundle of emails between our solicitors and the solicitors for Realtek in relation to this issue.

10. On Tuesday, 25 February 2025, the Honourable Justice O'Sullivan made Orders including:
- 10.1. extending the period for reconvening the Meeting but only until 28 February 2025; and
 - 10.2. as amended by consent on 26 February 2025, the payment by Realtek of \$501,528.80 (**Realtek Funds**) into Thomson Geer's trust account.
11. On Thursday, 27 February 2025, the Realtek Funds cleared into Thomson Geer's trust account. Following this, the Honourable Justice O'Sullivan allowed our application to vary the Orders of 25 February 2025 to further extend the period for the reconvened Meeting to Monday, 17 March 2025.
12. Pursuant to the Orders of 25 February 2025 as varied on 27 February 2025, the Meeting on 28 February 2025 was adjourned to a date to be notified. We presently intend to issue a notice under section 439A of the Act on Friday, 7 March 2025 reconvening the Meeting on Monday, 17 March 2025..
13. As the date of swearing this affidavit, the only funding available to the Administrators for the conduct of the Administrations until the holding of the Meeting is the Realtek Funds. We have negotiated a funding term sheet with Realtek (**Realtek Funding Agreement**), but have not yet entered into the agreement, and we will not do so until this application is determined for the reasons I describe below.
14. As at the date of swearing this affidavit, the administration's net position is negative \$114,215.35 as follows:

MBL Account	525,666.33
CBA Account	20,601.64

Total Cash	546,267.97
Less:	
Pending Trades	(\$2,092.36)
Provision for legal fee (Thomson Geer) December	(\$13,636.36)
Foreign tax obligations + fees estimate	(\$191.41)
Rent provision (JLL)	(\$50,000.00)
Dec Qtr GST receivable	\$7,033.00
Dec Qtr GST payable actual	(\$2,124.00)
Estimated Jan 25 GST receivable	\$4,067.67
Estimated Jan 25 GST payable	(\$464.86)
Contingency trading	(\$20,000.00)
Annual leave accrued	(\$3,000.00)
Long service leave accrued	(\$3,500.00)
TG legal fees (ASA,442c etc)	(\$7,000.00)
TG - Legal Fees	(\$65,000.00)
Jan PAYG	(\$39,810.00)
Feb PAYG	(\$39,550.00)
NUH Administrators fees to 31 October 2024	(\$425,215.00)
Liabilities	(\$660,483.32)
Net Cash	(\$114,215.35)

15. There are no substantial expenses that will need to be paid by us until Friday, 14 March 2025. However, a pay run is due to take place on that date for the NUH employees, in the total amount of approximately \$200,000.
16. We accordingly respectfully request that this Honourable Court determines our application prior to 14 March 2025.

This application

17. The Administrators seek guidance from the Court that we are justified in entering into the Realtek Funding Agreement on the terms circulated by our solicitors on 28 February 2025. We also seek related orders to indemnify us in the usual manner in respect of the Companies' obligations under this agreement.
18. We also seek corresponding guidance and orders in respect of the Syndicate Funding Agreement.
19. Finally, we seek guidance and orders regarding our rights of indemnity in respect of the Realtek Funds.
20. On Tuesday, 4 March 2025, the Honourable Justice O'Sullivan allocated time for hearing this application on Wednesday, 12 March 2025. This was communicated by our solicitors to the solicitors for Realtek and the Syndicate on the evening of Tuesday 4 March 2025 by emails sent at approximately 8.20pm AEDT.



Annexed and marked "MBJ-39" are emails to the solicitors for Realtek and the Syndicate relating to the date for hearing of this matter.

21. Following the filing of the interlocutory process, we will issue a circular to creditors notifying them of the hearing. All documents filed in the Court by us or another party to this proceeding will also be posted to the website which KPMG maintains for the administrations.

The administration's funding position following our appointment

22. As I have described in my earlier affidavits, early in the administration we formed the view that the best return for the Assets and Business of the Companies would be achieved if they were sold as a going concern. In order to do so, it was essential that we maintained as many of NUH's employees as possible, which requires us to pay salaries of approximately \$200,000 per month. Additionally, a further approximately \$50,000 per month is required for other expenses of the Companies, including utilities, IT, sales platforms, shipping of products and insurance.
23. When the administration commenced on 7 August 2024, the Companies had a total of \$29,616 cash at bank. However, in early September 2024, a research and development tax refund of approximately \$840,000 was received. We considered that this would be sufficient to fund the Companies' operations until the end of October 2024 but not beyond.
24. Our approach is described in our report to creditors (annexure "MBJ-2" to my First Affidavit at page 209):

"Following our urgent assessment of the Group's operations, it was apparent that the Group was operating at a loss and had limited remaining funds available to preserve the Group's business as a going concern.

Please note that whilst the Administrators subsequently received \$840k related to the FY24 R&D Tax Incentive, this funding was insufficient to satisfy the Group's funding obligations past 1 November 2024.

Accordingly, the Administrators reached out to several potential funders including the Group's Major Shareholders in order to ascertain their interest in providing funding. By obtaining funding for the Group, the Administrators could preserve the business as a going concern, which may provide creditors with a greater return than an immediate winding up of the Group's operations.

Given the Major Shareholders had funded the Group prior to our appointment,



on 18 November 2024, the Administrators executed a Funding Agreement on behalf of the Group with the Major Shareholders for a loan of up to \$600k, of which \$100k is a contingency amount. The funding provided is for the period from 1 November 2024 and will likely be extinguished by 31 December 2024. The Major Shareholders are yet to confirm whether they will fund the business past this date. In the absence of an extension to this facility, or without alternative funding, then the Administrators will be required to cease operations."

25. Realtek is amongst the potential funders that we approached (through their solicitors) following our appointment in August 2024, however we were advised that Realtek was not prepared to offer any funding.
26. Otherwise, we received a term sheet from one funder in respect of interim funding to be repaid upon receipt of the tax refund, however this was not entered into because the refund became available before it was necessary. I have not exhibited this term sheet because of commercial confidentiality and because it is not relevant to this application.
27. In respect of longer-term funding of the administration (ie, the type of funding provided under the Syndicate Funding Agreement), we were constrained by the Companies' lack of tangible, marketable assets. Typically, a lender prepared to provide funding to a distressed company (including one in administration) will require security over real property or similar assets (eg, a mining tenement).
28. As I described in my First and Second Affidavits, the Companies valuable, marketable Assets are principally intellectual property and goodwill, and the inventory and plant and equipment are unlikely to realise any value outside of a going concern sale. Accordingly, we were not in a position following our appointment to seek third party funding.
29. Even if we were able to do so, in my experience as an administrator, I consider that the commercial terms (ie, interest rate and establishment fee) would have been no better (and may have been materially worse) than the terms of the Syndicate Funding Agreement.

The Syndicate Funding Agreement

30. The Lenders under the Syndicate Facility Agreement are three members of the Syndicate, Farjoy Pty Ltd, Fiago Construction Pty Ltd and Mr Xuan Khoa Pham. As clause 5 of the Syndicate Facility Agreement notes, \$200,000 had been

advanced prior to entry into the agreement.

31. The key terms of the Syndicate Funding Agreement are:
 - 31.1. \$500,000 of committed funding, plus a further \$100,000 contingency, to be approved by the Lenders acting reasonably (clause 6);
 - 31.2. if a DOCA is entered into, then there will also be an establishment fee which is greater of \$100,000 or 20% of the amounts of funds advanced by the Lenders (clause 6);
 - 31.3. security by way of a deed of priority entered into by existing ALLPAAP holders, ie Realtek, unless waived by the Lenders (which occurred) (clause 8);
 - 31.4. interest at 15% per annum, save that if repayment is by way of issuing shares to the Lenders under a DOCA entailing the recapitalisation of the Companies, interest will be at 24% per annum (clause 9); and
 - 31.5. all amounts payable under the Syndicate Funding Agreement will be applied under Part 5.3A of the Act, and may be drawn against the specified funding requirements set out in Annexure B to the agreement (clause 11).
32. Based on my experience as an administrator, I consider that the terms of the Syndicate Funding Agreement, including the interest rate, were in line with those which would typically be available in the administration of a business comparable to the Companies.
33. When the Syndicate Funding Agreement was entered into, the convening period for the Meeting had been extended by the Honourable Justice Hill of the Supreme Court of Western Australia to 11 December 2024. Hence, because the funds available under the Syndicate Funding Agreement would be sufficient to allow the Companies to trade until the end of December 2024, we anticipated that by the time these funds ran out, the Companies either would have entered into a DOCA or would be ceasing trading should the creditors resolve they be wound up.
34. However, because the second creditors' meeting on 17 December 2024 was instead adjourned for up to 45 business days, we knew that the funds totalling \$600,000 would not be sufficient.
35. Accordingly, with the agreement of the Lenders, we have continued to draw



amounts in excess of the Facility Limit to ensure that the costs of the administration can be met. The total drawings have been as follows:

Contributor	Date Received	Total Funding
Fiago Construction Pty Ltd	14/11/2024	100,000.00
Farjoy Pty Ltd	14/11/2024	100,000.00
Xuan Khoa Pham	18/11/2024	50,000.00
Xuan Khoa Pham	25/11/2024	25,000.00
Xuan Khoa Pham	26/11/2024	25,000.00
Farjoy Pty Ltd	27/12/2024	100,000.00
Fiago Construction Pty Ltd	30/12/2024	112,000.00
Xuan Khoa Pham	13/01/2025	50,000.00
Farjoy Pty Ltd	31/01/2025	100,000.00
Fiago Construction Pty Ltd	31/01/2025	100,000.00
Farjoy Pty Ltd	7/02/2025	28,308.50
Fiago Construction Pty Ltd	7/02/2025	28,308.50
Fiago Construction Pty Ltd	14/02/2025	156,565.50
Farjoy Pty Ltd	19/02/2025	100,000.00
Farjoy Pty Ltd	20/02/2025	56,565.50
Total receipts to date		1,131,748.00

36. Of the above, \$1,024,748 has been drawn to fund the business, the balance of \$107,000 was a provision for legal fees. None of the payments made by the Syndicate pursuant to the Syndicate Funding Agreement have been applied to the remuneration of the Administrators.
37. By an email dated 19 December 2024, we requested that the Lenders agree to amend the Syndicate Funding Agreement to increase the Facility Limit from \$600,000 to \$984,000, however, this was not actioned. However, in all of our discussions with the Shareholders Committee and Lenders we have proceeded on the basis that the further advances are treated as being under the terms of the Syndicate Funding Agreement.

Annexed and marked "MBJ-40" is a copy of the 19 December 2024 email.

38. In total, we have drawn \$1,131,748 under the Syndicate Funding Agreement. As at the date of this affidavit, the interest payable at 15% per annum is \$26,083.10. Additionally, the establishment fee of \$226,349.60 will be payable if a DOCA is entered into.

The Realtek Funds held in trust

39. When this proceeding was commenced on Monday, 17 February 2025, there was no funding guaranteed under the Syndicate Funding Agreement beyond the end of February 2025.

40. On 19 February 2025, we wrote to the Syndicate and requested that it consider providing further funding to allow the Companies to trade to end March 2025, which we estimated to be in the order of \$250,000 (see "MBJ-37 referred to at paragraph 6 above).
41. When Realtek sent us the Realtek Proposal on Monday, 24 February 2025, we advised Realtek that it should consider providing interim funding pending the convening of the Meeting that would be convened to discuss the Realtek Proposal and the Syndicate Proposal. A telephone call from Mr Barrett of Thomson Geer to Mr Banda of Bennett Lawyers following the receipt of the Realtek Proposal is summarised in an email from Mr Barrett to Mr Sanders of Bennett Lawyers (see "MBJ-32" at page 71 of my Third Affidavit):

" I spoke briefly to Delitso [sic] earlier about one notable omission from the [Realtek Proposal] letter. If creditors were to vote in favour of a DOCA on the terms set out in your letter it will clearly take some time for these arrangements to be documented. The funding currently available to the Administrators provided by the shareholder syndicate will be exhausted by the end of the month. The Administrators are not in a position to trade the business, which we understand based on my conversation with Delitso is required by your client, without having funding. The indicative numbers of that funding have been provided in the materials filed before the Court for the purpose of the hearing before Justice O'Sullivan.

Your client would need to meet those payments and would need to pay money to the Administrator's account by the end of this week.

I have asked the Administrators to provide me with an estimate of the funding that will be required to keep the business trading pending the completion of the transaction the subject of your letter.

...

The Administrators will not assume any risk of trading the business at the request of your client, and incurring liabilities in doing so unless they have funding for that purpose regardless of the outcome of the creditor".

42. By further emails on Monday, 24 February, Mr Barrett set out details of the amount required (see "MBJ-32" at pages 65 and 68 of my Third Affidavit).
43. On 25 February 2025, the Honourable Justice O'Sullivan heard our ex parte application to extend the date to hold the Meeting. The Realtek Proposal and the



emails I refer to above were in evidence in my Third Affidavit at this hearing.

Annexed and marked "MBJ-41" is a copy of the transcript of the hearing.

44. His Honour observed:

"But I hold a great concern that this is very late and might have another purpose – might. I don't put any higher than that, but it seems to me that one of the important features has to be the payment of money by Realtek on account of the administrator's fees and keeping the business going. That, I think, is in the figure of \$474,000. Is there any reason why I shouldn't make an order that Realtek pay that money into – I imagine it's KPMGs trust account by the close of business tomorrow? If they don't, then that's fine. You can get on, and we can adjourn – you can carry on with the meeting. If they do or they want to be heard on the amount or extend the date, then I will list this tomorrow. I will adjourn this to tomorrow. It might be 4.30 or 5 o'clock Australian Western Standard Time. So I'm just putting that out there for you to – and I want to hear you on that. Is there any reason why I shouldn't do that?"

45. Mr Bird, who appeared for us, agreed to his Honour's proposal, subject to the order also proposed by his Honour that Realtek would have liberty to apply on short notice.

46. The Realtek Funds were paid into Thomson Geer's trust account on Thursday, 27 February 2025. They will remain there unless and until the Realtek Funding Agreement is entered into or otherwise as ordered by the Court.

Negotiation of the Realtek Funding Agreement

47. Over the period from the receipt of the Realtek Proposal on Monday, 24 February 2025, our solicitors and Realtek's solicitors have negotiated the terms of Realtek Funding Agreement.

48. The terms of the Realtek Funding Agreement, subject only to one matter which remains unresolved (and which I seek to resolve by the orders I seek from this Honourable Court), are in my view appropriate and in the interests of the creditors of the Companies.

49. There are two present drafts of the Realtek Funding Agreement, being the draft sent from our solicitors to Realtek's solicitors on 28 February 2025 (**Administrators' Draft**), and the draft sent back today, 5 March 2025 (**Realtek Draft**).

Annexed and marked "MBJ-42" is a copy of the Administrators' Draft and covering email.

Annexed and marked "MBJ-43" is a copy of the Realtek Draft and covering email.

50. The agreed key terms of the Realtek Funding Agreement are as follows:
- 50.1. the funds may be used for the following purposes (clause 5):
- "(1) *The expenses and liabilities likely to be incurred by the Administrators in operating the business of the NUH Entities;*
- (2) *The remuneration of the Administrators; and*
- (3) *The liability of the Administrators for legal fees";*
- 50.2. if additional funds are needed, Realtek may approve same in its absolute discretion (clause 6);
- 50.3. the funds are to be used as followed (clause 8):
- " 8.1 *All amounts payable under the Funding Agreement will be stated as being incurred in preserving, realising or getting in the property of the NUH Entities, or in carrying on the NUH Entities' business, or paying other Administration Debts for the Administration Period, estimated to be \$274,732.78 plus applicable GST; and*
- 8.2 *the estimated remuneration of the Administrators and their liability for legal fees for the Administration Period, up to the amount of \$200,000 plus GST*
- The amounts paid to the Administrators, will be applied by them in accordance with Part 5.3A Division 9 of the Act";*
- 50.4. during the period of the agreement, Realtek will not seek to exercise any rights as a secured creditor of NUH (clause 9);
- 50.5. interest is at 15% per annum; and
- 50.6. the agreement is subject to a condition precedent that the Court approval now sought be granted (clause 13).
51. The material terms of the Realtek Funding Agreement are the same or similar to the Syndicate Funding Agreement beyond the provision in clause 10.2 (which I discuss from paragraph 53 below). The terms of the Realtek Funding Agreement

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are also, based on my experience as an administrator, in line with those which would typically be available in the administration of a business comparable to the Companies.

52. Further, we have not applied and will not apply any of the Realtek Funds unless and until the Realtek Funding Agreement is entered into or otherwise as permitted under orders of the Court. Those funds will only be applied for the purposes set out in clause 5 (see paragraph 50.1 of this affidavit) and the manner of their use has been agreed in clause 8 (see paragraph 50.3 above). I note that clause 8 is in similar terms to clause 11 of the Syndicate Funding Agreement.

Status of the Realtek Funding Agreement and the Syndicate's challenge

53. The only point of difference between us and Realtek is contained in second paragraph of clause 10.2 of the Administrators' Draft which reads as follows:

" On termination, no further funds can be drawn down and regardless of any other provision of this Term Sheet, the Administrators have no obligation to repay any portion of the sum of \$200,000 plus GST paid on account of their remuneration or their legal fees, except where the same have not been incurred to that extent."

54. This paragraph reflects my (and the Syndicate's) view that, because of the decision of Realtek not to submit any DOCA proposal (and in particular the Realtek Proposal) until after the making of the orders sought by the Administrators pursuant to s442C of the Act, additional Administrators' remuneration and legal fees (estimated to be approximately \$220,000 including GST) will be incurred that would not have been incurred had the Realtek Proposal been submitted at a time when I was due to report to creditors for the purpose of the meetings to be held on 28 February 2025. As I have noted previously, we requested that Realtek submit a DOCA proposal in respect of any proposed acquisition of the Assets and Business as early as December 2024 (see "MBJ-14" at page 390 of my First Affidavit).

55. This concern was raised in a letter from the Syndicate's solicitors dated 27 February 2025, which reads in part:

"In relation to the amount ordered by the Court to be paid by Realtek, we understand this has been paid to the trust account of the Australian solicitors for Realtek. We are instructed to inform you that the character of that payment, if made, is by way of an order of the Court and cannot be characterised as a

voluntary loan to the Administrators. It was only necessary because the delay in holding the creditors meeting was caused by Realtek's failure to propose a DOCA in a timely way, thereby exhausting the funds of NuHeara and increasing the costs of Administration, including legal costs which would otherwise have been unnecessary. It should not receive any priority in the administration of NuHeara to the detriment of unsecured creditors."

Annexed and marked "MBJ-44" is a letter from the solicitors for the Syndicate dated 27 February 2025.

56. On Friday, 28 February 2025, our solicitors sent a letter in response to the Syndicate's solicitors, which reads in part:

"As we have said to you, in light of the Realtek DOCA proposal, the Administrators were obliged to make an urgent application to the Court under s447A of the Act in order to permit them to adjourn the meetings of creditors given that Tuesday 25 February 2025 was otherwise the last day on which those meetings could be held.

His Honour, Justice O'Sullivan, in the course of that hearing, of his own volition, required Realtek to put monies into our trust account for the purpose of demonstrating its bona fides given the lateness of its DOCA proposal. This did not form any part of the application made by our client. The sole purpose of our clients' application as was explained to you immediately following receipt of the letter from Bennett Lawyers late on 24 February 2025, was to deal with the fact, as you say, of the delay on the part of Realtek in putting a DOCA proposal in a form which had to be considered by the Administrators.

Realtek has now paid moneys into our trust account in the amount of \$501,528.

Realtek is prepared to offer to make available that funding for the costs of the administration from 28 February 2025 given that, as of today, the Administrators have no additional funding. They have put a Funding Term Sheet to the Administrators which permits the Administrators to access the funding held in our trust account.

It is our client's intention to apply to the Court for the necessary orders under s447A in order to permit the Administrations to continue to be funded. It will also seek orders in relation to the funding that was provided by your client. We will endeavour to finalise those materials today and once they are finalised, we will provide you with a copy of them. That will give you the opportunity to put



whatever you may wish in relation to the matters referred to in the penultimate paragraph of your letter or any other matter concerning the funding of the Administrations."

Annexed and marked "MBJ-45" is a copy of the letter to the Syndicate's solicitors.

57. On Monday, 3 March 2025, our solicitors received a response, which reads in part:

"We understand that the payments contemplated by the Court's orders have been finally made, but we do not think that such payments by Realtek Semiconductor Corporation (Realtek) can be characterised as a voluntary loan to the Administrators.

To the extent that such funds are paid towards NuHeara's wages and associated expenses, our client has no objection to Realtek obtaining a priority. Our client does object to any priority being given to costs generated by Realtek's delay, for which it is wholly responsible. If our client's DOCA proposal is supported by the creditors meeting, then it will assume the burden of paying priority debts (see clauses 6.1, 8.1, 9 and 10 of our letter dated 7 February 2025 referred to above)."

Annexed and marked "MBJ-46" is a copy of the letter from the Syndicate's solicitors.

58. I understand this letter to reflect that the Syndicate is content with the approach taken in our solicitors' draft of the Realtek Funding Agreement inclusive of the language at clause 10 of that agreement extracted at paragraph 53 above.
59. Our solicitors outlines our position to Realtek's solicitors in the email enclosing the Administrators' Draft (see the covering email at annexure "MBJ-40" to this affidavit):

" From the point of view of the Administrators the amendments you sent to me in the document attached to the relevant email are largely acceptable subject to:

a. The amount being advanced on account of remuneration and legal fees not being refundable nor subject to the security. The Administrators consider that these fees are only being incurred as a result of the decision on the part of Realtek to not submit its DOCA Proposal until Monday. The Administrators consider that this is an issue which should be considered by the Court in the application pursuant to s447A of the Act which the Administrators intend to make on Tuesday

for orders effectively approving their decision to enter into the Funding Term Sheet and also to exempt them from personal liability under that Term Sheet.

b. Another reason for this application is that the shareholder syndicate is aware of the willingness of your client to fund the Administration pending the convening of the adjourned meetings of creditors but is agitating about what priority it should enjoy in respect of that advance."

60. However, as at today, Realtek's position is as follows (see the covering email at annexure "MBJ-43" to this affidavit):

"We understand that you are instructed that clause 10 of the Funding Agreement should include a provision stating that \$220,000 for legal costs and administrator remuneration should be non-refundable if the Realtek DOCA is not approved. Your explanation for this is that \$220,000 for legal costs and administrator remuneration should not be met by the creditors if the Realtek DOCA is not approved.

In our view that the \$220,000 paid by Realtek is for enabling the Administrators to carry on the business of NUH and/or is a debt incurred for the performance of the Administrator's duties. Please explain why this is not the case.

Realtek is open to considering an amendment to clause 10, making the \$220,000 non-refundable if the Administrators do not execute the attached funding agreement and if they leave Realtek with no choice and subject to the matters below. This will only be done to prevent the Realtek proposal from being compromised. The concern here is that these funds are not solely for the Realtek DOCA proposal. Please confirm how the funds are being utilised.

Realtek's position is that if the funds are being used to deal with the Shareholders syndicate's new proposals or for their benefit, these costs should not be borne by Realtek. Please confirm how the Administrators are accounting for the syndicate's costs.

Realtek considers that if there is a delay to the creditors meeting beyond 17 March 2025, the costs associated with the delay should be recovered from the responsible party.

If the Court approves the funding agreement as signed by Realtek, the Administrators will not be personally prejudiced by the non-inclusion of the non-refundable clause.

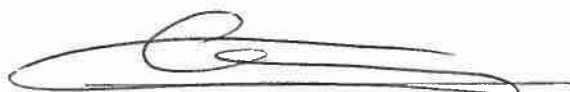
16 

Having regard to the above matters, please confirm if the Administrators still insist on amending clause 10. If so, provide a proposed amendment to clause 10. If not, please arrange for the Administrators to sign the attached funding agreement."

- 61. We respectfully request that the Court makes a declaration and order to provide us (and the other parties) certainty regarding our position.
- 62. I know the facts deposed to herein of my own knowledge except where otherwise appears.

SWORN by the deponent at Perth in)
 the State of Western Australia on this)
 5th day of March 2025)
 Before me:)


 Signature of deponent



CALEB ANDREW DELANEY
 of 525 Collins Street, Melbourne
 being an Australian Legal Practitioner
 within the meaning of the Legal Profession
 Uniform Law (Victoria)

A person authorised under section 19(1) of the **Oaths and Affirmations Act 2018** to take an affidavit.

This affidavit, as signed and notated by a person authorised under section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit was, pursuant to Part 5A of that Act, signed or initialled by the deponent by electronic means, specified things in respect of the affidavit were done by means of audio-visual link, and the document is a scanned copy not an original.

SCHEDULE

Federal Court of Australia

No WAD 41 of 2025

District Registry: Western Australia

Division: Corporations

Second Plaintiff: Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara IP Pty Ltd (administrators appointed) ACN 605 704 096

Third Plaintiff: Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Terrace Gold Pty Ltd (administrators appointed) ACN 072 608 952

Form 59

Rule 29.02(1)

Federal Court of Australia

No of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133

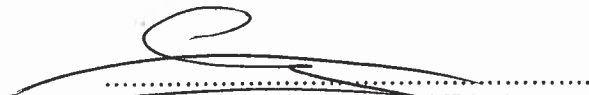
Plaintiffs

Realtek Semiconductor Corporation

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**MBJ-35**" now produced and shown to Martin Bruce Jones at the time of swearing his affidavit on 5 March 2025.



.....
Signature of person taking Affidavit



.....
Signature of deponent

CALEB ANDREW DELANEY
of 525 Collins Street, Melbourne
being an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit "MBJ-35"
being a copy of the revised Realtek Proposal

From: Kylie Evans <kevans@bennettlaw.com.au> on behalf of David Sanders <dsanders@bennettlaw.com.au>
Sent: Friday, 28 February 2025 6:58 PM
To: Barrett, Michael
Cc: Roost, Hedley; Bird, Eden; Dalitso Banda (117912) NUH
Subject: Letter to Michael Barrett - Thomson Geer 28_02_2025 .pdf; RE: NUH [TGLAW-Legal.FID4248359]

Dear Michael

Thank you for your earlier email.

1. Funding Term Sheet

I will forward your updated draft Funding Term Sheet to my client and recommend to them that they accept your amendments. I will revert to you once I have instructions.

On this basis by all means arrange for the Funding Term Sheet to be executed by your clients and returned to me such that if Realtek are happy to accept my recommendation they can countersign it and return it to me.

2. The Realtek DOCA Proposal

I have *attached* a letter as requested.

3. Business Sale and Purchase Agreement

I have *attached* a copy of my email exchange with Hedley yesterday in relation to the draft Business Sale and Purchase Agreement which sets out Realtek's position on the draft at that point in time.

I do not yet have instructions from Realtek in relation to my proposed amendments to the draft (including amendments consequent on an email I received from Hedley this afternoon), but once again I will seek instructions in that regard.

When we spoke a few days ago on a Teams call with Hedley and your client I was advised that the process of drafting the DOCAs themselves had commenced but had not yet been completed. Given that the DOCAs themselves are referred to in the draft Business Sale and Purchase Agreement can you please confirm when you expect to be in a position to provide us drafts to review?

Kind regards

Bennett
LITIGATION AND COMMERCIAL LAW

DOYLES
2024

DOYLES
2024

David Sanders
Corporate Counsel

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D +61 8 6316 2223
M + 61 439 999 968
dsanders@bennettlaw.com.au

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Our ref: DGS:117912
Contact: David Sanders
Telephone: +61 8 6316 2200
Email: dsanders@bennettlaw.com.au

28 February 2025

Michael Barrett
Partner
Thomson Geer
By Email: mbarrett@tglaw.com.au

Dear Michael

Realttek DOCA Proposal

I refer to your email this afternoon in relation to the above matter.

As requested, I have set out below the terms agreed between our respective clients yesterday in relation to my client's DOCA Proposal.

DOCA in respect of NUH

The elements of the proposed DOCA for NUH are as follows:

- 1 The joint and several deed administrators would be Martin Jones, Matthew Woods and Clint Joseph.
- 2 The parties to the DOCA will be the Group, the deed administrators and a special purpose vehicle nominated by Realttek which will provide the funding (**Proponent**). Realttek will not be party to this DOCA and will not have any obligations under the DOCA itself but will guarantee in favour of the Administrators the discharge by the Proponent of its obligations under the DOCA. That guarantee will be signed within 1 Business Day of the creditors of the Group approving the Group entering into a DOCA on the terms set out in this document.
- 3 The deed administrators will have all of the powers set out in Schedule 8A of the Corporations Regulations.
- 4 Proponent will contribute to a deed fund to be distributed as follows:
 - 4.1 Firstly, in payment of the administrators' liabilities, administrators' disbursements and administrators' remuneration. As at the date of this proposal Realttek acknowledges that these amounts are estimated as follows:



Whadjuk Noongar Boodja
Level 14, Westralia Square
141 St Georges Terrace
PERTH WA 6000
Australia

PO Box 7766
Cloisters Square
PERTH WA 6850

T + 61 8 6316 2200
F + 61 8 6316 2211
bennettlaw.com.au

Lawfirst Pty Ltd
ABN 69 147 622 197
An incorporated legal practice
trading as Bennett.

NUH	Relevant clause	NUH
Administrators balance		280,664
Azure fee		TBC
Administrators' fees incurred from date of appointment to 17 January 2025		(848,777)
Estimated Administrators fees from 18 January 2025 to the Reconvened Meeting of Creditors (25 Feb 25)	4.1	(296,612)
Estimated Administrators fees from Reconvened Meeting of Creditors (26 Feb 25) to the Final Reconvened Meeting of Creditors (17 Mar 25)		(150,000)
Estimated Administrators fees from the Final Reconvened Meeting of Creditors to the execution of the DOCA		(50,000)
Estimated Administrators' disbursements and legal fees		(100,000)
Realtek Payment pursuant to Court Order dated 26 February 2025		200,000
Net Priority Costs		(964,725)
Estimated Deed Administrators fees (commencement to completion)	4.2	(75,000)
Total Net Priority Costs		(1,039,725)
Total VA Loan	4.1	(1,395,775)
Realtek March 25 (trading only)		(274,733)
Realtek Payment pursuant to Court Order dated 26 February 2025		274,733
Total		(2,435,500)

- 4.2 Secondly, in payment of the deed administrators' liabilities, deed administrators' disbursements and deed administrators' remuneration;
- 4.3 Thirdly, to meet in full the priority entitlement of any employees who are not employed by the Proponent in accordance with paragraph 9 below; and
- 4.4 Fourthly, in payment of a dividend to arm's length non-priority unsecured creditors' creditors whose proofs of debt are admitted by the Deed Administrators as admissible debts in the DOCA (**Unsecured Creditor**) of 21.1 cents in the dollar.
- 5 The deed fund will be made up of:
- 5.1 The net funds received and receivable by the administrators during the administration period (**Administration Balance**); and
- 5.2 A payment made by the Proponent to ensure that the fund is sufficient to meet all of the obligations set out in paragraph 4 above;
- 5.3 In respect of funding of the administrators' liabilities, administrators' disbursements and administrators' remuneration pursuant to cl 4.1, for the period between 28 February 2025 until the execution of the DOCA will be funded by the Proponent. For this purpose the Proponent will, in accordance with paragraph 3 of the Court's order dated 25 February 2025, pay the amount of \$501,528.80 inclusive of GST to the Administrators' Lawyers Trust Account on or before 5pm AWST on Thursday 27 February 2025. This amount is broken down as follows:
- 5.3.1 Operating costs for March 2024 \$274,733;
- 5.3.2 Administrators' estimated remuneration \$100,000;
- 5.3.3 Administrators' estimated legal fees \$100,000;
- 5.3.4 GST \$26,796.02.

To the extent that any such amounts are not incurred then they will be credited to the Deed Fund. For the avoidance of doubt any remuneration or legal fees incurred between the date of payment and the execution of the DOCA are not refundable.

The payment to be made pursuant to the Court's order will be the subject of a separate funding agreement.

5.4 The Deed Fund will comprise the following:

Deed Fund - Summary	Relevant Clause	Amount \$
NUH	4.1/4.2	(1,520,389)
Less: Funds paid under Orders made on 25 February 2025 (Excluding March 25 Funding)		200,000
Less: Administrators Balance	4.1	280,664
Total NUH		(1,039,725)
NUH IP	4.1/4.2	(66,379)
Terrace Gold	4.1/4.2	(67,321)
Repayment of VA Funding Loan	4.1	(1,395,775)
Employee Entitlements	4.3	(825,425)
Unsecured Creditor Contribution (capped @21.1c/\$ based upon \$4.82m unsecured claims)(estimated)	4.4	(1,018,672)
Deed Fund		(4,413,298)

- 6 The deed administrators will not cause any of the Group to make claims or prove for or receive distributions based on an inter-group loan account balances.
- 7 Proponent will enter into an asset sale agreement (**ASA**) to acquire all of the property, assets and undertakings of NUH and its affiliates reasonably required for the conduct of the Nuheara business (including, without limitation, logos, designs, design rights, copyright, patents, patent applications, drawings discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, data bases including customer data bases, knowhow and similar industrial or intellectual property rights and the "Nuheara" business name), which includes the shares in Nuheara IP except for the Administration Balance in consideration for the secured debt currently owned by NUH to Realtek including the principal amount of \$2,500,000 which continues to accrue interest and late payment charges.
- 8 The DOCA will take effect upon each of the following being satisfied:
- 8.1 The execution of the DOCA by the parties to it; and
- 8.2 Execution of the subsidiary DOCAs referred to below.
- 9 Unfortunately the Proponent has not been provided details as to the existing employees of NUH, their duties or remuneration packages, but as part of its DOCA proposal the Proponent would look to interview all employees on an urgent basis to discuss with them offering ongoing employment with the Proponent to continue to work on the development of NUH's technology
- 10 Realtek agrees in relation to the application made by the Administrators in action no [] the subject of orders of the Federal Court made on 21 February 2025:
- 10.1 Subject only to it on appeal obtaining an order that it no pay such costs, to pay the Administrators Costs of the application within 14 days of the same being agreed or assessed by the Court; and
- 10.2 For the avoidance of doubt, should this proposal be accepted at a meeting of creditors pursuant to s439A of the Act, it will not appeal those orders.

DOCA for Nuheara IP

The elements of the proposed DOCA for Nuheara IP are as follows:

- 1 The joint and several deed administrators would be Martin Jones, Matthew Woods and Clint Joseph.
- 2 The parties to the DOCA will be the relevant companies, the deed administrators and the Proponent.
- 3 The deed administrators will have all of the powers set out in Schedule 8A of the Corporations Regulations.
- 4 The deed fund in respect of the Nuheara IP will be distributed as follows:
 - 4.1 Firstly, in payment of the administrators' liabilities, administrators' disbursements and administrators' remuneration. As at the date of this proposal Realtek acknowledges that these amounts are estimated as follows:

QUANT	Relevant clause	NUH IP
Administrators' fees incurred from date of appointment to 17 January 2025		(4,624)
Estimated Administrators fees from 18 January 2025 to the Reconvened Meeting of Creditors (25 Feb 25)		(1,756)
Estimated Administrators fees from Reconvened Meeting of Creditors to the Final Reconvened Meeting of Creditors	4.1	(15,000)
Estimated Administrators fees from the Final Reconvened Meeting of Creditors to the execution of the DOCA		(25,000)
Total Administrators Fees		(46,379)
Estimated Deed Administrators Remuneration execution of the DOCA to completion	4.2	(20,000)
Total		(66,379)

- 4.2 Secondly, in payment of the deed administrators' liabilities, deed administrators' disbursements and deed administrators' remuneration;
- 4.3 Thirdly, to the extent there are such claims, in full payment of entitlements that would, in a liquidation, be accorded a priority under section 556(1), 560 and 561 of the Corporations Act, including in respect of employees plus unpaid superannuation contributions and annual leave entitlements; and
- 4.4 Fourthly, in payment of a dividend to arm's length non-priority Unsecured Creditors of 21.1 cents in the dollar.
- 5 The deed fund in respect of Nuheara IP will be made up of:
 - 5.1 The relevant Administration Balances in respect of Nuheara IP; and
 - 5.2 A payment made by the Proponent to ensure that the fund is sufficient to meet all of the obligations set out in paragraph 4 above.

DOCA for Terrace

The elements of the proposed DOCA for Terrace are as follows:

- 1 The joint and several deed administrators would be Martin Jones, Matthew Woods and Clint Joseph.
- 2 The parties to the DOCA will be the relevant companies, the deed administrators and the Proponent.
- 3 The deed administrators will have all of the powers set out in Schedule 8A of the Corporations Regulations.

4 The deed fund in respect of Terrace will be distributed as follows:

4.1 Firstly, in payment of the administrators' liabilities, administrators' disbursements and administrators' remuneration, which are included in the NUH. As at the date of this proposal Realtek acknowledges that these amounts are estimated as follows:

Terrace Gold	Relevant clause	Terrace Gold
Administrators' fees incurred from date of appointment to 17 January 2025		(4,379)
Estimated Administrators fees from 18 January 2025 to the Reconvened Meeting of Creditors (25 Feb 25)	4.1	(2,943)
Estimated Administrators fees from Reconvened Meeting of Creditors to the Final Reconvened Meeting of Creditors		(15,000)
Estimated Administrators fees from the Final Reconvened Meeting of Creditors to the execution of the DOCA		(25,000)
Total Administrators Fees		(47,321)
Estimated Deed Administrators fees (commencement to completion)	4.2	(20,000)
Total		(67,321)

4.2 Secondly, in payment of the deed administrators' liabilities, deed administrators' disbursements and deed administrators' remuneration; and

4.3 Thirdly, in payment of a dividend to arm's length non-priority Unsecured Creditors of 21.1 cents in the dollar.

5 The deed fund in respect of Terrace will be made up of:

5.1 The relevant Administration Balances in respect of Terrace; and

5.2 A payment made by the Proponent to ensure that the fund is sufficient to meet all of the obligations set out in paragraph 4 above.

Yours sincerely



David Sanders
Corporate Counsel

Form 59

Rule 29.02(1)

Federal Court of Australia

No of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133

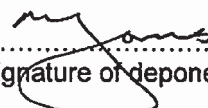
Plaintiffs

Realtek Semiconductor Corporation

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**MBJ-36**" now produced and shown to Martin Bruce Jones at the time of swearing his affidavit on 5 March 2025.


.....
Signature of deponent


.....
Signature of person taking Affidavit

CALEB ANDREW DELANEY
of 525 Collins Street, Melbourne
being an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit "MBJ-36"
being a copy of the Syndicate Funding Agreement

FUNDING TERM SHEET

Nuheara Limited (Administrators Appointed) ABN 29 125 167 133 (NUH) and the Subsidiaries (collectively **NUH Entities**)

Farjoy Pty Ltd ACN 000 384 903 (**Farjoy**) as to 40%

Fiago Construction Pty Ltd ACN 659 811 266 (**Fiago**) as to 40%

Mr Xuan Khoa Pham as to 20%

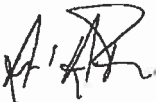
(**Lenders**)

Martin Jones, Matthew Woods and Clint Joseph (**Administrators**)

Date: 18 November 2024

1 Purpose	This binding term sheet sets out the terms and conditions on which the Lender will provide funding to the NUH Entities for the Purpose during the Administration Period (Funding Agreement)
2 Definitions	Capitalised Terms in this Funding Agreement have the meaning given to them in Annexure A – Dictionary.
3 Parties	3.1 NUH Entities (as joint and several Borrowers) 3.2 The Administrators 3.3 The Lenders in their proportions specified above (Respective Proportions).
4 Funding Term Sheet	The NUH Entities, the Lenders and the Administrators enter into this Funding Agreement, pursuant to which the Lenders will provide advances to the Borrowers to fund certain expenses incurred by the Administrators in that capacity and pursuant to section 443A of the Act, and payment of other Administration Debts. The parties may enter into a more definitive funding agreement based on the terms set out in this Term Sheet.
5 Commencement date	Date of this Term Sheet. Funds will be advanced to a bank account in the name of a Borrower as notified by the Administrators. The Administrators acknowledge the amount of \$100,000 has been received from Farjoy and \$100,000 from Fiago on or prior to the date of this Term Sheet.

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6 Facility Limit

AUD\$600,000 comprising \$500,000 by way of committed funding and a contingency of \$100,000. Of the committed funding, \$250,000 is to be drawn immediately on commencement. The balance can be drawn down with the consent of the Lenders upon 4 business days notice.

For the \$100,000 contingency, this is to be approved by the Lenders acting reasonably.

In the event that further funding is requested by the Administrators in excess of \$600,000, the Lenders may approve such additional funding in their absolute discretion on the same terms as set out in this Term Sheet.

All payments by the Lenders to the Borrower and all payments or repayments by the Borrower to the Lenders will be in the Respective Proportions.

If either NUH Entity enters into a Deed of Company Arrangement (DOCA), the Borrowers will also pay the Lenders an establishment fee which is the greater of \$100,000 or 20% of the amount of funds advanced by the Lenders (Establishment Fee). For clarity, if no DOCA is entered into, no Establishment Fee will be payable.

7 Conversion

If a DOCA is entered into by either NUH Entity, the Lenders may elect in their absolute discretion to convert the amount of funds advanced, accrued interest and the Establishment Fee into fully paid ordinary shares in the NUH (or the relevant NUH Entity, as determined by the Lenders) (Shares). The conversion price per share will be \$0.001. The issue of the Shares will be subject to shareholder approval.

Each Share will also have an attaching unlisted option, exercisable into one Share at an exercise price of \$0.001 per Share. The option must be exercised within 2 years from issue date. The issue of the options is subject to shareholder approval.

8 Security

Deed of Priority entered by existing ALLPAAP holders as required, to be fully executed prior to first draw down unless waiver by the Lenders.

9 Interest rate

Advances under this Funding Agreement will accrue interest daily at a rate of 15% per annum, provided that if the payment of interest is made by way of the issue of shares in the relevant Borrower entity to the Lenders pursuant to a DOCA, the interest rate will be 24% per annum.

Interest will capitalise monthly until the repayment date.

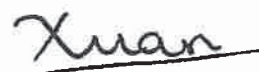


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-
- 10 Miscellaneous Provision**
- 10.1 The terms of the Funding Agreement include acknowledgement by the parties that:
- (a) the Administrators entered into the agreement solely in the capacities of the Administrators of NUH Entities, and in no other capacity;
 - (b) section 443A of the Act applies to this Funding Agreement;
 - (c) the Lenders covenant not to sue the Administrators in respect of their personal liability if the actual funds received to which the Administrators have recourse pursuant to section 443F of the Act are not sufficient to repay the advances made under the Funding Agreement; and
 - (d) there is a right in favour of the Administrators to seek orders under section 447A of the Act exempting them from any personal liability on account of the Funding Agreement (as required), and which orders the Lenders will not oppose.
-
- 11 Usage of Funds**
- 11.1 All amounts payable under the Funding Agreement will be stated as being incurred in preserving, realising or getting in property of NUH Entities, or in carrying on the NUH Entity business, or paying other Administration Debts and any amounts paid to the Administrators, will be applied by them in accordance with Part 5.3A Division 9 of the Act.
- 11.2 Annexure B – Funding requirements cashflow, identifies the expense amounts or budgeted items against which advances can be drawn. The expense amounts/budgeted items will be specified with a contingency amount that can be drawn to fund them should the amounts exceed the budgeted amounts within an agreed contingency limit. The Administrators will provide the Lenders with a weekly report in respect of the utilisation of funds advanced by the Lenders.
-
- 12 Acknowledgements by the Lenders**
- The Lenders acknowledge in favour of the NUH Entities and the Administrators that:
- 12.1 they will not during the Administration Period seek to exercise any rights which it may assert claiming to be a secured creditor of a NUH Entity pursuant to the Funding Agreement; and
 - 12.2 without limitation to paragraph 12.1, not seek to enforce any security which they assert they have over the assets of a NUH Entity by the appointment of any form of Insolvency Administrator.
-
- 13 Termination**
- The Funding Agreement will terminate on the earlier of:
- 13.1 the Lenders being entitled to terminate it as a consequence of an Event of Default; or
 - 13.2 a NUH Entity entering Liquidation; or
 - 13.3 4 months from the date of Commencement, or such other period as agreed in writing.
- On termination, no further funds can be drawn down.
-

- 3 -

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- 14 Repayment**
- 14.1 Interest on all amounts outstanding to be capitalised until loan is repaid.
 - 14.2 Payment of legal and other professional charges incurred or payable by the Administrators (including for Remuneration) may not be made from funds lent by the Lenders.
 - 14.3 The Administrators will regularly review the Available Assets and consult with the Lenders regarding each review (including providing such information that the Lenders may reasonably require) until such time as:
 - the loan has been repaid;
 - the affairs of the Borrowers are fully wound up; or
 - the Administrators certify that a DOCA executed by the Borrowers has been fully effectuated in accordance with section 445FA of the Corporations Act,

whichever happens first.

If, as a result of their review of the Available Assets the Administrators determine, acting reasonably, that the Available Assets are sufficient to repay part or all of the loan, the Administrators may issue a repayment notice (the form of which will be agreed or set out in the Funding Agreement).

15 Governing law This Term Sheet is governed by the laws of Western Australia.

Executed by Nuheara Limited
(Administrators Appointed) ABN 29 125 167
133 by its joint and several administrator:

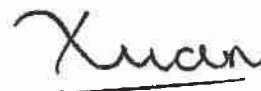
Full Name of Administrator

Signature of Administrator

Executed by Nuheara IP Pty Ltd
(Administrators Appointed) ACN 605 704 096
by its joint and several administrator:

Full Name of Administrator

Signature of Administrator



CONFIDENTIAL

Executed by Martin Jones as joint and several administrator of Nuheara Limited (Administrators Appointed) ABN 29 125 167 133 and Nuheara IP Pty Ltd (Administrators Appointed) ACN 605 704 096 in the presence of:



Martin Jones



Kieran Chu

Full name of witness

Executed by Farjoy Pty Ltd ACN 000 384 903 pursuant to section 127 of the Corporations Act 2001:

Full Name of Director

Signature of Director

Full Name of Director/Secretary

Signature of Director/Secretary

Executed by Fiago Construction Pty Ltd ACN 659 811 266 pursuant to section 127 of the Corporations Act 2001:

Full Name of Director

Signature of Director

Full Name of Director/Secretary

Signature of Director/Secretary

CONFIDENTIAL

Executed by Martin Jones as joint and several administrator of Nuheara Limited (Administrators Appointed) ABN 29 125 167 133 and Nuheara IP Pty Ltd (Administrators Appointed) ACN 805 704 096 in the presence of:

Martin Jones

Full name of witness

Executed by Farjoy Pty Ltd ACN 000 384 903 pursuant to section 127 of the Corporations Act 2001:

Full Name of Director

Signature of Director

TIMOTHY FRANK ROBERTSON

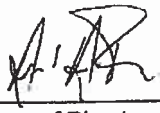
Full Name of Director/Secretary

Signature of Director/Secretary

Executed by Flago Construction Pty Ltd ACN 659 811 266 pursuant to section 127 of the Corporations Act 2001:

DANIEL M DI PAOLO

Full Name of Director



Signature of Director

Full Name of Director/Secretary

Signature of Director/Secretary

- 5 -

243627_3448-8761-4770_1

CONFIDENTIAL

Signed by Xuan Khoa Pham:



Signature of Xuan Khoa Pham

In the presence of:

Full Name of Witness

Address

Telephone No

Signature of Witness - Signed in my presence by the above signatory who is either personally known to me or has satisfied me as to their identity. (A witness must be 18 years or over and not be a party to the document)

CONFIDENTIAL

Annexure A – Dictionary

In this Term Sheet:

Act means the *Corporations Act 2001* (Cth).

Administration Period means the period beginning on the Appointment Date and ending when the Administration ends pursuant to s435C(3) of the Act.

Administrators means Martin Jones, Matthew Woods and Clint Joseph of KPMG, Level 8 235 St Georges Terrace Perth WA

Appointment Date means 7 August 2024.

Administration Debts means those liabilities, expenses, costs and debts incurred or damages or losses sustained, in good faith and without negligence, by the Administrators in the performance or exercise or purported performance or exercise of any of their functions or powers as Administrators of the Borrowers, but excludes any liability of the Borrowers or the Administrators under the Funding Agreement.

Available Assets means all of the cash assets of the Borrowers that are:

- (a) available for distribution to creditors under sections 555 and 556 of the Corporations Act in the event the Borrowers are wound up;
- (b) available for distribution to creditors in the event a deed of company arrangement is executed by the Borrowers pursuant to section 444B of the Corporations Act; or
- (c) available at the end of the Administration Period, in the in the event (a) or (b) does not apply.

but for the avoidance of doubt does not include cash held by the Administrators, and to be received by them as a refund of Goods and Service Tax and/or in respect of research and development expenditure, which funds are subject to a lien pursuant to s 443F of the *Corporations Act 2001* (Cth).

Costs includes costs, charges, fees, government charges, taxes and expenses, including those incurred in connection with advisers and incurred in connection with the performance of the Administrators' duties, obligations and responsibilities under the Act and during the Administration Period.

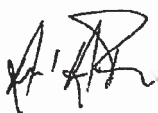
Event of Default means the use of the Funding other than for the Purpose.

Funding means the sum of \$600,000 to be advanced by the Lender to the Administrators for the Purpose on the terms set out in this document.

Purpose means the conduct of the Administration of NUH by the Administrators during the Administration Period including the incurring of liabilities by them for the purpose of the Administration, and excludes payment of Remuneration.

Remuneration means such remuneration to which the Administrators may be or become entitled as is determined in accordance with Division 60 of Schedule 2 to the Corporations Act.

Subsidiaries means Nuheara IP Pty Ltd ACN 605 704 096.



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243627_3448-8761-4770_1

Annexure B – Funding requirements cashflow

Nuheara VA extension/Funding Requirement	Week 1 10/11/2024	Week 2 17/11/2024	Week 3 24/11/2024	Week 4 1/12/2024	Week 5 8/12/2024	Week 6 15/12/2024	Week 7 22/12/2024	Week 8 29/12/2024	Total
Nuheara Employee Payments	-	134,651	60,258	-	9,919	134,651	80,258	9,919	408,653
Office & Admin Costs (incl storage)	2,000	-	8,000	-	2,000	-	2,000	6,000	20,000
Insurances	7,048	-	-	7,048	-	-	-	-	14,097
OMS / Registrations / US Office (FDA requirements)	-	-	-	6,530	15,164	-	-	5,000	26,694
IT Expenses (incl ERP system)	1,719	2,880	59	6,627	1,619	978	2,060	21,866	37,808
Legal Fees	-	-	-	-	-	-	-	-	-
Sales platform & shipping costs	1,050	5,189	6,129	608	1,060	5,189	6,129	608	25,973
Total operating expenditure	11,827	142,720	74,446	20,813	29,761	140,819	70,447	43,393	654,227
Forecast sales receipts - B2C	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	32,000
Total receipts	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	32,000
Net cash flow forecast	7,827	138,720	70,446	16,813	25,761	136,819	66,447	39,393	602,227
Opening Cash	-	-	146,547	216,993	233,806	259,567	386,386	482,634	-
Cumulative Funding requirement	7,827	148,547	216,993	233,806	259,567	386,386	482,634	502,227	502,227

Notes

1. Sales are from existing inventory with no production or manufacturing ongoing
2. All above excludes Administration costs and legal fees incurred by the Administrators. It also excludes payment of any pre-VA and VA amounts owing to creditors (i.e. done on a starting with no liabilities and no cash basis to show funding requirements).
3. Assumes that C-suite continue to only be paid 40% of salary in cash (with incentives to put in place), other employees are maintain and at current levels (100% salary)
4. Employee related costs are split across net pay to employees (on 15th of the month) + PAYG payments to ATO Super payments and Payroll Tax

243627_3448-8761-4770_1

Form 59

Rule 29.02(1)

Federal Court of Australia

No. of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133

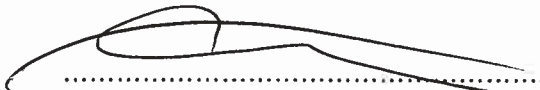
Plaintiffs

Realtek Semiconductor Corporation

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**MBJ-37**" now produced and shown to Martin Bruce Jones at the time of swearing his affidavit on 5 March 2025.


.....
Signature of person taking Affidavit


.....
Signature of deponent

CALEB ANDREW DELANEY
of 525 Collins Street, Melbourne
being an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit "MBJ-37"
being a copy of an email to the Syndicate
dated 19 February 2025

From: Jones, Martin <martinjones@kpmg.com.au>
Sent: Wednesday, 19 February 2025 9:16 PM
To: Tim Robertson; xuankhoapham150183@gmail.com; Daniel
Cc: Richard Beissel; Barrett, Michael; Bird, Eden; CHU, Kieran; Flower, Michael
Subject: Nuheara Limited (Administrators Appointed) - Funding post Feb 2025
Attachments: RE: Realtek [TGLAW-Legal.FID4248799]

Dear all

We take this opportunity to provide an update on the status of the funding of the Nuheara business.

As agreed, we have been operating under the Funding Agreement which was executed on or around 18 November 2024. The terms of the agreement were for a period of 4 months and due to expire on 17 March 2025 but can be extended in writing by the parties. I also confirm that under the terms of this agreement, we have received a total of \$975,182.5 (with a final \$156,565.5 outstanding and payable) as follows:

Contributor	Date Received	All current employees remain
Fiago Trust	14/11/2024	100,000.00
Timothy Robertson	14/11/2024	100,000.00
Xuan Khoa Pham	18/11/2024	50,000.00
Xuan Khoa Pham	25/11/2024	25,000.00
Xuan Khoa Pham	26/11/2024	25,000.00
Timothy Robertson	27/12/2024	100,000.00
Daniel Di Paolo	30/12/2024	112,000.00
Xuan Khoa Pham	13/01/2025	50,000.00
Timothy Robertson	31/01/2025	100,000.00
Daniel Di Paolo	31/01/2025	100,000.00
Timothy Robertson	07/02/2025	28,308.50
Daniel Di Paolo	07/02/2025	28,308.50
Daniel Di Paolo	14/02/2025	156,565.50
Timothy Robertson	Outstanding	156,565.50
Total		1,131,748.00

@Tim Robertson Please arrange payment of the \$156,565.50 as outlined in the attached email. This amount is the final installment for the February 2025 funding commitment.

The amounts advanced above were to fund the operations of the Nuheara business up until the end of February 2025.

Whilst we acknowledge that the Administrators' S442C application has been progressing and will be heard on Friday, 21 February 2025, the Reconvened Second Meeting of Creditors is to be held on 25 February, there is a possibility that the DOCA itself might not complete at the end of February 2025.

In this regard, out of an abundance of caution, we request that the funding Shareholders consider the following:

1. That the Shareholders consider committing to funding the business post-February (i.e. 1 March to 31 March) To that end, we will work with Ivan and his team to quantify this funding commitment during this period of transition and will advise accordingly. If past indication is anything to go by, then the amount is estimated to be circa \$250k.
2. If the above is contemplated, then consider that the "Termination Date" of the funding agreement be extended to 30 April 2025.

We can discuss this on our call at 10am (Perth Time) and 1pm (Sydney/Melbourne time) tomorrow.

Regards,

Martin

Form 59

Rule 29.02(1)

Federal Court of Australia

No of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133

Plaintiffs

Realtek Semiconductor Corporation

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**MBJ-38**" now produced and shown to Martin Bruce Jones at the time of swearing his affidavit on 5 March 2025.



.....
Signature of person taking Affidavit



.....
Signature of deponent

CALEB ANDREW DELANEY
of 525 Collins Street, Melbourne
being an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit "MBJ-38"
being a bundle of emails between Thomson
Geer and Bennetts

From: Barrett, Michael
Sent: Monday, 24 February 2025 8:35 PM
To: David Sanders
Cc: Dalitso Banda; Chloe Placzek; Bird, Eden
Subject: RE: (117912) Nuheara Limited (Administrators Appointed)From Subject Received Size Categories [TGLAW-Legal.FID4248799]

Funding table below which is exclusive of GST and is in addition to the Administrators remuneration and likely legal fees.

	Total
Payments:	
Nuheara Employee Payments	193,286
Office & Admin Costs (incl storage)	3,500
Insurances	9,897
US - Inc Expenses	1,823
QMS / Registrations (FDA requirements)	25,164
IT Expenses (incl ERP system)	33,201
Contingency	10,000
Sales platforms & shipping costs	11,363
Total operating expenditure	288,233
Receipts:	
Sales Receipts	13,500
Total receipts	13,500
Total Funding	(274,733)

Michael Barrett | Partner

Thomson Geer

T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861

mbarrett@tqlaw.com.au | tqlaw.com.au

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Domestic & Cross Border

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From: David Sanders <dsanders@bennettlaw.com.au>

Sent: Monday, 24 February 2025 7:26 PM

To: Barrett, Michael <mbarrett@tqlaw.com.au>

Cc: Dalitso Banda <DBanda@bennettlaw.com.au>; Chloe Placzek <cplaczek@bennettlaw.com.au>; Bird, Eden <ebird@tqlaw.com.au>

Subject: RE: (117912) Nuheara Limited (Administrators Appointed)From Subject Received Size Categories [TGLAW-Legal.FID4248799]

Thanks

It will obviously include employee costs and possibly some other costs.

In terms of the employees it would be helpful to have a breakdown per employee including details of their roles and remuneration.

Kind regards



David Sanders
Corporate Counsel

bennettlaw.com.au

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D +61 8 6316 2223
M + 61 439 999 968
dsanders@bennettlaw.com.au

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Level 14, Westralia Square
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PERTH, WA 6000

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From: Barrett, Michael <mbarrett@tglaw.com.au>
Sent: 24 February 2025 17:19
To: David Sanders <dsanders@bennettlaw.com.au>
Cc: Dalitso Banda <DBanda@bennettlaw.com.au>; Chloe Placzek <cplaczek@bennettlaw.com.au>; Bird, Eden <ebird@tglaw.com.au>
Subject: RE: (117912) Nuheara Limited (Administrators Appointed)From Subject Received Size Categories [TGLAW-Legal.FID4248799]

[Confidential]

I will get a break down of the \$274,733 and send it to you.

Michael Barrett | Partner
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mbarrett@tglaw.com.au | tglaw.com.au

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From: David Sanders <dsanders@bennettlaw.com.au>
Sent: Monday, 24 February 2025 7:18 PM
To: Barrett, Michael <mbarrett@tglaw.com.au>
Cc: Dalitso Banda <DBanda@bennettlaw.com.au>; Chloe Placzek <cplaczek@bennettlaw.com.au>; Bird, Eden <ebird@tglaw.com.au>
Subject: RE: (117912) Nuheara Limited (Administrators Appointed)From Subject Received Size Categories [TGLAW-Legal.FID4248799]

Thanks

Should we discuss the details of this direct with KPMG or through your firm?

Kind regards

Bennett

LITIGATION AND COMMERCIAL LAW

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Corporate Counsel

bennettlaw.com.au

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D +61 8 6316 2223
M + 61 439 999 968
dsanders@bennettlaw.com.au

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From: Barrett, Michael <mbarrett@tglaw.com.au>
Sent: 24 February 2025 17:16
To: David Sanders <dsanders@bennettlaw.com.au>
Cc: Dalitso Banda <DBanda@bennettlaw.com.au>; Chloe Placzek <cplaczek@bennettlaw.com.au>; Bird, Eden <ebird@tglaw.com.au>
Subject: RE: (117912) Nuheara Limited (Administrators Appointed)From Subject Received Size Categories [TGLAW-Legal.FID4248799]

[Confidential]

David

Thank you.

I have just received the following from KPMG in terms of the funding requirement. I understand these amounts are all net of GST.

As indicated below, the Administrators have no funding beyond Friday and this amount would be required to be paid before then in order to permit them to continue to trade the business.

Details	Note	Amount \$
March funding commitment	1	274,733.00
Administrators' remuneration	2	100,000.00
Legal costs		100,000
Total		474,733

Notes:

- Given the incurring of liabilities, it is not possible to provide funding on a weekly basis, and therefore the shortest period is 1 month. Accordingly, we request \$274k. Any amounts not used up for March 2025 can be refunded following the provision of an accounting by the Administrators as to the source and use of the funds.
- The Administrators' estimated remuneration for March 2025 totals \$100k to finalise negotiations with potential DOCA proponents and produce a further supplementary report to creditors, along with preparations for that meeting. This is in addition to the amounts outlined in our current remuneration report and would be subject to creditor approvals.

Michael Barrett | Partner

Thomson Geer

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mbarrett@tqlaw.com.au | tqlaw.com.au

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From: David Sanders <dsanders@bennettlaw.com.au>

Sent: Monday, 24 February 2025 7:08 PM

To: Barrett, Michael <mbarrett@tqlaw.com.au>

Cc: Dalitso Banda <DBanda@bennettlaw.com.au>; Chloe Placzek <cplaczek@bennettlaw.com.au>; Bird, Eden <ebird@tqlaw.com.au>

Subject: RE: (117912) Nuheara Limited (Administrators Appointed)From Subject Received Size Categories [TGLAW-Legal.FID4248799]

Thanks Michael

This is noted.

Please send through the funding estimate when you have it.

I anticipate my client will have no issue with a short adjournment of the creditors meeting.

I would also be happy to discuss the funding requirements with your client in the morning once we have details of them.

Kind regards

Bennett
LITIGATION AND COMMERCIAL LAW

FOOTBALL AUSTRALIA

DOYLES
LITIGATION
2024

FOOTBALL AUSTRALIA

DOYLES
LITIGATION
2024

David Sanders

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M + 61 439 999 968

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From: Barrett, Michael <mbarrett@tqlaw.com.au>

Sent: 24 February 2025 17:03

To: David Sanders <dsanders@bennettlaw.com.au>

Cc: Dalitso Banda <DBanda@bennettlaw.com.au>; Chloe Placzek <cplaczek@bennettlaw.com.au>; Bird, Eden <ebird@tqlaw.com.au>

Subject: RE: (117912) Nuheara Limited (Administrators Appointed)From Subject Received Size Categories [TGLAW-Legal.FID4248799]

[Confidential]

Hi David

This bit

I spoke briefly to Delitso earlier about one notable omission from the letter. If creditors were to vote in favour of a DOCA on the terms set out in your letter it will clearly take some time for these arrangements to be documented. The funding currently available to the Administrators provided by the shareholder syndicate will be exhausted by the end of the month. The Administrators are not in a position to trade the business, which we understand based on my conversation with Delitso is required by your client, without having funding. The indicative numbers of that funding have been provided in the materials filed before the Court for the purpose of the hearing before Justice O'Sullivan. Your client would need to meet those payments and would need to pay money to the Administrator's account by the end of this week.

I have asked the Administrators to provide me with an estimate of the funding that will be required to keep the business trading pending the completion of the transaction the subject of your letter.

Since the above was typed, I have seen the email from Dalitso which I enclose. Paragraph 1 of it is not workable. We expect that the Administrators given the very late receipt of the proposal will have to apply urgently to the Court for directions as to the meeting to be held tomorrow and for it to be delayed primarily because (1) the Administrators are not in a position yet to form an opinion on the proposal and report to creditors and (2) the Administrators are holding a number of proxy votes which include special proxies to vote in favour of the current DOCA proposal and where the grantors of the proxies are obviously unaware of your clients' proposal. That being so, it is inevitable that subject to the Court making the relevant directions, a vote on any DOCA proposal cannot proceed tomorrow.

The Administrators will not assume any risk of trading the business at the request of your client, and incurring liabilities in doing so unless they have funding for that purpose regardless of the outcome of the creditor.

Michael Barrett | Partner

Thomson Geer

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mbarrett@tqlaw.com.au | tqlaw.com.au

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From: David Sanders <dsanders@bennettlaw.com.au>

Sent: Monday, 24 February 2025 6:59 PM

To: Barrett, Michael <mbarrett@tqlaw.com.au>

Cc: Dalitso Banda <DBanda@bennettlaw.com.au>; Chloe Placzek <cplaczek@bennettlaw.com.au>; Bird, Eden <ebird@tqlaw.com.au>

Subject: RE: (117912) Nuheara Limited (Administrators Appointed)From Subject Received Size Categories [TGLAW-Legal.FID4248799]

Sorry Michael,

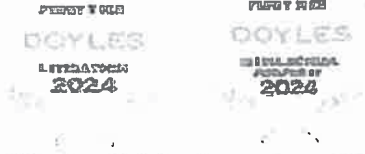
Your email only asked for the word document so I assumed you would send me something further in due course.

Can you clarify what other matter or matters you are seeking a response on at this point so I can take instructions?

Kind regards

Bennett

LITIGATION AND COMMERCIAL LAW



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Corporate Counsel

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From: Barrett, Michael <mbarrett@tglaw.com.au>
Sent: 24 February 2025 16:55
To: David Sanders <dsanders@bennettlaw.com.au>
Cc: Dalitso Banda <DBanda@bennettlaw.com.au>; Chloe Placzek <cplaczek@bennettlaw.com.au>; Bird, Eden <ebird@tglaw.com.au>
Subject: RE: (117912) Nuheara Limited (Administrators Appointed)From Subject Received Size Categories [TGLAW-Legal.FID4248799]

[Confidential]

Thank you David would you please revert on the funding point I raised in my earlier email?

Michael Barrett | Partner
Thomson Geer
T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861
mbarrett@tglaw.com.au | tglaw.com.au

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From: David Sanders <dsanders@bennettlaw.com.au>
Sent: Monday, 24 February 2025 6:53 PM
To: Barrett, Michael <mbarrett@tglaw.com.au>
Cc: Dalitso Banda <DBanda@bennettlaw.com.au>; Chloe Placzek <cplaczek@bennettlaw.com.au>; Bird, Eden <ebird@tglaw.com.au>
Subject: RE: (117912) Nuheara Limited (Administrators Appointed)From Subject Received Size Categories [TGLAW-Legal.FID4248799]

Dear Michael,

Please see attached as requested a word version of Realtek's DOCA proposals.

Kind regards

Bennett

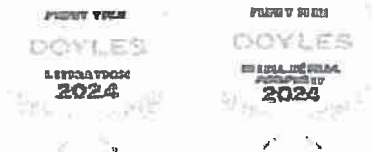
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From: Barrett, Michael <mbarrett@tglaw.com.au>

Sent: 24 February 2025 16:27

To: David Sanders <dsanders@bennettlaw.com.au>

Cc: Dalitso Banda <DBanda@bennettlaw.com.au>; Chloe Placzek <cplaczek@bennettlaw.com.au>; Bird, Eden <ebird@tglaw.com.au>

Subject: RE: (117912) Nuheara Limited (Administrators Appointed)From Subject Received Size Categories [TGLAW-Legal.FID4248799]

[Confidential]

Dear David

Thank you for your letter.

I spoke briefly to Dalitso earlier about one notable omission from the letter. If creditors were to vote in favour of a DOCA on the terms set out in your letter it will clearly take some time for these arrangements to be documented. The funding currently available to the Administrators provided by the shareholder syndicate will be exhausted by the end of the month. The Administrators are not in a position to trade the business, which we understand based on my conversation with Dalitso is required by your client, without having funding. The indicative numbers of that funding have been provided in the materials filed before the Court for the purpose of the hearing before Justice O'Sullivan. Your client would need to meet those payments and would need to pay money to the Administrator's account by the end of this week.

I have asked the Administrators to provide me with an estimate of the funding that will be required to keep the business trading pending the completion of the transaction the subject of your letter.

Since the above was typed, I have seen the email from Dalitso which I enclose. Paragraph 1 of it is not workable. We expect that the Administrators given the very late receipt of the proposal will have to apply urgently to the Court for directions as to the meeting to be held tomorrow and for it to be delayed primarily because (1) the Administrators are not in a position yet to form an opinion on the proposal and report to creditors and (2) the Administrators are holding a number of proxy votes which include special proxies to vote in favour of the current DOCA proposal and where the grantors of the proxies are obviously unaware of your clients' proposal. That being so, it is inevitable that subject to the Court making the relevant directions, a vote on any DOCA proposal cannot proceed tomorrow. .

The Administrators will not assume any risk of trading the business at the request of your client, and incurring liabilities in doing so unless they have funding for that purpose regardless of the outcome of the creditor

For the record, the complaints or criticisms made by your client about the trading on by the Administrators, are rejected as baseless. If the company had ceased trading employees would have resigned and any opportunity of the type now pursued by your clients would have been lost.

I am otherwise finalising instructions on the proposal. It would assist me if you would forward me a word copy of the document so that I can distribute a mark up once I have those instructions.

I look forward to hearing from you,

7

46

regards

Michael Barrett | Partner
Thomson Geer

T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861
mbarrett@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes
Domestic & Cross Border

Sydney | Melbourne | Brisbane | Perth | Adelaide | Canberra

From: Kylie Evans <kevans@bennettlaw.com.au> **On Behalf Of** David Sanders
Sent: Monday, 24 February 2025 5:24 PM
To: Barrett, Michael <mbarrett@tglaw.com.au>
Cc: Dalitso Banda <DBanda@bennettlaw.com.au>; Chloe Placzek <cplaczek@bennettlaw.com.au>
Subject: (117912) Nuheara Limited (Administrators Appointed)
Importance: High

Dear Michael

Please see the *attached* correspondence regarding the above matter.

Kind regards



David Sanders
Corporate Counsel

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D +61 8 6316 2223
M + 61 439 999 968
dsanders@bennettlaw.com.au

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Form 59

Rule 29.02(1)

Federal Court of Australia

No of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133

Plaintiffs

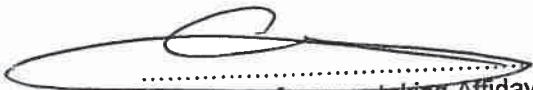
Realtek Semiconductor Corporation

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "MBJ-39" now produced and shown to Martin Bruce Jones at the time of swearing his affidavit on 5 March 2025.


.....
Signature of deponent


.....
Signature of person taking Affidavit

CALEB ANDREW DELANEY
of 525 Collins Street, Melbourne
being an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit "MBJ-39"
being a copy of emails to Cowell Clarke and Bennetts

From: Barrett, Michael
Sent: Tuesday, 4 March 2025 8:23 PM
To: Richard Beissel
Cc: Thomas Hill; Peter Leech; Bird, Eden; Roost, Hedley
Subject: NUH - funding application March 2025. [TGLAW-Legal.FID4248799]

Hi Richard

I refer to my discussion with earlier this evening.

The application by the Administrators on account of funding issues will be heard before Justice O'Sullivan at 2.15pm Adelaide time on Wednesday 12 March 2025. Parties who are interstate are given leave to appear by Teams.

We anticipate the application and supporting affidavit will be filed tomorrow morning and we will then proceed to serve you with a copy.

Please meanwhile revert as soon as possible with details of any proposed revised DOCA that the syndicate might propose noting that the Administrators must report to creditors before cob Friday 7

regards

Michael Barrett | Partner

Thomson Geer.

T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861

mbarrett@tqlaw.com.au | tqlaw.com.au

Advice | Transactions | Disputes

Domestic & Cross Border

Sydney | Melbourne | Brisbane | Perth | Adelaide | Canberra

From: Barrett, Michael
Sent: Tuesday, 4 March 2025 8:20 PM
To: David Sanders
Cc: Roost, Hedley; Bird, Eden; Dalitso Banda
Subject: RE: (117912) NUH [TGLAW-Legal.FID4248799]

Hi David

I have yet to hear from you. I did speak briefly to Dalitso.

Please revert asap on the issues I have raised below.

I advise that the Court has set down the application which will be filed tomorrow by the Administrators concerning funding issues for hearing before O'Sullivan J at 11.45am WA time on Wednesday 12 March 2025. Parties located outside of Adelaide have leave to appear by Teams.

regards

Michael Barrett | Partner
Thomson Geer

T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861
mbarrett@tqlaw.com.au | tqlaw.com.au

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Form 59

Rule 29.02(1)

Federal Court of Australia

No of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133

Plaintiffs

Realtek Semiconductor Corporation

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**MBJ-40**" now produced and shown to Martin Bruce Jones at the time of swearing his affidavit on 5 March 2025.


.....
Signature of person taking Affidavit


.....
Signature of deponent

CALEB ANDREW DELANEY
of 525 Collins Street, Melbourne
being an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit "MBJ-40"
being a copy of email dated 19 December
2024

From: Flower, Michael <mflower1@kpmg.com.au>
Sent: Thursday, 19 December 2024 6:56 PM
To: Tim Robertson
Cc: Jones, Martin
Subject: RE: Nuheara Limited (Administrators Appointed) - Funding Requirements / Cashflow to February 2025
Attachments: NUH_-_Funding_Agreement_18_November_2024_-_Execution_Version.pdf

Hi Tim,

As requested, please see attached a copy of the Funding Agreement dated 18 November 2024 (**Funding Agreement**).

Drawdown Request

I confirm that a total of \$300k has been paid up to date pursuant to the terms of the Funding Agreement.

As outlined below the Administrators have now committed to and paid wages for employees through to 31 December 2024. Accordingly, pursuant to clause 6 of the Funding Agreement, we seek the Lenders consent to release a further \$200k. If this is acceptable to you, please arrange payment of \$200k to the Administrators' controlled bank account as soon as possible. **Please note that a failure to provide this funding will cause staff to be terminated on 31 December 2024.**

For ease of reference, our account details are as follows:

- Account Name: Nuheara Limited (Administrators Appointed)
- BSB : 186-300
- Account Number: 224-294-876

Staff Retention Post 31 December 2024

As further discussed on the call, please confirm whether you wish to retain all employees post 31 December 2024? Should this be the case, a further \$484k (**in addition to the above \$200k drawdown**) will be required to fund the business through to 28 February 2025. Of which \$250k will be required by 15 January 2025.

In order to facilitate the above, we also recommend varying the terms of the Funding Agreement to extend the facility limit from \$500k to \$984k.

Should you agree with the above approach, please confirm before 31 December 2024.

Thanks Tim.

Regards,

Michael

From: Flower, Michael
Sent: Wednesday, 18 December 2024 9:15 AM
To: Tim Robertson (parobertson@fic.net.au) <parobertson@fic.net.au>; Farjoy (Nuheara) (troberson@fic.net.au) <troberson@fic.net.au>; Gregg Taylor (gregg.taylor@salterbrothers.com.au) <gregg.taylor@salterbrothers.com.au>; Daniel Di Paolo (construction) (daniel@alicon.com.au)

<daniel@alicon.com.au>; Paul Anstee (paul1908@icloud.com) <paul1908@icloud.com>;
xuankhoapham150183@gmail.com; Xuan Khoa Pham (xuankhoapham150183@hotmail.com)
<xuankhoapham150183@hotmail.com>; Ivan Kelly <ivan.kelly@nuheara.com>; Justin Miller
(justin.miller@nuheara.com) <justin.miller@nuheara.com>; Jones, Martin <martinjones@kpmg.com.au>; CHU,
Kieran <kchu2@kpmg.com.au>; Flower, Michael <mflower1@kpmg.com.au>
Cc: Kaye Alefelder <kaye@intuitiveaustralia.com.au>
Subject: Nuheara Limited (Administrators Appointed) - Funding Requirements / Cashflow to February 2025

All,

Thank you for the meeting yesterday.

As discussed:

1. Please see attached a ASX:NUH shareholder listing (top 40);
2. Please see further below an email dated 5 December regarding the funding requirement through to 28 February 2025. As you would appreciate, \$300k has been paid to the Administrators' to date under the Funding Agreement dated 18 November 2024 (**Funding Agreement**). Therefore the following **additional** amounts would be required to fund the business through to 28 February 2025:
 - a. \$672k under option 1 "business as usual"
 - b. \$362k under option 2 "critical staff only"
3. The Administrators have now committed to and paid wages for employees through to 31 December 2024. Accordingly, pursuant to clause 6 of the Funding Agreement, we seek the Lenders consent to release a further \$200k. If this is acceptable to you, please arrange payment to the Administrators' controlled bank account as soon as possible. **Please note that a failure to provide this funding will cause staff to be terminated on 31 December 2024.**
4. In respect of the 45 business day adjournment, we outlined below s75-140(3) of the IPR:

"(3) Despite subsection (2), a meeting convened under section 439A of the Act must not be adjourned to a day that is more than 45 business days after the first day on which the original meeting was held."

The above section, is in reference to section 439A of the Act (which is a reference to the Second Meeting). See a link to the ASIC website which also confirms same: [Voluntary administration: A guide for creditors | ASIC](#).

5. Salutica's legal advisers have emailed us to confirm that they will not be submitting a proxy form for today's meeting, but they agree with the Administrators' recommendation to adjourn the meeting for 45 business days.
6. We will provide you with an update later today following the outcome of the Second Meeting.

Thanks again. We look forward to receiving your DOCA for consideration.

Should you have any questions, please do not hesitate to contact me.

Regards,

Michael

From: CHU, Kieran <kchu2@kpmg.com.au>
Sent: Thursday, 5 December 2024 11:03 AM
To: Peter Nesveda <peter@intuitiveaustralia.com.au>; daniel@alicon.com.au; Tim Robertson <trobertson@fic.net.au>; xuankhoapham150183@gmail.com; Xuan Khoa Pham

(xuankhoapham150183@hotmail.com) <xuankhoapham150183@hotmail.com>; Gregg Taylor <gregg.taylor@salterbrothers.com.au>; Paul Anstee (paul1908@icloud.com) <paul1908@icloud.com>
 Cc: Ivan Kelly <ivan.kelly@nuheara.com>; Justin Miller <justin.miller@nuheara.com>; Flower, Michael <mflower1@kpmg.com.au>; Jones, Martin <martinjones@kpmg.com.au>
 Subject: Nuheara Limited (Administrators Appointed) - Funding Requirements / Cashflow to February 2025

Dear all,

Further to our previous correspondence, we provide below the following update on the cashflow forecast through to the end of February 2025, with the actual figures for November 2024.

We provide the cashflow for the following 2 options for consideration:

- "Option 1" a fully costed model whereby all employees are retained throughout the period to 28 February 2025. The total costs for the period 1 November 2024 to 28 February 2025 is estimated to be c\$972k
- "Option 2" a minimum funding option with employees reduced to a minimum from 1 January 2025. The total costs for the period 1 November 2024 to 28 February 2025 is estimated to be c\$662k

Tabled further below are the 2 scenarios and relevant assumptions:

Nuheara Cash Flow Projections*					
Option 1. All current employees remain throughout period					
AUD\$	Nov Actual	Dec Fcst	Jan Fcst	Feb Fcst	Total
Sales receipts forecast ¹	11,339	6,000	7,500	6,000	30,839
Selling costs (incl platform fees / shipping / customer returns) ¹	- 250	- 12,694	- 13,363	- 12,694	- 39,000
Net receipts from product sales	11,090	- 6,694	- 5,863	- 6,694	- 8,161
Employee Costs ²	- 135,845	- 271,825	- 195,993	- 195,993	- 799,656
Office & Admin costs	- 2,905	- 5,500	- 3,500	- 3,500	- 15,405
Insurances	-	- 6,594	- 9,043	- 5,448	- 21,086
US - Inc Expenses ³	- 1,638	- 293	- 3,353	- 1,823	- 7,106
QMS / Registrations (FDA requirements)	-	- 32,664	- 5,000	- 20,164	- 57,827
IT Expenses (incl ERP system)	-	- 34,150	- 17,948	- 11,284	- 63,382
Total net cash flow - pre Capex	- 129,299	- 357,719	- 240,700	- 244,905	- 972,623
Capex - next gen product completion / certification costs ⁴	-	-	-	-	-
Total Net Cash Flow	- 129,299	- 357,719	- 240,700	- 244,905	- 972,623

Cashflow only includes amounts incurred from 1 Nov, being amounts funded by the VA loan from shareholders, amounts incurred from appointment of KPMG to 31 Oct are covered by Administrators from the available cash at bank, and amounts outstanding prior to Administrators appointment are frozen.

Assumptions on Scenario 1: - Fully costed

1. Sales are from existing inventory with no production or manufacturing ongoing;
2. Assumes that C-suite continue to only be paid 40% of salary in cash; other employees are maintain and at current levels (100% salary); Employee related costs are split across net pay to employees (on 15th of the month) + PAYG payments to ATO, Super payments and Payroll Tax. As outlined above \$135K was incurred for Nov 24. This relates to net wages paid. On costs such as superannuation, PAYG and payroll tax will be paid in December.
3. Projections assume no costs are incurred to commence FDA-certification process for the Next Gen Product and/or costs to recommence production line preparation with the new contract manufacturer

Nuheara Cash Flow Projections*					
Option 2. Min Funding with employees reduced to Minimum from Jan**					
AUD\$	Nov Actual	Dec Fcst	Jan Fcst	Feb Fcst	Total
Sales receipts forecast ¹	11,339	6,000	7,500	6,000	30,839
Selling costs (incl platform fees / shipping / customer returns) ¹	- 250	- 12,694	- 13,363	- 12,694	- 39,000
Net receipts from product sales	11,090	- 6,694	- 5,863	- 6,694	- 8,161
Employee Costs ²	- 135,845	- 271,825	- 45,507	- 45,507	- 498,684
Office & Admin costs	- 2,905	- 5,500	- 2,500	- 2,500	- 13,405

Insurances	-	-	6,594	-	4,146	-	3,000	-	13,740	
US - Inc Expenses ³	-	1,638	-	293	-	3,353	-	1,823	-	7,106
QMS / Registrations (FDA requirements)	-	-	32,664	-	5,000	-	20,164	-	57,827	
IT Expenses (incl ERP system)	-	-	34,150	-	17,948	-	11,284	-	63,382	
Total net cash flow - pre Capex	-	129,299	-	357,719	-	84,317	-	90,971	-	662,306
Capex - next gen product completion / certification costs⁴	-	-	-	-	-	-	-	-	-	-
Total Net Cash Flow	-	129,299	-	357,719	-	84,317	-	90,971	-	662,306

Cashflow only includes amounts incurred from 1 Nov, being amounts funded by the VA loan from shareholders, amounts incurred from appointment of KPMG to 31 Oct are covered by Administrators from the available cash at bank, and amounts outstanding prior to Administrators appointment are frozen.

Assumptions on Scenario 2: - Fully costed to December 2024 and on a reduced basis in January and February 2025

1. Sales are from existing inventory with no production or manufacturing ongoing;
2. Assumes that C-suite continue to only be paid 40% of salary in cash; other employees are maintain and at current levels (100% salary) until end of December 2024 ; Employee related costs are split across net pay to employees (on 15th of the month) + PAYG payments to ATO, Super payments and Payroll Tax. Excludes any redundancy costs which are a pre-appointment claim and to be dealt with in a DOCA
3. From January 2025 onwards, includes essential people required to wind-down the business operation in an orderly fashion – being Financial Controller + US-based employee (at 40% salary) + Ops person (ships product and has knowledge on all other aspects of the business including relationships with contract manufacturers)
4. Projections assume no costs are incurred to commence FDA-certification process for the Next Gen Product and/or costs to recommence production line preparation with the new contract manufacturer

We look forward to discussing this with the you at our meeting later today.

Kind regards
Kieran

Kieran Chu | Associate Director, Turnaround and Restructuring

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+61 4 2159 2022
kchu2@kpmg.com.au

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235 St George's Terrace
Perth WA 6000 Australia

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Form 59

Rule 29.02(1)

Federal Court of Australia

No of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133

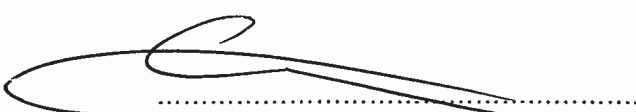
Plaintiffs


Realtek Semiconductor Corporation

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "MBJ-41" now produced and shown to Martin Bruce Jones at the time of swearing his affidavit on 5 March 2025.


.....
Signature of person taking Affidavit


.....
Signature of deponent

CALEB ANDREW DELANEY
of 525 Collins Street, Melbourne
being an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit "MBJ-41"
being a copy of the transcript of 25 February
hearing



VIQ SOLUTIONS

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For: Thomson Geer (VIC)

Email: cdelaney@tglaw.com.au

TRANSCRIPT OF PROCEEDINGS

O/N H-2000822

FEDERAL COURT OF AUSTRALIA

SOUTH AUSTRALIA REGISTRY

O'SULLIVAN J

No. WAD 41 of 2025

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ADELAIDE

11.31 AM, TUESDAY, 25 FEBRUARY 2025

MR E. BIRD appears for the plaintiffs

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HIS HONOUR: I will take appearances.

5

MR E. BIRD: If the court pleases, Bird. I appear for the plaintiffs.

HIS HONOUR: Thank you, Mr Bird. Now, Mr Bird this is your ex parte application. Have the documents been filed as yet?

10

MR BIRD: I understand that the affidavit of Mr Jones, the third affidavit, was filed about five minutes ago, and I will undertake to your Honour to file the interlocutory process which has been sent to your Honour's chambers and pay the filing fee immediately following this hearing.

15

HIS HONOUR: All right. Thank you. Now, I can tell you, Mr Bird, I've read the documents. I have a couple of concerns, which I will just explore with you now. The first is I noticed from the affidavit of Mr Jones, sworn 25 February 2025 – I will just deal with that, actually. You read that affidavit on the application.

20

MR BIRD: Yes, your Honour. I seek to read also the prior affidavits that Mr Jones, sworn on 17 and 20 February, which were the affidavits before your Honour last Friday.

25

HIS HONOUR: All right. Well, they will be all taken as read on the application.

MR BIRD: Thank you.

30

HIS HONOUR: Now, the concerns I have are this. The first is the funding for the administrators. That was an important point in me making the orders on Friday, that is to say, that there was at least 250 thousand dollars' worth of funding required to keep the business running for a month. I note that Realtek, from the correspondence and from Mr Barrett's email correspondence forming part of, I think, MBJ32 – that some \$470,000 is required for an adjournment of the meeting out to 28 March.

35

MR BIRD: That's correct, your Honour.

HIS HONOUR: All right.

40

MR BIRD: And that final email in that exhibit MBJ32 from Mr Sanders of Bennett Law to Mr Barrett - - -

HIS HONOUR: Yes.

45

MR BIRD: - - - at 9.46 pm, which is Melbourne time - - -

HIS HONOUR: Yes.

MR BIRD: - - - last night, is the most recent correspondence, that is to say, there has been nothing further received overnight.

5 HIS HONOUR: All right.

MR BIRD: However, I note that it has only just gone on am in Perth.

HIS HONOUR: Yes.

10

MR BIRD: And so far as – and I should say I’ve had the opportunity to take some further instructions this morning - - -

HIS HONOUR: Yes.

15

MR BIRD: - - - further to what’s said about that in the submissions, the written submissions.

HIS HONOUR: Yes.

20

MR BIRD: And I’m instructed that in the first instance, the administrators will seek to adjourn today’s meeting to Friday.

HIS HONOUR: Yes.

25

MR BIRD: And the purpose of that short adjournment is to allow tomorrow and Thursday but no longer for an interim funding agreement with Realtek to be put in place. If that can’t happen, as was previously submitted to your Honour and as Mr Jones has deposed to at length, the money runs out on Friday. So unless and until there is a further interim funding document entered into to take the administration to the end of March - - -

30

HIS HONOUR: Yes.

35

MR BIRD: - - - the vote has to happen on Friday and has to happen, effectively, based on the material presently available.

HIS HONOUR: All right.

40

MR BIRD: But if that interim funding – I beg your pardon, your Honour.

HIS HONOUR: No, that’s okay. You finish, and then I’ve just got a query about that.

45

MR BIRD: So if that interim funding does come through ahead of Friday, then the intention of the administrators would be to seek a further adjournment without a fixed date so that the process which is outlined in Mr Jones’ third affidavit, the

5 affidavit sworn today, can be undertaken, namely, that the clarifications to the
DOCA proposal can be obtained from Realtek or their solicitors, that the
administrators can consider the relative merits of the Realtek proposal and the earlier
proposal, which I will call the syndicate proposal, that best endeavours will be used
to reduce the terms of what is proposed by Realtek to an asset sale agreement so that
the administrators and the creditors can compare it apples and apples with the
syndicate's sale agreement and, finally, that a further supplementary report to
creditors can be issued with the 439A notice, allowing the five-business-day period
before the final reconvene meeting and the vote.

10

HIS HONOUR: So on that point, I wanted to raise with you – can you adjourn the
meeting – can the administrators adjourn the meeting to Friday? Or don't they have
to give another five days? Because there will only be three days.

15

MR BIRD: That's so, your Honour. However, it's not the circumstance
contemplated by 439A where no one knows the meeting date, and unless the notice is
given, the creditors won't have time to properly consider the material. This is similar
to the type of situation which might have obtained today had not your Honour been
so accommodating, where perhaps the meeting might have been adjourned to, say, 6
pm tonight so that this hearing could happen, and then the meeting would be
reconvened.

20

HIS HONOUR: Yes.

25

MR BIRD: But out of an abundance of caution, we might perhaps draft in a further
order which regularises an adjournment to Friday for avoidance of doubt - - -

HIS HONOUR: Yes. All right.

30

MR BIRD: - - - so provides pursuant to 447A that to the extent that a 439A notice
would need to be given five business days before an adjourned meeting this Friday,
that time is abridged, and part 5.3A applies, accordingly, to the companies.

35

HIS HONOUR: All right. And that would be in circumstances where – and – well,
let's just come – I will just leave that for the moment. Let's come back to this. I
hold a great concern – and I certainly don't make any suggestion about Bennetts. Far
from it. But I hold a great concern that this is very late and might have another
purpose – might. I don't put any higher than that, but it seems to me that one of the
important features has to be the payment of money by Realtek on account of the
administrator's fees and keeping the business going. That, I think, is in the figure of
\$474,000. Is there any reason why I shouldn't make an order that Realtek pay that
money into – I imagine it's KPMGs trust account by the close of business tomorrow?
If they don't, then that's fine. You can get on, and we can adjourn – you can carry
on with the meeting. If they do or they want to be heard on the amount or extend the
date, then I will list this tomorrow. I will adjourn this to tomorrow. It might be 4.30
or 5 o'clock Australian Western Standard Time. So I'm just putting that out there for
you to – and I want to hear you on that. Is there any reason why I shouldn't do that?

45

MR BIRD: You Honour, orders in those terms, provided that, of course, there's the proviso about Realtek having the opportunity to be heard - - -

5 HIS HONOUR: Yes.

MR BIRD: - - - would be extremely helpful. And, indeed, but for the extremely short period of time in which this application needed to be prepared and filed, it might have been desirable to serve Realtek and give them the opportunity to appear today. As it is and having regard to the time difference – and your Honour will have seen the time this morning at which the material was sent to your chambers was about 4 am Perth time.

15 HIS HONOUR: Yes.

MR BIRD: We didn't want to put the court in a position where Realtek was coming to the court and saying, "We just haven't had time to take instructions on this." But subject to the proviso that your Honour has set out, we would be grateful for an order in those terms - - -

20 HIS HONOUR: It seems - - -

MR BIRD: - - - and we will draft some language to that effect.

25 HIS HONOUR: And I will hear it before 5 o'clock Australian Western Standard Time so that if they do have a problem, then they can let me know about it tomorrow.

MR BIRD: Yes.

30 HIS HONOUR: So - - -

MR BIRD: I'm grateful, your Honour.

35 HIS HONOUR: All right. Now, the point about that is that (a) the administrators and the business can continue to run, any surplus at the end – because I am concerned that the DOCA might be – a DOCA might be presented and then withdrawn, and - - -

40 MR BIRD: Yes.

HIS HONOUR: - - - that's a great worry for me. The second thing is that I'm not prepared to extend it to 28 March, but I will hear you on the day. It seems to me that's too long. First of all, I see what Mr Jones says in his affidavit. Is there any reason why any DOCA can't be reviewed and a view formed at the same time? I mean, that's two weeks. It seems to me they can review it and form a view.

MR BIRD: Indeed, your Honour. I'm conscious only – and Mr Jones refers to these matters in his affidavit – firstly, of the complaints that my learned friend Mr Banda made to your Honour on Friday and has reiterated in correspondence with my firm regarding the difficulties that he experiences taking instructions from Taiwan. As
5 your Honour quite correctly observed, Perth and Taiwan are in the same time zone. We don't understand the basis for those complaints.

HIS HONOUR: No.

10 MR BIRD: We had hoped to minimise the number of occasions on which we might need to come back before your Honour by seeking a lengthy period out of caution but on the basis that, of course, the administrators will seek to bring the matter to a vote as soon as is possible in a manner that they can discharge their duties to properly make the recommendation, so – which is required to be attached to the
15 439A notice under the insolvency practice schedule. So if the handful of matters which are likely to be identified or have been identified already by the administrators were put to bed this week – so, for example, an issue which has been raised by the administrators on a first read of the Realtek DOCA proposal is that Realtek itself won't be a party, that an SPV is to be incorporated. Presumably, that SPV will be a
20 two dollar company. Realtek doesn't have assets in the jurisdiction.

The concern that your Honour raises of the possibility of the DOCA proposal being put and withdrawn is another issue. There are things that need to be bettered down. We're hopeful that that can happen this week. We don't know if that can happen this
25 week because we don't know how quickly Mr Banda will get those instructions. No doubt if – Mr Banda or his firm. No doubt if Realtek comes before your Honour's court tomorrow, it will be impressed upon them that they are to do so as expeditiously as possible.

30 HIS HONOUR: Well, I will certainly – it is certainly my view that the administrators need to keep on to Realtek and provide – and insist on a DOCA being provided at the earliest possible opportunity, failing which they should simply convene a meeting and deal with what they've got.

35 MR BIRD: Yes.

HIS HONOUR: So, I mean, I'm prepared to – obviously, I'm prepared to adjourn the meeting, Mr Eden. I think that – Mr Bird, I beg your pardon. I think that's only an appropriate thing to do, given that indication. Ultimately, if it happens, it's in the
40 creditors' best interests, assuming, of course, they vote to accept the DOCA. So can your firm please get to me as soon as they possibly can – and I've got to travel interstate later today, in fact, in about one and three-quarter hours. Can you get me a Word version of the orders that you seek as a matter of urgency, and – but you can indicate to the administrators that I will adjourn the meeting today or make orders
45 terms of the orders, but – yes, I will make orders in terms of orders 1 and 2(a), (b) and (c). I will settle the orders, but I will make them broadly in those terms as well as order 3 and 4. Can you include in the orders a requirement that Realtek pay to

either the KPMG trust account or Thomson Geer's trust account – it doesn't worry me either way – the sum of – I think it was \$474,000. The figure is in Mr Barrett's email.

5 MR BIRD: Yes.

HIS HONOUR: By 5 pm tomorrow. And that leave – just that the matter is adjourned until 5 pm – sorry, the matter is adjourned tomorrow. Liberty to apply on short notice. If they don't apply, then they're going to have to pay the money in.
10 Can you prepare that for me, please?

MR BIRD: Yes, your Honour. And to ensure that I've understood your Honour correctly, order 2(a) and (b) does contemplate that the final date for the meeting under the Insolvency Practice (Corporations) Rules be extended to 28 March. Do I
15 understand that your Honour doesn't wish to make those orders yet but wishes to extend to this Friday, which is - - -

HIS HONOUR: Yes.

20 MR BIRD: - - - 28 February, only?

HIS HONOUR: Yes. Correct.

MR BIRD: I'm grateful.
25

HIS HONOUR: Because I don't want a situation whereby the administrators go along this track, and then the DOCA is withdrawn.

MR BIRD: Yes.
30

HIS HONOUR: That's unacceptable. It's an unacceptable risk, which is why I'm also going to require Realek to pay into the appropriate trust account the sum of \$474,000 by 5 o'clock tomorrow Australian Western Standard Time, but I will give them liberty to apply at short notice, and I can deal with that tomorrow.
35

MR BIRD: Thank you, your Honour.

HIS HONOUR: All right. Now, if they are going to apply, they need to apply promptly because I will be in Sydney, and there's a three-hour time difference. Also,
40 Mr Bird, would you – you're undertaking to file the interlocutory process. Will you also undertake, please, to serve Bennetts – I assume they've got - - -

MR BIRD: Yes.

45 HIS HONOUR: - - - instructions to accept service – without delay?

MR BIRD: Yes, we will serve forthwith the interlocutory process, the third affidavit of Mr Jones - - -

5 HIS HONOUR: All right.

MR BIRD: - - - and the final/last orders that your Honour will make later today.

HIS HONOUR: All right. Thank you.

10 MR BIRD: And we will send those to you as soon as possible following this hearing.

HIS HONOUR: Thank you very much. And I think this is a – as you’ve probably gathered, Mr Bird, this is a situation where we’ve got to push this hard because - - -

15 MR BIRD: Yes.

HIS HONOUR: - - - even though Realtek may complain, they’ve been aware of this for some time. They must know what they value the assets at. That’s my view, and there’s no reason why they shouldn’t just get on with it.

20 MR BIRD: Yes.

HIS HONOUR: All right. Was there anything further?

25 MR BIRD: I don’t think the administrators would cavil with any of those propositions, your Honour.

HIS HONOUR: No. No. All right. Thank you. Was there anything further, Mr Bird?

30 MR BIRD: No, thank you. May it please the court.

HIS HONOUR: All right. Thank you very much for your assistance. Adjourn the court.

35

MATTER ADJOURNED at 11.50 am INDEFINITELY

Form 59

Rule 29.02(1)

Federal Court of Australia

No of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133

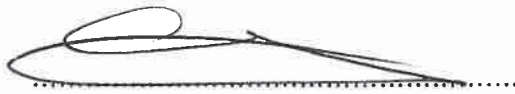
Plaintiffs

Realtek Semiconductor Corporation

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "MBJ-42" now produced and shown to Martin Bruce Jones at the time of swearing his affidavit on 5 March 2025.


.....
Signature of person taking Affidavit

CALEB ANDREW DELANEY
of 525 Collins Street, Melbourne
being an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)


.....
Signature of deponent

Exhibit "MBJ-42"
being a copy of covering email and
Administrators Realtek funding agreement

From: Barrett, Michael
Sent: Friday, 28 February 2025 4:04 PM
To: David Sanders
Cc: Dalitso Banda; Roost, Hedley; Bird, Eden
Subject: NUH [TGLAW-Legal.FID4248799]
Attachments: NUH and Realtek - Funding Agreement TG 12.30 28.02.2025 (90282534v6).DOCX

Hi David

Thank you for your emails of late yesterday. While I only too well understand the issues with time zones, would you please deal directly with me on the matter (other than anything specific on the form of the ASA which is Hedley's domain) rather than Hedley – I ask this solely from the point of view of efficiency at our end. I also understand that Hedley may be unwell.

1. Funding Term Sheet.

From the point of view of the Administrators the amendments you sent to me in the document attached to the relevant email are largely acceptable subject to:

- a. The amount being advanced on account of remuneration and legal fees not being refundable nor subject to the security. The Administrators consider that these fees are only being incurred as a result of the decision on the part of Realtek to not submit its DOCA Proposal until Monday. The Administrators consider that this is an issue which should be considered by the Court in the application pursuant to s447A of the Act which the Administrators intend to make on Tuesday for orders effectively approving their decision to enter into the Funding Term Sheet and also to exempt them from personal liability under that Term Sheet.
- b. Another reason for this application is that the shareholder syndicate is aware of the willingness of your client to fund the Administration pending the convening of the adjourned meetings of creditors but is agitating about what priority it should enjoy in respect of that advance.

I enclose a mark-up of the Funding Term Sheet to reflect the above.

Obviously the application can only be filed once the Term Sheet is agreed. I understand that it is a public holiday in Taiwan today but ask you to do what you can to obtain instructions as soon as possible. We will serve you and Cowell Clarke with a copy of the Administrators' application and any supporting affidavit following agreement on the Term Sheet.

I did try to speak to you about this.

2. The Realtek DOCA Proposal

Following our email 11.41am Perth time yesterday, could you please put the form of the Realtek DOCA proposal onto your firm's letterhead and send me a signed copy. As you know the Administrators are proposing to report further to creditors by next Friday 7 March 2025 ahead of the adjourned meetings and for that purpose ask you to have that letter sent to us as soon as possible.

3. ASA

I understand the form is agreed – could you please forward to me (and Hedley of course) a final mark up? Our client is keen to have this document signed as soon as possible.

I have a commitment from about 3pm your time which will prevent me from speaking to you after that. Alternatively I will make myself available to speak to you over the weekend if you wish.

I look forward to hearing from you.

Regards

Michael Barrett | Partner

Thomson Geer

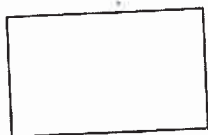
T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861

mbarrett@tqlaw.com.au | tqlaw.com.au

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FUNDING TERM SHEET

Nuheara Limited (Administrators Appointed) ABN 29 125 167 133 (**NUH**) and the Subsidiaries (collectively **NUH Entities**)

Realtek Semiconductor Corp (**Realtek**)

(**Lender**)

Martin Jones, Matthew Woods and Clint Joseph (**Administrators**)

Date: [xx] February 2025

1 Purpose	This binding term sheet sets out the terms and conditions on which the Lender will provide funding to the NUH Entities during the Administration Period (Funding Agreement).
2 Definitions	Capitalised Terms in this Funding Agreement have the meaning given to them in Annexure A – Dictionary.
3 Parties	<p>3.1 NUH Entities (as joint and several Borrowers)</p> <p>3.2 The Administrators</p> <p>3.3 The Lender.</p>
4 Funding Term Sheet	<p>The NUH Entities, the Lender and the Administrators enter into this Funding Agreement, pursuant to which the Lender will provide advances to the Borrowers. These advances are to fund remuneration and certain expenses incurred by the Administrators in that capacity and pursuant to section 443A of the Act, and payment of other Administration Debts for the purpose of providing funding to the NUH Entities for the Administration Period and pending consideration by the creditors of the NUH Entities of the Realtek DOCA Proposal and whether creditors should resolve that the NUH Entities should execute DOCAs on terms consistent with that Proposal.</p> <p>This Funding Term Sheet is subject in all respects to the terms of the Realtek DOCA Proposal and to the extent of any inconsistency between the two, the Realtek DOCA Proposal is to prevail to the extent of that inconsistency.</p> <p>The parties may enter into a more definitive funding agreement based on the terms set out in this Term Sheet.</p>
5 Commencement date	<p>This term sheet will commence on and from 28 February 2025, in the event that meetings of creditors of the NUH Entities are adjourned on that date for the purpose of the consideration of the Realtek DOCA Proposal. The Funding to be provided by the Lender is presently held in the trust account of Thomson Geer, lawyers for the Administrators pursuant to an order of the Federal Court of Australia in Action no WAD 41 of 2025 dated 25 February 2025.</p> <p>Upon the Administrators adjourning the meetings of creditors of the NUH Entities scheduled for 28 February 2025, for the purpose of submitting the Realtek DOCA Proposal to them at an adjourned meeting of creditors convened pursuant to s439A of the Act, the Lender agrees that the Administrators may immediately apply the funds held in the trust account of Thomson Geer as funds advanced to them and for the following purposes during the Administration Period:</p>

		(1) The expenses and liabilities likely to be incurred by the Administrators in operating the business of the NUH Entities;
		(2) The remuneration of the Administrators; and
		(3) The liability of the Administrators for legal fees.
6	Facility Limit	AUD\$474,732.78 plus GST in the amount of \$26,796.02 to be drawn in the circumstances set out in paragraph 5. In the event that further funding is requested by the Administrators in excess of these amounts, the Lender may approve such additional funding in their absolute discretion on the same terms as set out in this Term Sheet.
7	Miscellaneous Provision	7.1 The terms of the Funding Agreement include acknowledgement by the parties that: (a) the Administrators enter into this agreement solely in their capacities as the Administrators of NUH Entities, and in no other capacity and in particular not in their personal capacity; (b) section 443A of the Act applies to this Funding Agreement; (c) the Lender covenants not to sue or make any claim against the Administrators personally if the actual funds received to which the Administrators have recourse pursuant to section 443F of the Act are not sufficient to repay the advances made under the Funding Agreement; and (d) there is a right in favour of the Administrators to seek orders under section 447A of the Act exempting them from any personal liability on account of the Funding Agreement (as required), and to which orders the Lender will, to the extent reasonably required by the Administrators, consent.
8	Usage of Funds	8.1 All amounts payable under the Funding Agreement will be stated as being incurred in preserving, realising or getting in the property of the NUH Entities, or in carrying on the NUH Entities' business, or paying other Administration Debts for the Administration Period, estimated to be \$274,732.78 plus applicable GST; and 8.2 the estimated remuneration of the Administrators and their liability for legal fees for the Administration Period, up to the amount of \$200,000 plus GST The amounts paid to the Administrators, will be applied by them in accordance with Part 5.3A Division 9 of the Act.
9	Acknowledgements by the Lender	The Lender acknowledges in favour of the NUH Entities and the Administrators that: 9.1 it will not during the Administration Period <u>subject in all respects to Part 5.3A Division 7 of the Act, prior to the termination of the Funding Agreement seek to exercise any rights which it may assert claiming to be a secured creditor of NUH pursuant to the Funding Agreement in respect of the amounts referred to in paragraph 8.1 of this Term Sheet;</u> 9.2 without limitation to paragraph 9.1, not seek to enforce any security which it holds over the assets of NUH by the appointment of any form of Insolvency Administrator or any other enforcement step or process <u>prior</u>

to the termination of the Funding Agreement, but again subject in all respects to Part 5.3A Division 7 of the Act; and

- 9.3 to the extent that creditors of the NUH Entities vote in favour of a resolution that they enter into Deeds of Company Arrangement consistent with the Realtek DOCA Proposal, they will also vote in favour of the same with the intention that it will be bound by such Deeds of Company Arrangement.

10 Termination	The Funding Agreement will terminate on the earlier of: 10.1 the Lender being entitled to terminate it as a consequence of an Event of Default; or 10.2 the creditors of an NUH Entity failing to resolve that it enter into a DOCA on terms consistent with the terms of the Realtek DOCA Proposal. On termination, no further funds can be drawn down and regardless of any other provision of this Term Sheet, neither the NUH Entities or the Administrators have any obligation to repay any portion of the sum of \$200,000 plus GST paid on account of the Administrators' remuneration or their legal fees, except where the same have not been incurred to that extent.
11 Interest rate	Advances under this Term Sheet will accrue interest daily at a rate of 15% per annum. Interest will capitalise monthly until the repayment date.
12 Governing law	This Term Sheet is governed by the laws of Western Australia.
13 Condition	<u>The operation of this Term Sheet is conditional upon the Administrators obtaining orders pursuant to s447A of the Act authorising them to enter into and give effect to the same and exempting them from any personal liability pursuant to it.</u>

Executed by Nuheara Limited
(Administrators Appointed) ABN 29 125 167
133 by its joint and several administrators:

Full Name of Administrator

Signature of Administrator

Executed by Nuheara IP Pty Ltd
(Administrators Appointed) ACN 605 704 096
by its joint and several administrators:

Full Name of Administrator

Signature of Administrator

Executed by **Terrace Gold Pty Ltd**
(Administrators Appointed) ACN []
by its joint and several administrators:

Full Name of Administrator

Signature of Administrator

Executed by Martin Jones as joint and
several administrator of **Nuheara Limited**
(Administrators Appointed) ABN 29 125 167
133 and **Nuheara IP Pty Ltd (Administrators**
Appointed) ACN 605 704 096 and **Terrace**
Gold Pty Ltd (Administrators Appointed) ACN
[] in the presence of:

Martin Jones

Full name of witness

Executed by **Realtek Semiconductor Corp**
pursuant to the laws of its place of
incorporation:

Full Name of Director

Signature of Director

Full Name of Director/Secretary

Signature of Director/Secretary

Annexure A – Dictionary

In this Term Sheet:

Act means the *Corporations Act 2001* (Cth).

Administration Period means the period beginning on and from 28 February 2025 and ending when the Administration ends pursuant to s435C(3) of the Act.

Administrators means Martin Jones, Matthew Woods and Clint Joseph of KPMG, Level 8 235 St Georges Terrace Perth WA.

Appointment Date means 7 August 2024.

Administration Debts means those liabilities, expenses, costs and debts incurred or damages or losses sustained, in good faith and without negligence, by the Administrators in the performance or exercise or purported performance or exercise of any of their functions or powers as Administrators of the Borrowers, but excludes any liability of the Borrowers or the Administrators under the Funding Agreement.

Available Assets means all of the cash assets of the Borrowers that are:

- (a) available for distribution to creditors under sections 555 and 556 of the Corporations Act in the event the Borrowers are wound up;
- (b) available for distribution to creditors in the event a Deed of Company Arrangement is executed by the Borrowers pursuant to section 444B of the Corporations Act; or
- (c) available at the end of the Administration Period, in the in the event (a) or (b) does not apply,

but for the avoidance of doubt does not include cash held by the Administrators, and to be received by them as a refund of Goods and Service Tax and/or in respect of research and development expenditure, which funds are subject to a lien pursuant to s 443F of the Act.

Costs includes costs, charges, fees, government charges, taxes and expenses, including those incurred in connection with advisers and incurred in connection with the performance of the Administrators' duties, obligations and responsibilities under the Act and during the Administration Period.

DOCA means a Deed of Company Arrangement entered into in accordance with the provisions of Part 5.3A of the Act.

Event of Default means the use of the Funding other than for the Purpose.

Funding means the sum of \$474,732.78 plus GST in the amount of \$26,796.02 to be advanced by the Lender to the Administrators for the Purpose on the terms set out in this document.

Purpose means the conduct of the Administration of NUH by the Administrators during the Administration Period including on account of their Remuneration and including the incurring of liabilities by them for the purpose of the Administration, which includes, without limitation their legal fees.

Realtek DOCA Proposal means a proposal by the Lender that each of the NUH Entities enter into a DOCA dated 27 February 2025.

Remuneration means such remuneration to which the Administrators may be or become entitled as is determined in accordance with Division 60 of Schedule 2 to the Corporations Act.

Subsidiaries means Nuheara IP Pty Ltd (Administrators Appointed) ACN 605 704 096 and Terrace Gold Pty Ltd (Administrators Appointed) ACN [].

Form 59

Rule 29.02(1)

Federal Court of Australia

No of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133

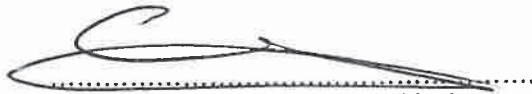
Plaintiffs

Realtek Semiconductor Corporation

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**MBJ-43**" now produced and shown to Martin Bruce Jones at the time of swearing his affidavit on 5 March 2025.



.....
Signature of person taking Affidavit



.....
Signature of deponent

CALEB ANDREW DELANEY
of 525 Collins Street, Melbourne
being an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit "MBJ-43"
being a copy of Realtek's version of the
Realtek Funding Agreement

From: Dalitso Banda <DBanda@bennettlaw.com.au>
Sent: Wednesday, 5 March 2025 12:13 PM
To: Barrett, Michael; David Sanders
Cc: Roost, Hedley; Bird, Eden
Subject: RE: (117912) NUH [TGLAW-Legal.FID4248799]
Attachments: NUH and Realtek - Funding Agreement TG FINAL 27.02.2025.pdf

Michael,

Thank you for the clarification.

We now have instructions regarding the matters we discussed yesterday. Here are our responses:

VA Funding for March

Realtek has confirmed that \$274,732.78 plus any applicable GST can be utilized by the Administrator to meet trade expenses for March. This amount is already reflected in the signed funding agreement.

Clause 10 of the Funding Agreement

We understand that you are instructed that clause 10 of the Funding Agreement should include a provision stating that \$220,000 for legal costs and administrator remuneration should be non-refundable if the Realtek DOCA is not approved. Your explanation for this is that \$220,000 for legal costs and administrator remuneration should not be met by the creditors if the Realtek DOCA is not approved.

In our view that the \$220,000 paid by Realtek is for enabling the Administrators to carry on the business of NUH and/or is a debt incurred for the performance of the Administrator's duties. Please explain why this is not the case.

Realtek is open to considering an amendment to clause 10, making the \$220,000 non-refundable if the Administrators do not execute the attached funding agreement and if they leave Realtek with no choice and subject to the matters below. This will only be done to prevent the Realtek proposal from being compromised. The concern here is that these funds are not solely for the Realtek DOCA proposal. Please confirm how the funds are being utilised.

Realtek's position is that if the funds are being used to deal with the Shareholders syndicate's new proposals or for their benefit, these costs should not be borne by Realtek. Please confirm how the Administrators are accounting for the syndicate's costs.

Realtek considers that if there is a delay to the creditors meeting beyond 17 March 2025, the costs associated with the delay should be recovered from the responsible party.

If the Court approves the funding agreement as signed by Realtek, the Administrators will not be personally prejudiced by the non-inclusion of the non-refundable clause.

Having regard to the above matters, please confirm if the Administrators still insist on amending clause 10. If so, provide a proposed amendment to clause 10. If not, please arrange for the Administrators to sign the attached funding agreement.

I am available to discuss this.

Application for Approval of Funding Agreements

We understand that the Administrators will soon be making an application to the Court for approval of the funding agreements with the syndicate (up to 28 February) and Realtek (for March). Please confirm this is correct.

I look forward to your response.

Kind regards,

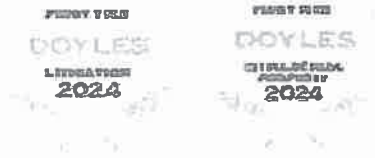


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From: Barrett, Michael <mbarrett@tglaw.com.au>
Sent: Wednesday, 5 March 2025 4:43 AM
To: Dalitso Banda <DBanda@bennettlaw.com.au>; David Sanders <dsanders@bennettlaw.com.au>
Cc: Roost, Hedley <hroost@tglaw.com.au>; Bird, Eden <ebird@tglaw.com.au>
Subject: RE: (117912) NUH [TGLAW-Legal.FID4248799]

[Confidential]

Morning

Yes. There is no application filed by the Administrators which is to be before the Court today.

We will be serving the papers on your office once the application is filed which we expect to be this morning.

Meanwhile I would be grateful for a response to my messages and emails.

regards

Michael Barrett | Partner
Thomson Geer
T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861
mbarrett@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes
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Sydney | Melbourne | Brisbane | Perth | Adelaide | Canberra

From: Dalitso Banda <DBanda@bennettlaw.com.au>
Sent: Tuesday, 4 March 2025 9:12 PM
To: Barrett, Michael <mbarrett@tglaw.com.au>; David Sanders <dsanders@bennettlaw.com.au>
Cc: Roost, Hedley <hroost@tglaw.com.au>; Bird, Eden <ebird@tglaw.com.au>
Subject: RE: (117912) NUH [TGLAW-Legal.FID4248799]

Michael

I would like to clarify/confirm the application which has is proposed to be filed has been listed for 12 March 2025 at 11.45am (AWST) and not tomorrow. Is that right? Could you please also provide us with the orders proposed to be sought?

Kind regards,



Dalitso Banda

Principal

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M +61 403 048 163

dbanda@bennettlaw.com.au

bennettlaw.com.au

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From: Barrett, Michael <mbarrett@tglaw.com.au>

Sent: Tuesday, 4 March 2025 5:20 PM

To: David Sanders <dsanders@bennettlaw.com.au>

Cc: Roost, Hedley <hroost@tglaw.com.au>; Bird, Eden <ebird@tglaw.com.au>; Dalitso Banda <DBanda@bennettlaw.com.au>

Subject: RE: (117912) NUH [TGLAW-Legal.FID4248799]

[Confidential]

Hi David

I have yet to hear from you. I did speak briefly to Dalitso.

Please revert asap on the issues I have raised below.

I advise that the Court has set down the application which will be filed tomorrow by the Administrators concerning funding issues for hearing before O'Sullivan J at 11.45am WA time on Wednesday 12 March 2025. Parties located outside of Adelaide have leave to appear by Teams.

regards

Michael Barrett | Partner

Thomson Geer

T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861

mbarrett@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes

Domestic & Cross Border

Sydney | Melbourne | Brisbane | Perth | Adelaide | Canberra

From: Barrett, Michael
Sent: Tuesday, 4 March 2025 2:00 PM
To: 'David Sanders' <dsanders@bennettlaw.com.au>
Cc: Roost, Hedley <hroost@tglaw.com.au>; Bird, Eden <ebird@tglaw.com.au>; 'Dalitso Banda' <DBanda@bennettlaw.com.au>
Subject: RE: (117912) NUH [TGLAW-Legal.FID4248799]

Hi David

I have left messages for you to call me. Please call me when convenient.

Funding Issues

Given the lack of response to my below email I assume my interpretation of your email is correct.

Would you please confirm whether your client consents to the release of the funds held in our trust account other than the amount of \$220,000 on account of estimated Administrators' remuneration and legal fees, for the purpose of meeting the trading liabilities of the Administrations, in accordance with the terms of the term sheet as amended by you?

We are meanwhile working on the assumption that neither your client nor the Syndicate agree as to how the amount of \$220,000 is to be dealt with in the context of it being an Administration liability or it being accorded any priority.

Subject to your response, we hope to be finalising our affidavit tomorrow morning Perth time with a view to the application being filed shortly thereafter.

ASA

I understand from Hedley that he has yet to receive a final mark up of the ASA. Could you please get that to him asap.

Again, would you please call me when convenient.

Thanks and regards

Michael Barrett | Partner
Thomson Geer
T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861
mbarrett@tqlaw.com.au | tqlaw.com.au

Advice | Transactions | Disputes
Domestic & Cross Border

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From: Barrett, Michael
Sent: Monday, 3 March 2025 6:47 PM
To: 'David Sanders' <dsanders@bennettlaw.com.au>
Cc: Roost, Hedley <hroost@tglaw.com.au>; Bird, Eden <ebird@tglaw.com.au>; Dalitso Banda <DBanda@bennettlaw.com.au>
Subject: RE: (117912) NUH [TGLAW-Legal.FID4248799]

Hi David

Thank you for your email. I assume you are intending to refer to clause 10. The words in question reflect our client's instructions. The fact that it is not within the First Funding Agreement entered into with the syndicate is, respectfully, irrelevant. The clause has been included because the only reason the additional remuneration for the Administrators is being incurred, and additional legal fees, was the decision of Realtek to not submit a DOCA proposal until this time last week. That led to the requirement to apply to the Court on an urgent basis, the subsequent adjourning of the meetings last Friday and also the need for the Administrators to submit a further report to creditors.

If the clause is not agreed, then I think the Administrators may well have to approach the Court now in order to address the trading liabilities of the Administration following the adjournment of the meetings on Friday and also of course the funding agreement entered into with the Syndicate. How the figure of \$220,000 is dealt with may well end up being determined by the Court. I know the Syndicate is of the same view concerning the \$220,000.

I will revert as soon as I have final instructions. Meanwhile if I have misunderstood your message, please clarify it asap.

Thanks and regards

Michael Barrett | Partner

Thomson Geer

T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861

mbarrett@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes

Domestic & Cross Border

Sydney | Melbourne | Brisbane | Perth | Adelaide | Canberra

From: David Sanders <dsanders@bennettlaw.com.au>

Sent: Monday, 3 March 2025 4:06 PM

To: Barrett, Michael <mbarrett@tglaw.com.au>

Cc: Roost, Hedley <hroost@tglaw.com.au>; Bird, Eden <ebird@tglaw.com.au>; Dalitso Banda <DBanda@bennettlaw.com.au>

Subject: Re: (117912) NUH [TGLAW-Legal.FID4248799]

Hi Michael,

I am travelling today but have been instructed that Realtek do not consider the final paragraph of clause to be appropriate and therefore request it is deleted.

As noted last week such a provision does not appear in the other Funding Agreement your client has entered into.

Kind regards

David Sanders

Corporate Counsel

Bennett

Litigation and Commercial Law

T +61 8 6316 2200

D +61 8 6316 2223

M +61 439 999 968

dsanders@bennettlaw.com.au

Whadjuk Noongar Boodja
Level 14, Westralia Square
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PERTH, WA 6000

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From: Barrett, Michael <mbarrett@tglaw.com.au>
Sent: Monday, March 3, 2025 8:06:28 AM
To: David Sanders <dsanders@bennettlaw.com.au>
Cc: Roost, Hedley <hroost@tglaw.com.au>; Bird, Eden <ebird@tglaw.com.au>; Dalitso Banda <DBanda@bennettlaw.com.au>
Subject: RE: (117912) NUH [TGLAW-Legal.FID4248799]

[Confidential]

Hi David

Sorry to bother you on a public holiday.

Could you please revert to me as soon as possible concerning your client's instructions on the Funding Term Sheet?

thanks

Michael Barrett | Partner

Thomson Geer

T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861

mbarrett@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes

Domestic & Cross Border

Sydney | Melbourne | Brisbane | Perth | Adelaide | Canberra

From: Kylie Evans <kevans@bennettlaw.com.au> **On Behalf Of** David Sanders
Sent: Friday, 28 February 2025 6:58 PM
To: Barrett, Michael <mbarrett@tglaw.com.au>
Cc: Roost, Hedley <hroost@tglaw.com.au>; Bird, Eden <ebird@tglaw.com.au>; Dalitso Banda <DBanda@bennettlaw.com.au>
Subject: (117912) NUH

Dear Michael

Thank you for your earlier email.

1. Funding Term Sheet

I will forward your updated draft Funding Term Sheet to my client and recommend to them that they accept your amendments. I will revert to you once I have instructions.

On this basis by all means arrange for the Funding Term Sheet to be executed by your clients and returned to me such that if Realtek are happy to accept my recommendation they can countersign it and return it to me.

2. The Realtek DOCA Proposal

I have *attached* a letter as requested.

3. Business Sale and Purchase Agreement

I have *attached* a copy of my email exchange with Hedley yesterday in relation to the draft Business Sale and Purchase Agreement which sets out Realtek's position on the draft at that point in time.

I do not yet have instructions from Realtek in relation to my proposed amendments to the draft (including amendments consequent on an email I received from Hedley this afternoon), but once again I will seek instructions in that regard.

When we spoke a few days ago on a Teams call with Hedley and your client I was advised that the process of drafting the DOCAs themselves had commenced but had not yet been completed. Given that the DOCAs themselves are

referred to in the draft Business Sale and Purchase Agreement can you please confirm when you expect to be in a position to provide us drafts to review?

Kind regards



David Sanders
Corporate Counsel

T +61 8 6316 2200
D +61 8 6316 2223
M + 61 439 999 968
dsanders@bennettlaw.com.au

bennettlaw.com.au

[Follow us on LinkedIn](#)
[Follow us on Instagram](#)

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Whadjuk Noongar Boodja
Level 14, Westralia Square
141 St Georges Terrace
PERTH, WA 6000

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#####

FUNDING TERM SHEET

Nuheara Limited (Administrators Appointed) ABN 29 125 167 133 (**NUH**) and the Subsidiaries (collectively **NUH Entities**)

Realtek Semiconductor Corp (**Realtek**)

(**Lender**)

Martin Jones, Matthew Woods and Clint Joseph (**Administrators**)

Date: February 2025

1 Purpose	This binding term sheet sets out the terms and conditions on which the Lender will provide funding to the NUH Entities during the Administration Period (Funding Agreement).
2 Definitions	Capitalised Terms in this Funding Agreement have the meaning given to them in Annexure A – Dictionary.
3 Parties	<p>3.1 NUH Entities (as joint and several Borrowers)</p> <p>3.2 The Administrators</p> <p>3.3 The Lender.</p>
4 Funding Term Sheet	<p>The NUH Entities, the Lender and the Administrators enter into this Funding Agreement, pursuant to which the Lender will provide advances to the Borrowers. These advances are to fund remuneration and certain expenses incurred by the Administrators in that capacity and pursuant to section 443A of the Act, and payment of other Administration Debts for the purpose of providing funding to the NUH Entities for the Administration Period and pending consideration by the creditors of the NUH Entities of the Realtek DOCA Proposal and whether creditors should resolve that the NUH Entities should execute DOCAs on terms consistent with that Proposal.</p> <p>This Funding Term Sheet is subject in all respects to the terms of the Realtek DOCA Proposal and to the extent of any inconsistency between the two, the Realtek DOCA Proposal is to prevail to the extent of that inconsistency.</p> <p>The parties may enter into a more definitive funding agreement based on the terms set out in this Term Sheet.</p>
5 Commencement date	<p>This term sheet will commence on and from 28 February 2025, in the event that meetings of creditors of the NUH Entities are adjourned on that date for the purpose of the consideration of the Realtek DOCA Proposal. The Funding to be provided by the Lender is presently held in the trust account of Thomson Geer, lawyers for the Administrators pursuant to an order of the Federal Court of Australia in Action no WAD 41 of 2025 dated 25 February 2025.</p> <p>Upon the Administrators adjourning the meetings of creditors of the NUH Entities scheduled for 28 February 2025, for the purpose of submitting the Realtek DOCA Proposal to them at an adjourned meeting of creditors convened pursuant to s439A of the Act, the Lender agrees that the Administrators may immediately apply the funds held in the trust account of Thomson Geer as funds advanced to them and for the following purposes during the Administration Period:</p>

		(1) The expenses and liabilities likely to be incurred by the Administrators in operating the business of the NUH Entities;
		(2) The remuneration of the Administrators; and
		(3) The liability of the Administrators for legal fees.
6	Facility Limit	AUD\$474,732.78 plus GST in the amount of \$26,796.02 to be drawn in the circumstances set out in paragraph 5. In the event that further funding is requested by the Administrators in excess of these amounts, the Lender may approve such additional funding in their absolute discretion on the same terms as set out in this Term Sheet.
7	Miscellaneous Provision	7.1 The terms of the Funding Agreement include acknowledgement by the parties that: <ul style="list-style-type: none"> (a) the Administrators enter into this agreement solely in their capacities as the Administrators of NUH Entities, and in no other capacity and in particular not in their personal capacity; (b) section 443A of the Act applies to this Funding Agreement; (c) the Lender covenants not to sue or make any claim against the Administrators personally if the actual funds received to which the Administrators have recourse pursuant to section 443F of the Act are not sufficient to repay the advances made under the Funding Agreement; and (d) there is a right in favour of the Administrators to seek orders under section 447A of the Act exempting them from any personal liability on account of the Funding Agreement (as required), and to which orders the Lender will, to the extent reasonably required by the Administrators, consent.
8	Usage of Funds	8.1 All amounts payable under the Funding Agreement will be stated as being incurred in preserving, realising or getting in the property of the NUH Entities, or in carrying on the NUH Entities' business, or paying other Administration Debts for the Administration Period, estimated to be \$274,732.78 plus applicable GST; and 8.2 the estimated remuneration of the Administrators and their liability for legal fees for the Administration Period, up to the amount of \$200,000 plus GST The amounts paid to the Administrators, will be applied by them in accordance with Part 5.3A Division 9 of the Act.
9	Acknowledgements by the Lender	The Lender acknowledges in favour of the NUH Entities and the Administrators that: <ul style="list-style-type: none"> 9.1 it will not during the Administration Period prior to the termination of the Funding Agreement seek to exercise any rights which it may assert claiming to be a secured creditor of NUH pursuant to the Funding Agreement; 9.2 without limitation to paragraph 9.1, not seek to enforce any security which it holds over the assets of NUH by the appointment of any form of Insolvency Administrator or any other enforcement step or process prior to the termination of the Funding Agreement; and

9.3 to the extent that creditors of the NUH Entities vote in favour of a resolution that they enter into Deeds of Company Arrangement consistent with the Realtek DOCA Proposal, they will also vote in favour of the same with the intention that it will be bound by such Deeds of Company Arrangement.

10 Termination

The Funding Agreement will terminate on the earlier of:

- 10.1 the Lender being entitled to terminate it as a consequence of an Event of Default; or
- 10.2 the creditors of an NUH Entity failing to resolve that it enter into a DOCA on terms consistent with the terms of the Realtek DOCA Proposal.

11 Interest rate

Advances under this Term Sheet will accrue interest daily at a rate of 15% per annum. Interest will capitalise monthly until the repayment date.

12 Governing law

This Term Sheet is governed by the laws of Western Australia.

Executed by **Nuheara Limited**
(Administrators Appointed) ABN 29 125 167
133 by its joint and several administrators:

Full Name of Administrator

Signature of Administrator

Executed by **Nuheara IP Pty Ltd**
(Administrators Appointed) ACN 605 704 096
by its joint and several administrators:

Full Name of Administrator

Signature of Administrator

Executed by **Terrace Gold Pty Ltd**
(Administrators Appointed) ACN []
by its joint and several administrators:

Full Name of Administrator

Signature of Administrator

**Executed by Martin Jones as joint and
several administrator of Nuheara Limited
(Administrators Appointed) ABN 29 125 167
133 and Nuheara IP Pty Ltd (Administrators
Appointed) ACN 605 704 096 and Terrace
Gold Pty Ltd (Administrators Appointed) ACN
[] in the presence of:**

Martin Jones

Full name of witness

**Executed by Realtek Semiconductor Corp
pursuant to the laws of its place of
incorporation:**

YUNG-FRANG HUANG

Full Name of Director

Y. Frang H. Huang

Signature of Director

Full Name of Director/Secretary

Signature of Director/Secretary

Executed by Martin Jones as joint and several administrator of Nuheara Limited (Administrators Appointed) ABN 29 125 167 133 and Nuheara IP Pty Ltd (Administrators Appointed) ACN 605 704 096 and Terrace Gold Pty Ltd (Administrators Appointed) ACN [] in the presence of:

Martin Jones

Full name of witness

Executed by Realtek Semiconductor Corp pursuant to the laws of its place of incorporation:

Full Name of Director

Signature of Director

Full Name of Director/Secretary

Signature of Director/Secretary

Annexure A – Dictionary

In this Term Sheet:

Act means the *Corporations Act 2001* (Cth).

Administration Period means the period beginning on and from 28 February 2025 and ending when the Administration ends pursuant to s435C(3) of the Act.

Administrators means Martin Jones, Matthew Woods and Clint Joseph of KPMG, Level 8 235 St Georges Terrace Perth WA.

Appointment Date means 7 August 2024.

Administration Debts means those liabilities, expenses, costs and debts incurred or damages or losses sustained, in good faith and without negligence, by the Administrators in the performance or exercise or purported performance or exercise of any of their functions or powers as Administrators of the Borrowers, but excludes any liability of the Borrowers or the Administrators under the Funding Agreement.

Available Assets means all of the cash assets of the Borrowers that are:

- (a) available for distribution to creditors under sections 555 and 556 of the Corporations Act in the event the Borrowers are wound up;
- (b) available for distribution to creditors in the event a Deed of Company Arrangement is executed by the Borrowers pursuant to section 444B of the Corporations Act; or
- (c) available at the end of the Administration Period, in the in the event (a) or (b) does not apply,

but for the avoidance of doubt does not include cash held by the Administrators, and to be received by them as a refund of Goods and Service Tax and/or in respect of research and development expenditure, which funds are subject to a lien pursuant to s 443F of the Act.

Costs includes costs, charges, fees, government charges, taxes and expenses, including those incurred in connection with advisers and incurred in connection with the performance of the Administrators' duties, obligations and responsibilities under the Act and during the Administration Period.

DOCA means a Deed of Company Arrangement entered into in accordance with the provisions of Part 5.3A of the Act.

Event of Default means the use of the Funding other than for the Purpose.

Funding means the sum of \$474,732.78 plus GST in the amount of \$26,796.02 to be advanced by the Lender to the Administrators for the Purpose on the terms set out in this document.

Purpose means the conduct of the Administration of NUH by the Administrators during the Administration Period including on account of their Remuneration and including the incurring of liabilities by them for the purpose of the Administration, which includes, without limitation their legal fees.

Realtex DOCA Proposal means a proposal by the Lender that each of the NUH Entities enter into a DOCA dated 27 February 2025.

Remuneration means such remuneration to which the Administrators may be or become entitled as is determined in accordance with Division 60 of Schedule 2 to the Corporations Act.

Subsidiaries means Nuheara IP Pty Ltd (Administrators Appointed) ACN 605 704 096 and Terrace Gold Pty Ltd (Administrators Appointed) ACN [].

Form 59

Rule 29.02(1)

Federal Court of Australia

No of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133


Plaintiffs

Realtek Semiconductor Corporation

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**MBJ-44**" now produced and shown to Martin Bruce Jones at the time of swearing his affidavit on 5 March 2025.



.....
Signature of person taking Affidavit



.....
Signature of deponent

CALEB ANDREW DELANEY
of 525 Collins Street, Melbourne
being an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit "MBJ-44"
being a copy of letter from Cowell Clarke 27
February 2025

From: Richard Beissel <RBeissel@CowellClarke.com.au>
Sent: Thursday, 27 February 2025 2:22 PM
To: Barrett, Michael
Cc: Peter Leech; Thomas Hill; Roost, Hedley; Bird, Eden
Subject: RE: NUH - DOCA issues [TGLAW-Legal.FID4248799]
Attachments: Letter to TG 27 Feb 2025.pdf

Dear Michael – please see the attached in response to your email below.

Kind regards

Richard Beissel

Director

D: +61 8 8228 1140 | M: +61 405 357 312

E: RBeissel@CowellClarke.com.au

ADELAIDE: Level 9, 63 Pirie Street, Adelaide, SA 5000, Australia

SYDNEY: Level 2, 50 Pitt Street, Sydney, NSW 2000, Australia

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From: Barrett, Michael <mbarrett@tglaw.com.au>
Sent: Wednesday, 26 February 2025 2:45 PM
To: Richard Beissel <RBeissel@CowellClarke.com.au>
Cc: Peter Leech <PLeech@CowellClarke.com.au>; Thomas Hill <THill@CowellClarke.com.au>; Roost, Hedley <hroost@tglaw.com.au>; Bird, Eden <ebird@tglaw.com.au>
Subject: NUH - DOCA issues [TGLAW-Legal.FID4248799]

[Confidential]

Hi Richard

I refer to my email sent at 7.02pm on Monday 24 February 2025 which enclosed a letter from the lawyers for Realtek which put its proposal for a DOCA relating to NUH and its subsidiaries (**Realtek Proposal**). As we have discussed, this proposal allows for a materially higher dividend to unsecured creditors than the proposal of your clients set out in your letter of 17 February 2025.

The Administrators have put to the lawyers for Realtek a series of amendments to the Realtek Proposal and have yet to receive a response. From the point of view of the Administrators, the Realtek Proposal requires further amendment in order for it to constitute a workable proposal.

The Administrators in light of the Realtek Proposal, and in particular the higher dividend to unsecured creditors, ask you to advise us whether your clients wish to revise their proposal as set out in your letter of 17 February 2025. If they do, would you please put to us the details of any revised DOCA which they intend to put and put that to us in writing **by no later than 2pm AEST tomorrow 27 February 2025?**

The Administrators are setting this deadline as they consider they need to know well before the rescheduled meetings of creditors to be held on 28 February 2025, whether the meetings should proceed on that day, or for the purpose of the Realtek Proposal being reported on in a supplementary report to creditors, the meetings need to be further adjourned. If so, they will also need to seek orders of the Court to vary the current timetable to permit the meetings to be held after 28 February 2025.

One other matter, the orders of the Court yesterday in paragraph 4, required Realtek to pay money into our trust account today. Because of logistical difficulties in effecting transfers from Taipei to Bennett's trust account we have agreed to their request that agreed amounts (including an adjusted amount in respect of GST) will be paid into our trust account by 5pm WAST tomorrow. We have sighted evidence to show that Realtek has transferred AUD550,000 from its Taipei accounts to Bennett.

If you wish to discuss the matter please contact me.

Regards

Michael

Michael Barrett | Partner
Thomson Geer
T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861
mbarrett@tqlaw.com.au | tqlaw.com.au

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Our Ref: 243627_3437-0673-7461_1

27 February 2025

Michael Barrett
Thomson Geer

By email:

NuHeara Limited (Administrators Appointed) (NuHeara)

Dear Mr Barrett

We refer to your email received on 26 February 2025 and are instructed to respond on behalf of the syndicate we represent.

We understand that your client has formed the view that the proposal from Realtek Semiconductor Corporation (**Realtek**) is of sufficient merit that it should be explored further by your client. On that basis we understand you are approaching the Federal Court of Australia at 4:00pm Sydney time today to seek an adjournment or extension of the time in which the creditors meeting has to be held, until 17 March 2025.


The syndicate as the DOCA proponents do not object to such an extension.

Our client agrees with you that the proposal from Realtek is incomplete and is not an offer that could be put as a DOCA proposal to creditors in its current form. While we acknowledge that you are seeking to address those matters, our client is not in a position to assess whether our client's current DOCA proposal should be revised.

In relation to the amount ordered by the Court to be paid by Realtek, we understand this has been paid to the trust account of the Australian solicitors for Realtek. We are instructed to inform you that the character of that payment, if made, is by way of an order of the Court and cannot be characterised as a voluntary loan to the Administrators. It was only necessary because the delay in holding the creditors meeting was caused by Realtek's failure to propose a DOCA in a timely way, thereby exhausting the funds of NuHeara and increasing the costs of Administration, including legal costs which would otherwise have been unnecessary. It should not receive any priority in the administration of NuHeara to the detriment of unsecured creditors.

If you disagree please notify us so that we can consider your client's response.

Yours faithfully
Cowell Clarke

Per: 

Richard Beissel
Director
RBeissel@cowellclarke.com.au

Form 59

Rule 29.02(1)

Federal Court of Australia

No of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133


Plaintiffs

Realtek Semiconductor Corporation

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "MBJ-45" now produced and shown to Martin Bruce Jones at the time of swearing his affidavit on 5 March 2025.


.....
Signature of person taking Affidavit
.....
Signature of deponent

CALEB ANDREW DELANEY
of 575 Collins Street, Melbourne
being an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit "MBJ-45"
being a copy of letter to Cowell Clarke 28
February 2025

Our ref MB:5801891

28 February 2025

rbeissel@cowellclarke.com.au

Cowell Clarke
Commercial Lawyers

Electronic

Dear Mr Beissel

Nuheara Limited (Administrators Appointed)

Thank you for your letter of 27 February 2025 and we refer to our subsequent discussion.

1 Orders of the Court made on 27 February 2025

In light of the submission of the amended proposal for a Deed of Company Arrangement (DOCA) by Realtek Semiconductor Corporation (**Realtek**), our client sought and obtained orders from the Federal Court yesterday afternoon permitting them to adjourn the meetings of creditors scheduled to be held today until a date no later than Monday 17 March 2025. We say more about the Realtek DOCA proposal below.

Accordingly, and as advised yesterday, the meetings of creditors to be held today will be adjourned in the same manner as they were on Tuesday 25 February. It is likely that the adjourned meetings will be held on 17 March 2025.

2 The Realtek DOCA proposal

We have yet to receive a signed form of that proposal from the lawyers acting for Realtek but we have had confirmation the document that has been provided to the Administrators, is agreed by Realtek. Although it contains terms additional to those set out in the letter from Bennett Lawyers dated 24 February 2025 and provided to you on that evening, the commercial terms are the same.

The Administrators are accordingly of the view that the current form of the Realtek DOCA proposal is such that it can be put to creditors for their consideration at the adjourned meetings.

Our client has previously requested (in our email of Wednesday 26 February 2025) that your client consider, in light of that proposal, which provides a materially greater return to unsecured creditors, whether your client was intending to submit a revised DOCA proposal. When we spoke to you about this matter at approximately 12 noon Eastern time yesterday, you indicated that your client was not prepared to increase the amount offered to be paid to unsecured creditors but was prepared to consider providing commitments to creditors that it would provide funding necessary to trade the entity which was intended to be the purchaser of Realtek's assets under the Asset Supply Agreement for some months. We understand from a conversation following the Court hearing yesterday afternoon, that your client is yet to formalise that proposal which requires additional

funding from the principals of your client, and that it also wishes to be provided with the Realtek DOCA proposal before it formally responds. We also note your letter confirms this position.

The Administrators will disclose in full detail the Realtek DOCA Proposal when they report to creditors for the purpose of the meetings to be held on 17 March 2025.

Given the orders of the Court, and as you have acknowledged, the Administrators are required to provide further reports to creditors in which they will need to opine on which of the three alternatives available to the Creditors under s439C of the Act should be followed. Inevitably, the Administrators in order to discharge their statutory functions, will also have to form an opinion on which of the two proposals for DOCAs that have been submitted, should be recommended to creditors.

Those reports will be provided to creditors most likely on 7 March 2025, i.e. a week today.

Accordingly, if it is your client's intention that it wishes to submit a fresh DOCA proposal, in light of the commercial terms of the Realtek proposal set out in the letter of 24 February 2025, we ask that you do so as quickly as possible and in any event in sufficient time to permit the Administrators to consider it and include it within the report to creditors. In the absence of your client putting such a proposal, the Administrators can only proceed on the basis that your client's proposal is that set out in your letter of 17 February 2025.

3 Funding

As we have said to you, in light of the Realtek DOCA proposal, the Administrators were obliged to make an urgent application to the Court under s447A of the Act in order to permit them to adjourn the meetings of creditors given that Tuesday 25 February 2025 was otherwise the last day on which those meetings could be held.

His Honour, Justice O'Sullivan, in the course of that hearing, of his own volition, required Realtek to put monies into our trust account for the purpose of demonstrating its *bona fides* given the lateness of its DOCA proposal. This did not form any part of the application made by our client. The sole purpose of our clients' application as was explained to you immediately following receipt of the letter from Bennett Lawyers late on 24 February 2025, was to deal with the fact, as you say, of the delay on the part of Realtek in putting a DOCA proposal in a form which had to be considered by the Administrators.

Realtek has now paid moneys into our trust account in the amount of \$501,528.

Realtek is prepared to offer to make available that funding for the costs of the administration from 28 February 2025 given that, as of today, the Administrators have no additional funding. They have put a Funding Term Sheet to the Administrators which permits the Administrators to access the funding held in our trust account.

It is our client's intention to apply to the Court for the necessary orders under s447A in order to permit the Administrations to continue to be funded. It will also seek orders in relation to the funding that was provided by your client. We will endeavour to finalise those materials today and once they are finalised, we will provide you with a copy of them. That will give you the opportunity to put whatever you may wish in relation to the matters referred to in the penultimate paragraph of your letter or any other matter concerning the funding of the Administrations. We presently do not have instructions on what you say about priority issues in relation to their funding.

If you wish to discuss the matter, please do not hesitate to contact us.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Barrett', with a stylized flourish at the end.

Michael Barrett

Partner

T +61 3 8080 3772 / +61 8 8236 1130

M 0412 807 861

E mbarrett@tglaw.com.au

From: Richard Beissel <RBeissel@CowellClarke.com.au>
Sent: Monday, 3 March 2025 9:12 PM
To: Barrett, Michael
Cc: Peter Leech; Thomas Hill; Roost, Hedley; Bird, Eden
Subject: RE: NUH
Attachments: Letter to TG 03 March 2025.pdf

Dear Michael

Thanks for keeping us updated. Please see attached letter.

Kind regards

Richard Beissel

Director

D: +61 8 8228 1140 | M: +61 405 357 312

E: RBeissel@CowellClarke.com.au

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From: Barrett, Michael <mbarrett@tglaw.com.au>
Sent: Saturday, 1 March 2025 2:02 PM
To: Richard Beissel <RBeissel@CowellClarke.com.au>
Cc: Peter Leech <PLeech@CowellClarke.com.au>; Thomas Hill <THill@CowellClarke.com.au>; Roost, Hedley <hroost@tglaw.com.au>; Bird, Eden <ebird@tglaw.com.au>
Subject: NUH

[Confidential]

Hi Richard

I refer to our discussion late yesterday.

Subsequent to that we have received a signed DOCA proposal from the lawyers for Realtek which is in a form which the Administrators consider can be put to creditors for their consideration and potentially approval at the adjourned meetings of creditors. It remains, in commercial terms, consistent with what was put to us by them last Monday evening (and which was also forwarded to you).

I confirm that your client is still considering its position but you have advised that any revised proposal to that contained in your letter of 17 February 2025, which they may submit, will be submitted to the Administrators with sufficient time for them to consider prior to providing their supplementary report to creditors on Friday 7 March 2025.

As you know the Administrators are intending to apply to the Court for the customary orders under s447A in respect of the First Funding Agreement with your clients, and also a funding agreement proposed by Realtek, early next week. Realtek's lawyers have told us they will recommend to their client certain amendments to their proposal which we have put and we expect to have a signed document shortly. Once we have it, we will file the application. Again as discussed we intend to serve you with a copy of those papers as soon as they are finalised.

The court has indicated that the application could perhaps be heard by O'Sullivan J on Wednesday afternoon but will confirm that timing on Monday morning.

regards

Michael Barrett | Partner

Thomson Geer

T +61 3 8080 3772 / +61 8 8236 1130 | M 0412 807 861

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Form 59

Rule 29.02(1)

Federal Court of Australia

No of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED)

ACN 125 167 133

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and several administrators of Nuheara Limited (administrators appointed) ACN 125 167 133

Plaintiffs

Realtek Semiconductor Corporation

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "MBJ-46" now produced and shown to Martin Bruce Jones at the time of swearing his affidavit on 5 March 2025.



.....
Signature of person taking Affidavit



.....
Signature of deponent

CALEB ANDREW DELANEY
of 525 Collins Street, Melbourne
being an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit "MBJ-46"
being a copy of letter from Cowell Clarke 3
March 2025

Our Ref: 243627_3437-3578-6550_2

3 March 2025

Michael Barrett
Thomson Geer

By email:

NuHeara Limited (Administrators Appointed) (NuHeara)

Dear Mr Barrett

We act for Orecchio Pty Ltd, the proponent of a Deed of Company Arrangement (**DOCA**) on the terms set out in our letter dated 7 February 2025 to your client.

We refer to your letter of 28 February 2025 and to your email of 1 March 2025.

We understand that the payments contemplated by the Court's orders have been finally made, but we do not think that such payments by Realtek Semiconductor Corporation (**Realtek**) can be characterised as a voluntary loan to the Administrators.


To the extent that such funds are paid towards NuHeara's wages and associated expenses, our client has no objection to Realtek obtaining a priority. Our client does object to any priority being given to costs generated by Realtek's delay, for which it is wholly responsible. If our client's DOCA proposal is supported by the creditors meeting, then it will assume the burden of paying priority debts (see clauses 6.1, 8.1, 9 and 10 of our letter dated 7 February 2025 referred to above).

The creditors meeting has been delayed by Realtek's failure to propose a DOCA in a timely way, thereby exhausting the funds of NuHeara (the DOCA proponents' funds), prejudicing the business which our client has agreed to continue and increasing the costs of Administration including legal costs.

Realtek's announced attitude is that it will not enter into a supply and royalty agreement with NuHeara, despite its obligation to do so under the Memorandum of Understanding, in order to drive NuHeara into liquidation. In these circumstances, there is an increasingly urgent need for Orecchio Pty Ltd, once it secures the business, to contract with another microchip company to develop the hardware for the hearing aid. Our principal competitor Apple obtained FDA approval in December 2024, and has commenced to market its device.

We look forward to receiving the sealed Court documents as soon as they are available.

Yours faithfully
Cowell Clarke

Per: 

Richard Beissel
Director
RBeissel@cowellclarke.com.au

