

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Interlocutory process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 3
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 5/03/2025 2:13:26 PM AWST
Date Accepted for Filing: 6/03/2025 8:52:57 AM AWST
File Number: WAD41/2025
File Title: IN THE MATTER OF NUHEARA LIMITED (ADMINISTRATORS APPOINTED) ACN 125 167 133
Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: Interlocutory Hearing
Time and date for hearing: 12/03/2025, 11:45 AM
Place: Court Room Not Assigned, Roma Mitchell Commonwealth Law Courts Building Level 5, 3 Angas Street, Adelaide; By Web Conference, Peter Durack Commonwealth Law Courts Building Level 6, 1 Victoria Avenue, Perth



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 3 Interlocutory process

(rules 2.2, 15A.4, 15A.8 and 15A.9)

Federal Court of Australia

No WAD41 of 2025

District Registry: Western Australia

Division: Corporations

IN THE MATTER OF NUHEARA LIMITED ACN 125 167 133, NUHEARA IP PTY LTD ACN 605 704 096 AND TERRACE GOLD PTY LTD 072 608 952 (ALL ADMINISTRATORS APPOINTED)

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 named in the Schedule

Plaintiffs

Realtek Semiconductor Corporation

Defendants

A. DETAILS OF APPLICATION

This application is made under section 447A of the *Corporations Act 2001* (Cth) (**Act**) and section 90-15 of the *Insolvency Practice Schedule* (Schedule 2 to the Act) (**IPS**).

The Plaintiffs seek orders approving the entry into and utilisation of funds under two funding agreements for the administration of Nuheara Limited, Nuheara IP Pty Ltd and Terrace Gold Pty Ltd (all administrators appointed) (**Companies**) and related orders.

On the facts stated in the fifth Affidavit of Martin Bruce Jones sworn on 5 March 2025, the Plaintiffs claim:

1. Declarations pursuant to section 90-15 of the IPS that:
 - (a) the Plaintiffs are justified *nunc pro tunc* in entering into and causing the Companies to enter into the Funding Term Sheet dated 18 November 2024 (**Syndicate Funding Agreement**) and in drawing down and utilising funds in the total amount of \$1,131,748 under that agreement;



- (b) the Plaintiffs are justified in entering into and causing the Companies to enter into a Funding Term Sheet in the form of the document at annexure "MBJ-42" to the Affidavit of Martin Jones sworn 5 March 2025 (**Realtek Funding Agreement**) and in drawing down and utilising funds of up to \$501,528.80 under that agreement; and
- (c) the Plaintiffs' obligation to repay the funds drawn under each of the Syndicate Funding Agreement and Realtek Funding Agreement is a debt or liability incurred in good faith and without negligence by the Plaintiffs as administrators of the Companies in the performance or exercise of their functions and power as administrators.
2. Further or in the alternative to paragraph 1(c), an order pursuant to section 447A(1) of the Act that Part 5.3A of the Act is to operate in relation to the Companies as if the Plaintiff's obligations to repay the funds drawn under each of the Syndicate Funding Agreement and Realtek Funding Agreement are a debt or liability incurred in good faith and without negligence by the Plaintiffs as administrators of the Companies in the performance or exercise of their functions and power as administrators.
3. Orders pursuant to section 447A(1) of the Act that Part 5.3A of the Act is to operate in relation to the Companies so that:
- (a) if the Plaintiffs' indemnity (in their capacities as administrators of each of the Companies) pursuant to section 443D of the Act out of the property of the relevant Company is insufficient to satisfy any debt or liability incurred by the Plaintiffs (in their capacities as administrators of the relevant Company) in respect of, or pursuant to, the Syndicate Funding Agreement and the Realtek Funding Agreement, then the Plaintiffs will not be personally liable, and relieved of any personal liability, to pay any such debt or liability to the extent of that insufficiency; and
- (b) the Plaintiffs' indemnity pursuant to section 443D of the Act out of the property of any of the Companies is, in the case of each of the Companies, to cover all debts and liabilities incurred by each of the Companies in respect of the Syndicate Funding Agreement and the Realtek Funding Agreement.



4. The solicitors for the Plaintiffs pay the amount of \$501,528.80 received pursuant to Order 3 of 25 February 2025 into the account maintained by the Plaintiffs for the purposes of the administration of the Companies.
5. The Plaintiffs' costs of this application are costs properly incurred in the administration of the Companies, and be paid out of the assets of the Companies.

Date: 5 March 2025

A handwritten signature in blue ink, appearing to be 'D. ...', written over a dotted line.

.....
Signature of Plaintiffs' lawyer

Thomson Geer – Perth

This application will be heard by the Honourable Justice O'Sullivan at 3 Angas Street, Adelaide, South Australia 5000 **at 2:15pm ACDT on 12 March 2025.**

B. NOTICE TO DEFENDANT(S) (IF ANY)

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.



C. FILING

Date of filing: 5 March 2025

This originating process is filed by Michael Barrett of Thomson Geer – Perth for the Applicants.

D. SERVICE

The Applicants' address for service is –

Thomson Geer – Perth

Level 29, Central Park Tower

152-158 St Georges Terrace

Perth WA 6000

It is intended to serve a copy on:

- a. the Defendant, Realtek Semiconductor Corporation, care of Bennett Lawyers;
- b. certain investors known as the Syndicate care of Cowell Clarke; and
- c. each creditor that has lodged a proof of debt in the administration of the Companies by way of posting to the website maintained by the Plaintiffs and issuing a circular to creditors.



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