

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: **17327 / 2020**

In the application between:

TREVO CAPITAL LTD

Applicant / Intervening Party

and

HAMILTON BV

First Respondent

HAMILTON 2 BV

Second Respondent

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

Third Respondent

In re the matter between:

HAMILTON BV

First Applicant

HAMILTON 2 BV

Second Applicant

and

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

Respondent

FILING SHEET

BE PLEASED TO TAKE NOTICE THAT the Applicant presents herewith for filing the following:

1. Supporting affidavit of Jacobus Hauptfleisch Du Toit
2. Supporting affidavit of Annamie Hansen
3. Supporting affidavit of Leon Marius Lourens
4. Supporting affidavit of Jacobus Francois Pienaar
5. Supporting affidavit of Johan Samuel Van Rooyen
6. Supporting affidavit of Johan Daniël Wasserfall; and
7. Supporting affidavit of Business Venture Investments No 1499 (RF) Proprietary Limited deposed to by Jacobus Francois Pienaar

DATED at **CAPE TOWN** on this **8th** day of **FEBRUARY 2021**.

BOWMAN GILFILLAN INC

Per: 

Deon de Klerk/Juliette de Hutton
Attorneys for the Applicant/
Intervening Party
22 Bree Street
CAPE TOWN
(Ref: D de Klerk/J de Hutton/6186596)
Tel: 021 480 7934
Fax: 021 480 3280
Email:
deon.deklerk@bowmanslaw.com
juliette.dehutton@bowmanslaw.com
[m](http://www.bowmanslaw.com)

TO: THE REGISTRAR
High Court

CAPE TOWN

AND TO: ADAMS AND ADAMS

Attorneys for First Respondent and Second Respondent

Lynnwood Bridge

4 Daventry Street

Lynnwood Manor

PRETORIA

Email: jac.marais@adams.africa

mia.dejager@adams.africa

c/o Adams and Adams

22nd Floor

2 Long Street

CAPE TOWN

(Ref: S Yeates / W Britz)

Email: steven.yeats@adams.africa & wensel.britz@adams.africa

AND TO: WERKSMANS ATTORNEYS

Attorneys for Third Respondent

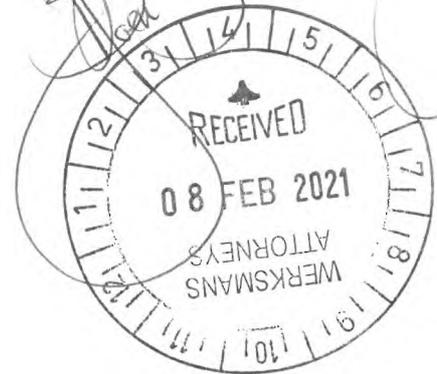
Level 1, No 5 Silo Square

V&A Waterfront

CAPE TOWN

(Ref: B Olivier / STEI1288.17)

Email: bolivier@werksmans.com



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SUPPORTING AFFIDAVIT

I, the undersigned,

JACOBUS HAUPTFLEISCH DU TOIT,

do hereby make oath and say:

1. I am an adult businessman residing at 39 Gladiolus Crescent, Welgedacht, Bellville, Cape Town, Western Cape Province.
2. The facts deposed to herein are within my personal knowledge, save where the context indicates the contrary, and are furthermore true and correct. Where I refer to information conveyed to me by others, I verily believe such information to be true. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be true and correct.
3. I have read the affidavits in the application for declaratory relief (**'the declaratory application'**) instituted by Hamilton BV and Hamilton 2 BV (collectively **'Hamilton'**) against Steinhoff International Holdings (Proprietary) Limited (**'SIHPL'**). I have also read the founding affidavit of Johann-Dirk Enslin in support of the urgent application by Trevo Capital Limited (**'Trevo'**) for leave to intervene in the declaratory application, and for an order that other creditors be afforded an opportunity to apply to intervene in the declaratory application and to advance submissions concerning the relief sought by Hamilton in the declaratory application.
4. In the circumstances, I do not seek at this stage to intervene in the declaratory application. However, for the reasons set out below, I support

Trevo's application. More particularly, I agree with the contentions in Mr Enslin's affidavit regarding the incorrectness of the approaches adopted by both Hamilton and SIHPL to the determination of classes for the purposes of a compromise in terms of section 155 of the Companies Act 71 of 2008 ('the Act'). I should be afforded the opportunity to intervene in the declaratory application after fully considering my position, should I be so minded and advised, and to advance submissions regarding the appropriate determination of classes.

MY CLAIM AGAINST SIHPL

5. On 29 March 2019, Charl Cronjé, Annamie Hansen, Leon Lourens, Estelle Morkel, Jacobus Pienaar, Johan van Rooyen, Johann Wasserfall (**Wasserfall**) and I (collectively '**the Cronjé plaintiffs**', but excluding Ms Morkel, who has subsequently withdrawn her claim) instituted action against SIHPL.
6. The Cronjé plaintiffs claim damages that each of them suffered as a result of the reduction in value of the shares that they held in Steinhoff International Holdings NV ('**Steinhoff NV**'). A copy of the Cronjé plaintiffs' particulars of claim is annexure JDW1 to the supporting affidavit of Wasserfall.
7. The essential allegation on behalf of the Cronjé plaintiffs is that SIHPL published financial statements, in particular its 2014 annual financial statements, that contained false information regarding its financial position. But for that false information, the Cronjé plaintiffs:

CIN


- 7.1 would not have concluded separate exchange agreements with SIHPL on or about 19 February 2015 in terms of which they exchanged ordinary shares in Pepkor Holdings Limited ('PPH') for ordinary shares in SIHPL at an issue price of R57 per share;
- 7.2 would not have held shares in Steinhoff NV pursuant to SIHPL's scheme of arrangement in terms of section 114 of the Act in December 2015; and
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THE DECLARATORY APPLICATION

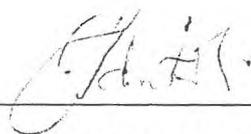
8. SIHPL intends to propose a compromise of its financial obligations with three classes of its creditors in terms of section 155 of the Act (**'the proposal'**). The broad terms of the proposal are set out in a term sheet that has been available on the Steinhoff NV website since 27 July 2020 (annexure FA2.3 to Hamilton's founding affidavit in the declaratory application). The terms were slightly updated and then republished on Steinhoff NV's website on 9 October 2020. A copy of the updated term sheet (**'the term sheet'**) is annexure JE1 to Mr Enslin's affidavit.
9. The three classes of creditor referred to in the term sheet are the SIHPL CPU Creditors (**'the FC class'**), the SIHPL Contractual Claimants (**'the CC class'**), and the SIHPL Market Purchase Claimants (**'the MPC class'**).



10. By way of the declaratory application, Hamilton seeks relief that would prevent the proposal from being adopted by SIHPL's creditors or from being sanctioned by a court. Hamilton contends in particular that the CC class and the MPC class cannot constitute a 'class of creditor' in terms of section 155 of the Act, because both classes comprise concurrent creditors. Instead, says Hamilton, the classes envisaged by section 155 are those recognised in insolvency law: concurrent creditors, secured creditors, and statutory preferent creditors. Moreover, Hamilton contends – in effect – that the proposed settlement with the CC class is unfair and inequitable and thus not sanctionable by a court in due course.
11. I agree with Hamilton that the proposal, as it is currently envisaged in the term sheet, cannot be sanctioned by a court. However, I am advised and respectfully say that Hamilton's contention that the only classes of creditors intended by section 155 of the Act are those recognised in insolvency law is incorrect. I concur in this regard with what has been said by Mr Enslin in paragraph 47 of his affidavit on behalf of Trevo.
12. SIHPL has categorised me as a member of the CC class in the term sheet. In terms of the term sheet, SIHPL will settle the claims of the Cronjé plaintiffs for a settlement consideration equivalent to R159 000 000. I may elect for my portion of the settlement consideration to be paid entirely in the form of shares in PPH at a deemed price of R13.50 per share (subject to a three-year lock-up restriction), or 50% in cash and 50% in the form of PPH shares at a deemed price of R15.00 per share (and subject to a 180 day lock-up restriction).

13. The members of the FC Class, the CC class and the MPC class are all concurrent creditors of SIHPL. Should the proposal instead (as suggested by Hamilton) place the existing members of the FC class, the CC class and the MPC class together in one class, this will have a material adverse effect on members of the CC class, including me.

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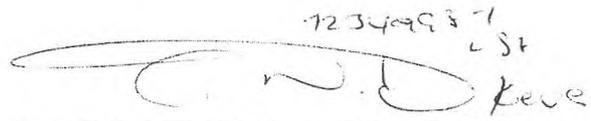


JACOBUS HAUPTFLEISCH DU TOIT

I certify that the above signature is the true signature of **JACOBUS HAUPTFLEISCH DU TOIT** and that he acknowledged to me that he knows and understands the contents of this affidavit which was signed and attested to at the undermentioned address on this 08 day of **FEBRUARY 2021** in accordance with the provisions of GN R1258 dated 21 July 1972 as amended by Regulation No. 1648 dated 19 August 1977, by GN R1428 of 11 July 1980 and by GN R744 of 23 April 1982.



12345678
L St
Kee



COMMISSIONER OF OATHS

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HAMILTON 2 BV

Second Applicant

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Respondent

SUPPORTING AFFIDAVIT

W. O'H.

I, the undersigned,

ANNAMIE HANSEN,

do hereby make oath and say:

1. I am an adult businesswomen residing at 27A Braemer Street, Green Point, Cape Town.
2. The facts deposed to herein are within my personal knowledge, save where the context indicates the contrary, and are furthermore true and correct. Where I refer to information conveyed to me by others, I verily believe such information to be true. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be true and correct.
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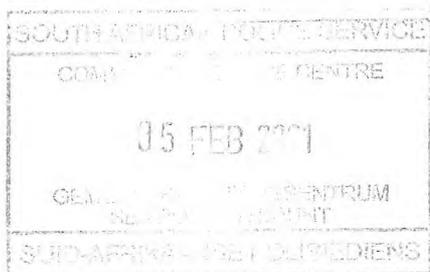


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Annemie Hansen 5/2/21

ANNAMIE HANSEN

I certify that the above signature is the true signature of **ANNAMIE HANSEN** and that she acknowledged to me that she knows and understands the contents of this affidavit which was signed and attested to at the undermentioned address on this 05 day of **FEBRUARY 2021** in accordance with the provisions of GN R1258 dated 21 July 1972 as amended by Regulation No. 1648 dated 19 August 1977, by GN R1428 of 11 July 1980 and by GN R744 of 23 April 1982.



Commissioner of Oaths

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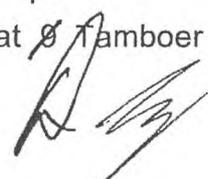
SUPPORTING AFFIDAVIT

A handwritten signature in black ink, consisting of several sweeping strokes and a circular flourish at the end.

I, the undersigned,

LEON MARIUS LOURENS,

do hereby make oath and say:

1. I am an adult businessman residing at ¹⁰ ~~8~~ Tamboer Street, De Zalze, Stellenbosch, Western Cape. 
2. The facts deposed to herein are within my personal knowledge, save where the context indicates the contrary, and are furthermore true and correct. Where I refer to information conveyed to me by others, I verily believe such information to be true. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be true and correct.
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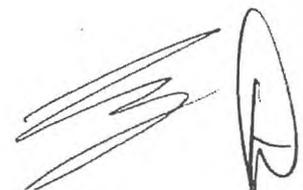
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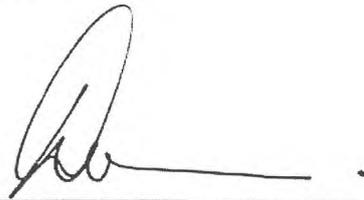
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Two handwritten signatures are present at the bottom right of the page. The first signature is a stylized, cursive name, and the second is a more traditional, legible signature.

10. By way of the declaratory application, Hamilton seeks relief that would prevent the proposal from being adopted by SIHPL's creditors or from being sanctioned by a court. Hamilton contends in particular that the CC class and the MPC class cannot constitute a '*class of creditor*' in terms of section 155 of the Act, because both classes comprise concurrent creditors. Instead, says Hamilton, the classes envisaged by section 155 are those recognised in insolvency law: concurrent creditors, secured creditors, and statutory preferent creditors. Moreover, Hamilton contends – in effect – that the proposed settlement with the CC class is unfair and inequitable and thus not sanctionable by a court in due course.
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LEON MARIUS LOURENS

I certify that the above signature is the true signature of **LEON MARIUS LOURENS** and that he acknowledged to me that he knows and understands the contents of this affidavit which was signed and attested to at the undermentioned address on this 8 day of **FEBRUARY 2021** in accordance with the provisions of GN R1258 dated 21 July 1972 as amended by Regulation No. 1648 dated 19 August 1977, by GN R1428 of 11 July 1980 and by GN R744 of 23 April 1982.

AREND JACOBUS KEULDER
COMMISSIONER OF OATHS
NON-PRACTICING ATTORNEY
36 STELLENBERG RD
PAROW INDUSTRIA
7493



COMMISSIONER OF OATHS

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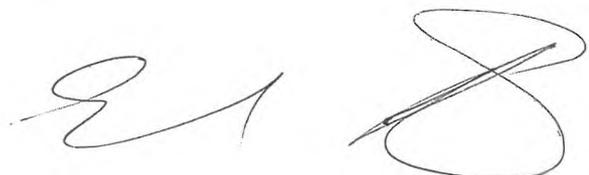
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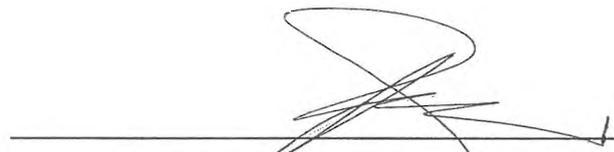
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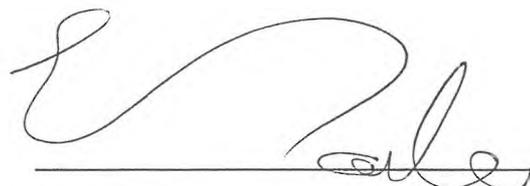


13. The members of the FC Class, the CC class and the MPC class are all concurrent creditors of SIHPL. Should the proposal instead (as suggested by Hamilton) place the existing members of the FC class, the CC class and the MPC class together in one class, this will have a material adverse effect on members of the CC class, including me.
14. I also concur with the contentions advanced on behalf of Trevo in paragraph 48 of Mr Enslin's affidavit as to why SIHPL's classification of creditors into the FC class, CC class and MPC class suffers from fundamental flaws that render the proposal unsanctionable by a court.



JACOBUS FRANCOIS PIENAAR

I certify that the above signature is the true signature of **JACOBUS FRANCOIS PIENAAR** and that he acknowledged to me that he knows and understands the contents of this affidavit which was signed and attested to at the undermentioned address on this 5th day of **FEBRUARY 2021** in accordance with the provisions of GN R1258 dated 21 July 1972 as amended by Regulation No. 1648 dated 19 August 1977, by GN R1428 of 11 July 1980 and by GN R744 of 23 April 1982.



COMMISSIONER OF OATHS

COMMISSIONER OF OATHS (RSA)
EBEN VAN TONDER
Advocate of the High Court of SA
Member No.: NBCSA0746
Westbrook House, 13 Seemeeu Crescent,
Paternoster, Western Cape, 7381

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 17327/2020

In the matter between:

TREVO CAPITAL LTD

Applicant / Intervening Party

and

HAMILTON BV

First Respondent

HAMILTON 2 BV

Second Respondent

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

Third Respondent

In re the matter between:

HAMILTON BV

First Applicant

HAMILTON 2 BV

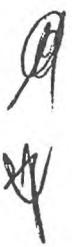
Second Applicant

and

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

Respondent

SUPPORTING AFFIDAVIT



I, the undersigned,

JOHAN SAMUEL VAN ROOYEN,

do hereby make oath and say:

1. I am an adult businessman residing at 10 Oortjie Street, Vierlanden, Durbanville, Cape Town.
2. The facts deposed to herein are within my personal knowledge, save where the context indicates the contrary, and are furthermore true and correct. Where I refer to information conveyed to me by others, I verily believe such information to be true. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be true and correct.
3. I have read the affidavits in the application for declaratory relief (**the declaratory application**) instituted by Hamilton BV and Hamilton 2 BV (collectively **'Hamilton'**) against Steinhoff International Holdings (Proprietary) Limited (**'SIHPL'**). I have also read the founding affidavit of Johann-Dirk Enslin in support of the urgent application by Trevo Capital Limited (**'Trevo'**) for leave to intervene in the declaratory application, and for an order that other creditors be afforded an opportunity to apply to intervene in the declaratory application and to advance submissions concerning the relief sought by Hamilton in the declaratory application.
4. In the circumstances, I do not seek at this stage to intervene in the declaratory application. However, for the reasons set out below, I support



Trevo's application. More particularly, I agree with the contentions in Mr Enslin's affidavit regarding the incorrectness of the approaches adopted by both Hamilton and SIHPL to the determination of classes for the purposes of a compromise in terms of section 155 of the Companies Act 71 of 2008 ('the Act'). I should be afforded the opportunity to intervene in the declaratory application after fully considering my position, should I be so minded and advised, and to advance submissions regarding the appropriate determination of classes.

MY CLAIM AGAINST SIHPL

5. On 29 March 2019, Charl Cronjé, Jacobus du Toit, Annamie Hansen, Leon Lourens, Estelle Morkel, Jacobus Pienaar, Johann Wasserfall (**Wasserfall**) and I (collectively '**the Cronjé plaintiffs**', but excluding Ms Morkel, who has subsequently withdrawn her claim) instituted action against SIHPL.
6. The Cronjé plaintiffs claim damages that each of them suffered as a result of the reduction in value of the shares that they held in Steinhoff International Holdings NV ('**Steinhoff NV**'). A copy of the Cronjé plaintiffs' particulars of claim is annexure JDW1 to the supporting affidavit of Wasserfall.
7. The essential allegation on behalf of the Cronjé plaintiffs is that SIHPL published financial statements, in particular its 2014 annual financial statements, that contained false information regarding its financial position. But for that false information, the Cronjé plaintiffs:



- 7.1 would not have concluded separate exchange agreements with SIHPL on or about 19 February 2015 in terms of which they exchanged ordinary shares in Pepkor Holdings Limited ('PPH') for ordinary shares in SIHPL at an issue price of R57 per share;
- 7.2 would not have held shares in Steinhoff NV pursuant to SIHPL's scheme of arrangement in terms of section 114 of the Act in December 2015; and
- 7.3 would not have suffered a loss when the value of the Steinhoff NV shares they acquired declined massively following the revelation, in December 2017, of the false information in the financial statements.

THE DECLARATORY APPLICATION

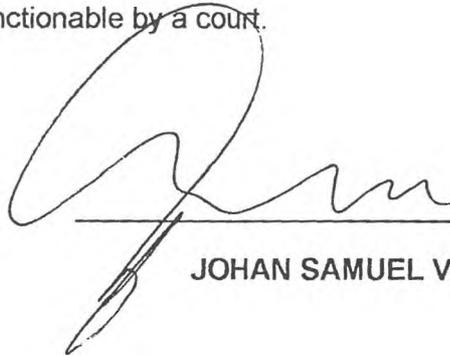
8. SIHPL intends to propose a compromise of its financial obligations with three classes of its creditors in terms of section 155 of the Act ('**the proposal**'). The broad terms of the proposal are set out in a term sheet that has been available on the Steinhoff NV website since 27 July 2020 (annexure FA2.3 to Hamilton's founding affidavit in the declaratory application). The terms were slightly updated and then republished on Steinhoff NV's website on 9 October 2020. A copy of the updated term sheet ('**the term sheet**') is annexure JE1 to Mr Enslin's affidavit.
9. The three classes of creditor referred to in the term sheet are the SIHPL CPU Creditors ('**the FC class**'), the SIHPL Contractual Claimants ('**the CC class**'), and the SIHPL Market Purchase Claimants ('**the MPC class**').



10. By way of the declaratory application, Hamilton seeks relief that would prevent the proposal from being adopted by SIHPL's creditors or from being sanctioned by a court. Hamilton contends in particular that the CC class and the MPC class cannot constitute a '*class of creditor*' in terms of section 155 of the Act, because both classes comprise concurrent creditors. Instead, says Hamilton, the classes envisaged by section 155 are those recognised in insolvency law: concurrent creditors, secured creditors, and statutory preferent creditors. Moreover, Hamilton contends – in effect – that the proposed settlement with the CC class is unfair and inequitable and thus not sanctionable by a court in due course.
11. I agree with Hamilton that the proposal, as it is currently envisaged in the term sheet, cannot be sanctioned by a court. However, I am advised and respectfully say that Hamilton's contention that the only classes of creditors intended by section 155 of the Act are those recognised in insolvency law is incorrect. I concur in this regard with what has been said by Mr Enslin in paragraph 47 of his affidavit on behalf of Trevo.
12. SIHPL has categorised me as a member of the CC class in the term sheet. In terms of the term sheet, SIHPL will settle the claims of the Cronjé plaintiffs for a settlement consideration equivalent to R159 000 000. My portion of the settlement consideration will (subject to an election to the contrary by SIHPL) be payable entirely in the form of shares in PPH at a deemed price of R13.50 per share, and subject to a three-year lock-up restriction.



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14. I also concur with the contentions advanced on behalf of Trevo in paragraph 48 of Mr Enslin's affidavit as to why SIHPL's classification of creditors into the FC class, CC class and MPC class suffers from fundamental flaws that render the proposal unsanctionable by a court.



JOHAN SAMUEL VAN ROOYEN

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SOUTH AFRICAN NARCOTICS ENFORCEMENT BUREAU PRIVATE BAG X52
2021-02-08
BELLVILLE 7530 DIRECTORATE FOR PRIORITY CRIME INVESTIGATION: WESTERN CAPE

Supporting Affidavit - Van Rooyen

.....0421821-3
Colonel AJ Jooste
SANEB

COMMISSIONER OF OATHS

*Abraham Jacobs Jooste
Colonel: SAPS
#3 West Street
Bellville*



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 17327/2020

In the matter between:

TREVO CAPITAL LTD

Applicant / Intervening Party

and

HAMILTON BV

First Respondent

HAMILTON 2 BV

Second Respondent

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

Third Respondent

In re the matter between:

HAMILTON BV

First Applicant

HAMILTON 2 BV

Second Applicant

and

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

Respondent

SUPPORTING AFFIDAVIT



I, the undersigned,

JOHAN DANIËL WASSERFALL,

do hereby make oath and say:

1. I am an adult businessman residing at 36 Burton Street, Durbanville, Cape Town.
2. The facts deposed to herein are within my personal knowledge, save where the context indicates the contrary, and are furthermore true and correct. Where I refer to information conveyed to me by others, I verily believe such information to be true. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be true and correct.
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7. The essential allegation on behalf of the Cronjé plaintiffs is that SIHPL published financial statements, in particular its 2014 annual financial statements, that contained false information regarding its financial position. But for that false information, the Cronjé plaintiffs:
 - 7.1 would not have concluded separate exchange agreements with SIHPL on or about 19 February 2015 in terms of which they exchanged ordinary



shares in Pepkor Holdings Limited ('PPH') for ordinary shares in SIHPL at an issue price of R57 per share;

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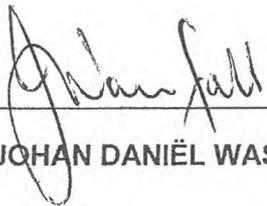
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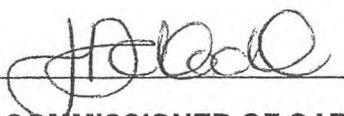
the MPC class together in one class, this will have a material adverse effect on members of the CC class, including me.

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JOHAN DANIËL WASSERFALL

I certify that the above signature is the true signature of **JOHAN DANIËL WASSERFALL** and that he acknowledged to me that he knows and understands the contents of this affidavit which was signed and attested to at the undermentioned address on this 8TH day of **FEBRUARY 2021** in accordance with the provisions of GN R1258 dated 21 July 1972 as amended by Regulation No. 1648 dated 19 August 1977, by GN R1428 of 11 July 1980 and by GN R744 of 23 April 1982.



COMMISSIONER OF OATHS

Nadia De Kock
Commissioner of Oaths
Practising Attorney & Conveyancer RSA
Miltos Matsemela Inc
10 Oxford Street, Durbanville, 7550
Tel: (021) 914 4100

OFFICE OF THE CHIEF JUSTICE
PRIVATE BAG X9020
CAPE TOWN 8000
2019-03-29
GENERAL OFFICE
WESTERN CAPE HIGH COURT

JDW1

COMBINED
SUMMONS

CASE NO: 5221/19

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

In the matter between:

- | | |
|-------------------------------------|-------------------|
| CHARL ANDRÉ CRONJÉ | First Plaintiff |
| JACOBUS HAUPTFLEISCH DU TOIT | Second Plaintiff |
| ANNAMIE HANSEN | Third Plaintiff |
| LEON MARIUS LOURENS | Fourth Plaintiff |
| ESTELLE ANN MORKEL | Fifth Plaintiff |
| JACOBUS FRANCOIS PIENAAR | Sixth Plaintiff |
| JOHAN SAMUEL VAN ROOYEN | Seventh Plaintiff |
| JOHAN DANIËL WASSERFALL | Eighth Plaintiff |

and

STEINHOFF INTERNATIONAL HOLDINGS (PROPRIETARY) LIMITED	Defendant
---	-----------

To the sheriff or his deputy:

[Handwritten signature]

INFORM

STEINHOFF INTERNATIONAL HOLDINGS (PROPRIETARY) LIMITED, a company duly incorporated with limited liability in terms of the company laws of South Africa and having its principal place of business and registered office within the area of jurisdiction of this Honourable Court at Block D, De Wagenweg Office Park, Stellantia Road, Stellenbosch.

(Hereinafter called the Defendant)

THAT

CHARL ANDRÉ CRONJÉ, an adult businessman residing at 10 Tamboer Street, De Zalze, Stellenbosch

And

JACOBUS HAUPTFLEISCH DU TOIT, an adult male retiree residing at 29 Gladiolus Crescent, Welgedacht, Bellville, Cape Town

And

A handwritten signature in black ink, appearing to be 'R. du Toit', is located in the bottom right corner of the page.

ANNAMIE HANSEN, an adult businesswoman residing at 27A
Braemer Street, Green Point, Cape Town

And

LEON MARIUS LOURENS, an adult businessman residing at 9
Tamboer Street, De Zalze, Stellenbosch

And

ESTELLE ANN MORKEL, an adult businesswoman residing at 41
Barlinka Way, Meadowridge, Bergvliet, Cape Town

And

JACOBUS FRANCOIS PIENAAR, an adult businessman residing
at No 5, La Bella Vita Estate, Simonsvlei Road, Paarl

And

JOHAN SAMUEL VAN ROOYEN, an adult businessman residing
at 10 Oortjie Street, Vierlanden, Durbanville, Cape Town

And

A handwritten signature in black ink, appearing to read 'P. van der...' or similar, located in the bottom right corner of the page.

JOHAN DANIËL WASSERFALL, and adult businessman residing
at 36 Burton Street, Durbanville, Cape Town

(hereinafter called the Plaintiffs),

hereby institutes action against the Defendant in which action the Plaintiffs claim the relief and on the grounds set out in the particulars annexed hereto.

INFORM the Defendant further that if the Defendant disputes the claim and wishes to defend the action, the Defendant shall –

- (i) within TEN (10) days of service upon the Defendant of this Summons, file with the Registrar of this Court at Keerom Street, Cape Town, Notice of Defendant's intention to defend and serve a copy thereof on the Attorneys of the Plaintiffs, which notice shall given an address (not being a post office or poste restante) referred to in rule 19(3) for the service upon the Defendant of all notices and documents in this action.
- (ii) Thereafter and within twenty days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiffs a Plea, Exception, Notice to strike out, with or without a Counter-claim.

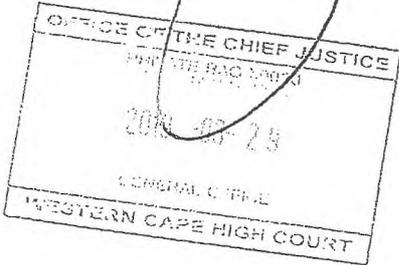
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INFORM the Defendant further that if the Defendant fails to file and serve notice as aforesaid, Judgment as claimed may be given against the Defendant without further notice to the Defendant or having filed and served such notice, the Defendant fails to plead, except, make application to strike out or counter-claim, Judgment may be given against the Defendant.

AND immediately thereafter serve on the Defendant a copy of this summons and return the same to the Registrar with whatsoever you have done thereupon.

DATED at CAPE TOWN this 29 day of MARCH 2019.

REGISTRAR



BOWMAN GILFILLAN

Per:



Plaintiffs' Attorneys

22 Bree Street

CAPE TOWN

REF: D de Klerk/6189363

Tel: 021 480 7934

Fax: 021 480 3280

Email: deon.deklerk@bowmanslaw.com



ANNEXURE

PARTICULARS OF PLAINTIFFS' CLAIMS

The parties

1.

- 1.1 The first plaintiff is Charl André Cronjé, an adult businessman residing at 10 Tamboer Street, De Zalze, Stellenbosch;
- 1.2 The second plaintiff is Jacobus Hauptfleisch du Toit, an adult male retiree residing at 29 Gladiolus Crescent, Welgedacht, Bellville, Cape Town;
- 1.3 The third plaintiff is Annamie Hansen, an adult businesswoman residing at 27A Braemer Street, Green Point, Cape Town;
- 1.4 The fourth plaintiff is Leon Marius Lourens, an adult businessman residing at 9 Tamboer Street, De Zalze, Stellenbosch;
- 1.5 The fifth plaintiff is Estelle Ann Morkel, an adult businesswoman residing at 41 Barlinka Way, Meadowridge, Bergvliet, Cape Town;

Ann Morkel

- 1.6 The sixth plaintiff is Jacobus Francois Pienaar, an adult businessman residing at No 5, La Bella Vita Estate, Simonsvlei Road, Paarl;
- 1.7 The seventh plaintiff is Johan Samuel van Rooyen, an adult businessman residing at 10 Oortjie Street, Vierlanden, Durbanville, Cape Town;
- 1.8 The eighth plaintiff is Johan Daniël Wasserfall, an adult businessman residing at 36 Burton Street, Durbanville, Cape Town.
2. The defendant is Steinhoff International Holdings (Proprietary) Limited (formerly Steinhoff International Holdings Limited) ("Steinhoff SA"), a company duly incorporated with limited liability in terms of the company laws of South Africa and having its principal place of business and registered office within the area of jurisdiction of this Honourable Court at Block D, De Wagenweg Office Park, Stellantia Road, Stellenbosch.

The share exchange agreements

3. The plaintiffs were at all material times employed by Pepkor Holdings (Proprietary) Limited ("Pepkor") as members of its management team, and on that basis held ordinary shares in the issued share capital of



Pepkor.

4. During or about February 2015 each of the plaintiffs entered into a separate share exchange agreement with Steinhoff SA in terms of which each of them exchanged his or her shares in Pepkor for shares in Steinhoff SA ("the share exchange agreements").
5. Steinhoff SA was at that time a public company listed on the main board of the Johannesburg Securities Exchange ("the JSE").
6. Effect was given to the share exchange agreements, and each of the plaintiffs disposed of, and transferred, his or her shares in Pepkor to Steinhoff SA in exchange for shares in Steinhoff SA, as follows:

	<u>Number of Pepkor</u> <u>shares transferred to</u> <u>Steinhoff SA</u>	<u>Number of Steinhoff SA</u> <u>shares received in return</u>
First plaintiff	350 460	875 427
Second plaintiff	1 965 110	4 908 720
Third plaintiff	26 529	66 268
Fourth plaintiff	457 518	1 142 851

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Fifth plaintiff	30 058	75 083
Sixth plaintiff	250 000	624 484
Seventh plaintiff	28 058	70 087
Eighth plaintiff	164 600	411 160

7. The issue price of each share in Steinhoff SA was R57, and the resultant value ascribed by the parties to the share exchange agreements to the ordinary shares in Steinhoff SA acquired by each of the plaintiffs was accordingly:

First plaintiff	R49 899 339
Second plaintiff	R279 797 040
Third plaintiff	R3 777 276
Fourth plaintiff	R65 142 507
Fifth plaintiff	R4 279 731
Sixth plaintiff	R35 595 588
Seventh plaintiff	R3 994 959



Eighth plaintiff

R23 436 120

8. Pursuant to a scheme of arrangement implemented in or about December 2015:

8.1 Steinhoff SA was converted to a private company;

8.2 its listing on the JSE was terminated;

8.3 it became a wholly-owned subsidiary of Steinhoff International Holdings NV ("Steinhoff NV"), a public company listed on the Frankfurt Stock Exchange and inwardly listed on the main board of the JSE; and

8.4 ordinary shares in Steinhoff SA were exchanged for an equal number of ordinary shares in Steinhoff NV, on the basis that Steinhoff NV's only asset, or only significant asset, was its shareholding in Steinhoff SA.

9.

9.1 As a result of the scheme of arrangement, being a shareholder in Steinhoff SA resulted in each of the plaintiffs becoming a shareholder in Steinhoff NV.



9.2 Each of the plaintiffs accordingly ultimately held the same number of ordinary shares in Steinhoff NV as they had held in Steinhoff SA prior to the scheme of arrangement.

Plaintiffs' claims in delict

10. Prior to their entering into each of the share exchange agreements, Steinhoff SA represented to each of the plaintiffs that its financial position was as it appeared from its annual financial statements for the 2014 financial year ("the 2014 AFS").
11. The representation was made in the following ways:
 - 11.1 by the publication to the general public, including therefore each of the plaintiffs, of the 2014 AFS;
 - 11.2 by Steinhoff SA's failure, despite its being listed on the JSE, to advise the general public, and more particularly each of the plaintiffs, of the existence of false statements in the 2014 AFS which could or would have constituted price-sensitive information regarding its shares;
 - 11.3 by the failure, in the period preceding the conclusion of the share exchange agreements, of Markus Jooste ("Jooste"), Steinhoff SA's chief executive officer at the time, or any other executive of



Steinhoff SA having knowledge of the true facts, acting in the course and scope of his or her position as such, to advise each of the plaintiffs of the existence of false statements in the 2014 AFS which could or would have had a substantially negative effect on the market value of Steinhoff SA's shares.

12. Steinhoff SA was obliged to advise each of the plaintiffs of the existence of any such false statements, in that:

12.1 the true facts regarding its financial position were within the exclusive knowledge of Steinhoff SA, given at least the knowledge of Jooste;

12.2 Steinhoff SA, including Jooste and other executives, knew that the plaintiffs would rely on the representation of Steinhoff SA's financial position as it appeared from the 2014 AFS in deciding whether or not to conclude the share exchange agreements and in acting on those decisions;

12.3 more particularly, Steinhoff SA, including Jooste and other executives, knew that if the 2014 AFS contained false statements as to Steinhoff SA's financial position, the plaintiffs would not conclude the share exchange agreements.



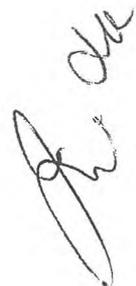
13. The representation was false, in that:

- 13.1 various transactions had been structured and implemented which had the result of substantially inflating the profit and asset values of the Steinhoff group (until August 2015 Steinhoff SA and its subsidiary companies) over an extended period;
- 13.2 fictitious or irregular transactions were entered into with parties said to be, and made to appear to be, third-party entities independent of the Steinhoff group and its executives, but which were in fact closely related to Jooste and other executives of the Steinhoff group or were controlled by Jooste and such other executives;
- 13.3 fictitious or irregular income was created at an intermediary Steinhoff SA level and then allocated to underperforming Steinhoff SA operating entities as so-called "contributions" that took many different forms and either increased income or reduced expenses in those operating entities;
- 13.4 documents supporting fictitious or irregular transactions were often created after the fact and backdated;
- 13.5 the assets and income of certain of Steinhoff SA's European



subsidiary companies were materially overstated and/or their liabilities materially understated.

14. The representation was made intentionally and with knowledge on the part of Steinhoff SA as to its falsity, and was made with the purpose *inter alia* of inducing each of the plaintiffs to exchange his or her shares in Pepkor for shares in Steinhoff SA by concluding the share exchange agreements.
15. But for this representation, the plaintiffs would not have concluded those agreements and would not have acquired shares in Steinhoff SA, and accordingly would not have held shares in Steinhoff NV.
16. On 5 December 2017 Steinhoff NV released an *ad hoc* announcement advising the market that its audited results would be delayed pending further investigation.
17. On 6 December 2017 Jooste resigned as chief executive officer of Steinhoff NV, and the price at which Steinhoff NV's shares traded on both the Frankfurt Stock Exchange and the JSE declined significantly.
18. On 2 January 2018 Steinhoff NV announced that its annual financial statements for the 2015 and 2016 financial years could not be relied upon and withdrew such statements, thereby confirming media reports



regarding misstatements in Steinhoff NV's and Steinhoff SA's financial statements, including the 2014 AFS, that had commenced at the approximate time of the *ad hoc* announcement of 5 December 2017.

19. In the result, the price at which Steinhoff NV's shares traded continued to decline, has not recovered significantly, and will not recover significantly, if at all.
20. Subsequent to 2 January 2018, the following plaintiffs sold a number or all of their shares in Steinhoff NV:

	<u>Number of shares sold</u>	<u>Proceeds from sale</u>
First plaintiff	875 427	R1 739 198
Fourth plaintiff	907 314	R2 053 732
Sixth plaintiff	71 400	R355 511
Seventh plaintiff	30 087	R103 277
Eighth plaintiff	411 160	R982 672

21. Each of the said plaintiffs accordingly incurred a loss in respect of the shares sold by him, compared to their value at the issue price, in the following amount:

First plaintiff	R48 160 141 (875 427 x R57 – R1 739 198)
Fourth plaintiff	R49 663 166 (907 314 x R57 – R2 053 732)
Sixth plaintiff	R3 714 289 (71 400 x R57 – R355 511)
Seventh plaintiff	R1 611 682 (30 087 x R57 – R103 277)
Eighth plaintiff	R22 453 448 (411 160 x R57 – R982 672)

22. The value of the shares held by those plaintiffs who continue to hold shares in Steinhoff NV at the current trading price of R1,77 per share is as follows:

	<u>Number of shares</u>	<u>Value</u>
Second plaintiff	4 908 720	R8 688 434
Third plaintiff	66 268	R117 294
Fourth plaintiff	235 537	R416 900
Fifth plaintiff	75 083	R132 897
Sixth plaintiff	553 084	R978 959

Seventh plaintiff 40 000 R70 800

23. This represents a loss to the plaintiffs, compared to the value of those shares at the issue price, of:

Second plaintiff R271 108 606 (4 908 720 x R57 – R8 688 434)

Third plaintiff R3 659 982 (66 268 x R57 – R117 294)

Fourth plaintiff R13 008 709 (235 537 x R57 – R416 900)

Fifth plaintiff R4 146 834 (75 083 x R57 – R132 897)

Sixth plaintiff R30 546 829 (553 084 x R57 – R978 959)

Seventh plaintiff R2 209 200 (40 000 x R57 – R70 800)

24. As a result of Steinhoff SA's misrepresentation, each of the plaintiffs has therefore suffered damages in the following amount:

First plaintiff: R48 160 141

Second plaintiff R271 108 606

Third plaintiff R3 659 982

Fourth plaintiff	R62 671 875 (R49 663 166 + R13 008 709)
Fifth plaintiff	R4 146 834
Sixth plaintiff	R34 261 118 (R30 546 829 + R3 714 289)
Seventh plaintiff	R3 820 882 (R2 209 200 + R1 611 682)
Eighth plaintiff	R22 453 448

25. Despite demand, Steinhoff SA has failed and/or refused to pay these damages to the plaintiffs.

Plaintiffs' alternative statutory claims

26. In terms of section 218(2) of the Companies Act 71 of 2008 ("the Act"), any person who contravenes any provision of the Act is liable to any other person for any loss or damage suffered by the latter person as a result of that contravention.
27. By its publication to the general public, including therefore each of the plaintiffs, of the 2014 AFS, and of the material misstatements contained therein (as described in paragraph 13 above), Steinhoff SA contravened the following provisions of the Act:



- 27.1 section 22(1), in that Steinhoff SA carried on its business recklessly, with gross negligence, with intent to defraud persons (including each of the plaintiffs), and for a fraudulent purpose;
- 27.2 section 28(1), in that Steinhoff SA failed to keep accurate and complete accounting records as necessary to enable it to satisfy its obligations in terms of the Act with respect to the preparation of financial statements, such obligations being set out in section 29(1) of the Act;
- 27.3 section 28(3), in that Steinhoff SA with an intention to deceive or mislead the general public, including therefore each of the plaintiffs, failed to keep accurate or complete accounting records; and falsified or permitted to be falsified its accounting records;
- 27.4 section 29(1), in that Steinhoff SA provided financial statements, including annual financial statements, to the general public, including therefore each of the plaintiffs, which did not present fairly the state of affairs and business of Steinhoff SA and did not (accurately) explain the transactions and financial position of the business of the company; and which did not (accurately) show Steinhoff SA's assets, liabilities and equity;

Dr. Ollie

- 27.5 section 29(2), in that the 2014 AFS prepared by Steinhoff SA were false and misleading in material respects, or were incomplete in material particulars.
28. The plaintiffs suffered loss or damage as a result of those contraventions, as set out in paragraphs 13 to 19 above.
29. The loss or damage suffered by each of the plaintiffs as a result of the aforesaid contraventions is set out in paragraphs 20 to 24 above.

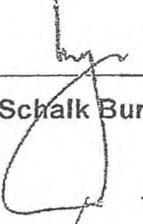
WHEREFORE the plaintiffs claim as follows:

- (a) Payment to:
- (i) the first plaintiff in the amount of R48 160 141;
 - (ii) the second plaintiff in the amount of R271 108 606;
 - (iii) the third plaintiff in the amount of R3 659 982;
 - (iv) the fourth plaintiff in the amount of R62 671 875;
 - (v) the fifth plaintiff in the amount of R4 146 834;
 - (vi) the sixth plaintiff in the amount of R34 261 118;

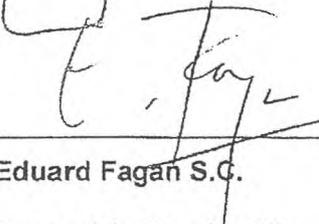


- (vii) the seventh plaintiff in the amount of R3 820 882;
- (viii) the eighth plaintiff in the amount of R22 453 448;
- (b) Interest on the aforesaid amounts at the prescribed rate *a tempore morae* to date of payment;
- (c) Further and/or alternative relief;
- (d) Costs of suit on the scale as between attorney and client.

DATED AT CAPE TOWN THIS 28th DAY OF MARCH 2019.



Schalk Burger S.C.



Eduard Fagan S.C.
Counsel for the plaintiffs



BOWMAN GILFILLAN

Per: 

Attorneys for the plaintiffs

22 Bree Street

CAPE TOWN

(Ref: D de Klerk)



IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 17327/2020

In the application between:

TREVO CAPITAL LTD

Applicant / Intervening Party

and

HAMILTON BV

First Respondent

HAMILTON 2 BV

Second Respondent

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

Third Respondent

In re the matter between:

HAMILTON BV

First Applicant

HAMILTON 2 BV

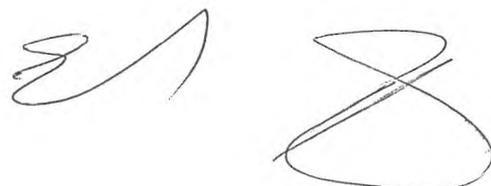
Second Applicant

and

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

Respondent

SUPPORTING AFFIDAVIT



I, the undersigned,

JACOBUS FRANCOIS PIENAAR,

do hereby make oath and say:

1. I am an adult businessman and a director of Business Venture Investments No 1499 (RF) Proprietary Limited ('BVI'), which has its principal place of business at 36 Stellenberg Road, Parow Industria, Cape Town.
2. I am duly authorised to depose to this affidavit on behalf of BVI.
3. The facts deposed to herein are within my personal knowledge, save where the context indicates the contrary, and are true and correct. Where I refer to information conveyed to me by others, I verily believe such information to be true. Where I make legal submissions, I do so on the advice of BVI's legal representatives, which advice I believe to be true and correct.
4. I have read the affidavits in the application for declaratory relief ('**the declaratory application**') instituted by Hamilton BV and Hamilton 2 BV (collectively '**Hamilton**') against Steinhoff International Holdings (Proprietary) Limited ('**SIHPL**'). I have also read the founding affidavit of Johann-Dirk Enslin in support of the urgent application by Trevo Capital Limited ('**Trevo**') for leave to intervene in the declaratory application, and for an order that other creditors be afforded an opportunity to apply to intervene in the declaratory application and to advance submissions concerning the relief sought by Hamilton in the declaratory application. Finally, I have read in draft the affidavit of Johan Daniël Wasserfall, one of

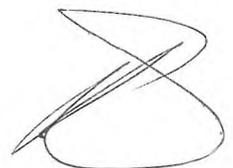


the so-called Cronjé plaintiffs. This affidavit to some extent tracks that of Mr Wasserfall.

5. Similarly to Mr Wasserfall, BVI does not seek at this stage to intervene in the declaratory application. However, for the reasons set out below, it supports Trevo's application. More particularly, it agrees with the contentions in Mr Enslin's affidavit regarding the incorrectness of the approaches adopted by both Hamilton and SIHPL to the determination of classes for the purposes of a compromise in terms of section 155 of the Companies Act 71 of 2008 (**'the Act'**). BVI should be afforded the opportunity to intervene in the declaratory application after fully considering its position, should it be so minded and advised, and to advance submissions regarding the appropriate determination of classes.

BVI'S CLAIM AGAINST SIHPL

6. On 25 March 2019, BVI instituted action against SIHPL.
7. BVI claims damages in the amount of R2 159 083 471, which it suffered as a result of the reduction in value of the shares that it held in Steinhoff International Holdings NV (**'Steinhoff NV'**). A copy of BVI's particulars of claim is annexure FA8 to the founding affidavit in the declaratory application.
8. BVI's essential allegation is that SIHPL published financial statements, in particular its 2014 annual financial statements, that contained false information regarding its financial position. But for that false information, BVI:



- 8.1 would not have concluded a subscription agreement with Newshelf 1093 (Proprietary) Limited ('Newshelf') on or about 20 February 2015 in terms of which BVI subscribed for 32 215 class D ordinary shares in Newshelf for a purchase consideration of R3 080 242 835;
- 8.2 would not have concluded an exchange agreement with Newshelf, SIHPL and Steinhoff Africa Holdings (Proprietary) Limited on or about 20 February 2015 in terms of which BVI exchanged its 32 215 class D ordinary shares in Newshelf for 51 703 157 ordinary shares in SIHPL at an issue price of R57 per share;
- 8.3 would not have held shares in Steinhoff NV pursuant to SIHPL's scheme of arrangement in terms of section 114 of the Act in December 2015; and
- 8.4 would not have suffered a loss in the amount claimed when the value of the Steinhoff NV shares acquired by BVI declined massively following the revelation, in December 2017, of the false information in the financial statements.

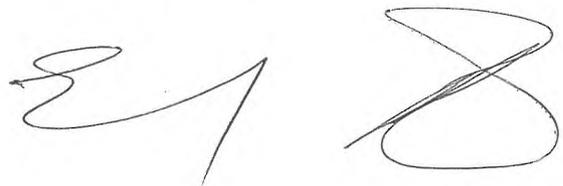
THE DECLARATORY APPLICATION

9. SIHPL intends to propose a compromise of its financial obligations with three classes of its creditors in terms of section 155 of the Act ('**the proposal**'). The broad terms of the proposal are set out in a term sheet that has been available on the Steinhoff NV website since 27 July 2020 (annexure FA2.3 to Hamilton's founding affidavit in the declaratory application). The terms were slightly updated and then republished on



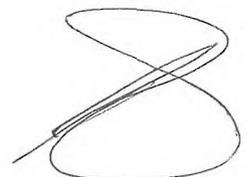
Steinhoff NV's website on 9 October 2020. A copy of the updated term sheet ('**the term sheet**') is annexure JE1 to Mr Enslin's affidavit.

10. The three classes of creditor referred to in the term sheet are the SIHPL CPU Creditors ('**the FC class**'), the SIHPL Contractual Claimants ('**the CC class**'), and the SIHPL Market Purchase Claimants ('**the MPC class**').
11. By way of the declaratory application, Hamilton seeks relief that would prevent the proposal from being adopted by SIHPL's creditors or from being sanctioned by a court. Hamilton contends in particular that the CC class and the MPC class cannot constitute a '*class of creditor*' in terms of section 155 of the Act, because both classes comprise concurrent creditors. Instead, says Hamilton, the classes envisaged by section 155 are those recognised in insolvency law: concurrent creditors, secured creditors, and statutory preferent creditors. Moreover, Hamilton contends – in effect – that the proposed settlement with the CC class is unfair and inequitable and thus not sanctionable by a court in due course.
12. BVI agrees with Hamilton that the proposal, as it is currently envisaged in the term sheet, cannot be sanctioned by a court. However, BVI has been advised, and I respectfully say, that Hamilton's contention that the only classes of creditors intended by section 155 of the Act are those recognised in insolvency law is incorrect. BVI concurs in this regard with what has been said by Mr Enslin in paragraph 47 of his affidavit on behalf of Trevo.
13. SIHPL has categorised BVI as a member of the CC class in the term sheet. In terms of the term sheet, SIHPL will settle the claims of BVI for a

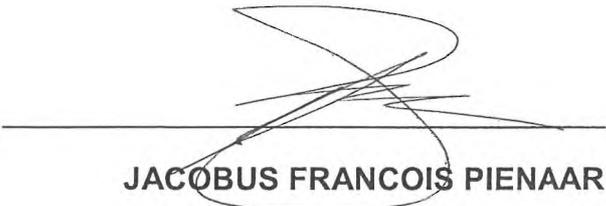


settlement consideration equivalent to R643 000 000. Its portion of the settlement consideration will (subject to an election to the contrary by SIHPL) be payable entirely in the form of shares in Pepkor Holdings Limited ('PPH') at a deemed price of R13.50 per share, and subject to a three-year lock-up restriction.

14. The members of the FC Class, the CC class and the MPC class are all concurrent creditors of SIHPL. Should the proposal instead (as suggested by Hamilton) place the existing members of the FC class, the CC class and the MPC class together in one class, this will have a material adverse effect on members of the CC class, including BVI.
15. BVI also concurs with the contentions advanced on behalf of Trevo in paragraph 48 of Mr Enslin's affidavit as to why SIHPL's classification of creditors into the FC class, CC class and MPC class suffers from fundamental flaws that render the proposal unsanctionable by a court.
16. In addition to the contentions advanced by Trevo, BVI has further particular concerns regarding the proposal, which I describe below. It is facts of this kind that will be placed before the Court by BVI, and presumably also other creditors, in the event that Trevo's application is granted.
17. First, Steinhoff at Work (Proprietary) Limited ('SAW') is a company in the Steinhoff group of companies. It owns 2 021 183 BVI shares, amounting to 17.29% of the issued share capital of BVI. The Steinhoff Group accordingly will itself benefit to that extent from the BVI settlement consideration.



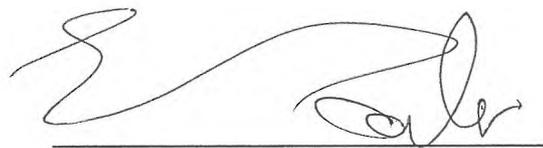
18. Secondly, Pepkor Trading (Proprietary) Limited (**'Pepkor Trading'**), another company in the Steinhoff Group, is a creditor of BVI in the amount of approximately R540 000 000 plus interest, arising from a loan agreement pursuant to which Pepkor Trading advanced that amount to BVI. In terms of the loan agreement, BVI must repay the full amount owing to Pepkor Trading if it receives the BVI settlement consideration. To the extent that the BVI settlement consideration is settled in the form of PPH shares, the loan agreement further stipulates that BVI must dispose of a sufficient number of PPH shares to settle the Pepkor Trading loan in full.
19. SIHPL will therefore effectively be repaying a company in the Steinhoff Group by means of the BVI settlement consideration. This would leave little of the settlement available to BVI shareholders. Taking into account SAW's shareholding in BVI, even less would be available to BVI shareholders who are independent of the Steinhoff Group.
20. Thus SIHPL has an interest in the BVI settlement consideration, which interest has not been disclosed in the term sheet. A company which proposes a compromise with its creditors in terms of section 155 of the Act must make full and frank disclosure, characterised by complete transparency and good faith. SIHPL has failed to adhere to this requirement.



JACOBUS FRANCOIS PIENAAR



I certify that the above signature is the true signature of **JACOBUS FRANCOIS PIENAAR** and that he acknowledged to me that he knows and understands the contents of this affidavit which was signed and attested to at the undermentioned address on this 5th day of **FEBRUARY 2021** in accordance with the provisions of GN R1258 dated 21 July 1972 as amended by Regulation No. 1648 dated 19 August 1977, by GN R1428 of 11 July 1980 and by GN R744 of 23 April 1982.



COMMISSIONER OF OATHS

COMMISSIONER OF OATHS (RSA)
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