

Form 40 (version 1)
UCPR 35.1

AFFIDAVIT OF JAMES RICHARD WarBURTON
30 MARCH 2011

COURT DETAILS

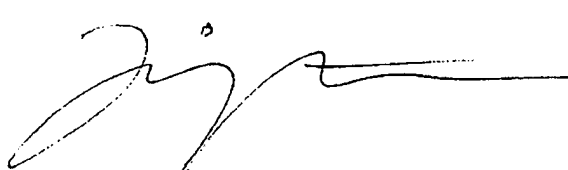
Court	Supreme Court of New South Wales
Division	Equity Division
Registry	Sydney
List	General Equity List
Case number	2011/76809

TITLE OF PROCEEDINGS

First Plaintiff	Seven Network (Operations) Limited ACN 052 845 262
Second Plaintiff	Seven Media Group Pty Ltd ACN 116 850 607
Third Plaintiff	Seven Network Limited ACN 052 816 789
Fourth Plaintiff	Pleiades Media International ULC
First Defendant	James Richard Warburton
Second Defendant	Network Ten Holdings Limited ACN 081 327 068

FILING DETAILS

Filed for	James Richard Warburton First Defendant
Legal representative	Nicholas Stevens, Stevens & Associates Lawyers
Legal representative reference	NPS:MLB:WAR:023/11
Contact name and telephone	Nicholas Stevens (02) 9222 1691



AFFIDAVIT


Name James Richard Warburton
Address [REDACTED] NSW [REDACTED]
Occupation Executive
Date 30 March 2011

I say on oath:

- 1 I am the First Defendant in these proceedings.
- 2 In this my Affidavit, where I recall conversations I do so to the best of my ability. Exhibited to me at the time of swearing this Affidavit and marked "JRW1" is a folder of documents to which I make reference throughout this Affidavit.
- 3 On or about 18 August 2003, I commenced employment with Seven Network (Operations) Limited ('the Seven Network'), the First Plaintiff, in the role of Network Director of Sales, in accordance with an employment agreement dated 6 August 2003 ('the First Agreement'). A copy of the First Agreement is behind **Tab 1** of JRW1.
- 4 On 31 March 2006, I accepted an offer from the Seven Network to extend the term of the First Agreement for a further three years in accordance with an extension agreement dated 29 March 2006 ('the Second Agreement'). A copy of the Second Agreement is behind **Tab 2** of JRW1.
- 5 On 14 July 2008, I signed a further three year fixed term employment agreement with the Seven Network in the position of Chief Sales and Digital Officer ('the Third Agreement'). A copy of the Third Agreement is behind **Tab 3** of JRW1

Contract Negotiations and Subsequent Departure from Seven Network

- 6 In or around September or October 2010, I commenced negotiations with the Seven Network regarding the future of my employment. Initially, these negotiations were between Mr David Leckie ('Mr. Leckie'), the current Chief Executive Officer ('CEO') for the Seven Network, and myself. Mr. Peter Lewis ('Mr. Lewis'), Chief Operating Officer ('COO') and Chief Financial Officer ('CFO') for the Seven



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Network stepped in on two or three occasions in an attempt to finalise my new contract of employment.

7 In particular, during the course of my annual performance review I had a conversation with Mr. Leckie:

Me: "David, you said to me three years ago, if I was still the Sales Director at the conclusion of my contract that I should ask you for a greater role. You yourself agreed, you can't be a Sales Director forever."

Mr. Leckie: "So what do you want? You're important to us and I need to go back to the Chairman, KKR and the Board. I'm under pressure to get you on a new contract"

Me: "I want to be CEO."

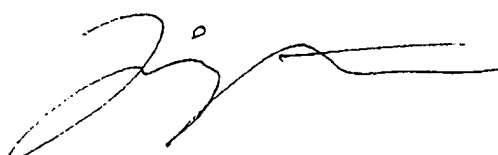
Mr. Leckie: "We know that. You've made your statement, leave it with me, I will talk to Stokes."

8 Mr. Leckie and I had many discussions in the following weeks, as we had a regular 'work in progress' meeting scheduled every week.

9 The discussions led initially to an offer to become Head of Television in or around late October. At this point there was no contract presented. A copy of an organisational chart, which I was given at the time, is behind **Tab 4** of JRW1

10 On 2 November 2010, I informed Mr. Leckie, by way of email, that I was not interested in becoming Head of Television. I also had oral discussions with Mr. Leckie to the same effect. A copy of this email is behind **Tab 5** of JRW1

11 At this point, Mr. Lewis offered to step in and attempt to finalise the negotiation of my new contract of employment



James Warrington

12 At about the same time, I had a conversation with Mr. Lewis:

Mr. Lewis: "If you just stay twelve months. Give us some assurance and be the man on the spot. You've seen David's health. The reality is that the bloke is likely to fall over at any point."

Me: "Mate, I can't work in this structure. I'm better to wait and see what comes on the open market. I could always wait and run Ten. Maybe I will go back into agencies. I won't be around with all this shit going on."

Mr. Lewis: "Which other media organisation is going to pay you what we pay you? Seriously, James, think about it. You will get over a \$1 million more base salary a year by just signing."

Me: "It's not money Peter, it is opportunity and progression. I've been consistent."

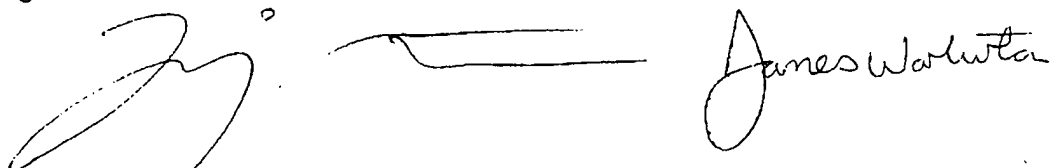
Mr. Lewis: "David has an expression...he doesn't want to be a gelding running with the stallions"...he is not ready to go, but this makes sense. If you take Head of Television you will end up doing everything anyway."

Me: "I'm not so sure. No power no point. David will contradict everything, you know that. This is his life."

13 I recall that in late October I had a conversation with Mr Leckie in which Mr. Leckie said:

Mr. Leckie: "Kerry, the Board and KKR are getting nervous with your contract end looming."

In this discussion, Mr. Leckie was referring to Mr. Kerry Stokes, Chairman of Seven Holdings Limited ('**Mr. Stokes**') and Kohlberg Kravis Roberts ('**KKR**'), then major shareholders in the Seven Media Group ('**SMG**'), the Second Plaintiff in these proceedings.



- 14 In or around November 2010, at one of Mr. Leckie and my regular work in progress meetings, I recall Mr. Leckie saying:

Mr. Leckie: "Kerry is getting nervous about losing you at the end of your contract. He wants to talk to you".

- 15 On 11 November 2010, I attended a two (2) hour meeting with Mr. Stokes at his Australian Capital Equity ("ACE") offices in Woolloomooloo at his request. At this meeting the following conversation took place:

Mr. Stokes: "So how are the negotiations going with David?"

Me: "Not great, Kerry. Sometimes the timing doesn't work and we all need to shake hands and move on. David doesn't want to go anywhere I understand that, but I might need to."

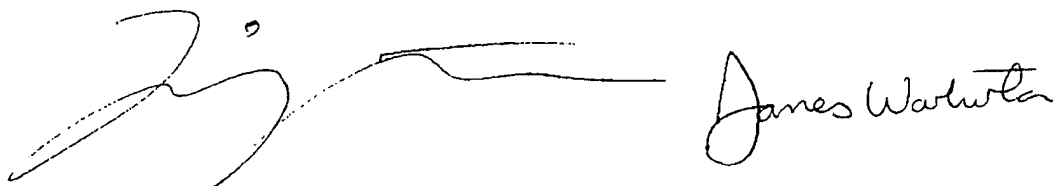
Mr. Stokes: "James, you and I have not had a lot of direct contact and I hope you understand why. David doesn't like it. I respect that but want you to know I'm here and that at some stage I may have to make a decision, or should I say the decision may be made for me."

Me: "I hope it doesn't come to that. I owe David some loyalty. It seems odd that we can't work out something which can work for both of us. I don't know why he is like this. He himself said if I was still the sales guy to tap him on the shoulder."

Mr. Stokes then discussed Mr. Leckie's health and the conversation continued:

Mr. Stokes: "As I said, I may be forced to make a decision in the next few months. If I make that decision then David will be removed from the business."

Me: "I understand Kerry. I've been patient. I've been consistent with my desires here at Seven."

A handwritten signature in black ink, appearing to read "James Warburton". The signature is stylized with a large, sweeping initial "J" and a long horizontal line extending to the right.

Mr. Stokes: *"Is Kurt [Burnette, Network Director of Sales] good enough to replace you."*

Me: *"Without question. Kurt is the best in the market. He has come a long way and he needs me out of the way. Just like David, we have headroom issues, but he is already running Seven. Don't forget the role that Jenny Hosie (Intergrated Sales Director – SMG Red) has played in our success with SMG Red. Kurt doesn't have to do it by himself, Jenny will be even more valuable in her role without me around".*

Mr. Stokes *I also need to offer Tim Worner [Director of Programming and Production] a new role. He has to look good in the new structure as well.*

Me *I have some ideas I will send you a note later today.*

Mr. Stokes: *"Look, you have to go back through David for obvious reasons. Peter Gammell [being the CEO of Seven Group Holdings ("SGH")] will get involved, but you are important to us. I want you to know that you have my endorsement for the job. I want the next thing and I want the best for the business and that's you. I'm here and I want you to know that I'm behind the scenes."*

Me: *"Thanks Kerry"*

The meeting then ended.

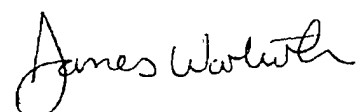
16 Later that day, on 11 November 2010, I sent an email to Mr. Stokes, which outlined the ideas that I promised Mr. Stokes in our earlier meeting.

17 The discussion with Mr. Stokes led to another offer for a new ^{one (1)}~~three (3)~~ year contract from the Seven Network on 23 November 2010. A copy of this new contract of employment is behind **Tab 6** of JRW1.



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- 18 On the same day, being 23 November 2010, I sent an email to Mr. Leckie. A copy of this email is behind **Tab 7** of JRW1
- 19 On 29 November 2010, I sent two (2) emails at 9.36am and 9.46am. A copy of these emails is behind **Tab 8** of JRW1
- 20 Also in or about November 2010, I had a conversation with Mr. Gammell:
- Mr. Gammell: "I understand that things have been tough with David on negotiations."*
- Me: "I wouldn't say tough. I'm asking the guy for his job."*
- Mr. Gammell: "Yes. You know David has to realise something and that is that he is in the twilight of his career. With that being the case, I've asked him directly to propose the next structure for the company. How does it look? How do we drive the business forward? We will not sit on our hands. We have big plans and there will be huge opportunity for a guy like you."*
- Me: "Thanks Peter. The reality is that all the discussions with David are claytons roles, sometimes timing doesn't work when it's the top job. Just be honest with me – I understand why you are loyal to David. If that is the case, I will piss off. I have lots of options."*
- Mr. Gammell: "We know we need the change. We will help. You have Kerry and KKR right behind you. David needs to front this for obvious reasons."*
- Me: "Okay, thanks Peter."*
- 21 On 10 December 2010, I sent an email to Mr. Leckie with respect to my role at the Seven Network. A copy of this email is behind **Tab 9** of JRW1.
- 22 On 15 December 2010, Mr. Leckie sent an email in response to my email dated 10 December 2010. In this offer from Mr. Leckie, it was my understanding that any further participation by me in the Management Equity Plan ('MEP') was not part of




these negotiations. On 15 December 2010, I responded to Mr. Leckie's email, indicating in writing that I would be leaving on 15 July 2011. A copy of this email sequence is behind **Tab 10** of JRW1.

- 23 On 16 December 2010, I received a further contract of employment. This document is behind **Tab 11** of JRW1.
- 24 On 17 December 2010, I sent an email to Mr. Leckie, a copy of which is behind **Tab 12** of JRW1. I did not receive a response to this email from Mr. Leckie.
- 25 Later that day, on 17 December 2010, I also sent an email to Mr. Gammell indicating that negotiations had broken down with Mr Leckie. A copy of this email is behind **Tab 13** of JRW1.
- 26 This email sparked a series of email exchanges between Mr. Gammell and myself, whereby Mr. Gammell requested a meeting the last day before we broke for Christmas.
- 27 Just prior to Christmas, I met with Mr. Gammell in his office. I cannot identify the precise date because I no longer have access to my diary. During this meeting, a conversation took place:

Mr. Gammell : "So you want to go and leave us? Go ahead, you will be leaving the biggest media company in Australia. I just got off the phone from the WAN Board [being the West Australian Newspapers Board] who confirmed that they have approved the KKR exit. This is what I do and this place will have significant opportunity."

Me: "Peter, nothing has changed. I can't work for David unless I have some autonomy. He is not interested in change. He might tell you that he is, but it's not true. Let's see how we end up next year. It's your opportunity, I will always consider the Seven option first."

Mr. Gammell: "Okay, well I'm comfortable with that. Let's leave things where they are and we can talk early next year. You are an important part of this company's future."

The block contains two handwritten signatures. On the left is a stylized signature, likely Peter Leckie, consisting of a large 'P' and 'L' with a horizontal line extending to the right. On the right is a signature that reads 'James Warburton' in a cursive script.

With that we shook hands and exchanged pleasantries for Christmas.

28 In the second week of January, Bruce McWilliam ('**Mr. McWilliam**'), the Commercial Director of the Seven Media Group had a discussion with me.

Mr. McWilliam: *"Look, why don't you sign for twelve months. That gives WAN [being West Australian Newspapers, the entity proposing to merge with the Seven Network ('the **Seven West Deal**')] some comfort and gets you in an even stronger negotiation position. We will be six months into a new entity and your contract will be up. You'd be in an even stronger position to negotiate a new contract."*

Me: *"I'll think about it Bruce. I'm comfortable where things are at, we can't force a new contract. Maybe post WAN we can have a sensible discussion."*

29 In early January 2011, after I returned from holidays. Ms. Sarah Barron, my Executive Assistant, said to me:

Ms. Barron: *"Lachlan Murdoch wants to catch up."*

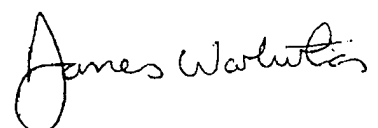
Mr. Murdoch and I would regularly meet because he is the Chairman of DMG Nova Radio Australia, a client of the Seven Network. The conversation continued:

Me: *"Sure."*

Ms. Barron: *"I will set it [the meeting] up."*

My anticipation was that this was a business meeting in the ordinary course of my employment. Ms. Barron inserted a meeting in my electronic diary to have lunch with Mr. Murdoch on 28 February 2011.

30 On 17 February 2011, I met with Mr. Leckie at noon, a meeting that had been requested by Mr. Leckie. A conversation between Mr. Leckie and I took place:



Mr. Leckie: "I can't talk to you, but you've heard what Stokes wants to do?"

Me: "No I haven't. I don't have the meeting with Kerry until 2:30."

Mr. Leckie: "Well, don't say we have spoken, I will be in more shit. It's sad, you've done a Gillard. I have to move aside. I'm not ready. I will be involved you know. Anyway, meet with Stokes and come back to me."

Me: "I will."

31 On 17 February 2011 at 2.30pm, I met with Mr. Stokes in his office on Level 5 of the Seven Network. The meeting took place at Mr. Stokes' request as it was his second day back in the office after the Christmas break. It was a two (2) hour meeting.

In this meeting Mr. Stokes said:

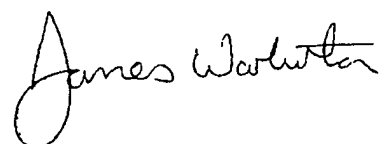
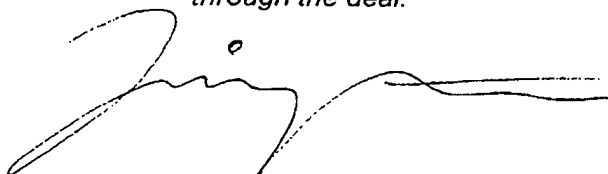
Mr. Stokes: "You will be CEO of the entire group but this is not something that I can achieve for eighteen months. I agree you need progression. I will come back to you with an offer if not tomorrow, by Monday at the latest."

During this meeting we also spoke at length about Mr. Worner. This discussion was particularly in relation to how Mr. Stokes needed more time to get Mr Worner signed on a new contract of employment. Mr. Stokes then said:

Mr. Stokes: "I can't do WAN without David and I can't do WAN without you. I need David for twelve months possibly eighteen and I need you for longer. I also have to find a way to keep Tim."

Me: "It's too long Kerry. It's killing me. I'm bored and it's just not a great role. Reporting to David is embarrassing. You see the good side, we see the rest."

Mr. Stokes: "Look you've made yourself clear. We can pay you well and you will get a guarantee of the top job. I just need to get through the deal."



Me: "Look Kerry you know I don't want to be anywhere else, I will wait for your offer, but surely you can consider shortening the timeframe?"

Mr. Stokes: "I will come back to you."

32 We concluded the meeting when Mr. Stokes showed me a document. myself conversation then took place:

Mr. Stokes: "Have you seen how much you will earn in the MEP when the WAN deal is done?"

Me: "Not yet Kerry."

Mr. Stokes went to his desk and retrieved a two page document with my name on the front, a copy of which is SR11 to the Affidavit of Ms Liston. The discussion continued:

Mr. Stokes: "Here."

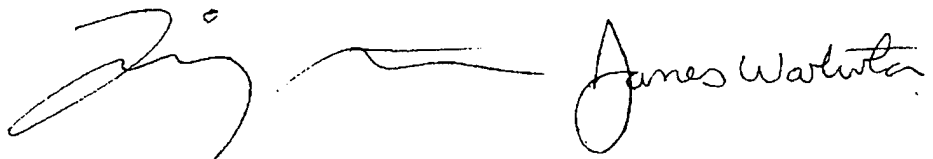
Me: "What am I looking at... it's hard to follow."

Mr. Stokes: "I agree. Just look at the bottom line, that's what you get."

Mr. Stokes opened the document to its last page and placed it on the coffee in front of us. table so that I could look at it. The document appeared to show that there was payable to me "now" the sum of \$479,057.00 and that in 2012 there was some \$900,000.00 worth of shares. I took it that the \$479,057.00 cash represented my money back from what I had put into the MEP as set out in paragraph 78 below. I then said:

Me: "Thanks Kerry. I will wait to get it from Sam so I can understand it."

I then passed the document back to Mr. Stokes.

A handwritten signature in black ink, appearing to read "James Warburton". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

33 On Monday, 21 February 2011, the Seven West Deal was publicly announced. Kerry Stokes rang me and said:

Mr. Stokes: "James, we just announced our deal"

Me: "Yes, Kerry, I watched the video link online, congratulations"

Mr. Stokes "I just wanted to make sure that you know that I am coming back to you regarding your new deal. I haven't forgotten and it is important"

Me: "I understand you have been busy. I look forward to the offer."

34 At or around 2pm on Wednesday, 23 February 2011, news broke that the Network Ten board had terminated the employment of their Chief Executive Officer, Mr Grant Blackley ('Mr Blackey'). I recall that mid afternoon, Ms Barron approached me and said that Mr. Leckie wanted to see me at 5pm that evening.

35 At approximately 5pm on the same day, I went to Mr. Leckie's office as instructed. Upon my arrival at Mr Leckie's office, Mr. Leckie said:

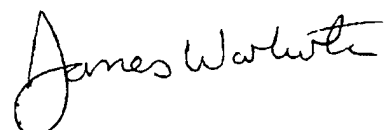
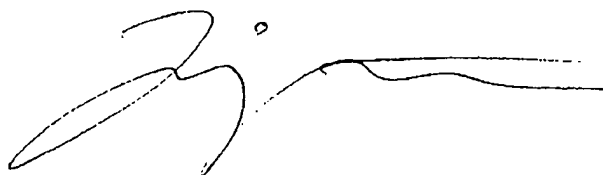
Mr. Leckie "Are you going to Ten?"

Me: "I am waiting for Kerry's offer. I have not been made an offer from Ten."

Mr. Leckie then made some general comments about how strong Seven would be under Seven West Media and that I would be mad to ever think about leaving. In particular, Mr. Leckie said:

Mr. Leckie "Are you talking to Ten? You'd be mad you know"

Me: "David, I'm waiting for Kerry's offer. All we need to do is sort out the contract and the offer. There is no Ten role. I'd imagine I would be a good candidate but as I've said all along, I'm yours to lose."



Mr. Leckie: "When will Kerry come back to you?"

Me: "He said last Monday. I think he has been busy on Seven West."

Mr. Leckie: "It's time for me. I'm sixty soon, I've got a party in the US. I won't be here long. This is yours James, all yours."

Me: "Thanks David. I will let you know when I see the contract".

Mr. Leckie: "You're close to Lachlan?"

Me: "I've got to know him well"

Mr. Leckie: "I spoke to Grant. He told me to watch the back door."

By this last statement I understood Mr Leckie to be referring to having spoken with Mr Blackley. By his reference to the "back door" I understood him to be referring to the possibility of me being approached to go to Network Ten. ~~The conversation continued:~~

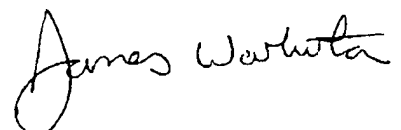
~~Mr Leckie: "You know me. If you want to leave and do Ten, no dramas we will let you go and just get on with it. You know what I'm like, no dramas."~~

~~Me: "Let's see what happens with the contract."~~

orally.

I understood from the last of the exchanges between Mr. Leckie and myself above, that in the event a position at Network Ten became available to me, I was free to accept such position and take up such employment at the conclusion of my then current three year contract in July 2011. I understood that Mr. Leckie was saying this to me as a truthful statement of my employer's position and that he intended that I could rely upon what he said.

36 To the best of my recollection, on the early evening of Thursday, 24 February 2011, I was at home when I noticed that I had received a "missed call" on my mobile phone from Mr. Stokes as well as a text message from Mr. Stokes. After referring

to the then public knowledge of Ten's revenue results, Mr. Stokes said that he wanted to "catch up with [me] tomorrow".

37 I rang Mr. Stokes at approximately 6pm that day:

Me: "Hi Kerry, it's James."

Mr. Stokes: "Hi James. Well, you've starved Ten. What horrible results. Make sure the sales team hear from me just how pleased I am and what a great job they have done."

Me: "Thanks Kerry, I will pass that thanks on, they will appreciate it"

Mr. Stokes: "Now I don't want to leave you hanging. We need to conclude the negotiation for your new contract. How are you placed tomorrow afternoon around noon?"

Me: "Kerry, we have your boat and a load of clients and we are meeting at noon."

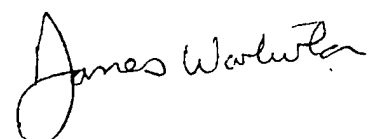
Mr. Stokes: "mmm... is it possible to trouble you for a cup of coffee on Saturday? I am travelling for the next two weeks."

Me: "Sure Kerry".

Mr. Stokes: "Now I want to conclude this James. My plan is to satisfy you by the end of the meeting financially and give you an assurance that you can have the top job in eighteen months."

Me: "Eighteen months is too long Kerry. I've been consistent in what I wanted and eighteen months will be too long. I know everyone is panicked, but I have had no offer from Ten. I don't know if I will but I can't continue with the structure and David is the issue, he doesn't want change, he will fight it to the end."

Mr. Stokes: "I want you to use this, James, with Ten. Use it and push us and Ten. Together in a 'pincer movement' we can work on David."



By this statement, I understood Mr Stokes to be saying that he wanted me to advance my negotiations with the Seven Network by using the situation which had now developed at Ten as a bargaining chip to help persuade Mr Leckie to move aside for me.

Me: "Okay Kerry, I will get in touch with Kate [being Kate Lewis-Fuller Mr Stokes' Executive Assistant] and organise the time and place."

Mr. Stokes: "Thanks James, look forward to seeing you".

I subsequently emailed Ms Lewis-Fuller and informed her of the conversation. She arranged via Ms. Barron for me to meet Mr. Stokes at his residential premises at 9am on Saturday, 26 February 2011.

38 On 26 February 2011, I met with Mr. Stokes at 9am at his house as requested. A wide-ranging conversation took place but as regards my employment, the following was said:

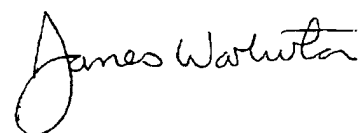
Mr. Stokes: "James, I have your new three year deal. You will be paid \$1.8 million rising to \$2.2 million and the WAN board will work out a bonus that is attractive. It will be up to one hundred percent of your salary and they may have some future shares which we can participate as well with. You will become Head of Television on July 1st and you will be CEO of the entire group within twelve months."

Me: "Kerry its an attractive offer but I don't want to be Head of Television, I want to be CEO".

Mr. Stokes: "That's what I mean, you will be CEO"

Me: "Great. How will it work with David?"

Mr. Stokes: "Well as of last night this was his idea. I've worked on him a bit and he knows he has to make room. We all know his limitations but it is time we made the change."



Me: *"Kerry I need to look David in the eye and see that it is his idea and that it could work. If I feel it can't work I do not want to do it. As an example where would I sit?"*

Mr. Stokes: *"We haven't worked that out yet. But it would need to look like you were running TV so it would be on Level 4. The reality is that David will need to understand that you are running TV. Don't forget David Leckie is the CEO of Seven West Media so he will have responsibility for the entire group not just Seven".*

Me: *"He won't like it. He has been CEO of SMG (Seven Media Group) for 5 years and he has never once done anything in magazines or online with Yahoo 7, he only likes TV it worries me he will not let go."*

Mr. Stokes: *"James he will, you will hear it directly from him. Peter Meakin [the Seven Network's Director of News and Current Affairs] told me that it is time for change, he supports you. That says a lot coming from Meakin, his mate".*

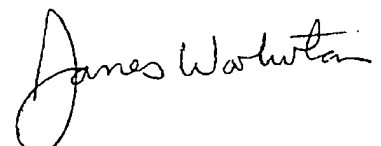
Me: *"Aside from David, I think most people do, but he is hanging on. Our relationship is not great now Kerry, he resents me. Not a great reporting line with that being the case."*

Mr. Stokes: *"He will. He has to or he answers to me. Now Ryan [being Ryan Stokes, a Director of Seven Group Holdings and Seven Media Group] and Peter Gammell will have a copy of the note I do to you in case something happens to me. But no one else can see it please. It will come direct from me to you. I can't have David see it".*

Me: *"Understood"*

Mr. Stokes: *"It will come first thing on Monday. Are you in the office?"*

Me: *"Yes."*

Mr. Stokes: "James, you are important to me. Do we have an agreement?"

Me: "Thanks Kerry, it is a great offer. I think we do in principle. I still have doubts about David and as I have said, I need to look into his eyes and truly believe that he wants this. If he does then we are on but if he can't we have a big problem".

Mr. Stokes: "Good. You will see his commitment".

39 My pre-arranged lunch in my diary with Mr. Murdoch was to be held on Monday, 28 February 2011, as referred to in paragraph 29 of this, my Affidavit. Given the media interest in suggesting that I was a likely candidate for the Network Ten job as Chief Executive Officer, I suggested that it was best to meet on the weekend instead of Monday. Accordingly, he invited me and my wife for lunch at his house, with two visiting friends on Saturday, 26 February 2011 at 12.30pm.

40 I arrived at Mr. Murdoch's house at 12.30pm on Saturday, 26 February 2011 and left at 4pm. At the end of lunch, Mr. Murdoch and I excused ourselves and went outside on the verandah. A conversation was held:

Mr. Murdoch: "So where are you at?"

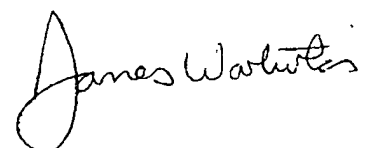
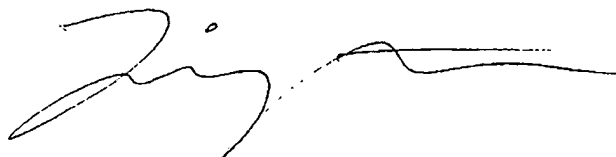
Me: "I've been offered everything I wanted at Seven but I'm not sure if I can work with David [Leckie]. I'm working that out on Monday."

Mr. Murdoch: "I feel any Ten offer will be used as a stalking horse for Seven."

Me: "I have no reason not to sign with Seven if David is serious about supporting my role. But if he doesn't, you would need to move quickly."

Mr. Murdoch: "When are you making that decision?"

Me: "Monday."



Mr. Murdoch: "When could you start?"

Me: "14 July."

Mr Murdoch: "Well, let's talk if you want, we can move quickly."

Me: "Okay. Thanks for lunch."

We then stood up and went inside. In having this conversation with Mr. Murdoch I was conscious of what Mr. Leckie had said to me at the 5:00pm meeting on 23 February 2011 about my being let go by the Seven Network to take the job at Network Ten and I relied upon it then and thereafter when I signed the contract in Mr. Murdoch's office. Had Mr Leckie not so represented to me, I would not have signed the contract with Network Ten on 2 March 2011, but would have sought legal advice on my position.

41 On the morning of Monday, 28 February 2011, I asked Ms. Barron to organise a meeting with Mr. Leckie. Ms. Barron did so and it was set for 2pm that day. At that time I walked into his office and a conversation took place:

Me: "Hi David."

Mr. Leckie: "Here comes Mr Ambitious I've been kicked into touch. I've been retired. How sad."

Me: "Mate, you're a great supporter, clearly."

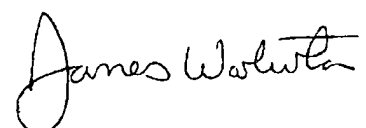
Mr. Leckie: "So you've heard what the Chairman wants to do? How much he wants to pay you."

Me: "Yes. We discussed it on Saturday."

Mr. Leckie: "So?"

Me: "Well, what do you think?"

Mr. Leckie: "It's sad. I'm being retired"



Me: *"Well, you and I need to work out a plan as to how we will work together. If we can't do that there is no point. I have no future here if my boss won't support me"*

Mr. Leckie: *"I have to do it. Stokes has told me I have to step aside and make some room. I'm tired. I do have to support it".*

Me: *"So what's the plan and how will it work?"*

Mr. Leckie: *"I don't know."*

Me: *"Great, no point"*

Mr. Leckie: *"I'm sixty soon. This is all yours now"*

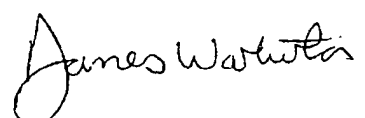
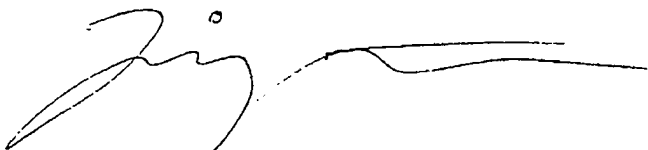
Me: *"Mate, the Seven West deal made you look like a king. You are around, it's not that bad. But if we can't work together then it will be a futile exercise. I can't take a job when I have no power."*

Mr. Leckie: *"Mate, I have counted that, between Nine and Seven, I've been a CEO for twenty years. I'm tired. It's time, I have no choice. I will still be involved though. I will not leave my office. I will still call people, I will still call the shots. I am the frigging boss of the fuckwits at WAN. I'll fix them right up. It will take me five minutes to fix the idiots on the WAN Board. They are all fucking dopes. They wouldn't know a thing about television, they don't even get how to put a paper together. They just do what Kerry tells them. Fuck me, Western Australia"*

Me: *"Mate, there is no point. Unless I have your honest support which I didn't think I did, and now I know I don't, I will just piss off"*

Mr. Leckie: *"Over with Lachlan?"*

Me: *"Mate, I'm yours to lose. You've effectively lost me."*



Mr. Leckie: "It'll work James, you'd be mad to consider Ten. They are fucked."

Me: "I'm still waiting to get Kerry's offer."

~~At the conclusion of this meeting it was clear to me that there was no future for me at the Seven Network while ever Mr Leckie remained as CEO.~~

42 I was contacted by Mr. Murdoch and I arranged a meeting for 5:00pm that day.

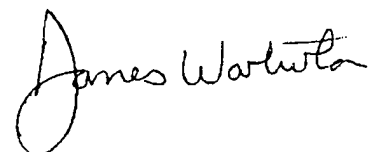
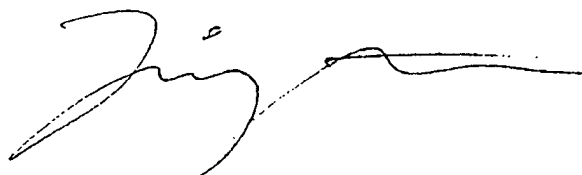
43 During the course of this meeting, Mr Murdoch put forward an offer of employment on behalf of Network Ten. I asked him to send a copy of the proposed agreement to Joydeep Hor, the Managing Principal of People + Culture Strategies, who had previously been my legal representative and by email to my wife so that she could print it out for me.

44 Between Monday night and the morning of Wednesday, 2 March 2011, I had two further discussions with Mr. Murdoch by telephone regarding amendments to the employment agreement.

45 At approximately 9.35am on Wednesday, 2 March 2011, I asked Ms. Barron to arrange a meeting with Mr. Leckie at 1pm, because I knew that I was going to sign the contract of employment with Network Ten. At approximately 10:00am on Wednesday, 2 March 2011, I signed a contract of employment with Network Ten at Mr. Murdoch's DMG office.

46 As I was signing the contract I was telephoned by Mr. David Gyngell, the Chief Executive Officer of Nine Entertainment Company (which was previously Publishing and Broadcasting Limited ('PBL')). I did not answer the call.

47 When I left the meeting with Mr. Murdoch, I had a message on my phone from Ms. Barron indicating that Mr. Leckie wanted to meet with me immediately upon my return to the Seven Network's premises.



48 While returning to the Seven Network's offices in a taxi, I returned Mr. Gyngell's call.

Mr Gyngell : *"Well done mate, look forward to competing with you."*

Me : *"Mate, news travels fast I only signed minutes ago."*

Mr Gyngell : *"It's out mate, everywhere."*

Me : *"Thanks for the call, I've got to go."*

I was concerned that the news of my signing a contract of employment with Network Ten was generally known amongst those in the media industry.

49 At approximately 10:45am on 2 March 2011, I met with Mr. Leckie in his office on my return. A conversation took place:

Me: *"G'day mate."*

Mr. Leckie: *"What's up?"*

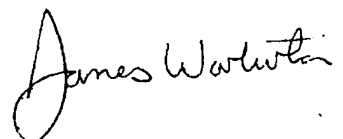
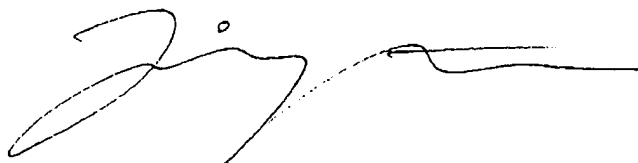
Me: *"I've made a decision, I'm joining Ten."*

Mr. Leckie: *"I thought you would go. You haven't signed anything have you?"*

Me: *"I've signed a few minutes ago."*

Mr. Leckie: *"James...Oh fuck, fuck, fuck. This is the worst day of my career."*

Me: *"The new structure at Seven was never going to work. You simply didn't want to go and you won't let go. It's a token job. Ten's a real job."*



Mr. Leckie: "I'd prefer to resign and stand aside and allow you to have my job than you leave."

Me: "What do you want to do now?"

Mr. Leckie: "I don't believe in showing you the door and all that shit. Have you told Kerry [being Mr. Stokes]?"

Me: "I will call Kerry right now."

Mr. Leckie: "You better do that right now."

Me: "I will do it right now and wait to hear from you as to the next steps."

I then left his office.

50 Following the meeting with Mr. Leckie, I attempted to call Mr. Stokes on his mobile as he was travelling at the time. As he did not answer his mobile, I left a voicemail saying:

"Hi Kerry, I've made a decision on my contract. I've just informed David and if you would please call me."

51 At approximately 11:15am, Mr Stokes returned my call and a conversation took place:

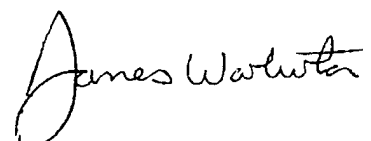
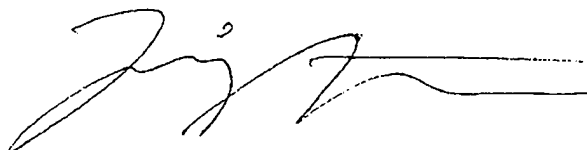
Me: "Hi Kerry."

Mr. Stokes: "Tell me what I'm hearing is not true."

Me: "It is Kerry, I've made a decision."

Mr. Stokes: "Tell me you haven't signed anything."

Me: "I have Kerry, it's done."



Mr. Stokes: *"But you have direct access to me, why didn't you talk directly to me. I thought we agreed on a deal on Saturday."*

Me: *"Kerry, I told you on Saturday that I had to look David in the eyes and see that what you were proposing was in fact his idea and that he was supportive and it could work. The meetings I had with David following Saturday's discussion were a disgrace and put beyond doubt that I could not work at Seven in the future."*

Following our meeting on the weekend, when I walked into David's office on Monday, David yelled at me "here comes Mr Ambitious. So you've heard what the Chairman wants? It's sad you know, I've been kicked into touch. I've never been retired before – how sad."

I then summarised for Mr Stokes my discussions with Mr Leckie:

"I said to David that I needed his support and we needed to find a way to work together. David replied that he had no choice and that he had to make room for me, but he would still be involved in Seven, there was no way he was leaving his office. David has no interest in me being the CEO. It's been months of negotiations, I have made a decision, I was going to leave Seven if I did not get what I wanted."

Mr. Stokes: *"You didn't come to me with the offer we gave you."*

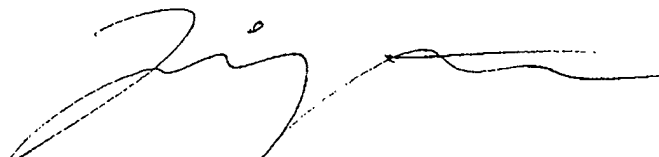
Me: *"Kerry, I don't have your offer."*

Mr. Stokes: *"My PA has been trying to give it to you."*

Me: *"Kerry, I've signed, it's done, it's too late now."*

52 Sometime during the conversation on the phone to Mr. Stokes, Ms. Barron came into my office and handed me an envelope.

Mr. Stokes: *"Can I ask what Ten offered you?"*



James Warburton

Me: "If it was money, it would have been more lucrative at Seven. I'm earning less at Ten. It's not money Kerry, you and I know I can't report to David it will not work, he doesn't want any change."

Mr. Stokes: "You told me you were not talking to Ten"

Me: "I wasn't Kerry. You had the option, you knew what I wanted, there have been no surprises. The meeting with David on Monday, where you indicated he supported the change, was so disgraceful it confirmed in my mind that I could not work in the structure and as I said, without progression and opportunity, I would leave Seven."

Mr. Stokes: "I don't appreciate the timing of this given what we are going through. I wish I had more time. You're a competitor now, when's your last day?"

Me: "Kerry, that is up to you."

Mr. Stokes: "You will get instruction."

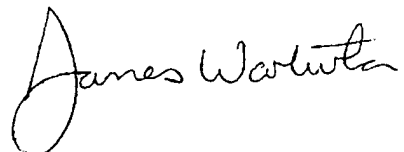
The conversation ended. In this conversation Mr Stokes was terse. It was not a pleasant discussion. ~~I understood from it that my employment at the Seven Network was about to end and that it was likely to be Mr Leckie, my immediate superior, who would take the matter further.~~

53 At the conclusion of my conversation with Mr. Stokes, I picked up the envelope handed to me minutes before by Ms. Barron. A copy of the letter dated 1 March 2011 enclosed in the envelope is behind **Tab 14** of JRW1.

54 Ms. Barron then re-entered my office. I had a general conversation with Ms. Barron in which I informed her that I was joining Network Ten. Ms. Barron then said:

Ms. Barron: "Dee Cott [being Mr Leckie's Executive Assistant] called. David wants to take you to lunch at the Blue Eye Dragon at 1pm."

Me: "Tell Dee I accept the invitation."

55 Shortly thereafter I thought better of the offer of lunch with Mr. Leckie and said to Ms. Barron:

Me: *"Can you cancel lunch and request that David and I have a drink in his office?"*

Ms. Barron left my office and soon after confirmed that I was to meet Mr. Leckie in his office at 1pm.

By this stage I was being inundated with text messages and emails. Many of my colleagues had sent text messages as I believe that a note had been sent to the management team by Mr Leckie. They were mainly saying goodbye and good luck.

56 I recall receiving a text message from Bruce McWilliam, which said:

McWilliam: *"Good luck, let's stay strong on the AFL and NRL together".*

By this statement I understood Mr McWilliam to be referring to the bidding alliance between the Seven Network and Network Ten for the rights to AFL football broadcasts in place for the five years to 2011 and for the next rights for the five years commencing 2012 which was in negotiation.

57 A conversation between Ms. Barron and myself then took place:

Ms. Barron: *"Kate called and asked if you could go to level 5 before you go?"*

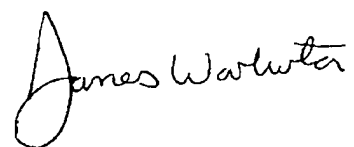
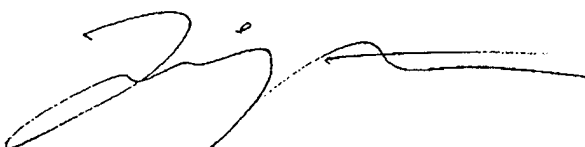
Me: *"Could you find out more information? Who will be there?"*

Ms. Barron left my office and re-entered a short time later. Ms. Barron then said:

Ms. Barron *"Kate said it was merely to say good-bye and could you drop by her office before the 1pm drink with David."*

Me: *"I think I will be leaving shortly, if Kate wants to say goodbye."*

I asked Ms. Barron to get some storage boxes for my personal files which were located under the television in the left hand cabinet. I folded down my three (3)



family photos, took down a calendar that my son had made for me, grabbed my fishing lure and V8 Supercar Helmet and left them on my desk, along with my car keys, so that Ms. Barron could pack up my belongings and place them in my car.

58 On 2 March 2011, at approximately 1:00pm, I attended Mr. Leckie's office as agreed earlier that day. Ms. Cott, was also present. Ms. Cott said:

Ms. Cott: "Congratulations James, what would you like to drink?"

Me: "A glass of wine please"

Mr. Leckie: "I'll have a glass as well."

59 Ms. Cott handed Mr. Leckie and I a glass of wine and left the room. A conversation then took place::

Mr. Leckie: "Hey mate, you have to go today, like this afternoon. I'm sorry, it's not personal, you should understand, it's untenable for you to be at Seven."

Me: "I understand [by this I meant that I understood the matter was not personal]."

Mr. Leckie: "It'll be tough you know, Ten."

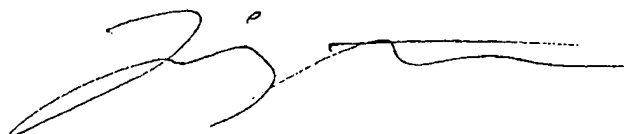
Me: "I didn't think it would be easy."

Mr. Leckie: "We're going well, Seven. Look at My Kitchen Rules, Winners and Losers, we have so much to come, we will be tough to beat. In fact, the slate is impressive, Dancing, the acts in Australia's Got Talent are massive and we've also got Amazing Race. We've got heaps."

Me: "It has been a great start."

Mr. Leckie: "Wait 'til Masterchef hits for Ten. I reckon it will do 1.3 million or less. Ten's fucked."

-orally.



James Wattle

Me: *"It won't be that low. It's good to be on the bottom before I start anyway."*

Mr. Leckie: *"The Chairman has lost his temper with me. He blames me. He says this is all my fault. He's had two cracks. He rang a second time you know?"*

Me: *"The structure would never work. Now you don't need to worry. You've asked me to leave, now you can stay as long as you like."*

Mr. Leckie: *"We've still got seventy hours of procedural drama at Seven, we haven't even put in the schedule yet. Seventy hours... We've got Disney, I couldn't give a shit about anything else. In fact, you can take NBC Universal anytime you like, just ring me and tell me it's yours. Fox is good for you guys, very good. CBS is good too, in fact great. I like Lachlan a lot. He is very confident, very up, I just had a meeting on the AFL. You should stay strong with us on the AFL and we should stay together. The Chairman doesn't want that, he's told us to fuck Ten. I'm not sure about that, I think we should do it together. He will calm down."*

Me: *"At least when I am at Ten, you can trust what I will say. At the end of the day, I will have my challenges."*

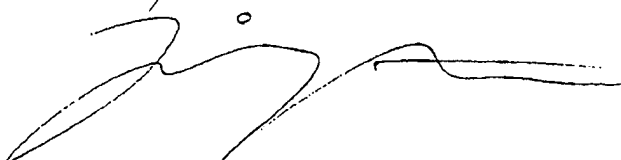
Mr. Leckie: *"C'mon mate, you will be after us."*

Me: *"We are competitors."*

Mr. Leckie: *"Are you taking Kurt?"*

Me: *"I would have him in a heartbeat. He's yours to lose David just like you lost me. He is the guy to replace me, no question. It's up to you to offer him a job and close a contract. I've been telling you that for a year now just sign him."*

Orally



James Warburton

~~Mr. Leckie: "I agree. You know this afternoon, I need to call all those fuckwit media buyers and tell them you have left Seven."~~

Me: "You mean all our clients David?"

Mr. Leckie: "Thanks. They are all fuckwits. They are dopes. None of them are any good. Anyway, I'm back into it. Anyway mate, it's been a great ride. When I employed you I said "welcome to first grade" and here we are, it's been a great seven and a half years mate. Thank you."

Me: "No, thank you David, you gave me the opportunity. What do you want me to do now?"

Mr. Leckie: "I'm seeing Sam Renwick [being, Ms Liston] at 2:00pm today to finalise things and then she will come and see you. You have to go today as soon as you can."

Orally

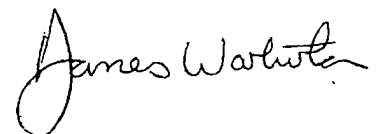
We both stood up and shook hands. It was approximately 1:30pm when I left the meeting. I understood that my employment was then at an end. ~~At no stage during this meeting was any reference made to gardening leave or any other form of leave or any notion that I was still an employee at the Seven Network.~~

60 At the conclusion of my drink with Mr Leckie, at approximately 1.30pm, I went to see Mr McWilliam, however he was not in his office.

61 At approximately 2:15pm, Mr. McWilliam came to my office holding the Hybrid Television file I had given to Ms Barron to pass on to Mr McWilliam. During that conversation, we spoke about the file. Mr McWilliam said:

Mr McWilliam: "We have to stay strong on the AFL. I think we are okay with Lachlan".

By this statement I understood Mr McWilliam to be referring to the bidding alliance between the Seven Network and Network Ten referred to in paragraph 56. I then proceeded to have a discussion with Mr McWilliam regarding pending negotiations

for the Seven Network. Following this, I shook hands with Mr McWilliam and this meeting ended.

62 On 2 March 2011, at approximately 2:30pm to 2:45pm, Ms Liston came to my office and a conversation took place:

Ms. Liston: "Sorry I'm late."

Me: "I've been waiting for you."

Ms. Liston: "There are a lot of disappointed people around the network, really disappointed."

Me: "It's not a surprise Sam. I warned you plenty of times."

Ms. Liston: "How did it come to this, Kerry felt he had a deal."

Me: "When I spoke to Kerry, he knew that I had to look David in the eye and be convinced that the new structure could work. I looked him in the eye and frankly the responses were embarrassing. It could not work so it was a straightforward decision. Seven's offer was a token deal."

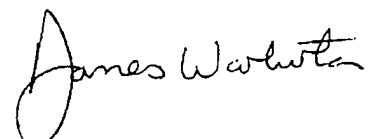
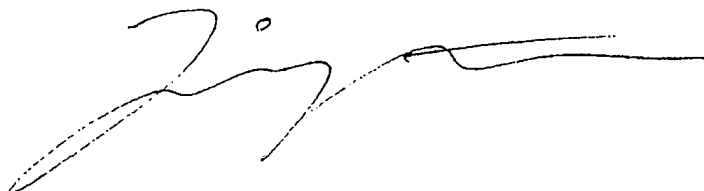
Ms. Liston: "You must have been working on this for a while with Ten, it doesn't just happen."

Me: "It did, two days start to finish."

Ms. Liston: "That's bullshit."

Me: "So what are we doing Sam? Here are my office keys, security card, Amex and my blackberry – David [Leckie] has instructed me to go."

63 At this point in the conversation between Ms. Liston and I, Mr. Leckie rang on my office phone and I answered. A conversation took place:



Mr. Leckie: "Mate, are you going?"

Me: "I'm with Sam, I'll go when we wrap up."

Mr. Leckie: "Please go soon, you have to go this afternoon."

Me: "As soon as Sam is finished, I'm leaving."

The telephone conversation between Mr. Leckie and I ended here. I got the impression from his tone that he could not believe I had not gone already.

64 Ms. Liston and I continued having a conversation:

Me: "David wants me to go now."

Ms. Liston: "We are preparing a letter which sets out your obligations. I was hoping to have it to you by now but it's not ready. It sets out your obligations on confidentiality, poaching staff as well as your twelve month non-compete which you signed with the MEP on 20 December 2007."

Me: "Nice try Sam."

Ms. Liston: "Weren't you aware of the non-compete?"

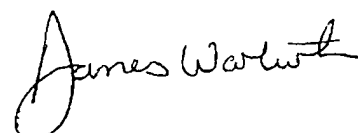
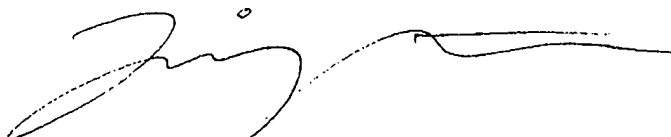
Me: "It does not apply to me"

Ms. Liston: "Yes it does. You signed the 2007 MEP."

Me: "Let's not fuck around and get nasty. Here is my stuff and as per David's instruction, I will go now. If you don't have anything to sign then there is no point continuing the conversation."

Ms. Liston: "No, you don't have to go now."

Me: "The Chairman was very angry, he made himself clear I've got to go. You just heard the conversation with David, I've been instructed to go today."



Ms. Liston: "Well what did you expect?"

Me: "You had your chance, you lost me. Goodbye Sam."

Ms. Liston: "Don't you want to say goodbye to people?"

Me: "Under the circumstances, I think I should just go. I've received instruction from David I've got to go now. Here are Joydeep Hor's details. Please send him the letter. I've got to go, you heard David's call, he wants me gone after I talked to you."

Ms. Liston: "It's not necessary James, you don't have to go."

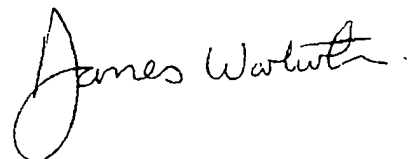
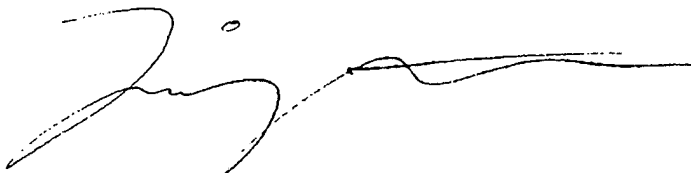
Me: "Sam, it's come from David and the Chairman made it clear. He said "James we are now competitors". David has told me I've got to go."

65 On 3 March 2011 I engaged Mr Stevens of Stevens & Associates Lawyers to act for me in the finalisation of whatever were my entitlements ~~from the conclusion of my employment at the Seven Network~~. I believe that I first saw the letter from Johnson Winter Slattery to me dated 3 March 2011 at sometime after midday on 3 March 2011 at Mr Stevens' office. I received another copy of this letter on 4 March 2011 after it was delivered to my house. A copy if this letter is behind **Tab 15** in JRW1.

66 On 4 March 2011 Mr Stevens wrote a letter in response to Johnson Winter Slattery Lawyers a copy of which is behind **Tab 16** of JRW1.

67 On 5 March 2011 Johnson Winter Slattery wrote a further letter to Mr Stevens a copy of which is behind **Tab 17** of JRW1.

68 A reply to this letter was sent by Mr Stevens on 7 March 2011, a copy of which is behind **Tab 18** on JRW1.



Management Equity Plan

69 In or around 2007, when KKR bought into the Seven Network Justin Reizes (the key executive running KKR in Australia ('Mr. Reizes')) in combination with Mr. Stokes, announced that management would share in "the success" of the Seven Network. A "Management Equity Plan" ('MEP') was put into place with about sixty to seventy executives within the Seven Network being a part of it.

70 On 2 October 2007, there was an executive briefing held by Mr. Lewis, the Seven Network's Chief Financial Officer, for all expected participants of the MEP. During "question time", I asked Mr. Lewis:

Me: *"How have the revenue budgets been determined given that we have not budgeted for that period of time?"*

I asked this question because the normal business practice was that we only budgeted for the year ahead. Mr. Lewis answered my question:

Mr. Lewis: *"We have taken this year's revenue and we have added five per cent growth to each year."*

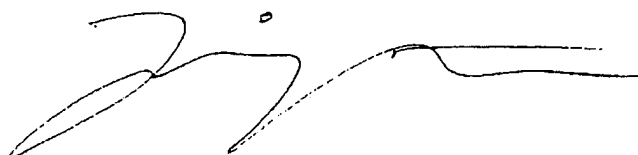
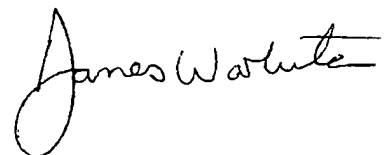
Me: *"What about Yahoo 7?"*

Mr. Lewis: *"We have based that on a five year business plan."*

Mr. Lewis then referenced to a chart in the documentation and it required Yahoo 7 to double its revenue in a small period of time.

71 ~~It worried me that nobody had consulted me in relation to this five year revenue projection. Mr. Lewis's comments demonstrated a simplistic outlook on market growth of this five (5) year advertising revenue. Advertising revenue made up approximately 95% of Seven Media Group's revenue.~~

72 Six days after the executive briefing on the 2 October 2007, I sent an email expressing my then views. A copy of the email dated 8 October 2007 is behind Tab 19 in JRW1.

73 In or around October and November 2007, there were a number of conversations with Mr. Lewis and Mr. Leckie regarding the MEP. In one conversation with Mr. Lewis, the following was said:

Me: *"Mate, I don't have the money."*

Mr. Lewis: *"I'm sure we can work something out."*

Me: *"Mate, I've been pretty clear about my financial situation, even if you were to loan me the money, the bigger issue is my ongoing employment contract with Seven."*

Mr. Lewis: *"As if we are not going to sort out a contract for you, James."*

Me: *"We'll I've given you suggestions in my email [referring to the email which is which is behind **Tab 20** of JRW1]."*

Mr. Lewis: *"James, you are the only executive that has not joined the plan. What kind of message is that going to send to KKR?"*

74 In or around the same time, I recall a telephone discussion with Mr. Reizes,:

Mr. Reizes: *"We want you in the plan. How can we fix this?"*

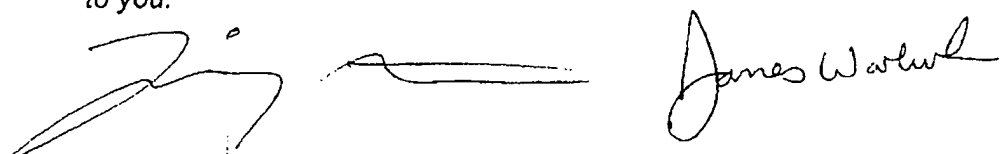
Me: *"Well I've made some suggestions to Peter [Lewis] and I have my issue with my contract expiry as well."*

Mr. Reizes: *"Leave it with me and we'll get back to you about the plan."*

75 Also in or around that time, Mr. Leckie had a conversation with me at one of our regular "work in progress" meetings. During this meeting, Mr. Leckie accused me of playing "hardball" about joining the plan and the conversation proceeded:

Me: *"I don't have the money, David, I am not 'playing hardball'."*

Mr. Leckie: *"Of course you do, the guys are talking about loaning the money to you."*

The block contains two handwritten signatures. On the left is a stylized signature, likely David Leckie, and on the right is a signature that reads "James Warlick".

Me: "Mate, I can't take on any more debt. I've got a massive build and I am mortgaged to the hilt. You might not renew my contract."

Mr. Leckie: "Don't be ridiculous. We're coming back to you."

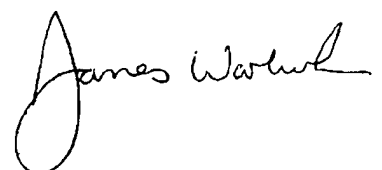
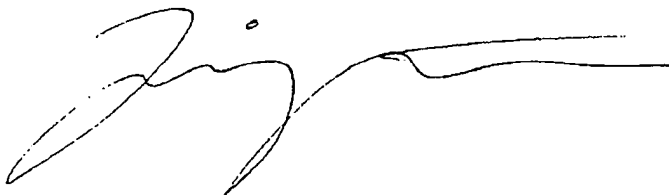
76 Sometime shortly thereafter I was informed by Mr. Lewis and Ms. Liston that the upcoming bonus payment could now be used to pay the initial investment funds. I recall a discussion with Mr. Lewis:

Mr. Lewis: "The expectation for you, James, is to put a million dollars into the MEP. Your bonus, if you roll it in, is half of that, meaning you will only need to get a loan for the remainder."

Me: "Let me think about it. Its still a lot of money, given my financial situation and I could really use my PMP [referring to my bonus] right now."

77 At 9.48am on 19 December 2007, I sent an email to Mr. Lewis stating that I could not afford to go into the plan. I said that I was able to sacrifice my bonus of \$552,187, but I could not afford to obtain a loan from them for the remaining \$447,000.00. A copy of the email dated 19 December 2007 and the emails sent shortly thereafter is behind **Tab 21** of JRW1.

78 On or around 21 December 2007, the documents were then signed by all parties. I was told not to date them by Ms. Liston so that the document was dated in accordance with the other participants. I understood this to be because of taxation and timing issues. A final signed copy of the MEP documentation is behind **Tab 22** of JRW1. As I understood the position as at 20 December 2007, I was contributing a total of \$552,187 of monies from my performance management plan bonus and sales commission together with an amount from the non-recourse loan of \$447,812.



79 In respect of the 2008 financial year I earned bonus and sales commission to the best of my recollection as follows:

(a) PMP Bonus	\$387,500
(b) Sales Commission	<u>\$116,250</u>
	\$503,750

80 I recall that when the time came to consider discharging the non-recourse loan made to me for the purpose of assisting me to fund my MEP investments made the previous year, I was given by Ms Liston a pay-out figure a figure of some \$447,812.50 and an amount for interest which I do not presently recall. I paid an amount of money in that order to pay out the balance of the non-recourse loan and interest from my total bonus and commission for the 2008 financial year. At the time I did so, I executed a document at Ms Liston's request, being the document marked SR10 to Ms Liston's Affidavit. As I understood it, that document was intended to signify that I had discharged the loan made to me in December 2007. ~~I did not receive any other loan from the Plaintiffs.~~

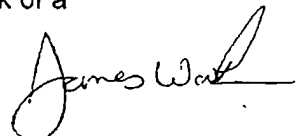
81 As I understand the position, as at 28 October 2008, my investment in the 2007 MEP stood at \$1 million. ~~I did not therefore invest any further monies in the MEP.~~

82 ~~In 2009, it was clear to me that the MEP was unachievable with the so-called "Global Financial Crisis" wiping out the current years EBITA as well as any chance to 'catch up' on the plan. It was for all intents and purposes "lost money". It was a source of heated debate in many executive meetings. Mr. Leckie repeatedly said to me:-~~

Mr. Leckie: *"The MEP is worthless. You've lost your money."*

Mr. Lewis: *"The best we could ever hope for is to get our investment back"*

83 In or around the middle of 2009, a dinner was organised with SMG's "Tier 1" investors. Mr. Leckie, Mr. Lewis, Mr. Nick Chan, Mr. McWilliam, Mr. Tim Worner, Mr. Rohan Lund and I attended, as did Mr. Kerry Stokes, Mr. Ryan Stokes and Mr. Gammell. The dinner was held in the Astral Private Dining Room at Star City Casino. The meeting was set to motivate the executive team on the back of a



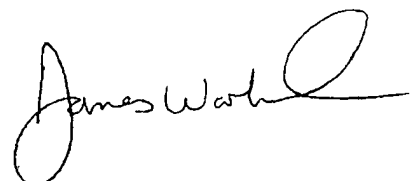
"tough" trading downturn which had occurred as a result of the global financial crisis and to assure the executive team that they had not lost their investment in the MEP.

84 At the dinner, Mr. Kerry Stokes said to the gathered executives:

Mr. Stokes: "I believe that this team is the best in the business. I am concerned for you that you have lost the money that you have put into the MEP. KKR are in this for the short term. We are here for the long term. I want you to feel reassured that you have not lost your money. I cannot put this in writing, but as you are all of my witnesses, I, Peter Gammel, Seven Network Operations Limited and ACE can guarantee that whatever happens, you will get your money back."

By this I understood that regardless of the fact that the 2007 MEP was worthless, I, and the other employees who had invested in it, would get our money back. I refer to the document marked Confidential Exhibit SR6 to the Affidavit of Samantha Maree Liston sworn 22 March 2011. The exhibit in the form provided by the Plaintiff has been redacted to exclude certain information. However, I retain in my possession a copy of the presentation comprised by the exhibit. The hard copy of the presentation was provided to me by the Seven Network after the presentation was delivered. The figures shown in slide 6 on page 17 of the presentation demonstrate that the EBITA targets identified for the years June 2009 to December 2011 were not met by a substantial margin. I crave leave to refer to my original copy of the presentation for the purpose of my giving evidence.

85 In June 2010, the Seven Network offered a new Management Equity Plan to its executives. A copy of this offer is behind **Tab 23** of JRW1. The 2010 offer was developed in relation to the upcoming exit of KKR and accordingly, the EBITA targets for the June 2010 and June 2011 financial years were downgraded from the figures in the 2007 MEP by approximately \$400 million or thirty seven percent for two years. I did not accept the 2010 offer.



86 On 21 February 2011, the day that the Seven West Media deal was announced, Ms. Barron came to see me. She said:

~~Ms.~~
MS Barron

"James, there is a 3pm conference call in the Level 4 Boardroom. Mr. Stokes, Peter Lewis and David Leckie will be in the video conference suite. There will be executives in the Boardroom as well as a video link with the other states."

Me: *"Is it about Seven West?"*


Ms. Barron: *"Yes."*

Me: *"Clear the diary, I need to be there".*

At approximately 3pm that day, I went to the Level 4 Boardroom for a meeting at which some forty other senior employees of SMG were present. At just after 3pm, Mr. Stokes, Mr. Lewis, Mr. Leckie, and Mr. McWilliam all walked into the Boardroom. Mr. Stokes addressed the members of the team in relation to the Seven West Deal and what an important day it was to the future of the Seven Network. He reiterated many of the comments he had made at the Extraordinary General Meeting that day about the strength of Seven West Media and how exciting the next stage of the Seven Network's development would be. Towards the end of the meeting, Mr. Stokes said:

Mr. Stokes: *"I know you are all concerned about your money but I will let Peter tell you the good news."*

Mr. Lewis: *"Thanks Kerry, in regards to the MEP, on the basis that this transaction with Seven West Media goes through on 11 April 2011, it does not automatically trigger an exit for KKR and therefore your investment, however, we've been able to negotiate an outcome which I am sure you'll all be happy with. In the first week of May, you will receive back what you committed to the MEP. In addition, you will receive an amount relevant to your circumstances of WAN shares escrowed in your name to vest at results day for WAN on approximately 31 May 2012."*



Mr. Stokes: "Peter has done a great job, it's complicated but basically that means you will get a cheque in the first week of May for the investment you placed into this program. You will also get, in your name, as earned your WAN shares at an attractive price, which will vest and be owned by you, on results day. Does anyone have any questions?"

Mr Meakin: "Now that David has been promoted to run the Group, and will be spending a lot more time in Western Australia, who will be doing David's job at Seven?"

Mr. Stokes: "David has always been CEO of the Group and you will continue to work with him in the same capacity as you always have."

87 In a meeting, Mr. Stokes and I had regarding contract discussions, he showed me a document prepared by Ms. Liston. This is Confidential Exhibit SR11 referred to in paragraph 32 above.

Response to the Affidavit of David John Leckie sworn 10 March 2011

88 I have been provided with a copy of the Affidavit of Mr David John Leckie sworn 10 March 2011 ('**Mr Leckie's Affidavit**').

89 I deny the contents of paragraphs 2, 3 and 5 of Mr Leckie's Affidavit in their entirety.

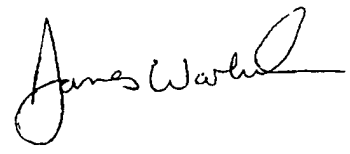
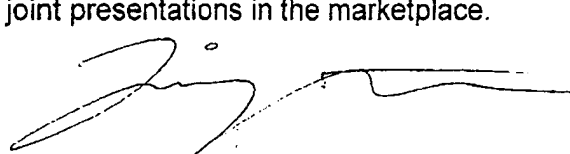
90 The conversation set out in paragraph 2 of Mr Leckie's Affidavit transpired in the manner set out in paragraph 49 above.

91 The conversation set out in paragraph 3 of Mr Leckie's Affidavit transpired in the manner set out in paragraph 59 above. In particular, I refute the suggestion that Mr Leckie made any reference to "gardening leave" during any of my conversations with him on 2 March 2011.

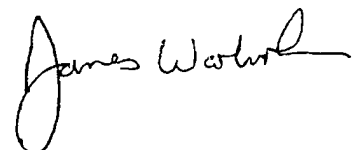
A handwritten signature in black ink, appearing to read 'James Warburton', is written across the bottom of the page. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Response to the Affidavit of Kurt James Burnette sworn 22 March 2011

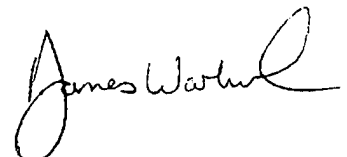
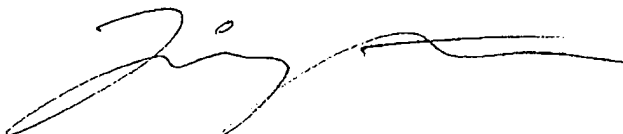
- 92 I have been provided with a copy of the Affidavit of Mr Kurt James Burnette sworn 22 March 2011 ('Mr Burnette's Affidavit').
- 93 I agree with the summary of the duties performed by the Seven Network's Chief Sales and Digital Officer set out in paragraph 2 of Mr Burnette's Affidavit. In particular, I agree that the role of Chief Sales and Digital Officer has responsibility for general oversight of the Seven Network's sales revenue as opposed to specific day to day management of the sales portfolio.
- 94 In response to paragraph 8 of Mr Burnette's Affidavit, I was not involved in the formulation of rates, discounts and incentives offered to the Seven Network's clients nor was I involved in the negotiation of specific details of client contracts. These matters were the sole responsibility of Mr Burnette and Ms Baker.
- 95 In response to paragraph 10 of Mr Burnette's Affidavit, Mr Burnette and I regularly talked about SMG's digital divisions and the implications those divisions had within the television market. Not only was it an area of interest for Mr Burnette, it was necessary that Mr Burnette had knowledge of those divisions given that he represented SMG's interests in the marketplace and needed to look informed in front of the media buyers so as to maximise television's share of revenue.
- 96 In particular, I provided Mr Burnette with many of the market or board presentations I had done whilst employed by the Seven Network, including but not limited to, the Digital Future Proofing Strategy behind Tab 1 of Confidential Exhibit KJB1, which was used in many of Mr Burnette's presentations internally to his sales teams and externally to media agencies and clients.
- 97 Mr Burnette also presented and sold packages on many occasions on behalf of Yahoo 7 or TiVo as proactive responses to 'digital' knowledge to show that Seven was not just a free to air operation but rather a media group of entities. As a result, Mr Burnette would meet regularly with the CEO of Hybrid TV (TiVo) Ms Robbee Minicola and would do joint presentations in the marketplace.



- 98 Mr Burnette has a deep understanding of the Digital environment. Without knowledge of the digital environment and competitors to television, SMG's revenue would be at risk.
- 99 In response to paragraph 11 of Mr Burnette's Affidavit, I refer to my statements in paragraphs 172 to 174 below regarding the Digital Proofing Report behind Tab 1 of the Confidential KJB1.
- 100 In relation to the three presentations dated March, June and October 2010 respectively behind Tab 2 of Confidential Exhibit KJB1, these documents provided commentary on the current performance of the sales team to budget, referred to any specific market issues we were having and then usually demonstrated the work we were doing in the market place. The Focus Series and SMG Red examples were always MPEG's or marketplace sales presentations or reels of current campaigns which were in the public domain.
- 101 Behind Tab 24 of JRW1 is a copy of a document titled "*Proposal to Acquire Seven Media Group*" ('the EM'). The EM is a publicly available document which can be easily downloaded from the Internet. The EM contains substantial information regarding the Seven Network's television budgets. For example, Table 11 on page 37 of the document sets out Seven's television revenue for Fiscal Years 2009 and 2010 and splits Fiscal year 2011 into First half 2011 and second half 2011. In conjunction with the publicly available and released KPMG report (released by KPMG), an example of which can be found in Exhibit KB2 to Ms Baker's Affidavit, which dates back to 2002, the Seven advertising revenue budgets are publicly available. ~~All the information in the presentations and any commentary on advertising revenue is therefore in the public domain.~~
- 102 In relation to Tab 3 of Confidential Exhibit KJB1, it is rare for the position of Chief Sales and Digital Officer to be provided with the CEO's Board Report. In fact, the copy of the report annexed to Mr Burnette's Affidavit is the only report I have received during the term of my employment with the Seven Network.



- 103 Section 4 of the EM details in full each division's EBITA and revenue performance for the 2011 financial year, which is what Mr Leckie's report refers to.
- 104 ~~In relation to Mr Worner's Programming Director's One Pager, whilst the information has been redacted this would largely form the presentation that is presented to media buyers and clients in the 2011 reel referred to in paragraph 204 below which was accompanied by programme formats and full detail. It is therefore in the public domain.~~ Behind Tab 25 of JRW1 is a media article referring to this matter. *orally.*
- 105 In relation to the Chief Sales & Digital Officer Report behind Tab 3 of Confidential Exhibit KJB1, this was a one page commentary on current performance with a revenue summary of won campaigns for the 2011 financial year to date with excel spreadsheets detailing the clients and expenditure. Ms Barron would source the revenue excel spreadsheets which were created and maintained by Ms Hosie.
- 106 In response to paragraph 12 of Mr Burnette's Affidavit, whilst I was provided revenue reports which reflected historical spends, the focus was always on future booking cycles and revenue. There are many sources for data, including the Nielsen Top 100 advertisers or the Top Agency report which has significant data and is in the public domain. SMI also provides data on a monthly basis which details revenue by individual channel and state.
- 107 When I received these reports I would look at them, digest them, point out any concerns and then usually destroy them. I would keep only the latest information as every month there was a huge number of reports generated and I knew that they were provided and maintained by Ms Baker and that Ms Barron could call for them at a moment's notice.
- 108 ~~In response to paragraphs 13 and 14 of Mr Burnette's Affidavit, the rate discounts and terms of trade were exclusively the domain of Mr Burnette and Ms Baker. They maintained the records, made decisions as were required and ran the business with a level of autonomy that would be expected of a Network Director of Sales with over twenty years' experience. I had no need to get involved in the~~



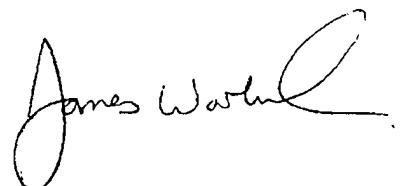
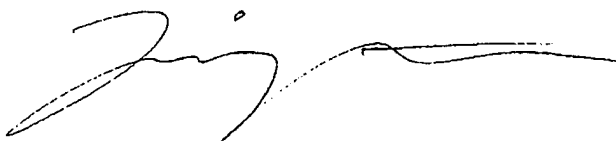
specific details of the individual rate discounts or specific terms and conditions of trade for the various agencies. My concern was to know that the Seven Network had a deal with each of the agencies and, following the finalisation of those deals, I was informed by Mr Burnette of the broad terms of each contract. Without access to the numerous reports prepared by Mr Burnette and Ms Baker in pitching deals to clients, I cannot remember any of the specific details of the rate discounts and terms of trade offered to particular clients.

109 In response to paragraph 15 of Mr Burnette's Affidavit, I refer to my statements in paragraph 108 above. I was not involved in the specific details of the individual rate discounts or specific terms and conditions of trade for the advertising agencies or the Seven Network's contracts with its top fifty advertising clients.

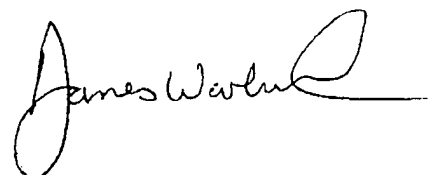
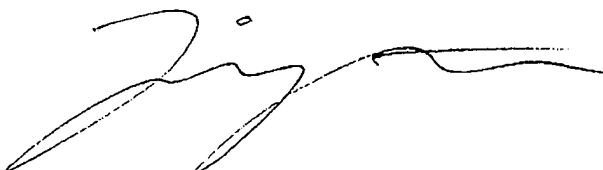
110 In response to paragraph 16 of Mr Burnette's Affidavit, it was important for the entire sales team to have excellent relationships at every level of a client's or agency's business. It was usual for Mr Burnette and/or Ms Hosie to attend key client meetings with me unless the diary did not allow or we decided it was a better use of time to divide our resources and attend meetings separately. The entire sales team is renowned for having the best relationships in the market.

111 In response to paragraph 18 of Mr Burnette's Affidavit the Aegis negotiation was performed by myself on a heads of agreement basis with the then CEO and owner Stuart Mitchell. Once the overall deal was done at a headline level with some consistent communication, Mr Burnette and Ms Baker worked directly with Alex Peckish (The Head of Trading for Aegis) to work out the finer details and provide rate discounts. Providing rate discounts and discussing zones was the exclusive domain of Ms Baker. ~~There was no need and no desire for me to get involved.~~

112 In addition, the Chairman of Aegis Harold Mitchell and the Chairman of SMG Mr Stokes have a very strong history together. During 2004, Seven's worst ratings year on record, Mr Mitchell continued to support Seven due to this association and received strong criticism for it. Behind **Tab 26** of JRW1 is a series of extracts from Mr Mitchell's book titled *"Living Large – The World of Harold Mitchell"* detailing the nature of his relationship with Mr Stokes.



- 113 In response to paragraphs 18 and 19 of Mr Burnette's Affidavit, I refute the suggestion that I attended a negotiation with a media buying group concerning upcoming 2011/2012 negotiations. The meeting I attended was to discuss improving the current revenue and share projections on the deal for the 2011 financial year with the fact being that we wanted more revenue for this group. I presented two ideas that were discussed in full with Mr Burnette. However, at the time of my departure, no discussions or briefs had been prepared for the 2012 financial year negotiations.
- 114 In response to paragraph 20 of Mr Burnette's Affidavit, it is not possible that I could have retained the volume of data and information referred to by Mr Burnette in my memory alone. The Seven Network kept extensive records and had an entire department headed by Ms Baker which provided and maintained these records. I no longer have access to any original or copies of these records in hard copy or electronic form.
- 115 In response to paragraph 21 of Mr Burnette's Affidavit the contract is an exclusive contract between Seven and Mirriads, which was introduced to the Seven Network by Janine Faithful, a current employee of the Seven Network. Virtual advertising reflects a relatively small revenue stream of the Company's total revenue. Further, given the exclusive nature of the contract, the concept of virtual advertising is not something I could take with me to the Ten Network. As far as I am aware, there are no known competitors to Mirriads in Australia capable of providing a similar or identical product.
- 116 In response to Paragraph 23 of Mr Burnette's Affidavit, Ms Hosie held the position of Integrated Sales Director of SMG Red. Ms Hosie has twenty plus years experience in the industry and was the Head of Sales for ACP Magazines for many years as well as being the Sales Director for Yahoo 7 for almost two years. Ms Hosie, like Mr Burnette, enjoyed strong autonomy to run the division as she saw fit. Her style and results led to many accolades. Mr Burnette's entire sales team worked very closely with SMG Red on all client renewals and pitches and it became an engrained part of the culture and point of difference for Seven. I was rarely involved in pitches, only attending when requested by Mr Burnette or Mrs Hosie on the basis that it was critical for me to be there to show some force or if it was a proactive pitch that had the opportunity to bring incremental revenue flows.



117 In response to Paragraph 24 of Mr Burnette's Affidavit, I refer to my statements in paragraph 116 above.

118 In response to paragraph 26 of Mr Burnette's Affidavit, I deny that the conversation transpired in the manner suggested by Mr Burnette. In particular, I deny that Mr Burnette made any reference to "non-compete clauses" or a "notice period". As far as I am aware, no one in the sales team at the Seven Network has a non-compete clause in their contract of employment with the Seven Network. All of the contracts are fixed term contracts and the only non-compete clauses I am aware of are those in the Management Equity Plan.

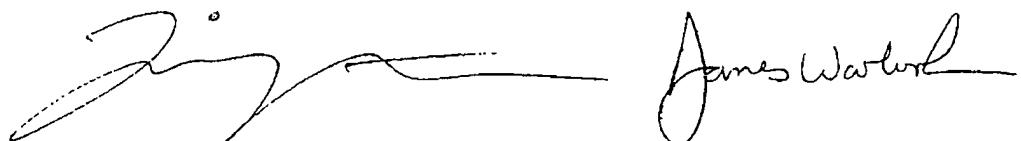
Response to the Affidavit of Kerry Baker (nee Parcell) sworn 22 March 2011

119 I have been provided with a copy of the Affidavit of Ms Kerry Baker sworn 21 March 2011 ('**Ms Baker's Affidavit**').

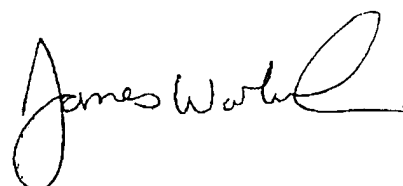
120 In response to paragraph 3 of Ms Baker's Affidavit, Mr Burnette and Ms Baker were responsible for the preparation of the budgets. Once these budgets were prepared, Mr Burnette and Ms Baker then presented the budgets to me for my approval and opinion. I then presented the budget to Mr Lewis and then, ultimately, the Board.

121 As at 2 March 2011, I had only had one meeting with Ms Holly Griffiths, the Group's Accountant ('**Ms Griffiths**') and Mr. Burnette regarding staffing numbers and the salary budget. As noted by Ms Baker, budget meetings usually commence around the end of March each year. As my last day working for the Seven Network was 2 March 2011, I had not been involved in any meetings with Mr Burnette or Ms Baker regarding revenue budgets for the 2012 financial year.

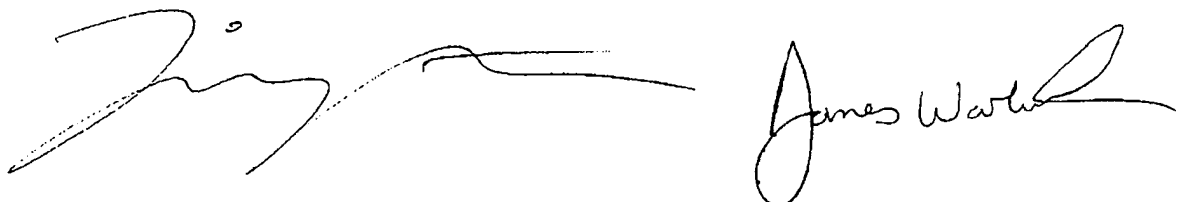
122 In response to paragraph 4 of Ms Baker's Affidavit, the annual target and half yearly sales target were agreed and set by Mr Burnette and Ms Baker and only presented to me for my approval. Once we had discussed and agreed the targets I would send a note or, increasingly, Mr Burnette would send a note to Mr. Leckie for his information and the Board would have the final approval.



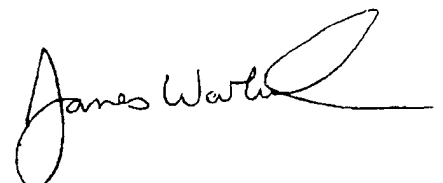
- 123 ~~In response to paragraphs 5 and 7 of Ms Baker's Affidavit, the annual budgets and sales targets Ms Baker refers to are readily available in the public domain as demonstrated in paragraphs 126 and 127 below.~~
- 124 In response to paragraph 9 of Ms Baker's Affidavit, I refer to my comments in paragraph 211 below. In response to paragraph 10 of Ms Baker's Affidavit, the ratings index referred to by Ms Baker is an internal document used by the Seven Network's finance and Human Resources departments to have common goals across all departments in the business. It is used specifically in measuring and debating the Performance Management Plan bonus each year. It has no relevance to the market and is simply a reporting process for the Seven Network. In any event, I have no recollection of the ratings indices for the 2001 financial year.
- 125 In response to paragraphs 11, 12, 13 and 14 of Ms Baker's Affidavit, as stated in paragraph 101 of this Affidavit, the EM reveals SMG's television revenue not only historically but also projected revenue for the first and second half of the 2011 financial year.
- 126 In addition, SMI produces a report that shows actual revenue generated monthly for each television station as well as splitting this revenue by state. The SMI report goes to every single media buyer (approximately eighty five percent of all TV expenditure) and a number of analysts and journalists buy the data as well. The data in the SMI reports shows actual advertising revenue by station (main station and then individual digital stations), and the exact dollar amount of ad bookings contributed to those stations. Network Ten and Nine Network all subscribe to SMI data.
- 127 In addition Adex from Nielsen produces monthly share reports that all Networks receive. The networks provide advertising logs to Nielsen in return for this service and to provide accuracy of data. These reports are within \$20 million of a market worth approximately \$1.8 billion for each six months of the financial year. I deny that this information is commercially sensitive and not in the public domain.



- 128 In response to paragraph 15 of Ms Baker's Affidavit, as noted in paragraph 101 above, the EM publicly reveals the Seven Network's projected advertising revenue for the entire 2011 financial year. Furthermore, as far as I am aware, as at 2 March 2011, weekly revenue targets for the 2012 financial year had not been prepared. I have not seen any data relating to revenue targets after 30 June 2011.
- 129 In response to paragraphs 16, 17 and 18 of Ms Baker's Affidavit, the preparation of rate cards is administered by Mr Burnette and Ms Baker exclusively. It is complex, detailed and requires a lot of work to get it right. Ms Baker came to Seven from a media buying background and accordingly brought a skill set to the Network that had not been experienced before. With that experience came autonomy. Ms Baker reported directly to Mr Burnette and both Mr Burnette and Ms Baker asked me to respect that process rather than get involved directly. I agreed to their request and have therefore had no access to the rate cards or terms and conditions since I handed that responsibility to Mr Burnette in 2008. Following the finalisation of the rate cards, Ms Baker is at liberty to work directly with the market with no need to copy either Mr Burnette or myself to the email correspondence.
- 130 In response to paragraph 19 of Ms Baker's Affidavit, Mr Burnette runs a weekly sales meeting, via video conference call, at 11:00am every Monday morning with his entire sales management team in each state as well as his department heads and managers covering the entire gambit of the Seven Business. Confidential day to day information is discussed as well as weekly revenue targets and/or the state of the current market in great detail. In these meetings, the sales team is directed to employ various tactics to maximise the current month's and future months' revenue. These meetings are usually seventy to ninety minutes in duration with every state on the video conference equipment. I have not attended these meetings since Mr Burnette took over this responsibility in 2008 other than I have dropped in on possibly two meetings since this time with Mr Burnette's consent. Although I have not attended these meetings, I am aware of the nature of the topics discussed during the meetings but not the detailed contents of those discussions because I was previously responsible for running such meetings when I was the Network Director of Sales.



- 131 In response to paragraph 21 of Ms Baker's Affidavit, I refer to my comments in paragraph 101 above and note that the information referred to by Ms Baker is readily available in the EM.
- 132 In response to paragraphs 22, 23 inclusive of Ms Baker's Affidavit, I refer to my statements in paragraphs 126 and 127 above. In response to paragraph 124 of Ms Baker's Affidavit, I refer to my statements in paragraphs 108 and 109 above. In addition, without the volume of reports that were available to me during the course of my employment at the Seven Network via Ms Baker, I would have no knowledge of the data at the level of detail prescribed in Ms Baker's Affidavit.
- 133 In response to paragraph 25 of Ms Baker's Affidavit, based on my experience in the television industry, I am aware that all networks and media outlets deal with these agency buying groups and they all represent about eighty to eighty five percent of market revenue.
- 134 In response to paragraphs 26 and 27 of Ms Baker's Affidavit, Mr Burnette and Ms Baker were responsible for the Seven Network's contracts with the various advertising agencies. With the exception of the Ageis Group, detailed in paragraph 111 above, I have had no involvement in negotiating the terms and conditions of the contracts or advertising rates by week and had not done so since Mr Burnette took over this responsibility in 2008.
- 135 In response to paragraph 28 of Ms Bakers Affidavit I confirm that Mr Burnette completed all media deals without my assistance with the exception of Aegis. In relation to Aegis I refer to paragraph 112 in Mr Burnette's Affidavit which addresses the Seven relationship with Aegis and the Mitchell family.
- 136 ~~In response to paragraph 29 of Ms Bakers Affidavit, the 2011 agreements are unable to be broken by media buyers.~~
- 137 In response to paragraphs 30 and 31 I refer to my statements in paragraphs 108, 109 and 127 above.



138 In response to paragraph 32 of Ms Baker's Affidavit, I deny that the purpose of the meeting was to commence negotiations for the 2012 financial year. The purpose of the meeting related to an allotment of bonus that the specific media group wanted to unlock and give to a client they had just pitched in the market and won. It was to be a heated conversation, as the email suggests. I discussed my intentions for the meeting with Ms Baker and Mr Elliot (Sydney Sales Director) and they agreed with the strategy. The meeting was set for 4 March 2011 but, as a result of my departure from the Seven Network, the meeting never eventuated.

139 In response to paragraph 33 of Ms Baker's Affidavit, I refer to my statements in paragraph 127 above.

140 In response to paragraph 34 of Ms Baker's Affidavit, I refer to my statements in paragraphs 200 to 206 and paragraph 216 below. ~~The Seven Network's sales team has multi faceted relationships in the market and my joining Network Ten would not lead to people changing alliances on a whim.~~

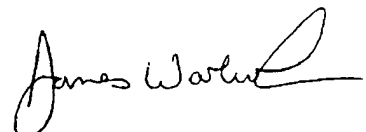
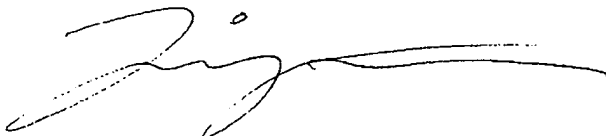
141 In relation to paragraph 35 of Ms Baker's Affidavit, as noted in paragraph 115 above, the contract is exclusive with Seven and there are no known competitors of Mirriads in Australia.

142 In response to paragraph 36 of Ms Baker's Affidavit, I agree with the gardening leave process described. However, the decision to place Ms Izzard on gardening leave was ultimately one made by Ms Baker. I was only involved and supported her note as Mr Burnette was having knee surgery that day.

Response to the Affidavit of Sarah Barron sworn 21 March 2011

143 I have been provided with a copy of the Affidavit of Ms Sarah Barron sworn 21 March 2011 ('Ms Barron's Affidavit').

144 In response to paragraph 4 of Ms Barron's Affidavit, I deny that Ms Barron performed only 'occasional filing'. The entire content of my work was either given to



Ms Barron to file or to be passed on to either Mr. Burnette, Ms. Baker, or Ms. Hosie. Ms. Barron created all my PowerPoint or market presentations. I only ever had paper copies of documents. Ms Barron assisted me by creating electronic versions of documents as necessary.

145 In response to paragraphs 6 and 7 of Ms. Barron's Affidavit, Ms Barron was responsible for maintaining my diary on a day to day basis. At 9:00am on Tuesday, 1 March 2011, I attended a SMG Executive meeting and a 10am Channel 7 Management Group meeting. These meetings are not shown in the diary page annexed to Ms Barron's Affidavit.

146 In response to paragraph 9 of Ms Barron's Affidavit, as noted in paragraph 45 above, I had a meeting with Mr Murdoch at approximately 10:00am on Wednesday, 2 March 2011. Before I left my office to meet with Mr Murdoch, I had a conversation with Ms Barron involving words to the following effect:

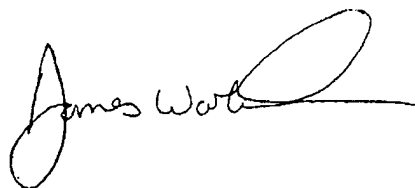
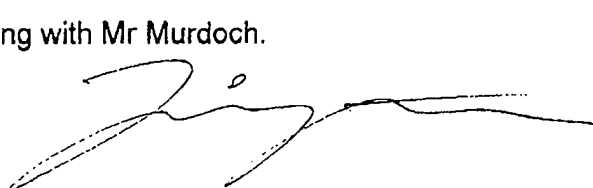
Me: *"Please cancel my 11.30 coffee meeting with Richard Finlayson [being the Chief Operating Officer at SBS]. Can you also arrange a meeting with David for 1pm?"*

Ms Barron: *"Yes, I will do that"*

147 At this point, I knew I was going to sign a contract of employment with Network Ten and had planned to call Mr. Stokes and then see Mr. Leckie and inform them of my decision after my meeting with Mr Murdoch.

148 As noted in paragraph 47 above, when I left the meeting with Mr. Murdoch at or around 10.15am, I received a text message or email on my blackberry (I cannot recall which) from Ms Barron telling me that Mr. Leckie wanted to urgently see me on my return to the offices of the Seven Network. I emailed or called (I cannot recall which) Ms Barron back to say that I was on my way back to the Seven Network offices.

149 I deny the contents of paragraph 13 of Ms Barron's Affidavit. As noted in paragraph 45 above, I had asked Ms Barron to schedule a meeting with Mr Leckie prior to meeting with Mr Murdoch.



150 I deny the contents of paragraph 14 of Ms Barron's Affidavit. When I returned to my desk after meeting Mr Murdoch, I said to Ms Barron words to the effect:

"Can you confirm that David is ready for me?"

Shortly thereafter, at approximately 10:45am, Ms Barron came into my office and said words to the effect:

"David's ready now James."

151 My meeting with Mr Leckie at 1pm was arranged as a result of my conversation with Ms Barron as outlined in paragraph 45 above

152 In response to paragraph 17 of Ms Barron's Affidavit I refute her record of events and refer to paragraphs 55 to 63 of this Affidavit.

153 In response to paragraphs 18 to 21 inclusive and paragraphs 24 to 27 inclusive of Ms Barron's Affidavit, the folders in the cupboard on the left hand side of the entertainment unit contained my personal records and documentation. These folders were packed by Ms Barron and placed in my car. On or about 22 March 2011, I took photographs of the contents of the boxes packed by Ms Barron. Copies of these photographs are behind **Tab 27** In JRW1. In the remaining cupboards, under the television, were the historical files containing confidential information pertaining to the buying groups for the period 2004 to 2008. My computer was left behind as well.

154 In response to paragraphs 22 and 23 of Ms Barron's email, Ms Izzard gave notice of the termination of her employment on the basis that she was leaving the Seven Network to commence employment with Network Ten, a competitor of the Seven Network. Some but not all employees leaving to work with a competitor would be placed on a period of "gardening leave" and would be escorted from the building by security.

155 In response to paragraphs 31 and 32 of Ms Barron's Affidavit, between my 10:45am and 1:00pm meetings with Mr Leckie, I made a few calls including one to my wife, and some colleagues at the Seven Network. I deny that I asked Ms Barron to telephone sales staff to ask them to come and see me. It is true to say that the day



was 'hectic' and a number of employees came to my office on hearing the news, being mainly Department Heads and Sales Directors on level 3.

- 156 In response to paragraphs 33 and 34 of Ms Barron's Affidavit, Mr. Burnette had knee surgery scheduled the day prior, being 1 March 2011. I rang Mr Burnette on his mobile and got his voicemail so I left a message saying:

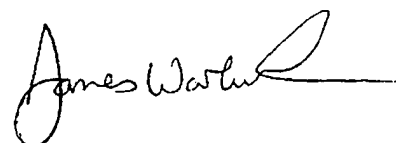
"It's James, I'm going to Ten. The job's yours here at Seven and I hope they look after you. I want to thank you, you have been a large part of my success and I wish you all the best."

- 157 Later Mr Burnette called back and we spoke. I could not make much sense of what he was saying so cut things short and wished him all the best.

- 158 In response to paragraph 38 of Ms Barron's Affidavit, only one file contained presentations. A second file was my working file containing current documents or anything that I was actively working on. Once accounts were won or lost the file was no longer needed given the sales team would follow through with the implementation side of the business if necessary. I did not keep nor maintain extensive business records. The file was either ripped up and destroyed, passed to Ms Barron to file or passed to the department head to file or destroy as they wished. Anything I used was generated by someone in Mr Burnette's team or by Ms Barron. I did not maintain this information in my head.

- 159 In response to paragraph 39 of Ms Barron's Affidavit, I did not personally keep meeting notes whilst employed at the Seven Network. I either destroyed the documents or, as noted in paragraph 144 above, gave them to Ms Barron for filing. In her role as my personal assistant, Ms Barron was aware that this was my practice. Often I would delete emails and only ask for the information when I needed it as I knew the sales team's job was to have the file history. I did not maintain the information in my head.

- 160 In response to paragraph 41 of Ms Barron's Affidavit, I agree that I did not maintain extensive historical files. However, I refute Ms Barron's suggestion that she had no

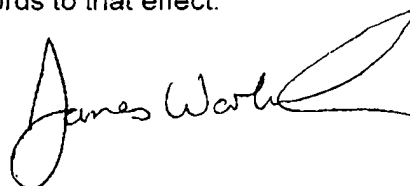


significant involvement in archiving my materials. Ms Barron dealt directly with my property investments and soccer team organisation and had a three page list of all my personal credit card, frequent flyer details and passport numbers

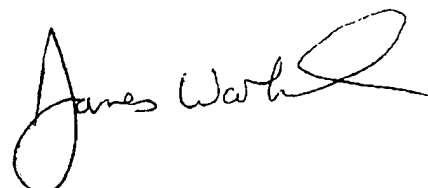
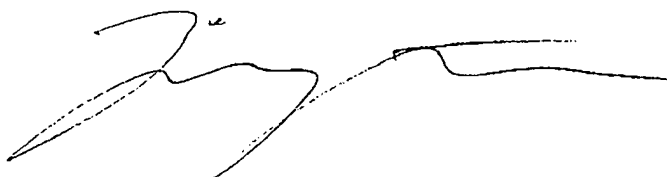
- 161 Further, Ms Barron created every single presentation or word document I presented in meetings or asked the relevant department to provide the document for me in printed version. In addition, being the Chairman of one Board and a Board member of four others (five Boards in total), Ms Barron managed all of the papers and business records I did keep for me and had sole access to my filing cabinets..

Response to Affidavit of Bruce Ian McWilliam sworn 22 March 2011

- 162 I have been provided with a copy of Bruce Ian McWilliam's Affidavit sworn 22 March 2011 ("**Mr. McWilliam's Affidavit**").
- 163 In response to paragraph 14 of Mr. McWilliam's Affidavit, the SMG Management meetings were held at 9:00am every Tuesday morning. These were very top level meetings, where we quickly (in fifty to sixty minutes) went around the table and discussed top line issues, including but not limited to, the previous week's ratings, revenue and budgets in the current month and the Pacific Magazines and Yahoo 7 CEOs briefly talked about their business. These meetings rarely involved major presentations as the main purpose was to provide brief oral updates.
- 164 I kept no record of these meetings. I would write my points on the agenda that would arrive at about 8am each Tuesday morning prior to the 9am meeting then rip them up on my return.
- 165 At 10:00am every Tuesday, meetings were held with the Channel 7 Management Group. These meetings were really a replication of the 9:00am Executive meetings. I believed that these meetings were a waste of time. I recall seeing an email from Mr. Leckie on or about 1 March 2011 whereby he cancelled the 10:00am meetings in the future on the basis that no one ever added any agenda items. Mr. Leckie also stated that the meetings were a "*waste of time*", or words to that effect.



- 166 In response to paragraph 15 of Mr McWilliam's Affidavit, I say that the concept of cross platform selling is neither new nor unique to the Seven Network. Both the Nine Network and Network Ten operate their own versions of integrated advertising methods. PBL created the concept of cross platform selling many years ago with the launch of "PBL One". At one stage Mr Gyngeell was the head of this unit. PBL One achieved general acceptance of the concept in or around 2006 when a well renowned marketer named Ms. Jo Pollard, formerly associated with Nike and now CEO of Nine MSN, headed up the unit. A copy of the media report announcing Ms Pollard's appointment is behind **Tab 28** in JRW1. In or around the end of 2010, Nine Entertainment Company relaunched PBL and the cross selling division as "Powered" and it was headed at that time by Ms. Louise Barrett. This has subsequently changed and Mr. Peter Wiltshire, the Sales Director at Nine, has become the Head of Sales across the entire company.
- 167 In addition, Network Ten announced an integrated unit on 20 January 2010 which is headed by Ms. Judy Allan. Ms Allan worked at the Seven Network for approximately ten years in various roles and was previously the Client Services Director working in much the same remit at Seven before "SMG Red" was re-branded at the end of 2008. A copy of the media report announcing Ms Allan's appointment is behind **Tab 29** in JRW1
- 168 In response to paragraph 16 of Mr McWilliam's Affidavit, I was not solely responsible for the digital strategy of SMG. Whilst I held the title of Chief Sales and Digital Officer, Yahoo 7, a joint venture entity fifty percent owned by SMG and fifty percent owned by Yahoo Inc, is capably led by the CEO, Mr Rohan Lund ('**Mr Lund**'), and a very strong management team. I was a Director on the Board of Yahoo 7 and attended all relevant board meetings quarterly.
- 169 The launch of 7 Two and 7 Mate was led in the sales division by Mr Burnette. Whilst I agree I was involved, the launch of 7 Two was Mr Burnette's opportunity to 'step out of the shadow' and own the launch, which he and I had agreed would be good career progression. At our market launch road shows in Sydney, Melbourne and Brisbane that were attended by approximately one thousand top clients and media buyers, Mr Burnette and Mr Worner presented the entire contents of the presentation in relation to the 7 Two channel. My role was limited to introducing the



launch of SMG Red and appearing on Mediaweek (Sky News channel) to do some public relations for the launch.

170 In addition, the sales launch of 7 Mate was Mr Burnette's sole responsibility. I did not attend the launch events, held at pubs across Sydney, Melbourne and Brisbane and attended by approximately five hundred media buyers and clients. The event was attended by many other departments of Seven and, in particular, Mr Worner.

171 Mr Burnette also directly recruited and employed a sales director for the multi channels, Ms Lisa Squillace, who reported directly to him, as well as a new team of staff of approximately thirty people who run the 7 Two and 7 Mate channels.

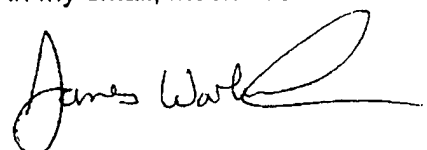
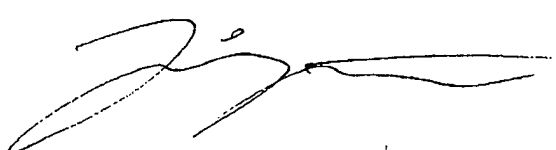
172 In relation to the digital strategy meeting, on my own initiative, I had prepared a proactive document which contained what I regarded as areas in the business that we needed to address, specifically within television, and labelled it *"Digital Future Proofing – Principles for Board Execution and Agreement March 2010"*.

173 After three or four attempts to get Seven as a television network to consider the pace of change in the digital environment, I finally got my report on the agenda for a board meeting, with the assistance of Mr Reizes and Mr. Ryan Stokes. However, it did not get much of a hearing. I recall Mr Stokes saying in the board meeting around that time:

Mr Stokes: *"I am much more interested in you getting us another share point than worrying about all this."*

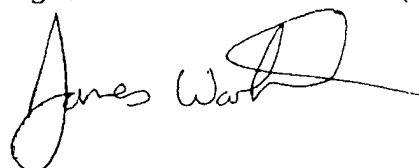
I left that meeting feeling frustrated given that I could not get action on the digital front.

174 There were no further discussions on this matter until a 9:00am Executive meeting in the final few weeks of me being at Seven in which Mr Leckie asked me to set up a strategy meeting. It was for this reason that I sent the email annexed to Mr McWilliam's affidavit and marked "A". As clearly stated in my email, much had



~~changed in the twelve months since my report was first prepared. This meant that the content of the report was no longer applicable to the current market conditions and would need to be started again.~~ At the time I left the Seven Network, no one had responded to my email suggesting agenda items. No discussions or correspondence had been entered into.

- 175 In response to paragraph 17 of Mr McWilliam's Affidavit, my employment did not start at Seven in 2003 as a result of the restructuring of Seven's sales and programming departments. My employment came about as a result of the resignation of Mr. Anthony Fitzgerald who was my predecessor in the role of Network Director of Sales.
- 176 Mr Fitzgerald, having been at Seven for approximately twenty years, had accepted a position as CEO of MCN (Multi Channel Network) which is the company owned by Pay TV companies Foxtel and Austar, and sold advertising in direct competition to Seven and the free to air networks Nine and Ten.
- 177 Prior to commencing employment with the Seven Network, I was not Managing Director of McCann Erickson (now McCann Worldgroup), as Mr McWilliam suggests in his affidavit. I was Managing Director of Universal McCann, the media division of McCann WorldGroup, now called MediaBrands.
- 178 My appointment to the Chief Sales and Digital Officer role in 2008 was a response by Mr Leckie to assist in career progression and to remove me from the day to day tasks of running the Seven Network's advertising sales which I had been performing since my appointment.
- 179 In response to paragraph 19 of Mr McWilliam's Affidavit, in 2004, the Seven Network had its lowest revenue share in the history of the Network. It was not until 2005 when things started to turn around. It is well documented that Seven's improved performance was on the back of the success of Desperate Housewives and LOST, the Disney created US products, as well as local production of hit shows Dancing With The Stars hosted by Darryl Somers and Border Security, that the fortunes of the Network changed and we really had something to sell.



180 In response to Paragraph 20 of Mr McWilliam's Affidavit, the appointment of David Leckie as CEO in or about March 2003 and the turnaround in programming strategy has resulted in the Seven Network becoming the number one network in the country. These factors have led to Seven's ability to generate a premium on ratings that Nine had enjoyed for many years previously. A media article commenting on Mr Leckie's credentials as a CEO in behind **Tab 30** in JRW1.

181 In response to paragraphs 21 to 28 of Mr. McWilliam's Affidavit, I refer to my statements in paragraphs 69 to 87 above.

182 In response to paragraph 32 of Mr McWilliam's Affidavit, Mr Burnette prepared and presented the first presentation to the independent WAN committee. Had this presentation been unsuccessful, the committee may have formed a view not to proceed. I had previously offered to return from holidays early to attend this presentation but was told I was not necessary by Mr Leckie. In particular, I recall a phone conversation with Mr Leckie whilst I was on holidays.

Mr Leckie: *"Mate, I can't believe you're not coming back for this meeting, it's a big deal you know?"*

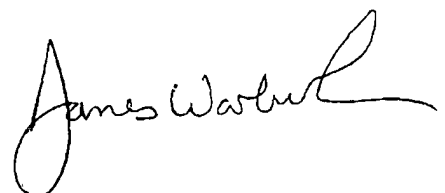
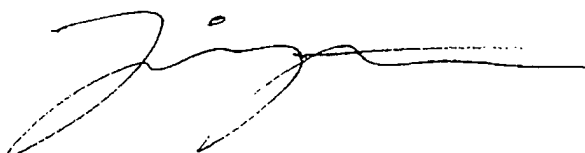
Me: *"I offered. Just tell me if you want me back and I will come back."*

Mr Leckie: *"No that would be unfair on Kurt, he has done all the work. He's done a good job".*

Me: *"He will nail it. He knows the business inside out."*

183 On my return I followed up with Mr Leckie in relation to Mr Burnette's presentation. A conversation took place:

Me: *"How did Kurt go?"*



Mr Leckie: *"Really well actually. Seriously, I'm not just saying it. He was particularly strong on the questions."*

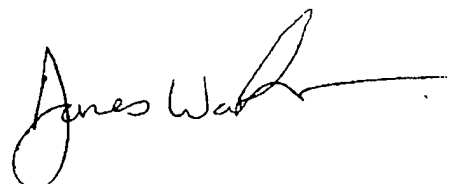
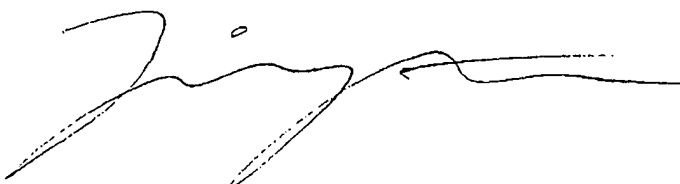
184 Sometime after my return from holidays (I cannot recall the exact date), I had a meeting with Mr Doug Flynn, a Director of West Australian Newspaper Holdings Pty Limited ('**Mr Flynn**'). The meeting was really just a meet and greet as I had not met Mr Flynn at the initial presentation. Nothing additional to Mr Burnette's presentation was discussed in this meeting.

185 From that point, there was one further presentation which was attended by Mr Gammell, Mr Leckie, Mr McWilliam, Mr Lewis, Mr Lynch, Mr Chan, Mr Lund, Mr Worner and myself. This meeting was a follow up for the major banking institutions and analysts to see the entire presentation and ask any questions. The room appeared to be very light on for attendees in both number and seniority given the whole SMG management team were presenting a two to three hour presentation. I sat next to Mr. McWilliam who spoke quietly in my ear, saying words to the effect:

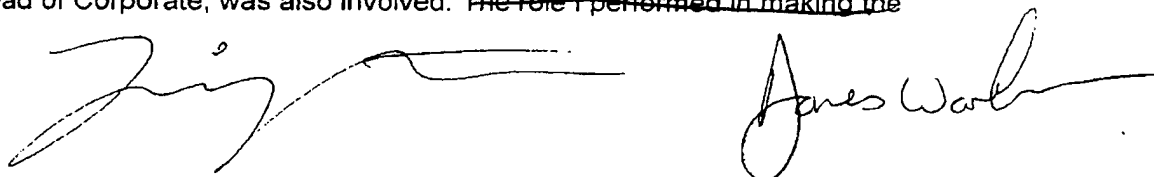
Mr McWilliam: *"What a waste of time, the room is lightweight."*

186 I reject that I was a key presenter in the WAN presentation. ~~The majority of the work was done in the first meeting and document which Mr Burnette championed.~~ My involvement in the discussions with the financial analysts resulted from a phone call from the CEO of WAN, Mr. Chris Wharton ('**Mr Wharton**') who needed me to help him with working out what incremental sales budget the merger would generate. I referred to all of our previous history of SMG Red (previous financial years) as well as our history and plans in the Western Australian market and came up with a figure of \$10 million. I sent Mr Wharton an email confirming the number.

187 I then spoke with Mr. Wharton a couple of times and had two, possibly three, phone conference calls to logic test the \$10 million and for the analysts to ensure they were comfortable with the number and the basis of my calculations. Mr. Wharton and Mr. Lynch attended the conference calls.



- 188 A WAN media release dated 3 March 2011 regarding the termination of my employment with the Seven Network in behind **Tab 31** of JRW1.
- 189 In response to paragraph 33 of Mr McWilliam's Affidavit, any media organisation would request media revenue projections for sporting rights from their sales directors prior to bidding for the same. Unless a simple question was asked relating to arithmetic, the usual process I followed when requested to provide revenue projections was to brief Mr Burnette on what was required. Mr Burnette, prior to his promotion to Network Director of Sales in 2008, was the Sports Sales Director and had worked on AFL for his entire twenty plus years at the Seven Network, with the exception of a five year window when Seven did not have the rights.
- 190 I am aware that Mr Burnette would then usually brief his revenue strategy management team and his sports Sales Managers who would perform the task. In particular, the revenue strategy team would look at historical budgets to determine the premise upon which the revenue assumptions were based.
- 191 In relation to optimal scheduling options, this process was extremely involved. The entire programming department, including Mr Worner, provided reports on the implications of different scheduling options on the Seven Network's ratings for a particular week. ~~The notion that I performed these task by myself or that I was the key executive performing such tasks is not correct.~~
- 192 In response to paragraph 34 of Mr. McWilliam's Affidavit, the Seven Network has had substantial scheduling problems on Sundays where both V8 Supercars telecasts and live or delayed AFL games clash. This has led to criticism from V8 fans as the AFL has always been given priority. This meant that someone has had to have negotiations with the V8s, as well as work out a solution. This was my suggestion.
- 193 These negotiations were attended by the Seven Network's Head of Sport, Mr Saul Shtein, legal representatives, being Mr McWilliam and Ms Renee Quirk and the programming department, including Mr Angus Ross. Mr Simon Francis, Seven's Head of Corporate, was also involved. ~~The role I performed in making the~~



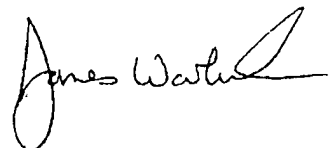
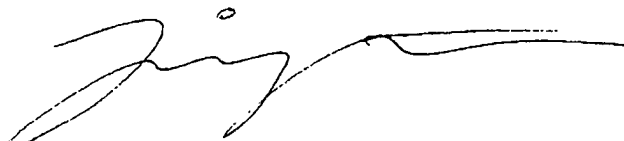
~~suggestion referred to in paragraph 102 was not unique and to suggest that I controlled the decisions that were made is not correct.~~

194 Mr Lewis Martin, Seven's General Manager in Melbourne, is responsible for the Seven Network's relationship with the AFL. In response to paragraph 35 of Mr McWilliam's Affidavit, I say that I attended internal meetings only on request when it was relevant to talk about revenue. Following these internal meetings, a series of meetings have been held with Foxtel, the AFL and Network Ten, none of which I have attended. I was not directly involved in bidding or in fronting the meetings with the AFL. At the time of my leaving the Seven Network, I had no knowledge of the bid that was going to be formulated. In particular, I had no knowledge of the methods the Seven Network intended to "exploit" to maximise its position in the bidding alliance as compared to NetworkTen's position.

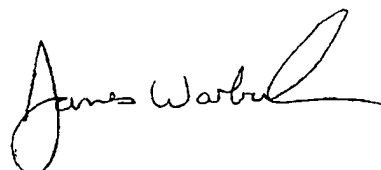
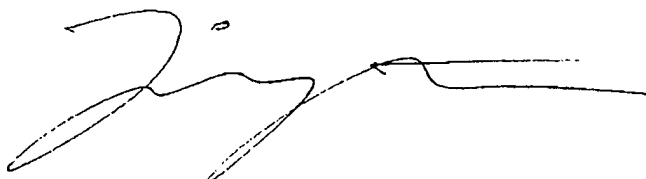
195 In response to paragraph 36 of Mr. McWilliam's Affidavit, I am aware of the scheduling considerations and revenue analysis that has been performed, as well as the overall revenue of the free to air games, however the majority of meetings I have attended have been specifically around our schedule and the associated revenue in attempting to work out a bid. At no stage have I been privy to the bidding agreement with Network Ten other than knowing that an agreement existed.

196 In response to paragraph 37 of Mr McWilliam's Affidavit, I reject the claim that I have unique knowledge in relation to Seven's scheduling considerations. Minister Conroy's announcements around anti-siphoning have been well documented and have clearly allowed the multi channels to be used to schedule live sport across different channels and thus maximise revenue. Notwithstanding this, there were some limitations on the scheduling of the AFL which, at the time of my departure from the Seven Network were not finalised.

197 In response to paragraph 37 of Mr McWilliam's Affidavit, I reject the inference that I worked with Mr Worner to maximise sales revenue. That work was a result of a meeting between Mr Burnette, Mr Martin and Mr Worner which Mr Lewis chaired. I had no direct involvement and although I may have received copy emails I have no present recollection of their contents. I have no knowledge of what Seven's bid was or would be at the time of my departure.

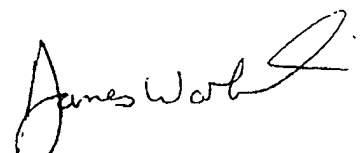


- 198 In response to paragraph 38 of Mr McWilliam's Affidavit, I refer to my statements in paragraphs 189 and 194 above and note that I had no direct involvement in the AFL negotiations.
- 199 In response to paragraphs 39 to 43 inclusive of Mr McWilliam's Affidavit, I am aware, as a result of my experience in the media industry that market conditions which are dictated by the economy and the amount of advertiser spending, demand and supply of airtime, programming and creative ideas are far more important to buying groups and clients than an individual relationship with a particular sales person or any sales person's 'likeability' or professionalism. In particular the performance of a television station in relation to its ratings strength or weakness is most crucial as, ultimately, the buying and selling of media airtime is a business transaction.
- 200 It is common business practice in the media industry, and particularly in television, in Australia, as it is elsewhere in the world, to have annual negotiations. The basic steps in these types of negotiations are, to my knowledge standardised across the television stations in Australia. In the United States they are called the "upfronts". In these negotiations, the starting point is the media buying group which accounts for approximately eighty five percent of all media expenditure booked on television. This process requires a whole of business approach. Accordingly, I deny that I have unique knowledge that I could use in my employment with Network Ten. In any given year, the process requires contributions from the Revenue Strategy Department, the Programming Department, the Sports Department and the Promotions and Marketing Departments.
- 201 The Revenue Strategy Department provides a summary of the competitive landscape and a ratings summary across all three competitive networks, as well as competitors from other mediums in the media landscape. A week by week and month by month revenue flow and an analysis of upcoming "special" events such as the Summer Olympics or Cricket World Cup are considered. This would require at least a month to six weeks' work by the entire Revenue Strategy Department in order to be completed.



- 202 The Programming Department provides a list of all the reasons why the Seven Network will continue to be strong as a result of returning hit shows or new formats which are being produced for the year ahead. Often this list would be discussed at length with Mr Leckie before any commitment is made by the Sales Department.
- 203 The Sports Department provides a summary of all the major sporting events and highlights for the coming year. In particular, an event like the Australian Open could be judged on historical ratings by media buyers or clients. The quality of seeded players both specifically and in general terms is an important factor.
- 204 The Promotions Department produces an annual reel which builds a case as to why the Seven Network considers it will be particularly strong in the year ahead. The reel is put together much like a movie trailer and is usually approximately fifteen minutes long. It would take the Promotions Department well over a month to produce each year's reel.
- 205 The Marketing Department assists with the development of the theme of the materials for a particular year as a way of creating a 'label' for the year. For example, in 2011 the Seven Network's label was "One Place".
- 206 The process outlined in paragraphs 200 to 205 above involved, and always will involve, an all of business approach. It was not, nor will it ever be, a one person job. For the coming year 2012, the process has not even begun as at 2 March 2011.
- 207 In terms of actual negotiations, the process resembles a tender and one made by the media buying group to all of the television networks. That is, all networks get the same brief:

- the media buying group gives all media owners a brief;
- this brief gives an indication of the spend for the coming year;
- the brief gives an indication of the demographics (age groups) and weighting of the media group's spend;

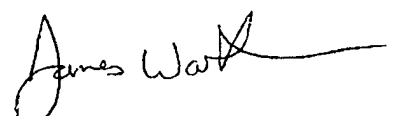
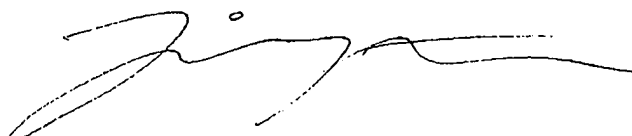


- the brief highlights any trading issues that a group has had over the past year of the contract;
- the brief reviews the ratings performance of the network predominately across Zone 1 (also referred to as peak viewing 1800-2230) as well as other zones of interest such as women's daytime. Zone 1 accounts for approximately ninety percent of a network's revenue;
- The brief usually indicates a required response and likely outcome in share delivery and expectation of a rate increase or decrease.

208 Following the process outlined in paragraph 213, it is then the media owner's responsibility to respond in a fair and open market trading environment with a proposal to the media buying group. In Australia we have five major media buying groups, Aegis (Mitchell Media and Carat), Opera (OMD and PHD), GroupM (Mindshare, Maxus, Media Edge, Mediacom), MediaBrands (Universal McCann and Initiative) and Vivaki (Starcom and Zenith Optimedia). With the exception of GroupM, which is negotiated on a fiscal calendar, the groups negotiate on a calendar year basis.

209 The process involved for a television station to deliver its response is one which in the case of the Seven Network requires many employees who prepare reports and contributions. It is an iterative process that occurs without fail every year and involves jockeying for share gain and jockeying between buyer and seller over what is perceived to be a reflected rate increase based on economic conditions or ratings performance. The job of a sales person is to sell 'tomorrow's ratings', being the programmes that are coming up in the schedule to demonstrate a fit between a client and a programme and to assure the 'market' that the network we will continue to be number one thereby making their expenditure with the network money well spent. I was not involved in each of the steps of such iterative process, rather, I would only become involved if I was asked to. I do not retain knowledge of the day to day processes or the figures involved in these processes

210 Buyers and clients look at trends and the consistency of a network. This can be evidenced throughout the 90's as publicly reported by KPMG when the Nine Network was number one in ratings and had the highest share or revenue. Since 2007 when the Seven Network surpassed Nine to take that mantle as number one



in audience and in revenue terms and to achieve as number one network a premium on ratings as against revenue shares.

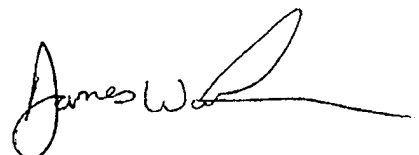
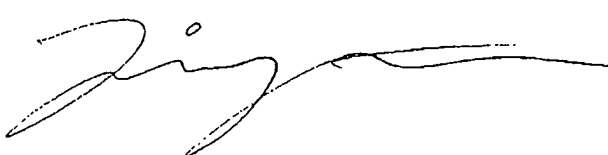
211 Paragraph (c) in section 4 on page 33 of the EM states:

"Advertising airtime on FTA (free to air) television is predominately sold on the basis of ratings. As such, Seven Network's number one audience share position has translated into a higher share of total advertising revenues compared with the other two major commercial stations. Seven Network has held the greatest market share of total metropolitan advertising revenue from December 2007 to June 2010"

212 ~~In my opinion, the notion that I could convince a client to change their spending patterns just because I had become CEO of Ten is laughable. The Seven Network's sales team is well established and a highly performing team and has been for some time.~~

213 In addition to my statements above regarding the nature of negotiations in the media industry, it is important to note that, whilst I may have been the Head of Sales, Mr Burnette was appointed the Network Director of Sales (replacing myself) in July 2008. He is responsible for and, during the term of my employment, reported to me on all matters in relation to television revenue. Mr Burnette has been with the Seven Network for more than 20 years and has extensive market relationships and experience in every facet of the business. It is for this reason that I have frequently suggested that Mr Burnette would be a suitable replacement for me at the conclusion of my contract.

214 From 2008 I no longer maintained a one hundred percent focus on selling television revenue. I assumed responsibility for three additional divisions (Pacific Magazines sales, Yahoo 7 Sales and Hybrid Television Services, Licensee of TiVo in Australia). In addition, I joined three industry boards (Free TV, Freeview and OzTam) and two company boards as Chairman of Hybrid TV and board director of Yahoo 7. Whilst I was still responsible for television revenue, these responsibilities

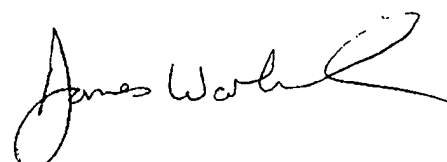


removed me from day to day operations I had been performing since joining the Seven Network in 2003 and became the responsibility of Mr Burnette.

215 Mr Burnette has at his disposal a senior management team which includes a number of department heads as well as State Sales Directors who have extensive industry experience and hold key relationships in the market. This team has extensive experience having been with the Seven Network in most cases for ten or more years.

216 The sales team as it stands today has incredible depth, knowledge and the relationships with the ratings to back them up:

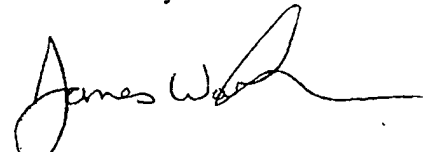
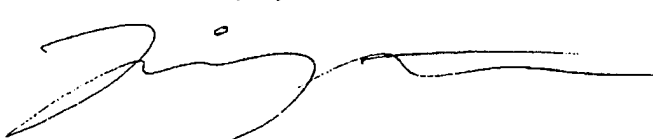
Employee	Tenure (approx)
Kurt Burnette – Acting Chief Sales & Digital officer	20 years plus
Jenny Hosie – Integrated Sales Director – SMG Red	3 years (2 previously Yahoo7)
Adam Elliot – Sydney Sales Director	15 years
Peter Charles – Melbourne Sales Director	10 years
Susan Davis – Brisbane Sales Director	15 years
Stephen Woolley – Adelaide Sales Director	7 years
Damian Hampson – Perth sales Director	10 years
Anne Sanders – Director of Commercial Inventory	15 years
Isobel Kerr – Head of Research	8 years
Kerry Baker – Head of Revenue Strategy	5 years
Lisa Squillace – Sales Manager, Multi Channels	1 year
Andrew Nichols – Sydney Sport Manager	4 years
Pat Maloughney – Melbourne Sport Manager	4 years
Karen Letica – Client Services Director	5 years

- 217 In addition, Mr. Leckie has over forty years of experience from both the Nine and Seven Networks and has extensive relationships in the market. ~~Recent media reports indicate that since the termination of my employment with the Seven Network, Mr. Leckie has mobilised to 'shore up' all the existing business relationships. An article from the Sydney Morning Herald on 7 March 2011, relating to Mr Leckie's attempts to reassure media buyers is behind Tab 32 of JRW4.~~
- 218 Over and above the structure outlined above Mr. Stokes has long term established relationships with clients and with the major media buyers. The majority of the media buyers who hold key positions and make decisions on spend allocation as well as approximately fifteen of Seven's top fifty clients have spent time with Mr Stokes as his guest at Olympic Games hospitality trips most recently at the 2008 Beijing Summer Games. ~~The unique relationship that advertisers and media buyers enjoy with an owner stands above all other relationships in the organisation.~~
- 219 ~~The Seven Network has an extensive footprint in the market and more importantly the experience to continue to deliver advertising revenue without interruption,~~
- 220 In addition, in my role as CEO at Network Ten, I will not be in the market representing advertising sales as I was at the Seven Network.
- 221 I refute the contents of paragraphs 45 and 46 of Mr McWilliam's affidavit as an inaccurate statement of events. The conversations that took place between Mr McWilliam and myself on 2 March 2011 transpired in the manner set out in paragraph 61 above.

Response to Affidavit of Samantha Maree Liston (nee Renwick) sworn 22 March 2011

- 222 I have been provided with a copy of Samantha Maree Liston (nee Renwick)'s Affidavit affirmed 22 March 2011 ('Ms Liston's Affidavit')
- 223 In response to paragraph 8 of Ms Liston's Affidavit, I state that my understanding of my contract of employment with the Seven Network was for a fixed three year term.



224 In response to paragraphs 15 to 28 inclusive of Ms Liston's Affidavit, I refer to my statements in paragraphs 69 to 87 above.

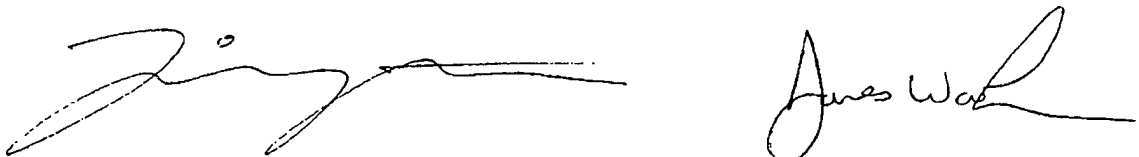
225 In response to paragraph 39 of Ms Liston's Affidavit, I deny that I was involved in the confidential negotiations of the contracts between the Seven Network and Mr Worner or any of Seven's highest profile television personalities. The only knowledge I have of Mr. Worner's contract is that both Mr. Stokes and Mr. Leckie have told me in my personal contract negotiations that they are trying to re-sign Mr Worner. The only Seven personality whose contract negotiations I was aware of was Mr. Larry Emdur ('**Mr. Emdur**') as he was part of The Morning Show and I was asked to assist. I did not actually do anything in this regard. I did negotiate a contract with Ms Sally Williams ('**Ms Williams**') for our Focus Series advertorials with IMG. Other than Mr Emdur and Ms Williams, I have had no other involvement in the negotiation of contracts for employees outside the Seven Network's sales team.

226 In response to paragraph 40 of Ms Liston's Affidavit, I had only had one meeting with Ms Griffiths prior to my departure from the Seven Network. I had neither seen nor read the revenue budgets or share targets for any of our divisions before or after my departure from Seven. Mr. Burnette was responsible for all budgeting across the Seven Network, including both expenditure and revenue. The only costs I was directly responsible for were mine, Ms Barron's and my direct reports, being the Sales Directors, who were also on fixed term contracts.

227 In response to paragraph 44 of Ms Liston Affidavit, as noted in paragraph 213 above, I had on numerous occasions urged Mr Leckie and Mr Stokes to re-sign Mr. Burnette.

228 In response to paragraph 45 of Ms Liston's Affidavit I requested a meeting with Ms Liston having been told to do so by Mr Leckie.

229 I deny that the meeting set out in paragraphs 46 and 47 inclusive of Ms Liston's Affidavit transpired in the manner suggested and I deny the conversations took place as set out. The meeting came about and the conversations occurred as set



out in paragraphs 62 to 64 above. I deny that Ms Liston made any reference to 'gardening leave' or the continuation of my employment during this meeting. I did not receive a letter from Mr. Leckie, or Ms. Liston.

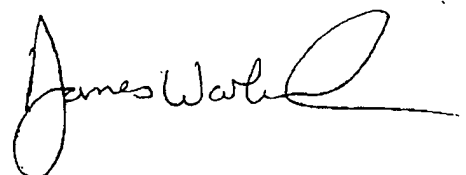

230 In response to paragraph 49 of Ms Liston's Affidavit, from the time I departed the Seven Network on 2 March 2011, I did not engage the facility on the IPAD which operated a remote connection to Seven's network server. Whether after I returned my Blackberry which could be used to access my email account on Seven's server, any other person has accessed that, I do not know. In fact, the computer on my desk, or the duplication of my account on Ms Barron's computer could have been used.

231 In response to paragraph 51 of Ms Liston's Affidavit, I say at no stage did Ms Liston assert that my employment with the Seven Network was continuing.

232 In response to paragraphs 52 to 61 inclusive, I say that in no point in my meetings with Mr Leckie or Ms Liston on 2 March 2011 was it ever suggested to me "gardening leave" was appropriate to my circumstances or that I was in fact being asked to go on "gardening leave". I do not accept the interpretation sought to be placed upon my contract in paragraph 61. In so far as there is reference to Mr Bellamy, I refer to my evidence in answer to Mr Burnette's Affidavit. In so far as Ms Izzard is concerned, I refer to my evidence in answer to Ms Baker's Affidavit. In so far as Mr Stephenson is concerned, given he was leaving the Seven Network to join an online media company, it was not as much of an issue, however after having discussions with the CEO of Yahoo 7 at the time, he was required to honour his fixed term contract. In so far as Ms Healy is concerned, I was supporting Ms Baker's suggestion in Mr Burnette's absence with knee surgery.

Response to the Affidavit of Amanda Curr sworn 21 March 2011

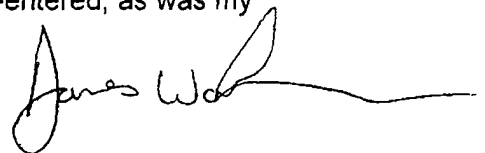
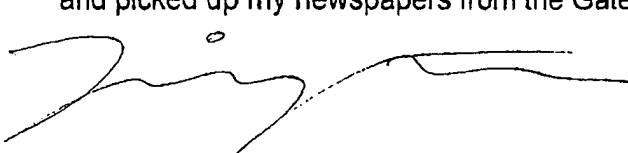
233 I have been provided with a copy of the Affidavit of Ms Amanda Curr sworn 21 March 2011 ('Ms Curr's Affidavit').



- 234 In response to paragraph 5 to Ms Curr's Affidavit, I refer to my statements in paragraph 154 above.
- 235 In response to paragraph 7 of Ms Curr's Affidavit, I refer to my statements in paragraph 156 above.
- 236 In response to paragraph 11 of Ms Curr's Affidavit, as Ms Curr has not revealed the documents she was asked to search for, I am unable to comment on the location or existence of those documents.
- 237 In response to paragraph 15 of Ms Curr's Affidavit, I refer to paragraph 107 (Ms Barron) above.
- 238 In response to paragraph 17 of Ms Curr's Affidavit I refer to paragraph 153 above.

Response to the Affidavit of Scott McIlvenna sworn 22 March 2011

- 239 I have been provided with a copy of the Affidavit of Mr Scott McIlvenna sworn 22 March 2011 ('**Mr McIlvenna's Affidavit**').
- 240 In response to paragraph 18 of Mr McIlvenna's Affidavit, I confirm that the black Lexus shown in the photograph is my vehicle.
- 241 In response to paragraph 19 of Mr McIlvenna's Affidavit, I confirm that I left the Seven Network's premises at approximately 6:52am. I went to the cafe across the road from the Seven Network's premises and bought a coffee. It was my practice every morning to walk out the boom gate and visit the cafe directly across the street.
- 242 In response to paragraph 20 of Mr McIlvenna's Affidavit, I confirm that I returned to the Seven Network's premises at approximately 6:57am having purchased a coffee and picked up my newspapers from the Gate House. I re-entered, as was my



practice every morning, via the car park due to the main foyer being locked until security started at approximately 7am. The Gate House was the only way to enter the building after hours via security and the car park access doors.

243 In response to paragraph 23 of Mr McIlvenna's Affidavit, I confirm that I left the Seven Network's premises at approximately 7:42am.

244 In response to paragraph 24 of Mr McIlvenna's Affidavit, I confirm that I returned to the Seven Network's premises at approximately 9:15am via the main foyer

245 In response to paragraph 26 of Mr McIlvenna's Affidavit, I confirm that I left the Seven Network's premises at approximately 9:40am.

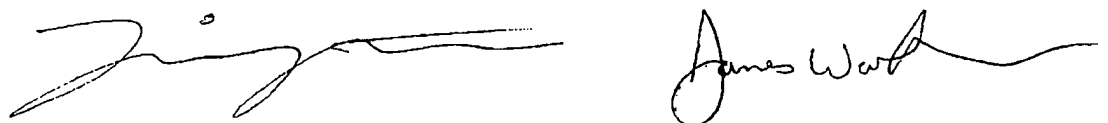
246 In response to paragraph 27 of McIlvenna's Affidavit, I confirm that I returned to the Seven Network's premises at approximately 10:25am following my meeting with Mr Murdoch. I entered via the car park as I put my signed contract of employment with Network Ten in my car before going to my office.

247 In response to paragraph 32 of Mr McIlvenna's Affidavit, I confirm that I left the Seven Network's premises, in accordance with Mr Leckie's directions at approximately 3:10pm on 2 March 2011. I used the fire stairs to exit the building as was my normal practice at the conclusion of every day. My office on level 3 adjoined the level 3 boardroom and the fire escape was within that boardroom. Unless there was a serious meeting in place, I would often interrupt on the way out. I did not need my security pass to exit via the fire stairs.

Response to the Affidavit of Kurt Burnette sworn 23 March 2011

248 I have been provided with a copy of the Affidavit of Mr Burnette sworn 22 March 2011 ('Mr Burnette's Second Affidavit').

249 The sling files behind my desk were almost exclusively used for personal documents and were used for the 'current files' and work I was performing in any



given week as well as some historical records such as market growth and general market information which I would refer to in meetings very occasionally.

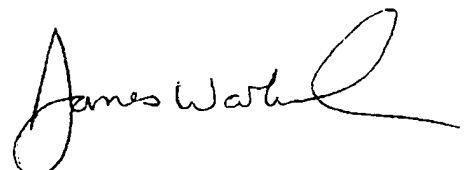
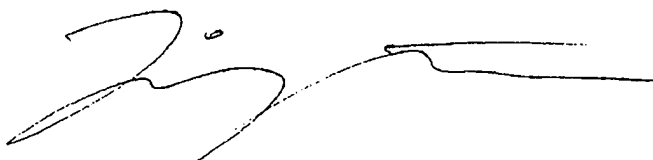
250 In addition, I had a number of industry presentations which I created as printed copies only which I used as a template to make others. Ms Barron or my previous Executive Assistant, Ms Renee Marin, had every single presentation stored on their drives as I did not create presentations in PowerPoint but rather on paper and usually at home. Then I would give them to Ms Barron or Ms Marin to finalise with as many images as possible.

251 I was not a keeper of information. I would use records on either a daily or monthly basis and then throw them out. Our business moved quickly and historical information quickly lost its relevance. As a result, Ms Barron kept all the files I needed or else the information I required was provided by Mr. Burnette or or Ms Baker not by my office.

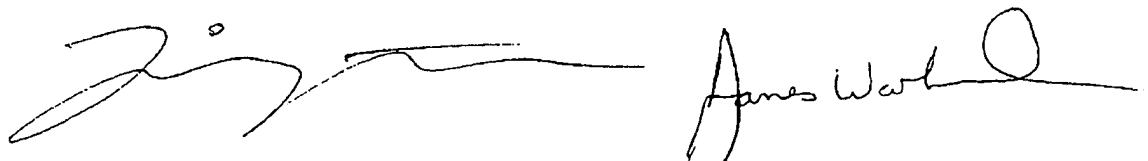
252 My personal files located in the swing files were:

- Building and renovation file – records of our current build
- Rental agreements
- Accountant's records
- Insurances – car, home, personal
- Bank accounts
- Boat file
- Superannuation trust
- Tax File
- Seven Contracts
- MEP File
- CV
- Personal Seven correspondence
- Birth Certificates
- Passports
- Soccer Team registrations
- Blood tests – blood donor records
- Doctor's Records

No one ever accessed these files other than myself.



- 253 In addition to the working documents located in my office at the Seven Network's premises, I also had a historical file and some major works like the Seven West Deal I was working on at home. I usually left the office at around 5pm each day so I could see my kids before they went to bed each night. This often meant that I had to do a lot of phone work on my blackberry or refer to files at home for either internal or external reasons. The vast majority of my presentations were constructed on paper at home and then brought into the office for Ms. Barron to create.
- 254 In response to paragraph 3 of Mr Burnett's Second Affidavit, I deny that these documents were taken when I left the office on 2 March 2011. The documents surrendered to Johnson Winter Slattery Lawyers by my legal representatives, Stevens & Associates Lawyers, were a collection of files from my home files, one file from my car as well as a number of items from the sling files in my office.
- 255 In response to paragraph 4 of Mr Burnette's Second Affidavit, behind **Tab 33** of JRW1 is the list of documents surrendered to Johnson Winter Slattery Lawyers on or about 21 March 2011. This list has been marked to show the documents stored at my home or in my car prior to their return. All of the documents appearing on the list were returned to Stevens & Associates Lawyers on 3 March or 4 March 2011 and I have had no access to those documents since that time.
- 256 Of the forty six items which were surrendered (and not copied or shown to any other party), many of the documents are either market presentations or contain information that is already in the public domain.
- 257 In response to paragraph 7 of Mr Burnette's Second Affidavit, the revenue sheet to which Mr Burnette refers contains information up until June 2010 which is in the public domain and openly released to the market by Free TV under the KPMG system. An example of the report produced by KPMG is the report contained in Exhibit KB2 of Ms Baker's Affidavit.
- 258 The data on the revenue sheet referred to in paragraph 257 above concludes June 2011. The relevance of the revenue sheet is in the fact that it is produced daily. The

A handwritten signature in black ink, appearing to read 'James Walsh', is written across the bottom of the page. The signature is fluid and cursive, with a large loop at the end.

daily sheet shows what advertising was booked on the previous day. The flows of revenue and market dynamics are such that the market can change from one week to the next. In the case of the revenue sheet dated 28 February 2011, the months of March and April would be in focus, with a weekly breakdown, but far from concluded. Future months such as May and June would not be in focus due to the fact that the market works on four to six week cycles. As noted previously in this Affidavit, without access to these reports, I cannot remember the specific detail of the data presented. Further, unless you are 'in the market' you lose a feel very quickly for the demand cycle and revenue flows.

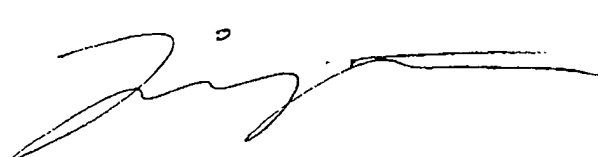
259 I also refer to my statements in paragraph 126 and 127 in relation to the reports produced by SMI and Adex.

260 In response to paragraph 8 of Mr Burnette's Second Affidavit, the SMG Red materials were part of my home file as I was working on a synergies document for the Seven West Deal as noted in paragraph 186 above. These documents were not taken from my office. The information in the document was purely a tracking document to keep tabs on what SMG Red represented of SMG's total revenue. My memory is that the contents reflect about ten per cent of the total SMG revenue.

261 The reporting on these items was formatted in respect of client, the spend and then the spend divided by media type, being Seven, Pacific Magazines and Yahoo 7. In these reports there are no details on rates or matters that can be used to undercut Seven as Mr Burnette suggests. In fact, this information is widely available on Nielsen AdEX, which both the Nine Network and Network Ten subscribe to.

262 In response to paragraphs 9 and 10 of Mr Burnette's Second Affidavit, this presentation was also in my home file as I was working on synergies with SMG Red in connection with the Seven West Deal as noted in paragraph 186 above.

263 SMG Red Works 2011 was an extension of a Quarter 1 proposal to the market that had been presented to the market from 2007. Whilst it was different in format to previous presentations, the Fast Start concept referred to in the packages was not new. The SMG Red Works project is the project referred to in the media article



behind **Tab 34** of JRW1. The details of SMG Red Works are therefore in the public domain.

- 264 In response to paragraph 11, the Toyota presentation was located in my car as it had been in my suit jacket pocket. It contained PowerPoint presentation and notes for my presentation. On the next occasion that I wore that suit I discovered that I had left the presentation in the suit pocket. I placed the presentation in the side pocket of my car and then proceeded to forget about it until Stevens & Associates Lawyers advised me to ensure I had no documentation belonging to the Seven Network or SMG in my possession on 3 March 2011. I surrendered my only copy of the presentation to Stevens & Associates Lawyers on 4 March 2011 and have not had access to the presentation since this time.
- 265 In response to paragraph 12 of Mr Burnette's Second Affidavit, I refer to my comments in paragraphs 172 to 174 above. In addition I say that to have not acted in a year in the fastest moving medium (Digital) renders the document irrelevant. The document is a year old and the landscape has completely changed in this time with new channels now in operation.
- 266 In response to paragraph 13 of Mr Burnette's Second Affidavit, I worked for the Seven Network for seven and half years. During that time I have always maintained a Seven owned phone and did not have a personal phone. I did not maintain a soft copy or hard copy records of my contact list. The list was printed to get the numbers and contact details of my family and friends as well as a number of important contacts, such as my doctor and other personal professional services, as well as managing my son's soccer team with the season start in a few weeks. I surrendered the list as advised by Stevens & Associates on 4 March 2011 and have not referred to it since.

SWORN at

SYDNEY

Signature of deponent

Signature of witness

Name of witness

Address of witness

Capacity of witness

Nicholas Peter Stevens

Level 4, 74 Pitt Street Sydney NSW 2000

Solicitor

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.