

Form 59
Rule 29.02(1)

Affidavit of Rebekah Giles

NSD103 of 2023

Federal Court of Australia
District Registry: NSW
Division: General

BRUCE LEHRMANN

Applicant

NETWORK TEN PTY LIMITED (ACN 052 515 250) & Anor

Respondents

Affidavit of: **Rebekah Giles**
Address: 135 King Street, Sydney NSW 2000
Occupation: Solicitor
Date: 1 May 2024

I, Rebekah Giles of 135 King Street, Sydney NSW 2000, say on oath:

1. I am a principal of Giles George. I act for Taylor Auerbach in relation to his involvement in this proceeding as a witness.
2. I am authorised to make this affidavit on behalf of Mr Auerbach.
3. I make this affidavit from my own knowledge save where I have stated otherwise. Where statements are not made from my own knowledge, I depose to the subject matter of those statements to the best of my information and belief after making reasonable enquiries and on the basis of the source of information set out in this affidavit.
4. This affidavit is sworn in support of Mr Auerbach’s Interlocutory Application dated 30 April 2024 in which he seeks to recover his costs incurred in complying with:

Filed on behalf of (name & role of party)	Taylor Auerbach, witness to the proceedings
Prepared by (name of person/lawyer)	Rebekah Giles, Giles George
Law firm (if applicable)	Giles George
Tel	1300 163 662
Fax	
Email	rebekah.giles@gilesgeorge.com.au
Address for service (include state and postcode)	Level 7, 135 King Street Sydney NSW 2000

- (a) a subpoena to attend to give evidence addressed to him which was dated 3 April 2024 (**Subpoena to Give Evidence**) and served by the First Respondent; and
- (b) a subpoena to produce addressed to him which was dated 2 April 2024 (**Subpoena to Produce**) and served by the Applicant.

SUBPOENA TO PRODUCE

5. Mr Auerbach swore four affidavits in this proceeding on 30 March 2024, 31 March 2024, 2 April 2024, and 3 April 2024.
6. At approximately 12.07pm on 3 April 2024, I received an email from the Applicant's solicitors, Mark O'Brien Legal, serving the Subpoena to Produce. A copy of this email and the Subpoena to Produce is at pages 6 to 12 of Exhibit RG-1. The Subpoena to Produce was returnable at 9.30am on 4 April 2024.
7. At approximately 6.17pm on 3 April 2024, I sent, by email, a letter to Mark O'Brien Legal (**3 April Letter**). A copy of my 3 April Letter is at page 13 of Exhibit RG-1. In that letter, I sought the Applicant's agreement to limit the scope of paragraphs 1, 2 and 3 of the Subpoena to Produce – as follows:
- (a) Paragraph 1 of the Subpoena to Produce sought: *"One copy of all documents evidencing and/or referring to and/or relating to any allegation of misuse of funds by you while employed by [Seven Network (Operations) Limited (**Seven**)]"*. I suggested in my 3 April Letter that paragraph 1 of the Subpoena be limited to documents evidencing and/or referring to and/or relating to any allegation of misuse of funds by Mr Auerbach relating to the Applicant while Mr Auerbach was employed by Seven.
- (b) Paragraph 2 of the Subpoena to Produce sought: *"One copy of all documents referring to and/or relating to the ceasing of your employment with Seven including any claim against Seven (whether prior to or after your employment with Seven) for psychological injury"*. I suggested in my 3 April Letter that paragraph 2 of the Subpoena be varied to: *"One copy of all documents referring to ~~and/or relating to~~ the ceasing of your employment with Seven including all documents referring to any claim against Seven (whether prior to or after your employment with Seven) for psychological injury"*.
- (c) Paragraph 3 of the Subpoena to Produce sought: *"One copy of any medical report referring to and/or relating to any psychiatric and/or mental condition and/or psychological injury suffered by you"*. I suggested in my 3 April Letter that paragraph 3 of the Subpoena to Produce be limited as to time *"30 August 2021 to date"*.




8. At approximately 7.57pm on 3 April 2024, I received an email from Monica Allen of Mark O'Brien Legal in reply to my 3 April Letter. A copy of that email is at page 14 of Exhibit RG-1. In Ms Allen's email, she stated that:
- (a) *"The Applicant considers the form of the Subpoena [to Produce] to be proper. It is pressed."*
- (b) The Applicant *"will not oppose an order that he pay [Mr Auerbach's] reasonable expenses incurred in complying with the Subpoena [to Produce]."*
9. At 9.30am on 4 April 2024, I appeared before Justice Lee in answer to the Subpoena to Produce. On behalf of Mr Auerbach, I produced to the Court documents in response to paragraphs 1, 3 and 5 of the Subpoena to Produce as well as documents in partial response to paragraph 2 of the Subpoena to Produce (**Initial Production**). After discussion about the scope of paragraph 2 of the Subpoena to Produce (at T2744.25 – T2746.22), the Applicant, through his Counsel, agreed to vary paragraph 2 of the Subpoena to Produce as suggested in my 3 April Letter.
10. In addition to the Initial Production, further tranches of documents were produced to the Court by Giles George in further response to the Subpoena to Produce at 1.43pm, 2.08pm and 10.51pm on 4 April 2024. In total, approximately 255 documents were produced to the Court in response to the Subpoena to Produce from over 1,000 documents which were reviewed.

Expenses incurred by Mr Auerbach

11. Mr Auerbach's costs incurred in complying with the Subpoena to Produce are \$38,145.25 (inclusive of GST).
12. A summary of the work undertaken by Giles George in order to respond on behalf of Mr Auerbach to the Subpoena to Produce is as follows:

Staff member	Title	Hourly rate	Hours	Total
Rebekah Giles	Principal	\$900.00	14.80	\$14,652.00
Jeremy Marel	Special Counsel	\$600.00	14.80	\$9,768.00
Bronte Callaghan	Associate	\$475.00	4.00	\$2,090.00
Petar Strkalj	Associate	\$475.00	21.70	\$11,338.25
Elysia Cook	Paralegal	\$300.00	0.90	\$297.00

13. I regard the total costs of complying with the Subpoena to Produce as reasonable in the circumstances, having regard to the following:




- (a) The Subpoena to Produce was served by email at 12.07pm on 3 April 2024 and was returnable at 9.30am on 4 April 2024. The urgency with which production was required meant it was necessary for several lawyers, working simultaneously, to be involved in the review and production process.
- (b) Mr Auerbach was required to attend Court to give evidence on 4 and 5 April 2024. Accordingly, in the evening of 3 April 2024 and the morning of 4 April 2024, he was required to prepare to give evidence. From the afternoon of 4 April 2024, and into 5 April 2024, he was being cross-examined. This added to the urgency with which documents needed to be reviewed for production and provided to Mr Auerbach so that he could give instructions and prepare his evidence in a very short time frame.
- (c) The Subpoena to Produce required production in response to five separate, and broad, categories of documents.
- (d) In my 3 April Letter, I requested the Applicant's agreement to narrow the scope of the Subpoena to Produce, as, I said, "*it has no doubt inadvertently captured a wide range of documents in respect of which compliance would be oppressive*". As set out above, I proposed a revised wording to limit the scope of paragraphs 1, 2 and 3 of the Subpoena to Produce but the Applicant refused (until the morning of 4 April 2024) to agree to any narrowing of the scope of the Subpoena to Produce.
- (e) The scope of the Subpoena to Produce was very wide:
- i. With the exception of category 5, none of the categories were limited by time.
 - ii. Four of the categories required production of all documents 'relating to' particular matters (for example, all documents 'relating to any allegations of misuse of funds' (category 1), all documents 'relating to the ceasing of [Mr Auerbach's] employment with Seven' (category 2), etc). This required an evaluative judgment to be made as to whether particular documents related to the subject matter specified in paragraphs 1-4. This required lawyers employed by Giles George to review all documents, including messages which I refer to further below, over an unspecified time period to identify those which responded to the categories.
 - iii. As set out in my 3 April Letter, paragraph 2 of the Subpoena to Produce required Mr Auerbach to search for all underlying documents which gave rise to his claim against Seven. This category was only confined in Court in the morning of 4 April 2024 by which time extensive searches and review had already commenced.



- iv. Responding to category 3 of the Subpoena to Produce required Giles George to review medical records to ascertain which documents referred to and/or related to 'any psychiatric and/or mental condition and/or psychological injury' suffered by Mr Auerbach. As with categories 1 and 2, this required lawyers from Giles George to review the medical records to make an evaluative assessment as to whether they responded to the category. Mr Auerbach produced a total of 5 documents, comprising of 24 pages in response to category 3 of the Subpoena to Produce.
- v. Category 4 of the Subpoena to Produce required production of all communications between Mr Auerbach and either Mark Llewellyn and/or Steve Jackson 'relating to or referring to' your client 'and/or the Lehrmann Spotlight Programmes'. This required Giles George to review all communications to and from Mr Llewellyn or Mr Jackson, over many years, which equated to many hundreds of pages, in order to identify which messages related to or referred to Mr Lehrmann and/or the Lehrmann Spotlight Programs and therefore fell within the scope of category 4 and which did not. Responding to this paragraph of the Subpoena to Produce was particularly burdensome.
- vi. Mr Auerbach extracted from his mobile phone, and provided to Giles George, all text messages in his possession: A) between himself and Mr Jackson; and B) between himself, Mr Jackson and Mr Llewellyn. The messages between Mr Auerbach and Mr Jackson comprised over 900 pages of messages, with multiple messages appearing on each page. The messages between Mr Auerbach, Mr Jackson and Mr Llewellyn comprised approximately 100 pages of messages. In addition, Mr Auerbach also provided to Giles George approximately 100 pages of screen-shots of messages between himself and Mr Llewellyn, which comprised approximately a further 100 pages of messages.
- vii. Over 1000 pages of messages had to be manually reviewed because, although it was possible to electronically perform targeted word searches (for example, of 'Bruce' or 'Lehrmann'), any such searches would only have identified messages referring explicitly to Mr Lehrmann and would not have identified messages which, whilst not referring explicitly to him, nonetheless related to him and/or the Lehrmann Spotlight Programmes and therefore needed to be produced. An initial review was conducted by Bronte Callaghan and Petar Strkalj, followed by a second level review by myself and Jeremy Marel to ensure that the message identified fell within the scope of category 4 of the Subpoena to Produce.



viii. Category 5 of the Subpoena to Produce required Giles George to review Mr Auerbach's social media posts from 18 December 2022 to date. This included a review of Mr Auerbach social media accounts on:

1. Facebook;
2. Instagram; and
3. X.

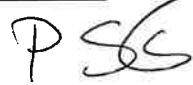
(collectively, **Mr Auerbach's Social Media Accounts**)

This included a review of all posts that are currently available for publication on Mr Auerbach's Social Media Accounts, as well as reviewing deleted posts that were previously preserved by Mr Auerbach and provided to Giles George.

- (f) Responding to the Subpoena to Produce on behalf of Mr Auerbach also required Giles George to liaise with Mr Auerbach's former solicitor, Dianne Banks of Gilbert + Tobin, and review her files. It was necessary for the documents to be separated into documents which were 'without prejudice', documents which were privileged, and documents which were neither without prejudice nor privileged.
- (g) Responding to paragraph 4 of the Subpoena to Produce also required Giles George to liaise with the solicitors acting for Seven as to whether they made any claim for privilege in respect of any of the documents being produced in response to paragraph 4 (as the communications to be produced were between then employees of Seven and, it was thought, may have included communications which might reveal sources, such that the documents would fall within the privilege under s 126K of the *Evidence Act*).
- (h) In light of the high volume of documents requiring review, the evaluative assessment required for many of these documents and the short time for compliance, I personally undertook a significant portion of the document review required to comply with the Subpoena to Produce, in addition to instructing junior solicitors employed by Giles George. For similar reasons, I regularly liaised with Mr Auerbach, orally and in writing, to advise on the nature of searches he would need to undertake in order to comply with the Subpoena to Produce. I corresponded with the First Respondent, the Court and Addisons Lawyers (being Seven's solicitors in relation to the potential claim for privilege traversed in paragraph 13(g) above). I appeared on behalf of Mr Auerbach on the return date of the Subpoena to Produce, for which I undertook preparatory work.

Correspondence with O'Brien Legal

14. On 19 April 2024, Mr Strkalj, a solicitor employed by Giles George, sent a letter, by email, to Mark O'Brien Legal, a copy of which is at pages 20 to 22 of Exhibit RG-1. In that letter,

Mr Auerbach offered to accept payment by Mr Lehmann of Mr Auerbach's costs of complying with the Subpoena to Produce in the sum of \$36,000 inclusive of GST.

15. On 22 April 2024, I received an email from Paul Svilans of Mark O'Brien Legal, a copy of which is at page 23 of Exhibit RG-1. In that email, Mr Svilans stated that the Applicant did not accept Mr Auerbach's offer.
16. On 24 April 2024, Mr Marel sent an email, to Mark O'Brien Legal, a copy of which is at page 25 of Exhibit RG-1. In that email, Mr Marel gave notice to Mark O'Brien Legal that this application would be made.
17. On 30 April 2024, Mr Strkalj sent a letter, by email, to Mark O'Brien Legal, a copy of which is at page 27 of Exhibit RG-1. In that letter, Mr Auerbach offered to accept payment by Mr Lehmann of Mr Auerbach's costs of complying with the Subpoena to Produce in the sum of \$34,000 inclusive of GST.

SUBPOENA TO GIVE EVIDENCE

18. At approximately 7.58pm on 3 April 2024, I received an email from the First Respondent's solicitors, Thomson Geer, serving the Subpoena to Give Evidence. A copy of this email and the Subpoena to Give Evidence appear at pages 1-5 of Exhibit RG-1.
19. Mr Auerbach's costs incurred in complying with the Subpoena to Give Evidence are \$18,705.50 (inclusive of GST).
20. On 4 and 5 April 2024, Mr Auerbach was examined by Dr Collins KC, counsel for the First Respondent, and cross examined by Mr Richardson SC, counsel for the Applicant.
21. A summary of the work undertaken by Giles George in order to prepare for the Subpoena to Give Evidence is as follows:

Staff member	Title	Hourly rate	Hours	Total
Rebekah Giles	Principal	\$900.00	11.70	\$11,583.00
Jeremy Marel	Special Counsel	\$600.00	10.00	\$6,600.00
Petar Strkalj	Associate	\$475.00	1.00	\$522.50

22. I regard the total costs of complying with the Subpoena to Give Evidence as reasonable in the circumstances, having regard to the following:
 - (a) At the request of the First Respondent, Mr Auerbach, myself and Jeremy Marel, an employed solicitor of Giles George, attended a conference with Dr Collins KC and Thomson Geer in preparation for the giving of Mr Auerbach's evidence.
 - (b) Mr Auerbach was examined and cross-examined on 4-5 April 2024. I attended the hearing on each day to observe Mr Auerbach's evidence and advise him accordingly.

(c) During the course of cross-examination, Mr Auerbach’s credit was brought into question by Mr Richardson SC. Accordingly, it was necessary for Giles George to prepare submissions on behalf of Mr Auerbach as to why his evidence should be accepted as being persuasive, true and correct.

Correspondence with Thomson Geer

- 23. On 8 April 2024, I sent an email to Marlia Saunders of Thomson Geer, a copy of which is at page 16 of Exhibit RG-1. In that email, I proposed to “*issue Ten an invoice for our costs of preparing [Mr Auerbach’s] affidavit and attending court in response to the subpoena.*”
- 24. On 10 April 2024, I received an email from Ms Saunders in reply, a copy of which is at page 18 of Exhibit RG-1. In that email, Ms Saunders indicated that:
 - (a) the First Respondent would “*pay [Mr Auerbach’s] conduct money sufficient to meet the reasonable expenses he incurred in attending Court last week to comply with the subpoena to attend to give evidence.*”; and
 - (b) the First Respondent “*does not agree to pay any additional expenses incurred by [Mr Auerbach] unless an order is made under r 24.22 of the Federal Court Rules.*”
- 25. On 30 April 2024, I sent a letter, by email, to the Thomson Geer, a copy of which is at pages 28 to 29 of Exhibit RG-1. In that letter, Mr Auerbach offered to accept payment by the First Respondent of Mr Auerbach’s costs of complying with the Subpoena to Give Evidence in the sum of \$17,000 inclusive of GST.

Sworn by the deponent
at Sydney
in NSW
on 1 May 2024
Before me:

PSG
Signature of witness

Petar Strkalj, Solicitor

)
)
)
)
)
Signature of deponent

Exhibit "RG-1"
To the Affidavit of Rebekah Giles
Sworn 1 May 2024

NSD103 of 2023

Federal Court of Australia
District Registry: NSW
Division: General

BRUCE LEHRMANN

Applicant

NETWORK TEN PTY LIMITED (ACN 052 515 250) and Anor

Respondents

This is the exhibit marked "**Exhibit RG-1**" produced and shown to Rebekah Giles at the time of swearing her affidavit on 1 May 2024.

Before me:



.....

Petar Strkalj

Solicitor

Subject: FW: Lehrmann v Ten - subpoena to Taylor Auerbach [TGLAW-Legal.FID3782978]
Attachments: Subpoena to Auerbach 030424.pdf; RE: (NSD103/2023) Lehrmann v Network Ten & Anor [SEC=OFFICIAL]

From: O'Beirne, Conor <cobeirne@tglaw.com.au>
Sent: Wednesday, April 3, 2024 7:58 PM
To: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>; Jeremy Marel <jeremy.marel@gilesgeorge.com.au>
Cc: Saunders, Marlia <msaunders@tglaw.com.au>
Subject: Lehrmann v Ten - subpoena to Taylor Auerbach [TGLAW-Legal.FID3782978]

You don't often get email from cobeirne@tglaw.com.au. [Learn why this is important](#)

[Confidential]

Dear Rebekah and Jeremy

Attached is a soft copy of the subpoena to attend served earlier.

We have also **attached** the email from his Honour's chambers from earlier today. His Honour has directed that while the subpoena is returnable at 9.30am, he will stand down his appearance until 2.15pm.

Regards

Conor O'Beirne | Senior Associate
Thomson Geer
T +61 3 9641 8630 | **M** +61 400 994 217
Level 23, Rialto South Tower, 525 Collins Street, Melbourne VIC 3000 Australia
cobeirne@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes

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r 1.32

Subpoena to give evidence

No. NSD103 of 2022

Federal Court of Australia
 District Registry: New South Wales
 Division: General

BRUCE LEHRMANN

Applicant

NETWORK TEN PTY LIMITED (ACN 052 515 250) and another
 Respondents

To: Taylor Auerbach, c/- Giles George, Level 7, 135 King Street, Sydney NSW 2000

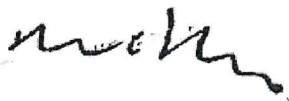
You are ordered to attend to give evidence. See next page for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

Please read Notes 1 to 8 at the end of this subpoena.

The last date for service of this subpoena is 3 April 2024. (See Note 1)

Date: 3 April 2024




Signed by a Justice of the Federal Court of Australia

Issued at the request of First Respondent, whose address for service is:

Place: Level 14, 60 Martin Place, Sydney NSW 2000

Email: msaunders@tglaw.com.au

Filed on behalf of (name & role of party)	First Respondent, being Network Ten Pty Limited
Prepared by (name of person/lawyer)	Marlia Saunders
Law firm (if applicable)	Thomson Geer
Tel	02 8248 5836
Fax	
Email	msaunders@tglaw.com.au
Address for service (include state and postcode)	Level 14, 60 Martin Place, Sydney NSW 2000

Details of subpoena

Date, time and place at which you must attend to give evidence, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 4 April 2024

Time: 9:30am

Place: Federal Court of Australia, Law Courts Building, 184 Phillip Street, Queens Square, Sydney New South Wales 2000

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

Notes**Last day for service**

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.

Applications in relation to subpoena

5. You have the right to apply to the Court:
 - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

6. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court - arrest

7. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
8. Note 7 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

5

4

Schedule

No. NSD103 of 2022

Federal Court of Australia
District Registry: New South Wales
Division: General

Respondents

Second Respondent: Lisa Wilkinson

Date: 3 April 2024

Subject: FW: Bruce Lehrmann v Network Ten Pty Ltd & Anor - Subpoena to Taylor Auerbach

From: Monica Allen <Monica.Allen@markobrienlegal.com.au>

Sent: Wednesday, April 3, 2024 12:07 PM

To: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>

Cc: Paul Svilans <Paul.Svilans@markobrienlegal.com.au>

Subject: Bruce Lehrmann v Network Ten Pty Ltd & Anor - Subpoena to Taylor Auerbach

You don't often get email from monica.allen@markobrienlegal.com.au. [Learn why this is important](#)

Dear Rebekah

Please find **attached** by way of service:

1. Subpoena to Produce to Taylor Auerbach (**Subpoena**); and
2. the Court's orders for short service of the Subpoena.

The Subpoena is returnable before his Honour Justice Lee at 9.30am tomorrow.

Kind regards

Monica Allen

Special Counsel | Mark O'Brien Legal

**MARK
O'BRIEN
LEGAL**

Level 10, 16-18 O'Connell Street, Sydney NSW 2000 Australia

T +61 2 9216 9815

E monica.allen@markobrienlegal.com.au

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W www.markobrienlegal.com.au

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Rule 1.32

Subpoena to Produce Documents

No. NSD. 103 of 2023

Federal Court of Australia
 District Registry: New South Wales
 Division: General

Bruce Lehrmann

Applicant

Network Ten Pty Limited ACN 052 515 250 and Anor

Respondents

To: Taylor Auerbach
 c/o Giles George
 Solicitors
 Level 7, 135 King Street, Sydney NSW 2000

You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See next page for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

Please read the Notes at the end of this subpoena.

The last time for service of this subpoena is **2pm, 3 April 2024**

Date: 2 April 2024



Justice Lee



Filed on behalf of (name & role of party)	Bruce Lehrmann, Applicant
Prepared by (name of person/lawyer)	Paul Svilians
Law firm (if applicable)	Mark O'Brien Legal
Tel +61 2 9216 9827	Fax -
Email	paul.svilians@markobrienlegal.com.au
Address for service (include state and postcode)	Level 10, 16-18 O'Connell Street, Sydney, New South Wales 2000

[Version 3 form approved 3/09/2014]

Issued at the request of Bruce Lehrmann, whose address for service is:

Place: c/- Mark O'Brien Legal, Level 10, 16-18 O'Connell Street, Sydney, New South Wales, 2000

Email: paul.svilans@markobrienlegal.com.au and monica.allen@markobrienlegal.com.au

Details of subpoena

You must comply with this subpoena by attending Court personally to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents at **9.30am on 4 April 2024** before Justice Lee at the Federal Court of Australia, New South Wales District Registry, Level 22, Law Courts Building, 184 Phillip Street, Queens Square Sydney NSW 2000.

Schedule of Documents

In this schedule “document” has the same meaning as it does in the *Evidence Act 1995* (Cth), namely any record of information, and includes:

- (a) anything on which there is writing, or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
- (d) a map, plan, drawing or photograph.

Lehrmann Spotlight Programmes means the 7News Spotlight programmes containing an interview with Mr Bruce Lehrmann broadcast on 4 June and 13 August 2023.

Related Body Corporate has the same meaning as set out in section 50 of the *Corporations Act 2001* (Cth).

Seven means Seven Network (Operations) Limited and any Related Body Corporate of Seven Network (Operations) Limited involved in the commission, production or broadcast of the Lehrmann Spotlight Programme.

The documents and things you must produce are as follows:

1. One copy of all documents evidencing and/or referring to and/or relating to any allegation of misuse of funds by you while employed by Seven.
2. One copy of all documents referring to and/or relating to the ceasing of your employment with Seven including any claim against Seven (whether prior to or after your employment with Seven) for psychological injury.
3. One copy of any medical report referring to and/or relating to any psychiatric and/or mental condition and/or psychological injury suffered by you.
4. One copy of all communications passing between you and any of the following:
 - a. Mark Llewellyn; and/or
 - b. Steve Jackson;

relating to or referring to the applicant and/or the Lehrmann Spotlight Programmes (as referred to in your affidavit sworn 30 March 2024 in this proceeding).

5. One copy of all social media posts (whether still online or deleted) posted by you from 18 December 2022 to present date concerning the applicant, Steve Jackson, Mark Llewellyn, Seven and/or this proceeding.

Notes**Informal service**

1. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Applications in relation to subpoena

2. You have the right to apply to the Court:
 - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

3. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court - arrest

4. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.

Your ref /

Our ref / 24GG0681

Date / 3 April 2024

Sent by / Email

Giles / George

By Email: paul.svilans@markobrienlegal.com.au
monica.allen@markobrienlegal.com.au

Paul Svilans and Monica Allen
 Mark O'Brien Legal
 Level 10, 16-18 O'Connell Street
 Sydney NSW 2000

Dear Colleagues

MR TAYLOR AUERBACH

- 1 We refer to your client's Subpoena to Produce issued upon our client, Taylor Auerbach, which you sent us by email at 12.07pm today (**Subpoena**) and returnable at 9.30am tomorrow.
- 2 Our client is diligently preparing his response to the Subpoena however would appreciate your agreement to narrow the scope of the Subpoena as it has no doubt inadvertently captured a wide range of documents in respect of which compliance would be oppressive to our client.
- 3 We propose that paragraph 1 be limited to funds 'relating to the applicant'.
- 4 In relation to paragraph 2, our client made claims about his employment with Seven Network (Operations) Limited (**Seven**) from August 2021 until August 2023. Requiring our client to produce all documents 'relating to' the cessation of his employment with Seven, 'including any claim against Seven...for psychological injury', would require him to search for and produce all underlying documents which gave rise to his claim. Accordingly, the inclusion of the words 'relating to' in paragraph 2 of the Subpoena make the request in that paragraph unduly burdensome.
- 5 Our client is prepared to respond to paragraph 2 of the Subpoena if it is varied – as follows:

One copy of all documents referring to ~~and/or relating to~~ the ceasing of your employment with Seven including all documents referring to any claim against Seven (whether prior to or after your employment with Seven) for psychological injury.
- 6 We propose that paragraph 3 be limited to as to time from '30 August 2021 to date'.
- 7 Please let us know whether you agree to these proposed revisions (or, if not, why not). If you do not agree to the proposed revised wording, we reserve our client's right to apply to set aside the Subpoena in part (insofar as it relates to paragraph 2) pursuant to r 24.15 of the *Federal Court Rules 2011* (Cth) (**FCR**).
- 8 Finally, we propose tomorrow to request, pursuant to r 24.22 of the FCR, that the Court order your client to pay our client's reasonable expenses incurring in complying with the Subpoena. Please let us know whether this order may be proposed by consent (or, if not, why not).

Yours faithfully
GILES GEORGE



Rebekah Giles
 Principal



From: [Monica Allen](#)
To: [Rebekah Giles](#)
Cc: [Paul Svilans](#); [Jeremy Marel](#)
Subject: RE: Bruce Lehrmann v Network Ten Pty Ltd & Anor - Subpoena to Taylor Auerbach
Date: Wednesday, 3 April 2024 7:56:53 PM
Attachments: [image001.png](#)
[image002.png](#)

Dear Rebekah

We refer to your letter received at 6.16pm concerning the Subpoena to Produce to Taylor Auerbach (**Subpoena**) approved by his Honour Justice Lee this morning.

The Applicant considers the form of the Subpoena to be proper. It is pressed. In any event, in circumstances where his Honour has considered and approved the form of the Subpoena, the Applicant is not in a position to agree to any proposed amendments.

We confirm that pursuant to r 24.22 of the *Federal Court Rules*, our client will not oppose an order that he pay your client's reasonable expenses incurred in complying with the Subpoena.

Kind regards

Monica Allen
Special Counsel | Mark O'Brien Legal
Level 19, 68 Pitt Street, Sydney NSW 2000 Australia
T +61 2 9216 9815
E monica.allen@markobrienlegal.com.au
W www.markobrienlegal.com.au

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From: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>
Sent: Wednesday, April 3, 2024 6:16 PM
To: Monica Allen <Monica.Allen@markobrienlegal.com.au>
Cc: Paul Svilans <Paul.Svilans@markobrienlegal.com.au>; Jeremy Marel <jeremy.marel@gilesgeorge.com.au>
Subject: RE: Bruce Lehrmann v Network Ten Pty Ltd & Anor - Subpoena to Taylor Auerbach

Dear Monica

Please see letter **attached**.

Please telephone me if you wish to discuss.

Regards

Rebekah Giles
Principal



m / 0413 583 316
t / 1300 163 662

Sydney + Melbourne

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www.gilesgeorge.com.au

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From: Monica Allen <Monica.Allen@markobrienlegal.com.au>
Sent: Wednesday, April 3, 2024 12:07 PM
To: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>
Cc: Paul Svilans <Paul.Svilans@markobrienlegal.com.au>
Subject: Bruce Lehrmann v Network Ten Pty Ltd & Anor - Subpoena to Taylor Auerbach

You don't often get email from monica.allen@markobrienlegal.com.au. [Learn why this is important](#)

Dear Rebekah

Please find **attached** by way of service:

1. Subpoena to Produce to Taylor Auerbach (**Subpoena**); and
2. the Court's orders for short service of the Subpoena.

The Subpoena is returnable before his Honour Justice Lee at 9.30am tomorrow.

Kind regards

Monica Allen
Special Counsel | Mark O'Brien Legal
Level 10, 16-18 O'Connell Street, Sydney NSW 2000 Australia
T +61 2 9216 9815
E monica.allen@markobrienlegal.com.au
W www.markobrienlegal.com.au

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Subject: FW: Seven statement [TGLAW-Legal.FID3782978]

From: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>

Sent: Monday, 8 April 2024 1:47 PM

To: Saunders, Marlia <msaunders@tglaw.com.au>

Subject: RE: Seven statement [TGLAW-Legal.FID3782978]

Thanks Marlia – much appreciated.

Thank you for your assistance. I propose to issue Ten an invoice for our costs of preparing his affidavits and attending court in response to the subpoena. Can you please confirm your client's agreement and also if there is any form or specifications for the invoice?

I am separately collating our costs associated with the subpoena issued by the applicant.

Regards

Rebekah Giles

Principal

Giles / George

m / 0413 583 316

t / 1300 163 662

Sydney + Melbourne

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From: Saunders, Marlia <msaunders@tglaw.com.au>

Sent: Monday, April 8, 2024 1:41 PM

To: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>

Subject: RE: Seven statement [TGLAW-Legal.FID3782978]

[Confidential]

Hi Rebekah

Friday's transcript is **attached**.

Kind regards

Marlia

Marlia Saunders | Partner

Thomson Geer

T +61 2 8248 5836 | **M** +61 417 435 251

Level 14, 60 Martin Place, Sydney NSW 2000 Australia

msaunders@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes

From: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>

Sent: Monday, 8 April 2024 1:38 PM

To: Saunders, Marlia <msaunders@tglaw.com.au>

Subject: RE: Seven statement [TGLAW-Legal.FID3782978]

Can you please send me Friday's tscript?

Subject: FW: Seven statement [TGLAW-Legal.FID3782978]

From: Saunders, Marlia <msaunders@tglaw.com.au>
Sent: Wednesday, April 10, 2024 12:00 PM
To: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>
Cc: O'Beirne, Conor <cobeirne@tglaw.com.au>
Subject: RE: Seven statement [TGLAW-Legal.FID3782978]

[Confidential]

Hi Rebekah

Thanks for your email and apologies for the delayed response.

I've sought instructions in relation to your proposal.

Network Ten will of course pay your client conduct money sufficient to meet the reasonable expenses he incurred in attending Court last week to comply with the subpoena to attend to give evidence which was issued and served on him on 3 April 2024. Please let us know the expenses incurred by your client in attending Court on both Thursday and Friday (including by providing receipts for such expenses) and his bank details and we will attend to reimbursement.

Otherwise I am instructed that, in the absence of any prior discussion or agreement about Network Ten paying your client's legal costs, our client does not agree to pay any additional expenses incurred by your client unless an order is made under r 24.22 of the Federal Court Rules.

Kind regards

Marlia

Marlia Saunders | Partner

Thomson Geer

T +61 2 8248 5836 | M +61 417 435 251

Level 14, 60 Martin Place, Sydney NSW 2000 Australia

msaunders@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes

From: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>
Sent: Monday, 8 April 2024 1:47 PM
To: Saunders, Marlia <msaunders@tglaw.com.au>
Subject: RE: Seven statement [TGLAW-Legal.FID3782978]

Thanks Marlia – much appreciated.

Thank you for your assistance. I propose to issue Ten an invoice for our costs of preparing his affidavits and attending court in response to the subpoena. Can you please confirm your client's agreement and also if there is any form or specifications for the invoice?

I am separately collating our costs associated with the subpoena issued by the applicant.

Regards

Rebekah Giles
Principal

Giles / George

m / 0413 583 316
t / 1300 163 662

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From: Saunders, Marlia <msaunders@tglaw.com.au>
Sent: Monday, April 8, 2024 1:41 PM
To: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>
Subject: RE: Seven statement [TGLAW-Legal.FID3782978]

[Confidential]

Hi Rebekah

Friday's transcript is **attached**.

Kind regards

Marlia

Marlia Saunders | Partner
Thomson Geer

T +61 2 8248 5836 | M +61 417 435 251
Level 14, 60 Martin Place, Sydney NSW 2000 Australia
msaunders@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes

From: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>
Sent: Monday, 8 April 2024 1:38 PM
To: Saunders, Marlia <msaunders@tglaw.com.au>
Subject: RE: Seven statement [TGLAW-Legal.FID3782978]

Can you please send me Friday's tscript?

Your ref /
Our ref / 24GG0681
Date / 19 April 2024
Sent by / Email

Giles / George

By Email: paul.svilans@markobrienlegal.com.au
monica.allen@markobrienlegal.com.au

Paul Svilans and Monica Allen
Mark O'Brien Legal
Level 10, 16-18 O'Connell Street
Sydney NSW 2000

Dear Colleagues,

OUR CLIENT: MR TAYLOR AUERBACH

- 1 We refer to your client's Subpoena to Produce served upon our client on 3 April 2024.
- 2 As you know, we produced documents in response to the Subpoena on 4 and 5 April 2024.
- 3 The purpose of this letter is to seek to reach an agreement as to the amount of our client's costs incurred in responding to the Subpoena which should be paid by your client.

Costs incurred

- 4 Responding to the Subpoena on 3, 4 and 5 April 2024 required a significant amount of time and work for our client and our firm - particularly in circumstances in which:
 - (a) The Subpoena was served by email at 12.07pm on 3 April 2024 and was returnable at 9.30am on 4 April 2024. The urgency with which production was required meant it was necessary for several lawyers, working simultaneously, to be involved in the review and production process.
 - (b) Our client was required to attend Court to give evidence on 4 and 5 April 2024 (in response to a Subpoena to Attend issued by the First Respondent). In the evening of 3 April 2024 and the morning of 4 April 2024, our client was therefore required to prepare to give evidence. From the afternoon of 4 April 2024, and into 5 April 2024, he was being cross-examined. This meant it was necessary for our firm to play a significant role in reviewing the documents and preparing them to be produced (i.e. rather than us advising our client as to what documents were required and then leaving him to locate and review them, or the overall task being shared between us and him). This is not to say he was not involved in the review and production process; rather, we had to play a more significant than usual role in the circumstances.
 - (c) The Subpoena required production in response to five separate and very broad categories of documents.
 - (d) In our letter to you of 3 April 2024 (**our previous letter**), we requested your agreement to narrow the scope of the Subpoena as, we said, "*it has no doubt inadvertently captured a wide range of documents in respect of which compliance would be oppressive*". We proposed a revised wording to limit the scope of categories 1, 2 and 3. In your email in reply at 7.57pm on 3 April 2024 (**your previous email**), you refused to agree to any narrowing of the scope of the Subpoena. Narrowing the scope of the Subpoena was likely to have reduced the expenses incurred in us responding to it.



- (e) The scope of the Subpoena was very wide – for example:
- i. With the exception of category 5, none of the categories were limited as to time.
 - ii. Four of the categories required production of all documents ‘relating to’ particular matters (for example, all documents ‘relating to any allegations of misuse of funds’ (category 1), all documents ‘relating to the ceasing of [our client’s] employment with Seven’ (category 2), etc). This required an evaluative judgment to be made as to whether particular documents related to the subject matter specified in paragraphs 1-4.
 - iii. As we said in our previous letter, paragraph 2 of the Subpoena - which required our client to produce all documents ‘relating to’ the cessation of his employment with Seven Network (Operations) Limited (**Seven**), ‘including any claim against Seven...for psychological injury’ - required our client to search for all underlying documents which gave rise to his claim against Seven. This category was only confined in Court on 4 April 2024.
 - iv. Responding to category 3 of the Subpoena required us to review medical records to ascertain which documents referred to and/or related to ‘any psychiatric and/or mental condition and/or psychological injury’ suffered by our client.
 - v. Category 4 of the Subpoena required production of all communications between our client and either Mark Llewellyn and/or Steve Jackson ‘relating to or referring to’ your client ‘and/or the Lehrmann Spotlight Programmes’. This required us to review all communications in our client’s possession to and from Mr Llewellyn or Mr Jackson, over many years, which equated to many hundreds of pages, in order to identify which messages related to or referred to Mr Lehrmann and/or the Lehrmann Spotlight Programs and therefore fell within the scope of category 4 and which did not. Responding to this paragraph of the Subpoena was particularly burdensome.
 - vi. The scope of paragraph 5 required us to review our client’s social media posts from 18 December 2022 to date.
- (f) More generally, responding to the Subpoena required us to liaise with our client’s former solicitor, Dianne Banks of Gilbert + Tobin, and review her files.
- (g) It was also necessary for us to liaise with the solicitors acting for Seven as to whether they made any claim for privilege in respect of any of the documents being produced in response to paragraph 4 (since the communications were between then employees of Seven and, it was thought, might include communications which might reveal sources which may fall within the privilege under s 126K of the *Evidence Act*). This was contemplated at T2751.1-25 of the transcript of 4 April 2024.

5 Our client’s costs of having complied with the Subpoena are approximately **\$40,000 inclusive of GST.**

Order sought

6 In our previous letter, we foreshadowed that we would be seeking an order, pursuant to r 24.22 of the *Federal Court Rules 2011* (Cth) (**FCR**), that your client pay our client’s reasonable expenses incurred in complying with the Subpoena. In your previous email, you confirmed that “[y]our client will not oppose an order that he pay [our] client’s reasonable expenses incurred in complying with the Subpoena”.



- 7 Rule 24.22(2) of the FCR provides that, if an order is made under r 24.22(1) (that is, an order that the issuing party pay the amount of any reasonable loss or expense incurred in complying with the Subpoena), the Court must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.
- 8 In our view, the parties should agree to an order that your client pay our client's costs of complying with the Subpoena fixed at a particular sum.
- 9 Our client is prepared to offer to accept a 10% discount, by accepting \$36,000 inclusive of GST rather than \$40,000 inclusive of GST (our client's offer).
- 10 Our client's offer is open for acceptance until 4.00pm on Monday 22 April 2024 and thereafter is withdrawn and will not be repeated.
- 11 Please let us know, as soon as possible and by no later than by 4.00pm on Monday 22 April 2024, whether your client will agree to the entry of an order that he pay our client's reasonable expenses incurred in complying with the Subpoena in the agreed sum of \$36,000 inclusive of GST.
- 12 We have asked for your response by 4.00pm on Monday 22 April 2024 because, if there is no agreement by that time, or if we have not heard from you by that time, it will be necessary for us to start preparing evidence and/or submissions in support of an order requiring your client to pay our client's costs fixed at a particular sum. If we are required to do so, and/or if we are required to appear at the next listing on 1 May 2024 to seek an order, we expect we will be instructed to seek to recover an amount in excess of \$40,000 since our costs will by that time have increased.
- 13 We look forward to hearing from you as soon as possible.

Yours faithfully

GILES GEORGE



Rebekah Giles
Principal



From: [Paul Svilans](#)
To: [Petar Strkalj](#)
Cc: [Rebekah Giles](#); [Jeremy Marel](#); [Monica Allen](#)
Subject: RE: Taylor Auerbach
Date: Monday, 22 April 2024 6:18:00 PM
Attachments: [image002.png](#)
[image003.png](#)

You don't often get email from paul.svilans@markobrienlegal.com.au. [Learn why this is important](#)

Dear Mr Strkalj

We refer to your email to us below and the attached letter.

We are instructed to advise that our client does not accept your client's offer.

Regards

Paul Svilans

Principal | Mark O'Brien Legal

Level 10, 16-18 O'Connell Street, Sydney NSW 2000 Australia

T +61 2 9216 9830 | M +61 410 687 900

E paul.svilans@markobrienlegal.com.au

W www.markobrienlegal.com.au

Please be advised that as of 18 March 2024 our address will be Level 10, 16-18 O'Connell Street, Sydney NSW 2000

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From: Petar Strkalj <petar.strkalj@gilesgeorge.com.au>
Sent: Friday, April 19, 2024 3:48 PM
To: Paul Svilans <Paul.Svilans@markobrienlegal.com.au>; Monica Allen <Monica.Allen@markobrienlegal.com.au>
Cc: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>; Jeremy Marel <jeremy.marel@gilesgeorge.com.au>
Subject: Taylor Auerbach

Dear Colleagues

Please see **attached** correspondence.

Kind regards

Petar Strkalj
Associate



m/ 0434 421 993
t/ 1300 163 662

Sydney + Melbourne

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From: [Jeremy Marel](#)
To: [Paul Svilans](#); [Monica Allen](#)
Cc: [Rebekah Giles](#); [Petar Strkalj](#)
Subject: RE: Taylor Auerbach
Date: Wednesday, 24 April 2024 8:47:20 AM
Attachments: [image001.png](#)
[image003.png](#)

Dear Colleagues,

Given our client's offer was not accepted and there has been no counter proposal from your client, we consider it is necessary for us to now proceed to prepare evidence and a short outline of submissions in support of an order requiring your client to pay our client's costs fixed at a particular sum. We propose to seek that order at the next listing on 1 May. The sum sought is likely now to be in excess of \$40,000 inclusive of GST, in order to account for the costs which will be incurred in preparing our client's evidence and a short outline of submissions and appearing on 1 May.

Kind regards,

Jeremy Marel
Special Counsel

Giles / George

m/ 0404 617 354
t/ 1300 163 662

Sydney + Melbourne

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From: Paul Svilans <Paul.Svilans@markobrienlegal.com.au>
Sent: Monday, April 22, 2024 6:18 PM
To: Petar Strkalj <petar.strkalj@gilesgeorge.com.au>
Cc: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>; Jeremy Marel <jeremy.marel@gilesgeorge.com.au>; Monica Allen <Monica.Allen@markobrienlegal.com.au>
Subject: RE: Taylor Auerbach

Dear Mr Strkalj

We refer to your email to us below and the attached letter.

We are instructed to advise that our client does not accept your client's offer.

Regards

Paul Svilans

Principal | Mark O'Brien Legal

Level 10, 16-18 O'Connell Street, Sydney NSW 2000 Australia

T +61 2 9216 9830 | M +61 410 687 900

E paul.svilans@markobrienlegal.com.au

W www.markobrienlegal.com.au

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From: Petar Strkalj <petar.strkalj@gilesgeorge.com.au>

Sent: Friday, April 19, 2024 3:48 PM

To: Paul Svilans <Paul.Svilans@markobrienlegal.com.au>; Monica Allen <Monica.Allen@markobrienlegal.com.au>

Cc: Rebekah Giles <rebekah.giles@gilesgeorge.com.au>; Jeremy Marel <jeremy.marel@gilesgeorge.com.au>

Subject: Taylor Auerbach

Dear Colleagues

Please see **attached** correspondence.

Kind regards

Petar Strkalj
Associate

Giles / George

m/ 0434 421 993
t/ 1300 163 662

Sydney + Melbourne

Tip the balance in your favour

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Your ref /
Our ref / RG:PS:24GG0681
Date / 30 April 2024
Sent by / Email

Giles / George

By email: paul.svilans@markobrienlegal.com.au
monica.allen@markobrienlegal.com.au

Paul Svilans and Monica Allen
Mark O'Brien Legal
Level 10, 16-18 O'Connell Street
Sydney NSW 2000

Dear Colleagues

OUR CLIENT: MR TAYLOR AUERBACH

- 1 We refer to our letter dated 19 April 2024 (**Our 19 April Letter**).
- 2 The purpose of this letter is to once again seek to reach an agreement as to the amount of our client's costs incurred in responding to your client's Subpoena to Produce which should be paid by your client.
- 3 As set out in Our 19 April Letter, our client has incurred approximately **\$40,000 inclusive of GST** in costs in complying with the Subpoena.
- 4 In Our 19 April Letter, our client offered to accept \$36,000 inclusive of GST. Your client rejected that offer.
- 5 Our client is prepared to make a further offer in order to reach a resolution. He offers to accept \$34,000 inclusive of GST (**Our Client's Offer**).
- 6 This offer is open for acceptance until **4.00pm today** and thereafter is withdrawn and will not be repeated.
- 7 In the event that your client rejects Our Client's Offer, or if we do not hear from you before 4.00pm today, we will have no choice but to formally notify the Court that we intend to appear at the listing tomorrow to seek an order for costs. We will also seek our costs of doing so.
- 8 We look forward to hearing from you.

Yours faithfully
GILES GEORGE



Rebekah Giles
Principal



Your ref /
Our ref / RG:PS:24GG0681
Date / 30 April 2024
Sent by / Email

Giles / George

By email: msaunders@tqlaw.com.au

Ms Marlia Saunders
Partner
Thomson Geer Lawyers
Level 14, 60 Martin Place
Sydney NSW 2000

Dear Ms Saunders

LEHRMANN V TEN NETWORK PTY LTD AND ANOR (NSD103 OF 2023)

- 1 We refer to you clients subpoena to give evidence served upon our client on 3 April 2024.
- 2 As you know, Mr Auerbach gave oral evidence before Justice Lee on 4 and 5 April 2024.
- 3 The purpose of this letter is to seek to reach an agreement as to the amount of our client's costs incurred in response to the subpoena, which your client should pay from the time that your client requested that our client provide an affidavit.

Costs incurred

- 4 Responding to the Subpoena required a significant amount of time and work for our client and our firm. To that end, we draw your attention to the following:
 - (a) Prior to the giving of Mr Auerbach's oral evidence, our client attended with us (at your request) several conferences with Dr Matthew Collins KC in preparation for the giving of his evidence. This too required preparatory work, including the preparation witness proofs, and compiling potential evidence.
 - (b) As already noted above, our client gave evidence on 4 and 5 April 2024, being cross examined on the afternoon of 4 April and the morning of 5 April 2024. Attendance at the examination and cross examination of our client was imperative in preparing the submissions referred to below in paragraph 4(c).
 - (c) Our client's credibility was brought into question during the Applicant's cross examination of our client. In order to persuade Justice Lee to accept our client's evidence as being persuasive and as having real probative value, our client was required to prepare short submissions in favour of accepting his evidence at its highest.
- 5 Our client's costs of complying with the Subpoena are approximately **\$20,000 inclusive of GST**. This includes our client's disbursements associated with returning from New Zealand and other conduct expenses such as taxis.

Orders sought

- 6 In our previous correspondence, we sought your client's agreement to pay our client's reasonable expenses incurred in complying with the Subpoena. In your email dated 10 April 2024, you indicated that "[your] *client does not agree to pay any additional expenses incurred by [our] client unless an order is made under r 24.22 of the Federal Court Rules*".
- 7 Our client is prepared to offer to accept a 15% discount, by accepting \$17,000 inclusive of GST rather than \$20,000 inclusive of GST within 21 days (**Our Client's Offer**).



- 8 Our client's offer is open for acceptance until **5.00pm today** and thereafter is withdrawn and will not be repeated.
- 9 We have asked for your response by 5.00pm today because if there is no agreement by that time, or if we have not heard from you by that time, it will be necessary for us to prepare evidence, and/or submissions in support of an order requiring your client to pay our client's costs fixed at a particular sum. If we are required to do so, and/or if we are required to appear at the next listing on 1 May 2024 to seek an order, we expect we will be instructed to seek to recover an amount in excess of \$20,000 since our costs will by that time have increased.
- 10 We look forward to hearing from you as soon as possible.

Yours faithfully
GILES GEORGE



Rebekah Giles
Principal

