

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 15/09/2022 1:28:43 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD616/2021
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172
& ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 15/09/2022 1:40:14 PM AEST

Registrar

Important Information

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

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59
Rule 29.02(1)

Affidavit

No. NSD616/2021

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

WESTPAC BANKING CORPORATION ABN 33 007 457 141 and another named in the
Schedule

Applicants

FORUM FINANCE PTY LIMITED ACN 153 301 172 and others named in the Schedule

Respondents

Affidavit of: NIGEL DAVID EVANS
Address: Level 1, 84 William Street, Melbourne, Victoria
Occupation: Solicitor
Date: 15 September 2022

Contents

Document number	Details	Paragraph	Page
1	Affidavit of NIGEL DAVID EVANS affirmed on 15 September 2022	[1]	2
2	Annexure " NDE-1 ", being copy of a paginated bundle of true copies of documents referred to in this affidavit (the Exhibit Bundle)	[7]	17

Filed on behalf of (name & role of party)	Third Respondent
Prepared by (name of person/lawyer)	Nigel Evans
Law firm (if applicable)	APTUM LEGAL
Tel	(03) 7020 9230
Email	nigel@aptumlegal.com.au
Address for service (include state and postcode)	C/- Aptum Legal, Level 1, 84 William Street Melbourne, Victoria 3000

[Form approved 01/08/2011]

Be

I, **NIGEL DAVID EVANS**, Solicitor, of Level 1, 84 William Street, Melbourne, Victoria, **DO SOLEMLY AND SINCERELY DECLARE AND AFFIRM** as follows:

A INTRODUCTION

1 I am an Australian Legal Practitioner and Director of Aptum Legal (**Aptum**), the solicitor for the Third Respondent (**Mr Tesoriero**) and his associated entities in this proceeding, proceeding number NSD681/2021 (**SMBC Proceeding**) and in proceeding VID778/2021 and NSD224-232/2022 (**Winding Up Proceedings**).

2 Aptum is also the solicitor for the Forty-Fifth Respondent (**Mr Tesoriero Snr**) in this proceeding. Aptum has a separate engagement with Mr Tesoriero Snr.

3 I am authorised by Mr Tesoriero and his associated entities (together, the **Respondents**) and Mr Tesoriero Snr (collectively, the **Tesoriero Respondents**) to make this affidavit on their behalf.

4 I make this affidavit in support of orders sought by the Tesoriero Respondents at the Case Management Hearing listed on 16 September 2022.

5 By making this affidavit, I do not intend and have no authority to waive any legal professional privilege of the Tesoriero Respondents. Nothing in or exhibited to this affidavit ought to be construed as waiving privilege.

6 Except where otherwise stated, I make this affidavit of my own knowledge. Where I state in this affidavit that I depose to any matter based on any information known to me or based on a belief, I believe those matters to be true and correct.

7 Now produced and shown to me and marked "**NDE-1**" is a paginated bundle of true copies of the documents referred to in this affidavit (**the Exhibit Bundle**).

B BACKGROUND

8 I make this affidavit to supplement and update my previous affidavit in this proceeding, which was affirmed on 19 August 2022 in support of the application before his Honour Justice Lee on 19 August 2022 (**my First Affidavit**). My First Affidavit was not read into evidence during that application. A true copy of my First Affidavit appears from pages 18 to 26 of the Exhibit Bundle.

9 In my First Affidavit, I deposed:

9.1 that Aptum had been engaged to act for the Respondents on 5 August 2022;

9.2 that at the time of my First Affidavit, Aptum had not yet been able to obtain the file from the Respondents' previous solicitors, Madgwicks; and



9.3 to the areas where significant work was required in order to prepare the Tesoriero Respondents for trial.

10 Since affirming my First Affidavit, Aptum has received a transfer of Madgwicks' file. The file was received by Aptum in tranches between 26 and 30 August 2022. On 5 September 2022, Madgwicks confirmed to Aptum that it had transferred the entire file.

C TRIAL PREPARATION – WORK DONE/REQUIRED TO BE DONE

11 Since my First Affidavit, Aptum has:

11.1 conducted a review of Madgwicks' file;

11.2 engaged senior and junior counsel (retaining the junior counsel previously briefed by Madgwicks, Michael O'Haire, and briefing Mr Anthony McInerney SC as senior counsel);

11.3 undertaken a substantial amount of work in preparation for trial; and

11.4 undertaken work in relation to the Winding Up Proceedings.

12 Now having the benefit of the Madgwicks' file and Aptum's review of those materials, I update my First Affidavit below.

C.1 Westpac's pleadings

13 Following our engagement, Aptum conducted a review of the pleadings filed in the proceeding. As a result of that review, Aptum identified concerns that the Second Further Amended Statement of Claim filed by Westpac does not comply with Rules 16.41, 16.42 and 16.43 of the *Federal Court Rules 2011* (Cth) (**the Rules**), in particular, in relation to Westpac's allegations of alleged knowledge and fraud.

14 Aptum has reviewed Madgwicks' files to identify any work done in relation to those issues. Based on that review, I understand that work was limited to a request for further and better particulars by Madgwicks on 3 December 2021, to which Westpac responded on 31 January 2022 – a true copy of Westpac's response appears from pages 27 to 51 of the Exhibit Bundle.

15 I am also aware that Fortis Law, our clients' solicitors before Madgwicks, also made request on 23 August 2021, which was responded to by Westpac on 14 September 2021 – a true copy of Westpac's response appears from pages 52 to 53 of the Exhibit Bundle.

16 Since our engagement, Aptum has corresponded with the solicitors for Westpac, MinterEllison, in relation to those issues and to seek the filing of an amended claim that properly conforms with the Rules as follows:

16.1 letter from Aptum to MinterEllison dated 12 September 2022 in respect to the claim against Mr Tesoriero Snr – a true copy of which appears from pages 54 to 56 of the Exhibit Bundle, which queries whether Westpac were seeking to impute knowledge to Mr Tesoriero Snr via the allegation of knowledge of Mr Tesoriero and seeks to clarify a number of Westpac’s pleadings against Mr Tesoriero Snr;

16.2 letter from Aptum to MinterEllison dated 15 September 2022 – a true copy of which appears from pages 57 to 164 of the Exhibit Bundle, which puts MinterEllison on notice that Westpac’s Second Further Amended Statement of Claim does not comply with the Rules.

C.2 Tesoriero Respondents’ defences

17 I deposed in my First Affidavit that I believed it would likely be necessary to seek leave to amend the defences previously filed by the Tesoriero Respondents.

18 Aptum is currently in the process of completing a detailed review of those defences with a view to identifying the precise scope of any necessary amendments. As part of that process, Aptum has identified at least three areas where I consider the Tesoriero Respondents may need to seek leave to amend their defences, those areas being the pleaded response to:

18.1 the alleged amounts and character of funds invested in Forum Finance Pty Ltd, its related entities and the broader group of entities;

18.2 the alleged character of the impugned transactions; and

18.3 the movement of funds after receipt in the hands of each respondent.

19 Subject to completing the above review, I believe it may then be appropriate for the Tesoriero Respondents to:

19.1 prepare the proposed amendments;

19.2 liaise with the other parties to confirm if those amendments may be made with consent; and

19.3 if not, prepare and issue an application seeking leave to file and serve those amended defences.

20 Aptum have not yet been in a position to begin preparation of the proposed amended defences or brief Senior Counsel, Anthony McInerney SC on the issues noted above.

C.3 Westpac's discovery

21 I deposed in my First Affidavit that I believed that little work appeared to have been done by Madgwicks on reviewing the discovered documents provided by Westpac. Westpac has discovered approximately 35,000 documents in this proceeding.

22 Aptum has conducted a review of Madgwicks' files to identify any substantive work product in relation to the review of discovery. We have not been able to identify any substantive work product which Aptum could use going forward.

23 The file of Westpac's discovery received by Aptum from Madgwicks also appeared to be incomplete – the file provided comprised approximately 8,000 documents, whereas the complete file ought to contain about 35,000 documents. As such, Aptum has obtained a fresh copy of Westpac's discovery from MinterEllison and have commenced its review based on those fresh files.

24 After Aptum's engagement, MinterEllison have provided a further approximately 10,000 documents which they considered may be subject to legal professional privilege involving Mr Tesoriero. I understand these documents were not previously provided by MinterEllison to Madgwicks.

25 Given the state of the Madgwicks' file, I believe that it will be necessary for Aptum to complete the followings steps in relation to Westpac and the other parties' discovery:

- 25.1 reviewing all documents related to the impugned transactions;
- 25.2 identifying all documents adverse to Westpac's pleaded case on knowledge;
- 25.3 identifying all documents that will assist our clients' case; and
- 25.4 preparing critical document bundles for trial preparation (including, for example, key witness bundles).

26 Since my First Affidavit, Aptum has:

- 26.1 imported a complete set of Westpac's discovery into an eDiscovery platform for review; and
- 26.2 begun reviewing the discovered documents by identifying and collating financial records and communications related to the impugned transactions.

27 Aptum has not yet commenced a review of the documents noted at paragraph 24 above and further time to complete a review of the Applicant's discovery will be required.

C.4 Tesoriero Respondents' discovery

28 On 10 March 2022, the Court made orders requiring discovery by all parties by 4pm on 29 April 2022.

29 On 18 July 2022, Madgwicks filed an Affidavit deposing to Mr Tesoriero's discovery and the inability to complete the discovery process at that time.

30 In my First Affidavit, I deposed that Westpac had previously raised concerns with Madgwicks in relation to the discovery given by the Respondents, and that those concerns had not yet been addressed.

31 Given the concerns that have been raised, I believe that it will be necessary for Aptum to complete a review of the Tesoriero Respondents discovery obligations and, if necessary, arrange for the Tesoriero Respondents to complete any necessary further searches for documents and prepare those documents for discovery.

32 Aptum has reviewed Madgwicks' file to identify any substantive work product that could be used in responding to Westpac's concerns and, if necessary, making further discovery. Through that review, Aptum has identified that Madgwicks had obtained further documents from the Tesoriero Respondents for review for potential discoverability, but that review was incomplete at the time of Aptum's engagement and the transfer of the file.

33 Since my First Affidavit, Aptum has:

33.1 reviewed the Respondents' discovery obligations and obtained instructions from Mr Tesoriero in relation to sources of documents that may require further review for potentially discoverable material;

33.2 reviewed documents provided by Madgwicks in the course of the handover of its file as referred to above;

33.3 begun advising the Respondents on further searches that will need to be done to collate any other documents that may be discoverable.

34 In the course of this process, Aptum has discussed matters briefly with Mr Lou Stefanetti of Pacific Blue Tax Services, the accountant for Mr Tesoriero and his related entities. We are instructed that Mr Stefanetti has recently had surgery, which has made it more difficult for us or our clients to be able to obtain documents held on their behalf for the purpose of the necessary searches. Aptum was able to meet Mr Steffanetti and discuss the matters for the first time on 14 September 2022.

35 Accordingly, more time will be required to complete the process of discovery and therefore an extension of time to comply with the previous orders requiring the Tesoriero Respondents' discovery will be required in the circumstances.

C.5 Westpac's lay evidence

36 Westpac has indicated that it intends to call a total of 23 witnesses at trial, in respect of which it has filed and served a total of 24 affidavits (2 of which being the affidavits of Mr Jason Preston, which relate to Westpac's summary evidence pursuant to s 50 of the *Evidence Act 1995* (Cth), to which I depose separately below).

37 Aptum has conducted a preliminary review of Madgwicks' files to identify any substantive work product in relation to the review of Westpac's lay evidence and necessary preparation for trial. Aptum has not been able to identify any such substantive work product which could be used in preparation for trial.

38 Given the above, I believe that it will be necessary for the Tesoriero Respondents to be given an extension of time to:

38.1 review each of the affidavits which Westpac has indicated it intends to rely on at trial;

38.2 identify which of Westpac's witnesses may need to be cross examined at trial; and

38.3 prepare for that cross-examination.

39 Since my First Affidavit, we have commenced the initial review of Westpac's lay evidence. As at the date of this affidavit, I believe that review is about one third complete. We have therefore not been in a position to comply with the direction to notify the Applicants of any witnesses that will be required for cross examination and will require further time to comply with that direction.

C.6 Westpac's "summary" evidence and tracing claim

40 I deposed in my First Affidavit that it appeared that little work had been done by Madgwicks in relation to the evidence which Westpac seeks to rely on at trial to maintain its tracing claim. In that regard, Westpac seeks to rely on summary evidence pursuant to s 50 of the *Evidence Act 1995* (Cth) in support of that aspect of its case, supported by the affidavits of Mr Jason Preston.

41 Aptum has completed a review of Madgwicks' files to identify any substantive work product relevant to the review of the relevant allegations as made by Westpac and the s 50 summaries that have been produced. Aptum has, however, not been able to

identify any substantive work product which could assist in the Tesoriero Respondents' preparation for trial.

42 Since the handover of the Tesoriero Respondents' files from Madgwicks, Aptum has:

- 42.1 reviewed Westpac's pleaded case for funds held on trust;
- 42.2 performed a preliminary analysis of all impugned transactions through our review of the s 50 summaries;
- 42.3 conducted a thorough review of the affidavit and exhibits contained therein of Mr Jason Preston dated 10 June 2022;
- 42.4 identified critical pleading and evidentiary gaps in Westpac's claim for funds held on trust; and
- 42.5 written to Westpac to clarify the nature of the allegations made by Westpac in respect to the impugned transactions.

43 As at the date of this affidavit, the following correspondence has been exchanged between Aptum and the Applicants solicitors, MinterEllison, in relation the above matters:

- 43.1 letter from Aptum to MinterEllison dated 30 August 2022 – a true copy of which appears from pages 165 to 167 of the Exhibit Bundle, which requests that, for each of the amended s 50 summaries, MinterEllison:
 - (a) identify the specific documents relied on for the attributions made in the grey shaded columns in each of the summaries by reference to the document IDs;
 - (b) identify each step in the reasoning process;
 - (c) identify the documents(s) relied on for every entry in each of the s 50 summaries by reference to the document IDs; and
 - (d) identify any evidence Westpac relies on specifically in relation to the veracity and/or admissibility of the documents underpinning each of the s 50 summaries;
- 43.2 letter from MinterEllison to Aptum dated 1 September 2022 – a true copy of which appears from pages 168 to 169 of the Exhibit Bundle, which, *inter alia*:
 - (a) states that although Westpac disagrees that the s 50 summaries must contain cross-references, they are prepared to assist nonetheless;
 - (b) provides responses to the questions put in Aptum's letter of 30 August 2022; and

- (c) states that the time to challenge the veracity of documents Westpac produce and rely on has long passed;
- 43.3 letter from Aptum to MinterEllison dated 1 September 2022 – a true copy of which appears from pages 170 to 171 of the Exhibit Bundle, which, *inter alia*:
 - (a) notes that it was necessary for Westpac to identify when the Respondents were on notice of the theft; and
 - (b) raises a number of questions about what Westpac’s case in relation to knowledge and the purpose of certain pleadings;
- 43.4 letter from MinterEllison to Aptum dated 5 September 2022 – a true copy of which appears at page 172 of the Exhibit Bundle which states, *inter alia*:
 - (a) that they disagree with certain points put to them in Aptum’s letter dated 1 September 2022; and
 - (b) Westpac’s position in relation to knowledge and notice, as requested in Aptum’s letter dated 1 September 2022;
- 43.5 email from Aptum to MinterEllison dated 8 September 2022 – a true copy of which appears from pages 173 to 176 of the Exhibit Bundle, which queries, *inter alia*:
 - (a) how much money was held in a controlled monies account that MinterEllison were a signatory to;
 - (b) how much of those funds were derived from the sale of a property at 23 Margaret Street; and
 - (c) what the quantum of Westpac’s proprietary claim was, noting that the section 50 summary for 23 Margaret Street referred to an amount of only \$7,555.50;
- 43.6 email from MinterEllison to Aptum dated 12 September 2022 – a true copy of which appears from pages 177 to 181 of the Exhibit Bundle which, *inter alia*, responds to queries raised by Aptum and notes that Westpac’s proprietary claim is not found in the s 50 summary titled “Payments to 23 Margaret Street, Rozelle NSW” (which states the sum of \$7,555.50 as noted above) but instead in the s 50 summary titled “23 Margaret Street Pty Ltd” which was in the amount of \$638,433.49;
- 43.7 letter from Aptum to MinterEllison dated 12 September 2022 – a true copy of which appears from pages 182 to 184 of the Exhibit Bundle which states, *inter alia*:

- (a) that Westpac's claim does not identify the amount claimed against the Respondents under each head of claim and that it is unclear what amount is sought, given the inconsistent amounts being sought in the various s 50 summaries;
 - (b) that the methodology adopted by Jason Preston in his affidavits, in relation to the tracing claim, has changed; and
 - (c) that it was unclear what their claim was against the Respondents, and/or the relevance of certain s 50 summaries;
- 43.8 email from Aptum to MinterEllison dated 15 September 2015 – a true copy of which appears from pages 185 to 190 of the Exhibit Bundle, which queries, *inter alia*:
- (a) whether Westpac were putting an alternative case on the amounts being traced to a particular property; and
 - (b) if so, what the basis of the alternative claim is, whether it has been pleaded and if there was an intention to amend the pleadings to plead the alternative claim;
- 44 I consider the following work is required to prepare for trial for Westpac and SMBC's tracing claim:
- 44.1 follow up MinterEllison in respect to Aptum's letter to the firm dated 12 September 2022 (referred to above) to ensure Westpac clearly articulate their claims with particulars on tracing, and identify their claims in circumstances where Westpac fails to prove its allegations of knowledge against the Tesoriero Respondents;
 - 44.2 identify all documents relevant to money advanced to the Forum entities by the Tesoriero Respondents;
 - 44.3 retain an expert to identify the flow of money after the impugned transactions were received by the Tesoriero Respondents to identify the traceable proceeds in the hands of the Tesoriero Respondents at the time notice of the alleged source of fraudulently obtained funds is established; and
 - 44.4 retain an expert forensic accountant to review the method relied on by Westpac to prove its tracing claim and the work performed by Mr Jason Preston (as referred to in his affidavit dated 10 June 2022).

C.7 Tesoriero Respondents' lay evidence

45 As at the date of Aptum's engagement, the Tesoriero Respondents had not filed and served any lay evidence on which they intended to rely at trial. I note for completeness that orders were made on 10 March 2022, which were extended by orders made on 20 July 2022 (for all active respondents other than Mr Tesoriero), for the filing of that lay evidence by 10 August 2022, but those orders were not complied with.

46 Aptum has conducted a review of Madgwicks' file to identify any substantive work product relevant to the preparation of lay evidence that the Tesoriero Respondents may seek to rely on at trial. We have, however, not been able to identify any such work product that could be used by the Tesoriero Respondents going forward.

47 To properly prepare for trial, I believe it will be necessary for an extension of time to be provided for the Tesoriero Respondents to:

47.1 complete the review of Westpac's evidence, discovery and pleadings to identify whether any lay evidence will need to be led by the respondents at trial;

47.2 conduct the necessary witness interviews to prepare their evidence and prepare affidavits for filing and service; and

47.3 generally prepare the necessary witnesses for trial.

48 Since the handover of Madgwicks' file, Aptum has:

48.1 begun an initial review of the evidence that will be necessary, including identifying potentially relevant witnesses that may need to be called; and

48.2 begun conducting interviews with those potential witnesses to confirm the scope of their potential evidence.

C.8 Respondents' strike-out/summary judgment application

49 On 21 February 2022, Madgwicks filed an application seeking orders for summary judgment against the Applicant, alternatively pursuant to rule 16.21 of the Rules, that the claim against Mr Tesoriero be struck out or alternatively that, pursuant to rule 16.45 of the Rules, the Applicants provide further particulars of the claim against the Mr Tesoriero.

50 As at the date of this affidavit, Aptum has not yet been able to review that application in any detail (as a result of the allocation of efforts on the above matters).

51 Upon reviewing the files relating to the application, I believe that Aptum will need to provide advice and seek instructions on whether Mr Tesoriero intends to pursue the

application. If Mr Tesoriero does instruct us to proceed with the application, we will need to prepare for the application.

C.9 Mediation

52 The proceeding has not, to date, been the subject of a mediation.

53 Aptum is presently instructed by the Respondents to seek orders to refer the proceeding to mediation.

C.10 General trial preparation

54 Aptum has completed a preliminary review of Madgwicks' file to identify any substantive work product prepared in connection with general preparation for trial. No such work product has been identified.

55 As a part of the general preparation for trial, I believe an extension of time will be necessary for the Tesoriero Respondents to:

55.1 complete conferral about the issues to be determined at trial and submissions to be made on behalf of the Respondents;

55.2 identify witnesses needed for cross-examination and preparations for that cross-examination;

55.3 prepare opening submissions; and

55.4 generally prepare for the conduct of trial.

D RELATED MATTERS

D.1 Winding Up Proceedings

56 Prior to our engagement, Madgwicks had issued various applications seeking to set aside statutory demands issued to our clients by the liquidators of Forum Group Financial Services Pty Limited (In Liquidation), who are the Fourth Respondent in this proceeding. Since our engagement, Aptum has:

56.1 briefed separate insolvency counsel (Adam Segal) to advise on the winding-up proceedings; and

56.2 reviewed the proceedings and withdrawn the application to set aside the statutory demands.

57 Going forward, I believe that our clients will need to seek timetabling orders for the further conduct of those winding up proceedings, being proceedings NSD 224-232/2022.

D.2 General dealings with liquidators and creditors

58 Aptum has also been engaged in communications with the liquidators and creditors of the various respondent entities regarding the issues in relation to the operation of the freezing orders.

E PROPOSED APPLICATIONS

E.1 Proposed application for variation to freezing orders

59 As deposed to above, Aptum has been conducting a review of the status of the proceeding and work necessary to properly prepare for trial following the transfer of Madgwicks' file. In relation to the freezing orders, that review has included:

- 59.1 identifying all costs that have been incurred to date;
- 59.2 reviewing the previous application to the Honourable Justice Lee to vary the freezing orders as made by Madgwicks and what the decision provides for;
- 59.3 reviewing and obtaining instructions on obtaining funds for personal living expenses;
- 59.4 reviewing the costs charged by the Respondent' previous solicitors and initiating a review of the costs of our clients' previous senior counsel, Paul Hayes KC;
- 59.5 enquiring with the Applicant's lawyers whether they would be agreeable to pay ordinary business expenses of the Respondent from monies held in controlled monies account they are signatories of; and
- 59.6 commencing work on a detailed estimation of the cost of work necessary to properly prepare for trial.

60 As at the date of this affidavit, the above work is ongoing.

61 Based on the work done to date and the amounts that have been made available under the exception for the reasonable legal expenses under the Freezing Orders made in the proceeding, there will be insufficient funds to enable us to undertake the work we consider necessary for a fair trial, as outlined in this affidavit.

62 In particular, I note that out of the \$1,250,000.00 that was allowed for Mr Tesoriero's reasonable legal expenses under the exception to the Freezing Orders previously made by the Court:

- 62.1 \$732,157.75 was spent with Madgwicks, with:

(a) \$538,084.52 being for the period 1 March 2022 to 10 August 2022; and

(b) \$194,073.23 being for the period prior to 1 March 2022

62.2 \$517,842.25 was paid into Aptum's trust account, with:

(a) \$209,480.96 being spent since Aptum were appointed up to 31 August 2022, on these proceedings, including Senior Counsel that appeared at the disqualification hearing, Junior Counsel's fees and disbursements (but not including the fees that are currently being incurred by Senior Counsel now engaged); and

(b) \$21,768.60 has been spent on the set aside of statutory demand and Winding Up Proceedings noted in D.1 of this affidavit, which includes Counsel's fees,

leaving the sum of \$286,592.69 remaining for the remainder of the proceeding from 1 September 2022 onwards, include covering Counsel's fees and disbursements.

63 In addition, Fortis Law, who previously represented our client, are owed the sum of \$215,928.97 pursuant to a Certificate of Determination of Costs which was provided to Aptum's office by Fortis Law on 7 September 2022. A true copy of Fortis Law's certificate of determination of costs received by Aptum on 7 September 2022 appears from pages 191 to 194 of the Exhibit Bundle.

64 We note that the Fortis Law fees were excluded from our client's previous application to vary the Freezing Orders in the proceeding, as the process of taxation had not completed at that stage.

65 The previous application was for the release of \$1,866,000. The calculation of that sum was set out in the supporting affidavit filed by our client at [34]. In that paragraph, there was reference to fees owed to Madgwicks of \$546,000 to the end of April 2022 and the table in the affidavit then sets out a further \$1.32 million, all of which relates to work contemplated for the trial.

66 The application excluded release of funds necessary for payment of the Fortis Law fees because those fees were still in dispute and the subject of the assessment process. That is made plain at [18] to [24] of the supporting affidavit.

67 Accordingly, I believe that it will be necessary for the Respondents to make an application seeking a further variation of the freezing orders to provide funds necessary to properly prepare for trial and to pay Fortis Law, the Tesoriero Respondents' previous solicitors before Madgwicks.

68 Further to the above, on 8 September 2022, the State Revenue Office (**SRO**) issued a notice of assessment of tax liabilities totalling \$354,530.00 for duties payable by Mr Tesoriero by 10 October 2022. Aptum has sought the release of funds from the funds currently being held by Arnold Bloch Leibler in order to pay those liabilities, however, Westpac has (through MinterEllison) objected to the release of those funds. A true copy of Aptum's correspondence with MinterEllison in this regard appears from pages 195 to 206 of the Exhibit Bundle. As a result, it is likely that Mr Tesoriero will need to seek a further variation to the existing freezing orders in order to pay the debt owed to the SRO.

69 In addition, Westpac have also opposed the payment of any monies from controlled monies accounts which the Court has previously allowed the Respondent's reasonable legal expenses to be paid from, in particular for an ASIC fee of \$347 being paid for one of the Respondents, from the proceeds of sale of the property that was owned by that respondent. A true copy of MinterEllison email in this regard appears from pages 207 to 209 of the Exhibit Bundle.

70 Based on the work done to date I believe that Aptum will be in a position to file and serve an application seeking the necessary variations by 23 September 2022.

E.2 Proposed application to adjourn the trial date

71 Based on the above, I believe it will be necessary for the Tesoriero Respondents to seek an adjournment to the current trial date in order to properly prepare for trial.

72 As matters presently stand, Aptum will have insufficient funds to conduct a proper defence at trial. Whether any further funds are released for the payment of reasonable legal expenses from the frozen funds and the timing of that release will have a significant impact on when the Tesoriero Respondents will be ready for trial.

73 Aptum is currently seeking instructions to prepare and file an application to seek orders to adjourn the trial. Based on the work done to date, I believe that Aptum will be in a position to file and serve that application by 23 September 2022.

E.3 Westpac's proposed order


74 Westpac have previously proposed orders between the parties which provide only for an extension of time for orders leading up to the hearing and listing of a trial in October 2022.

75 For the reasons set out above, I believe that the Tesoriero Respondents will be severely prejudiced for a number of reasons if the orders sought by Westpac were granted, in particular:


- 75.1 they will be forced to answer a case, and prepare for it, which has not been properly particularised pursuant to the Rules;
- 75.2 they will have insufficient funds to properly defend themselves, respond to the Applicant's and conduct the trial; and
- 75.3 they will not be afforded the opportunity to engage in any meaningful settlement discussions with the Applicants.

76 I believe that the proposed orders, a true copy of which appears from pages 210 to 211 of the Exhibit Bundle, will result in there being an orderly and fair trial.

Affirmed at **SYDNEY**)
 in the State of New South)
 Wales by Nigel David)
 Evans on 15 September)
 2022)


 Signature of **NIGEL DAVID EVANS**

Before me:



Signature of **JOSHUA NICHOLAS BARAVELLI**
 of Level 1, 84 William Street, Melbourne, Victoria,
 an Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria),
 a person authorised under section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the *Electronic Transactions Act 2000* (NSW).
2. I saw the face of the deponent.
3. I observed the deponent signing a copy of this affidavit in real time.
4. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
5. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
6. I have confirmed based on the following identification document presented to me: Drivers Licence

Form 59
Rule 29.02(1)

Annexure certificate

No. NSD616/2021

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

WESTPAC BANKING CORPORATION ABN 33 007 457 141 and another named in the
Schedule

Applicants

FORUM FINANCE PTY LIMITED ACN 153 301 172 and others named in the Schedule

Respondents

ANNEXURE "NDE1"

Before me:



Signature of **JOSHUA NICHOLAS
BARAVELLI**

of Level 1, 84 William Street, Melbourne,
Victoria, an Australian Lawyer, a person
authorised under s 19(1) of the Oaths and
Affirmations Act 2018 to take an affidavit in
the State of Victoria.

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 19/08/2022 9:20:46 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD616/2021
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172
& ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 19/08/2022 9:22:13 AM AEST

Registrar

Important Information

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

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59
Rule 29.02(1)

Affidavit

No. NSD616/2021

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

WESTPAC BANKING CORPORATION ABN 33 007 457 141 and another named in the Schedule

Applicants

FORUM FINANCE PTY LIMITED ACN 153 301 172 and others named in the Schedule

Respondents

Affidavit of: Nigel David Evans
Address: Level 1, 84 William Street, Melbourne, Victoria
Occupation: Solicitor
Date: 19 August 2022

Contents

Document number	Details	Paragraph	Page
1	Affidavit of NIGEL DAVID EVANS affirmed on 19 August 2022	1	1

I, **NIGEL DAVID EVANS**, Solicitor, of Level 1, 84 William Street, Melbourne, Victoria, **DO SOLEMNLY AND SINCERELY DECLARE AND AFFIRM** as follows:

- 1 I am an Australian Legal Practitioner and Director of Aptum Legal, the solicitor for the Third Defendant (**Mr Tesoriero**) and his associated entities in proceeding number NSD616/2021 (**Westpac Proceeding**) and proceeding number NSD681/2021 (**SMBC Proceeding**).

Filed on behalf of (name & role of party)	Third Respondent
Prepared by (name of person/lawyer)	Nigel Evans
Law firm (if applicable)	APTUM LEGAL
Tel	(03) 7020 9230
Email	nigel@aptumlegal.com.au
Address for service (include state and postcode)	C/- Aptum Legal, Level 1, 84 William Street Melbourne, Victoria 3000

Handwritten signature/initials

2 I am authorised by Mr Tesoriero and his associated entities to make this affidavit on their behalf.

3 By making this affidavit, I do not intend and have no authority to waive any legal professional privilege of Mr Tesoriero or any of his associated entities. Nothing in or exhibited to this affidavit ought to be construed as waiving privilege.

4 Except where otherwise stated, I make this affidavit of my own knowledge. Where I state in this affidavit that I depose to any matter based on any information known to me or based on a belief, I believe those matters to be true and correct.

A RECUSAL APPLICATION

5 I am instructed by Mr Tesoriero to make an application that the proceedings be referred to the National Operations Manager of the Court, for allocation to the docket of a justice of the Court other than the present docket judge, his Honour Justice Lee.

6 The application is occasioned by observations that his Honour formed in relation to Mr Tesoriero's reliability as a witness, and that his Honour drew to the attention of the parties in his interlocutory decision in *Westpac Banking Corporation v Forum Finance Pty Limited (Freezing Order Variation)* [2022] FCA 910. Having considered those observations, my clients have instructed me to make the aforementioned application on the ground of apprehended bias.

7 In this affidavit I depose to certain matters in response to submissions received from the plaintiffs in the proceedings yesterday, 18 August 2022.

B CHANGE OF REPRESENTATION

8 Prior to 5 August 2022 my clients were represented by other solicitors, **Madgwicks**.

9 On 5 August 2022, Mr Tesoriero appointed Aptum Legal (**Aptum** or **my firm**) to act for him and related entities in the Westpac Proceeding, the SMBC Proceeding, and in proceeding VID778/2021 and NSD224-232/2022 (**Winding Up Proceedings**).

10 On 10 August 2022, Aptum provided Madgwicks with the Notice of Change of Lawyer and an authority to transfer Mr Tesoriero's file from Madgwicks to Aptum.

11 Between 10 to 16 August 2022, Aptum filed Notices of Change of Lawyer to effect the change in representation, replacing Mr Tesoriero's former solicitor, Madgwicks.

12 Despite requests, Madgwicks have not released the file to my firm. We have no indication when Madgwicks will release the file to Aptum.

- 13 While this has significantly impeded the progress Aptum has made in preparing our clients for the trial of the proceedings, Aptum has, in the limited time, undertaken considerable work to identify the work necessary to prepare our clients for trial. I return to this below.

C WORK REQUIRED TO BE UNDERTAKEN IN THE IMMEDIATE FUTURE

- 14 Without a proper a handover by Madgwicks of Mr Tesoriero's files, I am not in a position to accurately determine what work will be required to ensure our clients are properly prepared for the trial and how long that work will take.
- 15 Having regard to my experience and the work Aptum Legal has undertaken so far, I and my team and identified the following areas that I currently consider will require substantial work.

Westpac and Forum Finance discovery:

- 16 It appears that little work has been done on reviewing the discovered documents provided by Westpac or the liquidators for Forum Finance. At this stage, we anticipate that it may be necessary to conduct a complete review of what I understand to be approximately 35,000 discovered documents.

Tracing claim and evidence summaries:

- 17 It appears as though little work has been done on any review of the evidence Westpac relies on to maintain its tracing claim. From Aptum Legal's preliminary review of the s50 *Evidence Act* summaries provided by Westpac, we have identified concerns with the admissibility of the summaries and identified issues that warrant further enquiry as to the chain of evidence Westpac will rely on to establish the tracing. We anticipate this will require extensive forensic analysis and may necessitate the briefing of a forensic accounting expert to obtain an opinion.

Defences:

- 18 We anticipate that amendments are required to the defences of all parties Aptum acts for. On our current preliminary review, we anticipate having to:
- 18.1 amend Mr Tesoriero's defence to:
- (a) directly plead to the trust/tracing claim (based on the forensic analysis discussed above); and
 - (b) amend the 'Capital Return' defence to more specifically plead the character of all relevant inflows and outflows of funds;

18.2 amend the defences for Mr Tesoriero Snr and each corporate entity to move away from the generic nature of the defences to a tailored defence for that particular respondent (e.g., we note, in particular, the need to plead specifically to the trust/tracing claim (based on the forensic analysis discussed above)).

Further and better particulars:

19 Related to the pleadings issue, Westpac and SMBC have requested further and better particulars of the details and character of the payments in and out of the Forum group, which to date have not adequately been provided.

20 My firm's preparation of a complete response is likely to be dependent on:

20.1 a review of discovery, subpoenaed documents, and documents in the possession or control of Mr Tesoriero; and

20.2 the outcome of the forensic analysis/expert evidence referred to above.

Mr Tesoriero's discovery:

21 Westpac has previously raised with Madgwicks concerns over Mr Tesoriero's discovery, and those questions and concerns have not been addressed. We anticipate that work may be required to ensure compliance with discovery obligations.

Mr Tesoriero's evidence:

22 We are unsure how much work has been done on considering and preparing Mr Tesoriero's evidence for trial. I am concerned that substantial work will be required to prepare Mr Tesoriero's evidence, including consideration of evidence from additional witnesses.

Mr Tesoriero Snr discovery and evidence:

23 We are still obtaining instructions from Mr Tesoriero Snr. I understand that he has not made any discovery. I also understand that little work has been done to consider and prepare (if necessary) evidence for Mr Tesoriero Snr.

Counsel team for trial:

24 Uncertainty about whether an adjournment application can and should be brought, and the outcome and effect of this disqualification application, has impeded progress on briefing counsel team for the trial. The existing junior counsel, Mr O'Haire, is likely to be retained, but my firm has not yet identified senior counsel who is suitable for the matter and available for the trial currently scheduled to commence on 10 October 2022 and run for 2-3 weeks.

Expert process:

25 If the Tesoriero entities do engage an expert, it is likely that the Court would benefit from a conclave or joint report.

Further release of funds:

26 Having regard to the observations I make above, I anticipate that it will be necessary to seek a further release of funds presently subject to the freezing order, to enable the further work described above. From my understanding of the course of the litigation to date, I expect that any further release is likely to be opposed and will therefore require a contested hearing. My firm is not prepared to act in a proceeding like this on a conditional-fee basis.

Affirmed at MELBOURNE)
 in the State of Victoria)
 by NIGEL DAVID EVANS)
 on 19 August 2022)



Signature of **NIGEL DAVID EVANS**

Before me:



Signature of **JOSHUA NICHOLAS BARAVELLI**
 of Level 1, 84 William Street, Melbourne VIC 3000,
 an Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria),
 a person authorised under section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the *Electronic Transactions Act 2000* (NSW).
2. I saw the face of the deponent.
3. I observed the deponent signing a copy of this affidavit in real time.
4. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
5. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
6. I have confirmed based on the following identification document presented to me: Drivers Licence

SCHEDULE OF PARTIES

<p>Federal Court of Australia District Registry: New South Wales Division: General</p>	<p>No. NSD616/2021</p>
<p>WESTPAC BANKING CORPORATION ABN 33 007 457 141</p>	<p>First Applicant</p>
<p>WESTPAC NEW ZEALAND LIMITED (COMPANY REGISTRATION NUMBER COMPANY NUMBER 1763882)</p>	<p>Second Applicant</p>
<p>FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172</p>	<p>First Respondent</p>
<p>BASILE PAPADIMITRIOU</p>	<p>Second Respondent</p>
<p>VINCENZO FRANK TESORIERO</p>	<p>Third Respondent</p>
<p>FORUM GROUP FINANCIAL SERVICES PTY LTD (PROVISIONAL LIQUIDATORS APPOINTED) ACN 623 033 705</p>	<p>Fourth Respondent</p>
<p>FORUM GROUP PTY LTD (RECEIVERS APPOINTED) (IN LIQUIDATION) ACN 153 336 997</p>	<p>Fifth Respondent</p>
<p>FORUM ENVIRO PTY LTD (PROVISIONAL LIQUIDATORS APPOINTED) ACN 168 709 840</p>	<p>Sixth Respondent</p>
<p>64-66 BERKELEY ST HAWTHORN PTY LTD ACN 643 838 662</p>	<p>Eighth Respondent</p>
<p>14 JAMES STREET PTY LTD (IN LIQUIDATION) ACN 638 449 206</p>	<p>Ninth Applicant</p>
<p>EDMONSTONE ROAD PTY LTD (IN LIQUIDATION) ACN 622 944 129</p>	<p>Tenth Respondent</p>
<p>5 BULKARA STREET PTY LTD (IN LIQUIDATION) ACN 630 982 160</p>	<p>Eleventh Respondent</p>
<p>6 BULKARA STREET PTY LTD (IN LIQUIDATION) ACN 639 734 473</p>	<p>Twelfth Respondent</p>
<p>23 MARGARET STREET PTY LTD ACN 623 715 373</p>	<p>Thirteenth Applicant</p>

1160 GLEN HUNTLY ROAD PTY LTD ACN 639 447 984	Fourteenth Respondent
14 KIRWIN ROAD MORWELL PTY LTD ACN 641 402 093	Fifteenth Respondent
CANNER INVESTMENTS PTY LTD ACN 624 176 049	Sixteenth Respondent
123 HIGH STREET TARADALE PTY LTD ACN 639 872 512	Seventeenth Respondent
160 MURRAY VALLEY HWY LAKE BOGA PTY LTD ACN 641 392 921	Eighteenth Respondent
31 ELLERMAN STREET DIMBOOLA PTY LTD ACN 641 392 887	Nineteenth Respondent
4 COWSLIP STREET VIOLET TOWN PTY LTD ACN 639 872 352	Twentieth Respondent
55 NOLAN STREET MARYBOROUGH PTY LTD ACN 641 392 912	Twenty-First Respondent
89 BETKA ROAD MALLACOOTA PTY LTD ACN 641 393 179	Twenty-Second Respondent
9 GREGORY STREET OUYEN PTY LTD ACN 641 392 707	Twenty-Third Respondent
9 MAIN STREET DERRINALLUM PTY LTD ACN 639 872 736	Twenty-Fourth Applicant
286 CARLISLE STREET PTY LTD ACN 610 042 343	Twenty-Fifth Respondent
275 HIGH STREET GOLDEN SQUARE PTY LTD ACN 639 870 545	Twenty-Sixth Respondent
MAZCON INVESTMENTS HELLAS IKE	Twenty-Seventh Respondent
PALANTE PTY LTD ACN 135 344 151	Twenty-Eighth Respondent
ANASTASIOS GIAMOURIDIS	Twenty-Ninth Respondent
THE FORUM GROUP OF COMPANIES PTY LTD (IN LIQUIDATION) ACN 151 964 626	Thirtieth Respondent
IUGIS PTY LTD (IN LIQUIDATION) ACN 632 882 243	Thirty-First Respondent
IUGIS (UK) LIMITED	Thirty-Second Respondent

IUGIS HOLDINGS LIMITED	Thirty-Third Respondent
IUGIS GLOBAL FINANCIAL SERVICES LIMITED	Thirty-Fourth Respondent
IUGIS FINANCE LIMITED	Thirty-Fifth Respondent
SPARTAN CONSULTING GROUP PTY LTD (IN LIQUIDATION) ACN 168 989 544	Thirty-Sixth Respondent
INTRASHIELD PTY LTD (IN LIQUIDATION) ACN 133 426 534	Thirty-Seventh Respondent
TESORIERO INVESTMENT GROUP PTY LTD ACN 161 088 115	Thirty-Eighth Respondent
MANGUSTA (VIC) PTY LTD ACN 631 520 682	Thirty-Ninth Respondent
193 CARLISLE STREET ENTERPRISES PTY LTD ACN 612 615 237	Fortieth Respondent
8-12 NATALIA AVE OAKLEIGH PTY LTD ACN 643 838 626	Forty-First Respondent
IUGIS HELLAS IKE	Forty-Second Respondent
IUGIS ENERGY SA	Forty-Third Respondent
ERIC CONSTANTINIDIS	Forty-Fourth Respondent
GIOVANNI (JOHN) TESORIERO	Forty-Fifth Respondent
MOUSSA (TONY) BOUCHAHINE	Forty-Sixth Respondent
LOUISA MARIA AGOSTINO	Forty-Seventh Respondent
D&D GROUP O.E	Forty-Eighth Respondent
AROMATIKA FYTA TSAI OLYMPOU THEION IKE	Forty-Ninth Respondent

MinterEllison

31 January 2021

BY EMAIL: sazz.nasimi@madgwicks.com.au

Sazz Nasimi
Partner
Madgwicks Lawyers
Level 6, 140 William Street
Melbourne VIC 3000

Dear Mr Nasimi

Westpac Banking Corporation & Anor v Forum Finance Pty Limited & Ors - Federal Court of Australia Proceeding NSD616/2021 (Proceedings)

1. We refer to your letter dated 3 December 2021 requesting further and better particulars of our clients' Second Further Amended Statement of Claim filed 10 August 2021 (**2FASOC**) and to the Orders of Justice Lee dated 12 November 2021.
2. As in your letter, terms defined in the 2FASOC have the same meaning in this letter.
3. This letter provides, where appropriate, further particulars of the paragraphs of the 2FASOC referred to in your letter. Although you have requested that we include these particulars in a third further amended statement of claim, we consider that such a course is unnecessary at this stage, particularly in circumstances where detailed particulars have already been provided to Fortis Law in our letter of 14 September 2021 and to you in our letter of 22 September 2021 (**22 September Letter**) in response to Fortis Law's letter of 23 August 2021 regarding the Amended Statement of Claim (**ASOC**).
4. In many instances, your letter requested further particulars of allegations which we have already provided to you in response to Fortis Law's previous requests, or which were already adequately particularised in the 2FASOC. In many instances, your requests extend beyond a request for particulars, necessary for your client to know the case he is to meet at trial and to confine the proceedings at trial, into a request for evidence or are in the nature of interrogatories. In order to facilitate the expeditious conduct of the proceedings, we have responded to these matters even though the requests are not proper requests for particulars. Further particulars will be provided to you in respect of some matters after service of evidence and the completion of discovery, if applicable.

Part C: The Scheme

5. The below facts, matters and circumstances of the Scheme are a matter for evidence. However, Westpac and WNZL intend to rely on the following facts, matters and circumstances, among others.

Paragraph 55

6. In response to Request 1 in relation to paragraph 55 of the 2FASOC, paragraph 12 of our 22 September Letter already details the facts, matters and circumstances from which it can be inferred that Mr Tesoriero devised the Scheme with Mr Papas pleaded in paragraph 55 of the ASOC, not paragraph 35 as erroneously stated. The request is also inappropriate as Westpac and WNZL are not required to prove (let alone plead) the "usual details" of the conspiracy. Conspiracy is proved by proving overt acts from which the conspiracy, the content of which is known only to the conspirators, is proven by inference.
7. In addition to paragraph 12 of the 22 September Letter, the following further facts, matters and circumstances are relied upon:



- (a) Further to that set out in paragraph 12(a) of our 22 September Letter, Mr Tesoriero has been involved in the Forum business since at least February 2013, attending board meetings for TFGC see for example [FOG.1000.0008.0753](#); [FOG.1000.0008.1084](#) and [FOG.1000.0008.1085](#) and “Executive Meetings” for Forum: see for example [FOG.1000.0008.1940](#) and [FOG.1000.0008.1941](#).
- (b) In addition to being privy to TFGC’s financial information and that of its controlled entities from 1 October 2014, as set out at paragraph 12(c) of our 22 September Letter, Mr Tesoriero was privy to TFGC’s financial information as at the time that the Scheme was devised (see for example email from Tony Bouchahine (**Mr Bouchaine**), Chief Financial Officer for Forum, attaching the TFGC company structure and its financial statements for the years ending 30 June 2016 and 30 June 2017: [FOG.1000.0001.6954](#), [FOG.1000.0001.6955](#), [FOG.1000.0001.6956](#), [FOG.1000.0001.6998](#). Mr Tesoriero was also provided with TFGC’s FY 2018 accounts: see [FOG.1000.0003.2165](#) and [FOG.1000.0003.2168](#); FY 2019 accounts: see [FOG.1000.0004.4751](#) and [FOG.1000.0004.4752](#); and FY 2020 accounts: see [FOG.1000.0004.5114](#) and [FOG.1000.0004.5115](#).
- (c) As at the date of incorporation of FGFS, 23 November 2017, Mr Tesoriero was aware that Mr Bouchahine had instructed the Forum group of companies’ accountants that the services to be provided by FGFS were “financial services”, when no such services were in fact provided by it: see [FOG.1000.0007.9073](#).
- (d) On 23 March 2018, Mr Tesoriero emailed Mr Papas a list of purchases for which he required finance from “Forum”, totalling \$2.125m: see [FOG.1000.0002.2616](#). On 25 March 2018 a further list was email to Mr Papas: see [FOG.1000.0002.2590](#). It can be inferred from these requests that Mr Tesoriero had the ability to direct, and in fact directed, TFGC and FGFS’s expenditure prior to the time of devising and implementing the Scheme and therefore had the relevant knowledge of those entities’ spending at the time the Scheme was devised.
- (e) Mr Tesoriero held an authorisation for FGFS’ NAB bank account number 271058642: see [FOG.1000.0003.9690](#), and apparently used that authorisation to cause transactions on the account: see [FOG.1000.0001.6613](#) and [FOG.1000.0005.9543](#). From this it can be inferred that Mr Tesoriero knew where FGFS obtained funds and to whom it dispersed those funds, providing further particularisation of the matters set out in paragraph 12(e) of our 22 September Letter.
- (f) Mr Tesoriero and Mr Papas, from time to time, exchanged emails about acquisitions that could be financed through Forum and the funds that could be extracted from FGFS: see for example [FOG.1000.0002.7062](#); [FOG.1000.0002.9301](#); and [FOG.1000.0003.0767](#). It is to be inferred from these emails that Mr Tesoriero and Mr Papas intended for Forum entities, including FGFS, to be used to purchase assets and properties from funds unlawfully obtained from the Scheme.
- (g) From as early as August 2018, Mr Tesoriero regularly received from Mr Bouchahine or from Brandon Chin, an accountant working with the Forum group, a schedule titled “BP & VT Outstanding Payments” or “Outstanding and Recurring Payments for BP & VT” which recorded third party payments and finance repayments to be made in relation to properties and assets purchased with funds obtained through the Scheme including those owned by the Tesoriero Entities and Jointly Owned Entities and used for Mr Tesoriero and Mr Papas’ benefit, for example rental properties, motor vehicles and boats: see for example [FOR.001085373](#) and [FOR.001085374](#). From at least July 2020 these schedules disclosed FGFS’ Cashflow including disclosing that funds from the “ORCA bank account” were a source of cashflow (including amounts described as “future funding” meaning payments received in relation to financing transactions which did not then exist), and referred to recurring payments to be made to “funders”, including “BHO”, “SMBC” and “Flexi” (see worksheet titled “Recurring”) and referred to payments to be made for “Funding for Forum group”; “Funding for lugis”, and “BHO – New Funder” (see worksheet titled “FGFS”): see [FOG.1000.0001.3302](#), [FOG.1000.0001.3303](#),. A detailed list of these spreadsheets, and the date on which each was provided to Mr Tesoriero, is annexed at **Annexure A** to this letter.

- (h) At the time of receipt of the schedules referred to in the previous paragraph, Mr Tesoriero knew that at least Forum Finance acted as an intermediary in equipment finance transactions and that the money received from financiers (including Westpac and WNZL) was paid by those financiers for the purpose of acquisition of the equipment subject of the finance arrangement with the debtor (or occasionally to refinance equipment subject of an equipment finance arrangement which that debtor had with another creditor). Forum Finance and FGFS had no entitlement to use the principal sum raised, or to raise money prior to completion of a genuine equipment finance agreement. On receipt of the schedules (if not before) Mr Tesoriero knew that money paid by the financiers for the purpose of funding equipment leases was not used for that purpose but was used to fund FGFS and for various purposes including the acquisition of properties and other chattels for the benefit of Mr Papas and Mr Tesoriero, payments to the benefit of Mr Papas and Mr Tesoriero, payment of debts owed by companies ultimately owned by Mr Papas and Mr Tesoriero and to other companies in the Forum Group or which were owned by Mr Papas.
- (i) Mr Tesoriero also directed payments to be made by FGFS to his account, or to entities associated with him, see for example: [FOR.000569394](#), [FOR.001352750](#); [FOR.001352845](#); [FOR.001411033](#); [FOG.1000.0001.6552](#); [FOG.1000.0002.4504](#); [FOG.1000.0003.7329](#) and [FOG.1000.0003.7330](#). A detailed list of the occasions on which Mr Tesoriero made directions as to the use of funds from FGFS is annexed at **Annexure B**.

8. With respect to the specific requests made in Request 1, we respond as follows:

- (a) As to Request 1(a), as pleaded at paragraph 55, the precise date on which the Scheme was devised is not known to Westpac and WNZL, but it is alleged to have been no later than 31 August 2018, or alternatively, 13 September 2018. The precise date is not required for your client to know the case he is to meet.
- (b) As to Request 1(b), a request as to the manner by which the Scheme is alleged to have been devised is not a proper request for particulars and is a matter for evidence. The material fact is the Scheme, not how it came to be. Westpac and WNZL rely on inferences arising from various facts, matters and circumstances as pleaded and particularised in establishing the creation of the Scheme.
- (c) As to Request 1(c), contrary to what is stated at paragraph 1(c) of your letter, it is not alleged in paragraph 55 that Mr Papas and Mr Tesoriero devised the Scheme *with* the “persons or entities related to one or both of them (including entities that they would later bring into existence)”, but that the scheme *involved* these persons or entities. The persons or entities known to Westpac and WNZL are pleaded throughout the 2FASOC, including in paragraph 1844, and are listed as follows.
- (i) Forum Group Financial Services Pty Ltd (in liquidation) ACN 623 033 705;
 - (ii) Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997;
 - (iii) Forum Enviro Pty Ltd (in liquidation) ACN 168 709 840;
 - (iv) Forum Enviro (Aust) Pty Ltd (in liquidation) ACN 607 484 364;
 - (v) 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662;
 - (vi) 14 James Street Pty Ltd (in liquidation) ACN 638 449 206;
 - (vii) 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129;
 - (viii) 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160;
 - (ix) 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473;
 - (x) 23 Margaret Street Pty Ltd ACN 623 715 373;
 - (xi) 1160 Glen Huntly Road Pty Ltd ACN 639 447 984;

- (xii) 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093;
 - (xiii) Canner Investments Pty Ltd ACN 624 176 049;
 - (xiv) 123 High Street Taradale Pty Ltd ACN 639 872 512;
 - (xv) 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921;
 - (xvi) 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887;
 - (xvii) 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352;
 - (xviii) 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912;
 - (xix) 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179;
 - (xx) 9 Gregory Street Ouyen Pty Ltd ACN 641 392 707;
 - (xxi) 9 Main Street Derrinallum Pty Ltd ACN 639 872 736;
 - (xxii) 286 Carlisle Street Pty Limited ACN 610 042 343;
 - (xxiii) 275 High Street Golden Square Pty Ltd ACN 639 870 545;
 - (xxiv) Mazcon Investments Hellas IKE;
 - (xxv) Palante Pty Ltd ACN 135 344 151;
 - (xxvi) The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626;
 - (xxvii) Iugis Pty Ltd (in liquidation) ACN 632 882 243;
 - (xxviii) Iugis (UK) Limited;
 - (xxix) Iugis Holdings Limited;
 - (xxx) Iugis Global Financial Services Limited;
 - (xxxi) Iugis Finance Limited;
 - (xxxii) Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544;
 - (xxxiii) Intrashield Pty Ltd (in liquidation) ACN 133 426 534;
 - (xxxiv) Tesoriero Investment Group Pty Ltd ACN 161 088 115;
 - (xxxv) Mangusta (Vic) Pty Ltd ACN 631 520 682;
 - (xxxvi) 193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237;
 - (xxxvii) 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626;
 - (xxxviii) Iugis Hellas IKE;
 - (xxxix) Iugis Energy SA;
 - (xl) Giovanni (John) Tesoriero;
 - (xli) Moussa (Tony) Bouchahine; and
 - (xlii) Louisa Maria Agostino.
- (d) As to request 1(d), the substance of the means or process by which Mr Papas and/or Mr Tesoriero planned to obtain money dishonestly and fraudulently from Westpac and WNZL is pleaded at paragraph 56 of the 2FASOC.

- (e) As to request 1(e), the request mistakes the pleading. The allegation is that (relevantly) Mr Papas and Mr Tesoriero devised a Scheme involving Forum Finance and others to obtain money dishonestly and fraudulently. That is not a pleading of knowledge, but a characterisation of the devised conduct. It also follows from the allegation that Mr Papas and Mr Tesoriero devised the fraudulent and dishonest Scheme that they knew the Scheme was fraudulent and dishonest, each of which are objective characterisations. Further, that the Scheme would involve Mr Tesoriero dishonestly and fraudulently obtaining money that he was not entitled to receive follows from the nature of the Scheme, in that it did in fact involve him dishonestly and fraudulently obtaining money that he was not entitled to receive as well as the facts, matters and circumstances set out in paragraph 7 above and the matters set out in paragraph 12 of our 22 September Letter, including paragraph 12(m).

Paragraph 56

9. In response to Request 2 regarding paragraph 56(f), we have provided you with the total figures of the funds dispersed to Mr Tesoriero or companies related to him which have been identified by Westpac and WNZL in paragraph 14 of our 22 September Letter, noting that particulars of further funds and payments used and dispersed to Mr Tesoriero will be provided after evidence. Westpac and WNZL's case that the funds were dispersed by implementation of the Scheme. The request for the "usual calculations" is otherwise not a proper request for particulars. The material fact is the dispersal of funds and, we accept, a proper particular of that allegation is identification of to whom the dispersal was made and the amount of that dispersal.
10. With respect to the funds disbursed to Mr Tesoriero, the individual payments that have been identified by Westpac and WNZL to date, and the date on which each was made by FGFS, is set out in particular (i) to paragraph 1895 of the 2FASOC. Our 22 September Letter referred to FGFS' bank statements which evidence many of these payments. As the bank statements were accidentally omitted from enclosure with that letter, a copy of the bank statements and FGFS' balance sheet is now **enclosed**. The precise details of each of the payments is (at the highest) a matter for evidence and will be disclosed as part of Westpac and WNZL's evidence.
11. With respect to funds disbursed to companies related to Mr Tesoriero, we refer to the FGFS balance sheet together with the worksheets included in FGFS's Xero records (**enclosed**) which record payments made to or to the benefit of the companies related to Mr Tesoriero. While the characterisation of the payments in the Xero records as "loans" from FGFS is not accepted, Westpac and WNZL rely on those records as recording payments made to and for the benefit of the relevant entities.
12. In response to Request 3 regarding paragraph 56(h), we repeat paragraphs 9 to 11 above. We add that the request for the "usual details" is also not a proper request for particulars.
13. In response to Request 4, paragraph 56 does not contain any allegations as to Mr Tesoriero's involvement in the operation of the Scheme beyond the receipt and use of funds (see the chapeau to paragraph 56). The actions taken by Mr Tesoriero in furtherance of the Scheme Agreement are pleaded at paragraph 1900 of the 2FASOC, which we note is the subject of separate requests numbered 28 to 36 in your letter to which we respond accordingly below.

Paragraph 57

14. We have responded to Requests 5(a) and (c) in our response to Request 1 at paragraphs 6 to 8 above. Further, the dishonest and fraudulent intent follows from the nature of the Scheme. As to Request 5(b), the facts, matters and circumstances relied upon for the allegation that Mr Tesoriero implemented the Scheme are the matters specified in paragraph 12 of our 22 September Letter, the matters specified at paragraphs 6 to 8 above and the matters pleaded at paragraph 1900 of the 2FASOC. Further:
- (a) Mr Tesoriero was involved in the selection and purchase of properties and the execution of contracts for sale of certain of the properties purchased by the Jointly Owned Entities and the Tesoriero Entities: see for example [FOG.1000.0003.1468](#); [FOG.1000.0004.2645](#); [FOG.1000.0003.4901](#) and [FOG.1000.0011.3341](#);

- (b) Mr Tesoriero was involved in causing new entities to be incorporated for the purposes of purchasing properties, including certain of the Jointly Owned Entities and the Tesoriero Entities, which used money fraudulently obtained from our clients to fund those purchases: see for example [FOG.1000.0005.1467](#); and in causing bank accounts to be opened for certain of the Jointly Owned Entities and Tesoriero Entities: see for example [FOR.000970329](#);
- (c) Mr Tesoriero was involved in directing which entities would be used to purchase properties to be purchased in part with the funds from the Scheme, and consequently how the money procured by the Scheme was to be used: see for example [FOG.1000.0002.4542](#); [FOG.1000.0003.2764](#); [FOG.1000.0010.5032](#) and [FOG.1000.0012.7070](#). We refer to Annexure B in this regard;
- (d) Mr Tesoriero was involved in identifying and acquiring assets with funds obtained through the Scheme, and in directing or requesting the purchase of particular assets: see for example [FOR.001350580](#); [FOG.1000.0003.2806](#); [FOG.1000.0003.2808](#) and [FOG.1000.0012.1011](#) and [FOG.1000.0015.3160](#).
15. In response to Request 6, the alleged benefit is a financial benefit, being the receipt and use of funds received from the Scheme and assets purchased with funds received from the Scheme. Those benefits are identified in paragraph 1895 of the 2FASOC and the paragraphs of the 2FASOC identified in paragraph 26(e) below.
16. In response to Request 7, paragraph 57(b) relevantly concerns the purpose of Mr Tesoriero rather than funds he in fact spent. The request is therefore not a proper request for further and better particulars in relation to this subparagraph. In any event, we refer to paragraphs 9 to 12 above regarding the funds spent by Mr Tesoriero. The funds spent by Mr Tesoriero on properties is a matter for evidence. Payments made towards properties include those that are set out in FGFS's Xero records and pleaded in Part H of the 2FASOC onwards.
17. In response to Request 8, paragraph 57(c) relevantly concerns the purpose of Mr Tesoriero rather than funds he in fact spent. The request is therefore not a proper request for further and better particulars in relation to this subparagraph. Nevertheless, in our 22 September Letter we have responded at paragraph 19 (and the opening words of paragraph 20) to this request. The businesses include those within the Forum Group overseas, as well as Theion Ike and D&D which received funds via 286 Carlisle St (although it is not accepted that those entities conducted any legitimate business). The amounts include amounts that are set out in FGFS' Xero records and pleaded in Part H of the 2FASOC onwards.
18. In response to Request 9(a), paragraph 57(d) relevantly concerns the purpose of Mr Tesoriero rather than funds he in fact spent or loans he in fact made. The request is not a proper request for further and better particulars in relation to this paragraph. Nevertheless, the FGFS balance sheet, with which you have been provided, sets out purported loans to businesses or subsidiaries of TFGC.
19. In response to Request 9(b)(i), the relevant businesses which are alleged to have been unprofitable absent the fraud, are those operated by FGFS (insofar as it operated a business), FE, FEA, Iugis, and Intrashield. In response to Request 9(b)(ii), the request is not a proper request for particulars and is a matter for evidence. In any event, we refer you to the affidavit of Jason Ireland affirmed on 29 September 2021 at paragraphs 22 to 25 regarding the financial position of FE and FEA. It can be inferred from the financial positions of each of these companies that they would have been unprofitable, absent the fraud.
20. In response to Request 10, paragraph 57(e) relevantly concerns the purpose of Mr Tesoriero rather than any acquisitions he in fact made. As such, requests (a) and (b) are not proper requests for particulars and are matters for evidence. Nevertheless, the goods and choses in action presently known to Westpac and WNZL which were acquired by Mr Papas and Mr Tesoriero, or Mr Papas include:
- (a) the Audi Race Cars pleaded at paragraph 2647 of the 2FASOC;
- (b) the XOXO yacht pleaded at paragraph 2543 of the 2FASOC, which although purchased in or prior to May 2018, payments in respect of which were still being made by FGFS after

entry into the Scheme, see for example the payments set out in the affidavit of Ms Caitlin Maria Murray (**Ms Murray**) sworn on 25 August 2021 at paragraph [31] and pages 285 to 296 of CMM-10 and see [FOG.1000.0001.5323](#) and [FOG.1000.0001.5324](#);

- (c) the jewellery particularised at particular (xiv) to paragraph 2684 of the 2FASOC;
- (d) a race horse, which again although purchased prior to August 2018, payments in respect of which were still being made by FGFS after entry into the Scheme, see for example: see [FOG.1000.0004.7299](#) and [FOG.1000.0004.7307](#);
- (e) a Porsche 911 GT2, in respect of which Mr Tesoriero and Mr Papas provided personal guarantees: see [FOG.1000.0003.2689](#) and [FOG.1000.0003.2691](#); [FOG.1000.0015.3214](#) and [FOG.1000.0015.3215](#). Further, the chattel mortgage for the Porsche GT2 RS is recorded on the FGFS balance sheet under non-current liabilities;
- (f) a Lamborghini Huracan, as to which see [FOG.1000.0004.5247](#), [FOG.1000.0004.5249](#), [FOG.1000.0010.9345](#) and [FOG.1000.0010.9346](#);
- (g) a Porsche Cayman GT4, see: [FOG.1000.0004.8721](#); [FOG.1000.0010.7081](#), [FOG.1000.0010.7082](#) and [FOG.1000.0010.7083](#). Further the chattel mortgage for the Porsche Cayman GT4 is recorded on the FGFS balance sheet under non-current liabilities;
- (h) two Jet skis, see [ROA.5000.0001.0001](#) at 4-11 and 22-28;
- (i) a 2020 Grady 325 Freedom boat, see: [ROA.5000.0001.0001](#) at 33-41; and
- (j) a Regal 2250 boat, as to which see [ROA.5000.0001.0001](#) at 54.

Payments in respect of a number of these assets are recorded the books and records of FGFS: see for example FGFS Account Transactions for the period 1 July 2020 to 30 April 2021: [SEC.5000.0144.2237](#).

Part F: The claim against Forum Finance

Paragraph 1839

- 21. In response to Request 11, we have responded to this request at paragraph 24 of our 22 September Letter.

Paragraph 1844

- 22. In response to Request 12:
 - (a) As to Request 12(a), as is evident from paragraph 1844 of the 2FASOC, the precise date on which the Scheme Agreement was entered into is unknown to Westpac and WNZL, but it is alleged that it was no later than 31 August 2018, or alternatively 13 September 2018. The date on which a conspiracy was entered into is not a material fact, or a particular necessary for a respondent to know the case that respondent is to meet.
 - (b) As to Request 12(b), this is not a proper request for particulars and is, at its highest, a matter for evidence. Westpac and WNZL rely on inferences arising from various facts, matters and circumstances as pleaded and particularised in establishing the entry into the Scheme Agreement, which is the material fact.
 - (c) As to Request 12(c), the basis of the allegation that Mr Tesoriero was a party to the Scheme Agreement is the facts, matters and circumstances set out in paragraph 12 of our 22 September Letter, together with the additional matters set out at paragraph 7 above.
 - (d) As to Request 12(d), the known co-conspirators are those identified in the particulars to paragraph 1844 of the 2FASOC; Mr Tesoriero Snr as pleaded in paragraph 2663 of the 2FASOC; Mr Bouchahine as pleaded in paragraph 2679 of the 2FASOC; and Ms Agostino as pleaded in paragraph 2697 of the 2FASOC. Westpac and WNZL do not know the identities of the other co-conspirators.

- (e) As to Request 12(e), Westpac and WNZL do not know whether the Scheme Agreement is express or implied (or partly express and partly implied). A conspiracy may be pleaded and proved by reference to overt acts (for example, *Dresna v Misu Nominees Pty Limited* [2004] FCA 1537 (2004) ATPR (Digest) 46-245 at [103]) and it is not necessary to allege whether it was express or implied.
- (f) As to Request 12(f), we refer to the matters set out in paragraph 12 of our 22 September Letter and the matters set out in paragraphs 6 to 8, 10 and 11 above.
23. In response to Request 13, we assume that your request relates to particular (a) to this paragraph which relevantly particularises the known co-conspirators as including Forum Finance and IUGIS NZ which were the corporations that Mr Papas and Mr Tesoriero controlled and used as the vehicles to implement the Scheme. That particular relevantly provides that Forum Finance and IUGIS NZ were the corporations that Mr Papas and Mr Tesoriero “controlled and used”, rather than “knowingly controlled and used”, as the vehicles to implement the Scheme. Sufficient particularisation of the allegation of the Scheme Agreement have been provided and no further particularisation of the detailed particulars already provided is necessary, but in any event, particulars of Mr Tesoriero’s control and use of Forum Finance as a vehicle to implement the Scheme are the matters pleaded at paragraph 56 and 1900 of the 2FASOC (including that Mr Tesoriero was a director of and acted as a director of Forum Finance), the matters set out in paragraph 12(a), (b), (d) and (p) to (r) of our 22 September Letter and the matters set out in paragraphs 6 to 8 above.
24. Particulars of Mr Tesoriero’s control and use of IUGIS NZ as a vehicle to implement the Scheme are the matters pleaded at paragraph 56 and 1900 of the 2FASOC, together with the fact that as a director of FGFS, it can be inferred that in accordance with his legal obligations, Mr Tesoriero was aware of a purported loan of \$10,432,022 from “Forum NZ” (IUGIS NZ) to FGFS, referred to in the accounts for FGFS: see [FOR.000182671](#), page 3 and [FOR.000182669](#). Further, a number of the spreadsheets referred to in Annexure A make reference to funding for “IUGIS NZ” and it is to be inferred from this that Mr Tesoriero was aware that FGFS was obtaining funds from Iugis NZ.
25. In response to Request 14, we assume your request relates to particular (c) which refers to FG, FE and FEA (rather than FEWA). The details of the monies received, used and disbursed by these entities is pleaded in Part D, Part J, in particular paragraphs 1933 and 1939 (in the case of FG), Part K, in particular paragraphs 1952 and 1958 (in the case of FE) and Part L, in particular paragraphs 1971 and 1977 (in the case of FEA). The proportion of monies used to benefit Mr Tesoriero is a matter for evidence. We refer to FGFS’ bank statements and balance sheet enclosed with this letter, and FGFS’s Xero records, which shows payments from FGFS to FG, FE and FEA. In addition, a preliminary analysis of the flow of funds from Forum Finance to FGFS, FEA, FE and FG in the month of October 2019 was referred to in paragraph [9] of the affidavit of Ms Murray dated 15 July 2021, the summary table being exhibited at page 20-33 of Exhibit CMM-7 to that affidavit. The bank statements relied upon in that analysis were included from pages 34 of Exhibit CMM-7. Further, a schedule of the payments made from FG (account number 121782934) to accounts held in the name of Tesoriero Investments Group (account 10572179) and John and Teresa Tesoriero (accounts 213608896 and 780597) that have been identified to date is annexed as **Annexure C** to this response. Payments received from Westpac and made by Forum Finance are identified in pages 1 to 11 of Exhibit CMM-7 to the first affidavit of Ms Murray sworn on 15 July 2021 in support of Westpac’s application for the appointment of provisional liquidators.
26. In response to Request 15:
- (a) As to Request 15(a), the knowledge that Mr Tesoriero had of these entities is of their operations and affairs, as a:
- (i) director of FGFS (or was a director of FGFS until April 2020 according to the records of ASIC); 64-66 Berkely St; 14 James St (until 1 May 2020); 26 Edmonstone Rd (until 1 May 2020); 5 Bulkara St (until 30 April 2020); 6 Bulkara St (until 27 October 2020); 23 Margaret St; 1160 Glen Huntley Rd; 14 Kirwin Rd; Canner Investments; 123 High St; 160 Murray Valley Hwy; 31 Ellerman St; 4 Cowslip St; 55 Nolan St; 89 Betka Rd; 9 Gregory St; 9 Main St; 286 Carlisle St; 275 High St; TIG; Mangusta; 193 Carlisle St; and 8-12 Natalia Ave;

- (ii) shareholder (either directly or indirectly) of FGFS, TFGC (indirectly through his shareholding in TIG and through his indirect shareholding in TFGC of FG, FE and FEA and other entities in the Forum group); 64-66 Berkely St; 14 James St; 26 Edmonstone Rd; 5 Bulkara St; 6 Bulkara St; 23 Margaret St; 1160 Glen Huntley Rd; 14 Kirwin Rd; Canner Investments; 123 High St; 160 Murray Valley Hwy; 31 Ellerman St; 4 Cowslip St; 55 Nolan St; 89 Betka Rd; 9 Gregory St; 9 Main St; 286 Carlisle St; 275 High St; TIG; Mangusta; 193 Carlisle St; and 8-12 Natalia Ave,

as pleaded at the following paragraphs of the 2FASOC: 5(h) (Jointly Owned Entities), 7(d) (286 Carlisle St), 7(e) (Tesoriero Entities), 34H (TIG), 34I (Mangusta), 34J (193 Carlisle St), 34K (8-12 Natalia Ave), 31 (275 High St). This information is apparent on the face of company searches of each of these entities. Further, with the exception of FGFS, TIG, 193 Carlisle St and 286 Carlisle St, each of the companies was a single venture or purpose company, where the venture or purpose was to acquire property (using debt and funds provided by FGFS) for the benefit or one or both of Mr Papas and Mr Tesoriero. 286 Carlisle St (of which Mr Tesoriero and Mr Tesoriero Snr were the only directors) received funds from FGFS and paid those funds overseas at Mr Papas' direction or to his benefit.

- (b) Further to paragraph (a), on numerous occasions, Mr Tesoriero directed or caused the payment of money to or from, or for the benefit of, these entities. On other occasions, he caused those entities to purchase property. Further particulars will be provided following the service of evidence. We refer to the list at **Annexure B**.
- (c) As to Request 15(b), see subparagraphs (a) and (b) above.
- (d) As to Request 15(c), the control that Mr Tesoriero had of these entities which caused them to become a co-conspirator is the fact that he (together with Mr Papas in the case of the Jointly Owned Entities) used them to receive funds and acquire assets as pleaded in the 2FASOC in Part I and following with respect to each entity. He did so as a director of the companies referred to in sub-paragraph (a)(i) above, and with the authority to direct that payments be made to the benefit of those companies (see **Annexure B**).
- (e) As to Request 15(d), the details of the monies received, used and disbursed by each of these entities is pleaded in the 2FASOC, and summarised in paragraph 19 of our 22 September Letter, and is set out further below, by reference to paragraph numbers of the 2FASOC.

(i) The Jointly Owned Entities –

- (A) FGFS – at least \$282,368,524.94 as set out in paragraph 1914;
- (B) 64-66 Berkeley St – at least \$1,865,000 as set out in paragraph 1990;
- (C) 14 James St – at least \$2,838,000 as set out in paragraph 2008;
- (D) 26 Edmonstone Rd - at least \$2,470,124.35 (as set out in paragraph 2026, less the payments recorded as made by FGFS prior to 31 August 2018);
- (E) 5 Bulkara St – at least \$3,779,000 as set out in the paragraph 2044;
- (F) 6 Bulkara St - at least \$4,953,000 as set out in paragraph 2062;

(ii) The Tesoriero Entities –

- (A) 23 Margaret St – at least \$605,674.09 as pleaded in paragraph 2080 less the payments recorded as made by FGFS prior to 31 August 2018 (and see further paragraph 29(a) below);
- (B) 1160 Glen Huntly – at least \$1,054,000 as pleaded in paragraph 2098.
- (C) 14 Kirwin – at least \$300,794 as pleaded in paragraph 2116.
- (D) Canner – at least \$1,180,000 as pleaded in paragraph 2134.

- (E) 123 High St – at least \$78,353 as pleaded in paragraph 2152.
- (F) 160 Murray Valley – at least \$260,202.74 as pleaded in paragraph 2170.
- (G) 31 Ellerman St – at least \$155,262 as pleaded in paragraph 2188.
- (H) 4 Cowslip St – at least \$346,623 as pleaded in paragraph 2206.
- (I) 55 Nolan – at least \$173,907 as pleaded in paragraph 2224.
- (J) 89 Betka – at least \$174,574 as pleaded in paragraph 2242.
- (K) 9 Gregory – at least \$18,969 as pleaded in paragraph 2260.
- (L) 9 Main St – at least \$146,136 as pleaded in paragraph 2278.
- (iii) 286 Carlisle St – at least \$2,405,000 as pleaded in paragraph 2296 (and see further paragraph 30(b) below).
- (iv) 275 High St – at least \$339,214 as set out in 2314.
- (v) TIG – at least \$1,159,000 as pleaded in paragraph 2425 (and see further paragraph 30(c) below).
- (vi) Mangusta – at least \$150,009.85 as pleaded in paragraph 2543.
- (vii) 193 Carlisle St- at least \$30,304.64 as pleaded in paragraph 2562. and
- (viii) 8-12 Natalia Ave – at least \$1,436,000 as pleaded in paragraph 2581 (and see further paragraph 29(d) below).

Paragraph 1845

27. In response to Request 16, we have answered this request in part at paragraph 27 of our 22 September Letter. The knowledge of Mr Tesoriero that is alleged to have caused Forum Finance to become a party to the Scheme Agreement is the knowledge of its operations and affairs which he had by reason of having been its director since 1 April 2017, as pleaded at paragraph 3(e) of the 2FASOC, as well as the other matters set out at paragraph 12 of our 22 September Letter and the matters set out in paragraphs 6 to 8, 10 and 11 above.

Part G: The claim against Mr Papas

Paragraph 1867

28. In response to Request 17(a), we have answered this request at paragraph 29 of our 22 September Letter by reference to paragraphs 12 and 13 of that letter. In particular, we refer to paragraph 12(q) of that letter. We further refer to the fact that Mr Tesoriero directed Mr Bouchahine and Forum staff to make payments in relation to those entities, some examples of which are given in response to Requests 64 and 65 below.
29. In response to Request 17(b), we repeat paragraph 29 of our 22 September Letter. Further, that the Jointly Owned Entities were created to hold property financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36 is inferred from the fact that the Jointly Owned Entities in fact did so, as pleaded in the 2FASOC at paragraph 6 together with the Scheme Agreement and the matters pleaded at paragraphs 55 to 57 of the 2FASOC and paragraph 12 of our 22 September Letter; and that the Jointly Owned Entities had no other business.

Paragraph 1872

30. In response to Request 18(a), we refer to our response at paragraph 30 of our 22 September Letter, the Xero worksheets referred to in paragraph 11 above and our response in paragraph 26(e) above. Additionally, details of the payments received by the following entities are found in interlocutory evidence already filed and served in the proceedings, as follows:

- (a) 23 Margaret St – see the affidavit of Ms Murray sworn on 25 August 2021: see [36]-[38] and pages 308-338 of CMM-10;
 - (b) 286 Carlisle St – see the second affidavit of Ms Murray sworn on 30 September 2021: see [23]-[26] and pages 94-123 of Exhibit CMM-14;
 - (c) TIG – see the second affidavit of Ms Murray sworn on 30 September 2021: see [29]-[30] and pages 136-169 of CMM-14; and
 - (d) 8-12 Natalia Ave – see the second affidavit of Ms Murray sworn on 30 September 2021: see [32]-[34] and pages 181-207 of CMM-14 and the first affidavit of Ms Murray of 30 September 2021: see [20]-[22] and pages 30, 59, 153-154 of CMM-13.
31. In response to Request 18(b), the basis of the allegation that each of Mr Tesoriero, the Jointly Owned Entities, the Tesoriero Entities and 286 Carlisle St had no legitimate basis to receive those payments is that those monies were stolen from Westpac and WNZL, and the repetition of conduct in which money stolen from Westpac and WNZL was paid to FGFS and then by FGFS to the benefit of companies owned by Mr Papas, to the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle St and to Mr Papas and Mr Tesoriero. That conduct was directed, from time to time, by Mr Papas and Mr Tesoriero and was for the benefit of Mr Papas and Mr Tesoriero in circumstances in which FGFS had no business and was not indebted to Mr Papas or Mr Tesoriero. Westpac and WNZL rely on the payments recorded in FGFS's Xero balance sheet and the documents received by Mr Tesoriero as set out in paragraph 7 above, as well as the list of spreadsheets set out in **Annexure A**. Further, we add that Annexure D to Mr Tesoriero's affidavit of 21 July 2021 ascribes a nominal value of shares to all entities there listed, with the exception of Canner, suggesting that the companies do not carry out any business, a fact supported by Mr Tesoriero's deposing that their nominal value was "due to there being no trading or business activity in them": at paragraph 14. The lack of trading or business activity of these entities supports a conclusion that there was no business arrangement justifying receipt of those payments.

Paragraph 1875

32. In response to Request 19, we repeat paragraph 31 of our 22 September Letter, and the basis of the allegation that each of Mr Tesoriero and the entities identified in your letter were receiving substantial payments from FGFS which they had no legitimate basis to receive is that those monies were stolen from Westpac and WNZL, and the repetition of conduct in which money stolen from Westpac and WNZL was paid to FGFS and then by FGFS to the benefit of companies owned by Mr Papas, to the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle Street and to Mr Papas and Mr Tesoriero. That conduct was directed, from time to time, by Mr Papas and Mr Tesoriero and was for the benefit of Mr Papas and Mr Tesoriero in circumstances in which FGFS had no business and was not indebted to Mr Papas or Mr Tesoriero. Westpac and WNZL rely on the payments recorded in FGFS's Xero balance sheet, the documents received by Mr Tesoriero as set out in paragraph 7 above, as well as the list of Schedules set out in **Annexure A**. We otherwise repeat paragraphs 30 and 31 above.

Part H: The claim against Mr Tesoriero

Paragraph 1895

33. In response to Request 20, we repeat our response at paragraph 34 of our 22 September Letter. The legal basis on which the funds are said to be held on trust is, as stated at paragraph 6 of our 22 September Letter by reference to 23 Margaret St, a trust arising at law under *Black v S Freedman & Company* (1910) 12 CLR 105. Stolen money, or the traceable proceeds of stolen money, is held by the recipient on trust for the owner. There is academic debate as to whether that trust is categorised as a constructive or a resulting trust, but the categorisation is not a proper particular. No further particularisation of that claim is required. It arises at law from the fact that the money was stolen from Westpac and WNZL.
34. In response to Request 21, it is not alleged in paragraph 1895 of the 2FASOC that Mr Tesoriero knowingly received the funds in a *Barnes v Addy* sense (those claims are pleaded in paragraphs 1902 to 1910). We refer to paragraph 33 above.

35. In response to Request 22, this is a matter for evidence. Nevertheless, the amounts and dates of payments directly received by Mr Tesoriero identified by Westpac and WNZL are particularised at paragraph 1895. We repeat paragraphs 9 to 12 above. Further, the tracing of the money from Westpac or WNZL to the recipient will be the subject of a report served with Westpac and WNZL's evidence.
36. In response to Request 23, this is a matter for evidence. We repeat paragraphs 9 and 10 above. Further, the tracing of the money from Westpac or WNZL to the recipient will be the subject of a report served with Westpac and WNZL's evidence.
37. In response to Request 24, this is a matter for evidence. We repeat paragraphs 9-11 above. Further, the tracing of the money from Westpac or WNZL to the recipient will be the subject of a report served with Westpac and WNZL's evidence. We refer to paragraph 20 above in relation to acquisitions of boats and cars.

Paragraphs 1896 and 1897

38. In response to Request 25, we repeat our response at paragraph 37 of our 22 September Letter and our response at paragraph 33 above as to the legal basis for the trust and liability to account for the amounts received. As to the details and calculations of the amounts received and paid away or caused or permitted to be paid away by Mr Tesoriero, we repeat paragraphs 9 and 10 above. Further particulars of these funds will be provided following evidence.
39. In response to Request 26, it is not alleged in paragraphs 1896 and 1897 of the 2FASOC that Mr Tesoriero knowingly received the funds in a *Barnes v Addy* sense. We refer to paragraph 33 above.

Paragraph 1898

40. Request 27 repeats Request 12. We refer to paragraph 22 above.

Paragraph 1900

41. In response to Request 28, the facts, matters and circumstances relied upon to support the allegation that Mr Tesoriero signed the First Forum Agreement in furtherance of the Scheme Agreement are that the First Forum Agreement bears his signature, in addition to the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter.
42. In response to Request 29, the facts, matters and circumstances relied upon to support the allegation that Mr Tesoriero signed the Second Forum Agreement in furtherance of the Scheme Agreement are that the Second Forum Agreement bears his signature, in addition to the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter.
43. In response to Request 30, the facts, matters and circumstances relied upon to support the allegation are that Mr Tesoriero was the director of Forum Finance, in addition to the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter. Forum Finance's only corporate activity was to receive from Westpac the money stolen from Westpac (by Transactions 1 to 100) as pleaded in paragraphs 56(a)-(d) and then pay away those moneys as pleaded in paragraph 56(f). The payments received from Westpac and made by Forum Finance are identified in pages 1 to 11 of Exhibit CMM-7 to the first affidavit of Ms Murray sworn on 15 July 2021 in support of Westpac's application for the appointment of provisional liquidators.
44. In response to Request 31, the facts, matters and circumstances relied upon to support the allegation are that Mr Tesoriero was a shareholder in FGFS, that FGFS had no business but received money stolen from Westpac and paid away that money to the benefit of companies owned by Mr Papas, to the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle St and to Mr Papas and Mr Tesoriero. That conduct was directed, from time to time, by Mr Papas and Mr Tesoriero and was for the benefit of Mr Papas and Mr Tesoriero in circumstances in which FGFS had no business and was not indebted to Mr Papas or Mr Tesoriero. Westpac and WNZL rely on the payments recorded in FGFS's Xero balance sheet. In addition, Westpac and WNZL repeat

the matters pleaded at paragraph 4(e), 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter. Westpac and WNZL also rely on the fact that Mr Papas and Mr Tesoriero considered that FGFS was the default entity for the purchase of property and certain assets paid for with funds received by Westpac: see for example [FOR.000300453](#) and [FOG.1000.0003.2764](#).

45. In response to Request 32(a) and (b), this is not a proper request for particulars and is a matter for evidence. In any event, the amounts alleged to have been paid away to FG, FE, FEA and FGFS are identified in pages 256 to 282 Exhibit CMM-5 to the affidavit of Ms Murray sworn on 12 July 2021 (paragraph 15). The money paid to FGFS which is traced to further recipients will be further identified in a report served with Westpac and WNZL's evidence. We repeat paragraphs 9 to 12 above.
46. In response to Request 32(c), we repeat paragraph 38 of our 22 September Letter. Additionally, Westpac and WNZL rely on the fact that Mr Tesoriero caused FGFS to disperse funds (originally paid to Forum Finance and by Forum Finance to FGFS) to various recipients, including himself, as set out in paragraphs 40 and 41 of our 22 September Letter and see further, by example, [FOG.1000.0002.7062](#).
47. In response to Request 32(d), Westpac and WNZL rely upon the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraphs 12 and 38 of our 22 September Letter.
48. In response to Request 33, we repeat paragraph 39 of our 22 September Letter. The basis on which those payments are said to have been received in furtherance of the Scheme Agreement is as a result of the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter. The tracing of the money paid by Westpac and WNZL will be the subject of a report served with Westpac's evidence.
49. In response to Request 34, we repeat paragraph 40 of our 22 September Letter and paragraphs 28 and 29 above.
50. In response to Request 35, we repeat paragraph 41 of our 22 September Letter. Further, that the Tesoriero Entities were created to hold property financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36 is inferred from the fact that the Tesoriero Entities in fact did so, as pleaded in the 2FASOC at paragraph 8 together with the Scheme Agreement and the matters pleaded at paragraphs 55 to 57 of the 2FASOC and paragraph 12 of our 22 September Letter; and that the Tesoriero Entities had no other business.
51. In response to Request 36, we repeat paragraph 42 of our 22 September Letter. We add that the receipt of funds by 286 Carlisle St, including the dates and amounts of receipts, is evidenced in Ms Murray's second affidavit sworn on 30 September 2021 at paragraphs 23-26 and pages 94-123 of Exhibit CMM-14, and the payments by 286 Carlisle St offshore are identified in the particulars to paragraphs 2704(b) and 2709(b).
52. In respect of paragraph 1900 generally, we further refer to the fact that Mr Tesoriero was a director and shareholder of Mangusta. Mr Papas was neither a director or shareholder of that entity, yet was a beneficiary (together with Mr Tesoriero) under the Mangusta Trust Deed: see [VIN.5000.0001.1142](#) (at .1190).

Paragraph 1901

53. In response to Request 37, we repeat paragraph 43 of our 22 September Letter as well as the matters set out at paragraphs 6 to 8 and 14 above. The allegation that Westpac and WNZL's loss and damage was a consequence of those acts flows as a direct consequence from dishonest theft of those moneys and the receipt and use of funds stolen by Westpac and WNZL, as alleged throughout the 2FASOC.

Paragraph 1904

54. In response to Request 38, we repeat paragraph 44 of our 22 September Letter. Further, a report as to the tracing of the money from Westpac and WNZL will be served as part of Westpac's evidence.

Paragraph 1905

55. In response to Request 39, we repeat paragraphs 12 and 45 of our 22 September Letter and rely on the matters pleaded at paragraphs 55 to 57 of the 2FASOC. By reason of the matters set out in paragraph 7 above, including the receipt of bank statements and spreadsheets as set out in Annexure A, Mr Tesoriero knew that the source of funds for assets and properties of which he or his companies were the beneficiaries was FGFS, and that FGFS had no legitimate source for those funds and was not indebted to him personally or to the Jointly Owned Entities or Tesoriero Entities.
56. In response to Request 40(a):
- (a) The amounts paid by Westpac and received by Forum Finance from Westpac were for the discrete purpose of financing acquisition of assets for underlying customers pursuant to the Eqwe/ Forum Programme, as pleaded at paragraphs 54 and 1905(g) of the 2FAOSC and were to fund equipment finance agreements, which did not exist. That is, Forum Finance received the money paid by Westpac but did not enter into the corresponding obligation or acquire the rights for which the money was paid;
 - (b) Forum Finance paid away the money it received, not to acquire finance equipment or for the debtor to acquire that equipment, but to FG, FE, FEA and FGFS for their own purposes or those of Mr Papas and Mr Tesoriero, as pleaded in the 2FASOC.
 - (c) Forum Finance also had no business.
57. In response to Request 40(b), we repeat paragraph 45 of our 22 September Letter and paragraph 55 above.
58. In response to Request 41(a):
- (a) The amounts paid by WNZL and received by IUGIS NZ from WNZL were for the discrete purpose of financing acquisition of assets for underlying customers pursuant to the Eqwe/ Forum Programme, as pleaded at paragraphs 54 and 1905(g) of the 2FAOSC and were to fund equipment finance agreements, which did not exist. That is, Forum Finance received the money paid but did not enter into the corresponding obligation or acquire the rights for which the money was paid;
 - (b) IUGIS NZ paid the money it received away, not to acquire finance equipment or for the debtor to acquire that equipment, but to FGFS for its own purposes or those of Mr Papas and Mr Tesoriero, as pleaded in the 2FASOC.
 - (c) IUGIS NZ also had no business.
59. In response to Request 41(b), we repeat paragraph 45 of our 22 September Letter and paragraph 55 above.
60. In response to Request 42, we repeat paragraph 12 and 45 of our 22 September Letter. We further rely on the following matters in support of the allegation as to Mr Tesoriero's awareness that any amounts received by Forum Finance or IUGIS NZ pursuant to the Eqwe/ Forum Programme were to finance the acquisition of assets for the underlying customers and were not amounts to which Forum Finance or IUGIZ NZ were entitled themselves to use and pay away:
- (a) Mr Tesoriero had been provided with a pro forma rental plan for Forum Finance in February 2018 which set out the terms and conditions on which Forum Finance was to lease equipment to customers: see [FOG.1000.0002.7267](#) and [FOG.1000.0002.7268](#).
 - (b) From as early as April 2018, Mr Tesoriero knew that Forum Finance was looking to finance its equipment loan book, with equipment financed under a principal and agent agreement: see [FOR.000140164](#) and attached spreadsheet.
 - (c) Mr Tesoriero was also aware of a similar funding program that was offered by MAIA, the indicative term sheet for which stated that the proposal being put forward was for "a funding program for the rental of ORCA equipment across...international operations for

clients of Forum Group Pty Ltd and its related entities": see [FOG.1000.0002.7325](#) and [FOG.1000.0002.7326](#).

- (d) Mr Tesoriero knew from June 2018 that finance was to be sought for ORCAs, from which it can be inferred that Mr Tesoriero knew that the ORCAs were assets to be acquired for customers: see [FOR.000140393](#).
 - (e) From August 2018, Mr Tesoriero knew that Veolia contracts as part of the MAIA scheme were intended to be transferred with due diligence to be conducted to check that assets were in place and rental contracts would be recognised by the customer: see [FOR.001440924](#)/ FOR.00077247.
61. In about February 2019, Mr Tesoriero was involved in the negotiation of a release sought from a funder over FGFS's assets. In the course of these communications emails were exchanged (which he received) in which Mr Papas wrote "*[w]e sell hardware and services under managed services agreements which are ultimately funded by financial institutions as an underwriter. This release is for our funders who finance our client contracts where they are funding these contracts under and undisclosed arrangement*": see [FOG.1000.0002.7145](#) and [FOG.1000.0001.7524](#), [FOG.1000.0001.7527](#); and [FOG.1000.0001.7533](#).
62. In response to Request 43(a):
- (a) It follows from the fact that the money was raised to finance acquisition of equipment for or by the end debtor that FGFS had no legitimate business which entitled it to receive that money.
 - (b) Further, FGFS did not carry on any business and instead used the money as pleaded in paragraph 56. Our clients rely on FGFS' Xero balance sheet, its bank statements and the tracing report which will be served as part of their evidence.
 - (c) Westpac and WNZL also rely on the matters pleaded at paragraph 4(e)(iii), the instances where Mr Tesoriero requested or directed payment for his and his companies' benefit from FGFS, as set out in Annexure B, and the fact that FGFS' only or predominant corporate purpose was to carry out the Scheme, as pleaded at paragraph 1867(d) of the 2FASOC.
63. In response to Request 43(b), we repeat paragraph 45 of our 22 September Letter and paragraph 55 above.
64. In response to Request 44, those entities had no legitimate basis to receive substantial payments from FGFS because those payments resulted from monies stolen from Westpac and WNZL, were not creditors of FGFS and otherwise repeat paragraph 32 above.

Paragraph 1906

65. In response to Request 45, Mr Tesoriero as the knowing recipient of those moneys holds that which he received, or the benefit, on a constructive trust for Westpac and WNZL (as the case may be), or as a knowing recipient is liable to account for the profit he has made or alternatively pay equitable compensation.

Paragraph 1907

66. In response to Request 46, we repeat paragraph 47 of our 22 September Letter and paragraphs 6 to 8 and 14 above.

Paragraph 1908

67. In response to Request 47, we repeat paragraph 48 of our 22 September Letter and paragraphs 6 to 8 and 14 above.
68. Request 48, which we assume is intended to refer to paragraph 1908(c), is not a proper request for particulars and is a matter for evidence. Westpac and WNZL rely upon the fact that the only business engaged in by Forum Finance was that undertaken as part of the Scheme, being to steal money from Westpac and WNZL.

69. Request 49 is not a proper request for particulars and is a matter for evidence. Westpac and WNZL also rely upon:
- (a) the fact that the only business engaged in by FGFS was that undertaken as part of the Scheme, being to steal money from Westpac and WNZL and either hold assets bought with that money or to pay that money away.
 - (b) the repetition of conduct in which money stolen from Westpac and WNZL was paid to FGFS and then by FGFS to the benefit of companies owned by Mr Papas, to the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle St and to Mr Papas and Mr Tesoriero. That conduct was directed, from time to time, by Mr Papas and Mr Tesoriero and was for the benefit of Mr Papas and Mr Tesoriero in circumstances in which FGFS had no business and was not indebted to Mr Papas or Mr Tesoriero.
 - (c) Westpac and WNZL rely on the payments recorded in FGFS's Xero balance sheet, the documents received by Mr Tesoriero as set out in paragraph 7 above and in the list of spreadsheets set out in Annexure A.
70. In response to Request 50(a), we repeat paragraph 49(e) of our 22 September Letter.
71. In response to Request 50(b) and (c), the details and calculations of the amounts Mr Tesoriero is alleged to have procured Forum Finance to pay away, and the recipients of those amounts, are identified in pages 256 to 282 Exhibit CMM-5 to the affidavit of Ms Murray sworn on 12 July 2021 (paragraph 15).
72. In response to Request 51, we repeat paragraph 49(f) of our 22 September Letter. The tracing of the money will be the subject of a report served with Westpac's evidence.
73. In response to Request 52(a), we repeat paragraph 49(g) of our 22 September Letter and refer to **Annexure B**.
74. In response to Request 52(b), that the Jointly Owned Entities were created for that purpose is to be inferred from the creation of the Scheme, and the fact that property held by those entities was in fact financed by amounts improperly obtained from the transactions pleaded.
75. In response to Request 53(a), we repeat paragraph 49(h) of our 22 September Letter and refer to **Annexure B**.
76. In response to Request 53(b), that the Tesoriero Entities were created for that purpose is to be inferred from the creation of the Scheme, and the fact that property held by those entities was in fact financed by amounts improperly obtained from the transactions pleaded.
77. In response to Request 54, we repeat paragraph 49(i) of our 22 September Letter. We also repeat paragraph 51 above. The tracing of the money will be the subject of a report served with Westpac's evidence.

Paragraph 1909

78. In response to Request 55, we repeat paragraphs 51 and 52 of our 22 September Letter as well as the matters set out in paragraphs 6 to 8 above. The allegation that Westpac and WNZL's loss and damage was a consequence of those acts flows as a direct consequence from the receipt and use of funds stolen by Westpac and WNZL.

Paragraph 1910

79. In response to Request 56, we repeat paragraph 53 of our 22 September Letter as well as the matters set out in paragraphs 6 to 8 above.

Paragraph 1911

80. Request 57 repeats Request 12 and Request 27. We repeat paragraph 22 above.
81. In response to Request 58, we repeat paragraph 54 of our 22 September Letter as well as the matters set out in paragraphs 6 to 8 above.

Parts I-BBB: The claims against other parties*Tort of unlawful means conspiracy*

82. Request 59 repeats Request 12, Request 27 and Request 57. We repeat paragraph 22 above.
83. In response to Request 60(a) and (b), the knowledge and control of Mr Tesoriero that is alleged to have caused each entity to become a party to the Scheme Agreement is that exercised by him as a director and/ or direct or indirect shareholder of each entity, as appropriate and as set out in response to Request 15(a) above, and his management of those entities (as to which, we refer to paragraph 40 and 41 of our 22 September Letter). We also refer further to paragraph 26 above.
84. In response to Request 60(c), we repeat paragraphs 6 to 8 above and paragraph 1844 of the 2FASOC and paragraph 22 above.
85. In response to Request 61(a), we refer to paragraph 1895 of the 2FASOC and paragraphs 9 to 11 above. The tracing of the money will be the subject of a report served with Westpac's evidence.
86. In response to Request 61(b), we refer to paragraphs 12 and 13 of our 22 September Letter.

Knowing receipt and knowing assistance

87. In response to Request 62(a), this is not a proper request for particulars and is a matter for evidence. However:
- (a) We repeat paragraphs 6 to 8 above and paragraph 12 and 13 of our 22 September Letter;
 - (b) As to the amounts received, we repeat paragraph 26(e) above, and refer you to FGFS's Xero balance sheet. The tracing of those payments will be the subject of a report served with Westpac's evidence.
 - (c) As to Mr Tesoriero's knowledge, we repeat paragraph 8 above.
88. In response to Request 62(b), we repeat paragraphs 56 to 59 and 62 to 63 above.
89. Request 62(c) repeats Request 42. We repeat paragraphs 60 and 61 above.
90. Request 62(d) repeats Request 43. We repeat paragraphs 62 and 63 above.
91. In response to Request 62(e):
- (a) Request 62(e)(i) is not a proper request for particulars and is a matter for evidence. We otherwise repeat paragraph 87(b) above.
 - (b) Request 62(e)(ii) repeats Request 44. We refer to paragraph 64 above.
 - (c) Request 62(e)(iii), we refer to Mr Tesoriero's knowledge of and control of those entities as pleaded in the 2FASOC, paragraph 12 of our 22 September Letter and paragraphs 6 to 8 and 26 above.
92. In response to Request 63, we repeat paragraphs 6 to 8, 26, 67, 83 and 84 above and paragraph 12 and 13 of our 22 September Letter.
93. In response to Request 64(a), the details and calculations of the funds are a matter for evidence and, further, the pleading is one against a respondent other than Mr Tesoriero. Nonetheless, as to the amounts paid, we repeat paragraph 26(e), and refer you to FGFS's Xero balance sheet. The sub-set paid to Mr Tesoriero and the Jointly Owned Entities, the Tesoriero Entities and 286 Carlisle St are identified in the particulars to paragraph 1895 of the 2FASOC, FGFS's Xero balance sheet and (insofar as traced from payments made by Westpac or WNZL) will be identified further in a report served with Westpac's evidence. The tracing of those payments will be the subject of a report served with Westpac's evidence.
94. In response to Request 64(b), the basis for the allegation that the funds were used at the direction of Mr Tesoriero is that Mr Tesoriero directed Forum staff to pay money to or for the benefit of particular entities, and that he was both able to make those directions and benefited from those

directions (as to which see **Annexure B**). Otherwise, this is a matter for evidence, but we refer to the examples given at paragraph 40 and 41 of our 22 September 2021 Letter. Further examples include [FOG.1000.0003.6648](#) and [FOG.1000.0005.8634](#); [FOG.1000.0005.8666](#), and [FOG.1000.0005.8668](#).

95. In response to Request 65, the details of the funds and assets are matters for evidence and repeat paragraph 93 above. We also refer paragraphs 9 to 11 above. Occasions on which Mr Bouchahine caused amounts to be paid away include on the following dates:
- (a) 4 December 2019, when Mr Tesoriero asked Mr Bouchahine to pay the amount of \$126,859.69: see [FOG.1000.0003.0136](#), [FOG.1000.0004.2357](#) and [FOG.1000.0004.2359](#).
 - (b) 19 December 2019, when Mr Tesoriero instructed Mr Bouchahine to pay the deposit for Mr Tesoriero's intended purchase of 8-12 Natalia Ave Oakleigh South: see [FOG.1000.0004.2455](#); [FOG.1000.0004.4989](#) and [FOG.1000.0004.4991](#).
 - (c) On 9 June 2020, Mr Bouchahine paid a further instalment for the deposit for Mr Tesoriero's intended purchase of 8-12 Natalia Ave Oakleigh South: see [FOG.1000.0004.1278](#) and [FOG.1000.0004.1283](#).
 - (d) 6 October 2020, when Mr Tesoriero instructed Mr Bouchahine to pay the amount of \$239,197.18 to GraysOnline for the purchase of a 1969 Ford Mustang Boss 429 Z-Code Coupe: see [FOG.1000.0001.0255](#); [FOG.1000.0001.2368](#), [FOG.1000.0001.2370](#); [FOG.1000.0006.7480](#); and [GRY.5000.0001.0016](#).
 - (e) On 22 October 2020, a payment made in the amount of \$5,912.46 from FGFS with the description "Vince 13480794" for the benefit of an account in the name of 286 Carlisle St: see [FOG.1000.0001.2150](#) and [FOG.1000.0001.2158](#).
 - (f) On 19 November 2020, Mr Bouchahine made in the amount of \$110,171.13 to Middle Point Marine for the Mangusta XOXO yacht: see [FOG.1000.0001.2199](#) and [FOG.1000.0001.2208](#).
 - (g) Payment of the insurance amounts referred to in paragraph 97 below.
96. Some of the above payments are recorded in the Xero records for FGFS: see the worksheet relating to Mr Tesoriero (VT Transactions) and the worksheet relating to Natalia Ave.

Paragraph 2654

97. In response to Request 66, this is a matter for evidence. But by way of example, on 6 October 2020, the amount of \$239,197.18 was paid from FGFS to GraysOnline for the purchase of a 1969 Ford Mustang Boss 429 Z-Code Coupe: see [FOG.1000.0001.0255](#); [FOG.1000.0001.2368](#), [FOG.1000.0001.2370](#); [FOG.1000.0006.7480](#); and [GRY.5000.0001.0016](#), which vehicle is insured in Mr Tesoriero Snr's name: see Metrix insurance renewal for 2021 [FOR.001232020](#) and [FOR.001232023](#). Additional examples of insurance for the benefit of motor vehicles in Mr Tesoriero Snr's name include [FOR.001465311](#); [FOR.001465329](#); [FOR.001462708](#), [FOR.001462710](#); [FOR.001462712](#); [FOR.001462718](#).

Paragraph 2655

98. In response to Request 67(a), a list of the payments identified to date which have been received from FGFS by Mr Tesoriero Snr is set out in the particulars to 2654 of the 2FASOC. Payments made to Mr Tesoriero Snr at the direction of Mr Tesoriero are a matter for evidence. Nevertheless, by way of example, Mr Tesoriero directed payments to be made into a Westpac account in the name of Mrs Teresa Tesoriero and Mr Giovanni Tesoriero with account number 78-0597 and directed payments to be made into an ANZ account in the name Mrs Teresa Tesoriero and Mr Giovanni Tesoriero with account number 213608896: see for example [FOR.001352750](#); [FOR.001352845](#); [FOR.001411033](#); [FOG.1000.0001.6552](#); [FOG.1000.0002.4504](#); [FOG.1000.0003.7329](#) and [FOG.1000.0003.7330](#). Westpac have also identified payments from FG to these two accounts associated with Mr Tesoriero Snr as set out in the annexed **Annexure C** and referred to in paragraph 25 above. Payments have been identified from the Westpac account associated with Mr Tesoriero Snr to an account in the name Samantha Pagano with

account number 59-1875. Ms Pagano is the girlfriend of Mr Tesoriero. Payments to Ms Pagano were used for the purchase of shares in online trading platforms.

99. In response to Request 67(b), this is a matter for evidence, however, can be inferred from the fact that Mr Tesoriero Snr paid funds to an account in the name of Mr Tesoriero's girlfriend, Ms Pagano as set out in paragraph 98 above.

MinterEllison

Yours faithfully
MinterEllison

Contact: Anthony Sommer T: +61 2 9921 4182
anthony.sommer@minterellison.com
Partner: Caitlin Murray T: +61 2 9921 4279
OUR REF: 1353397

ANNEXURE A – LIST OF SPREADSHEETS RECEIVED BY MR TESORIERO

Date	Details	Doc IDs
7/08/2018	Mr Bouchahine emails Mr Tesoriero a schedule titled "Outstanding Payments for BP VT". Schedule shows outstanding invoices for certain Jointly Owned Entities and Tesoriero Entities.	FOG.1000.0003.7710 FOG.1000.0003.7711
7/08/2018	Mr Chin emails Mr Tesoriero an updated schedule titled "Outstanding Payments for BP & VT". Various versions are emailed to Mr Tesoriero.	FOG.1000.0004.0835 FOG.1000.0004.0836 FOG.1000.0004.0834
17/08/2018	Email from Mr Chin to Mr Tesoriero attaching schedule titled "Outstanding payments for BP & VT".	FOG.1000.0002.3887 FOG.1000.0002.3889
30/08/2018	Email from Mr Chin to Mr Tesoriero attaching schedule titled "Outstanding payments for BP & VT" as at 30 August 2018.	FOG.1000.0002.3922 FOG.1000.0002.3923
7/09/2018	Email from Mr Chin to Mr Tesoriero attaching schedule titled "Outstanding payments for BP & VT" as at 7 September 2018.	FOG.1000.0002.4249 FOG.1000.0002.4250
4/10/2018	Email from Mr Chin to Mr Tesoriero (Mr Papas and Mr Bouchahine) attaching schedule titled "Outstanding payments for BP & VT" as at 4 October 2018.	FOG.1000.0004.0859 FOG.1000.0004.0861
19/10/2018	Emails from Mr Bouchahine to Mr Tesoriero and Mr Papas attaching a schedule titled "Cashflow for Bill and Vince 19 Oct". Schedule shows amounts outstanding for certain Jointly Owned Entities and Tesoriero Entities and includes a worksheet for FGFS.	FOG.1000.0001.6550 FOG.1000.0001.6551
19/10/2018	Emails from Mr Bouchahine to Mr Tesoriero and Mr Papas attaching an updated schedule titled "Cashflow for Bill and Vince 19 Oct". Schedule shows amounts outstanding for certain Jointly Owned Entities and Tesoriero Entities and includes a worksheet for FGFS.	FOG.1000.0001.6593 FOG.1000.0001.6594
22/11/2018	Email from Mr Chin to Mr Bouchahine (cc Mr Tesoriero and Mr Papas) attaching a schedule titled "Outstanding payments for BP & VT" as at 15 November 2018.	FOG.1000.0004.0866 FOG.1000.0004.0867
29/11/2018	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding payments for BP & VT" as at 29 November 2018.	FOG.1000.0004.7393 FOG.1000.0004.7394
5/12/2018	Email from Mr Bouchahine to Mr Tesoriero and Mr Papas attaching a schedule titled "Outstanding Payments for BP VT – 5 Dec 18".	FOG.1000.0003.7317 FOG.1000.0003.7318
11/12/2018	Email from Mr Bouchahine to Mr Tesoriero forwarding a copy of the schedule titled "Outstanding Payments for BP VT – 5 Dec 18".	FOG.1000.0003.7335 FOG.1000.0003.7336
21/12/2018	Email from Mr Bouchahine to Mr Tesoriero (and Mr Bouchahine) attaching a schedule titled "Outstanding Payments for BP VT" as at 21 December 2018.	FOG.1000.0004.0872 FOG.1000.0004.0873
16/01/2019	Email from Mr Chin to Mr Tesoriero (and Mr Bouchahine) attaching schedule titled "Outstanding Payments for BP & VT".	FOG.1000.0004.0877 FOG.1000.0004.0883
20/02/2019	Email from Mr Chin to Mr Tesoriero, Mr Papas and Mr Bouchahine attaching a schedule titled "Outstanding Payments for BP & VT as at 20 February 2019.	FOG.1000.0004.0894 FOG.1000.0004.0895
03/10/2019	Email from Mr Bouchahine to Mr Papas attaching a schedule titled "Cashflow FGFS Other Companies 1 Oct 2019".	SEC.5000.0056.5944 SEC.5000.0056.5945
07/04/2020	Email from Mr Chin to Mr Tesoriero (copy Mr Bouchahine) attaching schedule titled "Outstanding and Recurring Payments for BP & VT"	FOG.1000.0001.4401 FOG.1000.0001.4402
16/04/2020	Email from Mr Bouchahine to Mr Tesoriero (copy Mr Papas) attaching schedule titled "Outstanding and Recurring	FOG.1000.0002.9286 FOG.1000.0002.9287

	Payments for BP & VT". Schedule includes worksheets titled <i>Outstanding and recurring</i> .	
17/04/2020	Email from Mr Bouchahine to Mr Tesoriero (copy Mr Papas) attaching schedule titled "Book 1". Schedule is headed "Summary Cash Flow Forum Group financial Services".	FOG.1000.0002.9305 FOG.1000.0002.9306
1/06/2020	Email from Mr Chin to Mr Tesoriero (and Mr Bouchahine) attaching schedule titled "Outstanding and Recurring Payments for BP & VT". Schedule includes worksheets titled <i>Outstanding and recurring</i> .	FOG.1000.0001.2698 FOG.1000.0001.2701
30/07/2020	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT". Schedule has worksheet titled <i>outstanding</i> , a worksheet titled <i>recurring</i> ; and a worksheet titled <i>cashflow</i> .	FOG.1000.0001.3302 FOG.1000.0001.3303
19/08/2020	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT" as at 19 August 2020. Schedule has worksheet titled <i>outstanding</i> , a worksheet titled <i>recurring</i> ; and a worksheet titled <i>cashflow</i> .	FOG.1000.0001.3402 FOG.1000.0001.3403
24/08/2020	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT" as at 24 August 2020. Schedule has worksheet titled <i>outstanding</i> , a worksheet titled <i>recurring</i> ; and a worksheet titled <i>cashflow</i> .	FOG.1000.0001.4208 FOG.1000.0001.4209
18/02/2021	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT" as at 18 February 2021. Schedule has worksheets titled <i>Outstanding</i> ; <i>Recurring</i> ; <i>FGFS Petrol Stations</i> ; <i>Rental Properties</i> ; <i>Other Assets</i> ; <i>FGFS</i> . The worksheet titled <i>FGFS</i> has the heading "Summary Cash Flow".	FOG.1000.0001.5040 FOG.1000.0001.5041
24/02/2021	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT" as at 24 February 2021 and Payment Register report – 24.02.2021. Schedule has worksheets titled <i>Outstanding</i> ; <i>Recurring</i> ; <i>FGFS Petrol Stations</i> ; <i>Rental Properties</i> ; <i>Other Assets</i> ; <i>FGFS</i> . The worksheet titled <i>FGFS</i> has the heading "Summary Cash Flow".	FOG.1000.0001.5054 FOG.1000.0001.5055 FOG.1000.0001.5056

ANNEXURE B – INSTANCES WHERE MR TESORIERO DIRECTED OR REQUESTED PAYMENTS BE MADE FROM FGFS TO OTHER ENTITIES

Date	Details	Doc IDs
23/01/2018	Email from Mr Bouchahine to Adriana Tsiallis cc Mr Tesoriero and Mr Papas attaching remittance for deposit for 26 Edmonstone Rd, remittance showing \$290,000 paid from FG account.	FOG.1000.0001.5616 FOG.1000.0001.5617
18/05/2018	Email from Mr Bouchahine to Mr Tesoriero attaching remittance for deposit for Atherton Rd property, remittance showing \$100,000 paid from FG account.	FOG.1000.0003.8796 FOG.1000.0003.8797 FOR.000867479 FOG.1000.0005.6369
22/06/2018	Email from MS Fiona Yang to Mr Tesoriero attaching remittance showing \$321,000 paid from FGFS account to "Crabtrees"	FOG.1000.0010.3951 FOG.1000.0010.3952
13/08/2018	Email from Mr Tesoriero to Mr Bouchahine and Mr Papas titled "Fwd: upcoming"	FOG.1000.0002.3852
29/08/2018	Email chain between Mr Tesoriero and Mr Chin titled Re: Invoice #30536; M Motorsport Pty Ltd	FOG.1000.0005.5844
4/09/2018	Email chain between Mr Tesoriero and Mr Bouchahine titled "RE loan interest payments"	FOG.1000.0001.6390
26/09/2018	Email chain between Mr Tesoriero and Mr Chin titled "RE: boat payment"	FOG.1000.0002.4515
27/09/2018	Email from Mr Tesoriero to Mr Bouchahine and Mr Papas titled "Fwd: loan interest payments banks"	FOG.1000.0002.4504
3/10/2018	Email chain between Mr Tesoriero and Mr Bouchahine (and others) titled "Re Atherton Rd Settlement"	FOG.1000.0002.4542
4/10/2018	Email from Mr Tesoriero to Mr Chin titled "Fwd: Insurance Policy - Pleasure Craft – MY Mangusta 105 Open XOXO"	FOG.1000.0003.6484 FOG.1000.0003.6486
5/10/2018	Email chain between Mr Tesoriero and Ms Fiona Yang titled "RE: loan interest payments banks"	FOG.1000.0010.3966
9/10/2018	Email chain between Mr Tesoriero and Mr Bouchahine (Mr Chin and Mr Papas) titled Re: boat payment.	FOG.1000.0002.4733
15/10/2018	Email chain between Mr Tesoriero and Ms Yang (and Mr Bouchahine) titled "RE: payments", attaching remittance showing \$20,000 paid from FG account to "Carbay Net"	FOG.1000.0010.3968 FOG.1000.0010.3971
16/10/2018	Email from Mr Tesoriero to Mr Bouchahine and Mr Papas titled "Fwd: loan interest payments"	FOG.1000.0005.6384
17/10/2018	Email from Mr Bouchahine to Mr Tesoriero showing remittances for payment of deposit of \$421,000 for Atherton Rd. \$321,000 paid from FGFS account and \$100,000 paid from FG account.	FOG.1000.0003.8592 FOG.1000.0003.8593 FOG.1000.0003.8596
18/10/2018	Email chain between Mr Bouchahine and Ms Fiona Yang, forwarding email from Mr Tesoriero titled "FW: loan interest payments".	FOG.1000.0001.6552
21/11/2018	Email from Mr Tesoriero to Ms Kathleen Wang (Mr Bouchahine and Ms Suzi Phillips) titled "Fwd: 126463 & 126464 - Forum Group Financial Services Pty Ltd"	FOG.1000.0003.6436 FOG.1000.0003.6438 FOG.1000.0003.6439
3/12/2018	Email chain between Mr Tesoriero and Mr Papas titled "Re: wish list"	FOG.1000.0002.7062
6/12/2018	Email chain between Mr Tesoriero, Mr Papas and Mr Bouchahine titled "Re: Bowen Hills Loan - 1 month \$68,067"	FOG.1000.0005.7205

7/12/2018	Email from Mr Bouchahine to Mr Tesoriero attaching remittance.	FOG.1000.0003.7329 FOG.1000.0003.7330
11/01/2019	Email chain between Mr Tesoriero and Mr Bouchahine titled "Re: Funds"	FOG.1000.0003.6597
22/01/2019	Email from Mr Tesoriero to Mr Papas and Mr Bouchahine titled "Fwd: Vince: Here are my wire instructions for BTY."	FOG.1000.0003.6615
20/02/2019	Email from Mr Tesoriero to Mr Chin (copy Mr Papas and Mr Bouchahine) titled "Re: Invoices Payable - BP & VT Entities"	FOG.1000.0003.6648
15/03/2019	Email from Mr Chin to Mr Tesoriero (copy Mr Bouchahine and Mr Papas) titled "RE: Monaco transaction" attaching remittance showing payment	FOG.1000.0001.7620 FOG.1000.0001.7623
10/04/2019	Email from Mr Tesoriero to Joel Freeman of Freeman Group (copy Mr Bouchahine) titled "RE: Account details".	FOG.1000.0005.8634
15/04/2019	Email from Mr Tesoriero to Joel Freeman of Freeman Group (copy to Mr Papas and Mr Bouchahine) titled "Fwd: remittance for JAF" attaching remittance showing \$500,000 paid from FGFS account.	FOG.1000.0005.8666 FOG.1000.0005.8668
23/04/2019	Email from Mr Bouchahine to Mr Tesoriero and Mr Papas confirming that UD\$20,000 has been paid to Barclay Yachts as requested. Remittance shows amount is paid from FGFS account	FOG.1000.0001.5323 FOG.1000.0001.5324
14/06/2019	Email from Mr Tesoriero to Mr Bouchahine titled "Fw: Tesoriero Investment Group – Extension"	FOG.1000.0001.8192 FOG.1000.0001.8193
21/06/2019	Email from Mr Chin to Mr Tesoriero titled "RE: Tesoriero Investment Group – Extension"	FOG.1000.0004.7350 FOG.1000.0004.7352
27/06/2019	Email from Mr Tesoriero to Mr Bouchahine (copy Mr Papas) titled "monaco outstanding"	FOG.1000.0001.8318
26/09/2019	Email chain between Mr Tesoriero, Mr Chin, Mr Bouchahine and Mr Papas titled "Re: overdrafts closed off"	FOG.1000.0005.0444
7/11/2019	Email chain between Mr Tesoriero and Mr Bouchahine (copy Mr Papas) titled "Re: 18005_1b_20191106_26 Edmondstone Rd Bowen Hills_METIER3 Invoice 9721_LH"	FOG.1000.0003.2284
15/11/2019	Email from Mr Chin to Mr Papas and Mr Tesoriero titled "Remittance - NV Finance", attaching remittance	FOG.1000.0003.1950 FOG.1000.0003.1951
15/11/2019	Email from Mr Chin to Rodney King (copy Mr Tesoriero and Mr Papas) titled "1160 Glen Huntly Road Glen Huntly - Payment Remittance", attaching remittance showing \$152,000 paid from FGFS account	FOG.1000.0003.1953 FOG.1000.0003.1954
23/11/2019	Email chain between Mr Chin, Mr Tesoriero, Mr Papas and Mr Bouchahine titled "Fwd: 8-18 James St, Clayton Deposit"	FOG.1000.0005.1464
25/11/2019	Email chain between Mr Chin, Mr Tesoriero, Mr Papas and Mr Bouchahine titled "RE: 8-18 James St, Clayton Deposit", attaching remittance showing \$289,072 paid from FGFS account.	FOG.1000.0003.0123 FOG.1000.0003.0126
286/11/2019	Email from Mr Chin to Andrew Norbury (copy Mr Tesoriero) titled "Payment Remittance - Invoice 9722" attaching a remittance showing \$42,651.34 paid from the FGFS account.	FOG.1000.0004.7055 FOG.1000.0004.7056
2/12/2019	Email from Mr Tesoriero to Mr Bouchahine and Mr Chin titled "interest payments"	FOG.1000.0004.2353

54/12/2019	Email chain between Mr Tesoriero and Mr Bouchahine (copy Mr Papas) titled "Re: upcoming payment"	FOG.1000.0003.0136
19/12/2019	Emails between Mr Tesoriero and Mr Bouchahine, including remittance showing \$586,000 paid from FGFS account.	FOG.1000.0004.2455 FOG.1000.0004.4989 FOG.1000.0004.4991
5/12/2019	Email from Mr Chin to Mr Tesoriero (copy Mr Bouchahine) titled "RE: upcoming payment" attaching remittance showing \$126,859.68 paid from FGFS account.	FOG.1000.0004.2357 FOG.1000.0004.2359
15/01/2020	Email chain between Mr Chin, Mr Tesoriero (copy Mr Papas) titled "RE: Invoice 14206 from PROFESSIONAL HELICOPTER SERVICES PTY LTD is due". Attached remittance shows \$5,000 paid from FGFS account.	FOG.1000.0004.2500 FOG.1000.0004.2503
25/05/2020	Email chain between Mr Chin, Mr Tesoriero, Mr Bouchahine and Mr Papas titled "RE: 1160 Glen Huntly Road VIC 3163", attaching remittance showing \$100,000 paid from FGFS account.	FOG.1000.0001.2688 FOG.1000.0001.2693
27/05/2020	Email from Mr Chin to Mr Tesoriero (and others) titled "James St – Payment 6" attaching remittance showing \$100,000 paid from FGFS account.	FOG.1000.0001.2694 FOG.1000.0001.2695
28/05/2020	Email from Mr Chin to Mr Tesoriero titled "Monthly Invoice – Remittance" attaching remittance showing \$55,000 paid from FGFS account.	FOG.1000.0001.2696 FOG.1000.0001.2697
9/06/2020	Email chain between Mr Chine and John Servinis (copy to Mr Tesoriero and Mr Bouchahine) titled RE: Placelea Pty Ltd to Vince Tesoriero and/or Nominee - Sale of 8-12 Natalia Avenue, Oakleigh South (GM 190144). Attached remittance shows \$586,000 paid from FGFS account.	FOG.1000.0004.1278 FOG.1000.0004.1283
16/06/2020	Email from Mr Tesoriero to Mr Chin and Mr Bouchahine titled "Fwd: Remittance - Berkeley 300k". Attached remittance shows \$300,000 paid from FGFS account.	FOG.1000.0004.1292 FOG.1000.0004.1293
6/10/2020	Emails between Mr Tesoriero and Mr Bouchahine and Mr Chin titled "RE: GraysOnline Invoice 20007068-22". Remittance shows \$239,197.18 paid from FGFS account.	FOG.1000.0001.0255 FOG.1000.0001.2368 FOG.1000.0001.2370 FOG.1000.0006.7480
30/10/2020	Email chain between Mr Chin, Mr Tesoriero and Mr Bouchahine titled "RE: Tesoriero - Change of Corporate Structure **IMPORTANT**". Attached remittance shows \$5,912.46 paid from FGFS account	FOG.1000.0001.2150 FOG.1000.0001.2158
5/05/2021	Emails between Mr Chin, Imogen Moyle, Mr Tesoriero, Mr Bouchahine and others titled "RE: Tesoriero Investment Group Pty Ltd - Facility Maturity". Remittance shows \$2,401,755.00 paid from FGFS account.	FOG.1000.0001.4676 FOG.1000.0001.4678 FOG.1000.0001.4680 FOG.1000.0001.4681
21/05/2021	Email chain between Mr Tesoriero, Mr Papas and Mr Bouchahine titled Re: Vince".	FOG.1000.0003.7021

	Date	Currency	Transaction Am	Beneficiary BSB	Beneficiary Account	Transaction Account Name	Transaction Reference	Remitter BS	Remitter Account
123043979	4/09/2018	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
123043979	4/09/2018	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
123043979	4/09/2018	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
124913559	5/10/2018	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
124913559	5/10/2018	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
124913559	5/10/2018	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
125598984	18/10/2018	AUD	30,000.00	063-104	10572179	Tesoriero	FG1012	082-080	121782934
125598984	18/10/2018	AUD	10,000.00	733-349	780597	Tesoriero	ForumGroup Inv1012	082-080	121782934
125598984	18/10/2018	AUD	10,000.00	013-214	213608896	TESORIERO INVESTMENTS	TESORI	082-080	121782934
126573804	2/11/2018	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
126573804	2/11/2018	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
126573804	2/11/2018	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
128668779	7/12/2018	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
128668779	7/12/2018	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
128668779	7/12/2018	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
130446875	11/01/2019	AUD	30,000.00	063-104	10572179	TESORIERO INVESTMENTS	TESORI	082-080	121782934
130577248	15/01/2019	AUD	10,000.00	013-214	213608896	TESORIERO INVESTMENTS	TESORI	082-080	121782934
130577248	15/01/2019	AUD	10,000.00	733-349	780597	TESORIERO	INV1015	082-080	121782934
131612489	1/02/2019	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
131612489	1/02/2019	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
131612489	1/02/2019	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
131612399	1/02/2019	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
131612399	1/02/2019	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
131612399	1/02/2019	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
133259975	28/02/2019	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
133259975	28/02/2019	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
133259975	28/02/2019	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
135146404	1/04/2019	AUD	30,000.00	063-104	10572179	TESORIERO INVESTMENTS	TESORI	082-080	121782934
135146404	1/04/2019	AUD	10,000.00	733-349	780597	TESORIERO INVESTMENTS	TESORI	082-080	121782934
135146404	1/04/2019	AUD	10,000.00	013-214	213608896	TESORIERO INVESTMENTS	TESORI	082-080	121782934

14 September 2021

BY EMAIL: cnehme@fortislaw.com.au

Christopher Nehme
Partner
Fortis Law
Level 11, 75 Elizabeth Street
Sydney NSW 2000

Dear Mr Nehme

Westpac Banking Corporation & Anor v Forum Finance Pty Limited & Ors - Federal Court of Australia Proceeding NSD616/2021 (Proceedings)

We refer to your letter dated 23 August 2021 (**Your Letter**) requesting further and better particulars of our clients' Amended Statement of Claim filed 10 August 2021 (**ASOC**).

Part B: The Eqwe / Forum Programme

1. In response to requests [1]-[6] Your Letter, each of the agreements referred to was in writing and we **enclose** a copy of¹:
 - (a) the First Eqwe Agreement pleaded in paragraph 35 of the ASOC;
 - (b) the Second Eqwe Agreement pleaded in paragraph 37 of the ASOC;
 - (c) the NZ Eqwe Agreement pleaded in paragraph 41 of the ASOC;
 - (d) the First Forum Agreement pleaded in paragraph 43 of the ASOC;
 - (e) the Second Forum Agreement pleaded in paragraph 46 of the ASOC; and
 - (f) the NZ Forum Agreement pleaded in paragraph 50 of the ASOC.

Part D: the Fraudulent Transactions

2. In response to request [16] of Your Letter, each of the Transaction Documents are particularised in the Schedule to the ASOC served on 10 August 2021. An electronic copy of the Transaction 1 to 100 Documents referred to in that Schedule has been electronically provided by file-share.
3. In response to request [17] of Your Letter, each of the Transaction NZ1 to NZ36 Documents are particularised in the Schedule to the ASOC served on 10 August 2021. An electronic copy of the Transaction NZ1 to NZ36 Documents referred to in that Schedule has been electronically provided by file-share.
4. The file-share folder of documents, to which you have been granted access, and which contains the Transaction 1 to 100 and NZ1 to NZ36 Documents is accessible at the following link²:
<https://share.minterellison.com/w/f-c7a635fc-b6fa-43c6-86eb-f0ef8fbffbef>.

¹ A copy of the agreements referred to at 2(a), (b), (d) and (e) above are the agreements referred to in paragraphs [17], [19] and [20] of the affidavit of Geoffrey Keith Anderson sworn 28 June 2021 and included at pages 6-39 and 50-141 of Exhibit GKA-1 to that affidavit and served on your client on 2 July 2021.

² The link to the file-share folder containing the Transaction Documents referred to in paragraphs 3 and 4 (b) above was previously sent to your firm by email dated 18 August 2021 at approximately 7:35pm (AEST) from Kate Cockburn of our Firm



Part E: The Discovery of the Scheme

5. In response to the request at [18] of Your Letter, we enclose a copy of the Demand pleaded in paragraphs 1831 and 1832 of the ASOC³.

Other Requests

6. We will respond to the balance of Your Letter as soon as practicable.
7. We note that the orders of Justice Lee dated 30 July 2021 required your client to file a defence by 5:00pm on 3 September 2021. Please advise when you anticipate that your client will be in a position to file a defence to the ASOC as soon as practicable, and in any event, by no later than **4:00pm Friday, 17 September 2021**.
8. In the meantime, all of our clients' rights are expressly reserved.

Yours faithfully
MinterEllison



Contact: Anthony Sommer T: +61 2 9921 4182
anthony.sommer@minterellison.com
Partner: Caitlin Murray T: +61 2 9921 4279
OUR REF: 1353397

³ A copy of the Demand referred to at paragraph 3 above was previously sent to your firm under cover of the email dated 1 July 2021 sent at approximately 12:34pm (AEST) from Andrew Clarke of our Firm.



- + Level 1, 84 William Street
Melbourne VIC 3000
03 7020 9230
- + Level 1, 60 Martin Place
Sydney NSW 2000
02 7202 3404
- + Level 38, 71 Eagle Street
Brisbane QLD 4000
07 3778 3693

12 September 2022

Attn: Caitlin Murray
MinterEllison
Level 40 Governor Macquarie
Tower 1 Farrer Place
SYDNEY NSW 2000

By email

Dear Caitlin,

**Giovanni (John) Tesoriero & Ors ats Westpac Banking Corporation & Anor
Anor
Federal Court of New South Wales No. NSD616 of 2021**

We refer to the paragraphs 2652 to 2665 of the Second Further Amended Statement of Claim (**SFASOC**).

- 1 We are having difficulty understanding the case that Mr Tesoriero Snr is required to meet and we would be assisted by your responses to the following questions.
 - 2 In relation to the allegations at [2655] of the SFASOC:
 - 2.1 Are we to understand the particulars at (a), (b) and (c) as meaning that the allegation of knowledge and/or notice that the funds were fraudulently obtained is based on imputing to Mr Tesoriero Snr the knowledge of Mr Tesoriero?
 - 2.2 If not, what is the significance of Mr Tesoriero to Mr Tesoriero Snr's knowledge as outlined in these particulars?
 - 3 In relation to the particulars at (d) to paragraph [2655] of the SFASOC, embedded in (d) is two material fact allegations: that Mr Tesoriero Snr caused or permitted 286 Carlisle Street to engage in the conduct pleaded at [2304] to [2311]; and caused or permitted 286 Carlisle Street to make the payments in [2703] and [2708].
 - 4 [2304] of the SFASOC is an allegation that 286 Carlisle Street had the requisite knowledge because of the alleged knowledge of Mr Tesoriero. For the particulars in (d) to [2655] to make any sense, it must be that Westpac is alleging that Mr Tesoriero Snr caused or permitted Mr Tesoriero to know. That, with respect, seems nonsensical.
-

- 4.1 Is Westpac alleging that Mr Tesoriero Snr caused or permitted Mr Tesoriero to know of the matters alleged at [2304]? If not, then what do the particulars at (d) mean in relation to paragraph [2304]?
- 4.2 The same applies to [2306], [2307]. Is Westpac alleging that Mr Tesoriero Snr caused or permitted Mr Tesoriero to know of the matters alleged at [2306] and [2307]? If not, then what do the particulars at (d) mean in relation to paragraphs [2306] and [2307]?
- 5 Similarly, the remaining allegations at [2305], [2308], [2309], [2310], [2311] of the SFASOC are all allegations against 286 Carlisle Street that derive from Mr Tesoriero's alleged knowledge. We do not understand how Westpac alleges that Mr Tesoriero Snr caused or permitted the conduct pleaded at these paragraphs and we do not understand the case that Mr Tesoriero Snr is required to meet under the allegation at [2655].
- 6 If Westpac is to make an allegation that Mr Tesoriero Snr caused or permitted 286 Carlisle Street to undertake any relevant conduct, then that allegation needs to be pleaded as a material fact and properly particularised.
- 7 Equally, we do not understand the case that Mr Tesoriero Snr is required to meet in relation to the allegation embedded in the particulars at (d) to [2655] of the SFASOC that Mr Tesoriero Snr caused or permitted payments to be made to D&D Group and Theion Ike. If Westpac is to make an allegation that Mr Tesoriero Snr caused or permitted 286 Carlisle Street to make the payments to D&D Group and Theion Ike, then that allegation needs to be pleaded as a material fact and properly particularised. This is critical given Mr Tesoriero Snr was not a signatory to the bank account of Carlisle Street and played no part in causing or authorising transactions to be made by 286 Carlisle Street.
- 8 In relation to the allegation at [2661] of the SFASOC, what is the relevance of pleading that Mr Tesoriero was a director of 286 Carlisle Street?
- 9 [2663] of the SFASOC alleges that Mr Tesoriero Snr was a party to the Scheme but makes no allegation that Mr Tesoriero Snr had knowledge of the alleged fraudulent scheme. For Mr Tesoriero Snr to be a party and co-conspirator to the Scheme it would be necessary for Westpac to establish that Mr Tesoriero Snr had actual knowledge of the fraudulent scheme.
 - 9.1 Does Westpac agree that it is necessary to allege that Mr Tesoriero Snr had actual knowledge of the alleged fraudulent scheme for there to be legal significance attaching to the allegation at [2663]?
 - 9.2 If yes, where does Westpac plead Mr Tesoriero Snr's actual knowledge of the fraudulent scheme?
 - 9.3 If no, how does liability attach to Mr Tesoriero Snr for being a party to an alleged fraudulent scheme in the absence of actual knowledge?
- 10 In relation to the allegations at [2664] and [2665] of the SFASOC, are we right to assume that these allegations depend on establishing that Mr Tesoriero Snr had actual knowledge of the alleged fraudulent scheme?

11 As things presently stand, we do not understand that the case that Mr Tesoriero Snr is required to meet. We would appreciate your urgent response to the above questions.



Aptum Legal

Contacts: Nigel Evans, Managing Director (nigel@aptumlegal.com.au)
Eric Maben, Senior Lawyer (eric@aptumlegal.com.au)
Emma Soulsby, Project Manager (emma@aptumlegal.com.au)

Our Ref: B-0307

Copied To: None

Enclosures: None



- + Level 1, 84 William Street
Melbourne VIC 3000
03 7020 9230
- + Level 1, 60 Martin Place
Sydney NSW 2000
02 7202 3404
- + Level 38, 71 Eagle Street
Brisbane QLD 4000
07 3778 3693

15 September 2022

Attention: Caitlin Murray
Level 40 Governor Macquarie
Tower 1 Farrer Place
SYDNEY NSW 2000

By email

Dear Caitlin,

Vincenzo Frank Tesoriero & Ors ats Westpac Banking Corporation & Anor
Anor
Federal Court of New South Wales No. NSD616 of 2021

- 1 We consider that the Second Further Amended Statement of Claim (**SFASOC**) does not comply with the Federal Court Rules 2011 (the **Rules**).
 - 2 The Rules require a party to state (r 16.41(1)):

... in a pleading, or in a document filed and served with the pleading, the necessary particulars of each claim, defence or other matter pleaded by the party.
 - 3 Specifically, as to fraud and certain other conduct, r 16.42 requires:

A party who pleads fraud, misrepresentation, unconscionable conduct, breach of trust, wilful default or undue influence must state in the pleading particulars of the facts on which the party relies.
 - 4 Rule 16.43 provides the particulars that must be pleaded of 'conditions of mind', including knowledge and any fraudulent intention of the party: r 16.43:
 - (1) *A party who pleads a condition of mind must state in the pleading particulars of the facts on which the party relies.*
 - (2) *If a party pleads that another party ought to have known something, the party must give particulars of the facts and circumstances from which the other party ought to have acquired the knowledge.*
 - 5 The allegations made against the Tesoriero respondents, which include allegations of conspiracy by unlawful means, knowing receipt, and knowing assistance, are of a nature which engages rules 16.42 and 16.43. Accordingly, the Applicants are required to provide particulars of the facts and circumstances on which they rely in relation to these allegations.
-

- 6 Importantly, r 16.41 requires that these particulars are to be stated “in the pleading, or in a document filed and served with the pleading”. There was no separate document filed and served with the SFASOC. The central allegations against Mr Tesoriero—that he devised the Scheme with Mr Papas (at [55]) and that he reached the Scheme Agreement with Mr Papas (at [1844])—are not particularised in any relevant way in the SFASOC. The allegations of knowledge in [1905] and [1907] do not advance matters, as they appear to assume the relevant knowledge based on the (unparticularised) allegation that Mr Tesoriero devised the Scheme. The SFASOC itself accordingly does not comply with rules 16.41, 16.42 and 16.43.
- 7 It appears from your letters dated 10 September 2021, 22 September 2021 and 31 January 2022 that the Applicants intend to rely at trial on facts and circumstances which are not pleaded or particularised in the SFASOC in relation to their claims against the Tesoriero respondents. Accordingly, at present, the necessary particulars of the Applicants’ claim appear to be set out in part in the SFASOC, and in part in three letters from the Applicants’ solicitors, which cross-refer both to each other and to two letters from the Tesoriero respondents’ former solicitors.
- 8 Your letter dated 31 January 2022 states that the incorporation of particulars in a third further amended statement of claim was “*unnecessary at this stage, particularly in circumstances where detailed particulars have already been provided to Fortis Law in our letter of 14 September 2021 and to you in our letter of 22 September 2021 (22 September Letter) in response to Fortis Law’s letter of 23 August 2021 regarding the Amended Statement of Claim (ASOC).*”
- 9 We disagree. The separation of the Applicants’ case over six documents, five of which have not been filed, does not comply with the requirement in the Rules for the necessary particulars to be stated “in the pleading, or a in a document filed and served with the pleading”. We consider that it is necessary for the Applicants either to provide an amended pleading which incorporates the necessary particulars of their claims, including particulars of all of the facts and circumstances required by rules 16.42 and 16.43, or to provide a separate document stating those particulars, in order to comply with the requirements of rule 16.41.
- 10 In addition, your 31 January 2022 letter states that particulars of matters such as payments and the receipt of funds would be provided after evidence. No such particulars have been provided, and it remains uncertain what precisely is the case made against each of the Tesoriero respondents. In this regard, we refer to our letter dated 12 September 2022 regarding the apparent discrepancies between the amounts claimed in the SFASOC (and repeated in your 31 January 2022 letter) and the amounts set out in the Applicants’ evidence. Any amended pleading, or separate document, should address these discrepancies.
- 11 Please urgently let us know:
- 11.1 whether the Applicants agree to file an amended pleading, or separate document, which complies with rules 16.41, 16.42 and 16.43; and
 - 11.2 when the Applicants would be in a position to file any amended pleading.

Yours faithfully,



Aptum Legal

Contacts: Nigel Evans, Managing Director (nigel@aptumlegal.com.au)
Eric Maben, Senior Lawyer (eric@aptumlegal.com.au)
Emma Soulsby, Project Manager (emma@aptumlegal.com.au)

Our Ref: B-0307

Copied To: None

Enclosures: 2021.08.23 – 2022.01.31 Request and Response to FBP

Our Ref: CN:RH:26171
Your Ref: ME-ME.FID6264995

23 August 2021

Ms Caitlin Murray
Minter Ellison
Level 40, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

By email only: Caitlin.Murray@minterellison.com
Anthony.Sommer@minterellison.com

Dear Sir/Madam

Tesoriero, Papadimitriou and Forum Finance Pty Ltd -v- Westpac Banking Corporation Pty Ltd
Federal Court of Australia Proceedings No. NSD616/2021
Third Respondent's and Others Identified in the Schedule Request for Further and Better Particulars of the Amended Statement Of Claim

Please provide the following further and better particulars of the Amended Statement of Claim filed 10 August 2021 by 10 September 2021.

In this Request for Further and Better Particulars, the “**Condition of Mind Particulars**”, means the particulars and circumstances from which a party ought to have acquired any alleged knowledge in accordance with r 16.43 of the *Federal Court Rules 2011* (Cth) which provides:

- (1) A party who pleads a condition of mind must state in the pleading particulars of the facts on which the party relies.
- (2) If a party pleads that another party ought to have known something, the party must give particulars of the facts and circumstances from which the other party ought to have acquired the knowledge.
- (3) In this rule:

condition of mind, for a party, means:

- a. knowledge; and

- b. any disorder or disability of the party's mind; and
- c. any fraudulent intention of the party.

Defined terms in this Request for Further and Better Particulars take their meaning from the Amended Statement of Claim filed 10 August 2021 unless otherwise stated.

PART B: THE EQWE / FORUM PROGRAMME

Paragraph 35

- 1 In relation to paragraph 35 and the First Eqwe Agreement referred to therein, if the agreement was in writing, please provide a copy of it.

Paragraph 37

- 2 In relation to paragraph 37 and the Second Eqwe Agreement referred to therein, if the agreement was in writing, please provide a copy of it.

Paragraph 41

- 3 In relation to paragraph 41 and the NZ Eqwe Agreement referred to therein, if the agreement was in writing, please provide a copy of it.

Paragraph 43

- 4 In relation to paragraph 43 and the First Forum Agreement referred to therein, if the agreement was in writing, please provide a copy of it.

Paragraph 46

- 5 In relation to paragraph 46 and the Second Forum Agreement referred to therein, if the agreement was in writing, please provide a copy of it.

Paragraph 50

- 6 In relation to paragraph 50 and the NZ Forum Agreement referred to therein, if the agreement was in writing, please provide a copy of it.

PART C: THE SCHEME**Paragraph 55**

- 7 Further and better particulars of each fact, matter and circumstance, including the Condition of Mind Particulars, relied upon to allege that Mr Tesoriero devised a scheme involving Forum Finance to obtain money dishonestly and fraudulently from Westpac that they were not entitled to receive through the Eqwe / Forum Programme or at all.
- 8 In accordance with r 16.42 of the *Federal Court Rules 2011* (Cth), further and better particulars of facts relied upon to allege that Mr Tesoriero devised a scheme involving Forum Finance to obtain money dishonestly and fraudulently from Westpac that they were not entitled to receive through the Eqwe / Forum Programme or at all.

Paragraph 56

- 9 In relation to paragraph 56(f), further and better particulars of any alleged funds or payments that were used by or dispersed to Mr Tesoriero.

Paragraph 57

- 10 Further and better particulars of each fact, matter and circumstance, including the Condition of Mind Particulars, relied upon to allege that Mr Tesoriero devised and implemented the Scheme
- 11 Further and better particulars of each fact, matter and circumstance, including the Condition of Mind Particulars, relied upon to allege that Mr Tesoriero had any dishonest and fraudulent purpose in devising and implementing the Scheme.
- 12 In so far as it is alleged that Mr Tesoriero spent any funds on properties including the properties acquired by the Jointly Owned Entities and the Tesoriero Entities (being the Jointly Owned Real Property, and the Tesoriero Real Property) provide particulars of the facts, matters and circumstances to support that allegation.
- 13 In so far as it is alleged that Mr Tesoriero spent any funds on businesses in Australia and overseas (including in the Hellenic Republic, the United Kingdom, the Federal Republic of Germany and the United Arab Emirates), provide particulars of the facts, matters and circumstances to support that allegation.
- 14 In so far as it is alleged that Mr Tesoriero used any funds as loans to the businesses or subsidiaries of TFGC, including FG, FE and FEA, including to support the cash flow of

businesses which, unless the fraud was engaged in and the funds obtained, were unprofitable, provide particulars of the facts, matters and circumstances to support that allegation, including the allegation that FG, FE and FEA were unprofitable.

- 15 In so far as it is alleged that Mr Tesoriero used any funds to acquire other goods or choses in action, including racing cars, luxury cars, a race horse, boats, a yacht, jewellery and 94.38% of a Greek football team known as Xanthi FC through Mazcon, provide particulars of the facts, matters and circumstances to support that allegation.

PART D: THE FRAUDULENT TRANSACTIONS

- 16 In relation to paragraphs 59 to 1362 of the Amended Statement of Claim, and in particular, each of the Transaction 1 Documents to Transaction 100 Documents (inclusive), insofar as the Transaction 1 Documents to Transaction 100 Documents are in writing, please provide a copy.
- 17 In relation to paragraphs 1363 to 1830 of the Amended Statement of Claim, and in particular, each of the Transaction NZ1 Documents to Transaction NZ36 Documents (inclusive), insofar as the Transaction NZ1 Documents to Transaction NZ36 Documents are in writing, please provide a copy.

PART E: THE DISCOVERY OF THE SCHEME

Paragraphs 1831 and 1832

- 18 In relation to paragraphs 1831 and 1832 and the Demand referred to therein that was issued to Forum Finance, if it was in writing please provide a copy of the Demand, and further and better particulars of the mode of the Demand.

PART F: THE CLAIM AGAINST FORUM FINANCE

Paragraph 1839

- 19 In relation to paragraph 1839, further and better particulars of each fact, matter and circumstance, including the Condition of Mind Particulars, relied upon to allege that Mr Tesoriero had knowledge of Westpac as the principal of BHD Leasing and Eqwe pursuant to the First and Second Eqwe Agreements under the Eqwe / Forum Programme, including the Condition of Mind Particulars relied upon to allege that Mr Tesoriero had knowledge of the Eqwe / Forum Programme.

Paragraphs 1844, 1865, 1898, 1918, 1936, 1955, 1974, 1992, 2000, 2010, 2018, 2028, 2036, 2046, 2054, 2064, 2072, 2082, 2090, 2100, 2108, 2118, 2126, 2136, 2144, 2154, 2162, 2172, 2180, 2190, 2198, 2208, 2216, 2226, 2234, 2244, 2252, 2262, 2270, 2280, 2288, 2298, 2306, 2316, 2324, 2334, 2352

20 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that there was an agreement between Mr Papas, Mr Tesoriero, Forum Finance and diverse others including particulars relied upon to allege that:

- (a) Mr Tesoriero entered into the Scheme Agreement;
- (b) Mr Tesoriero devised the Scheme Agreement; and
- (c) Mr Tesoriero implemented the Scheme Agreement.

21 Further and better particulars of the facts, matters and circumstances relied upon, to allege that:

- (a) the Jointly Owned Entities joined in the Scheme Agreement;
- (b) the Tesoriero Entities joined in the Scheme Agreement;
- (c) the twenty-fifth respondent joined in the Scheme Agreement; and
- (d) the twenty-sixth respondent joined in the Scheme Agreement.

Paragraph 1845

22 Further and better particulars of the facts, matters and circumstances relied upon to allege that Forum Finance was a party to the Scheme Agreement by reason of the knowledge and control of it by Mr Tesoriero, including the Condition of Mind Particulars, as to the allegation that Mr Tesoriero:

- (a) had knowledge as a co-conspirator; and
- (b) had knowledge of Forum Finance's receipt, use and disbursement of money stolen from Westpac.

Paragraph 1846

23 In relation to paragraph 1846 and the allegation that the Scheme Agreement was carried into effect by Transactions 1 to 100 and Transactions NZ1 to NZ36 as set out in Part D of the Amended Statement of Claim, particulars of each fact, matter and circumstance relied upon to

allege that Mr Tesoriero had knowledge of Transactions 1 to 100 and Transactions NZ1 to NZ36 as set out in Part D of the Amended Statement of Claim.

PART G: THE CLAIM AGAINST MR PAPAS

Paragraph 1867

- 24 In relation to paragraph 1867, particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero managed the Jointly Owned Entities in furtherance of the Scheme Agreement and particulars as to the allegation that the Jointly Owned Entities were created to hold property that was financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36.

Paragraph 1872

- 25 In relation to paragraph 1872, particulars of each fact, matter and circumstance relied upon to allege that Mr Papas, Mr Tesoriero, FG, FE, FEA, Mazcon, the Jointly Owned Entities, the Tesoriero Entities, Palante, Mr Giamouridis and 286 Carlisle Street were receiving substantial payments from FGFS to which they had no legitimate basis to receive, and the particulars of each of those alleged payments.

Paragraph 1875

- 26 In relation to paragraph 1875, particulars of each fact, matter and circumstance relied upon to allege that Mr Papas, Mr Tesoriero, FG, FE, FEA, Mazcon, the Jointly Owned Entities, the Tesoriero Entities, Palante, Mr Giamouridis and 286 Carlisle Street were receiving substantial payments from FGFS to which they had no legitimate basis to receive and the particulars of each of those alleged payments.

Paragraph 1876

- 27 In relation to paragraph 1876, particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero, managed the Jointly Owned Entities and the allegation that the Jointly Owned Entities were entities created to hold property that was financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36.
- 28 Particulars of each fact, matter and circumstance relied upon to allege that the Tesoriero Entities were entities created to hold property that was financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36.

PART H: THE CLAIMS AGAINST MR TESORIERO**Paragraph 1895**

- 29 In relation to paragraph 1895, particulars of each fact, matter and circumstance relied upon to allege that:
- (a) Mr Tesoriero held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that he converted those funds into;
 - (b) Mr Tesoriero held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into; and
 - (c) holds on trust such of those funds or the traceable proceeds of those funds which he holds or of which he has the benefit.
- 30 Particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero received the funds set out in the particulars of paragraph 1895, including particulars of how the funds were paid and into which accounts.
- 31 Particulars of each fact, matter and circumstance, including the Condition of Mind Particulars, relied upon to allege that Mr Tesoriero fraudulently obtained \$28.478 million from Westpac and WNZL through his involvement in the Scheme.

Paragraphs 1896 and 1897

- 32 In relation to paragraph 1896, particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero held any amounts (or the traceable proceeds) on trust for Westpac or WNZL and was obliged to account to Westpac or WNZL for each of those amounts, including:
- (a) particulars of how any payments were received;
 - (b) the basis on which Westpac or WNZL alleges that Mr Tesoriero held those amounts (or the traceable proceeds) on trust for Westpac or WNZL;
 - (c) the basis on which Westpac or WNZL alleges that Mr Tesoriero is obliged to account to Westpac or WNZL for each of those amounts; and

- (d) particulars of the allegation that Mr Tesoriero paid away or caused or permitted to be paid away any funds that he received.

Paragraph 1900

- 33 In relation to paragraph 1900(e), further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero procured or permitted Forum Finance to pay the amounts received by it from Westpac away to third parties (including FG, FE or FEA and FGFS and the subsequent recipients), including:
- (a) particulars of any amounts paid away;
 - (b) particulars of the respective third party in receipt of those amounts; and
 - (c) particulars of Mr Tesoriero's involvement.
- 34 In relation to paragraph 1900(f), further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero received himself or in the Jointly Owned Entities, the Tesoriero Entities, 275 High St and 286 Carlisle Street money derived from Transactions 1 to 100 and NZ1 to NZ36.
- 35 In relation to paragraph 1900(g), further and better particulars of each fact, matter and circumstance relied upon to allege that:
- (a) Mr Tesoriero managed with Mr Papas the Jointly Owned Entities;
 - (b) the Jointly Owned Entities were created to hold property that was financed in part through amounts improperly obtained from Transactions 1 to 100.
- 36 In relation to paragraph 1900(h), further and better particulars of each fact, matter and circumstance relied upon to allege that:
- (a) Mr Tesoriero managed the Tesoriero Entities;
 - (b) the Jointly Owned Entities were created to hold property that was financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36.
- 37 In relation to paragraph 1900(i) further and better particulars of each fact, matter and circumstance relied upon to allege that:
- (a) Mr Tesoriero managed 286 Carlisle St;

- (b) 286 Carlisle Street received \$2,405,000 from FGFS which was money (or the traceable proceeds of money) stolen from Westpac, in the period 26 February 2021 to 24 June 2021, including particulars of how the money was received.

Paragraph 1901

- 38 Further and better particulars of each fact, matter and circumstance relied upon to allege that Westpac and WNZL's loss and damage was a consequence of the acts taken by Mr Tesoriero, including particulars of the specific acts undertaken by Mr Tesoriero.

Paragraph 1904

- 39 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero received any payment from FGFS including particulars of how any payment was made and received.

Paragraph 1905

- 40 In relation to paragraph 1905, further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero knew (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in his position) any of the matters alleged in paragraphs (a) to (i) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 1906

- 41 In relation to paragraph 1906, further and better particulars of each fact, matter and circumstance relied upon to allege that:
- (a) Mr Tesoriero holds on trust those amounts (or the traceable proceeds of those amounts) he received (directly or through the Jointly Owned Entities, the Tesoriero Entities, 275 High St and 286 Carlisle Street);
 - (b) the basis on which Mr Tesoriero is liable to account to Westpac or WNZL for the funds that he has received;
 - (c) the basis on which Mr Tesoriero is liable to pay equitable compensation.

Paragraph 1907

42 In relation to paragraph 1907, further and better particulars of each fact, matter and circumstance, including the Condition of Mind Particulars, relied upon to allege that Mr Tesoriero:

- (a) was aware of the Scheme;
- (b) was aware of the purposes of the Scheme;
- (c) devised the Scheme; and
- (d) participated in giving effect to the Scheme.

Paragraph 1908

43 In relation to paragraph 1908, further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero had knowledge of the Scheme and its purpose, including the Condition of Mind Particulars.

44 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero engaged in the conduct set out in subparagraphs (a) to (i) of paragraph 1908.

45 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D of the Amended Statement of Claim including the Conditions of Mind Particulars.

Paragraph 1909

46 In relation to paragraph 1909, further and better particulars of each fact, matter and circumstance relied upon to allege that that Mr Tesoriero knowingly assisted including the Condition of Mind Particulars.

47 Further and better particulars of each fact, matter and circumstance relied upon to allege that that Mr Tesoriero's knowing assistance caused Westpac or WNZL's loss and damage.

Paragraph 1910

48 In relation to paragraph 1910, further and better particulars of each fact, matter and circumstance relied upon to allege that that Mr Tesoriero is liable to pay Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 1911

49 In relation to paragraph 1911, further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegations that:

- (a) Mr Tesoriero aided, abetted and procured;
- (b) was knowingly concerned in or a party to;
- (c) conspired with others (by the Scheme Agreement) to give effect to:

Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and contraventions pleaded in paragraph 1858 and Mr Papas' misleading or deceptive conduct, and false and misleading conduct, and contraventions pleaded in paragraph 1890 of the Amended Statement of Claim.

Paragraph 1912

50 Further and better particulars of each fact, matter and circumstance relied upon to allege that Westpac is entitled to recover from Mr Tesoriero the loss or damage referred to in paragraph 1892 of the Amended Statement of Claim by reason of sections 236 or 237 of the ACL and/or sections 12GF or 12GM of the ASIC Act and/or section 1041I of the Corporations Act.

PART I: THE CLAIM AGAINST FGFS**Paragraph 1919**

51 In relation to paragraph 1919, further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegations that:

- (a) FGFS was a party to the Scheme Agreement;
- (b) the knowledge and control of FGFS by Mr Tesoriero;

- (c) FGFS's conduct in receiving and disbursing the money dishonestly obtained from Westpac set out in paragraph 1921 of the Amended Statement of Claim.

Paragraph 1921

- 52 In relation to paragraph 1921, further and better particulars of each fact, matter and circumstance relied upon to allege that FGFS received and then paid to Mr Papas, Mr Tesoriero, FG, FE, FEA, the Jointly Owned Entities, the Tesoriero Entities, Mazcon, Palante, 275 High St, Mr Giamouridis and 286 Carlisle Street money derived from Transactions 1 to 100 and NZ1 to NZ26.

Paragraph 1925

- 53 In relation to paragraph 1426, further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegations that Mr Tesoriero was aware of the matters set out in paragraphs (d) to (i) therein.

Paragraph 1927

- 54 In relation to paragraph 1927, further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero had knowledge of the Scheme and devised the Scheme.

Paragraph 1928

- 55 In relation to paragraph 1928, further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegations that Mr Tesoriero was aware of the matters set out in paragraphs (d) to (i) therein.

PART M: THE CLAIM AGAINST 64-66 BERKELEY ST

Paragraph 1993

- 56 In relation to paragraph 1993, further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraph 1998

- 57 In relation to paragraph 1998, further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in

paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2000

58 In relation to paragraph 2000, further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

PART N: THE CLAIM AGAINST 14 JAMES ST

Paragraph 2011

59 In relation to paragraph 2011, further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraph 2016

60 In relation to paragraph 2016, further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2019

61 In relation to paragraph 2019, further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

PART O: THE CLAIM AGAINST 26 EDMONSTONE RD

Paragraph 2029

62 In relation to paragraph 2029, further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraph 2034

63 In relation to paragraph 2034, further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2037

64 In relation to paragraph 2037, further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

PART P: THE CLAIM AGAINST 5 BULKARA ST**Paragraph 2047**

65 In relation to paragraph 2047, further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraph 2052

66 In relation to paragraph 2052, further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2055

67 In relation to paragraph 2055, further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

PART Q: THE CLAIM AGAINST 6 BULKARA ST**Paragraph 2065**

68 In relation to paragraph 2065, further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraph 2070

69 In relation to paragraph 2070, further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2073

In relation to paragraph 2073, further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

PART R: THE CLAIM AGAINST 23 MARGARET ST**Paragraphs 2080, 2081, 2089 and 2094**

70 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) 23 Margaret St held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
- (b) 23 Margaret S held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) 23 Margaret St holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 23 Margaret St is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and

- (e) 23 Margaret St is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2083

- 71 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 23 Margaret St was also a party to the Scheme Agreement.
- 72 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraph 2085

- 73 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 23 Margaret St received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 23 Margaret Street.

Paragraph 2088

- 74 Further and better particulars of each fact, matter and circumstance relied upon to allege that 23 Margaret St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.
- 75 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2091

- 76 Further and better particulars of each fact, matter and circumstance relied upon to allege that 23 Margaret St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

- 77 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2092 and 2093

- 78 Further and better particulars of each fact, matter and circumstance relied upon to allege that 23 Margaret St knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2095

- 79 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 23 Margaret St:

- (a) entered into the Scheme Agreement;
- (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART S: THE CLAIM AGAINST 1160 GLEN HUNTLY RD

Paragraphs 2098, 2099, 2107 and 2112

- 80 Particulars of each fact, matter and circumstance relied upon to allege that:
- (a) 1160 Glen Huntly Rd held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
 - (b) 1160 Glen Huntly Rd held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
 - (c) 1160 Glen Huntly Rd holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;

(d) 1160 Glen Huntly Rd is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and

(e) 1160 Glen Huntly Rd is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2101

81 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 1160 Glen Huntly Rd was also a party to the Scheme Agreement.

82 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraph 2103

83 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 1160 Glen Huntly Rd received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 1160 Glen Huntly Rd.

Paragraph 2106

84 Further and better particulars of each fact, matter and circumstance relied upon to allege that 1160 Glen Huntly Rd was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

85 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2109

86 Further and better particulars of each fact, matter and circumstance relied upon to allege that 1160 Glen Huntly Rd was aware (or, in the alternative, ought reasonably to have known or, in

the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

- 87 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2110 and 2111

- 88 Further and better particulars of each fact, matter and circumstance relied upon to allege that 1160 Glen Huntly Rd knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2113

- 89 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 1160 Glen Huntly Rd:
- (a) entered into the Scheme Agreement;
 - (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART T: THE CLAIM AGAINST 14 KIRWIN RD

Paragraphs 2116, 2117, 2125 and 2130

- 90 Particulars of each fact, matter and circumstance relied upon to allege that:
- (a) 14 Kirwin Rd held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
 - (b) 14 Kirwin Rd held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;

- (c) 14 Kirwin Rd holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 14 Kirwin Rd is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) 14 Kirwin Rd is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2119

- 91 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 14 Kirwin Rd was also a party to the Scheme Agreement.
- 92 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraph 2121

- 93 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 14 Kirwin Rd received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 14 Kirwin Rd.

Paragraph 2123

- 94 Further and better particulars of each fact, matter and circumstance relied upon to allege that 14 Kirwin Rd was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.
- 95 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2127

96 Further and better particulars of each fact, matter and circumstance relied upon to allege that 14 Kirwin Rd was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

97 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2128 and 2129

98 Further and better particulars of each fact, matter and circumstance relied upon to allege that 14 Kirwin Rd knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2131

99 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 14 Kirwin Rd:

- (a) entered into the Scheme Agreement;
- (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART U: THE CLAIM AGAINST CANNER INVESTMENTS

Paragraphs 2134, 2135, 2143 and 2148

100 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) Canner Investments held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;

- (b) Canner Investments held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) Canner Investments holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) Canner Investments is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) Canner Investments is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2137

- 101 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Canner Investments was also a party to the Scheme Agreement.
- 102 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraph 2139

- 103 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that Canner Investments received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to Canner Investments.

Paragraph 2142

- 104 Further and better particulars of each fact, matter and circumstance relied upon to allege that Canner Investments was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

105 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2145

106 Further and better particulars of each fact, matter and circumstance relied upon to allege that Canner Investments was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

107 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2146 and 2147

108 Further and better particulars of each fact, matter and circumstance relied upon to allege that Canner Investments knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2149

109 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that Canner Investments:

(a) entered into the Scheme Agreement;

(b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART V: THE CLAIM AGAINST 123 HIGH ST

Paragraphs 2152, 2153, 2161 and 2166

110 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) 123 High St held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
- (b) 123 High St held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) 123 High St holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 123 High St is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) 123 High St is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2155

- 111 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 123 High St was also a party to the Scheme Agreement.
- 112 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraphs 2157

- 113 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 123 High St received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 123 High St.

Paragraph 2160

- 114 Further and better particulars of each fact, matter and circumstance relied upon to allege that 123 High St was (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable

person in its position) aware of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

- 115 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2163

- 116 Further and better particulars of each fact, matter and circumstance relied upon to allege that 123 High St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

- 117 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2164 and 2165

- 118 Further and better particulars of each fact, matter and circumstance relied upon to allege that 123 High St knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2167

- 119 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 123 High St:

- (a) entered into the Scheme Agreement;
- (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART W: THE CLAIM AGAINST 160 MURRAY VALLEY HWY

Paragraphs 2170, 2171, 2179 and 2184

120 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) 160 Murray Valley Hwy held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
- (b) 160 Murray Valley Hwy held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) 160 Murray Valley Hwy holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 160 Murray Valley Hwy is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) 160 Murray Valley Hwy is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2173

121 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 160 Murray Valley Hwy was also a party to the Scheme Agreement.

122 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraphs 2175

123 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 160 Murray Valley Hwy received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 160 Murray Valley Hwy.

Paragraph 2178

124 Further and better particulars of each fact, matter and circumstance relied upon to allege that 160 Murray Valley Hwy was aware (or, in the alternative, ought reasonably to have known or, in

the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

125 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2181

126 Further and better particulars of each fact, matter and circumstance relied upon to allege that 160 Murray Valley Hwy was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

127 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2182 and 2183

128 Further and better particulars of each fact, matter and circumstance relied upon to allege that 160 Murray Valley Hwy knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2185

129 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 160 Murray Valley Hwy:

- (a) entered into the Scheme Agreement;
- (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART V: THE CLAIM AGAINST 123 HIGH ST

Paragraphs 2152, 2153, 2161 and 2166

130 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) 123 High St held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
- (b) 123 High St held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) 123 High St holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 123 High St is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) 123 High St is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2155

131 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 123 High St was also a party to the Scheme Agreement.

132 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraphs 2157

133 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 123 High St received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 123 High St.

Paragraph 2160

134 Further and better particulars of each fact, matter and circumstance relied upon to allege that 123 High St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

135 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2163

136 Further and better particulars of each fact, matter and circumstance relied upon to allege that 123 High St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

137 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2164 and 2165

138 Further and better particulars of each fact, matter and circumstance relied upon to allege that 123 High St knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2167

139 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 123 High St:

- (a) entered into the Scheme Agreement;
- (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART X: THE CLAIM AGAINST 31 ELLERMAN ST**Paragraphs 2188, 2189, 2197 and 2202**

140 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) 31 Ellerman St held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
- (b) 31 Ellerman St held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) 31 Ellerman St holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 31 Ellerman St is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) 31 Ellerman St is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2191

141 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 31 Ellerman St was also a party to the Scheme Agreement.

142 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraphs 2193

143 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 31 Ellerman St received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 31 Ellerman St.

Paragraph 2196

144 Further and better particulars of each fact, matter and circumstance relied upon to allege that 31 Ellerman St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

145 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2199

146 Further and better particulars of each fact, matter and circumstance relied upon to allege that 31 Ellerman St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

147 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2200 and 2201

148 Further and better particulars of each fact, matter and circumstance relied upon to allege that 31 Ellerman St knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2203

149 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 31 Ellerman St:

- (a) entered into the Scheme Agreement;
- (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART Y: THE CLAIM AGAINST 4 COWSLIP ST**Paragraphs 2206, 2207, 2215 and 2220**

150 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) 4 Cowslip St held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
- (b) 4 Cowslip St held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) 4 Cowslip St holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 4 Cowslip St is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) 4 Cowslip St is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2209

151 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 4 Cowslip St was also a party to the Scheme Agreement.

152 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraphs 2211

153 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 4 Cowslip St received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 4 Cowslip St.

Paragraph 2214

154 Further and better particulars of each fact, matter and circumstance relied upon to allege that 4 Cowslip St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

155 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2217

156 Further and better particulars of each fact, matter and circumstance relied upon to allege that 4 Cowslip St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

157 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2218 and 2219

158 Further and better particulars of each fact, matter and circumstance relied upon to allege that 4 Cowslip St knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2221

159 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 4 Cowslip St:

- (a) entered into the Scheme Agreement;
- (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART Z: THE CLAIM AGAINST 55 NOLAN ST**Paragraphs 2224, 2225, 2233 and 2238**

160 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) 55 Nolan St held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
- (b) 55 Nolan St held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) 55 Nolan St holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 55 Nolan St is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) 55 Nolan St is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2227

161 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 55 Nolan St was also a party to the Scheme Agreement.

162 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraphs 2229

163 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 55 Nolan St received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 55 Nolan St.

Paragraph 2232

164 Further and better particulars of each fact, matter and circumstance relied upon to allege that 55 Nolan St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

165 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2235

166 Further and better particulars of each fact, matter and circumstance relied upon to allege that 55 Nolan St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

167 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2236 and 2237

168 Further and better particulars of each fact, matter and circumstance relied upon to allege that 55 Nolan St knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2239

169 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 55 Nolan St:

- (a) entered into the Scheme Agreement;
- (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART AA: THE CLAIM AGAINST 89 BETKA RD**Paragraphs 2242, 2243, 2251 and 2256**

170 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) 89 Betka Rd held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
- (b) 89 Betka Rd held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) 89 Betka Rd holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 89 Betka Rd is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) 89 Betka Rd is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2245

171 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 89 Betka Rd was also a party to the Scheme Agreement.

172 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraphs 2247

173 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 89 Betka Rd received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 89 Betka Rd.

Paragraph 2250

174 Further and better particulars of each fact, matter and circumstance relied upon to allege that 89 Betka Rd was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

175 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2253

176 Further and better particulars of each fact, matter and circumstance relied upon to allege that 89 Betka Rd was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

177 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2254 and 2255

178 Further and better particulars of each fact, matter and circumstance relied upon to allege that 89 Betka Rd knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2257

179 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 89 Betka Rd:

- (a) entered into the Scheme Agreement;
- (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART BB: THE CLAIM AGAINST 9 GREGORY ST**Paragraphs 2260, 2261, 2269 and 2274**

180 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) 9 Gregory St held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
- (b) 9 Gregory St held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) 9 Gregory St holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 9 Gregory St is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) 9 Gregory St is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2263

181 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 9 Gregory St was also a party to the Scheme Agreement.

182 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraphs 2265

183 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 9 Gregory St received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 9 Gregory St.

Paragraph 2268

184 Further and better particulars of each fact, matter and circumstance relied upon to allege that 9 Gregory St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

185 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2271

186 Further and better particulars of each fact, matter and circumstance relied upon to allege that 9 Gregory St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

187 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2272 and 2273

188 Further and better particulars of each fact, matter and circumstance relied upon to allege that 9 Gregory St knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2275

189 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 9 Gregory St:

(a) entered into the Scheme Agreement;

(b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and

false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART CC: THE CLAIM AGAINST 9 MAIN ST

Paragraphs 2278, 2279, 2287 and 2292

190 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) 9 Main St held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
- (b) 9 Main St held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) 9 Main St holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 9 Main St is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) 9 Main St is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2281

191 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 9 Main St was also a party to the Scheme Agreement.

192 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraphs 2283

193 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 9 Main St received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the

purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 9 Main St.

Paragraph 2286

194 Further and better particulars of each fact, matter and circumstance relied upon to allege that 9 Main St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

195 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2289

196 Further and better particulars of each fact, matter and circumstance relied upon to allege that 9 Main St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

197 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2290 and 2291

198 Further and better particulars of each fact, matter and circumstance relied upon to allege that 9 Main St knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2293

199 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 9 Main St:

(a) entered into the Scheme Agreement;

- (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART DD: THE CLAIM AGAINST 286 CARLISLE ST

Paragraphs 2296, 2297, 2305 and 2310

200 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) 286 Carlisle St held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
- (b) 286 Carlisle St held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) 286 Carlisle St holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 286 Carlisle St is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) 286 Carlisle is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2299

201 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 286 Carlisle St was also a party to the Scheme Agreement.

202 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraphs 2301

203 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 286 Carlisle St received money derived from Transactions 1 to 100 and/or

Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 286 Carlisle St.

Paragraph 2304

- 204 Further and better particulars of each fact, matter and circumstance relied upon to allege that 286 Carlisle St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.
- 205 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2307

- 206 Further and better particulars of each fact, matter and circumstance relied upon to allege that 286 Carlisle St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.
- 207 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2308 and 2309

- 208 Further and better particulars of each fact, matter and circumstance relied upon to allege that 286 Carlisle St knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraphs 2311

- 209 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 286 Carlisle St:

- (a) entered into the Scheme Agreement;
- (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

PART EE: THE CLAIM AGAINST 275 HIGH ST

Paragraphs 2314, 2315, 2323 and 2328

210 Particulars of each fact, matter and circumstance relied upon to allege that:

- (a) 275 High St held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that it converted those funds into;
- (b) 275 High St held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into;
- (c) 275 High St holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) 275 High St is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away; and
- (e) 275 High St is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme.

Paragraph 2317

211 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that 275 High St was also a party to the Scheme Agreement.

212 Further and better particulars of each fact, matter and circumstance relied upon, including the Condition of Mind Particulars, in relation to the allegation that Mr Tesoriero was a co-conspirator.

Paragraphs 2319

213 Further and better particulars of each fact, matter and circumstance relied upon, in relation to the allegation that 275 High St received money derived from Transactions 1 to 100 and/or Transactions NZ1 to NZ36 pursuant to the Scheme Agreement and in accordance with the purpose of the Scheme and paid some or all of that money away for its own purposes or to benefit the other conspirators, including particulars as to any amounts paid to 275 High St.

Paragraph 2322

214 Further and better particulars of each fact, matter and circumstance relied upon to allege that 275 High St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

215 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (c) to (f) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraph 2325

216 Further and better particulars of each fact, matter and circumstance relied upon to allege that 275 High St was aware (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) of the matters alleged in paragraphs (a) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

217 Further and better particulars of each fact, matter and circumstance relied upon to allege that Mr Tesoriero was aware of the matters alleged in paragraphs (d) to (g) therein, including in relation to each allegation, the Condition of Mind Particulars.

Paragraphs 2326 and 2327

218 Further and better particulars of each fact, matter and circumstance relied upon to allege that 275 High St knowingly assisted the breaches of the obligations as trustee owed to Westpac by Forum Finance and the obligations as trustee owed to WNZL by IUGIS NZ identified in Part D including the Condition of Mind Particulars.

Paragraph 2329

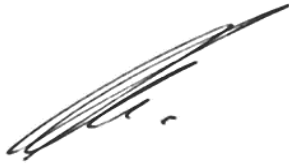
219 Further and better particulars of the facts, matters and circumstances relied upon, including the Condition of Mind Particulars, to allege that 275 High St:

- (a) entered into the Scheme Agreement;
- (b) was knowingly concerned in or a party to, or conspired with others (by the Scheme Agreement) to give effect to, Forum Finance's misleading or deceptive conduct, and false and misleading conduct, and Mr Papas' misleading or deceptive conduct, and false and misleading conduct.

We reserve our client's right to make further requests for further and better particulars.

Yours faithfully,

FORTIS LAW



Christopher Nehme
Partner

Email: cnehme@fortislaw.com.au



Roy Hanna
Solicitor

Email: rhanna@fortislaw.com.au

SCHEDULE

Third Respondent	Vincenzo Frank Tesoriero
Thirteenth Respondent	23 Margaret Street Pty Ltd ACN 623 715 373
Fourteenth Respondent	1160 Glen Huntly Road Pty Ltd ACN 639 447 984
Fifteenth Respondent	14 Kirwin Road Morwell Pty Ltd ACN 641 402 093
Sixteenth Respondent	Canner Investments Pty Ltd ACN 624 176 049
Seventeenth Respondent	123 High Street Taradale Pty Ltd ACN 639 872 512
Eighteenth Respondent	160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921
Nineteenth Respondent	31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887
Twentieth Respondent	4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352
Twenty-First Respondent	55 Nolan Street Maryborough Pty Ltd ACN 641 392 912
Twenty-Second Respondent	89 Betka Road Mallacoota Pty Ltd ACN 641 393 179
Twenty-Third Respondent	9 Gregory Street Ouyen Pty Ltd ACN 641 392 707
Twenty-Fourth Respondent	9 Main Street Derrinallum Pty Ltd ACN 639 872 736
Twenty-Fifth Respondent	286 Carlisle Street Pty Limited ACN 610 042 343
Twenty-Sixth Respondent	275 High Street Golden Square Pty Ltd ACN 639 870 545

14 September 2021

BY EMAIL: cnehme@fortislaw.com.au

Christopher Nehme
Partner
Fortis Law
Level 11, 75 Elizabeth Street
Sydney NSW 2000

Dear Mr Nehme

Westpac Banking Corporation & Anor v Forum Finance Pty Limited & Ors - Federal Court of Australia Proceeding NSD616/2021 (Proceedings)

We refer to your letter dated 23 August 2021 (**Your Letter**) requesting further and better particulars of our clients' Amended Statement of Claim filed 10 August 2021 (**ASOC**).

Part B: The Eqwe / Forum Programme

1. In response to requests [1]-[6] Your Letter, each of the agreements referred to was in writing and we **enclose** a copy of¹:
 - (a) the First Eqwe Agreement pleaded in paragraph 35 of the ASOC;
 - (b) the Second Eqwe Agreement pleaded in paragraph 37 of the ASOC;
 - (c) the NZ Eqwe Agreement pleaded in paragraph 41 of the ASOC;
 - (d) the First Forum Agreement pleaded in paragraph 43 of the ASOC;
 - (e) the Second Forum Agreement pleaded in paragraph 46 of the ASOC; and
 - (f) the NZ Forum Agreement pleaded in paragraph 50 of the ASOC.

Part D: the Fraudulent Transactions

2. In response to request [16] of Your Letter, each of the Transaction Documents are particularised in the Schedule to the ASOC served on 10 August 2021. An electronic copy of the Transaction 1 to 100 Documents referred to in that Schedule has been electronically provided by file-share.
3. In response to request [17] of Your Letter, each of the Transaction NZ1 to NZ36 Documents are particularised in the Schedule to the ASOC served on 10 August 2021. An electronic copy of the Transaction NZ1 to NZ36 Documents referred to in that Schedule has been electronically provided by file-share.
4. The file-share folder of documents, to which you have been granted access, and which contains the Transaction 1 to 100 and NZ1 to NZ36 Documents is accessible at the following link²:
<https://share.minterellison.com/w/f-c7a635fc-b6fa-43c6-86eb-f0ef8fbffbef>.

¹ A copy of the agreements referred to at 2(a), (b), (d) and (e) above are the agreements referred to in paragraphs [17], [19] and [20] of the affidavit of Geoffrey Keith Anderson sworn 28 June 2021 and included at pages 6-39 and 50-141 of Exhibit GKA-1 to that affidavit and served on your client on 2 July 2021.

² The link to the file-share folder containing the Transaction Documents referred to in paragraphs 3 and 4 (b) above was previously sent to your firm by email dated 18 August 2021 at approximately 7:35pm (AEST) from Kate Cockburn of our Firm



Part E: The Discovery of the Scheme

5. In response to the request at [18] of Your Letter, we enclose a copy of the Demand pleaded in paragraphs 1831 and 1832 of the ASOC³.

Other Requests

6. We will respond to the balance of Your Letter as soon as practicable.
7. We note that the orders of Justice Lee dated 30 July 2021 required your client to file a defence by 5:00pm on 3 September 2021. Please advise when you anticipate that your client will be in a position to file a defence to the ASOC as soon as practicable, and in any event, by no later than **4:00pm Friday, 17 September 2021**.
8. In the meantime, all of our clients' rights are expressly reserved.

Yours faithfully
MinterEllison



Contact: Anthony Sommer T: +61 2 9921 4182
anthony.sommer@minterellison.com
Partner: Caitlin Murray T: +61 2 9921 4279
OUR REF: 1353397

³ A copy of the Demand referred to at paragraph 3 above was previously sent to your firm under cover of the email dated 1 July 2021 sent at approximately 12:34pm (AEST) from Andrew Clarke of our Firm.

22 September 2021

BY EMAIL: sazz.nasimi@madgwicks.com.au

Sazz Nasimi
Partner
Madgwicks Lawyers
Level 6, 140 William Street
Melbourne VIC 3000

Dear Mr Nasimi

Westpac Banking Corporation & Anor v Forum Finance Pty Limited & Ors - Federal Court of Australia Proceeding NSD616/2021 (Proceedings)

1. We refer to Mr Nehme's letter dated 23 August 2021 requesting further and better particulars of our clients' Amended Statement of Claim filed 10 August 2021 (**ASOC**) and to our letter dated 10 September 2021.
2. As in your letter, terms defined in the ASOC have the same meaning in this letter.
3. This letter provides, where appropriate, further particulars of the paragraphs of the ASOC referred to in your letter.
4. Westpac and WNZL may provide further particulars as their investigations continue and after their evidence is served.
5. We note that, in many cases, Mr Nehme's letter asked for further particulars of allegations which were already particularised. For example, the case against each of the Tesoriero Entities is already adequately pleaded in the ASOC that it relies upon Mr Tesoriero's control of the entity as a director (which is plain from the face of the ASIC extracts) and then the receipt of that entity of funds from FGFS which in turn came from Forum Finance (two entities which Mr Tesoriero controlled as a director (again, which is plain from the face of the ASIC extracts)).
6. For example, as against 23 Margaret St (a company of which Mr Tesoriero has been the sole director, the sole secretary and the sole shareholder since it was incorporated according to the ASIC extracts), the claim has five parts:
 - (a) The first part sues 23 Margaret St for funds that it received from those stolen from Westpac and WNZL, which appears to be at least \$689,742 but which will ultimately be a matter for evidence. This claim arises in law by pursuant to the principles in *Black v S Freedman & Company* (1910) 12 CLR 105. It does not require any further particularisation than that provided in the ASOC.
 - (b) The second part sues 23 Margaret St for damages as a co-conspirator with Mr Papas and Mr Tesoriero. Particulars of the conspiracy are given in paragraph 1844 of the ASOC. There is particularised that, relevantly, 23 Margaret St joined in the Scheme Agreement by reason of the knowledge and control of it by Mr Tesoriero (a fact that is undisputable on the face of the corporate record) and by receiving, using and disbursing money stolen from Westpac and WNZL in order to benefit it, Mr Papas and Mr Tesoriero (again, a matter for evidence but which appears to be at least \$689,742).
 - (c) The third part is a knowing receipt claim, again for an amount which is a matter for evidence but which appears to be at least \$689,742. As pleaded in paragraph 2088, 23 Margaret St's knowledge is that or Mr Tesoriero and the knowledge that it is alleged he had is set out in paragraphs (d) to (f).



- (d) The fourth part is a knowing assistance claim. Again, this is based on Mr Tesoriero's knowledge as pleaded in paragraph 2091 and the conduct of 23 Margaret St pleaded in paragraph 2092.
 - (e) The fifth part is 23 Margaret St's accessorial liability for the misleading or deceptive conduct of Forum Finance and Mr Papas. The knowledge that 23 Margaret St is of Mr Tesoriero pleaded in section R (in paragraphs 2088(c) to (f) and 2091(d) to (f)) and its conduct is that identified in section R (in paragraph 2092).
7. Accordingly, the claims against 23 Margaret St are adequately particularised already, and this letter does not repeat particularisation that is already provide in the ASOC. Where it is appropriate to do so, further particulars are provided as set out below.
8. This explanation in relation to 23 Margaret St should be taken to be repeated in response to Requests 56 to 219 of Mr Nehme's letter.

Part B: The Eqwe / Forum Programme

- 9. We have provided a response to Requests 1 to 6 in our letter dated 10 September 2021.
- 10. We rely on that response here and it is not repeated again.

Part C: The Scheme

- 11. The below facts, matters and circumstances of the Scheme are a matter for evidence. However, Westpac intends to rely on the following facts, matters and circumstances, among others.
- 12. In response to Request 7, paragraph 35 of the ASOC does not plead a 'condition of mind' in relation to Mr Tesoriero and therefore FCR 16.43 has no application. Rather, it pleads the fact of the creation of the Scheme by either Mr Papas alone or Mr Papas with Mr Tesoriero. Westpac and WNZL rely upon the following facts, matters and circumstances from which it can be inferred that Mr Tesoriero devised the Scheme with Mr Papas:
 - (a) Mr Tesoriero had been involved in the Forum business since at least 28 July 2014 (see [FOR.000535727](#)).
 - (b) Mr Tesoriero was a director of TFGC from 27 January 2013 to 24 April 2020, according to the ASIC extracts. It is to be inferred from this that, given his role as director and the duties that were imposed upon by law by reason of the Corporations Act and the general law, Mr Tesoriero was aware of the activities that TFGC was engaged in from time, including where it obtained money, including at least \$5.930 million pleaded in FASOC [2372].
 - (c) Mr Tesoriero had access to financial information about TFGC and its controlled entities from at least 1 October 2014 and involved in working out how it would fund itself (see [FOR.000113461](#) and [FOR.000113462](#) and [FOR.001047176](#) and [FOR.001047177](#)). It is to be inferred from this that he knew the sources of funding for TFGC and its controlled entities, including the funds received into the group through the Eqwe / Forum Programme.
 - (d) Mr Tesoriero became a director of Forum Finance on 1 April 2017 and remained a director at all times thereafter, according to the ASIC extracts. It is to be inferred that, given his role as a director and the duties that were imposed upon by law by reason of the Corporations Act and the general law, Mr Tesoriero was aware of the activities that Forum Finance was engaged in from time, including where it obtained money and where it dispersed it to and its involvement in Transactions 1 to 100 and their underlying fraudulent nature as pleaded in Part D of the ASOC;
 - (e) Mr Tesoriero became a director of FGFS on 13 November 2018 and remained a director until 20 April 2020, according to the ASIC extracts. It is to be inferred that, given his role as a director and the duties that were imposed upon by law by reason of the Corporations Act and the general law, Mr Tesoriero was aware of the activities that FGFS was engaged in from time, including where it obtained money and where it dispersed it to and its

involvement in Transactions 1 to 100 and their underlying fraudulent nature as pleaded in Part D of the ASOC.

- (f) Before devising the Scheme to defraud Westpac and WNZL, FG, FE and FGFS had carried out an earlier scheme involving Maia Financial Pty Ltd (**Maia**) under which \$58.85 million was defrauded from Maia using false invoices and/or contracts purportedly for Veolia, ALH, WesTrac, CHC, Scentre and HWLE.
- (g) Mr Tesoriero's involvement in the scheme involving Maia is to be inferred from his role as a director of FGFS and the duties that were imposed upon by law as a director by reason of the Corporations Act and the general law and from the matters in the following subparagraphs. It is also described in internal documents as being Mr Papas and Mr Tesoriero's "loan book" (see [FOR.000140164](#) and attached spreadsheets).
- (h) Maia detected the fraud during 2018 and FG and FE ultimately repaid the amounts they had defrauded from Maia between April and October 2018.
- (i) Mr Tesoriero was involved in the negotiation of the settlement with Maia: see email of 1 August 2018 ([FOR.001440924](#)).
- (j) As part of the settlement with Maia, Mr Tesoriero agreed to give a Deed of Guarantee and Indemnity to Maia, which Mr Tesoriero executed on or around 7 September 2018 (document [FOR.001150472](#)).
- (k) Under this deed, Mr Tesoriero guaranteed the due and punctual payment to Maia, to fill in as the principal debtor and immediately on demand pay the amount owed to Maia and to indemnify Maia immediately against any cost, loss or liability suffered.
- (l) It is to be inferred that Mr Tesoriero gave this guarantee because he was aware of the fraud that FG, FE and FGFS had perpetrated and the repercussions for him if it was exposed and needed to give this guarantee in order to minimise those repercussions. This is because, if the fraud on Maia had only been perpetrated by Mr Papas, then Mr Tesoriero would have refused to give this guarantee and would have immediately resigned as a director of Forum Finance. He would not have continued in that role and agreed to be appointed as a director of FGFS. Instead, Mr Tesoriero remained as a director of Forum Finance and agreed to be appointed as a director of FGFS.
- (m) On or around 31 August 2018, Mr Tesoriero signed the First Master Agreement. It is to be inferred that he did so knowing how the arrangement contemplated by the First Master Agreement would function including that the funds to be provided in accordance with the First Master Agreement by Westpac would be used to acquire assets for the underlying customer, and not to provide funds to be used entirely for the benefit of Forum, FGFS, Mr Papas and Mr Tesoriero and entities related to them. Further, it is to be inferred that Mr Tesoriero signed the First Master Agreement knowing that this would give Westpac the false impression that Westpac's funds were to be used to acquire assets for the underlying customer.
- (n) From the commencement of the Scheme until Maia were repaid the amount it was defrauded by Forum Finance on 16 October 2018, Forum Finance defrauded Westpac of \$36,631,503 through Transactions 1 to 11 and some or all of those funds were used by Forum Finance to pay FG and FE and by FG and FE to pay Maia and to satisfy the obligations that Mr Tesoriero was guarantor of and would otherwise have had to pay if Forum Finance had not paid or procured the payment by FG or FE had not paid the amounts that they did.
- (o) On or around 12 July 2019, Mr Tesoriero signed the Second Master Agreement. It is to be inferred that he did so knowing how the arrangement contemplated by the Second Master Agreement would function including that the funds to be provided in accordance with the Second Master Agreement by Westpac would be used to acquire assets for the underlying customer, and not to provide funds to be used entirely for the benefit of Forum, FGFS, Mr Papas and Mr Tesoriero and entities related to them. Further, it is to be inferred that Mr Tesoriero signed the Second Master Agreement knowing that this would give

Westpac the false impression that Westpac's funds were to be used to acquire assets for the underlying customer.

- (p) Between 13 September 2018 and 9 June 2021, Forum engaged in each of Transactions 1 to 100 and received and paid away funds from Westpac. As a director of Forum Finance and FGFS throughout that period, it is to be inferred that Mr Tesoriero was aware of each of Transactions 1 to 100 and the circumstances in which Forum Finance engaged in those transactions as pleaded in Part D.
 - (q) From 11 April 2018 to 18 December 2020, Mr Tesoriero directly or indirectly owned and controlled the Jointly Owned Entities and procured the purchase by them of the Jointly Owned Real Property. These purchases, including the repayments of loans used to fund the purchases, were funded through payments from FGFS which came from Forum Finance. It is to be inferred that he was aware that these funds, which came through companies of which he was a director, came from Westpac and WNZL in order to finance the acquisition of assets pursuant to the Eqwe / Forum Programme and not real property for the benefit of Mr Tesoriero or companies related to him.
 - (r) From 30 April 2018 to 18 December 2020, Mr Tesoriero directly or indirectly owned and controlled the Tesoriero Entities and procured the purchase by them of the Tesoriero Real Property. These purchases, including the repayments of loans used to fund the purchases, were funded through payments from FGFS which came from Forum Finance. It is to be inferred that he was aware that these funds, which came through companies of which he was a director, came from Westpac and WNZL in order to finance the acquisition of assets pursuant to the Eqwe / Forum Programme and not real property for the benefit of Mr Tesoriero or companies related to him.
 - (s) In the process of procuring purchases and finance for purchases by the Tesoriero Entities and the Jointly Owned Entities, Mr Tesoriero was provided with bank statements for FGFS: which are a matter for evidence but see for example email 16 November 2018 ([FOR.000640891](#); [FOR.000640892](#); [FOR.000640893](#); [FOR.000640894](#)) and email 30 March 2019 ([FOR.000404309](#)). It is to be inferred that Mr Tesoriero was aware from those bank statements of the funds FGFS received and was remitting.
 - (t) Mr Tesoriero managed 286 Carlisle St which received \$2,405,000 from FGFS, which was money (or the traceable proceeds of money) stolen from Westpac and WNZL, in the period 26 February 2021 to 24 June 2021.
 - (u) Further particulars may be provided after evidence. For present purposes, the transfers by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which show these transfers (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
13. In response to Request 8, we repeat our response to Request 7.
14. In response to Request 9, the funds and payments that were used by or dispersed to Mr Tesoriero are a matter for evidence, however, include at least the payments and funds that, to date, Westpac and WZNL have identified as being dispersed to:
- (a) Mr Tesoriero in the amounts set out in the particulars to paragraph 1895 of the ASOC (\$2,356,784.17);
 - (b) the Jointly Owned Entities in the amount set out in the particulars to paragraph 1895 of the ASOC (\$18.798million);
 - (c) the Tesoriero Entities in the amount set out in the particulars to paragraph 1895 of the ASOC (\$4.578million);
 - (d) 275 High St in the amount set out in the out in the particulars to paragraph 1895 of the ASOC (\$339,214);
 - (e) 286 Carlisle St in the amount set out in the particulars to paragraph 1895 of the ASOC (\$2.405million).

15. The further funds and payments that were used or dispersed to Mr Tesoriero are presently unknown to Westpac and WZNL and further particulars will be provided after evidence.
16. In response to Request 10, we repeat our responses to Requests 7 and 8 above.
17. In response to Request 11, we repeat our responses to Requests 7 and 8 above.
18. In response to Request 12, this is not a proper request for particulars and is a matter for evidence.
19. In response to Request 13, this is not a proper request for particulars and is a matter for evidence. Notwithstanding this objection, in further response to Request 13 the funds spent on businesses included, the amounts received:
 - (a) by FGFS as set out paragraph 1914 and 1915 of the ASOC;
 - (b) by FG, as set put in paragraph 1933 and 1939 of the ASOC;
 - (c) by FE, as set out in paragraph 1952 and 1959 of the ASOC;
 - (d) by FEA, as set out in paragraph 1971 and 1985 of the ASOC;
20. by Mazcon, as set out in 2339 of the ASOC. In response to Request 14, this is not a proper request for particulars and is a matter for evidence.
21. In response to Request 15, this is not a proper request for particulars and is a matter for evidence.

Part D: the Fraudulent Transactions

22. A response to Requests 16 and 17 has been provided in our letter dated 10 September 2021 and is not repeated here.

Part E: The Discovery of the Scheme

23. A response to Request 18 has been provided in our letter dated 10 September 2021 and is not repeated here.

Part F: The claim against Forum Finance

24. In response to Request 19, it should be inferred that Mr Tesoriero had this knowledge given he set up the Forum / Eqwe Programme by signing the First and Second Master Agreements. In any event, Mr Tesoriero had this knowledge from the bank accounts of Forum Finance, which identified that each tranche of stolen funds came from Westpac.
25. In response to Request 20, we repeat our responses to Requests 7 and 8 above.
26. In response to Request 21:
 - (a) the basis of the allegation in relation to the Jointly Owned Entities is by reason of the acts and knowledge of Mr Papas (which is to be inferred from the acts set out in paragraph 1867 of the ASOC) and Mr Tesoriero (which is to be inferred from the acts set out in paragraph 1900 of the ASOC) and their receipt of funds from FGFS;
 - (b) the basis of the allegation in relation to the Tesoriero Entities, 286 Carlisle St and 275 High St is by reason of the acts and knowledge of Mr Tesoriero (which is to be inferred from the acts set out in paragraph 1900 of the ASOC) and their receipt of funds from FGFS.
27. In relation to Request 22, Westpac and WZNL rely upon the matters set out in our responses to Requests 7 and 8 above and the acts set out in paragraph 1900 of the ASOC.
28. In relation to Request 23, we repeat our responses to Requests 7 and 8 above.

Part G: The claim against Mr Papas

29. In relation to Request 24, we repeat our responses to Requests 7 and 8 above and the fact that the Jointly Owned Entities were created for this reason is evidenced by their receipt of money from FGFS all of which was stolen from Westpac and WNZL. The amounts of these transfers is a matter for evidence. For present purposes, we can identify that the transfers to these entities are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**).
30. In relation to Request 25, this is a matter for evidence. The transfers to these entities are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
31. In relation to Request 26, we repeat our response to Request 25.
32. In relation to Request 27, we repeat our response to Request 24.
33. In relation to Request 28, we repeat our responses to Requests 7 and 8 above and the fact that the Tesoriero Entities were created for this reason is evidenced by their receipt of money from FGFS all of which was stolen from Westpac and WNZL. For present purposes, we can identify that the transfers to these entities are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**).

Part H: The claim against Mr Tesoriero

34. Request 29 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WZNL's property. Mr Tesoriero must return the stolen property that he has or controls to Westpac and WZNL.
35. Request 30 is not a proper request for particulars. This is a matter for evidence. However, so there is no doubt, any payment that Mr Tesoriero received from FGFS is from stolen funds and was and remains Westpac's and WZNL's property. Mr Tesoriero must return the stolen property that he has or controls to Westpac and WZNL.
36. Request 31 is not a proper request for particulars. This is a matter for evidence. However, so there is no doubt, any payment that Mr Tesoriero received from FGFS is from stolen funds and was and remains Westpac's and WZNL's property. Mr Tesoriero must return the stolen property that he has or controls to Westpac and WZNL.
37. Request 32 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WZNL's property. Mr Tesoriero must return the stolen property that he has or controls to Westpac and WZNL.
38. In relation to Request 33, Mr Tesoriero was a director of Forum Finance and either did these things directly or allowed them to occur, given the only business that Forum Finance ever engaged in was stealing money from Westpac and WNZL and did so with Mr Tesoriero's knowledge (as to which we repeat our responses to Requests 7 and 8 above).
39. In relation to Request 34, this is a matter for evidence. The transfers to these entities are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
40. In relation to Request 35, Mr Tesoriero's management of the Jointly Owned Entities is to be inferred from his role as a director and/or shareholder of the Jointly Owned Entities (according to the ASIC extracts) and the direction (which will be the subject of evidence) to Forum staff to pay money to or for the benefit of the Jointly Owned Entities. For example, [FOR.000687557](#) and [FOR.000687557](#), [FOR.000639894](#) and [FOR.000639895](#), [FOR.000300453](#) and [FOR.000300454](#).
41. In relation to Request 36, Mr Tesoriero's management of the Tesoriero Entities is to be inferred from his role as a director and/or shareholder of the Tesoriero Entities according to the ASIC extracts and the direction (which will be the subject of evidence) to Forum staff to pay money to or

for the benefit of the Tesoriero Entities. For example, [FOR.000439568](#) and attached spreadsheet, [FOR.000300453](#) and [FOR.001063828](#) and attached spreadsheet.

42. In relation to Request 37, Mr Tesoriero's management of 286 Carlisle St is to be inferred from his role as a director and/or shareholder of 286 Carlisle St (according to the ASIC extracts). When and how 286 Carlisle St received the stolen money is a matter for evidence.
43. In relation to Request 38, the matters relied upon are those in paragraph 1900 of the ASOC.
44. In relation to Request 39, these matters have already been particularised in paragraph 1895 and are otherwise the subject of evidence. However, so there is no doubt, any payment that Mr Tesoriero received from FGFS is from stolen funds and was and remains Westpac's and WZNL's property. Mr Tesoriero must return the stolen property that he has or controls to Westpac and WZNL.
45. In relation to Request 40, the matters relied upon are those in paragraph 1905(d) to (i) of the ASOC which were either known to Mr Tesoriero or would have been apparent to an honest person in his position. As to Mr Tesoriero's involvement in the Scheme, we repeat our responses to Requests 7 and 8 above.
46. Request 41 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's property. Mr Tesoriero must return the stolen property that he has or controls to Westpac or pay equitable compensation.
47. In relation to Request 42, we repeat our responses to Requests 7 and 8 above.
48. In relation to Request 43, we repeat our responses to Requests 7 and 8 above.
49. In relation to Request 44:
 - (a) as to subparagraph (a), the fact that his signature appears on the document is relied upon to allege that he signed the document;
 - (b) as to subparagraph (b), the fact that his signature appears on the document is relied upon to allege that he signed the document;
 - (c) as to subparagraph (c), the fact that he was a director is relied to allege that he was a director;
 - (d) as to subparagraph (d), the fact that he was a shareholder is relied to allege that he was a shareholder;
 - (e) as to subparagraph (e), Mr Tesoriero was a director of Forum Finance and either did these things directly or allowed them to occur, given the only business that Forum Finance ever engaged in was stealing money from Westpac and WNZL and did so with Mr Tesoriero's knowledge (as to which we repeat our responses to Requests 7 and 8 above);
 - (f) as to subparagraph (f), the receipt of funds is a matter for evidence. In any event, the transfers to these entities are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds);
 - (g) as to subparagraph (g), Mr Tesoriero's management of the Jointly Owned Entities is to be inferred from his role as a director and/or shareholder of the Jointly Owned Entities and the direction (which will be the subject of evidence) to Forum staff to pay money to or for the benefit of the Jointly Owned Entities. Also, see the examples given in relation to Request 35;
 - (h) as to subparagraph (h), Mr Tesoriero's management of the Tesoriero Entities is to be inferred from his role as a director and/or shareholder of the Tesoriero Entities and the direction (which will be the subject of evidence) to Forum staff to pay money to or for the benefit of the Tesoriero Entities. Also, see the examples given in relation to Request 36;

- (i) as to subparagraph (i), Mr Tesoriero's management of 286 Carlisle St is to be inferred from his role as a director and/or shareholder of 286 Carlisle St. When and how 286 Carlisle St received the stolen money is a matter for evidence.
50. In relation to Request 45, we repeat our responses to Requests 7 and 8 above and otherwise rely on the matters set out in paragraph 1908 of the ASOC.
51. In relation to Request 46, we repeat our responses to Requests 7 and 8 above and otherwise rely on the matters set out in paragraph 1908 of the ASOC.
52. In relation to Request 47, we repeat our responses to Requests 7 and 8 above and otherwise rely on the matters set out in paragraph 1908 of the ASOC and the particulars to paragraph 1909.
53. Request 48 is not a proper request for particulars. Mr Tesoriero's obligation to pay equitable compensation arises as a matter of law. Together with Mr Papas, he conceived of and implemented a Scheme to steal money from Westpac and WNZL which he then used for his own benefit, rather than returning to Westpac and WNZL. Given his failure to do so, he should now be ordered to be equitable compensation for the amount his fraudulent and dishonest Scheme has injured Westpac and WNZL. In this regard, we repeat our responses to Requests 7 and 8 above.
54. In relation to Request 49, we repeat our responses to Requests 7 and 8 above and otherwise rely on the matters set out in paragraph 1900 and 1905 of the ASOC.
55. Request 50 is not a proper request for particulars. Mr Tesoriero's obligation to pay damages arises as a matter of law by reason of the statutes pleaded in paragraph 1912 of the ASOC. Together with Mr Papas, he conceived of and implemented a Scheme to steal money from Westpac and WNZL which he then used for his own benefit, rather than returning to Westpac and WNZL. Given his failure to do so, he should now be ordered to be equitable compensation for the amount his fraudulent and dishonest Scheme has injured Westpac and WNZL. In this regard, we repeat our responses to Requests 7 and 8 above.

Part I: The claim against Mr Tesoriero

56. In response to Request 51, Mr Tesoriero was a director and shareholder of FGFS and its involvement in the Scheme is to be inferred by reason of the acts and knowledge of Mr Papas (which is to be inferred from the acts set out in paragraph 1867 of the ASOC and the matters set out in our responses to Requests 7 and 8 above) and Mr Tesoriero (which is to be inferred from the acts set out in paragraph 1900 of the ASOC and the matters set out in our responses to Requests 7 and 8 above) and their receipt of funds by FGFS.
57. In relation to Request 52, this is a matter for evidence. The receipt by FGFS and then the transfers to these entities are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
58. In relation to Request 53, we repeat our responses to Requests 7 and 8 above in relation to subparagraphs (d) to (h). In relation to subparagraph (i), this is a matter for evidence. For present purposes, see the examples given in response to Requests 35 and 36 and the bank statements and balance sheets provided in response to Request 28.
59. In relation to Request 54, we repeat our responses to Requests 7 and 8 above.
60. In relation to Request 55, we repeat our responses to Requests 7 and 8 above in relation to subparagraphs (d) to (h). In relation to subparagraph (i), this is a matter for evidence. For present purposes, see the examples given in response to Requests 35 and 36 and the bank statements and balance sheets provided in response to Request 28.

Part M: The claim against 64-66 Berkeley St

61. In relation to Request 56, we repeat our responses to Requests 7 and 8 above.
62. In relation to Request 57, we repeat our responses to Requests 7 and 8 above.

63. In relation to Request 58, we repeat our responses to Requests 7 and 8 above.

Part N: The claim against 14 James St

64. In relation to Request 59, we repeat our responses to Requests 7 and 8 above.

65. In relation to Request 60, we repeat our responses to Requests 7 and 8 above.

66. In relation to Request 61, we repeat our responses to Requests 7 and 8 above.

Part O: The claim against 26 Edmonstone Rd

67. In relation to Request 62, we repeat our responses to Requests 7 and 8 above.

68. In relation to Request 63, we repeat our responses to Requests 7 and 8 above.

69. In relation to Request 64, we repeat our responses to Requests 7 and 8 above.

Part P: The claim against 5 Bulkara St

70. In relation to Request 65, we repeat our responses to Requests 7 and 8 above.

71. In relation to Request 66, we repeat our responses to Requests 7 and 8 above.

72. In relation to Request 67, we repeat our responses to Requests 7 and 8 above.

Part Q: The claim against 6 Bulkara St

73. In relation to Request 68, we repeat our responses to Requests 7 and 8 above.

74. In relation to Request 69, we repeat our responses to Requests 7 and 8 above.

75. In relation to your unnumbered request regarding paragraph 2073 of the ASOC, we repeat our responses to Requests 7 and 8 above.

Part R: The claim against 23 Margaret St

76. Request 70 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 26 Margaret St must return the stolen property that it has or controls to Westpac and WNZL.

77. In relation to Request 71, we repeat our responses to Requests 7 and 8 above.

78. In relation to Request 72, we repeat our responses to Requests 7 and 8 above.

79. In relation to Request 73, this is a matter for evidence. The transfers to 26 Margaret St by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).

80. In relation to Request 74, we repeat our responses to Requests 7 and 8 above.

81. In relation to Request 75, we repeat our responses to Requests 7 and 8 above.

82. In relation to Request 76, we repeat our responses to Requests 7 and 8 above.

83. In relation to Request 77, we repeat our responses to Requests 7 and 8 above.

84. In relation to Request 78, we repeat our responses to Requests 7 and 8 above.

85. In relation to Request 79, we repeat our responses to Requests 7 and 8 above.

Part S: The claim against 1160 Glen Huntly Rd

86. Request 80 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 1160 Glen Huntly Rd must return the stolen property that it has or controls to Westpac and WNZL.
87. In relation to Request 81, we repeat our responses to Requests 7 and 8 above.
88. In relation to Request 82, we repeat our responses to Requests 7 and 8 above.
89. In relation to Request 83, this is a matter for evidence. The transfers to 1160 Glen Huntly Rd by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
90. In relation to Request 84, we repeat our responses to Requests 7 and 8 above.
91. In relation to Request 85, we repeat our responses to Requests 7 and 8 above.
92. In relation to Request 86, we repeat our responses to Requests 7 and 8 above.
93. In relation to Request 87, we repeat our responses to Requests 7 and 8 above.
94. In relation to Request 88, we repeat our responses to Requests 7 and 8 above.
95. In relation to Request 89, we repeat our responses to Requests 7 and 8 above.

Part T: The claim against 14 Kirwin Rd

96. Request 90 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 14 Kirwin Rd must return the stolen property that it has or controls to Westpac and WNZL.
97. In relation to Request 91, we repeat our responses to Requests 7 and 8 above.
98. In relation to Request 92, we repeat our responses to Requests 7 and 8 above.
99. In relation to Request 93, this is a matter for evidence. The transfers to 14 Kirwin Rd by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
100. In relation to Request 94, we repeat our responses to Requests 7 and 8 above.
101. In relation to Request 95, we repeat our responses to Requests 7 and 8 above.
102. In relation to Request 96, we repeat our responses to Requests 7 and 8 above.
103. In relation to Request 97, we repeat our responses to Requests 7 and 8 above.
104. In relation to Request 98, we repeat our responses to Requests 7 and 8 above.
105. In relation to Request 99, we repeat our responses to Requests 7 and 8 above.

Part U: The claim against Canner Investments

106. Request 100 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. Canner Investments must return the stolen property that it has or controls to Westpac and WNZL.
107. In relation to Request 101, we repeat our responses to Requests 7 and 8 above.
108. In relation to Request 102, we repeat our responses to Requests 7 and 8 above.

109. In relation to Request 103, this is a matter for evidence. The transfers to Canner Investments by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
110. In relation to Request 104, we repeat our responses to Requests 7 and 8 above.
111. In relation to Request 105, we repeat our responses to Requests 7 and 8 above.
112. In relation to Request 106, we repeat our responses to Requests 7 and 8 above.
113. In relation to Request 107, we repeat our responses to Requests 7 and 8 above.
114. In relation to Request 108, we repeat our responses to Requests 7 and 8 above.
115. In relation to Request 109, we repeat our responses to Requests 7 and 8 above.

Part V: The claim against 123 High St

116. Requests 110 and 130 are not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 123 High St must return the stolen property that it has or controls to Westpac and WNZL.
117. In relation to Requests 111 and 131, we repeat our responses to Requests 7 and 8 above.
118. In relation to Requests 112 and 132, we repeat our responses to Requests 7 and 8 above.
119. In relation to Requests 113s and 133, this is a matter for evidence. The transfers to 123 High St by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
120. In relation to Requests 114 and 134, we repeat our responses to Requests 7 and 8 above.
121. In relation to Requests 115 and 135, we repeat our responses to Requests 7 and 8 above.
122. In relation to Requests 116 and 136, we repeat our responses to Requests 7 and 8 above.
123. In relation to Requests 117 and 137, we repeat our responses to Requests 7 and 8 above.
124. In relation to Requests 118 and 138, we repeat our responses to Requests 7 and 8 above.
125. In relation to Requests 119 and 139, we repeat our responses to Requests 7 and 8 above.

Part W: The claim against 160 Murray Valley Hwy

126. Request 120 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 160 Murray Valley Hwy must return the stolen property that it has or controls to Westpac and WNZL.
127. In relation to Request 121, we repeat our responses to Requests 7 and 8 above.
128. In relation to Request 122, we repeat our responses to Requests 7 and 8 above.
129. In relation to Request 123, this is a matter for evidence. The transfers to 160 Murray Valley Hwy by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
130. In relation to Request 124, we repeat our responses to Requests 7 and 8 above.

131. In relation to Request 125, we repeat our responses to Requests 7 and 8 above.
132. In relation to Request 126, we repeat our responses to Requests 7 and 8 above.
133. In relation to Request 127, we repeat our responses to Requests 7 and 8 above.
134. In relation to Request 128, we repeat our responses to Requests 7 and 8 above.
135. In relation to Request 129, we repeat our responses to Requests 7 and 8 above.

Part X: The claim against 31 Ellerman St

136. Request 140 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 31 Ellerman St must return the stolen property that it has or controls to Westpac and WNZL.
137. In relation to Request 141, we repeat our responses to Requests 7 and 8 above.
138. In relation to Request 142, we repeat our responses to Requests 7 and 8 above.
139. In relation to Request 143, this is a matter for evidence. The transfers to 31 Ellerman St by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
140. In relation to Request 144, we repeat our responses to Requests 7 and 8 above.
141. In relation to Request 145, we repeat our responses to Requests 7 and 8 above.
142. In relation to Request 146, we repeat our responses to Requests 7 and 8 above.
143. In relation to Request 147, we repeat our responses to Requests 7 and 8 above.
144. In relation to Request 148, we repeat our responses to Requests 7 and 8 above.
145. In relation to Request 149, we repeat our responses to Requests 7 and 8 above.

Part Y: The claim against 4 Cowslip St

146. Request 150 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 4 Cowslip St must return the stolen property that it has or controls to Westpac and WNZL.
147. In relation to Request 151, we repeat our responses to Requests 7 and 8 above.
148. In relation to Request 152, we repeat our responses to Requests 7 and 8 above.
149. In relation to Request 153, this is a matter for evidence. The transfers to 4 Cowslip St by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
150. In relation to Request 154, we repeat our responses to Requests 7 and 8 above.
151. In relation to Request 155, we repeat our responses to Requests 7 and 8 above.
152. In relation to Request 156, we repeat our responses to Requests 7 and 8 above.
153. In relation to Request 157, we repeat our responses to Requests 7 and 8 above.
154. In relation to Request 158, we repeat our responses to Requests 7 and 8 above.
155. In relation to Request 159, we repeat our responses to Requests 7 and 8 above.

Part Z: The claim against 55 Nolan St

156. Request 160 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 55 Nolan St must return the stolen property that it has or controls to Westpac and WNZL.
157. In relation to Request 161, we repeat our responses to Requests 7 and 8 above.
158. In relation to Request 162, we repeat our responses to Requests 7 and 8 above.
159. In relation to Request 163, this is a matter for evidence. The transfers to 55 Nolan St by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
160. In relation to Request 164, we repeat our responses to Requests 7 and 8 above.
161. In relation to Request 165, we repeat our responses to Requests 7 and 8 above.
162. In relation to Request 166, we repeat our responses to Requests 7 and 8 above.
163. In relation to Request 167, we repeat our responses to Requests 7 and 8 above.
164. In relation to Request 168, we repeat our responses to Requests 7 and 8 above.
165. In relation to Request 169, we repeat our responses to Requests 7 and 8 above.

Part AA: The claim against 89 Betka Rd

166. Request 170 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 89 Betka Rd must return the stolen property that it has or controls to Westpac and WNZL.
167. In relation to Request 171, we repeat our responses to Requests 7 and 8 above.
168. In relation to Request 172, we repeat our responses to Requests 7 and 8 above.
169. In relation to Request 173, this is a matter for evidence. The transfers to 89 Betka Rd by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
170. In relation to Request 174, we repeat our responses to Requests 7 and 8 above.
171. In relation to Request 175, we repeat our responses to Requests 7 and 8 above.
172. In relation to Request 176, we repeat our responses to Requests 7 and 8 above.
173. In relation to Request 177, we repeat our responses to Requests 7 and 8 above.
174. In relation to Request 178, we repeat our responses to Requests 7 and 8 above.
175. In relation to Request 179, we repeat our responses to Requests 7 and 8 above.

Part BB: The claim against 9 Gregory St

176. Request 180 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 9 Gregory St must return the stolen property that it has or controls to Westpac and WNZL.
177. In relation to Request 181, we repeat our responses to Requests 7 and 8 above.
178. In relation to Request 182, we repeat our responses to Requests 7 and 8 above.

179. In relation to Request 183, this is a matter for evidence. The transfers to 9 Gregory St by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
180. In relation to Request 184, we repeat our responses to Requests 7 and 8 above.
181. In relation to Request 185, we repeat our responses to Requests 7 and 8 above.
182. In relation to Request 186, we repeat our responses to Requests 7 and 8 above.
183. In relation to Request 187, we repeat our responses to Requests 7 and 8 above.
184. In relation to Request 188, we repeat our responses to Requests 7 and 8 above.
185. In relation to Request 189, we repeat our responses to Requests 7 and 8 above.

Part CC: The claim against 9 Main St

186. Request 190 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 9 Main St must return the stolen property that it has or controls to Westpac and WNZL.
187. In relation to Request 191, we repeat our responses to Requests 7 and 8 above.
188. In relation to Request 192, we repeat our responses to Requests 7 and 8 above.
189. In relation to Request 193, this is a matter for evidence. The transfers to 9 Main St by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
190. In relation to Request 194, we repeat our responses to Requests 7 and 8 above.
191. In relation to Request 195, we repeat our responses to Requests 7 and 8 above.
192. In relation to Request 196, we repeat our responses to Requests 7 and 8 above.
193. In relation to Request 197, we repeat our responses to Requests 7 and 8 above.
194. In relation to Request 198, we repeat our responses to Requests 7 and 8 above.
195. In relation to Request 199, we repeat our responses to Requests 7 and 8 above.

Part DD: The claim against 286 Carlisle St

196. Request 200 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 286 Carlisle St must return the stolen property that it has or controls to Westpac and WNZL.
197. In relation to Request 201, we repeat our responses to Requests 7 and 8 above.
198. In relation to Request 202, we repeat our responses to Requests 7 and 8 above.
199. In relation to Request 203, this is a matter for evidence. The transfers to 286 Carlisle St by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
200. In relation to Request 204, we repeat our responses to Requests 7 and 8 above.
201. In relation to Request 205, we repeat our responses to Requests 7 and 8 above.

- 202. In relation to Request 206, we repeat our responses to Requests 7 and 8 above.
- 203. In relation to Request 207, we repeat our responses to Requests 7 and 8 above.
- 204. In relation to Request 208, we repeat our responses to Requests 7 and 8 above.
- 205. In relation to Request 209, we repeat our responses to Requests 7 and 8 above.

Part EE: The claim against 275 High St

- 206. Request 210 is not a proper request for particulars. The trust arises as a matter of law, as the funds received were stolen and were and remain Westpac's and WNZL's property. 275 High St must return the stolen property that it has or controls to Westpac and WNZL.
- 207. In relation to Request 211, we repeat our responses to Requests 7 and 8 above.
- 208. In relation to Request 212, we repeat our responses to Requests 7 and 8 above.
- 209. In relation to Request 213, this is a matter for evidence. The transfers to 55 Nolan St by FGFS are evidenced by FGFS's bank statements (a copy of which are **enclosed**) and the FGFS balance sheet (a copy of which is **enclosed**) which shows transfers to these entities (although the characterisation of these transfers as 'loans' is not accepted as they were not loans but transfers of stolen funds).
- 210. In relation to Request 214, we repeat our responses to Requests 7 and 8 above.
- 211. In relation to Request 215, we repeat our responses to Requests 7 and 8 above.
- 212. In relation to Request 216, we repeat our responses to Requests 7 and 8 above.
- 213. In relation to Request 217, we repeat our responses to Requests 7 and 8 above.
- 214. In relation to Request 218, we repeat our responses to Requests 7 and 8 above.
- 215. In relation to Request 219, we repeat our responses to Requests 7 and 8 above.



Yours faithfully
MinterEllison

Contact: Anthony Sommer T: +61 2 9921 4182
anthony.sommer@minterellison.com
Partner: Caitlin Murray T: +61 2 9921 4279
OUR REF: 1353397

Anthony Sommer
Senior Associate
Minter Ellison
Level 40 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Date: 3 December 2021
File No: 047678
Partner: Sazz Nasimi
Author: Alexandra Lawrence
Your Ref: 1353397

By email: anthony.sommer@minterellison.com

Dear Mr Sommer

**Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & ors
Federal Court of Australia proceeding number NSD616/2021 (Proceedings)**

We refer to the Orders of Justice Lee dated 12 November 2021 (**Orders**). This letter sets out Mr Tesoriero's request for further and better particulars of the second further amended statement of claim filed 5 November 2021 (**Second Further Amended Statement of Claim**), in accordance with order 6 of the Orders.

We make the following comments in relation to the request:

- A Wherever in this request "**the usual particulars**" are sought of any agreement, arrangement, transaction, demand, representation, statement, term, condition, notification, advice, information, instruction, direction, fact, matter, circumstance, suggestion, or thing, state whether the same was wholly or partly in writing, evidenced in writing, oral or to be implied and:
- (i) insofar as the same was in writing or evidenced in writing, identify sufficiently each document or documents and within such document the relevant part or paragraph constituting the same and stating in whose possession the same is or are and where the same may be inspected. If any such document is not available for inspection, say why and where a copy may be inspected and if neither the original nor a copy is available, give the material substance thereof.
 - (ii) insofar as the same was oral state when, where and between what persons (identifying them by name) each such conversation or conversations constituting same took place and set out the material substance of each such conversation and say whether the conversation was by telephone or otherwise.
 - (iii) insofar as the same is to be implied state each and every act, fact, matter, omission, circumstance and thing (with all relevant names, dates and places) giving rise to each such implication or implications.



MADGWICKS
ABN 82 199 611 971

Level 6
140 William Street
Melbourne VIC 3000
Australia
DX 485

T: +61 3 9242 4744
F: +61 3 9242 4777
E: madgwicks@madgwicks.com.au
W: madgwicks.com.au



- (iv) if in any way the same depends upon writing, conversation or act of any person other than a party hereto, give the usual particulars as are sought of the authority of such person to make such writing and engage in such conversation and/or act.
- B Wherever in this request “**the usual details**” of any allegation are sought, specify (with all material names, dates and places) each and every act, fact, matter, circumstance, event, happening, occurrence, omission, error, neglect, default or thing relied upon as establishing that allegation.
- C Wherever in this request you are asked to give “**the usual calculations**” of any cost, amount, figure or number or alleged loss or damage, state how the same is calculated, quantified, derived or ascertained and set out all relevant calculations concerning it, and where it is made up of or derived from payments made to any person, give the usual particulars of the contract, agreement, arrangement or understanding pursuant to which the payment was made to that person and state how the payment is made up and calculated.

Please provide the following further and better particulars of the Amended Statement of Claim.

PART C: THE SCHEME

Paragraph 55

- 1 The usual details of the allegation that Mr Papas devised the Scheme with Mr Tesoriero, including (but not limited to):
- (a) the date on which the Scheme is alleged to have been devised;
 - (b) the manner by which the Scheme is alleged to have been devised;
 - (c) the identities of the “persons or entities related to one or both of them (including entities that they would later bring into existence)” with whom Mr Papas and Mr Tesoriero are alleged to have devised the Scheme;
 - (d) at the date on which the Scheme was devised, the means or process by which Mr Papas and/or Mr Tesoriero planned to obtain money dishonestly and fraudulently from Westpac and WNZL (that they were not entitled to receive through the Eqwe / Forum Programme);
 - (e) the basis on which it is alleged that Mr Tesoriero knew, on the date that he is alleged to have devised the Scheme, that the Scheme would involve him dishonestly and fraudulently obtaining money that he was not entitled to receive.

Paragraph 56

- 2 In relation to paragraph 56(f), the usual details and the usual calculations of the funds paid by Westpac that are alleged to have been dispersed to:
- (a) Mr Tesoriero; or
 - (b) companies related to Mr Tesoriero.
- 3 In relation to paragraph 56(h):
- (a) the usual details and the usual calculations of the funds alleged to have been used by or dispersed to:

- (i) Mr Tesoriero; or
 - (ii) other entities or persons related to Mr Tesoriero; and
- (b) the usual details of the funds alleged to have been used to acquire or fund the acquisition of assets, including the Jointly Owned Real Estate Property and the Tesoriero Real Property.
- 4 The usual details of any involvement which Mr Tesoriero is alleged to have had in the operation of the Scheme, beyond the receipt of funds as alleged in paragraph 56(f) and 56(h).

Paragraph 57

- 5 The usual details of the allegation that Mr Tesoriero:
- (a) devised the Scheme (to the extent not provided in response to paragraph 1 above);
 - (b) implemented the Scheme (to the extent not provided in response to paragraphs 2 to 4 above); and
 - (c) had a dishonest and fraudulent intent when devising the Scheme.
- 6 In relation to paragraph 57(a), the usual details of the benefit it is alleged that Mr Tesoriero obtained for himself and people and entities related to him.
- 7 In relation to paragraph 57(b), the usual details and the usual calculations of any funds Mr Tesoriero is alleged to have spent on properties including the properties acquired by the Jointly Owned Entities and the Tesoriero Entities (being the Jointly Owned Real Property, and the Tesoriero Real Property).
- 8 In relation to paragraph 57(c), the usual details and the usual calculations of any funds that Mr Tesoriero is alleged to have spent on businesses in Australia and overseas (including in the Hellenic Republic, the United Kingdom, the Federal Republic of Germany and the United Arab Emirates) for the benefit of himself and people or entities related to him, to the detriment of Westpac and WNZL.
- 9 In relation to paragraph 57(d):
- (a) the usual details and the usual calculations of any funds which Mr Tesoriero is alleged to have used as purported loans to the businesses or subsidiaries of TFGC, including FG, FE and FEA, including to support the cash flow of businesses which, unless the fraud was engaged in and the funds obtained, were unprofitable;
 - (b) the usual details of:
 - (i) the businesses said to have been unprofitable unless the fraud was engaged in and the funds obtained;
 - (ii) the allegation that those business would have been unprofitable unless the fraud was engaged in and the funds obtained.
- 10 In relation to paragraph 57(e):

- (a) the usual details and the usual calculations of any goods or choses in action which Mr Tesoriero is alleged to have acquired;
- (b) the usual details of the allegation that Mr Tesoriero acquired such goods or choses in action.

PART F: THE CLAIM AGAINST FORUM FINANCE

Paragraph 1839

11 The usual details of the allegation that Mr Tesoriero knew:

- (a) of the Eqwe / Forum Programme;
- (b) that Westpac was the principal of BHD Leasing and Eqwe pursuant to the First and Second Eqwe Agreements.

Paragraph 1844

12 The usual particulars and the usual details of the Scheme Agreement, including:

- (a) the date on which the Scheme Agreement is alleged to have been reached;
- (b) the manner by which the Scheme Agreement is said to have been reached;
- (c) the basis of the allegation that Mr Tesoriero was involved in the Scheme Agreement;
- (d) the identities of any parties to the Scheme Agreement, other than those named in paragraph 1844 and its particulars, and paragraph 1845;
- (e) whether the Scheme Agreement was express or implied;
- (f) if it is alleged that the existence of the Scheme Agreement is to be inferred, what are the material facts relied upon to support that inference.

13 The usual details of the allegation that Mr Tesoriero knowingly controlled and used:

- (a) Forum Finance as a vehicle to implement the Scheme;
- (b) IUGIS NZ as a vehicle to implement the Scheme.

14 The usual details and the usual calculations of the money stolen from Westpac and WNZL that FG, FE and FEWA are alleged to have received, used and disbursed in order to benefit Mr Tesoriero.

15 In relation to the allegation that the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle St, TIG, Mangusta, 193 Carlisle St, 8-12 Natalia Ave and 275 High St were co-conspirators in the Scheme Agreement:

- (a) the usual details of the knowledge of Mr Tesoriero that is alleged to have caused each entity to become a co-conspirator;
- (b) the usual details of the allegation that Mr Tesoriero had such knowledge;

- (c) the usual details of the allegation that Mr Tesoriero controlled each entity in a way that caused them to become a co-conspirator;
- (d) the usual details and the usual calculations of the money stolen from Westpac and WNZL that is alleged to have been received, used and disbursed by each entity in order to benefit Mr Tesoriero.

Paragraph 1845

16 The usual details of:

- (a) the knowledge of Mr Tesoriero that is alleged to have caused Forum Finance to become a party to the Scheme Agreement;
- (b) the allegation that Mr Tesoriero had such knowledge;
- (c) the allegation that Mr Tesoriero controlled Forum Finance in a way that caused it to become a party to the Scheme Agreement.

PART G: THE CLAIM AGAINST MR PAPAS**Paragraph 1867**

17 In relation to paragraph 1867(j), the usual details of:

- (a) the allegation that Mr Tesoriero managed the Jointly Owned Entities in furtherance of the Scheme Agreement;
- (b) the allegation that the Jointly Owned Entities were entities created to hold property that was financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36.

Paragraph 1872

18 In relation to paragraph 1872(i):

- (a) the usual details and the usual calculations of the substantial payments from FGFS alleged to have been received by Mr Tesoriero, the Jointly Owned Entities, the Tesoriero Entities and 286 Carlisle Street;
- (b) the usual details of the allegation that each of Mr Tesoriero, the Jointly Owned Entities, the Tesoriero Entities and 286 Carlisle Street had no legitimate basis to receive those payments.

Paragraph 1875

19 In relation to paragraph 1875(i):

- (a) the usual details and the usual calculations of the substantial payments from FGFS alleged to have been received by Mr Tesoriero, the Jointly Owned Entities, the Tesoriero Entities, TIG, Mangusta, 193 Carlisle St, 8-12 Carlisle St and 286 Carlisle Street;

- (b) the usual details of the allegation that each of Mr Tesoriero, the Jointly Owned Entities, the Tesoriero Entities, TIG, Mangusta, 193 Carlisle St, 8-12 Carlisle St and 286 Carlisle Street had no legitimate basis to receive those payments.

PART H: THE CLAIMS AGAINST MR TESORIERO

Paragraph 1895

20 The usual details of the allegations that Mr Tesoriero:

- (a) held on trust for Westpac all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions 1 to 100 and any property that he converted those funds into;
- (b) held on trust for WNZL all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to Transactions NZ1 to NZ36 and any property that he converted those funds into; and
- (c) holds on trust such of those funds or the traceable proceeds of those funds which he holds or of which he has the benefit,

including the legal basis on which the funds are said to have been held on trust (including the type of trust being alleged).

21 If it is to be alleged that Mr Tesoriero 'knowingly received' the funds with the knowledge that the funds had been misappropriated from the Applicants (in a *Barnes v Addy* or a *Black v Freedman* sense), and otherwise belonged to the Applicants, please provide the usual details of that allegation, including particulars of that knowledge.

22 The usual details and the usual calculations of:

- (a) the funds alleged to have been received by Mr Tesoriero from the payments made pursuant to Transactions 1 to 100;
- (b) the funds alleged to have been received by Mr Tesoriero from the payments made pursuant to Transactions NZ1 to NZ36;
- (c) any property Mr Tesoriero is alleged to have converted such funds into;

23 The usual details and the usual calculations of the money paid by Westpac pursuant to Transactions 1 to 100 and by WNZL pursuant to Transactions NZ1 to NZ36 alleged to have been received by:

- (a) Mr Tesoriero, including any property he is alleged to have converted such funds into;
- (b) the Jointly Owned Entities, including the amount of \$18.798 million referred to in particular (iii);
- (c) the Tesoriero Entities, including the amount of \$4.578 million referred to in particular (iii);
- (d) 275 High St, including the amount of \$339,214 referred to in particular (iii);
- (e) 286 Carlisle Street, including the amount of \$2.405 million referred to in particular (iii).

- 24 In relation to particular (iv), the usual details and the usual calculations of the allegations that Mr Tesoriero:
- (a) fraudulently obtained the amount of \$28.478 million through his involvement in the Scheme;
 - (b) fraudulently obtained and used funds to acquire other property such as boats and cars.

Paragraphs 1896 and 1897

- 25 The usual details of the allegation that Mr Tesoriero held any amounts (or the traceable proceeds) on trust for Westpac or WNZL and was obliged to account to Westpac or WNZL for each of those amounts, including:
- (a) the usual details and the usual calculations of the amounts Mr Tesoriero is alleged to have:
 - (i) received;
 - (ii) paid away or caused or permitted to be paid away;
 - (b) the legal basis on which Mr Tesoriero is alleged to have held those amounts on trust for Westpac or WNZL (including the type of trust being alleged);
 - (c) the legal basis on which Mr Tesoriero is alleged to be obliged to account to Westpac or WNZL for each of those amounts.
- 26 If it is to be alleged that Mr Tesoriero 'knowingly received' the funds with the knowledge that the funds had been misappropriated from the Applicants (in a *Barnes v Addy* or a *Black v Freedman* sense), and otherwise belonged to the Applicants, please provide the usual details of that allegation, including particulars of that knowledge.

Paragraph 1898

- 27 The usual particulars and the usual details of the Scheme Agreement, including:
- (a) the date on which the Scheme Agreement is alleged to have been reached;
 - (b) the manner by which the Scheme Agreement is said to have been reached;
 - (c) the basis of the allegation that Mr Tesoriero was involved in the Scheme Agreement;
 - (d) the identities of any parties to the Scheme Agreement, other than those named in paragraph 1844 and its particulars, and paragraph 1845;
 - (e) whether the Scheme Agreement was express or implied;
 - (f) if it is alleged that the existence of the Scheme Agreement is to be inferred, what are the material facts relied upon to support that inference.

Paragraph 1900

- 28 In relation to paragraph 1900(a), the usual details of the allegation that Mr Tesoriero signed the First Forum Agreement in furtherance of the Scheme Agreement.

- 29 In relation to paragraph 1900(b), the usual details of the allegation that Mr Tesoriero signed the Second Forum Agreement in furtherance of the Scheme Agreement.
- 30 In relation to paragraph 1900€, the usual details of the allegations that:
- (a) Mr Tesoriero was and acted as a director of Forum Finance in furtherance of the Scheme Agreement;
 - (b) the predominant corporate purpose of Forum Finance was to carry into effect the Scheme.
- 31 In relation to paragraph 1900(d), the usual details of the allegations that:
- (a) Mr Tesoriero was a shareholder in FGFS in furtherance of the Scheme Agreement;
 - (b) the predominant corporate purpose of FGFS was to carry into effect the Scheme.
- 32 In relation to paragraph 1900€, the usual details of the allegation that Mr Tesoriero procured or permitted Forum Finance to pay the amounts received by it from Westpac away to third parties (including FG, FE or FEA and FGFS and the subsequent recipients) in furtherance of the Scheme Agreement, including:
- (a) the usual details and the usual calculations of any amounts alleged to have been so paid away;
 - (b) the usual details of the parties to whom those amounts were paid;
 - (c) the usual details of Mr Tesoriero's alleged involvement in those payments;
 - (d) the basis on which those payments are said to have been made in furtherance of the Scheme Agreement.
- 33 In relation to paragraph 1900(f):
- (a) the usual details and the usual calculations of the money derived from Transactions 1 to 100 and NZ1 to NZ36 that is alleged to have been received either by Mr Tesoriero or by the Jointly Owned Entities, the Tesoriero Entities, 275 High Street and 286 Carlisle Street;
 - (b) the basis on which those amounts are said to have been received in furtherance of the Scheme Agreement.
- 34 In relation to paragraph 1900(g), the usual details of the allegations that:
- (a) Mr Tesoriero managed the Jointly Owned Entities in furtherance of the Scheme Agreement;
 - (b) the Jointly Owned Entities were created to hold property that was financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36.
- 35 In relation to paragraph 1900(h), the usual details of the allegations that:
- (a) Mr Tesoriero managed the Tesoriero Entities in furtherance of the Scheme Agreement;

- (b) the Tesoriero Entities were created to hold property that was financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36.

36 In relation to paragraph 1900(i), the usual details of the allegations that:

- (a) Mr Tesoriero managed 286 Carlisle St in furtherance of the Scheme Agreement;
- (b) 286 Carlisle St received \$2,405,000 from FGFS, which was money (or the traceable proceeds of money) stolen from Westpac and WNZL, in the period 26 February 2021 to 24 June 2021.

Paragraph 1901

37 The usual details of:

- (a) the acts taken by Mr Tesoriero in furtherance of the Scheme Agreement;
- (b) the acts taken by Mr Tesoriero to implement the Scheme;
- (c) the allegation that Westpac and WNZL's loss and damage was a consequence of those acts.

Paragraph 1904

38 The usual details and the usual calculations of the amounts:

- (a) FGFS is alleged to have paid Mr Tesoriero;
- (b) Mr Tesoriero is alleged to have received.

Paragraph 1905

39 In relation to paragraph 1905(d), the usual details of the allegation that Mr Tesoriero was aware that the amounts that Forum Finance received from Westpac were obtained by it pursuant to the Scheme and pursuant to the false and fraudulent Transaction 1 to 100 Documents in the circumstances set out in Part D.

40 In relation to paragraph 1905(e), the usual details of the allegations that:

- (a) Forum Finance had no legitimate business which would entitle it to use itself the amounts that it received from Westpac and which are set out in Part D;
- (b) Mr Tesoriero was aware of that alleged fact.

41 In relation to paragraph 1905(f), the usual details of the allegations that:

- (a) IUGIS NZ had no legitimate business which would entitle it to use itself the amounts that it received from WNZL and which are set out in Part D;
- (b) Mr Tesoriero was aware of that alleged fact.

42 In relation to paragraph 1905(g), the usual details of the allegation that Mr Tesoriero was aware that any amounts that Forum Finance or IUGIS NZ received pursuant to the Eqwe / Forum Programme were to finance the acquisition of assets for the underlying customers

and were not amounts to which Forum Finance or IUGIS NZ were entitled themselves to use and pay away to its related parties, including FG, FE or FEA or FGFS;

- 43 In relation to paragraph 1905(h), the usual details of the allegations that:
- (a) FGFS had no legitimate business which entitled it to receive or use itself the amounts that it received from Forum Finance and IUGIS NZ;
 - (b) Mr Tesoriero was aware of that alleged fact.
- 44 In relation to paragraph 1905(i), the usual details of the allegation that he, FG, FE, FEA, the Jointly Owned Entities, the Tesoriero Entities, 275 High St, TIG, Mangusta, 193 Carlisle St, 8-12 Natalia Ave and 286 Carlisle St had no legitimate basis to receive substantial payments from FGFS.

Paragraph 1906

- 45 The usual details of the allegation that Mr Tesoriero holds on trust those amounts (or the traceable proceeds of those amounts) he received (directly or through the Jointly Owned Entities, the Tesoriero Entities, 275 High St and 286 Carlisle Street) and is liable to account to Westpac or WNZL for the funds that he has received and/or pay equitable compensation, including:
- (a) the legal basis on which Mr Tesoriero is alleged to have held those amounts on trust for Westpac or WNZL (including the type of trust being alleged);
 - (b) the legal basis on which Mr Tesoriero is alleged to be liable to account to Westpac or WNZL for each of those amounts;
 - (c) the legal basis on which Mr Tesoriero is alleged to be liable to pay equitable compensation.

Paragraph 1907

- 46 The usual details of the allegations that Mr Tesoriero:
- (a) devised the Scheme;
 - (b) participated in giving effect to the Scheme.

Paragraph 1908

- 47 The usual details of Mr Tesoriero's alleged:
- (a) knowledge of the Scheme;
 - (b) knowledge of the purpose of the Scheme.
- 48 In relation to paragraph 1908(e), the usual details of the allegation that the predominant corporate purpose of Forum Finance was to carry into effect the Scheme.
- 49 In relation to paragraph 1908(d), the usual details of the allegation that the predominant corporate purpose of FGFS was to carry into effect the Scheme, including receiving and dispersing funds improperly obtained by Forum Finance and IUGIS NZ from Westpac and WNZL.

- 50 In relation to paragraph 1908€:
- (a) the usual details of the allegation that Mr Tesoriero procured Forum Finance to pay the amounts received by it from Westpac away to third parties (including FG, FE or FEA and FGFS and the subsequent recipients);
 - (b) the usual details and the usual calculations of the amounts Mr Tesoriero is alleged to have so procured Forum Finance to pay away;
 - (c) the usual details of the recipients of those amounts.
- 51 In relation to paragraph 1908(f), the usual details and the usual calculations of the money derived from Transactions 1 to 100 and NZ1 to NZ36 that Mr Tesoriero is alleged to have received himself or in the Jointly Owned Entities, the Tesoriero Entities, 275 High St or 286 Carlisle Street.
- 52 In relation to paragraph 1908(g), the usual details of the allegations that:
- (a) Mr Tesoriero managed the Jointly Owned Entities in a way that knowingly assisted the alleged breaches by Forum Finance and IUGIS NZ;
 - (b) the Jointly Owned Entities were created to hold property that was financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36.
- 53 In relation to paragraph 1908(h), the usual details of the allegations that:
- (a) Mr Tesoriero managed the Tesoriero Entities in a way that knowingly assisted the alleged breaches by Forum Finance and IUGIS NZ;
 - (b) the Tesoriero Entities were created to hold property that was financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36.
- 54 In relation to paragraph 1908(i), the usual details of the allegations that:
- (a) Mr Tesoriero managed 286 Carlisle Street in a way that knowingly assisted the alleged breaches by Forum Finance and IUGIS NZ;
 - (b) 286 Carlisle St received \$2,405,000 from FGFS, which was money (or the traceable proceeds of money) stolen from Westpac and WNZL, in the period 26 February 2021 to 24 June 2021.

Paragraph 1909

- 55 The usual details of:
- (a) the alleged knowing assistance of Mr Tesoriero;
 - (b) the allegation that Westpac and WNZL suffered loss and damage by reason of that knowing assistance.

Paragraph 1910

- 56 The usual details of the allegation that Mr Tesoriero is liable to pay equitable compensation to Westpac and WNZL with respect to the losses occasioned by reason of the Scheme, including the legal basis on which that liability is said to arise.

Paragraph 1911

- 57 The usual particulars and the usual details of the Scheme Agreement, including:
- (a) the date on which the Scheme Agreement is alleged to have been reached;
 - (b) the manner by which the Scheme Agreement is said to have been reached;
 - (c) the basis of the allegation that Mr Tesoriero was involved in the Scheme Agreement;
 - (d) the identities of any parties to the Scheme Agreement, other than those named in paragraph 1844 and its particulars, and paragraph 1845;
 - (e) whether the Scheme Agreement was express or implied;
 - (f) if it is alleged that the existence of the Scheme Agreement is to be inferred, what are the material facts relied upon to support that inference.
- 58 The usual details of the allegations that Mr Tesoriero:
- (a) aided, abetted and procured Forum Finance's and Mr Papas' alleged misleading or deceptive conduct, false and misleading conduct and contraventions;
 - (b) was knowingly concerned in or a party to Forum Finance's and Mr Papas' alleged misleading or deceptive conduct, false and misleading conduct and contraventions;
 - (c) conspired with others (by the Scheme Agreement) to give effect to Forum Finance's and Mr Papas' alleged misleading or deceptive conduct, false and misleading conduct and contraventions.

PARTS I-BBB: THE CLAIMS AGAINST OTHER PARTIES**Tort of unlawful means conspiracy**

- 59 In relation to paragraphs 1918 (FGFS), 1936 (FG), 1955 (FE), 1974 (FEA), 1992 (64-66 Berkeley St), 2010 (14 James St), 2028 (26 Edmonstone Rd), 2046 (5 Bulkara St), 2064 (6 Bulkara St), 2082 (23 Margaret St), 2100 (1160 Glen Huntly Rd), 2118 (14 Kirwin Rd), 2136 (Canner Investments), 2154 (123 High Street), 2172 (160 Murray Valley Hwy), 2190 (31 Ellerman St), 2208 (4 Cowslip St), 2226 (55 Nolan St), 2244 (89 Betka Rd), 2262 (9 Gregory St), 2280 (9 Main St), 2298 (286 Carlisle St), 2316 (275 High St), 2334 (Mazcon), 2352 (Palante), 2374 (TFGC), 2393 (Iugis), 2412 (Iugis UK), 2431 (Iugis Holdings UK), 2450 (Iugis GFS UK), 2469 (Iugis Finance UK), 2488 (Spartan), 2507 (Intrashield), 2526 (TIG), 2545 (Mangusta), 2564 (193 Carlisle St), 2583 (8-12 Natalia Ave), 2602 (Iugis Greece), 2621 (Iugis Energy Greece), 2657 (Mr Tesoriero Snr), 2677 (Mr Bouchahine) and 2695 (Ms Agostino) the usual particulars and the usual details of the Scheme Agreement, including:
- (a) the date on which the Scheme Agreement is alleged to have been reached;
 - (b) the manner by which the Scheme Agreement is said to have been reached;
 - (c) the basis of the allegation that Mr Tesoriero was involved in the Scheme Agreement;
 - (d) the identities of any parties to the Scheme Agreement, other than those named in paragraph 1844 and its particulars, and paragraph 1845;

- (e) whether the Scheme Agreement was express or implied;
- (f) if it is alleged that the existence of the Scheme Agreement is to be inferred, what are the material facts relied upon to support that inference.
- 60 In relation to paragraphs 1919 (FGFS), 1993 (64-66 Berkeley St), 2011 (14 James St), 2029 (26 Edmonstone Rd), 2047 (5 Bulkara St), 2065 (6 Bulkara St), 2083 (23 Margaret St), 2101 (1160 Glen Huntly Rd), 2119 (14 Kirwin Rd), 2137 (Canner Investments), 2155 (123 High Street), 2173 (160 Murray Valley Hwy), 2191 (31 Ellerman St), 2209 (4 Cowslip St), 2227 (55 Nolan St), 2245 (89 Betka Rd), 2263 (9 Gregory St), 2281 (9 Main St), 2299 (286 Carlisle St), 2317 (275 High St), 2527 (TIG), 2546 (Mangusta), 2565 (193 Carlisle St) and 2584 (8-12 Natalia Ave), the usual particulars of:
- (a) the knowledge of Mr Tesoriero that is alleged to have caused each entity to become a party to the Scheme Agreement; and
- (b) the control by Mr Tesoriero that is alleged to have caused that entity to become a party to the Scheme Agreement;
- (c) the allegation that Mr Tesoriero was a co-conspirator.
- 61 In relation to paragraphs 1921 (FGFS), 1995 (64-66 Berkeley St), 2013 (14 James St), 2031 (26 Edmonstone Rd), 2049 (5 Bulkara St), 2067 (6 Bulkara St), 2085 (23 Margaret St), 2103 (1160 Glen Huntly Rd), 2121 (14 Kirwin Rd), 2139 (Canner Investments), 2157 (123 High Street), 2175 (160 Murray Valley Hwy), 2193 (31 Ellerman St), 2211 (4 Cowslip St), 2229 (55 Nolan St), 2247 (89 Betka Rd), 2265 (9 Gregory St), 2283 (9 Main St), 2301 (286 Carlisle St), 2319 (275 High St), 2529 (TIG), 2548 (Mangusta), 2567 (193 Carlisle St) and 2586 (8-12 Natalia Ave):
- (a) the usual details and the usual calculations of the payments of money derived from Transactions 1 to 100 and NZ1 to NZ36 that are alleged to have been made to any of Mr Tesoriero, the Jointly Owned Entities, the Tesoriero Entities, TIG, Mangusta, 193 Carlisle St, 8-12 Natalia Ave or 286 Carlisle Street;
- (b) in respect of each payment, the usual details of the allegation that the payment was an act done pursuant to the Scheme Agreement.

Knowing receipt and knowing assistance

- 62 In relation to paragraphs 1925 and 1928 (FGFS), 1998 and 2001 (64-66 Berkeley St), 2016 and 2019 (14 James St), 2034 and 2037 (26 Edmonstone Rd), 2052 and 2055 (5 Bulkara St), 2070 and 2073 (6 Bulkara St), 2088 and 2091 (23 Margaret St), 2106 and 2109 (1160 Glen Huntly Rd), 2124 and 2127 (14 Kirwin Rd), 2142 and 2145 (Canner Investments), 2160 and 2163 (123 High Street), 2178 and 2181 (160 Murray Valley Hwy), 2196 and 2199 (31 Ellerman St), 2214 and 2217 (4 Cowslip St), 2232 and 2235 (55 Nolan St), 2250 and 2253 (89 Betka Rd), 2268 and 2271 (9 Gregory St), 2286 and 2289 (9 Main St), 2304 and 2307 (286 Carlisle St), 2322 and 2325 (275 High St), 2532 and 2535 (TIG), 2551 and 2554 (Mangusta), 2570 and 2573 (193 Carlisle St) and 2589 and 2592 (8-12 Natalia Ave):¹

¹ References to sub-paragraphs in this paragraph are references to those sub-paragraphs as they appear in the paragraphs relating to FGFS. To avoid repetition, the request in relation to the sub-paragraphs relating to FGFS should be taken to apply to the relevant sub-paragraphs for each entity, where the relevant allegations are made against that entity.

- (a) in relation to the allegations that Mr Tesoriero was aware that the amounts received by Forum Finance and/or IUGIS NZ from Westpac and/or WNZL were dishonestly obtained by them pursuant to the Scheme and pursuant to the allegedly false and fraudulent Transaction 1 to 100 Documents and/or Transaction NZ1 to NZ36 Documents in the circumstances set out in Part D:
- (i) the usual details and the usual calculations of the allegedly dishonestly obtained amounts of which Mr Tesoriero is alleged to have been aware;
 - (ii) the usual details of the allegation that Mr Tesoriero was aware that those amounts had been received pursuant to the allegedly false and fraudulent Transaction 1 to 100 Documents and/or Transaction NZ1 to NZ36 Documents;
 - (iii) the usual details of the allegation that Mr Tesoriero was aware that those amounts had been obtained by Forum Finance and/or IUGIS NZ:
 - (A) dishonestly;
 - (B) pursuant to the Scheme; or
 - (C) through the use of false or fraudulent documents;
- (b) the usual details of the allegations that:
- (i) Forum Finance, IUGIS NZ and FGFS had no legitimate business which would entitle them to use themselves the amounts that they received from Westpac or WNZL and which are set out in Part D;
 - (ii) Mr Tesoriero was aware of that alleged fact;
- (c) the usual details of the allegation that Mr Tesoriero was aware that any amounts that Forum Finance or IUGIS NZ received pursuant to the Eqwe / Forum Programme were to finance the acquisition of assets for the underlying customers and were not amounts to which Forum Finance or IUGIS NZ were entitled themselves to use and pay away to their related parties, including FG, FE or FEA or FGFS;
- (d) the usual details of the allegations that:
- (i) FGFS had no legitimate business which entitled it to receive or use itself the amounts that it received from Forum Finance and IUGIS NZ;
 - (ii) Mr Tesoriero was aware of that alleged fact;
- (e) in relation to the substantial payments from FGFS that Mr Tesoriero, the Jointly Owned Entities, the Tesoriero Entities, TIG, Mangusta, 193 Carlisle St, 8-12 Natalia Ave and 286 Carlisle Street were allegedly receiving, which he and they allegedly had no legitimate basis to receive:
- (i) the usual details and the usual calculations of each payment;
 - (ii) the usual details of the allegation that the recipient of each payment had no legitimate basis to receive the payment;
 - (iii) the usual details of the allegation that Mr Tesoriero was aware that the recipient of each payment had no basis to receive the payment.

- 63 In relation to paragraph 1927 (FGFS), 2000 (64-66 Berkeley St), 2018 (14 James St), 2036 (26 Edmonstone Rd), 2054 (5 Bulkara St), 2072 (6 Bulkara St), 2090 (23 Margaret St), 2108 (1160 Glen Huntly Rd), 2126 (14 Kirwin Rd), 2144 (Canner Investments), 2162 (123 High Street), 2180 (160 Murray Valley Hwy), 2198 (31 Ellerman St), 2216 (4 Cowslip St), 2234 (55 Nolan St), 2252 (89 Betka Rd), 2270 (9 Gregory St), 2288 (9 Main St), 2306 (286 Carlisle St), 2324 (275 High St), 2534 (TIG), 2553 (Mangusta), 2572 (193 Carlisle St) and 2591 (8-12 Natalia Ave) the usual details of:
- (a) the knowledge of Mr Tesoriero that is alleged to have caused FGFS to become aware of the Scheme;
 - (b) the allegation that Mr Tesoriero had that knowledge;
 - (c) the allegation that Mr Tesoriero devised the Scheme.
- 64 In relation to paragraph 2669€ and (f) (Mr Bouchahine) and 2687(d) and € (Ms Agostino):
- (a) the usual details and the usual calculations of the funds:
 - (i) that Westpac paid to Forum Finance that were allegedly used at the direction of Mr Tesoriero;
 - (ii) that WNZL paid to Iugis NZ that were allegedly used at the direction of Mr Tesoriero;
 - (b) the usual details of the allegation that those funds were used at the direction of Mr Tesoriero.
- 65 In relation to paragraph 2671 and 2680:
- (a) the usual details and the usual calculations of the funds received by Forum Finance from Westpac, and/or by Iugis NZ from WNZL, that Mr Bouchahine allegedly caused to be paid away to the acquisition and operation of various assets of Mr Tesoriero's private companies;
 - (b) the usual details of those assets.

Paragraph 2654

- 66 In relation to particular (xxiii):
- (a) the usual details and the usual calculations of the payments relating to motor vehicles held in Mr Tesoriero Snr's name, including payments of insurance on those vehicles, which Mr Tesoriero is alleged to have caused FGFS to make;
 - (b) the usual details of the allegation that Mr Tesoriero caused FGFS to make those payments.

Paragraph 2655

- 67 In relation to particular (b):
- (a) the usual details and the usual calculations of the money Mr Tesoriero Snr allegedly received from FGFS that is alleged to have been paid to or at the direction of Mr Tesoriero;

- (b) the usual details of the of the allegation that Mr Tesoriero directed Mr Tesoriero Snr to pay that money.

Given the importance of these particulars to Mr Tesoriero's understanding of the claim made against him, for the convenience of the Court and the parties we ask that you incorporate any particulars provided in response to this request into a further amended statement of claim—including, where necessary, through the addition of material facts.

Yours faithfully

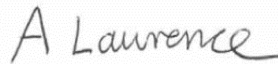
MADGWICKS



Sazz Nasimi
Partner

T: 03 9242 4741

E: Sazz.Nasimi@madgwicks.com.au



Alexandra Lawrence
Lawyer

T: 03 9242 4720

E: Alexandra.Lawrence@madgwicks.com.au

Liability limited by a scheme approved under Professional Standards Legislation

31 January 2021

BY EMAIL: sazz.nasimi@madgwicks.com.au

Sazz Nasimi
Partner
Madgwicks Lawyers
Level 6, 140 William Street
Melbourne VIC 3000

Dear Mr Nasimi

Westpac Banking Corporation & Anor v Forum Finance Pty Limited & Ors - Federal Court of Australia Proceeding NSD616/2021 (Proceedings)

1. We refer to your letter dated 3 December 2021 requesting further and better particulars of our clients' Second Further Amended Statement of Claim filed 10 August 2021 (**2FASOC**) and to the Orders of Justice Lee dated 12 November 2021.
2. As in your letter, terms defined in the 2FASOC have the same meaning in this letter.
3. This letter provides, where appropriate, further particulars of the paragraphs of the 2FASOC referred to in your letter. Although you have requested that we include these particulars in a third further amended statement of claim, we consider that such a course is unnecessary at this stage, particularly in circumstances where detailed particulars have already been provided to Fortis Law in our letter of 14 September 2021 and to you in our letter of 22 September 2021 (**22 September Letter**) in response to Fortis Law's letter of 23 August 2021 regarding the Amended Statement of Claim (**ASOC**).
4. In many instances, your letter requested further particulars of allegations which we have already provided to you in response to Fortis Law's previous requests, or which were already adequately particularised in the 2FASOC. In many instances, your requests extend beyond a request for particulars, necessary for your client to know the case he is to meet at trial and to confine the proceedings at trial, into a request for evidence or are in the nature of interrogatories. In order to facilitate the expeditious conduct of the proceedings, we have responded to these matters even though the requests are not proper requests for particulars. Further particulars will be provided to you in respect of some matters after service of evidence and the completion of discovery, if applicable.

Part C: The Scheme

5. The below facts, matters and circumstances of the Scheme are a matter for evidence. However, Westpac and WNZL intend to rely on the following facts, matters and circumstances, among others.

Paragraph 55

6. In response to Request 1 in relation to paragraph 55 of the 2FASOC, paragraph 12 of our 22 September Letter already details the facts, matters and circumstances from which it can be inferred that Mr Tesoriero devised the Scheme with Mr Papas pleaded in paragraph 55 of the ASOC, not paragraph 35 as erroneously stated. The request is also inappropriate as Westpac and WNZL are not required to prove (let alone plead) the "usual details" of the conspiracy. Conspiracy is proved by proving overt acts from which the conspiracy, the content of which is known only to the conspirators, is proven by inference.
7. In addition to paragraph 12 of the 22 September Letter, the following further facts, matters and circumstances are relied upon:

- (a) Further to that set out in paragraph 12(a) of our 22 September Letter, Mr Tesoriero has been involved in the Forum business since at least February 2013, attending board meetings for TFGC see for example [FOG.1000.0008.0753](#); [FOG.1000.0008.1084](#) and [FOG.1000.0008.1085](#) and “Executive Meetings” for Forum: see for example [FOG.1000.0008.1940](#) and [FOG.1000.0008.1941](#).
- (b) In addition to being privy to TFGC’s financial information and that of its controlled entities from 1 October 2014, as set out at paragraph 12(c) of our 22 September Letter, Mr Tesoriero was privy to TFGC’s financial information as at the time that the Scheme was devised (see for example email from Tony Bouchahine (**Mr Bouchaine**), Chief Financial Officer for Forum, attaching the TFGC company structure and its financial statements for the years ending 30 June 2016 and 30 June 2017: [FOG.1000.0001.6954](#), [FOG.1000.0001.6955](#), [FOG.1000.0001.6956](#), [FOG.1000.0001.6998](#). Mr Tesoriero was also provided with TFGC’s FY 2018 accounts: see [FOG.1000.0003.2165](#) and [FOG.1000.0003.2168](#); FY 2019 accounts: see [FOG.1000.0004.4751](#) and [FOG.1000.0004.4752](#); and FY 2020 accounts: see [FOG.1000.0004.5114](#) and [FOG.1000.0004.5115](#).
- (c) As at the date of incorporation of FGFS, 23 November 2017, Mr Tesoriero was aware that Mr Bouchahine had instructed the Forum group of companies’ accountants that the services to be provided by FGFS were “financial services”, when no such services were in fact provided by it: see [FOG.1000.0007.9073](#).
- (d) On 23 March 2018, Mr Tesoriero emailed Mr Papas a list of purchases for which he required finance from “Forum”, totalling \$2.125m: see [FOG.1000.0002.2616](#). On 25 March 2018 a further list was email to Mr Papas: see [FOG.1000.0002.2590](#). It can be inferred from these requests that Mr Tesoriero had the ability to direct, and in fact directed, TFGC and FGFS’s expenditure prior to the time of devising and implementing the Scheme and therefore had the relevant knowledge of those entities’ spending at the time the Scheme was devised.
- (e) Mr Tesoriero held an authorisation for FGFS’ NAB bank account number 271058642: see [FOG.1000.0003.9690](#), and apparently used that authorisation to cause transactions on the account: see [FOG.1000.0001.6613](#) and [FOG.1000.0005.9543](#). From this it can be inferred that Mr Tesoriero knew where FGFS obtained funds and to whom it dispersed those funds, providing further particularisation of the matters set out in paragraph 12(e) of our 22 September Letter.
- (f) Mr Tesoriero and Mr Papas, from time to time, exchanged emails about acquisitions that could be financed through Forum and the funds that could be extracted from FGFS: see for example [FOG.1000.0002.7062](#); [FOG.1000.0002.9301](#); and [FOG.1000.0003.0767](#). It is to be inferred from these emails that Mr Tesoriero and Mr Papas intended for Forum entities, including FGFS, to be used to purchase assets and properties from funds unlawfully obtained from the Scheme.
- (g) From as early as August 2018, Mr Tesoriero regularly received from Mr Bouchahine or from Brandon Chin, an accountant working with the Forum group, a schedule titled “BP & VT Outstanding Payments” or “Outstanding and Recurring Payments for BP & VT” which recorded third party payments and finance repayments to be made in relation to properties and assets purchased with funds obtained through the Scheme including those owned by the Tesoriero Entities and Jointly Owned Entities and used for Mr Tesoriero and Mr Papas’ benefit, for example rental properties, motor vehicles and boats: see for example [FOR.001085373](#) and [FOR.001085374](#). From at least July 2020 these schedules disclosed FGFS’ Cashflow including disclosing that funds from the “ORCA bank account” were a source of cashflow (including amounts described as “future funding” meaning payments received in relation to financing transactions which did not then exist), and referred to recurring payments to be made to “funders”, including “BHO”, “SMBC” and “Flexi” (see worksheet titled “Recurring”) and referred to payments to be made for “Funding for Forum group”; “Funding for Iugis”, and “BHO – New Funder” (see worksheet titled “FGFS”): see [FOG.1000.0001.3302](#), [FOG.1000.0001.3303](#),. A detailed list of these spreadsheets, and the date on which each was provided to Mr Tesoriero, is annexed at **Annexure A** to this letter.

- (h) At the time of receipt of the schedules referred to in the previous paragraph, Mr Tesoriero knew that at least Forum Finance acted as an intermediary in equipment finance transactions and that the money received from financiers (including Westpac and WNZL) was paid by those financiers for the purpose of acquisition of the equipment subject of the finance arrangement with the debtor (or occasionally to refinance equipment subject of an equipment finance arrangement which that debtor had with another creditor). Forum Finance and FGFS had no entitlement to use the principal sum raised, or to raise money prior to completion of a genuine equipment finance agreement. On receipt of the schedules (if not before) Mr Tesoriero knew that money paid by the financiers for the purpose of funding equipment leases was not used for that purpose but was used to fund FGFS and for various purposes including the acquisition of properties and other chattels for the benefit of Mr Papas and Mr Tesoriero, payments to the benefit of Mr Papas and Mr Tesoriero, payment of debts owed by companies ultimately owned by Mr Papas and Mr Tesoriero and to other companies in the Forum Group or which were owned by Mr Papas.
- (i) Mr Tesoriero also directed payments to be made by FGFS to his account, or to entities associated with him, see for example: [FOR.000569394](#), [FOR.001352750](#); [FOR.001352845](#); [FOR.001411033](#); [FOG.1000.0001.6552](#); [FOG.1000.0002.4504](#); [FOG.1000.0003.7329](#) and [FOG.1000.0003.7330](#). A detailed list of the occasions on which Mr Tesoriero made directions as to the use of funds from FGFS is annexed at **Annexure B**.

8. With respect to the specific requests made in Request 1, we respond as follows:

- (a) As to Request 1(a), as pleaded at paragraph 55, the precise date on which the Scheme was devised is not known to Westpac and WNZL, but it is alleged to have been no later than 31 August 2018, or alternatively, 13 September 2018. The precise date is not required for your client to know the case he is to meet.
- (b) As to Request 1(b), a request as to the manner by which the Scheme is alleged to have been devised is not a proper request for particulars and is a matter for evidence. The material fact is the Scheme, not how it came to be. Westpac and WNZL rely on inferences arising from various facts, matters and circumstances as pleaded and particularised in establishing the creation of the Scheme.
- (c) As to Request 1(c), contrary to what is stated at paragraph 1(c) of your letter, it is not alleged in paragraph 55 that Mr Papas and Mr Tesoriero devised the Scheme *with* the “persons or entities related to one or both of them (including entities that they would later bring into existence)”, but that the scheme *involved* these persons or entities. The persons or entities known to Westpac and WNZL are pleaded throughout the 2FASOC, including in paragraph 1844, and are listed as follows.
- (i) Forum Group Financial Services Pty Ltd (in liquidation) ACN 623 033 705;
 - (ii) Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997;
 - (iii) Forum Enviro Pty Ltd (in liquidation) ACN 168 709 840;
 - (iv) Forum Enviro (Aust) Pty Ltd (in liquidation) ACN 607 484 364;
 - (v) 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662;
 - (vi) 14 James Street Pty Ltd (in liquidation) ACN 638 449 206;
 - (vii) 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129;
 - (viii) 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160;
 - (ix) 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473;
 - (x) 23 Margaret Street Pty Ltd ACN 623 715 373;
 - (xi) 1160 Glen Huntly Road Pty Ltd ACN 639 447 984;

- (xii) 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093;
- (xiii) Canner Investments Pty Ltd ACN 624 176 049;
- (xiv) 123 High Street Taradale Pty Ltd ACN 639 872 512;
- (xv) 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921;
- (xvi) 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887;
- (xvii) 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352;
- (xviii) 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912;
- (xix) 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179;
- (xx) 9 Gregory Street Ouyen Pty Ltd ACN 641 392 707;
- (xxi) 9 Main Street Derrinallum Pty Ltd ACN 639 872 736;
- (xxii) 286 Carlisle Street Pty Limited ACN 610 042 343;
- (xxiii) 275 High Street Golden Square Pty Ltd ACN 639 870 545;
- (xxiv) Mazcon Investments Hellas IKE;
- (xxv) Palante Pty Ltd ACN 135 344 151;
- (xxvi) The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626;
- (xxvii) Iugis Pty Ltd (in liquidation) ACN 632 882 243;
- (xxviii) Iugis (UK) Limited;
- (xxix) Iugis Holdings Limited;
- (xxx) Iugis Global Financial Services Limited;
- (xxxi) Iugis Finance Limited;
- (xxxii) Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544;
- (xxxiii) Intrashield Pty Ltd (in liquidation) ACN 133 426 534;
- (xxxiv) Tesoriero Investment Group Pty Ltd ACN 161 088 115;
- (xxxv) Mangusta (Vic) Pty Ltd ACN 631 520 682;
- (xxxvi) 193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237;
- (xxxvii) 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626;
- (xxxviii) Iugis Hellas IKE;
- (xxxix) Iugis Energy SA;
- (xl) Giovanni (John) Tesoriero;
- (xli) Moussa (Tony) Bouchahine; and
- (xlii) Louisa Maria Agostino.

- (d) As to request 1(d), the substance of the means or process by which Mr Papas and/or Mr Tesoriero planned to obtain money dishonestly and fraudulently from Westpac and WNZL is pleaded at paragraph 56 of the 2FASOC.

- (e) As to request 1(e), the request mistakes the pleading. The allegation is that (relevantly) Mr Papas and Mr Tesoriero devised a Scheme involving Forum Finance and others to obtain money dishonestly and fraudulently. That is not a pleading of knowledge, but a characterisation of the devised conduct. It also follows from the allegation that Mr Papas and Mr Tesoriero devised the fraudulent and dishonest Scheme that they knew the Scheme was fraudulent and dishonest, each of which are objective characterisations. Further, that the Scheme would involve Mr Tesoriero dishonestly and fraudulently obtaining money that he was not entitled to receive follows from the nature of the Scheme, in that it did in fact involve him dishonestly and fraudulently obtaining money that he was not entitled to receive as well as the facts, matters and circumstances set out in paragraph 7 above and the matters set out in paragraph 12 of our 22 September Letter, including paragraph 12(m).

Paragraph 56

9. In response to Request 2 regarding paragraph 56(f), we have provided you with the total figures of the funds dispersed to Mr Tesoriero or companies related to him which have been identified by Westpac and WNZL in paragraph 14 of our 22 September Letter, noting that particulars of further funds and payments used and dispersed to Mr Tesoriero will be provided after evidence. Westpac and WNZL's case that the funds were dispersed by implementation of the Scheme. The request for the "usual calculations" is otherwise not a proper request for particulars. The material fact is the dispersal of funds and, we accept, a proper particular of that allegation is identification of to whom the dispersal was made and the amount of that dispersal.
10. With respect to the funds disbursed to Mr Tesoriero, the individual payments that have been identified by Westpac and WNZL to date, and the date on which each was made by FGFS, is set out in particular (i) to paragraph 1895 of the 2FASOC. Our 22 September Letter referred to FGFS' bank statements which evidence many of these payments. As the bank statements were accidentally omitted from enclosure with that letter, a copy of the bank statements and FGFS' balance sheet is now **enclosed**. The precise details of each of the payments is (at the highest) a matter for evidence and will be disclosed as part of Westpac and WNZL's evidence.
11. With respect to funds disbursed to companies related to Mr Tesoriero, we refer to the FGFS balance sheet together with the worksheets included in FGFS's Xero records (**enclosed**) which record payments made to or to the benefit of the companies related to Mr Tesoriero. While the characterisation of the payments in the Xero records as "loans" from FGFS is not accepted, Westpac and WNZL rely on those records as recording payments made to and for the benefit of the relevant entities.
12. In response to Request 3 regarding paragraph 56(h), we repeat paragraphs 9 to 11 above. We add that the request for the "usual details" is also not a proper request for particulars.
13. In response to Request 4, paragraph 56 does not contain any allegations as to Mr Tesoriero's involvement in the operation of the Scheme beyond the receipt and use of funds (see the chapeau to paragraph 56). The actions taken by Mr Tesoriero in furtherance of the Scheme Agreement are pleaded at paragraph 1900 of the 2FASOC, which we note is the subject of separate requests numbered 28 to 36 in your letter to which we respond accordingly below.

Paragraph 57

14. We have responded to Requests 5(a) and (c) in our response to Request 1 at paragraphs 6 to 8 above. Further, the dishonest and fraudulent intent follows from the nature of the Scheme. As to Request 5(b), the facts, matters and circumstances relied upon for the allegation that Mr Tesoriero implemented the Scheme are the matters specified in paragraph 12 of our 22 September Letter, the matters specified at paragraphs 6 to 8 above and the matters pleaded at paragraph 1900 of the 2FASOC. Further:
- (a) Mr Tesoriero was involved in the selection and purchase of properties and the execution of contracts for sale of certain of the properties purchased by the Jointly Owned Entities and the Tesoriero Entities: see for example [FOG.1000.0003.1468](#); [FOG.1000.0004.2645](#); [FOG.1000.0003.4901](#) and [FOG.1000.0011.3341](#);

- (b) Mr Tesoriero was involved in causing new entities to be incorporated for the purposes of purchasing properties, including certain of the Jointly Owned Entities and the Tesoriero Entities, which used money fraudulently obtained from our clients to fund those purchases: see for example [FOG.1000.0005.1467](#); and in causing bank accounts to be opened for certain of the Jointly Owned Entities and Tesoriero Entities: see for example [FOR.000970329](#);
- (c) Mr Tesoriero was involved in directing which entities would be used to purchase properties to be purchased in part with the funds from the Scheme, and consequently how the money procured by the Scheme was to be used: see for example [FOG.1000.0002.4542](#); [FOG.1000.0003.2764](#); [FOG.1000.0010.5032](#) and [FOG.1000.0012.7070](#). We refer to Annexure B in this regard;
- (d) Mr Tesoriero was involved in identifying and acquiring assets with funds obtained through the Scheme, and in directing or requesting the purchase of particular assets: see for example [FOR.001350580](#); [FOG.1000.0003.2806](#); [FOG.1000.0003.2808](#) and [FOG.1000.0012.1011](#) and [FOG.1000.0015.3160](#).
15. In response to Request 6, the alleged benefit is a financial benefit, being the receipt and use of funds received from the Scheme and assets purchased with funds received from the Scheme. Those benefits are identified in paragraph 1895 of the 2FASOC and the paragraphs of the 2FASOC identified in paragraph 26(e) below.
16. In response to Request 7, paragraph 57(b) relevantly concerns the purpose of Mr Tesoriero rather than funds he in fact spent. The request is therefore not a proper request for further and better particulars in relation to this subparagraph. In any event, we refer to paragraphs 9 to 12 above regarding the funds spent by Mr Tesoriero. The funds spent by Mr Tesoriero on properties is a matter for evidence. Payments made towards properties include those that are set out in FGFS's Xero records and pleaded in Part H of the 2FASOC onwards.
17. In response to Request 8, paragraph 57(c) relevantly concerns the purpose of Mr Tesoriero rather than funds he in fact spent. The request is therefore not a proper request for further and better particulars in relation to this subparagraph. Nevertheless, in our 22 September Letter we have responded at paragraph 19 (and the opening words of paragraph 20) to this request. The businesses include those within the Forum Group overseas, as well as Theion Ike and D&D which received funds via 286 Carlisle St (although it is not accepted that those entities conducted any legitimate business). The amounts include amounts that are set out in FGFS' Xero records and pleaded in Part H of the 2FASOC onwards.
18. In response to Request 9(a), paragraph 57(d) relevantly concerns the purpose of Mr Tesoriero rather than funds he in fact spent or loans he in fact made. The request is not a proper request for further and better particulars in relation to this paragraph. Nevertheless, the FGFS balance sheet, with which you have been provided, sets out purported loans to businesses or subsidiaries of TFGC.
19. In response to Request 9(b)(i), the relevant businesses which are alleged to have been unprofitable absent the fraud, are those operated by FGFS (insofar as it operated a business), FE, FEA, Iugis, and Intrashield. In response to Request 9(b)(ii), the request is not a proper request for particulars and is a matter for evidence. In any event, we refer you to the affidavit of Jason Ireland affirmed on 29 September 2021 at paragraphs 22 to 25 regarding the financial position of FE and FEA. It can be inferred from the financial positions of each of these companies that they would have been unprofitable, absent the fraud.
20. In response to Request 10, paragraph 57(e) relevantly concerns the purpose of Mr Tesoriero rather than any acquisitions he in fact made. As such, requests (a) and (b) are not proper requests for particulars and are matters for evidence. Nevertheless, the goods and choses in action presently known to Westpac and WNZL which were acquired by Mr Papas and Mr Tesoriero, or Mr Papas include:
- (a) the Audi Race Cars pleaded at paragraph 2647 of the 2FASOC;
- (b) the XOXO yacht pleaded at paragraph 2543 of the 2FASOC, which although purchased in or prior to May 2018, payments in respect of which were still being made by FGFS after

entry into the Scheme, see for example the payments set out in the affidavit of Ms Caitlin Maria Murray (**Ms Murray**) sworn on 25 August 2021 at paragraph [31] and pages 285 to 296 of CMM-10 and see [FOG.1000.0001.5323](#) and [FOG.1000.0001.5324](#);

- (c) the jewellery particularised at particular (xiv) to paragraph 2684 of the 2FASOC;
- (d) a race horse, which again although purchased prior to August 2018, payments in respect of which were still being made by FGFS after entry into the Scheme, see for example: see [FOG.1000.0004.7299](#) and [FOG.1000.0004.7307](#);
- (e) a Porsche 911 GT2, in respect of which Mr Tesoriero and Mr Papas provided personal guarantees: see [FOG.1000.0003.2689](#) and [FOG.1000.0003.2691](#); [FOG.1000.0015.3214](#) and [FOG.1000.0015.3215](#). Further, the chattel mortgage for the Porsche GT2 RS is recorded on the FGFS balance sheet under non-current liabilities;
- (f) a Lamborghini Huracan, as to which see [FOG.1000.0004.5247](#), [FOG.1000.0004.5249](#), [FOG.1000.0010.9345](#) and [FOG.1000.0010.9346](#);
- (g) a Porsche Cayman GT4, see: [FOG.1000.0004.8721](#); [FOG.1000.0010.7081](#), [FOG.1000.0010.7082](#) and [FOG.1000.0010.7083](#). Further the chattel mortgage for the Porsche Cayman GT4 is recorded on the FGFS balance sheet under non-current liabilities;
- (h) two Jet skis, see [ROA.5000.0001.0001](#) at 4-11 and 22-28;
- (i) a 2020 Grady 325 Freedom boat, see: [ROA.5000.0001.0001](#) at 33-41; and
- (j) a Regal 2250 boat, as to which see [ROA.5000.0001.0001](#) at 54.

Payments in respect of a number of these assets are recorded the books and records of FGFS: see for example FGFS Account Transactions for the period 1 July 2020 to 30 April 2021: [SEC.5000.0144.2237](#).

Part F: The claim against Forum Finance

Paragraph 1839

21. In response to Request 11, we have responded to this request at paragraph 24 of our 22 September Letter.

Paragraph 1844

22. In response to Request 12:
- (a) As to Request 12(a), as is evident from paragraph 1844 of the 2FASOC, the precise date on which the Scheme Agreement was entered into is unknown to Westpac and WNZL, but it is alleged that it was no later than 31 August 2018, or alternatively 13 September 2018. The date on which a conspiracy was entered into is not a material fact, or a particular necessary for a respondent to know the case that respondent is to meet.
 - (b) As to Request 12(b), this is not a proper request for particulars and is, at its highest, a matter for evidence. Westpac and WNZL rely on inferences arising from various facts, matters and circumstances as pleaded and particularised in establishing the entry into the Scheme Agreement, which is the material fact.
 - (c) As to Request 12(c), the basis of the allegation that Mr Tesoriero was a party to the Scheme Agreement is the facts, matters and circumstances set out in paragraph 12 of our 22 September Letter, together with the additional matters set out at paragraph 7 above.
 - (d) As to Request 12(d), the known co-conspirators are those identified in the particulars to paragraph 1844 of the 2FASOC; Mr Tesoriero Snr as pleaded in paragraph 2663 of the 2FASOC; Mr Bouchahine as pleaded in paragraph 2679 of the 2FASOC; and Ms Agostino as pleaded in paragraph 2697 of the 2FASOC. Westpac and WNZL do not know the identities of the other co-conspirators.

- (e) As to Request 12(e), Westpac and WNZL do not know whether the Scheme Agreement is express or implied (or partly express and partly implied). A conspiracy may be pleaded and proved by reference to overt acts (for example, *Dresna v Misu Nominees Pty Limited* [2004] FCA 1537 (2004) ATPR (Digest) 46-245 at [103]) and it is not necessary to allege whether it was express or implied.
- (f) As to Request 12(f), we refer to the matters set out in paragraph 12 of our 22 September Letter and the matters set out in paragraphs 6 to 8, 10 and 11 above.
23. In response to Request 13, we assume that your request relates to particular (a) to this paragraph which relevantly particularises the known co-conspirators as including Forum Finance and IUGIS NZ which were the corporations that Mr Papas and Mr Tesoriero controlled and used as the vehicles to implement the Scheme. That particular relevantly provides that Forum Finance and IUGIS NZ were the corporations that Mr Papas and Mr Tesoriero “controlled and used”, rather than “knowingly controlled and used”, as the vehicles to implement the Scheme. Sufficient particularisation of the allegation of the Scheme Agreement have been provided and no further particularisation of the detailed particulars already provided is necessary, but in any event, particulars of Mr Tesoriero’s control and use of Forum Finance as a vehicle to implement the Scheme are the matters pleaded at paragraph 56 and 1900 of the 2FASOC (including that Mr Tesoriero was a director of and acted as a director of Forum Finance), the matters set out in paragraph 12(a), (b), (d) and (p) to (r) of our 22 September Letter and the matters set out in paragraphs 6 to 8 above.
24. Particulars of Mr Tesoriero’s control and use of IUGIS NZ as a vehicle to implement the Scheme are the matters pleaded at paragraph 56 and 1900 of the 2FASOC, together with the fact that as a director of FGFS, it can be inferred that in accordance with his legal obligations, Mr Tesoriero was aware of a purported loan of \$10,432,022 from “Forum NZ” (IUGIS NZ) to FGFS, referred to in the accounts for FGFS: see [FOR.000182671](#), page 3 and [FOR.000182669](#). Further, a number of the spreadsheets referred to in Annexure A make reference to funding for “IUGIS NZ” and it is to be inferred from this that Mr Tesoriero was aware that FGFS was obtaining funds from Iugis NZ.
25. In response to Request 14, we assume your request relates to particular (c) which refers to FG, FE and FEA (rather than FEWA). The details of the monies received, used and disbursed by these entities is pleaded in Part D, Part J, in particular paragraphs 1933 and 1939 (in the case of FG), Part K, in particular paragraphs 1952 and 1958 (in the case of FE) and Part L, in particular paragraphs 1971 and 1977 (in the case of FEA). The proportion of monies used to benefit Mr Tesoriero is a matter for evidence. We refer to FGFS’ bank statements and balance sheet enclosed with this letter, and FGFS’s Xero records, which shows payments from FGFS to FG, FE and FEA. In addition, a preliminary analysis of the flow of funds from Forum Finance to FGFS, FEA, FE and FG in the month of October 2019 was referred to in paragraph [9] of the affidavit of Ms Murray dated 15 July 2021, the summary table being exhibited at page 20-33 of Exhibit CMM-7 to that affidavit. The bank statements relied upon in that analysis were included from pages 34 of Exhibit CMM-7. Further, a schedule of the payments made from FG (account number 121782934) to accounts held in the name of Tesoriero Investments Group (account 10572179) and John and Teresa Tesoriero (accounts 213608896 and 780597) that have been identified to date is annexed as **Annexure C** to this response. Payments received from Westpac and made by Forum Finance are identified in pages 1 to 11 of Exhibit CMM-7 to the first affidavit of Ms Murray sworn on 15 July 2021 in support of Westpac’s application for the appointment of provisional liquidators.
26. In response to Request 15:
- (a) As to Request 15(a), the knowledge that Mr Tesoriero had of these entities is of their operations and affairs, as a:
- (i) director of FGFS (or was a director of FGFS until April 2020 according to the records of ASIC); 64-66 Berkely St; 14 James St (until 1 May 2020); 26 Edmonstone Rd (until 1 May 2020); 5 Bulkara St (until 30 April 2020); 6 Bulkara St (until 27 October 2020); 23 Margaret St; 1160 Glen Huntley Rd; 14 Kirwin Rd; Canner Investments; 123 High St; 160 Murray Valley Hwy; 31 Ellerman St; 4 Cowslip St; 55 Nolan St; 89 Betka Rd; 9 Gregory St; 9 Main St; 286 Carlisle St; 275 High St; TIG; Mangusta; 193 Carlisle St; and 8-12 Natalia Ave;

- (ii) shareholder (either directly or indirectly) of FGFS, TFGC (indirectly through his shareholding in TIG and through his indirect shareholding in TFGC of FG, FE and FEA and other entities in the Forum group); 64-66 Berkely St; 14 James St; 26 Edmonstone Rd; 5 Bulkara St; 6 Bulkara St; 23 Margaret St; 1160 Glen Huntley Rd; 14 Kirwin Rd; Canner Investments; 123 High St; 160 Murray Valley Hwy; 31 Ellerman St; 4 Cowslip St; 55 Nolan St; 89 Betka Rd; 9 Gregory St; 9 Main St; 286 Carlisle St; 275 High St; TIG; Mangusta; 193 Carlisle St; and 8-12 Natalia Ave,

as pleaded at the following paragraphs of the 2FASOC: 5(h) (Jointly Owned Entities), 7(d) (286 Carlisle St), 7(e) (Tesoriero Entities), 34H (TIG), 34I (Mangusta), 34J (193 Carlisle St), 34K (8-12 Natalia Ave), 31 (275 High St). This information is apparent on the face of company searches of each of these entities. Further, with the exception of FGFS, TIG, 193 Carlisle St and 286 Carlisle St, each of the companies was a single venture or purpose company, where the venture or purpose was to acquire property (using debt and funds provided by FGFS) for the benefit or one or both of Mr Papas and Mr Tesoriero. 286 Carlisle St (of which Mr Tesoriero and Mr Tesoriero Snr were the only directors) received funds from FGFS and paid those funds overseas at Mr Papas' direction or to his benefit.

- (b) Further to paragraph (a), on numerous occasions, Mr Tesoriero directed or caused the payment of money to or from, or for the benefit of, these entities. On other occasions, he caused those entities to purchase property. Further particulars will be provided following the service of evidence. We refer to the list at **Annexure B**.
- (c) As to Request 15(b), see subparagraphs (a) and (b) above.
- (d) As to Request 15(c), the control that Mr Tesoriero had of these entities which caused them to become a co-conspirator is the fact that he (together with Mr Papas in the case of the Jointly Owned Entities) used them to receive funds and acquire assets as pleaded in the 2FASOC in Part I and following with respect to each entity. He did so as a director of the companies referred to in sub-paragraph (a)(i) above, and with the authority to direct that payments be made to the benefit of those companies (see **Annexure B**).
- (e) As to Request 15(d), the details of the monies received, used and disbursed by each of these entities is pleaded in the 2FASOC, and summarised in paragraph 19 of our 22 September Letter, and is set out further below, by reference to paragraph numbers of the 2FASOC.

(i) The Jointly Owned Entities –

- (A) FGFS – at least \$282,368,524.94 as set out in paragraph 1914;
- (B) 64-66 Berkeley St – at least \$1,865,000 as set out in paragraph 1990;
- (C) 14 James St – at least \$2,838,000 as set out in paragraph 2008;
- (D) 26 Edmonstone Rd - at least \$2,470,124.35 (as set out in paragraph 2026, less the payments recorded as made by FGFS prior to 31 August 2018);
- (E) 5 Bulkara St – at least \$3,779,000 as set out in the paragraph 2044;
- (F) 6 Bulkara St - at least \$4,953,000 as set out in paragraph 2062;

(ii) The Tesoriero Entities –

- (A) 23 Margaret St – at least \$605,674.09 as pleaded in paragraph 2080 less the payments recorded as made by FGFS prior to 31 August 2018 (and see further paragraph 29(a) below);
- (B) 1160 Glen Huntly – at least \$1,054,000 as pleaded in paragraph 2098.
- (C) 14 Kirwin – at least \$300,794 as pleaded in paragraph 2116.
- (D) Canner – at least \$1,180,000 as pleaded in paragraph 2134.

- (E) 123 High St – at least \$78,353 as pleaded in paragraph 2152.
- (F) 160 Murray Valley – at least \$260,202.74 as pleaded in paragraph 2170.
- (G) 31 Ellerman St – at least \$155,262 as pleaded in paragraph 2188.
- (H) 4 Cowslip St – at least \$346,623 as pleaded in paragraph 2206.
- (I) 55 Nolan – at least \$173,907 as pleaded in paragraph 2224.
- (J) 89 Betka – at least \$174,574 as pleaded in paragraph 2242.
- (K) 9 Gregory – at least \$18,969 as pleaded in paragraph 2260.
- (L) 9 Main St – at least \$146,136 as pleaded in paragraph 2278.
- (iii) 286 Carlisle St – at least \$2,405,000 as pleaded in paragraph 2296 (and see further paragraph 30(b) below).
- (iv) 275 High St – at least \$339,214 as set out in 2314.
- (v) TIG – at least \$1,159,000 as pleaded in paragraph 2425 (and see further paragraph 30(c) below).
- (vi) Mangusta – at least \$150,009.85 as pleaded in paragraph 2543.
- (vii) 193 Carlisle St- at least \$30,304.64 as pleaded in paragraph 2562. and
- (viii) 8-12 Natalia Ave – at least \$1,436,000 as pleaded in paragraph 2581 (and see further paragraph 29(d) below).

Paragraph 1845

27. In response to Request 16, we have answered this request in part at paragraph 27 of our 22 September Letter. The knowledge of Mr Tesoriero that is alleged to have caused Forum Finance to become a party to the Scheme Agreement is the knowledge of its operations and affairs which he had by reason of having been its director since 1 April 2017, as pleaded at paragraph 3(e) of the 2FASOC, as well as the other matters set out at paragraph 12 of our 22 September Letter and the matters set out in paragraphs 6 to 8, 10 and 11 above.

Part G: The claim against Mr Papas

Paragraph 1867

28. In response to Request 17(a), we have answered this request at paragraph 29 of our 22 September Letter by reference to paragraphs 12 and 13 of that letter. In particular, we refer to paragraph 12(q) of that letter. We further refer to the fact that Mr Tesoriero directed Mr Bouchahine and Forum staff to make payments in relation to those entities, some examples of which are given in response to Requests 64 and 65 below.
29. In response to Request 17(b), we repeat paragraph 29 of our 22 September Letter. Further, that the Jointly Owned Entities were created to hold property financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36 is inferred from the fact that the Jointly Owned Entities in fact did so, as pleaded in the 2FASOC at paragraph 6 together with the Scheme Agreement and the matters pleaded at paragraphs 55 to 57 of the 2FASOC and paragraph 12 of our 22 September Letter; and that the Jointly Owned Entities had no other business.

Paragraph 1872

30. In response to Request 18(a), we refer to our response at paragraph 30 of our 22 September Letter, the Xero worksheets referred to in paragraph 11 above and our response in paragraph 26(e) above. Additionally, details of the payments received by the following entities are found in interlocutory evidence already filed and served in the proceedings, as follows:

- (a) 23 Margaret St – see the affidavit of Ms Murray sworn on 25 August 2021: see [36]-[38] and pages 308-338 of CMM-10;
 - (b) 286 Carlisle St – see the second affidavit of Ms Murray sworn on 30 September 2021: see [23]-[26] and pages 94-123 of Exhibit CMM-14;
 - (c) TIG – see the second affidavit of Ms Murray sworn on 30 September 2021: see [29]-[30] and pages 136-169 of CMM-14; and
 - (d) 8-12 Natalia Ave – see the second affidavit of Ms Murray sworn on 30 September 2021: see [32]-[34] and pages 181-207 of CMM-14 and the first affidavit of Ms Murray of 30 September 2021: see [20]-[22] and pages 30, 59, 153-154 of CMM-13.
31. In response to Request 18(b), the basis of the allegation that each of Mr Tesoriero, the Jointly Owned Entities, the Tesoriero Entities and 286 Carlisle St had no legitimate basis to receive those payments is that those monies were stolen from Westpac and WNZL, and the repetition of conduct in which money stolen from Westpac and WNZL was paid to FGFS and then by FGFS to the benefit of companies owned by Mr Papas, to the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle St and to Mr Papas and Mr Tesoriero. That conduct was directed, from time to time, by Mr Papas and Mr Tesoriero and was for the benefit of Mr Papas and Mr Tesoriero in circumstances in which FGFS had no business and was not indebted to Mr Papas or Mr Tesoriero. Westpac and WNZL rely on the payments recorded in FGFS's Xero balance sheet and the documents received by Mr Tesoriero as set out in paragraph 7 above, as well as the list of spreadsheets set out in **Annexure A**. Further, we add that Annexure D to Mr Tesoriero's affidavit of 21 July 2021 ascribes a nominal value of shares to all entities there listed, with the exception of Canner, suggesting that the companies do not carry out any business, a fact supported by Mr Tesoriero's deposing that their nominal value was "due to there being no trading or business activity in them": at paragraph 14. The lack of trading or business activity of these entities supports a conclusion that there was no business arrangement justifying receipt of those payments.

Paragraph 1875

32. In response to Request 19, we repeat paragraph 31 of our 22 September Letter, and the basis of the allegation that each of Mr Tesoriero and the entities identified in your letter were receiving substantial payments from FGFS which they had no legitimate basis to receive is that those monies were stolen from Westpac and WNZL, and the repetition of conduct in which money stolen from Westpac and WNZL was paid to FGFS and then by FGFS to the benefit of companies owned by Mr Papas, to the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle Street and to Mr Papas and Mr Tesoriero. That conduct was directed, from time to time, by Mr Papas and Mr Tesoriero and was for the benefit of Mr Papas and Mr Tesoriero in circumstances in which FGFS had no business and was not indebted to Mr Papas or Mr Tesoriero. Westpac and WNZL rely on the payments recorded in FGFS's Xero balance sheet, the documents received by Mr Tesoriero as set out in paragraph 7 above, as well as the list of Schedules set out in **Annexure A**. We otherwise repeat paragraphs 30 and 31 above.

Part H: The claim against Mr Tesoriero

Paragraph 1895

33. In response to Request 20, we repeat our response at paragraph 34 of our 22 September Letter. The legal basis on which the funds are said to be held on trust is, as stated at paragraph 6 of our 22 September Letter by reference to 23 Margaret St, a trust arising at law under *Black v S Freedman & Company* (1910) 12 CLR 105. Stolen money, or the traceable proceeds of stolen money, is held by the recipient on trust for the owner. There is academic debate as to whether that trust is categorised as a constructive or a resulting trust, but the categorisation is not a proper particular. No further particularisation of that claim is required. It arises at law from the fact that the money was stolen from Westpac and WNZL.
34. In response to Request 21, it is not alleged in paragraph 1895 of the 2FASOC that Mr Tesoriero knowingly received the funds in a *Barnes v Addy* sense (those claims are pleaded in paragraphs 1902 to 1910). We refer to paragraph 33 above.

35. In response to Request 22, this is a matter for evidence. Nevertheless, the amounts and dates of payments directly received by Mr Tesoriero identified by Westpac and WNZL are particularised at paragraph 1895. We repeat paragraphs 9 to 12 above. Further, the tracing of the money from Westpac or WNZL to the recipient will be the subject of a report served with Westpac and WNZL's evidence.
36. In response to Request 23, this is a matter for evidence. We repeat paragraphs 9 and 10 above. Further, the tracing of the money from Westpac or WNZL to the recipient will be the subject of a report served with Westpac and WNZL's evidence.
37. In response to Request 24, this is a matter for evidence. We repeat paragraphs 9-11 above. Further, the tracing of the money from Westpac or WNZL to the recipient will be the subject of a report served with Westpac and WNZL's evidence. We refer to paragraph 20 above in relation to acquisitions of boats and cars.

Paragraphs 1896 and 1897

38. In response to Request 25, we repeat our response at paragraph 37 of our 22 September Letter and our response at paragraph 33 above as to the legal basis for the trust and liability to account for the amounts received. As to the details and calculations of the amounts received and paid away or caused or permitted to be paid away by Mr Tesoriero, we repeat paragraphs 9 and 10 above. Further particulars of these funds will be provided following evidence.
39. In response to Request 26, it is not alleged in paragraphs 1896 and 1897 of the 2FASOC that Mr Tesoriero knowingly received the funds in a *Barnes v Addy* sense. We refer to paragraph 33 above.

Paragraph 1898

40. Request 27 repeats Request 12. We refer to paragraph 22 above.

Paragraph 1900

41. In response to Request 28, the facts, matters and circumstances relied upon to support the allegation that Mr Tesoriero signed the First Forum Agreement in furtherance of the Scheme Agreement are that the First Forum Agreement bears his signature, in addition to the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter.
42. In response to Request 29, the facts, matters and circumstances relied upon to support the allegation that Mr Tesoriero signed the Second Forum Agreement in furtherance of the Scheme Agreement are that the Second Forum Agreement bears his signature, in addition to the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter.
43. In response to Request 30, the facts, matters and circumstances relied upon to support the allegation are that Mr Tesoriero was the director of Forum Finance, in addition to the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter. Forum Finance's only corporate activity was to receive from Westpac the money stolen from Westpac (by Transactions 1 to 100) as pleaded in paragraphs 56(a)-(d) and then pay away those moneys as pleaded in paragraph 56(f). The payments received from Westpac and made by Forum Finance are identified in pages 1 to 11 of Exhibit CMM-7 to the first affidavit of Ms Murray sworn on 15 July 2021 in support of Westpac's application for the appointment of provisional liquidators.
44. In response to Request 31, the facts, matters and circumstances relied upon to support the allegation are that Mr Tesoriero was a shareholder in FGFS, that FGFS had no business but received money stolen from Westpac and paid away that money to the benefit of companies owned by Mr Papas, to the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle St and to Mr Papas and Mr Tesoriero. That conduct was directed, from time to time, by Mr Papas and Mr Tesoriero and was for the benefit of Mr Papas and Mr Tesoriero in circumstances in which FGFS had no business and was not indebted to Mr Papas or Mr Tesoriero. Westpac and WNZL rely on the payments recorded in FGFS's Xero balance sheet. In addition, Westpac and WNZL repeat

the matters pleaded at paragraph 4(e), 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter. Westpac and WNZL also rely on the fact that Mr Papas and Mr Tesoriero considered that FGFS was the default entity for the purchase of property and certain assets paid for with funds received by Westpac: see for example [FOR.000300453](#) and [FOG.1000.0003.2764](#).

45. In response to Request 32(a) and (b), this is not a proper request for particulars and is a matter for evidence. In any event, the amounts alleged to have been paid away to FG, FE, FEA and FGFS are identified in pages 256 to 282 Exhibit CMM-5 to the affidavit of Ms Murray sworn on 12 July 2021 (paragraph 15). The money paid to FGFS which is traced to further recipients will be further identified in a report served with Westpac and WNZL's evidence. We repeat paragraphs 9 to 12 above.
46. In response to Request 32(c), we repeat paragraph 38 of our 22 September Letter. Additionally, Westpac and WNZL rely on the fact that Mr Tesoriero caused FGFS to disperse funds (originally paid to Forum Finance and by Forum Finance to FGFS) to various recipients, including himself, as set out in paragraphs 40 and 41 of our 22 September Letter and see further, by example, [FOG.1000.0002.7062](#).
47. In response to Request 32(d), Westpac and WNZL rely upon the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraphs 12 and 38 of our 22 September Letter.
48. In response to Request 33, we repeat paragraph 39 of our 22 September Letter. The basis on which those payments are said to have been received in furtherance of the Scheme Agreement is as a result of the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter. The tracing of the money paid by Westpac and WNZL will be the subject of a report served with Westpac's evidence.
49. In response to Request 34, we repeat paragraph 40 of our 22 September Letter and paragraphs 28 and 29 above.
50. In response to Request 35, we repeat paragraph 41 of our 22 September Letter. Further, that the Tesoriero Entities were created to hold property financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36 is inferred from the fact that the Tesoriero Entities in fact did so, as pleaded in the 2FASOC at paragraph 8 together with the Scheme Agreement and the matters pleaded at paragraphs 55 to 57 of the 2FASOC and paragraph 12 of our 22 September Letter; and that the Tesoriero Entities had no other business.
51. In response to Request 36, we repeat paragraph 42 of our 22 September Letter. We add that the receipt of funds by 286 Carlisle St, including the dates and amounts of receipts, is evidenced in Ms Murray's second affidavit sworn on 30 September 2021 at paragraphs 23-26 and pages 94-123 of Exhibit CMM-14, and the payments by 286 Carlisle St offshore are identified in the particulars to paragraphs 2704(b) and 2709(b).
52. In respect of paragraph 1900 generally, we further refer to the fact that Mr Tesoriero was a director and shareholder of Mangusta. Mr Papas was neither a director or shareholder of that entity, yet was a beneficiary (together with Mr Tesoriero) under the Mangusta Trust Deed: see [VIN.5000.0001.1142](#) (at .1190).

Paragraph 1901

53. In response to Request 37, we repeat paragraph 43 of our 22 September Letter as well as the matters set out at paragraphs 6 to 8 and 14 above. The allegation that Westpac and WNZL's loss and damage was a consequence of those acts flows as a direct consequence from dishonest theft of those moneys and the receipt and use of funds stolen by Westpac and WNZL, as alleged throughout the 2FASOC.

Paragraph 1904

54. In response to Request 38, we repeat paragraph 44 of our 22 September Letter. Further, a report as to the tracing of the money from Westpac and WNZL will be served as part of Westpac's evidence.

Paragraph 1905

55. In response to Request 39, we repeat paragraphs 12 and 45 of our 22 September Letter and rely on the matters pleaded at paragraphs 55 to 57 of the 2FASOC. By reason of the matters set out in paragraph 7 above, including the receipt of bank statements and spreadsheets as set out in Annexure A, Mr Tesoriero knew that the source of funds for assets and properties of which he or his companies were the beneficiaries was FGFS, and that FGFS had no legitimate source for those funds and was not indebted to him personally or to the Jointly Owned Entities or Tesoriero Entities.
56. In response to Request 40(a):
- (a) The amounts paid by Westpac and received by Forum Finance from Westpac were for the discrete purpose of financing acquisition of assets for underlying customers pursuant to the Eqwe/ Forum Programme, as pleaded at paragraphs 54 and 1905(g) of the 2FAOSC and were to fund equipment finance agreements, which did not exist. That is, Forum Finance received the money paid by Westpac but did not enter into the corresponding obligation or acquire the rights for which the money was paid;
 - (b) Forum Finance paid away the money it received, not to acquire finance equipment or for the debtor to acquire that equipment, but to FG, FE, FEA and FGFS for their own purposes or those of Mr Papas and Mr Tesoriero, as pleaded in the 2FASOC.
 - (c) Forum Finance also had no business.
57. In response to Request 40(b), we repeat paragraph 45 of our 22 September Letter and paragraph 55 above.
58. In response to Request 41(a):
- (a) The amounts paid by WNZL and received by IUGIS NZ from WNZL were for the discrete purpose of financing acquisition of assets for underlying customers pursuant to the Eqwe/ Forum Programme, as pleaded at paragraphs 54 and 1905(g) of the 2FAOSC and were to fund equipment finance agreements, which did not exist. That is, Forum Finance received the money paid but did not enter into the corresponding obligation or acquire the rights for which the money was paid;
 - (b) IUGIS NZ paid the money it received away, not to acquire finance equipment or for the debtor to acquire that equipment, but to FGFS for its own purposes or those of Mr Papas and Mr Tesoriero, as pleaded in the 2FASOC.
 - (c) IUGIS NZ also had no business.
59. In response to Request 41(b), we repeat paragraph 45 of our 22 September Letter and paragraph 55 above.
60. In response to Request 42, we repeat paragraph 12 and 45 of our 22 September Letter. We further rely on the following matters in support of the allegation as to Mr Tesoriero's awareness that any amounts received by Forum Finance or IUGIS NZ pursuant to the Eqwe/ Forum Programme were to finance the acquisition of assets for the underlying customers and were not amounts to which Forum Finance or IUGIS NZ were entitled themselves to use and pay away:
- (a) Mr Tesoriero had been provided with a pro forma rental plan for Forum Finance in February 2018 which set out the terms and conditions on which Forum Finance was to lease equipment to customers: see [FOG.1000.0002.7267](#) and [FOG.1000.0002.7268](#).
 - (b) From as early as April 2018, Mr Tesoriero knew that Forum Finance was looking to finance its equipment loan book, with equipment financed under a principal and agent agreement: see [FOR.000140164](#) and attached spreadsheet.
 - (c) Mr Tesoriero was also aware of a similar funding program that was offered by MAIA, the indicative term sheet for which stated that the proposal being put forward was for "a funding program for the rental of ORCA equipment across...international operations for

clients of Forum Group Pty Ltd and its related entities": see [FOG.1000.0002.7325](#) and [FOG.1000.0002.7326](#).

- (d) Mr Tesoriero knew from June 2018 that finance was to be sought for ORCAs, from which it can be inferred that Mr Tesoriero knew that the ORCAs were assets to be acquired for customers: see [FOR.000140393](#).
 - (e) From August 2018, Mr Tesoriero knew that Veolia contracts as part of the MAIA scheme were intended to be transferred with due diligence to be conducted to check that assets were in place and rental contracts would be recognised by the customer: see [FOR.001440924](#)/ FOR.00077247.
61. In about February 2019, Mr Tesoriero was involved in the negotiation of a release sought from a funder over FGFS's assets. In the course of these communications emails were exchanged (which he received) in which Mr Papas wrote "*[w]e sell hardware and services under managed services agreements which are ultimately funded by financial institutions as an underwriter. This release is for our funders who finance our client contracts where they are funding these contracts under and undisclosed arrangement*": see [FOG.1000.0002.7145](#) and [FOG.1000.0001.7524](#), [FOG.1000.0001.7527](#); and [FOG.1000.0001.7533](#).
62. In response to Request 43(a):
- (a) It follows from the fact that the money was raised to finance acquisition of equipment for or by the end debtor that FGFS had no legitimate business which entitled it to receive that money.
 - (b) Further, FGFS did not carry on any business and instead used the money as pleaded in paragraph 56. Our clients rely on FGFS' Xero balance sheet, its bank statements and the tracing report which will be served as part of their evidence.
 - (c) Westpac and WNZL also rely on the matters pleaded at paragraph 4(e)(iii), the instances where Mr Tesoriero requested or directed payment for his and his companies' benefit from FGFS, as set out in Annexure B, and the fact that FGFS' only or predominant corporate purpose was to carry out the Scheme, as pleaded at paragraph 1867(d) of the 2FASOC.
63. In response to Request 43(b), we repeat paragraph 45 of our 22 September Letter and paragraph 55 above.
64. In response to Request 44, those entities had no legitimate basis to receive substantial payments from FGFS because those payments resulted from monies stolen from Westpac and WNZL, were not creditors of FGFS and otherwise repeat paragraph 32 above.

Paragraph 1906

65. In response to Request 45, Mr Tesoriero as the knowing recipient of those moneys holds that which he received, or the benefit, on a constructive trust for Westpac and WNZL (as the case may be), or as a knowing recipient is liable to account for the profit he has made or alternatively pay equitable compensation.

Paragraph 1907

66. In response to Request 46, we repeat paragraph 47 of our 22 September Letter and paragraphs 6 to 8 and 14 above.

Paragraph 1908

67. In response to Request 47, we repeat paragraph 48 of our 22 September Letter and paragraphs 6 to 8 and 14 above.
68. Request 48, which we assume is intended to refer to paragraph 1908(c), is not a proper request for particulars and is a matter for evidence. Westpac and WNZL rely upon the fact that the only business engaged in by Forum Finance was that undertaken as part of the Scheme, being to steal money from Westpac and WNZL.

69. Request 49 is not a proper request for particulars and is a matter for evidence. Westpac and WNZL also rely upon:
- (a) the fact that the only business engaged in by FGFS was that undertaken as part of the Scheme, being to steal money from Westpac and WNZL and either hold assets bought with that money or to pay that money away.
 - (b) the repetition of conduct in which money stolen from Westpac and WNZL was paid to FGFS and then by FGFS to the benefit of companies owned by Mr Papas, to the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle St and to Mr Papas and Mr Tesoriero. That conduct was directed, from time to time, by Mr Papas and Mr Tesoriero and was for the benefit of Mr Papas and Mr Tesoriero in circumstances in which FGFS had no business and was not indebted to Mr Papas or Mr Tesoriero.
 - (c) Westpac and WNZL rely on the payments recorded in FGFS's Xero balance sheet, the documents received by Mr Tesoriero as set out in paragraph 7 above and in the list of spreadsheets set out in Annexure A.
70. In response to Request 50(a), we repeat paragraph 49(e) of our 22 September Letter.
71. In response to Request 50(b) and (c), the details and calculations of the amounts Mr Tesoriero is alleged to have procured Forum Finance to pay away, and the recipients of those amounts, are identified in pages 256 to 282 Exhibit CMM-5 to the affidavit of Ms Murray sworn on 12 July 2021 (paragraph 15).
72. In response to Request 51, we repeat paragraph 49(f) of our 22 September Letter. The tracing of the money will be the subject of a report served with Westpac's evidence.
73. In response to Request 52(a), we repeat paragraph 49(g) of our 22 September Letter and refer to **Annexure B**.
74. In response to Request 52(b), that the Jointly Owned Entities were created for that purpose is to be inferred from the creation of the Scheme, and the fact that property held by those entities was in fact financed by amounts improperly obtained from the transactions pleaded.
75. In response to Request 53(a), we repeat paragraph 49(h) of our 22 September Letter and refer to **Annexure B**.
76. In response to Request 53(b), that the Tesoriero Entities were created for that purpose is to be inferred from the creation of the Scheme, and the fact that property held by those entities was in fact financed by amounts improperly obtained from the transactions pleaded.
77. In response to Request 54, we repeat paragraph 49(i) of our 22 September Letter. We also repeat paragraph 51 above. The tracing of the money will be the subject of a report served with Westpac's evidence.

Paragraph 1909

78. In response to Request 55, we repeat paragraphs 51 and 52 of our 22 September Letter as well as the matters set out in paragraphs 6 to 8 above. The allegation that Westpac and WNZL's loss and damage was a consequence of those acts flows as a direct consequence from the receipt and use of funds stolen by Westpac and WNZL.

Paragraph 1910

79. In response to Request 56, we repeat paragraph 53 of our 22 September Letter as well as the matters set out in paragraphs 6 to 8 above.

Paragraph 1911

80. Request 57 repeats Request 12 and Request 27. We repeat paragraph 22 above.
81. In response to Request 58, we repeat paragraph 54 of our 22 September Letter as well as the matters set out in paragraphs 6 to 8 above.

Parts I-BBB: The claims against other parties*Tort of unlawful means conspiracy*

82. Request 59 repeats Request 12, Request 27 and Request 57. We repeat paragraph 22 above.
83. In response to Request 60(a) and (b), the knowledge and control of Mr Tesoriero that is alleged to have caused each entity to become a party to the Scheme Agreement is that exercised by him as a director and/ or direct or indirect shareholder of each entity, as appropriate and as set out in response to Request 15(a) above, and his management of those entities (as to which, we refer to paragraph 40 and 41 of our 22 September Letter). We also refer further to paragraph 26 above.
84. In response to Request 60(c), we repeat paragraphs 6 to 8 above and paragraph 1844 of the 2FASOC and paragraph 22 above.
85. In response to Request 61(a), we refer to paragraph 1895 of the 2FASOC and paragraphs 9 to 11 above. The tracing of the money will be the subject of a report served with Westpac's evidence.
86. In response to Request 61(b), we refer to paragraphs 12 and 13 of our 22 September Letter.

Knowing receipt and knowing assistance

87. In response to Request 62(a), this is not a proper request for particulars and is a matter for evidence. However:
- (a) We repeat paragraphs 6 to 8 above and paragraph 12 and 13 of our 22 September Letter;
 - (b) As to the amounts received, we repeat paragraph 26(e) above, and refer you to FGFS's Xero balance sheet. The tracing of those payments will be the subject of a report served with Westpac's evidence.
 - (c) As to Mr Tesoriero's knowledge, we repeat paragraph 8 above.
88. In response to Request 62(b), we repeat paragraphs 56 to 59 and 62 to 63 above.
89. Request 62(c) repeats Request 42. We repeat paragraphs 60 and 61 above.
90. Request 62(d) repeats Request 43. We repeat paragraphs 62 and 63 above.
91. In response to Request 62(e):
- (a) Request 62(e)(i) is not a proper request for particulars and is a matter for evidence. We otherwise repeat paragraph 87(b) above.
 - (b) Request 62(e)(ii) repeats Request 44. We refer to paragraph 64 above.
 - (c) Request 62(e)(iii), we refer to Mr Tesoriero's knowledge of and control of those entities as pleaded in the 2FASOC, paragraph 12 of our 22 September Letter and paragraphs 6 to 8 and 26 above.
92. In response to Request 63, we repeat paragraphs 6 to 8, 26, 67, 83 and 84 above and paragraph 12 and 13 of our 22 September Letter.
93. In response to Request 64(a), the details and calculations of the funds are a matter for evidence and, further, the pleading is one against a respondent other than Mr Tesoriero. Nonetheless, as to the amounts paid, we repeat paragraph 26(e), and refer you to FGFS's Xero balance sheet. The sub-set paid to Mr Tesoriero and the Jointly Owned Entities, the Tesoriero Entities and 286 Carlisle St are identified in the particulars to paragraph 1895 of the 2FASOC, FGFS's Xero balance sheet and (insofar as traced from payments made by Westpac or WNZL) will be identified further in a report served with Westpac's evidence. The tracing of those payments will be the subject of a report served with Westpac's evidence.
94. In response to Request 64(b), the basis for the allegation that the funds were used at the direction of Mr Tesoriero is that Mr Tesoriero directed Forum staff to pay money to or for the benefit of particular entities, and that he was both able to make those directions and benefited from those

directions (as to which see **Annexure B**). Otherwise, this is a matter for evidence, but we refer to the examples given at paragraph 40 and 41 of our 22 September 2021 Letter. Further examples include [FOG.1000.0003.6648](#) and [FOG.1000.0005.8634](#); [FOG.1000.0005.8666](#), and [FOG.1000.0005.8668](#).

95. In response to Request 65, the details of the funds and assets are matters for evidence and repeat paragraph 93 above. We also refer paragraphs 9 to 11 above. Occasions on which Mr Bouchahine caused amounts to be paid away include on the following dates:
- (a) 4 December 2019, when Mr Tesoriero asked Mr Bouchahine to pay the amount of \$126,859.69: see [FOG.1000.0003.0136](#), [FOG.1000.0004.2357](#) and [FOG.1000.0004.2359](#).
 - (b) 19 December 2019, when Mr Tesoriero instructed Mr Bouchahine to pay the deposit for Mr Tesoriero's intended purchase of 8-12 Natalia Ave Oakleigh South: see [FOG.1000.0004.2455](#); [FOG.1000.0004.4989](#) and [FOG.1000.0004.4991](#).
 - (c) On 9 June 2020, Mr Bouchahine paid a further instalment for the deposit for Mr Tesoriero's intended purchase of 8-12 Natalia Ave Oakleigh South: see [FOG.1000.0004.1278](#) and [FOG.1000.0004.1283](#).
 - (d) 6 October 2020, when Mr Tesoriero instructed Mr Bouchahine to pay the amount of \$239,197.18 to GraysOnline for the purchase of a 1969 Ford Mustang Boss 429 Z-Code Coupe: see [FOG.1000.0001.0255](#); [FOG.1000.0001.2368](#), [FOG.1000.0001.2370](#); [FOG.1000.0006.7480](#); and [GRY.5000.0001.0016](#).
 - (e) On 22 October 2020, a payment made in the amount of \$5,912.46 from FGFS with the description "Vince 13480794" for the benefit of an account in the name of 286 Carlisle St: see [FOG.1000.0001.2150](#) and [FOG.1000.0001.2158](#).
 - (f) On 19 November 2020, Mr Bouchahine made in the amount of \$110,171.13 to Middle Point Marine for the Mangusta XOXO yacht: see [FOG.1000.0001.2199](#) and [FOG.1000.0001.2208](#).
 - (g) Payment of the insurance amounts referred to in paragraph 97 below.
96. Some of the above payments are recorded in the Xero records for FGFS: see the worksheet relating to Mr Tesoriero (VT Transactions) and the worksheet relating to Natalia Ave.

Paragraph 2654

97. In response to Request 66, this is a matter for evidence. But by way of example, on 6 October 2020, the amount of \$239,197.18 was paid from FGFS to GraysOnline for the purchase of a 1969 Ford Mustang Boss 429 Z-Code Coupe: see [FOG.1000.0001.0255](#); [FOG.1000.0001.2368](#), [FOG.1000.0001.2370](#); [FOG.1000.0006.7480](#); and [GRY.5000.0001.0016](#), which vehicle is insured in Mr Tesoriero Snr's name: see Metrix insurance renewal for 2021 [FOR.001232020](#) and [FOR.001232023](#). Additional examples of insurance for the benefit of motor vehicles in Mr Tesoriero Snr's name include [FOR.001465311](#); [FOR.001465329](#); [FOR.001462708](#), [FOR.001462710](#); [FOR.001462712](#); [FOR.001462718](#).

Paragraph 2655

98. In response to Request 67(a), a list of the payments identified to date which have been received from FGFS by Mr Tesoriero Snr is set out in the particulars to 2654 of the 2FASOC. Payments made to Mr Tesoriero Snr at the direction of Mr Tesoriero are a matter for evidence. Nevertheless, by way of example, Mr Tesoriero directed payments to be made into a Westpac account in the name of Mrs Teresa Tesoriero and Mr Giovanni Tesoriero with account number 78-0597 and directed payments to be made into an ANZ account in the name Mrs Teresa Tesoriero and Mr Giovanni Tesoriero with account number 213608896: see for example [FOR.001352750](#); [FOR.001352845](#); [FOR.001411033](#); [FOG.1000.0001.6552](#); [FOG.1000.0002.4504](#); [FOG.1000.0003.7329](#) and [FOG.1000.0003.7330](#). Westpac have also identified payments from FG to these two accounts associated with Mr Tesoriero Snr as set out in the annexed **Annexure C** and referred to in paragraph 25 above. Payments have been identified from the Westpac account associated with Mr Tesoriero Snr to an account in the name Samantha Pagano with

account number 59-1875. Ms Pagano is the girlfriend of Mr Tesoriero. Payments to Ms Pagano were used for the purchase of shares in online trading platforms.

99. In response to Request 67(b), this is a matter for evidence, however, can be inferred from the fact that Mr Tesoriero Snr paid funds to an account in the name of Mr Tesoriero's girlfriend, Ms Pagano as set out in paragraph 98 above.

MinterEllison

Yours faithfully
MinterEllison

Contact: Anthony Sommer T: +61 2 9921 4182
anthony.sommer@minterellison.com
Partner: Caitlin Murray T: +61 2 9921 4279
OUR REF: 1353397

ANNEXURE A – LIST OF SPREADSHEETS RECEIVED BY MR TESORIERO

Date	Details	Doc IDs
7/08/2018	Mr Bouchahine emails Mr Tesoriero a schedule titled "Outstanding Payments for BP VT". Schedule shows outstanding invoices for certain Jointly Owned Entities and Tesoriero Entities.	FOG.1000.0003.7710 FOG.1000.0003.7711
7/08/2018	Mr Chin emails Mr Tesoriero an updated schedule titled "Outstanding Payments for BP & VT". Various versions are emailed to Mr Tesoriero.	FOG.1000.0004.0835 FOG.1000.0004.0836 FOG.1000.0004.0834
17/08/2018	Email from Mr Chin to Mr Tesoriero attaching schedule titled "Outstanding payments for BP & VT".	FOG.1000.0002.3887 FOG.1000.0002.3889
30/08/2018	Email from Mr Chin to Mr Tesoriero attaching schedule titled "Outstanding payments for BP & VT" as at 30 August 2018.	FOG.1000.0002.3922 FOG.1000.0002.3923
7/09/2018	Email from Mr Chin to Mr Tesoriero attaching schedule titled "Outstanding payments for BP & VT" as at 7 September 2018.	FOG.1000.0002.4249 FOG.1000.0002.4250
4/10/2018	Email from Mr Chin to Mr Tesoriero (Mr Papas and Mr Bouchahine) attaching schedule titled "Outstanding payments for BP & VT" as at 4 October 2018.	FOG.1000.0004.0859 FOG.1000.0004.0861
19/10/2018	Emails from Mr Bouchahine to Mr Tesoriero and Mr Papas attaching a schedule titled "Cashflow for Bill and Vince 19 Oct". Schedule shows amounts outstanding for certain Jointly Owned Entities and Tesoriero Entities and includes a worksheet for FGFS.	FOG.1000.0001.6550 FOG.1000.0001.6551
19/10/2018	Emails from Mr Bouchahine to Mr Tesoriero and Mr Papas attaching an updated schedule titled "Cashflow for Bill and Vince 19 Oct". Schedule shows amounts outstanding for certain Jointly Owned Entities and Tesoriero Entities and includes a worksheet for FGFS.	FOG.1000.0001.6593 FOG.1000.0001.6594
22/11/2018	Email from Mr Chin to Mr Bouchahine (cc Mr Tesoriero and Mr Papas) attaching a schedule titled "Outstanding payments for BP & VT" as at 15 November 2018.	FOG.1000.0004.0866 FOG.1000.0004.0867
29/11/2018	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding payments for BP & VT" as at 29 November 2018.	FOG.1000.0004.7393 FOG.1000.0004.7394
5/12/2018	Email from Mr Bouchahine to Mr Tesoriero and Mr Papas attaching a schedule titled "Outstanding Payments for BP VT – 5 Dec 18".	FOG.1000.0003.7317 FOG.1000.0003.7318
11/12/2018	Email from Mr Bouchahine to Mr Tesoriero forwarding a copy of the schedule titled "Outstanding Payments for BP VT – 5 Dec 18".	FOG.1000.0003.7335 FOG.1000.0003.7336
21/12/2018	Email from Mr Bouchahine to Mr Tesoriero (and Mr Bouchahine) attaching a schedule titled "Outstanding Payments for BP VT" as at 21 December 2018.	FOG.1000.0004.0872 FOG.1000.0004.0873
16/01/2019	Email from Mr Chin to Mr Tesoriero (and Mr Bouchahine) attaching schedule titled "Outstanding Payments for BP & VT".	FOG.1000.0004.0877 FOG.1000.0004.0883
20/02/2019	Email from Mr Chin to Mr Tesoriero, Mr Papas and Mr Bouchahine attaching a schedule titled "Outstanding Payments for BP & VT as at 20 February 2019.	FOG.1000.0004.0894 FOG.1000.0004.0895
03/10/2019	Email from Mr Bouchahine to Mr Papas attaching a schedule titled "Cashflow FGFS Other Companies 1 Oct 2019".	SEC.5000.0056.5944 SEC.5000.0056.5945
07/04/2020	Email from Mr Chin to Mr Tesoriero (copy Mr Bouchahine) attaching schedule titled "Outstanding and Recurring Payments for BP & VT"	FOG.1000.0001.4401 FOG.1000.0001.4402
16/04/2020	Email from Mr Bouchahine to Mr Tesoriero (copy Mr Papas) attaching schedule titled "Outstanding and Recurring	FOG.1000.0002.9286 FOG.1000.0002.9287

	Payments for BP & VT". Schedule includes worksheets titled <i>Outstanding and recurring</i> .	
17/04/2020	Email from Mr Bouchahine to Mr Tesoriero (copy Mr Papas) attaching schedule titled "Book 1". Schedule is headed "Summary Cash Flow Forum Group financial Services".	FOG.1000.0002.9305 FOG.1000.0002.9306
1/06/2020	Email from Mr Chin to Mr Tesoriero (and Mr Bouchahine) attaching schedule titled "Outstanding and Recurring Payments for BP & VT". Schedule includes worksheets titled <i>Outstanding and recurring</i> .	FOG.1000.0001.2698 FOG.1000.0001.2701
30/07/2020	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT". Schedule has worksheet titled <i>outstanding</i> , a worksheet titled <i>recurring</i> ; and a worksheet titled <i>cashflow</i> .	FOG.1000.0001.3302 FOG.1000.0001.3303
19/08/2020	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT" as at 19 August 2020. Schedule has worksheet titled <i>outstanding</i> , a worksheet titled <i>recurring</i> ; and a worksheet titled <i>cashflow</i> .	FOG.1000.0001.3402 FOG.1000.0001.3403
24/08/2020	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT" as at 24 August 2020. Schedule has worksheet titled <i>outstanding</i> , a worksheet titled <i>recurring</i> ; and a worksheet titled <i>cashflow</i> .	FOG.1000.0001.4208 FOG.1000.0001.4209
18/02/2021	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT" as at 18 February 2021. Schedule has worksheets titled <i>Outstanding</i> ; <i>Recurring</i> ; <i>FGFS Petrol Stations</i> ; <i>Rental Properties</i> ; <i>Other Assets</i> ; <i>FGFS</i> . The worksheet titled <i>FGFS</i> has the heading "Summary Cash Flow".	FOG.1000.0001.5040 FOG.1000.0001.5041
24/02/2021	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT" as at 24 February 2021 and Payment Register report – 24.02.2021. Schedule has worksheets titled <i>Outstanding</i> ; <i>Recurring</i> ; <i>FGFS Petrol Stations</i> ; <i>Rental Properties</i> ; <i>Other Assets</i> ; <i>FGFS</i> . The worksheet titled <i>FGFS</i> has the heading "Summary Cash Flow".	FOG.1000.0001.5054 FOG.1000.0001.5055 FOG.1000.0001.5056

ANNEXURE B – INSTANCES WHERE MR TESORIERO DIRECTED OR REQUESTED PAYMENTS BE MADE FROM FGFS TO OTHER ENTITIES

Date	Details	Doc IDs
23/01/2018	Email from Mr Bouchahine to Adriana Tsiallis cc Mr Tesoriero and Mr Papas attaching remittance for deposit for 26 Edmonstone Rd, remittance showing \$290,000 paid from FG account.	FOG.1000.0001.5616 FOG.1000.0001.5617
18/05/2018	Email from Mr Bouchahine to Mr Tesoriero attaching remittance for deposit for Atherton Rd property, remittance showing \$100,000 paid from FG account.	FOG.1000.0003.8796 FOG.1000.0003.8797 FOR.000867479 FOG.1000.0005.6369
22/06/2018	Email from MS Fiona Yang to Mr Tesoriero attaching remittance showing \$321,000 paid from FGFS account to "Crabtrees"	FOG.1000.0010.3951 FOG.1000.0010.3952
13/08/2018	Email from Mr Tesoriero to Mr Bouchahine and Mr Papas titled "Fwd: upcoming"	FOG.1000.0002.3852
29/08/2018	Email chain between Mr Tesoriero and Mr Chin titled Re: Invoice #30536; M Motorsport Pty Ltd	FOG.1000.0005.5844
4/09/2018	Email chain between Mr Tesoriero and Mr Bouchahine titled "RE loan interest payments"	FOG.1000.0001.6390
26/09/2018	Email chain between Mr Tesoriero and Mr Chin titled "RE: boat payment"	FOG.1000.0002.4515
27/09/2018	Email from Mr Tesoriero to Mr Bouchahine and Mr Papas titled "Fwd: loan interest payments banks"	FOG.1000.0002.4504
3/10/2018	Email chain between Mr Tesoriero and Mr Bouchahine (and others) titled "Re Atherton Rd Settlement"	FOG.1000.0002.4542
4/10/2018	Email from Mr Tesoriero to Mr Chin titled "Fwd: Insurance Policy - Pleasure Craft – MY Mangusta 105 Open XOXO"	FOG.1000.0003.6484 FOG.1000.0003.6486
5/10/2018	Email chain between Mr Tesoriero and Ms Fiona Yang titled "RE: loan interest payments banks"	FOG.1000.0010.3966
9/10/2018	Email chain between Mr Tesoriero and Mr Bouchahine (Mr Chin and Mr Papas) titled Re: boat payment.	FOG.1000.0002.4733
15/10/2018	Email chain between Mr Tesoriero and Ms Yang (and Mr Bouchahine) titled "RE: payments", attaching remittance showing \$20,000 paid from FG account to "Carbay Net"	FOG.1000.0010.3968 FOG.1000.0010.3971
16/10/2018	Email from Mr Tesoriero to Mr Bouchahine and Mr Papas titled "Fwd: loan interest payments"	FOG.1000.0005.6384
17/10/2018	Email from Mr Bouchahine to Mr Tesoriero showing remittances for payment of deposit of \$421,000 for Atherton Rd. \$321,000 paid from FGFS account and \$100,000 paid from FG account.	FOG.1000.0003.8592 FOG.1000.0003.8593 FOG.1000.0003.8596
18/10/2018	Email chain between Mr Bouchahine and Ms Fiona Yang, forwarding email from Mr Tesoriero titled "FW: loan interest payments".	FOG.1000.0001.6552
21/11/2018	Email from Mr Tesoriero to Ms Kathleen Wang (Mr Bouchahine and Ms Suzi Phillips) titled "Fwd: 126463 & 126464 - Forum Group Financial Services Pty Ltd"	FOG.1000.0003.6436 FOG.1000.0003.6438 FOG.1000.0003.6439
3/12/2018	Email chain between Mr Tesoriero and Mr Papas titled "Re: wish list"	FOG.1000.0002.7062
6/12/2018	Email chain between Mr Tesoriero, Mr Papas and Mr Bouchahine titled "Re: Bowen Hills Loan - 1 month \$68,067"	FOG.1000.0005.7205

7/12/2018	Email from Mr Bouchahine to Mr Tesoriero attaching remittance.	FOG.1000.0003.7329 FOG.1000.0003.7330
11/01/2019	Email chain between Mr Tesoriero and Mr Bouchahine titled "Re: Funds"	FOG.1000.0003.6597
22/01/2019	Email from Mr Tesoriero to Mr Papas and Mr Bouchahine titled "Fwd: Vince: Here are my wire instructions for BTY."	FOG.1000.0003.6615
20/02/2019	Email from Mr Tesoriero to Mr Chin (copy Mr Papas and Mr Bouchahine) titled "Re: Invoices Payable - BP & VT Entities"	FOG.1000.0003.6648
15/03/2019	Email from Mr Chin to Mr Tesoriero (copy Mr Bouchahine and Mr Papas) titled "RE: Monaco transaction" attaching remittance showing payment	FOG.1000.0001.7620 FOG.1000.0001.7623
10/04/2019	Email from Mr Tesoriero to Joel Freeman of Freeman Group (copy Mr Bouchahine) titled "RE: Account details".	FOG.1000.0005.8634
15/04/2019	Email from Mr Tesoriero to Joel Freeman of Freeman Group (copy to Mr Papas and Mr Bouchahine) titled "Fwd: remittance for JAF" attaching remittance showing \$500,000 paid from FGFS account.	FOG.1000.0005.8666 FOG.1000.0005.8668
23/04/2019	Email from Mr Bouchahine to Mr Tesoriero and Mr Papas confirming that UD\$20,000 has been paid to Barclay Yachts as requested. Remittance shows amount is paid from FGFS account	FOG.1000.0001.5323 FOG.1000.0001.5324
14/06/2019	Email from Mr Tesoriero to Mr Bouchahine titled "Fw: Tesoriero Investment Group – Extension"	FOG.1000.0001.8192 FOG.1000.0001.8193
21/06/2019	Email from Mr Chin to Mr Tesoriero titled "RE: Tesoriero Investment Group – Extension"	FOG.1000.0004.7350 FOG.1000.0004.7352
27/06/2019	Email from Mr Tesoriero to Mr Bouchahine (copy Mr Papas) titled "monaco outstanding"	FOG.1000.0001.8318
26/09/2019	Email chain between Mr Tesoriero, Mr Chin, Mr Bouchahine and Mr Papas titled "Re: overdrafts closed off"	FOG.1000.0005.0444
7/11/2019	Email chain between Mr Tesoriero and Mr Bouchahine (copy Mr Papas) titled "Re: 18005_1b_20191106_26 Edmondstone Rd Bowen Hills_METIER3 Invoice 9721_LH"	FOG.1000.0003.2284
15/11/2019	Email from Mr Chin to Mr Papas and Mr Tesoriero titled "Remittance - NV Finance", attaching remittance	FOG.1000.0003.1950 FOG.1000.0003.1951
15/11/2019	Email from Mr Chin to Rodney King (copy Mr Tesoriero and Mr Papas) titled "1160 Glen Huntly Road Glen Huntly - Payment Remittance", attaching remittance showing \$152,000 paid from FGFS account	FOG.1000.0003.1953 FOG.1000.0003.1954
23/11/2019	Email chain between Mr Chin, Mr Tesoriero, Mr Papas and Mr Bouchahine titled "Fwd: 8-18 James St, Clayton Deposit"	FOG.1000.0005.1464
25/11/2019	Email chain between Mr Chin, Mr Tesoriero, Mr Papas and Mr Bouchahine titled "RE: 8-18 James St, Clayton Deposit", attaching remittance showing \$289,072 paid from FGFS account.	FOG.1000.0003.0123 FOG.1000.0003.0126
286/11/2019	Email from Mr Chin to Andrew Norbury (copy Mr Tesoriero) titled "Payment Remittance - Invoice 9722" attaching a remittance showing \$42,651.34 paid from the FGFS account.	FOG.1000.0004.7055 FOG.1000.0004.7056
2/12/2019	Email from Mr Tesoriero to Mr Bouchahine and Mr Chin titled "interest payments"	FOG.1000.0004.2353

54/12/2019	Email chain between Mr Tesoriero and Mr Bouchahine (copy Mr Papas) titled "Re: upcoming payment"	FOG.1000.0003.0136
19/12/2019	Emails between Mr Tesoriero and Mr Bouchahine, including remittance showing \$586,000 paid from FGFS account.	FOG.1000.0004.2455 FOG.1000.0004.4989 FOG.1000.0004.4991
5/12/2019	Email from Mr Chin to Mr Tesoriero (copy Mr Bouchahine) titled "RE: upcoming payment" attaching remittance showing \$126,859.68 paid from FGFS account.	FOG.1000.0004.2357 FOG.1000.0004.2359
15/01/2020	Email chain between Mr Chin, Mr Tesoriero (copy Mr Papas) titled "RE: Invoice 14206 from PROFESSIONAL HELICOPTER SERVICES PTY LTD is due". Attached remittance shows \$5,000 paid from FGFS account.	FOG.1000.0004.2500 FOG.1000.0004.2503
25/05/2020	Email chain between Mr Chin, Mr Tesoriero, Mr Bouchahine and Mr Papas titled "RE: 1160 Glen Huntly Road VIC 3163", attaching remittance showing \$100,000 paid from FGFS account.	FOG.1000.0001.2688 FOG.1000.0001.2693
27/05/2020	Email from Mr Chin to Mr Tesoriero (and others) titled "James St – Payment 6" attaching remittance showing \$100,000 paid from FGFS account.	FOG.1000.0001.2694 FOG.1000.0001.2695
28/05/2020	Email from Mr Chin to Mr Tesoriero titled "Monthly Invoice – Remittance" attaching remittance showing \$55,000 paid from FGFS account.	FOG.1000.0001.2696 FOG.1000.0001.2697
9/06/2020	Email chain between Mr Chine and John Servinis (copy to Mr Tesoriero and Mr Bouchahine) titled RE: Placelea Pty Ltd to Vince Tesoriero and/or Nominee - Sale of 8-12 Natalia Avenue, Oakleigh South (GM 190144). Attached remittance shows \$586,000 paid from FGFS account.	FOG.1000.0004.1278 FOG.1000.0004.1283
16/06/2020	Email from Mr Tesoriero to Mr Chin and Mr Bouchahine titled "Fwd: Remittance - Berkeley 300k". Attached remittance shows \$300,000 paid from FGFS account.	FOG.1000.0004.1292 FOG.1000.0004.1293
6/10/2020	Emails between Mr Tesoriero and Mr Bouchahine and Mr Chin titled "RE: GraysOnline Invoice 20007068-22". Remittance shows \$239,197.18 paid from FGFS account.	FOG.1000.0001.0255 FOG.1000.0001.2368 FOG.1000.0001.2370 FOG.1000.0006.7480
30/10/2020	Email chain between Mr Chin, Mr Tesoriero and Mr Bouchahine titled "RE: Tesoriero - Change of Corporate Structure **IMPORTANT**". Attached remittance shows \$5,912.46 paid from FGFS account	FOG.1000.0001.2150 FOG.1000.0001.2158
5/05/2021	Emails between Mr Chin, Imogen Moyle, Mr Tesoriero, Mr Bouchahine and others titled "RE: Tesoriero Investment Group Pty Ltd - Facility Maturity". Remittance shows \$2,401,755.00 paid from FGFS account.	FOG.1000.0001.4676 FOG.1000.0001.4678 FOG.1000.0001.4680 FOG.1000.0001.4681
21/05/2021	Email chain between Mr Tesoriero, Mr Papas and Mr Bouchahine titled Re: Vince".	FOG.1000.0003.7021

	Date	Currency	Transaction Am	Beneficiary BSB	Beneficiary Account	Transaction Account Name	Transaction Reference	Remitter BS	Remitter Account
123043979	4/09/2018	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
123043979	4/09/2018	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
123043979	4/09/2018	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
124913559	5/10/2018	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
124913559	5/10/2018	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
124913559	5/10/2018	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
125598984	18/10/2018	AUD	30,000.00	063-104	10572179	Tesoriero	FG1012	082-080	121782934
125598984	18/10/2018	AUD	10,000.00	733-349	780597	Tesoriero	ForumGroup Inv1012	082-080	121782934
125598984	18/10/2018	AUD	10,000.00	013-214	213608896	TESORIERO INVESTMENTS	TESORI	082-080	121782934
126573804	2/11/2018	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
126573804	2/11/2018	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
126573804	2/11/2018	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
128668779	7/12/2018	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
128668779	7/12/2018	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
128668779	7/12/2018	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
130446875	11/01/2019	AUD	30,000.00	063-104	10572179	TESORIERO INVESTMENTS	TESORI	082-080	121782934
130577248	15/01/2019	AUD	10,000.00	013-214	213608896	TESORIERO INVESTMENTS	TESORI	082-080	121782934
130577248	15/01/2019	AUD	10,000.00	733-349	780597	TESORIERO	INV1015	082-080	121782934
131612489	1/02/2019	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
131612489	1/02/2019	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
131612489	1/02/2019	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
131612399	1/02/2019	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
131612399	1/02/2019	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
131612399	1/02/2019	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
133259975	28/02/2019	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
133259975	28/02/2019	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
133259975	28/02/2019	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
135146404	1/04/2019	AUD	30,000.00	063-104	10572179	TESORIERO INVESTMENTS	TESORI	082-080	121782934
135146404	1/04/2019	AUD	10,000.00	733-349	780597	TESORIERO INVESTMENTS	TESORI	082-080	121782934
135146404	1/04/2019	AUD	10,000.00	013-214	213608896	TESORIERO INVESTMENTS	TESORI	082-080	121782934



- + Level 1, 84 William Street
Melbourne VIC 3000
03 7020 9230
- + Level 1, 60 Martin Place
Sydney NSW 2000
02 7202 3404
- + Level 38, 71 Eagle Street
Brisbane QLD 4000
07 3778 3693

30 August 2022

FOR YOUR IMMEDIATE ATTENTION

Attn: Caitlin Murray
MinterEllison
Level 40 Governor Macquarie Tower 1 Farrer Place
SYDNEY NSW 2000

By email

Dear Caitlin,

Westpac Banking Corporation & Anor v Forum Finance Pty Ltd & Ors Federal Court of Australia Proceeding No. NSD616/2021

1. We refer to Order 9 of the Orders of His Honour Justice Lee dated 10 March 2022 and the summaries served by your clients for the purposes of section 50(2) of the *Evidence Act 1995* (Cth) (**Amended Section 50 Summaries**).
2. We are currently trying to understand the evidence your clients rely on to establish its claims against Mr Tesoriero and related entities for funds held on trust. In undertaking this task, we have some queries in relation to the Section 50 Summaries.
3. *First*, the Amended Section 50 Summaries do not demonstrate what evidence your clients rely on to calculate the attributions referred to in the grey shaded columns titled, 'Westpac Funds' and 'Westpac NZ Funds'.
4. For example, in the amended section 50 summary for payments to 64-66 Berkeley Street, Hawthorn, Victoria the first item dated 6 May 2022 provides an amount for 'Westpac Funds' of \$29,069.52 and an amount for 'Westpac NZ Funds' of \$70,930.48. The document provides no further information as to how those two amounts were calculated.
5. *Second*, while each of the columns refer to a description taken from what appears to be a single document (e.g., the FGFS Xero Loan Statement) we have not been provided with the cross references to the particular document Westpac relies on. We assume those entries derive from a particular document Westpac intends to tender but that link should be made clear so we can evaluate the admissibility of the summary.
6. *Third*, there are summaries with entries where there has been attribution to a particular respondent, but it is not clear on which documents Westpac relies on to make that attribution. Line 1 in the

summary of payments to, or on behalf of, Mr Tesoriero is an example. We will need to understand the documents that Westpac relies on for the attribution.

7. *Finally*, we are unsure as to whether Westpac intends to rely on any evidence in relation to the veracity of the underlying documents – such as, for example, who was responsible for preparing the journal entries that relate to the FGFS Xero Loan Statements noted above. We would be assisted if you could direct us to any particular evidence Westpac relies on in relation to the veracity or admissibility of the underlying documents.
8. In order to narrow the issues in dispute, we would therefore be grateful if you could please provide, for each of the Amended Section 50 Summaries:
 - a. the identify of the specific documents you rely on for the attributions made in the grey shaded columns in each of the summaries by reference to the document IDs;
 - b. to the extent a chain of reasoning has led to the attributions in the grey shaded columns, please identify each step in the reasoning process;
 - c. please identify the document(s) relied on for every entry in each of the summaries by reference to the document IDs;
 - d. in circumstances where there is no reference to a document describing the character of the payment, and the payment is attributed to a particular respondent but not received by that respondent, please identify the specific documents relied on to make that attribution by reference to the document IDs;
 - e. to the extent a chain of reasoning has led to any attribution referred to in (d) above, please identify each step in the reasoning process; and
 - f. please identify any evidence Westpac relies on specifically in relation to the veracity and/or admissibility of the documents underpinning each of the summaries.
9. We appreciate that an explanation of the above may have already been provided to our clients' former solicitors but it would expedite our preparation if you could forward any response you may have previously provided.
10. Please let us know if you would like to discuss. We will otherwise await your response.

Yours faithfully,

A handwritten signature in black ink that reads "Aptum" with a small plus sign to the right of the word.

Aptum Legal

Contacts: Nigel Evans (nigel@aptumlegal.com.au)
Eric Maben (eric@aptumlegal.com.au)
Emma Soulsby (emma@aptumlegal.com.au)

Our Ref: B-0307

Copied To: None

Enclosures: Payments to 64-66 Berkeley Street, Hawthorn Victoria

1 September 2022

BY EMAIL

Nigel Evans and Eric Maben
Level 1
84 William Street
Melbourne VIC 3000

Dear Mr Evans and Mr Maben

Westpac Banking Corporation (Westpac) & Anor v Forum Finance Pty Limited & Ors - Federal Court of Australia Proceeding NSD616/2021 (Proceedings)

1. We refer to your letter dated 30 August 2022 about our clients' summaries served for the purposes of section 50(2) of the *Evidence Act 1995* (Cth) (**Section 50 Summaries**).
2. To the extent that you suggest that the Section 50 Summaries must contain cross-references to the voluminous documents summarised by each summary in order to be admissible, we disagree: the formal requirements are identified in section 50(2) of the *Evidence Act 1995* (Cth). However, for the purpose of facilitating your clients' examination of the documents in question we have prepared a copy of each Section 50 Summary that includes a hyperlinked reference to the documents summarised. In the email sending this letter is a sharefile link to the bulk of the hyperlinked Section 50 Summaries. We trust that this will assist you in your consideration of the Section 50 Summaries. There are a small number which we are in the process of finalising and which we will upload to the same sharefile as soon as we can.
3. To answer generally your queries as to the Section 50 Summaries, we have assumed your questions are directed towards the payments summaries for each respondent and have directed our responses to those Section 50 Summaries (**Tracing Summaries**).
4. The Tracing Summaries summarise:
 - (a) bank statements for the Forum companies and for each relevant respondent. These bank statements have been included as an exhibit to the affidavit of Jason Preston affirmed 7 February 2022 (**Preston February**) and second affidavit of Mr Preston affirmed 10 June 2022 (**Preston June**): see exhibit JP-3 and exhibit JP-11. As set out in Preston June at [14] and Preston February at [22]-[25], the bank statements have been converted into Excel form: see relevantly exhibit JP-12;
 - (b) a trace of outgoing transactions from a specified subset of the Forum bank accounts prepared by National Australia Bank Limited, produced on subpoena (see Packet S14), which includes information as to the recipient entity and the recipient's bank account details (**NAB Outbound Trace**);
 - (c) extracts from the accounting system (Xero) on which the accounting records for the Forum entities, including Forum Group Financial Services Pty Ltd (in liquidation) (**FGFS**), were held: see Preston June at [21]. In particular, the Tracing Summaries summarise the FGFS balance sheet as at 30 June 2021 (**FGFS Balance Sheet**) and the transaction listings in respect of balance sheet line items for entities and individual referred to in the FGFS Balance Sheet (**FGFS Xero Transaction Listings**). Those documents are business records of (at least) the relevant Forum company and were kept by that company on the Forum group's server; and

Level 40 Governor Macquarie Tower 1 Farrer Place Sydney
GPO Box 521 Sydney NSW 2001 Australia DX 117 Sydney
T +61 2 9921 8888 F +61 2 9921 8123 minterellison.com

- (d) other books and records in relation to certain of the transactions referred to in the Tracing Summaries. These are identified in the hyperlinked Section 50 Summaries provided today.

5. As to your specific queries, we respond as follows:

- (a) the attributions of the source of funds for each transaction (i.e. the grey shaded columns, including those headed 'Westpac Funds' and 'Westpac NZ Funds') in the Tracing Summaries is derived from the documents referred to and is otherwise shown in the tracing analysis conducted by McGrath Nicol and exhibited to Preston June as exhibit JP-17 (**Tracing Model**) for that particular transaction. The Tracing Model and Preston June disclose the documents relied on;
- (b) as set out above, we respectfully disagree with the proposition that a section 50 summary must contain cross-references to the documents relied upon in order to be admissible. In any event the hyperlinked Section 50 Summaries provide the cross-references requested;
- (c) attribution of payments to or on behalf of a particular respondent is based upon i) the bank statements, including JP-12; ii) the FGFS Xero Transaction Listings; and iii) books and records available for the transaction. The attribution is further identified in the Tracing Model;
- (d) our clients rely upon the FGFS Balance Sheet and FGFS Xero Transaction Listings as business records of FGFS. However, as previously indicated, our clients do not accept the characterisation of certain of the transactions as "loans". As to the veracity or otherwise of FGFS's business records, we note that your client, Mr Tesoriero, was a director of FGFS in the period from 19 November 2018 to 30 April 2020. We add that your clients have an obligation under section 37M of the *Federal Court Act 1975* (Cth) to only litigate the real issues. The time when it was acceptable to put a party to proof of the veracity of every document to be tendered has long passed. If your clients do challenge the veracity of a document they need to do so by admissible evidence, and on a proper basis (as our clients have done). We add that your clients, to date, have not sought to challenge the veracity of any documents, some of which including the FGFS Xero Transaction Listings have been tendered on a number of interlocutory applications, and a change of solicitors is not a proper basis for your clients to engage in a change of forensic course.

Yours faithfully

MinterEllison



Caitlin Murray
Partner

Contact: Kate Cockburn T: +61 2 9921 4304
kate.cockburn@minterellison.com
Partner: Caitlin Murray T: +61 2 9921 4279
OUR REF: 1353397



- + Level 1, 84 William Street
Melbourne VIC 3000
03 7020 9230
- + Level 1, 60 Martin Place
Sydney NSW 2000
02 7202 3404
- + Level 38, 71 Eagle Street
Brisbane QLD 4000
07 3778 3693

1 September 2022

Attn: Caitlin Murray
MinterEllison
Level 40 Governor Macquarie
Tower 1 Farrer Place
SYDNEY NSW 2000

By email

Dear Caitlin,

Westpac Banking Corporation & Anor v Forum Finance Pty Ltd & Ors
Federal Court of Australia Proceeding No. NSD616/2021

- 1 The purpose of this letter is to ask questions to help us understand the nature of the allegations made by Westpac at paragraphs [1895] to [1897] of the Second Further Amended Statement of Claim (the **SFASOC**).
 - 2 We note we have the benefit of letters sent to Mr Tesoriero's former solicitors dated 22 September 2021 and 31 January 2022 in response to requests for further particulars. This is not a request for further particulars.
 - 3 We do not understand whether the allegations at [1895] of the SFASOC have a separate factual basis to the allegations made about funds held in trust arising from the claim of knowing receipt at [1906].
 - 4 In your letters of 22 September 2021 and 31 January 2022, you make clear that the allegation at paragraph [1895] is an allegation of a trust arising at law under the principles outlined in *Black v S Freedman & Company* (1910) 12 CLR 105 as a consequence of the receipt of stolen money. We understand the separate basis for the allegation, and we understand that such an allegation is different in character to that of knowing receipt.
 - 5 However, in order to make an allegation of a trust arising at law in the *Black v S Freedman* sense, it is still necessary for Westpac to identify when the recipient (in this case Mr Tesoriero) was on notice of the theft, as it is only those funds that are in the hands of the recipient at the time sufficient knowledge is obtained that are recoverable (or impressed with the trust).
 - 6 This is where it is difficult to distinguish the trust allegation at [1895] from the trust allegation arising from a claim in knowing receipt at [1906].
-

- 7 Can you please clarify the following:
- 7.1 When does Westpac allege that Mr Tesoriero was on notice of the receipt of stolen funds for the purpose of giving rise to the trust alleged at [1895]?
- 7.2 For the purpose of establishing notice, is Westpac intending to rely on the allegation of Mr Tesoriero's knowledge at [1905]?
- 7.3 If yes, what function does the allegation at [1895] play? To put it another way, if Westpac intends to rely on the allegation of knowledge at [1905] to prove notice for the purpose of establishing the trust at [1895], does it follow that if Westpac fails to establish the allegations at [1905], then it fails to establish the trust claims at both [1895] and at [1906]? If no, then what is the alternative basis on which Westpac alleges notice?
- 7.4 If no to question 7.2 above, what is the basis for Westpac's allegations that Mr Tesoriero was on notice and where do we find it alleged in the SFASOC?

* * * * *

We look forward to hearing from you soon.

Yours faithfully,

A handwritten signature in black ink that reads "Aptum" followed by a small plus sign.

Aptum Legal

Contacts: Nigel Evans, Managing Director (nigel@aptumlegal.com.au)
Eric Maben, Senior Lawyer (eric@aptumlegal.com.au)
Emma Soulsby, Project Manager (emma@aptumlegal.com.au)

Our Ref: B-0307

Copied To: None

Enclosures: None

5 September 2022

BY EMAIL

Nigel Evans and Eric Maben
Level 1
84 William Street
Melbourne VIC 3000

Dear Mr Evans and Mr Maben

Westpac Banking Corporation (Westpac) & Anor v Forum Finance Pty Limited & Ors - Federal Court of Australia Proceeding NSD616/2021 (Proceedings)

We refer to your letter of 1 September 2022.

We do not agree with your characterisation of the nature of a *Black v Freedman* trust as set out in paragraph 5 of your letter and therefore what flows from that in paragraphs 6 and 7 of your letter.

As set out in our response to the request for particulars dated 31 January 2022, stolen money, or the traceable proceeds of stolen money is held on trust, be it constructive or resulting, for the owner. The claim arises at law from the fact that the funds were stolen from Westpac or WNZL and does not depend on any requirement that the recipient have notice of the theft. It is therefore, respectfully, unnecessary for Westpac and WNZL to establish that “*Mr Tesoriero .. was on notice of the theft*” at the time of receipt of the funds in order to succeed in relation to the claim at [1895]. We disagree with the assertion that “*only those funds that are in the hands of the recipient at the time sufficient knowledge is obtained that are recoverable (or impressed with the trust)*.”

To the extent that Mr Tesoriero or any entity he controls received trust property as an innocent volunteer without notice (which is not accepted, having regard to the claims at [1898]-[1910]), he cannot retain the property once the true position comes to light: *Black v S Freedman & Company* (1910) 12 CLR 105 at 109 - 110; *Heperu Pty Ltd v Belle* [2009] 76 NSWLR 230 at [92]-[94], [144]-[149]; *Shiu Seng Sze Tu v Lowe* (2014) 89 NSWLR 317 at [141] –[144]; *Fistar v Riverwood Legion and Community Club Ltd* (2016) 91 NSWLR 732 at [45] –[47]. There can be little doubt that Mr Tesoriero was aware of the true facts from no later than 28 June 2021 (being the commencement of the proceeding and the execution of the search orders at 23 Margaret Street Rozelle, at which Mr Tesoriero was present) and is obliged to account to Westpac and WNZL for all funds received as a result of the fraud. Further, and in any event, it is alleged that Mr Tesoriero had notice of the fraudulent scheme by no later than 31 August 2018, or alternatively 13 September 2018 and was aware, or ought reasonably to have known, the true facts at all relevant times.

For the above reasons and for the avoidance of doubt, Westpac does not accept that if the claims at [1905] fail, then the claim at [1895] will also fail.

Yours faithfully
MinterEllison



Contact: Kate Cockburn T: +61 2 9921 4304
kate.cockburn@minterellison.com
Partner: Caitlin Murray T: +61 2 9921 4279
OUR REF: 1353397

Level 40 Governor Macquarie Tower 1 Farrer Place Sydney
GPO Box 521 Sydney NSW 2001 Australia DX 117 Sydney
T +61 2 9921 8888 F +61 2 9921 8123 minterellison.com

Josh Baravelli

From: Eric Maben <eric@aptumlegal.com.au>
Sent: Thursday, 8 September 2022 9:54 AM
To: Caitlin Murray; PROJECT OLYMPUS
Cc: Nigel Evans; Emma Soulsby; Nikolas Kalcic; Josh Baravelli
Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Caitlin,

Thank you for clarifying your client's position.

Can you please confirm:

1. how much is currently held in the CMA
2. how much of those funds relate to funds derived from the sale of 23 Margaret Street (**Margaret Street Funds**)
3. what is the quantum of the proprietary claim made by your client over the Margaret Street Funds (the amended section 50 for payments to 23 Margaret Street refers to an amount of \$7,555.50 which appears to be the total of the proprietary claim over the Margaret Street Funds. If it is another amount, please indicate the amount and refer us to the relevant evidence)

Kind regards,



Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
aptumlegal.com.au

Melbourne Level 1, 84 William St 03 7020 9230 **Sydney** Level 1, 60 Martin Pl 02 7202 3404 **Brisbane** Level 38, 71 Eagle St 07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Wednesday, September 7, 2022 10:46 AM
To: Eric Maben <eric@aptumlegal.com.au>
Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>
Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Eric

Given their proprietary claims against the remaining funds in the CMA, my clients do not consent to any other amounts being paid out of those accounts.

Regards
Caitlin

Caitlin Murray

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)

From: Eric Maben <eric@aptumlegal.com.au>

Sent: Monday 5 September 2022 07:46 PM

To: Caitlin Murray <Caitlin.Murray@minterellison.com>

Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>

Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Caitlin,

If the other parties consent, will your client consent?

Kind regards,



Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
aptumlegal.com.au

Melbourne Level 1, 84 William St
03 7020 9230

Sydney Level 1, 60 Martin Pl
02 7202 3404

Brisbane Level 38, 71 Eagle St
07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

From: Caitlin Murray <Caitlin.Murray@minterellison.com>

Sent: Monday, September 5, 2022 6:04 PM

To: Eric Maben <eric@aptumlegal.com.au>

Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>

Subject: Re: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Eric

MinterEllison does not "hold" any monies in a controlled monies account. To confirm, there is an account in the name of 23 Margaret St set up by Madgwicks, the joint signatories of which are two partners from Madgwicks and two partners from ME (**the CMA**).

Given the proprietary claims by our client (and others) to the balance of the funds held in the CMA, our clients do not agree to release any funds as requested below. As there are claims brought by SMBC and the liquidators of FGFS against 23 Margaret St, their consent would also be required.

Regards
Caitlin

Caitlin Murray
Partner

T [+61 2 9921 4279](tel:+61299214279) M [+61 422 977 971](tel:+61422977971)

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower [1 Farrer Place Sydney NSW 2000](https://www.minterellison.com/locations/sydney)

[minterellison.com](https://www.minterellison.com) Follow us on [LinkedIn](#) and [Twitter](#)



On 5 Sep 2022, at 3:41 pm, Eric Maben <eric@aptumlegal.com.au> wrote:

Dear Caitlin,

We have been provided with an outstanding ASIC fee in the sum of \$347.00 due for 23 Margaret Street Pty Ltd.

We understand that MinterEllison holds monies from the proceeds of the sale of the property previously owned by 23 Margaret Street Pty Ltd in its controlled monies account.

Noting the exceptions in the Freezing Orders, we request that MinterEllison makes payment of this amount, or release the funds to our trust account, so that we can make payment of them.

Please let us know if there are any issues or concerns with making the payment noted above.

Kind regards,

Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
[aptumlegal.com.au](https://www.aptumlegal.com.au)

Melbourne Level 1, 84 William St
03 7020 9230

Sydney Level 1, 60 Martin Pl
02 7202 3404

Brisbane Level 38, 71 Eagle St
07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

Josh Baravelli

From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Monday, 12 September 2022 1:21 PM
To: Eric Maben
Cc: Nigel Evans; Emma Soulsby; Nikolas Kalcic; Josh Baravelli; PROJECT OLYMPUS; Tuan Van Le
Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Eric

In answer to your queries:

1. We understand that there is currently \$271,331.20 remaining in the Margaret Street CMA.
2. The balance of the proceeds from the sale of the 23 Margaret Street property were placed into the CMA. All remaining funds in the CMA are derived from the proceeds of that sale.
3. The section 50 summary headed "Payments to, or on behalf of, 23 Margaret Street Pty Ltd" (**23 Margaret St Corporate Summary**) identifies monies paid to or to the benefit of 23 Margaret Street Pty Ltd. As the sole purpose of that company was to own the 23 Margaret Street property, prima facie, all payments made to it, or for its benefit, are traceable into the property. The s50 summary headed "Payments to 23 Margaret Street, Rozelle NSW" was an attempt to identify an alternate approach to identifying payments used directly – that is for example without being paid into a bank account or the like - to purchase or improve that property, or making loan repayments in relation to the loan secured over it. However, our clients' primary case is that as 23 Margaret Street Pty Ltd was a single purpose company, and prima facie any payment to that company, or for its benefit, unless shown to the contrary, is capable of being traced into the asset owned by the company (being the property at 23 Margaret Street Rozelle). On that basis, the quantum of our clients' proprietary claim against 23 Margaret Street Pty Ltd is the amount of \$638,433.49 (being the total of the Westpac Funds and Westpac NZ Funds set out in the 23 Margaret St Corporate Summary).

Regards
Caitlin

Caitlin Murray

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com [Follow us on LinkedIn and Twitter](#)



From: Eric Maben <eric@aptumlegal.com.au>

Sent: Thursday 8 September 2022 09:54 AM

To: Caitlin Murray <Caitlin.Murray@minterellison.com>; PROJECT OLYMPUS
<PROJECTOLYMPUS@minterellison.com>

Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic
<nikolas@aptumlegal.com.au>; Josh Baravelli <josh@aptumlegal.com.au>

Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Caitlin,

Thank you for clarifying your client's position.

Can you please confirm:

1. how much is currently held in the CMA
2. how much of those funds relate to funds derived from the sale of 23 Margaret Street (**Margaret Street Funds**)
3. what is the quantum of the proprietary claim made by your client over the Margaret Street Funds (the amended section 50 for payments to 23 Margaret Street refers to an amount of \$7,555.50 which appears to be the total of the proprietary claim over the Margaret Street Funds. If it is another amount, please indicate the amount and refer us to the relevant evidence)

Kind regards,



Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
aptumlegal.com.au

Melbourne Level 1, 84 William St 03 7020 9230 **Sydney** Level 1, 60 Martin Pl 02 7202 3404 **Brisbane** Level 38, 71 Eagle St 07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

From: Caitlin Murray <Caitlin.Murray@minterellison.com>

Sent: Wednesday, September 7, 2022 10:46 AM

To: Eric Maben <eric@aptumlegal.com.au>

Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>

Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Eric

Given their proprietary claims against the remaining funds in the CMA, my clients do not consent to any other amounts being paid out of those accounts.

Regards
Caitlin

Caitlin Murray

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



From: Eric Maben <eric@aptumlegal.com.au>
Sent: Monday 5 September 2022 07:46 PM
To: Caitlin Murray <Caitlin.Murray@minterellison.com>
Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>
Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Caitlin,

If the other parties consent, will your client consent?

Kind regards,



Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
aptumlegal.com.au

Melbourne Level 1, 84 William St 03 7020 9230 **Sydney** Level 1, 60 Martin Pl 02 7202 3404 **Brisbane** Level 38, 71 Eagle St 07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Monday, September 5, 2022 6:04 PM
To: Eric Maben <eric@aptumlegal.com.au>
Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>
Subject: Re: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Eric

MinterEllison does not "hold" any monies in a controlled monies account. To confirm, there is an account in the name of 23 Margaret St set up by Madgwicks, the joint signatories of which are two partners from Madgwicks and two partners from ME (**the CMA**).

Given the proprietary claims by our client (and others) to the balance of the funds held in the CMA, our clients do not agree to release any funds as requested below. As there are claims brought by SMBC and the liquidators of FGFS against 23 Margaret St, their consent would also be required.

Regards
Caitlin

Caitlin Murray

Partner

T [+61 2 9921 4279](tel:+61299214279) M [+61 422 977 971](tel:+61422977971)

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower [1 Farrer Place Sydney NSW 2000](https://www.minterellison.com)

minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



On 5 Sep 2022, at 3:41 pm, Eric Maben <eric@aptumlegal.com.au> wrote:

Dear Caitlin,

We have been provided with an outstanding ASIC fee in the sum of \$347.00 due for 23 Margaret Street Pty Ltd.

We understand that MinterEllison holds monies from the proceeds of the sale of the property previously owned by 23 Margaret Street Pty Ltd in its controlled monies account.

Noting the exceptions in the Freezing Orders, we request that MinterEllison makes payment of this amount, or release the funds to our trust account, so that we can make payment of them.

Please let us know if there are any issues or concerns with making the payment noted above.

Kind regards,

Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
aptumlegal.com.au

Melbourne Level 1, 84 William St 03 7020 9230 **Sydney** Level 1, 60 Martin Pl 02 7202 3404 **Brisbane** Level 38, 71 Eagle St 07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal



- + Level 1, 84 William Street
Melbourne VIC 3000
03 7020 9230
- + Level 1, 60 Martin Place
Sydney NSW 2000
02 7202 3404
- + Level 38, 71 Eagle Street
Brisbane QLD 4000
07 3778 3693

12 September 2022

Attn: Caitlin Murray
MinterEllison
Level 40 Governor Macquarie
Tower 1 Farrer Place
SYDNEY NSW 2000

By email

Dear Caitlin,

Westpac Banking Corporation & Anor v Forum Finance Pty Ltd & Ors
Federal Court of Australia Proceeding No. NSD616/2021

- 1 We are writing to clarify the nature of the allegations made by Westpac in its Second Further Amended Statement of Claim (the **SFASOC**).
 - 2 We have the benefit of letters sent to Mr Tesoriero's former solicitors dated 22 September 2021 and 31 January 2022 (the **January Response**) in response to requests for further particulars. For the avoidance of doubt, we confirm this is not a request for further particulars.
 - 3 We would be grateful if you could please consider and respond to the following:
 - 4 **First**, the SFASOC does not identify what amount is claimed from each Respondent under each head of claim.
 - 4.1 Is the amount claimed from each Respondent the amount in the SFASOC, which is repeated in the January Response? For example, in respect to the claim against Canner Investments, at [26(3)(ii)(D)] of the January Response, you state "at least \$1,180,000 as pleaded in paragraph 2134" was claimed from Canner Investments. Are these amounts (the amounts listed in the January Response) the amounts claimed from each Respondent?
 - 4.2 Alternatively, is the amount claimed from each Respondent the total "payments to, or on behalf of" the relevant Respondent, as set out in the section 50 summary for that Respondent? For example, in respect to the claim against Canner Investments, the grey shaded columns (titled, 'Westpac Funds' and 'Westpac NZ Funds') of the amended section 50 summary provide an amount for 'Westpac Funds' of \$156,431.34 and an amount for 'Westpac NZ Funds' of \$14,684.81. Is this the amount claimed from each Respondent?
-

- 4.3 Alternatively, is the amount claimed from each Respondent the “total funds paid to, or for the benefit of” the relevant Respondent, as set out in the s 50 summary for that Respondent? For example, in respect to the claim against Canner Investments, the “Amount” of total funds paid to or for the benefit of Canner Investments is \$160,357.64, of which \$131,002.64 is allocated to ‘Westpac Funds’ and \$12,742.60 is allocated to ‘Westpac NZ Funds’.
- 4.4 Alternatively, is the amount claimed from each Respondent the amounts shown in the respondent tab in either Exhibit JP-16 to the Affidavit of Jason Preston dated 10 June 2022 (**Revised Tracing Model**) or Exhibit JP-18 to the Affidavit of Jason Preston dated 10 June 2022 (**Alternative Tracing Model**)? For example, in respect to the claim against Canner Investments, in each of the Revised Tracing Model and the Alternative Tracing Model, the amount shown is nil.
- 4.5 Alternatively, is the amount claimed from each Respondent some other amount?
- 5 **Second**, how (if at all) do the property and asset section 50 summaries feed into the claims against the Respondents? The following examples demonstrate the ambiguity:
- 5.1 for 23 Margaret Street, the “respondent” section 50 summary includes \$638,433.49 allocated to Westpac entities, whereas the “property” section 50 summary includes only \$6,574.76 allocated to Westpac entities, and an additional \$359,692.46 which is not allocated to Westpac or any other financier, and which does not appear in the “respondent” summary at all; and
- 5.2 for Mangusta, the “respondent” section 50 summary includes \$267.00 allocated to Westpac entities, whereas the “asset” summary includes \$82,311.70 under the heading “XOXO”.
- 6 **Third**, it appears from the section 50 summaries that the categorisation of various payments has changed since the Affidavit of Jason Preston dated 10 June 2022. For example, in respect to the claim against 8-12 Natalia Ave, items 19, 21, 22 and 24 in the section 50 summary are not allocated to 8-12 Natalia Ave in the Revised Tracing Model and the Alternative Tracing Model. Do your clients intend to serve a further version of the tracing models with updated categorisation? If not, which categorisation does Westpac intend to rely on?
- 7 **Fourth**, a number of section 50 summaries (for example, the summaries for Tesoriero Investment Group and Mr Tesoriero Snr) state that, for certain payments, the financier contributions are “not yet determined”. Does Westpac intend to determine the financier contributions for these payments before trial? If so, when will the relevant evidence be served? If not, what is the purpose of including those payments in the section 50 summaries?
- 8 **Fifth**, there are several payments which appear to be traced to the Respondents (primarily FG and FEA), but which appear to have been subsequently paid back to Westpac. For example, on 3 August 2020, a payment of \$3,385,284 was made by FEA to FG, with description including “BHO RENT”, and on the next day two payments totalling that exact amount were made out of the relevant FG account. From the inclusion of the two outgoing payments in the “Payments to EQWE

/ BHO" section 50 summary, these payments appear to have been made to Eqwe on behalf of Westpac. However, the 3 August payment also appears in the FG section 50 summary and is allocated to FG in the tracing model. In circumstances where the Liquidators are not actively defending the proceedings on behalf of the entities they represent, do your clients or the Liquidators intend to reconcile the payments to Eqwe with the section 50 summaries for the respondents in liquidation, to ensure that Westpac does not over claim against these respondents?

- 9 **Sixth**, the standard formulation for the allegations contained in the SFASOC in respect to "Funds held on trust" is that, for each Respondent, the Respondent held on trust for Westpac and WNZL "all funds, or the traceable proceeds of those funds".¹ There appears to be a difference between "all funds" on the one hand, and "the traceable proceeds of those funds" on the other. However, it is not clear to us what your clients claim to be the traceable proceeds as against each Respondent. To assist us to understand the case our clients have to meet, for each Respondent, please identify "all funds", and then separately identify what your clients contends are "the traceable proceeds of those funds".

* * * * *

As is evident from the above questions, we are unable to identify the case that needs to be met by our clients and, as such, we would be assisted by your response to the above questions.

We look forward to hearing from you soon.

Yours faithfully,



Aptum Legal

Contacts: Nigel Evans, Managing Director (nigel@aptumlegal.com.au)
 Eric Maben, Senior Lawyer (eric@aptumlegal.com.au)
 Emma Soulsby, Project Manager (emma@aptumlegal.com.au)
 Our Ref: B-0307
 Copied To: None
 Enclosures: None

¹ SFASOC at [1895]; [1990]; [2080]; [2098]; [2116]; [2134]; [2152]; [2170]; [2188]; [2206]; [2224]; [2242]; [2260]; [2278]; [2296]; [2314]; [2524]; [2543]; [2562]; [2581]; [2654].

Josh Baravelli

From: Eric Maben <eric@aptumlegal.com.au>
Sent: Thursday, 15 September 2022 6:41 AM
To: Caitlin Murray; PROJECT OLYMPUS
Cc: Nigel Evans; Emma Soulsby; Nikolas Kalcic; Josh Baravelli; Tuan Van Le
Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Caitlin,

Thank you for your response.

A few questions arise from your explanation. We do not understand the status of the alternative approach.

In relation to 23 Margaret St, you state your clients' primary case, and we understand how that is put. However, we are confused about the status of this attempted alternative approach, and we would be assisted by further explanation.

1. Are your clients' also putting an alternative case on the amounts that can be traced into 23 Margaret St?
2. If so, what is the basis for the alternative claim and how much is claimed?
3. Has the alternative claim been pleaded?
4. Do you intend to amend the pleadings to plead the alternative claim?

Kind regards,



Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
aptumlegal.com.au

Melbourne Level 1, 84 William St 03 7020 9230 **Sydney** Level 1, 60 Martin Pl 02 7202 3404 **Brisbane** Level 38, 71 Eagle St 07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Monday, September 12, 2022 1:21 PM
To: Eric Maben <eric@aptumlegal.com.au>
Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; Josh Baravelli <josh@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>; Tuan Van Le <tuan@aptumlegal.com.au>
Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Eric

In answer to your queries:

1. We understand that there is currently \$271,331.20 remaining in the Margaret Street CMA.
2. The balance of the proceeds from the sale of the 23 Margaret Street property were placed into the CMA. All remaining funds in the CMA are derived from the proceeds of that sale.
3. The section 50 summary headed "Payments to, or on behalf of, 23 Margaret Street Pty Ltd" (**23 Margaret St Corporate Summary**) identifies monies paid to or to the benefit of 23 Margaret Street Pty Ltd. As the sole purpose of that company was to own the 23 Margaret Street property, prima facie, all payments made to it, or

for its benefit, are traceable into the property. The s50 summary headed "Payments to 23 Margaret Street, Rozelle NSW" was an attempt to identify an alternate approach to identifying payments used directly – that is for example without being paid into a bank account or the like - to purchase or improve that property, or making loan repayments in relation to the loan secured over it. However, our clients' primary case is that as 23 Margaret Street Pty Ltd was a single purpose company, and prima facie any payment to that company, or for its benefit, unless shown to the contrary, is capable of being traced into the asset owned by the company (being the property at 23 Margaret Street Rozelle). On that basis, the quantum of our clients' proprietary claim against 23 Margaret Street Pty Ltd is the amount of \$638,433.49 (being the total of the Westpac Funds and Westpac NZ Funds set out in the 23 Margaret St Corporate Summary).

Regards
Caitlin

Caitlin Murray

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com [Follow us on LinkedIn and Twitter](#)

From: Eric Maben <eric@aptumlegal.com.au>

Sent: Thursday 8 September 2022 09:54 AM

To: Caitlin Murray <Caitlin.Murray@minterellison.com>; PROJECT OLYMPUS
<PROJECTOLYMPUS@minterellison.com>

Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic
<nikolas@aptumlegal.com.au>; Josh Baravelli <josh@aptumlegal.com.au>

Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Caitlin,

Thank you for clarifying your client's position.

Can you please confirm:

1. how much is currently held in the CMA
2. how much of those funds relate to funds derived from the sale of 23 Margaret Street (**Margaret Street Funds**)
3. what is the quantum of the proprietary claim made by your client over the Margaret Street Funds (the amended section 50 for payments to 23 Margaret Street refers to an amount of \$7,555.50 which appears to be the total of the proprietary claim over the Margaret Street Funds. If it is another amount, please indicate the amount and refer us to the relevant evidence)

Kind regards,



Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
aptumlegal.com.au

Melbourne Level 1, 84 William St 03 7020 9230 **Sydney** Level 1, 60 Martin Pl 02 7202 3404 **Brisbane** Level 38, 71 Eagle St 07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Wednesday, September 7, 2022 10:46 AM
To: Eric Maben <eric@aptumlegal.com.au>
Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>
Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Eric

Given their proprietary claims against the remaining funds in the CMA, my clients do not consent to any other amounts being paid out of those accounts.

Regards
Caitlin

Caitlin Murray

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



From: Eric Maben <eric@aptumlegal.com.au>
Sent: Monday 5 September 2022 07:46 PM
To: Caitlin Murray <Caitlin.Murray@minterellison.com>
Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>
Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Caitlin,

If the other parties consent, will your client consent?

Kind regards,



Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
aptumlegal.com.au

Melbourne Level 1, 84 William St 03 7020 9230 **Sydney** Level 1, 60 Martin Pl 02 7202 3404 **Brisbane** Level 38, 71 Eagle St 07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Monday, September 5, 2022 6:04 PM
To: Eric Maben <eric@aptumlegal.com.au>
Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>
Subject: Re: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Eric

MinterEllison does not “hold” any monies in a controlled monies account. To confirm, there is an account in the name of 23 Margaret St set up by Madgwicks, the joint signatories of which are two partners from Madgwicks and two partners from ME (**the CMA**).

Given the proprietary claims by our client (and others) to the balance of the funds held in the CMA, our clients do not agree to release any funds as requested below. As there are claims brought by SMBC and the liquidators of FGFS against 23 Margaret St, their consent would also be required.

Regards
Caitlin

Caitlin Murray
Partner
T [+61 2 9921 4279](tel:+61299214279) M [+61 422 977 971](tel:+61422977971)
caitlin.murray@minterellison.com
MinterEllison Governor Macquarie Tower [1 Farrer Place Sydney NSW 2000](https://www.minterellison.com/locations/sydney)
[minterellison.com](https://www.minterellison.com) **Follow us on [LinkedIn](#) and [Twitter](#)**



On 5 Sep 2022, at 3:41 pm, Eric Maben <eric@aptumlegal.com.au> wrote:

Dear Caitlin,

We have been provided with an outstanding ASIC fee in the sum of \$347.00 due for 23 Margaret Street Pty Ltd.

We understand that MinterEllison holds monies from the proceeds of the sale of the property previously owned by 23 Margaret Street Pty Ltd in its controlled monies account.

Noting the exceptions in the Freezing Orders, we request that MinterEllison makes payment of this amount, or release the funds to our trust account, so that we can make payment of them.

Please let us know if there are any issues or concerns with making the payment noted above.

Kind regards,

Eric Maben
Senior Lawyer

Melbourne Level 1, 84 William St 03 7020 9230 **Sydney** Level 1, 60 Martin Pl 02 7202 3404 **Brisbane** Level 38, 71 Eagle St 07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its

attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

Form C3

CERTIFICATE OF DETERMINATION OF MANAGER'S ASSESSMENT COSTS*Legal Profession Uniform Law Application Act 2014 (NSW) s. 71***Assessment Number: 2021/00355719****Costs Applicant Billing Law Practice****Fortis Law Group****Costs Respondent Client****Vincenzo Frank Tesoriero****The Following Determinations Are** made under the *Legal Profession Uniform Law Application Act 2014 s 71*:

1. Costs incurred by the costs assessor and the Manager, Costs Assessment	\$ N/A
2. Costs related to remuneration of costs assessor	\$ 6,238.65
3. Total of the above	\$ 6,238.65
4. Payable by costs applicant	\$ NIL
5. Payable by costs respondent	\$ 6,238.65

A statement of reasons accompanies this certificate.

Costs Applicant: Fortis Law Group

Level 11, 75 Elizabeth Street
 Sydney NSW 2000
 Telephone: (02) 9233 2722
 Email: asarkis@fortislaw.com.au

Costs Respondent: Madgwicks Lawyers

Level 6, 140 William Street
 Melbourne VIC 3000
 Telephone: (03) 9242 4741
 Email: sazz.nasimi@madgwicks.com.au; melissa.passarelli@madgwicks.com.au



Signature of costs assessor:

Name of costs assessor: Michael Eagle

Certificate issued by the costs assessor and sent to the Manager, Costs Assessment on: **23 August 2022**Certificate sent by the **Manager, Costs Assessment**to the parties on: **7 September 2022**

* Delete or modify as appropriate. Manager's certification requires stamp or seal.

For completion by the Manager, Costs Assessment*Legal Profession Uniform Law Application Act 2014 s 71(3)(a)*

Certified as follows:

*The costs applicant has paid the amount at item 5 of this certificate. That amount is payable by the costs respondent to the costs applicant.

~~*The costs respondent has paid the amount at item 4 of this certificate. That amount is payable by the costs applicant to the costs respondent.~~

Manager, Costs Assessment

Date: 7 September 2022



Form C1

CERTIFICATE OF DETERMINATION OF COSTS
ASSESSMENT OTHER THAN OF PARTY/PARTY COSTS

Legal Profession Act 2004 (NSW) s 368

Legal Profession Uniform Law Application Act 2014 (NSW) s.70

Assessment Number: 2021/00355719

Costs Applicant Billing Law Practice

Fortis Law Group

Costs Respondent Client

Vincenzo Frank Tesoriero

The costs that have been assessed are the costs claimed in the following bill: Invoice #6451 of Fortis Law Group to Vincenzo Frank Tesoriero dated 12/11/2021.¹

The amounts determined in the assessment are as follows:

1. Amount of costs assessed	\$ 203,463.35
2. Interest on costs to date	\$ 3,890.33
3. Add in respect of filing fee	\$ 2,336.61
4. Less any amount included in a pre-completion certificate	\$ N/A
5. Total amount specified in this certificate	<u>\$ 209,690.29</u>

I substitute the amount at item 1 above for the amount claimed in the bills referred to above.

Subject to allowance for amounts paid in respect of the relevant costs, the total amount specified in this certificate is payable to the abovenamed law practice by the abovenamed client.

Costs Applicant: Fortis Law Group

Level 11, 75 Elizabeth Street

Sydney NSW 2000

Telephone: (02) 9233 2722

Email: asarkis@fortislaw.com.au



Costs Respondent: Madgwicks Lawyers

Level 6, 140 William Street

Melbourne VIC 3000

Telephone: (03) 9242 4741

Email: sazz.nasimi@madgwicks.com.au; melissa.passarelli@madgwicks.com.au

¹ E.g. bill #1234 of AB to CD dated 1/7/2016. If the bills are numerous, a schedule may be attached. If the costs are not set out in bills, modify the wording of the certificate appropriately.

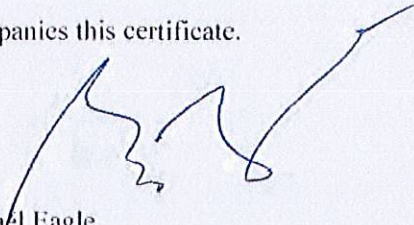
For the convenience of the parties but not forming part of this certificate, I record the following:²

The amount that I have treated as paid (for the purpose of calculating interest payable) is	\$ N/A
The total amount specified in this certificate *exceeds / falls short of that amount by	\$ N/A

A statement of reasons accompanies this certificate.

Signature of costs assessor:

Name of costs assessor: Michael Eagle



Certificate issued by the costs assessor and sent to the Manager, Costs Assessment on: **23 August 2022**

Certificate sent to the parties by *costs assessor / Manager, Costs Assessment on: 7 September 2022

² * Modify or omit if appropriate.

From: [Eric Maben](#)
To: "[Caitlin Murray](#)"; [Anthony Sommer](#); "[amy@lascorp.com](#)"; [PROJECT OLYMPUS](#); "[Ken Gray](#)"
Cc: [Nigel Evans](#); [Nikolas Kalcic](#); [Josh Baravelli](#); [Emma Soulsby](#)
Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ABL-MATTER.FID1159220] [ME-ME.FID6264995]
Date: Tuesday, 13 September 2022 4:26:58 PM
Attachments: [Notice of assessment .pdf](#)
[image001.png](#)

Dear Caitlin,

Please see attached.

Kind regards,



Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
[aptumlegal.com.au](#)

Melbourne Level 1, 84 William St
03 7020 9230

Sydney Level 1, 60 Martin Pl
02 7202 3404

Brisbane Level 38, 71 Eagle St
07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

From: Caitlin Murray <Caitlin.Murray@minterellison.com>

Sent: Tuesday, September 13, 2022 2:55 PM

To: Eric Maben <eric@aptumlegal.com.au>; Anthony Sommer <Anthony.Sommer@minterellison.com>; 'amy@lascorp.com' <amy@lascorp.com>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>; 'Ken Gray' <KGray@abl.com.au>

Cc: Nigel Evans <nigel@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; Josh Baravelli <josh@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Caitlin Murray <Caitlin.Murray@minterellison.com>

Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ABL-MATTER.FID1159220] [ME-ME.FID6264995]

Eric

Please also let us have a copy of the assessment referred to below.

Regards
Caitlin

Caitlin Murray

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

[minterellison.com](#) Follow us on [LinkedIn](#) and [Twitter](#)



From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Tuesday 13 September 2022 02:42 PM
To: Eric Maben <eric@aptumlegal.com.au>; Anthony Sommer <Anthony.Sommer@minterellison.com>; 'amy@lascorp.com' <amy@lascorp.com>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>; 'Ken Gray' <KGray@abl.com.au>
Cc: Nigel Evans <nigel@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; Josh Baravelli <josh@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>
Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ABL-MATTER.FID1159220] [ME-ME.FID6264995]
Importance: High

Dear Colleagues

Both 8-12 Natalia Ave Oakleigh Pty Limited and Mr Tesoriero are the subject of a freezing orders, copies of which are attached.

As set out in our letter to ABL of 22 September 2021 (which was copied to both Madgwicks and Fortis Law) and which is also attached, our clients' position is that the Balance Amount (as defined in that letter) is held on trust for them and they do not agree to it being used to meet any tax liability of Mr Tesoriero or any other party.

We also do not presently agree that any of the exemptions to the Freezing Orders allow such payment to be made.

All of our clients' rights are reserved.

Regards
Caitlin

Caitlin Murray
Partner
T +61 2 9921 4279 M +61 422 977 971
caitlin.murray@minterellison.com
MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000
minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



From: Eric Maben <eric@aptumlegal.com.au>
Sent: Tuesday 13 September 2022 01:34 PM
To: Anthony Sommer <Anthony.Sommer@minterellison.com>; Caitlin Murray <Caitlin.Murray@minterellison.com>; 'amy@lascorp.com' <amy@lascorp.com>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>; 'Ken Gray' <KGray@abl.com.au>
Cc: Nigel Evans <nigel@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; Josh Baravelli <josh@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>
Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ABL-MATTER.FID1159220] [ME-ME.FID6264995]

Dear Colleagues,

We confirm that on Thursday evening last week, we received a Notice of Assessment from the Victorian State Revenue Office in the sum of \$354,530.00 for duties payable by our client (Vince Tesoriero) by 10 October 2022.

We understand that Arnold Block Leibler hold sufficient funds in its trust account to cover this notice of assessment and accordingly will be making payment of it.

Dear Ken, please kindly confirm if this is correct?

Kind regards,



Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
aptumlegal.com.au

Melbourne Level 1, 84 William St
03 7020 9230

Sydney Level 1, 60 Martin Pl
02 7202 3404

Brisbane Level 38, 71 Eagle St
07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

From: Ken Gray <KGray@abl.com.au>

Sent: Monday, September 12, 2022 3:11 PM

To: Anthony Sommer <Anthony.Sommer@minterellison.com>; Eric Maben <eric@aptumlegal.com.au>

Cc: Caitlin Murray <Caitlin.Murray@minterellison.com>; Amy Golvan (amy@lascorp.com) <amy@lascorp.com>; Nigel Evans <nigel@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; Josh Baravelli <josh@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>

Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ABL-MATTER.FID1159220] [ME-ME.FID6264995]

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

Thank you, Anthony,

We understand that State Revenue Office either has, or will shortly, issue an assessment notice to Aptum Legal – [@Eric Maben](#), can you confirm if this has been received?

Regards

Ken Gray | Partner

Arnold Bloch Leibler
Level 21, 333 Collins Street, Melbourne Victoria 3000
E: kgray@abl.com.au | T: 61 3 9229 9874 | M: 0417 352 369 | [Vcard](#)

Wurundjeri Country



From: Anthony Sommer <Anthony.Sommer@minterellison.com>

Sent: Monday, 12 September 2022 1:49 PM

To: Ken Gray <KGray@abl.com.au>

Cc: Caitlin Murray <Caitlin.Murray@minterellison.com>; Amy Golvan (<amy@lascorp.com> <amy@lascorp.com>); Nigel Evans <nigel@aptumlegal.com.au>; Eric Maben <eric@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; Josh Baravelli <josh@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>

Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ABL-MATTER.FID1159220] [ME-ME.FID6264995]

Dear Ken

We refer to the emails below.

Please can you provide an update in connection with this matter.

We note that we have copied in Mr Tesoriero's current solicitors (from Aptum Legal) acting for him and his entities in the above proceeding.

We look forward to hearing from you.

Regards

—

Anthony Sommer

Senior Associate

T +61 2 9921 4182 M +61 431 058 780

anthony.sommer@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



From: Ken Gray <KGray@abl.com.au>

Sent: Friday 21 January 2022 12:36 PM

To: Caitlin Murray <Caitlin.Murray@minterellison.com>; Anthony Sommer <Anthony.Sommer@minterellison.com>

Cc: Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>; Amy Golvan (<amy@lascorp.com> <amy@lascorp.com>)

Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ABL-MATTER.FID1159220] [ME-ME.FID6264995]

Hi Caitlin

There has been no response from SRO as yet. We have followed them up again today, and will let you know their response.

Their 'standard' response time is 90 days (which has now been exceeded) – so, even allowing for the intervening holiday shutdown period, a response should be imminent

Regards

Ken Gray | Partner

Arnold Bloch Leibler

Level 21, 333 Collins Street, Melbourne Victoria 3000

E: kgray@abl.com.au | T: 61 3 9229 9874 | M: 0417 352 369 | [Vcard](#)

Wurundjeri Country



From: Caitlin Murray <Caitlin.Murray@minterellison.com>

Sent: Thursday, 20 January 2022 10:29 AM

To: Ken Gray <KGray@abl.com.au>; Anthony Sommer <Anthony.Sommer@minterellison.com>

Cc: Caitlin Murray <Caitlin.Murray@minterellison.com>; Sazz Nasimi

<Sazz.Nasimi@madgwicks.com.au>; Caitlin Murray <Caitlin.Murray@minterellison.com>

Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ABL-MATTER.FID1159220] [ME-ME.FID6264995]

Hi Ken

Are you able to indicate whether there is any change in connection with the funds held in your trust account?

Kind regards
Caitlin

Caitlin Murray

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



From: Ken Gray <KGray@abl.com.au>
Sent: Thursday 25 November 2021 01:58 PM
To: Anthony Sommer <Anthony.Sommer@minterellison.com>
Cc: Caitlin Murray <Caitlin.Murray@minterellison.com>; Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>
Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ABL-MATTER.FID1159220] [ME-ME.FID6264995]

Hi Anthony

No change in status from my email below

Regards

Ken Gray | Partner

Arnold Bloch Leibler
Level 21, 333 Collins Street, Melbourne Victoria 3000
E: kgray@abl.com.au | T: 61 3 9229 9874 | M: 0417 352 369 | [Vcard](#)

Wurundjeri Country



From: Anthony Sommer <Anthony.Sommer@minterellison.com>
Sent: Thursday, 25 November 2021 11:43 AM
To: Ken Gray <KGray@abl.com.au>
Cc: Caitlin Murray <Caitlin.Murray@minterellison.com>; Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>
Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ABL-MATTER.FID1159220] [ME-ME.FID6264995]

Dear Mr Gray

We refer to the correspondence below.

Please could you provide an update.

Regards

Anthony Sommer

Senior Associate

T +61 2 9921 4182 M +61 431 058 780

anthony.sommer@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



From: Ken Gray <KGray@abl.com.au>

Sent: Friday 29 October 2021 12:41 PM

To: Anthony Sommer <Anthony.Sommer@minterellison.com>

Cc: Caitlin Murray <Caitlin.Murray@minterellison.com>; Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>

Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995] [ABL-MATTER.FID1159220]

Hi Anthony

No, we have not had a response – which is in keeping with our recent experiences with these types of matter at SRO. There appears to be a significant backlog at SRO

We will let you know once a response issues.

Regards

Ken Gray | Partner

Arnold Bloch Leibler

Level 21, 333 Collins Street, Melbourne Victoria 3000

E: kgray@abl.com.au | T: 61 3 9229 9874 | M: 0417 352 369 | [Vcard](#)

Wurundjeri Country



From: Anthony Sommer <Anthony.Sommer@minterellison.com>

Sent: Friday, 29 October 2021 12:07 PM

To: Ken Gray <KGray@abl.com.au>

Cc: Caitlin Murray <Caitlin.Murray@minterellison.com>; Sazz Nasimi

<Sazz.Nasimi@madgwicks.com.au>

Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Dear Mr Gray

We refer to your letter of 28 September 2021.

Please could you provide an update with respect to the investigations and assessment by the State Revenue Office referred to in your letter.

Regards

Anthony Sommer

Senior Associate

T +61 2 9921 4182 M +61 431 058 780

anthony.sommer@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



From: Ken Gray <KGray@abl.com.au>

Sent: Tuesday 28 September 2021 03:41 PM

To: Anthony Sommer <Anthony.Sommer@minterellison.com>

Cc: Caitlin Murray <Caitlin.Murray@minterellison.com>; Christopher Nehme <cnehme@fortislaw.com.au>; Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>

Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Dear Anthony

Please refer to the attached letter

Regards

Ken Gray | Partner

Arnold Bloch Leibler

Level 21, 333 Collins Street, Melbourne Victoria 3000

E: kgray@abl.com.au | T: 61 3 9229 9874 | M: 0417 352 369 | [Vcard](#)



From: Ken Gray

Sent: Monday, 27 September 2021 9:51 AM

To: Anthony Sommer <Anthony.Sommer@minterellison.com>

Cc: Caitlin Murray <Caitlin.Murray@minterellison.com>; Christopher Nehme <cnehme@fortislaw.com.au>; Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>

Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Dear Anthony

We acknowledge receipt of your letter of 22 September 2021. We expect to be in a position to provide a substantive response by close of business tomorrow, 28 September 2021

Regards

Ken Gray | Partner

Arnold Bloch Leibler

Level 21, 333 Collins Street, Melbourne Victoria 3000

E: kgray@abl.com.au | T: 61 3 9229 9874 | M: 0417 352 369 | [Vcard](#)



From: Anthony Sommer <Anthony.Sommer@minterellison.com>

Sent: Monday, 27 September 2021 8:29 AM

To: Ken Gray <KGray@abl.com.au>

Cc: Caitlin Murray <Caitlin.Murray@minterellison.com>; Christopher Nehme <cnehme@fortislaw.com.au>; Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>

Subject: RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Dear Mr Gray

We refer to our letter of 22 September 2021.

Please could you urgently respond to our letter.

Regards

Anthony Sommer

Senior Associate

T +61 2 9921 4182 M +61 431 058 780

anthony.sommer@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



From: Anthony Sommer
Sent: Wednesday 22 September 2021 11:57 AM
To: 'KGray@abl.com.au' <KGray@abl.com.au>
Cc: Caitlin Murray <Caitlin.Murray@minterellison.com>; Christopher Nehme <cnehme@fortislaw.com.au>; 'Sazz Nasimi' <Sazz.Nasimi@madgwicks.com.au>
Subject: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors - Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Dear Mr Gray

Please see the attached correspondence.

Regards

Anthony Sommer

Senior Associate

T +61 2 9921 4182 M +61 431 058 780

anthony.sommer@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



IMPORTANT INFORMATION, PLEASE READ

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

----- Disclaimer -----

This email and any attachments are confidential and may contain privileged information. If you are not the intended recipient you must not disclose, print, copy or use this email or any attachments. If you have received this message in error, please notify the sender immediately and delete it from your system.

Please be aware of the increase in cybercrime and fraud. If you receive an email purporting to be from someone at ABL which seeks to direct a payment to bank details which differ from those which we have already given you (in our engagement letter and on our invoices) it is unlikely to be genuine. Please do not reply to the email or act on any information contained in it but contact us immediately. It is unlikely to be genuine. Please do not reply to the email or act on any information contained in it but contact us immediately. It is possible for emails to be intercepted in transit and email details changed. When receiving an email from ABL containing bank account details, please phone us (on the number on our website) to verify the account details before transferring the funds.

Arnold Bloch Leibler does not accept liability for any loss or damage (whether direct, indirect, consequential or economic) however caused, and whether by negligence or otherwise, which may result directly or indirectly from this email or any attachments (including as a result of your failure to scan this email for viruses or as a result of interference or unauthorised access during communication). In any event, our liability is limited to the cost of re-supplying this communication.

DisclaimerID:AUUYGH000012

IMPORTANT INFORMATION, PLEASE READ**RETURN TO OFFICE**

Public health orders influence our Return to Office Policy in each office jurisdiction. The Policy promotes a vaccinated workplace, and takes effect when professional services employees are permitted to return to the office following lockdown or when borders open to interstate travel without the need to quarantine. When the Policy takes effect in each jurisdiction, only fully vaccinated partners, employees, clients and visitors will have access to our office. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

Assessment Enquiries : 13 21 61
 Assessment Fax : (03) 9628 0021
 Our Reference : Bundle No 2844668
 Your Reference :

MR VINCENZO FRANK TESORIERO
 LEVEL 5
 141 WALKER STREET
 NORTH SYDNEY NSW 2060



DUTIES ACT 2000
NOTICE OF ASSESSMENT NO: 30150586

MR VINCENZO FRANK TESORIERO

Liable Party :

On 08 September 2022 an assessment of duty was made under the *Duties Act 2000* and is issued pursuant to section 8(1) of the *Taxation Administration Act 1997* (TAA) in respect to the following dutiable transaction. The penalty and interest are raised pursuant to Part 5 of the TAA. Interest continues to accrue on overdue assessments.

Instrument	Duty	Penalty	Interest	Total
Transfer of Land	\$354,530.00	\$0.00	\$0.00	\$354,530.00
Less Paid				\$0.00
Total Amount Due				\$354,530.00

"Not subject to GST - Federal Treasurer's Determination 2000 (Exempt Taxes, Fees and Charges)..."

Payment is Due By : **10 October 2022**

If you are not satisfied with an assessment made under the *Taxation Administration Act 1997*, you may object against the assessment under section 96 of the *Taxation Administration Act 1997*.

An objection in writing, stating fully and in detail the grounds of the objection, must be received by the Commissioner of State Revenue within 60 days of service of the notice of assessment unless the Commissioner permits the objection to be lodged outside the 60 day period. Lodgement of an objection does not in any way defer or remove your liability to pay the assessed amount or stop daily interest from accruing.

If this is a Notice of Reassessment, you can only object to liabilities that are additional to or greater than those under the previous assessment or reassessment as stated in section 97(2) of the *Taxation Administration Act 1997*. Objections cannot be made against reassessments where there is a decrease in tax liability.

You also cannot lodge an objection in relation to a compromise assessment or reassessment issued under section 12 of the *Taxation Administration Act 1997* as it is a non-reviewable decision.

For more information about lodging an objection, refer to How to lodge an objection on the SRO Web page.

PAUL BRODERICK

Commissioner of State Revenue.

-----<0035453000<0035453000>030150586000<030150586000>052<052>----- ✂

<0035453000<0035453000>030150586000<030150586000>052<052>----- ✂

Payment Slip for the State Revenue Office

Our Reference: Assessment 30150586
 Payment Due By : 10 October 2022
 Total Amount Due : \$354,530.00

Payment options :



Billers Code : 47290
Ref : 30150586

Contact your financial institution for details of the payment facility.

Receipt number:
 Date:
 Excludes credit cards

BY EFT

To pay your duty using Direct Credit, you will need to quote the following:

Lodgement reference
30150586_117523184
BSB No: 033222 Account No: 170313

Josh Baravelli

From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Wednesday, 7 September 2022 10:46 AM
To: Eric Maben
Cc: Nigel Evans; Emma Soulsby; Nikolas Kalcic; PROJECT OLYMPUS
Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Tracked To Dynamics 365

Dear Eric

Given their proprietary claims against the remaining funds in the CMA, my clients do not consent to any other amounts being paid out of those accounts.

Regards
Caitlin

Caitlin Murray

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com [Follow us on LinkedIn and Twitter](#)

From: Eric Maben <eric@aptumlegal.com.au>

Sent: Monday 5 September 2022 07:46 PM

To: Caitlin Murray <Caitlin.Murray@minterellison.com>

Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>

Subject: RE: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Caitlin,

If the other parties consent, will your client consent?

Kind regards,



Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
aptumlegal.com.au

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Monday, September 5, 2022 6:04 PM
To: Eric Maben <eric@aptumlegal.com.au>
Cc: Nigel Evans <nigel@aptumlegal.com.au>; Emma Soulsby <emma@aptumlegal.com.au>; Nikolas Kalcic <nikolas@aptumlegal.com.au>; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>
Subject: Re: Payment of ASIC fees from company funds held by MinterEllison - 23 Margaret Street Pty Ltd

Dear Eric

MinterEllison does not "hold" any monies in a controlled monies account. To confirm, there is an account in the name of 23 Margaret St set up by Madgwicks, the joint signatories of which are two partners from Madgwicks and two partners from ME (**the CMA**).

Given the proprietary claims by our client (and others) to the balance of the funds held in the CMA, our clients do not agree to release any funds as requested below. As there are claims brought by SMBC and the liquidators of FGFS against 23 Margaret St, their consent would also be required.

Regards
Caitlin

Caitlin Murray
Partner
T [+61 2 9921 4279](tel:+61299214279) M [+61 422 977 971](tel:+61422977971)
caitlin.murray@minterellison.com
MinterEllison Governor Macquarie Tower [1 Farrer Place Sydney NSW 2000](#)
minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



On 5 Sep 2022, at 3:41 pm, Eric Maben <eric@aptumlegal.com.au> wrote:

Dear Caitlin,

We have been provided with an outstanding ASIC fee in the sum of \$347.00 due for 23 Margaret Street Pty Ltd.

We understand that MinterEllison holds monies from the proceeds of the sale of the property previously owned by 23 Margaret Street Pty Ltd in its controlled monies account.

Noting the exceptions in the Freezing Orders, we request that MinterEllison makes payment of this amount, or release the funds to our trust account, so that we can make payment of them.

Please let us know if there are any issues or concerns with making the payment noted above.

Kind regards,

Eric Maben
Senior Lawyer

03 7020 9240 / 0411 228 075
aptumlegal.com.au

Melbourne Level 1, 84 William St 03 7020 9230 **Sydney** Level 1, 60 Martin Pl 02 7202 3404 **Brisbane** Level 38, 71 Eagle St 07 3778 3693

This email may contain information which is legally privileged and/or confidential. We do not intend to waive any claim of privilege and/or confidentiality over any information contained in this email unless expressly stated otherwise. If you believe you received this email in error, please immediately notify the sender and permanently delete it and any attachments and copies.

IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices. [Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal

**ORDERS PROPOSED BY MR TESORIERO
FOR THE CMH LISTED ON 16 SEPTEMBER 2022**

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

No. NSD616/2021

WESTPAC BANKING CORPORATION ABN 33 007 457 141
and another named in the Schedule

Applicants

FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172
and others named in the Schedule

Respondents

No. NSD642/2021

SOCIETE GENERALE ABN 71 092 516 286

Applicant

FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172
and others named in the Schedule

Respondents

No. NSD681/2021

SMBC LEASING AND FINANCE, INC. ARBN 602 309 366

Plaintiff

FORUM ENVIRO (AUST) PTY LTD (VOLUNTARY ADMINISTRATORS APPOINTED)
ACN 607 484 364 and others named in the Schedule

Defendants

No. NSD747/2021

**THE FORUM GROUP OF COMPANIES PTY LIMITED (ADMINISTRATORS
APPOINTED)** and others named in the Schedule

Plaintiffs

Filed on behalf of (name & role of party)	Third Respondent
Prepared by (name of person/lawyer)	Nigel Evans
Law firm (if applicable)	APTUM LEGAL
Tel	(03) 7020 9230
Email	nigel@aptumlegal.com.au
Address for service (include state and postcode)	C/- Aptum Legal, Level 1, 84 William Street Melbourne, Victoria 3000

JUDGE: JUSTICE THAWLEY
DATE OF ORDER: 16 September 2022
WHERE MADE: Sydney

THE COURT ORDERS THAT:

Proposed applications (NSD616/2021, NSD642/2021 and NSD681/2021):

- 1 By 4:00pm on 23 September 2022, Mr Tesoriero file and serve any interlocutory application (including any affidavits in support) seeking orders:
 - 1.1 to adjourn the trial listed to commence on 10 October 2022;
 - 1.2 to vary the freezing orders made against him in proceeding no. NSD616/2021 by Order 4 of the orders dated 2 July 2021 (as varied on 9 July 2021, 27 August 2021, 12 November 2021, 19 July 2022 and 20 July 2022); and/or
 - 1.3 requiring the applicants in proceeding NSD616/2021 to file and serve either an amended statement of claim, or a separate document, that complies with rules 16.41, 16.42 and 16.43 of the *Federal Court Rules 2011* (Cth).
- 2 In the event that any such application is filed:
 - 2.1 the application be listed for hearing at 10:00 am on {date};
 - 2.2 by 4:00pm on {date}, Mr Tesoriero file and serve any written submissions in support of the application (limited to 10 pages);
 - 2.3 by 4:00pm on {date}, any party seeking to oppose the application file and serve any affidavits on which they intend to rely and any written submissions in response to the application (limited to 10 pages).

Mediation (NSD616/2021, NSD642/2021 and NSD681/2021):

- 3 The proceedings be referred to a mediation by a Registrar of the Court, with such mediation to be convened in Sydney and to be held at the soonest date possible to all parties after {date}.

Other matters (all proceedings):

- 4 Orders 10, 12, 15, 16, 17, 18, 19, 21, 23, 24 and 25 of the Orders dated 10 March 2022 be vacated.
- 5 The proceedings be listed for a Case Management Hearing at 9:00am on {date}.
- 6 The parties have liberty to apply on 48 hours' notice.
- 7 Costs be reserved.

DATE: 16 September 2022