

## NOTICE OF FILING

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### Important Information

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Federal Court of Australia  
District Registry: Victoria  
Division: General

VID404/2025

**ALON CASSUTO**

Applicant

**MARY KOSTAKIDIS**

Respondent

**APPLICANT'S SUBMISSIONS: DISCOVERY**

## INTRODUCTION

1. These submissions are made by the applicant, Alon Cassuto, in respect of the parties' discovery applications. Mr Cassuto relies upon two affidavits of Raphael Yehudah Leibler affirmed on 14 April 2026 and 1 May 2026 (the **First** and **Second Leibler Affidavits**, respectively).
2. Following conferral, the version of the categories sought by each party (so far as Mr Cassuto understands it) is provided in the schedule to these submissions. The extent of the dispute is indicated in red ink in the schedule.
3. Mr Cassuto's position can be shortly stated as follows. **First**, he has sought discovery categories that are defined with clarity and precision. They have been agreed, save for the 'Relevant Period'. The period he seeks is appropriate having regard to Ms Kostakidis' public statements over the past year concerning the proceeding and matters pertaining to her views about Israeli and Jewish people, which are directly relevant to the issues in dispute. It is likely, in those circumstances, that documents in the agreed categories, but extending into the later period, exist which are directly relevant to the issues in dispute between the parties. **Second**, the disputed categories of discovery sought by Ms Kostakidis are plainly an exercise in fishing that this Court should not countenance.

## MR CASSUTO'S PROPOSED DISCOVERY CATEGORIES

4. Mr Cassuto contends that the Relevant Period should be one year longer than that for which Ms Kostakidis contends. As Mr Cassuto has pleaded in the FASOC, Ms Kostakidis has a history of posting antisemitic and anti-Israel content, including conspiracy theories. Her posting of that kind occurred both before and after the impugned posts subject of the s 18C claim. Ms Kostakidis' statements on X, after the impugned posts, are relevant to her state of mind — or, to use the language of s 18C(1)(b) of the *Racial Discrimination Act 1975* (Cth) (**RDA**), they are relevant to whether the impugned posts were done "because of" the race, or national or ethnic origin of the victim groups (as McDonald J found in *Cassuto v Kostakidis* [2025] FCA 1226 at [70]-[71]). Thus, each category sought by Mr Cassuto covers a relevant period that goes beyond the impugned posts. But Ms Kostakidis seeks to confine the documents to be discovered to the last-dated post particularised in the Annexure to the FASOC. There is no rational basis for that to occur. Rather, documents in the period ending on 16 March 2026 should be discovered.
5. There is no reason to think that Ms Kostakidis' communications and documents, which bear directly upon her state of mind, cease to be relevant in March 2025. As the evidence exposes, Ms Kostakidis has continued to post extensively about Jews, and Israel.<sup>1</sup> A perusal of the First Leibler Affidavit demonstrates the kinds of statements Ms Kostakidis is willing to make *publicly*, and *recently*, which may shed light on her state of mind in making the impugned posts.

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<sup>1</sup> See First Leibler Affidavit, [16]-[19] and Exhibit RYL-2, pp 14-32.

Accordingly, documents and communications relating to the impugned posts or referring to Ms Kostakidis' purposes in making the posts (see, eg, categories 3 and 4) are directly relevant, including more recent documents and communications. For this reason, each category which uses 'Relevant Period' should extend to March 2026.

6. Ms Kostakidis' solicitor, Mr Vaughan, has sought to address this issue in his affidavit filed on 30 April 2026 (**Third Vaughan Affidavit**) at [6]-[10]. **First**, he seeks to address Mr Cassuto's category 1 on the basis of oppression. As Mr Vaughan acknowledges, X offers a feature to extract all data from a person's X account, known as the 'Your X data' feature. But he says that the feature "does not permit an extraction of only a section of the data associated with a particular X account", and so Ms Kostakidis will need to manually compile the responsive data or manipulate the data extracted. But as Mr Vaughan's *own evidence* indicates, there is an automated feature for the extraction of all Ms Kostakidis' data on her X account. Mr Cassuto would be quite content for Ms Kostakidis to generate that archive and produce it to comply with category 1 (as he proposed in his original category 1 in his discovery application). That would be a quick and simple task. Similarly, Mr Cassuto is content for Ms Kostakidis to 'fillet' that data by removing that which is outside the further refined version of proposed category 1, including by date. But to do so, she (or, more accurately, her legal representatives) will have to review that data so as to remove material outside the 'Relevant Period'. Whether that period ends in 2025 or 2026, all the data will need to be reviewed. Accordingly, the 'filleting' exercise is not materially more or less time consuming whether one adopts Ms Kostakidis' proposed Relevant Period or Mr Cassuto's proposed Relevant Period. (And if Ms Kostakidis does not seek to use the 'Your X data' feature, and for reasons unexplained wishes to use a more labour intensive process, that is not a matter that can be sheeted home to Mr Cassuto and is irrelevant.)
7. **Second**, in respect of proposed categories 3 to 7, Mr Vaughan's evidence is that Ms Kostakidis will be required to search through her communication channels, notes and documents with increased volume by the Relevant Period pressed by Mr Cassuto.<sup>2</sup> Whichever Relevant Period is adopted, though, Ms Kostakidis will need to search those depositories. Given Ms Kostakidis' ongoing and recent public statements evidencing her conspiracy-based views of Jewish people and Israelis, it is likely that more recent material will be directly relevant to the issues in dispute and in particular, her reason for making the impugned posts (i.e. were they acts done "because of" the race or national or ethnic origin of the victim groups, within the meaning of s 18C?).
8. Balancing the cost, time and burden to Ms Kostakidis against the importance and likely benefits which will likely arise to Mr Cassuto by the extended period of production, it is respectfully submitted that the Court ought to adopt Mr Cassuto's proposed formulation.<sup>3</sup>

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<sup>2</sup> Third Vaughan Affidavit, [6(b)].

<sup>3</sup> For completeness, generalised evidence concerning Ms Kostakidis' age and personal circumstances (such that she is "committed to maintaining her physical and mental health throughout the difficult process of this litigation" (Third Vaughan Affidavit, [7]) does not assist the Court in determining this application.

## MS KOSTAKIDIS' PROPOSED CATEGORIES

### Category 8

9. Proposed category 8 is a most extreme example of fishing. Ms Kostakidis presses for this category on the asserted bases that: (a) It is “directly relevant to the respondent’s claim that the applicant has instituted the proceeding vexatiously, without reasonable cause and in bad faith”,<sup>4</sup> a matter she asserts in paragraph 29 of her Defence; and (b) It is also “directly relevant, not only to costs, but the applicant’s claim that the respondent’s [impugned posts] were ‘reasonably likely, in all the circumstances, to offend, insult or intimidate another person or a group of people’ (a condition for unlawful behaviour contrary to s 18C(1) of the [RDA])”.<sup>5</sup>
10. These contentions should be rejected. **First**, the formulation of the category is hopelessly vague. It seems to be contended by this category the following: (a) There is a Creative WhatsApp Group (of which it is not even alleged that Mr Cassuto is a member); (b) Unnamed members in that WhatsApp group stated on a number of occasions that Ms Kostakidis is antisemitic;<sup>6</sup> (c) An unnamed member of the WhatsApp group stated on one occasion “Perhaps this is suitable for lawyers group” and another stated, on another occasion, “Is there no legal avenue against her?”;<sup>7</sup> (d) Thus, there must be some “lawyers group” on WhatsApp, although again, it is not alleged that Mr Cassuto is a member, nor is the name of the ‘group’ even identified. It is utterly unclear how Mr Cassuto could possibly give discovery in this category.<sup>8</sup>
11. **Second**, by paragraph 29 of her Defence, Ms Kostakidis asserts that the proceeding has been brought vexatiously and without reasonable cause. It appears from the Defence that that is said to follow principally from these matters: (a) Mr Cassuto’s complaint in the AHRC was brought six months after the impugned posts (a matter not in dispute, noting there is no limitations defence advanced or available); (b) Immediately before the complaint was made, Mr Cassuto issued a statement and participated in a press conference (also not in dispute); (c) Ms Kostakidis believes that there has been a deliberate campaign conducted by unnamed individuals to discredit her because some individuals (not Mr Cassuto) referred to some of her public posting in WhatsApp messages and said they felt she was antisemitic.
12. That allegation is extremely speculative, at best. It is not relevant to any fact in issue on a s 18C claim, nor to any defence to such a claim available at law. The Court has already disposed of a very detailed attack on Mr Cassuto’s case advanced by Ms Kostakidis last year (*Cassuto v Kostakidis* [2025] FCA 1226), where she was represented by two senior and two junior counsel, in which no allegation was made that the proceeding was vexatious or an

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<sup>4</sup> Affidavit of Jack Vaughan affirmed on 10 March 2026 (**First Vaughan Affidavit**), [6(c)].

<sup>5</sup> Jack Vaughan affirmed on 14 April 2026 (**Second Vaughan Affidavit**), [8].

<sup>6</sup> See Second Vaughan Affidavit, JV-2, p 68. See also Second Vaughan Affidavit, [35].

<sup>7</sup> Second Vaughan Affidavit, [23(a)].

<sup>8</sup> Proposed discovery by categories must be described with precision so that the party required to give discovery will be able to ascertain whether particular documents are or are not within the categories: See, eg, *KGL Health Pty Ltd v Mecthler* [2008] FCA 273, [9] (Tamberlin J); *Anstal Ships Pty Ltd v Incat Australia Pty Ltd* [2009] FCA 368, [150] (McKerracher J).

abuse. Mr Cassuto has objected to paragraph 29 in his Reply — it does not plead any material fact in support of a claim or defence. The mere fact that Ms Kostakidis has asserted something (a ‘campaign to discredit her’) in her pleading does not *make it relevant* for the purposes of discovery. Further, the Court will not permit discovery where to do so would permit fishing, to seek evidence in support of a speculative claim.<sup>9</sup>

13. **Third**, the evidence at [37] of the Second Vaughan Affidavit serves to underscore the speculative nature of proposed category 8. It appears that Ms Kostakidis has a conspiracy theory about the conduct of certain unnamed, presumably Jewish, people in two WhatsApp groups, one group (the group from which she wants discovery) being unnamed, and on that footing seeks to invoke the compulsory processes of this Court for the production of documents.
14. **Fourth**, to the extent the documents are sought for the purposes of a costs application, no such application has been made, and may never be made. Discovery in aid of a non-existent costs application cannot be said to be discovery directly relevant to the issues in dispute.

#### Categories 5 and 6

15. These proposed categories seek documents concerning a press conference and statement issued by the ZFA when this proceeding was commenced. There is no dispute that the press conference and statement were issued: see Reply at [5(b)(i)(2)]. Ms Kostakidis has, at best, speculative, views that *because of* that statement and press conference, the proceedings were not brought properly. The fact of a press conference and statement — not unusual in litigation of public interest — do not provide anything more than a speculative foundation for an allegation that the proceeding was not brought properly or that Mr Cassuto’s offence at Ms Kostakidis’ impugned posts was genuine. The Court should not permit a fishing exercise such as this. Discovery on this basis would be oppressive for the same reason.

#### Categories 2, 3 and 9

16. Ms Kostakidis’ categories 2, 3 and 9 are agreed save that Mr Cassuto presses for the inclusion of the words ‘to or from the applicant’ in those categories.
17. Mr Cassuto does not dispute that category 2 (in the form he proposes) is relevant to Mr Cassuto’s claim that he was, himself, offended and insulted by the impugned posts, which, although not an element of a contravention of s 18C, is a matter capable of bearing upon whether the relevant acts were reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or group of people.<sup>10</sup> However, communications that were not sent or received by Mr Cassuto, which would need to be produced by Ms Kostakidis’ formulation of category 2, can have no bearing on that issue.

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<sup>9</sup> See, eg, *Australian Competition and Consumer Commission v Cornerstone Investments Aust Pty Ltd (No 2)* [2017] FCA 393, [5], [8] (Gleeson J); *Storry v Clout* [2024] FCA 1274, [40] (Rangiah J); *KTC v David* [2022] FCAFC 60, [208] (Wigney J); *Andrews v Australian and New Zealand Banking Corporation* [2011] FCA 388, [45] (Gordon J); *Austral Ships Pty Ltd v Incat Australia Pty Ltd* (2010) 272 ALR 177, [10] (McKerracher J); *W A Pines Pty Ltd v Bannerman* 566 (1980) 30 ALR 559, 566 (Brennan J), 573 (Lockhart J).

<sup>10</sup> See *Cassuto v Kostakidis* [2025] FCA 1226, [92].

Such communications may be in Mr Cassuto's control, in that other people within the ZFA, of which he is the CEO, might have referred to the impugned posts in communications. Mr Cassuto should not be put to the time and expense of searching all records within the ZFA that may refer to Ms Kostakidis' posts. Only those to which he was a party are directly relevant to an issue in dispute. The formulation pressed by Ms Kostakidis would also be oppressive to Mr Cassuto, as discussed below.

18. The claim made in the Second Vaughan Affidavit at [8] that these documents are relevant to whether the impugned posts are "reasonably likely, in all the circumstances, to offend, insult or intimidate another person or a group of people" should be rejected. A requirement that Mr Cassuto search all of the records of his employer for the purposes of discovery would plainly constitute fishing.
19. As to proposed categories 3 and 9, the relevance of the documents sought is not obvious. In any event, in the interests of narrowing the issues in dispute, Mr Cassuto is content to produce the documents sought, subject to the same limiting words as he proposes for category 2: i.e. that the communications or documents involve him.
20. We then turn to the oppression of production in the form of categories 2, 3 and 9 proposed by Ms Kostakidis. Although Mr Cassuto brings this proceeding in his own capacity,<sup>11</sup> because he is the CEO of the ZFA he has access to the books, records, files and documents of the ZFA.<sup>12</sup> Complying with the categories as proposed by Ms Kostakidis would require an onerous review<sup>13</sup> of the ZFA files by the ZFA (a charitable organisation with limited resources).<sup>14</sup> The process of complying with these categories as proposed by Ms Kostakidis would take about 200 hours of work,<sup>15</sup> plainly a disproportionate and oppressive burden, particularly taking into account that the form of the categories proposed are not, in any event, directly relevant to the issues in dispute. The oppressive burden is exacerbated by the fact that the ZFA has been engaged in other important matters, including the Royal Commission (for which it has been granted leave to appear) and has limited resources.<sup>16</sup>
21. Finally, to the extent it is submitted by Ms Kostakidis that the broader form of these categories is relevant to the allegation at paragraph 29 of the Defence, Mr Cassuto repeats his submissions made above: a speculative allegation (made without proper foundation) that the proceeding was brought vexatiously does not provide a foundation for these proposed categories.

**Michael Borsky**

**Tim Jeffrie**

**Colette Mintz**

8 May 2026

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<sup>11</sup> Second Leibler Affidavit, [15(a)].

<sup>12</sup> Second Leibler Affidavit, [15(b)].

<sup>13</sup> Second Leibler Affidavit, [15]–[18].

<sup>14</sup> Second Leibler Affidavit, [15(c), (e)].

<sup>15</sup> Second Leibler Affidavit, [16].

<sup>16</sup> Second Leibler Affidavit, [18].

## SCHEDULE

### APPLICANT'S CATEGORIES

1. All posts/tweets, replies, reposts/retweets, threaded posts, likes and interactions, profile information and media files made using or recorded on the X account @marykostakidis in the Relevant Period, together with associated metadata (including any deleted, edited, or archived content).
2. Drafts of the Posts.
3. Documents created in the Relevant Period recording communications relating to the Posts.
4. Documents created in the Relevant Period recording or referring to the purposes for which the Respondent published the Posts.  
For the avoidance of doubt, documents solely containing third party opinion concerning the Posts or the Applicant's purposes in making the Posts are not required to be produced under category 3 or 4.
5. Documents created in the Relevant Period recording statements made by the Respondent referring to Israel, Israelis, the Jewish people, Jewish organisations, Zionists or Zionism, the Holocaust, Hezbollah, Hassan Nasrallah, Hamas or Yahya Al-Sinwar (including derivations or abbreviations of any of the above terms).
6. Documents evidencing any agreement, acknowledgment, membership, accreditation, or other acceptance by the Respondent of any Australian or international professional code of ethics, code of practice, editorial standard, or professional guideline applicable to journalists in the Relevant Period.
7. Any document recording or referring to a contract, arrangement or understanding, in existence in the Relevant Period, between the Respondent and a third party in relation to her activism or activity on social media, excluding standard terms and conditions that the Respondent has agreed to with a social media platform (including X) by virtue of her membership of that platform.

Where:

**Relevant Period** means 1 January 2023 to 16 March 2026 [*respondent seeks 19 March 2025*].

**Posts** means 4 January Post and 13 January Post (as defined in the Applicant's Further Amended Statement of Claim).

## RESPONDENT'S CATEGORIES

1. Any sources upon which the Applicant based his assertions of the:
  - a. matters particularised at paragraph 7 of the Further Amended Statement of Claim (FASOC);
  - b. statements particularised at paragraph 8 of the FASOC; and
  - c. statements particularised in the fourth and fifth (unnumbered) particulars to paragraph 10 of the FASOC.
2. All documents recording or evidencing any communications **to or from the applicant** *[these words are pressed by the applicant and not agreed by the respondent]* in the period 4 January to 14 July 2024 inclusive, referring or relating to either the 4 January Post or the 13 January Post.
3. All documents recording or evidencing any communications **to or from the applicant** *[these words are pressed by the applicant and not agreed by the respondent]* in the period 7 October 2023 to 14 July 2024 inclusive, referring or relating to posts by the respondent on the social media platform X.
4. All documents recording or evidencing any communications in the period 7 October 2023 to 14 July 2024 inclusive, referring or relating to Richard Medhurst or to any post on social media by Richard Medhurst (including but not limited to any post on the X account @richimedhurst, and on the YouTube channel @RichardMedhurst).
5. **All documents recording or evidencing any communications in the period 4 January to 14 July 2024 inclusive, referring or relating to a press conference to be held by the Zionist Federation of Australia (ZFA) announcing a complaint to the Australian Human Rights Commission by the applicant against the respondent.** *[the applicant contests this category]*
6. **All documents recording or evidencing any communications in the period 4 January to 14 July 2024 inclusive, referring or relating to the preparation of the official statement published by the ZFA on 14 July 2024 "ZFA CEO Alon Cassuto files 18C complaint against Mary Kostakidis".** *[the applicant contests this category]*
7. [Not pressed]
8. **All communications sent and received by members of the "lawyers group" referred to in the message sent in the "Creative Whatsapp Group" on 6 December 2023, and referred to in the Defence at [29(g)(i)], in the period 6 December 2023 to 14 July 2024 inclusive, referring or relating to the respondent.** *[the applicant contests this category]*
9. All documents recording or evidencing any communications **to or from the applicant** *[these words are pressed by the applicant and not agreed by the respondent]* in the period 7 October 2023 to 14 July 2024 inclusive, referring to the respondent.