



**Westpac Banking Corporation & anor v Forum Finance Pty Ltd (in liquidation) (receivers  
appointed) & ors**

**Federal Court of Australia NSD 616/2021**

**APPLICANTS' OUTLINE OF OPENING SUBMISSIONS FOR FINAL HEARING**

*Unless otherwise indicated, these submissions use definitions used in the Second Further  
Amended Statement of Claim*

**Introduction**

*The Proceedings*

1. There are three proceedings before the Court for determination, proceeding NSD616/2021 (**Westpac Proceeding**); proceeding NSD681/2021 (**SMBC Proceeding**), and proceeding NSD642/2021 (**Societe Generale Proceeding**). These submissions are made in the Westpac Proceeding.
2. The applicants in the Westpac Proceeding, Westpac Banking Corporation (**WBC**) and Westpac New Zealand Limited (**WNZL**) (together **Westpac**), proceed against the first respondent, Forum Finance Pty Limited (in Liquidation) (**Forum Finance**), the second respondent, Mr Papas, together with other individuals and entities in connection with a fraud perpetrated on WBC and WNZL by Forum Finance and Mr Papas in the period August 2018 to June 2021.
3. In June 2021 WBC discovered that in excess of \$341 million<sup>1</sup> in payments it had made to Forum Finance in the period from September 2018 to June 2021, were made in reliance on fictitious and falsified equipment finance contracts. A short time later WNZL discovered that in excess of NZD 58 million had been paid by it, in the period from December 2018 to June 2021, to a company related to Forum Finance in New Zealand, Iugis (NZ) Limited (in Liquidation) (**Iugis NZ**), also in reliance on fictitious and falsified equipment finance contracts. The fraud resulted in WBC sustaining losses of approximately \$254 million and WNZL approximately NZD 44 million: the loss was less than the full amount fraudulently obtained as certain of the funds advanced, but not all, had been "repaid" by companies within the Forum group of companies. WBC and WNZL allege that Forum Finance and Iugis NZ have been used as vehicles for a dishonest scheme devised by Mr Papas, or Mr Papas and

<sup>1</sup> In these submissions "\$" is used to refer to Australian dollars. New Zealand dollars are referred to as "NZD".

the third respondent, Mr Tesoriero. Both Forum Finance and Iugis NZ paid most of the fraudulently obtained money to Forum Group Financial Services Pty Ltd (in Liquidation) (FGFS), the fourth respondent, a company the shares in which were owned by Mr Papas and Mr Tesoriero. FGFS sat outside of the Forum group of companies (in the sense that it was not owned, directly or indirectly by The Forum Group of Companies Limited (TFGC), the ultimate parent), and was used as the vehicle through which the fraudulently obtained funds were disbursed to a number of companies and persons associated with, and related to, Mr Papas and Mr Tesoriero. It either carried on no legitimate business, or any genuine transactions were minor compared to the very large sums paid to and then away by FGFS.

4. The claims brought against the respondents are variously in trust, the tort of unlawful means conspiracy, the tort of deceit, misleading or deceptive conduct or false or misleading conduct, knowing receipt and knowing assistance. It is alleged that these individuals and entities either assisted in the Scheme (as defined in [55] 2FASOC) or received the funds stolen pursuant to the Scheme, some of which was applied to the purchase of properties and other assets. Other substantial sums were paid into the Forum group of companies, and still other sums paid to foreign companies. WBC and WNZL seek declaratory relief, orders for disclosure and account, damages or equitable compensation.
5. The submissions follow a template (as directed by Lee J) generally agreed between the parties who participated in the conferral. The Tesoriero parties (Mr Tesoriero, Mr Tesoriero Snr, the Tesoriero Entities and other entities controlled by Mr Tesoriero), while participating in the conferral, have not agreed the template. The Tesoriero parties have also foreshadowed an application to amend their pleadings, but no application has been filed or served. These submissions do not address any permitted amended defence, and proceed on the basis that the current pleadings identify the issues.

### *The Parties*

6. Mr Papas was one of two directors of Forum Finance at the time of the fraud and had been a director of that company from 19 September 2011: see Westpac's s50 Summary of Corporate Directorships, Shareholdings and Trusts (**Corporate Summary**) Court Book (CB) F.I.2 pF.1.77, Line (Ln) 1. Mr Papas was, at all relevant times, the Managing Director of the Forum group of companies;<sup>2</sup> and a director at all relevant times of Forum Finance, FGFS and TFGC: Corporate Summary CB F.I.2 pF.1.77 Ln 1, 7, and 5. A more detailed

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<sup>2</sup> In these submissions reference to the "Forum group of companies" is distinct from the entity The Forum Group of Companies Pty Ltd (TFGC).



description of his role in relation to the various companies and in relation to the scheme is set out in paragraphs 36 to 45 below. Mr Papas absconded to Greece at the time that the fraud was detected by WBC and WNZL: *Westpac Banking Corporation v Forum Finance Pty Limited (Greek Telephone Number)* [2021] FCA 1341; CB Part C DHA.5000.0001.0004 and DHA.5000.0001.0021. Despite participating in the proceedings at one point and seeking to do so in a very limited respect at a later point (to set aside a subpoena addressed to a former solicitor), Mr Papas has not filed a defence or any evidence. No orders have been made excusing Mr Papas from filing a defence. He has been served with the originating application, pleading and WBC and WNZL's evidence. Orders were made by Lee J to facilitate service on Mr Papas: *Westpac Banking Corporation v Forum Finance Pty Limited (Greek Telephone Number)* [2021] FCA 1340; see further orders made by Lee J on 10 March 2022 (**10 March Orders**) (Order 4).

7. Mr Tesoriero was the other director of Forum Finance at the time of the fraud, a position he held from 1 April 2017: Corporate Summary CB F.I.2 pF.1.77 Ln 1. He was a director of FGFS in the period from 13 November 2018 until 30 April 2020: Corporate Summary CB F.I.2 pF.1.77 Ln 7. He is and was a director and shareholder of various other respondent companies: Corporate Summary, Lns 8-24, 28-34. Commencing in 2018, Mr Tesoriero has caused the Jointly Owned Entities and the Tesoriero Entities to purchase properties with a cost price in excess of \$55 million: Westpac's s50 Summary of Property Purchases and Ownership (**Property Summary**) CB F.I.3 pF.I.107. All of those properties were purchased, in part, with funds from WBC and WNZL paid pursuant to the fraudulent scheme.
8. The remainder of the respondents fall into the following categories.
9. *First, the **Forum Entities**.* Forum Finance was part of the Forum group of companies. It was wholly owned by TFGC which is the 30<sup>th</sup> respondent in the Westpac Proceeding. Mr Papas held, directly or indirectly, 59.4% of TFGC and Mr Tesoriero held, directly or indirectly, 38.6% of TFGC: Corporate Summary CB F.I.2 pF.1.77. At the relevant times they were directors of TFGC. The other Forum Entities are TFGC's subsidiaries: the fifth to seventh respondents: Forum Group Pty Ltd (**FG**), Forum Enviro Pty Ltd (**FE**) and Forum Enviro Australia Pty Ltd (**FEA**) respectively and the 31<sup>st</sup> respondent Iugis Pty Ltd (**Iugis**). Iugis was wholly owned by Iugis Holdings Limited (**Iugis Holdings UK**), which in turn was 100% owned by Mr Papas. Each of the Forum Entities is in liquidation. Leave to proceed against the Australian companies which are in liquidation has been granted to Westpac by Lee J: see orders made by Lee J on 22 September 2021.

10. *Secondly*, the **Jointly Owned Entities**, which are those companies jointly owned by Mr Papas and Mr Tesoriero, namely FGFS and the eighth to twelfth respondents: 64-66 Berkeley St Hawthorn Pty Ltd (**64-66 Berkeley St**), 14 James Street Pty Ltd (**14 James St**), 26 Edmonstone Road Pty Ltd (**26 Edmonstone Rd**), 5 Bulkara Street Pty Ltd (**5 Bulkara St**) and 6 Bulkara Street Pty Ltd (**6 Bulkara St**). With the exception of 64-66 Berkeley St, each of these entities is in liquidation, and again leave to proceed has been granted: orders 22 September 2021. Each company is (or was) the registered proprietor of real property, usually the name reflecting the address. Each company was a single purpose vehicle, with no function or business other than to own the property. The companies are each trustees of a trust of which Mr Papas and Mr Tesoriero, or companies they own, or their relatives, are the beneficiaries: Corporate Summary CB F.I.2 pF.1.77.
11. *Thirdly*, the **Tesoriero-Related Entities**, each of which is owned by Mr Tesoriero. The Tesoriero Entities are the 13th to 24th respondents, as well as other entities controlled by Mr Tesoriero, referred to as Other Tesoriero Related Companies in the Corporate Summary, being the 25<sup>th</sup> respondent (**286 Carlisle St**), the 26<sup>th</sup> respondent (**275 High St**), the 38<sup>th</sup> to 41<sup>st</sup> respondents, (**TIG, Mangusta, 193 Carlisle St** and **8-12 Natalia Ave** respectively). The Tesoriero-Related Entities also generally owned real properties, again special purpose vehicles with no other business, and the company's name usually reflecting the address of the property. The exceptions are 286 Carlisle St and 193 Carlisle St. 286 Carlisle St appears to be a company used to distribute funds including to foreign companies apparently connected with Mr Papas. Mr Tesoriero's father, Mr Tesoriero Snr, received some of the funds and was a director of 286 Carlisle St. The Tesoriero Entities are all actively defending the proceedings.
12. *Fourthly*, the **Papas Companies**, being companies owned and controlled by Mr Papas, including some in the United Kingdom and Greece:
  - a. the 27<sup>th</sup> respondent, **Mazcon**;
  - b. the 28<sup>th</sup> respondent, **Palante**;
  - c. the 32nd to 37th respondents, **Iugis UK, Iugis Holdings UK, Iugis GFS UK, Iugis Finance UK**,
  - d. the 36<sup>th</sup> to 37<sup>th</sup> respondents, **Spartan** and **Intrashield**; and
  - e. the 42nd to 43rd respondents, **Iugis Greece** and **Iugis Energy Greece**.

13. Of these entities, Iugis Holdings UK, Iugis GFS UK, and Iugis Finance UK have been deregistered and, in those circumstances, Westpac's claims against them are not pressed in these proceedings. Iugis UK is in liquidation. Those companies remain relevant to the operation of the Scheme and are referred to in these submissions for completeness. While Iugis Greece is in liquidation (Mr Papas is the liquidator), WBC and WNZL proceed with their claims against it (which is permissible under Greek law, and in any event the liquidation of a foreign defendant does not result in a stay). The service of the foreign entities will be addressed separately at the start of the trial. Palante, Spartan and Intrashield are also in liquidation and leave to proceed against those companies has been given by Lee J.
14. *Fifthly*, the following individuals:
  - a. the 29<sup>th</sup> respondent, Mr Giamouridis, a 1% shareholder in Mazcon. Mr Giamouridis is resident in Greece and service on him will be addressed separately at the start of the trial;
  - b. the 45<sup>th</sup> respondent, Mr Tesoriero Snr, who is Mr Tesoriero's father. Mr Tesoriero Snr has common representation with Mr Tesoriero and the Tesoriero-Related Entities;
  - c. the 46<sup>th</sup> respondent, Mr Bouchahine, who was at all relevant times the Chief Financial Officer of the companies comprising the Forum group of companies and of FGFS. He has filed a defence in the Westpac Proceeding. Mr Bouchahine's solicitors filed on 7 September 2022 a notice of intention to cease to act; and
  - d. the 47<sup>th</sup> respondent, Ms Agostino, Mr Papas' domestic partner and who was at all relevant times an employee within the Forum group of companies. Ms Agostino has left Australia and is currently understood to be located in Greece, with Mr Papas. Ms Agostino was represented in the Westpac Proceeding in the period from January 2022 until August 2022. She has filed a defence in the Westpac Proceeding: CB ~~A.I.7 A.I.31~~ p A.I.1087, although she has not complied with the orders for filing evidence and giving discovery. She is no longer represented and a freezing order has been made over her remaining Australian assets. There is a relatively small fund held in a solicitor's trust account over which Westpac seeks proprietary relief.
15. *Sixthly*, entities not falling into the above categories who received funds, being:
  - a. the 48<sup>th</sup> respondent, **D&D Group**; and
  - b. the 49<sup>th</sup> respondent, **Theion Ike**.

16. Westpac has settled, in principle, with the 44<sup>th</sup> respondent, Eric Constantinidis.
17. Since the commencement of the Westpac Proceedings, Jason Preston and Jason Ireland (**Liquidators**) have been appointed as the joint and several liquidators of:
  - a. Forum Finance by order made in the Westpac Proceeding on 9 July 2021: see further Corporate Summary CB F.I.2 pF.I.77 Ln 1;
  - b. FGFS, FE and FEA by order made in the Westpac Proceeding on 12 November 2021: see Corporate Summary CB F.I.2 pF.I.77 Ln 7, 3 and 4;
  - c. FG, TFGC, Iugis, 26 Edmonstone, 5 Bulkara, 6 Bulkara, James St, Intrashield and Spartan by court order made on 28 July 2021: Corporate Summary CB F.I.2 pF.I.77 Ln 2, 5, 6, 10, 11, 12, 9, and 27; and
  - d. Palante on 2 February 2022: Corporate Summary CB F.I.2 pF.I.77 Ln 25.
18. The respondents in external administration, in Australia, have been excused from filing a defence in the proceedings: 10 March Orders, Order 6. Various residential and commercial properties owned by the respondents have been sold and the net proceeds from the sale of the relevant property has been paid into Court or into controlled monies accounts pending the outcome of the proceedings, subject to one significant exemption. The proceeds from the sale of the property at 23 Margaret Street Rozelle, NSW (formerly owned by 23 Margaret St) were held in a controlled monies account. However, by orders made on 20 July 2022, Mr Tesoriero has been permitted to access \$1,070,000 from those monies for the purposes of his reasonable legal expenses: see orders made by Lee J on 20 July 2022. A schedule of the properties; or net funds held from the sale of properties and assets is annexed to these submissions as **Annexure A**.

*Evidence relied upon by Westpac*

19. WBC and WNZL rely on affidavit evidence from their own officers and former officers regarding the Eqwe/ Forum Programme (explained in a later section of these submissions), meetings with Mr Papas at the inception of that Programme and during the period of the fraud, the Fraudulent Transactions,<sup>3</sup> WBC and WNZL's reliance on the Transaction Representations,<sup>4</sup> the discovery of the fraud, conversations by WBC personnel with Mr

<sup>3</sup> That is, Transactions 1 to 100 and Transactions NZ1 to NZ36 set out in Part D of the 2FASOC

<sup>4</sup> That is, the Transaction 1 to 100 Representations and the Transaction NZ1 to NZ36 Representations set out in Part D of the 2FASOC

Papas in the aftermath of the discovery of the fraud, amounts paid to Forum Finance and Iugis NZ and the amount of WBC's and WNZL's loss, as follows:

- a. the affidavits of Geoffrey Keith Anderson sworn 28 June 2021 (**Anderson June**): CB D.I.1 pD.I.1; 8 July 2021 (**Anderson July**): CB D.I.2 pD.I.19; and 14 October 2021 (**Anderson October**) CB D.I.3 pD.I.27;
- b. the affidavit of Randy Aaron Stack affirmed 4 February 2022 (**Stack**): CB D.I.22 pD.I.314;
- c. the affidavit of Trevor John Chapman sworn 21 December 2021 (**Chapman**) CB D.I.5 pD.I.64; and
- d. Brent Neil Moreton affirmed 22 December 2021 (**Moreton**): CB D.I.17 pD.I.198,

with documents within the exhibits to those affidavits subsumed into the tender bundle in Part C of the Court Book or Westpac's Section 50 Summaries (described below).

20. WBC and WNZL also rely on affidavit evidence from each of the seven Australian customers and one New Zealand customer (**Customers**) in respect of whom the Fraudulent Transaction Documents were created. This evidence establishes the contracts underlying all 136 Transactions financed by WBC and WNZL were fraudulent in that each customer (by a senior employee) disavows those contracts; deposes that the purported signatures on behalf of the relevant customers on the contracts are forgeries; and deposes that the equipment was neither sought nor purchased from Forum Finance (some Customers' officers give evidence that the type of equipment was not used in the Customer's business). The Customer affidavits are as follows:

- a. from Australian Leisure and Holdings Group Pty Ltd (**ALH**): Trevor Smith sworn 21 January 2022 (**Smith**): CB D.I.21 pD.I.303;
- b. from Catholic Healthcare Limited (**CHC**), the affidavits of Stacy Flanagan sworn 22 December 2021 (**Flanagan**) CB D.I.7 pD.I.88; and David Maher sworn 18 October 2021 (**Maher**): CB D.I.14 pD.I.175;
- c. from Coles Supermarkets Australia Pty Limited (**Coles**), the affidavits of Vinay Parikh sworn 1 February 202 (**Parikh**): CB D.I.18 pD.I.273; and Rohan De Silva affirmed 1 February 2022 (**de Silva**): CB D.I.20 pD.I.296;
- d. from HWL Ebsworth Lawyers (**HWLE**), the affidavits of Kris Hopkins sworn 4 February 2022 (**Hopkins**): CB ~~D.I.54~~ <sup>D.I.10</sup> pD.I.127 and Juan Martinez sworn 4 February 2022 (**Martinez**): CB ~~D.I.59~~ <sup>D.I.15</sup> pD.I.183;

- e. from Scentre Shopping Centre Management Pty Ltd (**Scentre**), Paul Francis Giugni sworn 8 July 2021 (**Giugni**) CB D.I.8 pD.I.96; and Gregory Miles sworn 19 January 2022 (**Miles**): CB D.I.16 pD.I.191;
- f. from Veolia Environmental Services (Australia) Pty Ltd (**Veolia**) and Veolia Environmental Services (NZ) Limited (**Veolia NZ**): Gurpreet Brar sworn 3 February 2022 (**Brar**): CB D.I.4 pD.I.47; and Lorenzo Kozlovic sworn 1 February 2022 (**Kozlovic**): CB D.I.12 pD.I.142; and
- g. from WesTrac Pty Limited (**WesTrac**): Jarvas Croome affirmed 3 February 2021 (**Croome**): CB D.I.6 pD.I.77; and Carly Rossbach-Smith affirmed 3 February 2022 (**Rossbach-Smith**): CB D.I.19 pD.I.286,

again, documents from the exhibits to those affidavits have been subsumed into Part C of the Court Book or Westpac's Section 50 Summaries.

21. WBC and WNZL further rely on the following affidavits:
  - a. affidavits affirmed by Mr Preston, one of the Liquidators, on 7 February 2022 (**Preston February**): CB E.1 pE.1 and 10 June 2022 (**Preston June**): CB E.2 pE.49 together with the exhibits to those affidavits; and an affidavit of Andrew John Grenfell sworn 22 December 2021 (**Grenfell**), the Liquidator of Iugis NZ: CB D.I.9 pD.I.116;
  - b. the affidavit of Michael Richard Hughes, a partner of MinterEllison, sworn 4 February 2022 (**Hughes**): CB D.I.11 pD.I.135 as to the location of certain documents during the course of executing the search orders made in the Westpac Proceeding and the exhibit to that affidavit; and
  - c. the affidavit of Chandana Roshan Kumaragamage affirmed 4 February 2022 (**Kumaragamage**): CB D.I.13 pD.I.164 in relation to certain documents located and maintained in connection with the Westpac Proceeding.
22. Pursuant to the 10 March Orders, WBC and WNZL have prepared and served a number of summaries under s50 of the *Evidence Act 1995* (Cth) (**Section 50 Summaries**), including summaries in relation to:
  - a. the Fraudulent Transactions, namely Transactions 1 to 100 and Transactions NZ1 to NZ36 (**Transactions Summary**): CB F.I.1 pF.I.1;
  - b. the Corporate Summary: CB F.I.2 pF.I.77;

- c. the Property Summary: CB F.I.3 pF.I.107;
- d. funds paid from WBC to Forum Finance and to WBC's agents, BHD Leasing and Eqwe, in the relevant period and pursuant to Transactions 1 to 100 (**WBC Payments Summary**): CB F.I.4 pF.I.117. This summary shows that WBC advanced a total of \$341,097,895.94 to Forum Finance; paid \$6,590,981.80 to BHD Leasing and Eqwe and currently has a loss (an amount remaining unpaid from the advances) of \$253,766,555.76;
- e. funds paid from WNZL to Iugis in the relevant period and pursuant to Transactions NZ1 to NZ36 (**WNZL Payments Summary**): CB F.I.5 pF.I.125. This summary shows that WNZL advanced a total of NZD58,763,504.71 to Iugis NZ; paid NZD 2,660,288.47 to Eqwe and currently has a loss (an amount remaining unpaid from the advances) of NZD 44,097,968.98;
- f. funds paid by Forum Finance into the Forum group of companies including FGFS (**Forum Finance Payments Summary**): CB F.I.6 pF.I.129. This summary shows that of the funds paid to Forum Finance, Forum Finance paid:<sup>5</sup>
  - i. \$282,368,524.94 to FGFS;<sup>6</sup>
  - ii. \$29,437,994.00 to FG; and
  - iii. \$24,740,108 to FE;
- g. funds paid from Iugis NZ to FGFS (**Iugis NZ Payments Summary**): CB F.I.7 pF.I.149. This summary shows that NZD 58,763,504.71 (\$54,889,185) was transferred from Iugis NZ to FGFS;
- h. funds paid to, or on behalf of, the respondents (**Respondent Payments Summaries**): CB F.I.10-F.I.37; F.I.39-F.I.48;
- i. a summary of payments made by FGFS towards the purchase and maintenance of luxury items and assets (**Assets Summary**): CB F.I.51 pF.I.927;
- j. a summary of payments made by FGFS towards various property related expenses (**Property Payments Summary**): CB F.I.50 pF.I.905; and
- k. a summary of emails containing requests made or instructions given by Mr Tesoriero to Mr Bouchahine, Mr Brandon Chin or other Forum accounting or administrative

<sup>5</sup> That is, directly from Forum Finance to each entity and does not include other amounts paid to that company from other entities (eg FG) after that entity had received the funds from Forum Finance.

<sup>6</sup> As set out in Preston June at [28], FGFS received \$297,427,676 of WBC funds.

staff to make payments towards certain expenses or to respondents (**Payment Directions Emails Summary**) CB F.I.8 pF.I.155.

23. There is to be a single trial of the three proceedings. Orders have been made that evidence in one proceeding be evidence in the other (10 March Orders, Order 3) and Westpac also points to the evidence of the fraud on each of SMBC and Societe Generale. The relevance of those frauds is not so much to prove the fraud on Westpac: there is more than enough evidence to prove that fraud. Instead, some of the documents provided to Mr Tesoriero record receipts, as is shown by those proceedings fraudulently obtained, from SMBC and Societe Generale.
24. Those proceedings explain a further matter. The tracing exercise involves tracing from a fund, a bank account held by FGFS, which comprised money stolen from all three banks (Westpac, SMBC and Societe Generale). The usual presumptions as to tracing have been applied, with one matter to be explained. The tracing involves a day-by-day analysis, and as the FGFS account from time to time included money paid in by Forum companies which is not identified as stolen money, the lowest intermediate balance rule has been applied: *Caron v Jahani (No 2)* [2020] NSWCA 117 (2020) 102 NSWLR 537. As is conventional, where money has been wasted or is untraceable it is presumed that to be the wrong-doer's money first (the Forum companies), but where the money can be traced to a recipient (particularly to an asset) the applicant banks' money is presumed to be paid to that recipient. Where money can be traced to a recipient, the banks have together traced that money on the basis that it was applied *pro rata* from the innocent banks' money in the FGFS account on the day of payment. For example, assuming that there was \$100 in the FGFS account of which \$50 can be traced to a recipient, and of the \$100, \$50 was sourced from Westpac (where funds from WBC and WNZL have been separately identified), \$30 from Societe Generale and \$20 from SMBC, the banks have approached the tracing exercise on the basis that 50% of the payment (\$25) is Westpac's money, 30% (\$15) is Societe Generale's money and 20% (\$10) is SMBC's money. That is to not adopt a first in first out approach in accordance with *Clayton's* case: that exercise would have been unduly time consuming and expensive, and the banks have approached the issue pragmatically and on the basis that across the many transactions, comparative wins or losses caused by a first in first out approach probably largely even out.

### **The Eqwe/ Forum Programme**

#### *The Eqwe/ Forum Programme Agreements*



25. The fraudulent transactions the subject of the Westpac Proceeding arise out of a funding structure pursuant to principal and agency agreements and sale of receivable agreements, referred to internally by WBC as the “Eqwe/ Forum Programme”: Anderson June [7] CB D.I.1 pD.I.1. That Programme was also referred to as the “BHO/ Forum Programme” as Eqwe previously traded under the name BHO.
26. The agreements that comprised the Eqwe/ Forum Programme during the Relevant Period were as follows.
  - a. Australian Principal and Agency Agreements:
    - i. the **First Eqwe Agreement** between WBC and BHD Leasing dated 18 May 2017: 2FASOC [35]; Anderson October [7] CB D.I.1 pD.I.1, Part C WBC.5000.0001.1889;
    - ii. the **Second Eqwe Agreement** between WBC and Eqwe dated 15 July 2019: 2FASOC [37]; Anderson June [6a], [17], [23] CB D.I.1 pD.I.1; GKA-1 p6-39; Anderson October [8] CB D.I.3 pD.I.27, Part C WBC.5000.0001.1923. As set out in further detail below, the Second Eqwe Agreement was entered into when Eqwe was known as BHO Funding Pty Ltd. The First Eqwe Agreement came to an end when the Second Eqwe Agreement came into effect: Anderson October [11] CB D.I.3 pD.I.27; and
    - iii. a document titled “Business Terms Letter BHO Funding Pty Ltd – Disclosed Principal and Agency program” dated 15 July 2019: Anderson June [18] CB D.I.1 pD.I.1; GKA-1 p40-49.
  - b. Australian Sale of Receivables and Goods Agreements:
    - i. the **First Forum Agreement**, a Master Sale of Receivables and Good Agreement between BHD Leasing and Forum Finance dated 31 August 2018: 2FASOC [43]; Anderson June [20] CB D.I.1 pD.I.1; GKA-1 p 114-141; Anderson October [17] CB D.I.3 pD.I.27, Part C WBC.5000.0001.1957;
    - ii. the **Second Forum Agreement**, a Master Sale of Receivables and Good Agreement between Eqwe and Forum Finance dated 12 July 2019: 2FASOC [46]; Anderson June [6b], [20] CB D.I.1 pD.I.1; GKA-1 p114; Anderson October [17] CB D.I.3 pD.I.27, Part C WBC.5000.0001.1985. The Second Forum Agreement replaced the First Forum Agreement: Anderson October [17];

- c. New Zealand Agreements:
  - i. the **NZ Eqwe Agreement**, a principal and agency agreement between WNZL and Eqwe dated on about 17 December 2018: 2FASOC [41]; Moreton [15a] CB D.I.17 pD.I.198; BNM-1 p60; and
  - ii. the **NZ Forum Agreement**, a master sale of goods and receivables agreement between Eqwe and Iugis NZ dated 19 December 2018: 2FASOC [50]; Moreton [15b] CB D.I.17 pD.I.198; BNM-1 p98.
- 27. Under the Principal and Agency Agreements, WBC or WNZL appointed Eqwe as non-exclusive agent to purchase equipment and enter into leasing agreements (finance leases) with customers approved by WBC or WNZL throughout Australia and New Zealand: First Eqwe Agreement clause 2.1; Second Eqwe Agreement clause 2.1; NZ Eqwe Agreement clause 2.1; Moreton [17] CB D.I.17 pD.I.198. Pursuant to these agreements, Eqwe was authorised to act as WBC's and WNZL's agent in sourcing customers who required equipment or receivables finance: Anderson June [6a], [21] CB D.I.1 pD.I.1.
- 28. The replacement of the First Eqwe Agreement with the Second Eqwe Agreement occurred at the request of Eqwe, as explained at the time by Eqwe because Eqwe wished to put in place a different Eqwe entity for the arrangements with WBC to the arrangements with other financiers: Anderson October [11] CB D.I.3 pD.I.27; WES.5000.0003.2927.
- 29. Under the Forum Agreements:
  - a. Forum Finance could offer to sell to Eqwe (as agent for WBC) customer receivables on finance being advanced and Forum Finance, if the offer was accepted, would assign to Eqwe (as agent for WBC) the right and title to the receivables and security in exchange for the advance of finance to be provided by WBC: Anderson June [20]-[22], CB D.I.1 pD.I.1; GKA-1 p 114-141; Anderson October [17]-[18] CB D.I.3 pD.I.27, Part C WBC.5000.0001.1957 and WBC.5000.0001.1985; and
  - b. Iugis NZ could offer to sell to Eqwe (as agent for WNZL) customer receivables on advancing finance and Iugis NZ, if the offer was accepted, would assign to Eqwe (as agent for WNZL) the right and title to the receivables and security in exchange for the advance of finance to be provided by WNZL: Moreton [17] CB D.I.17 pD.I.198.
- 30. The Eqwe/ Forum Programme funding structure was intended to operate as follows:
  - a. Forum Finance, subject to credit approval by WBC (there ought to have been an intermediate review by Eqwe, but WBC made the credit decision), would enter into

equipment purchase arrangements with its customers pursuant to which it would acquire assets required by its customers, using funding provided by WBC through Eqwe. Forum Finance would then provide those assets to the customers on conventional equipment finance terms which provided for monthly payments to be made by the customer (which would be assigned to WBC). At the end of the term, the equipment which had been used by the customer was to be assigned to the customer.

- b. Receipt of the relevant documents from Eqwe (including documents which it received from Forum Finance under the First and Second Forum Agreements) was a condition precedent to the advance of funds by WBC under the Agency Agreement. On receipt of those documents and credit approval, WBC advanced funds to Forum Finance, which WBC understood Forum Finance used to acquire the equipment by the customer, the subject of the relevant approval by WBC. Once WBC received an email from Eqwe providing the relevant documents and the funding request (initially provided by Forum Finance to Eqwe purportedly on behalf of the Customer), it then paid the approved amount of the required funding to Forum Finance's bank account at National Australia Bank Limited (**NAB**), for the purpose of being used to purchase the financed equipment.
- c. Simultaneously with receipt of the funds, a Sale Notice (in accordance with the First and Second Forum Agreements) (a copy which would be sent to WBC as part of a funding request received via Eqwe) was then issued by Forum Finance to Eqwe. By that Sale Notice Forum Finance sold the relevant receivable to Eqwe (as agent for WBC).
- d. A Notice of Assignment was to be issued to the customer by Forum Finance under the First or Second Forum Agreement, to give notice to the relevant customer that Forum Finance had assigned its rights to Eqwe, acting as agent for WBC.
- e. Eqwe was required to disclose to the end customer (in respect of the relevant equipment or receivables financing) that it acted as agent for a disclosed principal, WBC. On being notified of the assignment of the receivable, the customer was also directed to make its monthly payments to an Eqwe account held with WBC.
- f. Eqwe then paid the monthly scheduled payments in respect of the lease payments due to WBC.

See Forum Agreements; Anderson October [28]-[30] and [33]-[44] CB D.I.3 pD.I.27; Stack [6] CB D.I.22 pD.I.314.

31. Under the First Eqwe Agreement, Eqwe (then known as BHO) was paid an arranger fee, calculated as a percentage of the contract price for the service it provided in sourcing asset financing customers: Anderson June [19] CB D.I.1 pD.I.1; Anderson October [12] CB D.I.3 pD.I.27; WBC Payments Summary (Brokerage Payment) CB F.I.4 pF.I.117. Under the Second Eqwe Agreement, Eqwe was paid a trailing commission in relation to the introduced contracts: Anderson June at [17]; Anderson October [12]; CB Part C WBC.5002.0001.0260 Business Terms Letter.
32. Payments made by WBC to Forum Finance in respect of transactions introduced by Eqwe were paid to an account in the name of Forum Finance, held at the NAB with BSB 082 080 and account number 848483695 (**FF Account**): Transactions Summary T1-100: CB F.I.1 pF.I.1; Anderson June [8]: CB D.I.1 pD.I.1.
33. The Eqwe/ Forum Programme was intended to operate in the same way in New Zealand: see Moreton [12], [18] CB D.I.17 pD.I.198, with the key differences being that Iugis NZ (instead of Forum Finance), subject to credit approval, entered into equipment purchase arrangements with Veolia NZ pursuant to which it acquired assets required by Veolia NZ, using funding provided by WNZL through Iugis NZ. Iugis NZ then provided those assets to Veolia NZ on conventional equipment leasing or financing terms. The receivables agreements for Iugis NZ were introduced to WNZL by Eqwe: Moreton [14] CB D.I.17 pD.I.198. The payments of the amount financed were made by WNZL to an Iugis NZ account.
34. Payments made by WNZL to Iugis NZ in respect of transactions introduced by Eqwe were paid to an account in the name of Iugis NZ, held at the ANZ Bank New Zealand Limited (**ANZ**) with account number 010277 0773014-00 (**Iugis NZ Account**): Moreton [24], [26]-[108] CB D.I.17 pD.I.198; WNZL Payments Summary CB F.I.5 pF.I.125; Transactions Summary NZ1-NZ36: CB F.I.1 pF.I.1. Eqwe was paid a brokerage fee in relation to the NZ Transactions: Moreton [108]; WNZL Payments Summary CB F.I.5 pF.I.125.
35. As the evidence already described demonstrates, in point of fact the documents provided by Forum Finance, Iugis NZ and Mr Papas to Eqwe (and by Eqwe to Westpac) were fraudulent. There was no equipment purchased. There were no finance leases with the Customers. There were no payments by the Customers. But Westpac thought the financing arrangements were genuine. Westpac did pay the amounts the subject of the falsified

documents to Forum Finance or Iugis NZ. Instead of being used to acquire equipment those moneys were then stolen. The amounts paid by WBC to Forum Finance in late 2018 were paid by Forum Finance to various Forum companies, mostly FG. From early 2019, Forum Finance and Iugis NZ paid in substance all the fraudulently obtained money to FGFS, Mr Papas' and Mr Tesoriero's company. From there very many payments were made, none for a legitimate financing purpose.

### The Scheme

36. Mr Papas' and Mr Tesoriero's devising of and implementation of the Scheme is pleaded at 2FASOC [55] to [56]. WBC and WNZL allege that by no later than 31 August 2018, or alternatively, 13 September 2018, Mr Papas either together with Mr Tesoriero, or alone, devised the Scheme involving Forum Finance and Iugis NZ and persons or entities related to one or both of them for the dishonest and fraudulent obtaining of money from Westpac through the Eqwe/ Forum Programme. That the Scheme was devised by them is apparent from its operation and the steps each took in the Scheme's implementation and the benefit each obtained, as well as the fact that FG, FE and FGFS had carried out an earlier scheme involving Maia Financial Pty Ltd (**Maia**) under which all or some of the amount of \$58.85 million was obtained from Maia using false invoices and contracts purportedly for some of the same customers the subject of these proceedings, being Veolia, ALH, WesTrac, CHC, Scentre and HWLE: see for example Miles [8]; CB Part C SEC.5000.0023.8859. Maia having received some unsatisfactory responses to queries it made of Mr Papas and the Forum companies, demanded repayment of some \$58.85 million in circumstances in which the money could not be repaid: see for example CB Part C MCN.0001.0003.0107; MCN.0001.0003.0802; SEC.5000.0033.5218; and MCN.0001.0003.0601. Money was required, and WBC became the source. Mr Papas and Mr Tesoriero were the directors of TFGC who promised the money, and who procured the money. They also guaranteed that payment.
37. The operation of the Scheme involved Mr Papas creating, or causing the creation of, the Fraudulent Transaction Documents. Mr Papas falsely signed many of these documents as a witness and forged the signatures of officers of the apparent or purported customers: see, by way of example, Transactions Summary CB F.I.1 pF.I.1 at p1 T1, p3 T3, p4 T4, p5 T8. That the documents were fraudulent is evidenced by, for example, the Customer evidence disavowing them and of which the customers were unaware: see, by way of example, Croome [10]- [13]; [17] – [18] D.I.6 pD.I.77; Rossbach-Smith [9] CB D.I.19 pD.I.286 (WesTrac); and Smith [15] – [22], [28] CB D.I.21 pD.I.303 (ALH); and Annexure C

(described below). Mr Papas (and by him, Forum Finance) then submitted or caused to be submitted the Fraudulent Transaction Documents to Eqwe, requesting or intending Eqwe would forward them to WBC or WNZL as part of the Eqwe/ Forum Programme, and that WBC or WNZL would pay funds in accordance with the Fraudulent Transaction Documents to Forum Finance or Iugis NZ as appropriate: see details of Submission to Agent and Submission to Westpac in Transactions Summary CB F.I.1 pF.I.1. Emails between Mr Papas and Eqwe representatives demonstrate Mr Papas' involvement in the creation and provision of the Fraudulent Transaction Documents: see emails from Mr Papas to Mike Sheeran and Luke Price of Eqwe referred to in Transactions Summary CB F.I.1 pF.I.1 at Submission to Agent, for example, T1-26, T28-30. Further, internal emails demonstrate Mr Papas' involvement in the implementation and execution of the Scheme: see Transactions Summary CB F.I.1 at "Submission to Agent", for example, T29, T38, T39, T73. Those emails also show Ms Agostino's and Mr Bouchahine's involvement: see Transactions Summary CB F.I.1 at "Submission to Agent", for example, T3, T29, T31, T32.

38. In reliance on the Fraudulent Transaction Documents and the representations made in those documents, WBC and WNZL paid funds to Forum Finance and Iugis NZ respectively: see Anderson October [36] – [43] CB D.I.3 pD.I.27; Stack [6] CB D.I.22 pD.I.314; Moreton [24] – [103], [107] CB D.I.17 pD.I.198. Following payment, Forum Finance dispersed funds paid by WBC to FG and FE, and from early 2019 to FGFS, which then paid the moneys to FG, FE, FEA and other companies related to Mr Papas (including the Papas Companies), Mr Tesoriero (including the Jointly Owned Entities and the Tesoriero-Related Entities) and TFGC, and Iugis NZ dispersed funds paid by WNZL to FGFS. The funds were then used by or dispersed to Mr Papas, Mr Tesoriero or other entities or persons related to one or both of them: see Respondent Payments Summaries and Annexure B (described below).
39. Another element of the Scheme was to pay some of the money to companies in Greece, for Mr Papas' or his associates' benefit. Mr Papas wrote down that part of the Scheme in a diary (a diary which also included practiced forged signatures): CB Part C SOH.5000.0002.0426 (page SOH.5000.0002.0441-0443; 0450; 0471). Mr Hughes' evidence proves that the diary was located in Mr Papas' office. The payments included payments to Mazcon, in part then used to buy the Xanthi Football Club, and purchases of properties in Greece. One way in which money was paid to Greece was by payments to 286 Carlisle St, which then paid large sums onto some of the Greece based corporate defendants: 286 Carlisle St Respondent Payment Summary CB F.I.28 pF.I.789. Mr Tesoriero and Mr Tesoriero Snr were the directors of 286 Carlisle St.

40. The detail of the events leading to discovery of the Scheme are addressed in Westpac's evidence (and summarised in *Westpac Banking Corporation v Forum Finance Pty Limited* [2021] FCA 807 at [2]-[4]: the evidence Lee J relied on to make those findings is reproduced in Westpac's affidavit evidence). When Westpac was first alerted to WesTrac's concern (the customer which first identified that Westpac thought it had lent the customer more than the customer's records showed) that it, WesTrac, had no records of transaction documents with Forum Finance in June 2021, Westpac made attempts to contact Mr Papas.
41. On 11 June 2021, Mr Anderson of Westpac had a conversation with Mr Price of Eqwe and Mr Papas during which Mr Papas said that Forum Finance was receiving approximately \$120,000 to \$150,000 per month from WesTrac and that as certain software "*was not working*", Forum Finance was making payments on behalf of WesTrac: Anderson June [40] CB D.I.1 pD.I.1. Mr Papas indicated that he would provide Mr Anderson with copies of the payment receipts from WesTrac and would repay the exposure to WesTrac by 18 June 2021. Of course, all of that was false. WesTrac did not pay any money to Forum Finance, BHO or Eqwe: Rossbach-Smith [8(h)] CB D.I.19 pD.I.286.
42. On 15 June 2021, WBC made a demand on Forum Finance under clause 9 of the Second Forum Agreement that Forum Finance repurchase certain receivables relating to WesTrac in the amount of \$9,624,791.26: Anderson June [45] CB D.I.1 pD.I.1; GKA-1 p249.
43. A meeting was scheduled to take place on 16 June 2021, between Mr Papas and WesTrac in relation to the concerns raised in connection with the receivables: Anderson June [44] CB D.I.1 pD.I.1; Rossbach-Smith [14] CB D.I.19 pD.I.286. Mr Anderson exchanged text messages with Mr Papas about this meeting: Anderson June [46] CB D.I.1 pD.I.1; GKA-1 p251. The meeting with Mr Papas and WesTrac did not proceed, with representatives from Forum Finance indicating that "*an emergency has come up and [Mr Papas] cannot make the meeting*": Rossbach-Smith [14], CRS-1 p 257. Instead, on the date that the meeting was scheduled Mr Papas travelled to Greece: CB Part C DHA.5000.0001.0004.
44. Over 16 and 17 June 2021, WBC received the total amount of \$4,425,358.25 in repayments for the WesTrac receivable. A further demand was sent to Eqwe on 17 June 2021: Anderson June at [49] CB D.I.1 pD.I.1, GKA-1 p253. No further repayment was made in connection with the demand.
45. Mr Papas' behaviour at the point at which enquiries were being raised of him regarding the fraud is consistent with his establishment of the Scheme.

46. Mr Tesoriero's role in devising and implementation of the Scheme is apparent from a number of matters.
47. *First*, his involvement in the Forum business since at least February 2013 and the Forum group companies, including the fact that he was a director of TFGC from 27 January 2013 to 24 April 2020, a director of FGFS from 13 November 2018 to 20 April 2020 and a director of Forum Finance from 1 April 2017: Corporate Summary CB F.1.2 pF.1.77. He and his family interests were the second largest shareholder in TFGC, after Mr Papas. He was one of two shareholders in FGFS. Mr Tesoriero was aware of the business, and the very large amounts of funds flowing in from the fraudulent transactions were readily apparent from documents he received. Further, there was no legitimate explanation for that flow of money. It was not Forum's business to itself borrow hundreds of millions of dollars: it was a finance intermediary not a borrower taking on obligations to repay. Pausing there, the existence of FGFS is also telling. It was not owned by TFGC, which had shareholders other than Mr Papas' and Mr Tesoriero's interests. It was owned by Mr Papas and Mr Tesoriero. It had no substantive business. It received stolen money and paid that money at Mr Papas' and Mr Tesoriero's direction and to their benefit. Mr Bouchahine kept records of the receipts and payments of the stolen money, and from time to time he, or one of his direct reports, sent some of those records to Mr Tesoriero: see Annexure D referred to in paragraph 52 below. That is unsurprising in a sense; in light of the very large sums of money involved, the need to in effect budget for what were notionally (from Mr Papas and Mr Tesoriero's perspective) repayments to keep the Scheme secret, and the demands for ongoing cashflow to fund liabilities and their extravagant lifestyles, some record of the payments was required. Some of those documents referred to receipts from financiers including Westpac and SMBC, in places euphemistically described as "future funded". There were of course no transactions to be funded nor any legitimate source of income.
48. *Second*, Mr Tesoriero directed expenditure of the stolen money. There are very many examples. Of course, Mr Tesoriero was a director of FGFS and must have known it had no business: CB Part C FOG.1000.0007.9073. After the time that the Scheme was devised, Mr Tesoriero directed payments to be made by FGFS to his bank accounts, and companies associated with him, or on his (or those companies') behalf, examples of which are as set out in the Payment Directions Emails Summary CB F.I.8 pF.I.155. He also received bank statements for FGFS (which showed the absence of a genuine business which might have involved borrowing hundreds of millions of dollars) during the period of the fraud: see for example, CB Part C FOG.1000.0003.7118 and FOG.1000.0003.7121; and was privy to



TFGC's financial information at the time the Scheme was devised: see for example CB Part C FOG.1000.0001.6107 and FOG.1000.0001.6108.

49. *Third*, Mr Tesoriero was involved in and knew of the Maia settlement. He executed a Deed of Guarantee and Indemnity on 7 September 2018 with Maia in which he personally guaranteed repayment of money Maia had demanded: MCN.0001.0003.0748; MCN.0001.0003.0606; MCN.0001.0003.0607. That occurred after Maia, having apparently become concerned about its exposure to Forum, demanded repayment of all transactions: CB Part C MCN.001.0003.0107. If Mr Tesoriero had not been involved in the fraud, it is improbable that he would have given the personal guarantee and remained a director of Forum Finance. In fact, he did give the guarantee, and became a director of FGFS within two months after guaranteeing payment of in excess of \$58.5 million to Maia. It was at this time that the fraud on Westpac commenced.
50. *Fourth*, Mr Tesoriero's involvement in the Forum/ Eqwe Programme including signing the First Forum Agreement on 31 August 2018 and the Second Forum Agreement on 12 July 2019: see CB Part C WBC.5000.0001.1957 and WBC.5000.0001.1985. Not only did he sign the agreements, he was a director of Forum Finance and FGFS. He could not have been ignorant of the absence of genuine transactions, nor the source of money to fund FGFS and his and Mr Papas' spending. The difference is between receiving money from financiers for the companies' own use (with a repayment obligation) and receiving a fee on arranging a financing transaction.
51. *Fifth*, his ownership and control of the Jointly Owned Entities and Tesoriero Entities respectively and purchase by them of the Jointly Owned Real Property and Tesoriero Real Property respectively, funded by payments from FGFS. Mr Tesoriero admits he managed the Tesoriero Entities and that he managed with Mr Papas the Jointly Owned Entities with the exception of FGFS: Tesoriero Defence [1900(d) and (e)] CB ~~A.I.8~~ A.I.773. The timing **A.I.4** of payments to those companies by FGFS is largely co-incident with the fraud on Westpac and the other applicant banks and the otherwise unexplained source of funds for companies controlled by Mr Tesoriero and Mr Papas.<sup>7</sup> While the properties were mortgaged and finance to complete each purchase was obtained, very large sums were paid towards the property purchases with funds from FGFS, and other costs and loan repayments made with funds supplied by FGFS: see Respondent Payment Summaries for the Jointly Owned

<sup>7</sup> "Largely" as purchase of the 23 Margaret Street property, 26 Edmonstone Road property and the motor yacht "XOXO", each using finance, occurred prior to the fraud on Westpac, albeit at the time Maia was financing transactions the veracity of which is doubtful.

Entities and Tesoriero Entities. Mr Bouchahine recorded the receipts and payments in the Xero accounting system records kept by FGFS. The balance sheet and profit and loss for 30 June 2021 (**FGFS Balance Sheet**), with the separate accounts and the transaction listings in respect of balance sheet line items for entities and individuals referred to in the FGFS Balance Sheet (**FGFS Xero Transaction Listings**) record the payments.

52. *Sixth*, from August 2018, Mr Tesoriero received financial spreadsheets contained in **Annexure D** to these submissions headed “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. From at least July 2020, these spreadsheets disclosed FGFS’ cashflow, including that funds from the “ORCA bank account” (ORCA was a waste receptor product promoted by the Forum group and was generally the product said to have been financed) were a source of cashflow, and amounts described as “future funding”, which euphemistically meant payments received in relation to financing transactions which did not exist at that time (or at all). Those payments are consistent with the operation of the Scheme in that, by the Scheme, funds received from Westpac which should have been used for the purpose of acquiring equipment had the Eqwe/ Forum Programme operated in accordance with its contractual provisions were in fact used and spent by Forum Finance, FGFS and other companies in the Forum Group and individuals associated with them. These spreadsheets also referred to recurring payments to “funders” including BHO, SMBC and “Flexi”, in circumstances where had the Eqwe/ Forum Programme operated in accordance with its contractual provisions, no recurring payments would have been made to these financiers by any Forum entity. Similarly, in an email dated 5 September 2018, Mr Tesoriero (at the time he was seeking to find a source of funds to repay Maia) stated “*Forum is in the midst of opening a third funder to the finance book portfolio for large enterprise deals that our historical funding lines have tapped out on large transactions*”: CB Part C FOG.1001.0016.1260. That was in the context of Mr Tesoriero also seeking funding for acquisitions for his benefit. The “third party funder” was Westpac, but the transactions were not genuine. Mr Tesoriero knew that the money was not used, contrary to the next sentence of his 5 September email, to acquire ORCA units. There are other examples.
53. Pausing there, the unreality is readily apparent. Very large amounts are paid into FGFS, said to be from reputable third-party financiers. FGFS did not carry on a business, nor enter into agreements with the financiers to borrow money from those financiers. Mr Tesoriero as a director knew that fact, he had not signed or seen any agreements (as there were none).

Instead, FGFS paid the money away, to a combination of Forum group companies (the major shareholders in which were Mr Papas and Mr Tesoriero through various private companies) and Mr Papas' and Mr Tesoriero's interests. That money had to be repaid, but similarly to a Ponzi scheme more money was obtained (stolen) to allow repayments and more payments to the benefit of Mr Papas and Mr Tesoriero. It stretches beyond incredulity to suggest, as Mr Tesoriero's defence alleges, that Mr Tesoriero was unaware of the fraud.

54. *Seventh*, the nature of the expenditure is relevant. Mr Tesoriero and Mr Papas not only spent money on investments, but they lived extravagant lifestyles. Each lived in luxury houses bought using the stolen money. They leased GT racing cars which they raced. They bought or leased numerous luxury cars. They bought boats. Mr Papas bought extravagant jewelry. Honest people can engage in conduct of that type, but it requires very large amounts of money. Mr Tesoriero (and Mr Papas) did not have an apparent source of funds to maintain those lifestyles without the stolen money. Use of the stolen money to fund a lifestyle that could not otherwise apparently be maintained is probative of participation in the Scheme.
55. *Eighth*, through 286 Carlisle St Mr Tesoriero caused moneys to be paid to Greek companies apparently connected to Mr Papas: see, for example, CB Part C FOG.1000.0002.8266 and FOG.1000.0002.8267. As already described, paying money away to Greece was one of the uses of the stolen money written down by Mr Papas. Mr Tesoriero's defence is to deny that he was aware of such payments at around the time they were made: Tesoriero Defence **A.I.4** [1900(n)] CB ~~A.I.8~~ A.I.773. That is plainly not true. Mr Tesoriero was provided with details of the "*overseas bank that 286 Carlisle st [sic] pays into*": CB Part C FOG.1000.0002.8266; and was sent bank statements and other documents in connection with opening that account: see CB Part C FOG.1000.0004.7234; FOG.1000.0004.7235; FOG.1001.0002.5086; and FOG.1001.0002.5081.

#### **The dishonest and fraudulent purpose of Mr Papas**

56. WBC and WNZL allege at 2FASOC [57] that the dishonest and fraudulent purpose of Mr Papas (with Mr Tesoriero, or by himself) in devising and implementing the Scheme was (in summary) to benefit himself and people and entities related to him and Mr Tesoriero. The benefits included expenditure on properties acquired by the respondents, to fund acquisition of properties including those acquired by the respondent entities, businesses in Australia and overseas, to acquire a Greek football team and to acquire other goods or choses in action, and to use as purported loans to the businesses or subsidiaries of TFGC, including

to support the cash flow of businesses. And funds were used on Mr Papas' extravagant lifestyle already described.

57. This purpose is evidenced by Mr Papas' central involvement in the Scheme, as set out above including falsifying documents, in circumstances where he was one of only two directors of Forum Finance (with Mr Tesoriero) as well as his receipt of funds from FGFS and other entities in the Forum Group such as FG, FE, FEA, and subsequent expenditure of those funds on assets owned by him or his entities or individuals or entities associated with him, as demonstrated by Westpac's Respondent Payments Summaries.

#### **The dishonest and fraudulent purpose of Mr Tesoriero**

58. The dishonest and fraudulent purpose of Mr Tesoriero is seen from Mr Tesoriero's participation in the Scheme, and, as with Mr Papas, his receipt and subsequent expenditure of misappropriated funds on assets owned by him or associated entities or individuals. In particular, Mr Tesoriero was involved in the selection and purchase of properties and the execution of contracts for sale of certain properties purchased by the Jointly Owned Entities and Tesoriero Entities: Property Summary. He caused new companies to be incorporated (and trusts created) for the purposes of purchasing properties and bank accounts to be opened for them: see for example, CB Part C FOG.1000.0003.9858. He directed which entities would be used to purchase properties using funds from the Scheme and how money procured through the Scheme would be used, and identified and acquired assets with funds obtained through the Scheme: see Payment Directions Emails Summary CB F.I.8 pF.I.155; CB Part C FOG.1000.0002.4542. Spending money, which was stolen, knowing of its theft or without an honest explanation for the source of the money, is dishonest.

#### **The Fraudulent Documents and Fraudulent Transactions**

59. The Fraudulent Transaction Documents for each Fraudulent Transaction are identified in Westpac's Transactions Summary CB F.I.1 pF.I.1. Payments made in reliance on those Fraudulent Transaction Documents for Transactions 1 to 100 are set out in the WBC Payments Summary CB F.I.4 pF.I.117, and for Transactions NZ1 to NZ36 are set out in the WNZL Payments Summary: CB F.I.5 pF.I.125.
60. For each transaction the following documents were prepared and submitted to WBC:
  - a. a Customer Payment Schedule from Forum Finance that itemises the equipment purporting to be sold to the Customer. Each Customer Payment Schedule purports to be signed by an authorised representative of the relevant Customer and sets out

the terms of repayments for purchase of the Equipment. The evidence is that each is a forgery;

- b. a Certificate of Delivery purporting to certify that the equipment referred to in the relevant Customer Payment Schedule had been delivered to the relevant Customer. The Certificates of Delivery purport to be signed by the relevant Customer as an acknowledgement of delivery of the equipment: again the evidence is that each is a forgery;
- c. a Sale Notice from Forum Finance to BHD Leasing (for Transactions 1 to 30) or Eqwe purporting to assign the (non-existent) receivable for the equipment to BHD Leasing or Eqwe respectively in exchange for payment of the purchase price of the equipment, which Sale Notices were signed by Mr Papas. By each Sale Notice, Forum Finance confirmed that the representations and warranties set out in the relevant Forum Agreement were correct; and
- d. a letter styled “Transfer of Rights” from Forum Finance addressed to the Customer, but never sent, purporting to assign the rights to payment for the equipment from Forum Finance to BHD Leasing (for Transactions 1 to 30) or Eqwe. The Transfer of Rights letters were signed by Mr Papas,

see: Transactions Summary CB F.I.1 pF.I.1; 2FASOC Annexure A.

- 61. These documents are collectively referred to as the **Fraudulent Transaction Documents**. The Fraudulent Transaction Documents for each Transaction were prepared by Mr Papas, or on his instructions. The Fraudulent Transaction Documents were submitted by email to representatives of BHD Leasing or Eqwe by Mr Papas, or by others on his behalf often where Mr Papas was copied to these emails: see the section titled “Submission to Agent” for each Transaction in the Transactions Summary CB F.I.1 pF.I.1.
- 62. By each of the Fraudulent Transaction Documents, Forum Finance and Mr Papas represented in relation to the corresponding transaction that:
  - a. the transaction set out in the relevant Transaction Documents was genuine;
  - b. the Customer Payment Schedule and the Certificate of Delivery had been executed by, and were binding upon the relevant Customer;
  - c. the Transfer of Rights and assignment of the receivable was genuine;
  - d. the Transaction Documents, and the security contemplated by them, were binding and enforceable;

- e. the relevant Transaction Documents were complete and accurate and were not misleading;
- f. there was no fraud, dishonesty, misrepresentation or negligence on the part of Forum Finance in connection with the selection and offer of the transaction for financing; and
- g. the assets to be provided to the Customer to which the relevant Transaction Documents related had been delivered to and duly accepted by the relevant Customer,

together these representations are referred to as the **Transaction Representations**.

- 63. The Transaction Representations were false as the Transactions as set out in the Transaction Documents were fictions. The evidence of the employees and officers of the Customers in relation to the Transaction Documents is compelling. Each Customer disavows the Fraudulent Transaction Documents, with each expressly denying that the signatures on the Customer Payment Schedules and the Certificates of Delivery purporting to be theirs are genuine. Each Customer denies receiving the relevant Transfer of Rights letters from Forum Finance. None of the Customers made any lease or finance payments.
- 64. In summary the documents held by WBC and WNZL on which each relied and paid large sums to Forum Finance and Iugis NZ respectively are said by each of their reputable Customers to be false, statements corroborated by the objective facts such as the absence of any payment by those customers on the (fictitious) finance leases.
- 65. The evidence of each Customer is set out in **Annexure C** to these submissions.
- 66. In reliance on the Fraudulent Transaction Documents for Transactions 1 to 100, WBC advanced a total of \$341,097,895.94 to Forum Finance: Stack [6] CB D.I.22 pD.I.314; Anderson October [33]-[44] CB D.I.3 pD.I.27; WBC Payments Summary CB F.I.4 pF.I.117.
- 67. In reliance on the Fraudulent Transaction Documents for Transactions NZ1 to NZ36, WNZL advanced a total of NZD58,763,504.71 to Iugis NZ: WNZL Payments Summary CB F.I.5 pF.I.125.

#### **Demand on Forum Finance**

- 68. Clauses 9.1 and 9.2 of the Second Forum Agreement provided that if a “Seller Event” occurred (as defined), then Eqwe could demand and Forum Finance must repurchase any Purchased Asset (as defined) if the Seller Event resulted in the purchased receivable not

being enforceable in full: cl 9.1.V.b; or if any of the representations made in connection with the Customer Agreement (as defined) were found to be untrue or incorrect: cl 9.2.

69. A Seller Event included the circumstance where a representation or warranty made by Forum Finance under a Transaction Document was, or became, inaccurate: cl 16.1. The representations made by Forum Finance included that there had been no fraud, dishonesty, misrepresentation or negligence on the part of Forum Finance in connection with the selection and offer of the Receivable (as defined in the Second Forum Agreement and the First Forum Agreement) to Eqwe: see clause 6.2.1VII Second Forum Agreement. Those representations were false in the circumstances where customer contracts were falsified. There was fraud and dishonesty by Forum Finance.
70. Under the terms of the Second Eqwe Agreement, Eqwe held on behalf of WBC all rights in relation to a Relevant Agreement (as defined), which included any receivable under or in connection with any of the Relevant Agreements. Further, if there were a default by the Seller (Forum Finance), Eqwe was to exercise and seek to enforce against Forum Finance: see clause 13.2 and was to lend its name to any document or demand by WBC for the purposes of enforcing WBC's rights or remedies in respect of any payable: see clause 13.3.
71. Having discovered the first indicia of the fraud, on 1 July 2021 WBC caused a demand to be issued to Forum Finance for the repurchase of Receivables (as defined) in reliance on clauses 7.1 and 13.3 of the Second Eqwe Agreement: Anderson July [6] CB D.I.2 pD.I.19; CB Part C WBC.5000.0001.2015. The demand required that Forum Finance repurchase receivables in the total amount of \$254,219,440.23 from WBC.
72. Other than collections made from the Eqwe account, the demand has not been satisfied: Anderson July [11] CB D.I.2 pD.I.19. The amount of \$253,766,555.76 remains owing to WBC in relation to finance provided under the Eqwe/ Forum Programme: Anderson July [11], WBC Payments Summary: CB F.I.4 pF.I.117. Pausing there, WBC is entitled to judgment against Forum Finance in the sum of \$253,766,555.76 at least in contract but also in the tort of deceit or for that matter under the ACL in light of Forum Finance's misleading or deceptive or false or misleading conduct. There are other bases for judgment against Forum Finance identified later in these submissions.

#### *Proceedings against Iugis NZ*

73. Proceedings were commenced by WNZL against Iugis NZ in the High Court of New Zealand in June 2021: Moreton [121] CB D.I.17 pD.I.198. However, after Iugis NZ entered external administration (Moreton [121]; Grenfell [6] CB D.I.9 pD.I.116) those proceedings have been

stayed: Chapman [8] CB D.I.5 pD.I.64. No relief is sought against Iugis NZ in these proceedings. However, its role as a recipient of fraudulently obtained (stolen in the relevant field of discourse) money is important. These submissions return to the reason why the money received by Iugis NZ (and Forum Finance) was held on trust at the moment of receipt and when paid to FGFS (and in 2018 other recipients) was held by the recipient on trust for WBC or WNZL as appropriate.

### **The receipt of monies by the respondents**

74. Each of the respondents have received, or have caused to be paid to third parties for the relevant respondent's benefit, amounts paid from FGFS pursuant to the Scheme. The receipt of the monies, or payments for the benefit of the relevant respondent (with the exception of Forum Finance and FGFS), is demonstrated by the Respondent Payment Summary for each respective respondent. The attribution of the source of funds for each transaction in the Respondent Payment Summaries is derived from the documents referred to in the summaries, and is also shown in the tracing analysis conducted by McGrathNicol and exhibited to Preston June CB E.2 pE.49 as exhibit JP-17 (**Tracing Model**).
75. Attribution of payments to or on behalf of a particular respondent is based on:
  - a. the bank statements for the respondent and the companies within the Forum group of companies;
  - b. the FGFS Balance Sheet and the FGFS Xero Transaction Listings referred to in the FGFS Balance Sheet ;
  - c. a trace of outgoing transactions from a specified subset of the Forum bank accounts extracted from the records of NAB, produced on subpoena (see Packet S14), which includes information as to the recipient entity and the recipient's bank account details (**NAB Outbound Trace**): CB Part C NAB.5000.0002.0014; and
  - d. the books and records available for the transaction.
76. The attributions of the source of funds for each transaction in the grey shaded columns, including those headed 'Westpac Funds' and 'Westpac NZ Funds' in the Respondent Payment Summaries is derived from the documents referred to and is otherwise shown in the tracing analysis conducted by McGrathNicol, the Tracing Model. The attributions to a particular respondent are also further identified in the Tracing Model, although the Respondent Payment Summaries supplement the attributions in the Tracing Model with further payments subsequently identified.



77. The Respondent Payment Summaries show payments to, or on behalf of, each respondent. The “Total Amount” reflects the full amount received by, or paid to the benefit of that respondent, prior to any attribution as to the source of funds. A table of payments made to, or on behalf of, each respondent is set out in **Annexure B (Receipts Table)**.
78. No funds were traced as paid to, or for the benefit of Iugis Finance UK. However, a practical limitation should be noted. With limited exceptions, the tracing exercise has not been pursued beyond the immediate or sometimes secondary recipient after FGFS. The payments to some of the recipients, for example FG, FE and FEA, are into mixed accounts which in turn have numerous other credit and debit transactions. Not every transaction has been traced to exhaustion. The likely consequence is that the tracing exercise underestimates receipts by other respondents, but as a matter of practicality those payments have not been further pursued.
79. That the funds received by the remaining respondents were received pursuant to the Scheme is seen from the following matters.
80. The monies received from Westpac were, possibly subject to inconsequential exception, not used in relation to the purchase of any equipment within the Forum companies and was not used to purchase the equipment the subject of the Fraudulent Transaction Documents. As already described, each of the Customers disavows the transactions pursuant to which the funds have been paid by WBC to Forum Finance and by WNZL to Iugis NZ. No other basis for receipt of the funds by Forum Finance and Iugis NZ has been proffered by the Respondents nor is apparent from the evidence. Mr Papas was initially represented and participated in the Westpac Proceeding. Despite this, he filed no defence and offered no explanation as to the basis upon which he, or his associated entities, have received funds paid to Forum Finance or Iugis NZ purporting to be for the purchase of equipment. There were occasions for an explanation (by him and Mr Tesoriero), including the application for final relief on the winding up of Forum Finance: *Westpac Banking Corporation v Forum Finance* [2021] FCA 807; orders made by Lee J on 9 July 2021.
81. Funds received by Iugis NZ were transferred to FGFS: Iugis NZ Payments Summary CB F.I.7 pF.I.149. This summary shows that NZD58,763,504.71 (being all of the funds paid from WNZL to Iugis NZ) (\$54,889,185) was transferred from Iugis NZ to FGFS. FGFS had no legitimate business entitling it to use the monies paid by WBC or WNZL to Forum Finance and Iugis NZ respectively itself. Of course, and perhaps more directly, the transfers meant that Iugis NZ did not do that which the Fraudulent Transaction Documents would, if

genuine, have required which was to acquire equipment and provide it, on finance lease, to Veolia NZ.

82. In the period from 13 September 2018 to 21 December 2018, funds received by Forum Finance were transferred to other entities in the Forum group of companies including FG, FE, and FGFS. In the period from 4 February 2019, funds received by Forum Finance were transferred to FGFS. Again, there is no legitimate basis suggested in the evidence for those payments, and the payments prevented the purported purpose of the fraudulent financing documents being achieved.
83. A total amount of \$297,427,676 of the \$341,097,895 paid by WBC to Forum Finance was transferred to FGFS: Preston June [50] CB E.2 pE.49; Forum Finance Payments Summary CB F.I.6 pF.I.129. Funds received by Forum Finance from WBC are reflected in the WBC Payments Summary CB F.I.4 pF.I.117. The Respondent Payment Summary for Forum Finance demonstrates the payment of funds to Forum Finance from various Forum group entities *after* the funds had been misappropriated by Forum Finance and paid away to other Forum group companies.
84. None of the companies or individuals who received the monies had a legitimate basis for receiving any of those funds: (a) the payments were not for the supposed purpose identified in the Fraudulent Transaction Documents; and (b) there is no evidence of any legitimate reason for the payments.
85. Mr Tesoriero, Mr Tesoriero Snr and their related companies deny the receipt of funds derived from the Fraudulent Transactions, but plead that if funds were received, the funds were received by way of return on a capital investment made by Mr Tesoriero as pleaded at paragraph 1900(l) of his defence (**Tesoriero Return**). No evidence has been adduced by Mr Tesoriero, Mr Tesoriero Snr or their associated entities in support of that proposition, or at all. Orders made by Lee J allowed Mr Tesoriero to elect whether to give evidence orally at the close of Westpac's case. A similar application was made by Mr Tesoriero Snr and refused. Mr Tesoriero Snr has served no evidence. There are further fundamental difficulties with that defence. It is inconsistent with FGFS' records, and other contemporaneous documents. There are no corporate documents which record a dividend or buy-back of shares (and recalling that there were other shareholders in FGOC, a selective buy-back was required for the theory to be implemented). And it is inconsistent with the behaviour of Mr Papas and Mr Tesoriero both together and separately buying assets with the stolen money, in effect sharing the spoils of the fraud.

86. Ms Agostino pleads in her defence that funds received were in connection with her employment within the Forum group of companies. Again, no evidence has been filed in support of this position. There is a further difficulty. The evidence shows her involvement in preparing some of the fraudulent documents (for example preparing false certificates of insurance and the customer payment schedules): see for example CB Part C SEC.5000.0041.4396, SEC.5000.0041.4397, SEC.5000.0050.0734, SEC.5000.0050.0735, SEC.5000.0064.0987, SEC.5000.0064.0988 and further at paragraph 107 below.
87. Mr Bouchahine has relied on the privilege against self-incrimination and has denied involved in the Scheme, and on this basis has denied the receipt of the funds alleged in the 2FASOC as paid to him or to his benefit. Yet the evidence shows that Mr Bouchahine, who was the Forum group of companies' CFO, distributed (and likely prepared) the spreadsheets and other financial records recording the receipt and use of the stolen money (including the euphemistic "future funded"): see Annexure D and facilitated many of the payments to the benefit of Mr Papas and Mr Tesoriero: see Payment Directions Emails Summary CB F.I.8 pF.I.155. He was also involved in trying to defer Maia's questions and finding a way to repay Maia.

#### **The Transaction 1 to 100 Representations and the NZ1 to NZ36 Representations**

88. WBC and WNZL allege that Mr Papas and Forum Finance made each of the Transaction 1 to 100 Representations and that Mr Papas made the NZ1 to NZ36 Representations. These were representations to the effect each transaction was genuine; that the Transaction Documents had been executed by the relevant customer; that those documents and the relevant security were valid, binding and enforceable, were complete, accurate and not misleading; that there was no fraud, dishonesty, misrepresentation or negligence on the part of Forum Finance or Iugis NZ in connection with the selection and offer of the transaction; and that the assets had been delivered to and accepted by the customer prior to the payment of money to Forum Finance.
89. That the applicable Representations were made as alleged by Mr Papas and Forum Finance is proved by their conduct in which they fraudulently prepared and presented the Transaction Documents as valid and genuine, knowing that they were not. Mr Papas prepared the Transaction Documents or caused them to be prepared and in many cases signed them, as set out in the Transactions Summary. He forged, or caused to be forged, purported signatures of officers of the relevant customers. He caused the documents to be submitted by Forum

Finance to BHO and Eqwe, which submitted them to Westpac at Mr Papas' and Forum Finance's request and intent: Transactions Summary "Submission to Agent" CB F.I.1 pF.I.1.

90. The Transaction Representations were false, as the transactions and documents were not genuine, the documents had not been executed by the relevant customer and the assets had not been delivered to the customer prior to the payment of money as there were in fact no valid transactions: see Annexure C. The transactions did not exist.
91. The purpose of each of the false Transaction Representations is readily apparent. These Transaction Representations were made to induce Westpac to pay the sums identified in each transaction to Forum Finance or Iugis NZ. That the money was then used to the benefit of Mr Papas, the Forum group companies, Mr Tesoriero and other individuals and entities associated with Mr Papas and Mr Tesoriero demonstrates the fraudulent purpose.
92. It follows that Mr Papas and Forum Finance made the Transaction Representations with the knowledge that they were false, and with the intention that they should be acted upon by Westpac in a manner which would result in damage to Westpac.

#### **The knowledge of the relevant parties**

93. The knowledge of Mr Papas and Mr Tesoriero of the Scheme is necessary to establish liability on their part for certain – but not all - causes of action, as well as the liability of the various corporate respondents for the tort of unlawful means conspiracy (by reason of Mr Papas' and Mr Tesoriero's knowledge and control of them making them parties to the Scheme Agreement), knowing receipt, knowing assistance and involvement in misleading or deceptive conduct or false or misleading conduct. Likewise, the knowledge of the other individuals sued is necessary for establishment of liability against those individuals for certain causes of action.
94. Care need be taken. The extent of required knowledge or notice differs for different causes of action. At one end of the spectrum is the receipt of stolen money held on trust. Knowledge is not required, at least insofar as the traceable proceeds of the stolen money remain held by the respondent: *Great Investments Limited v Warner* [2016] FCAFC 85 (2016) 243 FCR 516 (*Great Investments*) at [53]-[69] (Jagot, Edelman and Moshinsky JJ); *Fistar v Riverwood Legion and Community Club Limited* [2016] NSWCA 81 (2016) 91 NSWLR 732 (*Fistar*) at [36]-[51] (Leeming JA, Bathurst CJ agreeing). In contrast, knowledge or notice, to the relevant *Baden* level (to which these submissions return), is required for knowing receipt and the consequential remedies of account or compensation: *Great Investments* at [53]. There are then different degrees of knowledge, or facts which

must be known, required for the accessorial liability in misleading or deceptive conduct, knowing assistance in a fraudulent and dishonest scheme and conspiracy claims.

95. The knowledge of Mr Papas presents no difficulty. Nor on analysis does the knowledge of Mr Tesoriero, which has already been identified.
96. The knowledge of Mr Papas and Mr Tesoriero is attributed to the relevant companies by reason of Mr Papas' and Mr Tesoriero's (depending on the company, one was or both were a director of each company) control of those companies: adopting the well-known although sometimes unhelpful anthropomorphic concept each was a directing mind and will of the companies of which he was a director. A person's knowledge and state of mind will be attributed to a company where that person manages and controls a company's actions (the directing mind and will of a company): *El Ajou v Dollar Land Holdings Ltd Plc* [1994] 2 All ER 685, or where the person is so centrally concerned with the corporation's operations to be considered its directing mind and will: *Commonwealth Bank of Australia v Kojic* (2016) 249 FCR 421 at [95] (Edelman J; Allsop CJ and Besanko J agreeing); *Krakowski v Eurolynx Properties Ltd* (1995) 183 CLR 563 at 582-3 (Brennan, Deane, Gaudron and McHugh JJ). Consistently with these principles, the mental state of a director of a company (and in each case substantial or sole shareholder) who personally carried out the undertakings of the company is to be attributed to the company: *Bernard Elsey Pty Ltd v FCT* (1969) 121 CLR 119 at 121 (Windeyer J). In relation to the ACL claims, attribution is governed by s 139B of the *Competition and Consumer Act 2010* (Cth).

#### *Mr Papas*

97. The knowledge of Mr Papas is evident from the matters set out at paragraphs 36 to 45 above.

#### *Mr Tesoriero*

98. Westpac's primary case is that Mr Tesoriero knew, or knew circumstances which would have disclosed to an honest and reasonable person in his position, that the amounts paid for Transactions 1 to 100 and NZ1 to NZ36 were dishonestly obtained and paid by Forum Finance and Iugis NZ respectively. Mr Tesoriero knew (or was on notice of) these matters because he was aware that the amounts received were obtained pursuant to the Scheme and the false and fraudulent Transaction Documents, and that Forum Finance; Iugis NZ; and FGFS had no legitimate business which entitled them to use the amounts they received; and that he and the various entities and individual associated with him or Mr Papas which subsequently received substantial payments from FGFS were receiving those payments without any legitimate basis for their receipt: 2FASOC [1905], see further paragraphs 46 to

55 and 58 above. It follows that if Mr Tesoriero was a participant in the Scheme, he had actual knowledge of the matters alleged.

99. If, contrary to WBC and WNZL's primary argument, Mr Tesoriero was not a participant in the Scheme, he nevertheless had constructive knowledge of, or was on notice of, the matters alleged. This knowledge is evident from the same matters already referred to as to Mr Tesoriero's participation in the Scheme.

*Mr Tesoriero Snr*

100. Westpac's case is that Mr Tesoriero Snr knew or had notice that the funds he received were the traceable proceeds of money fraudulently obtained from WBC or WNZL, or at least which were the property of someone other than him or Mr Tesoriero: 2FASOC [2655]. Pausing there, in relation to the receipt based claim Westpac's first submission is that knowledge is not required.
101. In any event, this knowledge can be seen from the following. Nearly every month from 30 April 2019 to 2 April 2020, Mr Tesoriero Snr received from FGFS \$20,000 on the same day, as two payments of \$10,000, which were described in the outgoing bank statements as "management fees": Mr Tesoriero Snr Payment Summary CB F.I.45 pF.I.884 Ln 1 to 26. He was not engaged by nor had any position with FGFS. FGFS also made various payments for the purchase of motor vehicles in Mr Tesoriero Snr's name (and to insure those vehicles): for example on 6 October 2020, the purchase of a 1969 Ford Mustang Boss 429 Z-Code Coupe in the amount of \$239,197.18: CB Part C FOG.1000.0001.2368; FOG.1000.0001.2370; GRY.5000.0001.0016. Mr Tesoriero Snr provided no consideration for these and other moneys and benefits he received from FGFS. That is, he received money for no reason, from a company which had no or no substantive purpose other than to receive and distribute stolen money. He paid some of the money he received from FGFS to, or at the direction of, Mr Tesoriero.
102. Mr Tesoriero Snr was at all relevant times a director of 286 Carlisle St: Corporate Summary CB F.1.2 pF.1.77. Holding that position he caused or permitted 286 Carlisle St to engage in the conduct pleaded against it and caused or permitted it to make the payments pleaded to D&D Group and Theion Ike: 286 Carlisle St, Theion Ike and D&D Group Respondent Payment Summaries CB F.I.28 pF.I.789; F.I.53 pF.I.960; F.I.54 pF.I.962. That is, stolen money was received by a company of which he was a director (with Mr Tesoriero) and then paid to foreign companies for no apparent legitimate reason. Mr Tesoriero Snr admits in his defence that amounts were paid by FGFS to 286 Carlisle St's bank account but denies

knowledge of the payments out: Mr Tesoriero Snr Defence at [2655]. Mr Tesoriero Snr has adduced no evidence of these matters, and in light of the Court's directions for service of evidence, he will not give evidence. The denial of knowledge is not persuasive. His unexplained receipt of moneys from FGFS and his position as a director of 286 Carlisle St while it participated in the fraud are sufficient to establish his knowledge in relation to the funds he and 286 Carlisle St received. Pausing there, as explained later in these submissions, the case against Mr Tesoriero Snr is only in relation to his receipt and the moneys paid to 286 Carlisle St.

*Mr Bouchahine*

103. Mr Bouchahine knew of the Scheme and its purpose, as part of his role as Chief Financial Officer of the Forum group of companies: 2FASOC [2669]. His knowledge of these matters is demonstrated by the evidence he gave at his public examination dated 6 and 7 September 2021 as particularised at 2FASOC [2669]. His evidence in that examination included the following key matters, amongst others particularised at 2FASOC [2669].
104. His evidence was that Mr Papas instructed him that when funds were deposited into Forum Finance, they needed to be transferred straight away to FGFS, and he did so, despite knowing that the money was advanced by Westpac for the purpose of purchasing the equipment the subject of the equipment leases: T16.36-46. He gave evidence that Mr Papas instructed that the monthly invoices in relation to the equipment contracts *should not* be sent to the named customer: T25.3-24. He admitted that he was the person who caused all payments to be made out of FGFS during the time of the fraud, under instructions from Mr Papas: T68.46-T69.15. He admitted that the payments he authorised included those unconnected with the purchase of equipment, including the acquisition and operation of assets of Mr Papas' private companies, including a soccer club in Greece (the Xanthi soccer club), yachts, racing cars, and properties in the names of unit trusts owned by Mr Papas and Mr Tesoriero: T66.11-44. Each week from September 2020 to June 2021, Mr Bouchahine received a spreadsheet from Mr Rollinson (another senior employee of the Forum group companies) which requested that he procure that funds from FGFS be transferred to different companies around the world: T14.4-6; CB Part C FOG.10002.0001.0268; FOG.1002.0001.0269. To that it may be added that he was the CFO of the Forum group of companies. Well over \$200 million of the money stolen from Westpac was paid to the apparent benefit of the Forum group of companies, Mr Papas, Mr Tesoriero, and other individuals and entities associated with each of them, by transfers he made and recorded. Knowing the source of the money, the difference between

its purported and actual use, and his involvement in distributing the money (for purposes other than the purported use), has the consequence that he too knew of the Scheme.

*Ms Agostino*

105. Ms Agostino knew (or alternatively, was on notice) of the fraud and that Forum Finance and Iugis NZ were receiving funds from WBC and WNZL in relation to the Fraudulent Transactions, and that there was no underlying asset or receivable connected with those transactions or purchased with the funds received by Forum Finance and Iugis NZ. She knew or was on notice of the fact that the funds paid to Forum Finance and Iugis NZ were transferred to other Forum entities and used at the direction of Mr Papas and Mr Tesoriero, and thereby knew of the Scheme: 2FASOC [2687] - [2688].
106. This knowledge is demonstrated by Ms Agostino's conduct in assisting Mr Papas to create the Fraudulent Transaction Documents, by providing him with unexecuted annexures for payment schedules and delivery certificates in relation to the Transactions, which Mr Papas returned to her with fraudulent signatures inserted to send to Eqwe: see for example. CB Part C SEC.5000.0041.4396; SEC.5000.0041.4397; SEC.5000.0034.8220, SEC.5000.0034.8221; SEC.5000.0064.0987; SEC.5000.0065.9644, EQW.5000.0001.7875, EQW.5000.0001.7876. There are other examples.
107. Not only did Ms Agostino assist Mr Papas in creating the Fraudulent Transaction Documents, she created fraudulent insurance certificates of currency for submission to Eqwe. For example, on 9 July 2020 at 13:13, Mr Papas forwarded to Ms Agostino an email she sent to him in 2017 attaching a Confirmation of Insurance in favour of WesTrac dated 20 September 2017 in respect of a period of cover of 30 June 2017 to 30 June 2018: CB Part C SEC.5000.0083.9560; SEC.5000.0083.9561. Less than one hour later, at 14:01, Ms Agostino sent to Mr Papas an email with no subject attaching a version of the same Confirmation of Insurance document, now dated 7 July 2020 and with a period of cover of 30 June 2019 to 30 June 2020: CB Part C SEC.5000.0083.9620, SEC.5000.0083.9621. Two minutes later, at 14:03, Mr Papas responded by email stating "*Period of cover is wrong*": see CB Part C SEC.5000.0083.9623. Ms Agostino then sent Mr Papas two further emails at 14:06 and 14:14 respectively, each attaching a Confirmation of Insurance document with the cover period being 30 June 2020 to 30 June 2021: CB Part C , SEC.5000.0083.9624 and SEC.5000.0083.9636, SEC.5000.0083.9637. At 14:43, Mr Papas sent an email to Mr Price at Eqwe attaching a document purporting to be a Confirmation of Insurance from Lockton in favour of WesTrac dated 7 July 2020 for the period 30 June 2020 to 30 June 2021. This



document was not a true confirmation of insurance from Lockton in favour of WesTrac dated 7 July 2020 for the period 30 June 2020 to 30 June 2021 but a fraudulently altered version, prepared by Ms Agostino, of an earlier confirmation of insurance document in favour of WesTrac dated 20 September 2017 for the period 30 June 2017 to 30 June 2018.

108. Ms Agostino's knowledge of the Scheme and fraud is shown by instances such as the above. Ms Agostino is and was also Mr Papas domestic partner. It may be accepted that the fact of a relationship does not mean Mr Papas told her about the fraud. But the present circumstances which include her involvement in creating the Fraudulent Transaction Documents leads to the overwhelming inference that she knew of the Scheme. She also undoubtedly observed Mr Papas' flamboyant lifestyle of racing cars, holiday houses, boats, jewelry and the acquisition of Xanthi Football Club. She was also a senior employee of the Forum group, and must have observed that those companies were not generating business or profits sufficient to support that lifestyle. And she fled the country when the fraud was discovered.

#### **The conduct and role of the relevant parties**

109. WBC and WNZL allege that the individuals sued by it performed identified acts, and occupied various roles within the Forum group of companies, and that they managed and controlled various entities. These roles and undertakings are relied upon to support WBC's and WNZL's claims against those individuals and various entities.
110. Mr Papas performed certain acts in furtherance of the Scheme Agreement (2FASOC [1867]), including signing the First and Second Forum Agreements and the NZ Forum Agreement: CB Part C WBC.5000.0001.1957, WBC.5000.0001.1985 and BNM-1 p98. Mr Papas was and acted as director of Forum Finance, Iugis NZ and FGFS: Corporate Summary CB F.1.2 pF.1.77 each of which had as its predominant corporate purpose to carry into effect the Scheme. He created or caused to be created the false Transaction Documents and caused them to be submitted to BHD Leasing and Eqwe, made the Transaction 1 to 100 and NZ1 to NZ36 Representations: Transactions Summary CB F.I.1 pF.I.1. He procured Forum Finance and Iugis NZ to pay the amounts received from WBC and WNZL respectively away to third parties. He received himself or through Mazcon and the other Greek companies, the Papas Companies, the Forum companies and the Jointly Owned Entities money the source of which was the fraudulent transactions, as set out in the Respondent Payment Summaries. The large amounts of money were received by him and his companies, with no honest explanation for the receipt. He managed with Mr Tesoriero the Jointly Owned Entities, the purpose of which

was to acquire and own property financed in part through amounts improperly obtained through the fraudulent Transactions. That Mr Papas performed these acts is seen from the matters set out at paragraphs 37 to 45 above. That these acts were performed in furtherance of the Scheme Agreement follows from the nature of the acts, taken alone and in combination with each other. There is no honest or innocent explanation for those acts.

111. Mr Tesoriero performed certain acts in furtherance of the Scheme Agreement (2FASOC [1900]), including signing the First and Second Forum Agreements: CB Part C WBC.5000.0001.1957, WBC.5000.0001.1985, was and acted as a director of Forum Finance, was a director and shareholder in FGFS: Corporate Summary CB F.1.2 pF.1.77, the predominant purpose of both of which was to carry into effect the Scheme. He procured or permitted Forum Finance and FGFS to pay the amounts received away to third parties and received himself or by various entities the money derived from the fraudulent transactions: Payment Directions Emails Summary CB F.I.8 pF.I.155, CB Part C FOG.1000.0001.5363. As with Mr Papas, large amounts of money were paid to and used by Mr Tesoriero and his companies, with no apparent honest or lawful explanation for the receipt. He managed with Mr Papas the Jointly Owned Entities (admitted: Tesoriero Defence [1900(d)(ii)]), managed the Tesoriero Entities (admitted: Tesoriero Defence [1900(e)]) and 286 Carlisle St: see for example paragraph 55 above. Mr Tesoriero and Mr Tesoriero Snr caused 286 Carlisle St to receive money and make payments away to Theion Ike and D&D Group in Greece. The Tesoriero Entities, like the Jointly Owned Entities (with the exception of FGFS), were incorporated to acquire and hold property financed in part through amounts improperly obtained through the Fraudulent Transactions.
112. Mr Tesoriero does not admit that he signed the First and Second Forum Agreements: Tesoriero Defence [1900]. However, by his defence at [43]–[49] he has admitted these matters. Furthermore, by operation of rule 16.07(2) of the *Federal Court Rules 2011*, the non-admissions must be taken to be admitted. His signature and name appears on each of these documents, albeit misspelt in respect of the Second Forum Agreement: CB Part C WBC.5000.0001.1985. So too, his non-admission of management of 286 Carlisle St must be taken as an admission, and there is evidence of his management of that company, including that he was authorised to operate its business bank account: see CB Part C FOG.1001.0002.5086; FOG.1001.0002.5081; and CBA.5000.0003.0002.
113. Mr Tesoriero has also pleaded that he was not aware that he was a director of Forum Finance until about late June 2021, and that executive management and control of Forum Finance was exercised by Mr Papas: Tesoriero Defence [1900(b)]. He denies that he managed FGFS,

that he knowingly performed any acts in furtherance of the Scheme Agreement, that he procured or permitted Forum Finance to pay amounts received by it from Westpac away to third parties, and says that he did not occupy any executive role within Forum Finance. There is presently no evidence to support Mr Tesoriero's pleadings, although he may elect to give oral evidence. On the contrary, the evidence shows the control he had of Forum Finance and the management of FGFS, including by virtue of instructions for various payments to be made out of FGFS' funds.

114. The evidence also proves that Mr Bouchahine frequently sent to Mr Tesoriero schedules titled "BP & VT Outstanding Payments" which recorded third party payments and finance repayments to be made in relation to properties and assets purchased with funds obtained through the Scheme as set out in Annexure D. The Payment Directions Emails Summary CB F.I.8 pF.I.155 also discloses that Mr Tesoriero instructed Mr Bouchahine (and others) on numerous occasions to pay money away for purposes unrelated to the purchase of equipment, and Mr Bouchahine (or his team members) effected those payments, as set out in the Payment Directions Emails Summary CB F.I.8 pF.I.155 at, for example, B F.I.8 p.F.I.155 Ln 389-390, 401-402, 403, 417, 424, 801-802, 1271-1273, 1321-1325.

## Claims in Trust

### *Principles*

115. *First*, it is settled law that "[w]here money has been stolen, it is trust money in the hands of the thief, and he cannot divest it of that character" although if that person shows that it has come to him or her *bona fide* for valuable consideration, and without notice, then it may lose its character as trust money and cannot be recovered. If it is handed over as a gift, it does not matter whether there is notice or not: *Black v S Freedman & Company* (1910) 12 CLR 105 (*Black v Freedman*) at 110 (O'Connor J); also *Fistar* at [36], [39] where it was held that a "thief holds stolen property on trust" (Leeming JA, Bathurst CJ and Sackville AJA agreeing).
116. The trust is of an institutional rather than remedial character, and arises immediately because the conscience of the thief is bound: see *Sze Tu v Lowe* (2014) 89 NSWLR 317 (*Sze Tu*) at [141]–[149] and the cases there cited (Gleeson JA, with whom Meagher and Barrett JJA agreed). The trust arises immediately upon acquisition of the property by the thief, not when recognised by a court: *Robb Evans v European Bank Limited* [2004] NSWCA 82 (2004) 61 NSWLR 75 (*Robb Evans*) at [113] (Spigelman CJ, Handley and Santow JJA agreeing); *Sze Tu* at [148].

117. Where a thief pays stolen money to a third party, the recipient holds the money (or its traceable proceeds) on trust for the true owner unless the recipient establishes that he or she or it is bona fide purchaser for value without notice or, subject to the honesty of the change of position, a change of position: see the authorities referred to above. That is, subject to defences receipt is sufficient to establish proprietary relief in relation to the stolen money and its traceable proceeds.
118. Pausing there, absent a defence of bona fide purchaser for value without notice (or an honest change of position), and no defendant pleads that defence, the receipt of trust property claims are established. Westpac is in effect put to proof of the fraud. The evidence already referred to establishes the fraud. The tracing evidence shows receipt, and that the traceable proceeds remain held whether in properties, chattels, bank accounts or funds created on the sale of the assets.
119. *Second*, if the recipient receives the property and obtains notice, actual or constructive, that it was trust property and that the transfer to the recipient was a breach of trust or if the recipient subsequently discovers that fact while the property is still in the recipient's hands, the recipient is liable to account for the property: *Sze Tu* at [142]; *Agip (Africa) Ltd v Jackson* [1990] Ch 265 at 291 (Millett J); *Heperu Pty Ltd v Belle* (2009) 76 NSWLR 230 (*Heperu*) at [92], [163] (Allsop P). That is again different to a first limb *Barnes v Addy* (1874) LR 9 Ch App 244 (*Barnes v Addy*) claim, knowing receipt to which these submissions return. Constructive knowledge in this field of discourse means the fourth category of *Baden* knowledge, namely knowledge of circumstances which would indicate the facts to an honest and reasonable person: see the authorities cited in *Turner v O'Bryan* [2022] NSWCA 23 (2022) 107 NSWLR 171 at [106] (White JA, Meagher JA and McCallum JA agreeing) (citing the fourth category) and [139] including *Grimaldi v Chameleon Mining NL (No 2)* [2012] FCAFC 6 (2012) 200 FCR 296 at [268]-[270] albeit in relation to a knowing receipt claim (coherency leads to the conclusion that the state of knowledge or notice ought to be the same).
120. Pausing there, for the reasons already identified each of the respondents have at least *Baden* fourth category knowledge. Free money does not accord with reality. Using money for a purpose other than that for which it was advanced, in very large amounts, and budgeting to make repayments to keep the money flowing (repayments that do not reflect a genuine transaction) is not the conduct of an honest person. An honest person knowing the facts or circumstances each of the various respondents knew was at least on notice for the purpose of this form of relief. Indeed, the correct conclusion is that each had actual knowledge. Each

respondent is liable to account for the benefit received or pay compensation. No different analysis of those remedies is required in this case in terms of quantum. While Westpac seeks an account, the account is based on and limited to the amount received. Westpac has not attempted to prove further profits on the stolen money. Thus, it is the amount received which is the measure of the account or compensation payable. And while in another case differences in the correct causation analysis may be important, in the present case there is no difference. The money received by each respondent is the measure of the loss caused by that respondent's receipt (the counter-factual is that the money would have been held and returned, the only honest alternative). Otherwise, the right to an account is established if it is established that the receipt of money was "by reason of" the dealing in the stolen money, and a but for analysis is sufficient (albeit perhaps not always necessary): *Ancient Order of Foresters in Victoria Friendly Society Limited v Lifeplan Australia Friendly Society Limited* [2018] HCA 43 (2018) 265 CLR 1 at [85] and [88] (Gageler J).

121. *Third*, where a trustee, who has with knowledge or notice of the trust, in breach of trust paid the trust property away the trustee is under an immediate duty to remedy the breach and reconstitute the trust fund: *Re Dawson* [1966] 2 NSW 211 (***Re Dawson***) at 214, 216 (Street CJ); *Youyang Pty Ltd v Minter Ellison Morris Fletcher* (2003) 212 CLR 484 at [35] (Gleeson CJ, McHugh, Gummow, Kirby and Hayne JJ); *Heperu* at [154]. Where monetary compensation is to be paid in lieu of restoring assets, it is to be assessed by reference to the value of the assets at the date of restoration, not at the date of deprivation: *Re Dawson* at 216. Where there is an obligation to reconstitute the trust fund and the property has been paid away, the remedy is equitable compensation by reason of the trustee's ongoing obligation to account: *Maguire v Makaronis* (1996) 188 CLR 449 at 469; *Australian Executor Trustee (SA) Ltd v Kerr* (2021) 151 ACSR 204 (***Kerr***) at [95] (Gleeson JA, Leeming JA and Emmett AJA agreeing).
122. Again pausing at this point. Each recipient, because of the knowledge or notice of the fraud which has paid away any part of the received money, is liable to pay back that money to restore the fund.
123. The use of tracing as a process of demonstration or proof of what has happened to property which has been fraudulently obtained is well recognized: *Foskett v McKeown* [2001] 1 AC 102 at 128; *Robb Evans* at [133]; *Toksoz v Westpac Banking Corporation* (2012) 289 ALR 577, [2012] NSWCA 199 (***Toksoz***) at [7]; *Sze Tu* at [146]; *Heperu* at [89]. Money can be traced notwithstanding an inability of the follower to connect each link in the chain of

accounts, requiring the use of commonsense and reasonable inference, particularly where there is fraud involved and if there is a lack of explanation: *Toksoz* at [8].

124. In *Toksoz*, Allsop ACJ (Hoeben JA and Sackville AJA agreeing) noted at [9]:

A number of cases reveal a sensible robust approach to the tracing of moneys from theft: *R v Powell* (1837) 7 Car & P 640 ; 173 ER 280 ; *Harford v Lloyd* (1855) 20 Beav 310 ; 52 ER 622 ; *Black, Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548, [1992] 4 All ER 512 ; *El Ajou v Dollar Land Holdings Plc* [1993] 3 All ER 717 ; and see the discussion in L D Smith, *The Law of Tracing*, Clarendon Press, Oxford, 1997, p 263 and the other cases there cited. The expression “tracing by exhaustion” is sometimes used. Where the facts as proved are sufficient to permit the inference that moneys have been received or property bought without there being an honest source available to explain the wealth and the sums or value can be seen as referable to the following party’s property wrongfully obtained, such that the inference is open that the wrongfully obtained funds were the source of the wealth, the funds can be so treated. One does not need to be able to show every link in the chain of accounts from and through which the money passed. Inferences will be more easily drawn, as here, in circumstances where the funds were stolen, the person who is said to have provided the funds was one of the thieves who stole money from the follower, when the recipient has an apparent close relationship with the thief, which recipient gave no value for it, has no personal source of income and gives no explanation as to the source or circumstances of the receipt of the money or any honest source of it.

125. Where the wrongdoer’s money is mixed with the money of an innocent claimant and there is uncertainty as to the proportions of the money, the onus is on the wrongdoer to distinguish the money he has contributed, and to the extent he cannot, the money will be treated as trust money: *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1994] 1 WLR 938; [1994] 4 All ER 890 at 938-939 (Dillon, Leggatt and Kennedy LJ, unaffected on this point by the appeal [1996] AC 669); *Heperu* at [116].

#### *Receipt of funds*

126. The respondents received the funds as set out in the Receipts Table, and in greater detail as set out in the various s50 payment summaries.

#### *Payment away of funds*

127. The respondents paid away the funds as set out in the various s50 payment summaries.

#### **Tort of unlawful means conspiracy**

128. Where two or more persons agree to effect an unlawful purpose, whether as an end or a means to an end, and in the carrying out of that agreement damage is caused to another, then those who have agreed are parties to a tortious conspiracy: *Williams v Hursey* (1959) 103 CLR 30 at 122; *Talacko v Talacko* [2021] HCA 15 (2021) 389 ALR 178 (*Talacko*) at [25].

129. The elements of the tort are as follows:

- a. there is to be an agreement or combination between two or more persons to perform unlawful acts;
- b. with the intention, which need not be the sole or dominant purpose, to injure the applicants. This element will be fulfilled if the conspiracy and the unlawful means were directed at the applicants;
- c. the agreement was carried into effect in whole or in part; and
- d. the applicant suffered some pecuniary loss as a result of the respondents' acts in furtherance of their agreement,

see *Uber Technologies Incorporated (4849283) v Andrianakis* [2020] VSCA 186; 61 VR 580 at [31]-[34], [42] and authorities referred to therein; and *Australian Wool Innovation Ltd v Newkirk* [2005] FCA 290 (*AWI v Newkirk*) at [59] – [64] (Hely J).

130. The agreement or common design between the parties is necessary for them to be jointly liable for the unlawful means: *Talacko* at [25].

131. A breach of a fiduciary duty or a statutory provision may constitute unlawful means: *Fatimi Pty Ltd v Bryant* (2004) 59 NSWLR 678 at [24]-[32]; *Dresna Pty Ltd v Misu Nominees Pty Ltd* [2004] FCAFC 169 at [14]-[19].

132. It has also been established that one or more respondents can join in the execution of an unlawful means conspiracy at any point in time after it was first conceived and still be liable for the conspiracy, provided that the respondent learns of the relevant conspiracy: see *Muriniti v Lawcover Insurance Pty Ltd* [2022] NSWSC 90 at [334], referring to *Metall und Rohstoff AG v Donaldson Lufkin & Jenrette Inc* [1990] 1 QB 391 at 405, *AWI v Newkirk* at [59] – [64] (Hely J); *Weston v Publishing and Broadcasting Ltd* (2011) 83 ACSR 206.

133. In the present circumstances there was unlawful conduct, the fraudulent representations to Westpac. Similarly, the intention was to cause harm to Westpac, to defraud it of very large sums of money (in effect the corollary of stealing money for the benefit of the respondents). There was a combination or agreement, at least between Mr Papas and the various companies but the evidence shows also Mr Tesoriero. The companies of which Mr Papas was a director have his knowledge and intention. The Scheme was carried into effect, and Westpac has suffered loss.

134. The only issue of substance is Mr Tesoriero's (and his companies') joinder in the agreement. As identified earlier in these submissions, the fraud on Westpac follows after dealings,

probably fraudulent, with Maia. Mr Tesoriero guaranteed repayment of Maia. Following that act, the fraud on Westpac was conceived and implemented, including through the agreements with Eqwe that Mr Tesoriero signed. He was a director of each company which perpetrated the fraud, received information about the amounts received and payments made and took a substantial part of the benefit of the fraud, sometimes himself and sometimes with Mr Papas. He was involved in paying money to Greece through 286 Carlisle St. His – and his companies’ – joinder in the agreement is readily apparent.

## **Tort of deceit**

### *Principles*

135. When a defendant makes a false representation, with knowledge that it was false, or recklessly or carelessly as to whether it was false or not, with the intention that it be relied on by the person to whom it was made, and that person relies on that false representation resulting in damage to it, the tort of deceit is committed and is actionable: *Magill v Magill* (2006) 226 CLR 551 at [114] (Gummow, Kirby and Crennan JJ). Recklessness or carelessness as to a representation’s truth has been treated as an instance of making a statement without belief in its truth: *Derry v Peek* (1889) 14 App Cas 337 at 374 (Lord Herschell). But no issue of that type arises – the Representations were quite false and plainly known to be by Mr Papas, Forum Finance and Iugis NZ.
136. An applicant is entitled to recover as damages a sum representing the prejudice or disadvantage the applicant has suffered in consequence of the applicant altering their position under the inducement of the fraudulent representations made by the defendant: *Toteff v Antonas* (1952) 87 CLR 647 at 650 (Dixon J).

### *Reliance on the Transaction Documents and Representations*

137. It is necessary for Westpac’s claim in deceit as against Forum Finance and Mr Papas to establish that WBC and WNZL relied on the Transaction 1 to 100 and NZ1 to NZ36 Documents and the Transaction 1 to 100 and NZ1 to NZ36 Representations, and that the reliance produced in the mind of WBC and WNZL an erroneous belief that the documents and underlying transactions they documented were genuine, when they were not: 2FASOC [1853]; [1884].
138. WBC’s and WNZL’s reliance on the documents and representations is seen from the process followed by Westpac in drawing down funds pursuant to the Eqwe/ Forum Programme described in Stack (particularly at [6] CB D.I.22 pD.I.314) and the process followed by



WNZL described in Moreton (at [24] CB D.I.17 pD.I.198) and in greater detail with respect to each transaction at paragraphs [26]-[34] above. It is plain that Westpac relied on the documents and the representations conveyed. It paid away very large sums of money, and it is not Westpac's business to give away money.

#### *Deceit claims*

139. The deceit claims are advanced against Mr Papas and Forum Finance. It was Mr Papas and Forum Finance which made the Transaction Representations. There is no difficulty in attributing the dishonest representations to both Mr Papas and the company: *Standard Chartered Bank v Pakistan National Shipping Corporation (No 4)* [2003] 1 AC 959 at [20]-[24] (Lord Hoffmann, Lord Mustill, Lord Slynn of Hadley and Lord Hobhouse of Woodborough agreeing); at [32]-[41] (Lord Rodger of Earlsferry, Lord Hobhouse agreeing); reasoning applied in *Houghton v Arms* (2006) 225 CLR 553 at [40] (the Court) in reaching the same conclusion in relation to misleading or deceptive conduct. The evidence already referred to establishes each element of the deceit claims. Judgment for the whole of Westpac's losses should be entered against Mr Papas and Forum Finance.

### **Misleading or deceptive conduct or false or misleading conduct**

#### *Principles*

140. The principles relevant to the operation of s18 of the ACL are well-established. The central question is whether the impugned conduct, viewed as a whole, has a sufficient tendency to lead a person exposed to the conduct into error (that is, to form an erroneous assumption or conclusion about some fact or matter): *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* [2013] HCA 54; 250 CLR 640 at [39]; *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* [2020] FCAFC 130; (2020) 278 FCR 450 at 458-459 at [22]; *Campbell v Backoffice Investments Pty Ltd* [2009] HCA 25; 238 CLR 304 at [102].
141. Whether conduct is deceptive or misleading is a question of fact to be determined in the context of the evidence as to the alleged conduct and the surrounding facts and circumstances: *Google Inc v Australian Competition and Consumer Commission* (2013) 249 CLR 435; [2013] HCA 1 at [89], [102], [118].
142. Whether an applicant has relied on certain conduct is a subjective question: *Italform Pty Ltd v Sangain Pty Ltd* [2009] NSWCA 427 at [40]. Reliance can be inferred: *Australian*

*Competition and Consumer Commission v TPG Internet Pty Ltd* (2013) 250 CLR 640; [2013] HCA 54 at [55].

143. Similar provisions to those found in s18 of the ACL are also contained within s12DA(1) of the *Australian Securities and Investments Commission Act* 2001 (Cth) (**ASIC Act**) and s1041H(1) of the *Corporations Act* 2001 (Cth) (**Corporations Act**) insofar as the conduct relates to financial products or financial services. It is likely that the provision of finance facilities pursuant to the Eqwe /Forum Programme is the provision of a financial service.
144. The reasoning in relation to deceit applies equally to the misleading or deceptive conduct, or false or misleading conduct, causes of action.

#### *Accessory to the conduct*

145. By s79 of the Corporations Act and s2 of the ACL, a person is involved in a contravention if the person, among other things, has aided, abetted, counselled or procured the contravention, or has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention. The same definition of involvement set out in s79 of the Corporations Act applies to the ASIC Act: s5(2)(b) ASIC Act; *ASIC v M101 Nominees Pty Ltd (No 3)* [2021] FCA 354 at [391] (Anderson J); *Rural Funds Management Limited as Responsible Entity for the Rural Funds Trust and RF Active v Bonitas Research LLC* (2020) 143 ACSR 241; [2020] NSWSC 61 at [69] (Hammerschlag J).
146. A person will be knowingly concerned in a statutory contravention if the person has knowledge of the essential elements of the contravention (although it is not necessary to show that the person knew the conduct amounts to a contravention): *Yorke v Lucas* [1985] HCA 65; (1985) 158 CLR 661; *Lifeplan Australia Friendly Society Ltd (ACN 087 649 492) v Ancient Order of Foresters in Victoria Friendly Society Ltd (ACN 087 648 842)* [2017] FCAFC 74; (2017) 120 ACSR 421 at [104]. This will, at least ordinarily, require “some intentional participation or assistance in the contravening conduct”: *Australian Securities & Investments Commission v Maxwell* [2006] NSWSC 1052; (2006) 59 ACSR 373 at [92].
147. Knowledge of the essential elements of the contravention may be inferred from the fact that the person is exposed to the obvious, however, constructive knowledge is not sufficient: *Re HIH Insurance Ltd and HIH Casualty and General Insurance Ltd; Australian Securities and Investments Commission v Adler* [2002] NSWSC 171; (2002) 41 ACSR 72 at [209].

#### *The respondents’ conduct*

148. The conduct giving rise to the misleading or deceptive conduct or false or misleading conduct concerns the preparation and provision of the Transaction 1 to Transaction 100 Documents, Forum Finance's provision of the representations and warranties to WBC under the First and Second Forum Agreements and making each of the Transaction 1 to Transaction 100 Representations to WBC. Forum Finance and Mr Papas engaged in the misleading or deceptive conduct and false or misleading conduct and all other respondents against whom the allegation is made were accessories to that conduct.
149. The respondents who are alleged to have been accessories to that conduct are not alleged to have been involved in all conduct from Transaction 1, in circumstances where they were not yet parties to the Scheme Agreement and engaging in the conduct pleaded against them. Their alleged involvement in the misleading or deceptive conduct or false or misleading conduct dates from their becoming a party to the Scheme Agreement and engaging in the conduct alleged against them. Again, it is necessary to address each separately.

### **Knowing receipt**

#### *Principles*

150. These claims arise as the fraudulently obtained money, stolen money in this field of discourse, and its traceable proceeds is trust property at every stage until received by a bona fide purchaser for value. The money or traceable proceeds are trust property when held by Forum Finance and FGFS, and each subsequent non-innocent recipient. Liability can also be established in each recipient under the first limb of *Barnes v Addy*, knowing receipt.
151. Under the first limb of *Barnes v Addy*, a third party who receives trust property (or property to which a fiduciary duty attaches) which has been misapplied by the trustee or fiduciary, with knowledge by the third party at the time of receipt that the property was trust property and was misapplied, or that it was transferred due to a breach of fiduciary duty is chargeable with that trust property and holds it on trust for the true owner: *Simmons v NSW Trustee and Guardian* [2014] NSWCA 405 (*Simmons*) at [86], [88] (Beazley P, Barrett and Gleeson JJA); *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 (*Say-Dee*) at [112].
152. Knowledge may be established by means of:
- a. actual knowledge of the existence of the fiduciary duty and the misapplication of the transfer pursuant to a breach of fiduciary duty;
  - b. wilfully shutting one's eyes to those matters;

- c. abstaining in a calculated way from making such inquiries as an honest and reasonable person would make about the trust and applicable of trust property; or
- d. knowledge of facts to which an honest and reasonable person would indicate the existence of the trust and fact of misapplication:

*Grimaldi* at [259], [270] (Finn, Stone and Perram JJ); *Simmons* at [90]. That is, the first four categories of *Baden* knowledge.

153. It is unnecessary to establish that the knowing recipient acted dishonestly: *Robins v Incentive Dynamics Pty Ltd (in liq)* (2003) 175 FLR 286 at [60] – [63] (Mason P, Stein and Giles JJA agreeing).
154. The remedies available include imposition of a constructive trust, although this use of constructive trust is an order giving effect to the recipient’s obligation to account: *Twigg v Twigg* (2022) 402 ALR 119; [2022] NSWCA 68 at [50] (Brereton JA), citing *Williams v Central Bank of Nigeria* [2014] AC 1189 at [9]. The Court should decide whether there is an appropriate equitable remedy falling short of the imposition of a trust in the particular circumstances of a given case: *Grimaldi* at [507] – [511], [514] and the cases there cited. In the context of a claim in knowing receipt, a constructive trust to give effect to an account of profits may well ordinarily be the appropriate remedy: *Grimaldi* at [510].
155. A claim for equitable compensation can be made against a third party who has received trust property, subject to the claimant establishing knowledge of the breach in one of the four categories identified in *Consul Development Pty Ltd v DPC Estates Pty Ltd* (1975) 132 CLR 373. The differences in causation and assessment, and why those differences are not of significance in this case, have already been addressed in relation to the trust claims.

## **Knowing assistance**

### *Principles*

156. For the same reason as identified in the previous section of these submissions, the stolen money is held on trust by each (non-innocent in the sense described) recipient. The second limb of *Barnes v Addy* is also available, and is to the effect that a person who assists a fiduciary to breach the fiduciary duty with knowledge of a dishonest and fraudulent design on the part of the fiduciary is liable as though they were the fiduciary: *Say-Dee* at [160].
157. Liability under the second limb will be established if the fourth type of *Baden* knowledge is established (“*knowledge of circumstances which would indicate the facts to an honest and*

*reasonable man*”): *Say-Dee* at [174]-[178]; *Turner v O’Bryan* at [106] (White JA; Meagher and McCallum JJA agreeing).

158. The Scheme was fraudulent and dishonest. On receipt of the moneys paid by Westpac, Forum Finance, Iugis NZ and FGFS held those moneys on trust. The payment away, as part of stealing the money from Westpac, was fraudulent and dishonest. The companies which then used and benefited from the stolen money of which Mr Papas was a director had actual knowledge. The same applies in relation to Mr Tesoriero if he is found to have been involved in the Scheme (as Westpac submits he should be found), but in any event Mr Tesoriero and the companies of which he was a director were on notice, in at least the *Baden* fourth category sense, of Mr Papas’ fraudulent and dishonest conduct.

### **Claims against Forum Finance**

#### *Trust*

159. As set out above, Forum Finance received \$341,097,895 from WBC. It follows from the principles set out above and that the fraud was perpetrated as alleged that Forum Finance held those funds on trust for WBC (a *Black v Freedman* trust) and is obliged to account to it for those funds, including those funds paid away. A nice question may have arisen as to whether WBC is required to give an allowance for the notional repayments it received. But that does not arise as WBC seeks judgment only for the net amount, plus interest and costs. Consequently, no difference arises as to whether the correct analysis is an account or equitable compensation, other than that the relief ought to be an account by imposition of a constructive trust. The amount is \$253,766,555.76 (plus interest).
160. In the alternative, WBC alleges that Forum Finance is liable to pay equitable compensation to WBC for breach of its obligations as trustee by paying away to FGFS, FG, FE and others the amounts it received from WBC and which it held on trust for WBC: 2FASOC [1838]. That order follows from the principles set out above regarding available remedies where there has been a breach of trust. WBC must elect between remedies at judgment, although for the reasons identified the quantum is the same in light of the way in which the claim is framed.

#### *Contract*

161. WBC alleges that Forum Finance breached the First and Second Forum Agreements by its representations and warranties pleaded at 2FASOC [1841] and referred to in paragraphs 62, 88 to 92 of these submissions. For the reasons described in paragraphs 88 above, Forum

Finance breached those terms as the transactions and documents were not valid, accurate, enforceable or genuine. As a consequence, WBC suffered loss of \$253,766,555.76.

*Unlawful means conspiracy*

162. Forum Finance's liability to WBC in the tort of unlawful means conspiracy derives from it being a party to the Scheme Agreement. The knowledge and control of it by its directors, Mr Papas and Mr Tesoriero, is attributed to it and the fact of its receipt, use and disbursement of money stolen from WBC means it participated in and was a party to the conspiracy. Forum Finance had an intent to injure WBC, by submitting the false and fraudulent Transaction Documents in relation to Transactions 1 to 100, as evidenced by the Transactions Summary, and as a result of which, WBC has suffered loss and damage.

*Deceit*

163. It follows from: (a) Forum Finance making the Transaction 1 to 100 Representations; (b) that they were false; (c) that the Transaction Representations were made in the knowledge of their falsity (Mr Papas' knowledge attributed to Forum Finance); (d) that the Transaction Representations were made with the intention that they should be acted upon by WBC in a manner which would result in damage to WBC; (e) that WBC relied on the Transaction 1 to 100 Documents and Transaction 1 to 100 Representations forming an erroneous belief that the Fraudulent Transaction Documents and the underlying transactions were genuine; and (f) that WBC paid away the amounts pleaded that Forum Finance committed the tort of deceit. By reason of the commission of that tort, WBC suffered the loss already identified.

*Misleading or deceptive conduct or false or misleading conduct*

164. It likewise follows from Forum Finance making the Transaction 1 to 100 Representations, providing the Transaction 1 to 100 Documents to WBC via BHO and Eqwe and making the representations and warranties under the First and Second Forum Agreements that Forum Finance engaged in conduct, in trade or commerce, that was misleading or deceptive in contravention of s18 of the ACL and made false or misleading representations in contravention of s29(1)(a), (b) or (d) of the ACL (in respect of the conduct that did not concern financial services), and engaged in misleading or deceptive conduct in relation to a financial product or financial services in contravention of s1041H(1) of the Corporations Act and made false or misleading representations in contravention of s12DB(1)(a) and (b) of the ASIC Act.

### *Conclusion*

165. Judgment should be entered against Forum Finance in the amount of \$253,766,555.76 plus interest, subject to an allowance for the various recoveries arising from the other claims over assets or funds WBC has identified. It should be declared that, consistently with Forum Finance's obligation to account, it holds such assets as it has on constructive trust for WBC.

### **Claims against Mr Papas**

#### *Trust*

166. As set out above and in the Receipts Table, \$3,041,853.35 of WBC and WNZL's funds are traced to Mr Papas (directly in contrast to companies he owned or controlled). It follows from the principles set out above in relation to trusts and from the fraud that was perpetrated by Mr Papas, that Mr Papas holds the funds he has received on trust for WBC and WNZL and is obliged to account to them for those funds, including those funds paid away. It should be declared that he holds the sum of and assets to the value of \$3,041,853.35 on trust for WBC and WNZL (the breakdown is shown in the Receipts Table).

#### *Knowing receipt*

167. Mr Papas caused Forum Finance to pay \$297,427,676 to FGFS from the amounts paid for Transactions 1 to 100, and caused Iugis NZ to pay \$54,889,185 to FGFS from the amounts paid for Transactions NZ1 to NZ36: Forum Finance Payments Summary and Iugis NZ Payments Summary. Mr Papas then caused FGFS to pay amounts to himself, both directly and through companies owned or controlled by him.
168. By reason of his knowledge of and participation in the fraudulent appropriation of those amounts, as well as the fact that the entities involved had no legitimate business entitling them to use themselves the amounts they had received, Mr Papas had actual knowledge that the amounts paid for the Transactions were dishonestly obtained and paid by Forum Finance or Iugis NZ to FGFS in breach of their obligations to WBC and WNZL as trustees of the respective funds. The evidence set out at paragraphs 36 to 45 above is sufficient for the Court to be satisfied that Mr Papas had the requisite knowledge. In those circumstances, Mr Papas was a knowing recipient of the funds and holds those funds on trust or is liable to account to WBC or WNZL for them (and the traceable proceeds of the funds) that he received, or received and dissipated, or to pay equitable compensation. The relief identified in paragraph 166 is appropriate.

#### *Knowing assistance*

169. By reason of Mr Papas' knowledge and his conduct in furtherance of the Scheme, Mr Papas knowingly assisted the breaches of obligations Forum Finance and FGFS owed WBC, and Iugis NZ and FGFS owed WNZL respectively. By reason of these matters, WBC and WNZL have suffered loss and damage and Mr Papas is liable to pay equitable compensation to them. They are entitled to judgment in the sums of \$253,766,555.76 and NZD 44,097,968.98 respectively.

*Unlawful means conspiracy*

170. The conspiracy is described in paragraphs [36] to [55] and the law is described in paragraphs [128] to [134] above. Mr Papas is liable to WBC and WNZL in the tort of unlawful means conspiracy by reason of his forming and being a party to the Scheme Agreement, and his conduct in furtherance of the Scheme Agreement, as detailed at paragraph [110] above. His intent to injure WBC and WNZL is evident from his actions: the intent to injure is the converse of his intention to benefit him and Mr Tesoriero. As a result, WBC and WNZL have suffered loss and damage in the amount of \$253,766,555.76 and NZD 44,097,968.98 respectively.

*Deceit*

171. It follows from the fact that: (a) Mr Papas made the Transaction 1 to 100 Representations to WBC and the Transaction NZ1 to NZ36 Representations to WNZL (as identified in paragraph [62] and [88] to [92] there is no difficulty in the analysis that both Forum Finance (or Iugis NZ) and Mr Papas made the representations); (b) that they were false; (c) that the Transaction Representations were made in the knowledge of their falsity; (d) were made with the intention that they should be acted upon by WBC and WNZL in a manner which would result in damage to them; (e) that WBC and WNZL relied on the Transaction Documents and Transaction Representations which produced an erroneous belief that the Transaction Documents and underlying transactions were genuine; and (f) that WBC and WNZL paid away the amounts pleaded, that Mr Papas committed the tort of deceit. By reason of the commission of that tort, WBC and WNZL suffered the loss already identified.

*Misleading or deceptive conduct or false or misleading conduct*

172. It likewise follows from Mr Papas making of the Transaction Representations (again, for the reasons identified in *Houghton v Arms* no difficulty arises in both the companies and Mr Papas making the representations), by providing the Transaction Documents to WBC and WNZL and causing Forum Finance to make the representations and warranties under the First and Second Forum Agreements, that he engaged in conduct, in trade or commerce,



that was misleading or deceptive in contravention of s18 of the ACL and made false or misleading representations in contravention of s29(1)(a), (b) or (d) of the ACL. In respect of his conduct in relation to the provision of finance facilities to customers pursuant to the Eqwe/ Forum Programme, he engaged in misleading or deceptive conduct in relation to a financial product or financial services in contravention of s1041H(1) of the Corporations Act and made false or misleading representations in contravention of s12DB(1)(a) and (b) of the ASIC Act.

### *Conclusion*

173. Judgment should be entered against Mr Papas in the sums of \$253,766,555.76 (WBC) and NZD 44,097,968.98 (WNZL) respectively, together with interest and costs. A declaration should be made that he holds the sum of, or assets to the value of, \$3,041,853.35 on trust for WBC and WNZL. Of course, WBC and WNZL cannot make double recovery. The amounts held on trust should be deducted from the money judgments to which WBC and WNZL are entitled. Further, as the liability is in equity it should be declared that he holds all his assets, to the net balance, on constructive trust for Westpac.

### **Claims against Mr Tesoriero**

#### *Trust*

174. As set out above and in the Receipts Table, \$1,581,500.98 of WBC and WNZL's funds is directly traced to Mr Tesoriero and a further \$20,102,041.90 of WBC and WNZL's funds is traced to him indirectly via the Jointly Owned Entities (excluding FGFS), Tesoriero Entities and Tesoriero-Related Entities. It follows from the principles identified in paragraphs [115] to [127] above in relation to trusts and that the fraud was perpetrated (with the consequence that the money was held on a *Black v Freedman* trust) that Mr Tesoriero holds the funds he has received on trust for WBC and WNZL and is obliged to account to them for those funds, including those funds paid away or those he caused or permitted to be paid away. Pausing there, no question of knowledge arises on this cause of action, and no defence to this cause of action is pleaded.

#### *Knowing receipt*

175. After Mr Papas caused Forum Finance and Iugis NZ to pay \$352,361,861 to FGFS (\$297,427,676 from Forum Finance and \$54,889,185 from Iugis NZ) as set out above, he and Mr Tesoriero caused FGFS to pay amounts to Mr Tesoriero, who received amounts

directly as well as other amounts through the receipt of companies owned or controlled by him, as set out in paragraph [174].

176. By reason of his knowledge of and participation in the Scheme, as well as the fact that the companies involved had no legitimate business entitling them to use themselves the amounts they had received, Mr Tesoriero had actual knowledge that the amounts paid for the Transactions were dishonestly obtained and paid by Forum Finance or Iugis NZ to FGFS in breach of their obligations to WBC and WNZL. He need not know the legal character (trust property) only the facts which lead to that conclusion: the morally obtuse do not avoid liability. Alternatively, Mr Tesoriero was on notice of the identified facts and circumstances which would have, at least, disclosed the fraud to an honest and reasonable person in his position (or an honest person would not have turned a blind eye). The evidence set out at paragraphs 93, 96 and 98 to 99 above shows that Mr Tesoriero had the requisite knowledge or notice. In those circumstances, Mr Tesoriero was a knowing recipient of the funds and holds them on trust or is liable to account to WBC or WNZL for them (and the traceable proceeds of the funds) that he received, or received and dissipated, or to pay equitable compensation.

*Knowing assistance*

177. For the same reasons Mr Tesoriero knew of and participated in the dishonest and fraudulent Scheme, and by his conduct in furtherance of the Scheme (including actions in disbursing the stolen money, and buying assets for himself and Mr Papas with that money), Mr Tesoriero knowingly assisted the breaches of obligations Forum Finance and FGFS owed WBC and Iugis NZ and FGFS owed WNZL respectively. By reason of these matters, WBC and WNZL have suffered the loss already identified and Mr Tesoriero is liable to pay equitable compensation to them.

*Unlawful means conspiracy*

178. Mr Tesoriero is liable to WBC and WNZL in the tort of unlawful means conspiracy by reason of his forming and being a party to the Scheme Agreement, and his conduct in furtherance of the Scheme Agreement, as detailed at paragraphs [110] to [114] above. His intent to injure WBC and WNZL is evident from his actions, which again is the converse of his intention to benefit himself and Mr Papas. As a result of these, WBC and WNZL have suffered the loss already identified \$253,766,555.76 and NZD 44,097,968.98 respectively.

*Misleading or deceptive conduct or false or misleading conduct*

179. Further, WBC and WNZL allege that by entering into the Scheme Agreement and by engaging in the conduct in furtherance of the Scheme Agreement as set out in paragraphs [110] to [114] above, in the circumstances of Mr Tesoriero's knowledge referred to in paragraphs [96]-[99], Mr Tesoriero was involved in Forum Finance's and Mr Papas' misleading or deceptive conduct, false or misleading conduct and contraventions of the ACL, ASIC Act and Corporations Act. Mr Tesoriero is involved in this conduct by aiding, abetting or procuring, being knowingly concerned in or party to or conspiring with others by the Scheme Agreement to give effect to such conduct by his conduct already identified.
180. Mr Tesoriero engaged in conduct, including by his distribution and use of the stolen funds, which was (and could only have been) premised on his actual knowledge of the essential elements of the conduct which amounted to these contraventions of the ACL, ASIC Act and Corporations Act. Mr Tesoriero's conduct, in turn, constituted a practical connection with these contraventions. On that basis, Mr Tesoriero should be ordered to pay damages or compensation under s236 and 237 of the ACL or s12GF and 12GM of the ASIC Act, or s1041I of the Corporations Act by reason of the loss and damage suffered by Westpac caused by his contravening conduct.

*Conclusion*

181. Judgment should be entered against Mr Tesoriero in the sums of \$253,766,555.76 (WBC) and NZD 44,097,968.98 (WNZL) respectively, together with interest and costs. A declaration should be made that he holds the sum of, or assets to the value of, \$20,102,041.90 on trust for WBC and WNZL. Again, WBC and WNZL cannot make double recovery. The amounts held on trust should be deducted from the money judgments to which WBC and WNZL are entitled. Further, as the liability is in equity it should be declared that he holds all his assets, to the net balance, on constructive trust for Westpac.

**Claims against FGFS**

*Trust*

182. As set out above, the amount of \$297,427,676 was paid to FGFS from Forum Finance and a further \$54,889,185 paid to it from Iugis NZ. FGFS held money on trust for WBC and WNZL due to its receipt, but also on the basis that it participated in the Scheme with the attribution of Mr Papas' and Mr Tesoriero's knowledge to it. It follows from the foregoing that FGFS held the funds it has received on trust for WBC and WNZL and is obliged to

account to them for those funds, including those funds paid away or those it caused or permitted to be paid away. There are cascading forms of relief claimed.

183. To the extent that the Receipts Table records the amount of \$1,982,794.71 as being received by FGFS this is the amount remaining, returned to or paid for the benefit of FGFS *after* the funds it received had been misappropriated and paid away to other Forum companies or respondents.
184. FGFS continues to hold \$570,143 in its bank account and holds \$1,151,425.23 in a property fund from the sale of the Atherton Rd property which is the traceable proceeds of the money received from WBC and WNZL. That money is currently held by the Liquidators. A declaration should be made to the effect that FGFS holds that sum on trust for WBC and WNZL.
185. The balance of the money received by FGFS (\$296,219,236.77) has been paid away. Nonetheless, FGFS is obliged to account, and to make good the trust fund. It should be declared that FGFS hold such further assets it has on constructive trust for Westpac, as a remedial response to the obligation to account, up to the amount of \$296,219,236.77.

#### *Knowing receipt*

186. As set out above, Mr Papas caused Forum Finance and Iugis NZ to pay \$352,361,861 to FGFS.
187. By reason of its knowledge of and participation in the Scheme, again with Mr Papas and Mr Tesoriero's knowledge attributed to it, as well as the fact that each of the companies involved had no legitimate business entitling them to use themselves the amounts they had received, FGFS had actual knowledge that the amounts paid for the Transactions were dishonestly obtained and paid by Forum Finance and Iugis NZ to it in breach of their obligations to WBC and WNZL as trustees of the respective funds. Alternatively, FGFS had constructive knowledge of those matters. In those circumstances, FGFS was a knowing recipient of the funds and holds them on trust or is liable to account to WBC or WNZL for them (and the traceable proceeds of the funds) that it received, or received and paid away, or to pay equitable compensation. The relief is the same as in relation to the trust claims.

#### *Knowing assistance*

188. FGFS knowingly assisted in Forum Finance's and Iugis NZ's breaches of obligations as trustee owed to WBC and WNZL respectively by receipt of and disbursement of the monies derived from the Transactions and using the funds for its own benefit or paying amounts

received by it away to third parties, including other entities in the Forum Group. By reason of FGFS' participation, WBC and WNZL have suffered loss and damage and FGFS is liable to pay equitable compensation. That loss is the total amount Forum Finance and Iugis NZ received from Westpac and paid to FGFS, namely \$352,361,861.

*Unlawful means conspiracy*

189. FGFS is liable to WBC and WNZL in the tort of unlawful means conspiracy by reason of its being a party to the Scheme Agreement and the acts taken in furtherance of that Agreement. At its most direct, that follows by its actions and attribution of Mr Papas' knowledge to FGFS. FGFS was a party to the Scheme Agreement by reason of its conduct in receiving and disbursing the money dishonestly obtained from WBC and WNZL in furtherance of the Scheme Agreement, with Mr Papas and Mr Tesoriero's knowledge (and for that matter, Mr Bouchahine's knowledge). Mr Papas and Mr Tesoriero were each 50% shareholders in FGFS and at the time of the Scheme Agreement, Mr Papas was a director at all relevant times, with Mr Tesoriero becoming a director from 13 November 2018: Corporate Summary CB F.1.2 pF.1.77 Ln 7. In the circumstances, it is sufficient for WBC and WNZL to establish that Mr Papas knew the matters alleged for FGFS to have the same knowledge: Corporate Summary CB F.1.2 pF.1.77 Ln 7.
190. Its intent to injure WBC and WNZL is evident for the reasons identified in relation to Mr Papas and Mr Tesoriero. As a result, WBC and WNZL have suffered loss in the same amounts identified in relation to Mr Papas and Mr Tesoriero.

*Misleading or deceptive conduct or false or misleading conduct*

191. Further, WBC and WNZL allege that by engaging in the conduct in furtherance of the Scheme Agreement in receiving, using and paying away money received pursuant to the Transactions set out at [181] to [184] above, when it had actual knowledge of the fact that the moneys were dishonestly obtained pursuant to the fraud as set out above, FGFS was involved in the misleading or deceptive conduct.
192. By reason of its knowledge, FGFS knew the essential elements of the conduct which amounted to contraventions and had a practical connection with the conduct, by reason of its conduct in receiving and disbursing the money. On that basis, Westpac is entitled to recover from FGFS damages or compensation under ss236 and 237 of the ACL, or ss12GF and 12GM of the ASIC Act, or s1041I of the Corporations Act by reason of the loss and damage suffered by Westpac caused by the conduct.

### *Conclusion*

193. The remedies Westpac moves for will be separately identified. Rather than repeat the submission as to the appropriate remedial response in this document, the remedies for each of the corporate respondents, subsequently referred to, will also be separately identified.

### **Claims against the Forum Entities**

#### *Trust*

194. The following amounts have been traced from WBC and WNZL's funds to each of the Forum Entities, as set out in the Receipts Table:
- a. FG – \$120,808,760.51;
  - b. FE – \$15,606,243.74;
  - c. FEA – \$99,170,586.34;
  - d. Iugis – \$14,275,514.59;
  - e. TFGC – \$7,668,501.54.
195. It follows from the principles set out above in relation to trusts and that the fraud was perpetrated as alleged that these entities hold the funds they received on trust for WBC and WNZL and are obliged to account to them for those funds, including those funds paid away or those they caused or permitted to be paid away. The appropriate remedial response is to order that each company holds its assets on constructive trusts (or an equitable charge) up to the amount received plus interest.

#### *Knowing receipt*

196. As set out above, Mr Papas caused Forum Finance and Iugis NZ to pay, via FGFS, the amounts to FG, FE, FEA, TFGC and Iugis from the amounts Westpac had paid to Forum Finance and Iugis NZ for the Transactions.
197. By reason of Mr Papas' knowledge, each of the Forum Entities had actual knowledge that the amounts paid for the Transactions were dishonestly obtained and paid by Forum Finance and Iugis NZ to FGFS and then to the recipient company in breach of its obligations to WBC and WNZL as trustees of the respective funds. In those circumstances, they were knowing recipients of the funds and hold them on trust or are liable to account to WBC or WNZL for them (and the traceable proceeds of the funds) that they received, or received and paid away, or to pay equitable compensation. Again, as a remedial response to the obligation to account the assets of each company ought to be subject to a constructive trust or equitable charge.

*Knowing assistance*

198. By reason of Mr Papas' knowledge, as set out above, and the Forum companies' conduct in receiving, using and paying away monies derived from the Transactions, the Forum Entities knowingly assisted the breaches of obligations Forum Finance and FGFS owed WBC and Iugis NZ and FGFS owed WNZL respectively. By reason of these matters, WBC and WNZL have suffered loss and damage and the Jointly Owned Entities are liable to pay equitable compensation to them.

*Unlawful means conspiracy*

199. Each of the Forum Entities was a party to the Scheme Agreement by reason of the knowledge and control of them by Mr Papas, and by their acts taken in furtherance of the Scheme Agreement, which were receiving money deriving from the Transactions and paying all or some of the money away for their own purposes or to benefit the other conspirators.
200. Mr Papas was a director of each at the relevant time: see Corporate Summary Corporate Summary CB F.1.2 pF.1.77 Ln 2 to 6. In the case of FG, FE, FEA and Iugis, Mr Papas was the sole director, and in the case of TFGC, Mr Tesoriero was the only other director at the time of the fraud.

*Misleading or deceptive conduct or false or misleading conduct*

201. Further, by engaging in the conduct in furtherance of the Scheme Agreement in receiving, using and paying away money received pursuant to the Transactions, when the companies had actual knowledge of the fact that the moneys were dishonestly obtained pursuant to the fraud (Mr Papas' knowledge attributed to the companies; equally Mr Tesoriero and Mr Bouchahine), the Forum Entities were involved in the misleading or deceptive and false or misleading conduct by aiding, abetting or procuring, being knowingly concerned in or party to or conspiring with others by the Scheme Agreement to give effect to such conduct.
202. By reason of the knowledge attributed to them, the Forum Entities knew the essential elements of the conduct which amounted to contraventions and had a practical connection with the conduct, by reason of their conduct. On that basis, Westpac is entitled to recover from them damages or compensation under ss236 and 237 of the ACL, or ss12GF and 12GM of the ASIC Act, or s1041I of the Corporations Act equal to the loss and damage suffered by Westpac caused by the conduct.

**Claims against the Jointly Owned Entities***Trust*

203. The Receipts Table sets out the amount of WBC and WNZL's funds traced to 64-66 Berkeley St, 14 James St, 26 Edmonstone Rd, 5 Bulkara St and 6 Bulkara St. It follows from the principles set out in paragraphs [115] to [127] above in relation to trusts and the fraud that the Jointly Owned Entities hold the funds they have received on trust for WBC and WNZL and are obliged to account to them for those funds, including those funds paid away. There are slight differences in relation to each.
204. 64-66 Berkeley Street still owns the property acquired using WBC and WNZL's money. It has no undertaking other than owning that property, and the money can be traced to the acquisition, maintenance or repayment of debt secured over that property. It should be declared that the property (known as 64-66 Berkeley Street Hawthorn Victoria) is held on trust for WBC and WNZL to the extent of \$752,414.64 plus interest.
205. The properties owned by 14 James Street have been sold. After paying out the priority financiers which had registered mortgages, an estimated fund of \$2,385,369 has been created. WBC and WNZL trace into that fund, and claim \$2,462,818.44 is held on trust for WBC and WNZL.
206. 5 Bulkara St and 6 Bulkara St formerly owned property in Wagstaffe, NSW. Both of those properties (5 Bulkara Street and 6 Bulkara Street) have been sold. Net proceeds from the sale of 5 Bulkara Street are to be held by the receivers in a fund. WBC and WNZL trace into that fund and claim \$3,000,716.89 is held on trust for them. The receivers of 6 Bulkara St hold a fund of \$9,808,169.94; WBC and WNZL trace into that fund, and claim \$3,104,433.84 is held on trust for WBC and WNZL.
207. 26 Edmondstone Road Bowen Hills QLD, formerly owned by 26 Edmonstone Rd. That too has been sold and a fund is currently held by the Liquidators. WBC and WNZL trace into that fund and claim \$1,981,283.89 is held on trust for them.

*Knowing receipt*

208. As set out above, Mr Papas caused Forum Finance and Iugis NZ to pay, via FGFS, amounts to the Jointly Owned Entities from the amounts paid for the Transactions.
209. By reason of Mr Papas' and Mr Tesoriero's knowledge, each of the Jointly Owned Entities had actual knowledge that the amounts paid for the Transactions were dishonestly obtained and paid by Forum Finance or Iugis NZ to FGFS and then by that company in breach of their obligations to WBC and WNZL as trustees of the respective funds. In those circumstances, they were knowing recipients of the funds and hold them on trust or are liable to account to WBC or WNZL for them (and the traceable proceeds of the funds) that they received, or



received and paid away, or to pay equitable compensation. The same analysis as the trust analysis above applies in relation to the individual companies, although the appropriate relief is the declaration of a constructive trust.

*Knowing assistance*

210. By reason of Mr Papas' and Mr Tesoriero's knowledge, as set out above, and their conduct in furtherance of the fraud in receiving, using and paying away monies received derived from the Transactions, the Jointly Owned Entities knowingly assisted the breaches of obligations Forum Finance and FGFS owed WBC and Iugis NZ and FGFS owed WNZL respectively. By reason of these matters, WBC and WNZL have suffered loss and damage and the Jointly Owned Entities are liable to pay equitable compensation to them.

*Unlawful means conspiracy*

211. Each of the Jointly Owned Entities was a party to the Scheme Agreement by reason of the knowledge of Mr Papas and Mr Tesoriero attributed to them, and by their acts taken in furtherance of the Scheme Agreement, which were receiving money derived from the Transactions and paying all or some of the money away for their own purposes or to benefit the other conspirators (ultimately Mr Papas and Mr Tesoriero).
212. Mr Papas and Mr Tesoriero were joint directors and shareholders of each at the relevant time: see Corporate Summary Lns 8 to 12.
213. The involvement of the Jointly Owned Entities in the Scheme means that judgment should be entered against each for the full amount of the loss suffered (less recoveries from the various forms of proprietary relief).

*Misleading or deceptive conduct or false or misleading conduct*

214. Further, by engaging in the conduct in furtherance of the Scheme in receiving, using and paying away money received pursuant to the Transactions, when the companies had actual knowledge of the fact that the moneys were dishonestly obtained pursuant to the fraud, the Jointly Owned Entities were involved in the misleading or deceptive or false or misleading conduct by aiding, abetting or procuring, being knowingly concerned in or party to or conspiring with others by the Scheme Agreement to give effect to such conduct.
215. By reason of Mr Papas' knowledge, the Jointly Owned Entities knew the essential elements of the conduct which amounted to contraventions, from the date that Mr Papas acquired that knowledge or the date of their incorporation, whichever is the later, and had a practical connection with the conduct, by reason of their conduct. On that basis, Westpac is entitled

to recover from them damages or compensation under ss236 and 237 of the ACL, or ss12GF and 12GM of the ASIC Act, or s1041I of the Corporations Act by reason of the loss and damage suffered by Westpac caused by the conduct.

### **Claims against Entities controlled by Mr Tesoriero**

216. The companies owned and controlled by Mr Tesoriero are those listed in the “Tesoriero Entities” section in the Corporate Summary at lines 13 to 24, and the “Other Tesoriero Related Companies” listed at lines 28 to 33. Mr Tesoriero is a director and shareholder of each, and in some cases the sole director and shareholder. These companies are not in liquidation, and have filed defences in the proceedings but no evidence.

### *Trust*

217. As set out in the Receipts Table, WBC and WNZL’s funds are traced to these entities from funds paid from Forum Finance and Iugis NZ to FGFS, which were fraudulently obtained from WBC and WNZL. It follows from the principles set out above in relation to trusts and the fraud that the companies controlled by Mr Tesoriero hold the funds they have received on trust for WBC and WNZL and are obliged to account to them for those funds, including those funds paid away.
218. These entities have pleaded that they do not know and therefore do not admit that they received amounts paid pursuant to the Transactions, deny that they knew that monies they received were derived from the Transactions, deny that they held any funds or property on trust for WBC and WNZL. Pausing there, for the reasons already identified, it is unnecessary for those companies to have known that the monies were derived from the Transactions in order for them to be liable to WBC and WNZL in trust: *Black v Freedman* at 110. But further and in any event Mr Tesoriero’s knowledge is to be attributed to those companies.
219. The property owned by 23 Margaret St has been sold. After paying out the financiers, a fund of \$1,340,866.65 was created and placed in a controlled monies account. Orders made on 20 July 2022 provided for Mr Tesoriero to access \$1,070,000 from that fund for his reasonable legal expenses. WBC and WNZL trace \$638,433.49 to 23 Margaret St and claim that this amount is held on trust for WBC and WNZL. Only \$271,331.20 remains in the controlled monies account.
220. The property owned by 1160 Glen Huntly Road has been sold, and net proceeds of \$795,000 have been paid into the Supreme Court of Victoria. WBC and WNZL trace into that fund, and claim \$942,638.73 is held on trust for WBC and WNZL.

221. A number of the Tesoriero Entities are companies that each own a regional petrol station or other properties. In respect of each WBC and WNZL trace money into the acquisition, maintenance or repayment of debt secured that property. It should be declared that the properties are held on trust for WBC and WNZL to the extent of their claims as follows:
- a. 14 Kirwin Road : 14 Kirwin Road Morwell Victoria as to the extent of \$251,392.35;
  - b. 123 High Street: 124 High Street Taradale Victoria as to the extent of \$63,428.46;
  - c. 160 Murray Valley: 160 Murray Valley Highway Lake Boga Victoria as to the extent of \$200,336.95;
  - d. 31 Ellerman Street: 31 Ellerman Street Dimboola Victoria as to the extent of \$200,336.95;
  - e. 4 Cowslip Street: 2 Cowslip Street Violet Town Victoria as to the extent of \$271,388.65;
  - f. 89 Betka Road: 89 Betka Road Mallacoota Victoria as to the extent of \$143,992.79;
  - g. 9 Gregory Street: 9 Gregory Street Ouyen Victoria as to the extent of \$5,173.25;
  - h. 9 Main Street: 9-15 Main Street Derrinallum Victoria as to the extent of \$129,605.76; and
  - i. 275 High Street: Unit 9, 269-275 High Street Golden Square Victoria as to the extent of \$273,390.59.
222. As set out in the Receipts Table, \$143,745.24 has been traced from WBC and WNZL's funds to Canner Investments which is held on trust. Canner Investments is the registered proprietor of 12 Hartington Street, Elsternwick, Victoria 3185.
223. As set out in the Receipts Table:
- a. \$639,632.25 has been traced from WBC and WNZL's funds to TIG;
  - b. \$30,304.64 has been traced from WBC and WNZL's funds to 193 Carlisle Street Enterprises which is held on trust,
- and it should be declared that those companies hold those amounts on trust for Westpac.
224. Mangusta (Vic) had no undertaking other than to be the entity through which the Mangusta XOXO yacht was to be held: CB Part C FOG.1001.0008.9634. WBC and WNZL, as set out in the receipts table can trace amounts paid towards the maintenance and upkeep of the XOXO and for the benefit of Mangusta (Vic). The XOXO has been sold and a fund of

\$556,000 is held by the Liquidators, a declaration should be made that the amount of \$82,578.70 of that fund is held on trust for WBC and WNZL in respect of their claims.

*Knowing receipt*

225. By reason of Mr Tesoriero's knowledge, each of the entities controlled by Mr Tesoriero had actual knowledge that the amounts paid for the Transactions were dishonestly obtained and paid by Forum Finance and Iugis NZ to FGFS and then to that company in breach of the obligations owed to WBC and WNZL as beneficiaries of the respective funds. Alternatively, if Mr Tesoriero did not have actual knowledge but some lesser notice, the companies had the same knowledge or notice which he did. In those circumstances, they were knowing recipients of the funds and hold them on constructive trust or are liable to account to WBC or WNZL for them (and the traceable proceeds of the funds) that they received, or received and paid away, or to pay equitable compensation.

*Knowing assistance*

226. By reason of Mr Tesoriero's knowledge, as set out above, including of the dishonest and fraudulent purpose of the Scheme, and the entities controlled by Mr Tesoriero's conduct in furtherance of the Scheme in receiving, using and paying away monies received or derived from the Transactions, each knowingly assisted the breaches of obligations Forum Finance and FGFS owed WBC and Iugis NZ and FGFS owed WNZL respectively. By reason of these matters, WBC and WNZL have suffered loss and damage and the entities controlled by Mr Tesoriero are liable to pay equitable compensation to them. As with the conspiracy claim, the losses recoverable are not only the amounts paid to the particular company, but all losses arising from the Scheme, or at least arising after the particular company first received money.

*Unlawful means conspiracy*

227. Each of the entities controlled by Mr Tesoriero was a party to the Scheme Agreement by reason of the knowledge and control of them by Mr Tesoriero and by their acts taken in furtherance of the Scheme Agreement, which were receiving money deriving from the Transactions and paying all or some of the money away for their own purposes or to benefit the other conspirators.
228. Mr Tesoriero's knowledge is to be attributed to the entities controlled by Mr Tesoriero for the reasons identified in paragraph 96 above. So is his conduct in relation to the disbursement and receipt of the stolen money. By the companies' participation in the fraudulent conduct,

receipt and use of the benefit under the control of Mr Tesoriero, the companies have joined the Scheme. They are liable for damages for the whole loss caused.

*Misleading or deceptive conduct or false or misleading conduct*

229. Further, WBC and WNZL allege that by engaging in the conduct in furtherance of the Scheme in receiving, using and paying away money received pursuant to the Transactions, when the companies had actual knowledge or notice of the fact that the moneys were dishonestly obtained pursuant to the fraud set out above, the entities controlled by Mr Tesoriero were involved in the misleading or deceptive or false or misleading conduct by aiding, abetting or procuring, being knowingly concerned in or party to or conspiring with others by the Scheme Agreement to give effect to such conduct. By reason of Mr Tesoriero's knowledge, the entities controlled by Mr Tesoriero knew the essential elements of the conduct which amounted to contraventions, from the date that Mr Tesoriero acquired that knowledge or the date of their incorporation, whichever is the later, and had a practical connection with the conduct, by reason of their conduct. On that basis, Westpac is entitled to recover from them damages or compensation under ss236 and 237 of the ACL, or ss12GF and 12GM of the ASIC Act, or s1041I of the Corporations Act by reason of the loss and damage suffered by Westpac caused by the conduct.

**Claims against Entities controlled by Mr Papas**

230. As set out above, Iugis Holdings UK, Iugis GFS UK and Iugis Finance UK have been dissolved and the claims against them are not pressed.

*Trust*

231. As set out in the Receipts Table, WBC and WNZL's funds are traced to the Papas Companies from funds paid from Forum Finance and Iugis NZ to FGFS, which were fraudulently obtained from WBC and WNZL. It follows from the principles set out above in relation to trusts and the fraud that these companies hold the funds they have received on trust for WBC and WNZL, and are obliged to account to them for those funds, including those funds paid away. Declarations to the effect already identified should be made.
232. The amount traced by Westpac and WNZL into each of Palante, Spartan and Intrashield exceeds the assets held by those companies. Palante's assets including money held by it, and money and shares held by Macrovue Pty Ltd (a broker) (or perhaps now cash, the shares may have been realised by the liquidators), each of which are held on trust for WBC and WNZL have an estimated asset value of \$1,650,000. Westpac and WNZL trace

\$2,452,403.23 into Palante. Spartan holds \$177,247.13 in cash at bank. WBC and WNZL trace \$1,333,226.46 into this company. Intrashield holds \$8,819 in cash at bank as well as \$56,000 by way of a fund from the sale of a motor vehicle, the Lotus Type 11 Exige. WBC and WNZL trace \$1,176,393.65 into this company.

*Knowing receipt*

233. By reason of Mr Papas' knowledge, each of the Papas Companies had actual knowledge that the amounts paid for the Transactions were dishonestly obtained and paid by Forum Finance/Iugis NZ to FGFS and then to that company in breach of the obligations owed to WBC and WNZL as beneficiaries of the respective funds. Alternatively, if Mr Papas did not have actual knowledge but some lesser notice, the companies had the same constructive knowledge which he did. In those circumstances, they were knowing recipients of the funds and hold them on constructive trust or are liable to account to WBC or WNZL for them (and the traceable proceeds of the funds) that they received, or received and paid away, or to pay equitable compensation.

*Knowing assistance*

234. By reason of Mr Papas' knowledge, as set out above, including of the dishonest and fraudulent purpose of the Scheme, and the Papas Companies' conduct in furtherance of the Scheme in receiving, using and paying away monies received or derived from the Transactions, each knowingly assisted the breaches of obligations Forum Finance and FGFS owed WBC and Iugis NZ and FGFS owed WNZL respectively. By reason of these matters, WBC and WNZL have suffered loss and damage and the Papas Companies are liable to pay equitable compensation to them. As with the conspiracy claim, the losses recoverable are not only the amounts paid to the particular company, but all losses arising from the Scheme, or at least arising after the particular company first received money.

*Unlawful means conspiracy*

235. Mr Papas was a director and shareholder of each of the Papas Companies. In some instances, he was the sole director and shareholder: see Corporate Summary Lns 25- 27, 35-36, 38, 40-41.
236. Each of the Papas Companies was a party to the Scheme Agreement by reason of the knowledge and control of them by Mr Papas and by their acts taken in furtherance of the Scheme Agreement, which were receiving money deriving from the Transactions and paying all or some of the money away for their own purposes or to benefit the other conspirators.

237. Mr Papas' knowledge is to be attributed to the Papas Companies for the reasons identified in paragraph 96 above. So is his conduct in relation to the disbursement and receipt of the stolen money. By the companies' participation in the fraudulent conduct, receipt and use of the benefit under the control of Mr Papas, the companies have joined the Scheme. They are liable for damages for the whole loss caused.

*Misleading or deceptive conduct or false or misleading conduct*

238. Further, WBC and WNZL allege that by engaging in the conduct in furtherance of the Scheme in receiving, using and paying away money received pursuant to the Transactions, when the companies had actual knowledge or notice of the fact that the moneys were dishonestly obtained pursuant to the fraud set out above, the Papas Companies were involved in the misleading or deceptive or false or misleading conduct by aiding, abetting or procuring, being knowingly concerned in or party to or conspiring with others by the Scheme Agreement to give effect to such conduct.
239. By reason of Mr Papas' knowledge attributed to them, the Papas Companies knew the essential elements of the conduct which gave rise to the contraventions, from the date that Mr Papas acquired that knowledge or the date of their incorporation, whichever is the later, and had a practical connection with the conduct, by reason of their conduct. On that basis, Westpac is entitled to recover from them damages or compensation under s236 and 237 of the ACL, or s12GF and 12GM of the ASIC Act, or s1041I of the Corporations Act equal to the loss and damage suffered by Westpac caused by the conduct.

**Claims against Mr Tesoriero Snr**

*Trust*

240. A total amount of \$989,727 has been identified as paid to Mr Tesoriero Snr from the Forum companies. In relation to this amount, the origin of the funds has not been determined in relation to payments in the amount of \$180,000 (the origin having been determined in the Tracing Model for the balance of the payments received by Mr Tesoriero Snr). As set out in the Receipts Table, \$437,437.94 of WBC and WNZL's funds are traced to Mr Tesoriero Snr from funds derived from WBC and WNZL. WBC and WNZL allege that those funds are received from payments made pursuant to the Fraudulent Transactions and that he holds those funds on trust, or the traceable proceeds of those funds; 2FASOC [2654]. It follows from the principles set out in paragraphs [115] to [125] above in relation to trusts and that the fraud was perpetrated (with the consequence that the money was held on a *Black v*

*Freedman* trust) that Mr Tesoriero Snr holds the funds he has received on trust for WBC and WNZL and is obliged to account to them for those funds, including those funds paid away.

241. Mr Tesoriero Snr pleads that he does not know and does not admit that he received amounts paid from the Transactions and denies that he knew that any amounts received derived from the Transactions, denies that he held those funds on trust for Westpac and says that if he did receive any funds, then they were paid to him by way of the so called Tesoriero Return: Mr Tesoriero Snr Defence [2654] CB A.I.29 pA.I.1074. Of course, that makes no sense as Mr Tesoriero claims he invested in TFGC (not Mr Tesoriero Snr) and in any event there was no dividend or buyback; and in any event the defence does not explain why FGFS, a different company, made the payments. Further, Mr Tesoriero Snr has adduced no evidence. As earlier identified, knowledge is not a necessary element of this claim.

#### *Knowing receipt*

242. WBC and WNZL allege further or in the alternative to their claim in trust that Mr Tesoriero Snr knew or had notice that the funds he received were the traceable proceeds of money fraudulently obtained from WBC or WNZL, or at least which were the property of someone other than him or Mr Tesoriero, and that Mr Tesoriero Snr has knowingly received trust money: 2FASOC [2655].
243. WBC and WNZL rely on the following matters. Mr Tesoriero Snr provided no consideration for the moneys he received from FGFS or other benefits he received from FGFS; the implausibility of free money. Mr Tesoriero Snr paid some of the money he received from FGFS to, or at the direction of, Mr Tesoriero. Mr Tesoriero Snr was at all material times a director of 286 Carlisle St which engaged in the conduct pleaded against it and made the payments pleaded to D&D Group and Theion Ike. Mr Tesoriero Snr has adduced no evidence to explain these facts and it is to be inferred that he could give no explanation.

#### *Unlawful means conspiracy*

244. The claim in tort of unlawful means conspiracy is brought against Mr Tesoriero Snr on the basis that during the course of the Scheme, 286 Carlisle St received amounts fraudulently obtained from WBC and WNZL by the Transactions, in the amount of \$872,839.06. It is alleged that 286 Carlisle St became a party to the Scheme Agreement by no later than the date on which it received amounts fraudulently obtained from WBC and WNZL, which is 7 August 2019. It is common ground that Mr Tesoriero Snr was a director of 286 Carlisle St from 8 November 2017. As set out above, he received amounts which were fraudulently obtained from WBC and WNZL pursuant to the Transactions. WBC and WNZL allege that



Mr Tesoriero Snr became a party to the Scheme Agreement and a co-conspirator in the Scheme with Mr Papas and Mr Tesoriero from the date 286 Carlisle St received money derived from the Transactions or the date Mr Tesoriero Snr did, which is 30 April 2019.

245. Mr Tesoriero Snr's receipt of funds from the Transactions himself or in 286 Carlisle St and management with Mr Tesoriero of 286 Carlisle St financed through amounts stolen from WBC and WNZL were acts done in furtherance of the Scheme Agreement: 2FASOC [2664].
246. Mr Tesoriero Snr's management of 286 Carlisle St can be seen from: CB Part C CBA.5000.0003.0002; FOG.1000.0010.3224, FOG.1000.0010.3240; FOG.1002.0001.0027 and FOG.1002.0001.0028.
247. Mr Tesoriero Snr's intent to injure WBC and WNZL is evident from his actions.

### **Claims against Mr Bouchahine**

#### *Trust*

248. A total of \$254,443.82 is traced to Mr Bouchahine from all financiers' funds. As set out in the Receipts Table, \$81,611.78 of WBC and WNZL's funds is traced to Mr Bouchahine from funds fraudulently obtained from WBC and WNZL, noting that \$154,043.90 in payments made to Mr Bouchahine have not had the origin determined. It follows from the principles set out above in relation to trusts and the fraud that Mr Bouchahine holds the funds he has received on trust for WBC and WNZL and is obliged to account to them for those funds or those of which he has the benefit, including those paid away.

#### *Knowing assistance*

249. By reason of the matters Mr Bouchahine knew as part of his role as CFO of the Forum group of companies and his actions and thereby knew of the Scheme and its purpose. WBC and WNZL rely on this knowledge (and his admissions already referred to) as well as Mr Bouchahine's conduct pleaded at 2FASOC [1671] and set out at paragraphs 103 and 104 above. Mr Bouchahine knowingly assisted in the Scheme by causing funds to be paid away, acquiring and assisting manage various assets of Mr Papas' and Mr Tesoriero's private companies and other things unrelated to the purchase of the equipment, effecting all payments from the FGFS bank account and maintaining the Xero accounting system in connection with those payments, causing FGFS to use money it received from Westpac through Forum Finance to fund monthly amounts repayable to Westpac by customers named in the purported equipment leases where Mr Bouchahine knew the funds remitted to Westpac had not been received by FGFS.

250. By reason of Mr Bouchahine's knowing assistance, WBC and WNZL suffered loss and damage and Mr Bouchahine is liable to pay equitable compensation to them. The losses recoverable are not only the amounts paid to Mr Bouchahine, but all losses arising from the Scheme, or at least arising after he first received money.

*Knowing receipt*

251. By reason of Mr Bouchahine's knowledge and receipt of funds as set out above, he was a knowing recipient of the funds or their traceable proceeds and holds them on trust or is liable to account to WBC or WNZL for them including those that he received and paid away, or to pay equitable compensation.

*Unlawful means conspiracy*

252. The claim in tort of unlawful means conspiracy is brought against Mr Bouchahine on the basis that he knew of the Scheme and its purpose and became a party to it by reason of his actions in causing funds received by Forum Finance and Iugis NZ from WBC and WNZL respectively to be paid away, effecting payments from the FGFS bank account and accounting for those, and causing FGFS to make purported repayments under the Customers' loan agreements. That conduct was engaged in in furtherance of the Scheme Agreement.

*Misleading or deceptive conduct or false or misleading conduct*

253. Further, WBC and WNZL allege that by engaging in the conduct in furtherance of the Scheme Agreement when Mr Bouchahine had actual knowledge or notice of the fact that the moneys were dishonestly obtained pursuant to the fraud set out above, he was involved in the misleading or deceptive or false or misleading conduct by aiding and abetting or being knowingly concerned in or party to that conduct.
254. On that basis, Westpac is entitled to recover from him damages or compensation under ss236 and 237 of the ACL or ss12GF and 12GM of the ASIC Act, or s1041I of the Corporations Act by reason of the loss and damage suffered by Westpac caused by the conduct.

**Claims against Ms Agostino**

*Trust*

255. \$290,583.09 has been traced to Ms Agostino, of which a total of \$231,870.31 is WBC and WNZL's funds, noting that \$48,742.81 has not had the origin determined. It follows from the principles set out above and the fraud that Ms Agostino held the funds she has received

on trust for WBC and WNZL and is obliged to account to them for those funds or those of which she has the benefit, including those paid away.

256. Ms Agostino admits that she received payments from the Forum group of companies and says that these payments were made to her in accordance with the terms of her employment, including as salary payments, reimbursement for out-of-pocket expenses and commissions: Agostino Defence [2684] CB ~~A.I.31~~<sup>A.I.7</sup> pA.I.1087. She has adduced no evidence in support of these allegations, and they should be rejected. Some of the expenses included trips to the United Kingdom: see s50 summary F.I.30 pF.I.798tab 121, Ln 5-9; and Greece CB F.I.30 pF.I.798 tab 121 Ln 3, when there is no evidence of any legitimate business conducted by the Forum group of companies. Further, other items received by Ms Agostino included jewelry purchased by Mr Papas: see Assets Summary CB F.I.51 pF.I.927, CB Part C AMX.5000.0001.0001, AMX.5000.0001.0104 and MCN.5000.0002.0002; the 5% deposit on the apartment at Unit 413/3 Nagurra Place Rozelle: see Property Summary CB F.I.30 pF.I.798 Ln 1, CB Part C FGF.5000.0005.0012; and payments from Palante: CB F.I.30 pF.I.798, lines 2-4, 10-18. It is inherently improbable that these payments were received in accordance with an employment agreement and the Court should find that they were not received on that basis but as part of the fraud. The implausibility is increased by her conduct in fabricating some of the forged documents, the probabilities are that the payments relate to her involvement in the fraud, or were gifts from Mr Papas.

#### *Knowing assistance*

257. By reason of the matters set out above in respect of Ms Agostino's knowledge and her conduct in furtherance of the Scheme, she knew or was on notice of the Scheme and its purpose. By her conduct as set out above in preparing all or many of the Fraudulent Transaction Documents, she knowingly assisted in Forum Finance's, FGFS' and Iugis' breaches of obligations owed as trustee to WBC and WNZL. Ms Agostino is therefore liable to pay equitable compensation to WBC and WNZL in respect of their loss already identified.

#### *Knowing receipt*

258. By reason of Ms Agostino's knowledge and receipt of funds as set out above, she was a knowing recipient of the funds or their traceable proceeds and holds them on trust or is liable to account to WBC or WNZL for them including those that she received and paid away, or to pay equitable compensation.

#### *Unlawful means conspiracy*

259. Ms Agostino became a party to the Scheme Agreement by reason of her conduct in assisting Mr Papas to create the Fraudulent Transaction Documents. She did this in furtherance of the Scheme Agreement and also received funds sourced from the Fraudulent Transactions. She furthered and benefitted from the Scheme and by her actions, prevented or delayed the discovery of the Scheme and its fraudulent intent and design.

*Misleading or deceptive conduct or false or misleading conduct*

260. Further, WBC and WNZL allege that by engaging in the conduct in furtherance of the Scheme Agreement when Ms Agostino had actual knowledge or was on notice of the fact that the moneys were dishonestly obtained pursuant to the fraud, she was involved in the misleading or deceptive conduct or false or misleading conduct.
261. On that basis, Westpac is entitled to recover from Ms Agostino damages or compensation under s236 and 237 of the ACL, or s12GF and 12GM of the ASIC Act, or s1041I of the Corporations Act by reason of the loss and damage suffered by Westpac caused by the conduct.

**Claim against Mr Giamouridis**

*Trust*

262. \$11,159,090.52 of WBC's funds and \$1,534,420.92 of WNZL's funds have been traced to Mr Giamouridis, the 1% shareholder of Mazcon, as set out in the Receipts Table. It follows from the principles set out above in relation to trusts and from the fraud that Mr Giamouridis holds the funds he has received on trust for WBC and WNZL and is obliged to account to them for those funds or those of which he has the benefit, including those paid away.

**Claims against D&D Group and Theion Ike**

*Trust*

263. \$109,866.75 of WBC's funds and \$17,887.30 of WNZL's funds have been traced to D&D Group as set out in the Receipts Table. D&D Group received those monies as a volunteer or with knowledge or on notice that they were held on trust for another. It is liable to account to WBC and WNZL for those funds or pay equitable compensation.
264. \$99,142.33 of WBC's funds and \$32,988.69 of WNZL's funds have been traced to Theion Ike as set out in the Receipts Table. It received those monies as a volunteer or with knowledge or on notice that they were held on trust for another. It is liable to account to WBC and WNZL for those funds or pay equitable compensation.

**Relief**

265. WBC and WNZL will separately more precisely identify the relief sought against each respondent.

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15 September 2022

Counsel for the applicants

**Annexure A: Schedule of the properties and assets**

<b>Company</b>	<b>Asset (sold and now a fund unless marked with an ‘*’)</b>	<b>Asset value (‘**’ signifies estimated asset value)<sup>8</sup></b>
<b>Papas companies (other than Forum companies)<sup>9</sup></b>		
Spartan Consulting Group Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Cash at bank: \$177,247.13</li> </ul>	<ul style="list-style-type: none"> <li>\$177,247.13</li> </ul>
Palante Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Money and shares held by Macrovue</li> <li>Money held by Palante</li> </ul>	<ul style="list-style-type: none"> <li>\$1,650,000*</li> </ul>
Intrashield Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Cash at bank on appointment: \$8,819</li> <li>Fund of \$56,000 from sold Lotus Type 11 Exige (VIN SCCLKHPC7LHC10236)</li> </ul>	<ul style="list-style-type: none"> <li>\$8,819 (cash at bank)</li> <li>\$56,000 (Lotus Funds)</li> </ul>
<b>Jointly Owned Entities (other than FGFS)</b>		
64-66 Berkeley St Hawthorn Pty Ltd (Property Summary CB F.I.3 pF.I.107 Ln 36)	<ul style="list-style-type: none"> <li>Real Property – 64-66 Berkeley St, Mt Hawthorn*</li> </ul>	<ul style="list-style-type: none"> <li>TBC*</li> </ul>
14 James Street Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Fund of \$2,385,369 held in trust account from sold real property, being various real properties: James Street and Parsons Street.</li> <li>Cash at bank on appointment \$60,109</li> </ul>	<ul style="list-style-type: none"> <li>\$60,109 (cash at bank)</li> <li>\$2,385,369* (property funds)</li> </ul>
26 Edmonstone Road Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Fund (sold real property)</li> <li>Cash at bank: \$15,590.39</li> </ul>	<ul style="list-style-type: none"> <li>\$2,349,732.07 (Funds held by Receivers)</li> <li>\$15,590.39 (cash at bank)</li> </ul>
5 Bulkara Street Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Real Property – 5 Bulkara St, Wagstaff*</li> </ul>	<ul style="list-style-type: none"> <li>(Funds held by Mortgagee)</li> </ul>

<sup>8</sup> Unless marked with an ‘\*’ the asset has been sold and is now a fund. Where marked with an ‘\*\*’, this indicates estimated value of the real property (including any secured debt), which amount may change.

<sup>9</sup> This analysis is of proprietary relief so does not list respondents where no assets have been identified as being held by that respondent, or where there are no assets of that respondent into which funds have presently been traced.

Company	Asset (sold and now a fund unless marked with an ‘*’)	Asset value (‘*’ signifies estimated asset value) <sup>8</sup>
	<ul style="list-style-type: none"> <li>Cash at bank on appointment \$11,117</li> </ul>	<ul style="list-style-type: none"> <li>\$11,117 (cash at bank)</li> </ul>
6 Bulkara Street Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Fund (sold real property)</li> <li>Cash at bank on appointment: \$17,332</li> </ul>	<ul style="list-style-type: none"> <li>\$9,808,169.94 (funds held by Receivers)</li> <li>\$17,332 (cash at bank)</li> </ul>
<b>Tesoriero Entities</b>		
23 Margaret Street Pty Ltd	<ul style="list-style-type: none"> <li>Fund (sold real property)</li> </ul>	<ul style="list-style-type: none"> <li>\$271,331.20 (CMA)</li> </ul>
1160 Glen Huntly Road Pty Ltd	<ul style="list-style-type: none"> <li>Fund (MIP sold real property)</li> </ul>	<ul style="list-style-type: none"> <li>\$795,000 (funds paid into Victorian Supreme Court)</li> </ul>
14 Kirwin Road Morwell Pty Ltd (Property Summary CB F.I.3 pF.I.112 Ln 24)	<ul style="list-style-type: none"> <li>Real Property –14 Kirwin Road, Morwell*</li> </ul>	<ul style="list-style-type: none"> <li>\$1,140,000*</li> </ul>
123 High Street Taradale Pty Ltd (Property Summary CB F.I.3 pF.I.110 Ln 11 and 12)	<ul style="list-style-type: none"> <li>Real Property –124 High Street Taradale*</li> </ul>	<ul style="list-style-type: none"> <li>\$560,000*</li> </ul>
160 Murray Valley Hwy Lake Bolga Pty Ltd (Property Summary CB F.I.3 pF.I.107 Ln 26 and 27)	<ul style="list-style-type: none"> <li>Real Property –160 Murray Valley Highway Lake Boga*</li> </ul>	<ul style="list-style-type: none"> <li>\$1,800,000*</li> </ul>
31 Ellerman Street Dimboola Pty Ltd (Property Summary CB F.I.3 pF.I.113 Ln 25)	<ul style="list-style-type: none"> <li>Real Property –31 Ellerman Road, Dimboola*</li> </ul>	<ul style="list-style-type: none"> <li>\$1,050,000*</li> </ul>
4 Cowslip Street Violet Town Pty Ltd (Property Summary CB F.I.3 pF.I.110 Ln 24)	<ul style="list-style-type: none"> <li>Real Property – 4 Cowslip Street, Violet Town*</li> </ul>	<ul style="list-style-type: none"> <li>\$3,400,000*</li> </ul>
55 Nolan Street Maryborough Pty Ltd	<ul style="list-style-type: none"> <li>Real Property –55 Nolan Street Maryborough*</li> </ul>	<ul style="list-style-type: none"> <li>\$1,200,000*</li> </ul>

Company	Asset (sold and now a fund unless marked with an ‘*’)	Asset value (‘*’ signifies estimated asset value) <sup>8</sup>
(Property Summary CB F.I.3 pF.I.112 Ln 23)		
89 Betka Road Mallacoota Pty Ltd (Property Summary CB F.I.3 pF.I.112 Ln 22)	<ul style="list-style-type: none"> <li>Real Property –89 Betka Street, Mallacoota*</li> </ul>	<ul style="list-style-type: none"> <li>\$1,200,000*</li> </ul>
9 Gregory Street Ouyen Pty Ltd (Property Summary CB F.I.3 pF.I.115 Ln 37)	<ul style="list-style-type: none"> <li>9 Gregory Street, Ouyen*</li> </ul>	<ul style="list-style-type: none"> <li>\$900,000*</li> </ul>
9 Main Street Derrinallum Pty Ltd (Property Summary CB F.I.3 pF.I.111 Ln 15-20)	<ul style="list-style-type: none"> <li>Real Property – 9 Main Road, Derrinallum*</li> </ul>	<ul style="list-style-type: none"> <li>\$1,250,000*</li> </ul>
<b>Other Entities</b>		
Mangusta (Vic) Pty. Ltd. (receivers appointed)	<ul style="list-style-type: none"> <li>Fund of \$616,282.78 from sale of Mangusta 105 (funds held by Receivers)</li> </ul>	<ul style="list-style-type: none"> <li>\$616,282.78 (funds held by Receivers)</li> </ul>
275 High Street Golden Square Pty Ltd (Property Summary CB F.I.3 pF.I.111 Ln 14)	<ul style="list-style-type: none"> <li>Real Property –275 High Street, Golden Square, Bendigo*</li> </ul>	<ul style="list-style-type: none"> <li>\$3,500,000*</li> </ul>
8-12 Natalia Ave Oakleigh Pty Ltd	<ul style="list-style-type: none"> <li>Funds in court</li> </ul>	<ul style="list-style-type: none"> <li>\$773,000 (paid into court)</li> </ul>
Forum Finance Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Cash at bank on appointment: \$147,658</li> </ul>	<ul style="list-style-type: none"> <li>\$147,658</li> </ul>
Forum Group Financial Services Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Fund (sold Atherton Rd property)</li> <li>Cash at bank on appointment: \$570,143</li> <li>Vehicles*</li> <li>Grady White Freedom 325 (valued at \$85,000)*</li> </ul>	<ul style="list-style-type: none"> <li>\$1,151,425.23 (property fund held by the Liquidators of FGFS)</li> <li>\$570,143 (cash)</li> <li>Boat (TBC)*</li> </ul>
Forum Group Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Cash at bank: \$3,426,959.9</li> </ul>	<ul style="list-style-type: none"> <li>\$3,426,959.9 (cash at bank)</li> </ul>



Company	Asset (sold and now a fund unless marked with an ‘*’)	Asset value (‘*’ signifies estimated asset value) <sup>8</sup>
	<ul style="list-style-type: none"> <li>Regal 2250 Cuddy (valued at \$33,000)*</li> </ul>	<ul style="list-style-type: none"> <li>Regal 2250 Cuddy (TBC)*</li> </ul>
Forum Enviro Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Cash at bank on appointment: \$39,660</li> <li>Fund of \$62,000 from sale of Land Range Rover Sport with VIN SALWA2EKXHA128421 on 27 September 2021 )</li> </ul>	<ul style="list-style-type: none"> <li>\$103,660</li> </ul>
Forum Enviro (Aust) Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Cash at bank on appointment: \$23,250</li> </ul>	<ul style="list-style-type: none"> <li>\$23,250</li> </ul>
The Forum Group of Companies Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Cash at bank on appointment: \$211,470</li> <li>Ferrari 488 Pista F142*</li> </ul>	<ul style="list-style-type: none"> <li>\$213,470</li> </ul>
Iugis Pty Ltd (in liquidation)	<ul style="list-style-type: none"> <li>Cash at bank on appointment: \$198,243</li> </ul>	<ul style="list-style-type: none"> <li>\$198,243</li> </ul>
Louisa Agostino	<ul style="list-style-type: none"> <li>Fund (real property sold and held in trust account)</li> <li>Shares</li> </ul>	<ul style="list-style-type: none"> <li>\$247,152</li> </ul>
Bill Papas	<ul style="list-style-type: none"> <li>Three jet skis (VIN registration numbers CAYDV01168H819, CAYDV36267G819 and CAYDV00723G920); and camper trailer (VIN 6FJDDD333K2A12929)*</li> </ul>	<ul style="list-style-type: none"> <li>TBC*</li> </ul>
Vincent Tesoriero	<ul style="list-style-type: none"> <li>Lamborghini Huracan Spyder LP580-2 (VIN ZHWER2ZF6JLA09200)*</li> <li>1967 Ford Mustang Shelby GT500 (VIN 7R02Q192898) (estimate not available)</li> <li>Mustang (VIN 9F02Z173053) (estimate not available)</li> </ul>	<ul style="list-style-type: none"> <li>TBC*</li> </ul>

**Annexure B – Payments to, or on behalf of each Respondent (Receipts Table)**

<b>Respondent</b>	<b>Total Amount</b>	<b>Amount of Westpac Funds</b>	<b>Amount of WNZL Funds</b>	<b><i>Westpac &amp; WNZL total</i></b>
4 Cowslip St	\$331,131.33	\$231,824.42	\$39,564.23	<i>\$271,388.65</i>
5 Bulkara St	\$3,487,428.13	\$2,675,088.04	\$325,628.85	<i>\$3,000,716.89</i>
6 Bulkara St	\$4,809,830.00	\$2,488,328.69	\$616,105.15	<i>\$3,104,433.84</i>
8-12 Natalia Ave	\$2,885,886.02	\$2,015,455.23	\$257,017.80	<i>\$2,272,473.02</i>
9 Gregory St	\$11,700.00	\$4,213.85	\$959.40	<i>\$5,173.25</i>
9 Main St	\$155,898.10	\$113,900.42	\$15,705.34	<i>\$129,605.76</i>
14 James St	\$2,466,432.36	\$2,136,707.41	\$326,111.03	<i>\$2,462,818.44</i>
14 Kirwin Rd	\$271,735.65	\$248,103.36	\$3,288.98	<i>\$251,392.35</i>
23 Margaret St	\$878,355.32	\$530,221.40	\$108,212.09	<i>\$638,433.49</i>
26 Edmonstone Rd	\$2,023,347.36	\$1,775,050.10	\$206,233.79	<i>\$1,981,283.89</i>
31 Ellerman St	\$139,445.53	\$119,794.31	\$5,599.03	<i>\$125,393.34</i>
55 Nolan St	\$145,765.00	\$129,281.72	\$2,844.23	<i>\$132,125.95</i>
64-66 Berkeley St	\$1,774,931.12	\$592,485.27	\$159,929.37	<i>\$752,414.64</i>
89 Betka Rd	\$174,751.58	\$141,607.49	\$2,385.30	<i>\$143,992.80</i>
123 High St	\$73,502.27	\$56,346.51	\$7,081.95	<i>\$63,428.46</i>
160 Murray Valley Hwy	\$224,012.41	\$195,024.13	\$5,312.82	<i>\$200,336.95</i>
193 Carlisle St	\$30,304.64	\$22,477.22	\$7,827.42	<i>\$30,304.64</i>
275 High St	\$337,388.29	\$234,829.64	\$38,560.95	<i>\$273,390.58</i>
286 Carlisle St	\$1,470,499.84	\$792,276.44	\$80,562.61	<i>\$872,839.06</i>
1160 Glen Huntly Rd	\$988,843.73	\$705,943.56	\$236,695.17	<i>\$942,638.73</i>
Ms Agostino	\$290,583.09	\$218,920.88	\$12,949.43	<i>\$231,870.31</i>

Respondent	Total Amount	Amount of Westpac Funds	Amount of WNZL Funds	Westpac & WNZL total
Theion Ike	\$825,578.07	\$99,142.33	\$32,988.69	<i>\$132,131.02</i>
Mr Bouchahine	\$254,443.82	\$52,521.86	\$29,089.92	<i>\$81,611.78</i>
Canner Investments	\$160,357.64	\$131,002.64	\$12,742.60	<i>\$143,745.24</i>
D&D Group	\$316,222.09	\$109,866.75	\$17,887.30	<i>\$127,754.05</i>
FEA	\$138,809,010.70	\$82,411,759.08	\$16,758,827.26	<i>\$99,170,586.34</i>
FE	\$15,606,270.16	\$14,546,708.65	\$1,059,535.09	<i>\$15,606,243.74</i>
Forum Finance	\$3,758,234.76	\$2,170,213.15	\$840,801.65	<i>\$3,011,014.80</i>
FGFS	\$2,286,387.22	\$1,827,743.91	\$155,050.80	<i>\$1,982,794.71</i>
FG	\$150,656,759.23	\$102,652,850.27	\$18,155,910.24	<i>\$120,808,760.51</i>
Mr Giamouridis	\$16,979,714.13	\$11,159,090.52	\$1,534,420.92	<i>\$12,693,511.44</i>
Intrashield	\$1,227,216.34	\$1,092,636.75	\$83,756.90	<i>\$1,176,393.65</i>
Iugis UK	\$2,343,417.04	\$1,539,310.24	\$97,309.00	<i>\$1,636,619.24</i>
Iugis Energy Greece	\$558,421.82	\$81,806.14	\$0.00	<i>\$81,806.14</i>
Iugis GFS UK	\$48,609.08	\$21,704.82	\$2,308.60	<i>\$24,013.42</i>
Iugis Greece	\$770,305.38	\$329,562.99	\$143,364.23	<i>\$472,927.22</i>
Iugis Holdings UK	\$4,285,855.56	\$2,509,794.68	\$510,503.54	<i>\$3,020,298.22</i>
Iugis	\$19,626,861.58	\$11,263,477.27	\$3,012,037.32	<i>\$14,275,514.59</i>
Mangusta <sup>10</sup>	\$233,736.15	\$75,972.14	\$6,606.56	<i>\$82,578.70</i>
Mazcon	\$14,264,185.26	\$7,475,974.67	\$397,986.07	<i>\$7,873,960.73</i>
Palante	\$3,168,587.66	\$2,082,443.54	\$369,959.70	<i>\$2,452,403.23</i>
Mr Papas	\$3,503,875.10	\$2,193,129.67	\$848,723.68	<i>\$3,041,853.35</i>
Spartan	\$1,794,583.23	\$1,296,689.69	\$36,536.77	<i>\$1,333,226.46</i>
TIG	\$1,053,013.87	\$572,562.76	\$67,069.49	<i>\$639,632.25</i>

<sup>10</sup> Including payments to the benefit of the XOXO

Respondent	Total Amount	Amount of Westpac Funds	Amount of WNZL Funds	<i>Westpac &amp; WNZL total</i>
Mr Tesoriero Snr	\$989,727.00	\$384,805.47	\$52,632.47	<i>\$437,437.94</i>
Mr Tesoriero	\$4,301,000.19	\$1,198,197.10	\$383,303.88	<i>\$1,581,500.98</i>
TFGC	\$11,102,895.52	\$6,663,617.66	\$1,004,883.88	<i>\$7,668,501.54</i>
<b>TOTAL</b>	<b><u>\$421,897,040.37</u></b>	<b><u>\$269,370,464.84</u></b>	<b><u>\$48,072,811.50</u></b>	<b><u><i>\$317,443,276.33</i></u></b>

**Annexure C - Customer Evidence**

<b>Customer</b>	<b>Evidence</b>
ALH	<p>ALH, as set out in the evidence of Trevor Smith CB D.I.21 pD.I.303, the National Food Manager for ALH, had a trial program with the ORCA waste digestion units which resulted in waste units being installed at seven of ALH's licensed venues. There were no formal contracts in relation to the machines installed at those venues, although there is a Service Agreement executed between ALH and Iugis: Smith [5]-[9].</p> <p>Having reviewed the Customer Payment Schedules and Certificates of Delivery for Transaction 2, Transaction 5, Transaction 15, Transaction 17, Transaction 30, Transaction 87, Transaction 90, Transaction 91, Transaction 95, Transaction 96 and Transaction 98, Mr Smith gives evidence that none of the signatures on those documents that purport to be his, are his signature: Smith [12]-[13]; [15] and [17]. Mr Smith further identifies that the title identified for him and set out on those documents is that of "COO" a role he has never had with ALH: Smith [17].</p> <p>Contacted on 23 June 2021 by Mr Anderson about the Transaction Documents, Mr Smith gives evidence that this was the first occasion on which he was provided with the Transfer of Rights letter addressed to ALH from Forum Finance and marked to his attention: Smith [14], [22].</p> <p>Other oddities are described by Mr Smith: certain of the premises at which it is said that ORCAs were installed for ALH were not operated by ALH (in the case of Transaction 30 and the venue at Woolloomooloo) or did not have an operational need for a waster digester (in the case of Transaction 17 and the venue at Airlie Beach): Smith [20]. A letter said to be signed by "B. L. Mathieson" authoring Mr Smith to sign documents does not appear to be genuine as Mr Smith does not recall receiving such a letter, it was not the practice of Mr Mathieson to provide such letters, the signature is not one that Mr Smith recognises and he has been unable to locate an email with that letter attached and sent to Tas Papas: Smith at [23]-[24].</p> <p>Mr Smith, who has access to the books and records of ALH has not located any arrangements with respect to the equipment with the serial numbers</p>

	referred to in the Customer Payment Schedules, nor has he located a copy of the Customer Payment Schedules, the Certificates of Delivery or the transfer of rights letters in the books and records of ALH: Smith [25].
CHC	<p>David Maher was, in the period up until May 2021, the Managing Director of CHC: Maher [9] CB D.I.14 pD.I.175. He had delegated authority to execute documents up to the value of \$500,000 and above that Board approval was required: Maher [9].</p> <p>Mr Maher gives evidence that he has received and reviewed the Customer Payment Schedules and Certificates of Delivery for Transaction 8 and Transaction 13: Maher [10] and that the signatures on those documents are not his signature: Maher [12]. Maher also gives evidence that he did not authorise any person to sign or affix his electronic signature on his behalf, and the handwriting on the documents is not his handwriting: Maher [12]-[15]. Further Mr Maher says that the title on the documents “CEO” was not one that he has ever held with CHC: Maher [16]. Mr Maher also notes that the Customer Payment Schedule for Transaction 8 (the September Schedule) purports to be signed on a Sunday and it was not his practice to work on a Sunday: Maher [12].</p> <p>Mr Maher also gives evidence that he had not previously seen the Transfer of Rights letter from Forum Finance to CHC and marked for his attention: Maher [19].</p> <p>Stacey Flanagan (Flanagan CB D.I.7 pD.I.88), the Financial Controller for CHC, has reviewed the Customer Payment Schedules, the Certificates of Delivery and the Forum Finance transfer of rights letters and has been unable to locate a copy of them in the books and records of CHC: Flanagan [15]. Ms Flanagan in searching the accounting records for CHC could also not find any payments to Forum Finance, Eqwe, BHD or BHO: Flanagan [15].</p>
Coles	<p>On 23 June 2021, Mr Parikh (Parikh CB D.I.18 pD.I.273) was contacted by Mr Anderson from Westpac in relation to four contracts with Forum Finance. Mr Parikh has looked at each of the Customer Payment Schedules and Delivery Certificates (which relate to Transaction 4, Transaction 7, Transaction 10 and Transaction 18) and the signatures on those documents</p>

	<p>which purport to be his are not his: Parikh [25]-[29]. Mr Parikh gives evidence that he did not sign those documents and did not give anyone authority to sign them or affix his electronic signature on his behalf and was prior to the email from Mr Anderson unaware of Forum Finance: Parikh [29]. Mr Parikh does not have authority to execute contracts on behalf of Coles: Parikh [30].</p> <p>Rohan de Silva (de Silva CB D.I.20 pD.I.296), who was Senior Category Manager of Stores and Sustainability for Coles in the period from November 2016 until July 2019 has also given evidence. The Certificates of Delivery for Transactions 4, 7 and 10 purporting to be signed by Mr Parikh also purport to be witnessed by Mr de Silva: Fraudulent Transaction Documents Summary, T4, T7, T10. Mr de Silva gives evidence that having been shown those documents the signatures purporting to be his on the Certificates of Delivery are not his, he did not sign those documents, and he did not witness Mr Parikh sign those documents: de Silva [9]-[11].</p> <p>Mr Parikh also gives evidence that an email purporting to be sent by him on 10 September 2018 at 11.41am to Tas Papas, that the ORCA contract fell within his delegation (provided it was under the value of \$10million) was not sent by him and that he did not have, and does not have delegation to sign contracts up to \$10million for an on behalf of Coles: Parikh [13].</p> <p>Mr Parikh also gives evidence that an email purporting to be sent by him, including an email from Leah Weckert, the Chief Financial Officer of Coles to him on 19 September 2018, authorising him to execute the agreement for the supply of ORCAs was not a genuine email: Searches conducted across Coles' systems could not locate the email purporting to be sent by Mr Parikh or Ms Weckert on 19 September 2018: Parikh [15]-[16].</p> <p>The Transfer of Rights letter from Forum Finance addressed to Coles and marked to Mr Parikh's attention was not received by Mr Parikh until it was provided to him by Mr Anderson in June 2021: Parikh [31]-[32].</p> <p>On receipt of the documents from Westpac, Mr Parikh emailed Tas Papas and Mr Papas: Parikh [35]-[37]. Mr Parikh on 24 June 2021 was forwarded an email chain by Tas Papas that included an email in which Tas Papas said in relation to the Customer Payment Schedules purporting to be signed by Mr Parikh <i>"I have never seen this before and don't understand what it is"</i>: Parikh</p>
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	<p>[37]. The respondents have not filed any evidence that refutes or contradicts Tas Papas' email.</p> <p>Mr Parikh has not located the Customer Payment Schedule and Certificates of Delivery in Coles' books and records, nor has he located any record of the equipment referred to in those documents being leased or purchased by Coles: Parikh [39]-[42]. The evidence is consistent with the evidence of Mr de Silva who indicates that he has no recollection of Coles purchasing any ORCA machines from Forum: de Silva [11].</p>
HWLE	<p>HWLE is a reputable full service commercial law firm. The evidence of its Managing Partner and its Chief Operating Officer is that the Transaction Documents for Transaction 3, Transaction 22, Transaction 28 and Transaction 75 (<b>HWLE Transactions</b>) are not genuine. While there were certain legitimate dealings between HWLE and various Forum entities, those are not reflected in the Fraudulent Transaction Documents.</p> <p>Mr Martinez, as Managing Partner of the firm, gives evidence that he has reviewed the Customer Payment Schedules and the Certificates of Delivery for the HWLE Transactions and that the signatures on those documents that purport to be his signature are not his: Martinez [8]-[9], [12]-[14] CB D.I.59 pD.I.183. The first occasion on which he saw these documents was when shown them on 23 June 2021 following an enquiry by Westpac: Martinez [5], [15].</p> <p>Specifically, Mr Hopkins, the COO of HWLE says that he has reviewed the Customer Payment Schedules and the Certificates of Delivery for the HWLE Transactions and that the signature on the Certificate of Delivery from October 2020 (Transaction 75) is not his: Hopkins [8], [11], [13] CB D.I.54 pD.I.127.</p> <p>Mr Hopkins and Mr Martinez both give evidence that they have undertaken a review of the books and records of HWLE and cannot find in those records any arrangement in relation to the equipment referred to in the HWLE Transaction documents, or a record of the goods referenced by serial number in the HWLE Transaction documents as being delivered to HWLE: Hopkins [19]; Martinez [17]. Mr Martinez also says that HWLE has not made payments in relation to the HWLE Transactions: Martinez [17].</p>



Scentre	<p>Gregory Miles was, until 19 December 2019, the Chief Operating Officer for Scentre Group Limited. One of the companies within the group was Scentre. The Board Charter for Scentre Group Limited has been and remains available on the Scentre Group Limited's website: Miles [2]-[7] CB D.I.16 pD.I.191.</p> <p>Mr Miles has been shown a copy of the Customer Payment Schedule and Certificate of Delivery for Transaction 12 and gives evidence that the signatures on those documents that purport to be his signatures are not his: Miles [11]-[12]. Mr Miles also gives evidence that the Customer Payment Schedule has an amendment that purports to be initialled by him but that he did not initial the document: Miles [11]-[12].</p> <p>Mr Miles gives evidence that he has not met Tas Papas or Mr Papas and has not dealt with a company by the name Forum Finance: Miles [15]-[16].</p> <p>Mr Miles does not recall receiving the Transfer of Rights letter from Forum Finance to Scentre marked to his attention: Miles [14].</p> <p>Paul Giugni, General Counsel for Scentre Group Limited has caused a search of the books and records of Scentre to be carried out and has been unable to locate the Customer Payment Schedule or Certificate of Delivery within Scentre's books and records: Giugni [8] CB D.I.8 pD.I.96. In addition, the employee that is recorded on the Certificate of Delivery as purporting to witness Mr Miles' signature left the company 18 months prior to the date of the document: Giugni [9].</p>
Veolia	<p>Ms Brar, who was the Chief Financial Officer for Veolia in the period from 1 February 2018 until 31 May 2021 gives evidence of reviewing the Customer Payment Schedules and Delivery Certificates for Transaction 1, Transaction 6, Transaction 11, Transaction 14, Transaction 16, Transaction 19, Transaction 20, Transaction 21, Transaction 23, Transaction 24, Transaction 25, Transaction 26, Transaction 27, Transaction 76, Transaction 77, Transaction 79, Transaction 80, Transaction 82, Transaction 83, Transaction 84, Transaction 85, Transaction 86, Transaction 89, Transaction 92, Transaction 93, Transaction 94, Transaction 97, Transaction 99 and Transaction 100. Her evidence is that she did not sign those documents and that she has not authorised anyone to affix her electronic signature to those</p>

	<p>documents: Brar [6]-[9] CB D.I.4 pD.I.47. The signature does not look like hers and to the extent that there is handwriting on the documents, the handwriting is not hers: Brar [9].</p> <p>Further she says that for Transaction 100, the execution clauses on the Customer Payment Schedule and the Certificate of Delivery identify her title as Chief Financial Officer, but that she did not have that role at the time the documents purport to be executed (2 June 2021) having resigned from that role on 31 May 2021: Brar [11].</p> <p>Ms Brar also gives evidence that she did not sign a letter purporting to be signed by her, addressed to Forum Finance (CB ref) titled “Authorised Signatories – ORCA Products” : Brar [16].</p> <p>Mr Kozlovic was the former Executive General Manager, Central / Western Australia for Veolia and the Executive General Manager for Veolia NZ. He was also on the board of directors for Veolia NZ for the period November 2015 to 31 August 2020: Kozlovic [4], [6] CB D.I.12 pD.I.142. His evidence is that although he had delegated authority to sign contracts, it was not his practice or part of his role to execute supplier or minor contractual agreements on behalf of Veolia or Veolia NZ: Kozlovic [8].</p> <p>Having reviewed of the Customer Payment Schedules and the Certificates of Delivery for each of Transaction 29, Transaction 31, Transaction 32, Transaction 35, Transaction 36, Transaction 37, Transaction 38, Transaction 39, Transaction 41, Transaction 42, Transaction 43, Transaction 44, Transaction 45, Transaction 46, Transaction 47, Transaction 48, Transaction 49, Transaction 50, Transaction 51, Transaction 52, Transaction 53, Transaction 54, Transaction 55, Transaction 56, Transaction 57, Transaction 58, Transaction 59, Transaction 60, Transaction 61, Transaction 62, Transaction 63, Transaction 64, Transaction 65, Transaction 66, Transaction 68, Transaction 69, Transaction 70, Transaction 71, Transaction 72, and Transaction 73, Mr Kozlovic gives evidence that each of the signatures on those documents purporting to be his, are not his: Kozlovic [16]-[19].</p> <p>Mr Kozlovic is recorded on the Customer Payment Schedules for as “COO”, “CFO” or Director, roles he did not hold while at Veolia”: Kozlovic [20].</p>
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	Both Ms Brar and Mr Kozlovic give evidence that they did not receive the Transfer of Rights letter from Forum Finance addressed to Veolia and marked to their attention: Brar [12]-[13]; Kozlovic [23]-[24].
Veolia NZ	<p>Ms Brar gives evidence of reviewing the Customer Payment Schedules and Delivery Certificates for Transaction NZ1, Transaction NZ2, Transaction NZ3, Transaction NZ25, Transaction NZ26, Transaction NZ27, Transaction NZ28, Transaction NZ29, Transaction NZ30, Transaction NZ31, Transaction NZ32, Transaction NZ33, Transaction NZ34, Transaction NZ35, AND Transaction NZ36. Her evidence is that she did not sign those documents and that she has not authorised anyone to affix her electronic signature to those documents: Brar [6]-[9], CB ref. The signature do not look like hers and to the extent that there is handwriting on the documents, the handwriting is not hers: Brar [9].</p> <p>Further she says that for Transaction NZ36, the execution clauses on the Customer Payment Schedule and the Certificate of Delivery identify her title as Chief Financial Officer, but that she did not have that role at the time the documents purport to be executed (2 June 2021) having resigned from that role on 31 May 2021: Brar [11].</p> <p>Mr Kozlovic gives similar evidence. Having reviewed of the Customer Payment Schedules and the Certificates of Delivery for each of Transaction NZ4, Transaction NZ5, Transaction NZ6, Transaction NZ7, Transaction NZ8, Transaction NZ9, Transaction NZ10, Transaction NZ11, Transaction ZN12, Transaction NZ13, Transaction NZ14, Transaction NZ15, Transaction NZ16, Transaction NZ17, Transaction NZ18, Transaction NZ19, Transaction NZ20, Transaction NZ21, Transaction NZ22, Transaction NZ23, Transaction NZ24, and Transaction 54, Mr Kozlovic gives evidence that each of the signatures on those documents purporting to be his, are not his: Kozlovic [16]-[19].</p> <p>Ms Brar also gives evidence that a Guarantee and Indemnity purportedly made between Veolia (as guarantor) and Iugis NZ (as beneficiary) which purports to be executed by her was not signed by her: Brar [14].</p> <p>Mr Kozlovic gives evidence that it was not his practice or part of his role to sign contracts on behalf of Veolia NZ and that the Veolia NZ Country Manager would executed supplier and contractual documents in accordance</p>

	<p>with the Veolia NZ Delegation of Authority: Kozlovic [8]. He also gives evidence that he never held the role of “COO” or “CFO” for Veolia NZ which is the title assigned to him on the Customer Payment Schedules and Certificates of Delivery: Kozlovic [20].</p> <p>Further, Mr Kozlovic says that the waste business of Veolia NZ in the time that he was employed with the Veolia group had no need or requirement for waste digestors: Kozlovic [21]. Waste digesters were included in the equipment purportedly purchased by Veolia NZ: Fraudulent Transaction Documents Summary, Kozlovic [16]-[17].</p> <p>Both Ms Brar and Mr Kozlovic give evidence that they did not receive the Transfer of Rights letter from Iugis NZ addressed to Veolia NZ and marked to their attention: Brar [12]-[13]; Kozlovic [23]-[24].</p>
WesTrac	<p>Jarvas Croome is the Chief Executive Officer of WesTrac and a member of its board of directors: Croome [1].</p> <p>Mr Croome has been show a copy of the Customer Payment Schedules and Certificates of Delivery for Transaction 9, Transaction 74, Transaction 78, Transaction 81 and Transaction 88 (<b>WesTrac Transactions</b>) each of which purport to be executed on behalf of WesTrac by Mr Croome: Croome [14]-[15]. Having reviewed those signatures Mr Croome gives evidence that the signatures are not his; he did not sign, and nor did he authorise anyway to sign on his behalf those documents: Croome [17].</p> <p>His execution of Certificates of Delivery purport to be witnessed by Mr Papas or Jeff Glass, individuals that Mr Croome gives evidence that he has never met: Croome [18].</p> <p>The Transfer of Rights letters from Forum Finance and addressed to WesTrac marked for the attention of Mr Croome are not documents that he has a recollection of receiving: Croome [21]-[22].</p> <p>Ms Rossbach-Smith is the customer that alerted Westpac to the issues concerning the Forum Finance transactions in the context of discussions about potential leasing facilities for an unrelated transaction: Rossbach-Smith [4] CB D.I.19 pD.I.286.</p>

	<p>On receipt of the documents in relation to the WesTrac Transactions, Ms Rossbach-Smith commenced inquiries in relation to the transactions within WesTrac. Those enquiries revealed that WesTrac did not have a register of the equipment referred to in the WesTrac transaction documents: Rossbach-Smith [8(b)] and business Facility Managers had no record of the equipment, Further, Ms Rossbach-Smith was told that WesTrac has no operational need for the Zzoota purportedly sold to it by Forum Finance: Rosbach-Smith [8(e)].</p>
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**Annexure D – List of “BP & VT Payments” spreadsheets**

<b>Date</b>	<b>Details</b>	<b>Doc IDs</b>
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
7/08/2018	Mr Chin emails Mr Tesoriero a further updated schedule titled “Outstanding Payments for BP & VT” for 7 August 2018. Various versions are emailed to Mr Tesoriero.	FGF.5000.0002.0735 FGF.5000.0002.0738
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
11/09/2018	Email from Mr Chin to Mr Tesoriero attaching schedule titled “Outstanding payments for BP & VT” as at 11 September 2018.	FOG.1000.0002.4443 FOG.1000.0002.4446
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

Date	Details	Doc IDs
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 Payments fort BP &VT”. Schedule includes worksheets titled <i>Outstanding</i> and <i>recurring</i> .	FOG.1000.0002.9286 FOG.1000.0002.9287
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
08/05/2020	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</i> and <i>recurring</i> .	FOG.1000.0001.2576 FOG.1000.0001.2577
13/05/2020	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</i> and <i>recurring</i> .	FOG.1000.0001.2604 FOG.1000.0001.2605
01/06/2020	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</i> and <i>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

Date	Details	Doc IDs
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



## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 15/09/2022 9:08:01 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:	Outline of Submissions
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



A handwritten signature in black ink that reads "Sia Lagos".

Dated: 15/09/2022 9:19:30 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.