

20 August 2026

By Email

Gilbert Walker Lawyers
PO Box 1595, Shortland Street
Auckland 1140

For: Martin Smith/Sean Coupe

Dear Colleagues

CIV-2026-404-1264 Digital Holdings (2017) Limited & Ors v BDO Auckland Limited & Ors

1. We refer to your letter of 31 July 2026. We address the topics raised in it in turn. In this letter, the Jaques Family Trust (No 3) is referred to as the Trust.

The plaintiffs' initial disclosure

Listing particulars

2. Our clients accept that document type, author and recipient particulars should be specified in the list where those particulars are not apparent from the document itself. Please find this attached. We also include the last communication from each finance application (although we maintain these are not relevant). This has involved reworking the affidavit. It is attached in draft. A link to the documents is provided with this letter. Mrs Jaques is presently travelling abroad. It will be sworn after she returns to New Zealand on 28 August 2026 (but she has confirmed the contents as accurate and final via email).

The defendants' disclosure

3. Our clients agree to the amendment to paragraph 3 of Mr Jaques' undertaking set out in your paragraph 5.b. An undertaking in the amended form, executed by Mr Jaques, is enclosed.
4. As to your paragraph 5.a, we confirm that the obligations imposed by r 8.30(4) have been explained to the first to third plaintiffs, that they understand those obligations, and that they will comply with them in all respects.
5. Both conditions stated in your paragraph 5 are accordingly satisfied. We require copies of the defendants' disclosure documents to be provided to this firm immediately and without further delay.
6. Our clients' rights are reserved, including as to the costs occasioned by the withholding of those documents to date.

Shareholding of Digital Holdings (2017) Limited and trusteeship of the Trust

7. Your clients have no interest in the shareholding of Digital Holdings (2017) Limited. It is not a matter in issue in the proceeding.
8. Whether Mr Jaques remains a trustee of the Trust is likewise a matter in which your clients have no interest. If your clients wish to pursue that question, they should raise it with Mr Jaques directly, or with the Official Assignee.

Funding of the litigation

9. The sum of \$30,000 held on deposit by this firm as security for costs is held to the credit of Digital Signs (2017) Limited.
10. Our clients do not accept the characterisation of the Trust in your paragraph 12. As your clients are aware, the Trust holds 95% of the shares in Digital Holdings (2017) Limited, which in turn holds all the shares in the remaining plaintiffs.
11. The Trust is not a third party which has no interest in the subject-matter of the proceeding. Its funding is provided by way of loan to Digital Holdings (2017) Limited, which in turn lends the funds to the remaining plaintiffs so that they may meet the costs of this proceeding. The Trust provides funding to the companies on the same basis in relation to their commercial interests generally, and not only in relation to this proceeding.
12. *Waterhouse v Contractors Bonding Ltd* is directed at the position of commercial litigation funders. It does not require a majority shareholder which lends money within its own group of companies to be treated as a third-party litigation funder.
13. Without accepting that any obligation of disclosure arises, and in order to avoid unnecessary correspondence, we confirm that the trustees of the Trust are David Arthur Jaques and Deena Marie Jaques, and that the Trust and its trustees are subject to the jurisdiction of the New Zealand courts.
14. As previously advised, there is no litigation funder. If formal litigation funding is put in place, the disclosure obligations applicable to such an arrangement will be observed.

Discontinuance

15. The notice of discontinuance against BDO Auckland Limited has been filed.
16. Our clients do not agree to discontinue the proceeding against Mr McKay or Mr Innes-Jones. Each is alleged to have owed and breached duties to the plaintiffs arising from the conflicting retainers which are the subject of the claim, and each is additionally liable as a partner of the firm pleaded in the alternative.
17. Whether the Standard Terms afford Mr McKay and Mr Innes-Jones the contractual protection your clients assert, and whether the plaintiffs are bound by those terms, are matters in issue on the pleadings and are addressed in the reply. They are matters for trial. They cannot be resolved in correspondence.
18. If an application to strike out is made, it will be opposed, and our clients will seek costs.

19. Our clients accept the central plaintiffs are Digital Signs (2017) Limited and Digital Advertising (2017) Limited. David Jaques and Digital Holdings (2017) Limited shall be removed as parties via the filing of notices of discontinuance by each of them. Appropriate input from the OA is being sought.

Defining the issues

20. We anticipate that the parties shall serve their evidence in accordance with the enclosed proceeding timetable which we provide for your comment. We propose endeavouring to agree the issues in the proceeding now. This will assist the parties prepare their evidence. It is required later for the Judicial Issues Conference (JIC). We attach a draft list for your response.

Required steps

21. We look forward to receiving the defendants' initial disclosure documents. Please let us know if you have any input on the attached Procedural Timeline. Please also let us have your response to the draft issues list.

Yours faithfully

COWAN LAW



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CC. Steve Keall, Barrister

Enclosure: Undertaking of David Arthur Jaques (amended form); draft affidavit of Deena Jaques; Procedural Timeline