11 September 2026

Cowan Law
Level 1, 10 Heather Street
Parnell
Auckland 1052

Dear Mr Cowan,

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

1. We refer to the witness statement of David Jaques served on 1 September 2026.

2. The defendants give notice under r 9.11(1) that they object to the admissibility of the parts of Mr Jaques' witness statement identified below.

3. There are other passages of Mr Jaques' witness statement that do not comply with the rules of evidence, most commonly as hearsay, speculation or submission. Without waiving their rights, the defendants do not intend to formally object to those passages at this time but will invite the Court to give them no weight.

Objections

Hearsay references to reports

4. Mr Jaques' statement refers to and states the conclusions of various reports commissioned by Mr Jaques. In particular:

    a. Paragraphs [48] and [110](b) refer to a valuation report obtained by SMetric Consulting Group.

    b. Paragraph [110](a) refers to a "formal assessment" of expected income completed by Alf Jamieson of Media 5.

    c. Paragraph [124] refers to a report prepared by Bellingham Wallace regarding the management of conflicts of interest.

    d. Paragraphs [129] and [130] refer to valuation reports prepared by Sapere Valuation.

    e. Paragraph [130] refers to a prospective financial report prepared by Biz Solutions Limited.

f. Paragraphs [95](a) and [132] refer to a forensic accounting report prepared by Moriarty Associates.

5. Mr Jaques did not author any of these reports, yet he relies on them for the truth of their own contents. Mr Jaques' reference to each of these reports is therefore inadmissible hearsay. No exceptions to the hearsay rule apply to these statements. If the plaintiffs wish to produce these reports in evidence, it will be necessary to call each of the authors as expert witnesses. The reports cannot be produced through Mr Jaques.

Inadmissible opinion

6. In paragraph [110] (including subparagraphs (a)-(g)) and paragraph [111], Mr Jaques outlines the reasons why he does not accept the conclusions in BDO Auckland's independent financial review report. These are matters of expert opinion as to how certain matters ought to have been addressed by an accounting professional preparing such a report. They are not limited to "factual points" from Mr Jaques' own knowledge as he asserts, but are in substance opinions as to the correctness of aspects of BDO Auckland's report. For example, at paragraph [110](d), Mr Jaques opines as to why "I do not think Mr McKay's report properly categorises our business for solvency purposes". That is opinion evidence as to the solvency of the business.

7. Mr Jaques does not have any relevant qualifications, expertise or experience which could qualify him as an expert to give evidence on these matters of accounting and finance. He also lacks the requisite impartiality to provide admissible expert opinion evidence. He does not attempt to qualify himself as an expert, nor does he confirm compliance with the Code of Conduct for Expert Witnesses. This evidence is therefore inadmissible.

8. Paragraph [131] is inadmissible for the same reasons. In that paragraph, Mr Jaques gives opinion evidence as to the soundness of a business model and what funding the business required. These are again matters of expert accounting and finance evidence, which Mr Jaques cannot give. Attempting to caveat his comments by saying that quantification is a matter for expert evidence does not somehow make admissible the inadmissible opinions he proceeds to give.

9. In the final sentence of paragraph [135] Mr Jaques states, "I do not believe a fair, balanced and genuinely independent review of our business, conducted with our own advisers free to assist us, would have reached that conclusion […]". This is also a matter of expert opinion and is inadmissible.

10. The final sentence of paragraph [130] is also expert evidence as to the market for billboard sites. This is also expert opinion evidence which Mr Jaques is not qualified to give and is inadmissible.

Conclusion

11. Please confirm that your clients will withdraw the inadmissible aspects of Mr Jaques' statement identified in this letter. If any of the objections raised in this letter are not accepted, please advise us of this within 10 working days in accordance with r 9.11(2).

Yours faithfully,

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Partner / Associate

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