In the High Court of New Zealand
Auckland Registry

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

CIV 2026-404-1264

Between **Digital Holdings (2017) Limited, Digital Signs (2017) Limited, and Digital Advertising (2017) Limited**

Plaintiffs

And **BDO Auckland, Nicholas Robert Innes-Jones and Andrew John McKay**

Defendants

WITNESS STATEMENT OF ANDREW JOHN MCKAY

Dated 4 November 2026

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WITNESS STATEMENT OF ANDREW JOHN MCKAY

1. My full name is Andrew John McKay. I reside in Auckland.

2. I am the third-named defendant in these proceedings. I am a Chartered Accountant and a partner in the first-named defendant, BDO Auckland. I work in the firm's CBD office.

3. I became a partner at BDO Auckland in 2015. Prior to joining BDO Auckland, I was a director of Corporate Finance Limited for 10 years. Corporate Finance provided all forms of insolvency accounting and investigative and forensic accounting services.

4. I hold a Bachelor of Commerce in Accounting as well as a Diploma in Information Systems from the University of Auckland. I also hold a Master of Forensic Accounting and a Diploma in Financial Forensics and Fraud Investigation from the University of Toronto – Rotman School of Management. I am a member of Chartered Accountants Australia and New Zealand and a Licensed Insolvency Practitioner.

5. Throughout my career I have been involved in a number of insolvency assignments, including acting as a liquidator or a receiver on many occasions. I also regularly provide financial restructuring, forensic accounting and independent business review services, and have given expert accounting evidence in the District and High Courts.

Approach by BNZ regarding Digital Signs and Digital Advertising

6. As I have mentioned, I regularly undertake independent business reviews (**IBRs**) for clients. Banks will sometimes require the customer to obtain an IBR from an independent accountant (usually an insolvency practitioner) of the bank's choosing when managing a customer which may be in financial difficulty, including when the customer has made a request for either ongoing lending from the bank or increased lending from the bank. The exact timing of when to appoint is a bank decision. The IBR assists the bank in deciding whether to lend to the customer, and on what terms. For IBRs, an independent accountant will undertake the investigation and prepare a report. The bank (and not the accountant undertaking the IBR) then makes the decision about any lending or to continue lending.

7. I have regularly been involved in completing IBRs since about 2002. I estimate that I would usually complete between 5 and 15 IBRs a year. I have completed IBRs for all of New Zealand's major trading banks.

8. On 28 May 2020, I received a call from Ennis Young from Bank of New Zealand (**BNZ**). I knew Mr Young from work I had previously done with

BNZ. He worked in the Strategic Business Services (**SBS**) team at BNZ, which I knew from my IBR work is the team that deals with distressed or defaulting customers.

9. Mr Young asked me if I would be able to assist with an IBR for two companies called Digital Signs Limited (**Digital Signs**) and Digital Advertising Limited (**Digital Advertising**).[1] In this statement I refer to these two companies collectively as the **Group**. The Group was run by David Jaques.

10. Mr Young told me that the Group had requested to borrow more money from BNZ, but the bank had concerns about the Group's solvency and trading.

11. Mr Young mentioned that he thought BDO Auckland's East Tāmaki office may have done some work for the Group. I said that I would look into that and come back to him to see whether I could assist with the IBR. Mr Young also mentioned that Paul Kilmartin from the SBS team would be in touch about the possible IBR.

12. After the call, I was copied on a short email from Mr Young to Mr Kilmartin noting that I would look into the background regarding Digital Signs and come back to him **[[BDO.01.00325]].**

13. After I had spoken with Mr Young, I called Nick Innes-Jones, who was a partner in BDO Auckland's East Tāmaki office. I explained that BNZ had asked if I would be available to assist with an IBR for Digital Signs and Digital Advertising, but the engagement was not confirmed. Mr Innes-Jones told me that his team had completed some work for the Group in late 2019 or early 2020. He said that the work was of a one-off nature and involved preparing forecasts. Mr Innes-Jones said that the Group was looking to bring BDO Auckland on as their accountants, but this had not happened yet. He also told me that the Group's accounts for the year ended 31 March 2020 were going to be completed by their existing accountants called Accounting Plus Solutions (**Accounting Plus**), not by BDO Auckland.

14. I also discussed with Mr Innes-Jones whether the forecasts he had prepared for the Group previously were part of the current loan application to BNZ. He said that they were not. This meant I would not be reviewing any existing BDO Auckland work as part of the IBR, if it was to go ahead. Mr Innes-Jones also mentioned there was a possibility that

[1] Digital Signs Limited is now called Digital Signs (2017) Limited and Digital Advertising Limited is now called Digital Advertising (2017) Limited.

he may fill a role on the Group's advisory board, but this also had not been confirmed or formalised yet.

15. Mr Innes-Jones and I agreed that, if I was instructed to complete the IBR, he would not do any work for Digital Signs and Digital Advertising in the meantime. That was to avoid any conflict of interest. We discussed that he could pick up the work again once the IBR was done.

16. The IBRs that I do require me to be independent. I do not accept IBR engagements where it would involve me reviewing work done by BDO Auckland. I regularly refer IBR work to other firms where there would be a conflict for BDO Auckland.

17. After my discussion with Mr Innes-Jones, I was satisfied that there would be no conflict of interest if I completed the IBR. That was because BDO Auckland had only done one-off work for the Group in the past and had not yet been engaged as the Group's accountants. Mr Innes-Jones could put any further work on hold whilst I was doing the IBR. I would not need to review any BDO Auckland work product as part of the IBR.

18. I then emailed Mr Young and Mr Kilmartin **[[BDO.01.00326]]**. I explained that I had spoken with Mr Innes-Jones and BDO Auckland had prepared some forecasts at the end of the previous year, so we had done a one-off piece of work. I said there was a proposal for the Group to transfer its accounting work to BDO Auckland, but this had not happened yet, and the company was not a client.

19. Mr Kilmartin emailed me on 29 May 2020 to say he had spoken to the client and the client would arrange a joint meeting with Mr Innes-Jones the following week **[[BDO.01.00340]].**

20. On 3 June 2020, Mr Kilmartin emailed me asking to have a phone call that day **[[BDO.01.00366]]**. The purpose of the call was for Mr Kilmartin to provide some further context to me about why the bank had required my engagement. I recall that Mr Kilmartin was concerned that the Group appeared to have had a very large jump in sales in March 2020 which was not in line with previous months, and held other concerns about the accuracy of the financial information BNZ had been provided. I recall that Mr Kilmartin was concerned that the level of lending the Group already had was at the limit of what BNZ was willing to consider, and that there were solvency concerns regarding the Group.

21. I did not complete a formal conflict check in the BDO system when I was approached by BNZ. This was an oversight. However, the main potential conflict-related issue was that it was intended that Mr Innes-Jones

would do further work for the companies in future. Mr Innes-Jones and I addressed this as I describe in this witness statement, by us both agreeing that Mr Innes-Jones would go "on- hold" while I completed the IBR. I advised Mr Jaques of this verbally at our first meeting. Whilst in hindsight I should have documented this also (as confirmed by the New Zealand Institute of Chartered Accountants (**NZICA**) Professional Conduct Committee decision), this lack of documentation did not affect how I approached the IBR.

22. The formal conflict check process would not have identified that BDO Auckland acted for Lumo Digital, which is a separate issue that I address further below.

The IBR engagement letter

23. I sent Mr Kilmartin a draft letter of engagement the next day. He confirmed it covered off what he wanted me to review **[[BDO.01.00375]]**.

24. I spoke with Mr Jaques by phone on 5 June 2020. I recall saying that I would send him an information request and an engagement letter, and I recall discussing that we would arrange a time to meet soon.

25. After the phone call, the same day I emailed Mr Jaques with a copy of the engagement letter and an information request, setting out the documents and information we required from the companies to start the IBR **[[BDO.01.00388]]-[[BDO.01.00390]].**

26. Mr Jaques came back to me within about 15 minutes with a signed copy of the engagement letter. He also said that he would get started on responding to our information requests **[[BDO.01.00391]]**, **[[BDO.01.00392]]**. The engagement letter Mr Jaques signed attached BDO Auckland's standard terms and conditions.

27. The engagement letter for the IBR was addressed to the Director of Digital Signs and Digital Advertising and signed by Mr Jaques. It noted that following a request from BNZ, BDO Auckland had been engaged to carry out an independent financial review and report to the Director and BNZ. The letter set out the scope of BDO Auckland's engagement, noting that it included but was not restricted to:

    a. Review and comment on historic financial performance and current financial position of the Companies focusing on debtors and creditors (including IRD) positions;

b. Critically assess the reasonableness of current business plan and review the underlying assumptions used in developing the financial forecast;

c. Analyse current capital structure and capital adequacy of the Companies including working capital assessment to determine funding requirements;

d. Assess the ongoing viability of the Companies and their ability to repay the Bank and meet commitments to external creditors; and

e. Any other matters likely to be relevant to the Bank in considering continued financial support to the Companies.

28. The engagement letter also noted, "by the signing of this letter we shall be at liberty at any time, and without prior advice or approval, to disclose any information and provide any opinions to the Bank in relation to our investigations as we see fit."

Initial work on the IBR report

29. Melissa Lee, who was a Manager in the Business Recovery and Insolvency team at BDO Auckland, assisted me with the IBR.

30. From 8 June 2020, Mr Jaques began sending Ms Lee and me the information and documents we had requested. This included giving Ms Lee access to the companies' Xero accounting records.[2] **[[BDO.01.00394]]-[[BDO.01.00422]]**; **[[BDO.01.00437]]-[[BDO.01.00440]]**; **[[BDO.01.00441]]**; **[[BDO.01.00444]]-[[BDO.01.00458]]**; **[[BDO.01.00459]]-[[BDO.01.00476]]**; **[[BDO.01.00478]]-[[BDO.01.00479]]**; **[[BDO.01.00481]], [[BDO.01.00493]]-[[BDO.01.00500]]**; **[[BDO.01.00501]]-[[BDO.01.00511]]**; **[[BDO.01.00556]]**.

31. In one of his initial emails on 8 June 2020 **[[BDO.01.00394]]**, Mr Jaques said, "I've attached the valuation for the most recent purchase (that kicked off this request to BNZ) of 2 x Halo Media billboards". This is a reference to the purchase of two billboards from Halo Media Limited (**Halo**), another digital billboard company, which was in liquidation. I will discuss this further shortly. One of the documents Mr Jaques sent me on 8 June 2020 was a letter which explained that Ricoh Finance, which I knew to be a finance company, would finance either all or 50% of the purchase of the Halo billboards **[[BDO.01.00419]]**.

[2] Mr Jaques noted he granted Ms Lee "read only" access in an email dated 8 June 2020 **[[BDO.01.00423]].**

Meeting on 8 June 2020

32. Ms Lee and I met with Mr Jaques on 8 June 2020 at his office in Highbrook, Auckland. I recall that at this meeting, Mr Jaques gave an overview of his business and his business plan. We also discussed the information we had required for the IBR.

33. I believe I said at that meeting that Mr Innes-Jones would not be involved in the IBR and that Mr Jaques would be dealing with Ms Lee and me for the IBR. I believe I said that we would copy Mr Innes-Jones on correspondence as he would likely be the accountant following the review. Mr Jaques appeared to understand this. I do not recall him raising any concerns or questions and he did not disagree with the approach I had described.

Mr Innes-Jones' 12 June 2020 "meet and greet"

34. On about 12 June 2020, Mr Innes-Jones told me that he had attended a "meet and greet" of the advisory board for Digital Signs and Digital Advertising. I recall that during this conversation, Mr Innes-Jones and I discussed again that he would pause work for the companies whilst I was completing the IBR.

Further correspondence with Mr Jaques

35. On 15 June 2020, I was copied on an email from Mr Jaques to Mr Kilmartin. Mr Jaques explained that Digital Signs had applied to borrow $420,000 from BNZ to buy the Halo billboards. He also said that the company had requested an additional overdraft of $200,000. He then explained that he wanted to change this to request a "working capital facility" of $2 million, as well as a "50% Plant Finance facility" **[[BDO.01.00492]]**.

36. In that email, Mr Jaques also said that Heartland Bank had approved a $700,000 loan but the bank then had a "change of direction". He said that Ricoh had also approved lending but this had then been "knocked back" by the CEO. Mr Jaques said that, "I was due to pay for the Halo purchase last week but have not been able to yet." He asked Mr Kilmartin to consider the lending request for $420,000 for the purchase of the Halo billboards separately whilst BDO Auckland's IBR was ongoing, in advance of considering the broader lending request.

37. Later, on 25 June 2020, Ms Lee emailed Mr Jaques, copying me. The email attached a spreadsheet with a series of questions we had about the Group's sales forecast. Our questions focused on understanding the status of each order, whether there were contracts in place and when payment would be received. As Ms Lee explained to Mr Jaques, we were

"trying to do a sense check on the sales forecast based on pipelines provided" **[[BDO.01.00513]]-[[BDO.01.00514]].** Mr Jaques replied providing some information the next day **[[BDO.01.00518]]-[[BDO.01.00532]], [[BDO.01.00533]]-[[BDO.01.00534]], [[BDO.01.00535]]-[[BDO.01.00536]].**

Halo billboards, house purchase and IRD arrears

38. On 29 June 2020, Mr Jaques emailed Ms Lee and me a copy of a tax invoice dated 5 June 2020 and issued to Digital Advertising for the purchase of two digital billboards from Halo **[[BDO.01.00545]]-[[BDO.01.00546]].** Mr Jaques had mentioned the Halo purchase previously, but this was the first time he provided the invoice to me. The invoice for the billboards was for $346,150 (including GST), dated 5 June 2020 and stated "Payment terms strictly 7 days".

39. Mr Jaques wrote in his email that "The deal is confirmed and we're just in the process of paying for it." He mentioned that "The most likely method of finance will be sale with lease back (taking off the Balance Sheet but still having the same cash flow effect)." **[[BDO.01.00545]]-[[BDO.01.00546]].**

40. I was aware from Mr Jaques' email on 15 June 2020 that the Group had requested lending from Ricoh and Heartland Bank that had been declined and that Mr Jaques was trying to get lending from BNZ for this. I recall this became a pressing issue because Mr Jaques had committed to purchasing the billboards but the Group did not have the funds to pay for them.

41. This transaction raised concerns for me as it involved Mr Jaques committing Digital Advertising to a substantial purchase it did not have the funds for. This was also occurring during the Covid-19 pandemic, when there was a lot of uncertainty for small businesses.

42. Mr Jaques emailed Ms Lee, copying me, on 29 June 2020 with some general comments on his business. In that email he said that he had purchased a house which was due to settle on 14 July 2020. He also said, "Even though Bianca (BNZ) indicated she would support a house purchase (as it only diverts current rent outgoing to mortgage and increases real security to the bank) they won't process my mortgage application while you are doing your review." I thought it was odd that Mr Jaques was attempting to buy a property at a time when he was seeking substantial further lending for his companies (which he and his wife worked in), which were being managed by the SBS team **[[BDO.01.00547]]**.

43. Ms Lee sent Mr Jaques some further queries by email on 29 June 2020 **[[BDO.01.00548]]**. This included asking when the last date for payment for the Halo billboards was. In addition, from our review to date, we had identified that the Group had substantial PAYE tax arrears and that it was on a payment plan with the Inland Revenue Department (**IRD**) to repay that debt. Because of this, Ms Lee's email also asked Mr Jaques for details of the total arrears the Group had with the IRD. She asked for details of the Group's payment plan with the IRD.

44. This was an area of concern as unpaid PAYE tax is a common sign that a company is facing cash flow difficulties and may be insolvent. Ms Lee and I wanted to understand this further.

45. Mr Jaques replied advising that payment for the Halo billboards needed to be made by 5pm the next day. He also advised that the companies were paying $10,000 a month to the IRD to repay their PAYE debt, and that they still had $70,000 owing **[[BDO.01.00550]].**

46. Mr Jaques emailed Ms Lee, copying me, on 30 June 2020 to say that "all other mainstream lenders" had said no to lending to buy the Halo billboards, so he "had to get extremely expensive money" to complete the deal **[[BDO.01.00555]]**. I later learned that the Halo purchase had not actually been completed.

47. Also on 30 June 2020, Mr Jaques emailed Ms Lee to comment on the Group's business model. He explained that Digital Signs was a hardware selling business and Digital Advertising was a billboard operator. As a billboard operator, Digital Advertising managed billboards for clients. In his email, Mr Jaques explained that he wanted to build on this business by buying company-owned sites for billboards. He expressed his view that "this opportunity only requires proper management and monitoring to be highly profitable." He then said "It is for this reason we're asking the bank for the required funding to deliver to the projections as adjusted along the way etc." **[[BDO.01.00553]]**.

Meeting with Mr Jaques on 3 July 2020 and subsequent emails

48. By late June 2020, BDO Auckland had analysed all the information provided by Mr Jaques. The focus of my analysis was on whether the Group was generating, and could realistically generate, sufficient cash flow to meet its existing debts and the further debt it was looking to take on with BNZ.

49. My assessment at that time was that the Group's current cash flow was not sufficient to meet its existing debts or the debt it was looking to take on. I will explain this further when I address my IBR report, which

was issued in August 2020. The Group was looking to grow too fast without the sales it needed to fund that growth. I also had concerns about the completeness and accuracy of the Group's financial records, which did not appear to accurately reflect the Group's true financial position.

50. I recall that I met with Mr Jaques on about 3 July 2020. I recall explaining some of these concerns to him. I suggested that he could consider slowing down his growth plans. I suggested that he could build the business one billboard site at a time and once a site produced sufficient cash flow to support expansion, he could then consider incremental expansion. I considered this was the best way forward for the Group because my review to date had shown that it did not have sufficient cash flow to service further borrowing. The Group was essentially spread too thin as it could not meet existing obligations such as PAYE tax. Mr Jaques was resistant to this idea and was adamant that the business would grow quickly if he got more lending from BNZ.

51. On 6 July 2020, Mr Jaques emailed Mr Kilmartin, copying me, with various comments following the meeting on 3 July 2020 **[[BDO.01.00566]]**. I do not address all the topics covered in Mr Jaques' email, but address some key points below. Where I have not addressed a point raised by Mr Jaques, I should not be taken as agreeing with him.

52. That email started by saying that I would "not support additional lending". I do not quite agree with that characterisation. It is not my role when undertaking an IBR to "support" or "not support" a particular position. Instead, my role is to investigate the true financial position of the company. In doing so I may express a view of whether the company can service further debt, but I do not "support" or "not support" additional lending. It is for the bank to decide, based on all the information available to it including my report, whether to lend further funds or not. As I have said, at the meeting with Mr Jaques I explained my assessment that the Group was not able to service its existing debts or the debt it was looking to take on. In that sense, it is fair to say that my report was unlikely to provide support for a decision by the bank to advance further lending. However, that would be a decision for the bank.

53. In his next paragraph, Mr Jaques says that he had "put forward a cash flow with $3.5m profit" and that he expected me to point out why his forecast was wrong. This is one of the points I had tried to discuss with Mr Jaques at our meeting. My focus was on understanding the Group's actual cash flow position to assess what level of debt it could service.

My analysis was that the actual and verifiable cash flow provided no basis for Mr Jaques' forecasts, as I will explain further below.

54. Mr Jaques then says that the Group had "$1.232m of signed and confirmed orders (just waiting for consent)". From the information I had been provided with, Mr Jaques had a number of different schedules of sales. For example, I was provided with a valuation of Digital Signs completed by SMEtric dated 18 February 2019, which I will discuss further below **[[BDO.01.00647]]**. That valuation included as Appendix I a schedule of proposed sales totalling $6.5m to $12.0m across the Group. However, very few of these materialised in the year to 31 March 2019 and up to the period of my IBR in 2020. BDO Auckland's IBR report, which I will discuss further, also included as Appendix C a list of "sales", many of which did not materialise during our review **[[BDO.01.00740]]**. For these reasons and as I will explain below, I identified serious concerns about the accuracy of Mr Jaques' claimed amount of confirmed orders. As Mr Jaques noted, these sales were "waiting for consent" in any event, which meant that it was not certain if or when these amounts would be payable.

55. In this email, Mr Jaques also said he was exploring the option of entering into a joint venture with another billboard company. He said he would allow some time to see if that joint venture proposal would come through, otherwise he would consider selling his business to the proposed joint venture partner.

Email from Mr Jaques on 22 July 2020

56. I did not hear anything further from Mr Jaques for a few weeks. Ms Lee and I had been drafting the IBR report, but had not finalised this whilst we were waiting to hear the outcome of Mr Jaques' joint venture negotiations.[3]

57. Then I received an email from Mr Jaques on 22 July 2020, asking for a meeting **[[BDO.01.00614]].** Mr Jaques said he was disappointed with my assessment of his business and thought I was wrong. I do not address all the topics covered in Mr Jaques' email, but address some key points below. Where I have not addressed a point raised by Mr Jaques, I should not be taken as agreeing with him.

58. One of the topics Mr Jaques mentioned was that he "simply cannot understand how I can have a business with so much revenue coming in, and no capital outlay, and you tell me I do not have a viable entity". I have addressed the revenue point above. From my review, the Group

[3] I noted this in an email to Mr Jaques dated 23 July 2020 **[[BDO.01.00618]]**.

had limited verifiable sales which were not at a sufficient level to service further debt. It is also incorrect to say that the Group had no capital outlay, as it needed to invest a significant amount to install a planned billboard referred to as the "Wash Depot" billboard, and was looking to purchase the Halo billboards.

59. Mr Jaques wrote that I "lumped [him] in with all the other billboard operators, said their market is/will be depressed, and therefore there is no way my projections can be right." I disagree. That is not what I did. I looked at the Group's sales, not at the market for billboards generally.

60. Mr Jaques then mentioned the Halo billboards, and said that the Group had "started selling into" one of the two billboards based in Christchurch. He also mentioned that I "disagreed with Warwick's valuation". I understand that this is a reference to a valuation of the Halo billboards prepared by Warwick Russell of SMEtric Valuations.

61. Mr Jaques had previously provided me with a copy of the SMEtric valuation of the Halo billboards, which I had reviewed.[4] The report assessed the value of the billboards as $840,000, based on the "assumptions and qualifications contained within the body of this report".[5] Digital Advertising had agreed to buy the billboards for $346,150 (including GST).[6]

62. I did have concerns about the usefulness and accuracy of this valuation. I explain these further below. In short, the valuation was based on the cost of replacement of the billboards depreciated to reflect that the billboards were 18 months into an 8 year lifespan. Both the replacement costs and the lifespan were assumptions supplied by Digital Signs itself. As the report explained, "This valuation is based on the replacement values and remaining economic lives provided by Digital Signs set out in Appendix I". Appendix I then included two draft quotes from Digital Signs, giving prices for replacement parts. I did not consider that this was a robust valuation because it was based on information provided by Digital Signs itself.

63. However, my main concern was about the cash flow to be generated from these potential assets, rather than simply trying to get them on the balance sheet as an asset at a value, which appeared to me to be one of Mr Jaques' focuses. Ultimately, an asset is worth what a third party is willing to pay for it, or the cash flows that can be generated by it. The cost price is real, but it can be academic. That is because it may cost

[4] **[[BDO.01.00394]], [[BDO.01.00409]]**.
[5] **[[BDO.01.00409]]**.
[6] **[[BDO.01.00649]]**.

more to build or replace the asset than the cash flows that it will produce. Given this, even if Mr Jaques' replacement values were accurate, it does not mean the billboards were worth that amount. Cash flow is the key consideration in terms of value, not necessarily the cost to build the asset.

64. I replied to Mr Jaques' email saying that I could meet that week to discuss the matters he had raised **[[BDO.01.00618]]**. I also responded to some of his comments. In particular:

    a. I explained that I had not "lumped" the Group in with other billboard operators. I explained that "[…] we have looked at DS & DA as standalone businesses and the cash flows they are generating and their solvency".

    b. I also explained that "We do not make the lending decisions that is for the Bank".

65. I also asked Mr Jaques to provide details of whether he had funded the purchase of the Halo billboards and what the lease terms for these were.

66. I concluded my email by saying:

> The reality is at the time of the review DA & DS are insolvent and I would suspect remain so.

67. Mr Jaques replied confirming a time for a meeting the next day. He also provided some comments on the Group's financial position **[[BDO.01.00617]]**.

Meeting with Mr Jaques on 24 July 2020 and steps following

68. Ms Lee and I met with Mr Jaques on 24 July 2020. I do not recall the details of the meeting, but Mr Jaques emailed me the next day with various comments on the Group's financial position **[[BDO.01.00646]]**.

69. In this email, Mr Jaques noted that I had asked to speak to the members of the Group's advisory board. Mr Jaques directed me to Ken Leeming and Sarah Lochead-Macmillan.

70. I recall speaking with Ms Lochead-Macmillan. Her feedback to me was that the Group appeared to be disorganised and was looking to grow too fast. My recollection is that she agreed with my suggestion that the Group scale back and grow more sustainably. I exchanged emails with Mr Leeming about arranging a call, but do not recall if I spoke with him **[[BDO.01.00663]]**.

71. Mr Kilmartin sent me an email asking to have a call about Mr Jaques on 27 July 2020 **[[BDO.01.00652]]**. I do not recall this phone call specifically. I expect we would have discussed the progress of the IBR.

72. Mr Jaques copied me on an email on 27 July 2020 between himself and Iain Nellies, who was the liquidator of Halo **[[BDO.01.00653]]**. In the email to Mr Nellies, Mr Jaques said, "That meeting went VERY well", which I understood to be a reference to the meeting Mr Jaques and I had on 24 July 2020. Mr Jaques then said to Mr Nellies:

> Now that he has got to the finer details he understands it much better and strongly indicated he is willing to support what I am doing.
>
> I am aiming for Tue/Wed to have this transaction completed with you at my main bank BNZ.

73. Mr Nellies had replied to Mr Jaques that he required confirmation that the transaction would be completed the next day, which I understood to be the purchase of the Halo billboards I have mentioned. Mr Jaques forwarded this to me saying:

> This is starting to unravel.
>
> Did you have a chance to speak with Paul [Kilmartin] at all?
>
> If I get Halo sorted we then have time to address the rest.

74. I was surprised to receive this email, which said that I had indicated I would support what Mr Jaques was doing. I had never said this. The emails also suggested that Mr Jaques would have lending from BNZ shortly. This did not reflect what I told Mr Jaques at our meeting on 24 July 2020, or at any earlier time.

75. I sent this email on to Mr Kilmartin. I said that I was concerned and not sure that we (being BDO Auckland) had [redacted] I asked to discuss this with Mr Kilmartin **[[BDO.01.00654]]**.

76. Mr Kilmartin responded to me saying **[[BDO.01.00655]]**:

> [redacted]

77. Later, on 27 July 2020, Mr Jaques emailed me again to ask if there was anything I could do to help him get the Halo purchase completed "early this week" **[[BDO.01.00664]]**.

78. I replied that evening (which was a Monday) explaining to Mr Jaques that we had not finished our analysis of the information provided on 25 July 2020. I said that, even if we could finish it by Wednesday, I doubted that it could go through BNZ's processes so that he could buy the Halo billboards by then. I also explained that we still had questions for him and were waiting to receive information that we had asked him for earlier **[[BDO.01.00665]]**. I also raised a few other concerns I had:

    a. I suggested to Mr Jaques that he cease making commitments until he knew the level of funds he may or may not have available. I said, "You have almost locked yourself into this Halo deal with currently no ability to pay for it".

    b. I explained that certain billboards would need to be incorporated into the companies' balance sheet as both an asset and a liability. By this I meant that the Group would record the purchase of the asset (the billboards) and record a corresponding loan (liability) for the same amount on the balance sheet. This meant the net effect on the balance sheet would be zero.

    c. I explained that we needed to understand the position in respect of each of the companies' debtors. The balance sheet as at 31 March 2020 included a large number of outstanding debtors, and we needed to understand the status of each. I was concerned the outstanding debtors may have been overstated or were not collectable.

    d. Around this time, I spoke with Mr Innes-Jones about the valuation of the Halo billboards. This was because Mr Jaques was of the view that Mr Innes-Jones had said that, when he purchased the Halo billboards, he could revalue them on the Group's balance sheet based on the SMEtric valuation. That is, if the Group purchased the Halo billboards for the proposed purchase price of $346,150, he could add them to the balance sheet as an asset at SMEtric's valuation of $840,000. I explained in the email that "I also briefly talked to Nick on Friday - and he would not be revaluing the Halo Assets to $800k purely by a valuation - if you spend money fixing the boards up then that would be added to the purchase price".

    e. SMEtric had also completed a valuation of Digital Signs in February 2019, which Mr Jaques had provided to me.[7] I had reservations about this valuation and wrote in the email, "I have

[7] See **[[BDO.01.00646]]-[[BDO.01.00647]]**.

also had a look at the valuation of the Company/Group by SMetric and ran it past one of my Corporate Finance team and it does not make sense to either of us." I explain these reservations further below.

79. Mr Jaques responded about half an hour later, saying, "Suit yourself Andy. I am out of time to do any more on this." He also said, "I have either offended you or Paul has become entrenched." **[[BDO.01.00666]]**. I do not accept that statement. The concerns I had raised about the Group's financial position were based on my professional, independent opinion, and not because of any other matter.

80. I forwarded this email to Mr Kilmartin **[[BDO.01.00667]]**.

28 July 2020 email from Mr Jaques

81. The next day, 28 July 2020, Mr Jaques emailed me again with various queries. He said, "What made you go from being willing to support Halo, Wash Depot and (say) $200k of working capital Friday to last night's email?" Similarly, later in his email Mr Jaques said, "the flip-flop between support and not is entirely unacceptable". **[[BDO.01.00668]]**. I do not agree with these statements. I had not indicated that I was willing to support lending from BNZ and there was no change in position.

82. He also said, "Why are you again focusing on picking holes in accounting technicalities instead of assessing the flow of revenue now and in the future?". I do not accept this comment. We did consider the Group's incoming revenue and future prospects as part of our assessment. Our assessment of the Group's accounting was also an important part of the review. I was not "picking holes" in technical issues. My role in an IBR is to assess a company's true financial position. This involves critically analysing the company's accounts, rather than relying on them at face value. In the case of the Group, there were significant issues with its financial records such as creditors that were not accounted for (as I will explain below) and debtors that appeared to be overstated.

83. Mr Jaques then said, "Please don't let your dispute with Warwick Russell effect the way you are assessing me". Mr Russell had prepared the SMEtric valuation of the Halo billboards and an earlier valuation in 2019 of Digital Signs. I do not know what "dispute" Mr Jaques was referring to here. I did not have any dispute with Mr Russell. I have explained in this witness statement some concerns I had about the usefulness and accuracy of SMEtric's valuations of the Halo billboards and Digital Signs.

SMEtric valuation of Digital Signs

84. As I have mentioned, SMEtric completed a valuation of Digital Signs dated 18 February 2019 **[[BDO.01.00647]]**. The valuation was provided to me by Mr Jaques in the course of the IBR,[8] and he referred to it at times in his emails and in our discussions.

85. I disagreed with the valuation prepared by Mr Russell of SMEtric **[[BDO.01.00647]]**. The key reasons for this are as follows:

    a. The valuation was done on a discounted cash flow analysis, or "DCF". That is a valid valuation method. However, in relation to the cash flows, the reliability of a DCF valuation depends heavily on the reasonableness and supportability of the forecast cash flows. The SMEtric valuation assumed very high growth over the forecast period, with net cash flow growing from $288,607 in FY19 to $18.3 million in FY22. Over the period, that equates to a compound annual growth rate of 299% per year. No detailed justification is provided in the valuation report for the forecast cash flows or the significant growth. It did not appear to me that Mr Russell had undertaken independent testing of those forecasts or sensitivity analysis around the key operating assumptions underpinning the forecast growth. My view was that there was considerable uncertainty regarding the achievability of these forecasts and, in the absence of further supporting analysis, they appeared speculative.

    b. To reach a valuation of $50 million to $60 million, Mr Russell applied a terminal value multiple of four times FY22 EBITDA.[9] A multiple of EBITDA is typically used to value a company, but the multiple chosen must be supported by evidence such as market data. Mr Russell did not provide market evidence, comparable company or transaction analysis, or other analysis supporting this key input. I therefore considered this component of the valuation to be insufficiently supported. The multiple used drove the majority of the valuation – in this case 68% to 69% of the $50m to $60m valuation. Given the material contribution of the multiple to the overall valuation, the absence of support for the multiple is significant.

    c. Finally, Mr Russell applied an assumed discount rate of between 20% and 25%, but provided no supporting calculation demonstrating how these rates were derived. I would expect the

[8] See **[[BDO.01.00646]]-[[BDO.01.00654]]**.

[9] Earnings Before Interest, Taxes, Depreciation, and Amortisation.

discount rate to be supported by a transparent calculation, for example using the Brennan-Lally Capital Asset Pricing Model, together with appropriate inputs and adjustments to reflect the risks of the business and/or forecast cash flows. In the absence of such analysis, it is not possible to assess whether the discount rates appropriately reflect the risks inherent in the business and forecast cash flows. I therefore considered that this key input to the valuation was insufficiently supported.

86. Given the above I considered the valuation to be significantly overstated.

87. Importantly, the Group had not achieved the revenue projected in the valuation prepared by SMEtric in the financial years ended 2019 and 2020. I accept that the revenue/sales were in the hands of Mr Jaques. The table below sets out the revenue projections and the actual results that we used to prepare the IBR report. It also sets out the revised financial statements prepared for the Group after BDO Auckland's IBR engagement. The Group did not achieve turnover of more than $1 million in the period under review. In the table, the two columns under "Forecast/Valuation" note the figures forecast in Mr Russell's valuation. To explain this table:

    a. The figure in the "Actual" column is the actual sales for FY2019, as noted in the draft financial statements for Digital Signs for FY2020.

    b. The figure under "Presented" is the sales as noted in the draft financial statements for Digital Signs for FY2020 and which were provided by Mr Jaques to BDO Auckland.

    c. The figure under "Revised" is the sales as noted in the final financial statements for Digital Signs for FY2020, which have been disclosed by the plaintiffs in disclosure.

Table 1: Summary of Forecast vs Actual Sales of Digital Signs

	Forecast/Valuation		Actual	Presented	Revised
	31-Mar-19	31-Mar-20	31-Mar-19	31-Mar-20	31-Mar-20
	$	$	$	$	$
Sales	1,315,389	10,620,942	441,469	2,292,946	886,786
Source	BDO.01.0647	BDO.01.0647	PLA.0454	PLA.0454	PLA.0248

88. While the Group did plan for sales from Digital Signs to Digital Advertising, it is notable that the largest sale in the year ending 31

March 2020 was to Digital Advertising on Invoice 20289, being an amount of $516,768 (GST exclusive).[10] This represents 58% of the Revenue of Digital Signs, per the Revenue recorded in the revised 31 March 2020 financial statements referred to in Table 1 above **[[PLA.0248]]**.

SMEtric valuation of Halo billboards

89. SMEtric also completed a valuation of the Halo billboards which Mr Jaques was proposing to purchase. I make the following observations on this valuation, which I identified during the IBR **[[BDO.01.00409]]**.

    a. The valuation adopts a depreciated replacement cost approach. The value of the billboard assets is based on their estimated current replacement cost, adjusted for their remaining economic life. However, the replacement values adopted by Mr Russell were not determined through an independent external valuation of the assets. Rather, they were based on Digital Signs' own internal assessment, which SMEtric relied on without audit or other examination to test its accuracy or validity.

    b. This is significant because the replacement value is the key input into the asset valuation. Although the report describes itself as an independent valuation, there is no independent external valuation or other market evidence presented in the report to support the replacement values assessed internally by Digital Signs. I expected those replacement values to be independently established or, at a minimum, verified and tested for reasonableness by the valuer. Instead, Mr Russell's analysis applied depreciation assumptions to replacement values determined internally by the company whose assets were being valued. Accordingly, I did not consider the report provided sufficient independent evidence or analysis to substantiate this key valuation input.

    c. I did not agree with "booking" the revaluation of the Halo billboards as commented on previously – there is no cash effect which was the Group's problem. That is, adding the billboards to the Group's balance sheet at this valuation does not actually introduce cash into the Group, which is what was needed.

[10] This is identified in the General Ledger Report for Digital Signs, provided to Ms Lee by Mr Jaques on 9 June 2020 **[[BDO.01.00468]]** (attached to **[[BDO.01.00459]]**). See rows 9026 and 9027 of the spreadsheet **[[BDO.01.00468]]**.

Further comments on 28 July 2020 email

90. In his 28 July 2020 email, Mr Jaques also said:

> BDO (Nick) are my accountants and that side of the business is supposed to be going to bat for me and showing me in a good light. It will not take much for Nick to provide a credible path through on the data I gave you Friday so he needs to be doing his job properly and proving that to you.

91. It is not correct that BDO Auckland was the companies' accountants. BDO Auckland had not been engaged as such. I had agreed with Mr Innes-Jones that his work was on hold whilst I completed the IBR. The records and forecasts had been prepared by Mr Jaques or Accounting Plus, the Group's actual accountants.

92. I also do not agree that it was the role of Mr Innes-Jones, or the companies' actual accountants, to go "to bat" for Mr Jaques and show him in a "good light". In the course of an IBR, my interaction with a company's accountant is usually fairly limited. An accountant will typically prepare year-end financial statements and tax returns, based on compiling information provided by the company's directors.

93. I will often get some financial information and documentation from a company's accountants, but my focus is on trying to understand the business and its cash flows. That information is more likely to come from the business owner than their accountant. My role is to investigate a company's true position. An accountant can only help so much with that because they are external to the company and are not involved in its day-to-day operations.

94. In the case of the Group, Accounting Plus provided us with some information but most of our questions were for Mr Jaques.

95. I sent my draft response to Mr Innes-Jones. He responded confirming that Mr Jaques was wrong to describe BDO Auckland as the Group's accountants. He said **[[BDO.01.00675]]**:

[redacted]

96. This reflected my understanding that BDO Auckland was not the Group's accountants.

97. Ms Lee also emailed Mr Jaques, copying me, on 28 July 2020. Ms Lee asked for information about agreements the Group had entered into and when certain payments were due from customers, amongst some other topics **[[BDO.01.00670]]-[[BDO.01.00671]]**. Mr Jaques replied shortly afterwards providing some of the information Ms Lee had requested. In his email Mr Jaques noted that he would "speak with Nick to complete the rest (he is going to take over the financial reporting with his expertise)." **[[BDO.01.00672]]-[[BDO.01.00674]]**.

Mr Jaques pauses the IBR

98. On 28 July 2020, Mr Jaques emailed me saying, "Please do not do any more work on this matter and invoice me for what you have done" **[[BDO.01.00680]]**.

99. I raised this with Mr Kilmartin and suggested we discuss the issue the next day **[[BDO.01.00682]]**. I do not recall that phone call in particular, but I believe that around this time I discussed the status of my review with Mr Kilmartin. This involved relaying to Mr Kilmartin the concerns I had identified with the Group's financial position.

100. Ms Lee emailed Mr Jaques the next day to check the status of our engagement. Mr Jaques responded that we were to stop doing work **[[BDO.01.00686]]**. I forwarded this response to Mr Kilmartin **[[BDO.01.00687]]**.

Meeting on 10 August 2020

101. On 10 August 2020, I met with Mr Kilmartin and Mr Jaques at BNZ's Queen Street office. We discussed the continuation of BDO Auckland's role in the IBR. I recall we also discussed a revised amount the Group was looking to borrow. It was agreed that we would continue with our engagement and complete our report.

102. Mr Jaques emailed me after the meeting, confirming we were to continue with the IBR **[[BDO.01.00691]]-[[BDO.01.00695]]**. His email noted that we should consider lending involving an additional $200,000 of working capital to be advanced by BNZ to Digital Signs, and/or $350,000 in lending to buy the Halo billboards, and/or $402,500 to install the Wash Depot billboards.

Finalising the IBR report

103. BDO Auckland continued to seek information from Mr Jaques to continue with our engagement **[[BDO.01.00700]]-[[BDO.01.00701]]**,

[[BDO.01.00704]]-[[BDO.01.00705]], [[BDO.01.00706]]-[[BDO.01.00711]]. One of the questions Ms Lee asked as part of this process was:

> PAYE – What is the plan to clear up PAYE payable of $191k and PAYE payable sitting in AP $29k (Total $220k) as of 31 Jul? The monthly repayment of $10.8k/month included in the previous forecast – is it still applicable? Please can you provide a summary/breakdown for the total amount outstanding and payments made as of to date.

104. In response, Mr Jaques provided a message chain with the IRD titled "Breach of arrangement" **[[BDO.01.00710]]**. The chain included a message dated 16 July 2020 from Mr Jaques to the IRD in which he explained that he was attempting to sell a 50% interest in the business by 31 July, or failing that to make the majority of the staff redundant and reduce to a holding pattern. The message ended by asking if he and the IRD representative could speak "after 31 July on how we are going to clear our arrears to you".

105. In his cover email to Ms Lee and me, Mr Jaques wrote **[[BDO.01.00706]]**:

> The IRD officer rang me 16 July and I put in writing what I told her (attached). She has indicated the IRD position is: a) pay all current as it falls due if you can; b) pay current and $10,000/month until cleared if you can; c) if you can't, but you have a plan (to sell or refinance) they will give all the time to get it resolved

106. Ms Lee and I had been working on the IBR report, which she sent to me on 22 August 2020 for my review **[[BDO.01.00719]]-[[BDO.01.00721]]**. Ms Lee and I worked to finalise the draft over the following few days **[[BDO.01.00724]]-[[BDO.01.00727]], [[BDO.01.00730]]-[[BDO.01.00734]]**.

107. Mr Kilmartin emailed me on 26 August 2020 asking when the IBR report would be completed. It had been delayed a bit as I was recovering from surgery for a broken collarbone at the time, and Ms Lee had been ill. I said that a draft report would go to Mr Jaques that day. I also said, [redacted] which reflected my assessment of the Group's financial position, as I explain below **[[BDO.01.00729]]**.

108. On 27 August 2020, Ms Lee sent the final draft IBR report to Mr Jaques, copying me. Ms Lee asked Mr Jaques to review the report for factual accuracy. She also asked Mr Jaques to confirm the outstanding amount owed to IRD, which appeared to be about $190,000 to $220,000 as at July 2020. Ms Lee requested that Mr Jaques clarify some other matters and then commented **[[BDO.01.00735]]-[[BDO.01.00736]]**:

> We are of the view that you will not agree with our assessment, however, you are welcome to make a submission directly to the BNZ. This report will be forwarded to Paul at BNZ once you have reviewed.

109. Mr Jaques responded about an hour later saying that he did not agree with our report **[[BDO.01.00737]]**. Mr Jaques said that there were a number of inaccuracies, but that every time he went to show this, I got into an argument with him. I do not agree with that comment. We provided a draft of the report to Mr Jaques and specifically asked him to comment on any factual inaccuracies. All the information in the report was based on information obtained from Mr Jaques or the companies' accountants or Xero records. When Mr Jaques and I disagreed, this was based on my review of the information he supplied and my professional assessment of it. My experience was that Mr Jaques was not open to feedback or questioning.

110. Mr Jaques also said, "Put your Report to the Bank and do what you like." He then said that BDO were his accountants, which I do not agree with as I have said.

111. Mr Jaques also commented, why did I not "take the monthly modelling of the sites once operational (Wairau, Wash Depot, Highbrook, Victoria Street and Pages Road), recommend an adjustment of OPEX, recommend converting related party debt to paid up capital and show that over the next 36 months trading on this basis alone is profitable and viable. On this basis it is clear the company can sustain the debt sought and trade profitably." **[[BDO.01.00737]]**. There could have been a conversion of related party debt to equity to reduce the liability of the Group. However, the fundamental problem of the Group was that it did not produce sufficient cash. Converting debt to equity did not solve that critical problem.

112. After reviewing Mr Jaques' response, I sent the draft IBR report to Mr Kilmartin, along with Mr Jaques' reply **[[BDO.01.00739]]-[[BDO.01.00740]]**. I said to Mr Kilmartin that I did not think we could get any further with our review. I raised several concerns about the Group in my email:

- [redacted]

- [redacted]

[redacted]

113. I did not consider that the business had sound fundamentals or that it was recording its transactions appropriately. It had not achieved any of its previous forecasts.

114. Mr Kilmartin replied that he would be in touch with any questions once he had gone through the report **[[BDO.01.00741]]**.

The findings in the IBR Report

115. My IBR report identified a number of issues facing the Group. I will address the key points below.

116. I note that in completing the IBR, I did not review or take into account the financial forecasts Mr Innes-Jones had previously prepared for the companies. I understand these were completed in December 2019 and February 2020, which meant that they would have been out of date by the time I was completing my review.

Cash flow forecast

117. Mr Jaques provided us with a series of forecasts for the Group. Ms Lee reviewed these in the first instance and reported to me that they were not very well prepared and difficult to understand. I also reviewed them and agreed with what Ms Lee had told me.

118. We considered Mr Jaques' cash flow forecasts were overly optimistic. A key issue was that the Group was coming off a very low base of sales, yet was projecting significant revenue going forward. The Group had historically not achieved the level of sales it was projecting going forward. That is a factor I looked at when assessing whether the projections were realistic.

119. Mr Jaques had projected Digital Signs' sales to increase by 284% in the financial year to 31 March 2021. This was based largely on the Group erecting 30 billboards by the end of the 2021 Financial Year (31 March 2021). This included 13 billboards owned by the Group and 17 billboards operated as joint ventures between the Group and third parties which owned the sites on which billboards were installed. At the date of my report, progress had been slow and Digital Signs had not secured enough projects to achieve this forecast. I considered that Mr Jaques' forecast was overly optimistic.

120. It is important to consider that, in most cases, sales do not grow substantially overnight. There is typically a "ramp up" period, with sales increasing over time. This is typically the case even where a company acquires a new revenue-producing asset, such as the billboards Mr Jaques was looking to buy. There would be a period between acquiring the asset and the asset reaching its revenue-earning potential. That can sometimes be a long period. Even where customers have indicated interest, sales may or may not materialise once the asset is commissioned, and those sales may or may not be sustained over a period of time. In the meantime, the company must continue to service its debt. Acquiring an asset may produce revenue, but it also creates a cost for the company. It is therefore important to assess whether a company can support further debt based on realistic cash flow projections.

121. In my assessment, the "ramp" Mr Jaques had projected was too steep and not realistic. My report adjusted Mr Jaques' forecast so that it was based on the future projects that were most likely to materialise. The adjustment to the ramp rate would have been more gradual, reflecting a more appropriate timeline based on my experience of a likely path forward.

122. Digital Signs was requesting a further $200,000 loan to be used to meet the costs of day-to-day operations. This would bring its overdraft facility to $670,000. However, based on the adjusted forecast, Digital Signs would have immediately exceeded that new overdraft limit. I forecast that this deficit would have continued to grow and by March 2021, the deficit (even with the additional $200,000 in working capital) would have been $294,000. This demonstrated that Digital Signs did not have sufficient cash flow to pay its debts. Even with more lending, the Group would be making a substantial loss.

The Group was insolvent

123. The report identified that the Group was insolvent and failed both limbs of the solvency test.

124. To explain this, there are two parts to the solvency test for a company: (a) the liquidity test; and (b) the balance sheet test. The liquidity test asks whether the company can pay its accounts as they fall due in the normal course of business. This is what I meant by the "cash flow test" in my report. The balance sheet test requires the company's assets to exceed its liabilities (including contingent liabilities).

125. A company must pass both tests to be considered solvent. My assessment was that the Group did not.

126. In particular, the Group had limited cash flow as I have explained. On the Group's existing cash flow, it did not have the ability to pay its debts in the ordinary course of business. My assessment was that forecast sales would also be insufficient to meet the Group's debts, and Mr Jaques' forecast sales were overly optimistic as I have explained.

127. Additionally, the analysis of the Group's balance sheet showed that its liabilities exceeded its assets.[11] That is, it failed the balance sheet test as well.

Outstanding debtors overstated

128. Digital Signs' balance sheet recorded that it had total assets of $1.576 million as at 31 July 2020. However, $1.2 million of this was made up of debtors outstanding as at 31 March 2020.

129. In short, this meant that the Group had $1.2 million in assets recorded in its balance sheet representing money it had not yet received from clients.

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[11] See the balance sheet for Digital Signs on page 21 of the report and the balance sheet for Digital Advertising on page 23 **[[BDO.01.00736]].**

130. After investigating this, it became clear that Digital Signs was adding the full value of a contract to its outstanding debtors when a contract was entered into. However, Digital Signs' customers were not required to pay the full amount up front. Instead, they would typically make an upfront payment for resource consent costs for the billboard. 50% of the purchase price would then be paid when a consent was obtained. 40% would be paid when the signs were installed, with the remaining 10% paid on the 20th of the month following commissioning of the billboard.

131. My assessment was that it was not appropriate to record the full value of the contract as a sale at the outset. My view was that the proper approach would be to record the sale in the accounts, but then to reverse out any unpaid amounts. The unpaid amounts would then be added over time as they become due to be paid to the Group. This ensures that the accounts accurately reflect the true amounts due and payable to the Group. Recognising the full amount at the outset does not account for the risk that the full contract price may not be paid, for example if a consent is not obtained or if the customer cancels the contract or cannot pay for any reason. It also recognises as an asset an amount of money that the Group is not actually entitled to receive yet.

132. In other words, my assessment was that it would have been more appropriate to recognise revenue as each stage of the contract was reached (e.g. consent obtained), as only at that stage was the Group entitled to payment.

133. In this case, the $1.2 million had been added to the accounts in March 2020, seemingly out of nowhere. It was not consistent with sales in previous months, which raised further concerns for me as to whether this full amount was recoverable.

134. Ms Lee and I repeatedly asked Mr Jaques about this issue. If the Group was in fact owed this amount, it would have provided much needed cash to the Group. It may not have even needed the lending, and the amount of outstanding debtors exceeded the amount Mr Jaques was trying to borrow.

135. Further, it is a concern if a company is not following up on and receiving payment from outstanding debtors, particularly given these debtors had been outstanding for over three months by the time of my IBR report. That may suggest the amounts may not be recovered or are not in fact recoverable.

136. Mr Jaques did not provide answers which explained why the Group was in fact owed this amount and why it had not followed up on payment if it was. Given this and the other reasons I have mentioned above, I had serious concerns as to whether the $1.2 million was in fact collectable by the Group.

Incorrect accounting

137. In August 2020, Digital Signs made payments in arrears to creditors of $219,000. Those payments related to council fees, freight, stock purchases and rental and billboard land leases. However, these amounts had not previously been recorded in the balance sheet as current liabilities. My assessment was that they should have been. Failure to record these amounts was a serious concern. It meant that the financial records, including the general ledger, were not correct and did not give an accurate picture of the Group's financial position, including its liabilities.

138. Another issue was that Digital Advertising's balance sheet recorded total assets of $437,000 as at 31 July 2020. This included $408,000 related to a billboard referred to as the Wash Depot billboard which did not exist because it had not been installed yet.

139. Through my review, I identified that the acquisition of the Wash Depot billboard had been funded by a loan from Mr Jaques' father, Tom Jaques. However, there were delays in obtaining a resource consent for the billboard. In the meantime, the funds the company had received for the billboard had been used to fund day-to-day operations. Digital Signs obtained a resource consent in July 2020, but by this stage it did not have the funds available to meet the cost of installing the billboard.

140. I also identified that Digital Signs had not yet ordered the LED panels needed for the Wash Depot billboard. Digital Signs' financial records showed $691,000 was owed to a company called LEDMAN, of which $200,000 related to LED panels for the Wash Depot billboard. However, Mr Jaques advised BDO Auckland that there was no amount payable to LEDMAN as no orders had been placed with that company. This was a concern as it suggested the Group's accounting did not reflect the true position. It also suggested that Digital Signs had not ordered or paid for the signs needed for the Wash Depot billboard.

141. Given that it had not been installed yet and the Group was not in a position to fund its installation, the Wash Depot billboard was not a true asset of the company. I recall that at the time, costs had been incurred for resource consents, but there were no funds available in the Group to buy the parts required for the billboard itself.

142. These matters, as well as the inclusion of the $1.2 million of outstanding debtors in the balance sheet called into question the reliability and accuracy of the Group's financial records.

Halo billboard purchase

143. As I have explained above, Digital Advertising had agreed to buy two billboards from the liquidator of Halo. However, it did not have funding in place to complete that deal. I understood that several lenders had declined to provide funding for this. Given the weak financial position the Group was in and lack of confirmed funding, in my view it was bordering on reckless for Mr Jaques to commit to this deal. He was committing the company to an obligation with no certainty it could be met.

144. I did not consider that we had been provided with sufficient evidence from Mr Jaques about the income to be generated from the Halo billboards. The then-current earnings of the business were low, and previous forecasts had not been met, which gave cause to doubt the income the billboards could earn. I was also aware that the previous business that had owned these billboards had failed.

145. The Halo billboards were also the subject of a security interest by Panasonic, which had registered an interest on the Personal Property Securities Register (**PPSR**). This security interest would have needed to be resolved before the Group could have purchased the billboards. I recall that Mr Jaques told me that this was not an issue as Panasonic had already "written them off" its balance sheet. I do not know how Mr Jaques knew that. It did not matter in any event as Panasonic still had a security interest registered on the PPSR and so had not given up any interest in the billboards in PPSR terms, which would have been required. It is possible that the sale by the liquidator may have been able to give clear title to the Group. However, I recall explaining to Mr Jaques that the fact that a company has written an asset off for accounting purposes does not mean that it does not still own it.

Unpaid PAYE tax

146. Digital Signs had an outstanding debt to the IRD in relation to unpaid PAYE. This was approximately $191,000 as at the date of my IBR report. Whilst the company had been on a payment plan with the IRD, it appeared it was not meeting this as the debt remained outstanding. The IRD had also followed up on a default in the payment plan in July 2020.

147. It is a serious concern if a company is unable to meet its PAYE. PAYE is a portion of employees' salaries that the company retains and then pays

on to the IRD. This is a basic tax obligation that companies must meet in the ordinary course of business. If a company is behind on its PAYE, that is an indicator of poor or insufficient cash flow. Solvent companies pay their PAYE on time. PAYE arrears are a red flag for a company that may be insolvent. A significant proportion of liquidations are ultimately triggered by applications by the IRD based on outstanding tax arrears, including PAYE.

148. The Group was substantially behind on meeting its PAYE obligations. I identified this as a critical issue for the Group.

Digital Advertising

149. In the IBR report and in this witness statement, I have focused on Digital Signs or the Group, being Digital Signs and Digital Advertising collectively. That is because the two companies operated together, but Digital Signs was the main company in the Group. However, Digital Advertising also faced significant financial difficulties.

150. As recorded in the IBR report,[12] Digital Advertising was initially a dormant company, which commenced operations in December 2019. Digital Advertising's actual revenue for the year to 31 March 2020 was $3,000, which produced an EBITDA loss of $213,000.

151. Digital Advertising's actual revenue in the four months from 1 April 2020 to July 2020 was $34,775, which produced a year-to-date EBITDA loss of $60,000.[13]

152. Digital Advertising had forecast that its revenue would increase from $3,000 for the year to 31 March 2020, to $279,000 for the year to 31 March 2021. However, this was contingent on deriving revenue from installations of billboards by Digital Signs. This forecast increase in revenue was also forecast to produce and EBITDA loss of $85,000. This loss would have required funding, which Digital Advertising was not forecast to derive.

153. The balance sheet of Digital Advertising[14] had negative net assets at 31 March 2020 of $222,000. The forecast net assets for FY2021 were negative $282,000 at 2021.

154. Digital Advertising was reliant on Digital Signs achieving its revenue in order to achieve its sales. Given the low base Digital Signs and Digital

[12] See page 15 of the IBR report **[[BDO.01.0040]]**.
[13] **[[BDO.01.00745]]**, "P&L" tab.
[14] See page 23 of the IBR report **[[BDO.01.0040]]**.

Advertising were starting from, I had serious doubts that Digital Advertising could achieve its forecast sales for FY21.

Steps after IBR report

155. I did not hear much more from Mr Jaques after I issued my IBR report.

156. I sent Mr Jaques BDO Auckland's invoice for the IBR engagement on 8 September 2020 **[[BDO.01.00748]]-[[BDO.01.00749]]**.

157. I was forwarded an email from Mr Jaques by BDO Auckland's credit controller on 23 April 2021. Mr Jaques' email noted that he had not been able to sell his business, and that the Group did not have cash to obtain resource consents and complete projects. He also mentioned that the IRD had issued a statutory demand **[[BDO.01.00757]].**

158. I then received an email from Mr Jaques on 21 March 2022, outlining complaints against me and Mr Innes-Jones. The complaint was sent to me and Mr Innes-Jones **[[BDO.01.00760]]-[[BDO.01.00765]].** I responded on 29 April 2022 explaining why we did not agree with Mr Jaques' complaint. This letter was accompanied by various supporting documents including the relevant engagement letters and correspondence **[[BDO.01.00767]]-[[BDO.01.00781]]**.

159. I received another email from Mr Jaques on 25 July 2022, attaching a letter. The email said Mr Jaques had engaged a law firm and was engaging a "suitable QC" to bring a claim against BDO Auckland. The letter said he intended to bring a claim against me for services provided under the engagement letter dated 5 June 2020, which is the IBR engagement letter **[[BDO.01.00785]]-[[BDO.01.00786]]**.

160. In May 2023, Mr Jaques lodged complaints against Mr Innes-Jones and me with NZICA.[15] I responded in writing on 31 July 2023 **[[BDO.01.00810]]**, made some additional comments in writing on 6 March 2024 **[[BDO.01.00820]]** and attended a meeting of NZICA's Professional Conduct Committee (**PCC**) on 18 June 2024. The PCC issued a decision on 17 October 2024 **[[BDO.01.00833]]**.

Response to Mr Jaques' witness statement

161. I have reviewed Mr Jaques' witness statement dated 1 September 2026. I comment on several statements made by Mr Jaques below.

[15] **[[BDO.01.00803]]-[[BDO.01.00807]].**

Alleged offer of $10 million from BNZ

162. I have reviewed Mr Jaques' account of a meeting between himself, Mr Kilmartin and Mr Innes-Jones on 2 June 2020 at paragraphs [51]-[70]. Mr Jaques says that in that meeting, Mr Kilmartin said, "We will not be granting you the $2m that you want, but we will be giving you a $10m facility!".

163. I was not present at that meeting. However, at no stage after 2 June 2020 did Mr Jaques say to me that BNZ had offered to lend him any amount of money, much less $10 million. This was despite meeting with Mr Jaques several times, including meeting with Mr Jaques and Mr Kilmartin together on 10 August 2020. Mr Kilmartin similarly never told me that he had offered to lend the Group any money. My understanding of the position from my discussions with Mr Kilmartin and Mr Jaques was that no offer had been made by BNZ to lend any money and BNZ would consider what to do after receiving my IBR report.

Lumo Digital

164. I have read Mr Jaques' comments in his witness statement at paragraphs [76] and [77] to the effect that Mr Jaques was not told that BDO Auckland provided accounting services to a company called Lumo Digital, which was a competitor of Digital Signs.

165. I did not tell Mr Jaques that Lumo was a client of BDO Auckland. I do not believe that I knew that at the time. It was not a conflict of interest. Lumo was simply a company in the same industry as Digital Signs.

166. I did not have any involvement in any work BDO Auckland did for Lumo in any event. I would not have been able to access Lumo's files with BDO Auckland, except that I would have been able to see that they were a BDO Auckland client and as a partner I had access to billing information. As a result, I would not have known about any substantive work BDO Auckland had done for Lumo.

Statements incorrectly attributed to me

167. At paragraph [95](b) of his witness statement, Mr Jaques says I told him that I "did not really understand the advertising industry". I do not recall saying this to Mr Jaques. I routinely undertake IBRs in relation to a range of different industries and did not have any concerns about my experience and ability to undertake an IBR for Digital Signs and Digital Advertising.

168. Mr Jaques then says at paragraph [95](c) of his witness statement that I said I was "very worried about putting BDO's name to emerging

technology that was not as proven as he would like to see it be". I did not say this or words to that effect to Mr Jaques. This statement makes no sense to me anyway. That is because, in completing the IBR report, I was not "putting BDO's name" to any "emerging technology". Instead, I was completing a routine IBR, which did not involve endorsing any "emerging technology", but instead assessing the financial position of the Group.

The Halo valuation

169. At paragraph [95](a) of his witness statement, Mr Jaques says, "I told Andy of the circa $600,000 discount I was buying the Halo billboards for and that Nick had told me I could record this as an entry on the Balance Sheet which would strengthen my equity position". He then says that I violently reacted to this. I do not recall reacting in that manner. I have addressed this issue above in this witness statement, in particular in relation to the SMEtric valuation of these billboards.

Comments on the IBR report

170. At paragraph [107] of his witness statement, Mr Jaques says that I sent BNZ my IBR report "less than two hours" after he had first received it. I do not consider that accurately represents matters. Ms Lee sent Mr Jaques the IBR report at 10:23am on 27 August 2020 **[[BDO.01.00735]]** and asked that he review the report. Mr Jaques then replied at 11:17am saying that he had reviewed the report and he provided some comments. He said, "Put your Report to the Bank and do what you like" **[[BDO.01.00737]]**. We then did so.

171. At paragraph [107] of his witness statement, Mr Jaques comments:

> Mr McKay's covering email told the bank, among other things, that he expects BNZ to fund that maybe position that is an equity play not debt, and that further lending still requires BNZ putting in up to $1.4million on uncertain cash flow no track record - with no real security. This is a ridiculous statement as we had nearly that much security in just our properties alone let alone in the Halo and Wash Depot billboards.

172. I had serious concerns about the ability of the Group to earn income. Its track record for 2019 and the 2020 year to date was nowhere near the projections in the 2019 SMEtric forecast. I was also of the view that there were more trading losses to be incurred over the next period while the business tried to "ramp-up", and a bank traditionally does not lend to fund trading losses given a choice. There was no track record of this business doing what it said it was going to do in terms of trading and cash flows. Mr Jaques comments on areas in which he disagrees with the IBR report at paragraph [110] of his statement. These points are

largely addressed in my IBR report or in this witness statement. I do not respond to each of these points here. I do not agree with them. None of the matters raised cause me to question the findings in my IBR report.

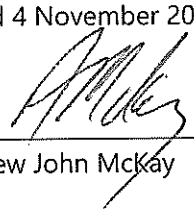
173. I also reject Mr Jaques' statement at paragraph [111] of his witness statement that I made statements that were "unnecessarily damaging beyond any legitimate scope" in the IBR report. The IBR report recorded my professional, independent assessment of the Group's financial position, which is what I was engaged by the Group to do in the IBR.

174. Mr Jaques complains in particular that I noted in the report that the directors should seek legal advice regarding the solvency position. It was my view, based on my assessment, that the Group was insolvent. I was aware that this engaged legal duties of the director(s) of the companies under the Companies Act 1993. I considered this was a point I needed to raise as being relevant to the assessment of the ongoing viability of the Group, and relevant to BNZ in considering continued financial support to the Group. Those are topics which the Group engaged me to comment on as part of the IBR.

Conclusion

175. I was engaged by Digital Signs and Digital Advertising, at BNZ's request, to carry out an independent business review of the Group's financial position. I carried out that review independently. My review found that the Group did not have enough cash flow to service its existing debts or the further lending it was seeking. It also found that the Group failed both the liquidity and balance sheet limbs of the solvency test. The Group's financial records also raised serious concerns, including overstated debtors, unrecorded creditors and substantial PAYE arrears. It was not my role to "support" or "not support" further lending, which was a decision for BNZ. I do not agree with many of the statements made by Mr Jaques in his witness statement. Many are incorrect.

Dated 4 November 2026



Andrew John McKay