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 NICHOLAS ROBERT INNES-JONES

Dated 4 November 2026

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**WITNESS STATEMENT OF NICHOLAS ROBERT INNES-JONES**

1. My full name is Nicholas Robert Innes-Jones. I reside in Auckland.

2. I am the second-named defendant in these proceedings. I am a Chartered Accountant and a partner in the first-named defendant, BDO Auckland.

**Background**

3. I graduated from the University of Auckland in 2006 with a Bachelor of Commerce and a Bachelor of Laws. I qualified as a Chartered Accountant in 2009.

4. Between March 2006 and March 2008, I worked for KPMG in Auckland in their Middle Market Advisory team. I then joined PwC in Auckland in their Business Recovery (insolvency and restructuring) team. I worked for PwC from March 2008 until March 2010. I then joined BHP Billiton, a mining company, in September 2010. I worked for BHP Billiton in various finance roles across their London, Johannesburg, Melbourne and Brisbane offices. I then joined BDO Auckland in October 2013.

5. I became a partner at BDO Auckland on 1 July 2019. I am based in BDO Auckland's East Tāmaki office. I undertake general business advisory work, largely focusing on the construction and real estate sectors.

**Initial contact from David Jaques**

6. Sometime in October 2019, Nigel Milton approached me about undertaking some work for Digital Signs Limited (**Digital Signs**). Mr Milton is another partner in BDO Auckland's East Tāmaki office.

7. Mr Milton told me that he had been contacted by David Jaques who was the director of Digital Signs. Mr Milton said that he had spoken with Mr Jaques, who wanted to engage BDO Auckland to prepare some financial forecasts that he could use to apply to a bank for lending. I agreed to assist with the matter. I did not have any previous relationship with Mr Jaques or Digital Signs, nor did BDO Auckland.

8. On 29 October 2019, Mr Milton emailed Mr Jaques, copying me, providing a fee estimate of $6,500 to $7,500 plus GST for the forecast work Mr Jaques wanted **[[BDO.01.00002]]**. Mr Milton noted that the forecasts would be completed with various assumptions. He noted:

    - We understand you require integrated forecasts to 31 March 2021. BDO would prepare integrated forecasts for the 18 month period from 1 October 2019 to 31 March 2021. The forecast would include and show the bank covenants that

the BNZ has indicated to put in place and would show whether or not Digital Signs Limited would meet these covenants over the forecast period.

- The cost includes detailed assumptions as requested by BNZ and a sensitivity analysis.
- We would require access to the company's Xero accounts.
- Assumption that the 30 September 2019 Xero accounts are up to date and correct.
- Revenue and cost forecasts provided by you can be validated.

[…]

- The biggest challenge relates to the cash flow modelling of the company's revenue but it should be achievable once we have gained a better understanding of the company's sales cycle.

9. After Mr Milton sent this email, I became the partner responsible for this work for Digital Signs. The day-to-day work was completed by an Assistant Manager at BDO Auckland, Husain Suterwala, with my oversight.

**Plaintiffs' engagement of BDO Auckland in 2019**

*Initial engagement for Digital Signs*

10. Digital Signs and BDO Auckland signed an engagement letter on 29 October 2019 **[[BDO.01.00006]]-[[BDO.01.00007]]**. The scope of the work was recorded in the engagement letter as "Preparation of integrated forecasts to 31 March 2021 [and 31 March 2020], including assumptions and sensitivity analysis".

11. I understood Mr Jaques wanted to utilise the forecast to support a loan application to the Bank of New Zealand (**BNZ**).

12. At the time, Digital Signs' accountants were a firm called Accounting Plus Solutions Limited (**Accounting Plus**). BDO Auckland's engagement was not to replace Accounting Plus as the company's accountants. It was limited to preparing integrated forecasts.

13. My recollection is that Mr Jaques had various purchase orders he had obtained from customers and he wanted BDO Auckland to model Digital Signs' sales going forward based on those orders.

14. Mr Jaques provided BDO Auckland with some information and documentation to enable us to prepare the forecasts, including providing access to the company's Xero account, financial modelling he

had prepared, purchase orders and invoices **[[BDO.01.00006]]-[[BDO.01.00008]]; [[BDO.01.00014]]-[[BDO.01.00026]]; [[BDO.01.00029]]-[[BDO.01.00039]]; [[BDO.01.00058]]-[[BDO.01.00071]]**.

15. We asked Mr Jaques a number of questions when preparing the forecasts for Digital Signs. The process also required that BDO Auckland make a number of assumptions about the company's forecast sales and overheads. These were addressed with Mr Jaques. An example is an email I sent to Mr Jaques on 15 November 2019, setting out various questions and identifying some assumptions **[[BDO.01.00049]]**, to which Mr Jaques responded the next day **[[BDO.01.00051]]**.

16. I believe I met with Mr Jaques on or around 20 November 2019, although I do not recall the specifics of what was discussed at our meeting beyond Mr Jaques giving a description of his business **[[BDO.01.00057]]**.

17. Following on from this, Mr Jaques provided further information about the company's business **[[BDO.01.00058]]-[[BDO.01.00071]]**. We then worked on updating the forecasts to incorporate information received at the meeting and from Mr Jaques by email.

18. I sent the draft forecasts to Mr Jaques on 29 November 2019 **[[BDO.01.00081]] [[BDO.01.00082]]**. Mr Jaques provided some feedback by email the same day **[[BDO.01.00086]] [[BDO.01.00087]]**. We then revised the forecast and sent it through to Mr Jaques on 2 December 2019 **[[BDO.01.00093]] [[BDO.01.00094]]**.

19. The forecasts were subject to a number of restrictions and assumptions which were expressly outlined in the forecast report **[[BDO.01.00094]]**. The forecasts were based on information Mr Jaques provided and the financial statements which were completed by Accounting Plus. This meant the accuracy of the forecasts depended on the accuracy of the information Mr Jaques provided, and the accuracy of the financial statements. Our report outlined these restrictions and included the following comments:

    a. These forecasts have been prepared on a basis considered appropriate for the stated purpose and the forecasts may not necessarily follow financial reporting standards. Accordingly the forecasts may not be appropriate for any other purpose.

    b. The Director is solely responsible for the information contained in the financial projections […].

c. Achievement of the financial projections is dependent upon future events of which the outcomes are uncertain. The actual results may therefore vary significantly from the attached financial projections and no warranty of accuracy or reliability can be given.

d. Our procedures use accounting expertise to undertake the compilation of projections from information provided to us by the Director. Our procedures do not include verification or validation procedures.

20. The report also specifically highlighted the following points under the heading "Emphasis of Matter":

> The future revenue and profitability projections observed in the enclosed forecasts include many future unsecured projects that the Director is expecting to secure. There is no guarantee that these projected unsecured jobs will be obtained by the Company. The level of trading activity forecasted in the enclosed projections is also significantly greater than the level that the Company has previously traded at. The achievement of the financial projections is heavily dependent on whether or not the Company is successful in obtaining these unsecured projects and the ability of the Company to successfully operate at this increased trading level. The failure to meet one or both of these factors for which there is no guarantee of achievement will have a significant impact on the actual results that the Company will achieve over the forecast period.

21. To explain this paragraph further, "Emphasis of Matter" paragraphs may be used in financial documents to identify matters which are fundamental to the reader's understanding of the document. I had not previously put an "Emphasis of Matter" statement in any forecast I had completed (and have not done so since). However, it was necessary in this case because the forecasts were based on information provided by Mr Jaques about future projects he expected to secure, and Digital Signs had not previously achieved results at the levels shown. I considered that it was necessary to emphasise the limitations on the forecasts to make this clear.

22. My impression at this time was that Mr Jaques' own forecasts (rather than BDO's) were very optimistic, if not unrealistic. The sales the company had to date did not support the sort of growth Mr Jaques had forecast himself. I recall telling him at the time that companies do not realistically grow at the rate that he was suggesting, and that if he was wanting to obtain lending from BNZ he needed to use credible numbers.

23. In particular, as we explained in note 2 to the forecasts, Mr Jaques projected that Digital Signs should achieve monthly sales revenue of $36,363 from the sale of own use signs from March 2020 onwards. At the time of the forecast, the company did not have enough projects to achieve that level of sales. It had never achieved anything like that level of sales. Given this, we considered that it was appropriate to forecast based on 30% of that level of sales, which was $10,909 per month.

24. We also made other downwards adjustments in the forecasts, reflecting the risk that the company would not secure all the projects Mr Jaques hoped it would. The overall effect of our adjustments was to reduce the projected revenue across the forecast period of 1 October 2019 to 31 March 2021 from the $10,236,905 supplied by Mr Jaques to $3,812,810. Our figure was 37% of that supplied by Mr Jaques.[1]

25. Our forecasts showed Digital Signs becoming profitable in January 2020 and achieving net profits after tax of $289,619 for the year ended 31 March 2020 and $309,271 for the year ended 31 March 2021. As I have explained, this forecast was based on information provided by Mr Jaques and subject to the qualifications I have mentioned.

26. BDO Auckland issued an invoice to Digital Signs for this forecasting work on 30 November 2019 **[[PLA.0006]]**. The invoice was for $8,803.83, comprising fees for professional services of $7,500 plus disbursements and GST.

27. According to our time records **[[BDO.02.00004]]**, the BDO Auckland team spent 22.2 hours on the file between October 2019 and 2 December 2019 when the Digital Signs forecast was delivered, comprising:

    a. Nigel Milton: 2.7 hours.

    b. Nick Innes-Jones: 5.5 hours.

    c. Husain Suterwala: 14 hours.

*Additional engagement for Digital Advertising and Digital Holdings*

28. Whilst I was working on the forecasts for Digital Signs, Mr Jaques mentioned in an email to me that he would like BDO Auckland to undertake a similar exercise for a related company called Digital Advertising Limited (**Digital Advertising**) and a consolidation for Digital Holdings Limited (**Digital Holdings**), which was the parent of Digital Signs and Digital Advertising **[[BDO.01.00051]]**. After BDO

[1] See page 9 of the forecast – **[[BDO.01.00094]].**

Auckland completed the forecasts for Digital Signs, Mr Jaques asked that we provide a fee proposal for this work **[[BDO.01.00116]]**.

29. I sent Mr Jaques a fee proposal of $5,500 to $6,000 plus GST for the further forecasting work for Digital Advertising and Digital Holdings on 4 December 2019. This was followed by an engagement letter which Mr Jaques signed the next day **[[BDO.01.00126]] [[BDO.01.00127]]**.

30. Under this engagement, BDO Auckland's clients were Digital Holdings and Digital Advertising. The scope of the work was recorded in the engagement letter as "Preparation of consolidated integrated forecasts to 31 March 2021, including assumptions and sensitivity analysis".

31. The preparation of the forecasts for Digital Advertising and Digital Holdings followed a similar process to the one I described for the forecasts for Digital Signs except that, unlike Digital Signs, Digital Advertising had not previously traded so there was no past performance to compare to the values and assumptions provided by Mr Jaques to be used in the forecasts. BDO Auckland had a number of queries for Mr Jaques, and we received further information from him in December 2019 and January 2020 which we took into account in preparing the forecasts.[2]

32. Mr Suterwala sent the draft forecasts for Digital Advertising to Mr Jaques for his review on 4 February 2020 **[[BDO.01.00181]], [[BDO.01.00182]]**. Mr Jaques sent back some comments the same day **[[BDO.01.00183]]-[[BDO.01.00187]]** and Mr Suterwala had further questions for Mr Jaques as a result.[3]

33. Mr Suterwala then sent Mr Jaques a further draft of the forecasts on 14 February 2020 **[[BDO.01.00214]]**, **[[BDO.01.00215]]** and a final version a few days later on 18 February 2020 **[[BDO.01.00221]], [[BDO.01.00222]]**.

34. As with the previous forecasts BDO Auckland prepared, it was necessary to outline a number of restrictions and assumptions in the forecasts for Digital Advertising **[[BDO.01.00222]]**. These included the following:

    a. These forecasts have been prepared on a basis considered appropriate for the stated purpose and the forecasts may not necessarily follow financial reporting standards. Accordingly the forecasts may not be appropriate for any other purpose.

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[2] See, for example**, [[BDO.01.00151]], [[BDO.01.00154]]** to **[[BDO.01.00179]]**.

[3] See **[[BDO.01.00197]]-[[BDO.01.00198]], [[BDO.01.00199]], [[BDO.01.00200]], [[BDO.01.00208]].**

b. The Director is solely responsible for the information contained in the financial projections and has determined that the financial reporting framework used is appropriate to meet his needs and the purpose that the projections were prepared.

c. Achievement of the financial projections is dependent upon future events of which the outcomes are uncertain. The actual results may therefore vary significantly from the attached financial projections and no warranty of accuracy or reliability can be given.

d. Our procedures use accounting expertise to undertake the compilation of projections from information provided to us by the Director. Our procedures do not include verification or validation procedures.

35. This report also specifically highlighted the following points under the heading "Emphasis of Matter":

> Digital Advertising Limited (the Company) has been inactive and not trading since its incorporation. As per the Director, the Company forecasts to actively start trading from the 1st of April 2020. As a result, past performances cannot be drawn on to justify the values and assumptions seen in the forecast. All values and assumptions seen in our forecast have been provided by the Director. We have not undertaken any exercise to test the validity and reasonableness of the assumptions and values seen in the forecast.

36. We again reduced the revenue projections supplied by Mr Jaques to reflect the risk that projects that were not yet secured may not materialise. This is explained in note 2 to the forecasts. As explained at the conclusion of that note, the effect of our adjustments was to reduce the projected revenue across the forecast period of 1 April 2020 to 31 March 2022 to 30% of that supplied by Mr Jaques, from $10,840,000 to $3,260,882.[4]

37. Our forecasts showed Digital Advertising becoming profitable in October 2020 and achieving net profits after tax of $38,781 for the year ended 31 March 2021[5] and $651,996 for the year ended 31 March 2022.[6] Again, as I have explained in relation to Digital Signs, this forecast was based on information provided by Mr Jaques and subject to the qualifications I have mentioned.

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[4] See page 10 of the forecast – **[[BDO.01.00222]]**.
[5] See page 5 of the forecast – **[[BDO.01.00222]]**.
[6] See page 6 of the forecast – **[[BDO.01.00222]]**.

38. BDO Auckland did not in the end produce any forecasts for Digital Holdings. I recall that that was because this was a holding company only, rather than a trading company like Digital Signs and Digital Advertising.

39. BDO Auckland issued two invoices for this forecasting work, one on 29 January 2020 and another on 27 February 2020 **[[PLA.0011]]; [[PLA.0015]]**. The first invoice was for $4,196.06, comprising fees for professional services of $3,500 plus disbursements and GST. The second invoice was for $2,397.75, comprising fees for professional services of $2,000 plus disbursements and GST.

40. According to our time records **[[BDO.02.00004]]**, the BDO Auckland team spent 20.6 hours on the file between 4 December 2019 and 18 February 2020 when the Digital Advertising forecast was delivered, comprising:

    a. Nigel Milton: 0.9 hours.

    b. Nick Innes-Jones: 3.4 hours.

    c. Husain Suterwala: 16.3 hours.

**Discussions with BNZ in late 2019**

41. After BDO Auckland completed the forecasts for Digital Signs on 2 December 2019, Mr Jaques sent these on to BNZ. He sent them alongside an application for further lending of $200,000 from BNZ for working capital. I was aware of this because Mr Jaques copied me on his email to BNZ that day **[[BDO.01.00095]]-[[BDO.01.00113]]**.

42. Mr Jaques emailed me a few days later on 5 December 2019 to say that "Bianca rang today and that is looking good" **[[BDO.01.00126]]**. Bianca was Bianca van Graan from BNZ.

43. Mr Jaques then emailed me on 10 December 2019 saying that "I think Bianca is going to decline this actually" **[[BDO.01.00130]]**, which I understood to mean decline Digital Signs' application to BNZ for lending. Mr Jaques asked me to contact BNZ and see what the issue was. I did that the next day. BNZ told me they were still working on the application and were looking at other options to structure the lending. I reported my conversation to Mr Jaques by email **[[BDO.01.00134]]**.

44. Mr Jaques continued to take forward discussions with BNZ and copied me on some emails concerning this.

**Mr Jaques' account of discussions in December 2019**

45. In paragraphs [28] to [33] of his witness statement, Mr Jaques outlines various comments he says I made in December 2019. I never made many of the statements Mr Jaques has attributed to me.

46. At paragraph [28] of his statement, Mr Jaques says:

> Out of the blue (unsolicited) Nick said words to the effect: "When you get EBITDA into the $5m to $15m range I can sell your business to a private equity, either in whole or in part, on a 17 multiple".

47. I never said this, nor did I say words to this effect. By December 2019, I had only had limited dealings with Digital Signs and Digital Advertising. This involvement was limited to preparing forecasts for Digital Signs based on information provided by Mr Jaques. I did not know enough about their business to suggest what multiples could be achieved through a sale of the businesses. I have some experience in assisting clients to sell their businesses to private buyers, but I have no particular experience in the digital billboards business and did not know what multiple they could achieve in a business sale. I did not undertake any research on multiples for digital billboard company sales. I did not make any time entries related to such research to BDO Auckland's matters for Digital Signs or Digital Advertising. I would likely have done this research had I been asked by Mr Jaques to comment on this topic. Based on the information I had seen, the companies were not trading at anywhere near an EBITDA range of $5 million to $15 million. I did not know whether it was realistic that they could in the future. That would have required a significant improvement from their financial position at this time.

48. As I will explain shortly, in March 2020 Mr Jaques told me he was looking for investors in Digital Signs based on a $25 million valuation of the company. I expressed reservations about that valuation at the time.

49. Given all of this, I did not say (and would never have said) that the business could be sold at a 17x multiple.

50. I also did not say "I can sell your business". I am a Chartered Accountant involved in corporate finance transactions, valuations and business advisory work. Whilst I have been involved in and assisted with business sales, I am not a business sales broker. Mr Jaques says at paragraph [19] of his witness statement that he considered I was experienced at growing businesses for later exit via IPO or to private equity. I have never been involved in an IPO and did not tell Mr Jaques that I had been. I have limited experience with sales to private equity firms.

51. In paragraph [29] of his statement, Mr Jaques describes a further exchange which did not happen. He says we discussed the reason for the 17x multiple. Mr Jaques says this was due to the "extremely high barriers to entry" and the company's "$1/ad model and Client Portal". He suggests I agreed these were the reasons for the multiple. This exchange never occurred. For the reasons I have mentioned, I did not have the expertise or necessary information to suggest a multiple for the sale of the business, and did not do so.

52. Mr Jaques then says at paragraph [30] that he told me he wanted to grow the business and exit in the next 5 to 10 years. He then says, "we formed an agreement that [I] would partner with [Mr Jaques] and we were going to do this together". I recall that at a later "meet and greet" board meeting which I will discuss shortly, Mr Jaques said words to the effect that he wanted to grow the business then sell it, but I never formed the agreement with Mr Jaques that he describes.

53. Mr Jaques then says at paragraph [31] that as a result of this alleged discussion, BDO was going to handle all the accounting needs for his business, family trust, and Mr Jaques and his wife personally. This is not correct. As I describe below, BDO Auckland put forward proposals to provide services to Mr Jaques' companies, but he never accepted these.

54. I never agreed to provide services to Mr Jaques, his wife or his family trusts. That was never mentioned in any of the further engagement proposals I put forward to Mr Jaques. I had no involvement in his personal financial affairs.

55. In the same paragraph of his witness statement Mr Jaques then says that "Nick and I were going to join up and make a success of the business all the way through until exit (which Nick would also handle)". I never agreed to this. As I have explained, I did not form any agreement of this sort with Mr Jaques.

56. Mr Jaques ends that paragraph by saying "Nick was our accountant and we were in this together". Again, that is not correct. By December 2019, BDO Auckland had only been engaged to prepare forecasts for the companies. BDO Auckland had no engagement to act as the companies' accountants. The companies had an existing accountant, Accounting Plus. I do not know what Mr Jaques means by being "in this together". Even had BDO been engaged as the companies' accountants, that would have been a professional services engagement, not a business partnership, if that is what Mr Jaques is intending to suggest.

**Proposal for further services in February 2020**

57. In early 2020, Mr Jaques told me that he was pleased with the work BDO Auckland had done for him to date and he wanted to engage us for further work. Following this, I sent him a proposal on 25 February 2020 for BDO Auckland to provide certain compliance and advisory services to the companies **[[BDO.01.00226]]**. This included preparing end of year accounts, monthly review of financial statements, preparation and/or review of the companies' 90 day cash flow position, and attendance at board meetings when required.

58. Mr Jaques responded on 11 March 2020 identifying some work that he wished BDO Auckland to take on. However, he also said that he was looking at getting Digital Signs' existing accountants, Accounting Plus, to complete the March 2020 accounts. He said that would then form the starting point for BDO's engagement **[[BDO.01.00227]]**. I note that from the documents provided by the plaintiffs in disclosure, it appears that Accounting Plus finalised the March 2020 accounts for Digital Signs on 14 July 2020 **[[PLA.0248]]**.

59. Mr Jaques concluded his 11 March email by asking what the next step was to "kick this into gear". I replied the next day saying we would need to draft an engagement letter and complete anti-money laundering (**AML**) procedures **[[BDO.01.00231]]**. No engagement letter was signed, nor was any AML documentation completed for this proposal, and the engagement was never confirmed and formalised. I do not recall precisely why, except that this was likely superseded by the further events I discuss below.

60. In his witness statement at paragraph [37], Mr Jaques says he accepted our proposal by email on 11 March 2020. I do not accept that this is correct. Whilst Mr Jaques did identify some work he wanted to "sign up for", he did not progress this proposed engagement. He never signed an engagement letter as was required, and as he had done for the two forecasting engagements I have discussed. I never received the finalised and signed March 2020 accounts from Accounting Plus or Mr Jaques, which he said would be the starting point for our engagement.

61. Mr Jaques continues in the next paragraph of his witness statement to say that he regarded BDO Auckland, through me, as "our accountants and our virtual CFO". Mr Jaques makes this statement and others like it repeatedly in his witness statement. For example, he makes a similar statement at paragraph [43] of his witness statement that by late 2019 or early 2020 I was "in substance, our CFO", that BDO had a "continuing advisory relationship with us, committed to continue that until sale, and

detailed knowledge of our business, finances, prospects, internal information and funding strategy". I do not agree with those statements as I will explain further below. It was proposed that we would become the accountants, but we never did.

62. I also do not agree with Mr Jaques when he says at paragraph [25] of his statement that I and BDO "acquired a genuinely detailed understanding of our business: its sites, its pipeline, its customers, its costs, its related party funding and its banking arrangements." Or at paragraph [4] that I was a "trusted business adviser" with a "detailed inside knowledge" of the businesses. All we had done was prepare two sets of forecasts. BDO Auckland was not fulfilling the role of accountant or CFO. My understanding of the businesses was quite limited as it was only based on the information Mr Jaques provided when BDO Auckland was preparing the forecasts. As I set out above, the BDO team had spent a little over 40 hours in total on the matter in the period that the forecasts were prepared. I had personally recorded about 9 hours on the matter.[7] It is possible that I did not record my time for some minor attendances. Even accounting for that, Mr Jaques' statement at paragraph [78] of his witness statement that "it will have taken Nick well over 100 hours to get to his current level of understanding on our business" is wrong.

**Digital Signs' capital raising proposal**

63. On 11 March 2020 Mr Jaques contacted me about capital raising efforts Digital Signs was undertaking **[[BDO.01.00228]]; [[BDO.01.00229]]**.

64. Mr Jaques said he was looking to sell 4% of the company to raise $1 million. This valued the company at $25 million. I said to him that BDO Auckland could see if there was any interest in investment from BDO Auckland's clients. I also told Mr Jaques that the $25 million valuation would likely get pushback from investors until the company had a history with profitable billboards. This was my polite way of saying that I thought the valuation was unrealistic.

65. I asked Mr Jaques if he would consider reducing the valuation **[[BDO.01.00230]]**. Mr Jaques replied, saying "I could of course be completely delusional, but I don't think I am". He outlined some reasons for his view **[[BDO.01.00235]]**. I do not believe I replied to Mr Jaques' email.

[7] See **[[BDO.02.00004]]**.

**Lending applications in April and May 2020**

66. On 20 April 2020, Mr Jaques emailed me to say that BNZ had turned him down "on any further lending" **[[BDO.01.00240]]**. He said that he would see what he could do about getting lending from Heartland Bank, and that GET Capital, a subsidiary of Avanti Finance, had already said no to him. Following this, I sent Mr Jaques some emails about a Government-backed lending scheme that had recently been introduced in response to the Covid-19 pandemic.

67. On 24 April 2020, Mr Jaques emailed Ms van Graan at BNZ, copying me, asking to re-apply for a "Govt backed scheme" **[[BDO.01.00254]]**. I understood this to be a request for further lending from BNZ. Ms van Graan copied me on her reply that same day, directing Mr Jaques to an application form and asking him to complete a business plan **[[BDO.01.00260]]-[[BDO.01.00261]]**.

68. Mr Jaques then copied me on an email to Ms van Graan on 28 April 2020, attaching a loan application document requesting a loan of $500,000. In his email, Mr Jaques asked whether Ms van Graan could provide an additional $100,000 loan facility "until you have the time to process it further" **[[BDO.01.00265]]-[[BDO.01.00266]]**.

69. Ms van Graan replied, copying me again, on 4 May 2020 saying that she was working through the loan application and requesting further information **[[BDO.01.00268]]-[[BDO.01.00269]]**. Mr Jaques replied to Ms van Graan the same day with additional information and documents **[[BDO.01.00270]]-[[BDO.01.00278]]**.

70. The next day, 5 May 2020, Mr Jaques copied me on an email to Ms van Graan saying, "Thank you for your request for when we expect to receive our Accounts Receivables." He then outlined various amounts that were due to Digital Signs from customers in the future **[[BDO.01.00279]]**.

71. Mr Jaques then emailed me saying that Ms van Graan had rung him "off the record". Mr Jaques said **[[BDO.01.00280]]**:

> The business loans are impossible to meet the criteria.
>
> She said if she focuses more on cash flow lending she can get me $270k as a 6 month temporary overdraft (over and above the $200k I have now).

72. Later, on 7 May 2020, Mr Jaques emailed me to say that he had just been approved by BNZ for a further $270,000 in lending **[[BDO.01.00285]]**.

73. I note that although Mr Jaques and Ms van Graan copied me on these emails, I did not assist Mr Jaques in preparing the loan application beyond letting him know that there were Government-backed loans available to assist businesses during the Covid-19 pandemic.

**Proposal for further services in May 2020**

74. In May 2020, Mr Jaques asked if he could make BDO Auckland's office the registered office for Digital Advertising, Digital Signs, Digital Holdings and a fourth company called Digital Rentals Limited (**Digital Rentals**) **[[BDO.01.00289]]**. I actioned this request **[[BDO.01.00303]]**.

75. Later in May 2020, BDO Auckland sent Mr Jaques a draft engagement letter for further services, as well as various client onboarding documents **[[BDO.01.00317]]-[[BDO.01.00324]]**. The draft engagement letter offered to provide services to Digital Signs, Digital Advertising, Digital Rentals and Digital Holdings. The letter included a detailed appendix setting out the scope of services we offered to provide. This included:

    a. Compilation services, including the compilation of special purpose financial reports, AGM minutes and other minutes, resolutions, certificates or notices the companies may need.

    b. Preparing income tax returns and providing other income tax related services.

    c. Secretarial services relating to Companies Office and Companies Act records and dividend and gifting documentation.

76. Neither Mr Jaques nor any other representative of the companies responded accepting these terms. Mr Jaques never signed the engagement letter or completed the onboarding documents. As a result, I never considered that BDO Auckland had been engaged to provide these services to the companies. I note that this proposal did not extend to me being the companies' CFO or "virtual CFO", a role Mr Jaques has asserted I held.

**Proposed acquisition of Halo billboards**

77. Also in early May 2020, Mr Jaques emailed me to say that he had made an offer which had been accepted to buy two digital billboards from a company called Halo which was in liquidation **[[BDO.01.00296]]**. Mr Jaques asked me some accounting questions about the billboards, which I answered **[[BDO.01.00297]]**. Essentially, Mr Jaques was wanting to buy the billboards at a discount, but recognise a higher value in Digital Signs' balance sheet. I explained the ways in which this was

permissible, but that it would need to be supported by a proper valuation.

78. Mr Jaques then copied me on an email to BNZ on 18 May 2020 in which he applied for a loan of $420,000 to acquire the two Halo billboards **[[BDO.01.00305]]-[[BDO.01.00308]]**.

79. Ms van Graan replied to Mr Jaques on 19 May 2020 to say that she had sent the valuation to an asset finance specialist to review and would be in touch **[[BDO.01.00312]]**. She emailed again on 28 May 2020 (copying me and others) advising that she had referred the application to Paul Kilmartin at BNZ, and that he would be in touch **[[BDO.01.00327]]**.

**Meeting with BNZ**

80. I am now aware that, on 28 May 2020, BNZ contacted Andrew McKay of BDO Auckland about the possibility of Mr McKay undertaking an independent business review of Digital Signs' business as part of Mr Jaques' application to BNZ. Mr McKay is a partner in BDO Auckland's CBD office. He is a Business Restructuring Partner specialising in Forensics.

81. I recall that around this time, Mr McKay told me about this approach and he and I discussed what work I had done for Digital Signs already. I explained that I had completed some forecasts for Digital Signs and Digital Advertising. I also explained that it was intended that BDO Auckland would be engaged as the companies' accountants, but that had not occurred yet. I mentioned that BDO Auckland would not be doing the March 2020 accounts for Digital Signs. Mr McKay and I discussed that, if he were to complete an independent business review for the companies, he would not need to review any of the work I had already done. We also agreed that the potential engagement of BDO Auckland as the companies' accountants should be put on hold pending completion of Mr McKay's independent financial review.

82. In my discussion with Mr McKay, he told me that he did not know yet whether or not he would be instructed by BNZ to undertake the business review, and he had just been sounded out about it. As a result, I understood that it was possible but not certain that Mr McKay would be instructed to complete the independent business review.

83. In his witness statement at paragraph [56], Mr Jaques says that he has the clear impression that coming out of the 28 May 2020 phone call from BNZ to Mr McKay, he was "being characterised as a competent business with potential. This would likely be because Nick held us in

high regard and Andy [McKay] himself knew nothing of us at that point (so would have been consciously or subconsciously passing Nick's assessment on to Paul Kilmartin)".

84. I was not a party to the 28 May 2020 phone call between BNZ and Mr McKay. What I can say though is that I did not tell Mr McKay that I held Mr Jaques in high regard. I did view his business as having potential, but I was not in a position to say whether it was being competently run or whether it was in fact viable. My knowledge of Mr Jaques' business was confined to what I had learned through the limited work I had done for the companies previously. I had seen only limited information to that point, all of which was provided by Mr Jaques. This was also from some months prior when BDO Auckland completed the forecasts in December 2019 and February 2020. I did not know how the business had performed since, whether it had achieved its forecasts, or how it had been impacted by the Covid-19 pandemic. After completing the forecasts in early 2020, I did not prepare financial documents for the companies. As a result, I was not in a position to express any particular view of the business as at late May 2020. My recollection is that I explained this to Mr McKay and said that I thought an independent review would be helpful.

85. I have mentioned that Ms van Graan from BNZ had emailed Mr Jaques (copying me and others) saying that his funding request had been referred to Mr Kilmartin at BNZ. Mr Jaques then sent some questions to me about Mr Kilmartin **[[BDO.01.00329]]**. He asked if I knew Mr Kilmartin, whether he was above Ms van Graan, and whether I would come to any meeting with him (by which I assumed he meant any meeting with Mr Kilmartin).

86. I was unsure how to respond so I raised this with a fellow BDO partner, Nigel Milton. I thought I might not be able to mention to Mr Jaques that Mr McKay had called me about the possible independent financial review of the companies **[[BDO.01.00331]]**. This was because of my understanding that it was uncertain whether Mr McKay would even be engaged or not. I suggested to Mr Milton that I respond to Mr Jaques' questions by saying Mr Kilmartin is a Risk Manager so it appeared the bank had taken the funding requests up another level **[[BDO.01.00332]]**. Mr Milton [redacted] that was an ok response **[[BDO.01.00333]]** and I then emailed Mr Jaques saying this **[[BDO.01.00335]]**.

*Invitation by Mr Jaques to attend meeting with BNZ*

87. On 29 May 2020, Mr Jaques asked me if I would attend a meeting with him and Mr Kilmartin from BNZ **[[BDO.01.00339]]**. I was not sure whether I should attend. That was because I had not been closely involved in the business. I raised this with Mr Milton and said, [redacted] Mr Milton suggested that [redacted] **[[BDO.01.00342]]**. I figured this made sense as, at that stage, the intention was for BDO Auckland to become more involved in Digital Signs' and Digital Advertising's business going forward, although that had not happened yet.

*Steps before the meeting*

88. Mr Kilmartin, Mr Jaques and I arranged to meet at BDO Auckland's East Tāmaki office on 2 June 2020. Ahead of that meeting, I sent Mr Jaques a series of key points I thought he should be prepared to discuss with Mr Kilmartin **[[BDO.01.00351]]**. The questions focused on explaining the companies' business to BNZ, its sales and its financial position. I sent the email at 7:42 pm on 1 June 2020.

89. The questions I raised were largely based on what I had learned from preparing the forecasts some months earlier, as well as some information Mr Jaques had sent me since. I was aware of some of the specific billboard sites I mentioned in my email from that earlier work. However, there were also significant gaps in my knowledge. In particular:

    a. I mentioned that Mr Jaques should discuss how many signed contracts he had at the Wairau site and what was the dollar value. I also said, "how many are in the pipeline". I did not know the answer to any of these questions.

    b. I mentioned that Mr Jaques could give an update on the billboards mentioned in the forecasts. I did not know how they had performed since the forecasts had been completed some months prior.

    c. I mentioned that Mr Jaques should give an update on the collection of unpaid debtors, which he had at over $1.2 million in some financial documents that he had sent to me and BNZ back in May 2020.[8] I asked, "of this amount what has been paid?" as I did not know the answer.

[8] **[[BDO.01.00270]]-[[BDO.01.00278]]**.

d. I said, "Do you have any IRD arrears, if so what is the value and terms".

90. I raised these points because I did not know the answers, but they seemed to me to be the sorts of things Mr Jaques should have been prepared to discuss with BNZ.

91. Mr Jaques replied one minute later at 7:43 pm saying, "I have the answers to these" and that he had had an email ready to send me already **[[BDO.01.00352]]**. He then sent me a further email at 7:44 pm with details on the companies' sales, cash flow, security, and other points to discuss with BNZ **[[BDO.01.00353]]**.

92. I have read Mr Jaques' witness statement, including paragraph [57] where he says that I "prepared [Mr Jaques] for that meeting in detail the night before". I do not agree with that description. Whilst I sent Mr Jaques a list of issues I considered he needed to be prepared to discuss with the bank, these were largely a list of questions I did not know the answers to. Mr Jaques responded within a minute saying he had the answers to these, and sent me his own comments on points to discuss with BNZ within 2 minutes of my email. Mr Jaques had prepared himself; I did not prepare him in detail. I could not have done so because I did not have the necessary information.

*Meeting with BNZ on 2 June 2020*

93. I attended the meeting on 2 June 2020 with Mr Jaques and Mr Kilmartin. Mr Kilmartin worked for BNZ's "Strategic Business Services" team (**SBS**), which I understood gets involved with companies that are distressed or with cash flow concerns. SBS and the equivalent teams at the other major banks are informally referred to as "bad bank".

94. I made some handwritten notes of this meeting **[[BDO.02.00001]]**. I did not actively participate in the meeting and let Mr Jaques and Mr Kilmartin discuss matters. This was largely because I did not have a detailed knowledge of the business so did not have much to add.

95. The meeting started with Mr Jaques talking about the companies and his business plan. Mr Kilmartin had a number of questions for Mr Jaques about the companies' financial position and plan going forward. His questions were firm.

96. In my notes, I recorded [redacted] which I believe was the amount Mr Jaques was requesting to borrow to buy the Halo billboards.

97. In the meeting, Mr Kilmartin said that he wanted to get an independent accountant in to do a review of the companies.

98. I recall that Mr Jaques was a bit hesitant to agree to this. I recall that he suggested that he and I could get BNZ all the information they needed. Mr Kilmartin was clear however that he needed an independent review to be done. He explained that he needed to understand the companies' true position in order to decide what the next steps would be. My understanding from the discussion was that Mr Kilmartin held concerns about the business and needed the independent business review done before considering Mr Jaques' loan application further. Mr Kilmartin suggested that Mr McKay could do the review. I noted [redacted] in my notes. I did not mention my previous discussion with Mr McKay because I still did not know whether he would be engaged or not.

99. I made a list of several other notes regarding the independent review. One of the notes I made was [redacted] This was a reference to the fact I would [redacted] and not be involved with Digital Signs during the independent review. I believe I would have noted this down because [redacted] I also made a note, [redacted] I did not prepare any updated forecasts for the companies for this loan application.

100. I made various other notes of the meeting. Several times I wrote down [redacted] including a note [redacted] This was because this was an important point discussed in the meeting. Mr Kilmartin said that Digital Signs needed sufficient cash flow to service the lending it was seeking, and this was something the independent review would look into. Another note I made was [redacted] I do not recall precisely what this was a reference to, but it may have been a reference to services Mr Jaques wanted to obtain for the companies in the future. I was not undertaking this work at this time.

101. Toward the end of my notes, I listed [redacted] and [redacted] I recall that this was a list of topics that Mr Kilmartin told Mr Jaques that the independent reviewer would look at.

*Response to Mr Jaques' account of the meeting*

102. I have read Mr Jaques' account of this meeting at paragraphs [58] to [70] of his witness statement. There are a number of points raised which are incorrect.

103. At paragraph [59], Mr Jaques says that at one point in the meeting Mr Kilmartin changed from "stress-testing" Mr Jaques to "openly

expressing how he thought this was a fantastic opportunity!" Similarly, Mr Jaques says at paragraph [69] that in the meeting Mr Kilmartin made an "abrupt change" to "'gushing' in support".

104. I do not agree with those descriptions of Mr Kilmartin's statements or conduct. As I have said, Mr Kilmartin was quite firm at times in his questioning of Mr Jaques during the meeting. At no stage did Mr Kilmartin say that Digital Signs' business was a "fantastic opportunity", or words to that effect. I was not "grinning like a Cheshire cat" at that comment as Mr Jaques says at paragraph [59], because Mr Kilmartin did not say that.

105. In the next paragraph of his statement ([60]), Mr Jaques says:

> Paul took quite a lot of pleasure at announcing the following statement to me (with all the appropriate pauses for effect), in words to the effect, "We will not be granting you the $2m that you want, but we will be giving you a $10m facility!".

106. Mr Kilmartin did not offer to lend Digital Signs any money in the meeting. He did not offer to lend $10 million in the meeting. My handwritten notes [redacted] BNZ of $10 million. I would have noted this down if it had been mentioned, as it would have been important.

107. The suggestion that BNZ offered Mr Jaques $10 million does not make any sense to me given that Mr Kilmartin was clear in the meeting that he needed the independent business review done as a first step.

108. I note that Mr Jaques sent an email the day after the meeting, copying me, in which he commented **[[BDO.01.00365]]**:

> The meeting with Paul Kilmartin from BNZ went well.
>
> [Mr Kilmartin] was a typical risk/insolvency specialist who was looking to do a rigorous study into our viability.
>
> He requires BDO to do proper modelling (with scenarios) then he will form a view.
>
> If we meet his criteria then the purse will open, and if not he might even look to claw back what has been granted.
>
> He does spend a lot of his time dealing with businesses in trouble so he was a bit more focused on that as an expectation rather than looking for growth opportunities.

109. I do not agree with everything Mr Jaques said in this email. I would not have said that the meeting "went well" for Mr Jaques, nor do I recall a

comment from Mr Kilmartin to the effect that "the purse will open" if the companies met certain criteria. However, this email more closely reflects what actually happened in the meeting, including that "[Mr Kilmartin] was a typical risk/insolvency specialist who was looking to do a rigorous study into our viability".

110. Mr Jaques did not say in this email that BNZ had offered to lend Digital Signs $10 million. Similarly, I will shortly discuss a "meet and greet" I attended with the advisory board of Digital Signs on 11 June 2020. In my notes of that meeting, I recorded that Mr Jaques was looking for [redacted] I did not make any note that BNZ had [redacted] [9] I do not recall Mr Jaques saying that at the 11 June 2020 meeting.

111. At paragraph [62] of his witness statement, Mr Jaques says:

> It then clicked that he [Mr Kilmartin] was making a move from asset-based lending (against my properties and the billboards themselves) to cashflow lending (based on our strong forecast ARR) so I asked if that was the case. Paul grinned (again pleased I was able to keep up with him) and said, "Yes".

112. I do not recall this. Mr Kilmartin did explain that one of the key issues for the reviewer to explore was the companies' cash flow and what level of borrowing they could service.

113. Mr Jaques says at paragraph [63] of his witness statement that Mr Kilmartin advised him that:

> "Most people do not borrow enough from their bank. They only borrow as much as they can afford, or the least amount to save interest, but what if things go wrong? This way by giving you more money the Bank can rest assured that you will definitely succeed, even if things don't go to plan" (or words to that effect).

114. Again, Mr Kilmartin did not say this at any stage during the meeting and I did not make a note to this effect in my handwritten notes.

115. Mr Jaques then says at paragraph [64] of his statement that:

> Paul also said he would invite us 'into town to meet the other guys' which I took to mean the BNZ were going to make us their 'poster child' […]

116. Nothing Mr Kilmartin said gave me any impression that BNZ were going to make Mr Jaques their "poster child".

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[9] **[[BDO.01.00487]]**.

117. In his statement, Mr Jaques then says (at [65]) that Mr Kilmartin said he respected the opinion of Andrew McKay of BDO, and that the bank would lend Mr Jaques the money if Mr McKay agreed. As I have said, Mr Kilmartin raised the need for BNZ to obtain an independent financial review of Digital Signs and he mentioned Mr McKay could do this. At no stage did Mr Kilmartin say that if Mr McKay approved, then BNZ would lend the money.

118. In the same paragraph Mr Jaques says that he "got the very distinct impression Paul [Mr Kilmartin] already knew the pathway to approval and that he had this in the bag". Nothing Mr Kilmartin said or did gave me any cause to believe that Digital Signs "had this in the bag". It was clear to me, including due to the need for BNZ to obtain an independent financial review, that Mr Kilmartin was approaching this matter cautiously. In the section of my handwritten notes about the independent review, I made a note [redacted] with an arrow pointing to a note about Mr McKay's review. To be clear, I do not mean that if Mr McKay approved, then BNZ would lend the money. What I mean is that Mr McKay's review needed to be completed before any further lending could be considered.

**BDO Auckland's independent financial review**

119. I believe that I told Mr Jaques that I could not assist him further whilst the independent financial review was being completed. I do not recall precisely when I discussed this with Mr Jaques, but it would have been sometime in June 2020. I am certain that I told Mr Jaques this, because Mr McKay and I had discussed and agreed that it was necessary to put the proposed engagement of BDO Auckland as the companies' accountants on hold whilst the independent review was being completed, and I needed to convey this to Mr Jaques.

120. I thought that Mr Jaques understood that I could not undertake any further work for him whilst the independent review was being completed. This was reflected in the fact that, although BDO Auckland had recently sent Mr Jaques an engagement proposal for wider accounting services on 21 May 2020 **[[BDO.01.00317]]**, Mr Jaques never returned a signed copy of that engagement letter or the other required client onboarding documentation. I should also note that in a later email to me on 28 July 2020 discussing Mr McKay's review and attempting to get me to insert myself into the process, Mr Jaques suggested that I needed to "ignore the Chinese Wall for now" **[[BDO.01.00669]]**.

121. I did not see any issue with me pausing my involvement with the companies. I had only limited involvement up to that point. The companies also had an existing accountant, Accounting Plus, who could assist with any accounting matters. As Mr Jaques had told me, Accounting Plus were to complete the companies' financial statements for the period to March 2020.[10]

122. From this point onwards, Mr McKay and his team largely dealt with Mr Jaques and took the independent review forward. I have seen that an engagement letter for the review was signed on 5 June 2020 **[[BDO.01.00392]]**.

123. I did have some involvement with Mr Jaques and his companies over the next few months, but this was fairly limited. It included a few phone calls and emails, as well as attendance at a "meet and greet" of the companies' advisory board which I discuss below.

**"Meet and greet" board meeting**

*The lead up to the "meet and greet"*

124. On 28 May 2020, before the meeting with BNZ, Mr Jaques asked me to attend an initial advisory board meeting for Digital Signs and Digital Advertising, which was scheduled for 11 June 2020. He said that it would "mostly be a 'meet and greet' with the main focus of bringing everyone up to speed to then look to create a plan for the go forward". He asked me if I was available then and interested to attend. I confirmed that I would **[[BDO.01.00337]]**.

125. Mr Jaques had mentioned this meeting to me before and I understood it was an initial meeting. In an email on 11 March 2020, he had said **[[BDO.01.00227]]**:

> Board Meeting – please come to our first meeting of the Advisory Board (hopefully to be in April). Ken Leeming (Icehouse) is chairing so I will responsibility [sic] for planning over to him. Sarah Lockhead-MacMillan [sic] (Geneva Capital ex SH Locks) will be on the first couple until we see the fit/needs. I expect Ken to look to recommending recruiting 1 additional person.

126. I agreed to attend because it was intended that BDO Auckland would come on as the companies' accountants after the independent review was completed. The meeting was pitched as a meet and greet to bring everyone up to speed, which I thought would be helpful going forward.

[10] **[[BDO.01.00231]]**.

127. It was not clear to me if Mr Jaques intended that I join the "advisory board" in future, or if he was just asking me to attend on the basis that BDO Auckland would likely become the companies' accountants going forward. If I was to join the companies' advisory board in future, a separate engagement letter would have been required. BDO Auckland has separate engagement letters for advisory board engagements. However, this never eventuated.

128. As well as Mr Jaques, the other proposed attendees for the meet and greet included Ken Leeming and Sarah Lochead-Macmillan. Ahead of the meeting, Mr Jaques emailed Mr Leeming, Ms Lochead-Macmillan and me saying **[[BDO.01.00360]]**:

> Yes Nick will be there. Since it is our first one he will also not be fully up to speed until we've had that initial introduction and the forward work responsibilities start being allocated.

129. Mr Jaques also sent us all some documentation before the meeting.

130. On 8 June 2020, Mr Jaques sent Mr Leeming, Ms Lochead-Macmillan and me a document titled "Notes to Cash Flow Forecast (and Business Plan)" **[[BDO.01.00425]]-[[BDO.01.00433]]**. Mr Jaques then emailed me separately under the heading "Forecasts" and said, "Let me know what you think when you are ready", which I understood to be a request for comment on the "Notes to Cash Flow Forecast" document he had just sent through. I replied saying "The first step is to understand what Andy wants so there is no duplication. So I should talk to Andy after your meeting." **[[BDO.01.00436]]**. At this time, I was not certain what stage Mr McKay was at in his review, so I made this suggestion in order to clarify this and to understand whether the work Mr Jaques was requesting was required.

131. Mr Leeming replied to Mr Jaques' email attaching the "Notes to Cash Flow Forecast" document. Mr Leeming wrote, "We need to address the issue of the balance sheet stating our liabilities are greater than the company's assets. As you know this is one of the tests for business solvency" **[[BDO.01.00442]]**.

132. Ahead of the meeting, I was conscious that Mr McKay was undertaking his review. I emailed Mr Milton asking [redacted] **[[BDO.01.00482]]**. I knew I could not give advice pending the completion of Mr McKay's report and was wondering whether that meant [redacted]. Mr Milton suggested that there would [redacted] **[[BDO.01.00483]]**.

133. I prepared some notes based on the information provided to me ahead of the meeting **[[BDO.01.00489]]**. These noted that BDO Auckland had completed some work in December and January, and that BDO Auckland was about to start monthly accounts (we had not yet done so). I made a note that BDO was completing the independent assessment report into Digital Signs, and noted that this [redacted] The other possibility I noted was [redacted]

134. I also made a note [redacted] which I understood was the range of borrowing Mr Jaques was looking for from BNZ. I did not make any note to the effect that BNZ had offered to lend $10 million (because it did not do so).

135. I then made some notes under the heading, "INFO GIVEN BY DAVE FOR MEETING". The first note I made was [redacted] as from what I had seen it appeared that the company lacked sufficient cash flow to meet its obligations and the further lending Mr Jaques was seeking. I then noted [redacted] and [redacted] which was a reference to the fact that Mr McKay's review would look into the solvency of the company and was an in-depth review rather than the limited compilation exercise we had previously undertaken.

136. I also wrote down [redacted] This was a reference to a November 2019 board report that Mr Jaques sent to me before the meet and greet.[11] I also noted that [redacted] which was a reference to [redacted]. The fact that I understood the company was behind on its PAYE obligations was therefore a serious issue.

137. My notes included a section starting [redacted] I noted from the information I had available that only $65,000 out of the $1.214 million in debtors listed in the 31 March accounts had paid the company since. This was a concern as it either suggested the company had made a number of sales for which it had not yet received payment, or it meant that the accounts were incorrect as at 31 March and overstated the debtors. If the outstanding debtors paid Digital Signs, this would provide some of the cash the company needed. I noted, [redacted] I also noted [redacted].

[11] **[[BDO.01.00425]]** and attachment **[[BDO.01.00427]]**.

*The "meet and greet" on 11 June 2020*

138. I then attended the "meet and greet" on 11 June 2020. Mr Jaques, Mr Leeming and Ms Lochead-Macmillan were also present. I made some handwritten notes of the meeting **[[BDO.01.00487]]**.

139. One of the first notes I made was [redacted] I also noted, [redacted] I have mentioned that Mr Leeming raised this topic in an email before the meeting. He raised it again during the meeting. Mr Leeming was concerned that Digital Signs' liabilities exceeded its assets and that Mr Jaques was trying to grow the business too quickly. Another note I made was [redacted]

140. Mr Jaques was dismissive of these concerns. He explained that he wanted to grow the business quickly. Mr Jaques said words to the effect that he wanted to get the business "massive" and then list it on the stock exchange. Mr Leeming's response was that Mr Jaques needed to sort out the company's balance sheet and financial position before he could even think about those steps.

141. In the meeting Mr Jaques explained that he was looking to borrow $700,000 to $800,000 from BNZ initially. I made a note of this. I made the suggestion that Digital Signs could try and collect its outstanding debtors as this would provide the cash he was looking for. I recall raising this a few times. Mr Jaques was dismissive of this suggestion each time I raised it. This made me think that the $1.214 million in debtors represented sales that did not exist.

142. I do not recall Mr Jaques saying at any stage that BNZ had offered to lend $10 million. I believe I would have made a note of this if it had been mentioned as it would have been very significant, but my notes do not record this.

143. I recall that Mr Jaques mentioned that Mr McKay had been engaged to complete an independent review and that BNZ had requested this. Mr Leeming was supportive of this given his solvency concerns, and I recall Ms Lochead-Macmillan was also supportive.

144. I also made a note that Mr Jaques had said Ricoh, a finance company, had offered to fund $825,000, which Mr Jaques proposed to use to purchase the Halo billboards I have mentioned. I also noted that [redacted] meaning that Ricoh may [redacted] It was not clear to me from the meeting whether Mr Jaques had secured funding from Ricoh or not, and the amount of the lending. I had not been involved in assisting Mr Jaques with the loan application to Ricoh.

145. At another stage, Mr Leeming raised the fact that the company had an outstanding debt to the IRD. I made a note, [redacted] In the meeting Mr Jaques mentioned the company was paying off outstanding PAYE to the IRD, of around $200,000.

146. I remember leaving the meeting with concerns about the company's solvency and how Mr Jaques was running the business. The company had a lot of debt. Mr Jaques was looking to borrow more money. I did not know why Mr Jaques was reluctant to collect the outstanding debtors of over $1 million. I recall thinking that it was good that BNZ had involved Mr Kilmartin and Mr McKay, who would be able to assess the company's real financial position and take steps appropriately.

147. The day after the meeting I sent Mr Jaques an email noting that a new Covid-19 wage subsidy had been made available by the Government **[[BDO.01.00491]]**.

**Events following the meet and greet**

148. I mentioned the meet and greet to Mr McKay on 12 June 2020. We discussed that I would not assist Mr Jaques further whilst the independent review was being completed. I tried to avoid substantive discussions with Mr Jaques going forward.

149. There were however some emails I was copied on by Mr Jaques or others. There were also a small number of things I believed I needed to comment on occasionally, without affecting Mr McKay's work.

150. For example, on 29 June 2020 Mr Leeming sent an email to Mr Jaques, Ms Lochead-Macmillan and me asking for an update. Mr Jaques replied that things were "Messy, messy, messy". He said **[[BDO.01.00544]]**:

> After all the talk of at least 50% of plant finance being guaranteed Ricoh refused the entire deal (Credit approved but CEO knocked back).
>
> Friday Flexilease declined (as they've lost AUD$11m in Australia from a billboard operating falling over there).
>
> Heartland, GET Capital, Avanti all saying no. Everyone in NZ is twitchy of the digital billboard market at present.
>
> […]

151. Another example was that in an email on 1 July 2020, Mr Jaques advised that he had not arranged finance for the Halo billboards deal I have mentioned earlier **[[BDO.01.00557]]**. Mr Leeming responded that he was concerned with the increasing level of debt and operational costs of the business **[[BDO.01.00559]]**. Ms Lochead-Macmillan also raised

concerns about the companies' ability to service debt. This was a serious issue. I replied commenting that I agreed with Mr Leeming and Ms Lochead-Macmillan and raising a couple of questions for Mr Jaques, one of which was a request for an update on his 31 March 2020 debtor collections **[[BDO.01.00561]]**.

152. Then, on 3 July 2020 Mr Jaques sent a further email saying that he could not finance the Halo transaction. He also said that he had spoken with Mr McKay, who Mr Jaques said had told him BNZ would not lend him any more money and he should consider reducing the companies' operations **[[BDO.01.00565]]**.

153. A few days later, on 6 July 2020, Mr Jaques emailed Ms Lochead-Macmillan, Mr Leeming and me to say that he had decided to give up and wanted to sell the business **[[BDO.01.00581]]**. I replied, expressing my disappointment at this news **[[BDO.01.00585]]**. Mr Jaques did not ask me to assist with the sale process.

154. After a while, Mr Jaques emailed me on 20 July 2020 about Kiwibank. I took it that Mr Jaques was looking to get some lending from them **[[BDO.01.00605]]**.

155. The next day, Mr Jaques emailed a letter to Kiwibank seeking lending **[[BDO.01.00610]]-[[BDO.01.00613]]**. Mr Jaques must have blind copied me on this email, because I reviewed it and noticed that in his letter, he described me as "our CFO" **[[BDO.01.00613]]**. I was very surprised by this as I certainly was not the companies' CFO. I forwarded the email to my colleague Mr Suterwala saying: [redacted] do not know what the outcome of Mr Jaques' approach to Kiwibank was. I do not recall correcting Mr Jaques at the time on his statement that I was the companies' CFO, but it was incorrect.

156. On 23 July 2020, I emailed Mr Jaques asking him if he had a flyer promoting the sale of his business as there was someone I wanted to send it to. He replied providing a document. He also told me that he was meeting with Mr McKay the next day. He told me he had sent Mr McKay a "very direct email yesterday challenging him his assessment was wrong" **[[BDO.01.00619]]**. I had not been involved in Mr McKay's review so I did not know the details of what Mr McKay's view was.

157. Later the same day, I emailed Mr Jaques to put him in touch with a potential purchaser, Raana Horan of Coast Group Limited **[[BDO.01.00638]]**.

158. On 25 July 2020, Mr Jaques copied me on an email to Mr McKay. The email was also copied to Mr Kilmartin, Mr Leeming, Ms Lochead-Macmillan, and a member of Mr McKay's team, Melissa Lee. The email referred to an earlier meeting between Mr Jaques and Mr McKay, which I did not attend **[[BDO.01.00646]]**.

159. Mr Jaques copied me into an email on 27 July 2020. Mr Jaques had asked Mr McKay if there was anything he could do with Mr Kilmartin to "get the Halo deal done" **[[BDO.01.00664]]**. Mr McKay replied, copying me. Mr McKay said his analysis was not completed and that Ms Lee had more questions for him **[[BDO.01.00665]]**. Mr McKay also made other comments which I understand he will address in his witness statement.

160. Mr Jaques then replied to Mr McKay, copying me. I note that Mr Jaques' reply included a section of text which had been struck out, but which remained in his email. One of the comments was addressed to me and read **[[BDO.01.00666]]:**

> Nick: I can't do any more with this. I am not an accountant. I do not know how to present the current and forward trading position. I get that you have not been engaged to do this but that you might not have been able to anyway due to Andy also being BDO. None of this helps

161. On 28 July 2020, Mr Jaques emailed me, asking to do some financial modelling **[[BDO.01.00537]]**. I replied suggesting that he wait until Mr McKay had issued his report **[[BDO.01.00678]]**. Mr Jaques replied **[[BDO.01.00679]]**:

> Thanks for this.
>
> I'm out of time and out of money. I think it is better I accept this and stop at this point.
>
> Thanks for all you have done.
>
> I will get back to you shortly on my next steps.

162. Earlier the same day, Mr McKay emailed me forwarding some queries he had received from Mr Jaques with his proposed responses. In his email, Mr Jaques referred to BDO and me as his accountants. I replied to Mr McKay stating [redacted]. I said that there was no signed engagement letter, anti-money laundering processes had not been completed, no "no professional reasons" letter had been sent to the companies' other accountant, and the other accountant needed to finalise the 31 March 2020 accounts. I explain what a no professional reasons letter is below. I also told Mr McKay that I had agreed to be on the companies' advisory board, but that we had only had a "meet and greet" so far. I told Mr McKay that Mr Jaques had asked me to do some

financial modelling work, but that I would decline to do this until Mr McKay's report was completed **[[BDO.01.00675]]**.

163. The same day Mr Jaques instructed Mr McKay to stop his work on the independent review report **[[BDO.01.00687]]**.

164. On 10 August 2020 Mr Jaques copied me on an email where he asked Mr McKay to continue with his engagement following a meeting that had apparently taken place that day between Mr Jaques, Mr McKay and Mr Kilmartin of BNZ. In that email he explained a new lending proposal **[[BDO.01.00691]]**.

165. I did not hear much more from Mr Jaques after this. On 27 August 2020, I was copied on an email from Mr McKay to Mr Kilmartin, providing Mr McKay's independent review report **[[BDO.01.00739]]-[[BDO.01.00740]]**. The report identified financial difficulties facing the companies, including identifying that they were insolvent.

166. I do not recall having any further contact with Mr Jaques for the rest of 2020, but as BDO Auckland was the registered office of the companies, on 12 October 2020 we received a letter addressed to Digital Signs and Digital Advertising **[[BDO.01.00754]]-[[BDO.01.00755]]**. The letter asserted that the companies were in breach of a "supply agreement" with a sign owner referred to as the Wairau Park Syndicate. The letter enclosed a statutory demand addressed to Digital Advertising. BDO Auckland passed this on to Mr Jaques the same day **[[BDO.02.00002]]-[[BDO.02.00003]]**.

**Complaints by Mr Jaques**

167. Mr Jaques called me on 25 January 2021. I made a file note of that call at the time **[[BDO.01.00756]]**. The key points Mr Jaques raised with me were:

    a. He had tried to find other borrowing for the companies without success and the business had very little trading activity.

    b. He was dealing with the companies' remaining debt, but disagreed with how BNZ was dealing with this and had laid a complaint with the Banking Ombudsman.

    c. He had been given a final warning regarding his $200,000 debt to the IRD for unpaid PAYE. He mentioned the IRD may liquidate the companies and bankrupt him.

d. He said that he enjoyed working with me, but that Mr McKay did not understand his business. He thought Mr McKay's report ruined his business. I did not comment on this.

168. A few months later in April 2021, BDO Auckland received an update from Mr Jaques advising that he had been unable to sell his business and that the IRD had served a statutory demand on him, and was looking to liquidate the company. He said he was trying to pay his creditors, which included BDO Auckland as we had an unpaid invoice at this stage **[[BDO.01.00757]]**.

169. I did not hear further from Mr Jaques until he wrote to BDO several times in 2022 concerning complaints against Mr McKay and me. In May 2023, Mr Jaques lodged a complaint against each of us with the New Zealand Institute of Chartered Accountants (**NZICA**).[12] I provided a response to the complaint against me in writing on 31 July 2023 **[[BDO.01.00809]]**. I provided some further comments to NZICA by email on 4 March 2024 **[[BDO.01.00818]]** 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.01.00832]].**

**Other matters raised by Mr Jaques**

170. I will now address various topics raised in Mr Jaques' witness statement.

*BDO Auckland was not the companies' accountants or CFO*

171. Mr Jaques repeatedly says in his witness statement that BDO Auckland and I were his "trusted business adviser" and "company accountant". He also says that I was the CFO or virtual CFO[13] and that I had an in -depth knowledge of his business.[14] I do not agree with these statements. They are incorrect. I explain why below.

172. First, BDO Auckland never had an engagement in place with Mr Jaques' companies to be the companies' accountants. There were three letters of engagement executed: the two forecasting engagements and the independent business review engagement. None of the terms of those engagements encompassed BDO Auckland becoming the companies' accountants. Although BDO Auckland offered other engagement terms which did include wider accounting work, these were never accepted and signed by Mr Jaques. Client onboarding and anti-money laundering

[12] **[[BDO.01.00803]]-[[BDO.01.00807]].**
[13] Mr Jaques makes these or similar statements at paragraphs [4], [9], [17], [18], [31], [34], [38], [43], [71], [83], [97], and [135] of his witness statement.
[14] Mr Jaques makes these or similar statements at paragraphs [4], [25], [26], [39], [43], [78], and [135] of his witness statement.

documentation was never completed. We never started work as the companies' accountants.

173. I also note that although Mr Jaques refers to me as the CFO or virtual CFO, these terms never appeared in any engagement terms BDO Auckland offered. I made a handwritten note [redacted] in my notes of the meeting with Mr Kilmartin and Mr Jaques on 2 June 2020 **[[BDO.02.00001]]**. I do not recall precisely what this was a reference to, but it may have been a reference to services Mr Jaques wanted to obtain for the companies in the future. Aside from making this note, I never referred to myself or BDO Auckland as the companies' accountants, CFO or virtual CFO because I was not undertaking that role. It was Mr Jaques who used these terms, and he never did so with my prior knowledge or agreement.

174. For example, in his witness statement at paragraph [97], Mr Jaques refers to an authority he signed with LINK Business Brokers to sell his business, in which he listed me as the companies' accountant. That was a document Mr Jaques completed. I did not agree to being listed as the companies' accountant in it. The same is true of other documents and letters Mr Jaques sent where he referred to me in these terms, including those listed at paragraph [38] of his witness statement.

175. The next reason is that the companies had an existing accountant, Accounting Plus. My understanding is that Accounting Plus remained the companies' accountant throughout the relevant period, and that they continued to be the companies' accountants after my involvement ceased.[15] For example, in an email to me on 11 March 2020 Mr Jaques confirmed that he wanted Accounting Plus to complete the companies' financial statements for the year to March 2020 **[[BDO.01.00231]]**. In an email dated 29 May 2020, Mr Milton suggested to me that BDO Auckland should [redacted] and I replied that Mr Jaques [redacted] **[[BDO.01.00342]]**. Completing financial statements is a core task for a company's accountant, and it was Accounting Plus, not BDO Auckland, that was doing this.

176. Relatedly, a company's accountant undertakes a number of tasks such as preparing financial statements, cash flow reports, income tax returns, GST returns and profit and loss statements amongst other things. This

[15] See financial statements for Digital Advertising for the years ended 31 March 2021, 2022 and 2023, which were completed by Accounting Plus **[[PLA.0544]]**, **[[PLA.0551]]**, **[[PLA.0553]]**; and financial statements for Digital Signs for the years ended 31 March 2021, 2022 and 2023, which were completed by Accounting Plus **[[PLA.0542]], [[PLA.0552]], [[PLA.0556]].**

requires access to the company's financial records and tax records, including its IRD account. BDO Auckland did not have access to Digital Signs' and Digital Advertising's IRD accounts. I recall that we were provided with access to the companies' Xero records for the purposes of completing the forecasts in late 2019 and early 2020, but I did not continue to access those records on an ongoing basis. BDO Auckland was also not completing the tasks I have listed. My understanding was that Accounting Plus was the companies' tax agent. A CFO or virtual CFO would be involved in these tasks and would also have close day-to-day involvement in the company's financial management.

177. BDO Auckland did not have that sort of involvement with the companies. My involvement with Mr Jaques' companies was limited. It can be summarised as follows, alongside other occasional calls, emails and meetings:

a. Preparation of forecasts for Digital Signs in late 2019.

b. Preparation of forecasts for Digital Advertising, completed in February 2020.

c. Contacting Ms van Graan at BNZ in December 2019 at Mr Jaques' request.

d. Issuing a proposal to Mr Jaques for additional services BDO Auckland could provide in February 2020, which was not accepted.

e. Issuing a proposal to Mr Jaques for additional services BDO Auckland could provide in May 2020, which was not accepted.

f. Commenting on Mr Jaques' capital raising attempt in March 2020, noting that his $25 million valuation of the company was likely to get push back.

g. Informing Mr Jaques of the wage subsidy and the business loan schemes offered by the Government during the Covid-19 pandemic.

h. Transferring the companies' registered offices to BDO Auckland.

i. On 8 May 2020, commenting on the accounting treatment of the Halo billboards Mr Jaques was looking to buy.

j. Meeting with Mr Jaques and Mr Kilmartin on 2 June 2020, and identifying some key points for Mr Jaques to discuss the day prior.

k. Attending the "meet and greet" on 11 June 2020.

l. Suggesting to Mr Jaques on 28 July 2020 that he wait until Mr McKay completed his report before undertaking further work.

178. BDO Auckland did issue invoices for its work, including my attendance at the advisory board "meet and greet". However, this work was isolated and did not amount to BDO Auckland being Digital Signs' or Digital Advertising's accountants. The invoices issued for work I was involved in were:

a. Invoice dated 30 November 2019 for the preparation of forecasts for Digital Signs **[[PLA.0006]]**. The invoice was for $7,500 in professional fees (plus disbursements and GST).

b. Invoices dated 29 January 2020 and 27 February 2020 for the preparation of forecasts for Digital Advertising **[[PLA.0011]]; [[PLA.0015]]**. These invoices were for $3,500 and $2,000 respectively (plus disbursements and GST).

c. An invoice dated 29 June 2020 for my attendance at the meeting with BNZ on 2 June 2020, attendance at the "meet and greet" on 11 June 2020 and calls and emails **[[PLA.0043]]**. This invoice was for $2,835 in professional fees (plus disbursements and GST).

179. BDO Auckland's time records show that I recorded a total of 16.80 hours to the companies' matters between 30 October 2019 and 28 July 2020. There may have been some hours that I did not record, but this would be a few hours only at most.

180. Another reason why it is wrong to describe BDO Auckland as the companies' accountants is that I never sent Accounting Plus a" no professional reasons" letter. This is a formal letter a company's new accountant sends to the former accountant to inform them of their replacement. BDO Auckland never sent Accounting Plus a professional reasons letter in relation to Mr Jaques' companies, nor did we complete any file uplift which would be necessary if we were the companies' accountants. BDO Auckland would have taken these steps if it were the companies' accountants.

181. Relatedly, Mr Jaques did not involve me in the finance applications he was pursuing through 2020. From information Mr Jaques sent me at the time, and from what I have learned since, I am aware that he made loan applications or requests for investment to Ricoh, GET Capital, Avanti Finance, Real Asset Finance, Flexilease, TBK Capital, Polar Capital, Heartland Bank, Westpac, and Liberty Finance. However, Mr Jaques did

not involve me in those applications. Mr Jaques also did not involve me when he began the process of selling the business. He did not seek advice from me on this process. I did not assist him with it.

182. I also note that the PCC considered the issue of whether I was the companies' accountant in its decision, and accepted that I was not **[[BDO.01.00832]]**.

*Lumo Digital*

183. At paragraph [76] of his witness statement, Mr Jaques says that at the time of the independent review by BDO Auckland, he was not aware that BDO were the accountants to one of his competitors, Lumo Digital. He notes that in 2025, BDO went on to assist Lumo in acquiring another billboard business called "Globox". Mr Jaques asserts that this "should have been an opportunity BDO were helping us to get".

184. I have never had any dealings with Lumo. I understand that Lumo was a client of BDO Auckland's CBD office. I work in the East Tāmaki office. BDO Auckland's engagement for Lumo had no impact on my interactions with Digital Signs and Mr Jaques. I do not know how Lumo's acquisition of Globox came about and had no involvement with it.

*Asserted enthusiasm for the companies*

185. In his witness statement at paragraph [26], Mr Jaques gives various descriptions for what he says was my enthusiasm for his business. He suggests I was figuratively "jumping around like a little child" and "fizzing like a child with a secret to tell". I do not accept those characterisations. I was not as enthusiastic about the companies as Mr Jaques suggests. As I have explained, I did not know much about the business, so had no reason to be particularly enthusiastic about it. The most I could say is that the digital billboards business idea seemed to have some merit, if the financials could be made to stack up. The more I learned over time though, the more concerned I became about the companies' financial prospects.

186. Mr Jaques then asserts in the same paragraph that I "really wanted [him] as a client" and "wanted to essentially partner with [him] to combine [my] skills with [his] to take this business all the way through to completion (realising its full potential via a final sale at a high price)."

187. BDO Auckland offered to provide services to Mr Jaques' companies in response to his approaches and requests. As with any potential client, I was interested in securing their business. However, Mr Jaques' description overstates my enthusiasm and intentions. As I have

explained above, I did not agree to "partner" with him or take the business through to a sale.

188. At paragraph [136] of his witness statement, Mr Jaques says, "Mr Innes-Jones asked his own questions and arrived at the opinion our business had excellent merit". That was not my opinion of the business at any time for the reasons I have explained above. It was not that I had a poor view of the business (at least at the time we were preparing the initial forecasts, although my view became more negative over time), but that I simply did not have enough information to have any real view of the business either way. However, the more information I received about the companies from June 2020 onwards, the more concerned I became about their financial position.

189. Mr Jaques also refers at paragraph [35] of his witness statement to an event I invited him to in February 2020. Mr Jaques says, "On that day Nick said to me he was really glad I was one of his clients as he said he did not have many clients of my calibre that he could invite to events like this." I do not recall saying that. I would not have said this as the statement would have been incorrect.

**Conclusion**

190. In summary, my work for Mr Jaques' companies was limited to two forecasting engagements in late 2019 and early 2020 and a small number of ad hoc attendances. Neither BDO Auckland nor I became the companies' accountants, CFO or "virtual CFO". The proposals for wider services were never accepted. I did not make many of the statements Mr Jaques attributes to me. A number of statements Mr Jaques has made in his witness statement are simply untrue.

Dated 4 November 2026



Nicholas Robert Innes-Jones