

3.6. Is a person NOT bound by the PSA pursuant to s5(3) of the TAA OR the;

3.6.1. Code of Conduct set out at section 13 of the PSA

3.6.2. The APS Values set out at section 10 of the PSA

3.7. Is a person bound by the Code of Conduct issued by the Fourth Accused pursuant to the provisions of the PSA and the TAA, being **“the Tax Payer’s Charter”**.

3.8. Carries on a business providing services to the Government of the Commonwealth of Australia and to the Taxpayers of the Commonwealth pursuant to the terms of the ACAC Act, Australian Consumer Law at s18, s20, s21, s29, s34 and s37.

3.9. Has oversight to ensure that the Staff of the ATO act in accordance with the;

3.9.1. Code of Conduct set out at section 13 of the PSA, and

3.9.2. The APS Values set out at section 10 of the PSA, and

3.9.3. The Tax Payer’s Charter, and

3.9.4. The terms of the ACAC Act, Australian Consumer Law at s18, s20, s21, s29, s34 and s3, and

3.9.5. The Common Law

3.10. Has the Statutory duty to **“properly”** administer the ATO and the Australian Business Register (as the Registrar) in accordance with the TAA, the GST Act, the ABN Act and the ITAA and the other Taxation related acts of the Commonwealth;

*proper, when used in relation to the use or management of public resources, means efficient, effective, economical and ethical.*

3.11. Is a person whose conduct and decisions are capable of being reviewed and prosecuted pursuant to

3.11.1. the provisions of sections 5, 6 & 7 of *the ADJR Act, and*

3.11.2. the provisions of *Part IVC of the TAA, and*

3.11.3. *Common Law and*

- 3.11.4. the provisions of section 39B of *the Judiciary Act*, and
- 3.11.5. the provisions of section 75 (v) of *the Constitution*, and
- 3.11.6. the provisions of *the Crimes Act 1914 (Cth)* and *the Criminal Code Act 1995 (Cth)*
- 3.12. Is civilly vicariously liable for the actions of his employees
- 3.13. Is Criminally vicariously liable for the actions of his personnel pursuant to the provisions of the Criminal Law Consolidation Act 1935 (SA), the Crimes Act 1958 (Vic) the Crimes Act 1914 (Cth) and the Criminal Code Act 1995 (Cth)
- 3.14. Is obliged to pay compensation to me in all of my capacities for failures of the Fourth Accused to comply with the provisions aforementioned under;
  - 3.14.1. The Legal Services Directions 2005 (Cth)
  - 3.14.2. The CDDA Scheme
  - 3.14.3. The Common Law

## **The Factual Background**

### **4. The First Default Judgment**

- 4.1. On the 11th February 2004, in my capacity as a Joint Trustee of AGFT, I was the subject of a Judgment Debt in favour of the Fourth Accused in the amount of \$72,329.70 given in Default of filing a defence in the District Court of South Australia action DCCIV-1666-2003. (**"The First Default Judgment"**)
- 4.2. That Judgment was based on the "Prima Facie Evidence" of debt appearing on the Running Balance Account (**"the RBA"**) of the Integrated Client Account of the AGFT.
- 4.3. At the time of the making of the First Default Judgment the Solicitors who were on the Court File , Lancione Partners (**"Lancione"**) who were representing me failed to file my defence in circumstances where the Debt appearing on the RBA was entered by my accountant by mistake (**"GST Mistake"**)

- 4.4. Between the date of my reappointment as a Trustee of AGFT on the 19th January 2006 and today's date the Fourth Accused have not consented to set aside the First Default Judgment in circumstances where the Fourth Accused were and remain aware that;
- 4.4.1. Correction of the GST Mistake occurred on the 6th and 7th October 2008 by lodging of amending BAS so that the amount of the First Default Judgment no longer appeared on the RBA and that instead of owing money to the Fourth Accused and amount of \$14,548.57 appeared on the RBA as being owed by the Fourth Accused to the Trustees of AGFT.
- 4.4.2. The Four Year Rule DID NOT apply to the Corrections to GST Mistakes entered on the RBA of AGFT on the 6th and 7th October 2008 by the Fourth Accused in accordance with the instructions given by the Fourth Accused to the Prosecutor on the 1st September 2008 by way of letter and in accordance with the findings of *KAP Motors Pty Ltd v the Commissioner of Taxation* 2008 in the Federal Court of Australia, the GST Act and the TAA, and
- 4.4.3. The Four Year Rule DID apply to the reversal of the GST Corrections by the Fourth Accused made to the RBA of AGFT on the 18th February 2009 by Diana James at the instruction of Peter Goggins in circumstances where the Fourth Accused had obtained internal Legal Advice advising that the Fourth Accused could NOT LEGALLY reverse the GST Corrections, and
- 4.4.4. GST Corrections to the RBA of AGFT made on the 6th & 7th October 2008 by the Fourth Accused were not entered in error as asserted by Peter Goggins to my legal representative and in fact were entered in accordance with the instructions of the Fourth Accused
- 4.4.5. The Fourth Accused would be "embarrassed" by the enquiry of the Commonwealth Ombudsman into the conduct of the Fourth Accused.
- 4.4.6. The Fourth Accused cancelled the GST corrections on the 18th February 2014 for the improper purpose of saving embarrassment and misleading the Honourable Master Norman in an application to set aside the First Default Judgment.

4.5. **Particulars**

- 4.5.1. The conduct and decisions of the Accused in refusing to agree to consent to set aside the First Default Judgment as set out at paragraphs 4.1 – 4.4 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law, section 75(v) of the Constitution, Part IVC of the TAA and the provisions of s39B of the Judiciary Act
- 4.5.2. The conduct and decisions of the Fourth Accused is/was and are/were Harsh and oppressive and Unconscionable within the meaning of Unwritten Law, the Common Law and is/was and are/were breaches of;
  - 4.5.2.1. the Public Services Code of Conduct and Public Service Values at s10 and 13 of the PSA, and
  - 4.5.2.2. the Tax Payers Charter as a Code of Conduct issued by the Fourth Accused under the provisions of the TAA and the PSA
- 4.5.3. The decisions, conduct and associated actions of the Accused and their servants in cancelling the amending Activity Statements that led to the GST Corrections being entered onto the RBA were breaches of;
  - 4.5.3.1. *s42 & s43 of the Crimes Act 1914 (Cth)* ,and
  - 4.5.3.2. *s134.1, s134.2, s135.1, s135.2, s135.4, s137.2, s 139.2 & s142.2 of the Criminal Code 1995 (Cth)*,and
  - 4.5.3.3. *the Rules of Professional Conduct and Practice 2003 (SA)*, South Australia Australian Law Society in respect to the Fourth Accused that are legal representatives of, and/or lawyers employed by, the Fourth Accused, and
  - 4.5.3.4. *\_s139, s140(4), s142, s238, s251, s242,s243, s256, s270 of the Criminal Law Consolidation Act 1935 (SA)*

4.5.3.5. *the ACAC Act, Australian Consumer Law at s18, s20, s21, s29, s34 and s3, and*

4.5.4. The decisions, conduct and associated actions of the Accused and their servants was fraud, deception and serious error which;

4.5.4.1. is/was and are/were breaches of the duties of the Fourth Accused to properly administer the provisions of the TAA and the GST Act.

4.5.4.2. is/was and are/were in breach of the duties and obligations of the Fourth Accused as representatives of the Crown to act as model litigants

4.5.4.3. Has caused Loss and Damage to the Prosecutor in his aforementioned capacities

4.5.4.4. Is conscious maladministration and malfeasance of public office

## 5. **The Sequestration Order made in Estate SA 1590 of 2004**

- 5.1. As a consequence of correction of the GST Mistakes within time on the 6th and 7th October 2008 by me the evidence shows that at the time of the First Default Judgment, instead of a Debt owing to the Fourth Accused in the amount of the First Default Judgment, in fact, after correction of the relevant GST Mistakes the RBA was in credit by an amount of at least \$14,548.57.
- 5.2. In May 2004, the Fourth Accused served a Bankruptcy Notice upon me in respect of the First Default Judgment, *which debt did not in fact exist, and* then became the subject of a Creditor's Petition filed by the Fourth Accused that was heard by Registrar Christie in ADG 90 of 2004.
- 5.3. On the 22nd September 2004 the Fourth Accused was paid the Amount of the First Default Judgment plus costs claimed by the Fourth Accused in the amount of \$81,860.55.
- 5.4. On the 24th September 2004 despite having received the payment of the Fourth Accused's Claim pursuant to the First Default Judgment and having advised me that the Fourth Accused would NOT agitate for the relevant sequestration order, the Fourth Accused changed his mind one hour before the time listed for the hearing and instead obtained the Sequestration Order at a time when I was not prepared, had been misled by

the Fourth Accused and had in fact paid the whole amount of the First Default Judgment plus Costs.

## 5.5. Particulars

5.5.1. The conduct and decisions of the Accused set out at paragraphs 5.1 – 5.4 in pursuing a sequestration order in circumstances where the default judgment was obtained in respect to a debt that did not in fact exist, and where the Fourth Accused had been paid the whole amount of the alleged indebtedness was and were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law, section 75(v) of the Constitution, Part IVC of the TAA and the provisions of s39B of the Judiciary Act

### *5.5.1.1. Repeats paras 4.5.2 to 4.5.6*

5.6. On the application of the Fourth Accused, Peter Ivan Macks was appointed Trustee of my Bankrupt Estate SA 5901 of 2014 (**“the Trustee”**) at a time when the Fourth Accused knew and/or ought to have known that;

5.6.1. The Trustee was the subject of adverse costs orders in excess of \$19 million given in the Supreme Court of Queensland in favour of Foster’s Brewing Group (**“FBG”**) and was himself insolvent as a man of straw, and

5.6.2. I was owed at least \$2,400,000 in outstanding payments due under clause 9.2(b) of a Deed of Settlement dated 26th July 2000 executed between me and a wholly owned subsidiary of FBG (**“Mildara Blass Limited”**) .

5.6.3. I held the benefit of payments to be made to me as a Trustee of the Garrett Family Trust under clause 9.1(b) of the Deed of Settlement for a further period of 6 years

5.6.4. I held the benefit of payments to be made to me under clause 9.2 (b) of the Deed of Settlement of \$600,000 per annum in perpetuity.

5.6.5. National Australia Bank (**“NAB”**) was in breach of the First and Second Contracts of Finance executed between me and my related entities and had committed Fraud in obtaining possession of land by Deception pursuant to the provisions of

the Real Property Act 1886 (SA) and remains entitled to restitution as a party deprived of land by Fraud, and

- 5.6.6. As a consequence of the breaches of the Contracts of Finance by NAB all of the securities held by NAB over any entity related to me were voidable, and
- 5.6.7. National Australia Bank did not lodge a proof of debt in the administration of Bankrupt Estate SA 1590 of 2004 or SA 2112 of 2004, and
- 5.6.8. I was the registered First Mortgagee in my capacity as Trustee of AGFT pursuant to the Right of Subrogation over the land known as Springwood Park being 535 acres in metropolitan Adelaide until the 4th June 2004, and upon my reappointment on the 19th January 2006, and on the 21st October 2014 in respect to the relevant equitable mortgage remaining and hold a lien over that mortgage as property of AGFT pursuant to my right of indemnity.
- 5.6.9. I was the sole Director of the Registered Proprietor of the Property known as Springwood Park as to 22 undivided of 26th parts of the Property as Trustee of the Springwood Park Unit Trust until the date of the sequestration order
- 5.6.10. As a consequence of the flaws in the NAB securities (**“the NAB Security Issues”**) set out in the security documentation prepared by Greg May and Louisa McClurgh of the Firm Minter Ellison who failed to act as instructed the NAB did not hold a valid security over the property known as Springwood Park.
- 5.6.11. The Trustee of the Andrew Garrett Family Trust had sold the units issued in the Agwater Infrastructure Unit Trust which owned a pipeline in Langhorne Creek for \$12,733,000.
- 5.7. On the 5th October 2004, 11 days after the sequestration order made against me, National Australia Bank Limited (**“NAB”**) provided the Trustee of AGFT with three archive boxes (**“the NAB discovery”**).
- 5.8. The Trustee began pressing for the provision of the NAB discovery immediately upon receipt of those files by the Trustee of AGFT.

- 5.9. I do not know how the Trustee was made aware of the existence of those files that came into possession of the Trustee of the AGFT.
- 5.10. The Trustee has at all relevant times in swearing of evidentiary material in SAD 5 of 2006 and SAD 29 of 2005 relied on alleged Debt of;
- 5.10.1. Evidenced by officers of the NAB and subsequently allegedly admitted by the Trustee on the 12th June 2007 in circumstances when the Trustee knew that NAB as the secured creditor was not able to submit a Proof of Debt until realisation of its securities or at all in circumstances of breach of contract.....let alone have it admitted by the Trustee.
- 5.10.2. Submitted by the Deputy Commissioner of Taxation on behalf of the Fourth Accused and subsequently allegedly admitted by the Trustee on the 12th June 2007 for the limited purpose of litigation in the amount of the First Default Judgment at a time when the Trustee knew that
- 5.10.2.1. The First Default Judgment was given in respect to a GST Mistake which was then corrected.
- 5.10.2.2. The Fourth Accused had been paid the whole amount of the Fourth Accused's claim.
- 5.10.3. Submitted by Westpac and subsequently admitted on the 12th June 2007 by the Trustee in circumstances where the alleged Westpac Debt was the subject of an adverse finding in the Supreme Court of South Australia against Westpac.
- 5.10.4. Submitted by Lancione and subsequently admitted by the Trustee on the 12th June 2007 in circumstances where the Trustee was aware of a counterclaim against and set off against Lancione as the Property of Estate SA 1590 of 2004
- 5.10.5. Submitted by Georgiadis lawyers and subsequently admitted by the Trustee on the 12th June 2007 in circumstances where the Trustee was aware of a counterclaim and set off against Georgiadis Lawyers as the Property of Estate SA 1590 of 2004
- 5.11. Despite my ongoing requests to the Trustee and his personnel no copies of any Proof of Debt has ever been provided to me by the Trustee and the Trustee has resisted the return of my files to me despite my discharge from Bankruptcy.

5.12. No Proof of Debt has been adjudicated on by the Trustee in Bankruptcy in respect to the administration of the Bankrupt Estate.

5.13. From the date of his appointment the Trustee was represented in;

5.13.1. The administration of Estate SA 1590 of 2014 by Skip Lipman and Emma Trebilcock of the Firm Lipman Karas until the date of finalisation of that Estate on the 11th May 2011 nearly 7 years after his appointment.

5.13.2. The administration of Bernsteen Pty Ltd (In Liquidation) ("**Bernsteen**") by Ray Mansuetto of the firm Minter Ellison which firm relevantly prepared the NAB security documentation for the Prosecutor at the time of the First And Second Contracts of Finance at the direction of the Chairman of Minter Ellison, Mr Greg May.

5.14. From the date of his appointment the Trustee did not commence proceedings against NAB in his administration of Bernsteen OR my estate because NAB was a source of work for the Trustee as an insolvency practitioner.

5.15. From the date of his appointment the Trustee did not commence proceedings against Minter Ellison in his administration of my estate because Minter Ellison was acting for the Trustee on a speculative/Profit sharing arrangement in his administration of Bernsteen.

5.16. From the date of his appointment the Trustee did not commence proceedings against Lancione in his administration of my estate because Lancione worked for the Trustee on a speculative/Profit sharing arrangement in his administration of other insolvent Estates.

5.17. It is not known to me exactly how much Fees were earned by the Trustee in his administration of my Estate as there are a number of inconsistencies revealed in the annual estate returns that are the subject of litigation in VID 304 of 2014.

5.18. The Trustee has not advised me of any aspect of his administration of my Bankrupt estate save the correspondence received on the 12th June 2007.

5.19. On the 23rd October 2007 my Trustee lodged a Notice of Objection to my automatic Discharge from Bankruptcy on the expiry of the minimum 3 years statutory term.

5.20. On the 13th November 2007 I lodged an application for review of the Notice of Objection to my Discharge from Bankruptcy.

5.21. As a consequence of the actions of the Fourth Accused in refusing to consent to set aside the Default Judgment I was not able to show evidence of the setting aside of the Default Judgment and the Trespass by the Trustee on my Bankrupt Estate.

5.22. The relevant components of the Notice of Objection that were not set aside by the Delegate of the Inspector General related to Bills of Exchange which efficacy was brought into question by the actions of the Fourth Accused in not acknowledging payment prior to the making of the sequestration order in ADG 69 of 2004.

5.23. From the date of appointment of my Trustee to the date of finalisation of my Bankrupt Estate, my Trustee trespassed on the estates that I am or was a Trustee of and that I am or was either a general or primary beneficiary.

#### 5.24. **Particulars**

5.24.1. The conduct and decisions of the Trustee in his administration of my bankrupt estate has at all times been;

5.24.1.1. Harsh and oppressive and Unconscionable within the meaning of Unwritten Law, the Common Law, and

5.24.1.2. in breach of the relevant provisions of the Bankruptcy Act 1966 (Cth) and the Bankruptcy Regulations 1996 (Cth), and

5.24.2. The decisions, conduct and associated actions of the Trustee and his servants was fraud, deception and serious error which;

5.24.2.1. is/was and are/were in breach of the duties and obligations of the Trustee as an officer of the Court and a representative of the Crown to act as model litigant

5.24.2.2. has caused Loss and Damage to the Prosecutor in his aforementioned capacities

5.24.2.3. is/was and are/were in breach of s42 & s43 of the Crimes Act 1914 (Cth),and

5.24.2.4. is/was and are/were in breach of s134.1, s134.2, s135.1, s135.2, s135.4, s137.2, s 139.2 & s142.2 of the Criminal Code 1995 (Cth),and

5.24.2.5. is/was and are/were in breach of the Rules of Professional Conduct and Practice 2003, South Australia Australian Law Society in respect to the legal representatives of the Trustee, and

5.24.2.6. is/was and are/were in breach of s139, s140(4), s142, s238, s251, s242,s243, s256, s270 of the Criminal Law Consolidation Act 1935 (SA)

## 6. The Sequestration Order made in Estate SA 2112 of 2004

6.1. On the 10th September 2004 International Vintners Australia Pty Ltd (“**IVA**”) lodged a creditor’s petition against Averil Gay Garrett nee Hodge (“my ex-wife”) in the Federal Magistrates court Adelaide Registry which matter was given action ADG 187 of 2014.

6.2. The action was commenced in respect to costs orders given in favour of IVA against the Trustees of AGFT, namely myself and my wife, in respect to an application to set aside a Statutory Letter of Demand for repayment of a Loan Account owed by IVA to AGFT in excess of \$900,000

6.3. My Ex-wife had a right of set off against IVA in the amount of the account.

6.4. On the 16th November 2004, the Deputy Commissioner of Taxation joined proceeding ADG 187 of 2004 as a supporting creditor to IVA in the amount of the First Default Judgment Debt.

6.5. On the 22nd December 2004 my wife executed a Debtor’s Petition on the advice of Lancione and Stephen James Duncan, who was then appointed as “**my ex-wife’s Trustee**” of her Bankrupt Estate SA2112 of 2004, solely as a consequence of the actions of the Deputy Commissioner of Taxation..

6.6. From the date of his appointment my ex-wife’s Trustee was represented in the administration of Estate SA 1590 of 2014 by James Cudmore and David Elix of the Firm

Cudmore Cusoff Knox until the date of finalisation of that Estate on the 7th February 2013 nearly 9 years after his appointment.

- 6.7. At no time has my-ex-wife's Trustee ever admitted a Proof of Debt in Estate SA 2112 of 2014 ("**my ex-wife's Estate**") or provided my wife with any documentation at all in respect to her Bankrupt Estate including any evidence of management of the Bankrupt Estate or evidence of Proofs of Debt.
- 6.9. From the date of his appointment the Trustee did not investigate or admit the debt that was the subject of the joinder of the Deputy Commissioner of Taxation to ADG 187 of 2004
- 6.8. From the date of his appointment my ex-wife's trustee did not commence proceedings against NAB in his administration of my ex-wife's Estate because NAB was a source of work for my ex-wife's Trustee as an insolvency practitioner.
- 6.9. From the date of his appointment my Ex-wife's Trustee did not commence proceedings against Minter Ellison in his administration of my Ex-Wife's Estate because Minter Ellison has acted for my ex-wife's Trustee on a speculative/Profit sharing arrangement in his administration of other insolvent Estates.
- 6.10. From the date of his appointment my Ex-Wife's Trustee did not commence proceedings against Lancione in his administration of my Ex-Wife's Estate because Lancione worked for my Ex-Wife's Trustee on a speculative/Profit sharing arrangement in his administration of other insolvent Estates and introduced my ex-wife to my ex-wife's Trustee.
- 6.11. Between the date of his appointment and the date of finalisation been paid at least \$450,000 in fees to my ex-wife's Trustee.
- 6.12. It is not known to me exactly how much Fees were earned by my ex-wife's Trustee in his administration of my ex-wife's Estate as there are a number of inconsistencies revealed in the annual estate returns that are the subject of VID 425 of 2014.
- 6.13. From the date of appointment of my ex-wife's Trustee to the date of finalisation of the Bankrupt Estate of my ex-wife, my ex-wife's Trustee trespassed on the estates that I am or was a Trustee of and that I am or was either a general or primary beneficiary.

## 6.14. Particulars

6.14.1. The conduct and decisions of my ex-wife's Trustee in his administration of her bankrupt estate has at all times been;

6.14.1.1. Harsh and oppressive and Unconscionable within the meaning of Unwritten Law, the Common Law, and

6.14.1.2. in breach of the relevant provisions of the Bankruptcy Act 1966 (Cth) and the Bankruptcy Regulations 1996 (Cth), and

6.14.2. The decisions, conduct and associated actions of my ex-wife's Trustee and his servants was fraud, deception and serious error which;

6.14.2.1. is/was and are/were in breach of the duties and obligations of my ex-wife's Trustee as an officer of the Court and a representative of the Crown to act as model litigant

6.14.2.2. has caused Loss and Damage to the Prosecutor in his aforementioned capacities

6.14.2.3. is/was and are/were in breach of s42 & s43 of the Crimes Act 1914 (Cth),and

6.14.2.4. is/was and are/were in breach of s134.1, s134.2, s135.1, s135.2, s135.4, s137.2, s 139.2 & s142.2 of the Criminal Code 1995 (Cth),and

6.14.2.5. is/was and are/were in breach of the Rules of Professional Conduct and Practice 2003, South Australia Australian Law Society in respect to the legal representatives of the Trustee, and

6.14.2.6. is/was and are/were in breach of s139, s140(4), s142, s238, s251, s242,s243, s256, s270 of the Criminal Law Consolidation Act 1935 (SA)

## 7. Conduct of the Trustees & Improper Purpose

- 7.1. Between the date of their respective appointments and today's date the Trustee and my Ex-Wife's Trustee (**hereinafter "The Trustees"**) made claims over assets that they knew they had no legal claim to as they knew or ought to have known, as experienced Accountants that they were appointed improperly in respect to a Debt that did not exist,
- 7.2. The Trustees were assisted in those claims by entering into Success Fee/Speculative/Profit Sharing arrangements with their respective lawyers of the kind found by the Honourable Kourakis CJ to exist in his interim judgment given in SCI-2006-165; *Viscariello v Peter Macks* of the 16th August 2012
- 7.3. On the 8th December 2014 Final Judgment was delivered in SCI-2002-189; *Viscariello v Peter Macks* in which regard the Honourable Chief Justice found for the Plaintiff that the Trustee had abused process, falsified documents, breached his duties as an officer of the Court and should be removed as Liquidator of Bernsteen.
- 7.4. The Trustees are professional certified practising accountants of many years' experience, who have at all times been aware of;
  - 7.4.1. The conflict of interest of the Trustee in acting in Estate SA 1590 of 2014 as a consequence of the Costs orders made against him in favour of FBG, and
  - 7.4.2. The fundamental and fatal flaws in their respective appointments as Trustees in respect to the First Default Judgment being given in respect to a debt,
    - 7.4.2.1. that did not in fact exist in accordance with their intimate professional knowledge of the operation of the GST Act, and
    - 7.4.2.2. that had been paid in any event.
  - 7.4.3. The breaches of the First and Second Contracts of Finance by NAB, and
  - 7.4.4. The adverse Judgment given against Westpac in SCI-2004-165; *Andrew Garrett Wine Resorts Pty Ltd v Westpac* by the Honourable Justice White.
  - 7.4.5. The Negligence of Lancione
  - 7.4.6. The Negligence of Minter Ellison Lawyers
  - 7.4.7. The Negligence of Georgiadis Lawyers

7.5. Between the dates of their respective appointments the Trustees and their respective lawyers have knowingly sworn and filed affidavit material that they knew not to be true in order to mislead the court in VIC SC-2005-7330 and SADS 29 of 2005 and SAD 5 of 2006 and knowingly trespassed on at least the following estates;

7.5.1. Andrew Garrett

7.5.2. Averil Garrett

7.5.3. Nicholas Garrett

7.5.4. Tom Garrett

7.5.5. The Trustee of AGFT

7.5.6. The Trustee of AGFT 2

7.5.7. The Trustee of AGFT 3

7.5.8. The Trustee of AGFT 4

7.5.9. The Trustee of SPUT

7.5.10. The Trustee of OVANZ

7.5.11. The Trustee of OVPET

7.5.12. The Trustee of OVPET 2

7.5.13. The Trustee of HGPT 4

7.6. The Fourth Accused have at all relevant times been aware of the trespass of the Trustees on the aforementioned Estates and have knowingly and capriciously assisted and facilitated that trespass because;

7.6.1. The Trustees are a source of revenue for the Fourth Accused, and

7.6.2. The Fourth Accused relied upon the fraud, deception and serious error of the Trustees to conceal the improper bankruptcy notice, improper appointment and abuse of process by the Fourth Accused in the oppression of interests related to me.

### 7.7. Particulars

7.7.1. The conduct and decisions of the Fourth Accused in refusing to agree to consent to set aside the First Default Judgment, in Appointing the Trustee, in joining ADG 187 of 2004, and knowingly facilitating the trespass of the Trustees on the aforementioned Bankrupt Estates as set out at paragraphs 7.1 – 7.6 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law, s75(v) of the Constitution and the provisions of s39B of the Judiciary Act;

7.7.2. *Repeats paras 4.5.2 to 4.5.6*

## 8. The Treasury Wine Estates Vintners Limited (“TWEV”) Deed of Settlement

- 8.1. On the 1st July 2000, *A New Tax System (the Goods and Services Tax) Act 1999* (Cth) (“**the GST Act**”) and *A New Tax System (the Australian Business Number) Act 1999* (Cth) (“**the ABN Act**”) came into effect.
- 8.2. Following extended negotiations between March 2000 and May 2000 a heads of agreement was executed between me (personally, in my capacity as Trustee of GFT and Director of Companies) and Mildara Blass Limited, now known as Treasury Wine Estates Vintners Limited.
- 8.3. On the 26th July 2000 I, personally, and in my capacity as Trustee of GFT and sole director of entities related to me, executed a Deed of Settlement with TWEV and entities related to TWEV in order to resolve a long running dispute in the Supreme Court of South Australia; *Andrew Garrett v Mildara Blass Limited* given action no SCI-1996-2244.

- 8.3.1. Clause 9 of the TWEV Deed of Settlement sets out payments due to me in my capacity as Trustee of GFT at clause 9.1 and to me in my personal capacity at clause 9.2, and
- 8.3.2. The Payments were agreed to be made as payments in the settlement of a dispute and were not payments that constituted a Taxable Supply for the purposes of the GST Act, and
- 8.3.3. TWEV did not pay a an additional amount of 10% on the payment made under clause 9.1(a),and
- 8.3.4. TWEV paid \$82,500 per quarter to the Trustee of the GFT under clause 9.1(b) from the 31st March 2000 until the 31st December 2008, and
- 8.3.5. When making the payments per quarter TWEV provided a recipient generated invoice for reasons that are not known to me but I conclude was an error of the internal accountants of TWEV at a time when the GST act had just come into effect, and
- 8.3.6. The Payments made under the TWEV Settlement Deed were not a Taxable supply as the Garrett Family License had been terminated with all claims resolved, and
- 8.3.7. At that time I did not know or understand the effect of the recipient generated invoices would have on my staff who were misled by TWEV into believing that the payments were made needed to declare a GST liabilities each quarter which were entered on the RBA of AGFT.
- 8.3.8. From the date of settlement TWEV did not pay the amount due under clause 9.2 to me which matter is the subject of dispute between me that is on foot in the Federal Court of Australia, Melbourne Registry given action number VID 248 of 2014.
- 8.3.9. The conduct and decisions of the Fourth Accused has frustrated the pursuit of the Prosecutor's rights under the TWEV Deed of Settlement by;
  - 8.3.9.1. The Sequestration order made in ADG 69 of 2014 against the Prosecutor in circumstances where;

- 8.3.9.1.1. The First Default Judgment was given in respect to a debt that did not exist.
- 8.3.9.1.2. The Fourth Accused had been paid the amount of the claim claimed by the Fourth Accused in the Creditors Petition on the 22nd September 2014 that was the subject of the Bankruptcy Notice issued in May 2014, and
- 8.3.9.1.3. Has not refunded that payment, and
- 8.3.9.1.4. Has not accounted for that payment on the RBA of AGFT.
- 8.3.9.2. The application for joinder made on the 16th November 2004 in ADG 187 of 2004 and the sequestration order given in that proceeding in circumstances where;
  - 8.3.9.2.1. The First Default Judgment was given in respect to a debt that did not exist.
  - 8.3.9.2.2. The Fourth Accused had been paid the amount of the claim claimed by the Fourth Accused in the Creditors Petition on the 22nd September 2014 that was the subject of the Bankruptcy Notice issued in May 2014, and
  - 8.3.9.2.3. Has not refunded that payment, and
  - 8.3.9.2.4. Has not accounted for that payment on the RBA of AGFT.
- 8.3.9.3. Resisting the application to set aside the First Default Judgment commenced by the Prosecutor on the 4th December 2006 in DCCIV-2003-1666, and
- 8.3.9.4. Cancelling the Amending Activity Statements of AGFT on the 18th February 2009 that were properly processed on the 6th and 7th October 2008 in circumstances where the Fourth Accused knew that Respondent could NOT LEGALLY reverse the GST Corrections, and

8.3.9.5. Refusing to consent to set aside the First Default Judgment between 4th December 2006 and today's date, and

#### 8.4. Particulars

##### **8.4.1. The Conduct and Decisions of the Fourth Accused have at all times been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Fourth Accused;**

8.4.1.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

8.4.1.2. render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused, and

8.4.1.3. assist the Trustees in the generation of Fees because the Trustees are a source of Revenue for the Fourth Accused and of strategic importance in the oppression of taxation claims generally as a management practice of the Fourth Accused, and

8.4.1.4. Knowingly and capriciously frustrating the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused

8.4.1.5. *Repeats paras 4.5.2 to 4.5.6*

#### 9. National Australia Bank Limited ("NAB")

9.1.1. In early 2000 I was approached by NAB to consolidate all of my banking business with NAB in order to "make my life easier".

9.1.2. On May the 21st 2002 I, personally and in my capacity as Trustee of AGFT, and entities related to me accepted the First Contract of Finance from NAB to advance a sum of \$10,500,000 in order to develop the interests of entities related to me in the Australian and Global Wine Industries.

- 9.1.3. Later in October 2002 the First Contract of Finance was varied by agreement to include the purchase of a vineyard in Tasmania known as "Old Stornoway" and now known as Joseph Kromy Vineyards.
  - 9.1.4. For reasons then not known to me NAB started to withdraw facilities 6 months after moving my business from Bank SA Limited, NM Rothschild (Australia) Limited and Rabobank (Australia) Limited.
  - 9.1.5. Subsequently a review of various court files and the NAB discovery given on the 5th October 2004 I discovered that the reasons for the NAB withdrawing its finance facilities were that the security documentation prepared by Minter Ellison Lawyers acting for me were fatally flawed.
  - 9.1.6. I have prepared a summary of those issues and have filed them in VID 304 of 2014; Andrew Garrett v Peter Ivan Macks as Trustee of my Bankrupt Estate (SA 1590 of 2004) and VID 425 of 2014; Andrew Garrett v Stephen James Duncan as Trustee of my ex-wife's Bankrupt Estate (SA 2112 of 2004).
  - 9.1.7. On the 13th March 2004 my accountant prepared an Interim Balance Sheet and Profit and Loss for AGFT in preparation for the refinancing of the NAB alleged debt.
  - 9.1.8. Between July 2003 and today's date the NAB and its servants made claim in SASC-127 of 2004 and SASC 1767 of 2003 as to the amount owed under its securities that was inconsistent with the moneys advanced and the moneys collected by NAB under its securities and was not money owed by any entity related to the Prosecutor.
- 9.2. **The Conduct and Decisions of the Fourth Accused has at all times been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Fourth Accused;**
- 9.2.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;
    - 9.2.1.1. render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused, and
    - 9.2.1.2. because the Trustees are a source of Revenue for the Fourth Accused

9.2.2. Knowingly and capriciously sought to oppress my interests, in all of my capacities, in the agitation of the claim against NAB

9.2.3. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused

9.3. **Particulars**

9.3.1. The conduct and decisions of the Fourth Accused in refusing to agree to consent to set aside the First Default Judgment and facilitate the trespass on estates associated with me is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

9.3.2. *Repeats paras 4.5.2 to 4.5.6*

**10. The First SAD 29 of 2005 Settlement Agreement**

10.1. On the 1st September 2014 the Trustee swore and filed an affidavit in VID 304 of 2014 that relevantly set out the aforementioned SAD 29 Settlement Agreement dated the 2nd November 2005 as exhibit PIM 2 and that I have not seen before.

10.2. That settlement agreement reveals that the Trustees have released the claims of both Bankrupt Estates for breach of contract against both;

10.2.1.1. Shu Mu Tseng, and

10.2.1.2. National Australia Bank

**10.3. The Conduct and Decisions of the Fourth Accused has at all times been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Fourth Accused;**

10.3.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

10.3.1.1. render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused, NAB and Shu Mu Tseng, and

10.3.1.2. because the Trustees are a source of Revenue for the Fourth Accused

10.3.2. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused.

#### 10.4. Particulars

10.4.1.1. *Repeats paras 4.5.2 to 4.5.6*

#### 11. The SAD 5 of 2006/SAD 29 of 2005 Settlement Agreement

11.1. On the 3rd July 2008 the Honourable Lander J dismissed my application to be joined to SAD 5 of 2006 as Trustee of GFT and made findings that GFT and AGFT were one and the same Trust on the basis of representations made by counsel for the Trustees in SAD 5 of 2006.

11.2. On the 8th September 2008 the Honourable Justice Lander dismissed my appeal against the aforementioned Judgment in SAD 101 of 2008.

11.3. The Honourable Judge was conflicted in making a decision on an application for leave to appeal from his own judgment.

11.4. On the 6th and 7th October 2008 the relevant corrections were made to the RBA of AGFT in respect to the First Default Judgment bringing into question the proper appointment of the Trustees to the respective Estates.

11.5. On the basis that the Debt relating to the appointment of the Trustees did not exist then orders ought to be made setting aside the appointment of the two Trustees and annulling the Bankruptcies of me and my ex-wife in VID 730 and VID 732 of 2014.

11.6. On the 10th March 2009 in my capacity as Trustee and authorised officer of AGFT, AGFT 3 and in my own capacity I executed the SAD 5 of 2006/SAD 29 of 2005 Settlement Agreement with the Trustees in order for

the Trustee to lodge a withdrawal of his Notice of Objection to my discharge from Bankruptcy lodged by him on the 2007.

11.7. On the 17th April 2009 the Trustee withdrew his notice of objection to discharge solely as a consequence of the SAD 5 of 2006/SAD29 of 2005 settlement agreement which moneys were applied to pay fees to the Trustees and the Lawyers of the Trustees and not applied to any creditors.

11.8. At all relevant times there were no Bona Fide Creditors whose alleged debts had been adjudicated on by either Trustee in respect to either estate.

11.9. I was suborned into executing the SAD 5 of 2006/SAD 5 of 2005 Settlement agreement in circumstances where the Fourth Accused and the Trustees knew that the Trustees were improperly appointed and that the Bankruptcies of me and my ex-wife should have been annulled and that the Trustees had no standing to make any applications on behalf of my own or my ex-wife's estates.

11.10. On the aforementioned basis the Fourth Accused knew that all judgements and orders made by the Honourable Lander J in SAD 5 of 2006 and SAD 29 of 2005 along with all settlement agreements ought be set aside on the basis that;

11.10.1. The Bankruptcies of me and my ex-wife ought be annulled, and

11.10.2. The Trustees lacked standing to make any applications on behalf of the relevant estates, and

11.10.3. There would be no contradictor in any proceeding where the Trustees appeared, argued against me or any other person on behalf of the relevant estates.

11.11. On the 1st September 2014 the Trustee swore and filed an affidavit in VID 304 of 2014 that relevantly set out the aforementioned SAD 5 of 2006/SAD 29 of 2005 Settlement Agreement as exhibit PIM 3.

11.12. I executed that agreement in circumstances where

11.12.1. The Trustee had approached me in December 2008 via my elder brother, Michael Garrett ( a senior partner at BDO accountants and Advisors) and advised me that he would keep me Bankrupt until “Hell Freezes” over, and

11.12.2. On the 18th February 2009 the Fourth Accused had cancelled the GST Corrections entered on the RBA for AGFT on the 6th and 7th October 2008 in circumstances where the Fourth Accused knew that they COULD NOT LEGALLY reverse the GST Corrections which action was done for the sole purposes of

11.12.2.1. misleading the Court in DCCIV-2003-1666 in the hearing of the application to set aside the First Default Judgment, and

11.12.2.2. Saving embarrassment in the face of enquiry from the Commonwealth Ombudsman that was initiated by me in November 2008.

11.12.2.3. The Hearing of the aforementioned application filed on the 4th December 2006 was heard on the 19th February 2009 (the day after the cancellation of the GST Corrections) following the actions of the Fourth Accused in

11.12.2.3.1. cancelling the amending activity statements on the 18th February 2009 in order to mislead the court, and

11.12.2.3.2. Mislead the court in respect to my NOT having standing as a Joint Trustee of the AGFT to make the application in circumstances where the Fourth Accused now seek to rely on that Standing as a Joint Trustee of AGFT in SCI-2013-02968 in respect to the same appointment dated 19th January 2006, and

11.12.2.3.3. Seeking to save embarrassment in the face of enquiry from the Commonwealth Ombudsman that was initiated by me in November 2008.

11.12.2.4. The Fourth Accused and the Trustees delayed me from developing the interests of AGFT 4 in developing the Urban Winery Business then known as Two Tribes Wine Company and now known as OenoViva Business Systems and OenoViva Hand Crafting by the refusal of the Fourth Accused to set aside the First Default Judgment.

**11.13. The Conduct and Decisions of the Fourth Accused has at all times in the refusal to set aside the First Default Judgment been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Fourth Accused;**

11.13.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

11.13.1.1. render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused, NAB and Shu Mu Tseng, and

11.13.1.2. because the Trustees are a source of Revenue for the Fourth Accused

11.13.2. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused

**11.14. Particulars**

11.14.1. The conduct and decisions of the Fourth Accused referred to at paragraph 11.1 to 11.13 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

11.14.2. *Repeats paras 4.5.2 to 4.5.6*

**12. The Second Default Judgment against AGFT in respect to a Debt that did not exist**

12.1. On the 6th August 2014 the Fourth Accused were successful in obtaining the summary judgment of the Honourable Mukhtar AJ in SCICIV-2013-029568 in the Supreme Court of Victoria in respect to an alleged PAYG instalment liability.

12.2. Subsequent research by me into my records revealed that the debt alleged by the Fourth Accused did not in fact exist and that;

12.2.1. That the alleged Income Tax PAYG liability that was the subject of the proceedings was calculated against an alleged Income Tax Liability on the 7th June 2012 for the purposes of entry into the Legal Action account of AGFT, and

12.2.2. On the 12th June 2013 the Income Tax liability that was admitted by AGFT for the Income Tax year ending 30 June 2011 was cancelled by the Fourth Accused so that the alleged liability upon which the PAYG instalment was calculated against was in fact ZERO, and

12.2.3. The Proceedings were personally served on me on the 11th July 2013 at my home, and

12.2.4. That the Fourth Accused knew, as the Registrar of the Australian Business Register (“**the ABR**”), that I had resigned as a Trustee of AGFT on the 8th June 2013, and

12.2.5. That the Fourth Accused did not amend the ABR despite having notice to do so for the sole purposes of litigation in SCICIV-2013-02968 and misleading the Honourable Mukhtar AsJ as to the true state of affairs, and

12.2.6. On the 5th August 2013 the Deputy Commissioner of Taxation sent a letter to the Trustees of AGFT that they did not need to pay PAYG instalments, and

12.2.7. On the 4th of October 2013 cancelled the PAYG Instalment liability from the RBA of the Legal Action Account of AGFT that was the subject of SCICIV-2013-02968.

12.2.8. Relevantly the Fourth Accused and his servants alleged in the application to set aside the default judgment referred to in paragraph 4 above that I was NOT a properly appointed trustee of AGFT in contradiction to the acknowledgement of the Fourth Accused made to the Honourable Mukhtar AsJ as to my proper appointment as a Trustee of AGFT

### 12.3. Perjury

12.3.1. Between the 28th September 2013 and today’s date Alyx Sudall for the Deputy Commissioner of Taxation swore 5 affidavits and filed them in SCICIV-2013-02968

for the sole Improper purpose of misleading the Honourable Mukhtar AJ into making the relevant Summary Judgment that is the subject of the Application for an Extension of time to file and serve a Notice of Appeal in respect to that Judgment that is listed for hearing on the 25th May 2015.

12.3.2. In swearing the affidavits referred to above Miss Sudall committed Perjury which the Fourth Accused is personally vicariously liable for.

**12.4. The Conduct and Decisions of the Fourth Accused has at all times in the management of SCI -20143-02968 been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Fourth Accused;**

12.4.1. Knowingly and capriciously frustrated the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused

**12.5. Particulars**

12.5.1. The conduct and decisions of the Fourth Accused referred to at paragraphs 12.1 - 12.4 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

12.5.2. *Repeats paras 4.5.2 to 4.5.6*

**13. Manipulations of the ABR by the Fourth Accused and Abuse of Process**

13.1. SCI-2013-02968 was commenced by the Fourth Accused against me in my alleged capacities as;

13.1.1. Trustee of AGFT, and

13.1.2. Trustee of OVPET 2.

13.2. The Honourable Mukhtar AJ did not make the order for summary judgment sought by the Fourth Accused against me in my alleged capacity as Trustee of OVPET 2, and has

instead ordered that the matter is listed for trial with Directions on the 14th October 2014 and was subsequently listed for the 25th May 2015 before the Honourable Zammit AsJ.

13.3. The evidence filed and served by me shows that it is common conduct of the Fourth Accused where Trusts are involved in the exercise of the Fourth Accused powers under the TAA and the ABN Act to manipulate the ABR in order to create Prima Facie Evidence and allege that a person is a Trustee of a Trust in circumstances where the Fourth Accused are aware of evidence that does not support the case of the Fourth Accused exists.

13.4. The Fourth Accused manipulate the ABR for the sole purpose of making a person the target of litigation in enforcement proceedings.

13.5. Evidence sworn into the aforementioned proceeding shows that the Fourth Accused, falsely and capriciously;

13.6. **OVPET**

13.6.1. Failed to enter my Name into the ABR as a Trustee of OVPET with effect from the 15th March 2014 for the improper purpose of preventing me from agitating my standing in AAT-2012-5901 and AAT-2014-1300 as the sole remaining Trustee in circumstances where the Fourth Accused were in possession of the Deed of my Appointment on that date which evidenced that I was a Trustee of OVPET, and

13.6.2. On the 12th December 2013 cancelled the Auskeys used by me and my staff for the sole purpose of preventing me from making the proper corrections to the ABR of OVPET,

13.6.3. Made submissions to the Tribunal in respect to the aforementioned proceedings against my standing in circumstances where the Fourth Accused knew that the evidence was the reverse of their submissions, and

13.6.4. Misled the Tribunal when I am an unrepresented party and the Fourth Accused have an obligation to assist the Tribunal,

13.6.5. With the Result that the Tribunal was misled and the decision of the Senior member is now the subject of an application to the Federal Court given action number VID 557 of 2014.

### 13.7. OVPET 2

13.7.1. Entered my Name into the ABR as a Trustee of OVPET 2 for the improper purpose of taking enforcement proceedings against me in circumstances where the Fourth Accused were in possession of the Deed of Settlement dated 23rd November 2012 which evidenced that I was not a Trustee of OVPET 2, and

13.7.2. Have failed to remove the reference on the ABR to me as a Trustee of OVPET 2 for the improper purpose of taking enforcement proceedings against me despite having received at least three notices issued in accordance with the ABN act to make that removal, and

13.7.3. On the 12th December 2013 cancelled the Auskeys used by me and my staff for the sole purpose of preventing me from making the proper corrections to the ABR of OVPET 2,

### 13.8. The Trustee of AGFT

13.8.1. Have failed to remove the reference on the ABR for AGFT to me as a Trustee of AGFT for the improper purpose of taking enforcement proceedings against me despite having received at least three notices issued in accordance with the ABN act to make that removal, and

13.8.2. On the 12th December 2013 cancelled the Auskeys used by me and my staff for the sole purpose of preventing me from making the proper corrections to the ABR of AGFT, and

13.8.3. Issued Garnishee Notices on my personal bank accounts in circumstances where the Fourth Accused knew that the issuing of those notices was an abuse of Process for an improper purpose being to destabilise me as the controlling mind of the Estates listed above.

### 13.9. The Trustee of the Shed 5 (South Wharf) Trust

13.9.1. Entered the name of Stan Sarris into the ABR as a Trustee of the Shed 5 (South Wharf) Trust for the purposes of taking enforcement proceedings against him in circumstances where the Fourth Accused were in possession of the Deed of Settlement dated 14th May 2012 which evidenced that he was not a Trustee of the Shed 5 (South Wharf) Trust, and

13.9.2. Issued Garnishee Notices of the Bank Accounts of Stan Sarris in circumstances where the Fourth Accused knew that the issuing of those notices was an abuse of Process for an improper purpose being to destabilise the purchaser of the Urban Winery License for OenoViva Business Systems to be located at Sheds 3,4 & 5, 35 Dukes Wharf, South Wharf.

### **13.10. The Trustee of the OenoViva (Victoria) Trust**

13.10.1. Entered the name of Stan Sarris into the ABR as a Trustee of the OenoViva (Victoria) Trust for the improper purpose of taking enforcement proceedings against him in circumstances where the Fourth Accused were in possession of the Deed of Settlement dated 28th March 203 which evidenced that he was not a Trustee of the Shed 5 (South Wharf) Trust, and

13.10.2. A Completion of Audit of the Trustee of the OenoViva (Victoria) Trust dated 13th September 2013 authored by the Eighth Respondent sets out;

4. According to ATO systems, Mr Stanley Sarris was trustee between 28 February 2013 to 12 July 2013.
5. According to a Trust deed you provided on the 28 March 2013 your current corporate trustee is The Hunger Food & Wine Company Pty Ltd.
6. According to ATO systems, Mr Stanley Sarris is the director of your current corporate trustee that being The Hunger Food & Wine Company Pty Ltd.

13.10.3. Issued Garnishee Notices of the Bank Accounts of Stan Sarris in circumstances where the Fourth Accused knew that the issuing of those notices was an abuse of Process for an improper purpose being to destabilise the purchaser of the Victorian Master Sub Regional License for OenoViva Business Systems

### **13.11. The Trustee of the Fairweather Trust**

13.11.1. Entered the name of John Sitkiewicz into the ABR as a Trustee of the Fairweather Trust for the improper purpose of taking enforcement proceedings against me in circumstances where the Fourth Accused were in possession of the Deed of Settlement of the Fairweather Trust dated 24th June 2008 and Deed of Retirement

and Appointment of New Trustee dated 10th January 2005 which evidenced that John Sitkiewicz was not a Trustee of the Fairweather Trust, and

13.11.2. Issued Garnishee Notices of the Bank Accounts of John Sitkiewicz in circumstances where the Fourth Accused knew that the issuing of those notices was an abuse of Process for an improper purpose being to destabilise the sole director of Blue Diamond Pty Ltd in its capacity as Trustee of the Fairweather Trust as the purchaser of the Queensland Master Sub Regional License for OenoViva Business Systems

**13.12. The Conduct and Decisions of the Fourth Accused in the management of the ABR in respect to entities related to me has at all times been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Fourth Accused;**

13.12.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

13.12.1.1. render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused, NAB and Shu Mu Tseng, and

13.12.1.2. because the Trustees are a source of Revenue for the Fourth Accused

13.12.2. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused

**13.13. Particulars**

13.13.1. The conduct and decisions of the Fourth Accused in manipulating the Australian Business Register and making is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law, section 75(v) of the Constitution and the provisions of s39B of the Judiciary Act

13.13.2. *Repeats paras 4.5.2 to 4.5.6 and adds that such conduct is also a breach of s24(2) of the ABN Act*

#### 14. OenoViva Business Systems & OenoViva Hand Crafting

- 14.1. I have been involved in multiple aspects of the wine industry in Australia and Internationally from the age of 16 when I commenced working on the bottling line of Ryecroft wines in McLaren Vale in 1973.
- 14.2. I am now 58 years of age and have been committed to the Wine Industry in all of its aspects for now 41 years.
- 14.3. Between then and now I have been responsible for the development of at least 21 wine brands and building of around 3,000 acres of vineyards while working in the traditional channel to market and sell wines made by me or my related entities.
- 14.4. When I launched my own brand in 1981 there were 294 wineries in the territory of Australia & New Zealand, today there are over 3,000 which proliferation of supply has created a downwards pressure on prices to the producer.
- 14.5. During the last 40 years the available shelf space and pattern of purchasing of wholesale wine has changed with the consolidation of ownership of the retail channel to market now resting mainly in the hands of the multiples, including Coles and Woolworths.
- 14.6. Concurrently, those Multiples are seeking to increase the percentage of their “**Own Brands**” sold in those channels to enhance margins thus further restricting the available shelf space available to traditional suppliers.
- 14.7. By way of example Woolworths Liquor is Australia’s largest liquor business in a market with annual revenues of \$21,000,000,000 with Woolworth’s share of the Market being 35% (AUD\$7,500,000,00 of all retail sales of liquor in Australia (wine, beer, spirits and other) or 45% of all wine sold; of which 35% of sales are own Woolworth’s own brands.
- 14.8. As a consequence of the proliferation of brands, increase in supply of Own Brands and the change in control of the Channel to market the downward pressure on retail prices flows back to the producer consequently there is limited profitability across all sectors of the wine industry (which often generally translates to a loss)

- 14.9. The industry is one that seeks owners of wine related business to invest “patient capital”.
- 14.10. Between 2008 and today’s date my sole aim has been to develop “**the Know-How**” and “**Intellectual Property**” ((together the “**IP**”) of OenoViva Business Systems (“**OBS**”).
- 14.11. OBS is the IP behind my vision of a new complete retail channel to market for the distribution of wine through a franchise system that has evolved from my 41 years’ experience in the Australian and global wine industry.
- 14.12. Prior to the 7th February 2014, ACN 133 861 579 Pty Ltd (in Liquidation) (Controller Appointed) was known as OenoViva (Australia & New Zealand) Pty Ltd (“**the Company**”).
- 14.13. From the date of its incorporation, the company has also been involved with me in the development of OBS and at various times has acted as a trustee of;
- 14.13.1. AGFT
- 14.13.2. AGFT 3
- 14.13.3. AGFT 4
- 14.13.4. The OenoViva (Australia & New Zealand ) Trust (“**OVANZ**”)
- 14.13.5. The OenoViva (Australia & New Zealand) Plant & Equipment Trust (“**OVPET**”)
- 14.13.6. The OenoViva (Australia & New Zealand) Plant & Equipment Trust No 2. (“**OVPET 2**”)
- 14.14. On the 22<sup>nd</sup> January 2014, a liquidator was appointed to the company pursuant to an application made in the Federal Court of Australia; South Australia Registry and given action No SAD 368 of 2013 that was commenced by the Fourth Accused for an improper purpose.

14.15. From the date of its incorporation Sanctuary has been involved with me in the development of the interests of Trusts related to me as a corporate Trustee and also in the importation and sale of Solar Panels for a brief period in 2011.

14.16. Also on the 22<sup>nd</sup> January 2014, a liquidator was appointed to Sanctuary pursuant to an application made in the Federal Court of Australia; South Australia Registry and given action No SAD 370 of 2013 that was commenced by the Fourth Accused for an improper purpose.

## 15. Perjury

15.1. A servant of the Fourth Accused swore an affidavit in support of each of SAD 368 of 2013 and SAD 370 of 2013 setting out that the Company and Sanctuary had been served by normal post to the Registered Office of the Company.

15.2. No such service was ever received by the Company OR Sanctuary at the registered office of those entities.

15.3. The servant of the Fourth Accused did not post the letter set out in the affidavit sworn and filed in SAD 368 of 2013 and SAD 370 of 2013 on behalf of the Deputy Commissioner of Taxation for the Improper Purpose of ensuring the appointment of Liquidators was not contested by Sanctuary or the Company in order to frustrate.

15.4. The affidavit material attesting to the posting of the aforementioned letters was perjury of the relevant ATO officer swearing the affidavit for which the Commissioner is vicariously liable.

15.5. The Judgments in SAD 368 and SAD 370 of 2013 appointing a Liquidator was given *ex parte* as a consequence of the Registered Office and the Sole Director not being aware of either of the aforementioned proceedings.

15.6. Subsequently on the 23<sup>rd</sup> January 2014 I was appointed as managing controller to the company and on the 9<sup>th</sup> May 2014 as managing controller to Sanctuary.

15.7. The Decisions and Conduct of the Fourth Accused over the last 10 years is driven by the Fourth Accused;

15.7.1. Desire to frustrate and prevent the development of OenoViva Business Systems

- 15.7.2. view that OenoViva Business Systems is a collateral attack on the GST System by me
  - 15.7.3. unwillingness to consider OenoViva Business Systems as a proper, well researched and well developed plan to establish an alternate retail channel to market for the distribution of Wine and associated products on a Global Scale,
  - 15.7.4. desire to be wilfully blind to the steps in establishing a business extending over 7 years, and
  - 15.7.5. “*cover up*” and avoid “*embarrassment*” in respect to the Fourth Accused conduct related to my Bankruptcy in 2004, in respect to a debt that did not in fact exist, when a judgment was given in default in DCCIV-20013-1666 and the subsequent refusal of the Plaintiff to consent to orders setting aside the Default Judgment.
- 15.8. The Fourth Accused has misused and continues to misuse his statutory powers to create debts in my hands and in the hands of entities related to me in respect to alleged administration of the GST ACT, the ABN Act, the ITAA, the TAA manipulate the Australian Business Register for an “*Improper Purpose*” as an “*Abuse of Process*” and which is a situation of “*Double Jeopardy*”

#### 15.9. **Particulars**

- 15.9.1. The conduct and decisions of the Fourth Accused in failing to post the letters containing the originating process of SAD 368 of 2013 and SAD 370 of 2013 and swearing affidavit material and acting as described in para 15.1 – 15.9 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

- 15.9.2. *Repeats paras 4.5.2 to 4.5.6*

#### 16. **Unaccounted for payments made to the ATO by entities related to the Prosecutor**

- 16.1. As the authorised officer of AGFT 3 I instructed the group accountant to lodge an amending activity statement for the March Quarter 2009 which relevantly recognised a GST liability of \$112,500 to the ATO, under protest.

- 16.2. That liability matched the drawing of a Bank Cheque in favour of the ATO in the amount of \$112,500 by the South Australia Registry of the Federal Court drawn on the Litigant's Fund held in favour of the Litigant's in SAD 5 of 2006 on the 3rd April 2009.
- 16.3. I have reviewed the RBA of AGFT 3 and observe that the amount of \$112,500 is not accounted for by the Fourth Accused.
- 16.4. Relevantly, the affidavit of the Trustee filed in VID 304 of 2014 dated 1st September 2014 sets out at exhibit PIM 17 of that affidavit a document described by the Trustee to be a copy of a the Lipman Karas Trust account which suggests that the lawyers for the Trustee drew a number of cheques totalling \$45,000 made payable to the ATO in the amount of \$7,500 each on the following dates;
- 16.4.1. 9th June 2009
- 16.4.2. 17th July 2009
- 16.4.3. 5th November 2009
- 16.4.4. 10th February 2009
- 16.4.5. 8th May 2009
- 16.4.6. 19th July 2009
- 16.5. A review of the MYOB accounts exhibited by the Trustee at exhibit PIM 5 reveals that those payments were not accounted for in my Estate.
- 16.6. Payments made to the ATO by entities related to me have not been credited to any RBA of any entity related to me in the total of \$239,360.55 as follows;
- 16.6.1. \$45,000 in cheques issued to the ATO from the Trust account of Lipman Karas referred to at para 16.4, and
- 16.6.2. \$112,500 bank cheque issued by the SA Registry of the Federal Court Payable to the ATO, and
- 16.6.3. \$81,860.55 on the 22nd September 2004

**16.7. The Conduct and Decisions of the Fourth Accused in the management of receipts paid by entities related to me has at all times been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Fourth Accused;**

16.7.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

16.7.1.1. render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused, NAB and Shu Mu Tseng, and

16.7.1.2. because the Trustees are a source of Revenue for the Fourth Accused

16.7.2. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused,

16.7.3. Knowingly and capriciously overstated tax liabilities of entities related to me in order to render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused.

**16.8. Particulars**

16.8.1. The conduct and decisions of the Fourth Accused in failing to properly account for payments made to the Fourth Accused by me or entities related to me as described at paragraphs 16.1 – 16.7 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

16.8.2. *Repeats paras 4.5.2 to 4.5.6*

**17. Freedom of Information**

17.1. On the 11th May 2012 I issued an invitation to the ATO to attend a whole of ATO briefing on the 21st May 2012 at the OenoViva Dining Wine Room in respect to

OenoViva Business Systems which IP was developed by me in concert with professional taxation advice from Deloitte Private (South Australia) over the preceding 4 years.

- 17.2. On the 18th May 2012 the ATO declined my invitation to attend the whole of ATO briefing planned by me and my staffs.
- 17.3. On the 26th June 2012 the Commissioner exercised his substantial Powers to gather information under the provisions of the TAA and placed in excess of 120 officers in the field at 5 different locations in South Australia and Victoria including my home where 20 officers attended and searched the home, took copies of all relevant documents as well as copies of Portable Hard Discs, Computers, Telephones and other electronic devices that were on the premises.
- 17.4. On the 28th September 2012 I was provided with the First Tranche of a release of information under the provisions of *the Freedom of Information Act* 1981 (Cth) (“**FOI Act**”) in respect to my request for documents relating to my Bankruptcy and the Tax Affairs of AGFT.
- 17.5. The First Tranche withheld relevant information that should have been provided at that time and which was subsequently provided on the 17th June and the 11th July 2014
- 17.6. On the 12th October 2012 the Second Tranche of FOI was provided in respect to the Taxation affairs of the OenoViva Plant and Equipment Trust No 2.
- 17.7. Subsequently, on the 20th October 2012 I lodged an application for compensation with the Fourth Accused in respect to the conduct and decisions of the Fourth Accused over the period from the 11th February 2004 until that date.
- 17.8. On the 24th October 2012 the Fourth Accused wrote to me requesting that I lodge outstanding income tax returns.
- 17.9. On the 8th January 2013 I was provided with an FOI release that revealed the existence of a strategic task force known as “Operation Winebar”.
- 17.10. On the 21st January 2013 I wrote to the Fourth Accused and advised that I had been unable to obtain taxation advice due to my impecuniosity and explained the circumstances of failing to lodge income tax returns from 2008 until that date.

17.11. Subsequently on the 2nd February 2013 I lodged non-lodgement advices for each of the relevant income tax periods as my earnings were below the Taxable thresh hold for the reasons set out in my communication dated 23rd January 2013.

17.12. Following my complaints to the ATO regarding the conduct of the Fourth Accused the Third Respondent communicated with me by letter on the 24th May 2013 having discussed my tax affairs with the Second Respondent.

17.13. Subsequently on the 29th July 2013 I held a telephone conference with the Third Respondent to discuss the conduct of the Fourth Accused at that time in which regard I raised issues of malfeasance in public office/conscious maladministration amongst other things

17.14. On the 1st August 2013 I received a Compensation Decision from the Fourteenth Respondent that rejected my claim for compensation.

17.15. At all relevant times the Tenth Respondent has been the team leader of an Audit Team (**“the Audit Team”**) based in the Gold Coast offices of the Fourth Accused including;

17.15.1. The Eighth Respondent

17.15.2. The Ninth Respondent

17.15.3. The Tenth Respondent

17.15.4. The Eleventh Respondent

17.16. Between the 2nd May 2012 and today’s date the Audit Team has made at least 300 taxation decisions and other decisions that I am aware of that have been without exception negative.

**17.17. The Conduct and Decisions of the Fourth Accused in the making of those taxation and other decisions in respect to entities related to me has at all times been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Fourth Accused;**

17.17.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

17.17.1.1. render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused, NAB and Shu Mu Tseng, and

- 17.17.1.2. because the Trustees are a source of Revenue for the Fourth Accused
- 17.17.2. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused,
- 17.17.3. Knowingly and capriciously overstated tax liabilities of entities related to me in order to render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused.
- 17.17.4. Applied penalties and made Notices of assessment that the Fourth Accused know are not correct.
- 17.18. Between the date of my first Application under the provisions of the FOI Act and todays date I have made over 85 applications for information related to me and entities related to me.
- 17.19. Allegedly, on 5th the September 2014 the Fourth Accused made application to the Office of the Australian Information Commissioner (“**OAIC**”) for a declaration under s89K of the FOI Act.
- 17.20. On the 16th December 2014 the OAIC wrote to me and advised me of the application made on the 5th September 2014. That communique also advised of an update by the Fourth Accused to the application under s59K of the FOI Act lodged on the 15th December 2014 with the OAIC and sought my response.
- 17.21. Since making the application for the s89K declaration the Fourth Accused have sought to delay and frustrate applications made subsequent to that date in particular with respect to the Tax Affairs of the Trustee of the Andrew Garrett Family Trust No 3

#### 17.22. **Particulars**

- 17.22.1. The conduct and decisions of the Fourth Accused in manipulating the provision of FOI, undertaking multiple audits, completing audits and applying penalties audits in respect to me and entities related to me as described at paragraphs 17.1 – 17.21 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act, and

17.22.2. *Repeats paras 4.5.2 to 4.5.*

#### 18. Income Tax Liability & SCI -2014-03380

- 18.1. On the 5th December 2013 the Fourth Accused entered a liability for income tax on the Running Balance Account for my personal Income Tax.
- 18.2. Subsequently, on the 6th December 2013 the Fourth Accused issued a Completion of Audit Notice authored by the Ninth Respondent.
- 18.3. On the 12th and 13th December 2013 the Fourth Accused issued a number of notices of Assessment, Assessment of penalties as described in the originating process and levied general interest charge.
- 18.4. **The Conduct and Decisions of the Fourth Accused in the making of the Completion of Audit Decision and issuing the relevant Notices of Assessment and Notices of Penalty Assessments in respect to my income tax account was harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Fourth Accused;**
  - 18.4.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;
    - 18.4.1.1. render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused, NAB and Shu Mu Tseng, and
    - 18.4.1.2. because the Trustees are a source of Revenue for the Fourth Accused, and
    - 18.4.1.3. Frustrate the redevelopment of my income
  - 18.4.2. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused,
  - 18.4.3. Knowingly and capriciously overstated tax liabilities of entities related to me in order to render me impecunious in order to prevent me from ventilating my claims against the Fourth Accused and other parties.

18.4.4. Applied penalties and made Notices of assessment that are an abuse of process.

## 18.5. Particulars

18.5.1. The conduct and decisions of the Fourth Accused in acting as described at paragraphs 18.1 – 18.4 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

18.5.2. *Repeats paras 4.5.2 to 4.5.6*

## 19. Operation Winebar

### 19.1. Deloitte Private (South Australia) (“Deloitte”)

19.1.1. Prior to June 2011 Deloitte was known as MHM Accountants and Advisors (“MHM”).

19.1.2. Sometime after June 2011 MHM was acquired by Deloitte.

19.1.3. Between 2008 and today’s date I have been working with Graeme Hodge of Deloitte in the development of the Business Plans and Financial Models of OBS

19.1.4. At all times in the development of OBS I have been properly advised from a tax and accounting perspective by a top tier accounting firm.

19.1.5. Sometime in February/March 2012 Deloitte advised that the sale of Rights had become “Ordinary Income” rather than “Statutory Income” for the purposes of calculating the Threshold for conversion from “Cash Based GST Reporting” to “Accruals Based GST Reporting”.

19.1.6. As a consequence of this change in reporting entities related to me needed to recognise the relevant GST liability as being due and payable to the Commissioner on the 25th Day after the closure of the Accounting Period.

### 19.2. CK Consulting

- 19.2.1. From April 2009 I also obtained advice from a joint venture consulting firm, Crescendo/Kopp consulting, (**"CK Consulting"**) represented by Mathias Kopp.
- 19.2.2. Crescendo has expertise in Fast Moving Consumable Goods and has previously acted as a Consultant to the Fourth Accused.
- 19.2.3. Kopp comes from a merchant banking background with Deutsche Bank in addition to his consulting background and has conducted extensive research into OBS in the writing of the Business Methodology (annexure 8.1 of the Business Plan)
- 19.2.4. At all times I have been properly advised by person with appropriate experience in developing the Business Methodology and Business Plan of OBS
- 19.2.5. On the 20th January 2012 OVANZ sold the exclusive Consulting Rights for the territory of Australia & New Zealand to Daleford Downs Pty Ltd .
- 19.2.6. The Fourth Accused did not pay the relevant GST Credit to Daleford Downs Pty Ltd

### 19.3. **Hambros and Cahill Lawyers**

- 19.3.1. In the second week of October 2011 AGFT 4 sold its Litigation Management Services Rights to HC Legals Pty Ltd as Trustee of the HC Legal (Services) Unit Trust. (**"the First Legal Services Rights Sale Agreement"**)
- 19.3.2. **The Choses in action to be managed included the Choses in action against the Trustees, and the Fourth Accused.**
- 19.3.3. On or about the 31st December 2011 Hambros advised that there had been a mistake in the ABN on the First Rights Sale Agreement and requested AGFT 4 to execute a new agreement with HC Legal Pty Ltd (**"HCL"**) . (**"the Second Rights Sale Agreement"**)
- 19.3.4. There is no legal entity known as HC Legals Pty Ltd.

- 19.3.5. The Trustee of the HC Legal (Services) Unit Trust is HC Legal (Services ) Pty Ltd ("**HCLS**")
- 19.3.6. On the 23rd December 2011 HCLS was placed in Liquidation by the Sole Directors Peter Hambros ("**Hambros**") and Francis Cahill ("**Cahill**")
- 19.3.7. Hambros and Cahill misled me in the execution of the Second Rights Sale Agreement; I did not know that HCL and HCLS were different Legal entities until sometime in 2013.
- 19.3.8. Between the 11th December 2011 and the 6th April 2012 the Company and Sanctuary in their capacities as Trustees of AGFT 4 paid a total of \$400,000 to be held in Trust on account of works to be undertaken by HCL and its Directors. ("**the Part A Trust Moneys**")
- 19.3.9. No work was undertaken by HCL at any time on behalf of AGFT 4 and its related entities on a chargeable basis because;
  - 19.3.9.1. Hambros and Cahill advised me that their Bank Accounts had been frozen and garnished by the Fourth Accused and that the money paid into Trust was in the hands of the Fourth Accused, and
  - 19.3.9.2. They would forego their fees on minimal essential works, until issues between HCL and the Fourth Accused had been resolved.
- 19.3.10. On the 23rd February 2014 the Fourth Accused paid a GST Credit to the account of HCL.
- 19.3.11. At all relevant times during the periods leading to the execution of the First and Second Legal Services Rights Sale Agreements I and entities related to me were advised by;
  - 19.3.11.1. Deloitte Private SA in respect to accounting advice, and
  - 19.3.11.2. Peter Hambros and Francis Cahill in respect to Legal Advice.

19.3.12. Between the 31st January 2012 and the 7th November 2012

Hambros and Cahill advised me that they could not properly act in respect to the Management Rights Purchase Agreement due to the actions of the Fourth Accused in;

19.3.12.1. Freezing all accounts of HCL and accounts related to the Directors of HCL, and

19.3.12.2. Garnishing all accounts related to HCL

19.3.13. On the 22nd February 2012 Hambros and Cahill executed alleged non-recourse loan agreements between themselves and HCL and withdrew approximately \$4,900,000 from the accounts of HCL and HCLS between 13th December 2011 and 13th March 2012.

19.3.14. As a consequence of the advice received from Deloitte between January 2012 and February 2012 in respect to the legal obligation to convert from Cash Based Reporting to Accruals Based Reporting, I instructed Hambros and Cahill to prepare;

19.3.14.1. a supplementary Deed to pay an initial payment to AGFT 4 in the amount of the GST liability in the hands of AGFT 4 being \$4,500,000 which was to be funded by the GST Credit when it was received by HCL.

19.3.14.2. a Performance Security to be registered over HCL to compel the compliance of HCL and its Directors with the terms of the Second Rights Sale Agreement as amended.

19.3.15. I instructed Hambros and Cahill to prepare Rights Sale Agreements and Performance Securities in respect to the following Rights Sales all of which were to incorporate the obligation on the purchaser to pay an initial payment of 10% to the Vendor and the execution of a Performance Security;

19.3.15.1. Exclusive Supplier of Vehicles and Forklifts to Edwards Motor Company by the Company, and

19.3.15.2. Exclusive Supplier of Management and Consulting Services to Daleford Downs Pty Ltd as Trustee of the Kopp Family Trust by the Company, and

19.3.15.3. Exclusive Supplier of Technology and Point of Sale Systems to PCS Global Pty Ltd by the Company, and

19.3.15.4. Exclusive Supplier of Franchising Services to CLP Masters Pty Ltd trading as Growit.net.au by the Company, and

19.3.15.5. Exclusive supplier of Plant and Equipment to ABT 2 by the Trustee of the Holy Grail Property Trust No 4 and the Company for the Territories of;

19.3.15.5.1. Vietnam (“**The Vietnam Rights Sale**”), and

19.3.15.5.2. UK & Ireland (“**The UK/Ireland Rights Sale**”), and

19.3.15.5.3. Hungary (“**The Hungary Rights Sale**”), and

19.3.15.5.4. Nevada (“**The Nevada Rights Sale**”), and

19.3.15.5.5. California (“**The California Rights Sale**”).

19.3.16. Between February 2012 and July 2012 Hambros and Cahill did not act as instructed and instead supplied me with the templates of the Rights Sale Agreements which they offered to review before execution, and

19.3.16.1. It was always the intention of the entities related to me that the related party vendor of rights would receive from the purchaser of rights an amount of 10% of the Purchase Price upon receipt of the relevant GST Credit payable by the Fourth Accused in respect to the activity statement lodged by each rights purchaser of the rights set out at para 19.3.15, and

19.3.16.2. That the obligation to pay those moneys to the related party vendor being AGFT, AGFT 4, HGPT 4 and/or OVANZ was to

be set out in a supplementary deed or alternatively in the final exclusive rights purchase deed to be prepared by Hambros and Cahill, and

19.3.16.3. That the performance of the Rights Purchasers was to be secured by a Performance Security to compel performance of the purchaser under the Rights Purchase Agreement, and

19.3.16.4. That upon receipt of the payment of 10% initial payment from the purchasers the moneys received would be applied to meet the Net GST Liability of the related party vendor to the Fourth Accused in respect to the Rights Sales.

19.3.17. From the date of receipt of the GST credit by the Purchaser of the relevant rights from the Fourth Accused the moneys paid by the Fourth Accused to the account of HCL took on the characteristic of Trust Moneys, as a consequence of the obligation to pay AGFT 4 the same amount as AGFT 4 held an obligation to pay GST on the second Rights Sale to the Fourth Accused.

19.3.18. From February 2012 it became apparent the Fourth Accused was rejecting the various rights sales in the hands of the Purchaser.

19.3.19. The Money paid by the Fourth Accused to HCL in respect to the GST Credit of \$4,500,000 was Trust Money belonging to AGFT 4 pursuant to the obligation to pay that amount to the Fourth Accused set out in the RBA of AGFT 4 (**“the Part B Trust Moneys”**)

19.3.20. The actions of Hambros and Cahill in failing to pay the Part B Trust Moneys have caused bias and prejudice against me in all of my capacities in the minds of the Fourth Accused that has driven the conduct and decisions of the Fourth Accused since at least January 2012.

19.3.21. On the 7th November 2012 HCL repudiated the Second Rights Sale Agreement which repudiation was accepted by me on the 8th November 2012 following receipt of independent Legal Advice

19.3.22. In Submissions made in VID 515 of 2012 the Fourth Accused apparently admits that there was no impropriety in respect to the Rights Sale and took action in any event to revise the relevant Activity Statement and pursue recoupment of the GST Credit paid to HCL rather than from AGFT 4 in whose hands the liability existed.

19.3.23. Subsequently in MLG 1631 of 2014 the Honourable Justice Burchardt made findings in his reasons delivered on the 19th January 2015 that the Second Rights Sale was a Sham.

19.3.24. Hambros and Cahill misled me as to;

19.3.24.1. Their own conduct, and

19.3.24.2. The actions of the Fourth Accused and his personnel, and

19.3.24.3. Their dealings with Part A Trust Moneys being a sum of \$310,000 paid to accounts under the control of Hambros and Cahill between the 11th December 2011 and the 14th February 2012 by the Company and Sanctuary in their capacities as Trustees of AGFT 4, (**“the Part A Trust Moneys”**)

19.3.24.4. Their Dealings with the Part B Trust Moneys in the amount of \$4,500,000 paid to the account of HCL as GST credit on the 23rd February 2012 (**“the Part B Trust Moneys”**)

#### 19.4. **The Legal Services Commissioner (“the LSC”)**

19.4.1. Following the repudiation of the Second Rights Sale Agreement by HCL the sole Director of the Company and Sanctuary lodged a complaint dated 19th November 2012 with the LSC regarding the dealings with the Part A Trust Moneys and invoices issued on the 7th November 2012 but dated the 26th January and 1st February 2012 (**“the First Complaint”**).

19.4.2. On the 31st March 2014 the Delegate of the LSC made a Decision in favour of HCL and against the First Complaint which decision is the

subject for Judicial Review pursuant to Order 56 of the Victorian Supreme Court Rules given action VICSC-2014-02728.

- 19.4.3. On the 19th May 2014 I lodged a second complaint with the LSC in respect to the conduct of Hambros and Cahill in respect to their dealings with the Part A and Part B Trust Moneys and breaches of the Professional Conduct and Practice Rules 2005 (Vic) (“**the Second Complaint**”)

#### 19.5. **ABT 2**

- 19.5.1. Between July 2010 and today’s date I have been working with Gerald Asbroek of Wineries by Design in the development and innovation of OenoViva Business Systems; the Development, Costing and Delivery of Urban Wineries and a unique/ innovative point of sale system known as Oenotecas.
- 19.5.2. On the 27th September 2011, Sanctuary as Trustee of HGPT 4 sold the preferred supplier rights for Winery Design and Plant & Equipment Supply for the territory of Australia & New Zealand pursuant to a Heads of Agreement executed on that day to a related entity of Wineries by Design being AES as Trustee of ABT 2. (“**the ANZ Rights Sale**”)
- 19.5.3. Subsequently, on the 4th May 2012 a Vendor Finance Agreement, Rights Purchase Deed and Performance Security for the territory of Australia & New Zealand were executed by HGPT 4 and ABT 2
- 19.5.4. The first sets of OenoTecas were installed at 79-81 Fitzroy Street St Kilda pursuant to a Plant and Equipment Lease executed between Holy Grail Hospitality (St Kilda) Pty Ltd and OVPET.
- 19.5.5. On the 31st March 2012 OVANZ by way of binding Heads of Agreement sold to ABT 2 the exclusive supplier rights for the Territories of;
- 19.5.5.1. Vietnam (“**The Vietnam Rights Sale**”)

19.5.5.2. UK & Ireland (“**The UK/Ireland Rights Sale**”)

19.5.5.3. Hungary (“**The Hungary Rights Sale**”)

19.5.5.4. Nevada (“**The Nevada Rights Sale**”)

19.5.5.5. California (“**The California Rights Sale**”)

19.5.6. Subsequently also on the 4th May 2014 OVANZ and ABT 2 executed the Rights Purchase Agreements, Vendor Finance Agreement and Performance Security in respect to;

19.5.6.1. The Vietnam Rights Sale

19.5.6.2. The UK/Ireland Rights Sale

19.5.6.3. The Hungary Rights Sale

19.5.6.4. The Nevada Rights Sale

19.5.6.5. The California Rights Sale

## 19.6. **OVPET**

19.6.1. OVPET was settled by way of Deed of Settlement dated 30th March 2012 as a Hybrid Unit Trust for the purposes of placing an order for 300 sets of the Generation 1 sets of Oenotecas being the patented Point of Sale System relating to OBS.

19.6.2. The Company was the Trustee of OVPET at settlement of the Trust Deed.

19.6.3. On the 15th March 2013 I was appointed as a Trustee of OVPET.

19.6.4. On the 8th May 2012 the Commissioner delivered to the Company a Notice of Completion of Audit following a 45 minute audit undertaken by the personnel of the Commissioner on the 4th May 2014 being the date that a Notice of Audit was provided to the Company.