FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v iSignthis Limited (Penalty) [2025] FCA 917

File number(s):	VID 773 of 2020
Judgment of:	**MCEVOY J**
Date of judgment:	8 August 2025
Catchwords:	**CORPORATIONS** – disqualification orders and pecuniary penalties sought against director and company – where serious contraventions of ss 180, 674(2A) and 1309(1) and (12) of the *Corporations Act 2009* (Cth) by director – where serious contravention of s 674(2) of the Act by company – where contraventions involved misleading market and market operator – where contraventions had serious impact on market – where contraventions were deliberate and continuing – where there is an absence of contrition and cooperation – asserted mitigating factors including reliance on external legal advice are not exculpatory – nature and extent of contraventions, protection of the public, and deterrence justify disqualification and pecuniary penalties to be ordered in respect of director – nature and extent of the contraventions and deterrence justify pecuniary penalty to be ordered in respect of company
Legislation:	*Corporations Act 2001* (Cth) ss 180, 104H, 206C(1), 206E(1), 674(2), 674(2A), 1309, 1317E, 1317G *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth) Explanatory Memorandum, Corporate Law Reform Bill 1992 (Cth)
Cases cited:	*Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* (2017) 254 FCR 68 *Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union* (2020) 299 IR 231 *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450 *Australian Competition and Consumer Commission v Telstra Corporation Ltd* (2010) 188 FCR 238 *Australian Securities and Investments Commission v Adler* [2002] NSWSC 483

Australian Securities and Investments Commission v AGM Markets Pty Ltd (In Liq) (No 4) [2020] FCA 1499
Australian Securities and Investments Commission v Austal [2022] FCA 1231
Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited (No 3) [2020] FCA 1421
Australian Securities and Investments Commission v Australia and New Zealand Banking Group Ltd (No 3) [2023] FCA 1565
Australian Competition and Consumer Commission v Baxter Healthcare Pty Ltd [2005] FCA 860
Australian Securities and Investments Commission v Beekink [2007] FCAFC 7
Australian Securities and Investments Commission v Blue Star Helium Ltd (No 4) [2021] FCA 1578
Australian Competition and Consumer Commission v Dimmeys Stores Pty Ltd [2011] FCA 372
Australian Securities and Investments Commission v Donovan (1998) 28 ACSR 583
Australian Securities and Investments Commission v Forex Capital Trading Pty Ltd [2021] FCA 570
Australian Securities and Investments Commission v GetSwift Limited (Penalty Hearing) [2023] FCA 100
Australian Securities and Investments Commission v Healey (No 2) (2011) FCR 430
Australian Securities and Investments Commission v Helou (No 2) [2020] FCA 1650
Australian Securities and Investments Commission v Holista Colltech Ltd [2024] FCA 244
Australian Securities and Investments Commission v iSignthis Limited [2024] FCA 669
Australian Securities and Investments Commission v Lanterne Fund Services Pty Ltd [2024] FCA 353
Australian Securities and Investments Commission v Macquarie Bank Limited [2024] FCA 416
Australian Securities and Investments Commission v Mayfair Wealth Partners Pty Ltd [2021] FCA 1630
Australian Securities and Investments Commission v Mercer Financial Advice (Australia) Pty Ltd [2023] FCA 1453
Australian Securities and Investments Commission v Mitchell (No 3) [2020] FCA 1604
Australian Securities and Investments Commission v MLC Limited [2023] FCA 539
Australian Competition and Consumer Commission v Murray Goulburn Co-Operative Co Ltd [2018] FCA 1964
Australian Securities and Investments Commission v Noumi Ltd [2024] FCA 862
Australian Securities and Investments Commission v Rich [2003] NSWSC 186

	Australian Competition and Consumer Commission v Renegade Gas Pty Ltd (trading as Supagas NSW) [2014] FCA 1135 *Australian Securities and Investments Commission v Ryan* [2024] FCA 1267 *Australian Securities and Investments Commission v Select AFSL Pty Ltd (No 3)* [2023] FCA 723 *Australian Securities and Investments Commission v Sino Australia Oil and Gas Ltd (in liq)* [2016] FCA 1488 *Australian Securities and Investments Commission v Web3 Ventures Pty Ltd* [2024] FCA 578 *Australian Securities and Investments Commission v Westpac Banking Corporation* [2019] FCA 2147 *Australian Securities and Investments Commission v Westpac Banking Corporation (No 3)* [2018] FCA 1701 *Australian Securities and Investments Commission v Vocation Ltd (in liq) (No 2)* [2019] FCA 1783 *Blair v Curran* (1939) 62 CLR 464 *Commission for Corporate Affairs (WA) v Ekamper* (1987) 12 ACLR 519 *Construction, Forestry, Maritime, Mining and Energy Union v Fair Work Ombudsman* (2023) 322 IR 233 *Cruickshank v Australian Securities and Investments Commission* (2022) 292 FCR 627 *Impiombato v BHP Group Limited (No 5)* [2024] FCA 591 *Mayfair Wealth Partners Pty Ltd v Australian Securities and Investments Commission* (2022) 295 FCR 106 *Mornington Inn Pty Ltd v Jordan* (2008) 168 FCR 383 *Rich v Australian Securities and Investments Commission* (2004) 220 CLR 129 *United Voice v MDBR123 Pty Ltd (No 2)* [2015] FCA 76 *Vines v Australian Securities and Investments Commission* [2007] NSWCA 126 *Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission* (2021) 284 FCR 24
Division:	General Division
Registry:	Victoria
National Practice Area:	Commercial and Corporations
Sub-area:	Corporations and Corporate Insolvency
Number of paragraphs:	315
Date of hearing:	21-22 October 2024
Date of last submissions:	17 December 2024
Counsel for the Plaintiff:	M Borsky KC and R Kruse

Solicitor for the Plaintiff:	Ashurst Australia
Counsel for the Defendants:	P W Collinson KC and J S Mereine
Solicitor for the Defendants:	HWL Ebsworth Lawyers

ORDERS

VID 773 of 2020

BETWEEN:	**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION** Plaintiff
AND:	**ISIGNTHIS LIMITED** First Defendant
	NICKOLAS JOHN KARANTZIS Second Defendant

ORDER MADE BY: **MCEVOY J**

DATE OF ORDER: **8 AUGUST 2025**

THE COURT ORDERS THAT:

1. Mr Nickolas John Karantzis be disqualified from managing corporations for a period of six years pursuant to ss 206C(1) and 206E(1) of the *Corporations Act 2011* (Cth).
2. Mr Nickolas John Karantzis pay to the Commonwealth a pecuniary penalty of $1 million, within 30 days of the date of these orders, pursuant to s 1317G(1) of the Corporations Act in respect of his contraventions of ss 180(1), 674(2A) and 1309(2) and (12) of the Corporations Act identified in paragraphs 6 to 11 of the orders dated 26 July 2024.
3. Southern Cross Payments Ltd (formerly iSignthis Ltd) pay to the Commonwealth a pecuniary penalty of $10 million, within 30 days of the date of these orders, pursuant to s 1317G(1) of the Corporations Act in respect of the contraventions of s 674(2) of the Corporations Act identified in paragraphs 2 to 5 of the orders dated 26 July 2024.
4. In the absence of agreement as to the question of the costs of and incidental to the proceeding, on or before **4:00pm** on **5 September 2025** the parties are to file and serve written submissions, not exceeding six pages on the question of costs (to be prepared with 1.5 line spacing and 12-point font).
5. If submissions are filed pursuant to paragraph 4 of these orders, on or before **4:00pm** on **19 September 2025** the parties may file any responsive submissions to those filed by the other party on the question of costs, not exceeding three pages (to be prepared with 1.5 line spacing and 12-point font).

6. Any question of the costs of this proceeding will be determined on the papers pursuant to s 20A of the *Federal Court of Australia Act 1976* (Cth).

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

MCEVOY J:

INTRODUCTION

1 On 21 June 2024 I delivered judgment on liability in this proceeding: *Australian Securities and Investments Commission v iSignthis Limited* [2024] FCA 669 (**Liability Judgment**). This judgment, which is concerned with questions of penalty, should be read together with the Liability Judgment. The abbreviations employed in the Liability Judgment are adopted here.

2 For the reasons outlined in the Liability Judgment, I determined that iSignthis had engaged in conduct in contravention of ss 1041H and 674(2) of the *Corporations Act 2001* (Cth), and that its former chief executive officer and managing director, Mr Nickolas John Karantzis, had contravened ss 180(1), 1309(2), 1309(12), and 674(2A) of the Act by reason of his involvement in iSignthis' contravention of s 674(2).

3 On 26 July 2024, pursuant to s 1317E of the Act, I made declarations of contravention of civil penalty provisions by iSignthis and Mr Karantzis giving effect to the findings in the Liability Judgment. These may be summarised as follows:

(a) iSignthis contravened s 674(2) of the Act:

  (i) for failing to notify the ASX of the One-off Revenue/Costs Information from 3 August 2018 until 15 November 2019 (Declaration 2);

  (ii) for failing to notify the ASX of the Visa Termination Decision from 12 May 2020 until 17 August 2020 (Declaration 3); and

  (iii) for failing to notify the ASX of the Reasons for Visa's Termination from 12 May 2020 until 26 October 2020 (Declaration 4),

  and each of these contraventions was "serious" within the meaning of s 1317G(1)(b)(iii) of the Act (Declaration 5).

(b) Mr Karantzis contravened:

  (i) s 180 of the Act:

    (A) in respect of his making the One-off Revenue Representation, and iSignthis' contravention of s 1041H in relation to that representation (Declaration 6);

    (B) in respect of iSignthis' contravention of 674(2) for failing to notify the ASX of the One-off Revenue/Costs Information (Declaration 8);

(C) in respect of iSignthis' contraventions of 674(2) for failing to notify the ASX of the Visa Termination Decision and the Reasons for Visa's Termination (Declaration 9);

(ii) s 674(2A) of the Act for his involvement in iSignthis' contravention of s 674(2) in relation to the One-off Revenue/Costs Information (Declaration 7); and

(iii) ss 1309(2) and (12) of the Act in relation to the 25 May 2020 letter to the ASX (Declaration 10),

and each of these contraventions by Mr Karantzis was "serious" within the meaning of s 1317G(1)(b)(iii) of the Act (Declaration 11).

4 For convenience, the declarations and orders I made on 26 July 2025 are annexed to these reasons.

5 Regrettably the parties are significantly apart as to the penalties which should be imposed. ASIC seeks a disqualification order against Mr Karantzis and pecuniary penalty orders against iSignthis and Mr Karantzis. The orders sought by ASIC are in the following terms:

(a) Mr Karantzis be disqualified from managing corporations for a period of ten years pursuant to ss 206C(1) and 206E(1) of the Act;

(b) Mr Karantzis pay to the Commonwealth a pecuniary penalty of $1,500,000 pursuant to s 1317G(1) of the Act, in respect of his contraventions of s 180(1), s 674(2A) and ss 1309(2) and (12) of the Act identified in paragraphs 6 to 11 of the orders dated 26 July 2024; and

(c) iSignthis pay to the Commonwealth a pecuniary penalty of $12,500,000 pursuant to s 1317G(1) of the Act, in respect of the contraventions of s 674(2) of the Act identified in paragraphs 1 [sic] (ASIC presumably intended to refer to paragraph 2) to 5 of the orders dated 26 July 2024.

6 ASIC relies on two affidavits of Mr Adam Anthony Boscoscuro, an employee of ASIC, sworn on 23 August 2024 and 4 October 2024.

7 ASIC also relies on written submissions dated:

(a) 15 November 2024, being a summary of the civil penalties awarded in relevant previous cases;

(b) 12 December 2024, being written submissions on penalty (which are a version of submissions filed in advance of the penalty hearing, amended to incorporate references to the evidence given by Mr Karantzis at the penalty hearing); and

(c) 12 December 2024, being separate submissions on certain without prejudice correspondence adduced by the defendants on the question of penalty.

8 iSignthis and Mr Karantzis accept that in the circumstances they should be required to pay a modest pecuniary penalty, and submit that this would serve the objectives of general deterrence, specific deterrence, and protection of the public. They say that Mr Karantzis should be required to pay a pecuniary penalty of $250,000 and iSignthis should be required to pay a pecuniary penalty of $350,000. The defendants' position is that it would not be appropriate for Mr Karantzis to be disqualified from managing corporations pursuant to ss 206C(1) and 206E(1) of the Act for any period of time at all, and that a disqualification order would be wholly inappropriate.

9 The defendants rely on the following affidavits:

(a) the affidavit of Elizabeth Warrell sworn on 21 September 2021;

(b) the affidavit of Mr Tod McGrouther sworn on 22 September 2024;

(c) the affidavit of Mr Varghese Jojo Jose sworn on 23 September 2024;

(d) the affidavit of Mr Nickolas John Karantzis sworn on 23 September 2024;

(e) the affidavit of Mr Ajay Treon sworn on 23 September 2024;

(f) the affidavits of Mr Anthony Seyfort sworn on 7 March 2023 and 23 September 2024;

(g) the affidavit of Mr Christakis Taoushanis affirmed on 23 September 2024;

(h) the affidavit of Mr Hongfu (Fred) Sun sworn on 23 September 2024;

(i) the affidavit of Mr Justin Klintberg sworn on 23 September 2024;

(j) the affidavit of Mr Peter Betyounan sworn on 23 September 2024;

(k) the affidavit of Mr Peter Douglas Morton sworn on 23 September 2024;

(l) the affidavit of Mr Panikos Pouros affirmed on 23 September 2024;

(m) the affidavits of Mr Timothy Joseph Hart sworn on 21 September 2021, 7 March 2023 and 23 September 2024; and

(n) the affidavit of Mr Todd Michael Richards sworn on 24 September 2024.

10 The defendants also rely on written submissions dated:

(a) 16 October 2024, being those filed in advance of the penalty hearing;

(b) 15 November 2024, being a competing summary of previous civil penalty cases;

(c) 13 December 2024, being supplementary submissions on the evidence given by Mr Karantzis at the penalty hearing; and

(d) 13 December 2024, being their submissions on the issue of the without prejudice correspondence.

11 For the reasons that follow I have determined that iSignthis (now Southern Cross Payments Ltd) should be ordered to pay a pecuniary penalty of $10 million and that Mr Karantzis should be ordered to pay a pecuniary penalty of $1 million. I have also determined that Mr Karantzis should be disqualified from managing corporations for a period of six years.

THE STATUTORY REGIME AND RELEVANT PRINCIPLES

Disqualification orders

12 ASIC submits, and I accept, that having made five declarations that Mr Karantzis contravened the Act the court is empowered under any of ss 206C, 206E(1)(a)(i) or 206E(1)(a)(ii) of the Act to disqualify him from managing corporations for a period that the court considers appropriate if it is satisfied that the disqualification is justified. Section 206C of the Act is engaged in circumstances where the court has declared that Mr Karantzis contravened s 180 (a "corporation/scheme civil penalty provision": ss 1317E(3), 1309(12)). Section 206E(1)(a)(ii) is engaged in circumstances where the court has declared that Mr Karantzis contravened the Act more than once. And s 206E(1)(a)(i) is engaged in circumstances where Mr Karantzis was an officer of iSignthis when it contravened the Act more than once, and on each occasion he failed to take reasonable steps to prevent the contravention (a conclusion which, I accept, necessarily arises from the conclusions that Mr Karantzis contravened s 180 by being involved in each of iSignthis' contraventions).

13 I also accept ASIC's submission that in determining whether any disqualification is justified, the court may have regard to Mr Karantzis' conduct in relation to the management of any corporation as well as any other matters it considers to be appropriate: ss 206C(2), 206E(2) of the Act. The criteria relevant to the exercise of the court's discretion is the same under each section: *Australian Securities and Investments Commission v GetSwift Limited (Penalty Hearing)* [2023] FCA 100 at [59] (Lee J) (***ASIC v GetSwift***). As Lee J observed in *ASIC v*

GetSwift (at [59]), nothing therefore turns on whether a disqualification order is made under s 206C or s 206E.

14 ASIC submits that the following principles are relevant to the court's consideration of a disqualification order in this case. I do not consider these principles to be controversial, and it is convenient to set them out here, supplemented where appropriate with relevant additional authority referred to by the defendants in their submissions.

15 First, the court has an established practice of considering the period of disqualification before considering whether any pecuniary penalty should be awarded, or the amount of that penalty: see *Cruickshank v Australian Securities and Investments Commission* (2022) 292 FCR 627 at [143] (Allsop CJ, Jackson and Anderson JJ) (***Cruickshank v ASIC***); *Australian Securities and Investments Commission v Blue Star Helium Ltd (No 4)* [2021] FCA 1578 at [74] (Banks-Smith J) (***ASIC v Blue Star (No 4)***). See also *Rich v Australian Securities and Investments Commission* (2004) 220 CLR 129 (McHugh J) (***Rich v ASIC***). In an appropriate case the court may make a pecuniary penalty order in addition to a disqualification order, having regard to the purposes for which such orders are made: *ASIC v GetSwift* at [64]-[65].

16 Secondly, while the primary purpose of a pecuniary penalty is to act as a specific and general deterrent against repetition of like conduct, the primary aim of disqualification orders is the protection of the public from the harmful use of the corporate structure, or from use that is contrary to proper commercial standards: *Cruickshank v ASIC* at [144]; *Australian Securities and Investments Commission v Adler* [2002] NSWSC 483 at [56] (Santow J) (***ASIC v Adler***); *ASIC v GetSwift* at [61], [65]. Protection of the public also extends to protection of individuals who deal with companies, including consumers, creditors, shareholders and investors: *Registrar of Aboriginal and Torres Strait Islander Corporations v Murray* [2015] FCA 346 at [220] (Gordon J); *ASIC v GetSwift* at [61]. I accept however, as the defendants submit, that a disqualification order must not be excessive, and no one should be "sacrificed for the public interest": *Australian Securities and Investments Commission v Beekink* [2007] FCAFC 7 at [113] (Mansfield, Jacobson and Siopis JJ), quoting *Australian Securities and Investments Commission v Rich* [2003] NSWSC 186 at [26]-[32] (Bryson J).

17 Thirdly, it is these different purposes of disqualification orders and pecuniary penalty orders that justify the long-standing practice of considering the imposition of a pecuniary penalty only after a disqualification order is considered: *Cruickshank v ASIC* at [144], citing *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450 at [42] and [43] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ) (***Pattinson***). See also

Explanatory Memorandum, Corporate Law Reform Bill 1992 (Cth) at [178] (**Explanatory Memorandum**).

18 Fourthly, the length of the period of disqualification and the seriousness of the contraventions in question are correlative: *ASIC v GetSwift* at [62]. In assessing an appropriate length of disqualification, consideration is to be given to the degree of seriousness of the contraventions, the propensity that the defendant may have to engage in similar conduct in the future, and the likely harm that may be caused to the public: *ASIC v Adler* at [56]. Importantly in the present circumstances, longer periods of disqualification are reserved for cases where contraventions have been of a serious nature such as those involving dishonesty and large financial losses.

19 Fifthly, a number of factors have been identified in the authorities as relevant to an assessment of the length of a period of disqualification, including the following:

(a) whether the conduct was inadvertent or deliberate, especially where concerns have previously been raised with the director by the ASX: *ASIC v Blue Star (No 4)* at [85]-[87];

(b) whether the conduct was "continued, knowing and wilful": *Australian Securities and Investments Commission v Healey (No 2)* (2011) FCR 430 at [105] (Middleton J) (***ASIC v Healey (No 2)***), quoting *ASIC v Adler* at [56];

(c) whether the director had acted dishonestly or appreciated that relevant announcements would mislead or deceive: see, for example, *Australian Securities and Investments Commission v Vocation Ltd (in liq) (No 2)* [2019] FCA 1783 at [50] (Nicholas J) (***ASIC v Vocation Ltd (No 2)***);

(d) whether the director has expressed any contrition or remorse: *ASIC v Blue Star (No 4)* at [97]. It is relevant to note in this regard that the Full Court in *Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission* (2021) 284 FCR 24 (Wigney, Beach and O'Bryan JJ) said as follows:

> … a contravener who has displayed no contrition or remorse, and no insight into their contravening conduct, would generally expect a higher penalty than would a contravener who has shown genuine contrition and remorse and good prospects of rehabilitation. That is because the requirement of specific deterrence is generally considered to be greater in the case of a contravener who has shown no contrition or insight into their offending behaviour.

See also *Mayfair Wealth Partners Pty Ltd v Australian Securities and Investments Commission* (2022) 295 FCR 106 at [229]-[230] (Jagot, O'Bryan and Cheeseman JJ);

(e) the experience and age of the director: *ASIC v Vocation Ltd (No 2)* at [58];

(f) the relevance of false representations to the company's business: see, for example, *Australian Securities and Investments Commission v Sino Australia Oil and Gas Ltd (in liq)* [2016] FCA 1488 at [21] (Davies J) (***ASIC v Sino***);

(g) whether the director was involved in drafting relevant announcements: *ASIC v Blue Star (No 4)* at [84]; and

(h) the consequences of the contraventions committed by the director: *ASIC v Healey (No 2)* at [114].

20 Sixthly, and obviously enough, previous cases will only provide general guidance for determining a penalty or length of disqualification: see, for example, *Australian Securities and Investments Commission v Mayfair Wealth Partners Pty Ltd* [2021] FCA 1630 at [192] (Anderson J); *ASIC v Healey (No 2)* at [103]; *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Ltd (No 3)* [2023] FCA 1565 at [47] (Moshinsky J) (***ASIC v ANZ (No 3)***). Nonetheless, certain factors evident in previous cases as justifying disqualification in a particular range were helpfully set out in *ASIC v Adler* by Santow J (at [56]). It will be necessary to return to his Honour's analysis of the relevant factors in due course.

21 For their part the defendants refer also to the observations of Hargrave J in *Australian Securities and Investments Commission v White* [2006] VSC 239 (at [18]), where his Honour distilled McHugh J's analysis in *Rich v ASIC* into the following four general categories of important matters to which courts have regard when determining whether to order disqualification and, if so, for what period:

(a) the nature and seriousness of the contraventions;

(b) the need for protection of the public;

(c) retribution and deterrence; and

(d) whether there are mitigating factors.

22 The defendants refer also in this regard to *Commission for Corporate Affairs (WA) v Ekamper* (1987) 12 ACLR 519 (***Ekamper***) where Franklyn J, in observations which have been influential, noted that in making a disqualification orders it is necessary to assess the:

(a) character of the offenders;

(b) nature of the breaches;

(c) structure of the companies and the nature of their business;

(d) interests of shareholders, creditors and employees;

(e) risks to others from the continuation of offenders as company directors;

(f) honesty and competence of offenders;

(g) hardship to offenders and their personal and commercial interests; and

(h) offenders' appreciation that future breaches could result in future proceedings.

23 Seventhly, insofar as co-operation is concerned, ASIC submits and I accept that this can be a mitigating factor where it involves elements of contrition, or a willingness to accept responsibility and to facilitate the course of justice. It may also be a mitigating factor (but perhaps to a lesser degree) where it has spared the community the expense of a contested trial and enabled the resources of the regulator to be allocated to other investigations: see generally *Construction, Forestry, Maritime, Mining and Energy Union v Fair Work Ombudsman* (2023) 322 IR 233 (***CFMMEU v Fair Work Ombudsman***) at [67]-[93] (Rangiah J).

24 ASIC submits and I accept that a contravenor's motivations for co-operating may also be relevant to determining whether there is to be any discount to the penalty to be imposed. For example, in *Mornington Inn Pty Ltd v Jordan* (2008) 168 FCR 383 (***Mornington Inn***), Stone and Buchanan JJ observed (at [76]):

> [A] discount should not be available simply because a respondent has spared the community the cost of a contested trial. Rather, the benefit of such a discount should be reserved for cases where it can be fairly said that an admission of liability: (a) has indicated an acceptance of wrongdoing and a suitable and credible expression of regret; and/or (b) has indicated a willingness to facilitate the course of justice.

25 ASIC also notes that in *CFMMEU v Fair Work Ombudsman*, Rangiah J observed that despite the High Court's observations in *Pattinson*, co-operation in the absence of contrition may be mitigatory in three ways:

(a) First, on the basis that although deterrence is the primary objective of a pecuniary penalty, other well-known factors have been identified as bearing upon (albeit to a lesser degree) the court's assessment of the penalty: at [85]-[88].

(b) Secondly, the general deterrence objective of pecuniary penalties could be achieved, at least indirectly, if cooperation results in freeing up resources of a regulator to enable investigation of other matters: at [89]; see also *Australian Securities and Investments Commission v MLC Limited* [2023] FCA 539 at [88] (Moshinsky J).

(c) Thirdly, in any event, the High Court in *Pattinson* had refused special leave from the Full Court's finding that the primary judge had erred by not giving any discount on penalty by reason of the contravenor's admissions and cooperation, which rendered the

trial in that case unnecessary: at [92]. This part of the Full Court's decision in *Pattinson* (see, in particular, [119]-[120]) therefore remains undisturbed.

26 Eighthly, it should be emphasised that the criminal law principles of totality, course of conduct and parity also inform the court's consideration of disqualification. When determining the disqualification period to be imposed for multiple contraventions, the court should impose a disqualification period for each individual contravention and then take into account the totality principle to adjust that period to arrive at a total effective disqualification: *ASIC v Healey (No 2)* at [130]; see also *ASIC v GetSwift* at [90].

Pecuniary penalties

General principles

27 ASIC submits and I accept that having made declarations both of contravention under s 1317E and "seriousness" within the meaning of s 1317G(1)(b)(iii) of the Act, the court has power under s 1317G(1) of the Act to impose pecuniary penalties in respect of the contraventions.

28 As is well known the relevant underlying principles have been expressed in various ways, most recently and authoritatively by the High Court in *Pattinson*. That case concerned s 546 of the *Fair Work Act 2009* (Cth), but what the High Court there said has been repeatedly applied to the civil penalty regime in the Act: see, for example, *ASIC v GetSwift* at [34]-[48]; *Australian Securities and Investments Commission v Mercer Financial Advice (Australia) Pty Ltd* [2023] FCA 1453 at [62]-[80] (McEvoy J) (***ASIC v Mercer***).

29 ASIC submits and I accept that the fundamental principles can be summarised as follows (supplemented as appropriate by particular expressions of principle referred to by the defendants in their submissions).

30 First, the power to impose a penalty is to be exercised judicially, that is, fairly and reasonably: *Pattinson* at [40].

31 Secondly, the primary or sole purpose of civil penalties is the promotion of the public interest in compliance with the relevant regulatory regime by deterrence, both specific and general: *Pattinson* at [9]-[10], [15].

32 Thirdly, the penalty must be "proportionate" and "appropriate" in the sense that it strikes a reasonable balance between oppressive severity and deterrence in the circumstances of the case: *Pattinson* at [40]-[41], [46]; *ASIC v Mercer* at [65]. While the penalty should not be so high that it is oppressive, it should not be so low as to be regarded by the contravener as "an

acceptable cost of doing business": *Pattinson* at [17], [40]-[41]. Even if there is no indication that a defendant will contravene a civil penalty provision in the proximate future, a penalty must be imposed which will act as a reminder to that defendant and the community of the consequences of the contraventions, and this can be the most significant factor in determining penalty in particular cases: *Australian Securities and Investments Commission v Lanterne Fund Services Pty Ltd* [2024] FCA 353 at [117] (McEvoy J) (***ASIC v Lanterne***), citing *Australian Competition and Consumer Commission v Telstra Corporation Ltd* (2010) 188 FCR 238 at [204] (Middleton J) (***ASIC v Telstra***).

33 Fourthly, the court should have regard to the prescribed maximum penalty, and there should be some reasonable relationship between the maximum penalty and that imposed: *Pattinson* at [10], [53]; *ASIC v Mercer* at [68]. This relationship will be established where the penalty does not exceed what is reasonably necessary to deter future contraventions of a like kind by the contravenor and by others. This means that the court should not simply start with the maximum penalty and proceed by making proportional deductions to that amount. The maximum penalty is also not reserved for only the most serious examples.

34 Fifthly, s 1317G(6) of the Act requires the court to take into account the following factors for conduct occurring after 13 March 2019 following the enactment of the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth) (**Treasury Laws Amendment Act**), noting that for conduct occurring before s 1317G(6) came into effect, that these factors were already relevant considerations: *ASIC v Mercer* at [76]:

(a) the nature and extent of the contravention;

(b) the nature and extent of any loss or damage suffered because of the contravention;

(c) the circumstances in which the contravention took place; and

(d) whether the person has previously been found by a court (including a court in a foreign country) to have engaged in similar conduct.

35 Sixthly, additional factors may be taken into account as relevant considerations, insofar as they inform the penalty necessary to secure the objects of deterrence: *ASIC v GetSwift* at [40]. However, they are not to be applied as a "rigid catalogue", and as the defendants submit, the court should weigh all relevant circumstances: *Pattinson* at [18]-[19], [46]-[48]; *ASIC v Mercer* at [69]-[72]; *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* (2017) 254 FCR 68 at [101] (Dowsett, Greenwood and Wigney JJ). The defendants refer in this regard to *Australian Securities and Investments Commission v Austal* [2022] FCA 1231 at [82]-[95] (O'Bryan J) (***ASIC v Austal***) and *Australian Securities*

and Investments Commission v Mitchell (No 3) [2020] FCA 1604 at [41] (Beach J) (***ASIC v Mitchell (No 3)***), where relatively modest pecuniary penalties were imposed in all of the circumstances.

36 The courts have adopted from criminal sentencing practice (see *Markarian v The Queen* (2005) 228 CLR 357 at [51] (McHugh J)) the notion of an intuitive or "instinctive synthesis", which involves the identification and balancing of all the factors relevant to the contravention and the contravener, and the making of a value judgment as to what is the appropriate penalty in light of the protective and deterrent purpose of a pecuniary penalty: *ASIC v Mitchell (No 3)* at [40]; *Australian Securities and Investments Commission v Forex Capital Trading Pty Ltd* [2021] FCA 570 at [105] (Middleton J). Various lists of relevant factors have been proposed in the cases, but in *Australian Securities and Investments Commission v Westpac Banking Corporation (No 3)* [2018] FCA 1701 at [49] (***ASIC v Westpac (No 3)***), Beach J listed the following factors which his Honour considered were to be taken into account:

(a) the extent to which the contravention was the result of deliberate or reckless conduct by the corporation, as opposed to negligence or carelessness;

(b) the number of contraventions, the length of the period over which the contraventions occurred, and whether the contraventions comprised isolated conduct or were systematic;

(c) the seniority of the officers responsible for the contravention;

(d) the capacity of the defendant to pay, but only in the sense that whilst the size of a corporation does not of itself justify a higher penalty than might otherwise be imposed, it may be relevant in determining the size of the pecuniary penalty that would operate as an effective specific deterrent;

(e) the existence within the corporation of compliance systems, including provisions for and evidence of education and internal enforcement of such systems;

(f) remedial and disciplinary steps taken after the contravention and directed to putting in place a compliance system or improving existing systems and disciplining officers responsible for the contravention;

(g) whether the directors of the corporation were aware of the relevant facts and, if not, what processes were in place at the time or put in place after the contravention to ensure their awareness of such facts in the future;

(h) any change in the composition of the board or senior managers since the contravention;

(i) the degree of the corporation's co-operation with the regulator, including any admission of an actual or attempted contravention;

(j) the impact or consequences of the contravention on the market or innocent third parties;

(k) the extent of any profit or benefit derived as a result of the contravention; and

(l) whether the corporation has been found to have engaged in similar conduct in the past.

37 Seventhly, the capacity of the defendant to pay may be relevant when assessing whether a penalty would operate as a specific deterrent (see *ASIC v Lanterne* at [194]), but it is less important and less relevant than the objective of general deterrence itself: *Australian Securities and Investments Commission v Holista Colltech Ltd* [2024] FCA 244 at [132] (SC Derrington J) (***ASIC v Holista Colltech***). Even if the imposition of a penalty is likely to cause a company to become insolvent, or if the company is already in liquidation, it may be appropriate to impose a penalty as a measure of the seriousness of the contravention and for general deterrence: *ASIC v GetSwift* at [43]; *Australian Securities and Investments Commission v Select AFSL Pty Ltd (No 3)* [2023] FCA 723 at [119] (Abraham J) (***ASIC v Select AFSL (No 3)***); *Australian Securities and Investments Commission v AGM Markets Pty Ltd (In Liq) (No 4)* [2020] FCA 1499 at [35] (Beach J). In *Australian Competition and Consumer Commission v Dimmeys Stores Pty Ltd* [2011] FCA 372 at [54], Gordon J observed:

> However, as deterrence is the primary objective of penalties, the financial capacity of a respondent to pay must not prevent the Court from doing its duty even if in some cases, the penalty is so high that the offender will become insolvent. Put another way, I accept that capacity to pay is a relevant factor, but one of "less importance when balanced against the necessity of imposing a penalty that satisfies the objective of general deterrence".
>
> (Citations omitted.)

38 The court is also to consider the size and capacity of the company to pay as at the date of the contravention (see *ASIC v Holista Colltech* at [136]), and whether assets of the company have been removed from its hands at a time when exposure to a pecuniary penalty and a costs order was a real possibility: *ASIC v Select AFSL (No 3)* at [118]-[119].

39 Eighthly, as has been mentioned in relation to disqualification orders, criminal law principles of totality, course of conduct and parity also inform the court's determination of a penalty: *Pattinson* at [45]-[46]; *ASIC v Mercer* at [69]-[70], [80]; *ASIC v GetSwift* at [44]-[47].

40 Insofar as totality is concerned, as with disqualification orders the court is to look at the entirety of the offending and determine the most appropriate penalty for all the offences taken together: *ASIC v Mercer* at [70]; *ASIC v GetSwift* at [46]; *ASIC v Westpac (No 3)* at [162]. Where the

totality principle is applicable, the general approach adopted by the court with respect to pecuniary penalties has been to determine the appropriate pecuniary penalty for each contravention and to apply a discount to the aggregate amount: *ASIC v Healey (No 2)* at [129].

41 As to the course of conduct principle, the court is to consider whether multiple contraventions arise out of the same course of conduct or a single transaction, and calibrate the penalty for each contravention to avoid double punishment: *Pattinson* at [45]; *ASIC v Mercer* at [80]; *ASIC v GetSwift* at [45]. See also, in this regard, the observations of Beach J in *Australian Competition and Consumer Commission v Murray Goulburn Co-Operative Co Ltd* [2018] FCA 1964 at [29] (***ASIC v Murray Goulburn***) and *ASIC v Mitchell (No 3)* at [43]-[44] as to "multi-faceted courses of conduct". This principle does not, however, permit the court to impose a single penalty in respect of multiple related contraventions: *Australian Securities and Investments Commission v Westpac Banking Corporation* [2019] FCA 2147 at [268] (Wigney J).

42 On the subject of parity, each case must turn on its own facts, but predictability of outcomes (for comparable contraventions) is capable of assisting in the assessment of general deterrence: *ASIC v Mercer* at [69]; *ASIC v GetSwift* at [47].

43 Ninthly, when assessing continuing contraventions, s 1317QA of the Act provides (for contraventions occurring after 13 March 2019) that a person who contravenes a civil penalty provision that requires an act or thing to be done before a particular time commits a separate contravention of that provision each day during which the contravention occurs. In *Australian Securities and Investments Commission v Noumi Ltd* [2024] FCA 862 at [50] (***ASIC v Noumi***), Jackman J observed that for a contravention of s 674(2) (and by parity of reasoning s 674(2A)), s 1317QA has the effect that a separate contravention occurs on each trading day in the relevant period of non-disclosure. The arithmetic maximum penalty must therefore be taken to be the aggregate of those contraventions, but this must be balanced against the course of conduct and totality principles referred to above: *ASIC v Noumi* at [69]-[73].

Maximum penalties

44 ASIC submits, correctly, that the contravening conduct committed by iSignthis and Mr Karantzis occurred over a period from around July or August 2018 until around October 2020. On 13 March 2019, the Treasury Laws Amendment Act amended the civil penalty provisions in the Act by increasing the maximum pecuniary penalties applicable to contraventions of civil penalty provisions and fixing those maximums to the value of a penalty unit. The amendments

apply in relation to contraventions where the "conduct constituting the contravention" occurred wholly on or after 13 March 2019: s 1657 of the Act.

45 ASIC submits and I accept that the maximum applicable pecuniary penalties calculated pursuant to s 1317G(3)-(4) of the Act during the period of contravening conduct were as follows:

(a) from May 2018 to 12 March 2019:

  (i) $200,000 for Mr Karantzis; and

  (ii) $1,000,000 for iSignthis;

(b) from 13 March 2019 until 30 June 2020:

  (i) $1,050,000 for Mr Karantzis; and

  (ii) $10,500,000 for iSignthis;

(c) from 30 June 2020 until commencement of the proceedings:

  (i) $1,110,000 for Mr Karantzis; and

  (ii) $11,100,000 for iSignthis.

46 ASIC also submits and I accept that in relation to the contraventions of ss 674(2) and 674(2A) of the Act, by operation of s 1317QA, separate contraventions of s 674(2) and (2A) were committed by iSignthis and Mr Karantzis each trading day during the relevant period of contravening conduct. Therefore, where those contraventions were continuing on and from 13 March 2019 and 30 June 2020, respectively, the higher maximum penalty is applicable. ASIC also submits, and I accept, that s 1657 of the Act does not bar the application of the 2019 amendments to these contraventions because, by s 1317QA of the Act, the relevant "conduct constituting the contravention" within the meaning of s 1657 re-occurs, and a separate (and whole) contravention is committed each trading day. I accept that this approach is consistent with that adopted by Wigney J in *Australian Securities and Investments Commission v Macquarie Bank Limited* [2024] FCA 416 at [10], [39], [69], [80], [92], where his Honour applied the post-13 March 2019 penalty regime to contraventions by the Macquarie Bank of s 912A(1)(a) of the Act where those contraventions had commenced in 2016 and were continuing as at 13 March 2019 (and into 2020).

47 Having regard to these statutory provisions and the applicable principles, I turn to consider what orders should be made against Mr Karantzis and iSignthis.

ORDERS TO BE MADE AGAINST MR KARANTZIS

48 While correctly acknowledging that previous cases may only provide general guidance, the parties have not identified any recent similar or analogous cases which they consider provide suitable guidance to the determination and the length of any period of disqualification from managing corporations, or the calculation of penalty in this case. To the extent that the defendants have referred to various cases which they submit support the imposition of a relatively minor sanction, I am not satisfied that these cases provide meaningful guidance in the present circumstances.

49 What follows therefore is a consideration of Mr Karantzis' contraventions, together with an assessment of the mitigating factors relied upon by the defendants in support of their position that nothing more than a modest pecuniary penalty should be imposed on Mr Karantzis. While I acknowledge the differences between the remedial responses of disqualification and penalty noted above, it is convenient to traverse mitigating factors as relevant to both enquiries together before returning to a separate consideration of each penalty.

The nature of Mr Karantzis' contraventions

50 Consistently with the way this litigation has been conducted from the outset, there is significant disagreement between the parties as to the way the conduct of Mr Karantzis is to be characterised for the purposes of determining the penalty to be ordered against him.

51 ASIC's position is that that the court can be satisfied that Mr Karantzis' contraventions are in the mid-to-upper range of offending, and this is why a disqualification order of ten years is justified and appropriate. ASIC advances several reasons for this, including the following. First, it is said that Mr Karantzis was effectively the guiding mind of iSignthis. He was closely involved in and bears responsibility under ss 180 and (or alternatively) 674(2A) of the Act for each of the contraventions, and was directly responsible for contravening ss 1309(2) and (12).

52 Secondly, ASIC submits that Mr Karantzis' contraventions concerned matters that were material and central to iSignthis' business. The contraventions concerned issues of particular to concern to the market, Mr Karantzis well knew this, and each of the contraventions had the effect of misleading the market and the market operator. This, ASIC submits, had a tendency to undermine confidence in the market and its integrity and efficiency.

53 Thirdly, ASIC submits that Mr Karantzis knew of his and iSignthis' obligations under the Act, and he knew of the materiality of the information he misrepresented or withheld.

54 Fourthly, ASIC submits that Mr Karantzis' contraventions demonstrate that he is a serious and continuing risk to the public and the public needs to be protected from him, notwithstanding his relocation to Cyprus.

55 Fifthly, ASIC submits that Mr Karantzis' conduct occurred and continued over a significant period of time, extending from 2018 until late 2020, including during ASIC's investigation into iSignthis and its directors. This, it is said, underscores the seriousness of the offending, an absence of contrition and insight, and a disregard for the regulatory framework.

56 Sixthly, ASIC submits that it is significant that the non-disclosure contraventions concerning the Visa Termination Decision and the Reasons for Visa's Termination occurred after the ASX had sent its letter to iSignthis of 7 May 2020 asking questions about what was happening with Visa, and that these contraventions were continuing when the ASX sent its further query letter on 5 August 2020.

57 The defendants' position is that the contraventions found to have been proven by ASIC are in stark contrast to the serious allegations which underpinned ASIC's Performance Shares case. It is, the defendants submit, inappropriate and disproportionate to contemplate a disqualification order where there has been no finding that Mr Karantzis acted dishonestly in relation to any of the contraventions which were proven and when mitigating factors are considered. On the whole, the defendants' submissions seek, somewhat unsatisfactorily, to minimise the seriousness of Mr Karantzis' contraventions.

58 Before turning to the relevant contraventions, I record my acceptance of ASIC's submission that Mr Karantzis was in every sense the guiding mind of iSignthis. Mr Karantzis closely managed and guided the strategic direction of the company, he was the spokesperson and public face of the company, and he was involved in preparing and directing the announcements, reports and publications of the company. Other than drawing attention to Mr Karantzis' reliance on others during the periods relevant to his contravening conduct, the defendants do not contend otherwise. This reality must be kept front of mind in considering each of the relevant contraventions and the parties' competing positions in relation to them.

The One-off Revenue Representation

59 Mr Karantzis contravened s 180 of the Act in respect of his making of the One-off Revenue Representation, and in respect of iSignthis' contravention of s 1041H of the Act in making that representation (Declaration 6). This was a serious contravention (Declaration 11).

60 ASIC submits that the seriousness of this contravention is supported by the following findings in the Liability Judgment:

(a) the Analyst Briefing was conducted in circumstances where previous disclosures and reports made by the company had generated a narrative of a startup company building recurring transactional (or "settlement") revenue through the processing of GPTV from integrated clients (Liability Judgment at [113]-[114], see also, importantly, [154]);

(b) these reports and announcements were followed and reported upon by Mr Jacobs of Patersons (Liability Judgment at [115], see also [154]), and as a result Mr Jacobs formed the view, which was directly confirmed by Mr Karantzis, that the revenue generated in the June 2018 quarter was recurring revenue (Liability Judgment at [116]-[117], see also [154]);

(c) Mr Karantzis invited, received and engaged with questions in advance of the Analyst Briefing as to the proportion of revenue in the June quarter that was recurring (Liability Judgment at [118], [163(c)], see also, importantly, [154] and [173]);

(d) Mr Karantzis was involved in drafting the written Analyst Brief (Liability Judgment at [163(d)], see also [173]);

(e) the misrepresentation made at the Analyst Briefing was directed to market analysts and market investors (Liability Judgment at [125], see also [154]);

(f) the question directed to Mr Karantzis at the Analyst Briefing which prompted the misrepresentation was "unambiguously clear" and the answer was similarly "a clear representation that the percentage of revenue in the fourth quarter to 30 June 2018 from one-off integration fees was less than 15 per cent" (Liability Judgment at [154]);

(g) Mr Karantzis knew in advance of the Analyst Briefing that a question on that topic was coming (Liability Judgment at [163(e)], see also [173]);

(h) Mr Karantzis knew that the question and its answer was of interest and importance to the market (Liability Judgment [174], see also, importantly, [176]);

(i) there was no suggestion that Mr Karantzis misunderstood the question or misspoke, and the defendants gave no explanation for why he gave the answer he did (Liability Judgment at [163(g)], see also [173]);

(j) there is no suggestion that Mr Karantzis did not know the answer to the question, or the true financial position in the June quarter (Liability Judgment at [163(g), (h)], see also [173]);

(k) the misrepresentation was picked up and re-published by Mr Jacobs to other investors and potential investors (Liability Judgment at [136]);

(l) the misrepresentation had a material effect on the price of iSignthis' shares, by perpetuating the market's incorrect understanding of the proportion of recurring revenue, and caused harm to the market (Liability Judgment at [177]-[178]);

(m) Mr Karantzis failed to correct the misrepresentation, which became more egregious on 7 August 2018 when he received Mr Jacobs' research note reporting on the Analyst Briefing and repeating the misrepresentation (Liability Judgment at [163(i), (j)], see also [173]); and

(n) the failure to correct the misrepresentation continued until 15 November 2019, which is more than 15 months (Liability Judgment at [163(k)], see also [173]).

61 As ASIC submits, having regard to these matters in the Liability Judgment the court found that Mr Karantzis was "obliged not to mislead the market on a matter which he knew was of interest and importance to the market" and that by doing so he "committed a serious breach of the normative standard of honesty of conduct required by s 180(1) of the Act and on which market efficiency rests" (Liability Judgment at [176]).

62 ASIC also draws attention to the finding in the Liability Judgment that in relation to the One-off Revenue Representation, Mr Karantzis not only failed in the duty required by s 180(1) of the Act but "either knowingly misrepresented facts or intentionally or recklessly acted to prevent the truth from being disclosed" (Liability Judgment at [174]). The defendants submit, however, that in the particular context of a penalty hearing this finding ought not to be characterised as a finding of deliberate wrongdoing by Mr Karantzis in circumstances where ASIC brought a confined case alleging no more than a failure by Mr Karantzis to discharge his duties with appropriate care and diligence. Rather, the defendants submit that the reference to Mr Karantzis having "recklessly acted" to prevent the truth from being disclosed should be understood as no more than an "elevated form of negligence" or "gross carelessness" in this respect (referring to the observations of Gummow, Hayne and Heydon JJ as to the various uses of "reckless" as a criterion of legal liability in *Banditt v The Queen* (2005) 224 CLR 623 at [1]-[2]). The defendants submit that the reference to recklessness should not in any sense be regarded as a finding of dishonesty or deceit on the part of Mr Karantzis in making the One-off Revenue Representation.

63 Accordingly, the defendants submit that the finding in the Liability Judgment (at [174]) should not be read as a finding that Mr Karantzis was aware that the market had been misled from the

time the misstatement was made, in August 2018, until the statement was corrected some 15 months later. This, the defendants maintain, would amount to a finding that Mr Karantzis' conduct in making the misstatement was deceitful, and this would not be justified having regard to the way ASIC put its case.

64 I accept the defendants' submission that the findings in the Liability Judgment with regard to the One-off Revenue Representation, and in particular the use of the expression "recklessly acted" (at [174]), should not be understood as amounting to a finding that Mr Karantzis engaged in conduct which intentionally or dishonestly sought to mislead.

65 The defendants adduced evidence in the penalty hearing from Mr Karantzis that he was not aware that the market had been misled by his misstatement at the Analyst Briefing, and that he does not recall reading Mr Jacobs' research note which was sent to him on 7 August 2018 as he relied on other people to read material of this kind. Mr Richards, the company secretary, gives evidence that he had no independent recollection of the question which was asked by Mr Davies at the Analyst Briefing or the answer given by Mr Karantzis. It was also Mr Richards' evidence that he has no memory of speaking to Mr Karantzis after the Analyst Briefing about the question, and that he considered he would recollect such a conversation if it occurred. I accept that this evidence may be inconsistent with any intention on the part of Mr Karantzis to mislead the market and that in circumstances where ASIC was alleging that Mr Karantzis' conduct was dishonest, it was open for this evidence to be led at the penalty hearing.

66 As the defendants submit, ASIC brought a case that iSignthis contravened s 1041H of the Act and that Mr Karantzis failed to discharge his duties with appropriate care and diligence in breach of s 180 of the Act. The proceeding was conducted by both parties on that basis. I accept that ASIC's allegation was that Mr Karantzis had particular knowledge that the One-off Revenue Representation was false, or ought to have had that knowledge, and either was said by ASIC to be sufficient to amount to a breach of s 180 of the Act. ASIC succeeded on the second limb of this case (Liability Judgment at [180]).

67 Nonetheless, to the extent that the defendants maintain a submission that Mr Karantzis' conduct which was the subject of the One-off Revenue Representation was nothing more than a careless mistake, and could not therefore be regarded as serious, I do not accept that this is so. Indeed, the finding in the Liability Judgment was to the contrary (at [174]). Nor am I persuaded, as the defendants submit, that the One-off Revenue Representation can properly be characterised as no more than a failure by Mr Karantzis to exercise care and diligence on a single occasion

when particular words were spoken in response to a question. On any view it was more than this.

68 Although the finding in the Liability Judgment was not, and should not be taken to be, that Mr Karantzis was intentionally dishonest, it remains that Mr Karantzis knew that the question which was asked and the answer he gave which is the subject of this contravention was of interest and importance to the market. Mr Karantzis ought to have known that the market would be misled by a misstatement by him, and it was reckless, in the sense that it was "grossly careless" (to use the language of senior counsel for the defendants), for him to have acted as he did. I accept therefore, as ASIC submits, that nothing in Mr Karantzis' evidence about the One-off Revenue Representation (and the One-off Revenue/Costs Information) casts doubt upon these particular findings in the Liability Judgment. These are serious matters.

69 In circumstances where it was a conclusion in the Liability Judgment that Mr Karantzis received a copy of Mr Jacobs' research note (Liability Judgment at [163(i),(j)], [173]), I am satisfied that Mr Karantzis had, at the very least, constructive knowledge that a correction of his statement at the Analyst Briefing was required. The evidence relied upon by the defendants at the penalty hearing as to Mr Karantzis' actual state of mind does not affect the finding at [174] of the Liability Judgment as to the seriousness of Mr Karantzis' recklessness or, to use the defendants' language, "gross carelessness". As the defendants themselves acknowledge, in circumstances where Mr Karantzis' usual practice was to use trading volumes and share prices to alert him to information which had been released to the market, one might reasonably think that the absence of share price movement would have alerted him to the fact that the market had been misled.

One-off Revenue/Costs Information

70 Mr Karantzis contravened ss 180 and 674(2A) of the Act in respect of iSignthis' contravention of s 674(2) by failing to notify the ASX of the One-off Revenue/Costs Information (Declarations 7 and 8). These were serious contraventions (Declaration 11).

71 The Liability Judgment concluded that insofar as the contravention of s 674(2A) is concerned Mr Karantzis "intentionally participated in the relevant conduct" by reason of "his actual knowledge of the essential elements constituting the contravention" (Liability Judgment at [294]). Mr Karantzis was well aware of the significance of the One-off Revenue/Costs Information to the market, that it was not generally available, and that had it been generally available it would have had a material effect on the price or value of iSignthis' shares (Liability Judgment at [199]-[201], [265], [282]-[285], [294]). Also, as has been mentioned, Mr Karantzis

was in direct communications with investors and analysts before and during the Analyst Briefing about the proportion of one-off and recurring revenue in the 30 June 2018 quarter. It is reasonable to think that he had an even greater knowledge of the importance of the information to the market than other directors of iSignthis (Liability Judgment at [284]).

72 The defendants' position is that ASIC succeeded in this contravention only from 3 August 2018, that being the date on which of the One-off Revenue Representation was made at the Analyst Briefing. The defendants submit, therefore, that Mr Karantzis' conduct the subject of the One-off Revenue/Costs contravention is indistinguishable from his conduct which is the subject of the One-off Revenue Representation contravention. There is, the defendants maintain, no additional content in this contravention from the perspective of penalty.

73 While I accept the defendants' submission that the One-off Revenue Representation and One-off Revenue Costs Information contraventions arise from the one event (that is, the representation on 3 August 2018), I do not accept the defendants' submission that Mr Karantzis' conduct in relation to the One-off Revenue Costs Information can effectively be ignored in the court's consideration of penalty. The One-off Revenue Costs Information contravention involved misleading the ASX, as well as the market. It will be necessary to return to a consideration of the course of conduct principle as applicable to these contraventions.

Visa Termination Decision and the Reasons for Visa's Termination

74 Mr Karantzis also contravened s 180 of the Act in respect of iSignthis' contraventions of 674(2) of the Act for failing to notify the ASX of the Visa Termination Decision and the Reasons for Visa's Termination (Declaration 9). This was a serious contravention (Declaration 11).

75 In relation to the non-disclosure of the Visa Termination Decision and the Reasons for Visa's Termination (the **Visa information**) to the ASX, ASIC succeeded in respect of the period from 12 May 2020 to 17 August 2020 (with respect to the Visa Termination Decision) and 12 May 2020 until 26 October 2020 (with respect to the Reasons for Visa's Termination). However, as the defendants emphasise, ASIC did not prove its case in respect of the period between 17 April 2020 to 12 May 2020. During this period the court found that iSignthis was entitled to rely on the incomplete negotiation exception in Listing Rule 3.1A (Liability Judgment at [336]-[343]).

76 I accept ASIC's submission that it is significant that the non-disclosure of the Visa information occurred after the ASX had sent its letter to iSignthis of 7 May 2020 pursuant to Listing Rule 18.7, asking questions about the fact that iSeM had been listed as "SUSPENDED BY AML" on Visa's Global Registry of Service Providers. I also accept ASIC's submission that it is

significant that these contraventions were continuing even when the ASX sent a further query letter on 5 August 2020, specifically seeking explanations from iSignthis as to why it had not disclosed the relevant information. Although the 5 August 2020 letter prompted iSignthis and Mr Karantzis to acknowledge on 17 August 2020 that Visa had terminated the relationship with iSignthis and iSeM, albeit in what were found to be less than expansive and tendentious terms (Liability Judgment at [566]), ASIC is correct to submit that the Reasons for Visa's Termination were never disclosed (Liability Judgment at [375] and [460]).

77 While ostensibly acknowledging the seriousness of Mr Karantzis' conduct in relation to the non-disclosure of the Visa information, the defendants submit that there are a number of mitigating factors which explain that conduct and which should affect the court's determination of penalty.

78 The first is that at all times other than between 12 and 21 May 2020, Mr Karantzis acted in accordance with the legal advice of Mr Andrew Seyfort, a senior and experienced external corporate legal practitioner. Relatedly, the defendants submit that after 24 May 2020 Mr Karantzis relied on advice in two reports which were prepared by Clayton Utz. I will deal separately with the relevance of Mr Karantzis' asserted reliance on the company's external legal advice, and whether weight should be given to this in assessing penalty.

79 Of particular relevance to the non-disclosure of the Visa information, however, the defendants submit that between 12 and 21 May 2020 Mr Karantzis was acting partly in accordance with advice he received from the Cyprus based directors of iSignthis that it was in the best interests of the company to notify the regulator, the CBC, of Visa's decision prior to the ASX. The defendants submit that during this period the board of iSignthis and Mr Karantzis had intended to notify the ASX following notification to the CBC, and that there were therefore sound commercial reasons for delaying the notification to the ASX.

80 The defendants make lengthy and detailed submissions on this issue, which is said to be relevant both to disqualification and to pecuniary penalty. They draw attention in particular to the finding in the Liability Judgment (at [459]) that "it would seem that on 13 May 2020 Mr Karantzis had no intention to make disclosure to the CBC or the ASX, but was continuing to communicate with Visa seeking further concessions". Relying on observations of Dixon J (as his Honour then was) in *Blair v Curran* (1939) 62 CLR 464 (at 531-533), the defendants submit that these findings should be regarded as "non-essential" or "subsidiary" to the conclusion that the obligation to advise the CBC was no defence to the case that iSignthis was in breach of its continuous disclosure obligations. Thus the defendants submit that it is not accurate to conclude

as the Liability Judgment did (at [459]) that "iSignthis' communications with the CBC did not occur until after the CBC's email of 15 May 2020 asking for an explanation of the present state of affairs." That is, that the relevant intention to notify the CBC only came about when the CBC communication of 15 May 2020 arrived. In this regard the defendants rely on the evidence of Ms Elizabeth Warrell (the chief financial officer and company secretary), Mr Hart (the non-executive chairman) and Mr Seyfort.

81 Before turning to consider the defendants' submissions on this point, however, it should be noted that any mitigation which might be available in this regard would be relevant only to the short period between 12 and 21 May 2020. This point does not assist the defendants in relation to Mr Karantzis' conduct between 21 May and 17 August 2020 (with respect to the Visa Termination Decision) and 21 May 2020 and 26 October 2020 (with respect to the Reasons for Visa's Termination).

82 In relation to iSignthis' communications with the CBC, the defendants rely on evidence given by Ms Warrell that:

(a) on the morning of 13 May 2020, she and Mr Karantzis agreed that it would be more appropriate to speak to the CBC before notifying the market of the Visa Termination Decision given that there were already announcements in the market about Visa, and because shares in iSignthis had been suspended from trading; and

(b) iSignthis was not waiting for a response from Visa before informing the CBC and the email from the CBC on 15 May 2020 was not the prompt to draft a notification.

83 The defendants submit that the evidence of Mr Hart and Mr Seyfort is also to the effect that it was understood by them, Ms Warrell and Mr Karantzis that the CBC would be informed as to the status of iSignthis' relationship with Visa before the ASX and the market were notified. They submit that Mr Christakis and Dr Theocharides had both informed the board of iSignthis that the CBC needed to be notified of what was happening with Visa, or the licence would be put at risk.

84 The defendants submit that although iSignthis' decision making with regard to the CBC does not excuse the contraventions of the Act, it bears upon penalty because it explains why Mr Karantzis (and others within iSignthis) did not work towards disclosing the Visa information to the market before 21 May 2020. The defendants submit again, as they did during the liability trial, that it is difficult to conceive that a chief executive officer in the position of Mr Karantzis

would risk the business of the company rather than follow the advice he and the company were receiving to inform the CBC before making a market announcement in Australia.

85 The defendants submit that it is in this context of the changed landscape after 12 May 2020, and also the communications between iSignthis and the CBC until 21 May 2020, that both the letter to shareholders and the responses to the 7 May query letter were prepared with the intention that they be released together. It is said that the contraventions which were found to have occurred in relation to the non-disclosure of the Visa information arise from the same factual matrix as the contraventions that were found in relation to the 7 May query letter.

86 The defendants submit that if the letter to shareholders had disclosed the Visa information, then as at 24 May 2020:

(a) the market would have been informed about those matters;

(b) the questions in the 7 May query letter would have been superseded; and

(c) the ASX would have had additional underlying information such that the responses provided on 24 May 2020, in their terms and in that context, could not have been false or misleading.

87 In these circumstances the defendants submit that iSignthis' contravention would have been confined to s 674 of the Act, and for a period of 14 days (eight business days), during which shares were suspended from trading. The defendants submit therefore that in determining the appropriate penalty the circumstances which explain why the letter to shareholders did not ultimately achieve this intended outcome are relevant because they affect the nature of the contravention and are also mitigating factors which ought to be taken into account in determining penalty. The defendants submit that if it is accepted that the operative delay was only 14 days, this is analogous to the factual circumstances of *ASIC v Austal* in which a delay of 14 days (ten business days) in making proper disclosure resulted in only a modest penalty being imposed upon the relevant director.

88 Mr Karantzis concedes that he did not wish to refer to anti-money laundering issues in iSignthis' response to the 7 May query letter if that could be avoided. The defendants submit that this was because iSignthis was attracting adverse publicity arising from the suspension of trading in its shares, that he was worried the marketplace would misinterpret a response on this subject matter and that Mr Kevin Lewis (of the ASX) would misrepresent the issue because Mr Karantzis believed that the ASX was still trying to find a justification to support the continued suspension of trading in iSignthis' shares. The defendants submit that Mr Karantzis'

concern in this regard was well founded in circumstances where the CBC has confirmed that no other fines or sanctions were imposed on iSignthis FEU in the period between 1 June 2021 to 30 May 2023.

89 The defendants submit further that by 24 May 2020 Mr Karantzis genuinely believed that the market had been notified of the Visa information in the letter to shareholders dated that day. This is because Mr Seyfort did not advise Mr Karantzis that the Visa information was required to be disclosed as part of iSignthis' continuous disclosure obligations.

90 The defendants also maintain their submission in relation to the non-disclosure of the Visa information, that at all times relevant to these contraventions, shares in iSignthis were suspended and that the prospect of any trading in them was remote.

91 I am not satisfied that the seriousness of the contraventions relating to the Visa information is mitigated as contended for by the defendants insofar as their submission that there were sound "commercial reasons" for the delay in notifying the ASX is concerned.

92 As ASIC submits, it has been determined that Mr Karantzis had a "central role" in the company's contraventions of s 674(2) of the Act (Liability Judgment at [465]). Mr Karantzis had a duty to ensure that iSignthis made disclosure to the ASX of the Visa information. That duty fell to him as managing director with the primary responsibility for determining what course the company would take in light of Visa's termination of the relationship (Liability Judgment at [457]). Mr Karantzis' failed in that duty "by authorising or permitting the company to commit contraventions", and by jeopardising the interests of the company by exposing it to liability under the Act (Liability Judgment at [465]). The company's contraventions were "navigated by Mr Karantzis himself" (Liability Judgment at [465]).

93 As ASIC also submits, the seriousness of this contravention is underscored by the fact that Mr Karantzis was well aware of the significance and materiality of the Visa information (Liability Judgment at [461]). Notwithstanding his asserted reliance on legal advice, Mr Karantzis was also well aware that iSignthis was required by Australian law to disclose the relevant information to the ASX (Liability Judgment at [461]).

94 As to the defendants' submission that the finding at [459] of the Liability Judgment does not preclude them from making a submission that it was appropriate for notification of the Visa information to the ASX to be delayed while iSignthis prepared to notify the CBC first, I do not accept this submission. I am not persuaded that the conclusion at [459] should somehow be regarded as a "non-essential" or "subsidiary" finding for the purpose of the ultimate conclusion

in the Liability Judgment that the obligation to advise the CBC was no defence to ASIC's case that Mr Karantzis had a duty to ensure that iSignthis complied with its continuous disclosure obligations in the Act. The finding at [460] of the Liability Judgment was as follows:

> The weight of the evidence is that after 12 May 2020 Mr Karantzis made a decision that the company would refrain from making disclosure of the Visa Termination Decision and the Reasons for Visa's Termination. Mr Karantzis decided that until the letter to shareholders dated 24 May 2020, no disclosure would be made.

95 This was the court's conclusion on the basis of the evidence at the liability trial. Importantly, it was informed by Mr Karantzis' failure to appear to give evidence in defence of his position.

96 Indeed, as ASIC submits, the evidence at the liability trial established that Mr Karantzis was not inclined to make disclosure to the CBC until the CBC itself raised the issue (Liability Judgment at [461]), and that even after the communication was received from the CBC, Mr Karantzis remained disinclined to make proper disclosure (at [462]). These conclusions remain undisturbed.

97 Even if it were feasible for the defendants to contend that it was somehow not entirely unreasonable for them to have proceeded as they did in all of the circumstances, the reality is that this point only has significance for a relatively short time – from 12 to 21 May 2020. There remains the period between 21 May 2020 and 17 August 2020 (with respect to the Visa Termination Decision) and the period between 21 May 2020 and 26 October 2020 (with respect to the Reasons for Visa's Termination). Even on the defendants' mitigation case as to this issue, any mitigation cannot be regarded as much more than negligible.

98 Nor am I persuaded that the reasons the defendants advance as to why the 24 May 2020 letter to shareholders did not achieve its intended outcome, and did not appropriately disclose the Visa information to the market, mitigate Mr Karantzis' relevant conduct in any material way. Whatever the reason or motivation for doing so, after 12 May 2020 iSignthis and Mr Karantzis breached their non-disclosure obligations under the Act. I do not accept that Mr Karantzis' subjective commercial motivations are materially relevant in explaining his conduct for the purpose of reducing the penalty to be awarded against him. This is especially so where Mr Karantzis failed to give evidence as to these matters in the liability trial.

99 Finally, as ASIC also submits, it has been determined that the suspension of iSignthis' shares from trading on the ASX provided no defence to Mr Karantzis' contravention of ss 180 and 674(2A) of the Act (Liability Judgment at [400], [429], [466]). In the circumstances of this case, particularly the nature of the contraventions that Mr Karantzis has been found to have committed and the findings in the Liability Judgment, the fact that trading of iSignthis' shares

on the open market was suspended does not mitigate against the seriousness of the non-disclosure of the Visa information for the purposes of penalty.

25 May 2020 letter to the ASX

100 Mr Karantzis contravened ss 1309(2) and (12) of the Act in relation to the 25 May 2020 letter to the ASX (Declaration 10). This was a serious contravention (Declaration 11).

101 The defendants accept that the provision of correct answers to the ASX was ultimately the responsibility of Mr Karantzis as managing director and Mr Hart as chairman. Mr Karantzis acknowledges that the answers he provided to the ASX were false or misleading in contravention of s 1309(2) of the Act.

102 Nonetheless, the defendants submit that the manner in which iSignthis responded to the questions in the 7 May query letter was influenced heavily by what had come to be iSignthis' hostile relationship with the ASX arising from the ASX litigation, and what they say was their reasonably held suspicion that the ASX was acting in breach of the law by sending numerous lengthy query letters. The defendants submit here also that a significantly mitigating factor is that Mr Karantzis relied upon the advice of Mr Seyfort in formulating the impugned responses to the ASX.

103 Notwithstanding his asserted reliance upon Mr Seyfort and others (to which I will come), Mr Karantzis' contraventions of s 1309 of the Act were serious. As ASIC submits, the court determined that Mr Karantzis contravened s 1309 because he gave answers to the ASX that were "non-responsive", "plainly wrong", "obfuscatory", "little more than sophistry" and "plainly misleading" (Liability Judgment at [547]-[552]). Mr Karantzis gave those answers in circumstances where he well knew the truth of the matters and well knew what the ASX's direct questions were asking.

104 I accept ASIC's submission that Mr Karantzis' evidence as to the strained relationship between iSignthis and the ASX was no defence to liability under s 1309 of the Act, and in my view it is not a consideration which can operate to mitigate the assessment of disqualification or penalty. As was emphasised in the Liability Judgment, "it can never be reasonable to decide not to respond, or not to respond openly and candidly, to questions from the operator of a financial market" (Liability Judgment at [546]). The company's troubled relationship with the ASX provides no basis for a more lenient view to be taken of Mr Karantzis' responses in the 25 May 2020 letter (Liability Judgment at [562]). As ASIC submits, Mr Karantzis' answers to the ASX

went further than a mere failure to respond, or to respond openly and candidly, to the relevant questions.

Conclusion as to the nature and seriousness of Mr Karantzis' contraventions

105 It may be accepted, as the defendants submit, that Mr Karantzis' contraventions which ASIC has proven are of a lesser order of seriousness than ASIC's allegations concerning the Performance Shares. Nonetheless, this does not somehow transform or render insignificant those contraventions.

106 To the extent that the defendants seek to discount Mr Karantzis' contraventions in relation to the 25 May 2020 letter to the ASX, including because they involved "sins of omission" and not positively misleading statements, I do not accept this submission. Mr Karantzis' contraventions, which include the sending of the 25 May 2020 letter to the ASX, involved an objective misleading of both the market and the market operator about matters which were material to the business of iSignthis and the market itself: see *ASIC v Sino Australia* at [22]. The one-off revenue contraventions occurred in a context where iSignthis was a start-up business building its recurring transactional revenue. The Visa contraventions occurred in circumstances where iSignthis had achieved Visa principal membership and was developing its card processing business without the need to rely on third party payment platforms. Both of these issues were of particular concern to the market, and Mr Karantzis was well aware of their importance.

107 Mr Karantzis' conduct in relation to the one-off revenue and Visa contraventions is serious and significant, both in respect of its immediate effect on the market but also as to its tendency to undermine the confidence that market participants can place in the integrity and efficiency of the market: see *Australian Securities and Investments Commission v Helou (No 2)* [2020] FCA 1650 at [149] (Beach J).

108 Although there has been no finding of actual dishonesty against Mr Karantzis, ASIC is correct to submit that each of Mr Karantzis' contraventions occurred in circumstances where Mr Karantzis well knew of his and iSignthis' obligations under the Act, the significance and materiality of the information that iSignthis failed to disclose, and the truth of the matters that he knowingly (or in the case of the One-off Revenue Representation, recklessly) misrepresented, obfuscated about and withheld from the market. Mr Karantzis had actual knowledge of the essential elements constituting each contravention. He was directly involved in each contravention, and he intentionally participated in the relevant conduct: see *ASIC v Vocation Ltd (No 2)* at [50].

109 Although it remains necessary to consider Mr Karantzis' conduct in light of aspects of the circumstances which are said to be mitigating, together with the course of conduct and totality principles, I accept ASIC's submission that generally Mr Karantzis' contraventions were continuing, and that they occurred over a relatively lengthy period of time (being from mid-2018 until late 2020).

110 I also accept ASIC's submission that it is particularly significant that the contraventions occurred during the period when Mr Karantzis and iSignthis were being investigated for conduct which included that which I have now found to be in contravention of the Act. In particular, ASIC having formally commenced its investigation into iSignthis and its directors on 2 October 2019:

(a) iSignthis contravened s 674(2) by failing to notify the ASX of the One-off Revenue/Costs Information, and Mr Karantzis contravened ss 180 and 674(2A) in relation to this conduct which continued until 15 November 2019;

(b) iSignthis contravened s 674(2) by failing to notify the ASX of the Visa information, and Mr Karantzis contravened s 180 in relation to this conduct which occurred wholly after ASIC commenced its investigation; and

(c) Mr Karantzis conduct in contravening ss 1309(2) and (12) in relation to the 25 May 2020 letter to the ASX, which also occurred wholly after ASIC commenced its investigation.

111 I accept ASIC's submission that the fact that these contraventions occurred in the context of an investigation by ASIC demonstrates the seriousness of Mr Karantzis' offending and also his disregard of the regulatory framework.

112 I also accept ASIC's submission that it is significant that Mr Karantzis' non-disclosure contraventions occurred after the ASX had sent the 7 May query letter to iSignthis, and, that it was by the 25 May 2020 response to that letter, which was objectively false or misleading (see Liability Judgment at [556]), that Mr Karantzis contravened ss 1309(2) and (12): see *ASIC v Blue Star (No 4)* at [85]-[87].

113 There can thus be no doubt, consistently with the findings in the Liability Judgment and the declarations I made subsequently, that Mr Karantzis' contraventions should not be discounted as easily as the defendants contend. Nonetheless, against the background of these contraventions I turn to consider the key further matters raised by the defendants in mitigation.

Does Mr Karantzis' reliance on legal advice assist him?

114 The first of these matters is the submission that that a disqualification order and a substantial financial penalty would not be appropriate where, in certain important respects, Mr Karantzis acted on the basis of legal advice.

115 The defendants submit that Mr Karantzis' conduct is made significantly less egregious because he was acting upon advice he received from Mr Seyfort. They make detailed and lengthy submissions to this effect with respect to the period relevant to the non-disclosure of the Visa information in particular, and also in relation to the 25 May 2020 letter to the ASX. First, the defendants note that in respect of the period from 17 April 2020 to 12 May 2020, it was Mr Seyfort who raised the possibility of iSignthis relying on the incomplete negotiation exception in ASX Listing Rule 3.1A. The defendants submit that in reaching the conclusion that in this period iSignthis was entitled to rely on the incomplete negotiation exception, the court attributed significance to Mr Seyfort's evidence that he considered that there was a prospect of negotiating an outcome with Visa which would leave its relationship with iSignthis intact and that an announcement did not need to be made until such negotiation had run its course.

116 The defendants submit that Mr Karantzis reposed the same trust and confidence in Mr Seyfort with respect to the 25 May 2020 letter to the ASX and the letter to shareholders sent on 24 May 2020 as he did in relation to the 17 April 2020 letter. Mr Karantzis gave evidence, which the defendants submit was not challenged in cross examination, that Mr Seyfort advised him to keep his answers to the ASX short and accurate, and that iSignthis should prepare a letter to shareholders which would give the company an opportunity to explain the parameters of the Visa dispute. Mr Karantzis maintains that at all times he intended to follow this legal advice and keep Mr Seyfort closely involved in the preparation of relevant documents.

117 The defendants submit that Mr Karantzis prepared drafts of the response to the 7 May query letter and the letter to shareholders and sent them to Mr Seyfort to review on the basis that Mr Seyfort would advise Mr Karantzis on the drafting of the letters taking into account iSignthis' obligation to make proper disclosure in accordance with the ASX Listing Rules and s 674(2) of the Act. The defendants rely on Mr Seyfort's approval of the drafts giving rise to an understanding on the part of Mr Karantzis that there were no legal issues with the content included, or not included, in the letters.

118 As has been mentioned, it is a key part of Mr Karantzis' narrative that during the relevant period he and Mr Hart believed that "iSignthis was in a battle with the ASX" which they reasonably thought the ASX was conducting "unfairly and in bad faith". They were concerned

that the ASX had suspended iSignthis' shares without a proper basis, and was searching for reasons to justify the suspension. This is the context in which the defendants submit that Mr Karantzis was at pains to ensure he followed Mr Seyfort's advice, although Mr Karantzis concedes that this approach was not how the company would usually respond to questions from a market operator. Mr Karantzis maintains that prior to the events arising from the suspension of iSignthis' shares, iSignthis responded fully and promptly to ASX query letters received from time to time.

119 It is Mr Karantzis' evidence that he did not intend to hide the fact that Visa was the party desiring to terminate the contractual relationship with iSignthis when he drafted the letter to shareholders. The defendants emphasise that Mr Karantzis' draft of the letter commenced with the sentence "iSignthis Ltd regrets to advise that its contractual relationship with Visa as a principal member will terminate in approximately 90 days", which conveys that it was Visa who was terminating the relationship. They submit that it was Mr Seyfort who amended the letter to read "iSignthis Ltd will end its contractual relationship with Visa as a principal member in approximately 90 days", which, the defendants accept, had a tendency to imply that iSignthis was the active party in ending the relationship with Visa. Mr Karantzis gave evidence that he did not suggest this change, he doubts that he noticed the difference in wording at the time, and he does not recall any discussion with Mr Seyfort about this aspect of the drafting. The defendants refer also to Mr Seyfort's evidence that at no time was there any discussion between him and Mr Karantzis about disclosing the ending of the contractual relationship between iSignthis and Visa in a way that did not acknowledge that Visa was the terminating party.

120 The defendants maintain that during the relevant period Mr Karantzis did not consider that iSignthis was obliged to disclose the substance of the 17 April 2020 letter from Visa, the earlier suspension dated 6 March 2020, or the other communications between iSignthis and Visa because the relationship was coming to an end. Mr Karantzis accepts that this was partially because of his own disagreement with the criticisms made and the reasons given for Vias's decision in the 17 April letter. However, the defendants submit that had Mr Seyfort advised Mr Karantzis otherwise Mr Karantzis would have accepted this advice, although he says he would have raised with Mr Seyfort the importance of setting out rebuttal information in any communication to the market. The defendants also submit that the absence of any reference to anti-money laundering issues in the 25 May 2020 letter was because Mr Karantzis understood from Mr Karantzis that it was permissible to provide a reply in terms which did not give a description of all of the issues raised by Visa, including the expressed anti-money laundering concerns. Mr Karantzis maintains that if Mr Seyfort had advised him to respond in more detail

and include a full description of Visa's anti-money laundering concerns as set out in the 6 March Visa Letter and the 17 April Visa Letter, he would have followed that advice.

121 The defendants also refer to Mr Seyfort's evidence that at the time that he was advising Mr Karantzis he did not consider that the responses to the ASX were non-compliant with the relevant obligations in the ASX Listing Rules or s 1309(2) of the Act. Mr Seyfort says that had he been of this opinion he would not have advised Mr Karantzis that answers in these terms be provided to the ASX.

122 It is also the defendants' position, as has been mentioned, that it was Mr Karantzis' belief that by 24 May 2020 the market had been sufficiently notified of the Visa information because Mr Seyfort had not advised him that the reasons for the termination needed to be disclosed as part of iSignthis' continuous disclosure obligations.

123 As they did in the liability trial, the defendants submit that it was appropriate for Mr Karantzis to obtain and rely upon advice from Mr Seyfort about the 7 May query letter and the draft letter to shareholders. They submit in particular that Mr Seyfort:

(a) had extensive experience in advising on matters concerning the Act and the ASX Listing Rules, and in relation to anti-money laundering risks, and that Mr Karantzis was aware of this experience;

(b) had been the principal legal advisor to iSignthis since 2018, and had familiarity with the business and its legal issues;

(c) had knowledge of all relevant facts, and had awareness of Visa's suspension letter dated 6 March 2020 and all relevant correspondence between Visa and iSignthis in the relevant period, including iSignthis' responses to the 17 April letter;

(d) had been instructed by Mr Karantzis that Mr Karantzis did not accept the reasons for termination as stated in the 17 April 2020 letter were Visa's true reasons, that there was a third-party auditor involved, and that the words "suspended by AML" on Visa's register did not mean shares had been suspended due to money laundering concerns; and

(e) in advising Mr Karantzis, relied on relevant documents and factual matters, the instructions given to him, and his accumulated professional skill and expertise, including about how to interpret questions and about the behaviour of businesses in the course of disputes.

124 The defendants also refer to two further matters insofar as the contraventions of ss 674 and 180 of the Act persisted after 24 May 2020 because the letter to shareholders was found to be deficient.

125 The first is that in the period from 16 July 2020 to 17 August 2020, Mr Karantzis maintains that he and iSignthis relied on the Clayton Utz report dated 16 July 2020 which did not state that iSignthis was required to make any further disclosure to the market in relation to the Visa information. The defendants refer in this regard to an email to the ASX on 17 July 2020, which attached a copy of this report, in which Mr Karantzis said "[w]e note that there are no substantial adverse findings and the board has overnight resolved to adopt all recommendations". The defendants refer also to iSignthis' intended market announcement that same day, which emphasised that the report did not identify any critical non-compliance around those transactions.

126 Secondly, the defendants submit that in the period from 4 September 2020 to 26 October 2020 they relied on the report Clayton Utz had prepared in July 2020, as well as a supplementary Clayton Utz report dated 4 September 2020, neither of which stated that iSignthis was required to make any further disclosure to the market in relation to the Visa information. Notably, the defendants submit that on 7 September 2020 the supplementary Clayton Utz report was sent to the ASX under cover of a letter signed by Mr Karantzis which claimed vindication of the position adopted by iSignthis in the disclosure of its dispute with Visa. The defendants submit that the supplementary Clayton Utz report did not suggest that there was an issue with the 24 May letter to shareholders, and did not suggest that the Reason for Visa's Termination should be disclosed to the market.

127 In support of their reliance on Mr Seyfort's advice, the defendants rely in particular on the findings of O'Callaghan J in *Australian Securities and Investments Commission v Ryan* [2024] FCA 1267 at [39] (***ASIC v Ryan***). His Honour there dismissed a proceeding in which ASIC alleged that the defendant had breached ss 180, 181(1) or 182 of the Act in circumstances where he had reasonably and in good faith relied on legal advice which was not materially inaccurate. It is questionable, however, whether the conclusion that O'Callaghan J reached on the basis of the facts in *ASIC v Ryan* has a sufficiently similar factual predicate to be applicable in the present circumstances.

128 I am prepared to accept, as a matter of fact, and subject to what follows, that Mr Karantzis broadly relied upon the advice of Mr Seyfort. Insofar as there was a suggestion made by ASIC, both in cross examination and in its submissions, that Mr Karantzis admitted that he did not

follow Mr Seyfort's advice, I am not inclined to accept that this is so. I consider, as the defendants submit, that Mr Karantzis' concession in cross examination that he did not follow Mr Seyfort's advice to keep his answers to the ASX accurate is a concession that the answers he gave were not in fact accurate, in light of the findings in the Liability Judgment.

129 It may be accepted that the taking and following of legal advice, reasonably and in good faith, even when that advice is proven to have been incorrect by a court's subsequent findings, may be a mitigating factor in the consideration of that conduct by a court: *ASIC v Ryan* at [39]; *Australian Securities and Investments Commission v Web3 Ventures Pty Ltd* [2024] FCA 578 (Jackman J). Indeed, ASIC concedes that as a general proposition this is so.

130 Nonetheless, consistently with ASIC's position, I do not consider that Mr Karantzis' asserted reliance on legal advice, particularly that of Mr Seyfort, is of much assistance to the defendants in the court's consideration of penalty in the circumstances of this case.

131 In the Liability Judgment it was determined that Mr Karantzis' reliance on Mr Seyfort's advice was no defence to his contraventions of the Act. The reality is that although he had an involvement in their drafting, Mr Seyfort's advice was not sought or given in relation to the truth or accuracy of the information contained in the letters to the ASX or the letter to shareholders. Rather, it is more correct to regard Mr Seyfort's advice as having been sought and given on strategy in the context of iSignthis' broader legal dispute with the ASX (Liability Judgment at [557]). Mr Seyfort was not asked to and did not conduct any form of fact-checking or due diligence exercise to ensure that what Mr Karantzis wrote was accurate. To the contrary, as has been found, Mr Karantzis had superior knowledge, and Mr Seyfort relied upon him for the truth of the matters (Liability Judgment at [558]).

132 The defendants correctly acknowledge that where a legal advisor has not been fully informed of relevant facts and documents, it will not avail a contravenor that they placed reliance on that advisor. In these circumstances, therefore, it is not open to the defendants at the penalty stage of these proceedings to traverse the findings in the Liability Judgment in relation to these matters.

133 I accept also, as ASIC submits, that although Mr Karantzis obviously relied on the Clayton Utz reports for his own purposes in dealing with the ASX, no real weight can be placed on them in the context of mitigation. Those reports were provided to iSignthis on the express assumption that all information provided to Clayton Utz by iSignthis and Mr Karantzis was true, complete and accurate. Relevantly, Clayton Utz assumed expressly that iSignthis was withholding disclosure of the Visa information under Listing Rule 3.1A on the basis that it would have been

a breach of European law to disclose the information unless and until the process with the CBC had concluded.

134 The circumstances in which Mr Karantzis and the company relied on the advice of Mr Seyfort and Clayton Utz may therefore be distinguished from those which were found to absolve the defendant of responsibility in *ASIC v Ryan*. In that case, O'Callaghan J was satisfied that the evidence showed that the defendant had independently satisfied himself that the legal advice upon which he relied was founded on accurate and complete information and assumptions: *ASIC v Ryan* at [301]. The position with respect to Mr Karantzis' asserted reliance on the advice of Mr Seyfort and Clayton Utz is obviously different.

135 This is not to say that a company or a director who has procured and relied upon legal advice which is proven to be incorrect may not in certain circumstances be relieved from liability and penalty for breaches of the Act where there has been reasonable reliance on that advice. Nonetheless, in my assessment a director who does not provide the relevant legal advisor with complete and accurate information and a basis for the legal advisor's assumptions cannot subsequently rely on the advice which is produced on the basis of this incomplete or inaccurate information for the purpose of seeking a reduction in the penalty that is to be ordered.

136 For these reasons I do not consider that Mr Karantzis' asserted reliance on legal advice provided by Mr Seyfort (or by Clayton Utz) can properly operate to mitigate against the seriousness of the contraventions he has been found to have committed in such a way as to sound in a reduced penalty.

Does the public require protection from Mr Karantzis?

137 A further key part of the defendants' submissions in mitigation is that a disqualification order and substantial financial penalty would not be appropriate where:

(a) Mr Karantzis has left Australia and does not intend to return or conduct business here, including as a director;

(b) Mr Karantzis is a person of such good character that there is no need for the public to be protected from him; and

(c) it would be in the best interests of ISX Financial EU Plc (**iSignthis FEU**), formerly iSeM, and its shareholders for Mr Karantzis to be permitted to maintain his role as a director of that company and use his abilities and skills for the benefit of that company and its shareholders.

138 Indeed, in relation to this third point, the defendants' position is that a disqualification order would in fact harm the interests of shareholders in iSignthsi FEU, they being the persons such an order would most be directed to protecting.

139 ASIC's position, however, is that a disqualification order is *required* to protect the public from Mr Karantzis. ASIC contends that Mr Karantzis is a person who serially obfuscates and misleads when it suits him and his interests, and that he is a serious and continuing risk to the Australian public, particularly to the shareholders of iSignthis who, as a result of the demerger, are now shareholders in iSignthis FEU. In any event, ASIC submits that the court must seek to achieve the objectives of specific and general deterrence.

140 ASIC's position is that in these circumstances the defendants' contention that Mr Karantzis should not be disqualified from managing corporations because his leadership is fundamental to the continuing success of iSignthis FEU is untenable. It submits that the court can have no confidence in Mr Karantzis' suitability to manage companies anywhere.

141 One issue which arose in this context and in relation to which the parties are apart is who is to be regarded as "the public" in need of protection. To the extent that the defendants maintained a submission that "the public" for present purposes should be regarded as the shareholders of iSignthis FEU, I do not accept that submission. As ASIC submits, the court is entrusted with the protection of the public more generally from use of the corporate structure that is contrary to proper commercial standards. In appropriate cases, this may involve safeguarding the public interest by disqualifying certain persons from holding office as directors. I do not consider that it would be correct to have regard only, or even substantially, to the interests of shareholders of iSignthis FEU in determining what level of protection of the public is necessary.

Mr Karantzis' relocation to Cyprus

142 Insofar as Mr Karantzis' relocation to Cyprus and his plans not to return to Australia or to conduct business here are concerned, I do not consider that in this case these matters are materially relevant to the question of whether there is a public interest in disqualifying Mr Karantzis from managing corporations in Australia. As ASIC submits, whatever risk Mr Karantzis poses is a risk to shareholders of any Australian companies he may manage from overseas, including those Australian shareholders in iSignthis FEU. Further, I accept ASIC's submission that the objectives of specific and general deterrence must be advanced in any event, regardless of where Mr Karantzis proposes to base himself and conduct business.

Mr Karantzis' character

143 As to Mr Karantzis' character, the defendants submit that the court should place considerable weight on the substantial evidence which has been led on this subject, including that which attests to Mr Karantzis' skill, competence and integrity, in weighing the appropriate penalty to be imposed on him. In this regard the defendants rely on the decision of the New South Wales Court of Appeal in *Vines v Australian Securities and Investments Commission* [2007] NSWCA 126 (Spigelman CJ, Santow and Ipp JA) (***Vines v ASIC***) in which there was a "singularly impressive" body of positive evidence about the skill and integrity of the relevant director which was not challenged and was accorded substantial weight in the court's consideration of whether the director was a fit and proper person to manage a corporation: at [86]-[100] (Spigelman CJ, Ipp JA agreeing). The only evidence to the contrary, the Court found, were the contraventions which were upheld on appeal: at [99].

144 I have accepted that Mr Karantzis is the founder of the iSignthis business, and its guiding mind. Mr Karantzis gives unchallenged evidence that under his leadership the company became a true regulated technology company with patents in multiple jurisdictions, generating export revenue, taxes and jobs in Australia through its activities in the European Union. It is also Mr Karantzis' unchallenged evidence that iSignthis became cashflow positive in 2018, and then profitable in 2019. The defendants submit that by comparison to other ASX listed companies it is unusual for a company that has only been listed for approximately three years to achieve this level of success. I am prepared to proceed on the basis that all of this is so.

145 In support of their submissions as to Mr Karantzis' character and skill, the defendants called a number of witnesses. This evidence can be summarised as follows.

146 First, Mr Seyfort, who has had professional dealings with Mr Karantzis over several years, describes Mr Karantzis as "an honest, intelligent, capable, diligent, innovative and effective chief executive officer." Mr Seyfort deposes that he has found Mr Karantzis to have a strong understanding of disclosure and reporting obligations, and an appropriate respect for the law, that he is hardworking and someone who takes responsibility for his actions.

147 Mr Hart gives evidence that he met Mr Karantzis professionally in or about 2008, and has worked closely with him since that date. Mr Hart describes Mr Karantzis "a very intelligent, inquisitive, loyal, passionate, driven and hardworking person". His evidence is that Mr Karantzis is respectful and has never asked him to engage in conduct which made him feel uncomfortable or that Mr Hart considered to be in breach of the law, and that he has "never

had any reason to doubt [Mr Karantzis'] honesty or integrity" including in relation to some of the conduct which is the subject of these proceedings.

148 Mr Christakis Taoushanis, the chairman of the board of iSignthis FEU gives evidence that:

(a) he has over 40 years of experience in the banking and financial services industry, and held significant executive roles including as the managing director of the Hongkong and Shanghai Banking Corporation Limited in Cyprus, and the chief executive officer of the Cyprus Development Bank;

(b) Mr Karantzis has always been clear, open, honest and respectful of Mr Taoushanis and the other directors of iSignthis FEU when responding to questions and providing updates; and

(c) he continues to have trust and confidence in Mr Karantzis' ability to lead iSignthis FEU and has not to date had reason to question Mr Karantzs' honesty or whether he was paying attention to the iSignthis FEU board.

149 Mr Panikos Pouros, another professional colleague who has been a non-executive director of iSignthis FEU since April 2022, gives evidence that Mr Karantzis has always been clear and candid in his dealings with the board. In circumstances where Mr Pouros has had experience on many boards, committees and delegations, his evidence is that he has "the utmost confidence and respect in Mr Karantzis as the Managing Director of [iSignthis] FEU for his ability to innovate and successfully execute a strategy for the benefit of shareholders".

150 Mr Ajay Treon, another professional colleague, also has a high opinion of Mr Karantzis. Perhaps this is unsurprising because Mr Treon is the chief financial officer of iSignthis FEU, although he is also an experienced professional in the banking industry. Mr Treon's evidence is that he has worked closely with Mr Karantzis and found him to be professional, courteous, respectful, and prepared to listen and engage with questions. Mr Treon has found Mr Karantzis to be hard working and committed to achieving iSignthis FEU's goals, including listing on a securities exchange for the benefit of its shareholders.

151 Mr Justin Klintberg is another person with whom Mr Karantzis has a positive professional relationship. Mr Klintberg, who is a founding partner of KG Capital Partners, first met Mr Karantzis professionally in 2015 and assisted iSignthis to raise capital in 2018. He gives evidence that Mr Karantzis is intelligent, honest, driven, and determined to create a successful business and value for shareholders. He also states that he has no reason to doubt Mr Karantzis'

integrity, and continues to have "great trust and confidence in Mr Karantzis and his ability to continue leading [iSignthis FEU]".

152 Mr Tod McGrouther is another supporter of Mr Karantzis. Mr McGrouther is a director of KTM Capital Pty Ltd and first met Mr Karantzis in 2015. He assisted iSignthis raise capital. Mr McGrouther describes Mr Karantzis as a "diligent, intelligent and honest person" determined to make the business financially successful. His evidence is that Mr Karantzis provided him with "straightforward answers" to questions during their dealings.

153 Mr Peter Betyounan, a relatively small shareholder of iSignthis and iSignthis FEU who has spoken to Mr Karatnzis by telephone in relation to matters concerning his shares, gives evidence that Mr Karantzis was "very polite and respectful" to him, appeared to be "genuinely interested" in his concerns as a shareholder, and that Mr Karantzis took the time to answer his questions "clearly and honestly". Mr Betyounan also credits the achievements of iSignthis and iSignthis FEU to Mr Karantzis' leadership of those companies.

154 As well as relying on the evidence of these various people, the defendants submit that the CBC is aware of the Liability Judgment and that although it has not raised any issues about Mr Karantzis being a "fit and proper" person to be a director of iSignthis FEU, if he were to be disqualified from being a director of a company in Australia, he and iSignthis FEU would need to advise the CBC of that information.

155 Having regard to the relevant evidence on this subject I have no difficulty in accepting that Mr Karantzis is a talented entrepreneur. I also accept that once it was listed on the ASX, iSignthis enjoyed relatively rapid financial success. It is clear that Mr Karantzis is the creative innovator that drives the whole iSignthis business and that he is important, and perhaps critical, to its success.

156 I accept also that the witnesses called by the defendants, including Messers Hart, Taoushanis, Pouros, Treon, Klintberg and McGrouther, perceive Mr Karantzis to be an honest, skilled, diligent and hardworking director and colleague. I agree that this evidence should be accepted in circumstances where it was not challenged by ASIC and there is otherwise no good reason why it should not be accepted: *Impiombato v BHP Group Limited (No 5)* [2024] FCA 591 at [143] (Murphy J).

157 However, the evidence of these witnesses can only be accepted on the basis of two qualifications. The first, as ASIC submits, is that evidence as to the character of a director who has been found to have contravened the Act can only sensibly be understood as an indication

of what the relevant deponents have perceived from their own dealings with that person: see *ASIC v Adler* at [93]. The second is that any findings about Mr Karantzis' character with respect to penalty must be read conformably with the findings made in the Liability Judgment. In this regard I accept that the findings made in these proceedings represent the first time Mr Karantzis has been found by a court to have breached the Act in Australia, or any similar legislation in a foreign jurisdiction, since he became a director of a public company.

158 Nonetheless, notwithstanding Mr Karantzis' undoubted talents, his success in managing the iSignthis companies, and the popularity he seems to enjoy amongst at least some of his peers, it remains the case that Mr Karantzis has engaged in serious contraventions of the Act involving repeated false and misleading misrepresentations to the market and the market operator. Also, having regard to several matters, including Mr Karantzis' less than frank answers in cross examination to questions about his control over iSignthis Ltd BVI, and to his admission in cross examination that he lied to ASIC investigators during the 2 October 2019 voluntary interview, I am prepared to accept ASIC's submission that Mr Karantzis has a tendency to obfuscate and mislead when it suits him to do so. Such a conclusion is entirely consistent with the court's findings in relation to certain of Mr Karantzis' answers to questions posed by the ASX in iSignthis' 25 May 2020 letter to the ASX. Insofar as the defendants submit that in his answers to questions in cross examination Mr Karantzis was merely seeking to clarify that there were other shareholders of iSignthis BVI, and that his inaccurate statements to ASIC investigators can be explained by reference to his understanding of certain matters in the statement of claim in this proceeding, I do not accept these submissions as a reasonable explanation of Mr Karantzis' answers.

159 For these reasons I am not persuaded that when understood in light of his serious contraventions of the Act and the need to protect the public, the evidence as to Mr Karantzis' integrity, his undoubted abilities as a director and successful innovator, and his preparedness to engage on an appropriate basis with his colleagues and shareholders would mitigate to any significant extent whatever penalties it would be appropriate to impose on him: cf *Vines v ASIC*. The circumstances of the relevant director's contraventions in *ASIC v Vines,* and the nature of those contraventions, are different to those concerning Mr Karantzis.

The interests of shareholders

160 The final aspect of the defendants' submissions in relation to whether the public requires protection from Mr Karantzis concerns his asserted importance to the shareholders of iSignthis FEU given its central role in the success of the business.

161 I accept, as a general proposition, that the interests of shareholders, creditors and employees may be relevant to the court's consideration of penalty and in particular to the objective of protection of the public: *ASIC v Healey (No 2)* at [105]; *ASIC v Rich* at [49]; *ASIC v Adler* at [56]; *Ekamper* at 525. Having regard to the defendants' submissions, however, it is necessary to consider what weight these interests should be afforded in coming to a determination on penalty in this case.

162 The defendants submit that any disqualification order must be considered in light of the "extraordinary success" which iSignthis FEU has had in growing its European business and the interests of its more than 10,200 shareholders, many of whom are small investors. They assert that as Mr Karantzis is the principal driver of the iSignthis FEU business, were he to be disqualified for a period of time there would be no practical possibility of iSignthis FEU going forward with a listing on a securities exchange during the period of any disqualification, and perhaps permanently. This, it is submitted, would have a devastating impact on many smaller shareholders whom it is said have "suffered already" as a result of the "involvement of ASIC and the ASX in the affairs of iSignthis".

163 Having regard to the changing structure of the iSignthis companies since the demerger in October 2021, shareholders now hold a direct interest in iSignthis FEU (which had previously been a subsidiary of iSignthis). The defendants submit that iSignthis demerged from its subsidiaries for the benefit of its shareholders essentially by reason of the suspension in trading which operated to prevent the company from raising additional capital. The evidence, the defendants submit, is that:

(a) shareholders who purchased shares in iSignthis prior to the suspension on 2 October 2019 approved the demerger of iSignthis in 2021 on the basis that they would receive one share in iSignthis FEU for every ten shares that they held in iSignthis; and

(b) the primary purpose of the demerger was to provide a mechanism for iSignthis FEU to be listed on an overseas stock exchange, to enable its shares to be traded on an open market, and to enhance its ability to raise funds to grow the business.

164 Thus the defendants submit that if iSignthis FEU is unable to be listed on an overseas stock exchange because Mr Karantzis is disqualified as a company director in Australia, this would be antithetical to the best interests of the shareholders in that entity.

165 As has been mentioned, the evidence is that the business of iSignthis FEU has grown significantly since the demerger. In particular, insofar as the 2024 financial year is concerned,

Mr Treon's evidence is that iSignthis had a "record breaking" first and second quarter, and the company was forecast to nearly double processed volumes, increase revenue, nearly triple its net profit after tax, increase cash reserves, increase funds held on behalf of clients and increase net assets.

166 Mr Taoushanis' evidence is that iSignthis FEU will be able to benefit from its achievements if it can list on a securities exchange as soon as possible, and Mr Hart's evidence is that the company has told shareholders that it had hoped to list on a securities exchange in the fourth quarter of 2024, or soon thereafter.

167 The defendants submit that since the suspension of trading in iSignthis' shares, Mr Karantzis has sought to restore shareholders to a position where they can trade their shares on a securities exchange. It is Mr Karantzis' evidence that since the demerger he has worked diligently to achieve this goal, and that such a listing must occur if the company is to grow and develop. Mr Karantzis also says that as iSignthis FEU is a public company, access to capital is extremely difficult because private capital seeks entities that are private or can be privatised for investment. The defendants submit that iSignthis FEU must therefore rely upon public markets to raise capital to fund any future growth beyond that which can be funded from cash flow and profits.

168 Further, it is Mr Hart's evidence that:

(a) the most common question he is asked by individual shareholders is about when iSignthis FEU will be listed on a securities exchange;

(b) shareholders have advised him that such a listing is critically important to them;

(c) shareholders are "annoyed and frustrated" because, despite the demonstrable financial success of iSignthis FEU, they cannot realise financial benefit because they are unable to trade their shares on an open market; and

(d) if iSignthis FEU's listing on an overseas securities exchange is delayed or abandoned these shareholders will suffer because they purchased an asset which was readily realisable but has effectively become inaccessible since October 2019.

169 As well as this, it is the evidence of Mr Hongfu Sun, a shareholder in iSignthis FEU, that in September 2019 he purchased 4,400,000 iSignthis shares for $4,752,000. Since 2 October 2019 he has been unable to access his investment. Mr Sun says that since the demerger in October 2021 he has been unable to determine the value of the 4,440,000 iSignthis FEU shares he received, make informed decisions in relation to them, or easily sell them. Other investors give

evidence to a similar effect. Those who have given evidence wish to see iSignthis FEU listed on an overseas exchange so that they can realise their investment at a price which reflects the real value of the company.

170 In the same vein, Mr Treon has also given evidence that:

(a) iSignthis FEU has received many emails from "ordinary unsophisticated investors" in which these people have expressed frustration and disappointment at being unable to ascertain the value of their shares, or to sell them because they are suffering financial hardship; and

(b) if iSignthis FEU does not list on a securities exchange the "ordinary unsophisticated shareholders" will continue to suffer because they will remain unable to easily determine the value of their shares or sell them.

171 Mr Peter Morton, Mr Klintberg and Mr McGrouther, each of whom have extensive experience in equity capital markets, all depose that it is imperative for iSignthis FEU to list on an overseas exchange as soon as possible because doing so will bring significant shareholder benefits, and allow the business to continue to grow. It is submitted that Signthis FEU may otherwise lose the opportunity to list.

172 The shareholders who have given evidence, together with Mr Hart, the three officers of iSignthis FEU, Mr Taoushanis, Mr Pouros, and Mr Treon, and the three experienced equity capital markets advisors, Mr Klintberg, Mr McGrouther and Mr Morton, in their own ways each express considerable confidence in Mr Karantzis. They consider him to be critical to iSignthis FEU and therefore to the successful listing of that company on an overseas securities exchange. The prospect of Mr Karantzis being disqualified from being a director of iSignthis is of grave concern to them.

173 Mr Taoushanis' evidence is also that the disqualification of Mr Karantzis from being a director of a company in Australia for a period of time would make listing iSignthis FEU on a securities exchange "very challenging". He considers that institutional investors' support would be "questionable" in such circumstances. Mr Pouros and Mr Treon give evidence of their similar view.

174 Mr Treon also says that were Mr Karantzis to be disqualified from being a director of a company in Australia for a period of time, instead of only being ordered to pay a monetary penalty, it is unlikely that iSignthis FEU would be able to progress its goal of listing on an overseas securities exchange without delay, and possibly at all. It is his view that the

disqualification of Mr Karantzis is likely to be seen by securities exchanges, listing agents, sponsors, auditors, valuers and institutional investors as a much more significant matter than a financial penalty, and they would not support a listing of iSignthis FEU where the key executive is a person disqualified from being a company director in Australia.

175 Mr Karantzis' evidence is to like effect. He also considers that he is critical to the successful listing of iSignthis FEU, and that his disqualification would make this very difficult, if not impossible. Mr Karantzis also gives evidence that he has completed the CySec advanced examination which involved a study of the relevant market abuse regulations and disclosure requirements.

176 As to the interests of iSignthis FEU's employees, the defendants submit by reference to Mr Treon's evidence that iSignthis FEU is a substantial company which has approximately 151 employees of whom about 110 are located in Cyprus and the remainder in the United States, the United Kingdom, Cyprus, Israel, Lithuania, Malta, the Netherlands and Australia. Mr Karantzis and Mr Treon have deposed that no fines or other sanctions were imposed on iSignthis FEU by the CBC under its supervisory authority for the period from 1 June 2021 to 30 May 2023.

177 There can be little doubt on the evidence that Mr Karantzis is important to iSignthis FEU and perhaps critical to its ability to list on a securities exchange. It would also seem to be the case that if Mr Karantzis were to be disqualified from being a director for a period of time it may become more difficult for iSignthis FEU to list on an exchange. It seems that many shareholders perceive it to be in their best interests that such a listing occur. To the extent that ASIC maintained a submission that iSignthis FEU would be better off without Mr Karantzis as a director, this may be something about which different people may hold different views.

178 I therefore accept that a disqualification order against Mr Karantzis is likely to have an adverse impact on the financial interests of the minority shareholders of iSignthis FEU. I accept also that the interests of iSignthis FEU shareholders can be taken into account to some extent in mitigation. Nonetheless, in all the circumstances I am not persuaded that the financial interests of this class of people ought properly be the court's primary focus, or even a substantial focus, having regard to the other objectives of disqualification orders. I would not therefore attribute significant weight to this consideration in the present circumstances. As the defendants appear to accept, the need for specific and general deterrence may outweigh the adverse impact on shareholders in a consideration of penalty in particular cases. That Mr Karantzis has undertaken

a further course of study into corporate disclosure requirements in Cyprus does not affect my analysis.

Is Mr Karantzis suitably contrite?

179 The defendants also address submissions in mitigation to the effect that a disqualification order and a substantial financial penalty would not be appropriate where Mr Karantzis has acknowledged his responsibility for the conduct which has caused him to breach the Act. They maintain that in releasing information to the market on behalf of iSignthis over a number of years Mr Karantzis has consistently sought to make it accurate, although they also maintain that Mr Karantzis recognises that on the occasions which are the subject of the findings of contravention in this proceeding he failed to do this. The defendants submit that Mr Karantzis has genuinely apologised for the responses provided to the ASX, which he says he thought were sufficient at the time based upon Mr Seyfort's advice. The defendants emphasise Mr Karantzis' evidence that he very much regrets that his answers were false or misleading in contravention of s 1309(2) of the Act, and that it is a source of "embarrassment and discomfort" to him that he has been found to have contravened the law in the Liability Judgment.

180 The defendants also point to evidence of two offers made by them to ASIC to settle this proceeding as evidence of Mr Karantzis genuine contrition. While accepting that the settlement offers do not contain an express apology, the defendants submit that they contain numerous admissions which evidence Mr Karantzis' willingness to take responsibility for his actions.

181 ASIC's position, however, is that in truth Mr Karantzis has shown no real contrition, remorse or insight into his conduct and the contraventions. This is an additional reason ASIC advances in support of its position that Mr Karantzis' contraventions warrant his disqualification for a period of ten years. ASIC submits that:

(a) Mr Karantzis' evidence, including in cross examination, seeks to explain why his conduct was justifiable and has a tendency to minimise or deny its seriousness;

(b) Mr Karantzis has sought to deflect responsibility onto others, such as the ASX and Mr Seyfort, and this is a consistent theme;

(c) the evidence of the two without prejudice offers ought be given little weight as to contrition; and

(d) Mr Karantzis has made no general public apology for his conduct, and the statements of remorse he has made reveal a lack of genuine insight into the seriousness of his misconduct, and the responsibility he bears for it.

182 ASIC draws attention in this latter respect to a press release which was published by Southern Cross Payments on 24 June 2024 reporting on the findings in the Liability Judgment in relation to the company and Mr Karantzis. ASIC notes, and Mr Karantzis accepts, that he saw and read a draft of the press release prior to it being published, although Mr Karantzis says that it was drafted by senior and junior counsel, and not by him. The press release was in the following terms:

> **ASIC vs iSignthis Ltd and Nickolas John Karantzis**
>
> **24th June 2024, Melbourne, Australia**: Southern Cross Payments Ltd, formerly iSignthis Ltd (the **Company**), announces that last Friday afternoon, the Federal Court of Australia in Victorian Registry Case No VID773/2020 handed down its decision in the proceeding brought by [ASIC] against [the Company] and its former managing director, Mr Karantzis.
>
> Following a report published by Ownership Matters in September 2019 and suspension by the ASX of the Company's shares in October 2019, ASIC commenced an investigation into the revenue earned by the Company in the six months to 30 June 2018, which resulted in the achievement of the performance milestones and consequent issue of the performance shares. At all times, the Company and its officers, including Mr Karantzis, maintained that the revenue had been earned legitimately.
>
> ASIC refused to accept this position and instead issued the proceeding making very serious allegations against Mr Karantzis for breach of his directors' duties arising from the achievement of the performance milestones. That case failed.
>
> In rejecting those allegations, the Court made the following findings:
>
> - "ASIC has not proven to the requisite standard that Mr Karantzis has made an improper use of his position in relation to the performance shares…"
> - "it cannot be accepted that ASIC has proven to the requisite standard that Mr Karantzis failed to exercise his powers in good faith in the best interests of the corporation and for a proper purpose."
>
> The matter of the achievement of the performance milestones and consequent issue of the performance shares is now closed, with ASIC having failed to make its case.
>
> The relative significance of the issues on which ASIC failed and those on which it succeeded will be the subject of detailed legal submissions in the second phase of the proceeding. Accordingly, it is not appropriate to comment further. The Company expects to be in a position to make fuller comment when all of the issues in the proceeding have been finally determined by the Court.
>
> [The Company] and Mr Karantzis were represented in court by Mr Peter Collinson, Kings Counsel and Mr Justin Mereine, as instructed by law firm HWL Ebsworth of Melbourne, Victoria, Australia.

183 ASIC submits that it is telling on the subject of Mr Karantzis' contrition that he continues to maintain that he "believed, and still believe[s] today, that ASX did not have any proper basis for suspending iSignthis' shares from trading". Mr Karantzis' continued efforts to explain his conduct in terms of ongoing suspicion and distrust of the ASX, ASIC submits, underscores his

lack of contrition, lack of insight into his conduct, and continuing disregard for his regulatory obligations.

184 Standing back and looking at all of the relevant evidence as a whole, I accept ASIC's submission that Mr Karantzis has not in fact demonstrated genuine contrition or taken real responsibility for what have been found to be the serious contraventions of his obligations under the Act. Contrary to the defendants' submissions, I do not accept that Mr Karantzis has demonstrated any genuine remorse for the contraventions that he has been found to have committed. What he has demonstrated is a profound lack of insight.

185 Notwithstanding the valiant efforts of senior counsel for the defendants to minimise the significance of the press release, I have no difficulty in accepting ASIC's submission that it conveys an absence of any remorse, regret, and perhaps most importantly insight, on the part of Mr Karantzis into the seriousness of the contraventions he and iSignthis have committed. Indeed, Mr Karantzis accepted in cross examination at the penalty hearing that the press release conveyed no sense whatsoever of any contrition on the part of him or the company. It is significant, in my assessment, that the press release is the only public statement made on behalf of the defendants following the Liability Judgment.

186 When it is considered in its proper context I regard the press release as just another example of corporate spin fashioned by Mr Karantzis and those around him. It is in much the same category as iSignthis' letter to shareholders of 24 May 2020 (Liability Judgment at [374], [376]). This approach bespeaks defiance rather more than contrition.

187 Further, the fact that the press release was not actually drafted by Mr Karantzis does not mean that he can simply wash his hands of it. As ASIC submits, there is no basis to draw an inference that counsel was at any time acting other than in accordance with the instructions of Mr Karantzis or another officer of the company. And in circumstances where Mr Karantzis accepted that he read a draft of the press release before it was published, and must therefore be taken to have directed or at least consented to its publication, there is no basis to doubt that if Mr Karantzis had wished to express contrition in a public statement he could have done so through the press release or in some subsequent announcement. I accept that in these circumstances Mr Karantzis must bear substantial responsibility for the absence of contrition and insight which has been demonstrated by the defendants.

188 It is also the case, as ASIC submits, that Mr Karantzis has not made any public apology for his contraventions, and that while he made a brief and carefully crafted apology in relation to misleading the ASX, he did not apologise for any of the other contraventions found by the

court. To the extent that the defendants submit that it is not appropriate to give any weight to Mr Karantzis' failure in this regard in circumstances where this proceeding is continuing, I do not accept that this is so in circumstances where Mr Karantzis makes an affirmative submission that he has acknowledged his responsibility for the contraventions and has apologised.

189 The structure and terms of Mr Karantzis brief apologetic remarks and statements of remorse are also telling. While it is true, as Mr Karantzis acknowledges, that contrition evidence may at times be artificial, I accept ASIC's submission that Mr Karantzis' remarks do not reveal any genuine insight into the seriousness of his conduct. Although Mr Karantzis may regret having contravened the Act, I accept ASIC's submission that his statements of regret, embarrassment and discomfort are no more than that. I do not consider that they can properly be regarded as evidence of genuine contrition.

190 I also accept that there is a striking absence of any evidence of Mr Karantzis taking full and unqualified responsibility for the serious conduct which he has been found to have engaged in. His completion of the CySEC advanced examination is not a matter to which I attribute any real significance. As ASIC submits, Mr Karantzis' evidence has a tendency to seek to explain why he believed his conduct was justifiable, and to minimise or deny its seriousness.

191 I also accept ASIC's submission that it is significant that Mr Karantzis continues to maintain that the ASX did not have a proper basis to suspend iSignthis' shares from trading and that it was not acting in good faith. As ASIC submits, it is now clear that the ASX had correctly and appropriately concluded that iSignthis had breached Listing Rule 3.1, and that from May 2020 it was correctly and appropriately concerned that iSignthis was in further breach of its disclosure obligations in relation to the Visa information.

192 Nor am I persuaded that evidence which was adduced by the defendants of two without prejudice offers made by them to ASIC in 2023 to settle this proceeding are suggestive of any real contrition on the part of Mr Karantzis. The terms of these offers and the context in which they were made are set out and considered in further detail below in the context of Mr Karantzis' asserted co-operation, but I accept that these without prejudice offers do not exhibit genuine insight into the contravening conduct or an acceptance of responsibility on the part of Mr Karantzis.

193 Insofar as the defendants maintained a submission, with reference to *United Voice v MDBR123 Pty Ltd (No 2)* [2015] FCA 76 (Rangiah J), that contrition can be demonstrated by the fact that they made a without prejudice offer during the course of the proceedings, I do not accept this submission in the present circumstances. While the making of such offers and admissions even

on a without prejudice basis may be relevant (and mitigating) in the court's determination of penalty, the mere fact of making an offer absent any further analysis as to its content does not assist the defendants in demonstrating an appropriate level of contrition.

194 It follows that contrition cannot play any significant role in mitigation of the contraventions Mr Karantzis has committed in the consideration of penalty.

Did Mr Karantzis co-operate with ASIC?

195 In its written submissions for the penalty phase of this proceeding, ASIC submitted in support of its position that Mr Karantzis' conduct justifies disqualification for a period of ten years that Mr Karantzis should have no discount for cooperation because he put ASIC to proof on all aspects of its case, and although he relied on the penalty privilege he failed to appear and give evidence in the liability proceeding in answer to the allegations made against him.

196 It was primarily in response to this submission that the defendants adduced, in circumstances which it is unnecessary to canvas here, evidence of two without prejudice offers which had been made to ASIC. The offers, which were contained in letters dated 15 February 2023 and 21 April 2023, were both rejected by ASIC. The question therefore arises as to what weight should be given to these two without prejudice offers on the question of co-operation.

197 ASIC submits that where a without prejudice offer has been made but not accepted, and where a defendant has, under cover of the privilege, continued vigorously to defend the proceeding on liability without making any admissions or concessions, there is no justification for discounting the penalty to be imposed. ASIC maintains that in circumstances where the offers do not convey any evidence of contrition, they can carry little weight in mitigation of penalty.

198 It is the defendants' position, however, that the offers are evidence of their cooperation with ASIC, and that it is not correct that they did not cooperate with ASIC *at all*. They submit that the 15 February 2023 offer in particular contained an offer to resolve the proceeding on the basis that, if the offer had been accepted by ASIC, Mr Karantzis and iSignthis would have made admissions and concessions (including because it included a proposed Statement of Agreed Facts) which aligned closely with the ultimate outcome of the liability trial and the findings made in the Liability Judgment. As has been mentioned, the defendants also rely on the two letters as demonstrating Mr Karantzis' contrition, and the responsibility he has taken for the conduct which caused him to contravene the Act.

199 In considering the weight that should be given to the letters, it is necessary to understand the terms of the letters themselves and the context in which the offers were made.

200 It will be recalled that the proceeding was commenced by ASIC in December 2020, and the defendants filed defences in March 2020. Those defences made no admissions of any substance. During this period the defendants made numerous public statements that they would vigorously defend ASIC's claims. In March 2021, in its 2020 Annual Report, iSignthis stated that the company "[would] vigorously contest the claims". In October 2021, in the demerger prospectus, iSignthis reported publicly that the company and Mr Karantzis would "vigorously" defend ASIC's claims. And then on 31 March 2022, in its 2021 Annual Report, iSignthis repeated its statement that "iSignthis and [Mr Karantzis] continue to vigorously contest the claims" made by ASIC.

201 It was on 15 February 2023, two weeks prior to the commencement of the trial on liability, that the defendants sent ASIC a letter stated to be "without prejudice save as to costs" containing an offer to compromise the proceedings. Paragraph one of the letter stated:

> For the reasons set out in our clients' opening submissions dated 13 February 2023 …and below we consider that:
>
> (a) many, and potentially all, of the allegations made in the Proceeding against the Defendants are misconceived and bound to fail;
>
> (b) even if your client proves one or more of those allegations:
>
> (i) the pecuniary penalty which would be imposed by the Court is likely to be at the lower end of the range, particularly having regard to all the relevant matters in section 1317G(6) of the [Act]; and
>
> (ii) this is not a case where in all the circumstances the Court would seriously entertain an order that [Mr Karantzis] be disqualified from managing corporations.

202 As ASIC submits, paragraphs 3 to 12 of the letter sought to justify the assertion that ASIC's case was misconceived and bound to fail, setting out in some detail the weaknesses the defendants perceived in the allegations made by ASIC against them.

203 The 15 February 2023 letter contained a "global" offer seeking resolution of all of ASIC's claims against the defendants on the conditions set out in the offer, stated to be made "in order to avoid an unnecessary and costly trial, and in the interests of the Overarching Obligations" in s 37M of the *Federal Court of Australia Act 1976* (Cth).

204 In particular:

(a) Mr Karantzis offered to settle the proceeding on the basis that he would substantially concede four of the six claims made against him, being:

(i) three breaches of s 180(1) of the Act arising from the oral One-off Revenue Representation, non-disclosure of Visa's Termination Decision between 12 May 2020 and 17 August 2020 and non-disclosure of the Reasons for Visa's Termination between 12 May 2020 and 26 October 2020; and

(ii) a breach of ss 1309(2) and (12) of the Act in relation to the information contained in the letter dated 25 May 2020 to the ASX; and

(b) iSignthis offered to settle the proceeding on the basis that it would substantially concede three of the four claims made against it, being the:

(i) oral One-off Revenue Representation;

(ii) non-disclosure of Visa's Termination Decision between 12 May 2020 and 17 August 2020; and

(iii) non-disclosure of the Reasons for Visa's Termination between 12 May 2020 and 26 October 2020.

205 Paragraph 22 of the letter stated:

> If, notwithstanding the above, your client does not accept this offer and ultimately does not achieve a better result after a trial of the Proceeding, the Defendants will rely on this letter in support of an application for an order that your client pay their costs of and incidental to the Proceeding on an indemnity basis.

206 The annexure to the letter proposed the following penalty orders:

(a) iSignthis pay a pecuniary penalty of $500,000; and

(b) Mr Karantzis pay a pecuniary penalty of $150,000.

207 Importantly, the offer did not involve disqualification of Mr Karantzis as a director for any period of time.

208 On 21 April 2023, after the first phase of the liability trial had concluded, the defendants sent ASIC a second letter, also said to be "without prejudice save as to costs", containing a further offer to compromise the proceedings. Paragraph 1 of that letter was in the following terms:

> For the reasons set out in our clients' written opening submissions dated 13 February 2023 and 10 March 2023, as well as our clients' oral opening submissions made on 1 March 2023, 2 March 2023, 9 March 2023 and 10 March 2023, and taking into account the evidence given in the Proceeding, we consider that:
>
> (a) the allegations made in the Proceeding against our clients are misconceived and bound to fail; and
>
> (b) even if your client proves one or more of those allegations:
>
> (i) the Court is unlikely to find that the contravention was serious

> within the meaning of section 1317G(1)(b)(iii) of the [Act]; and/or
>
> (ii) insofar as [Mr Karantzis] is concerned, the Court is likely to find that at all material times he acted honestly and ought to be fairly excused for the contravention pursuant to section 1317S(2) of the [Act], further or alternatively section 1318(1) of the [Act].

209 Paragraph 3 contained the offer, again stated to be made "in order to avoid further significant legal costs, and in the interests of the Overarching Obligations". Somewhat optimistically, the offer was that the proceeding be dismissed and there be no order as to costs. As ASIC points out, it therefore involved no admission of liability by Mr Karantzis or the company, no payment of pecuniary penalties, and no disqualification of Mr Karantzis.

210 As ASIC submits, even after these two offers were made and the trial on liability had concluded in June 2023 the defendants continued to refer publicly to their vigorous defence against ASIC's claims, including that:

(a) on 31 July 2023, iSignthis released its 2023 Annual Report, which continued to state that "[the company] will vigorously contest the claims";

(b) on 11 December 2023, iSignthis released its 2023 Half-Year Report, which stated that "[the company] has vigorously contested the claims in the matter heard between February 2023 and June 2023"; and

(c) in August 2024, iSignthis released its 2023 Annual Report, which stated "[the company] vigorously contested the claims."

211 The question then is whether it can properly be said that these letters can now be regarded as constituting evidence of co-operation with ASIC so as to sound in mitigation in relation to the penalties to be imposed.

212 It must be accepted that they are at least relevant to the court's consideration of whether Mr Karantzis and iSignthis cooperated with ASIC. In this regard there can be no doubt that co-operation can be a mitigating factor in the assessment of penalty: *CFMMEU v Fair Work Ombudsman* at [67]-[93]. However, the discount in penalty for making admissions that save the cost and resources involved in a contested hearing, but which are unaccompanied by contrition, will generally be modest: see *Mornington Inn* at [78]. As Katzmann J observed in *Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union* (2020) 299 IR 231 (at [62]-[63]):

> The respondents have cooperated with the regulator in the disposition of this proceeding, by agreeing on the facts and making admissions. Their conduct in this

> respect saved the costs and inconvenience of a trial. Despite their utilitarian value, it is not a sufficient basis for a discount that admissions have saved the cost of a contested hearing. Nevertheless, a discount may be justified if the admission of liability indicates an acceptance of wrongdoing and "a suitable and credible expression of regret" and/or "a willingness to facilitate the course of justice". See [*Mornington Inn*] at [76].
>
> The respondents eschewed any notion that they were entitled to any leniency because their admissions represented an acceptance of wrongdoing, let alone a "suitable and credible expression of regret". Indeed, none of the respondents offered an apology or exhibited any contrition and in their original defence they all denied liability. That said, I accept that the admissions of liability indicate "a willingness to facilitate the course of justice". The respondents agreed to participate in a mediation. A series of admissions were made at the mediation following which both the amended statement of claim and the amended defence were filed. That occurred at an early stage of the proceeding, before any evidence was filed and before any orders for the filing of evidence were made. For this reason, as senior counsel for the respondents put it in argument, "there is a basis for some mitigation". As the Full Court observed in the *Queensland Infrastructure Case* at [163], "[f]rom a public policy perspective, it is important to encourage such cooperation by reflecting it in the penalties imposed". In the absence, however, of any contrition or any evidence to demonstrate that the respondents have accepted their wrongdoing, no more than a modest discount is justifiable.

213 As ASIC submits, the authorities indicate, *a fortiori*, that a defendant will not be entitled to a discount in penalty where the defendant has gone on vigorously to defend liability. An example of such authority propounded by ASIC is *ASIC v ANZ (No 3)* where, having recounted ASIC's submission that ANZ had not shown any contrition, and had fought the proceeding to the end of trial, Moshinsky J concluded (at [43]):

> ANZ contested the issue of liability, as it was entitled to do. ANZ participated in a mediation, but I do not consider that any significant weight is to be placed on this. ANZ has not co-operated in such a way that would cause a reduction in the penalty otherwise to be imposed.

214 ASIC refers also to *Australian Competition and Consumer Commission v Renegade Gas Pty Ltd (trading as Supagas NSW)* [2014] FCA 1135 (Gordon J) where the circumstances were as follows:

(a) the defendant had not assisted the Australian Competition and Consumer Commission (**ACCC**) or cooperated voluntarily in the course of the ACCC's investigation: at [141];

(b) following the filing of the ACCC's evidence, the defendant had made an offer to settle the proceedings on terms including payment of a pecuniary penalty of $2 million together with other relief in terms similar to the relief the subject of Gordon J's proposed orders: at [146];

(c) the offer was not accepted by the ACCC: at [147];

(d) the defendant and the ACCC participated in a mediation, which was unsuccessful: at [148]; and

(e) six weeks before trial, the defendant and the ACCC agreed to settle the proceeding: at [149] (and the agreed penalty was $4.8 million: at [153]).

215 Justice Gordon concluded (at [149]) that the defendant was entitled to a "modest discount" for settling the proceeding six weeks prior to the trial, and thereby saving the costs of the court and also the ACCC, but that the defendant was not entitled to any further discount by reason of its other conduct during the investigation or proceedings as set out above, including by its earlier offer to resolve the proceeding.

216 ASIC submits and I accept that having regard to the relevant authorities the following relevant propositions can be identified as to the affect of cooperation in considering penalty:

(a) first, it cannot be assumed that cooperation by making admissions and resolving part or all of a proceeding involves any element of contrition;

(b) secondly, it is therefore necessary that there be specific evidence of contrition as a mitigating factor;

(c) thirdly, although there is some authority that cooperation on its own absent evidence of contrition is not relevantly mitigatory, a modest discount may be available if that cooperation has involved admissions which have resulted in the resolution of proceedings and the saving of resources; and

(d) fourthly, the weight to be given to co-operation without contrition must therefore take into account the actual practical or utilitarian value of that co-operation.

217 As ASIC submits, where a without prejudice offer has been made but not accepted, and where a defendant has, under cover of the privilege, continued vigorously to defend the proceeding on liability without making any admissions or concessions, there is no justification for discounting the penalty to be imposed. However, obviously enough, the particular circumstances in which the offer was made and refused must be considered in the context of each case.

218 In my assessment it is correct for ASIC to submit that there can be little (if any) mitigation in the mere potential for an offer to result in an agreed settlement. And such a potential could only be assessed having regard to whether the offer was reasonable.

219 I accept ASIC's submission that in the usual course considerations as to the reasonableness of an offer can only properly be made at the conclusion of a proceeding so as to enable a comparison between the offer and the final outcome. But even at that point, whether ASIC as a regulator has reasonably rejected an offer cannot be assessed merely by comparing the court's

conclusions against the terms of the offer. This is because ASIC is responsible for the enforcement of the Act, and it does not have the freedom to agree upon an appropriate civil penalty in the same way as a private litigant in civil litigation. ASIC may agree a penalty, but it is for the court to determine its appropriateness: see *Australian Competition and Consumer Commission v Baxter Healthcare Pty Ltd* [2005] FCA 860 at [12] (Allsop J).

220 I have some sympathy with the defendants' position that, as ASIC concedes, the offer made on 15 February 2023 has more than a little resemblance to the court's ultimate conclusions on liability. In this sense I accept the defendants' submission that it cannot be said that they did not co-operate *at all* with ASIC. However, for the reasons which have been canvassed I cannot readily infer that if there is some commonality between the terms of an offer both with the court's findings on liability and the contemplated ranges on penalty and disqualification, and where the offer does not contain any expression of contrition, the offer should necessarily carry any significant weight in mitigation when it comes to determining the penalty to be imposed.

221 Having accepted that the two without prejudice offers made by the defendants to ASIC do not on their face demonstrate any real contrition on the part of the defendants, I accept also that they were made in the context of the defendants' continued reliance upon the without prejudice privilege vigorously to defend all elements of the case ASIC had brought against them. I accept ASIC's submission that the offers expressed in the letters can carry very little (if any) weight because they have not created utilitarian or practical value by saving the public resources of the regulator and the court. More fundamentally, in circumstances where it was reasonable for ASIC not to accept the offers the defendants pursued a vigorous defence, put ASIC to proof on all aspects of its case, and made no substantive admissions or concessions. I accept that in the circumstances there can be little mitigation in a defendant being "finally moved by its assessment of the strength of the case against it rather than any desire to facilitate the course of justice": *Mornington Inn* at [77].

222 In my assessment it was not unreasonable for ASIC to refuse the offers made by the defendants in circumstances where there was no admission of liability, concessions were made conditionally and the offer (under the cover of without prejudice privilege) to concede parts of ASIC's case was made on the basis that ASIC must agree to the defendants' proposed penalties which did not include disqualification and featured proposed pecuniary penalties lower than those proposed in these penalty proceedings. As ASIC submits, having regard to its public responsibility for the administration of the Act, it will not be unreasonable in the context of a co-operation analysis as it relates to penalty for ASIC to refuse an offer which it determines

amounts to little more than "an acceptable cost of doing business", and would not achieve the objectives of specific or general deterrence, or the protection of the public, and lacks insight on the part of the contravenor.

223 I therefore accept that in the consideration of penalty Mr Karantzis (and iSignthis) should not be given any credit for co-operation because, despite co-operating to the extent that offers to compromise the proceeding were made, ASIC was put to proof on all aspects of its case: see *ASIC v GetSwift* at [75].

224 It is also relevant to note, as ASIC submits, that the contraventions were identified by ASIC through its own investigations, and not through any reporting on the part of Mr Karantzis or iSignthis (see *ASIC v Lanterne* at [196]). And as has been observed, although Mr Karantzis relied upon the penalty privilege, he failed to appear and give evidence in the liability proceeding.

Disqualification

225 Having considered Mr Karantzis' contraventions, and the mitigating factors relied on by the defendants, I turn to the question of whether Mr Karantzis should be disqualified from managing corporations. In doing so I have had regard to the relevant principles which I have set out above.

226 By reason of the serious nature of Mr Karantzis' contraventions, I accept that it is appropriate that he be disqualified from managing corporations for a period of time. Indeed, I consider it untenable for the defendants to have suggested otherwise.

227 I have found that the contravening conduct was not inadvertent. It was deliberate, much of it was knowing, and it continued for lengthy periods. The relevant misrepresentations and failure to disclose information concerned matters centrally relevant to the business and to the market. Mr Karantzis, who was an experienced director, was directly involved in the contraventions. And, as I have found, Mr Karantzis has not demonstrated any real contrition or insight into his own responsibility for the misconduct.

228 As I observed in *ASIC v Lanterne* (at [197]) and *ASIC v Mercer* (at [149]), referring to the observations of Allsop CJ in *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited (No 3)* [2020] FCA 1421 at [74], market efficiency, upon which consumer confidence rests, relies on reliability, good faith, fairness and honesty of conduct (the latter of which can be taken to include conduct which is not apt to mislead). These obligations are of fundamental importance, and they underpin the efficient functioning of the

Australian economy in all its sectors. It is important never to lose sight of them. The community is entitled to expect that investors will not be misled, the market operator will be respected, and that questions asked by the market operator will be answered accurately and devoid of spin and obfuscation. It is not for particular corporations or individuals to arrogate to themselves the right to impugn the motivation and content of enquiries made by the market operator in the discharge of its functions. It must be made clear to market participants that their conduct must be consistent with the regulatory regime which Parliament has legislated. Where it is not, the public is entitled to be protected from their actions by appropriate restraints on market participation.

229 Although I have accepted that Mr Karantzis' conduct was not dishonest, I have found that his conduct was grossly careless insofar as the One-off Revenue Representation is concerned. I have also found that Mr Karantzis misled the ASX insofar as the One-off Revenue/Costs Information and the 25 May 2020 letter to the ASX are concerned, and that he failed to notify the ASX of the Visa information as his ongoing disclosure obligations required him to do. Mr Karantzis' conduct harmed the market by artificially and improperly inflating iSignthis' share price (Liability Judgment at [178]). And as has been mentioned, I do not consider that in the context of contraventions which involve serious breaches of Mr Karantzis' non-disclosure obligations under the Act, the fact that iSignthis' shares were suspended from trading on the open market weighs materially in Mr Karantzis' favour in considerations of the nature and seriousness of his conduct, or the penalty to be imposed upon him.

230 Mr Karantzis' evidence during the penalty phase of the proceeding sought to explain why he believed his conduct in relation to aspects of these matters was justifiable, and to deny the seriousness of the contraventions. ASIC points to the fact that Mr Karantzis asserted that after the Analyst Briefing it never came to his attention that the market had been misled, and that ASIC never raised issues about one-off revenue prior to him reading the statement of claim in this proceeding on or about 6 December 2020. However, Mr Karantzis gave this evidence, as ASIC submits, in circumstances where he was interviewed by ASIC about iSignthis' reporting of one-off revenue in October 2019, he was put on notice in November 2019 that ASIC had broadened its investigation to include misleading and deceptive conduct (including whether Mr Karantzis had made misleading statements to the ASX), and was also aware of the One-off Revenue Representation by at least March 2020 when the ASX published its statement of reasons recording its findings in relation to iSignthis' compliance with the ASX Listing Rules.

231 Mr Karantzis' tendency to try to minimise the seriousness of his conduct and in some respects to justify it is troubling. It reinforces the need not only for the public to be protected from Mr Karantzis' participation in the market, but also, as ASIC submits, for the court's determination of penalty to reflect a measure of specific and general deterrence. There is a danger, as ASIC submits, that given Mr Karantzis' financial success in Europe, the imposition of only a financial penalty would be regarded by him as an "acceptable cost of doing business". This must be avoided. It is for these reasons that, in the circumstances of this case, an order that Mr Karantzis be disqualified from managing corporations, as opposed to an order that he pay a pecuniary penalty only, is necessary to achieve these deterrent objectives.

232 In circumstances where I have determined that Mr Karantzis' asserted reliance on legal advice is not a mitigating factor, and that his departure from Australia and his previous good character are not matters which sound substantially in mitigation either, an order that Mr Karantzis be disqualified from managing corporations for a period is required to protect the public and prevent the recurrence of contraventions of the kind that have been found. It is also required to deter both Mr Karantzis and market participants more generally from conduct which is the subject of the contraventions. That Mr Karantzis has demonstrated scant evidence of contrition, and the offers made to compromise the proceeding, properly understood, do not amount to real evidence of co-operation, only serve to buttress this conclusion.

233 In considering the length of the period of disqualification to be ordered ASIC directs attention to the propositions derived from the cases on disqualification essayed by Santow J in *ASIC v Adler* at [56]. ASIC submits that having regard to the factors identified by his Honour, the following matters are of particular relevance in the present case:

(a) there is a high propensity that Mr Karantzis may engage in similar activities or conduct;

(b) his conduct occurred in a field in which there was potential to do great financial damage;

(c) he shows a lack of contrition or remorse;

(d) he shows a complete disregard for law and compliance with corporate regulations; and

(e) he has acted knowingly and intentionally, and engaged in deliberate courses of conduct.

234 I accept ASIC's submissions that these matters bear upon the period of disqualification to be imposed on Mr Karantzis. Although Mr Karantzis says that he no longer proposes to do business in Australia, there is no suggestion (in fact quite the contrary) that he would not continue as a director of iSignthis FEU. Plainly, Mr Karantzis intends to remain centrally

involved in the management of that company. I accept therefore that there is a danger that Mr Karantzis may engage in patterns of behaviour of the kind which underlie the contraventions he has been found to have committed in this case. The public must be protected from conduct of this kind.

235 I accept also that Mr Karantzis' conduct has arisen in circumstances where there was a potential to do great financial damage. The One-off Revenue Representation harmed the market, and Mr Karantzis' preparedness to mislead the market operator must be regarded as having had a corrosive effect on market efficiency.

236 Nonetheless, despite ASIC's submissions, and having regard to Santow J's observations in *ASIC v Adler* as to the sorts of cases where longer periods of disqualification are required, I am not persuaded that Mr Karantzis' conduct in this case, serious as it is, warrants a ten year period of disqualification.

237 As Santow J notes (at [56(viii)]), longer periods of disqualification are reserved for cases where contraventions have been of a particularly serious nature, such as those involving actual dishonesty (citing *Australian Securities and Investments Commission v Donovan* (1998) 28 ACSR 583 at 605-607 (Cooper J)). In cases where the period of disqualification ranged from seven years to 12 years, his Honour listed (at [56(xiv)] the following factors as being evident and leading to the conclusion that these cases were serious, though not the "worst cases":

- Serious incompetence and irresponsibility
- Substantial loss
- Defendants had engaged in deliberate courses of conduct to enrich themselves at others' expense, but with lesser degrees of dishonesty
- Continued, knowing and wilful contraventions of the law and disregard for legal obligations
- Lack of contrition or acceptance of responsibility, but as against that, the prospect that the individual may reform

(Citations omitted.)

238 Santow J also observed (at [56(xv)] that the factors leading to the shortest disqualifications, that is disqualifications up to three years were:

- Although the defendants had personally gained from the conduct, they had endeavoured to repay or partially repay the amounts misappropriated
- The defendants had no immediate or discernible future intention to hold a position as manager of a company
- In *Donovan's case*, the respondent had expressed remorse and contrition, acted

on advice of professionals and had not contested the proceedings

(Citations omitted.)

239 Although Mr Karantzis' contraventions were serious and continuing, some of them were wilful, and Mr Karantzis is not especially contrite, in my assessment the contraventions which have been established do not sit clearly in the seven to 12 year disqualification range identified by Santow J in *ASIC v Adler*. In my view they do not warrant that level of disqualification.

240 On the other hand, nor do I consider that Mr Karantzis' contraventions sit obviously in the shortest qualification period identified in *ASIC v Adler*: up to three years. Mr Karantzis' contraventions are more serious than this. The reality, in my view, is that Mr Karantzis' contraventions require a period of disqualification somewhere in between the longer and shortest periods of disqualification which Santow J identified.

241 An aspect of my reasoning that a ten year period of disqualification would not be warranted reflects some acceptance of the defendants' submissions in relation to course of conduct and the principle of totality. It is the defendants' position that Mr Karantzis' conduct, properly viewed, should be treated as two "multi-faceted courses of conduct". That is, a single course of conduct in 2018 (the One-off Revenue Representation and the One-off Revenue/Costs Information) and a single course of conduct in 2020 (the non-disclosure of the Visa information and the 25 May 2020 letter to the ASX). Although I have not accepted the defendants' submission that Mr Karantzis' conduct in relation to the One-off Revenue/Costs Information need not be accounted for at all in the consideration of penalty (because the One-off Revenue Costs Information contravention involved misleading the ASX, as well as the market) there is force in the defendants' submission that the underlying conduct is essentially the same. A similar conclusion is open in relation to Mr Karantzis' contraventions concerning disclosure of the Visa information. I am prepared to accept that in the circumstances of this case the course of conduct principle operates in Mr Karantzis' favour in the assessment of an appropriate period of disqualification and that the totality principle also points in the direction of a lesser period of disqualification than that sought by ASIC.

242 Also taking into account Mr Karantzis' age, and that a ten year period of disqualification may, as a practical matter, effectively terminate Mr Karantzis' corporate life, I am inclined to the view in all the circumstances that such a period of disqualification would be excessive. When some limited account is taken of the interests of shareholders, and it is also acknowledged that there has been no positive finding of dishonesty, there is an absence of significant financial loss as a result of the contraventions, and the conduct in question does not obviously seem to

have enriched Mr Karantzis at the expense of others, I consider that the contraventions of the Act which Mr Karantzis has committed make it appropriate that he be disqualified from managing corporations for a period of six years.

243 I record my acceptance of ASIC's submission that the defendants' evidence that Mr Karantzis should not be disqualified from managing corporations because his leadership is central to the continuing success of iSignthis FEU cannot mean that he should not be so disqualified. As ASIC submits, if a disqualification order was not made against Mr Karantzis he would be permitted to continue managing companies notwithstanding his serious breaches of the Act. He would also effectively be permitted to manage the same revenue generating business from Europe that he has been found to have mismanaged in Australia and which was moved out of its Australian corporate entity as a result of the demerger of iSignthis and iSignthis FEU.

Pecuniary Penalty

244 Turning then to the question of pecuniary penalty, ASIC submits that in the circumstances of this case the court should make a pecuniary penalty order against Mr Karantzis as well as an order disqualifying him from managing corporations: see *ASIC v GetSwift* at [64]-[65]. I accept that this is the appropriate course.

245 As has been mentioned, ASIC contends for a pecuniary penalty of $1.5 million, whereas the defendants propose that Mr Karantzis pay a pecuniary penalty of $250,000. ASIC submits that a pecuniary penalty of $1.5 million is appropriate when regard is had to the primary purpose of such orders to act as a specific and general deterrent against repetition of like conduct, the nature and seriousness of the contraventions, the applicable statutory maximums, and the other matters considered above which support disqualification.

246 Having regard to the relevant maximum penalties, ASIC's starting point for each individual contravention is as follows:

(a) $150,000 in respect of the One-off Revenue Representation;

(b) $700,000 in respect of the One-off Revenue/Costs Information;

(c) $700,000 in respect of the Visa Termination Decision and the Reasons for Visa's Termination; and

(d) $750,000 in respect of the 25 May 2020 letter to the ASX.

247 The sum of these separate amounts is $2.3 million. ASIC's position, however, is that on the application of the totality principle, and having regard to the need for specific and general

deterrence, the lesser amount of $1.5 million for all the contraventions taken together is the appropriate pecuniary penalty. ASIC submits that there is no evidence suggesting Mr Karantzis would be unable to pay (or even that he would have difficulty paying) a pecuniary penalty at this level.

248 The defendants maintain that their much lesser figure of $250,000 is appropriate when regard is had, in particular, to the involvement of Mr Seyfort, their argument that the contraventions involve only two courses of conduct, and that iSignthis' shares were not trading at the relevant times.

Maximum penalties

249 In coming to a determination of the appropriate pecuniary penalty it is necessary to bear in mind the maximum penalties.

250 With respect to the One-off Revenue Representation, Mr Karantzis' contravention occurred on 3 August 2018 and so the maximum applicable penalty is $200,000.

251 With respect to the One-off Revenue Costs Information, Mr Karantzis' contraventions of ss 180 and 674(2A) continued for more than 15 months from 3 August 2018 until 15 November 2019. Insofar as the contraventions occurred from 3 August 2018 until 12 March 2019 the maximum applicable penalty is $200,000. However, by operation of s 1317QA of the Act, ASIC submits that it is appropriate for the court to have regard to the higher maximum penalty of $1,050,000 because separate contraventions of s 674(2A) occurred each trading day on and from 13 March 2019 until 15 November 2019.

252 Aggregating the contraventions from 13 March 2019 to 15 November 2019 alone (approximately 174 trading days) would produce a penalty in excess of $180 million. ASIC accepts, however, that this arithmetic maximum must be balanced against the course of conduct and totality principles.

253 Mr Karantzis' contravention of s 180 in relation to the non-disclosure of the Visa information continued for more than five months from 12 May 2020 until 26 October 2020. The maximum applicable penalty was $1,050,000 from 12 May 2020 and $1,110,000 from 30 June 2020.

254 With respect to the 25 May 2020 letter to the ASX, Mr Karantzis' contravention of s 1309(2) and (12) occurred on 25 May 2020, and so the maximum applicable penalty is $1,050,000.

Course of conduct and totality principles

255 As has been mentioned, it is the defendants' position that Mr Karantzis' contraventions of the Act involve essentially two courses of conduct. The same considerations apply as in relation to disqualification.

256 With respect to the One-off Revenue/Costs Information I accept, as ASIC acknowledges, that Mr Karantzis' contraventions of ss 180 and 674(2A) of the Act arise from the same legal and factual circumstance and should be treated as a single course of conduct for the purposes of determining an appropriate penalty. The parties were in agreement, and I accept also, that an aggregation of the penalty for each daily contravention of the Act with respect to the One-off Revenue/Costs Information would produce a penalty that would be so "disproportionately large that it is not helpful to the court": see *ASIC v Noumi* at [69]. While I do not discount the length of the contravening conduct in determining penalty, I accept that Mr Karantzis' individual contraventions on each trading day of the relevant period may be treated as one course of conduct.

257 Although in one sense the One-off Revenue Representation can be said to be quite different to the One-off Revenue/Costs Information contravention because the former was a representation made to a group of analysts and the latter involved misleading the ASX, in all the circumstances I am prepared to proceed in Mr Karantzis' favour on the basis that the One-Off Revenue Representation and the One-Off Revenue/Costs Information may be considered as a single course of conduct. Although they are differently directed, they involve the same underlying conduct. I consider that there would be the risk of double punishment were both contraventions to be treated separately for the purposes of penalty.

258 I accept also, for the same reasons, that Mr Karantzis' contraventions of s 180 of the Act with respect to the Visa Termination Decision and Reasons for Visa's Termination, while again not discounting the length of time over which the contraventions occurred, should in fairness to Mr Karantzis be treated as the one course of conduct.

259 As to as the defendants' contention that the 25 May 2020 letter to the ASX should also be treated with the non-disclosure of the Visa information as a single course of conduct, in all the circumstances I am prepared to proceed in Mr Karantzis' favour in this regard also. The matter is, however, finely balanced. Although the contraventions are different, I accept that they involve essentially the same underlying conduct, (being the misleading of the market and market operator in relation to iSignthis' relationship with Visa). I consider that there would be the risk of double punishment if this was not recognised in respect of these contraventions also.

260 The totality principle requires that the penalty to be imposed is not out of proportion to the conduct giving rise to the contraventions when viewed collectively, and that the penalty is accordingly just and appropriate from the perspective of that collective assessment: *ASIC v Telstra* at [230]. I accept that it is appropriate to assess the 2018 course of conduct in relation to the one-off revenue contraventions and the 2020 course of conduct in relation to the non-disclosure of the Visa information in aggregate and determine the most appropriate penalty for the contraventions taken together. An appropriate pecuniary penalty for each contravention should be determined, and then a discount applied to the aggregate amount: *ASIC v Healey (No 2)* at [129].

The appropriate pecuniary penalty to be ordered against Mr Karantzis

261 As Beach J noted in *ASIC v Murray Goulburn* at [36]-[37], the process of intuitive synthesis involved in deriving a penalty figure requires a weighing together of all relevant factors rather than an arithmetical algorithmic process that starts from some pre-determined figure then makes incremental additions or subtractions for each factor according to a set of predetermined rules. As I observed in *Lanterne* at [178], the process requires a consideration of all factors taken together by reference to the civil penalty provisions contravened, in their statutory context.

262 Taking all relevant matters and circumstances into account (including those required by s 1317G(6) of the Act), as well as the course of conduct and totality principles, that Mr Karantzis is to be disqualified from managing corporations for six years, that Mr Karantzis has not previously been found to have breached the Act or similar legislation elsewhere, and that there has been no finding of dishonesty, I have concluded that a pecuniary penalty of $1.5 million exceeds what would be required to achieve the necessary deterrent effect. I therefore regard such a sum as too high. Nonetheless, the pecuniary penalty of $250,000 proposed by the defendants would be little more than derisory and would not be appropriate either. Such a penalty would be manifestly insufficient to achieve a deterrent effect and would thus be wholly inadequate. I am also prepared to accept that there is a risk that a penalty of such an amount would be so low as to be regarded by Mr Karantzis as an acceptable cost of doing business: *Pattinson* at [17].

263 Bearing in mind the seriousness of Mr Karantzis' contraventions, and also the prescribed maximum penalties, I have come to the view that an aggregate penalty of $1 million would be appropriate in all the circumstances. As has been canvassed at length, Mr Karantzis' conduct was not inadvertent, and it continued for considerable periods of time in circumstances where

Mr Karantzis was aware of his obligations under the Act, and was also aware that ASIC had commenced an investigation which included an investigation of his conduct. Mr Karantzis' conduct also involved misrepresentations about matters fundamental to the company's business, and which Mr Karantzis knew were important to the market and the market operator. Mr Karantzis was the managing director of iSignthis and was centrally and directly involved in misleading both the market and the market operator and was at all times aware of all relevant facts and circumstances which led to his contraventions of the Act. While I have accepted that there is no evidence that Mr Karantzis personally benefited financially from the market having been misled, the consequence of his contraventions was that iSignthis' share price continued to be artificially inflated, and this caused harm to the market. Also importantly, Mr Karantzis has demonstrated little by way of contrition or insight into the significance of his contraventions and, properly understood, little preparedness to co-operate with ASIC.

264 It is an aspect of my analysis in deriving the penalty figure that for the reasons I have set out above, Mr Karantzis' asserted reliance on the advice of Mr Seyfort does not assist him. Nor does the fact that at the time the Visa information contraventions occurred, iSignthis' shares were not trading on the open market.

265 Although the defendants take issue with ASIC's submission that Mr Karatnzis would have no difficulty paying a pecuniary penalty of $1 million, I accept ASIC's submission that there is no definitive evidence that Mr Karatnzis would not be able to pay such a sum. Whatever may be said about the illiquidity of the shares in iSignthis FEU, and Mr Karantzis' personal financial commitments, his salary alone suggests that he would have an ability to pay. In any event, even if Mr Karantzis did not have the ability to pay a pecuniary penalty at this level, I consider it is an appropriate amount having regard to the need for specific and general deterrence.

266 It is for these reasons that I regard an amount of $1 million as a proportionate pecuniary penalty in the circumstances of this case.

ORDERS TO BE MADE AGAINST ISIGNTHIS

267 As has been mentioned, ASIC seeks an order that iSignthis pay a penalty of $12.5 million, whereas the defendants propose a penalty of $350,000.

268 ASIC's starting point is as follows:

(a) $7 million in respect of the One-off Revenue/Costs Information contravention;

(b) $6 million in respect of the non-disclosure of the Visa Termination Decision contravention; and

(c) $7 million in respect of the non-disclosure of the Reasons for Visa's Termination contravention.

269 Separate penalties on this basis would total $20 million, but ASIC proposes the reduction to $12.5 million on the application of the course of conduct and totality principles and having regard to the objective of general deterrence.

The nature of iSignthis' contraventions

270 I commence once again with a consideration of the relevant contraventions, noting that much of the relevant conduct has already been the subject of consideration though the lens of Mr Karantzis' involvement.

One-off Revenue/Costs Information

271 iSignthis contravened s 674(2) of the Act in failing to notify the ASX of the One-off Revenue/Costs Information from 3 August 2018 until 15 November 2019 (Declaration 2). This was a serious contravention (Declaration 5).

272 As ASIC notes, it was a finding in the Liability Judgment that iSignthis was aware of the One-off Revenue/Costs Information by as early as 18 June 2018 when it issued invoices under the integration agreements (Liability Judgment at [190]). It also determined that iSignthis was aware that the One-off Revenue/Costs Information was material. Mr Karantzis, Mr Hart and Mr Minehane were each aware that the relative proportion of the company's recurring revenue was of interest and importance to the market (Liability Judgment at [176], [199]-[201], [265]). ASIC notes that Mr Hart gave evidence (Liability Judgment at [200]) that he and the other directors of iSignthis were aware that:

(a) in 2017 and 2018, iSignthis had highlighted, in its public statements and reports, the significance of recurring revenue;

(b) in 2017 and 2018 the proportion of recurring versus one-off revenue was a meaningful and important distinction for the company and its investors, because recurring revenue was more valuable;

(c) in 2018 and 2019 the market viewed iSignthis' recurring revenue more favourably than its one-off revenue, and the market was interested in the composition of iSignthis' revenues (recurring as opposed to one-off);

(d) by 19 June 2018, one-off integration revenue for the year ending 30 June 2018 was in excess of approximately $3.5 million dollars and one-off costs associated with the back-to-back arrangement were in the order of $3 million;

(e) in June and up to and including 30 July 2018, the market did not know the extent of one-off revenue and costs; and

(f) the market was interested in the composition of iSignthis' revenue, in terms of recurring versus one-off revenue.

273 ASIC notes that Mr Minehane gave evidence that he knew at the relevant time that the distinction between recurring and one-off revenue in the context of iSignthis was known by the market and was important to it (Liability Judgment at [201], [265]). ASIC refers also to the evidence that Mr Richards, too, was involved in preparing the investor briefing materials, understood the integration revenue and performance milestones (Liability Judgment at [138]) and communicated in detail with Mr Karantzis about it (Liability Judgment at [584]).

274 As ASIC submits, it is for these reasons that the failure by iSignthis to disclose the One-off Revenue/Costs Information was serious. And not only did iSignthis fail to disclose the information, on 3 August 2018 iSignthis contravened s 1041H of the Corporations Act by telling the market essentially the opposite when the One-off Revenue Representation was made by Mr Karantzis at the Analyst Briefing (Liability Judgment at [191]). This compounded the problem by perpetuating the market's incorrect understanding of the proportion of recurring revenue (Liability Judgment at [177]-[178]). It also caused Mr Jacobs to publish a research note on 6 August 2018 that the Analyst Briefing "provide[d] the market with confidence that iSignthis ha[d] genuinely met the threshold to achieve all three tranches of the performance shares" (Liability Judgment at [202]). As has been mentioned, Mr Karantzis received a copy of that research note on 7 August 2018 (Liability Judgment at [163(j)]). The perpetuation of the market's incorrect understanding required prompt correction by iSignthis, a fact that is acknowledged by Mr Hart (Liability Judgment [163(i)]).

275 ASIC notes correctly that this contravention continued for more than 15 months until the company notified the ASX of the true figure for one-off integration revenue in its 15 November 2019 response to an ASX query letter. It was upon publication of that response by the ASX that the information became generally available (Liability Judgment at [260]). However, there is no evidence that it has ever been publicly acknowledged by the company. I accept, as ASIC submits, that the length of continuing contravention is also indicative of the seriousness of the offending.

276 The defendants' position once again is that iSignthis' contravention of s 674(2) of the Act on and from 3 August 2018 was inevitable from the moment when the One-off Revenue Representation was made at the Analyst Briefing. The defendants submit that if the One-Off

Revenue Representation had not been made by Mr Karantzis or had been corrected promptly, iSignthis would not have contravened s 674(2) of the Act in respect of the One-off Revenue/Costs Information.

277 ASIC notes that insofar as iSignthis' contravention continued from 3 August 2018 until 12 March 2019, the maximum applicable penalty was $1,000,000. However, ASIC submits that by operation of s 1317QA of the Act it is appropriate for the court to have regard to the higher maximum penalty of $10,500,000 on the basis that separate contraventions of s 674(2) occurred each trading day, including each trading day on and from 13 March 2019 until 15 November 2019.

278 ASIC notes that the arithmetic maximum penalty is therefore the aggregate of the contraventions which occurred on each trading day, being approximately 174 trading days, which is more than $1.8 billion. ASIC concedes once again, however, that this must be balanced against the course of conduct and totality principles.

Visa Termination Decision

279 iSignthis also contravened s 674(2) of the Act in failing to notify the ASX of the Visa Termination Decision from 12 May 2020 until 17 August 2020 (Declaration 3). This was a serious contravention (Declaration 5).

280 ASIC notes that the it was a finding in the Liability Judgment that disclosure of the Visa Termination Decision could and should have been made on or shortly after 12 May 2020 (Liability Judgment at [355]). There was no obligation under the law of Cyprus that iSignthis make a disclosure to the CBC *before* iSignthis made the required disclosure to the ASX (Liability Judgment at [355]) and, in any event, iSignthis did not disclose to the CBC that Visa had terminated its relationship with iSignthis (Liability Judgment [91]). For the reasons given earlier it is impermissible at the penalty stage for the defendants to attempt to re-litigate this issue in aid of a submission that iSignthis and its directors were trying to avoid risking the business of the company by "awaiting feedback" from the CBC before making an announcement to the market in Australia.

281 As ASIC notes, it was not until iSignthis' 17 August 2020 response to the 5 August query letter that the company acknowledged explicitly to the ASX that Visa had terminated the relationship (Liability Judgment at [375]). By that date it was obvious to iSignthis by the terms of the 5 August 2020 query letter that the ASX had already obtained copies of the correspondence between iSignthis and Visa (Liability Judgment at [566]). The information with respect to Visa

became generally available only upon the ASX publishing its query letters and iSignthis' responses. As has been mentioned, there is no evidence that iSignthis has made any announcement to the market of the Visa Termination Decision.

282 It is clear, as ASIC submits, that the directors of iSignthis, including Mr Karantzis, knew that if the Visa Termination Decision was generally available information it would have had a material detrimental effect on the price or value of iSignthis' shares. iSignthis' principal membership of Visa was a matter of great significance for the company (Liability Judgment at [421]). Mr Hart and Mr Minehane gave that evidence (Liability Judgment at [378]-[380]). The company represented to the Director-General of Competition in Europe on 30 July 2020 that the termination would "cripple its future business" (Liability Judgment at [381]). Mr Karantzis made a similar representation to Visa (Liability Judgment at [381]). Ms Warrell gave evidence that the company also knew, and had recorded in its reporting, that Visa was its primary source of card processing GPTV, and if Visa had not suspended and then terminated iSignthis, Visa would have remained the leading source of card processing GPTV (Liability Judgment at [382], [421]). ASIC notes also that in addition to Mr Karantzis, Mr Hart and Ms Warrell were also involved in the decision-making process in relation to the non-disclosure of the Visa information (Liability Judgment at [347], [351]).

283 ASIC submits, and I accept, that the seriousness of iSignthis' contravention is further underscored by the company's publication of the 24 May 2020 letter to its shareholders. This letter clearly did not make disclosure of the Visa Termination Decision (Liability Judgment at [374]). It stated that iSignthis would "end its contractual relationship with Visa as a principal member in approximately 90 days", and advised that the reason for the termination was that Visa had amended its rules, and that this amendment led to anti-competitive concerns. It was a finding in the Liability Judgment that the letter conveyed the impression that it was iSignthis that had severed the relationship with Visa because of difficulties that iSignthis had with changes to Visa's rules (Liability Judgment at [374]). This was characterised as "essentially corporate spin of problematic information that was not generally available to the market", in an attempt by iSignthis to "create a new narrative" (Liability Judgment at [374]). I accept ASIC's submission that in a number of respects, this publication reflects the company's contraventions in relation to the one-off revenue information – in each instance, not only did the company fail to disclose information that it knew to be material, but it represented the contrary position to the market.

284 The defendants submit that had the letter to shareholders conveyed the intended message, and not the distorted message which unintentionally arose from an amendment made by Mr Seyfort during the drafting process, the market and the ASX would have known by 24 May 2020 that Visa had decided to terminate its relationship with iSignthis such that the non-disclosure period would have been limited to 14 days (eight business days). As in relation to Mr Karantzis, contrary to the defendants' submission I do not accept that these circumstances mitigate the seriousness of the contravention or the penalty to be imposed on the company.

285 This contravention by iSignthis of s 674(2) of the Act continued from 12 May 2020 until 17 August 2020. ASIC submits that the length of continuing contravention is also indicative of the seriousness of the offending. The maximum applicable penalty was $10,500,000 from 12 May 2020 and $11,100,000 from 30 June 2020. Again, by operation of s 1317QA, the arithmetic maximum penalty is the aggregate of the contraventions that occurred on each trading day. This is approximately $740 million (in relation to 69 trading days). ASIC accepts that this must be balanced against the course of conduct and totality principles.

Reasons for Visa's Termination

286 iSignthis contravened s 674(2) of the Act for failing to notify the ASX of the Reasons for Visa's Termination from 12 May 2020 until 26 October 2020 (Declaration 4). This was a serious contravention (Declaration 5).

287 ASIC notes the determination that iSignthis never disclosed the Reasons for Visa's Termination (Liability Judgment [375] and [460]). Some of that information became generally available on 26 October 2020 upon the publication by the ASX of extracts of Visa's 17 April 2020 letter, however as with the Visa Termination Decision, I accept that there is no evidence that iSignthis has ever acknowledged the Reasons for Visa's Termination or made any announcement to the market about them.

288 Once again it is ASIC's position and I accept that the length of and continuing nature of the contravention is indicative of its seriousness.

289 As ASIC notes, Mr Hart gave evidence that he knew that use of anti-money laundering words in Visa's reasons presented a critical risk to the iSignthis brand and its shareholder value (Liability Judgment at [378]). Similarly, Mr Minehane gave evidence that he and all of the directors including Mr Karantzis were acutely aware in May 2020 that the link to anti-money laundering issues would have been materially detrimental to the value of iSignthis, and more detrimental than the termination decision alone (Liability Judgment at [380]). Mr Sisson gave

similar expert evidence that the risks perceived by a valuer "would rise materially" if Visa's reasons were to become generally available (Liability Judgment at [391]). ASIC submits and I accept that iSignthis and its directors therefore went to considerable lengths to ensure that Visa's reasons were not publicly disclosed.

290 In defence of the company's position the defendants maintain that the company's reliance on legal advice is a significant consideration and necessitates a reduction in the penalty to be imposed in respect of this contravention. In this regard the defendants submit that the company was not advised by Mr Seyfort, that the Reasons for Visa's Termination as set out in the 17 April Visa letter ought to be disclosed, and had it been so advised it would have included a rebuttal. iSignthis submit also that after 24 May 2020 the company continued to rely on the advice of Mr Seyfort as well as the two reports received from Clayton Utz, which did not require iSignthis to make any further disclosure to the market in relation to the termination of the relationship with Visa or the reasons for the termination of that relationship.

291 For the reasons I have explained above in relation to Mr Karantzis, I do not accept that the company's asserted reliance on the advice of Mr Seyfort and Clayton Utz is a consideration that justifies a reduction in the penalty to be imposed on iSignthis in respect of this contravention.

292 iSignthis' contravention of s 674(2) occurred from 12 May 2020 until 26 October 2020. Once again, the maximum applicable penalty was $10,500,000 from 12 May 2020 and $11,100,000 from 30 June 2020. Again, by operation of s 1317QA of the Act, the arithmetic maximum penalty is the aggregate of the contraventions that occurred on each trading day. This is well over $1 billion (in relation 119 trading days), although ASIC submits that his must be balanced against the course of conduct and totality principles.

Course of conduct and totality principles

293 As in relation to Mr Karantzis, the defendants submit that iSignthis' contraventions which occurred in 2020 concerning the non-disclosure of the Visa information arose from a single event (Visa's termination of the relationship) and that the course of conduct and totality principles are applicable to ensure that the pecuniary penalty is not out of proportion to the conduct: see *ASIC v Healey* (No 2) at [131]).

294 I am prepared to proceed, as I did with Mr Karantzis, on the basis that iSignthis' contraventions of the Act in 2020 in relation to the non-disclosure of the Visa information involve essentially the same underlying conduct. As with Mr Karatnzis' conduct, iSignthis may therefore be

regarded as having engaged in two courses of conduct: the 2018 course of conduct in respect of the One-off Revenue/Costs Information contravention, and the 2020 course of conduct with respect to the non-disclosure of the Visa information. I accept that there would be the risk of double punishment if this was not recognised.

295 As with Mr Karantzis' contraventions, it is necessary to have regard to the totality principle and I have done so in determining the appropriate penalty to be imposed against iSignthis: see *ACCC v Telstra* at [230]; *ASIC v Healey (No 2)* at [129].

The appropriate pecuniary penalty to be ordered against iSignthis

296 Obviously enough, because it is clear that Mr Karantzis was the guiding mind of iSignthis at all relevant times, much of the consideration above which is relevant to the disqualification and penalty to be ordered against him is also relevant to the assessment of the penalty to be paid by iSignthis. It is unnecessary to repeat that analysis, or my determination, but it must be borne in mind. It is, however, important to have regard to certain additional matters which were raised by the parties concerning iSignthis in particular.

297 First, as has been mentioned, in addition to Mr Karantzis, other senior executives of the company were involved in the contraventions (Mr Richards and Ms Warrell), as were members of the board of iSignthis (Mr Hart and Mr Minehane). This is a relevant consideration and I take it into account.

298 Secondly, it is also the case that, like Mr Karantzis, iSignthis has shown a lack of contrition and insight into the seriousness of its contraventions. In this regard ASIC again draws attention to the press release issued by the company on 24 June 2024, following publication of the Liability Judgment. I have accepted that this announcement is relevant in that it conveys an absence of contrition or insight on the part of the company. As I have explained, the fact that this announcement was apparently drafted by the company's legal advisors is irrelevant in all the circumstances.

299 It is also notable that, like Mr Karantzis, Mr Hart gave evidence that he believes that the ASX suspension was "a misuse of power". In circumstances where the court's findings have substantially vindicated the ASX's conclusions as to the One-Off Revenue Representation, and its concerns in relation to the Visa non-disclosures, I consider that Mr Hart's evidence also exhibits a lack of insight and contrition on behalf of the company. As with Mr Karantzis' evidence, it has a defiant tone.

300 Thirdly, as ASIC submits, there is no evidence that iSignthis has taken any remedial or disciplinary steps, that it has revisited any compliance systems, or that it has conducted any education to prevent future contraventions. I do not regard Mr Karantzis' completion of the CySec advanced examination as especially significant in this regard. The attitude of Mr Karantzis and Mr Hart in particular demonstrates that the company's view, at its highest level, is that no systematic remedial steps are required.

301 Fourthly, as with Mr Karantzis' contraventions, the suspension of iSignthis' shares from trading on the ASX provided no defence to the contravention of s 674(2) by iSignthis (Liability Judgment [400], [429]), and does not affect the seriousness of the departure from the company's disclosure obligations. As I have determined with respect to Mr Karantzis, the suspension of the shares is not exculpatory for present purposes.

302 Fifthly, as ASIC submits, the court must consider the capacity of iSignthis to pay as at the time of the contraventions, and must also give consideration to whether assets of the company have been removed from its hands at a time when exposure to a pecuniary penalty was a real possibility: see *ASIC v Holista Colltech* at [136]; *ASIC v Select AFSL (No 3)* at [118]-[119]).

303 In this connection ASIC notes that iSignthis' revenue was growing substantially in 2019 and 2020, and that its consolidated revenue in the 2019 financial year was more than $30 million, and more than $37 million in 2020 (Liability Judgment at [628], [631]).

304 Nonetheless, ASIC notes that in October 2021, after the commencement of this proceeding, iSignthis effected the demerger of iSignthis FEU by reducing capital through a distribution of iSignthis FEU shares to existing shareholders of iSignthis. In this regard ASIC notes the evidence that Mr Karantzis was involved in conceiving of and effecting the demerger, that there was no provision at all made for potential penalties or costs to be paid in this proceeding, and that it was an intended result of the demerger that the remaining Australian entity of iSignthis be left with limited assets and cash reserves. To the extent that ASIC submits that the demerger was effected in order to ensure that assets were removed from iSignthis FEU for the purpose of avoiding a penalty in this proceeding, I do not consider that the evidence before the court supports unequivocally a conclusion that this is so. I acknowledge the evidence given by Mr Karantzis, Mr Hart and Mr McGrouther in this regard that the purpose of the demerger was to provide iSignthis FEU with a mechanism to list on the stock exchange in Europe and therefore enable it to trade there and enhance its ability to raise capital.

305 The demerger, it may be accepted, saw the wider iSignthis group's revenue-producing businesses and assets, including the iSeM licence described by Mr Hart as the "most precious

thing" for iSignthis and central to its continuing business (Liability Judgment at [445]), transferred to Europe. The evidence is that in the financial year ended 31 December 2021, iSignthis' annual report indicates that sales revenue from Australian operations was approximately $150,000 compared to approximately $26 million from European operations. It is also the evidence that iSignthis FEU recorded substantial net profits in the 2022 and 2023 financial years, and that while iSignthis has previously recorded significant profits, in the year ended 31 December 2023 it recorded a loss of $3.6 million with no revenue generated. Its only revenue was a small amount of interest earned on reducing a convertible note issued in 2021. The evidence is also that on 4 November 2022 the company was delisted from the ASX.

306 The upshot, it seems clear, is that iSignthis may not be in a position to pay a large pecuniary penalty absent an influx of funds from iSignthis FEU.

307 Nonetheless, whatever might be said about the present capacity of iSignthis to pay, and about the operation of s 553B of the Act in relation to the Commonwealth's ability to prove in any insolvency, I do not consider that the possibility of non payment outweighs the importance of general deterrence in all the circumstances.

308 Sixthly, as with Mr Karantzis, I accept that prior to this proceeding iSignthis had not been found to have contravened s 674 of the Act or any other statutory provision.

309 Seventhly, I also accept ASIC's submission that iSignthis' contraventions have caused loss and damage in the sense that they have caused harm to the market. This being a civil penalty proceeding, it is unnecessary to quantify actual loss suffered by shareholders. As I have found, the consequence of iSignthis' contraventions was that iSignthis' share price was artificially and improperly inflated (Liability Judgment at [178]). To the extent that the defendants submit that none of iSignthis' contraventions have caused loss or damage, I reject this submission.

310 I also accept ASIC's submission that although iSignthis will likely not be in a position to commit similar contraventions of the Act in the future, general deterrence in a serious case such as the present remains critical: *ASIC v GetSwift* at [68]. While proportionality is to be favoured over retribution, the court must impose a penalty which reflects the court's disapproval of the conduct which has resulted in the contraventions.

311 The $350,000 penalty proposed by iSignthis for its contraventions is plainly untenable. As with the penalty that the defendants proposed for Mr Karantzis, it is derisory and manifestly inadequate to effect any form of deterrence. As with Mr Karantzis, I am prepared to accept that

there is a risk that such a penalty would be viewed by iSignthis as an acceptable cost of doing business: *Pattinson* at [17].

312 Nonetheless, noting the description of the process of intuitive synthesis in *ASIC v Murray Goulburn* at [36]-[37], and taking all relevant matters and circumstances into account, including the course of conduct and totality principles, I have concluded that a pecuniary penalty of $12.5 million exceeds what would be required to achieve the necessary deterrent effect. That amount should therefore be regarded as too high.

313 In my assessment, again having regard to all relevant matters and circumstances, iSignthis should be required to pay a pecuniary penalty of $10 million for the contraventions it has been found to have committed. As with Mr Karantzis, I am satisfied that a penalty amount of $10 million is appropriate and proportionate in all the circumstances and would give effect to the objectives of specific and general deterrence.

CONCLUSION

314 There will therefore be orders that:

(a) Mr Karantzis be disqualified from managing corporations for a period of six years pursuant to ss 206C(1) and 206E(1) of the Act;

(b) Mr Karantzis pay to the Commonwealth a pecuniary penalty of $1 million within 30 days of the date of the orders, pursuant to s 1317G(1) of the Act, in respect of his contraventions of ss 180(1), 674(2A) and 1309(2) and (12) of the Act identified in paragraphs 6 to 11 of the orders dated 26 July 2024; and

(c) Southern Cross Payments Ltd (formerly iSignthis Ltd) pay to the Commonwealth a pecuniary penalty of $10 million within 30 days of the date of the orders, pursuant to s 1317G(1) of the Act, in respect of the contraventions of s 674(2) of the Act identified in paragraphs 2 to 5 of the orders dated 26 July 2024.

315 There will also be orders that in the absence of agreement in relation to the costs of and incidental to the proceeding the parties may file submissions on the question of costs within the next 30 days (limited to six pages), and any responsive submissions on the question of costs within 14 days following this (limited to three pages). Any question of the costs of the proceeding will be determined on the papers.

I certify that the preceding three hundred and fifteen (315) numbered

paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice McEvoy.

Associate:

Dated: 8 August 2025

ANNEXURE A

Federal Court of Australia

District Registry: Victoria Registry

Division: General No: VID773/2020

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

ISIGNTHIS LIMITED (ACN 075 419 715) and another named in the schedule
Defendant

ORDER

JUDGE:	Justice McEvoy
DATE OF ORDER:	26 July 2024
WHERE MADE:	Melbourne

THE COURT NOTES THAT:

Definitions

A. The following defined terms are adopted in the paragraphs which follow:

Term	Definition
iSignthis	iSignthis Limited (ACN 075 419 715), now Southern Cross Payments Ltd, the First Defendant
Mr Karantzis	Nicholas John Karantzis, the Second Defendant
Analyst Briefing	The online Analyst Briefing held by iSignthis on 3 August 2018
ASX	Australian Securities Exchange
Visa	The entities operating under the umbrella of Visa Inc (except Visa AP)

THE COURT DECLARES THAT:

Declarations concerning iSignthis

1. By representing on 3 August 2018 that iSignthis' revenue for one-off integration and set-up fees in the period 1 April 2018 to 30 June 2018 accounted for less than 15% of the total revenue in that period, iSignthis engaged in conduct that was misleading or deceptive in contravention of section 1041H of the ***Corporations Act*** *2001* (Cth).

2. Pursuant to section 1317E of the Corporations Act, iSignthis contravened section 674(2) of the Corporations Act on and from 3 August 2018 continuing until 15 November 2019 by failing to notify the ASX that, in the final quarter to 30 June 2018:

   (a) it had recognised approximately $3 million in revenue for one-off integration and set-up services; and

   (b) it had incurred approximately $2.85 million in one-off costs for out-sourcing services,

   (**One-off Revenue/Costs Information**).

3. Pursuant to section 1317E of the Corporations Act, iSignthis contravened section 674(2) of the Corporations Act on or shortly after 12 May 2020 continuing until 17 August 2020 by failing to notify the ASX that Visa had decided to terminate its relationship with iSignthis eMoney Ltd and iSignthis in accordance with the Visa Rules (the **Visa Termination Decision**).

4. Pursuant to section 1317E of the Corporations Act, iSignthis contravened section 674(2) of the Corporations Act on or shortly after 12 May 2020 continuing until 26 October 2020 by failing to notify the ASX that the reasons for the Visa Termination Decision included that:

   (a) iSignthis' response to the 6 March 2020 suspension letter had "not allayed the concerns outlined in the Suspension Letter";

   (b) Visa had obtained further evidence that "IsignThis is not operating appropriate programs to manage Anti-Money Laundering and Risk";

   (c) iSignthis' transaction monitoring program was "not fit-for-purpose" and had failed to identify unusual transactional behaviour"; and

   (d) Visa's relationship with iSignthis presented an excessive level of risk,

(the **Reasons for Visa's Termination**).

5. The contraventions by iSignthis referred to in paragraphs 2 to 4 above were serious within the meaning of section 1317G(1)(b)(iii) of the Corporations Act.

Declarations concerning Mr Karantzis

6. Pursuant to section 1317E of the Corporations Act, Mr Karantzis contravened section 180 of the Corporations Act in respect of the contravention by iSignthis referred to in paragraph 1 above by:

   (a) failing to exercise the degree of care and diligence that a reasonable person would have exercised in his position as a director of iSignthis to:

      (i) ensure that he and iSignthis provided reliable, truthful and accurate information to the market at the Analyst Briefing;

      (ii) ensure that he and other representatives of iSignthis were prepared to respond to questions and give reliable, truthful, accurate and responsive answers in the written material at the Analyst Briefing;

      (iii) correct any misunderstanding, misconception or incorrect information released or disseminated to the market of which he or iSignthis was, or became, aware;

   (b) by either knowingly misrepresenting that iSignthis' revenue for one-off integration and set-up fees in the period 1 April 2018 to 30 June 2018 accounted for less than 15% of the total revenue in that period or intentionally or recklessly acting to prevent the truth about that subject matter from being disclosed.

7. Pursuant to section 1317E of the Corporations Act, Mr Karantzis was involved in the contravention referred to in paragraph 2 above and thereby contravened section 674(2A) of the Corporations Act.

8. Pursuant to section 1317E of the Corporations Act, Mr Karantzis contravened section 180 of the Corporations Act in respect of the contravention by iSignthis referred to in paragraph 2 above by failing to exercise the degree of care and diligence that a reasonable person in his position would have exercised in considering whether iSignthis was required to disclose the One-off Revenue/Costs Information.

9. Pursuant to section 1317E of the Corporations Act, Mr Karantzis contravened section 180 of the Corporations Act in respect of the contraventions by iSignthis referred to in paragraphs 3 and 4 by failing to exercise the degree of care and diligence

that a reasonable person in his position would have exercised to ensure that on or shortly after 12 May 2020 iSignthis disclosed to the ASX the Visa Termination Decision and the Reasons for Visa's Termination.

10. Pursuant to section 1317E of the Corporations Act, Mr Karantzis gave or authorised the giving of information to the ASX in a letter dated 25 May 2020 relating to the affairs of iSignthis that was false or misleading and/or misleading in a material respect by reason of omissions, without having taken reasonable steps to ensure that the information was not so false or misleading, in contravention of sections 1309(2) and (12) of the Corporations Act.

11. The contraventions by Mr Karantzis referred to in paragraphs 6 to 10 above were serious within the meaning of section 1317G(1)(b)(iii) of the Corporations Act.

THE COURT ORDERS THAT:

Dismissal

12. The Plaintiff's claims against Mr Karantzis are otherwise dismissed.

Other matters

13. The time for filing an application for leave to appeal and/or notice of appeal in respect of the declaratory orders made on 26 July 2024 be 28 days after the final orders are made in the proceeding.

14. Costs reserved.

15. The parties have liberty to apply.

Date orders authenticated: 29 July 2024

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

Schedule

No: VID773/2020

Federal Court of Australia

District Registry: Victoria Registry

Division: General

Second Defendant	NICKOLAS JOHN KARANTZIS