

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/10/2021 11:01:48 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	NSD1114/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v KEITH CHARLES COHEN & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 22/10/2021 2:37:36 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 2 Originating process

(rules 2.2 and 15A.3)

No. of 2021

Federal Court of Australia
District Registry: New South Wales
Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

KEITH CHARLES COHEN and Another
(named in the attached schedule)

Defendants

This is an application for:

- (a) declaratory relief pursuant to s.21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA**) and s.1317E(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**);
- (b) injunctive relief pursuant to s.23 of the FCA, s.1324 and/or s.1101B(1)(a) of the Corporations Act;
- (c) an order for pecuniary penalties pursuant to s.1317G(1) of the Corporations Act;
- (d) disqualification orders pursuant to ss.206C or 206E of the Corporations Act; and
- (e) costs,

in respect of:

- (f) the First Defendant being knowingly concerned in, or party to, the giving to, and acceptance by, representatives of a responsible licensee and/or employees, of conflicted remuneration (within the meaning of Division 4 of

Filed on behalf of: Australian Securities & Investments Commission, Plaintiff

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Part 7.7A of the Corporations Act), in contravention of ss.963E, 963F and 963J of the Corporations Act;

- (g) the Second Defendant being knowingly concerned in, or party to, the acceptance by representatives of a responsible licensee of conflicted remuneration (within the meaning of Division 4 of Part 7.7A of the Corporations Act), in contravention of s.963E and 963F of the Corporations Act;
- (h) the First and Second Defendants being knowingly concerned in, or party to, the breach of general obligations of a financial services licensee in contravention of s.912A(1)(c) of the Corporations Act; and
- (i) the breach of the First Defendant's director's duties in contravention of s.180(1) of the Corporations Act.

The Court's jurisdiction to hear the present case and to grant the relief sought is found in s.1337B(1) of the Corporations Act and s.39B(1A)(c) of the *Judiciary Act 1903* (Cth).

A. DETAILS OF APPLICATION

In this Originating Process, the terms which are defined in the accompanying Concise Statement have the same meaning as they do in that document.

On the grounds stated in the accompanying Concise Statement, the Plaintiff claims:



DECLARATORY RELIEF IN RELATION TO CONTRAVENTIONS OF PART 7.7A CHAPTER 7 OF THE CORPORATIONS ACT

The Vespa Incentive

1. A declaration that the First Defendant (**Keith Charles Cohen**) was knowingly concerned in, or party to, a contravention by Freedom Insurance Pty Ltd (ACN 138 864 543) (in liquidation) (**Freedom Insurance**), a financial services licensee that was providing financial product advice to retail clients, of s.963E of the Corporations Act, when Adam Walker, a representative for which Freedom Insurance was the responsible financial services licensee, accepted a non-monetary benefit in the form of a brand new Vespa scooter (**Vespa**) on or around 2 February 2018, since the nature of the Vespa and the circumstances in which it was given to Adam Walker could reasonably be expected to influence the financial product advice given by Adam Walker to retail clients during the qualifying period of 15 November 2017 to 25 January 2018.
2. In the alternative to the relief sought in paragraph 1, a declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, a contravention by Freedom Insurance of s.963E of the Corporations Act, when Adam Walker, a representative for which Freedom Insurance was the responsible financial services licensee, accepted the Vespa on or around 2 February 2018, since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, Adam Walker had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the *Corporations Regulations 2001* (Cth)) (**Corporations Regulations**) during the period of 1 to 25 January 2018.
3. A declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, a contravention by Freedom Insurance, a financial services licensee that was providing financial product advice to retail clients, of s.963F of the Corporations Act, by Freedom Insurance failing to take reasonable steps to ensure that Adam Walker, being a representative of its financial services licence, did not accept a non-monetary benefit in the form of the Vespa on or around 2 February 2018, since the nature of the Vespa and the circumstances in which it was given to Adam Walker could reasonably be expected to influence the financial product advice given by Adam Walker to retail clients during the qualifying period of 15 November 2017 to 25 January 2018.



4. In the alternative to the relief sought in paragraph 3, a declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, a contravention by Freedom Insurance of s.963F of the Corporations Act, by Freedom Insurance failing to take reasonable steps to ensure that Adam Walker, being a representative of its financial services licence, did not accept the Vespa on or around 2 February 2018, since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, Adam Walker had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations) during the period of 1 to 25 January 2018.
5. A declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, a contravention by Insurance Network Services Australia Pty Ltd (ACN 137 632 770) (in liquidation) (**INSA**) of s.963J of the Corporations Act, by INSA giving a non-monetary benefit in the form of the Vespa on or around 2 February 2018 to its employee Adam Walker (being a representative of Freedom Insurance, which as a financial services licensee was providing financial product advice to retail clients), since the nature of the Vespa and the circumstances in which it was given to Adam Walker could reasonably be expected to influence the financial product advice given by Adam Walker to retail clients during the qualifying period of 15 November 2017 to 25 January 2018.
6. In the alternative to the relief sought in paragraph 5, a declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, a contravention by INSA of s.963J of the Corporations Act, by INSA giving a non-monetary benefit in the form of the Vespa on or around 2 February 2018 to its employee Adam Walker (being a representative of Freedom Insurance), since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, Adam Walker had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations) during the period of 1 to 25 January 2018.
7. A declaration that the Second Defendant (**Robert Rafec Oayda**) was knowingly concerned in, or party to, a contravention by Freedom Insurance, a financial services licensee that was providing financial product advice to retail clients, of s.963E of the Corporations Act, when Adam Walker, a representative for which Freedom Insurance was the responsible licensee, accepted a non-monetary



benefit in the form of the Vespa on or around 2 February 2018, since the nature of the Vespa and the circumstances in which it was given to Adam Walker could reasonably be expected to influence the financial product advice given by Adam Walker to retail clients during the qualifying period of 15 November 2017 to 25 January 2018.

8. In the alternative to the relief sought in paragraph 7, a declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, a contravention by Freedom Insurance of s.963E of the Corporations Act, when Adam Walker, a representative for which Freedom Insurance was the responsible financial services licensee, accepted the Vespa on or around 2 February 2018, since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, Adam Walker had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations) during the period of 1 to 25 January 2018.
9. A declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, a contravention by Freedom Insurance, a financial services licensee that was providing financial product advice to retail clients, of s.963F of the Corporations Act, by Freedom Insurance failing to take reasonable steps to ensure that Adam Walker, being a representative of its financial services licence, did not accept a non-monetary benefit in the form of the Vespa on or around 2 February 2018, since the nature of the Vespa and the circumstances in which it was given to Adam Walker could reasonably be expected to influence the financial product advice given by Adam Walker to retail clients during the qualifying period of 15 November 2017 to 25 January 2018.
10. In the alternative to the relief sought in paragraph 9, a declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, a contravention by Freedom Insurance of s.963F of the Corporations Act, by Freedom Insurance failing to take reasonable steps to ensure that Adam Walker, being a representative of its financial services licence, did not accept the Vespa on or around 2 February 2018, since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, Adam Walker had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations) during the period of 1 to 25 January 2018.



The Bali 1 Incentive

11. A declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by Freedom Insurance, a financial services licensee that was providing financial product advice to retail clients, of s.963E of the Corporations Act, on each occasion when the following of its representatives, for which it was the responsible financial services licensee, accepted a non-monetary benefit in the form of a seven day holiday package to Bali in Indonesia (**Bali 1 package**) from about 30 January 2018 to October 2018 (inclusive):

11.1. Hannah Dewhurst;

11.2. Nina Duncan;

11.3. Omar Gaddafi;

11.4. Becky Ghinn;

11.5. Daniel Holmes;

11.6. James Laubhan;

11.7. Russell Littleford;

11.8. Lewis Miles;

11.9. Luke Pedelty;

11.10. Rajika Perera;

11.11. Jacob Stray;

11.12. Adam Walker;

11.13. Ellie Warde;

11.14. Sally Webb; and

11.15. Sam White,

(together, the **Bali 1 recipients**),

since the nature of the Bali 1 package and the circumstances in which it was given to the Bali 1 recipients could reasonably be expected to influence the financial product advice they gave to retail clients during the qualifying period of 15 November 2017 to about 30 January 2018, with the acceptance of the Bali 1 package by each representative constituting a separate contravention of s.963E.

12. A declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by Freedom Insurance, a financial services licensee that was



providing financial product advice to retail clients, of s.963F of the Corporations Act, by Freedom Insurance failing to take reasonable steps to ensure that the Bali 1 recipients, being representatives of its financial services licence, did not accept a non-monetary benefit in the form of the Bali 1 package from about 30 January 2018 to October 2018 (inclusive), since the nature of the Bali 1 package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period of 15 November 2017 to about 30 January 2018, with a separate contravention of s.963F occurring each time a representative accepted the Bali 1 package.

13. A declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by INSA of s.963J of the Corporations Act, by INSA giving a non-monetary benefit in the form of the Bali 1 package from about 30 January 2018 to October 2018 (inclusive) to each of the Bali 1 recipients, being its employees (and representatives of Freedom Insurance, which as a financial services licensee was providing financial product advice to retail clients), since the nature of the Bali 1 package and the circumstances in which it was given to the employees could reasonably be expected to influence the financial product advice that they gave during the qualifying period of 15 November 2017 to about 30 January 2018, with the giving of the Bali 1 package to each employee constituting a separate contravention of s.963J.
14. A declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, contraventions by Freedom Insurance, a financial services licensee that was providing financial product advice to retail clients, of s.963E of the Corporations Act, on each occasion when the Bali 1 recipients, being its representatives and for which it was the responsible licensee, accepted a non-monetary benefit in the form of the Bali 1 package from about 30 January 2018 to October 2018 (inclusive), since the nature of the Bali 1 package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period of 15 November 2017 to about 30 January 2018, with the acceptance of the Bali 1 package by each representative constituting a separate contravention of s.963E.
15. A declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, contraventions by Freedom Insurance, a financial services licensee that was providing financial product advice to retail clients, of s.963F of the Corporations Act, by failing to take reasonable steps to ensure that the Bali 1 recipients, being



representatives of its financial services licence, did not accept a non-monetary benefit in the form of the Bali 1 package from about 30 January 2018 to October 2018 (inclusive), since the nature of the Bali 1 package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period of 15 November 2017 to about 30 January 2018, with a separate contravention of s.963F occurring each time a representative accepted the Bali 1 package.

16. In the alternative to the relief sought in paragraph 11, a declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by Freedom Insurance, a financial services licensee that was providing financial product advice to retail clients, of s.963E of the Corporations Act, on each occasion when the following of its representatives, for which it was the responsible financial services licensee, accepted the Bali 1 package from about 30 January 2018 to October 2018 (inclusive):

- 16.1. Nina Duncan;
- 16.2. Russell Littleford;
- 16.3. Lewis Miles;
- 16.4. Luke Pedelty;
- 16.5. Rajika Perera;
- 16.6. Jacob Stray; and
- 16.7. Sam White,

(together, the **Post-1 January 2018 Bali 1 recipients**),

since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, the representatives had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations) during the qualifying period of 1 January 2018 to about 30 January 2018, with the acceptance of the Bali 1 package by each representative constituting a separate contravention of s.963E.

17. In the alternative to the relief sought in paragraph 12, a declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by Freedom Insurance of s.963F of the Corporations Act, by Freedom Insurance failing to take reasonable steps to ensure that the Post-1 January 2018 Bali 1



recipients, being representatives of its financial services license, did not accept the Bali 1 package from about 30 January 2018 to October 2018 (inclusive), since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, the representatives had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations) during the qualifying period of 1 January 2018 to about 30 January 2018, with a separate contravention of s.963F occurring each time a representative accepted the Bali 1 package.

18. In the alternative to the relief sought in paragraph 13, a declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by INSA of s.963J of the Corporations Act, by INSA giving a non-monetary benefit in the form of the Bali 1 package from about 30 January 2018 to October 2018 (inclusive) to each of the Post-1 January 2018 Bali 1 recipients, being its employees (and representatives of Freedom Insurance), since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, the employees had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations) during the qualifying period of 1 January 2018 to about 30 January 2018, with a separate contravention of s.963J occurring each time an employee was given the Bali 1 package.
19. In the alternative to the relief sought in paragraph 14, a declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, contraventions by Freedom Insurance of s.963E of the Corporations Act, on each occasion when each of the Post-1 January 2018 Bali 1 recipients (being representatives of its financial services licence) accepted the Bali 1 package from about 30 January 2018 to October 2018 (inclusive), since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, the representatives had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations), during the qualifying period of 1 January 2018 to about 30 January 2018, with the acceptance of the Bali 1 package by each representative constituting a separate contravention of s.963E.



20. In the alternative to the relief sought in paragraph 15, a declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, contraventions by Freedom Insurance of s.963F of the Corporations Act, by Freedom Insurance failing to take reasonable steps to ensure that the Post-1 January 2018 Bali 1 recipients, being representatives of its financial services licence, did not accept the Bali 1 package from about 30 January 2018 to October 2018 (inclusive), since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, the representatives had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations), during the qualifying period of 1 January 2018 to about 30 January 2018, with a separate contravention of s.963F occurring each time a representative accepted the Bali 1 package.

The Bali 2 Incentive

21. A declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by Freedom Insurance, a financial services licensee that was providing financial product advice to retail clients, of s.963E of the Corporations Act, on each occasion when the following of its representatives, for which it was the responsible licensee, accepted a non-monetary benefit in the form of a seven day holiday package to Bali in Indonesia or an upgraded Bali 1 package (**Bali 2 package**) from about February 2018 to October 2018 (inclusive):
- 21.1. Harry Balbirnie;
 - 21.2. Jamie Finnegan;
 - 21.3. Omar Gaddafi;
 - 21.4. Devin Leal;
 - 21.5. Zacharias Patsalides;
 - 21.6. Daniel Saphra;
 - 21.7. Ross Scott;
 - 21.8. Jordyn Wihare; and
 - 21.9. Mark Andrew Worswick,
- (together, the **Bali 2 recipients**),



since the nature of the Bali 2 package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period of 15 January 2018 to about 24 March 2018, with the acceptance of the Bali 2 package by each representative constituting a separate contravention of s.963E.

22. In the alternative to the relief sought in paragraph 21, a declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by Freedom Insurance of s.963E of the Corporations Act, on each occasion when each of the Bali 2 recipients (being representatives of its financial services licence) accepted the Bali 2 package from about February 2018 to October 2018 (inclusive), since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, the representatives had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations) during the qualifying period of 15 January 2018 to about 24 March 2018, with the acceptance of the Bali 2 package by each representative constituting a separate contravention of s.963E.
23. A declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by Freedom Insurance, a financial services licensee that was providing financial product advice to retail clients, of s.963F of the Corporations Act, by Freedom Insurance failing to take reasonable steps to ensure that the Bali 2 recipients, being representatives of its financial services license, did not accept a non-monetary benefit in the form of the Bali 2 package from about February 2018 to October 2018 (inclusive), since the nature of the Bali 2 package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period of 15 January 2018 to about 24 March 2018, with a separate contravention of s.963F occurring each time a representative accepted the Bali 2 package.
24. In the alternative to the relief sought in paragraph 23, a declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by Freedom Insurance of s.963F of the Corporations Act, by Freedom Insurance failing to take reasonable steps to ensure that the Bali 2 recipients, being representatives of its financial services license, did not accept the Bali 2 package from about February 2018 to October 2018 (inclusive), since access to this non-monetary benefit was dependent on the value or number of life risk insurance



products subsequently acquired by a person to whom, or in relation to whom, the representatives had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations) during the qualifying period of 15 January 2018 to about 24 March 2018, with a separate contravention of s.963F occurring each time a representative accepted the Bali 2 package.

25. A declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by INSA of s.963J of the Corporations Act, by INSA giving a non-monetary benefit in the form of the Bali 2 package from about February 2018 to October 2018 (inclusive) to each of the Bali 2 recipients, being its employees (and representatives of Freedom Insurance, which as a financial services licensee was providing financial product advice to retail clients), since the nature of the Bali 2 package and the circumstances in which it was given to the employees could reasonably be expected to influence the financial product advice that they gave during the qualifying period of 15 January 2018 to about 24 March 2018, with the giving of the Bali 2 package to each employee constituting a separate contravention of s.963J.
26. In the alternative to the relief sought in paragraph 25, a declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by INSA of s.963J of the Corporations Act, by INSA giving a non-monetary benefit in the form of the Bali 2 package from about February 2018 to October 2018 (inclusive) to each of the Bali 2 recipients, being its employees (and representatives of Freedom Insurance), since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, the employees had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations) during the qualifying period of 15 January 2018 to about 24 March 2018, with a separate contravention of s.963J occurring each time an employee was given the Bali 2 package.
27. A declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, contraventions by Freedom Insurance, a financial services licensee that was providing financial product advice to retail clients, of s.963E of the Corporations Act, on each occasion when the Bali 2 recipients, being its representatives for which it was the responsible licensee, accepted a non-monetary benefit in the form of the Bali 2 package from about February 2018 to October 2018 (inclusive), since the nature of the Bali 2 package and the circumstances in which it was



given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period of 15 January 2018 to about 24 March 2018, with the acceptance of the Bali 2 package by each representative constituting a separate contravention of s.963E.

28. In the alternative to the relief sought in paragraph 27, a declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, contraventions by Freedom Insurance of s.963E of the Corporations Act, on each occasion when the Bali 2 recipients (being representatives of its financial services licence) accepted the Bali 2 package from about February 2018 to October 2018 (inclusive), since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, the representatives had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations), during the qualifying period of 15 January 2018 to about 24 March 2018, with the acceptance of the Bali 2 package by each representative constituting a separate contravention of s.963E.
29. A declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, contraventions by Freedom Insurance, a financial services licensee that was providing financial product advice to retail clients, of s.963F of the Corporations Act, by Freedom Insurance failing to take reasonable steps to ensure that the Bali 2 recipients, being representatives of its financial services licence, did not accept a non-monetary benefit in the form of the Bali 2 package from about February 2018 to October 2018 (inclusive), since the nature of the Bali 2 package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period of 15 January 2018 to about 24 March 2018, with a separate contravention of s.963F occurring each time a representative accepted the Bali 2 package.
30. In the alternative to the relief sought in paragraph 29, a declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, contraventions by Freedom Insurance of s.963F of the Corporations Act, by Freedom Insurance failing to take reasonable steps to ensure that the Bali 2 recipients, being representatives of its financial services licence, did not accept the Bali 2 package from about February 2018 to October 2018 (inclusive), since access to this non-monetary benefit was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, the



representatives had given information regarding those insurance products (within the meaning of regulation 7.7A.11B of the Corporations Regulations), during the qualifying period of 15 January 2018 to about 24 March 2018, with a separate contravention of s.963F occurring each time a representative accepted the Bali 2 package.

DECLARATORY RELIEF IN RELATION TO CONTRAVENTIONS OF PART 7.6 OF CHAPTER 7 OF THE CORPORATIONS ACT

31. A declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by Freedom Insurance of the general obligations it owes as a financial services licensee pursuant to s.912A(1)(c) of the Corporations Act to comply with the financial services laws in Part 7.7A Division 4 of the Corporations Act (specifically, s.963E) when:

- 31.1. one of the representatives of Freedom Insurance's financial services licence accepted a non-monetary benefit in the form of the Vespa on or around 2 February 2018;
- 31.2. 15 of the representatives of Freedom Insurance's financial services licence accepted non-monetary benefits in the form of the Bali 1 package from about 30 January 2018 to October 2018 (inclusive); and
- 31.3. 9 of the representatives of Freedom Insurance's financial services licence accepted non-monetary benefits in the form of the Bali 2 package from about February 2018 to October 2018 (inclusive),

with each acceptance referred to above constituting a contravention of s.912A(1)(c) of the Corporations Act.

32. A declaration that **Keith Charles Cohen** was knowingly concerned in, or party to, contraventions by Freedom Insurance of the general obligations it owed as a financial services licensee pursuant to s.912A(1)(c) of the Corporations Act to comply with the financial services laws in Part 7.7A Division 4 of the Corporations Act (specifically, s.963F) when it failed to take reasonable steps to ensure that representatives of its financial services licence did not accept conflicted remuneration as follows:

- 32.1. one of the representatives of Freedom Insurance's financial services licence accepting a non-monetary benefit in the form of the Vespa on or around 2 February 2018;



32.2. 15 of the representatives of Freedom Insurance's financial services licence accepting non-monetary benefits in the form of the Bali 1 package from about 30 January 2018 to October 2018 (inclusive); and

32.3. 9 of the representatives of Freedom Insurance's financial services licence accepting non-monetary benefits in the form of the Bali 2 package from about February 2018 to October 2018 (inclusive),

with each failure referred to above constituting a contravention s.912A(1)(c) of the Corporations Act.

33. A declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, contraventions by Freedom Insurance of the general obligations it owes as a financial services licensee pursuant to s.912A(1)(c) of the Corporations Act to comply with the financial services laws in Part 7.7A Division 4 of the Corporations Act (specifically, s.963E) when:

33.1. one of the representatives of Freedom Insurance's financial services licence accepted a non-monetary benefit in the form of the Vespa on or around 2 February 2018;

33.2. 15 of the representatives of Freedom Insurance's financial services licence accepted non-monetary benefits in the form of the Bali 1 package from about 30 January 2018 to October 2018 (inclusive); and

33.3. 9 of the representatives of Freedom Insurance's financial services licence accepted non-monetary benefits in the form of the Bali 2 package from about February 2018 to October 2018 (inclusive),

with each acceptance referred to above constituting a contravention of s.912A(1)(c) of the Corporations Act.

34. A declaration that **Robert Rafec Oayda** was knowingly concerned in, or party to, contraventions by Freedom Insurance of the general obligations it owed as a financial services licensee pursuant to s.912A(1)(c) of the Corporations Act to comply with the financial services laws in Part 7.7A Division 4 of the Corporations Act (specifically, s.963F) when it failed to take reasonable steps to ensure that representatives of its financial services licence did not accept conflicted remuneration as follows:

34.1. one of the representatives of Freedom Insurance's financial services licence accepting a non-monetary benefit in the form of the Vespa on or around 2 February 2018;



- 34.2. 15 of the representatives of Freedom Insurance's financial services licence accepting non-monetary benefits in the form of the Bali 1 package from about 30 January 2018 to October 2018 (inclusive); and
- 34.3. 9 of the representatives of Freedom Insurance's financial services licence accepting non-monetary benefits in the form of the Bali 2 package from about February 2018 to October 2018 (inclusive),
- with each failure referred to above constituting a contravention s.912A(1)(c) of the Corporations Act.

DECLARATORY RELIEF IN RELATION TO CONTRAVENTIONS OF CHAPTER 2D OF THE CORPORATIONS ACT

35. A declaration that **Keith Charles Cohen** contravened s.180(1) of the Corporations Act by failing to exercise his powers and discharge his duties, as a director of each of Freedom Insurance and INSA, to each of which he owed duties, with reasonable care and diligence by:

- 35.1. establishing, approving and/or overseeing the implementation of incentive programs for representatives of Freedom Insurance and employees of INSA in circumstances where:
- a. the nature of the benefits or the circumstances in which they were given could reasonably be expected to have influenced the financial product advice given by Freedom Insurance's representatives; or
 - b. alternatively, access to the benefits was dependent on the value or number of life risk insurance products subsequently acquired by a person to whom, or in relation to whom, the information was given (within the meaning of regulation 7.7A.11B of the Corporations Regulations); and/or
- 35.2. failing to take reasonable steps, or any steps, to prevent the implementation of incentive programs for representatives of Freedom Insurance and employees of INSA as set out above and/or the giving to and/or acceptance by such representatives/employees of the benefits,

thereby creating a significant risk of non-compliance by Freedom Insurance and/or INSA with their legal obligations (including those arising under Division 4 of Part 7.7A of the Corporations Act) and jeopardising Freedom Insurance and/or INSA's interests by exposing Freedom Insurance to a risk of cancellation of its Australian Financial Services



Licence and Freedom Insurance and/or INSA to the risk of reputational harm, litigation and/or regulatory action.

DISQUALIFICATION ORDERS IN RELATION TO CONTRAVENTIONS OF THE CORPORATIONS ACT

36. An order pursuant to s.206C of the Corporations Act that **Keith Charles Cohen** be disqualified from managing corporations for such period as the Court considers appropriate.
37. Further, or in the alternative, an order pursuant to s.206E of the Corporations Act that **Keith Charles Cohen** be disqualified from managing corporations for such period as the Court considers appropriate.

PECUNIARY PENALTIES IN RELATION TO CONTRAVENTIONS OF THE CORPORATIONS ACT

38. An order that **Keith Charles Cohen** pay pecuniary penalties pursuant to s.1317G(1) of the Corporations Act.

INJUNCTIONS

39. An injunction pursuant to s.1324 and/or s.1101B(1)(a) of the Corporations Act restraining **Keith Charles Cohen**, by himself, his servants, agents or employees, in respect of companies of which he is a director or officer and which hold a financial services licence, from causing or permitting representatives of the financial services licence of those companies accepting conflicted remuneration.
40. An injunction pursuant to s.1324 and/or s.1101B(1)(a) of the Corporations Act restraining **Keith Charles Cohen**, by himself, his servants, agents or employees, in respect of companies of which he is a director or officer, from causing or permitting employees of those companies being given conflicted remuneration.
41. An order pursuant to s.1324 and/or s.1101B(1)(a) of the Corporations Act restraining **Keith Charles Cohen**, by himself, his servants, agents or employees, for such period as the Court considers appropriate, from:
 - 41.1. carrying on a financial services business within the meaning of s.761A of the Corporations Act;
 - 41.2. carrying on a business related to, concerning or directed to 'financial products' or 'financial services' within the meaning of s.761A of the Corporations Act;



- 41.3. managing corporations related to, concerning or directed to 'financial products' or 'financial services' within the meaning of s.761A of the Corporations Act;
 - 41.4. providing 'financial services' within the meaning of s.761A of the Corporations Act, including providing financial product advice and dealing in financial products;
 - 41.5. in any way holding himself out as doing, authorised to do, or being in any way involved in, the matters referred to in sub-paragraphs 41.1 to 41.4 above; and/or
 - 41.6. holding office in, or being employed by, or acting in the capacity of a contractor or consultant for any entity engaged in any of the activities referred to in sub-paragraphs 41.1 to 41.4 above.
42. An injunction pursuant to s.1324 and/or s.1101B(1)(a) of the Corporations Act restraining **Robert Rafec Oayda**, by himself, his servants, agents or employees, in respect of companies of which he is being employed by, or acting in the capacity of a contractor or consultant, and which hold a financial services licence, from causing or permitting representatives of the financial services licence of those companies accepting conflicted remuneration.
43. An injunction pursuant to s.1324 and/or s.1101B(1)(a) of the Corporations Act restraining **Robert Rafec Oayda**, by himself, his servants, agents or employees, in respect of companies of which he is being employed by, or acting in the capacity of a contractor or consultant, from causing or permitting employees of those companies being given conflicted remuneration.
44. An order pursuant to s.1324 and/or s.1101B(1)(a) of the Corporations Act restraining **Robert Rafec Oayda**, by himself, his servants, agents or employees, for such period as the Court considers appropriate, from:
- 44.1. carrying on a financial services business within the meaning of s.761A of the Corporations Act;
 - 44.2. carrying on a business related to, concerning or directed to 'financial products' or 'financial services' within the meaning of s.761A of the Corporations Act;
 - 44.3. managing corporations related to, concerning or directed to 'financial products' or 'financial services' within the meaning of s.761A of the Corporations Act;



- 44.4. providing 'financial services' within the meaning of s.761A of the Corporations Act, including providing financial product advice and dealing in financial products;
- 44.5. in any way holding himself out as doing, or being in any way involved in, the matters referred to in sub-paragraphs 44.1 to 44.4 above; and/or
- 44.6. holding office in, or being employed by, or acting in the capacity of a contractor or consultant for any entity engaged in any of the activities referred to in sub-paragraphs 44.1 to 44.4 above.

OTHER

45. An order that the Defendants pay the Plaintiff's costs of the proceeding.
46. Such further or other orders as the Court considers appropriate.

Date: 22 October 2021

A handwritten signature in black ink, appearing to read 'Cynthia Di Blasio'.

Cynthia Di Blasio
Plaintiff's legal practitioner

This Originating Process was prepared by Tiffany Wong SC and Meg O'Brien of Counsel and Cynthia Di Blasio, Lawyer.

This application will be heard by the Federal Court of Australia, Level 17, Law Courts Building, 184 Phillip Street, Queens Square, Sydney at _____ am/pm
on _____ 2021.

**B. NOTICE TO DEFENDANTS****TO:**

First Defendant – KEITH CHARLES COHEN
c/- MADDOCKS
ATTENTION: NORMAN LUCAS
LEVEL 27, 123 PITT STREET
SYDNEY NSW 2000

Second Defendant – ROBERT RAFEC OAYDA
13/339 EDGECLIFF ROAD
WOOLLAHRA NSW 2025

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.



C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

N/A

D. FILING

Date of filing:

.....
Registrar

This originating process is filed by Cynthia Di Blasio for the Plaintiff.

E. SERVICE

The Plaintiff's address for service is:

Place: Australian Securities and Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000

Email: cynthia.diblasio@asic.gov.au

It is intended to serve a copy of this originating process on each Defendant.



SCHEDULE OF PARTIES

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

KEITH CHARLES COHEN

First Defendant

ROBERT RAFEC OAYDA

Second Defendant