

NOTICE OF FILING AND HEARING

Filing and Hearing Details

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File Number: NSD176/2023
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v
TERRACOM LIMITED ACN 143 533 537 & ORS
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

Registrar

Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.



No. of 2023

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

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

TERRACOM LIMITED (ACN 143 533 537) and the others listed in the schedule

Defendants

ORIGINATING PROCESS

A. DETAILS OF APPLICATION

This application is made under sections 206C(1), 206E(1), 1317E, 1317G of the *Corporations Act 2001* (Cth) (**Corporations Act**), and sections 21 and 23 of the *Federal Court of Australia Act 1976* (Cth).

The Plaintiff seeks declarations of contraventions by the First Defendant (**TerraCom**) of section 1317AC(1) of the Corporations Act, declarations of contraventions by the Second Defendant (**McCarthy**), Third Defendant (**Boom**) and Fourth Defendant (**Ransley**) of section 1317AC(3), declarations of contraventions by McCarthy, Boom, Ransley and the Fifth Defendant (**King**) of sections 180(1), 1309(2) and 1309(12) of the Corporations Act, orders that the First to Fifth Defendants each pay to the Commonwealth a pecuniary penalty or penalties, and orders that the Second to Fifth Defendants be disqualified from managing corporations.

In this Originating Process, terms which are defined in the Concise Statement dated 28 February 2023 have the same meaning in this document.

On the facts stated in the Plaintiff's Concise Statement, the Plaintiff seeks the following orders:

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Rebecca Jaffe		
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Against the First Defendant (TerraCom)

1. A declaration that on and from 24 February 2020, the First Defendant contravened s 1317AC(1) of the Corporations Act by causing detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by publishing the false, misleading and otherwise harmful contents of the February Announcement at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for publishing the February Announcement.
2. A declaration that on and from 12 March 2020, the First Defendant contravened s 1317AC(1) of the Corporations Act by causing detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by publishing the false, misleading and otherwise harmful contents of the Open Letter at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for publishing the Open Letter.
3. A declaration that on and from 3 April 2020, the First Defendant contravened s 1317AC(1) of the Corporations Act by causing detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by publishing the false, misleading and otherwise harmful contents of the April Announcement at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for publishing the April Announcement.
4. A declaration that between 24 February 2020 and 3 April 2020, the First Defendant contravened s 1317AC(1) of the Corporations Act by causing detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by engaging in the Public Announcement Conduct at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for the Public Announcement Conduct.



5. An order pursuant to s 1317G(1) of the Corporations Act that the First Defendant pay to the Commonwealth of Australia a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of its contraventions of s 1317AC(1) of the Corporations Act.
6. Costs.
7. Such further orders or other orders or relief as the Court thinks fit.

Against the Second Defendant (Daniel McCarthy)

The Exoneration Representations: Contravention of ss 1309(2) and (12) of the Corporations Act

8. A declaration that on or from 24 February 2020, the Second Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the February Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:
 - (a) was false or misleading in a material particular; or
 - (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement was amended or reissued so that it accurately reflected the PwC Findings and PwC Matters for Inquiry.
9. A declaration that on or from 10 March 2020, the Second Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the Proposed March Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:
 - (a) was false or misleading in a material particular; or
 - (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,



without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement, and the Proposed March Announcement were amended or reissued so that they accurately reflected the PwC Findings and PwC Matters for Inquiry.

10. A declaration that on or from 3 April 2020, the Second Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the April Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:
- (a) was false or misleading in a material particular; or
 - (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,

without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement, the Proposed March Announcement and the April Announcement were amended or reissued so that they accurately reflected the PwC Findings and PwC Matters for Inquiry.

11. A declaration that on or from 3 April 2020, the Second Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of one or more of the February Announcement, the Proposed March Announcement and the April Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:
- (a) was false or misleading in a material particular; or
 - (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,



without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement, the Proposed March Announcement and the April Announcement were amended or reissued so that they accurately reflected the PwC Findings and PwC Matters for Inquiry.

The No Customer Complaint Representations: Contravention of ss 1309(2) and (12) of the Corporations Act

12. A declaration that on or from 10 March 2020, the Second Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the Proposed March Announcement which contained information comprising the No Customer Complaint Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the Customer Enquiry and Complaint Information, the omission of which rendered the No Customer Complaint Representations misleading in a material respect,

without having taken reasonable steps to investigate the Customer Enquiry and Complaint Information or to ensure that the Proposed March Announcement was amended or reissued so that it accurately reflected the Customer Enquiry and Complaint Information.

13. A declaration that on or from 3 April 2020, the Second Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the April Announcement which contained information comprising the No Customer Complaint Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the Customer Enquiry and Complaint Information, the omission of which rendered the No Customer Complaint Representations misleading in a material respect,



without having taken reasonable steps to investigate the Customer Enquiry and Complaint Information or to ensure that the Proposed March Announcement and the April Announcement were amended or reissued so that they accurately reflected the Customer Enquiry and Complaint Information.

14. A declaration that on or from 3 April 2020, the Second Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of one or more of the Proposed March Announcement and the April Announcement which contained information comprising the No Customer Complaint Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the Customer Enquiry and Complaint Information, the omission of which rendered the No Customer Complaint Representations misleading in a material respect,

without having taken reasonable steps to investigate the Customer Enquiry and Complaint Information or to ensure that the Proposed March Announcement and the April Announcement were amended or reissued so that they accurately reflected the Customer Enquiry and Complaint Information.

Breach of Officer's Duties: Contravention of s 180(1) of the Corporations Act

15. A declaration that on and from 20 January 2020, the Second Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Executive Officer of a corporation in the First Defendant's circumstances and occupied the office held by the Second Defendant, and had the same responsibilities within the corporation, by failing to take a diligent and intelligent interest in the information available to him to understand that information, and apply an enquiring mind to the responsibilities placed upon him including by failing to:

- (a) take any reasonable step to investigate or understand the reasons for the PwC Findings, especially the existence of inconsistent coal quality results; and
- (b) take any reasonable step to investigate the PwC Matters for Inquiry; and
- (c) contact any representative of ALS responsible for testing TerraCom coal to discuss the matters raised by the PwC Findings and the PwC Matters for Inquiry.



16. A declaration that on and from 24 February 2020, the Second Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Executive Officer of a corporation in the First Defendant's circumstances and occupied the office held by the Second Defendant, and had the same responsibilities within the corporation, by failing to take a diligent and intelligent interest in the information available to him to understand that information, and apply an enquiring mind to the responsibilities placed upon him including by failing to:
- (a) take any reasonable step to investigate or understand the reasons for the PwC Findings, especially the existence of inconsistent coal quality results; and
 - (b) take any reasonable step to investigate the PwC Matters for Inquiry; and
 - (c) contact any representative of ALS responsible for testing TerraCom coal to discuss the matters raised by the PwC Findings, the PwC Matters for Inquiry and the February ALS Announcement.
17. A declaration that on and from 2 April 2020, the Second Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Executive Officer of a corporation in the First Defendant's circumstances and occupied the office held by the Second Defendant, and had the same responsibilities within the corporation, by failing to take a diligent and intelligent interest in the information available to him to understand that information, and apply an enquiring mind to the responsibilities placed upon him including by failing to:
- (a) take any reasonable step to investigate or understand the reasons for the PwC Findings, especially the existence of inconsistent coal quality results; and
 - (b) take any reasonable step to investigate the PwC Matters for Inquiry; and
 - (c) contact any representative of ALS responsible for testing TerraCom coal to discuss the matters raised by the PwC Findings, the PwC Matters for Inquiry, the February ALS Announcement and the April ALS Announcement.
18. Alternatively to paragraphs 15 to 17 above, if the Court finds that the Second Defendant did not read the PwC Report, then a declaration that on and from 20 January 2020, the Second Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Executive Officer of a corporation in the First Defendant's



circumstances and occupied the office held by the Second Defendant, and had the same responsibilities within the corporation, by failing to read the PwC Report in circumstances where:

- (a) the PwC Report had been specifically commissioned on instruction from the TerraCom Board; and
- (b) the Second Defendant was a member of the Disclosure Committee, received copies of each draft ASX announcement, and authorised or permitted the release of the February Announcement, the Proposed March Announcement, the Open Letter and the April Announcement or at least knew that they were to be published and knew that the First Defendant's ASX announcements typically expressly stated that they had been authorised for release by the Disclosure Committee.

Involvement in Whistleblower Contraventions: Contravention of s 1317AC(3) of the Corporations Act

19. A declaration that on and from 24 February 2020, the Second Defendant contravened s 1317AC(3) of the Corporations Act by his involvement in the First Defendant's contravention of s 1317AC(1) whereby (to the Second Defendant's knowledge) the First Defendant caused detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by publishing the false, misleading and otherwise harmful contents of the February Announcement at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for publishing the February Announcement.
20. A declaration that on and from 12 March 2020, the Second Defendant contravened s 1317AC(3) of the Corporations Act by his involvement in the First Defendant's contravention of s 1317AC(1) whereby (to the Second Defendant's knowledge) the First Defendant caused detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by publishing the false, misleading and otherwise harmful contents of the Open Letter at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for publishing the Open Letter.
21. A declaration that on and from 3 April 2020, the Second Defendant contravened s 1317AC(3) of the Corporations Act by his involvement in the First Defendant's contravention of s 1317AC(1) whereby (to the Second Defendant's knowledge) the First



Defendant caused detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by publishing the false, misleading and otherwise harmful contents of the April Announcement at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for publishing the April Announcement.

22. A declaration that between 24 February 2020 and 3 April 2020, the Second Defendant contravened s 1317AC(3) of the Corporations Act by his involvement in the First Defendant's contravention of s 1317AC(1) whereby (to the Second Defendant's knowledge) the First Defendant caused detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by engaging in the Public Announcement Conduct at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for the Public Announcement Conduct.

Penalties, disqualification and costs

23. Orders pursuant to s 1317G(1) of the Corporations Act that the Second Defendant pay to the Commonwealth of Australia a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of ss 180(1), 1309(2), 1309(12) and s 1317AC(3) of the Corporations Act.
24. An order pursuant to s 206C(1) and/or s 206E(1) of the Corporations Act disqualifying the Second Defendant from managing corporations for a period to be determined by the Court.
25. Costs.
26. Such further or other orders as the Court thinks fit.

Against the Third Defendant (Nathan Boom)

The Exoneration Representations: Contravention of ss 1309(2) and (12) of the Corporations Act



27. A declaration that on or from 24 February 2020, the Third Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the February Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,

without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement was amended or reissued so that it accurately reflected the PwC Findings and PwC Matters for Inquiry.

28. A declaration that on or from 10 March 2020, the Third Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the Proposed March Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,

without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement, and the Proposed March Announcement were amended or reissued so that they accurately reflected the PwC Findings and PwC Matters for Inquiry.

29. A declaration that on or from 3 April 2020, the Third Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the April Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or



- (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,

without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement, the Proposed March Announcement and the April Announcement were amended or reissued so that they accurately reflected the PwC Findings and PwC Matters for Inquiry.

30. A declaration that on or from 3 April 2020, the Third Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of one or more of the February Announcement, the Proposed March Announcement and the April Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,

without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement, the Proposed March Announcement and the April Announcement were amended or reissued so that they accurately reflected the PwC Findings and PwC Matters for Inquiry.

The No Customer Complaint Representations: Contravention of ss 1309(2) and (12) of the Corporations Act

31. A declaration that on or from 10 March 2020, the Third Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the Proposed March Announcement which contained information comprising the No Customer Complaint Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or



- (b) had omitted from it the Customer Enquiry and Complaint Information, the omission of which rendered the No Customer Complaint Representations misleading in a material respect,

without having taken reasonable steps to investigate the Customer Enquiry and Complaint Information or to ensure that the Proposed March Announcement was amended or reissued so that it accurately reflected the Customer Enquiry and Complaint Information.

32. A declaration that on or from 3 April 2020, the Third Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the April Announcement which contained information comprising the No Customer Complaint Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the Customer Enquiry and Complaint Information, the omission of which rendered the No Customer Complaint Representations misleading in a material respect,

without having taken reasonable steps to investigate the Customer Enquiry and Complaint Information or to ensure that the Proposed March Announcement and the April Announcement were amended or reissued so that they accurately reflected the Customer Enquiry and Complaint Information.

33. A declaration that on or from 3 April 2020, the Third Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of one or more of the Proposed March Announcement and the April Announcement which contained information comprising the No Customer Complaint Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the Customer Enquiry and Complaint Information, the omission of which rendered the No Customer Complaint Representations misleading in a material respect,

without having taken reasonable steps to investigate the Customer Enquiry and Complaint Information or to ensure that the Proposed March Announcement and the



April Announcement were amended or reissued so that they accurately reflected the Customer Enquiry and Complaint Information.

Breach of Officer's Duties: Contravention of s 180(1) of the Corporations Act

34. A declaration that on and from 13 January 2020, the Third Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Financial Officer of a corporation in the First Defendant's circumstances and occupied the office held by the Third Defendant, and had the same responsibilities within the corporation, by failing to take a diligent and intelligent interest in the information available to him to understand that information, and apply an enquiring mind to the responsibilities placed upon him including by failing to:
- (a) take any reasonable step to investigate or understand the reasons for the PwC Findings, especially the existence of inconsistent coal quality results; and
 - (b) take any reasonable step to investigate the PwC Matters for Inquiry; and
 - (c) contact any representative of ALS responsible for testing TerraCom coal to discuss the matters raised by the PwC Findings and the PwC Matters for Inquiry.
35. A declaration that on and from 24 February 2020, the Third Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Financial Officer of a corporation in the First Defendant's circumstances and occupied the office held by the Third Defendant, and had the same responsibilities within the corporation, by failing to take a diligent and intelligent interest in the information available to him to understand that information, and apply an enquiring mind to the responsibilities placed upon him including by failing to:
- (a) take any reasonable step to investigate or understand the reasons for the PwC Findings, especially the existence of inconsistent coal quality results; and
 - (b) take any reasonable step to investigate the PwC Matters for Inquiry; and
 - (c) contact any representative of ALS responsible for testing TerraCom coal to discuss the matters raised by the PwC Findings, the PwC Matters for Inquiry and the February ALS Announcement.
36. A declaration that on and from 2 April 2020, the Third Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a



reasonable person would exercise, if he or she were the Chief Financial Officer of a corporation in the First Defendant's circumstances and occupied the office held by the Third Defendant, and had the same responsibilities within the corporation, by failing to take a diligent and intelligent interest in the information available to him to understand that information, and apply an enquiring mind to the responsibilities placed upon him including by failing to:

- (a) take any reasonable step to investigate or understand the reasons for the PwC Findings, especially the existence of inconsistent coal quality results; and
- (b) take any reasonable step to investigate the PwC Matters for Inquiry; and
- (c) contact any representative of ALS responsible for testing TerraCom coal to discuss the matters raised by the PwC Findings, the PwC Matters for Inquiry, the February ALS Announcement and the April ALS Announcement.

37. Alternatively to paragraphs 34 to 36 above, if the Court finds that the Third Defendant did not read the PwC Report, then a declaration that on and from 13 January 2020 the Third Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Financial Officer of a corporation in the First Defendant's circumstances and occupied the office held by the Third Defendant, and had the same responsibilities within the corporation, by failing to read the PwC Report in circumstances where:

- (a) the PwC Report had been specifically commissioned on instruction from the TerraCom Board; and
- (b) the Third Defendant was a member of the Disclosure Committee, received copies of each draft ASX announcement, and authorised and permitted the release of the February Announcement, the Proposed March Announcement, the Open Letter and the April Announcement or at least knew that they were to be published and knew that the First Defendant's ASX announcements typically expressly stated that they had been authorised for release by the Disclosure Committee.

Involvement in Whistleblower Contraventions: Contravention of s 1317AC(3) of the Corporations Act

38. A declaration that on and from 24 February 2020, the Third Defendant contravened s 1317AC(3) of the Corporations Act by his involvement in the First Defendant's



contravention of s 1317AC(1) whereby (to the Third Defendant's knowledge) the First Defendant caused detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by publishing the false, misleading and otherwise harmful contents of the February Announcement at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for publishing the February Announcement.

39. A declaration that on and from 12 March 2020, the Third Defendant contravened s 1317AC(3) of the Corporations Act by his involvement in the First Defendant's contravention of s 1317AC(1) whereby (to the Third Defendant's knowledge) the First Defendant caused detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by publishing the false, misleading and otherwise harmful contents of the Open Letter at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for publishing the Open Letter.
40. A declaration that on and from 3 April 2020, the Third Defendant contravened s 1317AC(3) of the Corporations Act by his involvement in the First Defendant's contravention of s 1317AC(1) whereby (to the Third Defendant's knowledge) the First Defendant caused detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by publishing the false, misleading and otherwise harmful contents of the April Announcement at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for publishing the April Announcement.
41. A declaration that between 24 February 2020 and 3 April 2020, the Third Defendant contravened s 1317AC(3) of the Corporations Act by his involvement in the First Defendant's contravention of s 1317AC(1) whereby (to the Third Defendant's knowledge) the First Defendant caused detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by engaging in the Public Announcement Conduct at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for the Public Announcement Conduct.



Penalties, disqualification and costs

42. Orders pursuant to s 1317G(1) of the Corporations Act that the Third Defendant pay to the Commonwealth of Australia a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of ss 180(1), 1309(2), 1309(12) and s 1317AC(3) of the Corporations Act.
43. An order pursuant to s 206C(1) and/or s 206E(1) of the Corporations Act disqualifying the Third Defendant from managing corporations for a period to be determined by the Court.
44. Costs.
45. Such further or other orders as the Court thinks fit.

Against the Fourth Defendant (Craig Ransley)

The Exoneration Representations: Contravention of ss 1309(2) and (12) of the Corporations Act

46. A declaration that on or from 24 February 2020, the Fourth Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the February Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:
 - (a) was false or misleading in a material particular; or
 - (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement was amended or reissued so that it accurately reflected the PwC Findings and PwC Matters for Inquiry.
47. A declaration that on or from 10 March 2020, the Fourth Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by the authorising or permitting the making available or the giving to the ASX of the Proposed March Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:
 - (a) was false or misleading in a material particular; or



- (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,

without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement, and the Proposed March Announcement were amended or reissued so that they accurately reflected the PwC Findings and PwC Matters for Inquiry.

48. A declaration that on or from 3 April 2020, the Fourth Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the April Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,

without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement, the Proposed March Announcement and the April Announcement were amended or reissued so that they accurately reflected the PwC Findings and PwC Matters for Inquiry.

49. A declaration that on or from 3 April 2020, the Fourth Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of one or more of the February Announcement, the Proposed March Announcement and the April Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,

without having taken reasonable steps to understand and/or investigate the PwC



Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement, the Proposed March Announcement and the April Announcement were amended or reissued so that they accurately reflected the PwC Findings and PwC Matters for Inquiry.

The No Customer Complaint Representations: Contravention of ss 1309(2) and (12) of the Corporations Act

50. A declaration that on or from 10 March 2020, the Fourth Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the Proposed March Announcement which contained information comprising the No Customer Complaint Representations, being information that relates to the affairs of TerraCom and that:
- (a) was false or misleading in a material particular; or
 - (b) had omitted from it the Customer Enquiry and Complaint Information, the omission of which rendered the No Customer Complaint Representations misleading in a material respect,
- without having taken reasonable steps to investigate the Customer Enquiry and Complaint Information or to ensure that the Proposed March Announcement was amended or reissued so that it accurately reflected the Customer Enquiry and Complaint Information.
51. A declaration that on or from 3 April 2020, the Fourth Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the April Announcement which contained information comprising the No Customer Complaint Representations, being information that relates to the affairs of TerraCom and that:
- (a) was false or misleading in a material particular; or
 - (b) had omitted from it the Customer Enquiry and Complaint Information, the omission of which rendered the No Customer Complaint Representations misleading in a material respect,



without having taken reasonable steps to investigate the Customer Enquiry and Complaint Information or to ensure that the Proposed March Announcement and the April Announcement were amended or reissued so that they accurately reflected the Customer Enquiry and Complaint Information.

52. A declaration that on or from 3 April 2020, the Fourth Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of one or more of the Proposed March Announcement and the April Announcement which contained information comprising the No Customer Complaint Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the Customer Enquiry and Complaint Information, the omission of which rendered the No Customer Complaint Representations misleading in a material respect,

without having taken reasonable steps to investigate the Customer Enquiry and Complaint Information or to ensure that the Proposed March Announcement and the April Announcement were amended or reissued so that they accurately reflected the Customer Enquiry and Complaint Information.

Breach of Officer's Duties: Contravention of s 180(1) of the Corporations Act

53. A declaration that on and from 16 December 2019, the Fourth Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were an officer of a corporation in the First Defendant's circumstances and occupied the office held by the Fourth Defendant, and had the same responsibilities within the corporation, by failing to take a diligent and intelligent interest in the information available to him to understand that information, and apply an enquiring mind to the responsibilities placed upon him including by failing to:

- (a) take any reasonable step to investigate or understand the reasons for the PwC Findings, especially the existence of inconsistent coal quality results; and
- (b) take any reasonable step to investigate the PwC Matters for Inquiry; and
- (c) contact any representative of ALS responsible for testing TerraCom coal to discuss the matters raised by the PwC Findings and the PwC Matters for Inquiry.



54. A declaration that on and from 24 February 2020, the Fourth Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were an officer of a corporation in the First Defendant's circumstances and occupied the office held by the Fourth Defendant, and had the same responsibilities within the corporation, by failing to take a diligent and intelligent interest in the information available to him to understand that information, and apply an enquiring mind to the responsibilities placed upon him including by failing to:
- (a) take any reasonable step to investigate or understand the reasons for the PwC Findings, especially the existence of inconsistent coal quality results; and
 - (b) take any reasonable step to investigate the PwC Matters for Inquiry; and
 - (c) contact any representative of ALS responsible for testing TerraCom coal to discuss the matters raised by the PwC Findings, the PwC Matters for Inquiry and the February ALS Announcement.
55. A declaration that on and from 2 April 2020, the Fourth Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were an officer of a corporation in the First Defendant's circumstances and occupied the office held by the Fourth Defendant, and had the same responsibilities within the corporation, by failing to take a diligent and intelligent interest in the information available to him to understand that information, and apply an enquiring mind to the responsibilities placed upon him including by failing to:
- (a) take any reasonable step to investigate or understand the reasons for the PwC Findings, especially the existence of inconsistent coal quality results; and
 - (b) take any reasonable step to investigate the PwC Matters for Inquiry; and
 - (c) contact any representative of ALS responsible for testing TerraCom coal to discuss the matters raised by the PwC Findings, the PwC Matters for Inquiry, the February ALS Announcement and the April ALS Announcement.
56. Alternatively to paragraphs 53 to 55 above, if the Court finds that the Fourth Defendant did not read the PwC Report, then a declaration that on and from 16 December 2019, the Fourth Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were an officer of a corporation in the First Defendant's circumstances and



occupied the office held by the Fourth Defendant, and had the same responsibilities within the corporation, by failing to read the PwC Report in circumstances where:

- (a) the PwC Report had been specifically commissioned on instruction from the TerraCom Board; and
- (b) the Fourth Defendant was a member of the Disclosure Committee, received copies of each draft ASX announcement, and authorised and permitted the release of the February Announcement, the Proposed March Announcement, the Open Letter and the April Announcement or at least knew that they were to be published and knew that the First Defendant's ASX announcements typically expressly stated that they had been authorised for release by the Disclosure Committee.

Involvement in Whistleblower Contraventions: Contravention of s 1317AC(3) of the Corporations Act

57. A declaration that on and from 24 February 2020, the Fourth Defendant contravened s 1317AC(3) of the Corporations Act by his involvement in the First Defendant's contravention of s 1317AC(1) whereby (to the Fourth Defendant's knowledge) the First Defendant caused detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by publishing the false, misleading and otherwise harmful contents of the February Announcement at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for publishing the February Announcement.
58. A declaration that on and from 12 March 2020, the Fourth Defendant contravened s 1317AC(3) of the Corporations Act by his involvement in the First Defendant's contravention of s 1317AC(1) whereby (to the Fourth Defendant's knowledge) the First Defendant caused detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by publishing the false, misleading and otherwise harmful contents of the Open Letter at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for publishing the Open Letter.
59. A declaration that on and from 3 April 2020, the Fourth Defendant contravened s 1317AC(3) of the Corporations Act by his involvement in the First Defendant's contravention of s 1317AC(1) whereby (to the Fourth Defendant's knowledge) the First Defendant caused detriment to Mr Justin Williams (an eligible whistleblower within the



meaning of s 1317AAA of the Corporation Act) by publishing the false, misleading and otherwise harmful contents of the April Announcement at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for publishing the April Announcement.

60. A declaration that between 24 February 2020 and 3 April 2020, the Fourth Defendant contravened s 1317AC(3) of the Corporations Act by his involvement in the First Defendant's contravention of s 1317AC(1) whereby (to the Fourth Defendant's knowledge) the First Defendant caused detriment to Mr Justin Williams (an eligible whistleblower within the meaning of s 1317AAA of the Corporation Act) by engaging in the Public Announcement Conduct at a time when the First Defendant believed or suspected that Mr Williams may have made or proposed to make or could make a qualifying disclosure and such belief or suspicion was the reason, or part of the reason, for the Public Announcement Conduct.

Penalties, disqualification and costs

61. Orders pursuant to s 1317G(1) of the Corporations Act that the Fourth Defendant pay to the Commonwealth of Australia a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of ss 180(1), 1309(2), 1309(12) and s 1317AC(3) of the Corporations Act.
62. An order pursuant to s 206C(1) and/or s 206E(1) of the Corporations Act disqualifying the Fourth Defendant from managing corporations for a period to be determined by the Court.
63. Costs.

Against the Fifth Defendant (Wallace King)

The Exoneration Representations: Contravention of ss 1309(2) and (12) of the Corporations Act

64. A declaration that on or from 24 February 2020, the Fifth Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the February Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:
- (a) was false or misleading in a material particular; or



- (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,

without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement was amended or reissued so that it accurately reflected the PwC Findings and PwC Matters for Inquiry.

65. A declaration that on or from 10 March 2020, the Fifth Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the Proposed March Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,

without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement and the Proposed March Announcement were amended or reissued so that they accurately reflected the PwC Findings and PwC Matters for Inquiry.

66. A declaration that on or from 3 April 2020, the Fifth Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of the April Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,

without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement, the Proposed March Announcement and the April



Announcement were amended or reissued so that they accurately reflected the PwC Findings and PwC Matters for Inquiry.

67. A declaration that on or from 3 April 2020, the Fifth Defendant contravened ss 1309(2) and 1309(12) of the Corporations Act by authorising or permitting the making available or the giving to the ASX of one or more of the February Announcement, the Proposed March Announcement and the April Announcement which contained information comprising the Exoneration Representations, being information that relates to the affairs of TerraCom and that:

- (a) was false or misleading in a material particular; or
- (b) had omitted from it the PwC Findings and the PwC Matters for Inquiry, the omission of which rendered the Exoneration Representations misleading in a material respect,

without having taken reasonable steps to understand and/or investigate the PwC Findings and PwC Matters for Inquiry or speak to relevant witnesses and to ensure that the February Announcement, the Proposed March Announcement and the April Announcement were amended or reissued so that they accurately reflected the PwC Findings and PwC Matters for Inquiry.

Breach of Officer's Duties: Contravention of s 180(1) of the Corporations Act

68. A declaration that on and from 20 January 2020 the Fifth Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chairman of the Board and non-executive director of a corporation in the First Defendant's circumstances and occupied the office held by the Fifth Defendant, and had the same responsibilities within the corporation, by failing to take a diligent and intelligent interest in the information available to him to understand that information, and apply an enquiring mind to the responsibilities placed upon him including by failing to:

- (a) take any reasonable step to investigate or understand the reasons for the PwC Findings, especially the existence of inconsistent coal quality results; and
- (b) take any reasonable steps to investigate the PwC Matters for Inquiry; and
- (c) contact any representative of ALS responsible for testing TerraCom coal to discuss the matters raised by the PwC Findings and the PwC Matters for Inquiry.



69. A declaration that on and from 24 February 2020, the Fifth Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chairman of the Board and non-executive director of a corporation in the First Defendant's circumstances and occupied the office held by the Fifth Defendant, and had the same responsibilities within the corporation, by failing to take a diligent and intelligent interest in the information available to him to understand that information, and apply an enquiring mind to the responsibilities placed upon him including by failing to:
- (a) take any reasonable step to investigate or understand the reasons for the PwC Findings, especially the existence of inconsistent coal quality results; and
 - (b) take any reasonable step to investigate the PwC Matters for Inquiry; and
 - (c) contact any representative of ALS responsible for testing TerraCom coal to discuss the matters raised by the PwC Findings, the PwC Matters for Inquiry and the February ALS Announcement.
70. A declaration that on and from 2 April 2020, the Fifth Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chairman of the Board and non-executive director of a corporation in the First Defendant's circumstances and occupied the office held by the Fifth Defendant, and had the same responsibilities within the corporation, by failing to take a diligent and intelligent interest in the information available to him to understand that information, and apply an enquiring mind to the responsibilities placed upon him including by failing to:
- (a) take any reasonable step to investigate or understand the reasons for the PwC Findings, especially the existence of inconsistent coal quality results; and
 - (b) take any reasonable step to investigate the PwC Matters for Inquiry; and
 - (c) contact any representative of ALS responsible for testing TerraCom coal to discuss the matters raised by the PwC Findings, the PwC Matters for Inquiry, the February ALS Announcement and the April ALS Announcement.
71. Alternatively to paragraphs 68 to 70 above, if the Court finds that the Fifth Defendant did not read the PwC Report, then a declaration that on and from 20 January 2020, the Fifth Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chairman of the Board and non-executive officer of a corporation in the First



Defendant's circumstances and occupied the office held by the Fifth Defendant, and had the same responsibilities within the corporation, by failing to read the PwC Report in circumstances where:

- (a) the PwC Report had been specifically commissioned on instruction from the TerraCom Board; and
- (b) the Fifth Defendant was a member of the Disclosure Committee, received copies of each draft ASX announcement, and authorised or permitted the release of the February Announcement, the Proposed March Announcement, the Open Letter and the April Announcement or at least knew that they were to be published and knew that the First Defendant's ASX announcements typically expressly stated that they had been authorised for release by the Disclosure Committee.

Penalties, disqualification and costs

- 72. Orders pursuant to s 1317G(1) of the Corporations Act that the Fifth Defendant pay to the Commonwealth of Australia a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of s 180(1) and ss 1309(2) and 1309(12) of the Corporations Act.
- 73. An order pursuant to s 206C(1) and/or s 206E(1) of the Corporations Act disqualifying the Fifth Defendant from managing corporations for a period to be determined by the Court.
- 74. Costs.

Date: 28 February 2023

A handwritten signature in blue ink, appearing to read 'Rebecca Jaffe', written over a dotted line.

Signed by Rebecca Caroline Jaffe
Lawyer for the Plaintiff

**B. NOTICE TO DEFENDANTS**

TO:

TERRACOM LIMITED (ACN 143 533 537) of Blair Athol Mine Access Road, Clermont, Queensland

DANIEL MCCARTHY of 42 Jardine Drive, Erakala, Queensland

NATHAN REECE TIMOTHY BOOM of 88 Haywards Bay Drive, Haywards Bay, New South Wales

CRAIG ANTHONY RANSLEY of Apartment 3508, The Address Downtown, Sheikh Mohammed Bin Rashed Boulevard, Downtown Dubai, Dubai, United Arab Emirates

WALLACE MACARTHUR KING of 41-43 The Point Road, Woolwich, New South Wales

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.

Before appearing before the Court, you must if you have already done so file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

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. FILING**

Date of filing: 28 February 2023

Registrar

This originating process is filed by Australian Securities and Investments Commission.

D. SERVICE

The Plaintiff's address for service is:

Place: HWL Ebsworth Lawyers
Level 8, 447 Collins Street
Melbourne VIC 3000

(Attention: Rebecca Jaffe)

Email: rjaffe@hwle.com.au

The Plaintiff's address is Level 7, 120 Collins Street, Melbourne VIC 3000.

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



No. NSD of 2023

SCHEDULE

**IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: New South Wales
DIVISION: GENERAL**

- Second Defendant:** DANIEL MCCARTHY
- Third Defendant:** NATHAN REECE TIMOTHY BOOM
- Fourth Defendant:** CRAIG ANTHONY RANSLEY
- Fifth Defendant:** WALLACE MACARTHUR KING

Date: 28 February 2023