FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Wealth & Risk Management Pty Ltd (No 3) [2025] FCA 722

File number(s):	VID 238 of 2017
Judgment of:	**HORAN J**
Date of judgment:	2 July 2025
Catchwords:	**CONTEMPT OF COURT** – criminal contempt – where defendant admitted charges of contempt and particulars – contravention by defendant of previous order restraining him from carrying on financial services business, providing financial product advice and dealing in financial products – where conduct was contumacious and in deliberate defiance of restraint order – sentencing principles – defendant sentenced to imprisonment for 12 months, wholly suspended for period of two years
Legislation:	*Australian Securities and Investments Commission Act 2001* (Cth) *Corporations Act 2001* (Cth) ss 206B(3), 761A *Evidence Act 1995* (Cth) s 191 *Federal Court of Australia Act 1976* (Cth) ss 31, 37AH, 37AG *Judiciary Act 1903* (Cth) s 24 *National Consumer Credit Protection Act 2009* (Cth) ss 80, 81 *Federal Court Rules 2011* (Cth) rr 41.06, 41.07, 42.11, 42.12, 42.15, 42.21, 42.22
Cases cited:	*Advan Investments Pty Ltd v Dean Gleeson Motor Sales Pty Ltd* [2003] VSC 201 *Australian Competition and Consumer Commission v Goldstar Corp Pty Ltd* [1998] FCA 1441 *Australian Competition and Consumer Commission v Hughes (t/as Crowded Planet)* [2004] FCA 519; 207 ALR 116 *Australian Competition and Consumer Commission v Hughes* [2001] FCA 38; [2001] ATPR 41-807 *Australian Competition and Consumer Commission v INFO4PC.com Pty Ltd* (2002) 121 FCR 24 *Australian Competition and Consumer Commission v Levi*

(No 3) [2008] FCA 1586; [2008] ATPR 42-257

Australian Competition and Consumer Commission v World Netsafe Pty Ltd (2003) 133 FCR 279

Australian Consolidated Press Ltd v Morgan (1965) 112 CLR 483

Australian Meat Industry Employees' Union v Mudginberri Station Pty Ltd (1986) 161 CLR 98

Australian Prudential Regulation Authority v Siminton (No 3) [2006] FCA 397; 230 ALR 528

Australian Securities and Investments Commission v Eagle Inter-Link Pty Ltd [2002] FCA 1524

Australian Securities and Investments Commission v Matthews [1999] FCA 803; 32 ACSR 404

Australian Securities and Investments Commission v Matthews [2000] NSWSC 392

Australian Securities and Investments Commission v Matthews [2001] NSWSC 735; 39 ACSR 110

Australian Securities and Investments Commission v Matthews [2009] NSWSC 285; 71 ACSR 279

Australian Securities and Investments Commission v Michalik [2004] NSWSC 1259; 52 ACSR 115

Australian Securities and Investments Commission v One Tech Media Ltd (No 3) [2018] FCA 1071

Australian Securities and Investments Commission v One Tech Media Ltd (No 4) [2018] FCA 1533

Australian Securities and Investments Commission v Reid (No 2) [2006] FCA 700

Australian Securities and Investments Commission v Reid [2002] FCA 84

Australian Securities and Investments Commission v Reid [2005] FCA 1274

Australian Securities and Investments Commission v Wealth & Risk Management Pty Ltd [2017] FCA 477

Australian Securities and Investments Commission v Financial Circle Pty Ltd [2018] FCA 1644; 131 ACSR 484

Australian Securities and Investments Commission v Wealth & Risk Management Pty Ltd (No 2) [2018] FCA 59; 124 ACSR 351

Australian Securities Commission v Macleod (No 3) (1993) 40 FCR 475

Council of the New South Wales Bar Association v Rollinson [2022] NSWSC 407

Deckers Outdoor Corporation Inc v Farley (No 6) [2010] FCA 391

Deckers Outdoor Corporation Inc v Farley (No 8) [2010]

	FCA 657 *Deputy Commissioner of Taxation v Hickey* [1999] FCA 259; 42 ATR 229 *eSafety Commissioner v Rotondo (No 3)* [2023] FCA 1590 *Ferguson v Dallow (No 5)* [2021] FCA 698 *Hinch v Attorney-General (Vic)* (1987) 164 CLR 15 *Hudson v Australian Competition and Consumer Commission* [1999] FCA 891 *Hughes v Australian Competition Consumer Commission* (2004) 247 FCR 277 *Kazal v Thunder Studios Inc (California)* (2017) 256 FCR 90 *Lee v Walker* [1985] QB 1191 *Louis Vuitton Malletier SA v Design Elegance Pty Ltd* (2006) 149 FCR 494 *Matthews v Australian Securities and Investments Commission* [2009] NSWCA 155 *Metcash Trading Ltd v Bunn (No 5)* [2009] FCA 16 *Morris v Crown Office* [1970] 2 QB 114 *Pearce v The Queen* (1998) 194 CLR 610 *Re Colina; Ex parte Torney* (1999) 200 CLR 386 *Siminton v Australian Prudential Regulation Authority* (2006) 152 FCR 129 *Vaysman v Deckers Outdoor Corporation Inc* (2014) 222 FCR 387 *Vaysman v Deckers Outdoor Corporation Inc* [2011] FCAFC 17; 276 ALR 596 *Witham v Holloway* (1995) 183 CLR 525
Division:	General Division
Registry:	Victoria
National Practice Area:	Commercial and Corporations
Sub-area:	Corporations and Corporate Insolvency
Number of paragraphs:	133
Date of hearing:	29 April 2025
Counsel for the Applicant:	Ms L Papaelia with Mr S Thomas
Solicitor for the Applicant:	Australian Securities and Investments Commission
Counsel for the Fourth	Ms H Aprile

Respondent:

ORDERS

VID 238 of 2017

BETWEEN:	**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION** Plaintiff
AND:	**WEALTH & RISK MANAGEMENT PTY LTD (ACN 161 722 514)** First Defendant
	JECA HOLDINGS PTY LTD (ACN 609 298 820) Second Defendant
	YES FP PTY LTD (ACN 607 165 159) Third Defendant
	(and another named in the Schedule)

ORDER MADE BY: **HORAN J**

DATE OF ORDER: **2 JULY 2025**

THE COURT NOTES THAT:

A. The **Fourth Defendant**, Joshua David Fuoco, admits each and every charge in the Amended Statement of Charge dated 17 June 2024 (**ASOC**), all particulars to the charges and each and every matter contained in the affidavits filed and served by the plaintiff (**ASIC**) in support of the Interlocutory Process dated 22 December 2023 and the ASOC, save for the exceptions recorded in the Schedule to the affidavit of Joshua David Fuoco sworn on 9 December 2024.

B. On 6 December 2024, the Fourth Defendant, by his counsel, undertook to the Court that:

   (a) He will comply with the terms of paragraph 8 of the order made by Justice Moshinsky on 5 February 2018 (**Restraint Order**) and, further, he will not at any time in the future and on a permanent basis, whether by himself, his servants, agents and employees, or otherwise:

      (i) carry on a financial services business;

(ii) carry on a business related to, concerning or directed to financial products or financial services within the meaning of s 761A of the ***Corporations Act*** *2001* (Cth);

(iii) provide any of the following services:

A. providing financial product advice within the meaning of s 761A of the Corporations Act;

B. dealing in financial products within the meaning of s 761A of the Corporations Act; or

(iv) in any way hold himself out as doing, or being in any way involved in, the matters referred to in sub-paragraphs 8(a) to (c) of the Restraint Order.

(b) He will comply with the terms of ASIC's banning order made on 13 September 2023 under ss 80 and 81 of the *National Consumer Credit Protection Act 2009* (Cth) in that he will not, at any time in the future and on a permanent basis:

(i) engage in any credit activities;

(ii) control, whether alone or in concert with one or more other entities (as defined by s 64A of the Corporations Act), another person who engages in credit activities; and

(iii) perform any functions involved in the engaging of credit activities (including as an officer (within the meaning of the Corporations Act), manager, employee, contractor or in some other capacity).

C. The Fourth Defendant, by his counsel, informed the Court that the reference to s 761A of the Corporations Act in the undertaking referred to in paragraph B(a) above was a reference to that provision at the time the Restraint Order was made.

D. The references to s 761A of the Corporations Act in the declarations made by orders 3, 6, 8 and 10 to 17 below are references to that provision at the time the Restraint Order was made.

THE COURT DECLARES THAT:

Charge 1

1. Between March and June 2019, in breach of paragraphs 8(a) and 8(d) of the Restraint Order, the Fourth Defendant carried on and was involved in carrying on a financial

services business through **State Advice** Pty Ltd and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 2

2. Between July and November 2019, in breach of paragraphs 8(a) and 8(d) of the Restraint Order, the Fourth Defendant carried on and was involved in carrying on a financial services business through **AFSL Group** Pty Ltd and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 3

3. Between March and November 2019, in breach of paragraphs 8(b) and 8(d) of the Restraint Order, the Fourth Defendant carried on and was involved in carrying on a business related to, concerning and directed to financial products and financial services within the meaning of s 761A of the Corporations Act through **Ansa Finance** Pty Ltd and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 4

4. Between 28 May and 10 August 2020, in breach of paragraphs 8(a) and 8(d) of the Restraint Order, the Fourth Defendant carried on and was involved in carrying on a financial services business through AFSL Group and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 5

5. Between 28 July and 27 October 2021, in breach of paragraphs 8(a) and 8(d) of the Restraint Order, the Fourth Defendant carried on and was involved in carrying on a financial services business through AFSL Group and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 6

6. Between December 2019 and November 2021, in breach of paragraphs 8(b) and 8(d) of the Restraint Order, the Fourth Defendant carried on and was involved in carrying on a business related to, concerning and directed to financial products and financial services within the meaning of s 761A of the Corporations Act through Ansa Finance and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 7

7. Between December 2021 and August 2022, in breach of paragraphs 8(a) and 8(d) of the Restraint Order, the Fourth Defendant carried on and was involved in carrying on a financial services business through AFSL Group and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 8

8. Between December 2021 and August 2022, in breach of paragraphs 8(b) and 8(d) of the Restraint Order, the Fourth Defendant carried on and was involved in carrying on a business related to, concerning and directed to financial products and financial services within the meaning of s 761A of the Corporations Act through Ansa Finance and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 9

9. On 31 January 2022, in breach of paragraph 8(d) of the Restraint Order, the Fourth Defendant informed staff at AFSL Group that he was their superior at AFSL Group and thereby held himself out as carrying on a financial services business and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 10

10. Between 31 January and 1 February 2022, in breach of paragraph 8(d) of the Restraint Order, the Fourth Defendant asked Isaac McQueen, a financial advisor at AFSL Group, to obtain further information in relation to a client that was relevant to the financial product advice that Mr McQueen was to provide to the client and was thereby involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 11

11. On 1 February 2022, in breach of paragraph 8(d) of the Restraint Order, the Fourth Defendant directed John Mundy, a financial advisor at AFSL Group, as to the financial product advice that Mr Mundy should provide to a client and Mr Fuoco was thereby involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 12

12. On 2 February 2022, in breach of paragraph 8(d) of the Restraint Order, the Fourth Defendant provided Mr McQueen with information and direction as to the financial product advice that Mr McQueen should provide to a particular client and to clients of AFSL Group generally and was thereby involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 13

13. On 3 February 2022, in breach of paragraph 8(d) of the Restraint Order, the Fourth Defendant provided Mr McQueen with information in relation to a client that was relevant to the financial product advice that Mr McQueen was to provide to the client and was thereby involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 14

14. On 7 February 2022, in breach of paragraph 8(d) of the Restraint Order, the Fourth Defendant discussed with Mr McQueen whether a client that Mr McQueen was advising could obtain insurance and directed Mr McQueen as to the financial product advice to be provided and was thereby involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 15

15. On 10 February 2022, in breach of paragraph 8(d) of the Restraint Order, the Fourth Defendant disagreed with Mr McQueen as to the advice that Mr McQueen proposed to give to a client and, as a result, arranged for Mr Mundy to advise the client and Mr Fuoco was thereby involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 16

16. On 22 February 2022, in breach of paragraph 8(d) of the Restraint Order, the Fourth Defendant suggested to Mr McQueen the financial product advice that he should

provide to a client and was thereby involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 17

17. On 3 March 2022, in breach of paragraph 8(d) of the Restraint Order, the Fourth Defendant arranged for a client to provide to AFSL Group information relevant to the financial product advice to be provided to the client and was thereby involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and in deliberate defiance of the Restraint Order.

Charge 18

18. Between September 2022 and April 2023, in breach of paragraphs 8(a) and 8(d) of the Restraint Order, the Fourth Defendant carried on and was involved in carrying on a financial services business through AFSL Group and About Advice Pty Ltd and his conduct was contumacious and in deliberate defiance of the Restraint Order.

THE COURT ORDERS THAT:

1. For his contempts as referred to in paragraphs 1 to 18 above, the Fourth Defendant be sentenced to imprisonment for a period of 12 months, to be suspended for a period of two years on the condition that, during that period, he complies with the terms of the Restraint Order and his undertakings to the Court given on 6 December 2024.
2. In the event that, within two years from the date of these orders, the Fourth Defendant fails to comply with the terms of the Restraint Order or his undertakings to the Court given on 6 December 2024, a warrant for his committal to prison for a period of 12 months be issued on the application of ASIC.
3. The Fourth Defendant pay ASIC's costs of the proceeding with such costs to be taxed in default of agreement.
4. Pursuant to ss 37AF and 37AG(1)(a) of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), and to prevent prejudice to the proper administration of justice, for a period of ten years or until further order, Annexures JF-1 and JF-2 to the affidavit of Joshua David Fuoco sworn on 19 March 2025:
   (a) be confidential to the parties to this proceeding and to their legal representatives;

(b) be treated as confidential for the purposes of r 2.32 of the *Federal Court* ***Rules*** *2011* (Cth); and

(c) shall not be published or disclosed to any person, other than the parties to this proceeding and their legal representatives, except by leave of the Court.

5. Pursuant to ss 37AF and 37AG(1)(a) of the FCA Act, and to prevent prejudice to the proper administration of justice, for a period of ten years or until further order, the documents at paragraphs (i) to (vii) below:

(a) are confidential to the parties to this proceeding and to their legal representatives;

(b) be treated as confidential for the purposes of r 2.32 of the Rules; and

(c) shall not be published or disclosed to any person, other than the parties to this proceeding and their legal representatives, except by leave of the Court.

Documents

(i) Annexures ESI-3 to ESI-12 of the affidavit of Elijah Sobhy Isac sworn on 20 November 2023;

(ii) Annexure LC-13 of the Affidavit of Lea Cramer affirmed on 30 November 2023;

(iii) Annexures CS-1, CS-5 to CS-10, CS-12 to CS-17 of the affidavit of Craig Stevenson affirmed on 14 December 2023;

(iv) Annexures TG-17 of the Affidavit of Todd Gawn affirmed on 14 December 2023; and

(v) Annexures DFN-35 to DFN-62; DFN-64, DFN-71 to DFN-73, DFN-78 and DFN-79 of the affidavit of David Frances Neal sworn on 21 December 2023;

(vi) Annexure WHL-52 of the affidavit of Wen Hao Lee affirmed on 18 December 2023; and

(vii) Annexure NDK-1 of the affidavit of Nicholas Damien Klooger sworn on 12 June 2024.

6. Pursuant to s 37AG(1)(a) of the FCA Act and to prevent prejudice to the proper administration of justice, for a period of ten years or until further order, the documents at paragraphs (i) to (ii) below:

(a) are confidential to the parties to this proceeding and to their legal representatives; and

(b) treated as confidential for the purposes of r 2.32 of the Rules.

Documents

(i) the affidavit of John Mundy affirmed on 12 December 2023; and

(ii) the affidavit of Isaac Jacob McQueen affirmed on 19 December 2023.

7. By 16 July 2025, ASIC file and serve copies of the affidavits referred to in paragraph 6(b)(i) and (ii) above with redactions to remove any references to information that may identify any consumer, including their name and contact details, for placing on the Court file.

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

REASONS FOR JUDGMENT

HORAN J:

INTRODUCTION

1 On 5 February 2018, Moshinsky J made an order in this proceeding (the **Restraint Order**) that relevantly restrained the fourth defendant, **Mr** Joshua **Fuoco**, for a period of ten years from carrying on a financial services business, carrying on a business related to financial products or financial services, providing financial product advice or dealing in financial products, or in any way holding himself out as doing, or being in any way involved in, those matters.

2 Mr Fuoco subsequently engaged in conduct in breach of the Restraint Order during a four-year period between March 2019 and May 2023. The Australian Securities and Investments Commission (**ASIC**) alleges, and Mr Fuoco admits, that such conduct was contumacious and in deliberate defiance of the Restraint Order.

3 By an interlocutory application under r 42.11 of the *Federal Court **Rules** 2011* (Cth), ASIC applies for punishment of 18 charges of contempt by Mr Fuoco of the Restraint Order. Mr Fuoco has made full admissions of the charges and their particulars, and (with limited exceptions) has admitted the matters deposed in the affidavits on which ASIC relies.

4 For the reasons set out below, I find Mr Fuoco guilty on each of the charges, in accordance with his plea and admissions, and make declarations accordingly. In respect of those charges, Mr Fuoco is sentenced to imprisonment for a term of 12 months, to be wholly suspended for a period of two years on the condition that, during that period, he complies with the terms of the Restraint Order and his undertakings to the Court given on 6 December 2024.

PROCEDURAL BACKGROUND

5 This proceeding was commenced by an originating application filed on 10 March 2017 against three corporate entities owned and controlled by Mr Fuoco. The first defendant, Wealth & Risk Management Pty Ltd (**WRM**), was the holder of an Australian Financial Services Licence (**AFSL**) permitting it to provide advice to retail clients about life insurance and superannuation products. The second defendant, **JECA** Pty Ltd, was a related company which carried on marketing activities. The third defendant, **Yes FP** Pty Ltd, was a corporate authorised representative of WRM, and employed most of the authorised representatives of WRM who provided advice on life insurance and superannuation products. For convenience, I will refer

to WRM, JECA and Yes FP collectively as the **WRM entities**. Mr Fuoco was subsequently joined as the fourth defendant by consent orders made on 8 August 2017.

6 ASIC alleged that the WRM entities had contravened various provisions of the ***Corporations Act** 2001* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and sought relief including declarations, pecuniary penalties and injunctions. ASIC alleged that Mr Fuoco had been knowingly involved or concerned in contraventions by the WRM entities, or had aided, abetted, counselled or procured those contraventions, and sought orders to restrain him from carrying on a financial services business or related businesses, providing financial product advice, or dealing in financial products.

7 In broad terms, ASIC alleged that the WRM entities had conducted a business or scheme that involved offering and giving cash payments to clients in connection with the provision of financial product advice and financial services. JECA would attract prospective clients to its website by offering loans or cash payments to persons with a poor credit history. Persons who approached JECA for a loan or cash payment would be asked to provide details of their personal circumstances, following which they would be referred to WRM or its authorised representatives to obtain financial advice. The advice provided was to the effect that they should alter their superannuation and insurance arrangements by transferring to a new superannuation fund and purchasing new or replacement life insurance, total and permanent disability insurance, or income protection insurance. The new superannuation fund would pay WRM a fee for providing this advice to each client, while the insurance company would pay WRM an up-front commission. WRM would pay the commission to JECA, who would in turn make a cash payment to the client which constituted the loan or cash payment that had initially been sought. The true nature of the scheme was not disclosed by JECA or Yes FM in their website and online advertising. The advice given by WRM and its authorised representatives was typically neither appropriate nor in the best interests of clients.

8 On 8 May 2017, Moshinsky J granted interlocutory injunctions against the WRM entities restraining them (among other things) from making any offers of cash payments to prospective retail clients in connection with the provision of a statement of advice, the switching of superannuation or the purchase of insurance products, and from advertising, promoting or marketing any business or service involving the offer of cash payments to retail clients in connection with financial products or services: see *Australian Securities and Investments Commission v Wealth & Risk Management Pty Ltd* [2017] FCA 477 (***ASIC v WRM (No 1)***).

9 In September 2017, within about four months after the interlocutory injunctions were made, Mr Fuoco commenced operating and managing a business through another corporate entity, **Financial Circle** Pty Ltd, which was substantially the same as the business that had been operated by the WRM entities, save that prospective clients were offered loans instead of cash rebates. This led ASIC to commence separate proceedings in this Court, in which further interlocutory injunctions were made to restrain Financial Circle from continuing its business. Financial Circle was ultimately found to have engaged in misleading or deceptive conduct and unconscionable conduct, as a consequence of which it was ordered to pay pecuniary penalties and was permanently restrained from carrying on any business relating to financial services: *Australian Securities and Investments Commission v Financial Circle Pty Ltd* [2018] FCA 1644; 131 ACSR 484. While Mr Fuoco was associated with the contraventions of Financial Circle, he was not personally joined as a party to that proceeding.

10 On 5 February 2018, Moshinsky J delivered judgment in the present proceeding, in which he found that the WRM entities had contravened the relevant provisions of the Corporations Act and the ASIC Act as alleged by ASIC, and that Mr Fuoco was knowingly involved in those contraventions: see *Australian Securities and Investments Commission v Wealth & Risk Management Pty Ltd (No 2)* [2018] FCA 59; 124 ACSR 351 (***ASIC v WRM (No 2)***).

11 Mr Fuoco had admitted the allegations made by ASIC in its further amended statement of claim, and consented to the relief sought against him, including declarations of contravention, injunctions, civil penalties and costs: *ASIC v WRM (No 2)* at [4]–[5], [64], [129]–[133], [152], [161]. In particular, Mr Fuoco admitted that he devised and implemented the cash rebate scheme described above, and was intimately involved in its operations: *ASIC v WRM (No 2)* at [64], [172]. In concluding that Mr Fuoco was knowingly concerned in the contraventions by the WRM entities, Moshinsky J found that the extent of his involvement indicated that he was the "mastermind and architect" of the scheme: *ASIC v WRM (No 2)* at [131].

12 Justice Moshinsky ordered the WRM entities collectively to pay a total sum of $7.15 million in pecuniary penalties and Mr Fuoco to pay a pecuniary penalty of $650,000 plus ASIC's costs fixed in the amount of $50,000. Relevantly, Moshinsky J made the Restraint Order in the following terms:

> 8. The fourth defendant be restrained for a period of 10 years commencing on 22 December 2017, whether by himself, his servants, agents and employees or otherwise, from:

(a) carrying on a financial services business;

(b) 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*;

(c) providing any of the following services:

(i) providing financial product advice within the meaning of s 761A of the *Corporations Act*;

(ii) dealing in financial products within the meaning of s 761A of the *Corporations Act*; or

(d) in any way holding himself out as doing, or being in any way involved in, the matters referred to in sub-paragraphs (a) to (c).

The orders made by Moshinsky J included a penal notice in accordance with r 41.06 of the Rules.

13 The WRM entities subsequently entered liquidation, and have not paid the pecuniary penalties required by the orders. While Mr Fuoco made payments in March 2018 totalling $50,000 towards the first monthly instalment in respect of his pecuniary penalty and costs, he has not since made any further payments in respect of those liabilities. He remains indebted in the amount of $606,500 in respect of the pecuniary penalty order and $93,500 in respect of the costs order. Following service by ASIC of a bankruptcy notice, Mr Fuoco was declared bankrupt on 24 September 2019, as a result of which he was automatically disqualified from managing corporations under s 206B(3) of the Corporations Act. Mr Fuoco was discharged from bankruptcy on 25 September 2022.

14 On 22 December 2023, ASIC filed its interlocutory application seeking declarations that Mr Fuoco is guilty of contempt of court and orders punishing him for that contempt. ASIC relies on an amended statement of charge dated 17 June 2024 (**ASOC**). The charges against Mr Fuoco comprise 18 separate counts of breaching the Restraint Order over a four-year period between March 2019 and May 2023. The charges include allegations that Mr Fuoco carried on a financial services business, carried on a business related to financial products and financial services, held himself out as carrying on a financial services business, and was in fact involved in the provision of financial advice. With respect to each charge, Mr Fuoco's conduct is alleged to have been contumacious and in deliberate defiance of the Restraint Order.

15 At a case management hearing on 6 December 2024, at which Mr Fuoco was represented Ms Aprile of counsel acting pro bono, the parties informed the Court that they had reached a

resolution of the matter on the basis that Mr Fuoco would admit all charges in the ASOC. At that case management hearing, Mr Fuoco gave an undertaking to the Court that he was prepared to comply "on a permanent basis" with the terms of the Restraint Order and with a separate banning order that was made by ASIC on 13 September 2023 to ban him from engaging in any credit activities.

16 In support of its contempt application, ASIC has filed 15 affidavits from employees of ASIC, former employees of the businesses carried on by Mr Fuoco and the spouse of one former employee, consumers of those businesses, and a business associate of Mr Fuoco. The evidence on which ASIC relies comprises:

(a) an affidavit of Keith Nicolas Gurd affirmed 16 November 2023;

(b) an affidavit of Elijah Sobhy Isac sworn 20 November 2023;

(c) an affidavit of Lea Cramer affirmed 30 November 2023;

(d) an affidavit of Kuber Jung Pandey affirmed 4 December 2023;

(e) an affidavit of John McDonald Mundy affirmed 12 December 2023;

(f) an affidavit of Craig Stevenson affirmed 14 December 2023;

(g) an affidavit of Todd Linton Gawn affirmed 14 December 2023;

(h) an affidavit of Wen Hao Lee affirmed 18 December 2023;

(i) an affidavit of Isaac Jacob McQueen affirmed 19 December 2023;

(j) an affidavit of Rachel McQueen affirmed 19 December 2023;

(k) an affidavit of Ian Donald Cameron affirmed 21 December 2023;

(l) three affidavits of David Francis Neal sworn 21 December 2023, 31 May 2024, and 12 June 2024; and

(m) an affidavit of Nick Klooger sworn 12 June 2024.

17 Mr Fuoco has filed four affidavits in this proceeding sworn on 10 May 2024, 1 August 2024, 9 December 2024 and 19 March 2025 respectively. On the contempt application, he relies principally on his third and fourth affidavits, together with written submissions.

18 ASIC has also prepared a **Statement of Facts** dated 14 February 2025, which is based on matters contained in the affidavits set out above. While this does not constitute a statement of agreed facts for the purposes of s 191 of the *Evidence Act 1995* (Cth), Mr Fuoco has indicated that he does not challenge or contest any of the matters set out in ASIC's Statement of Facts.

This is consistent with his admission of the matters contained in the affidavits filed by ASIC, save for some limited exceptions: see Mr Fuoco's third affidavit sworn on 9 December 2024 at [6]. The exceptions to Mr Fuoco's admissions relate to specific statements contained in some of the affidavits in which former staff members claim that they were owed unpaid wages, superannuation and other entitlements. Those claims have no bearing on the matters that are the subject of the charges of contempt admitted by Mr Fuoco.

CONTEMPT OF COURT

19 This Court's power to punish for contempt is sourced in s 31 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), which relevantly provides:

> **31 Contempt of Court**
>
> (1) Subject to any other Act, the Court has the same power to punish contempts of its power and authority as is possessed by the High Court in respect of contempts of the High Court.

Section 24 of the *Judiciary Act 1903* (Cth) in turn confers on the High Court the same power to punish contempts as was possessed by the Supreme Court of Judicature in England at the time of commencement of that provision. Section 31 of the FCA Act is therefore "declaratory of an attribute of judicial power of the Commonwealth vested in federal courts by s 71 of the *Constitution*": *Australian Competition and Consumer Commission v **INFO4PC**.com Pty Ltd* (2002) 121 FCR 24 at [2] (RD Nicholson J), referring to *Re Colina; Ex parte **Torney*** (1999) 200 CLR 386 at [16] (Gleeson CJ and Gummow J).

20 Contempt of court involves an interference with the effective administration of justice, either in a particular case or more generally, and as such is "a matter of basic public significance" that places at risk the whole system of justice: *Deputy Commissioner of Taxation v **Hickey*** [1999] FCA 259; 42 ATR 229 at [35] (Carr J); see also *Australian Meat Industry Employees' Union v **Mudginberri Station** Pty Ltd* (1986) 161 CLR 98 at 106 (Gibbs CJ, Mason, Wilson and Deane JJ). The exercise by the Court of its power to punish contempt is directed to vindicating its authority and preserving the rule of law: *Deckers Outdoor Corporation Inc v Farley (No 6)* [2010] FCA 391 at [131] (Tracey J), referring to *Australian Competition and Consumer Commission v Hughes* [2001] FCA 38; [2001] ATPR 41-807 at [15] (Tamberlin J).

21 Punishment for contempt may serve the dual functions of enforcement of the process and orders of the court, and punishment of acts which interfere with the administration of justice: *Mudginberri Station* at 106 (Gibbs CJ, Mason, Wilson and Deane JJ). Although proceedings

for contempt proceed in the civil jurisdiction of the court and are tried summarily, they are essentially criminal in nature and must be proved beyond reasonable doubt: ***Witham*** *v Holloway* (1995) 183 CLR 525 at 534 (Brennan, Deane, Toohey and Gaudron JJ); *Mudginberri Station* at 109, 115 (Gibbs CJ, Mason, Wilson and Deane JJ); *Hinch v Attorney-General (Vic)* (1987) 164 CLR 15 at 89 (Mason CJ, Wilson, Deane, Toohey and Gaudron JJ). However, contempt proceedings are not to be equated with the trial of a criminal charge: *Witham* at 534 (Brennan, Deane, Toohey and Gaudron JJ).

22 In this Court, the procedure for bringing an application for contempt is governed by Div 42.2 of the Rules. If a party to a proceeding alleges that a contempt was committed by a person in connection with the proceeding, that party must make an interlocutory application in the proceeding for punishment of the alleged contempt: r 42.11(1). The application must be accompanied by a statement of charge specifying the contempt with sufficient particularity to allow the person to answer the charge, together with the affidavits on which the party intends to rely to prove the charge: r 42.12. The person charged may file affidavits in answer to the charge, or may give oral evidence and call witnesses without filing any affidavits: r 42.15.

23 A distinction has been maintained between civil contempts and criminal contempts, including by reference to whether the object of the proceedings is remedial or coercive (*i.e.* directed at securing obedience with the order or judgment) or punitive (*i.e.* directed at punishing wilful disobedience with the order or judgment). This distinction is sometimes couched as whether the proceedings involve the enforcement of private interests or the vindication of the public interest. However, there is no rigid dichotomy between these categories, and the differences between civil and criminal contempt have been described as "in significant respects, illusory" given the potential overlap between such objects: see *Witham* at 532–534 (Brennan, Deane, Toohey and Gaudron JJ); see also at 539 (McHugh J). The outcome in either case is the imposition of punishment, usually in the form of imprisonment, the imposition of fines, or the sequestration of property.

24 Deliberate conduct in breach of a court order or undertaking will amount to a civil contempt where it involves wilful (*i.e.* not merely casual, accidental or unintentional) disobedience: *Mudginberri Station* at 113 (Gibbs CJ, Mason, Wilson and Deane JJ); ***Metcash Trading*** *Ltd v Bunn (No 5)* [2009] FCA 16 at [9] (Finn J); *Australian Securities and Investments Commission v* ***One Tech*** *Media Ltd (No 3)* [2018] FCA 1071 at [19] (Moshinsky J). Such conduct may constitute a criminal contempt if it involves deliberate or "contumacious" defiance of the order

or undertaking: *Australian Consolidated Press Ltd v Morgan* (1965) 112 CLR 483 at 489 (Barwick CJ); *Witham* at 530 (Brennan, Deane, Toohey and Gaudron JJ), 538–539 (McHugh J).

25 The principal elements necessary to establish a contempt of court involving the breach of a court order are that an order was made by the court in terms that are clear, unambiguous and capable of compliance; that the order was served on the alleged contemnor, who had knowledge of the terms of the order; and that the alleged contemnor breached the terms of the order: ***Advan*** *Investments Pty Ltd v Dean Gleeson Motor Sales Pty Ltd* [2003] VSC 201 at [31] (Gillard J); *One Tech* at [20] (Moshinsky J). However, it is not necessary to establish that the alleged contemnor understood the true meaning of the terms of the order, nor that he or she intended to disobey the order or was aware that his or her conduct constituted a breach of the order, although such matters may be relevant to the question of penalty: see *e.g. Metcash Trading* at [9] (Finn J).

26 While it is accepted that the party who brings an application for contempt bears the onus of proving the elements necessary to establish the contempt, and that such proof must be on the criminal standard of beyond reasonable doubt, those matters have a limited bearing on the disposition of the present case, in the light of Mr Fuoco's admission of the facts constituting the alleged contempt, including the characterisation of his conduct as deliberate or contumacious.

LIABILITY OF MR FUOCO

27 In his third affidavit sworn on 9 December 2024, Mr Fuoco admitted the charges set out in the ASOC, including the particulars to each of those charges, and (with some specified exceptions) every matter contained in the affidavits filed by ASIC in support of the charges.

28 It is unnecessary to determine whether the effect of Mr Fuoco's formal admission of the charges is analogous to a guilty plea which operates to relieve ASIC of any need to lead evidence in order to prove the charges, leaving only the question of what punishment ought to be imposed: see *e.g. Australian Securities and Investments Commission v Reid* [2002] FCA 84 at [4]–[5] (Kenny J). The affidavits on which ASIC relies in support of the charges have been read in evidence, and Mr Fuoco has given evidence by which he admits the matters contained in those affidavits. The Court is therefore in a position to make the findings of fact necessary to establish Mr Fuoco's liability for the alleged contempts, based on the uncontested evidence.

29 For such purposes, I have drawn assistance from ASIC's Statement of Facts, which distils and summarises the key facts addressed in the evidence before the Court. In his written submissions, Mr Fuoco does not take issue with the contents of the Statement of Facts, and submits that it is appropriate that the Court find that the charges are established and to make the declarations sought by ASIC.

The Restraint Order

30 The Restraint Order made on 5 February 2018 was clear and unambiguous. It can be readily inferred that Mr Fuoco had knowledge and an understanding of the terms of the Restraint Order and its effect. He has qualifications in financial planning and has worked in financial services for more than 20 years. He was the principal architect of the cash rebate scheme that was the subject of the civil penalty proceedings against the WRM entities, having both designed and overseen the scheme and devised and procured its implementation: *ASIC v WRM (No 2)* at [170], [172] (Moshinsky J). He was legally represented and voluntarily gave undertakings and signed a settlement agreement by which he agreed to the subject matter of the orders made by the Court. In an affidavit that was tendered at the substantive hearing of the proceeding before Moshinsky J, Mr Fuoco recognised and acknowledged his "failings from both a compliance and conduct perspective", and expressed regret for the impact of the scheme on affected individuals.

31 The Restraint Order was endorsed with a penal notice in accordance with r 41.06 of the Rules, by which Mr Fuoco was informed that he would be "liable to imprisonment, sequestration of property or punishment for contempt" if he were to disobey the order by doing an act which the order required him to abstain from doing.

32 The conduct that is the subject of the present contempt charges bears close similarities to the scheme that was at the heart of the civil penalty proceedings in which the Restraint Order was made, leaving no doubt that Mr Fuoco would have been aware that such conduct was encompassed within the scope of that order.

33 The Restraint Order was personally served on Mr Fuoco in accordance with r 41.07 of the Rules. On 6 February 2018, a copy of the Restraint Order was sent by email to the parties, including Mr Fuoco's solicitor who forwarded the email to his client. Mr Fuoco's knowledge of the terms of the Restraint Order may also be inferred from the fact that he subsequently

made payments in respect of the first instalment of the amounts payable under the orders by way of pecuniary penalty and costs.

34 There is no suggestion that Mr Fuoco was not capable of complying with the Restraint Order, which required him to refrain from carrying on any financial services business, providing any financial product advice, or dealing in any financial products.

Breaches of the Restraint Order

35 From around March 2019, Mr Fuoco conducted businesses through **Ansa Finance** Pty Ltd, **State Advice** Pty Ltd, **AFSL Group** Pty Ltd and **About Advice** Pty Ltd that were substantially the same as the businesses that had been conducted by the WRM entities.

36 These businesses typically operated in the following manner.

(a) Ansa Finance advertised on the internet for people looking for personal loans.

(b) After clients applied to Ansa Finance for a loan, they would be contacted to determine whether they were likely to take out insurance. The clients would be told that they needed to take out insurance in order to get a loan or to increase their chances of getting a loan. The clients would be asked to provide information about their financial and personal circumstances.

(c) The loan applications were referred to State Advice, AFSL Group or About Advice (as the case may be), who would provide the clients with insurance advice. Clients were advised that, in order to obtain a loan through Ansa Finance, it was a requirement that they take out a suitable insurance policy. The clients would be asked to complete a health questionnaire and to provide information about their occupation and salary, and other financial and personal circumstances.

(d) State Advice, AFSL Group or About Advice made recommendations that the clients should take out life, income protection, total and permanent disability and/or trauma insurance and pay the insurance premiums from their superannuation. The clients were often told that if they took out insurance, it would increase their chances of getting a loan. State Advice, AFSL Group or About Advice applied for insurance on behalf of clients who agreed to implement the advice.

(e) State Advice, AFSL Group and About Advice received fees paid by clients for the provision of financial advice (which were almost always paid from the clients' superannuation), and commissions paid by insurance providers.

(f) If a client obtained insurance, Ansa Finance progressed their loan application.

37 Thus, there were essentially two aspects of the financial services businesses conducted by Ansa Finance, State Advice, AFSL Group and About Advice.

(a) The first aspect involved providing financial product advice by making recommendations in relation to insurance and superannuation, and dealing in financial products by applying for insurance and arranging for insurance to be issued on behalf of clients (the **Advice Business**).

(b) The second aspect involved referring clients who had applied for a personal loan to receive insurance advice from State Advice, AFSL Group or About Advice and, if the client obtained insurance, progressing their loan application (the **Loan Business**).

38 The Advice Business was a financial services business carried on by State Advice, AFSL Group and About Advice. Although the way in which the Advice Business operated was largely the same across the period covered by the charges, the company used by Mr Fuoco to carry on the Advice Business changed over time from State Advice to AFSL Group and then to About Advice.

39 The Loan Business carried on by Ansa Finance was a business related to, concerning or directed to financial products (*i.e.* insurance) and financial services (*i.e.* the provision of financial advice in relation to insurance).

40 Mr Fuoco carried on, and was involved in carrying on, the Advice Business and the Loan Business. In particular:

(a) The Advice Business and the Loan Business operated from Mr Fuoco's family home.

(b) Mr Fuoco solicited, interviewed, hired and trained staff, and dealt with staff about employment-related matters.

(c) Mr Fuoco gave instructions to staff about the operation of the businesses including the business model, processes to be adopted, fees to be charged, staff targets, day-to-day activities, advice to be given, and business strategies.

(d) Staff of the businesses reported to Mr Fuoco, including about the status of individual client files, the achievement of targets, and the commissions paid by insurers.

(e) Mr Fuoco communicated with various entities on behalf of and in relation to the Advice Business, including insurance companies, accountants, and statutory authorities.

(f) Mr Fuoco conducted assessments of clients of the Loan Business, including assessing whether they were likely to take out insurance before referring them to State Advice or AFSL Group to obtain insurance advice.

(g) Mr Fuoco and his family members were paid money by Ansa Finance and AFSL Group

Charges 1, 2, 4, 5, 7 and 18

41 Charges 1, 2, 4, 5, 7 and 18 arise from the Advice Business, and allege that Mr Fuoco carried on financial services businesses, or was involved in carrying on financial services businesses, at various times between March 2019 and April 2023, in breach of paragraphs 8(a) and (d) of the Restraint Order. The charges are as follows (omitting the particulars to each charge):

> Charge 1
>
> 1. In breach of paragraphs 8(a) and/or 8(d) of the Order, between March and June 2019, Joshua David Fuoco (**Mr Fuoco**), by himself, his servants, agents, employees or otherwise, carried on and/or was involved in carrying on a financial services business and his conduct was contumacious and/or in deliberate defiance of the Order.
>
> …
>
> Charge 2
>
> 2. In breach of paragraphs 8(a) and/or 8(d) of the Order, between July and November 2019, Mr Fuoco, by himself, his servants, agents, employees or otherwise, carried on and/or was involved in carrying on a financial services business and his conduct was contumacious and/or in deliberate defiance of the Order.
>
> …
>
> Charge 4
>
> 4. In breach of paragraphs 8(a) and/or 8(d) of the Order, between 28 May and 10 August 2020, Mr Fuoco, by himself, his servants, agents, employees or otherwise, carried on and/or was involved in carrying on a financial services business and his conduct was contumacious and/or in deliberate defiance of the Order.
>
> …
>
> Charge 5
>
> 5. In breach of paragraphs 8(a) and/or 8(d) of the Order, between 28 July and 27 October 2021, Mr Fuoco, by himself, his servants, agents, employees or

otherwise, carried on and/or was involved in carrying on a financial services business and his conduct was contumacious and/or in deliberate defiance of the Order.

…

Charge 7

7. In breach of paragraphs 8(a) and/or 8(d) of the Order, between December 2021 and August 2022, Mr Fuoco, by himself, his servants, agents, employees or otherwise, carried on and/or was involved in carrying on a financial services business and his conduct was contumacious and/or in deliberate defiance of the Order.

…

Charge 18

18. In breach of paragraphs 8(a) and/or 8(d) of the Order, between September 2022 and April 2023, Mr Fuoco, by himself, his servants, agents, employees or otherwise, carried on and/or was involved in carrying on a financial services business and his conduct was contumacious and/or in deliberate defiance of the Order.

…

42 Charge 1 relates to the conduct of the Advice Business by State Advice between March and June 2019. Charges 2, 4, 5 and 7 relate to the conduct of the Advice Business by ASFL Group between July and November 2019, between 28 May and 10 August 2020, between 28 July and 27 October 2021, and between December 2021 and August 2022. Charge 18 relates to the conduct of the Advice Business by ASFL Group or About Advice between September 2022 and April 2023.

Charges 3, 6 and 8

43 Charges 3, 6 and 8 arise from the Loan Business, and allege that Mr Fuoco carried on, or was involved in carrying on, a business related to, concerning or directed to financial products or financial services at various times between March 2019 and May 2023, in breach of paragraphs 8(b) and (d) of the Restraint Order. The charges are as follows (omitting the particulars to each charge):

Charge 3

3. In breach of paragraphs 8(b) and/or 8(d) of the Order, between March and November 2019, Mr Fuoco, by himself, his servants, agents, employees or otherwise, carried on and/or was involved in carrying on a business related to, concerning and/or directed to financial products and financial services within the meaning of s 761A of the Corporations Act and his conduct was contumacious and/or in deliberate defiance of the Order.

…

Charge 6

6. In breach of paragraphs 8(b) and/or 8(d) of the Order, between December 2019 and November 2021, Mr Fuoco, by himself, his servants, agents, employees or otherwise, carried on and/or was involved in carrying on a business related to, concerning and/or directed to financial products or financial services within the meaning of s 761A of the Corporations Act and his conduct was contumacious and/or in deliberate defiance of the Order.

…

Charge 8

8. In breach of paragraphs 8(b) and/or 8(d) of the Order, between December 2021 and August 2022, Mr Fuoco, by himself, his servants, agents, employees or otherwise, carried on and/or was involved in carrying on a business related to, concerning and/or directed to financial products and financial services within the meaning of s 761A of the Corporations Act and his conduct was contumacious and/or in deliberate defiance of the Order.

…

Charge 9

44 Charge 9 alleges that, on 31 January 2022, Mr Fuoco held himself out as carrying on financial services business, in breach of paragraph 8(d) of the Restraint Order. The charge is as follows (omitting the particulars):

Charge 9

9. In breach of paragraph 8(d) of the Order, on 31 January 2022, Mr Fuoco by himself, his servants, agents, employees or otherwise, held himself out as carrying on a financial services business and his conduct was contumacious and/or in deliberate defiance of the Order.

…

45 The particulars to this charge involve a WhatsApp message sent by Mr Fuoco to staff at AFSL Group in which he informed them that he was their boss or superior.

Charges 10 to 17

46 Charges 10 to 17 allege that Mr Fuoco was involved in providing financial product advice on various separate occasions, in breach of paragraph 8(d) of the Restraint Order. The charges are as follows (omitting the particulars to each charge):

Charge 10

10. In breach of paragraph 8(d) of the Order, between 31 January and 1 February 2022, Mr Fuoco by himself, his servants, agents, employees or otherwise was involved in the provision of financial product advice within the meaning of s 761A of the

Corporations Act and his conduct was contumacious and/or in deliberate defiance of the Order.

…

Charge 11

11. In breach of paragraph 8(d) of the Order, on 1 February 2022, Mr Fuoco by himself, his servants, agents, employees or otherwise, was involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and/or in deliberate defiance of the Order.

…

Charge 12

12. In breach of paragraph 8(d) of the Order, on 2 February 2022, Mr Fuoco by himself, his servants, agents, employees or otherwise, was involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and/or in deliberate defiance of the Order.

…

Charge 13

13. In breach of paragraph 8(d) of the Order, on 3 February 2022, Mr Fuoco by himself, his servants, agents, employees or otherwise, was involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and/or in deliberate defiance of the Order.

…

Charge 14

14. In breach of paragraph 8(d) of the Order, on 7 February 2022, Mr Fuoco by himself, his servants, agents, employees or otherwise, was involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and/or in deliberate defiance of the Order.

…

Charge 15

15. In breach of paragraph 8(d) of the Order, on 10 February 2022, Mr Fuoco by himself, his servants, agents, employees or otherwise, was involved in the provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and/or in deliberate defiance of the Order.

…

Charge 16

16. In breach of paragraph 8(d) of the Order, on 22 February 2022, Mr Fuoco by himself, his servants, agents, employees or otherwise, was involved in the

provision of financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and/or in deliberate defiance of the Order.

…

Charge 17

17. In breach of paragraph 8(d) of the Order, on 3 March 2022, Mr Fuoco, by himself, his servants, agents, employees or otherwise, was involved in providing financial product advice within the meaning of s 761A of the Corporations Act and his conduct was contumacious and/or in deliberate defiance of the Order.

…

47 The particulars to these charges relate to WhatsApp or text messages that were sent by Mr Fuoco to various financial advisers at AFSL Group, in which he directed the advisers as to financial product advice that should be provided to particular clients or to clients generally, discussed the advice that was to be given to particular clients, or directed the advisers to obtain information in relation to clients which was relevant to the financial product advice provided to them.

Findings on liability

48 Having regard to the affidavits filed by the parties as reflected in ASIC's Statement of Facts, and in the light of the admissions made by Mr Fuoco, I find that each of the charges of contempt has been established beyond reasonable doubt, and accordingly make declarations to that effect.

49 As is alleged in each of the charges, and is admitted by Mr Fuoco, I find that Mr Fuoco's conduct was both contumacious and in deliberate defiance of the Restraint Order, and therefore constitutes criminal contempt. In particular, this finding is based on the following admitted facts as set out in ASIC's Statement of Facts:

11.2.19 Mr Fuoco's conduct was contumacious and in deliberate defiance of the Restraint Order in that:

(a) Mr Fuoco knew of the contents of the Restraint Order;

(b) Mr Fuoco knew that State Advice, AFSL Group and About Advice conducted the Advice Business and that Ansa Finance conducted the Loan Business;

(c) Mr Fuoco knew that the Advice Business was a financial services business and that the Loan Business was a business related to, concerning and/or directed to financial products and financial services;

(d) Mr Fuoco knew that, by his conduct as alleged in charge 9, he held himself out as carrying on a financial services business;

(e) Mr Fuoco knew that, by his conduct as alleged in charges 10 to 17, he was involved in providing financial product advice;

(f) Mr Fuoco's conduct as alleged in the charges was not accidental or unintended, but the result of intentional acts;

(g) Mr Fuoco had overall control of the Advice Business and the Loan Business;

(h) Mr Fuoco has a long history of contravening, or being involved with corporations that have contravened, financial services laws, credit laws and corporations laws, and being the subject of, and contravening, banning orders made by ASIC;

(i) Mr Fuoco sought to avoid or defy the operation of the Restraint Order by:

(i) operating the Advice Business and the Loan Business through separate corporate entities; and

(ii) maintaining that he was responsible for the day to day operation of the Loan Business, but was not involved at a meaningful level with the Advice Business,

in circumstances where the businesses collectively were substantially the same as the business operated by the corporate defendants in this proceeding which were the subject of financial services injunctions and the business subsequently operated by [Financial] Circle which was the subject of a financial services injunction;

(j) Mr Fuoco engaged in the conduct alleged to obtain financial advantage for himself at the expense of clients of the Advice Business and the Loan Business.

PENALTY

Sentencing principles

50 The principles governing sentencing for contempt of court were addressed by the Full Court in ***Kazal*** *v Thunder Studios Inc (California)* (2017) 256 FCR 90 at [95]–[118] (Besanko, Wigney and Bromwich JJ). As there explained, the approach to sentencing is informed by the nature of contempt proceedings and the objects sought to be advanced by such proceedings: *Kazal* at [95]. The underlying rationale of the power to punish contempt is to uphold and protect the effective administration of justice, including by demonstrating that the court's orders will be enforced: *Mudginberri* at 107 (Gibbs CJ, Mason, Wilson and Deane JJ). Accordingly, while contempt proceedings may also serve to vindicate private interests and rights, they are "essentially protective in nature as to the judicial function and the role of the courts" and are "therefore to be viewed as essential in facilitating courts being able to function properly",

including being effectual in adjudicating and resolving disputes and making orders that will be obeyed: *Kazal* at [97] (Besanko, Wigney and Bromwich JJ).

51 Where a finding of contempt has been made, the court has a broad discretion to adopt such punitive or coercive measures as would best deal with that contempt: *Mudginberri* at 113 (Gibbs CJ, Mason, Wilson and Deane JJ). A wide range of penalties is available, including the imposition of a fine, a sentence of imprisonment, or a combination of both: *Hickey* at [34] (Carr J); *INFO4PC* at [138] (RD Nicholson J); *Australian Securities and Investments Commission v Reid* [2002] FCA 84 at [30] (Kenny J); *Australian Competition and Consumer Commission v* ***World Netsafe*** *Pty Ltd* (2003) 133 FCR 279 at [30], [33] (Spender J).

52 It is generally accepted that imprisonment is a punishment of "last resort", subject always to the nature and seriousness of the contempt: *Hickey* at [34] (Carr J); *Australian Competition and Consumer Commission v* ***Levi (No 3)*** [2008] FCA 1586; [2008] ATPR 42-257 at [98] (McKerracher J); ***Vaysman*** *v Deckers Outdoor Corporation Inc* [2011] FCAFC 17; 276 ALR 596 at [54] (Gray J), [169]–[170] (Bromberg J); *Council of the New South Wales Bar Association v* ***Rollinson*** [2022] NSWSC 407 at [90] (Beech-Jones CJ at CL). The sentencing court must consider whether it is necessary to imprison the contemnor in order to vindicate and protect the court's authority, a question which calls for "the most anxious consideration": ***Gallagher*** *v Durack* (1983) 152 CLR 238 at 245 (Gibbs CJ, Mason, Wilson and Brennan JJ). Before settling on imprisonment as an appropriate penalty, the sentencing court must consider whether some other form of punishment would be appropriate in all the circumstances: *Vaysman* at [54] (Gray J); see also at [174] (Bromberg J). Generally speaking, a sentence of imprisonment will be confined to the most serious of criminal contempts: *Vaysman* at [178] (Bromberg J).

53 Imprisonment may be appropriate where the contempt involves deliberate and contumacious disobedience of court orders. In addition to the gravity of the contempt, it can also be relevant to consider whether or not the contemnor has the capacity to pay a fine. If there would be no capacity to pay, the imposition of a fine would be unlikely to have any deterrent effect and may not be sufficient to vindicate the authority of the court. As the plurality noted in *Gallagher* (at 245), "[i]f the court comes to the conclusion that a person convicted of contempt of court will not personally suffer or be deterred by a fine, that is a matter which it may consider in imposing sentence".

54 In *Australian Prudential Regulation Authority v* ***Siminton*** *(No 3)* [2006] FCA 397; 230 ALR 528, Merkel J (at [13] and [16]) considered that, in circumstances where there was no evidence that the respondent had any capacity to pay a fine, the imposition of a fine was not likely to have a significant effect on him and a term of imprisonment was both appropriate and necessary to vindicate the authority of the court in respect of his contempts. While the sentence of imprisonment was overturned on appeal on grounds relating to the form of the court order that had been served on the contemnor, the Full Court nevertheless concluded that it remained open to impose a fine: *Siminton v Australian Prudential Regulation Authority* (2006) 152 FCR 129 at [67] (North, Goldberg and Weinberg JJ). The Court acknowledged the concerns that had been expressed by Merkel J about "the efficacy of the imposition of a fine upon the appellant having regard to the fact that he was a bankrupt", but was satisfied that it was "appropriate in all the circumstances that a substantial fine be imposed instead in recognition of the serious nature of the contempts committed", concluding that the appropriate penalty was a fine of $50,000: *ibid*. at [80]–[81]

55 In *Australian Securities and Investments Commission v Matthews* [1999] FCA 803; 32 ACSR 404, Sackville J (at [32]) found that there would be "little point" in imposing a fine "having regard to the fact that the respondent is unemployed and appears to have few resources", and where a fine was unlikely "to bring home sufficiently to the respondent the seriousness of his conduct and the need scrupulously to observe orders of the court". See also *Australian Securities and Investments Commission v Matthews* [2009] NSWSC 285; 71 ACSR 279 at [50] (Barrett J).

56 On the other hand, in ***Louis Vuitton*** *Malletier SA v Design Elegance Pty Ltd* (2006) 149 FCR 494 at [28], the limited financial means of the respondents did not prevent Merkel J from concluding that the imposition of significant fines was appropriate to vindicate the court's authority and to deter others from engaging in similar conduct. In *Vaysman* at [54], Gray J considered that "[t]he fact that a person to be sentenced is bankrupt does not prevent the court from considering the appropriateness of a fine or fines", noting that a bankrupt is not relieved from an obligation to pay a fine, which "endures during the bankruptcy and after discharge from bankruptcy". His Honour also referred to the possibility of imposing a fine with a term of imprisonment in default of payment.

57 Ultimately, while the contemnor's inability to pay a fine may be relevant, it is not of itself a sufficient basis on which to impose a sentence of imprisonment as a penalty for a contempt of

court. It is always necessary to have regard to the seriousness of the conduct comprising the contempt, along with other sentencing factors such as the personal circumstances and antecedents of the contemnor.

58 A sentence of imprisonment can be suspended, including on conditions to ensure that the contemnor complies with the terms of the order: *INFO4PC* at [138] (RD Nicholson J). The suspension of a sentence of imprisonment both renders the punishment "appreciably more lenient" and "provides a significant incentive for the contemnor to comply" with the orders made by the court: *Rollinson* at [104] (Beech-Jones CJ at CL). Any consideration of whether a sentence of imprisonment should be suspended usually involves two steps — first determining the appropriate length of the sentence, without having regard to the possibility of suspension, and then considering whether the sentence should be suspended by reference to the circumstances, including the nature of the offence, its objective seriousness, the need for deterrence and the subjective circumstances of the offender: see *Rollinson* at [90] (Beech-Jones CJ at CL).

59 In *Kazal* at [101]–[102], Besanko, Wigney and Bromwich JJ endorsed the following list of sentencing considerations as "useful … although not exhaustive". This list had been adopted in *Matthews v Australian Securities and Investments Commission* [2009] NSWCA 155 at [129] (Tobias JA); see also the similar list set out in *Australian Securities and Investments Commission v Michalik* [2004] NSWSC 1259; 52 ACSR 115 at [29] (Palmer J); *Australian Securities and Investments Commission v One Tech Media Ltd (No 4)* [2018] FCA 1533 at [13] (Moshinsky J). Under this list, the factors relevant to the determination of an appropriate punishment for contempt of court are:

(1) the seriousness of the contempt proved;

(2) the contemnor's culpability;

(3) the reason or motive for the contempt;

(4) whether the contemnor has received, or sought to receive, a benefit or gain from the contempt;

(5) whether there has been any expression of genuine contrition by the contemnor;

(6) the character and antecedents of the contemnor;

(7) the contemnor's personal circumstances;

(8) the need for deterrence of the contemnor and others of like mind from similar disobedience; and

(9) the need for denunciation of contemptuous conduct.

60 The Full Court in *Kazal* (at [102]) noted that all of these factors were "relevant to differing degrees in ascertaining the need for deterrence", which the Court had earlier identified (at [23]) as "a unifying principle informing the appropriate sanction to be imposed" (for both civil and criminal contempt). After referring to decisions of this Court that added weight to the factors listed above, Besanko, Wigney and Bromwich JJ said (at [103]):

> The focus remains on the core themes of the objective seriousness of the conduct and, in particular, its effect on the administration of justice, subjective factors such as the contemnor's culpability, antecedents and attitude, including in particular any apology or other palpable sign of contrition, the capacity to pay a fine, and imprisonment being a last resort. Deterrence remains a dominant theme, both specific and general. Even denunciation and punishment can be seen as bolstering deterrence. That is especially so when the conduct entails contemplation and the opportunity to reflect and desist.

61 It may also be relevant to take into account sentences imposed in comparable cases, at least where sufficient examples are available: see *e.g. Vaysman* at [51] (Gray J), [128] (Besanko J) [154], [188] (Bromberg J); *eSafety Commissioner v Rotondo (No 3)* [2023] FCA 1590 at [31] (Derrington J). However, given the relative scarcity of contempt cases and the variation in the particular circumstances of each case, some caution should be exercised when relying on such comparisons.

62 The parties may make submissions as to the appropriate disposition as to penalty, including whether or not a custodial sentence should be imposed. However, at least in relation to criminal contempts, the parties should refrain from advocating from any particular sentence or range of sentence (including the length of any sentence of imprisonment) to be imposed: *Kazal* at [159] (Besanko, Wigney and Bromwich JJ). The role of the parties is ensure that the court is properly informed of the matters relevant to determining penalty, and to assist the court to avoid error in sentencing.

63 ASIC submitted that, in cases where multiple contempts have been committed over a period of time, the court can impose either separate penalties for each contempt or an aggregate sentence for all of the contempts, referring to *Rollinson* at [93]–[94] (Beech-Jones CJ in CL). The discussion in *Rollinson* was in the context of the totality principle, under which a sentencing court must consider whether the aggregate sentence for multiple offences is just and appropriate, and if necessary reduce the period of imprisonment for one or more individual sentences or make one or more individual sentences wholly or partially concurrent with the sentences imposed for other offences. Where the court imposes a single aggregate period of

imprisonment referable to multiple contempts, it may nevertheless be appropriate (even if it is not necessary) to indicate the individual periods considered to be appropriate for each separate contempt, if only to "enhance transparency": see *Rollinson* at [94] (Beech-Jones CJ in CL); *cf*. *Pearce v The Queen* (1998) 194 CLR 610 at [44]–[46] (McHugh, Hayne and Callinan JJ); see *e.g. Kazal* at [89]–[90], [182], [185], [190], [191]; *Vaysman* at [15] (Gray J), [81]–[82] (Besanko J).

Evidence and submissions of Mr Fuoco

64 Mr Fuoco is 50 years of age, and has a Bachelor of Applied Science (Deakin University) and a Masters Degree in Financial Planning (RMIT University). He has worked in various roles in the financial services industry since 2002, including as a financial planner.

65 Mr Fuoco has been in a de facto relationship with his current partner since 2014. He has two children, aged 8 and 17 years respectively, and is stepfather to his partner's son from a previous relationship, who is 15 years of age. His after-tax income is approximately $3,200 per week, all of which he spends on family and household living expenses. Mr Fuoco submitted that he has significant financial and emotional responsibilities in relation to his family, which are set out in his fourth affidavit sworn on 19 March 2025. Mr Fuoco and his family currently reside in a rental property, and he does not own any real property or significant personal property. Counsel for Mr Fuoco accepted that, on her instructions, Mr Fuoco would currently have limited capacity to pay any fine.

66 Mr Fuoco submitted that he engaged in the conduct comprising the contempts in circumstances in which he needed to provide for his family, at a time when he and his partner had experienced personal difficulties arising from the recent loss of their stillborn child and his partner's resultant mental health issues. He submitted that he is a committed family man who is otherwise of good character. He is cognisant of the negative impact that his conduct has had on his family, which included the execution of a search warrant on his home in the presence of his family, following which he and his partner separated for a short period.

67 In December 2024, after having received legal advice from counsel in relation to the proceeding, Mr Fuoco reached a resolution with ASIC pursuant to which he admitted the contempt charges against him. As part of that resolution, Mr Fuoco informed ASIC that "he wholeheartedly and unreservedly expresses his contrition in respect of his conduct which is the subject of this proceeding and unreservedly apologies [sic] to the Court and ASIC in respect of

that conduct": Statement of Facts, para 11.1.13. This apology was repeated in Mr Fuoco's fourth affidavit sworn 19 March 2025 in the following terms:

> I accept and acknowledge that the conduct in which I have engaged is a very serious matter and a grave error of judgment on my part. I understand and acknowledge that it has affected people who were financially vulnerable, and I deeply regret the harm it has caused to those persons. I unreservedly apologise to them and to the Court.
>
> I am very embarrassed by my conduct and regret the shame and embarrassment it has caused to my family, as well as the fact that my conduct has resulted in my earning capacity being lessened, meaning that I will not be in a position to ensure my family is as financially secure as I would like it to be.
>
> I have no intention of working in the regulated credit space or financial services ever again. I have voluntarily provided an undertaking to the Court, on a permanent basis, to that effect, as a way of showing my remorse and that I have learnt my lesson. I understand that breaching the undertaking will jeopardise my relationship with my family and it may, depending on the penalty I receive, result in me going to jail.

68 Counsel for Mr Fuoco submitted that his admissions and apology should be considered as a genuine expression of contrition, and that he had realised that this is "essentially the end of the road in terms of this conduct [and] that any further conduct of this nature will sound in a very severe punishment indeed, and may include incarceration". It was further submitted that, by admitting all of the charges, Mr Fuoco had saved both ASIC and the Court from the considerable time and expense of a contested hearing. The admissions were made reasonably promptly after ASIC filed its evidence and Mr Fuoco secured legal representation pursuant to a pro bono referral from the Court.

69 As a further demonstration of Mr Fuoco's remorse, his counsel relied on the voluntary cancellation of the Australian Credit Licence held by Ansa Finance and Mr Fuoco's voluntary undertaking to comply with the Restraint Order on a permanent basis. It was submitted that this undertaking will prevent Mr Fuoco from working in the finance industry, and will significantly curtail his ability to earn a living and provide for his family.

70 Counsel for Mr Fuoco submitted that he has not previously been found guilty of contempt of court, and that this ought to be a mitigating factor.

71 In so far as ASIC submitted that imprisonment is an appropriate penalty in the present case, Mr Fuoco submitted that any sentence of imprisonment should be wholly suspended. Otherwise, while Mr Fuoco did not consent to the disposition sought by ASIC, he did not oppose such an outcome.

Factors relevant to the assessment of the appropriate penalty

Seriousness of the contempt

72 It is not in dispute that the contempts committed by Mr Fuoco involved contumacious conduct of the most egregious kind.

73 The Restraint Order was directed to protecting the public from harm of the kind that was caused by the scheme operated by the WRM entities with Mr Fuoco's knowing involvement. As was found by Moshinsky J, that scheme had been marketed so as to target financially vulnerable persons who were induced by unfair tactics into paying fees and commissions which significantly eroded their existing superannuation funds: *ASIC v WRM (No 2)* at [119]–[121], [124], [126], [148], [166]. The WRM entities derived significant revenue from the scheme: *ASIC v WRM (No 2)* at [167]–[168]. Their business model was "fundamentally built upon the unconscionable and predatory behaviour" of the WRM entities: *ASIC v WRM (No 2)* at [172]. In his capacity as a director and the owner of the WRM entities, Mr Fuoco devised and oversaw the scheme: *ASIC v WRM (No 2)* at [170], [172].

74 The contraventions by the WRM entities were described by Moshinsky J as "a particularly egregious example of the kind of conduct that the statutory provisions are designed not merely to prevent, but to dissuade and sanction in the strongest terms": *ASIC v WRM (No 2)* at [145]; see also at [172]. Significantly, his Honour found that there was "a reasonably high likelihood that WRM would engage in similar conduct if not prevented by the Court from doing so", that it was "likely that harm will be caused to the public if WRM is not prohibited from providing financial services", and that there was "potential for WRM to do significant financial damage to clients via its financial services operations": *ASIC v WRM (No 2)* at [146], [147]; see also at [164]–[166].

75 That was the context in which Moshinsky J found that it was appropriate to make the Restraint Order against Mr Fuoco: *ASIC v WRM (No 2)* at [152]. The Restraint Order was clearly made for the protection of the public, which "adds to the question of penalty a dimension that is unusual, in that, in most cases, injunctions and similar orders are protective of some private interest of a litigant": *Australian Securities and Investments Commission v Matthews* [2009] NSWSC 285; 71 ACSR 279 at [25] (Barrett J). As ASIC submitted, this heightens the seriousness of the contempts committed by Mr Fuoco, which have in fact caused further harm to members of the community against which the Restraint Order was designed to protect.

76 Further, as was submitted by ASIC:

(a) Mr Fuoco's conduct in breach of the Restraint Order commenced in March 2019, just over one year after the order was made, and continued for more than four years until shortly before the interlocutory application was filed by ASIC.

(b) The contemptuous conduct was far from accidental or unintentional, and involved a repetition of the same conduct and business model that led to the Restraint Order being made in this proceeding, along with similar restraint orders in this proceeding and other proceedings against corporate entities controlled by Mr Fuoco.

(c) Mr Fuoco was on notice that the business model involved the targeted exploitation of financially vulnerable individuals through unfair and unconscionable marketing practices, but knowingly continued to operate the same business model notwithstanding the terms of the Restraint Order.

(d) Mr Fuoco had overall control of the Advice Business and the Loan Business, and was involved in those businesses at every level of their operation (see paragraph [40] above). He instructed and trained staff in the business, and held regular strategy sessions in which he discussed the business model and processes. Staff reported to Mr Fuoco about the status of client files, the achievement of targets, and the payment of commissions by insurers. Mr Fuoco was personally involved in handling and assessing loan applications made by clients, as well as the process of providing financial advice (including by arranging appointments and communicating with clients and staff about clients' individual circumstances, the financial advice to be given and the financial products that were available). Mr Fuoco was also involved in general operational matters including purchasing "leads", liaising with insurance providers and lenders, appointing directors, communicating with accountants, dealing with complaints, and communicating with government agencies.

(e) ASIC drew particular attention to Charge 15, by which Mr Fuoco was personally involved in the provision of financial produce advice by exchanging WhatsApp messages with a financial advisor in which he disagreed with the advice that was proposed to be given to a client, following which Mr Fuoco arranged for a different financial advisor to provide contrary advice to the client. This was said by ASIC to be a "particularly egregious example" of Mr Fuoco having "descended to a level of engagement with individual clients that was at the heart of what the Restraint Order

was designed to prevent [him] from doing: being in any way involved in the provision of financial services to clients".

(f) Mr Fuoco deliberately sought to avoid or defy the operation of the Restraint Order by carrying on the Advice Business and the Loan Business through separate corporate entities, maintaining that he was responsible for the day-to-day operation of the Loan Business (as a credit activity) but was not involved at a meaningful level with the Advice Business (which involved the provision of a financial service). This was a thinly veiled attempt to distance himself from the provision of financial services, when in fact the business operated as one enterprise. The "referral" of clients by Ansa Finance to AFSL Group, State Advice or About Advice was in reality the continuation of the same operation.

(g) Mr Fuoco engaged in conduct designed to obscure his involvement in the businesses, such as the appointment of other persons as directors in order to make it appear as though he was not in control. In so doing, Mr Fuoco actively sought to avoid the intended effect of the restrictions imposed upon him by the Restraint Order, and flouted the spirit and intent of the Restraint Order.

(h) Mr Fuoco disobeyed every limb or aspect of the Restraint Order: the prohibition from carrying on a financial services business (charges 1, 2, 4, 5, 7 and 18); the prohibition from carrying on a business related to financial services (charges 3, 6 and 8); the prohibition from being involved in providing financial product advice (charges 10 to 17); and the prohibition from holding himself as carrying on a financial services business (charge 9). As discussed above, each of those aspects of the Restraint Order were designed to protect the public in different ways.

(i) Mr Fuoco's conduct impacted a large number of vulnerable consumers who obtained insurance through the Advice Business. The affected consumers were financially vulnerable and were specifically targeted as such by Mr Fuoco. This included individuals who were desperate for a loan and who were unable to obtain finance from any other source. Individuals who had applied for a loan were "funnelled" into obtaining financial advice and taking out insurance, incurring substantial advice fees and premiums that would be deducted from their superannuation. Clients typically agreed to take out insurance only because it would increase their chances of obtaining

a loan. To this end, Mr Fuoco employed a range of tactics to convince clients to take out insurance, despite the fact that they were only seeking a loan.

(j) The evidence adduced by ASIC contained examples of the impacts on particular clients of the Advice Business and the Loan Business. Those examples illustrate the pressure that was placed on individual clients to roll over their superannuation and to take out insurance in order to obtain a loan. There is also evidence of a financial adviser who worked for State Advice and AFSL Group having become concerned that the advice he was giving was not in the best interests of his clients.

77 As mentioned above, Mr Fuoco has admitted that his conduct was contumacious and in deliberate defiance of the Restraint Order. He specifically admits that he knew of the contents of the Restraint Order, and that his conduct contravened each relevant limb of the Restraint Order. He admits that the Loan Business and the Advice Business were substantially the same as the businesses respectively operated by the WRM entities and by Financial Circle which were the subject of injunctions issued by this Court.

78 Accordingly, I find that the conduct by Mr Fuoco that is the subject of the contempt charges amounted to a premediated, persistent and wilful defiance of the Restraint Order, and constitutes an extremely serious contempt with a clear tendency to interfere with the administration of justice and the authority of the Court.

Mr Fuoco's culpability

79 I accept ASIC's submission that Mr Fuoco bears full responsibility for his contemptuous conduct. As set out above, Mr Fuoco was responsible for devising, establishing and carrying on the Loan Business and the Advice Business in breach of the Restraint Order. He knew and understood the terms and effect of the Restraint Order, but nevertheless proceeded to conduct a similar business in complete disregard of that order for the purpose of generating financial reward for himself and his family.

The reason or motive for the contempt

80 Mr Fuoco has admitted that he engaged in the contemptuous conduct in order to obtain financial advantage for himself at the expense of clients of the Advice Business and the Loan Business. This is borne out by the evidence before the Court, which reveals that Mr Fuoco's principal focus was to make money for himself from the advice fees and insurance commissions charged to or payable by clients.

81 Among other things, Mr Fuoco set financial targets and instituted a system by which potential clients were rated according to the likelihood that they would take out insurance, with a particular emphasis on income protection insurance which had higher premiums and commissions. Further, Mr Fuoco exhorted one financial adviser with AFSL Group to increase the rate at which he got clients to agree to take out insurance, and to increase the insurance premiums charged to clients by using an insurance calculator provided by AFSL Group despite the adviser's reservations about the appropriateness of the results produced by that calculator.

82 Mr Fuoco gave evidence that in around mid-2018, after the Restraint Order was made, he began working in the "regulated credit space" because he had worked in the financial services industry for the majority of his working life, and felt that this was "the only area in which [he] could work which would utilise [his] skill set and allow [him] to earn enough money to support [his] family". He also gave evidence about his financial responsibilities. Counsel for Mr Fuoco submitted that the circumstances which existed at this time ultimately led to him engaging in the conduct that is the subject of the contempt charges, including that he needed to provide for his family during a time when he and his partner were grieving the loss of their stillborn child, as a result of which his partner became mentally unwell and was unable to work for several months.

83 While I accept that Mr Fuoco's personal circumstances included his financial responsibilities towards his family, it remains the fact that his primary motive for engaging in the conduct in breach of the Restraint Order was for the purposes of financial gain.

Receipt of a benefit or gain

84 It is also clear that Mr Fuoco and his family derived significant financial benefit from his contemptuous conduct. An analysis of relevant bank records carried out by ASIC revealed that the Advice Business generated around $2,000,000 in commissions, and that the Loan Business generated income of around $223,000 during the relevant period. There were multiple withdrawals of money by Mr Fuoco and his family from bank accounts held by State Advice, AFSL Group and Ansa Finance, including around $400,000 for personal expenses such as restaurants, private school fees and holidays.

Expression of genuine contrition

85 A guilty plea or admission of contempt is a mitigating factor in the assessment of penalty, particularly where the plea or admission is timely: *Levi (No 3)* at [112] (McKerracher J); *World*

Netsafe at [19] (Spender J). As such, it attracts a discount to the sentences that might otherwise have been imposed in its absence. The significance of a plea or admission is that it saves the time and cost of a contested hearing, indicates a willingness to facilitate proceedings directed to vindicating the Court's authority, and provides some evidence of the contemnor's remorse: *Rollinson* at [64] (Beech-Jones CJ at CL).

86 In addition, genuine contrition and a full apology are capable of reducing the penalty, although the court should be wary not "to be beguiled by an offending party's confessions of guilt in a context of susceptibility to significant prison sentences": *Australian Competition and Consumer Commission v Hughes (t/as Crowded Planet)* [2004] FCA 519; 207 ALR 116 at [34] (Conti J). Thus, the timing and circumstances of any apology will be relevant.

87 As set out above (at paragraph [66]), Mr Fuoco has not only admitted his guilt of the contempts charged, but has expressed his contrition and remorse in respect of his conduct and offered an apology to the Court and to ASIC. That was accompanied by his voluntary provision of an undertaking to comply with the terms of the Restraint Order on a permanent basis, in circumstances where the order itself was limited to a period of 10 years.

88 ASIC submitted that Mr Fuoco's admissions and expressions of remorse should not be taken as reflecting any genuine contrition, in circumstances where they were made some time after the contempt proceeding was commenced, and in circumstances where Mr Fuoco is facing a potential custodial sentence. Further, ASIC submitted that Mr Fuoco has "a long history of making admissions in proceedings brought against him and related corporate entities – as well as making accompanying expressions of contrition", and yet he "has nevertheless continued to engage in unlawful conduct, demonstrating a complete lack of genuine remorse". In this regard, ASIC referred to several previous occasions on which it was submitted on behalf of Mr Fuoco that he had "learned his lesson" or "learnt from his past failures", including in the context of a financial services banning order in 2010 and a disqualification from managing corporations in 2016.

89 Further, in admitting his involvement in the contraventions by the WRM entities that were the subject of the current proceeding, and which led to the Restraint Order made by Moshinsky J, Mr Fuoco swore an affidavit in which he acknowledged his "failings from both a compliance and conduct perspective" and expressed his deep regret for the impacts on individuals who were affected by the scheme. Nevertheless, not long after interlocutory injunctions had been

made by Moshinsky J, and while he was still disqualified from managing corporations, Mr Fuoco had commenced carrying on substantially the same business through a new company, Financial Circle. He subsequently pleaded guilty and was convicted of managing Financial Circle while disqualified.

90 Despite these previous admissions and expressions of contrition or remorse, Mr Fuoco proceeded to engage in conduct in wilful defiance of the Restraint Order over a four-year period. In such circumstances, there is some force in ASIC's submission that Mr Fuoco's expressions of contrition should be regarded as disingenuous.

91 Nevertheless, I am prepared to give some weight to Mr Fuoco's admissions in the present proceeding. In so far as the admissions were not made until late 2024, Mr Fuoco was not legally represented before then and ASIC had not yet filed its evidence in support of the charges. While the cancellation of the credit licence held by Ansa Finance might have been regarded as inevitable, Mr Fuoco has gone further by giving a voluntary undertaking to comply with the Restraint Order on a permanent basis. In written submissions filed on his behalf, Mr Fuoco acknowledged that he had been "somewhat motivated to admit the charges by the possibility of receiving a lesser penalty than if the matter had run to trial and he was found guilty". Nevertheless, that does not itself prevent the admissions from being treated as a mitigating factor. At the very least, the admissions have spared the Court and ASIC from the time and expense of a contested trial.

Character and antecedents

92 While the presence (or absence) or a prior conviction for contempt can be taken into account, other criminal history is not relevant in sentencing for contempt unless the offence is sufficiently "similar" to the contempt for which the person is being sentenced: *Louis Vuitton* at [25] (Merkel J); *Levi (No 3)* at [101]–[110] (McKerracher J); *Ferguson v Dallow (No 5)* [2021] FCA 698 at [20] (O'Callaghan J).

93 It is common ground that Mr Fuoco has not previously been the subject of a conviction or finding of contempt of court.

94 Nevertheless, Mr Fuoco has a long history of contravening, or being involved with corporations that have contravened, financial services laws, credit laws and corporation laws, as well as being the subject of and contravening banning orders made by ASIC: see ASOC, para 1.4(f). Some of those contraventions have arisen from engaging in conduct that is very similar to the

conduct comprising the contempts that Mr Fuoco has admitted in the present proceeding. This reflects a pattern of conduct over the last 20 years in which Mr Fuoco has paid scant regard to his legal obligations, including pursuant to regulatory and court orders. This past conduct by Mr Fuoco may be taken into account in relation to his character, quite apart from whether it involved a past conviction for a criminal offence.

95 In so far as Mr Fuoco was convicted on 16 February 2023 of an offence of managing a corporation while disqualified, arising from his involvement with Financial Circle, it is arguable that the circumstances of that offence are sufficiently similar to his contemptuous conduct as to warrant consideration in assessing the penalty for contempt of court. Financial Circle was used by Mr Fuoco to carry on substantially the same business as was operated by the WRM entities and, later, by Ansa Finance, State Advice, AFSL Group and About Advice. However, out of an abundance of caution, I have not placed any independent weight on Mr Fuoco's past conviction of this offence.

Mr Fuoco's personal circumstances

96 I have referred to the evidence of Mr Fuoco's personal circumstances above (at paragraphs [63]–[64]). I accept that he has financial and emotional responsibilities for his family, and that he has no substantial assets and would have limited capacity to pay any fine. He remains personally indebted in the amount of $606,500 in respect of the previous pecuniary penalty order and $93,500 in respect of costs. Mr Fuoco's ability to generate income in the future will be limited by the Restraint Order, assuming his compliance with its restrictions.

Special and general deterrence

97 One of the primary underlying purposes of punishment for contempt of court is to deter the contemnor and others from disobedience of court orders, thereby vindicating the authority of the Court and protecting the effective administration of justice. Accordingly, deterrence is a "dominant theme" and a "vitally important consideration" in sentencing for contempt: see *Kazal* at [103], [104] (Besanko, Wigney and Bromwich JJ).

98 The need for specific deterrence is a particularly significant factor in the present case. By its terms, the Restraint Order applies for a period of 10 years (until 5 February 2028), although Mr Fuoco has now given an undertaking to comply with the restrictions on a permanent basis. Mr Fuoco nevertheless breached the Restraint Order continuously over a four-year period. Given his history of repeated contravening conduct, it is important to protect the public by

imposing a penalty that is sufficient to deter him from again engaging in conduct in breach of the Restraint Order. In this regard, I note that the imposition of significant financial penalties has previously been ineffective to deter Mr Fuoco from engaging in the prohibited conduct.

The need for denunciation

99 I adopt the submissions made by ASIC in relation to denunciation:

> The need for denunciation of Mr Fuoco's conduct weighs in favour of imposing a significant penalty. Mr Fuoco's conduct was a brazen and contumacious breach of the Restraint Order. The Court ought impose a penalty that upholds the administration of justice and communicates to the public that Mr Fuoco's conduct was unacceptable and will not be tolerated.

Comparable cases

100 As discussed above, while some guidance may be obtained from sentences imposed for contempts of court in other cases, it is necessary to exercise caution in drawing any direct comparisons. In particular, other cases cannot be used to derive a benchmark that is directly applicable to the facts of the present case.

101 ASIC referred to several comparable cases from which it sought to distil a "theme" that a term of imprisonment may be warranted in circumstances where a contemnor contravenes orders which protect the public interest.

(a) In *Australian Securities and Investments Commission v Matthews* [1999] FCA 803; 32 ACSR 404, the respondent (Mr Matthews) was in contempt of an order that restrained him from publishing or allowing the publication of reports about securities on the internet. The respondent had not engaged in any previous contempt and admitted the charges. Justice Sackville considered (at [30]) that the respondent's conduct was sufficiently serious to warrant a term imprisonment for two months, suspended on the condition that the respondent not contravene the original orders, noting that "[t]his form of order has the added virtue, given the respondent's lack of contrition, of driving home the importance of abiding by the orders made in the principal proceedings". As discussed above, Sackville J (at [32]) did not consider that the imposition of a fine would be sufficient for such purposes.

(b) In *Australian Securities and Investments Commission v Matthews* [2000] NSWSC 392, Mr Matthews committed a second contempt of the same order by allowing the publication of securities reports on a website in New Zealand. The Supreme Court of

New South Wales found him guilty of contempt and sentenced him to imprisonment of three months, which was not suspended. Justice Windeyer found (at [14]) that, as a result of the first hearing, Mr Matthews had been made perfectly aware of what was necessary to obey the court orders, but that he had purposely breached those orders by a deliberate continuation of the conduct which was the subject of the original orders. In determining what penalty should be imposed, Windeyer J stated (at [18]–[19]):

> I do not consider a fine would be appropriate and it is unlikely Mr Matthews could pay any substantial fine. In my view it is necessary to impose a term of imprisonment. The system of justice depends upon persons, the subject of court orders, obeying those orders and it depends upon the court making it perfectly clear that it will enforce in a proper way its own orders so as to make the system of justice, upon which the community relies, effective and recognised as being effective by members of the community.
>
> Deliberate renewed breach of a court order in respect of which there has been no apology and no contrition shown, make it necessary for a term of imprisonment to be imposed, regrettable though that may be.

(c) In *Australian Securities and Investments Commission v Matthews* [2001] NSWSC 735; 39 ACSR 110, Mr Matthews committed a third contempt in relation to different orders made by the Supreme Court of New South Wales that had permanently restrained him from publishing securities reports or advice on the internet. The Court found that the respondent was in contempt of those orders, and imposed a term of imprisonment of 12 months, which was suspended for two years. Although Foster AJ considered that a further custodial sentence would be appropriate, he expressed "some disquiet at the prospect of sending Mr Matthews to prison again, particularly as the previous sentence does not appear to have effected a change in his behaviour", and he was "concerned that the imposition of a necessarily greater custodial sentence might well be equally ineffective in curbing his seemingly perverse desire to publish in breach of the court's orders": at [50]. Referring to the need to find the most effective remedy in the public interest, Foster AJ formed the view that, while the respondent had not responded sensibly to the suspended sentence that was previously imposed by Sackville J, he was "more likely to curb his foolhardy attitude to the court's orders, if he is under the threat of a substantial suspended sentence, to be served should he offend again": at [51].

(d) In *Australian Securities and Investments Commission v Matthews* [2009] NSWSC 285; 71 ACSR 279, the same respondent was found guilty of further changes of contempt in relation to the final orders made in the proceeding. The history was summarised by Barrett J (at [11]):

> This is thus the fourth occasion on which the defendant has been found guilty of contempt of court by reason of contravention of court orders regulating his behaviour in matters concerning securities. On each of the earlier occasions, he has been sentenced to a term of imprisonment. In one case, the sentence was served. In each of the other two (the first and the third) it was suspended on condition that the defendant be of good behaviour.

His Honour noted (at [24]–[25]) that the orders that had been breached by Mr Matthews were directed towards the protection of the public, by imposing specifically on him prohibitions "of an investor kind" which corresponded with prohibitions imposed generally by statutory provisions. After taking into account each of the factors relevant to penalty, Barrett J sentenced Mr Matthews to a term of imprisonment of six months, which was not suspended. His Honour did not consider that a fine should be imposed, stating (at [50]):

> Even if a fine were somehow an appropriate penalty, it would have to be substantial and the defendant's lack of means indicates that there would be no point in imposing a penalty of that kind. A fine is, in any event, not an appropriate penalty.

Justice Barrett also observed (at [51]) that a "good behaviour bond" (*i.e.* suspension of sentence) had not deterred Mr Matthews from the activities giving rise to the charges on which he was being sentenced, and that there was "no reason to think that it would, on this occasion, have any greater deterrent effect" nor "that it would sufficiently register the denunciation that is warranted".

(e) In *Australian Securities and Investments Commission v Reid* [2002] FCA 84, the respondent breached a previous court order that prohibited him from managing a corporation. The respondent admitted the charge of contempt. He had a previous conviction for contempt arising from an earlier breach of the same order. Having found (at [35]) that a fine would not be appropriate because it would not properly reflect the serious of the respondent's conduct, Kenny J considered that it would have been appropriate to make an immediate custodial order, but for the respondent's contrition and his undertaking to obey the court order in the future. Her Honour therefore considered (at [41]) that "a suspended sentence that requires Mr Reid to observe certain conditions is most appropriate in the circumstances". In circumstances where he had "already had the advantage" of a previous suspended sentence of six months' imprisonment, Kenny J considered that "the sentence must be relatively substantial", and imposed a term of imprisonment of 12 months, suspended for a period of two years

on the condition that the respondent abstain from further contravention of the original order.

(f) Mr Reid was again found guilty of contempt of the same order in *Australian Securities and Investments Commission v Reid* [2005] FCA 1274, following which he was sentenced to imprisonment for nine months: *Australian Securities and Investments Commission v Reid (No 2)* [2006] FCA 700. This was in circumstances where he had "twice before been charged with and found guilty of contempt, and ordered to be imprisoned": at [16] (Lander J). It may be noted that Lander J (at [23]–[24]) did not consider that it was appropriate to require the respondent to serve both the suspended sentence of imprisonment that was imposed by Kenny J and a further sentence of imprisonment. Rather, he was sentenced separately for his further contempt, taking into account the previous sentence of imprisonment. While recognising that imprisonment is a sentence of last resort, Lander J (at [42]) concluded that it was necessary to require the respondent to serve a sentence of imprisonment "to impress upon him the seriousness of his behaviour".

(g) In *Australian Securities and Investments Commission v Eagle Inter-Link Pty Ltd* [2002] FCA 1524, the respondent pleaded guilty to a contempt after breaching of an order prohibiting him from inviting or receiving any investment in certain land. Having found that the breach was contumacious and a criminal contempt, Heerey J sentenced the respondent to imprisonment for one month (to be served at the completion of another sentence that he was then serving for various criminal offences). His Honour found (at [18]) that "the serious and deliberate nature of the contempt made a term of imprisonment unavoidable if the authority of this Court is to be maintained".

102 In addition to the cases set out above, I refer also to the Full Court's decision in *Vaysman v Deckers Outdoor Corporation Inc* (2014) 222 FCR 387 (***Vaysman (2014)***). In that case, the primary judge had imposed on the appellant an effective sentence of three years' imprisonment in respect of the contumacious disobedience of previous restraining orders and undertakings given in the proceeding. The primary judge had regarded the charges as "one of the worst cases of contempt to have come before the Court" and as "within the most serious category of criminal contempt cases", involving deliberate and repeated contravention of undertakings and orders over a four-year period: *Deckers Outdoor Corporation Inc v Farley (No 8)* [2010] FCA

657 at [18] (Tracey J). On appeal, the Full Court reduced this sentence to imprisonment for two years.

103 While Besanko J (with whom Siopis J agreed) accepted (at [137]) that the appellant's conduct was "a most serious contempt of court", he concluded that the sentence of three years' imprisonment was manifestly excessive, being "three times as long, or at least twice as long", as the sentences that had been imposed in other cases. His Honour proceeded (at [138]–[144]) to resentence the appellant. Having regard to the well-known matters to be taken into account when determining the penalty for a contempt of court, Besanko J concluded that the contempt was "very serious" and warranted a sentence of two years' imprisonment. In reaching this conclusion, Besanko J found that the conduct was "deliberate, serious and carried out over a substantial period of time", in circumstances where the appellant had been "motivated by sheer greed" with "no respect for the rights of others or the authority and orders of the Court": at [144].

104 Although reaching his conclusion on a slightly different basis, Dowsett J also held that the appellant's sentence ought to be reduced. His Honour agreed that the appellant's conduct amounted to a very serious contempt that "constituted a serious and sustained attack on the legitimacy of the administration of justice in this country" which "called for condign punishment": at [41], [44]; see also at [65]. In particular, the conduct "involved sustained contempt over a lengthy period" (at [46]). However, Dowsett J considered that it was necessary to reduce the sentence of three years imprisonment to reflect the fact that, in the substantive proceedings, the appellant had been ordered to pay additional damages in connection with the same conduct that was the subject of the contempts. Accordingly, in the particular circumstances, Dowsett J would have imposed a sentence of imprisonment for two years and three months: at [67].

105 Among other things, the Full Court in *Vaysman (2014)* had regard to the circumstances and penalties that had been imposed in a range of comparable cases, particularly those in which there was "repeated misconduct over a relatively long period of time": see at [46]–[58] (Dowsett J); see also at [128]–[137] (Besanko J). In relation to the use of comparable cases, Besanko J stated (at [126]):

> There is no maximum penalty for contempt and the circumstances surrounding contempts of court may vary considerably. Nevertheless, I think it is appropriate to consider comparable cases because they constitute or may constitute a yardstick

> against which to examine a proposed sentence (*Hili v The Queen* (2010) 242 CLR 520 (*Hili*) at [54]), although, in doing that, it is necessary to bear in in mind two factors. First, that it is likely to be difficult to find a truly comparable case, and secondly, that it is always open to a court on appeal to reset what might until then have been considered the prevailing tariff.

After examining a number of cases, Besanko J relevantly observed (at [137]) that "[t]he many and varied circumstances which may give rise to a contempt of court means that it is difficult to identify a range of appropriate sentences for contempt or a standard sentence for a serious contempt".

Other

106 ASIC submitted during the hearing that, based on searches carried out on 29 April 2025 as to the current status of the relevant corporate entities:

(a) State Advice was wound up on 19 June 2019 and has been deregistered;

(b) AFSL Group and Ansa Finance are in the process of being deregistered; and

(c) while About Advice remains registered, there is no indication that Mr Fuoco is involved in any ongoing business activities of About Advice.

107 ASIC has not taken any other enforcement action in respect of the conduct of those entities or of Mr Fuoco in relation to any contraventions of the Corporations Law or the ASIC Act.

Sentence

108 It remains to determine the appropriate penalty to be imposed in respect of Mr Fuoco's contempts, having regard to all of the matters set out above.

109 I consider that the conduct of Mr Fuoco amounts to a very serious contempt of court. The conduct involved the deliberate and persistent breach of the Restraint Order over a lengthy period, motivated by personal financial gain, with significant impacts on financially vulnerable individuals who were within the protection of the Restraint Order. The conduct was engaged in by Mr Fuoco with full knowledge of the prohibitions imposed by the Restraint Order. I have taken into account Mr Fuoco's admissions together with his expressions of remorse and apologies, along with his personal circumstances.

110 ASIC submitted that Mr Fuoco's contemptuous conduct warrants sanctioning in the strongest terms, and that it would be appropriate to sentence Mr Fuoco to a term of imprisonment. In the course of oral submissions, counsel for Mr Fuoco indicated that she was instructed that he

did not oppose that disposition sought by ASIC, although she submitted that any sentence of imprisonment should be wholly suspended. As Gray J noted in *Vaysman* (at [54]), in response to a similar submission, "[t]he fact that counsel making a plea in mitigation of sentence might concede that imprisonment is appropriate does not absolve the sentencing judge from the obligation to be satisfied that this is the case before such a sentence is imposed".

111 In the present case, I consider that it is necessary that Mr Fuoco be sentenced to a term of imprisonment, and that any alternative penalty would not provide an appropriate vindication of the authority of the Court nor serve the purposes of general and specific deterrence. In particular, the imposition of a fine would be inadequate, particularly in circumstances where Mr Fuoco would not have the capacity to pay any fine, and has failed to pay pecuniary penalties and costs that have previously been ordered. In all of the circumstances, I consider that the appropriate sentence is imprisonment for an aggregate period of 12 months.

112 To the extent that it is necessary to give an indication of the sentence for each of the separate charges, ASIC explained the basis on which the charges had been separated by reference to the different sub-paragraphs of the Restraint Order, different time periods, and the evidence given by particular witnesses. To that end, ASIC provided the Court with an "aide memoire" which broke down the charges and indicated the supporting evidence relevant to each charge.

(a) Charges 1, 2, 4, 5, 7 and 18 relate to carrying on (and being involved in) a financial services business, being the Advice Business that was conducted by State Advice, AFSL Group or About Advice during specified periods that reflect the evidence led by ASIC in support of each of those charges.

(b) Charges 3, 6 and 8 relate to carrying on (and being involved in) a business related to financial products or services, being the Loan Business that was conducted by Ansa Finance during specified periods that reflect the evidence led by ASIC in support of each of those charges.

(c) Charge 9 relates to Mr Fuoco holding himself out as carrying on a financial services business. This is based on specific evidence of a WhatsApp message that was sent by Mr Fuoco to staff at AFSL Group on 31 January 2022 to the effect that he was their superior at AFSL Group — *e.g.* "a reminder of who's who in the zoo (with me the biggest monkey of course)".

(d) Charges 10 to 17 relate to Mr Fuoco being involved in providing financial product advice on a number of specific occasions, based on evidence of communications between Mr Fuoco and financial advisers at AFSL Group between 31 January 2022 and 3 March 2022.

113 There is a degree of interrelationship between many of these charges. Some involve the continuation of similar conduct in different time periods or through different entities. In broad terms, the most serious charges are those relating to the conduct of the Advice Business and the Loan Business, having regard to their nature, duration and impact on clients. This covers the ongoing breaches of paragraphs 8(a) and (b), in conjunction with paragraph 8(d), of the Restraint Order. The charge relating to Mr Fuoco having held himself out as carrying on a financial services business arises from a single communication that was made to staff of AFSL Group, as opposed to members of the public. While this communication might be taken as reflecting the position more generally in relation to Mr Fuoco's control over the business, the charge relates to a discrete instance and is not itself as serious as those relating to the conduct of the business. Each of the charges relating to Mr Fuoco's involvement in providing financial product advice are slightly more serious, in so far as they demonstrate Mr Fuoco's supervision and direction in relation to the advice provided to clients. ASIC placed particular emphasis on Charge 15, by which Mr Fuoco arranged for a financial adviser to be replaced when he disagreed with the advice that was proposed to be given to a client. Nevertheless, Charges 10 to 17 concern a number of specific instances occurring over a confined period of just over one month.

114 I would give the following indicative sentences in respect of each of the charges:

(a) each of Charges 1, 2, 4, 5, 7 and 18: 12 months;

(b) each of Charges 3, 6 and 8: 12 months;

(c) Charge 9: 2 months;

(d) each of Charges 10 to 17: 3 months;

(e) Charge 15: 4 months.

115 In fixing the total effective sentence of imprisonment, it is necessary to have regard to principles of totality. In my view, it is appropriate for the sentence on each of the charges to be served concurrently with the sentences for the other charges. Accordingly, the total effective sentence will be imprisonment for a period of 12 months.

Suspension of sentence

116 The power to punish for contempt includes a power to suspend on condition any sentence of imprisonment that it might impose: *Australian Securities and Investments Commission v Matthews* [1999] FCA 803; 32 ACSR 404 at [29] (Sackville J). In ***Hughes*** *v Australian Competition Consumer Commission* (2004) 247 FCR 277 at [52], French, Emmett and Dowsett JJ referred to *Morris v Crown Office* [1970] 2 QB 114 at 125, where Lord Denning described the common law powers for criminal contempt as encompassing "a power to fine or imprison, to give an immediate sentence or to postpone it, to commit to prison pending his consideration of the sentence, to bind over to be of good behaviour and keep the peace, and to bind over to come up for judgment if called upon", and noted that "[t]hese powers enable the judge to give what is, in effect, a suspended sentence".

117 The considerations that may be taken into account in determining whether a sentence of imprisonment should be suspended overlap with the factors that are relevant to determining the penalty (including the appropriate length of any period of imprisonment), and include "the nature of the offence, its objective seriousness, the need for specific or general deterrence and the subjective circumstances of the offender": *Rollinson* at [90] (Beech-Jones CJ at CL). However, the inquiry is different, in that it may involve a greater focus on matters personal to the contemnor — see, *e.g.*, the submissions made in *Rollinson* at [97].

118 As was recognised in *Rollinson* at [104], the suspension of a sentence of imprisonment renders the punishment "appreciably more lenient", but the conditions of any suspension may also serve a coercive purpose of encouraging future compliance with the orders of the court. Thus, suspending imprisonment for a specified period on condition that the contemnor comply with the court's order may provide "a significant incentive for the contemnor to comply in circumstances where he has been unable to do so to date", and afford the contemnor "one last opportunity to comply with the orders made against him": *Rollinson* at [104] (Beech-Jones CJ at CL). Similar comments were made in *Australian Securities and Investments Commission v Matthews* [1999] FCA 803; 32 ACSR 404 at [30], where Sackville J regarded such an order as having "the added virtue … of driving home the importance of abiding by orders made in the principal proceedings".

119 Of course, it might be said that suspending a sentence of imprisonment for contempt arising from wilful disobedience of court orders on condition that the person comply with those orders tends to reduce the punishment almost to nothing, at least where the sentence is wholly

suspended on such a condition. The contemnor would ordinarily remain bound by the original orders in any event, such that the condition on which the sentence of imprisonment is suspended would require no more from the contemnor than he or she is already bound to do. Any further breach of the original orders would itself be likely to constitute a contempt of court as well as breaching the conditions on the suspended sentence. Nevertheless, the possibility that the sentence of imprisonment imposed by the court might be enlivened, and a warrant for imprisonment might be executed, upon a failure to comply with the original orders provides an additional incentive to comply with those orders, at least if that sentence of imprisonment is required to be served independently of any charge or sentence in respect of the further contempt of court.

120 This would reflect the position at common law under which, as was noted by Lander J in *Australian Securities and Investments Commission v Reid (No 2)* [2006] FCA 700 at [22], "if a person is sentenced to imprisonment and the sentence is suspended upon the person being of good behaviour for a period of time and the person then commits a further criminal offence, the person can be called upon to serve the original suspended sentence and to serve a further sentence of imprisonment in respect of the later criminal offence". However, in that case, Lander J did not consider that such an approach would be appropriate in relation to sentencing for contempt, "where the Court is imposing a sentence to uphold the authority and dignity of the Court": *ibid*. Accordingly, his Honour concluded that it would be inappropriate to require the respondent in that case to serve the earlier sentence of imprisonment that had been suspended and a further sentence of imprisonment for the later contempt: at [23]–[24]. Rather, a separate sentence of imprisonment was imposed for the later contempt (which, although not suspended, was shorter than the sentence imposed by Kenny J for the previous contempt), and the earlier orders were discharged in order to remove the threat of further imprisonment for any other contempt which might have been committed during the two-year period for which the sentence was suspended: at [44]–[45].

121 In my view, the common law approach would generally be more likely to give effect to the intention of the original sentence, by ensuring that the contemnor must serve his or her sentence of imprisonment for the contempt in the event of any further breach of the court's orders. If that further breach also amounts to a contempt of court, a charge can be brought and dealt with separately. While it would undoubtedly be appropriate to have regard to the original sentence of imprisonment when sentencing the contemnor for any further contempt, that does not mean

that the former should be ignored or subsumed in the latter. Each sentence would relate to a different contempt.

122 It is also possible for a sentence of imprisonment for contempt to be suspended on condition that the contemnor be generally of good behaviour during a specified period, rather than simply refrain from contravening the original orders that were the subject of the contempt. This would give rise to additional obligations on the contemnor, over and above the obligations under the original orders. However, in *Levi (No 3)* at [139]–[140], McKerracher J was disinclined to impose such a condition on the basis that both the facts of the contempt and the antecedents of the respondent involved "activity concerning false representations pertaining to businesses", and the conditions on which the sentence of imprisonment was suspended "should be similarly and more precisely confined". That is not to say that it might not be appropriate on the facts of a particular case to suspend a sentence of imprisonment for contempt on the condition that the contemnor be of good behaviour, including by giving a bond or security: see *e.g. Australian Securities and Investments Commission v Matthews* [2001] NSWSC 735; 39 ACSR 110 at [51] (Foster AJ).

123 Where the Court suspends a sentence of imprisonment, the Court also has a discretion as to the period of that suspension. It may be accepted for present purposes that an order should not be made to suspend a term of imprisonment for an indefinite period, and that "[t]here must come a time when a person who is the subject of a conditional suspension of a term of imprisonment is no longer exposed to that sanction": *Hughes* at [56] (French, Emmett and Dowsett JJ). Similarly, the period of suspension should not be inordinately long or disproportionate to the length of the sentence: *cf. Australian Securities and Investments Commission v Reid* [2005] FCA 1274 at [17] (Lander J).

124 In the present case, Mr Fuoco has submitted that any sentence of imprisonment should be wholly suspended, relying on the various circumstances in mitigation of penalty. ASIC submitted that it would not be inappropriate to suspend any sentence of imprisonment, including by wholly suspending that sentence.

125 I consider that it is appropriate in the circumstances for the sentence of imprisonment imposed on Mr Fuoco to be wholly suspended for a period of two years on the condition that, during that period, he must comply with the Restraint Order and the terms of his undertaking to the Court (which requires compliance with the Restraint Order and the credit activities banning

order made under ss 80 and 81 of the *National Consumer Credit Protection Act 2009* (Cth)). Any further contravention of the Restraint Order in the next two years will not only be a breach of the conditions of the suspension, but would potentially also constitute a further contempt of that order. After the two-year period of suspension, the prohibitions under the Restraint Order, including as extended by the undertaking given by Mr Fuoco, will continue to operate. As such, any breach of that undertaking may also give rise to a potential contempt of court

126 In reaching this conclusion, I have given significant weight to Mr Fuoco's plea of guilty and full admissions, which have saved considerable time and expense that would have been involved in any contested trial of the charges, together with his apologies and expressions of remorse. I have also had regard to his personal circumstances, including his age, and his financial and emotional responsibilities for his family. While I have given serious consideration to a partial suspension, so as to require Mr Fuoco to serve at least some part of the term of imprisonment immediately, on balance I consider that it is appropriate that the term of imprisonment be wholly suspended.

127 In relation to the form of order giving effect to the suspension of the term of imprisonment, there are past examples in this Court where orders have been made for a warrant of imprisonment to issue, and for that warrant to "lie in the Registry to the intent that it not be executed" on the conditions and during the period of suspension: see *e.g. Australian Securities and Investments Commission v Reid* [2002] FCA 84 (Kenny J); *Australian Securities and Investments Commission v Matthews* [1999] FCA 803; 32 ACSR 404 (Sackville J); *Australian Securities and Investments Commission v Matthews* [2001] NSWSC 735; 39 ACSR 110 (Foster AJ). Orders in that form were discussed by the Full Court in *Hughes* at [52] (French, Emmett and Dowsett JJ), with reference to the practice adopted in *Lee v Walker* [1985] QB 1191 at 1199–1200:

> The "suspended sentence" in that case was in the form of an order of committal made subject to a direction that it "should lie in the office for a stated time and should not issue if the contemnor within that time complied with stated conditions" (at 1200).

Their Honours referred to several cases in which similar orders had been made in this Court, including *Australian Securities Commission v* ***Macleod (No 3)*** (1993) 40 FCR 475 at 482 (Drummond J) and *Australian Competition and Consumer Commission v Goldstar Corp Pty Ltd* [1998] FCA 1441 (affirmed *Hudson v Australian Competition and Consumer Commission* [1999] FCA 891).

128 Notwithstanding this recognised past practice, I consider that it is unnecessary to adopt this form of order in the present case. There may be practical difficulties in issuing a warrant that directs the Sherriff to take the person to a named prison and deliver him or her to the officer in charge of that prison (see r 42.21 of the Rules and Form 91), in advance of circumstances arising in which the person is required to serve the term of imprisonment. A warrant for imprisonment can be issued if and when it is necessary, in the event that Mr Fuoco fails to comply with the conditions on which the sentence of imprisonment has been suspended.

129 For completeness, I note that, in the event that Mr Fuoco is required to serve the sentence of imprisonment for 12 months, r 42.22 of the Rules provides that he may apply to the Court for his early discharge from prison if he has grounds on which to do so: *cf. Macleod (No 3)* at 481 (Drummond J).

Costs

130 ASIC has proposed an order that Mr Fuoco pay its costs of the proceeding. Although it might be "relatively common" in some kinds of contempt cases to award costs on an indemnity basis (see *Levi (No 3)* at [143] (McKerracher J)), no application has been made for indemnity costs in the present case. Accordingly, any costs would be payable on the standard basis as between party and party. It is therefore unnecessary to consider whether the effect of any order for indemnity costs is capable of being taken into account as a factor in mitigation of penalty, although it would have been unlikely that any reduction would have been called for in the present case given the unlikelihood that Mr Fuoco will be in a position to pay any costs ordered: see generally *Macleod (No 3)* at 479–480 (Drummond J); *Levi (No 3)* at [117] (McKerracher J).

131 In my view, no reason has been identified why Mr Fuoco should not pay ASIC's costs of the contempt proceedings.

Confidentiality and non-publication orders

132 The parties have sought orders under ss 37AF and 37AG(1)(a) of the FCA Act in relation to certain parts of the affidavit material, on the basis that they contain personal information of individuals including clients of the businesses conducted by Mr Fuoco and his companies, as well as members of Mr Fuoco's family. I am satisfied that it is appropriate for such orders to be made.

CONCLUSION

133 Accordingly, I find Mr Fuoco guilty on each charge of contempt. I consider that he should be sentenced to a term of imprisonment for 12 months, which will be wholly suspended for a period of two years on condition that, during that period, he complies with the terms of the Restraint Order and his undertakings to the Court given on 6 December 2024. Mr Fuoco should pay ASIC's costs, to be agreed or taxed.

I certify that the preceding one hundred and thirty-three (133) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Horan.

Associate: 

Dated: 2 July 2025

SCHEDULE OF PARTIES

VID 238 of 2017

Defendants

Fourth Defendant:	JOSHUA DAVID FUOCO