

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
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File Number: NSD1533/2023
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v
ADAM BLUMENTHAL
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: Hearing
Time and date for hearing: 11/04/2024, 10:15 AM
Place: Please check Daily Court List for details

UNREDACTED ORIGINATING PROCESS



Sia Lagos

Registrar

Important Information

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

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



Form 2

Rules 2.2 and 15A.3

Originating process

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

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

ADAM BLUMENTHAL

Defendant

A. DETAILS OF APPLICATION

1. This application is made under sections 180(1), 181(1)(a), 206C, 1041B(1)(b), 1317E and 1317G of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**).
2. For the purposes of this Application:
 “Relevant Period” means: 18 March 2021 to 15 November 2021.
3. On the facts stated in the Statement of Agreed Facts, the Plaintiff seeks declarations of contraventions, a disqualification order and a pecuniary penalty order against Mr Blumenthal, who during the Relevant Period was the chairman, director, Authorised Representative and Responsible Manager of EverBlu Capital Pty Ltd ACN 612 793 683 (**EverBlu**). During the Relevant Period, Mr Blumenthal also oversaw and was involved in the corporate advisory and stockbroking services provided by EverBlu, and was a director of Creso Pharma Limited ACN 609 406 911 (**Creso**) and Anglo Menda Pty Ltd ACN 608 554 052 (**Anglo Menda**).

B ORDERS SOUGHT

On the facts stated in the Statement of Agreed Facts, the Plaintiff seeks the following orders:

3454-9583-5691v1	Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff	
	Prepared by (name of person/lawyer)	Anna Ross	
	Law firm (if applicable)	Corrs Chambers Westgarth	
Tel	(02) 9210 6904	Fax	(02) 9210 6611
Email	sasha.steinhoff@corrs.com.au		
Address for service (include state and postcode)	Quay Quarter Tower Level 37/50 Bridge St Sydney NSW 2000		



4. Declarations pursuant to s 1317E of the Corporations Act that, during the Relevant Period, Mr Blumenthal contravened:
- (a) The duties he owed as a director of EverBlu, pursuant to s 180(1) of the Corporations Act, by:
 - i. engaging in conduct that was in breach of a number of EverBlu's policies, including the Dealing Manual, Document Retention Policy, Conflicts of Interest Policy, Personal Dealing Policy and Compliance Framework;
 - ii. causing EverBlu to be in breach of its obligations under s 912A of the Corporations Act, through his involvement in EverBlu's breaches of its general obligations, which jeopardised EverBlu's interests including by creating a real risk of regulatory action.
 - (b) The duties he owed as a director of Creso, pursuant to s 180(1) of the Corporations Act, by causing Creso to engage Mr Aldo Sacco (**Sacco**) and Mr Tyson Scholz (**Scholz**) to provide consultancy, promotional and marketing services to Creso and, in the absence of sufficient due diligence, documentation and the imposition of measurable deliverables, authorising and co-ordinating Creso's payment of invoices totalling:
 - i. \$2,013,000 to two companies controlled by Scholz; and
 - ii. \$1,237,500 to a company controlled by Sacco.
 - (c) The duties he owed as a director of Creso, pursuant to s 181(1)(a) of the Corporations Act, by failing to avoid the conflict of interest between the advantage he stood to gain and the interests of Creso, in circumstances where he benefitted from Creso's payments to Scholz, as such payments enhanced Scholz's ability to repay loans advanced by Anglo Menda, and where he failed to:
 - i. disclose to the Board of Creso his financial relationship with Scholz from May 2021 to the end of the Relevant Period (noting disclosure of this relationship was made by Mr Blumenthal to the Board of Creso in 2022); and
 - ii. exclude himself from the approval of Scholz's invoices by the Board of Creso in July, September and November 2021.
 - (d) Section 1041B(1)(b) of the Corporations Act by directing or causing certain single client bids (of significant volume) to purchase Creso shares to be disaggregated into two bids through the EverBlu account designated 'SUSP_EVB' and/or the relevant client's account, intending to represent to the market that there were more individual bidders for Creso shares than in fact existed, so as to likely have had the effect of creating, or causing the creation of, a misleading appearance with respect to the number of market participants actively trading Creso shares .
5. An order pursuant to s 206C of the Corporations Act that Mr Blumenthal be disqualified from managing corporations for a period of 5 years.
6. An order pursuant to s 1317G of the Corporations Act that Mr Blumenthal pay to the Commonwealth of Australia a pecuniary penalty in the amount of \$850,000 in respect of his civil penalty contraventions of his director's duties as a director of EverBlu and Creso pursuant to ss 180(1) and 181(1)(a) (as applicable), and his contraventions of s 1041B(1)(b) of the Corporations Act.



7. An order that Mr Blumenthal pay the Plaintiff's litigation costs in the amount of \$100,000.
8. Such further orders as the Court considers appropriate.

The Plaintiff also seeks the following notation be made on the orders:

9. The Court notes that Mr Blumenthal has entered into a Court Enforceable Undertaking with the Plaintiff, pursuant to s 93AA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**). By that undertaking Mr Blumenthal has undertaken (amongst other things):
 - (a) to not act as a responsible manager, or perform any function as an officer, of an entity carrying on a financial services business for a period of 5 years; and
 - (b) if at the end of the 5 year period he wishes to re-enter the financial services industry, to complete relevant training and provide the Plaintiff with documentary evidence of the completion of such training.
10. The Court also notes that Mr Blumenthal has undertaken to pay a minimum of \$150,000 towards the Plaintiff's investigation costs, which may be ordered by the Plaintiff pursuant to s 91 of the ASIC Act.

Date: 15 February 2024

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Signature of
Plaintiff's legal practitioner

This application will be heard by the Federal Court of Australia at Level 17, Law Courts Building, 184 Phillip St, Queens Square, Sydney, NSW 2000 on 11 April 2024.



B. NOTICE TO DEFENDANT

TO: **ADAM BLUMENTHAL**

C/- Quinn Emanuel Urquhart & Sullivan, LLP

Level 15

111 Elizabeth St, Sydney NSW 2000

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

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

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

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

D. FILING

Date of filing:

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Registrar

This originating process is filed by Anna Ross, Legal Practitioner for the Plaintiff.

E. SERVICE

The Plaintiff's address for service is Quay Quarter Tower, Level 37/50 Bridge St, Sydney NSW 2000.

Plaintiff's Solicitors Name: Anna Ross

Telephone: (02) 9210 6904

Facsimile (02) 9210 6611

Email: sasha.steinhoff@corrs.com.au

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