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To whom it may concern,

**CITI JOURNALISM AWARDS FOR EXCELLENCE - CHARLOTTE GRIEVE 2021 YOUNG BUSINESS JOURNALIST OF THE YEAR AWARD WINNER FOR 'OPERATION ATLANTIS'**

## BACKGROUND

- 1 We act for Peter Schiff in relation to the broadcast entitled 'Operation Atlantis' which aired on the Nine Network's '60 Minutes' program on 18 October 2020 (**Broadcast**).
- 2 In 2021, Charlotte Grieve was awarded the 'Citi Young Business Journalist of the Year Award' for the Broadcast, in the 'Citi Journalism Awards for Excellence' (**Award**).
- 3 As you may be aware, the Broadcast has been the subject of legal proceedings in the Federal Court of Australia. Mr Schiff instituted defamation proceedings against the Nine Network Australia Pty Ltd, The Age Company Pty Ltd, Nicholas McKenzie, Charlotte Grieve and Joel Tozer.
- 4 In *Schiff v Nine Network Australia Pty Ltd (No. 2)* Justice Jagot found that the Broadcast conveyed the following defamatory imputations<sup>1</sup>:

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<sup>1</sup> *Schiff v Nine Network Australia Pty Ltd (No 2)* [2022] FCA 1120 at [141].

- By permitting his bank, Euro Pacific, to be used as a vehicle for around one hundred Australian customers to commit tax evasion, Schiff facilitated the theft of millions of dollars from the Australian people.
- Schiff orchestrated an illegal tax evasion scheme.
- Schiff committed tax fraud.
- Schiff knowingly facilitates tax fraud, in that he established his bank, Euro Pacific, in Puerto Rico for the purpose of enabling his customers to illegally hide their money from tax authorities.
- Schiff knowingly assisted around one hundred Australians to illegally evade their tax obligations.
- Through his bank Euro Pacific, Schiff poses a grave organised crime threat to Australia.
- Schiff is such an unscrupulous individual that he has no qualms about doing his business with criminals and money launderers.

5 These extremely serious imputations are baseless and seriously defamatory. They have had a shocking impact on Mr Schiff's reputation, business affairs, and well-being. They have ruined Mr Schiff's banking career and made the continued operation of his bank untenable. The Puerto Rican regulator also rejected the sale of the bank, instead shutting it down, citing concern over Mr Schiff's proposed 4.15% stake in the buyer, given 'negative press articles at the international level about [Mr Schiff]'.

6 If there was ever any investigation into Mr Schiff or his bank, it has long since concluded, resulting in no charges being brought against him, the bank or any employee of the bank. Ms Grieve instead told the world Mr Schiff was guilty of serious crimes he had not even been charged with, and never was charged with.

7 As noted below, judgment has now entered against Ms Grieve and the respondents for defaming Mr Schiff by conveying these imputations.

8 Justice Jagot also found that:

*“The broadcast is not a reflection of sombre and careful investigative journalism... The broadcast is a carefully choreographed piece of drama and intrigue focused on eliciting condemnation of Mr Schiff.”<sup>2</sup>*

## AGGRAVATION

- 9 The Respondents sought to defend the claim but the Court found the particulars alleged in the defence did not meet the minimum threshold of even being arguable and so the defences were disallowed (*Schiff v Nine Network Australia Pty Ltd (No 3)*)<sup>3</sup>. Persisting with a baseless justification defence is a basis for awarding aggravated damages in defamation, and Mr Schiff claimed aggravation on this basis.
- 10 Mr Schiff also relied on the following particulars of aggravated damages, among others:
- (a) Ms Grieve’s misleading and deceptive conduct in requesting an interview with Mr Schiff, in her email dated 20 August 2020, by representing that the purpose of the interview was to seek Mr Schiff’s comments about gold and inflation, when in fact the purpose was to provide Mr McKenzie a pretext to interrogate Mr Schiff about Euro Pacific;
  - (b) The misleading and deceptive editing of the interviews with Mr Schiff and other participants in the Broadcast, so as to exclude exculpatory material and deliberately and falsely impute wrongdoing to Mr Schiff;
  - (c) The knowingly false suggestion in the Broadcast and articles that Mr Schiff established Euro Pacific in Puerto Rico because it is a ‘Caribbean tax haven’, and ‘offered the secrecy his clients wanted’, when the truth is that Puerto Rico is a United States territory which is subject to regulation in the same way as every other state and territory of the United States;
  - (d) The knowingly false representations in the Broadcast that a former employee of Euro Pacific, John Ogilvie, referred to Mr Schiff as dishonest or unscrupulous and had knowledge of the bank’s compliance procedures and Mr Schiff’s involvement in them;<sup>4</sup>
  - (e) The knowingly false representation in the Broadcast that the respondents had opened an account with Euro Pacific, when the truth is they could not do so or did not attempt to do so;

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<sup>2</sup> *Schiff v Nine Network Australia Pty Ltd (No 2)* [2022] FCA 1120 at [61].

<sup>3</sup> *Schiff v Nine Network Australia Pty Ltd (No 3)* [2023] FCA 336.

<sup>4</sup> Enclosed is the Affidavit of John McConnell Ogilvie affirmed on 27 September 2023

- (f) The maintenance by Ms Grieve of the Award; and
- (g) The respondents' conduct in the litigation including:
  - (i) Attempts to link the closure of the bank with the Broadcast, in the litigation and in media, when the two have nothing to do with each other and an improper attempt to introduce material about this in the proceedings which was removed from the Court file;
  - (ii) One instance of falsely alleging criminal conduct which Justice Jackman described as 'most egregious'.<sup>5</sup>
  - (iii) The maintenance of the Broadcast online well after it had been found to be defamatory and all defences struck out;
  - (iv) The concession more than six months into the proceedings by the respondents that imputations were defamatory and were likely conveyed, even though they had denied this in their certified Defence.<sup>6</sup>

11 Some of this unethical conduct was elaborated upon by Mr Schiff's Senior Counsel, Sue Chrysanthou SC, at the hearing on 16 November 2023. The relevant passage from the transcript is set out in full at the Annexure to this letter.

## JUDGMENT

12 After putting Mr Schiff to the expense and aggravation of seven contested hearings, resulting in seven judgments in Mr Schiff's favour<sup>7</sup>, the respondents consented to another judgment against them for the whole of the proceedings. **Enclosed** are orders entered by the Court which:

- (a) Enter judgment against the respondents for the whole of the proceedings;
- (b) Order payment of an amount well in excess of the statutory cap for damages in defamation, which cap represents 'the most serious case', beyond which damages may only be awarded for aggravated damages;

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<sup>5</sup> *Schiff v Nine Network Australia Pty Ltd (No 3)* [2023] FCA 336 at [26].

<sup>6</sup> *Schiff v Nine Network Australia Pty Ltd* [2022] FCA 658 at [5]; Transcript of Proceedings, page 25 line 14-20.

<sup>7</sup> *Schiff v Nine Network Australia Pty Ltd* [2022] FCA 658; *Schiff v Nine Network Australia Pty Ltd (No 2)* [2022] FCA 1120; *Schiff v Nine Network Australia Pty Ltd (No 3)* [2023] FCA 336; *Schiff v Nine Network Australia Pty Ltd (No 4)* [2023] FCA 688; *Schiff v Nine Network Australia Pty Ltd (No 5)* [2023] FCA 753; *Schiff v Nine Network Australia Pty Ltd (No 6)* [2023] FCA 1427; *Schiff v Nine Network Australia Pty Ltd (No 7)* [2023] FCA 1432.

- (c) Order the payment of Mr Schiff's costs on an indemnity basis;
- (d) Order the removal of the last vestiges of the Broadcast from online;

13 Just prior to this final judgment, Justice Jackman dismissed an application by the respondents to obtain further documents, finding that to allow this *“would be an unjust imposition on the applicant, who has succeeded in establishing liability, and now awaits a hearing on the quantification of damages to compensate him for the wrongful conduct.”*<sup>8</sup>

14 the Broadcast has been removed from online and all extracts of it have also be removed from online. It is no longer publicly available.

15 Aggravated damages are ordered when the conduct of journalists is ‘improper, unjustified or lacking bona fides’.<sup>9</sup>

16 Indemnity costs are a departure from the usual costs order awarded only in special circumstances where some feature of a litigant's conduct has been unreasonable.

## STATEMENT BY NINE

17 Following the judgment, Nine released a media statement standing by their ‘accomplished’ journalists and yet again referring the bank closure.<sup>10</sup>

18 We consider this statement is also defamatory of Mr Schiff. Publishers who stand by their journalists do not admit liability by consenting to judgment against them in excess of the statutory cap and indemnity costs. Had their stories or their conduct been defensible, they would have been defended. Ultimately, they were not defended. Nor could they have been defended after the Court made findings on liability. Quantum was the only matter in issue when the respondents consented to judgment against them.

19 Mr Schiff intends to take further action against Nine in relation to this disgraceful statement, calculated to undermine the vindication to Mr Schiff's reputation the judgment was intended to provide.

20 Two matters stand out as particularly disgraceful to Mr Schiff:

- (a) reference to the bank closure by regulators in the context of praising Ms Grieve's story. The bank was officially closed due to lack of regulatory capital.

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<sup>8</sup> Schiff v Nine Network Australia Pty Ltd (No 7) [2023] FCA 1432 at [12].

<sup>9</sup> Triggell v Pheene (1951) 82 CLR 497 at [514].

<sup>10</sup> The full statement can be found within the Lawyerly article attached, entitled “Nine to pay Euro Pacific Bank chief \$550,000 in defamation settlement”.

The Commissioner of the Regulator expressly rejected the false allegations of tax evasion and money laundering made by Ms Grieve as forming any part of its decision. In fact, the only link between the bank closure and the Broadcast was that the Broadcast caused a fall in the bank's revenue, contributing to its capital deficiency; and

- (b) in another case this week, Nine's Senior Counsel described Seven's agreement to pay Nine costs on an indemnity basis to be 'complete capitulation'.<sup>11</sup>

## MS GRIEVE AND THE 2021 AWARD

- 21 Ms Grieve continues to hold the Award and continues to publicly promote this, including on her LinkedIn profile, where it is listed prominently as her only award.
- 22 Mr Schiff has been brought into hatred, ridicule and contempt and has been gravely injured in his personal character and reputation because of the defamatory Broadcast. The Award is said to 'encourage excellence in business and finance reporting' and Citi has emphasised and promoted the 'integrity' of the Award's judging panel.
- 23 The legitimisation of the Broadcast by the Award was grossly offensive to Mr Schiff.
- 24 Now that you are on notice of all of the matters set out in this letter, the maintenance of the Award by Ms Grieve is untenable and improper. It continues to legitimise the Broadcast and Ms Grieve's reporting and enables Nine to refer to Ms Grieve as one of the 'most accomplished journalists in Australia'. It has and is continuing to causing Mr Schiff further damage.
- 25 Defamation is not 'excellent' journalism. It should elicit condemnation, not praise, and the disgraceful and unethical conduct by Ms Grieve and the respondents goes beyond simply defamation.
- 26 Mr Schiff made it very clear in the proceedings that Ms Grieve should return the Award herself, but Ms Grieve has declined to do so.
- 27 Mr Schiff asks that you:
  - (a) Promptly and publicly revoke Ms Grieve's Award, with express reference to the judgment made by the Court against her for defaming Mr Schiff; and

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<sup>11</sup><https://www.smh.com.au/national/kerry-stokes-capitulates-in-fight-over-costs-of-roberts-smith-defamation-battle-20231211-p5eqi4.html>

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(b) Consult with Mr Schiff in relation to the form and means of this revocation in advance.

28 Mr Schiff intends to rely on your response to this letter (or lack thereof) in his public condemnation of Ms Grieve and, potentially, the Citi Awards and Citigroup, and reserves all of his rights.

29 We request a response to this letter within seven days.

Yours faithfully

**KENNEDYS**

A handwritten signature in cursive script, appearing to read 'N Buck'.

**Nathan Buck**  
**Special Counsel**

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## Annexure

35 HIS HONOUR: All right. Yes.

MS CHRYSANTHOU: The history of the matter prior to publication we've given a summary of. That's in my instructing solicitor's affidavit. And we say it is relevant that the manner in which these respondents approached the publication of the manner in a dishonest and deceitful way and made allegations during the broadcast which were plainly wrong is relevant. And one of the key allegations that was made during 40 the broadcast – and it's at the transcript of the broadcast at line 149 to 152, and I will just read that out – is on this issue of opening of accounts. So at lines 149 to 152 of the transcript, where my client says:

45 *I'm not involved in the day-to-day operations, and if you – and if, in fact, you think we're doing something wrong, why you don't you try to open up an*

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MS CHRYSANTHOU

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*account at our bank? Go there under an assumed name, give us some BS and see if you can actually open up an account. I dare you.*

And Mr McKenzie says:

5 *Well, Pete, we've tried to do that.*

And he said:

10 *Have you tried to open up an account with our bank?*

And Nick McKenzie says:

15 *Yes, we have. So we've gone to one of your referrers.*

Now, that's – that was broadcast with the implication that they were able to open an account, and the only document that has been produced in discovery by the respondents is the last document of MB2, the absolute only document, and we have raised this in correspondence to see if there were any other documents, and nothing 20 further has been produced, while Charlotte Grieve attempted to open an account – an investment account with Euro Pacific Asset Management, which is a different corporate entity. That's not even the bank, and she was refused. Yes. And we've

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only been given the refusal email, not the actual application, and we've raised this in  
25 correspondence on the question of discovery. So on the key issue the subject of the  
first particular, we say that during the interview and then on the broadcast, from the  
documents that have been discovered having sought further documents from the  
respondents and not received them, my client and the public were misled.

30 Now, that's not the end of the matter. We say that the entire broadcast was prepared  
on a misleading and dishonest basis, and we've set out in the affidavit from  
paragraphs 15 and following, the misrepresentations made to my client in order to  
induce him to participate in the interview, and further, we have now seen and have  
produced to your Honour transcripts of the unedited footage and interview and, in  
35 particular, have highlighted in the affidavit, which I don't wish to spend too much  
time on so we don't waste your Honour's time this morning, some dishonest editing  
in the context of what was actually asked and answered. Further, we've noted from a  
review of the discovery, exculpatory material from the notes of Ms Grieve and  
interviews with other sources where Ms Grieve was told very clearly how hard it was  
40 to open an account at the bank, and in particular at page 4, a former customer telling  
her:

45 *It took weeks and weeks to open an account. They were just so careful about  
making sure who they were dealing with. I've never come across anything like  
it. They were just so thorough. They're people with high integrity and wanted  
to make sure I was who I said I was. Are there any tax advantages to having a  
bank account there? Not at all. Every year I submit my tax returns, I have to  
indicate the current balance, what transactions have occurred. I know there*

5 *are tax advantages for Americans who reside in PR, but that's all legitimate.  
It's an open declaration of intent. The US authorities allow it, but I can't  
imagine how it would apply to an Australian unless you're not fully disclosing  
income or assets to the ATO.*

So this is Ms Grieve interviewing one of my client's bank's customers prior to  
publication. Surprisingly or unsurprisingly, having regard to the way the broadcast  
came out, not mentioned in the broadcast. Page 2, Ms Grieve records in her notes:

10 *Why do you say they act in the highest ethics? Their diligence with KYC was*

came out, not mentioned in the broadcast. Page 2, Ms Grieve records in her notes:

10 *Why do you say they act in the highest ethics?---Their diligence with KYC was  
extreme. They don't loan money out. They don't engage in fractional reserve  
banking. They understand the role of gold in the monetary system. So when I  
set up the account, I thought it would be perfect for what we needed, but it just  
hasn't worked out that way, which is disappointing for me.*

15

And then she talks to a former employee, and for example – I won't go through all of them, but at subparagraph (e) on page 5 of the affidavit:

20 *With regard to the red flags, it's hard for me to say right now –*

this is the former employee of the bank –

25 *but if I had to guess, I'd wager that most of the applications we got to the bank  
didn't even make it to the pre-screening call because the red flags they raised  
were absurd and comically ridiculous. "I don't ever want to pay taxes again"  
is one of the red flags raised by a customer. Yeah, good luck with that buddy,  
but you aren't getting an account at this bank. Goodbye. It's better to lose a  
potential account that may make loads of dollars that seems a bit sketch than  
lose corresponding bank relationships because you were either too lazy or too  
greedy or too blind to spot the red flags.*

30

And then another confidential former employee of the bank says:

35 *In terms of the AML, they seem to be strong. I personally didn't experience a  
situation where something out of place was going on. We got the training that  
we needed.*

40 Now, I mean, I haven't re-watched the broadcast in the last few weeks, but I don't  
remember any of that – you know, any of those former employees and customers  
being referred to in the broadcast, and this is all directly relating to these, Burstein in  
particular, and this allegation that my friends wish to vacate the trial on the back of  
that the bank was engaging in misconduct when it came to allowing people to open  
accounts and not doing its due diligence, and documents have been discovered by my  
client – which the respondents have, by my client which contradicts those assertions.  
45 He has discovered the documents he has in his possession in relation to those  
matters, and the respondents have in their possession documents which also  
contradict that allegation. So as I said, if we were here, and we weren't talking about