

**IN THE SPECIAL TRIBUNAL
(REPUBLIC OF SOUTH AFRICA)
(HELD AT BOOYSENS MAGISTRATE'S COURT, JOHANNESBURG)**

CASE NUMBER:

In the matter between:

SPECIAL INVESTIGATING UNIT	Applicant
and	
DIGITAL VIBES (PTY) LTD	First Respondent
TAHERA AHMED SAEED MATHER	Second Respondent
NAADHIRA MITHA	Third Respondent
RADHA HARIRAM	Fourth Respondent
ZWELINI LAWRENCE MKHIZE	Fifth Respondent
DEDANI DALUXOLO SPHELELE MKHIZE	Sixth Respondent
THAMIZHANBAN PILLAY	Seventh Respondent
FIRST NATIONAL BANK LTD	Eighth Respondent
GLACIER FINANCIAL SOLUTIONS (PTY) LTD	Ninth Respondent
SYGNIA FINANCIAL SERVICES (PTY) LTD	Tenth Respondent
AMODS ATTORNEYS	Eleventh Respondent
WT GRAPHICS AND DESIGNS (PTY) LTD	Twelfth Respondent
SUHAILA MATHER	Thirteenth Respondent
STRATEGEEWHIZ (PTY) LTD	Fourteenth Respondent

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SUHAILA MATHER CONSULTING (PTY) LTD	Fifteenth Respondent
COMPOSIT TRADE AND INVESTMENTS 02 (PTY) LTD	Sixteenth Respondent
BEVELS COMMUNICATIONS ADVERTISING AND DIGIATAL MEDIA (PTY) LTD	Seventeenth Respondent
MATETA SPECIAL OPERATIONS (PTY) LTD	Eighteenth Respondent
MKOKWANA EVENTS MANAGEMENT (PTY) LTD	Nineteenth Respondent
WASIM AHMED MATHER	Twentieth Respondent
SP ATTORNEYS INC.	Twenty First Respondent
SHIRAZ HOUSEN	Twenty Second Respondent
SALOOJEES CHEMIST CC	Twenty Third Respondent
HASINA KATHRADA	Twenty Fourth Respondent
YENZIWE SOKHELA	Twenty Fifth Respondent
WELCOME (MDU) MTHETHWA	Twenty Sixth Respondent
MAKHOSAZANA MTHETHWA	Twenty Seventh Respondent
SOTOBÉ MEDIA (PTY) LTD	Twenty Eighth Respondent
ROYAL BHACA PROJECTS (PTY) LTD	Twenty Ninth Respondent
DIRECTOR GENERAL FOR THE NATIONAL DEPARTMENT OF HEALTH (REPRESENTING THE NATIONAL DEPARTMENT OF HEALTH FOR THE REPUBLIC OF SOUTH AFRICA)	Thirtieth Respondent

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FOUNDING AFFIDAVIT

I, the undersigned,

RAJENDRA CHUNILALL

hereby declare on oath as follows:

1. I am a Principal Forensic Investigator who is fulfilling the role of a Lead Investigator in this investigation employed by the Special Investigating Unit ("SIU") appointed in terms of section 3(2) of the *Special Investigating Units and Special Tribunals Act 74 of 1996* (the "SIU Act").
2. I am duly authorised to bring this application and to depose to this affidavit on behalf of the SIU as appears from the copy of the written Resolution of Delegation of Authority and Authorisation marked Annexure "FA 1".
3. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are, to the best of my knowledge and belief, true and correct.
4. I have been intimately and directly involved in the investigation into the appointment by the National Department of Health ("NDOH") of the first respondent, Digital Vibes (Pty) Ltd ("Digital Vibes") to conduct a Covid-19 communication campaign, which was referred to the SIU in February 2021.

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5. Furthermore, I have full access to all relevant records of the SIU. Some of the facts set out in this affidavit derive from the documents that were provided to the SIU investigation team acting under my direction, or that were otherwise received, during the course of the SIU's investigation into this matter. A list of documents obtained by the SIU in the course of its investigation, which are directly relevant for purpose of this application, will be provided with this affidavit. In what follows, I will refer to those documents by reference to their exhibit number as referred to in the affidavit of Ms Hesti Marcia Le Roux ("Ms Le Roux"), which will be filed with this application.
6. I am advised that some of the evidence to which I depose below, and as will be deposed to by Ms Le Roux, amounts to hearsay evidence. At the hearing of this matter, the SIU shall contend that this evidence ought to be admitted because of (i) the nature of the proceedings, (ii) the importance of the evidence to the matter; (iii) the fact that the evidence cannot otherwise be accessed without admitting the evidence; and (iv) that it is in the interests of justice to do so.
7. I rely also on the expert evidence of Ms Le Roux, a specialist Forensic Accountant employed by the firm Abacus FCA (Pty) Ltd, who is seconded to the SIU. Ms Le Roux's affidavit will be filed with this application.
8. Insofar as I deal with legal submissions in this affidavit, I do so on the advice of the SIU's legal representatives, which advice I accept as correct.

INTRODUCTORY MATTERS

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Overview of this application and Identification of the impugned decisions

9. This is an application for declarations of invalidity and the setting-aside of decisions of the NDOH to appoint Digital Vibes as a communication services provider in respect of National Health Insurance and to subsequently unlawfully extend or convert or amend that appointment to encompass communication services pertaining to the Covid-19 pandemic, and for the setting aside as invalid of all contracts and payments consequent upon those impugned decisions, in particular:
- 9.1. The appointment of Digital Vibes by the NDOH on 15 November 2019 as a communication service provider in relation to the National Health Insurance Bill and policy of the Department ("NHI") for a period of one year. (Exhibits 26 and 27).
- 9.2. The service level agreement concluded on 29 November 2019 between Digital Vibes represented by Ms Radha Hariram and the NDOH, represented by Ms Shireen Pardesi, appointing Digital Vibes to provide communication services in respect of the NHI for a period of one year renewable annually for a period of a maximum of three years and for a total value of R 144 million ("the NHI contract") (exhibit 30).
- 9.3. The quotation requested on 6 March 2020, by the acting Director-General Dr T Pillay from Ms Tahera Mather, representing Digital Vibes, to produce "20 million A5 pamphlets ... 4 Billboards near major airports, Airtime Voucher Advertising, Television slots over two weeks" on the subject of

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Covid-19, the quotation emailed by Ms Mather on behalf of Digital Vibes, on the same day (i.e. 6 March 2020) for an amount of R 35 906 450.00 and the purported acceptance of the quotation by Dr Pillay on 6 March 2020 by e-mail that "*your proposal is approved*" (exhibits 46 - 49)

9.4. The following payments made by the NDOH to Digital Vibes (exhibit 114), of which the first four pertain to NHI-related communications in terms of the NHI contract and the remainder to Covid-19:

#	Date	Amount (Rand)	Invoice number
1	2020-01-29	7 477 300.00	DV 2002
2	2020-01-31	1 847 734.00	DV 2003
3	2020-03-04	7 877 500.00	DV 2004
4	2020-03-13	7 820 000.00	DV 2007
5	2020-03-31	18 032 384.00	DV 0033
6	2020-04-15	7 843 000.00	DV 20014
7	2020-05-11	7 877 500.00	DV 0048
8	2020-05-13	17 874 068.00	DV 0041
9	2020-05-15	2 104 500.00	DV 20050
10	2020-06-18	6 727 500.00	DV 20045
11	2020-07-20	2 875 000.00	DV 20062
12	2020-09-01	7 973 333.00	DV 20071
13	2020-10-05	11 452 083.00	DV 20081
14	2020-10-05	(230 000.00)	DV 20071
15	2020-10-21	11 753 086.00	DV 20090
16	2020-10-29	4 710 688.00	DV 20061
17	2020-11-13	11 113 598.80	DV 0094
18	2020-12-23	6 344 166.00	DV 20098

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#	Date	Amount (Rand)	Invoice number
19	2021-02-08	8 529 167.00	DV 20103
	Total	150 002 607.80	

- 9.5. I will refer to the appointment of Digital Vibes and the NHI contract and the subsequent payments (the majority of which are made in respect of invoices pertaining to Covid-19 related communication and for which no procurement process took place and for which there was no contractual basis) collectively as "the impugned transactions".
10. On 17 June 2021, the SIU obtained an interim interdict from the Special Tribunal under Case No. KN 3/2021 for a total amount of R 22 001 884.54 that was being held in a number of accounts. A copy of the Tribunal's order is annexed as "FA 2". In terms of the order the SIU is required to bring this review application within 30 court days from 17 June 2021 (i.e. on or before 29 July 2021). This application is brought in terms of that order.
11. The SIU seeks in this application an order that the monies that are the subject of the interdict obtained in terms of the order referred to above are forfeited to the state. It has been advised accordingly to seek an order in terms of Rule 28 of the Special Tribunal rules read with Rule 11 of the Uniform rules consolidating this application with the interdict application in matter KN 3/2021. It is submitted that the consolidation is convenient given that the SIU seeks an order consequent upon the interim interdict that was granted in the earlier application and relies on

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the evidence in that application. All the parties cited in matter KN 3/2021 have been cited in this application.

12. For the reasons set out below, the impugned transactions fall to be declared unlawful and invalid and set aside. As a consequence thereof, the amount of some R 150 million received by Digital Vibes was unlawfully received. To remedy the flagrant abuse of public resources that has occurred the SIU seeks an order that it is just and equitable that this amount (minus the amount currently interdicted and subject to be forfeited in terms of the order referred to above) must be repaid to the state by Digital Vibes and/or the individuals that are its controlling minds and/or participated in the fraudulent and unlawful scheme. This order is just and equitable, it is submitted, for the following reasons:

- 12.1. There was no procurement or contractual basis at all for the majority of the payments made to Digital Vibes;
- 12.2. Digital Vibes received these payments on the basis of fraudulent misrepresentations made in its bid documents and the procurement process was fraudulently manipulated by officials of the NDOH in order to ensure the appointment of Digital Vibes;
- 12.3. The evidence obtained thus far by the SIU, as detailed in Ms Le Roux's affidavit, shows that the NDOH received little or no value for money in respect of services provided to it. Instead, tens of millions of Rands of the monies paid to Digital Vibes by the NDOH have been paid out to companies controlled by Ms Mather and Ms Mitha and to family members

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of Ms Mather. Some R 90 million out of the total of approximately R 150 million received by Digital Vibes appears to be suspicious expenditure bearing no possible relation to *bona fide* disbursements in respect of the costs of provision of communication services to the NDOH.

- 12.4. The SIU requested Digital Vibes to provide supplier invoices and supporting documentation in respect of payments made by Digital Vibes, but to date, the SIU has not been furnished with this information or records.
- 12.5. The fact that no supplier invoices and supporting documentation could be, or was supplied by Digital Vibes, supports the inference that in these instances Digital Vibes had no need to pay any purported suppliers or purportedly "paid" suppliers in circumstances where no goods or services had been rendered to justify these payments.
13. The SIU has traced the subsequent transfers of the funds received by Digital Vibes into its bank account from the NDOH payments to various parties. The following funds directly or indirectly received by these parties from Digital Vibes constitute undue gratification or were transferred for purposes of money laundering or as the proceeds of unlawful activities and derive from the unlawful payments that Digital Vibes received from the NDOH in terms of the impugned transactions, which were made without any proof of goods, works or services (i.e. value) rendered by such parties in exchange for such funds (i.e. these parties were directly or indirectly unduly enriched to the ultimate detriment of the NDOH):

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No.	Party that received the funds	Amount received
1	Composit Trade and Investments 02 (Pty) Ltd	R 20 517 668.64
2	Strategeewhizz (Pty) Ltd	R 14 216 139.07
3	Mateta Projects (Pty) Ltd	R 10 636 575.82
4	Sotobe Media (Pty) Ltd	R 9 781 250.00
5	Mkokwana Events	R 8 983 305.00
6	WT Graphics and Designs (Pty) Ltd	R 6 255 391.15
7	Bevels communications	R 6 017 831.00
8	SP Attorneys	R 2 100 000.00
9	Signet Pharmacy	R 1 568 488.60
10	Royal Bhaca Projects	R 1 000 000.00
11	Ms Radha Hariram	R 2 508 041.20
12	Ms Naadhira Mitha	R 1 967 622.00
13	Ms Suhaila Mather	R 1 496 539.00
14	Ms Hasina Kathrada	R 1 094 546.91
15	Mr Wasim Mather	R 1 040 000.00
16	Mr Mthethwa	R 874 610.02
17	Ms Yenziwe Sokhela	R 367 726.70



18	Ms Makhosazana Mthethwa	R 31 524.00
19	Zwelini Lawrence Mkhize	R 6 720.00
20	Dedani Daluxolo Sphelele Mkhize	R 3 860 000.00 (i.e. R 160 000.00 + R 300 000.00 + R 3 400 000.00)

14. There is no justification for the retention of these amounts and it is just and equitable to hold the parties concerned liable jointly and severally with Digital Vibes and the second to fourth respondents to repay them. The applicant consequently seeks an order directing each of these parties to repay the funds unjustifiably received by them to the NDOH, any such payments to absolve the liability of the first to fourth respondents in respect of such amounts.

Parties

15. The Applicant is the **Special Investigating Unit**, a statutory body with juristic personality established by *Proclamation No. R. 118 of 2001*, as published in *Government Gazette No. 22531 on 31 July 2001* ("Proclamation No. R. 118 of 2001"), which was issued in terms of section 2 of the SIU Act. The SIU head office or principal place of business is situated at Rentmeester Building, 74 Watermeyer Street, Meyerspark, Pretoria in the Gauteng Province.
16. The SIU brings this Application in its own right and name, and on behalf of the State in terms of sections 4(1)(c) and 5(5) of the SIU Act.

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17. The First Respondent is **Digital Vibes (Pty) Ltd (Digital Vibes)**, a private, for-profit company registered in terms of the company laws of South Africa with registration number 2014/095639/07 and its registered address is situated at 7 Rajoo Street, Highridge, Stanger in the KwaZulu-Natal ("KZN") Province.
18. The SIU's investigations have revealed evidence that there has been an unconscionable abuse of the juristic personality of Digital Vibes as a separate entity in order to conceal the involvement of the second and third respondents in the transactions with:
- (a) the Municipal Infrastructure Support Agency ("**MISA**"), which is an entity of the Department of Cooperative Governance and Traditional Affairs ("**COGTA**") due to the fact that they were close associates of Minister Mkhize (the fifth respondent), who was the then Executive Authority of the COGTA, which was awarding the MISA contract; and/or
 - (b) the NDOH due to the fact that they were close associates of Minister Mkhize (the fifth respondent), who was the Executive Authority of the NDOH, which was awarding the NHI media campaign contract.

This abuse was perpetrated with the assistance of the fourth respondent, one of the registered directors of the company (Digital Vibes) who facilitated this fraud by maintaining the façade that the company was an independent entity under her control and the service provider to the COGTA and the NDOH while in fact the company was the alter ego of the second and third respondents who were in the

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main the beneficiaries of the monies paid to it by the COGTA and the NDOH. These individuals are accordingly cited in their personal capacity/ties:

- 18.1. The Second Respondent is **Tahera Ahmed Saeed Mather** ("Ms Mather"), who is an adult female person with RSA ID number 650521 0122 083, whose full and further particulars are not known to the applicant, and who is residing or is working at 14 Tarpon Cres, Blythedale, KwaDukuza in the KZN Province.
 - 18.2. The Third Respondent is **Naadhira Mitha** ("Ms Mitha"), who is an adult female person with RSA ID number 900911 0144 088, whose full and further particulars are not known to the applicant, and who is residing or working at Unit 205, the Nicol Hotel, Cnr. Nicol and Skeen Boulevard, Johannesburg, 2001 in the Gauteng Province.
 - 18.3. The Fourth Respondent is **Radha Hariram** ("Ms Hariram"), who is an adult female person with RSA ID number 600101 01 490 088, whose full and further particulars are not known to the applicant, and who resides at Lily Road, Stanger in the KZN Province. As appears from the affidavit of Ms Hariram (Exhibit 138), she is purportedly a director of Digital Vibes and the 95 per cent shareholder of the company.
19. The SIU's investigations have revealed evidence that the impugned transactions took place in circumstances constituting the commission of offences in terms of, *inter alia*, section 3 read with sections 24 and 26 of the *Prevention and Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004)* committed by, *inter alia*, the

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fifth and sixth respondents. This evidence has been referred to the National Prosecuting Authority by the SIU in terms of the sections 4(1)(d) and 4(2) of the SIU Act. Certain of the evidence is relied upon to support the grounds of review of the impugned transactions and it is accordingly necessary to provide the evidence supporting this contention. The fifth and sixth respondents accordingly have an interest in this application sufficient for them to be "interested parties" in terms of the SIU Act, and the SIU is seeking relief against them, as set out in the Notice of Motion (i.e. repayment of any and all funds that they directly or indirectly received from Digital Vibes, Ms Mather, Ms Mitha, Ms Hariram and/or from persons or entities associated with them:

- 19.1. The fifth respondent is **Zwellni Lawrence Mkhize (Member of Parliament (MP)) ("Dr Mkhize")** of 5 Sunset Avenue, Ashburton, Pietermaritzburg in the KZN Province. Dr Mkhize is a Member of Parliament and the incumbent Minister of Health, having been appointed on 20 May 2019. He was previously the Minister of Co-operative Governance and Traditional Affairs (COGTA) from 27 February 2018 to 29 May 2019. His full and further particulars are not known to the applicant.
- 19.2. The sixth respondent is **Dedani Daluxolo Sphelele Mkhize ("Dedani Mkhize")** an adult male person with RSA ID 871123 5950 080, whose full and further particulars are not known to the applicant, of Tusokuhle Farm, Table Mountain Road, 0408, Bishopstowe, Pietermaritzburg, 3200 in the KZN Province. Dedani Mkhize is the son of Dr Mkhize.



20. The SIU's investigations have further revealed evidence that the impugned transactions took place in circumstances constituting the commission of the offence of fraud and the contravention of section 86(1) of the *Public Finance Management Act 1 of 1999* ("PFMA") by the seventh respondent. This evidence has been referred to the National Prosecuting Authority by the SIU in terms of the sections 4(1)(d) and 4(2) of the SIU Act. Certain of the evidence is relied upon to support the grounds of review of the impugned transactions and it is accordingly necessary to provide the evidence supporting this contention.. The seventh respondent accordingly is an interested party in this application, and the SIU is seeking to hold the seventh respondent liable for any loss or damages suffered by the NDOH as a result of the misconduct and/or negligence of the seventh respondent:
- 20.1. The seventh respondent is **Thamizhanban (known as Anban) Pillay ("Dr Pillay")**, an adult male person with RSA ID number 6911185165083 of 5 Daniel Road, Pierre van Ryneveld, Centurion, Gauteng Province.
- 20.2. Dr Pillay is the Deputy Director-General: Health Regulation and Compliance of the NDOH and he was the acting Director-General of the NDOH during the period 1 November 2019 until 31 May 2020. His full and further particulars are not known to the applicant.
21. The eighth to fourteenth respondents were parties cited in the interdict application and the consequent order of the Tribunal under case number

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KN 3/2021 and are cited in this application by virtue of the prayer for consolidation and the prayer for the forfeiture of the funds subject to the interdict.

22. The eighth to tenth respondents are financial institutions that hold funds deriving from the impugned transactions originally paid to Digital Vibes by the NDOH and have been ordered not to permit any transactions in respect of those funds pending the resolution of this review application:

- 22.1. The eighth respondent is **First National Bank**, a division of **First Rand Bank Limited**, a public company with limited liability duly registered and incorporated in terms of the company laws of South Africa, and also a registered commercial bank in terms of the Banks Act 94 of 1990, with its head office located at Simmonds St, Johannesburg, 2001 in the Gauteng Province.
- 22.2. The ninth respondent is **Glacier Financial Solutions (Pty) Ltd**, a private company registered in terms of the company laws of South Africa and conducting business as an investment service provider offering investment and savings products to the public with its registered office at Glacier Place, 1 Sportica Crescent, Tyger Valley 7530 in the Western Cape Province.
- 22.3. The tenth respondent is **Sygnia Financial Services (Pty) Ltd**, a private company conducting business as an investment service provider offering investment and savings products to the public, with its registered office

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at 7th Floor, The Foundry Cardiff Street, Green Point Cape Town 8001;
in the Western Cape Province.

23. The eleventh to fourteenth respondents are individuals and entities that own or control the banking and investment accounts referred to above and have been ordered by the Tribunal not to deal in any manner with the funds in those accounts pending the outcome of this review application:

23.1. The eleventh respondent is **Amods Attorneys** a firm of attorneys operating under the sole proprietorship of Ahmed Rashid Amod with RSA and adult make attorney with ID number 610926 5151 087 with its main place of business at Suite 900, Nedbank House, 30 Ingcuze Street, Durban in the KZN Province.

23.2. The twelfth respondent is **WT Graphics and Designs (Pty) Ltd** ("**WT Graphics**"), a private, for-profit company registered in terms of the company laws of South Africa with registration number 2020/244804/07 and with its registered office at 14 Tarpon Crescent, Blythedale Beach, Stanger, in the KZN Province. The sole director of WT Graphics is Mr Wasim Ahmed Mather (RSA ID 920330 5419 088), who is the son of the second respondent, who is also cited herein as the Twentieth Respondent.

23.3. The thirteenth respondent is **Suhaila Mather** ("**Ms Suhalla Mather**") with RSA ID number 891110 0148 089 of 14 Tarpon Cres, Blythedale, KwaDukuza, in the KZN Province, 4449. Ms Suhaila Mather is the

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daughter of the second respondent (Ms Mather), and her full and further particulars are not known to the applicant.

- 23.4. The fourteenth respondent is **Strategeewhiz (Pty) Ltd** ("**Strategeewhiz**"), a private, for-profit company registered in terms of the company laws of South Africa with registration number 2016/348757/07 and its registered address at Suite 1710, The Franklin, 4 Pritchard Street, Johannesburg, 2001. The sole director of Strategeewhiz is Ms Mitha, the third respondent, and its full and further particulars are not known to the applicant.
- 23.5. The fifteenth respondent is **Suhaila Mather Consulting (Pty) Ltd** ("**Suhaila Mather Consulting**"), a private, for-profit, company registered in terms of the company laws of South Africa with registration number 2020/793771/07 and its registered address at 14 Tarpon Crescent, Blythedale, Kwa-Dukuza, in the KZN Province, 4450. The sole director of Suhaila Mather Consulting is Ms Suhaila Mather, the thirteenth respondent, and its full and further particulars are not known to the applicant.
24. The sixteenth respondent to the twenty ninth respondent are all persons and entities who received funds or payments or benefits that were directly or indirectly made/given to them by Digital Vibes as part of undue gratification or for purposes of money laundering or as the proceeds of unlawful activities from the unlawful payments that Digital Vibes received from the NDOH in terms of the impugned



transactions, which were made without any proof of goods, works or services (i.e. value) rendered by such parties in exchange for such funds (i.e. these parties were directly or indirectly unduly enriched to the ultimate detriment of the NDOH):


- 24.1. The sixteenth respondent is **Composit Trade and Investments 02 (Pty) Ltd**, a private, for-profit, company registered in terms of the company laws of South Africa with registration number 2012/00552507 and its registered address at 7 Achilles Street, Zwavelpoort, Pretoria.
- 24.2. The seventeenth respondent is **Bevels Communications Advertising and Digital Media (Pty) Ltd**, a private, for-profit, company registered in terms of the company laws of South Africa with registration number 2016/209284/07 and its registered address at 547 Indlonzi Street, Enseleni Township, Richards Bay, Kwa-Zulu Natal.
- 24.3. The eighteenth respondent is **Mateta Projects (Pty) Ltd**, a private, for-profit, company registered in terms of the company laws of South Africa with registration number 2015/396370/07 and its registered address at 9 Azalea street, Roodepoort, Gauteng.
- 24.4. The nineteenth respondent is **Mkokwana Events (Pty) Ltd**, a private, for-profit, company registered in terms of the company laws of South Africa with registration number 2020/788684/07 and its registered address at 547 Indlonzi street, Enseleni Township, Richards Bay, Kwa Zulu Natal.

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- 24.5. The twentieth respondent is **Wasim Ahmed Mather** with (RSA ID No. 920330 5419 088), who is an adult male person, whose full and further particulars are not known to the Applicant, who resides at Unit 908, The Franklin, 4 Pritchard Street, Johannesburg, Gauteng Province, 2001. Alternatively 14 Tarpon Cres, Blythedale, KwaDukuza, 4449, KwaZulu-Natal Province.
- 24.6. The twenty first respondent is **SP Attorneys Inc**, an incorporated Attorneys firm with Registration No. 2018 / 503206 / 21; with is registered office situated at Waterford Place, 27 Autumn St, Rivonia, Sandton, in the Gauteng Province, 2128
- 24.7. The twenty second respondent is **Shiraz Hoosen**, an adult male person, whose full and further particulars are not known by the Applicant, who is residing at 53 Seal Cres, Lenasia, Gauteng Province, 1827.
- 24.8. The twenty third respondent is **Saloojees Chemist CC** (also trading as Signet Pharmacy), a closed corporation registered in terms of the company laws of South Africa, with its registered address at 53 Seal Cres, Lenasia, Gauteng Province, 1827.
- 24.9. The twenty fourth respondent is **Hasina Kathrada**, and adult female person with RSA ID No. 691117 0205 084, whose full and further particulars are not known by the Applicant, who is residing at 53 Seal Cres, Lenasia, Gauteng Province, 1827.

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- 24.10. The twenty fifth respondent is **Yenziwe Sokhela**, and adult female person whose full and further particulars are not known by the Applicant, who is employed at unit 16, 3 Cascades Crescent, Pietermaritzburg, 3201
- 24.11. The twenty sixth respondent is **Welcome (Mdu) Mthethwa**, and adult male person with RSA ID No. 791109 5483 088, whose full and further particulars are not known by the Applicant, who is residing at 387 Stellanie Street, 10 Forest Weaver, Willow Park Manor, Pretoria, Gauteng Province.
- 24.12. The twenty seventh respondent is **Makhosazana Mthethwa**, and adult female person, whose full and further particulars are not known by the Applicant, who is residing at 387 Stellanie Street, 10 Forest Weaver, Willow Park Manor, Pretoria, Gauteng Province.
- 24.13. The twenty eight respondent is **Sotobe Media (Pty) Ltd**, a private, for-profit, company registered in terms of the company laws of South Africa with registration number 2015/173501/07 and its registered address at 7 Mellis Road, Bradenham Hall, Rivonia, Gauteng.
- 24.14. The twenty ninth respondent is **Royal Bhaca Projects (Pty) Ltd** ("Royal Bhaca"), a private, for-profit, company registered in terms of the company laws of South Africa with registration number 2018/643405/07 and its registered address at No. 3 The Links, 2 John Avenue, Bedford Park in the Gauteng Province, 2007.

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25. The thirteenth respondent is the Director General ("DG") of the National Department of Health (NDOH) for the Republic of South Africa, who is cited herein in his official capacity as the DG of the NDOH, Head of Department and Accounting Officer of the NDOH (as envisaged in the PFMA) and who represents the NDOH in these proceedings. The head office or principal place of business for the DG of the NDOH and the NDOH is situated at Civitas Building, Cnr Thabo Sehume and Struben Streets, Pretoria in the Gauteng Province. No relief is sought against the DG of the NDOH and the NDOH, other than the setting aside of the agreements or purported agreements concluded by its officials, who is being cited because of the interest the NDOH has in the subject-matter of this application. For purposes of service of all documents and notices in these proceedings, the DG of the NDOH and the NDOH appoints the Office of the State Attorney, Johannesburg, which is situated on the 12th Floor, North State Building, 95 Albertina Sisulu Road (formerly Market Street), Corner of Kruis Street, Johannesburg in the Gauteng Province
26. The Rules of the Special Tribunal do not make provision for an organ of state that is a respondent to a review application to provide a record of the decision impugned in the review. The SIU accordingly seeks an order in terms of Rule 28 of the Special Tribunal that Rule 53(1)(b) of the Uniform rules are made applicable and that the NDOH should accordingly provide the record of the impugned decisions together with such reasons for the decisions as it is required or wishes to furnish.

Commencement of the investigation and mandate of the SIU

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27. The SIU received allegations from a whistle-blower during February 2021 regarding potential irregularities in the award by the NDOH of the NHI media campaign to Digital Vibes and the subsequent extension and variation thereof to include services regarding the Covid-19 media campaign.
28. Also in February 2021 the first in a series of articles appeared in the *Daily Maverick* newspaper alleging irregularities in the procurement of the contract between Digital Vibes and the NDOH and alleging that the true beneficiaries of the contract were Tahera Mather and Naadhira Mitha despite them not being directors or shareholders of the company. Ms Mather and Ms Mitha were described as "long-time associates and alleged friends of [Minister] Mkhize" and it was imputed that this relationship led to the award of the highly lucrative contract to Digital Vibes. Later articles alleged that the Minister and his son had received benefits from Digital Vibes. A copy of an article published on 26 May 2021 which summarises the *Daily Maverick's* investigative reporting up to that date is annexed as "FA 3". Subsequent articles, published on 28 May 2021 and 16 June 2021 are annexed as "FA 4".
29. Following the publication of the first of these reports in the *Daily Maverick*, the NDOH appointed Ngubane Tax Advisory in February 2021 to conduct a forensic investigation into the appointment of Digital Vibes by the NDOH. Ngubane delivered a report on 21 May 2021 titled "Report on the Investigation into the Multimillion Rand Strategic Communication Contract for the National Department of Health (NDOH)" ("Ngubane Report") (exhibit 143).

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30. The Ngubane Report concluded that the appointment of Digital Vibes and the conclusion of the SLA had been irregular and unlawful, and that the subsequent "expansion" of the SLA to include Covid-19 communication was unauthorised, irregular and unlawful. As a consequence, the total expenditure of R 150 002 607.00 in respect of payments made to Digital Vibes was irregular and should be reported in accordance with the stipulations of the PFMA.
31. The Ngubane Report further recommended that the Director-General of the NDOH should consider obtaining legal advice on whether this irregular expenditure amount is recoverable.
32. The Ngubane Report found that Digital Vibes was paid R 2 500 000 a month as a retainer fee, which was not provided for in the SLA, which stated that "An Activity Based Cost will apply as and when services relating to NHI communication and marketing are concerned". These payments constituted fruitless and wasteful expenditure, as envisaged in the PFMA, and the NDOH initiated steps to attempt to recoup approximately R 37 million that was paid to Digital Vibes in this regard.
33. The SIU conducted an investigation into the allegations described above in accordance with its mandate:
- 33.1. The SIU was, in terms of *Proclamation 23 of 2020* published in *Government Gazette No 43546 of 23 July 2020* ("the Proclamation") directed by the President to investigate certain specified matters which

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are listed in the Schedule to the Proclamation. A copy of the Proclamation is annexed as Annexure "FA 5".

- 33.2. The matters listed in the Schedule to the Proclamation relate, broadly speaking, to irregularities and/or corruption in contracting or procurement of goods and services by or on behalf of State institutions (which will include the NDOH) during or in respect of the state of national disaster (brought about by the Covid-19 pandemic), as well as payments made as a result thereof, and to recover losses incurred in relation thereto.
- 33.3. The SIU is required to investigate any such activities *"which took place between 1 January 2020 and the date of publication of this Proclamation or which took place prior to 1 January 2020 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the or the State institutions or the State, in relation to the said matters in the Schedule"*.
- 33.4. Furthermore, the SIU was authorised to institute civil proceedings as are necessary emanating from its investigations.
- 33.5. The SIU's investigations revealed that the impugned transactions entailed the unlawful and irregular appointment of Digital Vibes to perform

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communications work relating to the NHI in 2019. The irregular NHI contract between Digital Vibes and the NDOH was then unlawfully extended by Dr Pillay and the NDOH officials, acting in concert with Ms Mather, in March 2020 to encompass communication services in relation to the Covid-19 emergency. The NDOH did not follow any other procurement or competitive bidding process in respect of the Covid-19 appointment, and relied upon the irregular and unlawful procurement process underpinning the NHI contract. No SLA or contract was concluded in respect of the Covid-19 appointment and it was merely deemed to be an extension to the NHI contract. Furthermore, the NDOH utilised the budget allocated for the NHI contract and NHI media campaign to pay for the purported Covid-19 media campaign work allegedly performed by Digital Vibes.

- 33.6. The procurement and conclusion of the NHI contract in 2019 is thus relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule to the Proclamation (i.e. the Covid-19 appointment) and involve the same persons, entities or contracts investigated under authority of the Proclamation.
34. The SIU has completed its investigation of all matters, excluding:
- 34.1. ongoing processes to attempt to trace further assets for preservation purposes; and

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- 34.2. SIU support for civil proceedings and referrals made in terms of the SIU Act.

CHRONOLOGY AND GROUNDS OF REVIEW OF THE IMPUGNED TRANSACTIONS

Digital Vibes' contract with Municipal Infrastructure Support Agent ("MISA")

35. During the course of its investigation, the SIU ascertained that Digital Vibes signed an Agreement with the MISA on 14 August 2018 for an amount of R 3 947 000 (exhibit 1). MISA is an agency of the Department of COGTA.
36. The MISA Contract was signed by Ms Hariram (the purported owner of Digital Vibes).
37. Minister Mkhize was the Minister of COGTA and Ms Mather was the Minister's private spokesperson during this period while Ms Mitha was a personal assistant to the Minister:
- 37.1. Mr Michael Bongumusa Zondi ("Mr Zondi") (COGTA: Head of Communications/former spokesperson for the Minister) gave the following evidence (exhibit 3) regarding the presence of Ms Mather and Ms Mitha at COGTA:

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As soon as I took up my post I noticed that the Minister already had a spokesperson working with him. This person was known as Thaheera Mather. I was informed by fellow colleagues that this person was contracted to do social media services at MISA, a subsidiary of COGTA. I found it strange as I was employed to be the Minister's spokesperson and Thaheera was contracted to do work at MISA, but was however acting as the Minister's spokesperson. I am not aware of which company Thaheera is associated with. I already, from the onset found myself in a very conflicted situation, but nonetheless performed my duties for which I was employed to do.

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My immediate boss, who worked closely with the Minister, was Lakela Kaunda and on my assumption of duty, she gave me of the way things work around here in the Minister's office. I also noticed that a female by the name of Nadheera Mitha was employed as the Minister's PA. The Minister's secretary was an individual by the name of Georgina.

38. According to Ms Hariram's evidence (affidavit of 3 June 2021, exhibit 138):
- 38.1. Ms Hariram is a former bank employee who worked as the manager of Dawnside Petrol Service Station in Stanger. She has no experience or qualifications in the field of communication.
 - 38.2. On the advice of Ms Mather she registered a company, Digital Vibes, in 2014.
 - 38.3. Digital Vibes did not participate in any tender during the period 2014 (from date of registration) up to 2017. It was loaded onto the Central Supplier Database ("CSD") some time prior to 2018.

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38.4. Ms Hariram states the following as regards the COGTA/MISA contract:

- 12.1. In 2018, Ms. Mather phoned me and informed me that she has work for us.
- 12.2. Ms. Mather met with me. She informed me that it is not a big contract.
- 12.3. Ms. Mather had a team of people who could assist her with this contract.
- 12.4. I did not see the MISA tender proposal and I did not see the final bid documents submitted by Digital Vibes to MISA.
- 12.5. The tender invitation was emailed to my private email address that was loaded on the CSD system.
- 12.6. I gave my background and experience, etc., company registration number, SARS tax clearance, BEE documents, etc.
- 12.7. The Digital Vibes tender proposal was submitted by Tahera. I assume Tahera delivered the documents.
- 12.8. Ms. Mather and Ms. Naadhira Mitha's details were not part of the Digital Vibes MISA tender proposal.
- 12.9. I did not know who was the team for the tender.
- 12.10. I received the email with the letter of award.
- 12.11. Ms. Mather said "We would be able to get it".
- 12.12. She phoned me and informed me that Digital Vibes won the contract.
- 12.13. Ms. Mather did not keep me updated with the performance of the contract.
- 12.14. I never flew up to Pretoria to meet MISA. I do not even know what was required of the MISA contract.

39. It is significant that, as set out below, the same modus operandi whereby Digital Vibes under the ostensible directorship of Ms Hariram was used to obscure the

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central role of Ms Mather in the tender and in the performance of the contract was also followed in respect of the impugned transactions with the NDOH in 2019/20.

Ms Mather's role at the NDOH

40. Following the appointment of Minister Mkhize as Minister of Health, Ms Mather and Ms Mitha followed him to his new ministry, the latter as an employee of the Department.

41. According to the evidence of Ms MP Matsoso ("**Ms Matsoso**") (the then Director-General of NDOH) (**exhibit 139**):

41.1. On 30 May 2019 she received an invitation to attend the swearing-in of the Minister.

41.2. At the swearing-in event of the Minister, the Chief of Staff of the Minister introduced Ms Mitha as the Minister's Personal Assistant, and Ms Mather as the Minister's Strategic Communications Advisor, to Ms Matsoso.

41.3. Documents provided by Ms Matsoso show Ms Mitha to be listed in the Ministry staff as an Assistant Private Secretary to the Minister.

41.4. On 2 June 2019, Ms Mather sent a message to Ms Matsoso "*ZM wants to do something around child protection week. Hope to get more info so I can put together a comms plan*".

41.5. On 21 June 2019, Ms Mather again sent a message to Ms Matsoso in which Ms Mather requested Ms Matsoso's assistance in respect of the

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Health Portfolio Communication, and Ms Mather further stated that *"Let's keep between us"*.

- 41.6. According to Ms Matsoso *"Minister assigned me with responsibility to prepare a contract for Dr Nicolas Crisp who would work on the establishment of NHI Fund Implementation Office and development of a plan. Minister also tasked me to sort out the contractual arrangements of NHI communication which would be handled by Ms Mather. Minister indicated that Ms Mather would work with Dr Anban Pillay."*
42. On 4 July 2019, Digital Vibes submitted a Proposal relating to a proposed consulting rate of R 800 per hour, clearly in respect of the exclusive use of Ms Mather to work on the NHI media campaign (exhibit 4)..
43. On 5 July 2019, Ms Mather and Mr Joseph Thembe Popo Maja ("Mr Maja") (the Head of Communications of the NDOH) attended an NHI Communication Meeting, which was also attended by representatives of the Government Communication Information System ("GCIS") and the Presidency (exhibit 152).
44. This chronology clearly indicates that, notwithstanding the fact that the NDOH only attempted to officially appoint Ms Mather on 12 July 2019, Ms Mather was from 30 May 2019, *de facto* already doing work for the NDOH and conveying instructions from the Minister to the DG of the NDOH as to proposed communication interventions for and on behalf of the NDOH.

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45. According to Ms Matsoso, she was instructed by the Minister to "sort out the contractual arrangements" for NHI communication to be handled by Ms Mather.

10.

Minister assigned me with responsibility to prepare a contract for Dr Nicolas Crisp who would work on the establishment of NHI Fund Implementation Office and development of a plan. Minister also tasked me to sort out the contractual arrangements of NHI communication which would be handled by Ms Mather. Minister indicated that Ms Mather would work with Dr Anban Pillay. Annexure MP4

46. Ms Matsoso's evidence further confirms that, long prior to the actual appointment of Digital Vibes, Ms Mather was already working with Dr Pillay and the Minister on NHI matters as the following WhatsApp message received by her from Dr Pillay shows:

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The NDOH attempts to appoint Digital Vibes

47. As is detailed in Ms Le Roux's affidavit, the NDOH made numerous irregular attempts during the period July to November 2019 first to appoint Ms Mather directly and thereafter Digital Vibes (and thereby, indirectly, Ms Mather) to provide services in respect of the NDOH media campaign for NHI, culminating in the signing of an SLA with Digital Vibes on 29 November 2019.
48. According to the evidence of the whistle-blower (who is known to the SIU, but who requested the SIU to keep his/her identity confidential, in as far as possible) ("the whistle-blower") (exhibit 6), pressure was placed upon the SCM Department and the Director-General to ensure the appointment of Ms Mather and thereafter, when this was considered to be impermissible in terms of the SCM processes and policies, to appoint Digital Vibes. In particular:
- 48.1. For the communication strategy, the whistle-blower was requested not to appoint any service provider but was provided the name of an individual, namely Ms. Tahera Mather. This name was provided *via* an email from Dr Pillay and Ms Matsoso.
- 48.2. According to the whistle-blower this attempt was not successful, because the SCM Division of the NDOH informed them that an individual could not be appointed for the required communication campaign, and that a service provider had to be appointed by means of a compliant SCM process.

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48.3. Thereafter, according to the whistle-blower Dr. Pillay then provided the name of a company called Digital Vibes to the SCM.

48.4. According to the whistle-blower, *"It was expected that this company must be appointed"*.

48.5. On 15 July 2019, the Minister of Health sent the following WhatsApp message to the Director-General (Ms. MP Matsoso). Ms. Matsoso then forwarded the WhatsApp message to Dr. Pillay, who forwarded it to the whistle-blower:

"Hi DG

Kindly sort out contractual arrangement

Please ask for preliminary NHI implementation plan and draft communication plan by Friday from each individual as discussed"

48.6. The whistle-blower stated the following:

"Digital Vibes was then identified as a proposed service provider and Taheera remained as a consultant to work with Digital Vibes".

49. Ms Matsoso's affidavit confirms receipt of this WhatsApp from the Minister and also that she had been instructed to "sort out the contractual arrangements" to ensure the appointment of Ms Mather.

50. It is noteworthy that the Minister at that stage already referred to "contractual arrangements" regarding the "preliminary NHI implementation plan and draft communication plan by Friday from each individual", notwithstanding the fact that no procurement processes in this regard had been initiated by the NDOH. The



Minister was therefore at that stage already aware of the potential involvement of Ms Mather in the NHI media campaign and it is probable that the “contractual arrangements” referred to by the Minister was relevant to Ms Mather.

51. It is apparent from the contents of the WhatsApp message that the Minister was giving instructions to the DG. At best, this conduct on the part of the Minister was improper and at worst, the conduct of the Minister was unlawful (as implied in paragraphs 27 and 41 of the written statement dated 21 June 2021 that was provided by the Minister to the SIU (exhibit 6), as it constituted an interference by the Executive Authority in the affairs of the administrative authority of the NDOH.

52. Ms Le Roux’s affidavit demonstrates that these allegations are borne out by the evidence that has been obtained by the SIU. In particular:

52.1. The documents obtained by the SIU established that the NDOH did attempt to appoint a “communication strategist” for the NDOH as a communication expert at a rate of R 800 per hour, a proposed appointment that, considering the circumstances, must have been drafted and earmarked for Ms Mather (exhibit 4). Then, when this was considered to be impermissible due to constraints on the appointment of consultants, adjusted in the document sent to Treasury dated 12 July 2019 to request the direct appointment of Digital Vibes as the consultant.

52.2. Thus the document at exhibit 4 reads:

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"Deviation from Normal Procurement Processes: NHI Bill Communication Strategy

"8. The National Department of Health will be required to prepare this plan within a very short time frame and hence the Minister will require a person with the appropriate skills to immediately start working on this matter.

16. Hourly rate of R 800 excluding Disbursements, on a contract term of 12 months"

(emphasis added)

52.3. The deviation request was compiled by Dr. Pillay (at the top of the document, the following is reflected *"Enquiries: Dr. A. Pillay"*).

52.4. This deviation request was signed as proof of recommendation by Dr T Pillay (Deputy Director-General), Ms. Dikeledi Tshabalala (Chief Director/Cluster Manager: Supply Chain and Asset Management) and Mr. Ian van der Merwe (CFO). The deviation request was approved by Ms. Matsoso (former Director-General).

52.5. On 12 July 2019 the same day, Ms. Matsoso sent a letter to Ms. Basani Duiker of National Treasury, headed as follows **(Exhibit 5)**:

"Requesting Approval for Deviation from Normal Bidding Process in Accordance with Section 8.5 of National Treasury SCM Instruction Note 3 of 2016/17 - Digital Vibes".

53. It is thus clear that the Minister and Dr Pillay were aware of the connection between Digital Vibes and Ms Mather and that the proposed appointment of

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Digital Vibes was intended to be a mechanism to obtain the appointment via SCM processes of Ms Mather, which had been requested by the Minister.

54. As is detailed in Ms le Roux's affidavit, the request to appoint Digital Vibes was then further developed as set out in the letter to Treasury of 26 July 2019 (exhibit 7), requesting approval for *"Deviation from Normal Bidding Process in Accordance with Section 8.5 of NT SCM Instruction note 3 of 2016/2017 - Digital Vibes (Pty) Ltd for R 133 million"*.
55. The original request for deviation stated that Digital Vibes was to be appointed for a period not exceeding 12 months at an hourly rate of R 800.00 excluding disbursement. Treasury then requested the estimated cost for twelve months, whereupon the NDOH provided an implementation plan showing an estimated amount of R 133 000 000. The Implementation Plan did not show how the individual services were costed in terms of time to be spend per activity, rate per hour, cost per individual activity. There appeared to be no supporting documentation indicating that the original rate of R 800 per hour was used as one of the variables in arriving at the estimated cost of R 133 000 000 and the amount shows a remarkable degree of inflation compared to the original request.
56. The request was not supported by Treasury (exhibit 8) because, inter alia, it was *"not clear how Digital Vibes (Pty) Ltd was selected, and there is no evidence that it is the only Communication service provider with the required experience and capacity"*.



The NHI Request for Proposals (“RFP”) process

57. Following a meeting with Treasury (in which the NDOH was represented by Dr Pillay and Ms Tshabalala) the impasse was resolved by agreeing that the NDOH would follow a shortened-period tender process involving 10 service providers operating within the fields of public relations and professional communication services.
58. As is detailed in Ms Le Roux’s affidavit, this process, which the NDOH plainly followed only because of Treasury’s opposition to its original plan simply to appoint Digital Vibes without any tender process, was not conducted in good faith. Instead, Departmental officials deliberately set about ensuring that, notwithstanding the pretence of a (limited) competitive process, Digital Vibes would be appointed as the NDOH had in fact already resolved to do. This is set out in detail in Ms le Roux’s affidavit.
59. I draw particular attention to the following:
- 59.1. Dr Pillay was a member of the BSC and the BEC in circumstances where, given that he was previously directly involved in the attempts to appoint Digital Vibes, he should not have participated in the tender process at all or at the very least declared his interest in seeing Digital Vibes appointed as the service provider for NHI.
- 59.2. There is evidence that Ms Mather was made aware that the RFP would be issued prior to its publication to the closed list of ten suppliers on 23

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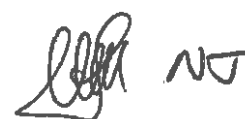
September 2019, and that perhaps she was made aware of the content of the RFP prior to its publication. According to Ms Hariram's affidavit:

14.

- 14.1. In 2019, I was still working for the Dawnside petrol service station in Stanger.
- 14.2. Ms. Mather contacted me during 2019 and stated that we need to build-up a profile for a contract.
- 14.3. Ms. Mather introduced me to Mr. Reuben Naidoo ("Mr. Naidoo").
- 14.4. I never met him personally.
- 14.5. Ms. Mather knew Mr. Naidoo from Stanger.
- 14.6. The above, happened prior to Digital Vibes being invited for the NHI tender.

- 14.7. I do not know how Ms. Mather knew about this proposal that would come up.
- 14.8. Mr. Naidoo was then appointed in August 2019 as a director of Digital Vibes because of his extensive experience in communication.
- 14.9. Ms. Mather said that Digital Vibes should appoint Mr. Naidoo as a director. I am usually easily influenced by Ms. Mather.
- 14.10. 5% shareholding is currently held by Ms. Nabeela Khan ("Ms. Khan").
- 14.11. 10% shareholding was previously held by Mr. Naidoo. Ms. Mather said that Mr. Naidoo had to "step down" from the NHI contract as a result of conflict of interest with another contract.
- 14.12. I submitted Mr. Naidoo's detail to my friend who is an auditor (Ms. Ishana Pundit) to assist me with listing him as a director.

59.3. Mr Reuben Naidoo was appointed as a director of Digital Vibes on 29 August 2019, i.e. prior to the publication of the RFP. He is represented


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at several places in Digital Vibes' bid document (exhibit 20) as the "Team Leader" of Digital Vibes for purposes of the NHI bid:

4. PERSON AND POSITION	HOURLY RATE	DAILY RATE
REUBEN MAIDOO	R N/A	
	R	
	R	
	R	
	R	

5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE

Owing to the varying opinions and political sensitivity around implementation of NHI, strong and available PR machinery should be at the beck and call of NHI. At Digital Vibes, we have a team with critical strengths in PR. Team leader, Robbie Maidoo has operated in this environment for over 25 years with one of the strongest track records countrywide. He has previously worked on crisis communications for key media players including Tourism KwaZulu-Natal, where he was commended the National Tourism Safety Task Team for his handling of the murder of a German tourist on the Durban beachfront. He has also operated as a media officer internationally from high profile international events including Wimbledon and the Olympic Games. He has a powerful and experienced team alongside him.

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59.4. There is no evidence that any of the persons listed as the key experienced members of the NHI team of Digital Vibes in the bid documents and whose CVs were provided (i.e., Vinny Sivbadhan,

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Mildred Ramasela and Charles Hale) did any work at all for the company or had any connection to it. There is no trace of any payment made by Digital Vibes to these individuals for their services and the inference can reasonably be drawn that no such services were rendered.

- 59.5. The list of names given above thus describes a fictional "team" and creates the false impression that Digital Vibes was capable of and intended to call on the services of the highly experienced and skilled individuals that were named. This was necessary to comply with the requirements of the RFP (exhibit 14 and exhibit 20).

Skills Matrix (Team Leader) The Team Leader should demonstrate that he/she is capable of driving and leading a campaign of this nature and must have least 10-15 years' experience in the communications field. Resume must consist of three successful campaigns in public and private sector of the magnitude of current tender.	20 %	Excellent = 5 >15 years = 5 13-15 years=4 10-13 years=3 <10 year = 1
Past Work Samples Each specialist on the team must demonstrate their unique capability and provide at least two samples of their past work. Submit names and credentials of other team members in the fields of Public Relations, Media buying, digital and Creative fields.	20 %	No information = 0 Poor = 1 Below average = 2 Average = 3 Good = 4 Excellent = 5
Implementation Methodology	20 %	No information = 0

- 59.6. The list is a fraudulent misrepresentation. The list moreover omits the names of Ms Mather and Ms Mitha, who were in fact the real "team" members.
- 59.7. Ms Hasina Kathrada, listed on the "team" as an assistant is the younger sister of Ms Mather. According to the evidence of Ms Hariram she did

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work for Digital Vibes on the NDOH projects and the Digital Vibes bank account shows payments to her of R 1 094 547.

59.8. The RFP's requirements for the "Team Leader" were as follows:

<p>Skills Matrix (Team Leader)</p> <p>The Team Leader should demonstrate that he/she is capable of driving and leading a campaign of this nature and must have least 10-15 years' experience in the communications field. Resume must consist of three successful campaigns in public and private sector of the magnitude of current tender.</p>	<p>20 %</p>	<p>EXPERIENCE - Y</p> <p>>15 years = 5 13-15 years=4 10-13 years=3 <10 year = 1</p>
<p>Past Work Samples</p>	<p>20 %</p>	<p>No information = 0</p>

59.9. Mr Reuben Naidoo's own account of the circumstances leading up to his appointment is as follows (exhibit 142):

4.2. I will now explain the events with reference to my involvement in the company Digital Vibes and with Ms Tahera Mather:

- 4.2.1. Ms Tahera Mather hails from my hometown Stanger in KwaZulu-Natal and we have known each other for over 20 years.
- 4.2.2. During 2019, I was approached telephonically by Ms Mather informing me that there may be business opportunities in government and enquired if I would be interested in serving as a director in a company that would be pitching for work
- 4.2.3 Ms Mather contacted me telephonically a few months later and said that a tender had been advertised by the National Department of Health for the marketing and awareness of the National Health Insurance (NHI) Bill Ms Mather said that my expertise would be used in a "media purchasing" capacity

- 4.2.4 I forwarded my details and required records to Ms Mather. This included my identity document and Curriculum Vitae. Later, the date I cannot recall, I was informed that I was now a Director of Digital Vibes and that I had a 10% profit share in the company. I did not have to buy any shares from Digital Vibes and was given the 10% at no cost to me
- 4.2.5. I met Ms Mather subsequently in Durban in around September 2019 and introduced her to the advertising agency, Vargis. I provided Ms Mather with my details and additional information required for the NHI tender.
- 4.2.6 In November 2019, I was informed telephonically by Ms Mather that Digital Vibes had won the tender for the NHI.
- 4.2.7. In November 2019, Ms Mather contacted me and requested my media company, Rolaguard (Pty) Ltd to submit a complete National Media Plan for the NHI project.
- 4.2.8. After about two weeks, I submitted the Media Plan to Ms Mather via email. A copy of the plan is hereto attached as Annexure RN1
- 4.2.9 At the same time I also submitted to Ms Mather a National Media Implementation Plan and a Budget plan for the NHI project. A copy of the Implementation and Budget Plan is hereto attached as Annexure RN2-2.1
- 59.10. It is plain from the date of Mr Naidoo's appointment (29 August 2019; exhibit 9) as a director that this step, obviously considered necessary by Ms Mather to boost the non-existent credentials of Digital Vibes and to comply with the requirements of the RFP regarding the skillset and experience of the "Team Leader", took place before publication of the RFP on 23 September 2019.
- 59.11. Moreover, the documents prepared by Mr Naidoo at the request of Ms Mather were then included in the NDOH file of documents forming the SCM records of the appointment of Digital Vibes and provided to the SIU. According to Mr Naidoo's evidence these documents were only prepared

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in November 2019, i.e. after the submission (on 15 and then 30 October 2019) of the bid documents. This is corroborated by the date on the copy of the document provided by Mr Naidoo as an annexure to his affidavit as follows:

DATE: 2019/11/08

Rev no #3

Revised: 2019/11/08

Gross Cost

Revis

- 59.12. The identical document with the same "Rev no" and date is included in the Digital Vibes bid, forming part of the SCM records, at Exhibit 20.

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**Budget Summary - Launch
Phase 4 months**

DATE: 2019/11/08

Rev no #3

		Gross Cost
Radio	East Coast	R 94 095,00
	947	R 145 418,00
	702	R 94 503,00
	Jararanda	R 140 760,00
	Kfm	R 126 735,00
	Algoa	R 42 313,00
	Ofm	R 39 270,00
	RSG	R 231 540,00
	Lotus	R 64 260,00
	TV campaign spots	R 7 100 800,00
	Sub Total	R 8 079 694,00
Radio	Ukhozi	R 2 079 616,00
	Umkhobo Wenene	R 1 337 054,40
	Lesedi	R 1 391 702,40
	Motsweding	R 1 009 166,40
	Thobela	R 954 518,40
	Mpumalanga	R 1 256 640,00
	Ikwekwezi	R 306 768,00
	Ugwafawala	R 365 904,00
	Munghana Lonene	R 277 200,00
	Phalaphala	R 306 768,00
	Reserve for rate incr	R 430 000,00
	AFSTEREO	R 210 000,00
	Sub Total	R 9 925 337,60
Electronic Total		R 18 005 031,60

Revised: 2019/11/08

Revisions
#1 - planning
#2 - revised budget allocation
#3 - revised to new rollout

Budget allocation :		
Year 1		% Total
Radio	R 30 000 000	56,60
TV	R 14 000 000	26,42
Print	R 2 000 000	3,77
OCH	R 7 000 000	13,21
Production	R 0	0,00
PR	R 0	0,00
Digital	R 0	0,00
	R 53 000 000	
Launch - 4 months		
Radio	R 10 904 232	
TV	R 7 100 800	
Print	R 1 000 000	
OCH	R 3 000 000	
Production	R 0	
PR	R 0	
Digital	R 0	
	R 22 005 032	41,52

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59.13. This can only be explained if Digital Vibes was permitted by the NDOH to correct or add to its bid documents after they were submitted. This further supports the SIU's submission that the entire RFP process was, with the active support of SCM officials in the NDOH, fraudulent.

59.14. Ms le Roux's affidavit analyses the list of ten companies invited to respond to the RFP according to the Departmental Bid Adjudication Committee ("DBAC") report (Item 23).

- 1.1.2 NDOH 24/2019-2020 was invited as a closed bid on the 23 September 2019 with a closing date set at 14 October 2019. Ten (10) service providers were invited, which were as follows;
- Media Mix 360
 - Creative Spark
 - Brandswell
 - Preference-MC
 - Tengeza
 - Backhousia
 - Change Agilty
 - Digital Vibes
 - Kallnjani
 - Humaurtumsa
- 1.1.3 Upon closure on the 14 October 2019 at 11:00, only 2 bidders submitted their bid responses. During

59.15. This list was shown by the Ngubane Report to consist for the most part of companies not carrying on business in the field of communications. This conclusion has been verified by the SIU. (Paragraph 10.67, exhibit 143)

59.16. The list was plainly carefully curated by the SCM officials to ensure that Digital Vibes would face minimum competition in the tender process. Digital Vibes itself should not in fact have been selected as it was registered on the CSD for telecommunications related services.

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59.17. The list in the DBAC report (exhibit 23) represents that "Ten (10) service providers were invited", which was the requirement of National Treasury as agreed with the NDOH. In fact "Humaurtumsa" is a reference to humautrumsa@gmail.com which is the email address of Mr Hariram and thus of Digital Vibes. "Kalinjani" similarly is not a company or service provider but an email address, kalinjani@gmail.com. Thus ten companies were not in fact invited to bid.

59.18. The companies identified were most part entirely unqualified to participate. The SIU established that:

59.18.1. Change Agility provides the following services: Change management consulting and advisory, inspired learning, transformative workshops.

59.18.2. Kadese PR and Marketing are a marketing agency specialising in events management, strategic marketing and project management.

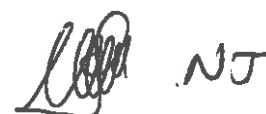
59.18.3. Backhousia Consulting Services went into voluntary liquidation on 6 November 2019 was a registered Recruitment Services provider. The email reception@backhousia.co.za was a registered email address but around 2017/19 they downscaled operations and cut most of the emails they were no longer using to save and this email was thus discontinued during this period.

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They accordingly informed the SIU that they never received or responded to the bid in question.

59.18.4. Gayoyo Communications provides public relations services which include below the line marketing, media buying, advertising, design, printing and brand strategy but they informed the SIU that they did not receive the request to submit a bid, nor did they receive the request to re-submit their bid, from NDOH.

59.18.5. Preference MB Consultants (Pty) Ltd is registered on the CSD as providing the following: Computer Equipment and Accessories; Office supplies; Paper products; Software; Printing and publishing equipment; Accommodation furniture; Commercial and industrial furniture; Classroom and instructional and institutional furniture and fixtures; Human resources services; Marketing and distribution; Business administration services; Vocational training; Specialized educational services; Merchandising furniture and accessories; Public relations and professional communications services. The company director told the SIU that they are a skills development consulting company of which they provide training via workshops and seminars. They might have received the email but they probably deleted them because they might have considered them to be spam.

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- 59.18.6. Media.Mix 360 is registered on CSD to provide: Management and Business Professionals and Administrative Services; Marketing analysis, Marketing Plans and Sales marketing agencies. The Director of company was contacted and told the SIU that he checked his emails and he could not find any emails from Department of Health. He normally receive a lot of RFP/RFQ's daily which they ignore because of scams. They only submit or apply for tenders advertised in national papers or reputable portals like tendersonline.co.za
- 59.18.7. Creative Spark Interactive (Pty) Ltd is registered on CSD to provide Editorial and Design and Graphic and Fine Art Services; Advertising campaign services, Advertising production services, Internet advertising, Internet placement, Computer generated design services and Copywriting; Web page creation and editing software and Web platform development software.
- 59.19. In the event, only one other bidder, Brandswell (Pty) Ltd ("Brandswell") submitted a bid.
- 59.20. It then appears from the evidence summarised by Ms le Roux, that the bids were opened whereupon the NDOH officials realised that, owing to them not providing a functionality threshold in the RFP, they would be compelled to award the bid to Brandswell, which had a far lower price

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than Digital Vibes. Brandswell quoted a price of R 69 046 000. Digital Vibes quoted R 141 783 500, being R 72 737 500 (i.e. approximately 105 %) more than Brandswell.

- 59.21. A second RFP was then issued by the NDOH providing a minimum threshold for functionality of 60 %.
- 59.22. Ms le Roux's affidavit analyses the patently incorrect and unjustifiable scoring applied to Brandswell's bid, which arrived at the result that it scored 59.2% enabling the NDOH officials conveniently to disqualify it from proceeding to the next stage and allowing its lower bid price to be disregarded in the assessment. Digital Vibes was given a perfect score by the Technical Evaluation Committee ("TEC"), notwithstanding that the bid documents clearly showed that its experience was confined to a single contract with the MISA in 2018.
- 59.23. The reference letters submitted by Brandswell clearly indicated that Brandswell itself (and not its staff or consultants) was a long-standing and reputable communication solution service provider and had in excess of 5 years relevant previous experience.
- 59.24. The members of the TEC should thus have awarded Brandswell the full 5 points for having showed that it had in excess of five years relevant previous experience, which would have ensured that Brandswell surpassed the 60 % minimum threshold set for functionality and



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proceeded to the price evaluation stage with the result that it would have been entitled to be awarded the contract.

- 59.25. The SIU has further ascertained that the scoring as recorded on the TEC's report for one of the members of the TEC, Ms Senzi Ngubane, differed from her individual Functionality Evaluation Sheet.
- 59.26. According to Ms Ngubane's individual Functionality Evaluation Sheet, she scored Brandswell a "3" for "*Implementation methodology*". However, this score was changed to a "2" on the TEC report when the scores for all the TEC members were consolidated into one table in order to quantify the overall score for the bidder (exhibits 21 and 22).
- 59.27. The correct overall score for Brandswell based on the individual evaluations was 60 % based on a score of "3" for the "*Implementation methodology*". However, since the score was changed to a "2", the overall score was 59.2 %, as per the TEC report.
- 59.28. Hence, even if only the TEC's scoring of Brandswell is taken into consideration (even with the existing under-scoring as explained in the paragraphs above), Brandswell in any event scored 60 % and qualified in terms of the functionality evaluation criteria.
- 59.29. Therefore, Brandswell was again in this manner irregularly and incorrectly disqualified from the NHI tender evaluation process.

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- 59.30. Ms. le Roux's affidavit further details the numerous discrepancies between the SLA signed with Digital Vibes and the tender award itself.
- 59.31. Although the bid proposal of Digital Vibes was for a total of R 141 million, as per their Pricing Schedule, the SLA, without any discernible basis, stipulated that a total amount of R 2.5 million should be paid for the services listed per Annexure B to the SLA.
- 59.32. The SLA (and Annexure B) does not stipulate whether this amount should be paid monthly, or if it was a once-off amount.
- 59.33. Furthermore, the SLA stated that "An Activity Based Cost will apply as and when services relating to NHI communication and marketing are concerned".
- 59.34. However, from the Digital Vibes invoices, the SIU confirmed that Digital Vibes invoiced the NDOH the R 2.5 million per month as a type of "retainer fee", which invoices were accepted and paid by the NDOH. Since a retainer type fee is normally based on the billable hours spent by, or provided for the staff and consultants working on the project, it was clearly not based on "*An Activity Based Cost*" as envisaged in the SLA. As such, the invoicing was not in line with the SLA.
- 59.35. The SLA is in any event invalid as it was signed by an official, Ms Pardesi, who was not authorised to do so.

Grounds of review of the appointment of Digital Vibes and the NHI contract

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60. For the reasons given above and in Ms le Roux's affidavit, the appointment of Digital Vibes as a communication services provider for NHI and the consequent conclusion of the SLA are unlawful and unconstitutional.
61. The procurement process was not fair, equitable, transparent, competitive and/or cost-effective, as prescribed by section 217(1) of the Constitution and section 38(1)(a)(iii) of the PFMA. It was instead a sham, designed and conducted to reach the predetermined result that Digital Vibes would be appointed.
62. The appointment and contract were moreover obtained in circumstances where Digital Vibes fraudulently misrepresented the role of Mr Naidoo as "team leader" and the role of other supposed members of the team to work that would work on the NHI project at the same time as fraudulently concealing the role of the true members of the "team", namely Ms Mather and Ms Mitha.
63. It follows that the appointment and NHI contract fall to be declared invalid and set aside.
64. A total of R 25 022 534.00 was paid to Digital Vibes by the NDOH during the period of 29 January 2020 to 13 March 2020 in respect of the NHI contract and in respect of services related to the NHI. As a consequence of the declaration of invalidity of the NHI contract there is no lawful basis for the payment of these amounts to Digital Vibes and for their retention and they fall to be repaid. I deal with this further below.

Digital Vibes then provides Covid-19 related communication

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65. As is detailed in Ms le Roux's affidavit, in March 2020 the NDOH, without following any procurement process at all and without any contractual basis for doing so, shifted the role of Digital Vibes from providing NHI communication to providing communication in respect of Covid-19, where after Digital Vibes invoiced the NDOH for and was paid some R 125 million over the course of a single year for Covid-19 communication services.
66. The sole authorisation for this was the exchange of emails on Friday, 6 March 2020 between Dr Pillay (then the Acting Director-General) and Ms Mather (exhibits 46-49).
67. Ms Mather responded to the request on behalf of Digital Vibes with a quotation of R 35 906 450. As Ms le Roux's affidavit details, the quotation provided by Digital Vibes was not aligned to the items that were requested by Dr Pillay in his email yet on the same day (i.e. 6 March 2020), Dr Pillay responded and confirmed as follows: *"Your proposal is approved. Please advise on the expected payment schedule for this plan and the timelines for implementation"*.
68. On 30 March 2021, Dr Pillay sent an e-mail from his private Yahoo e-mail address (pillayanban@yahoo.com.au) to Ms Mather stating the following:
- "Since the outbreak of COVID-19, there has been no need to continue with the NHI communications as outlined in our [sic].*
- You were requested to direct communication strategies to the COVID 19 response based on requests from the NDOH."*
69. The NDOH did not issue any request to bid or enter into a separate SLA or written Addendum to any SLA regarding the services to be rendered for the Covid-19

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media campaign. It did not compile proper specifications and test the market, either through a process of limited bidding, obtaining quotations or an open tender process. The NDOH further failed to conduct any evaluation and adjudication processes prior to the award of the Covid-19 media campaign contract to Digital Vibes. As is detailed in Ms le Roux's affidavit, there was no work plan or clear set of instructions from the NDOH to Digital Vibes as to the work that it wished Digital Vibes to execute.

70. The appointment of Digital Vibes or conversion or expansion of the appointment of Digital Vibes for this purpose was thus seemingly based on an arbitrary decision by Dr Pillay, a decision made even before Digital Vibes had submitted its quotation.
71. Furthermore, the NDOH utilised the approved budget that had been allocated for the NHI media campaign, to pay for the purported Covid-19 media campaign work performed by Digital Vibes.
72. It is indisputable that no proper procurement process was followed by the NDOH in appointing Digital Vibes in respect of the Covid-19 media campaign.
73. Nor can the appointment be justified in terms of the applicable legislation governing deviations from normal procurement processes. As Ms le Roux concludes, the NDOH did not comply with the prescripts of:

73.1. *National Treasury Practice Note No. 8 of 2007/2008 dated 29 November 2007;*

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- 73.2. Regulation 16A6.2(a), (b) and (e) of the Treasury Regulations;
- 73.3. Regulation 16A6.3(b) of the Treasury Regulations;
- 73.4. At the time of the events (6 March 2020), the National State of Disaster had not yet been declared. As such, State institutions were obliged to follow an open tender process to procure their required goods or services. The NDOH could thus only have deviated from following an open tender process by utilising the provisions of regulation 16A6.4 of the Treasury Regulations, which stipulates that where it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.
74. This renders the "appointment" or the extension or alteration of the terms of the original appointment unlawful.
75. As detailed in Ms Le Roux's affidavit on 10 April 2020, the CFO of the NDOH, Mr van der Merwe, sent an internal memorandum to Dr Pillay raising a number of concerns, inter alia, that as at 31 March 2020, an amount of R 43 million had been paid to Digital Vibes, which included R 18 million for Covid-19 (of the R 35 million Digital Vibes quotation approved by Dr Pillay). The CFO indicated that *"This still has to be sent to Treasury for concurrent approval as this is a huge scope variation"*. He commented further that the *"amount seems to be exorbitant and excessive and the NDOH needs assurance that value for money was*

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derived." He concluded by saying that "The position in the current financial year is the same. This does not have specifically earmarked budget and any expenditure could lead to unauthorised expenditure and be subjected to Section 38(2) of the PFMA and the Public Audit Amendment Act. The file has been selected for audit by the Auditor-General." (exhibit 63).

76. On 11 May 2020 (i.e. 66 days after Dr Pillay had already accepted the Digital Vibes Proposal), Dr Pillay sent a letter to the National Treasury in respect of a "Request for approval to deviate from Normal Procurement Procedures in order to drive a Public Awareness and Engagement on Coronavirus Campaign using Multiple Communication Platforms". (exhibit 78)

77. In the said letter, Dr Pillay stated the following:

"To this date the NDOH has spent R 32 864 534.00 related to NHI.

However, it needs to be mentioned that during March when COVID-19 pandemic was declared a national state of disaster, the contract of Digital Vibes was expanded to include information dissemination, education, public awareness and media communication on COVID-19.

This expansion was done using Practice no. 3 of 2016/2017 paragraph 8.1 and 8.2 which allows the Accounting Officer to deviate without sourcing concurrence approval of National Treasury in cases of emergency.

The expansion of the mentioned contract include COVID-19 communication related matters was also activity based and were reported to National Treasury within 10 days after their approval.

NDOH has incurred the expenditure to the value of R 25 909 884.00 relating to the expansion of NDOH 24/2019-2020 as a result of COVID-19.

More expenditure on this contract may be incurred and will be reported as and when it occurs.

It is therefore against paragraph 3.6 and 3.7 of Practice Note no. 5 of 2020/21 that we bring this to the attention of National Treasury as it is difficult

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to indicate if the expansion is within 25 % or R 25 million of the original contract more so the initial contract had no value but it was activity based cost contract." [Emphasis added]

78. There are a number of misrepresentations that were made by Dr Pillay in this letter:

- 78.1. No evidence was found that the NDOH had in fact reported the award of the Covid-19 media campaign by means of a SCM Deviation, as envisaged in regulation 16A6.4 of the Treasury Regulations, to the National Treasury and the relevant AGSA within 10 days from 6 March 2020;
- 78.2. Paragraph 9.2 of Practice Note no. 3 of 2016/2017, expressly requires prior written approval by the relevant Treasury in all cases where the contract value is to be increased by more than 15 % or R 15 million, the statement made by Dr Pillay that the said Practice Note "...allows the Accounting Officer to deviate without sourcing concurren[t] approval of National Treasury in cases of emergency." [emphasis added] was in fact false, incorrect and misleading;
- 78.3. Dr Pillay stated that R 25 909 884.00 had been spent on the Covid-19 media campaign, as at 11 May 2020. However, if all Digital Vibes invoices dated after 6 March 2020 (i.e. the date of the award of the Covid-19 media campaign contract to Digital Vibes), are considered to be related to the Covid-19 media campaign, then the NDOH had in fact already spent

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R 60 458 952.00 on the Covid-19 media campaign as at 11 May 2020, and not R 25 million as had falsely or incorrectly been stated by Dr Pillay.

- 78.4. Since Dr Pillay had already accepted the quotation of R 35 906 450 in respect of the Covid-19 media campaign and approved the award to Digital Vibes on 6 March 2020 (see paragraph 4.67 above), the referral by Dr Pillay to *National Treasury Instruction No. 5 of 2020/21, dated 28 April 2020: Emergency Procurement in response to National State of Disaster* in the letter of 11 May 2020, was completely misplaced and misleading. Instruction Note no. 5 of 2020/21 only came into operation on 28 April 2020 (i.e. 53 days after the Covid-19 media campaign contract had effectively already been awarded to Digital Vibes).
- 78.5. Dr Pillay failed to disclose to the National Treasury that on 6 March 2020, Digital Vibes had provided the NDOH with a written quotation amounting to R 35 906 450 in respect of the Covid-19 media campaign, which was already at least R 10 906 450 in excess of the threshold of R 25 million for later contract value extensions set out in Practice Note no. 5 of 2020/21. Moreover, as at 11 May 2020, the NDOH had in fact already spent R 60 458 952.00 on the Covid-19 media campaign.
- 78.6. Even on Dr Pillay's own inaccurate version, as stated in the letter of 11 May 2020, the NDOH had already spent at least R 25 909 884.00 on the Covid-19 media campaign, as at 11 May 2020, making the statement made by Dr Pillay that "...it is difficult to indicate if the expansion is within

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25 % or R 25 million of the original contract...” false, incorrect and in fact misleading and fraudulent in nature.

- 78.7. As such, the belated attempt by the NDOH to seek approval for a SCM Deviation from the National Treasury in respect of the Covid-19 media campaign contract, was ill-founded and invalid. Therefore, this purported extension of the NHI media campaign SLA was void.
79. On 16 June 2020, the Minister approved a budget of R 85 502 500 for Digital Vibes after a submission: “To Request the Minister of Health to Approve Implementation Strategy and Budget from June to November 2020 for National Health Insurance (NHI) Communication Strategy which will be executed by Digital Vibes.”
80. This Budget for NHI cannot justify expenditure on Digital Vibes since due to the fact that, from 6 March 2020, Digital Vibes had only delivered Covid-19 related communication services (and no NHI related communication services).
81. Moreover, as regards the approval of these budgets by the Minister is irregular for the following reasons:
- 81.1. The Minister approved budgets amounting to approximately R 132 million in respect of the NHI – and Covid-19 media campaigns, in circumstances where the NDOH had already informed the GCIS that the NDOH had no budget for the NHI media campaign.

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- 81.2. In these circumstances, the Minister should at least have raised concerns regarding the belated budget approval request and the fact that the budget had already been allocated to a service provider (Digital Vibes), where budget allocations are normally aligned to a need being identified before a SCM process is launched.
- 81.3. A Cabinet Memorandum dated 13 June 2019 (the Minister formed part of the Cabinet at that stage) indicated that the GCIS would be responsible for the rollout of the NHI communication strategy (NHI media campaign). In the circumstances, it is astonishing that the Minister thereafter, contrary to the Cabinet Memorandum, allowed Digital Vibes to be appointed by the NDOH in respect of the NHI media campaign. In fact, it can be argued that the Minister deliberately ignored a Cabinet decision (of which he formed part of) in this regard. During the end of February/March 2020, the GCIS was again tasked by the NATJoint to do the Covid-19 awareness campaign for Government. Once again, it is inexplicable as to why the Minister would have allowed the "extension" of the Digital Vibes SLA with the NDOH in respect of the NHI media campaign to include the Covid-19 media campaign. It would have been far more cost-effective if the GCIS had rendered the required services.
- 81.4. In his evidence to the SIU the Minister indicated that protracted discussions in this regard had taken place and he was satisfied that costing in this regard had been done. However, the SIU could find no evidence/documentation indicating the existence of such a costing

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exercise prior to the decision to outsource all the work in this regard. Furthermore, the Minister indicated that the GCIS could not be approached as according to him, the GCIS had indicated that all communication related work should be done by State departments themselves and that the state departments should set aside specific budget for this purpose.


82. On 2 July 2020, the newly appointed DG, Dr Buthelezi, sent a letter to the CFO stating that all Communications Contracts would, with immediate effect, be managed by the Office of the DG. The CFO was requested to hand over to the DG all documentation relating to the Digital Vibes contract(s). In excess of R 60 million was paid to Digital Vibes from 2 July 2020.
83. On 24 June 2020, National Treasury sent a report to the DG of the NDOH (the position had been filled from 1 June 2020, the incumbent being Dr Buthelezi) informing him that the NDOH had reported an approved deviation in respect of the procurement of Digital Vibes to provide information dissemination, education, public awareness and media communication regarding Covid-19, at a total cost of R 25 909 884.
84. In light of the fact that the NDOH ultimately paid an amount of approximately R 125 million to Digital Vibes in respect of the Covid-19 media campaign, it is apparent that the NDOH paid an amount of approximately R 99 million in excess of the purportedly approved deviation amount, which made a mockery of the purported approved SCM deviation.

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85. The amount of R 25 million, was approved by National Treasury 110 days (three and a half months) after the quotation of approximately R 35 million from Digital Vibes had been approved by Dr Pillay.

Grounds of review of the Covid-19 "extension"

86. For the reasons given above and in Ms le Roux's affidavit, what amounts to an entirely unauthorised, arbitrary and unlawful decision by Dr Pillay to have Digital Vibes perform Covid-19 communication is unlawful and unconstitutional and falls to be declared invalid and set aside.
87. In any event, if due to the gross irregularity and unlawfulness of the original appointment of Digital Vibes and the NHI contract described above, that appointment and contract is declared invalid and set aside, there is no basis on which any amendment or extension or expansion of that appointment can survive the declaration of invalidity of the original appointment.
88. A total of R 124 980 073.80 was paid to Digital Vibes by the NDOH during the period of 21 March 2020 to 8 February 2021 in respect of Covid-19 communication services. The total amount paid by the NDOH to Digital Vibes (NHI and Covid-19) is thus R 150 002 607.80 which must be considered, in light of the SCM irregularities, to be irregular expenditure.
89. As a consequence of the declaration of invalidity of the NHI contract and of any purported extension or amendment of that contract or any purported appointment

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of the contract there is no lawful basis for the payment of this amount to Digital Vibes or its retention by the company or the individuals controlling it.

REMEDIES AND RELIEF SOUGHT CONSEQUENT UPON THE DECLARATIONS OF INVALIDITY

Repayment of the amounts received by Digital Vibes and the second to third respondents

90. The SIU seeks an order, consequent upon the declaration of invalidity and setting-aside of the impugned transactions, requiring Digital Vibes and the second to fourth respondents jointly and severally to repay all amounts received in terms of the impugned transactions:

90.1. Once the underlying contract and transactions are declared invalid and set aside the payments made to the respondents were accordingly made sine causa and the NDOH was impoverished and the respondents enriched thereby.

90.2. As a consequence the first to fourth respondents fall to be ordered jointly and severally to repay the amounts received by Digital Vibes on the basis of the *condictio ob turpem vel iniustam causam* alternatively the *condictio sine causa* further alternatively the *condictio indebiti*.

90.3. I have been advised that it is incumbent on the first to fourth respondents to raise and prove any defence of non-enrichment by producing evidence

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to contradict the SIU's findings that no services corresponding to the value of the amounts paid were received by the NDOH.

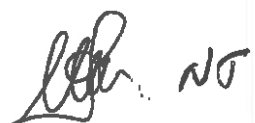
- 90.4. Alternatively, on the basis that it is just and equitable to order the respondents to repay their profits gained from the impugned contracts the first to fourth respondents fall to be ordered to repay the NDOH such sum as constitutes the difference between the amounts paid in terms of the impugned transactions and the amount expended by the respondents on the delivery of bona fide communication services to the NDOH.

Personal liability of the second to fourth respondents

91. For the reasons given above and in Ms le Roux's affidavit, the separate juristic personality of Digital Vibes was a sham and the company was in fact a front disguising the involvement of Ms Mather and Ms Mitha who were its true controlling minds despite not being directors, shareholders or even employees of the company but ostensibly consultants.
92. Ms Hariram actively participated in the sham, signing the bid and contractual documents in her capacity as director and representing to the NDOH that she was acting as the company's director when in fact she was not and when, to her knowledge, the company was under the control of Ms Mather and Ms Mitha. The analysis of the Digital Vibes bank accounts shows that Ms Hariram received R 2.5 million from the funds paid by the NDOH.

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93. The second director of the company, Mr Naidoo, was appointed at the instance of Ms Mather solely in order to be able to use his name, and his experience and knowledge of media buying, to justify Digital Vibes securing the contract from the NDOH in respect of the NHI media campaign. Mr Naidoo has said that he believes that Digital Vibes and Ms Mather never had the intention to use his skills during the execution of the contract, and in fact he played no role other than to compile the National Media Plan, Implementation Plan and Budget Plan for the NHI media campaign for which his company was paid R 100 000. His ostensible role as the "*Team Leader*" of Digital Vibes pitch for the NHI contract was a fraudulent misrepresentation. (Exhibit 142)
94. On or about 7 May 2021, Ms Hariram laid charges of fraud and embezzlement against Ms Mather and Ms Mitha with the SAPS (Exhibit 148). In this regard, she alleged that:
- 94.1. Ms Mather and Ms Mitha had embezzled over R 80 million from Digital Vibes.
- 94.2. They were in complete control of the activities of, and the bank accounts belonging to Digital Vibes.
- 94.3. Their *modus operandi* had been to make payments from Digital Vibes to third parties, as if these payments had been for services rendered and value obtained, when in fact this was not the case;

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- 94.4. A large amount of money was paid to family members and associates of both Ms Mather and Ms Mitha, without them having conducting any work or providing any services to Digital Vibes; and
- 94.5. These transactions were done unlawfully and without her knowledge or consent, and constituted theft and fraud.
- 94.6. When Ms Hariram contacted Ms Mather and Ms Mitha in this regard, they retained the services of an attorney and, after numerous consultations, only R 9 million was paid back to Digital Vibes.

No evidence of contract performance by Digital Vibes (Including sub-contractors) and evidence of corrupt activities

95. The SIU requested Digital Vibes to provide supplier invoices and supporting documentation regarding payments made by Digital Vibes.
96. The attorneys of Digital Vibes, namely Hajibey-Bhyat Inc, stated that their client, Digital Vibes, was not in possession of the requested supplier invoices and supporting documentation. Digital Vibes therefore did not, and to date has not, supplied the requested supplier invoices and supporting documentation to the SIU.
97. The fact that no supplier invoices and supporting documentation could be, or was supplied by Digital Vibes, supports the inference that in these instances Digital Vibes "paid" "suppliers" in circumstances where no goods or services had been rendered to justify these payments.

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98. The SIU's analysis of the Digital Vibes Nedbank bank account no. 1159701830 described in Ms le Roux's affidavit identifies a number of suspect payments and corroborates the evidence of Ms Hariram that large amounts of money were paid to companies owned by Ms Mather and Ms Mitha and to members of Ms Mather's family. In particular the following suspect payments have been identified:
- 98.1. Ms Mather: R 20 million (paid to Ms Mather's company);
- 98.2. Ms Mitha: R 16 million (paid to Ms Mitha and to her company);
- 98.3. Ms Hariram: R 2.5 million;
- 98.4. Family of Ms Mather: R 11.5 million was paid to family members and their respective businesses.
99. Further, as detailed in Ms le Roux's affidavit, large sums of money were paid to individuals with links to Minister Mkhize:

Nedbank bank account 1159701830		
Potential Implicated Entitles		
Company name	Relationship	Amount (Rand)
Composite trade	Ms Mather's company	(20 517 668.6
Strategeewhizz	Ms Mitha's company	(14 216 139.0
Mateta Projects	Mr Welcome M. Mthethwa's company	(10 636 575.8
Sotobe Media Pty Ltd	Director is Sithembiso Sikhumbuzo Sibiya (Mr. Ndabezinhle	(9 781 250.0

Nedbank bank account 1159701830		
Potential Implicated Entities		
Company name	Relationship	Amount (Rand)
	Sibiya was a previous spokesperson of the Minister. Therefore, this company is potentially related to the previous spokesperson)	
Mkokwana Events	Mr Welcome M Mthethwa's cousin's company	(8 983 305.0
WT Graphics and Design (Pty) Ltd ("WT Graphics")	Mr. Wasim Mather	(6 255 391.1
Bevels communications	Mr Welcome M Mthethwa's mother's company	(6 017 831.0
SP Attorneys Inc.	Attorneys of Ms Mather and Ms Mitha	(2 100 000.0
Saloojees Chemist CC (also trading as Signet Pharmacy)	Business of Mr Hoosen (Brother-in-Law of Ms Mather)	(1 568 488.6
Royal Bhaca Projects	Company linked to Mr Madzikane II Thandisizwe Diko, who is the husband of the Spokesperson to the	(1 000 000.0



Nedbank bank account 1159701830		
Potential Implicated Entities		
Company name	Relationship	Amount (Rand)
	President (Ms Diko)	
Potential Implicated Individuals		
Name and Surname	Relationship	Amount (Rand)
Ms Radha Hariram	Director or "owner" of Digital Vibes	(2 508 041.2)
Ms Naadhira Mitha	Niece of Ms Mather	(1 967 622.0)
Ms Suhaila Mather	Daughter of Ms Mather	(1 496 539.0)
Ms Hasina Kathrada	Sister of Ms Mather	(1 094 546.9)
Mr Wasim Mather	Son of Ms Mather	(1 040 000.0)
Mr Welcome (Mdu) M Mthethwa	Husband of former ANC staffer (M. Mthethwa)	(874 610.0)
Ms Yenziwe Sokhela	Ms Yenziwe Sokhela (Former employee at the Minister's Ikusasa Le Afrika Foundation ("ILAF"))	(367 726.7)
Ms Makhosazana Mthethwa	Former ANC staffer (wife of Welcome (Mdu) M Mthethwa, referred to above)	(31 524.0)
Total		(90457 259.1)



100. The role of the Minister in relation to the appointment of Digital Vibes has been set out above. In particular:
- 100.1. Ms Mather was, as early as 30 May 2019 or shortly thereafter involved with the Minister in his NDOH portfolio as his Strategic Communications Advisor.
- 100.2. It was plainly the wish of the Minister to have Ms Mather officially appointed in some or other capacity to conduct NHI communication and on 12 July 2019, the NDOH made its initial attempt to appoint her as a communication expert consultant for the NDOH in respect of the envisaged NHI media campaign.
- 100.3. On 15 July 2019 (i.e. 3 days after this attempt), the Minister sent the following WhatsApp message to the DG Ms Matsoso, saying "Kindly sort out contractual arrangements. Please ask for preliminary NHI implementation plan and draft communication plan by Friday from each individual, as discussed" [Emphasis added].
- 100.4. Although the Minister indicated in his evidence to the SIU that the aforementioned WhatsApp message related to the NHI media campaign in general, and not to individuals, the only reasonable inference in the circumstances is that the communication of the Minister was referring to an envisaged contract with Ms Mather and this was how Ms Matsoso and



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the Departmental officials interpreted it as they then set about finding a way to ensure her appointment.

- 100.5. It is noteworthy that the Minister at that stage already referred to "contractual arrangements" regarding the "preliminary NHI implementation plan and draft communication plan by Friday from each individual", notwithstanding the fact that no procurement processes in this regard had been initiated by the NDOH. The Minister was therefore at that stage already aware of the potential involvement of Ms Mather in the NHI media campaign.
- 100.6. It is apparent from the contents of the WhatsApp message that the Minister was giving instructions to the DG. At best, this conduct on the part of the Minister was improper and at worst, the conduct of the Minister was unlawful (as implied in paragraphs 27 and 41 of the written statement dated 21 June 2021 that was provided by the Minister to the SIU), as it constituted an interference by the Executive Authority in the affairs of the administrative authority of the NDOH.
- 100.7. Ms Matsoso said that during this period she received repeated WhatsApp messages from the Minister to resolve the contractual issues of the NHI media campaign.
- 100.8. According to the chronology of events, these occurrences too place approximately four and a half months before the SLA with Digital Vibes was signed on 29 November 2019. Digital Vibes thereafter "appointed"

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Ms Mather and Ms Mitha as purported contractors for purposes of the NHI media campaign.

100.9. The Minister approved the first budget allocation for the NHI media campaign on 20 January 2020, which approval specifically mentioned that the services would be rendered by Digital Vibes.

100.10. Thereafter, on 16 June 2020, the Minister signed the *"Request the Minister of Health to Approve Implementation Strategy and Budget from June to November 2020 for National Health Insurance (NHI) Communication Strategy which will be executed by Digital Vibes"* [Emphasis added] for an amount of R 85 502 500 at a time when, as the Minister must have been aware, Digital Vibes had ceased all work on NHI and had been instructed instead to concentrate on Covid-19.

101. There is evidence that the Minister has directly and indirectly received gratifications from Digital Vibes:


101.1. During the relevant period, Digital Vibes paid 4-Way Maintenance Services (Pty) Ltd an amount of R 6 720 for repairs at a property belonging to the Minister. The required services had been identified by the Minister's wife. The particulars on the two invoices reflected the requester of the services as being one "Mkhize" and a cellular phone number was also indicated in the invoices. (Exhibit 134)

Invoices of 4 Way Maintenance Services and the subsequent payments received thereof

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#	Date	Invoice number	Address	Telephone number	Amount (Rand)	Date paid
1	22 May 2020	INA11846	Mkhize 8 Cranbrook Complex Bryanston Sandton	074 208 1381	1,960.00	4 June 2020
2	20 June 2020	INA11882	Mkhize 8 Cranbrook Complex	074 208 1381	4,760.00	1 July 2020
3	5 August 2020	INA11913	Mkhize 10 Davis Road Unit 5 Bryanston	074 208 1381	650.00	2 September 2020
4	5 September 2020	INA12090	Mkhize 8 Cranbrook Complex	074 208 1381 066 513 9132	1,335.00	3 March 2020

101.2. The Minister indicated to the SIU that he had not requested these services nor did the indicated cellular number belong to him or to an account registered in his name. However, the indicated cellular number, in eNatis records, is linked to vehicles registered in the name of the Minister. The Minister indicated that, a Messenger also with the surname "Mkhize", who was in his employ had subsequently confessed that the cash to pay for the maintenance services that had been provided by the Minister's Housekeeper, had been stolen by him. When payment for the services became due, the Messenger had approached Ms Mitha who, according to the Messenger, paid the R 6 720 to the service provider (an affidavit in this regard was also provided by the Messenger, exhibit 147).

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101.3. However, the obtained evidence indicates that Digital Vibes, and not Ms Mitha, paid for these services.

Digital Vibes Nedbank bank account 1159701830		
Date	Description per bank statement	Debits (payments) (Rand)
2020-06-04	4way maintenance ina11846	(1 960.00)
2020-07-01	4WAY INA11882	(4 760.00)
	Total	(6,720.00)

101.4. During the questioning of the Minister, he did not indicate whether he had dismissed the messenger or laid criminal charges against him for this alleged theft. Therefore, the veracity of the explanation of the messenger is, in the view of the SIU in doubt.

101.5. Obtained evidence indicates that on 2 May 2020, Digital Vibes transferred R 300 000 (via Composit Trade, the company belonging to Ms Mather, exhibit 116) to All-Out Trading a company belonging to Dedani Mkhize (exhibit 133). The transactions in question are as follows:

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101.5.1. A total amount of R 20.5 million was paid from the Digital Vibes Nedbank account 1159701830 to the Composit Trade FNB bank account number 62546679319 (Exhibit 115 and 131).

101.5.2. An amount of R 300,000 was paid from the Composit Trade FNB bank account number 62546679319 to the All-Out-Trading FNB Bank account 62458713841 (Exhibit 132):

From Acct	To Acct	To Acct Name	Debit Reference	Credit Reference	Amount	Tran Date	Tran Time
62546679319	62458713841	ALL OUT TRADING	DM	TM	300 000.00	2020/05/01	09:33:52

101.6. The Minister indicated to the SIU that his son had (only once this information had become known in the media) informed him that this money was a gift from Ms Mather, who had a close relationship with him (his son).

101.7. Obtained evidence also indicates that on 4 May 2020 Digital Vibes paid an amount of R 160 000 to Mr Car, a Pietermaritzburg car dealership in respect of the purchase of a second-hand motor vehicle (i.e. a 2003 Toyota Land Cruiser) for the Minister's son. This motor vehicle was registered in the name of the Minister's son..

101.7.1. According to the Manager of Mr. Car, Mr. Shrimay Rajbally, Mr. Dedani Sphelele Mkhize approached Mr. Car on 2 May 2020 in order to purchase a vehicle (Exhibit 137).

- 101.7.2. The Mr. Car sales person, Mr. Mohammed Ismail, assisted Mr. Mkhize. Mr. Mkhize was interested to purchase a 4 x 4 vehicle. Mr. Mkhize identified a 2003 white Land Cruiser on Mr. Car's showroom. The initial price of the vehicle was R 170 000 (Exhibit 137).
- 101.7.3. Mr. Mkhize requested a discount on the vehicle. Mr. Car agreed to provide Mr. Mkhize a discount of R 10 000 and to sell the Land Cruiser to Mr. Mkhize for R 160 000 (Exhibit 137).
- 101.7.4. The sales person provided Mr. Mkhize with the banking details of Mr. Car, namely ABSA bank, Chatterton; account number 4054894207. The sales person informed Mr. Mkhize that full payment had to be made to this bank account and Mr. Car received a payment of R 160 000 on 4 May 2020 for the Land Cruiser (Exhibit 137).
- 101.7.5. On 4 May 2020, an offer-to-purchase was completed by the Administrator, Ms. Rowena Sokoo and signed by Mr. Mkhize.
- 101.7.6. On 4 May 2020, an invoice was issued to Mr. Mkhize for the sale of the vehicle.
- 101.7.7. Mr. Car completed the documents for the change of ownership. On 5 May 2020, Mr. Car received a notification that the vehicle has been registered in the name of Mr. Mkhize.

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101.7.8. The following payments that were made from the Digital Vibes Nedbank account number 1159701830 to Mr. Car.

Digital Vibes		
Nedbank bank account 1159701830		
Date	Description per bank statement	Debits (payments) (Rand)
2020-05-02	Mr Car	(160,000.00)
	Total	(160,000.00)

101.8. The Minister also indicated that his son had (once this information had become known in the media) informed him that this second-hand motor vehicle was a gift from Ms Mather, who had a close relationship with him (his son). According to media reports, which referred to photographs posted on social media, the vehicle was put to use at a farm near Pietermaritzburg owned by the Minister's son.

101.9. As appears from the evidence of Ms Hariram (Exhibit 138), Ms Hariram alleged that JD Communications was paid R 1.25 million from the Digital Vibes Nedbank account.

101.10. The SIU's analysis of the Digital Vibes bank account shows that after NDOH related payments amounting to approximately R 135 million had been received by Digital Vibes, it made six payments totalling

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R 1 750 000 to the bank account of JD Communications CC, registration number 1988 / 014259 / 23, registered address is 53 Seal Crescent Avenue, Lenasia, Gauteng.

101.11. Ms. Mather requested Ms. Hariram to collect a box from Mr. Yusuf Ganie ("Mr. Ganle") (cell number 083 786 3980).

101.12. Mr. Ganie would either deliver the money to Ms. Hariram's house or she would collect the money from his house in Stanger (in the area "Oceanview").

101.13. Ms. Hariram was then informed by Ms. Mather that Mr. Dedani Mkhize would collect the parcel from her.

101.14. Ms. Hariram was then contacted by Mr. Dedani Mkhize on several occasions prior to him collecting the parcel.

101.15. These collections would take place at the Dawnside Petrol service station where Ms. Hariram was employed as a manager. This occurred about six times.

101.16. Ms. Hariram was informed by Ms. Mather that the parcel contained cash. Ms. Hariram was also under the impression that it was indeed the case as it appeared to be very clandestine.

101.17. Ms. Mather informed Ms. Hariram that Mr. Dedani Mkhize is the son of Dr. Mkhize, the Minister of Health.

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101.18. The SIU obtained the evidence of Mr Ganie (exhibit 146). According to Mr Ganie, Ms Mather contacted him and inquired if he knew of anyone that could give her cash in return for an EFT transfer that she would do for the said cash value.

101.19. According to Mr Ganie:

11.

I advised her that I would make some enquiries. I enquired with one Yacoob Desai (Desai) a cash and carry wholesaler whether he was able to assist Tahera with her request.



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12.

Desai had agreed to assist and provided his account details in order for Tahera to make the EFT payments.

101.20. The SIU has established that the account that was provided is the bank account of JD Communications.

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101.21. According to Mr Ganie, transfers amounting to R 3 400 000 were made into the account indicated by Desai. Desai would then arrange for this cash, which was contained either in boxes or plastic packets to be delivered to him.

18.

After each of the EFT payments were made by Tahera into the account of Desai, I receive electronic messages from Tahera advising that the payments had been made.

19.

I in turn notified Desai of the payments and Desai regularly confirmed that he indeed had received the EFT payments.

20.

Desai would arrange for cash to be delivered to me.

21.

The cash was contained either in boxes or plastic packets.

101.22. Mr Ganie stated that the cash (boxes or plastic packets) was fetched from him on different occasions by Ms Mather, Ms Mitha or "a person by the name of Radha", (i.e. Ms Hariram).

FORFEITURE OF AMOUNTS SUBJECT TO THE INTERIM INTERDICT

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102. It follows from the evidence set out above that Digital Vibes received payments of amounts that are the proceeds of unlawful activities. In particular, they are the proceeds of the unlawful and irregular processes whereby the NDOH appointed and paid Digital Vibes for goods allegedly delivered and services allegedly rendered in terms of the impugned transactions.
103. The impugned transactions are unlawful and unconstitutional and moreover were obtained by fraud on the part the second to fourth respondents and by officials of the NDOH.
104. The impugned transactions are unlawful as contemplated by section 2(2) of the SIU Act, constituting improper or unlawful conduct by employees of any State institution; unlawful expenditure of public money and the intentional or negligent loss of public money.
105. Rule 26 of the Special Tribunal Rules provides that "At the conclusion of the proceedings and on a final determination of the dispute, depending on the outcome on the unlawful activities of the respondent or the defendant, as the case may be, the Tribunal may make a final order for forfeiture to the State, of the property held under a preservation order or interdict order where the respondent has been found to have participated in unlawful activities".
106. Mr Hayes' affidavit filed in matter KN 3/2021 traces the flow of the funds paid to Digital Vibes and establishes the link between the payments made by the NDOH to Digital Vibes and the funds/property listed in Annexure "A" to the Notice of

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Motion, which were made the subject of the interim interdict granted by the Special Tribunal.

107. The property and funds listed in Annexure "A" to the order of the Special Tribunal are directly linked to the payments made by the NDOH to Digital Vibes in terms of the impugned transactions. The owners of the funds are Ms Mather, a company controlled by Ms Mitha (Strategieewhiz), by the son and daughter of Ms Mather (WT Graphics and Suhaila Mather Consulting) or by Ms Mather's daughter, Suhaila Mather, in her own name.
108. The acquisition by Ms Mather and Ms Mitha and their companies of monies deriving from the impugned transactions that derive from their fraudulent conduct is, self-evidently, unlawful and not for value. There is no basis for them to contend that they neither knew nor had reasonable grounds to suspect that the money was the proceeds of unlawful activity. The funds were moreover, according to Ms Hariram, stolen or embezzled from Digital Vibes.
109. There is equally no basis on which the son and daughter of Ms Mather may plausibly contend that they or their companies received the funds for value and without suspecting that they were the proceeds of unlawful activity. The transfer of funds to them is consonant with an intention of Ms Mather to conceal the funds by holding them in accounts not directly controlled by Ms Mather herself.

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CONCLUSION

110. The SIU consequently seeks orders in terms of the notice of motion.

Do you know and understand the contents of this affidavit?


Answer: YES

Do you have any objection to taking the prescribed oath?

Answer: NO

Do you consider the prescribed oath to be binding on your conscience?

Answer: YES



RAJENDRA CHUNILALL

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit and confirmed the correctness of the contents.

He has no objection to taking the prescribed oath and considers the oath to be binding on his conscience.

I certify that the regulations contained *inter alia* in Government Notice number R. 1258 of 21 July 1972, as amended by Government Notice number R. 1648 dated 19 August 1977 and Government Notice number R. 1428 dated 11 July 1980, have been complied with.

This affidavit was sworn to before me and the deponent's signature was placed thereon in my presence

at PRETORIA on this 29TH day of JULY 2021.

LT COL
NOKUZOLA J. MTATI

COMMISSIONER OF OATHS OR EX OFFICIO COMMISSIONER OF OATHS

NOKUZOLA J. MTATI

Full Names

LT. COLONEL

Position / Rank

74 WATERMEYERS STREET

Business Address

RENTMEESTER BUILDING

MEYERSPARK, 0184

