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**HIGHER RIGHTS OF AUDIENCE ASSESSMENT**

**IN RESPECT OF CIVIL PROCEEDINGS**

**THE PRACTICAL ASSESSMENT**

**TRIAL BUNDLE FOR MINI-TRIAL**

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### **Witness Statement of Andrew Fong**

I, ANDREW FONG, of [Hong Kong address], say as follows:

1. I am the Plaintiff. I am 50 years of age. I am the founder and majority shareholder of Import and Export Trading Limited.
2. Unless otherwise stated, all the facts and matters contained in this witness statement are within my personal knowledge and are true. Where they are not within my personal knowledge, they are based on the sources identified and are true to the best of my information and belief.

### **Introduction**

3. I am suing the 1<sup>st</sup> Defendant Mr John Smith (“**Mr Smith**”) and the 2<sup>nd</sup> Defendant Industrial Goods Limited (“**IGL**”), for the cost of repairing my Ferrari motorcar (the “**Ferrari**”), in the sum of HK\$400,000, which was damaged by the negligent driving of Mr Smith.

### **The Accident**

4. In the early hours of 1 January 2016, I was driving my Ferrari along Acacia Avenue together with my wife, Martha Fong.
5. There was mild traffic on the road, and I was driving at the speed limit of 50 km/h. In my rear-view mirror, I saw a lorry approaching me from behind. Since I was already driving at the speed limit, the lorry must have been speeding.
6. I saw that the traffic ahead of me had stopped, so I started to brake.
7. As I was braking, I noticed that the lorry did not slow down until it was too late. It could not brake in time and collided with the rear-end of my Ferrari.
8. After the collision, Mr Smith and I pulled over onto the curb to inspect the damage. I recall that Mr Smith looked very tired. His eyes were red and he had clearly been driving all day. I believe that the accident occurred because Mr Smith was driving at an excessive speed, and delay in his reaction time due to fatigue.
9. The lorry was unscathed, but the rear-end of the Ferrari was obviously damaged. All the panels would have to be replaced, and there was a risk that

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the engine was damaged as well. I knew that the repair costs could be very expensive.

10. Therefore I told Mr Smith that he and his employer would have to compensate me for the damage, or otherwise I would sue them.
11. Mr Smith started shouting at me. He swore at me and blamed me for causing the accident by suddenly braking. I believe he was trying to scare me into not suing him, but I calmly and firmly stood my ground.
12. Mr Smith then told me that he had to call his employer, IGL. After 5 minutes, Mr Smith told me that his employer would agree to pay me the reasonable costs of repair so long as I did not claim against them for any further loss. Since neither my wife or I were injured, I saw no harm in agreeing to this proposal and waiving any further claims against Mr Smith or IGL. This would also save me the time and costs of litigating my claim in Court.
13. Mr Smith told me to contact Ms Jane Chan (“**Ms Chan**”) the CEO of IGL after the Ferrari had been repaired and the costs of repair were finalised. I wrote down Mr Smith’s and Ms Chan’s telephone numbers on a piece of paper.
14. Since we had resolved the matter amicably, Mr Smith and I decided not to report the incident to the police. Without IGL’s agreement to pay, I definitely would have called the police.
15. After I got back into the Ferrari, I told Martha that we would not call the police because no one was hurt and the accident was not serious. I was also tired and did not want to waste time waiting for the police if the matter was already resolved. We then drove home.
16. I understand that Mr Smith claims that the accident was caused because I was drink-driving and having an argument with Martha.
17. This is a preposterous allegation. I only had one half-glass of champagne over the course of the entire evening to celebrate the new year.
18. I am a member of the Hong Kong Road Safety Council, and am very aware of the dangers of drink-driving. I consider drink-driving to be very improper, and I would never do so myself. I always remind my friends not to drink and drive. If they have drunken too much, and they do not have a designated driver, I insist that they take a taxi home.
19. I also deny that I was arguing with my wife. We had a fine and enjoyable evening with our friends, and she was busy text messaging her friends when the car crash occurred.

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**My Attempt to Claim Reimbursement From IGL**

20. The repairs on my Ferrari were completed in the middle of March 2016. The costs of repair were HK\$400,000.
21. On 1 April 2016, I called Ms Chan and informed her that the costs of repair were HK\$400,000, and asked her to reimburse me as we had agreed. Unfortunately I accidentally misplaced the piece of paper on which I wrote Mr Smith's and Ms Chan's telephone numbers, but I managed to get in contact with Ms Chan by obtaining her details from IGL's website on the internet.
22. Surprisingly, Ms Chan said that she did not know who I was, and denied that there had been any agreement.
23. After I reminded her about the accident, Ms Chan said that she recalled that Mr Smith, on behalf of IGL, and I had agreed that we would not seek compensation from each other. She also said that according to what Mr Smith had told her, if anyone was at fault, it was me because I had braked too early.
24. I asked Ms Chan to give me Mr Smith's telephone number, which she did.
25. I then called Mr Smith, and he had the same response as Ms Chan.
26. Due to the refusal of Ms Chan and Mr Smith to reimburse me for my repair costs, I commenced this action to recover the HK\$400,000 from them.

[Please assume that the statement has been dated and signed with a statement of truth.]

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### **Witness Statement of Martha Fong**

I, MARTHA FONG, of [Hong Kong address] say as follows:

1. I am the Plaintiff's ("**Andrew**") wife. I am 48 years of age. I am one of the partners of Private Equity Associates, a venture capital firm based in Hong Kong.
2. Unless otherwise stated, all the facts and matters contained in this witness statement are within my personal knowledge and are true. Where they are not within my personal knowledge, they are based on the sources identified and are true to the best of my information and belief.

### **Introduction**

3. I make this witness statement in support of my husband's claim against the 1<sup>st</sup> Defendant Mr John Smith ("**Smith**") and the 2<sup>nd</sup> Defendant Industrial Goods Limited ("**IGL**").

### **The Accident**

4. After midnight on 1 January 2016, Andrew and I were driving home from dinner at our friend's house.
5. I was busy text messaging my friends on my mobile phone, so I was not paying attention to the traffic outside. Suddenly, out of the blue, a lorry collided with the rear-end of our Ferrari. Fortunately neither Andrew or I were hurt, but I was quite shaken.
6. Andrew and the lorry driver, Mr Smith, pulled over onto the curb to inspect their respective vehicles and discuss what to do. I stayed inside the car and continued messaging, telling my friends that we had just gotten into a car crash but that luckily neither Andrew or I were injured. My friends were very concerned and offered to pick us up if we needed to drive home. Fortunately that was not necessary.
7. Suddenly I heard some shouting. I looked in the rear-view mirror and saw Mr Smith pointing his finger aggressively at my husband. On the other hand, my husband remained calm and did not let Mr Smith's aggressive behaviour unnerve him. Eventually, Andrew got back into the Ferrari and we drove off.

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8. On the way home, Andrew told me that Mr Smith and his employer were going to pay for the repair costs. He also mentioned that Mr Smith had clearly been driving all day, and that it was irresponsible for Mr Smith's employer to allow Mr Smith to be driving in a sleep deprived state.
  9. I asked Andrew why he did not call the police. Andrew told me that since no one was hurt and the accident was not very serious, there was no need to call the police. Andrew also wanted to go home because he was tired and did not want to waste time waiting for the police to arrive and deal with the situation.
  10. I understand that Mr Smith claims that the accident occurred because Andrew was driving while intoxicated and that he was also distracted by a heated argument with me. That is a total fabrication.
  11. Andrew and I were at our friend's house for dinner to countdown to the new year, and Andrew only had one half-glass of champagne over the course of the entire evening to celebrate when the new year came.
  12. Andrew always makes sure to watch his alcohol consumption if he needs to drive home, and he always lectures me and his friends about the dangers of drink-driving. He also takes his membership of the Hong Kong Road Safety Council very seriously.
  13. Contrary to Mr Smith's allegations, Andrew and I were not arguing. As I said, I was text messaging my friends on my mobile phone. We have a very good relationship and even if we do argue once in a while, we treat each other with respect and never raise our voices. Andrew has a calm disposition and he would never get so flustered by an argument that it would affect his driving.

#### **Andrew's Attempt to Claim Reimbursement**

14. We did not discuss the accident again until the workshop had finished its repairs on the Ferrari. Andrew said that the repairs were very expensive, and cost HK\$400,000.
15. On 1 April 2016, Andrew told me that he had called Ms Jane Chan of IGL, and Mr Smith, and that both they refused to honour their agreement to reimburse Andrew for the repair costs.

[Please assume that the statement has been dated and signed with a statement of truth.]

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### **Witness Statement of John Smith**

I, JOHN SMITH, of [Hong Kong address], say as follows:

1. I am the 1<sup>st</sup> Defendant. I am 65 years of age. Before I retired, I was employed as a lorry driver by the 2<sup>nd</sup> Defendant Industrial Goods Limited (“**IGL**”).
2. Unless otherwise stated, all the facts and matters contained in this witness statement are within my personal knowledge and are true. Where they are not within my personal knowledge, they are based on the sources identified and are true to the best of my information and belief.

### **Introduction**

3. This is my witness statement in defence to the Plaintiff Mr Andrew Fong’s (“**Mr Fong**”) claim against me and IGL for the cost of repairing his Ferrari motorcar (the “**Ferrari**”), in the sum of HK\$400,000.

### **The Accident**

4. At around 2 am on 1 January 2016, I was driving along Acacia Avenue. I volunteered to drive on new year’s eve because I wanted to earn as much money as I could before I retired in December of 2016.
5. I was driving at the speed limit of 50 km/h. I have always been a safe driver and never drive above the speed limit. Further, IGL has a strict policy against speeding. Any drivers caught speeding would be penalised by being terminated and losing their HK\$50,000 annual ‘safety bonus’.
6. As I was driving, a Ferrari overtook my lorry, and then suddenly braked right in front of me. I was not able to brake in time, and my lorry collided with the Ferrari.
7. The driver of the Ferrari, Mr Fong, and I pulled over onto the curb and we inspected the damage to our respective vehicles.
8. Fortunately, there was no apparent damage to my lorry. The rear-end of the Ferrari only appeared to have some minor damage.
9. When Mr Fong opened his car door, I could hear him and his female passenger shouting at each other. From these proceedings, I now know that Mr Fong’s passenger was his wife Martha Fong (“**Mrs Fong**”). I also recall that when I

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later walked past the front of the Ferrari, Mrs Fong looked like she was crying. Mrs Fong stayed inside the vehicle the whole time.

10. Mr Fong was red in the face and I could smell alcohol on his breath. He was very angry and scolded me for being a careless driver.
11. I believed that the accident occurred because Mr Fong was intoxicated and in an argument with his wife. This distracted him from the traffic in front of him, and when he belatedly realised that the vehicles ahead had slowed down, he braked unexpectedly quickly and suddenly.
12. In accordance with company protocol, I called my boss at IGL, Ms Jane Chan (**"Ms Chan"**), to tell her what happened.
13. I told Ms Chan about the minimal damage to each of our vehicles, and that I believed that the accident was caused because Mr Fong was drinking and was arguing with his wife. Ms Chan told me that since the accident was Mr Fong's fault, IGL should not compensate him. At the same time, since there was no apparent damage to the lorry, and I needed to deliver the goods in my lorry to the warehouse on time, it was not worth wasting time trying to get Mr Fong to agree to compensate IGL for any damage. Therefore Ms Chan instructed me to agree with Mr Fong that IGL and Mr Fong would not sue each other. If Mr Fong agreed, then there was no need to call the police and I could drive off.
14. After my telephone call, Mr Fong appeared to have calmed down. I told him what Ms Chan and I decided to do, and he agreed.
15. Mr Fong probably realised that it was in his interests to resolve this matter amicably with me without calling the police, since he was driving while intoxicated. Not only would Mr Fong have been arrested for drink-driving, but the police's breathalyser test would serve as proof that Mr Fong responsible for the accident.
16. Before getting back into my lorry I sent a text message to Ms Chan which stated that "Mr Fong agrees."
17. I understand that Mr Fong claims that I was responsible for the accident because I was speeding and sleep deprived. I deny this. As I said above, I was driving at the speed limit. Further, even though this was my last delivery of the day, my shift only started at 7:30 pm on 31 December 2015. I was a professional driver for over 30 years and worked almost every day. I know when I am too fatigued to drive, and this was not one of those occasions.



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**Mr Fong's Attempt to Claim Reimbursement From IGL**

18. On 1 April 2016, I received an angry telephone call from Mr Fong. He said that the costs of repairing his Ferrari were HK\$400,000 and that Ms Chan had refused to reimburse him. I was surprised that he expected IGL to reimburse him, since we had agreed not to sue each other. Mr Fong accused me and Ms Chan of being liars and reneging on our agreement to compensate him for the repair costs.
19. I then called Ms Chan, and she said to me that Mr Fong had called her several minutes earlier and asked her to reimburse him for the repair costs, and that she refused.

[Please assume that the statement has been dated and signed with a statement of truth.]

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### **Witness Statement of Jane Chan**

I, JANE CHAN, of [Hong Kong address], say as follows:

1. I am the chief executive officer of the 2<sup>nd</sup> Defendant Industrial Goods Limited (“**IGL**”). I am 45 years of age.
2. Unless otherwise stated, all the facts and matters contained in this witness statement are within my personal knowledge and are true. Where they are not within my personal knowledge, they are based on the sources identified and are true to the best of my information and belief.

### **Introduction**

3. This is my witness statement in support of IGL’s defence to the Plaintiff Mr Andrew Fong’s (“**Mr Fong**”) claim against Mr John Smith (“**Mr Smith**”) and IGL for the cost of repairing his Ferrari motorcar (the “**Ferrari**”), in the sum of HK\$400,000.

### **The Telephone Call from Mr Smith on 1 January 2016**

4. At around 2 am on 1 January 2016, I was woken up by a telephone call from Mr Smith.
5. Mr Smith told me that he had gotten into a traffic accident with a Ferrari.
6. He said that he was driving at the speed limit of 50 km/h at the time. A Ferrari had overtaken him, and then suddenly slowed down right in front of his lorry.
7. Mr Smith was not able to brake in time and collided with the rear-end of the Ferrari. Fortunately, there was no damage to the lorry and only minor damage to the Ferrari.
8. Mr Smith told me that the driver of the Ferrari, Mr Fong, had been drinking, and that it also appeared that Mr Fong had an argument with his wife. Mr Smith said that he believed these factors were the cause of the accident.
9. Based on what I learned from Mr Smith, I told him that since the accident was Mr Fong’s fault, IGL had no responsibility to compensate Mr Fong. At the same time, I decided that it was not worth it for IGL to claim compensation from Mr Fong since there was no apparent damage to the lorry. Mr Smith also needed to deliver the goods in the lorry to the warehouse on time before it

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closed for the night, so I thought it would be better if Mr Smith just asked Mr Fong to agree that neither party would sue each other.

10. Contrary to Mr Fong's claim, I never told Mr Smith to agree to reimburse Mr Fong for the repair costs. Mr Fong was clearly in the wrong, not Mr Smith.
11. Several minutes later I received a text message from Mr Smith stating that "Mr Fong agrees."
12. I understand that Mr Fong claims that Mr Smith was speeding at the time. I do not believe this, because our company has a strict policy against speeding. One of the main reasons is that our customers care very much about our safety record and we may lose business if IGL is involved in too many accidents.
13. In order to prevent our drivers from speeding, IGL employs a 'carrot and stick' strategy. The 'carrot' is that each year, drivers are awarded an annual 'safety bonus' of HK\$50,000 each year if they do not speed. The 'stick' is that if any of our drivers are caught speeding, they will be immediately dismissed.
14. I also understand that Mr Fong claims that Mr Smith was overworked and tired. I disagree with this, because our company only permits drivers to drive 9 hours a day. Mr Smith had volunteered to take the night shift on new year's eve, which started at 7:30 pm and would end at 2:30 am the next day. Therefore, even though Mr Smith was completing the final delivery of the day, he would not have been fatigued at the time of the accident.

#### **Mr Fong's Attempt to Claim Reimbursement From IGL**

15. On 1 April 2016, I received a telephone call from Mr Fong. He said that the costs of repairing his Ferrari were HK\$400,000 and asked IGL to reimburse him as agreed.
16. Initially I could not recall who Mr Fong was until he reminded me about the accident. I denied that there was any agreement to reimburse Mr Fong and said that IGL and Mr Fong had agreed not to sue each other. Mr Fong then accused me of being a liar and asked for Mr Smith's telephone number.
17. I gave Mr Smith's telephone number to Mr Fong. Several minutes later, Mr Smith called me and said that Mr Fong asked Mr Smith to reimburse him for the repair costs.

[Please assume that the statement has been dated and signed with a statement of truth.]