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A. *INTRODUCTION*

1. This is the hearing of the application of the plaintiff (“P”) by *Inter Partes* Summons dated 24 October 2025 (“**Summons**”) for judgment against the 1<sup>st</sup> defendant (“**D1**”) in default of defence pursuant to O 19, r 7 of the Rules of the District Court, Cap 336H.

2. At the conclusion of the hearing, I granted judgment in favour of P against D1 and stated that my reasons would be given in writing subsequently. These are my reasons for granting default judgment. This judgment does not deal with P’s claim against the 2<sup>nd</sup> defendant, who is not before this Court.

B. *THE FACTUAL BACKGROUND AND PROCEDURAL HISTORY*

3. This is a typical internet fraud case. The following facts in support of P’s claim are taken from the Statement of Claim indorsed on the Writ issued on 3 September 2025.

4. P is a resident of the United States of America and holds a bank account with Wells Fargo (“**P’s Account**”). D1 holds an account with China CITIC Bank International Limited, with account number 018735130383501 (“**D1’s Account**”).

5. In late May 2022, P was contacted by a “Victor Parker” (“**Victor**”) by email and text messages, who claimed that he was a United States Government Federal Trade Agent. Victor claimed that P was required to transfer certain sums of money to third-party accounts as part

of an investigation into money laundering under P’s name. Victor gave P his email address and telephone number, and emailed P purported proof of the said investigation.

6. On 25 May 2022, P followed Victor’s instructions and transferred US\$59,800 from P’s Account to D1’s Account (“**the Sum**” or “**the Fund**”). On 31 May 2022, P similarly transferred US\$89,900 from P’s Account to an account held in the 2<sup>nd</sup> defendant’s name.

7. More than one year later, on or about 8 June 2023, P realized that he was a victim of fraud. He would not have made the transfers but for his mistaken belief that Victor’s claims were true.

8. Subsequently, P contacted Wells Fargo to submit a claim and recall the said transfers, but to no avail. P made a report to the police in the United States.

9. More than three years after the transfer of the Sum, on 3 September 2025, P issued the Writ, claiming, on the basis of fraud and unjust enrichment, against D1, *inter alia*:

- (1) a declaration that D1 had been unjustly enriched;
- (2) an order that D1 transfer to P such sums as had been derived therefrom; and
- (3) a declaration that the Fund or its proceeds were held by D1 on constructive trust for P.

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10. By an affirmation of service filed on 15 September 2025, a representative of P’s solicitors deposed to the fact that, on 4 September 2025, a sealed copy of the Writ, enclosed in a sealed envelope addressed to D1, had been served by insertion through the letter box at the last known address of D1. Having considered the evidence filed, I am satisfied that the Writ has been duly served on D1 pursuant to O 10, r 1(2).

11. D1 did not acknowledge service of the Writ. Since the Writ is indorsed with a claim for various declarations which fall outside O 13, rr 1 to 4, P rightly proceeded with the action as if D1 had given notice of intention to defend pursuant to O 13, r 6(1).

12. D1 has not filed a defence. P therefore applied for judgment in default of defence against D1 pursuant to O 19, r 7 by the Summons dated 24 October 2025.

13. Since the Summons and its supporting affirmations are not required to be served personally and D1 is in default as to acknowledgement of service, these documents need not be served on D1 pursuant to O 65, r 9. In any event, on the basis of the affirmation of service filed on behalf of P, I am satisfied that the Summons and its supporting affirmations have been duly served by P by insertion through the letter box at D1’s last known address.

14. D1 is absent from this hearing. O 32, r 5(1) empowers this Court to “proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.” O 32, r 5(2) provides that,

before proceeding in his absence, the Court “may require to be satisfied that the summons ... was duly served on that party.” Having regard to all the circumstances of the case, in particular my above finding that the Summons has been duly served on D1, and the fact that D1 has never appeared or participated in any way to contest these proceedings, I consider it expedient to proceed with this hearing in his absence.

*C. THE APPLICABLE PRINCIPLES*

15. The principles applicable to an application for default judgment pursuant to O 19, r 7 (or its equivalent applicable to the High Court) in cases concerning similar internet frauds can be summarised as follows.

(1) The power to grant judgment under the provision is discretionary. The court is required to scrutinise whether the matters pleaded in the Statement of Claim entitle the plaintiff to the judgment sought. The court’s decision is made on the basis of the pleaded facts, rather than on evidence: *Minebea Cambodia Co Ltd v Zhao Jin Fang* [2022] HKCFI 3325 at §28 per Recorder William Wong SC.

(2) As to declaratory relief, it is not the normal practice of the court to grant a declaration without going to trial. This is, however, only a rule of practice rather than a rule of law, and gives way to the paramount duty of the court to do the fullest justice to the plaintiff to which he

is entitled. In a number of cases involving email fraud, declaratory relief has been granted on the basis that there is a genuine need for such relief to secure the plaintiff's proprietary, as opposed to merely personal, claim, particularly given that the defendant may have other creditors. See *Minebea Cambodia Co Ltd v Zhao Jin Fang* [2022] HKCFI 3325 at §29.

(3) Where service of the Statement of Claim has been effected, and the defendant has not filed a defence, the court will assume that the facts pleaded in the Statement of Claim have been impliedly admitted. Hence, it is not necessary to consider evidence in support of the claim. See *Geng Wen v Zhong Ying* [2024] HKCFI 3513 at §12 per DHCJ Yuen.

#### *D. DISCUSSION*

16. Having scrutinised the application, particularly the pleaded facts, I am satisfied that those pleaded facts entitle P to the judgment sought, and this is an appropriate case to exercise my discretion to grant judgment in default of defence against D1 even though the case involves fraud.

##### *D.1 The personal claim based on unjust enrichment*

17. It has been established that a victim of fraud in similar circumstances has a personal claim for restitution based on unjust

enrichment: see *Minebea Cambodia Co Ltd v Zhao Jin Fang* [2022] HKCFI 3325 at §35.

18. In *Shanghai Tongji Science and Technology Industrial Co Ltd v Casil Clearing Ltd* (2004) 7 HKCFAR 79 at §67, Ribeiro PJ (with whom the other members of the Court agreed) held that a useful framework for approaching a claim for restitution based on unjust enrichment involves asking four questions, namely: (1) Was the defendant enriched? (2) Was the enrichment at the plaintiff's expense? (3) Was the enrichment unjust? (4) Are any of the defences applicable?

19. There is no reason not to accept P's pleas (to which D1 has impliedly admitted) that he transferred the Fund on the basis of his mistaken belief that Victor's claims were true. I find that P's claim for restitution is made out for the following reasons:

- (1) D1 was plainly enriched by P's transfer of the Fund into D1's Account.
- (2) Such enrichment was at P's expense, since the transfer of the Fund was sourced from P's Account.
- (3) The enrichment was unjust because D1 has never been entitled to the Fund, which was transferred under P's mistaken belief as to the truth of Victor's claims, and in the absence of any consideration or meaningful commercial purpose.

(4) There is no applicable defence since D1 has failed to file any defence.

20. P sought a declaration that D1 has been unjustly enriched at the expense of P to the value of US\$59,800. On my finding, that was the case. I am not referred to any decision where such a declaration was made when the Court has already made a finding to that effect. Nor could I find one. At the hearing, counsel for P clarified the claim for this declaration is not pressed. In *Wai Chow Sau Ying v Lee Kwok Ling and Lee Pui Tak Suky*, the representatives of “Li Tun Pun Tong (李敦本堂)” [2019] HKCFI 2000, the plaintiff alleged that various plots of land were leased to her by a tenancy in 1971, while the defendant averred that it only covered a smaller area identified as the “Leased Portion” and made a counterclaim for a declaration to that effect. Having found in favour of the defendant at §72, DHCJ To dismissed the defendant’s counterclaim for declaration at §130 as follows:

“The Tong seeks a declaration that the area leased under the 1971 Tenancy Agreement was the Leased Portion. On my finding that was the case. However, there is no real purpose or public interest to be served making the declaration. The dispute is private dispute between the parties which has no effect to any third party. A declaration is not called for. A judgment of this court is all that is required. This counterclaim is therefore dismissed.”

21. In my view, the declaration sought would serve no real purpose or public interest. A personal restitutionary remedy, namely, an order that D1 pay P the sum of US\$59,800 representing the value of the benefit that D1 received at P’s expense would be sufficient and appropriate

to reverse the unjust enrichment: see *Goff & Jones on Unjust Enrichment* (10<sup>th</sup> Ed, 2022) at §36-03.

22. P's pleaded claim for compound interest was not pursued at the hearing. Had it been pursued, the Court would need to be satisfied that such a claim was justified on the facts, particularly in light of the Supreme Court's judgment in *Prudential Assurance Co Ltd v Revenue and Customs Commissioners* [2019] AC 929 and the English Court of Appeal's judgment in *Granville Technology Group Ltd (in liquidation) v LG Display Co Ltd* [2024] KB 179, which have apparently yet to be considered in Hong Kong.

*D.2 The proprietary claim based on fraud*

23. It is well established that when the Fund in D1's Account was obtained by fraud, equity imposes a constructive trust on D1 as a fraudulent recipient, particularly when D1 must have been aware of P's mistake, such that it is unconscionable for him to retain the Fund and its traceable proceeds: *Minebea Cambodia Co Ltd v Zhao Jin Fang* [2022] HKCFI 3325 at §§32-36.

24. Similar declarations have been made in cases of internet fraud such as *UNA Trading FZE v Pak Fei Trade Ltd* [2022] HKCFI 1920 at §6(1); *Kuo Benjamin Yung-Hsiang v Xu Meiyi* [2022] 5 HKLRD 111 at §20; and *Chen Charles Chong Wah v Lee Siu Keung* [2025] HKCFI 309 at §27. I am satisfied that it is just to grant the declaration to the effect that D1 has been holding the Fund received into D1's Account on or about 25

May 2022 and/or such traceable proceeds or any part thereof on constructive trust for P.

*E. DISPOSITION*

25. For the foregoing reasons, I allowed the Summons and entered default judgment against D1. The issues of interest and costs were addressed at the hearing and are explained below.

*E.1 Interest*

26. Section 49(1) of the District Court Ordinance, Cap 336 provides:

“The Court may include simple interest, at the rate the Court thinks fit in a judgment for a debt or damages, on the debt or damages or on a payment made before judgment, for the period between the date when the cause of action arose and—

- (a) for a sum paid before judgment, the date of the payment; and
- (b) for the sum for which judgment is given, the date of the judgment.”

27. In *Peter Shoikhet and Gale Shoikhet v Chen Guoqiang* [2022] 3 HKLRD 238, HHJ KC Chan, having held that the defendant was unjustly enriched at the expense of the plaintiff and was liable to repay a sum transferred under mistake in a similar internet fraud case, refused at §30 to award pre-judgment interest (presumably sought under the statutory jurisdiction under section 49 of the District Court Ordinance) at HSBC prime rate plus 1% on the ground that the sum transferred “has all along

been sitting in D’s Account and there is no allegation that the US\$128,000 was earning interests at prime rate plus 1%, and therefore that the defendant was thereby also enriched in the amount of such interests”, and instead awarded “such interest that the Sum earned from the Bank while sitting in D’s Account”. This decision has been followed by HHJ Grace Chow (as she then was) in *Steve Jay Shire v Zhao Yanling* [2024] 2 HKLRD 1356.

28. Unfortunately, the attention of the learned judges apparently was not drawn to the relevant authorities on the statutory jurisdiction to award pre-judgment interest, whether generally or in the specific context of claims to reverse unjust enrichment.

29. In *Remedy Asia Ltd v Patrick Tong Hing Chi* [2021] 2 HKC 190; [2020] HKCFI 2792, Coleman J held at §12 that the jurisdiction to award pre-judgment interest under section 48 of the High Court Ordinance, Cap 4 (which is equivalent to section 49 of the District Court Ordinance, Cap 336) may be exercised by taking into account the following well-established matters, as appropriate:

- (1) The aim of an award of interest is to compensate the plaintiff for being deprived of the money later awarded during the relevant period until the award.
- (2) The award of interest is not intended as punishing the paying party, but to achieve appropriate restoration of the monies deprived.

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- (3) In the absence of contrary evidence, the settled practice is that the award of interest should reflect the theoretical cost to the plaintiff of borrowing the sums withheld, usually taken to be the prime rate +1%.
- (4) Though most claims to interest sound in the award of simple interest, the court has jurisdiction in equity to award compound interest.
- (5) Compound interest may be awarded in cases including where there has been a breach of fiduciary duty, in particular where the trustee or fiduciary has misappropriated funds which the Court assumes would have been used by him to gain profits. Such an award is in place of ordering an account of those profits.
- (6) However, it is not a sufficient reason to award compound interest simply because the claim involves fraud or breach of fiduciary duties. Further, any claim to compound interest must be pleaded, with particulars of how it is said such interest is justified on the facts, and proved.
- (7) Where the claim is to economic loss which is quantified only at the time of judgment, the Court has a discretion to award interest from the date upon which the cause of action arose.

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(8) The Court may take into account delay on the part of the plaintiff, and reduce the award of interest accordingly. The rationale is that it would be wrong in principle that interest should accrue during a time when the plaintiff has been guilty of unreasonable delay, thereby keeping him out of the sum awarded by his own fault.

(9) Where there has been significant delay, the Court may either decline to award interest for the relevant period, or may reduce the rate of interest during the relevant period.

(10) The disallowance or reduction of interest should be made so as to mark a period of unreasonable delay, bearing in mind also that the defendants have had the use of the money during that period of delay. But, that the defendants have had the use of the money may not excuse the plaintiff's fault.

(11) A broad brush approach to questions of delay is appropriate. That requires being realistic, and considering the character of the delay making due allowance for the circumstances. Essentially, the Court is concerned to see whether the plaintiff has neglected or declined to pursue (or prosecute) his claim for a significant period. If so, the logic of disallowing or

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reducing an award of interest for that period comes into play.

30. It is therefore clear that, as a matter of general principle, the purpose of the award of pre-judgment interest under the statutory jurisdiction is “to compensate the plaintiff for being deprived of the money later awarded during the relevant period until the award”. As re-affirmed by the Court of Appeal in *Lo Yuk Sui v Fubon Bank (Hong Kong) Ltd* [2019] HKCA 1345 at §34, “for commercial cases prime plus 1% should be the starting point and interest would be awarded at such rate unless there is evidence to persuade the court that time has come to move away from such rate.”

31. In *Prudential Assurance Co Ltd v Revenue and Customs Commissioners* [2019] AC 929, the Supreme Court of the United Kingdom affirmed that, in cases of unjust enrichment, the Court may award pre-judgment interest based on the same compensatory principle applicable to the statutory jurisdiction under section 35A of the Senior Courts Act 1981 (which is equivalent to section 49 of the District Court Ordinance). The law has been explained in the joint judgment of Lord Reed DPSC, Lord Hodge JSC and Lord Mance (with whom Lord Sumption and Lord Carnwath JJSC agreed) at §§72-79:

“72. The position is essentially the same if the £1,000 is repaid not on 1 April but on 1 May. There has been no transfer of value subsequent to 1 April, when the mistaken payment was made. The only transfer of value needing to be reversed remains the payment of the £1,000. The claimant can however be awarded, in addition to the £1,000, simple interest on that amount under section 35A of the 1981 Act. That is because the obligation which arose under the law of unjust enrichment on 1 April, upon the making of the mistaken payment, created a debt.

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Interest can normally be awarded on a debt under section 35A of the 1981 Act.

73. That interest is intended to compensate the claimant for the loss of the use of the money to which he became entitled to restitution on 1 April. There is no right to interest on the basis of unjust enrichment: failure to pay a sum which is legally due is not a transfer of value, and does not give rise to an additional cause of action based on unjust enrichment. ...

...

77. Once it is understood that the claim to interest is not truly based on unjust enrichment but on the failure to pay a debt on the due date, the conclusion inevitably follows that interest can be awarded on the claims within categories (b) and (c) under section 35A of the 1981 Act ...

...

79. For the foregoing reasons, we therefore depart from the reasoning in *Sempra Metals* [i.e. *Sempra Metals Ltd (formerly Metallgesellschaft Ltd) v Inland Revenue Commissioners* [2008] 1 AC 561] so far as it concerns the award of interest in the exercise of the court’s jurisdiction to reverse unjust enrichment. ...”

32. *Goff & Jones on Unjust Enrichment* (10<sup>th</sup> Ed, 2022) at §36-22 contains a useful summary of the law in this regard:

“Interest awards made under s.35A have a compensatory purpose: they compensate the claimant for loss of the use of the money to which he became entitled from the time that the defendant’s liability accrued—or as the point is commonly put, they compensate the claimant “for having been kept out of money which ought to have been paid to [him]”. This explanation is supported by many earlier cases and was confirmed by the Supreme Court in [*Prudential Assurance Co Ltd v Revenue and Customs Commissioners* [2019] AC 929]. As the Supreme Court also affirms, these awards should not be understood as based on the defendant’s unjust enrichment, irrespective of whether the defendant’s liability is a liability in unjust enrichment or is of a different nature, such as a contractual debt or a liability to pay damages for a tort or breach of contract. ...” (footnotes omitted)

33. The Court of First Instance has awarded interest for pecuniary restitutionary remedies based on unjust enrichment at the rate of prime plus 1% in a number of similar cases of internet fraud involving foreign plaintiffs: see *Arrow ECS Norway AS v M Yang Trading Ltd* [2018] HKCFI 975 at §37; *Comtel Solutions Pte Ltd v Yi Li Trade (HK) Co Ltd* [2019] HKCFI 2407 at §13; *800 Columbia Project Co, LLC v Xiang Yang Logistics Ltd* [2020] HKCFI 1527 at §14; *UNA Trading FZE v Pak Fei Trade Ltd* [2022] HKCFI 1920 at §6(3); *J P Morgan SE, Luxembourg Branch v LV Guangxin Trade Co Ltd* [2023] 2 HKLRD 893 at §23; *Chang Anna I-No v Caibaolong Trading Ltd* [2023] HKCFI 2782 at §6.2; *Deines-Pollan Services LLC v Tongzhou Industrial Co Ltd* [2024] HKCFI 2196 at §34(2); and *Verde Brasil Industria De Produtos Plasticos Ltda v Wosite Ltd* [2025] HKCFI 626 at §18.

34. In *MKKWH v RKSH (re: costs)* [2019] 1 HKLRD 284, an ancillary relief case, the respondent (H) was ordered under paragraph 7 of an amended order of the court to pay a sum to the petitioner (W). Owing to arithmetical errors in that order, H paid \$15 million less in purported compliance. W sought interest on the shortfall from 11 May 2015, being the date on which the lump sum payment was required pursuant to the order, at the judgment rate. Lam VP (as he then was), delivering the Court's Decision on Costs, refrained from determining the question of interest under section 49 of the High Court Ordinance. At §36, however, His Lordship held that the additional sum payable upon rectification was "more in the nature of money payable upon the rectification of a mistake, thus akin to a restitutionary claim", since W had been deprived of \$15 million from 11 May 2015 until rectification, while "H was unjustly enriched by having the benefit of such sum of money." Interest was accordingly

awarded at the rate of prime plus 1% on the \$15 million from 11 May 2015 until payment.

35. On the basis of the above authorities, I would therefore award pre-judgment interest on the Sum at HSBC prime rate plus 1%. Such interest shall accrue from 3 September 2025 (ie date of the Writ) to the date of judgment, as requested by counsel for P.

36. As to post-judgment interest, I would order that interest shall accrue on the judgment debt (inclusive of pre-judgment interest as ordered) at the judgment rate from the date of judgment until full payment: see *Xiamen Xinjingdi Group Co Ltd (廈門新景地集團有限公司) v Eton Properties Ltd* [2024] 5 HKLRD 321 at §22 (Mimmie Chan J); appeal dismissed on other grounds at [2025] HKCA 1119.

## *E.2 Costs*

37. This is an appropriate case to award costs to P, with certificate for counsel. Initially, P sought costs to be taxed. In *Sterling Payment Services Ltd v Registrar of Companies* [2021] HKCFI 2047, Recorder Manzoni SC observed at §§19-28 that he could see no justification for a party to come to court and simply ask for costs to be taxed in a short and uncontested application (in that case a summary disposal of an originating summons). Having regard to these observations and the circumstances of this case, Miss Li sensibly accepted that this is an appropriate case for summary assessment of costs. Upon reviewing the Statement of Costs submitted at the hearing, I summarily assessed the costs to be paid by D1

to P in respect of the action (including the Summons and all costs reserved) at \$93,000.

*E.3 Judgment*

38. Based on the draft submitted to the Court, but revised at the hearing, I granted judgment in the following terms:

- (1) D1 do pay P the sum of US\$59,800 (or its HKD equivalent at the time of payment) (“**the Sum**”);
- (2) D1 do pay P interest accrued on the Sum from 3 September 2025 to the date of judgment at HSBC prime rate plus 1% per annum;
- (3) D1 do pay P interest accrued on the judgment debt (inclusive of pre-judgment interest as ordered) at the judgment rate from the date of judgment until full payment;
- (4) There be a declaration that the sum of US\$59,800 transferred from the P’s Account to D1’s Account on 25 May 2022 and/or the proceeds thereof whether in money form or whether in the form of assets purchased with the Sum or any part thereof were at all times and remain the property of P and were received and held by D1 on constructive trust for P, and that D1 must account in trust to P for the same and D1 do transfer the

Sum or assets as have been derived from the said Sum  
or any part thereof P; and

(5) D1 do pay P's costs of this action (including costs of  
the Summons and all costs reserved), with certificate  
for counsel, summarily assessed at HK\$93,000.

39. I thank Miss Li for her helpful submissions.

( Lee Siu-him )  
Deputy District Judge

Ms Polly Li, instructed by Payne Velasco, for the Plaintiff

The 1<sup>st</sup> Defendant was not represented and did not appear

