IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHCR 13

HC/OA 121 of 2023

Between

Gillingham James Ian

… *Applicant*

And

(1) Fearless Legends Pte Ltd
(2) Christopher David Mansfield
(3) Plaskocinski Thomas Andre
(4) Liam Patrick Jones

… *Respondents*

JUDGMENT

[Civil Procedure – Disclosure of documents]

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Gillingham James Ian
v
Fearless Legends Pte Ltd and others

[2023] SGHCR 13

General Division of the High Court — Originating Application No 121 of 2023
Justin Yeo AR
26 July 2023, 21 August 2023

25 August 2023

Justin Yeo AR:

1 This judgment concerns the pre-action production of documents and information under O 11 r 11 of the Rules of Court 2021 ("ROC 2021"). An application for such production was filed by Mr Gillingham James Ian ("the Applicant") against four respondents, *ie*, Fearless Legends Pte Ltd ("Fearless Legends"), Mr Christopher David Mansfield ("Mr Mansfield"), Mr Plaskocinski Thomas Andre ("Mr Plaskocinski") and Mr Liam Patrick Jones ("Mr Jones"). Fearless Legends is presently in liquidation. It was unrepresented and absent from the proceedings because the lack of funding prevented its liquidators from participating or obtaining legal advice.[1] The remaining respondents, Mr Mansfield, Mr Plaskocinski and Mr Jones ("the Represented

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[1] Letter from Applicant's counsel (dated 20 July 2023), enclosing an email from the liquidators (dated 17 July 2023, 4.49pm).

Respondents"), were represented by a single set of counsel (hereafter referred to, for convenience, as "Respondents' counsel"). I heard arguments on 26 July 2023 and 21 August 2023, and now render my judgment.

Background

2 The Applicant is an entrepreneur who, together with Mr Plaskocinski, co-founded Fearless Legends. Fearless Legends was incorporated in Singapore on 18 October 2019. It engaged in the business of developing software and technology relating to digital asset trading. One of its main assets was a proprietary code ("the Source Code") used to set up a cryptocurrency platform named "FINXFLOW". A brief background to the four individuals involved in the present application is as follows:

(a) The Applicant was a founding shareholder and director of Fearless Legends from its incorporation and served as its Chief Executive Officer ("CEO") from March 2021. He held approximately 31% of the shares of Fearless Legends. He was dismissed as CEO and director on 8 April 2022, allegedly without being afforded a reasonable opportunity to defend himself before the board of directors or shareholders of Fearless Legends.[2]

(b) Mr Plaskocinski was the other founding shareholder of Fearless Legends. He served as its Chief Technology Officer and was responsible for the development of Fearless Legends' technical expertise and

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[2] Applicant's Written Submissions (dated 20 July 2023), at paragraph 16 to 18, and the affidavit evidence cited therein.

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intellectual property, including the Source Code.[3] Mr Plaskocinski also held approximately 31% of the shares of Fearless Legends.

(c) Mr Jones became a director of Fearless Legends around the time the company was incorporated. He became the CEO in January 2020, and served as a director until he resigned as director and CEO in March 2021.[4] Mr Jones held approximately 11% of the shares of Fearless Legends.[5]

(d) Mr Mansfield joined Fearless Legends as its local Executive Director on 18 March 2021.[6] Mr Mansfield was and is not a shareholder of Fearless Legends.

3 There was a fifth individual – Mr Jeremy Gonske ("Mr Gonske") – who, although mentioned in various of the production requests, was not named as a respondent to this application. Mr Gonske was an authorised representative of the BlocTech group of companies ("BlocTech Group").[7] The BlocTech Group included an entity known as the BlocTech Investment Group I LP,[8] which held about 0.8% of the shares of Fearless Legends.[9]

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3 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 10 and 1st Affidavit of Plaskocinski Thomas Andre (dated 10 April 2023), at paragraph 18.

4 1st Affidavit of Liam Patrick Jones (dated 6 April 2023), at paragraphs 14, 16 and 18.

5 1st Affidavit of Liam Patrick Jones (dated 6 April 2023), at paragraph 4.

6 1st Affidavit of Christopher David Mansfield (dated 10 April 2023), at paragraph 6.

7 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 26(a).

8 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 26(a).

9 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at p 224.

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4 Following his removal as CEO and director of Fearless Legends, the Applicant suspected that there was a scheme ("the Diversion Scheme"), involving one or more (direct or indirect) shareholders, to take control of Fearless Legends' resources and divert these to another entity – possibly OneX LLC. OneX LLC was a company incorporated in the United States and a direct competitor to Fearless legends, operating a cryptocurrency platform named "LiquidityOne".[10] The Applicant contended that the Diversion Scheme only benefited some of Fearless Legends' shareholders, to the detriment of its remaining shareholders who were not involved or did not participate in the scheme.[11] The Applicant further suspected that the scheme sought to deprive him of the value of his 31% stake in Fearless Legends.[12] These suspicions were primarily premised upon four developments:

(a) the Applicant's allegedly abrupt and baseless removal as CEO and director of Fearless Legends;

(b) the ostensible diversion of Fearless Legends' main assets (*ie*, intellectual property such as the Source Code) to OneX LLC (see [7(a)] below);

(c) the poaching of Fearless Legends' employees (see [7(c)] below); and

(d) the suspected approaches made to Fearless Legends' customers, encouraging them to terminate their business relationship with

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10 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraphs 26(b) and 50.

11 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 76(a) and (b).

12 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 25.

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Fearless Legends and to transfer their accounts to OneX LLC (see [7(d)] below).[13]

5 Based on these suspicions, the Applicant opined that he may have at least two viable claims:[14]

(a) First, a claim for minority oppression under s 216 of the Companies Act 1967 ("the Minority Oppression Claim").[15] The claim, in gist, is that by virtue of the Diversion Scheme, the Applicant had suffered commercial unfairness when the dominant members of Fearless Legends conducted themselves in a manner that had advanced only their interests, to the detriment of other shareholders of Fearless Legends (including the Applicant).[16]

(b) Second, a claim under the tort of lawful and/or unlawful conspiracy ("the Conspiracy Claim").[17] The Conspiracy Claim is that through the execution of the Diversion Scheme, the perpetrators of the scheme had acted in a concerted manner, with the intention to, and indeed did, cause injury or loss to the Applicant.[18]

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13 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 25.

14 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 76(c).

15 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 69.

16 Applicant's Written Submissions (dated 20 July 2023), at paragraph 45(a).

17 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 69.

18 Applicant's Written Submissions (dated 20 July 2023), at paragraph 45(b).

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The Present Application and Parties' Arguments

6 The Applicant claimed that he did not have sufficient knowledge of the intended claims and the basis upon which these may arise, given that most of the developments supporting the existence of the Diversion Scheme were circumstantial and/or hearsay in nature.[19] As such, the Applicant's counsel wrote to Mr Mansfield, Mr Plaskocinski and Mr Jones to request for documents and information relating to the Applicant's intended claims. Mr Mansfield did not respond substantively to the request; Mr Plaskocinski refused to accept service of the request; and Mr Jones was served (through leaving a copy of the letter at his registered residential address) but did not respond to the request.[20] Applicant's counsel also wrote to Fearless Legends and its directors, Mr Mansfield and Mr Andrei Costescu. However, service was unsuccessful as the company located at the registered address no longer acted as Fearless Legends' registered agent[21] and, in any event, there was no response to the letter.

7 In the circumstances, the Applicant brought the present application for the pre-action production of documents and information, seeking a total of 64 sub-categories of documents and information (see the Annex to this judgment). These may be grouped into seven thematic categories for ease of understanding:[22]

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19 Applicant's Written Submissions (dated 20 July 2023), at paragraph 46.

20 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 63.

21 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 64.

22 This categorisation follows that set out in Applicant's Written Submissions (dated 20 July 2023), at paragraph 55.

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(a) *Category 1: Documents and information relating to asset diversion*. This concerned the ostensible diversion of Fearless Legends' assets to OneX LLC. The basis for claiming such diversion included (i) an email from a Fearless Legends shareholder, Mr Daniel Emery ("Mr Emery"), stating that he did not consider that "signing away the company's entire intellectual property (essentially the entire value in the company) is in the best interests of the company, even less so when it is actually being signed away in favour of one of the company's minority shareholders and/or related entities"; (ii) two draft licensing agreements and an executed licensing agreement ("the Licensing Agreement") between Fearless Legends and OneX LLC; and (iii) Fearless Legends' execution of a registered charge over its intellectual property in favour of OneX LLC ("the Registered Charge").[23] The terms of the Licensing Agreement, as understood through affidavits filed by Mr Mansfield and Mr Gonske in other proceedings, appeared impractical, unfeasible and onerous to Fearless Legends.[24] Indeed, the Licensing Agreement and Registered Charge may have been entered into to avoid detection of the Diversion Scheme while enabling OneX LLC to obtain Fearless Legends' intellectual property for less than fair value.[25]

(b) *Category 2: Documents relating to the Source Code*. This category would enable the Applicant to instruct an expert to consider

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23 Applicant's Written Submissions (dated 20 July 2023), at paragraphs 25 to 37, and the affidavit evidence cited therein.

24 Applicant's Written Submissions (dated 20 July 2023), at paragraph 36.

25 Applicant's Written Submissions (dated 20 July 2023), at paragraph 36.

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whether OneX LLC and/or LiquidityOne had used Fearless Legends' intellectual property (such as the Source Code) for its operations.[26]

(c) *Category 3: Documents and information relating to employee diversion*. This concerned the ostensible diversion of Fearless Legends' employees to OneX LLC. The basis for claiming such diversion included (i) Mr Emery's email, stating that "other employees who are employed by [Fearless Legends] have actually arranged to join the proposed licensee or a related company (employment contracts have been provided)"; and (ii) that as a matter of fact, at least ten employees had left Fearless Legends to commence work with OneX LLC.[27]

(d) *Category 4: Documents and information relating to customer diversion*. This concerned the ostensible diversion of Fearless Legends' customers to OneX LLC. The basis for claiming such diversion included conversations on the FINXFLO Telegram Group concerning a "token swap" by Mr Gonske, through which tokens issued by Fearless Legends may be swapped if they meet certain criteria of LiquidityOne. In the Applicant's view, this meant that there was a "high chance" that Fearless Legends' customers were being enticed to move to LiquidityOne.[28]

(e) *Category 5: Documents and information relating to the management of Fearless Legends*. This category included matters

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26 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at p 34.

27 Applicant's Written Submissions (dated 20 July 2023), at paragraphs 38 to 39, and the affidavit evidence cited therein.

28 Applicant's Written Submissions (dated 20 July 2023), at paragraphs 40 to 44, and the affidavit evidence cited therein.

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relating to the Applicant's performance and removal as CEO and director of Fearless Legends, as well as the involvement of Mr Mansfield, Mr Plaskocinski, Mr Jones and Mr Gonske in matters relating to the management of Fearless Legends.[29]

(f) *Category 6: Documents and information relating to OneX LLC*. This category concerned the involvement of Mr Mansfield, Mr Plaskocinski and Mr Jones in matters relating to the management of OneX LLC and/or LiquidityOne, and whether they had benefited from the Diversion Scheme.[30]

(g) *Category 7: Documents relating to Fearless Legends' legal fees*. The Applicant contended that if the individual or entity funding Fearless Legends' legal fees was either Mr Gonske or an entity from the BlocTech Group, this may suggest that they had a substantial interest in Fearless Legends apart from the 0.8% share held by BlocTech Investment Group I LP.[31]

8 The Represented Respondents objected to the production of documents and information. Respondents' counsel raised various arguments, which I have synthesized in the following paragraphs and classified according to each of the Applicant's intended claims. I have also provided a shorthand name for each argument to facilitate subsequent cross-reference.

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29 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at pp 37 to 45 and 48 to 59.

30 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at pp 41, 42 and 45.

31 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at pp 47 and 48.

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9 In relation to the Minority Oppression Claim, Respondents' counsel's arguments may be grouped under seven headings, as follows:

(a) *The "No Locus Standi Argument".* The Applicant lacked *locus standi* to bring the Minority Oppression Claim as he was not the proper claimant. The alleged Diversion Scheme was, if anything, a wrong done to Fearless Legends, which only Fearless Legends (acting through its liquidators) can make in view of the rule in *Foss v Harbottle* (1843) 2 Hare 461.[32]

(b) *The "Circumvention Argument".* The Applicant was improperly pursuing a minority oppression action when, in fact, commencing a statutory derivative action would have been more appropriate (citing *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Ho Yew Kong*") at [115]). Granting the application would enable the Applicant to circumvent the requirements of bringing a statutory derivative action under s 216A of the Companies Act 1967 (2020 Rev Ed) ("the Companies Act"), allowing him to effectively avoid (i) having to demonstrate (amongst other things) that he was acting in good faith and that any claim concerning the Diversion Scheme was in Fearless Legends' interests; (ii) possible opposition from Fearless Legends (acting through its liquidators) and/or its other shareholders; and (iii) the need to fund or procure funding for Fearless Legends to bring such a claim (given that Fearless Legends has insufficient funds to do so).

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[32] Respondents' Written Submissions (dated 20 July 2023), at paragraph 15.

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(c) *The "No Diversion Argument"*. There was no diversion of assets, customers and employees, as elaborated upon here:

(i) In relation to the diversion of assets, the Applicant had run Fearless Legends to the ground, and thereafter obstructed attempts to save or restructure the company. Evidence of Fearless Legends' perilous financial situation included the low sums of money in two of Fearless Legends' bank accounts and high levels of outstanding bills.[33] Evidence of the Applicant's misconduct included the Applicant being "entirely uncooperative" in efforts to salvage Fearless Legends, with his 31% shareholding causing difficulties in restructuring the company.[34] He had also threatened to "watch everything crash and burn".[35] Against this backdrop, Fearless Legends' board of directors had entered into the License Agreement with the *bona fide* objective of furthering Fearless Legends' best interests.

(ii) In relation to the diversion of customers, Fearless Legends effectively had no customer base or revenue

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33 Respondents' Written Submissions (dated 20 July 2023), at paragraph 43, and the affidavit evidence cited therein.

34 Respondents' Written Submissions (dated 20 July 2023), at paragraph 44, and the affidavit evidence cited therein.

35 Respondents' Written Submissions (dated 20 July 2023), at paragraph 44, and the affidavit evidence cited therein.

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from its operations via the FINXFLO platform.[36] Fearless Legends had also never transferred any customer data to external parties.[37]

(iii) In relation to the diversion of employees, many of Fearless Legends' employees had ceased work as they had not been paid.[38] The local employees had filed employment claims with the Tripartite Alliance for Dispute Management. Mr Plaskocinski, on the other hand, had remained employed by Fearless Legends until he was terminated by the liquidators in end January 2023.[39]

(d) *The "No Recoverable Loss Argument"*. The Applicant's alleged loss was a reduction in the value of his 31% shareholding in Fearless Legends. This is merely reflective of Fearless Legends' loss which cannot be recovered by the Applicant.[40]

(e) *The "No Remedy Argument"*. The Applicant has no available personal monetary remedy for minority oppression given that

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36 Respondents' Written Submissions (dated 20 July 2023), at paragraph 47, and the affidavit evidence cited therein.

37 Respondents' Written Submissions (dated 20 July 2023), at paragraph 47, and the affidavit evidence cited therein.

38 Respondents' Written Submissions (dated 20 July 2023), at paragraph 49, and the affidavit evidence cited therein.

39 Respondents' Written Submissions (dated 20 July 2023), at paragraph 49, and the affidavit evidence cited therein.

40 Respondents' Written Submissions (dated 20 July 2023), at paragraph 24.

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Fearless Legends is insolvent and therefore wholly unprofitable.[41]

(f) *The "No Buyout Argument"*. The Applicant cannot avail himself of a share buyout of his Fearless Legends shares, as it was his own wrongdoing and misconduct which had seen Fearless Legends run to the ground and in dire financial straits (see also [9(c)(i)] above).[42]

(g) *The "Director's Decision Argument"*. The decision to enter into the License Agreement was made by Fearless Legends' board of directors independently, without being beholden to any of the shareholders. As such, there can be no cause of action in minority oppression, which is grounded in *shareholders* acting oppressively and as a majority.[43]

10 In relation to the Conspiracy Claim, Respondents' counsel adopted arguments akin to the No *Locus Standi* Argument, the No Diversion Argument, the No Recoverable Loss Argument and the Director's Decision Argument. He also raised two additional arguments:

(a) *The "No Intention To Injure Argument"*. The Applicant did not provide evidence suggesting any intention to injure by the

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41 Respondents' Written Submissions (dated 20 July 2023), at paragraph 27.

42 Respondents' Written Submissions (dated 20 July 2023), at paragraph 28.

43 Respondents' Written Submissions (dated 20 July 2023), at paragraph 29.

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allegedly conspiring directors and shareholders, in acting to remove the Applicant as CEO and director.[44]

(b) *The "No Unlawful Means Argument".* The Applicant did not provide evidence suggesting that unlawful acts had taken place. The alleged acts of oppressive behaviour do not constitute "unlawful means" for the purposes of the Conspiracy Claim, given that conduct which is merely unfair is not – by itself – unlawful (citing *Baker, Samuel Cranage and another v SPH Interactive Pte Ltd and others* [2022] SGHC 237 at [35] and [107]).

11 Applicant's counsel responded to the No *Locus Standi* Argument, the Circumvention Argument and the No Recoverable Loss Argument by citing four recent cases to demonstrate that a minority oppression claim could be founded on a shareholder's suffering of a personal wrong over and above the corporate wrong suffered by the company – see [23(a)] below. In relation to the No Remedy Argument, Applicant's counsel contended that the Applicant was on the cusp of securing a major investment of USD 20 million from one Mr Rohit Jain of CoinDCX, together with "at least two to three other family offices" which were ready to invest in Fearless Legends.[45] Applicant's counsel also pointed out that the fact that Fearless Legends was insolvent did not preclude relief such as a share buyout (citing *Wei Fengpin v Raymond Low Tuck Loong and others* [2022] 2 SLR 363 ("*Wei Fengpin*")). In relation to the remaining arguments (*ie*, the No Diversion Argument, the No Buyout Argument, the

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44 Respondents' Written Submissions (dated 20 July 2023), at paragraph 32.

45 3rd Affidavit of Gillingham James Ian (dated 13 February 2023), at pp 41, 42 and 45.

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Director's Decision Argument, the No Intention To Injure Argument and the No Unlawful Means Argument), Applicant's counsel argued that these matters could only be determined after pre-action production, or at trial.

The Law

12 The present application was brought under O 11 r 11(1) of ROC 2021, which provides as follows:

> The Court may order the production of documents and information before the commencement of proceedings or against a non-party to identify possible parties to any proceedings, to enable a party to trace the party's property or for any other lawful purpose, in the interests of justice.

13 O 11 r 11 of ROC 2021 enables a scope of pre-action production that extends beyond the parameters set out in *Norwich Pharmacal v Customs & Excise Commissioner* [1974] AC 133. Under O 11 r 11 of ROC 2021, pre-action production may be sought not just to identify possible parties to any proceedings, but also to "trace" a party's property, or for "any other lawful purpose", guided by the overarching "interests of justice" (Jeffrey Pinsler SC, *Singapore Civil Practice* (LexisNexis, 2022) ("*Singapore Civil Practice*") at para 30-145).

14 While there are phrasing and terminological differences between O 11 r 11 of ROC 2021 and its predecessor provision (*ie*, O 24 r 6 of the revoked Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC 2014")), the overarching rationale remains the same. The pre-action production mechanism is aimed at saving judicial costs and time, as well as ensuring the efficient management of court processes (*Dorsey James Michael v World Sport Group Pte Ltd* [2014] 2 SLR 208 ("*Dorsey James Michael*") at [26], commenting on pre-action discovery under O 24 r 6 of ROC 2014; and see *Singapore Rules of Court: A Practice*

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Guide (Chua Lee Ming editor-in-chief) (Academy Publishing, 2023) ("*ROC Practice Guide*") at para 11.039). It helps to avoid litigation where the intended claimant realises that his/her suspicions are unfounded, or – if litigation is unavoidable – to identify the real issues in dispute (*Dorsey James Michael* at [26]).

15 The Court of Appeal has observed some tension in the ROC 2014 provisions concerning whether pre-action disclosure ought to be ordered (see *Ching Mun Fong v Standard Chartered Bank* [2012] 4 SLR 185 ("*Ching Mun Fong*") at [18]). On the one hand, an applicant is expected to demonstrate "relevance", which requires him/her to possess sufficient grounds for making the application (entailing, amongst other things, justifying the relevance of the requests based on issues which are likely to arise out of an intended claim) (see O 24 r 6(3) of ROC 2014). As such, an applicant who cannot even set out the core substance of a complaint will not be granted pre-action disclosure (*Intas Pharmaceuticals Ltd v DealStreetAsia Pte Ltd* [2017] 4 SLR 684 ("*Intas Pharmaceuticals*") at [29]). On the other hand, an applicant must demonstrate the "necessity" of the requests (see O 24 r 7 of ROC 2014) – *ie*, that the documents and information sought are necessary for the applicant to have sufficient knowledge of the intended causes of action and the basis upon which the causes of action have arisen (rather than for the applicant to plead a cause of action that is likely to succeed at trial) (*Intas Pharmaceuticals* at [32], citing *Ching Mun Fong*). An applicant may demonstrate necessity by showing that there is some gap in his/her knowledge which must be filled by the information obtained through pre-action disclosure (*CSR v CSS* [2022] 5 SLR 675 ("*CSR*") at [5]).

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16 While the mentioned tension may be less immediately apparent based on the text of O 11 r 11 of ROC 2021, it nonetheless remains very much part of the pre-action production mechanism, save that the requirement of "necessity" has been replaced by "material[ity]" (O 11 r 3(3)(*b*) of ROC 2021; and see *Singapore Civil Procedure 2022 (Vol 1)* (Cavinder Bull SC, gen ed) (Sweet & Maxwell, 2022) ("*Singapore Civil Procedure 2022*") at para 11/3/6). The "material[ity]" touchstone differs from the "necessity" touchstone in that the former connotes a higher level of importance to the case at hand (see, *eg*, *Singapore Civil Procedure 2022* at para 11/3/6; and see *Singapore Civil Practice* at para 30-64, observing that "if a document is material to an issue its production is obviously necessary").

17 The upshot of the tension means that the pre-action production mechanism is generally intended for an applicant who has *some* basis for believing that he/she has a viable cause of action, but who is unable to properly plead his/her claim because he/she requires certain documents and information to cover "critical gaps" in the intended claim (see, *eg*, *CSR* at [5] and [8], and *Toyota Tsusho (Malaysia) Sdn Bhd v United Overseas Bank Ltd and another* [2016] SGHC 74 at [12]). One example of such a "critical gap" is where an intended claim is "largely based on circumstantial and hearsay evidence" (see, *eg*, *CSR* at [8] and *China Merchants Bank Co Ltd v Sinfeng Marine Services Pte Ltd* [2019] SGHC 238 ("*China Merchants Bank*") at [20]). The documents and information obtained through the pre-action production mechanism must be "material" to the applicant's determination of whether there is a cause of action which may be fashioned into a viable claim against a potential defendant (rather than whether the applicant has a meritorious claim that is likely to succeed at trial) (see *Ching Mun Fong* at [23] and *Intas Pharmaceuticals* at [32]). It follows that in assessing whether such production should be ordered, the court takes into

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consideration the applicant's intended cause of action to determine whether the applicant has the requisite information to assess the viability of his/her claim (*CSR* at [5], citing *Haywood Management Ltd v Eagle Aero Technology Pte Ltd* [2014] 4 SLR 478 at [45]).

18 While the viability of the applicant's intended claims and the state of his/her knowledge about those claims are important considerations in deciding whether pre-action production is warranted, these are not exhaustive of the court's inquiry as to whether pre-action production is justified in the manner sought. The court's discretion in ordering such production is ultimately rooted in the broader exercise of achieving the "interests of justice" (a phrase found in O 11 r 11(1) of ROC 2021), which "echoes the concept of 'justness' that undergirds the exercise of the court's power under [O 24 r 6 of ROC 2014]" (*ROC Practice Guide* at p 250). Two cases – *Dorsey James Michael* and *Intas Pharmaceuticals* – have provided useful guidance on the factors to be considered in determining whether pre-action production would be in the "interests of justice", with the latter building upon some (but not all) aspects of the former. These factors continue to apply in the context of O 11 r 11(1) of ROC 2021. Synthesizing both cases, a non-exhaustive set of six factors for consideration includes:

(a) The need to guard against requests of a fishing and roving nature, which are brought in the hope of gathering information on making out a speculative claim (*Dorsey James Michael* at [26]). This entails assessing, amongst other things, the extent to which the intended claim is supported by presently known information, the degree of relevance of the requests to the issues pertaining to the intended claim, and the scope or width of the documents or

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information sought (*Intas Pharmaceuticals* at [35(b)], [35(c)] and [35(d)]).

(b) The seriousness of the injury and or the loss and damage behind the complaint made (*Intas Pharmaceuticals* at [35(a)]).

(c) The reasonable expectations of non-parties in maintaining confidentiality and privacy, including in relation to their own private information, or to satisfy duties of confidentiality owed to others (*Dorsey James Michael* at [26]; *Intas Pharmaceuticals* at [35(f)]).

(d) The need to avoid unnecessarily inconveniencing, embarrassing or prejudicing non-parties by requiring them to disclose the information sought, especially when they may not or cannot be parties to any eventuating litigation (*Dorsey James Michael* at [27]).

(e) The danger that judicially administered orders for pre-action production can increase the expense of resolving disputes (*Dorsey James Michael* at [26]), such as through encouraging satellite litigation on claims that may not be, or have not been, commenced.

(f) The nexus between the intended claim and Singapore, *ie*, whether there is more than a mere possibility that the applicant can potentially bring the intended claim in Singapore (*Intas Pharmaceuticals* at [35(e)].

19 Finally, as with the assessment of "necessity" under ROC 2014, there is a temporal element to the assessment of "material[ity]" under ROC 2021. As

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such, a court may dismiss an application for production of a specific document or piece of information at the time of the application, while leaving it open to the applicant to apply at a subsequent stage where the requested document or information has become "material" (see, *eg*, *Trek Technology (Singapore) v FE Global Electronics* [2003] 3 SLR(R) 685 at [5] in the context of ROC 2014; and see *Singapore Civil Practice* at para 30-65).

Decision

20 Based on the information and evidence available to me, I find that both the Minority Oppression Claim and the Conspiracy Claim are viable claims for the purposes of pre-action production (see [21] to [31] below). I further find that on a holistic assessment of the "interests of justice", the Applicant's wide-ranging requests must be significantly narrowed (see [32] to [39] below).

Viability of the Minority Oppression Claim

21 In relation to the Minority Oppression Claim, the threshold issue is that engaged by the No *Locus Standi* Argument; namely, whether there are any actionable personal wrongs (as opposed to corporate wrongs) for which the Applicant may seek redress. This issue is sometimes far from straightforward. The Court of Appeal has observed that the distinction between personal and corporate wrongs "will not always be clear", and there are many "overlap cases" in which there are plausible arguments that what appears to be a corporate wrong is also, in some way, a personal wrong (*Ho Yew Kong* at [115]). The Court of Appeal set out an analytical framework to guide the court in a situation where a minority oppression action features both personal wrongs and corporate wrongs, as follows:

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(a) **Injury**

(i) What is the real injury that the plaintiff seeks to vindicate?

(ii) Is that injury distinct from the injury to the company and does it amount to commercial unfairness against the plaintiff?

(b) **Remedy**

(i) What is the essential remedy that is being sought and is it a remedy that meaningfully vindicates the real injury that the plaintiff has suffered?

(ii) Is it a remedy that can only be obtained under s 216?

[*bold text in original*]

22 The Court of Appeal's findings on the facts of *Ho Yew Kong* illuminate how the analytical framework is to be applied. These merit further discussion given some similarities with the present factual matrix.

(a) In relation to the twin questions concerning "injury", the Court of Appeal found that there was a "picture of *systemic* abuse" (emphasis in original) by two persons in relation to certain impugned transactions and the management of the company's affairs (*Ho Yew Kong* at [126]). The aggrieved minority shareholder in that case had invested in the joint venture and clearly had the "legitimate expectation that its funds would not be mismanaged, much less siphoned away in the way that was done by [the two culpable persons]" (*ibid*). The Court of Appeal further found that the two culpable persons had "engaged in fraudulent schemes to mislead [the aggrieved shareholder] … and conceal the true nature of the transactions" (*ibid*). This constituted not just a wrong against the company (in the sense that the company's assets were misappropriated), but also a "*distinct* personal wrong" (emphasis in original) against the

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aggrieved shareholder, whose trust was abused through "systemic abuses which benefitted one group of shareholders… at the expense of the other" (*ibid* at [127]). The Court of Appeal further observed that while some of the impugned transactions may not, on their own, have sufficed as a basis for relief under s 216 of the Companies Act, the transactions "taken together, coupled with the systemic nature of … abuse, occasioned serious commercial unfairness to [the aggrieved shareholder]" (*ibid*). Returning to the present facts, assuming that the Applicant's version of events is true, there appears plausible basis that the Applicant had suffered a distinct personal wrong for purposes of the "injury" questions given the circumstances of his dismissal and exclusion from management of Fearless Legends, as well as the Diversion Scheme. For instance, the Applicant may (after obtaining the requisite documents and information) be able to make out a claim that the Represented Respondents' (or, indeed, another person's or entity's) actions were contrary to his legitimate expectations concerning the management of Fearless Legends' assets, or a case of systemic abuse resulting in commercial unfairness to him.

(b) In relation to the twin questions concerning "remedy", in *Ho Yew Kong*, the aggrieved shareholder had prayed for either a winding up of the company or a buyout of its shares in the company. The Court of Appeal found that these remedies were only available in an action under s 216 of the Companies Act. As such, a minority oppression action offered the only way for the aggrieved shareholder to exit the joint venture with as little loss as possible, thus meaningfully vindicating the injury suffered (*Ho Yew Kong* at [128]). In like vein, Applicant's counsel submitted at the hearing that if the Applicant successfully proves the

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Diversion Scheme, an appropriate remedy would be a buyout based on the previous valuation of Fearless Legends. The fact that Fearless Legends is presently in liquidation would not prevent a buyout based on its previous valuation (see *Wei Fengpin*).

23 The Minority Oppression Claim also presents parallels with the following four cases cited by Applicant's counsel. The salient features are highlighted here:

(a) *Leong Chee Kin v Ideal Design Studio Pte Ltd and ors* [2018] 4 SLR 331 ("*Leong Chee Kin*") – This was a decision after a trial of a minority oppression claim. The court held that the defendant-shareholders had devalued the aggrieved shareholder's shareholding by diverting commercial opportunities from the company to five companies in which the defendant-shareholders alone had an interest (*Leong Chee Kin* at [76]). Such diversion was "grossly commercially unfair" to the aggrieved shareholder, thus defeating the aggrieved shareholder's legitimate expectation as a shareholder (*ibid* at [77]). The court thus found the defendant-shareholders guilty of oppressive conduct under s 216 of the Companies Act.

(b) *Cheong Hong Meng David v Sim Irene and anor* [2022] SGHC 72 ("*Cheong Hong Meng David*") – This was a decision after a trial of a minority oppression claim. In gist, a shareholder/director took certain actions to benefit herself and other entities, to deplete the company's assets and finances (including the value of the aggrieved shareholder's shareholding), and to reduce the returns that the aggrieved shareholder would obtain from his investment in the company. This was found to be "commercially unfair" to the aggrieved shareholder, and "contrary to

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[the] legitimate expectation that [the director/shareholder] would act in [the company's] best interest and not use [the company] to further her interest or the interest of other parties" (*ibid* at [140]). The court therefore found that the minority oppression claim was made out.

(c) *Kroll Daniel v Cyberdyne Tech Exchange Pte Ltd* [2022] SGHC 231 ("*Kroll Daniel*") – This was a decision on an application to strike out a minority oppression claim at the interlocutory stage. The aggrieved shareholder claimed that a director and an alleged shadow director of the company had run the company in an "opaque manner", substantially depleting the company's funds with "costly 'questionable' transactions", sought to "pressure" the aggrieved shareholder to exit the company at a "low price" by telling him that the company was "insolvent" and that new funds would be injected only if the aggrieved shareholder left, and eventually took steps to dilute the aggrieved shareholder's shares. Against this backdrop, the court found that the aggrieved shareholder had pleaded a distinct injury to himself *qua* shareholder, rather than merely disclosing a corporate wrong (*ibid* at [165] and [167]). The court further found that the aggrieved shareholder may be entitled to the remedy of a buyout of his shares or a winding up, and therefore declined to strike out his minority oppression claim on the ground of unsustainability (*ibid* at [167]).

(d) *Ang Xing Yao Lionel and anor v Lew Mun Hung Joseph and ors* [2022] SGHC 277 ("*Ang Xing Yao Lionel*") – This was a decision after a trial of a minority oppression claim. The court opined that conduct involving stripping a company of assets in favour of another business in which the majority (but not the minority) shareholders had an interest

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would potentially found relief under s 216 of the Companies Act, even if the majority was "justifiably unhappy with the minority" (*Ang Xing Yao Lionel* at [75]). On the facts, however, the evidence did not establish that there was any stripping of assets.

24 Assessing the background facts and the Applicant's allegations against the cases cited above (*ie*, *Ho Yew Kong*, *Leong Chee Kin*, *Cheong Hong Meng David*, *Kroll Daniel* and *Ang Xing Yao Lionel*), I find that there is sufficient basis for the Minority Oppression Claim to justify an order for pre-action production. I acknowledge that Respondents' counsel drew parallels with *Venkatraman Kalyanaraman v Nithya Kalyani and others* [2016] 4 SLR 1365 ("*Venkatraman*"), a case in which a common law derivative action was struck out on the basis that the plaintiff did not have *locus standi* to bring claims relating to the diversion of the company's business and assets given that the diversion constituted corporate rather than personal loss. However, the citation of *Venkatraman* did not change my assessment on the viability of the Minority Oppression Claim, for three reasons.

(a) First, *Venkatraman* primarily concerned an application to strike out a common law derivative action. The court ordered the striking out because the plaintiff (i) failed to meet the procedural requirements for bringing a common law derivative action; (ii) failed to plead that the company had suffered losses for the wrongs committed, focusing instead only on the personal loss he suffered; and (iii) provided insufficient detail undergirding the common law derivative action (*Venkatraman* at [71] to [73]). These points are not applicable in the present case, which relates to an intended claim in minority oppression under s 216 of the Companies Act.

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(b) Second, while the court in *Venkatraman* did address a possible cause of action based on minority oppression, this was with the caveat that the plaintiff had not expressly relied on such a cause of action. The court struck out the pleading which may have given rise to a minority oppression claim on the basis that insufficient detail was pleaded, and the plaintiff's loss was, "[a]t the most", reflective loss that merely reflected the loss suffered by the company through a fall in value of shares (*Venkatraman* at [75] to [77]). In contrast, in the present case, the Applicant may (if the requested documents or information provide sufficient basis) claim a breach of legitimate expectations or systemic abuse and seek a personal remedy such as a buyout of shares. Based on the cases cited in [22] and [23] above, this appears to provide the foundation for a viable claim in minority oppression.

(c) Third, caution must be exercised when relying on decisions concerning the striking out of claims (or decisions after trial) to challenge the viability of an *intended* claim in a pre-action production application. The latter cannot be held to the same standard as the former. After all, an intended claimant may have far less information available to him/her at the pre-action stage, and the pre-action production mechanism in fact assists an applicant in deciding whether he/she has a cause of action that would survive a striking out application (see, generally, [15] above; see also *China Merchants Bank* at [20], which explains that pre-action production minimizes the risk of time and costs being unnecessarily expended in the bringing of a claim that is subsequently struck out due to insufficient information). Indeed, if an intended claimant already has sufficient information to formulate a

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claim that will survive a striking out application, it is difficult to see how the pre-action production sought would be "material" at that stage.

25 In the present case, I am satisfied that while there is sufficient basis for the Minority Oppression Claim, the Applicant has insufficient knowledge concerning the basis upon which the claim may arise, given that much of the evidence is circumstantial and/or hearsay in nature. I acknowledge the Represented Respondents' positions that there may be difficulties with the Minority Oppression Claim, as seen in the arguments outlined at [9] above. For instance, allegations have been made to the effect that Fearless Legends was already in a poor financial state in early 2022, that it was the Applicant's alleged wrongdoing and misconduct which precipitated Fearless Legends' demise (and the Applicant's removal as CEO and director), and that there was little documentary evidence of the Applicant's alleged forthcoming funding. There were also questions concerning Mr Gonske's role, the Applicant's alleged threat to let Fearless Legends "crash and burn", the messages within the FINXFLO Telegram Group, and so on. However, the issues arising from these allegations are disputed between the parties and can only be properly judicially determined at trial, in the crucible of cross-examination (or, at the very least, through the rigour of the civil interlocutory process). They cannot be summarily determined at the pre-action stage.

26 As such, I find that the Minority Oppression Claim is sufficiently viable, at the pre-action stage, to warrant the production of documents and information. Properly scoped, such production will enable the Applicant to assess whether he had a good cause of action and, if so, to properly bring such a claim.

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Viability of the Conspiracy Claim

27 In relation to the Conspiracy Claim, there is no need to revisit the No *Locus Standi* Argument, the No Diversion Argument, the No Recoverable Loss Argument and the Director's Decision Argument. The reasons for rejecting these arguments are the same as those already canvassed in relation to the Minority Oppression Claim. The remaining two arguments (*ie*, the No Intention To Injure Argument and the No Unlawful Means Argument) relate to specific elements of the tort of conspiracy, and will be considered in greater detail here.

28 The tort of conspiracy has two branches, namely, *unlawful means conspiracy* (where the acts committed pursuant to the conspiracy are unlawful); and *lawful means conspiracy* (where the acts committed pursuant to the conspiracy are lawful). The elements of the tort were set out *SH Cogent Logistics Pte Ltd v Singapore Agro Agricultural Pte Ltd* [2014] 4 SLR 1208 (at [18]) as follows:

> (a) an agreement between two or more persons to do certain acts;
>
> (b) if the conspiracy involves:
>
> (i) *unlawful* means, the conspirators must have *intended* to cause damage to the claimant;
>
> (ii) *lawful* means, then the conspirators must additionally have had the *predominant purpose* of causing damage to the claimant;
>
> (c) the acts must have actually been performed in furtherance of the agreement; and
>
> (d) damage must have been suffered by the claimant.
>
> [*emphasis in original*]

29 I am satisfied that taking the Conspiracy Claim at its highest, there is basis for the Applicant's suggestion that Mr Mansfield and Mr Plaskocinski

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were conceivably involved in the alleged conspiracy, or are at least in a position to provide the necessary documents and information: the former due to this role in running Fearless Legends on a day-to-day basis and for putting together the Licensing Agreement, and the latter as the person involved in developing the relevant technology and the Source Code. While the basis for Mr Jones' involvement in the alleged conspiracy is less clear, Mr Jones may have some of the necessary information given that he was one of the larger shareholders in Fearless Legends and had provided affidavit evidence that there were shareholder meetings concerning the management of Fearless Legends.

30 In relation to the No Intention To Injure Argument, I accept Applicant's counsel's argument that there is some basis for suggesting that there may have been an intention to injure the Applicant, particularly in view of his abrupt removal as CEO and director as well as the alleged Diversion Scheme (which are heavily disputed and cannot be summarily determined at the pre-action stage – see [25] above). It is also not unreasonable to believe that at the pre-action stage, an aggrieved party may lack direct evidence of a conspiracy, given the informational asymmetry between him/her and the alleged conspirators. Allowing pre-action production in the present case would facilitate the obtaining of documents and information which are material in assessing if the Conspiracy Claim is a viable one at this pre-action stage.

31 In relation to the No Unlawful Means Argument, I accept that the Applicant is presently unable to state whether any unlawful acts had taken place as part of the conspiracy. However, this is precisely the reason for the Applicant seeking pre-action production of documents and information: to see if a viable cause of action can be established, in the light of the surrounding circumstances (such as his removal as CEO and director, as well as the alleged Diversion

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Scheme). I therefore find the Conspiracy Claim sufficiently viable, at the pre-action stage, to warrant some production of documents and information.

Interests of Justice

32 Having found that both the Minority Oppression Claim and Conspiracy Claim are sufficiently viable claims at the pre-action stage, I turn to assess the Applicant's requests holistically in the light of the interests of justice. Five of the six factors enumerated at [18] above can be concisely addressed, before I focus in greater detail on the remaining factor.

(a) First, in relation to the seriousness of the injury, loss or damage (see [18(b)] above), the loss suffered by the Applicant is potentially significant given that Fearless Legends was allegedly valued at about USD527,300,000 (of which the Applicant's stake would be valued at about USD163,463,000) as at 31 December 2020. Even on Mr Mansfield's case, the value of Fearless Legends would be around USD127,300,000 (of which the Applicant's stake would be valued at about USD39,463,000).[46]

(b) Second, in relation to confidentiality and privacy (see [18(c)] above), while I acknowledge that the Respondents should not be unnecessarily made to share their private information, no specific confidentiality arrangements have been highlighted to me which may warrant heightened circumspection in ordering pre-action production. It also appears that the Respondents will likely be involved (whether as

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[46] Applicant's Written Submissions (dated 20 July 2023), at pp 53 and 54, and the affidavit evidence cited therein.

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parties, or as witnesses) in any eventuating litigation, although it is too early to draw conclusions at this stage.

(c) Third, in relation to inconveniencing, embarrassing or prejudicing non-parties (see [18(d)] above), other than the fact that the Respondents will likely be involved in any eventuating litigation, there is also presently no evidence of any embarrassment caused to the Respondents, or of any inconvenience or prejudice caused to them which cannot be compensated by costs. The issue of costs will be considered later in this judgment.

(d) Fourth, in relation to judicially administered orders for pre-action production increasing the expense of dispute resolution (see [18(e)] above), no evidence was proffered to demonstrate any disproportionate expense occasioned by judicially administered pre-action disclosure orders in the present case. Indeed, given that the Applicant's pre-application attempts to obtain the information directly from the Respondents were unsuccessful (see [6] above), and that the post-application responses from Mr Mansfield, Mr Plaskocinski and Mr Jones (in their reply affidavits) were caveated and heavily qualified (*eg*, "without prejudice to my right to answer more fully"[47]), it is uncertain how this dispute can otherwise be resolved without judicially administered pre-action production orders. In addition, the narrowed timeframe and scope of the requests, as discussed below, would help mitigate the costs expended in pre-action production.

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47 1st Affidavit of Christopher David Mansfield (dated 10 April 2023), at paragraphs 70 and 71.

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(e) Fifth, in relation to a Singapore nexus for the intended claims (see [18(f)] above), it is undisputed that Fearless Legends is a Singapore incorporated company, and various acts had occurred in Singapore. As such, both the Minority Oppression Claim and Conspiracy Claim have a clear nexus to Singapore.

33 The remaining factor concerns the need to guard against requests of a fishing and roving nature (see [18(a)] above). This factor must be considered in greater detail.

34 Applicant's counsel submitted that the requests were not overly broad but that, in any event, the court may narrow the requests as appropriate (citing *Element Six Technologies Ltd v IIa Technologies Pte Ltd* [2018] SGHCR 13 at [41]-[43], and *Sanae Achar v Sci-Gen Ltd* [2011] 3 SLR 967 at [21]). While neither of the cited cases concerned applications for pre-action production, the court certainly has the discretion to narrow the requests rather than to reject the requests in their entirety. In the interests of justice, I grant a substantially circumscribed set of requests, narrowed both in terms of the *substantive scope* of the documents and information sought as well as the operative *timeframe*.

35 First, I narrow the substantive scope of the requests as elaborated upon in the following paragraphs. For good order, the items allowed in their entirety are listed first, followed by the items which are allowed in part, and thereafter the denied items.

36 In relation to Appendix 1 (pre-action production of *documents*):

(a) Table A (documents requested from Fearless Legends):

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(i) S/N 5, 6, and 7 are allowed in their entirety. The Registered Charge is directly relevant and material to whether there was a diversion of assets (*ie*, intellectual property) to OneX LLC.

(ii) S/N 2 is allowed in part, limited to S/N 2(a) and (b)(i), and with S/N 2(a) amended to read "a third party obtains an interest in the intellectual property rights owned by Fearless Legends*, including the agreement entered into on 10 May 2022 between Fearless Legends and OneX LCC*" (emphasis added to indicate the amendment). This is on the basis that S/N 2(a) will help to confirm or deny the Applicant's suspicions that the relevant technology has been misused. For completeness, S/N 2(b)(ii) to (b)(x) are denied as it would not be in the interests of justice to allow such wide-ranging requests.

(iii) S/N 3 and 4 are allowed in part, with the references to "S/N 1 and 2" being replaced by a reference to "S/N 2(a) and (b)(i)". This follows from the narrowing mentioned in [36(a)(ii)] above.

(iv) S/N 1 is denied in its entirety as the document sought is an interim document that is not the executed version of the Licensing Agreement. The Applicant has not provided good justification for why such an interim document would be relevant or material to the intended claims.

(v) S/N 8 to 15 are denied in their entirety as they do not appear material to the Applicant's determination of whether his intended claims are viable. The Applicant's stated intention for

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seeking these documents is to enable the Applicant to instruct an expert to consider whether Onex LLC and/or LiquidityOne had used Fearless Legends' intellectual property. However, these highly technical requests appear excessive, and it would not be in the interests of justice to allow such wide-ranging requests, at least at this pre-trial stage.

(b) Table B (documents requested from Mr Mansfield):

(i) S/N 2, 3, 5 and 9 are allowed in their entirety. They are relevant and material given the Applicant's contention that Mr Gonske is possibly the mastermind of the Diversion Scheme,[48] and that OneX LLC is directly or indirectly related to Mr Gonske and/or the BlocTech Group.

(ii) S/N 1 is allowed in part, limited to S/N 1(a), which directly relates to the removal of the Applicant as CEO and director. For completeness, S/N 1(b) is denied given that the Applicant's performance of his CEO and director's duties are only tangentially relevant (if at all) to the intended claims.

(iii) S/N 8 is allowed in part, with the references to "S/N 1 and 2" being replaced by a reference to "S/N 2(a) and (b)(i)" (see [36(a)(iii)] above).

(iv) S/N 4 is denied in its entirety as it is neither relevant nor material at this stage of proceedings.

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[48] 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 26(a).

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(v) S/N 6 is denied in its entirety as it encapsulates the more-targeted request in S/N 5 (which has been allowed).

(vi) S/N 7 is denied in its entirety given that the Applicant has not provided any basis for asserting that Mr Gonske is involved in the management of Fearless Legends.

(c) Table C (documents requested from Mr Plaskocinski): S/N 1, 2, 3, 4 and 5 are allowed in their entirety. These requests are directly related to the possible diversion of assets and employees, the removal of the Applicant as CEO and director, as well as the possible interests that Mr Plaskocinski may have in OneX LLC.

(d) Table D (documents requested from Mr Jones):

(i) S/N 1, 2, 3, 10 and 11 are allowed in their entirety. These requests are directly related to the possible diversion of assets and employees, the removal of the Applicant as CEO and director, as well as the possible interests that Mr Jones may have in OneX LLC.

(ii) S/N 8 is allowed in part, with the references to "S/N 1 and 2" being replaced by a reference to "S/N 2(a) and (b)(i)" (see [36(a)(iii)] above).

(iii) S/N 4 is denied in its entirety given that the Applicant's performance of his CEO and director's duties are only tangentially relevant (if at all) to the intended claims (see [36(b)(ii)] above).

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(iv) S/N 5, 6 and 7 are denied in their entirety as the Applicant has not provided any clear basis for why Mr Jones (who is not involved in the day-to-day operations or management of Fearless Legends) would be in a position to provide such information. Mr Mansfield appears better placed to address the issues in S/N 5 and 6 and has, indeed, been ordered to provide the relevant documents (see [36(b)(i)] above). In relation to S/N 7, this seems to be a roving request for information from Mr Jones, when the Applicant has not provided basis for asserting that Mr Jones is still involved in the management of Fearless Legends.

(v) S/N 9 is denied in its entirety as it is neither relevant nor material at this stage of proceedings.

37 In relation to Appendix 2 (pre-action production of *information*):

(a) Table A (information requested from Fearless Legends):

(i) S/N 2 is allowed in part, with the words "to OneX LLC and/or LiquidityOne" appended to the first paragraph, and S/N 2(b) and (e) deleted. The appending of the words and the denial of S/N 2(b) effectively confine the request to information relating to the entry into contracts or deeds with OneX LLC and/or LiquidityOne, rather than a roving request for all contracts and deeds entered into with any other entity. S/N 2(e) is denied as the Applicant has not demonstrated how the commercial reasons for entering contracts or deeds are relevant or material to the intended claims.

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(ii) S/N 3 is allowed in part, with the deletion of everything after the phrase "please provide a list of such accounts that were transferred". The deletion confines the request to the list of customer accounts that were transferred to OneX LLC and/or Liquidity One. The Applicant has not demonstrated how the various details sought in the sub-paragraphs are relevant or material to the intended claims.

(iii) S/N 1 is denied in its entirety for the reasons stated in [36(a)(iv)] above.

(iv) S/N 4 is denied in its entirety. This request is presumably intended to buttress aspects relating to customer diversion, but the request as framed does not achieve this end.

(v) S/N 5 is denied in its entirety given that it appears entirely speculative. It is unclear what conclusions can be drawn based on the identity of the entity that was funding Fearless Legends' legal fees (see [7(g)] above).

(b) Table B (information requested from Mr Mansfield):

(i) S/N 6 is allowed in its entirety as it is directly relevant and material to the diversion of employees, as well as the allegation that there may be systemic abuse which benefitted one group of shareholders at the expense of the others.

(ii) S/N 1 is allowed in part, with the deletion of S/N 1(b). S/N 1(b) is denied as the Applicant has not demonstrated how the mode of instructions or communications is relevant and material to the intended claims.

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(iii) S/N 3 is allowed in part, with the words "to OneX LLC and/or LiquidityOne" appended to the first paragraph, and S/N 3(b) and (e) deleted, for the reasons stated in [37(a)(i)] above.

(iv) S/N 4 and 5 are allowed in part, with everything after the first paragraph deleted. The Applicant has not demonstrated the relevance and materiality of information relating to how Mr Mansfield was made aware of the approaches to divert employees or customers, or whether (and how) Fearless Legend's board of directors responded to the approaches.

(v) S/N 2 is denied in its entirety, as whether Mr Gonske was aware or informed of the removal of Mr Gillingham as CEO and director prior to Mr Gillingham's removal is neither relevant nor material at this stage of proceedings.

(c) Table C (information requested from Mr Plaskocinski):

(i) S/N 1, 5 and 6 are allowed in their entirety as they are directly relevant and material to the diversion of employees, the removal of the Applicant as CEO and director, as well as the allegation that there may be systemic abuse which benefitted one group of shareholders at the expense of the others.

(ii) S/N 2 is allowed in part, with the deletion of S/N 2(b). S/N 2(b) is denied as the Applicant has not demonstrated how the mode of instructions or communications is relevant and material to the intended claims.

(iii) S/N 4 is allowed in part, appending the words "to OneX LLC and/or LiquidityOne" to the first paragraph, and deleting

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everything after the first paragraph, *ie*, from the phrase "If so, please state…". The appending of the words is to achieve a similar confining effect as that discussed at [37(a)(i)] above, while the deletion is ordered on the basis that the ensuing sub-paragraphs are roving in scope and do not appear material at this pre-action stage.

(iv) S/N 3 is denied in its entirety. The Applicant has not demonstrated how Mr Plaskocinski's current access to Fearless Legend's intellectual property is directly relevant and material to the intended claims.

(d) Table D (information requested from Mr Jones):

(i) S/N 2 and 7 are allowed in their entirety, as they are directly relevant and material to the removal of the Applicant as CEO and director, as well as the allegation that there may be systemic abuse which benefitted one group of shareholders at the expense of the others.

(ii) S/N 1 is allowed in part, with the deletion of S/N 1(b). S/N 1(b) is denied as the Applicant has not demonstrated how the mode of communications is relevant and material to the intended claims.

(iii) S/N 3 is allowed in part, with the words "to OneX LLC and/or LiquidityOne" appended to the first paragraph, and S/N 3(b) and (e) deleted, for the reasons stated in [37(a)(i)] above.

(iv) S/N 4, 5 and 6 are denied in their entirety as the Applicant has not provided any clear basis for why Mr Jones (who is not

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involved in the day-to-day operations or management of Fearless Legends) would be in a position to provide such information. Mr Mansfield appears better placed to address the issues in S/N 4 and 6 and has, indeed, been so ordered to provide the relevant information (see [37(b)(iv)] above). As for S/N 5, this appears to be a roving request for information from Mr Jones; it is unclear why such a request, which concerns *other* shareholders of Fearless Legends (rather than Mr Jones himself, or any shareholder with a specific relation to Mr Jones), is targeted at Mr Jones.

38 In addition to narrowing the substantive scope of the requests, I also order a narrowing of the operative timeframe for the requests.

(a) In relation to the start date for the requests, Applicant's counsel suggested limiting this to documents and information from March or April 2021 onward (*ie*, about one year prior to the Applicant's dismissal). In my assessment, a timeframe commencing six months (*ie* from October 2021) prior to the Applicant's dismissal suffices at this pre-action stage. If the Applicant's intended claims are viable, there will likely have been major adjustments and developments within this period.

(b) In relation to the end date for the requests, I order that all requests relating to the removal of the Applicant as CEO and director shall be limited to an end date of 12 April 2022 (being the date that the

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shareholders were informed of the Applicant's removal[49]), given that any reasons for wrongful removal will likely have crystallised by that date. All other requests will be limited to the end-date of 27 January 2023 (being the date that Fearless Legends was wound up).[50] The narrowed timeframes will provide sufficient information for the Applicant to determine whether and against whom to bring the intended claims.

39 The granted narrowed requests are what, in my assessment, are relevant, material and ought to be disclosed in the interests of justice at this time. The Applicant is not precluded from subsequently seeking the production of documents or information relating to the denied items or falling within a broader operative timeframe, should he be able to meet the required thresholds at that time (see the discussion on temporality at [19] above).

Costs

40 Applicant's counsel submitted that O 11 r 11(3) of ROC 2021 did not apply to the present situation. Instead, she argued that costs should be awarded in favour of the Applicant as he had succeeded in obtaining the pre-action production of documents and information for many of his requests. In relation to the quantum, she sought costs of the application in the region of $22,000 to $24,000, to be paid by the Represented Respondents to the Applicant.

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49 1st Affidavit of Gillingham James Ian (dated 13 February 2023), at paragraph 19.

50 HC/ORC 336/2023 (dated 27 January 2023).

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41 Respondents' counsel contended that in the light of O 11 r 11(3) of ROC 2021, the costs of the application and the costs of compliance with the production orders ought to be paid by the Applicant to the Represented Respondents. In relation to quantum, Respondents' counsel sought $30,000 in costs of the application (*ie*, $10,000 for each of the Represented Respondents), and $6,500 in costs of compliance (based on a $500 blended hourly rate, multiplied by four hours needed to advise each of the three respondents, and adding filing and administrative fees of nearly $500).

42 The crux of the arguments centred upon the entitlement to costs in O 11 r 11(3) of ROC 2021, which provides as follows:

> A non-party is entitled to all reasonable costs arising out of such an application.

43 The predecessor provision – O 24 r 6(9) of ROC 2014 – reads as follows:

> Unless the Court orders otherwise, where an application is made in accordance with this Rule for an order, the person against whom the order is sought shall be entitled to his costs of the application, and of complying with any order made thereon on an indemnity basis.

44 Applicant's counsel contended that the understanding of "non-party" in O 11 r 11(3) of ROC 2021 is limited to a "non-party" in the context of *commenced* proceedings. She pointed out that the heading to O 11 r 11 of ROC 2021 reads "Production before action *or* against non-parties" (emphasis added), and that O 11 r 11(1) of ROC 2021 refers to the production of documents either "before the commencement of proceedings *or* "against a non-party" (emphasis added). The disjunctive "or", in her contention, meant that the reference to "non-party" was intended to refer *only* to a situation *after* the commencement of proceedings; it did not encompass a respondent to a pre-action production

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application. She further pointed out that such an interpretation is supported by the fact that O 11 r 11(3) of ROC 2021 is phrased differently from its predecessor provision O 24 r 6(9) of ROC 2014, which refers to a "person against whom the order is sought" rather than a "non-party".

45 Respondents' counsel argued that the term "non-party" includes a respondent to an application for pre-action production. He cited two Australian decisions and one UK decision to support his view that the general approach is to award costs to the person against whom a pre-action disclosure order is made, *ie*, *Horwood v Davenport* [2014] WASC 436 ("*Horwood*"), *Riley as Trustee of the Ker Trust v Jubilee Gold Mines NL BC 200002859* [2000] WASC 114 ("*Riley*") and *SES Contracting Ltd and Others v UK Coal plc* [2007] 5 Costs LR 758 ("*SES Contracting*"). In *Horwood*, the Supreme Court of Western Australia referred to the respondent as a "non-party" and ordered that the applicant pay the respondent's costs. In *Riley*, the Supreme Court of Western Australia opined that it was the applicant who should pay costs to the respondent even though the applicant had succeeded on the application, since it was the applicant who was "seeking an indulgence from the Court" (*Riley* at [18]). In *SES Contracting*, the UK Court of Appeal pointed out that the UK Civil Procedure Rules Rule 48.1 provides that the general rule in a pre-action disclosure application is for the court to award costs to the "person against whom the order is sought" (*SES Contracting* at [17]). The court in *SES Contracting* also noted that it is "not usually… unreasonable" for a person to resist pre-action disclosure and require the applicant to satisfy the court that such disclosure is warranted by way of a pre-action disclosure application (*ibid*).

46 Neither Applicant's nor Respondents' counsel addressed the definition of "non-party" in O 1 r 3(1) of ROC 2021. That definition provides:

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> "non-party" means any person who is not a party in the action and includes a person who participates in the action because of a statutory duty or because he or she may be affected by the Court's decision in the action;

47 To be sure, this definition cannot be literally interpreted in the context of an application under O 11 r 11 of ROC 2021. This is because the respondent to any such application (whether in a pre-action context, or in the context of an action that has already commenced) is *necessarily* a party to the production application. It will therefore be necessary to invoke the reference to "unless the context otherwise requires" in the chapeau of O 1 r 3(1) of ROC 2021 and read the references to "party in the action" or "action" as references to the *eventuating* action or application (as the case may be). Even so, however, the definition of "non-party" in O 1 r 3(1) of ROC 2021 does not conclusively answer the question: does the term "non-party" in O 11 r 11(3) of ROC 2021 refer exclusively to a non-party in the context of a commenced proceeding, to the exclusion of a respondent to a pre-action production application? In my view, this question admits of a *negative* answer, for three reasons:

(a) First, I accept that the definition of "non-party" in O 1 r 3 of ROC 2021, as well as the disjunctive phrasing in the heading to O 11 r 11 of ROC 2021 and in O 11 r 11(1) of ROC 2021, may be interpreted to distinguish a "non-party" on the one hand, from a respondent to a pre-action production application on the other. However, on a plain reading of O 11 r 11(3) of ROC 2021, there is no express suggestion that the term "non-party" refers *only* to a "non-party" in the context of commenced proceedings. Indeed, the term "non-party", read on its own, is arguably wide enough to encompass a person from whom production is sought at the pre-action stage, given that such a person would not be a party to any proceedings at the time of the application (given that

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proceedings have yet to, and indeed may never, commence). This broader understanding of "non-party" also finds resonance in O 11 r 4 of ROC 2021, which is the general provision stating the court's power to order production generally. The reference to "non-party" in this general provision cannot be limited to a "non-party" in the context of *commenced* proceedings, given that O 11 r 11 of ROC 2021 clearly contemplates the court ordering production in a *pre-action* context. The use of the term "non-party" in O 11 r 4 of ROC 2021 therefore supports the understanding that the term "non-party" may not have as circumscribed a meaning in O 11 r 11(3) of ROC 2021 as Applicant's counsel suggests.

(b) Second, there is no known basis for thinking that O 11 r 11(3) of ROC 2021 was intended to create a substantial difference in terms of the *entitlement* to costs *vis-à-vis* the position in O 24 r 6(9) of ROC 2014; rather, the real difference concerns the *scale* of costs allowed, with the scale being altered from "indemnity" costs to "reasonable" costs. As a matter of principle, there does not appear to be any reason why a respondent to a pre-action production application should be denied entitlement to costs. Under O 24 r 6(9) of ROC 2014, the rationale for the entitlement to costs is that a person should be compensated for his/her efforts in complying with a production order (whether in a pre-action situation, or as a non-party to commenced proceedings) when he/she is being compelled to do so despite the absence of any interest in any proceedings. While the wording in O 11 r 11(3) of ROC 2021 differs from O 24 r 6(9) of ROC 2014, the same rationale continues to apply (see, *eg*, *Singapore Civil Practice* at para 30-158, observing that the "rationale of this right to costs is that the respondent's involvement is

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compelled despite not having any interest in the proceedings nor bearing any responsibility for them"). The general position of a respondent being entitled to costs also reflects the general principle in the Australian and UK cases, as seen in *Horwood*, *Riley* and *SES Contracting* (although the wording of O 11 r 11(3) of ROC 2021 does differ from the relevant rules in Australia and the UK). I further note that in *Singapore Civil Practice* at para 30-158, the learned author cited O 11 r 11(3) of ROC 2021 and observed that a respondent to a pre-action production application is entitled to the reasonable costs arising out of such an application.

(c) Third, Applicant's counsel's position is premised on a strict literal interpretation. Adopting a purposive interpretation as is required by O 3 r 1(1) of ROC 2021, for the reasons in [47(a)] and [47(b)] above, the reference to "non-party" in O 11 r 11(3) of ROC 2021 should be interpreted to include a respondent to a pre-action production application.

48 I therefore find that pursuant to O 11 r 11(3) of ROC 2021, the Represented Respondents are entitled to the reasonable costs of the application, while the Respondents (*ie*, including Fearless Legends) are entitled to the reasonable costs of complying with the production orders made. Even if I have erred in my interpretation of O 11 r 11(3) of ROC, it is uncontroverted that the court has broad discretion to make orders relating to costs (see O 2 r 13(1) of ROC 2021), and that it ought to exercise such discretion in a manner that advances the "Ideals" in O 3 r 1(2) of ROC 2021 (see O 3 r 1(3) of ROC 2021). As such, I would have – in any event – exercised my discretion and arrived at the same conclusion on the entitlement to costs.

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49 I turn next to the quantum of costs to be awarded. In relation to the costs of the application, Appendix G to the Supreme Court Practice Directions 2021 provides a guideline range of $12,000 to $30,000 per day for contested originating applications. In the present application, there were many categories of requests spread over two Appendices, and substantive legal arguments were canvassed. At the same time, the issues were not overly complex and there was considerable overlap in the matters addressed by the Represented Respondents, who were represented by a single set of counsel. Considered in the round, I fix the costs of the application at $18,000, all in, to be paid by the Applicant to the Represented Respondents.

50 In relation to costs of compliance with the order for pre-action production, there is no prescribed guideline amount. As mentioned at [41] above, Respondents' counsel sought compliance costs of $6,500 all in for the Represented Respondents. Applicant's counsel had no quarrel with the methodology of calculating the compliance costs, but queried if four hours of legal work would be required for each of the Represented Respondents. However, she did not provide any counterarguments as to why four hours would be excessive based on the number of requests made. In my view, four hours spent for each of the Represented Respondents at a blended hourly rate of $500 is reasonable. As such, I fix the costs of compliance at $6,500, all in, to be paid by the Applicant to the Represented Respondents.

51 In relation to Fearless Legends, I make no order as to costs of the application given that Fearless Legends was unrepresented and did not contest the application. However, Fearless Legends ought to be entitled to the costs of compliance should compliance be forthcoming. I therefore order costs of

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compliance of $2,200 to Fearless Legends, conditional upon Fearless Legends' compliance with the production orders made.

Security for Costs

52 The final issue concerns the Represented Respondents' request for security for costs. Respondents' counsel contended that the Represented Respondents had already incurred liability for costs and fees in responding to the present application and that, in all likelihood, the Applicant would be unable to pay costs. As such, the Represented Respondents sought to have the pre-action production order made conditional on the Applicant's giving security for costs. In making this argument, Respondents' counsel pointed out that the Applicant had lost his employment visa, faces criminal proceedings in Singapore for assault (which may result in the revocation of any visitor's pass or tourist visa he may be carrying), no longer appeared to reside at the address indicated in the affidavits filed in this application, and has been and remains wanted by the City of London police since March 2019. Applicant's counsel responded by emphasising that the Applicant is married to a Singaporean and has started to apply for permanent residency, that the criminal proceedings are unmeritorious, and that the allegation concerning the City of London Police was untrue.

53 Unlike O 24 r 6(6)(*a*) of ROC 2014, there is no provision in O 11 of ROC 2021 expressly stating that an order for pre-action production may be made conditional upon an applicant giving security for the respondent's costs. However, it seems clear that the court may still order security for costs in a pre-action production situation pursuant to its general powers under O 3 r 2(2) of ROC 2021 (see *Singapore Civil Practice* at para 30-158). What is less clear are the principles undergirding an order that the pre-action production of documents

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be made conditional upon the applicant's furnishing of security. Both sets of counsel submitted that in the absence of any relevant published decision touching on O 24 r 6(6)(*a*) of ROC 2014, the general rules relating to security for costs (*ie*, O 23 of ROC 2014, or O 9 r 12 of ROC 2021) provide guidance on the court's exercise of discretion to order security in a pre-action production context. They differed, however, over whether these general rules should be understood as requirements or as mere guidelines.

54 Given the facts of the present case, however, I decline to decide on this issue. The award of and rules governing security for costs generally relate to situations where the merits of the action or application, and/or the costs of compliance with any orders made, have yet to be determined. The present situation is different, given that the merits of the application as well as the costs orders have already been decided. Respondents' counsel's concerns about the Represented Respondents being unable to recover the costs of the application or compliance may well be met by an order that the pre-action production of documents and information be made conditional upon the Applicant's payment of the ordered costs within 14 days of the present order.

Conclusion

55 My orders are as follows:

(a) The Represented Respondents shall, within 14 days of the Applicant's payment of costs as stipulated in [55(d)(i)] below, serve on the Applicant:

(i) a list of documents verified by affidavit stating whether the documents allowed (at [36(b)] to [36(d)], read with [38] above) are, or have at any time been, in their

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possession or control, and if the documents or any of them have been but are no longer in their possession or control, stating when they parted with the documents and what has become of those documents; and

(ii) the requested information (set out in [37(b)] to [37(d)], read with [38] above), verified by affidavit.

(b) Fearless Legends shall, within 14 days of this judgment, serve on the Applicant:

(i) a list of documents verified by affidavit stating whether the documents allowed (at [36(a), read with [38] above) are, or have at any time been, in its possession or control, and if the documents or any of them have been but are no longer in its possession or control, stating when it parted with the documents and what has become of those documents; and

(ii) the requested information (set out in [37(a)], read with [38] above), verified by affidavit.

(c) The Applicant and/or his solicitors shall be at liberty to inspect, within seven days of the service of the list(s) of documents, the documents enumerated therein and to take copies of any or all of such documents upon giving reasonable notice to the relevant respondent.

(d) In relation to costs, the Applicant shall:

(i) within 14 days of this judgment, pay to the Represented Respondents the sum of $18,000, all in (being the costs

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of the application) and the sum of $6,500, all in (being the costs of compliance); and

(ii) within 14 days of the provision by Fearless Legends of the documents and information stipulated in [55(b)], pay to Fearless Legends the sum of $2,200, all in (being the costs of compliance).

Justin Yeo
Assistant Registrar

Ms Chui Lijun and Mr Joseph Lim (M/s Bird & Bird ATMD) for the Applicant.
1st Respondent unrepresented and absent.
Mr Dominic Chan and Ms Chua Su Ann (M/s Characterist LLC) for the 2nd to 4th Respondents.

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Annex

APPENDIX 1

Table A: Categories of documents requested from Fearless Legends Pte Ltd

S/N	Category of Documents
1.	The draft licensing agreement proposed by the board of directors of Fearless Legends during a Zoom meeting with its shareholders on 11 May 2022 (i.e., the 2nd Draft Licensing Agreement).
2.	Any contract and/or deed entered into by Fearless Legends pursuant to which: (a) a third party obtains an interest in the intellectual property rights owned by Fearless Legends; and/or (b) a licence is granted by Fearless Legends to a third party for the said third party to: i. use, reproduce, modify, improve, expand, and/or transfer the software and/or technology of Fearless Legends; ii. use all trade marks and/or copyrights of Fearless Legends; iii. reproduce, install and render the software and/or technology of Fearless Legends; iv. sell, rent, lease, assign, lend, sublicence or otherwise transfer or grant to any other person or entity any right under the licence; v. further develop any or all of Fearless Legends: (A) software and/or technology; (B) user manuals and other written materials created by Fearless Legends relating to and/or describing the functionality and use of the software and/or technology; (C) branding materials concerning or arising from the software and/or technology; and (D) trade marks and service marks in connection with the branding materials, software and/or technology; vi. remove or obscure any proprietary rights notices referencing Fearless Legends on any of the things listed in item (b)(v) above; vii. decode, alter, decompile reverse engineer, or disassemble any of the software and/or technology of Fearless Legends; viii. disclose, publish, display or otherwise make available to any third party of the software and/or technology of Fearless Legends or copies thereof; ix. use and allow the use of any of the things listed in item (b)(v) above anywhere in the world; and/or

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S/N	Category of Documents
	x. sublicence the licence to any other number of users.
3.	Any Communication by or from Fearless Legends in relation to the contract(s) and/or deed(s) entered into by Fearless Legends in S/N 1 and 2 above.
4.	All internal memoranda, notes, records of meetings or discussions and other Documents in relation to the negotiation, preparation and execution of the contract(s) and/or deed(s) entered into by Fearless Legends in S/N 1 and 2 above.
5.	With reference to the Registered Charge made in favour of OneX LLC, the written instrument and its Annexures that was executed by Fearless Legends.
6.	Any Communication from or by Fearless Legends in relation to the written instrument and its Annexures executed by Fearless Legends in S/N 5 above.
7.	All internal memoranda, notes, records of meetings or discussions and other Documents in relation to the negotiation, preparation and execution of the Registered Charge made by Fearless Legends in favour of OneX LLC.
8.	In relation to the **planning and analysis stage** of the development of the Source Code, any Document in relation to: (a) the business requirements of the Source Code; (b) the functional requirements of the Source Code; (c) the use cases of the Source Code; and/or (d) the budget planning and approvals relating to and/or in connection with the development of the Source Code.
9.	In relation to the **design stage** of the development of the Source Code, any Document in relation to: (a) the process flow diagrams; (b) the technical architecture and design of the Source Code; (c) the database design relating to and/or in connection with the Source Code; and/or (d) the user interface design related to and/or in connection with the Source Code.
10.	In relation to the **development** of the Source Code, any Document in relation to: (a) the code reviews of the Source Code; (b) the issue logs of the Source Code; (c) the test plans relating to and/or in connection with the Source Code; and/or (d) the rollback plans relating to and/or in connection with the Source Code.
11.	In relation to the **testing** of the Source Code, any Document containing:

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S/N	Category of Documents
	(a) the system test plan and results in relation to and/or in connection with the Source Code; and/or (b) the user acceptance test plan and results.
12.	In relation to the **deployment** of the Source Code, any Document in relation to: (a) the software user guide; (b) the system administration guide; (c) the operations guide; (d) the deployment logs; and/or (e) the release notes.
13.	In relation to the **maintenance** of the Source Code, any Document containing: (a) the software update log; and/or (b) the bug fixes log.
14.	In relation to the **project management** of the Source Code and the tools and licences involved in its development, any Document in relation to: (a) the project team organisational chart; (b) the project management plan; (c) the project status reports; (d) the minutes of any meetings concerning the Source Code; (e) issues management log; (f) the written code of the Source Code; (g) any code management platform used (e.g. GitHub or GitLab) and the accompanying records pertaining to the date of set up, account creation date, change of management and code deployment records; and/or (h) the software tools (including cloud platforms and any third party service providers) and licences including procurement and subscription.
15.	Any Communication in relation to the planning and analysis, design, development, testing, deployment, and/or maintenance of the Source Code.

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Table B: Categories of documents requested from Christopher David Mansfield

S/N	Category of Documents
1.	Any Communication between Mr Mansfield and Mr Gonske in relation to: (a) the removal of Mr Gillingham as CEO and director of Fearless Legends; and (b) Mr Gillingham's performance of his duties as CEO and director of Fearless Legends (when he was as such).
2.	Any Communication between Mr Mansfield and Mr Gonske in relation to the intellectual properties (including but not limited to the Source Code) of Fearless Legends.
3.	Any Communication between Mr Mansfield and Mr Gonske in relation to the termination or resignation of employees of Fearless Legends.
4.	Any Communication between Mr Mansfield and Mr Gonske in relation to the conduct of any legal proceedings between Mr Gillingham and Fearless Legends (including the current proceedings in HC/OC 19/2022).
5.	Any Communication between Mr Mansfield and Mr Gonske in relation to the alleged "token swap" proposed by Mr Gonske in his message posted on the FINXFLO Telegram Group on 26 May 2022.
6.	Any Communication between Mr Mansfield and Mr Gonske in relation to the messages posted on the FINXFLO Telegram Group (and in particular, the message posted by Mr Gonske on the FINXFLO Telegram Group on 26 May 2022 regarding the "token swap").
7.	Any Communication between Mr Mansfield and Mr Gonske in relation to the management of Fearless Legends.
8.	Any Communication between Mr Mansfield and Mr Gonske in relation to the execution of the contract(s) and/or deed(s) entered into by Fearless Legends in S/N 1 and 2 of Table A above.
9.	Any Communication between Mr Mansfield and Mr Gonske in relation to OneX LLC and/or LiquidityOne (i.e., the Oppression Entity).

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Table C: Categories of documents requested from Plaskocinski Thomas Andre

S/N	Category of Documents
1.	Any Communication sent or received by Mr Plaskocinski in relation to the transfer of the intellectual properties of Fearless Legends (including the Source Code) out of Fearless Legends's possession or control.
2.	Any Communication received by Mr Plaskocinski in relation to the termination of his employment with Fearless Legends and commencement of employment with OneX LLC and/or LiquidityOne.
3.	Any draft or executed employment contracts with OneX LLC and/or LiquidityOne and its Annexures that had been issued to Mr Plaskocinski.
4.	Any Communication sent or received by Mr Plaskocinski in relation to the removal of Mr Gillingham as CEO and director of Fearless Legends.
5.	Share certificate (including its Annexures) in relation to the shareholdings of Mr Plaskocinski in OneX LLC and/or its Affiliated Entities.

Table D: Categories of documents requested from Liam Patrick Jones

S/N	Category of Documents
1.	Any Documents and Communication sent or received by Mr Jones in relation to the removal of Mr Gillingham as CEO and director of Fearless Legends.
2.	Any Communication sent or received by Mr Jones in relation to the transfer of the intellectual properties of Fearless Legends (including the Source Code) out of Fearless Legends's possession or control.
3.	Any Communication sent or received by Mr Jones in relation to the termination or resignation of employees of Fearless Legends.
4.	Any Communication sent or received by Mr Jones the subject of which is the Mr Gillingham's performance of his duties as CEO and director of Fearless Legends (when he was as such).
5.	Any Communication sent or received by Mr Jones in relation to the alleged "token swap" proposed by Mr Gonske in his message posted on the FINXFLO Telegram Group on 26 May 2022.
6.	Any Communication sent or received by Mr Jones in relation to the messages posted on the FINXFLO Telegram Group (and in particular, the message posted

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S/N	Category of Documents
	by Mr Gonske on the FINXFLO Telegram Group on 26 May 2022 regarding the "token swap").
7.	Any Communication sent or received by Mr Jones in relation to the management of Fearless Legends.
8.	Any Communication sent or received by Mr Jones in relation to the execution of the contract(s) and/or deed(s) entered into by Fearless Legends in S/N 1 and 2 of Table A above.
9.	Any Communication sent or received by Mr Jones in relation to the conduct of any legal proceedings between Mr Gillingham and Fearless Legends (including the current proceedings in HC/OC 19/2022).
10.	Any Communication sent or received by Mr Jones in relation to OneX LLC and/or LiquidityOne.
11.	Share certificate (including its Annexures) evidencing that Mr Jones is a shareholder of OneX LLC and/or its Affiliated Entities.

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APPENDIX 2

Table A: Information requested from Fearless Legends Pte Ltd

S/N	Requested Information
1.	Please confirm whether the 2nd Draft Licensing Agreement was executed.
2.	Please confirm whether Fearless Legends had entered into any contract and/or deed, the effect of which was to cause Fearless Legends to part ownership with, relinquish possession or control of, or license one or more of its intellectual property rights of Fearless Legends (including but not limited to the Source Code). If so, please provide a list of such contracts and/or deeds and the following details: (a) the date of such contract and/or deed; (b) the identity of the counterparty to such contract and/or deed; (c) the intellectual property right(s) which were the subject of such contract and/or deed; (d) whether any consideration was provided in return for the said intellectual property rights (and if so, the nature and value of the consideration); and (e) the commercial reason for entering into such contract and/or deed.
3.	Please confirm whether Fearless Legends had facilitated or carried into effect any transfer of a customer's account to OneX LLC and/or LiquidityOne. If so, please provide a list of such accounts that were transferred and the following details: (a) the value of the accounts that were transferred (in the form of the annual fees paid (in USD) to Fearless Legends) and a breakdown of such fees paid; (b) as a percentage, how much do the aforesaid annual fees paid by the customer contribute to Fearless Legends total annual revenue; and (c) what is the basis for the valuation above.
4.	In relation to Genesis Global Trading, Inc., please confirm that Genesis Global Trading, Inc., is no longer a customer of Fearless Legends. If so, please state:

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S/N	Requested Information
	(a) The annual fees (in USD) that are paid by Genesis Global Trading, Inc., to Fearless Legends and the breakdown of such fees paid in annual terms since Genesis Global Trading, Inc., became a customer of Fearless Legends. (b) As a percentage, how much do the annual fees paid by Genesis Global Trading, Inc., contribute to Fearless Legends total annual revenue? (c) What is the basis of the aforesaid valuation?
5.	Please state the identity of the individual or entity that was paying the Fearless Legends's legal fees (to Drew & Napier LLC).

Table B: Information requested from Christopher David Mansfield

S/N	Requested Information
1.	Please state whether you had received instructions (written or otherwise) from or communicated with Mr Gonske and/or any of the shareholders of Fearless Legends regarding the removal of Mr Gillingham as CEO and director of Fearless Legends. If there were such instructions or communications had been received, please state: (a) the date(s) of such instructions / communications were given; (b) the mode of such instructions/ communications; and (c) the person from whom such instructions were given.
2.	Please confirm whether Mr Gonske was aware or informed of the removal of Mr Gillingham as CEO and director of Fearless Legends prior to such actions being taken. If so, please state how Mr Gonske was made aware or informed of the intention to remove Mr Gillingham as CEO and director of Fearless Legends before Mr Gilingham was informed.
3.	Please confirm whether Fearless Legends had entered into any contract and/or deed, the effect of which was to cause Fearless Legends to part ownership with, relinquish possession or control of, or license one or more of its intellectual property rights (including but not limited to the Source Code)

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S/N	Requested Information
	If so, please provide a list of such contracts and/or deeds and the following details: (a) the date of such contract and/or deed; (b) the identity of the counterparty to such contract and/or deed; (c) the intellectual property right(s) which were the subject of such contract and/or deed; (d) whether any consideration was provided in return for the said intellectual property rights (and if so, the nature and value of the consideration); and (e) the commercial reason for entering into such contract and/or deed.
4.	Please state whether you were aware that approaches had been made to the employees of Fearless Legends to induce them to terminate their employment with Fearless Legends and commence employment with OneX LLC and/or LiquidityOne. If you were aware of such approaches, please state: (a) how you were made aware of such approaches; and (b) whether actions had been taken by the Board to respond to such approaches, and if so, what these actions were.
5.	Please state whether you were aware that approaches had been made to the customers of Fearless Legends to: (a) withdraw their monies and/or FXF Tokens from Fearless Legends and deposit them with OneX LLC and/or LiquidityOne; and/or (b) terminate their business relationship with Fearless Legends and transfer their accounts to OneX LLC and/or LiquidityOne. If you were aware of such approaches, please state: (a) how you were made aware of such approaches; and (b) whether actions had been taken by the Board to respond to such approaches, and if so, what these actions were.
6.	Please state whether you were offered by Mr Gonske, the shareholders of Fearless Legends and/or any third party: (a) shares in OneX LLC and/or its Affiliated Entities; or (b) employment in OneX LLC and/or LiquidityOne.

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S/N	Requested Information
	If so, please state: (a) the number of shares you currently hold in OneX LLC and/or its Affiliated Entities; or (b) whether you are currently employed by OneX LLC and/or LiquidityOne.

Table C: Information requested from Plaskocinski Thomas Andre

S/N	Requested Information
1.	Please confirm whether you are currently employed by: (a) OneX LLC; and/or (b) LiquidityOne. If so, please state: (a) the date on which you started your current role; (b) your current job title; (c) the scope and nature of work that your current role requires you to perform; and (d) whether any part of Fearless Legends's intellectual properties (or part thereof), including the Source Code or its business logic, is being replicated or adapted in the projects you have worked on / are currently working on in OneX LLC and/or LiquidityOne.
2.	Please state whether you had received any Communication in relation to an offer of employment with OneX LLC and/or LiquidityOne. If you had so received such communications, please provide the following details: (a) the date on which such communications were received; (b) the mode of such communications; (c) the identity of the person who had communicated with you and whether the person was an authorised representative of OneX LLC and/or LiquidityOne; and (d) the contents of the communication.
3.	Please confirm whether you currently have access to the intellectual property rights of Fearless Legends.

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S/N	Requested Information
	If you have such access, please provide a full list of the intellectual properties currently owned by Fearless Legends, and state: (a) where they are currently stored (and specifically, whether the Source Code remains on Fearless Legends's GitHub Repositories and if not, where); (b) whether they have been licensed out to one or more entities (and if so, the identity of these entities); (c) whether any further work has been done to improve or enhance these intellectual properties; and (d) whether the version control system has operated to keep track of any changes that have been made to the intellectual properties (including the Source Code).
4.	Please state whether you had received any instructions (written or otherwise) from or communicated with Mr Gonske, the Board of Fearless Legends and/or any shareholders of Fearless Legends to transfer the intellectual properties of Fearless Legends (including the Source Code) out of Fearless Legends's possession or control. If so, please state: (a) what these affected intellectual properties are; (b) where they have been moved to; and (c) the reason why such instructions had been given to transfer these intellectual properties out of Fearless Legends's possession or control.
5.	Please confirm whether there had been any meetings between the shareholders of Fearless Legends relating to and/or in connection with the removal of Mr Gillingham as CEO and director of Fearless Legends. If so, please state: (a) the date on which such meetings occurred; (b) the shareholders who were present at each of these meetings; and (c) the contents of these meetings between the shareholders.

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S/N	Requested Information
6.	Please state whether you were offered by Mr Gonske, the shareholders of Fearless Legends and/or any third party shares in OneX LLC and/or its Affiliated Entities. If so, please state the number of shares you currently hold in OneX LLC and/or its Affiliated Entities.

Table D: Information requested from Liam Patrick Jones

S/N	Requested Information
1.	Please state whether you had received any instructions (written or otherwise) from or communicated with Mr Gonske and/or any of the shareholders of Fearless Legends regarding the removal of Mr Gillingham as CEO and director of Fearless Legends. If such communications had been received, please provide the following details: (a) the date on which such communications were received; (b) the mode of such communications; (c) the identity of the person who had communicated with you and whether the person was an authorised representative of OneX LLC and/or LiquidityOne; and (d) the contents of the communication.
2.	Please confirm whether there had been any meetings between the shareholders of Fearless Legends relating to and/or in connection with the removal of Mr Gillingham as CEO and director of Fearless Legends. If so, please state: (a) the date on which such meetings occurred; (b) the shareholders who were present at each of these meetings; and (c) the contents of these meetings between the shareholders.
3.	Please confirm whether Fearless Legends had entered into any contract and/or deed, the effect of which was to cause Fearless Legends to part ownership with,

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S/N	Requested Information
	relinquish possession or control of, or license one or more of its intellectual property rights (including but not limited to the Source Code). If so, please provide a list of such contracts and/or deeds and the following details: (a) the date of such contract and/or deed; (b) the identity of the counterparty to such contract and/or deed; (c) the intellectual property right(s) which were the subject of such contract and/or deed; (d) whether any consideration was provided in return for the said intellectual property rights (and if so, the nature and value of the consideration); and (e) the commercial reason for entering into such contract and/or deed.
4.	Please state whether you were aware that approaches had been made to the employees of Fearless Legends to induce them to terminate their employment with Fearless Legends and commence employment with OneX LLC and/or LiquidityOne. If you were aware of such approaches, please state: a) how you were made aware of such approaches; and b) whether actions had been taken by the Board to respond to such approaches, and if so, what these actions were.
5.	Please confirm whether there were other shareholder(s) of Fearless Legends who had commenced employment with OneX LLC and/or LiquidityOne. If so, please state the identity (or identities) of these shareholder(s).
6.	Please state whether you were aware that approaches had been made to the customers of Fearless Legends to: (a) withdraw their monies and/or FXF Tokens from Fearless Legends and deposit them with OneX LLC and/or LiquidityOne; and/or (b) terminate their business relationship with Fearless Legends and transfer their accounts to OneX LLC and/or LiquidityOne. If you were aware of such approaches, please state: (a) how you were made aware of such approaches; and

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S/N	Requested Information
	(b) whether actions had been taken by the Board to respond to such approaches, and if so, what these actions were.
7.	Please state whether you were offered by Mr Gonske, the shareholders of Fearless Legends and/or any third party: (a) shares in OneX LLC and/or its Affiliated Entities; or (b) employment in OneX LLC and/or LiquidityOne. If so, please state: (a) the number of shares you currently hold in OneX LLC and/or its Affiliated Entities; or (b) whether you are currently employed by OneX LLC and/or LiquidityOne.

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GENERAL INFORMATION AND EXPLANATORY NOTES TO APPENDIX 1 AND APPENDIX 2

1. The following definitions and references shall apply to Appendix 1 and Appendix 2.

(a) Each reference to a natural person or a corporation in this Appendix 1 shall be deemed to include that person's or that corporation's agents, lawyers, representatives, and any other persons who acted or purported to act on that person's or corporation's behalf.

(b) Each reference to "Affiliated Entities" shall be a reference to any entity (or entities) which is (or are) a holding company of OneX LLC, a subsidiary of OneX LLC, and/or is a subsidiary of the holding company of OneX LLC).

(c) Each reference to "Communication" in this Appendix 1 shall be deemed to include emails, letters, notices, memorandums, telephone recordings, mobile phone text messages and text application messages.

(d) Each reference to "Document" in this Appendix 1 shall be deemed to include any writing, text, image, recording or information responsive to the Requests, including any agreements, internal and external correspondence (including email), drafts, presentations, memoranda, meeting minutes, reports, studies, analyses, records and personal notes (including diaries and calendars), in any form or medium, including electronic or software formats, and in any language. For the purpose of this paragraph, "Request" means the request for the documents to be disclosed.

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(e) Each reference to an "interest" in this Appendix 1 shall be a reference to both a legal and equitable interest.

(f) Each reference to "Annexures" shall be a reference to the annexures, appendices, schedules, tabs, and any other Documents that may be attached, whether physically or otherwise.

(g) Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular.

(h) Where appropriate, Appendix 1 and Appendix 2 adopt the terms and abbreviates used in the 1st Affidavit of Gillingham James Ian filed on 13 February 2023.

2. For each Document requested, the respondent is requested to produce all responsive documents within their possession or control. For the avoidance of doubt, such documents include any document that is in the possession or control of any other person and that the respondent is entitled legally, contractually, or otherwise, to obtain upon request, in the original or in copy.

3. Further, insofar as the categories of documents requested in Appendix 1 and the information requested in Appendix 2 make references to statements made by certain named parties, such references shall not be construed to limit the relevance of such requests (in both Appendix 1 and Appendix 2).

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