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Sia Lagos

Registrar

Important Information

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The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59
Rule 29.02(1)

Affidavit

No. 527 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

FORTESCUE LIMITED ACN 002 594 872 (currently described in the proceeding by the pseudonym QFM1) and another
Applicants

ELEMENT ZERO PTY LIMITED ACN 664 342 081 (currently described in the proceeding by the pseudonym RAB1) and others
Respondents

Affidavit of: **Michael John Williams**
Address: Level 35, International Tower Two, 200 Barangaroo Avenue
Barangaroo NSW 2000
Occupation: Solicitor
Date: 29 May 2024

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Filed on behalf of (name & role of party) The First, Second and Fourth Respondents
 Prepared by (name of person/lawyer) Michael John Williams, Partner
 Law firm (if applicable) Gilbert + Tobin
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 Email mwilliams@gtlaw.com.au

Address for service Level 35, International Tower Two
 (include state and postcode) 200 Barangaroo Avenue, Barangaroo NSW 2000

I **Michael John Williams** of Level 35, International Tower Two, 200 Barangaroo Avenue Barangaroo NSW 2000, Solicitor, say on oath:

Introduction

1. I am the solicitor on record for the First, Second and Fourth Respondents. This is my first affidavit sworn in these proceedings.
2. I make this affidavit in support of First, Second and Fourth Respondents' proposed short minutes of order (**Proposed Orders**).
3. I have over 28 years' experience conducting complex litigation before the Federal Court of Australia, the Supreme Court of New South Wales and the High Court of Australia, including matters that have involved claims of infringement of copyright, breach of confidence, breach of fiduciary duties, contraventions of the *Corporations Act 2001* (Cth) and breach of contract. A number of these matters have involved the analysis of electronic records and the forensic investigation of electronic records.
4. I have also executed or been involved in the execution of (including as applicant's solicitor and Independent Lawyer), numerous *Anton Piller* / search orders over the last 25 years in cases of suspected breaches of confidence and infringement of intellectual property rights in Australia. I am familiar with the Federal Court of Australia's Search Orders Practice Note (**GPN-SRCH**) in relation to the guidelines that apply to *Anton Piller* orders, which came into operation changing the practice of search orders in the Court.
5. Where I refer to my experience in this affidavit, I intend to refer to my experience in relation to matters such as this one including as described above.
6. I have prepared this affidavit and have made enquiries with the First, Second and Fourth Respondents on an urgent basis in the time available. The contents of this affidavit are based on my own knowledge or, where otherwise indicated, on information from the sources identified, which I believe to be true. The sources of the information include Mr Masterman (CEO of the First Respondent and the Fourth Respondent) and Dr Kolodziejczyk (the Second Respondent), who have provided me with instructions to the best of their knowledge and belief at this stage of the proceedings.
7. By referring in this affidavit to any information or instructions I received or obtained, I do not waive or intend to waive – nor am I authorised to waive – any privilege attaching to those instructions or any work I performed as a result of those instructions, other than where expressly referred to in this affidavit.



Exhibits

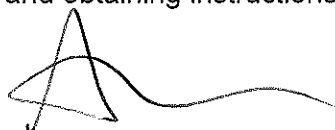
8. Exhibited to me at the time of swearing this affidavit a bundle of documents to which I refer in this affidavit marked "**Exhibit MJW-1**". A reference to a page number of **Exhibit MJW-1** is a reference to the document on the corresponding page of **Exhibit MJW-1**.
9. Also exhibited to me at the time of swearing this affidavit are confidential documents marked "**Confidential Exhibit MJW-2**" to which I refer below. The First Respondent claims confidentiality over the document marked **Confidential Exhibit MJW-2**.

Background

10. These proceedings were commenced by the Applicants (collectively, **Fortescue**) by way of urgent application for *ex parte* relief on 30 April 2024.
11. On 14 May 2024, Justice Perry made search orders pursuant against the First, Second and Third Respondents (**Search Orders**). A copy of the Search Orders appears at pages 2 to 30 of **Exhibit MJW-1**.
12. I am informed by Mr Masterman (the Fourth Respondent and Chief Executive Officer of the First Respondent) and Dr Kolodziejczyk that the Search Orders were executed on 15 May 2024 at the following premises (**the Premises**):
 - (a) Unit 2, **30 Oxleigh Drive**, Malaga, Western Australia, 6090;
 - (b) Unit 1, **19 Oxleigh Drive**, Malaga, Western Australia, 6090; and
 - (c) **5A Volga Street**, Hadfield, Victoria 3046 (**Dr Kolodziejczyk's residence**).
13. I was instructed to act for the First, Second and Fourth Respondents in these proceedings on 20 May 2024. On the same date, I filed a Notice of Acting – Appointment of Solicitor.
14. Senior and junior counsel have been briefed for the Respondents, along with an experienced computer forensic expert, Mr Nigel Carson of Digital Trace Australia (formerly head of computer forensics at KordaMentha). A copy of Mr Carson's CV is reproduced on page 31 of **Exhibit MJW-1**.

Status of investigations

15. In the week following my appointment, I (along with other members of Gilbert + Tobin) have been urgently undertaking a review of the affidavit evidence relied on by Fortescue in support of the Search Orders (some 12 affidavits, which together with their annexures comprise approximately 4 lever arch folders of material), the submissions relied on, transcript of the hearing and information concerning the execution of the Search Orders and obtaining instructions.



16. The reports of the Independent Lawyer and the Independent Computer Expert were served on Gilbert + Tobin at approximately 7pm on the date of swearing this affidavit. As at the time of swearing this affidavit, I have not had the opportunity to review those reports.
17. As at the time of making this affidavit, Gilbert + Tobin has not had access to the following confidential information and exhibits relied on by Fortescue:
- (a) Confidential information in boxed text in the body of Mr Huber's affidavit and in annexures AH 11, AH 21 and AH 26 attachment (row 127 onwards);
 - (b) Confidential information in boxed text in the body of Dr Bhatt's affidavit and in annexures AIB 5, AIB 6, AIB 9, AIB 10, AIB 14, AIB 15, AIB 30, AIB 31, AIB 32 and AIB 33;
 - (c) Confidential information in boxed text in the body of Mr McFaul's affidavit and in annexures WM 2 and WM 3;
 - (d) Confidential information in boxed text in the body of Ms Hantos' affidavit and in annexure SMH 3;
 - (e) Confidential information in boxed text in the body of Mr Olivier's affidavit and in annexures JPO 03 and JPO 04;
 - (f) Confidential information in boxed text in annexures NM 2 and NM 3 to Mr Marrast's affidavit; and
 - (g) Confidential Attachment 1-7 to annexure AH 21 to Mr Huber's affidavit.

Copies of email requests for this material, including as late as today, are reproduced at pages 32 to 37 of **Exhibit MJW-1**.

18. In addition, the computer forensic images which were taken by the Independent Computer Expert (Mr McKemmish) of computers, electronic devices and cloud storage of the First and Second Respondents have only just been received by Gilbert + Tobin's Perth office today from the Independent Lawyer. Arrangements have been made to have the forensic images couriered to Sydney but these are not expected to arrive until tomorrow.
19. I am informed by Mr Carson, and believe, that the forensic images will take 1-2 weeks for him to process to enable the individual documents to be reviewed by the First and Second Respondents and approximately 2 days to prepare a list of files which are contained within forensic images.
20. Without having access to the documents contained in the forensic image, I am unable to provide an accurate estimate of the time that will be required to review it. However,



based on previous experience in comparable cases, I estimate that the process of reviewing the documents extracted from the forensic image by Mr Carson will take weeks if not months to undertake, even using advanced document review technology. This review process would be considerably reduced if the volume of data was reduced, such as if categories of irrelevant material was first excised.

Summary of position

21. Although Gilbert + Tobin's review of the material and information referred to in paragraph 15 is not complete, at this stage I consider that there are grounds for the Respondents to apply to vary or set aside the Search Orders based on:
 - (a) Material non-disclosure by Fortescue at the time the orders were sought. I have serious concerns about the material that was relied on by Fortescue which omitted key information about the relationship between Fortescue and the First, Second and Fourth Respondents in the preceding 6-month period;
 - (b) The form of the search orders which were sought by Fortescue, which departed from and exceeded in a number of respects the model orders under **GPN-SRCH**. Instead of being tied to identified relevant material to be copied by the forensic expert from computers and electronic devices, the Search Orders extended to whole computers and devices, which greatly extended their reach; and
 - (c) The manner in which the search orders were executed which resulted in an extraordinarily large volume of electronic material (over 3 terabytes), being virtually the entirety of the documents and emails of the First Respondent in its business, together with highly confidential and privileged material and the indiscriminate capture of material entirely unrelated to Fortescue's pleaded claim.
 - (d) The apparent extraordinary invasion of the privacy of the respondents of a kind which exceeds what is usually contemplated in proceedings such as these, both prior to the application for the Search Orders and in the execution of the orders.
22. I intend to provide further evidence in relation to some of these matters in my second affidavit sworn in these proceedings.
23. The First, Second and Fourth Respondents intend to file such an application (the **Proposed Application**) and have provided for this to occur under the Proposed Orders. Pending the hearing of the Proposed Application the Respondents seek to maintain the status quo, in terms of access to the forensic images and non-publication.
24. I am informed by Mr Masterman, and believe, that the First Respondent is a start-up company that would be significantly damaged if Fortescue was to publicise the Search Orders and its allegations against the First, Second and Fourth Respondents, which are




denied. The damage to the First Respondent caused by such publicity could not be readily quantified if the Search Orders were subsequently varied or set aside.

Material seized as a result of the Search Orders

25. Dr Kolodziejczyk has informed me of his understanding of at least some of the material that was removed from the Premises as a result of the execution of the Search Orders, as set out below.

From 19 Oxleigh Drive

26. The entire email server of the First Respondent was imaged, including the contents of all its email accounts (i.e., of all staff), dating back to the inception of its business.
27. The entire contents of the personal Google account belonging to Dr Kolodziejczyk linked to the following email addresses: kolodziejczykbartlomiej@gmail.com and kolodziejczyk.bartlomiej@gmail.com were copied. These addresses are connected to a Google account used by Dr Kolodziejczyk for personal emails and the storage of personal documents using the Google Drive service, dating back to 2008 were copied.
28. The entire contents of the bart@kolodziejczyk.com email account were copied, which is another personal email address used by Dr Kolodziejczyk since around 2022.
29. The entire contents of Dr Kolodziejczyk's personal mobile phone was copied.
30. The entire contents of Dr Kolodziejczyk's HP laptop were copied.
31. No electronic devices were physically removed from the premises for the purposes of executing the Search Orders and no hard copy documents were removed.

From 30 Oxleigh Drive

32. A Lenovo Think Sensor desktop computer was removed from these premises. This computer is used in the Element Zero laboratory to operate a potentiostat (a piece of hardware required to run electroanalytical experiments). The desktop computer contains electrochemical measurements resulting from experiments run by the First Respondent. The Lenovo Think Sensor desktop computer has since been returned.
33. Five hard copy documents were removed. Four of the five documents removed were staff notepads. The notepads have not been returned to the First Respondent.

From 5A Volga Street:

34. Three hard copy documents were removed. Two of the three hard copy documents removed contained confidential information belonging to a third party. The three hard copy documents have not been returned to the First Respondent.



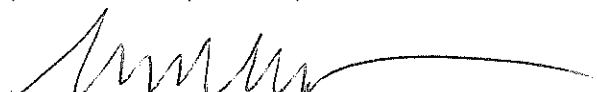
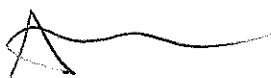
35. A laptop belonging to Dr Kolodziejczyk's wife was accessed, but I understand no records were copied from that device, and the device was not removed from the premises.

Element Zero Google Drive

36. In addition to material removed from the Premises during the execution of the Search Orders, I am informed by Mr Masterman and Dr Kolodziejczyk that during the weekend of Saturday 18 and Sunday 19 May, the Element Zero Google Drive cloud storage account was accessed remotely by the Independent Computer Expert, and the entire contents of that Google Drive cloud storage account was copied.
37. No representatives of First Respondent were present (and as far as Mr Masterman and Dr Kolodziejczyk are aware, the Independent Lawyer was not present) with the Independent Computer Expert at the time of this access and copying, so the First, Second and Fourth Respondents are not aware of where this access occurred. I am instructed that the Element Zero Google Drive account contains some 600GB of data.

Access to things removed from the Premises

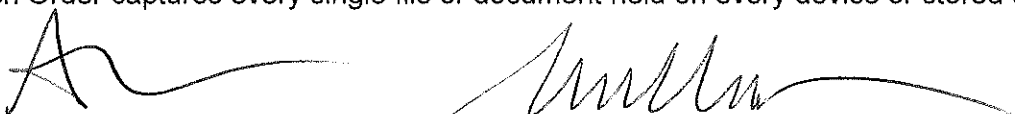
38. Since I began acting for the First, Second and Fourth Respondents, Gilbert + Tobin has made requests to gain access to copies of things removed from the Premises.
39. On 21 May 2024, Gilbert + Tobin sent an email to the Independent Lawyer, Hall & Wilcox, requesting copies of all things removed from the Premises by no later than 5pm 22 May 2024. A copy of this email is reproduced at page 38 of **Exhibit MJW-1**.
40. On 22 May 2024, Hall & Wilcox responded, providing a copy of the 8 hard copy documents removed from the Premises and confirming that the electronic images of all computers and other devices imaged (**Forensic Images**) would be delivered to Gilbert + Tobin via courier once received from the Independent Computer Expert. A copy of these emails without attachments appears at pages 39 to 40 of **Exhibit MJW-1**.
41. On 23 May 2024, Gilbert + Tobin emailed the Independent Lawyer proposing, for expediency and security, to arrange for transfer of the Forensic Images via electronic file transfer, and seeking confirmation that the Independent Computer will not retain copies of the Forensic Images once provided to the Independent Lawyer. A copy of this email is reproduced at pages 41 to 42 of **Exhibit MJW-1**.
42. On 24 May 2024 Gilbert + Tobin partner Rebecca Dunn attempted to call the Independent Lawyer and left a message.
43. On 27 May 2024 the Independent Lawyer called Ms Dunn and informed her that:
- (a) As far as he was aware, Hall & Wilcox still had not at that time received a copy of the Forensic Images from the Independent Computer Expert.



- (b) Approximately 3 terabytes of electronic material was removed from the Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090 and Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090 premises.
 - (c) Hall & Wilcox does not have access to the Signiant transfer site.
 - (d) Once Hall & Wilcox received the Forensic Images from the Independent Computer Expert, proposed that copies be provided to Gilbert + Tobin by arranging for the delivery of a physical hard drive or hard drives.
44. On 28 May 2024 at 5:22pm, the Independent Lawyer confirmed by email that a hard drive containing the Forensic Images was ready for collection at Hall & Wilcox's office in Perth. A copy of this email is reproduced at page 43 of **Exhibit MJW-1**.
45. This morning a graduate lawyer from Gilbert + Tobin's Perth office collected the hard drive (a Toshiba 4TB portable storage device) from Hall & Wilcox's Perth office. The hard drive was encrypted and could only be accessed using an encryption password.
46. On 29 May 2024 at 12:12pm Gilbert + Tobin received an email from the Independent Lawyer providing the encryption password of the Hard Drive. A copy of that email is not reproduced here for confidentiality reasons.
47. Given the volume of the data on the hard drive it was not feasible, or cost-effective, to transmit it to Sydney. Instead, arrangements have been made for the hard drive to be urgently couriered to Gilbert + Tobin's office in Sydney. The hard drive is not scheduled to arrive in Sydney until tomorrow (Thursday).
48. Access to copies of all material removed from the Premises, including the Forensic Images, is an essential precursor to allow the Respondent to comply with the Search Orders, including at least Orders 22 and 23 which require the Respondents to review the material has been captured by the Search Orders. It is currently not possible for the First, Second and Fourth Respondents to comply with that order.

Concerns about the form of Search Orders

49. Based on my experience, I am concerned that issues with the drafting of the Search Order have caused the Search Order to cover an unduly extensive volume and scope of material (which volume and scope is discussed in more detail in the section below).
50. The first category of Listed Things includes all electronic storage devices and cloud-based storage accounts at or accessible from the Premises as themselves "Listed Things" rather than as the devices to be searched *for* Listed Things. The effect of the inclusion of all devices and accounts as Listed Things, without qualification, is that the Search Order captures every single file or document held on every device or stored on



every cloud-based account at or accessible from the Premises without any limitation for file name, subject matter, key word hits, date range or any other standard limitations.

51. The inclusion of category 1 of the Listed Things appear to me to be inconsistent with other parts of the Search Orders. The orders themselves (see order 20(d1)) contemplate excluding certain devices on the basis that they do not contain material falling into categories 2 to 9 of the Listed Things. If the Listed Things included the devices themselves, then there would be no basis to exclude devices. Categories 2 to 8A of the Listed Things would also appear to me to be unnecessary (except for hard-copy documents) in light of category 1, which captures all documents on all devices and accounts falling within category 1, without limitation. All documents falling within categories 2 to 8A because of file name, subject matter, key word hits, date range or any other characteristics would already be caught by category 1.

Material removed from the Premises

52. I understand from the Independent Lawyer that the Search Orders have captured around **3 terabytes** (that is, 3,000GB) of data, which is in my experience an extremely large volume of material to be caught by an *Anton Piller* search order.
53. Because I do not know the nature of the documents (e.g. types of files, size of individual files), it is difficult to accurately estimate how long it would take to review the data. Based on my experience and the information I have available to me at this stage, I estimate it could take a team of multiple reviewers months to review the documents (for example for confidentiality and privilege for the purposes of order 22(b) of the Search Orders).
54. I am informed by Mr Masterman and believe that, as a result of how the Search Orders are drafted and executed they will have captured a very large amount of information that is confidential, privileged, and not likely to be relevant to these proceedings. Examples of some of these categories of information that will have been captured below. It is not clear to me why documents in these categories would have been at any risk of deletion, warranting preservation.

Whole of business records

55. The files that were imaged by the Independent Computer Expert extend to virtually the entire business records of the First Respondents, including confidential:
- (a) Financial records such as management reports, revenue and profit information, capitalisation tables, budgets and forecasts;
 - (b) Banking and payroll information of the company, its officers and employees;




- (c) Employee information including employment contracts, remuneration information, potentially sensitive personal information such as health data and other personal records, home addresses and phone numbers, performance review information;
- (d) Information about third parties Element Zero deals with such as suppliers, including names, addresses, contact information, contracts, pricing, confidential information about future customers including memoranda of understanding and letters of intent;
- (e) Stakeholder liaison and negotiation including with domestic and international government and other bodies, feasibility studies, applications for grants;
- (f) Investment records for the business including future investment;
- (g) Business strategies, investor negotiations, roadmap documents and pitch decks; and
- (h) Technical data including experimental data, specifications, pilot plant design documents and technical analyses.

Patents

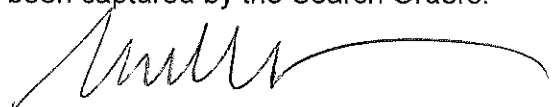
56. The imaged files will include the confidential records relating to the First Respondents' PCT patent application (PCT/AU2023/051041) and its privileged communications with its lawyers and patent attorneys in respect of the patent application.

Third party confidential information

57. I am informed by Mr Masterman and Dr Kolodziejczyk and believe that the Search Orders will have captured material that is unrelated to these proceedings that is highly confidential to third parties including competitors of Fortescue (who would not be aware of the Search Order or the fact that documents concerning their confidential arrangements will have been captured in the wide-ranging orders). The third-party confidential information captured by the Search Order includes information provided to the First Respondent under strict confidentiality regimes and material relating to ongoing third-party projects, the existence, nature and scope of which are highly confidential. Reproduced at page 2 of **Confidential Exhibit MJW-2** is a confidential list of some examples of third parties with non-disclosure and exploratory agreements in place.

Material subject to legal professional privilege

58. Because all emails ever sent or received by any staff member using the First Respondents' email were captured by the Search Orders, all email correspondence between any officer or employee of the First Respondent and its lawyers relating to any legal matter since establishment would have been captured by the Search Orders.

Irrelevant, confidential, and voluminous personal files

59. All personal emails sent or received by Dr Kolodziejczyk from his personal Gmail account since 2008 have been captured by the Search Orders, together with the entire contents of Dr Kolodziejczyk's personal Google Drive storage account, and the entire contents of Dr Kolodziejczyk's other personal email account, linked to the bart@kolodziejczyk.com email address.
60. Dr Kolodziejczyk's personal email accounts contain highly confidential material:
- (a) belonging to third parties for whom Dr Kolodziejczyk has acted as a contractor during his career, including third party information relating to current and ongoing projects, including with commercial parties and government departments;
 - (b) relating to Dr Kolodziejczyk's role as a board member of Proto Axiom;
 - (c) relating to Dr Kolodziejczyk's role as expert consultant to the European Commission (over the past 14 years); and
 - (d) privileged communications between Dr Kolodziejczyk and various legal advisors about many unrelated matters over the years.
61. There are also thousands of Dr Kolodziejczyk's personal emails and photos, and include personal information and possibly sensitive information of hundreds of individuals.
62. The entire contents of Dr Kolodziejczyk's mobile telephone were captured by the Search Orders. His mobile phone contains all personal texts and other communications with his wife, family and friends, many personal files, photographs and videos. Based on my review of the Search Orders, the images taken of Dr Kolodziejczyk's mobile telephone would also have captured data such as his account passwords including for online banking, superannuation and other accounts.

Orders proposed by the parties

63. On 24 May 2024, I received an email from Davies Collison Cave, the solicitors for the Applicants, proposing short minutes of order which, among other orders, contemplate access to the search materials by all parties on or before 6 June 2024 or within 1 week of the next return date. A copy of that email and the Applicants' proposed short minutes of order are reproduced at pages 44 to 47 of **Exhibit MJW-1**.
64. On 28 May 2024, I caused short minutes of order proposed by the First, Second and Fourth Respondents to be circulated to Davies Collison Cave. A copy of that email and the First, Second and Fourth Respondents' proposed short minutes of order are reproduced at pages 48 to 54 of **Exhibit MJW-1**.



- 65. On 29 May 2024 at 12:40pm, Davies Collison Cave circulated a marked up version of the First, Second and Fourth Respondents' proposed short minutes of order. A copy of that email its attachments are reproduced at pages 55 to 66 of **Exhibit MJW-1**.
- 66. On 29 May 2024 at 4:16pm, Gilbert + Tobin circulated a further marked up version of the First, Second and Fourth Respondents' proposed short minutes of order. A copy of that email its attachments are reproduced at pages 67 to 72 of **Exhibit MJW-1**.

Conclusion


- 67. A number of the Proposed Orders are agreed. Those orders include short extensions of time for the provision of the required material by the Independent Lawyer and Independent Computer Expert, as well as procedural orders for the filing of a Defence and a Reply (although there is a difference between the Applicants and Respondents on the timing of the filing of those documents).
- 68. There are a number of orders that are not agreed. The First, Second and Fourth Respondents seek orders extending undertakings about confidentiality (which are not agreed by the Applicants), and the Applicants seek orders requiring the Respondents to take certain steps pursuant to order 23 of the Search Order (which are not agreed for reasons including that the First and Second Respondents would be unable to comply with them, within the timeframe proposed by the Applicants because of the issues identified above including access to and the need to carry out a review of the Forensic Images). The First, Second and Fourth Respondents' position is that orders should be made which preserve the status quo, and enable the matter to be advanced procedurally while the Proposed Application is prepared in parallel.

Sworn by the Deponent
at Barangaroo
in New South Wales
on 29 May 2024
Before me:



Signature of witness

Amelia Cooper, Solicitor
Level 35 200 Barangaroo Avenue,
Barangaroo NSW 2000

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Signature of deponent

Federal Court of Australia
District Registry: New South Wales
Division: General

FORTESCUE LIMITED ACN 002 594 872 (currently described in the proceeding by the pseudonym QFM1) and another named in the schedule

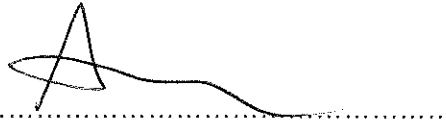
Applicants

ELEMENT ZERO PTY LIMITED ACN 664 342 081 (currently described in the proceeding by the pseudonym RAB1 and others named in the schedule

Respondents

EXHIBIT MJW-1

This is the Exhibit marked **Exhibit MJW-1** to the Affidavit of **Michael John Williams** sworn before me on 29 May 2024.



Witness

Name: Amelia Cooper, Solicitor

Address: Level 35, Tower 2 International Towers, 200
Barangaroo Avenue, Barangaroo NSW
2000

Filed on behalf of	The First, Second and Fourth Respondents		
Prepared by	Michael Williams		
Law firm	Gilbert + Tobin		
Tel	(02) 9263 4000	Fax	(02) 9263 4111
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Address for service	Level 35, Tower 2, International Towers Sydney 200 Barangaroo Ave, Barangaroo NSW 2000		



Federal Court of Australia
District Registry: New South Wales
Division: General

No: NSD527/2024

FORTESCUE LIMITED ACN 002 594 872 (currently described in the proceeding by the pseudonym QFM1) and another/others named in the schedule
Applicant

ELEMENT ZERO PTY LIMITED ACN 664 342 081 (currently described in the proceeding by the pseudonym RAB1) and another/others named in the schedule
Respondent

ORDER

JUDGE: JUSTICE PERRY

DATE OF ORDER: 14 May 2024

WHERE MADE: Sydney

PENAL NOTICE

TO:

- (a) Element Zero Pty Limited ACN 664 342 081;**
- (b) Bartłomiej Piotr Kolodziejczyk;**
- (c) Bjorn Winther-Jensen; and**
- (d) the occupants of each of:**
 - (i) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;**
 - (ii) Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;**
 - (iii) 5A Volga Street, Hadfield, Victoria 3046; and**
 - (iv) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019.**

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THE ORDER FOR THE DOING OF THE ACT; OR

(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.



TO:

- (a) Element Zero Pty Limited ACN 664 342 081;
- (b) Bartłomiej Piotr Kolodziejczyk;
- (c) Bjorn Winther-Jensen; and
- (d) the occupants of each of
 - (i) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;
 - (ii) Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;
 - (iii) 5A Volga Street, Hadfield, Victoria 3046; and
 - (iv) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019,

This is a **search order** made against You on 14 May 2024 by Justice Perry at a hearing without notice to You after the Court was given the undertakings set out in **Schedule B** to this order and after the Court read the affidavits listed in **Schedule C** to this order.

THE COURT ORDERS THAT:

Introduction

1. (a) The application for this order is made returnable immediately.
 - (a) The time for service of the following documents:
 - (i) the Originating Application;
 - (ii) the Statement of Claim;
 - (iii) the Interlocutory Application and Annexure I thereto (Search Application);
 - (iv) the affidavits listed in **Schedule C** and their annexures or exhibits (other than the confidential affidavit text, confidential annexures and confidential exhibits) and the schedule of corrections to those affidavits;
 - (v) any other document listed in **Schedule B, Part B.2**, paragraph 2, is abridged and service is to be effected by the Independent Lawyer on each Respondent in accordance with **Schedule B, Part B.3**, paragraph 1, on or before 21 May 2024.



2. Subject to the next paragraph, this order has effect up to and including 31 May 2024. On the **Return Date**, 30 May 2024 at 9:30am or as otherwise advised on that day or on 31 May 2024, there will be a further hearing before the Duty Judge in respect of this order.
3. You may apply to the Court at any time to vary or discharge this order; including, if necessary, by telephone to the chambers of the Duty Judge.
4. This order may be served only between 9am and 2pm (Australian Western Standard Time) on a business day.
5. In this order:
 - (a) **Applicant** means the person who applied for this order, and if there is more than one applicant, includes all the applicants.
 - (b) **Independent Computer Expert** means any person identified as an independent computer expert in the Search Party referred to in **Schedule A** to this order.
 - (c) **Independent Lawyer** means any person identified as an Independent Lawyer in the Search Party referred to in **Schedule A** to this order.
 - (d) **Listed Thing** means any thing referred to as such in **Schedule A** to this order.
 - (e) **Premises** means the premises and any of the premises identified in **Schedule A** to this order, including any vehicles and vessels that are under Your control on or about the premises or that are otherwise identified in **Schedule A**.
 - (f) **Search Party** means the persons identified or described as constituting the search party in **Schedule A** to this order.
 - (g) **Thing** includes a document.
 - (h) **You**, where there is more than one of you, includes all of you and includes you if you are a corporation.
 - (i) Any requirement that something be done **in your presence** means:
 - (i) in the presence of You or of one of the persons described in paragraph 6 below; or



- (ii) if there is more than one of You, in the presence of each of You at each of the Premises, or, in relation to each of You, in the presence of one of the persons described in paragraph 6 below.

6. This order must be complied with by:
- (a) Yourself;
 - (b) any director, officer, partner, employee or agent of Yourself; or
 - (c) any other person having responsible control of the Premises.
7. This order must be served by, and be executed under the supervision of, an Independent Lawyer.

Entry, search and removal

8. Subject to paragraphs 10 to 20 below, upon service of this order, You must permit members of the Search Party to enter the Premises so that they can carry out the search and other activities referred to in this order.
9. Having permitted members of the Search Party to enter the Premises, You must:
- (a) permit them to leave and re-enter the Premises on the same and the following day until the search and other activities referred to in this order are complete;
 - (b) permit them to search for and inspect the Listed Things and to make or obtain a copy, photograph, film, sample, test or other record of the Listed Things;
 - (c) disclose to them the whereabouts of all the Listed Things in Your possession, custody or power, whether at the Premises or otherwise;
 - (d) disclose to them the whereabouts of all computers (including smartphones, tablets and other mobile devices), computer disks, drives or memory (including portable drives and USB drives), electronic information storage devices or systems, and online accounts (including all cloud and email accounts) at or accessible from the Premises in which any documents among the Listed Things are or may be stored, located or recorded and cause and permit those documents to be copied or printed out;
 - (e) do all things necessary to enable them to access the Listed Things,



including by opening or providing keys to physical or digital locks and enabling them to access and operate computers and online accounts and providing them with all necessary passwords, access credentials and other access means;

- (f) permit any Independent Lawyer to remove from the Premises into the Independent Lawyer's custody:
 - (i) the Listed Things or things which reasonably appear to the Independent Lawyer to be the Listed Things and any things the subject of dispute as to whether they are Listed Things; and
 - (ii) the copies, photographs, films, samples, tests, other records and printed out documents referred to in paragraph 9(b) above; and
- (g) permit any Independent Computer Expert to search any computer (including any smartphone, tablet and other mobile device), computer disk, drive or memory (including any portable drive and USB drive), any electronic information storage device or system, and online accounts (including all cloud and email accounts) at or accessible from the Premises, and make a copy or digital copy of any of the foregoing and permit any Independent Computer Expert to remove any of the foregoing from the Premises as set out in paragraphs 20 and 21 below.

Restrictions on entry, search and removal

- 10. This order may not be executed at the same time as a search warrant (or similar process) is executed by the police or by a regulatory authority.
- 11. You are not required to permit anyone to enter the Premises until:
 - (a) an Independent Lawyer serves You with copies of this order and any affidavits referred to in **Schedule C** (confidential annexures and exhibits, if any, need not be served until further order of the Court) and the schedule of corrections to those affidavits; and
 - (b) You are given an opportunity to read this order and, if You so request, the Independent Lawyer explains the terms of this order to You.
- 12. Before permitting entry to the Premises by anyone other than the Independent



Lawyer, You, for a time (not exceeding two hours from the time of service or such longer period as the Independent Lawyer may permit):-

- (a) may seek legal advice;
 - (b) may ask the Court to vary or discharge this order;
 - (c) (provided You are not a corporation) may gather together any things which You believe may tend to incriminate You or make You liable to a civil penalty and hand them to the Independent Lawyer in (if You wish) a sealed envelope or container; and
 - (d) may gather together any documents that passed between You and Your lawyers for the purpose of obtaining legal advice or that are otherwise subject to legal professional privilege or client legal privilege, and hand them to the Independent Lawyer in (if You wish) a sealed envelope or container.
13. Subject to paragraph 22 below, the Independent Lawyer must not inspect or permit to be inspected by anyone, including the Applicant and the Applicant's lawyers, any thing handed to the Independent Lawyer in accordance with subparagraphs 12(c) and 12(d) above and the Independent Lawyer must deliver it to the Court at or prior to the hearing on the Return Date.
14. During any period referred to in paragraph 12 above, You must:
- (a) inform and keep the Independent Lawyer informed of the steps being taken;
 - (b) permit the Independent Lawyer to enter the Premises but not to start the search;
 - (c) not disturb or remove any Listed Things. In the case of smartphones, You may continue to use any smartphone to obtain legal advice, provided that You comply with the terms of paragraphs 25 and 26 ('Prohibited Acts') below in relation to any such use; and
 - (d) comply with the terms of paragraphs 25 and 26 ('Prohibited Acts') below.
15. Any thing the subject of a dispute as to whether it is a Listed Thing must promptly be handed by You to the Independent Lawyer for safekeeping pending resolution of the dispute or further order of the Court.
16. Before removing any Listed Things from the Premises (other than things referred



to in the immediately preceding paragraph), the Independent Lawyer must supply a list of them to You, give You a reasonable time to check the correctness of the list, and give You and the Applicant's lawyers a copy of the list signed by the Independent Lawyer.

17. The Premises must not be searched, and things must not be removed from the Premises, except in Your presence or of a person who appears to the Independent Lawyer to be Your director, officer, partner, employee, agent or other person acting on Your behalf or on Your instructions.
18. If the Independent Lawyer is satisfied that full compliance with the immediately preceding paragraph is not reasonably practicable, the Independent Lawyer may permit the search to proceed and the Listed Things to be removed without full compliance.
19. The Applicant's lawyer and the Independent Lawyer must not allow the Applicant in person to inspect or have copies of any thing removed from the Premises nor communicate to the Applicant information about its contents or about anything observed at the Premises until 4:30pm on the Return Date or other time fixed by further order of the Court. However, the Applicant's lawyer may communicate to the Applicant:
 - (a) for the purpose of obtaining instructions if it appears it is not safe or otherwise practicable to proceed or continue with the execution of this search order at any of the Premises; and
 - (b) for the purpose of obtaining instructions for the hearing on the Return Date.

Computers

20. (a) The Search Party must include a computer expert, being an expert who is independent of the Applicant and of the Applicant's lawyers (the **Independent Computer Expert**), as set out in Schedule A to this order.
- (b) Any search of a computer (including smartphone, tablet and other mobile device), computer disk, drive or memory (including portable drive and USB drive), electronic information storage device or system, and online accounts (including all cloud and email accounts) must be carried out only by an Independent Computer Expert.



- (c) Subject to (d1) and (d2) below, an Independent Computer Expert may:
- (i) make a copy or digital copy of any computer (including smartphone, tablet and other mobile device), computer disk, drive or memory (including portable drive and USB drive), electronic information storage device or system and online accounts (including all cloud and email accounts), as follows:
 - (A) in the case of smartphones, tablets and other mobile devices, such copy is to be made at the Premises; and
 - (B) in any other case, such copy may be made at the Premises or offsite and
 - (ii) remove from the Premises that copy or digital copy (if made at the Premises) or the original device (if the copy is to be made offsite).
- (d) Subject to (d1) and (d2) below, the Independent Computer Expert may search any computer (including smartphone, tablet and other mobile device), computer disk, drive or memory (including portable drive and USB drive), electronic information storage device or system, and online accounts (including all cloud and email accounts) or the copy or digital copy thereof at the Premises or offsite for Listed Things and may copy the Listed Things electronically or in hard copy or both.
- (d1) For computers and other devices (except smartphones) claimed to belong to, or to be exclusively used by, an immediate family member of Dr Kolodziejczyk or Dr Winther-Jensen (including a child), an Independent Computer Expert may gain access to, operate and search that computer or other device at the Premises to see whether they can exclude the computer or other device from further search activities on the basis that it does not contain anything falling within paragraphs 2 to 9 of the Listed Things.
- (d2) For smartphones claimed to belong to, or to be exclusively used by, an immediate family member of Dr Kolodziejczyk or Dr Winther-Jensen (including a child), an Independent Computer Expert may gain access to and operate that smartphone to confirm the claim, and if so confirmed, is to return and exclude the smartphone from further search activities.



- (e) The Independent Computer Expert must:
 - (iii) return any original device removed from any of the Premises as soon as practicable, and in any event within one week after the execution of this order; and
 - (iv) as soon as practicable and, in any event, prior to the hearing on the Return Date, deliver the copy or digital copy of the computers (including smartphones, tablets and other mobile devices), computer disks, drives or memory (including portable drives and USB drives), electronic information storage devices or systems, and online accounts (including all cloud and email accounts), and all electronic and hard copies of Listed Things to the Independent Lawyer, together with a report of what the Independent Computer Expert has done including a list of such electronic and hard copies.
 - (f) The Independent Lawyer must, at or prior to the hearing on the Return Date, deliver to the Court all things received from the Independent Computer Expert and serve a copy of the Independent Computer Expert's report on the parties.
21. (a) This paragraph 21 applies if You are not a corporation and You wish to object to complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that You:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (b) This paragraph 21 applies if You are a corporation and all of the persons who are able to comply with paragraph 20 on Your behalf and with whom You have been able to communicate, wish to object to Your complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or



- (ii) are liable to a civil penalty.
- (c) You must:
 - (i) disclose so much of the information required to be disclosed to which no objection is taken; and
 - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
 - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

Inspection

22. Prior to the Return Date, You or Your lawyer or representative shall be entitled, in the presence of the Independent Lawyer, to inspect any thing removed from the Premises and to:
- (a) make copies of the same; and
 - (b) provide the Independent Lawyer with a signed list of things which are claimed to be privileged or confidential and which You claim ought not to be inspected by the Applicant.

Provision of information

23. Subject to paragraph 24 below, You must:
- (a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of Your ability inform the Applicant in writing as to:
 - (i) the location of the Listed Things;
 - (ii) the name and address of everyone who has supplied You, or offered to supply You, with any Listed Thing;
 - (iii) the name and address of every person to whom You have supplied, or offered to supply, any Listed Thing; and
 - (iv) details of the dates and quantities of every such supply and offer.
 - (b) within 10 working days after being served with this order, make and serve



on the Applicant an affidavit setting out the above information.

24. (a) This paragraph 24 applies if You are not a corporation and You wish to object to complying with paragraph 23 on the grounds that some or all of the information required to be disclosed may tend to prove that You:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (b) This paragraph 24 also applies if You are a corporation and all of the persons who are able to comply with paragraph 23 on Your behalf and with whom You have been able to communicate, wish to object to Your complying with paragraph 23 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
 - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
 - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

Prohibited Acts

25. Except for the sole purpose of obtaining legal advice, You must not, until 4:30pm on the Return Date, directly or indirectly inform any person of this proceeding or of the contents of this order, or tell any person that a proceeding has been or may be brought against You by the Applicant.
26. Until 4:30pm on the Return Date You must not destroy, tamper with, cancel or



part with possession, power, custody or control of the Listed Things otherwise than in accordance with the terms of this order or further order of the Court.

Costs

27. The costs of this application are reserved to the Court hearing the application on the Return Date.

Date that entry is stamped: 14 May 2024

Sia Lagos
Registrar



Schedule A

Premises

The premises located at:

- (a) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090; Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;
- (b) 5A Volga Street, Hadfield, Victoria 3046; and
- (c) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019,

including any vehicle or vehicles under Your control on or about those premises.

Listed Things

1. All computers (including smartphones, tablets or other mobile devices), computer disks, drives or memory (including any portable drives and USB drives), electronic information storage devices or systems, or online accounts (including all cloud and email accounts), at or accessible from the Premises (including offsite data storage, cloud, email and other platforms or services that are accessible from the Premises), including the following devices:
 - a. Toshiba branded USB drive with serial no. 07080A078F1B6304; and
 - b. Kingston branded USB drive with serial no. 900042ACAE668708.
2. All documents (whether in hardcopy or electronic form) containing the word “Fortescue”, “FFI”, “FMG” or “FMGL”.
3. All documents (whether in hardcopy or electronic form) recording or evidencing research and development work by or on behalf of Element Zero, Dr Kolodziejczyk or Dr Winther- Jensen, including laboratory notebooks and experimental data.
4. All documents (whether in hardcopy or electronic form) recording or evidencing the design, engineering, construction or operation of any pilot plant operated by or on behalf of Element Zero.
5. Any document listed in Annex 1 to this Schedule A (whether in hardcopy or electronic form) and any emails or communications attaching those documents.



6. Any document recording or evidencing communications to which any two or more of the Second to Fourth Respondents are parties. The email accounts and mobile numbers for the Second to Fourth Respondents include:
 - a. “kolodziejczyk.bartlomiej@gmail.com”, “kolodziejczykbartlomiej@gmail.com”, and “bart@kolodziejczyk.com”;
 - b. “bjornwj@gmail.com” and “b.wintherjensen@kurenai.waseda.jp”;
 - c. “mgmasterman@gmail.com”;
 - d. +61416833585;
 - e. +61447865470; and
 - f. +61418951792 or +447791288381.
7. Emails in Dr Kolodziejczyk’s email accounts (including but not limited to “kolodziejczyk.bartlomiej@gmail.com”, “kolodziejczykbartlomiej@gmail.com”, and “bart@kolodziejczyk.com”):
 - a. to or from any email account in the domain “fmgl.com.au”; or
 - b. in the period from 25 March 2019 to January 2024.
8. Emails in Dr Winther-Jensen’s email accounts (including but not limited to “bjornwj@gmail.com” and “b.wintherjensen@kurenai.waseda.jp”):
 - a. to or from any email account in the domain “fmgl.com.au”; or
 - b. in the period from 18 January 2021 to January 2024.
- 8A. Documents relating to Australian provisional patent application no. 2023902103, Australian provisional patent application no. 2023903979 and any other patent applications in the name of any of the Respondents which have not become open to public inspection as at the date of this order.
9. All of the above may be located on any computer (including smartphone, tablet or other mobile device), computer disk, drive or memory (including any portable drive and USB drive), electronic information storage device or system, or online accounts (including all cloud and email accounts), at or accessible



from the Premises (including offsite data storage, cloud, email and other platforms or services that are accessible from the Premises).

Search Party for Premises at Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090 and for Unit 1, 19 Oxleigh Drive Malaga, Western Australia 6090

1. Independent Lawyers:
 - (a) Nicholas Beech of Hall & Wilcox located at Level 19, 108 St Georges Terrace, Perth, Western Australia 6000, assisted by:
 - (b) Ebenezer Assibey-Bonsu of Hall & Wilcox located at Level 19, 108 St Georges Terrace, Perth, Western Australia 6000; or
 - (c) Alexander Crowhurst of Hall & Wilcox located at Level 19, 108 St Georges Terrace, Perth, Western Australia 6000.
2. Applicant's lawyers:
 - (a) Paul Dewar of Davies Collison Cave Law located at level 4, 7 Macquarie Place, Sydney, New South Wales 2000.
3. Independent Computer Experts:
 - (a) Rod McKemmish of Cyter located at level 8, 280 Pitt St, Sydney, New South Wales 2000.
 - (b) Darren Michael of Evidence Advisory located at level 12, 192 St Georges Terrace, Perth, Western Australia 6000.
 - (c) Phillip Russo of Evidence Advisory located at level 12, 192 St Georges Terrace, Perth, Western Australia 6000.

Search Party for Premises at 5A Volga Street, Hadfield, Victoria 3046

1. Independent Lawyers:
 - (a) Katherine Payne of Hall & Wilcox located at Level 11, Rialto South Tower, 525 Collins Street, Melbourne, Victoria 3000.
2. Applicant's lawyers:
 - (a) Rohit Dighe of Davies Collison Cave Law located at Level 4, 7 Macquarie Place, Sydney, New South Wales 2000.



3. Independent Computer Experts:
 - (a) Yian Sun of Cyter located at level 8, 280 Pitt St, Sydney, New South Wales 2000.
4. Independent child support person:
 - (a) Dr Felicity McFarlane (child psychologist) of Melbourne Children's Psychology Clinic located at 617 Hampton St, Brighton, Victoria 3186.

Search Party for Premises at Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019

1. Independent Lawyers:
 - (a) Penelope Ford of Hall & Wilcox located at Level 19, 108 St Georges Terrace, Perth, Western Australia 6000.
2. Applicant's lawyers:
 - (a) Ashley Cameron of Davies Collison Cave Law located at level 4, 7 Macquarie Place, Sydney, New South Wales 2000.
3. Independent Computer Experts:
 - (a) Phillip Russo of Evidence Advisory located at level 12, 192 St Georges Terrace, Perth, Western Australia 6000.



Annex 1 to Schedule A

Specified Listed Things

Documents referred to in paragraph 19 of the Statement of Claim

1. Green Update (02.08.2021).pdf
2. Copies of the specifications and drawings, as filed on 24 May 2021, of Australian provisional patent application no. 2021901547 entitled 'Apparatus and process for producing iron' in the name of Fortescue Future Industries Pty Ltd, including documents with the file names "35557986AU- Specification as filed (35557986).pdf" and "35557986AU - Drawings as filed (35557986).pdf"
3. Document titled "Basis of Design – Chameleon Pilot Plant" having document number or file name FFI0302-10000-00-EG-BOD-0001
4. Bumblebee PID markups 26_10_21.pdf

Documents referred to in paragraph 20 of the Statement of Claim

5. 211029_Iron ore leaching_Report_ASH.R1.docx
6. 211014_FFI Green Steel_Ore Leach_ASH_XRF results.csv
7. 211014_FFI Green Steel_Ore Leach_ASH_ICP results.csv
8. Technical Evaluation.xlsx
9. Email from David White sent on 4 November 2024 with Subject "Technical Evaluation of Green Iron process"
10. Microsoft PowerPoint document with the internal title, 'Green Iron Forum', internally dated 1 November 2021, including documents with the file name "Green Iron Update (01.11.2021)"
11. Copies of the specifications and drawings, as filed on 24 May 2021, of Australian provisional patent application no. 2021901547 entitled 'Apparatus and process for producing iron' in the name of Fortescue Future Industries Pty Ltd, including documents with the file names "35557986AU- Specification as filed (35557986).pdf" and "35557986AU - Drawings as filed (35557986).pdf"

SharePoint documents referred to in Affidavit of Dr Anand Bhatt

12. 2. FFI Pilot - concept flowsheet REV0.pdf



13. 2. FFI pilot plant (Project Chameleon).msg
14. 20210813 All Operations Tailings Chemistry to Current_SCH.xlsx
15. 210827_Leaching project draft plan_NTH_ASH edits.docx
16. 210920_Update presentation_ASH.pptx
17. 211004_Leaching experimental design_ASH.xlsx
18. 211029_Iron ore leaching_Report_ASH.R1.docx
19. 570CBC0001-02007-BD-EG-0001_1_US.pdf
20. A22314 - ISAMill SigPlot Report Final.pdf
21. A22314 - SigPlot Report Final edit.xlsx
22. Brief notes on processing product from 'filter press' test rig 10_6_21.docx
23. BumbleBee FFI0301-10000-00-EG-BOD-0001_A.docx
24. Bumblebee layout.docx
25. Christmas Creek OPF2 Mass Balance.xlsx
26. Effluent stream potentials.docx
27. Electrochemical ore reduction Figures and flow diagram (002).pptx
28. Engineering Diary Week 36_21 12_9_21.docx
29. Example Flow Diagrams 22_2_21.docx
30. Feed Input calc.XLS
31. FFI INNOVATION CENTRE Engineering Diary Week 42_21 22_10_21 DJA input.docx
32. FFI0001-0001-00-DR-PR-0002_rA_COMMINUTION STAGE - CHECK.pdf
33. FFI0001-0001-00-DR-PR-0004_rA_LEACHING STAGE - CHECK.pdf
34. FFI0301-0001-00-DR-PR-0001_rA GS RIG OVERALL BLOCK DIAGRAM.pdf
35. FFI0302-8100-EG-BOD-0001_A.docx
36. FFI0302-8100-EG-TNN-0001 - Questions.docx
37. FFI0303-8100-EG-PLN-0002 Comminution Testing Plan.xlsx



38. FFICGreen_Steel_Process_Overview_Memo_v2.docx
39. FFI-Green_Steel_Process_Overview_Memo_v1.docx
40. filter press concepts 22_3_21.pdf
41. filter press conversion.pdf
42. Filter Press tesfa.docx
43. green iron quick intro.pptx
44. Green Iron Update (10.09.2021) v1.pdf
45. Green_Steel_PFD_Example_Overview_BWJ_16-07-21_Comments.pdf
46. Green_Steel_PFD_Example_Overview_NOT_FOR_USE.pdf
47. Green_Steel_PFD_Rev1_v2_Example.png
48. GreenSteel_ProcessFlow_Schematic_v4.pdf
49. GS_PFD.png
50. IsaMill Budget Quote ETM 2120 6721.pdf
51. Isamill call 28_4_21docx.docx
52. Isamill purchase review.pdf
53. IsaMill_Technology_Used_in_Effecient_Grinding_Circuits.pdf
54. Leaching results_Rob.xlsx
55. Multiple Aspen software files located within the folder named Models
56. Ore composition after drying.xlsx
57. Pilot Plant Assumptions.xlsx
58. Pilot Plant Basis of Design - Mechanical.docx
59. Pilot Plant MEL draft.xlsx
60. Pilot Plant Technical Workshop .potx
61. Pilot Plant Workshop_Outputs.pptx
62. PTHPSM01_3BF00564-PTH_PRN_Belmont_0576_001.pdf
63. SGS Filter Press review 29_03_21.docx



64. SOL DID Rc chip polished blocks grades_JCedits final.xlsx
65. Solomon_Stratigraphy_Geo-Met_GE.pptx
66. SWI RS-WI-MT-0101 Wet Low Intensity Magnetic Sperator (Rev 0) SG.doc
67. Tailings stream potentials.docx
68. Tank Review 1_6_21 expanded .docx
69. tanks.xlsx
70. Test Plan for leaching variables.docx
71. ULT_Green Steel_u330327.a_Alkali roasting_Diff NaOH trial+Wash trial.csv
72. ULT_Green Steel_u330327.b_ICP_Bjorn Leach solution.csv
73. ·V1.0_Estimated Grade_Logging_Template_8mm_Sample
Post_Scrub_20201216 AL.xlsx

Internal Fortescue procedure and specification documents

74. Any of the documents in the table below.

Document Number	Title
100-PR-PM-0013	FMG Procedure Safety In Design
100-SP-CI-0003	FMG Engineering Specification Concrete
100-SP-CI-0007	FMG Engineering Specification Earthworks
100-SP-EL-0001	FMG Engineering Specification Electrical Design Criteria
100-SP-EL-0002	FMG Engineering Specification Earthing & Bonding
100-SP-EL-0005	FMG Engineering Specification Low Voltage MCCs and Switchboards
100-SP-EL-0006	FMG Engineering Specification Distribution and Control Panels
100-SP-EL-0008	FMG Engineering Specification Electrical Installation
100-SP-EL-0009	FMG Engineering Specification for Preferred Electrical Equipment
100-SP-EL-0010	FMG Engineering Specification Testing and Commissioning of Electrical Installations
100-SP-EL-0013	FMG Engineering Specification Low Voltage Induction Motors
100-SP-EL-0014	FMG Engineering Specification High Voltage Induction Motors
100-SP-IN-0001	FMG Engineering Specification Preferred Instrumentation List
100-SP-IN-0002	FMG Engineering Specification Instrumentation and Control Design
100-SP-IN-0014	FMG Engineering Specification Instrumentation



100-SP-IN-0015	FMG Engineering Specification Field Communication and Marshalling Panels
100-SP-IN-0019	FMG Engineering Specification Instrument Installations
100-SP-ME-0002	FMG Engineering Specification Mechanical Equipment
100-SP-ME-0004	FMG Engineering Specification Installation of Mechanical Equipment
100-SP-ME-0042	FMG Engineering Specification Centrifugal Pumps
100-SP-PI-0001	FMG Engineering Specification Pipe Work and Valves
100-SP-ST-0001	FMG Engineering Specification Structural Steelwork Fabrication
100-SP-ST-0002	FMG Engineering Specification Structural Steelwork Erection
100-SP-ST-0003	FMG Engineering Specification Protective Coating Systems – Hot Dip Galvanising
500CB-00000-SP-PI-0002	Manual Valves Specification
500CB-00000-SP-PI-0007	Special Piping Items



Schedule B

Undertakings given to the Court

B.1 Undertakings given to the Court by each Applicant by their counsel:

1. The Applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
2. The Applicant will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
3. The Applicant will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.



B.2 Undertakings given to the Court by each Applicant's lawyer:

1. The Applicant's lawyer will pay the reasonable costs and disbursements of the Independent Lawyer and of any Independent Computer Expert.
2. The Applicant's lawyer will provide to the Independent Lawyer for service on each Respondent copies of the following documents:
 - (a) this order;
 - (b) the Originating Application;
 - (c) the Statement of Claim;
 - (d) the Applicant's genuine steps statement;
 - (e) the Interlocutory Application and Annexure I thereto (Search Application);
 - (f) the following material in so far as it was relied on by the Applicant at the hearing when the order was made:
 - (i) the affidavits listed in **Schedule C** (other than confidential affidavit text) and the schedule of corrections to those affidavits;
 - (ii) annexures and exhibits capable of being copied (other than confidential annexures and exhibits);
 - (iii) the Applicant's written submissions dated 8 May 2024; and
 - (iv) any other document that was provided to the Court.
 - (g) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submissions that were put, to the Court.
3. The Applicant's lawyer will answer to the best of the lawyer's ability any question as to whether a particular thing is a Listed Thing.
4. The Applicant's lawyer will use the lawyer's best endeavours to act in conformity with the order and to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to each Respondent.



5. The Applicant's lawyer will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
6. The Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.
7. The Applicant's lawyer will not disclose to the Applicant any information that the lawyer acquires during or as a result of execution of the search order, until 4:30pm on the Return Date or other time fixed by further order of the Court, unless the disclosure is permitted by paragraph 19 of this order or with the leave of the Court.
8. The Applicant's lawyer will use best endeavours to follow all directions of the Independent Lawyer.



B.3 Undertakings given to the Court by each Independent Lawyer:

1. The Independent Lawyer will use his or her best endeavours to serve each Respondent with this order and the other documents referred to in undertaking **Part B.2** of the above (undertakings by each Applicant's lawyer).
2. Before entering the Premises, the Independent Lawyer will:-
 - (a) offer to explain the terms and effect of the search order to the person served with the order and, if the offer is accepted, do so; and
 - (b) inform each Respondent of his or her right to take legal advice.
3. Except for the Independent Computer Expert's removing computers, other devices and their copies or digital copies for copying or searching in accordance with paragraph 20 of this order and subject to undertaking 4 below, the Independent Lawyer will retain custody of all things removed from the Premises by the Independent Lawyer pursuant to this order until delivery to the Court or further order of the Court.
4. At or before the hearing on the Return Date, the Independent Lawyer will provide a written report on the carrying out of the order to the Court and provide a copy to the Applicant's lawyers and to each Respondent or each Respondent's lawyers. The report will attach a copy of any list made pursuant to the order and a copy of any report received from an Independent Computer Expert.
5. The Independent Lawyer will use best endeavours to ensure that members of the Search Party act in conformity with the order and that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to each Respondent, and will give such reasonable directions to other members of the Search Party as are necessary or convenient for the execution of the order.
6. The Independent Lawyer will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
7. The Independent Lawyer will not inform any other person of the existence of this



proceeding except for the purposes of this proceeding until after 4:30pm on the
Return Date.



B.4 Undertakings given to the Court by each Independent Computer Expert

1. The Independent Computer Expert will use his or her best endeavours to act in conformity with the order and to ensure that the order, so far as it concerns the Independent Computer Expert, is executed in a courteous and orderly manner and in a manner that minimises disruption to each Respondent.
2. The Independent Computer Expert will remove computers and other devices from the Premises for copying and searching in accordance with paragraph 20 of this order.
3. The Independent Computer Expert will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
4. The Independent Computer Expert will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.
5. The Independent Computer Expert will use best endeavours to follow all directions of the Independent Lawyer.



Schedule C
Affidavits relied on

No.	Name of deponent	Date affidavit made
1.	Anand Indravadan Bhatt	1 May 2024
2.	Wayne McFaull	1 May 2024
3.	Susanne Monica Hantos	1 May 2024
4.	John Paul William Testaferrata Olivier	2 May 2024
5.	Adrian Huber	1 May 2024
6.	Paul Alexander Dewar	1 May 2024
7.	Rodney McKemmish	6 May 2024
8.	Adrian Chai	8 May 2024
9.	Nicolas Marrast	8 May 2024
10.	Paul Alexander Dewar	9 May 2024
11.	Stephen Klotz	14 May 2024
12.	Paul Alexander Dewar	14 May 2024

Name and address of Applicant's lawyers

The Applicant's lawyers are:

Davies Collison Cave Law

Level 4, 7 Macquarie Place, Sydney NSW 2000

Email: PDewar@dcc.com ; ACameron@dcc.com ; RDighe@dcc.com

Mobile: +61 404 047 047

Tel: 02 9293 1000

Fax: 02 9262 1080



Schedule D

Schedule of Parties

No: NSD527/2024

Federal Court of Australia
District Registry: New South Wales
Division: General

Second Applicant	FORTESCUE FUTURE INDUSTRIES PTY LTD ACN 625 711 373 (currently described in the proceeding by the pseudonym QFN2)
Third Applicant	FMG PERSONNEL SERVICES PTY LTD ACN 159 057 646 (currently described in the proceeding by the pseudonym QFP3)
Second Respondent	BARTLOMIEJ PIOTR KOLODZIEJCZYK (currently described in the proceeding by the pseudonym RAC2)
Third Respondent	BJORN WINTHER-JENSEN (currently described in the proceeding by the pseudonym RAD3)
Fourth Respondent	MICHAEL GEORGE MASTERMAN (currently described in the proceeding by the pseudonym RAE4)



EXPERIENCE

Responsible for the management and delivery of digital investigation services for Digital Trace Australia.

I have 30 years forensic investigative experience starting at the NSW Police where I provided computer expertise in support of serious criminal investigations. I am using those same skills to identify, preserve, and report on digital evidence in civil and regulatory disputes.

CONTACT

Mobile: +61 410626662

Email: ncarson@digitaltrace.com.au

MEMBERSHIPS

Australia Information Security Association (AISA)
International Association of Auto Theft Investigators (IAATI)

KEY QUALIFICATIONS/TRAINING

1988 BSc – Computer Science and Mathematics – Sydney University

1999 Canada Revenue -
Computer Search and Evidence
Recovery Certificate (CSER)

Encase Certified Examiner (EnCE)

SANS certified Firewall Analyst (GCFW)

2000 Microsoft Systems Engineer
(MCSE)

2023 – Assurety (UK) Elite Expert Witness
training

NIGEL CARSON

EMPLOYMENT HISTORY

Digital Trace Australia (Principal)

Mar 2023 - Present

KordaMentha Forensic (Partner /Consultant)

Feb 2010 to Mar 2023

Ferrier Hodgson (Director)

Feb 2003 to Jan 2010

Chief Security Officer roles (RTA and Coca - Cola)

Aug 2001 to Jan 2003

KPMG Forensic (Manager)

Jun 2000 to Jul 2001

NSW Police (Sgt – Computer Crime)

Jan 1997 to Jan 2000

SIGNIFICANT ENGAGEMENTS

Kazaa (2005) – Universal Music v Sharman

Expert evidence and testimony concerning the features and operation of the 'Kazaa' peer to peer file sharing system.

iiNet (2008) - Village Roadshow & Ors v iiNET

Expert evidence and testimony in the matter of Village Roadshow & Ors versus iiNet for alleged copyright breaches in facilitating the downloading of copyrighted motion picture movies via the BitTorrent protocol.

Akai Electronics v EY Hong Kong (2009)

Expert evidence in the case of Akai v Ernst Young in relation to the falsification of audit documents.

Optiver Australia v Tibra Trading (2013)

Expert reports in relation to the actions of the key programmer and staff who left Optiver for competitive employment at Tibra in relation to the alleged theft of derivatives trading source code.

MPAA v YIFY Torrents / Popcorn Time (2015)

Assisted the MPAA in orders to attend search orders and take down a popular online site in New Zealand facilitating copyright infringement.

Site Blocking Applications (2017)

Assisted Village Roadshow and other applicants in preparing site blocking applications to the Federal Court in respect of copyright infringing online locations, including Pirate Bay.

Data Breach Investigations (1999 to 2024)

Assisted in preparing reports on over 50 data breach investigations including business email compromise, malware and trojan infection matters including in 1999/2000 an investigation into the Cult of the Dead Cow remote access trojan.

Caitlin Meade

From: Rebecca Dunn
Sent: Tuesday, May 28, 2024 6:42 PM
To: Paul Dewar; Ashley Cameron; Rohit Dighe; Kevin Huang
Cc: Mike Hales; Edward Fearis; Lachlan McLean; Michael Williams; Siabon Seet; Amelia Cooper; Caitlin Meade
Subject: Element Zero Pty Ltd & Ors ats Fortescue Limited & Ors – Federal Court Proceedings NSD527/2024
Attachments: Attachments.zip
Categories: Filed to ND
FilingIndicator: -1

Dear Colleagues

We refer to orders 4 and 5 of the orders made 9 May 2024 (the **Orders**).

Please see attached a proposed Confidentiality Undertaking in standard form as contemplated by orders 4(d) of the Orders.

Please confirm, by return, that the form of proposed Confidentiality Undertaking is acceptable to the Applicants so that we can arrange for execution of the same by our clients' representatives.

Regards

Michael Williams / Rebecca Dunn

REBECCA DUNN
PARTNER | GILBERT + TOBIN

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F +61 2 9263 4111 | **E** RDunn@gtlaw.com.au

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Confidentiality Undertaking

No. NSD527 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

FORTESCUE LIMITED ACN 002 594 872 (currently described in the proceeding by the pseudonym QFM1) and others

Applicants

ELEMENT ZERO PTY LIMITED ACN 664 342 081 (currently described in the proceeding by the pseudonym RAB1) and others named in the schedule

Respondents

I, **[name]** of Gilbert + Tobin, Level 35, International Tower Two, 2000 Barangaroo NSW 2000, undertake to the Applicants and to the Court in relation to the documents listed in the Schedule (**Confidential Documents**), and the information contained in those Confidential Documents (**Confidential Information**), that:

- 1 I will keep the Confidential Information confidential.
- 2 I will not use or disclose the Confidential Documents, the Confidential Information or any part of them except for the purposes of the proceedings.
- 3 Subject to paragraph 4 and 5 below, I will not, without the prior written consent of the Applicant, or an order of the Court, or as required by law, disclose the Confidential Information either directly or indirectly to any person – including to the First, Second and Fourth Respondents to the proceedings.
- 4 The Confidential Information may be disclosed by me (including providing a copy) to any of the following persons:
 - (a) any partner or employee of Gilbert + Tobin who is required to view the Confidential Information for the purposes of the conduct of these proceedings who has signed a confidentiality undertaking in the same form as this undertaking;

- (b) any counsel retained by the First, Second and Fourth Respondents in these proceedings who has signed a confidentiality undertaking in the same form as this undertaking;
 - (c) any support and administrative staff employed by (or, in the case of Australian external barristers, employed or engaged by the barrister or by their chambers) persons referred to in sub-paragraph (a) or (b) above who reasonably require access to the Confidential Material for the purpose of the Proceeding;
 - (d) any independent expert retained by the First, Second and Fourth Respondents and that expert's colleagues and any person working under their supervision for the purposes of the conduct of these proceedings who has signed a confidentiality undertaking in the same form as this undertaking; and
 - (e) any other person provided the prior written consent to such disclosure has been obtained from the Applicant.
- 5 Subject to paragraph 6, the Confidential Information may be disclosed to the Federal Court of Australia and the Judges of that Court for the purposes of the conduct of these proceedings, including by way of tender in the proceedings or in any interlocutory application or voir dire.
- 6 If I require any Confidential Information to be used in evidence in these proceedings, I will:
- (a) ensure that the Confidential Information is only used, referred to or reproduced:
 - (i) as exhibits marked 'confidential';
 - (ii) as annexures marked 'confidential'; or
 - (iii) in a section of an affidavit marked 'confidential'; and
 - (b) not disclose the Confidential Information to any person other than the Court as contemplated in paragraph 5 and the persons referred to in paragraph 4 above.

7 When the proceedings are resolved by way of judgment or otherwise, within 30 days I will:

- (a) return or cause to be returned to the external legal representatives for the Applicants all copies of the Confidential Documents held by me; and
- (b) destroy any documents (including any electronic copies) made or caused to be made by me or given to me recording any or all of the Confidential Information, other than any documents or notes that I am required to maintain under my professional obligations.

Dated: [insert]

Signed by [name]

in the presence of:

Witness

[insert witness name]

Signature

Schedule – Confidential Documents

- 1 Confidential information in boxed text in the body of Mr Huber's affidavit and in annexures AH 11, AH 21 and AH 26 attachment (row 127 onwards);
- 2 Confidential information in boxed text in the body of Dr Bhatt's affidavit and in annexures AIB 5, AIB 6, AIB 9, AIB 10, AIB 14, AIB 15, AIB 30, AIB 31, AIB 32 and AIB 33;
- 3 Confidential information in boxed text in the body of Mr McFaull's affidavit and in annexures WM 2 and WM 3;
- 4 Confidential information in boxed text in the body of Ms Hantos' affidavit and in annexure SMH 3;
- 5 Confidential information in boxed text in the body of Mr Olivier's affidavit and in annexures JPO 03 and JPO 04;
- 6 Confidential information in boxed text in annexures NM 2 and NM 3 to Mr Marrast's affidavit;
- 7 Confidential Attachment 1 to annexure AH 21 to Mr Huber's affidavit (application book tab 99; Exhibit A2);
- 8 Confidential Attachment 2 to annexure AH 21 to Mr Huber's affidavit (application book tab 100; Exhibit A2);
- 9 Confidential Attachment 3 to annexure AH 21 to Mr Huber's affidavit (application book tab 101; Exhibit A2);
- 10 Confidential Attachment 4 to annexure AH 21 to Mr Huber's affidavit (application book tab 102; Exhibit A2);
- 11 Confidential Attachment 5 to annexure AH 21 to Mr Huber's affidavit (application book tab 103; Exhibit A2);
- 12 Confidential Attachment 6 to annexure AH 21 to Mr Huber's affidavit (application book tab 104; Exhibit A2).

Caitlin Meade

From: Caitlin Meade
Sent: Wednesday, May 29, 2024 7:16 PM
To: Paul Dewar; Ashley Cameron; Rohit Dighe; Kevin Huang; Kevin Huang
Cc: Mike Hales; Edward Fearis; Lachlan McLean; Michael Williams; Rebecca Dunn; Amelia Cooper
Subject: FW: Element Zero Pty Ltd & Ors ats Fortescue Limited & Ors – Federal Court Proceedings NSD527/2024
Attachments: 3455-9968-4397_2_Proposed Confidentiality Undertaking.docx

Dear Colleagues

We refer to our email below to which we have not received a response.

As at the time of sending this email, we have not received the documents referred to in Annexure B of the orders made 9 May 2024.

Please confirm that the proposed Confidentiality Undertaking is acceptable to the Applicants as soon as possible.

Regards
 Rebecca Dunn / Caitlin Meade

From: Rebecca Dunn <RDunn@gtlaw.com.au>
Sent: Tuesday, May 28, 2024 6:42 PM
To: Paul Dewar <pdewar@dcc.com>; Ashley Cameron <ACameron@dcc.com>; Rohit Dighe <RDighe@dcc.com>; Kevin Huang <KHuang@dcc.com>
Cc: Mike Hales <Mike.Hales@minterellison.com>; Edward Fearis <Edward.Fearis@minterellison.com>; Lachlan McLean <Lachlan.McLean@minterellison.com>; Michael Williams <MWilliams@gtlaw.com.au>; Siabon Seet <SSeet@gtlaw.com.au>; Amelia Cooper <ACooper@gtlaw.com.au>; Caitlin Meade <CMeade@gtlaw.com.au>
Subject: Element Zero Pty Ltd & Ors ats Fortescue Limited & Ors – Federal Court Proceedings NSD527/2024

Dear Colleagues

We refer to orders 4 and 5 of the orders made 9 May 2024 (the **Orders**).

Please see attached a proposed Confidentiality Undertaking in standard form as contemplated by orders 4(d) of the Orders.

Please confirm, by return, that the form of proposed Confidentiality Undertaking is acceptable to the Applicants so that we can arrange for execution of the same by our clients' representatives.

Regards

Michael Williams / Rebecca Dunn

REBECCA DUNN
PARTNER | GILBERT + TOBIN

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F +61 2 9263 4111 | **E** RDunn@gtlaw.com.au

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 200 Barangaroo Avenue, Barangaroo NSW 2000

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This email and any attachment is confidential between Gilbert + Tobin and the addressee. If it has been sent to you in error, please delete it and notify us. Any opinion expressed in it is not the opinion of Gilbert + Tobin unless that is stated or apparent from its terms.

Caitlin Meade

From: Rebecca Dunn
Sent: Tuesday, May 21, 2024 2:36 PM
To: stephen.klotz@hallandwilcox.com.au
Cc: Michael Williams; Siabon Seet; Amelia Cooper
Subject: QFM1 & Ors v RAB1 & Ors - Federal Court proceeding NSD527 of 2024

Categories: Filed to ND

Dear Mr Klotz

We refer to the above proceeding.

We act for the First, Second and Fourth Respondents in the proceeding and have filed and served a Notice of Acting on behalf of those respondents today.

We have been provided with a copy of the orders dated 14 May 2024 (the **Orders**). We refer to order 22 of the Orders, which entitles the respondents to inspect and make copies of any thing removed from the Premises during the execution of the Orders.

Pursuant to that order, please provide us with copies of all things removed from the Premises as soon as possible, and in any event by no later than 5pm tomorrow. Prior to provision of the copies, please confirm how your firm intends to securely transfer the material to us, given its confidentiality and commercial sensitivity.

Yours sincerely

Michael Williams/ Rebecca Dunn

REBECCA DUNN
PARTNER | GILBERT + TOBIN

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Caitlin Meade

From: Sophie Caldwell <Sophie.Caldwell@hallandwilcox.com.au>
Sent: Wednesday, May 22, 2024 5:48 PM
To: Rebecca Dunn
Cc: Michael Williams; Siabon Seet; Amelia Cooper; Stephen Klotz; Katherine Payne
Subject: QFM1 & Ors v RAB1 & Ors - Federal Court proceeding NSD527 of 2024
Attachments: Bundle of documents Part 1.pdf; Bundle of Documents Part 2.pdf

 External email

 First time sender

 Discusses sensitive information

Dear Rebecca

I refer to your request of yesterday, pursuant to Order 22 of the Orders made on 14 May 2024, for a copy of all things removed from the Malaga and Hadfield Premises.

I attach a PDF of all things removed from the Hadfield Premises and a list of those things signed by Ranthini Manirajan.

Kind regards

Sophie Caldwell | Senior Associate

T +61 3 9603 3545 | F +61 3 9670 9632 | M +61 488 084 940
Sophie.Caldwell@hallandwilcox.com.au



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Our privacy policy can be reviewed at our website: <http://www.hallandwilcox.com.au/privacy/>

Caitlin Meade

From: Sophie Caldwell <Sophie.Caldwell@hallandwilcox.com.au>
Sent: Wednesday, May 22, 2024 5:48 PM
To: Rebecca Dunn
Cc: Michael Williams; Siabon Seet; Amelia Cooper; Stephen Klotz; Katherine Payne
Subject: QFM1 & Ors v RAB1 & Ors - Federal Court proceeding NSD527 of 2024
Attachments: Bundle of documents Part 1.pdf; Bundle of Documents Part 2.pdf

 External email

 First time sender

 Discusses sensitive information

Dear Rebecca

I refer to your request of yesterday, pursuant to Order 22 of the Orders made on 14 May 2024, for a copy of all things removed from the Malaga and Hadfield Premises.

I attach a PDF of all things removed from the Hadfield Premises and a list of those things signed by Ranthini Manirajan.

Kind regards

Sophie Caldwell | Senior Associate

T +61 3 9603 3545 | F +61 3 9670 9632 | M +61 488 084 940
Sophie.Caldwell@hallandwilcox.com.au



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Our privacy policy can be reviewed at our website: <http://www.hallandwilcox.com.au/privacy/>

Caitlin Meade

From: Rebecca Dunn <RDunn@gtlaw.com.au>
Sent: Thursday, May 23, 2024 1:06 PM
To: Nicholas Beech; stephen.klotz@hallandwilcox.com.au
Cc: Michael Williams; Siabon Seet; Amelia Cooper
Subject: FW: QFM1 & Ors v RAB1 & Ors - Federal Court proceeding NSD527 of 2024

Categories: Filed to ND

Dear Colleagues

We refer to your email below.

We note your proposal in relation to the delivery of the images of the computers, devices and online accounts. Given the upcoming return date, we consider it would be more expedient and secure for you to transfer the documents to us using a secure file transfer site. We will arrange a secure Signiant site to be set up for the purposes of this transfer and provide you with the details.

Additionally, could you please confirm:

1. The format the documents will be provided to us (i.e. as forensic image(s) of the computers, devices and accounts or as documents extracted from the computers, devices and accounts); and
2. That the Independent Computer Expert will deliver all copies of the computers, devices and online accounts to you (pursuant to order 20(e)(iv) of the orders dated 14 May 2024) and will not retain a copy or image of those computers, devices or online accounts.

We look forward to receiving the forensic images taken as soon as possible once you have received them.

Kind regards

Michael Williams/ Rebecca Dunn

REBECCA DUNN
PARTNER | GILBERT + TOBIN

T +61 2 9263 4625 | **M** +61 409 621 845
F +61 2 9263 4111 | **E** RDunn@gtlaw.com.au

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From: Nicholas Beech <Nicholas.Beech@hallandwilcox.com.au>
Sent: Wednesday, 22 May 2024 6:31 PM
To: Rebecca Dunn <RDunn@gtlaw.com.au>
Cc: Amelia Cooper <ACooper@gtlaw.com.au>; Michael Williams <MWilliams@gtlaw.com.au>; Siabon Seet <SSeet@gtlaw.com.au>; Stephen Klotz <Stephen.Klotz@hallandwilcox.com.au>
Subject: QFM1 & Ors v RAB1 & Ors - Federal Court proceeding NSD527 of 2024

I'm using Mimecast to share large files with you. Please see the attached instructions.

I'm using Mimecast to share large files with you. Please see the attached instructions.

Ms Dunn

I refer to your request of yesterday, pursuant to Order 22 of the Orders made on 14 May 2024, for a copy of all things removed from the Malaga and Hadfield Premises.

I attach a PDF of the documents removed from the Malaga Premises at Unit 2, 30 Oxleigh Drive, Malaga (No documents were removed from Unit 1, 19 Oxleigh Drive, Malaga) and a list of those documents signed by Nikolas Megalos. I will arrange for a copy of the images of computers to be delivered to you by courier when I have them from the Independent Computer Expert.

Kind regards

Nicholas Beech | Special Counsel

T +61 8 9482 7932 | F +61 8 9482 7999 | M +61 419 585 239
Nicholas.Beech@hallandwilcox.com.au | professional profile



www.hallandwilcox.com.au



Caitlin Meade

From: Nicholas Beech <Nicholas.Beech@hallandwilcox.com.au>
Sent: Tuesday, May 28, 2024 5:22 PM
To: Rebecca Dunn
Cc: Michael Williams; Siabon Seet; Amelia Cooper; Stephen Klotz
Subject: QFM1 & Ors v RAB1 & Ors - Federal Court proceeding NSD527 of 2024 [HW-ACTIVE.FID4587265]

 External email

 First time sender

 Discusses sensitive information

Dear Ms Dunn

I refer to my email dated 22 May 2024.

I have now received copies of the images of computers made by the independent computer experts who searched the Malaga Premises.

A copy can be collected from our office at a convenient time. Please let me know when would be suitable.

Kind regards

Nicholas Beech | Special Counsel

T +61 8 9482 7932 | F +61 8 9482 7999 | M +61 419 585 239
Nicholas.Beech@hallandwilcox.com.au | professional profile



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Our privacy policy can be reviewed at our website: <http://www.hallandwilcox.com.au/privacy/>

Caitlin Meade

From: Paul Dewar <PDewar@dcc.com>
Sent: Friday, May 24, 2024 6:44 PM
To: Rebecca Dunn
Cc: Michael Williams; Siabon Seet; Amelia Cooper; Ashley Cameron; Rohit Dighe; Kevin Huang
Subject: Proceeding NSD 527 of 2024 - Fortescue Limited & Ors v Element Zero Pty Ltd & Ors
Attachments: 20240524 FMG v EZ - SMOs (24 May 2024).docx



Dear Colleagues

We **attach** the Applicants' proposed short minutes of order.

We acknowledge that an appropriate confidentiality regime should be in place prior to the Applicants being provided with the materials contemplated in orders 2 and 3. We will shortly provide you with a proposed confidentiality agreement.

We ask that you please indicate the First, Second and Fourth Respondents' position regarding the proposed short minutes by **5pm Monday 27 May**.

Kind regards

Paul Dewar
Principal



DAVIES COLLISON CAVE LAW | dcc.com

T +61 2 9293 1000 | F +61 2 9262 1080

We extend our respect to all Aboriginal and Torres Strait Islander peoples throughout Australia and acknowledge the Traditional Owners and Custodians of the lands on which we work. We recognise their ongoing connection to land, sea and community.

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Form 1
Rule 2.13(2)

Proposed Short Minutes of Order

No. NSD 527 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

**FORTESCUE LIMITED ACN 002 594 872
and others named in the schedule**

Applicants

**ELEMENT ZERO PTY LIMITED ACN 664 342 081
and others named in the schedule**

Respondents

THE COURT ORDERS THAT:

Suppression and confidentiality

1. Order 4 made on 9 May 2024 (interim suppression order) to continue to have effect until the next case management hearing in this proceeding or further order.

Access to search materials

2. On or before [**6 June 2024 / 1 week from return date**], the Independent Computer Experts make and provide to each party's solicitors a copy of all things referred to in paragraph 20(e)(iv) of the search order made on 14 May 2024.
3. On or before [**6 June 2024 / 1 week from return date**], the Independent Lawyers make and provide to each party's solicitors a copy of the Listed Things removed from the Premises by the Independent Lawyers pursuant to paragraph 16 of the search order made on 14 May 2024.

Filed on behalf of	Fortescue Limited, Fortescue Future Industries Pty Ltd and FMG Personnel Services Pty Ltd, the Applicants		
Prepared by	Paul Dewar		
Law firm	Davies Collison Cave Law		
Tel	02 9293 1000	Fax	02 9262 1080
Email	PDewar@dcc.com		
Address for service	Level 4, 7 Macquarie Place, Sydney NSW 2000		

Delivery of search materials to court

4. The Independent Lawyers are to deliver all Listed Things in their custody to any registry of the Federal Court of Australia on or before **6 June 2024**, and notify the Associate to Justice **[**insert]** and the parties' solicitors when they have done so.

Case management

5. The matter be listed for case management on **17 June 2024**.

Date: 24 May 2024

Schedule

No. NSD 527 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

Applicants

Second Applicant: **FORTESCUE FUTURE INDUSTRIES PTY LTD**
ACN 625 711 373

Third Applicant: **FMG PERSONNEL SERVICES PTY LTD**
ACN 159 057 646

Respondents

Second Respondent: **BARTLOMIEJ PIOTR KOLODZIEJCZYK**

Third Respondent: **BJORN WINTHER-JENSEN**

Fourth Respondent: **MICHAEL GEORGE MASTERMAN**

Caitlin Meade

From: Rebecca Dunn
Sent: Tuesday, May 28, 2024 2:49 PM
To: Paul Dewar; Ashley Cameron; Rohit Dighe; Kevin Huang
Cc: Mike Hales; Edward Fearis; Lachlan McLean; Michael Williams; Siabon Seet; Amelia Cooper; Caitlin Meade
Subject: Fortescue Limited & Ors v Element Zero Pty Ltd & Ors - Federal Court Proceeding NSD 527 of 2024 -
Attachments: 3436-8904-8109_2_Letter to DCC re orders - 28.5.24.pdf; 3473-6397-9309_1_First Second Fourth Respondents' short minutes of order - 28.5.24.docx
Categories: Filed to ND

Dear Colleagues

Please see the attached letter and orders.

Regards

Michael Williams/ Rebecca Dunn

REBECCA DUNN
PARTNER | GILBERT + TOBIN

T +61 2 9263 4625 | **M** +61 409 621 845
F +61 2 9263 4111 | **E** RDunn@gtlaw.com.au

L35, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Barangaroo NSW 2000

Gilbert + Tobin acknowledges and recognises the Traditional Custodians of the lands on which we are located. We pay our respects to the Elders, both past and present.

This email and any attachment is confidential between Gilbert + Tobin and the addressee. If it has been sent to you in error, please delete it and notify us. Any opinion expressed in it is not the opinion of Gilbert + Tobin unless that is stated or apparent from its terms.

Partner Michael Williams
Contact Rebecca Dunn
T +61 2 9263 4625
rdunn@gtlaw.com.au
Our ref MJW:RXD:1058625



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28 May 2024

By email: pdewar@dcc.com

Mr Paul Dewar
Partner
Davies Collison Cave
Level 4, 7 Macquarie Place
SYDNEY NSW 2000

Dear Mr Dewar

Fortescue Limited & Ors v Element Zero Pty Ltd & Ors - Proceedings in the Federal Court of Australia (NSD527/2024)

We refer to your email dated 24 May 2024 and proposed orders attached to that email.

Our clients do not consent to the orders.

Our clients are presently considering the application your clients made for search orders, and the scope of the orders your clients obtained on 14 May 2024. At present, our clients reserve all of their rights in this regard.

With that qualification we are, however, in a position to suggest some proposed short minutes, which are enclosed.

Please let us know if your clients consent to the enclosed orders.

Yours faithfully
Gilbert + Tobin

A handwritten signature in black ink that reads 'Gilbert + Tobin' in a cursive style.

Michael Williams
Partner
+61 2 9263 4271
mwilliams@gtlaw.com.au

Rebecca Dunn
Partner
+61 2 9263 4625
rdunn@gtlaw.com.au

Form 1
Rule 2.13(2)

Proposed Short Minutes of Order

No. NSD 527 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

FORTESCUE LIMITED ACN 002 594 872

and others named in the schedule

Applicants

ELEMENT ZERO PTY LIMITED ACN 664 342 081

and others named in the schedule

Respondents

THE COURT ORDERS THAT:

Suppression and confidentiality

1. Order 4 made on 9 May 2024 (interim suppression order) continue to have effect until further order.

Search Orders

2. Order 19 of the search orders made on 14 May 2024 (the **Search Orders**) be varied such that:

- (a) the Applicant's lawyer and the Independent Lawyer must not allow the Applicant in person to inspect or have copies of any thing removed from the Premises nor communicate to the Applicant information about its contents or about anything observed at the Premises until 4:30pm on the next return date identified in Order 14 below or other time fixed by further order of the Court; and

- (b) the Applicant's lawyer may communicate with the Applicant for the purpose of obtaining instructions provided that such communications do not breach Order 2(a) above.
3. Order 20(e)(iv) of the Search Orders be varied such that:
- (a) The Independent Computer Expert deliver the copy or digital copy of the computers, computer disks, drives or memory, electronic information storage devices or systems, and online accounts, and all electronic and hard copies of Listed Things to the Independent Lawyer by no later than 4pm on 30 May 2024.
- (b) The Independent Computer Expert deliver a report of what he has done including a list of such electronic and hard copies to the Independent Lawyer by no later than 4pm on 30 May 2024.
4. Order 20(f) of the Search Orders be varied such that:
- (a) The Independent Lawyer deliver to the Court all things received from the Independent Computer Expert by no later than 4pm on 31 May 2024.
- (b) The Independent Lawyer serve a copy of the Independent Computer Expert's report on the parties by no later than 4pm on 31 May 2024.
5. The Independent Lawyer provide a written report on the carrying out of the Search Orders to the Court, and provide a copy to the parties' lawyers, by no later than 4pm on 31 May 2024 (in lieu of the Independent Lawyer's undertaking, at B.3 [4] of the Search Orders, to do so at or before the hearing on the Return Date) .
6. On or before 31 May 2024, the Independent Lawyer provide to the solicitors for the First, Second and Fourth Respondent a copy of the Listed Things removed from the following Premises:
- (a) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;
- (b) Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090; and
- (c) 5A Volga Street, Hadfield, Victoria 3046.
7. On or before 31 May 2024, the Independent Lawyer provide to the solicitors for the Third Respondent a copy of the Listed Things removed from Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019.

8. Orders 22(b) and 23 of the Search Orders be varied such that the time for compliance be extended to a date to be determined by the Court at the next return date identified in Order 14 below.
9. Orders 25 and 26 of the Search Orders be varied such that the prohibitions therein continue to have effect until further order.
10. The Search Orders otherwise continue to have effect until further order.

Pleadings

11. On or before 18 June 2024, the First, Second and Fourth Respondents, and the Third Respondent, file and serve their Defences.
12. On or before 25 June 2024, the Applicants file and serve any Reply.

Next return date

13. The Return Date (as defined in the Search Orders) be stood over until the date of the further hearing the subject of Order 14 below.
14. The matter be listed for further hearing before the Duty Judge in respect of the Search Orders on [a day convenient to the parties from 1 to 5 July 2024].
15. Liberty to apply.

THE COURT NOTES THAT:

16. The undertaking given to the Court by each Applicant by their counsel in Schedule B, paragraph B.1(3) of the Search Orders be extended such that the Applicant will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.
17. The undertaking given to the Court by each Applicant's lawyer in:
 - (a) Schedule B, paragraph B.2(6) of the Search Orders be extended such that the Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.
 - (b) Schedule B, paragraph B.2(7) of the Search Orders be varied and extended such that Applicant's lawyer will not disclose to the Applicant any information that the lawyer acquires during or as a result of execution of the search order, unless

permitted by Order 2 above, until 4:30pm on the next return date identified in Order 14 above or other time fixed by further order of the Court.

18. The undertaking given to the Court by each Independent Lawyer in Schedule B, paragraph B.3(7) be extended such that the Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.
19. The undertaking given to the Court by each Independent Computer Expert in Schedule B, paragraph B.4(4) be extended such that the Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.

Date: 28 May 2024

Schedule

No. NSD 527 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

Applicants

Second Applicant: **FORTESCUE FUTURE INDUSTRIES PTY LTD**
ACN 625 711 373

Third Applicant: **FMG PERSONNEL SERVICES PTY LTD**
ACN 159 057 646

Respondents

Second Respondent: **BARTLOMIEJ PIOTR KOLODZIEJCZYK**

Third Respondent: **BJORN WINTHER-JENSEN**

Fourth Respondent: **MICHAEL GEORGE MASTERMAN**

Caitlin Meade

From: Rohit Dighe <RDighe@dcc.com>
Sent: Wednesday, May 29, 2024 12:40 PM
To: Rebecca Dunn; Michael Williams; Siabon Seet; Amelia Cooper; Caitlin Meade
Cc: Paul Dewar; Ashley Cameron; Kevin Huang
Subject: NSD527/2024: Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]
Attachments: 28.5.24 3473-6397-9309_1_First Second Fourth Respondents' short minutes of order (Applicant Amends).docx; 3473-6397-9309_1_First Second Fourth Respondents' short minutes of order - 28.5.24.docx



Dear Colleagues

We **attach** the Applicants' marked-up copy of the Proposed Short Minutes of Order. This document has been marked up against the document sent by Ms Dunn yesterday at 2:49PM AEST (**attached** for your reference).

We request that G+T confirms by **3:30PM AEST** today if your clients consent to the amended form of the orders.

Failing agreement by G+T and MinterEllison, we have instructions to provide the amended form of the orders to the Duty Judge's Associate by 4:00PM AEST today.

Yours sincerely

Rohit Dighe **Paul Dewar**
 Associate Principal Lawyer



DAVIES COLLISON CAVE LAW | dcc.com

T +61 2 9293 1000 | F +61 2 9262 1080

We extend our respect to all Aboriginal and Torres Strait Islander peoples throughout Australia and acknowledge the Traditional Owners and Custodians of the lands on which we work. We recognise their ongoing connection to land, sea and community.

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Form 1
Rule 2.13(2)

Proposed Short Minutes of Order

No. NSD 527 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

FORTESCUE LIMITED ACN 002 594 872

and others named in the schedule

Applicants

ELEMENT ZERO PTY LIMITED ACN 664 342 081

and others named in the schedule

Respondents

THE COURT ORDERS THAT:

1. In this order the capitalised terms have the same meaning as in the search orders made on 14 May 2024 (the Search Orders).

Suppression and confidentiality

1.2. Order 4 made on 9 May 2024 (interim suppression order) continue to have effect until the case management hearing referred to in order 20 below or further order.

Search Orders

2. Order 19 of the search orders made on 14 May 2024 (the Search Orders) be varied such that:

(a)3. the Applicant's lawyer and the Independent Lawyer must not allow the Applicant in person to inspect or have copies of any thing removed from the Premises nor communicate to the Applicant information about its contents or about anything observed at the Premises until 4:30pm on the next return date identified case management hearing

Filed on behalf of (name & role of party)	<u>The First, Second and Fourth Respondents</u>
Prepared by (name of person/lawyer)	<u>Michael John Williams, Partner</u>
Law firm (if applicable)	<u>Gilbert + Tobin</u>
Tel	<u>(02) 9263 4271</u>
Fax	<u>(02) 9263 4111</u>
Email	<u>mwilliams@gtlaw.com.au</u>
Address for service (include state and postcode)	<u>Level 35, International Tower Two 200 Barangaroo Avenue, Barangaroo NSW 2000</u>

~~referred to in Order 14~~order 20 below or other time fixed by further order of the Court; and.

~~(b) the Applicant's lawyer may communicate with the Applicant for the purpose of obtaining instructions provided that such communications do not breach Order 2(a) above.~~

~~3.4.~~ **Order 20(e)(iv)** of the Search Orders be varied such that:

~~(a)~~ The Independent Computer Expert retain a digital copy of the computers, computer disks, drives or memory, electronic information storage devices or systems, and online accounts, and all electronic and hard copies of Listed Things.

~~(b)~~ The Independent Computer Expert is not to provide the digital copy referred to in Order 4(a) to any of the parties except by order of the Court.

~~(a)(c)~~ The Independent Computer Expert deliver ~~the~~a copy or digital copy of the computers, computer disks, drives or memory, electronic information storage devices or systems, and online accounts, and all electronic and hard copies of Listed Things to the Independent Lawyer by no later than 4pm on 30 May 2024.

~~(b)(d)~~ The Independent Computer Expert deliver a report of what he has done including a list of such electronic and hard copies to the Independent Lawyer by no later than 4pm on 30 May 2024.

~~4.5.~~ **Order 20(f)** of the Search Orders be varied such that:

(a) The Independent Lawyer deliver to any registry of the Federal Court of Australia all things received from the Independent Computer Expert by no later than 4pm on 31 May 2024.

(b) The Independent Lawyer serve a copy of the Independent Computer Expert's report on the parties by no later than 4pm on 31 May 2024.

~~5.6.~~ The Independent Lawyer provide a written report on the carrying out of the Search Orders to the Court, attaching a copy of any list made pursuant to the Search Orders and a copy of any report received from an Independent Computer Expert, and provide a copy to the parties' lawyers, by no later than 4pm on 31 May 2024 (in lieu of the Independent ~~Lawyer's undertaking~~Lawyers' undertakings, at **B.3 [4]** of the Search Orders, to do so at or before the hearing on the Return Date) .

~~7.~~ On Order 22(a) of the Search Orders be varied such that on or before 31 May 2024, the Independent Lawyer provide to:

~~6.(a)~~ the solicitors for the First, Second and Fourth Respondent a copy of the Listed Things removed from the following Premises:

~~(a)i.~~ Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;

~~(b)ii.~~ Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090; and

~~(c)iii.~~ 5A Volga Street, Hadfield, Victoria 3046.

~~7.(b)~~ On or before 31 May 2024, the Independent Lawyer provide to the solicitors for the Third Respondent a copy of the Listed Things removed from Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019.

8. ~~Orders~~ Order 22(b) and 23 of the Search Orders be varied such that the time for compliance be extended to a date to be determined by the Court at the ~~next return date identified in Order 14~~ case management hearing referred to in order 2019 below.

~~9.~~ Orders 25 and Time for compliance with Orders 23(a) and 23(b) of the Search Orders be extended to 5 June 2024.

~~10.~~ Order 25 of the Search Orders ceases to apply from 4:30pm on 31 May 2024

~~9-11.~~ Order 26 of the Search Orders be varied such that the prohibitions therein continue to have effect until further order.

~~10.~~ The Search Orders otherwise continue to have effect until further order.

~~12.~~ The Applicants be released from the undertaking provided at Schedule B, B.1(3) from 4:30pm on 31 May 2024.

~~13.~~ The Applicants' lawyers be released from the undertaking provided at Schedule B, B.2(6) from 4:30pm on 31 May 2024.

~~14.~~ The Independent Lawyers be released from the undertaking provided at Schedule B, B.3(7) from 4:30pm on 31 May 2024.

~~15.~~ The Independent Computer Experts be released from the undertaking provided at Schedule B, B.4(4) from 4:30pm on 31 May 2024.

Pleadings

~~11.16.~~ On or before ~~18~~¹² June 2024, the First, Second and Fourth Respondents, and the Third Respondent, file and serve their Defences.

~~12.17.~~ On or before ~~25~~¹⁴ June 2024, the Applicants file and serve any Reply.

Next ~~return date case management hearing~~

~~13.18.~~ The Return Date (as defined in the Search Orders) ~~be stood over until the date of the further hearing the subject of Order 14 below~~ hearing referred to in Order 2 of the Search Orders, listed on 30 May 2024 at 9:30am or as otherwise advised on that day or on 31 May 2024, be vacated.

~~19.~~ The matter be listed for ~~further hearing before the Duty Judge in respect a case management hearing at 9:30am on [Any of: 17, 18, 19, 21] June 2024.~~

~~14.20.~~ Costs of the Search Orders ~~on [a day convenient to the parties from 1~~ continue ~~to 5 July 2024].~~ be reserved.

~~15.21.~~ Liberty to apply.

THE COURT NOTES THAT:

~~16.~~—The undertaking given to the Court by each Applicant by their counsel in Schedule B, paragraph B.1(3) of the Search Orders ~~be extended such that the Applicant will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.~~

~~17.~~—The undertaking given to the Court by each Applicant's lawyer in:

~~(a) Schedule B, paragraph B.2(6) of the Search Orders be extended such that the Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.~~

~~(b)~~^{22.} Schedule B, paragraph **B.2(7)** of the Search Orders be varied and extended such that Applicant's lawyer will not disclose to the Applicant any information that the lawyer acquires during or as a result of execution of the search order, ~~unless permitted by Order 2 above,~~ until 4:30pm on the ~~next return date identified~~ of the case management hearing referred to in Order 14 order 20 above, or other time fixed by further order of the Court.

~~18.~~—The undertaking given to the Court by each Independent Lawyer in Schedule B, paragraph B.3(7) ~~be extended such that the Applicant's lawyer will not inform any other~~

~~person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.~~

~~19. The undertaking given to the Court by each Independent Computer Expert in Schedule B, paragraph B.4(4) be extended such that the Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.~~

Date: 2829 May 2024

Schedule

No. NSD 527 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

Applicants

Second Applicant: **FORTESCUE FUTURE INDUSTRIES PTY LTD**
ACN 625 711 373

Third Applicant: **FMG PERSONNEL SERVICES PTY LTD**
ACN 159 057 646

Respondents

Second Respondent: **BARTLOMIEJ PIOTR KOLODZIEJCZYK**

Third Respondent: **BJORN WINTHER-JENSEN**

Fourth Respondent: **MICHAEL GEORGE MASTERMAN**

Form 1
Rule 2.13(2)

Proposed Short Minutes of Order

No. NSD 527 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

FORTESCUE LIMITED ACN 002 594 872

and others named in the schedule

Applicants

ELEMENT ZERO PTY LIMITED ACN 664 342 081

and others named in the schedule

Respondents

THE COURT ORDERS THAT:

Suppression and confidentiality

- Order 4 made on 9 May 2024 (interim suppression order) continue to have effect until further order.

Search Orders

- Order 19 of the search orders made on 14 May 2024 (the **Search Orders**) be varied such that:

- the Applicant's lawyer and the Independent Lawyer must not allow the Applicant in person to inspect or have copies of any thing removed from the Premises nor communicate to the Applicant information about its contents or about anything observed at the Premises until 4:30pm on the next return date identified in Order 14 below or other time fixed by further order of the Court; and

Filed on behalf of (name & role of party)	The First, Second and Fourth Respondents		
Prepared by (name of person/lawyer)	Michael John Williams, Partner		
Law firm (if applicable)	Gilbert + Tobin		
Tel	(02) 9263 4271	Fax	(02) 9263 4111
Email	mwilliams@gtlaw.com.au		
Address for service	Level 35, International Tower Two		
(include state and postcode)	200 Barangaroo Avenue, Barangaroo NSW 2000		

[Form approved 01/08/2011]

- (b) the Applicant's lawyer may communicate with the Applicant for the purpose of obtaining instructions provided that such communications do not breach Order 2(a) above.
3. Order 20(e)(iv) of the Search Orders be varied such that:
- (a) The Independent Computer Expert deliver the copy or digital copy of the computers, computer disks, drives or memory, electronic information storage devices or systems, and online accounts, and all electronic and hard copies of Listed Things to the Independent Lawyer by no later than 4pm on 30 May 2024.
- (b) The Independent Computer Expert deliver a report of what he has done including a list of such electronic and hard copies to the Independent Lawyer by no later than 4pm on 30 May 2024.
4. Order 20(f) of the Search Orders be varied such that:
- (a) The Independent Lawyer deliver to the Court all things received from the Independent Computer Expert by no later than 4pm on 31 May 2024.
- (b) The Independent Lawyer serve a copy of the Independent Computer Expert's report on the parties by no later than 4pm on 31 May 2024.
5. The Independent Lawyer provide a written report on the carrying out of the Search Orders to the Court, and provide a copy to the parties' lawyers, by no later than 4pm on 31 May 2024 (in lieu of the Independent Lawyer's undertaking, at B.3 [4] of the Search Orders, to do so at or before the hearing on the Return Date) .
6. On or before 31 May 2024, the Independent Lawyer provide to the solicitors for the First, Second and Fourth Respondent a copy of the Listed Things removed from the following Premises:
- (a) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;
- (b) Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090; and
- (c) 5A Volga Street, Hadfield, Victoria 3046.
7. On or before 31 May 2024, the Independent Lawyer provide to the solicitors for the Third Respondent a copy of the Listed Things removed from Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019.

8. Orders 22(b) and 23 of the Search Orders be varied such that the time for compliance be extended to a date to be determined by the Court at the next return date identified in Order 14 below.
9. Orders 25 and 26 of the Search Orders be varied such that the prohibitions therein continue to have effect until further order.
10. The Search Orders otherwise continue to have effect until further order.

Pleadings

11. On or before 18 June 2024, the First, Second and Fourth Respondents, and the Third Respondent, file and serve their Defences.
12. On or before 25 June 2024, the Applicants file and serve any Reply.

Next return date

13. The Return Date (as defined in the Search Orders) be stood over until the date of the further hearing the subject of Order 14 below.
14. The matter be listed for further hearing before the Duty Judge in respect of the Search Orders on [a day convenient to the parties from 1 to 5 July 2024].
15. Liberty to apply.

THE COURT NOTES THAT:

16. The undertaking given to the Court by each Applicant by their counsel in Schedule B, paragraph B.1(3) of the Search Orders be extended such that the Applicant will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.
17. The undertaking given to the Court by each Applicant's lawyer in:
 - (a) Schedule B, paragraph B.2(6) of the Search Orders be extended such that the Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.
 - (b) Schedule B, paragraph B.2(7) of the Search Orders be varied and extended such that Applicant's lawyer will not disclose to the Applicant any information that the lawyer acquires during or as a result of execution of the search order, unless

permitted by Order 2 above, until 4:30pm on the next return date identified in Order 14 above or other time fixed by further order of the Court.

18. The undertaking given to the Court by each Independent Lawyer in Schedule B, paragraph B.3(7) be extended such that the Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.
19. The undertaking given to the Court by each Independent Computer Expert in Schedule B, paragraph B.4(4) be extended such that the Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.

Date: 28 May 2024

Schedule

No. NSD 527 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

Applicants

Second Applicant: **FORTESCUE FUTURE INDUSTRIES PTY LTD**
ACN 625 711 373

Third Applicant: **FMG PERSONNEL SERVICES PTY LTD**
ACN 159 057 646

Respondents

Second Respondent: **BARTLOMIEJ PIOTR KOLODZIEJCZYK**

Third Respondent: **BJORN WINTHER-JENSEN**

Fourth Respondent: **MICHAEL GEORGE MASTERMAN**

Caitlin Meade

From: Caitlin Meade
Sent: Wednesday, May 29, 2024 4:17 PM
To: Paul Dewar; Ashley Cameron; Rohit Dighe; Kevin Huang; Mike Hales; Edward Fearis; Lachlan McLean
Cc: Michael Williams; Rebecca Dunn; Amelia Cooper
Subject: Fortescue Limited & Ors v Element Zero Pty Limited & Ors - Proceedings in the Federal Court of Australia NSD527/2024
Attachments: 3453-7555-2557_2_29.5.24 First Second Fourth Respondents' short minutes of order (Applicant Amends accepted with 1st 2nd 4th Respondents' reply in mark up).docx

Dear Colleagues

Please find attached short minutes of order which the First, Second and Fourth Respondent intend to seek at the return date tomorrow. We have accepted the mark up in the version of the orders circulated by the Applicant today at 12:40pm, and made further amendments in mark up.

We will shortly provide a clean copy of the proposed orders to the Associate to the Duty Judge.

Regards
Rebecca Dunn / Caitlin Meade

Form 1
Rule 2.13(2)

Proposed Short Minutes of Order

No. NSD 527 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

FORTESCUE LIMITED ACN 002 594 872

and others named in the schedule

Applicants

ELEMENT ZERO PTY LIMITED ACN 664 342 081

and others named in the schedule

Respondents

THE COURT ORDERS THAT:

1. In this order the capitalised terms have the same meaning as in the search orders made on 14 May 2024 (the **Search Orders**).

Suppression and confidentiality

2. Order 4 made on 9 May 2024 (interim suppression order) continue to have effect until the **case management** hearing referred to in **order 20**Order 14 below or further order.

Search Orders

3. **Order 19** of the Search Orders be varied such that the Applicant's lawyer and the Independent Lawyer must not allow the Applicant in person to inspect or have copies of any thing removed from the Premises nor communicate to the Applicant information about its contents or about anything observed at the Premises until 4:30pm on **the the** **case management** hearing **date** referred to in **order 20**Order 14 below or other time fixed by further order of the Court.

Filed on behalf of (name & role of party)	The First, Second and Fourth Respondents		
Prepared by (name of person/lawyer)	Michael John Williams, Partner		
Law firm (if applicable)	Gilbert + Tobin		
Tel	(02) 9263 4271	Fax	(02) 9263 4111
Email	mwilliams@gtlaw.com.au		
Address for service (include state and postcode)	Level 35, International Tower Two 200 Barangaroo Avenue, Barangaroo NSW 2000		

4. **Order 20(e)(iv)** of the Search Orders be varied such that:
- ~~(a) — The Independent Computer Expert retain a digital copy of the computers, computer disks, drives or memory, electronic information storage devices or systems, and online accounts, and all electronic and hard copies of Listed Things.~~
 - ~~(b) — The Independent Computer Expert is not to provide the digital copy referred to in Order 4(a) to any of the parties except by order of the Court.~~
 - ~~(c)(a) —~~ The Independent Computer Expert deliver athe copy or digital copy of the computers, computer disks, drives or memory, electronic information storage devices or systems, and online accounts, and all electronic and hard copies of Listed Things to the Independent Lawyer by no later than 4pm on 30 May 2024.
 - ~~(d)(b) —~~ The Independent Computer Expert deliver a report of what he has done including a list of such electronic and hard copies to the Independent Lawyer by no later than 4pm on 30 May 2024.
5. **Order 20(f)** of the Search Orders be varied such that:
- (a) The Independent Lawyer deliver to anythe Sydney registry of the Federal Court of Australia all things received from the Independent Computer Expert by no later than 4pm on 31 May 2024.
 - (b) The Independent Lawyer serve a copy of the Independent Computer Expert's report on the parties by no later than 4pm on 31 May 2024.
6. The Independent Lawyer provide a written report on the carrying out of the Search Orders to the Court, attaching a copy of any list made pursuant to the Search Orders and a copy of any report received from an Independent Computer Expert, and provide a copy to the parties' lawyers, by no later than 4pm on 31 May 2024 (in lieu of the Independent Lawyers' undertakings, at B.3 [4] of the Search Orders, ~~to do so at or before the hearing on the Return Date~~).
7. **Order 22(a)** of the Search Orders be varied such that on or before 31 May 2024, the Independent Lawyer provide to:
- (a) the solicitors for the First, Second and Fourth Respondent a copy of the Listed Things removed from the following Premises:
 - i. Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;

- ii. Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090; and
- iii. 5A Volga Street, Hadfield, Victoria 3046.

(b) the solicitors for the Third Respondent a copy of the Listed Things removed from Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019.

8. **Order 22(b)** of the Search Orders be varied such that the time for compliance be extended to a date to be determined by the Court at the ~~case management~~ hearing referred to in ~~order 20~~Order 14 below.
9. Time for compliance with **Orders 23(a) and 23(b)** of the Search Orders be extended to 5 June 2024 a date to be determined by the Court at the hearing referred to in Order 14 below.
10. **Order 25** of the Search Orders ceases to apply from 4:30pm on 31 May 2024.
11. **Order 26** of the Search Orders be varied such that the prohibitions therein continue to have effect until further order.
- ~~12. The Applicants be released from the undertaking provided at Schedule B, **B.1(3)** from 4:30pm on 31 May 2024.~~
- ~~13. The Applicants' lawyers be released from the undertaking provided at Schedule B, **B.2(6)** from 4:30pm on 31 May 2024.~~
- ~~14. The Independent Lawyers be released from the undertaking provided at Schedule B, **B.3(7)** from 4:30pm on 31 May 2024.~~
- ~~15. The Independent Computer Experts be released from the undertaking provided at Schedule B, **B.4(4)** from 4:30pm on 31 May 2024.~~

Pleadings

~~16.12.~~ On or before 1218 June 2024, the First, Second and Fourth Respondents, and the Third Respondent, file and serve their Defences.

~~17.13.~~ On or before 1420 June 2024, the Applicants file and serve any Reply.

Next ~~case management~~ return date hearing

~~18.14.~~ The hearingReturn Date referred to in Order 2 of the Search Orders, listed on 30 May 2024 at 9:30am or as otherwise advised on that day or on 31 May 2024, be ~~vacated~~stood over to 9:30am on a date not before 24 June 2024.

~~19. The matter be listed for a case management hearing at 9:30am on [Any of: 17, 18, 19, 21] June 2024.~~

~~20-15.~~ Costs of the Search Orders continue to be reserved.

~~21-16.~~ Liberty to apply.

THE COURT NOTES THAT:

17. The undertaking given to the Court by each Applicant by their counsel in Schedule B, paragraph B.1(3) of the Search Orders be extended such that the Applicant will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.

18. The undertaking given to the Court by each Applicant's lawyer in:

(a) Schedule B, paragraph B.2(6) of the Search Orders be extended such that the Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.

22.(b) Schedule B, paragraph B.2(7) of the Search Orders be varied and extended such that Applicant's lawyer will not disclose to the Applicant any information that the lawyer acquires during or as a result of execution of the search order until 4:30pm on the next return date of the case management hearing referred to identified in order 20-Order 14 above- or other time fixed by further order of the Court.

19. The undertaking given to the Court by each Independent Lawyer in Schedule B, paragraph B.3(7) be extended such that the Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.

20. The undertaking given to the Court by each Independent Computer Expert in Schedule B, paragraph B.4(4) be extended such that the Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the next return date identified in Order 14 above.

Date: 29 May 2024

Schedule

No. NSD 527 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

Applicants

Second Applicant: **FORTESCUE FUTURE INDUSTRIES PTY LTD**
ACN 625 711 373

Third Applicant: **FMG PERSONNEL SERVICES PTY LTD**
ACN 159 057 646

Respondents

Second Respondent: **BARTLOMIEJ PIOTR KOLODZIEJCZYK**

Third Respondent: **BJORN WINTHER-JENSEN**

Fourth Respondent: **MICHAEL GEORGE MASTERMAN**

Federal Court of Australia
District Registry: New South Wales
Division: General

FORTESCUE LIMITED ACN 002 594 872 (currently described in the proceeding by the pseudonym QFM1) and another named in the schedule

Applicants

ELEMENT ZERO PTY LIMITED ACN 664 342 081 (currently described in the proceeding by the pseudonym RAB1 and others named in the schedule

Respondents

CONFIDENTIAL EXHIBIT MJW-2

This is the Confidential Exhibit marked **Confidential Exhibit MJW-2** to the Affidavit of **Michael John Williams** sworn before me on 29 May 2024.



Witness

Name: *Amelia Cooper, Solicitor*

Address: Level 35, Tower 2 International Towers, 200 Barangaroo Avenue, Barangaroo NSW 2000

Filed on behalf of	The First, Second and Fourth Respondents		
Prepared by	Michael Williams		
Law firm	Gilbert + Tobin		
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