

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 9/04/2024 10:16:52 AM AEST
Date Accepted for Filing: 9/04/2024 10:31:37 AM AEST
File Number: QUD178/2024
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v NGS
CRYPTO PTY LTD ACN 624 825 065 & ORS
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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



Form 2 **Originating process**
(rules 2.2 and 15A.3)

No. **of 2024**

IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: QUEENSLAND
DIVISION: COMMERCIAL AND CORPORATIONS

IN THE MATTER OF NGS CRYPTO PTY LTD (ACN 624 825 065)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

NGS CRYPTO PTY LTD (ACN 624 825 065) and others named in the schedule

Defendants

A. DETAILS OF APPLICATION

This application is made under sections 1101B, 1323 and 1324 of the *Corporations Act 2001* (Cth) (**Corporations Act**), sections 19, 21, 23, 37AF and 37AG of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), and the inherent jurisdiction of the Court.

The Plaintiff seeks relief including declarations, and orders for interim injunction restraining the conduct of the Defendants in relation to providing advice or dealing with financial products ostensibly in the investment of blockchain mining. The Plaintiff also seeks orders for the appointment of a receiver, asset preservation orders and other ancillary orders. The Plaintiff further seeks orders requiring the Fourth Defendant to deliver up his passport and prohibiting him from leaving Australia.

Filed on behalf of	Australian Securities and Investments Commission, Plaintiff
Prepared by (name of person/lawyer)	Savas Miriklis
Tel (03) 9280 3442	Fax 1300 729 000
Email savas.miriklis@asic.gov.au	
Address for service (include state and postcode)	Australian Securities and Investments Commission Level 7, 120 Collins Street Melbourne VIC 3000



Definitions

For the purpose of this Application:

Australian Member: *includes any person, whether as an individual or a body corporate, based or registered in Australia, who has entered into an agreement (however described) through the Business, to invest in Blockchain Mining.*

Books: *includes a register, any other record of information, financial reports or financial records however compiled or recorded or stored, a document, papers, records, books of account, ledgers, journals, banking records, computer records, or other documents of any type whatsoever recording or evidencing any dealings of any of the Defendants in relation to the Business.*

Blockchain Mining: *means the process of verifying or validating blockchain transactions using blockchain technology to secure the network, and includes the following methods:*

- a. *'Proof of Work', being a consensus mechanism in which participants on a decentralised network compete by using computational power to solve a mathematical equation on the blockchain; and*
- b. *'Proof of Stake', being a consensus mechanism in which participants on a decentralised network lock up or 'stake' an amount of their cryptocurrency or crypto-tokens for the ability to validate blockchain transactions.*

Business: *means all activities and arrangements whereby the First or Second or Third Defendants, whether by themselves or any of them, or by their servants, agents or employees:*

- a. *provide recommendations or statements of opinion about superannuation products, cryptocurrency or Blockchain Mining;*
- b. *elicit or obtain funds from investors for the actual or ostensible purpose of providing to investors, or arranging for investors to acquire, an interest in a financial product, including:*
 - i. *superannuation products; and*
 - ii. *investments in or related to cryptocurrency, including Blockchain Mining.*



Dealing: *includes:*

(a) *Removing, causing, procuring, assisting or permitting any Digital Currency Assets in the possession or under the control of the Defendants, to be removed from Australia or from the jurisdiction of this Court; and/or*

(b) *Selling, charging, mortgaging, encumbering, securing, diminishing, disposing of, parting with possession, making any declaration of trust in relation to, exercising any power to vary or modify any trust deed or any interest under any trust over Digital Currency Assets owned by or under the control of the Defendants.*

Digital Currency: *means property, as defined under section 9 of the Corporations Act, that is a digital currency, virtual currency, cryptocurrency or similar.*

Digital Currency Assets: *means Digital Currency held or controlled by the Defendants.*

Investor Funds: *means monies, including in the form of Digital Currency, provided to the First or Second or Third Defendants or any of them, whether directly, or through any of the other Defendants, or any of the Defendants' authorised agents, servants and/or representatives, for the actual or ostensible purpose of providing to investors, or arranging for investors to acquire, an interest in a financial product, including:*

- a. superannuation products; and*
- b. investments in or related to cryptocurrency, including Blockchain Mining.*

On the facts stated in the supporting affidavits of:

- (a) Peter James Connor;
- (b) Alex James Lynch;
- (c) Kristina Matia Hiratos;
- (d) Katie Nicholas Loizou;
- (e) Kaan Finney; and
- (f) Michael Spencer;

the plaintiff claims the following relief:



EX PARTE RELIEF

Ex parte/short service orders

1. An order that the Plaintiff have leave to file in this Court the affidavits of:
 - (a) Peter James Connor;
 - (b) Alex James Lynch;
 - (c) Kristina Matia Hiratos;
 - (d) Katie Nicholas Loizou;
 - (e) Kaan Finney; and
 - (f) Michael Spencer.
2. An order that in the first instance, service of this Originating Process be dispensed with.
3. An order that in the first instance, paragraph 4 to 22 be returnable instanter.
4. An order that the time for service of this Originating Process, the affidavits referred to in paragraph 1 on the Defendants be abridged to 5pm AEST on 11 April 2024.

Interim receiver and asset preservation orders

5. An order pursuant to sections 1323(1)(h) and (3) of the Corporations Act for the appointment effective on and from 6:00am AEST on Thursday, 11 April 2024, until further order, of a suitable person as receiver and/or receiver manager (**Receiver**), without security, over the Digital Currency Assets, whether within or without the State of Queensland, of the Defendants for the purpose of identifying and securing the Digital Currency Assets of the Defendants.
6. An order the Receiver have the following powers:
 - (a) The powers set out in sections 420(2)(a), (b), (e), (f), (g), (k), (n), (p), (q), (r) and (t) of the Corporations Act and can exercise these powers with respect to the Digital Currency Assets of the Defendants; and
 - (b) the power to apply to the Court for directions or further orders.



7. An order that the Defendants shall immediately deliver up to the Receiver all books, records and things, which relate to the Digital Currency Assets of the Defendants, including, but not limited to:
 - (a) all relevant credentials and passwords for access to any cryptocurrency or blockchain technology assets held by the Defendants, including but not limited to, the public and private access keys and/or addresses any hot or cold wallet held or controlled by the Defendants;
 - (b) any and all authentication devices required to facilitate access, operation or control of any cryptocurrency held or controlled by the Defendants;
 - (c) all relevant credentials and passwords for access to the authentication devices or systems, including emails, SMS or mobile apps, that facilitate access, operation or control of cryptocurrency held or controlled by the Defendants; and
 - (d) any hard wallet device containing cryptocurrency held or controlled by the Defendants together with that device's access code.

8. An order that the Plaintiff shall, upon request of the Receiver, deliver up to the Receiver copies of all books, records and things concerning the Digital Currency Assets, which have been obtained by the Plaintiff under Part 3, Division 3 and/or Division 3A of the *Australian Securities and Investments Act 2001* (Cth) including, but not limited to:
 - (a) all relevant credentials and passwords for access to any cryptocurrency or blockchain technology assets held by the Defendants, including but not limited to, the public and private access keys and/or addresses any hot or cold wallet held or controlled by the Defendants;
 - (b) any and all authentication devices required to facilitate access, operation or control of any cryptocurrency held or controlled by the Defendants;
 - (c) all relevant credentials and passwords for access to the authentication devices or systems, including emails, SMS or mobile apps, that facilitate access, operation or control of cryptocurrency held or controlled by the Defendants; and
 - (d) any hard wallet device containing cryptocurrency held or controlled by the Defendants together with that device's access code.



9. An order that the Plaintiff shall, upon the request of the Receiver, deliver up to the Receiver copies of the affidavits referred to in paragraph 1.
10. An order that the Receiver's costs and expenses be payable from the Digital Currency Assets of the Defendants.
11. Further or in the alternative to the orders sought in paragraphs 5 to 10 above, and subject to paragraph 12 below, an order pursuant to sections 1101B and/or 1323 of the Corporations Act that, until further order, the Defendants, by themselves and their servants, agents and employees are restrained from:
 - (a) removing, or causing or permitting to be removed from Australia all or any of the Digital Currency Assets of any of the Defendants;
 - (b) selling, charging, mortgaging or otherwise dealing with, disposing of and/or diminishing the value of all or any of the Digital Currency Assets of the Defendants;
 - (c) causing or permitting to be sold, charged, mortgaged or otherwise dealt with, disposed of, or diminished in value, all or any of the Digital Currency Assets of any of the Defendants; and
 - (d) without limiting the terms of sub-paragraphs (a) to (c) above, withdrawing, transferring or otherwise disposing of Digital Currency Assets available in any account with any bank, building society, cryptocurrency exchange, hot or cold crypto wallet, recorded in any blockchain or other financial institution (in Australia and elsewhere), in which the Defendants have any legal or equitable interest.
12. An order that the orders sought in paragraph 11 above, do not prevent:
 - (a) any bank, building society or financial institution from exercising any right of set-off which it may have in respect of a facility afforded by it to the Defendants prior to the date of this Order;
 - (b) the Defendants, from paying of any monies including in the form of Digital Currency, to the account or hot or cold crypto wallet of an Australian Member, representing any returns associated with that person's investment in the Blockchain Investment Products; and



(c) upon request by an Australian Member to divest from or cease their investment in the Blockchain Investment Product, the Defendants paying to that person any monies including in the form of Digital Currency, representing the person's Investor Funds and returns associated with their investment in the Blockchain Investment Product.

13. An order that the orders sought in paragraphs 11(b) and 11(c) above, do not apply where the Australian Member is a past or present servant, agent, employee, or office holder of the First, Second or Third Defendants; or otherwise associated with a past or present servant, agent, employee, or office holder of the First, Second or Third Defendants.

Asset disclosure orders

14. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made, an order that each of the Defendants deliver or cause to be delivered to the Plaintiff or any Receiver appointed by the Court, by 4pm on 26 April 2024, a full and detailed affidavit sworn or affirmed by themselves or a proper officer as the case may be:

(a) the name and address of any bank, building society, cryptocurrency exchange, or other financial institution (in Australia and elsewhere) at which there is any account in the name of or under the control of the Defendants, or which the Defendants have any legal or equitable interest, together with the number of such account, the name of such account and the balance of that account;

(b) a list of the locations (in Australia and elsewhere) of all Digital Currency and blockchain technology assets held or controlled by the Defendants, or which the Defendants have any legal or equitable interest, together with the public or private keys for any cold or hot wallets held or controlled by the Defendants and the nature and amount of the cryptocurrency held in any such wallets; and

(c) a list of all escrow accounts which hold Digital Currency on behalf of the Defendants.

15. An order that in the event that the Defendants wish to object that compliance with the order sought in paragraph 14 above, on the basis that it may tend to incriminate



the Defendant or make the Defendant liable to a civil penalty, the relevant Defendant must, in accordance with section 128A of the *Evidence Act 1995* (Cth):

- (a) prepare, file and serve on the Plaintiff an affidavit disclosing so much of the information required to be disclosed by paragraph 14 above to which no objection is taken;
- (b) prepare an affidavit containing so much of the information required to be disclosed by paragraph 14 above which objection is taken and deliver it to the Court in a sealed envelope; and
- (c) prepare, file and serve on the Plaintiff a separate affidavit setting out the basis of the objection.

Travel restraint orders

16. An order pursuant to section 1323(1)(k) of the Corporations Act that, until further order, the Fourth Defendant be prohibited from leaving Australia or attempting to leave Australia.
17. An order pursuant to section 1323(1)(j) of the Corporations Act that, by a time fixed by the Court, the Fourth Defendant deliver up to the Brisbane Registry of this Court all passports in his name which are in his possession, custody or control.
18. An order that the documents delivered up to the Brisbane Registry pursuant to paragraph 17 above be held by the Registry until further order.
19. An order that, until further order, the Fourth Defendant be restrained from applying for the issue of an Australian or non-Australian passport or other document permitting international travel.
20. An order that, in the event that the Fourth Defendant cannot locate any passport or other document permitting international travel, the Fourth Defendant promptly:
 - (a) give notification to the Australian Passport Office, or other relevant authorities responsible for the issue and control of Australian passports or travel documents, or, in the case of a foreign passport or travel document, the relevant authority responsible for the issue and control of such passports or travel documents, confirming that he has lost his passport or travel document; and;



- (b) file and serve an affidavit stating that fact and exhibiting a copy of the above notification sent.

Service of orders on third parties

21. An order that to the extent necessary, the Plaintiff has leave to give to:

- (a) any bank, building society, cryptocurrency exchange, or other financial institution through which, to the best of the Plaintiff's belief, Digital Currency Assets belongs to the Defendants;
- (b) any other person or entity, holding or controlling Digital Currency Assets, which, to the best of the Plaintiff's belief, belongs to the Defendants;
- (c) the relevant authorities that issue and control of passports; and
- (d) the Australian Border Force,

notice of the making of any of the foregoing interim orders by giving a copy of the minute of the orders to a person apparently in the employ of any such entity or person.

Non-publication orders

22. An order pursuant to sections 37AF(1)(a) and (b) and 37AG(1)(a) of the FCA Act that, in order to avoid prejudice to the proper administration of justice, the publication or disclosure of the following is prohibited until 5pm AEST, 11 April 2024, except to enable the Plaintiff to serve the Defendants, and provide copies of the orders to the entities set out in paragraph 21 above for the purpose of enforcing the orders:

- (a) any ex-parte orders obtained by the Plaintiff;
- (b) this Originating Process;
- (c) the affidavits referred to in paragraph 1 (including exhibits) filed by the Plaintiff in support of the ex-parte orders; and
- (d) any written submissions advanced by the Plaintiff in support of the ex-parte orders.



INTERIM RELIEF

Injunctive relief

23. An interim order pursuant to sections 1101B(5) and/or 1324(4) of the Corporations Act that until further order, the First and Second and Third Defendants, by themselves and their servants, agents and employees be restrained from:
- (a) promoting, advertising, or marketing superannuation products, cryptocurrency or Blockchain Mining in Australia;
 - (b) promoting or carrying on the Business in Australia;
 - (c) promoting or carrying on any financial services business in Australia;
 - (d) receiving, taking, or accepting new Investor Funds from any person in Australia;
 - (e) dealing with Investor Funds, in any account with any bank, building society, cryptocurrency exchange, or hot or cold crypto-wallet, recorded in any blockchain or other financial institution (in Australia and elsewhere); and
 - (f) either directly or indirectly carrying on a financial services business in Australia in contravention of section 911A of the Corporations Act.

FINAL RELIEF

Injunctive relief

24. An order pursuant to sections 1101B and/or 1324 of the Corporations Act, that until further order, the First and Second and Third Defendants, by themselves and their servants, agents and employees be restrained from
- (a) promoting, advertising, or marketing superannuation products, cryptocurrency or Blockchain Mining in Australia;
 - (b) promoting or carrying on the Business in Australia;
 - (c) promoting or carrying on any financial services business in Australia;
 - (d) receiving, taking, or accepting new Investor Funds from any person in Australia;



- (e) dealing with Investor Funds, in any account with any bank, building society, cryptocurrency exchange, or hot or cold crypto-wallet, recorded in any blockchain or other financial institution (in Australia and elsewhere); and
- (f) either directly or indirectly carrying on a financial services business in Australia in contravention of section 911A of the Corporations Act.

Declaration

25. A declaration pursuant to sections 1101B and/or 1317E of the Corporations Act or section 21 of the FCA Act that the First and Second and Third Defendants contravened sections 911A(1) and 911A(5B) of the Corporations Act, by carrying on a financial services business in this jurisdiction without holding an Australian financial services licence.

Other orders

- 26. An order that the Defendants pay ASIC's costs of and incidental to the proceeding.
- 27. The parties have liberty to apply on three business days' notice in writing.
- 28. Such further or other orders as the Court considers appropriate.

Date:

Savas Minklis

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Legal Practitioner for the
Australian Securities and Investments Commission

This application will be heard by the Federal Court of Australia, Harry Gibbs Commonwealth Law Courts Building, 119 North Quay (cnr Tank Street), Brisbane, QLD at *am/*pm on



B. NOTICE TO DEFENDANT(S) (IF ANY)

TO: NGS CRYPTO PTY LTD (ACN 624 825 065)

MERROTTS, 'Brisbane Club Tower' Level 9 Suite 1,
241 Adelaide Street, BRISBANE QLD 4000

TO: NGS DIGITAL PTY LTD (ACN 630 115 543)

MERROTTS, 'Brisbane Club Tower' Level 9 Suite 1,
241 Adelaide Street, BRISBANE QLD 4000

TO: NGS GROUP LTD (HK COMPANY NUMBER 1963940)

12/F Henley Building 5 Queen's Road Central,
Central, HONG KONG 999077

TO: BRETT ALLAN MENDHAM

25 Cathedral Avenue
MOLENDINAR QLD 4214

TO: MARK JAMES TEN CATEN

JL Tirtanadi II Gg. Cendana Villa, No 1 Sanur Kuah South Denpasar
Bali, 802227 INDONESIA

TO: RYAN TODD BROWN

7 Riverwood Drive
ASHMORE QLD 4124

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.



Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable

D. FILING

Date of filing:

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Registrar

This originating process is filed by Savas Miriklis, Legal Practitioner for the Plaintiff.

E. SERVICE

The Plaintiff's address for service is:

Name:	Australian Securities and Investments Commission
Plaintiff's address:	Level 7, 120 Collins Street Melbourne VIC 3000
Plaintiff's solicitor's name:	Savas Miriklis
Telephone:	(03) 9280 3442
Facsimile:	1300 729 000
Email:	savas.miriklis@asic.gov.au

It is intended to serve a copy of this Originating Process on the Defendants following the making of an ex-parte application for interim orders.



SCHEDULE

No. of 2024

Federal Court of Australia
District Registry: Queensland
Division: Commercial & Corporations

Plaintiff	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
First Defendant	NGS CRYPTO PTY LTD (ACN 624 825 065)
Second Defendant	NGS DIGITAL PTY LTD (ACN 630 115 543)
Third Defendant	NGS GROUP LTD (HK COMPANY NUMBER 1963940)
Fourth Defendant	BRETT ALLAN MENDHAM
Fifth Defendant	MARK JAMES TEN CATEN
Sixth Defendant	RYAN TODD BROWN