

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** RICHARD M. BANACH, Plaintiff

– and –

GALAXY DIGITAL HOLDINGS LTD., MICHAEL NOVOGRATZ, and  
ALEX IOFFE, Defendants

**BEFORE:** Justice E.M. Morgan

**COUNSEL:** *Soheil Karkhanechi, Paul Bates, and Mahdi Hussein*, for the Plaintiff

*Seamus Woods and Ryan Morris*, for the Defendants

**HEARD:** June 16, 2025

**ENDORSEMENT**

[1] Counsel for both sides in this investors’ proposed class action alleging misrepresentation by the Defendants have exchanged motion records in advance of a combined motion for leave to proceed under the *Securities Act* and certification under the *Class Proceedings Act*.

[2] Counsel for the Plaintiff, in coordination with counsel for the Defendant, have arranged a case conference to discuss matters that have arisen in advance of the two motions. Specifically, Plaintiff’s counsel raise two production issues flowing from the affidavit material filed by the Defendants.

[3] The first of these issues is framed by Plaintiff’s counsel as follows:

In his affidavit [affirmed Feb 13, 2025], Mr. Michael Novogratz, quotes from an audio recording of a conversation between him and Do Kwon, the founder of Terra. The recorded conversation relates to the risks associated with Terra and was held during the Class Period. Despite quoting from it in his affidavit, Mr. Novogratz refuses to produce this audio recording.

[4] Counsel for the Defendants advise me the recording referred to by Mr. Novogratz is from a podcast that apparently was never broadcast is not publicly accessible. It is their view that the only relevant portions of the interview are quoted in the affidavit, and that the rest of the unpublished podcast is not relevant.

[5] Counsel for the Plaintiff submit that Rule 30.04 requires any document specifically referred to in an affidavit to be produced, and that a podcast, or the transcript of a podcast, is not excepted from that rule. It is their view that the transcript must be produced; otherwise, there will likely be a refusal motion after cross-examination and then possibly re-examination once the document is produced, which will be an inefficient way to proceed.

[6] If a transcript of the podcast exists and can be retrieved by the Defendants, the portion of the transcript containing the quoted part of the interview is to be produced. In my view, that falls squarely within the requirement of Rule 30.04. The balance of the transcript need not be produced at this point, as there is nothing to indicate that any other portion of it is relevant to the issues in this litigation.

[7] The second production issue raised by Plaintiff's counsel is framed as follows:

In his affidavit [affirmed Feb. 14, 2025], Mr. Alex Ioffe refers to a chart included as Exhibit 7, which he describes as 'detailing [Galaxy's] holdings of Luna as compared to its total digital assets, total assets, and total equity' at various dates. Mr. Ioffe affirms in his affidavit that the 'numbers in the chart were compiled from [Galaxy's] public filings.' Upon review, it is apparent that the numbers in the chart were not prepared based on Galaxy's public filings and the chart itself references information not in the public domain. Mr. Ioffe refuses to provide the documents he relied on in preparing the chart.

[8] Plaintiff's counsel submits that the information that supports the chart must be produced in order for the chart to make sense. Since the information needed to comprehend this chart is apparently not in the public domain, it is Plaintiff's counsel's view that it should have been produced up front along with the chart itself and that a production order is called for at this point.

[9] Defendant's counsel takes issue with Plaintiff's view of the information needed to understand Mr. Ioffe's chart. They submit that, in any case, the request for production is not for any specific document but rather explores for background information to which the Plaintiff is not entitled at this stage of the proceedings.

[10] The request by Plaintiff's counsel for information support the chart is more in the nature of an inquiry into Mr. Ioffe's credibility as an affiant than anything else. In my view, it is something that could be the subject of questions in cross-examination, but does not fall into the Rule 30.04 category or otherwise qualify for a production order in advance of those cross-examinations.

[11] Plaintiff's counsel may or may not be right in their assessment of the background information used by Mr. Ioffe in compiling the chart that he references in his affidavit; that remains to be seen and explored in questioning him. I am not inclined to order that any further information relating to the chart at Exhibit 7 of the Ioffe affidavit be produced at this point.

[12] At the case conference, I mentioned to counsel that any contested refusals arising from the cross-examinations will likely be referred to an Associate Justice for adjudication. As I explained to counsel, that is my general practice with respect to undertakings and refusals motions that are in the nature of procedural disputes rather than major points of principle. On the other hand, if there are one or two refusals that, in effect, raise substantive issues that are germane to the dispute

between the parties and that in any case would have to be addressed in determining the leave/certification motions, I generally prefer to hear those myself.

[13] Both sides have agreed to the following timetable leading up to the double motion:

Plaintiff's Supplementary Record	July 15, 2025
Defendants' Supplementary Record	October 1, 2025
Plaintiff's Reply Record (if any)	October 31, 2025
Cross-examinations complete	December 15, 2025
Plaintiff's Factum	February 9, 2026
Defendants' Responding Factum	March 16, 2026
Plaintiff's Reply Factum (if any)	April 15, 2026
Hearing of Leave and Certification motions	April 27-30, 2026

[14] In order to adhere to this agreed-upon schedule, the portion of the podcast (or transcript thereof) ordered to be produced in paragraph 6 above is to be delivered by the Defendants to the Plaintiff as soon as is practicable.

[15] Counsel should feel free to be in touch with my assistant in the event that any further matters need to be addressed in the run-up to the leave/certification hearing commencing April 27, 2025.

**Date:** June 16, 2025

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**Morgan J.**