

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

[2021] SGHC 191

Suit No 1007 of 2018

Between

Jason Grendus

... Plaintiff

And

- (1) Stephen David Lynch
- (2) Brett Dawkins
- (3) William John Patrick Dale
- (4) Aryan Search Pte Ltd

... Defendants

JUDGMENT

[Tort] — [Misrepresentation] — [Fraud and deceit]
[Tort] — [Misrepresentation] — [Negligent misrepresentation]
[Tort] — [Conspiracy]
[Tort] — [Misrepresentation] — [Negligent misrepresentation]
[Evidence] — [Admissibility of evidence] — [Similar facts]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND	2
THE PARTIES	2
THE PROCEEDINGS	3
EXECUTIVE SUMMARY OF DECISION	4
MR DAWKINS' ROLE IN THE MATTER	6
MR DAWKINS SPOKE TO MR GRENDUS ABOUT DATACORE LOOKING FOR INVESTORS, BUT MR DAWKINS DID NOT "PITCH" AN INVESTMENT IN DATACORE	6
MR DAWKINS' INITIAL CONTACTS WITH MR GRENDUS WERE ABOUT WORK OPPORTUNITIES, NOT INVESTMENT OPPORTUNITIES	7
DATACORE DID NOT ENGAGE MR DAWKINS OR ARYAN SEARCH TO SOLICIT INVESTMENTS.....	9
<i>February 2016 – Mr Lynch told Mr Dawkins about DataCore, and Mr Dawkins introduced Shanda to DataCore.....</i>	<i>9</i>
<i>April 2016 – Mr Lynch and Mr Dawkins discussed Shanda, and also the possibility of Mr Dawkins and Aryan Search investing in DataCore.....</i>	<i>12</i>
<i>May-June 2016 – Mr Dawkins received the May Pro Forma, and DataCore tried to get Mr Dawkins and Aryan Search to invest</i>	<i>14</i>
NO FINANCIAL DUE DILIGENCE WAS DONE BY MR DAWKINS OR ARYAN SEARCH	16
DATACORE WAS NOT OBLIGED TO PAY FINDER'S FEES TO MR DAWKINS OR ARYAN SEARCH.....	21

MR DAWKINS DID NOT HAVE THE FINANCIAL ACUMEN OF A FINANCIAL ADVISOR.....	23
FRAUD.....	24
MR GRENDUS’ CASE ON THE REPRESENTATIONS ALLEGEDLY MADE TO HIM.....	24
<i>The representations as pleaded in the SOC</i>	24
<i>Mr Grendus’ particulars</i>	27
<i>When and how were the Representations and Further Representations made?</i>	28
<i>The Submission Representations</i>	30
DID MR DAWKINS MAKE THE REPRESENTATIONS?.....	30
<i>The 24 May 2016 Meeting</i>	30
<i>Submission Representation (1) / Representation (c)</i>	34
<i>Submission Representation (2) / Representation (a)</i>	36
<i>Submission Representation (3) / Representation (b)</i>	43
<i>Submission Representations (4) to (6) / Representations (d) and (e)</i>	44
<i>Submission Representation (7) / Representation (g)</i>	53
<i>Submission Representation (8) / Representation (h)</i>	57
<i>Representations (f), (i), (j) and (k)</i>	59
WERE THE REPRESENTATIONS FALSE?.....	61
<i>The “going concern” representation: Submission Representation (1) / Representation (c)</i>	61
<i>The Shanda representations: Submission Representations (4) to (6) / Representations (d) and (e)</i>	65
DID MR DAWKINS FRAUDULENTLY MAKE ANY FALSE STATEMENTS TO MR GRENDUS?	66
THE FURTHER REPRESENTATIONS.....	66

WAS MR GRENDUS INDUCED TO MAKE THE INVESTMENTS BY WHAT MR DAWKINS SAID (OR FAILED TO SAY) TO HIM?	70
CONCLUSION ON THE FRAUD CLAIM	73
NEGLIGENCE.....	73
CONSPIRACY	74
MR LEE-SIMION’S EVIDENCE	74
<i>The law on similar fact evidence.....</i>	<i>75</i>
<i>What happened between Mr Dawkins and Mr Lee-Simion?</i>	<i>79</i>
<i>There is no significant similarity as to modus operandi, concerning Mr Dawkins</i>	<i>82</i>
<i>Mr Lee-Simion’s evidence ought properly to be excluded, and in any event is not accepted.....</i>	<i>84</i>
THE EMAILS BETWEEN MR LYNCH AND MR DALE DO NOT IMPLICATE MR DAWKINS.....	85
VICARIOUS LIABILITY	89
RELIEF CLAIMED.....	90
CONCLUSION.....	92

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Jason Grendus
v
Stephen David Lynch and others

[2021] SGHC 191

General Division of the High Court — Suit No 1007 of 2018

Andre Maniam JC
16, 17, 18 March, 18 May 2021

17 August 2021

Judgment reserved.

Andre Maniam JC:

Introduction

1 A long drinking session is not the best occasion for a discussion on investments.

2 The plaintiff (“Mr Grendus”) sued in respect of US\$200,000 in investments (the “Investments”) he made: US\$100,000 into DataCore Innovations LLC (“DataCore”) (the “DataCore Subscription”), and another US\$100,000 into DataCore’s holding company CorePlus Innovations LLC (“CorePlus”) (the “CorePlus Debenture”). He says the Investments turned out to be worthless, or worth far less. He claims he had been induced to invest by fraudulent or negligent misrepresentations, and that he was the victim of a conspiracy to defraud.

3 This judgment deals with Mr Grendus’ claims against the second defendant (“Mr Dawkins”) and the fourth defendant (“Aryan Search”), which is Mr Dawkins’ employer. Mr Grendus had earlier obtained default judgment against the first and third defendants, Mr Lynch and Mr Dale.

Background

The parties

4 Mr Grendus is a trained accountant.¹ At the material time, he was on garden leave from his full-time employer,² and was teaching part-time at the National University of Singapore (“NUS”).³

5 Mr Dale is the chairman and Chief Executive Officer (“CEO”) of both DataCore and CorePlus.⁴ Mr Lynch was, at the material time, DataCore’s Chief Operating Officer (or equivalent).⁵

6 Mr Dawkins is a recruiter, the head of the IT and Technology recruitment department of Aryan Search, a company that has been in the recruitment business since 2008.⁶ Aryan Search’s director and shareholder, Shervani Vikram (“Mr Vikram”), testified on its behalf.

7 Mr Dawkins told Mr Grendus about a potential opportunity for Mr Grendus to work for DataCore. Mr Dawkins also mentioned that DataCore was

¹ Transcript, 16 Mar, p 78 lines 29–31.

² Transcript, 16 Mar, p 6 line 27.

³ Transcript, 16 Mar, p 62 lines 31–32.

⁴ Affidavit of Evidence-in-Chief of Jason Grendus (“Mr Grendus’ AEIC”) at para 9.

⁵ Mr Grendus’ AEIC at para 17.

⁶ Affidavit of Evidence-in-Chief of Shervani Vikram (“Mr Vikram’s AEIC”) at para 4.

looking for investors. Mr Grendus expressed interest in investing in DataCore.⁷ Mr Grendus and Mr Dawkins then met with Mr Lynch, who told Mr Grendus more about DataCore. The meeting lasted from the evening of 24 May 2016 till the early hours of 25 May 2016 (the “24 May 2016 Meeting”).⁸ They all drank a lot of alcohol, smoked cigars,⁹ and evidently enjoyed themselves.

8 On 10 June 2016, Mr Lynch emailed Mr Grendus information and documents about investing in DataCore (the “10 June 2016 Email”).¹⁰ This included a document titled “DataCore Innovations LLC: Financial Pro Forma and Business Assumptions: 2016”, which contained *pro forma* financial statements of DataCore (the “Pitch Document”).¹¹ On 24 June 2016, Mr Grendus made the Investments.¹²

9 Mr Grendus’ case against Mr Dawkins is largely based on what happened at the 24 May 2016 Meeting. He claims that Mr Dawkins made certain representations orally, and certain other representations by remaining silent in the face of what Mr Lynch said.

The proceedings

10 Mr Grendus sued in October 2018. He claimed that Mr Lynch and Mr Dawkins had induced into him making the Investments, by fraudulent or

⁷ Mr Grendus’ AEIC at para 16.

⁸ Mr Grendus’ AEIC at para 17.

⁹ Transcript, 16 Mar, p 44 lines 26–32; p 45 lines 1–5.

¹⁰ Mr Grendus’ AEIC at para 20(c); Plaintiff’s Bundle of Affidavit of Evidence-in-Chief Volume II (“AEIC Bundle Vol II”) at p 82.

¹¹ Mr Grendus’ AEIC at para 20(b); AEIC Bundle Vol II at pp 72–81; Statement of Claim (Amendment No 2) dated 15 Jul 2020 (“SOC”) at para 13(b).

¹² Mr Grendus’ AEIC at para 31.

negligent misrepresentations.¹³ He also claimed that Mr Lynch, Mr Dawkins, and Mr Dale had conspired to defraud him.¹⁴ Mr Grendus claimed against Aryan Search on the basis that it was vicariously liable for Mr Dawkins’ conduct.¹⁵

11 By the time Mr Grendus sued, Mr Lynch was already bankrupt (as of 4 January 2018).¹⁶ Still, Mr Lynch entered an appearance; but he did not file a defence in time, and on 23 November 2018 Mr Grendus obtained default judgment against him.¹⁷

12 Mr Dale did not enter an appearance, and on 14 September 2019 Mr Grendus obtained default judgment against him.¹⁸

13 Mr Dawkins and Aryan Search defended the claims against them, which proceeded to trial.

Executive summary of decision

14 I dismiss Mr Grendus’ claims against Mr Dawkins and Aryan Search.

15 Mr Grendus has not proved that Mr Dawkins fraudulently made any false representations which induced Mr Grendus to make the Investments.

16 There are several inconsistencies between Mr Grendus’ pleadings, his Affidavit of Evidence-in-Chief (“AEIC”), and his testimony at trial, as to the

¹³ SOC at paras 9–25; Plaintiff’s Written Submissions (“PWS”) at para 1(a).

¹⁴ PWS at para 1(b); SOC at paras 26–30.

¹⁵ PWS at para 1(c); SOC at para 37.

¹⁶ AEIC Bundle Vol II at pp 461–462.

¹⁷ HC/JUD 57/2019.

¹⁸ HC/JUD 502/2019.

alleged representations supposedly made by Mr Dawkins. Mr Grendus' case is built on shaky grounds:

- (a) his recollection of what was said to him (mainly by Mr Lynch rather than Mr Dawkins) over a lot of alcohol at the 24 May 2016 Meeting;
- (b) a mistaken assumption that Mr Dawkins had in his possession, by the time of the 24 May 2016 Meeting, the "Pitch Document" which was sent to Mr Grendus with the 10 June 2016 Email, such that Mr Dawkins could quote figures from the Pitch Document at the 24 May 2016 Meeting – what Mr Dawkins had was in fact an earlier version of the Pitch Document (the "*May Pro Forma*"), which contained figures that differed materially from the Pitch Document; moreover, I accept Mr Dawkins's evidence that he had not read the *May Pro Forma*, or at least not fully or properly;
- (c) an assertion that Mr Dawkins and Aryan Search had done (financial) due diligence to check on what Mr Lynch and Mr Dale were saying about DataCore, and in particular to verify the figures in the Pitch Document (and if Mr Dawkins and Aryan Search had not done such due diligence, they were at least negligent); and
- (d) rationalisation after the fact, from what Mr Grendus found out about DataCore after he invested, and documents which he obtained in discovery.

17 Mr Dawkins and Aryan Search were recruiting for DataCore; they were not engaged to solicit investments for DataCore. Mr Dawkins did mention the possibility of investing in DataCore to Mr Grendus and others – Mr Grendus

decided to invest, but others such as the Shanda Group (“Shanda”) decided not to. Mr Dawkins and Aryan Search were not obliged to do financial due diligence on DataCore, and they never did. In effect, Mr Grendus’ case is that he could invest on the faith of financial due diligence that Mr Dawkins and Aryan Search ought to have done – that is unsound.

18 Mr Grendus was informed in writing – by documents sent to him by Mr Lynch with the 10 June 2016 Email – that he might lose what he decided to invest in DataCore. This fundamentally contradicts Mr Grendus’ allegation that there was, at least, reassuring silence in response to him sharing his strategic investment objectives.

19 Mr Dawkins did not conspire with Mr Lynch and Mr Dale to defraud Mr Grendus (or anyone else). If there were any conspiracy between Mr Lynch and Mr Dale, Mr Dawkins was not involved in it.

20 As Mr Dawkins is not liable, it follows that Aryan Search is not vicariously liable. In any event, as the complaints about Mr Dawkins do not relate to anything done by him as a recruiter, Aryan Search ought not to be vicariously liable.

Mr Dawkins’ role in the matter

Mr Dawkins spoke to Mr Grendus about DataCore looking for investors, but Mr Dawkins did not “pitch” an investment in DataCore

21 It is common ground that Mr Dawkins told Mr Grendus that DataCore was looking for investors.¹⁹ Mr Dawkins says that this was done as part and parcel of him introducing DataCore to Mr Grendus, in the context of an

¹⁹ Transcript, 17 Mar, p 24 lines 26–32; p 25 lines 1–22.

opportunity for Mr Grendus to work for DataCore.²⁰ Mr Grendus says that Mr Dawkins was “pitching” to him an investment in DataCore: that Mr Dawkins was soliciting investments for DataCore for reward, that Mr Dawkins had the financial acumen to do so, and that Mr Dawkins had done financial due diligence on DataCore (including verifying whether the *pro forma* financial statements in the Pitch Document were accurate).

22 I accept Mr Dawkins’ account of the context in which he had mentioned to Mr Grendus that DataCore was looking for investors – Mr Dawkins was acting as a recruiter, providing information about the company that he was recruiting for, and incidentally making investor introductions, but he did not “pitch” any investment in DataCore to Mr Grendus – he left it to Mr Grendus to discuss that directly with DataCore’s representatives.

Mr Dawkins’ initial contacts with Mr Grendus were about work opportunities, not investment opportunities

23 Mr Dawkins was first introduced to Mr Grendus in December 2015, when Mr Dawkins did not even know about DataCore. Their initial exchanges were also about work opportunities rather than investment opportunities.

24 In December 2015, Mr Grendus’ flatmate shared Mr Grendus’ LinkedIn profile with Mr Dawkins. Mr Dawkins then made attempts in December 2015 and January 2016 (*via* LinkedIn) to contact Mr Grendus.²¹ At that time, Mr Dawkins did not even know about DataCore (which he would only hear about from Mr Lynch in February 2016) (see [29] below).

²⁰ Transcript, 17 Mar, p 25 lines 22–31; p 32 lines 17–26.

²¹ AEIC Bundle Vol II at pp 65–66.

25 In the event, Mr Dawkins and Mr Grendus did not speak until around 13 May 2016 as Mr Grendus did not respond to Mr Dawkins’ earlier LinkedIn invite.²² They then proceeded to exchange messages on LinkedIn.²³ Mr Grendus says he recalls receiving a LinkedIn message with a generic reference to “Opportunities”.²⁴ The messages themselves are, however, more specific:

(a) Mr Grendus said he was in Singapore and would split his time between Singapore and Saigon for the next few months, and that he was teaching at NUS part-time. He then said, “I would stay in Singapore for the right opportunity, but it has not surfaced up to this point.” [emphasis added]

(b) Mr Dawkins then said, “I might have some options for you.”

26 I accept Mr Dawkins’ evidence that they were then discussing possible work opportunities rather than investment opportunities.²⁵ The “right opportunity” which Mr Grendus was willing to stay in Singapore for was work-related rather than investment-related; up to that point investment had not come up as a topic between them.

²² Affidavit of Evidence-in-Chief of Brett Dawkins (“Mr Dawkins’ AEIC”) at paras 10–10.1.

²³ Plaintiff’s Bundle of Affidavit of Evidence-in-Chief Volume I (“AEIC Bundle Vol I”) at pp 68–70.

²⁴ Reply to the Defence of the 2nd and 4th Defendants dated 24 Dec 2018 (“Reply”) at para 7.

²⁵ Mr Dawkins’ AEIC at paras 10.1–10.3.

27 The two of them spoke again on 24 May 2016. Over the telephone, Mr Dawkins provided Mr Grendus with information on two potential work opportunities, one of which was with DataCore.²⁶

DataCore did not engage Mr Dawkins or Aryan Search to solicit investments

28 There is no evidence that DataCore had engaged Mr Dawkins or Aryan Search to solicit investments; the evidence points to the contrary.

February 2016 – Mr Lynch told Mr Dawkins about DataCore, and Mr Dawkins introduced Shanda to DataCore

29 On 4 February 2016, Mr Lynch sent Mr Dawkins an email captioned, “Introduction to DataCore Innovations and Dominant Factor Indices” (the “4 February 2016 Email”).²⁷ Mr Lynch attached various documents to that email. He said this was:

- (c) “updated collateral introducing our business and Dominant Factor Indices”;
- (d) “a few performance reports featuring index products that may be of interest to your client”; and
- (e) a “Smart Beta market survey” which he thought “you and your clients” will find very interesting.

30 Mr Lynch concluded by saying he had included a brief description of DataCore along with some background information that may be helpful as Mr

²⁶ Mr Dawkins’ AEIC at paras 10.4–10.6.

²⁷ Mr Dawkins’ AEIC at para 10.8; AEIC Bundle Vol I at pp 71–72.

Dawkins introduced Dominant Factor Indices (the products which DataCore offered as its main business activity) “to [his] contacts at Harvest Global”.

31 I accept Mr Dawkins’ evidence that he did not know why Mr Lynch was referring to Harvest Global; Mr Dawkins did not know who Harvest Global was.²⁸ There is also no evidence that Mr Dawkins ever spoke to anyone from Harvest Global about DataCore.

32 Instead, Mr Dawkins spoke with Mr Lynch the day he received the 4 February 2016 Email, with a view to *recruiting* for DataCore.²⁹

33 Mr Dawkins also proceeded to introduce Shanda to DataCore later the same day. Mr Dawkins spoke to his contact at Shanda, and sent him an email saying, [a]s discussed I think this is a phenomenal concept and its [*sic*] going to fly, it looks like a cracking fintech startup with great potential”.³⁰ He forwarded the 4 February 2016 Email from Mr Lynch, save that he edited out the phrase “to your contacts at Harvest Global” (which made no sense to him). Mr Dawkins also copied Mr Lynch in that email and asked that his contact at Shanda reach out to Mr Lynch directly, whose mobile number he provided in that same email. Having introduced the parties, and added his endorsement, Mr Dawkins then stepped away and left it to Shanda and DataCore to deal directly with each other. Thereafter, it was DataCore rather than Mr Dawkins that pursued potential financing from Shanda. That behaviour is not consistent with Mr Grendus’ theory that Mr Dawkins was engaged to solicit investments for DataCore.

²⁸ Transcript, 17 Mar, p 14 lines 28–32, p 15 lines 6–14.

²⁹ Transcript, 17 Mar, p 15 lines 16–17.

³⁰ AEIC Bundle Vol II at pp 487–489.

34 Mr Lynch sent Mr Dawkins an email on 20 February 2016 to express gratitude on behalf of himself and Mr Dale, for the Shanda introduction (the “20 February 2016 Email”). Mr Lynch also said in that email:³¹

If anything is to come out of this [referring to the Shanda introduction], and Shanda group invests, we will make sure you are looked after for this. We are also going to have a number of technology hires required around scaling the platform for multiple custom indices creation, so we will certainly be using you as our point recruitment for those hires.

[emphasis added]

35 The 20 February 2016 Email indicates that Mr Dawkins had not introduced Shanda to DataCore because he had been engaged by DataCore to do so. In that email, Mr Lynch said that if Shanda invested, he and Mr Dale would make sure Mr Dawkins was “looked after” – had Mr Dawkins been engaged to solicit investments from Shanda (and others), that assurance would have been unnecessary, and indeed out of place. Mr Lynch also said that they would be using Mr Dawkins for DataCore’s recruitment needs – that is consistent with Mr Dawkins’ evidence that he made investor introductions for DataCore in hope of becoming its exclusive recruitment partner (see [67] below).

36 I accept Mr Dawkins’ evidence that he had not asked or expected anything for the Shanda introduction to DataCore. He fairly accepted that by saying he would be “looked after” if Shanda invested, Mr Lynch could have meant a finder’s fee; but it could also have just meant Mr Lynch taking him out for a beer and a steak.³² In the end, neither Mr Dawkins nor Aryan Search were paid anything by DataCore for these introductions Mr Dawkins had made:

³¹ AEIC Bundle Vol II at p 486.

³² Transcript, 17 Mar, p 18 lines 18–32.

Shanda never invested; Mr Grendus did; one Mr Paul Lee-Simion (“Mr Lee-Simion”) did not agree to invest, but he put some monies in escrow and said they had been misappropriated. It does not appear that any of the other DataCore investors Mr Grendus later became acquainted with and whom he says were similarly “defrauded”,³³ had spoken with Mr Dawkins.

April 2016 – Mr Lynch and Mr Dawkins discussed Shanda, and also the possibility of Mr Dawkins and Aryan Search investing in DataCore

37 Mr Lynch and Mr Dawkins continued to discuss the possibility of DataCore obtaining financing from Shanda, in an email exchange between 21–23 April 2016 (the “April 2016 Email Exchange”):³⁴

Mr Lynch: I have some more VC’s [venture capitalists] I am seeing when I am back in Singapore ... In terms of Shanda we have re-written the deck 3-4 times to tailor the story to their CEO needs [sic] ... What I need now is to get these guys to pull the trigger ...

Mr Dawkins: I can get you some more funds if you need. Some of my business partners will be able to help 100-200k also Even I am tempted to put in 100K :) but they wont [sic] bring business value. Im [sic] sure Shanda will come through if not I have 2 other VCs who will be ready. They are not anywhere near Shanda but can help if you really need it ...

Mr Lynch: That would be absolutely awesome its [sic] not that we are tight but to be honest with you it may take Shanda 1-2 more months and then we get tight ... Shanda are taking a long time because Legg Mason is a 350 million deal its massive [sic] and Jingkhan is the man in the middle of that. We wont [sic] get his attention till that is done and dusted.

³³ Mr Grendus’ AEIC at para 135.

³⁴ AEIC Bundle Vol II at pp 497–498.

38 The above exchange shows that neither Mr Lynch nor Mr Dawkins then considered the Shanda financing to be “guaranteed” (in the sense of it being a certainty). Mr Dawkins recognised the possibility that financing from Shanda might not come through, and indicated that he could introduce two other venture capitalists. I will return to this point again below (at [142]).

39 In his email reply on 23 April 2016, Mr Lynch also said:³⁵

Well if you guys want to take some stock I would love to send you over the new deck and details. Please advise if you want to proceed no pressure thanks so much for your support.

[emphasis added]

40 Mr Lynch was seeking to interest Mr Dawkins and Aryan Search in investing in DataCore – he would only send over further documents and details, *if* there was that interest. This is inconsistent with Mr Grendus’ theory that all along Mr Dawkins was engaged to solicit investments for DataCore – if so, Mr Lynch would simply have sent him documents and details to facilitate such solicitation, without it being a pre-condition that Mr Dawkins and Aryan Search themselves be interested in investing.

41 On 26 April 2016, Mr Lynch followed up with his earlier email and asked Mr Dawkins whether he wanted subscription documents to be sent over that day, or whether he would like to have a Skype call with Mr Lynch and Mr Dale first. Mr Dawkins responded to say, “[s]end over what you have for me to look at, I need to then call you back a bit later”.³⁶ The discussion thus continued in a similar vein – Mr Lynch was trying to get Mr Dawkins and Aryan Search

³⁵ AEIC Bundle Vol II at p 497.

³⁶ AEIC Bundle Vol II at p 497.

to invest; Mr Dawkins and Aryan Search were not engaged to solicit investments for DataCore.

May-June 2016 – Mr Dawkins received the May Pro Forma, and DataCore tried to get Mr Dawkins and Aryan Search to invest

42 On 1 May 2016, Mr Lynch emailed Mr Dawkins (copying in Mr Dale). He said Mr Dale would send over DataCore subscription documents in the next few days and they could meet to have a discussion.³⁷

43 On 3 May 2016, Mr Dale emailed Mr Dawkins, thanking him for his “interest and support of [DataCore]” and provided him with “information circulars related to [DataCore’s] current Equity Offering”, including an attachment named “DataCore Innovations – Business Plan Financial Pro Forma and Assumptions – Q2 2016 – Confidential” (the “3 May 2016 Email”).³⁸ That attachment was the *May Pro Forma*, which is an earlier version of the Pitch Document that Mr Lynch would later send to Mr Grendus in the 10 June 2016 Email.

44 In response, on 9 May 2016, Mr Dawkins said, “I’ve got some questions with regards to some of the details, a few colleagues and business partners are keen to learn more, hopefully tomorrow with Stephen [Mr Lynch] I’ll have a face to face catch up.”³⁹

³⁷ AEIC Bundle Vol II at p 545.

³⁸ AEIC Bundle Vol II at pp 544–545; Exhibit 2D1.

³⁹ AEIC Bundle Vol II at p 544.

45 On 10 May 2016, Mr Lynch met with Mr Dawkins and Mr Vikram of Aryan Search (the “10 May 2016 Meeting”). Mr Lynch tried to interest Mr Vikram into investing in DataCore, but Mr Vikram was not interested.⁴⁰

46 The next day, 11 May 2016, Mr Lynch emailed Mr Dawkins and Mr Vikram (the “11 May 2016 Email”).⁴¹ In the email, Mr Lynch set out “follow ups from the meeting, with some defined action points that we need to work through in order to satisfy the remainder of your due-diligence process”.⁴² Mr Grendus cites that and contends that Mr Dawkins and Aryan Search must have already done financial due diligence on DataCore.⁴³ As I discuss below (at [50]), that is not the case.

47 On 17 May 2016, Mr Dale emailed Mr Dawkins to say, “[t]hank you for your continued interest in our Dominant Factor index business and our Datacore Innovations LLC equity offering. Stephen [Mr Lynch] asked me to resend the attached documentation (originally sent May 2nd)” (the “17 May 2016 Email”).⁴⁴ Mr Dale was referring to documents which he had sent earlier in his 3 May 2016 Email (see [43] above).

48 The attachments to the 17 May 2016 Email also included a copy of the May *Pro Forma*. Mr Dale concluded by saying:⁴⁵

The subscription forms and wire instructions required to execute the investment transaction can be found on pages 4-22

⁴⁰ Transcript, 18 Mar, p 85 lines 28–32; p 86 lines 1–22.

⁴¹ AEIC Bundle Vol II at p 544.

⁴² AEIC Bundle Vol II at p 544.

⁴³ Transcript, 17 Mar, p 69 lines 27–32.

⁴⁴ AEIC Bundle Vol II at p 500.

⁴⁵ AEIC Bundle Vol II at p 500.

of the Membership Unit Offering Materials documentation package.

If you or your business partners have any questions, please do not hesitate to call me directly at the number below.

49 The 17 May 2016 Email too was in similar vein to the earlier emails – Mr Dale was trying to get Mr Dawkins and his “business partners” (in the context, Mr Vikram of Aryan Search) to invest in DataCore. Mr Dawkins and Aryan Search were not engaged to solicit investors for DataCore.

No financial due diligence was done by Mr Dawkins or Aryan Search

50 Mr Grendus contends that the reference to a “due diligence process” in the 11 May 2016 Email showed that Mr Dawkins and Aryan Search must have already done financial due diligence on DataCore.⁴⁶ However, as Mr Dawkins says, the 11 May 2016 Email appeared to just be a standard email which Mr Lynch also sent to other of his own business contacts: “[w]e [Mr Dawkins and Mr Vikram] had done no due diligence, we had no in-depth discussions, we saw no numbers, we saw no profile”.⁴⁷ In particular, neither Mr Dawkins nor Mr Vikram were ever sent *actual* financial statements of DataCore (whether audited accounts or unaudited management accounts), they only received *pro forma* financial statements (*viz*, the May *Pro Forma*) – with figures based on stated assumptions.

51 It is noteworthy that in cross-examining Mr Dawkins, Mr Grendus’ counsel took the position that Mr Dawkins first received the Pitch Document on 17 May 2016,⁴⁸ which was after the 11 May 2016 Email – on that premise, even

⁴⁶ Transcript, 17 Mar, p 69 lines 27–32.

⁴⁷ Transcript, 17 Mar, p 70 lines 4–6.

⁴⁸ Transcript, 17 Mar, p 149 lines 26–32.

if Mr Dawkins and Aryan Search had performed any financial due diligence up to the point of the 11 May 2016 Email, they could not have done so in relation to figures in the Pitch Document which (on Mr Grendus’ own case) was not sent to them yet. In actual fact, the Pitch Document was never sent to Mr Dawkins or Aryan Search – it was only sent to Mr Grendus (see [120] below).

52 It is also significant that the “follow ups” / “action points” mentioned in the 11 May 2016 Email from Mr Lynch do not cover checking the *actual* financial state of DataCore then, but only a Skype meeting with Mr Dale “to walk through the *projected* financials of the company and complete a formal introduction” [emphasis added], and introductions to two other individuals.⁴⁹ I accept Mr Dawkins’ evidence that the proposed Skype meeting never happened.⁵⁰

53 Mr Grendus also submits that Mr Vikram confirmed that it was standard practice for Aryan Search to do “due diligence” on their customers (including DataCore), which would extend to satisfying themselves that their customers are “doing well” and “have money to pay our services”.⁵¹

54 Mr Vikram, however, did not say that Aryan Search would do financial due diligence on its customers, to the extent of verifying their actual or *pro forma* financial statements (which is what Mr Grendus contends Aryan Search did, or ought to have done). Mr Vikram’s evidence was to the contrary. He explained that Aryan Search’s protocol was to “do some checks, whether the

⁴⁹ AEIC Bundle Vol II at p 544.

⁵⁰ Transcript, 17 Mar, p 70 lines 8–13.

⁵¹ PWS at para 59(e); Transcript, 18 Mar, p 77 lines 5–30.

client is doing well”,⁵² to “make sure ... [they] have money to pay [for] our services”.⁵³ However, not only were these checks limited to ascertaining a prospective client’s ability to pay for Aryan Search’s services, they were also limited to *publicly available* information. Mr Vikram explained that Aryan Search did not request documents from prospective clients; he said, “[w]e don’t ask them anything ... we’ll check it online”.⁵⁴

55 When Mr Vikram was asked why the 11 May 2016 Email – sent as a follow-up to the 10 May 2016 Meeting – mentioned a “due-diligence process”, he said he had very clearly told Mr Lynch at the 10 May 2016 Meeting that he was not interested in what Mr Lynch pitched, because his mind had been occupied with other matters (his mother in India was sick and he was preparing to return to India for some time); and DataCore’s products (the Dynamic Factor indices) – which he perceived as not being IT-related – were not within his area of expertise.⁵⁵ Mr Vikram was also 100 per cent sure that he had told Mr Lynch at the 10 May 2016 Meeting that he was not keen on investing in DataCore,⁵⁶ and 100 per cent sure that he did not mention the need to conduct due diligence on DataCore or anything along those lines.⁵⁷ I accept Mr Vikram’s evidence on this.

56 Moreover, DataCore never sent Mr Dawkins, Mr Vikram, or Aryan Search, any *actual* financial statements of DataCore. The May *Pro Forma*

⁵² Transcript, 18 Mar, p 77 lines 13–14.

⁵³ Transcript, 18 Mar, p 77 lines 23–24.

⁵⁴ Transcript, 18 Mar, p 77 lines 18–30; p 78 lines 5–6.

⁵⁵ Transcript, 18 Mar, p 88 lines 5–22.

⁵⁶ Transcript, 18 Mar, p 91 lines 27–32; p 92 lines 1–3 and 11–12.

⁵⁷ Transcript, 18 Mar, p 91 lines 4–25.

contained figures that were expressly based on assumptions (with a summary of those assumptions on page five of that document). Figures were provided for periods into the future (*viz*, from 2016 Q3 until 2018), for which there could be no *actual* figures. Where figures were provided for periods in the past (*viz*, from 2015 Q4 to 2016 Q2), however, there was no indication whether these were actual figures, or still *pro forma* figures that might not have been updated to reflect actual figures.

57 Pages four to eight of the May *Pro Forma*, which carried the *pro forma* figures, each had the following prominent statement: “All figures provided in these materials are for discussion purposes only and do not represent any forecast of future financial performance of the Venture or its affiliates”. So even the figures for future periods were not regarded as a forecast; they were just figures based on assumptions, for discussion.

58 The May *Pro Forma* concluded with a “Disclaimer” on page nine which stated:

This document does not constitute an offer to sell or a solicitation of an offer to buy any investment or any interest in the businesses described herein (collectively, the ‘Venture’) ... No such offers or solicitations related to the Venture will be made prior to the delivery of a definitive documentation and other materials relating to the matters herein.

This summary does not purport to be complete and is qualified in its entirety by reference to the more detailed discussions contained in the definitive documents or other materials provided by the Venture. This document is being provided to you on a confidential basis solely to facilitate further discussion between interested parties contemplating a business relationship ...

59 I accept Mr Dawkins’ evidence that he did not read the documents sent to him in the 3 May 2016 Email (including the May *Pro Forma*) or at least he

had not read them “fully” or “properly”.⁵⁸ This was vividly demonstrated when Mr Dawkins did not realise, when cross-examined on the contents of the Pitch Document on the mistaken premise that it was identical to the May *Pro Forma*, that the two documents were materially different. I elaborate on this below (at [160], [172] and [215]).

60 Finally, Mr Grendus’ position is that on the face of the Pitch Document, which contained *pro forma* financials, he could not tell if the figures in it were accurate.⁵⁹ Mr Dawkins and Aryan Search would have been in no better position in relation to the May *Pro Forma*, which similarly contained *pro forma* financials.

61 In the event, as neither Mr Dawkins nor Aryan Search (*ie*, Mr Vikram) decided to invest in DataCore, there was no reason for them to verify the accuracy of the figures in the May *Pro Forma*.

62 Unlike Mr Dawkins and Aryan Search, Mr Grendus decided to invest in DataCore (and CorePlus). He was free to conduct whatever financial due diligence he wished on DataCore (including verifying whether the figures in the Pitch Document were accurate for periods in the past, and evaluating the assumptions made as to the future). But he cannot blame Mr Dawkins and Aryan Search, both of whom never decided to invest their monies into DataCore, for not doing such financial due diligence on DataCore.

63 Mr Grendus contends that Mr Dawkins and Aryan Search *did* do financial due diligence on DataCore, and so they knew the truth and defrauded

⁵⁸ Transcript, 17 Mar, p 153 lines 28–32; p 154 lines 1–8.

⁵⁹ Transcript, 16 Mar, p 36 lines 13–19.

him; alternatively, if Mr Dawkins and Aryan Search did *no* financial due diligence, then they were reckless or careless – and so they still defrauded him,⁶⁰ or negligently misrepresented matters to him.⁶¹ I reject all of this.

64 Mr Dawkins and Aryan Search were not negligent in not verifying the accuracy of figures in *pro forma* financial statements of DataCore, a company which they were recruiting for, but decided not to invest in. They owed Mr Grendus no duty to do financial due diligence so that *he* could invest in the belief that *they* had done such due diligence.

DataCore was not obliged to pay finder’s fees to Mr Dawkins or Aryan Search

65 Mr Dawkins did mention “finder fees” in an email on 20 June 2016 to Mr Dale (the “20 June 2016 Email”),⁶² but that needs to be viewed in context. In that email, Mr Dawkins informed Mr Dale that he had been working on “recruitment introduction” and “investor introductions”. Under “recruitment introduction” he listed “Paul Szego” and “Jason Grendus (was a dual conversation when introduced, e.g. work and investment)”. Under “investor introductions”, he listed “Shanda Group – WIP”, “Jason Grendus – agreed”, “Paul Simion Lee – WIP” and another “[S] – TBC for tomorrow”. Mr Dawkins concluded his email saying:

Recruitment fees, can be settled normally in due course for Paul [Szego], but anything for finder fees for investment I would be keen to know what you typically look, I’m not going to be one dimensional about this so if you have suggestions or would be open to talk, I’d also like a little more air time to see where this can go[.]

⁶⁰ SOC at para 19.

⁶¹ SOC at para 20.

⁶² AEIC Bundle Vol II at p 490.

66 It is evident from Mr Dawkins' 20 June 2016 Email (and the earlier email correspondence, including the 20 February 2016 Email, 3 May 2016 Email, 11 May 2016 Email, and 17 May 2016 Email) that no agreement had been reached on Mr Dawkins being remunerated for the investor introductions he had made on behalf of DataCore (if any resulted in investment) – and in the event no agreement was ever reached, nor any payment made.

67 I accept Mr Dawkins' evidence that he made investor introductions as part of networking, and adding value to clients and potential clients; what he really wanted was recruitment work, and investor introductions were a way of strengthening that relationship – he wanted to be DataCore's exclusive recruitment partner.⁶³

68 Of course, if DataCore were to give Mr Dawkins more recruitment work (and were able to pay for it), that would benefit Aryan Search and by extension Mr Dawkins. Not only was Mr Dawkins an employee of Aryan Search, there was an understanding between him and Mr Vikram, that if Mr Dawkins obtained permanent resident status in Singapore he would become a part-owner of the business;⁶⁴ and if the business were sold he would be entitled to a share of its proceeds.⁶⁵ The fact that Mr Dawkins would have been incentivised to get business for Aryan Search, however, does not show that Mr Dawkins was soliciting investments for reward, as distinct from making investor introductions as part of, or incidental to, his work as a recruiter.

⁶³ Transcript, 17 Mar, p 19 lines 19–32; p 20 lines 1–13.

⁶⁴ Transcript, 16 Mar, p 84 lines 11–25.

⁶⁵ Transcript, 16 Mar, p 99 lines 13–32; p 100 lines 1–4.

Mr Dawkins did not have the financial acumen of a financial advisor

69 Mr Grendus points to Mr Dawkins’ job scope in his employment contract, which includes: “[r]aise the profile of Aryan Search and implement a strategy (to) attract investment”.⁶⁶ Mr Grendus argues that this shows that Mr Dawkins was capable of attracting investments for Aryan Search *and others*, and that Mr Dawkins’ description of his financial literacy should not be believed.⁶⁷

70 In this regard, Mr Dawkins says this about the 24 May 2016 Meeting in his AEIC:⁶⁸

... I was not too focussed [sic] and/or engaged in his [Mr Grendus] talk about financials [with Mr Lynch] as I was not a numbers person and that my training and experience did not allow me to fully understand the details. I am and had always been a recruiter all my professional life. I know nothing about the world of investments. Unlike me, [Mr Grendus] clearly exhibited a competent degree of knowledge about investments.

71 I accept Mr Dawkins’ evidence on this. He had worked as a recruiter for some 24 years since 1997, after finishing his A levels.⁶⁹ Mr Dawkins was not a trained accountant like Mr Grendus. Indeed, one theme running through Mr Grendus’ case is that Mr Dawkins should have been able to read financial statements like Mr Grendus could, to the extent of appreciating the significance of cashflow projections and headcount figures, and being able to quote figures from financial statements without referring to them. That is unfounded.

⁶⁶ PWS at para 11.

⁶⁷ PWS at paras 10–13.

⁶⁸ Mr Dawkins’ AEIC at para 10.14.

⁶⁹ Mr Dawkins’ AEIC at para 6; Transcript, 16 Mar, p 69 lines 31–32; p 70 lines 1–9.

72 At trial, Mr Dawkins was cross-examined on a mistaken premise: that he had received the Pitch Document (when he had not) by the time of the 24 May 2016 Meeting and so he provided Mr Grendus with information from it (see [59] above). Mr Dawkins did not realise that this was erroneous until after he was off the stand, when he checked the documents he had actually received and found that they did not include the Pitch Document – instead he had an earlier version of the *pro forma* financial statements (*ie*, the May *Pro Forma*), with materially different figures.⁷⁰ I will return to this when I discuss the representations to which this relates.

73 As for the reference in Mr Dawkins’ employment contract to him raising the profile of Aryan Search and implementing a strategy to attract investment, that was in the context of Aryan Search itself; it did not concern soliciting investments for others. Mr Vikram explained that Evo-AI was a recruitment product that Aryan was using, and he wanted Mr Dawkins to see if he could get some investment for that particular product.⁷¹ That evidence, which I accept, is worlds apart from Mr Dawkins being expected to solicit investments for Aryan Search’s recruitment clients. He was never engaged for that. Mr Dawkins was not hired to act as a financial advisor, investment broker, or anything of the sort.

Fraud

Mr Grendus’ case on the representations allegedly made to him

The representations as pleaded in the SOC

74 Mr Grendus pleaded at para 11 of his statement of claim (the “SOC”) that Mr Lynch and Mr Dawkins made 11 “Representations”, and at para 14 that

⁷⁰ Transcript, 18 Mar, p 2 lines 6–32, p 3 lines 1–6.

⁷¹ Transcript, 18 Mar, p 81 lines 19–32.

Mr Lynch and/or Mr Dawkins and/or Mr Dale made certain “Further Representations”, all of which induced him to make the Investments.

75 The 11 Representations are:⁷²

- (a) the figures in the Pitch Document are accurate;
- (b) Mr Dale was a cash-contributing investor in DataCore;
- (c) DataCore was a going concern;
- (d) DataCore was on the verge of closing a Series A round financing at thrice its alleged current valuation of US\$10 million (the “Financing”) and that the Financing was guaranteed;
- (e) the guaranteed Financing was provided by Shanda, which is based in China with a recently opened investment office in Singapore (the “Shanda Financing”);
- (f) if the subscription of the seed units were not fully subscribed, Shanda would purchase the remaining units in the Series A round, in accordance with the guaranteed Financing;
- (g) DataCore had a pre-Financing head count of nine with payroll costs of US\$95,000 per month;
- (h) DataCore had “a lot of interest from the insurance industry” and a deep sales pipeline had already been in development for some time with initial sales forecasted for June 2016 and US\$965,000 total sales expected by end-of-year 2016;

⁷² SOC at para 11.

- (i) DataCore was already involved in due-diligence processes with multiple banks and exchange traded fund (“ETF”) companies;
- (j) entering into the CorePlus Debenture will allow Mr Grendus to enjoy participation in DataCore as well as other projects CorePlus was involved in; and
- (k) of the said CorePlus projects referred to in (j) above were the underwriting of pet owner insurance, a “Green Energy” bond fund, a “Liquified Natural Gas” (LNG) fund and Skybridge Financial Pte Ltd (“Skybridge”) and a “Foreign Film Rights” fund said to be for and between Skybridge and Struans Capital Partners.

(I shall refer to these as Representations (a) to (k).)

76 In the SOC, Mr Grendus described the context in which Mr Lynch and/or Mr Dawkins and/or Mr Dale made the Further Representation as follows:⁷³

After hearing the Representations, [he] informed Mr Lynch and/or Mr Dawkins and/or Mr Dale that after the Series-A Financing, he intended to wait for a Series-B and then either de-risk or divest a portion of the position. He further shared that his intention was for [the Investments] to function as long-term strategic investments within his portfolio. Mr Lynch and/or Mr Dawkins and/or Mr Dale assured him that his strategic investment objectives would be achieved and/or did not inform him otherwise that the said objectives may not be attained.

[emphasis added]

⁷³ SOC at para 14.

Mr Grendus' particulars

77 On 3 December 2018, Mr Grendus provided further and better particulars of “[w]hether the alleged representation was made by [Mr Lynch] or [Mr Dawkins]” pursuant to a request by Mr Dawkins and Aryan Search.⁷⁴ Mr Grendus clarified that although he had pleaded that Mr Lynch and Mr Dawkins had made the 11 Representations:

- (a) Representation (h) was just made by Mr Lynch;
- (b) Representations (d) and (e) were made by both Mr Lynch and Mr Dawkins orally; and
- (c) Representations (a), (b), (c), (f), (g), (i), (j) and (k) were made by Mr Lynch in the presence of Mr Dawkins; and Mr Dawkins by being present, the circumstances, and him not offering any contrary views, affirmed the representations made by Mr Lynch.

78 Mr Grendus treated Representation (h) differently from Representations (a), (b), (c), (f), (g), (i), (j) and (k): he did not say that Representation (h) was made by Mr Lynch in Mr Dawkins’ presence; he simply said Representation (h) was made by Mr Lynch, and he did not say that Mr Dawkins had affirmed it in any way. Mr Grendus’ particulars in effect abandoned the allegation in para 11 of the SOC that Mr Dawkins had made Representation (h).

⁷⁴ Particulars Served by the Plaintiff pursuant to the 2nd and 4th Defendants’ Request for Further and Better Particulars by Letter dated 15 November 2018, dated 3 December 2018 (“the Particulars”).

When and how were the Representations and Further Representations made?

79 As pleaded, the focus of Mr Grendus’ case against Mr Dawkins, is what happened at the 24 May 2016 Meeting. Mr Grendus pleads that it was after hearing the Representations, that he shared his investment objectives with Mr Dawkins at the 24 May 2016 Meeting, whereupon Mr Dawkins made the Further Representations at the same meeting by “not inform[ing] him otherwise that the said objectives may not be attained” (see [76] above).⁷⁵

80 Mr Grendus pleaded at para 13 of the SOC that the Representations and Further Representations were made by and/or are to be inferred from:⁷⁶

- (d) oral statements by Mr Lynch, Mr Dawkins, and Mr Dale;
- (e) the Pitch Document circulated by Mr Lynch and Mr Dale;
- (f) the 10 June 2016 Email from Mr Lynch to Mr Grendus and the documents attached thereto (including the Pitch Document); and
- (g) all other documents provided by Mr Lynch, Mr Dawkins, and Mr Dale to him.

81 The Pitch Document ((b) above) and the 10 June 2016 Email ((c) above) are not attributed to Mr Dawkins. The reference to “all other documents” provided by Mr Lynch, Mr Dawkins and Mr Dale ((d) above) was then omitted from para 20 of Mr Grendus’ AEIC, where he had set out the various sources from which the Representations and Further Representations were made and/or are to be inferred from. In relation to Mr Grendus’ claim against Mr Dawkins,

⁷⁵ SOC at para 14; the Particulars.

⁷⁶ SOC at para 13.

that leaves oral statements by Mr Dawkins ((a) above), although from Mr Grendus' particulars, he evidently also relies on silence by Mr Dawkins – specifically Mr Dawkins not contradicting what was said by Mr Lynch at the 24 May 2016 Meeting, and Mr Dawkins not telling Mr Grendus that his strategic investment objectives may not be attained.

82 Mr Grendus says that the Representations were made “[d]uring the 24 May Meeting and in subsequent conversations [and/or discussions]” with Mr Lynch and Mr Dawkins.⁷⁷ Specifically, in his AEIC, Mr Grendus says that Mr Lynch and Mr Dawkins had “continued to repeat the representations” regarding the Shanda Financing even after the 24 May 2016 Meeting.⁷⁸

83 However, Mr Grendus' pleadings were focused on the 24 May 2016 Meeting, and his evidence is thin on what those subsequent conversations or discussions are. From his pleadings and particulars, Representations (a), (b), (c), (f), (g), (i), (j) and (k) were made by Mr Lynch in the presence of Mr Dawkins; and affirmed by Mr Dawkins not contradicting Mr Lynch. That could only have happened at the 24 May 2016 Meeting. Mr Grendus does not point to any further meeting between the three of them, before he made the Investments on 24 June 2016 and so Mr Dawkins could not have affirmed anything said in any subsequent discussion just between Mr Lynch and Mr Grendus.

84 I will address whether Mr Dawkins had made (and repeated) Representations (d) and (e), which relate to the Shanda Financing, and are the only ones Mr Grendus pleaded Mr Dawkins made orally (rather than by keeping silent), below (at [131]).

⁷⁷ PWS at para 35; Mr Grendus' AEIC at para 19.

⁷⁸ Mr Grendus' AEIC at para 24.

The Submission Representations

85 Having pleaded 11 Representations and certain Further Representations, Mr Grendus’ written submissions (the “Submissions”) instead identified eight representations (the “Submission Representations”). He repeated some of the pleaded Representations, reformulated some of them, split some of them, combined some of them, and dropped some of them. Representations (f), (i), (j) and (k) do not appear to feature in the Submissions – I will, for completeness, deal with them as they were pleaded, although they appear to have been abandoned.

86 The loose way in which Mr Grendus’ allegations are made, does not inspire confidence. Confusingly, Mr Grendus refers to the Submission Representations as “Representations and Further Representations”, in the same way as his pleadings were structured in the SOC. I shall refer to each of the eight representations in the Submissions as Submission Representations (1) to (8), which are to be distinguished from Representations (a) to (k) pleaded in the SOC. I will address the Submission Representations in turn, save that I will collectively deal with the various allegations relating to the Shanda Financing.

Did Mr Dawkins make the representations?

The 24 May 2016 Meeting

87 I first make some observations about what happened at the 24 May 2016 Meeting.

88 It is common ground that when Mr Dawkins and Mr Grendus spoke over the telephone on 24 May 2016, Mr Dawkins told Mr Grendus about a potential

opportunity to work for DataCore (see [27] above).⁷⁹ It is also common ground that Mr Dawkins mentioned that DataCore was looking for potential investors.⁸⁰ Mr Grendus then asked that Mr Dawkins arrange a meeting with DataCore.⁸¹

89 Mr Dawkins contacted Mr Lynch and made arrangements for a meeting that day with Mr Grendus (*ie*, the 24 May 2016 Meeting).⁸² Mr Dawkins says that the three of them first met at a coffee shop in Geylang which was near his office, and then adjourned to a cigar bar.⁸³ Mr Grendus pleaded that he cannot recall with particularity whether they first met at a coffee shop in Geylang, but he agrees that the three of them did meet at the cigar bar.⁸⁴

90 Mr Grendus says that during the 24 May 2016 Meeting, Mr Lynch and Mr Dawkins spent over five hours from 5pm to 10pm pitching potential investment opportunities in DataCore and CorePlus to him.⁸⁵

91 Mr Dawkins says that the meeting started at around 5pm,⁸⁶ but they only adjourned to the cigar bar at around 10pm,⁸⁷ and stayed there till around 2.30am the next day.⁸⁸

⁷⁹ Mr Grendus' AEIC at para 16, Mr Dawkins' AEIC paras 10.4, 10.5, 10.6, 10.10.

⁸⁰ Mr Grendus' AEIC at para 16; Mr Dawkins' AEIC at para 10.10.

⁸¹ Mr Grendus' AEIC at para 16; Mr Dawkins' AEIC at paras 10.10–10.11.

⁸² Mr Dawkins' AEIC at para 10.10.

⁸³ Defence of the 2nd Defendant (Amendment No. 1) dated 29 July 2020 ("Mr Dawkins' Defence") at para 10(b); Mr Dawkins' AEIC at paras 10.11–10.15.

⁸⁴ Reply to the Defence of the 2nd and 4th Defendants dated 24 December 2018 ("Mr Grendus' Reply") at para 10.

⁸⁵ Mr Grendus' AEIC at para 17.

⁸⁶ Mr Dawkins' Defence at para 10(b).

⁸⁷ Mr Dawkins' AEIC at 10.15.

⁸⁸ Mr Dawkins' Defence at para 10(b).

92 Under cross-examination, Mr Grendus acknowledged that the 24 May 2016 Meeting did not just last till 10pm (as para 17 of his AEIC suggests).⁸⁹ When asked what time the three of them left the cigar bar, he said it may have been “past midnight”, “late in the morning”, potentially 1am; he could not remember exactly, but only that it was “late”.⁹⁰ On this point, Mr Dawkins’ recollection is more specific and more reliable.

93 Mr Grendus acknowledged that they all had “quite a fair bit of drinking”.⁹¹ He agreed that “there was a whole lot of alcohol”, which could “have affected [his] recollection of some of the details”, but he said, “[t]he same goes for [Mr Dawkins]”.⁹² Mr Dawkins said “every single one of [them]” was “hammered drunk” by the end of the nine-hour session.⁹³ According to Mr Dawkins, they had been drinking pretty heavily, having had 20 bottles of beer before leaving Geylang for the cigar bar.⁹⁴ Mr Dawkins also said that Mr Grendus was “inebriated”.⁹⁵

94 Mr Dawkins acknowledged there were discussions between Mr Grendus and Mr Lynch regarding investments.⁹⁶ Mr Dawkins said Mr Grendus and Mr Lynch were each showing off their knowledge about financial products and investments, but he was not too focussed or engaged in that discussion, indeed,

⁸⁹ Mr Grendus’ AEIC at para 17.

⁹⁰ Transcript, 16 Mar, p 45 lines 1–3.

⁹¹ Transcript, 16 Mar, p 45 lines 4–5.

⁹² Transcript, 16 Mar, p 55 lines 9–10 and 15–16.

⁹³ Transcript, 17 Mar, p 40 lines 6–8.

⁹⁴ Transcript, 17 Mar, p 40 lines 8–9.

⁹⁵ Transcript, 17 Mar, p 40 lines 13–14.

⁹⁶ Transcript, 17 Mar, p 41 lines 3–4 and 7–10, p 42 lines 8–10.

he was “completely lost”.⁹⁷ He was, however, quite happy to stay on for drinks and cigars, rather than to return home early to his partner (with whom he was having a difficult relationship).⁹⁸

95 Mr Dawkins’ account of his involvement (rather, non-involvement) in the discussion on investments at the 24 May 2016 Meeting is largely consonant with Mr Grendus’ pleaded position on the Representations, where he asserts that:

(a) it was Mr Lynch that made Representations (a), (b), (c), (f), (g), (i), (j) and (k), though Mr Dawkins affirmed those by not contradicting Mr Lynch (see [77(c)] above); and

(b) the only representations which Mr Dawkins made orally (together with Mr Lynch) were those in relation to DataCore’s Financing and the Shanda Financing (Representations (d) and (e)) (see [77(b)] above). Mr Dawkins agrees that he did mention Shanda when he first spoke to Mr Grendus over the telephone about a potential opportunity to work for DataCore,⁹⁹ but denies representing that the Shanda Financing was “guaranteed”.¹⁰⁰

96 It was a long meeting, Mr Grendus had been drinking heavily, and his case against Mr Dawkins is largely based on what Mr Dawkins allegedly said (or, mostly, did not say). The circumstances of the 24 May 2016 Meeting

⁹⁷ Mr Dawkins’ AEIC at para 10.14; Transcript, 17 Mar, p 41 lines 27 and 32; p 42 lines 1–7.

⁹⁸ Transcript, 17 Mar, p 41 lines 14–29.

⁹⁹ Transcript, 17 Mar, p 96, lines 27–31.

¹⁰⁰ Transcript, 17 Mar, p 24 lines 1–5.

diminish the reliability of Mr Grendus’ evidence of what happened. Moreover, when asked at trial if Mr Dawkins had actually made Representations (a)–(k), Mr Grendus then gave evidence that varied from his pleaded position.¹⁰¹

97 I turn now to consider each of the Submission Representations and Representations.

Submission Representation (1) / Representation (c)

98 Submission Representation (1), which corresponds with pleaded Representation (c) is: “DataCore was a going concern”.

99 Mr Grendus’ pleaded that this representation was made by Mr Lynch, and affirmed by Mr Dawkins not contradicting him (see [77(c)] above). However, in his evidence, Mr Grendus says that it was made by both of them,¹⁰² and that is what he submits happened.¹⁰³

100 In response to the letter of demand from Mr Grendus’ solicitors (the “Letter of Demand”),¹⁰⁴ Mr Lynch said in his letter of 17 September 2018 (the “17 September 2018 Letter”) that he did say at the 24 May 2016 Meeting that DataCore was “an ongoing concern”.¹⁰⁵ However, Mr Dawkins’ evidence (which I accept) is that Mr Dawkins never heard Mr Lynch say that DataCore

¹⁰¹ Transcript, 16 Mar, p 54 lines 6–32; p 55 lines 1–8.

¹⁰² Transcript, 16 Mar, p 54 lines 18–21.

¹⁰³ PWS at para 36.

¹⁰⁴ Plaintiff’s Bundle of Documents Volume I (“PBOD Vol I”) at pp 148–150.

¹⁰⁵ AEIC Bundle Vol II at p 409.

is a going concern.¹⁰⁶ Indeed, it would not be natural in a discussion on investments to expressly say that the company in question “is a going concern”.

101 However, DataCore was portrayed as a going concern, *ie*, expected to continue in business for the foreseeable future. It was not presented as a company that was insolvent, or about to go into liquidation. The work opportunity with DataCore (which Mr Dawkins spoke to Mr Grendus about), and the potential investment in DataCore (which Mr Lynch spoke to Mr Grendus about), were both premised on DataCore being a going concern. In undertaking recruitment work for DataCore in the first place, Mr Dawkins too assumed DataCore to be a going concern that could subsequently pay fees to Aryan Search.

102 In the circumstances, notwithstanding that this representation was not expressly made at the 24 May 2016 Meeting, I accept that Mr Grendus was given the impression that DataCore was a going concern. This is also supported by Mr Dawkins’ own account of what he had told Mr Grendus when he shared about the potential work opportunity with DataCore:¹⁰⁷

... when I profiled the company, I told him everything about the business. I told him about what I know about the founders, what I know about the company, a high level about the product ... I told him about what the challenges were about the company. ... I said the company is funding, it’s looking for seed, it’s expanding. The company is going to be growing, the company is going to have a very, you know, high potential opportunity.

¹⁰⁶ Transcript, 17 Mar, p 96 lines 11–19.

¹⁰⁷ Transcript, 17 Mar, p 24 lines 9–17.

Submission Representation (2) / Representation (a)

103 Submission Representation (2) is: “[t]he financial figures in the Pitch Documents were accurate and that there was imminent financing from Shanda” [emphasis added]. This is a combination of pleaded Representations (a), (d) and (e). I will deal with the aspects relating to Representations (d) and (e) (which concern the Shanda Financing) later. For the present, I will only focus on Representation (a), viz, that the figures in the Pitch Document were accurate.

104 The Submissions also broaden the reference to the Pitch Document that Mr Grendus received from Mr Lynch in the 10 June 2016 Email to Pitch Documents. Presumably Mr Grendus is referring to the rest of the documents that he received from Mr Lynch and Mr Dale, not just the *pro forma* financials contained in the Pitch Document. But this does not assist Mr Grendus – those documents include a Subscription Agreement¹⁰⁸ containing various qualifications, warnings, and disclaimers. I will deal with these when I address the Further Representations. Moreover, on Mr Grendus’ pleadings, those documents are attributed to Mr Lynch and Mr Dale, not to Mr Dawkins.¹⁰⁹

105 For now, I will focus on the Pitch Document which Mr Grendus received from Mr Lynch with the 10 June 2016 Email.

106 Mr Grendus’ case that Mr Dawkins quoted figures from the Pitch Document is fatally flawed, for at the time of the 24 May 2016 Meeting, Mr Dawkins had not received the Pitch Document – he only had the May *Pro Forma*, which was materially different. Mr Dawkins could not have quoted

¹⁰⁸ AEIC Bundle Vol II at pp 83 and 89.

¹⁰⁹ SOC at paras 13(b)–13(d).

figures from the Pitch Document (which he did not have), and if he quoted figures from the May *Pro Forma*, the figures were different.

107 The Submissions compound the problem. Mr Grendus continues to assert that Mr Dawkins “received the Pitch Documents containing this information [ie, the *pro forma* financial figures] prior to the meeting with [Mr Grendus] on 24 May 2016”¹¹⁰ and that Mr Dawkins “knew that the figures in the Pitch Document were false”, or “could not have any genuine grounds to believe that the figures were true”.¹¹¹

108 The Submissions were filed on 12 May 2021, almost two months after it had been pointed out (on the last day of trial on 18 March 2021) that the May *Pro Forma* sent to Mr Dawkins in May 2016 was *not* the Pitch Document,¹¹² and there were differences in the figures contained in both documents. There is no evidence that Mr Dawkins ever received the Pitch Document, or that the Pitch Document even existed at the time of the 24 May 2016 Meeting.

109 In Mr Grendus’ solicitors’ letter of 18 May 2021 to the court (the “18 May 2021 Letter”), it was then acknowledged that the May *Pro Forma* and the Pitch Document *were* different, but it was submitted that they did not differ in any material or meaningful aspect.¹¹³ Differences in relation to financing and headcount figures were noted, but were characterised as “minor”.¹¹⁴ I do not agree with this characterisation. I will deal with the differences between the

¹¹⁰ PWS at para 62.

¹¹¹ PWS at para 60.

¹¹² Transcript, 18 Mar, p 2 lines 6–32, p 3 lines 1–6.

¹¹³ Letter from Solicitors for the Plaintiff dated 18 May 2021 (“Mr Grendus’ Letter”) at para 6.

¹¹⁴ Mr Grendus’ Letter at para 6.

figures for financing, headcount, and also revenue, when I discuss the representations they pertain to.

110 The simple point is: Mr Dawkins had not received the Pitch Document, and so he could not have quoted figures from it, or affirmed that the figures in the Pitch Document were accurate. Yet Mr Grendus maintains that Mr Dawkins quoted figures from the Pitch Document, including the valuation and the million dollars of expected revenue in the year 2016.¹¹⁵ I reject this. I also accept Mr Dawkins' evidence that he had not quoted figures to Mr Grendus.

111 Indeed, it is not Mr Grendus' pleaded case that Mr Dawkins had quoted revenue or headcount figures. Mr Grendus says it was Mr Lynch who said DataCore had a pre-Financing head count of nine, and that Mr Dawkins affirmed that by not contradicting Mr Lynch (Representation (g), as particularised: see [77(c)] above). Mr Grendus also says that Mr Lynch said US\$965,000 total sales were expected by end-of-year 2016, but critically, he *does not* say that Mr Dawkins affirmed that (Representation (h), as particularised: see [77(a)] above). Had Mr Dawkins quoted revenue or headcount figures from the Pitch Document at the 24 May 2016 Meeting, Mr Grendus would not have limited Mr Dawkins' role in relation to Representations (g) and (h) in the way he did in his pleadings.

112 Furthermore, Mr Grendus' pleaded case is that Representation (a) was made by Mr Lynch, and affirmed by Mr Dawkins not contradicting him, *ie*, Mr Lynch said the figures in the Pitch Document are accurate, and Mr Dawkins did not say otherwise (see [77(c)] above).

¹¹⁵ Transcript, 16 Mar, p 54 lines 12–14; PWS at para 37.

113 By now saying that Mr Dawkins (rather than Mr Lynch) was quoting figures from the Pitch Document, Mr Grendus is departing from his pleaded case (except in relation to representations relating to DataCore’s Financing, in the context of the Shanda Financing, viz, Representations (d) and (e)). As Denning LJ (as he then was) said in *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702: “The court is careful not to find fraud unless it is distinctly pleaded and proved” (at 712). It would not be right to allow Mr Grendus to now allege that Mr Dawkins quoted figures from the Pitch Document, when that is not his pleaded case.

114 Mr Grendus’ case thus reduces to this: Mr Lynch orally said things about DataCore at the 24 May 2016 Meeting which seemed to match what Mr Grendus *later* saw in the Pitch Document, and Mr Dawkins did not contradict Mr Lynch *at the time* of the 24 May 2016 Meeting. However, Mr Grendus can only sue Mr Dawkins for not contradicting Mr Lynch, in circumstances where one would expect Mr Dawkins to contradict Mr Lynch. That is not the case here. Mr Lynch was an insider to DataCore, Mr Dawkins was not. Mr Dawkins had no reason to believe that what Mr Lynch was saying about DataCore was untrue.

115 If there is no duty to speak (and there was none in the present case), silence is not actionable as a misrepresentation: *Wang Xiaopu v Goh Seng Heng and another* [2019] SGHC 284 (“*Wang Xiaopu*”) at [59]–[60]; *EA Apartments Pte Ltd v Tan Bek and others* [2017] 3 SLR 559 (“*EA Apartments*”) at [29]–[30].

116 At trial, Mr Grendus’ counsel told Mr Dawkins that the Pitch Document had been sent to him on 17 May 2016.¹¹⁶ That was factually wrong – on the

¹¹⁶ Transcript, 17 Mar, p 35 lines 6–8.

evidence, Mr Dawkins never received the Pitch Document. In response, Mr Dawkins said he had not read the Pitch Document,¹¹⁷ indeed he had never seen that document.¹¹⁸ Mr Dawkins was right: what was sent to him on 17 May 2016 was not the Pitch Document which was sent to Mr Grendus by Mr Lynch in the 10 June 2016 Email (see [120] below).

117 The cross-examination of Mr Dawkins thus proceeded on the mistaken premise that he had been sent the Pitch Document on 17 May 2016 when the attachments to the 17 May 2016 Email (or indeed, the 3 May 2016 Email) (see [43] and [48] above) were not included in the trial bundles, and evidently had not been looked at.

118 At the end of Mr Dawkins’ testimony, I queried the basis on which it was asserted that the Pitch Document had been sent to Mr Dawkins prior to the 24 May 2016 Meeting.¹¹⁹ I was informed that “the earliest” Mr Dawkins would have received it, was with the 17 May 2016 Email,¹²⁰ I was then informed that Mr Dawkins may have received the Pitch Document even earlier than 17 May 2016, that is, with the 3 May 2016 Email.¹²¹

119 Mr Dawkins maintained that he did not read any of the documents sent to him in the 3 May 2016 Email or the 17 May 2016 Email, or at least he had not read them “fully” or “properly”.¹²²

¹¹⁷ Transcript, 17 Mar, p 33 lines 22–25, p 35 line 8, p 37 lines 28–29.

¹¹⁸ Transcript, 17 Mar, p 37 lines 28–29.

¹¹⁹ Transcript, 17 Mar, p 148 lines 19–31.

¹²⁰ Transcript, 17 Mar, p 149 lines 26–32, p 150 lines 23–26.

¹²¹ Transcript, 17 Mar, p 151 lines 8–27.

¹²² Transcript, 17 Mar, p 153 lines 28–32, p 154 lines 1–10.

120 The position was checked overnight, and the next day (the third and final day of trial) I was informed that what Mr Dawkins received from Mr Dale in the 3 May 2016 Email and the 17 May 2016 Email was not the Pitch Document sent to Mr Grendus in the 10 June 2016 Email, but a different version of that document, with different figures (*ie*, the *May Pro Forma*).¹²³ Mr Dawkins offered to retake the stand and be examined on what he had in fact received in May 2016,¹²⁴ whereas counsel for Mr Grendus objected to the *May Pro Forma* even being introduced in evidence.¹²⁵ In the event, the trial continued with the evidence of other witnesses. By the time those witnesses had completed their testimony, though, Mr Dawkins had had to leave court to pick his daughters, and could not be recalled the same day.¹²⁶ The matter was then left on the basis that the *May Pro Forma* would be marked 2D1(i) for identification, and parties could address the matter further.¹²⁷ Mr Grendus' solicitors, in the 18 May 2021 Letter, did not object to the *May Pro Forma* being introduced into evidence (see [109] above). For good order, I formally admit the *May Pro Forma* as Exhibit 2D1.

121 I accept Mr Dawkins' evidence that he did not read through the *May Pro Forma*, at least not fully or properly. Indeed, on the stand, he had not even realised that what Mr Grendus' counsel was saying to him about his having received the Pitch Document in May 2016 was wrong.

¹²³ Transcript, 18 Mar, p 2 lines 6–32, p 3 lines

¹²⁴ Transcript, 18 Mar, p 4 lines 16–17.

¹²⁵ Transcript, 18 Mar, p 5 lines 14–27.

¹²⁶ Transcript, 18 Mar, p 95 lines 6–7.

¹²⁷ Transcript, 18 Mar, p 97 lines 15–20.

122 On a related note, all of Mr Grendus’ evidence that is premised on Mr Dawkins having in his possession the Pitch Document before the 24 May 2016 Meeting, is flawed, including the following:

(c) that financial figures from documents circulated by Mr Lynch and Mr Dale “subsequent to the meeting” were quoted by Mr Dawkins at the 24 May 2016 Meeting, including “the valuation and the million dollars of expected revenue in the year 2016”;¹²⁸

(d) that while Mr Dawkins did not provide financial statements, he quoted figures from the financial statements in conjunction with Mr Lynch at the 24 May 2016 Meeting and Mr Grendus believed him.¹²⁹

123 Mr Grendus relies on the Pitch Document as proof that Mr Dawkins must have said the same things to him at the 24 May 2016 Meeting, but that is unsound for the simple reason that Mr Dawkins did not have the Pitch Document. This passage from Mr Grendus’ testimony illustrates his thinking:¹³⁰

Q You are an educated person, with quite a fair bit of working experience. You do investments. Yet you choose to place heavy reliance on information communicated to you over a night of drinking.

A. A fair statement. The representations made in that evening were corroborated by the financial pro forma that was sent to me from [Mr Lynch] subsequent to that meeting. Numbers quoted in that previous meeting that evening matched what was represented.

Q. And you were so certain that–

A The same pro forma, financial statements were provided to [Mr Dawkins] prior to that meeting.

¹²⁸ Mr Grendus’ AEIC at para 19; Transcript, 16 Mar, p 54 lines 11–14.

¹²⁹ Transcript, 16 Mar, p 53 lines 13–15.

¹³⁰ Transcript, 16 Mar, p 63 lines 8–17.

[emphasis added]

124 I do not accept that Mr Dawkins represented that the figures in the Pitch Document are accurate – I thus reject Mr Grendus’ case on Submission Representation (1) (in relation to the Pitch Document) / Representation (a).

Submission Representation (3) / Representation (b)

125 Submission Representation (3) is: “[Mr Dale] was a cash-contributing investor in DataCore”.¹³¹ This corresponds with pleaded Representation (b).

126 In the 17 September 2018 Letter by Mr Lynch to Mr Grendus’ solicitors, Mr Lynch admitted representing to Mr Grendus at the 24 May 2016 Meeting that Mr Dale was a cash-contributing investor in DataCore.¹³² Mr Dawkins’ evidence (which I accept) is that he does not recall if that was said at the 24 May 2016 Meeting; it may have been discussed between Mr Lynch and Mr Grendus, but he (Mr Dawkins) did not discuss that with Mr Grendus.¹³³

127 Mr Grendus’ pleaded case is that Representation (b) was made by Mr Lynch, and affirmed by Mr Dawkins not contradicting him. In his evidence, however, Mr Grendus seemed to suggest that Mr Dawkins himself had said this,¹³⁴ and that was then asserted in the Submissions.¹³⁵ Again, I do not allow Mr Grendus to depart from his pleaded case and make a new allegation of fraud against Mr Dawkins.

¹³¹ PWS at para 38.

¹³² AEIC Bundle Vol II at p 409.

¹³³ Transcript, 17 Mar, p 94 lines 11–21.

¹³⁴ Transcript, 16 Mar, p 15 lines 20–24; p 54 lines 15–17.

¹³⁵ PWS at para 38.

128 In any event, there was no way Mr Dawkins could have known if Mr Dale was a cash-contributing investor. He was not privy to DataCore’s internal financial affairs, and any limited checks which he and/or Aryan Search might have performed (see [54] above) would not have shed light on this. I do not believe Mr Dawkins said anything about whether Mr Dale was a cash-contributing investor.

129 Indeed, if Mr Lynch had said at the 24 May 2016 Meeting that Mr Dale was a cash-contributing investor in DataCore (and that had made an impression on Mr Dawkins), there would have been no reason at all for Mr Dawkins to disbelieve Mr Lynch, and contradict him.

130 I thus reject Mr Grendus’ case on Submission Representation (3) / Representation (b).

Submission Representations (4) to (6) / Representations (d) and (e)

131 I take Submission Representations (4) to (6) together with the aspect of Submission Representation (2) relating to the Shanda Financing.

132 Submission Representation (4) is: “DataCore was on the verge of closing Series A financing at thrice its alleged valuation of US\$10 million”.¹³⁶

133 Submission Representation (5) is: “the Financing was to be provided by a wealthy Chinese global investment firm called the Shanda Group, based in China and which had recently opened an investment office in Singapore”.¹³⁷

¹³⁶ PWS at paras 39–40.

¹³⁷ PWS at para 41.

134 Submission Representation (6) is: “the Shanda Financing was guaranteed”.¹³⁸

135 An aspect of Submission Representation (2) is: “there was imminent financing from Shanda”.¹³⁹

136 Taken together, these representations correspond with pleaded Representations (d) and (e), which I reproduce in full below:

(a) DataCore was on the verge of closing a Series A round financing at thrice its alleged current valuation of US\$10 million (the “Financing”) and that the Financing was guaranteed;

(b) The guaranteed Financing was provided by a wealthy Chinese Global Investment Firm “Shanda” based in China with a recently opened investment office in Singapore.

137 Representations (d) and (e) are the only two which Mr Grendus pleaded that Mr Dawkins himself made orally (rather than by Mr Dawkins merely affirming Representations which Mr Lynch made, by not contradicting Mr Lynch) (see [77(b)] above).

138 The most significant aspect of these representations is that the Shanda Financing was allegedly “guaranteed” (in the sense of it being a certainty). I do not believe that either Mr Lynch or Mr Dawkins represented that the Shanda Financing was “guaranteed”.

¹³⁸ PWS at para 42.

¹³⁹ PWS at para 37.

139 Mr Dawkins said in his AEIC that the allegation that he had represented that the Shanda Financing was guaranteed, was baseless.¹⁴⁰ His evidence at trial was also consistent with his pleadings¹⁴¹ and AEIC. Mr Dawkins candidly acknowledged that he had mentioned to Mr Grendus that he had referred Shanda as a potential investor looking at Series A financing to DataCore.¹⁴² Mr Dawkins had mentioned this to Mr Grendus as part of him telling Mr Grendus about the job opportunity with DataCore.¹⁴³

140 Similarly, in the 17 September 2018 Letter from Mr Lynch, he says that DataCore were marketing and trying to close a Series A financing, and that he had told Mr Grendus that Shanda was one of the investors DataCore was approaching for Series A financing.¹⁴⁴

141 The 17 September 2018 Letter by Mr Lynch was sent in response to Mr Grendus' Letter of Demand, where Mr Grendus alleged that Mr Lynch had represented to him that DataCore was on the verge of closing its Series A, which was to be financed by Shanda. However, in the Letter of Demand, Mr Grendus did not allege that it was represented to him that the Shanda Financing was "guaranteed". The same applies to Mr Grendus' letter of demand to Mr Dawkins.¹⁴⁵ The complaint was simply that "the [Shanda Financing] did not materialize", rather than Mr Grendus having been lied to about "guaranteed" Financing.

¹⁴⁰ Mr Dawkins' AEIC at paras 14.2–14.3.

¹⁴¹ Mr Dawkins' Defence at para 11(b)

¹⁴² Transcript, 17 Mar, p 96 lines 29–32; p 97 lines 1–8.

¹⁴³ Transcript, 17 Mar, p 96 lines 29–31; p 97 lines 8–9 and 14–15.

¹⁴⁴ AEIC Bundle Vol II at p 409.

¹⁴⁵ PBOD Vol I at pp 151–153.

142 From the April 2016 Email Exchange between Mr Lynch and Mr Dawkins (see [37]–[38] above), it is clear that neither of them considered the Shanda Financing to be “guaranteed”. It was a possibility. Mr Dawkins expressed confidence that the Shanda Financing would come through, in response to Mr Lynch’s update on the situation, but Mr Dawkins also recognised the possibility that the Shanda Financing might not come through, and so he indicated that he could introduce two other venture capitalists in that event. Mr Lynch acknowledged that it might take another one to two more months for Shanda to reach a decision on financing. Mr Dawkins’ evidence at trial on his understanding of how Series A financing for start-ups generally worked was also consistent with that.¹⁴⁶

143 Mr Dawkins denied that he or Mr Lynch had at the 24 May 2016 Meeting represented that the Shanda Financing was imminent, let alone “guaranteed”.¹⁴⁷ I accept his evidence on this.

144 For his case that Mr Dawkins had made Representations (d) to (e), Mr Grendus also relies on the fact that the Pitch Document had “budgeted” an investment of US\$10m in DataCore (which he says was to be made by Shanda) in August 2016.¹⁴⁸ However, the May *Pro Forma* had different figures in that regard.

145 The Pitch Document had a figure of US\$10,115,000 in the August 2016 column for Investment Capital (Financing),¹⁴⁹ but the May *Pro Forma* Mr

¹⁴⁶ Transcript, 17 Mar, p 101 lines 22–31.

¹⁴⁷ Transcript, 17 Mar, p 102 lines 3–7.

¹⁴⁸ Transcript, 16 Mar, p 65 lines 5–8.

¹⁴⁹ Mr Grendus’ Letter at Tab 2 p 7.

Dawkins received has no US\$10m figure as an injection of investment capital in the month of August 2016. Instead, there is a figure of US\$5m in the July 2016 column, and another figure of US\$5m in the October 2016 column.¹⁵⁰

146 Mr Grendus’ evidence was that “the numbers that were represented tie up to the representations in the documents”.¹⁵¹ Specifically, referring to the Pitch Document, Mr Grendus said:¹⁵²

2016, Q3 investment capital (financing) – 10.385 million, of which Q3 includes August, which is when Shanda was supposed to be paid, which is what was represented to me on May 24th, 25th.

[emphasis added]

147 If (as Mr Grendus says), the impression he was given at the 24 May 2016 Meeting was that there would be US\$10m in financing from Shanda in August 2016, that could not have come from Mr Dawkins. The May *Pro Forma*, which is what Mr Dawkins had, instead had US\$5m in the July 2016 column, and another US\$5m in October 2016 column.

148 If Mr Lynch had represented at the 24 May 2016 Meeting that DataCore were trying to close US\$10m in financing from Shanda by August 2016, Mr Dawkins had no reason to disbelieve Mr Lynch, and contradict him. From what Mr Dawkins knew, DataCore were seeking to close the Shanda Financing, and Mr Lynch had indicated in his email in the April 2016 Email Exchange between himself and Mr Dawkins that it would take another one to two months for Shanda to decide (see [37]–[38] above).

¹⁵⁰ Mr Grendus’ Letter at Tab 3 p 6.

¹⁵¹ Transcript, 16 Mar, p 65 lines 5–7.

¹⁵² Transcript, 16 Mar, p 57 lines 12–15.

149 As for the alleged reference to the Shanda Financing being at triple the current US\$10m valuation of DataCore, I accept Mr Dawkins' evidence that he had not presented any specific numbers or facts to Mr Grendus.¹⁵³ If Mr Dawkins did not read through the May *Pro Forma*, at least not fully or properly, which I accept (see [121] above), he could not have put forward any specific numbers or facts premised on figures in the May *Pro Forma* – and, if he had, that would not have corresponded with the figures that Mr Grendus later saw from the Pitch Document. I do not believe Mr Dawkins said that DataCore's current valuation was US\$10m, or that if Shanda invested it would be at a valuation that was triple of that. If Mr Lynch had represented this, Mr Dawkins had no reason to disbelieve Mr Lynch, and contradict him.

150 Mr Grendus also says Mr Dawkins repeatedly said he (Mr Dawkins) would *triple his money by investing* in DataCore.¹⁵⁴ This was not pleaded as a separate representation on which Mr Grendus was suing, but Mr Grendus referred to it in the context of the Shanda Financing being at triple DataCore's current valuation.¹⁵⁵

151 Mr Dawkins acknowledges he had said that he was interested in investing in DataCore.¹⁵⁶ The April 2016 Email Exchange between Mr Lynch and Mr Dawkins also indicates that Mr Dawkins was interested in investing in DataCore; he said so to Mr Lynch, and there was nothing false about him saying so to Mr Grendus too.

¹⁵³ Transcript, 17 Mar, p 79 lines 24–25, p 96 lines 1–10.

¹⁵⁴ Transcript, 16 Mar, p 41 lines 29–30; PWS at para 53.

¹⁵⁵ Transcript, 16 Mar, p 10 lines 30–32.

¹⁵⁶ Transcript, 17 Mar, p 78 lines 21–28.

152 If Mr Dawkins further said anything about tripling his money by investing in DataCore (and I am not convinced he did say this), this would only have been a *response* to Mr Lynch saying that the Shanda Financing would be at triple the current valuation of DataCore. Mr Dawkins had no reason to disbelieve Mr Lynch, and contradict him.

153 After the 24 May 2016 Meeting, Mr Dawkins and Mr Grendus continued to exchange messages (the “Messages”).¹⁵⁷ In the Messages, there was further mention of:

- (a) the possibility of Mr Grendus working for DataCore;
- (b) the possibility of Mr Grendus and Mr Dawkins investing in DataCore; and
- (c) continued discussions between DataCore and Shanda.

154 Mr Grendus says the Messages corroborate his allegation that it had been represented at the 24 May 2016 Meeting that the Shanda Financing was “guaranteed”.¹⁵⁸ However, the Messages do not support his allegation. If it had been represented at the 24 May 2016 Meeting that the Shanda Financing was “guaranteed”, there would have been no need for Mr Dawkins to update Mr Grendus on the progress of such financing, but that was precisely what was discussed in the Messages. This extract from the Messages gives a flavour of the discussion:

25 May 2016, 12:56:15 (Mr Grendus) I have someone really good that can work with me

¹⁵⁷ AEIC Bundle Vol II pp 68–71.

¹⁵⁸ Transcript, 16 Mar, p 42 lines 6–11, p 46 lines 11–15, p 50 lines 4–6.

25 May 2016, 12:56:15 (Mr Grendus) where I come in fix things in about three months and have her working full time

25 May 2016, 12:56:32 (Mr Dawkins) Gr8 u can discuss with steve [Mr Lynch]

25 May 2016, 12:56:40 (Mr Grendus) obviously we have to see on both sides if it is a fit

...

26 May 2016, 16:33:18 (Mr Dawkins) ... just spoke to Steve he has a meeting with Shanda today was delayed from the morning. He is in there now. Not sure how late but keep the pressure on for you

26 May 2016, 16:33:46 (Mr Grendus) OK, I haven't had something this interesting come along in awhile.

26 May 2016, 16:34:19 (Mr Grendus) I have Big 4 experience as well, so compliance doesn't worry me either.

.....

26 May 2016, 18:02:44 (Mr Dawkins) He is still in there. No news. Possible it might be a long one as he was supposed to go in 930 but delayed to 3

26 May 2016, 18:03:07 (Mr Grendus) well, I recognize the importance as this is related to Series A

26 May 2016, 18:03:17 (Mr Dawkins) Yes this is the big final meeting

...

26 May 2016, 18:04:41 (Mr Grendus) this is a project that interests me, and besides myself, I have someone I would want to bring in after I've spent a month setting everything up

26 May 2016, 18:05:05 (Mr Grendus) if I need to be in Singapore full time for a month to work on this, that's fine, but I think I will be able to work remotely

...

27 May 2016, 13:20:16 (Mr Dawkins) Afternoon Jas [Mr Grendus]. Heard they r [sic] pushing on quickly with talks with their Series A today another chat. Im all ears and eyes waiting fr [sic] an update

27 May 2016, 13:22:30 (Mr Grendus) OK, are we both going to be able to get in pre-Series A, assuming they want to bring me in?

...

30 May 2016, 15:49:45 (Mr Grendus) Brett [Mr Dawkins], I am sorry to pester you, but if it turns out that Steve is not interested in working with me, I am not going to blame you for that

...

30 May 2016, 17:02:02 (Mr Dawkins) Jist [*sic*] spoke to steve. Seems like they had a guy in the usa to do the backend they already have it covered. Steve was not aware until today. He will chat to Bill Dale CEO [Mr Dale] re all of our interests to seed them tonight and arrange a call with you before weds [*sic*] with Bill

30 May 2016, 18:24:18 (Mr Grendus) well, on the one hand, disappointing

30 May 2016, 18:24:29 (Mr Grendus) but I'd still like to participate if they're willing

30 May 2016, 18:24:44 (Mr Grendus) hopefully they'd be willing to go over all the numbers with me.

[emphasis added]

155 In June 2016, Mr Grendus met with Mr Dale and Mr Lynch, and spoke with them.¹⁵⁹ It was open to him to get an update from them on the Financing, in particular whether the Shanda Financing had gone through; and to ask them to “go over all the numbers” with him. Whatever transpired between Mr Grendus, Mr Dale, and Mr Lynch, however, did not involve Mr Dawkins.

156 I thus reject Mr Grendus’ case on the representations relating to the DataCore’s Financing and the Shanda Financing, *ie*, Submissions Representations (4) to (6) and part of Submissions Representation (2) / Representations (d) and (e).

¹⁵⁹ Mr Grendus’ AEIC at para 31.

Submission Representation (7) / Representation (g)

157 Submission Representation (7) is: “DataCore had a pre-Financing head count of nine (9) employees with payroll costs of US\$95,000 per month”.¹⁶⁰ This corresponds with pleaded Representation (g).

158 Mr Grendus’ pleaded position is that Representation (g) was made by Mr Lynch, and affirmed by Mr Dawkins not contradicting him (see [77(c)] above); but when asked which of the pleaded Representations were actually made by Mr Dawkins, he said: “[Representation (g)] comes from the financial statements as in the *pro forma*”.¹⁶¹ That contrasts with what he said of the other pleaded Representations, *eg*, what he said about Representation (f), “is the first defendant, Stephen Lynch”¹⁶² and about Representation (h), “would be that meeting, first and second defendant”.¹⁶³

159 In so far as Mr Grendus attributes Representation (g) to “the *pro forma*”, *ie*, the Pitch Document Mr Lynch sent him with the 10 June 2016 Email, Mr Dawkins was not responsible for that document – Mr Dawkins was not copied in that email and was not even sent that document.

160 The May *Pro Forma*, which Mr Dawkins received, had different figures, in relation to headcount, from the Pitch Document, as shown in the following table:

¹⁶⁰ PWS at paras 43–44.

¹⁶¹ Transcript, 16 Mar, p 54 lines 6–29.

¹⁶² Transcript, 16 Mar, p 54 line 28.

¹⁶³ Transcript, 16 Mar, p 54 line 30.

Period	Salary Staff or Consultants – part & full		Total Global Head Count	
	Pitch Document	May <i>Pro Forma</i>	Pitch Document	May <i>Pro Forma</i>
2016 Q1	9	9	9	9
April 2016	9	9	9	9
May 2016	<u>9</u>	<u>11</u>	<u>9</u>	<u>14</u>
June 2016	12	12	<u>17</u>	<u>16</u>
2016 Q2	12	12	<u>17</u>	<u>16</u>

161 Mr Grendus seeks to downplay the difference in figures, especially the figures for May 2016 (the very month when the 24 May 2016 Meeting took place) by saying – through the 18 May 2021 Letter from his solicitors – that the total global headcount numbers for 2016 Q1 (which are identical in both the Pitch Document and May *Pro Forma*) are what matter. That is a clear shift in his case:

(a) Mr Grendus’ complaint is that “pre-Financing head count” of 9 is what was represented to him. Representation (g) therefore relates to the relevant headcount numbers of DataCore *before* any such Financing, which (as is common ground) did not yet take place at the time of the 24 May 2016 Meeting. As such, the headcount numbers for April and May 2016 were as relevant as those for 2016 Q1 (January to March 2016) were.

(b) In Mr Grendus’ testimony, referring to the Pitch Document, he said: “Headcount – 9, line item ‘Head Count (Salary Staff or Consultants – part & full) – 9’. 2016 Q1. 2016 Q2. Further misrepresentation. As it

stands, in the end there were only 6”.¹⁶⁴ In his testimony, Mr Grendus did not restrict himself only to the headcount numbers for 2016 Q1, contrary to his present position that only the numbers for 2016 Q1 matter.

(c) Mr Grendus’ counsel had cross-examined Mr Dawkins on what DataCore’s headcount was in *May 2016*:¹⁶⁵

Q. Wouldn’t you agree with me that on this pro forma forecast, a reader would believe that as at May 2016, the company has a global head count of 9 individuals?

...

Q. ... as of May 2016, this forecast [in the Pitch Document] represents that there was a head count of 9 in the company;

...

Q. I put it to you, Mr Dawkins, that you knew exactly what the head count was of the company... at or around May 2016.

[emphasis added]

(d) In saying that Representation (g) was false, Mr Grendus complains that instead of a headcount of 9, DataCore only had a headcount of 6, all of whom (including Mr Lynch) he says were overpaid¹⁶⁶ – but the financial statements of DataCore exhibited in Mr Grendus’ AEIC show that Mr Lynch was only paid from April 2016 onwards, *ie*, after 2016 Q1.¹⁶⁷

¹⁶⁴ Transcript, 16 Mar, p 57 lines 15–17.

¹⁶⁵ Transcript, 17 Mar, p 36 lines 10–12, p 79 lines 3–5, p 80 lines 29–32.

¹⁶⁶ SOC at para 17(d).

¹⁶⁷ AEIC Bundle Vol II at pp 436 and 442.

(e) As a prospective investor, it makes no sense for Mr Grendus only to be interested in the historical headcount of DataCore up to 2016 Q1, and not what its current and prospective headcount was. Mr Grendus’ interest would not only have been in the company’s past, but also its present and future.

162 It was not Mr Grendus’ pleaded case that Mr Dawkins had said DataCore’s headcount was 9: he said that came from Mr Lynch and Mr Dawkins did not contradict him (see [158] above). In his testimony, Mr Grendus then said the headcount figure came from the Pitch Document (see [159] above). It was, however, put to Mr Dawkins that *he* had represented to Mr Grendus that DataCore already had a headcount of 9, which Mr Dawkins denied.¹⁶⁸ Mr Dawkins maintained that he did not present a number to Mr Grendus.¹⁶⁹ He knew there were only a handful of people, but he never gave a specific figure.¹⁷⁰

163 I believe Mr Dawkins on this. If he had looked at the May *Pro Forma* to see what was stated as the headcount for May 2016, he would have seen a figure of 11 (not 9) for “Head Count (Salary Staff or Consultants – part & full)”, and 14 (not 9) for “Total Global Head Count” (see [160] above). As stated earlier, I accept Mr Dawkins’ evidence that he had not read the May *Pro Forma*, or at least not fully or properly (see [121] above); but even if he had, he would not have put forward a figure of 9 as DataCore’s headcount.

164 In any event, I do not allow Mr Grendus to depart from his pleaded case, and add to his allegations of fraud in this way.

¹⁶⁸ Transcript, 17 Mar, p 81 lines 2–4.

¹⁶⁹ Transcript, 17 Mar, p 80 lines 19–21.

¹⁷⁰ Transcript, 17 Mar, p 80 lines 21–23.

165 Mr Grendus saw the figure of 9 for DataCore’s May 2016 headcount in the Pitch Document, and so he alleged that that must have been what was represented to him at the 24 May 2016 Meeting – I reject that.

166 In any event, if Mr Lynch had mentioned a headcount of 9 (and I am not convinced he did), Mr Dawkins would have had no reason to think that was false, such that he should contradict Mr Lynch. As Mr Dawkins says, he “had never been presented with a hard number” of persons actually employed by DataCore at the time.¹⁷¹

167 I thus reject Mr Grendus’ case on Submission Representation (7) / Representation (g).

Submission Representation (8) / Representation (h)

168 Submission Representation (8) is: “DataCore had a lot of interest from the insurance industry and a deep sales pipeline had been in development for some time, with initial sales forecasted for June 2016 and US\$965,000 total sales expected by the end of 2016”.¹⁷² This corresponds with pleaded Representation (h).

169 As I noted above, in his pleadings, Mr Grendus had attributed Representation (h) to Mr Lynch alone (see [77(a)] above). Mr Grendus did not say that Mr Dawkins had affirmed that by not contradicting Mr Lynch (as he had said about most of the other Representations). In effect, Mr Grendus had abandoned his claim on Representation (h) against Mr Dawkins.

¹⁷¹ Transcript, 17 Mar, p 80 lines 27–28.

¹⁷² PWS at paras 45–46.

170 In his evidence, though, Mr Grendus said about Representation (h): “would be that meeting, first and second defendant”.¹⁷³ I do not allow Mr Grendus to add to his allegations of fraud in this way.

171 There are other problems with Representation (h) besides Mr Grendus’ pleadings. Mr Grendus says what was represented to him was US\$965,000 in total sales by the end of 2016. However, the very Pitch Document he received has a different figure of US\$936,000,¹⁷⁴ which was also what Mr Grendus referred to in his testimony about Representation (h): “[referring to the Pitch Document] This is the year 2016, revenue is 936,000, consistent with representations made to me at the meeting at the Cigar Bar.” [emphasis added]¹⁷⁵ Mr Grendus seemed unaware that the figure of US\$936,000 in the Pitch Document was not the same as the US\$965,000 he claimed had been orally represented to him at the 24 May 2016 Meeting.

172 The May *Pro Forma*, which is what Mr Dawkins had, had yet another figure for 2016 sales / revenue: US\$955,000.¹⁷⁶

173 Mr Dawkins never represented to Mr Grendus that a figure of US\$965,000 (or indeed, any particular figure) was expected as sales / revenue for 2016. I do not believe that Mr Lynch represented that figure either, but if he had, Mr Dawkins would have had no reason to disbelieve him, and contradict him.

¹⁷³ Transcript, 16 Mar, p 54 line 30.

¹⁷⁴ Mr Grendus’ Letter at Tab 2 p 5.

¹⁷⁵ Transcript, 16 Mar, p 57 lines 6–8 and 12.

¹⁷⁶ Mr Grendus’ Letter at Tab 3 p 4.

174 I thus reject Mr Grendus’ case on Submission Representation (8) / Representation (h).

Representations (f), (i), (j) and (k)

175 As I noted above, Representations (f), (i), (j), and (k) though pleaded, do not seem to feature in the Submissions. They appear to have been abandoned in relation to Mr Dawkins.

176 Representation (f) is: “[i]f the subscription of the seed units were not fully subscribed, Shanda would purchase the remaining units in the Series A round, in accordance with the guaranteed Financing”.¹⁷⁷ Mr Grendus’ pleaded case is that Representation (f) was made by Mr Lynch, and affirmed by Mr Dawkins not contradicting him (see [77(c)] above). In Mr Grendus’ evidence, however, he simply said this about Representation (f): “is the first defendant, Stephen Lynch”.¹⁷⁸ On Mr Grendus’ own testimony, Mr Dawkins never made Representation (f). If Mr Lynch had said it, there was no reason for Mr Dawkins to disbelieve him, and contradict him.

177 Representation (i) is: “DataCore was already involved in due-diligence processes with multiple banks and exchange traded fund (“ETF”) companies”.¹⁷⁹ Mr Grendus’ pleaded position is that Representation (i) was made by Mr Lynch, and affirmed by Mr Dawkins not contradicting him (see [77(c)] above). However, in his evidence Mr Grendus said, “that would have more come from the first defendant” [emphasis added].¹⁸⁰ Mr Dawkins never

¹⁷⁷ SOC at para 11(f).

¹⁷⁸ Transcript, 16 Mar, p 54 line 28.

¹⁷⁹ SOC at para 11(i).

¹⁸⁰ Transcript, 16 Mar, p 54 line 31.

made Representation (i). If Mr Lynch had said it, there was no reason for Mr Dawkins to disbelieve him, and contradict him.

178 Representation (j) is: “[e]ntering into the CorePlus Debenture will allow [Mr Grendus] to enjoy participation in DataCore as well as other projects CorePlus was involved in”.¹⁸¹ Representation (k) is: “Of the said CorePlus projects referred to in [Representation (j)] were the underwriting of pet owner insurance, a ‘Green Energy’ bond fund, a ‘Liquified Natural Gas’ (LNG) fund and Skybridge Financial Pte Ltd (‘Skybridge’), a ‘Foreign Film Rights’ fund ... for and between Skybridge and Struans Capital Partners”.¹⁸²

179 Mr Grendus’ pleaded position is that Representations (j) and (k) were made by Mr Lynch, and affirmed by Mr Dawkins not contradicting him (see [77(c)] above). However, in his evidence, when asked who had made these representations, Mr Grendus simply said, “first defendant”.¹⁸³ If these representations had been made by Mr Lynch at the 24 May 2016 Meeting, there was no reason for Mr Dawkins to disbelieve him, and contradict him.

180 Even if Mr Grendus had not abandoned his claims against Mr Dawkins on Representations (f), (i), (j) and (k), I reject them all.

181 In summary, I find that none of the pleaded Representations (a) to (k) can be attributed to Mr Dawkins, save for an implied representation that DataCore was a going concern (*viz*, Submission Representation (1) / Representation (c)) (see [98]–[102] above).

¹⁸¹ SOC at para 11(j).

¹⁸² SOC at para 11(k).

¹⁸³ Transcript, 16 Mar, p 54 line 32, p 55 line 1.

182 I go on to consider whether that representation was false, and if so, whether it was fraudulently made.

Were the representations false?

The “going concern” representation: Submission Representation (1) / Representation (c)

183 I find that Mr Grendus has not proved that DataCore was not a going concern at the time of the 24 May 2016 Meeting, or indeed when he invested on 24 June 2016.

184 Mr Grendus says DataCore was technically insolvent at the time of the 24 May 2016 Meeting: he says the financial statements of DataCore show that the liabilities of DataCore exceeded its assets.¹⁸⁴ However, the 2016 financial statements of DataCore which Mr Grendus exhibited in his AEIC do not show this. The balance sheet as of 31 December 2016 (the “2016 Balance Sheet”) shows that as at 31 March 2016 (before Mr Grendus invested), DataCore’s total assets of US\$285,040.73 exceeded its total liabilities of US\$92,500; and as at 30 June 2016 (after Mr Grendus invested), DataCore’s total assets of US\$146,369.77 exceeded its total liabilities of US\$102,500.¹⁸⁵

185 Perhaps Mr Grendus deducted from the total asset figure as at 30 June 2016 his investment of US\$100,000 (thereby leaving a figure of US\$46,369.77); but I cannot conclude thereby that as at the 24 May 2016 Meeting, or as at 24 June 2016 when Mr Grendus invested, that DataCore’s liabilities exceeded its assets. DataCore may have spent money, or incurred liabilities, with Mr Grendus’ investment in hand, that it otherwise might not have. Indeed, the

¹⁸⁴ Mr Grendus’ AEIC at para 39.

¹⁸⁵ AEIC Bundle Vol II p 440.

financial statements show that DataCore did spend money after Mr Grendus invested, bringing down the total asset figure as at 30 June 2016 – eg, salaries were paid to various persons including Mr Lynch on 30 June 2016.¹⁸⁶ The profit and loss statement covering the period of April to June 2016 also shows various other expenses, some of which may have been incurred in the period between 24 to 30 June 2016.¹⁸⁷

186 More fundamentally, even if DataCore’s total assets were less than its total liabilities, that does not mean it was insolvent (in the sense of being unable to pay its debts as they fall due), and it does not mean DataCore was not a going concern.

187 In *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd (formerly known as Tong Teik Pte Ltd)* [2021] SGCA 60, the Court of Appeal explained that a company whose total liabilities exceed its total assets is not thereby “unable to pay its debts” – “it is not the total asset to total liability ratio which determines a company’s present ability to pay its debts. Instead, this is determined by the liquidity of the assets and when the debts fall due” (at [62]). What is more pertinent is “whether the company’s current assets exceed its current liabilities” [emphasis added] (at [65]).

188 DataCore’s 2016 Balance Sheet show that as at 31 March 2016 it had current assets of US\$260,665.73, more than its current liabilities of US\$92,500. And as at 30 June 2016 it had current assets of US\$121,994.77, more than its current liabilities of US\$102,500. Those financial statements do not show that

¹⁸⁶ AEIC Bundle Vol II at p 442.

¹⁸⁷ AEIC Bundle Vol II at p 441.

DataCore was unable to pay its debts as at the 24 May 2016 Meeting, or 24 June 2016 when Mr Grendus invested.

189 I am also not persuaded by the Submissions that DataCore was not a going concern.¹⁸⁸

190 First, Mr Grendus relies on a supposed debt of \$120,000 owed by DataCore to Aryan Search, which Mr Grendus says Mr Dawkins had informed him of by a WhatsApp message sometime in May 2018 when the both of them and Mr Lee-Simion had been discussing what they might claim against Mr Lynch if legal proceedings were commenced.¹⁸⁹ Mr Dawkins wrote: “Recruitment fees not paid and salary for Paul Szego 60k amd [*sic*] 60k sgd”.¹⁹⁰ However, DataCore did not owe Aryan Search \$120,000 (or any sum). The first \$60,000 represented recruitment fees that Aryan Search might have earned for the placement of Paul Szego (“Mr Szego”) with DataCore, but DataCore never hired Mr Szego. As such, strictly speaking, no recruitment fees were payable by DataCore. Mr Dawkins mentioned that he might claim \$60,000 nevertheless, but that was not pursued.¹⁹¹ The other \$60,000 was salary that had been promised by Mr Lynch to Mr Szego, which Mr Dawkins thought he could try to get for Mr Szego’s benefit;¹⁹² it was not due to Aryan Search.

191 Second, Mr Grendus relies on a personal loan of S\$10,000 extended by Mr Dawkins to Mr Lynch in or around June 2017 for Mr Lynch’s personal

¹⁸⁸ PWS at para 59.

¹⁸⁹ PWS at para 59(a).

¹⁹⁰ AEIC Bundle Vol II at p 531.

¹⁹¹ Transcript, 17 Mar, p 111 lines 12–18.

¹⁹² Transcript, 17 Mar, p 128 lines 17–24.

expenses.¹⁹³ That says nothing about DataCore's situation as at 24 May 2016 or 24 June 2016.

192 Third, Mr Grendus relies on Mr Lynch's email to Mr Dawkins in the April 2016 Email Exchange about funding being needed if DataCore were to hire Mr Szego. There is nothing unusual about DataCore, a start-up, not taking on additional hires unless it had the means to support those hires. In Mr Lynch's further email to Mr Dawkins (also part of the April 2016 Email Exchange), he said "[it's] not that we are tight but to be honest with you it may take Shanda 1-2 more months and then we get tight and it does restrict me [bringing] on [Mr Szego]". Mr Lynch was only talking about whether the additional hire of Mr Szego might be restricted by finances in one to two months' time, because of the time it was taking to close financing from Shanda. There was no indication that DataCore would be insolvent, or would cease to be a going concern, by 24 May 2016 or 24 June 2016.

193 Fourth, Mr Grendus relies on Mr Dawkins' acknowledgement that on 23 May 2016 he had offered for Aryan Search to payroll Mr Szego upfront on behalf of DataCore.¹⁹⁴ Mr Grendus says this shows Mr Dawkins knew DataCore was insolvent or impecunious. As Mr Dawkins explains, however, his offer to payroll Mr Szego points the other way:¹⁹⁵

If we payroll [Mr Szego], we would have taken that entire loss on our business. We wouldn't have got that money back. So why would I offer something that would cost us money, if I believe that [DataCore] [is] insolvent? I wouldn't do it. I say I am not payrolling for you, you haven't got any money, I am not going to do it. Quite the opposite.

¹⁹³ PWS at para 59(b); AEIC Bundle Vol II at p 493; Transcript, 17 Mar, p 110 lines 17–25.

¹⁹⁴ PWS at paras 59(c)–(d); AEIC Bundle Vol II at p 494.

¹⁹⁵ Transcript, 17 Mar, p 59 lines 16–20.

194 Fifth, Mr Grendus asserts that Mr Dawkins and Aryan Search would have done (financial) due diligence on DataCore and/or CorePlus, and would have known that DataCore and/or CorePlus were insolvent or close to it.¹⁹⁶ I have already rejected Mr Grendus' assertion that Mr Dawkins and Aryan Search did due diligence (in the sense of financial due diligence) on DataCore and CorePlus (see [64] above).

195 Mr Grendus has not proven that DataCore and CorePlus *were* insolvent or close to it. It follows that although he was given the impression at the 24 May 2016 Meeting that DataCore was a going concern, he has not proved that that was a false representation.

The Shanda representations: Submission Representations (4) to (6) / Representations (d) and (e)

196 For completeness, I find that Mr Grendus has also not proven that DataCore did not have a current valuation of US\$10m, or that the Shanda Financing was not at triple that valuation.

197 Mr Grendus puts forward no evidence to prove that DataCore did not have a valuation of US\$10m when he invested.

198 He also puts forward no evidence on the parameters of the Shanda Financing. In particular, he offers no evidence that DataCore was *not* seeking US\$10m in financing from Shanda or that any such financing from Shanda was *not* based on a valuation of some US\$30m.

¹⁹⁶ PWS at paras 59(e)–(f).

199 Thus, even if Mr Dawkins had said he would triple his money if he invested (which Mr Grendus said pointed to the Shanda Financing being at triple DataCore’s current valuation) (see [150] above), Mr Grendus has not proved that this was a false representation.

Did Mr Dawkins fraudulently make any false statements to Mr Grendus?

200 For completeness, I find that Mr Dawkins did not fraudulently make any false statements to Mr Grendus. Mr Dawkins did not lack an honest belief in what he said to Mr Grendus. In so far as Mr Lynch said things about DataCore, Mr Dawkins did not believe any of that to be false, such that he ought to contradict Mr Lynch (see [114], [129], [148], [166], [173], [176]–[177] and [179] above).

201 In particular, Mr Dawkins honestly believed that DataCore was a going concern, and that it was not insolvent. That was the premise upon which he and Aryan Search were undertaking recruitment for DataCore, and upon which he had offered to payroll Mr Szego (see [193] above).

The Further Representations

202 Mr Grendus’ case on the Further Representations is that after he had allegedly shared his strategic investment objectives, he was not informed that they may not be attained.

203 This is fatally flawed, because he *was* informed that his strategic investment objectives *may not be attained*. Mr Lynch had sent Mr Grendus in his 10 June 2016 Email (alongside the Pitch Document) DataCore’s Membership Unit Offering Materials (the “Materials”). The Materials contained a Summary of Terms (on the second page), which specified “Investment

Risks”¹⁹⁷ that are elaborated upon in the “Risk Factors” section.¹⁹⁸ That section described the securities offered (which Mr Grendus purchased when he invested in DataCore) as “speculative” and involving a “high degree of risk”.¹⁹⁹ It was highlighted that there could be “the complete loss of all investments in the company”.²⁰⁰ DataCore’s lack of an operating history was highlighted: “Due to the lack of an operating history, no assurance can be made that the Company will ever be profitable or generate any return on investment.”²⁰¹

204 The Materials also included a Subscription Agreement,²⁰² which Mr Grendus became a party to when he invested in DataCore. The Subscription Agreement contained “Representations and Covenants of the Investor”, including the following:²⁰³

B. The Investor has received and read a copy of the Operating Agreement outlining, among other things, the organization and investment objectives and policies of, and the risks and expenses of an investment in the Company. The Investor acknowledges that in making a decision to subscribe for the Units, the Investor has relied solely upon the terms of the Operating Agreement and independent investigations made by the Investor, and is not investing as a result of any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, or presented at any seminar or meeting, or any solicitation of a subscription by a person not previously known to the Investor in connection with investments in securities generally. The Investor’s investment in the Units is consistent with the investment purposes and objectives and cash flow requirements of the Investor and will

¹⁹⁷ AEIC Bundle Vol II p 84.

¹⁹⁸ AEIC Bundle Vol II at pp 105–112.

¹⁹⁹ AEIC Bundle Vol II at p 105.

²⁰⁰ AEIC Bundle Vol II at p 105.

²⁰¹ AEIC Bundle Vol II at p 105.

²⁰² AEIC Bundle Vol II at p 89.

²⁰³ AEIC Bundle Vol II at p 95.

not adversely affect the Investor's overall need for diversification and liquidity.

...

The Investor has carefully considered and to the extent it believes necessary, discussed with its professional tax, legal and financial advisors, the suitability of an investment in the Company and has determined that such investment is suitable for it.

C. The Investor has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of the Investor's investment in the Units and is able to bear such risks, and has obtained, in the Investor's judgment, sufficient information from the Company or its authorized representatives to evaluate the merits and risks of such investment. The Investor has evaluated the risks of investing in the Units and has determined that the Units is a suitable investment for the Investor. The Investor has not utilized any other person as a purchaser representative in connection with evaluating such merits and risks.

D. The Investor can afford a complete loss of its investment in the Units, can afford to hold its investment in the Units for an indefinite period of time, and acknowledges that distributions, including, without limitation, withdrawal proceeds, may be paid in cash or in kind.

...

G. The Investor agrees and is aware that:

- (1) the Company does not have a financial or operating history;

...

- (3) there are substantial risks of loss of investment incidental to the purchase of the Units, including those summarized in the Executive Summary.

[emphasis added]

205 Paragraph G(1) specifically warned that DataCore did not have a financial or operating history; para G(3) warned of substantial risks of loss of investment; and by para D investors like Mr Grendus agreed that they could afford a complete loss of their investment.

206 Furthermore, paras B and C would have indicated to Mr Grendus that, in investing in DataCore, he would be representing:

- (a) that his investment in DataCore was consistent with his investment purposes and objectives;
- (b) that he had carefully considered the suitability of the investment in DataCore and determined that such investment was suitable for him; and
- (c) that he had evaluated the risks of investing in DataCore and had determined that that was a suitable investment for him, and that he had not utilised any other person as a purchaser representative in connection with evaluating such merits and risks.

207 The Materials in the 10 June 2016 Email from Mr Lynch thus told Mr Grendus that his strategic investment objectives may not be attained – indeed, he was told that he might suffer a complete loss of his investment in DataCore. Concomitantly, if DataCore were to fail (as Mr Grendus had been warned it might), that would have a negative impact on its holding company CorePlus, which Mr Grendus was also investing in.

208 Furthermore, Mr Grendus’ case against Mr Dawkins on the Further Representations is again based on Mr Dawkins’ silence. That is not actionable unless Mr Dawkins had a duty to speak (see [115] above), and there was no such duty.

209 It would have been naïve of Mr Grendus to think that DataCore, the start-up that he was investing in, would surely proceed to a Series B financing, and would certainly be a good long-term investment. It would also have been

naïve of him to believe that if Mr Dawkins remained silent after he allegedly expressed his strategic investment objectives, Mr Dawkins was somehow promising that those objectives would be attained. Mr Grendus does not however seek to enforce any such promise *as a promise*; instead he claims for misrepresentation and conspiracy.

210 Silence of this sort is not an actionable misrepresentation. Failing to disabuse a person of a mistaken belief does not, without more, constitute misrepresentation (*EA Apartments* ([115] above) at [29]–[30]); passively acquiescing in another’s self-deception is not sufficient (*EA Apartments* at [30]; see also *Wang Xiaopu* ([115] above) at [59]–[60]).

211 In any event, Mr Lynch had, by the 10 June 2016 Email, expressly warned Mr Grendus about the risks of investing in DataCore, and Mr Grendus invested despite those warnings. He was given no assurance (expressly or by silence) that his strategic investment objectives would be attained.

Was Mr Grendus induced to make the Investments by what Mr Dawkins said (or failed to say) to him?

212 I find that Mr Grendus was not induced to make the Investments by what Mr Dawkins said to him, or any silence on Mr Dawkins’ part.

213 Rather, Mr Grendus relied on information and documents (*eg*, the Pitch Documents) from DataCore, and his own investigations, in making his decision to invest.

214 By para B in the section on “Representations and Covenants of the Investor” in the Subscription Agreement (see [204] above), Mr Grendus acknowledged that, in making a decision to invest in DataCore, he has “relied

solely upon the terms of the Operating Agreement and independent investigations made by [him]”. Further, he acknowledged that he was not investing as a result of (among others) “any solicitation of a subscription by a person not previously known to [himself] in connection with investments in securities generally”. Even if Mr Dawkins had solicited the Investments (rather than just having made an introduction), Mr Grendus represented to DataCore that he was not investing as a result of any solicitation by Mr Dawkins.

215 Besides there being differences in figures between the May *Pro Forma* and the Pitch Document, I would highlight differences in the nature of those documents:

(d) Each page with *pro forma* figures in the May *Pro Forma* had a prominent statement: “All figures provided in these materials are for discussion purposes only and do not represent any forecast of future financial performance of the Venture or its affiliates”. The corresponding pages in the Pitch Document did not.

(e) The May *Pro Forma* concluded with a “Disclaimer” page which made it plain that it “[did] not constitute an offer to sell or a solicitation of an offer to buy any investment ... in the businesses described herein” and “[did] not purport to be complete”, and was provided “solely to facilitate further discussion”. The corresponding “Disclaimer” page in the Pitch Document merely had one word: “Disclaimer” on an otherwise blank page.

216 Mr Dawkins, of course, would not know of those differences – he never received the Pitch Document (see [120] above).

217 Mr Grendus, on the other hand, evidently regarded the Pitch Document as information from DataCore on which he could base his decision to make the Investments. In his testimony, he agreed that his decision to invest was made “subsequent to receiving the financial statements [*ie*, the Pitch Document]”.²⁰⁴ He specifically identified pages three and five of the Pitch Document (with figures for investment capital (financing) and headcount,²⁰⁵ as having influenced him to invest.²⁰⁶ Mr Grendus said that he had reviewed the Pitch Document in detail, checked the listings on the US SEC to confirm that the indices DataCore were offering (its main business activity) were actually listed, and also verified the curriculum vitae and credentials of Mr Raphael Douady (“Mr Douady”), the ‘brainchild’ of DataCore’s indices products.²⁰⁷

218 Mr Grendus also says that Mr Dale was responsible for some of the representations that induced him to make the Investments.²⁰⁸ Mr Grendus pleads that the Representations were made by and/or are to be inferred from (among others), not only oral statements by Mr Lynch and Mr Dawkins, but also those made by Mr Dale.²⁰⁹ Mr Grendus also says that Mr Dale made the Further Representations by assuring him, after he had shared his strategic investment objectives with Mr Dale, that they may be achieved (or by being silent that his objectives may not be attained).²¹⁰

²⁰⁴ Transcript, 16 Mar, p 55 lines 12–13.

²⁰⁵ AEIC Bundle Vol II at pp 76 and 78.

²⁰⁶ Transcript, 16 Mar, p 57 lines 1–21.

²⁰⁷ Transcript, 16 Mar, p 23 lines 8–19, p 36 lines 22–27.

²⁰⁸ SOC at para 32.

²⁰⁹ SOC at para 13.

²¹⁰ SOC para 14.

219 Mr Dawkins bears no responsibility for what Mr Dale represented to Mr Grendus, what Mr Lynch represented to Mr Grendus, the contents or the Pitch Document or other documents from Mr Lynch and/or Mr Dale, or what Mr Grendus had uncovered from his own investigations before deciding to invest in DataCore. Mr Dawkins is not responsible for Mr Grendus' decision to make the Investments.

Conclusion on the fraud claim

220 For the above reasons, Mr Grendus' claim in fraud fails. I should mention that I had also considered his allegations of conspiracy, and the evidence of Mr Lee-Simion, in reaching that conclusion; I deal with those matters in the section on conspiracy (see [225] below).

Negligence

221 The only alleged representation Mr Dawkins had made, was an implied representation that DataCore was a going concern. That is what Mr Dawkins honestly believed, and he was not negligent in conveying the same to Mr Grendus. In this regard, I have already stated that Mr Dawkins and Aryan Search were not obliged to conduct financial due diligence on DataCore (see [64] above). Mr Lynch was someone that Mr Dawkins had known from earlier (when Mr Lynch was with Nomura),²¹¹ and in these circumstances, there was no reason for Mr Dawkins to disbelieve what Mr Lynch was saying about DataCore. Indeed, Mr Lynch says, in the 17 September 2018 Letter responding to Mr Grendus' Letter of Demand, that he too believed that DataCore was a going concern at the time (see [100] above).²¹²

²¹¹ Transcript, 17 Mar, p 20 line 32, p 21 lines 1–5.

²¹² AEIC Bundle Vol II at p 409.

222 In so far as Mr Grendus' case against Mr Dawkins is based on silence, that silence is not actionable as a misrepresentation – whether in fraud or negligence. There was no duty to speak on Mr Dawkins' part.

223 Mr Dawkins was a recruiter – he was not Mr Grendus' investment advisor (and Mr Grendus does not assert that Mr Dawkins acted in such a capacity). There was no advisory relationship between them, and the facts do not give rise to a duty of care such that Mr Dawkins ought to have advised Mr Grendus on whether he should invest in DataCore (see *Deutsche Bank AG v Chang Tse Wen and another appeal* [2013] 4 SLR 886 at [38] and [49]–[58]).

224 In the circumstances, Mr Grendus' negligence claim fails: Mr Dawkins owed Mr Grendus no relevant duty of care; he was not negligent in giving Mr Grendus the impression that DataCore was a going concern (which he honestly believed); in any event, Mr Grendus did not make the Investments because of anything Mr Dawkins said (or did not say) to him.

Conspiracy

225 I find that Mr Dawkins was not part of any conspiracy to defraud Mr Grendus. If there were any conspiracy between Mr Lynch and Mr Dale, Mr Dawkins was not part of it.

Mr Lee-Simion's evidence

226 In support of his allegation of conspiracy, Mr Grendus called Mr Lee-Simion as a witness: Mr Lee-Simion too was aggrieved for having lost money in relation to DataCore, some US\$50,000. Mr Lee-Simion did not however commence proceedings against anyone in respect of his loss.

The law on similar fact evidence

227 Mr Lee-Simion’s evidence was used as similar fact evidence, *ie*, if Mr Lee-Simion was defrauded, Mr Grendus must have been defrauded too.

228 Such evidence, if relevant, must in the first place be admissible, but even if it is, the court has a discretion to exclude it if its prejudicial effect outweighs its probative value (*Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [126]). That discretion has also been acknowledged in criminal cases, in relation to the admission of similar fact evidence (see *Tan Meng Jee v PP* [1996] 2 SLR(R) 178 (at [41]) and voluntary statements from accused persons (see *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 at [51]–[55]). In *Hin Hup Bus Service (a firm) v Tay Chwee Hiang and another* [2006] 4 SLR(R) 723 (“*Hin Hup*”), it was recognised that “[t]he principles relating to similar fact evidence in criminal cases are equally applicable to civil cases” (at [40]).

229 The relevant provisions on similar fact evidence in the Evidence Act (Cap 97, 1997 Rev Ed) (“the EA”) are ss 14 and 15. Both provisions allow for the admission of evidence of similar facts to prove a person’s state of mind (Jeffrey Pinsler, SC, *Evidence and the Litigation Process* (LexisNexis, 7th Ed, 2020) (“*Pinsler*”) at para 3.016). Section 14 of the EA provides as follows:

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

230 Illustration (o) to s 14 of the EA is instructive:

A is tried for the murder of B by intentionally shooting him dead.

The fact that *A* on other occasions shot at *B* is relevant as showing his intention to shoot *B*.

The fact that *A* was in the habit of shooting at people with intent to murder them is irrelevant.

231 As illustration (o) demonstrates, for similar fact evidence to be admissible under s 14 of the EA, it must have distinct and immediate reference to the particular matter in question and not simply be evidence of general disposition or a tendency to do the act in question (*Public Prosecutor v Mas Swan bin Adnan and another* [2011] SGHC 107 (“*Mas Swan*”) at [109]; see also *Pinsler* at para 3.016). Purported evidence that Mr Dawkins was in the habit of cheating others on other occasions, is irrelevant to whether Mr Dawkins cheated Mr Grendus in the present case.

232 Section 15 of the EA provides as follows:

15. When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

233 Illustration (a) to s 15 states:

A is accused of burning down his house in order to obtain money for which it is insured.

The facts that *A* lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires *A* received payment from a different insurance office, are relevant as tending to show that the fire was not accidental.

234 For similar fact evidence to be admissible under s 15 of the EA, it must constitute a “series” of similar occurrences that are unlikely to have been produced by accident or inadvertence (see *Mas Swan* at [110]; *Pinsler* at 3.017). A “series” of similar occurrences connotes a recurring pattern which would

ordinarily require proof of more than one other similar act (*Hin Hup* ([228] above) at [37]). A significant similarity as to *modus operandi* may amount to striking resemblances or unusual features such that the court should find there was a series of similar occurrences involving the person in question (*Hin Hup* at [36]). In *Hin Hup*, the driver had been involved in seven other similar road accidents within a period of ten months prior to the accident that was the subject of the suit; the driver would also ask about insurance coverage whenever he applied for a job. The court found that the eight similar road accidents constituted a systemic course of conduct (at [29]) and so evidence relating to the seven previous accidents were admissible as similar fact evidence (at [50]).

235 The present case is quite different. Mr Grendus only puts forward Mr Lee-Simion as someone else that Mr Dawkins allegedly cheated. Just the two of them would tend not to constitute a *series* of alleged victims.

236 Pursuant to s 15 of the EA, one might seek to prove a *pre-existing* plan or design, with the act in question being only one of a class or series designed to bring about a similar result or object (*Mas Swan* at [110]; *Pinsler* at 3.018). Mr Grendus' case, however, is that he was cheated first, then Mr Lee-Simion;²¹³ Mr Lee-Simion's evidence is only about matters *after* the 24 May 2016 Meeting. Mr Grendus' argument is that Mr Dawkins must have cheated Mr Grendus at the 24 May 2016 Meeting because he also cheated Mr Lee-Simion *later*. There is no evidence of any pre-existing plan or design at the time of the 24 May 2016 Meeting.

237 I would also regard reliance on *subsequent* conduct as generally being of lower probative value than *prior* conduct. I note that Explanation 2 to s 14 of

²¹³ Mr Grendus' AEIC at para 132.

the EA provides that where the *previous* commission by the accused of an offence is relevant within the meaning of that section, the accused's conviction for that shall also be a relevant fact. Nothing is said about offences committed *after* the one for which the accused is charged. In so far as Mr Grendus seeks to rely on Mr Lee-Simion's evidence to show that Mr Dawkins, by virtue of having made the alleged representations to Mr Lee-Simion on a subsequent occasion, must also have made similar representations to him at the 24 May 2016 Meeting, such evidence relates to what Mr Dawkins supposedly had done and not his intentions at the time of the 24 May 2016 Meeting. It is not admissible under ss 14 and 15 of the EA, which only allow for the admission of similar facts to prove a person's state of mind (see [229]–[232] above).

238 For completeness, I would also mention s 11(b) of the EA, which provides that:

Facts not otherwise relevant are relevant —

...

- (b) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

239 Section 11(b) of the EA is limited to facts which are specifically connected to the facts in issue; similar facts which are unconnected with the facts in issue and which are inadmissible under ss 14 and 15 cannot be admitted under this provision (*Pinsler* at 3.026). Therefore, if Mr Lee-Simion's evidence is inadmissible under ss 14 and 15 of the EA, it cannot then become admissible under s 11(b) for it relates to an incident other than that involving Mr Grendus, and so is not specifically connected to the facts in issue.

What happened between Mr Dawkins and Mr Lee-Simion?

240 As between Mr Dawkins and Mr Lee-Simion, I accept Mr Dawkins' account of their interaction. Mr Dawkins denied Mr Lee-Simion's version of events.²¹⁴ He said that Mr Lee-Simion already knew Mr Lynch from 2013.²¹⁵ In or around May 2016, Mr Dawkins had updated Mr Lee-Simion about what Mr Lynch was doing in DataCore. He provided Mr Lee-Simion with Mr Lynch's contact details, and Mr Lee-Simion then dealt directly with Mr Lynch.²¹⁶ In or around June 2016, at Mr Lynch's suggestion, the three of them met for beers.²¹⁷ Mr Dawkins did not pitch to Mr Lee-Simion an investment in DataCore.

241 In his AEIC, Mr Lee-Simion referred to an email of 19 June 2016 from Mr Lynch which he said Mr Lynch enclosed "the documents for DataCore/Dominant Factors and repeated his pitch about DataCore" (the "19 June 2016 Email").²¹⁸ Mr Lee-Simion exhibited the text of the 19 June 2016 Email in his AEIC.²¹⁹ He asserted that Mr Lynch had copied Mr Dawkins in that email,²²⁰ but that was not so – it was Mr Dale, not Mr Dawkins, that Mr Lynch had copied in.

242 When Mr Lee-Simion was shown the 19 June 2016 Email in cross-examination, he acknowledged that what had been said in his AEIC was

²¹⁴ Transcript, 17 Mar, p 39 line 8.

²¹⁵ Transcript, 17 Mar, p 43 lines 27–28.

²¹⁶ Transcript, 17 Mar, p 39 lines 9–17, p 100 lines 17–20.

²¹⁷ Transcript, 17 Mar, p 39 lines 18–20.

²¹⁸ Affidavit of Evidence-in-Chief of Paul Lee-Simion ("Mr Lee-Simion's AEIC") at para 22.

²¹⁹ AEIC Bundle Vol I at p 204.

²²⁰ Mr Lee-Simion's AEIC at para 22.

erroneous – Mr Dawkins was *not* copied in the 19 June 2016 Email.²²¹ Disappointingly, the Submissions continue to assert that Mr Dawkins was copied in the 19 June 2016 Email,²²² although it was plain from the email itself that this is not so; and Mr Lee-Simion had conceded the point.

243 This error was significant. In his AEIC, Mr Lee-Simion prefaced his reference to the 19 June 2016 Email, by stating at para 21: “Following this meeting [which Mr Lee-Simion claims took place between himself, Mr Lynch and Mr Dawkins on or around the beginning of June 2016 at a bar in Boat Quay (the “Boat Quay Bar Meeting”)], the 1st *and* 2nd Defendants continued to communicate with me about the DataCore investment via email.” [emphasis added]²²³ Mr Lee-Simion then referred to the following emails:

- (a) The 19 June 2016 Email, claiming that Mr Dawkins was copied in it;
- (b) Mr Dale’s email to Mr Lee-Simion dated 22 June 2016, which Mr Dale then forwarded to Mr Lynch and to a law firm that Mr Lee-Simion would pay his US\$50,000 to (the “Law Firm”);²²⁴
- (c) Mr Dale’s email of 29 June 2016 to Mr Lee-Simion with Mr Lynch copied in it.²²⁵

²²¹ Transcript, 18 Mar, p 34 lines 23–32; p 35 lines 1–5.

²²² PWS at para 91(d).

²²³ Mr Lee-Simion’s AEIC at para 21.

²²⁴ AEIC Bundle Vol I at p 205.

²²⁵ AEIC Bundle Vol I at p 206.

244 Mr Dawkins is conspicuously not a recipient of any of those emails, and there was no basis for Mr Lee-Simion to assert that Mr Lynch *and Mr Dawkins* continued to communicate with him about the DataCore investment *via* email.

245 In the 19 June 2016 Email, Mr Lynch had proposed a meeting between Mr Lee-Simion, Mr Dale, and him on Tuesday 21 June 2016. He did not say Mr Dawkins would also be there. Mr Lee-Simion claims that Mr Dawkins also attended that meeting,²²⁶ but Mr Dawkins denies this.²²⁷ I believe Mr Dawkins on this.

246 After Mr Lee-Simion decided to go ahead with his investment in DataCore, he emailed Mr Lynch (copying in Mr Dale) on 21 July 2016.²²⁸ This was another email in which Mr Dawkins was not copied (see [243] above). In the email, Mr Lee-Simion asked Mr Lynch to “check these few sheets with Bill [Mr Dale] and get back to me”,²²⁹ and also referred to what “you [Mr Lynch] and Bill have stated”.²³⁰ Mr Lee-Simion also said that he was ready to transfer his US\$50,000 for the DataCore investment (which was to be placed in escrow with the Law Firm). Nowhere in this email was any reference made to Mr Dawkins. Neither was Mr Dawkins involved in the subsequent process by which Mr Lee-Simion parted with US\$50,000 in relation to DataCore.²³¹ Therefore, in relation to Mr Lee-Simion, Mr Dawkins’ only involvement was the Boat Quay Bar Meeting.

²²⁶ Mr Lee-Simion’s AEIC at para 25.

²²⁷ Transcript, 17 Mar, p 42 lines 23–25.

²²⁸ Mr Lee-Simion’s AEIC at paras 33–34.

²²⁹ AEIC Bundle Vol I at p 204.

²³⁰ AEIC Bundle Vol I at p 204.

²³¹ Mr Lee-Simion’s AEIC at para 35; Transcript, 18 Mar, p 41 line 14.

There is no significant similarity as to modus operandi, concerning Mr Dawkins

247 The alleged evidence of Mr Dawkins’ cheating Mr Lee-Simion does not show any significant similarity as to *modus operandi* with what Mr Grendus alleges.

248 First, unlike Mr Grendus who invested in DataCore and CorePlus, Mr Lee-Simion says he had never heard of CorePlus, nor was he ever introduced to CorePlus.²³²

249 Second, unlike Mr Grendus who decided to invest, Mr Lee-Simion says he only agreed to put monies into an escrow account – he had eventually decided not to invest.²³³ One of the four representations Mr Lee-Simion says was made to him by Mr Lynch and Mr Dawkins is that any monies transferred would be placed in escrow with the Law Firm, and only released upon his instructions.²³⁴ Mr Dale’s email of 22 June 2016 to Mr Lee-Simion had also asked for payment into an escrow account with the Law Firm (see [243(b)] above). Mr Grendus does not say this was represented to him, and there was no similar arrangement.

250 Third, the centrepiece of Mr Grendus’ case against Mr Dawkins is that Mr Dawkins had allegedly represented that the Shanda Financing was “guaranteed”; Mr Lee-Simion had not heard of Shanda.²³⁵ If there were a similar *modus operandi*, one would have expected the Shanda Financing to be mentioned to Mr Lee-Simion, but it was not.

²³² Transcript, 18 Mar, p 57 lines 9–11.

²³³ Transcript, 18 Mar, p 28 lines 23–29.

²³⁴ Mr Lee-Simion’s AEIC at para 19(d).

²³⁵ Transcript, 18 Mar, p 55 lines 17–18.

251 Fourth, Mr Lee-Simion says it was represented to him that DataCore was a fully functional and operationally profitable company with paying clients.²³⁶ In Mr Dale’s email of 29 June 2016 to Mr Lee-Simion with Mr Lynch copied (see [243(c)] above), he said:

Just wanted to confirm the following that we discussed yesterday. [DataCore] is a profitable company with SEC filings. I will send you the management accounts which show significant income from our clients. These clients are already using our indices.

[emphasis added]

252 This representation was not made to Mr Lee-Simion by Mr Dawkins, and it was also not a representation that Mr Grendus says was made to him. Instead, Mr Grendus received from Mr Lynch the Materials containing a Subscription Agreement on which he invested in DataCore while expressly agreeing he was aware that “the Company does not have a financial or operating history” (see [204] above). Mr Lee-Simion too signed a Subscription Agreement with the same statement.²³⁷

253 Fifth, Mr Lee-Simion says it was represented to him that all the DataCore principals were independently wealthy and there was no need for an additional cash injection; the investment opportunity was a favour to him given his friendship with Mr Dawkins.²³⁸ Mr Grendus does not say any such representation was made to him.

254 Sixth, Mr Lee-Simion says it was represented to him that Mr Dale himself had invested US\$100,000. Mr Grendus says it was represented to him

²³⁶ Mr Lee-Simion’s AEIC at para 19(a).

²³⁷ AEIC Bundle Vol II at p 513.

²³⁸ Mr Lee-Simion’s AEIC at para 19(b).

that Mr Dale was a cash-contributing investor, but he does not say that any specific amount was told to him (see [125] above). Under cross-examination, Mr Lee-Simion agreed that Mr Dale had orally represented to him that he (Mr Dale) had made cash investments in DataCore.²³⁹ Mr Lee-Simion added, “And so what you would expect from someone starting a company?”; but he did not then say that this was also represented to him by Mr Dawkins. I find that Mr Dawkins did not make that representation to Mr Lee-Simion.

255 Sixth, Mr Lee-Simion says Mr Dawkins had said that he too would be personally investing US\$100,000 into DataCore.²⁴⁰ However, whether Mr Dawkins actually invested does not appear to have been significant in Mr Lee-Simion’s decision to transfer the US\$50,000 as he did. Similarly, Mr Grendus said it was not important for Mr Dawkins to have invested in DataCore before he took the plunge and invested; he was content to have simply been told that Mr Dawkins would be investing.²⁴¹ As I noted above, Mr Grendus does not say this indication of interest by Mr Dawkins was itself an actionable representation; although he does refer to it in the context of the Shanda Financing being at triple DataCore’s then-current valuation (see [199] above) – and Shanda was never mentioned to Mr Lee-Simion.

Mr Lee-Simion’s evidence ought properly to be excluded, and in any event is not accepted

256 The prejudicial effect of Mr Lee-Simion’s evidence outweighs its probative value, and so even if it were admissible, I would have excluded it.

²³⁹ Transcript, 18 Mar, p 54 lines 31–32.

²⁴⁰ Mr Lee-Simion’s AEIC at para 27.

²⁴¹ Transcript, 16 Mar, p 64 lines 12–17.

257 I find Mr Lee-Simion's evidence unreliable. Besides asserting that Mr Dawkins was copied in the 19 June 2016 Email (which Mr Dawkins was in fact not copied in), and saying that there were email communications from Mr Dawkins to him (when there were none), he seems to have attributed to Mr Dawkins the contents of emails that he had later received from Mr Lynch and Mr Dale (which Mr Dawkins was not copied in). He also seems to have drawn on emails between Mr Lynch and Mr Dale (discussed in the next section) to say that Mr Dawkins had told him certain things, which in fact Mr Dawkins had not said.

258 Ultimately, even if Mr Lee-Simion's evidence were admissible and not excluded, I believe Mr Dawkins' version of events over Mr Lee-Simion's.

The emails between Mr Lynch and Mr Dale do not implicate Mr Dawkins

259 Besides testifying to matters that might have been within their personal knowledge, Mr Grendus and Mr Lee-Simion also refer to emails between Mr Lynch and Mr Dale (but not Mr Dawkins), which they only later obtained copies of. Mr Grendus contends these emails show that Mr Lynch, Mr Dale *and* Mr Dawkins were in a conspiracy to defraud him and Mr Lee-Simion.

260 There is a series of emails exchanged between Mr Lynch and Mr Dale on 3 July 2016. At 6.45pm, Mr Lynch emailed Mr Dale to say:²⁴²

Paul [Mr Lee-Simion] is chasing the SEC filings, client references and management account that show Datacore's profitability ... I can persuade him to transfer the money into escrow by repeating that he'll get it back if he does not proceed. I'll also have a word with Brett [Mr Dawkins].

²⁴² AEIC Bundle Vol I at p 207.

261 In his reply at 9.22pm, Mr Dale replied Mr Lynch and copied in Mr Douady, and the Law Firm that would receive Mr Lee-Simion’s US\$50,000; but he did not copy in Mr Dawkins, and neither had Mr Lynch in his original email of 6.45pm. Mr Dale told Mr Lynch, “For now go with it. We may reconsider, Raphael [Mr Douady] and I personally need the money.”²⁴³

262 Mr Dale then sent a further email at 11.31pm to Mr Lynch and Mr Douady (but, this time, not the Law Firm).²⁴⁴ Again, Mr Dawkins was not a recipient. Mr Dale told Mr Lynch: “Get Brett [Mr Dawkins] to tell Paul [Mr Lee-Simion] that all the principals are independently wealthy and we will use his investment as leverage for further capital to onboard more clients. Paul’s money will therefore remain in escrow.”

263 I accept Mr Dawkins’ evidence that although there were references to him in the 3 July 2016 emails between Mr Lynch and Mr Dale, Mr Lynch never followed up to ask him to tell Mr Lee-Simion anything;²⁴⁵ and Mr Dawkins did not tell Mr Lee-Simion anything of the sort suggested in the emails:²⁴⁶ Mr Dawkins did not tell Mr Lee-Simion that his money would be held in escrow, or that DataCore’s principals were independently wealthy, or what his money would be used for.

264 Indeed, Mr Lee-Simion’s evidence (which I reject) is that Mr Dawkins had already represented to him at the Boat Quay Bar Meeting with Mr Lynch that DataCore’s principals were independently wealthy, and that his money

²⁴³ AEIC Bundle Vol I at p 207.

²⁴⁴ AEIC Bundle Vol I at p 208.

²⁴⁵ Transcript, 17 Mar, p 99 lines 14–16.

²⁴⁶ Transcript, 17 Mar, p 99 lines 28–31, p 100 lines 5–25.

would be held in escrow (see [253] above). Had this been said pursuant to some conspiracy, one would expect Mr Dale to know, in which case he would not be asking Mr Lynch on 3 July 2016 to get Mr Dawkins to say these things. If Mr Dale did not know that had already been represented, one would expect a reply from Mr Lynch to Mr Dale's final email on 3 July 2016 to apprise him of this – but there is no evidence of that.

265 The fact that Mr Dawkins was not a recipient of any of these emails between Mr Lynch and Mr Dale points to Mr Dawkins not being a conspirator. There would have been no need for Mr Lynch to say he would have a word with Mr Dawkins, no need for Mr Dale to tell Mr Lynch to get Mr Dawkins to say certain things – either Mr Lynch or Mr Dale could simply have copied Mr Dawkins in those emails. After all, they both had Mr Dawkins' email address – they had sent him emails previously (see, *eg* [29] and [43] above). Mr Dawkins was not put in the loop, because he was not part of what was discussed and agreed between Mr Lynch and Mr Dale. Instead, the only recipients Mr Dale added were Mr Douady, and for one of Mr Dale's two emails, the Law Firm as well.

266 Mr Dale's 3 July 2016 email at 9.22pm about him and Mr Douady personally needing the money, says nothing about DataCore's financial situation. Moreover, this was on 3 July 2016, after Mr Grendus had already invested on 24 June 2016.

267 Mr Grendus' real grievance is not so much that DataCore was already in a poor financial state (if that were even the case), but rather that Mr Dale improperly took away investment monies received by DataCore. Thus, Mr Grendus says Mr Dale withdrew the funds injected by investors like him shortly after receipt without proper account; and that he believes that Mr Dale

effectively ran DataCore and CorePlus as his personal bank account and misappropriated investor monies by deception for his personal pecuniary gain.²⁴⁷

268 Although Mr Dale is the one that Mr Grendus in his AEIC accuses of having withdrawn investor funds, Mr Grendus pleaded in his SOC that “once the funds are paid by the potential investor, they would be withdrawn by [Mr Dale] and/or [Mr Dawkins] shortly thereafter”.²⁴⁸ Curiously, Mr Grendus does not plead that Mr Lynch withdrew investor funds, although Mr Lynch was a representative of DataCore and Mr Dawkins was not.

269 There was no basis for Mr Grendus to make that accusation against Mr Dawkins. When asked in cross-examination how Mr Dawkins could possibly have withdrawn investor funds from DataCore, Mr Grendus sought to explain his accusation against Mr Dawkins as “verbiage”, in this convoluted answer:²⁴⁹

The verbiage is they would be withdrawn as it was indicated that they would either be paid out to [Mr Dawkins] and the term ‘and/or’ was used here. So in this particular case, the withdrawing of funds happened via [Mr Dale] who then paid [Mr Lynch] and potentially could have paid [Mr Dawkins] and did not.

270 That answer is somewhat incomprehensible. If Mr Dale withdrew money and could have paid Mr Dawkins but did not, that is no basis to say there was a conspiracy that Mr Dale and/or Mr Dawkins would withdraw investor funds. Mr Dawkins was just a recruiter for DataCore – he had no means to withdraw any funds from DataCore.

²⁴⁷ Mr Grendus’ AEIC at para 112.

²⁴⁸ SOC at para 29.

²⁴⁹ Transcript, 16 Mar, p 28 lines 21–25.

271 Mr Dawkins was not part of any conspiracy to defraud. As Mr Dawkins' email to Mr Lynch from the April 2016 Email Exchange shows, Mr Dawkins himself was interested to invest in DataCore (see [37] above). He did not know that DataCore and CorePlus were just a scheme to defraud investors (if that were the case). If Mr Grendus is right about that scheme, had Mr Dawkins invested, he would have found himself in the same boat as Mr Grendus. The fact that Mr Dawkins proceeded to lend S\$10,000 to Mr Lynch in June 2017 (see [191] above) (which was never repaid, with Mr Lynch then going bankrupt) is a further indication that, even until then (more than a year after the 24 May 2016 Meeting), Mr Dawkins did not think that Mr Lynch was a fraudster cheating people of their money.

272 Mr Grendus' claim in conspiracy fails, and with it, all of Mr Grendus' claims against Mr Dawkins.

Vicarious liability

273 As I find Mr Dawkins not liable to Mr Grendus in any way, it follows that there is no vicarious liability on the part of Aryan Search.

274 In any event, I accept Aryan Search's contention that even if Mr Dawkins were liable in some way, Aryan Search should not be held vicariously liable.

275 In *Ng Huat Seng and another v Munib Mohammad Madni and another* [2017] 2 SLR 1074, the Court of Appeal indicated that even if there were an employment or equivalent relationship, a second stage consideration is whether there is a sufficient connection between the relationship on the one hand, and the commission of the tort on the other – that relationship must have created or

significantly enhanced, the very risk of the tort being committed (see [44] and [67]).

276 In the present case, there was an employment relationship between Aryan Search and Mr Dawkins. But Mr Dawkins was employed as a recruiter, he was not employed to solicit investments. Mr Dawkins says that as part of his job, or incidental to it, he would make introductions that could lead to investments – as he did with Shanda, Mr Grendus, and Mr Lee-Simion; he saw that as part of networking, providing value to clients and potential clients. In that regard, he told Mr Grendus that DataCore was looking for investors, and he also mentioned that he had introduced Shanda for DataCore’s Financing.

277 But those introductions are not what Mr Grendus is suing about. Mr Grendus’ case is centred on a discussion with Mr Dawkins at a cigar bar, when they were no longer talking about job opportunities, but only investment. He does not say he was continuing to interact with Mr Dawkins *because he was a recruiter*. Indeed, Mr Grendus’ evidence is that he only agreed to meet Mr Dawkins because he heard that DataCore was looking for investors.²⁵⁰

278 Aryan Search’s employment of Mr Dawkins as a recruiter did not create or significantly enhance the risk of Mr Dawkins committing the torts that Mr Grendus accuses him of. It would not be fair, just, and reasonable to impose liability on Aryan Search for the conduct complained of.

Relief claimed

279 In his SOC, Mr Grendus claimed a declaration that the DataCore Subscription and the CorePlus Debenture have been validly rescinded;

²⁵⁰ Mr Grendus’ AEIC at para 15.

alternatively, rescission of the DataCore Subscription and the CorePlus Debenture. These are properly matters as between Mr Grendus, on the one hand, and DataCore and CorePlus on the other hand. Neither DataCore nor CorePlus were parties to these proceedings, and in the circumstances, I make no orders on those prayers for relief.

280 Mr Grendus then claimed, jointly and severally against each of the four defendants:

- (a) the sum of US\$200,000;
- (b) damages;
- (c) interest at the rate of 12% per annum or such other rate as ordered by the Court;
- (d) costs; and
- (e) further or other relief.

281 I dismiss all of Mr Grendus' claims against Mr Dawkins and Aryan Search.

282 I would add that Mr Grendus' claim for interest at the rate of 12% per annum was based on the return he was to receive from the CorePlus Debenture. He did not, however, prove that he would have obtained a return of 12% per annum had he instead put his US\$200,000 to some other use. If I had found him entitled to any sum, I would not have awarded him interest at 12% per annum, but only at the usual rate of 5.33% per annum. But I have found that he is not entitled to recover anything from Mr Dawkins or Aryan Search.

283 In any event, the effective interest rate under the CorePlus Debenture was not 12% per annum – there was an interest-free period from 24 June 2016 (when Mr Grendus made the Investments) until but not including 8 September 2016, and interest only ran from 8 September 2016 till maturity on 8 June 2017.²⁵¹ The effective interest rate under the CorePlus Debenture was thus some 9.39% per annum, not 12% per annum.

Conclusion

284 For the above reasons, I dismiss Mr Grendus’ claim against Mr Dawkins and Aryan Search. I will hear the parties on costs.

Andre Maniam
Judicial Commissioner

Ramachandran Doraisamy Raghunath, Gerard Quek, Mato Kotwani
(PD Legal LLC) for the plaintiff;
Roche Eng Keng Loon (R E Law LLC) for the second defendant;
Noor Mohamed Marican, Mohd Munir Marican
(Marican & Associates) for the fourth defendant.

²⁵¹ Clauses 3.1 and 3.2 of the CorePlus Debenture in AEIC Bundle Vol II at pp 422–424.