



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1390/2017

CLIME CAPITAL LIMITED (ACN 106 282 777)

Applicant

UGL PTY LIMITED (ACN 009 180 287)

Respondent

ORDER

JUDGE: JUSTICE MURPHY

DATE OF ORDER: 23 October 2018

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

Amendment to Statement of Claim

1. Leave under Rule 8.21 of the *Federal Court Rules 2011* (Cth) (**Rules**) for the Applicant to file and serve an amended originating application in the form set out at **Schedule A** to the Applicant's interlocutory application dated 12 September 2018.
2. Leave under Rule 16.53 of the Rules for the Applicant to file and serve an amended statement of claim in the form set out at **Schedule B** to the Applicant's interlocutory application dated 12 September 2018.
3. The Applicant pay the Respondent's costs thrown away by reason of the amendments to the statement of claim.

Further Amended Defence and Particulars

4. By 19 October 2018, the Respondent file and serve:
 - (a) a Further Amended Defence; and
 - (b) particulars of paragraph 45 of the Amended Defence (or the equivalent paragraph in any Further Amended Defence).

Discovery



5. The former employee of the Respondent, Mr Peter Jones, be included as an Annexure 2, Category 3 Identified Custodian for the purposes of documents identified in paragraph 2 of the orders made 17 July 2018.

Interrogatories

6. By 23 November 2018, the Applicant to serve confirmation of which of the interrogatories set out at Annexure A it presses.
7. By 28 November 2018, the Respondent notify the Applicant as to which of the interrogatories served in accordance with Order 6 if any, the Respondent objects to answering, and the basis for any such objection.
8. By 3 December 2018, the Applicant file and serve its response to any objection received from the Respondent pursuant to Order 7 with respect to which it seeks a ruling from the Court with respect to a grant of leave.
9. By 14 December 2018, the Applicant administer those interrogatories served in accordance with Order 7 to which;
 - (a) no objection has been taken by the Respondent in accordance with Order 7, in which case the Applicant has leave under Rule 21.01; and
 - (b) the Court has determined to grant leave under Rule 21.01 to administer after considering any materials filed in accordance with Order 8.
10. By 20 December 2018, the Respondent provide verified answers to the interrogatories issued in accordance with Order 9.

Mediation

11. Pursuant to Rule 28.03 of the Rules, the proceeding be referred to mediation (by a mediator to be agreed between the parties) to be conducted by no later than 10 April 2019 (the **Court Ordered Mediation**).
12. On or before 5 February 2019, the Applicant is to file and serve any evidence on quantum and materiality upon which it intends to rely at trial.
13. On or before 15 March 2019, the Respondent is to file and serve any evidence on quantum and materiality upon which it intends to rely at trial.



14. Nothing in orders 12 or 13 prevents either party from filing and serving further evidence on quantum and materiality after the Court Ordered Mediation and by a date to be ordered.

Opt Out

15. Pursuant to section 33J of the *Federal Court of Australia Act 1976 (Cth) (Act)*, 4:00pm (AEDT) on 30 November 2018 be fixed as the date before which a Group Member may opt out of the proceeding (**Class Deadline**).
16. Pursuant to section 33ZF of the Act, any Group Member who wishes to opt out of this proceeding must, before the Class Deadline, deliver an opt out form to the Victorian District Registry of the Federal Court of Australia.
17. If, on or before the Class Deadline, the solicitors for any party receive a notice purporting to be an opt out form referable to this proceeding, the solicitors must file the notice in the Victorian District Registry of the Federal Court of Australia within two (2) days after receipt, and the notice shall be treated as an opt out notice received by the Court at the time it was received by the solicitors.

Claim Registration

18. Pursuant to section 33ZF of the Act, any Group Member who wishes to seek any benefit pursuant to any in-principle settlement (subject to Court approval) of this proceeding reached at the Court Ordered Mediation or within 3 months after the first day of the Court Ordered Mediation, must before the Class Deadline, register their claim, either by:
 - (a) executing, and providing to IMF Bentham Ltd (**IMF**), a funding agreement with IMF; or
 - (b) completing a Group Member Registration Form in the form set out at Schedule 1 to Annexure B to this order and returning it to IMF via email or post in accordance with the instruction as provided for in the Group Member Registration Form, or completing a Group Member Registration Form through a domain hosted by IMF at <http://www.imf.com.au/ugl>.

(Registered Group Members)



19. In completing the Group Member Registration Form, and in order to register for the purpose of Order 18(b), each Group Member will be required to submit:
- (a) the Group Member's name and address and/or email address;
 - (b) any relevant and available Holder Identification Number (HIN) or Security Reference Number (SRN);
 - (c) the number of UGL securities held by each Group Member as at close of trade on 15 April 2014;
 - (d) for each acquisition, all transactional information (date of acquisition, quantity of securities acquired, total amount paid (including brokerage where provided)) regarding UGL securities acquired from 16 April 2014 to 5 November 2014 (inclusive); and
 - (e) for each sale, all transactional information (date of sale, quantity of securities sold, and total amount received (excluding brokerage)) regarding UGL securities sold from 16 April 2014 to 5 November 2014.
20. Pursuant to section 33ZF of the Act, and subject to any further order of the Court, any Group Member who by the Class Deadline does not register or opt out of the proceedings in accordance with the manner provided for in these orders **(Unregistered Group Member)**:
- (a) will remain a group member for all purposes of this proceeding; and
 - (b) shall not, without leave of the Court, be permitted to seek any benefit pursuant to any in-principle settlement (subject to the approval of the Court) of this proceeding reached at the Court Ordered Mediation or within 3 months after the first day of that mediation
- (Mediation Class Closure Order)**
21. If no in principle settlement of this proceeding is reached at the Court Ordered Mediation or within 3 months after the first day of that mediation, and if the parties intend to conduct a further mediation and seek to extend the operation of the Mediation Class Closure Order either party may approach chambers seeking such orders. At that point either party may propose such regime for notification of group



members that the party considers reasonable and appropriate in the interests of group members, including by proposing that group members not be provided with further notification.

22. Any Group Member wishing to seek a variation of Orders 18 to 20 must deliver to the Applicant's solicitors, by no later than two weeks before the Class Deadline, written notice of the variation sought and a statement of the reasons for seeking the variation, and the solicitors shall forthwith notify the Respondent and the Court of the notice and the reasons.
23. By 4:00pm AEDT on 14 December 2018, the Applicant must:
 - (a) deliver to the solicitors for the Respondent, on a de-identified basis, a list of the persons who registered pursuant to Order 18 (**Registered Group Members**), which list shall contain:
 - (i) a unique identification number for each Registered Group Member;
 - (ii) the information referred to in Order 19(c) – (e) for each Registered Group Member; and
 - (iii) any amendments to the information as notified to Phi Finney McDonald by that date.
 - (b) file, in a sealed envelope marked "*Confidential List of Group Members – Not to be Opened without leave of the Court or a Judge*", a list of Registered Group Members which list shall contain:
 - (i) a unique identification number for each Registered Group Member; and
 - (ii) the information referred to in Order 19(a) – (e) for each Registered Group Member; and
 - (iii) any amendments to the information as notified to Phi Finney McDonald by that date.
24. The list of Registered Group Members provided in accordance with Order 23(a), and any information contained therein, is to be kept confidential to:
 - (a) the Respondent's legal advisors;



- (b) those officers and employees of the Respondent who have the conduct of this proceeding on behalf of the Respondent; and
- (c) experts retained by the Respondent in the proceedings.

Notice of Opt Out, Registration and Common Fund

25. Pursuant to section 33X of the Act, notice be given to Group Members of:

- (a) their right to opt out of the proceeding;
- (b) the requirement that they register their claim in order to participate in any distribution of any amount agreed in the Court Ordered Mediation (scheduled to commence on a date to be fixed by the Court), or within 3 months after the first day of that mediation; and
- (c) the fact that if no in-principle settlement of this proceeding is reached at the Court Ordered Mediation or within 3 months after the first day of that mediation, either party may apply to the Court to extend the operation of the Mediation Class Closure Order; and
- (d) the order of the Court made 4 October 2018 in respect of the common fund (**Common Fund Order**).

(Notice)

26. The form and content of the Notice (being **Annexure B** to this order), be approved for the purposes of section 33Y(2) of the Act.

27. The Notice be given to the Group Members on or before [the date that is 5 business days from the date these orders are made] October 2018 according to the following procedure:

- (a) by 5 October 2018, the Respondent shall instruct its share registry to prepare a list of contact details (including the last known postal address and/or email address) for all security holdings for which securities in UGL were recorded on the UGL Ltd share register as acquired between 16 April 2014 and 5 November 2014 inclusive;
- (b) by [the date that is 5 business days from the date these orders are made] October 2018, the Respondent shall cause the Notice to be sent by email to any



of the security holders that have email addresses recorded on the share register;

- (c) to the extent that any security holder does not have an email address recorded on the share register, the Respondent shall, by [the date that is 5 business days from the date these orders are made] October 2018, cause the Notice to be sent by prepaid ordinary post to that security holder at the address recorded for that person on the share register;
- (d) to the extent that any email sent to a security holder referred to in Order 27(b) above experiences a delivery failure, the Respondent shall cause the Notice to be sent by prepaid ordinary post to that security holder at the address recorded for that person on the share register, within two (2) business days of receiving that delivery failure notice;
- (e) the Applicant shall cause a copy of the Notice to be sent by email to each Group Member who has, at the date of this order, entered into a Funding Agreement with IMF or identified herself, himself or itself to the Applicant's solicitors as a potential Group Member (even if they have not entered into a Funding Agreement with IMF), and for whom the Applicant's solicitors hold a current email address; and
- (f) the Applicant shall cause a copy of the Notice, together with copies of the Amended Originating Application and Amended Statement of Claim (shortly after it is filed and served), and Amended Defence filed 13 April 2018 and Further Amended Defence (shortly after it is filed and served), the Common Fund Orders and these orders to be displayed on the website of the Applicant's solicitors, <http://phifinney-mcdonald.com/projects/>, and to remain continuously so displayed up to and including the Class Deadline.

28. The costs of distributing the Notice in accordance with Order 27 above shall be paid in the first instance by the Applicant, but ultimately be costs in the cause.

Trial Listing

29. The matter is listed for trial at 10.15 am on a date to be fixed, on an estimate of 5 - 6 weeks.



Case Management

30. The matter be listed for a case management hearing at 9.30 am on 21 December 2018.

Other

31. Save as to order 3 above, costs reserved.

32. Liberty to apply.

Date that entry is stamped: 24 October 2018

Warrick Soden
Registrar



ANNEXURE A

No. VID1390 of 2017

INTERROGATORIES FOR THE EXAMINATION OF THE RESPONDENT

Federal Court of Australia

District Registry: Victoria

Division: General

CLIME CAPITAL LIMITED (ACN 106 282 777)

Applicant

UGL PTY LIMITED (ACN 009 180 287)

Respondent

In these interrogatories for the Respondent to answer:

- A. Terms defined in the Amended Statement of Claim have the same meaning here.
- B. A reference to 'UGL' means both UGL Pty Limited and UGL Infrastructure Pty Ltd, its wholly owned subsidiary.
- C. A reference to 'senior management', for the purposes of these interrogatories, means any of the following persons:

- | | | | |
|--------|-------------------|---------|----------------------|
| (i) | Richard Leupen | (xii) | Paul Brittain |
| (ii) | Trevor Rowe | (xiii) | Murry McArdle |
| (iii) | Kathryn Spargo | (xiv) | Patricia Manton Hall |
| (iv) | Ross Taylor | (xv) | Renai Venables |
| (v) | Guy Cowan | (xvi) | Will Sare |
| (vi) | Richard Humphry | (xvii) | Raymond Church |
| (vii) | Douglas McTaggart | (xviii) | Lyn Nikopoloulos |
| (viii) | Raymond Ch'ien | (xix) | Dennis Mentzines |
| (ix) | Robert Denham | (xx) | Pryce Dale |
| (x) | Robert Bonaccorso | (xxi) | Rebecca Hill |
| (xi) | Michael Wandmaker | (xxii) | Carrie Barrack |
| | | (xxiii) | Stephen Barret-White |

May 2014 SEC Form 10-Q

1. On what date did UGL, or any of its senior management (specifying who), first learn of the existence of the May 2014 SEC Form 10-Q?



2. How did UGL or any of its senior management first learn of the existence of the May 2014 SEC Form 10-Q?

August 2014 SEC Filing

3. Was Carrie Barrack, Investor Relations Manager at UGL, the first in senior management of UGL to discover the existence of the August 2014 SEC Form 10-Q on 6 November 2014?
4. If the answer to question 3 above is yes: how did Carrie Barrack, Investor Relations Manager at UGL, discover the existence of the August 2014 SEC Form 10-Q?
5. If the answer to question 3 above is no:
 - (a) On what date did UGL, or any of its senior management (specifying who), first learn of the existence of the August 2014 SEC Form 10-Q?
 - (b) How did UGL or any of its senior management first learn of the existence of the August 2014 SEC Form 10-Q?
6. Who among the senior management of UGL did Ms Barrack tell about her discovery referred to in the particulars to paragraph 41 of the Amended Defence? When?
7. In an email dated 6 November 2014 from Steven Barrett-White, Chief Legal Officer, UGL Limited to D K 'Kirby' Wright Jr, Deputy General Counsel and Chief Litigation Officer, CH2M Hill,¹ Mr Barrett-White wrote: "*Hi Kirby, as discussed, could you send me any announcement or filing made by CH2 on or about 8 August 2014 (if any, and any other announcements or filings which may have been made regarding the project). Cheers, Stephen*". In light of the contents of this email:
 - (a) When was the discussion between Mr Barrett-White and Mr Wright referred to therein?
 - (b) What did Mr Barrett-White say in that discussion?
 - (c) What did Mr Wright say in that discussion?

¹ Marked with document reference UGL.010.004.3047.



Receipt of Joint Venture materials

8. When did UGL receive the monthly reports prepared by the Finance Manager required by clause 20.3 of the Joint Venture Agreement to be delivered to the Joint Venture parties for each of the following months:

- (a) January 2014;
- (b) February 2014;
- (c) March 2014;
- (d) April 2014;
- (e) May 2014;
- (f) June 2014?

9. When did each of:

- (a) UGL; and
- (b) the Joint Venture Management Committee

receive the Project Status reports prepared by the Project Manager required by Schedule F of the Joint Venture Agreement to be delivered to the Joint Venture Management Committee for each of the following months:

- (c) January 2014;
- (d) February 2014;
- (e) March 2014;
- (f) April 2014;
- (g) May 2014;
- (h) June 2014?



Project Ichthys

10. Who at UGL received the notification of the Provision Information (as defined in paragraph 35(a) of the Amended Defence) on 14 October 2014?
11. Who at CH2M first notified UGL of the Provision Information (as defined in paragraph 35(a) of the Amended Defence) on 14 October 2014?
12. What did the person identified in the answer to question 11 above say when making the notification?

The Respondent, by its proper officer, is required to answer the interrogatories to the best of its knowledge, information and belief after having first made all due and proper enquiries of its employees and agents.

DATED: 27 September 2018

Phi Finney McDonald
Lawyers for the Applicant



ANNEXURE B

Notice to Group Members

OPT OUT, REGISTRATION AND COMMON FUND NOTICE FEDERAL COURT OF AUSTRALIA

Clime Capital Limited v UGL Pty Limited (VID 1390/2017)

SECTION 1

Why is this notice important?

1. A class action has been commenced in the Federal Court of Australia by Clime Capital Limited (ACN 106 282 777) on behalf of all persons who acquired shares in UGL Pty Limited (which previously traded on the ASX as UGL Limited) (ACN 009 180 287) (**UGL**) during the period 16 April 2014 until the close of trading on 5 November 2014 inclusive (the **UGL Class Action**).
2. The Federal Court has ordered that this Notice be published for the information of persons who might be members of the class on whose behalf the action is brought and who may be affected by the action. You have been identified as a potential class member based on information contained in UGL's share registry. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.
3. The Federal Court of Australia intends to refer the UGL Class Action for mediation which is to be conducted by 10 April 2019 (**Court Ordered Mediation**).
4. This Notice provides important information about:
 - (a) what you need to do to participate in the Court Ordered Mediation and share in any monetary compensation that might be obtained;
 - (b) the proposed orders sought in respect of how group members will contribute to the costs of the litigation if the UGL Class Action is successfully resolved;
 - (c) what you need to do to remove yourself from participating in the UGL Class Action (**opt out**); and
 - (d) how your rights are affected if you neither register to participate in the Mediation, nor opt out.

What is a class action?

5. A class action is an action that is brought by one person (**Applicant**) on his or her own behalf and on behalf of a class of people (**group members**) against another person (**Respondent**) where the Applicant and the group members have similar claims against the Respondent.
6. The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found below in Section 2, Option C.



7. Group members are “bound” by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways being either a judgment following a trial, or a settlement at any time. If there is a judgment or a settlement of a class action group members will not be able pursue the same claims and may not be able to pursue similar or related claims against the respondent in other legal proceedings. Group members should note that:
 - (a) in a *judgment* following trial, the Court will decide various factual and legal issues in respect of the claims made by the applicant and group members. Unless those decisions are successfully appealed they bind the applicant, group members and the respondent. Importantly, if there are other proceedings between a group member and the respondent, it is likely that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
 - (b) in a *settlement* of a class action, where the settlement provides for compensation to group members it is likely to extinguish *all* rights to compensation which a group member might have against the respondent which arise in any way out of the events or transactions which are the subject-matter of the class action.
8. If you consider that you have claims against a respondent which are based on your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out (see below).

What is the UGL Class Action?

9. The UGL Class Action was commenced on 18 December 2017 and the Amended Statement of Claim alleges that:
 - (a) UGL engaged in misleading and/or deceptive conduct, and breached its obligations of continuous disclosure, in contravention of sections 1041H(1) and 674(2) of the *Corporations Act 2001* (Cth) (**Act**) and the ASX Listing Rules, between the period 16 April 2014 and 5 November 2014 inclusive (**claim period**); and consequently
 - (b) persons who purchased UGL shares within the claim period have suffered compensable loss.
10. The Respondent to the class action is UGL Pty Limited.
11. The detailed allegations are set out in the Applicant’s Amended Statement of Claim. A copy of the Statement of Claim is available to be viewed on the website referred to in paragraph 34 below.
12. On 20 December 2017, CIMIC Group Limited, which is the parent company of the Respondent, issued an ASX announcement in which it:
 - (a) denied the claim made in the Statement of Claim; and
 - (b) advised it would defend the allegations the subject of the Statement of Claim.
13. The Respondent has filed and served an Amended Defence in these proceedings, which respond to the Statement of Claim. A copy of the Amended Defence is available to be viewed on the website referred to in paragraph 34 below. The Respondent has until 19 October 2018 to file and serve a Further Amended Defence, which will respond to the Amended Statement of Claim.

Are you a group member in the UGL class action?

14. The UGL Class Action is ‘open’ in that includes all persons who acquired an interest in UGL shares during the period 16 April 2014 to 5 November 2014 (inclusive).



15. You have been sent this Notice because you have been identified as someone who is likely to be a group member in the UGL Class Action.
16. You are a group member if you meet the following criteria:
 - (a) You acquired shares in UGL during the claim period from 16 April 2014 to 5 November 2014 inclusive;
 - (b) you are not a director or officer, a close associate, a related party, a related body corporate, or an associated entity of UGL (as defined by the *Corporations Act*) or a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia; and
 - (c) you have suffered loss and damage by reason of the conduct alleged against UGL in the Statement of Claim.
17. If you fit the above description, you should read this Notice carefully as it will affect your rights.
18. If you are unsure whether or not you are a group member, you should contact Phi Finney McDonald on (03) 9134 7100 or email classactions@phifinney-mcdonald.com or seek your own legal advice without delay.

What do group members need to do?

19. Group members have three options at this stage:
 - (a) register;
 - (b) do nothing; or
 - (c) opt out.
20. There are different consequences depending on which option you choose:
 - (a) Group members who **register (Registered Group Members)** will be bound by, and share in the benefit of, any settlement monies gained from any settlement reached at the Court Ordered Mediation or within 3 months of the first day of that mediation. If you have not already signed and returned a Funding Agreement with IMF Bentham Limited (**IMF**) but wish to register, you need to follow the steps outlined in Section 2, Option A.
 - (b) Group members who do not register (**Unregistered Group Members**) will be bound by any settlement at the Court Ordered Mediation or within 3 months of the first day of that mediation but will not be entitled to any share of the monetary compensation which is recovered in accordance with that settlement. You will be an Unregistered Group Member if you **do nothing** in response to this Notice. Further information about this option is outlined in Section 2, Option B.
 - (c) Group members who **opt out** of the proceeding will not be bound by the outcome of the UGL Class Action and will be excluded from receiving any monetary compensation that results from the class action (including, but not limited to, at the Court Ordered Mediation). If you wish to opt out, you need to follow the steps outlined in Section 2, Option C.
21. Further information about each option is outlined in Section 2 below, together with information about what to do if you wish to oppose the process outlined in this notice.

Will group members be liable for legal costs?

22. In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party (an **adverse costs order**).



23. In a class action, it is only the Applicant that faces the risk of an adverse costs order if the action fails. As a group member, an adverse costs order will not be made against you.
24. The Applicant and some group members entered into a Funding Agreement with IMF which provides that IMF will pay the Applicant's legal costs of the action, indemnify the Applicant in respect of any adverse costs orders which may be made against it in the proceeding, and to provide any security for costs that the Court may order. On 4 October 2018 the Court made orders (**Common Fund Orders**) pursuant to which IMF undertook to indemnify the Applicant in respect of the Applicant's legal costs, any adverse costs orders which may be made against the Applicant and to provide any security for costs. The Common Fund Orders largely supersede any Funding Agreements entered into.
25. The Applicant and some group members have retained Phi Finney McDonald to act as their lawyers pursuant to a Conditional Legal Costs Agreement (the **CLCA**). It is not necessary for you or other group members to enter into a CLCA or a Funding Agreement in order to participate in the UGL Class Action, although you may wish to do so.
26. Pursuant to the Common Fund Orders, the Applicant's liability for legal costs and out of pocket expenses (**disbursements**) will be funded by IMF and only recovered by IMF in the event of a successful outcome in the proceeding. In the event of such an outcome, the Applicant will seek an order that those legal costs and disbursements be paid out of the total amount recovered for all group members (a **costs reimbursement order**).
27. The Federal Court will assess the legal costs and disbursements incurred in the proceeding and only make a reimbursement order for an amount the Court determines is reasonable.
28. Importantly, Common Fund Orders provide that in return for funding the proceeding, IMF is entitled to be paid a percentage commission (from any amount for which the claims are settled or judgment is given) which shall not exceed 30% of the settlement or judgment, being such percentage the Court considers reasonable at the time the claims are settled or judgment is given.
29. Under the Common Fund Orders, no group member will be liable to pay any amount of money to IMF unless and until there is a successful outcome in the proceeding. If a successful outcome is reached (subject to any other order the Court might make), the amounts payable to IMF will be deducted from the settlement or judgment sum before the balance is distributed to group members. The amount paid to IMF in the event of a successful outcome will not exceed the settlement or judgment sum.

Common fund order

30. The Applicant applied for the Common Fund Orders for the following reasons:
 - (a) it would be unfair for only those Registered Group Members who entered into a Funding Agreement with IMF to be the only group members required to pay a commission in circumstances where all Registered Group Members benefit from any favourable settlement and all group members benefit from any favourable judgment in the class action;
 - (b) the percentage commission rate shall be as determined as reasonable by the Court and shall not exceed 30%, which is lower than the rates in the Funding Agreements offered to group members. Group members will have the benefit of Court oversight of the percentage commission to be charged; and
 - (c) group members who do not want to participate in the case, or who do not wish to pay a commission to IMF, may opt out of the proceeding.
31. While the terms of the Funding Agreement and CLCA continue to apply to some Registered Group Members, the Funding Terms in the Common Fund Orders prevail over the terms of the



Funding Agreement to the extent of any inconsistency (for example, the Funding Terms do not provide for a Commission Percentage uplift in the event of any appeal of the Proceeding).

Where can you obtain copies of relevant documents?

32. Copies of relevant documents, including the Amended Originating Application, the Amended Statement of Claim, the Amended Defence and the common fund orders may be obtained by:
- (a) downloading them from <http://phifinneymcdonald.com/projects/>;
 - (b) requesting them by email to classactions@phifinneymcdonald.com;
 - (c) inspecting them at the Federal Court by visiting a District Registry of the Federal Court in Sydney, Canberra, Melbourne, Brisbane, Adelaide, Perth, Hobart or Darwin. The addresses for these registries are available at www.fedcourt.gov.au or by calling the Victoria District Registry on (03) 8600 3333.

Please consider the above matters, and the further information in Section 2, below, carefully.

If there is anything of which you are unsure, you should contact Phi Finney McDonald on (03) 9134 7100 or email classactions@phifinneymcdonald.com or seek your own legal advice. You should not delay in making your decision.



SECTION 2

YOUR OPTIONS

The options are different depending on whether or not you have already entered into or returned a Funding Agreement with IMF or completed and returned a Group Member Registration Form.

Options for Unregistered Group Members

If you have **not** entered into and returned a Funding Agreement with IMF or completed and returned a Group Member Registration Form, you **must** select one of the following options:

Option A – Register to participate in the Court Ordered Mediation

If you wish to receive a share of any settlement monies resulting from a settlement at the Court Ordered Mediation or within 3 months after the first day of that mediation you must:

- complete and return (in accordance with the instructions therein) the “Group Member Registration Form” enclosed at Schedule 1 by the deadline specified below;

OR

- complete the “Group Member Registration Form” online which is accessible at <http://www.imf.com.au/ugl> by the deadline specified below;

In completing the Group Member Registration Form, it is important to note the following:

- Once you complete the Group Member Registration Form and it is received by IMF you will become a Registered Group Member.
- The information and documents you provide will be used by Phi Finney McDonald and all or some of it may be provided to the Respondent prior to the Court Ordered Mediation to enable the parties to have sufficient information about all the claims to settle the UGL Class Action.
- If a settlement agreement is reached at the Court Ordered Mediation or within 3 months after the first day of that mediation, Registered Group Members will be contacted at the address provided on the Group Member Registration Form and informed of the terms of the settlement (which will be subject to Court approval). Only Registered Group Members will be eligible for a share of any settlement monies.
- If a settlement agreement is not reached at the Court Ordered Mediation or within 3 months after the first day of that mediation, then the UGL Class Action will continue and you will remain a group member (unless you opt out in accordance with procedure set out in Option C below).
- If you are unable to access to the online registration website, please contact IMF on 1800 016 464.

Registrations must be completed and submitted before **4:00 pm AEDT on 30 November 2018**.

Registrations received after this time may not be accepted by the Court, with the result being that you will be treated as having not responded to this notice (see Option B below).



Option B – Not respond to this notice

If you do nothing, that is you do not:

- register by submitting the “Group Member Registration Form” as per Option A above; or
- return an opt out notice as per Option C below;

you will remain an Unregistered Group Member but will not, without the leave of the Court, be permitted to seek any benefit pursuant to any settlement of the UGL Class Action reached at the Court Ordered Mediation or within 3 months after the first day of that mediation.

If you do nothing and a settlement agreement is not reached at the Court Ordered Mediation or within 3 months of the first day of the mediation and approved by the Court, you will remain an Unregistered Group Member and the Applicant will continue to bring the UGL Class Action on your behalf up to the point where the Court determines the substantial common issues of law and fact arising out of the claims of the Group Members.

In that case, you will be bound by the outcome of the UGL Class Action. If the UGL Class Action is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant, although you may have to satisfy certain conditions before your entitlement arises. If the UGL Class Action is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceedings.

It is open to the Applicant and the Respondent to apply to the Court for a further Court Ordered Mediation and to extend the period during which only Registered Group Members are permitted to seek any benefit pursuant to any subsequent settlement. It is unknown whether this will occur, and unknown what, if any, notice the Court will order to be provided to group members at that point. Accordingly, it is possible that if you remain an Unregistered Group Member, you will not, without leave of the Court, be permitted to seek any benefit pursuant to any settlement of the UGL Class Action even if that settlement occurs after 3 months after the first day of the Court Ordered Mediation.

If you wish to participate in any settlement of the UGL Class Action, the safest course is to submit a “Group Member Registration Form” as per Option A above **now**.

Option C – Opt out

If you do not wish to remain a group member in the UGL Class Action, you must opt out of the proceeding by completing the “Opt Out Notice” form annexed to this Notice at Schedule 2.

If you opt out of the UGL Class Action, you:

1. will not be affected by any orders made in the UGL Class Action;
2. will not be permitted to receive any distribution from any damages award or settlement outcome arising from the UGL Class Action (including, but not limited to, at Mediation); and
3. will be able to commence separate proceedings on your own behalf if you so wish.

Opt out forms must be submitted to the Victorian District Registry of the Federal Court of Australia (Level 7, Commonwealth Law Courts, 305 William Street, Melbourne) before **4:00 pm (AEDT) on 30 November 2018**. Opt out notices received after this time will not be accepted, and you will remain as a group member in the UGL Class Action (see Option B above).



Options for Registered Group Members

If you have already executed a Funding Agreement with IMF and returned that document to IMF **or** completed and returned a Group Member Registration Form you are automatically registered to participate in the UGL Class Action and do not need to complete the “Group Member Registration Form”.

However, if you do not wish to remain a group member in the UGL Class Action, you must opt out of the proceeding. Please refer to Option C above. If you do choose to opt out, please note that certain contractual obligations that you owe to IMF may continue to apply to you. In particular, please refer to clause 20 of the Funding Agreement.

Options for both Unregistered and Registered Group Members

1. Apply to the Federal Court to vary orders regarding the opt out protocol

If you wish to challenge the orders made by the Federal Court in relation to the options above, you must send a written notice to Phi Finney McDonald setting out the challenge you will make and the reasons for that challenge. You may then be required to attend the Victorian District of the Federal Court at a later date to have your challenge heard.

Any notice challenging the Federal Court orders must be delivered to Phi Finney McDonald before **4:00pm AEDT on 30 November 2018**. Any notice challenging the Federal Court orders received after this time will not be accepted.



Schedule 1

GROUP MEMBER REGISTRATION FORM

UGL CLASS ACTION

Clime Capital Limited v UGL Pty Limited

Information on how to complete the Group Member Details Section

- Please use BLOCK LETTERS
- Complete Parts 1 to 6 below in their entirety
- Please ensure all share trading information is recorded correctly in Parts 4 and 5. Please also provide IMF with copies of your contract notes.
- Return this Notice and any additional documents, including any attached pages or annexures, to IMF as soon as possible but no later **4PM AEDT 30 November 2018** (*you should retain a copy for your records*) to:

UGL Class Action Team
IMF Client Liaison Team

Email: 402633@imf.com.au

Post:
IMF Bentham Limited
PO Box 5106
PERTH WA 6831
AUSTRALIA

The group member named below provides the following information in respect of their claim in the UGL Class Action. You must use your best efforts to provide all of the requested information.

Part 1. Contact Information

Contact Details

Title	<input type="text"/>	First Name	<input type="text"/>	Middle Name	<input type="text"/>	Last Name	<input type="text"/>
Company	<input type="text"/>			Position	<input type="text"/>		
Landline Phone	<input type="text"/>			Mobile Phone	<input type="text"/>		
Email Address	<input type="text"/>						



If the address is the same as the contact address in Part 1, please tick this box (Note: If the contact address in Part 1 is a PO Box, the Group Member address **must** be completed below.)

Group Member Street Address (Not a PO Box)

Suburb **State** **Postcode** **Country**

Part 4. Shareholder Details

4. a) Registered Owner
 This is the name as it appears on the share register.
 Select one option:

The Registered Owner on the share register is the same as the name of the Group Member in Part 2 above.

The Registered Owner on the share register is different to the name of the Group Member in Part 2 above (e.g. a custodian is listed on the share register) Provide details below:

Full name of Registered Owner:

4. b) HIN / SRN (if available)
 This is the Holder Identification Number (HIN) or the Shareholder Reference Number (SRN) which identifies your registration on the CHESS or Issuer Sponsored Sub-register and may be found on holding statements or trade confirmations.

HIN / SRN:

Part 5. Trade Details

Please provide, with this Notice, any trade confirmations, contract notes or holding statements that demonstrate the transactions recorded below.

5. a) Opening Balance
 Please provide the number of UGL Limited shares held as at close of trade on **15 April 2014**. If you did not hold any shares please write **"NONE"**

Opening Balance:
 (i.e. number of UGL Limited shares held as at close of trade on 15 April 2014)

5. b) Trade Information
 In the sections below, list all transactions / trades of UGL Limited shares between 16 April 2014 and 5 November 2014 (inclusive) that affect the number of shares held. *If the shares were acquired or disposed of, other than through a regular on-market transaction, please specify the nature of the transaction in the column "Type" below. (e.g. "Off-Market Transfer", "DRP", "Capital Raising", "Short selling")

Purchases			
Between 16 April 2014 and 5 November 2014 (inclusive)			
Trade Date (NOT Settlement Date)	Quantity (Number of shares traded)	Total Amount Paid (i.e. Quantity x Price per share + Fees & GST)	Type* (On-Market, DRP, IPO)



Sales			
Between 16 April 2014 and 5 November 2014 (inclusive)			
Trade Date (NOT Settlement Date)	Quantity (Number of shares traded)	Total Amount Received (i.e. Quantity x Price per share + Fees & GST)	Type* (On-Market, DRP, IPO)

Part 6. Signing by the Group Member

By signing below, I confirm that the information I have provided in this form is true and complete.

Signature	<input type="text"/>	Signature	<input type="text"/>
Print Name	<input type="text"/>	Print Name	<input type="text"/>
Position	<input type="text"/>	Position	<input type="text"/>
Date	<input type="text"/>		



Schedule 2

Form 21
Rule 9.34

OPT OUT NOTICE

No. VID 1390 of 2017

Federal Court of Australia
District Registry: Victoria
Division: General

CLIME CAPITAL LIMITED (ACN 106 282 777)

Applicant

UGL PTY LIMITED (ACN 009 180 287)

Respondent

To: The Registrar
Federal Court of Australia
Victoria District Registry
305 William Street
Melbourne, VIC, 3000

[Name of group member], a class member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [Name of group member] is opting out of the class action.

Date:

Signed by [Name]

[Insert capacity eg group member / Lawyer for the group member]

Holder Identification Number (HIN) or Security Reference Number (SRN) as applicable: