



Federal Court of Australia
District Registry: Victoria
Division: General

No: VID1093/2018

NOEL MURRAY UREN
Applicant

RMBL INVESTMENTS LTD (ACN 004 493 789) and another named in the schedule
Respondent

ORDER

JUDGE: JUSTICE MURPHY

DATE OF ORDER: 02 May 2019

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

Common Fund

1. Pursuant to ss 23 and/or 33ZF of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**) and/or r 1.32 of the *Federal Court Rules 2011* (Cth), and subject to further order, the Funding Terms set out in Annexure A (**Funding Terms**) are approved and are binding upon the Applicant, the class members, Litigation Lending Services Ltd (**LLS**) and Maurice Blackburn (defined in the Funding Terms as the 'Lawyers').
2. Order 1 is subject to the provision of an undertaking by each of the Applicant, LLS and Maurice Blackburn to each other and to the Court in the terms set out in Annexure B (being that they will comply with their obligations under the Funding Terms), such undertakings to be given within seven days.

Notice to Class Members and Opt Out

3. Pursuant to s 33Y(3)(c) of the FCAA, on or before 10 May 2019 the First Respondent provide to the Applicant's solicitors:
 - (a) a list, in electronic form, containing the names and ACN numbers of all corporate class members known to the First Respondent who are currently deregistered (**Inoperative Class Members**), together with the last known



contact details held by the First Respondent for each of the Inoperative Class Members, including their:

- (b) email address;
- (c) postal address; and
- (d) telephone number(s),

(Inoperative Class Member List); and

- (e) a copy of the “*full company searches*” referred to in paragraph 28 of the Affidavit of Colin Henry Madden sworn 16 April 2019 in so far as they relate to the Inoperative Class Members.
4. The Inoperative Class Member List provided to the Applicant’s solicitors in accordance with Order 3, and all information contained therein, is to be kept confidential, and shall not be used by the Applicant’s solicitors for any purpose other than for the purpose of complying with Order 10 below (and, for the avoidance of doubt, shall not be used for the purpose of marketing).
 5. Pursuant to s 33J(1) of the FCAA, 4.00 pm on 19 July 2019 be fixed as the time and date before which a class member may opt out of this proceeding.
 6. Pursuant to s 33X of the FCAA, notice of this proceeding, and of the right of class members to opt out of the proceeding, is to be given to class members in accordance with Orders 7 and following below.
 7. Pursuant to s 33Y(2) of the FCAA, the form and content of the notice set out in Annexure C (**Notice**) is approved.
 8. Pursuant to s 33Y(3) of the FCAA, the Notice is to be given to all class members, other than the Inoperative Class Members (**Operative Class Members**), by 4.00 pm on 24 May 2019 according to the following procedure:
 - (a) the First Respondent shall provide to a mail house distribution service to be agreed between the Applicant and the First Respondent (or, failing agreement, appointed by the Court) the names of all Operative Class Members known to the First Respondent, and their last known contact details held by the First Respondent, including their:



- (i) ACN number (for corporate class members only);
 - (ii) email address;
 - (iii) postal address; and
 - (iv) telephone number(s);
- (b) the First Respondent shall cause the mail house to send the Notice by email to each of the Operative Class Members referred to in (a) above for whom the First Respondent holds an email address; and
- (c) the First Respondent shall cause the mail house to send the Notice by post to each of the Operative Class Members referred to in (a) above for whom the First Respondent does not hold an email address, but does hold a postal address.
9. To the extent that the mail house receives notice of a delivery failure in relation to any email sent to an Operative Class Member referred to in Order 8(b) above, the First Respondent shall cause the mail house to send the Notice by post to that Operative Class Member within three business days of receiving that delivery failure notice.
10. Pursuant to s 33Y(3) of the FCAA, the Notice is to be given by the Applicant to all Inoperative Class Members by 4.00 pm on 24 May 2019 by causing a copy of the Notice to be sent, by either email or post, to:
- (a) the most recent external administrator(s) (if any) of the Inoperative Class Member;
 - (b) the most recent director(s) of the Inoperative Class Member; and
 - (c) the Australian Securities and Investments Commission.
11. Pursuant to s 33Y(3) of the FCAA, the Applicant shall, by 4.00 pm on 24 May 2019, cause a copy of the Notice, together with a copy of:
- (a) the Originating Application dated 4 September 2018;
 - (b) the Statement of Claim dated 4 September 2018;
 - (c) the First Respondent's Defence dated 30 November 2018;
 - (d) the Applicant's Reply dated 13 December 2018; and



(e) these Orders,

to be displayed on, or otherwise made available for download from, the website of the Applicant's solicitors (www.mauriceblackburn.com.au/current-class-actions/rmbl-class-action), and to remain continuously so displayed or available up to and including 4.00 pm on 19 July 2019.

12. Pursuant to s 33Y(3)(c) of the FCAA, on or before 14 June 2019 the First Respondent shall provide to the Applicant's solicitors, in electronic form, a list of all Operative Class Members to whom the mail house was unable to distribute the Notice either by way of email or post (either because the email was unable to be delivered or the postal article was returned to the sender) together with the last known contact details held by the First Respondent for each of those persons, including their:
- (a) ACN number (for corporate class members only);
 - (b) email address;
 - (c) postal address; and
 - (d) telephone number(s),

(Failed Distribution Class Member List).

13. The Failed Distribution Class Member List provided to the Applicant's solicitors in accordance with Order 12, and all information contained therein, is to be kept confidential, and shall not be used by the Applicant's solicitors for any purpose other than for the purpose of complying with Order 14 below (and, for the avoidance of doubt, shall not be used for the purpose of marketing).
14. Upon receipt of the Failed Distribution Class Member List the Applicant's solicitors shall take such steps as they consider reasonably necessary to locate, and to send the Notice to, the persons on that list.
15. The costs charged by the mail house distribution service referred to in Orders 8 and 9 above shall be paid in the first instance by the Applicant, but otherwise the costs of each party of and incidental to the procedure set out in Orders 3 to 14 above shall be costs in the cause. For the avoidance of doubt, answering enquiries by class members



and members of the public in relation to the Notice and/or the proceeding generally is work incidental to Orders 3 to 14 above.

16. The Notice may be amended by the Applicant's solicitors before it is emailed, posted, displayed or published in order to correct any website or email address or telephone number or other non-substantive error.
17. If the solicitors for any party receive, on or before 4.00 pm on 19 July 2019, a notice purporting to be an opt out notice referable to this proceeding, the solicitors shall file the notice in the Victoria District Registry of the Court within three business days, and the notice shall be treated as an opt out notice received by the Court at the time it was received by the solicitors.
18. The Applicant's solicitors and the First Respondent's solicitors have leave to inspect the Court file and copy any opt out notices filed.

Other

19. Pursuant to s 37AF(1)(b) of the FCAA, on the ground that the order is necessary to prevent prejudice to the proper administration of justice, the evidence contained in the affidavit of Steven Mark Foale affirmed 5 April 2019 and marked 'Confidential Affidavit' (including the annexures thereto) not be published or disclosed without the prior leave of the Court to any person or entity other than the Applicant, the Applicant's legal representatives, the Judge with the carriage of this proceeding from time to time and officers of the Court to whom it is necessary or desirable to disclose the evidence.
20. Until further order, the evidence referred to in Order 19 above be sealed on the Court file in an envelope marked "*Not to be opened except by leave of the Court*".
21. Pursuant to s 37AJ of the FCAA, Orders 19 and 20 shall operate until the final conclusion of this proceeding by either a judgment or a settlement which is approved by the Court pursuant to s 33V of the FCAA.

Directions for Initial Trial

22. The matters to be determined at the trial listed for 5-9 August 2019 (**Initial Trial**) shall comprise the entirety of the Applicant's contract claim pleaded at paragraphs 1-30 in the Statement of Claim, but excluding:



- (a) the allegations in paragraphs 22 and 25 of the Statement of Claim to the effect that the Collection Charges were in excess of the amounts the Applicant alleges the First Respondent was entitled to charge;
 - (b) the allegations in the following paragraphs of the Defence:
 - (i) 21 regarding the calculation by the First Respondent;
 - (ii) 22 regarding the extent to which the Collection Charges were in excess of the amounts the Applicant alleges the First Respondent was entitled to charge;
 - (iii) 30.3 regarding the amount of the material loss and damage arising from the Applicant's alleged change of position;
 - (iv) 30.4 regarding the amount of the consideration alleged;
 - (v) 40 regarding the amount of the *quantum meruit* and/or *quantum valebat* claim;
 - (vi) 41-42 regarding the amount of the benefit alleged; and
 - (vii) 44-48 regarding the amount of the unjust enrichment alleged; and
 - (c) any other allegation of quantification of loss.
23. On or before 24 May 2019 the Applicant and the First Respondent confer with a view to agreeing a statement of agreed facts for the Initial Trial.
24. On or before 14 June 2019 the Applicant file and serve:
- (a) a copy of any statement of agreed facts, together with a copy of any documents referred to therein; and
 - (b) any affidavit evidence on which he intends to rely, in addition to the statement of agreed facts, at the Initial Trial.
25. On or before 5 July 2019 the First Respondent file and serve any affidavit evidence on which it intends to rely, in addition to the statement of agreed facts, at the Initial Trial.
26. On or before 17 July 2019 the Applicant file and serve any affidavit evidence in reply on which he intends to rely at the Initial Trial.



Joint List of Factual and Legal Issues

27. By 12 July 2019 the Applicant to prepare and provide to the First Respondent a list of the factual and legal issues in the matter. By 16 July 2019 the First Respondent to add any further issues to this list. The Applicant to file a joint list of factual and legal issues immediately thereafter.
28. By 19 July 2019 the Applicant to file a template for written submissions that has been agreed with the First Respondent comprising a framework within which each party can set out its written submissions on each of the factual and legal issues identified in the list. The template for written submissions will substantially form the framework of any opening written submissions to be made. The template will be added to and updated as evidence is heard, and likely varied as the positions taken by the parties change. In its updated and varied form it will substantially form the framework of any closing written submissions. The Court will assume that it is only the factual and legal issues raised in the template for written submissions that it is required to consider, and that the parties do not rely on any other matter.
29. By 4.00 pm on 23 July 2019 the Applicant file and serve a written outline of opening submissions in accordance with the template for the Initial Trial.
30. By 4.00 pm on 30 July 2019 the First Respondent file and serve a written outline of its opening submissions in accordance with the template for the Initial Trial.
31. By midday on 2 August 2019 the Applicant file and serve any written outline of submissions in reply for the Initial Trial.
32. The proceeding be referred to mediation:
 - (a) before a mediator agreed by the parties; or
 - (b) failing such agreement being reached by 24 May 2019, before Registrar Lagos or such other Registrar(s) as appointed by the Court,such mediation to take place after 5 July 2019 but before the commencement of the Initial Trial.
33. The proceeding be adjourned to a further case management hearing on 24 July 2019 at 9.30 am.



Date that entry is stamped: 2 May 2019

Warrick Soden
Registrar



Schedule

No: VID1093/2018

Federal Court of Australia
District Registry: Victoria
Division: General

Second Respondent BRUCE NORMAN UREN



ANNEXURE A

(Funding Terms)

1. Definitions and Interpretation

1.1. The following definitions apply in these Funding Terms:

Act	means the <i>Federal Court of Australia Act 1976</i> (Cth).
Adverse Costs Insurance	means a contract of insurance that provides cover for the costs incurred by the Respondents in the Proceeding that may be the subject of a Costs Order.
Adverse Costs Insurance Premium	means any sum paid by the Funder to purchase Adverse Costs Insurance.
Applicant	means the lead applicant in the Proceeding who has entered into a Funding Agreement with the Funder, being, as at the commencement of the Funding Period, Noel Murray Uren.
Claims	means the claim or claims the Applicant or any Class Member has or may have against any one or more of the Respondents for loss or damage caused to the Applicant or Class Member by the conduct of one or more of the Respondents in relation to the imposition of ‘collection charges’ as specified in the statement of claim filed in the Proceeding (as amended from time to time).
Class Members	means all persons who are identified as class members in the Proceeding and who do not validly opt out of the Proceeding.
Costs Order	means any order made by a court requiring one or more parties to the Proceeding to pay the costs incurred by another party or parties to the Proceeding.
Disbursements	means any third party expense that the Lawyers incur, whether as principal or as agent on behalf of the Applicant and/or Class Members, in relation to the conduct of the Proceeding, and including external advice and any external legal services which the Lawyers consider reasonably necessary to: (a) investigate the Claims; (b) prosecute the Claims; (c) negotiate a Settlement of the Claims.
Funder	means Litigation Lending Services Ltd (ACN 129 188 825), its successors and assigns.



- Funding Agreement** means a funding agreement between the Funder and a Class Member in relation to the Claims, including the funding agreement between the Funder and the Applicant as at the commencement of the Funding Period.
- Funding Period** commences on the date that the Court approves these Funding Terms and ends on the Termination Date.
- Funding Terms** means these terms.
- Lawyers** means Maurice Blackburn Pty Ltd, or any firm of lawyers appointed in their place by the Applicant, and with the Funder's consent.
- Legal Work** means legal work performed by the Lawyers pursuant to the Retainer Agreement, including such advice and services reasonably necessary to: (a) investigate the Claims; (b) prosecute the Proceeding; (c) negotiate a Settlement of the Claims; and (d) negotiate and secure funding for the Claims and the Proceeding and comply with the Funding Agreement and these Funding Terms.
- Other Parties** means any other person or entity which:
- (a) becomes a party to the Proceeding at the initiative of a Respondent; or
 - (b) the Lawyers recommend be joined to the Proceeding and in respect of whom the Funder agrees in writing to accept adverse Costs Order exposure.
- Proceeding** means proceeding number VID 1093 of 2018 (*Uren v RMBL Investments Ltd*) and any other legal proceedings to prosecute some or all of the Claims, including:
- (a) proceedings brought in contemplation of the Proceeding including, without limitation, proceedings for preliminary discovery; and
 - (b) any other proceedings or process as part of or consequent on the class action (including any alternative dispute resolution processes engaged in to resolve some or all of the Claims),
- but does not include any appeals of such legal proceedings or related enforcement actions unless the Funder has (in its absolute discretion) agreed to fund the particular appeal or enforcement



proceedings.

Project Costs

means all amounts paid by the Funder in respect of the Legal Work, including:

- (a) 75% of the reasonable legal fees of the Lawyers incurred in the conduct of each stage of the Proceeding, up to the amount of any 'cap' agreed between the Applicant, the Funder and the Lawyers;
- (b) Disbursements incurred in the conduct of the Proceeding;
- (c) all of the Funder's reasonable out-of-pocket costs and expenses incurred in relation to the conduct of each stage of the Proceeding, including in relation to any consultants engaged by the Funder (other than those costs and expenses already referred to in this definition);
- (d) if a Resolution Sum includes specified property other than money, any reasonable costs and expenses incurred by the Lawyers in selling any such property, or any costs of counsel incurred if there is any dispute about the monetary value of any such property;
- (e) any costs of taxation or assessment incurred if the Funder requires the Lawyers to submit any one or more of their invoices to taxation or assessment;
- (f) any adverse Costs Order made against the Applicant and/or any Class Member in the Proceeding;
- (g) the costs of counsel in providing any advice contemplated by these Funding Terms; and
- (h) any GST payable on any supply made by any entity as a result of the above costs or expenses being incurred,

and for the avoidance of doubt, and unless expressly stated otherwise, includes amounts described in (a) to (h) above which have been incurred during, or are in respect of, a period before or during the Funding Period.



- Remaining Costs** means any ‘at risk’ component of the Lawyers professional fees, as prescribed in the Retainer Agreement, including any ‘uplift’ component on any conditional legal costs. The Retainer Agreement provides for the following Remaining Costs:
- (a) 25% of the reasonable legal fees of the Lawyers incurred in the conduct of each stage of the Proceeding, up to the amount of any ‘cap’ agreed between the Applicant, the Funder and the Lawyers, in so far as such fees are incurred before or during the Funding Period and in accordance with the Retainer Agreement; plus
 - (b) 100% of the reasonable legal fees of the Lawyers incurred in the conduct of each stage of the Proceeding, over and above the amount of any ‘cap’ agreed between the Applicant, the Funder and the Lawyers, in so far as such fees are incurred before or during the Funding Period and in accordance with the Retainer Agreement; plus
 - (c) an uplift of 25% of the amounts in (a) and (b) above; plus
 - (d) interest on any amounts in a bill for the Lawyers’ legal costs which remain unpaid for 30 days after the Lawyers have issued that bill with interest calculated from that date and calculated at the rate prescribed by the applicable legal profession regulations or rules.
- Resolution** means when all or any part of a Resolution Sum is received and, where a Resolution Sum is received in parts, a ‘Resolution’ occurs each time a part is received.
- Resolution Sum** means the amount or amounts, or the market value of any goods or services, received on account of a Settlement or judgment in respect of the Claims, including the value of any favourable terms of future supply of goods or services, any interest and any costs recovered pursuant to a Costs Order in favour of the Applicant or by agreement.
- Respondent** means RMBL and any Other Parties named as defendants or respondents in the Proceeding.



Retainer Agreement	means the retainer and costs agreement between the Lawyers and any Class Member, including the retainer and costs agreement signed by the Applicant prior to the commencement of the Funding Period.
RMBL	means RMBL Investments Ltd (ACN 004 493 789).
Rules	means the <i>Federal Court Rules 2011</i> (Cth).
Settlement	means any settlement, compromise, discontinuance or waiver of the Claims or part of the Claims, and “Settles” and “Settled” shall be construed accordingly.
Termination Date	means the date on which these Funding Terms are terminated in accordance with cl 8 below.
Trust Account	means an interest-bearing trust account established and maintained by the Lawyers for the sole purpose of receiving Resolution Sums under these Funding Terms.

1.2. Unless the context otherwise requires, the following rules of interpretation apply to these Funding Terms:

1.2.1. a reference to any agreement or document is a reference to such agreement or document as validly amended, varied, restated, assigned or novated from time to time (in each case, other than in breach of the relevant agreement or the provisions of these Funding Terms, in which case it shall remain a reference to such agreement or document immediately prior to such amendment); and

1.2.2. a reference to any legislation or legislative provision includes any statutory modification, amendment or re-enactment of that legislation or legislative provision, and includes any subordinate legislation or regulations issued under that legislation or legislative provision.

2. Existing Agreements

2.1. For the duration of the Funding Period, these Funding Terms will prevail over the Funding Agreement.

2.2. Upon the request of a Class Member, the Lawyers shall provide that Class Member with a copy of the Retainer Agreement on a confidential basis.

3. Obligations of the Funder



- 3.1. The Funder must pay the Project Costs.
- 3.2. The Funder will pay any Costs Order made in the Proceeding against the Applicant and/or any Class Member after the commencement of the Funding Period.
- 3.3. If the Applicant agrees or is ordered to provide security for costs in the Proceeding, such security will be provided in a form that shall be acceptable to the Respondent (and any other applicable party to the Proceeding), or as otherwise ordered by the Court.
- 3.4. The costs of providing security, including any Adverse Costs Insurance Premium paid by the Funder, will be taken to be part of the Project Costs paid by the Funder for the purposes of these Funding Terms.
- 3.5. The Funder will not be obliged to fund any appeal or the defence of any appeal in respect of the Proceeding, but will have the option of doing so at its discretion.
- 3.6. The Funder will not be obliged to accept adverse Costs Order exposure in respect of any additional Respondent, but will have the option of doing so at its discretion.

4. Costs and Commission

- 4.1. Subject to further order, and pursuant to ss 23 and 33ZF of the Act and rule 1.32 of the Rules, upon Resolution the Funder and the Lawyers are entitled to be paid or to have distributed the following amounts from the Resolution Sum, to be paid or distributed in the order of priority listed below:

4.1.1. *first*, reimburse the Funder for all paid and Court-approved Project Costs;

4.1.2. *second*, pay:

- (a) to the Lawyers the Remaining Costs; and
- (b) to the Funder, as consideration for the funding of the Proceeding, an amount to be determined by the Court, following settlement or judgment, that it considers reasonable and proportionate, to be expressed as a percentage of the aggregate Resolution Sums, but no more than:
 - 25% of the Resolution Sum, where Resolution is on or before 31 August 2019; or
 - 30% of the Resolution Sum, where Resolution is on or after 1 September 2019.



In the event that the Resolution Sum is insufficient to pay in full the amounts referred to in (a) and (b) above, they shall be paid in the order of priority set out in cl 5.2 of the Funding Agreement;

- 4.1.3. *third*, pay to the Applicant any unpaid expenses (including fair and reasonable compensation for their time) incurred as a result of their acting as representative in the Proceeding, as approved by the Court; and
- 4.1.4. *fourth*, the remainder of the Resolution Sum be distributed to Class Members in accordance with any distribution scheme approved by the Court.
- 4.2. The amounts referred to in cl 4.1 above will not become due or owing by the Applicant and Class Members unless and until a Resolution occurs and must not exceed the aggregate Resolution Sums.
- 4.3. All Resolution Sums are to be paid to, and received by, the Lawyers and paid immediately into a Trust Account opened by the Lawyers and kept for that purpose.
- 4.4. If, despite cl 4.3 above, the Applicant or any Class Member directly receives any amounts, assets or benefits in respect of a Settlement or judgment of some or all of the Claims, he, she or it will cause the amounts, assets or benefits to be paid or directed to the Lawyers to be dealt with as part of the Resolution Sum including, if appropriate, the realisation of the market value of any such assets or benefits.
- 4.5. The Lawyers will pay out of any Resolution Sum held in the Trust Account the amounts referred to in cl 4.1 above in accordance with these Funding Terms prior to any distribution to the Applicant and Class Members in accordance with any distribution scheme approved by the Court.

5. Relationship Between the Applicants, the Lawyers and the Funder

- 5.1. The Lawyers' professional duties are owed to the Applicant and not to the Funder.
- 5.2. The Funder may at its discretion give day-to-day instructions to the Lawyers on all matters concerning the Claims and the Proceeding, subject to cll 5.3, 7 and 9 of these Funding Terms.
- 5.3. The Applicant may, subject to cll 7 and 9 of these Funding Terms, override any instruction given by the Funder. The Applicant may give binding instructions to the Lawyers and



make binding decisions on behalf of the Class Members in relation to the Claims up to the time of any court approval of settlement of the Claims or the delivery of judgment in respect of the common issues in the Proceeding (including, but not limited to, instructions and decisions in relation to Settlement), save where, in the reasonable professional opinion of the Lawyers, separate instructions are required from the Class Members.

5.4. Subject to cl 7 of these Funding Terms, if the Lawyers notify the Funder and the Applicant that the Lawyers believe that circumstances have arisen such that they may be in a position of conflict with respect to any obligations they owe to the Applicant and any obligations they owe to the Funder, then the Lawyers' obligations to the Applicant prevail (and for the avoidance of doubt, the Lawyers can continue to offer advice to and take instructions from the Applicant in such circumstances).

5.5. The Lawyers will:

5.5.1. keep the Funder fully informed of all matters concerning the Claims and the Proceeding, including any mediation and settlement discussions; and

5.5.2. ensure that the Funder and the Applicant are given all necessary information and advice in order for the Funder to provide informed instructions.

5.6. The Funder will:

5.6.1. implement its conflict management protocols so as to comply with the *Corporations Amendment Regulation 2012 (No 6)* (Cth);

5.6.2. agree that, should any conflict arise as between the interests of the Funder and the interests of the Applicant and Class Members, then the Lawyers may continue to provide the Legal Work to the Applicant and Class Members and the Funder will raise no objection to them doing so;

5.6.3. provide the Applicant with timely and clear disclosure of any material breach of the *Corporations Amendment Regulation 2012 (No 6)* (Cth);

5.6.4. not retain the Lawyers as its solicitors for any purpose connected with the Proceeding; and

5.6.5. upon the request of a Class Member, provide that Class Member with a copy of the current and applicable conflict management protocols as referred to above at cl 5.6.1.



6. Confidentiality

- 6.1. The Funder shall strictly maintain the confidentiality of any information provided to the Funder by the Applicant or the Lawyers for a purpose connected to the Proceeding, and shall adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information.
- 6.2. Where any information is provided to the Funder, the Funder shall:
 - 6.2.1. only use that information for purposes for which the information was provided; and
 - 6.2.2. not disclose the information to any person other than the Applicant, the Lawyers or counsel retained in the Proceeding and any third parties it is required to disclose information to in the course of, and for the purpose of, the Proceeding, including to any provider of Adverse Costs Insurance, advisor, sub-litigation advisor, attorney, consultant, associated company, insurer, shareholder or agent – provided it takes reasonable steps to ensure that any third party also retains the confidentiality of the information.

7. Settlement

- 7.1. If there is a disagreement between the Funder and the Applicant as to whether to settle the Proceeding, or as to the appropriate terms for settlement of the Proceeding, within five (5) days of either of the Funder or the Applicant providing notice of any such disagreement:
 - 7.1.1. the Lawyers will brief the most senior counsel of those retained by the Lawyers to advise as to whether, in senior counsel's opinion, settlement of the Proceeding on the terms is fair and reasonable in all of the circumstances;
 - 7.1.2. representatives of the Funder may attend any conference with senior counsel at which the issue is to be discussed;
 - 7.1.3. the legal costs of obtaining senior counsel's advice shall be met by the Funder as part of the Project Costs; and
 - 7.1.4. the advice of senior counsel will be final and binding on both the Applicant and the Funder.
- 7.2. Under cl 7.1 above, in determining whether a proposed settlement is reasonable having regard to all the circumstances, senior counsel may proceed as he or she sees fit to inform



himself or herself before forming and delivering his or her advice, but any such determination shall include the following considerations:

- 7.2.1. the strengths and weaknesses of the Claims of all Class Members;
- 7.2.2. the quantum of the Claims of all Class Members and any difficulties which might exist in proving that quantum;
- 7.2.3. the recoverability of a judgment sum from the Respondent;
- 7.2.4. the extent to which further legal costs incurred in the Proceeding are likely to be recoverable from the Respondent;
- 7.2.5. the risk of the Funder being ordered to pay adverse costs and the quantum of such costs – counsel will have regard to this factor as though all Class Members carried such risk rather than the Funder;
- 7.2.6. the matters set out at paragraph 248.95 of the Australian Securities and Investments Commission’s *Regulatory Guide 248: Litigation schemes and proof of debt schemes: Managing conflicts of interest* (April 2013); and
- 7.2.7. any other matters senior counsel considers relevant.

8. Termination

- 8.1. These Funding Terms may only be terminated by order of the Court, made either on its own motion or on application made by the Applicant, a Class Member or the Funder, and upon notice given to the Applicant, the Funder and such other persons as ordered by the Court.
- 8.2. If any application is made under cl 8.1 above, and the Court grants that application, then (subject to any contrary order of the Court) all obligations of the Applicant, the relevant Class Member, the Funder and the Lawyers under these Funding Terms will cease on the Termination Date, save for the following:
 - 8.2.1. where there has been no material breach of these Funding Terms by the Funder, the Funder will continue to be entitled to receive payment from any Resolution Sums (whether received before or after the Termination Date) pursuant to cl 4.1.1 above (for the avoidance of doubt, the Funder will not be entitled to receive any payment from any Resolution Sums pursuant to cl 4.1.2(b) above unless ordered by the Court);



8.2.2. where there has been a material breach of these Funding Terms by the Funder, the Funder will only be entitled to receive payment from any Resolution Sum (whether received before or after the Termination Date) as ordered by the Court; and

8.2.3. the Funder must pay:

- (a) any outstanding costs pursuant to cl 3.1 above incurred up to the Termination Date; and
- (b) to the extent such amounts are not captured by cl 8.2.3(a) above, any quantified Costs Order against the Applicant or any Class Member in respect of costs which arise in, or are attributed to, the period ending on the Termination Date.

9. Dispute Resolution

9.1. Subject to cll 7 and 9.2, any dispute arising between the Funder, the Applicant and/or the Lawyers that cannot be resolved will be referred to the most senior counsel of those retained by the Lawyers for a final decision, which the Funder, the Applicant and the Lawyers agree will bind them.

9.2. If a dispute arises which would be referred to senior counsel pursuant to cl 9.1 above and the Funder, the Applicant, the Lawyers or counsel considers that it is not appropriate for counsel to advise on or determine the dispute, the Lawyers may refer the dispute to an independent adjudicator, save that, failing agreement within a reasonable time by the Funder, the Applicant and the Lawyers as to such independent adjudicator, the dispute is to be referred to an independent adjudicator to be appointed by the President of the Law Institute of Victoria for a final decision, which the Funder, the Applicant and the Lawyers agree will bind them.

9.3. For the avoidance of doubt, the disputes regulated pursuant to this clause include:

9.3.1. any appeal in respect of the Proceeding;

9.3.2. the addition or removal of Respondents to or from the Proceeding;

9.3.3. the termination of the Lawyers' retainer; or

9.3.4. the appointment of alternative Lawyers.



**ANNEXURE B
(Undertakings)**

VID 1093 of 2018

Federal Court of Australia
District Registry: Victoria
Division: General

NOEL MURRAY UREN

Applicant

RMBL INVESTMENTS LTD (ACN 004 493 789) and another
Respondents

UNDERTAKING

[Litigation Lending Services Ltd OR Mr Noel Uren OR Maurice Blackburn Pty Ltd] undertakes to [the other two of Litigation Lending Services Ltd AND Mr Noel Uren AND Maurice Blackburn Pty Ltd] and to the Court to comply with [its/his] obligations under the Funding Terms (being Annexure A to the orders made on [date] 2019).

Signature:

Party: [Litigation Lending Services Ltd OR Mr Noel Uren OR Maurice Blackburn Pty Ltd]

Name of signatory:

Capacity:

Date of signature:

Filed on behalf of (name & role of party)	_____ Noel Murray Uren (Applicant) _____
Prepared by (name of person/lawyer)	_____ Steven Foale _____
Law firm (if applicable)	_____ Maurice Blackburn _____
Tel	_____ (07) 3016 0300 _____ Fax _____ (07) 3236 1966 _____
Email	_____ SFoale@mauriceblackburn.com.au _____
Address for service	_____ Level 8, 179 North Quay _____
(include state and postcode)	_____ Brisbane Qld 4000 _____

[Form approved 01/08/2011]



ANNEXURE C

(Opt Out Notice)

OPT OUT NOTICE

FEDERAL COURT OF AUSTRALIA

RMBL CLASS ACTION (VID 1093 of 2018)

THIS NOTICE IS VERY IMPORTANT – PLEASE READ IT CAREFULLY, AS IT MAY AFFECT YOUR LEGAL RIGHTS

[TO BE INCLUDED IN COPY OF NOTICE TO BE SENT TO ‘INOPERATIVE CLASS MEMBERS’ ONLY (AS DEFINED IN THE ORDERS):

***** IF YOU ARE A DEREGISTERED COMPANY (BEING THOSE COMPANIES WHO HAVE RECEIVED THIS NOTICE DIRECTLY FROM THE APPLICANT’S SOLICITORS, MAURICE BLACKBURN), THEN YOU ARE NOT PRESENTLY A CLASS MEMBER IN THIS CLASS ACTION – IN ORDER TO BECOME A CLASS MEMBER AND BE ENTITLED TO PARTICIPATE IN THIS CLASS ACTION, YOU MUST FIRST RE-REGISTER AS A COMPANY BEFORE YOU CAN TAKE ANY OF THE STEPS SET OUT IN THIS NOTICE – YOU MAY CONTACT MAURICE BLACKBURN (WHOSE DETAILS ARE SET OUT IN PARAGRAPH 29 OF THIS NOTICE) FOR ADVICE IN RELATION TO RE-REGISTERING AS A COMPANY, OR OTHERWISE SEEK YOUR OWN LEGAL ADVICE, BUT IN EITHER CASE YOU SHOULD DO SO PROMPTLY AND WITHOUT DELAY ***]**

SECTION 1

Why is this notice important?

1. A class action has been commenced in the Federal Court of Australia against RMBL Investments Ltd (**RMBL**) by Mr Noel Uren on his own behalf and on behalf of all persons who at any time:
 - a. entered into a loan agreement with RMBL, pursuant to which they were required to pay ‘collection charges’ to RMBL; and
 - b. paid to RMBL an amount or amounts by way of such ‘collection charges’,
(RMBL Class Action).
2. The Federal Court has ordered that this notice be published. You have received this notice because you have been identified as a potential class member in the RMBL Class Action. **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 this notice that you do not understand, you should contact the solicitors for Mr Uren (Maurice



Blackburn), whose contact details are set out in paragraph 29 of this notice, or alternatively seek your own legal advice.

3. This notice provides important information about:
 - a. your status as a class member in the RMBL Class Action;
 - b. what you need to do if you wish to remove yourself from being a class member in the RMBL Class Action (**Opt Out**); and
 - c. the orders made by the Court in the RMBL Class Action in respect of how class members will contribute to the costs of the RMBL Class Action if, and only if, it is ultimately successful.

What is a class action?

4. A class action is a legal action that is brought by one person (**Applicant**, being in this case Mr Uren) on his or her own behalf and on behalf of a group of people (**Class Members**) against another person or persons (**Respondent(s)**, being in this case RMBL), where the Applicant and the Class Members all have similar claims against the Respondent(s).
5. The Applicant in a class action does not need to seek the consent of Class Members to commence a class action on their behalf, or to identify a specific Class Member or Members. However, Class Members can cease to be Class Members by 'opting out' of the class action if they wish to do so. An explanation of how Class Members are able to opt out is found below in Section 2, Option B of this notice.

What is the RMBL Class Action?

6. The RMBL Class Action was filed on 4 September 2018 in the Victorian Registry of the Federal Court of Australia. In it, the Applicant alleges that the clause of the loan agreement which he and his business partner entered into with RMBL (and the corresponding clause of the loan agreements which each Class Member entered into with RMBL), and pursuant to which RMBL imposed 'collection charges' on borrowers:
 - a. only permitted RMBL to impose 'collection charges' in an amount equal to its actual costs, charges and expenses of collecting interest, and specifically did not permit RMBL to impose 'collection charges' in the amount which it did impose on the Applicant and the Class Members; or
 - b. *alternatively*, to the extent that it purported to confer on RMBL a discretion to increase the 'collection charge rate' from time to time, it was either void for uncertainty, or was subject to an implied term that any increases would reflect increases in the actual costs,



charges and expenses of collecting interest – and accordingly, any increases in the ‘collection charge rate’ from time to time were void and of no effect.

7. The Applicant therefore alleges that, by imposing the ‘collection charges’ which it did on himself and on the Class Members, RMBL acted in breach of contract, and/or engaged in misleading or deceptive and/or unconscionable conduct in contravention of the *Australian Securities and Investments Commission Act 2001* (Cth) and/or the *Australian Consumer Law*. The Applicant claims that he and the Class Members suffered loss as a result of those alleged breaches, in the form of the excessive ‘collection charges’ which they paid.
8. The detailed allegations are set out in the Applicant’s Statement of Claim filed with the Federal Court on 4 September 2018, a copy of which:
 - a. is available on the website of the Applicant’s solicitors (<http://www.mauriceblackburn.com.au/current-class-actions/rmbl-class-action>); or
 - b. can be obtained by contacting the Applicant’s solicitors (Maurice Blackburn), whose contact details are set out in paragraph 29 of this notice.
9. RMBL has denied the claims made against it, and is defending the RMBL Class Action.

Are you a Class Member in the RMBL Class Action?

10. The RMBL Class Action is ‘open’, which means that it includes as Class Members all persons who at any time paid ‘collection charges’ to RMBL.
11. You are a Class Member if you meet the following criteria:
 - a. you have at any time entered into a loan agreement with RMBL which contains or contained a clause requiring you to pay ‘collection charges’;
 - b. you have paid to RMBL an amount or amounts by way of ‘collection charges’ pursuant to that clause; and
 - c. you had not, as at 4 September 2018, received from RMBL a full refund of those amounts.
12. If you do not meet the above criteria, you may disregard this notice.
13. If you do meet the above criteria, you should read this notice carefully as it will affect your rights. If you were formerly the person (or one of the persons) in control of a corporation which meets the above criteria, but the corporation is now deregistered, it may be necessary for you (or for someone else) to apply for the corporation to be re-registered in order for it to participate in the RMBL Class Action.



14. If you are unsure as to whether or not you are a Class Member, you should contact the Applicant's solicitors (Maurice Blackburn), whose contact details are set out in paragraph 29 of this notice, or alternatively seek your own legal advice.

What do Class Members need to do?

15. Class Members have two options:
 - a. **Option A:** remain as a Class Member in the RMBL Class Action; or
 - b. **Option B:** opt out of the RMBL Class Action.

There are different consequences depending on which option you choose.

16. **Option A:** Class Members who wish to **remain as a Class Member** in the RMBL Class Action are not required to respond to this notice, or to do anything else at the present time. If you do not opt out:
 - a. you will continue to be a person or entity whose claim against RMBL is a claim the subject of the RMBL Class Action, and you will maintain the opportunity to benefit from any judgment or settlement in the RMBL Class Action (in due course, the Court may require you to take further steps to confirm your participation in the action – if this occurs, a further notice will be sent to you at the same address to which this notice has been sent); and
 - b. you may be bound by any judgment or settlement in the RMBL Class Action; thus, if the RMBL Class Action is ultimately unsuccessful, or is not as successful as you might have wished, you will not be able to pursue the same claims, and may not be able to pursue related claims, against RMBL in other legal proceedings.

If you do wish to **remain as a Class Member** in the RMBL Class Action, you should preserve any documentary records that you presently have relating to your loan from RMBL (including a copy of your loan agreement, and records of any payments which you have made to RMBL). It may also be in your interests to register your claim with the Applicant's solicitors (Maurice Blackburn), although you are not presently required to do so. By registering your claim, however, it will ensure:

- that you are kept informed of future developments with respect to the RMBL Class Action; and
- if there is ultimately a successful judgment or settlement in the RMBL Class Action, that you receive any money to which you may be entitled as a Class Member.



There is no cost to register your claim. You can register your claim by:

- completing and submitting the online registration form via Maurice Blackburn's website, accessible at <http://www.mauriceblackburn.com.au/current-class-actions/rmbl-class-action>; or
- alternatively, completing the RMBL Class Member Registration Form attached to this notice (**Attachment A**), and returning it to Maurice Blackburn by email (RMBLclassaction@mauriceblackburn.com.au) or post to the following address:

RMBL Class Action Team

Maurice Blackburn

Level 8, 179 North Quay

Brisbane Qld 4000

17. As noted in paragraph 13 above, if you were formerly the person (or one of the persons) in control of a corporation, but the corporation is now deregistered, it may be necessary for you (or for someone else) to apply for the corporation to be re-registered in order for it to become a Class Member in, and to participate in, the RMBL Class Action.
18. **Option B:** Class Members who **Opt Out** of the RMBL Class Action will not be bound by the outcome of the RMBL Class Action, and will not be entitled to receive any monetary compensation that might result from the RMBL Class Action. Class Members who opt out will no longer be Class Members in the RMBL Class Action following their opt out, but will preserve their legal rights (if any) against RMBL. If you wish to opt out, you need to follow the steps outlined below in Section 2, Option B of this notice.

Will Class Members be liable for legal costs?

19. In the RMBL Class Action, the Court has made orders that Litigation Lending Services Ltd (**LLS**) is to fund the legal costs of conducting the action, indemnify the Applicant and Class Members in respect of any adverse costs orders which may be made, and provide any security for costs that the Court may order.
20. The Applicant has retained Maurice Blackburn to act as his solicitors. However, it is not necessary for you or other Class Members to retain Maurice Blackburn in order to participate as a Class Member in the RMBL Class Action.
21. The Applicant's liability for legal costs and out of pocket expenses (**disbursements**) will be funded by LLS and recovered by LLS only in the event of a successful outcome of the RMBL



Class Action (by way of judgment or settlement). 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* Class Members (**costs reimbursement order**).

22. The Federal Court will assess the legal costs and disbursements incurred in the RMBL Class Action and make a costs reimbursement order for only an amount that the Court determines is reasonable.
23. In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party (**adverse costs order**). In a class action, it is only the Applicant that faces the risk of an adverse costs order if the class action is unsuccessful. As a Class Member, an adverse costs order will not, and cannot, be made against you.
24. Thus, you will not incur any costs simply by remaining as a Class Member. If the RMBL Class Action is ultimately unsuccessful, all costs will be borne by LLS and/or Maurice Blackburn. On the other hand, if the RMBL Class Action is ultimately successful, and you become entitled to receive compensation, your share of any costs will be deducted from your share of the compensation, but will never exceed that amount – under no circumstances will you be liable to pay any ‘out-of-pocket’ costs by remaining as a Class Member in the RMBL Class Action (whether to LLS, Maurice Blackburn or otherwise).

Common fund orders

25. As noted above, the RMBL Class Action is being funded by LLS. The Court has made orders (**common fund orders**) setting a commission to pay LLS and providing for the reimbursement of Project Costs (as defined in the Funding Terms annexed to the Court’s common fund orders). A copy of these orders, which set out the terms of the funding arrangements:
 - a. is available on the website of the Applicant’s solicitors (<http://www.mauriceblackburn.com.au/current-class-actions/rmbl-class-action>); or
 - b. can be obtained by contacting the Applicant’s solicitors (Maurice Blackburn), whose contact details are set out in paragraph 29 of this notice, or otherwise by visiting any Registry of the Federal Court of Australia.
26. The commission sought that is payable to LLS will be fixed by the Court upon any settlement or judgment in an amount the Court considers reasonable and proportionate. However, subject to further order, the Court has ordered that the amount will be: (i) for any settlement or judgment amounts that are received on or before 31 August 2019, no more than 25%; and (ii) for any settlement or judgment amounts that are received on or after 1 September 2019, no more than 30%.



27. As noted above, no Class Member will be liable to pay any amount of money to LLS, or to Maurice Blackburn, unless and until there is a successful outcome in the RMBL Class Action. If a successful outcome is achieved (subject to any other order the Court might make), then the amounts payable to LLS and/or to Maurice Blackburn will be deducted from the settlement or judgment sum before the balance is distributed to Class Members. The total amount paid to LLS and to Maurice Blackburn in the event of a successful outcome will never exceed the settlement or judgment sum.

Where can you obtain copies of relevant documents?

28. Copies of relevant documents, including the Originating Application, Statement of Claim, Defence, Reply and relevant orders of the Court:
- a. are available on the website of the Applicant's solicitors (<http://www.mauriceblackburn.com.au/current-class-actions/rmb-l-class-action>); or
 - b. may be obtained by contacting the Applicant's solicitors (Maurice Blackburn), whose contact details are set out in paragraph 29 of this notice.

What if you have further questions?

29. If you have any questions or queries, you may contact the Applicant's solicitors (Maurice Blackburn) as follows:

Email: RMBLclassaction@mauriceblackburn.com.au

Tel: 1800 931 361

Post: Maurice Blackburn

Level 8, 179 North Quay

Brisbane Qld 4000



SECTION 2

YOUR TWO OPTIONS

Option A – Remain a Class Member

If you wish to remain a Class Member in the RMBL Class Action, you are not required to respond to this notice. In the event that the Court makes orders in the future requiring you to take further steps to confirm your participation in the RMBL Class Action (including your participation in any settlement of the RMBL Class Action), a further notice will be sent to you. However, as noted above:

- if you wish to remain a Class Member, you should preserve all records you have of your loan(s) from RMBL, and it may also be in your interests to register your claim now with Maurice Blackburn, in the manner set out in paragraph 16 above – there is no cost to register your claim; and
- if you were formerly the person (or one of the persons) in control of a corporation, but the corporation is now deregistered, it may be necessary for you (or for someone else) to apply for the corporation to be re-registered in order for it to become a Class Member in, and to participate in, the RMBL Class Action.

Option B – Opt Out

If you do not wish to remain a Class Member in the RMBL Class Action, you must opt out by completing the 'Opt Out Notice' form attached to this notice (**Attachment B**), and returning it to the Federal Court.

If you opt out of the RMBL Class Action, you will:

- cease to be a Class Member in the RMBL Class Action, and will not be affected by, or entitled to the benefit of, any orders made in the action;
- not be entitled to receive any compensation from any successful damages award or settlement outcome arising in the RMBL Class Action; and
- be able to pursue any rights you may have against RMBL, on your own behalf and separate from the RMBL Class Action, if you so wish.

Opt out notices must be submitted to the Victorian District Registry of the Federal Court of Australia (Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne Vic 3000) before **4:00pm AEDT on 19 July 2019**. Opt out notices received after this time will not be accepted, and you will remain as a Class Member in the RMBL Class Action (and will be taken to have chosen Option A above).



Attachment A

Complete this form if you intend to choose Option A above, and register to participate as a Class Member in the RMBL Class Action (or if you prefer to register electronically, you can do so via Maurice Blackburn's website (www.mauriceblackburn.com.au))

CLASS MEMBER REGISTRATION FORM

RMBL CLASS ACTION

Uren v RMBL Investments Ltd (VID 1093 of 2018)

To: RMBL Class Action Team
Maurice Blackburn
Level 8, 179 North Quay
Brisbane Qld 4000
(Tel: 1800 931 361)
(Email: RMBLclassaction@mauriceblackburn.com.au)

The class member named below provides the following information in respect of their claim in the RMBL class action.

(Please use your best efforts to provide all of the requested information.)

Name of class member (i.e. the party who entered into a loan agreement with RMBL)	
Contact name (if different from name of class member), and authority to complete this form on class member's behalf (e.g. director / secretary of class member, lawyer for class member)	
Postal address	
Email address	
Telephone number(s)	
Date (or approximate date) of loan agreement with RMBL (if known)	
Amount (or approximate amount) borrowed (if known)	
Date (or approximate date) on which loan was repaid (if known)	



Estimate of total 'collection charges' paid (if known)	
--	--

By signing below, the class member:

- confirms that the information provided in this form is true and correct, to the best of their knowledge; and
- authorises Maurice Blackburn, on the class member's behalf, to obtain from RMBL Investments Ltd details of the loan agreement which they entered into with RMBL, and of all transactions between the class member and RMBL under and pursuant to that loan agreement (including, for the avoidance of doubt, the amount of interest and 'collection charges' which the class member paid).

.....

Please sign here

Date:

(If possible, please attach to this form a copy of the loan agreement which the class member entered into with RMBL Investments Ltd)



Attachment B

Complete this form only if you intend to choose Option B above, and opt out of (i.e. take no further part in) the RMBL Class Action

Form 21
Rule 9.34

Opt out notice

VID 1093 of 2018

Federal Court of Australia
District Registry: Victoria
Division: General

NOEL MURRAY UREN

Applicant

RMBL INVESTMENTS LTD (ACN 004 493 789) and another
Respondents

To: The Registrar
Federal Court of Australia
Victoria District Registry
Owen Dixon Commonwealth Law Courts Building
Level 7, 305 William Street
Melbourne Vic 3000

I,, a class member in this representative proceeding, give notice under section 33J of the *Federal Court of Australia Act 1976*, that I am opting out of the representative proceeding.

Date: 2019

.....
Signed by

Filed on behalf of (name & role of party) _____
Prepared by (name of person/lawyer) _____
Law firm (if applicable) _____
Tel _____ Fax _____
Email _____
Address for service
(include state and postcode) _____

[Form approved 01/08/2011]

