

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/09/2018 3:49:03 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: VID1093/2018  
File Title: NOEL MURRAY UREN v RMBL INVESTMENTS LTD & ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 5/09/2018 3:37:24 PM AEST

A handwritten signature in blue ink, reading 'Warwick Soden'.

Registrar

### Important Information

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

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 17  
Rule 8.05(1)(a)

## Statement of claim

VID 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

### The Parties

1. The applicant and the second respondent are brothers and were at all material times partners in a partnership to conduct a cattle farm known as 'Walkerville' at Tarwin Lower, Gippsland.
2. At all material times the first respondent (**RMBL**):
  - a. was and is a company registered pursuant to the *Corporations Act 2001* (Cth) (**CA**) and capable of being sued;
  - b. was and is the responsible entity of the RMBL Mortgage Income Investments Scheme (ARSN 091 248 289), being a registered managed investment scheme under Ch 5C of the CA (**Scheme**); and
  - c. in its capacity as responsible entity of the Scheme, carried on business as a contributory mortgage investment manager.

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

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**Address for service** Level 8, 179 North Quay  
(include state and postcode) Brisbane Qld 4000

3. The applicant has commenced this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976 (Cth)* on his own behalf and on behalf of other persons who:
  - a. have at any time entered into a loan agreement with RMBL which contains or contained a clause in the same, or substantially the same, terms as the Collection Charge Clause (as defined in sub-paragraph 6.h below); and
  - b. have paid to RMBL an amount or amounts by way of 'collection charge' pursuant to the clause referred to in sub-paragraph a.; and
  - c. have not, as at the date of the commencement of this proceeding, received from RMBL a full refund of the amount or amounts referred to in sub-paragraph b.,  
**(Group Members)**.
4. As at the date of the commencement of this proceeding there were more than seven Group Members.

#### **The Loan Agreement**

5. On or about 29 May 2001 the applicant, the second respondent (collectively, the **Borrowers**) and RMBL entered into a loan agreement (**Loan Agreement**).

#### **Particulars**

The Loan Agreement is in writing and is dated 29 May 2001. A copy of the Loan Agreement may be inspected at the offices of the applicant's solicitors.

6. The Loan Agreement contained, *inter alia*, the following express written terms:
  - a. RMBL (as lender) agreed to make an advance of moneys to the Borrowers in the amount of \$760,000 (**Advance**) (cl 2, Schedule item 4);
  - b. the Borrowers were required to repay, *inter alia*, the Advance to RMBL on expiration of the Loan Period (as defined in the Loan Agreement) (cl 4.1);
  - c. the Borrowers were not, without the written consent of RMBL, permitted to repay all or any part of the Advance prior to the expiration of the Loan Period (cl 4.2);
  - d. the Borrowers were required to pay to RMBL interest on the Advance at three-monthly intervals:
    - i. at the rate of 8.00% per annum, if paid by the due date; or
    - ii. at the rate of 12.00% per annum, if not paid by the due date,  
(cl 5, Schedule items 7, 8, 9);

- e. RMBL could, in its absolute discretion, from time to time increase or decrease the rates referred to in sub-paragraph d. (cl 5.7.1);
  - f. in the event that RMBL increased one or both of the rates referred to in sub-paragraph d., the Borrowers could, at any time within two months of the date of service on them by RMBL of notice of the increase, repay all or any part of the Advance notwithstanding clause 4.2 of the Loan Agreement (cl 5.7.3);
  - g. upon signing of the Loan Agreement, the Borrowers were required to pay to RMBL an establishment fee of a minimum of 1% of the Advance (cl 6.1);
  - h. the Borrowers were required to pay to RMBL or RMBL's solicitor on demand "*all costs, charges and expenses incurred in connection with the collection of interest on all moneys and amounts payable pursuant to [the Loan Agreement]*" at the rate of 5.5% of all interest entitled to be collected by RMBL pursuant to the Loan Agreement (**Collection Charge Rate**), provided that the Collection Charge Rate could "*in the absolute discretion of [RMBL] be increased or decreased from time to time*" (cl 6.3) (**Collection Charge Clause**); and
  - i. all amounts payable by the Borrowers to RMBL pursuant to the Loan Agreement were secured by a registered first mortgage from the Borrowers over the land and building located at Buffalo Road, Walkerville, being the land more particularly described in Certificates of Title Volume 9855 Folio 966, Volume 8774 Folio 533, Volume 8386 Folio 417 and Volume 9069 Folio 310 (cl 7, Schedule item 10).
7. On or about 29 May 2001 RMBL advanced to the Borrowers the Advance in accordance with cl 2 of the Loan Agreement.

#### **Variations to the Loan Agreement**

8. On or about 21 July 2004 the Borrowers and RMBL entered into a Deed of Variation of Loan Agreement (**First Variation**), by which the end of the Loan Period specified in the Loan Agreement was amended from 29 May 2004 to 29 May 2007.

#### **Particulars**

The First Variation is in writing and is dated 21 July 2004. A copy of the First Variation may be inspected at the offices of the applicant's solicitors.

9. On or about 3 May 2005 the Borrowers and RMBL entered into a Deed of Variation of Loan Agreement (**Second Variation**), by which the amount of the Advance specified in the Loan Agreement was increased by \$200,000 to \$960,000.

### Particulars

The Second Variation is in writing and is dated 3 May 2005. A copy of the Second Variation may be inspected at the offices of the applicant's solicitors.

10. On or about 20 July 2007 the Borrowers and RMBL entered into a Deed of Variation of Loan Agreement (**Third Variation**), by which the end of the Loan Period specified in the Loan Agreement (and amended by the First Variation) was amended from 29 May 2007 to 29 May 2010.

### Particulars

The Third Variation is in writing and is dated 20 July 2007. A copy of the Third Variation may be inspected at the offices of the applicant's solicitors.

11. On or about 20 December 2007 the Borrowers and RMBL entered into a Deed of Variation of Loan Agreement (**Fourth Variation**), by which the amount of the Advance specified in the Loan Agreement (and increased by the Second Variation) was increased by a further \$200,000 to \$1,160,000.

### Particulars

The Fourth Variation is in writing and is dated 20 December 2007. A copy of the Fourth Variation may be inspected at the offices of the applicant's solicitors.

12. On or about 11 June 2010 the Borrowers and RMBL entered into a Variation of Loan Agreement (**Fifth Variation**), by which the end of the Loan Period specified in the Loan Agreement (and amended by the First Variation and the Third Variation) was amended from 29 May 2010 to 29 May 2013.

### Particulars

The Fifth Variation is in writing and is dated 11 June 2010. A copy of the Fifth Variation may be inspected at the offices of the applicant's solicitors.

13. On or about 19 December 2013 the Borrowers and RMBL entered into a Variation of Loan Agreement (**Sixth Variation**), by which the end of the Loan Period specified in the Loan Agreement (and amended by the First Variation, the Third Variation and the Fifth Variation) was amended from 29 May 2013 to 29 May 2014.

### Particulars

The Sixth Variation is in writing and is dated 19 December 2013. A copy of the Sixth Variation may be inspected at the offices of the applicant's solicitors.

(collectively, the **Variations**)

### **Increases in Collection Charge Rate**

14. On or about 16 March 2006, and with effect from that date, RMBL purported to increase the Collection Charge Rate from 5.5% to 11% (incl GST) of all interest entitled to be collected by RMBL pursuant to the Loan Agreement.
15. On or about 16 July 2008, and with effect from that date, RMBL purported to increase the Collection Charge Rate from 11% to 16.5% (incl GST) of all interest entitled to be collected by RMBL pursuant to the Loan Agreement.
16. On or about 16 December 2008, and with effect from that date, RMBL purported to increase the Collection Charge Rate from 16.5% to 22% (incl GST) of all interest entitled to be collected by RMBL pursuant to the Loan Agreement.
17. On or about 16 September 2010, and with effect from that date, RMBL purported to increase the Collection Charge Rate from 22% to 27.5% (incl GST) of all interest entitled to be collected by RMBL pursuant to the Loan Agreement.

(collectively, the **Increases in Collection Charge Rates**)

### **Payment of Interest and Collection Charges by the Borrowers**

18. On or about the dates set out in column 1 of Schedule A hereto, RMBL demanded from the Borrowers and the Borrowers paid to RMBL:
  - a. by way of interest on the Advance (as increased from time to time), the amounts set out in column 2 of Schedule A; and
  - b. by way of 'collection charges', the amounts set out in column 4 of Schedule A, which amounts were calculated in accordance with the applicable Collection Charge Rate at the relevant time as set out in paragraphs 6.h, 14, 15, 16 and 17 above  
(**Collection Charges**).

### **Group Members' Collection Charge Clauses**

19. Each of the Group Members entered into loan agreements with RMBL containing a clause in the same or substantially the same terms as the Collection Charge Clause (**Group Member Collection Charge Clause**).

#### **Particulars**

Particulars of the loan agreements entered into between RMBL and each Group Member will be provided following the initial trial of the applicant's claim.

20. Each of the Group Members has paid interest to RMBL pursuant to their loan agreements and paid 'collection charges' pursuant to their Group Member Collection Charge Clause.

**Particulars**

Particulars of the amounts paid by each Group Member to RMBL by way of interest and 'collection charges' will be provided following the initial trial of the applicant's claim.

**Proper Construction of the Collection Charge Clause**

21. Upon its true construction, the Collection Charge Clause (and each Group Member Collection Charge Clause) only entitled RMBL to demand from the Borrowers and each Group Member, and only obliged the Borrowers and each Group Member to pay to RMBL:
- a. the amount of costs, charges and expenses actually incurred by RMBL from time to time in connection with (in the case of the Borrowers) the collection of interest on all moneys and amounts payable pursuant to the Loan Agreement and (in the case of each Group Member) the collection of interest on all moneys and amounts payable pursuant to their respective loan agreements; or
  - b. *in the alternative*, a pro rata proportion of the aggregate amount of costs, charges and expenses actually incurred by RMBL from time to time in connection with the collection of interest on all moneys and amounts payable pursuant to the Loan Agreement and the loan agreements in existence at that time between RMBL and each Group Member.
22. The amounts demanded by RMBL from the Borrowers and each Group Member, purportedly pursuant to the Collection Charge Clause and each Group Member Collection Charge Clause respectively, and paid by the Borrowers and each Group Member to RMBL (in the case of the Borrowers, being the Collection Charges set out in column 4 of Schedule A), were substantially in excess of the amounts referred to in sub-paragraphs 21.a and/or 21.b above.

**Particulars**

In relation to the Borrowers, particulars of the amounts referred to in sub-paragraphs 21.a and 21.b above will be provided following discovery. In relation to Group Members, particulars of the amounts referred to in sub-paragraphs 21.a and 21.b above will be provided following the initial trial of the applicant's claim.

### **RMBL's Discretion Under Collection Charge Clause**

23. *In the alternative to paragraph 21 above*, to the extent that the Collection Charge Clause (and each Group Member Collection Charge Clause) purported to confer on RMBL a discretion to increase or decrease the Collection Charge Rate, it was void for uncertainty.
24. Further and in the alternative, to the extent that the Collection Charge Clause (and each Group Member Collection Charge Clause) purported to confer on RMBL a discretion to increase or decrease the Collection Charge Rate, it was subject to an implied term that if, at any time, RMBL chose to exercise its discretion to alter the Collection Charge Rate (or the corresponding rate in any Group Member Collection Charge Clause), the revised Collection Charge Rate would not exceed a rate that would enable RMBL to recover only:
- a. the amount of costs, charges and expenses actually incurred by RMBL from time to time in connection with (in the case of the Borrowers) the collection of interest on all moneys and amounts payable pursuant to the Loan Agreement and (in the case of each Group Member) the collection of interest on all moneys and amounts payable pursuant to their respective loan agreements; or
  - b. *in the alternative*, a pro rata proportion of the aggregate amount of costs, charges and expenses actually incurred by RMBL from time to time in connection with the collection of interest on all moneys and amounts payable pursuant to the Loan Agreement and the loan agreements in existence at that time between RMBL and each Group Member.

#### **Particulars**

The term was implied to give business efficacy to the Loan Agreement and (in the case of each Group Member) their respective loan agreements.

25. The Increases in Collection Charge Rates (and increases in the corresponding rates in any Group Member Collection Charge Clause):
- a. were such as would entitle RMBL to recover substantially more than the amounts referred to in sub-paragraphs 24.a and/or 24.b above; and/or
  - b. were not caused by and/or in any way referable to any commensurate increase in the amounts referred to in sub-paragraphs 24.a and/or 24.b above.

#### **Particulars**

In relation to the Borrowers, particulars of the amounts referred to in sub-paragraphs 24.a and 24.b above will be provided following discovery. In relation to



Group Members, particulars of the amounts referred to in sub-paragraphs 24.a and 24.b above will be provided following the initial trial of the applicant's claim.

26. By reason of the matters referred to in paragraphs 23 to 25 above, the Increases in Collection Charge Rates were void and of no effect.

### **Breach of Contract**

27. In the premises, RMBL breached the Collection Charge Clause (and each Group Member Collection Charge Clause) by demanding from the Borrowers and each Group Member amounts that exceeded the amount (if any) referred to in sub-paragraph 21.a above or, *in the alternative*, sub-paragraph 21.b above (**Excessive Amounts**).
28. By reason of RMBL's breach of the Collection Charge Clause (and each Group Member Collection Charge Clause), the Borrowers and each Group Member have suffered loss and damage.

### **Particulars**

The Excessive Amounts paid by the Borrowers and each Group Member. In relation to the Borrowers, the loss and damage is the difference between the amount of the Collection Charges paid by the Borrowers (as set out in column 4 of Schedule A) and the amounts referred to in paragraph 27 above. In relation to the Group Members, particulars of the loss and damage will be provided following the initial trial of the applicant's claim.

### **Money Had and Received**

29. The amounts paid by the Borrowers to RMBL pursuant to the Collection Charge Clause (being the Collection Charges set out in column 4 of Schedule A) and the amounts paid by each Group Member to RMBL pursuant to their respective Group Member Collection Charge Clause, were paid by the Borrowers and each Group Member in the mistaken belief that they were under a legal obligation to pay them or that RMBL was legally entitled to demand payment of them.
30. In the premises, the Excessive Amounts paid by the Borrowers and each Group Member, are monies had and received by RMBL to the use of the Borrowers and each Group Member, and/or RMBL has been unjustly enriched by the receipt of the Excessive Amounts.

### Misleading and Deceptive Conduct

31. Further or alternatively, the Loan Agreements and the Variations (and the equivalent loan agreements and variations entered into between Group Members and RMBL):
  - a. constituted financial products as defined in s 12BAA of *the Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
  - b. constituted RMBL dealing in a financial product, and therefore providing a financial service, for the purposes of s 12BAB of the ASIC Act.
  
32. By demanding and receiving the Excessive Amounts purportedly pursuant to the Collection Charge Clause and each Group Member Collection Charge Clause, RMBL falsely represented to the Borrowers and each Group Member that the Collection Charge Clause and each Group Member Collection Charge Clause conferred upon RMBL a legal entitlement to the Excessive Amounts, and RMBL thereby engaged in conduct (the **Conduct**) that was:
  - a. in trade or commerce;
  - b. in relation to a financial service;
  - c. misleading or deceptive or likely to mislead or deceive; and
  - d. conduct in contravention of s 12DA of the ASIC Act.
  
33. Further or alternatively, the Conduct was:
  - a. in trade or commerce;
  - b. misleading or deceptive or likely to mislead or deceive; and
  - c. conduct in contravention of s 18 of the Australian Consumer Law (**ACL**).
  
34. In reliance upon or otherwise by reason of the Conduct, the Borrowers paid the Collection Charges (and each Group Member paid collection charges) to RMBL.
  
35. By reason of the foregoing, the Borrowers and Group Members have suffered loss and damage.

### Particulars

The applicant refers to and repeats the particulars subjoined to paragraph 28 above.

**Unconscionable Conduct**

- 36. Further or alternatively, the Conduct was:
  - a. in trade or commerce;
  - b. in connection with the supply of a financial service;
  - c. in all the circumstances unconscionable; and
  - d. conduct in contravention of s 12CB of the ASIC Act.
  
- 37. Further or alternatively, the Conduct was:
  - a. in trade or commerce;
  - b. in connection with the supply or possible supply of goods or services;
  - c. in all the circumstances unconscionable; and
  - d. conduct in contravention of s 21 of the ACL.
  
- 38. By reason of the foregoing, the Borrowers and Group Members have suffered loss and damage.

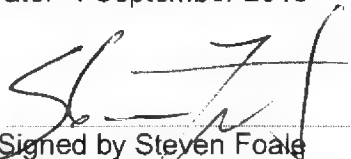
**Particulars**

The applicant refers to and repeats the particulars subjoined to paragraph 28 above.

**Relief**

- 39. In the premises, the applicant claims on his own behalf and on behalf of each Group Member, the relief set out in the Originating Application.

Date: 4 September 2018

  
Signed by Steven Foale  
Lawyer for the Applicant

This pleading was prepared by Steven Foale, lawyer, and settled by J.F. Richardson and B.F. Quinn QC of counsel

## Schedule A

Date	Interest Amount	Collection Charge Rate (incl GST)	Collection Charge (incl GST)
23-Nov-01	\$15,163.56	5.5%	\$834.00
22-Feb-02	\$14,846.03	5.5%	\$816.53
22-May-02	\$14,361.92	5.5%	\$789.91
30-Aug-02	\$15,241.64	5.5%	\$838.29
22-Nov-02	\$15,324.93	5.5%	\$842.87
21-Feb-03	\$15,324.93	5.5%	\$842.87
22-May-03	\$14,825.21	5.5%	\$815.39
22-Aug-03	\$15,163.56	5.5%	\$834.00
21-Nov-03	\$14,846.03	5.5%	\$816.53
20-Feb-04	\$15,647.67	5.5%	\$860.62
21-May-04	\$15,460.27	5.5%	\$850.31
20-Aug-04	\$15,803.84	5.5%	\$869.21
22-Nov-04	\$15,803.83	5.5%	\$869.21
22-Feb-05	\$15,803.83	5.5%	\$869.21
20-May-05	\$16,211.51	5.5%	\$891.64
22-Aug-05	\$20,567.67	5.5%	\$1,131.22
25-Nov-05	\$20,567.67	5.5%	\$1,131.22
22-Feb-06	\$20,567.67	5.5%	\$1,131.22
18-May-06	\$19,094.80	5.5% / 11%	\$1,756.14
21-Aug-06	\$19,758.91	11%	\$2,173.48
22-Nov-06	\$20,567.68	11%	\$2,262.45
21-Feb-07	\$20,567.68	11%	\$2,262.45
17-May-07	\$19,896.98	11%	\$2,188.67
20-Aug-07	\$20,567.68	11%	\$2,262.45
21-Nov-07	\$21,172.60	11%	\$2,328.99
21-Feb-08	\$25,130.41	11%	\$2,764.34
20-May-08	\$27,657.26	11%	\$3,042.30
19-Aug-08	\$28,507.40	16.5%	\$4,703.72
21-Nov-08	\$28,507.40	16.5%	\$4,703.72
18-Feb-09	\$25,551.78	16.5% / 22%	\$5,110.12
19-May-09	\$20,506.58	22%	\$4,511.45
19-Aug-09	\$21,197.81	22%	\$4,663.52
19-Nov-09	\$21,197.81	22%	\$4,663.52

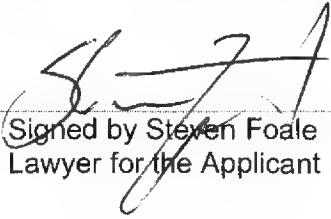
<b>Date</b>	<b>Interest Amount</b>	<b>Collection Charge Rate (incl GST)</b>	<b>Collection Charge (incl GST)</b>
18-Feb-10	\$21,936.71	22%	\$4,826.07
19-May-10	\$22,643.84	22%	\$4,981.65
24-Aug-10	\$24,852.61	22%	\$5,467.57
17-Nov-10	\$25,337.26	22% / 27.5%	\$6,507.17
21-Feb-11	\$25,583.56	27.5%	\$7,035.48
18-May-11	\$24,749.31	27.5%	\$6,806.07
18-Aug-11	\$25,583.56	27.5%	\$7,035.48
18-Nov-11	\$25,583.56	27.5%	\$7,035.48
20-Feb-12	\$25,583.56	27.5%	\$7,035.48
19-Mar-12	\$8,064.38	27.5%	\$2,217.70
18-Apr-12	\$8,620.55	27.5%	\$2,370.66
17-May-12	\$8,342.47	27.5%	\$2,294.18
19-Jun-12	\$8,324.99	27.5%	\$2,289.38
18-Jul-12	\$8,056.44	27.5%	\$2,215.52
17-Aug-12	\$8,127.95	27.5%	\$2,235.19
20-Sep-12	\$8,127.95	27.5%	\$2,235.19
22-Oct-12	\$7,865.75	27.5%	\$2,163.08
22-Nov-12	\$7,980.16	27.5%	\$2,194.55
18-Dec-12	\$7,722.74	27.5%	\$2,123.76
17-Jan-13	\$7,980.16	27.5%	\$2,194.54
19-Feb-13	\$7,783.12	27.5%	\$2,140.36
19-Mar-13	\$7,029.92	27.5%	\$1,933.23
17-Apr-13	\$7,783.12	27.5%	\$2,140.36
20-May-13	\$7,532.05	27.5%	\$2,071.31
18-Jun-13	\$7,536.82	27.5%	\$2,072.63
17-Jul-13	\$7,293.70	27.5%	\$2,005.77
20-Aug-13	\$7,536.82	27.5%	\$2,072.63
20-Sep-13	\$7,290.52	27.5%	\$2,004.89
17-Oct-13	\$7,055.34	27.5%	\$1,940.22
19-Nov-13	\$7,290.52	27.5%	\$2,004.89
17-Dec-13	\$7,055.34	27.5%	\$1,940.22
21-Jan-14	\$7,290.52	27.5%	\$2,004.89
18-Feb-14	\$7,290.52	27.5%	\$2,004.89
20-Mar-14	\$6,584.99	27.5%	\$1,810.88
17-Apr-14	\$7,290.52	27.5%	\$2,004.89

<b>Date</b>	<b>Interest Amount</b>	<b>Collection Charge Rate (incl GST)</b>	<b>Collection Charge (incl GST)</b>
20-May-14	\$7,055.34	27.5%	\$1,940.22
18-Jun-14	\$7,290.52	27.5%	\$2,004.89
17-Jul-14	\$7,055.34	27.5%	\$1,940.22
19-Aug-14	\$7,290.52	27.5%	\$2,004.89
18-Sep-14	\$7,290.52	27.5%	\$2,004.89
17-Oct-14	\$7,055.34	27.5%	\$1,940.22
18-Nov-14	\$7,290.52	27.5%	\$2,004.89
16-Dec-14	\$7,055.34	27.5%	\$1,940.22
19-Jan-15	\$7,290.52	27.5%	\$2,004.89
17-Feb-15	\$7,290.52	27.5%	\$2,004.89
19-Mar-15	\$6,584.99	27.5%	\$1,810.87
17-Apr-15	\$6,896.44	27.5%	\$1,896.52
19-May-15	\$6,673.97	27.5%	\$1,835.34
17-Jun-15	\$6,748.66	27.5%	\$1,855.88
21-Jul-15	\$6,530.96	27.5%	\$1,796.01
17-Sep-15	\$6,748.66	27.5%	\$1,855.89
<b>Total</b>			<b>\$207,688.56</b>

**Certificate of lawyer**

I Steven Mark Foale certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 4 September 2018



Signed by Steven Foale  
Lawyer for the Applicant