



Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

No: NSD2168/2019

RAYMOND BOULOS
Applicant

M.R.V.L. INVESTMENTS PTY LTD
Respondent

ORDER

JUDGE: JUSTICE THAWLEY

DATE OF ORDER: 21 December 2022

WHERE MADE: Sydney

BY CONSENT, THE COURT ORDERS THAT:

Interlocutory Application

1. The amended interlocutory application filed on 2 December 2022, be dismissed.
2. Orders 1 to 3 and 6 (inclusive) of the orders made on 8 December 2022 are vacated.

Discovery

3. By 27 January 2023, the Respondent is to provide to the Applicant copies of the documents described in **Annexure A**, to the extent that copies of those documents have not already been provided by the Respondent.
4. By 27 January 2023, the parties are to confer and use their best endeavours to agree on any further proposed discovery orders.
5. In the event that the parties agree on further discovery orders, the parties jointly approach the Court seeking consent orders by 4:00pm on 31 January 2023.
6. In the event that the parties are not able to agree on any further discovery orders by 27 January 2023:
 - a. on 10 February 2023, the parties file and serve:
 - i. any affidavit evidence to be relied upon at hearing; and



- ii. an outline of written submissions of no more than 5-pages;
- b. the proceeding be listed for hearing in the week commencing 13 February 2023 or such other date as may be convenient to the parties and the Court.

Mediation

7. Pursuant to s 53A(1) of the *Federal Court of Australia Act 1976 (FCA Act)*, the Court refers this proceeding to mediation, which is to occur no later than 30 June 2023.
8. The mediation is to be conducted by a mediator agreed between the parties, with such agreement to occur by no later than 1 February 2023. If the parties cannot agree to a mediator by this date, the parties are to notify the Associate to Justice Thawley by email in sufficient time to permit resolution of the dispute prior to 30 June 2023.
9. A group member who wishes to register for mediation must follow the procedure contained in the Notice to Group Members referred to at **Order 12** below before 4:00pm (AEST) on 27 February 2023 (the **Deadline**).

Display of Information

10. By 6 January 2023, Adero Law (**Adero**) is to:
 - a. permanently remove from its website (located at <https://www.aderolaw.com.au/class-actions/hospitality/merivale/>) the videos entitled “Myf on Merivale” and “Adero Law – Rory Markham – Feb 19 Merivale update”; and
 - b. display on its website until at least the Deadline, the following documents in relation to this proceeding:
 - i. the Applicant’s Further Amended Originating Application filed 26 November 2021;
 - ii. the Applicant’s Second Further Amended Statement of Claim filed 13 December 2021;
 - iii. the Respondent’s Amended Defence to the Second Further Amended Statement of Claim filed 15 February 2022;
 - iv. the Applicant’s Reply filed 18 June 2020; and



v. the Notice to Group Members referred to at **Order 12** below.

Notice to Group Members and Registration for Mediation

Approval of notices

11. Pursuant to s 33X(5) of the FCA Act, notice be given to all persons who satisfy the criteria contained in the Further Amended Originating Application filed 26 November 2021, who have not opted out of the proceeding (**Group Members**) of the registration process in aid of mediation in the form of the “Notice to Group Members” appearing at Annexure B to these orders (the **Notice to Group Members**).
12. Pursuant to ss 33X and 33Y of the FCA Act, the form and content of:
 - a. the Notice to Group Members;
 - b. Annexure C to these Orders (**Registered Group Member Cover Letter**);
 - c. Annexure D to these Orders (**Group Member Cover Letter**);
 - d. Annexure E to these Orders (**Reminder Email Cover Letter**);
 - e. Annexure F to these Orders (**SMS Cover**); and
 - f. Annexure G to these Orders (**SMS Reminder**),(collectively, the **Notifications**) are approved.
13. The Notifications may be amended by the parties before the Notifications are posted, emailed or published in order to correct any postal, website, email address or telephone number or any typesetting, typographical or other non-substantive errors.

Distribution of the Notice to Group Members

14. The Notifications are to be distributed to Group Members as set out in these orders, using COJO (the **Mailing Service**) wherever a third-party mailing service is required.
15. Pursuant to s 33Y(3) of the FCA Act, the Notice to Group Members be given to Group Members as follows:

Retained Group Members

- a. By 9 January 2023, Adero will cause the Notice to Group Members and the Registered Group Member Cover Letter in the form at **Annexure C** to these



orders to be sent to those Group Members who have registered their interest in the proceeding, or entered into a written retainer agreement with Adero (**Registered Group Members**), at the email addresses previously provided to Adero, or by ordinary post for those who have not specified an email address;

All Group Members

- b. By 10:00am on 21 December 2022, Adero will provide the Mailing Service, on a confidential basis which expressly precludes disclosure to the Respondent, its legal representatives or any other third party, a list comprising the first and last name, title, email address, and last known postal or residential address of each Registered Group Member (**List of Registered Group Members**), to the extent that Adero has such information;
- c. By 10:00am on 21 December 2022, the Respondent will provide to the Mailing Service, on a confidential basis which expressly precludes disclosure to the Applicant, his legal representatives or any other third party, the Contact Information previously provided by the Respondent pursuant to, and as defined in, order 5(b)(i) of the orders of Thawley J made on 14 October 2020 (**Respondent's List of Group Members**) to the extent that the Respondent has such information;
- d. By 23 December 2022, the Mailing Service will prepare a list of unregistered Group Members (**List of Unregistered Group Members**) by removing the name of any person which appears on the List of Registered Group Members from the Respondent's List of Group Members;
- e. By 9 January 2023, the Mailing Service will cause the Notice to Group Members and Group Member Cover Letter in the form at **Annexure D** to these orders to be sent to each person on the List of Unregistered Group Members in accordance with the protocol at **Annexure H** to these orders (**Protocol**); and
- f. By no later than 21 January 2023, the Respondent is to provide to the Mailing Service, on a confidential basis which expressly precludes disclosure to the Applicant, his legal representatives or any other third party, the mobile numbers of each Group Member that appears on the Respondent's List of Group Members to the extent that the Respondent has such information.



16. By 6 January 2023, the Applicant will enable a registration portal to be available at the Adero website for Unregistered Group Members to register electronically to become a Registered Group Member.

Respondent Communication with Group Members

17. The Respondent is not to engage in any substantive discussions about the proceeding with any Group Member who contacts the Respondent to discuss it, and who is reasonably known by the Respondent to be a Group Member but is to direct that person to make any enquiries with Adero via the contact information provided in the Notice to Group Members.

Compliance

18. The Applicant's and the Respondent's solicitors are to notify each other within five (5) business days of becoming aware of any actual non-compliance with the Protocol of a substantial nature.

Provision of Mediation Data

19. The **Mediation Registered Group Member List** will comprise of:
 - a. the Group Members who register by the Deadline; and
 - b. the Registered Group Members.
20. The Applicant's solicitors will, within no more than 14-day intervals and by no later than 3 March 2023, provide the Respondent's solicitors with:
 - a. the Mediation Registered Group Member List;
 - b. in respect of each of those Group Members on the Mediation Registered Group Member List who register by the Deadline:
 - i. their name;
 - ii. a summary of the information provided by that Group Member as contained in the Group Member Registration Form;
 - iii. a copy of that Group Member's Group Member Registration Form; and
 - iv. any documentary evidence provided by that Group Member with or in connection with the Group Member Registration Form;



c. in respect of each Group Member on the Mediation Registered Group Member List who is a Registered Group Member:

- i. their name; and
- ii. to the extent known by the solicitors for the Applicant, a summary of the subject of section 4 of the Group Member Registration Form.

21. Pursuant to s 33ZF of the FCA Act, for each person who appears on the Mediation Registered Group Member List, the Respondent will provide to the Applicant's solicitors confidentially and without prejudice, and to the extent that (a) the Respondent has records constituting the below and (b) to the extent that the records constituting the below have not already been provided to the Applicant in response to the employee records requests of the Applicant pursuant to regulation 3.42 of the *Fair Work Regulations 2009* (Cth), dated 17 February 2022 and 16 September 2022 (with Adero to notify the Respondent in writing, in respect of each person who appears on the Mediation Registered Group Member List, which records for that or those persons constituting the below have already been provided to the Applicant in response to the employee records requests of the Applicant pursuant to the *Fair Work Regulations 2009* (Cth), dated 17 February 2022 and 16 September 2022):

- a. an extract of the Group Member data from EMPLive, including but not limited to the data points set out in schedule D of the letter to the Respondent dated 11 July 2022;
- b. an extract of the Group Member data from Attaché, including but not limited to the data points set out in schedule D of the letter to the Respondent dated 11 July 2022;
- c. an extract of the Group Member data from Kronos Workforce Central, including but not limited to the data points set out in schedule D of the letter to the Respondent dated 11 July 2022;
- d. pay records from SAP SuccessFactors EC Payroll, including but not limited to the data points set out in schedule D of the letter to the Respondent dated 11 July 2022;



- e. an extract of the Group Member data from SAP SuccessFactors Employee Central, including but not limited to the data points set out in schedule D of the letter to the Respondent dated 11 July 2022; and
 - f. an extract from the employee file located in the Shared Central Drive for the period prior to the implementation of SAP SuccessFactors showing position title, internal classification, hours agreed (being the number of contracted hours), apprenticeship status, and any employment events which might affect payment (being any variation in the employment terms, including change in their employment type (casual, part time, full time), role, or rate of pay),

(collectively referred to as the “**Mediation Data**”).
22. The Mediation Data is to be provided electronically, in standard database form with the file extension .xlsx or .csv.
 23. The Respondent is to commence extracting the Mediation Data from the relevant databases as soon as reasonably practicable after it is provided with a list of Group Members comprising the Mediation Registered Group Member List.
 24. The Mediation Data is to be provided to the Applicant in weekly tranches, as soon as reasonably practicable after it becomes available, to be completed by 4:00pm no later than 21 April 2023 provided that the number of persons appearing on the Mediation Registered Group Member List does not exceed 1,000, in which case the parties are to seek to agree any revised timetable or to otherwise exercise their liberty to apply to vary the timetable.
 25. The Mediation Data provided by the Respondent to the solicitors for the Applicant is to be kept confidential to:
 - a. the solicitors and employees of the solicitors for the Applicant to whom disclosure is reasonably necessary for the conduct of this proceeding;
 - b. Counsel retained by the Applicant in this proceeding;
 - c. CASL/ICP Funding employees and directors;
 - d. any Group Member to the extent that the Mediation Data relates to that Group Member’s employment; and



- e. expert witnesses, referees or mediators to whom disclosure is reasonably necessary for the conduct of this proceeding.

25A. Within 21 days of the Mediation Data having been provided to the Applicant and in any event by no later than 5 May 2023 in respect of the Mediation Data provided as at that date, the Applicant is to provide the Respondent, confidentially and without prejudice, a soft copy model (not hard coded) calculating the alleged damages or compensation payable in respect of Mediation Registered Group Members.

Additional Registration Process

26. Pursuant to s 33ZF of the FCA Act, any group member who has not opted out of these proceedings, and is not on the Mediation Registered Group Member List, but who registers to participate in accordance with Order 27 of these Orders is an “**Additional Registered Group Member**”.
27. Any group member who wishes to register as an Additional Registered Group Member to participate in any settlement must register, by a deadline to be determined at a later date, which is to occur after the parties have attended mediation (**Final Registration Deadline**), in a process to be determined at a later date.
28. Pursuant to s 33ZF of the FCA Act, all group members on the Mediation Registered Group Member List and the Additional Registered Group Members will be a participant in any settlement agreed prior to a trial, in the event that it receives approval by the Court.
29. Upon a settlement being agreed, the Applicant will seek an order be made that any group member who after the Final Registration Deadline:
 - a. has not opted out of these proceedings; and
 - b. is not a group member on the Mediation Registered Group Member List; or
 - c. is not an Additional Registered Group Member,is a “Final Unregistered Group Member” for the purposes of the proceedings and will remain a group member for all purposes but will not, subject to further order of the Court, be permitted to participate in any settlement agreed prior to a trial in the event that the settlement receives approval by the Court.



Other matters

30. Liberty to apply.

Date that entry is stamped: 21 December 2022

Sia Lagos
Registrar



Annexure A

Categories and Sources of Discovery by the Respondent regarding the Applicant

No.	Category	Sources to be Searched
1	The employee personnel file for the Applicant	<p>Employee personnel file retained by the Respondent in the “shared central drive”, “Attache”, and “SAP SuccessFactors” which shows:</p> <ul style="list-style-type: none"> • Contracts of employment • Employment start and end dates • Location of work and department • Position title(s) • Employment type • Classification • Rate(s) of pay • Agreed hours of work • Any leave requests • Any requests or agreements to vary employment entitlements and work conditions • Any performance reviews or performance management plans • Employee identification number
2	The rosters for the Applicant for each roster period applicable to his employment by the Respondent	<i>Source TBD</i>
3	A report of the Applicant’s actual hours data for each shift worked by him during his employment by the Respondent	<p>Clock in an out data retained by the Respondent in “EmpLive” and “Kronos” which shows for each shift:</p> <ul style="list-style-type: none"> • Date(s) worked • Clock in and clock out times • Any adjustments to clock in and out times • Recorded work start and finish times • Recorded break start and finish times • Total duration worked • Total break duration • Employee identification number
4	A report of the Applicant’s pay data setting out the number of hours worked, together with the total amount paid for each pay period during his employment with the Respondent	<p>Pay data extracted from “Attache” and “SAP Payroll” which shows:</p> <ul style="list-style-type: none"> • Gross pay amounts • Details and amount of pay per entitlement/pay code • Pay code(s) description(s) • Hours paid • Payment dates • Pay period dates • Pay period identification number • Employee identification number
5	Human Resources policies and procedures of the Respondent that were in force during the period 24 December 2013 to 25 December 2019, and applicable to the Applicant	<p>Dedicated storage folders on the servers of the Respondent in respect of Human Resources policies and procedures which shows:</p> <ul style="list-style-type: none"> • induction • shift start time • overtime • split shifts



		<ul style="list-style-type: none">• meal breaks• time recording• performance of duties
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Annexure B

MERIVALE CLASS ACTION – RAYMOND BOULOS V M.R.V.L. INVESTMENTS PTY LTD (NSD2168/2019)

FURTHER IMPORTANT NOTICE – INFORMATION FOR UPCOMING SETTLEMENT NEGOTIATION (MEDIATION)

THIS IS A NOTICE APPROVED BY THE FEDERAL COURT OF AUSTRALIA

You are getting this notice because it is likely that you are a Group Member in the underpayment class action that has been filed in the Federal Court of Australia against M.R.V.L. Investments Pty Ltd (**Merivale**). The class action is subject to mediation, which means there will be discussions between the parties that could lead to a settlement for commercial purposes, without admission of liability.

You should read this notice carefully. If there is anything in it that you don't understand, you should seek legal advice.

WHY HAVE YOU RECEIVED THIS NOTICE?

This notice is separate from the Opt Out Notice you were sent previously. This notice is to inform you that:

- a. there will be a mediation in the class action by 30 June 2023;
- b. if you have not already registered your interest in the class action or signed a retainer agreement with Adero Law, you will need to register for your individual claim to be taken into account in the mediation or any other settlement discussions (subject to court approval of any settlement agreement); and
- c. to tell you how to register.

This is because, if a settlement of the class action is agreed, your individual claim will not have been taken into account at the mediation or in any settlement. The parties will then seek the Court's approval of any settlement agreement. If a settlement agreement is reached, you will be able to register to take part in that settlement but registering now will ensure that your claim is part of the negotiations. So, if you are permitted to receive any part of the settlement sum, you will have to register in any event in order to participate.

ABOUT THE CLASS ACTION

The class action claims money as compensation for people employed by MRVL Investments Pty Ltd (Merivale) who were employed in the period 25 December 2013 to 24 December 2019 (Relevant Period) and who would have been covered by the *Hospitality Industry (General) Award 2010 (Award)* if the *Merivale Employee Collective Agreement 2007 (Merivale Agreement)* is set aside by the Court. The Applicant, Raymond Boulos, has made the claims on his own account and also for the Group Members. If you have



received this notice, it is likely that you are a Group Member. Merivale is the Respondent to the claim.

On 30 March 2021, Justice Thawley made orders that the Merivale Agreement was beyond power. As a result of the decision, Mr Boulos says the workers should have been paid according to the Award not the Merivale Agreement, from 25 December 2013 instead of from 4 March 2019. The case claims that Merivale did not pay in accordance with the Award when it should have, and the wages paid were insufficient to satisfy the moneys owing. Merivale says that the Court should exercise its discretion to declare that no compensation is payable because Merivale had conducted its business on the lower wages and entitlements that applied under the Merivale Agreement which had been approved by the Workplace Authority. Merivale says that it would be unfair to pay the higher amount.

The claimed compensation includes payment for all hours worked, as well as Award entitlements (such as payment of penalty rates, overtime rates and allowances) which were not paid. The class action also seeks money penalties (like a fine) imposed on Merivale. If ordered by the Court, compensation for underpayments and penalties may be paid to eligible Group Members.

It is important that you register for mediation, because the types of payments owed under the Award will have a different impact depending on your circumstance. Secondly, Merivale may make different arguments as to why it shouldn't have to pay money to you based on your work circumstances. These things will be part of the mediation and any resolution.

COSTS OF THE CLASS ACTION

The costs of the class action are being paid by a commercial funder, called ICP Funding and will be deducted from any amount agreed to be paid to settle the proceedings. If the class action is successful, and any money compensation is recovered, the Court will be asked to distribute the legal and funding costs, including a funding commission, fairly, among all Group Members.

If such an order is made, all Group Members who benefit would contribute to the legal and funding costs, whether they have signed a funding agreement with ICP Funding or not.

If the class action is unsuccessful, Group Members will have no liability to pay any legal or funding costs.

POSSIBLE SETTLEMENT – AND THE NEED TO REGISTER TO PARTICIPATE

Mr Boulos and Merivale will engage in negotiations in a mediation by 30 June 2023 to try to reach a settlement for Mr Boulos himself and for all Group Members. The mediation can only consider the individual claims of Group Members who are registered.

So, if you want your individual claim to be taken into account, you need to register by 4:00pm on 27 February 2023, unless you have already registered your interest in the class action or signed a retainer agreement with Adero Law.



Any settlement agreed will be subject to Court approval. That means the Court will assess whether it is a fair and reasonable compromise, and it will only be approved if the Court says it is fair and reasonable for all Group Members.

COPIES OF RELEVANT DOCUMENTS

The allegations made against Merivale are set out in a Second Further Amended Statement of Claim, and Merivale's response denying those claims is set out in its Amended Defence. These documents are available at <https://www.aderolaw.com.au/class-actions/hospitality/merivale/>.

YOUR OPTIONS

You have **two options**:

1. **Register to participate**

If you wish to have your individual claim taken into account at the mediation and in any other settlement discussions, then you need to be registered by **4:00pm on 27 February 2023. As part of the registration process, you will need to provide details about yourself and your claim to Adero Law.**

To register, complete the form online at <https://www.aderolaw.com.au/class-actions/hospitality/merivale/>. A copy of the Registration Form is attached as Schedule 1 to this Notice. In the event that you do not have access to the internet, a copy of your completed registration form may be emailed to merivale@aderolaw.com.au or sent by mail to Adero Law at 3 Hobart Place, Canberra ACT 2601.

If you have already registered your interest with Adero Law in the class action, or signed a retainer agreement with Adero Law, you do not need to register. If necessary, Adero Law may contact you requesting further information.

2. **Do nothing**

If you have not already registered your interest in the class action with Adero Law or signed a retainer with Adero Law and you do nothing, you will be an "Unregistered Group Member". You will remain a Group Member (and possibly have the opportunity to share in any compensation ordered by the Court if the case has to have a full trial which is successful), but, subject to any further order of the Court, your individual claim will not have been taken into account at the mediation or in any settlement agreement that may be reached at the mediation. To receive any part of the settlement sum, you WILL have to register in order to participate but registering now will ensure that your claim is part of the negotiations. This is because, once a settlement is agreed, the parties will then seek an order, which if made, has the effect of providing that any Group Member who by a second registration date (to occur after the mediation and once a settlement agreement has been reached):

- a. has not registered; or
- b. has not opted out in accordance with the orders made by the Court,



will remain a Group Member for all purposes of this proceeding but shall not, without leave of the Court be permitted to seek any benefit from any settlement (subject to Court approval) of this proceeding that occurs before final judgement.

THREE IMPORTANT THINGS TO NOTE

1. *First*, you can check that this notice has been authorised by the Court, and get any copies of relevant documents, by:
 - a. visiting the Federal Court of Australia website for the class action at: <https://www.comcourts.gov.au/file/Federal/P/NSD2168/2019/actions>; or
 - b. visiting the website of Adero Law: <https://www.aderolaw.com.au/class-actions/hospitality/merivale/> or by email merivale@aderolaw.com.au or by telephoning 02 6189 1022.
2. *Secondly*, since you are a Group Member, you will continue to be bound by all orders and judgments the Court makes in the Merivale Class Action.
3. *Thirdly*, if you are unsure about something and you don't want to speak with Adero Law, or you want to understand their involvement better, you should get legal advice from a solicitor you choose.



SCHEDULE 1

GROUP MEMBER REGISTRATION FORM

COMPLETE THIS FORM IF YOU WISH TO REGISTER TO PARTICIPATE IN THE CLASS ACTION AND HAVE NOT ALREADY REGISTERED YOUR INTEREST IN THE CLASS ACTION WITH ADERO LAW OR SIGNED A RETAINER WITH ADERO LAW

If you do not complete this form, you may not receive any benefit or money compensation from any settlement approved by the Court. You will still be bound by the terms of any such settlement, which may include releases of M.R.V.L Investments Pty Ltd (Merivale), its related entities and their current and former directors, officers, employees, contractors and agents.

THIS FORM SHOULD BE COMPLETED ONLINE BY 4:00PM ON 27 February 2023 AT [HTTPS://WWW.ADEROLAW.COM.AU/CLASS-ACTIONS/HOSPITALITY/MERIVALE/](https://www.aderolaw.com.au/class-actions/hospitality/merivale/)

(Only persons without internet access should submit this form manually).

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

Raymond Boulos

Applicant

M.R.V.L. Investments Pty Ltd

Respondent

To: Adero Law

merivale@aderolaw.com.au

OR

Adero Law

3 Hobart Place,

Canberra ACT 2601



The Group Member named below *registers* to participate in the class action and to be bound by, and share in the benefit of any judgment or settlement of the class action.

You may also complete this form online at www.aderolaw.com.au/class-actions/merivale

1. FORM COMPLETION	
The person completing this form is	<input type="checkbox"/> An eligible group member – skip to 2. <input type="checkbox"/> Someone else, completing on behalf of an eligible group member – please complete below.
<i>Personal details of person completing this form</i>	
Title	
First name/s	
Last name	
Email address	
Reason for completing form on behalf of group member	
2. GROUP MEMBER DETAILS	
<i>Personal details of group member</i>	
Title	
First name/s	
Last name	
Email address	
Phone number	
Alternative phone number	
Street address	
Suburb/town	
State	
Postcode / ZIP	
Country (if not Australia)	
4. DOCUMENTARY EVIDENCE	
<p><i>You are required to take reasonable steps to provide the following information. Please attach further sheets of paper if you need more space. Please also attach any supporting documents you want taken into account.</i></p> <p><i>However, failure to do so will <u>not</u> invalidate your registration.</i></p>	
Date your employment started and ended with the Respondent?	
Type of employment (ie. Casual,	



<i>part-time or full-time)?</i>	
<i>List the positions held during the course of your employment with the Respondent</i>	
<i>List the venues you worked at during the course of your employment with the Respondent</i>	
I have emailed / attached documentary evidence in support of the information herein	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. EXECUTION	
Dated	
Signed by, or on behalf of and with the authority of, the Group Member (as specified above)	
Print name	



Annexure C

Dear Client,

**MERIVALE CLASS ACTION – RAYMOND BOULOS V M.R.V.L. INVESTMENTS PTY LTD
(NSD2168/2019)**

You are receiving this correspondence because you have already registered your interest in the class action with Adero Law, and/or signed a retainer agreement with Adero Law in respect of the Class Action.

THE NOTICE TO GROUP MEMBERS ENCLOSED WITH THIS CORRESPONDENCE HAS BEEN APPROVED BY THE FEDERAL COURT OF AUSTRALIA AND PROVIDES YOU WITH IMPORTANT INFORMATION CONCERNING YOUR RIGHTS AND ONGOING PARTICIPATION IN THE CLASS ACTION.

It is therefore very important that you read the enclosed Notice to Group Members carefully. As a registered group member, you are not required to do anything.

If you have any questions, please visit the Merivale Class Action website at <https://www.aderolaw.com.au/class-actions/merivale/> or contact Adero Law directly at merivale@aderolaw.com.au.

If there is anything of which you are unsure, you should seek independent legal advice.

Sincerely,

Adero Law



Annexure D

Dear Group Member,

MERIVALE CLASS ACTION – RAYMOND BOULOS V M.R.V.L. INVESTMENTS PTY LTD (NSD2168/2019)

You are receiving this correspondence because, based on the information available, you may have been employed by M.R.V.L Investments Pty Ltd (**Merivale**) at any stage from 25 December 2013 to 24 December 2019 and may be a Group Member in the Class Action.

THE NOTICE TO GROUP MEMBERS ENCLOSED WITH THIS CORRESPONDENCE HAS BEEN APPROVED BY THE FEDERAL COURT OF AUSTRALIA AND PROVIDES YOU WITH IMPORTANT INFORMATION CONCERNING YOUR RIGHTS AND PARTICIPATION IN THE CLASS ACTION.

It is very important that you read the enclosed Notice to Group Members carefully and make a decision before the deadline at **4:00pm on 27 February 2023**.

If you have any questions, please visit the Merivale Class Action website at <https://www.aderolaw.com.au/class-actions/merivale/> or contact Adero Law directly at merivale@aderolaw.com.au.

If there is anything of which you are unsure, you should seek independent legal advice.

You can check that sending this information to you is authorised by the Court by visiting the website of the Federal Court of Australia at <https://www.fedcourt.gov.au>, the website of Adero Law at www.aderolaw.com.au, by emailing Adero Law at merivale@aderolaw.com.au, or telephoning Adero Law on 02 6189 1022.



Annexure E

REMINDER EMAIL COVER LETTER

REMINDER – MERIVALE CLASS ACTION – RAYMOND BOULOS V M.R.V.L. INVESTMENTS PTY LTD (NSD2168/2019)

You are receiving this correspondence because, based on the information available, you may have been employed by M.R.V.L Investments Pty Ltd (Merivale) at any stage from 25 December 2013 to 24 December 2019 and may be a Group Member in the Class Action.

The Federal Court has approved an important notice **advising you about certain rights that you have and participation in the class action.**

This is a reminder to read the enclosed Notice to Group Members carefully and make a decision before the deadline, being **4:00pm on 27 February 2023.**

If you have any questions, please visit the Merivale Class Action website at <https://www.aderolaw.com.au/class-actions/merivale/> or contact Adero Law directly at merivale@aderolaw.com.au.

If there is anything of which you are unsure, you should seek independent legal advice.

You can check that sending this information to you is authorised by the Court by visiting the website of the Federal Court of Australia at <https://www.fedcourt.gov.au>, the website of Adero Law www.aderolaw.com.au, or by emailing them at merivale@aderolaw.com.au, or telephoning Adero Law on 02 6189 1022.



Annexure F

SMS COVER

You are receiving this because you may be a Group Member in the Merivale Class Action. **The Federal Court of Australia has approved an important notice to Group Members.**

Visit the Merivale Class Action website at <https://www.aderolaw.com.au/class-actions/merivale/> or contact Adero Law on 02 6189 1022 or merivale@aderolaw.com.au to find out more.



Annexure G

SMS REMINDER

This is a reminder to read the notice to group members approved by the Federal Court of Australia in the Merivale class action emailed or mailed to you.

Visit the Merivale Class Action website at <https://www.aderolaw.com.au/class-actions/merivale/> or contact Adero Law on 02 6189 1022 or merivale@aderolaw.com.au to find out more.



Annexure H

Distribution Protocol for Notice to Group Members

1. Scope and definitions

- 1.1. Terms defined in the Orders of Justice Thawley dated 21 December 2022 (**Orders**) to which this Protocol is Annexure H have the same meaning in this Protocol except where otherwise stated.

2. Communication

2.1. Email

- (a) The Notice to Group Members will be sent by Adero Law (**Adero**) by email to Registered Group Members for whom Adero holds an email address by 9 January 2023 with the Registered Group Member Cover Letter (**Annexure C** of the Orders).
- (b) The Notice to Group Members will be sent by the Mailing Service by email to Unregistered Group Members for whom the Respondent holds an email address and for whom there was no email bounce back received when the Mailing Service sent the notice to group members in relation to opt-out (Schedule A of the orders approved on 14 October 2020), by no later than 9 January 2023.
- (i) the subject line of the email shall read: "IMPORTANT: Class Action against Merivale (M.R.V.L. Investments Pty Ltd)";
- (ii) the body of the email shall read as set out in the Group Member Cover Letter (**Annexure D** of the Orders); and
- (iii) the email will be sent with read receipt.
- (c) If the Mailing Service receives notification that an email was not, or may not have been, delivered, then by no later than 20 January 2023, it will:
- (i) produce an email delivery failure report identifying the email failures or potential failures; and
- (ii) send the Notice to Group Members by ordinary prepaid post, in accordance with section 2.3(a)-(b) below, to all Unregistered Group Members identified in the delivery failure report for whom the Respondent holds a postal address.



- (d) By no later than 10 February 2023, the Mailing Service will send by email the Reminder Email Cover Letter (**Annexure E** of the Orders) enclosing a copy of the Notice to Group Members to Unregistered Group Members for whom the Respondent holds an email address and for whom there was no email bounce back received when the Mailing Service sent the notice to group members in relation to opt-out (Schedule A of the orders approved on 14 October 2020).

2.2. SMS

- (a) The SMS Cover (**Annexure F** of the Orders) will be sent by the Mailing Service by text message by no later than 23 January 2023 to Unregistered Group Members for whom the Respondent holds a mobile phone number.
- (b) The Mailing Service will send by SMS the SMS Reminder (**Annexure G** of the Orders) to Unregistered Group Members, by no later than 24 February 2023.

2.3. Post

- (a) The Notice to Group Members will be sent by the Mailing Service by prepaid ordinary post to Unregistered Group Members for whom the Respondent holds an Australian postal address and either:
 - (i) the Respondent does not have an email address recorded on their system; or
 - (ii) the Mailing Service receives notification that an email sent in accordance with section 2.1 above, was or may not have been delivered.
- (b) The Notice to Group Members will be attached to the Group Member Cover Letter.
- (c) The Mailing Service will by no later than 9 January 2023, send the Notice to Group Members by ordinary prepaid post in accordance with section 2.3(a)-(b) above, to all Unregistered Group Members for whom the Respondent does not have an email address recorded on their system, however, holds an Australian postal address.
- (d) The Mailing Service will by no later than 9 January 2023, send the Notice to Group Members by ordinary prepaid post in accordance with section 2.3(a)-(b) above, to all Unregistered Group Members for whom there was an email bounce back received when the Mailing Service sent the notice to group members in relation to opt-out (Schedule A of the orders approved on 14 October 2020).

3. Record of communications



- (a) By no later than 10 March 2023, the Mailing Service are to provide to the Respondent's legal representative a document which lists all Unregistered Group Members to whom the Notice to Group Members has been sent, in accordance with sections 2.1 to 2.3 above, and which identifies in relation to each potential Group Member:
- (i) the method(s) by which the Notice to Group Members was sent;
 - (ii) the date(s) on which the Notice to Group Members was sent;
 - (iii) whether, and which distribution attempts failed;
 - (iv) the form of the evidence by which the failed distribution attempt was identified, including, but not limited to, by way of receipt of an email delivery failure notification, or receipt of a prepaid ordinary post envelope marked 'return to sender' (or similar); and
 - (v) any responses received from Unregistered Group Members.
- (b) To the extent that they would not already do so in the ordinary course of their businesses, the Mailing Service are to retain records for the duration of this class action of all communications sent to and received from Unregistered Group Members in the course of executing this Protocol, including:
- (i) the emails sent in accordance with section 2.1 above;
 - (ii) the SMS text messages sent in accordance with section 2.2 above, ~~and any responses;~~
 - (iii) postal records or receipts or similar of the Notices to Group Members sent by prepaid ordinary post in accordance with section 2.3 above; and
 - (iv) evidence of any failed distribution attempts of the kind referred to in section 3(a)(iv) above.
- (c) By no later than 7 days after receiving the document referred to in 3(a) above, the legal representatives of the Respondent is to provide the Court, on a confidential basis, the document produced by the Mailing Service pursuant to section 3(a) above.

4. General Compliance with this Protocol

- (a) In the event that the Mailing Service becomes aware that it is unable to comply with, or has failed to comply with, any requirements under this Protocol, it is to notify the



Applicant's and Respondent's legal representatives in writing within two (2) business days of so becoming aware.

- (b) Notice of any matter which is required to be given to:
- (i) the Applicant's legal representatives under this Protocol is to be given to Rory Markham by email to rory.markham@aderolaw.com.au; and
 - (ii) the Respondent's legal representatives under this Protocol is to be given to Andreas Piesiewicz by email to andreas.piesiewicz@jws.com.au and ruveni.kelleher@jws.com.au.