

Defence to Further Amended Statement of Claim

No. NSD 1994 of 2008

Federal Court of Australia
District Registry: New South Wales
Division: General

Clime Capital Limited ACN 106 282 777
Applicant

and

Credit Corp Group Limited ACN 092 697 151
Respondent

To the Further Amended Statement of Claim filed on ~~18 October 2010~~ 20 July 2011 (**Claim**), the Respondent (**CCP**) pleads as follows:

1. In response to paragraph 1 of the Claim, CCP:
 - (a) admits sub-paragraphs (a); and
 - (b) otherwise does not admit the paragraph.
2. CCP admits paragraph 2 of the Claim.
3. CCP admits paragraph 3 of the Claim.
4. CCP admits paragraph 4 of the Claim.
5. CCP admits paragraph 5 of the Claim.
6. CCP admits paragraph 6 of the Claim.
7. CCP admits paragraph 7 of the Claim.

Filed on behalf of: The Respondent
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Attention: A K Phelps/F Ammer

8. In response to paragraph 8 of the Claim, CCP:

- (a) says in response to sub-paragraph (a) that page 4 of the Preliminary Report, page 6 of the Audited Financial Report and page 22 of the Annual Report each contained the following statement:

"Credit Corp's successful implementation of these human resource initiatives has translated significant workforce growth into efficient revenue growth";

- (b) says in response to sub-paragraph (b) that page 4 of the Preliminary Report, page 6 of the Audited Financial Report and page 22 of the Annual Report each contained the following statement:

"Whilst employee numbers have increased significantly throughout the year, substantial investment has also been made in workflow optimisation programs to ensure the effectiveness of our staff";

- (c) says in response to sub-paragraph (c) that page 4 of the Preliminary Report, page 6 of the Audited Financial Report and page 22 of the Annual Report each contained the following statement:

"Under the leadership of Ms Kristina White, Head of Business Services, the Group has ensured efficient management and intense scrutiny of its entire portfolio";

- (d) says in response to sub-paragraph (d) that page 4 of the Preliminary Report, page 6 of the Audited Financial Report and page 22 of the Annual Report each contained the following statement:

"Credit Corp has built exceptional workflow processes within a workflow and analytics function unmatched in the industry";

- (e) says in response to sub-paragraph (e):

- (i) that page 5 of the Preliminary Report contained the following statement:

"In releasing the 2007 earnings, Directors have issued a guidance of \$24 million in after tax earnings for the 2008 financial year, based on expected ledger purchase volumes in excess of \$125 million, over sixty percent of which come via forward flow agreements";

- (ii) that page 23 of the Results Presentation referred to "*Ledger Investments of > \$125m*" and "*NPAT of \$24.0m*";
 - (f) says in response to sub-paragraph (f):
 - (i) that page 5 of the Preliminary Report contained the following statement:

"During the 2008 financial year the company will continue to grow its Australian workforce to match servicing demands, will execute flexible servicing agreements with a small panel of agencies and will seek further leverage from its growing portfolio including both improved pricing analytics and continued workflow optimisation";
 - (ii) that page 23 of the Results Presentation referred to "*ongoing growth of domestic workforce*", "*continued development of operational flexibility*" and "*further leveraging depth of portfolio including both pricing, workflow benefits*";
 - (g) relies on the full text of the Results Presentation, the Preliminary Report, the Audited Financial Report and the Annual Report; and
 - (h) otherwise denies the paragraph.
9. CCP admits paragraph 9 of the Claim.
10. In response to paragraph 10 of the Claim, CCP:
- (a) admits sub-paragraphs (a) – (c); and
 - (b) relies on the full text of the 7 November Letter.
11. In response to paragraph 11 of the Claim, CCP:
- (a) says in response to sub-paragraph (a) that the 7 November Letter contained the following statement:

"the Company has revised its previous full year FY08 NPAT guidance of \$24 million to between \$17 and \$19 million";
 - (b) denies making the Ledger Purchase Representation referred to in sub-paragraph (b);

- (c) denies making the Likely Results Representation referred to in sub-paragraph (c);
- (d) denies making the Material Disclosure Representation referred to in sub-paragraph (d);
- (e) denies making the Reasonable Enquiry Representation referred to in sub-paragraph (e);
- (f) denies making the Accurate Disclosure Representation referred to in sub-paragraph (f); and
- (g) otherwise denies the paragraph.

11A. In response to paragraph 11A of the Claim, CCP:

- (a) repeats sub-paragraphs 11(a) – (g) above; and
- (b) otherwise denies the paragraph.

12. In response to paragraph 12 of the Claim, CCP:

- (a) repeats sub-paragraph 11(a) above; and
- (b) otherwise denies the paragraph.

~~13. In response to paragraph 13 of the Claim, CCP:~~

- ~~(a) repeats sub-paragraph 11(b) above; and~~
- ~~(b) otherwise denies the paragraph.~~

14. In response to paragraph 14 of the Claim, CCP:

- (a) repeats sub-paragraphs 11**(b)(e)** – 11(f) above; and
- (b) otherwise denies the paragraph.

15. CCP admits paragraph 15 of the Claim.

16. In response to paragraph 16 of the Claim, CCP:

- (a) admits sub-paragraph (a);

~~(b) — admits sub-paragraph (b);~~

(c) admits each of the further sub-paragraphs (c)(i), ~~(ii)~~, (iii), (iv) and (v);

(d) relies on the full text of the 11 February Letter; and

(e) otherwise denies the paragraph.

16A. CCP denies paragraph 16A of the Claim.

16B. In response to paragraph 16B of the Claim, CCP:

(a) denies sub-paragraphs (a), (c), (d), (e), (f) and (g);

(b) says in response to sub-paragraph (b) that it ceased purchases of 180 day credit card debts under the forward flow agreement with Westpac Bank in May 2007 and therefore the forward flow agreement did not form part of any current order book as at 7 November 2007; and

(c) otherwise denies the paragraph.

16C In response to paragraph 16C of the Claim, CCP:

(a) does not admit sub-paragraph (a); and

(b) otherwise denies the paragraph.

16D In response to paragraph 16D of the Claim, CCP:

(a) admits sub-paragraph (a);

(b) denies sub-paragraphs (b), (d) and (e);

(c) says in response to sub-paragraphs (c) and (f) that the size of CCP's workforce was expected to increase as a result of monthly recruitment of new employees over the period November 2007 to June 2008 and that this was taken into account by CCP in publishing its FY2008 earnings guidance revision contained in the 7 November Letter; and

(d) otherwise denies the paragraph.

16E CCP denies paragraph 16E of the Claim.

16F In response to paragraph 16F of the Claim, CCP:

- (a) admits that CCP had identified cost for infrastructure investments to be incurred in FY08; and
- (b) otherwise denies the paragraph.

16G CCP denies paragraph 16G of the Claim.

~~17. In response to paragraph 17 of the Claim, CCP:~~

- ~~(a) denies sub-paragraph (a);~~
- ~~(d) in response to sub-paragraph (d):~~
 - ~~(i) says that by 7 November 2007:~~
 - ~~(1) the number of less experienced staff had increased as a proportion of total staff due to large scale recruitment in the 2007 and 2008 financial years;~~
 - ~~(2) recently recruited employees had not reached anticipated productivity levels as rapidly as expected; and~~
 - ~~(3) productivity of CCP's more experienced personnel had been adversely affected by an increased contribution to training and supervisory activities in relation to new employees;~~
 - ~~(ii) says that the matters referred to in sub-paragraph (d)(i) above were taken into account by CCP in publishing its FY2008 earnings guidance revision contained in the 7 November Letter; and~~
 - ~~(iii) otherwise denies sub-paragraph (d);~~
- ~~(d1) in response to sub-paragraph (d1), CCP:~~
 - ~~(i) repeats paragraph 17(d) above;~~
 - ~~(ii) says that if (which is not admitted) by 7 November 2007 there had been relative underperformance of a number of CCP's recent debt purchases, this was taken into account by CCP in publishing its~~

~~FY2008 earnings guidance revision contained in the 7 November Letter; and~~

~~(iii) — otherwise denies sub-paragraph (d1);~~

~~(d2) — denies sub-paragraph (d2);~~

~~(e) — in response to sub-paragraph (e):~~

~~(i) — says that in May 2007, CCP made a decision not to renew a forward flow agreement with Westpac Banking Corporation which had historically produced high short-term returns;~~

~~(ii) — says that, by 7 November 2007, CCP had replaced that asset with other purchases which generated returns delivered more evenly over time;~~

~~(iii) — says that the matters referred to in sub-paragraph (e)(i) and (e)(ii) above were taken into account by CCP in publishing its FY2008 earnings guidance revision contained in the 7 November Letter; and~~

~~(iv) — otherwise denies sub-paragraph (e);~~

~~(f) — in response to sub-paragraph (f), CCP:~~

~~(i) — repeats paragraph 17(d) above;~~

~~(ii) — says that if (which is not admitted) by 7 November 2007 there had been underperformance of a forward flow agreement with the Commonwealth Bank of Australia, this was taken into account by CCP in publishing its FY2008 earnings guidance revision contained in the 7 November Letter; and~~

~~(iii) — otherwise denies sub-paragraph (f);~~

~~(g) — denies sub-paragraph (g);~~

~~(h) — otherwise denies the paragraph.~~

~~17A. — CCP denies paragraph 17A of the Claim.~~

18. CCP denies paragraph 18 of the Claim.

18AA CCP denies paragraph 18AA of the Claim.

18A. In response to paragraph 18A of the Claim, CCP:

(a) says that in so far as the NPAT Representation was made and was a representation as to a future matter or matters (which allegations are denied), CCP had reasonable grounds for making the representation; and

(b) otherwise denies paragraph 18A.

18B. In response to paragraph 18B of the Claim, CCP:

(a) says that in so far as the Ledger Purchase Representation was made and was a representation as to a future matter or matters (which allegations are denied), CCP had reasonable grounds for making the representation; and

(b) otherwise denies paragraph 18B.

18C. In response to paragraph 18C of the Claim, CCP:

(a) says that in so far as the Likely Result Representation was made and was a representation as to a future matter or matters (which allegations are denied), CCP had reasonable grounds for making the representation; and

(b) otherwise denies paragraph 18C.

18D. In response to paragraph 18D of the Claim, CCP:

(a) says that in so far as the Material Disclosure Representation was made and was a representation as to a future matter or matters (which allegations are denied), CCP had reasonable grounds for making the representation; and

(b) otherwise denies the paragraph.

18E. CCP denies paragraph 18E of the Claim.

18F In response to paragraph 18F of the Claim, CCP:

(a) says that in so far as the Accurate Disclosure Representation was made and was a representation as to a future matter or matters (which allegations are denied), CCP had reasonable grounds for making the representation; and

(b) otherwise denies the paragraph.

19. CCP denies paragraph 19 of the Claim.

~~20. CCP denies paragraph 20 of the Claim.~~

~~20A. CCP notes paragraph 20A but does not plead to it as it makes no allegation of fact against CCP.~~

21. CCP denies paragraph 21 of the Claim.

22. CCP denies paragraph 22 of the Claim.

22A CCP denies paragraph 22A of the Claim.

23. In response to paragraph 23 of the Claim, CCP:

(a) refers to and relies upon the 7 November Letter; and

(b) refers to and relies upon the 11 February Letter; and

(c) otherwise denies the paragraph.

24. CCP denies paragraph 24 of the Claim.

25. CCP denies paragraph 25 of the Claim.

26. In response to paragraph 26 of the Claim, CCP:

(a) repeats paragraphs 1 and 2 above; and

(b) otherwise does not admit the paragraph.

27. CCP denies paragraph 27 of the Claim.

28. CCP denies paragraph 28 of the Claim.

29. CCP denies paragraph 29 of the Claim.

30. CCP denies paragraph 30 of the Claim.

Date: 5 August 2011



Signed by Anthony Kevin Phelps, Partner
Lawyer for the Respondent

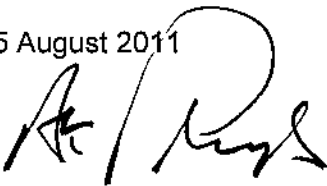
This pleading was prepared by Anthony Kevin Phelps and settled by Matthew Darke of Counsel.

Certificate of lawyer

I Anthony Kevin Phelps certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 5 August 2011



Signed by Anthony Kevin Phelps
Lawyer for the Respondent