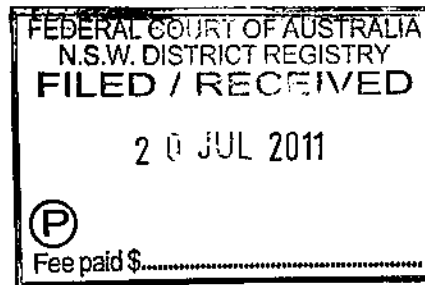


BETWEEN:

CLIME CAPITAL LIMITED  
(ACN 106 282 777)

- and -

CREDIT CORP GROUP LIMITED  
(ACN 092 697 151)



Applicant

Respondent

**Further Amended Statement of Claim**

(Order 4 rule 6 and Order 11)

**A. The Applicant**

**1. The applicant:**

- a. was and is a corporation registered pursuant to the *Corporations Act 2001 (Act)* and capable of suing in its own name;

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**Filed by the Applicant**

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- b. acquired an interest in 384,537 CCP shares (as defined in paragraph 2(b)(i) below) during the period from 8 November 2007 to 11 February 2008 (inclusive) (**Relevant Period**);

*Particulars*

*Particulars of the applicant's purchases in the Relevant Period are identified in the attached schedule.*

- c. sold all but 641 of its CCP shares and currently holds 641 CCP shares;

*Particulars*

*Particulars of the applicant's disposal of shares purchased in the Relevant Period are identified in the attached schedule.*

- d. represents all persons (**Group Members**) who:
- i. acquired an interest in CCP shares in the Relevant Period;
  - ii. suffered loss and damage from the conduct of the respondent (CCP) alleged in this further amended statement of claim; and
  - iii. as at the date of the filing of the amended statement of claim had entered into a litigation funding agreement with IMF (Australia) Limited in relation to this proceeding.

**B. The Respondent**

## 2. CCP at all material times:

- a. was and is a corporation registered pursuant to the Act and is capable of being sued;
- b. was and is:
  - i. a corporation the issued ordinary shares in which (**CCP shares**) have been quoted and (excluding periods of trading halts) have traded on the Australian Securities Exchange operated by ASX Limited (**ASX**);
  - ii. a listed disclosing entity within the meaning of section 111AL(1) of the Act;
  - iii. subject to the continuous disclosure requirements under section 674 of the Act; and
  - iv. subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
- c. was and is a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**); and
- d. was and is a person for the purposes of section 42 of the *Fair Trading Act 1987* (NSW) (**FTA**) and section 1041H(1) of the Act.

**C. CCP Financial Performance**

3. For the financial year ending on 30 June 2007, CCP made \$19.63 million net profit after tax (NPAT).

*Particulars*

*Media Release dated 16 August 2007 released to the ASX on 16 August 2007 as part of the lodgement of the CCP Appendix 4E Preliminary Final Report defined below as the Preliminary Report.*

4. For the financial year ending on 30 June 2008, CCP made NPAT of \$10.4 million before restructuring costs.

*Particulars*

*Media Release dated 14 August 2008 released to the ASX on 14 August 2008 forming page 3 of CCP's Appendix 4E Preliminary Final Report.*

**D. Relevant 2007 Publications and Announcements of CCP**

5. On 16 August 2007, CCP published and lodged with the ASX:
- a. a document entitled "Results Presentation FY2007" (**Results Presentation**);
  - b. a document entitled "Appendix 4E Preliminary Final Report" (**Preliminary Report**).
6. On 25 September 2007, CCP published and lodged with the ASX its Audited Financial Report for the financial year ending on 30 June 2007 (**Audited Financial Report**).

7. On 5 October 2007, CCP published and lodged with the ASX its Annual Financial Report for the financial year ending on 30 June 2007 (**Annual Report**).
8. The Results Presentation, the Preliminary Report, the Audited Financial Report and the Annual Report (**Relevant Pre-November Publications**) included express statements by CCP (**Pre-November Statements**) to the following effect:
  - a. that CCP had in 2007 implemented human resource initiatives which had translated significant workforce growth into efficient revenue growth;

*Particulars*

*Page 4 of the Preliminary Report, page 6 of the Audited Financial Report and page 22 of the Annual Report*

- b. whilst CCP employee numbers had increased significantly throughout the financial year ending 30 June 2007 (FY2007), substantial investment had been made on workflow optimisation programmes to ensure the effectiveness of CCP staff;

*Particulars*

*Page 4 of the Preliminary Report, page 6 of the Audited Financial Report and page 22 of the Annual Report*

- c. CCP had ensured the efficient management and intense scrutiny of its entire portfolio;

*Particulars*

*Page 4 of the Preliminary Report, page 6 of the Audited Financial Report and page 22 of the Annual Report*

- d. CCP had built exceptional workflow processes within a workflow and analytics function unmatched in the industry;

*Particulars*

*Page 4 of the Preliminary Report, page 11 of the Results Presentation, page 6 of the Audited Financial Report and page 22 of the Annual Report*

- e. CCP estimated NPAT of \$24 million for the financial year ending 30 June 2008 (FY2008) based on expected ledger purchase volumes in excess of \$125 million, over 60% of which would come via forward flow agreements; and

*Particulars*

*Page 5 of the Preliminary Report, page 23 of the Results Presentation.*

- f. during FY2008, CCP would continue to grow its Australian workforce to match servicing demands, would execute flexible servicing agreements with a small panel of agencies and would seek further leverage from its growing portfolio including both improved pricing analytics and continued work flow optimisation.

*Particulars*

*Page 5 of the Preliminary Report, page 23 of the Results Presentation and page 8 of the Annual Report.*

9. On 7 November 2007, CCP published and lodged with the ASX a letter addressed to the Company Announcements Office, Australian Stock Exchange Limited entitled "2008 Earnings Guidance Revision" (7 November Letter).

10. The 7 November Letter contained express statements by CCP (**Express November Statements**) to the following effect:
- a. CCP's FY2008 NPAT was expected to be below previous guidance due to increased costs from growth in employee numbers and infrastructure investments, ~~together with~~ a change in the mix of CCP's portfolio of purchased debt ledgers, delays in bringing new employees up to anticipated productivity levels and the adverse impact on the productivity of more experienced employees of their increased contribution to training and supervisory activities;
  - b. after fully assessing the cost and asset mix factors contributing to underperformance in the first four months of FY2008 and the infrastructure costs required over the balance of the year, CCP had revised previous full year FY2008 NPAT guidance from \$24 million to between \$17 and \$19 million; and
  - c. CCP was confident in its long term strategy to deliver NPAT growth in the 2009 financial year.

#### **E. The Representations**

11. On 7 November 2007, CCP represented to the applicant and Group Members that:
- a. on the information then available to CCP there was a reasonable basis for a NPAT forecast (**November NPAT Forecast**) of between \$17 and \$19 million for FY2008 (**NPAT Representation**);
  - b. there was no change in expected ledger purchase volumes of in excess of \$125 million (**Ledger Purchase Representation**);

- c. it was likely to achieve the November NPAT Forecast (**Likely Result Representation**);
- d. it had disclosed and would disclose to the public, as it immediately became aware of them within the meaning of the ASX Listing Rules, all material matters regarding its profitability which members of the public should take into account in deciding to acquire an interest in CCP shares (**Material Disclosure Representation**);
- e. it had undertaken all necessary and reasonable investigations before making representations as to the state of its business (and business model) and had satisfied itself on reasonable grounds following those investigations that its public statements were substantially accurate and not misleading or deceptive in any respect (**Reasonable Enquiry Representation**);
- f. there was no risk that the November NPAT Forecast and/or the Pre-November Statements were substantially inaccurate or, if there was such risk, it was so insignificant that members of the public could safely ignore it and not take it into account in deciding to acquire an interest in CCP shares (**Accurate Disclosure Representation**).

11A. Each of :

- (a) the representations referred to in paragraph 11 above (collectively, the 7 November Representations) was made initially on 7 November 2007 and (by reason of the matters pleaded in paragraph 14 (e)(iv) below) was a continuing representation at all times during the Relevant Period;
- (b) the November Representations (other than the Reasonable Enquiry Representation) was or included a representation as to a future matter or future matters.

12. The NPAT Representation was partly express and partly implied.

*Particulars*

*To the extent that the NPAT Representation was express, it was stated in the 7 November Letter. To the extent that the NPAT Representation was implied, the applicant repeats the matters pleaded in paragraph 14(d)(i) to 14(d)(iv).*

- ~~13. The Ledger Purchase Representation was express and was stated:~~

~~a. at pages 16 and 23 of the Results Presentation; and~~

~~b. at page 5 of the Preliminary Report.~~

14. Each of the:

- a. Likely Result Representation;
- b. Material Disclosure Representation;
- c. Reasonable Enquiry Representation; ~~and~~
- d. Accurate Disclosure Representation; and
- e. Ledger Purchase Representation.

was implied and made in circumstances where CCP:

- i. had published and lodged the Relevant Pre-November Publications;
- ii. had made the Pre-November Statements;

- iii. had made the Express November Statements; and
- iv. was under a statutory duty to comply with the continuous disclosure requirements of section 674(2) of the Act and Rule 3.1 of the ASX Listing Rules and by reason of this, to the extent that CCP did not make disclosures of material information, a representation was made by CCP, by silence, that there was no material information to disclose.

#### F. The February Disclosures

- 15. On 11 February 2008, CCP published and lodged with the ASX a letter addressed to the Company Announcements Office, Australian Stock Exchange Limited from Mr Richard Thomas, Acting Chairman of CCP to the Manager entitled "H1 2008 Earnings Update and Revised Full Year Guidance" (11 February Letter).
- 16. The 11 February Letter contained express statements (February Disclosures) by CCP to the following effect:
  - a. the FY2008 NPAT outlook had been revised downwards to a range of \$10 – \$12 million (February NPAT Forecast) before costs associated with a restructure to be implemented by the directors which were not expected to exceed \$5 million;
  - b. ~~ledger acquisition volume was expected to be in the range of \$85 to \$95 million for FY2008; and~~
  - c. there were five factors giving rise to the revision ~~review~~ of FY2008 NPAT being:

- i. the relative underperformance of a proportion of CCP's recent debt purchases (Recent Purchases Issue);
- ii. CCP's excessive focus on short term revenue performance ~~in the previous 3 years~~ which had compromised its ability to derive anticipated revenues from purchases made in prior years (Short Term Revenue Issue);
- iii. large scale recruitment as part of CCP's growth focus which had resulted in lower average productivity (Declining Productivity Issue);
- iv. reduction in volume of new ledger acquisitions to a range of \$85 - \$95 million for FY2008 (Reduced Purchases Issue); and
- v. the incurring of substantial costs in building a corporate platform (consistent with historical growth objectives) in circumstances in which revenue growth for the second half of the 2008 financial year was not expected to increase at the rate of such costs (Revenue Costs Issue).

(Collectively, the February Forecast Factors)

**G. Information available to CCP in relation to the February Forecast Factors as at 7 November 2007**

16A. By 7 November 2007, CCP knew or ought to have known:

- a. of each of the February Forecast Factors;
- b. that it required a restructure to be implemented by the directors at a likely cost of \$5million to be incurred during the remainder of FY2008.

Particulars of 16A(b)

- i. The Applicant repeats the matters pleaded and particularised in paragraphs 16A(a) above and 16B to 16F 16G below.
- ii. As CCP knew or ought to have known of each of the February Forecast Factors by 7 November 2007, it knew or ought to have known of the remedial action required to address those factors by that date.

16B. In relation to the Recent Purchases Issue, by 7 November 2007:

- a. there had been a shift in CCP's market for debt ledgers which had resulted in a need for CCP to pay more for debt ledgers and lower its return expectations;
- b. CCP had lost a high yielding 180 day credit card forward flow agreement with Westpac Bank worth about 20% of its then current order book;
- c. CCP had identified that its current ledger portfolio was returning an unsustainable average collection multiple of 1.7 before applying any headcount "uplift";
- d. ledgers which CCP had purchased from the Commonwealth Bank of Australia were performing below CCP's expectations;
- e. CCP's Repcol portfolio was performing below CCP's expectations;
- f. ledgers which CCP purchased from Australian and New Zealand Banking Group Limited were performing below CCP's expectations;
- g. ledgers which CCP purchased from the Bank of Western Australia Limited were performing below CCP's expectations.

16C. In relation to the Short Term Revenue Issue, by 7 November 2007:

- a. CCP had been focusing its collections strategies on the collection of younger and more easily collected debts for approximately two years;
- b. the loss of the Westpac Forward Flow agreement in May 2007 (which was a primary source of younger debts for Credit Corp) had created a different collections dynamic for the first time in CCP's growth path which required CCP to focus on the collection of older debts.

16D. In relation to the Declining Productivity Issue, by 7 November 2007:

- a. CCP had acknowledged in the 7 November Letter that CCP's new recruits were taking longer to reach full productivity and that the productivity of more senior staff was being affected by their increased contributions to training and supervisory activities;
- b. CCP's new recruits were taking 18 months to reach full productivity post recruitment (rather than 6 months as was assumed for the purposes of the spreadsheet model which underpinned the November NPAT Forecast (at exhibit TB1 262) (November Model));
- c. There were likely to be further declines in staff productivity within each maturity 'cohort' due to the increasing recruitment targets between November 2007 and 30 June 2008 and/or due to the Recent Purchases Issue and/or the Short Term Revenue Issue.
- d. Staff productivity results for the July 2007 to October 2007 period were trending downwards.
- e. The impact of seasonality considerations on productivity were likely to adversely affect staff productivity over the December 2007 to January 2008

period to a degree which was not adequately accounted for in the November Model.

- f. CCP had projected large numbers of new recruits in the period from November 2007 to 30 June 2008 which was likely to further adversely affect the average tenure of employees and (as a result) overall staff productivity.

16E. In relation to the Reduced Purchases Issue, by 7 November 2007, as a result of the Recent Purchases Issue, the Short Term Revenue Issue and/or the Declining Productivity Issue, CCP knew or ought to have known that:

- a. its projected ledger purchases of \$125 million for FY2008 could not be sustained and/or was not commercially viable;
- b. it ought to reduce projected ledger purchases for FY2008 to the range of \$85-95 million;

#### **Particulars**

- i. CCP's decision in February 2008 to reduce ledger purchases to a range of \$85-95 million was based on information which was available or substantially available to CCP as at 7 November 2007 and at all times during the Relevant Period.
- ii. The Applicant refers to the report of Owain Stone dated 11 June 2011 at paragraphs [217]-[230].

16F. In relation to the Revenue Costs Issue, by 7 November 2007:

- a. CCP had identified all or a substantial portion of the costs of building a corporate platform to be incurred in FY2008;

- b. due to the Reduced Purchases Issue:
- i. the average age of CCP's debt ledgers was likely to increase and result in further declines in employee productivity;
  - ii. CCP would likely be required to reduce its headcount projections for the remainder of FY2008.

**Particulars**

- A. The applicant repeats the particulars to paragraph 16E above.
  - B. As a result of CCP's decision to reduce ledger purchases to a range of \$85-95 million in FY2008, CCP determined it appropriate to reduce recruitment for the remainder of FY2008 and would have similarly reduced headcount targets as at 7 November 2007 had it made the same or a similar determination to reduce its ledger purchase targets at that time.
- c. Having regard to the matters identified in particular "(b)" above and the Recent Purchases Issue, Short Term Revenue Issue and Declining Productivity Issue (individually and in combination) CCP's revenue for the second half of FY2008 was likely to be well below that forecast by the November Model.

**Particulars**

The applicant repeats the matters pleaded and particularised in paragraph 18AA below.

16G. CCP lacked a reasonable basis for making the November NPAT Forecast and each of the 7 November Representations by reason of the fact that it did not utilise or

undertake an appropriate methodology which took into account all relevant information likely to impact on the future profitability of its business which it knew or ought to have known as at 7 November 2007.

### **Particulars**

- a. The Applicant refers to the report of Mr Owain Stone served on 2 September 2010 in particular, Mr Stone's opinions as to the 'Appropriate Methodology' (as that phrase is defined in the report) which CCP should have adopted in making the November Forecast (see in particular paragraphs 318, 321-322, 326, 327-329) and the manner in which CCP failed to adopt such a methodology and/or failed to satisfy itself on reasonable grounds that its public statements were substantially accurate (see paragraphs 331-432).
- b. The Applicant further refers to the report of Mr Owain Stone dated 11 June 2011 and the matters set out therein in particular Mr Stone's further opinions concerning the Appropriate Methodology (see paragraphs 57 to 131).
- c. As a result of CCP failing to utilise an appropriate methodology when making the November NPAT Forecast, it failed to take into account adequately (for the purposes of producing an NPAT forecast which was reasonably based) or at all each of the Recent Purchases Issue, Employee Productivity Issue, Reduced Purchases Issue and the Cost and Revenue Issue.
- d. The applicant repeats the matters pleaded and particularised in paragraphs 16A to 16F above and subparagraph 18AA below).

### **C. The True Position during the Relevant Period**

~~17. By 7 November 2007 and at all times during the Relevant Period there was or had been a progressive and material deterioration in CCP's profitability due:~~

- a. ~~CCP failing to efficiently manage collections across its entire portfolio (in the period leading up to 7 November 2007 and during the Relevant Period) by reason of management and workflow focus being directed to “freshly purchased debt”.~~

*Particulars*

~~The inefficiencies and failures are those referred to in the 11 February Letter and at page 6 of the document entitled “H1 08 Results Presentation” published and lodged with the ASX on 14 February 2008 (H1 Results Presentation).~~

- b. ~~declining collections and productivity from July 2007 (and in the period leading up to November 2007 and during the Relevant Period) in comparison to the level of collections and productivity achieved in prior years.~~

*Particulars*

~~The decline is that referred to in the 7 November Letter, the 11 February Letter and at pages 3 of the H1 Results Presentation the document entitled “Appendix 4D Half Year Information as at 31 December 2007” published and lodged with the ASX on 14 February 2008 (Appendix 4D Half Year Information as at 31 December 2007).~~

- c. ~~CCP’s inability to increase revenue by making new ledger acquisitions (being acquisitions funded in whole or in part from operating cash flows) by reason of CCP experiencing significant cash flow constraints.~~

*Particulars*

~~By November 2007 and during the Relevant Period profitability and available cash from operations had reduced or was reducing ; the applicant will provide further particulars following discovery but the reduction of cash can be seen by reference to the following:~~

- i. ~~cash held as at 31 December 2007 was 40% less than cash held at 30 June 2007 (see page 8, Appendix 4D Half Year Information as at 31 December 2007);~~

- ~~ii. Trade creditors had risen from \$7.729 million to \$12.690 million between 30 June 2007 and 31 December 2007 (see page 6, Appendix 4D Half Year Information as at 31 December 2007);~~
  - ~~iii. drawings under CCP's banking facility between 30 June 2007 and 31 December 2007 increased by \$19.6 million to \$144.6 million on a facility with an approved limit of \$160 million (see page 3, 'Review of Operations' in Appendix 4D Half Year Information as at 31 December 2007).~~
- d. declining productivity of CCP's existing workforce due to:
- ~~i. increasing numbers of less experienced staff as a proportion of overall staff due to large scale recruitment which occurred in FY2007 and had continued into FY2008;~~
  - ~~ii. the operational distraction of experienced personnel being co-opted into the training and supervisory requirements of substantial numbers of new employees; and~~
  - ~~iii. new staff members not reaching anticipated productivity levels as rapidly as expected;~~

### *Particulars*

#### *11 February Letter*

- ~~A. The productivity lag being experienced in relation to recent recruits is referred to in the 7 November Letter.~~
- ~~B. The decline in staff productivity as a result of CCP's recruitment activities is further referred to in the 11 February Letter, page 7 of the H1 Results Presentation and page 3 of the document entitled "Appendix 4D Half Year Information as at 31 December 2007"~~

*published and lodged with the ASX on 14 February 2008 (Appendix 4D Half Year Information as at 31 December 2007).*

~~d.1—the relative underperformance of a number of CCP's recent debt purchases which were failing to yield collection revenues in line with expectations;~~

**Particulars**

- ~~(i)—The underperformance of CCP's recent debt purchases is referred to in:
 
  - ~~(A)—the 11 February Letter;~~
  - ~~(B)—the H1 Result Presentation, page 5;~~
  - ~~(C)—the Appendix 4D Results Presentation, page 3;~~~~
- ~~(ii)—The Applicant repeats paragraphs 17(e) and 17(f);~~
- ~~(iii)—Concerns about the performance of ledgers purchased from the Bank of Western Australia Limited (Bankwest) were raised by Ms Baasch in email to Mr John on 12 November 2007 and 14 November 2007.~~
- ~~(iv)—By 5 March 2008, a forward flow agreement entered into with Australia and New Zealand Banking Group Limited (ANZ) had been identified as CCP's poorest performing forward flow agreement.~~

~~d.2—a deterioration in the prices which CCP was paying for new debt ledgers relative to the return potential of the ledgers;~~

**Particulars**

- ~~(i)—By 2 June 2007, CCP (Keith John) had recognised that there had been a “dramatic shift in [CCP's] market ... with respect to the prices being paid for debt” resulting in a need for CCP to “pay more for debt and ... lower [its] return expectations”.~~
- ~~(ii)—The need for CCP to implement more disciplined pricing going forward is referred to at page 11 of the H1 Results Presentation.~~

~~e. the consequences of a strategic decision by CCP in late 2007 not to renew one particular type of asset a forward flow agreement with Westpac Bank which historically produced short term revenues and the replacement of that asset with an asset or assets which generated returns spread over an extended period;~~

*Particulars*

~~(i) 7 February Letter;~~

~~(ii) CCP's high yielding credit card forward flow agreement with Westpac expired in May 2007.~~

~~f. underperformance from of a particular forward flow agreement with the Commonwealth Bank of Australia which CCP subsequently took steps to terminate;~~

*Particulars*

~~(i) 11 February Letter~~

~~(ii) CCP terminated its forward flow agreement with CBA on 17 December 2007.~~

~~g. the fact that without new ledger purchases or in the alternative, without new ledger purchases of substantial volume and/or of similar quality to ledgers purchased in earlier years, CCP's cash flow and profit was (and would be) required to be disproportionately derived from the collection of older debts ledgers which were harder to collect (particularly by an inexperienced workforce).~~

~~17A. By 7 November 2008 CCP's available cash flow was reducing such that there was a significant risk that it would have to reduce its projected ledger purchases for FY2008.~~

*Particulars*

~~By November 2007 and during the Relevant Period profitability and available cash from operations had reduced or was reducing. The reduction of cash can be seen by reference to the following:~~

- ~~i. Cash held as at 31 December 2007 was 40% less than cash held at 30 June 2007 (see page 8, Appendix 4D Half Year Information as at 31 December 2007);~~
- ~~ii. Trade creditors had risen from \$7.729 million to \$12.690 million between 30 June 2007 and 31 December 2007 (see page 6, Appendix 4D Half Year Information as at 31 December 2007);~~
- ~~iii. drawings under CCP's banking facility between 30 June 2007 and 31 December 2007 increased by \$19.6 million to \$144.6 million on a facility with an approved limit of \$160 million (see page 3, 'Review of Operations' in Appendix 4D Half Year Information as at 31 December 2007);~~
- ~~iv. on 8 November 2007 CCP (Mr Beregi) observed that CCP may have to quit forward flow agreements due to future cash flow constraints.~~

18. By reason of the matters pleaded in paragraphs 16, 16A, 16B, 16C, 16D, 16E, 16F and 16G above 17 and 17A (Adverse Factors), as at 7 November 2007 and at all times during the Relevant Period:

- a. on the information then available to CCP, there was not a reasonable basis for the November NPAT Forecast;
- b. there was likely to be a decrease in expected ledger purchase volumes;
- c. CCP was not likely to achieve the November NPAT Forecast;
- d. CCP had not disclosed and did not propose to disclose promptly to the public all material matters regarding its profitability which members of the public should take into account in deciding to acquire an interest in CCP shares;

- e. CCP had not undertaken all necessary and reasonable investigations before making the Express November Statements and had an insufficient basis following whatever investigations had occurred for the making of the Express November Statements; and
- f. there was a risk that the November NPAT Forecast and/or the Pre-November Statements were substantially inaccurate or the risk was sufficiently significant that members of the public could not safely ignore it and not take it into account in deciding to acquire an interest in CCP shares.

18AA. As at 7 November 2007, had CCP had proper regard to each of the Recent Purchases Issue, Employee Productivity Issue, Reduced Purchases Issue and the Cost and Revenue Issue when forecasting its FY2008 NPAT, it would have produced an NPAT Forecast in the range of \$10 - \$12 million, or in the alternative \$11 - \$13 million, before anticipated costs associated with a restructure to be implemented by directors following a detailed review of the company's operations (not expected to exceed \$5 million).

#### Particulars

- i. The applicant repeats the matters pleaded and particularised in paragraphs 16A, 16B, 16C, 16D, 16E, 16F, and 16G above.
- ii. The primary changes in assumptions between the November Model and the financial modelling spreadsheet which underpinned the February NPAT Forecast (February Model) (at exhibit TB1; 591 to 594) were those relating to headcount, maturity, seasonality and the ageing of CCP's ledger portfolio.
- iii. Had CPP had proper regard to the Recent Purchase Issue and the Declining Productivity Issue as at 7 November 2007 it would have

reduced its projected ledger purchases for FY2008 to a range of \$85-95 million at that time.

- iv. Had CCP reduced its projected ledger purchases for FY2008 to a range of \$85-95 million as at 7 November 2007, it would have:
  - A. reduced its headcount projections for the remainder of FY2008 to levels similar or substantially similar to those used in the February Model; and
  - B. accounted for the ageing of its ledger portfolio in any NPAT forecast made at that time by employing a similar "ledger age adjustment" to that used in the February Model.
  
- v. Had CCP had proper regard for the Declining Productivity Issue it would have:
  - A. adequately accounted for the effects of seasonality in the November Model by factoring the seasonality adjustment referred to at paragraph 212 of the affidavit of Mr Angell sworn 4 March 2011;
  - B. adequately accounted for the affects of staff maturity by accounting for maturity cohorts up to 18 months post recruitment as per the February Model;
  
- vi. As at 7 November 2007, there was sufficient information available to CCP for it to have made the same or substantially similar assumptions concerning headcount, maturity, seasonality and the ageing of CCP's ledger portfolio as it did in February 2008 when determining the inputs and assumptions to be entered into the February Model.

## H. Misleading and Deceptive Conduct

### 18A. The NPAT Representation:

- a. in so far as it was a representation as to a present matter or present matters, was misleading and deceptive or likely to mislead and deceive;

#### Particulars

~~(i) The Applicant repeats the matters pleaded and particularised in paragraphs 17 and 17A above and the matters pleaded in paragraph 18A(a) above.~~

~~(ii) CCP failed to take into account or to adequately take into account each of the Adverse Factors in making the November Forecast.~~

~~(iii) By 7 November 2007 CCP ought to have known that its NPAT for FY2008 was likely to be in the range of \$10-12 million.~~

~~(iv) The Applicant refers to the report of Mr Owain Stone served on 2 September 2010 in particular, Mr Stone's opinions as to the 'Appropriate Methodology' (as that phrase is defined in the report) which CCP should have adopted in making the November Forecast (see in particular 318, 321-322, 326, 327-329 paragraphs) and the manner in which CCP failed to adopt such a methodology and/or failed to satisfy itself on reasonable grounds that its public statements were substantially accurate (see paragraphs 331-332).~~

- b. in so far as it was a representation as to a future matter or future matters, was made without reasonable basis.

#### Particulars of 18A(a) and 18A(b)

~~(i) The Applicant repeats the matters pleaded and particularised in paragraphs 16A to 16G and 18AA above.~~

~~(ii) In so far as the NPAT Representation was a representation as to a future matter or future matters, the applicant relies on section 12BB(1) of the ASIC Act and/or section 41 of the FTA~~

18B. The Ledger Purchase Representation:

- a. in so far as it was a representation as to a present matter or present matters, was misleading and deceptive or likely to mislead and deceive;

Particulars

~~(i) The Applicant repeats paragraph 18(b).~~

~~(ii) The Adverse Factors were likely to lead to a decrease in expected ledger purchases.~~

~~(iii) When making the November Forecast CCP failed to take into account or failed to adequately take into account the likely impact of the Adverse Factors on expected ledger purchases for the remainder of FY2008.~~

~~(iv) By 7 November 2007 CCP knew or ought to have known that there was a real possibility that it would terminate the CBA Forward-Flow Agreement before the end of FY2008 with the result that ledger purchases would be reduced by approximately \$30 million.~~

- b. in so far as it was a representation as to a future matter or future matters, was made without reasonable basis.

Particulars of 18B(a) and 18B(b)

~~(i) The Applicant repeats the matters pleaded and particularised in paragraphs 16A to 16G above.~~

(ii) In so far as the Ledger Purchase Representation was a representation as to a future matter or future matters, the applicant relies on section 12BB(1) of the ASIC Act and/or section 41 of the FTA

18C. The Likely Result Representation:

- a. in so far as it was a representation as to a present matter or present matters, was misleading and deceptive or likely to mislead and deceive;

Particulars

~~(i) The Applicant repeats paragraph 18(c) above and the matters particularised in relation to paragraph 18A(a) above.~~

- b. in so far as it was a representation as to a future matter or future matters, was made without reasonable basis.

Particulars of 18C(a) and 18C(b)

(i) The Applicant repeats the matters pleaded and particularised in paragraphs 16A to 16G and 18AA above.

(ii) In so far as the Likely Result Representation was a representation as to a future matter or future matters, the applicant relies on section 12BB(1) of the ASIC Act and/or section 41 of the FTA

## 18D. The Material Disclosure Representation:

- a. in so far as it was a representation as to a present matter or present matters, was misleading and deceptive or likely to mislead and deceive;

Particulars

- ~~(i) The Applicant repeats paragraph 18(d) above.~~
- ~~(ii) As at 7 November 2007 CCP knew or ought to have known of each of the Adverse Factors and disclosed them to the market.~~
- ~~(ii) The Applicant repeats the matters particularised in relation to paragraph 18A(a) above and the matters pleaded and particularised at paragraph 23 below.~~

- b. in so far as it was a representation as to a future matter or future matters, was made without reasonable basis.

Particulars of 18D(a) and 18D(b)

- ~~(i) The Applicant repeats the matters pleaded and particularised in paragraphs 16A to 16G and 18AA above.~~
- ~~(ii) In so far as the Material Disclosure Representation was a representation as to a future matter or future matters, the applicant relies on section 12BB(1) of the ASIC Act and/or section 41 of the FTA~~

- 18E. The Reasonable Enquiry Representation was misleading and deceptive or likely to mislead and deceive.

Particulars

- (i) ~~The Applicant repeats paragraph 18(c) above and the matters particularised in relation to paragraph 18A(a) above.~~
- (i) The Applicant repeats the matters pleaded and particularised in paragraphs 16A to 16G and 18AA above.
- (ii) In so far as the Reasonable Enquiry Representation was a representation as to a future matter or future matters, the applicant relies on section 12BB(1) of the ASIC Act and/or section 41 of the FTA

18F. The Accurate Disclosure Representation:

- a. in so far as it was a representation as to a present matter or present matters, was misleading and deceptive or likely to mislead and deceive;
- b. in so far as it was a representation as to a future matter or future matters, was made without reasonable basis.

Particulars of 18F(a) and 18F(b)

- (i) The Applicant repeats the matters pleaded and particularised in paragraphs 16A to 16G and 18AA above.
- (ii) In so far as the Accurate Disclosure Representation was a representation as to a future matter or future matters, the applicant relies on section 12BB(1) of the ASIC Act and/or section 41 of the FTA

19. The making of the 7 November Representations ~~NPAT Representation, the Ledger Purchase Representation, the Likely Result Representation, the Material Disclosure Representation, the Reasonable Enquiry Representation and the Accurate Disclosure Representation (collectively, the Representations)~~ (and each of them) constituted:
- a. conduct by CCP in relation to financial products, within the meaning of subsections 1041H(1) of the Act; and/or
  - b. conduct by CCP in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
  - c. conduct by CCP in trade or commerce within the meaning of section 42 of the FTA.
- ~~20. The Representations being were each representations made initially on 7 November 2007 and (by reason of the matters pleaded in paragraph 14 (d)(iv)) were continuing representations made at all times during the Relevant Period.:~~
- ~~20A In so far as any of the Representations were representations as to a future matter or future matters, the applicant relies on section 12BB(1) of the ASIC Act and/or section 41 of the FTA.:~~

21. By reason of the matters pleaded in paragraphs 2, 11-14, 16A, 16B, 16C, 16D, 16E, 16F, 16G and ~~17~~18, 18AA, 19 and 20 (including paragraph 18A to ~~18FE~~), CCP engaged in conduct which was in contravention of:

- a. section 1041H(1) of the Act; or
- b. section 12DA(1) of the ASIC Act; and/or
- c. section 42 of the FTA,

(collectively, the **Contravening Conduct**).

#### I. **The Continuous Disclosure Breach**

22. ~~Each of the Adverse Factors, and the matters set out in paragraph~~ Each of:

- a. the February Forecast Factors; and/or
- b. disclosures of substantially similar nature to each of the February Forecast Factors; and
- c. the NPAT forecast set out in 18AA above that would have resulted from CCP considering properly the matters pleaded and particularised in paragraphs 16B to 16G above;

~~were (individually and in combination collectively)~~ information (**Material Information**) concerning CCP that:

- i. the ASX Listing Rules required be notified to the ASX;
- ii. was not generally available during the Relevant Period; and

- iii. a reasonable person would expect, if it were generally available, to have a material effect on the price or value of CCP's securities within the meaning of ASX Listing Rule 3.1.

22A. Further or in the alternative to the matters pleaded in paragraph 22 above, by 7 November 2007, the following matters (individually and in combination, the "Further Material Information") were Material Information that CCP was required to disclose to the market (in the manner and for the reasons set out in relation to the Material Information in the previous paragraph):

- a. in making the November NPAT Forecast and the 7 November Representations, CCP had failed to utilise or undertake an appropriate methodology which took into account all relevant information likely to impact on the future profitability of its business; and/or

#### Particulars

*The Applicant repeats the matters pleaded and particularised in paragraph 16G above.*

- b. there was no reasonable basis for the November NPAT Forecast or the NPAT Representation such that:
  - i. there was a substantial risk that NPAT Representation was substantially inaccurate; and/or
  - ii. the NPAT Representation was misleading and deceptive or likely to mislead and deceive persons who commonly invest in securities; and/or

**Particulars**

*The Applicant repeats the matters pleaded and particularised in paragraph 18A above.*

- c. there was no reasonable basis for the Ledger Purchase Representation such that:
- i. there was a substantial risk that the Ledger Purchase Representation was substantially inaccurate; and/or
  - ii. the Ledger Purchase Representation was misleading and deceptive or likely to mislead and deceive persons who commonly invest in securities; and/or

**Particulars**

*The Applicant repeats the matters pleaded and particularised in paragraph 18B above.*

- d. there was no reasonable basis for the Likely Result Representation such that:
- i. there was a substantial risk that the Likely Result Representation was substantially inaccurate; and/or
  - ii. the Likely Result Representation was misleading and deceptive or likely to mislead and deceive persons who commonly invest in securities; and/or

**Particulars**

*The Applicant repeats the matters pleaded and particularised in paragraph 18C above.*

- e. CCP had not disclosed to the public, as it immediately became aware of them within the meaning of the ASX Listing Rules, all material matters regarding its

profitability which members of the public should take into account in deciding to acquire an interest in CCP shares such that the Material Disclosure Representation was:

- i. substantially inaccurate; and/or
- ii. misleading and deceptive or likely to mislead and deceive persons who commonly invest in securities; and/or

#### **Particulars**

*The Applicant repeats the matters pleaded and particularised in paragraph 18D above.*

- f. CCP had not undertaken all necessary and reasonable investigations before making representations as to the state of its business (and business model) and had not satisfied itself on reasonable grounds that its public statements were substantially accurate and not misleading and deceptive in any respect such that the Reasonable Enquiry Representation was:
  - i. substantially inaccurate; and/or
  - ii. misleading and deceptive or likely to mislead and deceive persons who commonly invest in securities; and/or

#### **Particulars**

*The Applicant repeats the matters pleaded and particularised in paragraph 18E above.*

- g. there was a risk that the November NPAT Forecast and/or the Pre-November Statements were substantially inaccurate and such risk was not so insignificant that members of the public could safely ignore it and not take it into account in

deciding to acquire an interest in CCP shares such that the Accurate Disclosure Representation was:

- i. substantially inaccurate; and/or
- ii. misleading and deceptive or likely to mislead and deceive persons who commonly invest in securities.

#### **Particulars**

*The Applicant repeats the matters pleaded and particularised in paragraph 18C above.*

23. CCP did not notify the ASX of the Material Information and/or the Further Material Information as required by Listing Rule 3.1.

#### ***Particulars***

- (i) *CCP became aware of the Material Information and of the Further Material Information for the purpose of ASX Listing Rules 3.1 and 19 by 7 November 2007; and*
- (ii) *The applicant repeats the matters pleaded in paragraphs 16A to 16G above (including the particulars therein).*

24. By reason of the matters set out in paragraphs 22, 22A, and 23, CCP contravened section 674(2) of the Act (**Continuous Disclosure Breach**).
25. The Continuous Disclosure Breach was a continuing contravention and continued until at least 11 February 2008.
- J. The Contraventions caused loss to the Applicant and Group Members**

26. During the Relevant Period, the applicant and Group Members acquired an interest in CCP shares:
- a. in a market regulated by, inter alia, the ASX Listing Rules, sections 674(2) and 1041H of the Act; and
  - b. where the price or value of the CCP shares would reasonably be expected to have been informed or affected by information disclosed in accordance with ASX Listing Rules and sections 674(2) and 1041H of the Act.
27. During the Relevant Period, the Contravening Conduct and the Continuous Disclosure Breach (**Contraventions**) caused the market price for CCP shares to be substantially greater than:
- a. their true value; and/or
  - b. the market price that would have prevailed but for the Contraventions.
28. Further or in alternative, the applicant and Group Members would not have acquired an interest in CCP shares in the Relevant Period, if they had known the Material Information.
29. Further or in alternative, the Representations and each of them materially contributed to the decision of the applicant to purchase CCP shares at the prevailing market price during the Relevant Period.
- K Loss or Damage suffered by the Applicant and Group Members**
30. The applicant and Group Members have suffered loss and damage resulting from the Contraventions (or any one or combination of the Contraventions).

**Particulars**

*The loss suffered by the applicant and Group Members is:*

- i. the difference between the price at which it or they acquired their interest in each CCP share and the true value of that interest;*
- ii. the difference between the price at which it or they acquired their interest in each CCP share and the market price that would have prevailed but for the Contraventions or any of them;*
- iii. alternatively, the difference between the price at which it or they acquired their interest and whatever is 'left in hand' or has been realised upon a sale modified to take into account any part of the movement in the market price of each CCP share which did not 'result from' the Contraventions;*
- iv. in addition to (i),(ii) and (iii), the loss of the opportunity to achieve a reasonable rate of return on the monies used to purchase the interest in CCP shares.*

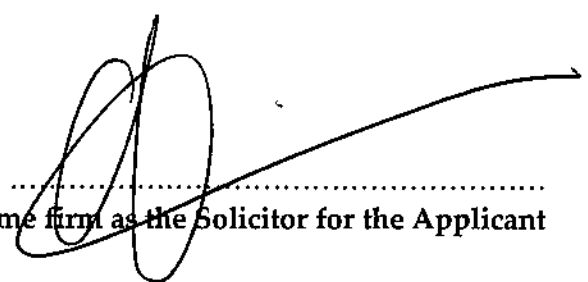
AND the applicant and Group Members claim the relief specified in the application.

This pleading was prepared by Blagoj (Bill) Petrovski and settled by Guy Donnellan and ~~M-B-J~~  
~~Lee of Counsel~~ AS Bell SC of Counsel

**FORM 15B CERTIFICATION (Order 11 Rule 1B):**

I, CARLOS ENRIQUE JARAMILLO, certify to the Court that, in relation to the pleading dated 20 July 2011, 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.

Dated: 20 July 2011

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

.....  
**Solicitor Director belonging to the same firm as the Solicitor for the Applicant**

**DEFINITIONS**

**Act** means the *Corporations Act 2001*.

**Accurate Disclosure Representation** is defined in paragraph 11.

**Annual Report** is defined in paragraph 7.

**Appendix 4D Half Year Information as at 31 December 2007** is defined in paragraph 17.

**ASX** means the Australian Securities Exchange operated by ASX Limited.

**ASX Listing Rules** means the Listing Rules of the ASX.

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001*.

**Audited Financial Report** is defined in paragraph 6.

**Credit Corp Group Limited ACN 092 697 151** means the respondent.

**CCP** means Credit Corp Group Limited ACN 092 697 151.

**CCP shares** means each ordinary share in CCP.

**Continuous Disclosure Breach** is defined in paragraph 24.

**Contravening Conduct** is defined in paragraph 21.

**Declining Productivity Issue** is defined in paragraph 16(c)(iii).

**Express November Statements** is defined in paragraph 10.

**February Disclosures** is defined in paragraph 16.

**February Forecast Factors** is defined in paragraph 16.

**February Model** is defined in the particulars to paragraph 18AA.

**11 February Letter** is defined in paragraph 15.

**FY2007** means financial year ending 30 June 2007.

**FY2008** means financial year ending 30 June 2008.

**FTA** means the *Fair Trading Act 1987* (NSW).

**Further Material Information** is defined in paragraph 22A.

**Group Members** is defined in paragraph 1.

**H1 Results Presentation** is defined in paragraph 17.

**IMF (Australia) Limited** means IMF (Australia) Limited ACN 067 298 088.

**Ledger Purchase Representation** is defined in paragraph 11.

**Likely Result Representation** is defined in paragraph 11.

**Material Disclosure Representation** is defined in paragraph 11.

**Material Information** is defined in paragraph 22.

**7 November Letter** is defined in paragraph 9.

November NPAT Forecast is defined in paragraph 11.

7 November Representations is defined in paragraph 11A above.

NPAT means net profit after tax.

~~NPAT Forecast is defined in paragraph 11.~~

NPAT Representation is defined in paragraph 11.

November Model is defined in paragraph 16D(b).

Pre-November Statements is defined in paragraph 8.

Preliminary Report is defined in paragraph 5.

Reasonable Enquiry Representation is defined in paragraph 11.

Recent Purchases Issue is defined in paragraph 16(c)(i).

Reduced Purchases Issue is defined in paragraph 16(c)(iv).

Relevant Period means the period from 8 November 2007 to 11 February 2008 (inclusive).

Relevant Pre-November Publications is defined in paragraph 8.

Representations is defined in paragraph 19.

Results Presentation is defined in paragraph 5.

Revenue Costs Issue is defined in paragraph 16(c)(iv).

Short Term Revenue Issue is defined in paragraph 16(c)(ii).

## SCHEDULE

### Purchases of CCP shares

The applicant acquired an interest in CCP shares as outlined in the following table:

Date	Number of CCP shares Purchased	Price Paid (Per share)	Consideration (Excluding brokerage charges)
8 November 2007	199,000	\$5.684	\$1,131,116.00
9 November 2007	40,000	\$5.755	\$230,200.00
16 November 2007	7,000	\$6.004	\$42,028.00
21 November 2007	10,000	\$5.710	\$57,100.00
14 December 2007	17,600	\$5.238	\$92,188.80
18 December 2007	5,000	\$4.946	\$24,730.00
31 December 2007	20,000	\$4.802	\$96,040.00
1 February 2008	10,000	\$4.373	\$43,730.00
11 February 2008	75,937	\$1.039	\$78,898.54
<b>TOTAL PURCHASED</b>	<b>384,537</b>		<b>\$1,796,031.34</b>

### Disposal of CCP shares

The applicant disposed of its interest in CCP shares acquired during the Relevant Period as outlined in the following table:

Date	Number of CCP shares Disposed	Sale Price (Per Share)	Consideration (Excluding brokerage charges)
13 February 2008	300,000	\$0.926	\$277,800.00
13 February 2008	31,459	\$0.961	\$30,232.10
14 February 2008	52,437	\$0.922	\$48,346.91
<b>TOTAL DISPOSED</b>	<b>383,896</b>		<b>\$356,379.01</b>
<b>BALANCE HELD</b>	<b>641</b>		