

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
GROUP PROCEEDINGS (CLASS ACTIONS)

Not Restricted

S ECI 2019 01926

**BETWEEN:**

NICOS ANDRIANAKIS

Plaintiff

and

UBER TECHNOLOGIES INC & ORS

Defendants

S ECI 2020 01834

**AND BETWEEN**

JAMAL SALEM in her capacity as executor  
for the estate of ANWAR SALEM

Plaintiff

and

UBER TECHNOLOGIES INC & ORS

Defendants

S ECI 2020 03593

**AND BETWEEN**

PETER STEWART

Plaintiff

and

UBER TECHNOLOGIES INC & ORS

Defendants

S ECI 2020 04787

**AND BETWEEN**

H.D. ANDREE & M. ANDREE (a partnership)

Plaintiff

and

UBER TECHNOLOGIES INC & ORS

Defendants

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JUDGE: Matthews J  
WHERE HELD: Melbourne  
DATE OF HEARING: 24 July 2024  
DATE OF REASONS: 29 July 2024  
CASE MAY BE CITED AS: Andrianakis v Uber Technologies Inc; Salem v Uber Technologies Inc (No 2)  
MEDIUM NEUTRAL CITATION: [2024] VSC 436

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PRACTICE AND PROCEDURE – Group Proceedings – “Soft” class closure orders – Whether or not to consider applications by unregistered group members to participate in the proposed settlement and objections to the proposed settlement which have not been submitted within the time ordered by the Court – *Supreme Court Act 1986* (Vic), ss 33ZF, 33ZG.

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<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Plaintiffs in each proceeding	Ms M Szydzik SC and Ms A Staker	Maurice Blackburn Lawyers
For the Defendants in each proceeding	Ms M Ellicott	Herbert Smith Freehills
For Harbour Fund III, L.P (the funder)	Mr N De Young KC and Mr K Raghavan	Webb Henderson

HER HONOUR:

### Introduction and background

- 1 Each of these proceedings is a group proceeding commenced under Part 4A of the *Supreme Court Act 1986* (Vic) (**Act**).
- 2 The trial in proceedings S ECI 2019 01926 and S ECI 2020 01834 was due to commence on 18 March 2024. The evening prior, the parties reached an in-principle settlement of the proceedings (**Proposed Settlement**). The Proposed Settlement also includes the claims made in the other two proceedings, being proceedings S ECI 2020 04787 and S ECI 2020 03593. Unless it is otherwise necessary to distinguish between the four proceedings, they will collectively be referred to as the **Uber Group Proceedings**.
- 3 It is a condition precedent of the settlement deed that the Court's approval of the Proposed Settlement be obtained. It is also a requirement under s 33V(1) of the Act that any settlement of a group proceeding receives approval from the Court. The plaintiffs' application for approval of the Proposed Settlement is listed for hearing on 9 and 10 September 2024.
- 4 These reasons concern certain issues which arose for determination at a directions hearing, held on 24 July 2024, regarding the application for approval of the Proposed Settlement.

### **Orders made on 21 July 2023**

- 5 On 3 July 2023, a hearing took place before Justice Nichols in the proceedings S ECI 2019 01926 and S ECI 2020 01834 in which the parties jointly sought orders for the fixing of a date by which group members may opt out of the proceedings and for relevant notices to be given, as well as orders for registration and what is often referred to as "soft class closure". On 21 July 2023, Justice Nichols made orders concerning these matters (**Soft Class Closure Orders**). Her Honour's reasons for deciding to make the Soft Class Closure Orders were published.<sup>1</sup> Familiarity with the Soft Class Closure Reasons is assumed for the purposes of this ruling.

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<sup>1</sup> *Andrianakis v Uber Technologies & Ors; Salem v Uber Technologies & Ors* [2023] VSC 415 (**Soft Class Closure Reasons**).

6 The Soft Class Closure Orders relevantly included the following:

- (a) the date by which group members could opt out of the Uber Group Proceedings was fixed as 4:00pm on 2 October 2023 (**Class Deadline**);
- (b) by the Class Deadline, a group member could register their claim with the plaintiffs' solicitors, Maurice Blackburn;
- (c) the means by which group members were to register their claim and what information they were to provide were set out in the orders;
- (d) subject to further order, only group members who had registered by the Class Deadline (**Registered Group Members**) were entitled to any relief or payment arising from an agreement to settle the proceedings where that agreement was reached any time between 21 July 2023 and 3 March 2024 (the date was later extended by Court order to 17 March 2024) and the agreement is subsequently approved by the Court;
- (e) any group member who did not opt out or register by the Class Deadline will remain a group member for all purposes of the proceedings but shall not, without leave of the Court, be permitted to seek any benefit pursuant to any such settlement (subject to Court approval) of the proceedings; and
- (f) the content of notices and advertisements and the manner in which Maurice Blackburn was to advertise and give notice of the Soft Class Closure Orders was prescribed in the orders.

#### **Orders made on 19 April 2024**

7 By applications made on 19 April 2024, the plaintiffs in each proceeding apply to the Court for approval of the Proposed Settlement (**Approval Application**).

8 The Approval Application was before me on 19 April 2024 for the making of directions. On that day, I made orders (**19 April Orders**) for the conduct of the Approval Application, including:

- (a) orders for a notice of the Proposed Settlement to be given to group members (whether registered or not) (**Notice**);<sup>2</sup>
- (b) a regime by which group members could object to the Proposed Settlement by submitting a completed notice of objection (the form of which was included in the Notice) and evidence (by way of affidavit), together with any written submissions (of no more than two pages) (**Objections**) to Maurice Blackburn and to the Court by 4:00pm on 2 July 2024. The email addresses to which the Objections were to be sent were set out in the orders;
- (c) a regime in respect of group members who had not registered with Maurice Blackburn by the Class Deadline as set out in the Soft Class Closure Orders (**Unregistered Group Members, or UGMs**), which included steps as follows:
  - (A) by 4:00pm on 7 May 2024, Maurice Blackburn was to make available on its website an online portal for the purpose of collecting the contact details of any person who is an Unregistered Group Member who wished to participate in the Proposed Settlement (**Online Portal**);<sup>3</sup>
  - (B) once an Unregistered Group Member entered their contact details on the Online Portal, Maurice Blackburn was to send them an additional notice (**Communication**)<sup>4</sup> and the Notice;
  - (C) By 4:00pm on 2 July 2024, Unregistered Group Members (each, a **UGM**) who wished to seek leave from the Court to participate in the Proposed Settlement were required to identify the basis on which the Court should grant permission to do so and provide evidence by way of affidavit in support, and any written submissions of no more than two pages (**UGM Application**) by

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<sup>2</sup> The content of the Notice and the manner in which it was to be given to group members was prescribed in the 19 April Orders.

<sup>3</sup> The form and content of the text to be displayed on the Online Portal was prescribed in the 19 April Orders.

<sup>4</sup> The content of the Communication was prescribed in the 19 April Orders.

email to Maurice Blackburn (the relevant email address being specified in the orders);<sup>5</sup> and

- (D) Maurice Blackburn was to provide the Court with a copy of UGM Applications received pursuant to sub-paragraph (C) above.
- (d) orders for the appointment of an independent costs solicitor as a special referee for the purpose of conducting an inquiry and making a written report to the Court stating, with reasons, the referee's opinion as to the reasonableness of the plaintiffs' legal costs and disbursements incurred in relation to the proceedings and as to the reasonableness of the sum proposed for settlement administration costs (**Costs Referee's Report**). The Costs Referee's Report was to be provided to the Court and to the plaintiffs, on a confidential basis, by 4:00pm on 2 July 2024; and
- (e) timetabling orders for the conduct of the Settlement Approval Application, including:
  - (A) setting the deadline of 4:00pm on 2 July 2024 (**2 July Deadline**) for submitting an Objection or a UGM Application;
  - (B) listing the proceedings for further directions at 10:00am on 25 July 2024 (subsequently changed to 24 July 2024 by orders made on 11 July 2024, which change of date was required to be advertised on the Court's website page for the Uber Group Proceedings and Maurice Blackburn's website for the Uber Group Proceedings);
  - (C) specifying a date of 4:00pm on 9 August 2024 by which the plaintiffs and Harbour Fund III, L.P (being the litigation funder who had been granted leave to appear in respect of the Approval Application) were to file and serve any affidavits or written submissions on which they seek to rely in relation to the Approval Application. Any affidavits or written submissions

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<sup>5</sup> The Notice and the Communication included instructions to the effect of sub-paragraph (C), being how to make a UGM Application; and

over which they wished to claim confidentiality were to be sent to my Chambers by email, rather than filed and served, by that same deadline;

- (D) listing the Approval Application for hearing at 10:00am on 9 and 10 September 2024.

#### **Mention hearing on 11 July 2024**

9 At the plaintiffs' request, on 11 July 2024 I listed the proceedings for mention so that Maurice Blackburn could provide the Court with information as to the Objections and UGM Applications received by them and as to how these were being processed.

10 As part of that mention, the plaintiffs' counsel provided a short written update dated 10 July 2024 regarding these matters (**Plaintiffs' 10 July Update**). Of particular note, the Court was informed that:

- (a) as at the 2 July Deadline, 8,319 expressions of interest in submitting a UGM Application had been received on the Online Portal;
- (b) in addition, between close of business on 28 June 2024 and the 2 July Deadline, Maurice Blackburn received approximately 8,000 emails regarding the Uber Group Proceedings, most of which consisted of Objections and UGM Applications;
- (c) since then, Maurice Blackburn has been separating the emails into Objections, UGM Applications, and other enquiries;
- (d) as at 9 July 2024:
  - (A) approximately 2,000 emails remained to be triaged;
  - (B) 7,717 emails had been triaged as relevant to a UGM Application;
  - (C) 725 emails had been triaged as relevant to Objections; and
  - (D) 9,500 emails remained to be processed.
- (e) the collation and review process used by Maurice Blackburn included:

- (A) identifying and collating all emails relevant to a single individual's Objection or UGM Application;
  - (B) confirming the characterisation of each email as an Objection or UGM Application, and cross-checking against previously received materials;
  - (C) packaging each individual's materials into a single pdf. This is laborious: for example, one individual sent 70 emails relating to a single application with potentially relevant attachments in each; and approximately 2,000 people sent multiple emails relating to the one application; and
  - (D) recording each UGM Application or Objection in a register containing names and contact details, whether the individual intends to attend the hearing of the Approval Application, the basis for the Objection or UGM Application, and whether any supporting material has been provided (being an affidavit, submissions, and/or statutory declaration). The register will be provided to the Court;
- (f) Maurice Blackburn estimated that it would take approximately seven weeks to finish processing the Objections and UGM Applications.

### **UGM Applications and Objections received by the Court's registry**

- 11 As at 23 July 2024, the information available to me suggested that the Court's registry (**Registry**) had received approximately:<sup>6</sup>
- (a) 345 Objections submitted by the 2 July Deadline;
  - (b) 155 Objections submitted after that deadline; and
  - (c) 141 UGM Applications submitted by the 2 July Deadline; and

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<sup>6</sup> These figures are provisional, only, as it is not yet known whether there is duplication between the various emails received by the Registry.



(d) an as yet unknown number of UGM Applications submitted after that deadline.

12 Copies of these materials were provided by the Registry to Maurice Blackburn prior to the directions hearing on 24 July 2024, but are not included in the update provided by Maurice Blackburn at that hearing as there had not been sufficient time for them to be reviewed by Maurice Blackburn.

13 Accordingly, at this stage the extent to which there is duplication between the Objections and the UGM Applications received by the Registry and by Maurice Blackburn is not known. It is also not known how many of the Objections are, in truth, UGM Applications. Based on the information available so far, it seems that many of the Objections received by Maurice Blackburn are likely to be more appropriately regarded as UGM Applications.

#### **Directions hearing on 24 July 2024**

14 The purpose of the directions hearing held on 24 July 2024 was for the Court to:

- (a) receive any further updates from Maurice Blackburn as to the processing of the Objections and UGM Applications;
- (b) ensure that the timetabling steps set out in the 19 April Orders were on track so that the hearing of the Approval Application could proceed smoothly on its scheduled dates; and
- (c) determine whether to appoint a contradictor or amicus curiae in respect of the Approval Application; and
- (d) make any further directions necessary for the conduct of the Approval Application.

#### ***Maurice Blackburn's update on processing Objections and UGM Applications***

15 The plaintiffs provided a written submission dated 23 July 2024 (**Plaintiffs' DH Written Submission**).

16 The Plaintiffs' DH Written Submission contained an update on processing Objections and UGM Applications as at 22 July 2024.

- 17 In respect of the ‘in time’ Objections and UGM Applications, being those received by the 2 July Deadline, as at 22 July 2024,
- (a) Maurice Blackburn had:
    - (A) completed the triaging process, that is, they had identified whether each email related to an Objection, a UGM Application, or another enquiry; and
    - (B) allocated each email concerning an Objection to a single group member’s objection and packaged up the Objection into a usable form;
  - (b) as a result of completing those steps, Maurice Blackburn received 576 ‘in time’ Objections (297 of which were received on 1 to 2 July 2024); and
  - (c) the total number of ‘in time’ UGM Applications is not yet known, however, as at 5 July 2024, 483 such applications had been identified.
- 18 Maurice Blackburn still expects to complete the processing of ‘in time’ Objections by 9 August 2024, when the plaintiffs’ materials for the hearing of the Approval Application are due.
- 19 In terms of processing the ‘in time’ UGM Applications, Maurice Blackburn intends to provide an update as part of their materials filed on 9 August 2024 along with the register addressing the UGM Applications which have been processed as at that time. In addition, Maurice Blackburn expects to be able to file a further affidavit addressing the remaining UGM Applications by 2 September 2024.
- 20 In respect of the ‘out of time’ Objections and UGM Applications, being those received after the 2 July Deadline, as at 22 July 2024:
- (a) Maurice Blackburn had received 1,236 emails in total, 94 of which relate to Objections and 1,142 to UGM Applications;
  - (b) none of these have yet been allocated to individual group members, so the total number of late Objections and late UGM Applications is not yet known;

- (c) the time it would take to do so, and to further process them in the same way as the 'in time' Objections and UGM Applications, would be an additional week on top of the seven weeks already estimated; and
- (d) as at the date of the hearing, Maurice Blackburn has continued to receive new emails concerning Objections and UGM Applications.

21 The plaintiffs' counsel note that the matters referred to in paragraphs 17 and 18 above could be affected by the number of 'in time' Objections received by the Court only, and whether Maurice Blackburn is required to review and process the 'out of time' emails relating to Objections and UGM Applications.

*Whether to appoint a contradictor or amicus curiae in respect of the Approval Application*

22 This topic was the subject of the Plaintiffs' DH Written Submission and was discussed at the directions hearing on 24 July 2024.

23 For reasons I gave orally at the hearing, I decided:

- (a) to appoint independent counsel as contradictor, to review and make submissions about the Objections and the UGM Applications, at the hearing of the Approval Application; and
- (b) that it was not necessary to appoint a firm of solicitors to process and review the Objections and UGM Applications, given the work being performed by Maurice Blackburn as described above.

*Applications for extensions of time to submit UGM Applications*

24 A number of UGMs were represented at the directions hearing by solicitors and/or counsel.

25 In the main, the UGMs who appeared were seeking extensions of time in which to submit a UGM Application. Those applications for an extension were dealt with at the directions hearing and reasons for the Court's decision as to whether or not to grant those extensions were given orally at the hearing.

*Objections and/or UGM Applications submitted after the 2 July Deadline*

26 Another issue which arose for consideration at the directions hearing on 24 July 2024 was how to deal with Objections and/or UGM Applications submitted after the 2 July Deadline where there was no application before the Court on 24 July 2024 for an extension of time to submit the Objection and/or UGM Application. I made orders that unless the Court had separately granted an extension of time to submit a UGM Application or an Objection following an application made to the Court for an extension, UGM Applications and Objections submitted after the 2 July Deadline would not be considered by the Court.

27 I indicated that I would publish my reasons for making the orders referred to in the preceding paragraph as soon as practicable after the directions hearing. These are those reasons.

**Whether to consider Objections and/or UGM Applications submitted after the 2 July Deadline**

28 As indicated, the issue before the Court at the directions hearing on 24 July 2024 was whether Objections and/or UGM Applications submitted after 4:00pm in respect of which no extension of time had been granted by the Court should be considered by the Court (respectively, **Late Objections** and **Late UGM Applications**).

29 I made orders on that day that Late Objections and Late UGM Applications would not be considered by the Court.

30 These are my reasons for making those orders.

**Submissions by the plaintiffs**

31 Although the plaintiffs state that they take no position on the question of whether the Court should consider the Late Objections and Late UGM Applications, their counsel have provided some submissions on the topic for the Court's consideration.

32 In respect of Late Objections, the plaintiffs' counsel submitted that courts have generally not treated the deadline for providing objections as a "hard" deadline, referring to the following examples:

- (a) In *Mutch v ISG Management Pty Ltd (No 3)*,<sup>7</sup> Bromberg J referred to an affidavit filed by the applicant which ‘annexed each of the 24 objections received ... including three objections received after the deadline for providing objections’.<sup>8</sup> The Court otherwise appears to have made no distinction between those objections received in time and those received after the deadline. In other words, all 24 objections were considered.<sup>9</sup>
- (b) In *Coatman v Colonial First State Investments Ltd*,<sup>10</sup> Murphy J stated: ‘A total of 18 notices of objections were received by the deadline, and one further objection was received out of time which I treated as having been lodged within time’.<sup>11</sup> His Honour did not refer to the circumstances surrounding the late provision of this objection.
- (c) In *Pearson v Queensland (No 2)*,<sup>12</sup> Murphy J stated: ‘Thirty-nine written objections to the proposed settlement were filed with the Court ... Three late written objections were filed after the deadline, and I accepted them for filing’.<sup>13</sup> Again, his Honour did not refer to the circumstances surrounding the late provision of these objections.

33 In respect of Late UGM Applications, the plaintiffs’ counsel stated that they had identified one case in which the Court referred to out of time applications from unregistered group members seeking to participate in the settlement, being *Dorajay Pty Ltd v Aristocrat Leisure Ltd*.<sup>14</sup> In that case:

- (a) A notice to group members had stated:<sup>15</sup>

If you did not submit any Proof (or complete Proof) by 24 June 2008 you are not a Participating Group Members and you will not receive a distribution of money under the proposed settlement. If you are in this category, but you still wish to make a claim in the class action, you are required to provide a statement of reasons why you should be included... together with a Proof, and the Court will be asked to make

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<sup>7</sup> [2023] FCA 648 (*Mutch v ISG*).

<sup>8</sup> *Mutch v ISG*, [14].

<sup>9</sup> *Mutch v ISG*, [21].

<sup>10</sup> [2022] FCA 1611 (*Coatman v Colonial*).

<sup>11</sup> *Coatman v Colonial*, [79].

<sup>12</sup> [2020] FCA 619 (*Pearson v Queensland*).

<sup>13</sup> *Pearson v Queensland*, [182].

<sup>14</sup> [2008] FCA 1311 (*Dorajay v Aristocrat*).

<sup>15</sup> *Dorajay v Aristocrat*, [17].

a determination in your case. The statement of reasons and the Proof must be received by Maurice Blackburn... by no later than 4pm, 8 August 2008.

(b) Stone J stated in her decision that:<sup>16</sup>

Maurice Blackburn received statements of reasons and/or Proofs after the 8 August 2008 deadline, including after the hearing on 14 August [which hearing was to determine the applications from unregistered group members], from three members.

(c) Her Honour concluded that:<sup>17</sup>

[t]he extent of their delay is such that, in my view, it is sufficient to justify their exclusion from the settlement group, and I will so order.

34 The plaintiffs' counsel submit that this suggests that her Honour did not consider the 8 August 2008 deadline to be a 'hard' deadline in the sense that the Court would not consider any applications received after that date. However, the extent of the delay in providing the application was a relevant factor in determining whether the Court would consider the application.

## Consideration

### *Late UGM Applications*

35 As noted above, the Soft Class Closure Orders were made so as to effect what is known as a "soft class closure". This is a term commonly used to distinguish orders from "hard" class closure orders which operate to close the class by removing unregistered group members from the class by amendment of the group definition or by providing that unregistered group members are not permitted to benefit from any judgment in favour of the plaintiffs. "Soft class closure" orders are employed to facilitate settlement discussions between the parties and, in this case, the Soft Class Closure Orders provided that if the proceeding did not settle before trial, the claims of unregistered group members would still be determined in the proceedings.<sup>18</sup>

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<sup>16</sup> *Dorajay v Aristocrat*, [73].

<sup>17</sup> *Dorajay v Aristocrat*, [73].

<sup>18</sup> *Soft Class Closure Reasons*, [3].

36 The Court's power to make such orders was explained by Justice Nichols in the *Soft Class Closure Reasons*:<sup>19</sup>

This Court has express power to under ss 33ZF and 33ZG of the Act to require group members to take a positive step in order to be entitled to obtain any relief or benefit arising out of a proceeding issued under Part 4A of the Act, and to specify a date after which, if that step has not been taken by a group member to whom the order applies, the group member is not entitled to any relief or payment or to obtain any such benefit. As s 33ZG provides, the power may be exercised irrespective of whether the Court has made a decision on liability or there has been an admission of liability by the defendant. Section 33ZG elaborates upon the power conferred by s 33ZF, by which the Court may make any order the Court *thinks appropriate or necessary to ensure that justice is done in the proceeding*.

37 After setting out the evidence relied upon and the parties' submissions (both the plaintiffs and the defendants supported the making of soft case closure orders), her Honour reached the conclusion that orders requiring group members to register an interest in the proceeding in order to participate in any settlement reached before trial were appropriate to ensure that justice is done in the proceeding,<sup>20</sup> for the following reasons:<sup>21</sup>

- (a) the issues raised by the proceedings are legally and factually complex, which complexity causes an increase litigation risk for both parties. If the Uber Group Proceedings do not settle, the costs of conducting the trial (set down for 10 weeks) will be very substantial. If the proceedings are settled on terms which meet Court approval, group members will have obtained an outcome judged to be in their interests while avoiding the significant trial costs and the inherent risks and uncertainties inherent in litigation;
- (b) a step that is likely to assist the parties to resolve the proceedings is one which may produce a tangible benefit for group members. Closing the class is a step likely to assist the parties in resolving the proceedings;<sup>22</sup>

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<sup>19</sup> *Soft Class Closure Reasons*, [6] (footnotes omitted).

<sup>20</sup> *Soft Class Closure Reasons*, [26].

<sup>21</sup> *Soft Class Closure Reasons*, [27] – [30].

<sup>22</sup> I note that at the time of the *Soft Class Closure Reasons*, a judicial mediation taking some days had been scheduled to occur prior to trial.

- (c) closing the class also serves the overarching purpose set out in s 7 of the *Civil Procedure Act 2010* (Vic) (the **CPA**);
- (d) group members will receive appropriate and sufficient notice of the requirement to register;
- (e) there is no identifiable prejudice to group members in requiring registration now, rather than at some later stage; and
- (f) the orders will be subject to further order, such that UGMs may apply to be re-admitted to the class, by exercise of the Court's discretion, if they can sufficiently demonstrate unfair prejudice to them in the operation of the orders.

38 The Court has been informed that after the making of the Soft Class Closure Orders, some 622 group members registered with Maurice Blackburn before the Class Deadline. In addition, many group members had registered with Maurice Blackburn prior to the making of those orders.

39 As set out in some detail above, the 19 April Orders set out a regime by which UGMs could submit a UGM Application to participate in the Proposed Settlement for the Court's consideration. Those orders specified a deadline for UGM Applications to be submitted: the deadline was 4:00pm on 2 July 2024. Accordingly, the UGMs had the benefit of a period of eight weeks between notification to group members and the deadline.

40 It is important to note that these reasons do not concern UGMs who submitted their UGM Applications by the 2 July Deadline. Their applications to participate in the Proposed Settlement will be determined as part of the hearing of the Approval Application listed for 9 and 10 September 2024. These reasons concern only those UGMs who submitted Late UGM Applications and who have not otherwise been granted an extension as at the date of these reasons.

41 Refusing to consider the Late UGM Applications is within the Court's powers as set out in ss 33ZF and 33ZG of the Act. I am satisfied that doing so in this instance is appropriate to ensure that justice is done in the proceedings. It is also consistent with the overarching purpose as set out in the CPA, being to facilitate the just, efficient,



timely and cost-effective resolution of the real issues in dispute. My reasons for reaching this conclusion are set out below.

42 First, group members were given extensive notice of the requirement to register prior to the Class Deadline and had over two months to do so. The advertisement and notice provisions contained in the Soft Class Closure Orders were extensive and comprised many different methods, as is summarised in the *Soft Class Closure Reasons*. It is apparent that this resulted in several hundred group members who had not already registered doing so by the Class Deadline.

43 Second, sufficient notice and time was given to UGMs to submit their UGM Applications. In this regard:

- (a) the 19 April Orders provided UGMs with eight weeks to submit a UGM Application;
- (b) the requirements for a UGM Application were not onerous: an affidavit and a short written submission of no more than two pages, which identified the basis on which leave should be granted; and
- (c) that so many UGMs did submit their applications in time indicates that it was possible to do so. The number of individual 'in time' UGM Applications is not yet known, but based on current information it is likely to be in the thousands.

44 Third, having submitted their UGM Applications after the 2 July Deadline, other than those UGMs who made applications to the Court for extensions, the Late UGM Applications were submitted without the UGMs having made an application for an extension. In this regard:

- (a) UGMs emailing Maurice Blackburn after the 2 July Deadline were informed that the time for submitting UGM Applications had closed and Maurice Blackburn could not accept their applications; and
- (b) having received such a response, it was incumbent upon those UGMs to make an application to the Court for an extension. There was no provision in the 19 April Orders for Maurice Blackburn to deal with extensions or applications for extensions.

45 Fourth, it is salient to consider the principles regarding exercising the Court's  
discretion to grant an application to extend time. In *Vimplane Pty Ltd v Cirss*,<sup>23</sup>  
Habersberger J stated:<sup>24</sup>

The overriding principle is what the interests of justice require. Four well-  
recognised factors which require consideration on any application for an  
extension of time are the length of the delay, the reason for the delay, whether  
there is an arguable case and the extent of any prejudice to the other party.

46 Insofar as these Late UGM Applications are concerned, the Court is not dealing with  
an application to extend time. Rather, they are simply late applications for which no  
extension has been sought. Given the relevance of delay to the Court's deliberations  
in circumstances where an application to extend time *has* been made, in my view, the  
circumstances here are such that two issues regarding delay arise. The first is delay  
in approaching the Court to make an application to extend time (or worse, merely the  
delay in submitting the UGM Application after the 2 July Deadline without having  
made any application for an extension), and the second is the delay such conduct here  
would cause in hearing the Approval Application, given the volume of Late  
Applications.

47 Fifth, I acknowledge that refusing to consider the Late UGM Applications is highly  
likely to cause prejudice to those UGMs who submitted late applications, as it will  
prevent them from participating in the Proposed Settlement yet will bind them to the  
release of claims against Uber which are part of the Proposed Settlement.

48 Sixth, there is a countervailing -prejudice to Registered Group Members, those UGMs  
who submitted their UGM Applications prior to the deadline, and to the other parties  
to this proceeding if the Court does not refuse to consider the Late UGM Applications.  
That prejudice comprises:

- (a) the overwhelming likelihood that the hearing of the Approval Application  
would not be able to go ahead on the scheduled dates, as the steps remaining  
to process the Late UGM Applications will involve a significant amount of  
material being provided too close to the hearing dates, even on a 'best case'

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<sup>23</sup> [2005] VSC 45 (*Vimplane*).

<sup>24</sup> *Vimplane*, [29] (citations omitted).

scenario. I struggle to see how the hearing date can be maintained given the volume of the Late UGM Applications;

- (b) in respect of the delay which would likely occur to the finalisation of the Approval Application. If the hearing cannot go ahead as planned, it is likely to be at least a further two months before a hearing can be accommodated, and even longer before the Court's decision is able to be made.
- (c) the additional costs associated with processing the Late UGM Applications, which are significant, especially when one has regard to the already significant costs associated with processing the 'in time' applications, which costs would ultimately mean a further depletion of the proposed settlement proceeds;
- (d) relatedly, there is the ongoing burden on limited Court resources in respect of the communications and materials which are being sent directly to Registry;
- (e) the plaintiffs' counsel indicated that if the Late UGM Applications had to be reviewed and processed and the hearing date maintained, then it was likely that some of that material would not be able to be provided to the Court until after the hearing of the Approval Application. In my view, that is highly undesirable and ought to be avoided;
- (f) the need for the Court to ensure compliance with its own orders; and
- (g) importantly, there has to be a cut-off for UGM Applications, and the 2 July Deadline was and is reasonable. If the Late UGM Applications are to be considered, at what point does the Court draw the line? It cannot be reasonable for the deadline to be open-ended;

49 Seventh, the situation before me is distinguishable from *Dorajay v Aristocrat*. In that case, the delay was not extensive and the number of unregistered group members seeking to participate in the settlement whose applications were made late was very small. There was no indication in that case that considering those late applications caused any delay in reaching a decision. Here, considering Late UGM Applications will add considerably to the time and resources required for applications to be

processed and considered by the Court, thus it would inevitably cause a substantial delay to the outcome of the Approval Application.

50 Eighth, the situation before me is distinguishable from *Wetdal Pty Ltd as Trustee for the BlueCo Two Superannuation Fund v Estia Health Limited*.<sup>25</sup> That decision concerned an application for approval of the settlement of a class action, during the course of which Beach J had to determine whether group members who had sought to register after two previous deadlines imposed by the Court could participate in the settlement. In that case, there had been an inadvertent failure to comply fully with the first soft class closure order made for opting out or registering which was not discovered for some time and which resulted in many group members not receiving that notice in time. There is no such issue arising here.

51 In *Wetdal v Estia*, the Court had also made orders for notice to group members of the proposed settlement, which included a date by which any unregistered group members could seek to register, and a number so did. In addition, there were group members who sought to register after that second date but before the approval hearing. In that case, Beach J exercised the Court's discretion to allow group members who had sought to register before the approval hearing to participate in the settlement. I cannot discern from the judgment the number of group members who sought to participate after the second date, but I apprehend that there were not many. There was no suggestion in that case that such late applications had any impact on the timing of the approval hearing or caused any difficulties with the Court making a timely decision. Finally, it is worth noting that there is no equivalent to s 33ZG of the Act in the *Federal Court of Australia Act 1976* (Cth), which applied to that application.

52 Ninth, drawing the line at 4:00pm on 2 July 2024 is consistent with the reasons expressed by Nichols J in the *Soft Class Closure Reasons*.

53 Tenth, even though prejudice will result in respect of the Late UGM Applications, I consider that the other nine matters identified above mean that the Court ought not consider the Late UGM Applications.

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<sup>25</sup> [2021] FCA 475 (*Wetdal v Estia*).

54 This is not an instance in which allowing the Late UGM Applications would cause negligible impact on registered group members and plaintiffs. Nor is this an instance in which it could be said that the affected individuals have had insufficient notice that they had to register and the consequences of not registering.<sup>26</sup> The strictures imposed by a class closure regime have much to recommend them. As here, the Court has been mindful of the potential prejudice to those who did not register within the deadline imposed by the Soft Class Closure Orders by such orders being expressed as subject to further order and by provision of a further window within which such persons could apply to participate.

55 In my view, UGMs have had a sufficient opportunity, both with the Soft Class Closure Orders and the regime put in place for UGM Applications as set out in the 19 April Orders, to make their UGM Applications ‘in time’. That some have not availed themselves of this further opportunity is unfortunate but, as already stated, the Court has to draw the line somewhere and I have done so by enforcing the 2 July Deadline. This has not been done inflexibly, since I have already considered and dealt with applications for an extension of time that were made to the Court in an orthodox and timely manner.

### *Late Objections*

56 I take the same view in respect of the Late Objections, for the same reasons as set out above.

57 The cases referred to by the plaintiffs’ counsel indicate that deadlines for objections in those cases were not treated as ‘hard deadlines’. However, each situation must be determined on its merits and in light of its own facts. In an instance where considering the Late Objections is likely to jeopardise the timely and efficient conduct of the Approval Application, as I consider to be the case here, it is within the Court’s power and also appropriate to require adherence to the deadline it has already imposed.

58 There are additional matters regarding the Late Objections which support my decision not to consider them. In respect of the Late Objections, there is no evidence before me

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<sup>26</sup> Cf *Blairgowrie Trading Ltd v Allco Finance Group Ltd (Receivers & Managers Appointed) (In Liq) (No 3)* [2017] FCA 330.

or indication that any prejudice would be occasioned for group members who wished to object but had not done so by the 2 July Deadline. I say this for two reasons:

- (a) first, considering objections to a proposed settlement does not involve the determination of individual rights. If a group member objects and the Court considers that the objection has merit, that is but one factor taken into account when determining whether or not to approve the settlement. After considering all relevant matters, the Court makes a decision to approve, or not approve, a settlement. The Court does not re-write the settlement. For example, if a group member's objection is that the proposed settlement will result in them receiving a lower sum than they think fair or reasonable, if the settlement is approved then it is not as if the Court grants approval conditionally on that group member receiving more than provided for under the settlement; and
- (b) second, given the number of 'in time' Objections and the information which has been communicated to the Court about them in the updates from Maurice Blackburn, it is highly unlikely that Late Objections will raise grounds which have not already been expressed in the 'in time' Objections, other than matters specific to the individual group member. As for those matters, the discussion in sub-paragraph (a) above addresses those.

59 Accordingly, the decision I made on 24 July 2024 also excluded the Late Objections from consideration.

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### CERTIFICATE

I certify that this and the 19 preceding pages are a true copy of the reasons for ruling of Justice Matthews of the Supreme Court of Victoria delivered on 29 July 2024.

DATED this twenty ninth day of July 2024.



*Amelia Simpson*

Associate