

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST**

S ECI 2022 04261

BETWEEN:

**FNH UNITED PTY LTD (ACN 639 802 798) & ORS (according to
the Schedule)** Plaintiffs

- and -

**UNITED PETROLEUM FRANCHISE PTY LTD (ACN 127 764
989) & ANOR (according to the Schedule)** Defendants

ORDER

JUDGE: The Honourable Justice Delany

DATE MADE: 25 October 2023

ORIGINATING PROCESS: Writ filed on 21 October 2022

HOW OBTAINED: Return of the Plaintiffs' summons dated 19 September 2023, the First Defendant's summons dated 28 September 2023, and the Plaintiffs' summons dated 3 October 2023

ATTENDANCE: Mr B May, counsel for the Plaintiffs
Mr S Rosewarne KC with Ms A Batrouney,
counsel for the First Defendant
Mr N De Young KC with Mr D McAloon,
counsel for the Second Defendant

OTHER MATTERS: A. The Court notes the undertakings given in Court on 4 October 2023 by Senior Counsel on behalf of the First Defendant, and on behalf of United Petroleum Pty Limited, that the First Defendant and United Petroleum Pty Ltd undertake that they will not, including by their servants and agents:

a. seek any release from liability in relation to this proceeding, or its subject matter, as a condition attaching to the return of all or any part of a bank guarantee or other security granted by a Group Member to the First Defendant or one of its related entities, where the First Defendant or one



of its related entities is already legally required to return all or any part of the bank guarantee or other security to the Group Member at the time of the agreement; and

- b. represent to any Group Member that he, she, or it has no entitlement to receive the bank guarantee or other security in the absence of such a release, unless the Group Member is not entitled to receive the bank guarantee or security at the time because it is legally being withheld pursuant to the terms of the agreement between the First Defendant or United Petroleum Pty Ltd and the Group Member, to make good the cost of remedying breaches and/or the loss caused by the Group Member's failure to comply with their obligations under that agreement.

THE COURT ORDERS THAT:

Communications Protocol

1. Until further order, the parties and their legal representatives must comply with the communications protocol annexed to this Order and marked 'Annexure A'.
2. The First Defendant is to pay the costs of the Plaintiffs' summons dated 19 September 2023.
3. The Second Defendant's costs of the Plaintiffs' summons dated 19 September 2023 are reserved.

Subpoena to Sunil Kumar

4. The Plaintiffs are to pay the reasonable costs (including legal costs) of Sunil Kumar in compliance with the subpoena filed 20 September 2023.

Corrective Notice

5. Within two business days of this Order, the Plaintiffs are to issue a corrective notice in the form set out at 'Annexure B' correcting certain statements in a circular distributed by Levitt Robinson on 26 July 2023 (the 'Circular') to all recipients of the Circular.
6. Within two business days of the issue of the corrective notice, the solicitors for the Plaintiffs are to file (but not serve) an affidavit which exhibits a confidential list of those persons and of the addresses to which the corrective notice was sent.
7. Pursuant to r 28.05(4) of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic), and subject to further order of the Court, the confidential list to be exhibited to



the affidavit to be filed in accordance with paragraph 6 above is confidential and must not be published or made available to any persons (including the defendants and their representatives), excepting the Court.

8. The Plaintiffs are to pay the costs of the First Defendant's summons dated 28 September 2023.

Notice to Produce

9. The notice to produce directed to the Plaintiffs and filed by the Second Defendant on 25 September 2023 is set aside.
10. The notice to produce directed to the Plaintiffs and filed by the First Defendant on 26 September 2023 is set aside.
11. No order as to the costs of the Plaintiffs' summons dated 3 October 2023 to set aside the notices to produce.

DATE AUTHENTICATED: 25 October 2023



The Hon. Justice Delany

SCHEDULE OF PARTIES

FNH UNITED PTY LTD (ACN 639 802 798) First Plaintiff

and

FAHIM ISTANIKZAI Second Plaintiff

and

JIGARKUMAR BHARATBHAI PATEL Third Plaintiff

and

JAYDEEP DEVJIBHAI BHATTI Fourth Plaintiff

and

UNITED PETROLEUM FRANCHISE PTY LTD (ACN 127 764 989) First Defendant

and

AVI SILVER Second Defendant

ANNEXURE A

ANNEXURE "A"

COMMUNICATIONS PROTOCOL

1. In relation to a Group Member that is known to either United Petroleum Franchise Pty Ltd (**UPF**), or Mr Avi Silver (**Silver**) to be a client of Levitt Robinson Solicitors, or to be otherwise represented by any solicitor in relation to these proceedings, UPF and Silver, and their related parties, servants, or agents, shall not communicate with that Group Member in relation to the proceeding, other than to inform that person that his or her enquiry should be directed to Levitt Robinson Solicitors or their own solicitor, as the case may be. For the avoidance of doubt, a Group Member is relevantly known to be represented (by Levitt Robinson or otherwise) if a Group Member confirms they are represented following an enquiry made pursuant to clauses 2(a), 3(a), 4 or 5 of this Protocol.

Releases of Group Members in respect of the proceeding

2. Subject to compliance by UPF and Silver with paragraphs 1 above and 3 below, until the proceeding is finally determined (including any appeal) or until further order, UPF and Silver, and their related parties, servants, or agents shall not seek a release in respect of any claim made in the proceeding from any Group Member who is not a known client of Levitt Robinson or any other solicitor, without first:
 - (a) querying with that Group Member whether it is legally represented in relation to the proceeding in accordance with paragraph 3(a)(i) below; and
 - (b) providing a letter in the form of Annexure A (**Letter**) addressed to any Group Member from whom UPF or Silver wishes to obtain such a release before entering into a deed containing such a release.

Unsolicited communications by the Defendants which could have an effect on a Group Member's participation in the proceeding

3. In relation to Group Members who are not known clients of Levitt Robinson Solicitors or any other solicitor, UPF and Silver shall use all reasonable measures to ensure that:
 - (a) any unsolicited communication made by UPF or Silver, their related parties, servants or agents to a Group Member or Group Members which could have an effect on a Group Member's participation in the proceeding, shall be made only after querying with that Group Member whether they are legally represented in relation to the proceeding; and
 - (b) any such unsolicited communication made by UPF or Silver, their related parties, servants or agents to a Group Member or Group Members which could have an effect on a Group Member's participation in the proceeding, shall include a statement to the effect that the Group Member is a Group Member in these proceedings, and refer the Group Member to the website of the Supreme Court of Victoria where the Further Amended Group Proceeding Summary Statement is to be found.

Responding to communications initiated by Group Members in relation to the proceeding

4. Prior to any written communication being made by UPF or Silver, their related parties, servants, or agents to an unrepresented Group Member which is responsive to a communication initiated by that Group Member which could have an effect on a Group Member's participation

in the proceeding, UPF, Silver, or their related parties, servants or agents will ask the Group Member to confirm that they are not legally represented in the proceeding.

5. An oral response which is responsive to a communication initiated by an unrepresented Group Member which could have an effect on that Group Member's participation in the proceeding, asks the Group Member to confirm that the Group Member is not legally represented in the proceeding, before discussing the proceeding with the Group Member.

Communication in the ordinary course of business unaffected

6. For the avoidance of doubt, UPF and Silver, their related parties, servants, or agents are not precluded from communicating with any Group Member in the ordinary course of business.

Communications by the Plaintiffs to Group Members as a whole

7. In relation to any unsolicited communication which the Plaintiffs or Levitt Robinson Solicitors intend to make with Group Members as a whole in relation to the proceeding, the Plaintiffs and Levitt Robinson Solicitors shall use all reasonable measures to ensure that any such communications shall be made in writing only after providing UPF and Silver with a draft of the proposed communication no less than five business days prior to its intended delivery.

Communications by the Defendants to Group Members as a whole

8. In relation to any unsolicited communication which either or both the Defendants intend to make with Group Members as a whole in relation to the proceeding, the Defendants shall use all reasonable measures to ensure that any such communications shall be made in writing only after providing the Plaintiffs with a draft of the proposed communication no less than five business days prior to its intended delivery.

“Annexure A”- Letter

[United Petroleum letterhead]

[insert date]

By email: [insert address]

Attention: [insert name of franchisee company director / trustee of trust] [Insert franchisee company details]

[Insert franchisee company address]

Dear [Franchisee company director / trustee],

[Insert Site number (if any) and Site name]

Enclosed please find a draft Deed for your consideration.

Please be aware that you and/or your company are current Group Members in the class action *FNH United Pty Ltd and Ors v United Petroleum Franchise Pty Ltd and Anor* in the Supreme Court of Victoria. The plaintiffs in this proceeding are suing on behalf of all Group Members, including you.

The solicitors for the plaintiffs are Levitt Robinson Solicitors. For more information, see the plaintiffs’ amended Group Proceeding Summary Statement filed on 20 June 2023 which is an annexure to this letter.

Please note that the Deed contains a release clause at clause XX in respect of this class action brought against United Petroleum Franchise Pty Ltd and Avi Silver (together, **United**). By agreeing to this Deed, this means you give up your rights as a member of the class action against United. If there is a favourable judgment or settlement that is approved by the Court, you will not be entitled to share in the benefit of that judgment or settlement.

The scope and content of the class action is explained in the plaintiffs’ amended Group Proceeding Summary Statement which is an annexure to this letter. It is important that you understand the consequences of entering into the Deed.

1. You and/or your company will be releasing United (and related entities and personnel) from all claims in the class action.
2. In simple terms, the “release” means that you and/or your company are agreeing to give up any claims against United which are made against United in the class action.

Broadly speaking, the claims made against United in the class action include allegations for breach of contract, misleading or deceptive conduct, unconscionable conduct, breach of the Franchising Code and the Oilcode, and unfair contract terms. The plaintiffs’ allegations are set out in more detail in the plaintiffs’ amended Group Proceeding Summary Statement which is an annexure to this letter. Further, we are also happy to provide to you copies of the filed Court documents which set out the claims fully. Please let us know if you would like copies of the Court documents.

United strongly recommends that you obtain your own independent legal advice in respect of the content of the Deed and before deciding whether or not you wish to enter into the Deed.

You have 14 days to consider the Deed and obtain any legal advice, should you wish to do so. If you would like to have more time to do so, please let us know. If you wish to enter into the Deed in a shorter period of time than 14 days, you may request this in writing to United.

The confirmation slip below must be completed and returned to United prior to the Deed being entered into.

Yours faithfully

[Insert name of relevant United personnel]

I, [insert name of director], being a director of [insert name and ACN of company] / [trustee]

- have received advice about the Deed from an independent legal adviser, OR
- agree that I have been told that I should obtain legal advice but have decided not to seek it.

Signed: _____

Date



UNITED PETROLEUM CLASS ACTION

FNH United Pty Ltd & Anor vs United Petroleum Franchise Pty Ltd & Anor

Supreme Court of Victoria Case S ECI 2022 04261

Case: S ECI 2022 04261

Filed on: 20/06/2023 11:45 AM

FURTHER AMENDED GROUP PROCEEDING SUMMARY STATEMENT

1. Who is the United Petroleum Class Action brought against, and what is the claim for?

The United Petroleum Class Action is against United Petroleum Franchise Pty Ltd (ACN 127 764 989) (**United Petroleum**), and Avi Silver, a director of United Petroleum.

United Petroleum is the franchisor for United Petroleum sites. The claim alleges wrongdoing by United Petroleum in its capacity as franchisor in relation to its conduct towards franchisees and guarantors, who are the Group Members.

The claim alleges that United Petroleum's wrongdoing includes misleading or deceptive conduct and unconscionable conduct with respect to the installation of the Pie Face franchise into United Petroleum sites, as well as the allocation of Pie Face stock to those sites. The proceeding alleges that Group Members have suffered loss as a result of this conduct, and that some Group Members would not have entered into franchises with United Petroleum had the alleged wrongdoing not occurred.

2. Who are the Group Members in the United Petroleum Class Action?

The Group Members are all persons (individuals or corporate entities) who:

- (a) at any time from 19 October 2016 to 20 October 2022 were or commenced to be a franchisee in the United Network pursuant to a standard form franchise agreement; and
- (b) at any time during that period were a guarantor of a Franchisee's obligations under a Franchise Agreement with United Petroleum.

3. Who is the law firm acting?

Levitt Robinson Solicitors.

4. Who are the plaintiffs, and what are their roles and responsibilities?

The plaintiffs are:

- (a) FNH United Pty Ltd (ACN 639 802 798);
- (b) Fahim Istanikzai;
- (c) Jigarkumar Bharatbhai Patel; and
- (d) Jaydeep Devjibhai Bhatti.

The plaintiffs bring the claim on their own behalf and on behalf of Group Members who have claims against the defendants arising from similar or related circumstances.

They will provide instructions to Levitt Robinson as representatives for the Group Members regarding the conduct of the case, including in relation to any offer of settlement, and may give evidence in the proceeding.

The plaintiffs have overarching obligations to act honestly, to avoid undue delay and expense, and to exercise their best endeavours to take steps to resolve the proceeding.

At the hearing, the Court will be asked to make findings in relation to the questions of fact and law that are common to all Group Members.

5. Is this group proceeding funded by a litigation funder?

There is currently no litigation funder involved in the case.

6. How are legal fees and disbursements charged?

As to fees, Levitt Robinson is acting on a “no win, no fee” basis.

This means that all fees associated with the Class Action will be borne by Levitt Robinson, unless and until there is a successful outcome (being a settlement approved by the Court or in a judgment after trial). In that case, Group Members may be required to pay legal costs to Levitt Robinson from the settlement or award of damages if approved by the Court.

If there is a successful outcome, the Plaintiffs’ legal fees and disbursements will be charged using time-based billing for professional fees, with disbursements (for example, filing fees, fees for experts and barristers) charged at cost.

As to disbursements, these are also funded by Levitt Robinson, and Levitt Robinson will seek to recoup those costs if there is a successful outcome.

Amounts recoverable by Levitt Robinson for legal fees and disbursements must be approved by the Court as reasonable, before being deducted from the money to be paid to Group Members.

If there is not a successful outcome, the Plaintiffs and Group Members will not be asked to pay Levitt Robinson’s costs or disbursements.

7. Are there any other Class Actions that relate to the operation of United Petroleum franchises?

Levitt Robinson is unaware of any other class actions in Australia that have been filed, or are likely to be filed, that relate to the operation of United Petroleum franchises.

8. Who can Group Members contact for further information?

For further information about the proceeding, Group Members may contact Maureen Oraha, Solicitor, at Levitt Robinson Solicitors using the details below. Group Members will not be charged for such enquiries.

Email: UPCA@levittrobinson.com
Phone: (02) 9286 3133
Post: United Petroleum Class Action – Ref: SAL:190004
Levitt Robinson Solicitors
Ground Floor,
162 Goulburn Street, SURRY HILLS, NSW, 2010

ANNEXURE B

CORRECTIVE NOTICE

FNH United Pty Ltd and Ors v United Petroleum Franchise Pty Ltd and Anor

Supreme Court of Victoria proceeding no. S ECI 2022 04261

Why am I receiving this notice?

You are receiving this notice because on 26 July 2023, Levitt Robinson sent you a document titled “*NOTICE TO ALL UNITED PETROLEUM FRANCHISEES AND COMMISSION AGENTS - 26 JULY 2023*” (the **Circular**).

The Circular contained two statements (set out below) which the Court has found may mislead or confuse group members, and which should not have been made.

Levitt Robinson has been ordered by the Court to correct those statements.

Has this corrective notice been approved by the Court?

This corrective notice has been approved by the Court and is issued pursuant to an Order of the Honourable Justice Delany dated 25 October 2023. The full judgment is *FNH United Pty Ltd v United Petroleum Franchise Pty Ltd* [2023] VSC 608.

What are the two statements that need to be corrected?

The First Statement

The Circular contained the following statement:

“We know that United has offered to return bank guarantees to former franchisees and commission agents – which it had to do anyway – in exchange for signing a full release.”

Levitt Robinson acknowledges that the reference in the above statement to it knowing that “*United has offered to return bank guarantees to former franchisees and commission agents – which it had to do anyway – in exchange for signing a full release*” was not correct.

Levitt Robinson is aware of one instance where a franchisee agreed to provide a release to United as part of the terms of a buy back arrangement.

Levitt Robinson is not aware of any instance where United has offered to return bank guarantees to former franchisees and commission agents, which it had to anyway, in exchange for signing a full release.

The Second Statement

The Circular also contained the statement:

“You should be very cautious about signing anything that United asks you to sign as it is highly probable that it will contain a release buried within it”.

Levitt Robinson acknowledges that it did not have a proper basis to say:

- that group members should be “*very cautious about signing anything*” United asks group members to sign; or
- that it is “*highly probable*” that any such document will contain a release “*buried*” within it.