

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/11/2021 4:25:38 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	NSD2168/2019
File Title:	RAYMOND BOULOS v M.R.V.L. INVESTMENTS PTY LTD ACN 000 620 888
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 26/11/2021 10:09:58 AM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Further Amended Originating application
for a representative proceeding under
Part IVA of the Federal Court of Australia Act 1976**

AGD NSD 2168 of 2019

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

Raymond Boulos
Applicant

M.R.V.L. Investments Pty Ltd
(ACN 000 620 888)
Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of	Raymond Boulos, Applicant		
Law firm	Adero Law		
Tel	(02) 6189 1022	Fax	n/a
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Address for service (include state and postcode)	5 Torrens St, Braddon ACT 2612	3 Hobart Place, City ACT 2601 City ACT 2601	



Details of claim

The Applicant brings this application on his own behalf and as a representative party under Part IVA of the *Federal Court of Australia Act 1976 (FCA Act)*.

The group members to whom this proceeding relates are all persons who were at any time, and from time to time, within the period of 6 years ending on the date of filing of this Originating Application, namely 24 December 2019 (the “**Claims Period**”), employed by the Respondent (“**MRVL**”):

1. to work in the Hospitality Industry as defined in cl. 4.2 of the Hospitality Industry (General) Award 2010 (the “**Award**”); and
2. in a position the duties and functions of which were as described in one or other of the classification within “Schedule D – Classification Definitions” of the Award, as the Award stood at 24 December 2019.

Details of claim

On the grounds stated in the accompanying Second Further Amended Statement of Claim, the Applicant claims:

1. Declarations that:

(1) the Merivale Agreement did not lawfully operate at any time from 30 January 2009; and

(2) the Recission Decision was made without jurisdiction.

2. Orders quashing or alternatively setting aside:

(1) the Merivale Agreement, with effect from 30 January 2009; and

(2) the Recission Decision.

3. A declaration that throughout the period of 6 years ending on the date of filing the Originating Application, namely 24 December 2019, the Award covered and applied to MRVL, the Applicant and each Group Member in respect of his or her employment by MRVL.
4. In respect of each MRVL contravention of s 45, or alternatively s 50 of the FW Act alleged in the Second Further Amended Statement of Claim filed herein by the Applicant:

(A1) declarations pursuant to s 545(1) of the FW Act that MRVL contravened s45 the FW Act and that the contravention occurring on and from 15 September 2017 was a serious contravention;

(1) [Deleted];

(2) [Deleted];



- (3) orders pursuant to s 545(2)(b) of the FW Act that MRVL pay to the Applicant and each Group Member compensation for the loss he or she suffered because of its contraventions; and
- (4) orders pursuant to s 546(1) and s 546(3) of the FW Act that MRVL pay a pecuniary penalty that each such penalty be paid to the Applicant.
5. [Deleted].
6. In respect of any amount (other than a penalty) payable pursuant to Prayer 4 above an order pursuant to s 547 of the FW Act, for interest up to judgement on the above amounts.

**Questions common to
the claims of the Applicant
and each Group Member**

The question of law or fact common to the claims of the Applicant and the Group Members (where terms with initial capital letters are defined in the Second Further Amended Statement of Claim) are:

1. Whether the Applicant and each Group Member were employed in an Employment with MRVL in the Claims Period.
2. Whether the Applicant and each Group Member was a national system employee in any Employments.
3. Whether during the Claims Period MRVL was an on-hire employer in the Hospitality Industry within the meaning of the Award.
4. Whether in the period of 6 years ending on the date of filing of the Originating Application, namely 24 December 2019, the Hospitality Industry (General) Award 2010 covered MRVL.
5. Whether the Award covered the Applicant and each Group Member in his or Employment.
6. Whether the Award applied (within the meaning of s 47 of the FW Act, and notwithstanding sch 3 item 28 of the TPCA Act) to MRVL, to the Applicant, and to each Group Member in his or her Employment with MRVL.
7. Whether during the Claims Period the Award contained a term entitling the Applicant and each Group Member to be paid, weekly, a sum representing the moneys payable to him or her under the Award for work performed in the week prior to payment.



8. Whether during the Claims Period MRVL paid the Applicant and Group Members wages calculated in accordance with their contracts of employment rather than by reference to the sums due to them under the Award.
9. Whether during the Claims Period the wages paid by MRVL to the Applicant and each Group Member satisfied their monetary entitlements under the Award.
10. Whether the wages paid by MRVL during the Claims Period to the Applicant and each Group Member were computed according to a payment system.
11. Whether during the Claims Period MRVL contravened the Award.
12. Whether during the Claims Period MRVL contravened s 45 of the FW Act.
13. Whether any contravention of s 45 of the FW Act by MRVL during the Claims Period was a serious contravention within the meaning of s 557A of the FW Act.
14. Whether the contraventions of the FW Act caused the Applicant and each Group Member loss and damage.
15. Whether compensation should be paid to the Applicant and each Group Member on account of any breach of the Award.
16. Whether compensation should be paid to the Applicant and each Group Member on account of any breach of the Award Act.
17. What is the proper measure for determining the quantum of any compensation which should be paid to the Applicant and each Group Member.
18. Whether during the Claims Period clause 7.4 of the Merivale Agreement bound MRVL to pay the Applicant and each Group Member moneys on account of working additional hours.
19. Whether during the Claims Period the Applicant and Group Members worked additional hours.
20. Whether during the Claims Period MRVL failed to pay the Applicant and Group Members any moneys for additional hours when they worked between 38 and 55 hours in a pay period.
21. Whether during the Claims Period MRVL contravened clause 7.4 of the Merivale Agreement.



22. Whether during the Claims Period MRVL contravened s 50 of the FW Act.

The Applicant's address
for service:

Place: ~~5 Torrens Street,~~ 3 Hobart Place
~~Braddon~~ City
~~ACT 2612~~ ACT 2601

Email: rory.markham@aderolaw.com.au

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: ~~1 October 2021~~ 25 November 2021


Signed by Rory Markham
Lawyer for the Applicant