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N.A.

STATEMENT OF CLAIM

[Redacted]

Court Supreme Court of New South Wales
Division Common Law Division
List General
Registry Sydney Registry
Case number 2015/12086

[Redacted]

Plaintiff Steven Andrew Navrozoglou by his tutor Alan Navrozoglou

First defendant ICM Group Finance Pty Limited
ACN 106 665 338

Number of defendants 3

[Redacted]

Filed for Steven Andrew Navrozoglou, plaintiff
Legal representative Steve O'Connor, Legal Aid NSW
Legal representative reference PCN 10164 NSW Ref 2014233849 / 14G101263
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[Redacted]

~~Commercially misleading conduct~~ Contracted Dispute

NOTATION pursuant to clause 4.2 of Practice Note SC Gen 17:

The proceedings are listed for an initial case conference at 9:0 am on the Wednesday after the expiration of 42 days following the filing of this statement of claim.

This matter has been listed before the Court
on 5/6/15
at 9:00

Clerk of the Court


Relief under the *National Credit Code* and related legislation

- 1 An amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee pursuant to cl 5(3) of Sch 3 of the Credit Powers Act
- 2 An amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee pursuant to s 23A(2)(b) of the *National Credit Code*.
- 3 Alternatively to paragraphs 1 and 2 above, an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee pursuant to s 31B(3)(b) of the *National Credit Code*.
- 4 An order pursuant to s 113(1) of the *National Credit Code* declaring that the first and the second defendants have, or alternatively the first defendant has, breached the key requirements contained in the following provisions of the *National Credit Code*:
 - (a) subsection 17(3);
 - (b) subsection 17(4);
 - (c) subsection 17(5);
 - (d) subsection 17(6);in connection with each Multi-Party Credit Contract or alternatively each Credit Contract and Bill Cashing Contract.
- 5 An order pursuant to s 113(2) of the *National Credit Code* requiring the first and the second defendants, or alternatively the first defendant, to pay an amount as a penalty.
- 6 Alternatively to paragraphs 1 to 3 above, damages pursuant to s 154(3) of the *National Credit Code*.
- 7 An injunction:
 - (a) pursuant to s 177(a) of the NCCPA against the first and the second defendants or alternatively the first defendant or alternatively the second defendant restraining them and their servants or agents from engaging in the conduct in one or all of paragraphs (c) to (f) below;
 - (b) pursuant to s 177(c), (d) and (e) of the NCCPA against the third defendant restraining him and his servants or agents from:

- (i) aiding, abetting, counselling or procuring;
- (ii) inducing or attempting to induce;
- (iii) being in any way, directly or indirectly, knowingly concerned in;

the first and the second defendants, or alternatively the first defendant, or alternatively the second defendant, and further or alternatively any other person, from engaging in the conduct in one or all of paragraphs (c) to (f) below;

- (c) entering into a Multi-Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;
- (d) making the First to Fifth Representations in connection with the provision or possible provision of credit to any person;
- (e) entering into a contract or arrangement that is substantially similar to a Multi-Party Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;
- (f) making representations that are substantially similar to the First to Fifth Representations in connection with the provision or possible provision of credit to any person.

Relief under the ASIC Act

- 8 Alternatively to paragraphs 1 to 3 and 6 above, damages pursuant to s 12GF of the ASIC Act.
- 9 Alternatively to paragraph 8 above, one or more of the following orders pursuant to s 12GM(2) and (7) of the ASIC Act:
 - (a) an order declaring the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is void ab initio;
 - (b) an order directing one or more of the first, second and third defendants to refund the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members;

- (c) alternatively to paragraph (b) above, an order directing or more of the first, second and third defendants to pay an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members.

10 Alternatively to paragraph 7 above, an injunction:

- (a) pursuant to s 12GD(a) of the ASIC Act against the first and the second defendants or alternatively the first defendant or alternatively the second defendant restraining them and their servants or agents from engaging in the conduct in one or all of paragraphs (c) to (f) below;
- (b) pursuant to s 12GD(c), (d) and (e) of the ASIC Act against the third defendant restraining him and his servants or agents from:
 - (i) aiding, abetting, counselling or procuring;
 - (ii) inducing or attempting to induce;
 - (iii) being in any way, directly or indirectly, knowingly concerned in;the first and the second defendants, or alternatively the first defendant, or alternatively the second defendant, and further or alternatively any other person, from engaging in the conduct in one or all of paragraphs (c) to (f) below;
- (c) entering into a Multi-Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;
- (d) making the First to Fifth Representations in connection with the provision or possible provision of credit to any person;
- (e) entering into a contract or arrangement that is substantially similar to a Multi-Party Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;
- (f) making representations that are substantially similar to the First to Fifth Representations in connection with the provision or possible provision of credit to any person.

Relief under the FTA and the *Australian Consumer Law (NSW)*

- 11 Alternatively to paragraphs 1 to 3, 6 and 8 above, damages pursuant to s 68(1) of the FTA.
- 12 Alternatively to paragraph 11 above, one or more of the following orders pursuant to s 72(1) and (5) of the FTA:
 - (a) an order declaring the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is void ab initio;
 - (b) an order directing one or more of the first, second and third defendants to refund the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members;
 - (c) alternatively to paragraph (b) above, an order directing one or more of the first, second and third defendants to pay an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members.
- 13 Further to paragraph 11 above, or alternatively to paragraphs 1 to 3, 6 and 8 above, damages pursuant to s 236 of the *Australian Consumer Law (NSW)*.
- 14 Further or alternatively to paragraph 13 above, one or more of the following orders pursuant to s 243 of the *Australian Consumer Law (NSW)*:
 - (a) an order declaring the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is void ab initio;
 - (b) an order directing one or more of the first, second and third defendants to refund the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members;
 - (c) alternatively to paragraph (b) above, an order directing one or more of the first, second and third defendants to pay an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members.
- 15 Alternatively to paragraphs 7 and 10 above, an injunction:
 - (a) pursuant to s 232(1)(a) and (2) of the *Australian Consumer Law (NSW)* against the first and the second defendants or alternatively the first defendant or alternatively the second defendant restraining them and their servants or agents from engaging in the conduct in one or all of paragraphs (c) to (f) below;

- (b) pursuant to s 232(1)(c), (d) and (e) and (2) of the *Australian Consumer Law (NSW)* against the third defendant restraining him and his servants or agents from:
- (i) aiding, abetting, counselling or procuring;
 - (ii) inducing or attempting to induce;
 - (iii) being in any way, directly or indirectly, knowingly concerned in;
- the first and the second defendants, or alternatively the first defendant, or alternatively the second defendant, and further or alternatively any other person, from engaging in the conduct in one or all of paragraphs (c) to (f) below;
- (c) entering into a Multi-Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;
- (d) making the First to Fifth Representations in connection with the provision or possible provision of credit to any person;
- (e) entering into a contract or arrangement that is substantially similar to a Multi-Party Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;
- (f) making representations that are substantially similar to the First to Fifth Representations in connection with the provision or possible provision of credit to any person.

Relief under the CRA

- 16 Alternatively to paragraphs 1 to 15 above, one or more of the following orders pursuant to ss 7(1) and 8 and Sch 1 of the CRA:
- (a) an order declaring the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is void ab initio;
 - (b) an order directing the first defendant or alternatively the second defendant to refund the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members;

- (c) alternatively to paragraph (b) above, an order directing the first defendant or alternatively the second defendant to pay an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members.

Relief under the general law

17 An amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee.

18 Alternatively to paragraph 17 above, damages under the general law.

Other relief

19 Such further or other relief as the Court thinks fit.

20 Interest pursuant to s 100 of the CPA.



The representative proceedings and group members

1. The plaintiff brings these proceedings pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) (**CPA**) on his own behalf and on behalf of the group members of which he is a member described in paragraph 2 below.

2. The group members are natural persons:

(a) who entered or have entered into a contract with the first and the second defendants under which:

(i) they were or have been provided with credit wholly or predominantly for personal, domestic or household purposes and under which they were or are bound to repay to the first defendant the loan amount consisting of a loan establishment fee and the net loan amount;

(ii) they authorised the second defendant on behalf of the first defendant to cash a bill of exchange drawn by the first defendant in favour of the group member for the net loan amount presented to the group member and for that service paid a fee to the second defendant;

(iii) they received from the second defendant a cash amount being the difference between the net loan amount and the fee paid to the second defendant;

- (b) alternatively to paragraph (a) above, who entered or have entered into the following contracts:
- (i) a contract with the first defendant under which they were or have been provided with credit wholly or predominantly for personal, domestic or household purposes and under which they were or are bound to repay to the first defendant the loan amount consisting of a loan establishment fee and the net loan amount;
 - (ii) a contract with the second defendant as agent of the first defendant under which they authorised the second defendant to cash a bill of exchange drawn by the first defendant in favour of the group member for the net loan amount presented to the group member and for that service paid a fee to the second defendant and under which they received from the second defendant a cash amount being the difference between the net loan amount and the fee paid to the second defendant.

The defendants

3. The first defendant:

- (a) since 14 October 2003 has been registered as a company under the *Corporations Act 2001* (Cth) (**Corporations Act**);
- (b) is and at all material times has been a trading or financial corporation carrying on the business in the State of New South Wales of providing credit.

4. The second defendant:

- (a) on 4 July 2000 was registered as a company under the *Corporations Law* and since 15 July 2001 has been taken to be registered as a company under the *Corporations Act*;
- (b) is and at all material times has been a trading corporation carrying on business under the registered business name "Cash-afx".

5. The third defendant:

- (a) is and at all material times has been the sole director, the secretary and the sole shareholder of the first defendant;

- (b) is and at all material times has been the sole director, the secretary and the sole shareholder of the second defendant.

The contracts between the group members and the first and second defendants

6. The first and the second defendants on the one part and each of the group members of the other part entered into a contract which:
- (a) specified the loan amount, the loan establishment fee, the net loan amount, the commencement date, the due date, the amount and frequency of repayments, the first payment date and the last payment date, and fees and charges being a dishonour fee and a late payment fee;
 - (b) provided that there is no interest payable by the group member;
 - (c) provided that the first defendant agrees to lend the loan amount to the group member and the group member agrees to repay the loan amount to the first defendant;
 - (d) provided that the group member authorised the second defendant on behalf of the first defendant to cash a bill of exchange drawn by the first defendant in favour of the group member for the net loan amount presented to the group member and for that service agreed to pay a fee to the second defendant (**Multi-Party Bill Cashing Fee** and **Multi-Party Bill Cashing Term** respectively);
 - (e) provided that the second defendant would pay to the group member a cash amount being the difference between the net loan amount and the Multi-Party Bill Cashing Fee;

(Multi-Party Credit Contract).

Particulars

- (1) The Multi-Party Credit Contract is partly in writing and partly implied.
 - (2.1) Insofar as the Multi-Party Credit Contract is in writing, it is contained in a document entitled "Short Term Contract" signed by the group member (**Short Term Contract Document**);

(2.2) a document in two parts, as to the first part entitled "Bill of Exchange", and as to the second part entitled "Cheque Cashing Deed" signed by the group member **(Bill Cashing Document)**.

(2) Insofar as the Multi-Party Credit Contract was implied, it is implied from the nature of the transaction contained therein.

7. Alternatively to paragraph 6 above, the first defendant and each of the group members entered into a contract which:

(a) specified the loan amount, the loan establishment fee, the net loan amount, the commencement date, the due date, the amount and frequency of repayments, the first payment date and the last payment date, and fees and charges being a dishonour fee and a late payment fee;

(b) provided that there is no interest payable by the group member;

(c) provided that the first defendant agrees to lend the loan amount to the group member and the group member agrees to repay the loan amount to the first defendant;

(Credit Contract).

Particulars

(1) The Credit Contract is partly in writing and partly implied.

(2) Insofar as the Credit Contract is in writing, it is contained in the Short Term Contract Document.

(3) Insofar as the Credit Contract was implied, it is implied from the nature of the transaction contained therein.

8. On or prior to the commencement date of the Credit Contract the second defendant as agent of the first defendant and each of the group members entered into a contract which:

(a) provided that the group member authorised the second defendant to cash a bill of exchange drawn by the first defendant in favour of the group member for the net loan amount presented to the group member and for that service

agreed to pay a fee to the second defendant (**Bill Cashing Fee** and **Bill Cashing Term** respectively);

- (b) provided that the second defendant would pay to the group member a cash amount being the difference between the net loan amount and the Bill Cashing Fee;

(Bill Cashing Contract).

Particulars

- (1) The Bill Cashing Contract is in writing and is contained in the Bill Cashing Document.
9. In performance of the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract on the commencement date the second defendant paid the cash amount to the group member.
10. At the time of entry into the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract the first defendant did not draw and present to the group member a bill of exchange within the meaning of the *Bills of Exchange Act 1909* (Cth) in favour of the group member for the net loan amount.
11. Prior to entry into the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract the first and the second defendants or alternatively the first defendant or alternatively the second defendant made the following representations to the group member:
- (a) that the Multi-Party Credit Contract is exempt, or alternatively the Credit Contract and the Bill Cashing Contract are exempt, from the provisions of the *National Credit Code* (**First Representation**);
 - (b) that the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee is a reasonable amount (**Second Representation**);
 - (c) that the second defendant would cash a bill of exchange drawn in favour of the group member by the first defendant for the net loan amount and presented to the group member (**Third Representation**);
 - (d) that there is no interest payable by the group member for the loan (**Fourth Representation**);

- (e) that the second defendant is entitled to charge the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee (**Fifth Representation**).

Particulars

- (1) The First Representation is in writing and is stated in each of the Short Term Contract Document and the Bill Cashing Document which was presented by a servant or agent of the first defendant or alternatively the second defendant to the group member for their signature.
 - (2) The Second Representation is in writing and is contained in the Bill Cashing Document which was presented by a servant or agent of the first defendant or alternatively the second defendant to the group member for their signature.
 - (3) The Third Representation is in writing and is contained in the Cheque Cashing Document or alternatively the Cheque Cashing Document and a document entitled "Payday Advance Pre-Disclosure Document" (**Payday Advance Pre-Disclosure Document**) which was presented by a servant or agent of the first defendant or alternatively the second defendant to the group member for their signature.
 - (4) The Fourth Representation is in writing and is stated in the Short Term Contract Document which was presented by a servant or agent of the first defendant or alternatively the second defendant to the group member for their signature.
 - (5) The Fifth Representation is in writing and is contained in each of the Bill Cashing Document and the Payday Advance Pre-Disclosure Document which was presented by a servant or agent of the first defendant or alternatively the second defendant to the group member for their signature.
12. The Third Representation relates to a future matter within the meaning of that expression:
- (a) in s 13(1)(a) of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**);
 - (b) in s 12BB(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);

- (c) in s 41(1) of the *Fair Trading Act 1987 (NSW)* (**FTA**) so far as it was made between 1 July 2010 and 31 December 2010;
- (d) in s 4(1) of the *Australian Consumer Law (NSW)* so far as it has been made since 1 January 2011.

13. In reliance on the First to Fifth Representations the group member entered into the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract.

Claims under the *National Credit Code* and related legislation

Contracts made between 1 July 2010 and 30 June 2013

14. The Multi-Party Credit Contract constitutes a credit contract to which the *National Credit Code* applies by the operation of s 5(1) thereof.

Particulars

- (1) The Multi-Party Credit Contract constitutes a credit contract within the meaning of s 4 of the *National Credit Code* by reason that:
 - (1.1) credit within the meaning of s 3(1) is provided thereunder;
 - (1.2) the group member is a natural person;
 - (1.3) the credit provided thereunder is wholly or predominantly for the personal, domestic or household purposes of the group member;
 - (1.4) the first defendant charges the loan establishment fee and second defendant as agent of the first defendant charges the Multi-Party Bill Cashing Fee;
 - (1.5) the first defendant provides the credit in the course of a business of providing credit carried on in the State of New South Wales.
- (2) Section 6(1) of the *National Credit Code* does not apply to the provision of credit under the Multi-Party Credit Contract by reason that:
 - (2.1) the Multi-Party Bill Cashing Fee exceeds 5% of the loan amount;
 - (2.2) alternatively to paragraph (2.1) above, the Multi-Party Bill Cashing Fee exceeds 5% of the loan amount and is payable by the group member

to the second defendant for the service of cashing a cheque in circumstances where the second defendant was introduced to the group member by the first defendant within s 6(2)(b) of the *National Credit Code* or alternatively is a charge payable by the group member to the second defendant on behalf of the first defendant for the service of cashing a bill of exchange being a service related to the provision of credit within s 6(2)(c) of the *National Credit Code*;

(2.3) alternatively to paragraphs (2.1) and (2.2) above, for the reasons set out in paragraphs 16 and 17 below the maximum amount of interest charges that may be imposed or provided exceeded an amount payable if the annual percentage rate were 24% per annum.

15. Alternatively to paragraph 14 above, the Credit Contract and the Bill Cashing Contract constitute a credit contract to which the *National Credit Code* applies by the operation of s 5(1) thereof.

Particulars

- (1) The Credit Contract and the Bill Cashing Contract is a contract within the meaning of that word in s 204(1) of the *National Credit Code*.
- (2) Pursuant to s 199 of the *National Credit Code* the conduct of the second defendant as agent of the first defendant in entering into and performing the Bill Cashing Contract is imputed to the first defendant and taken to be the conduct of the first defendant.
- (3) The Credit Contract and the Bill Cashing Contract constitute a credit contract within the meaning of s 4 of the *National Credit Code* by reason that:
 - (3.1) credit within the meaning of s 3(1) is provided thereunder;
 - (3.2) the group member is a natural person;
 - (3.3) the credit provided thereunder is wholly or predominantly for the personal, domestic or household purposes of the group member;
 - (3.4) the first defendant charges the loan establishment fee and by the operation of s 199 of the *National Credit Code* is taken to charge the Bill Cashing Fee;

- (3.5) the first defendant provides the credit in the course of a business of providing credit carried on in the State of New South Wales.
- (4) Section 6(1) of the *National Credit Code* does not apply to the provision of credit under the Credit Contract and the Bill Cashing Contract by reason that:
- (4.1) the Bill Cashing Fee exceeds 5% of the loan amount;
- (4.2) alternatively to paragraph (4.1) above, the Bill Cashing Fee exceeds 5% of the loan amount and is payable by the group member to the second defendant for the service of cashing a cheque in circumstances where the second defendant was introduced to the group member by the first defendant within s 6(2)(b) of the *National Credit Code* or alternatively is a charge payable by the group member to the second defendant on behalf of the first defendant for the service of cashing a bill of exchange being a service related to the provision of credit within s 6(2)(c) of the *National Credit Code*]
- (4.3) alternatively to paragraphs (4.1) and (4.2) above, for the reasons set out in paragraphs 16 and 17 below the maximum amount of interest charges that may be imposed or provided exceeded an amount payable if the annual percentage rate were 24% per annum.
16. The Multi-Party Credit Contract to the extent of the Multi-Party Bill Cashing Fee or alternatively the Credit Contract and the Bill Cashing Contract to the extent of the Bill Cashing Fee is a sham and the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee is properly to be regarded as a lump sum interest charge for the provision of credit.

Particulars

- (1) The plaintiff repeats paragraph 10 above.
- (2) The first defendant incurred no expense or alternatively an expense substantially less than the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee in providing the loan to the group member in cash through the second defendant rather than by a bill of exchange.
17. Alternatively to paragraph 16 above, the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is inconsistent with the substance and reality of the Multi-Party

Bill Cashing Fee or alternatively the Bill Cashing Fee being a lump sum interest charge for the provision of credit and on its proper construction provides for the payment of a lump sum interest charge by the group member.

Particulars

(1) The plaintiff repeats paragraph 10 and paragraph (2) of the particulars to paragraph 16 above.

18. The first defendant in contravention of cl 5(1) of Sch 3 of the *Credit (Commonwealth Powers Act 2010)* (NSW) (**Credit Powers Act**) entered into the Multi-Party Credit Contract, or alternatively entered into the Credit Contract and pursuant to s 199 of the *National Credit Code* is taken to have entered into the Bill Cashing Contract, in which the maximum annual percentage rate for the lump sum interest charge referred to in paragraphs 16 and 17 above exceeded 48% per annum.

Particulars

(1) The annual percentage rate of the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee is calculated in accordance with cl 7 of Sch 3 of the Credit Powers Act.

(2) The Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee pursuant to cl 5(4) of Sch 3 of the Credit Powers Act is to be taken into account in calculating the maximum annual percentage rate whether it is regarded as a lump sum interest charge or a fee for the cashing of a bill of exchange.

(3) The plaintiff will provide further particulars in due course.

19. By reason of the matters pleaded in paragraphs 16 to 18 above:

(a) pursuant to cl 5(2) of Sch 3 of the Credit Powers Act the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the extent that it exceeds the maximum annual percentage rate of 48% is void;

(b) pursuant to cl 5(3) of Sch 3 of the Credit Powers Act the group member is entitled to recover the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee as a debt.

20. By reason of the matters pleaded in paragraphs 14, 16 and 17 above, the Multi-Party Credit Contract contravened the following key requirements within the meaning of s 111(1) of the *National Credit Code*:

- (a) the amount of credit as required by subsection 17(3);
- (b) the annual percentage rate as required by subsection 17(4);
- (c) the calculation of the interest charges as required by subsection 17(5);
- (d) the total amount of interest charges as required by subsection 17(6).

Particulars

(1) As to subsection 17(3), the Multi-Party Credit Contract document does not contain:

- (1.1) the amount of credit to be provided; and
- (1.2) the persons, bodies or agents to whom it is to be paid and the amounts payable to each of them.

(2) As to subsection 17(4), the Multi-Party Credit Contract document does not contain the annual percentage rate payable under the contract;

(3) As to subsection 17(5), the Multi-Party Credit Contract document does not contain the method of calculation of the interest charges and the frequency with which interest charges are to be debited under the contract.

(4) As to subsection 17(6), the Multi-Party Credit Contract document does not contain the total amount of interest charges payable under the contract.

21. Alternatively to paragraph 20 above, by reason of the matters pleaded in paragraphs 15 to 17 above, the Credit Contract and the Bill Cashing Contract contravened the following key requirements within the meaning of s 111(1) of the *National Credit Code*:

- (a) the amount of credit as required by subsection 17(3);
- (b) the annual percentage rate as required by subsection 17(4);
- (c) the calculation of the interest charges as required by subsection 17(5);
- (d) the total amount of interest charges as required by subsection 17(6).

Particulars

- (1) As to subsection 17(3), the Credit Contract and the Bill Cashing Contract documents do not contain:
 - (1.1) the amount of credit to be provided; and
 - (1.2) the persons, bodies or agents to whom it is to be paid and the amounts payable to each of them.
- (2) As to subsection 17(4), the Credit Contract and the Bill Cashing Contract documents do not contain the annual percentage rate payable under the contract;
- (3) As to subsection 17(5), the Credit Contract and the Bill Cashing Contract documents do not contain the method of calculation of the interest charges and the frequency with which interest charges are to be debited under the contract.
- (4) As to subsection 17(6), the Credit Contract and the Bill Cashing Contract documents do not contain the total amount of interest charges payable under the contract.

22. By reason of the matters pleaded in paragraph 20 above, or alternatively paragraph 21 above, the first defendant contravened s 22(1)(a) of the *National Credit Code* and is liable under Part 6 of the *National Credit Code* to a penalty in respect of each breach of a key requirement of the *National Credit Code*.

23. In making each of the First to Fifth Representations the first and the second defendants or alternatively the first defendant or alternatively the second defendant made a false or misleading representation in relation to a matter that is material to entry into a credit contract or related transaction in contravention of s 154(1) of the *National Credit Code*.

Particulars

- (1) As to the First Representation, the plaintiff repeats paragraphs 14 and 15 above.
- (2) As to the Second Representation, the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee bore no relationship to the costs of the second defendant in cashing a bill of exchange drawn by the first defendant in

favour of the group member. The plaintiff will provide particulars in due course.

- (3) As to the Third Representation, the plaintiff repeats paragraph 10 above and says that the first and the second defendants or alternatively the first defendant or alternatively the second defendant had no reasonable grounds for making it.
 - (4) As to the Fourth Representation, the plaintiff repeats paragraphs 14 to 17 above.
 - (5) As to the Fifth Representation, the plaintiff repeats paragraphs 14 to 19 above.
24. The third defendant is a person involved in the contravention of s 154(1) of the *National Credit Code* within the meaning of paragraphs (a) to (c) that expression in s 5(1) of the NCCPA.

Particulars

- (1) The plaintiff repeats paragraph 5 above.
 - (2) The third defendant in his capacity as the sole director of the first defendant and the second defendant made the decision to structure the provision of credit to the group member through the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract, and authorised servants or agents of the first defendant or alternatively the second defendant to make the First to Fifth Representations.
25. By reason of the matters pleaded in paragraphs 23 and 24 above, the group members suffered loss by reason of paying the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee, or alternatively the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the extent that it exceeds an annual percentage rate of 48% per annum, to the second defendant within s 154(3) of the *National Credit Code* and pursuant to that provision is entitled to recover an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee, or alternatively the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the extent it exceeds the annual percentage rate of 48% per annum paid to the second defendant from one or more of the first, second and third defendants.

Contracts made since 1 July 2013

26. The Multi-Party Credit Contract constitutes a credit contract to which the *National Credit Code* applies by the operation of s 5(1) thereof.

Particulars

- (1) The plaintiff repeats the particulars to paragraph 14 above.
27. Alternatively to paragraph 26 above, the Credit Contract and the Bill Cashing Contract constitutes a credit contract to which the *National Credit Code* applies by the operation of s 5(1) thereof.

Particulars

- (1) The plaintiff repeats the particulars to paragraph 15 above.
28. The Multi-Party Credit Contract constitutes, or alternatively the Credit Contract and the Bill Cashing Contract constitute, a small amount credit contract within the meaning of that expression in s 5 of the NCCPA and s 204(1) of the *National Credit Code*.

Particulars

- (1) The Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract is not a continuing credit contract within the meaning of that expression in s 204(1) of the *National Credit Code*.
- (2) The first defendant is not an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth) and s 204(1) of the *National Credit Code*.
- (3) The credit limit under the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract plus the amount of the permitted establishment fee and the first permitted monthly fee payable thereunder is less than \$2000.
- (4) The term of the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract is at least 16 days and less than one year.
- (5) The group member's obligations under the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract are not secured.

29. The Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract in contravention of ss 23A(1)(b) and 31A(1) of the *National Credit Code* imposed the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee.

Particulars

- (1) The Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee is a fee and charge prohibited by the *National Credit Code* by reason of being a fee and charge which is not of the kind specified in s 31A(1) thereof.
30. By reason of the matters pleaded in paragraphs 6 to 9 and 28 above, the first defendant through its agent the second defendant or alternatively the second defendant in contravention of s 31 B(1) of the *National Credit Code* accepted payment of the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee in relation to:
- (a) a small amount credit contract; or
- (b) the provision of the amount of credit under a small amount credit contract; or
- (c) a thing that is connected with a small amount credit contract or the provision of the amount of credit under such a contract, being the fee to cash a bill of exchange.

Particulars

- (1) Since 14 June 2014 the second defendant pursuant to reg 79AE of the *National Consumer Credit Protection Regulations 2010* has been a prescribed person for s 31 B(1) of the *National Credit Code*.
31. By reason of the matters pleaded in paragraph 30 above:
- (a) pursuant to s 31B(3)(a) of the *National Credit Code* the group member has been taken never to have been liable to pay the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the second defendant on behalf of the first defendant;
- (b) pursuant to s 31B(3)(b) of the *National Credit Code* the group member is entitled recover an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee from the first defendant or alternatively the second defendant.

32. Alternatively to paragraphs 29 to 31 above, the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract in contravention of s 23A(1)(a) of the *National Credit Code* imposed an interest charge on the group member.

Particulars

- (1) The plaintiff repeats paragraphs 16 and 17 above.
33. By reason of the matters pleaded in paragraph 32 above:
- (a) pursuant to s 23A(2)(a) of the *National Credit Code* the lump sum interest charge which is represented as being the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee is void;
- (b) pursuant to s 23A(2)(b) of the *National Credit Code* the group member is entitled to recover as a debt the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee from the first defendant or alternatively the second defendant.
34. By reason of the matters pleaded in paragraphs 26 and 32 above, the Multi-Party Credit Contract contravened the following key requirements within the meaning of s 111(1) of the *National Credit Code*:
- (a) the amount of credit as required by subsection 17(3);
- (b) the annual percentage rate as required by subsection 17(4);
- (c) the calculation of the interest charges as required by subsection 17(5);
- (d) the total amount of interest charges as required by subsection 17(6).

Particulars

- (1) As to subsection 17(3), the Multi-Party Credit Contract document does not contain:
- (1.1) the amount of credit to be provided; and
- (1.2) the persons, bodies or agents to whom it is to be paid and the amounts payable to each of them.
- (2) As to subsection 17(4), the Multi-Party Credit Contract document does not contain the annual percentage rate payable under the contract;

- (3) As to subsection 17(5), the Multi-Party Credit Contract document does not contain the method of calculation of the interest charges and the frequency with which interest charges are to be debited under the contract.
 - (4) As to subsection 17(6), the Multi-Party Credit Contract document does not contain the total amount of interest charges payable under the contract.
35. Alternatively to paragraph 34 above, by reason of the matters pleaded in paragraphs 27 and 32 above, the Credit Contract and the Bill Cashing Contract contravened the following key requirements within the meaning of s 111(1) of the *National Credit Code*:
- (a) the amount of credit as required by subsection 17(3);
 - (b) the annual percentage rate as required by subsection 17(4);
 - (c) the calculation of the interest charges as required by subsection 17(5);
 - (d) the total amount of interest charges as required by subsection 17(6).

Particulars

- (1) As to subsection 17(3), the Credit Contract and the Bill Cashing Contract documents do not contain:
 - (1.1) the amount of credit to be provided; and
 - (1.2) the persons, bodies or agents to whom it is to be paid and the amounts payable to each of them.
- (2) As to subsection 17(4), the Credit Contract and the Bill Cashing Contract documents do not contain the annual percentage rate payable under the contract;
- (3) As to subsection 17(5), the Credit Contract and the Bill Cashing Contract documents do not contain the method of calculation of the interest charges and the frequency with which interest charges are to be debited under the contract.
- (4) As to subsection 17(6), the Credit Contract and the Bill Cashing Contract documents do not contain the total amount of interest charges payable under the contract.

36. By reason of the matters pleaded in paragraph 34 above, or alternatively paragraph 35 above, the first and the second defendants, or alternatively the first defendant, contravened s 22(1)(a) of the *National Credit Code* and is liable under Part 6 of the *National Credit Code* to a penalty in respect of each breach of a key requirement of the *National Credit Code*.
37. In making each of the First to Fifth Representations the first and the second defendants or alternatively the first defendant or alternatively the second defendant made a false or misleading representation in relation to a matter that is material to entry into a credit contract or related transaction in contravention of s 154(1) of the *National Credit Code*.

Particulars

- (1) As to the First Representation, the plaintiff repeats paragraphs 14 and 15 above.
 - (2) As to the Second Representation, the specified fee bore no relationship to the costs of the second defendant in cashing a bill of exchange drawn by the first defendant in favour of the group member. The plaintiff will provide particulars in due course.
 - (3) As to the Third Representation, the plaintiff repeats paragraph 10 above and says that the first and the second defendants or alternatively the first defendant or alternatively the second defendant had no reasonable grounds for making it.
 - (4) As to the Fourth Representation, the plaintiff repeats paragraphs 14 to 17 above.
 - (5) As to the Fifth Representation, the plaintiff repeats paragraphs 14 to 19 above.
38. The third defendant is a person involved in the contravention of s 154(1) of the *National Credit Code* within the meaning of that expression in s 5(1) of the NCCPA.

Particulars

- (1) The plaintiff repeats paragraph 5 above and paragraph (2) of the particulars to paragraph 21 above.

39. By reason of the matters pleaded in paragraphs 32 and 33 above, the group members suffered loss by reason of paying the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the second defendant within s 154(3) of the *National Credit Code* and pursuant to that provision is entitled to recover an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee from one or more of the first, second and third defendants.
40. By reason of the matters pleaded in paragraphs 26 to 32, 37 and 38 above, the plaintiff is entitled to an injunction:
- (a) pursuant to s 177(a) of the NCCPA against the first and the second defendants or alternatively the first defendant or alternatively the second defendant restraining them and their servants or agents from engaging in the conduct in one or all of paragraphs (c) to (f) below;
 - (b) pursuant to s 177(c), (d) and (e) of the NCCPA against the third defendant restraining him and his servants or agents from:
 - (i) aiding, abetting, counselling or procuring;
 - (ii) inducing or attempting to induce;
 - (iii) being in any way, directly or indirectly, knowingly concerned in;

the first and the second defendants, or alternatively the first defendant, or alternatively the second defendant, and further or alternatively any other person, from engaging in the conduct in one or all of paragraphs (c) to (f) below;
 - (c) entering into a Multi-Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;
 - (d) making the First to Fifth Representations in connection with the provision or possible provision of credit to any person;
 - (e) entering into a contract or arrangement that is substantially similar to a Multi-Party Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;

- (f) making representations that are substantially similar to the First to Fifth Representations in connection with the provision or possible provision of credit to any person.

Claims under the ASIC Act

41. The Multi-Party Credit Contract is a consumer contract within the meaning of that expression in s 12BF(3) of the ASIC Act.

Particulars

- (1) The loan is provided to the group member wholly or predominantly for personal, domestic or household purposes.
42. Alternatively to paragraph 41 above, the Credit Contract and the Bill Cashing Contract is a consumer contract within the meaning of that expression in s 12BF of the ASIC Act.

Particulars

- (1) The plaintiff repeats the particulars to paragraph 41 above.
- (2) Pursuant to s 12GH(4) of the ASIC Act the conduct of the second defendant as agent of the first defendant in entering into and performing the Bill Cashing Contract is imputed to the first defendant and taken to be the conduct of the first defendant.
43. The Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is unfair within the meaning of s 12BG(1) of the ASIC Act.

Particulars

- (1) The plaintiff repeats paragraph (2) of the particulars to paragraph 23 above and says that in these circumstances the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is not reasonably necessary in order to protect the legitimate interests of the first and the second defendants or alternatively the second defendant.
- (2) The Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term would cause financial detriment to the group member if it were to be applied or relied on because it has the effect of increasing the net loan amount by an amount

equivalent to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee.

44. The Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is void by reason of the operation of s 12BF of the ASIC Act.

Particulars

- (1) The plaintiff repeats paragraph 43 above.
 - (2) The Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract is a standard form contract within the meaning of that expression in s 12BF(1)(b) of the ASIC Act.
 - (3) The Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract is a contract for the supply of a service that are financial services within the meaning of s 12BF(1)(c) of the ASIC Act.
45. By reason of the matters pleaded in paragraphs 6 to 10 and 41 to 44 above and particularised below the first and the second defendants or alternatively the first defendant or alternatively the second defendant in trade or commerce in connection with the supply of financial services to the group member engaged in conduct that was in all the circumstances unconscionable in contravention of s 12CC of the ASIC Act in the period between 1 July 2010 and 31 December 2011 and s 12CB of the ASIC Act since 1 January 2012.

Particulars

- (1) There was a material inequality in bargaining power between the group members and the first and the second defendants by reason of the economic circumstances, educational background, literacy and business experience of the group members relative to those of the servants and agents of the first and second defendants or alternatively the first defendant or alternatively the second defendant.
- (2) The Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract are standard form contracts and were not the subject of negotiation.
- (3) It was not reasonably practicable for the group members to negotiate for the alteration of the Multi-Party Credit Contract or alternatively the Credit Contract

and the Bill Cashing Contract or to reject the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee by reason of their economic circumstances, background, education, literacy and business experience and their pressing need to obtain the loan to meet their personal, household or domestic expenses.

- (4) The group members did not obtain independent legal advice before entry into the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract.
 - (5) The provisions of the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract and their legal and practical effect were not explained or accurately explained to the group members by the servants and agents of the first and second defendants or alternatively the first defendant or alternatively the second defendant.
46. In making each of the First to Fifth Representations the first and the second defendants or alternatively the first defendant or alternatively the second defendant in trade or commerce engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act.

Particulars

- (1) As to the First Representation, the plaintiff repeats paragraphs 14 and 15 above.
- (2) As to the Second Representation, the specified fee bore no relationship to the costs of the second defendant in cashing a cheque drawn by the first defendant in favour of the group member. The plaintiff will provide particulars in due course.
- (3) As to the Third Representation, the plaintiff repeats paragraph 10 above and says that the first and the second defendants or alternatively the first defendant or alternatively the second defendant had no reasonable grounds for making it.
- (4) As to the Fourth Representation, the plaintiff repeats paragraphs 14 to 17 above.
- (5) As to the Fifth Representation, the plaintiff repeats paragraphs 14 to 19 above.

47. The third defendant is a person involved in the contravention of s 12DA(1) of the ASIC Act within the meaning of s 79(a), (b) and (c) of the Corporations Act applied to the ASIC Act by s 5(3) thereof.

Particulars

- (1) The plaintiff repeats paragraph 5 above and paragraph (2) of the particulars to paragraph 24 above.
48. By reason of the matters pleaded in paragraphs 46 and 47 above each group member suffered loss by reason of paying the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the second defendant within the meaning of s 12GF of the ASIC Act and pursuant to that section is entitled to recover an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee from one or more of the first, second and third defendants.
49. By reason of the matters pleaded in paragraphs 46 and 47 above the group members are entitled pursuant to s 12GM(2) and (7) of the ASIC Act to one or more of the following orders:
- (a) an order declaring the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is void ab initio;
 - (b) an order directing one or more of the first, second and third defendants to refund the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members;
 - (c) alternatively to paragraph (b) above, an order directing one or more of the first, second and third defendants to pay an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members.
50. By reason of the matters pleaded in paragraphs 41 to 47 above, the plaintiff is entitled to an injunction:
- (a) pursuant to s 12GD(a) of the ASIC Act against the first and the second defendants or alternatively the first defendant or alternatively the second defendant restraining them and their servants or agents from engaging in the conduct in one or all of paragraphs (c) to (f) below;
 - (b) pursuant to s 12GD(c), (d) and (e) of the ASIC Act against the third defendant restraining him and his servants or agents from:

- (i) aiding, abetting, counselling or procuring;
- (ii) inducing or attempting to induce;
- (iii) being in any way, directly or indirectly, knowingly concerned in;

the first and the second defendants, or alternatively the first defendant, or alternatively the second defendant, and further or alternatively any other person, from engaging in the conduct in one or all of paragraphs (c) to (f) below;

- (c) entering into a Multi-Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;
- (d) making the First to Fifth Representations in connection with the provision or possible provision of credit to any person;
- (e) entering into a contract or arrangement that is substantially similar to a Multi-Party Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;
- (f) making representations that are substantially similar to the First to Fifth Representations in connection with the provision or possible provision of credit to any person.

Claims under the FTA and the *Australian Consumer Law (NSW)*

- 51. The group members entering into the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract:
 - (a) between 1 July 2010 and 31 December 2010 acquired services as a consumer within the meaning of s 5(1) of the FTA;
 - (b) since 1 January 2011 acquired services as a consumer within the meaning of s 5(1) of the *Australian Consumer Law (NSW)*.
- 52. By reason of the matters pleaded in paragraphs 6 to 10, 16 to 18, paragraph (2) of the particulars to paragraph 23 and the particulars to paragraphs 43 and 45 above the first and the second defendants or alternatively the first defendant or alternatively the second defendant in trade or commerce in connection with the supply of services

to the group member engaged in conduct that was in all the circumstances unconscionable:

- (a) in respect of Multi-Party Credit Contracts or alternatively Credit Contracts and Bill Cashing Contracts made between 1 July 2010 and 31 December 2010 in contravention of s 43(1) of the FTA;
- (b) in respect of Multi-Party Credit Contracts or alternatively Credit Contracts and Bill Cashing Contracts made since 1 January 2011 in contravention of s 21(1) of the *Australian Consumer Law (NSW)*.

53. In making each of the First to Fifth Representations the first and the second defendants or alternatively the first defendant or alternatively the second defendant in trade or commerce engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive:

- (a) in respect of Multi-Party Credit Contracts or alternatively Credit Contracts and Bill Cashing Contracts made between 1 July 2010 and 31 December 2010 in contravention of s 42(1) of the FTA;
- (b) in respect of Multi-Party Credit Contracts or alternatively Credit Contracts and Bill Cashing Contracts made since 1 January 2011 in contravention of s 18(1) of the *Australian Consumer Law (NSW)*.

Particulars

- (1) As to the First Representation, the plaintiff repeats paragraphs 14 and 15 above.
- (2) As to the Second Representation, the specified fee bore no relationship to the costs of the second defendant in cashing a cheque drawn by the first defendant in favour of the group member. The plaintiff will provide particulars in due course.
- (3) As to the Third Representation, the plaintiff repeats paragraph 10 above and says that the first and the second defendants or alternatively the first defendant or alternatively the second defendant had no reasonable grounds for making it.
- (4) As to the Fourth Representation, the plaintiff repeats paragraphs 14 to 17 above.

- (5) As to the Fifth Representation, the plaintiff repeats paragraphs 14 to 19 above.
54. The third defendant is a person involved in the contravention of s 42(1) of the FTA within the meaning of s 61 (a), (b) and (c) of the FTA and paragraphs (a) to (c) of that expression in s 2(1) of the *Australian Consumer Law (NSW)*.

Particulars

- (1) The plaintiff repeats paragraph 5 above and paragraph (2) of the particulars to paragraph 24 above.
55. By reason of the matters pleaded in paragraphs 52 and 53 above the group members suffered loss by reason of paying the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the second defendant:
- (a) in respect of Multi-Party Credit Contracts or alternatively Credit Contracts and Bill Cashing Contracts made between 1 July 2010 and 31 December 2010 within the meaning of s 68(1) of the FTA and pursuant to that section is entitled to recover an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee from one or more of the first, second and third defendants;
 - (b) in respect of Multi-Party Credit Contracts or alternatively Credit Contracts and Bill Cashing Contracts made since 1 January 2011 within the meaning of s 236 of the *Australian Consumer Law (NSW)* and pursuant to that section is entitled to recover an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee from one or more of the first, second and third defendants.
56. By reason of the matters pleaded in paragraphs 51 to 55 above the group members are entitled to:
- (a) in respect of Multi-Party Credit Contracts or alternatively Credit Contracts and Bill Cashing Contracts made between 1 July 2010 and 31 December 2010 pursuant to s 72(1) and (5) of the FTA;
 - (b) in respect of Multi-Party Credit Contracts or alternatively Credit Contracts and Bill Cashing Contracts made since 1 January 2011 pursuant to s 243 of the *Australian Consumer Law (NSW)*;

one or more of the following orders specified in paragraphs (c) to (e) below:

- (c) an order declaring the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is void ab initio;
- (d) an order directing one or more of the first, second and third defendants to refund the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members;
- (e) alternatively to paragraph (b) above, an order directing one or more of the first, second and third defendants to pay an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members.

57. By reason of the matters pleaded in paragraphs 51(b), 52(b), 53(b), 54 and 55(b) above, the plaintiff is entitled to an injunction:

- (a) pursuant to s 232(1)(a) and (2) of the *Australian Consumer Law (NSW)* against the first and the second defendants or alternatively the first defendant or alternatively the second defendant restraining them and their servants or agents from engaging in the conduct in one or all of paragraphs (c) to (f) below;
- (b) pursuant to s 232(1)(c), (d) and (e) and (2) of the *Australian Consumer Law (NSW)* against the third defendant restraining him and his servants or agents from:
 - (i) aiding, abetting, counselling or procuring;
 - (ii) inducing or attempting to induce;
 - (iii) being in any way, directly or indirectly, knowingly concerned in;

the first and the second defendants, or alternatively the first defendant, or alternatively the second defendant, and further or alternatively any other person, from engaging in the conduct in one or all of paragraphs (c) to (f) below;

- (c) entering into a Multi-Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;

- (d) making the First to Fifth Representations in connection with the provision or possible provision of credit to any person;
- (e) entering into a contract or arrangement that is substantially similar to a Multi-Party Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;
- (f) making representations that are substantially similar to the First to Fifth Representations in connection with the provision or possible provision of credit to any person.

Claims under the CRA

58. By reason of the matters pleaded in paragraphs 6 to 10, 16 to 18, paragraph (2) of the particulars to paragraph 23 and the particulars to paragraphs 43 and 45 above the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract was unjust in the circumstances relating to it or them at the time it was or they were made within the meaning of s 7 of the *Contracts Review Act 1980* (NSW) **(CRA)**.
59. By reason of the matters pleaded in paragraph 58 above, the group members are entitled pursuant to ss 7(1) and 8 and Sch 1 of the CRA to one or more of the following orders:
- (a) an order declaring the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is void ab initio;
 - (b) an order directing the first defendant or alternatively the second defendant to refund the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members;
 - (c) alternatively to paragraph (b) above, an order directing the first defendant or alternatively the second defendant to pay an amount equal to the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee to the group members.

Claims arising from a total failure of consideration under the contracts between the group members and the first and second defendants

60. By reason of the matters pleaded in paragraphs 6 to 10 above there is a total failure of consideration under the Multi-Party Credit Contract or alternatively the Credit

Contract and the Bill Cashing Contract being the payment by the group member to the second defendant, or alternatively the retention by the second defendant, of the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee.

61. By reason of the matters pleaded in paragraph 60 above, each group members is entitled under the general law to claim as liquidated damages the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee as money had and received to the use of the group member from the first defendant or alternatively the second defendant.

Questions of fact or law common to the plaintiff and the group members

- 1 Whether prior to entry into the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract the first and the second defendants or alternatively the first defendant or alternatively the second defendant made the First to Fifth Representations.
- 2 Whether the Multi-Party Credit Contract constitutes, or alternatively the Credit Contract and the Bill Cashing Contract constitute, a credit contract to which the *National Credit Code* applies.
- 3 Whether the Multi-Party Credit Contract to the extent of the Multi-Party Bill Cashing Fee or alternatively the Credit Contract and the Bill Cashing Contract to the extent of the Bill Cashing Fee is a sham and the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee is properly to be regarded as a lump sum interest charge for the provision of credit.
- 4 Whether the Multi-Party Credit Contract to the extent of the Multi-Party Bill Cashing Fee or alternatively the Credit Contract and the Bill Cashing Contract to the extent of the Bill Cashing Fee is a sham and thereby the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee contravened cl 5(1) of Sch 3 of the Credit Powers Act.
- 5 Whether the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term on its proper construction provides for the payment of a lump sum interest charge by the group member and thereby the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee contravened cl 5(1) of Sch 3 of the Credit Powers Act.
- 6 Whether the First to Fifth Representations were false or misleading.

- 7 Whether the first and the second defendants or alternatively the first defendant or alternatively the second defendant made the First to Fifth Representations in contravention of s 154(1) of the *National Credit Code*, and the third defendant is a person involved in any such contravention within the meaning of paragraphs (a) to (c) that expression in s 5(1) of the NCCPA.
- 8 Whether Multi-Party Credit Contracts, or alternatively the Credit Contracts and the Bill Cashing Contracts made since 1 July 2013 constitutes or constitute a small amount credit contract within the meaning of that expression in s 5 of the NCCPA and s 204(1) of the *National Credit Code*.
- 9 Whether Multi-Party Credit Contracts, or alternatively the Credit Contracts and the Bill Cashing Contracts made since 1 July 2013 have imposed the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee in contravention of ss 23A(1)(b) and 31A(1) of the *National Credit Code*.
- 10 Whether Multi-Party Credit Contracts, or alternatively the Credit Contracts and the Bill Cashing Contracts made since 1 July 2013 have imposed an interest charge on the group member in contravention of s 23A(1)(a) of the *National Credit Code*.
- 11 Whether the first defendant is taken by the operation of s 199 of the *National Credit Code* to have accepted payment of the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee in relation to:
 - (a) a small amount credit contract; or
 - (b) the provision of the amount of credit under a small amount credit contract; or
 - (c) a thing that is connected with a small amount credit contract or the provision of the amount of credit under such a contract, being the fee to cash a cheque.
- 12 Whether since 14 June 2014 the second defendant pursuant to reg 79AE of the *National Consumer Credit Protection Regulations 2010* has been a prescribed person for s 31 B(1) of the *National Credit Code*.
- 13 Whether the Multi-Party Credit Contract, or alternatively the Credit Contract and the Bill Cashing Contract, contravened the following key requirements within the meaning of s 111(1) of the *National Credit Code*:
 - (a) the amount of credit as required by subsection 17(3);
 - (b) the annual percentage rate as required by subsection 17(4);

- (c) the calculation of the interest charges as required by subsection 17(5);
 - (d) the total amount of interest charges as required by subsection 17(6).
- 14 The amount of civil penalty to be paid by the first and the second defendants or alternatively the first defendant for each breach of a key requirement of the *National Credit Code*.
- 15 Whether an injunction should be ordered against the first, second and third defendants pursuant to s 177 of the NCCPA, s 12GD of the ASIC Act or s 232 of the *Australian Consumer Law (NSW)* and the terms of the injunction.
- 16 Whether the Multi-Party Credit Contract, or alternatively the Credit Contract and the Bill Cashing Contract, is a consumer contract within the meaning of that expression in s 12BF of the ASIC Act.
- 17 Whether the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is unfair within the meaning of s 12BG(1) of the ASIC Act.
- 18 Whether the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is void by reason of the operation of s 12BF of the ASIC Act.
- 19 Whether in entering into the Multi-Party Credit Contract, or alternatively the Credit Contract and the Bill Cashing Contract the first and the second defendants or alternatively the first defendant or alternatively the second defendant in trade or commerce in connection with the supply of financial services to the group member engaged in conduct that was in all the circumstances unconscionable;
- (a) in contravention of s 12CC of the ASIC Act in the period between 1 July 2010 and 31 December 2011 and s 12CB of the ASIC Act since 1 January 2012;
 - (b) in respect of Multi-Party Credit Contracts or alternatively Credit Contracts and Bill Cashing Contracts made between 1 July 2010 and 31 December 2010 in contravention of s 43(1) of the FTA;
 - (c) in respect of Multi-Party Credit Contracts or alternatively Credit Contracts and Bill Cashing Contracts made since 1 January 2011 in contravention of s 21(1) of the *Australian Consumer Law (NSW)*.
- 20 Whether In making each of the First to Fifth Representations the first and the second defendants or alternatively the first defendant or alternatively the second defendant in

trade or commerce engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive:

- (a) in contravention of s 12DA(1) of the ASIC Act;
- (b) in respect of Multi-Party Credit Contracts or alternatively Credit Contracts and Bill Cashing Contracts made between 1 July 2010 and 31 December 2010 in contravention of s 42(1) of the FTA;
- (c) in respect of Multi-Party Credit Contracts or alternatively Credit Contracts and Bill Cashing Contracts made since 1 January 2011 in contravention of s 18(1) of the *Australian Consumer Law (NSW)*

and the third defendant is a person involved in any such contravention within the meaning of s 79(a), (b) and (c) of the Corporations Act applied to the ASIC Act by s 5(3) thereof, s 61(a), (b) and (c) of the FTA and paragraphs (a) to (c) of that expression in s 2(1) of the *Australian Consumer Law (NSW)*.

- 21 Whether the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract was unjust in the circumstances relating to it or them at the time it was or they were made within the meaning of s 7 of the CRA.
- 22 Whether there is a total failure of consideration under the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract being the payment by the group member to the second defendant, or alternatively the retention by the second defendant, of the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee in circumstances where the first defendant did not draw and present to the group member a bill of exchange within the meaning of the *Bills of Exchange Act 1909 (Cth)* in favour of the group member for the net loan amount.

I certify under section 347 of the *Legal Profession Act 2004* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Sieve O'connor per *[Handwritten Signature]*

Capacity

Solicitor on the Record

Date of signature

24/02/2015

NOTICE TO DEFENDANTS

If you do not file a defence within 28 days of being served with this statement of claim:

- You will be in default in these proceedings.
- The court may enter judgment against you without any further notice to you.

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim,** by filing a defence and/or making a cross-claim.
- 2 If money is claimed, and you believe you owe the money claimed,** by:
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed,** by:
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address Law Courts Building, 184 Phillip Street, Sydney NSW 2000

Postal address GPO Box 3, Sydney NSW 2001

Telephone 1300 679 272

AFFIDAVIT VERIFYING

Name Alan Navrozoglou
 Address 58 McGregor Avenue, Barrack Heights NSW 2528
 Occupation Labourer
 Date 24 / 02 / 2015

I affirm

- 1 I am the Tutor for the plaintiff.
- 2 I believe that the allegations of fact in the statement of claim are true.

AFFIRMED at Mt Ousley
 Signature of deponent *A.N. [Signature]*
 Name of witness Matt Turner
 Address of witness 73 Church Street, Wollongong NSW 2500
 Capacity of witness **Solicitor**

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

Driver's Licence
 Identification document relied on (may be original or certified copy) †

Signature of witness *[Signature]*

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

PARTY DETAILS

[Include only if more than two plaintiffs and/or more than two defendants.]

PARTIES TO THE PROCEEDINGS**Plaintiff**

Steven Navrozoglou

First Defendant

ICM Group Finance Pty Ltd

Second Defendant

ICM Group Pty Ltd

Third Defendant

Michael O'Shea

FURTHER DETAILS ABOUT PLAINTIFF**Plaintiff**

Name Steven Navrozoglou
 Address 3/19 Wentworth St
 Port Kembla NSW 2505

Frequent user identifier [include if the plaintiff is a registered frequent user]

[repeat the above information as required for the second and each additional plaintiff]

Legal representative for plaintiff

Name Steve O'Conner, Deputy CEO Operations,
 Legal Aid NSW
 Practising certificate number 10164 NSW
 Firm Legal Aid NSW
 Contact solicitor Matt Turner
 Address Legal Aid, 73 Church Street
 Wollongong NSW 2500
 DX address 27819 WOLLONGONG COURT
 Telephone 02 4228 8299
 Fax 02 4229 9078
 Email matt.turner@legalaid.nsw.gov.au

Electronic service address

DETAILS ABOUT DEFENDANTS

First defendant

Name ICM Group Finance Pty Limited
Address c/ Brodie Long Grew
Level 2
128-134 Crown Street
WOLLONGONG NSW 2500

Second defendant

Name ICM Group Pty Limited
Address c/ Brodie Long Grew
Level 2
128-134 Crown Street
WOLLONGONG NSW 2500

Third defendant

Name Michael James O'Shea
Address 73 Barrack Avenue
BARRACK POINT NSW 2528