

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001 (Cth), section 93AA

and

Competition and Consumer Act 2010 (Cth), section 87B

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) and to the Australian Competition and Consumer Commission (ACCC), (collectively, the Agencies), by:

Malouf Group Enterprises Pty Ltd

ACN 115 371 581

Unit 1502, 56 Scarborough Street, SOUTHPORT, QLD 4215

and by

Jordan Francis Malouf

Southport, Queensland

1. **Definitions**

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

ACL means the Australian Consumer Law, contained in Schedule 2 to the *Competition and Consumer Act 2010 (Cth) (CCA)*.

Agreement means an agreement entered into between Malouf Group and a consumer for a Credit Repair Service.

Applicants means the Applicants in the Federal Court Proceeding

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

CCA means the *Competition and Consumer Act 2010 (Cth)*.

Commencement Date means the date this enforceable undertaking is accepted by the Agencies.

Corporations Act means the *Corporations Act 2001 (Cth)*.

Credit Provider has the meaning given in subsection 5(1) of the National Credit Act.

Credit Repair Service means any service provided, or offered, by Malouf Group involving, relating or purporting to involve or relate to, accessing, handling, checking, correcting, deleting or otherwise modifying (or assisting a person to perform any of these actions) information that is in any way relevant to whether a person should be provided credit.

Credit Report means a report created by a Credit Reporting Body of personal information collected from credit providers and other sources in relation to an individual.

Credit Reporting Body means a body that collects, holds, uses or discloses personal information about individuals for the purpose of, or for purposes including the purpose of, providing an entity with information about the credit worthiness of an individual.

Entitled Consumer means a consumer who entered into an Agreement with Malouf Group during the Relevant Period and paid Malouf Group for the Credit Repair Service when the consumer had no negative listing on their Credit Report.

Financial Literacy Australia means Financial Literacy Australia Limited, a not-for-profit organisation founded in 2012 whose mission is to advance financial literacy in Australia.

Federal Court Proceeding means the proceeding filed by ASIC in the Federal Court of Australia on 30 June 2017, *Australian Securities and Investments Commission & Anor v Malouf Group Enterprises Pty Ltd & Anor*, which has Federal Court of Australia file reference QUD 324/2017.

Malouf Entities means Malouf Group and Mr Malouf.

Malouf Group means Malouf Group Enterprises Pty Ltd (ACN 115 371 581).

Mr Malouf means Jordan Francis Malouf, the sole director, secretary and shareholder of Malouf Group.

Negative Listing means any default information, court judgment or other information which may have an adverse impact on a consumer's creditworthiness or on their ability to obtain credit.

Privacy Act means the *Privacy Act 1988 (Cth)*.

Relevant Period means 1 January 2014 to 31 December 2015.

Remediation Period means the eighteen month period commencing on the Commencement Date.

Malouf Group Websites means the websites accessible on the internet at the following internet domain names or at any subdomain of these domain names:

- (a) creditcleanaustralia.com.au;
- (b) mgeonline.com.au;
- (c) creditwash.com.au;
- (d) creditfixaustralia.com.au;
- (e) cleanyourcredit.com.au

2. Background

ASIC's role

- 2.1. Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.
- 2.2. ASIC is responsible for, among other things, the administration and enforcement of the provisions of the ASIC Act dealing with consumer protection in relation to financial services.

ACCC's role

- 2.3. The ACCC is responsible for, among other things, the administration and enforcement of the provisions of the CCA, the object of which is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.
- 2.4. Under section 26 of the CCA and with the agreement of the Chairperson of ASIC, the ACCC, by resolution passed at a meeting of the ACCC on 16 July 2014, has delegated to certain staff members of ASIC within the meaning of section 5 of the ASIC Act:
 - (a) all of the ACCC's functions and powers under or in relation to Part VI of the CCA and Chapter 2 of the ACL; and
 - (b) the power to do whatever is reasonably necessary for, or reasonably incidental to, the exercise or discharge by ASIC of those functions and powers,

to the extent that those functions and powers may be necessary for, or reasonably incidental to, regulating conduct (including taking enforcement action) in relation to Credit Repair Services and debt collection (ACCC Delegation). Kaan Finney is a staff member of ASIC who holds the ACCC Delegation.

Malouf Group

Services offered by Malouf Group

2.5. Since 2008, Malouf Group has operated a Credit Repair Service. Malouf Group advertised its Credit Repair Service through the Malouf Group Websites, through Google Adwords campaigns, through a Facebook Page, and through television advertisements aired on commercial "free to air" television.

2.6. The terms and conditions of the Agreement, (the Terms and Conditions), state that the services means:

"the provision by the provider [Malouf Group] to the client of:

(a) A report about credit status including the relevance of the length of the time of that status, how to change the status if incorrectly reported and recorded, how to respond to debt collection services, how to clean you credit file and how to maintain a good credit status or record;

(b) A copy of the client's credit file as created from information available from agencies that report on creditworthiness; and

(c) The Report by Express Post Mail.

(collectively, Agreed Services).

3. The Federal Court Proceeding

3.1 On 30 June 2017, ASIC and Kaan Finney, a staff member of ASIC to whom the ACCC's powers and functions referred to in paragraph 2.4 herein were delegated, commenced the Federal Court Proceeding seeking, inter alia:

(a) declarations that the Malouf Entities had breached provisions of the *Australian Consumer Law*;

(b) pecuniary penalties against the Malouf Entities;

(c) refunds for consumers; and

(d) costs.

3.2 The parties to the Federal Court Proceeding have agreed to compromise the Federal Court Proceeding on certain terms, including:

- (a) a Statement of Agreed Facts filed in the Federal Court Proceeding on 18 April 2018, which supports the making of agreed declarations, civil penalties and ancillary orders;
- (b) joint submissions to the Court, dated 18 April 2018, on the agreed declarations, civil penalties and ancillary orders; and
- (c) admissions, by the Malouf Entities, consistent with the Statement of Agreed Facts and the joint submissions, which support the agreed declarations sought by the parties to the Federal Court Proceeding – in respect of each of the matters set out paragraphs 3.3 to 3.20 below.

3.3 Malouf Group, between at least 1 January 2014 and 31 December 2015, in trade or commerce, and in connection with the supply or possible supply of services:

- (a) by stating on the Credit Clean Australia website that it was “Voted Australia’s No 1 Credit Repairs Solution Company”;
- (b) by stating on the Credit Wash website that it was “Voted Australia’s No 1 Credit Repairs Solution Company”;
- (c) by stating on the Clean Your Credit website “Find Out today why we are voted Australia’s no 1 credit repair solutions company”;
- (d) by stating on the Credit Fix Australia website that it was “Voted Australia’s First Choice for a Second Chance”;

thereby represented that:

- (e) each of Malouf Group trading as Credit Clean Australia, Malouf Group trading as Credit Wash and Malouf Group trading as Clean Your Credit respectively, or alternatively Malouf Group, had been voted, pursuant to an objective and verifiable voting process conducted by an entity other than itself, Australia’s number 1 credit repair solution company;
- (f) Malouf Group trading as Credit Fix Australia, or alternatively Malouf Group, had been voted, pursuant to an objective and verifiable voting process conducted by an entity other than itself, “Australia’s First Choice” among credit repair companies;

in circumstances where it was in fact the case that:

- (g) none of Malouf Group trading as Credit Clean Australia, Malouf Group trading as Credit Wash, Malouf Group trading as Clean Your Credit or

Malouf Group had been voted Australia's number 1 credit repair solution company pursuant to an objective and verifiable voting process conducted by an entity other than itself;

- (h) neither Malouf Group trading as Credit Fix Australia nor Malouf Group had been voted "Australia's First Choice" among credit repair companies pursuant to an objective and verifiable voting process conducted by an entity other than itself

has in relation to each representation:

- (i) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18(1) Australian Consumer Law;
- (j) made a false or misleading representation that its services were of a particular standard, quality, value or grade in contravention of s29(1)(b) Australian Consumer Law;
- (k) made a false or misleading representation that its services had sponsorship or approval in contravention of s29(1)(g) Australian Consumer Law.

3.4 Malouf Group, between at least 1 January 2014 and 31 December 2015, in trade or commerce, and in connection with the supply or possible supply of services:

- (a) by publishing on the Credit Clean Australia website what purported to be testimonials from consumers who had used Malouf Group's (trading as Credit Clean Australia) services;
- (b) by publishing on the Credit Wash website what purported to be testimonials from consumers who had used Malouf Group's (trading as Credit Wash) services;
- (c) by publishing on the Credit Fix Australia website what purported to be testimonials from consumers who had used Malouf Group's (trading as Credit Fix Australia) services;
- (d) by publishing on the MGE Online website what purported to be testimonials from consumers who had used Malouf Group's services;
- (e) by publishing on the Clean Your Credit website what purported to be testimonials from consumers who had used Malouf Group's (trading as Clean Your Credit) services;

and thereby representing that the said testimonials were respectively:

- (f) from persons who had used the services of Malouf Group trading as Credit Clean Australia;

- (g) from persons who had used the services of Malouf Group trading as Credit Wash;
- (h) from persons who had used the services of Malouf Group trading as Credit Fix Australia;
- (i) from persons who had used the services of Malouf Group;
- (j) from a person who had used the services of Malouf Group trading as Clean Your Credit;

and in circumstances where it was in fact the case that:

- (k) the purported testimonials were not testimonials from persons who had used the services of, respectively, Malouf Group trading as Credit Clean Australia, Malouf Group trading as Credit Wash, Malouf Group trading as Credit Fix Australia, Malouf Group or Malouf Group trading as Clean Your Credit;

has, in relation to each representation:

- (l) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18(1) *Australian Consumer Law*;
- (m) made a false or misleading representation that purports to be a testimonial by a person relating to services in contravention of s29(1)(e) *Australian Consumer Law*;
- (n) made a false or misleading representation concerning a testimonial by a person, or a representation that purports to be such a testimonial, relating to services in contravention of s29(1)(f) *Australian Consumer Law*.

3.5 Malouf Group, between at least 1 January 2014 and 31 December 2015, in trade or commerce, and in connection with the supply or possible supply of services:

- (a) by publishing on the Clean Your Credit website the words "Let us Clean Your Credit";

and thereby representing that:

- (b) in the event a consumer entered into an agreement with it to provide credit repair services, its services included that it would itself act on behalf of that consumer in dealing with third parties to remove incorrect negative listings on the consumer's credit report;

and in circumstances where it was in fact the case that:

- (c) Malouf Group's services did not always include that it would itself act on behalf of consumers in dealing with third parties to remove incorrect negative listings on the consumer's credit report;
- (d) pursuant to the MGE Agreement, Malouf Group's services were limited to the Agreed Services;

has engaged in conduct that:

- (e) was misleading or deceptive or likely to mislead or deceive in contravention of s18(1) *Australian Consumer Law*;
- (f) was liable to mislead the public as to the nature and the characteristics of Malouf Group's services in contravention of s34 *Australian Consumer Law*.

3.6 Malouf Group, between at least 1 January 2014 and 31 December 2015, in trade or commerce, and in connection with the supply or possible supply of services, by its sales representatives, acting at the direction of Malouf Group:

- (a) using certain identified sales scripts; and

thereby representing to potential consumers and consumers:

- (b) that upon receipt of the consumer's application it would obtain and consider the consumer's credit file in order to establish whether it could help the consumer with the consumer's negative listings;
- (c) that before approving the consumer's application it would establish whether credit providers had correctly followed any relevant procedures prior to making a negative listing;
- (d) that, by implication, its fee would only be payable if it established that the consumer had negative listings on the consumer's credit file;
- (e) that it would only approve the consumer's application if it established that the consumer had negative listings on the consumer's credit file;

and in circumstances where it was in fact the case that:

- (f) Malouf Group did not usually obtain and consider a consumer's credit report in order to establish whether it could help the consumer with all the consumer's negative listings;
- (g) Malouf Group had not usually established whether credit providers had correctly followed any relevant procedures prior to making a negative listing;

- (h) Malouf Group approved consumers' applications without usually establishing whether it could help the consumer with all of the consumer's negative listings;
- (i) Malouf Group's fee was usually payable by consumers who entered into the MGE Agreement, irrespective of whether or not the consumer had negative listings on the consumers credit file;

has on each occasion engaged in conduct that:

- (j) was misleading or deceptive or likely to mislead or deceive in contravention of s18(1) *Australian Consumer Law*;
- (k) was liable to mislead the public as to the nature and the characteristics of Malouf Group's services in contravention of s34 *Australian Consumer Law*.

3.7 Malouf Group, between at least 1 January 2014 and approximately 31 December 2015, in trade or commerce, and in connection with the supply or possible supply of services, by its sales representatives, acting at the direction of Malouf Group:

- (a) stating from at least 1 January 2014 until approximately 17 August 2014, as set out in one of the identified sales scripts:

"Once we receive your app, our investigation team will then open your file and look into it and see what procedure and protocol had been used before they have damaged your credit history ... once we've established we can help you with all your negative listings, we charge 1 fee and its only \$995. But if we can't help, there's no charge."

- (b) stating from at least 1 January 2014 until approximately 17 August 2014, as set out in one of the identified sales scripts:

"I'LL GET THAT APPLICATION STRAIGHT TO OUR INVESTIGATION TEAM AND I WILL HAVE AN ANSWER FOR YOU WITHIN AN HOUR. LETS GET YOU SORTED BACK ON TRACK AND OBTAINING NORMAL LOANS."

and thereby representing to potential consumers and consumers:

- (c) that it had an investigations team, separate to the MGE sales representative with whom the consumers were speaking, that would assess the consumer's application;

and in circumstances where it was in fact the case that:

- (d) Malouf Group did not have an investigation team, separate to the MGE sales representative with whom the consumers were speaking, that would assess the consumer's application;

has on each occasion:

- (e) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18(1) Australian Consumer Law;
- (f) engaged in conduct that was liable to mislead the public as to the nature and the characteristics of Malouf Group's services in contravention of s34 Australian Consumer Law.

3.8 Malouf Group, between at least 1 January 2014 and 31 December 2015, in trade or commerce, and in connection with the supply or possible supply of services, by its sales representatives, acting at the direction of Malouf Group:

- (a) Stating, pursuant to one of the identified sales scripts:

"Now please don't take it personal if you're not accepted ..., unfortunately not everyone is ... but if you are accepted and approved that's great. I only say this as I had a client this morning that abused me because she wasn't accepted so I just want you to keep that in mind, ok";

and thereby representing to potential consumers and consumers:

- (b) a client that morning had abused the MGE sales representative with whom the consumer was speaking because the client's application had not been accepted by Malouf Group;

and in circumstances where it was in fact the case that:

- (c) a client had not that morning abused the MGE sales representative because her application had not been accepted by Malouf Group;

has on each occasion:

- (d) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18(1) Australian Consumer Law.

3.9 Malouf Group, between at least 1 January 2014 and 31 December 2015, in trade or commerce, and in connection with the supply or possible supply of services, by its sales representatives, acting at the direction of Malouf Group:

- (a) by using the words, or materially similar words, set out under the heading "Guarantee Objections" in one of the identified sales scripts, when a consumer questioned the sales representative about whether, in effect,

Malouf Group could guarantee that the consumer's negative listings would be removed from their credit record if Malouf Group approved the consumer's application, and the consumer paid Malouf Group's fee;

and thereby:

- (b) failing to answer the consumer's question; and
- (c) representing to potential consumers, by omission, that Malouf Group guaranteed that their negative listings would be removed from their credit record if Malouf Group approved their application and they paid Malouf Group's fee;

and in circumstances where it was in fact the case that:

- (d) Malouf Group could not guarantee that the consumer's negative listings would be removed from their credit record if Malouf Group approved the consumer's application, and the consumer paid Malouf Group's fee;

has on each occasion:

- (e) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18(1) Australian Consumer Law.

3.10 Malouf Group, between at least 12 March 2014 and 31 December 2015, in trade or commerce, and in connection with the supply or possible supply of services, by its sales representatives, acting at the direction of Malouf Group:

- (a) stated, pursuant to one of the identified sales scripts:

"Let me explain ... What happens is when someone checks your file, it may put an enquiry on your file. Too many enquiries can further damage your file and if we process it tomorrow, we may have to reopen it to make sure that you are still approved. As you know, we are here to help FIX your file not to make it WORSE ... as we are a very well respected company and believe ... it would be hypocritical; if we were to make it worse!"

and thereby representing to potential consumers and consumers:

- (b) that if the consumer did not pay the fee that day, that failure would have the effect of adversely affecting the consumer's credit record;

and in circumstances where it was in fact the case that:

- (c) Malouf Group had not, at the time the sales representative said the words, usually accessed the consumer's credit record, and accordingly had not put an "enquiry" on the consumer's file;

- (d) if the consumer did not pay the fee on the day Malouf Group approved the consumer's application, that failure would not cause it to be necessary for Malouf Group to access the consumer's credit record on multiple occasions;
- (e) even if Malouf Group accessed the consumer's credit record on multiple occasions between 12 March 2014 and 31 December 2015, doing so would not be recorded on the copy of the credit report available to a credit provider, but rather would only be recorded on a copy of the credit report obtained by the consumer or the consumer's representative;
- (f) in the premises, the failure by the consumer to pay the fee on the day Malouf Group approved the consumer's application would not have adversely affected the consumer's credit record;

has on each occasion:

- (g) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18(1) *Australian Consumer Law*.

3.11 By its system of selling credit repair services to consumers between at least 1 January 2014 and 31 December 2015, in circumstances where:

- (a) consumers who sought the services of Malouf Group were vulnerable;
- (b) it created, or approved the creation of, the content of the TV advertisements, sponsored link advertising and website advertising used to advertise its services;
- (c) it utilised the TV advertisements, the sponsored link advertising, and the website advertising as conduits to the Telephone Sales Calls;
- (d) it remunerated MGE sales representatives in whole or part by commission;
- (e) its conduct involved that referred to in paragraphs 3.3 to 3.10 herein;
- (f) it used unfair tactics;

Malouf Group has:

- (g) engaged in conduct that was in all the circumstances unconscionable, in contravention of s 21 of the *Australian Consumer Law*.

3.12 Mr Malouf, as the director and manager of Malouf Group, and the person responsible for its operating systems and its day to day operations:

- (a) knowing that the matters in paragraphs 3.3 to 3.10 were occurring;
- (b) devising or assisting in devising the system described in paragraph 3.11;

was knowingly concerned in each of the contraventions by Malouf Group referred to in paragraphs 3.3 to 3.11 herein.

3.13 Malouf Group, in or about August 2014, in trade or commerce in connection with the supply of credit repair services to a consumer, Ian Collins, in the following circumstances:

- (a) in the course of the first telephone sales call between Collins and its sales representative:
 - (i) it represented that upon receipt of his application and before approving the application, it would obtain and consider his credit report to establish whether his credit record could be repaired, when in fact it did not obtain and consider his credit report before approving his application;
 - (ii) it represented that it would only accept his application if it established that his credit record could be repaired, when in fact it accepted his application without establishing that his credit record could be repaired;
 - (iii) by implication, in the event it approved his application, it would itself act on his behalf in dealing with all third parties to remove incorrect negative listings on his credit record, when in fact it required Collins to act on his own behalf in such dealings;
- (b) in the course of the second telephone sales call between Collins and its sales representative:
 - (i) it represented that upon receipt of his application it had obtained and considered his credit report to establish whether his credit record could be repaired, when in fact it had not obtained and considered his credit report;
 - (ii) it represented that it had established that the negative listings on his credit record could be removed, when in fact it had not established that;
 - (iii) it represented that the negative listings on his credit record could be removed, when in fact they could not be;

engaged in conduct that

- (c) was misleading or deceptive in contravention of s18 *Australian Consumer Law*;

- (d) in relation to paragraphs 3.13(a) and 3.13(b) herein, amounted to a false or misleading representation that the credit repair services had performance characteristics, uses or benefits in contravention of s29(1)(g) of the *Australian Consumer Law*.

3.14 Malouf Group, in or about August 2014, in trade or commerce in connection with the supply of credit repair services to a consumer, Ian Collins, in the following circumstances:

- (a) it knew that Collins was vulnerable in as much as he was concerned that he had negative listings on his credit record and wanted to repair that record;
- (b) it used a TV advertisement to persuade him to telephone it about its credit repair services;
- (c) its sales representative used the scripts in the course of telephone sales calls with him;
- (d) it made the representations referred to in paragraphs 3.13(a) and 3.13(b) herein;
- (e) it subjected Collins to undue influence or pressure, and unfair tactics

engaged in conduct that was unconscionable in all the circumstances, in contravention of section 21 *Australian Consumer Law*.

3.15 Malouf Group, in or about March 2015, in trade or commerce in connection with the supply of credit repair services to a consumer, Beau Gralike, in the following circumstances:

- (a) it represented that the fact that Gralike had already paid AGL's overdue account was a basis for removing the negative listing placed on his credit record by AGL, when in fact that was not the case;
- (b) it represented that the negative listing placed on his credit record by AGL could be removed, when in fact it could not be;
- (c) it represented that it would itself act on his behalf in dealing with AGL to remove the negative listing on his credit report, when in fact it required Gralike to act on his own behalf in such dealings;

engaged in conduct that:

- (d) was misleading or deceptive in contravention of s18 *Australian Consumer Law*;

- (e) in relation to paragraph 3.15(b) and 3.15(c) herein, amounted to false or misleading representations that the credit repair services had performance characteristics, uses or benefits in contravention of s29(1)(g) of the *Australian Consumer Law*.

3.16 Malouf Group, in or about March 2015, in trade or commerce in connection with the supply of credit repair services to a consumer, Beau Gralike, in the following circumstances:

- (a) it knew that Gralike was vulnerable in as much as he was concerned that he had a negative listing on his credit record and wanted to repair that record;
- (b) it advertised its credit repair services to Gralike via the Clean Your Credit website;
- (c) its sales representative used the scripts in the course of telephone sales calls with him;
- (d) it made the representations referred to in the paragraphs 3.15(a), 3.15(b) and 3.15(c) herein;
- (e) it subjected Gralike to undue influence or pressure, and unfair tactics;

engaged in conduct that was unconscionable in all the circumstances, in contravention of section 21 *Australian Consumer Law*.

3.17 Malouf Group, in or about July 2015, in trade or commerce in connection with the supply of credit repair services to a consumer, Warren Huisman, in the following circumstances:

- (a) it represented that it had, before approving Huisman's application, obtained and considered his credit report to establish whether the negative listing placed on his credit report by Educollect could be removed, when in fact it had not done so;
- (b) it represented that it had established that Educollect had not followed the required procedures, when in fact Edocollect had done so;
- (c) it represented that as Educollect had not followed the required procedures, the negative listing could be removed from his credit record, when in fact the negative listing could not be removed from his credit record;

engaged in conduct that:

- (d) was misleading or deceptive in contravention of s18 *Australian Consumer Law*;

- (c) in relation to paragraph 3.16(c) herein, amounted to a false or misleading representation that the credit repair services had performance characteristics, uses or benefits in contravention of s29(1)(g) of the *Australian Consumer Law*.

3.18 Malouf Group, in or about July 2015, in trade or commerce in connection with the supply of credit repair services to a consumer, Warren Huisman, in the following circumstances:

- (a) it knew that Huisman was vulnerable in as much as he was concerned that he had a negative listing on his credit record and wanted to repair that record;
- (b) it advertised its credit repair services to Huisman via the Credit Wash website;
- (c) its sales representative used the Scripts in the course of telephone sales calls with him;
- (d) it made the representations referred to in the paragraphs 3.17(a), 3.17(b) and 3.17(c) herein;
- (e) it subjected Huisman to undue influence or pressure, and unfair tactics;

engaged in conduct that was unconscionable in all the circumstances, in contravention of section 21 *Australian Consumer Law*.

3.19 Malouf Group, in or about October 2015, in trade or commerce in connection with the supply of credit repair services to a consumer, Harvinder Singh, in the following circumstances:

- (a) it represented that it had, before approving Singh's application, obtained and considered his credit report to establish whether there were any negative listings on his credit record, when in fact it had not done so;
- (b) it represented that it had established that Singh had one or more negative listings on his credit record, when in fact there were none on his credit record;
- (c) it represented that it could repair the negative listings that it said were on his credit record, when in fact there were no negative listings on his credit record for it to repair;

engaged in conduct that:

- (d) was misleading or deceptive in contravention of s18 *Australian Consumer Law*;

- (e) in relation to paragraph 3.19(c) herein, amounted to a false or misleading representation that the credit repair services had performance characteristics, uses or benefits in contravention of s29(1)(g) of the *Australian Consumer Law*.

3.20 Malouf Group, in or about October 2015, in trade or commerce in connection with the supply of credit repair services to a consumer, Harvinder Singh, in the following circumstances:

- (f) it knew that Singh was vulnerable in as much as he was concerned that he had a negative listing on his credit record and wanted to repair that record;
- (g) it knew, or ought to have known, that Singh was not able to read, write, speak or understand English well;
- (h) it advertised its credit repair services to Singh via the Credit Clean Australia website;
- (i) its sales representative used the Scripts in the course of telephone sales calls with him;
- (j) it made the representations referred to in the paragraphs 3.19(a), (b) and (c) herein;
- (k) it subjected Singh to undue influence or pressure, and unfair tactics;

engaged in conduct that was unconscionable in all the circumstances, in contravention of section 21 of the *Australian Consumer Law*.

3.21 In addition to the admissions set out above, and as part of the compromise of the Federal Court Proceeding, the Malouf Entities have offered an enforceable undertaking in the terms below.

4. Undertakings

4.1 Under section 93AA of the ASIC Act and section 87B of the CCA:

- (a) the Malouf Entities have offered the undertakings in the paragraphs below; and
- (b) the Agencies have agreed to accept those undertakings as an alternative to the Applicants pursuing the orders sought in the Federal Court Proceeding pursuant to ss 237 and 239 of the *Australian Consumer Law*.

Undertakings to refund consumers

- 4.2 The Malouf Entities undertake that they will refund to each Entitled Consumer the fees paid by the Entitled Consumer, or part thereof, up to a total aggregate of \$1,100,000 in accordance with the Refund Process outlined below. If at the end of the Remediation Period the total aggregate refunded to Entitled Consumers is less than \$1,100,000 the Malouf Entities undertake to, within 30 days of the expiration of the Remediation Period, make a community benefit payment of the remainder (that is, the difference between the total aggregate refunded to Entitled Consumers and \$1,100,000) to Financial Literacy Australia to support the financial capability of vulnerable people.

Refund Process

- 4.3 Within 28 days of the Commencement Date, the Malouf Entities will:
- (a) confirm with ASIC the identity of each Entitled Consumer;
 - (b) determine the amount paid by each Entitled Consumer to Malouf Group (Paid Amount);
 - (c) determine the amount (if any) previously refunded by Malouf Group to the Entitled Consumer (Previously Refunded Amount).
- 4.4 Within 30 days of the Commencement Date, Malouf Group will notify ASIC of:
- (a) the Paid Amount of each Entitled Consumer;
 - (b) in respect of any Previously Refunded Amounts, the name and contact details of each Entitled Consumer and the amount refunded to them.
- 4.5 Within 90 days of the Commencement Date, Malouf Group will send a letter to the last known physical address and an email to the last known email address of each Entitled Consumer, containing only the text at Annexure I of this undertaking.
- 4.6 The Malouf Entities undertake that they will, within the Remediation Period:
- (a) take all reasonable steps to pay to each Entitled Consumer the difference between the Paid Amount and any Previously Refunded Amount (Refund Amount) which applies to the Entitled Consumer;
 - (b) in the event the total aggregate amount payable to Entitled Consumers pursuant to paragraph 4.6(a) herein is greater than \$1,100,000, take all reasonable steps to pay to each Entitled Consumer a pro rata payment of the Refund Amount;
 - (c) make the payments referred to in paragraphs 4.6(a) or 4.6(b) herein as soon as reasonably practicable within the Remediation Period.

4.7 During the Remediation Period, Malouf Group undertakes that on the first day of each month after it has sent the letter and email to the Entitled Consumers referred to in paragraph 4.5, it will report to ASIC the following information:

- (a) the names of the Entitled Consumers who have contacted Malouf Group; and
- (b) the date on which Malouf Group paid any Refund Amount (or pro rata payment of the Refund Amount) to Entitled Consumers, and the names and amounts paid.

5. Independent Oversight

5.1 The Malouf Entities undertake, within 14 days of the Commencement Date, to engage an auditor (the **Remediation Consultant**) whose terms of engagement are to be approved by ASIC in writing (such approval not to be unreasonably withheld).

5.2 The Malouf Entities undertake not to vary the terms of engagement for the Remediation Consultant without the prior written approval of ASIC.

5.3 The Malouf Entities undertake to ensure that the terms of engagement of the Remediation Consultant require the Remediation Consultant to conduct a review of the compliance with the undertakings set out in paragraphs 4.2 to 4.7 herein and to submit a written report (**Remediation Report**) to the Malouf Entities and ASIC on the review by 30 days after the end of the Remediation Period that includes the following:

- (a) A list identifying the total dollar value of Refund Amounts paid to Entitled Consumers and the date on which those amounts were paid;
- (b) If the total aggregate paid to Entitled Consumers is less than \$1,100,000, a receipt confirming the payment, in accordance with paragraph 4.2 herein, to Financial Literacy Australia.

5.4 The Malouf Entities undertake to ensure that the terms of engagement of the Remediation Consultant:

- (a) include a statement to the effect that the work of the Remediation Consultant is being carried out for the Malouf Entities and ASIC, and acknowledging that ASIC is relying on the work of the Remediation Consultant;
- (b) include a statement that upon request by ASIC, ASIC is to be copied into all or some communications between the Malouf Entities and the Remediation Consultant;
- (c) require the Remediation Consultant to notify ASIC where a conflict of interest arises during the engagement or when the Remediation Consultant becomes aware of information that adversely affects its ability to exercise objective and impartial judgement; and
- (d) include an acknowledgement that in relation to the Remediation Report to be provided to ASIC and the Malouf Entities, ASIC may from time to time publicly refer to the content of the Remediation Report, and may make a summary of the content of the Remediation Report or a statement that refers to the content of the Remediation Report public.

5.5 The Malouf Entities undertake that they will:

- (a) pay the costs of their compliance with this enforceable undertaking and not pass any of the costs of this enforceable undertaking on to other parties;
- (b) provide all documents and information requested by ASIC from time to time for assessing their compliance with the terms of this enforceable undertaking.

5.6 All notifications required to be given to ASIC under this enforceable undertaking will be sent to:

Kaan Finney,

Senior Manager,

Financial Services Enforcement, Brisbane,

Australian Securities and Investments Commission

GPO Box 9827, Brisbane, QLD 4001.

Email: kaan.finney@asic.gov.au

6. Acknowledgements

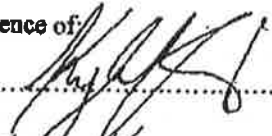
- 6.1 The Malouf Entities acknowledge that the acceptance by the Agencies of this undertaking does not affect the declarations and orders sought in the Federal Court Proceeding save that, following acceptance of this undertaking, the Applicants in the Proceeding will not pursue the application for orders pursuant to ss 237 and 239 of the *Australian Consumer Law*.
- 6.2 The Malouf Entities acknowledge that their obligations under this undertaking are joint and several.
- 6.3 The Malouf Entities acknowledge that the Agencies:
- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of the Agencies which led to its execution;
 - (b) may from time to time publicly refer to this undertaking;
 - (c) will from time to time publicly report about compliance with this undertaking; and
 - (d) will make this undertaking available for public inspection.
- 6.4 Further, the Malouf Entities acknowledge that:
- (a) acceptance by the Agencies of this undertaking does not affect the powers of the Agencies to investigate, conduct surveillance or pursue a criminal prosecution or their power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of their concerns in this enforceable undertaking or arising from future conduct; and
 - (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.
- 6.5 The Malouf Entities acknowledge that this undertaking has no operative force until accepted by the Agencies.
- 6.6 The Malouf Entities and the Agencies acknowledge that the date of the enforceable undertaking is the date on which it is accepted by the Agencies.

Executed by **MALOUF GROUP**)
ENTERPRISES PTY LTD in accordance)
with section 127(1) of the *Corporations Act*)
2001 (Cth))


.....
Jordan Francis Malouf

Sole Director and Company Secretary

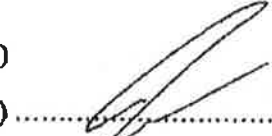
In the presence of:


.....
Name: **KYLIE KING**

Date: **24/04/2018**

Executed by **Jordan Francis MALOUF**)

Date: **24/04/2018**)


.....
Jordan Francis Malouf

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act:


.....
Tim Mulhaly

Senior Executive Leader, Financial Services Enforcement

Delegate of the Australian Securities and Investments Commission

Date: **24/4/2018**

Accepted by the Australian Competition and Consumer Commission under section 87B of the CCA:


.....
Rodney Graham Sims

Chairman and Delegate of the Australian Competition and Consumer Commission

Date: **24/4/18**

ANNEXURE 1

<Email date>

Dear <Title> <Surname>

You are entitled to a refund.

Following investigation and action taken by the Australian Securities and Investments Commission (ASIC), Malouf Group Enterprises Pty Ltd has admitted to the Court to making misleading representations. As part of the resolution, Malouf Group Enterprises and Mr Jordan Malouf have offered an Enforceable Undertaking to ASIC and to the Australian Competition and Consumer Commission (ACCC).

Malouf Group is required to refund money to you that you have paid to us, in accordance with the terms of the enforceable undertaking.

How can you find out more?

For a copy of our enforceable undertaking with ASIC and the ACCC please refer to the link [<here>](#).

You can also contact ASIC directly on [infoline number] to confirm the details.

How to receive your refund

Please contact us on telephone number to discuss or email us directly with your account details at **insert email address**.

For identification purposes, we will require you to provide a copy of your driver's licence, passport or other photographic identification at the time of seeking your refund.

Yours sincerely

Mr Jordan Malouf
Malouf Group Enterprises Pty Ltd

