

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 19/12/2019 4:21:50 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

| | |
|----------------------------|---|
| Document Lodged: | Originating Application - Form 15 - Rule 8.01(1) |
| File Number: | NSD2105/2019 |
| File Title: | AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v |
| Registry: | NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA |
| Reason for Listing: | To Be Advised |
| Time and date for hearing: | To Be Advised |
| Place: | To Be Advised |



Dated: 19/12/2019 5:07:18 PM AEDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

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

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

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



Originating Application

No. _____ of 2019

Federal Court of Australia
District Registry: New South Wales
Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

VOLKSWAGEN FINANCIAL SERVICES AUSTRALIA PTY LTD (ACN 097 071 460)

Respondent

To the Respondent

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

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

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

Time and date for hearing:

Place: Federal Court of Australia
Law Courts Building
184 Phillip St
Queens Square
Sydney NSW 2000

Date: 19 December 2019

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

| | | | |
|-------------------------------------|---|-----|------------|
| Filed on behalf of | Australian Securities and Investments Commission, Applicant | | |
| Prepared by (name of person/lawyer) | Susan Donnelly, Litigation Counsel | | |
| Law firm (if applicable) | Australian Securities and Investments Commission | | |
| Tel | 02 99112873 | Fax | 1300729000 |
| Email | susan.donnelly@asic.gov.au | | |
| Address for service | Level 5, 100 Market Street, Sydney, New South Wales 2000 | | |



Details of claim

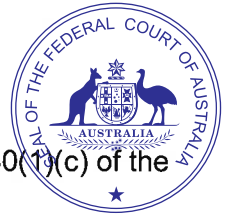
The Applicant claims:

Declarations – failure to make reasonable inquiries

1. Declarations pursuant to s 166 of the *National Consumer Credit Protection Act 2009* (Cth) (the **Act**) and/or s 21 of the *Federal Court of Australia Act 1976* (Cth) (the **Federal Court Act**), that for each of the credit contracts listed in Schedule A as referred to in the Concise Statement, the Respondent has contravened each of the following civil penalty provisions:
 - a. s 130(1)(b) of the Act, because it failed to make reasonable inquiries about the consumer's financial situation before making an assessment in accordance with s 129 of the Act; and/or
 - b. s 128(d) of the Act, because it entered into the credit contract, but did not within 90 days before entering the credit contract make reasonable inquiries about the consumer's financial situation, in accordance with s 130(1)(b) of the Act.

Declarations – failure to take reasonable steps to verify

2. Declarations pursuant to s 166 of the Act and/or s 21 of the Federal Court Act, that for each of the credit contracts listed in Schedule B as referred to in the Concise Statement, the Respondent has contravened each of the following civil penalty provisions:
 - a. s 130(1)(c) of the Act, because it failed to take reasonable steps to verify the consumer's financial situation before making an assessment in accordance with s 129 of the Act; and/or
 - b. s 128(d) of the Act, because it entered into the credit contract, but did not within 90 days before entering the credit contract take reasonable steps to verify the consumer's financial situation, in accordance with s 130(1)(c) of the Act.
3. In the alternative to paragraph 2, declarations pursuant to s 166 of the Act and/or s 21 of the Federal Court Act, that for each of the credit contracts listed in Schedule A, the Respondent has contravened each of the following civil penalty provisions:
 - a. s 130(1)(c) of the Act, because it failed to take reasonable steps to verify the consumer's financial situation before making an assessment in accordance with s 129 of the Act; and/or
 - b. s 128(d) of the Act, because it entered into the credit contract but did not within 90 days before entering the credit contract take reasonable steps to



verify the consumer's financial situation, in accordance with s 130(1)(c) of the Act.

Declarations – failure to assess

4. Declarations pursuant to s 166 of the Act and/or s 21 of the Federal Court Act, that for each credit contract listed in Schedule B, or in the alternative for each credit contract listed in Schedule A, the Respondent has also contravened s 128(c) of the Act, because it entered into the credit contract but did not within 90 days before entering the credit contract make an assessment that was in accordance with s 129 of the Act, in circumstances where it had not assessed the consumer's financial situation as part of an assessment as to whether the credit contract was unsuitable for the consumer.

Declarations – s 47 of the Act

5. Declarations pursuant to s 21 of the Federal Court Act that the Respondent contravened s 47(1)(a) of the Act because from 20 December 2013 to 15 December 2016 it failed to do all things necessary to ensure that the credit activities authorised by its credit licence were engaged in efficiently, honestly and fairly.
6. Declarations pursuant to s 21 of the Federal Court Act that the Respondent contravened s 47(1)(d) of the Act because from 20 December 2013 to 15 December 2016 it failed to comply with the Act on each occasion that it contravened ss 47(1)(a), 128(c), 128(d), 130(1)(b) and 130(1)(c) of the Act.

Penalties

7. Orders pursuant to s 167 of the Act that the Respondent pay to the Commonwealth pecuniary penalties in respect of each contravention of ss 128(c), 128(d), 130(1)(b) and 130(1)(c) of the Act.

Other Orders

8. The Respondent pay the Applicant's costs.
9. Such further or other order as the Court considers appropriate.

Applicant's address

The Applicant's address for service is:

Place: Level 5, 100 Market Street, Sydney, New South Wales 2000

Email: susan.donnelly@asic.gov.au

The Applicant's address is Level 5, 100 Market Street, Sydney, New South Wales 2000



Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 19 December 2019

A handwritten signature in blue ink, appearing to read "Susan Donnelly", written over a horizontal line.

Signed by Susan Donnelly
Lawyer for the Applicant