

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 23/11/2020 3:43:55 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: NSD1088/2020  
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v BHF SOLUTIONS PTY LTD ACN 631 775 123 & ANOR  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 25/11/2020 11:15:40 AM AEDT

Registrar

### Important Information

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

The 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.



## Statement of claim

No. NSD 1088 of 2020

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

### Australian Securities and Investments Commission

Applicant

**BHF Solutions Pty Ltd (ACN 631 775 123)** and another named in the schedule

Respondents

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## A. Parties

1 The Applicant (**ASIC**) is and was at all material times a body corporate:

1.1 established by s 7 of the *Australian Securities Commission Act 1989* (Cth);

1.2 continued in existence by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

1.3 entitled by s 8(1)(d) of the ASIC Act to sue in its corporate name.

2 The First Respondent (**BHFS**):

2.1 is and was at all material times a company incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);

2.2 is and was at all material times able to be sued in its own name;

2.3 does not hold and has never held an Australian Credit Licence as defined in s 35 of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**); and

2.4 provides loans to consumers, who are referred to it by the Second Respondent (**Cigno**).

### Particulars

(a) Private examination of Mr Brenton James Harrison, sole director of BHFS, pursuant to s 253 of the NCCP Act, 23 June 2020 (**Harrison Examination**) at 12:18-20, 20:25-21:15, 23:11-14, 34:3-25.

(b) Loan Management Facilitation Agreement between BHFS and Cigno, 1 July 2019 (**Cigno/BHFS Agreement**), Recitals A, D, cl 2. The Cigno/BHFS Agreement has been amended but the amendments have not been documented: Harrison Examination at 48:6-49:24; Private examination of Mr Mark Swanepoel, sole director of Cigno, pursuant to s 253 of the NCCP Act, 24 June 2020 (**Swanepoel Examination**) at 54:11-25.

(c) The arrangements for the provision of loans is set out at [4]-[32].

3 Cigno:

3.1 is and was at all material times a company incorporated under the Corporations Act;

- 3.2 is and was at all material times able to be sued in its own name;
- 3.3 does not hold and has never held an Australian credit licence as defined in s 35 of the NCCP Act (**Australian Credit Licence**); and
- 3.4 provides services to consumers to whom BHFS provides loans.

### **Particulars**

(a) Cigno markets the loans to consumers and assesses applications for loans.

(b) The services that Cigno provides are:

- i. receiving and responding to all enquiries by consumers, including enquiries as to the repayment schedule and requests for additional drawdowns;
- ii. managing and collecting payments by consumers, including by arranging for consumers' accounts to be directly debited by third party providers and paid to Cigno, entering into agreements with third party providers, monitoring direct debit payments made by third party providers to it and taking steps to recover debts from consumers who fail to make repayments; and
- iii. sending account statements, reminders and other communications to consumers in respect of their loans.

### **(Cigno Services)**

(c) The Cigno Services are recognised in agreements between Cigno and consumers entitled "Services Agreement", which have been used by Cigno since September 2019 and state, amongst other things, that:

- i. "The Client has chosen to engage the Service Provider [Cigno] to assist, rather than dealing directly with a lender or provider. The Service Provider will facilitate in all enquiries, management, payments and all other services related to the loan or financial product".
- ii. Cigno "will facilitate all payments due to the lender [BHFS] as well as [Cigno] in accordance with both agreements".

iii. Cigno “will retain a copy of the loan contract” that the consumer “enter[s] into with the lender [BHFS] ... to enable it to calculate and collect repayments from [the consumer] to forward to the lender [BHFS]”.

(d) Cigno/BHFS Agreement, Recitals E, H, cl 2.

(e) Swanepoel Examination at 20:3-8, 20:17-20, 74:3-27.

(f) The arrangements for the provision of loans is set out at [4]-[32].

## **B. New Model**

4 Since on or around 12 September 2019, Cigno and BHFS have conducted their businesses in accordance with the model of lending described below at [5]-[32] (**New Model**).

### ***Application process***

5 To obtain a loan from BHFS, a consumer completes an online application on the Cigno website (**Online Application**).

### **Particulars**

(a) For new clients of Cigno, the Online Application is available for completion at [www.cignoloans.com.au](http://www.cignoloans.com.au) (**Cigno Website**).

(b) For existing clients of Cigno, the Online Application is available through the Cigno member portal (**Cigno Member Portal**), which is also accessible at the Cigno Website.

(c) Screenshots of the Online Application taken on 27 July 2020 (CIB.0003.0002.5774) (**Online Application Screenshots**).

(d) In the Online Application, the consumer identifies, amongst other things, the amount that he or she would like to borrow and verifies their bank details.

### ***Approval and acceptance process***

6 After an Online Application is completed, if Cigno assess the consumer to be eligible for a loan, it passes the application to BHFS.

### Particulars

- (a) In assessing the Online Application, Cigno determines the amount that the consumer can repay, comprised of the loan amount and fees payable to BHFS and Cigno: Swanepoel Examination at 61:28-62:22, 67:16-69:3.
- (b) Harrison Examination at 38:18-39:6.

7 After receiving the Online Application from Cigno, BHFS conducts additional checks to determine whether money should be loaned to the consumer.

### Particulars

- (a) The additional checks conducted by BHFS are set out in the document called “Assessment Criteria – Helper Company Assisted Application” (DW5.0014.0001.0007 at .0008) (**BHFS Assessment Criteria**): Harrison Examination at 69:6-20, 94:22-95:4.
- (b) One of the BHFS Assessment Criteria is ensuring that the repayments, inclusive of payments due to BHFS and to Cigno, do not exceed 20% of the consumer’s income for the relevant payment cycle.
- (c) Harrison Examination at 39:3-9, 71:9-27.

8 If the BHFS Assessment Criteria are met, BHFS approves the loan requested in the Online Application.

9 After a loan is approved, Cigno sends the consumer a text message (**Approval Text**) and / or email (**Approval Email**) that:

- 9.1 confirms that the consumer’s Online Application has been approved; and
- 9.2 provides a link for the consumer to finalise the loan (**Acceptance Link**).

### Particulars

- (a) An example of the Approval Text is the text message from Cigno to Ms Morrow sent on 18 October 2019 at 3:35pm (CIB.1010.0001.0334\_E) (**October 2019 Approval Text**).
- (b) An example of the Approval Email is the email from Cigno to Ms Morrow sent on 18 October 2019 at 3:35pm (CIB.1010.0001.0334\_E) (**October 2019 Approval Email**).

(c) The Approval Email states: “To complete your application, please follow the link provided below to find out your loan limit, read and accept your agreements ...”

10 When a consumer clicks on the Acceptance Link, the consumer is taken to a webpage on the Cigno Website where the consumer:

10.1 confirms the bank account into which the loan should be deposited;

10.2 selects a payment schedule; and

10.3 accepts the terms and conditions of the loan.

#### Particulars

(a) The terms and conditions of the loan are accepted by clicking a button with the word “accept”.

11 The terms and conditions of the loan referred to at [10.3] above are:

11.1 an agreement between BHFS and the consumer entitled “Loan Agreement: Continuing Credit Contract” (**Loan Agreement**); and

#### Particulars

(a) An example of the Loan Agreement is the Loan Agreement between BHFS and Leah Morrow dated 18 October 2019 (CIB.1010.0001.0156) (**Morrow Loan Agreement**)).

11.2 an agreement between Cigno and the consumer entitled “Services Agreement” (**Services Agreement**).

#### Particulars

(a) An example of the Services Agreement is the Services Agreement between Cigno and Leah Morrow dated 18 October 2019 (CIB.1010.0001.0158) (**Morrow Services Agreement**).

12 Cigno generates the Loan Agreement and the Services Agreement.

13 After the consumer accepts the Loan Agreement and the Services Agreement, Cigno sends the consumer an email (**Welcome Email**) that:

13.1 confirms that the consumer’s loan has been finalised;

- 13.2 states that the consumer has been sent the Loan Agreement and the Services Agreement where the consumer will “find everything you need to know about repayment dates, amounts, deviations and additional costs in the event of a default”;
- 13.3 attaches a copy of the Loan Agreement and the Services Agreement;
- 13.4 notifies the consumer that he or she can access the Cigno Member Portal “to check on your balance ... upcoming payment dates and amounts and request further draw downs ... [and] request to change payments”; and
- 13.5 sets out the consumer’s payment schedule.

#### **Particulars**

- (a) An example of the Welcome Email is the email from Cigno to Ms Morrow sent on 18 October 2019 at 3:36pm (CIB.1010.0001.0336\_E) (**October 2019 Welcome Email**), attaching the Morrow Loan Agreement and the Morrow Services Agreement.

#### ***Loan Agreement***

- 14 The Loan Agreement provides, amongst other things, that:
  - 14.1 BHFS will extend a line of credit to the consumer up to a specified amount (**Credit Limit**);

#### **Particulars**

- (a) Loan Agreement, cl 1.
- 14.2 BHFS will charge the consumer \$15 for each request for an advance of funds, up to a maximum of \$120 in any 12 month period (**BHFS Fee**);

#### **Particulars**

- (a) Loan Agreement, cl 3.
- 14.3 the consumer promises to repay money advanced to the consumer by BHFS and any fees under the Loan Agreement;

#### **Particulars**

- (a) Loan Agreement, cl 1.



14.4 the Loan Agreement is a continuing credit contract;

**Particulars**

(a) Loan Agreement, cl 5.

14.5 the Loan Amount is the sum of all moneys advanced to the consumer under the Loan Agreement and any fees payable under the Loan Agreement, less any payments received from the consumer under the Loan Agreement (**Loan Amount**);

**Particulars**

(a) Loan Agreement, cl 2.

14.6 if the Loan Amount, excluding fees incurred, does not exceed the Credit Limit, the consumer may request a further advance of money from BHFS up to the difference between the Credit Limit and the Loan Amount;

**Particulars**

(a) Loan Agreement, cl 5.

14.7 the consumer must pay certain amounts (**BHFS Repayment Amount**) at specified dates (**BHFS Repayment Schedule**);

**Particulars**

(a) Loan Agreement, cl 7.

14.8 if there are further advances of funds, the BHFS Repayment Schedule will change; and

**Particulars**

(a) Loan Agreement, cl 7.

14.9 the Loan Agreement continues in effect until the Loan Amount is zero for a period of 12 consecutive months or the consumer repays the Loan Amount and notifies BHFS that he or she wishes to terminate the Loan Agreement, whichever is earlier.

**Particulars**

(a) Loan Agreement, cl 9.

- 15 In the Loan Agreement, the BHFS Repayment Amounts total the sum of the Credit Limit plus the BHFS Fee.

**Particulars**

- (a) Loan Agreement, cl 8.

**Services Agreement**

- 16 The Services Agreement provides, amongst other things, that in return for the Cigno Services, Cigno will charge the consumer fees, including:

- 16.1 a Financial Supply Fee;

**Particulars**

- (a) The Financial Supply Fee is "*Charged Once upon Acceptance of offer*" and is calculated in part by reference to a percentage of the "*Principal*" (that is, the Credit Limit). It is a base amount of \$13 plus a sliding percentage of the Credit Limit, determined by reference to the BHFS Repayment Schedule: Cigno Fee Structure provided by Cigno to ASIC on 20 December 2019 (DW5.0012.0001.1198) (**Cigno Fee Structure Document**).

- 16.2 an Account Keeping Fee; and

**Particulars**

- (a) The Account Keeping Fee is \$5.95 per week: Cigno Fee Structure Document.

- 16.3 a Change of Payment Schedule Fee, which is charged if the consumer wishes to change his or her payment obligations under the Loan Agreement and under the Services Agreement.

**Particulars**

- (a) The Change of Payment Schedule Fee is \$22. The Services Agreement states: "In the event, and only on request, you [the consumer] wish to change your payment obligations under the loan arranged for you, a Change of Payment fee will be added".

- 17 The Services Agreement also provides for a Default Fee, which is charged as a result of a default event, disbursal, administration, communication and reconciliation of a consumer's account.

**Particulars**

(a) The Default Fee is \$79.

(b) A default event occurs when a consumer is unable to meet his or her obligations under the Services Agreement.

18 The Services Agreement provides, amongst other things, that:

18.1 Cigno will facilitate all payments due to BHFS and Cigno under the Loan Agreement and the Services Agreement;

18.2 Cigno will collect payments from the consumer by direct debit and allocate those payments between the amount owing to BHFS and the amount owing to Cigno under the Loan Agreement and the Services Agreement;

18.3 the consumer must pay a certain amount (**Cigno Repayment Amount**) at specified dates (**Cigno Repayment Schedule**); and

**Particulars**

(a) Services Agreement, clause entitled "Payment Schedule".

18.4 where there is a default event, Cigno will negotiate a new arrangement for repayments with BHFS with which the consumer will need to comply; and

**Particulars**

(a) Services Agreement, clause entitled "A Default Event".

18.5 the consumer authorises direct debit providers to receive, account and remit payments from the consumer's bank account for both Cigno and BHFS.

**Particulars**

(a) Services Agreement, clause entitled "Direct Debit and Other Payment Method Agreement".

19 In the Services Agreement, the Cigno Repayment Amounts total the sum of the Credit Limit, the BHFS Fee, the Financial Supply Fee plus the Total Account Keeping Fee.

***Transfer of funds to consumers***

- 20 After the consumer accepts the Loan Agreement and the Services Agreement in accordance with the process described above in [9]-[10], BHFS transfers the amount of the Credit Limit to the consumer (**Transferred Amount**).

***Repayment***

- 21 Within eight weeks of the date of transfer of the Transferred Amount, Cigno transfers the Transferred Amount plus the BHFS Fee to BHFS, regardless of whether the consumer has met the Cigno Repayment Amounts in the Cigno Repayment Schedule.

**Particulars**

- (a) Cigno/BHFS Agreement, cl2.6.
- (b) Harrison Examination at 60:24-61:8, 61:26-62:16, 63:18-25, 65:3-66:25.

- 22 Over the duration of the Services Agreement and the Loan Agreement:

- 22.1 Cigno undertakes the Cigno Services; and

**Particulars**

- (a) See above particulars (b)-(c) to [3.4] and [18].

- 22.2 in practice, BHFS does not communicate with the consumer.

**Particulars**

- (a) Harrison Examination at 73:18-25.
- (b) Swanepoel Examination at 77:20-78:2.

***Further advances***

- 23 A consumer can request a further advance of funds through the Cigno Member Portal (**Advance Request**).

**Particulars**

- (a) Harrison Examination at 76:22-77:4.
- (b) Swanepoel Examination at 112:7-26.

- 24 After an Advance Request has been made:

- 24.1 Cigno communicates the request to BHFS; and
- 24.2 BHFS decides whether the advance is available.

### **Particulars**

- (a) Harrison Examination at 76:2-21.
  - (b) Swanepoel Examination at 78:7-19, 112:7-23.
- 25 After an Advance Request is approved, Cigno sends an email to the consumer (**Drawdown Approval Email**) that:
- 25.1 confirms that the Advance Request has been approved;
  - 25.2 states that Cigno has sent the consumer their “Cigno Service Agreement as well as the amended Lender Agreement for your draw down where you’ll find everything you need to know about new repayment dates, amounts, deviations and additional costs in the event of a default”;
  - 25.3 attaches a copy of a Drawdown Summary on a BHFS letterhead (**Drawdown Summary**);
  - 25.4 attaches a copy of a Drawdown Request Summary on a Cigno letterhead (**Drawdown Request Summary**);
  - 25.5 notifies the consumer that they can access the Cigno Member Portal “to check on your balance ... upcoming payment dates and amounts ... [and] request to change payments”; and
  - 25.6 sets out the consumer’s payment schedule.

### **Particulars**

Examples of the Drawdown Approval Email are:

- (a) the email from Cigno to Ms Morrow sent on 2 December 2019 at 11:48am (CIB.1010.0001.0333\_E) (**December 2019 Drawdown Approval Email**), attaching a Drawdown Summary dated 2 December 2019 (CIB.1010.0001.0160) (**First Morrow Drawdown Summary**) and a Drawdown Request Summary dated 2 December 2019 (CIB.1010.0001.0161) (**First Morrow Drawdown Request Summary**); and

(b) the email from Cigno to Ms Morrow sent on 11 January 2020 at 11:14am (CIB.1010.0001.0327\_E) (**January 2020 Drawdown Approval Email**), attaching a Drawdown Summary dated 11 January 2020 (CIB.1010.0001.0162) (**Second Morrow Drawdown Summary**) and a Drawdown Request Summary dated 11 January 2020 (CIB.1010.0001.0163) (**Second Morrow Drawdown Request Summary**).

- 26 The Drawdown Summary sets out a new BHFS Repayment Amount (**New BHFS Repayment Amount**) and a new BHFS Repayment Schedule.
- 27 In the Drawdown Summary, the sum of the New BHFS Repayment Amount comprises the outstanding Transferred Amount (if any), the further advance (**Drawdown Amount**) and the BHFS Fee.
- 28 The Drawdown Request Summary sets out:
- 28.1 the Drawdown Amount;
  - 28.2 the Financial Supply Fee;
  - 28.3 the Total Account Keeping Fee for the Drawdown Amount;
  - 28.4 the Change of Payment Schedule Fee; and
  - 28.5 a new Repayment Amount (**New Cigno Repayment Amount**) and a new Repayment Schedule (**New Cigno Repayment Schedule**).
- 29 In the Drawdown Request Summary, the sum of the New Cigno Repayment Amount comprises the outstanding Transferred Amount (if any), the Drawdown Amount, the BHFS Fee, the Financial Supply Fee and the Total Account Keeping Fee.
- 30 After an Advance Request is approved, BHFS transfers the Drawdown Amount to the consumer.
- 31 Within eight weeks of the date of transfer of the Drawdown Amount, Cigno transfers the Drawdown Amount plus the BHFS Fee to BHFS, regardless of whether the consumer has met the New Cigno Repayment Amounts in the New Repayment Schedule.

### **Particulars**

(a) The particulars to [21] above are repeated.

- 32 During the course of repayment of the Drawdown Amount by the consumer:

32.1 Cigno undertakes the Cigno Services; and

32.2 in practice, BHFS does not communicate with the consumer.

**Particulars**

(a) The particulars to [22] above are repeated.

**C. Leah Morrow**

33 Leah Morrow is a consumer who has borrowed money under the New Model.

***October 2019***

34 On or around 18 October 2019, Ms Morrow requested a loan of \$200 from Cigno (**First Morrow Application**).

**Particulars**

(a) On or around 18 October 2019, Ms Morrow completed an Online Application by accessing the Cigno Member Portal.

35 The reason that Ms Morrow made the First Morrow Application was to pay personal bills.

36 On or around 18 October 2019, the loan of \$200 to Ms Morrow was approved (**Morrow Loan**).

**Particulars**

(a) October 2019 Approval Text; October 2019 Approval Email.

37 On or around 18 October 2019, Ms Morrow accepted the terms and conditions of the Morrow Loan.

**Particulars**

(a) See [10] above.

(b) The terms and conditions of the Morrow Loan are those in the Morrow Loan Agreement and the Morrow Services Agreement.

- 38 On or around 18 October 2019, Cigno sent a Welcome Email to Ms Morrow, which attached the Morrow Loan Agreement and the Morrow Services Agreement.

**Particulars**

- (a) October 2019 Welcome Email.

- 39 The terms of the Morrow Loan Agreement include those set out above in [14]-[15].

**Particulars**

- (a) The Credit Limit for Ms Morrow was \$200: Morrow Loan Agreement, cl 1.  
(b) The BHFS Fee to be charged to Ms Morrow was \$15: Morrow Loan Agreement, cl 3.

- 40 The terms of the Morrow Services Agreement include those set out above in [16]-[19].

**Particulars**

- (a) The Financial Supply Fee to be charged to Ms Morrow was \$133: Morrow Services Agreement, "Services and Fees".  
(b) The Account Keeping Fee to be charged to Ms Morrow was \$5.95 per week. As the Cigno Repayment Amount was to be paid over three fortnights, the total Account Keeping Fee was \$29.75: Morrow Services Agreement, "Services and Fees".  
(c) The Change of Payment Schedule Fee that would be charged to Ms Morrow in the event of a change to the Payment Schedule was \$22: Morrow Services Agreement, "Additional Costs".  
(d) The Default Fee that would be charged to Ms Morrow in the event of a default event was \$79.

- 41 On or around 18 October 2019, BHFS credited \$200 to Ms Morrow's bank account.

**Particulars**

- (a) An account ending in #446 with the Commonwealth Bank of Australia (**Morrow Account**) was credited with \$200.



- 42 From on or around 28 October 2019 until on or around 25 November 2019, by three repayments, a total of \$377.75 was debited from the Morrow Account in repayment of the Morrow Loan.

**Particulars**

- (a) The money was automatically debited by Split Payments Pty Ltd (**Split**), a direct debit provider used by Cigno, for Cigno.

- 43 From on or around 28 October 2019 until on or around 25 November 2019, the total of \$377.75 debited from the Morrow Account included payment by Ms Morrow of \$177.75 in charges for the provision of the Morrow Loan.

**Particulars**

- (a) The table below shows how the money debited from the Morrow Account was allocated:

Transferred Amount	\$200
BHFS Fee	\$15
Financial Supply Fee	\$133
Total Account Keeping Fee	\$29.75
Total charged	\$377.75
Total fees charged	\$177.75

***December 2019***

- 44 On or around 2 December 2019, Ms Morrow requested additional funds of \$300 from Cigno (**Second Morrow Application**).

**Particulars**

- (a) On or around 2 December 2019, Ms Morrow made an Advance Request.

- 45 The reason that Ms Morrow made the Second Morrow Application was to pay personal bills and Christmas expenses.

46 On or around 2 December 2019, the loan of \$300 to Ms Morrow was approved (**First Morrow Drawdown**).

**Particulars**

(a) Text message from Cigno to Ms Morrow sent on 2 December 2019 at 11:48am (CIB.1010.0001.0333\_E).

(b) December 2019 Drawdown Approval Email.

47 On or around 2 December 2019, Cigno sent a Drawdown Approval Email to Ms Morrow, which attached a Drawdown Summary and a Drawdown Request Summary.

**Particulars**

(a) December 2019 Drawdown Approval Email, attaching the First Morrow Drawdown Summary and the First Morrow Drawdown Request Summary.

48 The terms of the First Morrow Drawdown Summary include those set out above in [26]-[27].

**Particulars**

(a) The sum of the New BHFS Repayment Amount was \$315.

49 The terms of the First Morrow Drawdown Request Summary include those set out above in [28]-[29].

**Particulars**

(a) The Drawdown Amount for Ms Morrow was \$300.

(b) The Financial Supply Fee to be charged to Ms Morrow was \$193.

(c) The Account Keeping Fee to be charged to Ms Morrow was \$5.95 per week. As the New Cigno Repayment Amount was to be paid over three fortnights, the total Account Keeping Fee was \$29.75.

(d) The Change of Payment Schedule Fee that would be charged to Ms Morrow in the event of a change to the New Repayment Schedule was \$22.

50 On or around 2 December 2019, BHFS credited \$300 to the Morrow Account.

- 51 From on or around 9 December 2019 to on or around 6 January 2020, by three repayments, a total of \$531.80 was debited from the Morrow Account in repayment of the First Morrow Drawdown.

**Particulars**

- (a) The money was automatically debited by Split for Cigno.

- 52 From on or around 9 December 2019 to on or around 6 January 2020, the total of \$531.80 debited from the Morrow Account included payment by Ms Morrow of \$231.80 in charges for the provision of the First Morrow Drawdown.

**Particulars**

- (a) The table below shows how the money debited from the Morrow Account was allocated:

Drawdown Amount	\$300
BHFS Fee	\$15
Financial Supply Fee	\$193
Total Account Keeping Fee	\$23.80
Total charged	\$531.80
Total fees charged	\$231.80

***January 2020***

- 53 On or around 11 January 2020, Ms Morrow requested additional funds of \$300 from Cigno (**Third Morrow Application**).

**Particulars**

- (a) On or around 11 January 2020, Ms Morrow made an Advance Request.

- 54 The reason that Ms Morrow made the Third Morrow Application was to pay personal bills.

55 On or around 11 January 2020, the loan of \$300 to Ms Morrow was approved (**Second Morrow Drawdown**).

**Particulars**

(a) January 2020 Drawdown Approval Email.

56 On or around 11 January 2020, Cigno sent a Drawdown Approval Email to Ms Morrow, which attached a Drawdown Summary and a Drawdown Request Summary.

**Particulars**

(a) January 2020 Drawdown Approval Email, attaching the Second Morrow Drawdown Summary and Second Morrow Drawdown Request Summary.

57 The terms of the Second Morrow Drawdown Summary include those set out above in [26]-[27].

**Particulars**

(a) The sum of the New BHFS Repayment Amount was \$315.

58 The terms of the Second Morrow Drawdown Request Summary include those set out above in [28]-[29].

**Particulars**

(a) The Drawdown Amount for Ms Morrow was \$300.

(b) The Financial Supply Fee to be charged to Ms Morrow was \$193.

(c) The Account Keeping Fee to be charged to Ms Morrow was \$5.95 per week. As the New Cigno Repayment Amount was to be paid over three fortnights, the total Account Keeping Fee was \$29.75.

(d) The Change of Payment Schedule Fee that would be charged to Ms Morrow in the event of a change to the New Repayment Schedule was \$22.

59 On or around 11 January 2020, BHFS credited \$300 to the Morrow Account.

60 From on or around 20 January 2020 until on or around 14 April 2020, taking into account debits from and credits to the Morrow Account, a total of \$771.30 was paid in repayment of the Second Morrow Drawdown.

#### Particulars

- (a) From on or around 20 January 2020 until on or around 14 April 2020, \$750.85 was automatically debited from the Morrow Account by Split for Cigno.
- (b) On or around 14 April 2020, Ms Morrow manually transferred \$157.74 from the Morrow Account to Cigno.
- (c) On or around 30 April 2020, Cigno credited \$137.29 to the Morrow Account.
- (d) Cigno Detailed Account Statement of Ms Morrow for the period 11 January 2020 to 20 April 2020 (CIB.1010.0001.0181) (**Detailed Account Statement for Second Morrow Drawdown**).

61 On or around 5 February 2020 and on or around 4 March 2020, Cigno sent Ms Morrow notices of default.

#### Particulars

- (a) Text message from Cigno to Ms Morrow sent on 5 February 2020 at 1:20pm (CIB.1010.0001.0324\_E).
- (b) Email from Cigno to Ms Morrow sent on 5 February 2020 at 1:20pm (CIB.1010.0001.0324\_E) attaching Default Notice dated 5 February 2020 (CIB.1010.0001.0164).
- (c) Text message from Cigno to Ms Morrow sent on 4 March 2020 at 1:33pm (CIB.1010.0001.0322\_E).
- (d) Email from Cigno to Ms Morrow sent on 4 March 2020 at 1:33pm (CIB.1010.0001.0322\_E), attaching Default Notice dated 4 March 2020 (CIB.1010.0001.0170).

62 From on or around 20 January 2020 to on or around 14 April 2020, the total of \$771.30 paid by Ms Morrow included payment by Ms Morrow of \$471.30 in charges for the provision of the Second Morrow Drawdown.

### Particulars

(a) Detailed Account Statement for Second Morrow Drawdown.

(b) The table below shows how the money debited from the Morrow Account was allocated:

Drawdown Amount	\$300
BHFS Fee	\$15
Financial Supply Fee	\$193
Total Account Keeping Fee	\$83.30
Default Fee	\$158
Change of Payment Schedule Fee	\$22
Total charged	\$771.30
Total fees charged	\$471.30

#### D. Credit contract

##### *Meaning of credit contract*

63 “Credit” in the NCCP Act has the same meaning as “credit” in the National Credit Code in Schedule 1 to the NCCP Act (**Code**).

### Particulars

(a) NCCP Act s 5(1) (definition of “credit”).

(b) Code s 3(1) (meaning of credit and amount of credit)

64 For the purposes of the Code, “credit” is provided if under a contract:

64.1 payment of a debt owed by one person (the debtor) to another person (the credit provider) is deferred; or

64.2 one person (the debtor) incurs a deferred debt to another (the credit provider).

**Particulars**

(a) Code s 3(1).

65 In the Code, a “contract” includes a series or combination of contracts, or contracts and arrangements.

**Particulars**

(a) Code s 204(1) (definition of “contract”).

66 “Credit contract” in the NCCP Act has the same meaning as in s 4 of the Code.

**Particulars**

(a) NCCP Act s 5(1) (definition of “credit contract”).

(b) Code s 4.

67 For the purposes of the Code, a “credit contract” is a contract under which credit is or may be provided, being the provision of credit to which the Code applies.

**Particulars**

(a) Code ss 4, 5.

68 By reason of [63]-[67] above, in the NCCP Act and the Code, a “credit contract” includes a series or combination of contracts, or contracts and arrangements, provided that under the series or combination considered as a whole, credit is or may be provided, being the provision of credit to which the Code applies.

69 By reason of [65]-[68] above, where a person provides credit for the purposes of s 3(1) of the Code under a series or combination of contracts, or contracts and arrangements, the person provides credit “under a credit contract”, and is a “credit provider”, without needing to be a party to each and every contract or arrangement in the series or combination.

***Loan Agreement together with any subsequent Drawdown Summary is a “credit contract”***

70 Under a Loan Agreement together with any subsequent Drawdown Summary:

70.1 the Transferred Amount and any subsequent Drawdown Amount (**BHFS Credit**) are provided to a consumer by BHFS;

70.2 the BHFS Credit is a debt owed by the consumer to BHFS and the consumer is liable to pay the BHFS Credit to BHFS; and

**Particulars**

(a) See above at [14], [20], [26], [30], [39], [41]-[42], [48], [50]-[51], [57], [59]-[60].

(b) Code s 3(1).

70.3 the payment by the consumer of the BHFS Credit owed to BHFS is deferred.

71 By reason of [70], a consumer to whom the BHFS Credit is provided is a “debtor” for the purpose of the NCCP Act and the Code.

**Particulars**

(a) NCCP Act s 5(1) (definition of “debtor”); Code, ss 3(1), 204(1) (definition of “debtor”).

72 The consumers to whom the BHFS Credit is provided are natural persons.

**Particulars**

(a) Code s 5(1)(a).

73 By reason of [70], BHFS is a “credit provider” for the purpose of the NCCP Act and the Code.

**Particulars**

(a) NCCP Act s 5(1) (definition of “credit provider”); Code ss 3(1), 204(1) (definition of “credit provider”).

74 BHFS provides the BHFS Credit in the course of a business of providing credit carried on in Australia.

**Particulars**

(a) Code s 5(1)(d).

(b) See above at [2].



- 75 The BHFS Credit is provided, or intended to be provided, wholly or predominantly for personal, domestic or household purposes.

**Particulars**

- (a) Code ss 5(1)(b)(i), 5(4).
- (b) See above at [35], [45], [54].
- (c) The BHFS Credit is usually less than \$1,000: Online Application Screenshots.
- (d) The BHFS Credit never exceeds \$2,000: Cigno/BHFS Agreement, cl 2.4.

- 76 The BHFS Fee is a charge that is or may be made for providing the BHFS Credit.

**Particulars**

- (a) Code s 5(1)(c).
- (b) See above at [14.2], [26]-[27], [39], [42], [48], [51], [57] and [60].

- 77 The Financial Supply Fee is a charge that is or may be made for providing the BHFS Credit.

**Particulars**

- (a) A charge that is or may be made for providing the credit, within the meaning of s 5(1)(c) of the Code, is not required to be imposed by or pursuant to a term of the credit contract itself, but may be made on account of the provisions of another contract or arrangement, including a contract or arrangement with a third party, or on account of an entitlement of a third party, provided that the charge is made for, or in exchange for, providing the credit, and the charge is not a government fee, charge or duty of any kind within the meaning of s 6(19) of the Code.
- (b) The Services Agreement is conditioned upon the existence of the Loan Agreement and the provision of the BHFS Credit under the Loan Agreement together with any subsequent Drawdown Summary.
- (c) The Financial Supply Fee is for, or in exchange for, the provision or supply of the BHFS Credit, as arranged by Cigno

(d) But for the provision of the BHFS Credit, Cigno could neither offer the Cigno Services nor charge the Financial Supply Fee.

(e) See above at [16.1], [28.2], [40], [42], [49], [51], [58] and [60].

78 The Account Keeping Fee is a charge that is or may be made for providing the BHFS Credit.

**Particulars**

(a) Particulars (a)-(b) to [77] are repeated.

(b) The Account Keeping Fee is for an activity required to facilitate the payment by the consumer, as debtor, of the debt (the BHFS Credit) to BHFS as credit provider, whilst the debt, or a part thereof, is deferred and so is outstanding.

(c) But for the provision of the BHFS Credit, Cigno could neither offer the Cigno Services nor charge the Account Keeping Fee.

(d) See above at [16.2], [28.3], [40], [42], [49], [51], [58] and [60].

79 The Change of Payment Schedule Fee is a charge that is or may be made for providing the BHFS Credit.

**Particulars**

(a) Particulars (a)-(b) to [77] are repeated.

(b) The Change of Payment Schedule Fee is for an activity required to facilitate the payment by the consumer, as debtor, of the debt (the BHFS Credit) to BHFS as credit provider, in a manner different from the BHFS Repayment Schedule in the Loan Agreement or the Cigno Repayment Schedule in the Services Agreement, in order to defer the payment of the debt or part of the debt, or a drawdown made following an Advance Request, for a longer period.

(c) But for the provision of the BHFS Credit, Cigno could neither offer the Cigno Services nor charge the Change of Payment Schedule Fee.

(d) See above at [16.3], [28.4], [40], [42], [49], [51], [58] and [60].

80 The Default Fee is a charge that is or may be made for providing the BHFS Credit.

**Particulars**

- (a) Particulars (a)-(b) to [77] are repeated.
- (b) The Default Fee is charged when the consumer fails to make a repayment under the Loan Agreement together with any subsequent Drawdown Summary, and/or fails to meet an obligation (including failing to make a repayment on time or failing to pay a charge on time) under the Services Agreement and any subsequent Drawdown Request Summary.
- (c) But for the provision of the BHFS Credit, Cigno could neither offer the Cigno Services nor charge the Default Fee.
- (d) See above at [17], [18.4], [40], [42], [51] and [60].

81 By reason of [70]-[80], the BHFS Credit is the provision of credit to which the Code applies.

**Particulars**

- (a) Code s 5.

82 By reason of [67]-[68], [70] and [81], the Loan Agreement together with any subsequent Drawdown Summary are a “credit contract” for the purposes of the Code.

**Particulars**

- (a) The BHFS Credit, being credit to which the Code applies, is provided under the Loan Agreement, together with any subsequent Drawdown Summary.
- (b) Code s 4.

***Alternative argument: Composite Credit Contract***

83 The Online Application, the Approval Text, the Approval Email, the Welcome Email and, if they exist, the Advance Request and the Drawdown Approval Email, are together preliminary arrangements between Cigno and a consumer undertaken for the purpose of providing the BHFS Credit to the consumer (**Preliminary Arrangements**).

**Particulars**

- (a) See above at [5]-[10], [13], [23]-[25], [34], [36]-[38], [44], [46]-[47], [53], [55]-[56].

84 Paragraph [70] above is repeated.

85 Under the Services Agreement together with any subsequent Drawdown Request Summary, Cigno provides the Cigno Services to the consumer for the provision of the BHFS Credit to the consumer.

#### Particulars

(a) See above at [16]-[18], [20], [28],[30], [40]-[42], [49]-[51], [58]-[60].

86 The Cigno/BHFS Agreement, as amended by BHFS and Cigno, governs the arrangements between BHFS and Cigno for the provision of the BHFS Credit to consumers.

87 Paragraph [71]-[81] above is repeated.

88 Further and in the alternative to [82], by reason of [68]-[69] and [83]-[87], the Preliminary Arrangements, the Loan Agreement together with any subsequent Drawdown Summary, the Services Agreement together with any subsequent Drawdown Request Summary, and the Cigno/BHFS Agreement, are a series or combination of contracts, or a series or combination of contracts and arrangements, under which the BHFS Credit, being credit to which the Code applies, is or may be provided (**Composite Credit Contract**).

89 Further and in the alternative to [82], by reason of [88], the Composite Credit Contract is a “credit contract” for the purposes of the Code.

#### Particulars

(a) Code ss 4, 204(1) (definition of “contract”).

***The Loan Agreement together with any subsequent Drawdown Summary do not enjoy an exception pursuant to s 6(5) (first sentence) of the Code***

90 Under the Code, a “continuing credit contract” is a credit contract under which multiple advances of credit are contemplated, and under which the amount of available credit ordinarily increases as the amount of credit is reduced.

#### Particulars

(a) Code s 204(1) (definition of “continuing credit contract”).

91 The Loan Agreement together with any subsequent Drawdown Summary is a “continuing credit contract” under the Code.

92 Paragraph [77] above is repeated.

93 The Financial Supply Fee is a periodic or fixed charge that varies according to the amount of BHFS Credit provided.

#### Particulars

(a) Particulars to [16.1] above are repeated.

94 By reason of [93], the exception to the application of the Code in s 6(5) is not engaged in respect of the provision of the BHFS Credit under the Loan Agreement together with any Drawdown Summary.

***The Loan Agreement together with any subsequent Drawdown Summary is a provision of credit to which the Code applies, by force of s 6(5) (second sentence) of the Code***

95 Further to [94], the Code applies to the provision of the BHFS Credit under the Loan Agreement together with any Drawdown Summary, because the charges that are or may be made for the provision of the BHFS Credit exceed the maximum prescribed charge under item 1(a) of reg 51 of the *National Consumer Credit Protection Regulations 2010* (Cth) (**NCCP Regulations**).

#### Particulars

(a) The charges that are or may be made for the provision of the BHFS Credit are the BHFS Fee, the Financial Supply Fee, the Account Keeping Fee, the Change of Payment Schedule Fee and the Default Fee: see above at [76]-[80].

(b) The BHFS Fee, the Account Keeping Fee, the Change of Payment Schedule Fee and the Default Fee are periodic or other fixed charges that do not vary according to the amount of credit provided: see above at [14.2], [16.2], [16.3], [17].

(c) In relation to a continuing credit contract, the maximum prescribed charge under item 1(a) of reg 51 of the NCCP Regulations is \$200 for the period of 12 months commencing when the debtor enters into the continuing credit contract.

(d) From on or around 18 October 2019 to on or around 14 April 2020, the charges in relation to the Morrow Loan together with the First Morrow

Drawdown and the Second Morrow Drawdown, totalled \$880.85: see above [43], [52], [62].

(e) In the alternative to (d) above, from on or around 18 October 2019 to on or around 14 April 2020, the charges in relation to the Morrow Loan together with the First Morrow Drawdown and the Second Morrow Drawdown, excluding the Financial Supply Fee, totalled \$361.85: see above [43], [52], [62].

96 By reason of [95], by force of s 6(5) of the Code, the Code applies to the provision of the BHFS Credit under the Loan Agreement together with any Drawdown Summary.

***Alternative argument: the Composite Credit Contract does not fall within s 6(5) of the Code***

97 Further or in the alternative to [91], the Composite Credit Contract is a “continuing credit contract” under the Code.

98 Paragraph [77] above is repeated.

99 Paragraph [93] above is repeated.

100 Further or in the alternative to [94], by reason of [99], the exception to the application of the Code in s 6(5) is not engaged in respect of the provision of the BHFS Credit under the Composite Contract.

101 Paragraph [95] above is repeated.

102 Further or in the alternative to [96], by reason of [101], by force of s 6(5) of the Code, the Code applies to the provision of the BHFS Credit under the Composite Contract.

**E. Credit activity undertaken by BHFS**

103 A person must not engage in a credit activity if the person does not hold an Australian Credit Licence authorising the person to engage in the credit activity.

**Particulars**

(a) NCCP Act s 29(1).

***Credit provider under a credit contract***

- 104 A person engages in a credit activity if the person is a credit provider under a credit contract.

**Particulars**

- (a) NCCP Act s 6(1) (item 1(a)).
- (b) NCCP Act s 5(1) (definition of “credit provider”); Code ss 3(1), 204(1) (definition of “credit provider”).
- (c) As to the definition of “credit contract”, see above at [63]-[68].

- 105 By reason of [70] and [73], BHFS is a credit provider under a credit contract.

**Particulars**

- (a) BHFS provides the BHFS Credit under the Loan Agreement together with any Drawdown Summary.
- (b) Alternatively, BHFS provides the BHFS Credit under the Composite Credit Contract.

- 106 BHFS engaged in a credit activity of being a credit provider under a credit contract without holding an Australian Credit Licence authorising it to engage in that credit activity, when it entered into a credit contract with Ms Morrow under which it was a credit provider.

**Particulars**

- (a) BHFS provided the Morrow Loan, the First Morrow Drawdown and the Second Morrow Drawdown to Ms Morrow under the Morrow Loan Agreement, the First Morrow Drawdown Summary and the Second Morrow Drawdown Summary.
- (b) Alternatively, BHFS provided the Morrow Loan, the First Morrow Drawdown and the Second Morrow Drawdown under a credit contract comprised of:
  - i. the First Morrow Application;
  - ii. the October 2019 Approval Text;
  - iii. the October 2019 Approval Email;

- iv. the October 2019 Welcome Email;
- v. the Morrow Loan Agreement;
- vi. the Morrow Services Agreement;
- vii. the Second Morrow Application;
- viii. the December 2019 Drawdown Approval Email;
- ix. the First Morrow Drawdown Summary;
- x. the First Morrow Drawdown Summary Request;
- xi. the Third Morrow Application;
- xii. the January 2020 Drawdown Approval Email;
- xiii. the Second Morrow Drawdown Summary;
- xiv. the Second Morrow Drawdown Summary Request; and
- xv. the Cigno/BHFS Agreement

(together, **Morrow Composite Credit Contract**).

(c) The Morrow Loan, the First Morrow Drawdown and the Second Morrow Drawdown is credit to which the Code applies.

(d) See above at [2.3].

107 By reason of [106], BHFS contravened s 29(1) of the NCCP Act.

108 By reason of [107], the Court should make a declaration that BHFS contravened s 29(1) of the NCCP Act by entering into a credit contract with Ms Morrow on or around 18 October 2019 under which it was a credit provider, without holding an Australian Credit Licence authorising it to engage in that activity.

109 BHFS:

109.1 continues to engage in a credit activity of being a credit provider under a credit contract without holding an Australian Credit Licence authorising it to engage in that credit activity; and

109.2 unless restrained, is likely to continue to engage in that credit activity.



**Particulars**

- (a) The New Model, described above at [5]-[32], continues to be available to consumers.
- (b) Since September 2019, on average around 5,000 customers per week have entered into Loan Agreements with BHFS pursuant to the New Model.
- (c) See above at [2.3], [105].

***Business of providing credit***

- 110 A person engages in a credit activity if the person carries on a business of providing credit, being credit the provision of which the Code applies to.

**Particulars**

- (a) NCCP Act s 6(1) (item 1(b)).
- (b) Code s 5.

- 111 BHFS engages in a credit activity of carrying on a business of providing credit, being credit the provision of which the Code applies to.

**Particulars**

- (a) BHFS provides the BHFS Credit: see above at [70.1].
- (b) The Code applies to the provision of the BHFS Credit: see above at [81].

- 112 BHFS engaged in a credit activity of carrying on a business of providing credit, being credit the provision of which the Code applies to, without holding an Australian Credit Licence authorising it to engage in that credit activity, when it provided the Morrow Loan, the First Morrow Drawdown and the Second Morrow Drawdown to Ms Morrow, respectively on or around 18 October 2019, on or around 2 December 2019 and on or around 11 January 2020.

**Particulars**

- (a) The Morrow Loan, the First Morrow Drawdown and the Second Morrow Drawdown is credit to which the Code applies.
- (b) See above at [2.3].

- 113 By reason of [112], BHFS contravened s 29(1) of the NCCP Act.
- 114 By reason of [113], the Court should make a declaration that BHFS contravened s 29(1) of the NCCP Act by carrying on a business of providing credit, being credit the provision of which the Code applies to, from on or around 18 October 2019 until on or around 11 January 2020, without holding an Australian Credit Licence authorising it to engage in that activity.
- 115 BHFS:
- 115.1 continues to engage in a credit activity of carrying on a business of providing credit, being credit the provision of which the Code applies to, without holding an Australian Credit Licence authorising it to engage in that credit activity; and
- 115.2 unless restrained, is likely to continue to engage in that credit activity.

#### **Particulars**

- (a) The New Model, described above at [5]-[32], continues to be available to consumers.
- (b) Since September 2019, on average around 5,000 customers per week have entered into Loan Agreements with BHFS pursuant to the New Model.
- (c) See above at [2.3], [111].

#### **F. ASIC claims the following relief against BHFS**

- 116 An interim injunction pursuant to s 177(3) of the NCCP Act to restrain, until the determination of this proceeding or further order, BHFS, whether by itself, its servants, agents or employees from:
- 116.1 engaging in a credit activity of being a credit provider under a credit contract within the meaning of item 1(a) of s 6(1) of the NCCP Act; and
- 116.2 in any way attempting to engage in or being involved in the activity referred to in [116.1] above.
- 117 An injunction pursuant to s 177(1)(a) of the NCCP Act to restrain permanently BHFS, whether by itself, its servants, agents or employees from:
- 117.1 engaging in a credit activity of being a credit provider under a credit contract within the meaning of item 1(a) of s 6(1) of the NCCP Act; and

117.2 in any way attempting to engage in or being involved in the activity referred to in [117.1] above.

118 An interim injunction pursuant to s 177(3) of the NCCP Act to restrain, until the determination of this proceeding or further order, BHFS, whether by itself, its servants, agents or employees from:

118.1 engaging in a credit activity of carrying on a business of providing credit within the meaning of item 1(b) of s 6(1) of the NCCP Act; and

118.2 in any way attempting to engage in or being involved in the activity referred to in [118.1] above.

119 An injunction pursuant to s 177(1)(a) of the NCCP Act to restrain permanently BHFS, whether by itself, its servants, agents or employees from:

119.1 engaging in a credit activity of carrying on a business of providing credit within the meaning of item 1(b) of s 6(1) of the NCCP Act; and

119.2 in any way attempting to engage in or being involved in the activity referred to in [119.1] above.

**G. Credit activity undertaken by Cigno**

***Exercising rights of a credit provider***

120 A person engages in a credit activity if the person performs the obligations, or exercises the rights, of a credit provider in relation to a credit contract or a proposed credit contract.

**Particulars**

(a) NCCP Act s 6(1) (item 1(c)).

(b) As to the definition of credit contract, see above at [63]-[68].

121 Cigno exercises the rights of a credit provider in relation to a credit contract.

**Particulars**

(a) BHFS is the credit provider.

(b) The credit contract is the Loan Agreement together with any Drawdown Summary.

(c) Alternatively, the credit contract is the Composite Credit Contract.

(d) The rights of BHFS that Cigno exercises are assessing applications for loans and managing and collecting payments by consumers: see above at [3.4], [6]-[9], [16]-[18], [22], [28], [32], [36], [40], [42], [46], [49], [51], [55], [58], [60], [61].

122 Cigno engaged in a credit activity of exercising the rights of a credit provider in relation to a credit contract without holding an Australian Credit Licence authorising it to engage in that credit activity, when it assessed the First Morrow Application and managed and collected repayments for the Morrow Loan, the First Morrow Drawdown and the Second Morrow Drawdown on behalf of BHFS from on or around 18 October 2019 until on or around 14 April 2020.

#### **Particulars**

(a) The credit contract was the Morrow Loan Agreement, the First Morrow Drawdown Summary and the Second Morrow Drawdown Summary.

(b) Alternatively, the credit contract was the Morrow Composite Credit Contract.

(c) The Morrow Loan, the First Morrow Drawdown and the Second Morrow Drawdown is credit to which the Code applies.

(d) See above at [3.3], [3.4], [36], [40], [42], [46], [49], [51], [55], [58], [60], [61].

123 By reason of [122] above, Cigno contravened s 29(1) of the NCCP Act.

124 Cigno:

124.1 continues to engage in a credit activity of exercising rights of a credit provider in relation to a credit contract without holding an Australian Credit Licence authorising it to engage in that credit activity; and

124.2 unless restrained, is likely to continue to engage in that credit activity.

#### **Particulars**

(a) The New Model, described above at [5]-[32], continues to be available to consumers.

(b) See above at [3.3] and [121].

- (c) As at late June 2020, Cigno had approximately 30,000-40,000 active clients under the New Model.
- (d) Since September 2019, on average approximately 5,000 customers per week have entered into Services Agreements with Cigno pursuant to the New Model.
- (e) From 14 September 2019 to 7 August 2020, Cigno entered into 236,683 separate Services Agreements with consumers in respect of loans made to those consumers from BHFS.

***Credit service***

- 125 A person engages in a credit activity if the person provides a credit service.

**Particulars**

- (a) NCCP Act s 6 (item 2).

- 126 A person provides a credit service if the person:

126.1 provides credit assistance to a consumer; or

126.2 acts as an intermediary.

**Particulars**

- (a) NCCP Act ss 7, 8, 9.

- 127 In the course of, or as part of, or incidentally to, a business carried on by Cigno in Australia, Cigno provides credit assistance to consumers by dealing directly with consumers:

127.1 to suggest that consumers apply for a credit contract with BHFS; or

**Particulars**

- (a) NCCP Act s 8(a).
- (b) Cigno suggests that consumers apply for the Loan Agreement and the Drawdown Summary with BHFS.
- (c) See above at [5], [34], [44], [53].

127.2 to assist consumers to apply for a credit contract with BHFS.

#### **Particulars**

- (a) NCCP Act s 8(d).
- (b) Cigno assists consumers to apply for the Loan Agreement and the Drawdown Summary with BHFS.
- (c) See above at [3.4], [5]-[10], [12]-[13], [23]-[25], [34], [36]-[38], [44], [46]-[47], [53], [55]-[56].

128 In the course of, or as part of, or incidentally to, a business carried on by Cigno in Australia, Cigno acts as an intermediary directly between BHFS and consumers for the purpose of securing a provision of credit for the consumer under a credit contract for the consumer with BHFS.

#### **Particulars**

- (a) NCCP Act s 9(a).
- (b) Cigno provides the Cigno Services to secure the BHFS Credit for consumers under a Loan Agreement together with any Drawdown Summary, for the consumer with BHFS: see above at [3.4], [5]-[13], [16]-[18], [21]-[22], [23]-[25], [28], [30]-[32], [34]-[44], [46]-[53], [55]-[62].
- (c) Alternatively, Cigno provides the Cigno Services to secure the BHFS Credit for consumers under a Composite Credit Contract for the consumer with BHFS: see above at [3.4], [5]-[13], [16]-[18], [21]-[22], [23]-[25], [28], [30]-[32], [34]-[44], [46]-[53], [55]-[62].

129 By reason of [127] and / or [128] above, Cigno engages in a credit activity of providing a credit service.

130 Further and in the alternative to [127] above, in the course of, or as part of, or incidentally to, a business carried on by BHFS in Australia, Cigno provides credit assistance to consumers by dealing directly with consumers:

130.1 to suggest that consumers apply for a credit contract with BHFS; or

130.2 to assist consumers to apply for a credit contract with BHFS.

### Particulars

(a) The particulars to [127] above are repeated.

- 131 Further and in the alternative to [128] above, in the course of, or as part of, or incidentally to, a business carried on by BHFS in Australia, Cigno acts as an intermediary directly between BHFS and consumers for the purpose of securing a provision of credit for the consumer under a credit contract for the consumer with BHFS.

### Particulars

(a) The particulars to [128] above are repeated.

- 132 Further and in the alternative to [129] above, by reason of [130] and / or [131] above, Cigno engages in a credit activity of providing a credit service.

- 133 Cigno engaged in a credit activity of carrying on a business of providing a credit service, without holding an Australian Credit Licence authorising it to engage in that credit activity, when it:

133.1 provided credit assistance to Ms Morrow from on or around 18 October 2019 until on or around 11 January 2020; and / or

### Particulars

(a) when dealing directly with Ms Morrow, Cigno suggested to Ms Morrow that she apply for the Morrow Loan Agreement, the First Morrow Drawdown Summary and the Second Morrow Drawdown Summary with BHFS: see above at [34], [44], [53].

(b) when dealing directly with Ms Morrow, Cigno assisted Ms Morrow to apply for the Morrow Loan Agreement, the First Morrow Drawdown Summary and the Second Morrow Drawdown Summary with BHFS: see above at [34], [36]-[38], [44], [46]-[47], [53], [55]-[56].

133.2 acted as an intermediary between Ms Morrow and BHFS from on or around 18 October 2019 until on or around 14 April 2020.

### Particulars

(a) Cigno provided the Cigno Services for the purpose of securing the Morrow Loan, the First Morrow Drawdown and the Second Morrow Drawdown for Ms Morrow under the Morrow Loan Agreement, the First Morrow Drawdown

Summary and the Second Morrow Drawdown Summary for Ms Morrow with BHFS: see above at [34]-[44], [46]-[53], [55]-[62].

(b) Alternatively, Cigno provided the Cigno Services for the purpose of securing the Morrow Loan, the First Morrow Drawdown and the Second Morrow Drawdown for Ms Morrow under the Morrow Composite Credit Contract for Ms Morrow with BHFS: see above at [34]-[44], [46]-[53], [55]-[62].

134 By reason of [133] above, Cigno contravened s 29(1) of the NCCP Act.

135 Cigno:

135.1 continues to engage in a credit activity of providing a credit service, without holding an Australian Credit Licence authorising it to engage in that credit activity; and

135.2 unless restrained, is likely to continue to engage in that credit activity.

#### **Particulars**

(a) The New Model, described above at [5]-[32], continues to be available to consumers.

(b) See above at [3.3], [129] and [132].

(c) As at late June 2020, Cigno had approximately 30,000-40,000 active clients under the New Model.

(d) Since September 2019, on average approximately 5,000 customers per week have entered into Services Agreements with Cigno pursuant to the New Model.

(e) From 14 September 2019 to 7 August 2020, Cigno entered into 236,683 separate Services Agreements with consumers in respect of loans made to those consumers from BHFS.

#### **H. ASIC claims the following relief against Cigno**

136 A declaration pursuant to s 166 of the NCCP Act, that Cigno contravened s 29(1) of the NCCP Act by exercising rights of BHFS in relation to a credit contract with Ms Morrow from on or around 18 October 2019 until on or around 14 April 2020, without holding an Australian Credit Licence authorising it to engage in that activity.



- 137 An interim injunction pursuant to s 177(3) of the NCCP Act to restrain, until the determination of this proceeding or further order, Cigno, whether by itself, its servants, agents or employees from:
- 137.1 engaging in a credit activity of exercising the rights of a credit provider in relation to a credit contract or proposed credit contract within the meaning of item 1(c) of s 6(1) of the NCCP Act; and
- 137.2 in any way attempting to engage in or being involved in the activity referred to in [137.1] above.
- 138 An injunction pursuant to s 177(1) of the NCCP Act, to restrain permanently Cigno, whether by itself, its servants, agents or employees from:
- 138.1 engaging in a credit activity of exercising the rights of a credit provider in relation to a credit contract or proposed credit contract within the meaning of item 1(c) of s 6(1) of the NCCP Act; and
- 138.2 in any way attempting to engage in or being involved in the activity referred to in [138.1] above.
- 139 A declaration pursuant to s 166 of the NCCP Act, that Cigno contravened s 29(1) of the NCCP Act by providing a credit service to Ms Morrow from on or around 18 October 2019 until on or around 14 April 2020.
- 140 An interim injunction pursuant to s 177(3) of the NCCP Act to restrain, until the determination of this proceeding or further order, Cigno, whether by itself, its servants, agents or employees from:
- 140.1 engaging in a credit activity of providing a credit service within the meaning of item 2 of s 6(1) of the NCCP Act; and
- 140.2 in any way attempting to engage in or being involved in the activity referred to in [140.1] above.
- 141 An injunction pursuant to s 177(1) of the NCCP Act, to restrain permanently Cigno, whether by itself, its servants, agents or employees from:
- 141.1 engaging in a credit activity of providing a credit service within the meaning of item 2 of s 6(1) of the NCCP Act; and

141.2 in any way attempting to engage in or being involved in the activity referred to in [141.1] above.

Date: 23 November 2020



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Signed by Kim Turner  
Lawyer for the Applicant

This pleading was prepared by Christina Trahanas, and settled by Margaret Allars SC and Neil Williams SC, counsel for the Applicant.

**Certificate of lawyer**

I Kim Turner certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 23 November 2020



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Signed by Kim Turner  
Lawyer for the Applicant

**Schedule**

No. NSD 1088 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Respondent:

Cigno Pty Ltd (ACN 612 373 734)