

## NOTICE OF FILING

### Details of Filing

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File Number: NSD830/2023  
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v  
BAKKEN HOLDINGS PTY LTD ACN 162 828 202 & ANOR  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



## Statement of claim

No. NSD830 of 2023

Federal Court of Australia  
District Registry: NSW  
Division: Commercial and Corporations

### **Australian Securities and Investments Commission**

Plaintiff

### **Bakken Holdings Pty Ltd (ACN 162 828 202)**

First Defendant

### **Merrilyn Anne Mansfield**

Second Defendant

## **A THE PARTIES**

1. The Plaintiff, the Australian Securities and Investments Commission (**ASIC**) is a body corporate established by s.8 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and is entitled to sue in its corporate name.
2. The First Defendant, Bakken Holdings Pty Ltd ACN 162 828 202 (**Bakken**):
  - a. is a company that was validly incorporated on 14 March 2013 under the law of Australia;
  - b. is and was at all material times a corporation within the meaning of s.57A of the *Corporations Act 2001* (Cth) (**Corporations Act**);
  - c. is and was at all material times a 'body' within the meaning of s.9 of the *Corporations Act*;
  - d. is and was at all material times the trustee for the Brave Heart Trust (ABN 24 871 384 859); and
  - e. has since 7 July 2019 held the registered business name "Solve My Debt Now" and has traded a business, as trustee for the Brave Heart Trust, under that name since in or about early 2020 (**Solve My Debt**).

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Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Plaintiff

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(include state and postcode)

### Particulars

The business name “Solve My Debt Now” has registration number 634699479 and the registered business name holder is The Trustee for the Brave Heart Trust, which is Bakken.

3. The Second Defendant, Merrilyn Anne Mansfield (**Dr Mansfield**):
  - a. is a natural person resident in Australia;
  - b. is and has been a director of Bakken since 7 May 2020;
  - c. is and has been the owner of 50% of the ordinary shares issued in Bakken since in or about 18 March 2021;
  - d. is and has been a Primary Beneficiary of the Brave Heart Trust since in or about March 2013; and
  - e. is and has at all material times been involved in the day to day management of Bakken and Solve My Debt.

## B THE SOLVE MY DEBT NOW BUSINESS

### B.1 Overview

4. During the period from 1 April 2020 to 30 June 2022 (**Relevant Period**), Bakken operated Solve My Debt.
5. During the Relevant Period, Bakken provided the following services to consumers of Solve My Debt (together, the **Service**):
  - a. negotiating with a consumer’s creditor(s) for reduction or waiver of debt(s) owed by the consumer to their creditor(s);
  - b. negotiating with a consumer’s creditor(s) for a reduction, freezing or waiver of interest and fees payable on debt(s) owed by the consumer to their creditor(s);
  - c. negotiating with a consumer’s creditor(s) to agree payment arrangements by which a consumer could repay their debt(s) to their creditor(s);
  - d. making payments on behalf of a consumer to their creditor(s) using funds Bakken received from the Regular Payments (defined below in paragraph 10.b) made by the consumer to Bakken (**Payment Service**); and
  - e. a “Credit File Repair Service” by which Bakken sought the attempted correction, the correction, resolution or improvement of any pending or existing negative or incorrect credit record or credit related matter of a consumer.

### Particulars

The Service was outlined in:

- i. the Solve My Debt Now document titled “Agreement – Terms and Conditions” (as amended from time to time) (**Agreement**); and
- ii. promotional material pleaded in paragraph 20, including in written and oral communications from Bakken to consumers and prospective consumers of Solve My Debt, further particulars of which will be provided after discovery.

6. During the Relevant Period, Bakken:

- a. provided the Service to consumers on the terms contained in the Agreement;

### Particulars

Agreement, clause 1

- b. charged consumers fees and charges for the Service; and

### Particulars

Bakken’s fees and charges are pleaded in section B.6.

- c. carried on a business of providing the Service, which included the Payment Service.

## B.2 Consumers of Solve My Debt

7. Consumers of the Service were generally persons:

- a. in financial hardship;
- b. who had more debt than they were able to service; and/or
- c. who had defaulted or were about to default on credit facilities, such as personal loans and credit cards.

## B.3 Payment Service

8. When a consumer engaged Bakken to provide the Service:

- a. the consumer provided Bakken with the details of their debt(s), including the name of the creditor(s) and the amount owed by them to the creditor(s);
- b. Bakken calculated an identified amount of money to be paid by the consumer to Bakken on a regular basis – typically weekly, fortnightly or monthly – for an identified period of time, typically up to 5 years (**Regular Payment**);

- c. the consumer agreed to pay the Regular Payment to Bakken; and
  - d. thereafter:
    - i. the consumer paid their Regular Payments by electronic payments including by direct debit from bank accounts or credit or debit cards;
    - ii. Bakken received the Regular Payment for the purpose of Bakken applying those funds to pay the consumer's creditor(s) in accordance with the Payment Service and to pay Bakken's fees and charges for the Service; and
    - iii. Bakken made payments to a consumer's creditor(s) by direct electronic bank transfers and/or BPay.
9. Consumers were required to commence making Regular Payments to Bakken upon agreeing to use the Service.
10. Consumers paid their Regular Payments for use in the Payment Service by electronic payments made by merchant settlement, PayPal or direct bank transfers into a Bendigo & Adelaide Bank Account ending 4471 or a Westpac Bank Account ending 4742 (the **Receiving Accounts**).
11. Bakken caused the Regular Payments to be transferred from the Receiving Accounts, into a Westpac Banking Account ending 5733 (**Operating Account**).
12. A consumer's Regular Payments were intermingled in the Receiving Accounts and the Operating Account with funds received from other consumer's Regular Payments.
13. Bakken used the Operating Account to:
- a. receive and make payments in respect of other businesses conducted by Bakken; and
  - b. hold the Regular Payments received from consumers of Solve My Debt and make payments to the creditor(s) of those consumers.
14. Bakken did not isolate or hold separately the funds paid to Bakken by a consumer in excess of the amount that Bakken was entitled to at any time for its fees.
15. The payments made by Bakken to a consumer's creditor(s) were paid by direct electronic bank transfers and/or BPay from the Operating Account.

16. As part of the Payment Service, Bakken could make payments to more than one creditor of a consumer.

### **Particulars**

Agreement, clause 3

17. During the Relevant Period all consumers who engaged Bakken to provide the Service utilised the Payment Service.
18. Bakken stopped providing the Payment Service on or about 30 June 2022, however, it continues to operate the Solve My Debt Now business.

#### **B.4 Promotion of Solve My Debt Now**

19. Bakken maintains or causes to be maintained:
- a. a website for the Solve My Debt Now business at <https://solvemydebtnow.com.au/> (**the Website**);
  - b. a 'channel' on the video sharing website YouTube.com under the name Solve My Debt Now, using the username @solvemydebtnow7049 (**the Channel**); and
  - c. a Facebook page under the name Solve My Debt Now at <https://www.facebook.com/solvemydebtnow/> (**the Facebook page**).

### **Particulars**

As at the date of filing the Channel is publicly accessible at <https://www.youtube.com/@solvemydebtnow7049> and the Website and Facebook page are publicly accessible.

20. During the Relevant Period, Bakken promoted the Service, including the Payment Service, on:
- a. the Website;
  - b. the Channel;
  - c. the Facebook page;
  - d. in bulk email broadcasts to consumers and potential consumers;
  - e. in emails sent to consumers and potential consumers; and
  - f. in telephone calls to consumers and potential consumers.
21. Bakken incentivised consumers to leave positive written and video reviews of Solve My Debt on the Facebook page by offering to provide them with a gift voucher(s) in circumstances where:

- a. the consumers had the characteristics pleaded in paragraph 7;
- b. Bakken publicly commented on each such review that it provided an incentive for reviews but that it did not have input into the content of reviews; and
- c. Bakken's provision of the incentive(s) to consumers was conditional on the review being positive.

#### **Particulars**

Emails from Bakken to various consumers requesting positive reviews on Facebook.

Comments left by Solve My Debt on the Facebook page.

Further particulars will be provided following discovery.

22. Each of the Website, the videos published on the Channel and the contents of the Facebook page were intended by Bakken to be viewed by potential consumers of Solve My Debt.
23. During the Relevant Period, Bakken made the false and/or misleading representations to potential consumers of the Service pleaded in Section F.

#### **B.5 Sales team and advocacy team**

24. During the Relevant Period, the activities of Solve My Debt were carried out, in part, by a sales team and an advocacy team.
25. The activities of the sales team included:
  - a. following up leads and enquiries from potential consumers;
  - b. working to have those potential consumers agree to the provision of the Services by Bakken on the terms and conditions set out in the Agreement; and
  - c. calculating the Regular Payment to be made by a consumer to Bakken.
26. Sales team members received:
  - a. a commission based on the number of consumers they signed-up to use the Service; and
  - b. a commission calculated as a proportion of a consumer's total debt in respect of which Bakken provided the Service.

#### **Particulars**

Further particulars will be provided following discovery.

27. The commissions pleaded at paragraph 26 were not disclosed to consumers.
28. The activities of the advocacy team included:
- a. negotiating with a consumer's creditor(s) for reduction or waiver of debts owed by the consumer to their creditor(s);
  - b. negotiating with a consumer's creditor(s) for a reduction of, freezing of, or waiver of interest payable on debt(s) owed by the consumer to their creditor(s); and
  - c. negotiating with a consumer's creditor(s) to agree payment arrangements by which a consumer could repay their debt(s) to their creditor(s)
  - d. the "Credit File Repair Service" as pleaded in paragraph 5.e.

#### **B.6 Fees**

29. During the Relevant Period, Bakken charged consumers who utilised the Service the following fees:
- a. a \$1,500 'Setup fee' (**Setup Fee**);
  - b. an 'ongoing administration fee' calculated as 20% of the consumer's debt and ongoing outstanding fee amount (**Administration Fee**);
  - c. a 'Debt Negotiation' fee (if applicable) calculated as 25% of the amount of any reduction in the consumer's debt achieved by Bakken (**Negotiation Fee**);
  - d. a \$1,500 'Credit Repair' fee (if applicable) for each issue on the consumer's credit file pursued by Bakken (**Credit Repair Fee**);
  - e. a fee of \$25 payable on each occasion a consumer failed to make their Regular Payment to Bakken (if applicable) (**Default Fee**);
  - f. a fee of \$250 payable on each occasion a consumer wished to recommence the Service after failing to keep up with their Regular Payments (if applicable) (**Restart Fee**); and
  - g. a fee of \$55 payable on each occasion a consumer sought information about the status of their debts, debt negotiations and payment arrangements (**Update Fee**).

#### **Particulars**

Agreement, clause 12, 15, 19 and the section titled "Schedule of Fees".



30. Each of the Setup Fee, Administration Fee, Debt Negotiation Fee and Credit Repair Fee were non-refundable.

**Particulars**

Agreement, clause 18.

31. The Restart Fee and the Update Fee:
- a. were not disclosed in the Agreement; and
  - b. in the ordinary course, were not disclosed to consumers prior to them engaging Bakken to provide the Service.
32. Bakken represented to consumers that its fees were paid via the Regular Payments over the whole of the period in which Bakken would provide the Service to a consumer.

**Particulars**

In the Sign-Up Emails pleaded at paragraph 73, Bakken stated “Our fees will be paid to us ... overtime. We take a small portion of the above amount, and the rest goes to your debts.”

Agreement, clause 12, clause 15 and the Schedule of Fees.

Statements made on the Website that Solve My Debt would “factor our fees into an affordable weekly or fortnightly repayment plan”.

33. The Setup Fee and Administration Fee:
- a. were applied by Bakken immediately upon a consumer’s commencement of use of the Service; and
  - b. were included in the calculation of the Regular Payment as pleaded in 8.b.
34. In the event that a Negotiation Fee became payable, it was incorporated into the Regular Payment at or around the time the Negotiation Fee became payable, and the Regular Payment was reduced accordingly (if applicable).
35. For consumers charged the Default Fee or the Restart Fee, the fees were incorporated into Regular Payment and the length of time that the Regular Payments were to be made was extended accordingly.
36. For a consumer charged the Update Fee, the fee was charged and required to be paid prior to Bakken providing the information requested by the consumer.
37. The amount of the Regular Payments made to Bakken by a consumer that were not otherwise paid to creditors were applied to Bakken’s fees, such that if no payments were

being made to creditors, Bakken would apply the whole of the Regular Payment to its fees.

## **B.7 Engagement with creditors**

38. During the Relevant Period, in the ordinary course of its conduct of the Solve My Debt business, Bakken:
- a. attempted to negotiate with creditors of consumers of the Service for:
    - i. a moratorium on actions by the creditor for a period during which the consumer was not required to make payments to the creditor (**payment holiday**);
    - ii. a reduction of, a freeze of, and/or waiver of the obligation to pay any interest on the debt in question;
    - iii. a reduction or complete waiver of the debt in question;
    - iv. a payment arrangement by which the consumer could repay the debt in question;
  - b. did not commence making payments to a creditor in accordance with the Payment Service in respect of a debt owed by the consumer to that creditor, until such time as Bakken had reached a negotiated agreement with that creditor;
  - c. in circumstances where a creditor agreed to provide the consumer with a payment holiday:
    - i. Bakken did not make any payments to that creditor during the consumer's payment holiday; and
    - ii. Bakken did not conduct any negotiations with that creditor until the end of the consumer's payment holiday;
  - d. if requested, attempted to correct, resolve or improve pending or existing negative or incorrect credit records or credit related matters of a consumer.
39. As a consequence of the conduct pleaded in paragraphs 38.b and 38.c above, there were often periods of weeks or months during which Bakken received Regular Payments from a consumer but made no payments towards that consumer's creditor(s).
40. At or about the time that a consumer engaged Bakken to provide the Service:
- a. Bakken did not have actual knowledge of what, if any, payment arrangements and/or reductions or waivers of debt or interest that the creditor(s) of that consumer would accept in respect of that consumer's debts; and

- b. Bakken therefore did not and could not know whether a consumer's Regular Payment (calculated as pleaded in paragraph 8.b) would be sufficient to discharge their debts with their creditor(s) and pay Bakken's fees and charges.

41. Bakken does not and has never had the unilateral power or ability to:

- a. ensure that a consumer would avoid bankruptcy;
- b. require a creditor of a consumer to grant a moratorium on enforcement actions by the creditor:
  - i. at the time that a consumer entered into an agreement with Bakken; and/or
  - ii. in respect of all consumers; and/or
  - iii. in respect of all forms of credit for which Bakken provided the Service;
- c. require a creditor of a consumer to agree to a moratorium on payments due to the creditor;
- d. require a creditor of a consumer to agree to a reduction or waiver of a consumer's debt owing to the creditor;
- e. require a creditor of a consumer to agree to a reduction, freeze, or waiver of a consumer's obligation to pay any interest owing or accruing to the creditor; and/or
- f. cause the removal of an adverse entry on a consumer's credit file, regardless of its correctness.

#### **B.8 Updates to consumers**

42. Bakken's contractual terms for use of the Service by consumers provided, or purported to provide, that:

- a. consumers had no entitlement to information about Bakken's dealings with their creditors; and
- b. Bakken had the unilateral right to stop providing the Service and/or vary the fees and charges payable to it.

#### **Particulars**

Agreement, clauses 9, 14 and 22

43. Bakken provided consumers with generic, template based updates about Solve My Debt's processes.

### Particulars

Emails to consumers with a subject line including the word “update”.

Further particulars will be provided following discovery.

44. Bakken did not provide specific updates to consumers:
- a. about the status of negotiations with their creditors, apart from those instances where it provided an update after such negotiations had been concluded; or
  - b. about the balance of their debts.
45. If a consumer requested a specific update, or an update beyond the generic updates pleaded in paragraph 43 above, Bakken charged the undisclosed Update Fee prior to and as a condition of providing such an update.

### C PROVISION OF A FINANCIAL SERVICE

46. By reason of the matters pleaded in paragraphs 8 to 16 above, in the operation of the Payment Service:
- a. the Regular Payment; and
  - b. the payments made by Bakken to a consumer’s creditor(s),
- were made otherwise than by the physical delivery of Australian or foreign currency in the form of notes and/or coins.
47. The Payment Service was:
- a. a facility through which a person made non-cash payments within the meaning of s.12BAA(1)(c) and s.12BAA(6) of the ASIC Act;
  - b. a financial product within the meaning of s.12BAA(1)(c) of the ASIC Act;
  - c. by operation of s.12BAB(1AA) of the ASIC Act, a financial service for the purposes of Part 2 Division 2 of the ASIC Act; and/or
  - d. by operation of s.12BAB(1)(b) and (7)(b) of the ASIC Act, a financial product which Bakken was dealing in, and therefore providing a financial service for the purposes of Part 2 Division 2 of the ASIC Act.
48. By reason of the matters pleaded in paragraphs 5 to 17 and 46 to 47, by offering and providing the Payment Service Bakken provided a financial service for the purposes of Part 2 Division 2 of the ASIC Act.
49. Further, the Payment Service was:

- a. a facility through which a person made non-cash payments within the meaning of ss.763A, 762C and 763D of the Corporations Act;
  - b. a financial product within the meaning of s.763A of the Corporations Act;
  - c. by operation of ss.761A, 766A, 766C(1)(b) of the Corporations Act, a financial product which Bakken was dealing in, and therefore providing a financial service for the purposes of Chapter 7 of the Corporations Act.
50. By reason of the matters pleaded in paragraphs 5 to 17, and 46 and 49, by offering and providing the Payment Service, Bakken provided a financial service for the purposes of Chapter 7 of the Corporations Act.

#### **D CONTRAVENTION OF S.911A OF THE CORPORATIONS ACT**

51. By reason of the matters pleaded at paragraph 50 (including the paragraphs referred to therein), during the Relevant Period Bakken:
- a. was carrying on a business of dealing in a financial product within the meaning of s.761A of the Corporations Act and, therefore, was carrying on a financial services business for the purposes of Chapter 7 of the Corporations Act; and
  - b. was required by operation of s.911A(1) of the Corporations Act to hold an Australian Financial Services licence covering the provision of the Payment Service.
52. Bakken did not and has never:
- a. held an Australian Financial Services licence covering the provision of the Payment Service; or
  - b. been an authorised representative of any person holding an Australian Financial Services licence which covered the provision of the Payment Service.
53. By reason of the matters pleaded at paragraph 52, during the period from 1 April 2020 to 30 June 2022, Bakken contravened s.911A(1) of the Corporations Act, and in so doing contravened s.911A(5B) of the Corporations Act.

#### **E UNCONSCIONABLE CONDUCT IN CONTRAVENTION OF S.12CB OF THE ASIC ACT**

##### **E.1 Relevant Period Consumers**

54. During the Relevant Period at least about 978 consumers engaged Bakken to provide the Service (**Relevant Period Consumers**).

55. During the Relevant Period, Bakken:

- a. collected about \$3,614,689.93 from 978 of the Relevant Period Consumers in Regular Payments;
- b. paid about \$1,138,422 to the creditors of about 348 of the Relevant Period Consumers;
- c. made no payments to the creditors of about 630 of the Relevant Period Consumers;
- d. did not achieve any debt reduction for about 43 percent of 978 of the Relevant Period Consumers;
- e. obtained an aggregate reduction of their respective debts of less than 15 percent for about 29 percent of 978 of the Relevant Period Consumers; and
- f. obtained a debt reduction that was equal to or greater than the fees charged by Bakken for only about 5.3 percent of 978 of the Relevant Period Consumers.

## **E.2 Bakken's conduct**

56. In conducting the Solve My Debt business during the Relevant Period, in respect of the Relevant Period Consumers, Bakken engaged in a system of conduct or pattern of behaviour that had all or most of the features or characteristics pleaded in paragraphs 4 to 45.

## **E.3 System of Conduct or Pattern of Behaviour**

57. The conduct pleaded at paragraph 56 (and the paragraphs referred to therein) above was:

- a. in trade or commerce;
- b. in connection with the supply or possible supply of a financial service to a person as pleaded in paragraph 48; and
- c. a system of conduct or pattern of behaviour for the purposes of s.12CB(4)(b) of the ASIC Act.

## **E.4 Circumstances of the Conduct**

58. Bakken's conduct pleaded at paragraph 56 (and the paragraphs referred to therein) above occurred in the circumstances pleaded at paragraphs 59 to 70.

59. Solve My Debt provided the Service to consumers who, by reason of the characteristics pleaded at paragraph 7, were vulnerable or at a disadvantage as they were persons:

- a. whose financial situation required urgent attention; and/or
  - b. who were likely to suffer harm if there was delay or default in payments being made to their creditors.
60. Solve My Debt provided the Service to consumers in circumstances where it was aware, or alternatively ought reasonably to have been aware, of the consumers' vulnerability or disadvantage as pleaded in paragraph 59.

### **Particulars**

Solve My Debt Now Application Form, sections titled "Reasons for financial difficulty", "Details about your situation".

Website page entitled "Avoid bankruptcy" undated.

Big or Small Loans Article pleaded in paragraph 108.

Website article entitled "Five signs you have a debt problem" published on or around 16 September 2019.

Website article entitled "How does Solve My Debt work and what will it cost me?" published on or around 11 November 2019.

Website article entitled "Is debt keeping you up at night" published on or around 21 April 2021.

Website article entitled "Starting your Solve My Debt Now journey" published on or around 13 April 2021.

Website article entitled "The faster road to becoming debt-free" published on or around 14 October 2019.

Website article entitled "You don't have to be stuck in the payday small loan trap" published on or around 9 August 2021.

Video entitled "Is Debt Keeping You Up At Night" published on or around 21 April 2021.

Video entitled "How Solve My Debt Now starts your Debt Free Journey" published on or around 13 April 2021.

Document entitled "SMDN – How we negotiate with Banks and other credit providers" undated.

Comments left by consumers of Solve My Debt on the Website.

61. Bakken's staff were not provided with adequate training or oversight, including in relation to:
- a. training or instructions as to how to identify and interact with vulnerable consumers;
  - b. training or instructions in respect of avoiding misrepresentations, unconscionable conduct, or pressure or unfair sales tactics; and
  - c. monitoring or review of their calls with consumers.

**Particulars**

Further particulars will be provided following discovery.

62. Bakken did not:
- a. have any written training policies for new staff members;
  - b. have any written policies in respect of identifying and dealing with vulnerable clients;
  - c. have any written policies for supervising and reviewing the performance of Bakken's staff members; and
  - d. Bakken did not record their calls with consumers. Telephone calls were only monitored to the extent that they might be overheard by other Bakken staff members and/or the directors of Bakken.

**Particulars**

Further particulars will be provided following discovery.

63. Bakken relied on:
- a. the prospect of consumers complaining and/or ceasing to use the Service as a safeguard against the sales team or other Solve My Debt representatives employing pressure sales tactics; and
  - b. creditors to notify Bakken if Bakken failed to make a payment to the creditor that was due under a payment arrangement in respect of a consumer's debt(s).
64. Bakken did not have systems (or adequate systems) in place to:
- a. record in a complete, up to date and easily accessible form, for each consumer:
    - i. the status of negotiations with the consumer's creditor(s);



- ii. the amount of Regular Payments made by the consumer to Bakken;
  - iii. the amount of payments that had been made by Bakken to the consumer's creditor(s) in accordance with the Payment Service;
  - iv. the amount from the Regular Payments that had been applied to Bakken's fees;
  - v. the amount of any funds attributable to the consumer that had not been paid to the consumer's creditor(s) or applied to Bakken's fees;
- b. prompt staff to follow-up or progress negotiations with a consumer's creditors;
  - c. ensure that payments were being made to creditors in accordance with payment arrangements that had been entered into with creditors;
  - d. safeguard or hold separately the funds paid to Bakken by consumers in excess of the amount that Bakken was entitled to at any time for its fees; and/or
  - e. identify, action or record complaints.

#### **Particulars**

Further particulars will be provided following discovery.

- 65. By reason of the matters pleaded at paragraph 59, where Bakken did not make payments to a consumers creditor(s) as pleaded in paragraph 39, consumers suffered or were at risk of suffering harm in the form of one or more of the following:
  - a. an increase in the debt owed by a consumer to their creditors by the application of interest and/or fees;
  - b. adverse entries being added to the credit file of a consumer; and/or
  - c. enforcement action being taken by a creditor of a consumer.
- 66. By reason of the matters pleaded at paragraphs 42 to 45, consumers:
  - a. had no way of knowing whether the Service was in fact being provided; and
  - b. could not (or could not easily) protect themselves from the consequences of Bakken not making payments to their creditors.
- 67. By reason of the matters pleaded in paragraphs 30 and 33:
  - a. upon commencement of use of the Service, a consumer was in greater indebtedness than they were immediately prior to commencing use of the Service;

- b. the amount payable by a consumer to Bakken and to the creditors in respect of which Service was to be provided would only be reduced below the amount of their indebtedness immediately prior to the commencement of their use of the Service if Bakken achieved reductions in the consumer's debts equal to or greater than the Setup Fee, Administration Fee and any applicable Negotiation Fee; and
- c. absent the circumstances in paragraph 67.b being achieved, if a consumer or Bakken terminated the Agreement, the consumer would be in greater indebtedness than they were prior to their use of the Service, and without the ongoing benefit of the Service or any part thereof.

68. By reason of the non-refundable Setup Fee and Administration Fee:

- a. if Bakken did not obtain a debt reduction equal to or greater than the total of the Setup Fee and Administration Fee, that consumer would, as a result of engaging Bakken to provide the Service, have greater indebtedness than prior to engaging Bakken to provide the Service;
- b. if a consumer had total debts serviced by Bakken of up to \$7,500, a total debt reduction of at least 50% was required for a consumer to be better off after application of Bakken's fees;
- c. if a consumer had total debts serviced by Bakken of more than \$7,500 and up to \$15,000, a total debt reduction of at least 40% was required for a consumer to be better off after application of Bakken's fees;
- d. if a consumer had total debts serviced by Bakken of more than \$15,000 and less than \$24,000, a total debt reduction of at least 35% was required for a consumer to be better off after application of Bakken's fees;
- e. if a consumer had total debts serviced by Bakken of between \$60,000 and \$800,000, a total debt reduction of at least 30% was required for a consumer to be better off after application of Bakken's fees.

#### **Particulars**

Details of the above calculations will be provided in evidence.

69. Prior to a consumer engaging Bakken to provide the Service, in the ordinary course, Bakken did not disclose to consumers:

- a. that by reason of the non-refundable Setup Fee and Administration Fee, if Bakken did not obtain a debt reduction equal to or greater than the total of the Setup Fee and Administration Fee, that consumer would, as a result of engaging

Bakken to provide the Service, have greater indebtedness than prior to engaging Bakken to provide the Service;

- b. that by reason of the matters pleaded at paragraph 68, consumers may have greater indebtedness than prior to engaging Bakken to provide the Service, if Bakken failed to achieve a certain level of debt reduction on a consumer's total debt; and/or
- c. the matters pleaded in paragraphs 12, 13, 14, 26, 29.f, 29.g, 37, 39, 40 and /or 41.

70. Prior to a consumer engaging Bakken to provide the Service and/or prior to charging the consumer the non-refundable Credit File Repair fee, in the ordinary course, Bakken did not disclose to consumers that accurate adverse entries on their credit files could not be removed (or caused to be removed) by Bakken.

#### **E.5 Contravention of s.12CB(1)**

71. By reason of the matters pleaded in paragraphs 56 to 58 (and the paragraphs referred to therein):
- a. Bakken's conduct in respect of the Relevant Period Consumers was, in all the circumstances, unconscionable within the meaning of s.12CB(1) of the ASIC Act; and
  - b. Bakken thereby contravened s.12CB(1) of the ASIC Act.

#### **F FALSE AND/OR MISLEADING CONDUCT IN CONTRAVENTIONS S.12DB OF THE ASIC ACT**

72. Bakken's conduct in the marketing and provision of the Service by the publications pleaded in paragraphs 73, 82, 84, 85, 95 to 97, 106 to 109, 118, 120, 122, 124, 134, 144, 153, 162, 163, 172, 173, 183 and 192 was:
- a. in trade and commerce; and
  - b. in connection with the supply or possible supply of financial services to consumers within the meaning of s.12DB of the ASIC Act.

#### **Particulars**

The Service was marketed or provided alongside of the supply or possible supply of the Payment Service.

## F.1 Sign Up Emails

73. In the period from on or about 30 April 2020 to on or about 23 March 2022, Bakken sent emails to potential consumers of the Solve My Debt business which contained one of the following statements (**Sign Up Emails**):

*We can assist with an Informal Debt Agreement ...*

*This option is not a Part 9 Debt Agreement. It therefore does not put a 5-year negative mark on your credit file.*

*As soon as you enter an Informal Debt Agreement your creditors must cease any recovery action.*

or;

*Informal Debt Agreement*

*As we spoke about, we can assist with an Solve My Debt Now Agreement ...*

*This option does not create any mark on your credit file.*

*As soon as you enter a Solve My Debt Now Agreement your creditors must cease any recovery action.*

### Particulars

The statements referred to above were part of pro forma language utilised in written communications by staff who liaised with potential consumers of the Solve My Debt business during the period from on or about 30 April 2020 to on or about 23 March 2022.

74. The Informal Debt Agreement and/or the Solve My Debt Now Agreement referred to in the Sign Up Emails was an agreement between Bakken trading as Solve My Debt and the potential consumer for use of the Service.
75. A consumer's entry into an agreement with Bakken for use of the Services:
- a. did not immediately or otherwise impose any requirement on creditors of that consumer to cease any recovery action or otherwise impose a moratorium on taking steps in respect of their debt; and/or
  - b. invest Bakken with a power or ability to require creditors to cease any recovery action against a consumer in respect of their debt or otherwise impose a moratorium on taking steps in respect of their debt.
76. The Sign Up Emails did not state or otherwise disclose the matters pleaded in paragraph 75 above.

77. By making the statements pleaded at paragraph 73 and by failing to disclose the matters pleaded in 75 above, Bakken represented that as soon as a consumer entered into an agreement with Bakken for use of the Service, the consumer's creditors were required to cease any recovery action or otherwise impose a moratorium on taking steps against the consumer in respect of their debts.
78. The representation pleaded at paragraph 77 was:
- a. with respect to a future matter for the purpose of s.12BB of the ASIC Act; and
  - b. by reason of the matters pleaded at paragraph 75, Bakken did not have reasonable grounds for making the representation.
79. Further or in the alternative to paragraph 78 above, the representation pleaded at paragraph 77 was false and/or misleading because of the fact of the matters pleaded at paragraph 75.
80. The representation pleaded at paragraph 77 was a representation that the Service had particular performance characteristics or benefits.
81. By reason of the matters pleaded at paragraphs 73 to 81, on each occasion that Bakken sent a Sign Up Email to a potential consumer in the period from on or about 30 April 2020 until on or about 23 March 2022, Bakken contravened s.12DB(1)(e) of the ASIC Act.

## **F.2 Debt Consolidation Video, Article and Mailout**

82. From on or about 10 February 2021 to 9 June 2022:
- a. Bakken published or caused to be published a video entitled "How our Solve My Debt Now solution is better than a debt consolidation loan" on the Channel (**Debt Consolidation Video**) and/or
  - b. Bakken published or caused to be published a link to the Debt Consolidation Video on the Website.
83. The Debt Consolidation Video included the statement:
- Our Solve My Debt Now solution aims to get your current debts to zero in three years or less. So, how does it work? Well, you let us know the total amount of debt you owe right now, and what you earn per week. We then provide you with an affordable weekly or fortnightly payment that you pay to us. We then pay your debts for you at the same time as we work to reduce or waive your debts and reduce or waive your interest. (Debt Consolidation Statement)*

### Particulars

The statement commences at the 50 second mark of the Debt Consolidation Video and ends at the 1.17 minute mark.

84. From on or about 10 February 2021 to 6 February 2022 Bakken published or caused to be published an article on the Website entitled “How our Solve My Debt Now solution is better than a debt consolidation loan” (**Debt Consolidation Article**).
85. On or about 15 February 2021 Bakken sent or caused to be sent to potential consumers an email mailout entitled “How our Solve My Debt Now solution is better than a debt consolidation loan” (**Debt Consolidation Mailout**).

### Particulars

Further particulars to be provided after discovery.

86. Each of the Debt Consolidation Article and the Debt Consolidation Mailout included the Debt Consolidation Statement.
87. ASIC repeats and relies upon the matters pleaded at paragraphs 38.b and 38.c.
88. None of the Debt Consolidation Video, the Debt Consolidation Article nor the Debt Consolidation Mailout stated or otherwise disclosed that:
  - a. by reason of the matters pleaded at paragraph 38.b, there may be a period of months during which a consumer makes payments to Bakken, but no payments would be made to their creditors by Bakken;
  - b. by reason of the matters pleaded at paragraph 38.c above, if a consumer made payments to Bakken during a payment holiday, Bakken neither made any payments to the relevant creditor during the consumer’s payment holiday nor conducted any negotiations with that creditor until the end of the consumer’s payment holiday.
89. By making the statements pleaded at paragraphs 83 and 86 and by failing to disclose the matters pleaded in paragraph 88, Bakken represented that it made payments towards a consumer’s debts at the same time that it engaged in negotiations with their creditors (**Payments Were Made**).
90. The representation pleaded at paragraph 89 was with respect to a future matter for the purpose of s.12BB of the ASIC Act.
91. Bakken did not have reasonable grounds for making the representation pleaded at paragraph 89 because:

- a. as pleaded at paragraph 38.b, Bakken often did not make payments to a consumer's creditor(s) until it reached a negotiated agreement with that consumer's creditor(s); and
- b. as pleaded at paragraph 38.c, Bakken often did not make any payments nor conduct any negotiations with a creditor that granted a payment holiday until that payment holiday ended,

(collectively, **Lack of Payments**).

92. Further and in the alternative to paragraph 91, the representation pleaded at paragraph 89 was false and/or misleading because in fact there was a Lack of Payments.
93. The representation pleaded at paragraph 89 was a representation that the Payment Service:
- a. was of a particular standard, quality, value or grade; and/or
  - b. had particular performance characteristics, uses or benefits.
94. By reason of the matters pleaded at paragraphs 82 to 93, Bakken separately contravened s.12DB(1)(a) and or s.12DB(1)(e) of the ASIC Act by its publication of each of the Debt Consolidation Video, the Debt Consolidation Article and each email sent as part of the Debt Consolidation Mailout.

### **F.3 The Early 2021 Mailouts**

95. On or about 15 March 2021 Bakken sent or caused to be sent to potential consumers an email mailout entitled "End of jobkeeper – what to do now?" (**Jobkeeper Mailout**).

#### **Particulars**

Further particulars to be provided after discovery.

96. On or about 19 April 2021 Bakken sent or caused to be sent to potential consumers an email mailout entitled "I would recommend Solve My Debt Now to absolutely anybody" (**Recommendation Mailout**).

#### **Particulars**

Further particulars to be provided after discovery

97. On or about 17 May 2021 Bakken sent or caused to be sent to potential consumers an email mailout entitled "Win back sleepless nights with solve my debt now" (**Sleepless Nights Mailout**).

#### **Particulars**

## Further particulars to be provided after discovery

98. Each of the Jobkeeper Mailout, the Recommendation Mailout and the Sleepless Nights Mailout stated:

*We take over your debts and pay them on your behalf.*

99. ASIC repeats and relies upon the matters pleaded at paragraphs 38.b and 38.c.

100. None of the Jobkeeper Mailout, the Recommendation Mailout nor the Sleepless Nights Mailout stated or otherwise disclosed the matters pleaded in paragraphs 88.a and/or 88.b.

101. By making the statement pleaded at paragraph 98 and by failing to disclose the matters pleaded in paragraph 100, Bakken represented that Payments Were Made.

102. The representation pleaded at paragraph 101 was:

- a. with respect to a future matter for the purpose of s.12BB of the ASIC Act; and
- b. Bakken did not have reasonable grounds for making the representation because there was a Lack of Payments.

103. Further and in the alternative to paragraph 102, the representation pleaded paragraph 101 above was false and/or misleading because there was a Lack of Payments.

104. The representation pleaded at paragraph 101 was a representation that the Payment Service:

- a. was of a particular standard, quality, value or grade; and/or
- b. had particular performance characteristics, uses or benefits.

105. By reason of the matters pleaded at paragraphs 95 to 104, on or about 15 March 2021 Bakken contravened s.12DB(1)(a) and or s.12DB(1)(e) of the ASIC Act by its publication of each email sent as part of the Jobkeeper Mailout, the Recommendation Mailout and/or the Sleepless Nights Mailout.

#### **F.4 The Late 2021 Articles and Mailouts**

106. From on or about 9 August 2021 to 6 February 2022 Bakken published or caused to be published an article entitled “You don’t have to be stuck in the payday (small) loans trap” on the Website (**Loan Trap Article**).

107. On or about 18 August 2021 Bakken sent or caused to be sent to potential consumers an email mailout entitled “You don’t have to be stuck in the payday (small) loans trap” (**Loan Trap Mailout**).



108. From on or about 15 September 2021 to 6 February 2022 Bakken published or caused to be published on the Website an article entitled “Have big or small loans? We can help you become debt free” (**Big or Small Loans Article**).
109. On or about 16 September 2021 Bakken sent or caused to be sent to potential consumers an email mailout entitled “Have big or small loans? We can help you become debt free” (**Big or Small Loans Mailout**).

### Particulars

Further particulars to be provided after discovery.

110. Each of the Loan Trap Article, Loan Trap Mailout, Big or Small Loans Article and the Big or Small Loans Mailout stated:
- At Solve My Debt Now, for a regular and affordable payment made to us, we take over your payday loans and other debts and pay them for you.*
111. ASIC repeats and relies upon the matters pleaded at paragraphs 38.b and 38.c.
112. None of the Loan Trap Article, Loan Trap Mailout, Big or Small Loans Article or the Big or Small Loans Mailout stated or otherwise disclosed the matters pleaded in paragraphs 88.a and/or 88.b.
113. By making the statement pleaded at paragraph 110 and by failing to disclose the matters pleaded in 112 above, Bakken represented that Payments Were Made.
114. The representation pleaded at paragraph 113 was:
- a. with respect to a future matter for the purpose of s.12BB of the ASIC Act; and
  - b. Bakken did not have reasonable grounds for making the representation because there was a Lack of Payments.
115. Further and in the alternative to paragraph 114, the representation pleaded at paragraph 113 was false and/or misleading because there was a Lack of Payments.
116. The representation pleaded at paragraph 113 was a representation that the Payment Service:
- a. was of a particular standard, quality, value or grade; and/or
  - b. had particular performance characteristics, uses or benefits.
117. By reason of the matters pleaded at paragraphs 106 to 116, Bakken contravened s.12DB(1)(a) and or s.12DB(1)(e) of the ASIC Act by its publication of each of the Loan Trap Article and/or the Big or Small Loans Article and each email sent as part of the Loan Trap Mailout and the/or Big and Small Loans Mailout.

## F.5 What is Insolvency Video and Article, the Stop Bankruptcy Article and the Fix Your Debt Article

118. From on or about 5 February 2020 and 9 June 2022]:
- a. Bakken published or caused to be published a video entitled “What is insolvency, what is bankruptcy” on the Channel (**What is Insolvency Video**).
  - b. Bakken published or caused to be published a link to the What is Insolvency Video on the Website.
119. The What is Insolvency Video stated:
- At Solve My Debt Now, our debt relief solution avoids bankruptcy, pays your entire debt down to zero in three years or less, stops your creditors calling, freezes interest, investigates whether your debt is valid, reduces your debt, and does not affect your credit file.*

### Particulars

- The statement commences at the 1 minute 35 second mark of the Debt Consolidation Video and ends at the 1 minute 53 second mark.
120. From on or about 5 February 2020 to 11 March 2022 Bakken published or caused to be published an article entitled “What is bankruptcy? What is insolvency?” on the Website (**What is Insolvency Article**).
121. The What is Insolvency Article stated:
- Our solution:*
- *Avoids Bankruptcy*
  - *Reduces or freezes interest*
  - *Reduces or waives your debt.*
122. From on or about 5 February 2020 to 6 February 2022 Bakken published or caused to be published an article entitled “How to get out of debt and stop going bankrupt” on the Website (**Stop Bankruptcy Article**).
123. The Stop Bankruptcy Article stated:
- Our solution:*
- *Avoids Bankruptcy*
  - *Freezes interest*
  - *Reduces your debt*

124. From on or about 5 February 2020 to 6 February 2022 Bakken published or caused to be published an article entitled “Fix your debt – Do you need help with debt?” on the Website (**Fix Your Debt Article**).
125. The Fix Your Debt Article stated:
- Our debt fix debt consolidation solution:*
- *Avoids Bankruptcy*
  - *Freezes interest*
  - *...*
  - *Reduces your debt*
126. ASIC repeats and relies upon the matters pleaded at paragraph 41.
127. None of the What is Insolvency Video, What is Insolvency Article, the Stop Bankruptcy Article nor the Fix Your Debt Article stated or otherwise disclosed that, by reason of the matters pleaded at paragraph 41, Bakken:
- a. had no power to or was not otherwise able to ensure that a consumer would avoid bankruptcy; and/or
  - b. had no power to or was not otherwise able to ensure that a consumer’s debt and/or liability to pay interest would be reduced, waived or frozen.
128. By making the statements pleaded at paragraphs 119, 121, 123 and 125 and by failing to disclose the matters pleaded at paragraph 127, Bakken represented that it:
- a. had the power to or would otherwise be able to ensure that a consumer would avoid bankruptcy (**Avoid Bankruptcy Power**); and/or
  - b. had the power to or would otherwise be able to ensure that a consumer’s debt and/or liability to pay interest would be reduced, waived or frozen (**Interest or Debt Power**).
129. The representations pleaded at paragraph 128 were with respect to a future matter for the purpose of s.12BB of the ASIC Act.
130. Bakken did not have reasonable grounds for making the representation pleaded at paragraph 128 because it:
- a. did not have the power to or was not otherwise able to ensure that a consumer would avoid bankruptcy if they used the Service (**No Avoid Bankruptcy Power**);
  - b. did not:

- i. have the power to or was not otherwise able to ensure that a consumer's debt and/or liability to pay interest would be reduced, waived or frozen; and
- ii. always achieve a reduction, waiver or freezing of the consumer's debt and/or interest,

(sub-paragraphs (b)(i)-(ii) are collectively referred to as the **No Interest or Debt Power**);

131. Further and in the alternative to paragraph 130, the representations pleaded at paragraph 128 were false and/or misleading because of the fact of the No Avoid Bankruptcy Power and/or the No Interest or Debt Power.
132. The representations pleaded at 128 were representations that the Service:
- a. was of a particular standard, quality, value or grade; and/or
  - b. had particular performance characteristics, uses or benefits.
133. By reason of the matters pleaded at paragraphs 118 to 132, Bakken contravened s.12DB(1)(a) and or s.12DB(1)(e) of the ASIC Act by its publication of each the What is Insolvency Video, What is Insolvency Article, the Stop Bankruptcy Article and the Fix Your Debt Article.

#### **F.6 Amended Stop Bankruptcy Article**

134. From on or about 6 February 2022 until 9 June 2022, Bakken published or caused to be published on the Website an amended version of the article entitled "How to get out of debt and stop going bankrupt" (**Amended Stop Bankruptcy Article**).
135. The Amended Stop Bankruptcy Article stated:
- Our debt relief solution:*
- ...
- *Clears old black marks off your credit file*
136. ASIC repeats and relies upon the matters pleaded at paragraph 41.f.
137. The Amended Stop Bankruptcy Article did not state or did not state or otherwise disclose that, by reason of the matters pleaded at paragraph 41.f, Bakken had no power to or was not otherwise able to ensure that adverse entries on a consumer's credit file would be removed.
138. By making the statement pleaded at 135 and by failing to disclose the matters pleaded at paragraph 137, Bakken represented that it had the power to or would otherwise be

able to ensure that adverse entries on a consumer's credit file would be removed  
**(Adverse Entry Removal Power)**.

139. The representation pleaded at paragraph 138 was with respect to a future matter for the purpose of s.12BB of the ASIC Act.
140. Bakken did not have reasonable grounds for making the representation pleaded at paragraph 138 because it did not:
- a. have the Adverse Entry Removal Power; and
  - b. did not always achieve the removal of adverse entries on a consumer's credit file,
- (sub-paragraphs (a)-(b) are collectively referred to as the **No Removal Power**).
141. Further and in the alternative to paragraph 140, the representation pleaded at paragraph 138 was false and/or misleading because of the fact of the No Removal Power.
142. The representation pleaded at paragraph 138 was a representation that the Service:
- a. was of a particular standard, quality, value or grade; and/or
  - b. had particular performance characteristics, uses or benefits.
143. By reason of the matters pleaded in paragraphs 134 to 142, Bakken contravened s.12DB(1)(a) and or s.12DB(1)(e) of the ASIC Act by its publication of the Amended Stop Bankruptcy Article.

#### **F.7 Masterclass 2 Emails**

144. At various times throughout the Relevant Period, Bakken sent or caused to be sent emails to potential consumers entitled or constituting "Masterclass 2" (**Masterclass 2 Emails**).

#### **Particulars**

Email from Dr Mansfield to Emma Fedorowitsch dated 18 March 2021.

Email from Dr Mansfield to Blake Howarth dated 14 November 2021.

Email from Dr Mansfield to Rebecca Kostadinaska dated 17 November 2021.

Further particulars to be provided after discovery.

145. The Masterclass 2 Emails stated:

*We clear your credit file of defaults, judgments, enquiries, and late repayment markers (if you need us to)*

....

*We ensure you don't go bankrupt (entering a Part 9 debt agreement is the same as going bankrupt)*

146. ASIC repeats and relies upon the matters pleaded at paragraph 41.

147. The Masterclass 2 Emails did not state or otherwise disclose that, by reason of the matters pleaded at paragraph 41, Bakken:

- a. had No Avoid Bankruptcy Power; and
- b. had No Removal Power.

148. By making the statement pleaded at paragraph 145 and by failing to disclose the matters pleaded in paragraph 147 above, Bakken represented that if a consumer used the Service, it:

- a. had the Avoid Bankruptcy Power; and
- b. had the Adverse Entry Removal Power.

149. The representations pleaded at 148:

- a. were with respect to a future matter for the purpose of s.12BB of the ASIC Act; and
- b. Bakken did not have reasonable grounds for making the representation pleaded at 148 because Bakken had No Avoid Bankruptcy Power and/or had No Removal Power.

150. Further and in the alternative to paragraph 149, the representations pleaded at paragraph 148 was false and/or misleading because in fact Bakken had No Avoid Bankruptcy Power and/or had No Removal Power.

151. The representations pleaded at paragraph 148 were representations that the Service:

- a. was of a particular standard, quality, value or grade; and/or
- b. had particular performance characteristics, uses or benefits.

152. By reason of the matters pleaded at paragraphs 144 to 151, Bakken contravened s.12DB(1)(a) and or s.12DB(1)(e) of the ASIC Act on each occasion that the Masterclass 2 Emails were sent to potential consumers.

## F.8 Masterclass 3 Emails

153. At various times throughout the Relevant Period, Bakken sent or caused to be sent emails to potential consumers entitled or constituting “Masterclass 3” (**Masterclass 3 Emails**).

### Particulars

Email from Dr Mansfield to Emma Fedorowitsch dated 19 March 2021

Email from Dr Mansfield to Petaia Lamafana dated 25 May 2021

Further particulars to be provided after discovery.

154. The Masterclass 3 Emails stated:
- It's different because you won't go bankrupt using our solution.*
155. ASIC repeats and relies upon the matters pleaded at paragraph 41.
156. The Masterclass 3 Emails did not state or otherwise disclose that, by reason of the matters pleaded at paragraph 41, Bakken had No Avoid Bankruptcy Power.
157. By making the statement pleaded at 154 and by failing to disclose the matters pleaded in paragraph 156, Bakken represented that it had the Avoid Bankruptcy Power.
158. The representation pleaded at 157:
- a. were with respect to a future matter for the purpose of s.12BB of the ASIC Act; and
  - b. Bakken did not have reasonable grounds for making the representation pleaded at 157 because Bakken had No Avoid Bankruptcy Power.
159. Further and in the alternative to paragraph 158 above, the representation pleaded at paragraph 157 was false and/or misleading because in fact Bakken had No Avoid Bankruptcy Power.
160. The representation pleaded at 157 was a representation that the Service:
- a. was of a particular standard, quality, value or grade; and/or
  - b. had particular performance characteristics, uses or benefits.
161. By reason of the matters pleaded at paragraphs 153 to 160, Bakken contravened s.12DB(1)(a) and or s.12DB(1)(e) of the ASIC Act on each occasion that the Masterclass 3 Emails were sent to potential consumers.

**F.9 COVID Video and COVID Article**

162. From on or about 10 February 2021 to 9 June 2022:
- a. Bakken published or caused to be published a video entitled “A financial recovery from COVID” on the Channel (**COVID Video**).
  - b. Bakken published or caused to be published a link to the COVID Video on the Website.
163. From on or about 10 February 2021 to 6 February 2022, Bakken published or caused to be published on the Website an article entitled “A financial recovery from COVID” (**COVID Article**).
164. Each of the COVID Video and the COVID Article stated:
- We remove any black marks off your credit file.*
165. ASIC repeats and relies upon the matters pleaded at paragraph 41.f.
166. Neither the COVID Video nor the COVID Article stated or otherwise disclosed that, by reason of the matters pleaded at paragraph 41.f, Bakken had No Removal Power.
167. By making the statement pleaded at paragraph 164 and by failing to disclose the matters pleaded in paragraph 166, Bakken represented that it had the Adverse Entry Removal Power.
168. The representation pleaded at paragraph 167:
- a. was with respect to a future matter for the purpose of s.12BB of the ASIC Act; and
  - b. Bakken did not have reasonable grounds for making the representation pleaded at 167 because Bakken had No Removal Power.
169. Further and in the alternative to paragraph 168 above, the representation pleaded at paragraph 167 was false and/or misleading because in fact Bakken had No Removal Power.
170. The representation pleaded at paragraph 167 was a representation that the Service:
- a. was of a particular standard, quality, value or grade; and/or
  - b. had particular performance characteristics, uses or benefits.
171. By reason of the matters pleaded at paragraphs 162 to 170, Bakken contravened s.12DB(1)(a) and or s.12DB(1)(e) of the ASIC Act by its publication of each of the COVID Video and COVID Article.



**F.10 Resetting Article and Resetting Video**

172. From on or about 10 February 2021 to 9 June 2022, Bakken published or caused to be published an article on the Website titled “Resetting your Home Loan & Rate” (**Resetting Article**).
173. From on or about 10 February 2021 to 9 June 2022:
- a. Bakken published or caused to be published a video entitled “Resetting Your Home Loan & Rate” on the Channel (**Resetting Video**).
  - b. Bakken published or caused to be published a link to the Resetting Video on the Website.
174. Each of the Resetting Article and the Resetting Video stated:
- Our Solve My Debt Now solution works to reduce your debt and clear your credit file of black marks - to get you in the best position to be approved for a better loan. You simply pay us a regular affordable amount and we sit between you and your creditors to get your debt and interest reduced or waived at the same time as clearing your credit file of old negative black marks.*
175. The word “old” (as appearing immediately above) was not used in the Resetting Article in the form that it was published prior to on or about 6 February 2022, but the statement was otherwise identical during the period pleaded at paragraph 174.
176. ASIC repeats and relies upon the matters pleaded at paragraph 41.
177. Neither the Resetting Article nor the Resetting Video stated or otherwise disclosed that, by reason of the matters pleaded at paragraph 41, Bakken:
- a. had No Interest or Debt Power; and
  - b. had No Removal Power.
178. By making the statement pleaded at paragraph 174 above and by failing to disclose the matters pleaded at paragraph 177, Bakken represented that it:
- a. had the Interest or Debt Power; and
  - b. had the Adverse Entry Removal Power.
179. The representations pleaded at paragraph 178:
- a. were with respect to a future matter for the purpose of s.12BB of the ASIC Act; and

- b. Bakken did not have reasonable grounds for making the representations pleaded at paragraph 178 because Bakken had No Interest or Debt Power and/or No Removal Power.
180. Further and in the alternative to paragraph 179, the representations pleaded at 178 were false and/or misleading because in fact Bakken:
- a. had No Interest or Debt Power; and/or
  - b. had No Removal Power.
181. The representations pleaded at paragraph 178 were representations that the Service:
- a. was of a particular standard, quality, value or grade; and/or
  - b. had particular performance characteristics, uses or benefits.
182. By reason of the matters pleaded in paragraphs 172 to 181, Bakken contravened s.12DB(1)(a) and or s.12DB(1)(e) of the ASIC Act by its publication of each of the Resetting Article and Resetting Video.

#### **F.11 Goal Setting Article**

183. From on or about 15 November 2021 to 5 February 2022, Bakken published or caused to be published an article on the Website titled “Positive goal setting in a post-COVID-19 world” (**Goal Setting Article**).
184. The Goal Setting Article stated:
- What does it cost to reduce my debt with Solve My Debt Now?*
- We love to be completely transparent with our clients, so you know exactly how our process works and what it costs.*
- The way we calculate our fees is your total outstanding debt amount (only debts you want us to work on of course!) plus 20% plus \$1500 case set up fee divided by weeks/fortnights of your 1–5-year payment plan with us (which is based on your affordability).*
- ...
- Once a debt reduction is achieved, we reduce your payment plan by that amount less 25% of the difference we made to your debt amount.*

185. ASIC repeats and relies upon the matters pleaded at paragraphs 29 to 36.
186. The Goal Setting Article did not state or otherwise disclose that, by reason of the matters pleaded at paragraphs 29 to 36, Bakken may also charge consumers:
- a. the Credit Repair Fee;

- b. the Update Fee;
  - c. the Restart Fee; and
  - d. the Default Fee.
187. By making the statement pleaded at paragraph 184 and by failing to disclose the matters pleaded at paragraph 186, Bakken represented that:
- a. it was completely transparent about its fees; and
  - b. the only fees charged to consumers would be the Setup Fee, the Administration Fee and the Negotiation Fee.
188. The representations pleaded at paragraph 187:
- a. were with respect to a future matter for the purpose of s.12BB of the ASIC Act; and
  - b. Bakken did not have reasonable grounds for making the representation pleaded at paragraph 187 by reason of the facts pleaded in paragraphs 29 to 36.
189. Further and in the alternative to paragraph 188 above, each of the representations pleaded at 187 were false and/or misleading because of the facts pleaded in paragraphs 29 to 36 above.
190. The representations pleaded at paragraph 187 were representations that the Service:
- a. was of a particular standard, quality, value or grade; and/or
  - b. had particular performance characteristics, uses or benefits.
191. By reason of the matters pleaded in paragraphs 183 to 190, Bakken contravened s.12DB(1)(a) and or s.12DB(1)(e) of the ASIC Act by its publication of the Goal Setting Article.

## **F.12 Amended Goal Setting Article**

192. From on or about 6 February 2022 to 9 June 2022, Bakken published or caused to be published an amended version of the Goal Setting Article on the Website also entitled “Positive goal setting in a post-COVID-19 world” (**Amended Goal Setting Article**).
193. The Amended Goal Setting Article stated:

*What does it cost to reduce my debt with Solve My Debt Now?*

*We love to be completely transparent with our clients, so you know exactly how our process works and what it costs.*

*The way we calculate our fees is your total outstanding debt amount (only debts you want us to work on of course!) plus 20% plus \$1500 case set up fee divided by weeks/fortnights of your 1–5-year payment plan with us (which is based on your affordability).*

194. ASIC repeats and relies upon the matters pleaded at paragraphs 29 to 36.
195. The Amended Goal Setting Article did not state or otherwise disclose that, by reason of the matters pleaded at paragraphs 29 to 36, Bakken may also charge consumers:
  - a. the Negotiation Fee;
  - b. the Credit Repair Fee;
  - c. the Update Fee;
  - d. the Restart Fee; and
  - e. the Default Fee.
196. By making the statement pleaded at paragraph 193 and by failing to disclose the matters pleaded at 195 above, Bakken represented that:
  - a. it was completely transparent about its fees; and
  - b. the only fees charged to consumers would be the Setup Fee and the Administration Fee.
197. The representations pleaded at paragraph 196:
  - a. were with respect to a future matter for the purpose of s.12BB of the ASIC Act; and
  - b. Bakken did not have reasonable grounds for making the representation pleaded at paragraph 196 by reason of the facts pleaded in paragraphs 29 to 36.
198. Further and in the alternative to paragraph 197, each of the representations pleaded at paragraph 196 were false and/or misleading because of the facts pleaded in paragraphs 29 to 36.
199. The representations pleaded at paragraph 196 were representations that the Service:
  - a. was of a particular standard, quality, value or grade; and/or
  - b. had particular performance characteristics, uses or benefits.
200. By reason of the matters pleaded in paragraphs 192 to 199, Bakken contravened s.12DB(1)(a) and or s.12DB(1)(e) of the ASIC Act by its publication of the Amended Goal Setting Article.

**G INVOLVEMENT OF MERRILYN MANSFIELD IN CONTRAVENTIONS OF S.12DB OF THE ASIC ACT**

201. Dr Mansfield was involved in the establishment of the Solve My Debt business.
202. During the Relevant Period, Dr Mansfield:
- a. is, or has held herself out as, the Chief Executive Officer of the business operated by Bakken under the name “Solve My Debt Now”;
  - b. was involved in the day to day management of the Solve My Debt business;
  - c. supervised the Solve My Debt Now sales team;
  - d. responded to complaints made by consumers to the Australian Financial Complaints Authority about Solve My Debt;
  - e. authored, authorised and/or caused the publication of marketing materials and content regarding the Solve My Debt business that was published to potential consumers of the Solve My Debt business:
    - i. on the Website;
    - ii. on the Channel; and/or
    - iii. by email mailouts.
203. At all material times during the Relevant Period, Dr Mansfield knew of the matters pleaded in each of paragraphs 4, 5, 6, 8, 15 and 16.

**Particulars**

ASIC repeats and relies upon the matters pleaded in paragraph 202 above.

Further particulars to be provided after discovery.

204. Since about February 2020, Dr Mansfield:
- a. has been admitted as a solicitor in New South Wales;
  - b. has practised as a solicitor acting for persons with credit and debt problems;
  - c. has advocated for clients in respect of disputes with and matters involving credit providers;
  - d. has been involved in over 5,000 debt negotiations, including part and full waivers of debt based on irresponsible lending and other negotiations;

- e. has been deeply engaged with the consumer laws that relate to credit reporting and in advocating for a consumer's right to a correct credit report;
- f. has represented clients in credit related matters and proceedings before the Australian Financial Complaints Authority.

#### **G.1 Knowledge of falsity of representations**

205. By reason of the matters pleaded in paragraphs 201 to 204 and by no later than 13 August 2021, Dr Mansfield knew of the Lack of Payments.

##### **Particulars**

Email sent from Dr Mansfield to a Solve My Debt consumer, James Callanan, dated 13 August 2021.

206. By reason of the matters pleaded in paragraphs 201 to 204 and by no later than 23 June 2020, Dr Mansfield knew that Bakken had No Removal Power.

##### **Particulars**

Email sent from Dr Mansfield to Thomas Hegarty, of Onsavii Partners, dated 23 June 2020.

207. By reason of the matters pleaded in paragraphs 201 to 204 and by no later than 17 July 2020, Dr Mansfield knew that Bakken had No Interest or Debt Power.

##### **Particulars**

Email from Dr Mansfield to Mr Hegarty dated 16 July 2020.

#### **G.2 Big or Small Loan Article**

208. On 15 September 2021:
- a. Dr Mansfield provided Onsavii Partners with the text to be used in the Big or Small Loan Article; and
  - b. Onsavii Partners effected its publication on the Website.

##### **Particulars**

Email from Dr Mansfield to Mr Thomas Hegarty and Garry Harris of Onsavii Partners at 3.47pm on 15 September 2021.

Email from Mr Harris to Dr Mansfield at 3.56pm on 15 September 2021.

209. The Big or Small Loan Article, as it appeared on the Website, stated that Dr Mansfield was the author of the article.

### **G.3 Big or Small Loan Mailout**

210. On 16 September 2021, Dr Mansfield sent emails to Mr Hegarty authorising Mr Hegarty to send the Big or Small Loan Mailout.

#### **Particulars**

Emails of Dr Mansfield to Mr Hegarty dated 16 September 2021.

211. The Big or Small Loan Mailout was described as being from Dr Mansfield.

#### **Particulars**

The Big or Small Loan Mailout concluded with the words “Kind Regards, Dr Merrilyn Mansfield” and provided Dr Mansfield’s contact details.

### **G.4 Loan Trap Mailout**

212. On 8 August 2021, Dr Mansfield sent Onsavii Partners the text of “her next blog” to be used in the Loan Trap Mailout.

#### **Particulars**

Email of Dr Mansfield to Mr Hegarty dated 8 August 2021.

213. On 9 August 2021, Dr Mansfield sent an email to Mr Hegarty authorising Mr Hegarty to send the Loan Trap Mailout.

#### **Particulars**

Email of Dr Mansfield to Mr Hegarty dated 9 August 2021.

214. The Loan Trap Mailout was described as being from Dr Mansfield.

#### **Particulars**

The Loan Trap Mailout concluded with Dr Mansfield’s signature.

### **G.5 Amended Stop Bankruptcy Article**

215. On 6 February 2022, Dr Mansfield sent an email to Mr Hegarty and Garry Harris (also of Onsavii Partners) providing the text to be used in the Amended Stop Bankruptcy Article and instructing them to publish it as early as possible.

**Particulars**

Emails of Dr Mansfield to Mr Hegarty and Mr Harris dated 6 February 2022.

**G.6 Masterclass 2 Email**

216. On 16 July 2020, Dr Mansfield sent an email to Mr Hegarty and Mr Harris providing the text to be used in the Masterclass 2 Email.

**Particulars**

Email from Dr Mansfield to Mr Hegarty and Mr Harris dated 16 July 2020.

217. On 18 March 2021, 14 November 2021 and 17 November 2021, the Masterclass 2 Email was sent to potential consumers. The said emails were sent from or purported to be sent from Dr Mansfield's email address and signed-off by Dr Mansfield.

**Particulars**

Email from Dr Mansfield to Emma Fedorowitsch dated 18 March 2021.

Email from Dr Mansfield to Blake Howarth dated 14 November 2021.

Email from Dr Mansfield to Rebecca Kostadinaska dated 17 November 2021.

Further particulars to be provided after discovery.

**G.7 Masterclass 3 Email**

218. On 19 July 2020, Dr Mansfield sent an email to Mr Hegarty and Mr Harris providing the text to be used in the Masterclass 3 Email.

**Particulars**

Email from Dr Mansfield to Mr Hegarty and Mr Harris dated 19 July 2020.

219. On 19 March 2021 and 25 May 2021, the Masterclass 3 Email was sent to potential consumers and were sent from or purported to be sent from Dr Mansfield's email address and signed-off by Dr Mansfield.



**Particulars**

Email from Dr Mansfield to Emma Fedorowitsch dated 19 March 2021.

Email from Dr Mansfield to Petaia Iamafana dated 25 May 2021.

Further particulars to be provided after discovery.

**G.8 COVID Article**

220. On 1 February 2021, Dr Mansfield sent an email to Mr Hegarty and Mr Harris providing the text to be used in the COVID Article.

**Particulars**

Email from Dr Mansfield to Mr Hegarty and Mr Harris dated 1 February 2021.

**G.9 Resetting Article**

221. On 1 February 2021, Dr Mansfield sent an email to Mr Hegarty and Mr Harris providing the text to be used in the Resetting Article.

**Particulars**

Email from Dr Mansfield to Mr Hegarty and Mr Harris dated 1 February 2021.

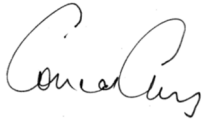
222. By reason of the matters pleaded at paragraphs 201 to 221, Dr Mansfield:

- a. was involved in each of the contraventions of the ASIC Act referred to in within the meaning of s.79(c) of the Corporations Act; and
- b. by operation of s.5(2)(b) and s.12GBCL of the ASIC Act, contravened s.12DB(1) of the ASIC Act on each occasion referred to immediately above.

**H RELIEF**

223. ASIC seeks the relief set out in the Originating Application.

Date: 11 October 2023



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Signed by Conrad Gray  
Lawyer for the Plaintiff

This pleading was prepared by G Walker SC and D Southwood.

**Certificate of lawyer**

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

Date: 11 October 2023



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Signed by Conrad Gray  
Lawyer for the Plaintiff