

## 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



A handwritten signature in blue ink that reads "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.

**Concise Statement**

No. NSD of 2023

Federal Court of Australia  
 District Registry: New South Wales  
 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. IMPORTANT FACTS GIVING RISE TO THE CLAIM****A.1 Introduction**

1. This proceeding concerns debt management services that the First Defendant, (**Bakken**) promoted to consumers experiencing financial hardship. The Plaintiff alleges that the promotion of the services and the way in which the services were provided generally exacerbated consumers' financial circumstances and involved contraventions of the *Australian Securities and Investments and Commission Act 2001* (Cth) (**ASIC Act**) prohibitions on unconscionable conduct and false and/or misleading representations and a contravention of the *Corporations Act 2001* (Cth) (**Corporations Act**) prohibition on the provision of unlicensed financial services.

**A.2 The First Defendant's Solve My Debt business**

2. During the period 1 April 2020 to 30 June 2022 (**Relevant Period**), Bakken operated a business under the registered business name 'Solve My Debt Now' (**Solve My Debt**). The Second Defendant, Dr Merylyn Mansfield owns 50% of Bakken's issued shares. During the Relevant Period, Dr Mansfield was involved in the day-to-day management of Solve My Debt, including authorising marketing publications. Dr Mansfield was a director of Bakken from 7 May 2020.
3. Solve My Debt's consumers were persons in financial hardship, who often had or were about to default on credit facilities such as personal loans and credit cards. Solve My Debt offered those consumers the following services (**Service**): a) negotiating with a consumer's creditors for debt reductions or waivers, relief from interest and/or payment arrangements; b) making payments on behalf of consumers to creditors from regular payments it received from the consumer over a period of typically up to 5 years (**Payment Service**); and c) a "Credit File Repair Service" by which Bakken sought to

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correct, amend or remove negative entries on a consumer's credit report. For the avoidance of doubt, the Service included the Payment Service.

4. Solve My Debt's consumers entered into an agreement with Bakken for the Service on the terms in the document titled "Agreement – Terms and Conditions" (as amended from time to time).
5. During the Relevant Period Solve My Debt's consumers were required to make at least monthly payments in an agreed amount to Bakken for an agreed period. Consumers paid by electronic transfer from debit or credit cards, or from bank accounts. Bakken made payments to consumers' creditors by electronic funds transfers from its bank account to creditors.
6. Bakken charged the following fees: a) a \$1,500 **setup fee**; b) an ongoing **administration fee** of 20% of the consumer's debt; c) a debt **negotiation fee** of 25% of the amount of any debt reduction achieved by Bakken; d) a \$1,500 **credit repair fee** for each issue on the consumer's credit report pursued by Bakken; and e) a \$25 **default fee** payable each time a consumer failed to make their regular payment to Bakken. For example, a consumer who had \$10,000 worth of debt, would pay Bakken, at a minimum, \$3,500 in fees.
7. During the Relevant Period Bakken also charged consumers a \$250 **restart fee** payable on each occasion a consumer wished to recommence the Service and a \$55 **update fee** payable when a consumer sought information about the status of their debts. Neither the restart fee nor the update fee were disclosed in the Agreement.
8. Solve My Debt had a sales team and an advocacy team. The sales team followed up leads/enquiries from potential consumers and worked to sign them up to a contract with Bakken for the Service. This process included calculating the regular payments to be made to Bakken, with the payments to be applied to Bakken's fees and used for payments made by Bakken to consumers' creditors. The advocacy team negotiated with consumers' creditors for debt reductions or waivers, relief from interest payable and/or payment arrangements.
9. Bakken did not during the Relevant Period (and has never) held an Australian financial services licence authorising it to carry on a financial service business.

### **A.3 Promotion of Solve My Debt Services**

10. During the Relevant Period Bakken promoted the Service including the Payment Service to potential consumers including on its **Website** <https://solvemydebtnow.com.au>, its YouTube **Channel** @solvemydebtnow7049, in bulk email broadcasts to potential consumers including persons who had provided their details to Bakken through the Website, and in telephone calls and emails from the sales team.
11. In the course of such marketing, Bakken made statements containing representations which were false and/or misleading. For example, Bakken told potential consumers that as soon as they entered into an Agreement, their creditors must cease any recovery action, when there was no such requirement imposed on creditors.
12. The statements made by Bakken, the representations that arose from those statements, and facts which made those representations false and/or misleading representations are detailed in **Schedule 1**. Dr Mansfield was involved those representations identified in Schedule 1 at paragraphs 5, 9, 10, and 11, and in the representations in the website articles referred to in paragraphs 13 and 14.

### **A.4 System of conduct or pattern of behaviour**

13. In conducting the Solve My Debt business during the Relevant Period, Bakken engaged in a system of conduct or pattern of behaviour which was comprised of the following features.

14. **Vulnerable Consumers and a degree of urgency:** Solve My Debt's consumers were in financial hardship and were typically in or about to be in default and/or their financial situation required urgent attention. They were likely to suffer harm if there was delay in payments to their creditors.
15. **Payments not made to creditors:** Bakken often did not make payments to a consumer's creditors unless and until it had reached a negotiated agreement with that creditor. There were often periods of weeks or months where Bakken received regular payments from consumers but made no payments towards their debts. During the Relevant Period Bakken collected \$3,614,689.93 from 978 consumers who signed up to the Service but paid only \$1,138,442 to the creditors of 348 of those consumers. No payments at all were made to the creditors of 630 (64%) of these consumers.
16. **Bakken's fees were paid in preference to creditors:** While payments were not being made to some or all of a consumer's creditors, the regular payments made to Bakken by that consumer that were not otherwise paid to creditors were applied to Bakken's fees.
17. **Bakken's practices resulted in the consumer owing more and having black marks on their credit reports:** Bakken's non-refundable setup and administration fees left consumers with greater debt than when they signed an Agreement, unless Solve My Debt achieved reductions in the consumer's debts sufficient to offset these fees. In fact, during the Relevant Period only 5.3% of the consumers referred to in [15] above obtained a debt reduction sufficient to offset Solve My Debt's fees. Where Bakken did not make payments to and/or reach a negotiated agreement with a consumer's creditors, their debts increased and they had, or were at risk of having, negative entries added to their credit reports. Terminating the Agreement (including if unable to meet the regular payment) left the consumer with more debt, and no Services.
18. **No / modest debt reductions achieved:** of the consumers referred to in [15] above, 43% did not obtain any debt reduction at all and a further 29% obtained a debt reduction of less than 15%.
19. **Consumers did not know the status of their debts:** Pursuant to the Agreement, consumers had no entitlement to information about Bakken's dealings with their creditors. They had no way of knowing whether the Service was in fact being provided and could not (or could not easily) protect themselves from the consequences of Bakken's conduct if payments were not being made to their creditors. Bakken did not ordinarily provide specific updates to consumers about the status of negotiations with their creditors or the balance of their debts. If such an update was requested, Bakken charged the undisclosed update fee.
20. **Misrepresentations:** Bakken made false and/or misleading representations. See Schedule 1.
21. **Incentives:** Sales team members received a commission for each consumer they signed up and a commission calculated as a proportion of the consumer's overall debt. This was not disclosed to consumers. Consumers were offered financial incentives for positive reviews on Solve My Debt's Facebook page. Solve My Debt commented on such reviews that they provided incentives for reviews but did not have input into the content, when the incentives were in fact conditional on the reviews being positive.
22. **Lack of training and oversight:** Bakken's staff were not provided with adequate training or oversight, including: a) training or instructions as to how to identify and interact with vulnerable consumers; b) training in respect of avoiding misrepresentations, unconscionable conduct, or pressure or unfair sales tactics; c) monitoring or review of their calls with potential consumers.
23. **Lack of systems and inadequate record keeping:** Bakken did not have systems (or adequate systems) in place to: a) record in a complete, up to date and easily accessible form the status of negotiations with a consumer's creditors; b) prompt staff to follow up or progress negotiations with creditors; c) ensure that payment arrangements that had

been entered into with a consumer's creditors were being implemented; d) record in a complete, up to date and easily accessible form, payments made by consumers to Bakken, payments made by Bakken to consumers' creditors, amounts applied to Bakken's fees and any balance of funds attributable to each consumer; e) safeguard or hold separately the funds paid to Bakken by consumers in excess of the amount Bakken was entitled to at any time for its fees; f) identify, action or record complaints.

24. **Unilateral contract terms:** The Agreement purported to provide Bakken with the unilateral right to stop providing the Service and/or vary the fees and charges payable to Bakken.

## **B. SUMMARY OF RELIEF SOUGHT FROM THE COURT**

25. ASIC seeks the relief set out in the accompanying Originating Process.

## **C. PRIMARY LEGAL GROUNDS FOR RELIEF SOUGHT**

26. The Payment Service was a financial product, being a facility through which Bakken made non-cash payments. Bakken was dealing in a financial product and providing a financial service. See ss. 761A, 762C, 763A, 763D, 766A and 766C(1)(b) of the Corporations Act. By offering and providing the Payment Service during the Relevant Period, Bakken carried on a financial services business and was required to hold a licence: s.911A(1) of the Corporations Act. As it did not hold such a licence, Bakken contravened s.911A(5B) of the Corporations Act.
27. The Payment Service was a financial service for the purposes of Part 2 Division 2 of the ASIC Act. See ss. 12BAA(1)(c), 12BAA(6) and 12BAB(1AA). Bakken's conduct in offering and providing the Service was in trade and commerce and in connection with the supply or possible supply of a financial service (being the Payment Service) to consumers for the purposes of s.12CB and s.12DB of the ASIC Act.
28. In making each of the representations detailed in **Schedule 1**, Bakken made false and/or misleading representations that the Service was of a particular standard, quality, value or grade; and/or had particular performance characteristics or benefits, and consequently, on each occasion Bakken contravened s.12DB(1)(a) and/or s.12DB(1)(e) of the ASIC Act. As identified in Schedule 1, Dr Mansfield was involved in the making of certain of those representations, and by operation of s.12GBCL of the ASIC Act, she too contravened s.12DB(1)(a) and/or s.12DB(1)(e).
29. By reason of the features of the operation of the Service set out above, Bakken engaged in a system of conduct or pattern of behaviour which was, in all the circumstances, unconscionable, and consequently Bakken contravened s.12CB(1) of the ASIC Act.

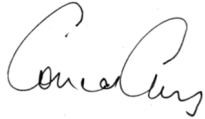
## **D. ALLEGED HARM**

30. Potential consumers were misled or deceived about the benefits and features of the Service. Consumers were subject to an unconscionable system of conduct or pattern of behaviour, which had the potential to, or did, cause them to owe more and / or have more adverse entries on their credit reports than when they first engaged Solve My Debt.

## Certificate of lawyer

I, Conrad Gray, certify to the Court that, in relation to the Concise Statement 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 Concise Statement.

Date: 8 August 2023

A handwritten signature in cursive script, appearing to read "Conrad Gray", positioned above a horizontal dotted line.

Signed by Conrad Gray

Lawyer for the Plaintiff

**SCHEDULE 1 - FALSE AND/OR MISLEADING REPRESENTATIONS BY BAKKEN**

1. Emails sent to potential consumers in the period 30.04.20–23.03.22 which stated either *“As soon as you enter an Informal Debt Agreement your creditors must cease any recovery action”* or *“As soon as you enter a Solve My Debt Now Agreement your creditors must cease any recovery action”*, and represented that as soon as a consumer entered into an agreement with Solve My Debt, their creditors were required to cease any recovery action in respect of their debts. These representations were false or misleading in contravention of s.12DB(1)(e) because the signing of an agreement with Solve My Debt did not impose any requirement on creditors to cease any recovery action in respect of that consumer’s debt.
2. A video uploaded to the Channel and linked to the Website and an article published on the Website on or about 10.02.21 until 6.02.22, both entitled *“How our Solve My Debt Now solution is better than a debt consolidation loan”* which stated *“Our Solve My Debt Now solution ... 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 to waive your debts and reduce or waive your interest”*, and represented that Bakken took over and made payments towards a consumer’s debts at the same time that it engaged in negotiations with their creditors (**Payments Were Made**). These representations were false or misleading in contravention of s.12DB(1)(a) and/or (e) because Bakken: a) often did not make payments to a consumer’s creditors until it reached a negotiated agreement with that creditor; b) often did not make any payments nor conduct any negotiations with a creditor that granted a payment holiday until that holiday ended (**Lack of Payments**).
3. A mailout emailed to potential consumers entitled *“How our Solve My Debt Now solution is better than a debt consolidation loan”* on or about 15.02.21 which stated *“Our Solve My Debt Now solution ... 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 try to reduce to waive your debts and try to reduce or waive your interest”*, and represented Payments Were Made. These representations were false or misleading in contravention of s.12DB(1)(a) and/or (e) because of the Lack of Payments.
4. Mailouts emailed to potential consumers entitled: *“End of jobkeeper – what to do now?”* on or about 15.03.21; *‘I would recommend Solve My Debt Now to absolutely anybody’* on or about 19.04.21; and *“Win back sleepless nights with solve my debt now”* on or about 17.05.21, each of which stated *“We take over your debts and pay them on your behalf”* and represented Payments Were Made. These representations were false or misleading in contravention of s.12DB(1)(a) and/or (e) because of the Lack of Payments.
5. An article published on the Website entitled *“Have big or small loans? We can help you become debt free”* on or about 15.09.21 until 06.02.22, and mailouts entitled *“Have big or small loans? We can help you become debt free”* emailed to potential consumers on or about 16.09.21 and *“You don’t have to be stuck in the payday (small) loans trap”* emailed to potential consumers on or about 18.08.21, each of which 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”* and represented Payments Were Made. These representations were false or misleading in in contravention of s.12DB(1)(a) and/or (e) because of the Lack of Payments.
6. An article published on the Website entitled *“You don’t have to be stuck in the payday (small) loans trap”* on or about 09.08.21 until 06.02.22 which 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”* and represented Payments Were Made. These representations were false or misleading in contravention of s.12DB(1)(a) and/or (e) because of the Lack of Payments.

7. A video uploaded to the Channel and linked to the Website on or about 05.2.20 and available throughout the Relevant Period entitled "*What is insolvency, what is bankruptcy*", which 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*" and represented that Bakken:
- had the power or was otherwise able to ensure that a consumer would avoid bankruptcy (**Avoid Bankruptcy Power**);
  - had the ability to ensure that a consumer's debt and/or liability to pay interest would be reduced, waived or frozen (**Interest or Debt Power**); and/or
  - had the power to or was otherwise able to ensure that adverse entries on a consumer's credit file would be removed (**Adverse Entry Removal Power**).
- These representations were false or misleading in contravention of s.12DB(1)(a) and/or (e) because:
- Bakken did not have the power to ensure that a consumer would avoid bankruptcy if they used the Service (**No Avoid Bankruptcy Power**);
  - Bakken: i) did not have the power to ensure that a consumer's debt and/or liability to pay interest would be reduced, waived or frozen; and ii) did not always achieve a reduction, waiver or freezing of the consumer's debt and/or interest (**No Interest or Debt Power**); and/or
  - Bakken: i) did not have the power to ensure that adverse entries on a consumer's credit file would be removed; and ii) did not always achieve the removal of adverse entries on a consumer's credit file (**No Removal Power**).
8. An amended article published on the Website on or about 06.2.22 until 11.03.22 entitled "*What is bankruptcy? What is insolvency*" which stated "*Our solution: ... Avoids Bankruptcy ... Reduces or freezes interest ... Reduces or waives your debt*", and represented that Bakken had the Avoid Bankruptcy Power and/or the Interest or Debt Power. These representations were false or misleading in contravention of s.12DB(1)(a) and/or (e) because Bakken had No Avoid Bankruptcy Power and/or No Interest or Debt Power.
9. An amended article published on the Website on or about 06.02.22 until 09.06.22 entitled "*How to get out of debt and stop going bankrupt*" which stated "*Our debt relief solution: ... Clears old black marks off your credit file*" and represented that Bakken had the Adverse Entry Removal Power. This representation was false or misleading in contravention of s.12DB(1)(a) and/or (e) because Bakken had No Removal Power.
10. Emails constituting "Masterclass 2" sent to potential consumers at various times throughout the Relevant Period (including 18.03.21, 14.11.21 and 17.11.21) which stated "*We clear your credit file of default, judgments, enquiries, and late repayment markers (if you need us to)*" and "*We ensure you don't go bankrupt (entering a Part 9 debt agreement is the same as going bankrupt)*", and represented that Bakken had the Adverse Entry Removal Power and the Avoid Bankruptcy Power. These representations were false or misleading in contravention of s.12DB(1)(a) and/or (e) because Bakken had No Removal Power and No Avoid Bankruptcy Power.
11. Emails constituting "Masterclass 3" sent to potential consumers at various times throughout the Relevant Period (including on 19.03.21 and 25.05.21) which stated "*It's different because you won't go bankrupt using our solution*", and represented that Bakken had the Avoid Bankruptcy Power. This representation was false or misleading in contravention of s.12DB(1)(a) and/or (e) because Bakken had No Avoid Bankruptcy Power.
12. Articles published on the Website on or about 06.2.22 until 09.06.22 entitled "*How to get out of debt and stop going bankrupt*" and "*Fix your debt – Do you need help with debt?*" which stated "*Our ... solution: ... Avoids Bankruptcy... Freezes interest... Reduces your debt...*", and represented that Bakken had the Avoid Bankruptcy Power and/or the Interest or Debt Power. These representations were false or misleading in



contravention of s.12DB(1)(a) and/or (e) because Bakken had No Avoid Bankruptcy Power and No Interest or Debt Power.

13. A video linked to the Website and an article published on the Website on or about 10.02.21 until 09.06.22, both entitled “*A financial recovery from COVID*”, which stated “*We remove any black marks off your credit file*” and represented that Bakken had the Adverse Entry Removal Power. These representations were false or misleading in contravention of s.12DB(1)(a) and/or (e) because Bakken had No Removal Power.
14. A video uploaded to the Channel and linked to the Website and an article published on the Website on or about 10.02.2021 until 09.06.22, both entitled “*Resetting your Home Loan & Rate*”, which stated : “*Our Solve My Debt Now solution works to reduce your debt and clear your credit file of black marks ...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*” (‘old’ not used in article before 06.02.22) and represented that Bakken had the Adverse Entry Power and Interest or Debt Power. These representations were false or misleading in contravention of s.12DB(1)(a) and/or (e) because Bakken had No Removal Power and No Interest or Debt Power.
15. An article published on the Website on or about 15.11.21 until 05.02.22 and amended from on or about 06.02.22 until 09.06.22 (**amended article**) entitled “*Positive goal setting in a post-COVID-19 world*” which stated “*What does it cost ...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... 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*” and represented that: a) Bakken was completely transparent about its fees; and b) the only fees charged to consumers were the setup fee, administration fee and the negotiation fee. The amended article deleted the reference to any negotiation fee. These representations were false or misleading in contravention of s.12DB(1)(a) and/or (e) because Bakken: a) also charged or purported to charge the update fee, the restart fee, the credit repair fee and/or the default fee and, in the case of the amended article, the negotiation fee; and b) did not disclose the update fee or the restart fee in the Agreement.
16. Merrilyn Mansfield was involved in the contraventions listed above at paragraph 5, paragraph 9, paragraph 10, paragraph 11, and in the contraventions relating to the website articles referred to in paragraphs 13 and 14 above.