

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 29/06/2022 3:40:08 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID366/2022
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v MERCER FINANCIAL ADVICE (AUSTRALIA) PTY LTD (ACN 153 168 293)
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 29/06/2022 4:31:14 PM AEST

Registrar

Important Information

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

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

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



Form 2
Rule 2.2 and 15A.3

ORIGINATING PROCESS

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL**

NO OF 2022

**AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**

Plaintiff

**MERCER FINANCIAL ADVICE (AUSTRALIA) PTY LTD
(ACN 153 168 293)**

Defendant

A. DETAILS OF APPLICATION

This application is made under:

- (a) sections 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), ss 1101B and 1317G(1E) of the *Corporations Act 2001* (Cth) (**Corporations Act**) as relevantly in force until 12 March 2019;
- (b) sections 1101B, 1317G(1) and 1317J(1) of the *Corporations Act* as relevantly in force from 13 March 2019; and
- (c) sections 12GBA(1), 12GJ and 12GLB of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) as relevantly in force until 12 March 2019 and ss 12GBA(1), 12GBB, 12GJ and 12GLB of the *ASIC Act* as relevantly in force from 13 March 2019.

The Plaintiff seeks declarations of contraventions of the *Corporations Act* and the *ASIC Act*, pecuniary penalty orders, adverse publicity orders and costs.

In this originating process, terms which are defined in the Concise Statement dated 29 June 2022 have the same meaning as they do in that document.

Filed on behalf of (name & role of party)	Australian Securities & Investments Commission (Plaintiff)		
Prepared by (name of person/lawyer)	Kim MacKay		
Law firm (if applicable)	Holding Redlich		
Tel	(03) 9321 9785	Fax	
Email	Kim.Mackay@holdingredlich.com		
Address for service	Level 8, 555 Bourke Street, Melbourne, 3000		



On the facts stated in the accompanying Concise Statement, the Plaintiff seeks:

Declarations

Sections 962P and 962S of the Corporations Act

1. A declaration that the Defendant (**MFA**) contravened s 962P of the Corporations Act on at least 1,052 occasions to 601 clients during the Penalty Period in which MFA charged a Post-FOFA FDS Affected Client an ongoing fee notwithstanding the deemed termination of the applicable Ongoing Service Arrangement.
2. A declaration that MFA contravened s 962S(1) of the Corporations Act on 2,902 occasions to 1,542 clients during the Penalty Period in which MFA failed to give a Pre-FOFA FDS Affected Client a 'fee disclosure statement' within the meaning of s 962H.

Section 12DB(1) of the ASIC Act

3. A declaration that by issuing MFA FDSs to Post-FOFA FDS Affected Clients, and in all the circumstances, MFA on 1,063 occasions represented to each relevant client that a binding fee arrangement was on foot, which representations were each a false or misleading representation concerning the existence or effect of a right in contravention of s 12DB(1)(i) of the ASIC Act.
4. A declaration that by issuing MFA FDSs to No Compliant FDS Clients, and in all the circumstances, MFA on 3,544 occasions represented to each relevant client that MFA had provided to them all service entitlements pursuant to the terms of the Ongoing Service Arrangement, which representations were each a false or misleading representation that:
 - (a) services were of a particular standard or quality, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (b) services had performance characteristics, uses or benefits, in contravention of s 12DB(1)(e) of the ASIC Act.
5. A declaration that by issuing MFA FDSs to Post-FOFA FDS Affected Clients, and in all the circumstances, MFA on 1,063 occasions represented to each No Complaint FDS Client that in respect of the FDS Period, MFA was contractually entitled to charge, and such client was contractually obliged to pay, the ongoing fees, which representations



were each a false or misleading representation concerning the existence or effect of a right in contravention of s 12DB(1)(i) of the ASIC Act.

Section 912A(1) of the Corporations Act

6. A declaration that on each occasion that MFA contravened ss 962P and/or 962S(1) of the Corporations Act and/or s 12DB(1) of the ASIC Act, MFA breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act.
7. A declaration that by its conduct during the Relevant Period in:
 - (a) not having in place any or alternatively any adequate, systems, procedures, controls and or policies capable of preventing the conduct referred to in paragraphs 1 to 5 above; and/or
 - (b) not providing certain clients with invitations to Review Meetings,

MFA failed to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a) of the Corporation Act.

Pecuniary Penalties

8. Orders that MFA pay pecuniary penalties to the Commonwealth:
 - (a) pursuant to ss 1317G(1E)(b)(iv) and (v) of the Corporations Act as in force until 12 March 2019, and 1317G(1) of the Corporations Act as in force from 13 March 2019, in respect its contraventions of ss 962P and 962S(1) of the Corporations Act;
 - (b) pursuant to s 12GBA(1) of the ASIC Act as in force until 12 March 2019, and s 12GBB of the ASIC Act as in force from 13 March 2019, in respect of its contraventions of ss 12DB(1) of the ASIC Act;

in such amounts as the Court considers appropriate.

Publicity Orders

9. Adverse publicity orders, pursuant to s 12GLB(1) of the ASIC Act and/or s 1101B of the Corporations Act, requiring MFA to:



- (a) disclose the contraventions the subject of the declarations and orders in paragraphs 1 to 8 above, and the circumstances giving rise to those contraventions; and
- (b) publish by form, means and channels to be determined by the court, at its own expense, those disclosures.

Further Orders

10. An order that MFA pay the Applicant's costs of and incidental to the proceeding.
11. Such further or other order as the Court thinks fit.

Date: 29 June 2022

Kim MacKay

Kim MacKay
HOLDING REDLICH
 Solicitor for the Plaintiff

This application will be heard by at 305 William St, Melbourne VIC 3000 at *am/*pm on

B. NOTICE TO DEFENDANT

TO: MERCER FINANCIAL ADVICE (AUSTRALIA) PTY LTD
 727 Collins Street, Docklands VIC 3008

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable.



D. FILING

Date of filing: 29 June 2022

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Registrar

E. SERVICE

The Plaintiff's address for service is Level 8, 555 Bourke Street, Melbourne 3000.

It is intended to serve a copy of this originating process on the Defendant.