

## NOTICE OF FILING

### Details of Filing

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File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v  
MONEY3 LOANS PTY LTD ACN 108 979 406  
Registry: VICTORIA 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.

**Concise Statement**

No.



Federal Court of Australia

District Registry: Victoria

Division: General

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Applicant

**MONEY3 LOANS PTY LTD (ACN 108 979 406)**

Respondent

**IMPORTANT FACTS GIVING RISE TO THE CLAIM****Introduction**

1. At all material times, the Respondent (**Money3**) held, and continues to hold, an Australian credit licence number 389067 (**Licence**) which authorises it to engage in credit activities, including as a credit provider under a credit contract (for the purposes of the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Act**)).
2. The Applicant (**ASIC**) alleges that during the period 8 May 2019 to 18 February 2021 (**Relevant Period**), Money3 entered into 5 credit contracts (for the purposes of the Credit Act) (**Credit Contracts**) with 6 consumers (**Consumers**) for the purpose of financing the purchase of second-hand vehicles. In each case, Money3 failed to make reasonable inquiries and verifications and failed to assess that each Credit Contract was unsuitable, in circumstances where it was likely that the Consumers who were the debtors under the Credit Contracts would be unable to comply with their financial obligations under the contracts, or could only comply with substantial hardship. By reason of its conduct as described below, Money3 contravened various sections of the Credit Act.

**Parties**

3. Money3 is a wholly owned subsidiary of Solvar Limited (previously named Money3 Corporation Limited) (ACN 117 296 143), a publicly listed company, and is a member of the Money3 Group (comprising Solvar Limited and its subsidiaries), which is a provider of consumer automotive finance and personal loans across Australia and New Zealand.
4. Money3 provides consumer personal loans and consumer vehicle finance through direct, broker and dealer channels within Australia. Much of Money3's business involves lending to 'sub-prime' consumers, and many of its consumers are Centrelink recipients or other consumers on low incomes.

<b>Filed on behalf of</b>	Australian Securities and Investments Commission, Applicant		
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## **The Credit Contracts and Money3's failure to undertake unsuitability assessments**

5. Each of the Consumers and the Credit Contracts are identified in **Schedule 1** below. The circumstances of each of the Consumers, the Credit Contracts and the purported assessments performed by Money3 in respect of the Credit Contracts are described below. As identified in Schedule 1, the total loan amount for each of the Credit Contracts comprised an amount of \$8,000 advanced to purchase the vehicle, as well as additional amounts totalling around \$3,000 (for an application fee, a broker fee, and extended warranty insurance) (together, the **Add-on Fees**). Each of the Consumers had as their objective obtaining financing for a second-hand vehicle (but not for financing any Add-on Fees).
6. In the process of pre-approving credit contracts, Money3 performed a "serviceability assessment" (**Serviceability Assessment**). Money3 obtained for each of the Consumers: bank statements; Centrelink statements; an incomplete application form prepared by the broker through whom the loan was being sought; as well as a credit report. However, other than those matters, prior to the day that Money3 undertook its Serviceability Assessment, or prior to the day on which each of the Consumers signed the Credit Contract, Money3 did not:
  - a) make reasonable inquiries about the Consumer's requirements and objectives in relation to the Credit Contract (and in particular, whether the Consumer wished to obtain finance for the Add-on Fees, on top of the price of the vehicle); and/or
  - b) make reasonable inquiries about or take reasonable steps to verify the Consumer's financial situation (including by obtaining a signed and/or completed statement from the Consumer setting-out their financial situation (including their likely expenses)).
7. Before entering into the Credit Contract with each Consumer, Money3:
  - a) in carrying-out its Serviceability Assessment in effect applied a number of the arbitrary expense amounts from its internal product guide (**Product Guide**), which included general weekly living expenses of \$200 (or \$225 from August 2019), a minimum amount of \$100 a week for rent, plus an amount of \$50 a week for each dependent (non-adult) child, all of which were derived from its own staff survey;
  - b) as a result of the conduct described in (a) above, applied expense amounts which were not based on the Consumer's individual financial situation, and were substantially lower than the Consumer's reasonably necessary expenses;
  - c) did not make any assessment of whether the Credit Contract would meet the Consumer's requirements or objectives;
  - d) did not assess whether or not the Credit Contract would be unsuitable for the Consumer; and
  - e) did not state the period for which any assessment covered.
8. After carrying-out the Serviceability Assessment, Money3 generated a partially completed application form for the Consumer (**Money3 Application**), which included a number of the expense amounts arrived at by reference to the Product Guide. The Consumers were

provided with, and asked to sign, the Money3 Application and the Credit Contract at the same time.

9. The Credit Contracts were unsuitable for each of the Consumers because:
  - a) it was likely that each Consumer would be unable to comply with their financial obligations under the contract, or could only comply with substantial hardship; and/or
  - b) the Credit Contract would not meet the Consumer's requirements or objectives because the amount financed under the Credit Contract included the Add-on Fees.

#### ***Credit Contract with Consumer 1***

10. Consumer 1 was a single mother, with 3 dependent children aged between 4 and 8. She had been unemployed for about 6 years, and had been on Centrelink payments for about 16 years. Her sole source of income was Centrelink payments and child support payments. Consumer 1 traded in another vehicle for the vehicle financed by the Credit Contract.
11. On or about 24 April 2019, a broker, National Loans Pty Ltd (**National Loans**) submitted an unsigned incomplete application form to Money3 on behalf of Consumer 1. Other than providing permission to access her Centrelink statement and bank statements, Consumer 1 was not asked to, and did not, provide any information regarding her financial circumstances to National Loans or Money3 prior to the day on which she signed her Credit Contract. Consumer 1 had no interaction with Money3 before she signed the Credit Contract.
12. On or about 26 April 2019, Money3 carried-out a Serviceability Assessment in respect of Consumer 1. The Serviceability Assessment understated Consumer 1's reasonably necessary expenses. On 8 May 2019, Consumer 1 was provided with a Credit Contract and a Money3 Application, which she signed. The Money3 Application did not include any weekly expenses other than for rent. On or about 9 May 2019, Money3 entered into the Credit Contract with Consumer 1.
13. Consumer 1's vehicle as financed by the Credit Contract broke down shortly after its purchase and required repairs. Six weeks after entry into the Credit Contract, Money3 agreed to Consumer 1's request to reduce the fortnightly repayment amount. Consumer 1 nevertheless continued to face significant financial hardship as a result of the repayments required under the Credit Contract, and she could not afford to buy sufficient groceries to feed and clothe her family and regularly missed bills when they were due for her power and telephone services. Consumer 1 ultimately sought assistance from charities and financial counsellors.
14. Consumer 1 made hardship claims to Money3. After making a complaint to the Australian Financial Complaints Authority, in about March 2021, National Loans reached a settlement with Consumer 1, to pay-off the amount owing under the Credit Contract, and the ownership of the vehicle was transferred back to the car dealer. Consumer 1 paid a total of \$4,655.88 under the Credit Contract, but as she had traded in her previous vehicle, she was left without a vehicle.

### ***Credit Contract with Consumer 2***

15. Consumer 2 was a single, indigenous woman with 2 dependent children who were aged between 5 and 1, including one child with chronic health problems. At the time of entering into the Credit Contract, Consumer 2 was unemployed, had recently stopped receiving support from an Indigenous assistance agency, and her sole source of income was Centrelink benefits.
16. On or about 23 September 2019, a broker, Dasso Investments Pty Ltd trading as Responsive Lending (**Responsive Lending**) provided an application form for Consumer 2 to Money3. Other than providing permission to access her Centrelink statement and bank statements, Consumer 2 was not asked to, and did not, provide any information regarding her financial circumstances to Responsive Lending or Money3. Consumer 2 had no interaction with Money3 before entry into the Credit Contract.
17. On or about 23 September 2019, Money3 carried-out a Serviceability Assessment of Consumer 2's capacity to service the Credit Contract. The assessment understated Consumer 2's reasonably necessary living expenses.
18. On 26 September 2019, Consumer 2 was provided with the Credit Contract and a Money3 Application, which had all expense figures filled-in as nil amounts with the exception of an amount for rent. Consumer 2 signed the Credit Contract and Money3 Application electronically that day. On or about 30 September 2019, Money3 entered into the Credit Contract with Consumer 2.
19. Consumer 2's vehicle as financed by the Credit Contract broke down within the first month of purchase and required repairs. Consumer 2 faced significant financial hardship as a result of the Credit Contract as she was not able to afford the repayments or to have her vehicle repaired on top of her living expenses. Ultimately, she sought assistance from a charity and a legal centre.
20. From November 2019, Consumer 2 defaulted on 16 fortnightly repayments and incurred dishonour fees. On 6 March 2020, Money3 issued a default notice and on 20 July 2020 Consumer 2 made a hardship claim to Money3. In February 2021, Consumer 2 accepted Money3's offer to reduce the amount owing under the Credit Contract, and reduced her repayment amounts.

### ***Credit Contract with Consumer 3***

21. Consumer 3 was a single, indigenous woman with 3 dependent children who were aged 6 and under, one of whom was a baby. At the time of entering into the Credit Contract, Consumer 3 was living in emergency housing, unemployed, and her sole source of income was Centrelink benefits and occasional child support payments from the father of her children.
22. On 14 October 2019, Aussie Bike Auto & Boat Loans Pty Ltd trading as Aussie Loans provided an unsigned application form for Consumer 3 to Money3. That application form was not provided to Consumer 3 to review or sign. Consumer 3 had no interaction with Money3 before entry into the Credit Contract.

23. On or about 16 October 2019, Money3 carried-out a Serviceability Assessment in respect of Consumer 3. The assessment understated Consumer 3's reasonably necessary expenses.
24. On 18 October 2019, Consumer 3 was sent an email, which attached the Credit Contract and a Money3 Application to sign electronically, with all expense figures filled-in as nil amounts, with the exception of an amount for rent. On or about 20 October 2019, Money3 entered into the Credit Contract with Consumer 3.
25. Following entry into the Credit Contract, Consumer 3 suffered financial distress, and as a result cancelled her comprehensive car insurance for the vehicle and sought financial assistance from family members and friends. On 24 December 2019, Consumer 3 contacted Money3 and requested that her repayments be put on hold, which Money3 declined. In September 2020, a financial counsellor contacted Money3 on behalf of Consumer 3.
26. On 26 November 2020, Consumer 3 was sent an email from Money3 which contained an offer to Consumer 3 for her to "redraw up to \$1,000 for Xmas!" on her current loan. On about 2 December 2020, Consumer 3 applied for the \$1,000 redraw offer, which Money3 approved (**Xmas Redraw Amount**).
27. In August 2021, Consumer 3 accepted Money3's offer to write-off the balance of the amount owing under the Credit Contract and refunded her for the Xmas Redraw Amount.

#### ***Credit Contract with Consumers 4 and 5***

28. Consumer 4 and Consumer 5 are a married couple. The husband, aged 74, was on a carer payment from Centrelink and looked after his wife, aged 67 and adult son, both of whom had disabilities. At the time of entering into the Credit Contract, Consumers 4 and 5 were unemployed, lived in community housing and their sole source of income was Centrelink benefits.
29. On or about 30 January 2021, a broker, Jambl Industries Pty Ltd trading as Finance My Bike provided an incomplete application for Consumers 4 and 5 to Money3. Other than providing Centrelink statements, bank and community housing statements, Consumers 4 and 5 were not asked to, and did not, provide any information on their financial situation to the broker or Money3 prior to signing the Credit Contract. They had no interaction with Money3 before signing the Credit Contract.
30. On about 1 February 2021, Money3 carried-out a Serviceability Assessment in respect of Consumers 4 and 5. The assessment understated the reasonably necessary expenses of Consumers 4 and 5.
31. On 18 February 2021, Consumers 4 and 5 signed the Credit Contract and Money3 Application. On 22 February 2021, Money3 obtained verification of the rental details for Consumers 4 and 5. On the same day, Money3 entered into a Credit Contract with Consumers 4 and 5.
32. About 3 months after entry into the Credit Contract, Consumers 4 and 5 began to be in arrears on rent and utility bills, and as a result had restricted water supply for a period of

time and could not afford to engage in normal social activities. On about 1 September 2021, they requested Money3 to reduce their monthly payments, and Money3 declined their request. They ultimately sought assistance from charities and community legal centres.

33. On 7 January 2022, Money3 offered to reduce the balance owing and the amount of the fortnightly repayments, and freeze interest and fees for the remainder of the Credit Contract. Consumers 4 and 5 agreed to that offer.

#### ***Credit Contract with Consumer 6***

34. Consumer 6 was a single mother who had two children, both under 10 years old. At the time of entering into the Credit Contract, Consumer 6 was living in temporary accommodation, unemployed, and her sole source of income was Centrelink benefits and occasional assistance from the father of her children.
35. On about 3 September 2019, a broker, Car Finance 4 You, submitted an unsigned incomplete application form to Money3 on behalf of Consumer 6. Consumer 6 had no interaction with Money3 before she signed the Credit Contract.
36. On about 3 September 2019, Money3 carried-out a Serviceability Assessment in respect of Consumer 6. The assessment understated the reasonably necessary expenses of Consumer 6.
37. On 5 September 2019, Consumer 6 signed the Credit Contract and Money3 Application.
38. From 24 December 2019, Consumer 6 did not make the required loan repayments on 14 occasions.
39. On 18 November 2020, Consumer 6 was sent an email from Money3 which contained an offer to Consumer 6 for her to “redraw up to \$1,000 for Xmas!” on her current loan. On about 23 December 2020, Consumer 6 applied for the \$1,000 redraw offer, which Money3 approved.
40. Consumer 6’s vehicle as financed by the Credit Contract broke down in February 2021 and required repairs. Consumer 6 faced significant financial hardship as a result of the Credit Contract as she was not able to afford the repayments or to have her vehicle repaired on top of her living expenses. Consumer 6 is unable to use the car because it has broken down and requires alternative transport to meet her needs. With the assistance of an Aboriginal legal service, Money3 agreed with Consumer 6 that she did not need to make any further repayments under the Credit Contract.

#### ***Conduct in relation to general obligations, training and competence***

41. During the Relevant Period, Money3:
  - a) failed to provide or arrange adequate training, professional development or other instructional assistance;
  - b) failed to provide adequate templates, forms, checklists and guides; and
  - c) failed to assess the skill and competency of its representatives,

to ensure that its representatives were adequately trained, and were competent, in discharging Money 3's obligations under sections 128, 130, 131 and 133 of the Credit Act, in contravention of sections 47(1)(g) and (4) of the Credit Act, and in particular, Money3:

- d) failed to provide its representatives with adequate training and tools to ensure that its representatives were competent to make reasonable inquiries about consumers' requirements, objectives and financial situation and to take reasonable steps to verify consumers' financial situation;
- e) directed its representatives to apply the minimum expense amounts contained in the Product Guide rather than adequately carrying-out the steps referred to above; and
- f) failed to provide its representatives with adequate training and tools to ensure that its representatives were able to competently carry out assessments as to the unsuitability of credit contracts.

42. As a result of the matters referred to in paragraphs 5 to 41 above, Money3 did not take reasonable steps to ensure that its representatives complied with sections 128, 130, 131 and 133 of the Credit Act, in contravention of section 47(1)(e) and (4) of the Credit Act, and failed to ensure that its representatives were adequately trained, and were competent, to engage in the credit activities authorised by Money3's Licence, in contravention of section 47(1)(g) and (4) of the Credit Act.

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

43. As set out in the Originating Application, the Applicant seeks declaratory relief under section 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**) and/or section 166 of the Credit Act, pecuniary penalty orders under section 167 of the Credit Act, injunctive relief under section 23 of the Federal Court Act and/or section 177 of the Credit Act, and costs.

#### **PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT**

44. By reason of the matters referred to above, and as set out in the Originating Application, Money3 contravened sections 47(1)(e) and (g), 47(4), 128, 130(1), 131(1) and 133(1) of the Credit Act.

#### **HARM SUFFERED**

45. As a result of the Credit Contracts, Money3 earned profits, including interest, and loan application or establishment fees on the Credit Contracts, at the expense of the Consumers.

46. As a result of Money3's contraventions as described above, each of the Consumers who entered into the Credit Contracts fell into hardship and suffered distress as a result of the Credit Contracts, and in the case of one Consumer, made payments under the Credit Contract for which she ultimately received little benefit (as she ultimately surrendered the vehicle that had been financed by the Credit Contract).



### **Certificate of lawyer**

I, Hugh Copley, certify to the Court that, in relation to the Concise Statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 16 May 2023



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Signed by Hugh Copley  
Lawyer for the Applicant

This concise statement was prepared by S R Senathirajah KC and R J Boadle, counsel for the Applicant.

**Annexure A**  
**The Credit Contracts**

Consumer	Name	Date	Credit Contract	Loan Amount	Amount advanced towards car purchase price	Application fee	Broker fee	Extended warranty	Interest rate	Term	Repayment amount
Consumer 1	[redacted]	9 May 2019	3722706	\$11,085	\$8,000	\$1,050	\$550	\$1,485	24.95%	3 years (36 months)	\$215.22 fortnightly, \$231.09 final repayment
Consumer 2	[redacted]	30 Sept 2019	3831513	\$11,055	\$8,000	\$995	\$660	\$1,400	24.95%	3 years	\$214.67 fortnightly, \$230.69 final repayment
Consumer 3	[redacted]	20 Oct 2019	3842697	\$11,255	\$8,000	\$995	\$660	\$1,600	24.95%	3 years (36 months)	\$218.32 fortnightly, \$234.62 final repayment amount
Consumers 4 and 5	[redacted]	22 Feb 2021	4118867	\$11,250	\$8,000	\$995	\$660	\$1,595	24.95%	3 years (36 months)	\$218.23 fortnight, \$24.42 final repayment
Consumer 6	[redacted]	5 Sept 2019	3819821	\$10,891	\$8,000	\$995	\$660	\$1,236	24.95%	3 years (36 months)	\$211.68 fortnightly, \$227.24 final repayment