

COMMERCE COMMISSION

AND

MOOLA.CO.NZ LIMITED

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SETTLEMENT AGREEMENT

DATED 3 July 2020

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This Agreement is made on the 3 day of July 2020

### Parties

1. The Commerce Commission is a statutory body established under section 8 of the Commerce Act 1986 (**Commission**).
2. Moola.co.nz Limited trades as Moola and is a registered limited liability company having its registered office at KPMG, Level 5, 79 Cashel Street, Christchurch (**Moola**).

### Interpretation

3. **Affected Loan Contract** means:
  - 3.1 a consumer credit contract entered into between Moola and an Affected Customer; and
  - 3.2 which provided for payment of one or more of the following fees:
    - 3.2.1 a Default Fee;
    - 3.2.2 an Establishment Fee; and/or
    - 3.2.3 a Processing Fee.
4. **Affected Customer**:
  - 4.1 means a borrower under an Affected Loan Contract; and
  - 4.2 does not include a Bad Debt Customer except where there is a Residual Amount owing to the customer, in which case the customer is an Affected Customer in respect of the Residual Amount.
5. **Agreement** means this settlement agreement.
6. **Bad Debt Customer** means:
  - 6.1 A customer who has had an accounting bad debt provision or loss recognised against them for financial reporting purposes; and/or
  - 6.2 A customer that has had an amount owing by them 'written-off', or 'discounted' as unrecoverable or non-payable in their loan ledgers; and/or
  - 6.3 A customer who has had interest charges reduced or limited by virtue of Moola's voluntary loan capping policies, such that contractually due interest is unrecoverable, non-payable, or not charged to their loan ledgers.

7. **Best Endeavours** includes using information currently known to Moola, as well as searches of Google, Facebook, White Pages and/or the electoral roll, and taking any steps that Moola would usually take to locate a non-paying debtor.
8. **CCCFA** means the Credit Contracts and Consumer Finance Act 2003.
9. **Credit Amount** means the amount calculated and aggregated pursuant to clause 26.6.
10. **Current Borrower** means an Affected Customer:
  - 10.1 who took out an Affected Loan Contract;
  - 10.2 was charged a Default Fee, Establishment Fee and/or Processing Fee in relation to the Affected Loan Contract; and
  - 10.3 has a loan with an unpaid balance with Moola as at the batched date of processing pursuant to clause 29 of this Agreement.
11. **Default Fee** means:
  - 11.1 the fee provided for in an Affected Loan Contract that was called a 'default fee';
  - 11.2 which was payable when the Affected Customer defaulted;
  - 11.3 which was charged at \$60 in the period from 12 February 2016 to 17 July 2017; and
  - 11.4 which was not subsequently waived.
12. **Establishment Fee** means:
  - 12.1 the fee provided for in an Affected Loan Contract that was called an 'application fee';
  - 12.2 which was payable when the Affected Customer entered into the loan;
  - 12.3 which was charged at \$150 or more in the period from 20 January 2017 to 12 July 2017; and
  - 12.4 which was not subsequently waived.
13. **Former Borrower** means an Affected Customer:
  - 13.1 who took out an Affected Loan Contract;
  - 13.2 was charged a Default Fee, Establishment Fee and/or Processing Fee; and
  - 13.3 does not have a loan with an unpaid balance with Moola as at the batched date of processing pursuant to clause 29 of this Agreement.

14. **Processing Fee** means:
- 14.1 the fee provided for in an Affected Loan Contract that was called a 'processing fee';
  - 14.2 which was payable when the Affected Customer entered into the loan;
  - 14.3 which was charged at \$50 and incurred in the period from 20 January 2017 to 12 July 2017; and
  - 14.4 which was not subsequently waived.
15. **Refund Amount** means:
- 15.1 for a Current Borrower, the remaining amount (if any) pursuant to clause 31.1.2 or the Residual Amount as applicable; or
  - 15.2 for a Former Borrower, would be equal to the calculated Credit Amount or the Residual Amount as applicable.
16. **Residual Amount** means the positive balance owing to an Affected Customer, who would otherwise be a Bad Debt Customer, after the Credit Amount has been applied to the customer's debt owed to Moola pursuant to clause 26.3.

### **The Commission's Investigation**

- 17. Moola is a high cost short term lender and is a creditor for the purposes of the CCCFA.
- 18. Moola offers small short-term loans to borrowers within New Zealand under consumer credit contracts online only via its website at [www.moola.co.nz](http://www.moola.co.nz).
- 19. The Commission has investigated whether Moola has breached the CCCFA by providing for unreasonable credit and default fees in its consumer credit contracts.
- 20. Moola has co-cooperated with the Commission's investigation. During its investigation, the Commission considered information provided by Moola regarding its fees, and specifically information regarding the cost activities that Moola asserted were closely connected to its Default Fee, Establishment Fee and Processing Fee.
- 21. As a result of the Commission's investigation, the Commission considers that, between 12 February 2016 and 17 July 2017, Moola is likely to have provided for unreasonable credit and default fees in consumer credit contracts in breach of section 41 of the CCCFA. This is because the Commission considers that Moola included in its Default Fee, Establishment Fee and Processing Fee costs that were not closely related to the matter giving rise to the fees being charged.
- 22. This Agreement sets out the terms on which the parties have agreed to resolve the Commission's investigation.

23. The Commission has agreed to resolve its investigation by entering into this Agreement taking into account Moola's:
- 23.1 co-operation with the Commission's investigation;
  - 23.2 prior to and during the Commission's investigation Moola's reduction of its Default Fee, Establishment Fee and Processing Fee;
  - 23.3 acknowledgment at clause 24 below; and
  - 23.4 agreement to remediate Affected Customers as set out in this Agreement.

### **Acknowledgment by Moola**

24. For the purposes of this Agreement, Moola acknowledges and does not dispute the Commission's position as recorded at clause 21 above.

### **Action to be taken by Moola**

#### **Overview of action to be taken**

25. To resolve the Commission's claim that Moola is likely to have breached section 41 of the CCCFA, Moola agrees to:
- 25.1 reimburse Affected Customers in accordance with clause 29 of this Agreement;
  - 25.2 write to Affected Customers in accordance with clauses 34 and 35 of this Agreement;
  - 25.3 publish the fact of this settlement and the availability of the Refund in accordance with clause 37 of this Agreement; and
  - 25.4 provide the Commission with the list of information, interim report and final report in accordance with clauses 28, 41 and 45 of this Agreement respectively.

#### **Calculating the Credit Amounts**

26. Within six months of the date of this Agreement Moola must:
- 26.1 identify all Bad Debt Customers;
  - 26.2 for each Bad Debt Customer:
    - 26.2.1 identify the number of Default Fees charged between 12 February 2016 and 31 March 2016 and multiply that number by the difference between the amount of each Default Fee and \$15.66;
    - 26.2.2 identify the number of Default Fees charged between 1 April 2016 and 31 March 2017 and multiply that number by the difference between the amount of each Default Fee and \$10.24;

- 26.2.3 identify the number of Default Fees charged between 1 April 2017 and 17 July 2017 and multiply that number by the difference between the amount of each Default Fee and \$10.53;
- 26.2.4 identify the number of Establishment Fees charged between 20 January 2017 and 31 March 2017 and multiply that number by the difference between the amount of each Establishment Fee and \$5.48;
- 26.2.5 identify the number of Establishment Fees charged between 1 April 2017 and 12 July 2017 and multiply that number by the difference between the amount of each Establishment Fee and \$4.47;
- 26.2.6 identify the number of Processing Fees charged between 20 January 2017 and 31 March 2017 and multiply that number by the difference between the amount of each Processing Fee and \$12.25; and
- 26.2.7 identify the number of Processing Fees charged between 1 April 2017 and 12 July 2017 and multiply that number by the difference between the amount of each Processing Fee and \$10.86; and
- 26.3 add the amounts calculated in clause 26.2 for each Bad Debt Customer and:
  - 26.3.1 apply or offset that amount to the customer's debt to Moola gross of any bad debt amounts or adjustments (as referenced in clause 6) that are reflected in the customer's debt to Moola; and
  - 26.3.2 identify the Residual Amount if any for that customer, being the net result of the above clause if it results in a positive balance owing to the customer;
- 26.4 identify all other Affected Loan Contracts;
- 26.5 for each Affected Loan Contract, not already addressed by clauses 26.1 to 26.3:
  - 26.5.1 identify the number of Default Fees charged between 12 February 2016 and 31 March 2016 and multiply that number by the difference between the amount of each Default Fee and \$15.66;
  - 26.5.2 identify the number of Default Fees charged between 1 April 2016 and 31 March 2017 and multiply that number by the difference between the amount of each Default Fee and \$10.24;
  - 26.5.3 identify the number of Default Fees charged between 1 April 2017 and 17 July 2017 and multiply that number by the difference between the amount of each Default Fee and \$10.53;

- 26.5.4 identify the number of Establishment Fees charged between 20 January 2017 and 31 March 2017 and multiply that number by the difference between the amount of each Establishment Fee and \$5.48;
- 26.5.5 identify the number of Establishment Fees charged between 1 April 2017 and 12 July 2017 and multiply that number by the difference between the amount of each Establishment Fee and \$4.47;
- 26.5.6 identify the number of Processing Fees charged between 20 January 2017 and 31 March 2017 and multiply that number by the difference between the amount of each Processing Fee and \$12.25; and
- 26.5.7 identify the number of Processing Fees charged between 1 April 2017 and 12 July 2017 and multiply that number by the difference between the amount of each Processing Fee and \$10.86; and
- 26.6 add the amounts calculated in clause 26.5 for each Affected Loan Contract with the total representing the Credit Amount.
- 27. For the avoidance of doubt, Moola will not be required to refund or credit any amounts in relation to Bad Debt Customers except where there is a Residual Amount owing to a customer, in which case the customer is an Affected Customer in respect of the Residual Amount.
- 28. Within one week of the date Moola has completed its obligations set out at clause 26 above, Moola must provide the Commission with a complete list of the information identified, calculated and aggregated in accordance with clause 26. The Commission requires that the list be provided in an Excel format.

#### **Crediting and Payment of the Credit Amounts and Refund Amounts**

- 29. Within the timeframes set out at clause 30 below, Moola must process in batches that are spread evenly across the period:
  - 29.1 crediting:
    - 29.1.1 each Current Borrower the Credit Amount to their affected loan(s) and/or current loan(s) as set out at clause 31 below; and
    - 29.1.2 each Former Borrower the Credit Amount to their affected loan account(s) as set out at clause 33 below; and
  - 29.2 paying:
    - 29.2.1 each Current Borrower the Refund Amount or Residual Amount (if any) as set out at clause 31 and or 32 below; and
    - 29.2.2 each Former Borrower the Refund Amount or Residual Amount as set out at clause 33 below.

30. Moola must complete the obligations set out in clause 29 above:
- 30.1 in relation to Current Borrowers owed a credit under clause 29.1.1:
- 30.1.1 prior to completing the obligations set out in clause 29 above that relate to any Former Borrowers; and
- 30.1.2 in any event, no later than 8 weeks from the date that Moola has completed its obligations set out at clause 26 above; and
- 30.2 in relation to Former Borrowers, and Current Borrowers owed a payment under clause 29.2.1, 12 months from the date that Moola has completed its obligations set out at clause 26 above.

*Current Borrowers*

31. Moola must appropriately allocate the Credit Amount to each Current Borrower's loan balance(s) such that:
- 31.1 If the aggregated Credit Amount owing to the Current Borrower is more than the total aggregated loan balance(s) owing by the Current Borrower to Moola, then Moola must:
- 31.1.1 credit that part of the Credit Amount to the Current Borrower's loan balance(s) which will reduce the individual loan account(s) to a zero balance; and
- 31.1.2 credit the residual Credit Amount to the Current Borrower's most recent loan. With the resulting loan balance then representing the Refund Amount outstanding and owing from Moola to the Current Borrower pursuant to clause 15.1; and
- 31.1.3 pay by direct credit the Refund Amount to the Current Borrower's verified bank account.
- 31.2 If the aggregated Credit Amount owing to a Current Borrower is less than the total aggregated loan balance(s) owing by the Current Borrower to Moola, then Moola must:
- 31.2.1 credit that part of the Credit Amount to the Current Borrower's loan balance(s) which will reduce the individual loan account(s) to a zero balance on an oldest loan first basis; until such point that the Credit Amount has been completely allocated to the Current Borrower's individual loan account(s).
32. Where a Residual Amount is calculated as owing to a Current Borrower, Moola must pay by direct credit the Residual Amount to the Current Borrower's verified bank account.



*Former Borrowers*

33. Moola must:
- 33.1 credit each Former Borrower's Affected Loan Contract(s) their respective calculated Credit Amounts and pay by direct credit the aggregated Refund Amount to the Former Borrower's verified bank account; or
  - 33.2 pay by direct credit the Residual Amount to the Former Borrower's verified bank account.

**Contacting Current Borrowers and Former Borrowers**

34. In relation to each batch processed pursuant to clause 29, and within one week of batched processing being undertaken, Moola must email each applicable Current Borrower and Former Borrower at their last known email address advising as applicable:
- 34.1 that Moola has entered into this Agreement with the Commission;
  - 34.2 in relation to the Credit Amount, that the Current Borrower's or Former Borrower's loan balance(s) will be credited pursuant to clause 31 or clause 33 and the resulting new loan balance(s);
  - 34.3 in relation to any Refund Amount that the Current Borrower or Former Borrower is entitled to:
    - 34.3.1 how that Refund Amount has been calculated; and
    - 34.3.2 advise the Current Borrower or Former Borrower how they can claim their Refund Amount, seeking that they respond to the email and verify their bank account details; and
  - 34.4 in relation to any Residual Amount that the Current Borrower or Former Borrower is entitled to:
    - 34.4.1 how that Residual Amount has been calculated; and
    - 34.4.2 advise the borrower how they can claim their Residual Amount, seeking that they respond to the email and verify their bank account details.
35. If Moola does not have a last known email address for a Current Borrower or a Former Borrower, or its email sent in compliance with clause 34 was unable to be electronically delivered, then Moola must send a letter to that Current Borrower or Former Borrower to their last known postal address advising of the matters at clause 34.
36. Within one month from the date of this Agreement, Moola must provide a copy of template letters and emails to be sent to Current Borrowers and Former Borrowers under clauses 34 and 35 above to the Commission for review and approval. Moola

must amend the template letters and emails on request by the Commission if the amendment is reasonably required to give effect to this Agreement.

#### **Locating Affected Customers**

37. Moola must, for 12 months from the date Moola has completed its obligations set out at clause 26 above, prominently publish information to the effect set out below on the main website currently operated by Moola being [www.moola.co.nz](http://www.moola.co.nz) or its replacement:
- 37.1 that Moola has entered into a settlement with the Commission;
  - 37.2 that Moola must:
    - 37.2.1 credit each Affected Customer the Credit Amount;
    - 37.2.2 pay each Affected Customer the resulting Refund Amount (if any); and
    - 37.2.3 pay each Affected Customer any Residual Amount;
  - 37.3 that Moola will contact Affected Customers directly via email, and if a customer has changed email addresses it should contact Moola to update their details in case they are impacted;
  - 37.4 Moola's contact details for this process; and
  - 37.5 informing Affected Customers what will happen to the Refund Amount if the Affected Customer does not respond to Moola's contact attempts.
38. Moola must update the details on its website within one week of any request by the Commission to do so if the amendment is reasonably required to give effect to this Agreement.

#### **Inability to locate and establish contact with an Affected Customer**

39. If, after using its Best Endeavours, Moola is unable to locate and establish contact with an Affected Customer who is eligible for a payment pursuant to this Agreement, Moola undertakes:
- 39.1 to hold the payment on trust for the Affected Customer for 36 months from the date Moola has completed its obligations set out at clause 26 above; and
  - 39.2 if at the end of the that period, the Affected Customer has not contacted Moola to arrange payment of the Refund Amount, Moola must:
    - 39.2.1 notify the Commission within 30 days the number of Affected Customers who have not been paid their Refund Amount and the total amount outstanding to all those Affected Customers;

39.2.2 within 30 days after the Commission has been notified pursuant to clause 39.2.1, the parties will consider the amount of money which remains unpaid and will agree whether that money will be either:

- (a) treated as unclaimed money under the Unclaimed Money Act 1971; or
- (b) paid to a charity to be agreed between Moola and the Commission.

40. Subject to clause 54 upon treatment of the money as unclaimed money under the Unclaimed Money Act pursuant to clause 39.2.2(a), or payment of the money to the charity pursuant to clause 39.2.2(b), any and all obligations to pay Affected Customers under this agreement will have been met as if the payment had been paid direct to the Affected Customers in satisfaction of Moola's obligations under this agreement.

#### **Interim reports**

41. Moola undertakes, at its own expense, to provide to the Commission at nine months from the date Moola has completed its obligations set out at clause 26 above an interim report recording the progress it has made with calculating the Credit Amounts; processing of batched calculations, batched locating, batched crediting, and batched refunding of Current Borrowers and Former Borrowers.
42. The interim report must include the following information:
- 42.1 For each Current Borrower and Former Borrower who is entitled to have their loan credited or a payment received (if any) in accordance with this Agreement:
    - 42.1.1 their name;
    - 42.1.2 their Affected Loan number(s); and
    - 42.1.3 the Credit Amount they are entitled to receive.
  - 42.2 Where the Current Borrower or Former Borrower has been included in a processed batch as at the date of the interim report:
    - 42.2.1 their Affected Loan number(s);
    - 42.2.2 the date the adjustment(s) were made;
    - 42.2.3 the resulting outstanding loan balance(s) as at the date of the report (if any);
    - 42.2.4 the amount of any payment provided to the Affected Customer (if any); and where the Affected Customer has not yet received payment, the steps that Moola has taken to locate the Affected Customer and

obtain their verification for payment of the Refund Amount or Residual Amount; and

42.2.5 if Moola is unable to locate any Affected Customers, at the time it provides the interim report to the Commission, Moola must write to the Commission setting out any further steps it proposes to take in relation to contacting the then uncontacted Affected Customers and the Commission will indicate its acceptance or otherwise (being reasonable) to Moola of those proposed further steps within 21 days.

43. The Commission requires that the interim report be provided in an Excel format.
44. Within 30 days of receipt of the interim report the Commission must, acting reasonably, advise Moola whether it requires Moola to use external credit reporting searches to locate Affected Customers, who Moola has been unable to locate and establish contact with.

#### **Final report**

45. Moola undertakes, at its own expense, to provide a final report to the Commission 15 months from the date Moola has completed its obligations set out at clause 26 of this Agreement.
46. The final report must be prepared by an independent accountant approved by the Commission who has reviewed the steps taken by Moola. The reviewer must confirm that Moola has undertaken all steps it has agreed to take in this Agreement.
47. The final report must include:
  - 47.1 The reviewer's opinion on whether Moola has undertaken the steps it has agreed to take in this Agreement.
  - 47.2 Details of any steps that have not yet been completed, including when they are likely to be completed by Moola.
  - 47.3 The reviewer's opinion as to the adequacy of any further steps that Moola ought reasonably to take to contact Former Borrowers who have been unable to be contacted at the time of the final report.
  - 47.4 A summary of the credits and payments made.
  - 47.5 For each Current Borrower who is entitled to have their loan credited in accordance with this Agreement, the following information:
    - 47.5.1 their name;
    - 47.5.2 their Affected Loan number(s);
    - 47.5.3 the Credit Amount they were entitled to receive;

47.5.4 where the Current Borrower has had their loan balance(s) credited:

- (a) the loan number(s) affected;
- (b) the date of the adjustment;
- (c) the outstanding loan balance(s) as at the date of the adjustment (if any); and
- (d) the amount of any Refund Amount or Residual Amount provided to the customer in accordance with clause 31.1.3 (if any); and

47.5.5 where the Current Borrower has not yet had their loan balance(s) credited, the steps that Moola proposes to take in order to provide those credits.

47.6 For each Former Borrower who is entitled to receive a payment in accordance with this Agreement, the following information:

47.6.1 their name;

47.6.2 the Refund Amount or Residual Amount they are entitled to receive;

47.6.3 where the Former Borrower has received payment, the date and method of payment; and

47.6.4 where the Former Borrower has not yet received payment of the Refund Amount or Residual Amount, the steps that Moola has taken to locate the customer and what further work it intends to do to locate and contact the customer.

47.7 The total value of credits and payments made, not yet made and the amount of money yet to be claimed by Former Borrowers.

48. The Commission requires that the final report be provided in an Excel format.

### **No further action by Commission**

49. The Commission will close its investigation into Moola's fees upon the signing of this Agreement by Moola.

50. The Commission will not issue or encourage any civil or criminal proceeding against Moola and/or its director(s) in relation to the conduct to which this Agreement applies other than any proceedings that may be brought as a consequence of Moola's failure to comply with this Agreement. If a third party requests disclosure of documents provided by Moola to the Commission (whether under the OIA or otherwise), the Commission will inform Moola and provide it with the opportunity to comment on the potential disclosure.

### **Effect and implementation of this Agreement**

51. Moola and the Commission will each take such steps as are necessary or desirable to give full effect to the terms of this Agreement.
52. If necessary to give effect to the Agreement, the terms of this Agreement may be amended by the written agreement of the parties.
53. If there is any breach of Moola's obligations under this Agreement the Commission may, in its complete discretion, bring proceedings against Moola for breach of the terms of this agreement.
54. This Agreement is entered into without prejudice to the rights of Affected Customers in respect of the Default Fees, Establishment Fees and Processing Fees, which rights the Commission is not compromising on their behalf. Nothing in this Agreement will limit or affect the ability of:
  - 54.1 the Commission to issue proceedings against Moola in respect of matters not related to this investigation, or in respect of conduct engaged in by Moola after the date of this Agreement or for breach of this Agreement; and
  - 54.2 any person who has not consented to be bound by the terms of this Agreement from pursuing any rights available to him, her or it under the CCCFA or under any other law.

### **Miscellaneous**

55. This Agreement will be governed and interpreted in accordance with the laws of New Zealand.
56. Subject to clause 57 below, Moola and the Commission agree that:
  - 56.1 neither the Agreement nor the fact that Moola has entered into the Agreement are confidential;
  - 56.2 the Agreement may be published on the Commission's website after Moola has completed its obligations set out at clause 26 above;
  - 56.3 the Commission may issue a media release about the Agreement after Moola has completed its obligations set out at clause 26 above;
  - 56.4 either Moola or the Commission may make public statements (either separately or jointly) in relation to the Agreement; and
  - 56.5 any public statement must be consistent with the matters set out in the Agreement.
57. Moola agrees that it will not make any public comment in relation to the Agreement until after the Commission has issued any media release notifying the public of it.

This media release will be published on the same day the Commission posts its notice of this Agreement on the Commission's website.

58. This Agreement is not intended to be enforceable by any registered charity or financial literacy organisation that may benefit from clause 39.2 and the parties to this Agreement may agree to vary the recipient of the Refund Amount in accordance with section 6(b) of the Contracts (Privity) Act 1982.

59. Any notice or communication that is given or served under or in connection with this Agreement must be given in writing in the following manner:

59.1 If addressed to the Commission, by hand delivery or email to the following address:

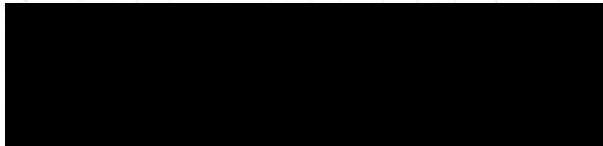
Commerce Commission  
44 The Terrace, Wellington

Attention: Dot Benson & Cathie Jenkins

Email: dot.benson@comcom.govt.nz  
cathie.jenkins@comcom.govt.nz

59.2 If addressed to Moola, by hand delivery or email to the following address:

Moola.co.nz Limited  
Level 3, 299 Durham Street, Christchurch



EXECUTED as an Agreement on the date first written above:

by the Commerce Commission

Moola.co.nz Limited



Signature of authorised representative

*Anna Rawlings*

Name of authorised representative

