

Settlement Agreement

Commerce Commission

Moola.co.nz Limited



Parties

Commerce Commission is a statutory body established under s 8 of the Commerce Act 1986 (**Commission**)

Moola.co.nz Limited is a company having its registered office at Level 3/299 Durham Street, Christchurch 8013 (**Moola**)

(collectively the **Parties**)

1 Introduction

- 1.1 Moola is a lender based in Christchurch and is a creditor for the purposes of the Credit Contracts and Consumer Finance Act 2003 (**CCCF Act**). Moola offers loans to borrowers under consumer credit contracts.
- 1.2 The Commission has investigated whether Moola's lending practices complied with the lender responsibility principles in s 9C of the CCCFA (**Investigation**).
- 1.3 Following the conclusion of its Investigation, the Commission commenced civil proceedings against Moola (CIV-2019-404-1355) (**Proceeding**) alleging the following conduct between 6 June 2015 and 30 November 2017 (**Relevant Period**):
 - (a) Moola breached s 9C(1) via ss 9C(2)(a)(ii) and 9C(3)(a)(i) of the CCCF Act by:
 - (i) failing to exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit; and/or
 - (ii) failing to make reasonable inquiries so as to be satisfied that it was likely that the credit provided under agreements met the Debtor's requirements and objectives.
 - (b) Moola breached s 9C(1) via ss 9C(2)(a)(ii) and 9C(3)(a)(ii) of the CCCF Act by:
 - (i) failing to exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit; and/or
 - (ii) failing to make reasonable inquiries so as to be satisfied that the Debtor would be able to make repayments without suffering substantial hardship.
 - (c) Moola breached s 9C(1) via s 9C(2)(a)(i) of the CCCF Act by failing to exercise the care, diligence, and skill of a responsible lender in advertisements for providing credit or finance under an agreement.
 - (d) Moola breached s 9C(1) via s 9C(3)(d)(i) of the CCCF Act by failing to treat the Debtor reasonably and in an ethical manner when breaches of the agreement have occurred or may occur or when other problems arise.

- (e) Moola breached s 9C(1) via s 9C(3)(e)(i) of the CCCF Act by failing to ensure that its agreement, to which Part 5 of the CCCF Act applies, was not oppressive.
 - (f) Moola breached s 9C(1) via s 9C(3)(e)(iii) of the CCCF Act by inducing Debtors to enter into the agreement by oppressive means.
- 1.4 Moola denied those allegations and has defended the proceeding.
- 1.5 This Agreement records the terms on which Moola and the Commission have agreed to resolve the Proceeding.
- 1.6 This Agreement will be made public by the Commission (including on the Commission's website).

2 Interpretation

- 2.1 For the purposes of this Agreement, in addition to those terms defined within the body of this Agreement:

Agreement means this Settlement Agreement.

Costs of Borrowing has the same meaning as defined in section 5 of the CCCF Act.

Day means working day as defined in High Court Rule 1.3.

Debtors means the debtors named in Schedule One to the Statement of Claim filed in the Proceeding.

Payments means the Costs of Borrowing for the Relevant Loans as calculated in accordance with clause 4.6 below.

Relevant Loans means the loans advanced by Moola to the Debtors during the Relevant Period.

Relevant Period means the period 6 June 2015 and 30 November 2017 inclusive.

3 Basis of settlement

Admitted breaches and basis of resolution

- 3.1 Following discussions between the Parties, the Commission has concluded based on the Commission's Enforcement Criteria, that it would be in the public interest for it to resolve the Proceeding on the basis that:
- (a) Moola admits the breaches of the CCCF Act, as pleaded in the first, second, third and fourth causes of action in the Second Amended Statement of Claim attached to this agreement at **Appendix One**.
 - (b) The Commission will amend its Statement of Claim to remove the fifth and sixth causes of action (as pleaded in the Statement of Claim) in the Proceeding, being allegations of oppressive conduct by Moola in breach of the CCCF Act.
 - (c) Moola will pay the Payments to the Debtors.

- (d) Moola will give enforceable undertakings to the Commission under s 113 of the CCCF Act, via sections 74A to 74C of the Commerce Act 1986, in the form set out at **Appendix Five** to this Agreement, as set out in clause 4.4 below (**Enforceable Undertakings**).
- (e) The rights of Debtors are not compromised by this Agreement, as set out in clause 5.3 below.

4 Terms of settlement

- 4.1 The Parties have agreed to resolve the issues arising out of the Proceeding on the terms set out below.

Admissions

- 4.2 Moola makes the admissions as set out in the First Amended Statement of Defence attached to this Agreement at **Appendix Two**.
- 4.3 The admissions in this Agreement are limited to those admissions expressly made in respect of the Second Amended Statement of Claim for the purposes of this settlement. Nothing in this Agreement constitutes any wider admission of liability by Moola.

Enforceable Undertakings

- 4.4 At the same time as the execution of this Agreement, Moola will give the Enforceable Undertakings to the Commission.

Notifying the Court of settlement

- 4.5 Within 5 days of execution of this Agreement, the parties will file a joint memorandum of counsel notifying the Court of the fact of this settlement, that the trial date can be vacated, and that the parties will be seeking a declaratory order in due course.

Settlement Amount

- 4.6 Moola agrees to pay the Payments to the Debtors, in accordance with 4.18 to 4.24 below and to be calculated as follows:
 - (a) Moola will calculate the Costs of Borrowing for each Debtor's Relevant Loan(s), net of any Costs of Borrowing already discounted or waived on the Debtor's Loan(s).
 - (b) Moola will credit the relevant amount calculated at 4.6(a) above to the Debtor's Relevant Loan(s).
 - (c) Moola will calculate the cumulative balance of the Debtor's Relevant Loan(s) reflecting the credits applied under 4.6(b).
 - (d) Where the cumulative balance calculated at 4.6(c) is an outstanding amount still owing from the Debtor, Moola will waive this balance by crediting the Relevant Loan(s) as necessary to result in no cumulative outstanding balance and close all of the Debtor's Relevant Loan(s).

- (e) Where this cumulative balance calculated at 4.6(c) is an amount owed to the Debtor, Moola will:
 - (i) Apply this refund to any other outstanding debts the Debtor has with Moola (if requested by the Debtor after advising the Debtor in accordance with 4.19); and/or
 - (ii) Pay any residual refund to the Debtor, being the Debtor's Payment amount in accordance with 4.20 (if requested by the Debtor after advising the Debtor in accordance with 4.19).
- (f) The Commission and Moola have entered into an unrelated settlement agreement dated 3 July 2020 relating to Moola's credit fees (**Fees Settlement**). The Parties acknowledge that there may be some affected debtors in that Fees Settlement that are also due to receive Payments under this Agreement. The Commission acknowledges that when calculating the payments to be made to debtors in the Fees Settlement Moola will take into account any credit fees already refunded to a debtor as Payments under this Agreement, so as to avoid the same fee being refunded under both settlement agreements.

4.7 On the date of this Agreement, Moola will cease charging Costs of Borrowing to, or accepting payments on, the Relevant Loans.

4.8 Within 10 Days of execution of this Agreement, Moola will:

- (a) calculate the Costs of Borrowing for each of the Relevant Loans (**Moola's Calculations**);
- (b) send the Commission a summary of Moola's Calculations and the most up to date statements of account for each of the Relevant Loans; and
- (c) deposit the Payments into [REDACTED] (**its Solicitors**) trust account to be held on trust for payment to the Debtors as provided for by clauses 4.18 and 4.23 to 4.26 below, such instructions being irrevocable.

Court procedure for declaratory order

- 4.9 Within 10 Days of execution of this Agreement the Commission will file the Second Amended Statement of Claim as set out in **Appendix One** to this Agreement.
- 4.10 Within 10 Days of the Commission filing the Second Amended Statement of Claim in accordance with clause 4.9 above, Moola will file the First Amended Statement of Defence as set out in **Appendix Two** to this Agreement.
- 4.11 Within 10 Days of Moola filing and serving its First Amended Statement of Defence in accordance with clause 4.10 above, the Commission will file an interlocutory application seeking a declaratory order on admission of facts in the form attached at **Appendix Four**, and a joint memorandum of counsel in the form attached at **Appendix Three**.
- 4.12 Moola will not oppose the Court making the declaration sought by the Commission in accordance with clause 4.11 above, agrees to support the Commission's application, will provide any information sought by the Court, and will not discourage the Court from making the declaration as sought.

- 4.13 The Parties agree to provide to each other, before filing, any Court documents that either intends to file, and to provide a reasonable opportunity for the recipient to comment on the contents.
- 4.14 The Commission agrees that it will not seek any relief in the Proceeding other than the declaration sought in accordance with clause 4.11 above.
- 4.15 The Parties will cooperate to arrange for the Commission's application to be heard by the Court as soon as reasonably possible.
- 4.16 The other provisions of this Agreement remain in force irrespective of the outcome of the Commission's application for a declaratory order under clause 4.11 above.
- 4.17 The Parties agree to take whatever steps are required to bring the Proceeding to a conclusion after there is a judgment on the Commission's interlocutory application under clause 4.11 above.

Payment to Debtors

- 4.18 Moola will:
- (a) make the necessary inquiries to enable payments to be made to the Debtors in accordance with clauses 4.19 to 4.22 below; and
 - (b) instruct its Solicitors to make the payments in accordance with clauses 4.19 to 4.22 below, such instructions being irrevocable.
- 4.19 Within 5 Days of depositing the Payments into its Solicitors' trust account in accordance with clause 4.8(c), Moola shall send an SMS to the contact details held for each Debtor advising them that they should expect to receive an email about refunds due to them, and Moola shall also send an email to the contact details held for each Debtor advising:
- (a) that Moola has entered into this Agreement with the Commission, and that details of the Agreement can be found on the Commission's website;
 - (b) that Moola has admitted that it breached the lender responsibility principles in relation to the Debtor's loan(s) with Moola during the Relevant Period;
 - (c) where no Payment is due to the Debtor, informing them of that fact;
 - (d) where paragraph 4.6(d) applies, that Moola will waive the Debtor's outstanding loan balance by crediting the Relevant Loan(s) as necessary to result in no cumulative outstanding balance and close all of the Debtor's Relevant Loan(s);
 - (e) where paragraph 4.6(e) applies, informing the Debtor of the specific amount of the Payment payable by Moola to the Debtor, and asking the Debtor to choose whether they wish for Moola to:
 - (i) pay him or her the Payment relating to that Debtor (for example by providing a bank account number); or
 - (ii) credit a Debtor's Payment against any outstanding balance the Debtor may have on a loan contract with Moola; and

- (f) a Moola contact email address and phone number for any Debtors who have any queries (which must be a contact email address that is monitored by Moola and a phone number with a voicemail facility that is checked regularly).
- 4.20 If Moola obtains instructions from any Debtor as to a nominated bank account into which the Payment due to that Debtor under this Agreement can be paid, Moola shall, within 5 Days of receiving that instruction, pay that Payment to the Debtor by instructing its Solicitors to direct-credit the relevant nominated account.
- 4.21 If Moola does not receive a response from a Debtor within 5 Days of contacting them in accordance with clause 4.19 above, Moola shall use reasonable endeavours to locate and contact those Debtors, including but not limited to:
- (a) telephoning the Debtor and if necessary, leaving a voicemail message;
 - (b) sending further SMS and emails to the Debtor;
 - (c) using external credit reporting searches to locate the Debtor;
 - (d) using searches of Google, Facebook, White Pages and/or the electoral roll to locate the Debtor; and
 - (e) taking any other steps that Moola would usually take to locate and contact a non-paying debtor.
- 4.22 The Parties will proceed as per clause 4.25 and 4.26 below if, 6 months after the step at clause 4.19 above:
- (a) there are any Debtors who Moola cannot locate after using reasonable endeavours as required under clause 4.19 above; or
 - (b) there are any Debtors who have not provided payment instructions in accordance with clauses 4.19 to 4.20 above.

Bankrupt Debtors

- 4.23 Notwithstanding clauses 4.19 to 4.22 above, if any Debtors who are entitled to receive a payment from Moola under this Agreement are bankrupt, Moola will pay the relevant payment (via its Solicitors' trust account in accordance with clause 4.18(b) above) to the Official Assignee, unless otherwise agreed with the Official Assignee.

Deceased Estates

- 4.24 Notwithstanding clauses 4.19 to 4.22 above, if Moola learns that any Debtors who are entitled to receive a payment from Moola under this Agreement are deceased:
- (a) Moola shall use reasonable endeavours to contact the legally empowered representative(s) of the deceased Debtor and write to those representative(s) informing them of the entitlement to the Payment (for the avoidance of doubt "legally empowered representatives" are such persons empowered to administer the deceased estate, by way of a grant of probate or such other operation of law in the relevant case); pay the Payment due to that Debtor by instructing its Solicitors to make the Payment (in accordance with clause 4.18(b) above) at the direction (if any) of the representative(s) of the deceased Debtor; or

- (b) if the representative(s) of the deceased Debtor has not contacted Moola within 6 months of the step in clause 4.19 above, the Parties will proceed as set out at paragraph 4.25 and 4.26 below in relation to the Payment due to that Debtor.
- 4.25 Six months after Moola takes the step in clause 4.19 above, Moola undertakes to provide a report to the Commission (**Payment Update**) confirming:
 - (a) the progress it has made in distributing the Payments, including a summary of each Payment made to the Debtors (to include the date and amount of each individual payment made) pursuant to this Agreement;
 - (b) the steps taken to locate any Debtors who did not respond to Moola's email and SMS sent in accordance with clause 4.19 above, including the steps it has taken to comply with clause 4.21 above; and
 - (c) a summary of any payments that Moola has been unable to pay to a Debtor as at the date of the Payment Update, either because Moola cannot locate the Debtor after using reasonable endeavours as required under clauses 4.19 and 4.21 above, or because the Debtor has not provided payment instructions in accordance with clauses 4.19 above.
- 4.26 Within 20 Days of the Commission receiving the Payment Update the Parties will consider the amount of any money which remains unpaid to the Debtors, and will agree whether that remaining unpaid amount will be either:
 - (a) treated as unclaimed money under the Unclaimed Money Act 1971;
 - (b) paid to a charity to be agreed with the Commission; or
 - (c) treated partially as unclaimed money under the Unclaimed Money Act 1971, and partially paid to a charity to be agreed with the Commission.
- 4.27 Other than the Payments, in no circumstances is Moola required to pay any further amounts to the Commission or the Debtors under this Agreement.

5 Other Proceedings

- 5.1 This Agreement is entered into without prejudice to the rights of the Debtors in respect of the alleged breaches, whose rights the Commission are not compromising on their behalf.
- 5.2 The Commission will not issue or encourage any civil proceeding against Moola and/or its directors(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.
- 5.3 Nothing in this Agreement will limit or affect the ability of:
 - (a) the Commission to issue new proceedings in respect of matters related to the Proceeding in the event Moola breaches any terms of the Enforceable Undertakings;
 - (b) the Commission to issue proceedings against Moola in respect of matters not related to the Proceeding, or in respect of conduct Moola engages in after the

date of this Agreement, or for breach of this Agreement or the Enforceable Undertakings; and

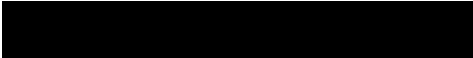
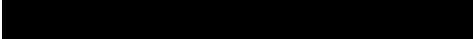

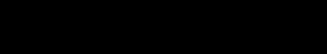
- (c) any person who has not consented to be bound by the terms of this Agreement from pursuing any rights that person considers would be available to them arising from matters contained in this Agreement.

6 Public statements

- 6.1 Subject to clauses 6.2 and 6.3 below, the Parties may make public statements in relation to the settlement after this Agreement has been executed. The Parties agree that any public statements relating to the Proceeding will be made in good faith and be consistent with the spirit and intent of this Agreement.
- 6.2 Except as required by law, Moola agrees that it will not make any public statement in relation to this Agreement or the Proceeding, except as expressly authorised under this Agreement, until after the Commission has issued any public statement notifying the public of this settlement.
- 6.3 The Parties agree to provide written copies of their initial press release to the other party at least one hour in advance of their release to allow the other party the opportunity to comment. A party will not be obliged to accept the comments of the other party.

7 Miscellaneous

- 7.1 The Commission acknowledges that some of the information provided by Moola in the course of the Investigation and Proceeding may be confidential and/or commercially sensitive and/or subject to privilege. The Commission agrees that, if it receives a request pursuant to the Official Information Act 1982 that covers or might cover and/or record or reveal all or some of that information it will notify Moola of that request and will consult with Moola as to whether there are grounds for the requested material to be withheld under Part 1 of the Official Information Act 1982.
- 7.2 Each party will meet its own expenses incurred in the course of performing its obligations under this Agreement.
- 7.3 The Parties agree to take such steps as are necessary or desirable to give full effect to the terms of this Agreement, and to demonstrate good faith in performing their obligations under this Agreement and in resolving any issues arising under this Agreement.
- 7.4 If necessary or desirable, the payment processes required to give full effect to the terms of this Agreement may be amended by agreement of the Parties.
- 7.5 The Parties by written agreement may vary any of the time periods stipulated in this Agreement, in which instance all other dependent time periods will be extended by the same amount of time.
- 7.6 Where Moola or the Commission take any step in the payment process of this Agreement late, all dependent dates shall be extended by the same period.

- 7.7 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.
- 7.8 The Parties agree that the New Zealand Courts will have exclusive jurisdiction to determine any proceedings arising out of or in connection with this Agreement and the matters to which it relates, including any proceedings brought by the Commission for breach of this Agreement or the Enforceable Undertakings by Moola.
- 7.9 This Agreement constitutes the entire agreement between the Parties in relation to resolving the Proceeding. It supersedes all prior communications, understandings or representations whether oral or written between the Parties.
- 7.10 No amendment to this Agreement will be effective unless it is in writing and signed by both of the Parties.
- 7.11 Any failure by any party to enforce any provision of this Agreement at any time will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.
- 7.12 Any person signing this Agreement on behalf of one of the Parties warrants that by signing they have all the necessary authority from that party to sign this Agreement on their behalf.
- 7.13 The Parties may enter into this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single document. A party may execute this Agreement by one signatory executing one counterpart and another signatory executing a different counterpart. A party's delivery of a signed pdf counterpart of this Agreement by email will have the same legal effect as that party's delivery of a signed original counterpart.
- 7.14 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:
- (a) If addressed to the Commission, by hand delivery or email to the following address:
- Commerce Commission
Level 12
55 Shortland Street
Auckland 1010
- Attention: 
- Email: 
- (b) If addressed to Moola, by hand delivery at, or registered mail to, its registered office address (for the time-being as recorded below), or email to the following address:
- Moola.co.nz Limited
Level 3, 299 Durham Street,
Christchurch 8013
- Attention: 
- Email: 

Execution

Signed by and on behalf of the **Commerce
Commission**



Chair

Anna Rawlings, Chair

Commerce Commission

Signed by and on behalf of **Moola.co.nz
Limited**



Appendix One

Second Amended Statement of Claim

1 The Parties

- 1.1 The plaintiff, the Commerce Commission is a body corporate established under s 8 of the Commerce Act 1986 (**Commission**). Its functions include enforcement of the Fair Trading Act 1986 and the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**).
- 1.2 The defendant, Moola.co.nz Limited (referred to hereafter as **Moola**):
- (a) is a company incorporated in New Zealand with its registered office at KPMG, Level 5, 79 Cashel Street, Christchurch, 8011;
 - (b) was incorporated on 16 March 2012 under the name Crank Finance Holdings Limited but later changed its name to Moola.co.nz Limited and then, on 14 August 2018, to NZ Fintech Limited;
 - (c) on 17 March 2020 NZ Fintech Limited changed its name back to Moola.co.nz Limited; and
 - (d) at all relevant times, traded and continues to trade as “Moola” and “Need Cash Today”.
- 1.3 Moola provides high cost short-term personal loans through its websites www.moola.co.nz and www.needcashtoday.co.nz.
- 1.4 Moola has no shopfronts or retail offices or branches. It offers its services only through its websites.
- 1.5 Moola employs around 35 full time staff made up of a management team (including a Chief Operating Officer), marketing team, IT team, collections team, processing team, and customer service team.

2 Period of conduct

- 2.1 Moola’s conduct at issue for this claim occurred between 6 June 2015 and 30 November 2017 (**Relevant Period**). All references to Moola’s conduct in this claim are to Moola’s conduct in the Relevant Period, unless specified otherwise.

3 Moola’s loan application process

- 3.1 Moola provides credit under “consumer credit contracts” and is a “creditor” and a “lender” as those terms are defined in the CCCFA and, therefore, all of Moola’s loans are subject to s 9C(1) of the CCCFA.
- 3.2 In addition, all of Moola’s loans are “high-cost credit agreements”, as defined by the Responsible Lending Code.

Particulars to paragraph 3.2 above

- (a) the Minister of Commerce and Consumer Affairs issued the Responsible Lending Code in 2015 under s 9G of the CCCFA; and
- (b) the Minister of Commerce and Consumer Affairs amended the Responsible Lending Code under s 9I of the CCCFA in 2017, with the amendments coming into force on 6 July 2017.

4 Moola's Loan Application Process

The Borrowers

- 4.1 Moola offered loans of between \$100 and \$5,000 to New Zealand debtors who were over 18 years old (**Borrowers**) under consumer credit contracts, as defined in s 11 of the CCCFA.
- 4.2 Set out at **Schedule One** to this statement of claim is a list of some of the Borrowers who entered into consumer credit contracts with Moola during the Relevant Period (Schedule One Borrowers). Moola's conduct:
 - (a) as pleaded in the First and Second Causes of Action applied to all of the Schedule One Borrowers; and
 - (b) as pleaded in the Third and Fourth Causes of Action applied to some of Schedule One Borrowers.

Types of loans

- 4.3 Moola offered three loan types: short term, medium term and long term loans.
 - Short term loans*
 - 4.4 Moola generally offered short term loans for terms of between 2 and 32 days, but sometimes for periods of up to 62 days.
 - 4.5 For short term loans, Moola charged an interest rate of 1.5% per day (being an annual interest rate of 547.5% per annum), which compounded daily.
 - Medium term loans*
 - 4.6 Moola generally offered medium term loans for terms of between 63 and 94 days.
 - 4.7 For medium term loans, Moola charged an interest rate of 0.75% per day (being an annual interest rate of 273.75% per annum), which compounded daily.
 - Long term loans*
 - 4.8 From on or about 20 January 2017, Moola offered long term loans, to previous customers, generally for terms of between 94 and 170 days.
 - 4.9 For long term loans, Moola charged an interest rate of 0.5% per day (being an annual interest rate of 182.5% per annum), which compounded daily.

Application process

- 4.10 As pleaded below, Moola's application process comprised:
- (a) an automated website-based process to collect information from the Borrower and allow the Borrower to apply for a loan for a particular amount and duration (**Online Process**); and, if the application was accepted
 - (b) a manual process to review loan applications before the loan is accepted (**Manual Process**).

The Online Process

- 4.11 Moola's Online Process required Borrowers to input information into Moola's website, including:
- (a) details about the loan the Borrower was seeking:
 - (i) the amount the Borrower wanted to borrow (**Proposed Loan Amount**);
 - (ii) the period of time over which the Borrower wanted to repay the loan (**Term**);
 - (iii) the frequency the Borrower was paid their income;
 - (iv) the date when the Borrower would next be paid; and
 - (v) the purpose of the loan (from a drop-down menu); and
 - (b) personal information about the Borrower, including their income, net pay, job position, employer and bank account details.
- 4.12 Aside from obtaining bank records from applicants, Moola did not otherwise require Borrowers to provide information about their expenses or other loans outstanding as part of the Online Process.
- 4.13 Based on the information provided, Moola's website would automatically calculate and display on screen to the Borrower:
- (a) the Proposed Loan Amount;
 - (b) the total dollar amount of the interest and fees that the Borrower would have to pay over the Term of the loan;
 - (c) the total amount the Borrower would have to repay;
 - (d) the total number of payments required to repay the loan; and
 - (e) the amount of each repayment (**Repayment Amount**).

Automated review of application information

- 4.14 If the Borrower then elected to proceed with the application, Moola's website would apply two filters to the application.

- 4.15 As part of the preliminary assessment, Moola would determine whether the Borrower was a first time Borrower.
- 4.16 If the Borrower was a first time Borrower, and the Borrower had sought a loan of more than \$500, Moola would automatically reduce the Proposed Loan Amount for that application to \$500.
- 4.17 Second, Moola automatically assessed whether a standard percentage of the Borrower's weekly pay (**Repayment Income**) exceeded the Repayment Amount.

Particulars to paragraph 4.17

- (a) from 6 June 2015 to on or about October 2016, Moola used 30% of the Borrower's weekly pay to calculate their Repayment Income; and
- (b) from on or about October 2016, Moola used 40% of the Borrower's weekly pay to calculate their Repayment Income.

(The percentage applicable at the relevant time is referred to in this claim as the **Moola Repayment Percentage**.)

- 4.18 If the Borrower's Repayment Income exceeded the Repayment Amount, Moola permitted the Borrower to continue with the application on the basis of the Proposed Loan Amount.
- 4.19 If the Borrower's Repayment Income was less than the Repayment Amount, then:
- (a) Moola would automatically reduce the Proposed Loan Amount to a level where the Borrower's Repayment Income matched the Repayment Amount; and
- (b) if that new Proposed Loan Amount exceeded \$100, then Moola permitted the Borrower to continue with the application on the basis of the reduced Proposed Loan Amount; or
- (c) if that new Proposed Loan Amount was less than \$100, then Moola advised the Borrower that they could not continue with the application but could return to the home page and reapply using "a different loan option".
- 4.20 If the Borrower then continued with the application, they were prompted to:
- (a) confirm their acceptance of the terms of the loan;
- (b) confirm that they had reviewed the loan documents; and
- (c) "sign" the loan documents, using a digital signature that Moola automatically created for them (which was a stylised version of their name).

Particulars of the loan documents

- (i) terms and conditions;
- (ii) privacy policy;
- (iii) Credit Agreement;

- (iv) direct debit authority;
- (v) employer's deduction authority;
- (vi) privacy waiver; and
- (vii) EzyPay terms & conditions.

Particulars to paragraph (vii)

- (A) The EzyPay terms and conditions document facilitated Moola and the Borrower's use of EzyPay's service for Moola to receive direct debits.

(Together, the **Loan Documents**)

4.21 The Borrower was also asked to confirm statements displayed on screen that were described by Moola as 'Important Information'.

Particulars of the 'Important Information'

- (a) "You understand that you cannot apply if you are currently seeking help, or thinking to seek help, from a Budget Advisor. And you are not claiming or thinking to claim Non-Asset Procedure, Kiwisaver Hardship, Insolvency, Summary Instalment [sic] Order, or Hardship on any other grounds for outstanding financial products."
- (b) "You understand that this product is only suitable to improve short term cash flow requirements."
- (c) "You understand that in the event of default you will incur default fees and interest, and that the debt may be passed to a collection agency."
- (d) "You understand that if there are foreseeable changes to your income or employment during the term of your loan you will need to advise Moola. If these changes are significant we recommend you do not proceed with your application without first considering budget advice."

4.22 After it applied the Borrower's digital signature to the Loan Documents, Moola:

- (a) sent a text message to the Borrower thanking them for applying for a loan; and
- (b) emailed the Borrower asking them to provide Moola with access to information regarding transactions on the Borrower's nominated bank account.

Particulars to paragraph (b)

- (i) Moola required first time applicants to provide Moola's external providers with access to 90 days of bank account information.
- (ii) In some instances, Moola accepted copies of bank statements provided by the Borrower.

The Manual Process

- 4.23 After the Borrower submitted their online application, Moola staff reviewed the information provided by the Borrower, and reports on the Borrower's bank account as pleaded at paragraphs 4.25 below, and assessed the application against Moola's lending criteria.
- 4.24 Moola staff sometimes also sought other information from the Borrower, or about the Borrower, to confirm that they were in continuing employment.

Particulars to paragraph 4.24 above

- (a) For example, for some Borrowers:
- (i) Moola would request payslips from the Borrower; and/or
 - (ii) Moola would contact a Borrower's employer.

Collation of bank account information

- 4.25 Moola used external providers to provide reports on the transactions in the Borrower's nominated bank account:

Decision Logic

- (a) From 6 June 2015 to on or about August 2016, Moola used an external provider called Clarilogic Inc., trading as Decision Logic (**Decision Logic**), to obtain and collate transactions on the Borrower's nominated bank account.
- (b) Decision Logic analysed debits to the Borrower's account and summarised them into categories of expenses and highlighted in bold the deposits into the Borrower's account, but did not provide any further analysis of income and expenses.

Credit Sense

- (c) From on or about August 2016, Moola used an external provider called Credit Sense Australia Pty Ltd (**Credit Sense**) to obtain and collate transactions on the Borrower's nominated bank account.
- (d) Credit Sense provided a report that listed and collated bank account transactions, calculated a borrower's average income, and identified outgoings, including the amount and frequency of any repayments being made to other lenders, and any evidence of defaults on other loans.

Moola's lending criteria

- 4.26 Based on the information contained in the Decision Logic or Credit Sense report (**Report**), in particular information about salary or wage payments and deposits into the account, Moola derived what it described as the Borrower's **Net Reliable Income** per week.

Particulars to paragraph 4.26 above

- (a) If the Borrower had a regular income, Moola used this as their Net Reliable Income; or

(b) If the Borrower had irregular income, Moola used the average of the income payments received in one month as the Borrower's Net Reliable Income.

4.27 Where the Borrower's weekly pay as disclosed in the application was less than the figure Moola derived from the Report, Moola would use the lower amount as the Borrower's Net Reliable Income.

Moola's lending parameters

4.28 Moola determined whether it would lend money to the Borrower, and the amount of any loan, using two interrelated tests that it had deemed as suitable to meet its obligations under the CCCFA, namely the:

(a) Income-to-Repayment Amount; and

(b) Debt Servicing Ratio.

The Income-to-Repayment Amount

4.29 First, Moola recalculated the Borrower's Repayment Income, by applying the Moola Repayment Percentage to the Borrower's Net Reliable Income.

4.30 The Borrower's Repayment Income was also used as the Borrower's **Income-to-Repayment Amount**.

Debt Servicing Ratio

4.31 Second, Moola applied its **Debt Servicing Ratio** to the Borrower's Net Reliable Income. Under the Debt Serving Ratio, Moola presumed that each Borrower:

(a) needed only 52% of their income to meet their expenses (which Moola called **Fundamental Necessities**); and, thus

(b) could apply 48% of their income to repay debt, including the proposed debt to Moola (Moola called this 48% the **Available Debt Servicing Balance**).

4.32 Moola then subtracted what it considered the Borrower was obliged to repay to other creditors for each repayment period (as disclosed in the Report) from the Available Debt Servicing Balance.

4.33 The result of that calculation was the amount that Moola deemed the Borrower had available to make repayments to Moola (referred to by Moola as the Borrower's **Debt Servicing Ability**).

Moola's Affordability Assessment

4.34 Moola then compared the lesser of the Borrower's Income-to-Repayment Amount and Debt Servicing Ability (the **Affordability Amount**) with the Repayment Amount.

4.35 Where the Affordability Amount exceeded the Repayment Amount, Moola would advance the loan for the Proposed Loan Amount.

4.36 Where the Affordability Amount was less than the Repayment Amount:

(a) Moola would reduce the Proposed Loan Amount to a level where the Repayment Amount was approximately equal to the Affordability Amount; or

- (b) if reducing the proposed loan amount would result in a loan of less than \$100 then Moola would decline the loan.

(This approach is referred to in this claim as **Moola's Affordability Policy**.)

- 4.37 Moola staff were sometimes permitted to override Moola's Affordability Policy to enable Moola to offer loans to borrowers where the borrower's debt repayments exceeded the restrictions set by that Policy.
- 4.38 In some isolated instances, where the Borrower had a history of meeting repayments on prior Moola loans, Moola advanced a loan to a Borrower when Moola's Affordability Policy indicated that the loan was unaffordable.
- 4.39 After Moola had made a final decision on whether to extend a loan to the Borrower (and in what amount), Moola advised the Borrower of the outcome of their application. Moola provided that advice by sending the Borrower a text message stating that:
 - (a) the application had been approved and the amount at which it had been approved; or
 - (b) the application had been declined.
- 4.40 Unless the application had been declined, after sending the text message pleaded at paragraph 4.39 above, Moola would transfer the amount of the loan to the Borrower's bank account without further consultation with the Borrower.
- 4.41 Moola then sent the Borrower a copy of the Credit Agreement, with any updated terms, by email. This Credit Agreement included the Borrower's digital signature as applied during the online application, but did not require the Borrower to sign the document again.

Returning Borrowers

- 4.42 To apply for subsequent loans, returning Borrowers could log onto Moola's website using the profile created for them when applying for their first loan.
- 4.43 When a returning Borrower applied for another loan using the profile previously created for them:
 - (a) the Borrower's personal details would be pre-populated with information from their previous loan application; and
 - (b) the Borrower was asked by the website to confirm that their personal details were still correct, and/or to update the details.
- 4.44 Moola did not require returning or existing Borrowers to submit new bank statements if the bank statements previously provided were less than four months old.

Further borrowing

Multiple loans

- 4.45 For some of the Schedule One Borrowers, Moola approved a subsequent loan to a Borrower within days of paying off their previous loan.

4.46 Moola did not limit the number of consecutive loans a Borrower could have over a given period.

Top-up loans

4.47 From 13 July 2017 Moola offered existing Borrowers the option to take out a new loan to refinance a previous loan. This was described by Moola as a top-up loan (**Top-up loan**).

4.48 Moola advertised Top-up loans to existing Borrowers after the Borrower paid the first instalment of an existing loan, by sending the Borrower a text message or email advising the Borrower they were eligible to apply for a Top-up loan.

5 Assessment of a Borrower's requirements, objectives and ability to repay without substantial hardship

5.1 By adopting and implementing the application and assessment process pleaded in Sections 3 and 4 above, in relation to the Schedule One Borrowers, Moola:

- (a) failed to make reasonable inquiries before entering into consumer credit contracts with the Schedule One Borrowers so as to be satisfied that it was likely that:
 - (i) the credit provided under the agreement would meet the Schedule One Borrower's requirements and objectives;
 - (ii) the Schedule One Borrower would make the payments under the agreement without suffering substantial hardship; and
- (b) failed to exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit with the Schedule One Borrowers.

The Borrower's requirements and objectives

Unilateral reduction in loan amount

5.2 As pleaded at paragraphs 4.16, 4.19(a), 4.19(b) and 4.36 above, for some of the Schedule One Borrowers, Moola would approve loans for less than the amount sought by the Borrower in their loan application without inquiring whether the lesser amount would meet the Borrower's requirements and objectives.

5.3 Where Moola unilaterally reduced the loan amount after the Borrower had electronically signed the Loan Documents that recorded the loan amount requested, Moola would:

- (a) amend the terms of the pre-signed contract in accordance with the revised loan amount (**Amended Credit Agreement**); and
- (b) notify the Borrower of this change by text message, asking the Borrower to check the Amended Credit Agreement.

5.4 Moola did not require that the Borrower had seen or approved the Amended Credit Agreement prior to the loan money being transferred to the Borrower's bank account.

5.5 If a Borrower was not prepared to accept the loan on the terms under the Amended Credit Agreement it was incumbent on the Borrower:

- (a) to contact Moola to cancel the loan; and
- (b) to return the funds.

5.6 In relation to some of the Schedule One Borrowers, if the Borrower did not complete those steps, Moola treated the Credit Agreement as being agreed by the Borrower without further assessment of whether the reduced amount of the loan met the Borrower's requirements and objectives and ability to repay without substantial hardship.

Purpose of the loan – insufficient specificity/consideration

5.7 As pleaded at paragraph 4.11(a)(v) above, as part of the Online Process for a new loan, Moola required Borrowers to select the purpose of their loan from a finite list of options via a drop-down menu.

5.8 The list of purposes that Moola specified in that menu did not provide it with sufficient information to understand the true purpose of the loan.

Particulars to paragraph 5.8

(a) The purposes that Borrowers were required to choose from were:

- (i) Short term cash flow problems.
- (ii) Hot date.
- (iii) New jeans.
- (iv) Your favourite band.
- (v) Cheap air tickets.
- (vi) Insurance claims.
- (vii) Crashed car.
- (viii) Mortgage or rent repayments.
- (ix) To pay credit card bills.
- (x) Emergency.
- (xi) Other.

5.9 Until October 2017, if a Borrower specified a loan purpose of "other" Moola did not follow up and require additional information.

5.10 In relation to the Schedule One Borrowers, Moola did not consider the specified purpose of the loan in determining whether to advance the loan.

5.11 Moola did not require Borrowers who applied for a top-up loan to specify the purpose for that loan between 13 July 2017 and 4 October 2017.

Purpose of the loan – one-off or ongoing expenditure

- 5.12 In relation to the Schedule One Borrowers, Moola did not properly assess whether the Borrower needed the loan to respond to an isolated, immediate event, or whether the Borrower was using the loan to cover ongoing expenditure.

Insufficient enquiries about substantial hardship

- 5.13 Moola's Affordability Policy was based on general assumptions applicable to all borrowers, and not on the specific factual circumstances of the individual Borrower, and was not a reliable guide to whether the Borrower could repay the loan without incurring substantial hardship.
- 5.14 In relation to the Schedule One Borrowers, Moola relied solely on bank records provided and as a result, did not make reasonable enquiries so as to be satisfied that it was likely that the Schedule One Borrowers could make the loan repayments without undue difficulty, and without having to realise security or assets, as well as:
- (a) meet necessities (such as accommodation, food, utilities, transport, or required medical expenses); and
 - (b) meet other financial commitments (including repayments of existing debts and the extent to which existing debts were to be repaid from the credit advanced).
- 5.15 In relation to the Schedule One Borrowers, Moola did not make reasonable enquiries into a Borrower's income, including:
- (a) Moola relied upon the Report to identify all sources of income, when the Report:
 - (i) did not identify sources of income that were not deposited into the specified bank account;
 - (ii) did not reliably identify or categorise income, or record the consistency of income;
 - (b) following receipt of Report, Moola did not undertake sufficient further checks on the bank transactions to sufficiently identify income that could indicate the potential for future hardship or an inability to repay the loan. In particular:
 - (i) on some loans, Moola did not carry out any further checks following receipt of the Report; or
 - (ii) on those loans where Moola did conduct checks, those checks did not reliably assess whether the Borrower would be able to make payments without suffering substantial hardship;
 - (c) Moola did not reliably interpret the income sources identified in the Report to derive the Net Reliable Income.
- 5.16 In relation to the Schedule One Borrowers, Moola did not make reasonable enquiries into a Borrower's expenses:
- (a) Moola relied on the Report, and did not otherwise require the Borrower to provide information about their:

- (i) necessities;
 - (ii) other financial commitments; or
 - (iii) other regular expenses (such as tithing or pay TV subscriptions);
 - (b) Moola relied upon the Report to identify and categorise the Borrower's expenses when those reports:
 - (i) did not identify expenses that were not paid out of the Borrower's specified bank account;
 - (ii) did not always accurately identify or categorise expenses, in particular repayments to other lenders;
 - (c) following receipt of Report, Moola did not undertake sufficient further checks on the bank transactions to sufficiently identify expenses that could indicate the potential for future hardship or an inability to repay the loan. In particular:
 - (i) on some loans, Moola did not carry out any further checks following receipt of the Report; or
 - (ii) on those loans where Moola did conduct checks, those checks did not reliably assess whether the Borrower would be able to make payments without suffering substantial hardship;
 - (d) Moola did not assess the Borrower's expenses as shown in the Report as part of its decision whether to advance the loan; and/or
 - (e) Moola did not assess whether the Borrower's actual expenses were greater than the Fundamental Necessities amount Moola assumed was sufficient (namely 52% of Net Reliable Income).
- 5.17 In relation to the Schedule One Borrowers, Moola did not make reasonable enquiries into a Borrower's likelihood of repaying the loan:
- (a) Moola did not always enquire into the Borrower's credit history by doing credit checks;
 - (b) Moola often relied on a Borrower's good repayment history to justify advancing loans which were unaffordable to the Borrower, even by standards set by Moola's Affordability Policy; and/or
 - (c) Moola's reliance on Moola's Affordability Policy did not consider the Borrower's individual circumstances.
- 5.18 As a result of Moola's conduct pleaded at Sections 3 and 4 and paragraphs 5.1 to 5.17 above, Borrowers suffered loss or damage.

First Cause of Action: failures in assessment of a Borrower's requirements and objectives

- 5.19 By its conduct at Sections 3 and 4 and paragraphs 5.1 to 5.18 above, Moola breached s 9C(1) via ss 9C(2)(a)(ii) and 9C(3)(a)(i) of the CCCFA in relation to the Schedule One Borrowers by:
- (a) failing to exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit; and/or
 - (b) failing to make reasonable inquiries so as to be satisfied that it was likely that the credit provided under agreements met the Borrower's requirements and objectives.

Wherefore the Plaintiff claims against the Defendant:

- A A declaration that by its conduct, Moola breached s 9C(1) via ss 9C(2)(a)(ii) and 9C(3)(a)(i) of the CCCFA by failing to make reasonable inquiries so as to be satisfied that it was likely that the loan would meet the Schedule One Borrower's requirements and objectives.

Second Cause of Action: failures in assessment of a Borrower's ability to repay without substantial hardship

- 5.20 By its conduct at Sections 3 and 4 and paragraphs 5.1 and 5.19 above, Moola breached s 9C(1) via ss 9C(2)(a)(ii) and 9C(3)(a)(ii) of the CCCFA in relation to the Schedule One Borrowers by:
- (a) failing to exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit; and/or
 - (b) failing to make reasonable inquiries so as to be satisfied that the Borrower would be able to make repayments without suffering substantial hardship.

Wherefore the Plaintiff claims against the Defendant:

- A A declaration that by its conduct Moola breached s 9C(1) via ss 9C(2)(a)(ii) and 9C(3)(a)(ii) of the CCCFA in relation to the Schedule One Borrowers by failing to make reasonable inquiries so as to be satisfied that it was likely that the Borrower would make the payments under the agreement without suffering substantial hardship.

6 Care, diligence and skill in advertising

- 6.1 Moola advertised its services to Borrowers by, amongst other methods, sending them text messages and emails.

No prominent risk warning disclosed

- 6.2 The text messages and emails pleaded at paragraph 6.1 above did not include a prominent risk warning to Borrowers that made it clear that high-cost credit agreements should not be used for long term or regular borrowing, and are suitable only to improve short term cash flow.

Advertising encouraged borrowing without regard to suitability

- 6.3 On the day that a Borrower's last payment was due, Moola would send a text message and emails to the Borrower advising that the Borrower could apply for a new loan.
- 6.4 Some of the text messages and emails sent to the Schedule One Borrowers as pleaded at paragraphs 6.1 and 6.3 above encouraged those Schedule One Borrowers to reapply for new loans, and encouraged them to use the loans for longer term borrowing:

Particulars to paragraph 6.4

- (a) The content of those messages included, for example:
- (i) "Your final payment has been attempted and you can now reapply. It is quick and easy just log into your account".
 - (ii) "You've paid off your loan with Moola. Get in before the weekend and reapply! Remember it's quick and easy to reapply just log in online and you are nearly done".
- 6.5 After 13 June 2017, Moola sent text messages and emails, encouraging Borrowers to apply to borrow more money and extend the Term of their loan through top-up loans.

Particulars to paragraph 6.5

- (a) The content of those emails included, for example:
- (i) "You could be eligible for a loan top up! Now you could either top up to the original amount of your loan or potentially more. Provided you've made a suitable payment or two off your loan, you can top up on the amount borrowed on your original loan, subject to our lending criteria of course".
- 6.6 As a result of Moola's conduct pleaded in paragraphs 6.1 to 6.5 above, Borrowers suffered loss or damage.

Third Cause of Action: lack of care, diligence and skill in advertising

- 6.7 By its conduct at paragraphs 6.1 to 6.6 above, between 6 June 2015 and 30 November 2017, Moola breached s 9C(1) via s 9C(2)(a)(i) of the CCCFA in relation to the Schedule One Borrowers by failing to exercise the care, diligence, and skill of a responsible lender in advertisements for providing credit or finance under an agreement.

Wherefore the Plaintiff claims against the Defendant:

- A A declaration that by its conduct, Moola breached s 9C(1) via s 9C(2)(a)(i) of the CCCFA in relation to the Schedule One Borrowers by failing to exercise the required care, diligence and skill in advertising.

7 Failing to treat the Borrower reasonably and in an ethical manner when breaches of the agreement have occurred

- 7.1 When a Borrower defaulted on a repayment, Moola attempted to telephone the Borrower up to three times per day for the ten working days following default, in addition to sending daily emails and text messages.

7.2 If the Borrower did not respond to Moola as a result of this contact, Moola would send emails and text messages to the Borrower on a daily basis for a further period of up to 50 days advising the Borrower that their repayment had been dishonoured and that payment was due.

7.3 As a result of Moola's conduct pleaded in paragraphs 7.1 to 7.2 above, Borrowers suffered loss or damage.

Fourth Cause of Action: Failing to treat the borrower reasonably and in an ethical manner when breaches of the agreement have occurred

7.4 By its conduct at paragraphs 7.1 to 7.3 above, between 6 June 2015 and 30 November 2017, Moola breached s 9C(1) via s 9C(3)(d)(i) of the CCCFA in relation to the Schedule One Borrowers by failing to treat the Borrower reasonably and in an ethical manner when breaches of the agreement have occurred or may occur or when other problems arise.

Wherefore the Plaintiff claims against the Defendant:

A A declaration that by its conduct Moola breached s 9C(1) via s 9C(3)(d)(i) of the CCCFA by failing to treat the Schedule One Borrowers reasonably and in an ethical manner when breaches of the agreement had occurred.

Schedule 1: Schedule of the affected Debtors who are the subject of the Proceeding, and for whom payments may be made under this Agreement

Number		
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
31		
32		
33		
34		
35		
36		
37		
38		
39		
40		
41		
42		
43		
44		
45		
46		
47		
48		
49		
50		

Appendix Two

First Amended Statement of Defence

The DEFENDANT, Moola.co.nz Limited (**Moola**) says by way of defence:

1. The Parties

- 1.1 Moola admits paragraph 1.1 of the Second Amended Statement of Claim.
- 1.2 Moola admits paragraph 1.2 of the Second Amended Statement of Claim.
- 1.3 Moola admits paragraph 1.3 of the Second Amended Statement of Claim.
- 1.4 Moola admits paragraph 1.4 of the Second Amended Statement of Claim.
- 1.5 Moola admits that at all times during the Relevant Period it had a Chief Operating Officer, and staff working in marketing, IT, collections, processing and customer service functions, but says that the precise staff numbers changed during the Relevant Period and otherwise denies paragraph 1.5 of the Second Amended Statement of Claim.

2. Period of Conduct

- 2.1 Moola is not required to plead to paragraph 2.1 of the Second Amended Statement of Claim.

3. Moola's loan application process

- 3.1 Moola admits that its loans include loans for personal, domestic or household purposes, but otherwise says it is not required to plead to paragraph 3.1 of the Second Amended Statement of Claim, which relates to matters of law.
- 3.2 Moola admits paragraph 3.2 of the Second Amended Statement of Claim.

4. Moola's Loan Application Process

The Borrowers

- 4.1 Moola admits that during the Relevant Period it offered loans of between \$100 and \$5,000 to New Zealand debtors who were over 18 years old and says further that between June 2015 and April 2016, Moola offered a minimum loan of \$50, but otherwise says it is not required to plead to paragraph 4.1 of the Second Amended Statement of Claim.
- 4.2 Moola admits paragraph 4.2 of the Second Amended Statement of Claim

Types of loans

- 4.3 Moola admits paragraph 4.3 of the Second Amended Statement of Claim.

Short term loans

4.4 Moola admits paragraph 4.4 of the Second Amended Statement of Claim.

4.5 Moola admits paragraph 4.5 of the Second Amended Statement of Claim.

Medium term loans

4.6 Moola admits paragraph 4.6 of the Second Amended Statement of Claim.

4.7 Moola admits that it started offering medium term loans from August 2016 at an interest rate of 0.5% per day and from July 2017, it charged interest rates as specified in paragraph 4.7 of the Second Amended Statement of Claim.

Long term loans

4.8 Moola admits paragraph 4.8 of the Second Amended Statement of Claim.

4.9 Moola admits that it started offering long term loans from January 2017 at an interest rate of 0.14% per day and from July 2017, it charged interest rates as specified in paragraph 4.9 of the Second Amended Statement of Claim.

Application process

4.10 Moola admits that there are both online and manual processes involved in its loan application process but otherwise denies paragraph 4.10 of the Second Amended Statement of Claim and says further that:

- (a) it oversimplifies the loan application process to describe it as a two stage, online and manual process;
- (b) no loan application is “accepted” prior to the completion of the entire process; and
- (c) it only entered into loans with applicants in paid employment and does not lend to beneficiaries.

The Online Process

4.11 Moola admits paragraph 4.11 of the Second Amended Statement of Claim.

4.12 Moola admits paragraph 4.12 of the Second Amended Statement of Claim.

4.13 Moola admits paragraph 4.13 of the Second Amended Statement of Claim.

Automated review of application information

4.14 Moola admits paragraph 4.14 of the Second Amended Statement of Claim.

4.15 Moola admits paragraph 4.15 of the Second Amended Statement of Claim.

4.16 Moola admits paragraph 4.16 of the Second Amended Statement of Claim save that during the Relevant Period the maximum amount was sometimes lower than \$500.

4.17 Moola admits paragraph 4.17 of the Second Amended Statement of Claim save that it says that; the percentage used between June 2015 and October 2015 was 25%; the

standard percentage of the borrower's pay was based on their pay frequency; and the amounts were net of income tax and other deductibles such as KiwiSaver.

- 4.18 Moola admits paragraph 4.18 of the Second Amended Statement of Claim but says further that the Proposed Loan Amount may subsequently decrease based on additional information obtained as part of the application process.
- 4.19 Moola admits paragraph 4.19 of the Second Amended Statement of Claim save that it says that at times during the Relevant Period the threshold was \$50 and it says further that any new loan amounts and payments were displayed and the applicant was required to click "confirm" to continue with the application.
- 4.20 Moola admits paragraph 4.20 of the Second Amended Statement of Claim and says further that no loan application was concluded or approved at this stage of the process.
- 4.21 Moola admits paragraph 4.21 of the Second Amended Statement of Claim and says further that:
- (a) the website also stated "If you are having difficulty understanding anything on this page please contact us on 0800 003 011 before signing your loan documents"; and
 - (b) throughout the application process, the applicant could "click" to "chat" online with Moola staff or leave messages offline in order to clarify any aspect of the loan.
- 4.22 Moola admits paragraph 4.22 of the Second Amended Statement of Claim and says further that:
- (a) where access to the last 90 days of bank account information was not provided the loan application was declined;
 - (b) with respect to paragraph 4.22 (b) the applicant was asked to verify their bank account information electronically via a link that allowed Moola access to all accounts held by the applicant with their bank; and
 - (c) with respect to paragraph 4.22 (b)(ii) copies of bank statements were accepted in limited circumstances such as where the applicant had security or privacy concerns with providing their internet login and further checks were conducted by Moola credit officers to ensure that statements were not fraudulent.

The Manual Process

- 4.23 Moola admits paragraph 4.23 of the Second Amended Statement of Claim.
- 4.24 Moola admits paragraph 4.24 of the Second Amended Statement of Claim and says further that credit officer inquiries were not limited to the particulars pleaded.

Particulars of paragraph 4.24

- (a) Loans would be declined where there were indications that the applicant was a not currently employed, including where an applicant was a beneficiary

(without other income from employment), on ACC, a student or in casual, seasonal or fixed term employment;

- (b) Loans may have been declined if the applicant was self-employed or a contractor;
- (c) Loans would likely have been declined where applicant was the controlling party of the employer (such as a director); and
- (d) Loans would be declined if credit staff were unable to establish contact with or the validity of the employer.

Collation of bank account information

4.25 Moola admits paragraph 4.25 of the Second Amended Statement of Claim and says further that the reports by Decision Logic and Credit Sense are considered by the credit officers who looks for other relevant affordability factors (although on occasions this policy was not followed) and that Moola may at any stage require a credit check and/or reassess whether the level of the proposed loan needed to be reduced and/or decline the loan.

Moola's lending criteria

4.26 Moola admits paragraph 4.26 (a) but otherwise denies that paragraph and says further that:

- (a) the assessment of the applicant's net reliable income was based on the information in the Decision Logic or Credit Sense reports as assessed by the credit officer; and
- (b) if the applicant had irregular income, a judgment call would be made by the credit officer as to whether it was appropriate to calculate an average income, or decline the loan.

4.27 Moola admits paragraph 4.27 of the Second Amended Statement of Claim.

Moola's lending parameters

4.28 Moola admits paragraph 4.28 of the Second Amended Statement of Claim.

The Income-to-Repayment Amount

4.29 Moola admits paragraph 4.29 of the Second Amended Statement of Claim.

4.30 Moola admits paragraph 4.30 of the Second Amended Statement of Claim.

Debt Servicing Ratio

4.31 Moola admits paragraph 4.31 of the Second Amended Statement of Claim save for all amounts were net of tax and other deductibles and were not gross income.

4.32 Moola admits paragraph 4.32 of the Second Amended Statement of Claim.

4.33 Moola admits paragraph 4.33 of the Second Amended Statement of Claim.

Moola's Affordability Assessment

- 4.34 Moola admits paragraph 4.34 of the Second Amended Statement of Claim.
- 4.35 Moola admits that where the Affordability Amount exceeded the Repayment Amount, Moola would proceed with the remaining steps in the loan application process as pleaded at paragraphs 4.25 and 4.39-4.41.
- 4.36 Moola admits paragraph 4.36 of the Second Amended Statement of Claim.
- 4.37 Moola admits paragraph 4.37 of the Second Amended Statement of Claim.
- 4.38 Moola admits paragraph 4.38 of the Second Amended Statement of Claim.
- 4.39 Moola admits paragraph 4.39 of the Second Amended Statement of Claim and it says further that during the Relevant Period approximately 57% of all loan applications, and 72% of all new borrower loan applications, were declined.
- 4.40 Moola admits paragraph 4.40 of the Second Amended Statement of Claim.
- 4.41 Moola admits paragraph 4.41 of the Second Amended Statement of Claim.

Returning Borrowers

- 4.42 Moola admits paragraph 4.42 of the Second Amended Statement of Claim.
- 4.43 Moola admits paragraph 4.43 of the Second Amended Statement of Claim.
- 4.44 Moola admits that in some circumstances it did not require returning borrowers or existing borrowers to submit new bank statements, but otherwise denies paragraph 4.44 of the Second Amended Statement of Claim and says further that:
 - (a) where a customer was requesting a Top-up loan Moola generally required them to submit 90 days new bank statements before accepting a new loan application; and
 - (b) where the returning or existing borrower's bank statements were more than four months old, 90 days new bank statements would be requested.

Further borrowing

Multiples loans

- 4.45 Moola admits paragraph 4.45 of the Second Amended Statement of Claim.
- 4.46 Moola admits paragraph 4.46 of the Second Amended Statement of Claim and says further that, with the exception of Top-up loans, it did not place a set limit on the number of loans a borrower could obtain.

Top-up loans

- 4.47 Moola admits paragraph 4.47 of the Second Amended Statement of Claim.

4.48 Moola admits paragraph 4.48 of the Second Amended Statement of Claim.

5. Assessment of a Borrower's requirements, objectives and ability to repay without substantial hardship

5.1 To the extent Moola has admitted the application and assessment process pleaded in Sections 3 and 4, Moola admits 5.1 of the Second Amended Statement of Claim.

The Borrower's requirements and objectives

Unilateral reduction in loan amount

5.2 Moola admits paragraph 5.2 of the Second Amended Statement of Claim.

5.3 Moola admits paragraph 5.3 of the Second Amended Statement of Claim.

5.4 Moola admits paragraph 5.4 of the Second Amended Statement of Claim.

5.5 Moola admits paragraph 5.5 of the Second Amended Statement of Claim.

5.6 Moola admits paragraph 5.6 of the Second Amended Statement of Claim.

Purpose of the loan – insufficient specificity/consideration

5.7 Moola admits paragraph 5.7 of the Second Amended Statement of Claim.

5.8 Moola admits paragraph 5.8 of the Second Amended Statement of Claim.

5.9 Moola admits until on or around 3 July 2017, if a Borrower specified a loan purpose of "other" Moola did not require additional information.

5.10 Moola admits paragraph 5.10 of the Second Amended Statement of Claim.

5.11 Moola admits paragraph 5.11 of the Second Amended Statement of Claim.

Purpose of the loan – one-off or ongoing expenditure

5.12 Moola admits paragraph 5.12 of the Second Amended Statement of Claim.

Insufficient enquiries about substantial hardship

5.13 Moola denies paragraph 5.13 of the Second Amended Statement of Claim.

5.14 Moola admits paragraph 5.14 of the Second Amended Statement of Claim.

5.15 Moola admits paragraph 5.15 of the Second Amended Statement of Claim.

5.16 Moola admits paragraph 5.16 of the Second Amended Statement of Claim.

5.17 Moola admits paragraph 5.17 of the Second Amended Statement of Claim.

5.18 Moola denies paragraph 5.18 of the Second Amended Statement of Claim.

First Cause of Action: failures in assessment of a Borrower's requirements and objectives

- 5.19 To the extent the matters pleaded in Sections 3 and 4 and paragraphs 5.1 to 5.18 above are admitted, Moola admits paragraph 5.19 of the Second Amended Statement of Claim.

Second Cause of Action: failures in assessment of a Borrower's ability to repay without substantial hardship

- 5.20 To the extent the matters pleaded in Sections 3 and 4 and paragraphs 5.1 to 5.19 above are admitted, Moola admits paragraph 5.20 of the Second Amended Statement of Claim.

6. Care, diligence and skill in advertising

- 6.1 Moola admits paragraph 6.1 of the Second Amended Statement of Claim.

No prominent risk warning disclosed

- 6.2 Moola admits paragraph 6.2 of the Second Amended Statement of Claim, but refers to the risk warning recorded at paragraph 4.21(b) of the Second Amended Statement of Claim.

Advertising encouraged borrowing without regard to suitability

- 6.3 Moola admits paragraph 6.3 of the Second Amended Statement of Claim save that it says that emails were sent from June 2017 onwards.

- 6.4 Moola admits paragraph 6.4 of the Second Amended Statement of Claim.

- 6.5 Moola admits paragraph 6.5 of the Second Amended Statement of Claim.

- 6.6 Moola denies paragraph 6.6 of the Second Amended Statement of Claim.

Third Cause of Action: lack of care, diligence and skill in advertising

- 6.7 Moola admits paragraph 6.7 of the Second Amended Statement of Claim

7. Failing to treat the Borrower reasonably and in an ethical manner when breaches of the agreement have occurred

- 7.1 Moola admits paragraph 7.1 of the Second Amended Statement of Claim, and says further that, such attempts only continued until the credit officer managed to contact the Borrower concerned to deal with the default.

- 7.2 Moola admits paragraph 7.2 of the Second Amended Statement of Claim and says further that if the Borrower requested Moola stop sending emails and texts it would do so.

- 7.3 Moola denies paragraph 7.3 of the Second Amended Statement of Claim.

Fourth Cause of Action: Failing to treat the borrower reasonably and in an ethical manner when breaches of the agreement have occurred

7.4 Moola admits paragraph 7.4 of the Second Amended Statement of Claim.

Appendix Three

Joint memorandum of counsel regarding hearing for interlocutory application for declaratory order

May it please the Court

- 1.1 The Commerce Commission (**Commission**) has filed an interlocutory application for declaratory orders on admission of facts, pursuant to r 15.15 of the High Court Rules. That application relies on the admissions made by Moola.co.nz Limited (trading as **Moola**) in paragraphs [•] of its First Amended Statement of Defence, filed as part of a negotiated settlement between the parties. The basis for the application is further set out in the affidavit of [REDACTED] sworn [•].
- 1.2 The application for declaratory orders is not opposed by Moola. In light of that fact, pursuant to r 7.37 of the High Court Rules, the Court may grant the orders sought with or without a hearing.
- 1.3 The parties seek that the order sought be made without a hearing. However, in the event the Court considers it would be assisted by written and oral submissions, then the parties agree that a one hour hearing would be sufficient, with timetabling directions for the exchange of synopses of submissions.
- 1.4 Accordingly, the parties seek:
- (a) In the event the Court is prepared to make the order sought on the papers:
 - (i) The declaratory order set out at paragraphs 5.19(A), 5.20(A) 6.7(A) and 7.4(A) of the Second Amended Statement of Claim; and
 - (ii) No order for costs.
 - (b) Or, in the event the Court wishes to convene a hearing to consider the application, the parties seek the following orders:
 - (i) The Registry to consult with the parties to set a one hour hearing on the first available date.
 - (ii) The Commission to file its written submissions ten working days before the hearing, in accordance with r 7.39 of the High Court Rules; and
 - (iii) Moola to file any written submissions five working days before the hearing, in accordance with r 7.39 of the High Court Rules.

Date: [•]

[REDACTED]

Counsel for the Commission

[REDACTED]

Counsel for Moola

Appendix Four

Interlocutory application seeking a declaratory order

To The Registrar of the High Court at Auckland

And

To The Defendant

This document notifies you that:

1.5 The applicant, the Commission, applies to the Court for declaratory orders as sought at paragraphs 5.19(A), 5.20(A) 6.7(A) and 7.4(A) of the Second Amended Statement of Claim, in the following terms:

- (a) A declaration that by its conduct, Moola breached s 9C(1) via ss 9C(2)(a)(ii) and 9C(3)(a)(i) of the Credit Contracts and Consumer Finance Act (**CCCF Act**) by failing to make reasonable inquiries so as to be satisfied that it was likely that the loan would meet the Debtor's requirements and objectives.
- (b) A declaration that by its conduct Moola breached s 9C(1) via ss 9C(2)(a)(ii) and 9C(3)(a)(ii) of the CCCF Act by failing to make reasonable inquiries so as to be satisfied that it was likely that the Debtor would make the payments under the agreement without suffering substantial hardship.
- (c) A declaration that by its conduct, Moola breached s 9C(1) via s 9C(2)(a)(i) of the CCCF Act by failing to exercise the required care, diligence and skill in advertising.
- (d) A declaration that by its conduct Moola breached s 9C(1) via s 9C(3)(d)(i) of the CCCF Act by failing to treat Debtors reasonably and in an ethical manner when breaches of the agreement had occurred.

1.6 The grounds on which the orders are sought are as follows:

- (a) The Defendant has admitted at paragraphs 5.19, 5.20, 6.7 and 7.4 of its First Amended Statement of Defence that it breached those sections of the CCCF Act.
- (b) The admitted facts amount to breaches of s 9C(1) via ss 9C(2)(a)(ii), 9C(3)(a)(i), 9C(3)(a)(ii), 9C(2)(a)(i) and 9C(3)(d)(i) of the CCCF Act.
- (c) Declaratory relief is available for breaches of the CCCF Act, even when there has been a settlement between the parties.
- (d) It is in the interests of justice to grant the declaratory orders sought and to give effect to the negotiated settlement.
- (e) There is a strong public interest in the making of the declaratory orders in this case.
- (f) The application for declaratory orders is not opposed by the Defendant, as set out in the joint memorandum of counsel filed with this application.

(g) Upon the grounds set out in the affidavit of [REDACTED] sworn on [•], and filed with this application.

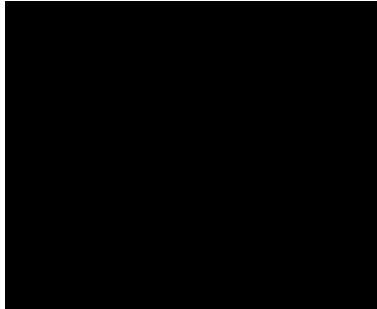
1.7 This application is made in reliance on:

(a) Rule 15.15 of the High Court Rules.

(b) *Commerce Commission v ANZ Bank New Zealand Limited* [2015] NZHC 1168.

(c) *Commerce Commission v Ferratum New Zealand Limited* [2020] NZHC 1607.

(d) Affidavit of [REDACTED] [•].



Counsel for the Commission

Appendix Five

Undertakings to the Commerce Commission under section 74A of the Commerce Act 1986 via s 113(aa) of the Credit Contracts and Consumer Finance Act 2003

1 Person giving undertakings

- 1.1 The undertakings set out at Section 4 below (**Undertakings**) are given to the Commerce Commission (**Commission**) by Moola.co.nz Limited (**Moola**), a company having its registered office at KPMG, Level 5, 79 Cashel Street, Christchurch, 8011, for the purposes of section 74A of the Commerce Act 1986 via section 113(aa) of the Credit Contracts and Consumer Finance Act 2003 (**CCCF Act**).

2 Background

- 2.1 Moola is a lender based in Christchurch and is a creditor for the purposes of the CCCFA. Moola offers loans to borrowers under consumer credit contracts.
- 2.2 The Commission has investigated whether Moola's lending practices complied with the lender responsibility principles in s 9C of the CCCFA.
- 2.3 Following the conclusion of its investigation, the Commission commenced the Proceeding alleging the following conduct between 6 June 2015 and 30 November 2017:
- (a) Moola breached s 9C(1) via ss 9C(2)(a)(ii) and 9C(3)(a)(i) of the CCCF Act by:
 - (i) failing to exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit; and/or
 - (ii) failing to make reasonable inquiries so as to be satisfied that it was likely that the credit provided under agreements met the Debtor's requirements and objectives.
 - (b) Moola breached s 9C(1) via ss 9C(2)(a)(ii) and 9C(3)(a)(ii) of the CCCF Act by:
 - (i) failing to exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit; and/or
 - (ii) failing to make reasonable inquiries so as to be satisfied that the Debtor would be able to make repayments without suffering substantial hardship.
 - (c) Moola breached s 9C(1) via s 9C(2)(a)(i) of the CCCF Act by failing to exercise the care, diligence, and skill of a responsible lender in advertisements for providing credit or finance under an agreement.
 - (d) Moola breached s 9C(1) via s 9C(3)(d)(i) of the CCCF Act by failing to treat the Debtor reasonably and in an ethical manner when breaches of the agreement have occurred or may occur or when other problems arise.

- (e) Moola breached s 9C(1) via s 9C(3)(e)(i) of the CCCF Act by failing to ensure that its agreement, to which Part 5 of the CCCF Act applies, was not oppressive.
- (f) Moola breached s 9C(1) via s 9C(3)(e)(iii) of the CCCF Act by inducing Debtors to enter into the agreement by oppressive means.

2.4 Moola admits that in the course of providing high cost short term loans to borrowers in New Zealand it:

- (a) breached s 9C(1) via ss 9C(2)(a)(ii) and 9C(3)(a)(i) of the CCCF Act by:
 - (i) failing to exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit; and/or
 - (ii) failing to make reasonable inquiries so as to be satisfied that it was likely that the credit provided under agreements met the Borrower's requirements and objectives;
- (b) breached s 9C(1) via ss 9C(2)(a)(ii) and 9C(3)(a)(ii) of the CCCF Act by:
 - (i) failing to exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit; and/or
 - (ii) failing to make reasonable inquiries so as to be satisfied that the Borrower would be able to make repayments without suffering substantial hardship;
- (c) breached s 9C(1) via s 9C(2)(a)(i) of the CCCF Act by failing to exercise the care, diligence, and skill of a responsible lender in advertisements for providing credit or finance under an agreement; and
- (d) breached s 9C(1) via s 9C(3)(d)(i) of the CCCF Act by failing to treat the Borrower reasonably and in an ethical manner when breaches of the agreement have occurred or may occur or when other problems arise.

2.5 As set out in the Settlement Agreement dated 16 September 2021 the parties will file amended pleadings in the proceeding referred to above, in which Moola admits the breaches in terms of paragraph 2.4 above.

2.6 In order to remedy the admitted breaches, Moola has offered to give, and the Commission has agreed to accept, pursuant to s 74A of the Commerce Act 1986 via s 113(aa) of the CCCFA, the Enforceable Undertakings as set out herein.

2.7 The parties acknowledge that the Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 (**New Regulations**) are due to come into force on 1 December 2021. As a result, these Undertakings require that:

- (a) between the date of the Undertakings and 1 December 2021, being the date that the New Regulations come into effect, Moola has systems and processes in place to ensure that it does not engage in specific conduct that breaches s 9C(1) via 9C(2)(a)(ii), 9C(3)(a)(i) and 9C(3)(a)(ii) of the CCCF Act (being the Undertakings at clauses 4.1(a) to 4.1(f) below); and

- (b) for the duration of the Undertakings, Moola has systems and processes in place to ensure that it does not engage in specific conduct that breaches s 9C(1) via s 9C(2)(a)(i) and s 9C(3)(d)(i) of the CCCF Act (being the Undertakings at 4.2 below).

3 Purpose of the Undertakings

- 3.1 Moola provides these Undertakings in order to address issues the Commission identified with Moola's compliance with the Lender Responsibility Principles (the **Principles**) in proceeding CIV 2019-404-1355.
- 3.2 For the avoidance of doubt, these undertakings do not exhaustively represent the steps and measures Moola may need to undertake in order to comply with the Principles.

4 Undertakings

- 4.1 Moola undertakes to the Commission that it will, by the date of these Undertakings, implement systems, processes, policies and training that ensure that between date of these Undertakings and 1 December 2021, before approving a high cost short term loan application, it will:
 - (a) collect bank statements from borrowers relating to a recent 90 day period;
 - (b) if there is any variance in the amount of the income received by a borrower, take into account that variance in the income for the purposes of estimating the borrower's income, unless either:
 - (i) the borrower intends to rely on means other than income to make payments under the agreement, and Moola is satisfied on reasonable grounds that it is likely that those other means will enable the borrower to make those payments under the agreement without suffering substantial hardship; or
 - (ii) Moola can be reasonably satisfied on other grounds that the borrower's regular income amount will be higher than that over the life of the loan;
 - (c) collect and assess information from borrowers about their fixed financial commitments, including but not limited to accommodation costs, insurance, rates, body corporate fees, school fees and child support payable under the Child Support Act 1991, payment of any debts, living expenses and regular or frequently recurring outgoings that the borrower is unable or unwilling to cease;
 - (d) take into account the purpose for which credit is sought when making inquiries into the borrower's requirements and objectives;
 - (e) make inquiries about unusual transactions disclosed in bank statements that raise potential issues with respect to affordability, for example all or a material part of a borrower's income being withdrawn in cash; and
 - (f) check that the amount that Moola calculates as being available for debt servicing is not higher than the borrower's actual income after expenses and

that there is a reasonable surplus to adequately address the risk that income may have been overestimated or expenditure has been underestimated.

- 4.2 With respect to high cost short term loans, from seven business days after the date of these Undertakings Moola also undertakes not to:
- (a) advertise the availability of high cost credit agreements in any medium without displaying a prominent risk warning that the loan is suitable only for short-term borrowing needs and is not suitable for long term or regular borrowing needs and are only suitable to improve short term cash flows;
 - (b) advertise high cost consumer credit with advertisements sent directly to borrowers who have an existing loan with Moola that is in default; and
 - (c) advertise high cost consumer credit with advertisements sent directly to borrowers who have entered into 2 or more loan agreements with Moola within the preceding 90 days.

5 Effect of Undertakings

- 5.1 The Undertakings are Court enforceable undertakings in terms of section 74A of the Commerce Act 1986 via section 113(aa) of the CCCF Act.

6 Commencement of the Undertakings

- 6.1 Clause 4.2 of these Undertakings come into effect seven business days after this document is:
- (a) executed by Moola; and
 - (b) the Commission confirms its acceptance of the Undertakings.
- 6.2 In respect of the other clauses in Section 4 above, the Undertakings come into effect when:
- (a) executed by Moola; and
 - (b) the Commission confirms its acceptance of the Undertakings.

7 Duration of the Undertakings

- 7.1 These Undertakings will continue to have effect as follows:
- (a) Clause 4.2 of these Undertakings will continue to have effect for 5 years from the the date that the Undertakings come into effect (as per clause 6.1 above).
 - (b) In respect of the other clauses in Section 4 above, those Undertakings will continue to have effect for the time periods specified within the Undertaking.
- 7.2 These Undertakings may be varied by agreement between the Commission and Moola.

8 Compliance with the Undertakings

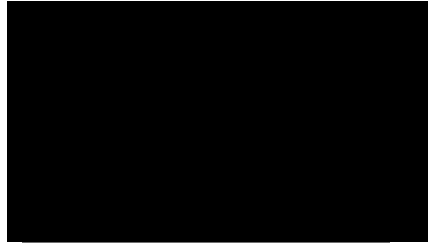
- 8.1 If Moola becomes aware of a breach of these Undertakings, whether advertent or inadvertent, it will notify the Commission within seven days of becoming aware, giving full particulars of the breach.
- 8.2 The Commission may directly and of its own motion seek any information from Moola at any time (including after a notification under 8.1 above) for the purpose of checking compliance with the Undertakings.
- 8.3 Moola will provide such information as sought by the Commission in accordance with 8.2 above within 15 working days of receipt of the Commission's request (or such other period as agreed between the parties from time to time).
- 8.4 Moola will provide the Commission by 4 November 2021 documents evidencing the systems, processes, policies and training implemented to comply with the New Regulations.
- 8.5 Moola to provide to the Commission by 8 October 2021 documents evidencing the systems, processes, policies and training implemented to comply with the Undertakings at 4.2 above.

9 Miscellaneous

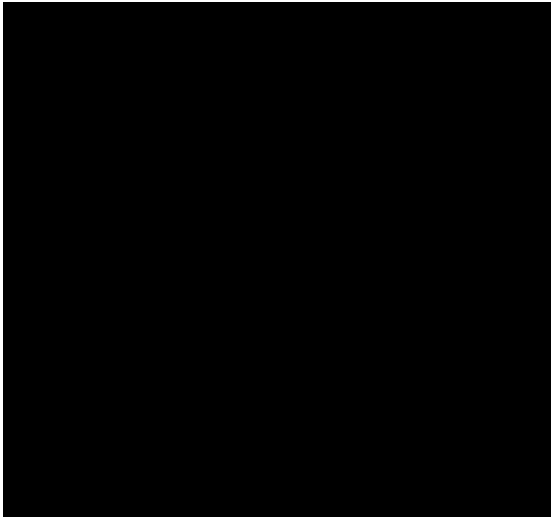
- 9.1 No amendment to the Undertakings will be effective unless it is in writing, executed by Moola, and signed as accepted by the Commission.
- 9.2 These Undertakings are properly executed if each of Moola and the Commission signs the same copy, or separate identical copies of the execution page. Where separate copies are signed by Moola or by the Commission, the signed copy can be the original document, or an emailed copy.
- 9.3 Moola acknowledges that:
 - (a) The Commission will make the Undertakings publicly available including by publishing them on the Commission's enforcement response register on its website.
 - (b) The Commission may, from time to time, make public reference to the Undertakings including in new media statements and in the Commission's publications.
 - (c) Nothing in the Undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the CCCF Act or any other statute or law.

Execution

Signed by and on behalf of **Moola.co.nz Limited**



In the presence of:



16 September 2021

Date

Acceptance

Signed by and on behalf of the Commerce
Commission by:



Chair

Anna Rawlings, Chair

Commerce Commission