



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERICAL COURT
GROUP PROCEEDINGS LIST

No. SEC 2023 02581

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B E T W E E N

TRACEY LEIGH HEPI AND ERU MARTIN HEPI

Plaintiffs

-and-

TOYOTA FINANCE AUSTRALIA LIMITED (ACN 002 435 181)

Defendant

AMENDED STATEMENT OF CLAIM

*Amended pursuant to the orders of
The Honourable Justice M Osborne made on 17 April 2025*

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A. INTRODUCTION

A.1. *The Group Members*

1. This proceeding is commenced as a group proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) by the Plaintiffs on their own behalf and on behalf of all persons who:
 - (a) entered into a finance agreement for the acquisition of an automobile (**Car Loan**);
 - i. with the Defendant;
 - ii. which was obtained through a Dealer as defined in paragraph 4 below, who supplied the automobile the subject of the Car Loan;
 - iii. in which a Flex Commission as defined in paragraph 7(c) below was paid to the Dealer; and
 - iv. between 1 January 2010 and 31 October 2018 (the **Relevant Period**):
 - (A) commenced entering into discussions concerning finance with the Dealer; and/or
 - (B) executed that finance agreement;
 - (b) have suffered loss or damage, or are entitled to relief, by reason of the matters pleaded in this statement of claim; and
 - (c) were not during any part of the Relevant Period, and are not as at the date of this statement of claim, any of the following:
 - i. a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of the Defendant;
 - ii. a related body corporate (as defined by s 50 of the *Corporations Act*) of the Defendant;
 - iii. an associated entity (as defined by s 50AAA of the *Corporations Act*) of the Defendant;

- iv. an officer or close associate (as defined by s 9 of the Corporations Act) of Toyota;
- v. a Justice or the Chief Justice of the Supreme Court of Victoria, or a Justice or the Chief Justice of the High Court of Australia;

↳ (the Group Members).

2. Immediately prior to the commencement of this proceeding, there were more than seven Group Members.

A.2. The Defendant

3. The Defendant (Toyota) is and at all materials times was:

- (a) incorporated pursuant to the Corporations Act and capable of being sued;
- (b) a person within the meaning of s_1041H of the Corporations Act;
- (c) a person within the meaning of s_12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- (d) the holder of, and trading under, the business names ~~“~~“Toyota Financial Australia”, “Lexus Financial Services” or “Powertorque Finance”;
- (e) the holder of an Australian credit licence; ~~and~~ and Australian Financial Services licence; and
- (f) subject to the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) and National Credit Code which formed Schedule 1 of the NCCP Act (the **Credit Code**);
- (g) a person within the meaning of s 180A of the NCCP Act.

Particulars

During the Relevant Period, Toyota held Australian Credit Licence and Australian Financial Services licence number 392356- (Toyota AFSL).

~~B. THE CLAIMS OF THE GROUP MEMBERS~~

~~B.1. The contravening conduct under the NCCPA of the Dealers~~

~~B.1.1.A.3. Arrangements between Dealers and Toyota~~

4. Throughout the Relevant Period, Toyota:

4.(a) entered into agreements with accredited dealers (**Dealers**) as agents to facilitate the provision of Car Loans to Group Members (**Dealer Agreements**);

(b) appointed the Dealer's staff (**Dealer Representatives**) as agents and "Accredited Persons" to arrange Car Loans for Group Members.

Particulars

The Dealer Agreements were in writing, and were styled "Trade Agreements", and had terms to the effect appointing the Dealers as non-exclusive agents to procure Car Loan applications and submit them to Toyota for its approval or rejection.

Toyota's appointment of the Dealers and the Dealer Representatives (whether those representatives were employees or contractors) as authorised representatives was disclosed in the Financial Services Guide.

The pro-forma terms and conditions of the Dealer Representatives' appointment as "Accredited Persons", and appointment as authorised representatives were included in the appendices to the Toyota Retail Finance & Insurance Sales Guide as updated from time to time, and appointment could include authorisation to arrange finance on Toyota's behalf.

Further particulars may be provided after discovery. ~~At all material times~~

5. During the Relevant Period, Toyota implemented a process by which the Dealers and Dealer Representatives participated in the process of the offering and writing of Car Loans, which included the following features:

- ~~(a) Group Members attended a Dealer for each Car Loan, an employee of the Dealer primary purpose of acquiring an automobile;~~
- ~~(a)(b) during the sales process for the automobile, a Dealer Representative had direct contact with the relevant Group Member; for the purpose of promoting or arranging Car Loans offered by Toyota;~~
- ~~(b)(c) the Dealer recommended the Dealer submitted a Car Loan application to Toyota to make a credit decision including the proposed credit amount, interest rate and term, which until 31 October 2018, involved the Dealer and/or Dealer Representative recommending to Toyota a rate of interest or term or both to be set by Toyota in relation to the Car Loan, pursuant to the Flex Commission Calculation Method (as defined in paragraphs 7 and 8 below);~~
- ~~(d) Toyota made a credit decision on the Car Loan application submitted by the Dealer (pursuant to which Toyota could approve the Car Loan application); and~~
- ~~(e) the Dealer arranged to issue the Car Loan offer documentation to the Group Member for signing.~~

(Car Loan Process).

Particulars

Particulars

The Plaintiffs refer to the matters in ASIC Consultation Paper 279 entitled 'Flex commission arrangements in the car finance industry' dated March 2017, [5]-[7], [9]-[10], and Attachment 2, [86]; and the inferences to be drawn from the statement of Toyota in its Annual Securities Report filed on 2 July 2018 which included a statement the translation of which was to the effect that from no later than 1 November 2018, [Toyota] would 'determine the interest rate for the customer using risk based pricing with the introducer no longer involved in the process'.

The process for Dealers and Dealer Representatives to arrange finance is set out in in the Toyota Retail Finance & Insurance Sales Guide as updated from time to time.

Further particulars may be provided after discovery.

6. At all material times during the Car Loan Process, Toyota was solely responsible for all aspects of credit assessment, credit decisions, loan management, administration and servicing of Car Loans.

B. THE CAR LOAN PROCESS IMPLEMENTED BY TOYOTA

B.1. The Flex Process

7. At all material times, pursuant to the Car Loan Process, Toyota:
 - (a) set a base rate of interest to be charged on Car Loans (**Base Rate**);
 - (b) authorised the Dealer to set a rate of interest ~~to be payable by a Group Member~~ under a Car Loan, in their discretion, and on a case-by-case basis, higher than the Base Rate (**Contract Rate**); to be payable by the Plaintiffs and the Group Members; and
 - (c) paid the Dealer a proportion of the difference between the Base Rate and the Contract Rate according to percentages agreed at the time of entering into the relevant Dealer Agreement (**Flex Commission**),

(**Flex Commission Calculation Method**).

Particulars

On or around 18 December 2017, the Plaintiffs entered into a Car Loan with Toyota (**Plaintiffs' Loan**), following the Plaintiffs' discussions with the Dealer, Broome Toyota.

The Plaintiffs' Loan was for the sum of \$47,760.43, on a Contract Rate of 10.95% per annum and a Loan Term of 72 months.

The Plaintiffs refer to the matters in ASIC Consultation Paper 279 entitled 'Flex commission arrangements in the car finance industry' dated March 2017, [5]-[7], [9]-[10], and Attachment 2, [86]; and statements attributed to John Chandler, CEO of Toyota Financial Services Corporation (being the parent company of Toyota) by GoAutoNews in an article titled 'Toyota finance jumps the gun', dated 28 June 2018, that Toyota had engaged in 'flex'

and that following the changes Toyota implemented from around 1 November 2018, the Dealers' 'business manager [would] no longer [have] to pitch a rate'. Further particulars may be provided after discovery.

8. The Flex Commission and the Flex Commission Calculation Method:

- (a) involved Dealers and/or Dealer Representatives setting the Contract Rate:
 - i. in the absence of any objective criteria; and, or alternatively,
 - ii. in circumstances where the amount of the Contract Rate would be influenced or determined by the self-interest of the Dealers;
- (b) involved Dealers and/or Dealer Representatives proposing the term of the Car Loan (**Loan Term**);
- (c) provided an incentive for Dealers to increase the price of a Car Loan and, or alternatively, the Loan Term, in a way that depended on the negotiating skills or vulnerability of the consumer;
- (d) created unfairness or a risk of unfairness in relation to the Car Loans;
- (e) was designed to encourage writing above the Base Rate;
- (f) created a conflict, or a potential for a conflict, between the interests of the Dealer and the interests of the Plaintiffs and Group Members or customers of that Dealer;

(together, and severally, **Flex Commission Features**).

Particulars

The Plaintiffs refer to the matters in ASIC Consultation Paper 279 entitled 'Flex commission arrangements in the car finance industry' dated March 2017, [5]-[7], [9]-[10], and Attachment 2, [86]. -Further particulars may be provided after discovery.

9. At all material times during the Car Loan Process:

- (a) neither Toyota, the Dealers nor the Dealers-Dealer Representatives disclosed to the Plaintiffs and Group Members:

- i. that the Contract Rate and, or alternatively, the Loan Term, had been set by someone other than Toyota, namely, the Dealers and/or the Dealer Representatives;
- ii. that the Dealers had been interested in the Contract Rate and, or alternatively, the Loan Term; and, or alternatively,
- iii. the Flex Commission, the Flex Commission Calculation Method, and/or the Flex Commission Features,

(Flex Commission Non-Disclosure);

(b) Toyota did not:

- i. ensure that the Dealers and Dealer Representatives disclosed; and, or alternatively,
- ii. have appropriate systems, procedures and processes in place to ensure that the Dealers and Dealer Representatives disclosed;

to the Plaintiffs and Group Members the matters in subparagraph (a) above
(Lender Conduct);

(c) a reasonable person in the position of the Plaintiffs and Group Members would have understood or assumed at the time that person entered into their Car Loan that:

- i. the Contract Rate and, or alternatively, the Loan Term, was set solely by Toyota;
- ii. the Dealers and/or the Dealer Representatives were merely conduits between the Group Members and Toyota; and, or alternatively,
- iii. Dealers were disinterested in the Contract Rate;

(d) the Group Members were in a comparatively weaker position to Toyota and, or alternatively, the Dealers; and/or the Dealer Representatives; and

(e) the Group Members were not treated equally in that comparable Group Members were not afforded equal Contract Rates,

(together and severally, **Car Loan Circumstances**).

Particulars

The Plaintiffs refer to the statement in the written contract which constituted the Plaintiffs' Loan stating:

"COMMISSION

(i) Commission is paid for the introduction of credit business by the Credit Provider [Toyota] to the Supplier [Broome Toyota] and its sales representative for finance manager with whom you dealt in relation to your loan. In each case the amount of commission is not presently ascertainable."

As to the matters pleaded in subparagraphs ~~(a), (b) and (c)~~(a), (b) and (e) above, the Plaintiffs refer to the representations made by Toyota on its website during the Relevant Period which used the words or were to the effect of:

"Can I contact Toyota Finance directly for a quote to finance my Toyota?

Toyota Finance works closely with our Toyota Dealer network to provide a personalised service ensuring the best finance product for your needs. The Business Manager at your local dealership is the best person to speak to about financing your next Toyota.

What is the current interest rate offered by Toyota Finance?

Toyota offers fixed interest rates for a fixed term on a range of consumer and commercial products. The rate is determined on a number of factors including market conditions. Your local Toyota Dealer can assist you with a finance quote."

As to the matters pleaded in subparagraphs ~~(c) and (d)~~(c) and (d) above, the matters are to be inferred in all of the surrounding circumstances.

Further particulars may be provided after discovery.

~~B.1.2.~~B.1.1. *The Dealers and/or Dealer Representatives provided credit assistance to the Plaintiffs and ~~the~~ Consumer Group Members*

10. ~~Some~~The Plaintiffs and some Group Members are natural persons (**Consumer Group Members**) and thereby consumers within the meaning of s 5 of the NCCP Act.
11. Car Loans entered into with the Plaintiffs and Consumer Group Members (**Consumer Car Loans**) were contracts under which credit was or may be provided and thereby were credit contracts within the meaning of ~~sections~~ 4 of the Credit Code and s 5 of the NCCP Act.
12. By reason of the Car Loan Process, at all material times, Dealers and/or Dealer Representatives:
 - (a) dealt directly with the Plaintiffs and Consumer Group Members in the course of, or as part of, or incidentally to, the business of the Dealers;
 - (b) and:
 - i. suggested that the Plaintiffs and Consumer Group Members apply for a Consumer Car Loan with Toyota; or
 - ii. assisted the Plaintiffs and Consumer Group Members to apply for a Consumer Car Loan with Toyota; or
 - iii. suggested that the Consumer Group Members apply for a Consumer Car Loan that was a consumer lease with Toyota; or
 - iv. assisted the Consumer Group Members to apply for a Consumer Car Loan that was a consumer lease with Toyota.
13. By reason of the matters pleaded in paragraph 12, Dealers and/or the Dealer Representatives provided credit assistance to the Plaintiffs and the Consumer Group Members within the meaning of ss 7(a) and 8 of the NCCP Act.

~~B.1.3.~~B.1.2. *The Dealers and/or the Dealer Representatives were intermediaries between the Plaintiffs, Consumer Group Members and Toyota*

14. The Dealers carried on business in Australia.

15. By reason of the matter pleaded in paragraph 14, the Dealers carried on business in this jurisdiction within the meaning of s 21(2) of the NCCP Act.
16. By reason of the Car Loan Process, Dealers and/or Dealer Representatives in the course of, or as part of, or incidentally to, the business carried on by ~~them~~the Dealers in this jurisdiction:
- (a) acted as an intermediary (whether directly or indirectly) between Toyota and the Plaintiffs and Consumer Group Members wholly or partly for the purposes of securing a provision of credit for the Consumer Group Members under a Consumer Car Loan for the Plaintiffs and Consumer Group Members with Toyota; or,
 - (b) acted as an intermediary (whether directly or indirectly) between Toyota, as a lessor, and the Consumer Group Members wholly or partly for the purposes of securing a Consumer Car Loan that was a consumer lease for the Consumer Group Members with Toyota.
17. By reason of the matters pleaded in paragraph 16, the Dealers and/or the Dealer Representatives acted as an intermediary for the purposes of ss 7(b) and 9 of the NCCP Act.

B.1.4.B.1.3. *The Dealers provided a “credit service” to the Plaintiffs and Consumer Group Members*

18. By reason of the matters pleaded in paragraph 13 and, or alternatively, paragraph 17, the Dealers and/or the Dealer Representatives provided a credit service to the Plaintiffs and Consumer Group Members within the meaning of ss 7 and 180A(1)(a) of the NCCP Act.

C. THE CONTRAVENTING CONDUCT

C.1. Misleading or deceptive conduct

19. Throughout the Relevant Period the Plaintiffs and the Group Members were not advised, sufficiently or at all, of the matters referred to in paragraph 9(a) above.
20. Further or alternatively, in the circumstances pleaded in paragraph 9(a) above, the Plaintiffs and Group Members had a reasonable expectation that had:

(a) the Contract Rate and, or alternatively, the Loan Term, been set by someone other than Toyota, namely the Dealers and/or Dealer Representatives; and, or alternatively,

(b) the Dealers and/or Dealer Representatives been interested in the Contract Rate and, or alternatively, the Loan Term; and, or alternatively,

(c) the Car Loans included features of the same or similar kind as the Flex Commission, Flex Commission Calculation Method, or the Flex Commission Features, or one or more of them,

the Dealer, the Dealer Representative and/or Toyota would have disclosed such matters or one or more of them to the Plaintiffs and Group Members.

21. Further or alternatively, by reason of the matters pleaded in paragraph 20 above, the Dealers and/or the Dealer Representatives represented to the Plaintiffs and Group Members at the time of making the decision to enter into the Car Loan, they had received from the Dealer, Dealer Representative and/or Toyota all material information, including some or all of the matters pleaded in paragraph 9(a) that was relevant to their decision whether to enter into the Car Loan.

22. The Dealers, Dealer Representatives and/or Toyota failed to disclose to the Plaintiffs and the Group Members the matters pleaded in paragraph 20 above.

23. By reason of the matters referred to in paragraphs 19 to 22 above, the Dealers, the Dealer Representatives and/or Toyota engaged in conduct in trade or commerce in relation to financial services that was misleading or deceptive or was likely to mislead or deceive in contravention of:

(a) section 1041H of the Corporations Act; and, or alternatively,

(b) section 12DA(1) of the ASIC Act;

(Misleading Conduct).

24. The Dealers' and or Dealer Representatives' conduct referred to in paragraphs 19 to 23 above during the Relevant Period was, by reason of s 12GH of the ASIC Act and s 769B(1) of the Corporations Act, engaged in also by Toyota.

25. By reason of the matters pleaded in paragraphs 19 to 23, in reliance on the Misleading Conduct, the Plaintiffs and the Group Members:

- (a) entered into the Car Loans (pursuant to which they paid interest at the Contract Rate) when they would not have done so apart from that conduct; and, or alternatively,
- (b) entered into Car Loans whereby the interest rate was higher and, or alternatively, the terms were longer, than the interest rate on, or the terms of, loans the Group Members would otherwise have entered into; and, or alternatively,
- (c) became liable to pay interest charges to Toyota at the Contract Rate, over the Loan Term.

Particulars

The causative effect of the conduct pleaded is to be inferred by reason of the Group Members' entry into the Car Loans and payment of the Contract Rate in the circumstances pleaded above.

Further particulars may be provided at the time of service of the Plaintiffs' evidence in chief, or prior to the trial of the individual claims of Group Members following the determination of the common questions.

26. By reason of the above, the Plaintiffs and Group Members have suffered loss and damage.

Particulars

The loss and damage suffered by the Plaintiffs and Group Members will be calculated by the difference between the Contract Rate, and:

- i. the Base Rate; or alternatively,
- ii. the rate the Group Members would have obtained on the market; or alternatively,
- iii. the Average Market Rate.

27. The Plaintiffs and Group Members whose Car Loan was issued, or entered into, during the six-year period prior to commencement of this proceeding may recover their loss and damage from Toyota pursuant to s 12GF(1) and/or s 12GM(1) of the ASIC Act and/or or s 1041I of the Corporations Act.

C.2. Unfair Conduct

B.1.5-C.2.1. The Dealers and Dealer Representatives engaged in unfair conduct in respect of the Plaintiffs and the Consumer Group Members

~~19-28.~~ ByFurther or alternatively, by reason of the Car Loan Process, the Flex Commission Features, and the Car Loan Circumstances (including the Flex Commission Non-Disclosure):

- (a) the Plaintiffs and the Consumer Group Members were at a special disadvantage in dealing with the Dealers and Dealer Representatives in relation to the Consumer Car Loans; and, or alternatively,
- (b) the Plaintiffs and the Consumer Group Members were unable, or considered themselves unable, to make:
 - i. a Consumer Car Loan with a credit provider other than Toyota; or
 - ii. a Consumer Car Loan that was a consumer lease with a credit provider other than Toyota; and, or alternatively,
- (c) the Plaintiffs' Loan Circumstances and the Car Loan Circumstances (including the Flex Commission Non-Disclosure) involved ~~a technique~~techniques that:
 - i. should not in good conscience have been used; or
 - ii. manipulated the Consumer Group Members; and, or alternatively,
- (d) Toyota could determine or significantly influence the terms of the Consumer Car Loans; and, or alternatively,
- (e) the terms of the Consumer Car Loans were less favourable to the Plaintiffs and the Consumer Group Members than the terms of a comparable transaction.

Particulars

The matters are to be inferred from the Car Loan Process, the Flex Commission Features, and the Car Loan Circumstances. In addition, as to the matters pleaded in subparagraph (a) above, the Plaintiffs rely on ASIC Consultation Paper 279 entitled 'Flex commission arrangements in the car finance industry' dated March 2017, [5]-[7], [9]-[10], and Attachment 2, [86]. ~~Further particulars may be provided after discovery.~~

Further particulars may be provided after discovery.

~~20-29.~~ By reason of the matters pleaded in paragraph 28, the Dealers and/or Dealer Representatives engaged in conduct in connection with the provision of a credit service that was unfair within the meaning of s 180A(1)(b) of the NCCP Act (**Dealers' Unfair Conduct**).

~~B.1.6.C.2.2.~~ Consequences of the Dealers' ~~unfair conduct~~ Unfair Conduct

~~21-30.~~ The Dealers' Unfair Conduct had the result that the Plaintiffs and the Consumer Group Members:

- (a) entered into the Consumer Car Loans (pursuant to which they paid interest at the Contract Rate) when they would not have done so apart from that conduct; and, or alternatively,
- (b) entered into Consumer Car Loans whereby the interest rate was higher and, or alternatively, the terms were longer, than the interest rate on, or the terms of, loans the Consumer Group Members would otherwise have entered into; and, or alternatively,
- (c) became liable to pay interest charges to Toyota at the Contract Rate.

~~22-31.~~ By reason of the matters pleaded in paragraph 30 the Plaintiffs and the Consumer Group Members are entitled to claim a remedy against the Dealers and/or the Dealer Representatives pursuant to s 180A of the NCCP Act.

~~B.2.A.1.~~ Unfair Conduct

~~23-32.~~ The Dealers and Dealer Representatives were:

- (a) persons acting on behalf of Toyota, being a holder of an Australian credit licence; and, or alternatively,
- (b) credit representatives of Toyota, being persons authorised in writing by Toyota, being a holder of an Australian credit licence, to:
 - i. provide a credit service; and, or alternatively,
 - ii. engage in a credit activity.

Particulars

~~The Dealers'~~ The Plaintiffs refer to and repeat paragraphs 4(a) and 4(b) above.

Further, the Dealers' and Dealer Representatives' positions are inferred from Toyota's description of the relationship between them, on Toyota's website during the Relevant Period which used the words or were to the effect of:

"Can I contact Toyota Finance directly for a quote to finance my Toyota?

Toyota Finance works closely with our Toyota Dealer network to provide a personalised service ensuring the best finance product for your needs. The Business Manager at your local dealership is the best person to speak to about financing your next Toyota.

...

Do Toyota Finance take security over the vehicle you have financed?

Toyota Finance will register their interest in any vehicle financed by us on the Personal Property Security Register (PPSR). Our interest in the vehicle will remain in place until the loan on that vehicle is paid out completely. For further information regarding PPSR please visit <http://www.ppsr.gov.au>^{39 39}.

Further particulars may be provided after discovery.

~~Further particulars may be provided after discovery.~~

~~24.~~33. By reason of the matters pleaded in paragraph 32, each Dealer and Dealer Representative was a representative of Toyota within the meaning of s 5 of the NCCP Act.

~~25.~~34. By reason of the matters pleaded in paragraph 18, the Dealers' Unfair Conduct was conduct that related to a credit activity within the meaning of s 74(a) of the NCCP Act.

~~26.~~35. The Dealers' Unfair Conduct was conduct on which the Plaintiffs and the Consumer Group Members could reasonably be expected to rely within the meaning of s 74(b) of the NCCP Act.

~~27.~~36. The Dealers' Unfair Conduct was conduct on which the Plaintiffs and the Consumer Group Members did rely in good faith within the meaning of s 74(c) of the NCCP Act.

Particulars

At this stage and prior to discovery the best particulars the Plaintiffs can give in relation to the claims of Consumer Group Members is that reliance of them is to be inferred by reason of the Group Members' entry into the Car Loans and payment of the Contract Rate.

Further particulars may be provided at the time of service of the Plaintiffs' evidence in chief, or prior to the trial of the individual claims of Consumer Group Members following the determination of the common questions.

~~28.~~37. By reason of the matters pleaded in paragraphs ~~25, 26 and~~33 to 36, Toyota is responsible for the Dealers' Unfair Conduct.

~~29.~~38. By reason of s 77 of the NCCP Act, Toyota is liable to the Plaintiffs and the Consumer Group Members in relation to any loss or damage suffered by the Plaintiffs and the Consumer Group Members as a result of the Dealers' Unfair Conduct.

~~30.~~39. By reason of s 78(1) of the NCCP Act the Plaintiffs and the Consumer Group Members have the same remedies against Toyota as they have against the Dealers.

~~31.~~40. In the premises, the Plaintiffs and the Consumer Group Members are entitled to an order against Toyota under s 180A(2) of the NCCP Act that it:

- (a) refrain from charging the Plaintiffs and the Consumer Group Members interest under the Consumer Car Loans above the Base Rate; and, or alternatively,
- (b) refrain from charging the Plaintiffs and the Consumer Group Members interest under the Consumer Car Loans above the interest rate the Plaintiffs and the Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,
- (c) refrain from charging the Plaintiffs and the Consumer Group Members interest under the Consumer Car Loans above the average market rate, excluding automobile loans also set by the same or a similar mechanism to the Flex Commission Calculation Method, prevailing at the time the Consumer Car Loans were entered into (**Average Market Rate**); and, or alternatively,
- (d) pay to the Plaintiffs and the Consumer Group Members the interest paid to Toyota under the Consumer Car Loans above the Base Rate; and, or alternatively,
- (e) pay to the Plaintiffs and the Consumer Group Members the interest paid to Toyota under the Consumer Car Loans above the rate the Plaintiffs and the Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,
- (f) pay to the Plaintiffs and the Consumer Group Members the interest paid to Toyota under the Consumer Car Loans above the Average Market Rate; and, or alternatively,
- (g) pay interest on the sums payable under (d), ~~(e)~~(e) or (f) above.

B.3.C.3. Unjust Transactions

32.41. By reason of the Car Loan Process, the Flex Commission Features ~~and,~~ the Car Loan Circumstances (including the Flex Commission Non-Disclosure):

- (a) the Plaintiffs and the Consumer Group Members had poor relative bargaining power in dealing with the Dealers including in relation to the Consumer Car Loans, including because of the matters pleaded in paragraph 28 above; and, or alternatively

- (b) the terms of the Consumer Car Loans were subject to little negotiation between the Dealers and the Plaintiffs and the Consumer Group Members, despite the considerable discretion over the terms held (but not disclosed) by Dealers; and, or alternatively
- (c) Toyota was not willing to, or it was not reasonably practicable for, the Plaintiffs and the Consumer Group Members to negotiate with the Dealers, particularly given the Flex Commission Non-Disclosure; and, or alternatively
- (d) the Car Loan Circumstances constituted unfair tactics by Toyota ~~and~~, Dealers; and/or Dealer Representatives, including because of the matters pleaded in paragraph 28 above; and, or alternatively
- (e) the use of a Flex Commission pricing model imposed additional costs on the Plaintiffs and the Consumer Group Members in a manner unconnected to the risk of default by the Plaintiffs and the Consumer Group Members, and therefore not justified by the risks assumed by Toyota in offering the Consumer Car Loans.

33.42. By reason of the matters pleaded in paragraph ~~32~~41, the Plaintiffs and the Consumer Group Members' Car Loans were unjust within the meaning of ~~section-s~~ 76 of the Credit Code.

34.43. In the premises, the Plaintiffs and the Consumer Group Members are entitled to have their Consumer Car Loan transactions reopened, and to orders against Toyota under ~~section-s~~ 77 of the Credit Code:

- (a) relieving Plaintiffs and the Consumer Group Members from payment of interest under the Consumer Car Loans above:
 - i. ~~the Base Rate; and, or alternatively,~~
 - ii. ~~the interest rate the Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,~~
 - iii. ~~the Average Market Rate;~~

~~and, or alternatively, requiring Toyota to pay the Consumer Group Members an amount equal to the interest paid by the Consumer Group Members above:~~

~~iv.i.~~ the Base Rate; and, or alternatively,

~~v.ii.~~ the interest rate the Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,

~~vi.iii.~~ the Average Market Rate; ~~and,~~

and, or alternatively, requiring Toyota to pay the Plaintiffs and the Consumer Group Members an amount equal to the interest paid by the Plaintiffs and the Consumer Group Members above:

iv. the Base Rate; and, or alternatively,

v. the interest rate the Plaintiffs and the Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,

vi. ~~the Average Market Rate;~~ requiring Toyota to pay

- (b) requiring Toyota to pay the Plaintiffs and the Consumer Group Members interest on the sums payable under subparagraph (a).

~~**B.4.A.1. Misleading or deceptive conduct**~~

C.4. Unconscionable conduct

44. Further or alternatively Toyota knew, or ought to have known that the Dealers and/or Dealer Representatives were engaging in the conduct in the manner alleged in paragraphs 7 to 9 above.

Particulars

~~in~~ Toyota's knowledge can be inferred from the matters pleaded in paragraphs 7 to 9 above.

Further particulars will be provided following discovery.

35-45. By reason of the matters referred to in paragraphs 4 to 43 above, Toyota engaged in conduct, in trade or commerce and in connection with the supply, or possible supply, of financial services, which was, in all the circumstances ~~pleaded above, the Group~~

~~Members had a reasonable expectation that had: unconscionable, in contravention of s 12CB of the ASIC Act.~~

~~(a) — the Contract Rate and, or alternatively, the Loan Term, been set by someone other than Toyota, namely the Dealers;~~

~~46. — the Dealers been interested in the Contract Rate and, Further or alternatively, by reason of the matters referred to in paragraphs 5 to 43 above, in entering into the Car Loans, in circumstances where:~~

~~(a) — the Car Loans were entered into in the manner alleged in paragraphs 7 to 9 above;~~

~~(b) — Toyota knew or alternatively, the Loan Term; and, or alternatively,~~

~~(c) — the Car Loans included features of the same or similar kind as the Flex Commission, Flex Commission Calculation Method and/or the Flex Commission Features,~~

~~Toyota would should have disclosed such matters or one or more known of them to the Group Members.~~

~~(d) (b) — The Defendant failed to disclose to the Group Members the matters pleaded in paragraph 35 alleged in paragraphs 7 to 9 above,~~

~~36. — The Defendant's Toyota engaged in a system of conduct in failing to disclose those matters, or one or more of them, to the Group Members prior to or at the time that the Car Loans were entered into, and in engaging in the Lender Conduct, was misleading or deceptive or likely to mislead or deceive.~~

~~37. — The conductor pattern of Toyota pleaded in paragraph 37 was conduct engaged in by Toyota:~~

~~(a) — in relation to financial services, behaviour (within the meaning of ss 1041H(1) and 1041H(2)(b) of the Corporations Act; and, or alternatively,~~

~~(b) — in trade or commerce, in relation to financial services within the meaning of Section 12DA(1s 12CB(4)) of the ASIC Act.~~

~~38. — By reason of the matters pleaded at paragraphs 36 to 38, Toyota contravened:~~

~~(a) s 1041H of the Corporations Act; and, or alternatively,~~

~~(b) s 12DA) which was unconscionable, in all the circumstances, in contravention of section 12CB(1) of the ASIC Act.~~

~~39. By reason of the matters pleaded at paragraphs 36 to 39, the Group Members:~~

~~(a) entered into the Car Loans (pursuant to which they paid interest at the Contract Rate) when they would not have done so apart from that conduct; and, or alternatively,~~

~~(b)(a) entered into Car Loans whereby the interest rate was higher and, or alternatively, the terms were longer, than the interest rate on, or the terms of, loans the Group Members would otherwise have entered into; and, or alternatively,~~

~~(c) became liable to pay interest charges to Toyota at the Contract Rate, over the Loan Term.~~

Particulars

~~The causative effect of the conduct pleaded is to be inferred by reason of the Group Members' entry into the Car Loans and payment of the Contract Rate in the circumstances pleaded above.~~

~~Further particulars may be provided at the time of service of the Plaintiffs' evidence in chief, or prior to the trial of the individual claims of Group Members following the determination of the common questions.~~

~~40.47. By reason of the matters pleaded in paragraph 40, Toyota's unconscionable conduct alleged in paragraphs 45 or 46, or both, the Plaintiffs and the Group Members have suffered loss and damage.~~

Particulars

Particulars

The loss and damage suffered by the Plaintiffs and Group Members will be calculated by the difference between the Contract Rate and:

- i. the Base Rate; or alternatively,
- ii. the rate the Plaintiffs and Group Members would have obtained on the market; or alternatively,
- iii. the Average Market Rate.

48. The Plaintiffs and Group Members whose Car Loan was issued, or entered into, during the six-year period prior to commencement of this proceeding may recover their loss and damage from Toyota pursuant to s 12GF(1) and/or s 12GM(1) of the ASIC Act.

B.5.C.5. Money had and received, and unjust enrichment

41.49. Further or alternatively, the Plaintiffs and Group Members were not at any stage prior to applying for or entering into a Car Loan informed, either sufficiently or at all, of one or more of the following facts:

- (a) the Contract Rate and, or alternatively, the Loan Term, had been set by someone other than Toyota, namely, the Dealer;
- (b) the Dealer had been interested in the Contract Rate and, or alternatively, the Loan Term;
- (c) the Car Loan included features of the same or similar kind as the Flex Commission, Flex Commission Calculation Method, ~~and/or~~ the Flex Commission Features; and, or alternatively,
- (d) ~~for the Consumer Group Members,~~ the existence of the Dealers' Unfair Conduct and, by reason thereof, the Plaintiffs and the Consumer Group Members:
 - i. would be entitled to claim a remedy against the Dealers pursuant to s 180A of the NCCP Act;

- ii. would, under s 78(1) of the NCCP Act, have the same remedies against Toyota that the Consumer Group Members have against the Dealers;
- iii. in the premises in (i)-(ii), would be entitled to obtain orders against Toyota under s 180A(2) of the NCCP Act as pleaded in paragraph 40;
- iv. would be entitled to have the Consumer Car Loans reopened as unjust transactions under sections 76 of the Credit Code; and
- v. in the premises in (iv), would be entitled to obtain orders against Toyota under sections 77 of the Credit Code as pleaded in paragraph 43_i;

(e) the existence of the unconscionable conduct referred to in paragraphs 45 or 46.

42-50. By reason of the matters pleaded in paragraph 49, prior to applying for or entering into a Car Loan, the Plaintiffs and Group Members did not know one or more of the matters pleaded in paragraph 4249 above, each of which constitute material information that would have been relevant to the decision of the Plaintiffs and Group Members whether to proceed with the entry into the Car Loan.

43-51. By reason of the matters pleaded in paragraphs 4249 to 50, the Plaintiffs and Group Members:

- (a) entered into the Car Loans (pursuant to which they paid interest at the Contract Rate) when they would not have done so; and, or alternatively,
- (b) entered into Car Loans whereby the interest rate was higher and, or alternatively, the terms were longer, than the interest rate on, or the terms of, loans the Plaintiffs and Group Members would otherwise have entered into; and, or alternatively,
- (c) became liable to pay interest charges to Toyota at the Contract Rate_i;

under one or more of the following causative mistaken beliefs:

- (d) the Contract Rate and/or the Loan Term were set by Toyota, and, or alternatively, were not set by someone other than Toyota, namely, the Dealers;
- (e) the Dealers were not interested in the Contract Rate and, or alternatively, the Loan Term;

- (f) the Car Loans did not include features of the same or similar kind as the Flex Commission, Flex Commission Calculation Method, and/or the Flex Commission Features;
- (g) the Plaintiffs and Group Members were under a legal obligation to pay interest charged at the Contract Rate and, or alternatively, for the Loan Term, and, or alternatively, Toyota was legally entitled to payment of such moneys;
- (h) at the time of making the decision to enter into the Car Loan, they had received from the Dealer and Toyota all material information, including some or all of the matters pleaded atin paragraph 4249;
- (i) for the Plaintiffs and the Consumer Group Members—
 - i. the conduct of the Dealers was not unfair within the meaning of s 180A(1)(b) of the NCCP Act;
 - ii. the Car Loan was not an unjust transaction within the meaning of sections 76 of the Credit Code;
- (j) the conduct referred to in paragraphs 45 or 46 was not unconscionable within the meaning of the ASIC Act.

Particulars

Reliance of the Plaintiffs and Group Members is to be inferred by reason of the Group Members' their entry into the Car Loans and payment of the Contract Rate in the circumstances pleaded above.

Further particulars may be provided at the time of service of the Plaintiffs' evidence in chief, or prior to the trial of the individual claims of Group Members following the determination of the common questions.

44-52. By reason of the matters pleaded in paragraphs ~~777~~ to ~~9,99~~, ~~20,2929~~, ~~31,4040~~, ~~334242~~ and ~~34,4343~~ each of the beliefs pleaded in paragraph 51 was a unilateral mistake.

45-53. The Plaintiffs and the Group Members;

- (a) entered into the Car Loans (pursuant to which they paid interest at the Contract Rate) when they would not have done; and, or alternatively,
 - (b) entered into Car Loans whereby the interest rate was higher and, or alternatively, the terms were longer, than the interest rate on, or the terms of, loans the Plaintiffs and Group Members would otherwise have entered into; and, or alternatively,
 - (c) became liable to pay interest charges to Toyota at the Contract Rate,
- by reason of one or more of the mistakes pleaded in paragraphs 51 and 52.

~~46-54.~~ By reason of the terms of the Dealer Agreements, Flex Commission Features ~~and,~~ the Car Loan Circumstances (including the Flex Commission Non-Disclosure), Toyota:

- (a) was aware, from those circumstances, of the matters pleaded in paragraphs 49, 50, 51, 52 and/or 53 above;
- (b) induced the matters pleaded in paragraphs 49, 50, 51, 52 and/or 53; ~~and, or alternatively;~~
- (c) concealed the matters pleaded in paragraph ~~42-49~~ and, or alternatively,
- (d) chose to leave the Plaintiffs and Group Members under one or more of the mistaken beliefs.

~~47-55.~~ By reason of the matters pleaded in paragraphs 53 and 54:

- (a) the Plaintiffs and Group Members are entitled to rescind the Car Loans;
- (b) the Car Loans are void; and, or alternatively,
- (c) the terms of the Car Loans requiring payment of the Contract Rate and/or payment over the Loan Term are void.

~~48-56.~~ By reason of the matters pleaded in paragraphs ~~42~~49 to 54 and/or ~~48,55(b)~~ the interest paid under the Car Loans are monies had and received by Toyota to the use of the Plaintiffs and Group Members, and Toyota is obliged to repay those sums to the Plaintiffs and Group Members.

~~49-57.~~ Further or alternatively, by reason of the matters pleaded in paragraphs 53 to 54 and/or ~~48,55(b).~~ Toyota has been unjustly enriched by the receipt of interest at the Contract

Rate and/or payment over the Loan Term at the expense of the Plaintiffs and Group Members and it would be unconscionable for Toyota is liable to retain that interest. make restitution of those respective sums to the Plaintiffs and Group Members.

C. THE PLAINTIFFS' INDIVIDUAL CLAIMS

C.1. The Plaintiffs

~~50. On or around 18 December 2017, the Plaintiffs entered into a Car Loan with Toyota (Plaintiffs' Loan), following the Plaintiffs' discussions with the Dealer, Broome Toyota.~~

~~51. The Plaintiffs' Loan was for the sum of \$47,760.43, on a Contract Rate of 10.95% per annum and a Loan Term of 72 months.~~

~~52. The Plaintiffs were natural persons and thereby consumers within the meaning of s 5 of the NCCP Act.~~

C.2. The contravening conduct of Broome Toyota

C.2.1. Arrangements between Broome Toyota and Toyota

~~53. The Car Loan Process and the Flex Commission Calculation Method applied to Broome Toyota and the Plaintiffs' Loan.~~

~~54. The Flex Commissions and the Flex Commission Calculation Method:~~

~~(a) involved Broome Toyota setting the Contract Rate for the Plaintiffs' Loan of 10.95% per annum;~~

~~i. in the absence of any objective criteria;~~

~~ii. in circumstances where the amount of 10.95% per annum was influenced or determined by the self-interest of Broome Toyota;~~

~~(b) involved Broome Toyota setting the term of the Plaintiffs' Loan;~~

~~(c) provided an incentive for Broome Toyota to increase the price of the Plaintiffs' Loan and, or alternatively, the term of the Plaintiffs' Loan, in a way that depended on the negotiating skills or vulnerability of the Plaintiffs;~~

~~(d) created unfairness or a risk of unfairness in relation to the Plaintiffs' Loan;~~

~~(e) — created a conflict, or a potential for a conflict, between the interests of Broome Toyota and the interests of the Plaintiffs;~~

~~(together and severally, **Broome Toyota Flex Commission Features**).~~

Particulars

~~The Plaintiffs refer to the particulars subjoined to paragraph 8.~~

~~Further particulars may be provided after discovery.~~

~~55. — During the Car Loan Process that applied to Broome Toyota and the Plaintiffs' Loan:~~

~~(a) — neither Toyota nor Broome Toyota disclosed to the Plaintiffs:~~

~~i. — that the Contract Rate of 10.95% per annum and, or alternatively, the term of the Car Loan, had been set or influenced by someone other than Toyota, namely, Broome Toyota;~~

~~ii. — that Broome Toyota had been interested in the Contract Rate of 10.95% per annum and, or alternatively, the term of the Car Loan; and, or alternatively,~~

~~iii. — the Flex Commission, Flex Commission Calculation Method, and/or the Broome Toyota Flex Commission Features,~~

~~(**Broome Toyota Flex Commission Non-Disclosure**);~~

~~(b) — Toyota did not:~~

~~i. — ensure that Broome Toyota disclosed; and, or alternatively~~

~~ii. — have appropriate systems, procedures and processes in place to ensure that Broome Toyota disclosed;~~

~~to the Plaintiffs the matters pleaded in subparagraph (a) above (**Defendant Conduct**);~~

~~(c) — a reasonable person in the position of the Plaintiffs would have understood or assumed at the time they entered into the Toyota Finance Car Loan that:~~

~~i. — the Contract Rate of 10.95% per annum and, or alternatively, the term of the Toyota Finance Car Loan, was set solely by Toyota;~~

- ii. ~~Broome Toyota was merely a conduit between the Plaintiffs and Toyota; and, or alternatively~~
 - iii. ~~Broome Toyota was disinterested in the Contract Rate of 10.95% per annum;~~
 - (d) ~~the Plaintiffs was in a comparatively weaker position to Toyota and, or alternatively, Broome Toyota;~~
 - (e) ~~the Plaintiffs was not treated equally in that comparable Group Members were not afforded equal Contract Rates;~~
- ~~(together and severally, **Toyota Finance Car Loan Circumstances**).~~

Particulars

~~The Plaintiffs refer to the particulars subjoined to paragraph 9, and the statement in the written contract which constituted the Plaintiffs' Loan stating:~~

~~**"COMMISSION**~~

~~(i) Commission is paid for the introduction of credit business by the Credit Provider [Toyota] to the Supplier [Broome Toyota] and its sales representative for finance manager with whom you dealt in relation to your loan. In each case the amount of commission is not presently ascertainable."~~

~~Further particulars may be provided after discovery.~~

~~**C.2.2. Broome Toyota provided credit assistance to the Plaintiffs**~~

- 56. ~~The Plaintiffs are natural persons and thereby consumers within the meaning of section 5 of the NCCPA.~~
- 57. ~~The Toyota Finance Car Loan was a contract under which credit was or may be provided and thereby was a credit contract within the meaning of section 4 of the Credit Code and s 5 of the NCCPA.~~

~~58. At all material times, Broome Toyota:~~

~~(a) dealt directly with the Plaintiffs in the course of, or as part of, or incidentally to, its business;~~

~~(b) and:~~

~~i. suggested that the Plaintiffs apply for the Toyota Finance Car Loan; and~~

~~ii. assisted the Plaintiffs to apply for the Toyota Finance Car Loan.~~

~~59. By reason of the matters pleaded in paragraph 59, Broome Toyota provided credit assistance to the Plaintiffs within the meaning of sections 7(a) and 8 of the NCCPA.~~

~~*C.2.3. Broome Toyota was an intermediary between the Plaintiffs and Toyota*~~

~~60. Broome Toyota carried on business in Australia.~~

~~61. By reason of the matter pleaded in paragraph 61, Broome Toyota carried on business in this jurisdiction within the meaning of s 21(2) of the NCCPA.~~

~~62. Broome Toyota in the course of, or as part of, or incidentally to, the business carried on by it in this jurisdiction acted as an intermediary (whether directly or indirectly) between Toyota and the Plaintiffs wholly or partly for the purposes of securing a provision of credit for the Plaintiffs under the Toyota Finance Car Loan.~~

~~63. By reason of the matters pleaded in paragraph 63, Broome Toyota acted as an intermediary for the purposes of sections 7(b) and 9 of the NCCPA.~~

~~*C.2.4. Broome Toyota provided a “credit service” to the Plaintiffs*~~

~~64. By reason of the matters pleaded in paragraph 60 and, or alternatively, paragraph 64, Broome Toyota provided a credit service to the Plaintiffs within the meaning of sections 7 and 180A(1)(a) of the NCCPA.~~

~~*C.2.5. Broome Toyota engaged in unfair conduct*~~

~~65. By reason of the Car Loan Process, Broome Toyota Flex Commission Features and the Toyota Finance Car Loan Circumstances (including the Broome Toyota Flex Commission Non-Disclosure):~~

- ~~(a) — the Plaintiffs were at a special disadvantage in dealing with Broome Toyota in relation to the Toyota Finance Car Loan; and, or alternatively~~
- ~~(b) — the Plaintiffs were unable, or considered themselves unable, to make a Car Loan with a credit provider other than Toyota; and, or alternatively~~
- ~~(c) — the Toyota Finance Car Loan Circumstances (including the Broome Toyota Flex Commission Non-Disclosure) involved a technique that:

 - ~~i. — should not in good conscience have been used; or~~
 - ~~ii. — manipulated the Plaintiffs; and, or alternatively~~~~
- ~~(d) — Toyota could determine or significantly influence the terms of the Toyota Finance Car Loan; and, or alternatively~~
- ~~(e) — the terms of the Toyota Finance Car Loan were less favourable to the Plaintiffs than the terms of a comparable transaction.~~

Particulars

~~The matters are to be inferred from the Car Loan Process, Broome Toyota Flex Commission Features, and the Toyota Finance Car Loan Circumstances. In addition, as to the matters pleaded in subparagraph (e) above, the Plaintiffs rely on ASIC Consultation Paper 279 entitled 'Flex commission arrangements in the car finance industry' dated March 2017, [5]-[7], [9]-[10], and Attachment 2, [86].~~

~~Further particulars may be provided after discovery.~~

~~66. — By reason of the matters pleaded in paragraph 66, Broome Toyota engaged in conduct in connection with the provision of a credit service that was unfair within the meaning of s 180A(1)(b) of the NCCPA (**Broome Toyota's Unfair Conduct**).~~

~~C.2.6. Consequences of Broome Toyota's unfair conduct~~

~~67. — Broome Toyota's Unfair Conduct had the result that the Plaintiffs:~~

- ~~(a) — entered into the Toyota Finance Car Loan (pursuant to which they paid interest at the Contract Rate of 10.95% per annum) when they would not have done so apart from that conduct; and, or alternatively~~

- (b) ~~entered into the Toyota Finance Car Loan whereby the interest rate was higher and, or alternatively, the term was longer, than the interest rate on, or the term of, a loan the Plaintiffs would otherwise have entered into; and, or alternatively~~
- (c) ~~became liable to pay interest charges to Toyota at the Contract Rate of 10.95% per annum.~~

Particulars

~~Particulars will be provided at the time of service of the Plaintiffs' evidence in chief.~~

~~68. By reason of the matters pleaded in paragraph 68, the Plaintiffs are entitled to claim a remedy against Broome Toyota pursuant to s 180A of the NCCPA.~~

~~C.3. Claim for unfair conduct~~

~~69. By reason of the Car Loan Process during the Relevant Period, Broome Toyota was:~~

- (a) ~~a person acting on behalf of Toyota, being a holder of an Australian credit licence; and, or alternatively~~
- (b) ~~a credit representative of Toyota, being a person authorised in writing by Toyota, being a holder of an Australian credit licence, to:~~
- ~~i. provide a credit service; and, or alternatively~~
 - ~~ii. engage in a credit activity.~~

~~70. By reason of the matters pleaded in paragraph 70, Broome Toyota was a representative of Toyota within the meaning of s 5 of the NCCPA.~~

~~71. By reason of the matters pleaded in paragraph 65, Broome Toyota's Unfair Conduct was conduct that related to a credit activity within the meaning of 74(a) of the NCCPA.~~

~~72. Broome Toyota's Unfair Conduct was conduct on which the Plaintiffs could reasonably be expected to rely within the meaning of s 74(b) of the NCCPA.~~

~~73. Broome Toyota's Unfair Conduct was conduct on which the Plaintiffs did rely in good faith within the meaning of s 74(c) of the NCCPA.~~

Particulars

~~Particulars will be provided at the time of service of the Plaintiffs' evidence in chief.~~

~~74. By reason of the matters pleaded in paragraphs 72, 73, and 74, Toyota is responsible for Broome Toyota's Unfair Conduct.~~

~~75. By reason of s 77 of the NCCPA Toyota is liable to the Plaintiffs in relation to any loss or damage suffered by the Plaintiffs as a result of Broome Toyota's Unfair Conduct.~~

~~76. By reason of s 78(1) of the NCCPA, the Plaintiffs have the same remedies against Toyota that the Plaintiffs has against Broome Toyota.~~

~~77. In the premises, the Plaintiffs are entitled to an order against Toyota under s 180A(2) of the NCCPA that it:~~

~~(a) refrain from charging the Plaintiffs interest under the Toyota Finance Car Loan above the Base Rate; and, or alternatively~~

~~(b) refrain from charging the Plaintiffs interest under the Toyota Finance Car Loan above the interest rate the Plaintiffs would or could have obtained on the market at the time the Toyota Finance Car Loan was entered into; and, or alternatively~~

~~(c) refrain from charging the Plaintiffs interest under the Toyota Finance Car Loan above the average market rate prevailing at the time the Toyota Finance Car Loan was entered into; and, or alternatively~~

~~(d) repay to the Plaintiffs the interest paid under the Toyota Finance Car Loan above the Base Rate; and, or alternatively~~

~~(e) repay to the Plaintiffs the interest paid under the Toyota Finance Car Loan above the rate the Plaintiffs would or could have obtained on the market at the time the Toyota Finance Car Loan was entered into; and, or alternatively~~

~~(f) repay to the Plaintiffs the interest paid under the Toyota Finance Car Loan above the average market rate prevailing at the time the Toyota Finance Car Loan was entered into; and, or alternatively~~

~~(g) pay interest on the sums payable under (d), (e) or (f) above.~~

~~C.4. Claim for unjust transactions~~

~~78. By reason of the Car Loan Process, Flex Commission Features and the Car Loan Circumstances (including the Flex Commission Non-Disclosure):~~

- ~~(a) the Plaintiffs had poor relative bargaining power in dealing with Broome Toyota in relation to the Toyota Finance Car Loan, including because of the matters pleaded in paragraph 19;~~
- ~~(b) the terms of the Toyota Finance Car Loan were subject to little negotiation between Broome Toyota and the Plaintiffs, despite the considerable discretion over the terms held (but not disclosed) by Broome Toyota;~~
- ~~(c) it was not reasonably practicable for the Plaintiffs to negotiate with Broome Toyota, particularly given the Flex Commission Non-Disclosure;~~
- ~~(d) the Car Loan Circumstances constituted unfair tactics by Toyota and Broome Toyota;~~
- ~~(e) the use of a Flex Commission pricing model imposed additional costs on the Plaintiffs in a manner unconnected to the risk of default by the Plaintiffs, and therefore not justified by the risks assumed by Toyota in offering the Toyota Finance Car Loan.~~

~~79. By reason of the matters pleaded in paragraph 79, the Toyota Finance Car Loan was unjust within the meaning of section 76 of the Credit Code.~~

~~80. In the premises, the Plaintiffs are entitled to have the Toyota Finance Car Loan transaction reopened, and to orders against Toyota under section 77 of the Credit Code:~~

~~(a) relieving them from payment of interest under the Toyota Finance Car Loan above:~~

~~i. the Base Rate; and, or alternatively,~~

~~ii. the interest rate the Plaintiffs would or could have obtained on the market at the time the Toyota Finance Car Loan was entered into; and, or alternatively,~~

~~iii. the Average Market Rate; and, or alternatively,~~

~~(b) requiring Toyota to pay the Plaintiffs an amount equal to the interest paid by the Plaintiffs above:~~

~~i. the Base Rate; and, or alternatively,~~

~~ii. the interest rate the Plaintiffs would or could have obtained on the market at the time the Toyota Finance Car Loan was entered into; and, or alternatively,~~

~~iii. the Average Market Rate; and~~

~~(c) requiring Toyota to pay the Plaintiffs interest on the sums payable under subparagraph (b).~~

~~C.5. Claim for misleading or deceptive conduct~~

~~81. Further or alternatively, in the circumstances pleaded above the Plaintiffs had a reasonable expectation that had:~~

~~(a) the Contract Rate and, or alternatively, the term of the Toyota Finance Car Loan, been set by someone other than Toyota, namely, Broome Toyota;~~

~~(b) Broome Toyota been interested in the Contract Rate and, or alternatively, the term of the Toyota Finance Car Loan; and, or alternatively,~~

~~(c) the Toyota Finance Car Loan included features of the same or similar kind as the Flex Commission, Flex Commission Calculation Method, and/or the Broome Toyota Flex Commission Features,~~

~~Toyota would have disclosed such matters or one or more of them to the Plaintiffs.~~

~~82. The Defendant failed to disclose to the Plaintiffs the matters pleaded in paragraph 82.~~

~~83. The conduct of Toyota in failing to disclose those matters or one or more of them to the Plaintiffs prior to or at the time the Toyota Finance Car Loan was entered into, and in engaging in Toyota Conduct, was misleading or deceptive or likely to mislead or deceive.~~

~~84. The conduct of Toyota pleaded in paragraph 84 was conduct engaged in by Toyota:~~

~~(a) in relation to financial services, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act; and, or alternatively,~~

~~(b) — in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act.~~

~~85. — By reason of the matters pleaded in paragraphs 83 to 85 Toyota contravened:~~

~~(a) — s 1041H of the Corporations Act; and, or alternatively,~~

~~(b) — s 12DA(1) of the ASIC Act.~~

~~86. — By reason of Toyota's conduct pleaded in paragraphs 83 to 87, the Plaintiffs:~~

~~(a) — entered into the Toyota Finance Car Loan (pursuant to which they paid interest at the Contract Rate of 10.95% per annum) when they would not have done so apart from that conduct; and, or alternatively~~

~~(b) — entered into the Toyota Finance Car Loan whereby the interest rate was higher and, or alternatively, the term was longer, than the interest rate on, or the term of, a loan the Plaintiffs would otherwise have entered into; and, or alternatively~~

~~(c) — became liable to pay interest charges to Toyota at the Contract Rate of 10.95% per annum.~~

Particulars

~~Particulars will be provided at the time of service of the Plaintiffs' evidence in chief.~~

~~87. — By reason of the matters pleaded in paragraph 87, the Plaintiffs has suffered loss and damage.~~

Particulars

~~The loss and damage suffered by the Plaintiffs will be calculated by:~~

~~(a) — the difference between the Contract Rate of 10.95% per annum and the Base Rate;~~

~~(b) — alternatively, the difference between the Contract Rate of 10.95% per annum and the rate the Plaintiffs would have obtained on the market; and~~

- ~~(c) — alternatively, the difference between the Contract Rate of 10.95% per annum and the average market rate prevailing at the time the Toyota Finance Car Loan was entered into.~~

~~C.6. — Claim for money had and received and unjust enrichment~~

~~88. — Further or alternatively, the Plaintiffs were not at any stage prior to applying for or entering into the Toyota Finance Car Loan, informed, either sufficiently or at all, of one or more of the following facts:~~

- ~~(a) — the Contract Rate of 10.95% per annum and, or alternatively, the term of the Toyota Finance Car Loan, been set by someone other than Toyota, namely, Broome Toyota;~~
- ~~(b) — Broome Toyota was interested in the Contract Rate of 10.95% per annum and, or alternatively, the term of the Toyota Finance Car Loan;~~
- ~~(c) — the Toyota Finance Car Loan included features of the same or similar kind as the Flex Commission, Flex Commission Calculation Method, and/or the Broome Toyota Flex Commission Features; and, or alternatively,~~
- ~~(d) — the existence of Broome Toyota's Unfair Conduct, and by reason thereof, the Plaintiffs:~~
- ~~i. — would be entitled to claim a remedy against Broome Toyota pursuant to s 180A of the NCCPA;~~
 - ~~ii. — would, under s 78(1) of the NCCPA, have the same remedies against Toyota that the Plaintiffs has against Broome Toyota; and~~
 - ~~iii. — in the premises in i-ii, would be entitled to obtain orders against Toyota under s 180A(2) of the NCCPA as pleaded in paragraph 81 above.~~
 - ~~iv. — would be entitled to have the Toyota Finance Car Loan reopened as an unjust transaction under section 76 of the Credit Code; and~~
 - ~~v. — in the premises in iv, would be entitled to obtain orders against Toyota under section 77 of the Credit Code as pleaded in paragraph 34 above.~~

~~89. — By reason of the matters pleaded in paragraph 89, prior to applying for or entering into the Toyota Finance Car Loan, the Plaintiffs did not know one or more of the matters~~

~~pleaded in paragraph 89, each of which constitute material information that would have been relevant to the decision of the Plaintiffs whether to proceed with the entry into the Toyota Finance Car Loan.~~

~~90. By reason of the matters pleaded in paragraphs 89 to 90, the Plaintiffs:~~

~~(a) entered into the Toyota Finance Car Loan (pursuant to which they paid interest at the Contract Rate of 10.95% per annum) when they would not have done so; and, or alternatively~~

~~(b) entered into the Toyota Finance Car Loan whereby the interest rate was higher and, or alternatively, the term was longer, than the interest rate on, or the term of, a loan the Plaintiffs would otherwise have entered into; and, or alternatively~~

~~(c) became liable to pay interest charges to Toyota at the Contract Rate of 10.95% per annum,~~

~~under one or more of the following causative mistaken beliefs:~~

~~(d) the Contract Rate of 10.95% per annum and, or alternatively, the term of the Toyota Finance Car Loan, was not set by someone other than Toyota, namely, Broome Toyota;~~

~~(e) Broome Toyota was not interested in the Contract Rate of 10.95% per annum and, or alternatively, the term of the Toyota Finance Car Loan;~~

~~(f) the Toyota Finance Car Loan did not include features of the same or similar kind as the Flex Commission, Flex Commission Calculation Method, and, or alternatively, the Broome Toyota Flex Commission Features;~~

~~(g) the conduct of Broome Toyota was not unfair within the meaning of s 180A(1)(b) of the NCCPA;~~

~~(h) the Plaintiffs were under a legal obligation to pay interest charges at the Contract Rate of 10.95% per annum and, or alternatively, for the term of the Toyota Finance Car Loan and, or alternatively, Toyota was legally entitled to payment of such moneys; and, or alternatively,~~

~~(i) at the time of making the decision to enter into the Toyota Finance Car Loan, the Plaintiffs had received from Broome Toyota and Toyota all material~~

~~information, including some or all of the matters pleaded at paragraph 89 above;~~

~~(j) — because they were consumers —~~

~~i. — the conduct of Broome Toyota was not unfair within the meaning of s 180A(1)(b) of the NCCP Act;~~

~~ii. — the Toyota Finance Car Loan was not an unjust transaction within the meaning of section 76 of the Credit Code.~~

Particulars

~~Further particulars will be provided at the time of service of the Plaintiffs' evidence in chief.~~

~~91. — By reason of the matters pleaded in paragraphs 7, 8, 55 and/or 78, each of the beliefs pleaded in paragraph 91 was a unilateral mistake.~~

~~92. — The Plaintiffs:~~

~~(a) — entered into the Toyota Finance Car Loan (pursuant to which they paid interest at the Contract Rate of 10.95% per annum) when they would not have done so; and, or alternatively~~

~~(b) — entered into the Toyota Finance Car Loan whereby the interest rate was higher and, or alternatively, the term was longer, than the interest rate on, or the term of, a loan the Plaintiffs would otherwise have entered into; and, or alternatively~~

~~(c) — became liable to pay interest charges to Toyota at the Contract Rate of 10.95% per annum,~~

~~by reason of one or more of the mistakes pleaded in paragraphs 91 to 92.~~

~~93. — By reason of the Car Loan Process, Broome Toyota Flex Commission Features and the Toyota Finance Car Loan Circumstances (including the Broome Toyota Flex Commission Non-Disclosure) Toyota:~~

~~(a) — was aware, from those circumstances, of the matters pleaded in paragraphs 89, 90, 91, 92, and/or 93;~~

~~(b) — induced the matters pleaded in paragraphs 89, 90, 91, 92, and/or 93; and, or alternatively,~~

~~(c) — concealed the matters pleaded in paragraph 89.~~

~~94. — By reason of the matters pleaded in paragraphs 93 and 94:~~

~~(a) — the Plaintiffs are entitled to rescind the Toyota Finance Car Loan;~~

~~(b) — the Toyota Finance Car Loan is void; and, or alternatively,~~

~~(c) — the term of the Toyota Finance Car Loan requiring payment of the Contract Rate at 10.95% per annum is void.~~

~~95. — By reason of the matters pleaded in paragraphs 89 to 94 and/or 95, the interest paid under the Toyota Finance Car Loan is monies had and received by Toyota to the use of the Plaintiffs, and Toyota is obliged to repay those sums to the Plaintiffs.~~

~~96. — Further or alternatively, by reason of the matters pleaded in paragraph 93 and/or 94, Toyota has been unjustly enriched by the receipt of interest at the Contract Rate at 10.95% per annum at the expense of the Plaintiffs and it would be unconscionable for Toyota to retain that interest.~~

D. COMMON QUESTIONS OF LAW OR FACT

D.1. The arrangements between Toyota and Dealers

58. Did Toyota enter into agreements with Dealers and appoint Dealer Representatives as agents and “Accredited Persons” to arrange Car Loans to the Plaintiffs and Group Members?

59. Did Toyota implement a process by which Dealer and Dealer Representatives participated in the Car Loan Process?

D.2. Regulatory Context

60. By reason of the matters pleaded in this statement of claim, did Dealers and/or Dealer Representatives provide credit assistance to the Plaintiffs and Consumer Group Members within the meaning of ss 7(a) and 8 of the NCCP Act?

61. By reason of the matters pleaded in this statement of claim, did Dealers and/or Dealer Representatives act as an intermediary for the purposes of ss 7(b) and 9 of the NCCP Act?

62. By reason of the matters pleaded in this statement of claim, did Dealers and/or Dealer Representatives provide a credit service to the Plaintiffs and Consumer Group Members within the meaning of ss 7 and 180A(1)(a) of the NCCP Act?

D.3. The Car Loan Process implemented by Toyota

~~97.~~63. Did the Car Loans include:

- (a) the Flex Commission Calculation Method?
- (b) the Flex Commission Features?

~~98.~~64. Did the Car Loan Circumstances arise?

D.2.D.4. The contravening conduct under the NCCP Act

~~99.~~ By reason of the matters pleaded in this statement of claim, did the Dealers ~~provide credit assistance to the Plaintiffs and Consumer Group Members within the meaning of ss 7(a) and 8 of the NCCP Act?~~

~~100.~~ By reason of the matters pleaded in this statement of claim, did Dealers act as an intermediary for the purposes of ss 7(b) and 9 of the NCCP Act?

~~101.~~ By reason of the matters pleaded in this statement of claim, did Dealers provide a credit service to the Plaintiffs and Consumer Group Members within the meaning of ss 7 and 180A(1)(a) of the NCCP Act?

~~102.~~65. By reason of the matters pleaded in this statement of claim, did the Dealers/or Dealer Representatives engage in conduct in connection with the provision of a credit service that was unfair within the meaning of s_180A(1)(b) of the NCCP Act?

~~103.~~66. By reason of the matters pleaded in this statement of claim, are the Plaintiffs and the Consumer Group Members entitled to claim a remedy against the Dealers pursuant to s_180A of the NCCP Act?

~~404-67.~~ By reason of the matters pleaded in this statement of claim, was each Dealer and/or Dealer Representative a representative of Toyota within the meaning of s 5 of the NCCP Act?

~~405-68.~~ By reason of the matters pleaded in this statement of claim, was the Dealers' Unfair Conduct conduct that related to a credit activity within the meaning of s 74(a) of the NCCP Act?

~~406-69.~~ Was the Dealers' Unfair Conduct conduct on which the Plaintiffs and the Consumer Group Members could reasonably be expected to rely within the meaning of s 74(b) of the NCCP Act?

~~407-70.~~ Was the Dealers' Unfair Conduct conduct on which the Plaintiffs and the Consumer Group Members did rely in good faith within the meaning of s 74(c) of the NCCP Act?

~~408-71.~~ By reason of the matters pleaded in this statement of claim, is Toyota responsible for the Dealers' Unfair Conduct?

~~409-72.~~ By reason of s 77 of the NCCP Act, is Toyota liable to the Plaintiffs and Consumer Group Members in relation to any loss or damage suffered by the Plaintiffs and Consumer Group Members as a result of the Dealers' Unfair Conduct?

~~410-73.~~ By reason of s 78(1) of the NCCP Act, do the Plaintiffs and the Consumer Group Members have the same remedies against Toyota that the Plaintiffs and Consumer Group Members have against the Dealers?

~~411-74.~~ By reason of the matters pleaded in this statement of claim, are the Plaintiffs and Consumer Group Members entitled to an order against Toyota under s 180A(2) of the NCCP Act that it:

- (a) refrain from charging the Plaintiffs and the Consumer Group Members interest under the Consumer Car Loans over the Base Rate; and, or alternatively,
- (b) refrain from charging the Plaintiffs and the Consumer Group Members interest under the Consumer Car Loans above the interest rate the Plaintiffs and the Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,

- (c) refrain from charging the Plaintiffs and the Consumer Group Members interest under the Consumer Car Loans above the Average Market Rate;
- (d) pay to the Plaintiffs and the Consumer Group Members the interest paid under the Consumer Car Loans to Toyota above the Base Rate; and, or alternatively,
- (e) pay to the Plaintiffs and the Consumer Group Members the interest paid under the Consumer Car Loans to Toyota above the rate the Plaintiffs and Consumer Group Members would or could have obtained on the market at the time the Car Loans were entered into; and, or alternatively,
- (f) pay to the Plaintiffs and the Consumer Group Members the interest paid under the Consumer Car Loans above the Average Market Rate; and,

~~(a)(g)~~ pay interest on the sums payable under (d), (e) and/or (f) above?

412.75. By reason of the matters pleaded in this statement of claim, were the Consumer Car Loans unjust transactions within the meaning of ~~section s~~ 76 of the Credit Code?

413.76. By reason of the matters pleaded in this statement of claim, should the Consumer Car Loans be reopened and should an order be made against Toyota under ~~sections~~ 77 of the Credit Code:

- (a) relieving the Plaintiffs and the Consumer Group Members from payment of interest under the Consumer Car Loans above:

i. the Base Rate; and, or alternatively,

~~i. the Base Rate; and, or alternatively,~~

ii. the interest rate the Plaintiffs and Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,

iii. the Average Market Rate; and, or alternatively,

(b) requiring Toyota to pay the Plaintiffs and the Consumer Group Members an amount equal to the interest paid by the Consumer Group Members above:

i. the Base Rate; and, or alternatively,

~~(b)(a) Consumer Group Members an amount equal to the interest paid by the Consumer Group Members above;~~

~~i. the Base Rate; and, or alternatively,~~

ii. the interest rate the Plaintiffs and Flex Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,

iii. the Average Market Rate; and, or alternatively,

(c) requiring Toyota to pay the Plaintiffs and Consumer Group Members interest on the sums payable under ~~9~~(a) and/or (b) above?

D.3.D.5. The contravening conduct under the Corporations Act and ASIC Act

114.77. By reason of the matters pleaded in this statement of claim, did the Plaintiffs and the Group Members have a reasonable expectation that had:

(a) the Contract Rate and, or alternatively, the Loan Term, been set by someone other than Toyota, namely, the Dealers;

(b) the Dealers and/or Dealer Representatives been interested in the Contract Rate and, or alternatively, the Loan Term; and, or alternatively,

(c) the Car Loans included features of the same or similar kind as the Flex Commission, Flex Commission Calculation Method, and/or the Flex Commission Features, or one or more of them,

Toyota would have disclosed such matters or one or more of them to the Plaintiffs and Group Members?

115.78. Was the conduct of Toyota in ~~failing to disclose the matters~~ alleged in paragraphs 35(a) to (c) or one or more of them to the Plaintiffs and Group Members prior to or at the time the Car Loans were entered into, and in engaging in the Lender Conduct, 19 to 22 misleading or deceptive or likely to mislead or deceive?

116.79. Was the conduct of Toyota pleaded in ~~paragraph 36~~paragraphs 19 to 22 engaged in by Toyota:

- (a) in relation to financial services, within the meaning of ss_1041H(1) and 1041H(2)(b) of the Corporations Act; and, or alternatively,
- (b) in trade or commerce, in relation to financial services within the meaning of s_12DA(1) of the ASIC Act?

417.80. By reason of Toyota's conduct pleaded in paragraphs ~~36~~19 to ~~39~~22, did Toyota contravene:

- (a) s 1041H of the Corporations Act; and, or alternatively,
- (b) s 12DA(1) of the ASIC Act?

418.81. What are the principles governing the quantification of loss or damage (if any) suffered by the Plaintiffs and Group Members by reason of any contraventions as alleged in this statement of claim which have been established?

D.6. The unconscionable conduct

82. Did the conduct referred to in any of paragraph ~~45~~ contravene s 12CB of the ASIC Act?

83. Did the conduct pleaded in paragraphs ~~46~~ amount to a system of conduct or pattern of behaviour (within the meaning of s 12CB(4) of the ASIC Act), in contravention of s 12CB(1) of the ASIC Act?

D.4.D.7. Money had and received and unjust enrichment

419.84. Would the Plaintiffs and Group Members who:

- (a) entered into Car Loans (pursuant to which they paid interest at the Contract Rate) when they would not have done; and, or alternatively,
- (b) entered into Car Loans whereby the interest rate was higher and, or alternatively, the terms were longer, than the interest rate on, or the terms of, loans the Group Members would otherwise have entered into; and, or alternatively,
- (c) became liable to pay interest charges to Toyota at the Contract Rate and/or over the Loan Term,

have been mistaken if they held one or more of the beliefs pleaded in paragraphs 51 and 52 above?

~~120-85.~~ By reason of the terms of the Dealer Agreements, Flex Commission Features and the Car Loan Circumstances (including the Flex Commission Non-Disclosure):

- (a) was Toyota aware, from those circumstances, of the matters pleaded in paragraphs ~~42~~49, 50, 51, 52 and/or 53 above?
- (b) did Toyota induce the matters pleaded in paragraphs ~~42~~49, 50, 51, 52 and/or 53 above?
- (c) did Toyota conceal the matters pleaded in paragraph ~~42~~49 above?

~~121-86.~~ By reason of the matters pleaded in paragraphs 53 and 54 above are:

- (a) the Plaintiffs and Group Members entitled to rescind the Car Loans;
- (b) the Car Loans void; and, or alternatively,
- (c) the terms of the Car Loans requiring payment of the Contract Rate and/or payment over the Loan Term void?

~~122-87.~~ By reason of the matters pleaded in paragraphs ~~42~~49 to 54 and/or ~~48~~55 above, is the interest paid under the Car Loans monies had and received by Toyota to the use of the Plaintiffs and Group Members, such that Toyota is obliged to repay those sums to the Plaintiffs and Group Members?

~~123-88.~~ Further or alternatively, by reason of the matters pleaded in paragraphs 53 to 54 and/or 55 above, was Toyota unjustly enriched by the receipt of interest at the Contract Rate and/or payment over the Loan Term at the expense of the Plaintiffs and Group Members such that it would be unconscionable for Toyota to retain that interest?

AND THE PLAINTIFFS CLAIM on their own behalf and on behalf of the Group Members:

A. An order against the Defendant under s 180A(2) of the NCCP Act that it:

~~AND THE PLAINTIFFS CLAIM on their own behalf and on behalf of the Group Members:~~

~~A. An order against the Defendant under s 180A(2) of the NCCP Act that it:~~

- (a) refrain from charging the Plaintiffs and the Consumer Group Members interest under the Consumer Car Loans above the Base Rate; and, or alternatively,
- (b) refrain from charging the Plaintiffs and the Consumer Group Members interest under the Consumer Car Loans above the interest rate the Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,
- (c) refrain from charging the Plaintiffs and the Consumer Group Members interest under the Consumer Car Loans above the Average Market Rate; and, or alternatively,
- (d) pay to the Plaintiffs and the Consumer Group Members the interest paid to the Defendant under the Consumer Car Loans above the Base Rate; and, or alternatively,
- (e) pay to the Plaintiffs and the Consumer Group Members the interest paid to the Defendant under the Consumer Car Loans above the rate the Plaintiffs and the Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,
- (f) pay to the Plaintiffs and the Consumer Group Members the interest paid to the Defendant under the Consumer Car Loans above the Average Market Rate; and, or alternatively,
- (g) pay interest on the sums payable under (d), ~~(e)~~ (e) or (f) above.

B. An order against the Defendant under sections 77 of the Credit Code:

- (a) relieving the Plaintiffs and the Consumer Group Members from payment of interest under the Consumer Car Loans above:
 - i. the Base Rate; and, or alternatively,
 - ii. the interest rate the Plaintiffs and Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,
 - iii. the Average Market Rate; and, or alternatively,

(b) requiring the Defendant to pay the Plaintiffs and the Consumer Group Members an amount equal to the interest paid by the Consumer Group Members above:

i. the Base Rate; and, or alternatively,

ii. the interest rate the Plaintiffs and the Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,

iii. the Average Market Rate; and, or alternatively,

~~(b) requiring the Defendant to pay the Plaintiffs and Consumer Group Members an amount equal to the interest paid by the Consumer Group Members above:~~

~~i. the Base Rate; and, or alternatively,~~

~~ii. the interest rate the Plaintiffs and Consumer Group Members would or could have obtained on the market at the time the Consumer Car Loans were entered into; and, or alternatively,~~

~~iii. the Average Market Rate; and,~~

~~(c) requiring the Defendant to pay the Plaintiffs and the Consumer Group Members interest on the sums payable under 9(a) and/or (b) above.~~

C. An order against the Defendant pursuant to:

(a) s 1041I of the Corporations Act that the Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Defendant in contravention of s 1041H of the Corporations Act; ~~and,~~

(b) s 12GF and s 12GM of the ASIC Act that the Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Defendant in contravention of ~~sss~~ 12DA(1) and 12CB(1) of the ASIC Act; and, or alternatively

D. A Judgment against the Defendant in the full amount of the interest paid at the Contract Rate mistakenly paid for.

~~D.E.~~ In respect of the Plaintiffs and Group Members, an order that:

(a) the Car Loans are rescinded;

- (b) the Car Loans are void; and, or alternatively,
- (c) the terms of the Car Loans requiring payment of the Contract Rate and/or payment over the Loan Term are void.

~~E. Judgment in the full amount of the interest paid at the Contract Rate mistakenly paid for.~~

F. Interest pursuant to statute.

G. Pursuant to ~~subsections~~ 33Z(1)(e) of the *Supreme Court Act 1986* (Vic), an award of damages, being damages consisting of specified amounts or amounts worked out in such manner as the Court specifies, in respect of Toyota:

~~(a) all of the damages pleaded in paragraphs B(d) (g) and C(b) to which the Group Members are entitled;~~

~~(a)(b) all of the damages pleaded~~ above to which the Consumer Group Members are entitled; ~~and~~

~~(b) all of the damages pleaded in paragraphs D(a) (b), F and G above to which the Group Members are entitled.~~

H. In the alternative to paragraph ~~H~~G above, pursuant to ~~subsections~~ 33Z(1)(f) of the *Supreme Court Act*, an award of damages in an aggregate amount without specifying amounts awarded in respect of individual Group Members, in respect of Toyota:

~~(a) all of the damages pleaded in paragraphs B(d) (g) and C(b) to which the Group Members are entitled;~~

~~(a)(b) all of the damages pleaded~~ above to which the Consumer Group Members are entitled; ~~and~~

~~(b) all of the damages pleaded in paragraphs D(a) (b), F and G above to which the Group Members are entitled.~~

I. Costs.

J. Such further or other order as the Court determines is appropriate.

Dated: ~~26 March 2024~~ 22 April 2025

P W Collinson

~~M Gue~~

E Dias

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Echo Law

Solicitors for the Plaintiffs

SCHEDULE 1 – DEFINED TERMS

<u>Defined Term</u>	<u>Defined in Paragraph</u>
<u>ASIC Act</u>	3
<u>Average Market Rate</u>	40
<u>Base Rate</u>	7
<u>Car Loan</u>	1
<u>Car Loan Circumstances</u>	9
<u>Car Loan Process</u>	5
<u>Consumer Car Loans</u>	11
<u>Consumer Group Members</u>	10
<u>Contract Rate</u>	7
<u>Corporations Act</u>	1
<u>Credit Code</u>	3
<u>Dealer Agreements</u>	4
<u>Dealer Representatives</u>	4
<u>Dealers</u>	4
<u>Dealers' Unfair Conduct</u>	29
<u>First Relevant Period</u>	1
<u>Flex Commission</u>	7
<u>Flex Commission Calculation Method</u>	7
<u>Flex Commission Features</u>	8
<u>Flex Commission Non-Disclosure</u>	9
<u>Misleading Conduct</u>	23
<u>Group Members</u>	1
<u>Lender Conduct</u>	9
<u>Loan Term</u>	8
<u>NCCP Act</u>	3
<u>Consumer Group Members</u>	28
<u>Plaintiffs' Loan</u>	7
<u>Relevant Period</u>	1
<u>Toyota</u>	1
<u>Toyota AFSL</u>	3