

NOTICE OF FILING

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Details of Filing

Document Lodged: Concise Statement
File Number: NSD1162/2019
File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v
PANTHERA FINANCE PTY LTD ACN 147 634 482
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 24/07/2019 9:35:43 AM AEST

Registrar

Important Information

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

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



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CONCISE STATEMENT

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: GENERAL**

NO NSD OF 2019

**AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION**

and another named in Schedule 1
Applicants

**PANTHERA FINANCE PTY LTD
ACN 147 634 482**

Respondent

A. INTRODUCTION

1. These proceedings concern undue harassment and coercion, unconscionable conduct, and a false and misleading representation by the Respondent (**Panthera**), a debt collection agency, in its pursuit of payments from certain consumers.
2. The Applicants allege that Panthera, in repeatedly pursuing payment from each of the consumers, and continuing to require onerous documentation from each consumer after they had informed Panthera of the basis on which they were not in fact liable for the debt being pursued, used undue harassment, and in the case of one consumer, also used coercion, engaged in unconscionable conduct, and made a false or misleading representation.

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

Panthera's conduct with respect to Witness A

3. From 5 September 2017 to 9 October 2017 and from 29 June 2018 to 17 July 2018, Panthera repeatedly contacted a consumer in Queensland, **Witness A**, seeking payment of a debt of \$378.50. Panthera had acquired the debt from Origin Energy Electricity Ltd (**Origin**), and it was purportedly owed in respect of the supply of electricity to an address in New South Wales (**Origin Debt**).
4. In fact, Witness A was not liable for the Origin Debt because she had never held an account with Origin and had never lived in New South Wales.
5. On or about 22 September 2017, Witness A informed a Panthera representative that she disputed liability for the debt, and that she had never held an account with Origin and had never lived in New South Wales. In response the Panthera representative informed Witness A that to dispute liability for the debt, she needed to file a police

Filed on behalf of the Applicants, ACCC and Rami Griess
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1903

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report. Subsequently on that day, another Panthera representative sent an email to Witness A providing the Origin bills (sent to a NSW address) evidencing the debt and also seeking that Witness A arrange payment of her account.

6. During the period 22 September 2017 to 9 October 2017, Panthera telephoned Witness A's number on ten occasions. During this period Panthera spoke with Witness A on at least three occasions. Witness A repeatedly informed Panthera representatives that she had never held an account with Origin and had never lived in New South Wales. On 24 September 2017, Witness A provided Panthera with the reference number to a complaint she made with the Australian Cybercrime Online Reporting Network (**ACORN**). Despite this, Panthera contacted Witness A again on 27 September 2017. During a call with Panthera on that day, Witness A again informed them that she had never lived in NSW, she had provided an ACORN reference number and stated that she had never received Centrelink payments in her life, referring to the Centrelink deductions recorded on the Origin bills provided to her. Panthera contacted Witness A again on 9 October 2017, asking whether she had sent in her police report, and she again pointed them to the ACORN reference number.
7. On 13 June 2018 Witness A provided Panthera with the details of the person the police had informed her was responsible for the Origin Debt, including that the person still resided at the NSW premises to which the electricity was supplied, and also with the relevant police officer's contact information. In response, on 29 June, 10 July and 14 July 2018 Panthera representatives asked Witness A to supply an electricity bill for the period between 17 January 2013 and 8 October 2014. On 10 and 14 July 2018, the Panthera representative stated that if Panthera did not receive the information collection activity may proceed. Despite Witness A's repeated queries about the need for additional information, on 16 July 2018 she sent Panthera two personal notices of assessment from the Australian Taxation Office and a private health insurance statement on 16 July 2018 because she did not have the information they requested.

Panthera's conduct with respect to Witness B

8. Between December 2016 and April 2017 Panthera repeatedly contacted a consumer, **Witness B**, for the purpose of seeking payment of a debt of \$657.10. Panthera had acquired the debt from Telstra Corporation Limited (**Telstra**), and it was purportedly owed in respect of the supply of mobile broadband internet services (the **Telstra Debt**).
9. In fact, Witness B was not liable for the Telstra Debt as he was not the holder of the relevant Telstra account.
10. Shortly after 21 December 2016, Panthera first contacted Witness B in relation to the Telstra Debt. Witness B and his financial advisor, informed Panthera on at least three occasions in the period 20 January 2017 to 4 April 2017 that Witness B was not liable for the Telstra Debt, and that Witness B believed the Telstra account was created fraudulently.
11. Panthera representatives told Witness B on two occasions in January 2017 that he needed to file a "fraud report" in order to establish that he was not liable for the Telstra Debt.

12. On at least two occasions in January 2017, Witness B received text messages from Panthera asking that he make a payment.
13. Witness B made a police report with respect to the Telstra Debt and on 17 February 2017, a police officer informed Panthera that she was “looking into fraud” in relation to the account.
14. In late March 2017, Witness B became aware that a default had been listed on his credit file with respect to the Telstra Debt. On 4 April 2017, a Panthera representative called Witness B’s financial advisor and stated that Panthera was aware of Witness B’s dispute and was investigating it, offered to negotiate a payment in order to secure the removal of the default listing and represented that Witness B would need to make a payment of \$100 to Panthera in order for the default listing to be removed. This was in circumstances where the Panthera representative knew that Witness B’s account was in the process of being ‘written off’ by Panthera, but also knew that Witness B needed the default listing removed quickly because he was trying to obtain finance.
15. In fact, Witness B had the right to have the inaccurate default listing on his credit file removed free of charge pursuant to s21V of the *Privacy Act 1988* (Cth).
16. On 4 April 2017, Witness B agreed to pay \$100 to Panthera to remove the default listing because he was concerned that Panthera would not otherwise remove the default listing from his credit file and that he would not be able to obtain finance if he did not make that payment. On 18 April 2017, Panthera asserted that the default listing in respect of the Telstra Debt had been removed from Witness B’s credit file. In fact, as at September 2018 Witness B’s credit file still contained a default listing with respect to the Telstra Debt.

Panthera’s conduct with respect to Witness C

17. Between July 2014 and April 2018 Panthera repeatedly contacted a consumer, **Witness C**, for the purpose of seeking payment of a debt of \$2,413.34. Panthera had acquired the debt from AGL APG Holdings Pty Limited (**AGL**), and it was purportedly owed in respect of the supply of energy (the **AGL Debt**).
18. In fact, Witness C was not liable for the AGL Debt, as she had not held an account with AGL at the relevant time and did not live at the property to which energy services were provided for the relevant period.
19. In about July 2014, Witness C received a letter from Panthera demanding payment for the AGL Debt.
20. Between July 2014 and October 2014 Witness C repeatedly informed Panthera representatives that she did not hold the AGL account and did not live at the property at the relevant time.
21. In July 2014, a Panthera representative required Witness C to provide proof that she was not liable for the AGL Debt. Witness C provided a letter from her real estate agent to Panthera stating the date that she moved out of the property, being at a time before the disputed service was provided.
22. From August 2014 to October 2015 Panthera attempted to contact Witness C by telephone and email on approximately 29 occasions in connection with the AGL Debt

and demanding repayment of it, including leaving her 19 voicemail messages. On 14 December 2015 Panthera listed a default on Witness C's credit file, of which Witness C first became aware in mid-2016 when she and her husband applied for finance to purchase a house. On 25 October 2017, Witness C's husband telephoned Panthera and again disputed that Witness C was liable for the AGL Debt. Panthera asked for a statutory declaration to be provided by Witness C.

23. On 7 February 2018, Witness C made a statutory declaration stating that she did not open the account the subject of the AGL Debt and Witness C's husband provided it to Panthera on 2 April 2018. On 4 April 2018 Panthera notified Witness C that Panthera was prepared to accept a 50% discount in return for payment of the AGL Debt, and asked for payment of that amount. Panthera again asked for further documents from Witness C's husband on 26 and 30 April 2018, in circumstances where Panthera had knowledge of circumstances indicating that Witness C was not liable for the AGL Debt. The default was eventually recalled by AGL on or about 10 May 2018 and the default was removed from Witness C's account on or about 21 May 2018.

C. THE RELIEF SOUGHT FROM THE COURT

24. The Applicant seeks the relief set out in the accompanying Originating Application, comprising declarations under s21 of the *Federal Court Act 1976* (Cth), orders for pecuniary penalties under s224 of the ACL, injunctions pursuant to s232 of the ACL, corrective publication orders and orders requiring Panthera to implement a compliance program under s246 of the ACL, and costs.

D. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

25. Panthera engaged in the conduct in trade or commerce. The conduct of each of the Panthera representatives was engaged in on behalf of Panthera within the scope of the representatives' actual or apparent authority, and was also engaged in by Panthera, by reason of s139B(2) of the CCA and/ or s12GH of the ASIC Act and s769B of the *Corporations Act 2001* (Cth).
26. Panthera's conduct occurred in connection with the supply or possible supply of goods or services by Origin, Telstra and AGL respectively, or in connection with the payment for those goods or services, or alternatively in connection with the supply or possible supply or promotion of the supply of financial services to the consumers by Panthera (financial accommodation by way of an extension of time to fully pay off their purported debts).

Undue Harassment and Coercion

27. By its conduct outlined above:
 - 27.1. in repeatedly contacting Witness A and Witness C in pursuit of payment of debts, after they had disputed liability for those debts, contrary to the ACCC-ASIC Debt Collection Guidelines for collectors and creditors (July 2017 version) (**Guidelines**) and Panthera's internal Compliance Policy and Contact Guidelines (**Policy**), which provided that Panthera should suspend collection activity with respect to a consumer who disputes a debt until it has ascertained that the consumer is liable for it, and

- 27.2. in requiring Witness A, Witness B and Witness C to provide proof that they were not liable for the particular debts;
- 27.3. in circumstances where those consumers had disputed liability for those debts, were not in fact liable for the debts and Panthera had information indicating the consumers were not so liable, Panthera used undue harassment in relation to each of the identified consumers, in contravention on each occasion of s50(1)(a) or (b) of the ACL, alternatively s12DJ(1) of the ASIC Act.
28. In the case of Witness B, Panthera also used coercion by making the representation set out in paragraph 14 above, in contravention of s50(1)(a) or (b) of the ACL, alternatively s12DJ(1) of the ASIC Act.

Unconscionable conduct

29. Panthera's conduct, in representing to Witness B that he needed to make a payment of \$100 to remove a default listing on his credit file and obtaining that payment from him, when he had a right to have the default listing removed free of charge, Panthera was on notice that the default listing had been incorrectly imposed and when Panthera was also aware Witness B required the default to be removed in order to obtain finance, was, in all the circumstances, unconscionable, in contravention of s21 of the ACL, alternatively s12CB(1)(a) of the ASIC Act.

False or misleading representation

30. Panthera made a false or misleading representation to Witness B concerning the existence or exclusion of a right (being the right to have the incorrect default listing removed free of charge, or alternatively, the right to pay a lower charge for the removal of the default listing), in contravention of s29(1)(m) of the ACL; alternatively s12DB(1)(i) of the ASIC Act.

E. ALLEGED HARM

31. Panthera engaged in the conduct without adequate regard to whether the consumers were in fact liable for the debts being pursued, in circumstances where it bore that responsibility. As a result of Panthera's conduct, the consumers were put to the significant inconvenience and stress of taking repeated and burdensome steps to attempt to persuade Panthera that they were not liable for debts, and suffered stress in being pursued over a significant period for debts for which they were not liable, and for which Panthera therefore had no legal entitlement to pursue. Witness B paid to have a credit default listing, for which Panthera was on notice that he was not liable, removed from his credit file so that he could obtain finance, yet it remained on his credit file. Some of the identified consumers experienced difficulties in obtaining finance due to credit defaults listed against them, and experienced stress and embarrassment because of the incorrect credit default listings.

Date: 23 July 2019



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Katrina Close
AGS Lawyer
For and on behalf of the Australian Government Solicitor
Lawyer for the Applicant

This statement was prepared by AGS Lawyers Katrina Close and Claudia Oakeshott, and settled by Naomi Sharp SC and Victoria Brigden of Counsel.

CERTIFICATE OF LAWYER

I Katrina Close certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 23 July 2019



Katrina Close
AGS lawyer
for and on behalf of the Australian Government Solicitor
Solicitor for the Applicants

Schedule 1

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
Division: General**

No NSD of 2019

Applicants

Second Applicant

Rami Greiss
the holder of a delegation dated 23 September
2014 from the Australian Securities and
Investments Commission pursuant to section 102
of the Australian Securities and Investments
Commission Act 2001 (Cth) in relation to alleged
contraventions of that Act

Date: 23 July 2019