

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

CIV 2021-404-1190

**UNDER THE CREDIT CONTRACTS AND CONSUMER FINANCE
ACT 2003 AND HIGH COURT RULE 4.24**

**BETWEEN Anthony Paul Simons & Ors suing as representatives
under High Court Rule 4.24**

PLAINTIFFS

AND ANZ Bank New Zealand Limited

FIRST DEFENDANT

AND ASB Bank Limited

SECOND DEFENDANT

**AMENDED NOTICE OF INTERLOCUTORY APPLICATION BY THE
PLAINTIFFS FOR LEAVE TO BRING PROCEEDINGS AS
REPRESENTATIVE ACTIONS AND FOR ANCILLARY ORDERS AND
SUMMARY JUDGMENT**

Dated: 28 January 2022

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**AMENDED NOTICE OF INTERLOCUTORY APPLICATION BY THE PLAINTIFFS FOR
LEAVE TO BRING PROCEEDINGS AS REPRESENTATIVE ACTIONS AND FOR
ANCILLARY ORDERS AND SUMMARY JUDGMENT**

To: the Registrar of the High Court at Auckland

and to: the defendants

This document notifies you that:

1. The plaintiffs will on 11 and 12 April 2022 apply to the Court for the following orders:

Representative orders

(a) Orders under r 4.24(b) of the High Court Rules granting:

- (i) the second plaintiffs (**ANZ representative plaintiffs**) leave to bring the proceeding against the first defendant (**ANZ**) as a representative action on behalf of the class of persons defined and on the terms set out in **Schedule 1**, or on such terms as the Court thinks fit;
- (ii) the first and third to fifth plaintiffs (**ASB representative plaintiffs**) leave to bring the action against the second defendant (**ASB**) as a representative action on behalf of the class of persons defined and on the terms set out in **Schedule 2**, or on such terms as the Court thinks fit.

(Representative Orders)

(b) Orders on the terms set out in **Schedules 3 and 4**, or on such terms as the Court thinks, fit providing that:

- (i) if the proceeding is settled with or judgment is entered against ANZ, the ANZ representative plaintiffs' costs in bringing the proceeding including the Project Costs defined in and due to the litigation funder LPF Funder No.33 Limited (**LPF**) pursuant to the ANZ funding agreement and LPF's CFO Services Fee (defined in Schedule 3) (or such lower fee as the Court considers reasonable at that time) will be met from, and in the case of the CFO Services Fee, calculated with reference to, the total sums paid or credited by ANZ under the settlement or judgment;

- (ii) if the proceeding is settled with or judgment is entered against ASB, the ASB representative plaintiffs' costs in bringing the proceeding including the Project Costs defined in and due to LPF pursuant to the ASB funding agreement and LPF's CFO Services Fee (defined in Schedule 4) (or such lower fee as the Court considers reasonable at that time) will be met from, and in the case of the CFO Services Fee, calculated with reference to, the total sums paid or credited by ASB under the settlement or judgment.

(Common Fund Orders)

- (c) Orders on the terms set out in **Schedule 5** and **Schedule 6**, or on such terms as the Court thinks fit, providing for notice of the Representative Orders, Common Fund Orders and certain other information to be provided to class members and prescribing the method and timing of communications with class members (**Notification Orders**).

Summary judgment

- (d) Orders entering summary judgment:
 - (i) in favour of the ANZ representative plaintiffs against ANZ on the first cause of action in the amended statement of claim dated 28 January 2022 (**ASOC**);
 - (ii) in favour of the ASB representative plaintiffs against ASB on the second cause of action in the ASOC.
- (e) Directions following determination of the summary judgment application for disposal of the extant issues on the ASOC.

Costs

- (f) Orders as to costs.

2. The orders are sought on the grounds set out below.

Representative Orders

3. The grounds on which the Representative Orders are sought are that:

- (a) The ASOC discloses arguable and serious issues to be tried.

- (b) The ANZ representative plaintiffs' claims against ANZ raise significant issues of fact and law which are common to all persons they seek to represent (**ANZ class members**). Those issues are set out in **Schedule 7**.
- (c) The ASB representative plaintiffs' claims against ASB raise significant issues of fact and law which are common to all persons whom they seek to represent (**ASB class members**). Those issues are set out in **Schedule 8**.
- (d) The represented classes are capable of clear definition.
- (e) The ANZ and ASB representative plaintiffs adequately represent their respective class members.
- (f) Determination of the common issues via representative proceedings on the terms sought will result in significant efficiencies and increase access to justice, including because:
 - (i) It will avoid duplicate proceedings relating to the common issues for class members, and for the defendants, and the risk of inconsistent findings.
 - (ii) It will enable the determination of class members' claims that would otherwise be uneconomic to bring as individual proceedings.
 - (iii) It preserves the ability of class members who wish to pursue individual claims against either of the defendants to do so through the opt-out process.
 - (iv) It does not deprive either of the defendants of any affirmative defence or otherwise cause them material prejudice, nor does it give individual claimants any claims they would otherwise not have.
- (g) It is appropriate that the representative actions be brought on an opt out basis:
 - (i) The proposed classes are very large. It is estimated that there are between approximately 86,000 and 101,000 ANZ class members and approximately 73,000 ASB class members.
 - (ii) Significantly more class members will have their claims heard and determined by the Court if the proceedings are brought on an opt out basis.
 - (iii) There is no disadvantage to the class members in being involved in the proceedings. In particular, there is no risk of them being exposed to

adverse costs awards and no identifiable risk of them being exposed to other claims as a result of being involved.

- (iv) The class members' right of autonomy is adequately protected by appropriate opt out directions being made.
- (h) Although it is not necessary in order for them to be represented by the ANZ and ASB representative plaintiffs, class members will have the option and be encouraged to proactively opt in to the proceedings.
- (i) Class members' rights are appropriately protected by the proposed condition that any settlement and discontinuance of the proceedings be subject to approval of the Court.
- (j) It is just and equitable that the Court grant the Representative Orders.

Common Fund Orders

- 4. The grounds on which the Common Fund Orders are sought are that:
 - (a) The Court has jurisdiction to make the Common Fund Orders at the commencement of these representative proceedings.
 - (b) If the Representative Orders are made, the ANZ and ASB representative plaintiffs will incur significant costs and expenses in pursuing the proceedings against the defendants.
 - (c) The ANZ and ASB representative plaintiffs are unable and/or unwilling to bear the full costs and expenses of pursuing the proceedings.
 - (d) The ANZ and ASB representative plaintiffs have engaged litigation funders LPF (a subsidiary of LPF Group Limited) and CASL Management Pty Ltd (**CASL**) (via a co-funding agreement), to fund their proceedings against the defendants:
 - (i) The ANZ representative plaintiffs, LPF and CASL are parties to a Deed for Provision of Services in Respect of Litigation (**ANZ Deed**) pursuant to which LPF has agreed to provide certain services and to fund the costs of the ANZ representative plaintiffs' proceeding on the condition that, if the proceeding is settled or judgment is obtained against ANZ, all costs, defined in the ANZ Deed as 'Project Costs', and a percentage of the total amount recovered from ANZ, defined in the ANZ Deed as

LPF's 'Service Fee', be met from sums paid or credited by ANZ under the settlement or judgment.

- (ii) The ASB representative plaintiffs, LPF and CASL are parties to a Deed for Provision of Services in Respect of Litigation (**ASB Deed**) pursuant to which LPF has agreed to provide certain services and to fund the costs of the ASB representative plaintiffs' proceeding on the condition that, if the proceeding is settled or judgment is obtained against ASB, all costs, defined in the ASB Deed as 'Project Costs', and a percentage of the total amount recovered from ANZ, defined in the ANZ Deed as LPF's 'Service Fee', be met from sums paid or credited by ASB under the settlement or judgment.
- (e) The terms of the Deeds and LPF's Service Fees are fair and reasonable.
- (f) Under the Common Fund Orders the representative plaintiffs and class members would pay the CFO Services fee, which is more advantageous to class members than the Services Fee, or such lower fee as the Court considers reasonable at the conclusion of the proceedings.
- (g) By making the Common Fund Orders the Court is able to protect the interests of class member and ensure that the funders' remuneration is proportionate to the overall judgment or settlement amounts by setting the CFO Services Fee subject to final Court approval.
- (h) If the ANZ and ASB representative plaintiffs are successful in obtaining judgment against the defendants or secure settlements that receive the approval of the Court, then it is just and equitable that each class member who benefits from such judgment or settlement contributes to the Project Costs incurred by the plaintiffs and funded by LPF and CASL and to LPF's CFO Services Fees.
- (i) It is in the interests of justice that the Common Fund Orders are made at this stage in the proceeding because:
 - (i) By making the Orders at the start of the proceedings and prior to the close of the opt out period, each class member will have greater certainty as to the effects of remaining in the relevant class, and therefore be in a better position to make a fully formed decision about whether to exercise their rights to opt out of the proceeding.

- (ii) Making the orders at this stage will provide the ANZ and ASB representative plaintiffs and their funders with certainty as to whether class members who have not signed up to the Deeds will be obliged to contribute to Project Costs and Service Fees in the event that the plaintiffs are successful. Without this certainty, the funders would be exposed to a significant level of risk which would require them to reassess the basis upon which they were prepared to fund the plaintiffs' proceedings, if at all.

Notification Orders

- 5. The grounds on which the Notification Orders are sought are that:
 - (a) Directions as to notification are necessary to ensure that class members are given accurate and easily understandable information about the Representative Orders and their right to opt in, remain in or opt out of the ANZ and ASB representative plaintiffs' claims.
 - (b) Directions need to be made directing the means by which that information shall be provided to class members.
 - (c) It is desirable that the Court should review and approve the information to be provided to class members before it is disseminated.
 - (d) The defendants will have the names and contact details of all of the class members, as they are or were customers of the defendants most of whom they have previously identified and contacted in order to make the remediation payments.
 - (e) A direction that the defendants send the information approved by the Court to each class member by registered post to their last known address, by email to their last known email address(es) and via any other channels by which the defendants customarily communicate with their customers will best ensure that the maximum number of class members receive the information.
 - (f) Direct communication of information to class members is more efficient and preferable to public advertising alone.
 - (g) The Court has jurisdiction to make the Notification Orders.
 - (h) It is just and efficient that the Notification Orders be made.

Summary judgment - ANZ

6. Entry of summary judgment in favour of the ANZ representative plaintiffs against ANZ on the first cause of action in the ASOC is sought on the grounds that:
 - (a) The ANZ representative plaintiffs' claim relates to ANZ's conduct during the period between 30 May 2015 and 28 May 2016 (**ANZ Relevant Period**).
 - (b) During the ANZ Relevant Period, ANZ provided a loan to the ANZ representative plaintiffs which was a consumer credit contracts to which the Credit Contracts and Consumer Finance Act (**CCCFA**) applies (**ANZ Loan**).
 - (c) During the ANZ Relevant Period, on 23 November 2015, ANZ made an agreed change to the ANZ representative plaintiffs' ANZ Loan, fixing interest on the Loan at 4.49% p.a for a period of three years (**ANZ Agreed Change**).
 - (d) Pursuant to s 22 of the CCCFA, each and every time ANZ made an agreed change to the ANZ representative plaintiffs' ANZ Loan, ANZ was required to provide the ANZ representative plaintiffs with full particulars of the change within the prescribed timeframe (**Variation Disclosure**).
 - (e) ANZ purported to provide the ANZ representative plaintiffs with Variation Disclosure in relation to the ANZ Agreed Change in a loan variation letter dated 23 November 2015 (**Loan Variation Letter**).
 - (f) Due to a coding error in the computer system that generated the figures in the Loan Variation Letter, the Loan Variation Letter contained incorrect information in respect of:
 - (i) the total amount payable under the ANZ Loan;
 - (ii) the total amount of interest payable under the ANZ Loan;
 - (iii) the amount of the new regular payment;
 - (iv) the amount of the last repayment.
 - (g) Due to the inclusion of the incorrect information listed above, the Loan Variation Letter did not comply with s 22 of the CCCFA and therefore did not constitute Variation Disclosure.
 - (h) To date, ANZ has not provided the ANZ representative plaintiffs with Variation Disclosure in relation to the ANZ Agreed Change.
 - (i) ANZ is liable on the first cause of action:

- (i) ANZ breached s 22 by failing to provide the ANZ representative plaintiffs with Variation Disclosure in relation to the ANZ Agreed Change within the prescribed timeframes or at all.
- (ii) Pursuant to s 99(1A) of the CCCFA, the ANZ representative plaintiffs were and are not liable for credit fees, default fees or interest charges (**costs of borrowing**) in relation to the period during which ANZ failed and is failing to provide them with Variation Disclosure in relation to the ANZ Agreed Change (**ANZ Breach Period**).
- (iii) ANZ was and is not entitled to receive or retain costs of borrowing in relation to the ANZ Breach Period paid to it by the ANZ representative plaintiffs (**ANZ Breach Period Payments**).
- (iv) Pursuant to s 48 of the CCCFA, ANZ was and is required to fully refund or credit the Breach Period Payments to the ANZ representative plaintiffs.
- (v) In breach of s 48 ANZ has not fully refunded or credited the Breach Period Payments to the ANZ representative plaintiffs.
- (j) The ANZ representative plaintiffs have suffered loss as a result of ANZ's breach of s 48 and are therefore entitled to relief under ss 93(a) and 94(1)(a) of the CCCFA.
- (k) In the alternative, the ASB representative plaintiffs are entitled to statutory damages under ss 88 and 89 of the CCCFA.
- (l) ANZ has no reasonably arguable defence to judgment on the first cause of action.
- (m) The overall interests of justice favour the entry of summary judgment on the first cause of action.

Summary judgment - ASB

- 7. The entry of summary judgment in favour of the ASB representative plaintiffs against ASB on the second cause of action in the ASOC in relation to pleaded agreed changes to their Post Amendment ASB Loans (as defined below) is sought on the grounds that:
 - (a) The ASB representative plaintiffs' claim relates to ASB's conduct during the period between 6 June 2015 and 18 June 2019 (**ASB Relevant Period**).

- (b) During the ASB Relevant Period, the ASB representative plaintiffs had loans with ASB which were consumer credit contracts to which the CCCFA applies and which were entered into after 6 June 2015 (**Post Amendment ASB Loans**).
- (c) During the ASB Relevant Period, the ASB representative plaintiffs requested and ASB made agreed changes to the ASB representative plaintiffs' Post Amendment ASB Loans (**ASB Agreed Changes**).
- (d) Pursuant to s 22 of the CCCFA, each and every time ASB made an ASB Agreed Change, ASB was required to provide the ASB representative plaintiffs with Variation Disclosure.
- (e) ASB did not provide Variation Disclosure to the ASB representative plaintiffs when it made ASB Agreed Changes.
- (f) To date, ASB has not provided the ASB representative plaintiffs with Variation Disclosure in relation to the ASB Agreed Changes.
- (g) ASB is liable on the second cause of action in relation to the the ASB Agreed Changes:
 - (i) ASB breached s 22 by failing to provide the ASB representative plaintiffs with Variation Disclosure in relation to the ASB Agreed Changes.
 - (ii) Pursuant to s 99(1A) of the CCCFA, the ASB representative plaintiffs were and are not liable for costs of borrowing in relation to any periods during which ASB failed and is failing to provide them with Variation Disclosure in relation to the ASB Agreed Changes (**ASB Breach Periods**).
 - (iii) ASB was and is not entitled to receive or retain costs of borrowing in relation to the ASB Breach Periods paid to it by the ASB representative plaintiffs (**ASB Breach Period Payments**).
 - (iv) Pursuant to s 48 of the CCCFA, ASB was and is required to fully refund or credit the ASB Breach Period Payments to the ASB representative plaintiffs.
 - (v) In breach of s 48 ASB has not fully refunded or credited the ASB Breach Period Payments to the ASB representative plaintiffs.

- (h) The ASB representative plaintiffs have suffered loss as a result of ASB's breaches of s 48 and are therefore entitled to relief under ss 93(a) and 94(1)(a) of the CCCFA.
 - (i) In the alternative, the ASB representative plaintiffs are entitled to statutory damages under ss 88 and 89 of the CCCFA.
 - (j) ASB has no reasonably arguable defence to judgment on the second cause of action in relation to the ASB Agreed Changes.
 - (k) The overall interests of justice favour the entry of summary judgment on the second cause of action.
8. This application is made in reliance on:
- (a) rules 1.2, 1.6, 4.24 (representative orders) 12.1 -12.4, (summary judgment) 14.1, 14.2 (costs) 18.7 and 18.8 (notification) of the High Court Rules;
 - (b) *R J Flowers v Burns* [1987] 1 NZLR 260 (HC); *Credit Suisse v Houghton* [2014] 1 NZLR 541 (SC); *Cridge v Studorp* [2017] NZCA 376; *Southern Response Earthquake Services Ltd v Ross* [2020] NZSC 126; *Southern Response Earthquake Services Ltd v Dodds* [2019] NZCA 431, (2019) 25 PRNZ 33; *Pemberton v Chappell* [1987] 1 NZLR 1 (CA); and *Krukziener v Hanover Finance Ltd* [2008] NZCA 187 (CA);
 - (c) the Court's inherent jurisdiction;
 - (d) the affidavits of Andrew Bevan (ANZ representative plaintiff) Anthony Simons, Philip Dunbar, Bruno Bickerdike, Glenn Marvin, Anna Cuthbert (ASB representative plaintiffs), Karen Chow, Philip Newland, John Walker, Jonathan Woodhams and Tina Payne.

Dated: 28 January 2021



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Scott Russell
Solicitor for the plaintiffs

SCHEDULE 1: REPRESENTATIVE ORDERS – ANZ REPRESENTATIVE PLAINTIFFS

1. The second plaintiffs (the **ANZ representative plaintiffs**) are granted leave pursuant to rule 4.24(b) of the High Court Rules to bring the proceeding CIV 2021-404-1190 against ANZ Bank New Zealand Limited (**ANZ**) as a representative action on behalf of all persons who have the same interest in the subject matter of the proceeding, on the basis that:
 - (a) they had one or more home or personal loans with ANZ between 30 May 2015 and 28 May 2016 (**Relevant Period**) which were or are consumer credit contracts to which the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) applied or applies (**ANZ Loan**);
 - (b) they requested and ANZ made one or more agreed changes to the terms of one or more of their ANZ Loans during the Relevant Period (**Agreed Changes**);
 - (c) ANZ sent them at least one a loan variation letter intended to disclose the full particulars of the Agreed Change(s), which, as a result of a loan calculator error, contained incorrect information in respect of one or more of the following:
 - (i) the total amount payable under the Loan;
 - (ii) the total amount of interest payable under the Loan;
 - (iii) the amount of the new regular payment;
 - (iv) the total number of payments to be made;
 - (v) the date of final payment.

(the **ANZ class members**)
2. Any ANZ class member may opt out of the ANZ representative plaintiffs' representative action by completing an opt out election form approved by the High Court for that purpose, and sending it to the ANZ representative plaintiffs' solicitors by registered post to Level 1, 40 Eden Crescent, Auckland 1010 or by email to scott.russell@russelllegal.co.nz on or by 5pm on [a date to be fixed by the High Court].

3. Any ANZ class member may proactively opt in to the ANZ representative plaintiffs' representative action by completing the online registration process at www.bankingclassaction.com by 5pm on [a date to be fixed by the High Court].
4. Any ANZ class member who neither opts out of or in to the ANZ representative plaintiffs' representative action shall remain an ANZ class member represented by the ANZ representative plaintiffs' in the representative action.
5. The ANZ representative plaintiffs will notify ANZ and the Court periodically of details of opt outs and opt ins.
6. The ANZ representative plaintiffs may settle or discontinue this proceeding only with the leave of the Court.
7. This order is to take effect from the date on which the proceeding was commenced.
8. Leave is reserved to the ANZ representative plaintiffs to apply for further directions under rule 2.24 if necessary or appropriate in the future.

SCHEDULE 2: REPRESENTATIVE ORDERS – ASB REPRESENTATIVE PLAINTIFFS

1. The first and third to fifth plaintiffs (the **ASB representative plaintiffs**) are granted leave pursuant to rule 4.24(b) of the High Court Rules to bring the proceeding CIV 2021-404-1190 against ASB Bank Limited (**ASB**) as a representative action on behalf of all persons who have the same interest in the subject matter of the proceeding, on the basis that:
 - (a) they had one or more home or personal loans with ASB between 6 June 2015 and 18 June 2019 (**Relevant Period**) which were or are consumer credit contracts to which the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) applied or applies (**ASB Loan**);
 - (b) they requested and ASB made one or more agreed changes to one or more of their ASB Loans during the Relevant Period (**Agreed Changes**);
 - (c) ASB did not provide them with disclosure under s 22 of the CCCFA in relation to the Agreed Changes within the prescribed timeframes.

(the **ASB class members**)
2. Any ASB class member may opt out of the ASB representative plaintiffs' representative action by completing an opt out election form approved by the High Court for that purpose, and sending it to the ASB representative plaintiffs' solicitors by registered post to Level 1, 40 Eden Crescent, Auckland 1010 or by email to scott.russell@russelllegal.co.nz on or by 5pm on [a date to be fixed by the High Court].
3. Any ASB class member may proactively opt in to the ASB representative plaintiffs' representative action by completing the online registration process at www.bankingclassaction.com by 5pm on [a date to be fixed by the High Court].
4. Any ASB class member who neither opts out of or in to the ASB representative plaintiffs' representative action shall remain an ASB class member represented by the ASB representative plaintiffs' in the representative action.
5. The ASB representative plaintiffs will notify ASB and the Court periodically of details of opt outs and opt ins.
6. The ASB representative plaintiffs may settle or discontinue this proceeding only with the leave of the Court.
7. This order is to take effect from the date on which the proceeding was commenced.

8. Leave is reserved to the ASB representative plaintiffs to apply for further directions under rule 2.24 if necessary or appropriate in the future.

SCHEDULE 3: COMMON FUND ORDERS – ANZ

1. If the second plaintiffs' (the **ANZ representative plaintiffs**) representative action against ANZ Bank New Zealand Limited (**ANZ**) CIV 2021-404-1190 is settled with or judgment is entered against ANZ:
 - (a) the Project Costs and other costs which LPF Litigation Funding No. 33 Limited (**LPF**) is entitled to pursuant to clause 5.1(a) of the Deed for Provision of Services in Respect of Litigation (ANZ Litigation) between LPF, CASL Management Pty Ltd, the ANZ representative plaintiffs and ANZ Class Members who have opted in to the representative action (**ANZ Deed**), will be paid from the total, gross amount payable or credited (by whatever means whatsoever) by ANZ to the ANZ Class Members (**Resolution Sum**) before any payments or credits are made to the ANZ representative plaintiffs or the other ANZ Class Members; and
 - (b) LPF's CFO Services Fee (or such lower fee as the Court considers reasonable at that time) will be calculated with reference to and paid to LPF from the Resolution Sum before any payments are made to the ANZ representative plaintiffs or the other ANZ Class Members.
2. The mechanics of the payments referred to above and those made to the ANZ representative plaintiffs or other ANZ Class Members from the Resolution Sum will be as directed by the Court, or if Court approval is not required, as agreed in writing by ANZ, the ANZ representative plaintiffs and LPF.
3. In this Order:
 - (a) **Project Costs** and **Services** have the meanings defined in the ANZ Deed.
 - (b) **ANZ Class Members** means all ANZ class members as defined in the Representative Orders who have not opted out and are entitled to receive a payment from ANZ pursuant to the settlement or judgment.
 - (c) The **CFO Services Fee** shall be a sum equivalent to:

If Project Costs are less than \$1m and the Resolution Sum is less than \$10m	21% of the Resolution Sum
If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$10m but less than \$100m	16% of the Resolution Sum

<p>If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$100m</p>	<p>The aggregate of:</p> <ul style="list-style-type: none"> • 16% of the Resolution Sum on the initial \$100m of the Resolution Sum; and • on any amount of the Resolution Sum greater than \$100m, 16% less 0.5% for each additional \$10m increment of Resolution Sum above \$100m, provided that such reduction shall not exceed 6% in aggregate.
<p>If Project Costs are equal to or greater than \$1m and the Resolution Sum is less than \$10m</p>	<p>23.5% of the Resolution Sum</p>
<p>If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$10m</p>	<p>20% of the Resolution Sum</p>
<p>If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$100m</p>	<p>The aggregate of:</p> <ul style="list-style-type: none"> • 20% of the Resolution Sum on the initial \$100m of the Resolution Sum; and • on any amount of the Resolution Sum greater than \$100m, 16% less 0.5% for each additional \$10m increment of Resolution Sum above \$100m, provided that such reduction shall not exceed 6% in aggregate.

Provided, however, that:

- (a) the CFO Services Fee shall increase by an amount equivalent to 2.5% of the Resolution Sum in the event that LPF provides the Services in respect of any appeal;
- (b) in no event shall the CFO Service Fee payable to LPF exceed 50% of the amount equal to the Resolution Sum less the Project Costs; and
- (d) in no event shall the CFO Services Fee payable to LPF exceed the aggregate fee that would be payable to any other litigation funder that actually funds proceedings relating to a claim against the Defendants similar to the Claims in the same period, had the litigation funder provided services to the Plaintiffs that are equivalent to the Services and otherwise on the same terms as set out in the ANZ Deed.

SCHEDULE 4: COMMON FUND ORDERS – ASB

1. If the first and third to fifth plaintiffs' (the **ASB representative plaintiffs**) representative action against ASB Bank Limited (**ASB**) CIV 2021-404-1190 is settled with or judgment is entered against ASB:
 - (a) the Project Costs and other costs which LPF Litigation Funding No. 33 Limited (**LPF**) is entitled to pursuant to clause 5.1(a) of the Deed for Provision of Services in Respect of Litigation (ASB Litigation) between LPF, CASL Management Pty Ltd, the ASB representative plaintiffs and ANZ Class Members who have opted in to the representative action (**ASB Deed**), will be paid from the total, gross amount payable or credited (by whatever means whatsoever) by ASB to the ASB Class Members (**Resolution Sum**) before any payments or credits are made to the ASB representative plaintiffs or the other ASB Class Members; and
 - (b) LPF's CFO Services Fee (or such lower fee as the Court considers reasonable at that time) will be calculated with reference to and paid to LPF from the Resolution Sum before any payments are made to the ASB representative plaintiffs or the other ASB Class Members.
2. The mechanics of the payments referred to above and those made to the ANZ representative plaintiffs or other ANZ Class Members from the Resolution Sum will be as directed by the Court, or if Court approval is not required, as agreed in writing by ASB, the ASB representative plaintiffs and LPF.
3. In this Order:
 - (a) **Project Costs** and **Services** have the meanings defined in the ANZ Deed.
 - (b) **ASB Class Members** means all ANZ class members as defined in the Representative Orders who have not opted out and are entitled to receive a payment from ASB pursuant to the settlement or judgment.
 - (c) The **CFO Services Fee** shall be a sum equivalent to:

If Project Costs are less than \$1m and the Resolution Sum is less than \$10m	21% of the Resolution Sum
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<p>If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$10m but less than \$100m</p>	<p>16% of the Resolution Sum</p>
<p>If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$100m</p>	<p>The aggregate of:</p> <ul style="list-style-type: none"> • 16% of the Resolution Sum on the initial \$100m of the Resolution Sum; and • on any amount of the Resolution Sum greater than \$100m, 16% less 0.5% for each additional \$10m increment of Resolution Sum above \$100m, provided that such reduction shall not exceed 6% in aggregate.
<p>If Project Costs are equal to or greater than \$1m and the Resolution Sum is less than \$10m</p>	<p>23.5% of the Resolution Sum</p>
<p>If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$10m</p>	<p>20% of the Resolution Sum</p>
<p>If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$100m</p>	<p>The aggregate of:</p> <ul style="list-style-type: none"> • 20% of the Resolution Sum on the initial \$100m of the Resolution Sum; and • on any amount of the Resolution Sum greater than \$100m, 16% less 0.5% for each additional \$10m increment of Resolution Sum above \$100m, provided that such reduction shall not exceed 6% in aggregate.

Provided, however, that:

- (c) the CFO Services Fee shall increase by an amount equivalent to 2.5% of the Resolution Sum in the event that LPF provides the Services in respect of any appeal;
- (d) in no event shall the CFO Service Fee payable to LPF exceed 50% of the amount equal to the Resolution Sum less the Project Costs; and
- (e) in no event shall the CFO Services Fee payable to LPF exceed the aggregate fee that would be payable to any other litigation funder that actually funds proceedings relating to a claim against the Defendants similar to the Claims in the same period, had the litigation funder provided services to the Plaintiffs that are equivalent to the Services and otherwise on the same terms as set out in the ASB Deed.

SCHEDULE 5: NOTIFICATION ORDERS – ANZ

1. Within [15 working days] of the date on which the Representative Orders are made, the second plaintiffs' (the **ANZ representative plaintiffs**) solicitors shall:
 - (a) publish on a website created to provide information regarding the ANZ representative plaintiffs' representative action against ANZ Bank New Zealand Limited (**ANZ**) (CIV 2021 404-1190), www.bankingclassaction.com (**Website**):
 - (i) the Opt Out Notice set out in **Annexure 1**;
 - (ii) the statement of claim filed on 25 June 2021 and amended statement of claim filed on 28 January 2022;
 - (iii) any statements of defence filed;
 - (iv) the amended notice of interlocutory application by the plaintiffs for leave to bring proceedings as representative action and for ancillary orders and summary judgment dated 28 January 2022;
 - (v) any notices of opposition to the interlocutory application;
 - (vi) the Representative Orders;
 - (vii) the Common Fund Orders;
 - (viii) the ANZ Opt Out Election Form attached to the Representative Action Letter set out in **Annexure 2**;
 - (b) provide, on the Website, means by which ANZ class members can opt in to the ANZ representative plaintiffs' representative action.
2. Within [15 working days] of the date on which the Representative Orders are made, ANZ shall send a copy of the ANZ Representative Action Letter set out in **Annexure 2** to all ANZ class members (being persons who fit the criteria in the Representative Order) by:
 - (a) sending a printed copy of the ANZ Representative Action Letter by registered mail to the last known postal or physical address that ANZ has on file for each ANZ class member;

- (b) sending an electronic copy of the ANZ Representative Action Letter by email to any email address or addresses that ANZ has on file for each ANZ class member, together with an electronic read receipt request;
- (c) sending notifications via any other channels by which ANZ communicates with its customers (including, for example, notifications by text message and via online and mobile banking applications) to all ANZ class members stating:

Our records indicate that you are may be class member in an opt out representative action against ANZ relating to a loan calculator problem commenced in the High Court. Please read the ANZ Representative Action Letter at [insert link] and visit www.bankingclassaction.com for more information.

- 3. Also within [15 working days] of the date on which the Representative Orders are made, ANZ shall publish the ANZ Social Media Notifications set out in **Annexure 3** to its accounts on all social media platforms on which it has a presence (including Instagram, Facebook and Twitter). ANZ shall not remove the ANZ Social Media Notifications from its accounts until the representative action is concluded, whether by judgment or settlement.
- 4. Within [10 working days] of the date on which the time period in paragraphs 2 and 3 above ends, ANZ shall file and serve an affidavit describing the steps it took to comply with paragraphs 2 and 3, and appending:
 - (a) a list of the names of the persons it has sent the ANZ Representative Action Letter to, including details for each such person as to whether the registered mail was delivered or returned to sender, and whether there was any acknowledgement of receipt of the email or any bounce back non-delivery message;
 - (b) screen shots of the Social Media Notifications as published on ANZ's social media accounts.
- 5. All reasonable costs and disbursements incurred in giving effect to these Notification Orders shall be met in the first instance by the party responsible for the steps taken but shall be considered to be costs in the cause.

ANNEXURE 1: ANZ OPT OUT NOTICE

This notice is important

1. A representative action has been commenced in the High Court of New Zealand by ANZ customers (the **ANZ representative plaintiffs**) against ANZ Bank New Zealand Limited (**ANZ**) (CIV 2021-404-1190). The action is by and on behalf of all ANZ customers who meet all of the following criteria:
 - (a) they had one or more home or personal loans with ANZ between 30 May 2015 and 28 May 2016 (**Relevant Period**) which were or are consumer credit contracts to which the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) applied or applies (**ANZ Loan**);
 - (b) they requested and ANZ made one or more agreed changes to the terms of one or more of their ANZ Loans during the Relevant Period (**Agreed Changes**);
 - (c) ANZ sent them a loan variation letter intended to disclose the full particulars of the Agreed Change(s), which, as a result of a loan calculator error, contained incorrect information in respect of one or more of the following:
 - (i) the total amount payable under the Loan;
 - (ii) the total amount of interest payable under the Loan;
 - (iii) the amount of the new regular payment;
 - (iv) the total number of payments to be made;
 - (v) the date of final payment.

(**ANZ class members**)

2. This notice is published to provide information to persons who might be ANZ class members and therefore may be affected by the representative action. **This notice contains important information regarding your legal rights and we encourage you to read it carefully.** If you have any questions or concerns, you should seek legal advice.

What is a representative action?

3. A representative action is an action brought by one or more persons (representative plaintiffs) on his or her own behalf and on behalf of a class of persons (class

members) against a defendant or defendants where the representative plaintiffs and the class members have the same interest in the subject matter of the proceeding.

4. Class members who have not opted out of the representative action are “bound” by the outcome in the legal proceedings. A binding outcome can occur in two ways, being either by judgment following trial or an agreed settlement at any time. If there is a judgment or settlement of a representative action, class members will not be able to pursue the same claim and may not be able to pursue similar claims against the defendant(s) in other legal proceedings.

The representative action against ANZ

5. The ANZ representative plaintiffs allege that ANZ breached section 22 of the CCCFA by failing to provide them and ANZ class members with variation disclosure when it made agreed changes made to their ANZ Loans during the Relevant Period.
6. Pursuant to s 22 of the CCCFA, every time that ANZ makes an agreed change to an ANZ Loan, it is required to ensure the customer is provided with disclosure of the full particulars of the change within prescribed timeframes (**Variation Disclosure**).
7. During the Relevant Period, when ANZ made agreed changes to the ANZ class members’ ANZ Loans, it sent them Loan Variation Letters, intended to contain Variation Disclosure in respect of the changes.
8. The Loan Variation Letters were generated by a loan calculator which calculated the figures to be inputted into the Letters.
9. Due to a coding error, the loan calculator failed to take into account any interest that had been incurred on the ANZ Loans but had not yet been charged (**Loan Calculator Problem**).
10. As a result of the Loan Calculator Problem, the Loan Variation Letters sent to the ANZ class members during the Relevant Period contained incorrect information in respect of one or more of the following:
 - (a) the total amount payable under the Loan;
 - (b) the total amount of interest payable under the Loan;
 - (c) the amount of the new regular payment;
 - (d) the total number of payments to be made;

- (e) the date of final payment.

(Incorrect Information)

11. In 2018 and 2019, ANZ wrote to certain ANZ class members informing them of the Loan Calculator Problem and credited their Loans or otherwise paid them various amounts.
12. In March 2020, ANZ entered into a settlement agreement with the Commerce Commission relating to the Loan Calculator Problem pursuant to which it agreed to make further payments to ANZ class members.
13. In May 2020, ANZ wrote to certain ANZ class members informing them that following discussions with the Commission it had agreed to make further payments in relation to the Loan Calculator Problem and paid or credited them various amounts.
14. The ANZ representative plaintiffs claim that:
 - (a) ANZ breached s 22 by failing to provide them and the ANZ class members with Variation Disclosure when it made agreed changes to their ANZ Loans during the Relevant Period. They say that the Loan Variation Letters did not comply with s 22, and therefore did not constitute Variation Disclosure, because they contained the Incorrect Information.
 - (b) In relation to ANZ Loans entered into after 6 June 2015, pursuant to s 99(1A) of the CCCFA, they and the ANZ class members were and are not liable for any costs of borrowing (including credit fees, default fees and interest charges) in relation to periods during which ANZ failed and is failing to comply with s 22.
 - (c) In relation to ANZ Loans entered into before 6 June 2015, pursuant to s 99(1) of the CCCFA, they and the other ANZ class members were and are not liable for any costs of borrowing in relation to periods during which ANZ failed and is failing to comply with s 22.
 - (d) To the extent that they and the ANZ class members paid ANZ costs of borrowing in relation to periods during which it was or is failing to comply with s 22 (**Breach Period Payments**), ANZ was and is not entitled to receive those amounts.

- (e) Pursuant to s 48 of the CCCFA, ANZ was and is required to refund or credit the Breach Period Payments to them and ANZ class members as soon as practicable.
 - (f) Although ANZ has paid or credited some money to the ANZ representative plaintiffs and the ANZ class members in relation to the Loan Calculator Problem, it has not fully refunded or credited the Breach Period Payments.
 - (g) As a result, the ANZ representative plaintiffs and the ANZ class members have suffered loss or damage in the amount of the Breach Periods Payments paid by them less any portion of those payments already refunded or credited.
15. The ANZ representative plaintiffs are seeking orders from the Court pursuant to ss 93(a) and 94(1)(a) of the CCCFA directing ANZ to refund or credit all Breach Period Payments to them and the ANZ class members, as well as certain declarations.
16. In the alternative, the ANZ representative plaintiffs seek statutory damages for them and the ANZ class members under ss 88 and 89 of the CCCFA.

This is an opt out representative action, but you can proactively opt in

17. The Court has made an order that this representative action proceed on an “opt out” basis. That means that if you are an ANZ class member, you will be bound by the outcome of the legal proceedings unless you elect to opt out of the representative action.
18. If you wish to opt out of the representative action you must fill in the Opt Out Election Form, which can also be downloaded from www.bankingclassaction.com and send it to the representative plaintiffs’ solicitors, Russell Legal:
- (a) by registered post to Level 1, 40 Eden Crescent, Auckland 1010; or
 - (b) by email to scott.russell@russelllegal.co.nz.
19. You must send your Opt Out Election Form in time for it to be received by Russell Legal by 5pm on [insert date].
20. Although not strictly necessary in order for you to remain an ANZ class member and be bound by the outcome of the legal proceeding, you may choose to proactively “opt in” to the representative action by registering with the Russell Legal online on at www.bankingclassaction.com.

What happens if you do not opt out of the representative action

21. If you do not opt out of the representative action, you will remain an ANZ class member and will be bound by (and if successful benefit from) any judgment on the representative action, or by any settlement reached at any time.
22. You will not be liable to contribute to the legal costs of the proceeding unless it is successful and you will in no circumstances be liable for any adverse costs awards made against the ANZ representative plaintiffs. Under agreements with the ANZ representative plaintiffs and ANZ class members who opt in to the action (**Funding Terms**), litigation funder LPF Litigation Funding No. 33 (**LPF**) will provide funding of the legal and other costs of the representative action, subject to certain conditions being satisfied. The action is also being funded by Australian funder CASL Management Pty Ltd pursuant to a co-funding agreement with LPF.
23. It is expected that this representative action will proceed in two stages:
 - (a) In the first stage, which will proceed by way of summary judgment (that is on the basis of affidavit evidence instead of a full trial) the issues of whether ANZ is liable to the ANZ representative plaintiffs, and whether certain declarations relating to the operation of the relevant provisions of the CCCFA should be made will be decided.
 - (b) If the ANZ representative plaintiffs are successful in stage 1, the proceeding will progress to stage 2. In stage 2, all issues not addressed in stage 1 will be tried and determined. If you do not opt out, at stage 2 some input may be needed from you in order to advance particular aspects of your claim.
24. If the representative action is ultimately successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the ANZ representative plaintiffs and ANZ class members, after deduction of the amounts to which the litigation funder is entitled pursuant to Common Fund Orders made by the Court.
25. The Common Fund Orders require all class members to contribute to the costs of the action (if successful) and provide that:
 - (a) The ANZ representative plaintiffs' costs incurred in the proceeding and funded by LPF (Project Costs) will be paid out of the total sum received from ANZ on settlement or judgment (**Resolution Sum**);

(b) LPF's CFO Services Fee (i.e. the commission it charges for its services in funding the action) will be calculated with reference to and deducted from the Resolution Sum.

26. The CFO Service Fee shall be a sum calculated on the basis set out below, or such lower fee as the court considers reasonable at the time.

If Project Costs are less than \$1m and the Resolution Sum is less than \$10m	21% of the Resolution Sum
If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$10m but less than \$100m	16% of the Resolution Sum
If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$100m	The aggregate of: <ul style="list-style-type: none"> • 16% of the Resolution Sum on the initial \$100m of the Resolution Sum; and • on any amount of the Resolution Sum greater than \$100m, 16% less 0.5% for each additional \$10m increment of Resolution Sum above \$100m, provided that such reduction shall not exceed 6% in aggregate.
If Project Costs are equal to or greater than \$1m and the Resolution Sum is less than \$10m	23.5% of the Resolution Sum
If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$10m	20% of the Resolution Sum
If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$100m	The aggregate of: <ul style="list-style-type: none"> • 20% of the Resolution Sum on the initial \$100m of the Resolution Sum; and • on any amount of the Resolution Sum greater than \$100m, 16% less 0.5% for each additional \$10m

	increment of Resolution Sum above \$100m, provided that such reduction shall not exceed 6% in aggregate.
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Provided, however, that:

- (A) the CFO Services Fee shall increase by an amount equivalent to 2.5% of the Resolution Sum in the event that LPF provides the Services in respect of any appeal;
 - (B) in no event shall the CFO Service Fee payable to LPF exceed 50% of the amount equal to the Resolution Sum less the Project Costs; and
 - (C) in no event shall the CFO Services Fee payable to LPF exceed the aggregate fee that would be payable to any other litigation funder that actually funds proceedings relating to a claim against the Defendants similar to the Claims in the same period, had the litigation funder provided services to the Plaintiffs that are equivalent to the Services and otherwise on the same terms as set out in the Funding Terms.
27. The Common Fund Orders are available at www.bankingclassaction.com and it is highly recommended that you view and consider them before deciding whether or not to opt out. If you do not understand the effect of the Common Fund Orders, seek independent legal advice.
28. In short, if the action is successful, you may recover a significant portion of the costs of borrowing you paid to ANZ during the period ANZ was in breach of s 22 in relation to agreed changes made to your ANZ Loan or Loans during the Relevant Period.
29. If the representative action is unsuccessful, or is not as successful as you would have liked, you will not be able to pursue the same claims, and may not be able to pursue related claims, against ANZ in other legal proceedings, but you will not be liable for any sums to the Bank.
30. ANZ class members should note that:
- (a) In a judgment following a hearing, the High Court will decide various factual and legal issues in respect of the claims made by the ANZ representative plaintiffs and ANZ class members. Unless those decisions are successfully appealed, they will bind the ANZ representative plaintiffs, the ANZ class

members and ANZ. That means that, if there are other proceedings between a class member and ANZ, it is likely that neither side will be able to raise arguments in that proceeding that are inconsistent with the factual or legal issues decided in the representative action.

- (b) In a settlement of a representative action, the settlement process is likely to extinguish all rights to compensation which an ANZ class member might have against ANZ which arise in any way out of the events or transactions to which the representative action relates.
31. If you consider that you have claims against ANZ which are based on your individual circumstances or are otherwise additional to the claims described in the representative action, then it is important you seek independent legal advice about the potential binding effects of the representative action before deciding whether to opt out.

What happens if you opt in to the representative action

32. If you choose to opt in to the representative action, you will be in the same position as if you do not choose to opt out, except that you will:
- (a) become a party to the Funding Terms;
 - (b) become a client of the ANZ representative plaintiffs' solicitors and party to their terms of engagement;
 - (c) receive regular updates regarding the progress of the representative action.

What happens if you choose to opt out of the representative action

33. If you opt out of the proceeding, you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the representative action. However, you will be free to bring your own claim against ANZ, provided you file proceedings within the time limit applicable to your claim. If you are thinking about bringing your own proceeding, you should seek legal advice prior to opting out of the representative action, not least because time limits may run out for filing new claims.

Are you an ANZ class member?

34. You are an ANZ class member if:
- (a) you requested and ANZ made agreed changes to the terms of your ANZ Loan(s) during the Relevant Period; and

- (b) ANZ sent you a Loan Variation Letter which, as a result of a Loan Calculator Problem, contained Incorrect Information.
35. It is highly likely that you are an ANZ class member if you received from ANZ:
- (a) between June 2018 and April 2019, a letter informing you of and apologising for the Loan Calculator Problem together with a credit to your home or personal loan or one of your ANZ accounts;
 - (b) in or around May 2020, a letter informing you that following discussions with the Commerce Commission, ANZ agreed to make further payments in relation to the Loan Calculator Problem, together with payment; and/or
 - (c) a letter informing you of this representative action.
36. If you are unsure whether you are an ANZ class member, seek your own legal advice without delay.

Next steps

37. If you are an ANZ class member and you wish to be bound by the outcome of the representative action, you do not need to do anything. However, if you would like to opt in and receive regular updates, you need to complete the online registration process at www.bankingclassaction.com by [insert date].
38. If you are an ANZ class member and do not wish to be bound by the outcome of the representative action, you need to fill in an Opt Out Election Form and return it to Russell Legal by 5pm on [date]. It is important that you return your Form by the due date, otherwise it will not be effective.

Relevant documents can be downloaded from www.bankingclassaction.com

39. The following documents relevant to the representative action can be downloaded from www.bankingclassaction.com:
- (a) the statement of claim filed on 25 June 2021 and amended statement of claim dated 28 January 2022;
 - (b) any statements of defence filed;
 - (c) the amended notice of interlocutory application by the plaintiffs for leave to bring proceedings as representative action and for ancillary orders and summary judgment dated 28 January 2022;

- (d) any notices of opposition to the interlocutory application;
- (e) the Representative Orders;
- (f) the Common Fund Orders.

40. If you think you are or may be an ANZ class member, it is recommended that you read these documents as they will assist you to understand the representative action and the orders that have been sought and made by the Court to date.
41. Please consider the above matters carefully. If you are unsure about any aspect of the information provided in this notice, you should visit www.bankingclassaction.com, or seek your own legal advice.

ANNEXURE 2: ANZ REPRESENTATIVE ACTION LETTER

Dear [valued customer],

Representative action against ANZ in relation to alleged breaches of CCCFA disclosure obligations

1. We are writing to let you know that a representative action has been commenced in the High Court of New Zealand by two customers of ANZ (the **ANZ representative plaintiffs**) against ANZ. The action is by and on behalf of every ANZ customer who meets the following criteria:
 - (a) they had one or more home or personal loans with ANZ between 30 May 2015 and 28 May 2016 (**Relevant Period**) which were or are consumer credit contracts to which the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) applied or applies (**ANZ Loan**);
 - (b) they requested and ANZ made one or more agreed changes to the terms of one or more of their ANZ Loans during the Relevant Period (**Agreed Changes**);
 - (c) ANZ sent them a loan variation letter intended to disclose the full particulars of the Agreed Change(s), which, as a result of a loan calculator error, contained incorrect information in respect of one or more of the following:
 - (i) the total amount payable under the Loan;
 - (ii) the total amount of interest payable under the Loan;
 - (iii) the amount of the new regular payment;
 - (iv) the total number of payments to be made;
 - (v) the date of final payment.

(ANZ class members)
2. We are writing to you because our records indicate that you may be an ANZ class member and therefore may be affected by the representative action. **This letter contains important information regarding your legal rights and we encourage**

you to read it carefully. If you have any questions or concerns, you should seek legal advice.

What is a representative action?

3. A representative action is an action brought by one or more persons (representative plaintiffs) on his or her own behalf and on behalf of a class of persons (class members) against a defendant or defendants where the representative plaintiffs and the class members have the same interest in the subject matter of the proceeding.
4. Class members who have not opted out of the representative action are “bound” by the outcome in the legal proceedings. A binding outcome can occur in two ways, being either by judgment following a hearing or an agreed settlement at any time. If there is a judgment or settlement of a representative action, class members will not be able to pursue the same claim and may not be able to pursue similar claims against the defendant(s) in other legal proceedings.

What is this representative action about?

5. The ANZ representative plaintiffs allege that ANZ breached section 22 of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) by failing to provide them and ANZ class members with variation disclosure when it made agreed changes made to their ANZ Loans during the Relevant Period.
6. Pursuant to s 22 of the CCCFA, every time that ANZ makes an agreed change to an ANZ Loan, it is required to ensure the customer is provided with disclosure of the full particulars of the change within prescribed timeframes (**Variation Disclosure**).
7. During the Relevant Period, when ANZ made agreed changes to the ANZ class members’ ANZ Loans, it sent them Loan Variation Letters, intended to contain Variation Disclosure in respect of the changes.
8. The Loan Variation Letters were generated by a loan calculator which calculated the figures to be inputted into the Letters.
9. Due to a coding error, the loan calculator failed to take into account any interest that had been incurred on the ANZ Loans but had not yet been charged (**Loan Calculator Problem**).
10. As a result of the Loan Calculator Problem, the Loan Variation Letters sent to the ANZ class members during the Relevant Period contained incorrect information in respect of one or more of the following:

- (a) the total amount payable under the Loan;
- (b) the total amount of interest payable under the Loan;
- (c) the amount of the new regular payment;
- (d) the total number of payments to be made;
- (e) the date of final payment.

(Incorrect Information)

- 11. In 2018 and 2019, ANZ wrote to certain ANZ class members informing of the Loan Calculator Problem and credited their loans or otherwise paid them various amounts.
- 12. In March 2020, ANZ entered into a settlement agreement with the Commerce Commission relating to the Loan Calculator Problem pursuant to which it agreed to make further payments to ANZ class members.
- 13. In May 2020, ANZ wrote to certain ANZ class members informing them that following discussions with the Commission it had agreed to make further payments in relation to the Loan Calculator Problem and paid or credited them various amounts.
- 14. You most likely received both of the letters and payments referred to above.
- 15. The ANZ representative plaintiffs claim that:
 - (a) ANZ breached s 22 by failing to provide them and the ANZ class members with Variation Disclosure when it made agreed changes to their ANZ Loans during the Relevant Period. They say that the Loan Variation Letters did not comply with s 22, and therefore did not constitute Variation Disclosure, because they contained the Incorrect Information.
 - (b) In relation to ANZ Loans entered into after 6 June 2015, pursuant to s 99(1A) of the CCCFA, they and the ANZ class members were and are not liable for any costs of borrowing (including credit fees, default fees and interest charges) in relation to any periods during which ANZ failed and is failing to comply with s 22.
 - (c) In relation to ANZ Loans entered into before 6 June 2015, pursuant to s 99(1) of the CCCFA, they and the ANZ class members were and are not liable for

costs of borrowing in relation to any periods during which ANZ failed and is failing to comply with s 22.

- (d) To the extent that they and the ANZ class members paid ANZ costs of borrowing in relation to periods during which ANZ was in breach of s 22 (**Breach Period Payments**), ANZ was and is not entitled to receive those amounts.
 - (e) Pursuant to s 48 of the CCCFA, ANZ was and is required to refund or credit the Breach Period Payments to them and ANZ class members as soon as practicable.
 - (f) Although ANZ has paid or credited some money to the ANZ representative plaintiffs and the ANZ class members in relation to the Loan Calculator Problem, it has not fully refunded or credited the Breach Period Payments.
 - (g) As a result, the ANZ representative plaintiffs and the ANZ class members have suffered loss or damage in the amount of the Breach Periods Payments paid by them less any portion of those payments already refunded or credited.
16. The ANZ representative plaintiffs are seeking orders from the Court pursuant to ss 93(a) and 94(1)(a) of the CCCFA directing ANZ to refund or credit all Breach Period Payments to them and the ANZ class members, as well as certain declarations.
17. In the alternative, the ANZ representative plaintiffs seek statutory damages for them and the ANZ class members under ss 88 and 89 of the CCCFA.

This is an opt out representative action, but you can proactively opt in

18. The Court has made an order that this representative action proceed on an “opt out” basis. That means that you will be an ANZ class member and bound by the outcome of the legal proceedings unless you opt out of the representative action.
19. If you wish to opt out of the representative action you must fill in the **enclosed** Opt Out Election Form (which can also be downloaded from www.bankingclassaction.com and send it to the Representative Plaintiffs’ solicitors, Russell Legal:
- (a) by registered post to Level 1, 40 Eden Crescent, Auckland 1010; or
 - (b) by email to scott.russell@russelllegal.co.nz.

20. You must send your Opt Out Election Form in time for it to be received by Russell Legal by 5pm on [insert date].
21. Although not strictly necessary in order for you to remain an ANZ class member and be bound by the outcome of the legal proceeding, you may choose to proactively “opt in” to the representative action by registering with Russell Legal online on at www.bankingclassaction.com.

What happens if you do not opt out of the representative action

22. If you do not opt out of the representative action, you will remain an ANZ class member and will be bound by (and if successful benefit from) any judgment on the representative action, or by any settlement reached at any time.
23. It is expected that this representative action will proceed in two stages:
 - (a) In the first stage, which will proceed by way of summary judgment (that is on the basis of affidavit evidence instead of a full trial) the issues of whether ANZ is liable to the ANZ representative plaintiffs, and whether certain declarations relating to the operation of the relevant provisions of the CCCFA should be made will be decided.
 - (b) If the ANZ representative plaintiffs are successful in stage 1, the proceeding will progress to stage 2. In stage 2, all issues not addressed in stage 1 will be tried and determined. If you do not opt out, at stage 2 some input may be needed from you in order to advance particular aspects of your claim.
24. If the representative action is unsuccessful, or is not as successful as you would have liked, you will not be able to pursue the same claims, and may not be able to pursue related claims, against ANZ in other legal proceedings, but you will not be liable for any sums to the bank.
25. We want to emphasise that a decision to remain in the representative action will not have any negative effect on your relationship with us. You are a valued customer of ANZ and although we deny and may defend the case against us, we fully respect your right to pursue your legal rights.

Do I have to pay money to join?

26. No. You do not need to pay anything upfront to participate in the representative action.

27. You will not be liable to contribute to the legal costs of the proceeding unless it is successful and you will in no circumstances will be liable for any adverse costs awards made against the ANZ representative plaintiffs. Under agreements with the ANZ representative plaintiffs and ANZ class members who opt in to the action (**Funding Terms**), litigation funder LPF Litigation Funding No. 33 (**LPF**), will provide funding of the legal and other costs of the representative action, subject to certain conditions being satisfied. The action is also being funded by Australian funder CASL Management Pty Ltd pursuant to a co-funding agreement with LPF.
28. If the representative action is ultimately successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the ANZ representative plaintiffs and ANZ class members, after deduction of the amounts to which the litigation funder is entitled pursuant to Common Fund Orders made by the Court.
29. The Common Fund Orders require all class members to contribute to the costs of the action (if successful) and provide that:
- (a) The ANZ representative plaintiffs' costs incurred in the proceeding and funded by LPF (Project Costs) will be paid out of the total sum received from ANZ on settlement or judgment (**Resolution Sum**);
 - (b) LPF's CFO Services Fee (i.e. the commission it charges for its services in funding the action) will be calculated with reference to and deducted from the Resolution Sum.
30. The CFO Service Fee will be a sum calculated on the basis set out below or such lower fee as the Court considers reasonable at the relevant time:

If Project Costs are less than \$1m and the Resolution Sum is less than \$10m	21% of the Resolution Sum
If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$10m but less than \$100m	16% of the Resolution Sum
If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$100m	The aggregate of: <ul style="list-style-type: none"> • 16% of the Resolution Sum on the initial \$100m of the Resolution Sum; and

	<ul style="list-style-type: none"> on any amount of the Resolution Sum greater than \$100m, 16% less 0.5% for each additional \$10m increment of Resolution Sum above \$100m, provided that such reduction shall not exceed 6% in aggregate.
If Project Costs are equal to or greater than \$1m and the Resolution Sum is less than \$10m	23.5% of the Resolution Sum
If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$10m	20% of the Resolution Sum
If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$100m	<p>The aggregate of:</p> <ul style="list-style-type: none"> 20% of the Resolution Sum on the initial \$100m of the Resolution Sum; and on any amount of the Resolution Sum greater than \$100m, 16% less 0.5% for each additional \$10m increment of Resolution Sum above \$100m, provided that such reduction shall not exceed 6% in aggregate.

Provided, however, that:

- (A) the CFO Services Fee shall increase by an amount equivalent to 2.5% of the Resolution Sum in the event that LPF provides the Services in respect of any appeal;
- (B) in no event shall the CFO Service Fee payable to LPF exceed 50% of the amount equal to the Resolution Sum less the Project Costs; and
- (C) in no event shall the CFO Services Fee payable to LPF exceed the aggregate fee that would be payable to any other litigation funder that actually funds proceedings relating to a claim against the Defendants similar to the Claims

in the same period, had the litigation funder provided services to the Plaintiffs that are equivalent to the Services and otherwise on the same terms as set out in the Funding Terms.

31. The Common Fund Orders are available at www.bankingclassaction.com and it is highly recommended that you view and consider them before deciding whether or not to opt out. If you do not understand the effect of the Common Fund Orders, seek independent legal advice.
32. In short, if the action is successful, you may recover a significant portion of the costs of borrowing you paid to ANZ during period ANZ was in breach of s 22 in relation to agreed changes made to your ANZ Loan or Loans during the Relevant Period.

What happens if you opt in to the representative action

33. If you choose to opt in to the representative action, you will be in the same position as if you do not choose to opt out, except that you will:
 - (a) become a party to the Funding Terms;
 - (b) become a client of the ANZ representative plaintiffs' solicitors and party to their terms of engagement;
 - (c) receive regular updates regarding the progress of the representative action.

What happens if you choose to opt out of the representative action

34. If you opt out of the proceeding, you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the representative action. However, you will be free to bring your own claim against ANZ, provided you file proceedings within the time limit applicable to your claim. If you are thinking about bringing your own proceeding, you should seek legal advice prior to opting out of the representative action not least because time limits may run out for filing new claims.

Where you can find more information

35. More information regarding the representative action (and a similar representative action against ASB) can be found at www.bankingclassaction.com.
36. As noted above, an Opt Out Election Form is attached to this letter. Such forms can also be downloaded from www.bankingclassaction.com, as can copies of other relevant documents including the statement of claim and any defences, the application for leave to bring proceedings as representative action and for ancillary

orders and summary judgment, any notices of opposition and orders of the Court in relation to the action.

37. You can also opt in to the representative action via the website.
38. Again, we emphasise that ANZ accepts that many customers may wish to be part of this representative action and looks forward to continuing its relationship with all of its customers whether they do so or not.

REPRESENTATIVE ACTION AGAINST ANZ – OPT OUT ELECTION FORM

Simons & Ors v ANZ Bank New Zealand Limited and Anor (CIV 2021 404-1191)

To: Russell Legal
Level 1, 40 Eden Crescent
Auckland, 1010
scott.russell@russelllegal.co.nz

..... (*print name*), a member of the class represented
by the second plaintiffs in the above named representative proceeding, give notice
that.....(*print name*) is opting out of the
representative proceeding.

Date:.....

.....(*signature*)

.....(*print name*)

Class member / lawyer for the class member

ANNEXURE 3: ANZ SOCIAL MEDIA NOTIFICATIONS

For Facebook and any other platform without a character limit

LOAN CALCULATOR PROBLEM REPRESENTATIVE ACTION AGAINST ANZ

A representative action against ANZ on behalf of all customers affected by a loan calculator problem that resulted in ANZ miscalculating interest payable on loans varied by agreement between June 2015 and May 2016 has been commenced in the High Court. The representative plaintiffs are seeking to recover from ANZ all interest and fees paid by affected customers between the date on which they varied their loans and today. The Court has made “opt out” representative orders. This means that if you are an affected customer and do not proactively opt out of the proceedings, you will be bound by them. We urge you to seek further information at www.bankingclassaction without delay.

For Twitter and Instagram

IMPORTANT: A representative action against ANZ on behalf of all customers affected by a loan calculator problem when they varied their loans between June 2015 and May 2016 has been commenced in the High Court. For more information visit www.bankingclassaction.com.

SCHEDULE 6: NOTIFICATION ORDERS – ASB CLASS

1. Within [15 working days] of the date on which the Representative Orders are made, the first and third to fifth plaintiffs' (the **ASB representative plaintiffs**) solicitors shall:
 - (a) publish on a website created to provide information regarding the ASB representative plaintiffs' representative action against ASB Bank Limited (**ASB**) (CIV 2021-404-1191), www.bankingclassaction.com (**Website**):
 - (i) the Opt Out Notice set out in **Annexure 1**;
 - (ii) the statement of claim filed on 25 June 2021 and amended statement of claim dated 28 January 2022
 - (iii) any statements of defence filed;
 - (iv) the amended notice of interlocutory application by the plaintiffs for leave to bring proceedings as representative action and for ancillary orders and summary judgment dated 28 January 2022;
 - (v) any notices of opposition to the interlocutory application;
 - (vi) the Representative Orders;
 - (vii) the Common Fund Orders;
 - (viii) the ASB Opt Out Election Form attached to the Representative Action Letter set out in **Annexure 2**;
 - (b) provide, on the Website, means by which ASB class members can opt in to the ASB representative plaintiffs' representative action.
2. Within [15 working days] of the date on which the Representative Orders are made, ASB shall send a copy of the ASB Representative Action Letter set out in **Annexure 2** to all ASB class members (being persons who fit the criteria in the Representative Order) by:
 - (a) sending a printed copy of the ASB Representative Action Letter by registered mail to the last known postal or physical address that ASB has on file for each ASB class member;

- (b) sending an electronic copy of the ASB Representative Action Letter by email to any email address or addresses that ASB has on file for each ASB class member, together with an electronic read receipt request;
- (c) sending notifications via any other channels by which ASB communicates with its customers (including, for example, notifications by text message and via online and mobile banking applications) to all ASB class members stating:

Our records indicate that you may be a class member in an opt out representative action against ASB relating to a loan calculator problem commenced in the High Court. Please read the ASB Representative Action Letter at [insert link] and visit www.bankingclassaction.com for more information.

- 3. Also within [15 working days] of the date on which the Representative Orders are made, ASB shall publish the ASB Social Media Notifications set out in **Annexure 3** to its accounts on all social media platforms on which it has a presence (including Instagram, Facebook and Twitter). ASB shall not remove the ASB Social Media Notifications from its accounts until the representative action is concluded, whether by judgment or settlement.
- 4. Within [10 working days] of the date on which the time period in paragraphs 2 and 3 above ends, ASB shall file and serve an affidavit describing the steps it took to comply with paragraphs 2 and 3, and appending:
 - (a) a list of the names of the persons it has sent the ASB Representative Action Letter to, including details for each such person as to whether the registered mail was delivered or returned to sender, and whether there was any acknowledgement of receipt of the email or any bounce back non-delivery message;
 - (b) screen shots of the Social Media Notifications as published on ASB's social media accounts.
- 5. All reasonable costs and disbursements incurred in giving effect to these Notification Orders shall be met in the first instance by the party responsible for the steps taken but shall be considered to be costs in the cause.

ANNEXURE 1: ASB OPT OUT NOTICE

This notice is important

1. A representative action has been commenced in the High Court of New Zealand by ASB customers (the **ASB representative plaintiffs**) against ASB Bank Limited (**ASB**) (CIV 2021 404-1191). The action is by and on behalf of every ASB customer who meets all of the following criteria:
 - (a) they had one or more home or personal loans with ASB between 6 June 2015 and 18 June 2019 (**Relevant Period**) which were or are consumer credit contracts to which the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) applied or applies (**ASB Loan**);
 - (b) they requested and ASB made one or more agreed changes to one or more of the their ASB Loans during the Relevant Period (**Agreed Changes**);
 - (c) ASB did not provide them with disclosure under s 22 of the CCCFA in relation to the Agreed Changes within the prescribed timeframes.

(the **ASB class members**)
2. This notice is published to provide information to persons who might be ASB class members and therefore may be affected by the representative action. **This notice contains important information regarding your legal rights and we encourage you to read it carefully.** If you have any questions or concerns, you should seek legal advice.

What is a representative action?

3. A representative action is an action brought by one or more persons (representative plaintiffs) on his or her own behalf and on behalf of a class of persons (class members) against a defendant or defendants where the representative plaintiffs and the class members have the same interest in the subject matter of the proceeding.
4. Class members who have not opted out of the representative action are “bound” by the outcome in the legal proceedings. A binding outcome can occur in two ways, being either by judgment following trial or an agreed settlement at any time. If there is a judgment or settlement of a representative action, class members will not be able to pursue the same claim and may not be able to pursue similar claims against the defendant(s) in other legal proceedings.

The representative action against ASB

5. The ASB representative plaintiffs allege that ASB breached section 22 of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) by failing to provide them and ASB class members with variation disclosure when it made Relevant Variations to their ASB Loans during the Relevant Period.
6. Pursuant to s 22 of the CCCFA, every time that ASB makes an agreed change to an ASB Loan, it is required to ensure the customer is provided with disclosure of the full particulars of the change within prescribed timeframes (**Variation Disclosure**).
7. During the Relevant Period, ASB did not have sufficient processes and procedures in place to ensure that it provided customers with Variation Disclosure when it made agreed changes to the amounts, frequency or timing of their repayments on their ASB Loans in response to requests by phone or in branch.
8. In February 2021, ASB entered into a settlement agreement with the Commerce Commission relating to its failures to provide Variation Disclosure in the circumstances described above, pursuant to which it agreed to make certain payments to ASB class members.
9. ASB then wrote to certain ASB class members informing them that it could not confirm that it provided them with written confirmation of agreed changes made to their ASB Loans during the Relevant Period and paid them either \$68 (if all their ASB Loans were entered into before 6 June 2015) or \$135 (if any of their ASB Loans was entered into after 6 June 2015).
10. It has subsequently become apparent that during the Relevant Period ASB also failed to provide customers with Variation Disclosure when it made other types of agreed changes to their ASB Loans in response to requests made other than by phone or in branch.
11. The ASB representative plaintiffs claim that:
 - (a) ASB breached s 22 by failing to provide them and the ASB class members with Variation Disclosure when it made agreed changes to their ASB Loans during the Relevant Period.
 - (b) In relation to ASB Loans entered into after 6 June 2015, pursuant to s 99(1A) of the CCCFA, they and the ASB class members were and are not liable for any costs of borrowing (including credit fees, default fees and interest

charges) in relation to any periods during which ASB failed and is failing to comply with s 22;

- (c) In relation to ASB Loans entered into before 6 June 2015, pursuant to s 99(1) of the CCCFA, they and the other ASB class members were and are not liable for any costs of borrowing in relation to periods during which ASB failed and is failing to comply with s 22.
 - (d) To the extent that they and the ASB class members paid ASB costs of borrowing in relation to the periods during which it was or is failing to comply with s 22 (**Breach Period Payments**), ASB was and is not entitled to receive those amounts.
 - (e) Pursuant to s 48 of the CCCFA, ASB was and is required to refund or credit the Breach Period Payments to them and ASB class members as soon as practicable.
 - (f) Although ASB has paid some money to the ASB representative plaintiffs and the ASB class members in relation to the Loan Calculator Problem, it has not fully refunded or credited the Breach Period Payments.
 - (g) As a result, the ASB representative plaintiffs and the ASB class members have suffered loss or damage in the amount of the Breach Periods Payments paid by them less any portion of those payments already refunded or credited.
12. The ASB representative plaintiffs are seeking orders from the Court pursuant to ss 93(a) and 94(1)(a) of the CCCFA directing ASB to refund or credit all Breach Period Payments to them and the ASB class members, as well as certain declarations.
13. In the alternative, the ASB representative plaintiffs seek statutory damages for them and the ASB class members under ss 88 and 89 of the CCCFA.

This is an opt out representative action, but you can proactively opt in

14. The Court has made an order that this representative action proceed on an “opt out” basis. That means that if you are an ASB class member you will be bound by the outcome of the legal proceedings unless you elect to opt out of the representative action.
15. If you wish to opt out of the representative action you must fill in the Opt Out Election Form, which can also be downloaded from www.bankingclassaction.com and send it to the ASB representative plaintiffs’ solicitors, Russell Legal:

- (a) by registered post to Level 1, 40 Eden Crescent, Auckland 1010; or
 - (b) by email to scott.russell@russelllegal.co.nz.
16. You must send your Opt Out Election Form in time for it to be received by Russell Legal by 5pm on [insert date].
17. Although not strictly necessary in order for you to remain an ASB class member and be bound by the outcome of the legal proceeding, you may choose to proactively “opt in” to the representative action by registering with Russell Legal online on at www.bankingclassaction.com.

What happens if you do not opt out of the representative action

18. If you do not opt out of the representative action, you will remain an ASB class member and will be bound by (and if successful benefit from) any judgment on the representative action, or by any settlement reached at any time.

Do I have to pay money to join?

1. No. You do not need to pay anything upfront to participate in the representative action
19. You will not be liable to contribute to the legal costs of the proceeding unless it is successful and you in no circumstances will be liable for any adverse costs awards made against the ASB representative plaintiffs. Under agreements with the ASB representative plaintiffs and ASB class members who opt in to the action (**Funding Terms**), litigation funder LPF Litigation Funding No. 33 (**LPF**), will provide funding of the legal and other costs of the representative action, subject to certain conditions being satisfied. The action is also being funded by Australian funder, CASL Management Pty Ptd pursuant to a co-funding agreement with LPF.
20. It is expected that this representative action will proceed in two stages:
- (a) In the first stage, which will proceed by way of summary judgment (that is on the basis of affidavit evidence instead of a full trial), the issues of whether ASB is liable to the ASB representative plaintiffs in relation to alleged breaches of s 22 which relate to their ASB Loans entered into after 6 June 2015, and whether certain declarations relating to the operation of the relevant provisions of the CCCFA should be made will be decided.
 - (b) If the ASB representative plaintiffs are successful in stage 1, the proceeding will progress to stage 2. In stage 2, all issues not addressed in stage 1 will

be tried and determined. If you do not opt out, at stage 2 some input may be needed from you in order to advance particular aspects of your claim.

21. If the representative action is ultimately successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the ASB representative plaintiffs and ASB class members, after deduction of the amounts to which the litigation funder is entitled pursuant to Common Fund Orders made by the Court.
22. The Common Fund Orders require all class members to contribute to the costs of the action (if successful) and provide that:
 - (a) The ASB representative plaintiffs' costs incurred in the proceeding and funded by LPF (Project Costs) will be paid out of the total sum received from ASB on settlement or judgment (**Resolution Sum**);
 - (b) LPF's CFO Services Fee (i.e. the commission it charges for its services in funding the action) will be calculated with reference to and deducted from the Resolution Sum.
23. The CFO Service Fee shall be a sum calculated on the basis set out below, or such lower fee as the court considers reasonable at the time:

If Project Costs are less than \$1m and the Resolution Sum is less than \$10m	21% of the Resolution Sum
If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$10m but less than \$100m	16% of the Resolution Sum

<p>If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$100m</p>	<p>The aggregate of:</p> <ul style="list-style-type: none"> • 16% of the Resolution Sum on the initial \$100m of the Resolution Sum; and • on any amount of the Resolution Sum greater than \$100m, 16% less 0.5% for each additional \$10m increment of Resolution Sum above \$100m, provided that such reduction shall not exceed 6% in aggregate.
<p>If Project Costs are equal to or greater than \$1m and the Resolution Sum is less than \$10m</p>	<p>23.5% of the Resolution Sum</p>
<p>If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$10m</p>	<p>20% of the Resolution Sum</p>
<p>If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$100m</p>	<p>The aggregate of:</p> <ul style="list-style-type: none"> • 20% of the Resolution Sum on the initial \$100m of the Resolution Sum; and • on any amount of the Resolution Sum greater than \$100m, 16% less 0.5% for each additional \$10m increment of Resolution Sum above \$100m, provided that such reduction shall not exceed 6% in aggregate.

Provided, however, that:

- (D) the CFO Services Fee shall increase by an amount equivalent to 2.5% of the Resolution Sum in the event that LPF provides the Services in respect of any appeal;

- (E) in no event shall the CFO Service Fee payable to LPF exceed 50% of the amount equal to the Resolution Sum less the Project Costs; and
 - (F) in no event shall the CFO Services Fee payable to LPF exceed the aggregate fee that would be payable to any other litigation funder that actually funds proceedings relating to a claim against the Defendants similar to the Claims in the same period, had the litigation funder provided services to the Plaintiffs that are equivalent to the Services and otherwise on the same terms as set out in the Funding Terms.
42. The Common Fund Orders are available at www.bankingclassaction.com and it is highly recommended that you view and consider them before deciding whether or not to opt out. If you do not understand the effect of the Common Fund Orders, seek independent legal advice.
43. In short, if the action is successful, you may recover a significant portion of the costs of borrowing you paid to ASB during the period ASB was in breach of s 22 in relation to agreed changes made to your ASB Loan or Loans during the Relevant Period.
24. If the representative action is unsuccessful, or is not as successful as you would have liked, you will not be able to pursue the same claims, and may not be able to pursue related claims, against ASB in other legal proceedings, but you will not be liable for any sums to the Bank.
25. ASB class members should note that:
- (a) In a judgment following a hearing, the High Court will decide various factual and legal issues in respect of the claims made by the ASB representative plaintiffs and ASB class members. Unless those decisions are successfully appealed, they will bind the ASB representative plaintiffs, the ASB class members and ASB. That means that, if there are other proceedings between a class member and ASB, it is likely that neither side will be able to raise arguments in that proceeding that are inconsistent with the factual or legal issues decided in the representative action.
 - (b) In a settlement of a representative action, the settlement process is likely to extinguish all rights to compensation which an ASB class member might have against ASB which arise in any way out of the events or transactions to which the representative action relates.
26. If you consider that you have claims against ASB which are based on your individual circumstances or are otherwise additional to the claims described in the

representative action, then it is important you seek independent legal advice about the potential binding effects of the representative action before deciding whether to opt out.

What happens if you opt in to the representative action

27. If you choose to opt in to the representative action, you will be in the same position as if you do not choose to opt out, except that you will:
- (a) become a party to the Funding Terms;
 - (b) become a client of the ASB representative plaintiffs' solicitors and party to their terms of engagement;
 - (c) receive regular updates regarding the progress of the representative action.

What happens if you choose to opt out of the representative action

28. If you opt out of the proceeding, you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the representative action. However, you will be free to bring your own claim against ASB, provided you file proceedings within the time limit applicable to your claim. If you are thinking about bringing your own proceeding, you should seek legal advice prior to opting out of the representative action not least because time limits may run out for filing new claims.

Are you an ASB class member?

29. You are an ASB class member if you:
- (a) You requested and ASB made agreed changes to your ASB Loan during the Relevant Period; and
 - (b) You did not receive Variation Disclosure in relation to the agreed changes to your ASB Loans made during the Relevant Period. Note that ASB may have corresponded with you regarding the agreed changes (for example by email, letter or its app), but not in a form that complies with s 22.
30. It is highly likely that you are an ASB class member if you received from ASB:
- (a) an email and payment in the first half of 2021 in relation to ASB's inability to confirm that it provided you with Variation Disclosure when required;
 - (b) a letter informing you of this representative action.

31. If you are unsure whether you are an ASB class member, you should visit www.bankingclassaction.com or seek your own legal advice without delay.

Next steps

32. If you are an ASB class member and you wish to be bound by the outcome of the representative action, you do not need to do anything. However, if you would like to opt in and receive regular updates, you need to complete the online registration process at www.bankingclassaction.com by [insert date].
33. If you are an ASB class member and do not wish to be bound by the outcome of the representative action, you need to fill in an Opt Out Election Form and return it to Russell Legal by 5pm on [date]. It is important that you return your Form by the due date, otherwise it will not be effective.

Relevant documents can be downloaded from bankingclassaction.com

34. The following documents relevant to the representative action can be downloaded from ww.bankingclassaction.com:
- (a) the statement of claim filed on 25 June 2021 and the amendment statement of claim dated 28 January 2022;
 - (b) any statements of defence filed;
 - (c) the amended notice of interlocutory application by the plaintiffs for leave to bring proceedings as representative action and for ancillary orders and summary judgment dated 28 January 2022;
 - (d) any notices of opposition to the interlocutory application;
 - (e) the Representative Orders;
 - (f) the Common Fund Orders;
35. If you think you are or may be an ASB class member, it is recommended that you read these documents as they will assist you to understand the representative action and the orders that have been sought and made by the Court to date.
36. Please consider the above matters carefully. If you are unsure about any aspect of the information provided in this notice, you should visit bankingclassaction.com, or seek your own legal advice.

ANNEXURE 2: ASB REPRESENTATIVE ACTION LETTER

Dear [valued customer],

Representative action against ASB in relation to alleged breaches of CCCFA disclosure obligations

2. We are writing to let you know that a representative action has been commenced in the High Court of New Zealand by customers of ASB (the **ASB representative plaintiffs**) against ASB. The action is by and on behalf of every ASB customer who meets the following criteria:

- (a) they had one or more home or personal loans with ASB between 6 June 2015 and 18 June 2019 (**Relevant Period**) which were or are consumer credit contracts to which the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) applied or applies (**ASB Loan**);
- (b) they requested and ASB made one or more agreed changes to one or more of their ASB Loans during the Relevant Period (**Agreed Changes**);
- (c) ASB did not provide them with disclosure under s 22 of the CCCFA in relation to the Agreed Changes within the prescribed timeframes.

(the **ASB class members**)

3. We are writing to you because our records indicate that you may be an ASB class member and therefore may be affected by the representative action. **This letter contains important information regarding your legal rights and we encourage you to read it carefully.** If you have any questions or concerns, you should seek legal advice.

What is a representative action?

- 4. A representative action is an action brought by one or more persons (representative plaintiffs) on his or her own behalf and on behalf of a class of persons (class members) against a defendant or defendants where the representative plaintiffs and the class members have the same interest in the subject matter of the proceeding.
- 5. Class members who have not opted out of the representative action are “bound” by the outcome in the legal proceedings. A binding outcome can occur in two ways, being either by judgment following a hearing or an agreed settlement at any time. If there is a judgment or settlement of a representative action, class members will

not be able to pursue the same claim and may not be able to pursue similar claims against the defendant(s) in other legal proceedings.

What is this representative action about?

6. The ASB representative plaintiffs allege that ASB breached section 22 of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) by failing to provide them and ASB class members with variation disclosure when it made Relevant Variations to their ASB Loans during the Relevant Period.
7. Pursuant to s 22 of the CCCFA, every time that ASB makes an agreed change to an ASB Loan, it is required to ensure the customer is provided with disclosure of the full particulars of the change within prescribed timeframes (**Variation Disclosure**).
8. During the Relevant Period, ASB did not have sufficient processes and procedures in place to ensure that it provided customers with Variation Disclosure when it made agreed changes to the amounts, frequency or timing of their repayments on their ASB Loans in response to requests by phone or in branch.
9. In February 2021, ASB entered into a settlement agreement with the Commerce Commission relating to its failures to provide Variation Disclosure in the circumstances described above, pursuant to which it agreed to make certain payments to ASB class members.
10. ASB then wrote to certain ASB class members informing them that it could not confirm that it provided them with written confirmation of agreed changes made to their ASB Loans during the Relevant Period and paid them either \$68 (if all their ASB Loans were entered into before 6 June 2015) or \$135 (if any of their ASB Loans was entered into after 6 June 2015).
11. It has subsequently become apparent that during the Relevant Period ASB also failed to provide customers with Variation Disclosure when it made other types of agreed changes to their ASB Loans in response to requests made other than by phone or in branch.
12. The ASB representative plaintiffs claim that:
 - (a) ASB breached s 22 by failing to provide them and the ASB class members with Variation Disclosure when it made agreed changes to their ASB Loans during the Relevant Period.

- (b) In relation to ASB Loans entered into after 6 June 2015, pursuant to s 99(1A) of the CCCFA, they and the ASB class members were and are not liable for any costs of borrowing (including credit fees, default fees and interest charges) in relation to any periods during which ASB failed and is failing to comply with s 22;
 - (c) In relation to ASB Loans entered into before 6 June 2015, pursuant to s 99(1) of the CCCFA, they and the other ASB class members were and are not liable for any costs of borrowing in relation to periods during which ASB failed and is failing to comply with s 22.
 - (d) To the extent that they and the ASB class members paid ASB costs of borrowing in relation to the periods during which it was or is failing to comply with s 22 (**Breach Period Payments**), ASB was and is not entitled to receive those amounts.
 - (e) Pursuant to s 48 of the CCCFA, ASB was and is required to refund or credit the Breach Period Payments to them and ASB class members as soon as practicable.
 - (f) Although ASB has paid some money to the ASB representative plaintiffs and the ASB class members in relation to the Loan Calculator Problem, it has not fully refunded or credited the Breach Period Payments.
 - (g) As a result, the ASB representative plaintiffs and the ASB class members have suffered loss or damage in the amount of the Breach Periods Payments paid by them less any portion of those payments already refunded or credited.
13. The ASB representative plaintiffs are seeking orders from the Court pursuant to ss 93(a) and 94(1)(a) of the CCCFA directing ASB to refund or credit all Breach Period Payments to them and the ASB class members, as well as certain declarations.
14. In the alternative, the ASB representative plaintiffs seek statutory damages for them and the ASB class members under ss 88 and 89 of the CCCFA.

This is an opt out representative action, but you can proactively opt in

15. The Court has made an order that this representative action proceed on an “opt out” basis. That means that you will be an ASB class member and bound by the outcome of the legal proceedings unless you opt out of the representative action.

16. If you wish to opt out of the representative action you must fill in the **enclosed** Opt Out Election Form (which can also be downloaded from www.bankingclassaction.com) and send it to the Representative Plaintiffs' solicitors, Russell Legal:
 - (a) by registered post to Level 1, 40 Eden Crescent, Auckland 1010; or
 - (b) by email to scott.russell@russelllegal.co.nz.
17. You must send your Opt Out Election Form in time for it to be received by Russell Legal by 5pm on [insert date].
18. Although not strictly necessary in order for you to remain an ASB class member and be bound by the outcome of the legal proceeding, you may choose to proactively "opt in" to the representative action by registering with Russell Legal online on at bankingclassaction.com.

What happens if you do not opt out of the representative action

19. If you do not opt out of the representative action, you will remain an ASB class member and will be bound by (and if successful benefit from) any judgment on the representative action, or by any settlement reached at any time.
20. It is expected that this representative action will proceed in two stages:
 - (a) In the first stage, which will proceed by way of summary judgment (that is on the basis of affidavit evidence rather than a full trial) the issues of whether ASB is liable to the ASB representative plaintiffs in relation to alleged breaches of s 22 in relation to their ASB Loans entered into after 6 June 2015 and whether certain declarations relating to the operation of the relevant provisions of the CCCFA should be made will be decided.
 - (b) If the ASB representative plaintiffs are successful in stage 1, the proceeding will progress to stage 2. In stage 2, all issues not addressed in stage 1 will be tried and determined. If you do not opt out, at stage 2 some input may be needed from you in order to advance particular aspects of your claim.
21. If the representative action is unsuccessful, or is not as successful as you would have liked, you will not be able to pursue the same claims, and may not be able to pursue related claims, against ASB in other legal proceedings, but you will not be liable for any sums to the bank.
22. We want to emphasise that a decision to remain in the representative action will not have any negative effect on your relationship with us. You are a valued customer

of ASB and although we deny and may defend the case against us, we fully respect your right to pursue your legal rights.

23. You will not be liable to contribute to the legal costs of the proceeding unless it is successful and you in no circumstances be liable for any adverse costs awards made against the ASB representative plaintiffs. Under agreements with the ASB representative plaintiffs and ASB class members who opt in to the action (**Funding Terms**), litigation funder LPF Litigation Funding No. 33 (**LPF**), will provide funding of the legal and other costs of the representative action, subject to certain conditions being satisfied. The action is also being funded by Australian funder CASL Management Pty Ltd pursuant to a co-funding agreement with LPF.
24. If the representative action is ultimately successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the ASB representative plaintiffs and ASB class members, after deduction of the amounts to which the litigation funder is entitled pursuant to Common Fund Orders made by the Court.
39. The Common Fund Orders require all class members to contribute to the costs of the action (if successful) and provide that:
- (a) The ASB representative plaintiffs' costs incurred in the proceeding and funded by LPF (Project Costs) will be paid out of the total sum received from ASB on settlement or judgment (**Resolution Sum**);
 - (b) LPF's CFO Services Fee (i.e. the commission it charges for its services in funding the action) will be calculated with reference to and deducted from the Resolution Sum.
40. The CFO Service Fee will be a sum calculated on the basis set out below or such lower fee as the Court considers reasonable at the relevant time:

If Project Costs are less than \$1m and the Resolution Sum is less than \$10m	21% of the Resolution Sum
If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$10m but less than \$100m	16% of the Resolution Sum
If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$100m	The aggregate of:

	<ul style="list-style-type: none"> • 16% of the Resolution Sum on the initial \$100m of the Resolution Sum; and • on any amount of the Resolution Sum greater than \$100m, 16% less 0.5% for each additional \$10m increment of Resolution Sum above \$100m, provided that such reduction shall not exceed 6% in aggregate.
If Project Costs are equal to or greater than \$1m and the Resolution Sum is less than \$10m	23.5% of the Resolution Sum
If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$10m	20% of the Resolution Sum
If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$100m	<p>The aggregate of:</p> <ul style="list-style-type: none"> • 20% of the Resolution Sum on the initial \$100m of the Resolution Sum; and • on any amount of the Resolution Sum greater than \$100m, 16% less 0.5% for each additional \$10m increment of Resolution Sum above \$100m, provided that such reduction shall not exceed 6% in aggregate.

Provided, however, that:

- (A) the CFO Services Fee shall increase by an amount equivalent to 2.5% of the Resolution Sum in the event that LPF provides the Services in respect of any appeal;
- (B) in no event shall the CFO Service Fee payable to LPF exceed 50% of the amount equal to the Resolution Sum less the Project Costs; and

(C) in no event shall the CFO Services Fee payable to LPF exceed the aggregate fee that would be payable to any other litigation funder that actually funds proceedings relating to a claim against the Defendants similar to the Claims in the same period, had the litigation funder provided services to the Plaintiffs that are equivalent to the Services and otherwise on the same terms as set out in the Funding Terms.

41. The Common Fund Orders are available at www.bankingclassaction.com and it is highly recommended that you view and consider them before deciding whether or not to opt out. If you do not understand the effect of the Common Fund Orders, seek independent legal advice.
42. In short, if the action is successful, you may recover a significant portion of the costs of borrowing you paid to ASB during any periods ASB was in breach of s 22 in relation to agreed changes made to your ASB Loan or Loans during the Relevant Period.

What happens if you opt in to the representative action

25. If you choose to opt in to the representative action, you will be in the same position as if you do not choose to opt out, except that you will:
- (a) become a party to the Funding Terms;
 - (b) become a client of the ASB representative plaintiffs' solicitors and party to their terms of engagement;
 - (c) receive regular updates regarding the progress of the representative action.

What happens if you choose to opt out of the representative action

26. If you opt out of the proceeding, you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the representative action. However, you will be free to bring your own claim against ASB, provided you file proceedings within the time limit applicable to your claim. If you are thinking about bringing your own proceeding, you should seek legal advice prior to opting out of the representative action not least because time limits may run out for filing new claims.

Where you can find more information

27. More information regarding the representative action (and a similar representative action against ANZ) can be found at www.bankingclassaction.com.

28. As noted above, an Opt Out Election Form is attached to this letter. Such forms can also be downloaded from www.bankingclassaction.com, as can copies of other relevant documents including the statement of claim and any defences, the application for leave to bring proceedings as representative action and for ancillary orders and summary judgment, any notices of opposition and orders of the Court in relation to the action.
29. You can also opt in to the representative action via the website.
30. Again, we emphasise that ASB accepts that many customers may wish to be part of this representative action and looks forward to continuing its relationship with all of its customers whether they do so or not.

REPRESENTATIVE ACTION AGAINST ASB – OPT OUT ELECTION FORM

Simons & Ors v ANZ Bank New Zealand Limited and Anor (CIV 2021-404-1191)

To: Russell Legal
Level 1, 40 Eden Crescent
Auckland, 1010
scott.russell@russelllegal.co.nz

..... (*print name*), a member of the class represented
by the first and third to fifth plaintiffs in the above named representative proceeding, give
notice that.....(*print name*) is opting out of the
representative proceeding.

Date:.....

.....(*signature*)

.....(*print name*)

Class member / lawyer for the class member

ANNEXURE 3: ASB SOCIAL MEDIA NOTIFICATIONS

For Facebook and any other platform without a character limit

VARIATION DISCLOSURE REPRESENTATIVE ACTION AGAINST ASB

A representative action against ASB on behalf of all customers who did not receive compliant variation disclosure in relation to agreed changes made to their home or personal loans between June 2015 and June 2019 has been commenced in the High Court. The representative plaintiffs are seeking to recover from ASB all interest and fees paid by affected customers between the date on which the relevant agreed changes were made to their loans and today. The Court has made “opt out” representative orders. This means that if you are an affected customer and do not proactively opt out of the proceedings, you will be bound by them. We urge you to seek further information at www.bankingclassaction.com without delay.

For Twitter and Instagram

IMPORTANT: A representative action against ASB on behalf of all customers who did not receive variation disclosure when ASB made agreed changes to their loans between June 2015 and June 2019 has been commenced in the High Court. For more information visit www.bankingclassaction.com.

SCHEDULE 7: COMMON ISSUES – ANZ CLASS

Common background

1. Each ANZ class member had one or more ANZ Loans during the ANZ Relevant Period.
2. During the ANZ Relevant Period, ANZ made one or more agreed changes to the terms the ANZ class members' ANZ Loans (**Agreed Changes**).
3. Pursuant to s 22 of the CCCFA, each time that ANZ made an Agreed Change, ANZ was required to provide the relevant ANZ class member with Variation Disclosure.
4. ANZ purported to provide the ANZ class members with Variation Disclosure in relation to Agreed Changes in Loan Variation Letters.
5. Due to the Coding Error, the Loan Variation Letters sent to the ANZ class members contained Incorrect Information.
6. The ANZ representative plaintiffs say that, due to the inclusion of the Incorrect Information, the Loan Variation Letters did not comply with s 22 of the CCCFA and therefore did not constitute Variation Disclosure.
7. To date, ANZ has not provided the ANZ class members with Variation Disclosure in relation to the Agreed Changes
8. In relation to ANZ Loans entered into after 6 June 2018, pursuant to s 99(1A) of the CCCFA, the ANZ class members were and are not liable for costs of borrowing in relation any period during which ANZ was in breach of s 22 and ANZ was not entitled to receive any ANZ Breach Period Payments from them.
9. In relation to ANZ Loans entered into before 6 June 2018, pursuant to s 99(1) of the CCCFA, the ANZ class members were and are not liable for costs of borrowing in relation any period during which ANZ was in breach of s 22 and ANZ was not entitled to receive any ANZ Breach Period Payments from them.
10. Pursuant to s 48 of the CCCFA, ANZ was and is required to fully refund or credit the ANZ Breach Period Payments to the ANZ class members. In breach of s 48, it has not done so.
11. As a result of the above, each ANZ class member has suffered loss, being the total of any ANZ Breach Period Payments made by them, less any portion of that total that has already been refunded or credited.

Common issues of fact and law

12. Factual and legal issues common to all ANZ class members include:
 - (a) Whether ANZ breached s 22 of the CCCFA by providing the class members with Loan Variation Letters containing Incorrect Information.
 - (b) Whether, in light of s 99(1A) of the CCCFA, ANZ was entitled to receive ANZ Breach Period Payments in relation to ANZ Loans entered into after 5 June 2015 from the ANZ class members.
 - (c) Whether, in light of s 99(1) of the CCCFA, ANZ was entitled to receive ANZ Breach Period Payments in relation to ANZ Loans entered into before 5 June 2015 from the ANZ class members.
 - (d) Whether ANZ breached s 48 of the CCCFA by failing to fully refund or credit ANZ Breach Period Payments to the ANZ class members.
 - (e) Whether ANZ is required to fully refund or credit the ANZ Breach Period Payments to the ANZ class members and the Court must make orders pursuant to ss 93(a) and 94(1)(a) of the CCCFA requiring it to so.
 - (f) To the extent the Court does not make the orders referred to in (e) above, whether the Court must make orders requiring ANZ to pay the ANZ class members statutory damages under ss 88, 89 and 90 and the quantum of those damages if so.
 - (g) The application of relevant limitation periods, if any.

SCHEDULE 8: COMMON ISSUES – ASB CLASS

Common background

1. Each ASB class member had one or more ASB Loans during the ASB Relevant Period.
2. During the ASB Relevant Period, ASB made one or more agreed changes the ASB class members' ASB Loans (**Agreed Changes**).
3. Pursuant to s 22 of the CCCFA, each time ASB made an Agreed Changes, ASB was required to provide the relevant class member with Variation Disclosure.
4. The ASB representative plaintiffs say that ASB breached s 22 by failing to provide the ASB class members with Variation Disclosure in relation to the Agreed Changes within the prescribed timeframes.
5. To date, ASB has not provided the ASB class members with Variation Disclosure.
6. In relation to ASB Loans entered into after 6 June 2015, pursuant to s 99(1A) of the CCCFA, the ASB class members were and are not liable for costs of borrowing in relation any periods during with ASB was or is in breach of s 22 and ASB was not entitled to receive any ASB Breach Period Payments from them.
7. In relation to ASB Loans entered into before 6 June 2015, pursuant to s 99(1) of the CCCFA, the ASB class members were and are not liable for costs of borrowing in relation any periods during with ASB was or is in breach of s 22 and ASB was not entitled to receive any ASB Breach Period Payments from them.
8. Pursuant to s 48 of the CCCFA, ASB was and is required to fully refund or credit the ASB Breach Period Payments to the ASB class members. In breach of s 48, it has not done so.
9. As a result of the above, each ASB class member has suffered loss, being the total of any ASB Breach Period Payments made by them, less any portion of that total that has already been refunded or credited.

Common issues of fact and law

10. Factual and legal issues common to all ASB class members include:
 - (a) Whether ASB breached s 22 of the CCCFA by failing to provide the ASB class members with Variation Disclosure in relation to Agreed Changes.

- (b) Whether, in light of s 99(1A) of the CCCFA, ASB was entitled to receive ASB Breach Period Payments in relation to ASB Loans entered into after 6 June 2015 from the ASB class members.
- (c) Whether, in light of s 99(1) of the CCCFA, ASB was entitled to receive ASB Breach Period Payments in relation to ASB Loans entered into before 6 June 2015 from ASB class members.
- (d) Whether ASB breached s 48 of the CCCFA by failing to fully refund or credit ASB Breach Period Payments to the ASB class members.
- (e) Whether ASB is required to fully refund or credit the ASB Breach Period Payments to the ASB class members and the Court must make orders pursuant to ss 93(a) and 94(1)(a) of the CCCFA requiring it to so.
- (f) To the extent the Court does not make the orders referred to in (e) above, whether the Court must make orders requiring ASB to pay the ASB class members statutory damages under ss 88, 89 and 90 and the quantum of those damages if so.
- (g) The application of relevant limitation periods, if any.