

NOTICE OF FILING

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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: NSD1100/2021
File Title: SPOZAC PTY LIMITED (ACN 112 100 231) AS TRUSTEE FOR THE LDB FAMILY TRUST T/AS NOT JUST CAKES v TYRO PAYMENTS LTD (ACN 103 575 042)
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 20/10/2021 10:17:48 AM AEDT

Registrar

Important Information

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

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Statement of claim

No. NSD of 2021

Federal Court of Australia
District Registry: New South Wales
Division: General

SPOZAC PTY LIMITED (ACN 112 100 231) AS TRUSTEE FOR THE LDB FAMILY TRUST T/AS NOT JUST CAKES

Applicant

TYRO PAYMENTS LTD (ACN 103 575 042)

Respondent

OVERVIEW OF CLAIM

- A. The Respondent (**Tyro**) is a listed Australian “fintech” institution which supplies banking and financial products and services as well as payment processing solutions to merchants across Australia. Amongst the various products and services distributed by Tyro, Tyro markets itself as Australia’s largest EFTPOS provider of all authorised deposit-taking institutions outside the big four Australian banks through its tailored EFTPOS payment terminals (**Tyro EFTPOS Terminals**) and secure payment network through which it provides merchant acquiring and payment processing services (**Tyro EFTPOS Facility**).
- B. Tyro has sought to grow its customer base by promoting the reliability of the Tyro EFTPOS Terminals and Tyro EFTPOS Facility, including its record of “99.9% uptime”, along with the “24/7” availability of its Australian-based team of technical assistance experts which provides solutions and support where customers experience issues with the products and services supplied by Tyro.
- C. Despite Tyro’s marketing of the reliability of its products and services and its strong technical support network, on 5 January 2021, a substantial number of Tyro’s customers experienced an outage in their connectivity to the Tyro EFTPOS Facility, causing their Tyro EFTPOS Terminals to be inoperable and incapable of repair by remote software updates (the **Connectivity Issue**). For a substantial period of time, Tyro’s customers were

Filed on behalf of (name & role of party)	Spozac Pty Ltd (ACN 112 100 231) as trustee for the LDB Family Trust t/as Not Just Cakes, Applicant		
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unable to process non-cash payments while they awaited rectification of the Connectivity Issue and experienced a substantial loss of business and goodwill as a consequence.

- D. The Applicant alleges that the Connectivity Issue, while caused by outdated software installed on the Tyro EFTPOS Terminals, would not have occurred had Tyro, amongst other things:
- (a) taken adequate and reasonable steps to ensure that the software in use by devices in the field was appropriately updated and that security certificate renewals had been properly implemented;
 - (b) properly monitored payment anomalies within its network to detect potential issues with the Tyro EFTPOS Terminals before the Connectivity Issue occurred; and
 - (c) implemented adequate business continuity processes to ensure that its customers were able to continue trading while awaiting rectification of the Connectivity Issue.
- E. The Connectivity Issue was handled badly by Tyro. Customers received limited to no technical support from Tyro and relied upon Tyro collecting their inoperable devices and replacing them with new Tyro EFTPOS Terminals. Many customers ultimately ceased use of the products and services supplied by Tyro altogether and obtained new EFTPOS terminals from other providers, at times at a higher cost.
- F. The Applicant brings this claim on behalf of Tyro's customers affected by the Connectivity Issue. The Applicant alleges that:
- (a) Tyro's representations on its website and through its communications with prospective customers as to its reliability and support systems, which induced the Applicant and Group Members to acquire its products and services, were misleading or deceptive in contravention of ss 18, 29, 33 and 34 of the *Australian Consumer Law (ACL)*;
 - (b) the Connectivity Issue involved contraventions by Tyro of the guarantees enshrined in ss 54, 55, 58, 59, 60 and 61 of the ACL; and
 - (c) the Connectivity Issue involved contraventions by Tyro of the contractual warranties given under the contract by which the Applicant and Group Members obtained products and services from Tyro (the **Tyro Agreement**).

A. THE PARTIES AND GROUP MEMBERS

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the Applicant on its own behalf and on behalf of all persons who:

- (a) entered into a written agreement (the **Tyro Agreement**) with the Respondent comprising:
 - (i) the Tyro EFTPOS Banking Application Form;
 - (ii) the Privacy Statement and Consent; and
 - (iii) for Group Members who entered into the Tyro Agreement before 29 October 2015, the Tyro EFTPOS Terms and Conditions / Merchant Service Agreement – General Terms (**Previous Terms**); or
 - (iv) for Group Members who entered into the Tyro Agreement on or after 29 October 2015, the Tyro EFTPOS Banking Terms and Conditions (**Current Terms**);
- (b) pursuant to the Tyro Agreement, used the Tyro EFTPOS Terminals, Tyro EFTPOS Facility and Tyro Services (as defined in this Statement of Claim) to accept non-cash payments from their customers;
- (c) as at 5 January 2021, were customers of the Respondent;
- (d) were not, and are not:
 - (i) a director, officer or close associate (as defined in section 9 of the *Corporations Act 2001* (Cth)) of the Respondent; or
 - (ii) a judge or judicial registrar of the Federal Court of Australia; and
- (e) have suffered loss or damage by reason of the contravening conduct of the Respondent as pleaded in this Statement of Claim,

(Group Members).

2. As at the date of the commencement of this proceeding, there are seven or more Group Members.
3. The Applicant, Spozac Pty Ltd (ACN 112 100 231) as Trustee for the LDB Family Trust, trading as Not Just Cakes, at all material times:
 - (a) was a company duly incorporated in accordance with the *Corporations Act 2001* (Cth) and able to sue and be sued;
 - (b) was the trustee of the LDB Family Trust;

- (c) traded under the name of “Not Just Cakes”;
 - (d) had as its directors Mrs Linda Beasley and Mr David Beasley; and
 - (e) operated three retail stores selling baked goods located in Wamberal, Kanwal and Bateau Bay in the State of New South Wales.
4. The Respondent, Tyro Payments Ltd (**Tyro**), at all material times:
- (a) was a company duly incorporated in accordance with the *Corporations Act 2001* (Cth) and able to sue and be sued;
 - (b) supplied, amongst other products and services, equipment and services for use by merchants to process payments made by customers using the EFTPOS System (as defined in paragraph 5 below); and
 - (c) supplied products and services to the Applicant and Group Members in trade or commerce within the meaning of section 2 of the *Australian Consumer Law (ACL)*.

B. ACQUISITION OF THE TYRO SERVICES BY THE APPLICANT AND GROUP MEMBERS

5. The EFTPOS System is an electronic payment system through which, on instructions transmitted through an electronic payment terminal:
- (a) a cardholder’s bank account is debited and the merchant’s bank account is credited for the purchase of goods or services by the cardholder from the merchant; or
 - (b) a cardholder’s bank account is credited and the merchant’s bank account is debited for any refund provided by the merchant in respect of goods and services supplied by the merchant to the cardholder,
- (the **EFTPOS System**).
6. At all material times prior to 5 January 2021, Tyro offered products and services to merchants for the purpose of processing non-cash payments made by customers, including:
- (a) physical, electronic terminals by which customers, through the use of a credit, debit, charge, purchase or other valid payment card, could make payments to the merchant using the EFTPOS System (**Tyro EFTPOS Terminals**);
 - (b) a facility through which Tyro provided merchants with merchant acquiring and transaction processing services (the **Tyro EFTPOS Facility**); and
 - (c) software comprised in the Tyro EFTPOS Terminals and which was otherwise provided to merchants to facilitate access to the EFTPOS System (**Software**).

7. In the period from around March 2020, non-cash payment options through the EFTPOS System have increased in usage by merchants and customers and/or become the primary means of payment by customers in lieu of cash-based payment options due to the COVID-19 pandemic and the infection risk associated with physical currency.

B.1. Representations as to the Tyro Services

8. At all material times prior to 5 January 2021, Tyro maintained a website with the domain name <https://www.tyro.com> (**Website**) through which, amongst other things, it:
- (a) advertised the Tyro EFTPOS Terminals and Tyro EFTPOS Facility to prospective customers; and
 - (b) facilitated the lodgement of an Application by prospective customers and entry into the Tyro Agreement.
9. At all material times prior to 5 January 2021, Tyro represented through statements published on the Website that:
- (a) the Tyro EFTPOS Terminals and Tyro EFTPOS Facility were fast, reliable and highly stable;
 - (b) the Tyro EFTPOS Facility enjoyed 99.9% EFTPOS uptime; and
 - (c) the Tyro EFTPOS Facility enjoyed 3G backup and dual live data centres, (together, the **Reliability Representations**).

Particulars

From at least 24 April 2018, Tyro published one or more of the following statements on its Website:

- A. *“99.9% UPTIME. 3G backup and dual live data centres keeps your business payments running smoothly”;*
- B. *“Reliable. Connected. EFTPOS network & machines”;*
- C. *“Reliable EFTPOS that supports your business”;*
- D. *“We make sure you can take payments so that you can focus on delighting your customers. Ensuring a reliable connection means you can deliver a superior customer experience. That’s why Tyro delivers a highly stable platform supported by a back-up system that allows you to accept payments in-store, on the go, anywhere and anytime”;*
- E. *“99.9% EFTPOS uptime. With a highly stable platform thanks to our in-house engineers, you can rely on Tyro EFTPOS”;*
- F. *“99.9% availability – WiFi & 3G backup”;*
- G. *“Reliable. 99.9% uptime with 3G backup and dual live data centers”;*

- H. *“Tyro EFTPOS can be trusted to ensure your business is up and running”*; and
- I. *“Fast. Reliable”*.

10. At all material times prior to 5 January 2021, Tyro represented through statements published on the Website that merchants could access EFTPOS support through Tyro 24 hours a day, 7 days a week (the **Support Representation**).

Particulars

From at least 24 February 2018, Tyro published one or more of the following statements on its Website:

- A. *“24/7 Local Support. Made for Australians, by Australians. Round the clock Aussie Tyros Support”*;
- B. *“24/7 support for your business. We are always available. Rely on us to care for your business with 24/7 Australian-based customer support”*;
- C. *“24/7 Australian-based EFTPOS, eCommerce and banking support”*;
- D. *“With Tyro, we’re always just a phone call away”*; and
- E. *“24/7 Australian based support from Tyro’s experts in integration”*.

11. On or around 6 April 2020, Ms Beasley made an enquiry with Tyro with respect to obtaining one or more Tyro EFTPOS Terminals for use in the Applicant’s stores.

Particulars

The enquiry was made by telephone, during which call Ms Beasley spoke with a customer service representative, Mr Nathan Slattery, of Tyro.

12. During the course of Ms Beasley’s telephone enquiry pleaded at paragraph 11 above, Mr Slattery of Tyro:

- (a) conveyed the substance of the Reliability Representations to Ms Beasley; and
- (b) conveyed the substance of the Support Representation to Ms Beasley.

Particulars

- A. *The representations were made orally by Mr Slattery.*
- B. *As to sub-paragraph (a), during the course of the telephone call on or around 6 April 2020, Mr Slattery said that:*
 - i. *the Tyro EFTPOS Facility was stable and reliable; and*
 - ii. *Tyro had been operating for 18 years and the Tyro EFTPOS Facility had never experienced a problem.*

C. *As to sub-paragraph (b), during the course of the telephone call on or around 6 April 2020, Mr Slattery said that:*

- i. Tyro's technical staff were available for telephone and chatline assistance 24 hours a day, 7 days a week; and*
- ii. there were never long delays in accessing the Tyro technical support line for assistance.*

- 13. During the course of Ms Beasley's telephone enquiry pleaded at paragraph 11 above, Mr Slattery of Tyro referred Ms Beasley to the Website.
- 14. On around the date on which the enquiry pleaded at paragraph 11 above was made, Ms Beasley accessed the Website and viewed one or more of the Reliability Representations and the Support Representation.
- 15. On 23 April 2020, in response to a telephone enquiry from Ms Beasley on behalf of the Applicant, Mr Slattery again conveyed the substance of the Reliability Representations and Support Representation to Ms Beasley.

Particulars

A. *The Reliability Representations and Support Representation were made by way of email from Mr Slattery to Ms Beasley on 23 April 2020.*

B. *The email contained the following statements:*

- i. "Reliable Systems: 99.9% uptime with 3G backup and dual live data centres"; and*
- ii. "Local support 24/7: 100% Australian Based Customer support".*

- 16. At all material times prior to 5 January 2021, and prior to entering into the Tyro Agreement, Group Members:
 - (a) accessed the Website and viewed one or more of the Reliability Representations and the Support Representation; and
 - (b) received one or more emails from sales representatives of Tyro which contained the Reliability Representations and the Support Representation.

Particulars

A. *Particulars of Group Members' viewing of the Reliability Representations and Support Representation may be provided following the trial of common questions or otherwise as the Court may direct.*

- B. As to paragraph 16(b), the Applicant refers to the email from Mr Slattery to Ms Beasley on 23 April 2020, which contained the standard banner at the end of the email entitled “Why Tyro?”.

B.2. Entry into the Tyro Agreement

17. In order for the Applicant and Group Members to acquire the products and services supplied by Tyro, including the Tyro EFTPOS Terminals and Tyro EFTPOS Facility, the Applicant and Group Members were required to enter into the Tyro Agreement.
18. On 19 May 2020, and in reliance upon the Reliability Representations and Support Representation, the Applicant entered into the Tyro Agreement for the acquisition of a Tyro EFTPOS Terminal for its store in Wamberal, NSW (**Wamberal Store**).

Particulars

The form entitled “Tyro EFTPOS Banking Application Form – Trust” was executed by Ms Beasley and Mr David Beasley in their capacity as directors of the Applicant on 19 May 2020.

19. At all material times prior to 5 January 2021, and in reliance upon the Reliability Representations and Support Representation, Group Members entered into the Tyro Agreement for the acquisition of one or more Tyro EFTPOS Terminals and for the right to access and use the Tyro EFTPOS Facility.

Particulars

Particulars of Group Members’ reliance the Reliability Representations and Support Representation may be provided following the trial of common questions or otherwise as the Court may direct.

20. Pursuant to the Tyro Agreement, Tyro agreed to provide to the Applicant and Group Members services, including the Tyro EFTPOS Facility (the **Tyro Services**).

Particulars

Previous Terms / Current Terms, Part A, cl 1.0.

21. Pursuant to Section 8 of the Application and clause 8.0 of Part A of the Current Terms, the Applicant agreed to pay \$39 a month for the use of one mobile EFTPOS Terminal (**Equipment Fee**).
22. It was a term of the Tyro Agreement that, in addition to the Equipment Fee, merchants would also pay to Tyro:
- (a) the merchant service fee (**MSF**) associated with each transaction processed by a merchant through the Tyro EFTPOS Facility;

- (b) the merchant acquiring fee (**MAF**) for each transaction; and
- (c) third party fees, including the Interchange Fee, any Card Scheme Fees, and any DCC levy (for international transactions effected by use of a Visa payment card where the cardholder chooses to use dynamic currency conversion services at the point of sale).

Particulars

Previous Terms / Current Terms, Part A, cl 8.0.

23. It was a term of the Tyro Agreement that Tyro warranted that:
- (a) any equipment rented or purchased from Tyro, including the Tyro EFTPOS Terminals and any Software comprised in the Tyro EFTPOS Terminals, was of merchantable quality and was fit for the purpose for which it was supplied as at the date of supply (**Tyro Fitness Warranty**); and
 - (b) the Tyro Services provided to the merchant would be performed with reasonable care and skill (**Tyro Reasonable Care Warranty**).

Particulars

Previous Terms / Current Terms, Part B, cl 3.0.

24. On 19 May 2020, the Applicant applied for:
- (a) an additional Tyro EFTPOS Terminal for its store in Kanwal, NSW (**Kanwal Store**), at an additional cost of \$39 per month; and
 - (b) an additional Tyro EFTPOS Terminal for its store in Bateau Bay, NSW (**Bateau Bay Store**), at an additional cost of \$39 per month.

Particulars

- A. *As to sub-paragraph (a), the Applicant refers to the Additional Site Request dated 19 May 2020 for the Kanwal Store.*
- B. *As to sub-paragraph (b), the Applicant refers to the Additional Site Request dated 19 May 2020 for the Bateau Bay Store.*

C. THE OUTAGE

C.1. The Connectivity Issue

25. On and from 5 January 2021, Tyro EFTPOS Terminals experienced a connectivity issue which caused them to lose connectivity with the Tyro EFTPOS Facility and/or the EFTPOS System (**Connectivity Issue**).

26. The Connectivity Issue was caused by the presence of a version of the platform software installed on the Tyro EFTOS Terminals which caused valid, forward-dated security certificates on the Tyro EFTPOS Terminals to be incorrectly interpreted as expired.
27. Security certificates are data files which permit the identity, authenticity and reliability of Tyro EFTPOS Terminals to be verified to facilitate the secure transmission of data from the Tyro EFTPOS Terminal to the Tyro EFTPOS Facility and the EFTPOS System.
28. Security certificates are renewed on a periodic basis by a renewal process which must be undertaken by merchants, rather than by technical personnel from Tyro.
29. From time to time, the software installed on a Tyro EFTPOS Facility must also be updated in order for the renewed security certificates to be processed.
30. The Connectivity Issue resulted in affected Tyro EFTPOS Terminals being unable to:
 - (a) process payments or transactions; and
 - (b) be updated remotely.
31. In order to remedy the Connectivity Issue, Tyro was required to:
 - (a) implement an update to the Software installed on the Tyro EFTPOS Terminals, which could only be performed by manual updates by technicians sent to merchants' premises by Tyro;
 - (b) in the event that the Software could not be updated, collect impacted Tyro EFTPOS Terminals for repair and redeployment; and/or
 - (c) supply new Tyro EFTPOS Terminals to merchants.
32. The Connectivity Issue would not have occurred or, alternatively, would not have had as significant or protracted an impact upon the Applicant and Group Members as described in Sections C.2 and C.3 below had Tyro implemented one or more of the following steps:
 - (a) conducted routine checking of the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Software;
 - (b) had adequate systems in place to ensure that subsequent software releases or updated versions of software were loaded onto the Tyro EFTPOS Terminals supplied to merchants;
 - (c) had adequate systems in place to monitor the age of the Tyro EFTPOS Terminals supplied to merchants to ensure that:
 - (i) older models of the Tyro EFTPOS Terminals were recalled and replaced by new models; and

- (ii) the Tyro EFTPOS Terminals supplied by Tyro were able to process security certificates when those certificates were renewed;
 - (d) had adequate systems in place to ensure that security certificate renewals were implemented correctly;
 - (e) had adequate systems in place to test the adequacy of security certificate renewal procedures, including in exceptional circumstances such as that which caused the Connectivity Issue;
 - (f) had adequate systems in place to ensure that security certificate renewals were loaded on to Tyro EFTPOS Terminals before old security certificates expired;
 - (g) had adequate business continuity procedures in place, which were tested regularly and which included protocols for the provision of the Tyro Services to merchants in the event of an error that prevented merchants' Tyro EFTPOS Terminals from processing transactions;
 - (h) had adequate systems in place to update all Tyro EFTPOS Terminals of the same model with the same software to the latest versions or releases of the software; and/or
 - (i) had adequate systems in place to monitor the Tyro EFTPOS Facility supplied by Tyro to identify and resolve potential issues, such as the Connectivity Issue, as soon as anomalies in transaction traffic was detected.
33. By reason of the occurrence of the Connectivity Issue and the matters pleaded at paragraph 32 above, it may be inferred that Tyro had not implemented one or more of the steps described at paragraph 32.

C.2. The impact of the Connectivity Issue on the Applicant

34. On and from 6 January 2021, the Applicant's Tyro EFTPOS Terminals at the Wamberal and Kanwal Stores were non-operational.
35. From 6 January 2021 to 8 January 2021, Ms Beasley:
- (a) attempted to contact Tyro's technical assistance support line and experienced extended waiting times to speak to Tyro's technical support staff;
 - (b) was informed that the Connectivity Issue would be resolved in a short period of time;
 - (c) by reason of the representations described at sub-paragraph (b), did not terminate the Tyro Agreement or seek out alternative EFTPOS terminals while awaiting resolution of the Connectivity Issue by Tyro; and

- (d) was not offered an alternative or back-up system, a manual transaction processing payment machine or a technician to repair the Applicant's Tyro EFTPOS Terminals.

Particulars

- A. *On 6 January 2021, Ms Beasley attempted to contact the technical assistance line, experienced extended waits and was told that the Connectivity Issue would be resolved "within 24 hours".*
- B. *On 7 January 2021, Ms Beasley attempted to contact the technical assistance line and was on hold for up to 48 minutes and was told that all available information regarding the Connectivity Issue had been posted on the Website.*
- C. *On 8 January 2021, Ms Beasley contacted the technical assistance line and requested that the Software update be provided to her for self-installation, but was informed that it could only be implemented by a technician.*
36. On 8 January 2021, the Applicant was notified by Tyro that:
- (a) its non-operational Tyro EFTPOS Terminals would be collected by couriers engaged by Tyro; and
 - (b) the repaired Tyro EFTPOS Terminal would be returned to the Applicant or a replacement Tyro EFTPOS Terminal would subsequently be provided.
37. On 11 January 2021, the non-operational Tyro EFTPOS Terminal in use at the Kanwal Store was collected by couriers engaged by Tyro.
38. On 15 January 2021:
- (a) the non-operational Tyro EFTPOS Terminal in use at the Wamberal Store was collected by couriers engaged by Tyro; and
 - (b) a replacement EFTPOS terminal was obtained by the Applicant from the National Australia Bank and installed in the Applicant's Wamberal Store.
39. On 18 January 2021, the Applicant obtained a replacement EFTPOS terminal from the National Australia Bank for use in the Applicant's Kanwal Store.
40. On 20 January 2021, the Applicant terminated the Tyro Agreement with respect to the Tyro EFTPOS Terminals being used in the Applicant's Kanwal Store, Wamberal Store and Bateau Bay Store.

C.3. The impact of the Connectivity Issue on Group Members

41. On and from 5 January 2021:

- (a) Group Members were affected by the Connectivity Issue and were unable to process payments using their existing Tyro EFTPOS Terminals;
- (b) Group Members were unable to access the Tyro technical assistance support line promptly or at all;
- (c) in the alternative to sub-paragraph (b) above, Tyro's technical support personnel were unable to offer any or any adequate assistance to resolve the Connectivity Issue;
- (d) Group Members were told that the Connectivity Issue would be resolved within a short period of time; and
- (e) Group Members were not offered an alternative or back-up system, a manual transaction processing payment machine or a technician to repair Group Members' Tyro EFTPOS Terminals.

Particulars

Particulars of the impact of the Connectivity Issue upon Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

42. During the period after 5 January 2021, Group Members:
- (a) opted to terminate the Tyro Agreement and obtain alternative EFTPOS terminals from different providers (**Terminating Group Members**); or
 - (b) in reliance upon the representation pleaded at paragraph 41(d) above, waited until the Connectivity Issue was resolved or Tyro replaced their non-operational Tyro EFTPOS Terminals (**Remaining Group Members**).

Particulars

Particulars of the impact of the Connectivity Issue upon Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

D. CLAIMS AGAINST TYRO

D.1. Misleading or deceptive conduct

43. Tyro, in supplying the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and the Tyro Services to the Applicant and Group Members, was:
- (a) engaged in trade or commerce as defined in s 2 of the ACL and within the meaning of ss 18, 29, 33 and 34 of the ACL; and

- (b) acting in connection with the supply or possible supply of goods or services and/or the promotion of the supply of goods or services within the meaning of s 29 of the ACL.
44. By reason of Tyro making the Reliability Representations and Support Representation, Tyro engaged in conduct within the meaning of ss 18, 33 and 34 of the ACL.
45. Further, the Reliability Representations were representations as to:
- (a) the standard, quality, value or grade of the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services within the meaning of s 29(1)(a) and/or (b) of the ACL;
 - (b) the performance characteristics, uses or benefits of the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services within the meaning of s 29(1)(g) of the ACL; and/or
 - (c) the nature, characteristics and/or suitability for their purpose of the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services within the meaning of ss 33 and/or 34 of the ACL.
46. Further, the Support Representation was a representation as to:
- (a) the standard, quality, value or grade of the technical support services available to the Applicant and Group Members as customers of Tyro within the meaning of s 29(1)(b) of the ACL
 - (b) the availability of benefits or accessories to the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services within the meaning of s 29(1)(g) of the ACL; and/or
 - (c) the nature, characteristics and/or suitability for their purpose of the technical support services available to the Applicant and Group Members as customers of Tyro within the meaning of s 34 of the ACL.

The Reliability Representations

47. The Reliability Representations were representations as to future matters in that they represented that:
- (a) the Tyro EFTPOS Facility would be working and available 99.9% of the time; and
 - (b) further and in the alternative to sub-paragraph (a), the Tyro EFTPOS Terminals (including any Software installed in the Tyro EFTPOS Terminals) and/or the Tyro EFTPOS Facility were reliable.

48. By reason of:

- (a) the occurrence of the Connectivity Issue;
- (b) the fact that the Connectivity Issue would not have occurred, or alternatively would not have had as significant or protracted an impact upon the Applicant and Group Members as described in Sections C.2 and C.3 above, had Tyro implemented one or more of the steps identified at paragraph 32 above; and
- (c) the fact that Tyro did not implement one or more of the steps identified at paragraph 32 above as pleaded at paragraph 33 above,

Tyro did not have reasonable grounds in making the Reliability Representations.

49. In the premises, and by reason of s 4 of the ACL, the Reliability Representations were misleading or deceptive.

50. Further and in the alternative, in the event that the Reliability Representations were representations as to past or present fact, they were false or misleading or deceptive because, on and from 5 January 2021:

- (a) the Tyro EFTPOS Facility was not working and available 99.9% of the time;
- (b) further and in the alternative to sub-paragraph (a), the Tyro EFTPOS Terminals (including any Software installed in the Tyro EFTPOS Terminals) and/or the Tyro EFTPOS Facility were not reliable; and/or
- (c) the Tyro EFTPOS Terminals and/or the Tyro EFTPOS Facility were vulnerable to failure as a consequence of a failure by Tyro to carry out one or more of the steps referred to in paragraph 32 above.

Particulars

The Applicant refers to and repeats paragraphs 25 to 30, 34 to 36 and 41 above.

51. Further and in the alternative, to the extent that the Reliability Representations involved a statement of opinion, in conveying that opinion, Tyro impliedly represented that its opinion was based on reasonable grounds and/or was the product of reasonable care, diligence and skill.

52. To the extent that the Reliability Representations involved a statement of opinion, it was not based on reasonable grounds and/or was not the product of reasonable care, skill and diligence.

Particulars

The Applicant refers to and repeats paragraph 48 above.

The Support Representation

53. The Support Representation was a representation as to future matters in that it represented that Tyro's technical assistance team would be available to provide technical support 24 hours a day, 7 days a week.
54. By reason of:
- (a) the occurrence of the Connectivity Issue;
 - (b) the fact that the Applicant and Group Members were not provided with prompt and adequate technical assistance by Tyro to resolve the Connectivity Issue as pleaded at paragraphs 35 and 41 above;
 - (c) in the alternative to (b), the fact that Group Members were unable to access Tyro's technical assistance services or were not provided with any technical assistance to resolve the Connectivity Issue, as pleaded at paragraph 41 above;
 - (d) the fact that the Connectivity Issue would not have occurred, or alternatively would not have had as significant or protracted an impact upon the Applicant and Group Members as described in Sections C.2 and C.3 above, had Tyro implemented one or more of the steps identified at paragraph 32 above;
 - (e) the fact that Tyro did not implement one or more of the steps identified at paragraph 32 above as pleaded at paragraph 33 above; and
 - (f) the fact that, in circumstances where the steps identified at paragraph 32 above had not been taken by Tyro, Tyro could not have been satisfied that it could continue to supply technical assistance 24 hours a day, 7 days a week in the event of a major outage such as the Connectivity Issue,

Tyro did not have reasonable grounds in making the Support Representation.

55. In the premises, and by reason of s 4 of the ACL, the Support Representation was misleading or deceptive.
56. Further, and in the event that the Support Representation was a representation as to past or present fact, it was false or misleading or deceptive because, on and from 5 January 2021 until the Connectivity Issue was rectified:
- (a) Tyro did not provide technical support to the Applicant and Group Members to remedy the Connectivity Issue;
 - (b) the Applicant and Group Members experienced long wait times to speak to Tyro's technical support staff or otherwise were unable to access Tyro's technical assistance line; and/or

- (c) Tyro's technical support team could not be contacted for online assistance.

Loss or damage

57. By reason of the matters pleaded at paragraphs 43 to 56 above, by making the Reliability Representations and Support Representation, Tyro:
- (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 18 of the ACL;
 - (b) engaged in conduct that was liable to mislead the public as to the nature, the characteristics and/or the suitability for purpose of the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services in contravention of ss 33 and/or 34 of the ACL;
 - (c) made a false or misleading representation that the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services were of a particular standard, quality, value or grade in contravention of s 29(1)(a) and/or (b) of the ACL; and/or
 - (d) made a false or misleading representation that the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services had certain performance characteristics, uses or benefits in contravention of s 29(1)(g) of the ACL.
58. Had Tyro not made the Reliability Representations and/or Support Representation, the Applicant and Group Members would not have:
- (a) entered into the Tyro Agreement; and/or
 - (b) acquired the Tyro EFTPOS Terminals and the Tyro Services.
59. In the premises, the Applicant and Group Members:
- (a) have suffered loss and damage because of the conduct pleaded in paragraphs 43 to 56 above;
 - (b) are entitled to recover that loss from Tyro pursuant to s 236(1) of the ACL; and
 - (c) are entitled to orders under ss 237(1) and 243 of the ACL:
 - (i) directing Tyro to refund all monies paid under the Tyro Agreement by the Applicant and Group Members; and
 - (ii) directing Tyro to pay to the Applicant and Group Members the amount of the loss or damage sustained.

Particulars

- A. *The Applicant's and Group Members' loss comprises:*

- i. *loss of profits from lost sales in the period from 5 January 2021 to the date on which the Tyro Agreement was terminated (for Terminating Group Members) or the date on which the Connectivity Issue was resolved (for Remaining Group Members);*
 - ii. *loss of goodwill;*
 - iii. *the costs of mitigating losses, including costs of obtaining temporary replacement EFTPOS terminals and payment processing services from Tyro or an alternative provider; and*
 - iv. *for Terminating Group Members, increased costs arising from obtaining permanent replacement EFTPOS terminals and payment processing services.*
- B. *Further particulars of the Applicant's loss may be provided with the Applicant's evidence.*
- C. *Particulars of Group Members' loss or damage may be provided following the trial of common questions or otherwise as the Court may direct.*

D.2. Breach of the Tyro Agreement

60. By reason of:

- (a) the matters pleaded at Section C above; and
- (b) the fact that Tyro did not take one or more of the steps pleaded at paragraph 32 above,

the Tyro EFTPOS Terminals were:

- (c) vulnerable to being rendered inoperable by reason of an outage in the nature of the Connectivity Issue; and
- (d) likely to be inoperable for an extended period of time until they could be manually repaired or replaced with new Tyro EFTPOS Terminals.

61. By reason of the matters pleaded at paragraph 60 above, and in circumstances where non-cash payment methods were the primary or only means of payment available to the Applicant and/or Group Members due to the matters pleaded at paragraph 7 above, the Tyro EFTPOS Terminals were not reasonably fit for the purpose of providing a reliable means of processing non-cash payments made by the Applicant's and Group members' customers.

62. In the premises, Tyro breached the Tyro Fitness Warranty.
63. By reason of the matters pleaded at paragraphs 25 to 33 above, the Connectivity Issue was the consequence of Tyro's failure to provide the Tyro EFTPOS Terminals and the Tyro EFTPOS Facility with due care and skill.
64. In the premises, Tyro breached the Tyro Reasonable Care Warranty.

Loss or damage

65. By reason of Tyro's breach of the Tyro Fitness Warranty and the Tyro Reasonable Care Warranty, the Applicant and Group Members suffered loss or damage.

Particulars

The Applicant refers to and repeats the particulars to paragraph 59 above.

D.3. Breach of consumer guarantees

66. The amount paid or payable by the Applicant and Group Members under the Tyro Agreement for the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and Tyro Services did not exceed \$40,000.

Particulars

- A. *CounterTop EFTPOS and Mobile EFTPOS Terminals were offered by Tyro at a monthly cost of \$29 and \$39 per month.*
- B. *The other fees pleaded at paragraph 22 were calculated on a per-transaction basis and did not exceed \$40,000.*
- C. *ACL, ss 3(1), (3), (6)-(8).*
67. In the premises, the Applicant and Group Members acquired the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and the Tyro Services as consumers within the meaning of s 3(1) of the ACL.
68. The supply of the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and the Tyro Services to the Applicant and Group Members was in trade or commerce within the meaning of s 2 of the ACL.
69. By reason of the matters pleaded at paragraphs 66 to 68 above, the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services were subject to:
- (a) a guarantee as to acceptable quality within the meaning of s 54 of the ACL;
- (b) a guarantee that the Tyro EFTPOS Terminals were reasonably fit for any purpose disclosed by the Applicant and Group Members and for any purpose for which Tyro represented that they were reasonably fit within the meaning of s 55 of the ACL;

- (c) a guarantee that the manufacturer of the goods will take reasonable action to ensure that facilities for the repair of the goods were reasonably available for a reasonable period after the goods were supplied, within the meaning of s 58(1) of the ACL;
- (d) a guarantee that the manufacturer of the goods would comply with any express warranty given or made by the manufacturer in relation to the goods within the meaning of s 59(1) of the ACL;
- (e) a guarantee that services supplied under the Tyro Agreement would be rendered with due care and skill within the meaning of s 60 of the ACL;
- (f) a guarantee that the services supplied under the Tyro Agreement were reasonably fit for any purpose disclosed by the Applicant and Group Members within the meaning of s 61(1) of the ACL; and
- (g) a guarantee that the services supplied under the Tyro Agreement, and any product resulting from those services, would be of such a nature, quality, state or condition that might reasonably be expect to achieve the result that the Applicant and Group Members made known expressly or by implication to Tyro within the meaning of s 61(2) of the ACL.

Breach of s 54 of the ACL

70. By reason of:

- (a) the Connectivity Issue;
- (b) the matters pleaded at Section C; and
- (c) the fact that Tyro did not take one or more of the steps pleaded at paragraph 32 above,

the Tyro EFTPOS Terminals were:

- (d) vulnerable to being rendered inoperable by reason of an outage in the nature of the Connectivity Issue; and
- (e) likely to be inoperable for an extended period of time until they could be manually repaired or replaced with new Tyro EFTPOS Terminals.

71. By reason of the matters pleaded in paragraph 70 above, and in circumstances where non-cash payment methods were the primary or only means of payment available to the Applicant and/or Group Members due to the matters pleaded at paragraph 7 above, the Tyro EFTPOS Terminals were accordingly not:

- (a) fit for all purposes for which goods of that kind are commonly supplied; and/or
- (b) free from defects,

as a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable having regard to the nature of the goods and the Reliability Representations and Support Representation made by Tyro.

72. In the premises, the Tyro EFTPOS Terminals did not conform to the guarantee as to acceptable use under s 54 of the ACL and Tyro did not comply with its obligation to supply the Tyro EFTPOS Terminals in conformity with the guarantee.

Breach of s 55 of the ACL

73. Further and in the alternative:
- (a) the Tyro EFTPOS Terminals had the disclosed purpose of being used by merchants to process non-cash payments made to them by customers; or
 - (b) in the alternative to sub-paragraph (a), by reason of the matters pleaded at paragraphs 8 to 16 above, the Tyro EFTPOS Terminals were represented by Tyro to be reasonably fit for use by merchants to process non-cash payments made to them by customers.

Particulars

As to sub-paragraph (a):

- A. *at all material times prior to 5 January 2021, the Website required a prospective customer, in lodging an inquiry for the acquisition of the Tyro EFTPOS Terminal, to answer the question "I'm after EFTPOS for", with the options to answer the question being EFTPOS Hospitality, EFTPOS Healthcare, EFTPOS Retail, EFTPOS Services, Mobile EFTPOS and Counter Top EFTPOS.*
- B. *Ms Beasley informed Mr Slattery of Tyro on 23 April 2020 that she intended to use the Tyro EFTPOS Terminal in the Applicant's retail stores.*
- C. *the Applicant's and Group Members' purpose in acquiring the Tyro EFTPOS Terminals was impliedly made known to Tyro by virtue of the terms and content of the Tyro Agreement and the fact that the Applicant and Group Members selected "enable a Tyro EFTPOS Facility for a business or store location" on the Tyro EFTPOS Banking Application Form.*

74. By reason of:

- (a) the Connectivity Issue;
- (b) the circumstances pleaded at paragraph 7 above; and

(c) the matters pleaded at Section C and paragraphs 60 and 70 above,
the Tyro EFTPOS Terminals were not:

(d) reasonably fit for the Applicant's and Group Members' disclosed purpose pleaded in paragraph 73(a) above; or

(e) reasonably fit for the purpose for which Tyro represented to the Applicant and Group Members that the Tyro EFTPOS Terminals would be reasonably fit.

75. In the premises, the Tyro EFTPOS Terminals did not conform to the guarantee as to fitness for use under s 55 of the ACL and Tyro did not comply with its obligation to supply goods in conformity with the guarantee.

Breach of ss 58 and 59 of the ACL

76. At all material times prior to 5 January 2021 or, alternatively, prior to 28 October 2020:

(a) Tyro imported the Tyro EFTPOS Terminals into Australia from Worldline, a company headquartered in Bezons, France, which manufactured the Tyro EFTPOS Terminals; and

(b) Worldline did not have a place of business in Australia.

77. By reason of the matters pleaded in paragraph 76 above, Tyro was, at all material times before 28 October 2020, deemed to be the manufacturer of the Tyro EFTPOS Terminals pursuant to s 7(1)(e) of the ACL.

78. By reason of:

(a) the Connectivity Issue; and

(b) the matters pleaded at Sections C.2 and C.3 above,

facilities for the repair of the Tyro EFTPOS Terminals were not reasonably available on and from 5 January 2021.

79. In the premises, the Tyro EFTPOS Terminals which were imported by Tyro before 5 January 2021 or, alternatively, before 28 October 2020, and supplied to the Applicant and Group Members did not conform to the guarantee as to repairs and spare parts under s 58 of the ACL and Tyro did not comply with its obligation as deemed manufacturer to supply goods in conformity with the guarantee.

80. Further, by reason of:

(a) the Connectivity Issue; and

(b) the matters pleaded at Section C and paragraphs 60 to 62 above,

the Tyro EFTPOS Terminals did not comply with the Tyro Fitness Warranty.

81. In the premises, the Tyro EFTPOS Terminals which were imported by Tyro before 5 January 2021 or, alternatively, before 28 October 2020 and supplied to the Applicant and Group Members did not conform to the guarantee as to express warranties under s 59(1) of the ACL and Tyro did not comply with its obligation as deemed manufacturer to supply goods in conformity with the guarantee.

Breach of s 60 of the ACL

82. By reason of the matters pleaded at paragraphs 25 to 33 above, the Connectivity Issue was the consequence of Tyro's failure to provide the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and the Tyro Services with due care and skill.
83. In the premises, the Tyro Services supplied under the Tyro Agreement did not conform to the guarantee as to due care and skill under s 60 of the ACL and Tyro did not comply with its obligation to provide services in conformity with the guarantee.

Breach of s 61 of the ACL

84. Further and in the alternative, the Applicant and Group Members expressly or by implication made known to Tyro that:
- (a) the purpose for which the Tyro EFTPOS Terminals and the Tyro EFTPOS Facility was required was to process non-cash payments made to them by their customers; and/or
 - (b) they desired the Tyro EFTPOS Terminals and the Tyro EFTPOS Facility to perform in accordance with the Reliability Representations.

Particulars

- A. *The Applicant refers to and repeats paragraph 73 above.*
 - B. *Particulars of Group Members' conduct in making the matters pleaded in sub-paragraphs (a) and (b) known to Tyro expressly or by implication may be provided following the trial of common questions or otherwise as the Court may direct.*
85. By reason of:
- (a) the Connectivity Issue; and
 - (b) the matters pleaded at Section C and paragraphs 60 and 70 above,
the Tyro EFTPOS Terminals and the Tyro EFTPOS Facility were not:
 - (c) reasonably fit for the Applicant's and Group Members' disclosed purpose pleaded in paragraph 84(a) above; or

(d) of such a nature and quality that might reasonably be expected to achieve the reliable processing of non-cash payments made by the Applicant's and Group Members' customers.

86. In the premises, the Tyro EFTPOS Terminals and Tyro EFTPOS Facility did not conform to the guarantee as to fitness for use under ss 61(1) and (2) of the ACL and Tyro did not comply with its obligation to supply services and any goods resulting from those services in conformity with the guarantee.

Remedy under Part 5-4 of the ACL

87. By reason of the matters pleaded at Sections C.2 and C.3, the Applicant and Group Members required Tyro to remedy the failure of the Tyro EFTPOS Terminals to comply with ss 54, 55, 60 and/or 61 of the ACL.

88. By reason of the matters pleaded at Sections C.2 and C.3 above, Tyro did not remedy the failures within a reasonable time or at all.

89. In the premises, in order to remedy the failures of the Tyro EFTPOS Terminals in conformity with ss 54, 55, 60 and/or 61 of the ACL:

- (a) the Applicant and Terminating Group Members were entitled to replace permanently the Tyro EFTPOS Terminals with alternative terminals from other providers; and
- (b) the Remaining Group Members were entitled to obtain temporary EFTPOS terminals and payment processing services from Tyro and/or other providers until the Connectivity Issue was resolved.

90. The Applicant and Group Members are entitled to recover all reasonable costs incurred in remedying the failures of the Tyro EFTPOS Terminals to comply with ss 54, 55, 60 and/or 61 of the ACL pursuant to s 259(2)(b) of the ACL from Tyro.

91. Further, it was reasonably foreseeable that, should the Tyro EFTPOS Terminals and/or the Tyro EFTPOS Facility not comply with ss 54, 55, 60 and/or 61 of the ACL in the manner pleaded, the Applicant and Group Members would:

- (a) experience inoperability of their Tyro EFTPOS Terminals by reason of the Connectivity Issue;
- (b) be unable to process payments from customers for so long as the Connectivity Issue remained unresolved;
- (c) incur a loss of business by reason of the inability to process payments;
- (d) be required to acquire alternative EFTPOS terminals from other providers; and
- (e) incur the additional cost of acquiring and installing alternative EFTPOS terminals.

92. In the premises, the Applicant and Group Members are entitled to recover damages for the costs and loss referred to in paragraph 91 above pursuant to s 259(4) of the ACL from Tyro.

Particulars

- A. *Particulars of the Applicant's costs may be provided with the Applicant's evidence.*
- B. *Particulars of Group Members' costs referable to the matters pleaded in paragraph 91 above may be provided following the trial of common questions or otherwise as the Court may direct.*
93. By reason of the matters pleaded at paragraphs 76 to 81 above, Group Members who acquired Tyro EFTPOS Terminals which were imported by Tyro into Australia before 5 January 2021 or, alternatively, before 28 October 2020, are entitled to recover damages from Tyro as deemed manufacturer pursuant to ss 271(5) of the ACL.
94. Further, it was reasonably foreseeable that, should the Tyro EFTPOS Terminals not comply with ss 58 and/or 59 of the ACL in the manner pleaded, the Applicant and Group Members would:
- (a) experience inoperability of their Tyro EFTPOS Terminals by reason of the Connectivity Issue;
 - (b) be unable to process payments from customers for so long as the Connectivity Issue remained unresolved;
 - (c) incur a loss of business by reason of the inability to process payments;
 - (d) be required to acquire alternative EFTPOS terminals from other providers; and
 - (e) incur the additional cost of acquiring and installing alternative EFTPOS terminals.

95. In the premises, the Applicant and Group Members are entitled to recover damages for the costs referred to in paragraph 94 above pursuant to s 272(1) of the ACL from Tyro as deemed manufacturer.

Particulars

The Applicant refers to and repeats paragraph 92 above.

E. COMMON QUESTIONS OF FACT OR LAW

The representations

96. Did Tyro make the Reliability Representations and/or the Support Representation in the manner pleaded at paragraphs 9 to 10 and 15 to 16 above?

97. Were the Reliability Representations representations as to:
- (a) the standard, quality, value or grade of the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services;
 - (b) the nature, characteristics and/or suitability for purpose of the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services; and/or
 - (c) the performance characteristics, uses or benefits of the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services?
98. Was the Support Representation a representation as to:
- (a) the availability of benefits of, or accessories to, the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services; and/or
 - (b) the nature, characteristics and/or suitability for purpose of the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services?

The Connectivity Issue

99. Was the Connectivity Issue caused by the matters pleaded at paragraph 26 above?
100. Did Tyro fail to take one or more of the steps pleaded at paragraph 32?
101. Had one or more of the steps pleaded at paragraph 32 been taken, would Tyro have prevented, or substantially reduced the impact upon merchants of, the Connectivity Issue?

Contraventions

102. Did Tyro engage in misleading or deceptive conduct or conduct that was likely to mislead or deceive in contravention of s 18 of the ACL?
103. Did Tyro engage in conduct that was liable to mislead the public as to the nature, characteristics and the suitability for their purpose of goods or services in contravention of ss 33 and/or 34 of the ACL?
104. Did Tyro contravene s 29(1) of the ACL?
105. Did the Tyro EFTPOS Terminals, the Tyro EFTPOS Facility and/or the Tyro Services fail to comply with the statutory warranties and guarantees under ss 55, 56, 58, 59, 60 and/or 61 of the ACL?

Breach of the Tyro Agreement

106. Did Tyro breach the Tyro Fitness Warranty in the Tyro Agreement?
107. Did Tyro breach the Tyro Reasonable Care Warranty in the Tyro Agreement?

Loss and damage

108. Are the Applicant and Group Members entitled to recover the following losses by reason of Tyro's contraventions of ss 18, 29, 33 and/or 34 of the ACL:
- (a) Loss of profits;
 - (b) Loss of goodwill;
 - (c) Costs of mitigating losses, including of obtaining temporary replacement EFTPOS terminals and payment processing services; and/or
 - (d) Increased costs arising from obtaining permanent replacement EFTPOS terminals and payment processing services.
109. Are the Applicant and Group Members entitled to a refund of all or some monies paid under the Tyro Agreement pursuant to ss 237 and 243 of the ACL?
110. What are the principles governing the quantification of loss or damage suffered by the Applicant and Group Members by reason of any of the contraventions of the ACL and/or breaches of the Tyro Agreement alleged in the Statement of Claim which have been established?
111. Was it reasonably foreseeable that, should the Tyro EFTPOS Terminals not comply with the statutory warranties and guarantees in the ACL pleaded in this Statement of Claim, the Applicant and Group Members would:
- (a) experience inoperability of their Tyro EFTPOS Terminals by reason of the Connectivity Issue;
 - (b) be unable to process payments from customers for so long as the Connectivity Issue remained unresolved;
 - (c) incur a loss of business by reason of the inability to process payments;
 - (d) be required to acquire alternative EFTPOS terminals from other providers; and
 - (e) incur the additional cost of acquiring and installing alternative EFTPOS terminals?

Date: 18 Oct 2021



Signed by Charles Bannister
Lawyer for the Applicant

This pleading was prepared by Charles Bannister, Bannister Law Class Actions, and settled by Christopher Withers SC, Peter Silver and Robert Pietriche of counsel.

Certificate of lawyer

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

Date: 18 Oct 2021



Signed by Charles Bannister
Lawyer for the Applicant