

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged:	Affidavit of Jane Foley
File Number:	ACT1 of 2019
File Title:	Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code and the determination made by the ACCC on 5 December 2019
Registry:	VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



DEPUTY REGISTRAR

Dated: 5/05/2020 4:53 PM

Important information

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 Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.



IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019

AFFIDAVIT OF JANE FOLEY

Affidavit of: Jane Foley
Address: Level 1, 80 Cooper St, Surry Hills NSW 2010
Occupation: Solicitor
Date: 29 April 2020

Contents

Document	Description	Paragraph	Page
JF1	Australian Business Register Extract for Massive Solar Pty Ltd	9	23
JF2	Green Power Gen Solar System Agreement dated 20 July 2016, Certegy Ezi-Pay Application Form dated 20 July 2016 and Certegy Ezi-Pay Credit Schedule dated 20 July 2016	13	3
JF3	Australian Business Register Extract for GreenPowerGen	13	3
JF4	Letter from Financial Rights Legal Centre to FlexiGroup dated 8 February 2017	20	4
JF5	Letter from Certegy Ezi-Pay to Financial Rights Legal Centre dated 28 February 2017	21	4
JF6	Refund Receipt dated 16 March 2017	23	5

I, Jane Foley of Level 1, 80 Cooper St, Surry Hills, in the State of NSW, Solicitor, do solemnly and sincerely affirm that:

1. I am a Solicitor at Financial Rights Legal Centre ("FRLC") and I had the care and conduct of the matter referred to below on behalf of FRLC client Mr [REDACTED].

Filed on behalf of (name & role of party) Consumer Action Law Centre
Prepared by (name of person/lawyer) Ursula Noye
Law firm (if applicable) Consumer Action Law Centre
Tel 03 9670 5088 Fax 03 9629 6898
Email ursula@consumeraction.org.au / rex@consumeraction.org.au
Address for service Level 6/179 Queen Street, Melbourne, VIC 3000
(include state and postcode)

[Handwritten signatures]

2. I make this affidavit on the basis of my own knowledge, except where indicated. Where I depose to matters on information and belief, I set out the basis of my belief and I believe such matters to be true.
3. Between about January and March 2017, FLRC assisted Mr [REDACTED] in relation to issues arising from an unsolicited sale of solar panels, financed by Certegy Ezi-Pay. Between and including 25 January 2017 and 29 March 2017, I sought and obtained instructions from Mr [REDACTED] by telephone. The information set out below in paragraphs 6 to 19 is based on those instructions.
4. Since that time, Mrs [REDACTED] has informed me, and I believe, that:
 - a. Mr [REDACTED] later developed Lewy Body Dementia Specific;
 - b. Mr [REDACTED] moved into a nursing home in September 2018, after becoming very violent and very disoriented as a result of his condition; and
 - c. *"He doesn't know who I am on most days"*.
5. I have obtained the consent of Mrs [REDACTED], power of attorney for Mr [REDACTED], to disclose the matters set out in this affidavit. Except with respect to the matters set out in this affidavit, I am not authorised to and do not intend to waive any client legal privilege held by Mr [REDACTED] and nothing in this affidavit may be construed as involving any such waiver of privilege.

Background

6. Mr [REDACTED] was born on [REDACTED]. Mr [REDACTED] is deaf, with a cochlear implant in one ear and a hearing aid in the other. In 2017, Mr [REDACTED] was on the waiting list for surgery to improve his hearing and his only source of income was the Aged Pension.
7. In 2017, Mr [REDACTED] was receiving \$661.00 per fortnight for the Aged Pension and had living expenses of approximately \$600.00 per fortnight including food, council rates, utility rates, insurance premiums, medical expenses and transport.

Mr [REDACTED]'s Solar Panels

8. In or about 2000, Mr [REDACTED] had eight (8) solar panels installed on the roof of his home at [REDACTED] (the "Property") at a cost of approximately \$5,000.00.



9. On 20 July 2016, a sales representative of Massive Solar Pty Ltd (the “**Representative**”) attended the Property, uninvited, for the purposes of selling Mr [REDACTED] solar panels. A copy of the Australian Business Register Extract for Massive Solar Pty Ltd is annexed hereto and marked “JF1”.
10. Among other things, Mr [REDACTED] was advised by the Representative that the solar panels would reduce his electricity bill. Mr [REDACTED] informed the Representative he already had solar panels installed, but he was told by installing more solar panels he could reduce his energy bill further.
11. Mr [REDACTED] and his wife expressed some uncertainty about the solar panels and Mrs [REDACTED] asked a question (she cannot recall what the question was). The response they received from the Representative was “*Who is the boss in this house?*” From then on, Mr [REDACTED] felt intimidated and pressured by the Representative.
12. Mr [REDACTED] recalled that the Representative was very softly spoken and he could not hear him clearly nor understand what he was being told.
13. Shortly thereafter, the Representative went to his car and returned with what Mr [REDACTED] only later understood was a Certegy Ezi-Pay Credit Application, Certegy Ezi-Pay Credit Schedule and a GreenPowerGen Solar System Agreement (collectively, the “**Contract**”). A copy of the Contract is annexed hereto and marked “JF2”. It is almost illegible. Further, a copy of the Australian Business Register Extract for Green Power Gen is annexed hereto and marked “JF3”.
14. Mr [REDACTED] recalls being told by the Representative that the solar panels would cost \$11.00 per month (rather than \$200 per month specified in the Contract). Mr [REDACTED] was never told what the total cost of the panels was (\$11,000.00 as specified in the Contract on the Customer Information page) nor that he would be purchasing them through credit. Mr [REDACTED] was also not told that he would not be eligible for the Small-Scale Technology Certificate discount (the “**STC Discount**”).

JF [signature]

15. An STC Discount is a financial initiative provided by the Government to encourage the use of renewable energy. It is defined as:

“...tradable certificates which you can create and trade yourself, or assign the right to create to a registered agent in exchange for an upfront discount off the cost of your system or a cash payment”.¹

16. Mr [REDACTED] was asked to sign the Contract with Certegy Ezi-Pay (“Certegy”). Mr [REDACTED] was not afforded the opportunity to read the Contract, and was not provided with a copy of any Terms and Conditions. Mr [REDACTED] did not complete the forms himself, he only signed them.
17. On or about 21 July 2016, ten (10) solar panels were installed on the roof of the Property below the existing eight (8) panels.
18. Had Mr [REDACTED] been told the cost of the panels was \$11,000.00 he would not have ever entered any discussions with the Representative since he knew from his previous experience of buying solar panels that he could obtain similar panels for a cost of \$5,000.00 including the STC discount.
19. In February 2017, Mr [REDACTED] had paid approximately \$1,500.00 to Certegy under the Contract.

Correspondence with Certegy Ezi-Pay


20. On or about 8 February 2017, FRLC requested that Certegy release Mr [REDACTED] from the terms of the Contract and that he be refunded the amount paid to Certegy. A copy of the letter from FRLC to FlexiGroup (on behalf of Certegy) dated 8 February 2017 is annexed hereto and marked “JF4”.
21. On 28 February 2017, Certegy agreed, among other things, to cancel the Contract and refund the amount paid by Mr [REDACTED] to Certegy (the “Settlement Offer”). A copy of the letter from Certegy to FRLC dated 28 February 2017 is annexed hereto and marked “JF5”.
22. On 28 February 2017, FRLC accepted the Settlement Offer on behalf of Mr [REDACTED].

¹ <http://www.cleanenergyregulator.gov.au/RET/How-to-participate-in-the-Renewable-Energy-Target/Financial-incentives/Claiming-small-scale-technology-certificates>

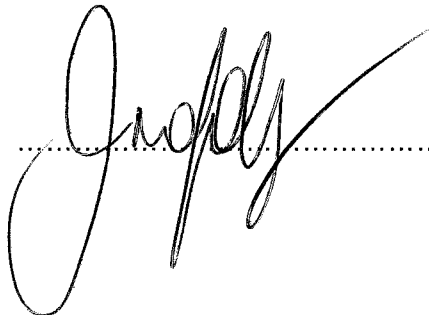
23. On 16 March 2017, Certegy refunded Mr [REDACTED] the sum of \$1,448.52. A copy of the refund receipt is annexed hereto and marked "JF6".

AFFIRMED by the deponent
at Sydney on 29 April 2020



.....

Before me:
Sarah Louise Foley
Solicitor of the Supreme Court of NSW
Practising No: L0058149



.....

IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019

Certificate identifying annexure

This is the annexure marked **JF1** now produced and shown to Jane Foley at the time of affirming her affidavit on 29 April 2020.

Before me:



Sarah Louise Foley
Solicitor of the Supreme Court of NSW
Practising No: L0058149



Current details for ABN 47 155 097 162

ABN details

Entity name: MASSIVE SOLAR PTY LTD
ABN status: Active from 11 Jan 2012
Entity type: Australian Private Company
Goods & Services Tax (GST): Registered from 11 Jan 2012
Main business location: QLD 4110

Business name(s)

Business name	From
<u>Integrated Energy Storage</u>	16 Apr 2018

ASIC registration - ACN or ARBN

155 097 162 [View record on the ASIC website](#)

Deductible gift recipient status

Not entitled to receive tax deductible gifts

Disclaimer

The Registrar makes every reasonable effort to maintain current and accurate information on this site. The Commissioner of Taxation advises that if you use ABN Lookup for information about another entity for taxation purposes and that information turns out to be incorrect, in certain circumstances you will be protected from liability. For more information see [disclaimer](#).

IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019

Certificate identifying annexure

This is the annexure marked **JF2** now produced and shown to Jane Foley at the time of affirming her affidavit on 29 April 2020.

Before me:

A handwritten signature in black ink, appearing to be 'SLF', with a long horizontal line extending to the right.

Sarah Louise Foley
Solicitor of the Supreme Court of NSW
Practising No: L0058149



ABN: 87 150 652 029
GreenPowerGen
3 - 49 Lara Way
Campbellfield Vic 3061
Ph: (03) 9357 5957
Tel: 1300 878 225
Mobile: 0433 670 304
www.greenpowergen.com.au

8331

Solar System Agreement

First Name:

Last Name:

Address:

NMI#

Retailer:

Phone:

Mobile:

Email:

Roof Type:

☐

TIN

☐

TILED

☐

FLATE

Panels

giling Type:

☐

SINGLE

☐

DOUBLE

Inverter

Roof Direction:

☐

N.NE.NW

☐

EW

RECS

System Size:

KW

System Price

INC GST

REC Discount

INC GST

Deposit

INC GST

Balance

INC GST

Certegy:

☐

YES

☐

NO

Please Accept my deposit of AUS \$

BY Credit Card

☐

MASTER CARD

☐

VISA

☐

AMERICAN EXPRESS

☐

DINERS

edit Card no

CCV

Expiry

Name on Card:

By Electronic Transfer

Account Name:

BSB:

ACC:

Please Insert Contact Number to Identify Payment

Payment Option:

☐

CHEQUE

☐

CASH

Executed As An Agreement

Client Name:

Client Signature:

Date:

Signed for and on behalf of GreenPowerGen:

Date:



Customer Information



PURCHASE NUMBER: 22747167

Prod 3 V3.0 10/02/15

APPLICATION FAST-CHECK

The applicant is:

☐ Over 18 years of age and is a permanent resident of Australia. You have sighted the required current I.D.:

- ☐ Current Australian DL (State)
☐ Aged Pension Card (APC)
☐ Veterans Pension Card (VPC)

Is the applicant currently employed full time:

☐ Yes ☐ No

Hours Worked per week

OR

Pension

- ☐ Aged
☐ Veterans

Please write the Card # in the section below

Credit Card Instalments

Deposit and Instalments must be made from the same credit card.

☐ Yes ☐ No

Cardholder and applicant must be the same person.

☐ Yes ☐ No

PURCHASE DETAILS

Merchant Name

Merchant Number

Product Purchased

Tracking Number

Sales Person

Total Purchase (GST Inc)

Last Pay Date

Deposit Paid to Merchant (No trade in's or Credits)

Balance Owning

Select term in Months only

NOTE: All debits will be calculated automatically and deducted fortnightly

PRINT CLEARLY)

PERSONAL DETAILS (For application approval, all personal details must be completed)

☐ Mr ☐ Mrs ☐ Ms

(First Name)

(Initial)

(Surname)

Mailing Address

Date of Birth

Suburb

State

Postcode

*EMAIL

*Certegy Ezi-Pay will email your Payment Schedule and password

Home Telephone

Mobile Telephone

DL State or ID type

ID Number

ID Expiry Must be Current

X COMPULSORY ALL EMPLOYMENT DETAILS REQUIRED

If Self-Employed please write their Trading Name in the space below and their ABN in the space below the trading name.

X Employer Suburb

X Employer Telephone

X Employer or Trading Name

X If Self Employed you must provide your ABN

DIRECT DEBIT REQUEST (DDR) - AUTHORITY TO DEBIT

Surname or Company Name (Print) X

Given names X

You request and authorise Certegy Ezi-Pay Pty Ltd (User ID No. 125202) to debit or charge from the account held at the financial institution identified below any amount payable by you under the Contract (which consist of each Credit Schedule, Terms and Conditions and this Customer Information Form) subject to the terms of the Contract.

OPTION 1 - FOR BANK ACCOUNT DEBITS ONLY

Financial Institution Name

Address or Suburb

Postcode

Name of Account and (If joint account, and two signatures are required, (both must sign))

X (Print)

BSB Number X

Account Number X

OPTION 2 - FOR CREDIT CARD DEBITS ONLY

Credit Card Type

VISA

MASTERCARD

DINERS

AMEX

NO ATM, EFTPOS OR PRE-PAID CREDIT CARDS

Credit Card Number

Credit Card Expiry X

Print Name

(First Name)

(Initial)

(Surname)

ACKNOWLEDGMENT (To be completed by Applicant)

By signing this document you have understood and agreed to the Terms and Conditions governing the debit arrangements between you and Certegy Ezi-Pay Pty Ltd as set out in this request and Clause 9 of the Terms and Conditions, and acknowledge that all of the information provided in this document is true and correct.

Signature (A) X

(B) If Joint Account

Print Name X

Date X

48676





There is nothing
better than
No Interest Ever!



Prod 3 V3.0 10/02/15

Credit Schedule

This document does not contain all of the information regarding this Continuing Credit Payment Plan. Further terms and information are in the *Terms and Conditions* dated February 2014 ("*Terms and Conditions*") The meaning of some key words presented like this and some other key words are explained in the *Terms and Conditions*. This information in this document is current as at the *Disclosure Date*.

IMPORTANT Must Complete

Purchase Number:
Merchant Number:
Certezy Verification Number:

FINANCIAL INFORMATION

Amount of credit for this purchase

Annual percentage rate

Total interest payable

Repayments

Number of repayments for this purchase
(Starting on the *Start Date*)
Repayment amount

Frequency of repayments from the *Start Date*

Total amount of repayments for this purchase

Fees and charges which
are definitely payable

Account Establishment Fee - payable on the establishment
of your *Revolving Credit Account*
Payment Processing Fee - payable to us with each repayment.
The fee is debited to your *Revolving Credit Account*

Total fees and charges payable
excluding *Monthly Account
Keeping Fee*

To the extent currently ascertainable

Fees and charges which
may become payable

Late Payment Fee - payable when a repayment is not made on the due date \$15.00

Change Details Fee - payable when you wish to change your details or payment schedule \$15.00

Collection Fee - payable when we take steps to collect an overdue payment \$30.00

A *Repeat Purchase Fee* is payable of \$18.50 for RCA's opened before 15 July 2013 or \$22.00 for RCA's opened on or after the 15 July 2013. \$22.00

Other Fees

Certezy Ezi-Pay Express Revolving Credit Account (RCA) \$3.50

If this is your first purchase & we accept your request to open a RCA, we will activate a RCA for you. Separate *Credit Schedules* will be provided for each purchase made under the RCA. This RCA will remain active even after you have repaid the amount of credit. There is a *Monthly Account Keeping Fee* payable of \$2.90 each month for RCA's opened before 15 July 2013 or \$3.50 for RCA's opened on or after the 15 July 2013, which will be automatically debited to your RCA while it remains active. You will not be charged the *Payment Processing Fee* when there is no purchase balance. You will be provided with access to RCA statement/s, profile information, repayment schedule/s & additional facilities as part of having this RCA. You may terminate your RCA via written notification to Certezy Ezi-Pay Pty Ltd, Level 1, 97 Pirie Street Adelaide SA 5000 only when your total amount outstanding is paid in full.

The Merchant may pay us and we may pay the Merchant amounts in connection with this *Contract*. These amounts are not ascertainable as at the *Disclosure Date*.

By signing this document you are requesting that we open a Certezy Ezi-Pay Express Revolving Credit Account for you (if this is your first purchase) or that we make a further advance to you under the account (if this is a subsequent purchase), on the terms and conditions set out in this document and the *Terms and Conditions*. By signing this document you (1) declare that all the information you have given us is accurate and not misleading and you are aware that we are relying on it, (2) acknowledge that you are bound by this document the *Customer Information Form* and the *Terms and Conditions*, (3) agree to being communicated with electronically, such as but not limited to SMS, email or other means, using details you have provided us until advised otherwise.

X

Date / / (disclosure date)

Customer Name:

58770



Certezy Ezi-Pay Pty Ltd ABN 28 129 228 986

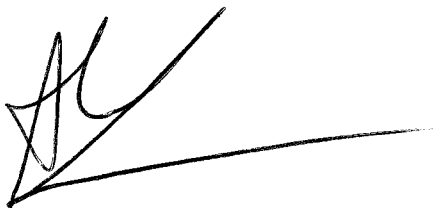
White Copy - Certezy Ezi-Pay / Yellow Copy - Merchant / Pink Copy - Consumer

IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019

Certificate identifying annexure

This is the annexure marked **JF3** now produced and shown to Jane Foley at the time of affirming her affidavit on 29 April 2020.

Before me:

A handwritten signature in black ink, appearing to be 'SLF', followed by a long horizontal line extending to the right.

Sarah Louise Foley
Solicitor of the Supreme Court of NSW
Practising No: L0058149



Current details for ABN 87 150 652 029

ABN details

Entity name: UBaid TRADING PTY. LTD.
ABN status: Active from 03 May 2011
Entity type: Australian Private Company
Goods & Services Tax (GST): Registered from 03 May 2011
Main business location: VIC 3061

Business name(s)

Business name	From
<u>GREEN POWER GEN</u>	20 Oct 2016
<u>EASY LIGHT SOLAR</u>	30 May 2016

Trading name(s)

From 1 November 2023, ABN Lookup will not display trading names and will only display registered business names. For more information, click [help](#)

Trading name	From
GREEN POWER GEN	03 May 2011

ASIC registration - ACN or ARBN

150 652 029 [View record on the ASIC website](#)

Deductible gift recipient status

Not entitled to receive tax deductible gifts

Disclaimer

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IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019

Certificate identifying annexure

This is the annexure marked **JF4** now produced and shown to Jane Foley at the time of affirming her affidavit on 29 April 2020.

Before me:

A handwritten signature in black ink, appearing to be 'SLF', with a long horizontal flourish extending to the right.

Sarah Louise Foley
Solicitor of the Supreme Court of NSW
Practising No: L0058149

8 February 2017

BY EMAIL ONLY

Flexigroup
Level 7, 179 Elizabeth Street,
Sydney, NSW 2000
AUSTRALIA

Email: customer.service@flexigroup.com.au / [REDACTED]
[REDACTED]

[REDACTED]
CERTEGY EZI-PAY CUSTOMER: [REDACTED]
PURCHASE NUMBER: 22747167

We act on behalf of Mr [REDACTED]. You may recall we have previously contacted you regarding our client [REDACTED]. We note Mr [REDACTED] was referred to us by his neighbour, Mr [REDACTED], who signed a contract with Certegy Ezi-Pay ("Certegy") the same day as Mr [REDACTED].

Mr [REDACTED] entered into a contract with Certegy in circumstances where:

1. he was sold a product he did not need;
2. he was misled as to the cost of the product;
3. he was intimidated and pressured by the sales representative to enter the contract;
4. he is deaf and did not understand what he was agreeing to;
5. the supplier of the goods was not a Clean Energy Council Member; and
6. the cash price of the goods was significantly less than the amount he has to pay under the contract with Certegy.

We say Certegy cannot enforce its agreement with Mr [REDACTED] where it has breached the law on unsolicited consumer agreements, among other things. Further, we say the *National Consumer Credit Protection Act 2009* (Cth) (the "Act") applies to the contract between Mr [REDACTED] and Certegy as the amount repayable to Certegy exceeds the cash price of the goods. That being so, by failing to carry out an assessment of Mr [REDACTED]'s suitability, among other things, Certegy breached the Act.

For these reasons, outlined fully below, our client is requesting he be released from any debt owed to Certegy without penalty effective immediately and that payments made to Certegy be refunded.

I. BACKGROUND

By way of background, Mr [REDACTED] is 67 years old. He is deaf, with a cochlear implant in one ear and a hearing aid in the other. Mr [REDACTED] is currently on the waiting list for surgery to improve his hearing. His only source of income is the Aged Pension.

In or about 2000, Mr [REDACTED] had solar panels installed on the roof of his home at a cost of approximately \$5,000.

On 20 July 2016, Mr [REDACTED] of Massive Solar Pty Ltd attended Mr [REDACTED]'s property, uninvited, for the purposes of selling him solar panels. Among other things, Mr [REDACTED] was advised the solar panels would reduce his electricity bill. Mr [REDACTED] informed Mr [REDACTED] he already had solar panels installed, but he was told by installing more solar panels he could reduce his bill further.

Mr [REDACTED] and his wife expressed some uncertainty about the solar panels and Mrs [REDACTED] asked a question (she cannot recall what the question was). The response they received from Mr [REDACTED] was "Who is the boss in this house?" From then on, Mr [REDACTED] felt intimidated and pressured by Mr [REDACTED]. Mr [REDACTED] has instructed us Mr [REDACTED] was very softly spoken and he could not hear him clearly nor understand what he was being told.

Shortly thereafter, Mr [REDACTED] went to his car and returned with what Mr [REDACTED] now knows was a Certegy Credit Application, Certegy Credit Schedule and a GreenPowerGen Solar System Agreement (collectively, the "Contract"). Mr [REDACTED] recalls being told the solar panels would cost \$11.00 per month (not \$200 per month). Mr [REDACTED] was never told what the total cost of the panels was (\$11,000) nor that he would be financing them. Mr [REDACTED] was also not told that he would not be eligible for the Small-Scale Technology Certificate discount (the "STC Discount").

Mr [REDACTED] was asked to sign the Contract. Mr [REDACTED] was not afforded the opportunity to read these documents, and was not provided with a copy of any Terms and Conditions. Mr [REDACTED] did not complete the forms himself, he only signed them.

On or about 21 July 2016, the solar panels were installed on the roof of Mr [REDACTED]'s property below the existing panels.

We are instructed had our client been told the cost of the panels was \$11,000 he would not have ever entered any discussions with Mr [REDACTED] since he knew from previous experience he could obtain similar panels for a cost of \$5,000.00 including the STC discount.

II. THE CERTEGY CONTRACT

Under the Certegy Contract, Mr [REDACTED] is required to pay 96 fortnightly instalments of \$109.00. To date, Mr [REDACTED] has paid approximately \$1,500.00.

At the time of entering into the contract, Mr [REDACTED]'s only source of income was the Aged Pension (\$661.00 per fortnight). Mr [REDACTED] has living expenses of approximately \$600.00 per fortnight including food, council rates, utility rates, insurance premiums, medical expenses and transport.

Had Certegy made enquiries as to Mr [REDACTED]'s ability to repay the credit it supplied for the purchase of the solar panels, it would have been aware immediately that Mr [REDACTED] could not afford the provision of credit.

Further we note the copy of the Credit Schedule provided to Mr [REDACTED] is almost illegible and no copy of the Terms and Conditions have ever been provided.

III. THE VALUE OF THE GOODS

The cost of the solar panels sold to Mr [REDACTED] is stated on the "Customer Information" sheet as being \$11,000.00. On the Solar System Agreement it states the system size is 2.5KW and it is being installed on a single tin roof.

Based on what we know and the quotes / invoices obtained for similar panels, arguably the value of the panels sold to Mr [REDACTED] was in the vicinity of \$7,000.00 (before the STC discount) not \$11,000.00. We also note Mr [REDACTED] telephoned Greenpowergen in late 2016 and was told "you have equipment on your roof worth \$7,000.00".

This is evidence that when the panels were sold to Mr [REDACTED], an interest component was added. That is, although it appears Mr [REDACTED] is only repaying the cost of the panels, he is actually paying interest on the credit provided by Certegy since the cash price of the goods is significantly less than the amount repayable under the contract.

IV. APPLICATION OF THE CODE

We are aware that Certegy takes the view it does not have to comply with the Act as it is not in the business of providing credit since, among other things, it does not charge its customers interest.

With respect, we disagree. Schedule 1 of the Act (the "Code"), section 11 entitled "*Deciding application of Code to particular contracts for the sale of goods by instalments*" states:

(1) *This section applies to a contract for the sale of goods if the amount payable to purchase the goods under the contract:*

- (a) is payable by instalments; and*
- (b) exceeds the cash price of the goods.*

(2) *This section does not apply to a contract for the hire of goods even if the hirer has a right or obligation to purchase the goods.*

(3) *For the purpose of deciding whether the contract is a credit contract and, if it is a credit contract, of applying this Code (including Part 6) to it:*

- (a) a debt is to be regarded as having been incurred, and credit provided, in the circumstances mentioned in subsection (1); and*
- (b) the debtor is the person who is to make the payments; and*
- (c) the credit provider is the person who is to receive the payments; and*
- (d) the charge for providing the credit is the amount by which the amount payable to purchase the goods, together with any other amount payable under the contract, exceeds the cash price of the goods.*

(4) *This section does not affect the application of this Code to a contract that is, apart from this section, a credit contract.*

We say that the amount payable to Certegy by Mr [REDACTED] exceeds the cash price of the solar panels and as such the Act and the Code applies. We refer you to the recent decision of *ASIC v Kobelt* [2016] FCA 1327.

V. BREACHES OF THE ACT

Assuming the Act applies, which we are of the view it does, Certegy breached the Act numerous times when it entered into a contract with our client.

Firstly, section 128 of the Act requires a suitability assessment to be carried out within 90 days **before** a credit contract is entered. We have no evidence any suitability assessment was carried out.

Secondly, section 130(1)(a) of the Act requires Certegy, before making an assessment, to make reasonable inquiries about the consumer's requirements and objectives in relation to the credit contract. Had Certegy carried out these inquiries it would have learnt that our client already had solar panels, only two people resided in the property and that his needs were met by the existing panels. It would also have become clear that our client did not want to purchase solar panels at a cost of \$11,000 since he could have bought them from a retailer that could provide the STC discount.

Thirdly, section 130(1)(b) and (c) of the Act requires Certegy, before making an assessment, to make reasonable inquiries and reasonable steps to verify a consumer's financial situation. There is no evidence Certegy carried out any enquiries to verify Mr [REDACTED]'s financial situation. Had these inquiries been made, Certegy would have become aware our client could not afford the fortnightly repayments of \$109.00 for 4 years.

Finally, section 131 of the Act requires Certegy to assess a credit contract as being unsuitable if at the time of the assessment, it is likely that, among other things:

- a) the consumer will be unable to comply with their obligations under the contract, or could only comply with substantial hardship, if the contract is entered; or
- b) the contract will not meet the consumer's requirements or objectives if the contract is entered.

The contract between our client and Certegy was wholly unsuitable as it did not meet our client's requirements, specifically, that he did not want to pay \$11,000 for solar panels and he could not afford it.

VI. BREACHES OF CONSUMER LEGISLATION

The Contract constitutes an unsolicited consumer agreement under the Australian Consumer Law ("ACL"). As such, the Agreement should have, but didn't:

1. set out our client's cooling-off and termination rights;
2. include the full terms of the agreement (which it did not since no copy of the Terms and Conditions were provided to our client);
3. include on the front page the following text:
'Important Notice to the Consumer'
'You have a right to cancel this agreement within 10 business days from and including the day after you signed or received this agreement'
'Details about your additional rights to cancel this agreement are set out in the information attached to this agreement'.
4. attach a notice that our client could use to terminate the contract.

While this is not an exhaustive list of our client's complaints under the ACL, we note Certegy cannot enforce its agreement with Mr [REDACTED] when it or its representatives have breached the law on unsolicited consumer agreements. It is also telling that the supplier Certegy has aligned itself with is a retailer that has not obtained accreditation from the Clean Energy Council.

VII. OUTCOME SOUGHT

In light of the issues raised above, our client requests:

1. he be released immediately from any debt owing to Certegy without penalty.
2. he be refunded the payments he has made to Certegy in the sum of approximately \$1,500.00.

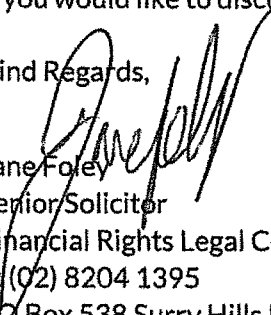
If Certegy do not agree to the terms proposed above, our client requests Certegy provide to our office on or before 21 February 2017:

1. a clear copy of the Credit Schedule and the Terms and Conditions;
2. evidence of the specifications of the solar panels installed;
3. evidence of the value of the panels installed; and
4. evidence as to how much Certegy paid the supplier for the solar panels.

Please note if the settlement terms set out above are not accepted or Certegy do not provide the information and evidence requested on or before 21 February 2017, our client reserves his rights to lodge a complaint with the Office of Fair Trading and ASIC without further notice.

If you would like to discuss this letter please contact me on (02) 8204 1340.

Kind Regards,



Jane Foley
Senior Solicitor
Financial Rights Legal Centre
T: (02) 8204 1395
PO Box 538 Surry Hills NSW 2010
www.financialrights.org.au

cc: Green Power Gen
3-49 Lara Way
Campbellfield VIC 3061

cc: Massive Solar Pty Ltd
2/13 Millennium Court
Silverwater NSW 2128

IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019

Certificate identifying annexure

This is the annexure marked **JF5** now produced and shown to Jane Foley at the time of affirming her affidavit on 29 April 2020.

Before me:

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Sarah Louise Foley
Solicitor of the Supreme Court of NSW
Practising No: L0058149

28 February 2017

Account No: 22747167

By email:

Jane.Foley@financialrights.org.au

Financial Rights Legal Centre

Attention: Jane Foley

PO Box 538

SURRY HILLS NSW 2010

Dear Jane,

**Re: [REDACTED] v Ubaid Trading Pty Ltd ABN 87 150 652 029 t/as Green Power Gen
("GPG") – Certegy Ezi-Pay purchase 22747167**

I refer to your letter dated 8 February 2017 regarding Mr [REDACTED]'s purchase of a solar panel system from GPG the purchase of which Mr [REDACTED] financed by using a Certegy Ezi-Pay Express payment plan.

Engagement with GPG

Certegy Ezi-Pay has required GPG to ensure their customer sales documents comply with all applicable obligations under the Australian Consumer Law (ACL).

Cooling off Period

Certegy Ezi-Pay is willing to accept that those documents may not have been fully compliant at the time Mr [REDACTED] entered the contract for the purchase of the solar panel system and the payment plan with Certegy Ezi-Pay.

We accept that GPG may not have provided documents as required under the ACL to Mr [REDACTED] before selling him the solar panel system and that there may be other problems with the conduct of the relevant salesperson.

Right to termination

Mr [REDACTED] was entitled to terminate both contracts within 6 months of 20 July 2016. This period ended on 20 January 2017.

However, we are willing to accept your proposal of resolution in part VII your letter.

Resolution

Certegy Ezi-Pay will:

- Cancel Mr [REDACTED]'s Certegy Ezi-Pay contract;
- Release Mr [REDACTED] from all liability to Certegy Ezi-Pay in respect of purchase 22747167;
- Refund Mr [REDACTED]'s repayments to date to his preferred bank account. As at the date of this letter that amount is \$1448.52; and
- Close Mr [REDACTED]'s revolving credit account with Certegy Ezi-Pay.

In addition, Certegy Ezi-Pay advises Mr [REDACTED] that he may retain the solar panel system at no further cost to him if he wishes to. If Mr [REDACTED] retains the system, he releases Certegy Ezi-Pay and GPG from all obligations to fix or maintain the system.

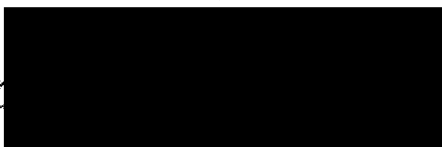
Moving Forward

Please advise whether Mr [REDACTED] consents to this resolution, and please provide Mr [REDACTED]'s preferred bank details to enable us to refund his repayments.

If you are aware of any other consumers who have experienced similar issues to those experienced by Mr [REDACTED], please provide me with those customers' details.

If you require any further information please contact me on 08 8464 1856.

Yours faithfully,



Director – Legal and Compliance

IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019

Certificate identifying annexure

This is the annexure marked **JF6** now produced and shown to Jane Foley at the time of affirming her affidavit on 29 April 2020.

Before me:

A handwritten signature in black ink, appearing to be 'SLF', with a long horizontal line extending to the right.

Sarah Louise Foley
Solicitor of the Supreme Court of NSW
Practising No: L0058149



NAB Connect - Domestic payment report

Payment ID 94020900

Value date 16/03/2017

Status Requires authorisation (0/1 done)

Total amount (AUD) \$1,448.52

Authorisation details

Authoriser name

Signature

Payment details

Payment type Domestic - Overnight

Credit transactions 1

Transaction type One to many

From

Account name	BSB	Account	Description	Amount (AUD)	Status
MAIN			EZIPAY REFUND	\$1,448.52 DR	Valid

To

Account name	BSB	Account	Reference	Amount (AUD)	Status
			CERTEGY REFUND	\$1,448.52 CR	Valid

End of report