

**THE QUEEN'S BENCH  
Winnipeg Centre**

BETWEEN:

**JENNY BRIONES (née BEJARANO)**

Plaintiff,

-and-

**NATIONAL MONEY MART COMPANY and DOLLAR FINANCIAL GROUP INC.**

Defendants.

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**STATEMENT OF DEFENCE AND COUNTERCLAIM  
OF THE DEFENDANT DOLLAR FINANCIAL GROUP INC.**

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**Solicitors for the Defendant, Dollar Financial Group Inc.**

**THE QUEEN'S BENCH  
Winnipeg Centre**

BETWEEN:

**JENNY BRIONES (née BEJARANO)**

Plaintiff,

-and-

**NATIONAL MONEY MART COMPANY and DOLLAR FINANCIAL GROUP INC.**

Defendants.

**STATEMENT OF DEFENCE AND COUNTERCLAIM OF THE DEFENDANT  
DOLLAR FINANCIAL GROUP, INC.**

1. The Defendant Dollar Financial Group, Inc. ("Dollar Financial") admits the allegations contained in paragraph 3 of the statement of claim (the "Statement of Claim").
2. Dollar Financial denies the allegations contained in paragraphs 4 to 56 of the Statement of Claim and the relief claimed in paragraph 1 therein.
3. Dollar Financial has no knowledge of the allegations in paragraph 2 of the Statement of Claim, and therefor deny them.
4. Except where admitted herein, Dollar Financial specifically denies each and every allegation of fact in the Statement of Claim and puts the Plaintiff to the strict proof thereof.
5. In answer to the whole of the Statement of Claim, Dollar Financial denies that it has any liability either to the Plaintiff, or to any proposed class member.

## **Dollar Financial's Business**

6. In further answer to the whole of the Statement of Claim Dollar Financial pleads the facts set out in the paragraphs below.

7. Dollar Financial was founded in 1979. It was incorporated in the State of New York, U.S.A., and had its principal place of business in Berwyn, Pennsylvania.

8. Dollar Financial is a financial services company which provides a diverse range of consumer financial products and services consisting of cheque cashing, short-term consumer loans, money orders and money transfers through its operating subsidiaries. Each of these services is independent of the others.

9. At all material times Dollar Financial owned and operated hundreds of stores in the United States which offered short-term consumer loans and other ancillary services, depending on their location. These short-term loan programs were very different from the loan product known as a Fast Cash Advance (the "Fast Cash Advance") which was independently created by the Defendant National Money Mart Company ("Money Mart") in Canada.

10. Dollar Financial does not carry on business in Canada. It has no stores, outlets, franchises, offices, physical assets, agents or employees in Canada. Dollar Financial has never carried on business in Canada.

11. In November 1996, the shares of National Money Mart Inc. were purchased by Dollar Financial Canada Ltd. ("DFC"), an Alberta company which was a wholly-owned subsidiary of Dollar Financial. In May 1997, National Money Mart Inc., DFC and two other companies amalgamated to become National Money Mart Company ("Money Mart"), the other defendant herein. The shares of the new company, Money Mart, were issued to DFG International, Inc. ("DFG International"), another wholly-owned subsidiary of Dollar Financial.

12. At the material times Dollar Financial had 22 direct subsidiaries, in addition to DFG International, including 21 separate U.S. subsidiaries and DFG World, Inc. DFG World, Inc. in turn owned 100% of Dollar Financial UK Limited, which in turn had 8 subsidiaries, 2 of which have 8 further subsidiaries between them.

13. The shares of Money Mart are no longer owned by Dollar Financial or DFG International, either directly or indirectly.

**No Relationship with the Plaintiff or Any Proposed Class Members**

14. Dollar Financial has never been party to any Fast Cash Advance agreement, or any other transaction, with the Plaintiff, or with any proposed class member.

15. Dollar Financial does not have and has never had any contact or relationship with the Plaintiff or with any proposed class member. Dollar Financial does not know the identity of any proposed class members.

16. Dollar Financial has never received any money from the Plaintiff or any proposed class members.

**Dollar Financial and National Money Mart Company Operate Independently of Each Other**

17. In further answer to the whole of the Statement of Claim, and in particular paragraphs 4-7, 17-18, 21-32, 34, 35, 37, 38 and 49-53 Dollar Financial pleads the facts set out below in respect of the relevant time period.

18. Money Mart had a very strong management team at the time of its acquisition which was left intact to operate the business. At all material times Money Mart had complete autonomy to carry on its business in the same manner as prior to the acquisition.

19. At the time of this acquisition, Money Mart was already offering most of its current products and services including Fast Cash Advances. The Fast Cash Advance offered by Money Mart had been developed and implemented independently by Money Mart prior to Money Mart's acquisition by DFC in November 1996. Dollar Financial was not involved in any manner in this planning, development or implementation of the Fast Cash Advance.

20. Contrary to the allegations in the whole of the Statement of Claim Dollar Financial did not exercise effective or actual control or management of Money Mart's business. Nor did Money Mart act "in furtherance of a common business enterprise carried on by Money Mart and Dollar Financial for their mutual benefit, in which Money Mart functioned as if it were a part of Dollar Financial."

21. Money Mart was and is a separate corporation and operates autonomously. At all material times, all decisions concerning the day-to-day business of Money Mart, the products offered by Money Mart and how they were offered, were made by Money Mart. The relationship between Dollar Financial and Money Mart was a typical parent/indirect-subsiary relationship.

22. Dollar Financial's officers and directors did not control Money Mart. Dollar Financial conducted the affairs of its board of directors separately and independently from the affairs of Money Mart. Money Mart's operations were not supervised or conducted by the board of directors of Dollar Financial.

23. Money Mart was separately financed and had separate bank relationships and separate lines of credit from those of Dollar Financial. Dollar Financial did not deposit any of its funds into Money Mart accounts, nor did Money Mart deposit any of its funds into Dollar Financial accounts. Dollar Financial did not pay any of its bills with Money Mart funds, nor did Money Mart pay any of its bills with Dollar Financial funds. Employees of Dollar Financial and

employees of Money Mart were paid by their respective employers from each company's own separate bank accounts. Staff meetings were entirely separate and independent of each other.

24. The form and contents of Dollar Financial's annual reports and other regulatory filings were dictated by U.S. law. Its annual reports were prepared and filed so as to meet the requirements of regulations promulgated by the U.S. Securities and Exchange Commission (the "SEC") pursuant to the *Securities Exchange Act of 1934*. Such regulatory filings of Dollar Financial were in keeping with SEC requirements and reflected normal reporting practices followed by similar companies in the United States, as a result of the requirements of U.S. law.

25. Dollar Financial specifically denies that it earned any revenue or net income from Fast Cash Advances in Canada. Nor did it at any time have, or report, revenues or profits from charging interest at a criminal rate.

26. Dollar Financial specifically denies that, at any material time, Money Mart reported to it, except where such reporting was required by law, in which case Money Mart reported in accordance with, and to the extent required by, its legal obligations.

27. If, at any material time, in any respect Dollar Financial and Money Mart functioned as an integrated business sharing common purposes and objectives, or shared networks or systems as alleged (all of which is not admitted but specifically denied), Money Mart and Dollar Financial did so lawfully, for the purposes of promoting its own business interests and without any intention to harm any proposed class member. Dollar Financial has no liability to any proposed class member in respect of such lawful activities.

### **Management and Royalty Fees**

28. With reference to paragraphs 18, 27, 34 and 37 and the whole of the Statement of Claim, Dollar Financial says that:

- (a) Money Mart and Dollar Financial were parties to a written royalty agreement dated July 1, 1999 (the "Royalty Agreement"), which was amended by an amending agreement dated July 1, 2000;
- (b) pursuant to the terms of the Royalty Agreement (as amended), Money Mart was required to pay and Dollar Financial was entitled to receive an annual royalty fee from Money Mart equal to 2.5% of Money Mart's annual revenue from all sources;
- (c) Money Mart and Dollar Financial were also parties to a written management agreement; and
- (d) Money Mart, from time to time, in accordance with its legal obligations and lawfully, paid amounts to Dollar Financial under that agreement.

29. Beginning in or around 1998, certain management functions were performed on behalf of Money Mart by Dollar Financial in its Berwyn, Pennsylvania office. In return for these services, Dollar Financial received an annual management fee. These fees have been allocated in keeping with Canada's transfer pricing legislation and have been scrutinized by Revenue Canada. Virtually all have been approved in accordance with the requirements of the *Income Tax Act* (Can.). They consist of arm's-length value payments by Money Mart for services rendered on its behalf.

30. In around 2003, Dollar Financial determined that it would be more economical for certain of Dollar Financial's accounting functions to be performed by Money Mart staff operating at Money Mart offices. Accordingly, certain of Dollar Financial's accounting functions were contracted out to Money Mart, to be performed by Money Mart staff on behalf of Dollar Financial.

31. Dollar Financial pays Money Mart for these services at fair market value. These payments have been scrutinized by Revenue Canada and virtually all have been approved in accordance with the requirements of the *Income Tax Act* (Can.).

**There Has Been No Unjust Enrichment**

32. In further answer to the whole of the Statement of Claim and in particular paragraphs 33-38, Dollar Financial pleads the facts set out in the paragraphs below.

- (a) Dollar Financial denies that it has any liability to account to any proposed class member;
- (b) Dollar Financial denies any unjust enrichment, and in particular Dollar Financial denies that at any material time it has been enriched at the expense of any proposed class member;
- (c) if any proposed class member has been deprived (which is not admitted but denied), Dollar Financial denies receiving any direct benefit from any alleged deprivation or at any proposed class member's expense;
- (d) proposed class members, such as the Plaintiff, who have defaulted on and failed to repay Fast Cash Advances, have suffered no deprivation in relation to such unpaid Fast Cash Advances, and Dollar Financial has received nothing and can have no liability to proposed class members in respect of such unpaid Fast Cash Advances;
- (e) to the extent that Dollar Financial has been paid amounts by Money Mart, such payments have been made lawfully, and pursuant to lawful agreements between Dollar Financial and Money Mart;

- (f) if at any material time Money Mart collected interest from a proposed class member in breach of s. 347 of the *Criminal Code*, which is not admitted but specifically denied, any such amount or amounts were combined with other amounts lawfully collected or earned by Money Mart, before Money Mart remitted any amounts to Dollar Financial.

33. In any event, neither the Plaintiff nor any proposed class members are entitled to the amounts claimed on the basis of unjust enrichment because of the delay in bringing this action during which time Dollar Financial has changed its position by using any monies allegedly received from the Plaintiff or any proposed class members in the ordinary course of its business with the result that those amounts are no longer available.

#### **Concentration Account**

34. At the material times all amounts received by Dollar Financial from Money Mart, including all royalty fees and management fees, were received into a general concentration account (the "**Concentration Account**") at a Wells Fargo branch located in California. The Concentration Account was a shared account which was used by all of Dollar Financial's active U.S. subsidiaries. It was used as a general chequing account, with cash orders, deposits, wire transfers, automated clearing house deposits and other transactions flowing both in and out. It was used for all cash requirements for the U.S. operations, including service of Dollar Financial's U.S. debt.

35. Due to the fact that the royalty fees were calculated as a percentage of Money Mart's total gross annual revenue from all sources, it is not possible to differentiate which funds received by Dollar Financial may have been derived from revenue received by Money Mart from Fast Cash Advances.

36. The Concentration Account also received funds which are wholly unrelated to Money Mart, including funds from Dollar Financial's operations in the U.S. and the United Kingdom, payments from third party collectors, automated clearing house deposits from non-Well Fargo accounts, and proceeds from draws upon Dollar Financial's revolving line of credit.

37. Dollar Financial says that at the material times:

- (a) it paid its own financial obligations from the Concentration Account, and the balance in the account fluctuated significantly;
- (b) since the first royalty and management fee payments were received by Dollar Financial from Money Mart, the Concentration Account has been overdrawn from time to time; as a result, any funds (whether in respect of royalties or management fees or otherwise) which may have been received by Dollar Financial from Money Mart prior to the last date of being overdrawn, are no longer in the possession of Dollar Financial.

38. Dollar Financial says that since August 1997 the balance in the Concentration Account has fluctuated and in the event that it is found that proposed class members are entitled to recover any amount on the basis of unjust enrichment (which is not admitted but specifically denied) such recovery cannot exceed the lowest intermediate balance in the Concentration Account. Similarly, to the extent that proposed class members are seeking to recover amounts from Dollar Financial in respect of payments or fees received by Dollar Financial from Money Mart, Dollar Financial says that such recovery cannot exceed the lowest intermediate balance in the relevant accounts of Money Mart in respect of any amounts it allegedly has received from Money Mart.

39. If Money Mart has paid or accrued any amounts to Dollar Financial, such payments or accruals have been made lawfully, pursuant to lawful agreements, and Dollar Financial has no liability to any proposed class member in respect of any such amounts.

**No Harsh or Unconscionable Transactions**

40. In further answer to the whole of the Statement of Claim and in particular to paragraphs 39-48, Dollar Financial pleads the facts set out in the paragraphs below.

41. Dollar Financial specifically denies that Fast Cash Advance transactions between Money Mart and the Plaintiff, or between Money Mart and any proposed class member, fall within the provisions of *The Unconscionable Transactions Relief Act*, C.C.S.M, c. U-20 (the "UTRA") or *The Consumer Protection Act*, C.C.S.M, c. C-200, as alleged.

42. Dollar Financial specifically denies that:

- (a) the Plaintiff or any proposed class members are "debtors" within the meaning of the *UTRA*;
- (b) the Plaintiff or any proposed class members are "borrowers" or "debtors" within the meaning of *The Consumer Protection Act*;
- (c) it or Money Mart is a "creditor" within the meaning of the *UTRA*;
- (d) it or Money Mart is a "credit grantor" and "money lender", in respect of Fast Cash Advances advanced before 1 April 2007, or a "credit grantor" in respect of Fast Cash Advances advanced on or after 1 April 2007, within the meaning of *The Consumer Protection Act*;
- (e) Fast Cash Advance Agreements are "loan agreements" in respect of Fast Cash Advances advanced before 1 April 2007, or "credit agreements" in respect of

Fast Cash Advances advanced on or after 1 April 2007, within the meaning of *The Consumer Protection Act*;

- (f) Fast Cash Advance Agreements were entered into for non-business purposes within the meaning of *The Consumer Protection Act*;
- (g) Fast Cash Advances were “money lent” within the meaning of the *UTRA*;
- (h) cheque cashing fees are included in the “cost of the loan” within the meaning of the *UTRA*;
- (i) cheque cashing fees are included in the “cost of borrowing” in respect of Fast Cash Advances advanced before 1 April 2007, or that the cost of borrowing for each Fast Cash Advance exceeded \$10 within the meaning of *The Consumer Protection Act*;
- (j) the “non-interest charges” in respect of Fast Cash Advances advanced on or after 1 April 2007, within the meaning of *The Consumer Protection Act* constitute part of the value given by the Plaintiff or any proposed class member for the Fast Cash Advances within the meaning of *The Consumer Protection Act*; or that they are included in the “cost of credit” within the meaning of *The Consumer Protection Act*;
- (k) each of the Fast Cash Advances provided by Money Mart to the Plaintiff or any proposed class member was advanced upon terms and conditions that required the payment of interest at a criminal rate contrary to s. 347 of the *Criminal Code*;
- (l) the Plaintiff or any proposed class member paid interest at a criminal rate to Money Mart or Dollar Financial on their Fast Cash Advances;

- (m) the cost of the Fast Cash Advances was harsh or unconscionable within the meaning of the *UTRA*;
- (n) the amounts paid by the Plaintiff or any proposed class member were sums in excess of the amount fairly due for the services they received from Money Mart, within the meaning of the *UTRA*, or that the Plaintiff or any proposed class member is entitled to repayment of those amounts;
- (o) Money Mart failed to properly disclose in the Fast Cash Advance Agreements any matter required to be disclosed by *The Consumer Protection Act*;
- (p) the Plaintiff or any proposed class member are entitled to repayment of any cheque cashing fees they paid or to any compensation of whatever kind under *The Consumer Protection Act* or otherwise.

43. Dollar Financial specifically denies that the terms and conditions upon which Money Mart offered to make Fast Cash Advances were either harsh or adverse:

- (a) to the Plaintiff in the circumstances of the Plaintiff; or
- (b) to any proposed class member, in the circumstances of such person.

44. Further or alternatively, Dollar Financial denies that, at any material time, it engaged in any conduct constituting either an unconscionable act or an unconscionable practice:

- (a) in relation to the Plaintiff in the circumstances of the Plaintiff; or
- (b) in relation to any proposed class member in the circumstances of such person.

45. Further or alternatively, Dollar Financial specifically denies that, in relation to any Fast Cash Advance:

- (a) either the Plaintiff or any proposed class member was subjected to any pressure by Dollar Financial to enter into the transaction;
  - (b) either the Plaintiff or any proposed class member was in the circumstances unable or incapable of reasonably protecting his or her own interests.
46. Further, in relation to each Fast Cash Advance between Money Mart and the Plaintiff:
- (a) the Plaintiff chose voluntarily to contract with Money Mart on the terms offered by Money Mart, which were acceptable to and accepted by the Plaintiff;
  - (b) the Plaintiff chose voluntarily to contract with Money Mart on the terms offered by Money Mart, knowing that there were other alternatives available to the Plaintiff;
  - (c) the Plaintiff chose voluntarily to contract on the terms offered by Money Mart because by doing so her could avoid other inconvenience and expense;
  - (d) the Plaintiff chose voluntarily to allow Money Mart to deposit her first party cheque, and pay the fees associated with use of the cheque cashing service, because by doing so she could avoid other inconvenience and expense;
  - (e) the Plaintiff had the ability and capacity to protect her own interests, and at all material times conducted her dealings with Money Mart in a manner the Plaintiff considered to be in her own interest;
  - (f) the Plaintiff did not suffer, or alternatively did not at any time communicate to Money Mart that she suffered, from any physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature and language of the Fast Cash Advances.

47. Dollar Financial specifically denies it had any direction or control of Money Mart, and further denies that it participated in Money Mart's Fast Cash Advance business through the provision of management, financing or other services.

48. Further or alternatively, if Dollar Financial engaged in any conduct constituting either an unconscionable act or an unconscionable practice, which is not admitted but specifically denied, Dollar Financial specifically denies that either the Plaintiff or any proposed class member suffered any loss or damage because of any such act or practice.

### **No Conspiracy**

58. In further answer to the whole of the Statement of Claim and in particular the allegations in paragraphs 23-28 and 49-52, Dollar Financial pleads the facts set out in the paragraphs below.

59. Dollar Financial specifically denies that at any material time:

- (a) it entered into any agreement or arrangement with any person to breach s. 347(1) of the *Criminal Code*;
- (b) it breached s. 347(1) of the *Criminal Code*.;
- (c) it conspired with any person in the manner alleged in paragraphs 49-52 of the Statement of Claim or in any manner whatsoever;
- (d) it engaged in any activity the predominant purpose of which was to cause injury to any proposed class member (and any alleged injury is not admitted but specifically denied).

60. If Dollar Financial engaged in any of the activities alleged in the Statement of Claim (and in particular in paragraphs 23-28 and 49-52), which is not admitted but specifically denied, Dollar Financial specifically denies that:

- (a) any proposed class member has suffered any injury or damage as a result;
- (b) a proposed class member's payment of a cheque cashing fee when such proposed class member repaid by cheque a Fast Cash Advance from Money Mart constituted an actionable injury or damage in law.

61. If any proposed class member has suffered any actionable injury or damage (which is not admitted but specifically denied), Dollar Financial specifically denies that:

- (a) it engaged in any conduct with Money Mart that was unlawful, and that was directed at the proposed class member or proposed class members in circumstances where either Money Mart or Dollar Financial ought to have known at the material time that injury to the proposed class member was likely;
- (b) any injury to any proposed class member was likely;
- (c) it ought to have known at any material time that any injury was likely;
- (d) it intended that such proposed class member suffer any such injury or damage;
- (e) any such injury or damage was caused by or the result of either any wrongful act on the part of Dollar Financial or any alleged conspiracy involving Money Mart, but rather it was caused by and was the result of the proposed class member's personal choices and voluntary acts;
- (f) it has any liability arising from personal choices made by, and voluntary acts of, a proposed class member; and

- (g) such proposed class member took appropriate steps to mitigate any such damage, including in particular taking steps to repay Fast Cash Advances in cash on or before the Due Date.

62. Specifically, if any proposed class member has in fact paid a cheque cashing fee to Money Mart in connection with the repayment by cheque of a Fast Cash Advance, Dollar Financial denies that such payment was caused by or the result of either any wrongful act on the part of Dollar Financial or any alleged conspiracy involving Dollar Financial. Rather it was caused by and was the result of the proposed class member's personal choice to incur the fee, rather than repay the Fast Cash Advance on or before the Fast Cash Advance's due date (as the Fast Cash Advance Agreement specifically provides), and Dollar Financial has no liability arising from personal choices made by, and voluntary acts of, an proposed class member.

#### **Dollar Financial Has Rights of Set Off Against Proposed Class Members**

63. In answer to the whole of the Statement of Claim, if certain provisions of a Fast Cash Advance Agreement relating to the payment of interest and fees are unenforceable against a proposed class member because of the provisions of s. 347 of the *Criminal Code* (which facts are not admitted but specifically denied), the remaining terms of the Fast Cash Advance Agreement, and specifically those relating to the customer's (including each proposed class member's) obligation to pay the Fast Cash Advance principal and interest, continue to be valid and enforceable against each proposed class member. Dollar Financial is entitled to enforce those rights in relation to each and every Fast Cash Advance Agreement with each proposed class member, and in particular against each and every proposed class member who has defaulted on a Fast Cash Advance, since (among other things):

- (a) the purpose and policy of s. 347 of the *Criminal Code* is not subverted by such enforcement;
- (b) the proposed class member would be given an unjustified windfall if the proposed class member was not required to repay the Fast Cash Advance principal and interest;
- (c) the proposed class member would be unjustly enriched in circumstances where the reasonable expectation of the parties to the Fast Cash Advance Agreement is that the Fast Cash Advance principal and interest would be paid by the proposed class member to Money Mart on or before the Due Date.

64. Accordingly, if Dollar Financial has any liability to any proposed class member in relation to the alleged payment and collection of interest contrary to s. 347 of the *Criminal Code* in relation to a Fast Cash Advance transaction, which liability is not admitted but denied, and if such proposed class member has either defaulted on any Fast Cash Advance or Advances and failed to repay to Money Mart the Fast Cash Advance principal and interest as required by the terms of the Fast Cash Advance Agreement, or defaulted on and failed to repay Money Mart any other amounts owed to Money Mart in consideration of other services provided to such proposed class member by Money Mart:

- (a) Dollar Financial is entitled and will seek to set off against such proposed class member's claim so much of the unpaid Fast Cash Advance principal, interest and/or all other amounts owing to Money Mart by such proposed class member as is sufficient to extinguish such proposed class member's claim against Dollar Financial; and

- (b) Dollar Financial is entitled to judgment for any balance owing by such proposed class member.

65. In addition, Money Mart has incurred costs and expenses as a result of any defaults by any proposed class members, including costs and expenses in connection with collection or other proceedings taken against such proposed class members to collect amounts properly due and owing to Money Mart.

66. It was a term, either express or implied, of the agreements between Money Mart and each of the proposed class members that all such costs and expenses would be paid by them to Money Mart, in addition to the principal amount of the debt and lawful interest due to Money Mart.

67. Accordingly, if Dollar Financial is found liable to any proposed class members, Dollar Financial has rights of set-off and a counterclaim against each and every proposed class member who has, at any material time, defaulted on a Fast Cash Advance or failed to pay Money Mart any other amount properly due to Money Mart, whether in respect of a Fast Cash Advance or any other service provided by Money Mart to the proposed class member, pursuant to the proposed class member's agreements with Money Mart. Until Dollar Financial's counterclaim and rights of set-off have been determined, liability cannot be established against Dollar Financial by any proposed class members, and no aggregate assessment of monetary relief can be made pursuant to *The Class Proceedings Act* or otherwise.

#### **Claims are Statute-Barred**

68. Pursuant to Section 2 of *The Limitations Act* C.C.S.M. c. L150 the claims in this action had to be commenced within six years. The proposed class is not limited to customers who obtained Fast Cash Advances within six years of the commencement date of this Action. Those

claims that are based on Fast Cash Advances that were entered into more than six years prior to the commencement of this Action are statute-barred.

69. Section 39 of *The Class Proceedings Act* does not apply to relieve the Plaintiff or any proposed class member from this result for the following reasons:

- (a) Dollar Financial is not named as a defendant in the action relied on by the Plaintiff for the purposes of s. 39, namely, *Blasko v. National Money Mart Company* (the "*Blasko*" action);
- (b) the *Blasko* action was commenced on about 26 April 2004 and the plaintiff has not taken any steps in the action since issuing the statement of claim except for amending her claim more than 8 years later in November 2012;
- (c) reliance on the *Blasko* action to toll any limitation periods would be an abuse of process;
- (d) the claims in the original statement of claim in *Blasko* are different from the claims in the within Action and so cannot be used to toll any limitation periods in any event;
- (e) the amendments made to the statement of claim in the *Blasko* action in November 2012 purport to allege new and different causes of action from the original statement of claim and are statute-barred;
- (f) there is no basis on which it is reasonable for the Plaintiff or any other proposed class member to assume that they were class members in the *Blasko* action.

70. Dollar Financial pleads and relies upon *The Limitation Act*, CCSM c L150.

**The Plaintiff and Proposed Class Members Agreed Not to Bring Claims More Than One Year After They Arose**

71. The Plaintiff and each proposed class member who obtained a Fast Cash Advance from and after April 2003 expressly agreed in writing in the Fast Cash Advance Agreements they signed that "any action involving any claim shall be commenced within one (1) year after the date on which this agreement was executed, failing which no such action can or shall be commenced."

72. All the claims in the within Action relate to Fast Cash Advance Agreements obtained before 18 October 2010. This action was commenced on 1 February 2012, more than a year after the last relevant Fast Cash Advance Agreement was signed and almost six years after the Plaintiff obtained her last Fast Cash Advance in July 2006.

73. Accordingly, the Plaintiff and any such proposed class members are not permitted to bring such claims in this Action against Money Mart, nor against Dollar Financial based on the allegations made against Dollar Financial in the Statement of Claim.

74. Section 39 of the *CPA* does relieve the Plaintiff or any proposed class members from their "one-year" agreements. Section 39 was never intended to and does not apply to private agreements of this type.

75. In the alternative, in the event it is found that the "one-year" agreements entered into by the Plaintiff and proposed class members come within the meaning of s. 39 of the *CPA*, s. 39 nonetheless does not apply for the reasons set out in respect of the statutory limitation period above.

### **Dollar Financial Has No Liability to the Plaintiff**

76. In answer to the whole of the Statement of Claim, Dollar Financial denies that it has any liability either to the Plaintiff or to any proposed class member on whose behalf the Plaintiff brings this Action.

77. In further answer to the whole of the Statement of Claim, and in particular paragraphs 19-22, Dollar Financial pleads the facts in the paragraphs below.

78. The Plaintiff first became a customer in September 2001. According to the Customer Registration Form completed by the Plaintiff, she had steady employment and a bank account with overdraft protection.

79. After becoming a Money Mart customer, the Plaintiff attended at Money Mart stores on more than 100 occasions to use Money Mart's services including its Cheque Cashing services and Fast Cash Advance services.

80. Between September 2001 and July 2006 the Plaintiff obtained 99 Fast Cash Advances from Money Mart. She repaid 17 of these Fast Cash Advances in cash. Since the Plaintiff did not use the Cheque Cashing service on these occasions to repay her loan she did not pay any cheque cashing fees.

70. The Plaintiff repaid her remaining Fast Cash Advances using Money Mart's Cheque Cashing service. The Plaintiff's last Fast Cash Advance transaction with Money Mart was in July 2006. The Plaintiff borrowed \$757.56. However, the cheque she delivered to Money Mart in repayment of this loan was returned by her bank which refused to honor it. She has made some payments towards the outstanding balance in instalments over time but the Plaintiff currently owes Money Mart a significant portion of the principal plus interest and fees related to her bounced cheque.

81. The Plaintiff entered into the Fast Cash Advance Agreements of her own accord and absent any compulsion by Money Mart. The Plaintiff used the proceeds from the Fast Cash Advances for her own personal benefit, in whatever manner she saw fit.

82. The Plaintiff, knowing that she had the contractual right pursuant to the terms of her Fast Cash Advance Agreements to repay her Fast Cash Advances on or before the Due Date, repaid the majority of her Fast Cash Advances using Money Mart's cheque cashing services and paid the fees associated with the use of such services. On each occasion, the payment of such fees was caused by and was the result of her personal choice to incur the fee, rather than repay the Fast Cash Advance in cash on the Due Date, and Money Mart has no liability arising from personal choices made by, and voluntary acts of, the Plaintiff.

83. Dollar Financial specifically denies that:

- (a) there was any breach of s. 347(1) of the *Criminal Code* in relation to any of the Fast Cash Advances:
- (b) the Plaintiff paid to Money Mart or Dollar Financial, or that Money Mart or Dollar Financial received from the Plaintiff, any sum in breach of s. 347 of the *Criminal Code*;
- (c) the Plaintiff has suffered any injury or damage in relation to any Fast Cash Advance transaction;
- (d) the payment by the Plaintiff of a cheque cashing fee was caused by or the result of either any wrongful act on the part of Dollar Financial or any alleged conspiracy involving Dollar Financial;
- (e) Dollar Financial was unjustly enriched in any manner as a result of its transactions with the Plaintiff.

84. In any event, the Plaintiff obtained multiple Fast Cash Advances and did so with full knowledge of the alleged illegality of the Fast Cash Advances. Therefore, she is *in pari delicto*, and so is not entitled to any relief in respect of her Fast Cash Advances.

**There is No Entitlement to Any Relief**

85. In further answer to the whole of the Statement of Claim, and alternatively, if Dollar Financial engaged in any wrongful conduct as alleged (which is not admitted but denied) and has any liability to any proposed class member as a result (which is also not admitted but denied), any proposed class member who is or was bankrupt, or who, in respect of the claims made in this action, has settled with Money Mart, has no status or standing to pursue any further claim against Dollar Financial.

86. If the Plaintiff or proposed class members have sustained the damages alleged in the Statement of Claim, which is expressly denied:

- (a) any alleged damages were caused solely and exclusively by their own acts and omissions and not by Dollar Financial;
- (b) the Plaintiff or proposed class members have failed or refused to take any, or any reasonable steps to mitigate such damages; and
- (c) such damages are excessive and too remote to be recoverable.

87. Dollar Financial respectfully requests that this Honourable Court grant judgment:

- (a) dismissing this Action against it, and in particular the claims of the Representative Plaintiff and all proposed class members, and;
- (b) in addition, or in the alternative,

- (i) ordering an accounting of what is due to it from the Plaintiff and all other proposed class members who have defaulted on a Fast Cash Advance or failed to pay Money Mart any other amount properly due to Money Mart, whether in respect of a Fast Cash Advance or any other service provided by Money Mart to the proposed class member, pursuant to the proposed class member's agreements with Money Mart together with prejudgment and post judgment interest on the said amounts;
  - (ii) setting off such amounts as are owed to Dollar Financial by such proposed class members against any amounts awarded to such proposed class members herein; and,
  - (iii) pursuant to the counterclaim hereto, ordering such proposed class members to pay Dollar Financial all amounts owing to it after the above set-offs are applied;
- (c) awarding costs on such basis as this Honourable Court deems appropriate in the exercise of its discretion, including G.S.T.; and
- (d) granting such other relief as this Honourable Court deems just in the circumstances.

## COUNTERCLAIM

88. If it is found that Dollar Financial is liable to the Plaintiff or any proposed class members on any basis alleged in the Statement of Claim, Dollar Financial (plaintiff by counterclaim), claims against the Plaintiff and proposed class members (defendants by counterclaim) as follows:

- (a) an accounting of what is due to Money Mart from each and every proposed class member (including the Plaintiff) who has defaulted on a Fast Cash Advance or failed to pay Money Mart any other amount properly due to Money Mart, whether in respect of a Fast Cash Advance or any other service provided by Money Mart to the proposed class member, pursuant to the proposed class member's agreements with Money Mart (the "**Defaulters**");
- (b) judgment for all amounts owing by each Defaulter, or alternatively judgment for the balance due and owing by any Defaulter, after the taking of accounts;
- (c) prejudgment and post judgment interest on the said amounts;
- (d) costs; and
- (e) such further and other relief as counsel may advise and this Honourable Court may permit.

89. Dollar Financial repeats and relies on the allegations in its Statement of Defence.

90. Dollar Financial uses the same defined terms in this Counterclaim as are used in its Statement of Defence.

91. The Defaulters failed to pay Money Mart amounts due and owing to Money Mart which the Defaulters agreed to pay, pursuant to the Defaulters' agreements (including their Fast Cash

Advance Agreements) with Money Mart in respect of services provided by Money Mart to the Defaulters.

92. If it is found that Dollar Financial is liable to the Plaintiff or any proposed class members on any basis alleged in the Statement of Claim, Dollar Financial has rights of set-off and a counterclaim against the Defaulters whether in respect of a Fast Cash Advance or any other service provided by Money Mart to them, pursuant to their agreements with Money Mart.

93. Money Mart has incurred costs and expenses as a result of the defaults of the Defaulters, including costs and expenses in connection with collection or other proceedings taken against the Defaulters to collect amounts properly due and owing to Money Mart.

94. It was a term, either express or implied, of the agreements between Money Mart and each of the Defaulters that all such costs and expenses would be paid by the Defaulter to Money Mart, in addition to the principal amount of the debt and lawful interest due to Money Mart.

95. Money Mart, and therefore pursuant to this counterclaim Dollar Financial, are entitled to set off so much of the Fast Cash Advance principal, interest and/or all other amounts owing to it that have not been paid by the Defaulters as is sufficient to extinguish such Defaulters' claims and are entitled to judgment against the Defaulters for any balance due and owing after all such set-offs are applied.

96. The Defaulters' failure to pay such Fast Cash Advance principal, interest and other amounts constitutes a breach of the respective Fast Cash Advance Agreements entered into by them in respect of which Money Mart has suffered damages for which the Defaulters are liable. Further, and in the alternative, the Defaulters' failure to pay such Fast Cash Advance principal, interest and other amounts results in their unjust enrichment to Money Mart's deprivation

without juridical reason. Further, and in the alternative, the Defaulters' receipt and retention of such Fast Cash Advance principal constitutes money had and received for which the Defaulters are bound to account or for which they are obligated to pay on the basis of *quantum meruit*. Money Mart, and pursuant to this counterclaim Dollar Financial, are entitled to judgment against the Defaulters for any balance due and owing after all such set-offs are applied.

97. Dollar Financial therefore claims from the Defaulters all such amounts that are owing by the Defaulters to it as above described.

98. Until Dollar Financial's rights of set-off and counterclaim have been determined, liability cannot be established against it by any proposed class member, and no aggregate assessment of monetary relief can be made.

Date: April 28, 2017

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