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JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER 0601-02908
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF H. CRAIG DAY, as representative plaintiff
DEFENDANTS NATIONAL MONEY MART COMPANY,
DOLLAR FINANCIAL GROUP, INC.,
MONEY MART SPRUCE GROVE LTD.,
MONEY MART ST. ALBERT LTD.,
MONEY MART LEDUC LTD., NORALTA
MONEY MART LTD., 1008485 ALBERTA
LTD., 815028 ALBERTA LTD., 632758
ALBERTA LTD. and MONEY MART
LLOYDMINSTER LTD.

Proceedings under the *Class Proceedings Act*, 1992

DOCUMENT **STATEMENT OF DEFENCE OF DOLLAR FINANCIAL GROUP, INC.**

PARTY FILING THIS DOCUMENT **DOLLAR FINANCIAL GROUP, INC.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Bishop & McKenzie LLP
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Statement of Facts relied on:

1. Except where expressly admitted herein, Dollar Financial Group, Inc. ("Dollar Financial") denies each and every allegation contained in the Statement of Claim, and puts the Plaintiff to the strict proof thereof.
2. Unless otherwise defined herein, capitalized terms used herein shall have the same meaning given to those terms in the Statement of Claim.

3. In reply to paragraph 1(b) of the Statement of Claim, on September 18, 2014, this Honourable Court ordered that the class (the "Class") on behalf of which the Representative Plaintiff is entitled to bring this Action is comprised of all persons who borrowed money as a 'Fast Cash Advance' or 'Payday Fast Cash Advance' ("Fast Cash Advance") from a Money Mart location in Alberta and have repaid that Fast Cash Advance using the post-dated first party cheque provided in order to obtain the Fast Cash Advance, between March 2, 2004 and April 30, 2010.

Dollar Financial's Business

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

5. 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.

6. Dollar Financial owns and operates hundreds of stores in the United States which offer 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.

7. 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.

8. Dollar Financial does not own the shares of Money Mart. In November 1996, the shares of National Money Mart Inc. were purchased by Dollar Financial Canada Ltd. ("DFC"), an Alberta company and 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 (i.e. Money Mart).

9. The shares of the new company, Money Mart, were issued to DFG International, Inc. ("DFG International"), a wholly-owned subsidiary of Dollar Financial. DFG International is one of 23 subsidiaries owned by Dollar Financial. Dollar Financial has 22 direct subsidiaries, in addition to DFG International, including 21 separate U.S. subsidiaries and DFG World, Inc. DFG World, Inc. in turn owns 100% of Dollar Financial UK Limited, which in turn has 8 subsidiaries, 2 of which have 8 further subsidiaries between them.

No Relationship with Franchisees, the Plaintiffs or Money Mart or Franchisee Customers

10. Dollar Financial has no franchisees in Canada or anywhere in the world.

11. Dollar Financial does not have and has never had any relationship or direct contact with Money Mart franchisees (the "Franchisees"). Dollar Financial has never received any money from the Franchisees.

12. Dollar Financial has never been party to any Fast Cash Advance agreement, or any other transaction, with the Plaintiff, or with the customers of Money Mart or the Franchisees.

13. Dollar Financial does not have and has never had any contact or relationship with the Plaintiff or with the customers of Money Mart or the Franchisees. Dollar Financial does not know the identity of the customers of Money Mart or the Franchisees.

14. Dollar Financial has never received any money from the Plaintiff or from the customers of Money Mart or the Franchisees.

Dollar Financial and Money Mart Operate Independently of Each Other

15. 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 relevant to this action Money Mart had complete autonomy to carry on its business in the same manner as prior to the acquisition.

16. 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 the planning, development or implementation of the Fast Cash Advance.

17. Contrary to the allegations in the Statement of Claim, Dollar Financial did not operate Money Mart as if it was functionally part of Dollar Financial. It did not operate Money Mart as if it and Money Mart were a single entity. It did not operate Money Mart as its "alter ego."

18. At all times material to this action, 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-subsidary relationship.

19. Dollar Financial did not exercised effective or actual control or management of Money Mart's business. Money Mart was a separate corporation and operated autonomously.

20. 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.

21. 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.

22. Dollar Financial denies that at any material time Money Mart reported to it, except where such reporting was legally required pursuant to the terms of lawful agreements between Money Mart and Dollar Financial or was otherwise required by law, in which case Money Mart reported in accordance with, and to the extent required by, its legal obligations.

23. If in any respect Dollar Financial and Money Mart functioned as a integrated business sharing common purposes and objectives, or shared networks or systems as alleged (all of which is not admitted but denied), Dollar Financial did so lawfully, for the purpose of promoting its own business interests and without any intention to harm any Class Member. Dollar Financial has no liability to any Class Member in respect of such lawful activities.

24. Dollar Financials' annual reports from time to time contained certain statements about Money Mart. However:

- a. the form and contents of Dollar Financial's annual reports and other regulatory filings were dictated by U.S. law;
- b. 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*; and
- c. 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 all other allegation in paragraphs 30 to 40, and in particular, the allegation 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.

Management and Royalty Fees

26. With reference to paragraphs 33 to 38 and the whole of the Statement of Claim, Dollar Financial says that:

- a. Dollar Financial and Money Mart 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), 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. Dollar Financial and Money Mart were also parties to a written management agreement;
- d. Money Mart, from time to time, in accordance with its legal obligations and lawfully paid amounts to Dollar Financial.

27. Dollar Financial specifically denies all other allegations in paragraphs 33 to 38 of the Statement of Claim.

28. 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.

29. 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.

30. 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.).

Concentration Account

31. All amounts received by Dollar Financial from Money Mart, including all royalty fees and management fees, are received into a general concentration account (the "Concentration Account") at a Wells Fargo branch located in California. The Concentration Account is a shared account which is used by all of Dollar Financial's active U.S. subsidiaries. It is 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 is used for all cash requirements for the U.S. operations, including service of Dollar Financial's U.S. debt.

32. Due to the fact that the royalty fees are 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.

33. 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.

34. Dollar Financial says that:

- a. it pays its own financial obligations from the Concentration Account, and the balance in the account fluctuates 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.

35. Dollar Financial says that since August 1997 the balance in the Concentration Account has fluctuated and in the event that it is found that the 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 Class Members are seeking to recover amounts from Dollar Financial in respect of payments or fees received by Dollar Financial from Money Mart and/or Franchisees, Dollar Financial says that such recovery cannot exceed the lowest intermediate balance in the relevant accounts of Money Mart or the Franchisees in respect of any amounts it allegedly has received from Money Mart or any given Franchisee.

Money Mart's Customers are Educated, Informed and Employed

36. In further answer to the whole of the Statement of Claim and in particular the allegations in paragraphs 41, 43(e), 62 and 63, Dollar Financial specifically denies that the Class Members:

- a. have poor credit or are otherwise unable to use traditional banking services;
- b. are part of an alleged "asset-limited, income-constrained population" in Alberta;
- c. belong to a "vulnerable segment" of the population;
- d. are the "poorest and most vulnerable members of society";
- e. are targeted if they are a single parent, pensioner, on social assistance, among the "working poor" or chronically unemployed;
- f. are economically vulnerable and in pressing need; or
- g. were in circumstances of economic vulnerability or pressing need, or were unlawfully exploited.

37. To the contrary, a typical Fast Cash Advance customer, including most or all of the Class Members:

- a. has a post-secondary education;

- b. is employed full-time;
- c. enjoys banking privileges, including a credit card;
- d. understand the nature of the services offered by Money Mart;
- e. is capable of reading and understanding the terms of the Fast Cash Advance Agreement;
- f. if a Fast Cash Advance is taken, makes a deliberate choice to take the Fast Cash Advance rather than refrain from borrowing at all or borrowing from a source other than Money Mart;
- g. appreciates the convenience and flexibility of a Fast Cash Advance to help with short-term cash needs or satisfy the desire for cash-on-hand;
- h. knows that Fast Cash Advances can be repaid in cash (including using a debit card), without incurring the fee payable when the first-party cheque cashing service is used;
- i. knows that there are fees associated with the use of the cheque cashing services to repay a Fast Cash Advance by first party cheque; and
- j. knows the amount of those fees and exercises a deliberate choice to pay them on the occasions they are paid.

38. No Class Member was on social assistance at the time of a Fast Cash Advance. A significant percentage of Money Mart's Fast Cash Advance customers report an annual income of more than \$40,000 and some report an annual income of more than \$60,000.

No Conspiracy Occurred

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

- a. it entered into any agreement or arrangement with any person to breach either s. 347(1) or s. 462.31 of the *Criminal Code*;
- b. it breached either s. 347(1) or s. 462.31 of the *Criminal Code*;
- c. it conspired with any person in the manner alleged in paragraphs 14 and 42 to 45 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 Class Member (and any alleged injury is not admitted by specifically denied).

40. If Dollar Financial engaged in any of the activities alleged in the Statement of Claim, which is not admitted but specifically denied, Dollar Financial denies that:

- a. any Class Member has suffered any injury or damage as a result;
- b. a Class Member's payment of a cheque cashing fee when such Class Member repays by cheque a Fast Cash Advance from Money Mart or a franchisee of Money Mart constitutes an actionable injury or damage in law.

41. If any Class Member has suffered any actionable injury or damage (which is not admitted but specifically denied), Dollar Financial denies that:

- a. it engaged in any conduct, either with any Defendant or with any alleged "Co-conspirator," that was unlawful, and that was directed at the Class Member or Class Member in circumstances where Dollar Financial ought to have known at the material time that injury to the Class Member was likely;
- b. any injury to any Class Member was likely;
- c. it ought to have known at any material time that any injury was likely;
- d. it intended that such 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 Dollar Financial;
- f. it has any liability arising from personal choices made by, and voluntary acts of, a Class Member; and
- g. such Class Member has taken appropriate steps to mitigate any such damage, including in particular taking steps to repay Fast Cash Advances on or before the Due Date.

42. Specifically, if any Class Member has in fact paid a cheque cashing fee to Money Mart or to any Franchisee of Money Mart in connection with the repayment by cheque of a Fast Cash Advance, Dollar Financial specifically 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 any such payment was caused by and was the result of the Class Member's personal choice to incur the fees, rather than repay the Fast Cash Advance on or before the Fast Cash Advance's Due Date (as the agreement in respect of the Fast Cash Advance (the "Fast Cash Advance Agreement") specifically provides), and Dollar Financial has no liability arising from personal choices made by, and voluntary acts of, Class Member.

There has been No Unjust Enrichment and No Tracing Order is Possible

43. In further answer to the whole of the Statement of Claim and in particular those paragraphs alleging constructive trust, tracing orders and unjust enrichment, Dollar Financial states:

- a. 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 Class Member;
- b. if any 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 Class Member's expense;

- c. Class Members, such as the Plaintiff Day, 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 Class Members in respect of such unpaid Fast Cash Advances;
- d. 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;
- e. if at any material time Money Mart collected interest from an 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.

44. In answer to the Statement of Claim, if the Class Members have suffered any injury or damages, as alleged, none of which is admitted and all of which is specifically denied:

- a. Dollar Financial denies that it has any liability to account to any Class Member;
- b. Dollar Financial denies that at any material time it has received from Money Mart any amounts of property in or to which any Class Member has or can have any interest or claim;
- c. the facts alleged do not establish any link to any property over which a trust can be claimed by any Class Member, and in particular, do not establish any link to any property in the hands of Dollar Financial;
- d. no Class Member has or can have any direct interest in any specific property of Dollar Financial that could be the subject of a trust or a tracing order, and no such direct interest is alleged by any Class Member;

- e. if Money Mart has any liability arising out of the alleged collection from Class Members of interest at a criminal rate and if Dollar Financial has any liability to any Class Member as a result of receipt of any funds from Money Mart, none of which is admitted and all of which is specifically denied;
 - i. Dollar Financial has no liability to any Class Member in respect of any amount alleged to have been paid by such Class Member to Money Mart prior to the last date of being withdrawn as at that time the Concentration Account had a negative balance;
 - ii. In particular, Dollar Financial has no liability to the Plaintiff Day;
- f. a monetary award is sufficient compensation for any loss or damage any Class Member claims to have suffered.

45. In any event, neither the Plaintiff nor any 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, Money Mart and the Franchisees have changed their position by using any monies allegedly received from the Plaintiffs or Class Members in the ordinary course of their respective businesses with the result that those amounts are no longer available.

No Unconscionable or Unlawful Practice

46. In further answer to the whole of the Statement of Claim and in particular the allegations in paragraphs 49 to 55, Dollar Financial specifically denies that the Fast Cash Advances between Money Mart and the Plaintiff, or between Money Mart and any Class Member, fall within the provisions of the *Fair Trading Act* or the *Unconscionable Transactions Act*.

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 throughout provision of management, financing or other services. As such, Dollar Financial denies it is a "supplier" or "credit grantor", that the Fast Cash Advances or cheque cashing fees are "credit agreements" or "consumer transactions" within the meaning of the *Fair Trading Act*, as alleged or at all.

48. Dollar Financial further specifically denies that it failed to disclose or that it misstated anything required to be disclosed or stated by the *Fair Trading Act* as alleged or at all.

49. 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, Money Mart specifically denies that either the Plaintiff or any Class Member suffered any loss or damage because of any such act or practice and deny that they are entitled to recover any amount on account of such amount being in excess of 60% or pursuant to any statute.

Delay and Limitation Periods

50. Further, and in the alternative, neither the Plaintiff nor any Class members are entitled to the amounts claimed because of the delay in bringing this action by operation of the *Limitations Act* and laches.

Dollar Financial May Have Rights of Set Off Against Class Member

51. If it is found that Dollar Financial at any material time has operated or continues to operate Money Mart as Dollar Financial's alter ego, and if certain terms of the Fast Cash Advance Agreement relating to the payment of interest and fees are unenforceable against a Class Member because of the provisions of s. 347 of the *Criminal Code*, none of which is admitted, and all of which is denied, the remaining terms of the Fast Cash Advance Agreement, and specifically those relating to the customer's (including each Class Member's) obligation to pay the Fast Cash Advance principal and interest, continue to be valid and enforceable against each Class Member and Dollar Financial is entitled to enforce them in relation to each and every Fast Cash Advance Agreement with each Class Member, and in particular against each and every 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 customer would be given an unjustified windfall if the customer was not required to repay the Fast Cash Advance principal and interest; and
- c. the customer 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 will be paid by the customer to Money Mart on the Due Date.

52. Accordingly:

- a. if Dollar Financial has any liability to any Class Member relating to the alleged payment and collection of interest contrary to s. 347 of the *Criminal Code* in respect of a Fast Cash Advance transaction involving such Class Member, which such liability is not admitted but specifically denied; and
- b. if such Class Member has either defaulted on any Fast Cash Advance or Fast Cash 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 services provided to such Class Member by Money Mart and pursuant to such Class Member's agreement or agreements with Money Mart;

Dollar Financial, if it is found to be Money Mart's alter ego (which is specifically denied), is entitled and will seek to set off against such Class Member's claim so much of the unpaid Fast Cash Advance principal, lawful interest and/or all other amounts owing to Money Mart by such Class Member as is sufficient to extinguish such Class Member's claim against Dollar Financial and Dollar Financial is entitled to judgment against the said Class Members for any balance due and owing to them after all such set-offs are applied.

53. Until the rights of set-off and counterclaim have been determined, liability cannot be established against Dollar Financial by any such Class Member, and no aggregate assessment of monetary relief can be made.

Knowledge of Illegality

54. Further, and in the alternative, if any term of a Fast Cash Advance Agreement is determined to be illegal (which is denied), the Plaintiff and the Class members obtained certain of the Fast Cash Advances with full knowledge of the alleged illegality of the Fast Cash Advances. In particular, the Plaintiff obtained certain Fast Cash Advances after the commencement of this Action as did other Class Members. Such Fast Cash Advance Agreements were entered into *in pari delicto*, and they are not entitled to any relief in respect of the same.

There is No Liability and no Entitlement to Any Relief

55. In answer to the whole of the Statement of Claim, Dollar Financial denies that it has any liability to the Plaintiff Day or to any person or persons on whose behalf the Plaintiff alleges he brings this action, which person or persons are described collectively in the Statement of Claim as the "Class" or "Class Members".

56. With reference to the allegations in paragraph 41 of the Statement of Claim, Dollar Financial denies that it has profited illegally at the expense of any Class Member or otherwise, or that it has at any material time received interest at a criminal rate from any Class Member, as alleged.

57. If it is found that the Fast Cash Advance Agreements are void or unenforceable due to illegality (which is not admitted but specifically denied) neither the Plaintiff nor the Class Members are entitled to recover any monies in respect of those agreements. Monies paid under an agreement that is unenforceable due to illegality are not recoverable. Therefore, a party to a contract that is void for illegality is not entitled to relief.

58. Dollar Financial specifically denies the allegations in paragraphs 64 and 65 of the Statement of Claim, and specifically denies that any Class Member has any entitlement to punitive damages.

59. 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 Class Member as a result (which is not admitted but specifically denied) any 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 either Money Mart or Dollar Financial.

60. If the Plaintiff or Class Members have sustained the damages alleged in the Statement of Claim, which is expressly denied:

- a. any alleged damages were caused solely by their own acts and omissions and not by Dollar Financial;
- b. the Plaintiff or Class Members have failed or refused to take any, or any responsible steps to mitigate such damages; and
- c. such damages are excessive and too remote to be recoverable.

Remedy Sought:

61. Dollar Financial therefore asks that this action be dismissed as against it with costs on a solicitor and client basis.