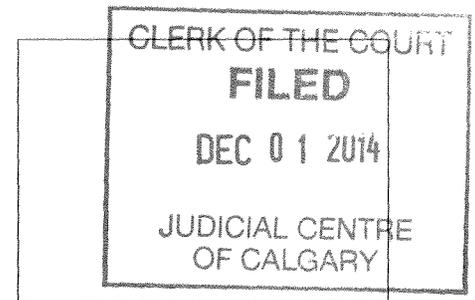


COURT FILE NO. 0601-02908  
COURT Court of Queen's Bench of Alberta  
JUDICIAL CENTRE Calgary



PLAINTIFF H. CRAIG DAY, as representative plaintiff  
DEFENDANT 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.

Brought under the *Class Proceedings Act*, S.A. 2003, c. C-16.5

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DOCUMENT

**STATEMENT OF DEFENCE**

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PARTY FILING THIS DOCUMENT NATIONAL MONEY MART COMPANY, MONEY MART SPRUCE GROVE LTD., MONEY MART ST. ALBERT LTD., MONEY MART LEDUC LTD., NORALTA MONEY MART LTD., and MONEY MART LLOYDMINSTER LTD.

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1. Except as expressly admitted herein, the Defendant, NATIONAL MONEY MART COMPANY ("**Money Mart**") and the Defendants, MONEY MART SPRUCE GROVE LTD., MONEY MART ST. ALBERT LTD., MONEY MART LEDUC LTD., NORALTA MONEY MART LTD., and MONEY MART LLOYDMINSTER LTD. ("**Franchisees**") (collectively, "**these Defendants**") deny each allegation made in the Amended Statement of Claim (the "**Statement of Claim**").

2. Unless otherwise defined herein, capitalized terms used herein shall have the same meaning given to those terms in the Statement of Claim.
3. These Defendants have no information at the present time to contradict the allegations in paragraph 2 of the Statement of Claim concerning the Plaintiff, H. Craig Day ("**Day**" or the "**Representative Plaintiff**").
4. 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 Loan' ("**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.

### **Money Mart's Business**

5. Money Mart provides financial services to ordinary Canadians throughout Canada. It offers a whole range of financial services. These services include cheque cashing, Western Union money transfers and money orders (Money Mart is the largest Western Union agent in Canada), foreign currency exchange, bill payments (Money Mart customers can make bill payments to more than 1,000 businesses and utilities), mailbox rentals, money orders, tax preparation and discounting (Money Mart is the only tax discounting company which provides consumers with a guaranteed same-day refund, in cash), and Fast Cash Advances.
6. Money Mart began as an entrepreneurial venture in 1982 in Edmonton, Alberta. In reply to paragraph 3 of the Statement of Claim, Money Mart was incorporated under the laws of Nova Scotia. Money Mart's goal from the outset was to provide excellent customer service, convenience and quality financial products and services. Most Money Mart store locations are open seven days a week and many are open 24 hours a day.
7. Money Mart adheres to a set of "best business practices" in offering its Fast Cash Advance and other services. Money Mart's Best Business Practices are now

incorporated into the Code of Conduct of the Canadian Payday Loan Association. Money Mart has been instrumental in the formation of the Canadian Payday Loan Association (the "Association"). The Association is a national group of short term lenders which represents more than half of the 1350 short term loan outlets in Canada.

8. Money Mart and the other members of the Association have agreed to abide by the Association's Code of Conduct. A copy of the Association's Code of Conduct is posted in all Money Mart stores and on the Association's website and includes the practices described below.

- (a) Borrowers must have a chequing account and employment income.
- (b) Loans are limited to a set percentage of the borrower's net pay.
- (c) Customers may not extend or "rollover" a loan i.e. they are not permitted to use the proceeds of another advance to repay an existing loan.
- (d) If a customer is dissatisfied in any way with a loan, including any fees or interest that are to be paid, a customer may simply return the principal amount of the loan prior to the close of business the following day and the customer will not be charged any interest or fees of any kind.
- (e) Default fees and charges on a loan in default cannot exceed the maximum NSF fees charged by the major banks and there are restrictions on the interest that can be charged on default.
- (f) A loan cannot be made to a customer based on social assistance payments to be received by the customer.
- (g) The cost of the loan must be displayed prominently on all loan documentation.

9. The federal and provincial governments, including Alberta, recognize the need for service providers such as Money Mart. Both the federal and provincial government of Alberta have passed legislation that permits the short term loan industry to continue to carry on business in a regulated environment.

## Cheque Cashing Services

10. Since Money Mart's inception in 1982, cheque cashing has been Money Mart's core business. It is the oldest and largest part of Money Mart's business. Money Mart cashes both first party cheques and second party cheques. A first party cheque is a cheque written by the customer on his/her own account. A second party cheque is a cheque written for the benefit of the customer by another party. These include payroll cheques, personal cheques, U.S. cheques, travelers cheques and Government cheques.

11. A significant advantage of Money Mart's cheque cashing service is that Money Mart does not put a "hold" on any cheques. That is, Money Mart does not wait for the cheques to clear before making cash available to the customer. Rather, Money Mart provides the customer with his or her cash right at the time of the transaction.

12. Money Mart's cheque cashing fee is comprised of two components, a per item fee (i.e. a flat fee for each cheque cashed) and a fixed percentage of the amount of the cheque to be cashed. The cheque cashing fees are different for a first party cheque and a second party cheque, to reflect the different risks of non-payment between the two types of cheques.

## Fast Cash Advance Agreements

13. In 1996, Money Mart began offering Fast Cash Advances to its customers. During the Class Period the Fast Cash Advance operated as follows:

14. Qualified Money Mart customers could borrow up to a percentage of their net pay cheque until the due date specified in the agreement (the "**Due Date**").

15. Interest was charged on the principal amount of the loan at an effective annual interest rate of less than 60% per year.

16. At the time of obtaining a loan, a customer signed a written agreement (the "Fast Cash Advance Agreement") the form and terms of which changed from time to time.

17. The customer provided a post-dated cheque drawn on his/her bank (or equivalent) account in an amount equal to:

- (a) the principal of the Fast Cash Advance;
- (b) the interest on the Fast Cash Advance; and
- (c) Money Mart's standard first party cheque cashing fee.

18. A customer could always repay a Fast Cash Advance on or before the Due Date. In those instances the customer was only required to pay the Fast Cash Advance principal plus interest pro-rated to the date of payment. The customer's post-dated cheque was returned to the customer. Since the cheque cashing service was not used where the customer repaid a Fast Cash Advance on or before the Due Date, the customer paid none of the cheque cashing fees associated with that service.

19. Alternatively, in conjunction with a Fast Cash Advance, a customer could utilize Money Mart's cheque cashing service to pay the Fast Cash Advance. If a customer did not repay a Fast Cash Advance in cash on or before the Due Date, the customer had elected to use Money Mart's cheque cashing service, and authorized Money Mart to deposit the customer's cheque. The customer's first party cheque, which included an amount in respect of Money Mart's fees for cashing a first party cheque, was then cashed by Money Mart.

20. The Fast Cash Advance service and the cheque cashing service (described above) are two separate and independent services offered to customers. The cheque cashing service is an optional service subject to its own charges. It could be used at the discretion of the borrower to repay a Fast Cash Advance. The cheque cashing fee which was charged in those circumstances was not part of the cost of the Fast Cash Advance. It was charged for the separate cheque cashing service.

### **Money Mart's Franchisees**

21. With reference to allegations in paragraphs 10, 8, 9, 18, and 41 of the Statement of Claim, Money Mart says that during the material period Money Mart was a party to

franchisee agreements with the Defendants 1008485 ALBERTA LTD., 815028 ALBERTA LTD., and 632758 ALBERTA LTD., pursuant to which they carried on business in Alberta independently as franchisees of Money Mart. The Franchisees carried on business in stores that were neither owned nor operated by Money Mart. Any transactions between a Franchisee and its customers involved agreements between those customers and the Franchisee and did not involve any agreements between Money Mart and those customers.

22. From time to time Money Mart was paid royalties by the Franchisees. Money Mart denies that it received from the Franchisees any amounts except those that Money Mart was lawfully entitled to receive. Money Mart specifically denies that it received from Franchisees any amounts in or to which any Class Member has or can have claim.

#### **Dollar Financial and Money Mart Operated Independently of Each Other**

23. The defendant Dollar Financial Group Inc. ("**Dollar Financial**") was founded in 1979. It was incorporated in the State of New York, U.S.A., with its principal place of business currently in Berwyn, Pennsylvania.

24. At no time material to this action did Dollar Financial 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). 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.

25. 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.

26. 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.

27. 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."

28. 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-subsiary relationship.

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

30. 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.

31. 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.

32. 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 the United States, as a result of the requirements of U.S. law.

33. Money Mart specifically denies all other allegations in paragraphs 30 and 31. In any event, these allegations fail to plead material facts disclosing a cause of action against Money Mart.

34. With reference to paragraphs 33 through 38 of the Statement of Claim, Money Mart says that at the material time:

- (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 is 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;
- (d) Money Mart, from time to time, in accordance with its legal obligations and lawfully, paid amounts to Dollar Financial.

35. Money Mart specifically denies all other allegations in these paragraphs of the Statement of Claim.

36. Money Mart specifically denies that, at any material time it reported to Dollar Financial, 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.

37. If 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 did so lawfully, for the purposes of promoting its own business interests and without any intention to harm any Class Member. Money Mart has no liability to any Class Member in respect of such lawful activities.

### **The Customers of Money Mart and the Franchisees Were Educated, Informed and Employed**

38. Money Mart and the Franchisees specifically deny 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 Ontario;
- (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.

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

- (a) had a post-secondary education;
- (b) was employed full-time;
- (c) enjoyed banking privileges, including a credit card;
- (d) understood the nature of the services offered by Money Mart;
- (e) was capable of reading and understanding the terms of a Fast Cash Advance Agreement;
- (f) if a Fast Cash Advance was taken, made 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) appreciated 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) knew that Fast Cash Advances could be repaid in cash (including using a debit card), without incurring the fee payable if the first-party cheque cashing service was used;
- (i) knew that there were fees associated with the use of the cheque cashing service to repay a Fast Cash Advance by first party cheque; and
- (j) knew the amount of those fees and exercised a deliberate choice to pay them on the occasions they were paid.

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

### **No Conspiracy**

41. Money Mart and the Franchisees specifically deny that at any material time:

- (a) they entered into any agreement or arrangement with any person to breach either s. 347(1) or s. 462.31 of the *Criminal Code*;
- (b) they breached either s. 347(1) or s. 462.31 of the *Criminal Code*;

- (c) they conspired with any person in the manner alleged in paragraphs 7 and 68-71 of the Statement of Claim or in any manner whatsoever;
- (d) they engaged in any activity the predominant purpose of which was to cause injury to any Class Member (and any alleged injury is not admitted but specifically denied).

42. If Money Mart or the Franchisees engaged in any of the activities alleged in the Statement of Claim, which is not admitted but specifically denied, they specifically deny 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 repaid by cheque a Fast Cash Advance from Money Mart or a Franchisee constituted an actionable injury or damage in law.

43. If any Class Member has suffered any actionable injury or damage (which is not admitted but specifically denied), Money Mart and the Franchisees specifically deny that:

- (a) they 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 Members in circumstances where they 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) they ought to have known at any material time that any injury was likely;
- (d) they 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 Money Mart or a Franchisee or any alleged conspiracy involving them, but rather it was caused by and was the result of the Class Member's personal choices and voluntary acts;
- (f) they have any liability arising from personal choices made by, and voluntary acts of, a Class Member; and

- (g) such Class Member has failed to take 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.

44. Specifically, if any Class Member in fact paid a cheque cashing fee to Money Mart or to any Franchisee in connection with the repayment by cheque of a Fast Cash Advance, Money Mart and the Franchisees deny that such payment was caused by or the result of either any wrongful act on the part of Money Mart or the Franchisee or any alleged conspiracy involving Money Mart or the Franchisee. Rather it was caused by and was the result of the 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 agreement in respect of the Fast Cash Advance (the "Fast Cash Advance Agreement") specifically provides), and Money Mart and the Franchisees have no liability arising from personal choices made by, and voluntary acts of, an Class Member.

#### **There Has Been No Unjust Enrichment and No Tracing Order is Possible**

45. Money Mart and the Franchisees deny any unjust enrichment, as alleged, and specifically deny that any Class Member has at any material time paid any sum to Money Mart or a Franchisee to which Money Mart or the Franchisee was not lawfully entitled. Further, if any Class Member has suffered a deprivation as alleged, Money Mart and the Franchisees specifically deny that they at any material time were enriched unjustly and at such Class Member's expense.

46. Money Mart and the Franchisees deny that they have received the "Total Interest" as alleged or any part thereof, and specifically deny that the Class Members have either paid Money Mart or the Franchisees the alleged "Total Interest," or suffered a deprivation in the amount of the "Total Interest." In particular, Class Members who have defaulted on and failed to repay Fast Cash Advances have suffered no deprivation in relation to such unpaid Fast Cash Advances. Money Mart and the Franchisees have received nothing and can have no liability to Class Members for any amount in respect of any such unpaid Fast Cash Advances.

47. Further:

- (a) Money Mart denies receiving any amount from any Class Member in respect of any Fast Cash Advance transaction between such Class Member and any Franchisee, and Money Mart specifically denies that at any material time it has been enriched at the expense of such Class Member in respect of any such Fast Cash Advance transaction;
- (b) alternatively, if any Class Member has been deprived as alleged in respect of a Fast Cash Advance transaction with a Franchisee, Money Mart denies receiving any benefit from any alleged deprivation or at any Class Member's expense in relation to such Fast Cash Advance transaction. Further, a Class Member who took a Fast Cash Advance or Fast Cash Advances only from a Franchisee has no claim against Money Mart in respect of any such Fast Cash Advance;
- (c) if at any material time a Franchisee collected interest from a Class Member in breach of s. 347 of the *Criminal Code*, which is not admitted but denied, any such amount or amounts were combined with other amounts lawfully collected or earned or borrowed by the Franchisee before the Franchisee remitted any amount to Money Mart, and Money Mart has no liability with respect to such amounts received from Franchisees.

48. In any event, neither the Representative 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 Money Mart and the Franchisees have changed their position by using any monies received from the Representative Plaintiff or Class Members in the ordinary course of their respective businesses with the result that those amounts are no longer available.

49. If as a result of the alleged conspiracy the Class Members have paid Money Mart or the Franchisees the amounts alleged to be "Interest at a Criminal Rate" and alleged to be damages, none of which is admitted and all of which is denied:

- (a) the facts alleged do not establish any link to property over which a trust can be claimed by any Class Member, and in particular do not establish any link to property in the hands of Money Mart;
- (b) alternatively, no specific property belonging to a Class Member has been identified, and as the facts alleged do not identify any specific property which a Class Member can claim is trust property, the paragraphs fail to plead a reasonable claim against Money Mart;
- (c) no Class Member has or can have any direct interest in any specific property that could be the subject of a trust or a tracing order, and no such direct interest is alleged by any Class Member;
- (d) a monetary award is sufficient compensation for any loss or damage any Class Member claims to have suffered.

50. If Franchisees have paid amounts to Money Mart as alleged (which is not admitted but denied):

- (a) Money Mart and the Franchisees deny that Money Mart has received from Franchisees any amounts except those that Money Mart was lawfully entitled to receive;
- (b) Money Mart and the Franchisees deny that Money Mart has received from Franchisees any amounts or property in or to which any Class Member has or can have any interest or claim;
- (c) to the extent that Money Mart has been paid any amounts by a Franchisee, all such payments have been made lawfully, and pursuant to lawful agreements between the Franchisee and Money Mart;
- (d) the Representative Plaintiff and all other Class Members who had no Fast Cash Advance transactions with Franchisees have no claim with respect to any amounts paid by a Franchisee to Money Mart.

51. Further and in the alternative Money Mart says that:

- (a) any funds Money Mart received from a Franchisee were not segregated based on their original source and were not identified as coming from any particular source or line of business;
- (b) all amounts received by Money Mart from its customers in respect of Fast Cash Advance transactions, including all amounts received by Money Mart from its Franchisees, were deposited by Money Mart into a general corporate account (the "Corporate Account");
- (c) the Corporate Account also received funds, unrelated to Fast Cash Advances and unrelated to payments from Franchisees, from Money Mart's other lines of business and from its line of credit, and all funds were commingled in the Account;
- (d) Money Mart paid its own financial obligations from the Corporate Account, and the balance in the account fluctuated significantly, including from a positive balance to a negative balance, daily;
- (e) the Corporate Account has been overdrawn from time to time and as a result, any funds (whether in respect of cheque cashing fees, from Franchisees or otherwise) which may have been received by Money Mart from any Class Member or any Franchisee are no longer in the possession of Money Mart;

52. Money Mart says that since August 1997 the balance in the Corporate 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) any such recovery cannot exceed the lowest intermediate balance in the Corporate Account.

53. Similarly, to the extent that Class Members are seeking to recover amounts from Money Mart in respect of fees received by Money Mart from Franchisees, Money Mart says that such recovery cannot exceed in respect of amounts received from any given Franchisee the lowest intermediate balance in the relevant Franchisee's account.

54. Further and in the alternative the Franchisees say that:

- (a) all amounts received by them from their customers in respect of Fast Cash Advance transactions were deposited by them into their separate general corporate accounts (the "Franchisee Corporate Accounts");
- (b) the Franchisee Corporate Accounts also received funds, unrelated to Fast Cash Advances, from their other lines of business and from their lines of credit, and all funds were commingled in their respective separate Accounts;
- (c) they paid their own financial obligations from their respective Franchisee Corporate Accounts, and the balances in the Accounts fluctuated significantly, including from a positive balance to a negative balance, daily;
- (d) the Franchisee Corporate Accounts have been overdrawn from time to time, and, as a result, any funds which may have been received by the Franchisees from any Class Member are no longer in the possession of the Franchisees;

55. The Franchisees say that since first operating as Franchisees the balances in the Franchisee Corporate Accounts have 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) any such recovery cannot exceed the lowest intermediate balance in the Franchisee Corporate Accounts.

56. 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 Money Mart has no liability to any Class Member in respect of any such amounts.

### **No Unconscionable or Unlawful Practice**

57. Money Mart and the Franchisees deny that they were, in respect of any of the Fast Cash Advance Agreements entered into by the Representative Plaintiff and the Class Members, a "supplier" or "credit grantor" within the meaning of the *Fair Trading Act* at the relevant times. Money Mart and the Franchisees further deny that the Fast Cash Advance Agreements were "credit agreements" within the meaning of the *Fair Trading Act*

at the relevant times. Money Mart and the Franchisees further deny that the Fast Cash Advance transactions were “consumer transactions” within the meaning of the *Fair Trading Act* at the relevant times and that it engaged in any unfair practice under the *Fair Trading Act*. Money Mart and the Franchisees specifically deny that they failed to disclose or that they misstated any thing required to be disclosed by the *Fair Trading Act* with respect to any Fast Cash Advance Agreement.

58. Money Mart and the Franchisees deny they were, in respect of any of the cheque cashing fees paid by the Representative Plaintiff and the Class Members, a “supplier” or “credit grantor” within the meaning of the *Fair Trading Act* at the relevant times. Money Mart and the Franchisees further deny that the cheque cashing fees were “credit agreements” within the meaning of the *Fair Trading Act* at the relevant times. Money Mart and the Franchisees further deny that the cheque cashing fees were “consumer transactions” within the meaning of the *Fair Trading Act* at the relevant times and that they engaged in any unfair practice under the *Fair Trading Act*. Money Mart and the Franchisees specifically deny that they failed to disclose or that they misstated any thing required to be disclosed by the *Fair Trading Act* with respect to the cheque cashing fees.

59. Money Mart and the Franchisees deny that the cheque cashing fees were within the “cost of the Fast Cash Advance” within the meaning of the *Unconscionable Transactions Act*. Money Mart and the Franchisees deny that the cost of any of the Fast Cash Advance transactions entered into by the Representative Plaintiff and the Class Members was excessive, harsh or unconscionable within the meaning of the *Unconscionable Transactions Act*.

60. Money Mart and the Franchisees further deny that the Representative Plaintiff and any Class Member is entitled to recover any amount from them on account of such amount being in excess of 60% or pursuant to any statute.

## Delay and Limitation Periods

61. Further, and in the alternative, neither the Representative 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.

## Set Off

62. Money Mart and the Franchisees have rights of set-off and a counterclaim against the Representative Plaintiff and all other Class Members who have defaulted on a Fast Cash Advance or failed to pay Money Mart or a Franchisee any other amount properly due to Money Mart or the Franchisee, whether in respect of a Fast Cash Advance or any other service provided by Money Mart or the Franchisee to the Class Member, pursuant to the Class Member's agreements with Money Mart or the Franchisee.

63. Money Mart and the Franchisees have incurred costs and expenses as a result of the defaults of the such Class Members, including costs and expenses in connection with collection or other proceedings taken against the said Class Members to collect amounts properly due and owing to Money Mart or the Franchisees.

64. It was a term, either express or implied, of the agreements between Money Mart and/or the Franchisees and each of the said Class Members that all such costs and expenses would be paid by the such Class Members to Money Mart or the Franchisees, as the case may be, in addition to the Fast Cash Advance principal amount of the debt and lawful interest due to Money Mart or the Franchisee.

65. Money Mart and the Franchisees are entitled to set off so much of the Fast Cash Advance principal, interest and/or all other amounts owing to them that have not been paid by the said Class Members as is sufficient to extinguish such Class Members' claims against Money Mart and the Franchisees. Money Mart and the Franchisees are entitled to judgment against the said Class Members for any balance due and owing to them after all such set-offs are applied.

66. The said Class Members' 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 and the Franchisees have suffered damages for which the said Class Members are liable. Further, and in the alternative, the said Class Members' failure to pay such Fast Cash Advance principal, interest and other amounts results in their unjust enrichment to Money Mart's and the Franchisees' deprivation without juridical reason. Further, and in the alternative, the said Class Members' receipt and retention of such Fast Cash Advance principal constitutes money had and received for which the said Class Members are bound to account or for which they are obligated to pay on the basis of quantum meruit. Money Mart and the Franchisees are entitled to judgment against the said Class Members for any balance due and owing to them Mart after all such set-offs are applied.

67. Until Money Mart's and the Franchisees' rights of set-off and counterclaim have been determined, liability cannot be established against them by any such Class Member, and no aggregate assessment of monetary relief can be made.

### **Knowledge of Illegality**

68. Further, and in the alternative, if any term of a Fast Cash Advance Agreement is determined by this Honourable Court to be illegal (which is denied), the Representative 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 Representative Plaintiff obtained certain Fast Cash Advances from Money Mart or the Franchisees after the commencement of this Action on his behalf as did other Class Members. Such Fast Cash Advance Agreements were entered into by the Representative Plaintiff and Class Members *in pari delicto*, and they are not entitled to any relief in respect of such Fast Cash Advances.

### **Money Mart and the Franchisees Have No Liability to the Representative Plaintiff**

69. In answer to the whole of the Statement of Claim, Money Mart and the Franchisees deny they have any liability either to the Representative Plaintiff or to any person or

persons on whose behalf the Representative Plaintiff bring this action, described collectively in the Statement of Claim as the “Class” or “Class Members.”

**There is No Entitlement to Any Relief**

70. In further answer to the whole of the Statement of Claim, and alternatively, if Money Mart or the Franchisees engaged in any wrongful conduct as alleged (which is not admitted but denied) and have any liability to any Class Member as a result (which is also not admitted but 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 or a Franchisee, has no status or standing to pursue any further claim against Money Mart or the Franchisees.

71. If the Representative 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 and exclusively by their own acts and omissions and not by Money Mart or the Franchisees;
- (b) the Representative Plaintiff or 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.

**RELIEF SOUGHT**

72. Money Mart and the Franchisees respectfully request that this Honourable Court grant judgment:

- (a) dismissing this Action against them, and in particular the claims of the Representative Plaintiff and of the Class Members he represents, and;
- (b) in the alternative,
  - (i) ordering an accounting of what is due to them from the Representative Plaintiff and all other Class Members who have defaulted on a Fast Cash Advance or failed to pay Money Mart or a Franchisee any other amount properly due to Money Mart or the Franchisee, whether in respect of a Fast Cash Advance or any other

- service provided by Money Mart or the Franchisee to the Class Member, pursuant to the Class Member's agreements with Money Mart and the Franchisee together with prejudgment and post judgment interest on the said amounts;
- (ii) setting off such amounts as are owed to Money Mart and the Franchisees by such Class Members against any amounts awarded to such Class Members herein; and,
  - (iii) pursuant to the counterclaim hereto, ordering such Class Members to pay Money Mart and the Franchisees all amounts owing to them 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.