

File No. C112-01-76868

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

JENNY BRIONES (née BEJARANO)

PLAINTIFF

- and -

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

DEFENDANTS

(Brought under *The Class Proceedings Act*, C.C.S.M. c. 130)

STATEMENT OF CLAIM

FILED FEB 01 2012
225.00

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STATEMENT OF CLAIM

TO THE DEFENDANTS: NATIONAL MONEY MART COMPANY
Leegals Express Legal Services
306 – 414 Graham Avenue
Winnipeg, Manitoba
R3C 0L8

DOLLAR FINANCIAL GROUP, INC.
Suite 310 – 1436 Lancaster Avenue
Berwyn, Pennsylvania
U.S.A. 19312

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the plaintiff's lawyer or, where the plaintiff does not

have a lawyer, serve it on the plaintiff and file it in this court office, WITHIN 20 DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: FEB 01 2012

Issued by: K.J. BUDDICK
DEPUTY REGISTRAR
COURT OF QUEEN'S BENCH
FOR MANITOBA
Registrar

TO:

National Money Mart Company

Address for Service:
Leegals Express Legal Services
306 – 414 Graham Avenue
Winnipeg, Manitoba
R3C 0L8

Dollar Financial Group, Inc.

Suite 310 – 1436 Lancaster Avenue
Berwyn, Pennsylvania
U.S.A. 19312

AND, PURSUANT TO THE *Class Proceedings Act*, s. 42, TO:

The Attorney General of Manitoba

104 Legislative Building
450 Broadway
Winnipeg, Manitoba
R3C 0V8

CLAIM

Relief Sought

1. The Plaintiff, Jenny Briones (née Bejarano), claims on her own behalf and on behalf of a Class, as defined below:
 - a. a declaration that the standard First Party Cheque Cashing Fees charged by Money Mart upon repayment of a Payday Loan, pursuant to Money Mart cashing the post-dated first party cheque provided by Class members in order to obtain a Payday Loan, are interest within the meaning and for the purpose of s. 347 of the *Criminal Code*, R.S.C. 1985, c. C-46;
 - b. a declaration that Money Mart's standard form Payday Loan agreements, which are used to provide Payday Loans to Class members, are unlawful;
 - c. a declaration that all agreements and arrangements made by Money Mart for the advance of a Payday Loan failed to comply with the disclosure requirements of *The Consumer Protection Act*, C.C.S.M., c. C-200, in force at the material times;
 - d. a declaration that all agreements and arrangements made by Money Mart for the advance of a Payday Loan constitute harsh or unconscionable transactions within the meaning of the *Unconscionable Transactions Relief Act*, C.C.S.M., c. U-20 ("*UTRA*");
 - e. a declaration that all First Party Cheque Cashing Fees received by Money Mart and Dollar Financial from the Plaintiff and Class members upon repayment of a Payday Loan, pursuant to Money Mart cashing the post-dated first party cheque provided by Class members in order to obtain a Payday

Loan, were received and are held on constructive trust for the benefit of the Plaintiff and Class members;

- f. an accounting or restitution to the Plaintiff and Class members of all First Party Cheque Cashing Fees received by Money Mart from the Plaintiff and Class members, pursuant to Money Mart cashing the post-dated first party cheques provided by the Plaintiff and Class members in order to obtain their Payday Loans;
- g. repayment of all First Party Cheque Cashing Fees received by Money Mart as a result of the harsh and unconscionable transactions, pursuant to *UTRA*, s. 2(c);
- h. repayment of all First Party Cheque Cashing Fees received by Money Mart as amounts received in excess of the amount permitted by the *Consumer Protection Act*, pursuant to s. 25(3), in respect of Payday Loans advanced before April 1, 2007, and s. 53, in respect of Payday Loans advanced on or after April 1, 2007;
- i. compensation for losses incurred by Class members in pursuing their legal rights as a result of breaches of the *Consumer Protection Act*, pursuant to the *Consumer Protection Act*, s. 54(1), in respect of Payday Loans advanced on or after April 1, 2007;
- j. damages for conspiracy;
- k. a declaration that Dollar Financial is jointly and severally liable for any liability of Money Mart to the Plaintiff and Class members arising out of the collection by Money Mart of the First Party Cheque Cashing Fees;

- l. interest on all amounts found to be owing, pursuant to the *Court of Queen's Bench Act*, C.C.S.M., c. C-280, as amended; and
- m. such further and other relief as this Honourable Court may allow.

The Parties

2. The representative Plaintiff, Jenny Briones (née Bejarano), is a resident of Winnipeg, Manitoba.
3. The representative Plaintiff brings this action on her own behalf and on behalf of all persons who have borrowed money as a "Fast Cash Advance" or "Payday Loan" from a Money Mart store in Manitoba and have repaid that loan using the post-dated first party cheque provided in order to obtain the loan, prior to October 18, 2010 (the "Class").
4. The Defendant, National Money Mart Company, is a company incorporated under the laws of Nova Scotia and carries on the business of lending money in Manitoba under the name "Money Mart". Money Mart is registered as an extra-provincial company under the laws of Manitoba, with a registered address for service at Leegals Express Legal Services, 306 – 414 Graham Avenue, Winnipeg, Manitoba, R3C 0L8. Money Mart has a corporate office at 401 Garbally Road, Victoria, British Columbia, V8T 5M3.
5. The Defendant, Dollar Financial Group, Inc. ("Dollar Financial") is a company incorporated pursuant to the laws of New York, United States of America, with corporate offices at Suite 310 – 1436 Lancaster Avenue, Berwyn, Pennsylvania, U.S.A., 19312. Dollar Financial carries on the business of lending money in the United States and also operates under the name "Money Mart".
6. Dollar Financial is Money Mart's parent corporation and is the owner of the "Money Mart" trademark in the United States. Dollar Financial exercises effective and

actual control over and directs the management of Money Mart. Dollar Financial and Money Mart are organized such that they operate as one common enterprise and Money Mart functions effectively as a part of Dollar Financial.

7. Dollar Financial provides a variety of services to Money Mart necessary for Money Mart to carry on its business, including executive management, financing, accounting, planning and strategic analysis, operations support and other administrative services. In particular, Dollar Financial has the overall responsibility for managing all facets of the loan business carried on by Money Mart and bears the entire risk of loss relating to the loans advanced by Money Mart.

The Payday Loan Business

8. At all material times, Money Mart provided short-term loans for small amounts known as “Fast Cash Advances” or “Payday Loans” (collectively, “Payday Loans”). Money Mart markets and intends these Payday Loans to be used by borrowers as a means to bridge short-term cash needs between paydays.

9. Both the term and the maximum amount of the Payday Loans provided by Money Mart are set by Money Mart, in accordance with its standard operating procedures, in relation to the borrower’s next scheduled “payday”, meaning the next date on which the borrower will receive the next payment from the borrower’s source of income, either from employment or some other form of regular payment such as a pension, unemployment insurance or disability benefit.

10. At all material times, Money Mart’s standard operating procedures provided that:

- a. each borrower must execute Money Mart’s standard form Payday Loan agreement, in the form then used by Money Mart, the terms of which are not negotiable and have not been renegotiated by Money Mart;

- b. the maximum term of a Payday Loan could be up to 31 days but could not exceed the borrower's next scheduled payday;
- c. the "due date" of the Payday Loan recorded in the standard form Payday Loan agreement must be set as the day before the borrower's next scheduled payday; and
- d. the maximum amount of a Payday Loan could not exceed 30% of the amount the borrower would receive on the borrower's next scheduled payday, up to July 1, 2004 and, subsequent to that date, could not exceed 40% of that amount.

11. At all material times, Money Mart advanced Payday Loans on terms that required the borrower, upon execution of Money Mart's standard form Payday Loan agreement and in order to obtain the Payday Loan, to provide Money Mart with a first party cheque, meaning a cheque payable to the borrower and endorsed by the borrower, post-dated to the date of the borrower's next scheduled payday and in an amount equal to:

- a. the principal amount of the Payday Loan;
- b. interest on the Payday Loan calculated in accordance with the terms of the standard form Payday Loan agreement then used by Money Mart; and
- c. Money Mart's standard "First Party Cheque Cashing Fee" calculated in accordance with the terms of the standard form Payday Loan agreement then used by Money Mart.

12. Each of the standard form Payday Loan agreements used by Money Mart in providing Payday Loans calculates an amount stated to be interest on the Payday Loan, to

be included in the amount of the post-dated first party cheque the borrower must provide in order to obtain the Payday Loan, which amount is calculated at an effective annual rate of interest of at least 59%.

13. Each of the standard form Payday Loan agreements used by Money Mart in providing Payday Loans sets out a formula for calculating the amount of Money Mart's standard First Party Cheque Cashing Fees, to be included in the amount of the post-dated first party cheque the borrower must provide to Money Mart in order to obtain the Payday Loan, which formula sets the First Party Cheque Cashing Fee as the sum of:

- a. an amount equal to a percentage of the principal amount of the Payday Loan, which percentage has ranged from 2.90% to 16.26% in the standard form Payday Loan agreements used by Money Mart from time to time; and
- b. a set dollar amount, which amount has ranged from \$2.49 to \$14.99 in the standard form Payday Loan agreements used by Money Mart from time to time.

14. Each of the standard form Payday Loan agreements used by Money Mart in advancing Payday Loans provides that the borrower must repay the principal amount of the Payday Loan, with interest as calculated on the Payday Loan agreement, in cash on the "due date" set by the standard form Payday Loan agreement, which under Money Mart's standard operating procedures is set as the day before the borrower's next scheduled payday. Each of the standard form Payday Loan agreements provides further that if the borrower does not repay this amount in cash before the borrower's next payday, the loan will be repaid by Money Mart cashing, on the borrower's payday, the post-date first party cheque provided by the borrower in order to obtain the Payday Loan.

15. The substance of the terms on which Money Mart has advanced Payday Loans as set out in paras. 8 through 14 above, and the true character and effect in law of those terms, is that the Payday Loans provided by Money Mart are loans until the borrower's next payday, with a right provided to the borrower to prepay that loan in cash before the borrower's next payday and thereby avoid payment of Money Mart's standard First Party Cheque Cashing Fee which the borrower is otherwise required to pay in order to obtain the benefit of the Payday Loan until the borrower's next payday.

16. Money Mart has advanced Payday Loans to the Class members in the manner and on the terms as set out in paras. 8 through 14 above, and has collected repayment of at least one Payday Loan from each of the Class members through cashing the post-dated first party cheque the Class member was required to provide in order to obtain the Payday Loan. As a result, Money Mart has collected from each Class member in respect of at least one Payday Loan:

- a. the principal amount of the Payday Loan immediately upon expiry of the loan term, which in every case was within 31 days of the loan advance;
- b. interest calculated on the principal amount of the Payday Loan calculated at an effective annual rate of at least 59% for the loan term; and
- c. an additional sum in the amount of Money Mart's standard First Party Cheque Cashing Fee, which in every case exceeds 2.90% of the principal amount of the loan advanced.

17. The Payday Loans advanced by Money Mart to the Class members were advanced by Money Mart, and the First Party Cheque Cashing Fees received by Money Mart in relation to those loans were collected and used or transferred by Money Mart, at the direction and under the control of Dollar Financial for the mutual benefit of both Money Mart and Dollar Financial.

18. Dollar Financial has received from Money Mart part of the First Party Cheque Cashing Fees collected by Money Mart from the Class members. In particular, Dollar Financial has received from Money Mart:

- a. royalty payments calculated as a percentage of the First Party Cheque Cashing Fees collected by Money Mart (the “Royalty Payments”); and
- b. management fees paid for management and other operations or administrative services provided by Dollar Financial in relation to Money Mart’s Payday Loan business (the “Management Fees”); and
- c. financing fees for financing provided by Dollar Financial for Money Mart’s Payday Loan business (the “Financing Fees”);

which have been paid, and which Dollar Financial knew were paid, in whole or in part, from the First Party Cheque Cashing Fees collected by Money Mart from the Class members in respect of their Payday Loans.

The Plaintiff’s Loans

19. The Plaintiff, Jenny Briones, obtained Payday Loans on various occasions from a Money Mart location in Winnipeg on Henderson Highway between about 2004 and 2007. The Plaintiff obtained the loans under her maiden name, Jenny Bejarano.

20. The amount of the Plaintiff’s Payday Loans ranged from approximately \$600 to \$700 and were usually for terms of around two weeks. The terms of the loans are well known to the Defendants.

21. The Plaintiff’s last Payday Loan was obtained in 2007. All of the loans were repaid except for the final one. The Plaintiff repaid most or all of her payday loans by

Money Mart cashing the first party cheque that the Plaintiff and the Class members were required to provide in order to obtain the Payday Loan, as set out in para. 11 above.

22. As a result of the repayment of the Plaintiff's Payday Loans through Money Mart cashing the post-dated first party cheque provided by the Plaintiff in order to obtain the Payday Loans, Money Mart has received in respect of each of the Plaintiff's Payday Loans:

- a. repayment of the principal amount of each Payday Loan immediately upon expiry of the loan term and, in every case, within 31 days of the loan advance;
- b. interest calculated on the principal amount of the Payday Loan at an effective annual rate in excess of 59% for the loan term; and
- c. an additional sum in the amount of Money Mart's standard First Party Cheque Cashing Fee, which in every case is in excess of 2.90% of the principal amount advanced.

Section 347(1) of the *Criminal Code*

23. Money Mart's standard First Party Cheque Cashing Fee charged and collected by Money Mart from Class members, pursuant to the terms of Money Mart's standard form Payday Loan agreements by which each Payday Loan was advanced to the Class members, including the standard First Party Cheque Cashing Fee charged and collected by Money Mart in respect of the Plaintiff's Payday Loans, constitutes interest for the purpose of s. 347(1) of the *Criminal Code*.

24. The effective annual rate of interest paid by the Class members and earned by Money Mart as a result of the collection by Money Mart of Money Mart's standard First

Party Cheque Cashing Fee from Class members upon repayment of their Payday Loans, by Money Mart cashing the post-dated first party cheque provided to it by the Class members at the time of the advance of their Payday Loans, including the effective annual rate of interest paid by the Plaintiff and earned by Money Mart as a result of the collection by Money Mart of its First Party Cheque Cashing Fees in respect of the Plaintiff's Payday Loans, in every case far exceeds 60% on the principal amount of each Payday Loan advanced, calculated in accordance with generally accepted actuarial practices and principles, and constitutes a criminal rate of interest as defined in s. 347(1) of the *Criminal Code*.

25. The terms of the standard form Payday Loan agreements used by Money Mart to advance Payday Loans to Class members, including the Plaintiff, required them to pay Money Mart's First Party Cheque Cashing Fee in order to obtain the benefit of the Payday Loan until their next payday, in an amount resulting in an effective rate of interest on the Payday Loan in excess of 60%, and, therefore, in every case those agreements constitute agreements to receive interest at a criminal rate, contrary to s. 347(1) of the *Criminal Code*.

26. The collection by Money Mart of Money Mart's standard First Party Cheque Cashing Fees from the Class members upon repayment of their Payday Loans, by Money Mart cashing the post-dated first party cheque provided to Money Mart by the Class members at the time of the advance of their Payday Loans, including the collection by Money Mart of its standard First Party Cheque Cashing Fee in respect of the Plaintiff's Payday Loans, constitutes the receipt of interest at a criminal rate, contrary to s. 347(1) of the *Criminal Code*.

27. The collection by Money Mart of Money Mart's First Party Cheque Cashing Fees from the Class members and the use and transfer of those First Party Cheque Cashing Fees, at the direction and under the control of Dollar Financial, and the receipt by Dollar Financial of any Royalty Payments, Management Fees and Financing Fees paid in whole

or in part from those First Party Cheque Cashing Fees, including the First Party Cheque Cashing Fees collected by Money Mart from the Plaintiff, constitutes the receipt by Dollar Financial of interest, or a partial payment of interest, at a criminal rate contrary to s. 347(1) of the *Criminal Code*.

28. Money Mart, at the direction and under the control of Dollar Financial and for the mutual benefit of both Money Mart and Dollar Financial, has knowingly and deliberately entered into agreements for the advance of its Payday Loans to Class members on terms which offend s. 347(1) of the *Criminal Code*, and received loan fees that violate s. 347(1) for the purpose of receiving an unlawful rate of return on the Payday Loans to the Class members.

Section 347.1 of the *Criminal Code*

29. In May 2007, amendments to the *Criminal Code* to add s. 347.1 came into force. Section 347.1 exempts a “payday loan” as defined by that section from the scope of s. 347(1) of the *Criminal Code* if, and only if, the payday loan was made in compliance with provincial regulations and the province in which it was made has been designated by the Governor-in-Council pursuant to s. 347.1.

30. The Payday Loans provided by Money Mart to borrowers constitute a “payday loan” for the purpose of s. 347.1 of the *Criminal Code*, as each of these loans is “an advancement of money in exchange for a post-dated cheque, a pre-authorized debit or future payment of similar nature, but not for any guarantee, surety ship, overdraft protection or security on property and not through a margin loan, pawn broking, line of credit or credit card”.

31. Payday loan regulations authorizing payday loans pursuant to s. 347.1 of the *Criminal Code* came into effect in Manitoba on October 18, 2010.

32. None of the Payday Loans provided by Money Mart to the Plaintiff or Class members prior to October 18, 2010 were authorized pursuant to s. 347.1 of the *Criminal Code*.

Unjust Enrichment

33. Money Mart has been enriched by the receipt of the First Party Cheque Cashing Fees paid by members of the Class upon repayment of their Payday Loans, by Money Mart cashing the post-dated first party cheques provided to it by the Class members at the time of the advance of their Payday Loans, which has resulted in the receipt of interest by the Defendants on those Payday Loans in excess of the maximum rate of interest permitted by s. 347(1) of the *Criminal Code*, and, in particular, the Defendants have been enriched by the receipt of the First Party Cheque Cashing Fees paid by the Plaintiff and the Class members.

34. Dollar Financial has been enriched by the receipt of the Royalty Payments, Management Fees and Financing Fees paid in whole or in part from the First Party Cheque Cashing Fees collected from the Class members, including the First Party Cheque Cashing Fees paid by the Plaintiff and which Dollar Financial knew were paid from these Fees.

35. Each member of the Class has been deprived by the payment of the First Party Cheque Cashing Fees each member has made to Money Mart upon repayment of their Payday Loans, pursuant to Money Mart cashing the post-dated first party cheque provided to them by the Class member in order to obtain a Payday Loan, and, in particular, the Plaintiff has suffered a deprivation by the payment to Money Mart of the First Party Cheque Cashing Fees in respect of the Plaintiff's Payday Loans.

36. There is no juristic reason why Money Mart should have received or should retain the benefit of the First Party Cheque Cashing Fees paid by the Class members upon the repayment of their Payday Loans, pursuant to Money Mart cashing the first party cheques provided to it by the Class members in order for them to obtain those Payday Loans, which Fees have resulted in the receipt by Money Mart of interest at a criminal rate on those loans, and, in particular, there is no juristic reason for Money Mart to have received or to retain the benefit of the First Party Cheque Cashing Fees paid by the Plaintiff that have resulted in the receipt by Money Mart of a criminal rate of interest in respect of the Plaintiff's Payday Loans.

37. There is no juristic reason for Dollar Financial to retain the benefit it has received from the Royalty Payments, Management Fees and Financing Fees paid in whole or in part from the First Party Cheque Cashing Fees paid by the Class members, including the First Party Cheque Cashing Fees paid by the Plaintiff, the payment of which Fees has resulted in the receipt by Dollar Financial of interest at a criminal rate or a partial payment of such interest.

38. As set out in paras. 33 through 37 above, Money Mart and Dollar Financial have been unjustly enriched by the collection of Money Mart's standard First Party Cheque Cashing Fees from the Plaintiff and other members of the Class, upon repayment by them of their Payday Loans pursuant to the post-dated first party cheques provided by them to Money Mart in order to obtain their Payday Loans, and Money Mart and Dollar Financial each hold the unlawful benefit they have received pursuant to the collection of these First Party Cheque Cashing Fees from the Plaintiff and other Class members in trust for them.

Harsh, Unconscionable and Unlawful Practices

39. The Plaintiff and other Class members are:

- a. “debtors” within the meaning of the *UTRA*, s. 1; and
- b. “borrowers” and “debtors” within the meaning of the *Consumer Protection Act*, s. 1.

40. Money Mart is a:

- a. “creditor” within the meaning of the *UTRA*, s. 1; and
- b. “credit grantor” and “money lender”, in respect of Payday Loans advanced before April 1, 2007, and a “credit grantor” in respect of Payday Loans advanced on or after April 1, 2007, within the meaning of the *Consumer Protection Act*, s. 1; and

41. The Payday Loan agreements used to advance Payday Loans to the Plaintiff and other Class members are “loan agreements”, in respect of Payday Loans advanced before April 1, 2007, and “credit agreements” in respect of Payday Loans advanced on or after April 1, 2007, within the meaning of the *Consumer Protection Act*, s. 1, and were entered into by the Plaintiff and other Class members for non-business purposes, within the meaning of the *Consumer Protection Act*, s. 1(1), in respect of Payday Loans advanced before April 1, 2007, and s. 4(1), in respect of Payday Loans advanced on or after April 1, 2007.

42. The Payday Loans advanced by Money Mart to the Plaintiff and the Class members are “money lent” within the meaning of the *UTRA*, s. 1.

43. The First Party Cheque Cashing Fees are:

- a. included in the “cost of the loan” within the meaning of the *UTRA*, s. 1;

- b. included in the “cost of borrowing”, in respect of Payday Loans advanced before April 1, 2007, within the meaning of the *Consumer Protection Act*, s. 1, and the cost of borrowing for each of those Payday Loans exceeds \$10, within the meaning of the *Consumer Protection Act*, s. 13(1)(d); and
- c. are “non-interest finance charges”, in respect of Payday Loans advanced on or after April 1, 2007, within the meaning of the *Consumer Protection Act*, s. 1, and constitute part of the value given by the Plaintiff and the Class members for those Payday Loans, within the meaning of the *Consumer Protection Act*, s. 6(3), and are included in the “cost of credit”, within the meaning of the *Consumer Protection Act*, s. 1.

44. Each of the Payday Loans provided by Money Mart to the Plaintiff and the Class members were advanced upon terms and conditions that required the payment of interest at a criminal rate contrary to s. 347 of the *Criminal Code* on the borrower’s next payday, as set out in paras. 11 through 15 and 23 through 25 above, and the Plaintiff and the Class members have paid interest at a criminal rate to Money Mart on their Payday Loans through the collection of the First Party Cheque Cashing Fees for those loans, as set out in paras. 16 and 26 above. As such, the cost of each Payday Loan was, in law, excessive, and each Payday Loan transaction was harsh and unconscionable, within the meaning of the *UTRA*, s. 2.

45. The First Party Cheque Cashing Fees paid by the Plaintiff and the Class members to Money Mart upon the repayment of their Payday Loans, which has resulted in the receipt of sums by Money Mart prohibited by s. 347(1) of the *Criminal Code*, are sums paid by the Plaintiff and the Class members in excess of the amount fairly due for their Payday Loans, within the meaning of the *UTRA*, s. 2(b), and the Plaintiff and the Class members are entitled to repayment of those First Party Cheque Cashing Fees, pursuant to the *UTRA*, s. 2(c).

46. At all material times, Money Mart failed to properly disclose in the Payday Loan agreements used to advance Payday Loans to the Plaintiff and the Class members the annual percentage rate (“APR”), by failing to include the First Party Cheque Cashing Fees in the APR calculation, as required by the *Consumer Protection Act*, s-ss. 13(1) and (2), in respect of Payday Loans advanced before April 1, 2007, and s. 34.3, in respect of Payday Loans advanced on or after April 1, 2007, and the regulations in force at the material times under the *Consumer Protection Regulation*, Man. Reg. 384/87, and the *Consumer Protection Regulation*, Man. Reg. 227/2006, and in respect of Payday Loans advanced before April 1, 2007, has failed to properly disclose the cost of borrowing in the Payday Loan agreements by failing to include the First Party Cheque Cashing Fees in the total stated to be the cost of borrowing as required by the *Consumer Protection Act*, s. 13(2).

47. As a result of the failure to properly disclose the cost of borrowing and the APR, Money Mart was not entitled, pursuant to the *Consumer Protection Act*, s. 25(1), in respect of Payday Loans advanced before April 1, 2007, and s. 53, in respect of Payday Loans advanced on or after April 1, 2007, to recover from the Plaintiff and the Class members any amount in respect of their Payday Loans in excess of the maximum rate of return permitted by s. 347(1) of the *Criminal Code*, and, in particular, to collect the First Party Cheque Cashing Fees from the Plaintiff and the Class members upon repayment of their Payday Loans. The Plaintiff and the Class members are entitled to repayment of those First Party Cheque Cashing Fees, pursuant to the *Consumer Protection Act*, s. 25(3), in respect of Payday Loans advanced before April 1, 2007, and s. 56(1), in respect of Payday Loans advanced on or after April 1, 2007.

48. As a further result of the breaches of the *Consumer Protection Act*, the Plaintiff and the Class members have incurred losses, including legal and other professional fees, in reasonably pursuing their legal rights in response to the breaches, and are entitled to compensation for those losses pursuant to the *Consumer Protection Act*, s. 54(1), in respect of Payday Loans advanced on or after April 1, 2007.

Conspiracy

49. In or around 1996, Money Mart and Dollar Financial agreed with each other to implement a scheme to provide Payday Loans to the Class members, including the Plaintiff, in order to earn profits on those Payday Loans at an unlawful rate of interest (the “Conspiracy”).

50. Dollar Financial and Money Mart have committed the following unlawful and overt acts in furtherance of the Conspiracy:

- a. Money Mart and Dollar Financial designed and implemented a business model in which Money Mart would charge and receive interest at a criminal rate contrary to s. 347(1) of the *Criminal Code* on the Payday Loans. The steps taken in the implementation of this business model included: drafting the standard form Payday Loan agreements, hiring employees, creating a computer system for maintaining customer records, opening store locations, raising financing for Money Mart operations, advertising and establishing the Money Mart brand, creating a website, establishing standardized collection procedures, appointing common officers and directors, holding directors and shareholder meetings, and providing the Payday Loans to the public pursuant to the business model designed.
- b. Money Mart entered into contracts with the Class members that required the payment of First Party Cheque Cashing Fees in contravention of s. 347(1) the *Criminal Code*, and received payment of the First Party Cheque Cashing Fees in contravention of s. 347(1) of the *Criminal Code* as set out in paras. 8 through 16 and paras. 23 through 26 above.

- c. Dollar Financial, through its direction and control of Money Mart and through the provision to Money Mart of management, financing, administrative and operating services, has knowingly caused, directed, abetted or counselled Money Mart to enter into contracts with the Class members that required the payment of First Party Cheque Cashing Fees and to receive payment of those First Party Cheque Cashing Fees, as set out in paras. 6, 7, 17, 18, 27 and 28 above, and in doing so contravened s. 21 and s. 22 of the *Criminal Code* and Dollar Financial has itself received interest at a criminal rate, or a partial payment of such interest, as set out in paras. 18 and 27 above.

51. Dollar Financial and Money Mart knew or ought to have known that the unlawful acts each of them committed in furtherance of the Conspiracy, as set out in para. 50, were likely to cause harm and injury to the Class members, including the Plaintiff.

52. As a result of the unlawful acts committed in furtherance of the Conspiracy, as set out in para. 50, the Class members, including the Plaintiff, have suffered damage and loss, which includes but is not limited to the payment of the First Party Cheque Cashing Fees, and Dollar Financial and Money Mart are jointly and severally liable for that damage and loss.

Joint and Several Responsibility

53. In addition, Dollar Financial is also jointly and severally liable for the acts of Money Mart in advancing the Payday Loans to the Plaintiff and other Class members, and in collecting the First Party Cheque Cashing Fees from them, because those acts were committed by Money Mart:

- a. at the direction, under the control and with the assistance of Dollar Financial; and/or
- b. in furtherance of a common business enterprise carried on and operated by Money Mart and Dollar Financial for their mutual benefit, in which Money Mart functions as if it were a part of Dollar Financial.

The Relevant Statutes

54. The Plaintiff and the Class members plead and rely on:

- a. *Class Proceedings Act*, C.C.S.M., c. C-130;
- b. *Consumer Protection Act*, C.C.S.M., c. C-200 and associated regulations, in force at the material times;
- c. *Court of Queen's Bench Act*, C.C.S.M., c. C-280;
- d. *Criminal Code*, R.S.C. 1985, c. C-46; and
- e. *Unconscionable Transactions Relief Act*, C.C.S.M., c. U-20.

55. In addition, the Plaintiff relies on Rules 17(f)(i), (g), (h), (l) and (m) of the *Manitoba Queen's Bench Rules* to serve this claim on Dollar Financial outside Manitoba without leave on the grounds that:

- a. The Plaintiff's claims against this Defendant, and the claims of the Class members resident in Manitoba, are in respect of both a contract made and performed in Manitoba and a tort committed in Manitoba;

- b. Dollar Financial carries on business in Manitoba and is a necessary and proper party to this proceeding properly brought against a party, Money Mart, served in Manitoba; and
 - c. The Plaintiff's claims against these Defendants, and the claims of the Class members resident in Manitoba, have resulted in loss or damage sustained in Manitoba.
56. The Plaintiff, therefore, claims for the relief as set out in para. 1 herein.

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File No. _____

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

JENNY BRIONES (née BEJARANO)

PLAINTIFF

- and -

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

DEFENDANTS

(Brought under *The Class Proceedings Act*, C.C.S.M. c.130)

STATEMENT OF CLAIM

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