

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

MARGARET SMITH and RON ORIET

Plaintiffs

- and -

NATIONAL MONEY MART COMPANY and DOLLAR FINANCIAL GROUP, INC.

Defendants

Proceedings under the *Class Proceedings Act, 1992*

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

1. The Defendant Dollar Financial Group, Inc. (“Dollar Financial”) admits the allegations in paragraph 10 in the Further Fresh Statement of Claim (the “Statement of Claim”).
2. Except where admitted herein, Dollar Financial denies each and every allegation contained in the Statement of Claim, and puts the Plaintiffs to the strict proof thereof.

Dollar Financial’s Business

3. 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.
4. 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.

5. 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 "Loan") which was independently created by the defendant National Money Mart Company ("Money Mart") in Canada.

6. 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.

7. 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).

8. 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

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

10. 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.

11. Dollar Financial has never been party to any Loan agreement, or any other transaction, with the Plaintiffs, Margaret Smith or Ron Oriet (together, the “Plaintiffs”), or with the customers of Money Mart or the Franchisees.

12. Dollar Financial does not have and has never had any contact or relationship with the Plaintiffs 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.

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

Dollar Financial and Money Mart Operate Independently of Each Other

14. In further answer to the whole of the Statement of Claim, and in particular paragraphs 3, 54, 55, 65 and 66, Dollar Financial pleads the facts set out below.

15. Money Mart had a very strong management team at the time of its acquisition by DFC in 1996 which was left intact to operate the business. Money Mart has always 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 Loans. The Loans 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 Loan.

17. Dollar Financial does not operate Money Mart as if it was functionally part of Dollar Financial. It does not operate Money Mart as if it and Money Mart are a single entity. It does not operate Money Mart as its "alter ego."

18. From the date the shares of Money Mart were acquired by DFC to the present, all decisions concerning the day-to-day business of Money Mart, the products offered by Money Mart and how they are offered, have been made by Money Mart. The relationship between Dollar Financial and Money Mart has been a typical parent/indirect-subsiary relationship.

19. Dollar Financial does not and has never exercised effective or actual control or management of Money Mart's business. Money Mart is a separate corporation and operates autonomously.

20. Dollar Financial's officers and directors do not control Money Mart. Dollar Financial conducts the affairs of its board of directors separately and independently from the affairs of Money Mart. Money Mart's operations are not supervised or conducted by the board of directors of Dollar Financial.

21. Money Mart is separately financed and has separate bank relationships and separate lines of credit from those of Dollar Financial. Dollar Financial does not deposit any of its funds into Money Mart accounts, nor does Money Mart deposit any of its funds into Dollar Financial accounts. Dollar Financial does not pay any of its bills with Money Mart funds, nor does Money Mart pay any of its bills with Dollar Financial funds. Employees of Dollar Financial and

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

22. Dollar Financial denies that, at any material time Money Mart has 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 function as a integrated business sharing common purposes and objectives, or share networks or systems as alleged (all of which is not admitted but denied), Dollar Financial does so lawfully, for the purposes 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. With reference to paragraphs 56 - 58 of the Statement of Claim, Dollar Financial admits that its annual reports from time to time contain certain statements about Money Mart. However:

- (a) the form and contents of Dollar Financial's annual reports and other regulatory filings are dictated by U.S. law;
- (b) its annual reports are 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 are in keeping with SEC requirements and reflect normal reporting practices followed by similar companies in the United States, as a result of the requirements of U.S. law.

Dollar Financial specifically denies all other allegations in paragraphs 56 – 58, and in particular, the allegations that it earned any revenue or net income from Loans in Canada; nor did it at any time report revenues or profits from charging interest at a criminal rate.

Dollar Financial has Invested Substantial Amounts in Money Mart

25. Dollar Financial advanced a significant amount of money to Money Mart by way of loans in 1996 and 1997 which Money Mart utilized to acquire additional stores and to fund its operations. Dollar Financial obtained the funds it loaned to Money Mart from public bond offerings in the United States.

26. Between July 1999 and March 2004, Money Mart made payments of interest and some principal on the outstanding loans to it from Dollar Financial. These payments were used by Dollar Financial to service interest payments on the bond offerings and to repay a part of the outstanding loans.

Management and Royalty Fees

27. With reference to paragraphs 59 – 64 of the Statement of Claim, Dollar Financial says that:

- (a) Dollar Financial and Money Mart are 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 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) no royalty fees were accrued or paid by Money Mart to Dollar Financial, directly or indirectly, prior to July 1, 1999;
- (d) Dollar Financial and Money Mart are also parties to a written management agreement;
- (e) Money Mart has, from time to time, paid amounts, or accrued amounts as owing, to Dollar Financial, in accordance with Money Mart's legal obligations under these agreements.

Dollar Financial specifically denies all other allegations in paragraphs 59 – 64 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 Loans.

33. The Concentration Account also receives 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-Wells Fargo accounts, and proceeds from draws upon Dollar Financial's revolving line of credit.

34. In response to the allegations in paragraphs 8, 59-64, 73, 75, 78 and 79 of the Statement of Claim, 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, most recently in June 2005; 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 June 2005 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) any 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.

No Conspiracy Occurred

36. In further answer to the whole of the Statement of Claim and in particular the allegations in paragraphs 7, 68, 66(c), 69, 70, 71, 73 and 80, Dollar Financial pleads the facts set out in paragraphs 40-43 below.

37. 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 7 and 68-71 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 but specifically denied).

38. If Dollar Financial engaged in any of the activities alleged in the Statement of Claim (and in particular in paragraphs 7 and 68-71), 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 Loan from Money Mart or a franchisee of Money Mart constitutes an actionable injury or damage in law.

39. 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 Members 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 Loans on or before the Due Date.

40. 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 Loan, 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.

41. Rather any such payment was caused by and was the result of the Class Member's personal choice to incur the fee, rather than repay the Loan on or before the Loan's Due Date (as the agreement in respect of the Loan (the "Loan 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

42. In further answer to the whole of the Statement of Claim and in particular paragraphs 8, 76, 77 and 78:

- (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 M. Smith, who have defaulted on and failed to repay Loans, have suffered no deprivation in relation to such unpaid Loans, and Dollar Financial has received nothing and can have no liability to Class Members in respect of such unpaid Loans;
- (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 amount to Dollar Financial.

43. In answer to paragraphs 72-75 and 79 of 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 or 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 June, 2005, since in June 2005 the Concentration Account had a negative balance;

(ii) in particular, Dollar Financial has no liability to either the Plaintiff M. Smith or the Plaintiff Oriet;

(f) a monetary award is sufficient compensation for any loss or damage any Class Member claims to have suffered.

44. In any event, neither the Plaintiffs 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.

Money Mart's Customers are Educated, Informed and Employed

45. In further answer to the whole of the Statement of Claim and in particular the allegations in paragraphs 3, 67, 69(e), 78, 84 and 85 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 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.

46. To the contrary and in answer in particular to the allegations in paragraphs 3, 67, 69(e), 78, 84 and 85 of the Statement of Claim, a typical Loan 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) understands the nature of the services offered by Money Mart;
- (e) is capable of reading and understanding the terms of a Loan Agreement;
- (f) if a Loan is taken, makes a deliberate choice to take the Loan rather than refrain from borrowing at all or borrowing from a source other than Money Mart;
- (g) appreciates the convenience and flexibility of a Loan to help with short-term cash needs or satisfy the desire for cash-on-hand;
- (h) knows that loans 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 service to repay a Loan 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.

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

Dollar Financial May Have Rights of Set Off Against Class Members

47. 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 Loan 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 Loan Agreement, and specifically those relating to the customer's (including each Class Member's) obligation to pay the Loan 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 Loan Agreement with each Class Member, and in particular against each and every Class Member who has defaulted on a Loan, 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 Loan principal and interest;
- (c) the customer would be unjustly enriched in circumstances where the reasonable expectation of the parties to the Loan Agreement is that the Loan principal and interest will be paid by the customer to Money Mart on the Due Date.

48. 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 Loan 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 Loan or Loans and failed to repay to Money Mart the Loan principal and interest as required by the terms of the Loan 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 Loan 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.

There is No Entitlement to Any Relief

49. In answer to the whole of the Statement of Claim, Dollar Financial denies that it has any liability either to the Plaintiff Margaret Smith ("M. Smith"), or to the Plaintiff Ronald Oriet ("Oriet"), or to any person or persons on whose behalf the Plaintiffs allege they bring this action, which person or persons are described collectively in the Statement of Claim as the "Class" or "Class Members."

50. With reference to the allegations in paragraph 67 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.

51. If it is found that the Loan agreements are void or unenforceable due to illegality (which is not admitted but specifically denied) neither the Plaintiffs 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.

52. Dollar Financial specifically denies the allegations in paragraphs 86 and 87 of the Statement of Claim, and specifically denies that any Class Member has any entitlement to punitive damages.

53. 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 also not admitted but specifically denied):

- (a) the claims of any Class Members who died on or before August 19, 2001 are statute-barred, and Dollar Financial pleads and relies on the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B and the *Trustee Act*, R.S.O. 1990, c. T.23;
- (b) 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.

54. If the plaintiffs 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 plaintiffs 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.

55. In further answer to the whole of the Statement of Claim, if Dollar Financial has any liability to any Class Member on any basis alleged, which is not admitted but specifically denied, Dollar Financial denies that Class Members have any entitlement to injunctive relief since damages are an adequate remedy and no Class Member has or will suffer irreparable harm. Further or alternatively, the Class Members have no status or standing to seek an injunction.

56. Dollar Financial therefore asks that this action be dismissed as against it with costs on a substantial indemnity basis.

COUNTERCLAIM

57. If it is found that Dollar Financial at any material time has operated Money Mart as its alter ego (which is not admitted but specifically denied), then Dollar Financial claims:

- (a) a declaration that it is entitled to assert all of Money Mart's rights against each and every Class Member who has, at any material time, defaulted on a Loan or failed to pay Money Mart any other amount properly due to Money Mart, whether

in respect of a Loan or any other service provided by Money Mart to the Class Member, pursuant to the Class Member's agreements with Money Mart (the "Defaulters");

- (b) an accounting of what is due to Money Mart from each and every Defaulter;
- (c) judgment for all amounts owing to Money Mart by each Defaulter, or alternatively judgment for the balance due and owing to Money Mart by any Defaulter, after the taking of accounts;
- (d) prejudgment and post judgment interest on the said amounts pursuant to the *Courts of Justice Act*;
- (e) costs and disbursements of this action on a substantial indemnity basis, plus G.S.T.; and,
- (f) such further and other relief as counsel may advise and this Honourable Court may permit.

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

59. Over the material period, fifty percent or more of the Class Members, including the Plaintiff M. Smith, have failed to pay Money Mart amounts due and owing to Money Mart, and that the Defaulters agreed to pay, pursuant to the Defaulters' agreements (including Loan Agreements) with Money Mart in respect of services provided by Money Mart to the Defaulters.

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

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

62. If at any material time Dollar Financial has operated Money Mart as Dollar Financial's alter ego and has any liability to any Class Member as a result, none of which is admitted and all of which is specifically denied, then Dollar is entitled to assert all of Money Mart's rights against each and every one of the Defaulters.

63. Dollar Financial requests that these Counterclaims be tried at the same time as the main action.

February 19, 2007

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BETWEEN :

SMITH et al

- and -

NATIONAL MONEY MART
COMPANY et al

Court File No. 03-CV-1275

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Ontario

**Statement of Defence and Counterclaim of
Dollar Financial Group, Inc.**

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