

Schedule F

2007 01 T 1386 CP

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION**

BETWEEN:

WILLIAM SQUIRES

PLAINTIFF

AND:

DOLLAR FINANCIAL GROUP INC., NATIONAL
MONEY MART COMPANY, SYD FRANCHUK,
JEFFREY WEISS, 10768 NEWFOUNDLAND
LIMITED carrying on business under the name and
style of MONEY MART, GERRY KILDUFF and
RON KUZYK

DEFENDANTS

BROUGHT UNDER THE CLASS ACTIONS ACT
BEFORE THE HONOURABLE MR. JUSTICE THOMPSON,
CASE MANAGEMENT JUDGE

APPROVAL ORDER

THIS MOTION, made by the Plaintiff for an order certifying this action as a class proceeding for settlement purposes and for approval of the Settlement of the Action pursuant to section 35 of the *Class Actions Act*, SNL 2001, s. C-18.1, in accordance with the terms of the Agreement, and for the fixing of Class Counsel Fees, was heard on May 26, 2010 at St. John's, Newfoundland and Labrador.

ON READING the following:

- (a) notice of motion;
- (b) the Agreement;
- (c) the affidavits of:
 - (i) ●;
 - (ii) ●;
 - (iii) ●;

(iv) •;

AND ON HEARING the submissions of counsel for the Parties, no objectors having appeared [*or upon hearing the objectors*]:

AND ON BEING ADVISED that:

- (a) the Plaintiff in the Action consents to this judgment;
- (b) the Defendants in the Action consent to this judgment;
- (c) John P. Brown of McCarthy Tétrault LLP consents to being appointed to receive Requests for Exclusion;
- (d) Reva Devins consents to being appointed Referee;
- (e) Mike Dull consents to being appointed Class Counsel Representative;
- (f) Grant Thornton LLP consents to being appointed Auditor; and
- (g) there have been no (OR •) written objections to the proposed Settlement received by John P. Brown or his designate, [NTD: Revise if required]

AND WITHOUT any admission of liability on the part any of the Defendants, all Defendants having denied liability,

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this judgment, the following definitions apply:

- (a) **Action** means the action in the Supreme Court of Newfoundland and Labrador, 2007 01T 1386 CP;
- (b) **Agreement** means the agreement between the Parties dated as of February 15, 2010 attached as **Schedule A**;
- (c) **Approval Order** means this order;
- (d) **Auditor** means Grant Thornton LLP;
- (e) **Cash Credits** mean cash in the amount of \$•;

- (f) ***Cheque Cashing Fees*** mean the amount of the percentage fee and the fixed fee for each Eligible Fast Cash Advance Transaction;
- (g) ***Class Counsel*** means the law firms of Crocco Hunter Purvis Johnson, which is located at 105 Cornell St., Unit 3, Woodstock, N.B. E7M 1K7; Ches Crosbie Barristers, which is located at 169 Water Street, 4th Floor, St John's NL, A1C 1B1; and Wagner & Associates, which is located at 1869 Upper Water Street, Halifax, Nova Scotia, B3J 1;
- (h) ***Class Counsel Fees*** mean the fees, disbursements, costs, interest, GST and other applicable taxes (including any future provincial or harmonized sales tax) or charges approved by the Court, but does not include the fees, disbursements and expenses of the Class Counsel Representative;
- (i) ***Class Counsel Representative*** means Mike Dull or such other lawyer, appointed by the Court;
- (j) ***Class*** means all persons who, in the period January 1, 1997 to March 31, 2010, entered into a fast cash advance in Nova Scotia, Newfoundland and Labrador or New Brunswick with Money Mart or a Former Franchisee or a Current Franchisee which was repaid using a first party personal cheque delivered at the time the fast cash advance was obtained provided such cheque was honoured by the bank, excluding persons who opt out;
- (k) ***Class Member*** means a member of the Class;
- (l) ***Court*** means the Supreme Court of Newfoundland and Labrador;
- (m) ***Credit Class Member*** means a Settlement Class Member with no Default Transactions;

- (n) ***Current Franchisees*** means 611282 N.B. Ltd;
- (o) ***Debt Release*** means the release by or on behalf of Money Mart, the Former Franchisees and the Current Franchisees of 100% of the amounts the Indebted Class Members owe on account of the Default Transactions;
- (p) ***Default Transaction*** means a transaction of any kind engaged in by a Settlement Class Member in Nova Scotia, New Brunswick or Newfoundland and Labrador up to and including April 30, 2009 with Money Mart, the Former Franchisees and/or the Current Franchisees which resulted in a default by that Settlement Class Member in respect of which there is still an amount owing by the Settlement Class Member on March 31, 2010;
- (q) ***Defendants*** mean National Money Mart Company (“Money Mart”), Dollar Financial Group, Inc (“Dollar Financial”), Sydney Franchuk, Jeff Weiss, 511742 NB Inc, 602269 NB Inc., 10768 Newfoundland Limited carrying on business under the name and style of Money Mart, Gerry Kilduff, Ron Kuzyk, and 2203850 Nova Scotia Limited carrying business under the name and style of Money Mart Cheque Cashing Centre;
- (r) ***Eligible Fast Cash Advance Transaction*** means a Fast Cash Advance which was repaid using a first party personal cheque delivered at the time the Fast Cash Advance was obtained provided such cheque was honoured by the bank;
- (s) ***Fast Cash Advance*** means a payday loan or a fast cash advance obtained in Nova Scotia, New Brunswick or Newfoundland and Labrador from Money Mart or the Former Franchisees or the Current Franchisees during the Settlement Period;

- (t) **Former Franchisees** mean 603000 N.B. Inc., 602268 N.B. Inc., 3081219 Nova Scotia Limited, 3085725 Nova Scotia Limited, and 11242 Newfoundland Limited, 511742 N.B. Inc., 602269 N.B. Inc., 2203850 Nova Scotia Limited (c.o.b. Money Mart Cheque Cashing Centre) , 3085726 Nova Scotia Limited and 10768 Newfoundland Limited (c.o.b. as Money Mart);
- (u) **Indebted Class Member** means a Settlement Class Member with at least one Default Transaction;
- (v) **Notice** means the form of notice substantially in the form at **Schedule B**
- (w) **Notice Period** means the 4 year period following the Settlement Date;
- (x) **Opt-Out Period** means the period commencing on the Settlement Date and ending 60 days thereafter;
- (y) **Parties** mean the Plaintiff and the Defendants;
- (z) **Plaintiff** means William Squires;
- (aa) **Referee** means Reva Devins;
- (bb) **Released Persons** mean the corporate Defendants, Former Franchisees, Current Franchisees and their respective predecessors, successors, parents, subsidiaries, affiliates, assigns, officers, directors, employees, attorneys, agents and representatives and the individual Defendants and their respective heirs, administrators, executors and assigns;
- (cc) **Request for Exclusion** means a properly completed and executed written request to be excluded from and to opt out of the Action substantially in the form of **Schedule C**;

- (dd) ***Settled Claims*** mean any claim, liability, right, demand, suit, matter, obligation, damage, loss or cost, action or cause of action of every nature and description, in law or in equity, that the Settlement Class Members have, had or may have up to and including the date of the Approval Order, including assigned claims, whether known or unknown, accrued or which may hereafter accrue, asserted or unasserted, latent or patent, that is, has been or could have been asserted by the Settlement Class Members in the Action against any of the Released Persons arising from or in any way related to the Common Issues and/or the facts and allegations asserted in the Action. Without limiting the generality of the foregoing, Settled Claims shall include any claims for a breach or violation of s. 347 of the *Criminal Code*, for an injunction, for damages for conspiracy, punitive damages, interest and costs, and any claims for a breach or violation of any federal or provincial statute, case law, common law, other law, equity, regulation or ordinance; any claims for breach of any duty imposed by law, by contract, or otherwise; any claims based on negligence, reliance, breach of express or implied warranty, conspiracy, deceptive or unconscionable acts or practices, breach of statutory duty, consumer fraud, negligent misrepresentation/omission, reckless misrepresentation/omission or intentional misrepresentation/omission; and any claims for penalties, arising from or in any way related to the Common Issues and/or the facts and allegations asserted in the Action. Excepted always from this definition are any claims arising out of the Approval Order and the Agreement and the failure of the Defendants to comply with their obligations particularized in the Approval Order and the Agreement. Excepted also from this definition is any claim arising out of a payday loan made in any province other than Nova Scotia, New Brunswick or Newfoundland and Labrador;
- (ee) ***Settlement*** means the settlement described in the Agreement;

- (ff) *Settlement Amount* means the total amount of \$650,000.00;
- (gg) *Settlement Class* means all Class Members excluding persons who opt out;
- (hh) *Settlement Class Member* means a member of the Settlement Class;
- (ii) *Settlement Date* means the date on which the Approval Order becomes a final order or 30 days after the date of the Approval Order if an appeal is taken from the Approval Order relating only to Class Counsel Fees; and
- (jj) *Settlement Period* means the period from January 1, 1997 to March 31, 2010.

2. **THIS COURT ORDERS** that this action be certified as a class proceeding for settlement purposes only.

3. **THIS COURT ORDERS** that the Class be defined as:

All persons who, in the period January 1, 1997 to March 31, 2010, entered into a fast cash advance in Nova Scotia, Newfoundland and Labrador or New Brunswick with Money Mart or a Former Franchisee or a Current Franchisee which was repaid using a first party personal cheque delivered at the time the fast cash advance was obtained in respect of which cheque cashing fees were paid, provided such cheque was honoured by the bank

4. **THIS COURT ORDERS** that William Squires be appointed as the representative plaintiff for the Settlement Class.

5. **THIS COURT ORDERS** that this action be certified as a class proceeding for settlement purposes only on the basis of the following common issue:

Have the Defendants or any one or more of them received interest, directly or indirectly, in excess of an effective annual rate of 60%, when calculated in accordance with generally accepted actuarial practices and principles, on each Fast Cash Advance and Payday Loan in Nova Scotia, New Brunswick and Newfoundland and Labrador in the Class Period which was repaid by a cheque dated on the day after the due date specified in the Fast Cash Advance Agreement and Payday Loan Agreement?

6. **THIS COURT ORDERS** that the form of Request for Exclusion is hereby approved.

7. **THIS COURT ORDERS** that John P. Brown of McCarthy Tétrault LLP be and is hereby appointed to receive Requests for Exclusion from Class Members and report to the Court thereon.

8. **THIS COURT ORDERS** that:

- (a) each Class Member who wishes to opt out of this class action shall submit by mail, courier or email a properly completed Request for Exclusion to John P. Brown within 60 days of the Settlement Date; and
- (b) if a Class Member fails to submit a properly completed Request for Exclusion within the Opt-Out Period, the Class Member shall be deemed not to have opted out of the Action.

9. **THIS COURT ORDERS AND ADJUDGES** that the Settlement of the Action as set out in the Agreement is fair and reasonable and in the best interests of the Settlement Class Members.

10. **THIS COURT ORDERS AND ADJUDGES** that the Settlement of the Action as set out in the Agreement is hereby approved pursuant to Section 35 of the *Class Actions Act*, SNL 2001, c. C-18.1.

11. **THIS COURT ORDERS** that the Agreement is incorporated by reference into this Approval Order and is binding upon the representative plaintiff, upon all Settlement Class Members and upon the Defendants.

12. **THIS COURT ORDERS** that Reva Devins is appointed as Referee until the Expiration Date or until further order of this court, on the terms and conditions and with the powers, duties and responsibilities set out in the Agreement.

13. **THIS COURT ORDERS** that Grant Thornton LLP is appointed as Auditor until further order of the Court, on the terms and conditions and with the powers, duties and responsibilities set out in the Agreement.

14. **THIS COURT ORDERS** that Mike Dull is appointed as Class Counsel Representative until the Expiration Date or until further order of this court, on the terms and conditions and with the powers, duties and responsibilities set out in the Agreement.

15. **THIS COURT ORDERS** that Money Mart pay the fees, disbursements and taxes of John P. Brown or his designate, the Referee, the Auditor and the Class Counsel Representative in an amount(s) fixed by the Court.

16. **THIS COURT ORDERS** that the Notice is approved.

17. **THIS COURT ORDERS** that the Class Members shall be given notice of the approval of the Agreement, and of the opt-out deadline, by distribution of the Notice in substantially the following manner immediately following the Settlement Date:

- (a) by the Defendants publishing the Notice, once, in a one-quarter page advertisement in each of the newspapers listed at Schedule D, subject to publication deadlines;
- (b) by Money Mart displaying the Notice on a sign measuring at least two (2) feet horizontally by three (3) feet vertically and installing and

maintaining this sign in a prominent location in each store in Nova Scotia, New Brunswick and Newfoundland and Labrador operated by Money Mart and its Current Franchisees throughout the Notice Period;

- (c) by Money Mart making the Notice available, in an 8 ½” by 11” pamphlet version, in a receptacle located at the bottom of each sign throughout the Notice Period;
- (d) by Money Mart posting the Notice on its website at www.moneymart.com throughout the Notice Period;
- (e) by Class Counsel posting the Notice on the website at www.ChesCrosbie.com; and
- (f) by Class Counsel delivering the Notice to any person who requests it.

18. **THIS COURT ORDERS** that Money Mart and its Current Franchisees stock the receptacle at the bottom of the sign in each store so that it always contains a supply of Notices.

19. **THIS COURT ORDERS AND DECLARES** that the notice program described in paragraph 17 of this order satisfies the requirements of sections 22 and 35 of the *Class Actions Act*, SNL 2001, c. C-18.1.

20. **THIS COURT ORDERS** that after publication and distribution of the Notice as directed in paragraph 13(a) to (f) of this order, counsel for the Parties shall file with the Court affidavits confirming the publication and distribution of the Notice in accordance with paragraph 13(a) to (f).

21. **THIS COURT ORDERS AND DECLARES** that this Approval Order, including the Agreement, is binding upon each Settlement Class Member, including

those persons who are minors or are mentally incapable, and the requirements of the Rules relating to such persons are dispensed with. For greater certainty, each Class Member who does not opt out in accordance with the terms of this Approval Order is bound by the Approval Order, whether or not such person receives a distribution, or whether such person claims compensation.

22. **THIS COURT ORDERS** that on or before ●, 2010, John P. Brown or his designate shall report to the Court, the Defendants and Class Counsel the names of the Class Members, if any, who opted out of the Action.

23. **THIS COURT ORDERS** that any person who validly opts out of the Action is excluded from the Class, shall have no rights with respect to the Settlement, and shall receive no benefit pursuant to the Settlement Agreement.

24. **THIS COURT ORDERS** that Money Mart shall pay the \$650,000.00 as follows:

[NTD: To be inserted by the Court.]

25. **THIS COURT ORDERS** that \$● in Cash Credits are to be paid to the Credit Class Members in accordance with the provisions of the Agreement. **[NTD: This paragraph will be included in the judgment if the Court awards Cash Credits.]**

26. **THIS COURT ORDERS** that Money Mart allocate, distribute and honour the \$1 million in Transaction Credits in accordance with the Agreement.

27. **THIS COURT ORDERS AND DECLARES** that:

- (a) by virtue of the Agreement and this Approval Order, each Indebted Class Member is individually, completely and unconditionally released, forever discharged and acquitted from any and all of his or her Default Transactions;

- (b) each Settlement Class Member has, by virtue of the Agreement and of this Approval Order, individually, completely and unconditionally released, forever discharged and acquitted the Released Persons from any and all of the Settled Claims;
- (c) each Settlement Class Member, by virtue of the Agreement and of this Approval Order, shall consent and shall be deemed to have consented to the dismissal of any other action or proceeding that he or she has commenced against any one or more of the Releasees, without costs and with prejudice;
- (d) Settlement Class Members and anyone claiming through or on behalf of any of them are forever barred from commencing, instituting or prosecuting the Settled Claims against any one of the Released Persons in any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, or any other forum, directly, representatively or derivatively;
- (e) the Court shall retain exclusive and continuing jurisdiction over the Action, Parties and Settlement Class Members to interpret and enforce the terms, conditions and obligations under the Agreement and this Approval Order;
- (f) nothing herein shall release a Settlement Class Member from any outstanding obligation owed by a Settlement Class Member to Money Mart except to the extent that Default Transactions are released pursuant to subparagraph (a) above;
- (g) nothing herein shall release the Released Persons from any outstanding obligation owed by the Released Persons to a Settlement Class Member except to the extent of the release provided pursuant to subparagraph (b) above; and

- (h) nothing in this paragraph releases the Defendants, the Current Franchisees and the Former Franchisees from their obligations as set out in the Agreement and in this Approval Order.

28. **THIS COURT ORDERS** that Class Counsel, any person employed by, associated with, or a partner with Class Counsel shall not, directly or indirectly, participate or be involved in or in any way assist with respect to any claim made or action by any person which relates to or arose from the Settled Claims.

29. **THIS COURT ORDERS** that any one or more of the Parties, Class Counsel, Class Counsel Representative, the Referee, the Auditor or John P. Brown or his designate may apply to the Court for directions in respect of the implementation and/or the administration of the Agreement or relating to any other matter.

30. **THIS COURT ORDERS** that any one of the Parties may apply to the Court for directions in respect of the termination of the Settlement or any matter relating thereto.

31. **THIS COURT ORDERS** that no person may bring any action or take any proceedings against the Referee, the Auditor, the Class Counsel Representative, John P. Brown or any of their employees, agents, partners, associates, representatives, successors or assigns, for any matter in any way relating to the administration of the Agreement or the implementation of this Approval Order except with leave of this Court.

32. **THIS COURT ORDERS** that Class Counsel Fees be and are hereby fixed at \$●, being \$● on account of fees, plus \$● on account of GST thereon and \$● on account of disbursements and \$● on account of GST thereon.

33. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the New Brunswick Court and the Nova Scotia Court of the

same Settlement Agreement and this Order shall have no force and effect if such approval is not secured in New Brunswick and Nova Scotia.

34. **THIS COURT ORDERS** that the Action is hereby dismissed without costs and with prejudice.

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Prothonotary