

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
1511419 ONTARIO INC., FORMERLY KNOWN AS THE CASH STORE FINANCIAL  
SERVICES INC., 1545688 ALBERTA INC., FORMERLY KNOWN AS THE CASH  
STORE INC., 986301 ALBERTA INC., FORMERLY KNOWN AS TCS CASH STORE  
INC., 1152919 ALBERTA INC., FORMERLY KNOWN AS INSTALOANS INC., 7252331  
CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING  
BUSINESS AS "THE TITLE STORE"**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**DAVID FORTIER**

Plaintiff

- and -

**THE CASH STORE FINANCIAL SERVICES INC., NANCY BLAND, GORDON J.  
REYKDAL, CRAIG WARNOCK, J. ALBERT MONDOR, RON CHICOYNE and  
MICHAEL M. SHAW**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

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**FACTUM OF THE SECURITIES PLAINTIFFS**  
**(Representation and Notice Approval)**

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including the Ontario Securities Class Action  
Plaintiff

**TO: ATTACHED SERVICE LIST**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE  
CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE  
INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926  
ALBERTA LTD DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

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**SERVICE LIST**  
**(as at August 28, 2015)**

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<sup>1</sup> Bodnar et al. v. The Cash Store Financial Services Inc. et al., Supreme Court of British Columbia, Vancouver Reg. No. S041348;  
Stewart v. The Cash Store Financial Services Inc. et al, Supreme Court of British Columbia, Vancouver Reg. No. S126361;  
Tschrutter et al. v. The Cash Store Financial Services Inc. et al, Alberta Court of Queen’s Bench, Calgary Reg. No. 0301-16243;  
Efthimiou v. The Cash Store Financial Services Inc. et al, Alberta Court of Queen’s Bench, Calgary Reg. No. 1201-11816;  
Meeking v. The Cash Store Inc. et al, Manitoba Court of Queen’s Bench, Winnipeg Reg. No. CI 10-01-66061;  
Rehill v. The Cash Store Financial Services Inc. et al, Manitoba Court of Queen’s Bench, Winnipeg Reg. No. CI 12-01-80578;  
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<sup>3</sup> Essa Road & Mapleton Avenue Shopping Centre, Barrie, ON

## PART I - OVERVIEW

1. This is a motion by the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the plaintiff in the Ontario Securities Class Action<sup>1</sup> ("**Securities Plaintiffs**") for an Order, among other things:
  - (a) appointing the Securities Plaintiffs as representative of the Securities Class Action Class Members<sup>2</sup> in the CCAA Proceeding<sup>3</sup> and the Ontario Securities Class Action, including for the purposes of the proposed settlement agreement between the plaintiff and defendants in the Ontario Securities Class Action, among others ("**D&O/Insurer Global Settlement**");
  - (b) appointing Siskinds LLP as representative counsel to the Securities Class Action Class Members; and
  - (c) approving the form and content of the notices to the Securities Class Action Class Members and the plan for disseminating the notices.
  
2. On June 4, 2013, the Ontario Securities Class Action was commenced against 1511419 Ontario Inc., formerly known as The Cash Store Financial Services Inc. ("**Cash Store**"), Nancy Bland, Gordon J. Reykdal, Craig Warnock, J. Albert Mondor, Ron Chicoyne, and Michael M. Shaw (together with Cash Store, the "**Defendants**"), alleging, among other things, that the Defendants made false and misleading statements regarding Cash Store's financial results, assets, business structure, and transactions, which caused Cash Store securities to trade at artificially inflated prices.

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<sup>1</sup> "**Ontario Securities Class Action**" means the class proceeding styled as *Fortier v The Cash Store Financial Services, Inc, et al* commenced in the Ontario Superior Court of Justice, bearing (Toronto) Court File No. CV-13-48194300CP.

<sup>2</sup> "**Securities Class Action Class Members**" means all persons, wherever they may reside or be domiciled, who acquired securities of The Cash Store Financial Services, Inc. from November 24, 2010 through to February 13, 2014, inclusive, except the Defendants (as defined herein), their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is an immediate member of the family of an individual Defendant.

<sup>3</sup> "**CCAA Proceeding**" means the insolvency proceeding commenced in the Ontario Superior Court of Justice, Commercial List, bearing Court File No. CV-14-10518-00CL.

3. On April 14, 2014, Cash Store obtained creditor protection under the *Companies' Creditors Arrangement Act* ("CCAA") and a stay of proceedings against the Defendants was ordered.
4. A settlement has been reached to resolve the Ontario Securities Class Action and related litigation commenced in Alberta, Quebec, and the Southern District of New York. The settlement, if approved, will be incorporated into Cash Store's CCAA Plan of Compromise and Arrangement ("**Plan**").
5. The relevant factors applicable to granting representation orders in insolvency proceedings are met.
6. The notices for which the Securities Plaintiffs seek court approval will communicate to the Securities Class Action Class Members key, relevant details of the settlement and the process for its approval, the right and deadline to object, and the method for filing claims, should the settlement be approved.

## **PART II – THE FACTS**

7. On June 4, 2013, the Ontario Securities Class Action was commenced against the Defendants under the *Class Proceedings Act, 1992* on behalf of investors in Cash Store securities. The action alleges, among other things, that the Defendants made false and misleading statements regarding Cash Store's financial results, assets, business structure, and transactions, which caused Cash Store securities to trade at artificially inflated prices.<sup>4</sup>

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<sup>4</sup> Affidavit of Alex Dimson, sworn September 23, 2015 ("**Dimson Affidavit**") at para 4, Motion Record of the Securities Plaintiffs (Representation and Notice Approval) ("**MR**"), Tab 2.

8. A similar class proceeding was commenced with Siskinds LLP as counsel on June 3, 2013, in the Alberta Court of Queen's Bench, bearing court file No. 1303-07837 ("**Alberta Securities Class Action**"). On July 11, 2013, Siskinds Demeules, sencrl, a Quebec law firm affiliated with Siskinds LLP, commenced another similar proceeding in the Quebec Superior Court, bearing court file No. 200-06-000165-137 ("**Quebec Securities Class Action**").<sup>5</sup>
9. From the outset, the intention was for Siskinds LLP to take the lead role in prosecuting the three above-noted actions in a coordinated and complementary manner.<sup>6</sup>
10. On November 18, 2013, Kirby McInerney LLP and Hoffner PLLC commenced a class proceeding against Cash Store and certain of the Defendants in the United States District Court for the Southern District of New York, bearing court file No. 13 Civ 3385 (VM). ("**SDNY Securities Class Action**") (together with the Ontario Securities Class Action, Alberta Securities Class Action, and Quebec Securities Class Action, "**Securities Class Actions**"). Substantially similar allegations were made in each of the Securities Class Actions.<sup>7</sup>
11. In March 2014, counsel to the parties in the Securities Class Actions participated in a global mediation before Mr. George Adams in an attempt to resolve the claims asserted in those actions. As a result of that mediation and continuing negotiations over the following weeks, the parties reached an agreement in principle to settle the claims.<sup>8</sup>

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<sup>5</sup> Dimson Affidavit at para 5, MR, Tab 2.

<sup>6</sup> Dimson Affidavit at para 6, MR, Tab 2.

<sup>7</sup> Dimson Affidavit at para 7, MR, Tab 2.

<sup>8</sup> Dimson Affidavit at para 8, MR, Tab 2.



12. However, on April 14, 2014, before the parties were able to finalize the terms of the settlement, Cash Store obtained creditor protection under the CCAA and a stay of proceedings was ordered.<sup>9</sup>
13. Siskinds LLP entered into negotiations with other stakeholders in the CCAA Proceeding in order to represent and protect the interests of the plaintiffs and proposed class members in the Securities Class Actions. The Securities Plaintiffs ultimately began to work cooperatively with the Ad Hoc Committee of Noteholders (who represent a significant subset of the proposed class members in the Securities Class Actions, represented by Goodmans LLP) in an effort to maximize the recovery for the claims asserted in the Securities Class Actions. To that end, a second mediation was scheduled with the Defendants and others before Mr. George Adams.<sup>10</sup>
14. In advance of that mediation, Siskinds LLP obtained access to relevant non-public information as well as information (previously unavailable to them) that had come to light in the CCAA Proceeding.<sup>11</sup>
15. The second mediation took place on December 4, 2014. In attendance were counsel to the parties in the Securities Class Actions, the Ad Hoc Committee of Noteholders, and the Chief Restructuring Officer of the Applicants, among others.<sup>12</sup>
16. As a result of the second mediation and negotiations and correspondence over the following months, the parties were able to reach an agreement to settle the Securities

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<sup>9</sup>Dimson Affidavit at para 9, MR, Tab 2.

<sup>10</sup>Dimson Affidavit at paras 11-12, MR, Tab 2.

<sup>11</sup>Dimson Affidavit at para 13, MR, Tab 2.

<sup>12</sup>Dimson Affidavit at para 14, MR, Tab 2.

Class Action claims (“**Securities Settlement**”).<sup>13</sup> The terms of the Securities Settlement are included in the D&O/Insurer Global Settlement Agreement,<sup>14</sup> which are proposed to be incorporated and implemented through the proposed Plan, and for which court approval will also be sought under the *Class Proceedings Act, 1992*.

17. The D&O/Insurer Global Settlement Agreement allocates a total of CAD\$13,779,167 to the Securities Class Action Class Members.<sup>15</sup>

### **PART III – THE ISSUES**

18. The factum addresses two issues:
  - (a) whether the court should appoint the Securities Plaintiffs and Siskinds LLP as representative and representative counsel, respectively, to the Securities Class Action Class Members; and
  - (b) whether the court should approve the form and content of the notices to the Securities Class Action Class Members informing them of the D&O/Insurer Global Settlement, and the plan for disseminating the notices.

### **PART IV – THE LAW**

#### ***(i) The Representation Order***

19. The Honourable Regional Senior Justice Morawetz recently confirmed the court’s authority to appoint representatives in CCAA proceedings under rules 10.01 and 12.07 of the *Rules of Civil Procedure*, as well as section 11 of the CCAA,<sup>16</sup> including on behalf of class members in an uncertified class action.

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<sup>13</sup> Dimson Affidavit at para 15, MR, Tab 2.

<sup>14</sup> D&O/Insurer Global Settlement Agreement, Affidavit of William Aziz, Exh A, Sch C, Motion Record of the Applicants (Meetings Order Motion Returnable September 30, 2015), Tab 2.

<sup>15</sup> Dimson Affidavit at para 16, MR, Tab 2.

<sup>16</sup> *Cash Store Financial Services (Re)*, 2014 ONSC 4567 at para 12, Plaintiffs’ Brief of Authorities dated September 25, 2015 (filed by Timothy Yeoman) (“**Plaintiffs’ Brief of Authorities**”), Tab 4.

20. In *Canwest*, Justice Pepall (as she then was) summarized the factors Canadian courts have considered when issuing representative orders in insolvency proceedings:
- (a) the vulnerability and resources of the group sought to be represented;
  - (b) any benefit to the companies under CCAA protection;
  - (c) any social benefit to be derived from representation of the group;
  - (d) the facilitation of the administration of the proceedings and efficiency;
  - (e) the avoidance of a multiplicity of legal retainers;
  - (f) the balance of convenience and whether it is fair and just including to the creditors of the Estate;
  - (g) whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and
  - (h) the position of other stakeholders and the Monitor.<sup>17</sup>
21. The representation orders sought will facilitate the Securities Settlement and the D&O/Insurer Global Settlement Agreement, which have a strong connection to the proposed Plan. The settling defendants are making tangible contributions that will provide substantial benefits to stakeholders.
22. The requested representation orders meet the relevant *Canwest* factors:
- (a) the Securities Class Action Class Members consist of certain investors whose likely size of claims, if pursued individually, would make participation in the CCAA Proceeding cost-prohibitive;
  - (b) the representation order benefits the Applicant defendant in the CCAA Proceeding by obviating the need to deal individually with class members and promoting finality of class litigation in a consistent and collective manner;

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<sup>17</sup> *Canwest Publishing Inc (Re)*, 2010 ONSC 1328 at para 21, Plaintiffs' Brief of Authorities, Tab 6.

- (c) the representation order provides a social benefit of access to justice for investors who have suffered losses from the alleged wrongdoing;
- (d) the representation order facilitates the administration of the CCAA Proceeding and enhances its efficiency by appointing a representative counsel who will function as a single point of contact and source of reliable information for the Securities Class Action Class Members;
- (e) the representation order avoids a multiplicity of legal retainers for individuals with similar claims and the associated delay and costs which would result in the CCAA Proceeding;
- (f) the balance of convenience favours granting the representation order, as no stakeholder in the CCAA Proceeding will be prejudiced by the representation orders sought, while the representation orders will enable and facilitate the completion of the settlement reached within the CCAA Proceeding in an efficient and comprehensive way;
- (g) no other representation order has been made in these proceedings in respect of the Securities Class Action Class Members; and
- (h) no other party has opposed or indicated opposition to the representation order sought on this motion.

23. Siskinds LLP is appropriate representative counsel for the Securities Class Action Class Members. In assessing the Securities Class Action Class Members' position in the proposed Securities Settlement, Siskinds LLP had access to and considered the following sources of information:

- (a) Cash Store's public disclosure documents and other publicly available information with respect to Cash Store;
- (b) the available trading data for Cash Store's securities, including certain non-public trading data in respect of the 11.5% Senior Secured Notes due 2017 ("**Notes**");
- (c) certain information in the data room created for the Applicants' sales process;

- (d) certain information and documents which came to light in the CCAA Proceeding;
- (e) the Defendants' respective insurance policies;
- (f) the input and opinions of experts in assessing damages in securities class actions;
- (g) the mediation briefs provided by the parties at the mediations in March 2014 and December 2014; and
- (h) input from counsel in the SDNY Securities Class Action.<sup>18</sup>

24. Siskinds LLP has had extensive experience litigating and resolving complex class action litigation, including securities litigation. As of September 23, 2015, Siskinds LLP has had over 20 securities class action settlements approved by courts, including two settlements in the litigation involving Sino-Forest Corporation. Siskinds LLP was appointed as co-representative counsel for investors in Sino-Forest Corporation's joint CCAA and class proceedings (Court File Nos. CV-12-9667-00CL and CV-11-431153-00CP), which, as in these proceedings, involved the settlement of securities class action claims within a CCAA proceeding. Siskinds LLP has also been appointed co-representative counsel for investors of Poseidon Concepts Corp in CCAA proceedings before the Alberta Court of Queen's Bench, Calgary Court File No: 1301-04364.<sup>19</sup>

***(ii) The Notices and Notice Plan***

25. The Securities Plaintiffs have prepared a form of notice ("**Notice**") to advise the Securities Class Action Class Members of, among others:

- (a) the date of the hearing ("**Settlement Approval Hearing**") to approve: (i) the proposed Securities Settlement, (ii) the plan of allocation and distribution of the

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<sup>18</sup> Dimson Affidavit at para 17, MR, Tab 2.

<sup>19</sup> Dimson Affidavit at para 18, MR, Tab 2.

proceeds of the Securities Settlement (“**Plan of Allocation**”), and (iii) the fees and disbursements requests of Siskinds LLP, Kirby McInerney LLP, Hoffner PLLC, Goodmans LLP, and Paul Hastings LLP (“**Fee Request**”);

- (b) the key items addressed in the proposed Securities Settlement, Plan of Allocation and Fee Request;
- (c) the right to object to or make submissions regarding the proposed Securities Settlement, Plan of Allocation and Fee Request, and the method and deadline for making such objections; and
- (d) the procedure by which to file claims, and the deadline for doing so.<sup>20</sup>

26. The Securities Plaintiffs have also prepared a short-form notice to the Securities Class Action Class Members (“**Short-Form Notice**”). The Short-Form Notice advises the Securities Class Action Class Members of the Settlement Approval Hearing, the claims filing deadline, the right and deadline to object, and where to find more information regarding each.<sup>21</sup>

27. Copies of the Notice, Short-Form Notice, and Notice of Objection (for those wishing to object to the Securities Settlement, Plan of Allocation or Fee Request) are attached as Schedules “B”, “C”, and “D”, respectively, to the draft Order.<sup>22</sup>

28. Siskinds LLP has received from the Monitor, with the assistance of the company, the Lists (defined below) containing contact information of certain Cash Store investors. Siskinds LLP has also made best efforts to maintain a database of certain persons that

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<sup>20</sup> Dimson Affidavit at para 20, MR, Tab 2.

<sup>21</sup> Dimson Affidavit at para 21, MR, Tab 2.

<sup>22</sup> Draft Order, MR, Tab 3.

have contacted the firm about the action.<sup>23</sup> As a point of clarification, the approximately 40 persons in the database referred to at paragraph 24 of the Dimson Affidavit include not only persons that have contacted the firm about the class action and identified themselves as Securities Class Action Class Members, but also include a variety of other persons with whom Siskinds LLP has had contact concerning the Securities Class Actions, as well as persons who have or appear to have mistakenly contacted Siskinds LLP about the consumer/borrower class action (“**Database**”).

29. The following method of disseminating the Notices are proposed (“**Notice Plan**”):

- (a) Siskinds LLP shall provide or cause to be provided a copy of the Notice directly, either electronically or by mail, to:
  - (i) any person that requests it and all persons in the Database, provided that such persons have provided their contact information; and
  - (ii) the current service list in the CCAA Proceeding.
- (b) The Notice shall be sent to the following lists provided by the Monitor (“**Lists**”):
  - (i) A list of Canadian non objecting beneficial owners (“**NOBOs**”) of Cash Store shares as of December 24, 2012;
  - (ii) A list of US NOBOs of Cash Store shares as of December 12, 2012;
  - (iii) A list of registered holders of Cash Store Notes as of December 20, 2013;
  - (iv) A list of private placement purchasers of \$28 million of the Notes under the \$125 million January 2012 Note Offering; and
  - (v) Any other lists provided by the Applicants and the Monitor.
- (c) The Notice shall be sent to:
  - (i) the list of 195 brokers in Canada known to RicePoint Administration Inc., including the Canadian Depository for Securities; and

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<sup>23</sup> Dimson Affidavit at paras 23 and 24, MR, Tab 2.

- (ii) for greater certainty, any brokers in the United States appearing on any of the Lists identified at paragraph 29(b) above,  
with a cover letter directing those brokers to provide a copy of the Notice, either electronically or by mail, to those of their clients that are or have been beneficial owners of Cash Store securities.
  
- (d) The Notice shall be sent to all current Noteholders through the distribution of meeting materials by the Monitor in connection with the Meeting Order for which the Applicants are seeking approval at the hearing before the Court on September 30, 2015.
  
- (e) The Notice shall be sent to the Indenture Trustee for the Notes with a direction to distribute the Notice to those persons that are or have been registered holders of the Notes and for whom the Indenture Trustee has contact information.
  
- (f) Copies of the Notice shall be posted on the websites of Siskinds LLP (in English and French), and Kirby McInerney LLP (in English).
  
- (g) Copies of the Short-Form Notice shall be published in one weekday publication in each of the following print publications:
  - (i) *The Globe and Mail* (in English);
  - (ii) *La Presse* (in French);
  - (iii) *Investor's Business Daily* (in English); and
  - (iv) *The Wall Street Journal* (in English).<sup>24</sup>

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<sup>24</sup> Dimson Affidavit at para 26, MR, Tab 2.



**PART V – RELIEF REQUESTED**

30. The Securities Plaintiffs respectfully request an Order:
- (a) recognizing and appointing the Securities Plaintiffs and Siskinds LLP, as representative and representative counsel, respectively, to the Securities Class Action Class Members in the CCAA Proceeding and the Ontario Securities Class Action, including for the purposes of the proposed D&O/Insurer Global Settlement;
  - (b) approving the form, content, and method of dissemination of the Notice, Short-Form Notice and Notice of Objection, and fixing the objection deadline;
  - (c) appointing the claims administrator and fixing the claims deadline; and
  - (d) such further and other relief as counsel may advise and this Honourable Court may deem just.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of September, 2015.

  
\_\_\_\_\_  
**Charles M. Wright**

  
\_\_\_\_\_  
**Serge Kalloghlian**

**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

*Canwest Publishing Inc (Re)*, 2010 ONSC 1328

*Cash Store Financial Services (Re)*, 2014 ONSC 4567

**SCHEDULE "B"**

**RELEVANT STATUTES**

***Rules of Civil Procedure, RRO 1990, Reg 194***

**Proceedings in which Order may be Made**

10.01 (1) In a proceeding concerning,

- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (b) the determination of a question arising in the administration of an estate or trust;
- (c) the approval of a sale, purchase, settlement or other transaction;
- (d) the approval of an arrangement under the *Variation of Trusts Act*;
- (e) the administration of the estate of a deceased person; or
- (f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.

***Companies' Creditors Arrangement Act, R.S.C. c. C-36, s. 11***

**11. General power of court**

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985,  
c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 1511419 ONTARIO INC., FORMERLY KNOWN AS THE CASH  
STORE FINANCIAL SERVICES INC.

Court File No: CV-14-10518-00CL

FORTIER v. THE CASH STORE FINANCIAL SERVICES INC., *et al.*

Court File No: CV-13-48194300CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

**FACTUM OF THE SECURITIES PLAINTIFFS  
(Representation and Notice Approval)**

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