

**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 CANDA INC., 5515433  
MANITOBA INC., 1693926 ALBERTA LTD DOING BUSINESS AS "THE TITLE  
STORE"

APPLICANTS

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**MOTION RECORD**  
(Returnable May 16, 2014)

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**MAY 15, 2014**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**Lara Jackson, LSUC #: 41858M**  
Tel: 416.860.2907  
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ljackson@casselsbrock.com

Lawyers for the Applicants

**TO: SERVICE LIST**

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**TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

*IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
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MANITOBA INC., 1693926 ALBERTA LTD DOING BUSINESS AS "THE TITLE  
STORE"

APPLICANTS

**NOTICE OF MOTION  
(Returnable May 16, 2014)**

Cassels Brock & Blackwell LLP ("Cassels Brock") will make a motion to a judge of the Superior Court of Justice (Commercial List), on Friday May 16, 2014 at 2:15 p.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) An order that the amount of \$1,087,866.45 currently held in trust by Cassels Brock in the name of The Cash Store Financial Services Inc. ("Cash Store") pursuant to a Consent Order (as described below), be paid out as follows:
  - (i) The amount of \$1,078,328.00, comprised of the Secured Amount and the Additional Amount (defined below) be paid to the BC Compliance Order Trust Account (defined below) to be opened by Cash Store, in its capacity as Trustee of the Compliance Order Trust (defined below) and approved by Consumer

Protection British Columbia ("CPBC") in accordance with the Compliance Order and Supplemental Compliance Order (defined below); and

- (ii) The amount of \$9,538.45 be paid to Cash Store; and
- (b) a declaration that the Secured Amount and the Additional Amount are not subject to any of the Charges, as defined in and granted under the Amended and Restated Initial Order dated April 15, 2014, as amended.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) Cassels Brock is currently holding the amount of \$1,087,866.45 in trust in the name of Cash Store. The majority of these funds are amounts secured for the purpose of satisfying a Compliance Order issued in British Columbia by CPBC and affirmed in Judicial Review by the British Columbia Supreme Court in January 2014. The remaining amount of approximately \$10,000 is interest that accrued on amounts held in trust.
- (b) In light of the CCAA filing, Cassels Brock seeks the Court's direction with respect to the payment out of these funds.

**The BC Compliance Orders and Refund Amounts**

- (c) Payday loans are regulated in the Province of British Columbia pursuant to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 ("BPCPA").
- (d) CPBC has the statutory authority and responsibility to monitor and ensure compliance with the BPCPA.
- (e) The BPCPA grants CPBC the authority, among other things, to issue compliance orders to entities it determines are non-compliant with the BPCPA.

- (f) On November 9, 2010, CPBC issued a Compliance Order to Cash Store (the "November 2010 Compliance Order").
- (g) On December 9, 2010, Cash Store exercised its right under the BPCPA to request reconsideration of the Compliance Order.
- (h) On March 23, 2012, CPBC issued a decision on the request for reconsideration and a Compliance Order.
- (i) The March 2012 Compliance Order required Cash Store to, among other things, comply with the following conditions:
- 5. to, within 90 days of this Order, refund all borrowers with loan agreements negotiated with the Respondent or its subsidiaries between November 1, 2009 and the date of this order, the amount of any issuance fee charged, required or accepted for or in relation to the issuance of a cash card in violation of s. 112.04(1)(f) [of the BPCPA];
  - 6. to, within 120 days of this Order, provide to Consumer Protection BC a detailed accounting and proof of the refunds required by paragraph 5 above in a form satisfactory to Consumer Protection BC; ...
- (j) On November 30, 2012, CPBC issued a Supplemental Compliance Order (the "Supplemental Compliance Order").
- (k) This Supplemental Compliance Order establishes a comprehensive refund process by which Cash Store was to complete the refund process contemplated by paragraph 5 and 6 of the March 2012 Compliance Order.
- (l) Cash Store filed a Petition for Judicial Review in the British Columbia Supreme Court on December 14, 2012.
- (m) The Judicial Review was heard on June 26, 27 and 28, 2013.

- (n) On January 30, 2014, The Honourable Madam Justice Brown dismissed Cash Store's Petition for Judicial Review.
- (o) In January 2013, after the Petition for Judicial Review was filed, Cash Store and CPBC agreed to a consent Court Order whereby paragraphs 5 and 6 of the March 2012 Compliance Order would be stayed pending a determination of the Petition for Judicial Review (the "Consent Order").
- (p) A term of the Consent Order required that Cash Store secure the sum of \$1,059,828 (the "Secured Amount") by payment into trust on terms to be agreed by the parties.
- (q) Cash Store provided the Secured Amount to Cassels Brock to be held in trust pending resolution of the Judicial Review.
- (r) On March 7, 2014, counsel for CPBC wrote to Cassels Brock further to the decision of Justice Brown dismissing the Petition for Judicial Review and advised that CPBC would consent to payment out of the Secured Amount to a financial institution to be used in the refund process on certain terms, including that:
- a. The Secured Amount be increased by the sum of \$18,500 to reflect the results of an audit;
  - b. The Secured Amount be made the subject of a trust in accordance with the terms of a trust declaration to be agreed upon (the "Compliance Order Trust");
  - c. Cash Store would establish a new trust account located in British Columbia with account and access details to be verified by the financial institution (the "BC Compliance Order Trust Account");
  - d. Copies of all documentation establishing the trust account would be provided to CPBC for review and approval.
- (s) On March 26, 2014, Cash Store transferred the additional sum of \$18,500 to Cassels Brock (the "Additional Amount").

- (t) Cassels Brock is currently holding the amount of \$1,087,866.45 in trust (including the Secured Amount, interest earned on the Secured Amount, and the Additional Amount).
- (u) On April 9, 2014, Gordon Reykdal signed a Trust Declaration on behalf of Cash Store establishing the Compliance Order Trust, for which Cash Store is the Trustee.
- (v) Recital "C" of the Trust Declaration contemplates that Cash Store in its capacity as Trustee of the Compliance Order Trust would be receiving certain funds currently held by Cassels Brock in the amount of \$1,078,328.00 to be used in accordance with the terms of the Supplemental Compliance Order.
- (w) Cash Store was in the process of opening the BC Compliance Order Trust Account with CIBC in which the Secured Amount and Additional Amount would be deposited when the Initial Order was granted on April 14, 2014 but there remained certain documents to be completed in order for the CIBC to open the BC Compliance Order Trust Account.
- (x) Following the Initial Order, Cassels Brock participated in several discussions with the Chief Compliance and Regulatory Affairs Officer, the Chief Restructuring Officer (the "CRO"), his counsel, and the Monitor. On May 13, 2014, Cassels Brock received instructions from counsel to the CRO to pay the Secured Funds and the Additional Amount to the BC Compliance Order Trust Account to be opened by Cash Store and approved by CPBC, after receipt of an appropriate court order.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) The Affidavit of Jason Beitchman, sworn May 15, 2014, and the exhibits attached thereto;
- (b) Such further material as counsel may advise and this Honourable Court may permit.

**May 15, 2014**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**Lara Jackson, LSUC #: 41858M**  
Tel: 416.860.2907  
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ljackson@casselsbrock.com

Lawyers for the Applicants

**TO: SERVICE LIST**

**TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

*IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
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STORE"

APPLICANTS

**AFFIDAVIT OF JASON BEITCHMAN  
(Sworn May 15, 2014)**

I, Jason Beitchman, of the City of Toronto in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am a lawyer at Cassels Brock & Blackwell LLP ("Cassels Brock"), counsel to the Applicants, and have knowledge of the matters to which I herein depose. Where my knowledge is based on information and belief, I have so stated and believe such information to be true.
2. Payday loans are regulated in the Province of British Columbia pursuant to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 ("BPCPA").
3. Consumer Protection British Columbia ("CPBC") has the statutory authority and responsibility to monitor and ensure compliance with the BPCPA.

4. The BPCPA grants CPBC the authority, among other things, to issue compliance orders to entities it determines are non-compliant with the BPCPA.
5. On November 9, 2010, CPBC issued a Compliance Order to Cash Store Financial Services Inc. ("Cash Store") (the "November 2010 Compliance Order"). A copy of the November 2010 Compliance Order is attached hereto as Exhibit "A".
6. On December 9, 2010, Cash Store exercised its right under the BPCPA to request reconsideration of the Compliance Order.
7. On March 23, 2012, CPBC issued a decision on the request for reconsideration and a Compliance Order. A copy of the March 2012 Compliance Order is attached hereto as Exhibit "B".
8. The March 2012 Compliance Order required Cash Store to, among other things, comply with the following conditions:
  5. to, within 90 days of this Order, refund all borrowers with loan agreements negotiated with the Respondent or its subsidiaries between November 1, 2009 and the date of this order, the amount of any issuance fee charged, required or accepted for or in relation to the issuance of a cash card in violation of s. 112.04(1)(f) [of the BPCPA];
  6. to, within 120 days of this Order, provide to Consumer Protection BC a detailed accounting and proof of the refunds required by paragraph 5 above in a form satisfactory to Consumer Protection BC; ...

9. On November 30, 2012, CPBC issued a Supplemental Compliance Order (the "Supplemental Compliance Order"). A copy of the Supplemental Compliance Order is attached hereto as Exhibit "C".
10. This Supplemental Compliance Order establishes a comprehensive refund process by which Cash Store was to complete the refund process contemplated by paragraph 5 and 6 of the March 2012 Compliance Order.
11. Paragraphs 30 and 31 of the Supplemental Compliance Order provide that any portion of amounts designated to be refunded to consumers that remain unpaid are to be paid by Cash Store to Consumer Protection BC, and to be held in trust by Consumer Protection BC for a further period of six years. At the end of this process, any remaining amounts will be paid by Consumer Protection BC to the BC Consumer Advancement Fund.
12. Cash Store filed a Petition for Judicial Review in the British Columbia Supreme Court on December 14, 2012. A copy of the Petition for Judicial Review is attached hereto as Exhibit "D".
13. The Judicial Review was heard on June 26, 27 and 28, 2013.
14. On January 30, 2014, The Honourable Madam Justice Brown dismissed Cash Store's Petition for Judicial Review. A copy of Madam Justice Brown's reasons for decision is attached hereto as Exhibit "E".

### **Funds Placed in Trust by Court Order**

15. In January 2013, after the Petition for Judicial Review was filed, Cash Store and CPBC agreed to a consent Order whereby paragraphs 5 and 6 of the March 2012 Compliance Order would be stayed pending a determination of the Petition for Judicial Review. Attached as Exhibit "F" is a copy of the Order of Master Tokarek, issued and entered on January 28, 2013 (the "Consent Order").
16. A term of the Consent Order required that Cash Store secure the sum of \$1,059,828 (the "Secured Amount") by payment into trust on terms to be agreed by the parties.
17. The Consent Order contemplated that, in the event the amounts to be refunded to consumers pursuant to the Supplemental Compliance Order was greater or less than the Secured Amount, the Secured Amount was to be adjusted so that the Secured Amount was equal to the total amount of fees to be refunded to eligible consumers in accordance with the Supplemental Compliance Order.
18. On February 22, 2013, Gordon Reykdal, the Chairman and CEO of Cash Store wrote to Cassels Brock and advised that Cash Store was transmitting funds in the Secured Amount as payment into trust for the purpose of satisfying the Consent Order. A copy of Mr. Reykdal's letter to Cassels Brock dated February 22, 2013 is attached hereto as Exhibit "G".

19. Cassels Brock received the Secured Amount into its trust account on February 26, 2013. Attached as Exhibit "H" is a Trust Summary from Cassels Brock's trust account as of February 27, 2013.
20. On February 27, 2013, Cassels Brock invested the funds in a one year cashable Guaranteed Investment Certificate at 0.90% interest. Attached hereto as Exhibit "I" is a copy of an Investment of Trust instruction form.
21. On February 27, 2014, the investment was cashed. The balance of the trust account, including interest of \$9,538.45, was now \$1,069,366.45. Attached as Exhibit "J" is a Trust Summary from Cassels Brock's trust account as of May 13, 2014.
22. On March 7, 2014, counsel for CPBC wrote to Cassels Brock further to the decision of Justice Brown dismissing the Petition for Judicial Review. Attached hereto as Exhibit "K" is a letter from Jennifer Francis to Tim Pinos dated March 7, 2014.
23. Among other things, CPBC advised that it would consent to payment out of the Secured Amount to a financial institution to be used in the refund process on certain terms, including that:
  - a. The Secured Amount be increased by the sum of \$18,500 to reflect the results of an audit;
  - b. The Secured Amount be made the subject of a trust in accordance with the terms of a trust declaration to be agreed upon (the "Compliance Order Trust");

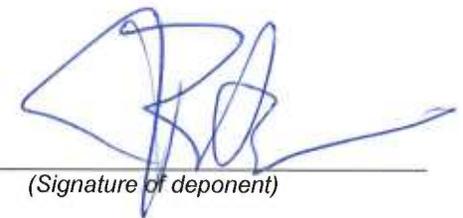
- c. Cash Store would establish a new trust account located in British Columbia with account and access details to be verified by the financial institution (the "BC Compliance Order Trust Account");
  - d. Copies of all documentation establishing the trust account would be provided to CPBC for review and approval.
24. On March 26, 2014, Cash Store transferred the additional sum of \$18,500 to Cassels Brock (the "Additional Amount"). Attached as Exhibit "L" is a copy of the confirmation of the incoming wire transfer of trust funds.
25. Cassels Brock is currently holding \$1,087,866.45 in trust, including the Secured Amount, the interest earned on the Secured Amount, and the Additional Amount.
26. On April 9, 2014, Gordon Reykdal signed a Trust Declaration on behalf of Cash Store establishing the Compliance Order Trust, for which Cash Store is the Trustee. A copy of the Trust Declaration is attached hereto as Exhibit "M".
27. Recital "C" of the Trust Declaration contemplates that Cash Store in its capacity as Trustee of the Compliance Order Trust would be receiving certain funds currently held by Cassels Brock in the amount of \$1,078,328.00 (the Secured Amount and the Additional Amount) to be used in accordance with the terms of the Supplemental Compliance Order.
28. Cash Store was in the process of opening the BC Compliance Order Trust Account with CIBC in which the Secured Amount and Additional Amount would be deposited when the Initial Order was granted on April 14, 2014.

29. On April 16, 2014, I was advised by Jerry Roczowsky, Cash Store's Vice President Compliance and Corporate Secretary, that there remained certain documents to be completed in order for the CIBC to open the BC Compliance Order Trust Account.
30. I am advised by Lara Jackson, a partner with Cassels Brock, that following the initial order, she participated in several discussions with the Chief Compliance and Regulatory Affairs Officer, the Chief Restructuring Officer ("CRO"), his counsel, and the Monitor. On May 13, 2014, Cassels Brock received instructions from the CRO to pay the Secured Funds and the Additional Amount to the BC Compliance Order Trust Account to be opened by Cash Store and approved by CPBC after receipt of an appropriate court order. A copy of an email from Jeremy Dacks, counsel to the CRO, to Lara Jackson dated May 15, 2014 confirming these instructions is attached hereto as Exhibit "N".

SWORN BEFORE ME at the City  
of Toronto, in the Province of  
Ontario on May 15, 2014

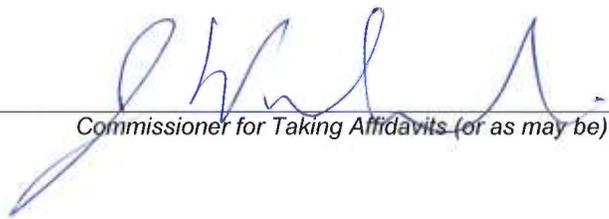


\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)



\_\_\_\_\_  
(Signature of deponent)

This is Exhibit "A" referred to in the Affidavit of Jason Beitchman sworn May 15, 2014

A handwritten signature in blue ink, appearing to be 'J. White', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



CONSUMER  
PROTECTION BC

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# COMPLIANCE ORDER

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IN THE MATTER OF

*THE BUSINESS PRACTICES & CONSUMER PROTECTION ACT, S.B.C. 2004 c. 2*

And

The Payday Loans Regulation

**Respondent:** The Cash Store Financial Services Inc.

**Adjudicator:** Tayt Winnitoy, VP, Operations

**Date of Order:** November 9, 2010

## REQUIREMENTS OF THE ORDER

Pursuant to section 155 of the *Business Practices and Consumer Protection Act* ("BPCP Act"), the Respondent is ordered to comply with the following:

### Section 112.04(1)(f) of the BPCP Act

Fees, penalties and charges prohibited unless allowed by regulation

"A payday lender must not charge, require or accept... any amount for or in relation to a cash card issued to a borrower."

### Section 17(1) of the Payday Loans Regulation

Permissible Charges

"The maximum amount that may be charged, required or accepted by a payday lender for a loan is 23% of the principal."

**Section 19(1) of the Payday Loans Regulation****Prohibited Practices – Tied Selling**

"A payday lender must not make a payday loan contingent on the supply of other goods or services."

**Pursuant to section 155(3) of the BPCP Act, the Respondent is required to stop engaging in or not engage in the contraventions as set out in this Compliance Order, and specifically:**

The respondent must not charge, require or accept any amount for or in relation to a cash card issued to a borrower.

The respondent must ensure that the maximum amount that may be charged, required or accepted by a payday lender for a loan is 23% of the principal.

The respondent must not make a payday loan contingent on the supply of other goods or services, including the de facto issuance of cash cards as the only immediate means of furnishing loan proceeds from a loan agreement.

**Pursuant to section 155(4) of the BPCP Act, the Respondent is ordered to:**

1. Within 90 days of this Order, reimburse any and all borrowers with loan agreements negotiated with The Cash Store Financial Services Inc. and its subsidiaries between November 1, 2009 and the date of this order, the amount charged, required or accepted for or in relation to the issuance of a cash card in violation of Section 112.04(1)(f) of the Act;
2. As of the date of this Order, immediately provide the option to any borrower negotiating a loan agreement with The Cash Store Financial Services Inc. and its subsidiaries, of receiving a cheque, cash or some other financial instrument which provides the loan proceeds to the borrower at the time the loan agreement is negotiated;
3. Within 30 days of this Order, reimburse the Director for the costs of inspections conducted and actual legal costs including the cost of the hearing in the amount of \$4,005.90

**APPEAL PROCESS**

The BPCPA Act provides that the Director may reconsider decisions made under the Act and may confirm, vary or cancel them.

A person may request a reconsideration of the following determinations (section 180 of the BPCPA Act):

- a compliance order

The request must be in writing and identify the error believed was made or other grounds. The decision made with respect to the reconsideration is final and may not be reconsidered. Information on the reconsideration process can be found at [www.consumerprotectionbc.ca](http://www.consumerprotectionbc.ca)

There is a \$200 reconsideration application charge which must be submitted with each reconsideration. The charge will be refunded to the applicant if the reconsideration results in the full reversal of the decision being reconsidered.

Section 181(1) of the BPCPA Act states that a person may request the Director to reconsider a determination within 30 days of receiving the order or within a time period specified by the director if any special circumstances exist.

Section 181(2) further states that this request must be made "in writing and must identify the error that the person believes was made or the other grounds for which reconsideration is requested".

Section 181(5) indicates that the Director must give written reasons for the decision in respect of the reconsideration to the person who made the request under section 181(2). This decision may not be reconsidered.

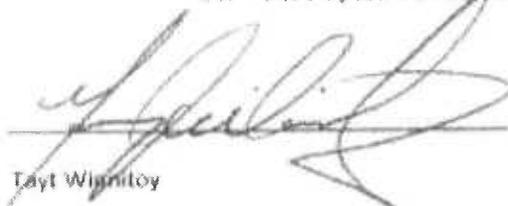
**SUMMARY**

The respondent is required to comply with this order made under the Act, and provide this office with proof of compliance as stated above. If the respondent does not comply with this order, the director may impose an administrative penalty of not more than \$5,000.00 on an individual and/or not more than \$50,000.00 on a corporation.

This Compliance Order may be filed in Supreme Court and the filed order is deemed an order of the Supreme Court and enforceable as such. The respondent may request in writing within 30 days from the date of service, a reconsideration of this order. The director must supply the respondents with the written reasons for the decision in respect of the reconsideration.

All correspondence, including any request for reconsideration, should be addressed to:

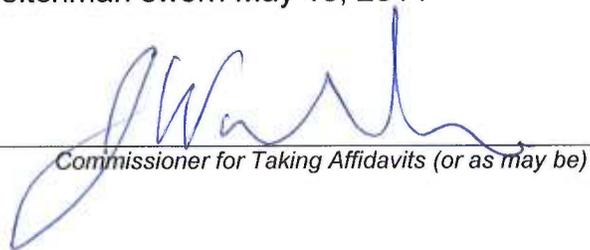
Consumer Protection BC  
Attn: Scott Mc Bride, President & CEO  
307 - 3450 Uptown Blvd., Victoria BC, V8Z 0B9

  
Taryn Wignitoy

9. NOV. 2010  
Date

Method of Service: Registered Mail

This is Exhibit "B" referred to in the Affidavit of  
Jason Beitchman sworn May 15, 2014



Commissioner for Taking Affidavits (or as may be)



CONSUMER  
PROTECTION BC

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# COMPLIANCE ORDER AND ADMINISTRATIVE PENALTY

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IN THE MATTER OF

*THE BUSINESS PRACTICES & CONSUMER PROTECTION ACT, S.B.C. 2004 c. 2*  
And The Payday Loans Regulation,  
Decision of the Director against The Cash Store Financial Services Inc.,  
dated November 9, 2010

**Respondent:** The Cash Store Financial Services Inc.

**Adjudicator:** Scott McBride, President and CEO

**Date of Order:** March 23, 2012  
**And Penalty**

Following a reconsideration process, it has been determined that the Respondent:

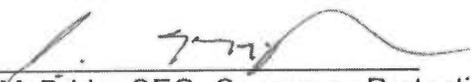
- (a) in providing prepaid debit or prepaid credit cards to borrowers as a means of delivering the proceeds of a payday loan, issues cash cards, as defined by s. 112.01 of the *Business Practices and Consumer Protection Act* (the "BPCP Act"), to borrowers;
- (b) in requesting and processing payment for the cost of a cash card ("issuance fee") from borrowers to facilitate the advance to borrowers of the proceeds of a payday loan, even where doing so on behalf of a third party, is acting contrary to s. 112.04(1)(f) by charging, accepting or requiring amounts for or in relation to cash cards issued to borrowers;
- (c) by separately accepting compensation from a third party in relation to the issuance of cash cards to borrowers, is in further violation of s. 112.04(1)(f) by accepting amounts for or in relation to the issuance of cash cards to borrowers;

- (d) by reason of the conduct set out in paragraphs (a) – (c) above and the failure to include the amount of the issuance fee in the calculation of the maximum permissible charge, has contravened s. 17 of the Payday Lending Regulation (the "*Regulation*") by charging, requiring and/or accepting an amount for a loan which is more than 23% of the principal; and
- (e) prior to October 22, 2010, by offering immediate receipt of loan proceeds contingent on the acquisition of a cash card for an issuance fee, with no alternative, cost-free option for immediate receipt of loan proceeds, acted in contravention of s. 19 of the *Regulation*.

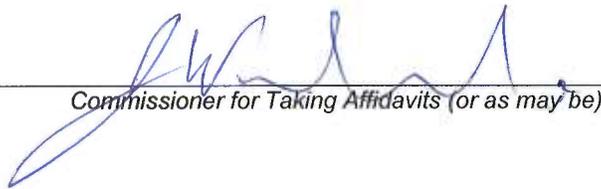
Further to these findings, the Respondent is ordered to immediately amend its practices to comply with s. 112.04(1)(f) of the *BPCP Act* and s. 17 and s. 19 of the *Regulation*. The Respondent is further ordered:

1. not to charge, require or accept any amount for or in relation to a cash card issued to a borrower;
2. to ensure that the maximum amount that is charged, required or accepted by it for a loan does not exceed 23% of the principal;
3. Where it offers a payday loan on an immediate basis by way of a cash card, to make available an alternative option for the immediate receipt of loan proceeds which: (i) does not include any charge beyond the maximum permissible charge of 23% of the principal and (ii) is not dependent on the supply of another good or service;
4. to, within 30 days of this Order, pay an administrative penalty in an amount of \$25,000 by reason of its contravention of s. 112.04(1)(f);
5. to, within 90 days of this Order, refund to all borrowers with loan agreements negotiated with the Respondent or its subsidiaries between November 1, 2009 and the date of this order, the amount of any issuance fee charged, required or accepted for or in relation to the issuance of a cash card in violation of s. 112.04(1)(f);
6. to, within 120 days of this Order, provide to Consumer Protection BC a detailed accounting and proof of the refunds required by paragraph 5 above in a form satisfactory to Consumer Protection BC; and
7. to, within 30 days of this Order, pay costs to Consumer Protection BC in the amount of \$21,830.90.

Dated at Victoria, March 23, 2012.

  
\_\_\_\_\_  
Scott McBride, CEO, Consumer Protection BC

This is Exhibit "C" referred to in the Affidavit of Jason Beitchman sworn May 15, 2014



Commissioner for Taking Affidavits (or as may be)

IN THE MATTER OF the *Business Practices and Consumer Protection Act*, S.B.C.  
2004, c. 2, Decision of the Director against The Cash Store Financial Services Inc.,  
dated November 9, 2010

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## SUPPLEMENTAL COMPLIANCE ORDER

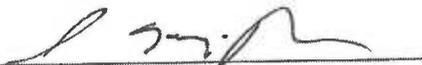
Dated: November 30, 2012  
Respondent: The Cash Store Financial Services Inc.

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Further to a Determination on Reconsideration dated March 23, 2012 and Compliance Order of the same date, the Respondent is ordered:

1. to complete the refund process contemplated by paragraph 5 and 6 of the March 23, 2012 Order in accordance with the procedures outlined in Schedule A; and
2. to, within 30 days of this Order, pay costs to Consumer Protection BC in the amount of \$5,000.

Dated at Burnaby, November 30, 2012.

  
\_\_\_\_\_  
Scott McBride, CEO, Consumer Protection BC

## SCHEDULE A: REFUND PROCESS

### *General*

1. Cash Store Financial shall complete the refund process in a timely manner, in strict compliance with the timeline identified herein, subject only to such extensions as are determined by Consumer Protection BC to be acceptable from time to time.
2. The refund process will be subject to audit as more fully described below.
3. Cash Store Financial shall arrange for the auditor's full and timely access to its documents, databases and other information throughout the refund process and to provide personnel to assist the auditors, all as determined by the auditor to be reasonably necessary.
4. The auditors will be Hahn & Houle, Chartered Accountants (working with Justin Thoman, CA).
5. The cost of the refund process, including the cost of the auditors will be borne by Cash Store Financial. Cash Store Financial shall pay the auditors directly. In addition, Cash Store Financial shall reimburse Consumer Protection BC for its administrative costs associated with the refund process at least quarterly, and, upon completion of the refund process, within 30 days. Administrative costs payable to Consumer Protection BC shall be capped at a flat amount of \$4.00 per claim submitted.

### *Preparation and Audit of Listing of Eligible Consumers*

6. Cash Store Financial will prepare a list of all consumers that were, in the period from November 1, 2009 to March 23, 2012 (the "Relevant Period") charged an amount to acquire a cash card (the "Non-Compliant Fee"). For greater clarity, the Non-Compliant Fee is most commonly described as the Card Activation Fee and ranges between \$7.00 and \$17.99 depending on the type of card and the time of acquisition.
7. The listing to be prepared pursuant to paragraph 6 above is referred to herein as the "Listing of Eligible Consumers".
8. The Listing of Eligible Consumers will be provided to the auditors and to Consumer Protection BC in hardcopy and electronically in an MS Excel format. The Listing of Eligible Consumers will identify:
  - (a) The unique borrower number assigned by Cash Store Financial;
  - (b) The full name of the unique borrower;

- (c) The latest address or addresses on file (street and email if applicable) and phone number(s) of the borrower;
  - (d) For each specific borrower, all loan transactions relevant to the borrower's refund and the total amount of the Non-Compliant Fees charged to the borrower in the Relevant Period.
  - (e) For each transaction, identify: (i) the unique loan identifier number; (ii) the loan amount; (iii) the date of the loan advance; (iv) the address of the borrower at loan inception, including email address; (v) store identification – store name, identifier number and address where the loan was made; and (vi) the amount of the Non-Compliant Fee charged to the borrower.
9. The Listing of Eligible Consumers will be reviewed by the auditors. The objectives of this phase of the audit include:
- (a) determining the total amount of Non-Compliant Fees charged in the Relevant Period (the "Refund Amount");
  - (b) identifying all consumers eligible for a refund and confirming the accuracy and completeness of information provided by Cash Store Financial in the Listing of Eligible Consumers.
10. Before commencing work, the auditors will prepare an audit plan, which will be subject to approval by Consumer Protection BC, acting reasonably. The audit of the Listing of Eligible Consumers will include a detailed examination of the internal records and systems of Cash Store Financial. As set out above, Cash Store Financial agrees to arrange for the auditor's full and timely access to its documents, databases and other information as required. In addition, Cash Store Financial will arrange for personnel to assist the auditors in the development of the audit plan and completion of the audit process, as determined by the auditors to be reasonably necessary.
11. Following the audit, the auditors will provide direction as to any requirements for revisions to the Listing of Eligible Consumers and will deliver a report to Consumer Protection BC as to the Refund Amount and other conclusions relevant to the audit. Cash Store Financial will be required to revise the Listing of Eligible Consumers as determined by the auditors. Such revised listing is referred to herein as the "Audited Listing of Eligible Consumers".

*Preparation and Approval of Refund Materials*

12. Cash Store Financial shall prepare all materials to be used in the mail-out process as more fully described below.
13. In an effort to reach all potentially eligible consumers, Cash Store Financial shall also prepare and place advertisements in print and digital media (and/or radio as may be negotiated with Consumer Protection BC), post notices on the Cash

Store and Instalozans websites and display, in a prominent location, posters in each British Columbia Cash Store and Instalozans location, all as approved by Consumer Protection BC. All materials required by this section shall be designed by Cash Store Financial to explain eligibility for refunds in a clear and comprehensible manner and offer easy access to refund claim forms, copies of which shall be made available by Cash Store Financial online and at each British Columbia Cash Store and Instalozans location.

14. Cash Store Financial will provide hard copy, original sample versions of materials to Consumer Protection BC. Consumer Protection BC will review and approve final draft templates of all materials as well as the media placement plan before their use in the refund process. The materials include:
  - (a) The Mail-out Package consisting of:
    - (i) Outer envelope and cover letter to listed borrower (outer envelope to identify return address as a postal location to be provided to Cash Store Financial by Consumer Protection BC and cover letter autopopulated to include the borrower's name, address, unique identifier and the dollar amount to which he/she is entitled);
    - (ii) Refund Eligibility Notice detailing the terms of the refund;
    - (iii) Refund Claim Form autopopulated with the borrower's unique identifier and instructions as applicable (including direction to return forms to postal location to be provided to Cash Store Financial by Consumer Protection BC); and
    - (iv) Addressed, business reply envelope (postage paid) to the postal location identified by Consumer Protection BC.
  - (b) Branch posters (24" wide by 36" tall; header font size: 75 pt. Helvetica Neue Bold; sub-header font size: 34.5 pt. Helvetica Neue Bold; main text font size: 28.7 pt. Helvetica Neue Regular (specifics provided by Cash Store Financial)).
  - (c) Advertisements for print and digital media, together with proposed placement plan (limited to The Province, Metro and 24Hrs, together with a plan for electronic paid searches).
  - (d) Form of website notice.
  - (e) Defect letter (letters sent to individual borrowers whose claims are denied because of a procedural defect in the claim, identifying the reason for the denial and permitting the borrower an opportunity to cure the defect in their claim within a subsequent 30 day period from the date of notice of denial).

15. In respect of the obligation to place advertisements, Cash Store Financial shall retain tear sheets or equivalent records and provide copies of same to Consumer Protection BC as evidence of placement.
16. Cash Store Financial will also provide branch level training to associates as to the proper placement of information and how to respond to consumer inquiries, including specific details concerning the forwarding of refund claims as detailed below. The training will be accomplished by a combination of written communication and programs conducted through Cash Store College, as more fully described in an email from Michael Thompson dated October 9, 2012.

*The Mail-out*

17. Cash Store Financial will be responsible for the mail-out process, mailing to the most recent address on file for each borrower on the Listing of Eligible Consumers or Audited Listing of Eligible Consumers a complete copy of the Mail-out Package (consisting of outer envelope, cover letter, refund eligibility notice, refund claim form and instructions, together with addressed, postage paid return envelope). Cash Store Financial shall ensure that the postage purchased for the mail-out allows for both forwarding and for returns of all undeliverable packages.
18. Cash Store Financial shall complete the mail-out in two phases:
  - (a) Phase 1 shall cover the borrowers identified on the Listing of Eligible Consumers produced by Cash Store Financial pursuant to paragraph 6 above. The Phase 1 mailout shall be completed within 15 business days of the later of (i) the date Cash Store Financial provides the Listing of Eligible Consumers or (ii) 15 business days following the date Consumer Protection provides its approval of the Mail-out Package.
  - (b) Phase 2 shall cover any additional borrowers identified in the Audited Listing of Eligible Consumers. The Phase 2 mailout shall be completed within 15 business days of the date Cash Store Financial provides the Audited Listing of Eligible Consumers.
19. Following the completion of each of Phase 1 and Phase 2, Cash Store Financial shall deliver to Consumer Protection BC a summary of the mailings included in each phase reporting as to the number of mailings, the name and address of each intended recipient and the date of mailing.
20. Further to both Phase 1 and Phase 2, where a Mail-out Package is returned as undeliverable, Consumer Protection BC will provide Cash Store Financial with the name of the borrower and his/her unique identifier and Cash Store Financial will make diligent efforts to make further contact (retaining evidence of such efforts for audit purposes) consisting of the following:

- 6 -

- (a) attempting to contact the eligible consumer by telephone to obtain an updated address and, where obtained, forthwith sending a Mail-out Package to the updated address;
- (b) sending a Mail-out Package electronically to any email address on file; and
- (c) sending a Mail-out Package to the last most current address of the eligible consumer.

*Processing and Audit of Refund Claims*

- 21. Cash Store Financial shall immediately provide to Consumer Protection BC any Refund Claim Forms inadvertently received by it, either at its head office or any Cash Store or Instalozans outlet.
- 22. Borrowers returning the Refund Claim Form by fax, email or mail will have their information registered by Consumer Protection BC with a unique claim number assigned to each claim form received. Borrowers requesting a refund will be required to provide a copy of government issued photo identification to ensure eligibility to receive a refund. Consumer Protection BC will forward this information to Cash Store Financial for processing as it is received and registered by Consumer Protection BC. On receipt, Cash Store Financial will have 15 business days to either prepare and mail the refund cheque(s) to the address identified on the Refund Claim Form or determine the claim should be denied.
- 23. For clarity, a refund claim may be denied only on the basis that (i) there is a procedural defect in the claim or (ii) the claimant is not included on the Audited Listing of Eligible Consumers.
- 24. Consumer Protection BC may, at its discretion, but acting reasonably, request that the auditor review the complete account of any claimant not included on the Listing of Eligible Consumers or the Audited Listing of Eligible Consumers.
- 25. Where Cash Store Financial determines that a claim should be denied by reason of a procedural defect in the claim, Cash Store Financial shall advise the borrower by provision of a Defect Letter. Where Cash Store Financial determines that a claim should be denied on eligibility grounds, such claim shall be reported to Consumer Protection BC as provided below. Cash Store Financial shall not communicate to any claimant advising him/her of a final decision as to a denied claim (regardless of the grounds) until directed to do so by Consumer Protection BC, following completion of the audit of the final report.
- 26. Cash Store Financial will report on the refund process on a monthly basis, by provision of a monthly report to Consumer Protection BC to be received by Consumer Protection BC before 4pm on the 5<sup>th</sup> business day of the calendar month following the reporting month, commencing the first calendar month after

the Phase 1 mail-out is completed. The report will identify, cumulatively and for each monthly period:

- (i) The name, borrower number and claim number of each borrower receiving a refund;
  - (ii) The street address of the borrower to whom the cheque was sent together with email, if applicable, and phone number(s) of the borrower;
  - (iii) The unique loan identifier number(s) associated with the amount refunded;
  - (iv) The amount refunded to the borrower for each loan and the total amount refunded to the borrower;
  - (v) The cheque number, and date of each refund cheque issued;
  - (vi) The total amount refunded to all borrowers;
  - (vii) Summary of follow-up efforts in relation to undeliverable Mail-out Packages;
  - (viii) Details of all claims denied on eligibility grounds; and
  - (ix) Such other information as may be determined by the auditors to be reasonably necessary.
27. Cash Store Financial will provide a final report in accordance with the timeline below. The form of the final report shall be determined by the auditors but will, at a minimum, identify all unpaid claims and the reasons they remain unpaid (e.g. refund claim notice not responded to, uncured defect, lack of eligibility, claim cheques returned as undeliverable, etc).
28. The monthly reports as well as the final report will be subject to audit. The objectives of this phase of the audit include:
- (a) ensuring the completeness and accuracy of the information provided, including verification of amounts refunded;
  - (b) confirming the grounds for a denial as to eligibility; and
  - (c) determining the amount of the Refund Amount which remains unpaid.
29. The audit of the monthly and final reports will include a detailed examination of the internal records and systems of Cash Store Financial, including bank records where applicable. As set out above, Cash Store Financial agrees to arrange for

the auditor's full and timely access to its documents, databases and other information as required.

*Payment and Administration of the Refund Amount*

- 30. Cash Store Financial shall pay to Consumer Protection BC any portion of the Refund Amount which remains unpaid (the "Unpaid Amount") as of the End Date (as defined below).
- 31. Following the End Date, the Unpaid Amount will be held in trust by Consumer Protection BC for a further period of six years, during which period, the Unpaid Amount will be used to satisfy any additional claims, including any denied claims which Consumer Protection BC determines were wrongly denied. At the end of this process, any remaining amounts will be paid by Consumer Protection BC to the Consumer Advancement Fund.

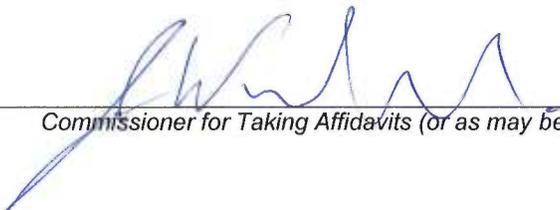
*Timelines and Determination of End Date*

- 32. The refund process will have an end date which is 120 days after completion of the Phase 2 Mailout (the "End Date").
- 33. The following timelines apply:

Provide access to auditors for purposes of developing audit plan	Upon request
Deliver Listing of Eligible Consumers	December 11, 2012
Provide access to auditors to complete audit of Listing of Eligible Consumers	Upon request
Submit materials (as required by paragraph 14) for approval by Consumer Protection BC	December 11, 2012
Submit copies of staff training materials	December 11, 2012
Provide revisions to materials submitted to Consumer Protection BC as requested	Within 3 business days of request
Post web notices and link to refund claim form to Cash Store and Instalozans websites and proceed with media placement plan	Within 1 business day of final approval of materials or at such other date as may be requested by Consumer Protection BC
Deliver posters and refund claim forms to all Cash Store and Instalozans outlets	Within 10 business days of final approval of materials or at such date as may be requested by Consumer Protection BC
Deliver tear sheets or other evidence for print advertisements as substantiation of placement	Within 15 business days of the dates of publication
Staff training	To be initiated prior to Phase 1

	mailout, with written confirmation of completion to be provided within 7 business days of the Phase 1 mailout
Proceed with Phase 1 mail-out	To be completed within 15 business days of the later of (i) the date Cash Store Financial provides the Listing of Eligible Consumers or (ii) 15 business days following the date Consumer Protection provides its approval of the Mail-out Package
Deliver Phase 1 mail-out report	Within 2 business days following completion of the Phase 1 mail-out
Process refund claims and issue refund cheques	Ongoing; to be processed within 15 days of receipt
Deliver Audited Listing of Eligible Consumers	Within 7 days of auditor's direction
Proceed with Phase 2 mail-out	To be completed within 15 business days of the date Cash Store Financial provides the Audited Listing of Eligible Consumers
Deliver Phase 2 mail-out report	Within 2 business days following completion of the Phase 2 mail-out
Deliver monthly reports	By 4pm on the 5 <sup>th</sup> day each calendar month following the reporting month, commencing the first calendar month after the Phase 1 mail-out is completed
Deliver final report	Within 15 business days of the End Date
Access to auditors to complete audit of monthly and final reports	Ongoing, from the date of the first monthly report to a period that is 30 days following delivery of the final report
Remit Unpaid Amount to Consumer Protection BC	Within 3 business days of direction to do so
Remit processing costs to Consumer Protection BC	At least quarterly
Advise claimants of denied claims	Within 3 business days of direction to do so

This is Exhibit "D" referred to in the Affidavit of  
Jason Beitchman sworn May 15, 2014



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*Commissioner for Taking Affidavits (or as may be)*



32

No. S-128906  
Vancouver Registry

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*  
R.S.B.C. 1996, C. 241

Between

**THE CASH STORE FINANCIAL SERVICES INC.**

Petitioner

and

**CONSUMER PROTECTION BRITISH COLUMBIA**

Respondent

**PETITION TO THE COURT**

**THIS IS THE PETITION OF:**

The Cash Store Financial Services Inc.  
c/o Cassels Brock & Blackwell LLP  
2100-40 King St. West  
Toronto ON, M5H 3C2

**ON NOTICE TO:**

Scott McBride  
President and CEO  
Consumer Protection BC  
307-3450 Uptown Blvd.  
Victoria, British Columbia  
V8W 9J2

Office of the Deputy Attorney General

c/o Ministry of the Attorney General  
Legal Services Branch  
6th Floor, 1001 Douglas Street  
Victoria, British Columbia  
V8W 9J7

**This proceeding has been started by the petitioner(s) for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioner(s)

- a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- c) if you were served with the petition anywhere else, within 49 days after that service, or,
- d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:  The Law Courts 800 Smithe Street
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	Vancouver, British Columbia V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner(s) is care of its legal counsel, at the address provided below:
(3)	The name and office address of the petitioner's(s') lawyer is:  <b>Cassels Brock &amp; Blackwell LLP</b> 2100 Scotia Plaza 40 King Street West Toronto, Ontario M5H3C2  <b>Timothy Pinos</b> Tel: 416-869-5784 Fax: 416-350-6903 Email: tpinos@casselsbrock.com  <b>Jason Beitchman</b> Tel: 416-860-2988 Fax: 647-259-7993 Email: jbeitchman@casselsbrock.com

### Claim of the Petitioner

#### Part 1: ORDERS SOUGHT

1. The petitioner, The Cash Store Financial Services Inc. ("**Cash Store Financial**"), seeks:
  - (a) an order, in the nature of certiorari, quashing or setting aside the Initial Compliance Order dated March 23, 2012 (as defined in para. 8 below), and the Supplemental Compliance Order dated November 30, 2012 (as defined in para. 11 below);

- 4 -

- (b) a declaration that the Cash Store Financial does not issue “cash cards” as defined in section 112.01 of the *Business Practices and Consumer Protection Act*, SBC 2004, c. 2 (the “*BPCPA*”);
- (c) a declaration that the Cash Store Financial has not contravened s. 112.04(1)(f) of the *BPCPA*;;
- (d) a declaration that the Cash Store Financial has not contravened the total cost of borrowing provision in s. 17 of the *Payday Loans Regulation*, BC Reg. 57/2009 (the “*Regulation*”);
- (e) a declaration that Cash Store Financial has not contravened s. 19 of the *Regulation*;
- (f) a declaration that Cash Store Financial need not amend its practices to comply with s. 112.04(1)(f) of the *BPCPA* and s. 17 and s. 19 of the *Regulation*;
- (g) an order staying the Initial Compliance Order and the Supplemental Compliance Order pending determination of this petition;
- (h) the costs of this petition; and
- (i) such further and other relief as counsel shall advise and this Honourable Court deems just.

## Part 2: FACTUAL BASIS

### *The Parties*

1. Cash Store Financial is a publicly traded company listed on the Toronto Stock Exchange and the New York Stock Exchange.
2. Cash Store Financial is licensed in British Columbia under the *BPCPA* and the *Regulation* to carry on the business of brokering short-term loans, referred to as “payday loans”, to customers in British Columbia in amounts of \$1,500 or less. Cash Store Financial, through its subsidiaries, The Cash Store Inc. and Instalans Inc., operates approximately 95 branches in British Columbia, employing approximately 370 employees in the province.
3. Consumer Protection BC (“**Consumer Protection**” or “**CPBC**”) is a not-for-profit organization responsible for the administration of the *BPCPA* and the *Regulation*. Consumer Protection oversees regulated industries, including the payday loan industry, to ensure compliance with legislation and administration of complaint investigations.

***Cash Store Financial Issues Loans in Compliance with the BPCPA and the Regulation***

4. Cash Store Financial provides several options for customers to receive the proceeds of their payday loan. Customers may receive their loan by way of cheque. There are no fees, charges, remittances or other amounts payable to Cash Store Financial in connection with a cheque, aside from repayment of the principal amount of the loan plus the cost of borrowing, which is capped by the *BPCPA* and *Regulation* at 23% of the principal loan amount.

5. Customers may elect to receive their loan proceeds by way of optional prepaid debit card and prepaid credit card. With respect to the prepaid cards, Cash Store Financial acts as agent for a third party issuer of the cards, DirectCash Bank ("DC Bank") and the distributor of the cards, Direct Cash Management Inc. ("DCMI"). Customers enter into an agreement directly with DCMI and DC Bank. Any fees associated with the cards are charged by DC Bank and DCMI, and are paid directly to them by the customers. Cash Store Financial is not a party to any transaction between customers and DC Bank or DCMI.
6. The existence and amount of fees for cash cards acquired through DC Bank are fully disclosed to customers. If they wish to receive loan proceeds by way of prepaid card, rather than cheque, they are required to expressly indicate this election in their loan agreement.

### ***The Impugned Decisions***

7. On November 9, 2010, Mr. Tayt Winnitoy, Vice-President of Consumer Protection BC ("CPBC"), issued a decision which determined that Cash Store Financial was non-compliant with certain provisions of the *BPCPA* and the *Regulation* (the "**Initial Decision**"). A compliance order accompanied the Initial Decision.
8. Cash Store Financial requested reconsideration of the Initial Decision on December 9, 2010. Following submissions in writing, and a partial oral hearing, Scott McBride, President and CEO for CPBC ("**McBride**") issued an initial determination on reconsideration, compliance order and administrative penalty

on March 23, 2012 (the "Initial Reconsideration Decision," and "Initial Compliance Order," respectively), upholding the Initial Decision.

9. The Initial Compliance Order determined that Cash Store Financial:
- a) in providing prepaid debit or prepaid credit cards to borrowers as a means of delivering the proceeds of a payday loan, issues cash cards, as defined by s. 112.01 of the *Business Practices and Consumer Protection Act* (the "BPCP Act"), to borrowers;
  - b) in requesting and processing payment for the cost of a cash card ("issuance fee") from borrowers to facilitate the advance to borrowers of a payday loan, even where doing so on behalf of a third party, is acting contrary to s. 112.04(1)(f) by charging, accepting or requiring amounts for or in relation to cash cards issued to borrowers;
  - c) by separately accepting compensation from a third party in relation to the issuance of cash cards to borrowers, is in further violation of section 112.04(1)(f) by accepting amounts for or in relation to the issuance of cash cards to borrowers;
  - d) by reason of the conduct set out in paragraphs (a) – (c) above and the failure to include the amount of the issuance fee in the calculation of the maximum permissible charge, has contravened s. 17 of the Payday Lending Regulation (the "*Regulation*") by charging, requiring and/or accepting an amount for a loan which is more than 23% of the principal; and
  - e) prior to October 22, 2010, by offering immediate receipt of loan proceeds contingent on the acquisition of a cash card for an issuance fee, with no alternative, cost-free option for immediate receipt of loan proceeds, acted in contravention of s. 19 of the *Regulation*.
10. McBride issued a series of orders in the Initial Compliance Order requiring, *inter alia*, Cash Store Financial to amend its business practices to comply with s.

112.01(1)(f) of the *BPCPA* and s. 17 and s. 19 of the *Regulation*, to pay an administrative penalty and to refund certain fees that in his opinion Cash Store Financial charged, requested or accepted from customers.

11. Following issuance of the Initial Reconsideration Decision and the Initial Compliance Order, McBride issued a Supplemental Compliance Order (the "**Supplemental Compliance Order**") on November 30, 2012. The Supplemental Compliance Order requires, among other things, that Cash Store Financial pay unredeemed refunds in to CPBC's Consumer Advancement Fund.

### Part 3: LEGAL BASIS

12. Cash Store Financial submits that McBride has erred in law in finding that:
  - (a) Cash Store Financial is an issuer of cash cards within the meaning of s. 112.01 and s. 112.04(f) of the *BPCPA*;
  - (b) Cash Store Financial charged, accepted or required amounts for or in relation to cash cards issued to customers contrary to s. 112.04(f) of the *BPCPA*; and,
  - (c) payday loans issued during the relevant period exceeded the maximum amount of borrowing specified in s. 17 of the *Regulation*.
  - (d) Cash Store Financial contravened s. 19(1) of the *Regulation* by failing to offer a cost-free option for immediate receipt of loan proceeds;

13. Cash Store Financial submits that McBride further erred in law and exceeded his jurisdiction by extending the effect of the Compliance Order beyond the period of November 1, 2009 to October 31, 2010, which was the period considered in the Initial Decision, and extending the effect of his order to up to and including March 23, 2012. There was no factual or legal basis on which to make this determination and it was both an error in law and in excess of jurisdiction to do so.
14. This extension of the order to March 23, 2012, was further a breach of procedural fairness. Cash Store Financial had no notice that McBride might issue such an order and had no opportunity to respond to whether doing so was appropriate. In any event the order in respect of that time period was made without any evidentiary foundation to support the conclusions reached.
15. In respect of the Supplemental Compliance Order, Cash Store Financial submits that McBride erred in law and exceeded his jurisdiction by requiring that Cash Store Financial pay any funds remaining unpaid following execution of a refund procedure to CPBC, to be deposited into its Consumer Advancement Fund. There is no basis in law to support such an order and no statutory authority for McBride to have done so.
16. In addition to the foregoing, the Cash Store Financial relies on the following:
  - (a) the *Business Practices and Consumer Protection Act*, SBC 2004 c. 2;

- (b) the *Business Practices and Consumer Protection Act – Payday Loans Regulation*, B.C. Reg. 57/2009;
- (c) the *Judicial Review Procedure Act*, RSBC 1996 c. 241; and
- (d) the *Administrative Tribunals Act*, SBC 2004, c. 45.

17. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Part 4: MATERIAL TO BE RELIED ON**

- 1. Affidavit # 1 of Michael Thompson, sworn December 14, 2012;
- 2. The petitioner's Petition Record; and
- 3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

The petitioner estimates that the hearing of the petition will take a half day.

Date: December 14, 2012

*Jason Beitchman*  
 \_\_\_\_\_  
 CASSELS BROCK & BLACKWELL LLP  
 per: Timothy Pinos / Jason Beitchman  
 Solicitors for the Petitioner

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this notice of application

with the following variations and additional terms:

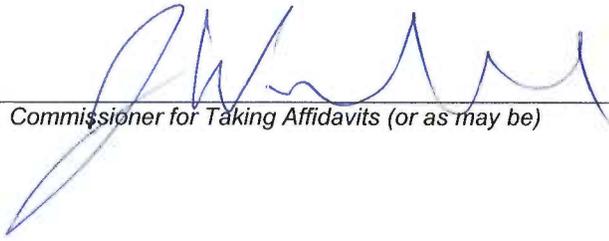
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Date: .....

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Signature of  Judge  Master

This is Exhibit "E" referred to in the Affidavit of  
Jason Beitchman sworn May 15, 2014



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*Commissioner for Taking Affidavits (or as may be)*

## IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cash Store Financial Services v.  
Consumer Protection British Columbia,*  
2014 BCSC 149

Date: 20140130  
Docket: S128906  
Registry: Vancouver

Between:

**Cash Store Financial Services**

Petitioner

And

**Consumer Protection British Columbia & Stewart**

Respondent

Before: The Honourable Madam Justice B.J. Brown

### Reasons for Judgment

Counsel for the petitioner:

T. Pinos  
Jason Beitchman

Counsel for the respondent, Consumer  
Protection British Columbia:

J. Francis

Counsel for the respondent, Roberta Stewart

P.R. Bennett  
M.W. Mounteer

Place and Date of Hearing:

Vancouver, B.C.  
June 26 - 28, 2013

Place and Date of Judgment:

Vancouver, B.C.  
January 30, 2014

- [1] The petitioner seeks the following relief:
- (a) an order, in the nature of certiorari, quashing or setting aside the Initial Compliance Order dated March 23, 2012 and the Supplemental Compliance Order dated November 30, 2012;
  - (b) a declaration that the Cash Store Financial does not issue “cash cards” as defined in section 112.01 of the *Business Practices and Consumer Protection Act*, SBC 2004, c. 2 (the “BPCPA”);
  - (c) a declaration that the Cash Store Financial has not contravened s. 112-04(1)(f) of the *BPCPA*;
  - (d) a declaration that the Cash Store Financial has not contravened the total cost of borrowing provision in s. 17 of the *Payday Loans Regulation*, BC Reg. 57/2009 (the “Regulation”);
  - (e) a declaration that Cash Store Financial has not contravened s. 19 of the *Regulation*;
  - (f) a declaration that Cash Store Financial need not amend its practices to comply with s. 112.04(1)(f) of the *BPCPA* and s. 17 and s. 19 of the *Regulation*;
  - (g) an order staying the Initial Compliance Order and the Supplemental Compliance Order pending determination of this petition...

### **BACKGROUND FACTS**

[2] The Cash Store Financial Services Inc. (the “Cash Store”) carries on the business of brokering short-term loans, referred to as payday loans, to customers in British Columbia through its subsidiaries, The Cash Store Inc., and Instaloz Inc.

[3] Cash Store takes issue with two decisions of Consumer Protection British Columbia (“CPBC”). The first, issued November 9, 2010 determined that the Cash Store did not comply with certain provisions of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the “Act”) and the *Payday Loans Regulation*, B.C. Reg. 57/2009 (the “Regulation”). CPBC issued a compliance order.

[4] Cash Store requested reconsideration of the initial decision. On March 23, 2012, the CPBC issued a reconsideration decision and compliance order.

[5] On November 30, 2012 the CPBC issued a Supplemental Compliance Order.

**ISSUES**

[6] The Cash Store says that there are four issues for judicial review:

1. did the Cash Store make the acquisition of a payday loan contingent on other goods or services?
2. did the Cash Store issue cash cards and charge, accept or require amounts for or in relation to cash cards?
3. did McBride (Decision #2) exceed his jurisdiction and breach his duty of procedural fairness by extending the effect of the compliance order beyond November 9, 2010; and
4. did McBride exceed his jurisdiction by ordering payment of funds into the Consumer Advancement Fund?

**STANDARD OF REVIEW**

[7] The Cash Store argues that the appropriate standard of review for construction of the *Act* and *Regulation* and for the jurisdiction of the Tribunal is correctness. With respect to questions of procedural fairness, the Cash Store says that the standard of review is not correctness or reasonableness, but fairness.

[8] CPBC submits that s. 59 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 does not apply and the appropriate standard of review, whether correctness or reasonableness, must be determined on the basis of the common law.

[9] CPBC says that the standard is reasonableness for all matters except whether procedures that were followed met the requirements of procedural fairness. CPBC says that with respect to this issue, the test is whether the Consumer Protection Branch met its duty of procedural fairness.

[10] CPBC says that there are no questions of true jurisdiction or *vires* raised on this application.

[11] The respondent, Roberta Stewart argues that the standard of review with respect to findings of fact is “palpable and overriding error”.

[12] She says that with respect to interpretations of CPBC’s home legislation, namely the *Act* and *Regulation*, the standard of review is reasonableness.

[13] Ms. Stewart says, as well, that Mr. McBride’s decision to extend the remedial refund order granted in the 2010 decision to the date of March 2012 is a determination that must be assessed on the standard of reasonableness. She says that Mr. McBride’s decision involved an interpretation of the enabling statute, that this is not a question of jurisdiction which must be resolved on the standard of correctness.

[14] I agree with CPBC’s submissions that the applicable standard is reasonableness for all of the matters raised by the petition with one exception, that being whether the procedures that were followed, met the requirements of procedural fairness.

[15] In *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, the Court reiterated the categories from *Dunsmuir v. New Brunswick*, 2008 SCC 9, which are subject to review for either correctness or reasonableness. The standard of correctness governs the following categories (*Smith* at para. 26):

1. a constitutional issue;
2. a question of “general law ‘that is both of central importance to the legal system as a whole and outside the adjudicator’s specialized area of expertise’”;
3. the drawing of jurisdictional lines between two or more competing specialized tribunals; and

4. a “true question of jurisdiction or *vires*”

On the other hand, as identified in *Smith*, reasonableness is normally the governing standard where the question fits the following categories (para. 26):

1. relates to the interpretation of the tribunal’s enabling (or “home”) statute or “statutes closely connected to its function, with which it will have particular familiarity”;
2. raises issues of fact, discretion or policy; or
3. involves inextricably intertwined legal and factual issues.

[16] The questions before me involve either the interpretation of the Tribunal’s home statute or inextricably intertwined legal and factual issues. Accordingly, the standard of review is reasonableness. There are no true questions of jurisdiction before me. There are no questions of general law that are of central importance to the legal system and outside the adjudicator’s specialized area of expertise.

[17] The Cash Store relies on *Rathje v. Business Practices and Consumer Protection Authority*, 2007 BCSC 1191. However, *Rathje* was decided before *Dunsmuir*, *Smith* and *Alberta (Information and Privacy Commissioner) v. The Alberta Teachers’ Association*, 2011 SCC 61. Accordingly, it is not determinative in this case.

[18] With respect to matters of true jurisdiction, in *Dunsmuir*, the majority of the Court said:

... true jurisdiction questions arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter (para. 59).

[19] In *Alberta Teachers’ Association* the majority of the Court said:

The direction that the category of true questions of jurisdiction should be interpreted narrowly takes on particular importance when the tribunal is interpreting its home statute. In one sense, anything a tribunal does that involves the interpretation of its home statute involves the determination of whether it has the authority or jurisdiction to do what is being challenged on

judicial review. However, since *Dunsmuir*, this Court has departed from that definition of jurisdiction. Indeed, in view of recent jurisprudence, it may be that the time has come to reconsider whether, for purposes of judicial review, the category of true questions of jurisdiction exists and is necessary to identifying the appropriate standard of review. However, in the absence of argument on the point in this case, it is sufficient in these reasons to say that, unless the situation is exceptional, and we have not seen such a situation since *Dunsmuir*, the interpretation by the tribunal of “its own statute or statutes closely connected to its function, with which it will have particular familiarity” should be presumed to be a question of statutory interpretation subject to deference on judicial review. (para. 34)

[20] I also accept CPBC’s submissions with respect to the meaning of “reasonableness”.

[21] In *Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, the Court said:

The fact that there may be an alternative interpretation of the agreement to that provided by the arbitrator does not inevitably lead to the conclusion that the arbitrator’s decision should be set aside if the decision itself is in the realm of reasonable outcomes. Reviewing judges should pay “respectful attention” to the decision maker’s reasons, and be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fatal. (para. 17).

and at para. 39 of *Smith*:

... the standard of reasonableness, even prior to *Dunsmuir*, has always been “based on the idea that there might be multiple valid interpretations of a statutory provision or answers to a legal dispute” such that “courts ought not to interfere where the tribunal’s decision is rationally supported” (*Dunsmuir*, at para. 41).

[22] As such, I agree with CPBC’s submission, which is in line with the above authorities, that a decision is reasonable where it is rationally defensible in terms of the justification, transparency and intelligibility of the decision-making process and the range of possible, reasonable conclusions.

**ANALYSIS**

**Did McBride exceed his jurisdiction and breach his duty of procedural fairness by extending the effect of the Compliance Order beyond November 9, 2010?**

[23] Mr. McBride extended the time frame of the compliance order from November 9, 2010 to March 23, 2012. Cash Store argues that he did not have jurisdiction to do so; that he did so without notice to Cash Store; and he did so without evidence that the impugned business practices were continuing.

[24] Cash Store argues that in reconsidering the matter under s. 182 of the *Act*, Mr. McBride could only confirm, vary or cancel Mr. Winnitoy's decision; he could not extend it. Cash Store says that there was no evidence of Cash Store's practices in the extended period of November 9, 2010 to March 23, 2012, and no investigation was undertaken for this period.

[25] Cash Store says that even if Mr. McBride could extend the time frame of the compliance order, it had no notice of his intention to do so, and was not permitted an opportunity to make submissions.

[26] Finally, Cash Store argues that the decision to extend the time frame of the order was an error of law because it was made without evidence.

[27] I accept the submissions of CPBC and Ms. Stewart that these arguments must fail for the following reasons.

[28] The compliance order of November 9, 2010 provided in part:

Pursuant to section 155(3) of the BPCP Act, the Respondent is required to stop engaging in or not engage in the contraventions as set out in this Compliance Order, and specifically:

...

Within 90 days of this Order, reimburse ... between November 1, 2009 and the date of this order, the amount charged ... in violation...

[29] The compliance order of March 23, 2012 extended the period of reimbursement:

...within 90 days of this Order, refund ... between November 1, 2009 and the date of this order, the amount ... charged ... in violation...

[30] First, as CPBC argues, the Notice of Pending Action by which the process was commenced identified violations “which may have occurred, or continue to be occurring”. Cash Store had a full opportunity to address the substantive issues.

[31] Second, the Initial Compliance Order was forward looking: Mr. Winnitoy found that certain practices violated the *Act* and ordered Cash Store to cease those practices, then and into the future. Section 155 of the *Act* permitted Mr. Winnitoy to require future compliance. Where Cash Store continued not to comply, in breach of Mr. Winnitoy’s order, it was entirely proper, and nothing “new” for Mr. McBride to order repayment of fees received in breach of the Initial Compliance Order.

[32] Third, Cash Store’s submissions before Mr. McBride effectively confirmed that their practices continued as they were at the time of the initial order. To the extent that they had changed, Cash Store had the opportunity to offer evidence of the change, and it did so with respect to its new practice of making cheques immediately available.

[33] Fourth, the interpretation of the legislation advocated by Cash Store is cumbersome and contrary to the interpretive approach in *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 that consumer protection statutes should be interpreted with the legislature’s protective goals in mind (see para. 37 for the majority and para. 123 for the minority). If Cash Store’s approach were followed, Cash Store would be ordered to cease specific practices now and into the future and to refund fees charged. It could continue those practices pending reconsideration. At reconsideration CPBC would not be able to address the continuing breach, but would be required to start a new investigation to address breaches which continued after the Initial Compliance Order. Such an approach is cumbersome, expensive and time consuming to no purpose. I reject this interpretation.

[34] Lastly, I reject Cash Store’s submission that Mr. McBride’s decision to extend the compliance order was made without evidence and therefor was an error of law.

Mr. McBride's decision applies only where the proscribed practices are continuing. If Cash Store changed its practices, there would be no illegal charges and no charges to be refunded. As Ms. Stewart argues, Cash Store cannot demonstrate how additional evidence as to its practices after November 2010 would have changed the practical effect of the March 2012 compliance order.

**Did McBride exceed his jurisdiction by ordering payment of funds into the Consumer Advancement Fund?**

[35] Mr. McBride's Supplemental Compliance Order contemplated that some consumers may not be located to receive their refund; that some funds may be left over. His order provided:

...[any portion of the Refund Amount which remains unpaid] will be held in trust by Consumer Protection BC for a further period of six years, ... will be used to satisfy any additional claims .... At the end of this process, any remaining amounts will be paid ... to the Consumer Advancement Fund.

[36] Cash Store says that Mr. McBride had no jurisdiction to order payment into the Consumer Advancement Fund. Cash Store argues that it may face double payment because a civil action has been or may be commenced against it.

[37] Cash Store argues that s. 155(4) does not provide Mr. McBride jurisdiction to make such an order and s. 139(2) limits the Consumer Advancement Fund to forfeiture of property and revenue from penalties, interest and prescribed additional sources of revenue (none are prescribed).

[38] CPBC submits that there is no basis for the limited interpretation sought to be attributed to the scope of CPBC's remedial powers. The *Act* is consumer protection legislation. It should not be narrowly construed. It should be given a fair, large and liberal construction and interpretation as best ensures the attainment of its objects. The focus of the payday lending provisions is on protecting consumers from abusive payday lending practices. This is accomplished by the imposition of a system of rules setting limits on payday lending practices and providing a broad range of remedial powers in the event of non-compliance.

[39] The foundation of a compliance order is a past, present or suspected act of non-compliance. The provisions of the November 30, 2012 Supplemental Compliance Order which are directed to the payment of monies into the Consumer Advancement Fund are directed to the non-compliant conduct of the petitioner. The November 30, 2012 Supplemental Compliance Order provides a means of ensuring that refunds, to which consumers are entitled, are available to consumers and are not frustrated by a claims process which is limited as to time. In the event the claims process results in unclaimed amounts, the November 30, 2012 Supplemental Compliance Order provides a means of effecting the refund which was originally ordered.

[40] The Consumer Advancement Fund exists for the general purpose of educating consumers and suppliers about matters relating to the *Act* and for the purpose of increasing compliance with the *Act*: s. 140 of the *Act*.

[41] CPBC argues that under the *Unclaimed Property Act*, S.B.C. 1999, c. 48, after 6 years, the funds at issue become the income of CPBC who can designate the funds for consumer advancement rather than the general purse.

[42] In my view, s. 155 of the *Act* gives Mr. McBride the jurisdiction to make an order of the type made here. Section 155 of the *Act* is set out as follows:

**Compliance orders**

**155** (1) After giving a person an opportunity to be heard, an inspector may order the person to comply with this Act and the regulations if satisfied that the person is contravening, is about to contravene or has contravened this Act or the regulations.

(2) A compliance order must

- (a) name the person in respect of whom the order is issued,
- (b) describe the person's act or practice that is contravening, is about to contravene or has contravened this Act or the regulations,
- (c) identify the section of this Act or the regulations that is being contravened, is about to be contravened or has been contravened,
- (d) be dated and signed by the inspector issuing the order, and
- (e) inform the recipient that the director may file the compliance order with the Supreme Court and that a filed order is deemed to be an order of the Supreme Court.

(3) In a compliance order, an inspector may order a person to stop engaging in or not engage in a specified act or practice.

(4) The director may include one or more of the following orders in a compliance order:

(a) that a person reimburse any money or return any other property or thing received to a consumer or a class of consumers;

(b) that a person compensate other persons or a class of persons who have suffered loss or damage as a result of a contravention of this Act or the regulations;

(c) that a person take specified action to remedy an act or practice by which the person is contravening, is about to contravene or has contravened this Act or the regulations;

(d) that a person reimburse to the director all or a portion of the actual costs of any inspection, including actual legal costs, incurred by the director for the inspection of that person in respect of the contravention referred to in the compliance order.

(5) The inspector must serve a copy of the compliance order on the person named in the order.

(6) If a compliance order is made against two or more persons, all the persons against whom the order is made are jointly and severally responsible for complying with the order and are jointly and severally liable for the payment of any amounts the persons are required to pay under the order.

(7) A compliance order may be reconsidered in accordance with Division 1 of Part 12 [*reconsiderations*].

[Emphasis added]

[43] This order was made in response to specific concerns raised by Cash Store, to address the difficulty of refunding small amounts to consumers, some of whom may be difficult or impossible to locate. The order relieves Cash Store of the obligation to refund to consumers after a specified period of time. It is a practical order, which is consistent with the purpose of the legislation. In my view, the order made is within the broad powers of the director in s. 155(4). The order is consistent with a large and liberal interpretation of the legislation. It is a reasonable interpretation of the “home” legislation.

[44] As to the funds being paid into the Consumer Advancement Fund, this, too, is a reasonable interpretation of the powers in s. 155(4). This aspect of the order compensates the class of persons who have suffered as a result of the breach of the *Act*.

**Did Cash Store Make the Acquisition of a Payday Loan Contingent on Other Goods or Services?**

[45] Section 19(1) of the *Regulation* provides:

A payday lender must not make a payday loan contingent on the supply of other goods and services.

[46] Mr. McBride deals with the question of statutory interpretation at paragraphs 117-122 of the Determination. After considering the nature of this prohibition generally as a prohibition against tied-selling and the arguments of Cash Store as to the dictionary definition of “contingent”, including that there can be no tied selling wherever the borrower has a choice as to the mechanism by which loan proceeds will be delivered, Mr. McBride concluded at paras. 121-122:

...the broader interpretation adopted by Mr. Winnitoy recognizes the context of the situation, the nature of payday loans and the broader scheme of the payday loan provisions of the BPCP Act to protect consumers from abusive practices. Mr. Winnitoy’s interpretation of s. 19 recognizes that the requirement or condition can arise from circumstances as much as from a direct condition or requirement imposed by the payday lender.

It is my conclusion that the more liberal interpretation which recognizes both actual and practical contingent selling is more in keeping with the purpose and aim of the legislation. Although the consumer may, in theory, have an option, it is appropriate to consider whether the option is one which is practical. Where the option is not practical, the supply of another good or service becomes a requirement. Section 19 should operate to protect consumers from such situations of tied selling.

[47] The error alleged at paragraph 43 of the petitioner’s submission was addressed by Mr. McBride at paragraph 123, in the context of a challenge by Cash Store that the decision by Mr. Winnitoy was made on the basis of an insufficient factual record. On this issue, Mr. McBride provides as follows:

... in oral submissions, counsel for Cash Store argued that there was an absence of factual support to conclude that a cheque option offered on a delayed basis failed to offer a true option to consumers or was not viable. It was submitted that, in a court of law, such a general finding regarding users of payday loan services generally would have to be based on survey evidence regarding the users of payday loan services to determine what time period created a viable option. I disagree and think it relatively uncontroversial and, not in need of proof, that consumers accessing payday loans do so because of an immediate need. This seems to me a fair inference from the nature of payday loans which are of a limited term and involve very high costs for the consumer.

[48] The petitioner argues that this decision is wrong and should be quashed. It says that the *Canadian Oxford Dictionary*, 2d ed. defines “contingent” as “occurring or existing **only** if certain other circumstances are the case; dependent on” [emphasis in the petitioner’s submissions].

[49] Cash Store says that it offered Consumers the option of having loan funds delivered by cheque at no additional fees or by purchasing a pre-paid debit or credit card.

[50] If the borrower elected to have funds delivered by cheque, the cheque would be available in 2 to 7 days.

[51] Cash Store says that there is no requirement to provide loan proceeds immediately and where loans are available to consumers by cheque, it is untenable to conclude that loans are “only” available by pre-paid card.

[52] Second, Cash Store says that the basis for Mr. McBride’s conclusion was the assumption that “consumers accessing payday loans do so because of an immediate need”. Cash Store says there is no proper evidentiary foundation for this conclusion.

[53] Third, Cash Store says that Mr. McBride was overly paternalistic in assuming that consumers are not able to make choices in a competitive environment. It says that at no time did it make delivery of a payday loan contingent on the acquisition of a cash card.

[54] In my view, the interpretation of “contingent” prohibited by s. 19(1) of the *Regulation* by Messrs. Winnitoy and McBride is entirely reasonable, and, indeed, correct.

[55] Cash Store’s customers were given the option of receiving an immediate loan, which would require them to purchase a cash card, or they could wait to receive a loan for 2 to 7 days, in which case they could obtain the loan by way of

cheque and without the cash card fees. Effectively, this ties the immediate loan to the purchase of a cash card.

[56] I reject Cash Store's second argument, that Mr. McBride made the determination on the basis of an assumption unsupported by evidence that consumers access payday loans because of an immediate need. I accept the submissions of Ms. Stewart that this is appropriate judicial notice. This accords with the regulatory scheme provided for in Part 6.1 "Payday Loans" of the *Act* which regulates high interest, short term loans. Also, CPBC is the designated authority for administering the *Act* and Mr. McBride would be able to identify the prevailing practices in the payday loan industry. It is a reasonable inference that a delay is significant due to the very nature of a short term loan.

[57] Moreover, even if this finding were not supportable as an exercise of judicial notice, it would not affect the end result of Mr. McBride's determination as the Cash Store offers customers the option to immediately receive loan proceeds by way of cash card, but does not offer an immediate option that is cost free.

[58] Finally, in my view, Cash Store's argument that Mr. McBride took an overly paternalistic view by assuming that consumers are not able to make choices in a competitive environment is not a relevant submission. It is not a defence for Cash Store to assert that discerning customers could have taken their business elsewhere. The issue is Cash Store's breach of the *Regulations*, not whether there are other businesses which provide immediate loans without tying them to the purchase of a cash card.

**Did Cash Store issue "cash cards" and charge, accept or require amounts for or in relation to cash cards?**

[59] Section 112.01 of the *Act* defines "cash card" as:

means a card or other device that

(a) can be used to obtain cash or acquire goods or services, but does not include a credit card, and

(b) is issued by a payday lender to the borrower of a payday loan instead of advancing cash or transferring money to the borrower or to the order of the borrower.

[60] Section 112.04(1)(f) of the *Act* provides that a payday lender must not charge, require or accept any amount for or in relation to a cash card issued to a borrower.

[61] In his reasons, Mr. McBride interpreted the meaning of “issued by a payday lender” in finding that Cash Store had violated the provisions of the *Act* and *Regulations* by issuing cash cards and receiving an amount for or in relation to a cash card.

[62] The determination of the issue turns on the interpretation of the words “issued by a payday lender”. Mr. McBride concluded:

157. I accept from this evidence that DC Bank is the maker of the prepaid cards and that, at all times, DC Bank remains the owner of the prepaid cards. DCMI, who obtains the prepaid cards from DC Bank, distributes the prepaid cards to its merchants, including Cash Store, who make these prepaid cards available to their customers. Ultimately, it is Cash Store who provides possession of the prepaid cards or delivers the prepaid cards to the consumer. It is Cash Store who is putting the cards into public circulation. It is Cash Store that activates the card via DCMI and directs the loading of funds onto the cards.

158. These factual findings end the analysis of whether Cash Store “issues” the prepaid cards for purposes of the *BPCP Act* only if I accept that the concept of issuance used in the definition of “cash card” in s. 112.01 and in s. 112.04(1)(f) of the *CPCP Act* is intended to be limited to the first delivery of the prepaid cards by their maker, as advocated by Cash Store.

...

161. So, in interpreting the provisions of the *BPCP Act* at issue, I must look at the words of the legislation but I must also have regard to the broader context, including the purpose of the *BPCP Act*. An interpretation that is consistent with or promotes the legislative purpose should be adopted, while interpretations that defeat or undermine legislative purpose should be avoided.

...

168. Having considered these submissions carefully, I find that I am unable to read the relevant provisions of the *BPCP Act* as Cash Store urges me to do. For the reasons that follow, I am of the view that Cash Store, in providing prepaid cards to its customers is issuing the prepaid card so as to bring the prepaid cards within the definition of “cash cards” set out in s. 112.04(1)(f). This is so despite the fact that Cash Store is not the maker or owner of the cards.

169. As a preliminary matter, I do not agree that the purpose of the legislation is to regulate only those charges required by the payday lender. The scheme of the legislation reflects a decision by the legislature to impose broader regulation. The general intent of the legislation is to regulate the payday lending industry in order to protect consumers from abusive lending practices generally. In British Columbia, this is accomplished by regulation of all charges permitted by a payday lender, including as to the cost of credit, any interest or any other fee or charge. No amount may be charged, accepted or required by the payday lender in excess of the maximum amount prescribed by *Regulation*. The *Regulation* permits a charge equivalent to 23% of the principal but prohibits a payday lender from charging, accepting or requiring any other amount in respect of the payday loan transaction. No fee, penalty, rate, commission, consideration, charge or other amount is permitted to be charged, required or accepted unless permitted. In British Columbia, no such amounts are permitted beyond the maximum permissible charge of 23% of the principal. This is true whether the amount reflects an option by the consumer or a requirement by the payday lender.

170. Except for the absolute prohibition in s. 112.04(1)(f) which is considered in more detail below, a charge for a cash card is most analogous to a cheque handling fee charged to a borrower electing a cheque option. The clear intent of the *BPCP Act* is to prohibit such charges, beyond the permissible charge of 23% of the principal. I do not accept that the provision of a cash card to the consumer as a means of delivering the loan proceeds is analogous to other optional services that may be offered following or in connection with the payday loan transaction. An example of that kind of service would be creditor insurance, which is entirely separate from the payday loan transaction. A payday loan is a loan of money. It is a credit agreement pursuant to which credit is extended. Delivery of the loan proceeds, whatever the method, constitutes the extension of credit. This extension of credit is part of the payday loan transaction, even if delivered by way of a separate or optional service.

171. Further, I find that the plain meaning of the words “issue” or “issued” as used in the *BPCP Act* would be understood by most to include the act of providing physical possession of an item to another. This would encompass the act of distributing, delivery or supplying a person with a thing. I find nothing in the context of Part 6.1 of the *BPCP Act* or the purpose of the payday loan legislation generally that favours the narrower interpretation advocated by Cash Store that the issuer must be the ultimate originator and owner of the card. While such an interpretation may be appropriate in the specialized context of the *Bank Act* or the *Securities Act*, I do not agree that such a narrow interpretation should be accepted in the context of the *BPCP Act*. It is clear to me, particularly by reference to the definition of “cash card” that the legislature is speaking of the concept of issuance in the *BPCP Act* as encompassing the storefront exchange between payday lender and consumer. The legislation defines a cash card as a device “issued by a payday lender to a borrower of a payday loan instead of advancing cash or transferring money to the borrower”. The concern here is not the original issuance of the cash card by its maker but the storefront exchange between the payday lender and consumer where the payday lender makes the option

of a cash card available to its customer as an alternative means of receiving the proceeds of a payday loan.

172. Where I have determined that an industry meaning is not required to give effect to the intention of the legislation, the language used in the documents between the parties is neither determinative nor helpful in interpreting the text of the *BPCP Act*. However, as an aside, I note that the use of language in those agreements is not consistent with the concept of issuance applying only to the original maker of the card. For example, the Cash Card Merchant Agreement which recognizes the technical concept of issuance under the Interac rules, nonetheless speaks of the Merchant as “issuing” the cash cards in the definition of “Storefront Services”. Similarly, the cash card agreement between DCMI and the consumer speaks of the Merchant issuing the prepaid debit card, in the sense of providing physical custody of the card to the consumer.

173. Finally, I am concerned that the interpretation advocated by Cash Store would largely eliminate the effect of s. 112.04(1)(f) prohibits a “payday lender” from accepting, requiring or charging “any amount for or in relation to a cash card issued to a borrower”. The effect of Cash Store’s submission is that only a financial institution or similarly authorized entity such as a credit union has the power to issue a cash card. However, Cash Store acknowledges that, in the main, such issuers are not regulated by the *BPCP Act*. Cash Store says, however, that it is conceivable that a payday lender could incorporate as a trust company or other provincially regulated entity with the authority to issue prepaid cards on their own behalf. It is submitted that these are the limited circumstances in which s. 112.04(1)(f) is intended to prohibit charges in relation to cash cards. I find it more likely that the legislature was aware of existing practices of payday lenders at the time the legislation was enacted, of providing payday loans by way of a cash card in exchange for an additional fee and was, by s. 112.04(1)(f) seeking to make clear its intention to prohibit any such practice generally, not only in the very narrow circumstances where the payday lender has the necessary power or authority to issue prepaid cards on its own behalf. I see no principled basis to distinguish between these two situations, regulating one but not the other. Confining the application of those provisions of Part 6.1 of the *BPCP Act* dealing with cash cards to these very narrow circumstances does not result in a fair, large and liberal construction or an interpretation that best ensures the attainment of the object of these provisions.

174. For all of these reasons, I find that the limited interpretation which Cash Store seeks to place on the concept of “issue” is inconsistent with the purpose of the legislation. I find that the plain meaning governs. That is, a payday lender in delivering or providing a prepaid card to its customer, either on its own behalf or on behalf of another “issues” the prepaid card with the effect that such cards are “cash cards” for the purposes of s. 112.01 of the *BPCP Act*. Accordingly, s. 112.04(1)(f) applies.

[63] Cash Store argues that it has not breached these provisions of the *Act* because it does not issue the cash cards as they are defined in the *Act*. It argues that the Direct Cash Bank (“DC Bank”) is the issuer of the card and Direct Cash

Management Inc. (“DCMI”) charges fees for the pre-paid cards. Cash Store submits that it does not issue the cards or charge fees on them. Cash Store argues that to be a cash card under the *Act*, the card must be issued by a payday lender to the borrower. It says that DC Banks’ pre-paid cards are not cash cards within the meaning of the *Act* because the cards are not issued by a payday lender and Cash Store transfers money to DC Bank to the order of the borrower instead of issuing the card.

[64] Cash Store says that if a consumer purchases a pre-paid card (through its offices) from DC Bank, the customer is required to explicitly acknowledge and accept in the cardholder agreement that there will be fees associated, payable to DC Bank and DCMI but not to Cash Store. Cash Store says that the consumer purchases the pre-paid card from DC Bank and that Cash Store acts as the agent for DC Bank in that transaction.

[65] Next, Cash Store argues that only federal institutions issue pre-paid cards. It says that it is improper for Mr. McBride to interpret the word “issuer” in the *Act* to include pre-paid cards issued by DC Bank. Cash Store says that this ignores the legal relationship between the parties and creates an inconsistency between federal and provincial legislation.

[66] Cash Store reiterates before me the arguments made to Mr. McBride and urges me to find that his conclusion is incorrect. I am not so persuaded.

[67] As I have indicated, the standard of review is reasonableness. Mr. McBride’s interpretation is reasonable. Moreover, I am also persuaded that it is correct. I agree with Mr. McBride’s analysis and decision. I adopt his reasoning as set out above.

#### **Miscellaneous Issues**

[68] Roberta Stewart argues that the application for judicial review is out of time. In light of my decision on the merits of the review, I do not need to address this argument.

[69] CPBC argues that Cash Store has improperly raised issues not argued before Mr. McBride. CPBC says that I should not consider these issues. I agree with CPBC's submissions on this point. Even if I had considered that these arguments were properly before me, they would not have led me to a different conclusion. Mr. McBride's interpretation of the *Act* does not result in an *ultra vires* application of the *Act*. I agree with CPBC's submissions on this issue. With respect to the argument that when Cash Store customers use a cash card, Cash Store is transferring money to the order of the borrower, I accept CPBC's submissions; namely as set out by Mr. McBride's analysis, such an interpretation would fail to give effect to the plain meaning of the *Act*.

**CONCLUSION**

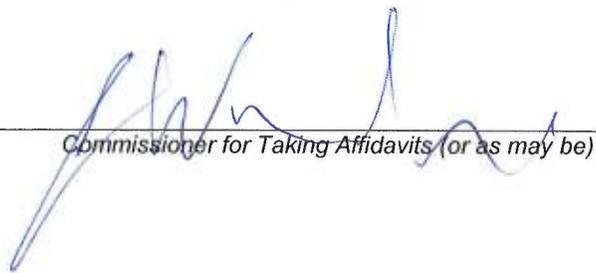
[70] For the reasons set out above, I dismiss the petition.

[71] Costs may be spoken to, if necessary.

"B.J. Brown J."

The Honourable Madam Justice B.J. Brown

This is Exhibit "F" referred to in the Affidavit of Jason Beitchman sworn May 15, 2014



Commissioner for Taking Affidavits (or as may be)



No. S-128906  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE CASH STORE FINANCIAL SERVICES INC.

PETITIONER

AND:

CONSUMER PROTECTION BRITISH COLUMBIA

RESPONDENT

ORDER MADE AFTER APPLICATION

BEFORE	)	MASTER TOKAREK	)	28/January/2013
	)		)	
	)		)	
	)		)	
	)		)	

ON THE APPLICATION OF the *petitioner* coming on for hearing at Vancouver, British Columbia, on 28/January/2013 and on hearing Timothy Pinos, counsel for the Petitioner and Jennifer Francis, counsel for the Respondent;

THIS COURT ORDERS that:

Upon consent of the petitioner, the respondent not opposing:

1. A stay of execution of paragraphs 5 and 6 of the Initial Compliance Order sated March 23, 2012 pending a determination of the Petition for Judicial Review of that order filed on December 14, 2012 in Court File No. S-128906 on condition that:
  - (a) The petition be heard on May 8 and 9, 2013.
  - (b) Within 30 days of the date of this Order, the petitioner shall file an application to extend the time for a hearing of the petition, pursuant to s. 57 of the *Administrative Tribunal Act*, without prejudice to the petitioner's position that no extension of time is required.

- (c) The petitioner shall deliver to all parties of record, at least 30 days prior to the hearing of the petition, full written submissions in support of the petition and any application delivered pursuant to paragraph 1(b) above.
- (d) The respondent shall deliver its responding submissions on all issues 15 days before the hearing of the petition.
- (e) The petitioner shall comply with all requirements of the Supplemental Compliance Order excluding the placement of advertisements, the provision of notice or the obligation to offer or pay refunds.
- (f) The petitioner shall, within 14 days of this Order, secure the sum of \$1,059,828 (the "Secured Amount") by payment into trust or by positing a letter of credit, both on terms to be agreed by the parties or settled by the Court on further application with at least 3 days' notice.
- (g) In the event the Refund Amount (as defined by paragraph 9 of the Supplemental Compliance Order dated November 30, 2012) is determined to be greater or less than the Secured Amount, the Secured Amount will, in the same time and in the same terms as provided for by paragraph 1(f) above, be adjusted accordingly so that the Secured Amount is equal to the Refund Amount.

2. Costs reserved to the Court hearing of the petition.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

*Tim Pung*  
 Lawyer for the  
 Petitioner

*Francis*  
 Lawyer for the Respondent

*DEI*  
*[Signature]*

This is Exhibit "G" referred to in the Affidavit of Jason Beitchman sworn May 15, 2014



---

Commissioner for Taking Affidavits (or as may be)



---

February 22, 2013

Tim Pinos  
Cassels Brock LLP  
40 King Street West  
Suite 2100 Scotia Plaza  
Toronto, ON M5H 3C2

Dear Tim,

**Re: Deposit for Consumer Protection British Columbia**

We are transmitting funds in the amount of \$1,059,828 as a payment into trust into the account provided by Cassels Brock LLP (wire details below) for the purposes of satisfying an Order of the Supreme Court of British Columbia issued January 28, 2013: We do so, despite the fact that the terms of the trust arrangement, pursuant to s.1(f) of the Order, have not yet been agreed upon between you and counsel for Consumer Protection British Columbia. On this basis, we reserve any rights we may have in respect of these funds until such time that the trust arrangements have been agreed upon.

**Account details**

Bank of Nova Scotia  
44 King St. West at Bay  
Toronto, Ontario M5H 1H1

Transit#: 47696-002  
CDN Account#: 47696-00739-11  
SWIFT CODE (CDN): NOSCCATT

---

The Cash Store Financial Services Inc.  
15511 – 123<sup>rd</sup> Avenue  
Edmonton, AB Canada T5V 0C3  
Phone: (780) 408-5110. Fax: (780) 408-5122  
TSX: CSF NYSE: CSFS

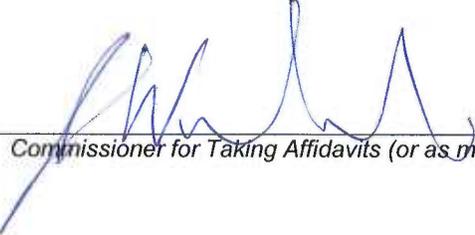
Please confirm once these funds have been received. We appreciate your assistance in this matter.

Yours truly,

A handwritten signature in black ink, appearing to read 'Gordon J. Reykdal', written in a cursive style.

Gordon J. Reykdal  
Chairman and CEO

This is Exhibit "H" referred to in the Affidavit of  
Jason Beitchman sworn May 15, 2014



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*Commissioner for Taking Affidavits (or as may be)*

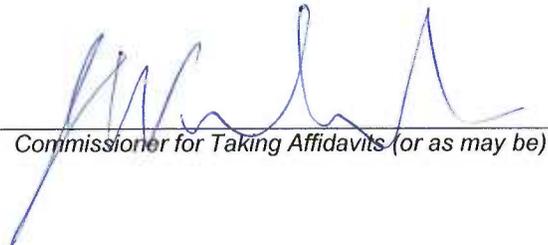
**Matter Trust Accounts Summary**



**Matter Number** 030678-00044   
**Client Name** THE CASH STORE FINANCIAL SERVICES INC.  
**Matter Description** BRITISH COLUMBIA PAYDAY LOAN REGULATIONS  
**Detail Range** 1/1/1900 to 2/26/2013

<b>Account</b>	<b>Description</b>	<b>Type</b>	<b>Currency</b>	<b>Balance</b>	<b>Cleared</b>
<u>11215</u>	BANK OF NOVA SCOTIA-CANADIAN DOLLARS	CANADIAN DOLLARS	CDN	1,059,828.00	1,059,828.00

This is Exhibit "I" referred to in the Affidavit of Jason Beitchman sworn May 15, 2014

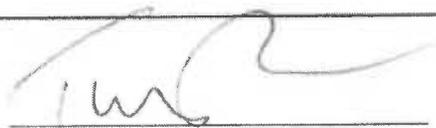


A handwritten signature in blue ink, consisting of several loops and a long tail, positioned above a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

		<b>Investment of Trust</b> Wednesday, February 27, 2013
Lawyer:	PINOS, J.D. TIMOTHY - 00053	
Legal Assistant:	Gina McCabe, x5337	
Matter Number:	030678-00044	
Client Name:	THE CASH STORE FINANCIAL SERVICES INC.	
Matter Description:	BRITISH COLUMBIA PAYDAY LOAN REGULATIONS	
<b>Amount:</b>	<b>1,059,828.00</b>	
Currency:	<b>Canadian Dollars</b>	
Financial Institution:	BNS due to firm standard bank	
Know Your Client:	Transaction exempt from Know Your Client rule due to investment Trust LSUC 7.1 - I	
Investment Type:	Term Deposit	
Investment Term (Months):	12	
Other Instructions:	We understand that if we take the funds out in June, 2013, that there is no penalty and we would still be able to collect interest earned.	
Date Funds will be Required, if Known:	Friday, June 28, 2013	
Recipient Type:	Corporation	
<b>Recipient:</b>		
Name	The Cash Store Financial Services Inc.	
Address	15511-123rd Avenue	
City	Edmonton	
Province	AB	
Country	Canada	Postal/Zip: T5V 0C3
Social Insurance Number:		
GST #:		
Foreign Social Security #:		

Approval



Partner's Signature

Please direct your inquiries to Mathi Mahadevan (x5459) or Maxine Williams (x6450)

This is Exhibit "J" referred to in the Affidavit of Jason Beitchman sworn May 15, 2014



Commissioner for Taking Affidavits (or as may be)

**Matter Trust Accounts Detail**



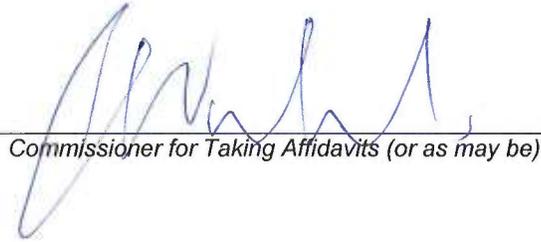
  
**Matter Number** 030678-00044

**Client Name** THE CASH STORE FINANCIAL SERVICES INC.  
**Matter Description** BRITISH COLUMBIA PAYDAY LOAN REGULATIONS

**Account Type** 11215

Date	Cleared Date	Type	Description	Document	Amount	Balance	Index
2/26/2013	2/26/2013	WIRE	*FROM GENERAL - WIRE - THE CASH STORE FINANCIAL	WIRE	1,059,828.00	1,059,828.00	417389
			- MONIES TO BE HELD IN TRUST AS PER COURT ORDER				
2/27/2013	2/27/2013	DISBURS	*ONE YEAR CASHABLE GIC @ 0.90%	INVEST	(1,059,828.00)	0.00	417418
2/27/2014	2/27/2014	CERT	*CASHED	INVEST	1,069,366.45	1,069,366.45	427468
3/26/2014	3/26/2014	CERT	*MISC. CREDIT - CASH STORE INC - COURT APPOINTED TRUST FUNDS	CREDIT	18,500.00	1,087,866.45	428151
<b>TOTAL</b>					<b>1,087,866.45</b>		

This is Exhibit "K" referred to in the Affidavit of Jason Beitchman sworn May 15, 2014



Commissioner for Taking Affidavits (or as may be)

**Fasken Martineau DuMoulin LLP**  
Barristers and Solicitors  
Patent and Trade-mark Agents

www.fasken.com

2900 – 550 Burrard Street  
Vancouver, British Columbia, Canada V6C 0A3

604 631 3131 Telephone  
604 631 3232 Facsimile  
1 866 635 3131 Toll free

**FASKEN  
MARTINEAU** 

**Jennifer Francis**  
Direct 604 631 4896  
Facsimile 604 632 4896  
jfrancis@fasken.com

March 7, 2014  
File No.: 286342.00002/15149

**VIA FAX**

Cassels Brock & Blackwell LLP  
2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

**Attention: Timothy Pinos**

Dear Sirs/Mesdames:

**Re: The Cash Store Financial Services Inc. v. Consumer Protection BC  
S.C.B.C. Action No. S-128906 (Vancouver Registry)**

We write further to the decision of Justice Brown dismissing the petition for judicial review.

A draft order reflecting the reasons is enclosed for your execution. Please sign and return the order to us at your early convenience. An entered order will be provided to you in due course. We also enclose a consent order providing for costs in the cause. Given the nature of the issues in this case, we consider that costs should follow the event in the ordinary manner. A draft Bill of Costs prepared by Consumer Protection BC is also enclosed.

The other matter that we need to address relates to the Secured Amount currently held by your firm in trust pursuant to the January 28, 2013 Order of the Court. We understand that the refund process is underway and that access to the Secured Amount will likely be required in short order.

Consumer Protection BC is prepared to consent to the payment out of the Secured Amount to a financial institution to be used in the refund process on the following terms:

1. The Secured Amount shall be immediately increased by the sum of \$18,500 to reflect the results of the audit;
2. The Secured Amount will be made the subject of a trust, in accordance with the proposed trust documentation attached. This document is in draft. It has yet to be reviewed by Consumer Protection BC and may be subject to change.

DM\_VAN/286342.00002/8781926.2

\* Fasken Martineau DuMoulin LLP is a limited liability partnership and includes law corporations.

Vancouver    Calgary    Toronto    Ottawa    Montréal    Québec City    London    Paris    Johannesburg

3. Cash Store will establish a new (never used before) trust account with a major financial institution that clearly indicates in both the account documentation and its title that it is a trust account with a requirement for dual signing authorities. The trust account must be located in British Columbia.
4. The trust account and access details must be verified by the financial institution through the Financial Account Verification form (copy attached).
5. Copies of all documentation establishing the trust account (including an executed copy of the Financial Account Verification form) must be provided to Consumer Protection BC for review and approval. In addition, Cash Store must also provide Consumer Protection BC with the necessary information (user ID and password) so that Consumer Protection BC may access the account online (read only and print).
6. Cash Store must agree, in writing, that:
  - (a) withdrawals from the trust account are restricted to cheques or EFTs made payable only to consumers listed on the Audited List of Eligible Consumers or as otherwise approved by Consumer Protection BC;
  - (b) cash transactions into or out of the trust account are prohibited; and
  - (c) provide all unclaimed funds to Consumer Protection BC as required by the Supplemental Compliance Order.

If these terms are agreeable, Cash Store should begin to undertake the necessary work. Consumer Protection BC will consent to a transfer of the Secured Amount once compliance with these terms is demonstrated and execution of the trust document is complete.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**

  
Jennifer Francis

c.c. Hordo Bennett Mounteer LLP  
Att: Paul R. Bennett

No. S-128906  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE CASH STORE FINANCIAL SERVICES INC.

PETITIONER

AND:

CONSUMER PROTECTION BRITISH COLUMBIA AND ROBERTA  
STEWART

RESPONDENTS

**ORDER MADE AFTER APPLICATION**

BEFORE	)		)	
	)	THE HONOURABLE MADAM JUSTICE	)	
	)	BROWN	)	30/January/2014
	)		)	
	)		)	

ON THE APPLICATION OF the Petitioner, The Cash Store Financial Services coming on for hearing at Vancouver, British Columbia on 26/June/2013 to 28/June/2013 and on hearing Timothy Pinos and Jason Beitchman, counsel for the Petitioner, Jennifer Francis, counsel for the Respondent, Consumer Protection British Columbia and Paul R. Bennett and Mark W. Munteer, counsel for the Respondent Roberta Stewart.

AND JUDGMENT BEING RESERVED TO THIS DATE.

THIS COURT ORDERS that:

1. The petition is dismissed.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of  
 Party  Lawyer for Petitioner

\_\_\_\_\_  
Timothy Pinos

\_\_\_\_\_  
Signature of  
 Party  Lawyer for the Respondent,  
Consumer Protection British Columbia

\_\_\_\_\_  
Jennifer Francis

\_\_\_\_\_  
Signature of  
 Party  Lawyer for the Respondent, Roberta  
Stewart

\_\_\_\_\_  
Paul R. Bennett

BY THE COURT

\_\_\_\_\_  
REGISTRAR

No. S-128906  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE CASH STORE FINANCIAL SERVICES INC.

PETITIONER

AND:

CONSUMER PROTECTION BRITISH COLUMBIA AND  
ROBERTA STEWART

RESPONDENTS

---

**ORDER MADE AFTER APPLICATION**

---

**FASKEN MARTINEAU DuMOULIN LLP**

Barristers and Solicitors  
2900 - 550 Burrard Street  
Vancouver, BC, V6C 0A3  
+1 604 631 3131

Counsel: Jennifer Francis  
Matter No: 286342.00002

No. S-128906  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE CASH STORE FINANCIAL SERVICES INC.

PETITIONER

AND:

CONSUMER PROTECTION BRITISH COLUMBIA AND ROBERTA  
STEWART

RESPONDENT

**CONSENT ORDER**

	)	<input type="checkbox"/> A JUDGE OF THE COURT	)	
	)	or	)	
BEFORE	)	<input type="checkbox"/> A MASTER OF THE COURT	)	/February/2014
	)	or	)	
	)	<input type="checkbox"/> A REGISTRAR	)	

ON THE APPLICATION OF the Respondent Consumer Protection British Columbia, without a hearing and by consent;

THIS COURT ORDERS that:

1. The Respondent, Consumer Protection British Columbia recover from the Petitioner costs of the application of the Petitioner coming on for hearing on 26/June 2013 to 28/June/2013 in any event of the cause.

The following parties approve the form of this Order and consent to each of the orders noted above:

*[A signature line in the following form must be completed and signed by or for each consenting party.]*

\_\_\_\_\_  
Signature of  
 Party  Lawyer for Petitioner

\_\_\_\_\_  
Timothy Pinos

\_\_\_\_\_  
Signature of  
 Party  Lawyer for the Respondent,  
Consumer Protection British Columbia

\_\_\_\_\_  
Jennifer Francis

\_\_\_\_\_  
Signature of  
 Party  Lawyer for the Respondent, Roberta  
Stewart

\_\_\_\_\_  
Paul R. Bennett

BY THE COURT

\_\_\_\_\_  
REGISTRAR

No. S-128906  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE CASH STORE FINANCIAL SERVICES INC.

PETITIONER

AND:

CONSUMER PROTECTION BRITISH COLUMBIA AND  
ROBERTA STEWART

RESPONDENTS

---

**CONSENT ORDER**

---

**FASKEN MARTINEAU DuMOULIN LLP**

Barristers and Solicitors  
2900 - 550 Burrard Street  
Vancouver, BC, V6C 0A3  
+1 604 631 3131

Counsel: Jennifer Francis  
Matter No: 286342.00002

No. S-128906  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE CASH STORE FINANCIAL SERVICES INC.

PETITIONER

AND:

CONSUMER PROTECTION BRITISH COLUMBIA AND ROBERTA  
STEWART

RESPONDENTS

**BILL OF COSTS OF THE RESPONDENT,**  
**CONSUMER PROTECTION BRITISH COLUMBIA**

This is the Bill of Costs of the Respondent, Consumer Protection British Columbia

Tariff Scale B

Unit Value \$110.00

Item	Description	# of Units Claimed	# of Units Allowed
<i>Instructions and Investigation</i>			
2	Correspondence, conferences, instructions, investigations or negotiations by a party after the start of the proceeding to the completion of the trial or hearing, for which provision is not made elsewhere in this tariff.	10	
<i>Court Documents</i>			
7	All process, for which provision is not made elsewhere in this tariff, for defending a proceeding, and for commencing and prosecuting a counterclaim.	1	
<i>Applications, Hearings and Conferences</i>			

Item	Description	# of Units Claimed	# of Units Allowed
21	Preparation for an application or other matter referred to in Item 22, for each day of hearing if hearing begun  (b) if opposed (1/2 day – application for stay).	1.5	
22	Application, other than an application referred to in Item 23 or 27, for each day  (b) if opposed (1/2 day – application for stay).	2.5	
26	Preparation for an application or other matter referred to in Item 27, for each day of hearing.  (b) if opposed (2.5 days)	12.5	
27	Hearing of proceeding, including petition, special case, proceeding on a point of law, stated case, interpleader or any other analogous proceeding, and applications for judgment under Rules 7-7(6), 9-6 or 9-7, for each day  (b) if opposed (2.5 days)	25	
<i>Attendance at Registry</i>			
41	Process relating to entry of an order or a certificate of costs when Item 30 or 44 does not apply.	3	

**TARIFF ITEMS**

Item #	Description	# of Units Claimed	# of Units Allowed
	Total number of units:	<u>55.5</u>	
	Multiplied by unit value:	\$ <u>110.00</u>	
	<b>Subtotal</b>	\$ <u>6,105.00</u>	
	Tax imposed under the <i>Social Service Tax Act</i>	\$ <u>427.35</u>	
	Tax imposed under Part IX [Goods and Services Tax] of the <i>Excise Tax Act</i> (Canada)	\$ <u>305.25</u>	
	<b>Total:</b>	\$ <u>6,837.60</u>	

**TAXABLE DISBURSEMENTS:**

Description	Claimed	Allowed
Agent's Fees	\$ 88.75	
Binding	\$ 157.25	
Copywork (12,599 pages x \$.25 per page)	\$ 3,149.75	
Courier	\$ 64.14	
Faxes (64 pages x \$.35 per page)	\$ 23.80	
Library Research	\$ 141.44	
Long Distance Telephone	\$ 1.80	
Postage	\$ 5.51	
	<b>Total \$ 3,632.44</b>	

Tax imposed under the *Social Service Tax Act* \$ 254.27

Tax imposed under Part IX [Goods and Services Tax] of  
the *Excise Tax Act* (Canada) \$ 181.62

**TOTAL TAXABLE DISBURSEMENTS** \$ 4,068.33

**NON-TAXABLE DISBURSEMENTS**

Court Filing Fees \$ 80.00

**TOTAL NON-TAXABLE DISBURSEMENTS** \$ 80.00

**TOTAL DISBURSEMENTS** \$ 4,148.33 \$

**TOTAL FEES:** \$ 6,837.60

**TOTAL FEES AND DISBURSEMENTS** \$ 10,985.93

**TOTAL ALLOWED** \$ \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assessing Officer

**TRUST DECLARATION**

THIS TRUST DECLARATION is made effective as of the \_\_\_\_\_ day of March, 2014, by **THE CASH STORE FINANCIAL SERVICES INC.** and executed as of the date set out below.

**WHEREAS:**

- A. A Supplemental Compliance Order dated November 30, 2012, was issued by Consumer Protection BC under the *Business Practice and Consumer Protection Act*, S.B.C. 2004, c.2, against The Cash Store Financial Services Inc. (the "Order"), a copy of which is attached hereto as Schedule A.
- B. The Order contemplates certain payments being made to certain "Eligible Consumers", as determined pursuant to the terms of the Order.
- C. The Cash Store Financial Services Inc. will be receiving certain funds currently held by its solicitors to be used in accordance with the terms of the Order.
- D. The Cash Store Financial Services Inc. intends to hold such funds on the terms of this Declaration of Trust.

**NOW THIS TRUST DECLARATION WITNESSES** as follows:

**PART 1  
CREATION OF THE TRUST**

- 1.1 **Name of Trust.** The Trust confirmed by this Trust Declaration shall be known as the "**COMPLIANCE ORDER TRUST**" (the "Trust").
- 1.2 **Cash Stores Financial Services Inc. (the "Original Trustee").** The Original Trustee declares that it holds all of the funds held by it at the date of the execution of this Trust in a non-interest bearing account number \_\_\_\_\_ at \_\_\_\_\_ (the "Initial Trust Property") and all funds referred to in Recitals C and D and hereafter deposited in such account (the "Additional Trust Property") on the terms set out in this Trust Declaration.
- 1.3 **Acceptance of the Trust.** The Original Trustee, by its execution of this Trust Declaration, signifies its acceptance of this Trust and the duties and obligations contained herein and declare that it holds the Trust Property pursuant to this Trust.
- 1.4 **Further Settlement.** Property or assets, in addition to the Initial Trust Property, may be settled upon the Trust from any person, corporation or trust, with the prior consent of the Trustee, and without detracting from the generality of this provision the Original Trustee hereby consents to the receipt of the Additional Trust Property.
- 1.5 **Trust is Irrevocable.** The Trust herein set forth shall be irrevocable.

## PART 2 INTERPRETATION

2.1 **Definitions.** For the purposes of this Trust Declaration:

- (a) **“Trustee”** means:
  - (i) the Original Trustee named in this Trust Declaration at the date of execution thereof until such time as it ceases to be Trustee in accordance with Part 7 hereof;
  - (ii) such other person or persons as from time to time may be appointed as replacement or as co-Trustees of this Trust in accordance with Part 7 hereof; and
  - (iii) such other person as may be lawfully appointed as Trustee.
- (b) **“Trust Property”** means:
  - (i) The Initial Trust Property;
  - (ii) the Additional Trust Property;
  - (iii) all other property hereafter paid or transferred to or otherwise vested in and accepted by the Trustee as additions to the property held on trust by it; and
  - (iv) all money, investments and other property from time to time representing the property originally contributed to the Trust and the said additions and accumulations or any part or parts thereof respectively.

2.2 **Standard Interpretation.** For the purposes of interpretation and construction of this Trust Declaration, the singular shall mean and include the plural and vice versa and any gender shall mean and include all genders and references to person or persons shall include a corporation or corporations save and except where the contrary intention appears. The titles and subtitles of this Trust Declaration are inserted and included for the purposes of convenience only and shall not be used in the interpretation or construction of this Trust Declaration.

## PART 3 PURPOSE OF THE TRUST

3.1 **Payments of Trust Property.** The Trustee shall hold and keep invested the Trust Property for distribution and payment to those persons listed in the Audited Listing of Eligible Consumers as determined in accordance with the terms set out in the Order, and to pay any balance of the Trust Property remaining at the End Date (as defined in and determined in accordance with the Order) to Consumer Protection BC to be administered by it in accordance with paragraph 31 of the Schedule to the Order.

**PART 4**  
**POWER AND AUTHORITY OF THE TRUSTEE**

The Trustee shall have and be invested with the following powers and authorities:

4.1           **Make Payments.** To make any payments or distributions which may be required under the terms of this Trust.

4.2           **Receive Additional Property.** To receive additional property as additions to the Trust Property and to hold the same upon the trusts herein set forth and to administer such additions under the provisions hereof, as set out in the Order.

4.3           **Execute Instruments.** To execute and deliver agreements, assignments, contracts, deeds, notes, receipts, and any and all other instruments in writing necessary or appropriate in the opinion of the Trustee for the settlement or administration of the Trust Property.

4.4           **Compromise and Settle.** With the prior approval of Consumer Protection BC, to compromise and settle for such consideration and upon such terms and considerations as the Trustee considers advisable all matters arising in relation to the Trust or the Trust Property and all such compromises and settlements shall be binding on the parties to the compromise or settlement, Consumer Protection BC and all others who in the future acquire any interest under this Trust Declaration.

4.5           **Employ Professionals.** With the prior approval of Consumer Protection BC, to employ and compensate out of the property of the Trustee and not out of the Trust Property, agents, accountants, solicitors, brokers and other assistants and advisors deemed by the Trustee to be helpful, for the proper settlement or administration of the Trust.

4.6           **Banking Arrangements.** With the prior approval of Consumer Protection BC, to open and operate such bank accounts as may be expedient in the opinion of the Trustee and to deposit any cash balances in the hands of the Trustee at any time in any chartered bank, credit union or trust company and, for the purposes of the Trust, to draw, make, endorse, deposit or deal in cheques, bills of exchange, promissory notes, drafts or any other mercantile, commercial or security documents of any nature or kind, and to enter into contracts or agreements of any nature or kind, with such a chartered bank or trust company. For these purposes, the signature of an authorized signatory of the Trustee, or a Trustee designated by all of the Trustees in writing if there is more than one, as Trustees, and not in their personal capacity, shall be valid and binding upon the Trust.

4.7           **Payment to Beneficiary or Guardians.** To make any payment, transfer or delivery of any part of the Trust Property passing to a beneficiary during his or her minority or during any legal disability either directly to such beneficiary, to the surviving parent(s) or guardian(s) of such beneficiary or to any person who may stand in *loco parentis* to such beneficiary or to anyone to whom the Trustee, in his absolute discretion, deem it advisable to make such payments. The receipt of such payment, transfer or delivery by such beneficiary, parent, guardian, person in *loco parentis* or other person shall be a sufficient discharge to the Trustee notwithstanding the minority of the recipient or that the recipient may not be bonded or

may be insufficiently bonded. The powers set out in this provision shall apply notwithstanding that the parent or guardian may be a trustee hereunder and for greater certainty even if such payment were to also benefit the trustee in his or her capacity as parent or guardian.

#### **PART 5 EXPENSES AND REMUNERATION**

5.1 **Payment of Expenses.** The Trustee shall not pay out of income or capital of the Trust Property, any expenses or disbursements incurred in the administration of the Trust except with the prior approval of Consumer Protection BC.

5.2 **Remuneration.** No person shall be entitled to any remuneration for acting as trustee hereunder.

#### **PART 6 ACCOUNTS AND RECORDS**

6.1 **Keep Accurate Accounts and Records.** The Trustee shall keep accurate accounts and records of its trusteeship and may have its accounts audited by Consumer Protection BC on notice to the Trustee. The Trustee shall transfer all of its records relating to its Trusteeship hereunder to Consumer Protection BC at the time the remaining trust property is transferred to Consumer Protection BC in accordance with the Order.

#### **PART 7 RETIREMENT, REPLACEMENT AND APPOINTMENT OF THE TRUSTEE**

7.1 **Resignation or Replacement.** A Trustee may resign or be replaced without court approval upon the following terms:

- (a) **Trustee's Office *ipso facto* Determined.** The office of a Trustee shall be *ipso facto* determined and vacated if any Trustee, being a corporation, shall enter into liquidation or dissolution whether compulsory or voluntary, not being merely a voluntary liquidation for the purposes of amalgamation or reorganization.
- (b) **Trustee's Office *ipso facto* Determined Where Trustee Becomes Non-Resident of Canada.** The office of a Trustee shall be *ipso facto* determined and vacated if any Trustee ceases to be a resident of Canada for income tax purposes.
- (c) **Notice of Change in Trusteeship.** Notices of all changes in trusteeship may be endorsed or attached to this Trust Declaration, signed by the new Trustee or Trustees, and every such notice shall be sufficient evidence to any person having dealings with this Trust as to the change in trusteeship set out therein.
- (d) **Reliance on Notices Endorsed.** Any person dealing with this Trust may rely on a copy of this Trust Declaration and of any notices endorsed thereon or attached thereto, notarially certified to the same extent as they might rely on the original.

7.2 **Removal of Trustee.** Consumer Protection BC may at any time remove any Trustee from office upon written notice being provided to such Trustee, and the removal shall be effective on delivery or on such later date as the notice may specify.

7.3 **Appointment of Additional or Replacement Trustee.** Consumer Protection BC shall be entitled to appoint anyone to serve as an additional or replacement trustee by instrument in writing such appointment to take effect on the date specified in the instrument.

7.4 **Replacement and Successor Trustees Have the Same Powers and Duties.** If any person becomes a Trustee of this Trust, the new Trustee shall, upon appointment, be invested with the Trust Property and with all the trusts, powers and authorities herein contained along with the remaining or continuing Trustee or Trustees without further assignment, transfer or conveyance of any kind or any order of any Court or Tribunal whatsoever.

## **PART 8 VARIATION**

8.1 **Variations of Terms of Trust.** The Trustee may, if it deems it expedient, vary, amend, add to or delete any or all of the administrative provisions of this Declaration of Trust, provided always that no such variation, amendment, addition or deletion shall:

- (a) infringe the Proper Law;
- (b) be inconsistent with any provisions of the Order; and
- (c) be made to this clause, but this clause may be deleted in its entirety.

Any variation, amendment, addition or deletion to the extent to which it purports to have any of the prohibited effects shall be null and void *ab initio*.

**PART 9  
PROPER LAW OF THE TRUST**

9.1 **Proper Law of the Trust.** The law of British Columbia shall be the proper law of this Trust.

**IN WITNESS WHEREOF** the Trustee to this Trust Declaration has executed this Trust Deed as of the \_\_\_\_ day of \_\_\_\_\_, 2014.

**THE CASH STORE FINANCIAL SERVICES INC.,  
as Trustee**

---

**Per: Authorized Signatory**



COURIER: 307-3450 Uptown Blvd. Victoria, BC V8Z 0B9  
MAIL: PO Box 9244, Victoria, BC V8W 9J2  
FAX: (250) 920-7181 P: (604) 320-1664 TF: 1 888 777-4393  
www.consumerprotectionbc.ca

**SAVINGS INSTITUTION  
VERIFICATION &  
AUTHORIZATION  
OF TRUST ACCOUNT**

This document must be completed, signed and submitted to our office immediately upon the trust account being established.

I/we, on behalf of CS Financial Inc., hereby irrevocably give consent to the Director, Consumer Protection BC (the Director) to obtain any financial information about the account(s) noted below from the savings institution noted below and we authorize the savings institution to disclose the information to the Director. I/we further authorize the savings institution to apply any property freezing order issued by the Director against the account(s) listed.

_____		_____	
(Signature - Authorized Signing Officer of CS Financial Inc.)		(Signature - Authorized Signing Officer of CS Financial Inc.)	
_____	_____	_____	_____
(Printed Name of Authorized Signing Officer)	(Position)	(Printed Name of Authorized Signing Officer)	(Position)
_____			
(Date)			

**VERIFICATION BY SAVINGS INSTITUTION**

We,

\_\_\_\_\_ (Name of Savings Institution)

) \_\_\_\_\_ (

(Address) (Telephone No.)

) \_\_\_\_\_ (

(City, Prov/St, Postal/Zip Code, Country) (Facsimile No.)

hereby certify that the CS Financial Inc. has opened the following account(s), in the above noted branch and that the accounts listed are recognized by us and designated in our records as trust accounts. We further confirm that we will comply with a written direction from the Director to provide any information about the accounts or to hold property of the licensee we hold on deposit, under our control or by us for safe keeping, provided the directions are issued in accordance with Sections 150, 151 or 159 of the *Business Practices and Consumer Protection Act*.

	<u>Account Number</u> (Please include the transit no.)	<u>Legal Jurisdiction of Account</u> (e.g. BC, AB, CA, etc.)
(1) Trust Account (CAD)	_____	_____
(2) Trust Account (USD) (If necessary and applicable)	_____	_____

\_\_\_\_\_

(Signature - Authorized Signing Officer of Savings Institution)

\_\_\_\_\_

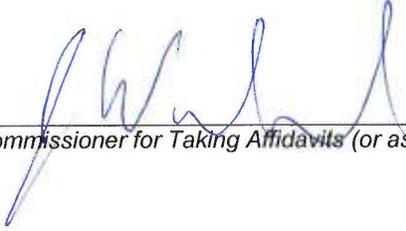
(Printed Name of Authorized Signing Officer)

\_\_\_\_\_

(Date)

Bank Stamp

This is Exhibit "L" referred to in the Affidavit of Jason Beitchman sworn May 15, 2014



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Commissioner for Taking Affidavits (or as may be)

 <b>Trust - Incoming Wire</b> Tuesday, March 25, 2014	
Lawyer:	BEITCHMAN, JASON - 05336
Legal Assistant:	Gina McCabe, x5337
Matter Number:	030678-00044
Client Name:	THE CASH STORE FINANCIAL SERVICES INC.
Matter Description:	BRITISH COLUMBIA PAYDAY LOAN REGULATIONS
<b>Amount:</b>	<b>18,500.00</b>
Currency:	<b>Canadian dollar (CAD)</b> <b>Not to be converted</b>
Received From:	Cash Store Financial Services Inc.
Purpose of Funds:	Other Court Appointed Trust Funds
Financial Institution:	BNS due to firm standard bank
Know Your Client:	Transaction exempt from the Know Your Client rule due to wire Trust LSUC 7.1 - TE
Financial Institution Sending Funds:	CIBC
Financial Institution City:	Vancouver
Contact:	Not Available (see CIBC confirmation)
Company:	Cash Store Financial
Date Expected:	Wednesday, March 26, 2014
<b>Special Instructions:</b>	
<b>Lawyer Signature:</b>  (Lawyer receiving funds for deposit into trust)	
<b>Accounting Use Only - Source of Funds:</b>	
Wire Transfer <input type="checkbox"/>	<input type="checkbox"/> Certified Cheque <span style="float: right;"><input type="checkbox"/> Bank Draft</span>
Direct Deposit (Certified only) <input type="checkbox"/>	<input type="checkbox"/> Uncertified Cheque (CAD) ("5-10 day" hold for CAD has ended) <span style="float: right;"><input type="checkbox"/> Uncertified Cheque (USD) ("20-30 day" hold for USD has ended)</span>
Other: <input type="checkbox"/>	
_____	_____
Trust Officer Name	Trust Officer Signature

Please direct your inquiries to Mathi Mahadevan (x5459) or Maxine Williams (x6450)

This is Exhibit "M" referred to in the Affidavit of Jason Beitchman sworn May 15, 2014



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*Commissioner for Taking Affidavits (or as may be)*

**TRUST DECLARATION**

THIS TRUST DECLARATION is made effective as of the 9<sup>th</sup> day of April, 2014, by **THE CASH STORE FINANCIAL SERVICES INC.** and executed as of the date set out below.

**WHEREAS:**

A. A Supplemental Compliance Order dated November 30, 2012, was issued by Consumer Protection BC under the *Business Practice and Consumer Protection Act*, S.B.C. 2004, c.2, against The Cash Store Financial Services Inc. (the "Order"), a copy of which is attached hereto as Schedule A.

B. The Order contemplates certain payments being made to certain "Eligible Consumers", as determined pursuant to the terms of the Order.

C. The Cash Store Financial Services Inc. will be receiving certain funds currently held by its solicitors in the amount of \$1,078,328.00 to be used in accordance with the terms of the Order.

D. The Cash Store Financial Services Inc. intends to hold such funds on the terms of this Declaration of Trust.

**NOW THIS TRUST DECLARATION WITNESSES** as follows:

**PART 1  
CREATION OF THE TRUST**

1.1 **Name of Trust.** The Trust confirmed by this Trust Declaration shall be known as the "**COMPLIANCE ORDER TRUST**" (the "Trust").

1.2 **Cash Store Financial Services Inc. (the "Original Trustee").** The Original Trustee declares that it holds all of the funds held by it at the date of the execution of this Trust in a non-interest bearing account number 80-33218 at Canadian Imperial Bank of Commerce (Branch 00010) (the "Initial Trust Property") and all funds referred to in Recitals C and hereafter deposited in such account (the "Additional Trust Property") on the terms set out in this Trust Declaration.

1.3 **Acceptance of the Trust.** The Original Trustee, by its execution of this Trust Declaration, signifies its acceptance of this Trust and the duties and obligations contained herein and declare that it holds the Trust Property pursuant to this Trust.

1.4 **Further Settlement.** Property or assets, in addition to the Initial Trust Property, may be settled upon the Trust from any person, corporation or trust, with the prior consent of the Trustee, and without detracting from the generality of this provision the Original Trustee hereby consents to the receipt of the Additional Trust Property.

1.5 **Trust is Irrevocable.** The Trust herein set forth shall be irrevocable.

## PART 2 INTERPRETATION

2.1 **Definitions.** For the purposes of this Trust Declaration:

- (a) **“Trustee”** means:
  - (i) the Original Trustee named in this Trust Declaration at the date of execution thereof until such time as it ceases to be Trustee in accordance with Part 7 hereof;
  - (ii) such other person or persons as from time to time may be appointed as replacement or as co-Trustees of this Trust in accordance with Part 7 hereof; and
  - (iii) such other person as may be lawfully appointed as Trustee.
- (b) **“Trust Property”** means:
  - (i) The Initial Trust Property;
  - (ii) the Additional Trust Property;
  - (iii) all other property hereafter paid or transferred to or otherwise vested in and accepted by the Trustee as additions to the property held on trust by it; and
  - (iv) all money, investments and other property from time to time representing the property originally contributed to the Trust and the said additions and accumulations or any part or parts thereof respectively.
- (c) **“Administrative Provisions”** means the provisions set out in Parts 4-7 of this Trust Declaration.

2.2 **Standard Interpretation.** For the purposes of interpretation and construction of this Trust Declaration, the singular shall mean and include the plural and vice versa and any gender shall mean and include all genders and references to person or persons shall include a corporation or corporations save and except where the contrary intention appears. The titles and subtitles of this Trust Declaration are inserted and included for the purposes of convenience only and shall not be used in the interpretation or construction of this Trust Declaration.

## PART 3 PURPOSE OF THE TRUST

3.1 **Payments of Trust Property.** The Trustee shall hold and keep invested the Trust Property for distribution and payment to those persons listed in the Audited Listing of Eligible

Consumers as determined in accordance with the terms set out in the Order or as otherwise directed by Consumer Protection BC, and to pay any balance of the Trust Property remaining at the End Date (as defined in and determined in accordance with the Order) to Consumer Protection BC to be administered by it in accordance with paragraph 31 of the Schedule to the Order.

#### **PART 4 POWER AND AUTHORITY OF THE TRUSTEE**

The Trustee shall have and be invested with the following powers and authorities:

4.1 **Make Payments.** Subject to s. 5.1 below, to make any payments or distributions which may be required under the terms of this Trust or pursuant to paragraphs 22 and 30 of the Order.

4.2 **Receive Additional Property.** To receive additional property as additions to the Trust Property and to hold the same upon the trusts herein set forth and to administer such additions under the provisions hereof, as set out in the Order.

4.3 **Execute Instruments.** To execute and deliver agreements, assignments, contracts, deeds, notes, receipts, and any and all other instruments in writing necessary or appropriate in the opinion of the Trustee for the settlement or administration of the Trust Property.

4.4 **Compromise and Settle.** With the prior approval of Consumer Protection BC, to compromise and settle for such consideration and upon such terms and considerations as the Trustee considers advisable all matters arising in relation to the Trust or the Trust Property and all such compromises and settlements shall be binding on the parties to the compromise or settlement, Consumer Protection BC and all others who in the future acquire any interest under this Trust Declaration.

4.5 **Banking Arrangements.** With the prior approval of Consumer Protection BC, to open and operate such bank accounts as may be expedient in the opinion of the Trustee and to deposit any cash balances in the hands of the Trustee at any time in any chartered bank, credit union or trust company and, for the purposes of the Trust, to draw, make, endorse, deposit or deal in cheques, bills of exchange, promissory notes, drafts or any other mercantile, commercial or security documents of any nature or kind, and to enter into contracts or agreements of any nature or kind, with such a chartered bank or trust company. For these purposes, the signature of an authorized signatory of the Trustee, or a Trustee designated by all of the Trustees in writing if there is more than one, as Trustees, and not in their personal capacity, shall be valid and binding upon the Trust.

4.6 **Payment to Beneficiary or Guardians.** To make any payment, transfer or delivery of any part of the Trust Property passing to a beneficiary during his or her minority or during any legal disability either directly to such beneficiary, to the surviving parent(s) or guardian(s) of such beneficiary or to any person who may stand in *loco parentis* to such beneficiary or to anyone to whom the Trustee, in his absolute discretion, deem it advisable to make such payments. The receipt of such payment, transfer or delivery by such beneficiary,

- 4 -

parent, guardian, person in *loco parentis* or other person shall be a sufficient discharge to the Trustee notwithstanding the minority of the recipient or that the recipient may not be bonded or may be insufficiently bonded.

#### PART 5 EXPENSES AND REMUNERATION

5.1 **Payment of Expenses.** The Trustee shall not pay out of income or capital of the Trust Property, any expenses or disbursements incurred in the administration of the Trust (including, without limitation, any banking fees or cheque processing fees) except with the prior approval of Consumer Protection BC.

5.2 **Remuneration.** No person shall be entitled to any remuneration for acting as trustee hereunder.

#### PART 6 ACCOUNTS AND RECORDS

6.1 **Keep Accurate Accounts and Records.** The Trustee shall keep accurate accounts and records of its trusteeship and may have its accounts audited by Consumer Protection BC on notice to the Trustee. The Trustee shall transfer all of its records relating to its Trusteeship hereunder to Consumer Protection BC at the time the remaining trust property is transferred to Consumer Protection BC in accordance with the Order.

#### PART 7 RETIREMENT, REPLACEMENT AND APPOINTMENT OF THE TRUSTEE

7.1 **Resignation or Replacement.** A Trustee may resign or be replaced without court approval upon the following terms:

- (a) **Trustee's Office *ipso facto* Determined.** The office of a Trustee shall be *ipso facto* determined and vacated if any Trustee, being a corporation, shall enter into liquidation or dissolution whether compulsory or voluntary, not being merely a voluntary liquidation for the purposes of amalgamation or reorganization.
- (b) **Trustee's Office *ipso facto* Determined Where Trustee Becomes Non-Resident of Canada.** The office of a Trustee shall be *ipso facto* determined and vacated if any Trustee ceases to be a resident of Canada for income tax purposes.
- (c) **Notice of Change in Trusteeship.** Notices of all changes in trusteeship may be endorsed or attached to this Trust Declaration, signed by the new Trustee or Trustees, and every such notice shall be sufficient evidence to any person having dealings with this Trust as to the change in trusteeship set out therein.
- (d) **Reliance on Notices Endorsed.** Any person dealing with this Trust may rely on a copy of this Trust Declaration and of any notices endorsed thereon or attached thereto, notarially certified to the same extent as they might rely on the original.

7.2 **Removal of Trustee.** Consumer Protection BC may at any time remove any Trustee from office upon written notice being provided to such Trustee, and the removal shall be effective on delivery or on such later date as the notice may specify.

7.3 **Appointment of Additional or Replacement Trustee.** Consumer Protection BC shall be entitled to appoint anyone to serve as an additional or replacement trustee by instrument in writing such appointment to take effect on the date specified in the instrument.

7.4 **Replacement and Successor Trustees Have the Same Powers and Duties.** If any person becomes a Trustee of this Trust, the new Trustee shall, upon appointment, be invested with the Trust Property and with all the trusts, powers and authorities herein contained along with the remaining or continuing Trustee or Trustees without further assignment, transfer or conveyance of any kind or any order of any Court or Tribunal whatsoever.

7.5 **Costs Associated with Appointment of Additional or Replacement Trustee.** Subject to the requirements of the Order, the Original Trustee shall not be responsible for any costs associated with the appointment of an additional or replacement trustee, and shall not be responsible for any costs payable to the additional or replacement trustee in connection with the Trust.

#### PART 8 VARIATION

8.1 **Variations of Terms of Trust.** With the prior approval of Consumer Protection BC, the Trustee may, if it deems it expedient, vary, amend, add to or delete any or all of the Administrative Provisions of this Declaration of Trust, provided always that no such variation, amendment, addition or deletion shall:

- (a) infringe the Proper Law;
- (b) be inconsistent with any provisions of the Order; and
- (c) be made to this clause, but this clause may be deleted in its entirety.

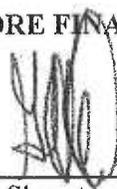
Any variation, amendment, addition or deletion to the extent to which it purports to have any of the prohibited effects shall be null and void *ab initio*.

**PART 9  
PROPER LAW OF THE TRUST**

9.1 **Proper Law of the Trust.** The law of British Columbia shall be the proper law of this Trust.

IN WITNESS WHEREOF the Trustee to this Trust Declaration has executed this Trust Deed as of the 9<sup>th</sup> day of April, 2014.

**THE CASH STORE FINANCIAL SERVICES INC.,  
as Trustee**



\_\_\_\_\_  
Per: Authorized Signatory

This is Exhibit "N" referred to in the Affidavit of Jason Beitchman sworn May 15, 2014



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*Commissioner for Taking Affidavits (or as may be)*

**Jackson, Lara**

---

**From:** Dacks, Jeremy [JDacks@osler.com]  
**Sent:** Thursday, May 15, 2014 9:43 AM  
**To:** Jackson, Lara  
**Cc:** Bill Aziz; Watson, Greg; 'Meredith, Heather L.'  
**Subject:** Cash Store

Hi Lara.

I am writing to you in my capacity as counsel for the Chief Restructuring Officer of the Applicants. On behalf of the CRO, I am confirming the instructions of the CRO to pay the Secured Funds and the Additional Amount to a trust account approved by Consumer Protection British Columbia after receipt of an appropriate court order in the CCAA Proceedings.

Regards,  
Jeremy

**OSLER**

**Jeremy Dacks**

416.862.4923 DIRECT  
416.862.6666 FACSIMILE  
[jdacks@osler.com](mailto:jdacks@osler.com)

Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8

[osler.com](http://osler.com)

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

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

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 CANDA INC., 5515433  
MANITOBA INC., 1693926 ALBERTA LTD DOING BUSINESS AS "THE TITLE  
STORE"

APPLICANTS

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF JASON BEITCHMAN**  
(Sworn May 15, 2014)

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**Lara Jackson, LSUC #: 41858M**  
Tel: 416.860.2907  
Fax: 416.640.3108  
ljackson@casselsbrock.com

Lawyers for the Applicants

**TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE REGIONAL	)	FRIDAY, THE 16TH
	)	
SENIOR JUSTICE MORAWETZ	)	DAY OF MAY, 2014

*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

**ORDER**

THIS MOTION, made by Cassels Brock & Blackwell LLP ("Cassels Brock"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended was heard this day at 361 University Avenue, Toronto, Ontario.

ON READING the affidavit of Jason Beitchman sworn May 15, 2014 and the Exhibits thereto (the "**Beitchman Affidavit**") and on hearing the submissions of counsel for the Applicants, the Chief Restructuring Officer, the Monitor, and such other counsel present, no other person appearing although duly served as appears from the affidavit of service of Jessbinder Dhanoa sworn May 15, 2014.

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that the amount of \$1,087,866.45 currently held in trust by Cassels Brock in the name of The Cash Store Financial Services Inc. ("Cash Store") pursuant to a Consent Order (as defined in the Beitchman Affidavit), be paid out as follows:

(i) The amount of \$1,078,328.00, comprised of the Secured Amount and the Additional Amount (as defined in the Beitchman Affidavit) be paid to the BC Compliance Order Trust Account (as defined in the Beitchman Affidavit) to be opened by Cash Store, in its capacity as Trustee of the Compliance Order Trust (as defined in the Beitchman Affidavit) and approved by Consumer Protection British Columbia in accordance with the Compliance Order and Supplemental Compliance Order (as defined in the Beitchman Affidavit); and

(ii) The amount of \$9,538.45 be paid to Cash Store.

3. THIS COURT DECLARES that the Secured Amount and the Additional Amount are not subject to any of the Charges, as defined in and granted under the Amended and Restated Initial Order dated April 15, 2014, as amended.

4. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom, or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

5. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative

body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

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 CANDA INC., 5515433  
MANITOBA INC., 1693926 ALBERTA LTD DOING BUSINESS AS "THE TITLE  
STORE"

APPLICANTS

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

Proceeding commenced at TORONTO

**ORDER**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**Lara Jackson, LSUC #: 41858M**  
Tel: 416.860.2907  
Fax: 416.640.3108  
ljackson@casselsbrock.com

Lawyers for the Applicants

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

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

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 CANDA INC., 5515433  
MANITOBA INC., 1693926 ALBERTA LTD DOING BUSINESS AS "THE TITLE  
STORE"

APPLICANTS

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

Proceeding commenced at TORONTO

**MOTION RECORD**  
(Returnable May 16, 2014)

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**Lara Jackson, LSUC #: 41858M**  
Tel: 416.860.2907  
Fax: 416.640.3108  
ljackson@casselsbrock.com

Lawyers for the Applicants