

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF QUÉBEC  
NO: 200-06-000165-137**

**(Class Action)  
SUPERIOR COURT**

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**MRS. MARIANNE DESSIS AND MR. JEAN-  
JACQUES FOURNIER,** [REDACTED]

Petitioners

vs

**THE CASH STORE FINANCIAL SERVICES  
INC.**, a legal person established pursuant to  
the Ontario Business Corporations Act, having a  
principal establishment at 15511-123 Ave.,  
Edmonton, Alberta, T5V 0C3;

and

**NANCY BLAND**, the Cash Store Financial  
Services inc., 15511-123 Ave., Edmonton,  
Alberta, T5V 0C3;

and

**GORDON J. REYKDAL**, the Cash Store  
Financial Services inc., 15511-123 Ave.,  
Edmonton, Alberta, T5V 0C3;

and

**CRAIG WARNOCK**, the Cash Store Financial  
Services inc., 15511-123 Ave., Edmonton,  
Alberta, T5V 0C3;

and

**J. ALBERT MONDOR**, the Cash Store Financial  
Services inc., 15511-123 Ave., Edmonton,  
Alberta, T5V 0C3;

and

**RON CHICOYNE**,  
the Cash Store Financial Services inc., 15511-  
123 Ave., Edmonton, Alberta, T5V 0C3;

and

**MICHAEL M. SHAW**, the Cash Store Financial  
Services inc., 15511-123 Ave., Edmonton,  
Alberta, T5V 0C3;

Respondents

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**MOTION FOR LEAVE TO PLEAD THE CAUSE OF ACTION CONTAINED IN  
TITLE VIII, CHAPTER II, DIVISION II OF THE QUÉBEC SECURITIES ACT  
("QSA") AND TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND  
TO OBTAIN THE STATUS OF REPRESENTATIVE  
(Article 1002 C.C.P. and following and 225.4 QSA and following)**

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**TO ONE OF THE HONOURABLE JUSTICES OF THE QUÉBEC SUPERIOR  
COURT, SITTING IN AND FOR THE DISTRICT OF QUÉBEC,  
PETITIONERS STATE AS FOLLOWS:**

**I. General presentation**

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
  - a. **"Acquisition"** means the acquisition of the consumer loan portfolio by Cash Store from third party lenders on January 31, 2012;
  - b. **"AIF"** means Annual Information Form
  - c. **"ASA"** means the *Securities Act* (Alberta), RSA 2000, c S-4, as amended;
  - d. **"Bland"** means the Respondent, Nancy Bland;
  - e. **"Cash Store"** means the Respondent, The Cash Store Financial Services Inc.;
  - f. **"CEO"** means Chief Executive Officer;

- g. **"CFO"** means Chief Financial Officer;
- h. **"Chicoyne"** means the Respondent, Ron Chicoyne;
- i. **"Class"** and **"Class Members"** mean all persons and entities, wherever they may reside or be domiciled, who acquired Cash Store's Securities during the Class Period;
- j. **"Class Period"** means the time between November 24, 2010 up to and including May 24, 2013;
- k. **"Common Shares"** means Cash Store's common shares;
- l. **"CPA"** means the Alberta *Class Proceedings Act*, SA 2003, c C-16.5, as amended;
- m. **"Respondents"** means Cash Store and the Individual Respondents, collectively;
- n. **"EDGAR"** means the Electronic Data-Gathering, Analysis, and Retrieval system of the **SEC**;
- o. **"Excluded Persons"** means the Respondents, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is an immediate member of the family of an Individual Respondent;
- p. **"GAAP"** means Generally Accepted Accounting Principles;
- q. **"Impugned Documents"** (each being an **Impugned Document**) means, collectively,
  - i. The annual audited consolidated financial statements for the fifteen months ended September 30, 2010, and for the year ended June 30, 2009, filed on SEDAR on November 24, 2010 (the **"FY 2010 Financial Statements"**);
  - ii. The **MD&A** for the three and fifteen months ended September 30, 2010, filed on SEDAR on November 24, 2010 (the **"FY 2010 MD&A"**);
  - iii. The **AIF** for the fifteen months ended September 30, 2010, filed on SEDAR on November 24, 2010 (the **"2010 AIF"**);

- iv. The interim consolidated financial statements for the three months ended December 31, 2010, filed on SEDAR on January 26, 2011 (the "**December 2010 Financial Statements**");
- v. The **MD&A** for the three months ended December 31, 2010, filed on SEDAR on January 26, 2011 (the "**December 2010 MD&A**")
- vi. The interim consolidated financial statements for the three and six months ended March 31, 2011, filed on SEDAR on April 27, 2011 (the "**March 2011 Financial Statements**")
- vii. The **MD&A** for the three and six months ended March 31, 2011, filed on SEDAR on April 27, 2011 (the "**March 2011 MD&A**");
- viii. The interim consolidated financial statements for the three and nine months ended June 30, 2011, filed on SEDAR on July 27, 2011 (the "**June 2011 Financial Statements**");
- ix. The **MD&A** for the three and nine months ended June 30, 2011, filed on SEDAR on July 27, 2011 (the "**June 2011 MD&A**");
- x. The annual audited consolidated financial statements for the twelve and fifteen months ended September 30, 2011 and September 30, 2010, filed on SEDAR on November 16, 2011 (the "**FY 2011 Financial Statements**");
- xi. The **MD&A** for the three and twelve months ended September 30, 2011, filed on SEDAR on November 16, 2011 (the "**FY 2011 MD&A**");
- xii. The **AIF** for the year ended September 30, 2011, filed on SEDAR on November 16, 2011 (the "**FY 2011 AIF**");
- xiii. the **Offering Memorandum**;
- xiv. the interim consolidated financial statements for the three months ended December 31, 2011, filed on SEDAR on February 8, 2012 (the "**December 2011 Financial Statements**");
- xv. the **MD&A** for the three months ended December 31, 2011, filed on SEDAR on February 8, 2012 (the "**December 2011 MD&A**");

- xvi. the interim consolidated financial statements for the three and six months ended March 31, 2012 filed on SEDAR on May 10, 2012 (the "**March 2012 Financial Statements**");
  - xvii. the **MD&A** for the three and six months ended March 31, 2012 filed on SEDAR on May 10, 2012, and the **MD&A** (Amended) for the three and six months ended March 31, 2012, filed on SEDAR on May 11, 2012 (collectively, the "**March 2012 MD&A**");
  - xviii. the interim consolidated financial statements for the three and nine months ended June 30, 2012 filed on SEDAR on August 13, 2012 (the "**June 2012 Financial Statements**");
  - xix. the **MD&A** for the three and nine months ended June 30, 2012 filed on SEDAR on August 13, 2012 (the "**June 2012 MD&A**");
  - xx. the annual audited consolidated financial statements for the years ended September 30, 2012 and September 30, 2011, filed on SEDAR on December 28, 2012 (the "**FY 2012 Financial Statements**");
  - xxi. the **MD&A** for the three months and year ended September 30, 2012, filed on SEDAR on December 28, 2012 (the "**FY 2012 MD&A**");
  - xxii. the **AIF** for the year ended September 30, 2012, filed on SEDAR on December 28, 2012 (the "**2012 AIF**");
  - xxiii. the interim consolidated financial statements for the three months ended December 31, 2012, filed on SEDAR on February 6, 2013 (the "**December 2012 Financial Statements**"); and
  - xxiv. the **MD&A** for the three months ended December 31, 2012, filed on SEDAR on February 6, 2013 (the "**December 2012 MD&A**");
- r. "**Individual Respondents**" means Bland, Reykdal, Warnock, Mondor, Chicoyne and Shaw, collectively;
  - s. "**MD&A**" means Management's Discussion and Analysis;
  - t. "**Mondor**" means the Respondent, J. Albert Mondor;
  - u. "**NYSE**" means the New York Stock Exchange;
  - v. "**OBCA**" means the *Business Corporations Act* (Ontario), RSO 1990, c B 16, as amended;

- w. **"Offering"** means the private placement in Canada of the Secured Notes by way of the **Offering Memorandum**, which closed on January 31, 2012;
- x. **"Offering Memorandum"** means the Offering Memorandum issued on or about January 24, 2012, by way of which Cash Store issued and distributed \$132,500,000 aggregate principal amount of the Secured Notes;
- y. **"Plaintiff"** means the plaintiffs, Marianne Dessis and Jean-Jacques Fournier;
- z. **"Representation"** means the statement, express or implied, that Cash Store's financial statements were prepared in accordance with GAAP and fairly presented in all material respects the financial condition, results of operations and cash flows of Cash Store;
- aa. **"Reykdal"** means the Respondent, Gordon J. Reykdal;
- bb. **"SEC"** means the United States Securities and Exchange Commission;
- cc. **"Secondary Market Impugned Documents"** means all Impugned Documents other than the Offering Memorandum;
- dd. **"Secured Notes"** means Cash Store's 11.5% Senior Secured Notes due January 31, 2017;
- ee. **"Securities"** means Cash Store's Common Shares and Secured Notes;
- ff. **"Securities Legislation"** means, collectively, the *ASA*, the *Securities Act*, RSO 1900, c S.5, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- gg. **"SEDAR"** means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators;
- hh. **"Shaw"** means the Respondent, Michael M. Shaw;
- ii. **"TSX"** means the Toronto Stock Exchange; and

- jj. **“Warnock”** means the Respondent, Craig Warnock.
2. Petitioners wish to institute a class action on behalf of the following group, of which they are members:

“All persons and entities, who is a resident of Québec, who purchased or otherwise acquired Cash Store’ Securities between November 24, 2010 up to and including May 24, 2013, other than the Excluded Persons.”

or such other group definition as may be approved by the Court.

## **II. THE PARTIES**

### **II.1 The Respondents**

3. Cash Store is a company incorporated under the *OBCA* with its head office in Edmonton, Alberta. Its primary business is acting as a lender and broker of short-term loans. Cash Store purports to prepare financial statements in accordance with GAAP.<sup>1</sup>
4. At all material times, Cash Store was a reporting issuer in Alberta, British Columbia, and Ontario, and a registrant with the SEC. At all material times, Cash Store’s Common Shares were listed for trading on the TSX under the ticker symbol “CSF,” and on the NYSE under the ticker symbol “CSFS.” Cash Store’s Common Shares also traded on alternative trading venues in Canada and the United States.
5. At all material times, Cash Store’s Secured Notes traded in the secondary market.
6. As a reporting issuer in Alberta, Cash Store was required to issue and file with SEDAR:
- a) Within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with GAAP that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;

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<sup>1</sup> Cash Store historically prepared its financial statements in accordance with Canadian GAAP and also provided reconciliation to U.S. GAAP of its financial statements. Cash Store adopted U.S. GAAP in or about February 2012, when it reported the financial results for the three months ended December 31, 2011. As the context requires, references to GAAP in this Statement of Claim are to either of Canadian GAAP or US GAAP.

- b) Within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with GAAP, including comparative financial statements relating to the period covered by the preceding financial year;
  - c) Contemporaneously with each of the above, an MD&A of each of the above financial statements; and
  - d) Within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development.
7. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future.
  8. AIFs are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.
  9. Reykdal is a founder of Cash Store. At all material times he was Cash Store's CEO, director and Chairman of the Board, and was an officer and director of Cash Store within the meaning of the Securities Legislation.
  10. Bland was Cash Store's CFO from September 2007 to July 1, 2012. Bland is a Chartered Accountant and a certified Internal Auditor. At all relevant times, Bland was an officer of Cash Store within the meaning of the Securities Legislation.
  11. Warnock was appointed Cash Store's CFO effective July 1, 2012, and continues to hold that position. At all relevant times, Warnock was an officer of Cash Store within the meaning of the Securities Legislation.
  12. At all material times since April 2008, Mondor was, and continues to be, Cash Store's director within the meaning of the Securities Legislation. At all material times, Mondor was Cash Store's Lead Director and Chair of the company's audit committee.
  13. As Cash Store's Lead Director, Mondor was responsible for assisting the Board in effectively discharging its duties, responsibilities and obligations



and to be satisfied that the Board functions independently from the management in accordance with Cash Store's written charter for Lead Director.

14. At all material times since October 2008, Chicoyne was, and continues to be, Cash Store's director within the meaning of the Securities Legislation. At all material times, Chicoyne was a member of the company's audit committee.
15. At all material times since October 2009, Shaw was, and continues to be, Cash Store's director within the meaning of the Securities Legislation. At all material times, Shaw was a member of the company's audit committee.
16. In accordance with Cash Store's written Audit Committee Charter, Mondor, Chicoyne and Shaw were responsible for assisting the Board in fulfilling its responsibilities relating to Cash Store's corporate accounting and reporting practices. Among other responsibilities, they were responsible for ensuring that management had established appropriate processes for monitoring Cash Store's systems and procedures for financial reporting and controls, reviewing all financial information in disclosure documents, as well as reviewing Cash Store's quarterly and annual financial reports prior to approval by the Board and release to the public.

## **II.2 The Petitioners**

17. The Petitioner Marianne Dessis is an individual resident of Québec, who purchased Cash Store's Securities during the Class Period, according to the document filed in support of this motion, as Exhibit **R-1**.
18. The Petitioner Jean-Jacques Fournier is an individual resident of Québec, who purchased Cash Store's Securities during the Class Period, according to the document filed in support of this motion, as Exhibit **R-2**.

## **III. THE FACTS**

### **III.1 Cash Store's Business**

19. Cash Store provides short-term advances and other financial services in Canada under its "Cash Store Financial" and "Instaloans" banners.
20. Prior to 2012, Cash Store acted primarily as a broker of short-term advances between its customers and third-party lenders. Cash Store did not finance the loans and, as a result, the loan portfolio it serviced was not reflected on its balance sheet.

21. In January 2012, Cash Store announced that it intended to undertake a transition from the traditional broker model to a direct lending model. Cash Store contended that the new business model would significantly reduce its effective cost of capital by bringing the loan financing business onto the company's balance sheet. In connection with this transition, Cash Store acquired a consumer loan portfolio owned by its purportedly independent third-party lenders (the Acquisition), which was financed by way of an offering of Cash Store's Secured Notes that was undertaken concurrently with the Acquisition in late-January 2012. Filed in support of this motion, as Exhibit **R-3**, is a copy of the January 24, 2012 press release issued by Cash Store.

### **III.2 Business model, Business Transition and Indisclosed Related Party Dealings**

#### ***Cash Store made "Retention Payments" to undisclosed related third-party lenders***

22. In Cash Store's traditional broker model, most funding of short-term advances were provided to Cash Store's customers by purportedly independent third-party lenders. As Cash Store's business was perceived to be dependent on such third-party lenders' advances to the company's customers, Cash Store made regular Retention Payments as consideration to those third-party lenders who continued to be willing to fund advances to Cash Store's customers.
23. Cash Store made the Retention Payments "voluntarily", and with the approval of Cash Store's Board of Directors, to third-party lenders that Cash Store repeatedly characterized as "independent". For example, the FY 2010 MD&A explained the Retention Payments as follows:

Most funding of short-term advances is currently provided by **independent** third party lenders. As a result, our business is highly dependent on third party lenders who are willing to make significant funds available for lending to our customers. There are no assurances that the existing or new third party lenders will continue to make funds available. Any reduction or withdrawal of funds could have a significant material adverse impact on our results of operations and financial condition.

[...]

Our Board of Directors regularly approves a resolution which authorizes us to pay a maximum amount of retention payments per quarter to third party lenders

as consideration to those lenders who continue to be willing to fund advances to our customers. **While the third party lenders have not been guaranteed a return, the decision has been made to voluntarily make retention payments to the lenders to deflect the impact of the loan losses they experienced.** Retention payments are recorded in the period in which a commitment is made to a lender pursuant to the resolution approved by the Board of Directors. **[Emphasis added]**

24. During the relevant periods, Cash Store made Retention Payments to third-party lenders in the amounts set out below:

Fifteen Months Ended September 30, 2010:	\$28.17 million
Twelve Months Ended September 30, 2011:	\$26.79 million
Twelve Months Ended September 30, 2012:	\$10 million
Six Months Ended March 31, 2013:	\$3.43 million
<b>TOTAL:</b>	<b>\$68.39 million</b>

25. As Cash Store was later forced to reveal, some or all of the third-party lenders to whom those Retention Payments were made were in fact controlled by or connected to Cash Store’s directors and officers.

***The Acquisition***

26. On January 12, 2012, Cash Store issued a press release announcing its intention to offer \$132.5 million principal aggregate amount of the Secured Notes in the Offering. The Offering was undertaken principally to finance the purchase of the consumer loan portfolio from Cash Store’s third-party lenders.
27. On or about January 24, 2012, Cash Store issued the Offering Memorandum. The Offering Memorandum contained detailed information about Cash Store’s history, business model, and its transition to the direct lending model. It also included information regarding the use of proceeds from the offering, namely to finance the Acquisition. In pertinent parts, the Offering Memorandum stated:

***Accelerate Direct Lending Model.*** We currently act primarily as a broker of short-term advances between our customers and third-party lenders, the effect of which is that the loan portfolio we service is

not financed on our balance sheet. With the implementation of regulations across Canada substantially reducing the potential risk of legal challenges, we will transition approximately 92% of our short-term lending business in Canada away from the current broker model to one of direct lending, essentially bringing the loan financing business onto our balance sheet (see "Use of Proceeds"). This will significantly reduce our effective cost of capital, which during the year ended September 30, 2011 was 19.0% with our third-party lenders. The return component of payments to our third-party lenders in the Regulated Provinces, which equaled \$21.3 million during the year ended September 30, 2011, will be eliminated with the proceeds of this Offering, thus decreasing our effective cost of capital. We intend to continue utilizing third-party lenders for loans originated in unregulated areas.

#### USE OF PROCEEDS

We estimate that our net proceeds from the offering, after deducting fees payable to the initial purchasers and expenses of this offering, will be approximately \$119.4 million. We intend to use the proceeds of the offering to accelerate the transition of our business to a direct lending model by purchasing loans receivable from the third-party lenders who currently lend to our customers in the Regulated Provinces, for general corporate purpose, and for the fees and expenses associated with this offering.

The following table sets forth our estimated sources and uses of funds related to the offering. The actual amounts of such sources and uses may differ on the actual closing date of the offering.

Sources of Funds		Uses of Funds	
New Revolving Credit Facility	\$ ----	Purchase of loans receivable	\$ 116,000
Senior Secured Notes offered hereby	\$125,356	General Corporate Purposes	\$3,356
		Fees and Expenses	\$6,000
<b>Total sources of funds</b>	<b>\$125,356</b>	<b>Total uses of funds</b>	<b>\$125,356</b>

28. The Offering Memorandum continued to falsely represent that Retention Payments were being made to “independent” third-party lenders. The Offering Memorandum also falsely represented that the \$116 million consumer loan portfolio would be purchased from these “independent” third-party lenders.
29. On January 31, 2012, Cash Store issued a press release announcing that it had contemporaneously closed the offering of the Secured Notes and completed the Acquisition.

***Cash Store misrepresents the value of the loan portfolio and incorrectly accounts for losses on consumer loans***

30. The Offering Memorandum represented that the value of the consumer loan portfolio that would be purchased in the Acquisition was \$116 million. The value of that portfolio had apparently increased over the past year-and-a-half, as the Offering Memorandum stated that “the balance of the third-party lenders’ loan portfolio [...] totaled approximately \$105 million as of September 30, 2011 (September 30, 2010—\$109 million).”
31. These statements falsely represented that the value of the loan receivable being acquired through the Acquisition was substantially greater than its true value, which was later revealed to be, at most, \$50 million.
32. On May 10 and 11, 2012, Cash Store filed its March 2012 Financial Statements and MD&A. The financial statements set out the total cash consideration paid to Cash Store’s third-party lenders for the Acquisition as well as the various “intangible assets” acquired:

Consumer loan portfolio	\$80,334
Non-compete agreement	\$18,998
Favourable supplier relationships	\$17,369
Proprietary knowledge	\$2,714
<b>Total acquired assets</b>	<b>\$119,415</b>
Deferred tax liability	\$3,081
<b>Total purchase price</b>	<b>\$116,334</b>

33. The March 2012 Financial Statements and MD&A incorporated the value of the various assets noted, including on the balance sheet where Cash Store

recorded \$77.2 million in consumer loans receivable. They also recorded a provision for consumer loan losses of \$7.4 million.

34. On August 13, 2012, Cash Store filed its June 2012 Financial Statements and MD&A. Therein, Cash Store reduced the fair value of the consumer loan portfolio acquired in the Acquisition, and re-allocated the consideration paid in the Acquisition as follows:

Consumer loan portfolio	\$70,334
Non-compete agreement	\$24,274
Favourable supplier relationships	\$22,193
Proprietary knowledge	\$3,469
<b>Total acquired assets</b>	<b>\$120,270</b>
Deferred tax liability	\$3,936
<b>Total purchase price</b>	<b>\$116,334</b>

35. At Note 3 to the June 2012 Financial Statements, Cash Store provided its explanation for the reduced value of the consumer loan portfolio:

During the course of preparing its financial statements for the quarter ended June 30, 2012, the Company noted that the values assigned to the consumer loan portfolio and related intangible assets acquired in connection with the acquisition of the loans receivable from its third-party lending group were incorrect. The Company has corrected the values assigned to the consumer loan portfolio and related intangible assets in the current quarter.

36. The June 2012 Financial Statements and MD&A incorporated the value of the various assets noted, including on the balance sheet where Cash Store recorded \$73 million in consumer loans receivable. They also recorded a provision for consumer loan losses of \$6.4 million. Filed in support of this motion, as Exhibit **R-4**, are copies of Cash Store's June 2012 Financial Statement and MD&A.
37. However, the true value of the consumer loan portfolio was not \$116 million, \$80 million, or \$70 million, but rather, at most, \$50 million. In addition, Cash Store's provision for consumer loan losses in the March 2012 and June 2012 Financial Statements were understated by \$3.3 million and \$3.7 million, respectively.

### III.3 The Truth is Revealed

#### ***Cash Store discloses materially weak and ineffective internal controls***

38. The truth about Cash Store's business and affairs first began to trickle out on December 10, 2012. However, it was not until May 24, 2013, that Cash Store made full disclosure of the problems that plagued the company's financial reporting.
39. The misrepresentations in Cash Store's disclosures were a result of materially weak and ineffective internal controls over financial reporting dating back over three years to the period covered by the FY 2010 Financial Statements. Despite this, Cash Store constantly represented that it had effective internal controls throughout the Class Period.
40. Cash Store was first forced to disclose its internal control weaknesses on December 10, 2012, when the company issued a press release a copy of this document is filed in support of this motion as Exhibit **R-5** admitting that it had paid a \$36.8 million premium in the Acquisition, and had understated its provision for consumer loan losses in its March 2012 and June 2012 Financial Statements. On December 28, 2012, Cash Store particularized its internal control weaknesses in its restated March 2012 and June 2012 MD&A as follows:
  - 1) Management did not maintain effective processes and controls specific to accounting for the January 31, 2012 acquisition of the portfolio of consumer loans. Management did not effectively research, develop, communicate and implement an accounting policy with respect to this non-recurring transaction. In addition, management did not implement sufficient preventative and detective controls governing the determination of the key valuation assumptions associated with the assets acquired and allocation of the purchase price.
  - 2) Management did not maintain effective processes and controls specific to the determination of the provision for loan losses. Senior finance personnel did not effectively communicate with operations to obtain a sufficient understanding in making the determination of the provision for loan losses. This material weakness resulted in material errors in the unaudited interim financial statements. Further, there is a reasonable possibility that a

material misstatement of the financial statements will not be prevented or detected on a timely basis.

41. The December 28, 2012 disclosures, however, only admitted to internal control weaknesses relating to the periods covered by the March 2012 and June 2012 Financial Statements.
42. It was not until a press release was issued on May 13, 2013, disclosing accounting errors relating to its own class action lawsuit settlement accrual, that Cash Store briefly indicated that "the Company has re-evaluated its conclusions regarding the effectiveness of its internal control over financial reporting for the affected periods and determined that a material weakness existed." As a result, each of Cash Store's disclosure documents going back to the FY 2010 Financial Statement had been affected. Filed in support of this motion, as Exhibit **R-6**, is a copy of the May 13, 2013 press release.
43. However, the particulars of those additional internal controls weaknesses were not revealed until May 24, 2013, when the company filed its further restatements. On that date, Cash Store finally revealed that the internal control weaknesses were related not just to the incorrect accounting for the settlement accrual, but also to the failure to disclose the Retention Payments being paid to related parties. The auditor's report attached to the restated FY 2011 Financial Statements described the internal control weaknesses, which plagued each of the Impugned Documents, as follows:

Management has identified two material weaknesses: 1) management did not design and implement effective [Internal Controls over Financial Reporting] related to the identification, assessment and disclosure or related parties and related party disclosures, and 2) management determined that the Company did not design and implement effective [Internal Controls over Financial Reporting] related to the review and interpretation of complex legal agreements.

Filed in support of this motion, as Exhibit **R-7**, is a copy of the May 24, 2013 press release.

44. As such, it was only on May 24, 2013 that Cash Store disclosed that its internal controls over financial reporting were ineffective at all times during the Class Period. These material weaknesses had significant effects and led to the restatements on December 28, 2012, and further



restatements on May 24, 2013, relating to a host of issues discussed below.

***Restatements of the March 2012 and June 2012 Financial Statements and MD&A relating to the Acquisition and provisions for loan losses***

The Nature of the Restatements

45. The December 10, 2012 press release discussed above disclosed that, as a result of improper valuation and accounting of the Acquisition assets, its March 2012 and June 2012 Financial Statements had not been prepared in accordance with GAAP and would require restatements (the "December Restatements"). Additionally, Cash Store disclosed that those financial statements had significantly understated Cash Store's provision for consumer loan losses:

During the preparation of the September 30, 2012 annual consolidated financial statements the Company determined that approximately \$36.8 million of the total consideration paid to acquire the portfolio of loans represented a premium paid on acquisition. The pre-existing contractual broker arrangements between the Company and the third-party lenders did not obligate the Company to pay retention payments, compensate for loan losses without cause or provide a guaranteed rate of return on the pool of funds advanced. However, the compensation paid to the third party lenders as part of the transaction recognized the loss of future retention payments and the ability to earn future returns on capital under the existing broker contracts. In accordance with U.S. GAAP, the Company has determined that the premium of \$36.8 million should have been recognized as an expense as a settlement of pre-existing business relationships with third-party lenders. The Company will restate the fair value of the loans receivable acquired to \$50.0 million and the fair value of intangible assets acquired to \$32.0 million with a corresponding deferred tax liability of \$2.5 million. The Company will also adjust the interim financial statements for the periods ended March 31, 2012 and June 30, 2012 for any corresponding impact that these restatements have on other financial statement line items.

Of the \$50 million of loans receivable acquired on January 31, 2012 the Company has collected a net amount of \$43.5 million to September 30, 2012, of which \$5.0 million (three months ended September 30, 2012 - \$1.8 million) represents late interest and default fees from the acquired loans. These amounts collected on the acquired portfolio were entirely applied to reduce the value of the acquired loans receivable on the balance sheet as at September 30, 2012 in accordance with U.S. GAAP.

[...]

In addition, the Company determined that its provision for loan losses on internally generated loans was understated. As a result, the Company will record an additional expense of \$3.3 million and \$3.7 million for the three month periods ended March 31, 2012 and June 30, 2012, respectively.

46. Cash Store re-allocated the Acquisition consideration in the December Restatements as follows:

Consumer loan portfolio	\$50,014
Non-compete agreement	\$15,524
Favourable supplier relationships	\$14,220
Proprietary knowledge	\$2,280
Premium paid to acquire the loan portfolio	\$36,820
Deferred tax liability	(\$2,524)
<b>Total purchase price</b>	<b>\$116,334</b>

47. The December Restatements thus disclosed, for the first time, that i) the value of the consumer loan portfolio was at most \$50 million, or 43% of the price paid for it; ii) that \$66 million was paid for "intangible assets"; and iii) the payment included a \$36.8 million premium.
48. The December Restatements had the following effect on the following items in the March 2012 and June 2012 Financial Statements and MD&As, among other items:

Item	March 2012 Financial Statements (6 months)		June 2012 Financial Statements (9 months)	
	Original	Restated	Original	Restated
Revenue	\$90 million	\$88 million	\$138.3 million	\$136.6 million
Provision for loan losses	\$8.2 million	\$11.5 million	\$14.6 million	\$21.6 million
Operating expenses	\$80.9 million	\$83.7 million	\$118.15 million	\$124.2 million
Operating margin	\$9.1 million	\$4.2 million	\$20.2 million	\$12.5 million
Premium paid to acquire the loan portfolio	Nil	\$36.8 million	Nil	\$36.8 million
Net income (loss)	(\$10.5 million)	(\$40 million)	(\$11.4 million)	(\$43.5 million)
Earnings (loss) per share	(\$0.54)	(\$2.29)	(\$0.65)	(\$2.49)
Consumer loan receivables	\$77.2 million	\$42.5 million	\$73 million	\$45.5 million
Assets	\$242.6 million	\$215.6 million	\$255.8 million	\$225.5 million

#### The Acquisition was a Related Party Transaction

49. The December Restatements made the following disclosure:

Subsequent to September 30, 2012, the Company's Audit Committee was made aware of written communications that contained questions about the acquisition of the consumer loan portfolio from third-party lenders in late January 2012 and included allegations regarding the existence of undisclosed related party transactions in connection with the acquisition. In response to this allegation and following some preliminary fact-finding performed by Company's internal auditor, legal counsel to a Special Committee of the Board has retained an independent accounting firm to conduct a special investigation. As of the release date of these financial statements, the scope of the investigation has been determined by the independent accounting firm and the Special Committee. However, the investigation has not yet commenced and the findings, if any, are not yet

known. The investigation may have an impact on the accounting for the loan acquisition transaction and/or on the accounting for, and disclosure of, any related party transactions; however, the Company does not believe that the outcome of the special investigation will impact the current accounting and disclosure in these financial statements.

50. While Cash Store claimed that the “findings, if any, are not yet known,” the December Restatements did in fact shed light on the related party nature of the Acquisition. The restatements disclosed, for the first time, that the purportedly “independent” third-party lenders to whom Retention Payments had been paid, and who had benefitted from a \$36.8 million windfall in connection with the Acquisition, were controlled and/or managed by immediate family members of Cash Store’s officers or directors.
51. A privately held entity that acted as a third-party lender was controlled by an immediate family member of Cameron Schiffner, Reykdal’s son-in-law and a Senior Divisional Vice President of Cash Store (the “Schiffner Lender”). In addition, a separate individual within Cameron Schiffner’s immediate family, identified only as Individual “A,” was a member of management of Cash Store’s Australian affiliate (“AUC”) and a member of management of the Schiffner Lender. The Schiffner Lender had received \$45.52 million of the \$116 million paid by Cash Store in connection with the Acquisition, and had received almost \$4 million in Retention Payments in the nine months ended June 30, 2012. It was in fact Individual “A” who actually signed the Acquisition agreement on behalf of the Schiffner Lender.
52. It was not until February 6, 2013, when Cash Store filed its December 2012 Financial Statements and MD&A, that Cash Store disclosed the precise relationship of these individuals to Cameron Schiffner. The individual that controlled the Schiffner Lender was Cameron Schiffner’s father, and Individual “A” was Cameron Schiffner’s brother. The Schiffner Lender continues to receive Retention Payments from Cash Store.
53. The December Restatements also disclosed that another third-party lender which received \$23.9 million in connection with the Acquisition received payments by an immediate family member of Michael Shaw, a Director of Cash Store, as well as by Bruce Hull, a director of AUC (the “Shaw Lender”). The Shaw Lender received \$1.377 million in Retention Payments for the nine months ended June 30, 2012. A further third-party lender controlled by Bruce Hull also received Retention Payments.

54. Finally, on May 15, 2013, Cash Store issued a press release announcing the completion of its special investigation. The press release disclosed no details of the findings of the Special Committee, apart from simply stating that no further corrections or restatements of previously reported financial statements and other public disclosure are required in relation to the Acquisition.

***Cash Store issues restatements dating back to the FY 2010 Financial Statements and MD&A to disclose related party transactions and incorrect accruals of its own class action settlement***

55. On May 13, 2013, Cash Store disclosed by way of a press release that it had understated expenses resulting from its accrual for a British Columbia class action settlement by \$8.2 million (the "Settlement Accrual").
56. As a result, Cash Store was required to restate the FY 2010, FY 2011, and FY 2012 Financial Statements and MD&A, as well as the December 2011, March 2012, June 2012, and December 2012 Financial Statements and MD&A (the "May Restatements"). Cash Store further disclosed that those financial statements and MD&As should not be relied upon.
57. The corrections to those financial statements was expected to reflect Cash Store's maximum exposure of \$18.8 million being expensed, comprised of:
- approximately \$6.2 million in cash, which was paid to the Settlement Administrator in 2011, approximately \$6.2 million in credit vouchers, and \$6.4 million in legal fees, which was paid to the plaintiff's counsel in 2010.
58. On May 24, 2013, Cash Store filed the May Restatements to correct the errors caused by the improper accounting for the Settlement Accrual, and disclosed that Cash Store's improper accounting practices and incorrect financial reporting were due to Cash Store's ineffective internal controls throughout the entire period.
59. In addition to the correction of the settlement accrual error, the FY 2010, FY 2011, and December 2011 Financial Statements and MD&As were restated to disclose related-party transactions in connection with Retention Payments.

***Impact of the corrective disclosures on the value of Cash Store's Securities***

60. After Cash Store's ineffective internal controls and improper accounting practices were first disclosed on December 10, 2012, the market price of Cash Store's Common Shares plummeted by approximately 21%, from

- \$4.26 as at the end of trading on December 7 to \$3.35 as at the end of trading on December 10, 2012.
61. Cash Store's Secured Notes suffered a similar decline in their market value, as their market price plummeted from \$97.19 as at December 10, 2012 to a post-disclosure average 10-day price of approximately \$75.25.
  62. On May 13, 2013, Cash Store disclosed that further restatements would be forthcoming due to further internal control weaknesses and accounting errors. But the true nature and implications of those further corrective disclosures were not made public until May 24, 2013, when Cash Store filed May Restatements.
  63. However, before the market had an opportunity to receive and absorb the information about Cash Store's further internal control weaknesses and improper accounting practices, trading in Cash Store's Securities was halted by an order of the Alberta Securities Commission issued on May 14, 2013. The British Columbia Securities Commission and the Ontario Securities Commission issued similar order on May 16, 2013 and May 21, 2013, respectively (collectively, the "Cease Trade Orders").
  64. The Cease Trade Orders were revoked by the various securities commissions on May 31, 2013. Filed in support of this motion, as Exhibit **R-8**, is a copy of the May 31, 2013 press release.

#### **IV. THE MISREPRESENTATIONS**

65. The Impugned Documents contained the following misrepresentations:
  - (a) Misrepresentations relating to internal controls over financial reporting;
  - (b) Misrepresentations relating to undisclosed related-party transactions;
  - (c) Misrepresentations relating to the value of the consumer loan portfolio;
  - (d) Misrepresentations relating to losses on consumer loans;
  - (e) Misrepresentations relating to the Settlement Accrual; and
  - (f) Misrepresentations that Cash Store's financial statements complied with GAAP, and the Representation.

#### **IV.1 Misrepresentations Relating to Internal Controls over Financial Reporting**

66. Throughout the Class Period, the Respondents misrepresented that Cash Store's internal controls over financial reporting were effective, and that they provided reasonable assurance that Cash Store's financial statements were accurate and reliable.

67. The FY 2010, FY 2011, and FY 2012 Financial Statements contained a statement as follows, or one substantially similar:

The Cash Store Financial Services Inc. maintains a system of internal controls to provide reasonable assurance that transactions are properly authorized, financial records are accurate and reliable and the Company's assets are properly accounted for and adequately safeguarded.

68. Cash Store's FY 2011 Financial Statements contained the following statement from the company's external auditors, which was attached to and incorporated into the Offering Memorandum:

In our opinion, The Cash Store Financial Services Inc. maintained, in all material respects, effective internal control over financial reporting as of September 30, 2011, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

69. The FY 2010, and FY 2011 MD&As contained a statement as follows, or statements substantially similar, among others:

[...] the CEO and CFO have concluded that the Company's disclosure controls and procedures and internal control over financial reporting were effective as at [the end of the reporting period].

70. The FY 2012 MD&A failed to disclose the extent of the internal control weaknesses described herein.

71. Each of the Impugned Documents that is an AIF failed to disclose that Cash Store suffered from internal control weaknesses.

72. All of Cash Store's MD&As pertaining to the interim financial statements issued during the Class Period contained a statement as follows, or one substantially similar:

Management has evaluated and has not identified any changes in our internal controls over financial reporting during the most recent interim period [...] that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

73. All such statements were false. Cash Store's internal controls were materially weak and ineffective at all material times during the Class Period, and resulted in improper accounting practices in violation of GAAP and false financial reporting throughout the Class Period.
74. To the extent that any of the Impugned Documents did disclose specific internal control weaknesses, they failed to disclose the full extent of the internal control weaknesses.

#### **IV.2 Misrepresentations relating to undisclosed related-party transactions**

75. At all times, the Respondents were required to disclose transactions entered into with related parties. In each of the Impugned Documents, they failed to do so.
76. To the contrary, the Respondents falsely represented in each of the Impugned Documents up to the June 2012 Financial Statements and MD&A that the third-party lenders, to whom Retention Payments were made, were "independent" when in fact they were controlled by or connected to immediate family members of Cash Store's directors or officers as described herein.
77. Similarly, Cash Store failed to disclose in the Offering Memorandum and the March 2012 and June 2012 Financial Statements and MD&A that the Acquisition was a related-party transaction and that the \$116 million consideration was being paid to parties related to Cash Store, instead characterizing such parties as "independent."

#### **IV.3 Misrepresentations Relating to the Value of the Consumer Loan Portfolio**

78. At all relevant times, Cash Store misrepresented the true fair value of the consumer loans portfolio being purchased in the Acquisition, which was, at most, \$50 million and, instead, overstated the value of the consumer loans portfolio.



79. The Offering Memorandum misrepresented that the value of the consumer loans portfolio represented all or nearly all of the \$116 million being paid in connection with the Acquisition. Such misrepresentation was made in the Offering Memorandum by stating that the Acquisition pertained to the balance of the third-party lenders' loan portfolio, which, as of September 30, 2011, was \$105 million.
80. In the alternative, the Offering Memorandum misrepresented the true value of the loan portfolio by stating that the Acquisition price was \$116 million, but omitting to disclose that the true value of the loan portfolio was, at most, \$50 million.
81. Moreover, Cash Store significantly overstated the value of the consumer loan portfolio in the March 2012 and June 2012 Financial Statements and MD&A, as follows:
  - (a) \$80.3 million - in the March 2012 Financial Statements and MD&A; and
  - (b) \$70.3 million - in the June 2012 Financial Statements and MD&A.
82. The incorrect value assigned to the consumer loans portfolio in those Impugned Documents described above resulted in an overstatement of Cash Store's receivables, net income and assets, among other financial items in the March 2012 and June 2012 Financial Statements and MD&As, as particularized herein.

#### **IV.4 Misrepresentations Relating to Losses on Consumer Loans**

83. At all times, Cash Store was required to properly account for losses on consumer loans in its financial statements in accordance with GAAP. Instead, the Respondents understated such amounts in Cash Store's March 2012 and June 2012 Financial Statements and MD&A by \$3.3 million and \$3.7 million, respectively.

#### **IV.5 Misrepresentations Relating to the Settlement Accrual**

84. At all times, Cash Store was required to properly account for accruals relating to the British Columbia class action settlement in its financial statements in accordance with GAAP. Instead, it understated expenses in regard thereto by \$8.2 million throughout the Class Period.
85. This improper accounting practice resulted in restatement of each of the Impugned Documents that was a financial statement or MD&A as particularized herein, and affected Cash Store's expenses and net income, among other items, during the relevant periods. The Offering

Memorandum, which attached and incorporated the FY 2011 Financial Statements, also contained this misrepresentation.

#### **IV.6 Misrepresentations that Cash Store's Financial Statements Complied with GAAP, and the Representation**

86. Each of the Impugned Documents contained the statement that Cash Store's financial statements were prepared in accordance with GAAP, and made the representation, express or implied, that they fairly presented in all material respects the financial condition, results of operations and cash flows of Cash Store.
87. However, due to the misrepresentations particularized above, Cash Store's financial statements were not prepared in accordance with GAAP, and did not fairly present in all material respects the financial condition, results of operations and cash flows of Cash Store. The Representation was accordingly false.

#### **IV.7 Reykdal, Bland and Warnock's False Certifications**

88. Pursuant to National Instrument 52-109, Reykdal, as CEO, and Bland and Warnock, as CFOs were required at the material times to certify Cash Store's financial statements and MD&As.
89. The certifications filed by Reykdal, Bland and Warnock during the Class Period contained statements as follows, or statements substantially similar:

Based on my knowledge, having exercised reasonable diligence, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made.

Based on my knowledge, having exercised reasonable diligence, the interim financial statements together with the other financial information included in the interim filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer.

[T]he issuer's other certifying officer(s) and I have ...

- a) designed [Disclosure Controls and Procedures], or caused it to be designed under our supervision, to provide

reasonable assurance that: (i) material information relating to the issuer is made known to us by others ...; and (ii) information required to be disclosed by the issuer ... is recorded, processed, summarized and reported within the time periods specified in securities legislation; and

b) designed [Internal Controls Over Financial Reporting], or caused it to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the presentation of financial statements for external purposes in accordance with the issuer's GAAP.

90. Due to the misrepresentations particularized herein, the certifications given by the Reykdal, Bland and Warnock during the Class Period were false.

## **V. THE IMPUGNED DOCUMENTS**

91. Each of the Impugned Documents contained one or more of the misrepresentations particularized above, and, as a result, was false and/or materially misleading within the meaning of the Securities Legislation and at civil law.<sup>2</sup>

92. The Offering Memorandum was materially false and misleading because it contained, as particularized above:

- (a) Misrepresentations relating to internal controls over financial reporting;
- (b) Misrepresentations relating to undisclosed related-party transactions;
- (c) Misrepresentations relating to the value of the consumer loan portfolio;

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<sup>2</sup> Each of the Impugned Documents, or their contents, apart from the Offering Memorandum were filed on EDGAR.

- (d) Misrepresentations relating to the Settlement Accrual; and
  - (e) Misrepresentations that Cash Store's financial statements complied with GAAP, and the Representation.
93. The Offering was undertaken primarily to finance the Acquisition, and the consumer loans portfolio represented the only tangible asset that was acquired pursuant to that transaction. Inasmuch as the Offering Memorandum misrepresented or failed to disclose the value of the consumer loan portfolio, that a \$36.8 million premium was being paid for the consumer loan portfolio, the related-party nature of the Acquisition and Retention Payments, and Cash Store's materially weak internal controls in respect of financial reporting, it was materially false and misleading.
94. The March 2012 and June 2012 Financial Statements were materially false and misleading because they contained, as particularized above:
- (a) Misrepresentations relating to undisclosed related-party transactions;
  - (b) Misrepresentations relating to the value of the consumer loan portfolio;
  - (c) Misrepresentations relating to losses on consumer loans;
  - (d) Misrepresentations relating to the Settlement Accrual; and
  - (e) Misrepresentations that Cash Store's financial statements complied with GAAP, and the Representation.
95. The March 2012 and June 2012 MD&As were materially false and misleading because they contained, as particularized above:
- (a) Misrepresentations relating to internal controls over financial reporting;
  - (b) Misrepresentations relating to undisclosed related-party transactions;
  - (c) Misrepresentations relating to the value of the consumer loan portfolio;
  - (d) Misrepresentations relating to the value of the consumer loan portfolio;

- (e) Misrepresentations relating to the Settlement Accrual; and
  - (f) Misrepresentations that Cash Store's financial statements complied with GAAP, and the Representation.
96. All Impugned Documents that are financial statements were materially false and misleading because they contained, as particularized above:
- (a) Misrepresentations relating to undisclosed related-party transactions;
  - (b) Misrepresentations relating to the Settlement Accrual; and
  - (c) Misrepresentations that Cash Store's financial statements complied with GAAP, and the Representation.
97. The FY 2010, FY 2011, and FY 2012 Financial Statements also contained misrepresentations relating to internal controls over financial reporting, as particularized above.
98. All Impugned Documents that are MD&As were materially false and misleading because they contained, as particularized above:
- (a) Misrepresentations relating to internal controls over financial reporting;
  - (b) Misrepresentations relating to undisclosed related-party transactions;
  - (c) Misrepresentations relating to the Settlement Accrual; and
  - (d) Misrepresentations that Cash Store's financial statements complied with GAAP, and the Representation.
99. All Impugned Documents that are AIFs were materially false and misleading because they contained, as particularized above:
- (a) Misrepresentations relating to internal controls over financial reporting;
  - (b) Misrepresentations relating to undisclosed related-party transactions; and
100. Misrepresentations that Cash Store's financial statements complied with GAAP, and the Representation.

## **VI. RIGHTS OF ACTION**

### **VI.1 *Statutory Liability for Misrepresentations in an Offering Memorandum***

101. As against Cash Store, Reykdal, Mondor, Chicoyne and Shaw, and on behalf of those Class Members who acquired the Secured Notes in the Offering, the Plaintiff asserts the right of action found in Title VIII, chapter II, division I, article 217 of the *QSA* and, if necessary, the equivalent provisions of the other Securities Legislation.
102. Those Respondents issued or caused to be issued the Offering Memorandum while, as particularized above, it contained misrepresentations. The Class Members who acquired the Secured Notes did so while the Offering Memorandum contained the misrepresentations.
103. Cash Store issued the Secured Notes. Reykdal, Mondor, Chicoyne and Shaw were directors of Cash Store as at the date of the Offering Memorandum.
104. The Offering Memorandum contained the following statement with respect to Class Members resident in Alberta, British Columbia, and Quebec:

In consideration of their purchase of Notes and upon accepting a purchase confirmation in respect thereof, these purchasers are hereby granted a contractual right of action for damages or rescission that is substantially the same as the statutory right of action, if any, provided to residents of Ontario who purchase Notes.

105. The Class Members in Alberta, British Columbia, and Quebec purchased the Secured Notes and accepted a purchase confirmation in respect thereof. By doing so, a contract was formed between those Class Members and Cash Store. The following was a material term of the contract:

If the Offering Memorandum contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation, the following rights:

1. The purchaser has a right of action for damages against the issuer and a selling

security holder on whose behalf the distribution is made.

2. If the purchaser purchased the security from a person or company referred to in paragraph 1, the purchaser may elect to exercise a right of rescission against the person or company. If the purchaser exercises this right, the purchaser ceases to have a right of action for damages against the person or company.

106. The Offering Memorandum contained a misrepresentation when Class Members in Alberta, British Columbia, and Quebec purchased the Secured Notes, and those Class Members have a right of action for damages or rescission against Cash Store.

## **VI.2 Fault in Connection with the Offering**

107. As against each of Cash Store, Reykdal, Bland, Mondor, Chicoyne and Shaw, and on behalf of those Class Members who acquired the Secured Notes in the Offering, the Plaintiff asserts negligence *simpliciter*.
108. Those Respondents issued the Offering Memorandum or caused it to be issued, and caused the Offering to occur while the Offering Memorandum contained misrepresentations.
109. Cash Store and, by virtue of their position of authority and responsibility within Cash Store, Reykdal, Bland, Mondor, Chicoyne and Shaw, owed a duty to ensure that the Offering Memorandum made full, true and plain disclosure of all material facts relating to the Secured Notes offered thereby, including full disclosure of the circumstances relevant to the use of proceeds of the Offering as well as the Acquisition.
110. Furthermore, Reykdal and Bland as Cash Store's CEO and CFO, and Mondor, Chicoyne and Shaw as members of Cash Store's audit committee were specifically responsible for ensuring that the company had reliable accounting systems and effective internal controls. They failed to do so.
111. The reasonable standard of care expected in the circumstances required those Respondents to prevent the Offering from occurring prior to the correction of the misrepresentations. Furthermore, they were responsible for establishing reliable accounting systems and effective internal controls. Those Respondents breached the standard of care, and violated their

duties to those Class Members who purchased the Secured Notes pursuant to the Offering Memorandum.

112. If Cash Store, Reykdal, Bland, Mondor, Chicoyne and Shaw had exercised the duty of care expected from them in the circumstances then the Offering would not have happened. In the alternative, the Offering would have happened at a price that would have reflected the true value of the Secured Notes.
113. As a result of the those Respondents' breach of their duty of care, the Offering took place and the Secured Notes were sold at an inflated price, and those Class Members who purchased the Secured Notes in the Offering suffered damage.

### **VI.3 Statutory Liability for Misrepresentations in the Secondary Market**

114. The Petitioner pleads the claim found in Title VIII, Chapter II, Division II of the *QSA*, and, if required, the equivalent sections of the Securities Legislation other than the *QSA*, against each of the Respondents and on behalf of those Class Members who acquired Cash Store's Common Shares or Secured Notes in the secondary market
115. The Secondary Market Impugned Documents are core documents in respect of each of the Respondents within the meaning of the Securities Legislation.
116. As particularized above, each of the Secondary Market Impugned Documents contained one or more misrepresentations.
117. Cash Store is a responsible issuer within the meaning of the Securities Legislation. It released the Secondary Market Impugned Documents while they contained misrepresentations.
118. At all material times, Reykdal was Cash Store's CEO, director and Chairman of the Board. He certified the accuracy of each of the financial statements and MD&As throughout the Class Period, and authorized, permitted or acquiesced in the release of all Secondary Market Impugned Documents.
119. Bland was Cash Store's CFO up to July 1, 2012. She certified the accuracy of each of the financial statements and MD&As that were released prior to July 1, 2012. She authorized, permitted or acquiesced in the release of all Secondary Market Impugned Documents released prior to July 1, 2012.



120. Warnock was Cash Store's CFO from July 1, 2012. He certified the accuracy of each of the financial statements and MD&As issued after July 1, 2012. He authorized, permitted or acquiesced in the release of all Secondary Market Impugned Documents issued after July 1, 2012.
121. At all material times, each of Mondor, Chicoyne and Shaw were directors of Cash Store.
122. The Individual Respondents authorized, permitted or acquiesced in the making of the misrepresentations in the Secondary Market Impugned Documents particularized herein while knowing that they were misrepresentations.
123. The Class Members that acquired Cash Store's Common Shares or Secured Notes in the secondary market during the Class Period did so while the Secondary Market Impugned Documents contained misrepresentations and before those misrepresentations were publicly corrected.

#### **VI.4 The Respondents violated the Duties owed to the Members of the Class**

124. Cash Store and, by virtue of their position of authority and responsibility within Cash Store, each of the Individual Respondents, owed a duty at law and under provisions of the *QSA* and article 1457 of the *Civil Code of Québec* to ensure that the Impugned Documents made full, true and plain disclosure of all material facts relating to the securities offered thereby, or was materially accurate and complete;
125. In support of these claims, the sole misrepresentation that the Plaintiff pleads is the Representation. The Representation was false when made and constituted a misrepresentation at law and within the meaning of the Securities Legislation.
126. Cash Store filed the Secondary Market Impugned Documents on SEDAR for the benefit of the market and the Class, and communicated those documents to the public. Those documents were also filed on EDGAR.
127. The Respondents had a duty at civil law to exercise care and diligence to not falsely state that the Impugned Documents presented fairly in all material respects Cash Store's financial condition, results of operations and cash flows in compliance with GAAP.

128. In addition, Cash Store is a reporting issuer three Canadian provinces and a registrant with the SEC. As such, at all material times Cash Store was subject to securities law in Canada and the United States.
129. The Respondents had statutory obligations under applicable securities law to ensure that the Impugned Documents represented fairly in all material respects Cash Store's financial condition, results of operations and cash flow in compliance with GAAP. The Respondents breached that duty by falsely certifying the accuracy of the financial statements and their compliance with GAAP, and by making the Representation.
130. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the investing public to purchase Cash Store's Securities. The Respondents knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would rely reasonably and to their detriment upon such documents in making the decision to purchase Cash Store's Securities.
131. The Respondents further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of Cash Store's publicly traded Securities such that the trading price of those Securities would at all times reflect the information contained in the Impugned Documents.
132. Throughout the Class Period, the Respondents had exclusive access to information about Cash Store's financials and operations. As such, they were the primary source of information specifically related to Cash Store's financial condition and results of operations, which was relevant to the Class Members' decision to acquire Cash Store's Securities and the prices at which they would be acquired.
133. As Cash Store's CEO, Reykdal falsely certified the accuracy of each of Cash Store's financial statements and MD&As, and adopted the Representation by certifying the accuracy of those documents. Reykdal authorized, permitted or acquiesced in the release of the Secondary Market Impugned Documents, or caused them to be released.
134. As Cash Store's CFO, Bland falsely certified the accuracy of each of Cash Store's financial statements and MD&As issued prior to July 1, 2012, and adopted the Representation by certifying the accuracy of those documents. Bland authorized, permitted or acquiesced in the release of the Secondary Market Impugned Documents issued prior to July 1, 2012, or caused them to be released.

135. As Cash Store's CFO, Warnock falsely certified the accuracy of each of Cash Store's financial statements and MD&As issued after July 1, 2012, and adopted the Representation by certifying the accuracy of those documents. Warnock authorized, permitted or acquiesced in the release of the Secondary Market Impugned Documents issued after July 1, 2012, or caused them to be released.
136. As Cash Store's CEO and CFOs, Reykdal, Bland and Warnock were specifically responsible for establishing effective internal controls.
137. Mondor, Chicoyne and Shaw were privy to information about Cash Store's ineffective internal controls. In accordance with Cash Store's stated policies and standards, including the Lead Director and Audit Committee Charters, they were specifically responsible for ensuring that Cash Store had established reliable accounting systems and effective internal controls.
138. As such, the Individual Respondents were responsible, by virtue of Cash Store's own stated standards and policies, among other policies and standards, to ensure that the Representation would not be made.

## **VII. DAMAGES**

139. Plaintiffs and Class Members suffered damages as a result of the Respondents' breach of their duties at law by making the misrepresentations particularized herein.
140. Plaintiffs and Class Members suffered damages equivalent to the drop in market price or value of the Common Shares or Secured Notes as the truth about Cash Store's financial condition, financial performance, and the other misrepresentations particularized herein, was disclosed. If the Respondents had not breached their duties and made the misrepresentations described above, Cash Store's Securities would not have traded or been sold at artificially high levels, and the Class Members would not have suffered losses when the truth was partially and belatedly revealed on December 10, 2012.
141. Further disclosures about Cash Store's materially weak and ineffective internal controls were made on May 24, 2013.

### ***Vicarious Liability***

142. In addition to its direct liability, Cash Store is vicariously liable for the acts and/or omissions of each of the Individual Respondents, and of its other officers, directors, partners and/or employees.

### ***The Relationship between Cash Store's Disclosures and the Price of Its Securities***

143. The issuance of the Secondary Market Impugned Documents directly affected the price of Cash Store's Securities. The Respondents were aware at all material times of the effect of Cash Store's disclosure documents upon the price of its Securities. The Secondary Market Impugned Documents were filed, among other places, with SEDAR and the TSX, as well as EDGAR, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.
144. Cash Store routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of its Securities. Cash Store provided either copies of the Secondary Market Impugned Documents or links thereto on its website. Cash Store maintains a website in part to communicate with the Class and prospective investors.
145. Cash Store regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada. Each time Cash Store communicated that new material information about its financial results to the public it directly affected the price of its Securities.
146. Cash Store was the subject of analysts' reports that incorporated certain of the material information contained in the Secondary Market Impugned Documents, with the effect that any recommendations to purchase Cash Store's Securities in such reports were based, in whole or in part, upon that information.
147. Cash Store's Securities were and are traded, among other places, on the TSX and the NYSE, which are efficient and automated markets. The price at which Cash Store's Securities traded promptly incorporated material information from Cash Store's disclosure documents about Cash Store's financials, business and affairs, including the Representation, which was disseminated to the public through the documents referred to above and distributed by Cash Store, as well as by other means.

### **VIII. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

148. The composition of the Class makes the application of article 59 or 67 C.C.P. impracticable for the following reasons:

- (a) The number of persons included in the class is estimated to be several thousand;
  - (b) The names and addresses of persons included in the class are not known to the Petitioner;
  - (c) All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 C.C.P. impossible.
149. The claims of the Class Members raise identical, similar or related questions of fact or law, namely:
- (a) Did the Impugned Documents contain a misrepresentation within the meaning of Title VIII, Chapter II, Division II of the QSA?
  - (b) Did the Respondents Misrepresentations cause the share price of Cash Store's stock to be artificially inflated?
  - (c) Did the Respondents therefore commit a fault towards the Petitioner and the Class Members, thereby engaging their liability?
  - (d) Did the Respondents violate the duties owed to Petitioners and the Class Members under the provisions of Title VIII, Chapter II, Division II of the QSA and article 1457 of the Civil Code of Québec?
  - (e) Did the Respondents therefore commit a fault in regards respectively to Title VIII, Chapter II, Division II of the QSA and article 1457 of the Civil Code of Québec towards Petitioners and the Class Members, thereby engaging its liability?
  - (f) What damages were sustained by Petitioners and the Class Members as a result of the Respondent's faults in regards respectively to Title VIII, Chapter II, Division II of the QSA and article 1457 of the Civil Code of Québec?
150. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions;

## **IX. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

151. The action that the Petitioners wish to institute for the benefit of the Class Members is an action in damages;

152. The conclusions that Petitioners wish to introduce by way of a motion to institute proceedings are:

**GRANT** the Petitioner's action against the Respondent, under the cause of action contained in Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation and under article 1457 of the *Civil Code of Québec*;

**CONDEMN** the Respondents to pay to the Class Members compensatory damages for all monetary losses;

**GRANT** the class action of the Petitioners on behalf of all the Class Members;

**ORDER** collective recovery in accordance with articles 1031 to 1036 C.C.P.;

**THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action.

153. The Petitioners suggests that this class action be exercised before the Superior Court in the District of Québec for the following reasons:

- The Class Members reside everywhere;

154. The Petitioners, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Class Members for the following reasons:

- They understand the nature of the action;
- They are available to dedicate the time necessary for an action to collaborate with Class Members; and
- Their interests are not antagonistic to those of other Class Members.

155. The present motion is well-founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** leave under the cause of action contained Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation, and under article 1457 of the *Civil Code of Québec*, and the bringing of a class action in the form of a Motion to institute proceedings in damages;

**ASCRIBE** the Petitioners the status of representative of the persons included in the Class herein described as:

“All persons and entities, wherever they may reside or be domiciled, who purchased or otherwise acquired Cash Store’ Securities between November 24, 2010 up to and including May 24, 2013, other than the Excluded Persons.”

or such other group definition as may be approved by the Court.

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Did the Impugned Documents contain a misrepresentation within the meaning of Title VIII, Chapter II, Division II of the *QSA*?
- b) Did the Respondents Misrepresentations cause the share price of Cash Store’s stock to be artificially inflated?
- c) Did the Respondents therefore commit a fault towards the Petitioners and the Class Members, thereby engaging their liability?
- d) Did the Respondent violate the duties owed to the Petitioners and the Class Members under the provisions of Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec*?
- e) Did the Respondent therefore commit a fault in regards respectively to Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec* towards the Petitioners and the Class Members, thereby engaging its liability?
- f) What damages were sustained by the Petitioners and the Class Members as a result of the Respondent’s faults in regards respectively to Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec*?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** the Petitioner's action against the Respondent, under the cause of action contained in Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation and under article 1457 of the *Civil Code of Québec*;

**CONDEMN** the Respondent to pay to the Class Members compensatory damages for all monetary losses;

**GRANT** the class action of the Petitioners on behalf of all the Class Members;

**ORDER** collective recovery in accordance with articles 1031 to 1036 C.C.P.;

**THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

**DECLARE** that all Class Members that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgement to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at 30 days from the date of the publication of the notice to the Class Members;

**ORDER** the publication of a notice to the Class Members in accordance with article 1006 C.C.P.;

**REFER** the record to the Chief Justice so that he may determine the district wherein the class action is to be brought and the judge before whom it will be heard;

**THE WHOLE** with costs, including the costs of all publications of notices.

Québec, July 11, 2013

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SISKINDS, DESMEULES, s.e.n.c.r.l.  
Lawyer for the Petitioners



## **SCHEDULE 1**

### **NOTICE TO RESPONDENT**

Take notice that the Petitioner has filed this action or application in the office of the Superior Court of the judicial district of Québec.

To file an answer to this action or application, you must first file an appearance, personally or by advocate, at the courthouse of Québec located at 300, boulevard Jean-Lesage, Québec, Québec G1K 8K6, within 10 days of service of this motion.

If you fail to file an appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10 day period.

If you file an appearance, the action or application will be presented before the court on August 29, 2013. On that date, the court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the court may hear the case, unless you have made a written agreement with the Petitioner or the Petitioner's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the court.

Québec, July 11, 2013

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SISKINDS, DESMEULES, s.e.n.c.r.l.  
Lawyers for the Petitioners

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF QUÉBEC  
NO: 200-06-000165-137**

**(Class Action)  
SUPERIOR COURT**

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**MRS. MARIANNE DESSIS AND MR. JEAN-  
JACQUES FOURNIER**  
Petitioners

vs

**THE CASH STORE FINANCIAL SERVICES  
INC. & AL.**  
Respondents

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**LIST OF EXHIBITS**

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- EXHIBIT R-1: Proof of purchase of Cash Store's Securities by the Petitioner Marianne Dessis
- EXHIBIT R-2: Proof of purchase of Cash Store's Securities by the Petitioner Jean-Jacques Fournier
- EXHIBIT R-3: Copy of the January 24, 2012 press release issued by Cash Store
- EXHIBIT R-4: Copies of Cash Store' June 2012 Financial Statement and MD&A.
- EXHIBIT R-5: Copy of the December 10, 2012 press release issued by Cash Store
- EXHIBIT R-6: Copy of the May 13, 2013 press release issued by Cash Store
- EXHIBIT R-7: Copy of the May 31, 2013 press release issued by Cash Store
- EXHIBIT R-8: Copy of the May 24, 2013 press release issued by Cash Store

Québec City July 11, 2013

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SISKINDS, DESMEULES, s.e.n.c.r.l.  
Lawyers for the Petitioners