

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. JUSTICE ) WEDNESDAY, THE 9<sup>TH</sup> DAY  
)  
WARREN K. WINKLER, SRJ ) OF NOVEMBER, 2005

B E T W E E N

PEGGY JANE DAVIS

Plaintiff

and

CLIVE METCALF, TIMOTHY VOISIN, GEORGE VOISIN, ELAINE VOISIN, CLAYTON METCALF, SNC INSURANCE COMPANY (BARBADOS) INC., 1394174 ONTARIO INC. (d.b.a. STOP 'N' CASH 1230), STOP 'N' CASH 1010 INC. (d.b.a. STOP 'N' CASH 1010), STOP 'N' CASH 1020 INC. (d.b.a. STOP 'N' CASH 1020), NEW MANOR DEVELOPMENTS LIMITED (d.b.a. STOP 'N' CASH 1030), 1543570 ONTARIO INC. (d.b.a. STOP 'N' CASH 1040), 1388200 ONTARIO LTD. (d.b.a. STOP 'N' CASH 1100), THE REFERRAL GROUP LTD. (d.b.a. STOP 'N' CASH 1110 and as STOP 'N' CASH 1580)), 1361864 ONTARIO LIMITED (d.b.a. STOP 'N' CASH 1120), STOP 'N' CASH 1130, 1404867 ONTARIO INC. (d.b.a. STOP 'N' CASH 1140), 1396502 ONTARIO LTD. (d.b.a. STOP 'N' CASH 1150), 1517380 ONTARIO INC. (d.b.a. STOP 'N' CASH 1160), 1410160 ONTARIO INC. (d.b.a. STOP 'N' CASH 1170), 1035507 ONTARIO INC. (d.b.a. STOP 'N' CASH 1180), DINAH J. HOGG (c.b.a. STOP 'N' CASH 1190), 1553618 ONTARIO INC. (d.b.a. STOP 'N' CASH 1201), 1389584 ONTARIO LIMITED (d.b.a. STOP 'N' CASH 1210), 1432615 ONTARIO INC. (d.b.a. STOP 'N' CASH 1220), 1568560 ONTARIO INC. (d.b.a. STOP 'N' CASH 1241), 1410176 ONTARIO INC. (d.b.a. STOP 'N' CASH 1250), 1423043 ONTARIO LIMITED (d.b.a. STOP 'N' CASH 1260), KRT ONE INC. (d.b.a. STOP 'N' CASH 1270), 1325681 ONTARIO INC. (d.b.a. STOP 'N' CASH 1290), 1410616 ONTARIO INC. (d.b.a. STOP 'N' CASH 1300), 1484838 ONTARIO INC. (d.b.a. STOP 'N' CASH 1320), 1432694 ONTARIO INC. (d.b.a. STOP 'N' CASH 1330), 1399227 ONTARIO INC. (d.b.a. STOP 'N' CASH 1350), 1438158 ONTARIO INC. (d.b.a. STOP 'N' CASH 1360), 1445130 ONTARIO INC. (d.b.a. STOP 'N' CASH 1370), 1457210 ONTARIO INC. (d.b.a. STOP 'N' CASH 1380), 1465009 ONTARIO INC. (d.b.a. STOP 'N' CASH 1390), 1445175 ONTARIO INC. (d.b.a. STOP 'N' CASH 1400), FRANCHISE INVESTMENT GROUP INC. (d.b.a. STOP 'N' CASH 1410), 2002415 ONTARIO LIMITED (d.b.a. STOP 'N' CASH 1420), 1473451 ONTARIO LIMITED (d.b.a. STOP 'N' CASH 1430), 1476550 ONTARIO LIMITED (d.b.a. STOP 'N' CASH 1440), DYNAMIC DEVELOPMENTS INC. (d.b.a. STOP 'N' CASH 1450), KRISWAY INC. (d.b.a. STOP 'N' CASH 1470), STOP 'N' CASH 1480, BEST SALES INC. (d.b.a. STOP 'N' CASH 1490), 2025579 ONTARIO LIMITED (d.b.a. STOP 'N' CASH 1500), BARUKCIC HOLDING COMPANY INC. (d.b.a. STOP 'N' CASH 1520), 1561593 ONTARIO INC. (d.b.a. STOP 'N' CASH 1530), 1543441 ONTARIO INC. (d.b.a. STOP 'N' CASH 1540), 1543541 ONTARIO LIMITED (d.b.a. STOP 'N' CASH 1550), 1553785 ONTARIO LTD. (d.b.a. STOP 'N' CASH 1560), 2025871 ONTARIO INC. (d.b.a. STOP 'N' CASH 1590), 2028022 ONTARIO INC. (d.b.a. STOP 'N' CASH 1600), 1573780 ONTARIO INC. (d.b.a. STOP 'N' CASH 1610), 1561469 ONTARIO INC. (d.b.a. STOP 'N' CASH 1620), 1587428 ONTARIO INC. (d.b.a. STOP 'N' CASH 1630), 2036998 ONTARIO LIMITED (d.b.a. STOP 'N' CASH 1640), 2024670 ONTARIO LIMITED (d.b.a. STOP 'N' CASH 1650), STOP 'N' CASH 1660, 1445174 ONTARIO INC. (d.b.a. STOP 'N' CASH 5010), 1449150 ONTARIO INC. (d.b.a. STOP 'N' CASH 5020), 1484809 ONTARIO INC. (d.b.a. STOP 'N' CASH 5040) and STOP 'N' CASH 1000 INC. (d.b.a. STOP 'N' CASH 5050)

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER**

THIS MOTION, made by the plaintiff for an Order for certification of the action as a class proceeding was heard this day at Toronto, Ontario.

ON READING the motion records, as filed,

ON BEING FURTHER ADVISED that the plaintiff and the defendants except for Stop 'N' Cash 1150, 1160, 1230, 1330, 1410, 1430, 1520 and 1660 ("Objecting Defendants") consent to this order,

ON READING THE WRITTEN SUBMISSIONS of counsel for the plaintiff and counsel for the Objecting Defendants,

1. THIS COURT ORDERS that the action be and is hereby certified as a class proceeding.
2. THIS COURT ORDERS that the Class is defined as:  
*All persons who obtained payday loans in Ontario from a defendant operating under the business name Stop 'N' Cash on or after January 1, 1998 to November 9, 2005.*
3. THIS COURT APPOINTS Peggy Jane Davis as the representative plaintiff of the Class.
4. THIS COURT DECLARES that the common issues in the action are:

- (a) Do the “Payday Loans” constitute agreements or arrangements for the purpose of the advancing of credit within the meaning of s. 347(2) of the *Criminal Code*?
- (b) Are the initial set-up fee, insurance premiums and interest charged by the defendants on each Payday Loan to the Class Members “Interest” for the purpose of s. 347(2)? If so, does the interest exceed an effective annual rate of interest of sixty percent when calculated in accordance with generally accepted actuarial practices and principles and therefore contravenes s. 347?
- (c) Should the court assess an aggregate award for the Class Members or permit individual defendants to dispute damages? If an aggregate award is to be made, what is the aggregate award and against which defendant is it to be made?
- (d) Should one or more of the defendants pay punitive damages to the Class Members? If so, who, why, in what amount and to whom?
- (e) Is prejudgment interest payable? If so, by whom, at what rate, and why?
- (f) Who should pay the cost of administering and distributing amounts to which the Class Members are entitled and how, and when, should such cost be determined?

5. THIS COURT ORDERS that the cause of action pleaded in the statement of claim is conspiracy to charge interest at a criminal rate and declaratory relief.

6. THIS COURT ORDERS that the class members shall be given notice of the certification of this action as a class proceeding, generally in accordance with the form of the notice in the litigation plan, attached as Schedule 1, in the following manner:

- (a) by the plaintiffs, at their expense, posting the Notice on the website [www.stopncashclassaction.com](http://www.stopncashclassaction.com);
- (b) by each defendant, at their expense, posting the Notice in a prominent location in each and every Stop ‘N’ Cash store it controls;
- (c) by the defendants, at their expense, posting the Notice in a prominent location on the Stop ‘N’ Cash website; and

- (d) by Class Counsel, at their expense, providing a copy of the Notice to any person who requests it.

7. THIS COURT DECLARES that the Notice and its distribution satisfy the requirements of s. 17(6) of the *Class Proceedings Act, 1992*.

8. THIS COURT ORDERS that a Class member may opt out of the class action by sending a written election to opt out, signed by the Class member, by prepaid mail, courier or fax to

Howie & Partners, Chartered Accountants  
3036 Walker Road  
Windsor, ON N8W 3R4  
Attention: Stop 'N' Cash Class Action

on or before the 30th day of January, 2006.

9. THIS COURT ORDERS that the litigation plan attached as Schedule 1 is a workable method of advancing the proceedings subject to clarification and amendment if required.

10. THIS COURT ORDERS that the defendants are restrained, until the trial of the common issues, from disposing of, deleting or destroying any business records, documents or information, in written, electronic or other form, related to the Class members' payday loan transactions or to SNC Insurance Company (Barbados) Inc. which documents are in the possession of the defendants or under their direction and control.

11. THIS COURT ORDERS that this court shall first determine common issues 4(a) and (b) before proceeding to determine the balance of the common issues.

12. THIS COURT ORDERS that there shall be documentary production on all common issues.

13. THIS COURT ORDERS that examinations for discovery shall proceed only on common issues 4(a) and 4(b) and that there shall be no examinations for discovery on the balance of the common issues until after the court determines common issues 4(a) and 4(b).

14. THIS COURT ORDERS that the defendants shall deliver their statements of defence or an amended statement of defence within 40 days of this order and may assert cross-claims but not third party claims without leave of the court.

15. THIS COURT ORDERS that the costs of this motion are reserved to the judge at the trial of the common issues 4(a) and (b).

  
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JUSTICE

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## **SCHEDULE 1: LITIGATION PLAN**

- 1.1 The court will first determine common issues 3(a) and 3(b).
- 1.2 If these issues are determined in favour of the Class, then, the court will determine the balance of the common issues.

**IF THE COMMON ISSUES ARE DETERMINED IN FAVOUR OF THE CLASS MEMBERS AND THE COURT ASSESSES AN AGGREGATE AWARD, THE PLAINTIFF WILL ASK THE COURT TO IMPLEMENT THIS CLAIMS PROCESS FOR DIVIDING AND DISTRIBUTING THE AGGREGATE AWARD**

- 2.1 If in determining the common issues, the court concludes that Class members should recover some or all of the Interest they paid on Payday Loans in the Class Period, then each eligible Class member shall be entitled to recover:
  - (a) an amount equivalent to that portion of the Interest s/he paid for all Payday Loans in the Class Period as is determined by the court (the “Payday Loan Interest Amount”); and
  - (b) a proportionate amount of punitive damages and prejudgment interest awarded, if any.
- 2.2 If the total amount of valid claims exceeds the aggregate awarded, the payments to eligible Class members shall be reduced pro rata.
- 2.3 The plaintiff will ask the court to:

- (a) settle the general form and content of a notice to be given Class members describing the claims process and advising of the claims deadline date;
  - (b) appoint an Administrator to implement and administer the claims process under the direction of the court;
  - (c) appoint a referee or referees to deal with any reviews arising out of the Administrator's eligibility decisions or the Administrator's calculation of the Payday Loan Interest Amount in accordance with rules approved by the court; and
  - (d) require that the reviews proceed in writing, except in exceptional circumstances at the discretion of the referee, and that the decision of the referee in respect of any reference is final.
- 2.4 Except as provided in paragraph 2.6, the defendants shall have no responsibility for and no involvement whatsoever with respect to the claims process.
- 2.5 The claims process shall, wherever practical, utilize a paperless, electronic state-of-the art web-based technology system.
- 2.6 Upon the commencement of administration and prior to the claims deadline date, the Administrator will review the customer information provided by the defendants and, based on the defendants' records, attempt to contact each identified Class member who did not opt out and advise the Class member of the Payday Loan Interest Amount calculated based upon the amounts s/he paid in the Class Period as recorded in the defendants' business records.

2.7 An identified Class member who accepts the particulars of the Payday Loan Interest Amount as calculated will not be required to provide the Administrator with supporting Payday Loan documentation, will be accepted as an eligible member of the Class and will be entitled to recover the Payday Loan Interest Amount, subject to any proration that may be required.

2.8 To the extent that :

- (a) a Class member does not agree with the particulars of the Payday Loan Interest Amount calculated by the Administrator;
- (b) the defendants cannot provide the names, addresses and particulars of the Payday Loan Interest paid by a Class member or the information provided is no longer current; or
- (c) persons assert that they are Class members although not identified as such by the defendants;

then these claimants will be required to submit a claim form to the Administrator on or before the claims deadline date as well as provide the Administrator with supporting Payday Loan documentation.

2.9 In any of the circumstances set out in paragraph 2.8, the Administrator shall:

- (a) make a decision on eligibility having regard to the opt out report, the claims deadline date and the proof of Class membership supplied by the defendants records and/or the claimant; and

- (b) calculate the Payday Loan Interest Amount for each eligible Class member during the Class Period from the Payday Loan documentation produced by the defendants records and/or the Class member.
  
- 2.10 A claimant whose claim for membership in the Class is rejected may request that the Administrator's eligibility decision be reviewed by a referee. An eligible Class member may request that the Administrator's calculation of the Payday Loan Interest Amount be reviewed by a referee.
  
- 2.11 Once all reviews are final, the Administrator shall also calculate each eligible Class member's proportionate share of punitive damages and/or prejudgment interest awarded, if any.
  
- 2.12 Thereafter the Administrator shall as soon as practicable report to the court by motion the name, address, Payday Loan Interest Amount calculation and the proposed distribution for each eligible Class member and obtain the court's authorization to distribute to eligible Class members.
  
- 2.13 *No distribution to eligible Class members shall be made by the Administrator until authorized by the court. The court shall have the power to authorize interim distributions.*
  
- 2.14 Any portion of the aggregate awarded that is not taken up by the Class members under the claims process shall be distributed by the Administrator for the general

benefit of the Class members *cy-près* for consumer credit education and protection programs as the court directs.

- 2.15 After the Administrator makes its final distribution, it shall report to the court in the manner the court directs and obtain a discharge.

**IF THE COMMON ISSUES ARE DETERMINED IN FAVOUR OF THE CLASS MEMBERS BUT THE COURT DOES NOT ASSESS AN AGGREGATE AWARD, THE PLAINTIFF WILL ASK THE COURT TO IMPLEMENT THIS CLAIMS PROCESS FOR ASSESSMENT OF MONETARY RELIEF**

- 3.1 The claims process described in paragraphs 2.1 to 2.11 shall apply, with the following modifications, in the circumstance where the court does not assess an aggregate award but rather orders the assessment of monetary relief for each Class member.
- 3.2 Paragraph 2.2 providing for the *pro rata* reduction of the Payday Loan Interest Amount shall have no application to the claims process for the assessment of monetary relief.
- 3.3 Paragraphs 2.4 and 2.10 shall be modified to provide for the limited involvement of the defendants in the claims process, in that either the claimant or the defendants may request or defend a review by a referee in respect of a claimant's eligibility as a Class member or the Administrator's calculation of the Payday Loan Interest Amount.

- 3.4 Paragraph 2.3(d) shall be modified to provide that the decisions of the referee shall be filed with the court and shall be confirmed and shall be final and binding unless a party to the review files a written submission with the court objecting to the decision within 15 days of its delivery.
- 3.5 Once all reviews are final and the Administrator has calculated each eligible Class member's proportionate share of punitive damages and/or prejudgment interest, if any, the Administrator shall report to the court by motion the name, address, Payday Loan Interest Amount and the balance of the proposed assessment for each eligible Class member and thereafter proceed in the manner the court directs.

#### **OTHER MATTERS**

- 4.1 Plaintiff's counsel will post, from time to time, other documentation and information relating to the action for the information of Class members on the website at [www.stopncashclassaction.com](http://www.stopncashclassaction.com).
- 4.2 The plaintiff has asked the court to order that all costs of assessment and/or of distribution including the costs of all notices associated with the process and the fees of the Administrator and referees be paid by the defendants. If the court should decline to so order, the plaintiff will seek an order that the costs of assessment and/or of distribution be deducted either from the aggregate award or the individual assessments, as the case may be.

## SCHEDULE 2

### NOTICE TO STOP 'N' CASH CUSTOMERS OF THE CERTIFICATION OF A CLASS ACTION

**This notice may affect your rights.  
Please read carefully.**

#### THE CLASS ACTION

This action is brought of behalf of all persons who obtained loans from any Stop 'N' Cash location in Ontario in the period January 1, 1998 to November 9, 2005.

The claim is for an order requiring Stop 'N' Cash to refund all interest and other fees charged on its loans.

#### CERTIFICATION ORDER

On November 9, 2005, Mr. Justice Winkler certified this action as a class proceeding and appointed Peggy Jane Davis as the representative plaintiff of a Class defined as: "All persons who obtained loans in Ontario from a business named Stop 'N' Cash in the period January 1, 1998 to November 9, 2005."

#### YOU MUST OPT OUT IF YOU DO NOT WISH TO PARTICIPATE IN THE CLASS ACTION

If you wish to participate in the class action, you do not need to do anything at this time because you are automatically included in the action. If you wish to opt out of the class action, you must do so by sending a written notice on or before January 30, 2006 to:

Howie & Partners, Chartered Accountants  
3036 Walker Road  
Windsor, ON N8W 3R4  
Attention: Stop 'N' Cash Class Action

stating that you are opting out of the class action.

#### ADDITIONAL INFORMATION

**This Notice was approved by Mr. Justice Winkler of the Ontario Superior Court of Justice. Any questions about the matters in this notice should not be directed to the court as its administrative structure is not designed to address this type of inquiry.**

The certification order and other information are available on the web site at [www.stopncashclassaction.com](http://www.stopncashclassaction.com). Questions for counsel should be directed to:

Harvey T. Strosberg, Q.C.  
Sutts, Strosberg LLP  
600-251 Goyeau Street  
Windsor ON N9A 6V4

Telephone: (519) 561-6296  
Fax: (519) 561-6203  
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PEGGY JANE DAVIS

vs. CLIVE METCALF et al.

Plaintiff

Defendants

Court File No. 04-CV-2451

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDINGS COMMENCED AT WINDSOR

**ORDER**

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SOLICITORS FOR THE PLAINTIFF

FILE: 73-111-000  
REF: HTS/ba