

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)
NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
GENERAL DIVISION** **No: NSD2089/2013**

NOTICE OF FILING

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 28/05/2014.

DETAILS OF FILING

Document Lodged: Amended Document
File Number: NSD2089/2013
File Title: Julie Gray v Cash Converters International Limited ACN 069 141 546 & Ors
District Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 28/05/2014

Registrar

Warwick Soden

Note

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.



Amended Statement of claim

(Dated 28 May 2014 and
filed pursuant to orders made by Farrell J
on 2 May 2014 and 23 May 2014)

No. 2089 of 2013

Federal Court of Australia
District Registry: New South Wales
Division: General

Julie Gray

Applicant

Cash Converters International Limited ACN 069 141 546 and others named in the schedule

Respondents

A. THE GROUP MEMBERS

1. The applicant brings this proceeding on her own behalf and on behalf of represented persons pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) being natural persons (**Group Members**) who:

- (a) entered into one or more credit contracts in New South Wales with either of the second or third respondents between 1 July 2010 and 30 June 2013, being the provision of credit to which the *National Credit Code* (**Code**) applies; and
- (b) had any of the following fees and/or charges debited to their account under the credit contract:
 - (i) an 'Administration Fee'; or
 - (ii) an 'nAdmin' fee; or
 - (iii) a 'Deferred Establishment Fee'.

| | | | |
|---------------------|--|-----|----------------|
| Filed on behalf of | Julie Gray (Applicant) | | |
| Prepared by | Miranda Nagy | | |
| Law firm | Maurice Blackburn (First Applicant) | | |
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B. THE PARTIES

2. The applicant (**Ms Gray**):

- (a) is a natural person;
- (b) is a ‘consumer’ within the meaning of section 5 of the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Act**); and
- (c) at all material times sought credit from the second and third respondents for personal, domestic or household purposes.

3. The first respondent (**CC International**):

- (a) is a public company duly incorporated under the laws of Australia; and
- (b) held, at all material times since at least November 2006, 100% of the shares in:
 - (i) the second respondent, Safrock Finance Corporation (QLD) Pty Ltd (**Safrock**);
 - (ii) the third respondent, Cash Converters Personal Finance Pty Ltd (**CC Personal Finance**); and
 - (iii) Mon-E Pty Ltd (**MON-E**).

4. Safrock:

- (a) is a company duly incorporated under the laws of Australia;
- (b) is a ‘credit provider’ within the meaning of section 5 of the Credit Act;
- (c) in the premises of 4(b), provides a ‘financial service’ within the meaning of section 12BAB(1)(b) of the ASIC Act; and

Particulars

Safrock provided credit to consumers in New South Wales at material times between 1 July 2010 and 30 June 2013. The provision of credit by Safrock was a financial service because Safrock dealt in a financial product, by issuing a financial product. The particular financial product dealt in was a credit facility as defined in section 12BAA(7)(k) of the *Australian Securities and Investments Commission Act 2001* (Cth) and Reg 2B(1)(a) of the *Australian Securities and Investments Commission Regulations 2001* (**ASIC Regulations**).

- (d) in its dealings with Ms Gray and the Group Members, engaged in ‘trade and commerce’ within the meaning of section 12BA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

5. CC Personal Finance:

- (a) is a company duly incorporated under the laws of Australia;

- (b) is a 'credit provider' within the meaning of section 5 of the Credit Act;
- (c) in the premises of 5(b), provides a 'financial service' within the meaning of section 12BAB(1)(b) of the ASIC Act; and

Particulars

CC Personal Finance provided credit to consumers in New South Wales at material times between 1 July 2010 and 30 June 2013. The provision of credit by CC Personal Finance was a financial service because CC Personal Finance dealt in a financial product, by issuing a financial product. The particular financial product dealt in was a credit facility as defined in s 12BAA(7)(k) of the ASIC Act and Reg 2B(1)(a) of the ASIC Regulations.

- (d) in its dealings with Ms Gray and the Group Members, engaged in 'trade and commerce' within the meaning of section 12BA(1) of the ASIC Act.

C. CONTRAVENING CONDUCT BY SAFROCK FINANCE

C1. First Gray Personal Loan

(a) Debiting and retention of nAdmin and Administration Fees

- 6. On or about 8 March 2011, Ms Gray and Safrock entered into a credit contract pursuant to which Ms Gray was advanced the sum of \$600.00 (**First Gray Personal Loan**).

Particulars

On the material presently available to Ms Gray, the terms and conditions of the First Gray Personal Loan were contained within:

- (a) the document entitled 'Contract – Part 1 Schedule' containing the terms referred to in paragraph 8 and incorporating the Standard Terms and Conditions; and
- (b) the Personal Loan Early Repayment Election signed by Ms Gray referred to in paragraph 17A;
- (c) alternatively, the documents referred to in particular (a).

Ms Gray also refers to and repeats paragraph 8(a) as to when the contract was formed or entered into by the parties.

- 7. The First Gray Personal Loan was a financial service within the meaning of section 12BAB(1)(b) of the ASIC Act.

Particulars

The First Gray Personal Loan was a credit facility as defined in section 12BAA(7)(k) of the ASIC Act and reg 2B(1)(a) of the ASIC Regulations because it involved the provision of credit to Ms Gray. Accordingly, the First Gray Personal Loan was a financial product that Safrock issued and dealt in, within the meaning of sections 12BAB(1)(b) and 12BAB(7) of the ASIC Act.

8. The express terms and conditions of the First Gray Personal Loan included:
- (a) that the First Gray Personal Loan was accepted by Safrock when it loaned Ms Gray the amount of credit provided under that contract;
 - (b) an annual percentage rate of 48%;
 - (c) a loan term of 24 months;
 - (d) repayment of the loan was to occur by 104 weekly payments of \$8.98;
 - (e) a 'Dishonour Fee' of \$33.00 which would be debited to the loan account when a payment by direct debit, salary deduction or cheque was dishonoured;
 - (f) a 'Reschedule Fee' of \$7.00 per week which would be payable upon deferred payments; and
 - (g) a 'Deferred Establishment Fee' which would be payable if Ms Gray paid out the loan before the full term and the amount of the fee varied depending upon the date on which the loan was fully repaid.

Particulars

The above terms were contained in the 'Contract – Part 1' schedule signed by Ms Gray and by Mr Wessels on behalf of Safrock.

9. Safrock was required by section 17(8) of the Code to disclose to Ms Gray in writing all fees and charges that could become payable under the First Gray Personal Loan.
10. Safrock did not disclose to Ms Gray at any time that an 'nAdmin' fee or an 'Administration Fee' would be payable under the First Gray Personal Loan.
11. On 8 March 2011, Ms Gray gave Safrock an authority to debit her account to satisfy her repayment obligations under the First Gray Personal Loan (**First Direct Debit Arrangement**).
12. Purporting to act pursuant to the First Direct Debit Arrangement, Safrock debited from Ms Gray's account and retained amounts identified as the 'nAdmin' fee and the 'Administration Fee' in her loan account under the First Gray Personal Loan.

Particulars

- (a) An 'Administration Fee' in the amount of \$14.00 was debited on each of 17 March 2011, 31 March 2011 and 14 April 2011.
- (b) An 'nAdmin' fee in the amount of \$14.00 was debited on each of 28 April 2011, 12 May 2011, 26 May 2011, 9 June 2011, 23 June 2011, 7 July 2011 and 21 July 2011.
- (c) An 'nAdmin' fee in the amount of \$7.00 was debited on each of 18 August 2011, 1 September 2011, 15 September 2011, 29 September 2011 and 13 October 2011.
- (d) An 'nAdmin' fee in the amount of \$8.05 was debited on 13 October 2011.

13. Safrock had no entitlement under the terms of the First Gray Personal Loan to debit those amounts.
14. Between 8 March and 13 October 2011, Safrock charged the annual percentage rate of 48% on the whole of the purported outstanding balances on the loan account under the First Gray Personal Loan which included the 'Administration Fee' and the 'nAdmin' fee and this interest was paid by Ms Gray.
15. By reason of the matters pleaded in paragraphs 12, 13 and 14, Safrock engaged in conduct that was, in all the circumstances, unconscionable and in contravention of section 12CB(1) of the ASIC Act in that:
 - (a) Safrock had no contractual right to require payment of the 'nAdmin' fee and the 'Administration Fee' under the First Gray Personal Loan;
 - (b) Safrock gave no notice to Ms Gray of the debits referred to in paragraph 12 and the charging of interest in paragraph 14; and/or
 - (c) Safrock engaged in the conduct recklessly and without due regard to whether those fees were properly payable.

Particulars

The imposition of the 'nAdmin' fee and 'Administration Fee' formed part of the system or practice of the respondents pleaded in paragraph 76.

16. Further and in the alternative to paragraph 15, the conduct of Safrock was unconscionable and in contravention of section 12CB(1) of the ASIC Act in that Safrock knew, or ought to have known having regard to its obligations under section 130 of the Credit Act, that:
 - (a) Ms Gray was not highly educated;

Particulars

Ms Gray left school at the age of 14 and, until 2001, was either at home caring for her children, or working in casual jobs in fast food preparation or cleaning.

- (b) Ms Gray was in receipt of a disability support pension;
- (c) the 'nAdmin' fee and the 'Administration Fee' would not be readily discoverable by Ms Gray as Safrock did not provide statements of account on a regular basis to borrowers; and
- (d) Ms Gray was not financially sophisticated and would require an oral explanation to fully understand her rights and obligations under the First Gray Personal Loan.

17. By virtue of the matters pleaded in paragraphs 15 and 16 and each of them, Ms Gray suffered loss and damage and claims compensation against Safrock pursuant to section 12GF(1) of the ASIC Act.

Particulars

The amount of the 'nAdmin' fee and 'Administration Fee' and interest on those fees.

(b) Breach of Maximum Annual Percentage Rate

17A. Prior to entering into the First Gray Personal Loan Ms Gray also signed a document entitled 'Personal Loan Early Repayment Election' in which she purported to elect to repay the loan 'early'.

Particulars

Ms Gray signed the Personal Loan Early Repayment Election prior to the provision of the credit by Safrock to her. Ms Gray repeats paragraph 8(a).

17B. On 7 March 2011, prior to entering into the First Gray Personal Loan, Safrock (by itself or its agent) conducted Preliminary and Final Assessments of Unsuitability in connection with Ms Gray's loan application by reference to a 7 month period.

17C. Immediately prior to the loan monies being advanced, Safrock intended to draw direct debits of \$60.13 per fortnight from Ms Gray's account commencing on 17 March 2011, which debits would be sufficient to repay the loan within 7 months, including payment of the Deferred Establishment Fee.

Particulars

- (a) On approval of the loan and prior to the advance Safrock formulated a repayment schedule pursuant to which, by fortnightly direct debits, the loan and the Deferred Establishment Fee were to be repaid over seven months from the date of the advance.
- (b) Safrock drew direct debits in accordance with that schedule, commencing on 17 March 2011.
- (c) Ms Gray repeats paragraph 17B and also relies on the particulars to paragraph 18.
- (d) The Cash Converters customer statement referable to the First Gray Personal Loan described the term of the loan as 7 months.

Further particulars may be provided following discovery and the issue of subpoenas and notices to produce.

18. ~~Further~~ In the alternative, it was the common intention of both Safrock and Ms Gray prior to entering into the First Gray Personal Loan that Ms Gray would repay the First Gray Personal Loan within 7 months.

Particulars

- (a) ~~Prior to entering into the First Gray Personal Loan Ms Gray signed a document entitled 'Personal Loan Early Repayment Election' in which she purported to elected to repay the loan 'early'. Ms Gray repeats paragraph 17A and the particulars thereto.~~
- (b) ~~Safrock (by itself or its agent) conducted Preliminary and Final Assessments of Unsuitability in connection with Ms Gray's loan application on 7 March 2011 by reference to a 7 month period. Ms Gray repeats paragraph 17B.~~
- (c) ~~Safrock drew direct debits of \$60.13 per fortnight from Ms Gray's account commencing on 17 March 2011, which debits were sufficient to repay the loan within 7 months. Ms Gray repeats paragraph 17C and the particulars thereto.~~
- (d) Ms Gray was orally informed at the time she applied for the loan to the effect that the loan term was 7 months and the repayments were approximately \$60 per fortnight. The statement was made by a female person prior to the provision of the credit by Safrock to Ms Gray. Ms Gray does not recall the precise words used.
- (e) Ms Gray was not told that she had the option to repay the First Gray Personal Loan over a 2 year period.
- (f) CC International stated in a publicly released document entitled 'Response to the Commonwealth Government Green Paper on Consumer Credit Reform – Phase II' dated August 2010 that their short term loan products are only financially viable if a 'large proportion' are repaid early and a deferred establishment fee applies, as if repaid over the 2 year period this results in a 'loss' (page 16).
- (g) For admission to listing on the Premium Segment of the Official List and to trading on the London Stock Exchange's main market for listed securities CC International stated on 2 August 2011 that the 'approximate' term of unsecured personal loans was 7 months (page 24).
- (h) CC International's 2012 Annual Report stated that the credit period for personal short term loans varied from 30 days to 7 months (page 54).

Further particulars may be provided following discovery and the issue of subpoenas and notices to produce.

18A. Further in the alternative, if (which is not admitted), Safrock was entitled, prior to the First Gray Personal Loan being paid out, to deduct periodical amounts to Ms Gray's loan in satisfaction of the Deferred Establishment Fee, then:

- (a) the Deferred Establishment Fee was an ascertainable fee or charge which is to be included in calculating the maximum annual percentage rate under the First Gray Personal Loan pursuant to clause 7 of Schedule 3 of the *Credit (Commonwealth Powers) Act 2010* (NSW) (NSW Act) as then applied; and
- (b) its inclusion in the First Gray Personal Loan caused the annual percentage rate under the First Gray Personal Loan to exceed 48% in contravention of clause 5(1) of Schedule 3 of the NSW Act as then applied.

19. In the premises of paragraphs 17A to 17C or 18, the provision in the First Gray Personal Loan for the payment of the Deferred Establishment Fee is void as:
- (a) the Deferred Establishment Fee was an ascertainable fee or charge which is to be included in calculating the maximum annual percentage rate under the First Gray Personal Loan pursuant to clause 7 of Schedule 3 of the *Credit (Commonwealth Powers) Act 2010 (NSW)* (~~NSW Act~~) NSW Act as then applied; and
 - (b) its inclusion in the First Gray Personal Loan caused the annual percentage rate under the First Gray Personal Loan to exceed 48% in contravention of clause 5(1) of Schedule 3 of the NSW Act as then applied.
20. In the premises of paragraph 18A and/or paragraph 19, Ms Gray is entitled to a declaration that the provision for the Deferred Establishment Fee is void.
21. Further in the alternative to paragraph 15, if (which is not admitted) the ‘nAdmin’ fee and ‘Administration Fee’ were in satisfaction of the Deferred Establishment Fee then the debiting and retaining of those amounts was conduct that, in all the circumstances, is unconscionable and in contravention of section 12CB(1) of the ASIC Act in that:
- (a) the provision of the First Gray Personal Loan requiring payment of the Deferred Establishment Fee is void under the NSW Act as then applied; and
 - (b) Safrock knew, or believed, or ought to have known at the time of entry into the First Gray Personal Loan and at all material times thereafter that:
 - (i) the Deferred Establishment Fee provided for under the First Gray Personal Loan was ascertainable at the time the contract was made; and
 - (ii) accordingly, the provision requiring payment of the Deferred Establishment Fee was void under the NSW Act as then applied;

Particulars

Ms Gray repeats paragraphs 17A to 18 and 19.

- (c) alternatively to (b), in causing the First Gray Personal Loan to include provision for the payment of the Deferred Establishment Fee and in purporting to debit and retain that fee, Safrock acted recklessly and without due regard to whether the provision for the Deferred Establishment Fee is void or whether the fee is properly payable;

Particulars

The payment of the Deferred Establishment Fee by the fees identified in the summary of account relating to the First Gray Personal Loan as ‘nAdmin’ and ‘Administration Fee’ formed part of the system or practice of the respondents pleaded in paragraph 76.

- (d) alternatively, the Deferred Establishment Fee was only payable upon the First Gray Personal Loan being paid out before the loan term of 24 months and Safrock had no entitlement before then to debit amounts to Ms Gray's loan account in satisfaction of the Deferred Establishment Fee and charge and retain interest upon a loan balance which included those amounts.

22. Ms Gray suffered loss and damage by the conduct referred to in paragraph 21 and claims compensation against Safrock pursuant to section 12GF(1) of the ASIC Act.

Particulars

The amounts of the Deferred Establishment Fee and interest on that fee or alternatively the interest on that fee.

(c) Further contravention of the ASIC Act

23. In the alternative, at no time prior to entering into the First Gray Personal Loan did Safrock say to Ms Gray that she had the option of repaying the loan over 2 years by 104 repayments of \$8.98 rather than over 7 months by 15 repayments of \$60.13.

24. If, (which is not admitted) the 'nAdmin' and Administration fees were in satisfaction of the Deferred Establishment Fee, then Safrock engaged in conduct that, in all the circumstances, is unconscionable and in contravention of section 12CB(1) of the ASIC Act as the debiting and retention of those amounts involved an unfair tactic against Ms Gray by Safrock in that:

- (a) the Deferred Establishment Fee was not in substance an early repayment fee as Safrock only intended to enter into a 7 month loan but nonetheless invited Ms Gray to sign contractual and application documentation in relation to a 2 year loan; and/or
- (b) the provision requiring payment of the Deferred Establishment Fee was part of a practice or system designed by the respondents to give the First Gray Personal Loan the appearance of not contravening clause 5(1) of Schedule 3 of the NSW Act as then applied; and/or

Particulars

Ms Gray repeats paragraph 76.

- (c) Ms Gray repeats paragraphs 16(a), 16(b) and 16(d).

25. Ms Gray suffered loss and damage by the conduct referred to in paragraph 24 and claims compensation against Safrock pursuant to section 12GF(1) of the ASIC Act.

Particulars

The amount of the Deferred Establishment Fee and interest on that fee.

(d) Unconscionable fee under the Code

26. Further and in the alternative, the Deferred Establishment Fee is an unconscionable fee or charge within the meaning of section 78(4) of the Code in that it exceeds a reasonable estimate of Safrock's loss arising from the early termination of the First Gray Personal Loan, including Safrock's average reasonable administrative costs in respect of such a termination.

Particulars

- (a) The First Gray Personal Loan would have been unprofitable for Safrock if repaid over 2 years. CC International stated this in its Response to the Commonwealth Government Green Paper on Consumer Credit Reform – Phase II dated August 2010 at page 16.
- (b) By virtue of the Deferred Establishment Fee, the First Gray Personal Loan would be profitable for Safrock if repaid in 7 months. CC International stated this in its Response to the Commonwealth Government Green Paper on Consumer Credit Reform – Phase II dated August 2010 at page 16.
- (c) In the premises of particulars (a) and (b), the Deferred Establishment Fee was not a reasonable estimate of loss consequent upon early repayment.

27. In the premises of paragraph 26, Ms Gray applies to have the Deferred Establishment Fee annulled or reduced pursuant to section 78(1)(c) of the Code.

27A. In the alternative, if (which is not admitted) Safrock was entitled to deduct weekly or fortnightly amounts to Ms Gray's loan in satisfaction of the Deferred Establishment Fee prior to the First Gray Personal Loan being paid out, then the Deferred Establishment Fee:

- (a) is in fact an establishment fee or charge within the meaning of the Code; and
- (b) is unconscionable within the meaning of section 78(1) of the Code.

Particulars

- (a) The fee is charged as a percentage of the amount advanced whereas administration costs do not vary according to the size of the loan or in a linear function.
- (b) The percentage charged also varies depending upon when the loan is paid out.
- (c) The fee is related not to Safrock's reasonable costs of determining Ms Gray's application for credit and the initial administrative costs of providing the credit or Safrock's average reasonable costs of those things with respect to similar personal loans but to the amount that makes loans of that class profitable overall (including loans which are not fully recovered).
- (d) Given (a) to (c), the description of the fee as having any relationship to "Establishment" of the loan is misleading.

27B. In the premises of paragraph 27A, Ms Gray applies to have the Deferred Establishment Fee annulled or reduced pursuant to section 78(1)(b) of the Code.

C2. Second Gray Personal Loan

(a) Debiting and retention of nAdmin Fee

28. On or about 9 January 2012, Ms Gray and Safrock entered into a credit contract pursuant to which Ms Gray was advanced the sum of \$600.00 (**Second Gray Personal Loan**).

Particulars

On the material presently available to Ms Gray, the terms and conditions of the Second Gray Personal Loan were contained within:

- (a) the document entitled 'Contract – Part 1 Schedule' containing the terms referred to in paragraph 30 and incorporating the Standard Terms and Conditions; and
- (b) the Personal Loan Early Repayment Election signed by Ms Gray referred to in paragraph 39A;
- (c) alternatively, the documents referred to in particular (a).

Ms Gray also refers to and repeats paragraph 30(a) as to when the contract was formed or entered into by the parties.

29. The Second Gray Personal Loan was a financial service within the meaning of section 12BAB of the ASIC Act.

Particulars

The Second Gray Personal Loan was a credit facility as defined in section 12BAA(7)(k) of the ASIC Act and reg 2B(1)(a) of the ASIC Regulations because it involved the provision of credit to Ms Gray. Accordingly, the Second Gray Personal Loan was a financial product that Safrock issued and dealt in, within the meaning of sections 12BAB(1)(b) and 12BAB(7) of the ASIC Act.

30. The express terms and conditions of the Second Gray Personal Loan included:

- (a) that the Second Gray Personal Loan was accepted by Safrock when it loaned Ms Gray the amount of credit provided under that contract;
- (b) an annual percentage rate of 48%;
- (c) a loan term of 24 months;
- (d) repayment of the loan was to occur by 52 fortnightly payments of \$18.02;
- (e) a 'Dishonour Fee' of \$33.00 which would be debited to the loan account when a payment by direct debit, salary deduction or cheque was dishonoured;
- (f) a 'Reschedule Fee' of \$7.00 per week which would be payable upon deferred payments; and
- (g) a 'Deferred Establishment Fee' which would be payable if Ms Gray paid out the loan before the full term and the amount of the fee varied depending upon the date on which the loan was fully repaid.

Particulars

The above terms of the credit contract were contained in the 'Contract – Part 1' schedule signed by Ms Gray and by Mr Wessels on behalf of Safrock.

31. Safrock was required by section 17(8) of the Code to disclose to Ms Gray in writing all fees and charges that could become payable under the Second Gray Personal Loan.
32. Safrock did not disclose to Ms Gray at any time that an 'nAdmin' fee would be payable under the Second Gray Personal Loan.
33. On 7 January 2012, Ms Gray gave Safrock an authority to debit her account to satisfy her repayment obligations under the Second Gray Personal Loan (**Second Direct Debit Arrangement**).
34. Purporting to act pursuant to the Second Direct Debit Arrangement, Safrock debited from Ms Gray's account and retained amounts identified as the 'nAdmin' fee in her loan account under the Second Gray Personal Loan.

Particulars

- (a) An 'nAdmin' fee in the amount of \$7.00 was debited on 19 January 2012 and that amount was then credited on 31 January 2012.
 - (b) An 'nAdmin' fee in the amount of \$14.00 was debited on each of 2 February 2012, 16 February 2012, 1 March 2012, 15 March 2012, 29 March 2012, 12 April 2012, 26 April 2012, 10 May 2012, 24 May 2012, 7 June 2012, 21 June 2012, 5 July 2012, 19 July 2012.
 - (c) An 'nAdmin' fee in the amount of \$28.00 was debited on 24 July 2012.
35. Safrock had no entitlement under the terms of the Second Gray Personal Loan to debit those amounts.
 36. Between 9 January and 24 July 2012, Safrock also applied the annual percentage rate of 48% to the whole of the purported outstanding balances on the loan account under the Second Gray Personal Loan which included the 'nAdmin' fee and this interest was paid by Ms Gray.
 37. By reason of the matters pleaded in paragraphs 34, 35 and 36, Safrock engaged in conduct that was, in all the circumstances, unconscionable and in contravention of section 12CB(1) of the ASIC Act in that:
 - (a) Safrock had no contractual right to require payment of the 'nAdmin' fee under the Second Gray Personal Loan;
 - (b) Safrock gave no notice to Ms Gray of the debits referred to in paragraph 34 and the charging of interest in paragraph 36; and/or

- (c) Safrock engaged in the conduct recklessly and without due regard to whether that fee was properly payable.

Particulars

The imposition of the 'nAdmin' fee formed part of the system or practice of the Respondents pleaded in paragraph 76.

38. Further and in the alternative to paragraph 37, the conduct of Safrock was also unconscionable and in contravention of section 12CB(1) of the ASIC Act in that Safrock knew, or ought to have known having regard to its obligations under section 130 of the Credit Act, that:

- (a) Ms Gray was not highly educated;

Particulars

Ms Gray left school at the age of 14 and, until 2001, was either at home caring for her children, or working in casual jobs in fast food preparation or cleaning.

- (b) Ms Gray was in receipt of a disability support pension;
- (c) the 'nAdmin' fee would not be readily discoverable by Ms Gray as Safrock did not provide statements of account on a regular basis to borrowers;
- (d) Ms Gray was not financially sophisticated and would require an oral explanation to fully understand her rights and obligations under the Second Gray Personal Loan.

39. By virtue of the matters pleaded in paragraphs 37 and 38 and each of them, Ms Gray suffered loss and damage and claims compensation against Safrock pursuant to section 12GF(1) of the ASIC Act.

Particulars

The amount of the 'nAdmin' fees and interest on those fees.

(b) Breach of Maximum Annual Percentage Rate

- 39A. Prior to entering into the Second Gray Personal Loan Ms Gray also signed a document entitled 'Personal Loan Early Repayment Election' in which she purported to elect to repay the loan 'early'.

Particulars

Ms Gray signed the Personal Loan Early Repayment Election prior to the provision of the credit by Safrock to her. Ms Gray repeats paragraph 30(a).

- 39B. On 6 January 2012, prior to entering into the Second Gray Personal Loan, Safrock (by itself or its agent) conducted Preliminary and Final Assessments of Unsuitability in connection with Ms Gray's loan application by reference to a 7 month period.

39C. Immediately prior to the loan monies being advanced, Safrock intended to draw direct debits of \$60.13 per fortnight from Ms Gray's account commencing on 19 January 2012, which debits would be sufficient to repay the loan within 7 months, including payment of the Deferred Establishment Fee.

Particulars

- (a) On approval of the loan and prior to the advance Safrock formulated a repayment schedule pursuant to which, by fortnightly direct debits, the loan and the Deferred Establishment Fee were to be repaid over seven months from the date of the advance.
- (b) Safrock drew direct debits in accordance with that schedule, commencing on 19 January 2012.
- (c) Ms Gray repeats paragraph 39B and also relies on the particulars to paragraph 40.
- (d) The Cash Converters customer statement referable to the Second Gray Personal Loan described the term of the loan as 7 months.

Further particulars may be provided following discovery and the issue of subpoenas and notices to produce.

40. ~~Further~~ In the alternative, it was the common intention of both Safrock and Ms Gray prior to entering into the Second Gray Personal Loan that Ms Gray would repay the Second Gray Personal Loan within 7 months.

Particulars

- (a) ~~Prior to entering into the Second Gray Personal Loan Ms Gray signed a document entitled 'Personal Loan Early Repayment Election' in which she purported to elect to repay the loan 'early' Ms Gray repeats paragraph 39A and the particulars thereto.~~
- (b) ~~Safrock (by itself or its agent) conducted Preliminary and Final Assessments of Unsuitability in connection with Ms Gray's loan application on 6 January 2012 by reference to a 7 month period Ms Gray repeats paragraph 39B.~~
- (c) ~~Safrock drew direct debits of \$60.13 per fortnight from Ms Gray's account commencing 19 January 2012, which debits would be sufficient to repay the loan within 7 months Ms Gray repeats paragraph 39C and the particulars thereto.~~
- (d) Ms Gray was orally informed at the time she applied for the loan to the effect that the loan term was 7 months and the repayments were approximately \$60 per fortnight. The statement was made by a female person prior to the provision of credit by Safrock to Ms Gray. Ms Gray does not recall the precise words used.
- (e) Ms Gray was not told that she had the option to repay the Second Gray Personal Loan over a 2 year period.
- (f) CC International stated in a publicly released document entitled 'Response to the Commonwealth Government Green Paper on Consumer Credit Reform – Phase II' dated August 2010 that their short term loan products are only financially viable if a 'large proportion' are repaid early and a deferred establishment fees applies, as if repaid over the 2 year period this results in a 'loss' (page 16).
- (g) For admission to listing on the Premium Segment of the Official List and to trading on the London Stock Exchange's main market for listed securities CC International stated on 2 August 2011 that the 'approximate' term of unsecured personal loans was 7 months (page 24).
- (h) CC International's 2012 Annual Report stated that the credit period for personal short term loans varied from 30 days to 7 months (page 54).

- 40A. Further in the alternative, if (which is not admitted), Safrock was entitled, prior to the Second Gray Personal Loan being paid out, to deduct periodical amounts to Ms Gray's loan in satisfaction of the Deferred Establishment Fee, then:
- (a) the Deferred Establishment Fee was an ascertainable fee or charge which is to be included in calculating the maximum annual percentage rate under the Second Gray Personal Loan pursuant to clause 7 of Schedule 3 of the NSW Act as then applied; and
 - (b) its inclusion in the Second Gray Personal Loan caused the annual percentage rate under the Second Gray Personal Loan to exceed 48% in contravention of clause 5(1) of Schedule 3 of the NSW Act as then applied.
41. In the premises of paragraphs 39A to 39C or 40, the provision in the Second Gray Personal Loan for the payment of the Deferred Establishment Fee is void as:
- (a) the Deferred Establishment Fee was an ascertainable fee or charge which is to be included in calculating the maximum annual percentage rate under the Second Gray Personal Loan pursuant to clause 7 of Schedule 3 of NSW Act as then applied; and
 - (b) its inclusion in the Second Gray Personal Loan caused the annual percentage rate under the Second Gray Personal Loan to exceed 48% in contravention of clause 5(1) of Schedule 3 of the NSW Act as then applied.
42. In the premises of paragraph 40A and/or paragraph 41, Ms Gray is entitled to a declaration that the provision for the Deferred Establishment Fee is void.
43. Further in the alternative to paragraph 37, if (which is not admitted) the 'nAdmin' fee was in satisfaction of the Deferred Establishment Fee then the debiting and retaining of those amounts was conduct that, in all the circumstances, is unconscionable and in contravention of section 12CB(1) of the ASIC Act in that:
- (a) the provision of the Second Gray Personal Loan requiring payment of the Deferred Establishment Fee is void under the NSW Act as then applied; and
 - (b) Safrock knew, or believed, or ought to have known at the time of entry into the Second Gray Personal Loan and at all material times thereafter that:
 - (i) the Deferred Establishment Fee provided for under the Second Gray Personal Loan was ascertainable at the time the contract was made; and
 - (ii) accordingly, the provision requiring payment of the Deferred Establishment Fee was void under the NSW Act as then applied;

Particulars

The applicant repeats paragraphs ~~39A40~~ and to 41.

- (c) alternatively to (b), in causing the Second Gray Personal Loan to include provision for the payment of the Deferred Establishment Fee and in purporting to debit and retain that fee, Safrock acted recklessly and without due regard to whether the provision for the Deferred Establishment Fee is void or whether the fee is properly payable;

Particulars

The imposition of the Deferred Establishment Fee by the fees identified in the summary of account relating to the Second Gray Personal Loan as 'nAdmin' fees formed part of the system or practice of the respondents pleaded in paragraph 76.

- (d) alternatively, the Deferred Establishment Fee was only payable upon the Second Gray Personal Loan being paid out before the loan term of 24 months and Safrock had no entitlement before then to debit amounts to Ms Gray's loan account in satisfaction of the Deferred Establishment Fee and charge and retain interest upon a loan balance which included those amounts.

44. Ms Gray suffered loss and damage by the conduct referred to in paragraph 43 and claims compensation against Safrock pursuant to section 12GF(1) of the ASIC Act.

Particulars

The amounts of the Deferred Establishment Fee and interest on that fee or alternatively the interest on that fee.

(c) Further contravention of the ASIC Act

45. In the alternative, at no time prior to entering into the Second Gray Personal Loan did Safrock say to Ms Gray that she had the option of repaying the loan over 2 years by 52 repayments of \$18.02 rather than over 7 months by 15 repayments of \$60.13.
46. If, (which is not admitted) the 'nAdmin' and Administration fees were in satisfaction of the Deferred Establishment Fee, then Safrock engaged in conduct that, in all the circumstances, is unconscionable and in contravention of section 12CB(1) of the ASIC Act in that as the debiting and retention of those amounts involved an unfair tactic against Ms Gray by Safrock and/or Cash Converters Penrith in that:
- (a) the Deferred Establishment Fee was not in substance an early repayment fee as Safrock only intended to enter into a 7 month loan but nonetheless invited Ms Gray to sign contractual and application documentation in relation to a 2 year loan; and/or

- (b) the provision requiring payment of the Deferred Establishment Fee was part of a deliberate practice or system designed by the respondents to give the Second Gray Personal Loan the appearance of not contravening clause 5(1) of Schedule 3 of the NSW Act as then applied.

Particulars

Ms Gray repeats paragraph 76.

- (c) Ms Gray repeats paragraphs 38(a), 38(b) and 38(d).

47. Ms Gray suffered loss and damage by the conduct referred to in paragraph 46 and claims compensation against Safrock pursuant to section 12GF(1) of the ASIC Act.

Particulars

The amount of the Deferred Establishment Fee and interest on that fee.

(d) Unconscionable fee under the Code

48. Further and in the alternative, the Deferred Establishment Fee is an unconscionable fee or charge within the meaning of section 78(4) of the Code in that it exceeds a reasonable estimate of Safrock's loss arising from the early termination of the Second Gray Personal Loan, including Safrock's average reasonable administrative costs in respect of such a termination.

Particulars

~~Ms Gray repeats the particulars to paragraph 26.~~

- (a) The Second Gray Personal Loan would have been unprofitable for Safrock if repaid over 2 years. CC International stated this in its Response to the Commonwealth Government Green Paper on Consumer Credit Reform – Phase II dated August 2010 at page 16.
- (b) By virtue of the Deferred Establishment Fee, the Second Gray Personal Loan would be profitable for Safrock if repaid in 7 months. CC International stated this in its Response to the Commonwealth Government Green Paper on Consumer Credit Reform – Phase II dated August 2010 at page 16.
- (c) In the premises of particulars (a) and (b), the Deferred Establishment Fee was not a reasonable estimate of loss consequent upon early repayment.

49. In the premises of paragraph 48, Ms Gray applies to have the Deferred Establishment Fee annulled or reduced pursuant to section 78(1)(c) of the Code.

- 49A. In the alternative, if (which is not admitted) Safrock was entitled to deduct weekly or fortnightly amounts to Ms Gray's loan in satisfaction of the Deferred Establishment Fee prior to the Second Gray Personal Loan being paid out, then the Deferred Establishment Fee:

- (a) is in fact an establishment fee or charge within the meaning of the Code; and

- (b) is unconscionable within the meaning of section 78(1) of the Code.

Particulars

- (a) The fee is charged as a percentage of the amount advanced whereas administration costs do not vary according to the size of the loan or in a linear function.
- (b) The percentage charged also varies depending upon when the loan is paid out.
- (c) The fee is related not to Safrock's reasonable costs of determining Ms Gray's application for credit and the initial administrative costs of providing the credit or Safrock's average reasonable costs of those things with respect to similar personal loans but to the amount that makes loans of that class profitable overall (including loans which are not fully recovered).
- (d) Given (a) to (c), the description of the fee as having any relationship to "Establishment" of the loan is misleading.

49B. In the premises of paragraph 49A, Ms Gray applies to have the Deferred Establishment Fee annulled or reduced pursuant to section 78(1)(b) of the Code.

D. CONTRAVENING CONDUCT BY CC PERSONAL FINANCE

(a) Debiting and retention of nAdmin and Administration Fees

50. On or about 23 July 2012, Ms Gray and CC Personal Finance entered into a credit contract pursuant to which Ms Gray was advanced the sum of \$600.00 (**Third Gray Personal Loan**).

Particulars

On the material presently available to Ms Gray, the terms and conditions of the Third Gray Personal Loan were contained within:

- (a) the document entitled 'Contract – Part 1 Schedule' containing the terms referred to in paragraph 52 and incorporating the Standard Terms and Conditions; and
- (b) the Personal Loan Early Repayment Election signed by Ms Gray referred to in paragraph 61A;
- (c) alternatively, the documents referred to in paragraph (a).

Ms Gray also refers to and repeats paragraph 52(a) as to when the contract was formed or entered into by the parties.

51. The Third Gray Personal Loan was a financial service within the meaning of section 12BAB of the ASIC Act.

Particulars

The Third Gray Personal Loan was a credit facility as defined in section 12BAA(7)(k) of the ASIC Act and reg 2B(1)(a) of the ASIC Regulations because it involved the provision of credit to Ms Gray. Accordingly, the Third Gray Personal Loan was a financial product that CC Personal Finance issued and dealt in, within the meaning of sections 12BAB(1)(b) and 12BAB(7) of the ASIC Act.

52. The express terms and conditions of the Third Gray Personal Loan included:
- (a) that the Third Gray Personal Loan was accepted by CC Personal Finance when it loaned Ms Gray the amount of credit provided under that contract;
 - (b) an annual percentage rate of 48%;
 - (c) a loan term of 24 months;
 - (d) repayment of the loan was to occur by 52 fortnightly payments of \$18.02;
 - (e) a 'Dishonour Fee' of \$16.50 which would be debited to the loan account when a payment by direct debit, salary deduction or cheque was dishonoured;
 - (f) a 'Reschedule Fee' of \$7.00 per week which would be payable upon deferred payments; and
 - (g) a 'Deferred Establishment Fee' which would be payable if Ms Gray paid out the loan before the full term and the amount of the fee varied depending upon the date on which the loan was fully repaid.

Particulars

The above terms were contained in the 'Contract – Part 1' schedule signed by Ms Gray and by Mr Wessels on behalf of CC Personal Finance.

53. CC Personal Finance was required by section 17(8) of the Code to disclose to Ms Gray in writing all fees and charges that could become payable under the Third Gray Personal Loan.
54. CC Personal Finance did not disclose to Ms Gray at any time that an 'nAdmin' fee would be payable under the Third Gray Personal Loan.
55. On ~~24 July 2012~~ ~~8 March 2011~~, Ms Gray gave CC Personal Finance an authority to debit her account to satisfy her repayment obligations under the Third Gray Personal Loan (**Third Direct Debit Arrangement**).
56. Purporting to act pursuant to the Third Direct Debit Arrangement, CC Personal Finance debited from Ms Gray's account and retained amounts identified as the 'nAdmin' fee in her loan account under the Third Gray Personal Loan.

Particulars

An 'nAdmin' fee in the amount of \$14.00 was debited on each of 16 August 2012, 30 August 2012, 13 September 2012, 27 September 2012, 11 October 2012, 25 October 2012 and 8 November 2012.

Further particulars may be provided following discovery and the issue of subpoenas and notices to produce.

57. CC Personal Finance had no entitlement under the terms of the Third Gray Personal Loan to debit those amounts.
58. Between 24 July 2012 and 22 November 2012, CC Personal Finance charged the annual percentage rate of 48% on the whole of the purported outstanding balances on the loan account under the Third Gray Personal Loan which included the 'nAdmin' fee.
59. By reason of the matters pleaded in paragraphs 56, 57 and 58, CC Personal Finance engaged in conduct that was, in all the circumstances, unconscionable and in contravention of section 12CB(1) of the ASIC Act in that:
- (a) CC Personal Finance had no contractual right to require payment of the 'nAdmin' fee under the Third Gray Personal Loan;
 - (b) CC Personal Finance gave no notice to Ms Gray of the debits referred to in paragraph 56 and the charging of interest in paragraph 58; and/or
 - (c) CC Personal Finance engaged in the conduct recklessly and without due regard to whether those fees were properly payable.

Particulars

The imposition of the 'nAdmin' fee formed part of the system or practice of the respondents pleaded in paragraph 76.

60. Further and in the alternative to paragraph 59, the conduct of CC Personal Finance was unconscionable and in contravention of section 12CB(1) of the ASIC Act in that CC Personal Finance knew, or ought to have known having regard to its obligations under section 130 of the Credit Act, that:
- (a) Ms Gray was not highly educated;

Particulars

Ms Gray left school at the age of 14 and, until 2001, was either at home caring for her children, or working in casual jobs in fast food preparation or cleaning.

- (b) Ms Gray was in receipt of a disability support pension;
- (c) the 'nAdmin' fee would not be readily discoverable by Ms Gray as CC Personal Finance did not provide statements of account on a regular basis to borrowers; and
- (d) Ms Gray was not financially sophisticated and would require an oral explanation to fully understand her rights and obligations under the Third Gray Personal Loan.

61. By virtue of the matters pleaded in paragraphs 59 and 60 and each of them, Ms Gray seeks a declaration that by this conduct CC Personal Finance contravened section 12CB(1) of the ASIC Act.

(b) Breach of Maximum Annual Percentage Rate

61A. Prior to entering into the Third Gray Personal Loan Ms Gray also signed a document entitled 'Personal Loan Early Repayment Election' in which she purported to elect to repay the loan 'early'.

Particulars

Ms Gray signed the Personal Loan Early Repayment Election prior to the provision of the credit by CC Personal Finance to her. Ms Gray repeats paragraph 52(a).

61B. On 23 July 2012, prior to entering into the Third Gray Personal Loan, CC Personal Finance (by itself or its agent) conducted Preliminary and Final Assessments of Unsuitability in connection with Ms Gray's loan application by reference to a 7 month period.

61C. Immediately prior to the loan monies being advanced, CC Personal Finance intended to draw direct debits of \$60.13 per fortnight from Ms Gray's account commencing on 2 August 2012, which debits would be sufficient to repay the loan within 7 months, including payment of the Deferred Establishment Fee.

Particulars

- (a) On approval of the loan and prior to the advance CC Personal Finance formulated a repayment schedule pursuant to which, by fortnightly direct debits, the loan and the Deferred Establishment Fee were to be repaid over seven months from the date of the advance.
- (b) CC Personal Finance drew direct debits in accordance with that schedule, commencing on 2 August 2012.
- (c) Ms Gray repeats paragraph 61B and also relies on the particulars to paragraph 62.
- (d) The Cash Converters customer statement referable to the Third Gray Personal Loan described the term of the loan as 7 months.

Further particulars may be provided following discovery and the issue of subpoenas and notices to produce.

62. ~~Further in~~ in the alternative, it was the common intention of both CC Personal Finance and Ms Gray prior to entering into the Third Gray Personal Loan that Ms Gray would repay the Third Gray Personal Loan within 7 months.

Particulars

- (a) ~~Prior to entering into the Third Gray Personal Loan Ms Gray signed a document entitled 'Personal Loan Early Repayment Election' in which she purported to elect to repay the loan 'early'~~ Ms Gray repeats paragraph 61A and the particulars thereto.

- (b) ~~CC Personal Finance (by itself or its agent) conducted Preliminary and Final Assessments of Unsuitability in connection with Ms Gray's loan application on 23 July 2013 by reference to a 7 month period Ms Gray repeats paragraph 61B.~~
- (c) ~~CC Personal Finance drew direct debits of \$60.13 per fortnight from Ms Gray's account commencing on 2 August 2012, which debits would have been sufficient to repay the loan within 7 months Ms Gray repeats paragraph 61C and the particulars thereto.~~
- (d) Ms Gray was orally informed at the time she applied for the loan to the effect that the loan term was 7 months and the repayments were approximately \$60 per fortnight. The statement was made by a female person prior to the provision of credit by CC Personal Finance to Ms Gray. Ms Gray does not recall the precise words used.
- (e) Ms Gray was not told that she had the option to repay the Third Gray Personal Loan over a 2 year period.
- (f) CC International stated in a publicly released document entitled 'Response to the Commonwealth Government Green Paper on Consumer Credit Reform – Phase II' dated August 2010 that their short term loan products are only financially viable if a 'large proportion' are repaid early and a deferred establishment fee applies, as if repaid over the 2 year period this results in a 'loss' (page 16).
- (g) For admission to listing on the Premium Segment of the Official List and to trading on the London Stock Exchange's main market for listed securities CC International stated on 2 August 2011 that the 'approximate' term of unsecured personal loans was 7 months (page 24).
- (h) CC International's 2012 Annual Report stated that the credit period for personal short term loans varied from 30 days to 7 months (page 54).

62A. Further in the alternative, if (which is not admitted), CC Personal Finance was entitled, prior to the Third Gray Personal Loan being paid out, to deduct periodical amounts to Ms Gray's loan in satisfaction of the Deferred Establishment Fee, then:

- (a) the Deferred Establishment Fee was an ascertainable fee or charge which is to be included in calculating the maximum annual percentage rate under the Third Gray Personal Loan pursuant to clause 7 of Schedule 3 of the NSW Act as then applied; and
- (b) its inclusion in the Third Gray Personal Loan caused the annual percentage rate under the Third Gray Personal Loan to exceed 48% in contravention of clause 5(1) of Schedule 3 of the NSW Act as then applied.

63. In the premises of paragraphs 61A to 61C or 62, the provision in the Third Gray Personal Loan for the payment of the Deferred Establishment Fee is void as:

- (a) the Deferred Establishment Fee was an ascertainable fee or charge which is to be included in calculating the maximum annual percentage rate under the Third Gray Personal Loan pursuant to clause 7 of Schedule 3 of the NSW Act as then applied; and
- (b) its inclusion in the Third Gray Personal Loan caused the annual percentage rate under the Third Gray Personal Loan to exceed 48% in contravention of clause 5(1) of Schedule 3 of the NSW Act as then applied.

64. In the premises of paragraph 62A and/or paragraph 63 , Ms Gray is entitled to a declaration that the Deferred Establishment Fee is void.
65. Further in the alternative to paragraph 59, if (which is not admitted) the ‘nAdmin’ fee was in satisfaction of the Deferred Establishment Fee then the debiting and retaining of those amounts was conduct that, in all the circumstances, is unconscionable and in contravention of section 12CB(1) of the ASIC Act in that:
- (a) the provision of the Third Gray Personal Loan requiring payment of the Deferred Establishment Fee is void under the NSW Act as then applied; and
 - (b) CC Personal Finance knew, or believed, or ought to have known at the time of entry into the Third Gray Personal Loan and at all material times thereafter that:
 - (i) the Deferred Establishment Fee provided for under the Third Gray Personal Loan was ascertainable at the time the contract was made; and
 - (ii) accordingly, the provision requiring payment of the Deferred Establishment Fee was void under the NSW Act as then applied;

Particulars

Ms Gray repeats paragraphs 61A to 62 and 63.

- (c) alternatively to (b), in causing the Third Gray Personal Loan to include provision for the payment of the Deferred Establishment Fee and in purporting to debit and retain that fee, CC Personal Finance acted recklessly and without due regard to whether the provision for the Deferred Establishment Fee is void or whether the fee is properly payable;

Particulars

The payment of the Deferred Establishment Fee by the fees identified in the summary of account relating to the Third Gray Personal Loan as ‘nAdmin’ fees formed part of the system or practice of the respondents pleaded in paragraph 76.

- (d) alternatively, the Deferred Establishment Fee was only payable upon the Third Gray Personal Loan being paid out before the loan term of 24 months and CC Personal Finance had no entitlement before then to debit amounts to Ms Gray’s loan account in satisfaction of the Deferred Establishment Fee and charge and retain interest upon a loan balance which included those amounts.
66. By virtue of the matters pleaded in paragraph 65, Ms Gray seeks a declaration that by this conduct CC Personal Finance contravened section 12CB(1) of the ASIC Act.

(c) Further contravention of the ASIC Act

67. In the alternative, at no time prior to entering into the Third Gray Personal Loan did CC Personal Finance say to Ms Gray that she had the option of repaying the loan over 2 years by 52 repayments of \$18.02 rather than over 7 months by 15 repayments of \$60.13.
68. If, (which is not admitted) the 'nAdmin' and Administration fees were in satisfaction of the Deferred Establishment Fee, then CC Personal Finance engaged in conduct that, in all the circumstances, is unconscionable and in contravention of section 12CB(1) of the ASIC Act as the debiting and retention of those amounts involved an unfair tactic against Ms Gray by CC Personal Finance in that:
- (a) the Deferred Establishment Fee was not in substance an early repayment fee as CC Personal Finance only intended to enter into a 7 month loan but nonetheless invited Ms Gray to sign contractual and application documentation in relation to a 2 year loan; and/or
 - (b) the provision requiring payment of the Deferred Establishment Fee was part of a practice or system designed by the respondents to give the Third Gray Personal Loan the appearance of not contravening clause 5(1) of Schedule 3 of the NSW Act as then applied; and/or

Particulars

Ms Gray repeats paragraph 76.

- (c) Ms Gray repeats paragraphs 60(a), 60(b) and 60(d).
69. By virtue of the matters pleaded in paragraph 68, Ms Gray seeks a declaration that by this conduct CC Personal Finance contravened section 12CB(1) of the ASIC Act.

(d) Unconscionable fee under the Code

70. Further and in the alternative, the Deferred Establishment Fee is an unconscionable fee or charge within the meaning of section 78(4) of the Code in that it exceeds a reasonable estimate of CC Personal Finance's loss arising from the early termination of the Third Gray Personal Loan, including CC Personal Finance's average reasonable administrative costs in respect of such a termination.

Particulars

- (a) The Third Gray Personal Loan would be unprofitable for CC Personal Finance if repaid over 2 years. CC International stated this in its Response to the Commonwealth Government Green Paper on Consumer Credit Reform – Phase II dated August 2010 at page 16.
- (b) By virtue of the Deferred Establishment Fee, the Third Gray Personal Loan would be profitable for CC Personal Finance if repaid in 7 months. CC International stated this in its Response to the Commonwealth Government Green Paper on Consumer Credit Reform – Phase II dated August 2010 at page 16.
- (c) In the premises of particulars (a) and (b), the Deferred Establishment Fee was not a reasonable estimate of loss consequent upon early repayment.

71. Ms Gray seeks a declaration that the Deferred Establishment Fee exceeds a reasonable estimate of CC Personal Finance's loss arising from the early termination of the Third Gray Personal Loan, including CC Personal Finance's average reasonable administrative costs in respect of such a termination within the meaning of section 78(4) of the Code.

71A. In the alternative, if (which is not admitted) CC Personal Finance was entitled to deduct weekly or fortnightly amounts to Ms Gray's loan in satisfaction of the Deferred Establishment Fee prior to the Third Gray Personal Loan being paid out, then the Deferred Establishment Fee:

- (a) is in fact an establishment fee or charge within the meaning of the Code; and
- (b) is unconscionable within the meaning of section 78(1) of the Code.

Particulars

- (a) The fee is charged as a percentage of the amount advanced whereas administration costs do not vary according to the size of the loan or in a linear function.
- (b) The percentage charged also varies depending upon when the loan is paid out.
- (c) The fee is related not to CC Personal Finance's reasonable costs of determining Ms Gray's application for credit and the initial administrative costs of providing the credit or CC Personal Finance's average reasonable costs of those things with respect to similar personal loans but to the amount that makes loans of that class profitable overall (including loans which are not fully recovered).
- (d) Given (a) to (c), the description of the fee as having any relationship to "Establishment" of the loan is misleading.

71B. In the premises of paragraph 71A, Ms Gray seeks a declaration that the Deferred Establishment Fee is unconscionable within the meaning of section 78(1) of the Code.

E. INVOLVEMENT OF CC INTERNATIONAL IN THE SAFROCK FINANCE AND CC PERSONAL FINANCE CONTRAVENTIONS

72. Since at least October 2006, CC International, CC Personal Finance, Safrock and MON-E have had:

- (a) the following directors in common:

- (i) Peter Cumins;
 - (ii) Reginald Webb;
 - (iii) John Yeudall; and
- (b) the same company secretary, being Derek Ralph Groom.

73. At all material times, Mr Peter Wessels was:

- (a) a senior manager at Safrock and CC Personal Finance, responsible for, among other things, signing all personal loan contracts, including that of Ms Gray; and
- (b) part of the 'senior management team' at CC International.

73A. Since 1 July 2009 the loan administration software and internet platform used by each of Safrock and CC Personal Finance in respect of the origination and administration of unsecured personal loan contracts for which either of those entities was, or was to be, the credit provider, has been provided by MON-E in conjunction with Safrock and/or CC Personal Finance (MON-E System).

73B. At all times since at least 1 July 2009, the MON-E System:

- (a) generated a recommendation as to the amount of credit that can be lent to a consumer, on the basis of information provided by the consumer to the credit provider;
 - (b) generated uniform documents relating to a credit contract or proposed credit contract, which have, since at least 1 July 2010, included the documents entitled 'Contract – Part 1 Schedule', 'Personal Loan Early Repayment Election', 'Preliminary Assessment of Unsuitability' and 'Final Assessment of Unsuitability' in respect of credit contracts entered into by Safrock or CC Personal Finance with consumers resident in NSW;
 - (c) formulated, or was used to formulate, the amounts and schedules for repayment of principal and the payment of interest, fees and charges by consumers with respect to each credit contract;
 - (d) caused direct debits to occur directly to a consumer's bank account;
- and
- (e) enabled reporting as to each individual credit contract accessible by the credit provider in respect of that individual credit contract.

74. Further, at all material times, CC International has had effective control over the conduct of Safrock and CC Personal Finance with respect to the system by which they would offer and administer unsecured loans styled as 'personal loans' by reason of:
- (a) CC International holding 100% of the shares in Safrock and CC Personal Finance as pleaded in paragraph 3(b);
 - (b) their common directors and officers pleaded in paragraphs 72 and 73; and/or
 - (c) the use by Safrock and CC Personal Finance of the MON-E System ~~for the origination and administration of unsecured loans styled as 'personal loans'~~ pleaded in paragraphs 73A and 73B above.

Particulars

~~From at least October 2007, Safrock and CC Personal Finance have implemented uniform systems for the offering and administration of each such loan, including by using a software and internet platform developed and provided by MON-E, which at the present time is provided by MON-E in combination with CC Personal Finance.~~

75. Safrock and CC Personal Finance debited the 'nAdmin' fee and/or the 'Administration Fee' from Ms Gray's account by using the system developed and provided by MON-E and/or CC Personal Finance.
76. At all material times, the system or practice of the respondents in relation to the provision of unsecured loans styled as 'personal loans' in New South Wales was that:
- (a) personal loan contracts would not run their stated 2 year term as that would cause a loss to the lender;
 - (b) prior to the advance of funds, consumers would purport to elect to repay the loans early within approximately 7 months;
 - (c) a direct debit from the consumer's account would be put in place so that consumers would repay the loans within approximately 7 months;
 - (d) a fee of ~~at least~~ approximately 35% of the monies lent would be paid by the consumer, in addition to interest, if the loan was repaid within approximately 7 months;
 - (e) the loan was approved on the basis that repayments were structured to ensure the fortnightly recovery of the fee in (d) in addition to repayment of principal and interest.

Particulars

- (a) Prior to the commencement of the NSW Act, CC International required a fee of approximately 35% of the principal loaned in credit contracts in NSW to be charged and stated to be for brokerage services.
- (b) CC International stated in a publicly released document entitled 'Response to the Commonwealth Government Green Paper on Consumer Credit Reform – Phase II' dated August 2010 that their short term loan products are only financially viable if a 'large proportion' are repaid early and a deferred establishment fee applies, as if repaid over the 2 year period this results in a 'loss' (page 16).
- (c) For admission to listing on the Premium Segment of the Official List and to trading on the London Stock Exchange's main market for listed securities CC International stated on 2 August 2011 that the 'approximate' term of unsecured personal loans was 7 months (page 24).
- (d) CC International's 2012 Annual Report stated that the credit period for personal short term loans varied from 30 days to 7 months (at page 54).
- (e) Peter Cumins' admission reported on 26 April 2011 in the Australian newspaper was that '...93 per cent of personal loan customers repay their loan over a seven-month period'.
- (f) The loan documents in respect of personal loans given by Safrock and/or CC Personal Finance were generated, and the amount and schedule of repayments were established, by the use of the MON-E System. Ms Gray repeats paragraphs 73B(b), (c) and (d).
- (g) CC International had effective control over:
 - (i) MON-E, because of the matters pleaded in paragraphs 3(b)(iii) and 72; and
 - (ii) Safrock and/or CC Personal Finance, because of the matters pleaded in paragraph 74;and thereby had control over the generation of loan documents and repayment amounts and repayment schedules by each of Safrock and CC Personal Finance via the MON-E System.
- (h) CC International had effective control over the conduct of each of Safrock and CC Personal Finance with respect to the system by which each would offer and administer unsecured loans styled as 'personal loans' because of the matters pleaded in paragraph 74.
- (e)—Further particulars may be provided following discovery and the issue of subpoenas and notices to produce.

~~77. By reason of paragraphs 72 to 76, CC International was directly or indirectly, knowingly concerned in or party to the Safrock and CC Personal Finance contraventions pleaded above.~~

77. In the premises of paragraphs 72 to 76, at all material times, CC International knew that Safrock and CC Personal Finance complied with its business system or practice in relation to unsecured loans styled as 'personal loans' by:

- (a) having the consumer sign, prior to the provision of credit:
 - (i) a document entitled 'Contract – Part 1' schedule signed by Mr Wessels which provided that the loan was for a term of 2 years; and

- (ii) a document entitled 'Personal Loan Early Repayment Election' by which the consumer purported to elect to repay the loan earlier than the 2 year term stated in the 'Contract – Part 1'; and
- (b) not disclosing to consumers in any of the pre-contractual or contractual documents or in any other document that an 'nAdmin' or an 'Administration Fee' would be payable under the credit contract and would be debited to the consumer's account balance on a weekly or fortnightly basis;
- (c) establishing and implementing, via the MON-E System, the schedule of periodic direct debits for each consumer providing for:
 - (i) the payment of 'nAdmin' fees or 'Administration Fees'; or
 - (ii) in the alternative to (i), the payments of amounts in satisfaction of the Deferred Establishment Fee.

Particulars

- (a) The knowledge of Mr Wessels as to the matters pleaded in paragraph 77 is to be inferred from the matters pleaded in paragraphs 72 to 74 and 77(a)(i).
- (b) Mr Wessels' knowledge is to be attributed to CC International by reason of the matters pleaded in paragraph 73(b).
- (c) Further or in the alternative, the knowledge of CC International as to the matters pleaded in paragraphs 77 is to be inferred from the matters pleaded in paragraphs 72 to 76 and the particulars thereto and the obligation of members of the senior management team to report to the Board and/or the Managing Director, Mr Cumins.

Further particulars may be provided following discovery and the issue of subpoenas and notices to produce.

77A. By reason of the matters pleaded in paragraph 77, CC International:

- (a) had knowledge of the essential elements of:
 - (i) the Safrock contraventions in paragraphs 15, 21, 24(a) and (b), 37, 43, and 46(a) and (b); and/or
 - (ii) the CC Personal Finance contraventions pleaded in paragraphs 59, 65 and 68(a) and (b); and
- (b) by reason of sub paragraph (a) above, was directly or indirectly, knowingly concerned in or party to:
 - (i) the Safrock contraventions in paragraphs 15, 21, 24(a) and (b), 37, 43, and 46(a) and (b); and/or
 - (ii) the CC Personal Finance contraventions pleaded in paragraphs 59, 65 and 68(a) and (b).

77B. Further, by reason of:

- (a) the matters pleaded in paragraphs 72 to 74;
- (b) Mr Wessel's conduct in signing each of the First Gray Personal Loan contract, Second Gray Personal Loan contract and Third Gray Personal Loan contract; and
- (c) the statutory duty of each of Safrock (in respect of the First and Second Gray Personal Loans) and CC Personal Finance (in respect of the Third Gray Personal Loan) pursuant to section 128(d) & (c) of the *National Consumer Credit Protection Act 2009* (Cth) to undertake the assessment and inquiries of the consumer's personal circumstances set out sections 129 to 131 of that Act;

CC International knew the matters pleaded in paragraph 16, 38 and 60.

Particulars

- (a) The knowledge of Mr Wessels as to the matters pleaded in paragraph 77 is to be inferred from the matters pleaded in paragraphs 72 to 74 and 77(a)(i).
- (b) Mr Wessels' knowledge is to be attributed to CC International by reason of the matters pleaded in paragraph 73(b).
- (c) Further or in the alternative, the knowledge of CC International as to the matters pleaded in paragraphs 77 is to be inferred from the matters pleaded in paragraphs 72 to 76 and the particulars thereto and the obligation of members of the senior management team to report to the Board and/or the Managing Director, Mr Cumins.

Further particulars may be provided following discovery and the issue of subpoenas and notices to produce.

77C. By reason of the matters pleaded in paragraph 77B, CC International:

- (a) had knowledge of the essential elements of:
 - (i) the Safrock contraventions pleaded in paragraphs 16, 24(c), 38 and 48(c); and/or
 - (ii) the CC Personal Finance contraventions pleaded in paragraphs 60 and 68(c); and
- (b) by reason of sub paragraph (a) above, was directly or indirectly, knowingly concerned in or party to:
 - (i) the Safrock contraventions pleaded in paragraphs 16, 24(c), 38 and 48(c); and/or
 - (ii) the CC Personal Finance contraventions pleaded in paragraph paragraphs 60 and 68(c).

78. In the premises of paragraphs 77A and/or 77C, CC International was a person involved in each of the Safrock contraventions and CC Personal Finance contraventions within the meaning of section 12GF(1) of the ASIC Act.

79. Ms Gray is entitled to compensation for her loss and damage arising from the Safrock contraventions from CC International pursuant to section 12GF(1) of the ASIC Act.
80. Ms Gray seeks a declaration that CC International was a person involved in each of the CC Personal Finance contraventions within the meaning of section 12GF(1) of the ASIC Act.

F. CLAIMS OF GROUP MEMBERS

81. Group Members:

- (a) paid to either Safrock or CC Personal Finance the ‘nAdmin’ fee and/or the ‘Administration Fee’ in circumstances where the credit contract did not authorise the deduction and retention of those fees and those fees were therefore unconscionable; and/or
- (b) entered into contracts which provided for the imposition of a ‘Deferred Establishment Fee’ in circumstances where that fee was void and/or unconscionable.

Particulars

The material facts and particulars of the claims of the Group Members are similar to those of Ms Gray in relation to the Safrock and CC Personal Finance contraventions and will be provided after a trial of the common issues.

82. In relation to each of the Group Members with whom they entered into a credit contract, Safrock and CC Personal Finance:

- (a) purported to charge a fee that was void pursuant to clause 5(2) of Schedule 3 of the NSW Act as then applied by reason of the matters pleaded in paragraph 81(b);
- (b) contravened section 12CB of the ASIC Act by reason of the matters pleaded in either or both of paragraphs 81(a) and 81(b); ~~and/or~~
- (c) charged a fee or charge that was unconscionable within the meaning of section 78(4) of the Code; and/or

Particulars

Ms Gray repeats the particulars to paragraphs 26, 48 and 70.

- (d) alternatively, charged a fee or charge that was unconscionable within the meaning of section 78(1) of the Code.

Particulars

Ms Gray repeats the particulars to paragraph 27A.

83. The Group Members suffered loss and damage by reason of the contravening conduct of Safrock and/or CC Personal Finance and claim compensation against Safrock and/or CC Personal Finance pursuant to section 12GF(1) of the ASIC Act.

Particulars

The amounts of 'nAdmin' fee and/or 'Administration Fee' and/or the deferred establishment fee and interest on those fees.

Further particulars of the Group Members' loss and damage will be provided after a trial of the common issues.

84. In the alternative, the Group Members apply to have the Deferred Establishment Fee annulled or reduced pursuant to section 78(1)(c) or section 78(1)(b) of the Code.

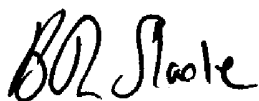
G. INVOLVEMENT OF CC INTERNATIONAL IN THE SAFROCK FINANCE AND CC PERSONAL FINANCE GROUP MEMBER CONTRAVENTIONS

85. By reason of the knowledge of CC International pleaded in paragraph 77, paragraphs 72 to 76, CC International;

- (a) had knowledge of the essential elements of the Safrock and CC Personal Finance contraventions pleaded in paragraph 82; and
- (b) was directly or indirectly, knowingly concerned in or party to the Safrock and CC Personal Finance contraventions pleaded in paragraph 82.

86. In the premises of paragraph 85, CC International was a person involved in the Safrock and CC Personal Finance contraventions pleaded in paragraph 82 within the meaning of section 12GF(1) of the ASIC Act and the Group Members are entitled to compensation for their loss and damage against CC International pursuant to section 12GF(1) of the ASIC Act.

Date: 28 May 2014



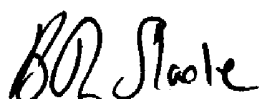
Signed by Ben Slade
Lawyer for the applicant

This pleading was prepared by John Sheahan of Senior Counsel and Rachel Francois of counsel.

Certificate of lawyer

I, Ben Slade, certify to the Court that, in relation to the statement of claim filed on behalf of the applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 28 May 2014

A handwritten signature in black ink that reads "Ben Slade". The signature is written in a cursive, slightly slanted style.

Signed by Ben Slade
Lawyer for the Applicant

Schedule

No. 2089 of 2013

Federal Court of Australia
District Registry: New South Wales
Division: General

Respondents

Second Respondent: **Safrock Finance Corporation (QLD) Pty Ltd ACN 098 566 520**

Third Respondent: **Cash Converters Personal Finance Pty Ltd ACN 110 275 762**

Date: 28 May 2014