

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 15/07/2015 11:41:01 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: NSD2090/2013
File Title: Julie Gray v Cash Converters International Ltd ACN 069 141 546 & Ors
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 15/07/2015 12:16:59 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Third Second Further Amended Statement of claim

(Dated 15 July 2015 and
filed pursuant to orders made by
Jagot J on 14 July 2015)

No. NSD 2090 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 between 1 July 2010 and 30 June 2013, being the provision of credit to which the *National Credit Code* (**Code**) applies:
 - (i) ~~in which \$1,000 or less was advanced; and~~
 - (i) in respect of which the lender was:
 - (A) a franchisee of a franchise in which the franchisor was the second respondent (**NSW Franchisee**); or
 - (AA) acting pursuant to an agreement, arrangement or understanding with a NSW Franchisee in relation to the provision of unsecured loans styled as 'cash advances' (**NSW Franchisee Lender**); or

Filed on behalf of	Julie Gray (Applicant)		
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(B) Cash Converters (Cash Advance) Pty Ltd;

(NSW Cash Advance Contracts); and

(b) signed a document entitled 'Cash Advance Early Repayment Election'.

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 third respondent for personal, domestic or household purposes.

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

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

(b) held, at all material times since at least November 2006, 100% of the shares in:

(i) the second respondent, Cash Converters Pty Ltd (**CCPL**);

(ii) Cash Converters Personal Finance Pty Ltd (**CC Personal Finance**);

(iii) Safrock Finance Corporation (QLD) Pty Ltd (**Safrock**);

(iv) Mon-E Pty Ltd (**MON-E**); and

(v) Cash Converters (Cash Advance) Pty Ltd (**CC Cash Advance**).

4. CCPL is a company duly incorporated under the laws of Australia.

5. The third respondent (**Ja-Ke Holdings**):

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

(aa) at all material times from on or about 1 October 2010:

(i) was a company under the 'control' of KJK Enterprises Pty Ltd (**KJK Enterprises**) within the meaning of the franchise agreement between KJK Enterprises and CCPL in that:

- (A) its sole director and secretary was Jacqueline Freida King, a family member of Keith John King who was and is the sole director, sole shareholder and secretary of KJK Enterprises;
 - (B) prior to 1 June 2012 it had 100 shares issued, 30 of which were owned by Keith John King, 50 of which were owned by Jacqueline Freida King, 10 of which were owned by Robert Henry James King and 10 of which were owned by Colin John King;
 - (C) at all material times from 1 June 2012 it had 100 shares issued, 50 of which were owned Keith John King and 50 of which were owned by Jacqueline Freida King;
- (ii) operated, among other businesses, a consumer credit service:
- (A) pursuant to the franchise agreement between KJK Enterprises and CCPL;
and
 - (B) with the consent of CCPL;
- (ab) since 7 September 2010 has owned the business name ‘Cash Converters Personal Finance Penrith’;
- [sub-paragraph 5(b) not used]
- (c) is a ‘credit provider’ within the meaning of section 5 of the Credit Act;
- (d) in the premises of paragraphs 5(aa)(ii) and 5(c), provides a ‘financial service’ within the meaning of sections 12BAB(1)(b) and (7) of the *Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act)*; and

Particulars

Ja-Ke Holdings provided credit to consumers in NSW at material times between on or about 1 October 2010 and 30 June 2013. The provision of credit by Ja-Ke Holdings was a financial service because Ja-Ke Holdings 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 ASIC Act and reg 2B(1)(a) of the *Australian Securities and Investments Commission Regulations 2001 (ASIC Regulations)*.

- (e) in its dealings with Ms Gray, engaged in ‘trade and commerce’ within the meaning of section 12BA(1) of the ASIC Act.

C. BUSINESS STRUCTURE OF CC INTERNATIONAL AND CCPL

6. CC International:
- (a) at all material times was, or has styled itself as, the international master franchisor of the Cash Converters franchise; and
 - (b) presently operates a global network of approximately 717 Cash Converters branded stores across 21 countries, including:
 - (i) approximately 64 stores in Australia which are owned either by CC International or by an entity that is wholly owned by CC International (**Cash Converters Company Owned Stores**); and
 - (ii) approximately 87 franchised stores in Australia;

which provide consumer credit services and second hand goods retailing.
7. CCPL has, since 1988, been the franchisor for the name and business system of the Cash Converter franchise operating in Australia.
8. Since at least October 2006, CC International, CCPL, 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.
- 8A. MON-E has provided loan administration software and an internet platform to:
- (a) CC Cash Advance since at least October 2007; and
 - (b) Cash Converters franchisees in Australia and NSW Franchisee Lenders_(other than Cash Converters franchisees in South Australia and the Northern Territory) since at least October 2007.
- 8B. At all times since at least October 2007, the loan administration software and internet platform provided by MON-E (**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 included, since at least 1 July 2010 in NSW, the documents entitled 'Cash Advance Contract', 'Cash Advance Early Repayment Election' and 'Final Assessment of Unsuitability' in respect of credit contracts entered into by the NSW Franchisees or CC Cash Advance;
 - (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;
 - (ca) in conjunction with Saffrock and/or CC Personal Finance caused direct debits to occur directly to a consumer's bank account;
 - (d) caused fees and/or commissions payable by each Cash Converters franchisee and/or NSW Franchisee Lender in respect of each credit contract entered into by that Cash Converters franchisee and/or NSW Franchisee Lender to be set and effected;
and
 - (e) enabled reporting as to each individual credit contract accessible by:
 - (i) the credit provider in respect of that individual credit contract; and
 - (ii) CCPL in respect of credit contracts entered into by a Cash Converters franchisee and/or a NSW Franchisee Lender.
9. Each Cash Converters franchisee in Australia, including KJK Enterprises:
- (a) is permitted, pursuant to its franchise agreement:
 - (i) to provide credit services to consumers in which it acts as the credit provider in respect of unsecured loans styled as 'cash advances'; or
 - (ii) to have an agreement, arrangement or understanding with another entity in relation to the provision of unsecured loans styled as 'cash advances';
 - (b) has at all material times since at least October 2007 been required by CCPL to use, or for the entity in paragraph 9(a)(ii) to use, the MON-E System in order to originate and administer the unsecured loans styled as 'cash advances' (excepting Cash Converters franchisees in South Australia and the Northern Territory); and

Particulars

Since at least October 2007, all Cash Converters franchisees in Australia (excepting those in South Australia and the Northern Territory) and NSW Franchisee Lenders_who offer unsecured loans styled as ‘cash advances’ have been required to implement 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. The applicant refers to and repeats paragraphs 8A and 8B.

- (c) has at all material times, been required, if providing the services stated in paragraph 9(a) by itself or through an agreement, arrangement or understanding with another entity, to provide a distribution network for unsecured personal loan products provided by Safrock and CC Personal Finance for which it receives revenue for acting as a credit assistance provider.
10. Cash Converters Company Owned Stores in Australia, including in NSW, have at all material times provided unsecured loans styled as ‘cash advances’ in which CC Cash Advance is the credit provider.

D. CONTRAVENING CONDUCT BY JA-KE HOLDINGS

11. In the period from 1 July 2010 until 12 October 2012, Ms Gray entered into 21 credit contracts with Ja-Ke Holdings styled as ‘cash advances’ pursuant to which Ms Gray was advanced sums of between \$100 and \$250 on each credit contract (**Gray Cash Advance Contracts**).

Particulars

The dates on which the Gray Cash Advance Contracts were entered into were:

- (a) 15 October 2010, an advance of \$150;
- (b) 26 November 2010, an advance of \$160;
- (c) 30 December 2010, an advance of \$200;
- (d) 10 February 2011, an advance of \$200;
- (e) 8 April 2011, an advance of \$200;
- (f) 13 May 2011, an advance of \$200;
- (g) 10 June 2011, an advance of \$250;
- (h) 13 July 2011, an advance of \$200;
- (i) 12 August 2011, an advance of \$200;
- (j) 4 November 2011, an advance of \$150;
- (k) 26 November 2011, an advance of \$150;
- (l) 7 January 2012, an advance of \$100;
- (m) 6 February 2012, an advance of \$100;
- (n) 12 March 2012, an advance of \$100;
- (o) 18 April 2012, an advance of \$100;

- (p) 11 May 2012, an advance of \$150;
- (q) 24 June 2012, an advance of \$100;
- (r) 23 July 2012, an advance of \$100;
- (s) 20 August 2012, an advance of \$100;
- (t) 22 September 2012, an advance of \$100; and
- (u) 12 October 2012, an advance of \$100.

11A. The terms and conditions of each of the Gray Cash Advance Contracts were contained within:

- (a) the Contract Form (as defined in paragraph 13 below) (which incorporated the DDR (as defined in paragraph 13A below)) and the CAERE (as defined in paragraph 15 below) in respect of each of the Gray Cash Advance Contracts; or
- (b) in the alternative, the Contract Form (which incorporated the DDR).

12. Each of the Gray Cash Advance Contracts was a financial service within the meaning of section 12BAB of the ASIC Act.

Particulars

Each of the Gray Cash Advance Contracts 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, each of the Gray Cash Advance Contracts was a financial product that Ja-Ke Holdings issued and dealt in, within the meaning of sections 12BAB(1)(b) and 12BAB(7) of the ASIC Act.

13. Ms Gray signed a document entitled 'Cash Advance Contract' (**Contract Form**) in respect of each Gray Cash Advance Contract.

13A. Ms Gray also signed, in respect of each Gray Cash Advance Contract, the following:

- (a) a loan application form which specified the term as being 1 month; and
- (b) a document entitled "Direct Debit Request" (**DDR**);

which were signed prior to Ms Gray receiving any of the funds representing the cash advance.

14. Each Contract Form signed by Ms Gray had terms which included:

- (a) an annual percentage rate of 48%;
- (b) a loan term of twenty-four months; ~~and~~
- (c) 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; and

- (d) the incorporation of the DDR “as part of this Contract”.
15. On each occasion that Ms Gray signed a Contract Form, and prior to the receipt of credit, Ms Gray also signed a document entitled ‘Cash Advance Early Repayment Election’ (**CAERE**) for the respective Gray Cash Advance Contract.
 16. The terms of each CAERE were to the effect that Ms Gray elected to repay the cash advance within one month.
 17. Ms Gray gave the signed Contract Form, the DDR and the signed CAERE to a representative of Ja-Ke Holdings or KJK Enterprises prior to the receipt of credit.
 18. In the premises, each of the Gray Cash Advance Contracts was entered into no earlier than the time when the signed Contract Form, the DDR and CAERE were received by a representative of Ja-Ke Holdings or KJK Enterprises.
 19. Further or alternatively, it was the common intention of both Ja-Ke Holdings and Ms Gray prior to entering into each of the Gray Cash Advance Contracts that Ms Gray would repay each of the Gray Cash Advance Contracts within approximately one month of the provision of credit.

Particulars

- (a) Ms Gray repeats paragraph 13A, 15 and 16.
 - (b) In accordance with the system or practice adopted by all NSW Franchisees, NSW Franchisee Lenders and CC Cash Advance pleaded in paragraphs 26 to 29, Ja-Ke Holdings expected and intended that each Gray Cash Advance would be repaid within approximately 1 month.
 - (ba) On approval of each of the Gray Cash Advance Contracts, Ja-Ke Holdings by itself or its agent entered a repayment schedule into MON-E System, or alternatively the MON-E System generated a repayment schedule in respect of each of the Gray Cash Advance Contracts, by which periodical debits would be drawn from Ms Gray’s account in amounts that would repay each of the Gray Cash Advance Contracts within one month.
 - (c) All direct debits drawn from Ms Gray’s account in respect of the Gray Cash Advance Contracts were in amounts that would repay each contract within one month.
 - (d) Ja-Ke Holdings (by itself or its agent) conducted a Final Assessment of Unsuitability in connection with each of Ms Gray’s loan applications by reference to a six week period.
- 19A. In the alternative, Ja-Ke Holdings intended at the time of the provision of credit to Ms Gray that:
- (a) each Gray Cash Advance would be repaid within approximately one month; and
 - (b) Ms Gray would incur a deferred establishment fee in respect of each Gray Cash Advance.

Particulars

Ms Gray repeats the particulars to paragraph 19.

20. In the premises of paragraphs 15 to 18 or alternatively 19 or alternatively 19A, the provision in each of the Gray Cash Advance Contracts 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 each of the Gray Cash Advance Contracts pursuant to clause 7 of Schedule 3 of the *Credit (Commonwealth Powers) Act 2010 (NSW) (NSW Act)* as then applied; and
 - (b) by its inclusion in each Gray Cash Advance Contract, caused the annual percentage rate under each of the Gray Cash Advance Contracts to exceed 48% in contravention of clause 5(1) of Schedule 3 of the NSW Act.
21. In the premises, Ms Gray is entitled to a declaration that the provision in each of the Gray Cash Advance Contracts for the payment of the deferred establishment fee is void.
22. Ja-Ke Holdings debited, or sought to debit, the bank account of Ms Gray for amounts which repaid the cash advance principal and interest and a deferred establishment fee within one month of the cash advance.

Particulars

The debits actually drawn from Ms Gray's accounts are set out below, and in every case other than the final Gray Cash Advance Contract dated 12 October 2012, were in amounts that included, in total, repayment of the loan principal, additional debits totalling approximately 35% of the loan principal, and interest, over a period of approximately one month:

- (a) the Gray Cash Advance Contract dated on 15 October 2010 for \$150 was repaid by 4 repayments of \$51.49 made on each of:
 - i. 21 October 2010;
 - ii. 28 October 2010;
 - iii. 4 November 2010; and
 - iv. 11 November 2010;
- (b) the Gray Cash Advance Contract dated on 26 November 2010 for \$160 was repaid by 4 repayments of \$54.92 made on each of:
 - i. 2 December 2010;
 - ii. 9 December 2010;
 - iii. 16 December 2010; and
 - iv. 23 December 2010;
- (c) the Gray Cash Advance Contract dated on 30 December 2010 for \$200 was repaid by 4 repayments of \$68.65 made on each of:
 - i. 13 January 2011;
 - ii. 20 January 2011;

- iii. 27 January 2011; and
 - iv. 3 February 2011;
- (d) the Gray Cash Advance Contract dated on 10 February 2011 for \$200 was repaid by 4 repayments of \$68.65 made on each of:
- i. 17 February 2011;
 - ii. 21 February 2011;
 - iii. 3 March 2011; and
 - iv. 7 March 2011;
- (e) the Gray Cash Advance Contract dated on 8 April 2011 for \$200 was repaid by 3 repayments of \$68.00 made on each of:
- i. 18 April 2011;
 - ii. 28 April 2011; and
 - iii. 2 May 2011;
- and 1 repayment of \$71.52 made on 12 May 2011;
- (f) the Gray Cash Advance Contract dated on 13 May 2011 for \$200 was repaid by 3 repayments of \$68.50 made on each of:
- i. 16 May 2011;
 - ii. 26 May 2011; and
 - iii. 30 May 2011;
- and 1 repayment of \$70.02 made on 9 June 2011;
- (g) the Gray Cash Advance Contract dated on 10 June 2011 for \$250 was repaid by 4 repayments of \$85.82 made on each of:
- i. 23 June 2011;
 - ii. 27 June 2011;
 - iii. 7 July 2011; and
 - iv. 11 July 2011;
- (h) the Gray Cash Advance Contract dated on 13 July 2010 for \$200 was repaid by 4 repayments of \$68.65 made on each of:
- i. 21 July 2011;
 - ii. 26 July 2011;
 - iii. 4 August 2011; and
 - iv. 8 August 2011;
- (i) the Gray Cash Advance Contract dated on 12 August 2011 for \$200 was repaid by 4 repayments of \$68.65 made on each of:
- i. 18 August 2011;
 - ii. 22 August 2011;
 - iii. 1 September 2011; and
 - iv. 5 September 2011;
- (j) the Gray Cash Advance Contract dated on 4 November 2011 for \$150 was repaid by 2 repayments of \$103.32 made on each of:
- i. 10 November 2011; and
 - ii. 24 November 2011;
- (k) the Gray Cash Advance Contract dated on 26 November 2011 for \$150 was repaid by 2 repayments of \$103.32 made on each of:
- i. 8 December 2011; and

- ii. 5 January 2012;
- (l) the Gray Cash Advance Contract dated on 7 January 2012 for \$100 was repaid by 2 repayments of \$68.88 made on each of:
 - i. 19 January 2012; and
 - ii. 2 February 2012;
- (m) the Gray Cash Advance Contract dated on 6 February 2012 for \$100 was repaid by 2 repayments of \$68.88 made on each of:
 - i. 16 February 2012; and
 - ii. 1 March 2012;
- (n) the Gray Cash Advance Contract dated on 12 March 2012 for \$100 was repaid by 2 repayments of \$68.88 made on each of:
 - i. 15 March 2012; and
 - ii. 29 March 2012;
- (o) the Gray Cash Advance Contract dated on 18 April 2012 for \$100 was repaid by 2 repayments of \$68.88 made on each of:
 - i. 26 April 2012; and
 - ii. 10 May 2012;
- (p) the Gray Cash Advance Contract dated on 11 May 2012 for \$150 was repaid by 2 repayments of \$103.32 made on each of:
 - i. 24 May 2012; and
 - ii. 7 June 2012;
- (q) the Gray Cash Advance Contract dated on 24 June 2012 for \$100 was repaid by 2 repayments of \$68.88 made on each of:
 - i. 5 July 2012; and
 - ii. 19 July 2012;
- (r) the Gray Cash Advance Contract dated on 23 July 2012 for \$100 was repaid by 2 repayments of \$68.88 made on each of:
 - i. 2 August 2012; and
 - ii. 16 August 2012;
- (s) the Gray Cash Advance Contract dated on 20 August 2012 for \$100 was repaid by 2 repayments of \$68.88 made on each of:
 - i. 30 August 2012; and
 - ii. 13 September 2012;
- (t) the Gray Cash Advance Contract dated on 22 September 2012 for \$100 was repaid by 2 repayments of \$68.88 made on each of:
 - i. 27 September 2012; and
 - ii. 11 October 2012;
- (u) the Gray Cash Advance Contract dated on 12 October 2012 for \$100 was scheduled to be repaid by 2 repayments of \$68.88 to be made on each of:
 - i. 25 October 2012; and
 - ii. 8 November 2012;

and Ms Gray defaulted on those repayments and repaid the loan on 19 August 2013 by a payment of \$152.06.

23. Further, by:

- (a) including in each of the Gray Cash Advance Contracts provision for the payment of a deferred establishment fee;
- (b) debiting amounts which included payment of such fees from Ms Gray's account; and
- (c) retaining those amounts;

Ja-Ke Holdings engaged in conduct that was, in all the circumstances, unconscionable and in contravention of section 12CB(1) of the ASIC Act in that:

- (i) the provision in the Gray Cash Advance Contracts for the payment of the deferred establishment fee was void under the NSW Act;
- (ii) Ja-Ke Holdings knew, or believed, or ought to have known at the time of entry into each of the Gray Cash Advance Contracts and at all material times thereafter that:
 - (A) the deferred establishment fee provided for by the Contract Form was ascertainable at the time the contract was made;
 - (B) accordingly, the provision requiring payment of the deferred establishment fee was void under the NSW Act;

Particulars

Ms Gray repeats paragraphs 15 to 19A and paragraphs 26 to 29.

- (iii) alternatively to (ii), in causing each Gray Cash Advance Contract to include provision for the payment of deferred establishment fee and in debiting of that fee to Ms Gray's account Ja-Ke Holdings acted recklessly and without due regard for whether the provision for the deferred establishment fee was void or whether the fee was properly payable.

Particulars

Ms Gray repeats paragraphs 15 to 19A. Further, the deferred establishment fee formed part of the system or practice of the respondents set out in paragraphs 26 to 29.

24. In the alternative:

- (a) in the premises of paragraphs 11A and 13 to 18, the term of each Gray Cash Advance Contract was one month, not twenty-four months;

Particulars

The material facts on which the allegation that the term of each Gray Cash Advance Contract was one month is based are pleaded at paragraphs 11A and 13 to 18.

- (b) no deferred establishment fee was payable under the terms of any of the Gray Cash Advance Contracts;
- (c) Ja-Ke Holdings' receipt and retention of the deferred establishment fee component of the payments debited from Ms Gray's account was, in all the circumstances, unconscionable and in contravention of section 12CB(1) of the ASIC Act in that:
 - (i) Ja-Ke Holdings had no lawful entitlement to receive or retain the deferred establishment fees;
 - (ii) Ja-Ke Holdings' receipt and retention of the deferred establishment fees was reckless and without due regard to whether the fee was properly payable.

Particulars

Ms Gray repeats the particulars to paragraph 23 (iii).

25. Ms Gray suffered loss and damage by the contravening conduct of Ja-Ke Holdings and claims compensation pursuant to section 12GF(1) of the ASIC Act.

Particulars

Payment by Ms Gray of the deferred establishment fee and interest on that fee, with respect to each of the Gray Cash Advance Contracts.

Ms Gray refers to and repeats the particulars of the payments made provided under paragraph 22.

E. BUSINESS SYSTEM OF CC INTERNATIONAL AND CCPL AND INVOLVEMENT IN CONTRAVENTION BY JA-KE HOLDINGS

26. At all material times, CC International and CCPL had effective control over the conduct of NSW Franchisees and NSW Franchisee Lenders, including Ja-Ke Holdings and KJK Enterprises, with respect to the system by which they would offer and administer unsecured loans styled as 'cash advances'.

Particulars

Particulars in relation to CCPL

- (a) Ms Gray repeats paragraphs 7 and 9 and the particulars thereto.
- (b) CCPL had effective control over the conduct of NSW Franchisees and by reason of the terms of the franchise agreement and by Operations Manuals provided to each NSW Franchisee as amended from time to time. Pursuant to these each NSW Franchisee received a uniform business format, uniform business systems, common training and operational support in conducting its business, including its consumer credit business.
- (ba) CCPL had effective control over the NSW Franchisee Lenders by reason of its effective control over the NSW Franchisees, the terms of franchise agreements with NSW Franchisees and the terms of Operations Manuals and licences;

Particulars in relation to CC International

- (c) Ms Gray repeats paragraphs 3 and 6 and the particulars thereto.
- (d) CC International had effective control over the conduct of NSW Franchisees and NSW Franchisee Lenders with respect to the giving of unsecured loans styled as 'cash advances' because:
 - (i) CC International had control over the conduct of CCPL because of the matters pleaded in paragraphs 3(b)(i) and 8 and/or 6(a);
 - (ii) CC International had effective control over MON-E (and thereby over the generation of loan documents and repayment amounts and schedules by NSW Franchisees and NSW Franchisee Lenders via the MON-E System) because of the matters pleaded in paragraphs 3(b)(iv), 8, 8A, 8B and 9.

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

27. At all times since at least October 2007, each of CC International and CCPL encouraged or required all franchisees in NSW, Queensland, Victoria, the ACT and NSW Franchisee Lenders to deal with their customers on terms which included the requirement to pay a fee or charge which amounted to approximately 35% of the amount of the credit loaned on a loan styled as a 'cash advance'.

Particulars

- (a) Ms Gray repeats paragraphs 9(a) and 9(b)0.
- (b) Prior to the commencement of the NSW Act, CC International and CCPL required a fee of approximately 35% of the principal loaned in credit contracts in NSW, Queensland and the ACT (including with respect to unsecured loans styled as 'cash advances' given by CC Cash Advance or by franchisees or by NSW Franchisee Lenders in those states and with respect to larger unsecured loans styled as 'personal loans' in which Safrock or CC Personal Finance was the lender) to be charged and stated to be for brokerage services. CC International and CCPL continued until 30 June 2013 to require a fee of approximately 35% of the principal loaned in credit contracts in Queensland and the ACT (including with respect to unsecured loans styled as 'cash advances' given by CC Cash Advance or by franchisees in those states and with respect to larger unsecured loans styled as 'personal loans' in which Safrock or CC Personal Finance was the lender) to be charged and stated to be for brokerage services.
- (c) At all material times since at least April 2009, CC International and CCPL required a fee or charge of approximately 35% of the principal loaned in credit contracts in Victoria to be charged and stated to be for the costs of the lender in connection with Loan Establishment, Documentation, Information Verification, Direct Debits, Loan Maintenance and Data Management.
- (d) In its Annual Report for the year ended 30 June 2008 at page 10, CC International stated in relation to 'cash advances' given through the Cash Converters franchise network in Australia that the loan was usually repaid within four weeks and the fee charged for providing the advance was 35% of the principal advanced which compensated the franchisee/lender for the high risk nature of the loan.

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

28. After 1 July 2010 each of CC International and CCPL encouraged or required NSW Franchisees and NSW Franchisee Lenders to recover a charge of approximately 35% of the amount of credit loaned on an unsecured loan styled as a 'cash advance' by requiring payment

of a charge styled as a 'deferred establishment fee' based upon the consumer purporting to elect to repay the credit contract earlier than the contractual period stated in the document entitled 'Cash Advance Contract'.

Particulars

The best particulars the applicant can give prior to discovery are as follows:

- (a) Ms Gray repeats paragraphs 9(a) and 9(b)0.

Particulars in relation to CC International

- (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 the cash advance product was only financially viable if the fee applied and the loan was fully repaid within a month (p 16).
- (c) 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 'Cash Advance loans are loans of less than \$1,000 and are one month in duration' (p 5).
- (d) CC International stated in the 'Admission to Listing on the Premium Segment of the Official List and to trading on the LSE main market for listed securities' dated 2 August 2011 that each Cash Converters store in Australia offers short term cash advances typically for between AUD\$50 and AUD\$1000 and for a term of 30 days (p 24).
- (e) In its Annual Report for the year ended 30 June 2008 at page 10, CC International stated in relation to 'cash advances' given through the Cash Converters franchise network in Australia that the loan was usually repaid within four weeks and the fee charged for providing the advance was 35% of the principal advanced which compensated the franchisee/lender for the high risk nature of the loan.
- (ea) CC International stated in its 14 October 2011 submission to the Parliamentary Committee on Corporations and Financial Services at page 7 that 'While it is argued that industry survives in these states [QLD and NSW], the reality is that all short term lenders in these states have in place mechanisms to ensure they receive a return greater than the (less than) 4% per month, which the 48% annualised cap imposes on them. They resort to these alternative mechanisms, most commonly a brokerage fee, in order to return a profit. The implication that consumers are better off in QLD and NSW, and are borrowing at much lower effective rates, is just not true. No-one pays less for a *Cash Advance* in QLD or NSW than in other states.'
- (f) The loan documents in respect of unsecured loans styled as 'cash advances' given by the NSW Franchisees and NSW Franchisee Lenders were generated, and the amount and schedule of repayments were established, by the use of the MON-E System. Ms Gray repeats paragraphs 8B(b), (c), (ca) and (d) and 9.
- (g) CC International had effective control over MON-E (and thereby over the generation of loan documents and repayment amounts and repayment schedules by the NSW Franchisees and NSW Franchisee Lenders via the MON-E System) because of the matters pleaded in paragraphs 3(b)(iv), 8, 8A, 8B and 9.

Particulars in relation to CCPL

- (h) Ms Gray repeats paragraphs 7 and 9 and the particulars thereto.
- (i) CCPL had effective control over the conduct of the NSW Franchisees by reason of the relationship between CCPL and each of those franchisees being regulated inter alia by the terms of the franchise agreement and by Operations Manuals provided to each NSW Franchisee as amended from time to time. Pursuant to these each NSW Franchisee received a uniform business format, uniform business systems, common

training and operational support in conducting its business, including its consumer credit business.

- (ia) CCPL had effective control over the NSW Franchisee Lenders by reason of its effective control over the NSW Franchisees, the terms of franchise agreements with NSW Franchisees and the terms of Operations Manuals and licences;
- (j) The loan documents in respect of unsecured loans styled as 'cash advances' given by the NSW Franchisees and NSW Franchisee Lenders were generated, and the amount and schedule of repayments were established, by the use of the MON-E System. Ms Gray repeats paragraphs 8B(b), (c), (ca) and (d) and (e).

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

29. In the premises of paragraphs 26 to 28, after 1 July 2010, each of CC International and CCPL knew that the NSW Franchisees and NSW Franchisee Lenders, including Ja-Ke Holdings, complied with their business system or practice in relation to unsecured loans styled as 'cash advances' by:

- (a) having the consumer sign, prior to the provision of credit:
 - (i) a document entitled 'Cash Advance Contract' which provided that the loan was for a term of 2 years; and
 - (ii) a document entitled 'Cash Advance Early Repayment Election' by which the consumer purported to elect to repay the loan within one month; and
- (b) establishing and implementing, via the MON-E System, the schedule of direct debits for each consumer providing for the repayment of the loan in a period of one month and the payment of a deferred establishment fee.

Particulars

The knowledge of each of CC International and CCPL is to be inferred from the matters pleaded at paragraphs 26 to 28 and the particulars thereto.

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

30. By reason of the matters pleaded in paragraph 29, each of CC International and CCPL:

- (a) had knowledge of the essential elements of the contraventions by Ja-Ke Holdings pleaded in paragraphs 23 and 24; and
- (b) by reason of sub paragraph (a), was directly or indirectly, knowingly concerned in or party to the contraventions by Ja-Ke Holdings pleaded in paragraphs 23 and 24.

31. In the premises, each of:

- (a) CC International; and
- (b) CCPL;

was a person involved in the contraventions by Ja-Ke Holdings pleaded in paragraphs 23 and 24 within the meaning of section 12GF(1) of the ASIC Act.

32. Pursuant to section 12GF(1) of the ASIC Act, Ms Gray is entitled to recover from CC International and CCPL the amount of her loss and damage in respect of the contraventions by Ja-Ke Holdings pleaded in paragraphs 23 and 24.

Particulars

Payment by Ms Gray of the deferred establishment fee and interest on that fee, with respect to each of the Gray Cash Advance Contracts.

Ms Gray refers to and repeats the particulars of the payments made provided under paragraph 22.

F. CLAIMS OF GROUP MEMBERS

33. Group Members entered into the NSW Cash Advance Contracts which provided for the payment of the ‘deferred establishment fee’ in circumstances where that fee was void and unconscionable.

Particulars

The deferred establishment fee formed part of the system or practice of the respondents set out in paragraphs 26 to 29.

The material facts and particulars of the claims of the Group Members in respect of the conduct of NSW Franchisees and CC Cash Advance are similar to the material facts and particulars of the claims of Ms Gray against Ja-Ke Holdings and will be provided after a trial of the common issues.

34. Each of:
- (a) the NSW Franchisees, with respect to any NSW Cash Advance Contract that a NSW Franchisee entered into with a Group Member;
 - (aa) the NSW Franchisee Lenders, with respect to any NSW Cash Advance Contract that a NSW Franchisee Lender entered into with a Group Member; and
 - (b) CC Cash Advance, with respect to any NSW Cash Advance Contract that CC Cash Advance entered into with a Group Member;

caused the deferred establishment fee to be paid by Group Members in contravention of section 12CB(1) of the ASIC Act by reason of the same or similar matters pleaded in paragraphs ~~11, 12~~ to 24.

Particulars

The deferred establishment fee formed part of the system or practice of the respondents set out in paragraphs 26 to 29.

The debits drawn from Group Members' accounts were in amounts that included, in total, repayment of the loan principal, additional debits totalling approximately 35% of the loan principal, and interest, over a period of approximately one month. Further particulars will be provided following discovery and the issue of subpoenas and notices to produce.

The material facts and particulars of the contravening conduct of the NSW Franchisees, NSW Franchisee Lenders and CC Cash Advance with respect to the Group Members are similar to the material facts and particulars of the contravening conduct of Ja-Ke Holdings with respect to Ms Gray and will be provided after a trial of the common issues.

G. INVOLVEMENT OF CC INTERNATIONAL AND CCPL IN CONTRAVENTIONS BY THE NSW FRANCHISEES, NSW FRANCHISEE LENDERS AND CC CASH ADVANCE WITH RESPECT TO THE GROUP MEMBERS

[paragraph numbers 35 and 36 not used]

37. CC International had effective control over the conduct of CC Cash Advance with respect to the system by which it would offer and administer unsecured loans styled as 'cash advances' by reason of:
- (a) CC International having held 100% of the shares in CC Cash Advance at all times since 5 October 2007;
 - (b) CC Cash Advance having at all times since 5 October 2007, Peter Cumins as a director, who is also a director of CC International;
 - (c) CC Cash Advance having at all times since 10 April 2012, John Yeudall as a director, who is also a director of CC International;
 - (ca) CC Cash Advance having at all times since 5 October 2007, Derek Ralph Groom as company secretary, who is also company secretary of CC International;
 - (d) the use by CC Cash Advance of the MON-E system for the origination and administration of unsecured loans styled as 'cash advances'; and

Particulars

CC International had effective control over MON-E (and thereby over the generation of loan documents and repayment amounts and schedules by CC Cash Advance via the MON-E System) because of the matters pleaded in paragraphs 3(b)(iv), 8, 8A and 8B.

- (e) the direct debits in respect of the NSW Cash Advance Contracts being drawn on behalf of CC Cash Advance by one of CC Personal Finance or Safrock.
38. At all times since at least October 2007, CC International encouraged or required CC Cash Advance to deal with its customers on terms which included the requirement to pay a fee or charge which amounted to approximately 35% of the amount of the credit loaned on a loan styled as a 'cash advance'.

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, Queensland and the ACT (including with respect to unsecured loans styled as 'cash advances' given by CC Cash Advance or by franchisees in those states and with respect to larger unsecured loans styled as 'personal loans' in which Safrock or CC Personal Finance was the lender) to be charged and stated to be for brokerage services. CC International and CCPL continued until 30 June 2013 to require a fee of approximately 35% of the principal loaned in credit contracts in Queensland and the ACT (including with respect to unsecured loans styled as 'cash advances' given by CC Cash Advance or by franchisees in those states and with respect to larger unsecured loans styled as 'personal loans' in which Safrock or CC Personal Finance was the lender) to be charged and stated to be for brokerage services.
- (b) At all material times since at least April 2009, CC International required a fee or charge of approximately 35% of the principal loaned in credit contracts in Victoria to be charged and stated to be for the costs of the lender in connection with Loan Establishment, Documentation, Information Verification, Direct Debits, Loan Maintenance and Data Management, including with respect to unsecured loans given by CC Cash Advance.
- (c) CC International had effective control over the conduct of CC Cash Advance with respect to the system by which it would offer and administer unsecured loans styled as 'cash advances' by reason of the matters in sub paragraphs 37(a) to (e).

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

39. After 1 July 2010, CC International encouraged or required CC Cash Advance to recover a charge of approximately 35% of the amount of credit loaned in NSW on an unsecured loan styled as a 'cash advance' by requiring payment of a charge styled as a 'deferred establishment fee' based upon the consumer purporting to elect to repay the credit contract earlier than the contractual period stated in the document entitled 'Cash Advance Contract'.

Particulars

The best particulars the applicant can give prior to discovery are as follows:

- (a) 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 the cash advance product was only financially viable if the fee applied and the loan was fully repaid within a month (p 16).
- (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 'Cash Advance loans are loans of less than \$1,000 and are one month in duration' (p 5).
- (c) CC International stated in the 'Admission to Listing on the Premium Segment of the Official List and to trading on the LSE main market for listed securities' dated 2 August 2011 that each Cash Converters store in Australia offers short term cash advances typically for between AUD\$50 and AUD\$1000 and for a term of 30 days (p 24).
- (d) CC International had effective control over the conduct of CC Cash Advance with respect to the system by which it would offer and administer unsecured loans styled as 'cash advances' by reason of the matters in sub paragraphs 37(a) to (e).
- (e) The loan documents in respect of unsecured loans styled as 'cash advances' given by CC Cash Advance were generated, and the amount and schedule of repayments were

established, by the use of the MON-E System. Ms Gray repeats paragraph 8A(a), (b), (c) and (d).

- (f) CC International had effective control over MON-E (and thereby over the generation of loan documents and repayment amounts and repayment schedules by CC Cash Advance via the MON-E System) because of the matters pleaded in paragraphs 3(b)(iv), 8, 8A and 8B.

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

40. In the premises of paragraphs 37 to 39, after 1 July 2010, CC International knew that CC Cash Advance complied with its business system or practice in relation to the giving of unsecured loans styled as 'cash advances' in NSW by:

- (a) having the consumer sign, prior to the provision of credit:
 - (i) a document entitled 'Cash Advance Contract' which provided that the loan was for a term of 2 years; and
 - (ii) a document entitled 'Cash Advance Early Repayment Election' by which the consumer purported to elect to repay the loan within one month; and
- (b) establishing and implementing, via the MON-E System, the schedule of direct debits for each consumer providing for the repayment of the loan in a period of one month and the payment of a deferred establishment fee.

Particulars

The knowledge of CC International is to be inferred from the matters pleaded at paragraphs 37 to 39 and the particulars thereto.

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

40A. By reason of the matters pleaded in paragraph 40, CC International:

- (a) had knowledge of the essential elements of the contraventions by CC Cash Advance pleaded in paragraph 34(eb); and
- (b) by reason of sub paragraph (a), was directly or indirectly, knowingly concerned in or party to the contraventions by by CC Cash Advance pleaded in paragraph 34(eb).

40B. By reason of the matters pleaded in paragraph 29, CC International and CCPL:

- (a) had knowledge of the essential elements of the contraventions by the NSW Franchisees pleaded in paragraph 34(a) and NSW Franchisee Lenders pleaded in paragraph 34(aa); and

- (b) by reason of sub paragraph (a), was directly or indirectly, knowingly concerned in or party to the contraventions by the NSW Franchisees pleaded in paragraph 34(a) and NSW Franchisee Lenders pleaded in paragraph 34(aa).
41. In the premises, CCPL was involved in the contraventions by the NSW Franchisees pleaded in paragraph 34(a) and NSW Franchisee Lenders pleaded in paragraph 34(aa) within the meaning of section 12GF(1) of the ASIC Act .
42. In the premises, CC International, was-a person involved in the contraventions:
- (a) by the NSW Franchisees pleaded in paragraph 34(a) and/or;
- (aa) by NSW Franchisee Lenders pleaded in paragraph 34(aa);
- (b) by CC Cash Advance pleaded in paragraph 34(b);
- within the meaning of section 12GF(1) of the ASIC Act.
43. The Group Members suffered loss and damage by reason of the matters pleaded in paragraph 34.

Particulars

Payment by the Group Members of the deferred establishment fee and interest on that fee, with respect to each of the NSW Cash Advances Contracts. Ms Gray repeats the particulars to paragraph 34.

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

44. Pursuant to section 12GF(1) of the ASIC Act, each Group Member who entered into-a NSW Cash Advance Contract with a NSW Franchisee or NSW Franchisee Lender is entitled to recover from CC International and CCPL the amount of his or her loss and damage in respect of the contraventions pursuant to section 12GF(1) of the ASIC Act.

Particulars

The Group Members claim repayment of the deferred establishment fee and interest on that fee.

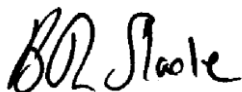
Further particulars of the Group Members' loss and damage will be provided after a trial of the common issues.

45. Pursuant to section 12GF(1) of the ASIC Act, each Group Member who entered into a NSW Cash Advance Contract with CC Cash Advance is entitled to recover from CC International the amount of his or her loss and damage in respect of the contraventions pursuant to section 12GF(1) of the ASIC Act.

Particulars

Ms Gray repeats the particulars to paragraph 44.

Date: 15 July 2015

A handwritten signature in black ink that reads "Ben Slade". The signature is written in a cursive style with a large, stylized 'B' and 'S'.

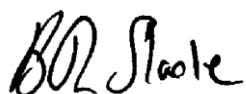
Signed by Ben Slade
Lawyer for the applicant

This pleading was prepared by John Sheahan and Rachel Francois of counsel and amended by 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: 15 July 2015

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. NSD 2090 of 2013

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

Respondents

Second Respondent: **Cash Converters Pty Ltd ACN 009 288 804**
Third Respondent: **Ja-Ke Holdings Pty Ltd ACN 072 118 720**

Date: 15 July 2015