

## NOTICE OF FILING

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### Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
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: 19/08/2014 1:31:19 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.

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## **Amended Defence**

No. NSD2090/2013  
(Amended on 19 August 2014 pursuant to  
paragraph 2 of the Order made by Her Honour  
Justice Farrell on 19 August 2014)

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

**Julie Gray**

Plaintiff Applicant

**Cash Converters International Limited (ACN 069 141 546) and others**

Defendants Respondents

Paragraph references are references to the Amended Statement of Claim (**ASC**) unless otherwise stated. Capitalised terms have the same meaning as set out in the ASC unless otherwise stated.

### **A. THE GROUP MEMBERS**

1. The first and second defendants respondents (the defendants respondents) do not plead to paragraph 1 as no allegation is made against them.

### **B. THE PARTIES**

2. The defendants respondents:

(a) admit paragraph 2(a);

(b) admit paragraph 2(b);

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Filed on behalf of (name & role of party)

Cash Converters International Limited (ACN 069 141 546) (First Defendant)  
Cash Converters Pty Ltd (ACN 009 288 804) (Second Defendant)

Prepared by (name of person/lawyer)

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(c) say that they do not know and cannot admit the allegations in paragraph 2(c).

3. The defendants ~~respondents~~ admit paragraph 3.

4. The defendants ~~respondents~~ admit paragraph 4.

5. Save to say that the franchise agreement in respect of the Cash Converters Penrith store and which was dated 15 October 2010 was between the second defendant and KJK Enterprises Pty Ltd, the The defendants ~~respondents~~ admit paragraph 5.

### **C. BUSINESS STRUCTURE OF CC INTERNATIONAL AND CCPL**

6. As to paragraph 6, the defendants ~~respondents~~:

(a) say that the first defendant ~~respondent~~ is the holding company of a group of companies;

(b) say that 64 stores in Australia that are branded "Cash Converters" are owned and operated by Cash Converters (Stores) Pty Ltd;

(c) say that 87 stores in Australia that are branded "Cash Converters" are operated by franchisees under a franchise agreement with the second defendant ~~respondent~~;

(d) otherwise deny paragraph 6.

7. The defendants ~~respondents~~ admit paragraph 7.

8. The defendants ~~respondents~~ admit paragraph 8.

8A. The defendants ~~respondents~~ admit paragraph 8A.

8B. As to paragraph 8B, the defendants ~~respondents~~:

(a) deny the first paragraph 8B(d) and say that MON-E in conjunction with Safrock and/or CC Personal Finance caused direct debits to occur directly to a consumer's bank account;

(b) otherwise admit paragraph 8B.

9. As to paragraph 9, the defendants ~~respondents~~:

(aa) say that the franchisee of the second defendant as from 15 October 2010 was KJK Enterprises Pty Ltd and not the third defendant;

(a) admit paragraph 9(a);

(b) say that it was a matter for ~~the third respondent~~ and each franchisee as to whether that franchisee wished to provide the cash advance product and personal loan products to customers;

(c) say that the terms of the franchise agreement between the second defendant ~~respondent~~ and ~~the third respondent~~ KJK Enterprises Pty Ltd (and other franchisees) governed the arrangement by which the third defendant ~~respondent~~ (or other franchisees or company under the control of the franchisee) offered Financial Products (as defined) including cash advances using the system provided by MON-E or any other system provided by the second defendant ~~respondent~~;

(d) otherwise deny paragraph 9.

10. The defendants ~~respondents~~ admit paragraph 10.

#### **D. CONTRAVENING CONDUCT BY JA-KE HOLDINGS**

11. As to paragraph 11, the defendants ~~respondents~~:

(a) admit that the plaintiff applicant and the third defendant ~~respondent~~ entered into the Gray Cash Advance Contracts the first of which bears the date 15 October 2010 and the last of which bears the date 12 October 2012;

(b) admit that each of the Gray Cash Advance Contracts was for a sum between \$100 and \$250;

(c) say that in the case of each of the Gray Cash Advance Contracts, the contract comprised the document styled "CASH ADVANCE CONTRACT";

(d) say that the document styled "Cash Advance Early Repayment Election" which the plaintiff applicant signed in respect of each credit contract was an election made by the plaintiff applicant which reduced the loan term and triggered the payment of the deferred establishment fee in accordance with the terms of each of the Gray Cash Advance Contracts;

(e) otherwise deny paragraph 11.

12. The defendants ~~respondents~~ admit paragraph 12.

13. The defendants ~~respondents~~ admit paragraph 13.

14. As to paragraph 14:

- (a) the defendants ~~respondents~~ admit paragraph 14(a);
- (b) the defendants ~~respondents~~ admit paragraph 14(b);
- (c) as to paragraph 14(c) the defendants ~~respondents~~ say that each of the Gray Cash Advance Contracts contained a term in respect of the deferred establishment fee in the following terms:

Deferred Establishment Fee: The loan term is 2 years (24 months). If the Borrower pays out the loan before the full term, a deferred establishment fee will be charged. The deferred establishment fee will vary depending upon the date on which the loan is fully repaid. If the loan is fully repaid within 3 months, the fee will be 60% of the principal amount but this will be reduced to 35% if paid by direct debit to encourage good fiscal management. If the loan is repaid after 3 months but within 6 months, the fee will be 50% of the principal amount but this will be reduced to 30% if paid by direct debit to encourage good fiscal management. If the loan is repaid after 6 months but within 12 months, the fee will be 40% of the principal amount but this will reduce to 25% if paid by direct debit to encourage good fiscal management. If the loan is repaid after 12 months but within 18 months, the fee will be 30% of the principal amount but this will be reduced to 20% if paid by direct debit to encourage good fiscal management. If the loan is repaid after 18 months there will be no deferred establishment fee.

15. As to paragraph 15, the defendants ~~respondents~~:

- (a) admit that in respect of each of the cash advances referred to in the particulars to paragraph 11, the plaintiff ~~applicant~~ signed a CAERE which bears the same date as the Gray Cash Advance Contract;
- (b) otherwise do not know and cannot admit paragraph 15.

16. The defendants ~~respondents~~ deny paragraph 16 and says that each CAERE was in the following terms:

"I hereby elect to repay my loan early. I understand that a deferred establishment fee as set out in the Cash Advance Contract will be charged to enable this early repayment.

I agree that direct debits may be presented to my nominated bank account in accordance with the following repayment schedule:

*[the relevant schedule setting out the date and amount for repayment was then set out for each Gray Cash Advance Contract]."*

17. The defendants ~~respondents~~ do not know and cannot admit paragraph 17.
18. The defendants ~~respondents~~ deny paragraph 18 and further say that:
- (a) each of the Gray Cash Advance Contracts was entered into at the time the plaintiff ~~applicant~~ signed the Gray Cash Advance Contracts;
  - (b) alternatively, each of the Gray Cash Advance Contracts was entered into at the time that the plaintiff ~~applicant~~ was assessed and the product deemed not unsuitable to the customer by or on behalf of the third defendant ~~respondent~~.
19. The defendants ~~respondents~~ do not know and cannot admit paragraph 19.
- 19A. The defendants ~~respondents~~ do not know and cannot admit paragraph 19A.
20. As to paragraph 20, the defendants ~~respondents~~:
- (a) repeat their response to paragraphs 15 to 19 and 19A;
  - (b) say that to the extent the third defendant ~~respondent~~ was implementing the cash advance product pursuant to the franchise agreement between the second defendant ~~respondent~~ and the ~~third respondent~~ KJK Enterprises Pty Ltd, the deferred establishment fee was not an ascertainable fee or charge which was 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 NSW Act because:
    - (i) the deferred establishment fee was not ascertainable when the annual percentage rate was calculated;
    - (ii) the plaintiff ~~applicant~~ had the opportunity to make an election as to the early repayment of the cash advance;
    - (iii) if the plaintiff ~~applicant~~ elected to repay the cash advance after 18 months then no deferred establishment fee was payable;
    - (iv) if, having made an election as to the early repayment of the cash advance, the plaintiff ~~applicant~~ had determined to revoke or vary her election then she was permitted to do so and the necessary adjustments would have been made to the deferred establishment fee charged.
  - (c) otherwise deny paragraph 20.

21. The defendants ~~respondents~~ deny paragraph 21 if and to the extent any allegation is made against them.
22. The defendants ~~respondents~~ admit paragraph 22.
23. The defendants ~~respondents~~ deny paragraph 23 if and to the extent that any allegations are made against them.
24. The defendants ~~respondents~~ deny paragraph 24 if and to the extent that any allegations are made against them.
25. The defendants ~~respondents~~ deny paragraph 25 if and to the extent that any allegations are made against them.

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

26. As to paragraph 26, the defendants ~~respondents~~:
  - (a) say that the franchise agreement was ~~entered into~~ between the second defendant ~~respondent~~ and the ~~third respondent~~ KJK Enterprises Pty Ltd and was dated 15 October 2010;
  - (b) say that the first defendant ~~respondent~~ was not a party to any franchise agreement with the third defendant ~~respondent~~ or any other franchisee;
  - (c) say that the terms of the franchise agreement between the second defendant ~~respondent~~ and the ~~third respondent~~ KJK Enterprises Pty Ltd governed the arrangement by which the third defendant ~~respondent~~ offered Financial Products (as defined) including cash advances using the system provided by MON-E or any other system provided by the second defendant ~~respondent~~;
  - (d) say that the defendants ~~respondents~~ were not in control or effective control of the third defendant ~~respondent~~ which at all material times made its own operational and business decisions;
  - (e) otherwise deny paragraph 26.
27. As to paragraph 27, the defendants ~~respondents~~:
  - (a) say that it was a matter for the ~~third respondent~~ and each other franchisee as to whether that franchisee wished to provide the cash advance product to customers;

- (b) say that at no time did the defendants respondents compel, encourage or require KJK Enterprises Pty Ltd or the third defendant respondent to provide the cash advance product to customers;
  - (c) say that it was open to ~~the third respondent~~ or any other franchisee to decline to provide the cash advance product;
  - (d) otherwise deny paragraph 27.
28. As to paragraph 28, the defendants respondents:
- (a) repeat their responses to paragraphs 14(c), 20, 26 and 27;
  - (b) otherwise deny paragraph 28.
29. As to paragraph 29, the defendants respondents:
- (a) repeat their responses to paragraphs 8A, 8B, 11, 18, 20, 26 and 27;
  - (b) knew that from 10 July 2010 NSW Franchisees offered a cash advance product which had as a feature an early repayment election and that a customer could at his or her option elect to execute a CAERE which reduced the loan term;
  - (c) knew that the terms of the franchise agreement between the second defendant respondent and the ~~third respondent~~ KJK Enterprises Pty Ltd (and other franchisees) governed the arrangement by which the third defendant respondent (or other franchisees or company under the control of the franchisee) offered Financial Products (as defined) including cash advances using the system provided by MON-E or any other system provided by the second defendant respondent;
  - (d) otherwise deny paragraph 29.
30. The defendants respondents deny paragraph 30.
31. The defendants respondents deny paragraph 31.
32. The defendants respondents deny paragraph 32.
- F. CLAIMS OF GROUP MEMBERS**
33. The defendants respondents deny paragraph 33 if and to the extent that any allegations are made against them.



34. The ~~defendants~~ ~~respondents~~ deny paragraph 34 if and to the extent that any allegations are made against them.

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

35. [not used].

36. [not used].

37. As to paragraph 37, the ~~defendants~~ ~~respondents~~:

- (a) admit that the first ~~defendant~~ ~~respondent~~ has held 100% of the shares in CC Cash Advance since 5 October 2007;
- (b) admit that Peter Cummins has been a director of CC Cash Advance since 5 October 2007 and that Peter Cummins is also a director of the first ~~defendant~~ ~~respondent~~;
- (c) admit that John Yeudall has been a director of CC Cash Advance since 10 April 2012 and that John Yeudall is also a director of the first ~~defendant~~ ~~respondent~~;
- (ca) admit that Derek Ralph Groom has been the secretary of CC Cash Advance since 5 October 2007 and that Derek Ralph Groom is also the secretary of the first ~~defendant~~ ~~respondent~~;
- (d) admit that CC Cash Advance use the MON-E system for the origination and administration of unsecured loans styled "cash advances";
- (e) admit that CC Personal Finance or Safrock drew direct debits in respect of the NSW Cash Advance Contracts on behalf of CC Cash Advance;
- (f) otherwise deny paragraph 37.

38. As to paragraph 38, the ~~defendants~~ ~~respondents~~:

- (a) admit that CC Cash Advance has since 10 July 2010 provided the cash advance product to customers which product at the borrower's election resulted in the payment of a deferred establishment fee on the terms of the relevant contracts;
- (b) otherwise deny paragraph 38.

39. As to paragraph 39, the ~~defendants~~ ~~respondents~~:

- (a) admit that CC Cash Advance has since 10 July 2010 offered a cash advance product which had as a feature an early repayment election and that a customer could at his or her option elect to execute a CAERE which reduced the loan term;
- (b) admit that CC Cash Advance use the MON-E system for the origination and administration of unsecured loans styled "cash advances";
- (c) otherwise deny paragraph 39.

40. As to paragraph 40, the defendants ~~respondents~~:

- (a) knew that from 1 July 2010 CC Cash Advance offered a cash advance product which had as a feature an early repayment election;
- (b) admit that CC Cash Advance used the MON-E system for the origination and administration of unsecured loans styled "cash advances";
- (c) otherwise deny paragraph 40.

40A. The defendants ~~respondents~~ deny paragraph 40A to the extent that any allegation is made against them.

40B. The defendants ~~respondents~~ deny paragraph 40B.

41. The defendants ~~respondents~~ deny paragraph 41 to the extent that any allegation is made against them .

42. The defendants ~~respondents~~ deny paragraph 42 to the extent that any allegation is made against them.

43. The defendants ~~respondents~~ deny paragraph 43.

44. The defendants ~~respondents~~ deny paragraph 44.

45. The defendants ~~respondents~~ deny paragraph 45 to the extent that any allegation is made against them.

Date: ~~24 July 2014~~ 19 August 2014



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Signed by Norman Samuel Fryde  
Lawyer for the First and Second Defendants  
~~Respondents~~

This pleading was prepared by Andrew Coleman and David Sulan of counsel.

**Certificate of lawyer**

I certify to the Court that, in relation to the defence filed on behalf of the First and Second Defendants Respondents, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~24 July 2014~~ 19 August 2014



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Signed by Norman Samuel Fryde  
Lawyer for the First and Second Defendants  
Respondents

**Schedule**

No. NSD2090/2013

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

**Defendants Respondents**

Second Defendant Respondent: **Cash Converters Pty Ltd (ACN 009 288 804)**

Third Defendant Respondent: **Ja-Ke Holdings Pty Ltd (ACN 072 118 720)**

Date: ~~24 July 2014~~ 19 August 2014