

ENFORCEABLE UNDERTAKING

pursuant to Section 93AA *Australian Securities And Investments Commission Act 2001*

The commitments in this Enforceable Undertaking are offered to the Australian Securities and Investments Commission (ASIC) by **Cash King Pty Limited** ACN 086 718 407 and **Daniel Swart** of Unit 1/ 4 North Rocks Road, North Parramatta, NSW, 2151.



1. Background

DANIEL SWART

1.1 Cash King Pty Limited ("**Cash King**") has in the period from about February 2002 to date, supplied the following services as part of the business conducted by it:

(a) Cash King has acted as a mortgage broker, broking business or investment loans financed by private lenders and secured over the borrower's real property ("**Broking Business**");

(b) Cash King has acted as a lender who supplied customers with finance, which was secured by an equitable mortgage over the borrower's real property ("**Lending Business**").

1.2 The Lending Business involved the advance of funds to borrowers secured by a mortgage over the borrower's property. The loans advanced by Cash King in the Lending Business were specifically for business and or investment purposes only and were for short periods of 3 to 12 months.

1.3 Daniel Swart ("**Mr Swart**") has been the managing director of Cash King since 16 March 1999. Prior to Cash King commencing its real property Broking and Lending Business in February 2002, Mr Swart had limited experience in this type of business.

1.4 On 18 May 2005 ASIC commenced proceedings against Cash King and Mr Swart in the Federal Court (proceedings no 767 of 2005) ("**Court Proceedings**") alleging in substance that:

- (a) Cash King engaged in misleading or deceptive conduct in relation to its Broking Business and its Lending Business in contravention of section 12DA of the ASIC Act;
- (b) Cash King made false or misleading representations in relation to its Broking Business and its Lending Business in contravention of section 12DB of the ASIC Act; and
- (c) Mr Swart was the managing director and was responsible for and supervised the day-to-day activities of Cash King.

1.5 The conduct which is the subject of the Court Proceedings includes the following.

Increase of establishment fee

1.6 As part of the Broking Business, Cash King brokered loans supplied by a number of lenders including private lenders and mortgage companies. In the period from 26 August 2002 to 5 August 2003, in relation to loans brokered by Cash King and established in particular by Bleier Mortgage Corporation Pty Ltd (“BMC”):

- (a) Cash King received letters of offer of finance from BMC which included a fee payable to BMC for the establishment of the mortgage. Cash King's practice was to copy this letter of offer from BMC onto its own letterhead before forwarding it to the borrower;
- (b) In the process of copying the letters of offer onto its own letterhead, Cash King, on occasion, increased the establishment fee payable to BMC by the borrower;
- (c) Cash King had an agreement with BMC whereby BMC would retain 35% of the increased portion of the establishment fee and pay back to Cash King the remaining 65% of the increased portion of the establishment fee.

Overcharging enforcement costs and expenses

- 1.7 Cash King, as part of the Lending Business, advanced funds to borrowers secured by a mortgage, usually a second mortgage, over the borrowers' property. Under the terms of the mortgage Cash King was entitled to charge borrowers for costs and expenses incurred by Cash King in relation to any default on the part of the borrower.
- 1.8 From October 2002 to about June 2004, when a borrower was in default, a range of enforcement tasks were undertaken by employees of Cash King who did not have legal qualifications ("**Enforcement Tasks**"). The Enforcement Tasks undertaken by Cash King employees were charged for in accordance with a memorandum provided to Cash King by an external solicitor which itemised various enforcement tasks and the corresponding fees that that solicitor charged his clients for undertaking those tasks, in circumstances where Cash King did not engage the external solicitor to undertake the Enforcement Tasks.
- 1.9 An assessment by an independent costs assessor, engaged by Cash King after ASIC raised concerns about the enforcement costs charged by Cash King, found that the amounts charged to borrowers for the Enforcement Tasks exceeded the actual costs to Cash King, being the internal salary and overhead costs to Cash King.
- 1.10 The independent costs assessor also found that there were some tasks undertaken by Cash King employees which could have been charged for as enforcement costs but were not, in fact, charged for at all.

Charging of brokerage fees where Cash King provided the loan and no third party brokerage services provided

- 1.11 Between 11 March 2002 and March 2003 Cash King, in the course of the Lending Business, regularly represented to borrowers that an amount was payable to Cash King

for a "brokerage fee" when the loan was supplied by Cash King and no third party had brokered the loan for those borrowers.

Incorrectly treated borrowers as in default

- 1.12 It was Cash King's usual practice, in the course of the Lending Business, to withhold from the loan advance one month's interest in advance and accordingly the next interest payment was not due until a particular date in the second month after the loan was made. However, between 11 March 2002 and 30 June 2004 it also was Cash King's usual practice to treat borrowers as being in default if they did not make an interest payment on a particular date in the first month after the loan was made, and to charge borrowers a higher, default rate of interest and, where relevant, enforcement expenses.
- 1.13 Cash King and Mr Swart have agreed to resolve the Court Proceedings by:
- (a) Preparing and filing in conjunction with ASIC a Statement of Agreed Facts ("**Statement of Agreed Facts**");
 - (b) consenting to orders being made by the Federal Court; and
 - (c) offering the undertakings set out in this document.

ASIC has agreed to accept the undertakings as part of the overall resolution of the Court Proceedings.

2. Undertakings by Cash King

Establishment fees

- 2.1 Subject to 2.12 below Cash King undertakes to pay refunds to borrowers (to the extent that Cash King has not already paid such refunds) of the amount by which Cash King increased the establishment fee originally sought by BMC in each transaction in which

there was an establishment fee payable to BMC. For example, if, in its letter of offer sent to Cash King, BMC had sought an establishment fee of \$1000, but Cash King in its letter of offer sent to the borrower had sought, as an establishment fee payable to BMC, the sum of \$1500, then Cash King is to refund to that borrower the sum of \$500.

- 2.2 Without limiting paragraph 2.1, but as part of that obligation, Cash King undertakes to pay to persons listed in column 1 of Annexure A to the Statement of Agreed Facts, (to the extent that Cash King has not already made such payments), within one month of receiving a request for a refund from those persons, a refund in an amount equal to the amount set out in column 3 of Annexure A less the amount set out in column 2 of Annexure A.

Enforcement expenses

- 2.3 Subject to 2.6 and 2.12 below Cash King undertakes to pay refunds to borrowers (to the extent that Cash King has not already paid such refunds) of the amount borrowers paid to Cash King by way of enforcement costs and expenses in excess of the enforcement costs and expenses actually incurred by Cash King.
- 2.4 Without limiting paragraph 2.3, but as part of that obligation, Cash King undertakes to pay refunds to borrowers (to the extent that Cash King has not already paid such refunds) of amounts charged by Cash King in relation to Enforcement Tasks carried out by Cash King employees to the extent that those amounts exceeded the salary and overhead costs attributable to the time taken by Cash King employees to complete the tasks.
- 2.5 Without limiting paragraph 2.3, but as part of that obligation, Cash King undertakes to, subject to paragraph 2.6 below, pay (to the extent that Cash King has not already paid) to the persons, listed in column 1 of Annexure B to the Statement of Agreed Facts, within one month of receiving a request for a refund from those persons, a refund in an amount equal to the amount set out in column 3 of Annexure B less the amount set out in column 4 of Annexure B.

- 2.6 Where a borrower is entitled to a refund of enforcement costs and expenses pursuant to paragraph 2.10 below, that borrower shall not be entitled to a refund pursuant to paragraphs 2.2 to 2.5 above in relation to the same enforcement costs and expenses.
- 2.7 Cash King undertakes that it will not, as a result of the matters leading to the offering of this Undertaking and the matters contained in the Undertaking, seek to claim, demand or receive any payment for any enforcement activities carried out by Cash King employees before 1 July 2004 unless such costs and expenses were the subject of a claim or demand made prior to 1 January 2005.

Brokerage fees

- 2.8 Subject to 2.12 below Cash King undertakes to pay refunds to borrowers (to the extent that Cash King has not already paid such refunds) of the brokerage fee paid to Cash King by borrowers where the finance was provided by Cash King and there was no third party broker.
- 2.9 Without limiting paragraph 2.8, but as part of that obligation, Cash King undertakes to pay (to the extent that Cash King has not already paid) to the persons listed in column 1 of Annexure D to the Statement of Agreed Facts, within one month of receiving a request for a refund from those persons, a refund in an amount set out in column 3 of Annexure D.

Amount to discharge credit facilities

- 2.10 Subject to 2.12 below Cash King undertakes to pay refunds to borrowers (to the extent that Cash King has not already paid such refunds) of all amounts paid to Cash King by borrowers which would not have been payable by them but for the assertion by Cash King that borrowers were in default by not paying the second interest payment under a credit facility with Cash King one month after the advance of the loan principal or the third interest payment two months after the advance of the loan principal and so on, notwithstanding that the first interest payment by them, due to be paid approximately one month after the advance of the loan principal, had been retained by Cash King out of the amount advanced under the credit facility.

2.11 Without limiting paragraph 2.10, but as part of that obligation, Cash King undertakes to pay (to the extent that Cash King has not already paid) to the persons listed in column 1 of Annexure E to the Statement of Agreed Facts, within one month of receiving a request for a refund from those persons, a refund in an amount equal to the amount set out in column 2 of Annexure E less the amount set out in column 3 of Annexure E.

Offset against amount outstanding

2.12 Subject to 2.17 through 2.21 below, where Cash King and a borrower entered into a loan agreement secured by a mortgage and the terms of this Undertaking require Cash King to make a refund payment to that borrower in relation to that loan agreement, Cash King shall be entitled to reduce the amount of any refund payment due to a borrower to the extent ("**Offset Amount**") that the amount paid to Cash King on the date that the mortgage was discharged was less than the amount actually due to Cash King pursuant to the terms of the loan agreement on that date.

Letter to affected borrowers

2.13 Cash King will within 21 days of the execution of this Enforceable Undertaking send by ordinary pre-paid post to the last address known to Cash King for each borrower entitled to a refund pursuant to paragraphs 2.1 to 2.11, including those borrowers listed in column 1 of Annexures A, B, D and E of the Statement of Agreed Facts, a letter:

- (a) in the form annexed at Annexure A to this Undertaking except in the circumstances set out in (b) and (c) below; or
- (b) in the form annexed at Annexure B to this Undertaking if Cash King intends to rely on paragraph 2.12 and paragraph 2.17 applies; or
- (c) in the form annexed at Annexure C to this undertaking where Cash King intends to rely on 2.11 below and paragraph 2.18 applies.

2.14 Cash King will, in the case of any of:

- (a) the letters sent in accordance with the undertaking given at 2.13 above that are returned to the First Defendant; and
- (b) the people referred to the undertaking given at 2.13 above who have not contacted Cash King within one month of the letters being sent in accordance with the undertaking given at 2.13 above

update the addresses they have for these people by conducting the searches set out in 2.15 below within 14 days of, in the case of (a) above, the letter being returned or, in the case of (b) above, the period of one month from the sending of the letter expiring.

2.15 Unless they have already done so in the six months prior to the execution of these undertakings, Cash King will update the addresses for the people referred to in 2.13 above by conducting the following searches ("**Searches**"):

- (a) access Australia Post's "National Change of Address" database;
- (b) an Internet search of the Telstra White Pages On-Line at the domain name www.whitepages.com.au; and
- (c) Commonwealth electoral roll searches in relation to each of those persons

2.16 If the Searches reveal a different address for any of the people referred to in 2.13 above, Cash King shall, within 7 days of becoming aware of the different address, send by ordinary pre-paid post to that different address a letter in the form annexed at Annexure A, B or C.

Referral of claims to an independent claims reviewer

- 2.17 If Cash King intends to rely on 2.12 above to reduce in part or entirely a refund payment otherwise due to a borrower pursuant to the terms of this Undertaking, it must, subject to 2.18 below, refer any request for review ("**Claim**") received from that borrower in response to the letter sent to that person pursuant to 2.13(b) above to the independent claims reviewer ("**Reviewer**") appointed in accordance with paragraphs 2.22 to 2.26 below within 14 days of receiving the Claim.
- 2.18 If the total amount of payments, including payments made towards interest, enforcement costs and expenses and other fees and charges, made by a borrower pursuant to their loan agreement with Cash King does not exceed the principal loaned by Cash King, then Cash King will not be obliged to refer any claims to the Reviewer prior to relying on 2.12 above.
- 2.19 Cash King will not be entitled to reduce any payment by the Offset Amount to the extent that the Reviewer is satisfied, having considered the Claim, any written material that Cash King submits to the Reviewer, and Cash King's files, that:
- (a) the Offset Amount is not, on the proper construction of the loan agreement, owed by the borrower; or
 - (b) that Cash King has by its actions or conduct waived its right to, or released the borrower from any obligation to pay, the Offset Amount; or
 - (c) that Cash King incorrectly charged the borrower any other fees or charges in relation to the loan agreement.
- 2.20 Cash King undertakes to make available to the Reviewer all of its files relating to the loan which is the subject of the Claim.
- 2.21 The Reviewer may make one of the following decisions only in relation to each Claim:
- (a) reject the Claim in full and uphold Cash King's right to reduce the payment due by the Offset Amount;

- (b) accept the Claim in full and refuse to allow Cash King to reduce the payment due by the Offset Amount; or
- (c) accept the Claim in part and allow Cash King to reduce the payment due by a part of the Offset Amount.

Appointment of independent claims reviewer

- 2.22 Within one month of the date that this Undertaking is accepted by ASIC, Cash King will appoint a Reviewer to conduct a review of claims made by the persons referred to in 2.13(b) above.
- 2.23 The Reviewer must be approved by ASIC before they are engaged to conduct this review. To enable ASIC to consider whether the proposed Reviewer should be engaged, Cash King must take all reasonable steps to ensure that as soon as reasonably practicable, and in any event within 14 days of the date of this undertaking, it provides to ASIC a curriculum vitae of the proposed Reviewer.
- 2.24 The terms of engagement of the Reviewer must include those set out in Annexure D. The terms of engagement may include additional terms but may not include any term that in any way contradicts or qualifies the terms set out in Annexure D.
- 2.25 All remuneration and costs associated with the Reviewer shall be borne by Cash King.
- 2.26 Cash King agrees to be bound by the decision of the Reviewer and to pay any refund payments due, following the decision of the Reviewer within 28 days of the date of the Reviewer's decision.

Reporting

- 2.27 Cash King will, upon execution of this Undertaking by Cash King and Mr Swart, provide to ASIC an affidavit sworn by Mr Swart setting out the details of how each refund payable under paragraphs 2.1, 2.3, 2.8 and 2.10 was calculated.

- 2.28 Cash King will maintain a payments register ("**Register**") containing the following information:
- (a) details of all borrowers who have contacted Cash King concerning a refund and the dates of those contacts;
 - (b) details of all payments made to borrowers;
 - (c) details of all payments to be paid but not yet paid to borrowers; and
 - (d) details of all Claims referred to the Reviewer and the status of those Claims.
- 2.29 Cash King undertakes to provide ASIC within 6 months of the execution of this Undertaking, and each six months thereafter until the obligations set out in this Undertaking are discharged, a report signed by a director of Cash King containing the following information:
- (a) a copy of the Register; and
 - (b) details of Cash King's compliance with the obligations set out in this Undertaking.
- 2.30 Cash King undertakes to produce to ASIC all files relating to any borrower entitled to a refund pursuant to paragraphs 2.1 to 2.11 within 7 days of receiving a written request from ASIC.

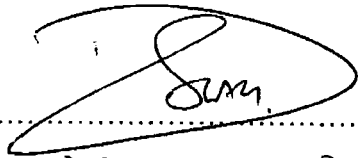
3. Undertakings by Mr Swart

- 3.1 Mr Swart undertakes to use his best endeavours to ensure that Cash King complies with its undertakings at paragraph 2 above.
- 3.2 Mr Swart undertakes not to be involved in Cash King, or any other company of which he is an officer, engaging in conduct of the kind described at paragraphs 1.6 to 1.12 above.

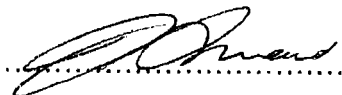
4. Acknowledgments

- 4.1 Cash King acknowledges that ASIC:
- (a) may issue a media release on execution of this undertaking referring to the terms of the undertaking and the concerns of ASIC which led to its execution;
 - (b) may from time to time refer publicly to this undertaking;
 - (c) will make a copy of the executed undertaking available on a Public Register.
- 4.2 Cash King acknowledges that this undertaking in no way derogates from the rights and remedies available to any person or entity arising from any conduct described in this undertaking, or conduct the subject of the Court Proceedings, except that Cash King reserves the right to submit that refunds to customers operate in mitigation of any loss or damage which customers may allege they have suffered.
- 4.3 Cash King acknowledges that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any or all of the conduct described in this undertaking or any contravention arising from future conduct.
- 4.4 Cash King acknowledges that the undertaking has no operative force until accepted by ASIC.
- 4.5 ASIC acknowledges that this investigation is now over, and it does not intend to take any further civil action based on the matters it is currently aware of.

The common seal of Cash King Pty Limited ACN 086 718 407 was duly affixed to this undertaking on 6 September 2005 in accordance with its constitution in the presence of:

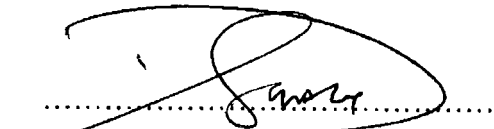


Name: DANIEL SWART
Title: Director



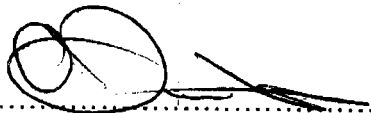
Name: JANET SWART
Title: Director

EXECUTED by DANIEL SWART)
on 2 September 2005)
In the presence of:)


Daniel Swart

Witness name: MAEGAN KELLY
Witness address: 1/4 NORTH ROCKS RD
NORTH PARRAMATTA

ACCEPTED by the AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION pursuant to section 93AA of the ASIC Act by its duly authorised delegate:



Name: ALLEN TURTON
Title: *Deputy Executive Director*
Date: 5.9.05

Annexure A

Dear

Refunds to some customers of Cash King

We are writing to you to tell you about a court case in the Federal Court of Australia which affects you.

Settlement of Federal Court Proceedings

On 18 May 2005 the Australian Securities and Investments Commission (ASIC) began court proceedings against Cash King Pty Ltd (Cash King) and a director of Cash King in the Federal Court of Australia. On 6 September 2005 Cash King consented to orders that it had engaged in a number of misleading and deceptive practices in its lending and finance broking business between March 2002 and June 2004. The court orders consented to by Cash King included that Cash King:

- represented to some customers that an establishment fee payable to a lender was higher than that initially requested by the lender;
- charged some customers enforcement costs and expenses that were higher than the costs and expenses actually incurred by Cash King;
- charged some customers a brokerage fee when no brokerage services were provided to the customer by any third party;
- represented to some customers that they were in default on their loans when they were not, and incorrectly charged these customers default interest and/or enforcement costs;
- represented to some customers that Cash King had incurred legal fees when no solicitor had been engaged; and
- advertised that there were no upfront fees when in fact Cash King's mortgage broking customers were required to pay non refundable fees prior to any loan application proceeding.

As part of the resolution of this case Cash King also gave an enforceable undertaking to ASIC in which it agreed to make a payment to certain Cash King customers who were affected by these practices.

How this affects you

Cash King's enforceable undertaking included an agreement that Cash King would make a payment to you of \$## because *Cash King represented to you that you had to pay an establishment fee of \$## when in fact the lender initially requested that you pay an establishment fee of \$##/charged you enforcement costs and expenses that were \$## higher than the enforcement costs and expenses Cash King incurred/charged you \$## for a brokerage fee when no brokerage services were provided to you by any third party/represented that you were in default on your loan when you were not and incorrectly charged you \$## default interest and/or enforcement costs.

**According to our records we paid you \$## on .../.../.....and accordingly this finalises our obligations to you under the enforceable undertaking./ Please contact Janet on (02) 9630 4866 so that she can arrange to make this payment to you of \$##. You may choose the option of a direct payment into your account or a cheque in the mail made out to your name, if so complete and return the attached refund form. Payments will be made after receipt of 100 points of identification and signed address or payment into account details have been received.

If you would like further information about the Federal Court case you may wish to look at ASIC's website [insert ASIC website for Cash King matter] or consult with your solicitor.

Yours faithfully

Cash King

* include only those phrases which apply to this customer.

** include one of the following paragraphs only.

Refund Acceptance Form

I, ##### of ##### hereby acknowledge receipt of Cash King's letter dated ##/##/#####, and hereby direct Cash King to pay the amount of \$## into the following account:

Bank:

Name of Account:

BSB No:

Account No:

Account Type

OR

Direct Cash King to post a cheque in the amount of \$## to the following address:

Signed by: #### Date:##/##/####

Paid: Cheque posted, Cheque by Hand, Direct online payment

Date Paid: ## /##/##

Signed by: CASH KING PTY LIMITED Representative

Annexure B

Dear

Refunds to some customers of Cash King

We are writing to you to tell you about a court case in the Federal Court of Australia which affects you.

Settlement of Federal Court Proceedings

On the 18 May 2005 the Australian Securities and Investments Commission (ASIC) began court proceedings against Cash King Pty Ltd (Cash King) and a director of Cash King in the Federal Court of Australia. On 6 September 2005 Cash King consented to orders that it had engaged in a number of misleading and deceptive practices in its lending and finance broking business between March 2002 and June 2004. The court orders consented to by Cash King included that Cash King:

- represented to some customers that an establishment fee payable to a lender was higher than that initially requested by the lender;
- charged some customers enforcement costs and expenses that were higher than the costs and expenses actually incurred by Cash King;
- charged some customers a brokerage fee when no brokerage services were provided to the customer by any third party;
- represented to some customers that they were in default on their loans when they were not, and incorrectly charged these customers default interest and/or enforcement costs;
- represented to some customers that Cash King had incurred legal fees when no solicitor had been engaged; and
- advertised that there were no upfront fees when in fact Cash King's mortgage broking customers were required to pay non refundable fees prior to any loan application proceeding.

As part of the resolution of this case Cash King also gave an enforceable undertaking to ASIC in which it agreed to make a payment to certain Cash King customers who were affected by these practices.

How this affects you

Cash King's enforceable undertaking included an agreement that Cash King would make a payment to you of \$## because *Cash King represented to you that you had to pay an establishment fee of \$## when in fact the lender initially requested that you pay an establishment fee of \$##/charged you enforcement costs and expenses that were \$## higher than the enforcement costs and expenses Cash King incurred/charged you \$## for a brokerage fee when no brokerage services were provided to you by any third party/represented that you were in default on your loan when you were not and wrongly charged you \$## default interest and/or enforcement costs.

However, if the amount you paid to Cash King on the date Cash King discharged your mortgage was less than the amount actually due to Cash King under the terms of the loan, then Cash King is entitled to offset this amount against the payment due to you.

According to our records when we discharged your mortgage you owed Cash King \$##. Cash King only recovered \$##, leaving a shortfall of \$##. Accordingly, unless you are of the view that the amount said to be owed by you to Cash King when the loan was discharged is incorrect (as discussed below) we are not required to pay you any money under the terms of the enforceable undertaking.

Complaints review

If you are of the view that:

1. the amount that Cash King says you owed at discharge of your mortgage is incorrect;
2. Cash King released you from any obligation to pay any further money in relation to your loan;
or
3. Cash King incorrectly charged you any other fees or charges in relation to your loan.

you can write to Cash King at P O Box 4756 North Rocks NSW 2151 setting out those complaints or telephone (02) 9630 4866 and speak to Janet. If we do not agree with your complaint then we will send your complaint together with our response to an independent claims reviewer, approved by ASIC, for further assessment. If the claims reviewer agrees with your complaints, they have the power to require Cash King to pay some or all of the payment referred to above.

If you would like further information about the Federal Court case you may wish to look at ASIC's website [insert ASIC website for Cash King matter] or consult with your solicitor.

Yours faithfully

Cash King

*include only those phrases which apply to this customer.

Annexure C

Dear

Refunds to some customers of Cash King

We are writing to you to tell you about a court case in the Federal Court of Australia which affects you.

Settlement of Federal Court proceedings

On 18 May 2005 the Australian Securities and Investments Commission (ASIC) began court proceedings against Cash King Pty Ltd (Cash King) and a director of Cash King in the Federal Court of Australia. On 6 September 2005 Cash King consented to orders that it had engaged in a number of misleading and deceptive practices in its lending and finance broking business between March 2002 and June 2004. The court orders consented to by Cash King included that Cash King:

- represented to some customers that an establishment fee payable to a lender was higher than that initially requested by the lender;
- charged some customers enforcement costs and expenses that were higher than the costs and expenses actually incurred by Cash King;
- charged some customers a brokerage fee when no brokerage services were provided to the customer by any third party;
- represented to some customers that they were in default of their loans when they were not, and incorrectly charged these customers default interest and/or enforcement costs;
- represented to some customers that Cash King had incurred legal fees, when no solicitor had been engaged; and
- advertised that there were no upfront fees when in fact Cash King's mortgage broking customers were required to pay non refundable fees prior to any loan application proceeding.

As part of the resolution of this case Cash King also gave an enforceable undertaking to ASIC in which it agreed to make a payment to certain Cash King customers who were affected by these practices.

How this affects you

Cash King's enforceable undertaking included an agreement that Cash King would make a payment to you of \$## because *Cash King represented to you that you had to pay an establishment fee of \$## when in fact the lender initially requested that you pay an establishment fee of \$##/charged you enforcement costs and expenses that were \$## higher than the enforcement costs and expenses Cash King incurred/charged you \$## for a brokerage fee when no brokerage services were provided to you by any third party/represented that you were in default on your loan when you were not and wrongly charged you \$## default interest and/or enforcement costs.

However, the enforceable undertaking also allowed Cash King to offset any amount you still owed Cash King against this payment.

According to our records we have been unable to recover all or part of our principal initially advanced to you. The amount which you owed Cash King on the discharge date was \$##. Cash King recovered \$## (amounting to a principal loss of \$##). Accordingly, unless you are of the view that the amount said to be owed by you to Cash King on the above date is incorrect (as discussed below) we are not required to pay you any money under the terms of the enforceable undertaking. You will not be permitted access to the claims reviewer.

If you are of the view that the amount said to be owed by you to Cash King when the loan was discharged is incorrect you can write to Cash King at P O Box 4756 North Rocks NSW 2151 setting out those complaints or telephone (02) 9630 4866 and speak to Janet.

If you would like further information about the Federal Court case you may wish to look at ASIC's website [insert ASIC website for Cash King matter] or consult with your solicitor.

Yours faithfully

Cash King

*include only those phrases which apply to this customer.

Annexure D

TERMS OF ENGAGEMENT OF COMPENSATION CLAIMS REVIEWER

Background

1. On 6 September 2005 Cash King Pty Ltd ("Cash King") gave an enforceable undertaking ("Undertaking") to the Australian Securities and Investments Commission ("ASIC") which requires, amongst other things, Cash King to appoint an independent person ("Reviewer") to review claims ("Claims") lodged by former customers of Cash King.
2. Under the Enforceable Undertaking, Cash King is required to make payments to a number of customers with whom Cash King entered into loan agreements secured by mortgages over real property. However, if when the mortgage was discharged there was a shortfall between what the customer repaid Cash King and the amount properly due under the loan agreement ("Offset Amount") the Undertaking allows Cash King to offset the Offset Amount against the payment otherwise due under the Undertaking.
3. The Undertaking requires Cash King, if it intends to rely on an Offset Amount to not make a payment or reduce a payment due to a customer, to notify the customer and offer them an opportunity to lodge a Claim with the Reviewer objecting to Cash King relying on the Offset Amount on one of the following grounds:
 - 3.1. the Offset Amount is not, on the proper construction of the loan agreement, owed by the borrower;
 - 3.2. that Cash King has by its actions or conduct waived its right to, or released the borrower from any obligation to pay, the Offset Amount; or
 - 3.3. that Cash King incorrectly charged the borrower any other fees or charges in relation to the loan agreement.
4. Under the Enforceable Undertaking, the compensation claims reviewer must be appointed by the Company before [6 November 2005].
5. Under the Enforceable Undertaking, the compensation claims reviewer must be approved by ASIC.

Obligations

6. The Reviewer, having been approved having been approved by ASIC for the purposes of the Enforceable Undertaking, will conduct the following tasks under the Enforceable Undertaking:
 - 6.1. within 28 days of receipt of a Claim from Cash King consider whether it is fair and appropriate for:
 - 6.1.1. Cash King to pay the payment due under the Undertaking;
 - 6.1.2. Cash King to pay part of the payment due under the Undertaking; or
 - 6.1.3. Cash King not to pay any of the payment due under the Undertaking.
 - 6.2. Within seven days of making a decision under clause 4.1, advise the Claimant in writing as to the decision of the Compensation Claims Reviewer and the reason for that decision.

Independence

7. The Reviewer warrants that:

- 7.1. the Reviewer, and the individuals who will assist the Reviewer, is independent of Cash King, and will at all material times be capable of exercising objective and impartial judgment;
- 7.2. the Reviewer's staff have not had a material business relationship with Cash King within the period of three years before the date the Enforceable Undertaking was accepted by ASIC;
- 7.3. the Reviewer or the Reviewer's staff have not have previously been a director or officer of Cash King or an employee, consultant or contractor in a position to exert a direct and significant interest over the engagement; and
- 7.4. the Reviewer will notify Cash King and ASIC immediately if the Reviewer or the Reviewer's staff are no longer capable of exercising objective and impartial judgment in relation to this engagement. This includes, but is not limited to, circumstances where the Reviewer or the Reviewer's staff:
 - 7.4.1. begin to have a material business relationship with Cash King;
 - 7.4.2. could directly or indirectly benefit from a financial interest in Cash King (where "financial interest" refers to an interest in any equity or other security, debenture, loan or other debt instrument of Cash King);
 - 7.4.3. promote, or may be perceived to promote, Cash King's position or opinion to the point that objectivity and/or impartiality is/are compromised;
 - 7.4.4. begin to have a close relationship with Cash King, its directors, officers or employees;
 - 7.4.5. may be deterred from acting objectively and/or impartially by the conduct of Cash King, directors or officers of Cash King or employees in a position to exert direct and significant interest over the engagement; or
 - 7.4.6. become aware of past or current circumstances the existence of which places the consultant in breach of any of the warranties contained in this Agreement.