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Attorneys for Complainant

BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

In the Matter of THE CALIFORNIA) 1)	DESIST AND REFRAIN ORDER
CORPORATIONS COMMISSIONER,)	PURSUANT TO CALIFORNIA
)	FINANCIAL CODE SECTION
Complainant,)	23050; AND
)	
v.) 2)	ORDER VOIDING DEFERRED
)	DEPOSIT TRANSACTIONS
BOTTOM DOLLAR PAYDAY)	PURSUANT TO CALIFORNIA
)	FINANCIAL CODE SECTION
Respondent.)	23060
)	
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I.

FACTUAL BACKGROUND

1. Bottom Dollar Payday (“BDP”) is, and was at all relevant times herein, a lender of indeterminate origin with its principal locations of business at Hunkins Waterfront Plaza, Suite # 556, Charlestown, Nevis (West Indies) and Apartado Postal 1434-1200, San Jose, Costa Rica.

2. BDP engaged in the business of originating, or offering to originate deferred deposit transactions (commonly referred to as “payday loans”) as defined by the California Deferred Deposit Transaction Law (“CDDTL”), California Financial Code section 23000 et. seq. BDP offered deferred deposit transactions to the general public, including California residents, over the Internet.

3. A deferred deposit transaction is a written transaction whereby one person gives funds to another person upon receipt of a personal check, and it is agreed that the personal check would not be deposited until a later date. “Personal check” referenced in Financial Code section 23001 includes “the electronic equivalent of a personal check”.

4. In 2012, BDP originated deferred deposit transactions with California residents through the website www.bottomdollarpayday.com, which authorized BDP to electronically debit the borrower’s account by means of an Automated Clearing House with the loan amount, fees and charges, on the due date.

5. The Commissioner has not issued a deferred deposit originator license to BDP pursuant to the CDDTL. As such, BDP is not authorized to offer, originate, or make a deferred deposit transaction, arrange a deferred deposit transaction for a deferred deposit originator, act as an agent for a deferred deposit originator, or assist a deferred deposit originator in the origination of a deferred deposit transaction in California or to California residents, pursuant to California Financial Code section 23005 (a).

6. BDP is not exempt from the licensing requirements of California Financial Code section 23005 (a).

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II.

DESIST AND REFRAIN ORDER

The Commissioner is statutorily authorized to enforce all provisions of the CDDTL, including the regulation of deferred deposit transactions, and to order any person to desist and refrain from engaging in violations of the CDDTL. California Financial Code section 23050 provides:

Whenever, in the opinion of the commissioner, any person is engaged in the business of deferred deposit transactions, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division. If within 30 days, after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

The foregoing facts establish that BDP engaged in the business of originating or offering to originate deferred deposit transactions through the website, www.bottomdollarpayday.com, without having first obtained a license to do so from the Commissioner, in violation of Financial Code section 23005(a). The issuance of a Desist and Refrain Order is necessary for the protection of consumers and is consistent with the purposes, policies and provisions of the CDDTL.

Pursuant to California Financial Code section 23050, Bottom Dollar Payday is hereby ordered to desist and refrain from engaging in the business of deferred deposit transactions, including but not limited to, originating or offering to originate deferred deposit transactions in the State of California without first obtaining a license from the California Corporations Commissioner, or otherwise being exempt, as required under Financial Code section 23005 (a). This Order is necessary, in the public interest, for the protection of consumers and is consistent with the purposes, policies and provisions of the California Deferred Deposit Transaction Law. This order shall remain in full force and effect until further order of the Commissioner.

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III.

ORDER VOIDING CALIFORNIA DEFERRED DEPOSIT TRANSACTIONS

California Financial Code section 23060 provides in pertinent part:

(b) If any provision of this division is willfully violated in the making or collection of a deferred deposit transaction, the deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive any amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

BDP willfully violated the CDDTL by originating deferred deposit transactions with California residents over the Internet at www.bottomdollarpayday.com without a license in violation of Financial Code section 23005 (a).

Pursuant to California Financial Code section 23060, any and all deferred deposit transactions contracted with California customers or in the State of California, including but not limited to the deferred deposit transactions originated through www.bottomdollarpayday.com by Bottom Dollar Payday are therefore void. Bottom Dollar Payday is hereby ordered to immediately cease collecting all principal amounts, and return all principal amounts, provided in any and all deferred deposit transactions contracted with California customers or in the State of California, and to disgorge any and all charges or fees received in conjunction with those deferred deposit transactions.

Dated: March 12, 2013
Los Angeles, California

JAN LYNN OWEN
California Corporations Commissioner

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division