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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
9 OF THE STATE OF CALIFORNIA

10	In the Matter of:	)	CDDTL LICENSE NO.: 100-3271
11	THE COMMISSIONER OF BUSINESS	)	FINAL CITATIONS AND DESIST AND REFRAIN ORDER PURSUANT TO FINANCIAL CODE SECTION 23058
12	OVERSIGHT,	)	
13	Complainant,	)	
14	v.	)	
15		)	
16	CNU OF CALIFORNIA, LLC, dba	)	
17	CASHNETUSA	)	
18	Respondent.	)	

19  
20 Complainant, the Commissioner of Business Oversight for the State of California  
21 (“Commissioner”) is informed and believes, and based on such information and belief, finds as  
22 follows:

23 **I.**

24 **FACTUAL BACKGROUND**

25 1. The Commissioner has jurisdiction over deferred deposit transactions as set forth in  
26 the California Deferred Deposit Transaction Law (“CDDTL”) (Cal. Fin. Code § 23000 et seq.)  
27  
28

1           2.       As set forth in Cal. Fin. Code section 23001, subdivision (a), “deferred deposit  
2 transaction” means a transaction whereby a person defers depositing a customer’s personal check  
3 until a specified date, pursuant to a written agreement for a fee or other charge.

4           3.       Respondent CNU of California, LLC (“CNU of California”) is a limited liability  
5 company formed under the laws of Delaware on September 1, 2006. Its principal place of business is  
6 175 W. Jackson Boulevard, Chicago, IL 60604. CNU of California does business in California as  
7 CashNetUSA.

8           4.       On September 8, 2006, the Commissioner issued to CNU of California a deferred  
9 deposit transaction originator license (File No. 100-3271) pursuant to the CDDTL.

10          5.       CNU of California originates deferred deposit transactions over the internet from its  
11 website, www.cashnetusa.com.

12          6.       On or about March 28, 2014, the Commissioner commenced a regulatory examination  
13 of CNU of California.

14          7.       During the examination, the Commissioner reviewed CNU of California’s Written  
15 Agreement governing its deferred deposit transactions. The Written Agreement contained the  
16 following statement: “Interest continues to accrue on the outstanding principal balance owing until  
17 the Payment Date.”

18          8.       The Written Agreement further stated, “If there are insufficient funds on deposit in  
19 Your Account to effect an ECheck/ACH debit entry on the Payment Date, you agree to pay us a  
20 \$15.00 NSF charge **plus any actual charges assessed by your bank** which we may collect via  
21 Echeck/ACH debit entry to Your Bank Account.” (emphasis added).

22          9.       Financial Code section 23036 provides, in pertinent part:

23           (a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face  
24 amount of the check.

25           ...

26           (e) A fee not to exceed fifteen dollars (\$15) may be charged for the return of a  
27 dishonored check by a depository institution in a deferred deposit transaction. A  
28 single fee charged pursuant to this subdivision is the exclusive charge for a  
dishonored check. No fee may be added for late payment.

(f) No amount in excess of the amounts authorized by this section shall be directly

1 or indirectly charged by a licensee pursuant to a deferred deposit transaction.

2 10. Financial Code section 23037, subdivision (f), provides that a licensee shall not  
3 “engage in any unfair, unlawful, or deceptive conduct, or make any statement that is likely to mislead  
4 in connection with the business of deferred deposit transactions.”

5 11. By stating in its Written Agreement that it would charge customers unlawful interest  
6 and charges assessed by the customers’ bank, CNU of California violated Financial Code section  
7 23037, subdivision (f).

8 12. During the examination, the Commissioner found that certain CNU of California  
9 customers who were unable to make a full payment were offered an Extended Payment Plan  
10 Agreement (an “EPP Agreement) in order to repay the loan in installment payments. The EPP  
11 Agreement then used by CNU of California included the following statements:

12 Customer must continue to pay the Agreement’s other fees and charges in  
13 accordance with its terms, including, without limitation, a one-time returned  
14 payment fee in the amount of \$20.00 if any check deposited, or ACH debit  
initiated, in connection with this EPP is dishonored.

15 ...  
16 You agree that we will initiate the debit entries in accordance with the EPP  
17 Payment Schedule and this ACH debit authorization, including any returned  
18 payment, insufficient funds charges, late fees, or other amounts owing if you do  
19 not pay as scheduled under the EPP...

20 13. By stating in the EPP Agreement that it would charge a returned payment fee of  
21 \$20.00 and late fees, the Commissioner believes CNU of California violated Financial Code section  
22 23037, subdivision (f), even though CNU of California never actually charged or collected those fees.  
23 CNU of California was previously warned of this violation in the Commissioner’s March 8, 2013  
24 regulatory letter, but failed to update its EPP Agreement until after the Commissioner issued the  
Initial Order.

25 14. The EPP Agreement stated that the lender’s legal name was “Cash America Net of  
26 California, LLC.” However, on or about August 31, 2011, CNU of California changed its legal name  
27 to CNU of California, LLC. CNU of California did not simultaneously update its legal name on the  
28

1 EPP Agreement, despite being warned of this violation in the Commissioner’s March 8, 2013  
2 regulatory letter.

3 15. Financial Code section 23023 provides:

4 No licensee shall transact the business licensed or make any transaction provided  
5 for by this division under any other name or at any other place of business than  
6 that named in the license except pursuant to a currently effective written order of  
the commissioner authorizing the other name or other place of business.

7 16. By using the name “Cash America Net of California, LLC,” CNU of California  
8 violated Financial Code section 23023.

9 17. CNU of California’s website advertisement at www.cashnetusa.com did not disclose  
10 on the non-California specific parts of its website that it is licensed by the Department of Business  
11 Oversight pursuant to the California Deferred Deposit Transaction Law.

12 18. Financial Code section 23027, subdivision (b), provides:

13 No licensee shall place an advertisement disseminated primarily in this state for a  
14 deferred deposit transaction unless the licensee discloses in the printed text of the  
15 advertisement, or the oral text in the case of a radio or television advertisement,  
that the licensee is licensed by the department pursuant to this division.

16 19. The Commissioner believes CNU of California’s website advertisement violated  
17 Financial Code section 23027, subdivision (b).

18 **II.**

19 **CITATIONS**

20 Financial Code section 23058 provides in pertinent part:

21 (a) If, upon inspection, examination or investigation, based upon a complaint  
22 or otherwise, the department has cause to believe that a person is engaged in  
23 the business of deferred deposit transactions without a license, or a licensee or  
24 person is violating any provision of this division or any rule or order  
25 thereunder, the department may issue a citation to that person in writing,  
26 describing with particularity the basis of the citation. Each citation may  
27 contain an order to desist and refrain and an assessment of an administrative  
28 penalty not to exceed two thousand five hundred dollars (\$2,500). All  
penalties collected under this section shall be deposited in the State  
Corporations Fund.

1 (b) The sanctions authorized under this section shall be separate from, and in  
2 addition to, all other administrative, civil, or criminal remedies.

3 For the violations of the CDDTL, the Department hereby issues the following  
4 citations:

5 **CITATION A:** The Commissioner believes CNU of California, LLC dba CashNetUSA, has  
6 violated Financial Code section 23037 by stating in its Written Agreement that it would charge  
7 customers unlawful interest and collect bank fees, and by stating in its EPP Agreement that it would  
8 charge a returned payment fee of \$20.00 and late fees.

9 **CITATION B:** CNU of California, LLC dba CashNetUSA, violated Financial Code section  
10 23023 by using the wrong legal name on its EPP Agreement.

11 **CITATION C:** The Commissioner believes CNU of California, LLC dba CashNetUSA,  
12 violated Financial Code section 23027 by placing an advertisement disseminated in this state without  
13 disclosing on the non-California specific parts of its website that it was licensed by the Department  
14 of Business Oversight.

15 Pursuant to Financial Code section 23058, CNU of California, LLC is hereby ordered to pay  
16 the Department an administrative penalty of two-thousand-five-hundred dollars (\$2,500.00) for each  
17 of the three (3) citations, for the total amount of seven-thousand-five-hundred dollars (\$7,500.00).

18 **III.**

19 **DESIST AND REFRAIN ORDER**

20 Where the Department has cause to believe a person is violating any provision of the CDDTL,  
21 the Department is further authorized under Financial Code section 23058 to issue, along with each  
22 citation, an order to desist and refrain.

23 The Commissioner believes the foregoing facts establish violations of the CDDTL by CNU of  
24 California including Financial Code sections 23023, 23027, and 23037, as described more fully above  
25 in Citations A-C.

26 Pursuant to Financial Code section 23058, CNU of California, LLC dba CashNetUSA, is  
27 hereby ordered to desist and refrain from violating Financial Code sections 23023, 23027, and 23037.  
28

1 This Order is necessary for the protection of consumers and consistent with the purposes,  
2 policies, and provisions of the CDDTL. This Order shall remain in full force and effect until further  
3 order of the Commissioner.

4  
5 Dated: November 16, 2015  
6 Los Angeles, California

JAN LYNN OWEN  
Commissioner of Business Oversight



By: \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner