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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
9 OF THE STATE OF CALIFORNIA  
10

11	In the Matter of THE COMMISSIONER OF )	FILE NO: 100-3271
12	BUSINESS OVERSIGHT OF THE STATE OF )	
13	CALIFORNIA, )	ORDER FORFEITING ALL CHARGES AND
14	Complainant, )	FEEES PURSUANT TO FINANCIAL CODE
15	v. )	SECTION 23062;
16	CNU OF CALIFORNIA, LLC, dba )	CITATIONS PURSUANT TO FINANCIAL
17	CASHNET USA )	CODE SECTION 23058; and,
18	Respondent. )	DESIST AND REFRAIN ORDER PURSUANT
19	)	TO FINANCIAL CODE SECTION 23058

20 Complainant, the Commissioner of Business Oversight of 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.*).  
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2. “Deferred deposit transaction” means a transaction whereby a person defers depositing a customer’s personal check until a specific date, pursuant to a written agreement for a fee or other charge. “Personal check,” which is referenced in Financial Code section 23001, subdivision (a), includes the electronic equivalent of a personal check, such as an Automated Clearing House (“ACH”) or debit card transaction.

3. Respondent CNU of California, LLC (“CNU”) is a limited liability company formed under the laws of Delaware on September 1, 2006. Its principal place of business is 200 West Jackson Street, Suite 2400, Chicago, IL 60606. CNU does business in California as CashNetUSA.

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

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

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

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

8. Financial Code section 23036 provides, in pertinent part:

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

....

(e) A fee not to exceed fifteen dollars (\$15) may be charged for the return of a dishonored check by a depository institution in a deferred deposit transaction. A 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 or indirectly charged by a licensee pursuant to a deferred deposit transaction.

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

4           10.      By stating in its Written Agreement that it would charge customers unlawful interest,  
5 CNU violated Financial Code sections 23036(a), 23036(f), and 23037(f).

6           11.      The examination of CNU’s transaction report showed that several customer accounts  
7 had been electronically debited for amounts other than the face amount of the check.

8           12.      Financial Code section 23001, subdivision (a), defines a deferred deposit transaction  
9 as “a transaction whereby a person defers depositing a customer’s personal check until a specific  
10 date, pursuant to a written agreement for a fee or other charge, as provided in Section 23035.”

11          13.      Financial Code section 23035, subdivision (a), provides, in pertinent part:

12           Each deferred deposit transaction shall be made pursuant to a written agreement as  
13 described in subdivision (e) that has been signed by the customer and by the licensee  
14 or an authorized representative of the licensee.

15          14.      By electronically debiting customer accounts for more than the original agreed upon  
16 amount without additional written authorization from customers, CNU violated Sections 23001(a)  
17 and 23035(a).

18          15.      During the examination, the Commissioner found that CNU customers who are unable  
19 to make a full payment as offered an Extended Payment Plan (“EPP”) Agreement in order to repay  
20 the loan in installment payments. The EPP Agreement includes the following statements:

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

25           ....

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

1 16. By stating in the EPP Agreement that it would charge a returned payment fee of  
2 \$20.00 and late fees, CNU violated Financial Code sections 23036(e), 23036(f), and 23037(f).

3 17. The EPP Agreement states that the lender's legal name is "Cash America Net of  
4 California, LLC." However, on or about August 31, 2011, CNU changed its legal name to CNU of  
5 California, LLC. CNU did not update its legal name on the EPP Agreement.

6 18. Financial Code section 23023 provides:

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

11 19. By using the name "Cash America Net of California, LLC," CNU violated Financial  
12 Code section 23023.

13 20. CNU's website advertisement at www.cashnetusa.com does not disclose that it is  
14 licensed by the Department of Business Oversight pursuant to the California Deferred Deposit  
15 Transaction Law.

16 21. Financial Code section 23027, subdivision (b), provides:

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

21 22. CNU's website advertisement violates Financial Code section 23027(b).

22 **II.**

23 **ORDER FORFEITING ALL CHARGES AND FEES**

24 Financial Code section 23062 provides, in pertinent part:

25 (a) If any provision of this division is violated in the making or collection  
26 of a deferred deposit transaction, for any reason other than a willful act of  
27 the licensee, the licensee shall forfeit all charges and fees on the deferred  
28 deposit and may collect or receive only the principal amount.

1 Pursuant to Financial Code section 23062, CNU of California, LLC, dba CashNetUSA, is  
2 hereby ordered to forfeit all charges and fees, and may only collect or receive the principal amount,  
3 for every deferred deposit transaction made in violation of Financial Code section 23036, 23037,  
4 23027, 23001, and/or 23035.

5 **III.**

6 **CITATIONS**

7 Financial Code section 23058 provides, in pertinent part:

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

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

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

20 **CITATION A:** CNU of California, LLC, dba CashNetUSA, has violated Financial Code  
21 sections 23036 and 23037 by stating in its Written Agreement that it would charge customers  
22 unlawful interest and by stating in its EPP Agreement that it would charge a returned payment fee of  
23 \$20.00 and late fees.

24 **CITATION B:** CNU of California, LLC, dba CashNetUSA, has violated Financial Code  
25 sections 23001 and 23035 by electronically debiting customer accounts for more than the original  
26 agreed upon amount without additional written authorization from customers.

27 **CITATION C:** CNU of California, LLC, dba CashNetUSA, has violated Financial Code  
28 section 23023 by using the wrong legal name on its EPP Agreement.

