

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION, AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS

TO: Hot Lava Flow, Inc., dba Cash Plus
1342 East Florida Ave., Space A-15
Hemet, CA 92545

CITATIONS

(California Financial Code section 23058)

DESIST AND REFRAIN ORDER

(For Violations of California Financial Code section 23036)

ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS

(California Financial Code section 23060)

The California Corporations Commissioner (“Commissioner”) finds that:

1. The California Department of Corporations (“Department”) is responsible for enforcing provisions of the California Deferred Deposit Transaction Law (“CDDTL”) found in California Financial Code section 23000 et seq. The Commissioner is authorized to pursue administrative actions and remedies against licensees who engage in violations of the CDDTL.

2. On February 3, 2006, Hot Lava Flow, Inc. incorporated in Nevada. Hot Lava Flow, Inc.’s principal executive office is located at: NCH, 101 Convention Center Dr., Las Vegas, NV 89109. Hot Lava Flow Inc.’s principal office in the State of California is located at: 1086 Nighthawk Place, Beaumont, CA 92223.

3. On February 28, 2006, Hot Lava Flow, Inc. filed a fictitious name statement with the Riverside County Clerk’s Office indicating that Hot Lava Flow, Inc does business in California under the dba of “Cash Plus.” On April 4, 2006, the California Secretary of State certified Hot Lava Flow,

1 Inc. to transact business in California. On June 5, 2006, the Commissioner issued a CDDTL license
2 to Hot Lava Flow, Inc., dba, Cash Plus (hereinafter, "Hot Lava").

3 4. The licensed location for Hot Lava's CDDTL business is 1342 East Florida Ave., Space A-15,
4 Hemet, California 92545.

5 5. Since June 5, 2006, Hot Lava engaged in the business of deferred deposit transactions by
6 offering, originating, and making deferred deposit transactions. A deferred deposit transaction is a
7 written transaction whereby one person gives funds to another person upon receipt of a personal
8 check along with an agreement that the personal check shall not be deposited until a later date. These
9 transactions are also referred to as "payday advances" or "payday loans."

10 6. Hot Lava had knowledge of the CDDTL. Ned Leland Coyle is the President and Chief
11 Executive Officer ("CEO") of Hot Lava. In 2006, Ned Leland Coyle submitted written, sworn
12 declarations to the Department representing that Hot Lava would comply with all provisions of the
13 CDDTL and other laws.

14 7. All CDTTL Licensees are required to comply with all CDDTL requirements and are
15 prohibited, by California Financial Code section 23036¹ from charging more than a single fee of
16 fifteen dollars (\$15.00) for the return of a dishonored or non-sufficient fund check (hereinafter "NSF
17 fee"). The CDDTL states that a single \$15.00 NSF fee "charged pursuant to this subdivision is the
18 exclusive charge for a dishonored check. No fee may be added for late payment." (Fin. Code sec.
19 23036, sub. (e).)

20 8. After giving advance written and oral notice of the Department's scheduled regulatory
21 examination, the Department's examiner visited Hot Lava's business location in September 2007.
22 During the regulatory examination, the Department's examiner discovered that Hot Lava willfully
23 and knowingly engaged in CDDTL violations, notwithstanding the earlier sworn declarations
24 promising Hot Lava's compliance with the CDDTL.

25 9. Jennifer Nicole Coyle is Hot Lava's Secretary and designated agent for service of process in
26 the State of California. On February 15, 2007, Jennifer Nicole Coyle, on behalf of Hot Lava,
27 _____

28 ¹ All further statutory references are to the California Financial Code, unless otherwise noted.

1 certified responses to twenty-four questions in the California Deferred Deposit Transaction Law
2 Examination Questionnaire. Question number 15 asks: "How many times do you charge an NSF fee
3 on the same returned check?" In these certified responses, Ms. Coyle stated that Hot Lava charged
4 NSF fees twice on the same returned check, admitting violations of Financial Code section 23036,
5 subdivision (e).

6 10. During the September 2007, regulatory examination of Hot Lava, the Department's examiner
7 requested that Hot Lava provide books and records that documented details about the customers NSF
8 checks and any NSF fees charged and/or collected by or on behalf of Hot Lava. Hot Lava provided
9 checks, documents, reports, and records that prove the following 75 violations:

10 (a) In 17 separate transactions, totaling \$4,494.50, Hot Lava charged and collected NSF
11 fees over and above the \$15.00 NSF fee allowed by the CDDTL in violation of section 23036,
12 subdivision (e);

13 (b) In 58 other transactions, totaling \$15,300.00, Hot Lava charged, but did not collect,
14 NSF fees over and above the \$15 NSF fee allowed by the CDDTL in violation of section 23036,
15 subdivision (e);

16 17 **DESIST AND REFRAIN ORDER**

18 By reason of the foregoing, Hot Lava has violated the CDDTL, specifically Financial Code
19 section 23036, subdivision (e), by charging and/or collecting excess NSF fees over and above the
20 \$15.00 limit imposed by the CDDTL.

21 California Financial Code section 23050 provides in pertinent part:

22 Whenever, in the opinion of the commissioner, any person is engaged in the
23 business of deferred deposit transactions, as defined in this division, without a
24 license from the commissioner, or any licensee is violating any provision of this
25 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.

26 Pursuant to Financial Code section 23050, Hot Lava is hereby ordered to desist and refrain
27 from violating Financial Code sections 23036. This Order is necessary for the protection of
28 consumers and consistent with the purposes, policies and provisions of the CDDTL. This Order

1 shall remain in full force and effect until further order of the Commissioner.

2
3 **CITATIONS**

4 Hot Lava’s CDDTL violations include 17 transactions in which illegal excess NSF fees
5 were charged and collected from the consumer, as well as 58 other transactions in which excess
6 NSF fees were charged, but not collected. For Hot Lava’s multiple violations in which Hot Lava
7 collected unlawful NSF fees from 17 individual consumers the Commissioner herein issues 17
8 separate Citations (A through Q), as part of this single document:

9 **CITATION A** –Hot Lava charged and collected excess NSF fees from a customer (D.B.), in
10 violation of Financial Code section 23036, subdivision (e);

11 **CITATION B** –Hot Lava charged and collected excess NSF fees from a customer (R.C.), in
12 violation of Financial Code section 23036, subdivision (e);

13 **CITATION C** –Hot Lava charged and collected excess NSF fees from a customer (T.L.), in
14 violation of Financial Code section 23036, subdivision (e);

15 **CITATION D** –Hot Lava charged and collected excess NSF fees from a customer (W.M.), in
16 violation of Financial Code section 23036, subdivision (e);

17 **CITATION E** –Hot Lava charged and collected excess NSF fees from a customer (J.M.), in
18 violation of Financial Code section 23036, subdivision (e);

19 **CITATION F** –Hot Lava charged and collected excess NSF fees from a customer (C.M.), in
20 violation of Financial Code section 23036, subdivision (e);

21 **CITATION G** –Hot Lava charged and collected excess NSF fees from a customer (J.R.), in
22 violation of Financial Code section 23036, subdivision (e);

23 **CITATION H** –Hot Lava charged and collected excess NSF fees from a customer (T.R.), in
24 violation of Financial Code section 23036, subdivision (e);

25 **CITATION I** –Hot Lava charged and collected excess NSF fees from a customer (S.T.), in
26 violation of Financial Code section 23036, subdivision (e);

27 **CITATION J** –Hot Lava charged and collected excess NSF fees from a customer (J.Y.), in
28 violation of Financial Code section 23036, subdivision (e);

29 **CITATION K** –Hot Lava charged and collected excess NSF fees from a customer (S.K.), in
30 violation of Financial Code section 23036, subdivision (e);

1 **CITATION L** –Hot Lava charged and collected excess NSF fees from a customer (M.T.), in
2 violation of Financial Code section 23036, subdivision (e);

3 **CITATION M** –Hot Lava charged and collected excess NSF fees from a customer (Y.A.), in
4 violation of Financial Code section 23036, subdivision (e);

5 **CITATION N**–Hot Lava charged and collected excess NSF fees from a customer (O.G.), in
6 violation of Financial Code section 23036, subdivision (e);

7 **CITATION O** –Hot Lava charged and collected excess NSF fees from a customer (E.V.), in
8 violation of Financial Code section 23036, subdivision (e);

9 **CITATION P** –Hot Lava charged and collected excess NSF fees from a customer (M.S.), in
10 violation of Financial Code section 23036, subdivision (e);

11 **CITATION Q** –Hot Lava charged and collected excess NSF fees from a customer (G.A.), in
12 violation of Financial Code section 23036, subdivision (e);

13 California Financial Code section 23058 gives the Commissioner the authority to issue
14 citations for CDDTL violations:

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

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

26 (c) If within 30 days from the receipt of the citation of the person cited fails to notify
27 the department that the person intends to request a hearing as described in subdivision
28 (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5
(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code, and in all states the commissioner has all the powers granted
therein.

(e) After the exhaustion of the review procedures provided for in this section, the
department may apply to the appropriate superior court for a judgment in the amount

1 of the administrative penalty and order compelling the cited person to comply with the
2 order of the department. The application, which shall include a certified copy of the
3 final order of the department, shall constitute a sufficient showing to warrant the
issuance of the judgment and order.

4 Pursuant to Financial Code section 23058, Hot Lava is hereby ordered to pay to the
5 Commissioner an administrative penalty of two thousand five hundred dollars (\$2,500) for each
6 of the 17 citations for the total amount of forty two thousand five hundred dollars (\$42,500.00)
7 within 30 days from the date of this citation, as shown below,

8 **ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS**

9
10 Hot Lava willfully violated Financial Code sections 23036 of the CDDTL by charging and
11 collecting illegal, excess NSF fees on at least 17 occasions. In at least 58 other instances, Hot
12 Lava charged but did not collect upon the illegal, excess NSF fees. The Commissioner's
13 examination revealed that at least in these 75 deferred deposit transactions involving California
14 consumers Hot Lava willfully charged, contracted for, or received amounts other than, or in
15 excess of, the charges or fees permitted by the CDDTL. The sum of money involved in these
16 deferred deposit transactions with these 75 consumers aggregates to \$19,794.50.

17 California Financial Code section 23060 states:

18 (a) If any amount other than, or in excess of, the charges or fees permitted by this
19 division is willfully charged, contracted for, or received, a deferred deposit transaction
20 contract shall be void, and no person shall have any right to collect or receive the
21 principal amount provided in the deferred deposit transaction, any charges, or fees in
connection with the transaction.

22 (b) If any provision of this division is willfully violated in the making or collection of
23 a deferred deposit transaction, the deferred deposit transaction contract shall be void,
24 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.

25 The Commissioner finds Hot Lava willfully violated Financial Code sections 23036.
26 Pursuant to Financial Code section 23060 the Commissioner declares void each of Hot Lavas'
27 above described deferred deposit transactions with these 75 California consumers identified by
28 Hot Lava's own records. The Commissioner's declaration voiding each of these 75 transactions

1 requires Hot Lava to do the following:

2 With regard to the 17 deferred deposit transactions in which an excess NSF fee was both
3 charged and collected along with the balance of the deferred deposit transaction, Hot Lava shall
4 return five thousand seventy-one dollars (\$5,071) it collected to the 17 consumers from whom it
5 collected illegal, excess NSF fees. The total amount of the checks written for these transactions
6 was four thousand four hundred ninety four dollars (\$4,494.50). The total amount of NSF fees
7 charged in these 17 cases was five hundred seventy dollars (\$570). Three hundred twenty-two
8 dollars (\$322) of the \$570 in NSF fees are illegal, excess NSF fees.

9 With regard to the 58 deferred deposit transactions in which Hot Lava charged an illegal,
10 excess NSF fee, but Hot Lava has not collected the principal balance or any fees, Hot Lava shall
11 not attempt to collect the excess NSF fees (totaling \$950.00). However, Hot Lava shall be
12 allowed to collect the principal balance plus authorized fees. If the deferred deposit transaction
13 has been sent to a collections agency with illegal, excess NSF fees as part of the debt, Hot Lava
14 shall contact the collections agency and notify the agency that the excess NSF fee has been
15 voided by this order.

16
17 Dated: May 16, 2008
18 Los Angeles, California

19 PRESTON DuFAUCHARD
20 California Corporations Commissioner

21
22 By _____
23 ALAN S.WEINGER
24 Lead Corporations Counsel
25 Enforcement Division
26
27
28