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10 BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

11
12 In the Matter of the Request for a Hearing on the)
Desist and Refrain Order, and Order Voiding) OAH No. 2007090758
13 Deferred Deposit Transactions issued by the)
California Corporations Commissioner,) Statement in Support of Desist and Refrain
14) Order, and Order Voiding
15 Complainant,) Deferred Deposit Transactions
16)
17 v.)
18)
19 Lisa Sierra doing business as Merchant Check)
Cashing, Merchant Check Cashing and Payday)
Advance,)
20 Respondents.)

21 Complainant, the California Corporations Commissioner, (“Commissioner”) is informed and
22 believes, and based upon such information and belief, alleges and charges Respondents as follows:

23 **INTRODUCTION**

24 The Commissioner of the Department of Corporations (“Department”) is responsible for
25 enforcing all provisions of the of the California Deferred Deposit Transaction Law (“CDDTL”) set
26 forth in California Financial Code sections 23000 et seq. (Section references are to the Financial
27 Code unless indicated otherwise.) Respondents, Lisa Sierra doing business as Merchant Check
28 Cashing, Merchant Check Cashing and Payday Advance, engaged in multiple CDDTL violations.

1 On August 24, 2007, the Commissioner issued a Desist and Refrain Order and Order
2 Voiding Deferred Deposit Transactions pursuant to sections 23050 and 23060 to Respondents for
3 their violations of the legal standards required of all deferred deposit transaction originators.
4 Respondents requested a hearing concerning the Department’s action.

5 **I**
6 **FACTS AND PROCEDUAL BACKGROUND**

7 1. Merchant Check Cashing, Merchant Check Cashing and Payday Advance are fictitious
8 business names owed and used by Lisa Sierra hereinafter referred to as “MCC”. MCC does
9 business at 13844 Rosecrans Avenue, Santa Fe Springs, California. Co-located with MCC is
10 Sierra Mortgage, the fictitious business name of BSLM Inc., a licensed real estate broker with the
11 California Department of Real Estate (license number 01224741). BSLM Inc. employs Lisa Sierra
12 as a salesperson (license number 1224741).

13 2. The Commissioner of the Department of Corporations (“Department”) is responsible
14 for enforcing the California Deferred Deposit Transaction Law (“CDDTL”) found in California
15 Financial Code section 23000 et seq. The Commissioner has not issued a license to MCC to
16 engage in the business of deferred deposit transactions pursuant to Financial Code section 23005.
17 MCC is not exempt from the licensing requirement of the CDDTL.

18 3. Since at least January 2005 MCC has engaged in the business of deferred deposit
19 transactions by offering, originating and making deferred deposit transactions as described below.

20 4. A deferred deposit transaction is a written transaction whereby one person gives funds
21 to another person upon receipt of a personal check and it is agreed that the personal check shall
22 not be deposited until a later date. These transactions are also referred to as “payday advances”
23 or “payday loans.”

24 5. MCC was aware that a CDDTL license was required to lawfully engage in the
25 business of deferred deposit transactions. On May 19, 2003, MCC filed with the Department an
26 incomplete CDDTL application requesting a license pursuant to Financial Code section 23005,
27 subdivision (a). In August 2004 and again in November 2004 the Department wrote to MCC
28 requesting it provide additional information to process its CDDTL application. MCC never

1 provided the requested information. As a result of MCC’s failure to comply with the Department’s
2 requests, the CDDTL application was abandoned. On March 10, 2005, the Department informed
3 MCC that the license had been withdrawn in accordance with Financial Code section 23011,
4 subdivision (b).

5 6. On April 17, 2007, the Commissioner’s examiner visited MCC and posed as a potential
6 customer to MCC’s manager, Lisa Sierra, who informed the examiner what she would need to
7 obtain a loan. Later Lisa Sierra informed the examiner that she could not give the examiner a loan
8 because there was a “problem with her license.” Ms. Sierra stated that she had contacted the
9 Department because she needed to obtain a copy of her license.

10 7. The Commissioner’s examiner later identified herself as an examiner with the
11 Department. Ms. Sierra admitted to the Commissioner’s examiner that MCC engaged in the
12 business of deferred deposit transactions. When Ms. Sierra was asked about the number of MCC
13 loans provided to consumers during 2005 and 2006, she stated that approximately 30 customers
14 received loans on a biweekly basis (approximately two loans per month) resulting in about 720
15 loans for each year.

16 8. Thereafter, Ms. Sierra provided to the Department’s examiner various records relating to
17 MCC’s CDDTL activities.

18 9. A review of MCC’s records show it failed to provide to consumers the written notice
19 required by Financial Code section 23035. In addition, MCC’s written agreements provided by Ms.
20 Sierra do not contain the required disclosures in violation of Financial Code section 23035.

21 10. Ms. Sierra produced daily cash logs and a list of outstanding loans which revealed that
22 MCC engaged in transactions that exceed \$300 and that they charge fees that exceed the statutory
23 maximum found in Financial Code sections 23035 and 23036, respectively. Ms. Sierra did not have
24 evidence of the check involved in closed loans and was unable to produce all the documentation
25 requested in violation of Financial Code section 23024 and California Code of Regulations section
26 2025, subdivision (c)(1).

27 11. When the Commissioner’s Corporations examiner questioned Ms. Sierra about MCC’s
28 fees she stated that MCC charges \$30 and \$40 for consumer checks that are returned unpaid and

1 that late fees or fees to extend the due date must be paid by consumers. MCC’s transactions are in
2 violation of Financial Code sections 23036 and 23037.

3 12. The Department examiner obtained a list of customers and the daily cash logs since
4 January 1, 2005. According to MCC’s records it provided deferred deposit transaction to
5 approximately seventy-seven (77) consumers since January 1, 2005. The Department examiner
6 analyzed the daily cash logs for the years 2005, 2006 and 2007 provided by Ms. Sierra. For the
7 2005, 2006 and 2006 calendar years, respectively, MCC made 549 loans totaling over \$23,000
8 (\$23,160.50); 683 loans of almost \$30,000 (\$29,970.29) and 132 loans of over \$ 5,000 (\$5,342,52).
9 Thus, MCC made 1,364 loans totaling at least \$58,484.31. Since MCC failed to maintain adequate
10 records as required by the CDDTL, the total number of loans and exact amounts involved in all the
11 transactions cannot be determined.

12 13. Notwithstanding knowledge regarding the licensure requirement, MCC willfully
13 and knowingly engaged in deferred deposit business without a license from the Commissioner and
14 engaged in deferred deposit transactions that violated various statutory provisions of the CDDTL,
15 as described below.

16 II

17 DEFERRED DEPOSIT TRANSACTION LAW

18 14. Respondents are within the definition of a “licensee” under the CDDTL found in section
19 23001, subdivision (d). All CDDTL licensees are required to comply with basic legal requirements
20 imposed on all persons so defined concerning notices and advertisements.

21 15. Section 23050 provides in pertinent part:

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

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16. Section 23005, in relevant part, states:

(a) No person shall 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 without first obtaining a license from the commissioner and complying with the provisions of this division. The requirements of this subdivision shall not apply to persons or entities that are excluded from the definition of "licensee" as set forth in Section 23001. Nothing in this division shall be construed to require the commissioner to create separate classes of licenses.

(b) An application for a license under this division shall be in the form and contain the information that the commissioner may by rule require and shall be filed upon payment of the fee specified in Section 23006.

17. Section 23024 mandates that every licensee comply with the following requirement:

Each licensee shall keep and use books, accounts, and records that will enable the commissioner to determine if the licensee is complying with the provisions of this division and with the rules and regulations promulgated by the commissioner. Each licensee shall maintain any other records as required by the commissioner. The commissioner or a designee of the commissioner may examine those records at any reasonable time. Upon the request of the commissioner, a licensee shall file an authorization for disclosure of financial records of the licensed businesses pursuant to Section 7473 of the Government Code. All records shall be kept for two years following the last entry on a deferred deposit transaction and shall enable an examiner to review the recordkeeping and reconcile each consumer deferred deposit transaction with documentation maintained in the consumer's deferred deposit transaction file records.

18. Section 23035, in part, states:

(a) A licensee may defer the deposit of a customer's personal check for up to 31 days, pursuant to the provisions of this section. The face amount of the check shall not exceed three hundred dollars (\$ 300). Each deferred deposit transaction shall be made pursuant to a written agreement as described in subdivision (e) that has been signed by the customer and by the licensee or an authorized representative of the licensee.

(b) A customer who enters into a deferred deposit transaction and offers a personal check to a licensee pursuant to an agreement shall not be subject to any criminal penalty for the failure to comply with the terms of that agreement.

1 (c) Before entering into a deferred deposit transaction, licensees shall
2 distribute to customers a notice that shall include, but not be limited to, the
3 following:

4 (1) Information about charges for deferred deposit transactions.

5 (2) That if the customer's check is returned unpaid, the customer may
6 be charged an additional fee of up to fifteen dollars (\$15).

7 (3) That the customer cannot be prosecuted in a criminal action in
8 conjunction with a deferred deposit transaction for a returned check
9 or be threatened with prosecution.

10 (4) The department's toll-free telephone number for receiving calls
11 regarding customer complaints and concerns.

12 (5) That the licensee may not accept any collateral in conjunction with
13 a deferred deposit transaction.

14 (6) That the check is being negotiated as part of a deferred deposit
15 transaction made pursuant to Section 23035 of the Financial Code
16 and is not subject to the provisions of Section 1719 of the Civil
17 Code. No customer may be required to pay treble damages if this
18 check does not clear.

19 19. Section 23035, subdivision (d), requires posting of required notices and in part states:

20 The following notices shall be clearly and conspicuously posted in the
21 unobstructed view of the public by all licensees in each location of a
22 business providing deferred deposit transactions in letters not less than
23 one-half inch in height: . . .

24 20. Section 23035 subdivision (e) states:

25 (e) An agreement to enter into a deferred deposit transaction shall be in
26 writing and shall be provided by the licensee to the customer. The written
27 agreement shall authorize the licensee to defer deposit of the personal check,
28 shall be signed by the customer, and shall include all of the following:

(1) A full disclosure of the total amount of any fees charged for the
deferred deposit transaction, expressed both in United States
currency and as an APR as required under the Federal Truth In
Lending Act and its regulations.

(2) A clear description of the customer's payment obligations as
required under the Federal Truth In Lending Act and its regulations.

(3) The name, address, and telephone number of the licensee.

(4) The customer's name and address.

(5) The date to which deposit of check has been deferred (due date).

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(6) The payment plan, or extension, if applicable as allowed under subdivision (c) of Section 23036.

(7) An itemization of the amount financed as required under the Federal Truth In Lending Act and its regulations.

(8) Disclosure of any returned check charges.

(9) That the customer cannot be prosecuted or threatened with prosecution to collect.

(10) That the licensee cannot accept collateral in connection with the transaction.

(11) That the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.

(12) Signature space for the customer and signature of the licensee or authorized representative of the licensee and date of the transaction.

(13) Any other information that the commissioner shall deem necessary by regulation.

21. Section 23035 also states:

(f) The notice required by subdivision (c) shall be written and available in the same language principally used in any oral discussions or negotiations leading to execution of the deferred deposit agreement and shall be in at least 10-point type.

(g) The written agreement required by subdivision (e) shall be written in the same language principally used in any oral discussions or negotiations leading to execution of the deferred deposit agreement; shall not be vague, unclear, or misleading and shall be in at least 10-point type.

(h) Under no circumstances shall a deferred deposit transaction agreement include any of the following:

(1) A hold harmless clause.

(2) A confession of judgment clause or power of attorney.

(3) Any assignment of or order for payment of wages or other compensation for services.

(4) Any acceleration provision.

(5) Any unconscionable provision.

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(i) If the licensee sells or otherwise transfers the debt at a later date, the licensee shall clearly disclose in a written agreement that any debt or checks held or transferred pursuant to a deferred deposit transaction made pursuant to Section 23035 are not subject to the provisions of *Section 1719 of the Civil Code* and that no customer may be required to pay treble damages if the check or checks are dishonored.

22. Section 23036 limit fees and transactions stating:

- (a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check.
- (b) A licensee shall not enter into an agreement for a deferred deposit transaction with a customer during the period of time that an earlier written agreement for a deferred deposit transaction for the same customer is in effect.
- (c) A licensee shall not enter into an agreement for a deferred deposit transaction with a customer during the period of time that an earlier written agreement for a deferred deposit transaction for the same customer is in effect.
- (d) 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.
- (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.

23. Section 23037 limits a licensee’s transactions and activities and in relevant part states:

In no case shall a licensee do any of the following:

- (a) Accept or use the same check for a subsequent transaction, or permit a customer to pay off all or a portion of one deferred deposit transaction with the proceeds of another. . . .

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- (b) Accept any collateral for a deferred deposit transaction.
- (c) Make any deferred deposit transaction contingent on the purchase of insurance or any other goods or services.
- (d) Enter into a deferred deposit transaction with a person lacking the capacity to contract.
- (e) Alter the date or any other information on a check.
- (f) Engage in any unfair, unlawful, or deceptive conduct, or make any statement that is likely to mislead in connection with the business of deferred deposit transactions.
- (g) Accept more than one check for a single deferred deposit transaction.
- (h) Take any check, instrument, or form in which blanks are left to be filled in after execution.
- (i) Offer, arrange, act as an agent for, or assist a deferred deposit originator in any way in the making of a deferred deposit transaction unless the deferred deposit originator complies with all applicable federal and state laws and regulations, including the provisions of this division.

(1) The prohibition specified in this subdivision does not apply to the arranger, agent, or assistant to a state or federally chartered bank, thrift, savings association, or industrial loan company where the state or federally chartered bank, thrift, savings association, or industrial loan company satisfies all of the following:

- (A) It initially advances the loan proceeds to the customer.
- (B) It does not sell, assign, or transfer a preponderant economic interest in the deferred deposit transaction to the arranger, agent, or assistant, or an affiliate or subsidiary of the state or federally chartered bank, thrift, savings association, or industrial loan company, unless selling, assigning, or transferring a preponderant economic interest is expressly permitted by the primary regulator of the state or federally chartered bank, thrift, savings association, or industrial loan company.
- (C) It develops the deferred deposit transaction product or products on its own.

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(2) If a licensee offers, arranges, acts as an agent for, or assists a state or federally chartered bank, thrift, savings association, or industrial loan company in any way in the making of a deferred deposit transaction and the state or federally chartered bank, thrift, savings association, or industrial loan company meets the standards set forth in paragraph (1), the licensee shall comply with all other provisions in this division to the extent they are not preempted by other state and federal laws.

24. California Code of Regulations, title 10, section 2025, subdivision (c)(1) specifies that books and records must be maintained for two (2) years, as set forth below.

(c)(1) Except as provided in subsection (e), records to be maintained at each licensed business location for each deferred deposit transaction shall include at least the following: the deferred deposit transaction agreement, evidence of the check, written disclosure(s) used to provide notice in compliance with subdivision (c) of Section 23035 of the Financial Code, record of any and all extensions of time or payment plans for repayment of an existing deferred deposit transaction, record of time periods for each transaction, record of transaction fees and charges, and record of transaction payments.

III

COMMISSIONER’S AUTHORITY TO ISSUE A DESIST AND REFRAIN ORDER

25. Respondents were informed about their violations at the time of the examination. On August 24, 2007, the Commissioner issued to Respondents a “Desist and Refrain Order and Order Voiding Deferred Deposit Transactions pursuant to section 23050, which states:

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.

26. Specifically, the Commissioner ordered Respondents to desist and refrain from engaging in the business of deferred deposit transactions in the State of California in violation of sections 23005, 23024, 23035, 23036 and 23037. It is apparent that Respondents also violated California Code of Regulations, title 10, section 2025.

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IV

ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS

27. Respondents willfully violated section 23005, 23024, 23035, 23036 and 23037 of the CDDTL and California Code of Regulations, title 10, section 2025 by entering into at least 1,364 consumer deferred deposit transactions without a license and in violation of mandatory provisions of the CDDTL. Section 23060 states:

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

(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.

28. Pursuant to Financial Code section 23060, subdivisions (a) and (b), all Respondents' deferred deposit transactions totaling at least \$58,484 shall be declared void, and no person shall have any right to collect or receive any amount provided in the deferred deposit transaction or the charges or fees in connection with those transactions.

V

CONCLUSION

Complainant finds that Respondents, Lisa Sierra doing business as Merchant Check Cashing, Merchant Check Cashing and Payday Advance violated sections 23005, 23024, 23035, 23036, 23037, and California Code of Regulations, title 10, section 2025.

Therefore, the Commissioner is justified in (1) issuing a Desist and Refrain Order to Respondents pursuant to section 23050; and, (2) voiding contracts and requiring restitution of all amounts collected from consumers pursuant to section 23060.

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PRAYER

WHEREFORE, Complainant, the California Corporations Commissioner prays that

1. The Desist and Refrain Order issued pursuant to Financial Code section 23050 be affirmed to prohibit Respondents from violating Financial Code sections 23005, 23024, 23035, 23036, and 23037 and California Code of Regulations section 2025; and

2. Respondents’ deferred deposit transactions with consumers, which total at least 1,364, be voided; and, Respondents ordered, pursuant to Financial Code section 23060, to pay restitution to the California consumers of at least fifty eight thousand four hundred eighty four dollars (\$58,484) for the above-described violations.

Dated: September 28, 2007
San Francisco, California

Respectfully submitted,

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____

Joan E. Kerst
Enforcement Division
Senior Corporations Counsel
Attorney for Complainant