

1 MARY ANN SMITH
2 Deputy Commissioner
3 EDWARD KELLY SHINNICK (CA Bar No. 96209)
4 Corporations Counsel
5 One Sansome Street, Suite 600
6 San Francisco, CA 94104
7 Tel: 415/972-8544
8 Fax: 415/972-8550

9 Attorneys for Complainant

10
11 BEFORE THE DEPARTMENT OF CORPORATIONS
12 OF THE STATE OF CALIFORNIA

13 In the Matter of the Orders Issued to:)
14)
15) DESIST AND REFRAIN ORDER PURSUANT
16 NATIONAL GROUP, LLC, ELVIRA LOPEZ,) TO CALIFORNIA FINANCIAL CODE
17 and CARLOS PORRAS) SECTION 23005; and
18)
19) ORDER VOIDING TRANSACTIONS AND
20 Respondents.) DISGORGING ALL CHARGES AND FEES
21) PURSUANT TO CALIFORNIA FINANCIAL
22) CODE SECTION 23060
23)
24)
25)

26 Complainant, the Commissioner of the Department of Corporations (“Commissioner” or
27 “Department”), is informed and believes, and based on such information and belief, finds as follows:

28 **I.**

Facts

National Group, LLC (“National Group”), is a limited liability company incorporated in the state of Arizona on March 3, 2009. It has a business address of 3001 West Indian School Road, Suite 301, Phoenix, Arizona 85017. Elvira Lopez and Carlos Porrás were at all relevant times managing members of National Group (collectively “Respondents”). A phone number used by National Group is

1 866-327-6921 and email addresses used are nationals@midlandcompanies.net and
2 joey@midlandscompanies.net).

3 In its most common form, a deferred deposit transaction, also known as a “payday loan”, is a
4 written transaction wherein one person gives funds to another upon receipt of a personal check and it
5 is agreed that the check shall not be deposited until a later agreed upon date for a fee or other charge.
6 “Personal check,” as referenced in California Financial Code section 23001, includes “the electronic
7 equivalent of a personal check,” such as an Automated Clearing House (“ACH”) or debit card
8 transaction. A written agreement that one person will provide another person funds and then defer
9 making an agreed upon ACH deduction until a specific date, for fee or other charge, is also a deferred
10 deposit transaction.

11 Since at least November 2011, National Group, Elvira Lopez and Carlos Porras have engaged
12 in the business of offering, originating, or making deferred deposit transactions, as defined by the
13 California Deferred Deposit Transaction Law (“CDDTL”), set forth in California Financial Code
14 sections 23000 *et seq.*), to California residents by telephone (including telephone number 1-866-327-
15 6921), and online.

16 In loan applications Respondents ask customers to provide personal identifying data,
17 including bank account information and numbers. Respondents then provide California residents
18 payday advances or loans, for charges exceeding \$45.00, the maximum of charges allowed per loan
19 under Financial Code section 23036 of the CDDTL no matter how late the repayments. For example,
20 on November 2, 2011, National Group, Elvira Lopez and Carlos Porras provided one California
21 resident with a payday loan of \$300.00 and charged, and made an ACH deduction of, \$90.00 every
22 two weeks through March 23, 2012, at which time, after deducting over \$900 in charges from her
23 bank account, Respondents made a deduction of the loan amount, \$300. Respondents collected from
24 that customer over \$900 in charges in excess of those allowed under the CDDTL.

25 Respondents National Group, Elvira Lopez and Carlos Porras have not been issued a
26 deferred deposit transaction originator license by the Commissioner pursuant to the CDDTL. As
27 such, Respondents are not authorized to engage in payday lending, or to offer, originate, or make a
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1 deferred deposit transaction, arrange a deferred deposit transaction for a deferred deposit originator,
2 act as an agent for a deferred deposit originator, or assist a deferred deposit originator in the
3 origination of a deferred deposit transaction in California or to California residents.
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5 **II.**

6 **Desist and Refrain Order for Violations of**
7 **Financial Code Sections 23005 and 23036**

8 The Department is responsible for enforcing all provisions of the CDDTL, including the
9 regulation of deferred deposit transactions. The Commissioner is statutorily authorized to order any
10 person to desist and refrain from engaging in violations of the CDDTL.

11 California Financial Code section 23005, subdivision (a), provides, in pertinent part: “No
12 person shall offer, originate, or make a deferred deposit transaction, arrange a deferred deposit
13 transaction for a deferred deposit originator, act as an agent for a deferred deposit originator, or assist
14 a deferred deposit originator in the origination of a deferred deposit transaction without first
15 obtaining a license from the commissioner and complying with the provisions of this division”

16 California Financial Code Section 23036, in pertinent part provides as follows:

- 17 (a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of
18 the check.
19 (b) A licensee may allow an extension of time, or a payment plan, for repayment of an
20 existing deferred deposit transaction but may not charge any additional fee or charge of any
21 kind in conjunction with the extension or payment plan....

22 California Financial Code section 23050 provides:

23 Whenever, in the opinion of the commissioner, any person is engaged in
24 the business of deferred deposit transactions, as defined in this division, without a
25 license from the commissioner, or any licensee is violating any provision of this
26 division, the commissioner may order that person or licensee to desist and to
27 refrain from engaging in the business or further violating this division. If within
28 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."

1 The forgoing facts establish violations of the CDDTL by National Group, LLC, Elvira Lopez
2 and Carlos Porras. The issuance of a Desist and Refrain Order, therefore, is necessary for the
3 protection of consumers and is consistent with the purposes, policies, and provisions of the CDDTL.

4 Pursuant to California Financial Code section 23050, National Group, LLC, Elvira Lopez and
5 Carlos Porras are hereby ordered to desist and refrain from violating California Financial Code
6 sections 23005 and 23036. This Order shall remain in full force and effect until further order of the
7 Commissioner.

8 **III.**

9 **Order Voiding California Deferred Deposit Transactions**
10 **and Disgorging All Charges and Fees**

11
12 California Financial Code Section 23060 provides:

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

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

21 Respondents willfully violated provisions of the CDDTL, including Financial Code section
22 23005 when they engaged in this deferred deposit transaction activity without a license and Financial
23 Code section 20036 when they charged excess fees and charges in conjunction with deferred deposit
24 transactions. Because Respondents willfully violated these provisions and over-charged its
25 customers, Respondents are not entitled to collect or receive the principal amounts provided in those
26 deferred deposit transactions, nor are they entitled to any of the charges or fees associated with the
27 transactions.

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Pursuant to California Financial Code section 23060, any and all deferred deposit transactions contracted with California customers or in the State of California by National Group, LLC, Elvira Lopez and Carlos Porras are therefore void. National Group, LLC, Elvira Lopez and Carlos Porras are hereby ordered to immediately cease collecting any and all principal and charges (including fees and interest), and to disgorge and return to all customers in California all principal and charges received, in conjunction with deferred deposit transactions.

Dated: September 10, 2012
Sacramento, California

JAN LYNN OWEN
California Corporations Commissioner

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division