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California Corporations Commissioner
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9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

11 In the Matter of the Accusation of) File No.: 100-3067 and 100-2318
12 THE CALIFORNIA CORPORATIONS)
COMMISSIONER,) 1) ACCUSATION TO REVOKE
13) LICENSES
14 Complainant,) 2) CITATIONS AND DESIST AND
REFRAIN ORDER
15 vs.) 3) ORDER VOIDING LOANS
16 Linda C. Kellum, dba Pay Day Financial and dba)
Payday Services Today,)
17)
18 Respondent.)
19)

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

22 INTRODUCTION

23 On December 31, 2004, the Commissioner of the Department of Corporations
24 (“Department”) issued to Respondent, Linda C. Kellum, dba Pay Day Financial and dba Payday
25 Services Today, (“Kellum”) a deferred deposit transaction originator license (File No. 100-2318) for
26 operating the business located at 1740 Yosemite Parkway, Merced, California, pursuant to the
27 California Deferred Deposit Transaction Law (“CDDTL”) set forth in California Financial Code
28 section 23000 et seq. (All future references to sections are to the California Financial Code unless

1 indicated otherwise.) On December 6, 2005, Respondent received a CDDTL license (File No. 100-
2 3067) for a second location at 2012 N. G Street in Merced, California.

3 Respondent violated numerous provisions of the CDDTL. If the Commissioner had known
4 Respondent would engage in a scheme that violated multiple provisions of the California Financial
5 Code, the Commissioner would have denied a license to Respondent. In view of the extent, nature
6 and duration of violations, the Commissioner believes it is in the best interests of the public to
7 revoke both of Respondent’s CDDTL licenses pursuant to section 23052. The Commissioner has
8 issued a Desist and Refrain order and four (4) citations against Respondent in the amount of two
9 thousand five hundred dollars (\$2,500) per citation, and an order voiding twenty-nine (29) loans
10 totaling seven thousand, five hundred, sixty-two dollars and eighty-one cents (\$7,562.81) made by
11 Respondent, pursuant to sections 23058 and 23060.

12 I

13 FACTUAL BACKGROUND

14 1. The Department is responsible for enforcing provisions of the CDDTL and authorized
15 to pursue administrative actions and remedies against licensees who engage in violations of the
16 CDDTL.

17 2. Since at least December 31, 2004, Respondent has engaged in the business of deferred
18 deposit transactions by offering, originating and making deferred deposit transactions.

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

23 4. On February 21, 2008 and March 27, 2008, the Commissioner’s representative visited
24 Respondent’s business location at 2012 N. G Street, in Merced, California.

25 5. The Department’s review of Respondent’s business revealed the CDDTL violations
26 described below warranting a revocation, penalties and restitution to consumers.

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II

DEFERRED DEPOSIT TRANSACTION LAW

6. Section 23015(b) states:

It is unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

7. Any person acting as an originator or agent, or otherwise arranging or assisting in the making of deferred deposit transactions, must be licensed, pursuant to section 23005.

8. Licenses are not transferable or assignable, pursuant to section 23018.

9. Section 23045(a) states that licenses remain in effect and subject to the requirements of the CDDTL until they are surrendered, suspended or revoked. Suspension and revocation are actions the Commissioner may take. Surrender of a license requires an application to surrender by the licensee.

10. Certain disclosures are required in each agreement between the licensee and its customer. These are detailed in section 23035(e) and include: a clear description of payment of obligations, a disclosure of the APR being charged, an itemization of the amount financed, charges for returned checks, as well as others.

11. Section 23035(c) requires that the licensee give to customers a written disclosure prior to the customer entering into a deferred deposit transaction with the licensee. This disclosure includes information such as the charges for transactions and the Department's toll-free telephone number for consumer complaints or concerns.

12. Pursuant to section 23036(f), only the fees listed in section 23036 may be charged by a licensee, and only in the maximum amounts listed in that section. For example, section 23036(e) states that a fee for a returned check may not exceed fifteen dollars (\$15), may only be charged once for one check, and is the exclusive charge allowed for a dishonored check.

13. Section 23050 gives the Commissioner authority to order that a licensee who violates any provision of the CDDTL desist and refrain from further violating the CDDTL.

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III

RESPONDENTS’ DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

14. Respondent applied for a second CDDTL license on November 22, 2005 to operate the business located at 2012 N. G Street, in Merced, California.

15. In her application, Respondent stated that she would own and be in charge of this location.

16. During an examination of Respondent’s activities by the Department on February 21, 2008, the licensee admitted that she does not own or operate the business at 2012 N. G Street, in Merced, California. In addition, Respondent admitted in writing that: “At no time did I have any financial interest and or relationship in the business”

17. These admissions are contrary to what Respondent represented to the Department in the process of obtaining a second license under the CDDTL for this location. This false license filing violated section 23015(b).

18. Licensees are not transferable or assignable under the CDDTL, pursuant to section 25018.

19. Licenses are in effect until surrendered, revoked or suspended under section 23045(a).

20. At the time of the regulatory examination on February 21, 2008, and the follow up examination on March 27, 2008, Respondent had not requested that her license for the business at 2012 N. G Street, in Merced, California be surrendered. In addition, the Commissioner has not suspended or revoked the license.

21. Consequently, Respondent held the license for the business at this location in her name and was responsible for compliance with the CDDTL for this location.

22. Customers at Respondent’s second location were charged “set-up fees”. These fees are not allowable fees under section 23036(f).

23. Twenty-eight customers who paid set up fees did not receive a refund of these illegal fees. See Exhibit A.

24. In addition, customers at Respondent’s second location were charged non-sufficient funds (“NSF”) or returned check fees in excess of what is allowed by section 23036(e).

1 25. Four customers who paid these excess fees did not receive a refund of these fees. See
2 Exhibit A.

3 26. In total, there are twenty-nine customers who paid excess fees in violation of section
4 23036 and were not refunded these fees.

5 27. Respondent also failed to use an agreement with customers that contained disclosures
6 required by section 23035(e) at the 2012 N. G Street location.

7 28. Additionally, Respondent failed to provide required disclosures to customers prior to
8 engaging in a deferred deposit transaction, in violation of section 23035(c).

9 29. The Commissioner is issuing four citations in the amount of two thousand five
10 hundred dollars (\$2,500) each, pursuant to section 23058, for Respondent’s specific violations of
11 sections 23015(b), 23035(c), 23035(e), and 23036.

12 30. The Commissioner is also voiding the twenty-nine (29) loans on which customers
13 were charged excess fees in violation of section 23036.

14 31. The Commissioner has also issued a Desist and Refrain order to Respondent so that
15 Respondent does not engage in further violations of the CDDTL, pursuant to section 23050.

16 IV

17 COMMISSIONER’S AUTHORITY TO ISSUE CITATIONS AND
18 DESIST AND REFRAIN ORDER

19 32. Section 23058 gives the Commissioner authority to issue citations, and states:

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

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

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(c) If within 30 days from the receipt of the citation of the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (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 of the administrative penalty and order compelling the cited person to comply with the order of the department. The application, which shall include a certified copy of the final order of the department, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

CITATIONS

33. Pursuant to Financial Code section 23058, Respondent is hereby ordered to pay to the Commissioner within thirty (30) days from the date of these Citations an administrative penalty of two thousand five hundred dollars (\$2,500) for four citations for the total amount of ten thousand dollars (\$10,000).

DESIST AND REFRAIN ORDER

34. California Financial Code section 23050 provides in pertinent part:

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. 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.

35. By reason of the foregoing, the Respondents have engaged in violations of CDDTL sections 23015(b), 23035(c), 23035(e), and 23036. Pursuant to Financial Code sections 23050 and 23058, Respondents are hereby ordered to desist and refrain from further violations of the CDDTL.

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V

COMMISSIONER’S AUTHORITY TO VOID TRANSACTIONS

36. Respondent willfully violated section 23036 of the CDDTL by charging excessive or unauthorized fees with at least twenty-nine (29) consumers. Therefore, the Commissioner seeks to void Respondent’s transactions with at least twenty-nine (29) consumers and order the return of the consumers’ funds in an amount that aggregates at least seven thousand, five hundred, sixty-two dollars and eighty-one cents (\$7,562.81). See Exhibit A.

37. California Financial Code 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.

ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS

38. Pursuant to California Financial Code section 23060 the above described deferred deposit transactions for at least twenty-nine (29) consumers totaling at least seven thousand, five hundred, sixty-two dollars and eighty-one cents (\$7,562.81) are declared void.

39. Further, Respondent had no right to charge fees in connection with these consumer transactions and is hereby ordered to immediately return any amount and all charges and fees, of at least three hundred and twenty dollars (\$320.00).

VI

COMMISSIONER’S AUTHORITY TO REVOKE RESPONDENT’S CDDTL LICENSES

40. Section 23052 states the grounds for revocation of CDDTL licenses:

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1 The commissioner may suspend or revoke any license, upon notice and
2 reasonable opportunity to be heard, if the commissioner finds any of the
3 following:

4 (a) The licensee has failed to comply with any
5 demand, ruling, or requirement of the commissioner
6 made pursuant to and within the authority of this
7 division.

8 (b) The licensee has violated any provision of this
9 division or any rule or regulation made by the
10 commissioner under and within the authority of this
11 division.

12 (c) A fact or condition exists that, if it had existed at the time of
13 the original application for the license, reasonably would have
14 warranted the commissioner in refusing to issue the license
15 originally.

16 41. By reason of the foregoing, Respondent has failed to comply with requirements of the
17 Commissioner and has violated provisions of the CDDTL. Consequently, the Commissioner seeks
18 to revoke both of Respondent’s licenses.

19 CONCLUSION

20 Complainant finds, due to the foregoing, that Respondent violated sections 23015, 23035 and
21 23036. Therefore, the Commissioner is justified in revoking both Respondent’s California deferred
22 deposit transaction licenses pursuant to section 23052. The Commissioner was also justified, based
23 upon the foregoing, in ordering the Respondent to desist and refrain from further violations of the
24 CDDTL, in issuing four citations in the amount of ten thousand dollars (\$10,000) to Respondent, and
25 in voiding at least twenty-nine (29) transactions pursuant to sections 23050, 23058 and 23060,
26 respectively.

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

WHEREFORE, Complainant, the California Corporations Commissioner prays that the
deferred deposit transaction license number 100-3067 of Linda C. Kellum, doing business as Payday
Services Today, and license number 100-2318 of Linda C. Kellum, doing business as Pay Day

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Financial, be revoked pursuant to Financial Code section 23052.

Dated: October 7, 2008
Sacramento, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
ALAN S. WEINGER
Acting Deputy Commissioner