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

14 In the Matter of the Accusation of THE)
CALIFORNIA CORPORATIONS)
15 COMMISSIONER,)

16 Complainant,

17 vs.

18)
19 RYMS FINANCIAL SERVICES, INC. dba)
CASH PLUS #132 and CASH PLUS #196,)

20 Respondent.)
21)
22)
23)

File No.: 100-2280; 100-3632

CITATIONS;
DESIST AND REFRAIN ORDER;
ORDER VOIDING TRANSACTIONS AND
DISGORGEMENT OF ALL CHARGES AND
EXCESS FEES

24 The Complainant is informed and believes, and based upon such information and belief, finds
25 and charges Respondent as follows:
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I**INTRODUCTION**

On December 31, 2004, the Commissioner of the Department of Corporations (“Commissioner”) issued Respondent, Ryms Financial Services, Inc., doing business as Cash Plus #132 (“Ryms Financial Services”) a deferred deposit transaction originator license (File No. 100-2280) pursuant to the California Deferred Deposit Transaction Law (“CDDTL”), which is set forth in California Financial Code sections 23000 *et seq.* (All future references are to Financial Code sections unless indicated otherwise.) On August 24, 2007, the Commissioner issued Respondent a second deferred deposit transaction originator license for a separate location doing business as Cash Plus #196 (File No. 100-3632).

The president of Ryms Financial Services is Michael W. Gibson (Gibson). Respondent operates from two principal places of business:

- 9339 Foothill Boulevard, #F, Rancho Cucamonga, CA 91730;
- 350 W. Foothill Boulevard, Upland, CA 91786.

By reason of Respondent Ryms Financial Services’ violations of the CDDTL, the Commissioner hereby issues citations, an order to desist and refrain from any such violations pursuant to Financial Code section 23058, and also orders the voiding of those transactions resulting in excess fees and charges totaling \$8,869.92, refunds of such fees and charges and prohibiting the collection of \$2,805 in excess fees that have been charged but remain uncollected.

II**FACTUAL BACKGROUND**

1. The Department is responsible for enforcing all provisions of the CDDTL. Ryms Financial Services has engaged in violations of the CDDTL as set forth below.

2. Since at least 2005, Ryms Financial Services has engaged in the business of deferred deposit transactions by offering, originating and making deferred deposit transactions as described below.

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

5 4. In November 2004, Respondent filed with the Department an application for a license to
6 make deferred deposit transactions and included a Declaration, designated as “Exhibit K” to the
7 application, and signed under penalty of perjury by its president, Michael Gibson, stating:

8 **I (we) have obtained and read copies of the California Deferred Deposit Transaction**
9 **Law (Division 10 of the California Financial Code) and the Rules (Chapter 3, Title**
10 **10, California Code of Regulations) and am familiar with their content; and,**

11 **I (we) agree to comply with all of the provision of the California Deferred Deposit**
12 **Transaction Law, including any rules or orders of the Commissioner of**
13 **Corporations.**

14 Respondent’s Declaration to the application also states that “by signing this declaration...., the
15 applicant hereby agrees (or attests) or declares their understanding of the following items listed
16 below:

- 17 1. That the applicant will submit to periodic examinations by the Commissioner
18 of Corporations as required by the California Deferred Deposit Transaction
19 Law.
- 20 2. That the applicant will keep and maintain all records for 2 years following the
21 last entry on a deferred deposit transaction and will enable an examiner to
22 review the record keeping and reconcile each consumer deferred deposit
23 transaction with documentation maintained in the consumer’s file records.
- 24 3. That the applicant understands the examination process involving the
25 reconciliation of records will be facilitated if the applicant maintains, at a
26 minimum, a ledger or listing of the following current and updated information
27 for each deferred deposit transaction (as specified in Financial Code Section
28 23035): customer’s name and address, account number, check number,
 amount provided, fee, amount of check, corresponding annual percentage rate
 (e.g. 14-day or 30-day), and the deferred due date.
4. That the applicant will maintain a file of all advertising for a period of 90 days
 from the date of its use, which will be available to the Commissioner of
 Corporations upon request.

1 notified that the “Department requires that a payment plan or extension be in writing and signed by
2 the customer.” That letter also requested that the licensee take “corrective action” to comply with
3 this requirement.

4 The licensee responded to the regulatory letter on December 5, 2006, indicating that it would
5 amend the written agreements to remove the statement authorizing ACH debits for *any portion* of a
6 returned check. However, a review of ACH reports and the Returned Item Customer Summary
7 during the 2008 examination revealed that in fact, respondent had continued making multiple
8 electronic (ACH) debits of smaller amounts totaling the balance due since December 2006.

9 The examination also revealed violations of California Financial Code section 23036(b) by
10 Ryms Financial Services dba Cash Plus #132. During the regulatory examination, a Department of
11 Corporations examiner, acting on behalf of the Commissioner, discovered that Respondent charged
12 \$240 in additional fees for an extension of time for repayment of six existing deferred deposit
13 transactions in the amount of \$1800 in violation of California Financial Code section 23036(b).

14 After having received a loan for \$300 on November 6, 2006, Lielani B. (a customer) only paid
15 \$55 in cash. The licensee recorded the rest of the loan amount (\$265) as payment collected to close
16 the existing loan, and issued a new loan. The examiner sent two letters to the licensee on June 24,
17 2008 and August 4, 2008 requesting a copy of the written agreement for the loan made on November
18 6, 2006. However, no written agreement was received from Ryms Financial Services. During the
19 exit conference on August 8, 2008, the licensee was informed that this practice violated Section
20 23036(b). The licensee explained that because some customers have problems paying their loan in
21 full, sometimes they allow customers to pay just the fees and get a new loan. The examiner asked
22 Ryms Financial Services to provide a written explanation by August 8, 2008. No written explanation
23 has been received.

24 At the time of the exit conference on August 8, 2008, the examiner also advised Gibson that
25 unauthorized fees (exceeding fifteen dollars) had been charged and collected for the return of some
26 dishonored checks in violation of California Financial Code 23036(e). Specifically, the licensee had
27 charged 181 customers excess NSF fees (for non-sufficient funds) of \$3,420 on returned checks
28 involving 184 transactions in the total loan amount of \$47,118.75. Of the excess fees, \$615 had been

1 collected and the other \$2,805 had been charged but not yet collected as of the examination date on
2 June 2, 2008. The examination also revealed that the licensee did not maintain an accurate and
3 complete payment record for closed returned check accounts. For example, in the Monthly Payment
4 Collection remittance, a full payment for a returned check had been collected; but in the Returned
5 Item Customer Summary (the licensee's book), only a partial payment was recorded to the
6 customer's account. As a result, the Returned check account was still open with a balance due.

7 In addition to the above-stated violations of California Financial Code sections 23035(e), and
8 23036(b),(e), the June 2008 regulatory examination also revealed that while engaging in the business
9 of deferred deposit transactions, Ryms Financial Services had charged excess collection charges to 52
10 customers totaling \$6,157.42 during the period of July 2006 through May 2008 in violation of section
11 23036(f). A comparison of the Returned Item Customer Summary and Monthly Payment Collection
12 Statement from the collection agency, United Process, Inc. revealed that the payments collected by
13 the licensee were more than the amounts due on the Returned Item Customer Summary. In addition
14 to excess NSF fees, collection overcharges were also collected from the customers. In order to
15 reconcile the over-collected payments, the licensee created a debt on the customer's account by
16 simply recording "Increased Amount Owed."

17 Ryms Financial Services also collected an unauthorized court fee of \$30 from one customer
18 on a transaction totaling \$300, and an unauthorized service fee of \$25 from another customer on a
19 transaction totaling \$300. Ryms Financial Services also collected double the loan amount from eight
20 customers on eight loans totaling \$1,802.50. Each of these transactions constituted a violation of
21 section 23036(f).

22 The violations listed above warrant voiding those loans resulting in excess fees and charges,
23 and refunds totaling \$8,869.92. The Department has no evidence that any refunds have yet been
24 made to correct these overcharges and excess fees.

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IV

AUTHORITY TO ISSUE CITATIONS AND DESIST AND REFRAIN ORDER

California Financial Code section 23058, subdivision (a), authorizes the Commissioner to issue citations and provides:

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

Additionally, the Commissioner is statutorily authorized to order any person or licensee to desist and refrain from engaging in violations of the CDDTL. Financial Code section 23050 provides:

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.

V

CITATIONS

During the examination which commenced on June 2, 2008, the Commissioner identified 234 deferred deposit transactions in which Ryms Financial Services charged excessive fees totaling \$11,674.92 to customers in violation of Financial Code sections 23035(e), 23036(b), 23036(e) and 23036(f). There is no evidence that the Respondent has issued any refunds despite being informed of the unauthorized fees during the August 8, 2008 exit interview.

1 The foregoing facts establish that Ryms Financial Services has violated California Financial
2 Code sections 23035(e) by electronically debiting (ACH) delinquent borrowers' accounts multiple
3 times in varying amounts without the borrowers' approval, 23036(b) by charging unauthorized
4 extension fees, 23036(e) by charging non-sufficient funds fees exceeding fifteen dollars (\$15) for the
5 return of a dishonored check, and 23036(f) by charging collection charges, court fees and service fees
6 in excess of the amounts authorized by the Financial Code, and also by collecting double the amount
7 of certain loans. Thus the Commissioner is statutorily authorized to issue the following Citations:

8 Citations 1 through 5 - Since about July 2006 through at least about August 2008, Ryms
9 Financial Services has charged customers fees exceeding the amounts authorized under the California
10 Financial Code in connection with deferred deposit transactions in violation of sections 23035(e),
11 23036(b), 23036(e) and 23036(f).

12 Pursuant to California Financial Code section 23058, Ryms Financial Services is hereby
13 ordered to pay to the Commissioner a total of 5 administrative penalties of \$2500.00 each in the
14 amount of twelve thousand five hundred dollars (\$12,500.00) for the following Citations within 30
15 days from the date of these Citations:

16 Citations 1 through 5 – Two thousand five hundred dollars (\$2500) EACH, totaling
17 \$12,500.00.

18 These Citations totaling \$12,500.00 shall remain in full force and effect until further order of
19 the Commissioner.

20 **VI**

21 **DESIST AND REFRAIN ORDER**

22 Based on the foregoing facts establishing multiple violations of the CDDTL by Respondent,
23 the issuance of a Desist and Refrain Order is necessary for the protection of consumers and is
24 consistent with the purposes, policies, and provisions of the CDDTL.

25 Pursuant to California Financial Code sections 23050 and 23058, Ryms Financial Services,
26 Inc. doing business as Cash Plus #132 and Cash Plus #196 is hereby ordered to desist and refrain
27 from violating California Financial Code section 23035(e), 23036(b), 23036(e), and 23036(f).

28 This Order shall remain in full force and effect until further order of the Commissioner.

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VII

AUTHORITY TO VOID CALIFORNIA DEFERRED DEPOSIT TRANSACTIONS

California Financial Code section 23060, subdivision (a), states:

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.

VIII

ORDER VOIDING CALIFORNIA DEFERRED DEPOSIT TRANSACTIONS AND DISGORGEMENT OF ALL CHARGES AND EXCESS FEES

Respondent Ryms Financial Services, Inc. dba Cash Plus #132 and Cash Plus #196 willfully violated Financial Code section 23036 by charging extension fees, charging fees exceeding fifteen dollars (\$15) for the return of a dishonored check, charging other collection fees, court fees and service fees and collecting double the amount of certain loans totaling \$11,674.92 in at least 234 transactions for loans in the amount of \$60,209.15. Respondent Ryms Financial Services has no right to collect or receive any amount other than, or in excess of, the charges or fees permitted by the CDDTL.

Ryms Financial Services doing business as Cash Plus #132 and Cash Plus #196 is hereby ordered to immediately return to consumers the principal amount provided in these deferred

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1 deposit transactions, plus any charges or fees received for the 234 deferred deposit transactions
2 described above. The transactions totaling at least \$60,209.15 are declared void.

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4 Dated: February 18, 2009
5 Sacramento, California

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PRESTON DuFAUCHARD
California Corporations Commissioner

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By _____
Alan S. Weinger
Lead Corporations Counsel
Enforcement Division

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