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CALIFORNIA CORPORATIONS COMMISSIONER

8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10	In the Matter of THE CALIFORNIA)	
	CORPORATIONS COMMISSIONER,)	
11)	DESIST AND REFRAIN ORDER (FIN CODE
)	§ 23050)
12	Complainant,)	
)	AND
13	vs.)	
)	ORDER VOIDING TRANSACTIONS AND
14	A-1 Premium Budget, Inc., doing business as)	TO DISGORGE ALL CHARGES AND FEES
	Cash In A Wink, doing business as Fast 1000,)	(FIN CODE §23060)
15	and Paul H. Silverman,)	
)	AND
16	Respondents.)	
)	CITATIONS (FIN CODE § 23058)
17)	
)	

18
19 Complainant, the Commissioner of the Department of Corporations (“Commissioner” or
20 “Department”), is informed and believes, and based on such information and belief, finds as follows:

21 **I**
22 **FACTUAL BACKGROUND**

23 A-1 Premium Budget, Inc., a Delaware corporation, doing business as Cash In A Wink, doing
24 business as Fast 1000 (hereinafter “A-1 Premium Budget”), and Paul H. Silverman (hereinafter
25 “Silverman”), using addresses of 3422 Old Capitol Trail, Suite 1109, Wilmington, DE 19808, and
26 8304 Wornall Road, Kansas City, Missouri 64114, and operating on the Internet at
27 www.cashinawink.com and at www.fast1000.com, offer “short-term” loans to their customers, which
28

1 are regulated in California as deferred deposit transactions.

2 Since at least January, 2011, A-1 Premium Budget and Silverman have engaged in the
3 business of offering, originating, or making deferred deposit transactions, or have acted as an agent or
4 assisted a deferred deposit originator in the origination of a deferred deposit transaction, as defined
5 by the California Deferred Deposit Transaction Law (“CDDTL”, Cal. Fin Code sections 23000 *et*
6 *seq.*)¹, section 23001(a), whereby A-1 Premium Budget and Silverman defer depositing the
7 customer’s personal check until a specific date pursuant to a written agreement for a fee or other
8 charge.

9 Customers submit an application online and are required to provide their checking account
10 information to which loan monies are automatically deposited. Customers are required to provide
11 “ACH Authorization” allowing deductions for payments, charges, fees and other monies directly
12 from the customers’ bank accounts, in amounts beyond those authorized by law or otherwise
13 prohibited by law. For example, a customer may be charged a fee for his or her loan of 25% or more,
14 which amount is automatically charged again plus any other “accrued fees” as an “Auto-Renewal” of
15 the loan if the customer fails to confirm his or her payment option. In addition, a customer’s bank
16 account may be deducted a late fee of five percent of the “Total of Payments” unpaid if payment is
17 not received by its due date, as well as a fee of \$20 for any payment returned unpaid, plus court costs
18 and attorney’s fees if the payment is returned due to insufficient funds or the account is closed.
19 Customers are also given loans in excess of \$300 and up to \$1,000 while not being provided certain
20 notices or disclosures required under the CDDTL, such as the limit of \$15 for a return check fee, the
21 Department’s toll-free telephone number for complaints, and that they may not be criminally
22 prosecuted in conjunction with the loan.

23 Transactions with customers, at times, are facilitated by a telephone number of 800-723-3050.
24 Other numbers used by A-1 Premium Budget and Silverman include:

25 (800) 505-6380;
26 (800) 723-3050 for its “loans”;

27 ¹ All future references are the California Financial Code unless otherwise indicated.
28

1 (800) 595-2425 for “Collections”;
 2 (800) 260-9790, directing customers to call (800) 595-2425, extension 5211;
 3 (800) 240-4934, directing customers to call (800) 595-2425, extension 5221;
 4 (800) 687-1785
 5 (800) 347-9504
 6 (800) 239-7312
 7 (800) 291-7957
 8 (800) 838-4338

9 Although A-1 Premium Budget may hold a license from Delaware to engage in short-term
 10 lending, neither A-1 Premium Budget, nor Silverman have been issued a deferred deposit transaction
 11 originator license by the Commissioner pursuant to the CDDTL to engage in deferred deposit
 12 transactions in California or with California customers.

13 II

14 CDDTL VIOLATIONS

15 The Department is responsible for enforcing all provisions of the CDDTL, including the
 16 regulation of deferred deposit transactions, which are also commonly referred to as “payday
 17 advances” or “payday loans.”

18 A. Failure to Obtain a License

19 Section 23005(a) states:

20 No person shall offer, originate, or make a deferred deposit transaction,
 21 arrange a deferred deposit transaction for a deferred deposit originator,
 22 act as an agent for a deferred deposit originator, or assist a deferred
 23 deposit originator in the origination of a deferred deposit transaction
 24 without first obtaining a license from the commissioner and complying
 25 the provision of this division...

26 A “person” is defined to include, in part, an individual, a corporation, partnership, limited
 27 liability company, joint venture, an association and an unincorporated organization. (Cal. Fin Code
 28 §23001(e).). A “deferred deposit originator” is defined to include “a person who offers, originates, or
 makes a deferred deposit transaction.” (Cal. Fin Code §23001(f).).

Because neither A-1 Premium Budget nor Silverman have been issued a deferred deposit
 transaction originator license by the Commissioner, neither is authorized to engage in payday
 lending, or assist a deferred deposit originator in the origination of a deferred deposit transaction.

B. Illegally Charging Excess or Unauthorized Fees

Pursuant to section 23036:

(a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check.

(b) A licensee may allow an extension of time, or a payment plan, for repayment of an existing deferred deposit transaction but may not charge any additional fee or charge of any kind in conjunction with the extension or payment plan...

(e) A fee not to exceed fifteen (\$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.

A “licensee” is defined, in part, to include “any person who offers, originates, or makes a deferred deposit transaction, who arranges a deferred deposit transaction for a deferred deposit originator, who acts as an agent for a deferred deposit originator, or who assists a deferred deposit originator in the origination of a deferred deposit transaction.” (Cal. Fin Code §23001(d).).

A-1 Premium Budget and Silverman’s fees to customers for payday loans violate the CDDTL, section 23036. For example, the 25% or higher fee for a loan is in violation of subsection (a), the auto-renewal fees are prohibited under subsection (b), and the return payment fees and late fees are in violation and prohibited under subsection (e). Such fees are directly charged to the customer by way of automatic ACH debits in violation subsection (f).

C. Agreements in Excess of \$300 and Deficient of Required Notices and Disclosures

Section 23035 limits the maximum amount of deferred deposit transactions to three hundred dollars (\$300), and requires certain notices and disclosures be made to the customer. For example, customers shall be notified about a maximum \$15 fee for

1 returned payments, the Department's toll-free telephone number for complaints and that
2 the customer may not be prosecuted or threatened with prosecution in a criminal action
3 in conjunction with the loan. (Cal. Fin Code §23035(c) and (e).)

4 Customers, however, are given loans up to \$1,000, well in excess of the \$300 loan limit, and
5 are not notified about the limit on returned payment fees, nor the Department's toll-free telephone
6 number for complaints, nor that they may not be prosecuted criminally.

7 **III**

8 **ORDERS**

9 **A. Desist and Refrain Order**

10 The Commissioner is statutorily authorized to order any person to desist and refrain from
11 engaging in violations of the CDDTL. Financial Code section 23050 provides:

12 Whenever, in the opinion of the commissioner, any person is engaged in
13 the business of deferred deposit transactions, as defined in this division,
14 without a license from the commissioner, or any licensee is violating any
15 provision of this division, the commissioner may order that person or
16 licensee to desist and to refrain from engaging in the business or further
17 violating this division. If within 30 days, after the order is served, a
18 written request for a hearing is filed and no hearing is held within 30 days
19 thereafter, the order is rescinded.

20 The foregoing facts establish multiple violations of the CDDTL by A-1 Premium Budget and
21 Silverman. The issuance of a Desist and Refrain Order, therefore, is necessary for the protection of
22 consumers and is consistent with the purposes, policies, and provisions of the CDDTL.

23 Pursuant to section 23050, A-1 Premium Budget, Inc., doing business as Cash In A Wink,
24 doing business as Fast 1000, and Paul H. Silverman, are hereby ordered to desist and refrain from
25 violating California Financial Code sections 23005(a) and 23036, subsections, (a), (b), (e) and (f).

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

27 **B. Order Voiding California Deferred Deposit Transactions**

28 Section 23060, of the CDDTL 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

1 right to collect or receive the principal amount provided in the deferred
2 deposit transaction, any charges, or fees in connection with the
transaction.

3 (b) If any provision of this division is willfully violated in the making or
4 collection of a deferred deposit transaction, the deferred deposit
5 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.

6 A-1 Premium Budget and Silverman willfully violated provisions of the CDDTL by
7 repeatedly and willfully charging California customers excess fees or charges without a license in
8 violation of sections 23005(a) and 23036, subsections (a), (b), (e), and (f) in conjunction with
9 deferred deposit transactions, and by entering into agreements for deferred deposit transactions in
10 excess of \$300 without notices required by law in violation of section 23035. As such, neither A-1
11 Premium Budget nor Silverman is entitled to collect or receive the principal amounts provided in
12 those deferred deposit transactions, nor any of the charges or fees associated with the transactions.

13 Pursuant to California Financial Code section 23060, subsections (a) and (b), any and all
14 deferred deposit transactions contracted with California customers or in this state are therefore
15 void. A-1 Premium Budget, Inc., doing business as Cash In A Wink, doing business as Fast
16 1000, and Paul H. Silverman are hereby ordered to immediately return the principal amounts
17 provided in any and all deferred deposit transactions contracted with California customers or in
18 the state, and to disgorge any and all charges or fees received in conjunction with the deferred
19 deposit transactions.

20 **C. Citations**

21 The foregoing violations were revealed after inspection, examination or investigation by
22 the department and warrant citations pursuant to section 23058(a), which states in part:

23 If, upon inspection, examination or investigation, based upon a complaint
24 or otherwise, the department has cause to believe that a person is engaged
25 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
26 order thereunder, the department may issue a citation to that person in
writing, describing with particularity the basis of the citation. Each
27 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)...

1 The Commissioner herein issues eight separate citations (1 through 8) to each A-1
2 Premium Budget and Silverman, incorporating the above Order to Desist and Refrain, for the
3 following violations:

- 4 1.) In April, 2012, both A-1 Premium Budget originated a deferred deposit transaction
5 with at least one California resident through the website www.cashinawink.com
6 without a license, in violation of section 23005(a);
- 7 2.) In April, 2012, A-1 Premium Budget originated a deferred deposit transaction with at
8 least one California resident charging excessive and unauthorized fees in violation of
9 section 23036, subsections (a), (b), (e) and (f), including loan fees of 25% or more,
10 which amount is automatically charged again plus any other “accrued fees” as an
11 “Auto-Renewal” of the loan, as well as a late fee of five percent of the “Total
12 Payments”, and a \$20 fee for any payment returned unpaid, plus court costs and
13 attorney’s fees due to insufficient funds or the account being closed;
- 14 3.) In April, 2012, A-1 Premium Budget originated a deferred deposit transaction for
15 \$1000 plus a \$250 finance charge, in violation of the \$300 transaction limit under
16 section 23035(a);
- 17 4.) In April, 2012, A-1 Premium Budget originated a deferred deposit transaction without
18 providing the requisite notices and disclosures regarding limits on the return check
19 fees, the Department’s toll-free telephone number for complaints, or that the customer
20 may not prosecuted criminally in violation of section 23035 subsections (c) and (e);
- 21 5.) In April, 2012, Silverman originated, or acted as an agent of or assisted A-1 Premium
22 Budget in originating, a deferred deposit transaction with at least one California
23 resident through the website www.cashinawink.com without a license, in violation of
24 section 23005(a);
- 25 6.) In April, 2012, Silverman originated, or acted as an agent of or assisted A-1 Premium
26 Budget in originating, a deferred deposit transaction with at least one California
27 resident charging excessive and unauthorized fees in violation of section 23036,
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1 subsections (a), (b), (e) and (f), including loan fees of 25% or more, which amount is
2 automatically charged again plus any other "accrued fees" as an "Auto-Renewal" of
3 the loan, as well as a late fee of five percent of the "Total Payments", and a \$20 fee for
4 any payment returned unpaid, plus court costs and attorney's fees due to insufficient
5 funds or the account being closed;

6 7.) In April, 2012, Silverman originated, or acted as an agent of or assisted A-1 Premium
7 Budget in the origination, of a deferred deposit transaction for \$1000 plus a \$250
8 finance charge, in violation of the \$300 transaction limit under section 23035(a);

9 8.) In April, 2012, Silverman originated, or acted as an agent of or assisted A-1 Premium
10 Budget in originating, a deferred deposit transaction without providing the requisite
11 notices and disclosures regarding limits on the return check fees, the Department's
12 toll-free telephone number for complaints, or that the customer may not prosecuted
13 criminally in violation of section 23035 subsections (c) and (e).

14 Pursuant to section 23058, A-1 Premium Budget, Inc., doing business as Cash In A Wink,
15 doing business as Fast 1000, and Paul H. Silverman, are hereby ordered to each pay the
16 Commissioner an administrative penalty of two-thousand five-hundred dollars (\$2,500) for each
17 of the eight citations (with Citations 2 and 6 representing four violations each, and Citations 4 and
18 8 representing two violations each), for a total amount of \$10,000 to each A-1 Premium Budget
19 and Silverman, or \$20,000 for a combined total.

20 Dated: July 19, 2012
21 Sacramento, California

22 JAN LYNN OWEN
23 California Corporations Commissioner

24
25 By: _____
26 ALAN S. WEINGER
27 Deputy Commissioner
28 Enforcement Division