

MARY ANN SMITH
Deputy Commissioner
SEAN ROONEY
Assistant Chief Counsel
JOYCE TSAI
Senior Corporations Counsel (SBN 241908)
DEPARTMENT OF BUSINESS OVERSIGHT
1350 Front Street, Suite 2034
San Diego, CA 92101
Telephone: (619) 525-4043

Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of THE COMMISSIONER OF)	FILE NO: 100-3271
BUSINESS OVERSIGHT OF THE STATE OF)	
CALIFORNIA,)	
)	ORDER FORFEITING ALL CHARGES AND
Complainant,)	FEEES PURSUANT TO FINANCIAL CODE
)	SECTION 23062;
v.)	
)	CITATIONS PURSUANT TO FINANCIAL
CNU OF CALIFORNIA, LLC, dba)	CODE SECTION 23058; and,
CASHNET USA)	
)	DESIST AND REFRAIN ORDER PURSUANT
Respondent.)	TO FINANCIAL CODE SECTION 23058
)	
)	

Complainant, the Commissioner of Business Oversight of the State of California
("Commissioner") is informed and believes, and based on such information and belief, finds as
follows:

I.
FACTUAL BACKGROUND

1. The Commissioner has jurisdiction over deferred deposit transactions as set forth in
the California Deferred Deposit Transaction Law ("CDDTL") (Cal. Fin. Code § 23000 *et. seq.*).

1 2. “Deferred deposit transaction” means a transaction whereby a person defers depositing
 2 a customer’s personal check until a specific date, pursuant to a written agreement for a fee or other
 3 charge. “Personal check,” which is referenced in Financial Code section 23001, subdivision (a),
 4 includes the electronic equivalent of a personal check, such as an Automated Clearing House
 5 (“ACH”) or debit card transaction.

6 3. Respondent CNU of California, LLC (“CNU”) is a limited liability company formed
 7 under the laws of Delaware on September 1, 2006. Its principal place of business is 200 West
 8 Jackson Street, Suite 2400, Chicago, IL 60606. CNU does business in California as CashNetUSA.

9 4. On September 8, 2006, the Commissioner issued to CNU a deferred deposit
 10 transaction originator license (File No. 100-3271) pursuant to the CDDTL.

11 5. CNU originates deferred deposit transactions over the internet from its website,
 12 www.cashnetusa.com.

13 6. On or about March 28, 2014, the Commissioner commenced a regulatory examination
 14 of CNU.

15 7. During the examination, the Commissioner reviewed CNU’s Written Agreement
 16 governing its deferred deposit transactions. The Written Agreement contains the following
 17 statement: “Interest continues to accrue on the outstanding principal balance owing until the
 18 Payment Date.”

- 19 8. Financial Code section 23036 provides, in pertinent part:
- 20 (a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face
 - 21 amount of the check.
 - 22
 - 23 (e) A fee not to exceed fifteen dollars (\$15) may be charged for the return of a
 - 24 dishonored check by a depository institution in a deferred deposit transaction. A
 - 25 single fee charged pursuant to this subdivision is the exclusive charge for a dishonored
 - 26 check. No fee may be added for late payment.
 - 27 (f) No amount in excess of the amounts authorized by this section shall be directly or
 - 28 indirectly charged by a licensee pursuant to a deferred deposit transaction.

1 9. Financial Code section 23037 provides that a licensee shall not “engage in any unfair,
2 unlawful, or deceptive conduct, or make any statement that is likely to mislead in connection with the
3 business of deferred deposit transactions.”

4 10. By stating in its Written Agreement that it would charge customers unlawful interest,
5 CNU violated Financial Code sections 23036(a), 23036(f), and 23037(f).

6 11. The examination of CNU’s transaction report showed that several customer accounts
7 had been electronically debited for amounts other than the face amount of the check.

8 12. Financial Code section 23001, subdivision (a), defines a deferred deposit transaction
9 as “a transaction whereby a person defers depositing a customer’s personal check until a specific
10 date, pursuant to a written agreement for a fee or other charge, as provided in Section 23035.”

11 13. Financial Code section 23035, subdivision (a), provides, in pertinent part:

12 Each deferred deposit transaction shall be made pursuant to a written agreement as
13 described in subdivision (e) that has been signed by the customer and by the licensee
14 or an authorized representative of the licensee.

15 14. By electronically debiting customer accounts for more than the original agreed upon
16 amount without additional written authorization from customers, CNU violated Sections 23001(a)
17 and 23035(a).

18 15. During the examination, the Commissioner found that CNU customers who are unable
19 to make a full payment as offered an Extended Payment Plan (“EPP”) Agreement in order to repay
20 the loan in installment payments. The EPP Agreement includes the following statements:

21 Customer must continue to pay the Agreement’s other fees and charges in accordance
22 with its terms, including, without limitation, a one-time returned payment fee in the
23 amount of \$20.00 if any check deposited, or ACH debit initiated, in connection with
24 this EPP is dishonored.

25

26 You agree that we will initiate the debit entries in accordance with the EPP Payment
27 Schedule and this ACH debit authorization, including any returned payment,
28 insufficient funds charges, late fees, or other amounts owing if you do not pay as
scheduled under the EPP....

1 Pursuant to Financial Code section 23062, CNU of California, LLC, dba CashNetUSA, is
2 hereby ordered to forfeit all charges and fees, and may only collect or receive the principal amount,
3 for every deferred deposit transaction made in violation of Financial Code section 23036, 23037,
4 23027, 23001, and/or 23035.

5 **III.**

6 **CITATIONS**

7 Financial Code section 23058 provides, in pertinent part:

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

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

19 For violations of the CDDTL, the Department hereby issues the following citations:

20 **CITATION A:** CNU of California, LLC, dba CashNetUSA, has violated Financial Code
21 sections 23036 and 23037 by stating in its Written Agreement that it would charge customers
22 unlawful interest and by stating in its EPP Agreement that it would charge a returned payment fee of
23 \$20.00 and late fees.

24 **CITATION B:** CNU of California, LLC, dba CashNetUSA, has violated Financial Code
25 sections 23001 and 23035 by electronically debiting customer accounts for more than the original
26 agreed upon amount without additional written authorization from customers.

27 **CITATION C:** CNU of California, LLC, dba CashNetUSA, has violated Financial Code
28 section 23023 by using the wrong legal name on its EPP Agreement.

