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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.

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

21 Respondent.

) File No.: 100-2280; 100-3632  
)  
)  
) CITATIONS;  
) DESIST AND REFRAIN ORDER;  
) ORDER VOIDING TRANSACTIONS AND  
) DISGORGEMENT OF ALL CHARGES AND  
) EXCESS FEES

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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                   5. That the applicant will file with the Commissioner of Corporations an
- 2                   Amendment to this application prior to any material change in the information
- 3                   contained in the application for licensure, including, without limitation, the
- 4                   plan of operation.
- 5                   6. That the applicant will file with the Commissioner of Corporations any report
- 6                   required by the Commissioner.
- 7                   7. That the applicant hereby attests that the applicant (including officers,
- 8                   directors and principals) has not engaged in conduct that would be cause for
- 9                   denial of a license.”

5. Respondent was required to and did complete another Declaration designated as “Exhibit L” to the application, which Gibson signed under penalty of perjury stating:

“The applicant will comply with all federal and state laws and regulations (including Division 10, commencing with Section 23000, of the Financial Code), if it offers, arranges, acts as an agent for, or assists a deferred deposit originator in the making of a deferred deposit transaction. (Financial Code Section 23037(i).)”

6. Notwithstanding knowledge regarding the licensure requirements, Respondent willfully and knowingly engaged in CDDTL violations as outlined below. The Department examiner’s review of Ryms Financial Services revealed violations of the CDDTL warranting citations, issuance of a desist and refrain order, the voiding of deferred deposit transactions, and disgorgement of all excess charges and fees.

**III**

**CALIFORNIA DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS**

On or about June 2, 2008, the Commissioner commenced a regulatory examination of the books and records of Respondent Ryms Financial Services (Rancho Cucamonga location – License # 100-2280). The examination identified the licensee as being in violation of California Financial Code section 23035(e)(6) for making Automated Clearing House (ACH) electronic debits in small multiple amounts totaling the balance due.

In a prior examination which commenced on October 3, 2006, it was noted that the Written Agreement specified that the licensee could initiate electronic (ACH) debits for the full amount of the returned check or “any portion.” In a regulatory letter dated November 14, 2006, the licensee was

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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