

1 MARY ANN SMITH
Deputy Commissioner
2 DOUGLAS M. GOODING
Assistant Chief Counsel
3 MIRANDA LEKANDER (CA BAR NO. 210082)
Senior Corporations Counsel
4 Department of Business Oversight
1515 K Street, Suite 200
5 Sacramento, California 95814
Telephone: (916) 322-8730
6 Facsimile: (916) 445-6985

7 Attorneys for Complainant

8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 In the Matter of THE COMMISSIONER OF) FILE NO: 100-1123
12 BUSINESS OVERSIGHT OF THE STATE OF)
13 CALIFORNIA,)
14 Complainant,) ORDER FORFEITING ALL CHARGES AND
15 v.) FEES PURSUANT TO FINANCIAL CODE
16 QC FINANCIAL SERVICES OF) SECTION 23062;
17 CALIFORNIA, INC. doing business as) CITATIONS PURSUANT TO FINANCIAL
18 CALIFORNIA BUDGET FINANCE,) CODE SECTION 23058; and,
19 Respondent.) DESIST AND REFRAIN ORDER PURSUANT
20) TO FINANCIAL CODE SECTION 23058
21)
22)

22 Complainant, the Commissioner of Business Oversight of the State of California
23 (“Commissioner” or “Department”),¹ is informed and believes, and based on such information and
24 belief, finds as follows:

25
26 _____
27 ¹ Effective July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the
28 Department of Business Oversight in accordance with the Governor's reorganization of state departments to provide
services more efficiently and effectively.

ORDER FORFEITING ALL CHARGES AND FEES PURSUANT TO FINANCIAL CODE SECTION 23062;
CITATIONS PURSUANT TO FINANCIAL CODE SECTION 23058; AND DESIST AND REFRAIN ORDER
PURSUANT TO FINANCIAL CODE SECTION 23058

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.*).²

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

3. Respondent, QC Financial Services of California, Inc. doing business as California Budget Finance, is a California corporation with a principal address of 9401 Indian Creek Parkway, Suite 1500, Overland Park, Kansas 66210, and its main office in this state located at 795 West Highland Avenue, San Bernardino, California 92405.

4. On December 31, 2004, the Commissioner issued to Respondent a deferred deposit transaction originator license (File No. 100-1123) pursuant to the CDDTL. Respondent engages in its payday lending business at 74 licensed locations in California.

5. As part of its application to the Department for a license to make deferred deposit transactions, Respondent executed a Declaration, designated as “Exhibit K,” signed under penalty of perjury, which states:

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

I (we) agree to comply with all the provision[s] of the California Deferred Deposit Transaction Law, including any rules or orders of the

² All further code references are to the California Financial Code unless otherwise stated.

Commissioner of Corporations.

By signing the Declaration, Respondent further attested to declare understanding of the following items on the application:

- 1. That the applicant will submit to periodic examinations by the Commissioner of Corporations as required by the California Deferred Deposit Transaction Law.
- 2. That the applicant will keep and maintain all records for 2 years following the last entry on a deferred deposit transaction and will enable an examiner to review the record keeping and reconcile each consumer deferred deposit transaction with documentation maintained in the consumer's file records.

....

6. On or about January 7, 2013, the Commissioner commenced a regulatory examination of all of Respondent's licensed California locations. The examination disclosed that Respondent had engaged in business practices in violation of the CDDTL.

7. As part of this examination, the Commissioner's examiner reviewed written agreements used by Respondent in its business to determine if the language communicated to customers is in compliance with the CDDTL. The written agreement used by Respondent (hereafter referred to as "the Written Agreement") contains a "Prepayment" clause advising customers that they will not be charged the finance charges on the deferred deposit transactions if the amount financed is paid prior to the close of business of the next business day. The "Prepayment" clause states:

In accordance with CFSA's best practices, we will rebate and refund the finance charge we have earned if at any time prior the close of business on the business day immediately following the date of this Contract, you prepay to us the Amount Financed in cash in full satisfaction of your obligations under the Contract. Thereafter, you may prepay in full at any time the amount due under this Contract and will not incur an additional charge or fee. However, because we earn the finance charge upon your execution of the Contract, you will not be entitled to a rebate and refund of any part of the finance charge.

1 8. During the January 2013 examination of Respondent's branch locations, the
2 Commissioner's examiner discovered four transactions where customers were not refunded finance
3 charges pursuant to the terms of the Written Agreement despite having paid off the amount financed
4 prior to the close of business of the next day.

5 9. During a prior examination that commenced on April 12, 2012, the Department had
6 previously brought to Respondent's attention its failure to issue refunds to customers as represented
7 in the "Prepayment" clause of its Written Agreement. At that time, Respondent had agreed to issue
8 refunds to customers for 279 transactions totaling \$7,463.29 in finance charges. However, during the
9 January 2013 examination, the Commissioner's examiner determined that 127 of the 279 refunds
10 made from the prior examination totaling \$3,382.48 remained unclaimed by customers; and, the
11 funds are being held by Respondent to be escheated to the State Controller's Office pursuant to the
12 California Unclaimed Property Law (Civ. Proc. Code, § 1500 *et seq.*).

13 10. On September 19, 2013, the Department requested that Respondent provide: (1) a
14 detailed written explanation of the corrective actions taken to prevent recurrence of the violations
15 cited in the April 2012 examination; and, (2) a report identifying all transactions during the period of
16 September 1, 2013 and September 15, 2013, where customers had paid the amount financed in full
17 within two days or less from the date of the transaction.

18 11. On September 30, 2013, Respondent responded that to prevent recurrence of
19 violations found in the prior examination, regional managers, store managers and branch personnel
20 had received training on procedures to confirm on a daily basis that contracts are reviewed to ensure
21 proper refunds are given if applicable. Respondent also provided a report identifying all transactions
22 during the period of September 1, 2013 and September 15, 2013 where customers had prepaid the
23 amount financed in full within two days or less from the date of the transaction (hereafter referred to
24 as "the report").

25 12. After analyzing the report provided by Respondent, the Department determined that in
26 151 transactions customers who had paid the full amount financed prior to the close of business of the
27 next business day did not receive a rebate or refund of the finance charge as stated in the

1 “Prepayment” clause included in the Written Agreement. These finance charges totaled \$5,356.78
2 for the 151 transactions.

3 13. On October 1, 2013, the Department sent Respondent an email asking for clarification
4 of whether any rebates were issued to customers for any of the transactions identified in its report.

5 14. During a branch store examination conducted on October 4, 2013, the Commissioner’s
6 examiner was told by Respondent’s regional manager that the licensee does not have the capability to
7 determine if, or notify store personnel when, a rebate of the finance charge is necessary after payment
8 is accepted from the customer prior to the close of business of the next business day. It was also
9 ascertained that the improper collection of finance charges likely resulted from Respondent’s failure
10 to correct problematic default and override settings in the electronic system used to process its
11 deferred deposit transactions.

12 15. On October 9, 2013, in response to the Department’s October 1st email, Respondent
13 informed that finance charges had not, in fact, been rescinded for any of the transactions noted in the
14 report but advised that it was possible that customers could have been given refunds through petty
15 cash. However, Respondent informed that “only an on site Store level review of contracts, receipts
16 and petty cash can make this determination.”

17 16. Financial Code section 23037, subdivision (f), provides that in no case shall a licensee
18 “[e]ngage in any unfair, unlawful, or deceptive conduct, or make any statement that is likely to
19 mislead in connection with the business of deferred deposit transactions.”

20 17. The Commissioner finds that the “Prepayment” clause contained in Respondent’s
21 Written Agreement is likely to mislead customers and, thus, including such a prepayment clause in its
22 Written Agreement constitutes unfair, unlawful, and deceptive conduct in connection with the
23 business of deferred deposit transactions, in violation of Financial Code section 23037, subdivision
24 (f). Customers who timely prepay the full amount financed pursuant to the terms of the
25 “Prepayment” clause of the Written Agreement should reasonably expect to receive a refund of the
26 finance charges. However, the Commissioner’s examination has disclosed that Respondent does not
27

1 have a reliable system in place to ensure that such refunds are consistently and fairly issued to each
2 customer.

3 18. Financial Code section 23024 provides:

4 Each licensee shall keep and use books, accounts, and records that will
5 enable the commissioner to determine if the licensee is complying with the
6 provisions of this division and with the rules and regulations promulgated
7 by the commissioner. Each licensee shall maintain any other records as
8 required by the commissioner. The commissioner or a designee of the
9 commissioner may examine those records at any reasonable time. Upon
10 the request of the commissioner, a licensee shall file an authorization for
11 disclosure of financial records of the licensed businesses pursuant to
12 Section 7473 of the Government Code. All records shall be kept for two
13 years following the last entry on a deferred deposit transaction and shall
14 enable an examiner to review the recordkeeping and reconcile each
15 consumer deferred deposit transaction with documentation maintained in
16 the consumer's deferred deposit transaction file records.

17 19. The Commissioner further finds that by relying solely on an onsite store-level review
18 of contracts, receipts, and petty cash to determine if accurate refunds have been made to customers,
19 Respondent has failed to keep records to enable an examiner of the Commissioner to “reconcile each
20 consumer deferred deposit transaction with documentation maintained in the consumer’s deferred
21 deposit transaction file records,” in violation of Financial Code section 23024.

22 **II.**

23 **ORDER FORFEITING ALL CHARGES AND FEES**

24 Financial Code section 23062 provides:

25 (a) If any provision of this division is violated in the making or collection
26 of a deferred deposit transaction, for any reason other than a willful act of
27 the licensee, the licensee shall forfeit all charges and fees on the deferred
28 deposit and may collect or receive only the principal amount.

(b) Subdivision (a) shall not apply to a violation if (1) the licensee shows
by a preponderance of evidence that the violation was not intentional and
resulted from a bona fide error notwithstanding the maintenance of
procedures reasonably adapted to avoid any such error, and (2) within 30
days of discovering the error the licensee notified the customer of the error

1 and rectified the error by making the appropriate changes in the
2 documents or account and by taking other action necessary to correct the
3 error.

4 Pursuant to Financial Code section 23062, where any provision of the CDDTL has been
5 violated in the making or collection of a deferred deposit transaction, for any reason other than the
6 willful act of the licensee, the licensee shall forfeit all charges and fees on the deferred deposit and
7 may collect or receive only the principal amount. QC Financial Services of California, Inc. doing
8 business as California Budget Finance is hereby ordered to forfeit all charges and fees, and may only
9 collect or receive the principal amount, for every deferred deposit transaction, including but not
10 limited to the 151 transactions identified pursuant to the Commissioner's January 2013 examination,
11 where customers fully prepaid the amount financed prior to the close of business of the next business
12 day and did not receive a refund of the finance charge as stated in the "Prepayment" clause of the
13 Written Agreement.

14 III.

15 CITATIONS

16 Pursuant to Financial Code section 23058, when the Department has cause to believe that a
17 person is violating any provision of the CDDTL, the Department may issue a citation to that person,
18 each containing an assessment of an administrative penalty not to exceed \$2,500.00.

19 Financial Code section 23058 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(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.

For the CDDTL violations of QC Financial Services of California, Inc. doing business as California Budget Finance, the Department hereby issues two separate citations (A and B) as part of this single document:

CITATION A – During the period of September 1, 2011 through at least September 15, 2013, QC Financial Services of California, Inc. doing business as California Budget Finance engaged in unfair, unlawful, or deceptive conduct, or made a statement in its Written Agreement that is likely to mislead in connection with the business of deferred deposit transactions, in violation of Financial Code section 23037, subdivision (f); and,

CITATION B – During the period commencing on or after the January 7, 2013 regulatory examination, QC Financial Services of California, Inc. doing business as California Budget Finance failed to keep records that shall enable the Commissioner’s examiner to reconcile each consumer deferred deposit transaction with documentation maintained in the consumer’s deferred deposit transaction file records, in violation of Financial Code section 23024.

Pursuant to Financial Code section 23058, QC Financial Services of California, Inc. doing business as California Budget Finance is hereby ordered to pay the Department an administrative

1 penalty of two thousand five hundred dollars (\$2,500) for each of the two citations (Citations A and
2 B) for the total amount of five thousand dollars (\$5,000) within 30 days from the date of this order.

3 **IV.**

4 **DESIST AND REFRAIN ORDER**

5 Where the Department has cause to believe a person is violating any provision of the CDDTL,
6 the Department is further authorized under Financial Code section 23058 to issue, along with each
7 citation, an order to desist and refrain.

8 The foregoing facts establish violations of the CDDTL by QC Financial Services of
9 California, Inc. doing business as California Budget Finance, including: (1) engaging in unfair,
10 unlawful, or deceptive conduct, or making any statement that is likely to mislead in connection with
11 the business of deferred deposit transactions, in violation of Financial Code section 23037,
12 subdivision (f), as set forth above in Citation A; and, (2) failing to keep records that shall enable an
13 examiner of Commissioner to reconcile each consumer deferred deposit transaction with
14 documentation maintained in the consumer's deferred deposit transaction file records, in violation of
15 Financial Code section 23024, as set forth above in Citation B.

16 Pursuant to Financial Code section 23058, QC Financial Services of California, Inc. doing
17 business as California Budget Finance is hereby ordered to desist and refrain from violating Financial
18 Code sections 23037, subdivision (f), and 23024, as set forth in Citations A and B above.

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

22 Dated: July 11, 2014
23 Sacramento, California

24 JAN LYNN OWEN
Commissioner of Business Oversight

25 By: _____
26 MARY ANN SMITH
27 Deputy Commissioner