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 OF ORIGINAL FILED
 Los Angeles Superior Court
AUG 30 2005
 John A. Clarke
 Deputy Clerk
 By: [Signature] Deputy

6 Attorneys for The People of the State of California

7
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF LOS ANGELES

10
 11 THE PEOPLE OF THE STATE OF
 CALIFORNIA, BY AND THROUGH THE
 12 CALIFORNIA CORPORATIONS
 13 COMMISSIONER,

14 Plaintiff,

15 vs.

16 SAVERIO LANNI, individually and doing
 17 business as CHECK EXCHANGE, and DOES 1
 18 through 10, Inclusive,

19 Defendants.

) Case No. BC338222

) NOTICE OF MOTION AND MOTION FOR
) PRELIMINARY INJUNCTION;
) MEMORANDUM OF POINTS AND
) AUTHORITIES

) DATE: September 26, 2005
) TIME: 8:30 a.m.
) DEPT.: 46

) ASSIGNED FOR ALL PURPOSES TO:
) Judge Rodney E. Nelson
) Dept:

) TRIAL DATE: None
) COMPLAINT FILED: August 12, 2005

20 TO: EACH PARTY AND THEIR ATTORNEY OF RECORD

21 PLEASE TAKE NOTICE that on September 26, 2005, at 8:30 a.m. in Department 46 of the
 22 Los Angeles Superior Court, located at 111 N. Hill Street, Los Angeles, California, or as soon
 23 thereafter as counsel may be heard, Plaintiff, the People of the State of California by and through the
 24 Acting California Corporations Commissioner ("Commissioner" or "Plaintiff") will move the court
 25 for an order preliminarily restraining and enjoining:
 26

27 Saverio Lanni, individually and doing business as Check Exchange ("Lanni") and his agents,
 28 employees, attorneys in fact and all persons acting in concert or participating with him during the

1 pendency of this action, from directly or indirectly:

2 (a) Engaging in any deferred deposit transaction business which is not exempt from the
3 licensing requirements of the California Deferred Deposit Transaction Law whether as part of the
4 scheme complained of herein or otherwise, unless and until they shall first have applied for, and
5 secured from the Commissioner, a license(s) pursuant to the California Deferred Deposit Transaction
6 Law authorizing the engagement in deferred deposit transaction business.

7 (b) Violating any order issued by the Commissioner against Lanni or any of them,
8 including, but not limited to, the June 29, 2005 Desist and Refrain Order.

9 (c) Destroying, mutilating, concealing, altering, transferring or otherwise disposing of, in
10 any manner, any books, records, documents, correspondence, brochures, manuals, or other
11 documents of any kind relating to its deferred deposit transaction business in the possession, custody
12 or control of any of Lanni or his agents, employees, attorneys in fact, and all other persons acting in
13 concert with him until further order of this Court.

14 This motion is made on the grounds that the Commissioner is entitled to the relief demanded
15 and such relief is necessary to provide the greatest protection to the public and the customers of
16 Lanni as more particularly described in the Memorandum of Points and Authorities and Declarations
17 filed herewith.

18 This motion is based upon the complaint, Memorandum of Points and Authorities, and
19 supporting declarations and exhibits, and such other oral and documentary evidence as may be
20 presented at the time of the hearing on the motion.

21 Dated: August 15, 2005

22 WAYNE STRUMPFER
23 Acting California Corporations Commissioner

24
25 By _____
26 Judy L. Hartley
27 Senior Corporations Counsel
28 Attorneys for Plaintiff

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I

**THE COMMISSIONER HAS AUTHORITY TO
BRING THIS ACTION FOR INJUNCTIVE RELIEF**

The present action seeks to protect the public by enjoining future violations of the California Deferred Deposit Transaction Law ("CDDTL"). To that end, California Financial Code section 23051 authorizes the Commissioner to bring an action for injunctive and ancillary relief whenever it appears that any person has engaged in any violation of the CDDTL (California Financial Code §§ 23000 et seq.) or any rule or order promulgated thereunder. In the event of a single violation, the Commissioner may bring an action to enjoin the act(s) or practice(s) by temporary restraining order, preliminary and/or permanent injunction. (For the court's convenience, a copy of each federal case cited herein is attached in an Appendix.)

Numerous decisions have held that where an injunction is authorized by statute to protect the public interest, usual equitable considerations such as inadequacy of legal remedy, irreparable harm, balancing of interests, etc. are irrelevant and it is not necessary to allege nor prove them, *Porter v. Fiske* (1946) 74 Cal.App.2d 332 [171 P.2d 971]. Applying "traditional equitable criteria" to determine whether to "grant or deny an injunction, authorized by statute" is an abuse of a court's discretion when a statute has been violated, *Atchison, Topeka and Santa Fe Railway Co. v. Lennen*, (10th Cir., 1981) 640 F.2d 255. See also *I.T. Corp. v. County of Imperial* (1983) 35 Cal.3d 63 [196 Cal.Rptr. 715].

Lanni has continued to engage in unlicensed, non-exempt deferred deposit transaction business in violation of both California Financial Code section 23005 and the Order. Lanni has committed numerous violations of the CDDTL. But if only one is demonstrated, this court can and should grant the requested injunctive relief.

II

**ENGAGING IN UNLICENSED, NON-EXEMPT
DEFERRED DEPOSIT TRANSACTION BUSINESS**

California Financial Code section 23005 makes it unlawful to engage in the business of deferred deposit transactions unless licensed by the Commissioner to engage in such business or

1 otherwise exempt.

2 **A. Deferred Deposit Transaction Business**

3 The term deferred deposit transaction is defined in California Financial Code section
4 23001 subdivision (a) as a written transaction whereby one person gives funds to another person
5 upon receipt of a personal check and it is agreed that the personal check shall not be deposited
6 until a later date.

7 California Financial Code section 23005 defines deferred deposit transaction business to
8 include the offer, origination, or making of a deferred deposit transaction, arranging a deferred
9 deposit transaction for a deferred deposit transaction originator, acting as an agent for a deferred
10 deposit transaction originator, and/or assisting a deferred deposit originator in the origination of a
11 deferred deposit transaction.

12 Lanni was giving funds to persons upon receipt of such persons' personal checks and
13 agreed that the personal checks would not be deposited until a later date. Seyoum Decl. ¶¶ 4-5.
14 The transactions entered into by Lanni are well within the definition of deferred deposit
15 transaction as that term is defined by California Financial Code section 23001, subdivision (a).

16 Accordingly, Lanni was engaged in the business of deferred deposit transactions.

17 **B. No License**

18 The Commissioner has never licensed or otherwise authorized Lanni either in his individual
19 or doing business as Check Exchange to engage in the business of deferred deposit transactions.
20 Thompson Decl. ¶ 9.

21 **C. The Burden Of Proving An Exemption Is On Lanni**

22 California Financial Code section 23014 provides in relevant part that "... the burden of
23 proving an exemption ... is upon the person claiming it."

24 California Financial Code section 23014 contains identical language to California
25 Corporations Code section 25163. Therefore, cases construing California Corporations Code section
26 25163 should apply equally to California Financial Code section 23014, *Los Angeles Metropolitan*
27 *Transit v. Brotherhood of P.R. Trainmen*, (1960) 54 C.2d 684, 688-689.

28

1 California Corporations Code section 25163 has been cited with approval in *People v. Park*
2 (1978) 87 Cal.App.3d 556 and upheld in *People v. Figueroa* (1986) 41 Cal.3d 714. Therefore, Lanni
3 has the burden of claiming and proving an exemption from the licensing requirements of the
4 CDDTL. Lanni is not a state or federally chartered bank, thrift, savings association, industrial loan
5 company or credit union. Lanni is also not a retail seller engaged primarily in the business of selling
6 consumer goods to retail buyers that cashes check or issues money orders for a minimum fee not
7 exceeding two dollars as a service to his customers that is incidental to his main business.
8 Thompson Decl. ¶ 10. It is the Commissioner's contention that no exemption can exist in that
9 Lanni is neither a state or federally chartered financial institution nor a retail seller charging minimal
10 fees as a convenience to his customers.

11 III

12 VIOLATION OF DESIST & REFRAIN ORDER

13 As stated previously in the Statement of Facts, on or about June 29, 2005, the Commissioner
14 issued a Desist and Refrain Order ("Order") against Lanni for engaging in unlicensed, non-exempt
15 deferred deposit transaction business. This order remains in effect. Thompson Decl. ¶ 8. Thus, any
16 further deferred deposit transaction business on the part of Lanni without a license or applicable
17 exemption would not only violate the provisions of California Financial Code section 23005, but
18 would also be in violation of the Order.

19 The evidence discussed above demonstrates that Lanni is, and was, engaging in unlicensed,
20 non-exempt deferred deposit transaction business. According to Lanni's own records, Lanni has
21 originated at least 487 deferred deposit transactions since the Order was issued. (Malekaghakhan
22 Decl. ¶¶ 4-6 and Weng Decl. ¶4. Therefore, Lanni has violated the Order on at least 487 occasions.

23 CONCLUSION

24 Lanni's illegal course of conduct demands redress. This court has the power to grant the
25 requested preliminary injunction to protect the public from any further unlicensed, non-exempt
26 deferred deposit transaction business and violations of the Commissioner's June 29, 2005 Desist and
27 Refrain Order.

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Dated: August 15, 2005
Los Angeles, California

WAYNE STRUMPFER
Acting California Corporations Commissioner

By _____
JUDY L. HARTLEY
Senior Corporations Counsel
Attorneys for Plaintiff