

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
3 ALAN S. WEINGER (CA BAR NO. 86717)
Lead Corporations Counsel
4 JOAN E. KERST (CA BAR NO. 123351)
Senior Corporations Counsel
5 Department of Corporations
6 71 Stevenson Street, Ste. 2100
7 San Francisco, California 94102
8 Telephone: (415) 972-5847
9 Facsimile: (415) 972-8550
Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

12 In the Matter of the Request for a Hearing on) OAH No. 2007080
13 Citations and Desist and Refrain Order issued by)
14 the California Corporations Commissioner,) File No.: 100-1753
)
15 Complainant,) Statement in Support of Citations and
) Desist and Refrain Order
16 v.)
17)
18 MicroLoan One, LLC)
)
19 Respondent.)
_____)

20
21 Complainant, the California Corporations Commissioner, (“Commissioner”) is informed and
22 believes, and based upon such information and belief, alleges and charges Respondent as follows:

23 **INTRODUCTION**

24 On December 31, 2004, the Commissioner of the California Department of Corporations
25 (“Department”) issued Respondent, MicroLoan One, LLC, a deferred deposit transaction originator
26 license (File No. 100-1753) pursuant to the California Deferred Deposit Transaction Law
27 (“CDDTL”). The CDDTL is found in California Financial Code sections 23000 et seq. (Future
28 section references are to the Financial Code unless indicated otherwise.)

1 The Commissioner is responsible for enforcing all provisions of the CDDTL. Pursuant to
2 section 23050 and 23058 on July 12, 2007, the Commissioner issued Citations and a Desist and
3 Refrain Order to Respondent for violations of the legal standards required of all deferred deposit
4 transaction originators. Respondent timely requested a hearing concerning the Department’s action.

5 **I**

6 **FACTS AND PROCEDUAL BACKGROUND**

7 1. Respondent MicroLoan One, LLC is a California limited liability company. The
8 owner and managing member is Jacobus Calitz (“Calitz”). Calitz filed Respondent’s CDDTL
9 application and is designated as the person in charge of Respondent’s place of business. Calitz
10 stated he is Respondent’s president/chief executive officer. Washington Kadzombe is its executive
11 vice president.

12 2. Respondent engaged in CDDTL business in Chino, California at 12468 Central Avenue
13 and 13141 Central Avenue, Suite A, after the Commissioner issued it a license pursuant to section
14 23005, subdivision (a).

15 3. Since at least January 2005 Respondent engaged in the business of deferred deposit
16 transactions by offering, originating and making deferred deposit transactions as described below.

17 4. A deferred deposit transaction is a written transaction whereby one person gives funds
18 to another person upon receipt of a personal check and it is agreed that the personal check shall
19 not be deposited until a later date. These transactions are sometimes referred to as “payday
20 advances” or “payday loans.”

21 5. Respondent filed with the Department an application (File No. 100-1753) for a license to
22 make deferred deposit transactions in May 30, 2003, which includes a Declaration, designated as
23 “Exhibit K” that Calitz signed under penalty of perjury for Respondents, which states:

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

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

1 Respondent’s Declaration to the application also states that “by signing this declaration” “the
2 applicant hereby agrees (or attests) or declares understanding of the following items listed below:”

- 3 1. That the applicant will submit to periodic examinations by the
4 Commissioner of Corporations as required by the California Deferred
5 Deposit Transaction Law.
- 6 2. That the applicant will keep and maintain all records for 2 years
7 following the last entry on a deferred deposit transaction and will
8 enable an examiner to review the record keeping and reconcile each
9 consumer deferred deposit transaction with documentation maintained
10 in the consumer’s file records.
- 11 3. That the applicant understands the examination process involving the
12 reconciliation of records will be facilitated if the applicant maintains,
13 at minimum, a ledger or listing of the following current and undated
14 information for each deferred deposit transaction (as specified in
15 Financial Code section 23035): customer’s name and address, account
16 number, check number, amount provided, fee, amount of check,
17 corresponding annual percentage rate (e.g. 14-day or 30-day) and the
18 deferred due date.
- 19 4. That the applicant will maintain a file of all advertising for a period of
20 90 days from the date of its use, which will be available to the
21 Commissioner of Corporations upon request.
- 22 5. That the applicant will file with the Commissioner of Corporations an
23 amendment to this application prior to any material change in the
24 information contained in the application for licensure, including,
25 without limitation, the plan of operation.
- 26 6. That the applicant will file with the Commissioner of Corporations
27 any report required by the Commissioner.
- 28 7. That the applicant hereby attests that the applicant (including officers,
directors and principals) has not engaged in conduct that would be
cause of denial of a license.

6. On May 9, 2003, Respondent completed another Declaration designated as “Exhibit L”
to the application, which Calitz signed under penalty of perjury stating:

1. 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).)

1 13. California Code of Regulations, title 10, section 2025, subdivision (c)(1) specifies that
2 books and records must be maintained for two (2) years, as set forth below.

3 (c)(1) Except as provided in subsection (e), records to be maintained at
4 each licensed business location for each deferred deposit transaction shall
5 include at least the following: the deferred deposit transaction agreement,
6 evidence of the check, written disclosure(s) used to provide notice in
7 compliance with subdivision (c) of Section 23035 of the Financial Code,
8 record of any and all extensions of time or payment plans for repayment
9 of an existing deferred deposit transaction, record of time periods for
10 each transaction, record of transaction fees and charges, and record of
11 transaction payments.

12 **III**
13 **DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS**

14 14. On June 12, 2007, the Commissioner’s examiner visited Respondent’s business after
15 giving the licensee advance notice of the Department’s regulatory examination.

16 15. The Commissioner’s examiner found Respondent used the business name “Micro Loan
17 Company” in its agreements and processed transactions from customers wherein the customers
18 made their checks payable to “Cash” rather than the licensee’s business name. Respondent was not
19 permitted to use any name other than the name on its CDDTL license. Consequently, Respondent’s
20 unauthorized use of other names constitute violations of section 23023.

21 16. The Commissioner’s examiner found Respondent violated section 23027, subdivision
22 (b), because its advertisements failed to disclose the Department had issued it a CDDTL license.

23 17. The Commissioner’s examiner additional found that Respondent engaged in loan
24 transactions in which the face amount of the check exceeded three hundred dollar (\$300), which
25 violates section 23035, subdivision (a).

26 18. Respondent also engaged in multiple transactions wherein the customer was permitted
27 to use the same check for subsequent transactions, which constitute violations of section 23037.

28 19. Lastly, Respondent failed to maintain evidence of customers’ checks on closed
transactions and usually destroyed the checks, which violates California Code of Regulations, title
10, section 2025.

1 20. Respondent was informed about the above-described violations at the time of the
2 Department’s regulatory examination.

3 21. On July 12, 2007, the Commissioner issued to Respondent “Citations and Desist and
4 Refrain Order” citing it for five violations of the CDDTL. The Citations are set forth below:

5 **Citation A.** Licensee failed to conduct deferred deposit transaction business under the
6 name in the license in violation of Financial Code section 23023. Licensee conducted
7 business or transactions under the name “Micro Loan Company” and “Cash.”

8 Respondent is only authorized by its license to conduct deferred deposit business under
9 the name “Micro Loan One, LLC.”

10 **Citation B.** Respondent engaged in deferred deposit transactions where the face amount of
11 customers’ checks exceeded \$300 in violation of section 23035.

12 **Citation C.** Respondent failed to maintain deferred deposit transaction records including
13 evidence of checks for closed deferred deposit transactions for a period of two years from
14 the date of the transactions as required by California Code of Regulations, title 10, section
15 2025(c)(1).

16 **Citation D.** Licensee failed to include disclosure in advertising that the licensee is
17 licensed by the Department of Corporations pursuant to the California Deferred Deposit
18 Transaction Law in violation of section 23027.

19 **Citation E.** The licensee failed to obtain a new customer’s check for a subsequent
20 deferred deposit transaction in violation of section 23037.

21 Pursuant to section 23058, Respondent was ordered to pay to the Commissioner a total
22 penalty of \$11,500. The penalty for each of citation is shown below.

23 **Citation A.** \$1,500

24 **Citation B.** \$2,500

25 **Citation C.** \$2,500

26 **Citation D.** \$2,500

27 **Citation E.** \$2,500

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IV

COMMISSISONER’S AUTHORITY TO ISSUE CITATIONS

Section 23058 gives the Commissioner’s authority to issues citations and states:

(a) 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.

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

(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.

V

COMMISSISONER’S AUTHORITY TO ISSUE A DESIST AND REFRAIN ORDER

Respondent engaged in the business of deferred deposit transactions that violated the above provisions of the CDDTL. California Financial Code section 23050 provides in pertinent part:

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.

1 Pursuant to section 23050, the Commissioner ordered Respondents to desist and refrain
2 from engaging in the business of deferred deposit transactions in the State of California in
3 violation of California Financial Code sections 23023, 23027, 23035, 23037 and California Code
4 of Regulations, title 10 section 2025. The Commissioner’s Desist and Refrain Order was
5 properly issued and necessary for the protection of consumers and consistent with the purposes,
6 policies and provisions of the CDDTL.

7 **CONCLUSION**

8 Complainant finds by reason of the foregoing that Respondent MicroLoan One, LLC
9 violated California Financial Code sections 23023, 23027, 23035, 23037 and California Code of
10 Regulations, title 10 section 2025. Therefore, the Commissioner is justified in issuing Citations to
11 Respondent pursuant to section 23058 and is also justified in issuing a Desist and Refrain Order to
12 Respondent pursuant to section 23050.

13 THEREFORE IT IS PRAYED THAT:

- 14 1. Respondent be ordered to immediately pay to the Commissioner an
15 administrative penalty in the total amount of eleven thousand five hundred
16 dollars (\$11,500) for Citations A through E described above; and,
- 17 2. The Desist and Refrain Order issued pursuant to Financial Code section
18 23050 be upheld to prohibit Respondent from violating Financial Code
19 sections 23023, 23027, 23035, 23037 and California Code of Regulations, title
20 10, section 2025.

21 Dated: August 21, 2007
22 San Francisco, California

23 Respectfully submitted,

24 PRESTON DuFAUCHARD
25 California Corporations Commissioner

26 By _____

27 Joan E. Kerst
28 Senior Corporations Counsel
Attorney for Complainant