

1
2
3 **STATE OF OREGON**
4 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**
5 **DIVISION OF FINANCE AND CORPORATE SECURITIES**

6 **BEFORE THE DIRECTOR OF THE DEPARTMENT**
7 **OF CONSUMER AND BUSINESS SERVICES**

8 In the Matter of:

PD-10-0002

9 **PAYDAY ONE OF OREGON, LLC,**
10 a Delaware limited liability company,
11 dba PayDay One,

ORDER TO CEASE AND DESIST,
ORDER ASSESSING CIVIL PENALTY,
ORDER PARTIALLY SUSPENDING
CIVIL PENALTY AND CONSENT TO
ENTRY OF ORDER

12 Respondent.

13 WHEREAS the Director of the Department of Consumer and Business Services
14 for the State of Oregon (“the Director”) has conducted an investigation of certain
15 business activities conducted by PayDay One of Oregon, LLC dba PayDay One
16 (“PayDay One” or “Respondent”) and has determined that PayDay One violated
17 provisions of the Oregon Consumer Finance Act, ORS chapter 725; and

18 WHEREAS the parties wish to resolve and settle this matter;

19 NOW THEREFORE, as evidenced by the authorized signatures subscribed on this
20 Consent Order, PayDay One hereby CONSENTS to entry of this ORDER TO CEASE
21 AND DESIST, ORDER ASSESSING CIVIL PENALTY, ORDER PARTIALLY
22 SUSPENDING CIVIL PENALTY AND CONSENT TO ENTRY OF ORDER
23 (“Consent Order”) upon the Director’s Findings of Fact and Conclusions of Law as
24 stated hereinafter.

25 **I.**

26 **FINDINGS OF FACT**

The Director FINDS that:

1. PayDay One is a Delaware limited liability company with principal offices





1 located at 4150 International Plaza, Suite 400, Fort Worth, Texas 76109. Kenneth E.
2 Rees is the president and chief operating officer of PayDay One and Jason Harvison is
3 Senior Vice-President and Secretary of PayDay One. Think Finance, Inc., a Delaware
4 corporation, is the sole member and 100 percent owner of PayDay One. On August 31,
5 2004, PayDay One registered with the Oregon Secretary of State's office as a foreign
6 company to conduct business in Oregon. The company does business in Oregon as
7 PayDay One.

8 2. From approximately January 7, 2005 to October 3, 2011, PayDay One has
9 been licensed (PI 0302-001) by the Director to engage in the business of short term
10 consumer lending. PayDay One surrendered its license to the Director by letter dated
11 October 3, 2011.

12 **2008 Exam**

13 3. On January 8 and 9, 2008, a Financial Examiner from the Oregon Division of
14 Finance and Corporate Securities ("the Division") conducted a financial examination of
15 PayDay One at the company's principal offices in Fort Worth, Texas ("the 2008
16 exam"). During the period December 27, 2006 to December 27, 2007 ("2008 exam
17 period"), PayDay One made approximately 7,103 short term consumer loans.

18 4. In reviewing loans made to borrowers for the 2008 exam period, the Financial
19 Examiner made the following findings of violation of the Oregon Consumer Finance
20 Act:

21 A. None of the loan agreements used by PayDay One for the 2008 exam period
22 specifically included language in compliance with ORS 725.360 that borrowers could
23 make loan payments in advance, in any amount, on any loan, at any time.

24 B. None of the loan agreements used by PayDay One for the 2008 exam period
25 specifically included a clear and distinct statement in the English language disclosing
26 the fact that the lender collected a loan origination fee, the amount of the fee, or the fact



1 that the fee was fully earned at the time the loan was made.

2 C. None of the loan agreements used by PayDay One for the 2008 exam period
3 included a statement that the lender would refund all unearned interest and charges if a
4 borrower paid off a short-term personal loan prior to the due date.

5 5. In conjunction with the 2008 exam, PayDay One was required to perform
6 remediation or correction of the violations cited in the examination report. This
7 included:

8 A. Revising the loan agreements to include language that notifies the borrower
9 that they may make loan payments in advance in any amount at any time;

10 B. Revising the loan agreements to include a clear and distinct statement in the
11 English language disclosing the fact that the lender is collecting a loan origination fee,
12 the amount of the fee, and the fact that the fee was fully earned at the time the loan is
13 made; and

14 C. Compiling a list of borrowers who had paid off their loans prior to the due
15 date, indicating how much each customer was paid as a rebate on unearned interest and
16 fees charged by PayDay One. PayDay One was required to provide the list to the
17 Division and to refund such amounts to any borrowers who had not previously received
18 those rebates.

19 6. On February 29, 2008, Sarah Fagin Cutrona, General Counsel for PayDay
20 One, notified the Division that PayDay One had addressed the deficiencies noted in the
21 2008 exam. Ms. Cutrona wrote that PayDay One had revised the loan agreement to
22 include the following provision:

23 "PREPAYMENT: If you pay off early, you will not have to pay a penalty, and
24 you may be entitled to a refund of part of the finance charge. Payment may be
made in advance in any amount on your loan at any time."

25 PayDay One also claimed that its failure to refund unearned interest when a loan was
26 prepaid "was related to an isolated bug in the system." PayDay One claimed it had



1 performed an internal review and identified 12 accounts where refunds were not made
2 due to the system error. PayDay One provided the Division with copies of letters and
3 refund checks mailed to those 12 customers in February 2008. PayDay One did not
4 respond to the exam finding that its loan agreement lacked a clear disclosure of the fact
5 that PayDay One was collecting an origination fee, the amount of the fee and the fact
6 that the fee is fully earned at the time the loan is made.

7 **2009 Exam**

8 7. On December 10, 2009, a Financial Examiner from the Division conducted a
9 financial examination of PayDay One at the company's principal offices in Fort Worth,
10 Texas ("the 2009 exam"). During the period November 30, 2008 to November 30, 2009
11 ("the 2009 exam period"), PayDay One made approximately 3,720 short term consumer
12 loans. The Financial Examiner reviewed customer documents to determine whether the
13 violations found during the 2008 exam were corrected or remediated.

14 8. In reviewing the loans made during the 2009 exam period, the Financial
15 Examiner made the following findings of violation of the Oregon Consumer Finance
16 Act:

17 A. None of the loan agreements used by PayDay One in the 2009 exam period
18 specifically included language notifying borrowers that they could make loan payments
19 in advance in any amount at any time. PayDay One was cited for this violation in the
20 2008 exam. Contrary to the representation made to the Division in February 2008 that
21 PayDay One had amended its loan agreement to add this language, the Financial
22 Examiner found that the language of the loan agreement was unchanged during the
23 exam period. PayDay One did not change the language in the loan agreement until
24 December 9, 2009, the day before the 2009 exam.

25 B. None of the loan agreements used by PayDay One for the 2009 exam period
26 specifically included language in the English language disclosing: 1) the fact that the



1 lender was charging and collecting a loan origination fee; 2) the amount of the fee; and
2 3) the fact that the fee was fully earned at the time the loan was made. PayDay One was
3 cited for this violation in the 2008 exam.

4 C. Because none of the loan agreements used by PayDay One in the 2009 exam
5 period specifically included a clear and distinct statement in the English language
6 disclosing the existence or collection of an origination fee, PayDay One was limited by
7 Oregon law to collecting a finance charge equal to 36 percent per annum. The Division
8 advised PayDay One to refund the origination fees using a pro-rated method. A
9 detailed list of refunds was provided to the Division on March 22, 2011. Refunds were
10 mailed to Oregon consumers on April 29, 2011.

11 9. It is the Division's normal practice to mail examination findings at the
12 conclusion of each examination. It appears that the 2009 examination findings were
13 not received by PayDay One and as of July 22, 2010, PayDay One had not responded to
14 the deficiencies noted in the 2009 examination report.

15 II.

16 CONCLUSIONS OF LAW

17 The Director CONCLUDES that:

18 10. The 3,720 short term consumer loans made by PayDay One during the 2009
19 exam period are payday loans as defined in ORS 725.600(3)

20 11. PayDay One violated ORS 725.360(3) and OAR 441-730-0240 by failing to
21 provide to 3,720 borrowers during the 2009 exam periods a written statement in their
22 loan agreements that payment in any amount may be made in advance at any time and
23 whether the loan contains a prepayment penalty, and if so, including a statement
24 complying with the notice required by ORS 82.160(1).

25 12. PayDay One violated ORS 725.622(1)(a) by making or renewing 3,720
26 payday loans where due to the loan agreements' failure to disclose the existence or



1 collection of an origination fee, the lender was charging and collecting a finance charge
2 in excess of 36 percent per annum.

3 13. PayDay One violated ORS 725.622(1)(b) by failing to deliver to 3,720
4 borrowers during the 2009 exam periods, a statement in the English language, provided
5 at the time their consumer loans were made, showing in clear and distinct terms the
6 existence or collection of a loan origination fee and to indicate whether the fee is fully
7 earned at the time the loan is made.

8 III.

9 ORDERS

10 NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING ORDERS:

11 *Cease and Desist Order*

12 14. Pursuant to the authority of ORS 725.400, the Director hereby ORDERS
13 PayDay One to CEASE AND DESIST from violating any provision of the Oregon
14 Consumer Finance Act, ORS chapter 725, OAR 441-730-0000 through 441-730-0320,
15 or any rule, order, or policy issued by the Director pursuant to ORS chapter 725.

16 15. In addition, PayDay One is to file a response to the deficiencies noted in the
17 2009 examinations. This response is being filed with the Division concurrent with this
18 Order.

19 *Order Assessing Civil Penalty*

20 16. Pursuant to the authority of ORS 725.910, the Director may assess against any
21 person who violates any provision of the Oregon Consumer Finance Act, ORS chapter
22 725, or any rule or final order of the Director under that chapter, a civil penalty in an
23 amount determined by the Director of not more than \$2,500 per violation. Pursuant to
24 this provision, the Director hereby ASSESSES Respondent PayDay One a CIVIL
25 PENALTY in the amount of \$100,000 (one hundred thousand dollars) for violations of
26 ORS 725.360(3) and OAR 441-730-0240, ORS 725.622(1)(a), ORS 725.622(1)(b) and



1 ORS 725.319.

2 *Suspension of Portion of Civil Penalty*

3 17. The Director, acknowledging that Respondent Payday One has refunded all
4 unlawfully collected fees from its Oregon clients and otherwise cooperated with the
5 investigation by the Division, hereby SUSPENDS payment of \$80,000 (eighty
6 thousand dollars) of the CIVIL PENALTY assessed herein against Respondent PayDay
7 One on condition that PayDay One complies with the terms and conditions of this
8 Consent Order, and all provisions of the Oregon Consumer Finance Act and the
9 administrative rules adopted thereunder. Should the Director find that Respondent has
10 committed a new violation in the three-year period from the date of this Consent Order,
11 the Director shall move to impose the suspended civil penalty amount. Should there be
12 no new violations during this three-year period, the suspended portion of the penalty is
13 waived.

14 18. The portion of the CIVIL PENALTY which is not suspended, in the amount of
15 \$20,000 (twenty thousand dollars), must be paid to the State of Oregon at the time this
16 document is returned to the Division for approval of the Director.

17 19. The entry of this Order in no way limits further remedies which may be
18 available to the Director under Oregon law.

19 IT IS SO ORDERED.

20 Dated this 10th day of January, 2012 at Salem,
21 Oregon.

22 PATRICK ALLEN, Acting Director
Department of Consumer and Business Services

23
24 /s/ David Tatman
25 David C. Tatman, Administrator
Division of Finance and Corporate Securities
26

1 **CONSENT TO ENTRY OF ORDER**

2 I, Kenneth E. Rees, state that I am an officer of PayDay One of Oregon, LLC
3 (“Respondent”), and I am authorized to act on its behalf; that I have read the foregoing
4 Consent Order and that I know and fully understand the contents hereof; that I and this entity
5 have been advised of the right to a hearing and of the right to be represented by counsel in this
6 matter; that Respondent voluntarily and without any force or duress, consents to the entry of
7 this Consent Order, expressly waiving any right to a hearing in this matter; that Respondent
8 neither admits nor denies the Findings of Fact and Conclusions of Law in the foregoing
9 Consent Order; that Respondent executes this Consent Order as settlement of the matters
10 referred to in the foregoing Consent Order; that Respondent understands that the Director
11 reserves the right to take further actions to enforce this Consent Order or to take appropriate
12 action upon discovery of other violations of ORS chapter 725 or rules adopted thereunder; and
13 that Respondent will fully comply with the terms and conditions stated herein.

14 Respondent further assures the Director that neither Respondent, nor its officers,
15 directors, employees or agents will effect payday, title or consumer finance loan business or
16 transactions in Oregon unless such activities are in full compliance with the Oregon law.

17 Respondent understands that this Consent Order is a public document.

18 **PAYDAY ONE OF OREGON, LLC**

19 /s/ Kenneth E. Rees
20 Kenneth E. Rees

21 Office Held: CEO

22 **ACKNOWLEDGMENT**

23 State of Texas

24 County of Tarrant

25 There appeared before me this 4th day of January, 2012, Kenneth E.
26 Rees, who was first duly sworn on oath, and stated that he was and is an officer of Respondent
PayDay One of Oregon, LLC and that he is authorized and empowered to sign this Consent to
Entry of Order on behalf of Respondent, and to bind Respondent to the terms hereof.

/s/ Tami Simpson
Signature of Notary Public

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

