

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	
Great Plains Specialty Finance, Inc.)	FINDINGS OF FACT,
d/b/a Check ‘n Go)	CONCLUSIONS OF LAW
9517 Q Street)	AND CONSENT ORDER
Omaha, Douglas County, Nebraska)	

THIS MATTER comes before the Nebraska Department of Banking and Finance (“Department”), by and through its Director, pursuant to its authority under the Delayed Deposit Services Licensing Act, Neb. Rev. Stat. §§ 45-901 to 45-930 (Reissue 2010; Cum. Supp. 2016) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2016), the Department has examined the books, accounts, and records of Great Plains Specialty Finance, Inc., d/b/a Check ‘n Go, 9517 Q Street, Omaha, Douglas County, Nebraska (“Check ‘n Go”). As a result of such examination, and being duly advised and informed in the matter, the Director and Check ‘n Go enter into the following Findings of Fact, Conclusions of Law and Consent Order (“Consent Order”).

FINDINGS OF FACT

1. Check ‘n Go holds a delayed deposit services business license under the Act. License No. 1840 was originally granted December 3, 1997, and was renewed annually on May 1st since that time until April 30, 2017, pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2016). Since May 1, 2017 to the present date, Check ‘n Go has been operating under a conditional license.

2. On April 24, 2017, the Department commenced an examination of Check 'n Go. This examination included an on-site visitation of Check 'n Go's Omaha, Douglas County, Nebraska location.

3. The April 24, 2017 Report of Examination ("Report") was forwarded to Check 'n Go on May 15, 2017. The Report noted a number of violations of the Act. Check 'n Go submitted a response received by the Department on or about June 7, 2017. Check 'n Go submitted additional information to the Department by a letter dated July 21, 2017 and a letter dated August 2, 2017 in response to requests from the Department.

4. The Department has reviewed the responses submitted by Check 'n Go and has taken them into consideration in determining the appropriate actions to be taken in this matter.

5. A previous regular examination of Check 'n Go was conducted on July 6, 2015 ("2015 Exam"), and revealed a number of violations of the Act. This exam resulted in a Consent Agreement between the Department and Check 'n Go with an effective date of November 23, 2015 ("2015 Consent Agreement"). Repeat and third successive violations of the Act will be noted below.

6. References in this Consent Order to customers of Check 'n Go will be by way of initials, in order to protect the privacy of such customers. Check 'n Go knows or should know the identity of these customers. If Check 'n Go is unable to ascertain the identity of these customers, the Department will provide a list of these customers upon receipt of a written request.

7. Check 'n Go used the word "loan" without the term being preceded by the word "payday" in three instances:

- a. On the "Your Maximum Approved Transaction Amount" Form;
- b. On the "Statement of Credit Denial" Form; and,

- c. On a "Refer-a-Friend" program document.

These are repeat violations as noted in the 2015 Exam and corresponding Consent Agreement.

8. Check 'n Go failed to conspicuously display its license at its place of business.

9. Check 'n Go failed to properly maintain customer records in thirty-one (31) total instances:

- a. Incorrect check numbers were entered into the automated system in four instances for customers CO, SE, MZ and CW;
- b. Incomplete contracts were found in two instances for customers HU and SJ;
- c. Conflicting deposit dates between the file and the collections report were found in two instances for customers AR and LR;
- d. Incorrect classifications of payment methods from customers were found in the records in five instances for customers ST, AB (2), CH and PB;
- e. Fifteen checks, for customer accounts that had been written off and transferred to Axxess Financial Collections, were found in a bankers box and had not been appropriately disposed of;
- f. Contracts were not signed by the maker in two instances for customers CC and JW; and,
- g. An incorrect amount was listed for a customer check on a deposit record, which was greater than the contract amount, in one instance for customer HJ.

These are third successive violations as noted in the 2015 Exam and corresponding Consent Agreement.

10. Check 'n Go failed to provide records to Department Examiners in forty-six (46) total instances:

- a. Copies of checks were not available in thirteen instances for customers PT, BE, MH, DS, JM, YP (2), NL (2), JY, MD (3);
- b. Transaction records were not available in sixteen instances for customers HG (3), NK, BL (11), and CG;
- c. Payment receipt records were not available in thirteen instances for customers CW, SV, RG, MD (2), YA, AA, VF, CJ, and TS (4);
- d. Bankruptcy paperwork was not in the customer file in two instances for customers HB and KB; and,
- e. Contracts were not available in two instances for customers MD and RB.

These are repeat violations as noted in the 2015 Exam and corresponding Consent Agreement.

11. Department Examiners witnessed Check 'n Go employees giving customers the option to not receive a copy of their contract, thereby failing to give customers written notice.

12. Check 'n Go held a check or checks in an aggregate face amount of more than five hundred dollars in two instances for customers MH and JH.

13. Check 'n Go held a check for more than thirty-four days in one instance for customer AZS. This is a repeat violation as noted in the 2015 Exam and corresponding Consent Agreement.

14. Check 'n Go failed to provide a Same Day Transaction Verification Form ("SDTVF") in six instances for customers AZS, SV, CC, and MD (3). These are third successive violations as noted in the 2015 Exam and corresponding Consent Agreement.

15. Check 'n Go failed to provide properly completed SDTVFs in forty-one (41) total instances:

- a. The SDTVF was not dated in twenty-seven instances for customers CW (2), MH (2), JM (3), YP, EF, GA (4), LM, AN, CO, JY, PB, CC, NK, RE, MD, NL (3), OC, and FR;
- b. The SDTVF was not signed or dated in four instances for customers CJ, AZS, EF and HG;
- c. An incorrect check number was listed on the SDTVF in two instances for customers CW and CO;
- d. Incorrect previous check information was listed on the SDTVF in one instance for customer MZ;
- e. The SDTVF had the incorrect date listed next to the maker's signature in five instances for customers HY, KS, MD, VF, and CQ; and,
- f. The SDTVF was not signed by an employee of Check 'n Go in two instances for customers JR and SE.

These are repeat violations as noted in the 2015 Exam and corresponding Consent Agreement.

16. Check 'n Go exhibited records management practices that did not support the belief that this office conducted its delayed deposit services business honestly, fairly and efficiently, as Check 'n Go's customer files were in a substantial state of disarray according to observations of Department Examiners, which compromised the security of customers' personal information.

17. The Department could conclude that the actions of Check 'n Go warrant the commencement of administrative proceedings to determine whether it should impose an

administrative fine in an amount up to five thousand dollars per violation, plus investigation costs, pursuant to Neb. Rev. Stat. § 45-925 (Reissue 2010).

18. The Department incurred a minimum of five thousand dollars (\$5,000.00) in investigation costs in this matter.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-902(2) (Reissue 2010) defines “delayed deposit services business” as any person who for a fee (a) accepts a check dated subsequent to the date it was written or (b) accepts a check dated on the date it was written and holds the check for a period of days prior to deposit or presentment pursuant to an agreement with or any representation made to the maker of the check. This definition does not include offering loans. As set forth in Department Interpretative Opinion No. 8, effective June 5, 2014, to operate in accordance with the Act, a licensee may use the phrase “payday loan” in its advertising, signage, coupons, contracts, or other customer contacts, but may not use the term “loan” by itself for any purpose.

2. The facts set forth in Finding of Fact No. 7 constitute a total of three, third successive violations of Neb. Rev. Stat. § 45-902(2) (Reissue 2010) and Interpretative Opinion No. 8.

3. Neb. Rev. Stat. § 45-910(1) (Reissue 2010) provides that a license issued pursuant to the Act shall be conspicuously posted at the licensee’s place of business.

4. The facts set forth in Finding of Fact No. 8 constitute one violation of Neb. Rev. Stat. § 45-910 (Reissue 2010).

5. Neb. Rev. Stat. § 45-915.01(1) (Reissue 2010) provides that a licensee shall keep or make available the books and records relating to transactions made under the Act as are necessary to enable the Department to determine whether the licensee is complying with the Act. The books and records shall be maintained in a manner consistent with accepted accounting practices.

6. The facts set forth in Finding of Fact No. 9 constitute thirty-one, third successive violations of Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

7. Neb. Rev. Stat. § 45-915.01(2) (Reissue 2010) provides that a licensee shall, at a minimum, include in its books and records copies of all application materials relating to makers, disclosure agreements, checks, payment receipts, and proofs of compliance required by Section 45-919.

8. The facts set forth in Finding of Fact No. 10 constitute forty-six repeat violations of Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

9. Neb. Rev. Stat. § 45-917(1)(a) (Reissue 2010) provides that every licensee shall, at the time any delayed deposit services transaction is made, give to the maker of the check, or if there are two or more makers, to one of them, a notice written in plain English disclosing the fee to be charged for the transaction.

10. The facts set forth in Finding of Fact No. 11 constitute a violation of Neb. Rev. Stat. § 45-917(1) (Reissue 2010).

11. Neb. Rev. Stat. § 45-919(1)(b) (Reissue 2010) provides that no licensee shall at any one time hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars.

12. The facts set forth in Finding of Fact No. 12 constitute two violations of Neb. Rev. Stat. § 45-919(1)(b) (Reissue 2010).

13. Neb. Rev. Stat. § 45-919(1)(c) (Reissue 2010) provides that no licensee shall hold or agree to hold a customer check or checks for more than thirty-four days.

14. The facts set forth in Finding of Fact No. 13 constitute one repeat violation of Neb. Rev. Stat. § 45-919(1)(c) (Reissue 2010).

15. Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) provides that no licensee shall enter into another delayed deposit transaction with the same maker on the same business day as the completion of a delayed deposit transaction unless prior to entering into the transaction the maker and the licensee verify on a form prescribed by the Department that completion of the prior delayed deposit transaction has occurred. The Department has prescribed the SDTVF for this purpose.

16. The facts set forth in Finding of Fact No. 14 constitute six, third successive violations of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010).

17. The facts set forth in Finding of Fact No. 15 constitute forty-one repeat violations of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) as well.

18. Neb. Rev. Stat. § 45-908 (Reissue 2010) provides that in order to issue a license to an applicant, the Director must determine that the experience, character, and general fitness of the applicant are such as to warrant the belief that the applicant will conduct the delayed deposit services business honestly, fairly, and efficiently in accordance with the Act; and Neb. Rev. Stat. § 45-915.01(1) (Reissue 2010) requires that a licensee's books and records shall be maintained in a manner consistent with accepted accounting practices.

19. The facts set forth in Finding of Fact No. 16 constitute circumstances where the Director could conclude that Check 'n Go no longer meets the requirements for licensure according to Neb. Rev. Stat. §45-908 (Reissue 2010) and constitute a violation of Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

20. Neb. Rev. Stat. § 45-925 (Reissue 2010) provides that if the Director finds, after notice and opportunity for hearing, that any person has violated the Act, the Director may order such person to pay an administrative fine of not more than five thousand dollars for each separate violation and the costs of an investigation.

21. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that Check 'n Go has violated the Act, and that an administrative fine in an amount of not more than five thousand dollars for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-925 (Reissue 2010).

22. Under the Act's statutory framework, the Director has the legal and equitable authority to fashion significant remedies.

23. It is in the best interest of Check 'n Go, and it is in the best interest of the public, for Check 'n Go and the Department to resolve the issues included herein.

STIPULATIONS

In connection with this Consent Order, Check 'n Go and the Director stipulate to the following:

1. The Department has jurisdiction as to all matters herein.
2. This Consent Order shall resolve all matters raised by the Department's April 24, 2017 examination of Check 'n Go's Omaha, Douglas County, Nebraska location. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the Department.
3. This Consent Order shall be in lieu of all other proceedings available to the Department, except as specifically referenced in this Consent Order.

Check 'n Go further represents as follows:

1. Check 'n Go is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.
2. Check 'n Go is acting free from any duress or coercion of any kind or nature.

3. This Consent Order is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for the purpose of this Consent Order and for no other purpose.

CONSENT ORDER

IT IS THEREFORE ORDERED as follows:

1. Within ten days after the effective date of this Consent Order, Check 'n Go shall pay an aggregate fine of One Thousand Five Hundred Dollars (\$1,500.00) for the three instances where Check 'n Go used the word "loan" in a customer document without the term being preceded by the word "payday" in repeat violation of Neb. Rev. Stat. § 45-902(2) (Reissue 2010) and Interpretative Opinion No. 8.

2. Within ten days after the effective date of this Consent Order, Check 'n Go shall pay a fine of Five Hundred Dollars (\$500.00) for failing to conspicuously post its license at its place of business in violation of Neb. Rev. Stat. §45-910(1) (Reissue 2010).

3. Within ten days after the effective date of this Consent Order, Check 'n Go shall pay an aggregate fine of Ten Thousand Dollars (\$10,000.00) for the thirty-one instances where Check 'n Go failed to properly maintain accurate customer records, which are third successive violations of Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

4. Within ten days after the effective date of this Consent Order, Check 'n Go shall pay an aggregate fine of Twenty Thousand Dollars (\$20,000.00) for the forty-six instances where Check 'n Go failed to provide customer records to Department Examiners in repeat violation of Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

5. Within ten days after the effective date of this Consent Order, Check 'n Go shall pay a fine of One Hundred Dollars (\$100.00) for the instances where Check 'n Go failed to provide a

notice written in plain English disclosing the fee to be charged for the transaction in violation of Neb. Rev. Stat. § 45-917(1)(a) (Reissue 2010).

6. Within ten days after the effective date of this Consent Order, Check 'n Go shall pay a fine of Two Hundred Fifty Dollars (\$250.00) for each of the two instances where Check 'n Go held a check or checks in an aggregate face amount of more than five hundred dollars in violation of Neb. Rev. Stat. § 45-919(1)(b) (Reissue 2010).

7. Within ten days after the effective date of this Consent Order, Check 'n Go shall pay a fine of Five Hundred Dollars (\$500.00) for the one instance where Check 'n Go held a customer check or checks for more than thirty-four days in repeat violation of Neb. Rev. Stat. § 45-919(1)(c) (Reissue 2010).

8. Within ten days after the effective date of this Consent Order, Check 'n Go shall pay a fine of Four Hundred Dollars (\$400.00) for each of the six instances where Check 'n Go failed to provide SDTVFs to Department Examiners, which are third successive violations of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010).

9. Within ten days after the effective date of this Consent Order, Check 'n Go shall pay a fine of One Hundred Dollars (\$100.00) for each of the forty-one instances where Check 'n Go failed to obtain correctly completed SDTVFs in repeat violation of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010).

10. Within ten days after the effective date of this Consent Order, Check 'n Go shall pay a fine of Five Thousand Dollars (\$5,000.00) for failing to maintain its customer records in a manner which warrants the belief that Check 'n Go will conduct its business honestly, fairly and efficiently, contrary to Neb. Rev. Stat. § 45-908 (Reissue 2010) and in violation of Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

11. Within ten days after the effective date of this Consent Order, Check 'n Go shall pay the Department's investigation costs in the amount of Five Thousand Dollars (\$5,000.00).

12. The total amount of the fine, Forty-Four Thousand Six Hundred Dollars (\$44,600.00), plus the total amount of investigation costs, Five Thousand Dollars (\$5,000.00), shall be payable in one check or money order in the amount of Forty-Nine Thousand Six Hundred Dollars (\$49,600.00) to the Department.

13. Within forty-five (45) days after the effective date of this Consent Order, Check 'n Go shall develop detailed, written policies and procedures, to prevent further repeat violations of the Act, which address the following:

- a. The management of payments from customers who are in bankruptcy or write-off status, in clear and concise terms, in order to prevent the wrongful retention or delay of customer payments;
- b. The management and secure storage of records that contain personal customer information (including, but not limited to, social security numbers, dates of birth, and bank account information);
- c. Actions to be taken when personal customer information (including, but not limited to, social security numbers, dates of birth, and bank account information) is lost, stolen or compromised; and,
- d. Actions to be taken when a store is temporarily closed for any period of time during its normal hours of operation, including how to notify customers and process payments during times of closure.

Check 'n Go shall submit a copy of such policies and procedures to the Department for its approval, and shall submit a copy of the "State-Specific Requirements" section in effect for

Nebraska located in Chapter 12 of Check 'n Go's policies and procedures manual. A full copy of Check 'n Go's policies and procedures must be available to the Department at any time, upon request, and shall be available on-site for examiner review.

14. Within forty-five (45) days after the effective date of this Consent Order, Check 'n Go shall provide a written detailed description of Check 'n Go's training procedures for Nebraska in-store employees who, on behalf of Check 'n Go, engage in DDS transactions with, and/or receive or process payments from, customers.

15. Within forty-five (45) days after the effective date of this Consent Order, Check 'n Go must also submit written documentation that employees referenced in paragraph fourteen of this order have been trained or re-trained in light of the terms of this Consent Order.

16. Within ten business days from the date the Department receives payment in full from Check 'n Go for the fines and costs levied by this Consent Order, the Department shall issue a non-conditional, regular delayed deposit services business license to Check 'n Go for License No. 1840.

17. In the event Check 'n Go fails to comply with any of the provisions of this Consent Order, the Department may commence such action regarding Check 'n Go as it deems necessary and appropriate in the public interest.

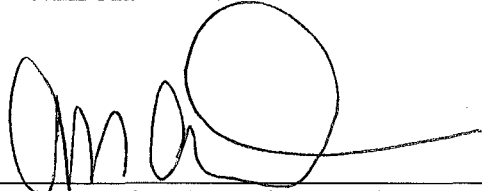
18. If, at any time, the Department determines Check 'n Go has committed any other violations of the Act, the Department may take any action available to it under the Act.

19. The Department reserves the right to examine Check 'n Go at any time before the next annual examination under Neb. Rev. Stat. §45-920 (Reissue 2010) and Neb. Rev. Stat. §45-921 (Reissue 2010).

20. The effective date of this Consent Order will be the date of the Director's signature.

DATED this 26th day of September, 2017.

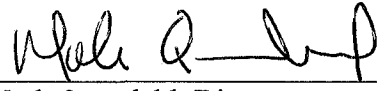
**GREAT PLAINS SPECIALTY FINANCE, INC.
D/B/A CHECK 'N GO**

By: 
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DATED this 29 day of Sept., 2017.

**STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE**

By: 
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