

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

**STATE OF CALIFORNIA**  
**BUSINESS, TRANSPORTATION AND HOUSING AGENCY**  
**DEPARTMENT OF CORPORATIONS**

ACE Cash Express, Inc.  
1231 Greenway Drive, Suite 600  
Irving, Texas 75038  
(File No: 1002988)

**DESIST AND REFRAIN ORDER AND**  
**SETTLEMENT AGREEMENT**

This Settlement Agreement and Desist and Refrain Order is entered into between the California Corporations Commissioner (“Commissioner”) and ACE Cash Express, Inc., (“ACE Cash”), and is made with respect to the following facts:

**RECITALS**

A. ACE Cash has 212 locations in the State of California licensed under the California Deferred Deposit Transaction Law (hereinafter, the “CDDTL”), Cal. Fin. Code §23000 *et seq.*, with its principal place of business located at 658 W. Holt Blvd., #C, Ontario, California 91762.

B. The Commissioner or the Department of Corporations (“Department”) is responsible for enforcing the CDDTL.

C. In July 2008, the Department conducted a regulatory examination of ACE Cash. The examination disclosed purported violations of the CDDTL, including that ACE Cash allegedly made 307 loans totaling \$88,496.73 (which includes finance charges totaling \$11,796.73) to 86 customers while those customers had at least one other loan in effect. Further, ACE Cash allegedly collected unauthorized NSF fees totaling \$855 on 57 loans for ACH transactions that were honored by the customer's banks, and collected excess amounts totaling \$32,148.61 on 1,055 loans. In addition, ACE Cash allegedly collected double the authorized amounts on 564 loans, totaling \$152,978.46, and allegedly charged unauthorized NSF fees on some of these loans, totaling \$1,391.22. ACE Cash also allegedly conducted unlicensed activity at 11252 S. Normandie Avenue, Los Angeles, CA 90044, and

1 over the Internet out of 1231 Greenway Drive, Suite 600, Irving Texas, (hereinafter collectively  
2 “Exam Findings”). ACE Cash denies and disputes the Exam Findings.

3 D. In an effort to avoid costly and protracted litigation, it is the parties’ intention to  
4 resolve the Exam Findings and related matters (File No. 1002988) without an administrative hearing  
5 or other litigation.

6 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set  
7 forth herein, it is hereby agreed, stipulated and ORDERED as follows:

8 **DESIST AND REFRAIN ORDER**

9 Pursuant to Financial Code section 23050 ACE Cash Express, Inc., is hereby ordered and  
10 agrees to Desist and Refrain from any violation of Financial Code sections 23005, 23036(e), and  
11 23036(f). The Order shall remain in full force and effect until further order of the Commissioner.

12 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set  
13 forth herein, the parties agree as follows:

14 **TERMS AND CONDITIONS**

15 1. Purpose. The purpose of this Agreement is to resolve the Desist and Refrain Order  
16 and Exam Findings expeditiously, avoid the expense of a hearing, and possible further court  
17 proceedings.

18 2. Waiver of Hearing Rights. ACE Cash Express, Inc. acknowledges its right to a  
19 hearing under the CDDTL in connection with the Desist and Refrain Order and hereby waives the  
20 right to a hearing, and to any reconsideration, appeal, or other right to review which may be afforded  
21 pursuant to the CDDTL, the California Administrative Procedure Act (“APA”), the California Code  
22 of Civil Procedure, or any other provision or law, and by waiving such rights, consents to the  
23 agreement becoming final.

24 3. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it  
25 has received or been advised to seek independent legal advice from its attorneys with respect to the  
26 advisability of executing this Settlement Agreement and Desist and Refrain Order.

27 ///

28

1           4.       No Admission of Liability. This Settlement Agreement and Desist and Refrain Order  
2 constitutes the settlement of disputed claims. ACE Cash denies that it has acted in any improper or  
3 illegal manner and denies the allegations of the Exam Findings. The parties enter into this Settlement  
4 Agreement and Desist and Refrain Order solely for the limited purpose of resolving the Exam  
5 Findings as well as any future proceeding(s) that may be initiated by, or brought before, the  
6 Commissioner related to the Department's current regulatory examination concerning the Exam  
7 Findings. The parties agree that this Settlement Agreement and Desist and Refrain Order does not  
8 and shall not constitute or be deemed to be an admission or evidence of any violation of statute,  
9 regulation or liability or wrongdoing by ACE Cash, or the proper scope of liability under any statute  
10 or law, or the truth of any allegation or finding in the Exam Findings. Nothing contained herein may  
11 be admitted in any court, administrative tribunal, or elsewhere as evidence of ACE Cash's liability  
12 for any of the allegations asserted in the Department's current regulatory examination concerning the  
13 Exam Findings.

14           5.       Payments and Forgiveness. ACE Cash has refunded to customers, \$5,783.29 out of  
15 the \$11,796.73 excess finance charges ACE Cash allegedly charged customers. Further, ACE Cash  
16 refunded to customers, \$18,322.20 out of the \$32,148.61 excessive fees allegedly charged on double  
17 loans extended to customers. In addition, ACE Cash refunded \$95,788 of the \$154,370 amount  
18 allegedly collected on double loans extended to customers and for NSF fees allegedly collected in  
19 connection with the double loans.

20           6.       Customer Refunds. ACE Cash agrees to refund \$5,783.29 for the finance charges  
21 collected on 154 loans from customers that had one or more loans outstanding at the same time. ACE  
22 Cash agrees not to collect finance charges totaling \$6,013.44 on 153 outstanding loans from  
23 customers that had one or more loans outstanding at the same time. Further, ACE Cash agrees to  
24 refund \$540 to customers that paid NSF fees on transactions that were honored by customers' banks.  
25 ACE Cash previously refunded \$315 to customers that paid NSF fees on transactions that were  
26 honored by the customers' banks. In addition, ACE Cash agrees to refund \$13,826.41 in excess  
27 amounts that were allegedly collected from customers. ACE Cash previously refunded excess  
28 amounts collected from customers totaling \$18,322.20. ACE Cash agrees to refund \$28,484.60 to

1 those customers that ACE Cash collected double the authorized loan amounts and unauthorized NSF  
2 fees. ACE Cash had previously refunded \$125,885.08 to customers that were allegedly charged  
3 double the authorized loan amounts. Of this amount, \$30,096.16 was refunded in excess of 30 days  
4 from the date of the alleged overcharge. ACE Cash hereby agrees to refund all amounts to their  
5 customers referenced in this section within 30 days of the date of this Agreement. Any amounts  
6 remaining unclaimed by customers, shall escheat to the State of California pursuant to the California  
7 Code of Civil Procedure, Title 10, Chapter 5. ACE Cash agrees that it will not collect any charged  
8 but unallocated excess bank or non-sufficient fund fees referenced in this Agreement.

9 7. Citations. ACE Cash hereby agrees to pay the amounts described below as  
10 citations for the violations alleged herein;

11 i) 300 citations at \$40 per citation for excess finance charges collected on loans that  
12 were outstanding while customers had other existing loans outstanding, totaling \$12,000.

13 ii) 950 citations at \$10 per citation for excessive amounts ACE Cash charged customers  
14 for credit card processing, totaling \$9,500.

15 iii) 60 citations at \$15 per citation for total NSF fees collected on ACH debit transactions  
16 that were honored by customers' banks, totaling \$900.

17 iv) 1000 citations at \$32 per citation, for collecting excess amounts, totaling \$32,000.

18 v) 200 citations at \$295 per citation, for charging double amounts of the loans collected  
19 and for unauthorized NSF fees, totaling \$59,000

20 vi) Citation of \$2,500 for unlicensed activity at 11252 S. Normandie Avenue, Los  
21 Angeles, CA 90044

22 vii) Citation of \$2,500 for unlicensed deferred deposit transaction activity conducted over  
23 the Internet at 1231 Greenway Drive, Suite 600, Irving TX.

24 These payments are due ten days after the execution of this Agreement by both parties.

25 8. Future Actions by the Commissioner. The Commissioner reserves the right to bring  
26 any action against ACE Cash or any of their partners, owners, employees or successors (collectively,  
27 the "ACE Cash Parties") for any and all unknown or future violations of the CDDTL. However, this  
28 Settlement Agreement and Desist and Refrain Order resolves and discharges the ACE Cash Parties of

1 any further liability, fine or discipline or other punitive conduct that could have been brought by the  
2 Commissioner arising out of or relating to the Exam Findings, the current regulatory examination and  
3 this Settlement Agreement and Desist and Refrain Order so long as ACE Cash is in compliance with  
4 section 6 of this Settlement Agreement and Desist and Refrain Order. If ACE Cash fails to make any  
5 payments to the Commissioner or offer refunds to the consumers referred to in section 6 above,  
6 failure to do so shall be a breach of this Settlement Agreement and Desist and Refrain Order and shall  
7 be cause for the Commissioner to revoke or deny, respectively any Department license or any  
8 pending applications of ACE Cash or their successors and assigns, by whatever names they might be  
9 known or take further action as appropriate.

10 9. Failure to Make Customer Refunds. ACE Cash Express, Inc. acknowledges that  
11 within 30 days of the execution date of this Agreement it will offer to make refunds to the consumers  
12 referred to in paragraph 6 above, if they have not already done so, and that failure to do so shall be a  
13 breach of this Agreement and shall be cause for the Commissioner to revoke or deny, or take further  
14 action as appropriate respectively, any Department of Corporations license or any pending  
15 application of ACE Cash or their successors and assigns, by whatever names they might be known.

16 10. Settlement Agreement Coverage. The parties hereby acknowledge and agree that this  
17 Settlement Agreement and Desist and Refrain Order is intended to constitute a full, final and  
18 complete resolution of the Exam Findings and current regulatory examination pertaining to the Exam  
19 Finding. The parties further acknowledge and agree that this Settlement Agreement and Desist and  
20 Refrain Order shall not operate to limit the Commissioner's ability to assist any other agencies with  
21 any prosecution, administrative, civil or criminal, brought by any such agency against ACE Cash  
22 based upon any of the activities alleged in this matter or otherwise. Each of the parties represents,  
23 warrants, and agrees that in executing this Settlement Agreement and Desist and Refrain Order it has  
24 relied solely on the statements set forth herein and the advice of its own counsel and has placed no  
25 reliance on any statement, representation, or promise of any other party, or any other person or entity  
26 not expressly set forth herein, or upon the failure of any party or any other person or entity to make  
27 any statement, representation or disclosure of anything whatsoever. The parties have included this  
28 clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute this

1 Settlement Agreement and Desist and Refrain Order; and (2) to preclude the introduction of parol  
2 evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement and  
3 Desist and Refrain Order.

4 11. Full Integration. This Settlement Agreement and Desist and Refrain Order is the final  
5 written expression and the complete and exclusive statement of all the agreements, conditions,  
6 promises, representations, and covenants between the parties with respect to the subject matter  
7 hereof, and supersedes all prior or contemporaneous agreements, negotiations, representations,  
8 understandings, and discussions between and among the parties, their respective representatives, and  
9 any other person or entity.

10 12. No Presumption From Drafting. In that the parties have had the opportunity to draft,  
11 review and edit the language of this Settlement Agreement and Desist and Refrain Order, no  
12 presumption for or against any party arising out of drafting all or any part of this Settlement  
13 Agreement and Desist and Refrain Order will be applied in any action relating to, connected to or  
14 involving this Settlement Agreement and Desist and Refrain Order. Accordingly, the parties waive  
15 the benefit of California Civil Code section 1654 and any successor or amended statute, providing  
16 that in cases of uncertainty, language of a contract should be interpreted most strongly against the  
17 party who caused the uncertainty to exist.

18 13. Effective Date. This Settlement Agreement and Desist and Refrain Order shall not  
19 become effective until signed and delivered by all parties.

20 14. Counterparts. This Settlement Agreement and Desist and Refrain Order may be executed  
21 in any number of counter-parts by the parties, and when each party has signed and delivered at least  
22 one such counter-part to the other party, each counter-part shall be deemed an original and taken  
23 together shall constitute one and the same Settlement Agreement and Desist and Refrain Order.

24 15. Modifications and Qualified Integration. No amendment, change or modification of this  
25 Settlement Agreement and Desist and Refrain Order shall be valid or binding to any extent unless it is  
26 in writing and signed by both of the parties.

27 16. Headings and Governing Law. The headings to the paragraphs of this Settlement  
28 Agreement and Desist and Refrain Order are inserted for convenience only and will not be deemed a

1 part hereof or affect the construction or interpretation of the provisions hereof. This Settlement  
2 Agreement and Desist and Refrain Order shall be construed and enforced in accordance with and  
3 governed by California law.

4 17. Authority For Settlement. ACE Cash covenants that it possesses all necessary capacity  
5 and authority to sign and enter into this Settlement Agreement and Desist and Refrain Order. ACE  
6 Cash warrants and represents that it is fully entitled and duly authorized to enter into and deliver this  
7 Settlement Agreement and Desist and Refrain Order. In particular, and without limiting the  
8 generality of the foregoing, ACE Cash warrants and represents that it is entitled to enter into the  
9 covenants, and undertake the obligations set forth herein.

10 18. Public Record. ACE Cash acknowledges that this Settlement Agreement and Desist and  
11 Refrain Order is a public record.

12 19. Voluntary Agreement. ACE Cash represents and acknowledges that it is executing this  
13 Settlement Agreement and Desist and Refrain Order completely voluntarily and without any duress  
14 or undue influence of any kind from any source.

15 20. Notices. Notice shall be provided to each party at the following addresses:

16 If to ACE Cash to: ACE Cash Express, Inc.  
17 Attn: General Counsel  
18 1231 Greenway Drive, Suite 600  
19 Irving, Texas 75038

20 If to the Commissioner to: Steven C. Thompson, Special Administrator  
21 Department of Corporations  
22 320 W. 4th Street, Suite 750  
23 Los Angeles, CA 90013-2344

24 ///  
25 ///  
26 ///  
27 ///  
28

1 IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on  
2 the dates set forth opposite their respective signatures.

3 **SIGNED AND AGREED TO:**

4 Dated: April 5, 2010

PRESTON DUFAUCHARD  
California Corporations Commissioner

6  
7 By: \_\_\_\_\_  
Alan S. Weinger, Deputy Commissioner

8  
9 Dated: March 26, 2010

ACE CASH EXPRESS, INC.,

11 By: \_\_\_\_\_  
Ted Eades, Senior Vice President and  
General Counsel

12  
13  
14 **IT IS SO ORDERED:**

15 Approved as to form

16  
17 Dated: March 30, 2010

18  
19 By: \_\_\_\_\_  
20 Paul Soter, Esq.  
21 Attorney for ACE Cash Express, Inc.

22 Approved as to form

23  
24 Dated: April 5, 2010

25  
26 By: \_\_\_\_\_  
27 Uche L. Enenwali  
28 Corporations Counsel  
Enforcement Division