

1 MARY ANN SMITH  
Deputy Commissioner  
2 SEAN ROONEY  
Assistant Chief Counsel  
3 UCHE L. ENENWALI (State Bar No. 235832)  
Senior Counsel  
4 Department of Business Oversight  
320 West 4<sup>th</sup> Street, Suite 750  
5 Los Angeles, California 90013-2344  
Telephone: (213) 576-7586  
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
9 OF THE STATE OF CALIFORNIA

10 In the Matter of	)	
	)	CDDTL LICENSE NO.: 100-0207
11 THE COMMISSIONER OF BUSINESS	)	
12 OVERSIGHT,	)	ACCUSATION IN SUPPORT OF NOTICE OF
	)	INTENT TO ISSUE ORDER SUSPENDING
13 Complainant,	)	CALIFORNIA DEFERRED DEPOSIT
14 v.	)	TRANSACTION LICENSE
	)	
15 ACE CASH EXPRESS, INC.	)	
	)	
16 Respondents.	)	
	)	
17	)	
18	)	

19 The Complainant, the Commissioner of The Department of Business Oversight  
20 (“Commissioner”),<sup>1</sup> is informed and believes and based upon such information and belief, alleges  
21 and charges as follows:

22 ///  
23 ///  
24 ///  
25 ///

26 \_\_\_\_\_  
27  
28 <sup>1</sup> Effective July 1, 2013 the Department of Corporations and Department of Financial Institutions combined and became the Department of Business Oversight within the Business, Consumer Services and Housing Agency pursuant to the Governor’s Reorganization Plan (G.R.P.) No. 2 of

**I**  
**Introduction**

1  
2  
3 1. ACE Cash Express, Inc. (ACE) is licensed under the California Deferred Deposit  
4 Transaction Law (CDDTL), Cal. Fin. Code §23000 *et seq.* ACE was issued a CDDTL license #100-  
5 0212 on 12/31/2004. ACE's principal place of business is located at 1231 Greenway Drive, Suite  
6 600, Irving, TX 75038. ACE currently has 207 branch office locations under its CDDTL license  
7 located in California, and other states.

8 2. The Commissioner is responsible for enforcing the CDDTL. A deferred deposit  
9 transaction is a written transaction whereby one person gives funds to another person upon receipt of  
10 a personal check and it is agreed that the personal check shall not be deposited until a later date. A  
11 deferred deposit transaction is more commonly known as a "payday loan."

12 3. On or about April 5, 2010, ACE entered into a settlement agreement and stipulation  
13 to a Desist and Refrain Order with the Commissioner ("2010 Order"). The 2010 Order directed  
14 ACE to, among other things, desist and refrain from any violation of the Financial Code provisions.  
15 The 2010 Order alleged that in July 2008, the Commissioner conducted a regulatory examination of  
16 ACE which disclosed purported violations of the CDDTL including; that ACE collected excessive  
17 amounts from customers; charged customers excessive amounts for credit card processing and  
18 finance charges; collected NSF fees on ACH debits that were honored by customers' banks; and  
19 conducted unlicensed deferred deposit transaction over the Internet and at a branch office located in  
20 Los Angeles, California. The 2010 Order issued approximately 2,512 citations against ACE and  
21 ordered it to pay \$118,400.00 in penalties for violations of the CDDTL within ten days after the  
22 execution of the 2010 Order. ACE timely paid the penalties of \$118,400.00 on or about April 15,  
23 2010.

24 4. On May 9, 2014, the Commissioner commenced a regulatory examination of the  
25 books and records of ACE at its branch office located at 658 W. Holt Boulevard, #C, Ontario,  
26 California 91762 ("2014 regulatory examination"). Two years prior, the Commissioner conducted a  
27

28 2012. (See Gov. Code, §§ 12080.2, 12080.5.) The Corporations Commissioner is now the  
Commissioner of Business Oversight.



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

**III**  
**2012 Regulatory Examination**

A. Collecting Unauthorized Repayments

8. Section 23036(f) of the Financial Code states that no amount in excess of the amounts authorized by Section 23036 of the Financial Code shall be directly or indirectly charged by a licensee pursuant to a deferred deposit transaction. The Department’s examination disclosed that ACE collected amounts in excess of the amount customers owed. On or about March 12, 2013, the Department sent a letter to ACE dated March 12, 2013 requesting among other things, that ACE refund the excess charges collected to all customers. ACE fully complied with the Commissioner’s request and provided evidence showing that it refunded customers the excess amounts charged.

B. Failure to Obtain a Customer’s Personal Check

9. Financial Code section 23001(a) defines a “Deferred deposit transaction” as a “transaction whereby a person defers depositing a customer’s personal check until a specific date, pursuant to a written agreement for a fee or other charge, as provided in Section 23035.” The Department’s examination disclosed that ACE did not obtain a “customer’s personal check” when making a deferred deposit transaction in accordance with Financial Code section 23001(a). Instead, ACE accepted checks issued by individuals designated as "Representative Payees" when creating deferred deposit transactions.

10. A Representative Payee, also referred to as a “Rep Payee” is a person appointed by the Social Security Administration (SSA) to receive and manage Social Security and/or Supplemental Security Income (SSI) benefits on behalf of another person. Under the SSA’s guidelines, a “Rep Payee” may only manage a person’s Social Security funds and has no legal authority to manage non-Social Security income. The "Rep Payee" is required to establish a bank account titled to clearly show that the funds belong to the beneficiary and must use the funds on behalf of the beneficiary only. ACE’s acceptance of checks from persons designated as “Rep Payee” does not satisfy the requirements of a deferred deposit transaction as set forth under Financial Code section 23001 (a).

///  
///

1 C. Acceptance of a Blank Check, Instrument, or Form

2 11. Financial Code section 23037 (h) prohibits a licensee from taking “any check,  
3 instrument, or form in which blanks are left to be filled in after execution....” The Department’s  
4 examination showed that ACE accepted checks, instruments, or forms in which blanks were left to  
5 be filled in after execution of the deferred deposit transaction in violation of Financial Code section  
6 23037 (h). Specifically, ACE accepted checks or written agreements that were partially completed  
7 by customers and contained blanks relating to the following: “Date,” “Payee,” “Amount,” and  
8 “Signature.”

9 D. Failure to Keep or Provide Records to the Commissioner

10 12. As part of ACE’s application to the Department for a license to make deferred deposit  
11 transactions, ACE executed a Declaration, designated as “Exhibit K,” (Declaration”) signed under  
12 penalty of perjury, which states:

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

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

19 13. By signing the Declaration, ACE further attested to understanding the following items  
20 on the application:

21 ...

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, without  
limitation, the plan of operation....

25 14. In addition to ACE’s signed Declaration, the Execution Section of the application for  
26 a deferred deposit license states:

27 In the event of the issuance of a license, applicant agrees ... that in the  
28 event of any change of its officers, directors, or any persons named in this  
application, that an amendment to the application reflecting such change

1 shall within sixty (60) days from the date of the change, be filed with the  
2 Commissioner of Corporations setting forth the change, the effective date  
3 of the change, the names of the persons involved in the change, and a  
4 statement of the qualifications of each successor person. (Financial Code  
5 Sections 23008, 23010.)

6 15. Further, Financial Code section 23024 requires that a licensee keep books and records  
7 that will enable the Commissioner to determine if the licensee is complying with the provisions of  
8 the CDDTL.

9 16. During the Department's examination, the Commissioner notified ACE that it had not  
10 filed the fingerprint images of an individual noted as the Director for Financial Services Holdings,  
11 LLC (FSH) with the Commissioner as required pursuant to Financial Code section 2006 and  
12 California Code of Regulations, Title 10, section 2020. The Commissioner is informed and believes,  
13 and thereon alleges that FSH wholly owns or controls ACE Acquisition Corp. (ACC), which  
14 allegedly, wholly owns or controls ACE.

15 17. In response to the Commissioner's request for the fingerprints of FSH's Director,  
16 ACE claimed that the subject individual was not involved with its CDDTL operations and as such,  
17 ACE did not have to provide the individual's fingerprints. The Commissioner finds that by failing to  
18 provide the fingerprints of FSH's Director and the names and titles of the controlling officers of the  
19 entities identified in ACE's Post Acquisition Structure, ACE has failed to keep records that would  
20 enable an examiner of the Commissioner to determine if the licensee is complying with the  
21 provisions of the CDDTL in violation of Financial Code section 23024. ACE's failure to provide  
22 the information requested further impedes the Commissioner's efforts to properly investigate ACE in  
23 accordance with Financial Code sections 23006 and 23008.

#### 24 **IV** 25 **2014 Regulatory Examination**

##### 26 **A. Collecting Unauthorized Repayments**

27 18. The 2014 regulatory examination disclosed that ACE continues to collect  
28 unauthorized excess repayments from customers. In at least five (5) out of 102 transactions  
reviewed, ACE was noted to have collected \$300.00 from various customers when the actual amount  
each customer owed was \$299.98, resulting in a \$0.02 overcharge. ACE discovered the overcharges

1 and refunded the overcharges in less than 30 days. Further, ACE overcharged one (1) customer by  
2 \$5.02; and two (2) customers by collecting cash payments in a branch location and later submitting  
3 ACH debits. Once the ACH debits cleared, ACE had collected amounts in excess of the amount  
4 authorized by the customer. ACE discovered the overcharges of \$78.74 and \$300.00 and refunded  
5 two (2) customers in 36 and 5 days, respectively. ACE appears to have adequate procedures in place  
6 to identify when a customer has been overcharged and has refunded customers that were  
7 overcharged in a timely manner.

8 B. Failure to Obtain a Customer's Personal Check

9 19. The 2014 regulatory examination disclosed that ACE continues to make deferred  
10 deposit transactions without first obtaining a "customer's personal check" in accordance with  
11 Financial Code section 23001(a). Instead of obtaining a "customer's personal check," ACE accepts  
12 checks issued by individuals designated as "Representative Payees" when creating deferred deposit  
13 transactions. ACE's acceptance of checks from individuals designated as "Representative Payees"  
14 does not satisfy the requirements of a deferred deposit transaction as set forth under Financial Code  
15 section 23001 (a).

16 20. The examination also showed that ACE accepts checks from customers designated  
17 only as "Beneficiary" on an individual's checking account with designated "Representative Payee"  
18 when making deferred deposit transactions in violation of Financial Code section 23035 (a). ACE's  
19 acceptance of checks from individuals designated as "Beneficiary" does not satisfy the requirements  
20 of a deferred deposit transaction as set forth under Financial Code section 23001 (a).

21 21. The examination further revealed that ACE accepts checks from individuals  
22 designated as "Legal Custodian" when making deferred deposit transactions in violation of Financial  
23 Code section 2305 (a). Once placed in the custodial account, the funds belong to the beneficiary on  
24 the account, not the customer. ACE's acceptance of checks from persons listed as "Legal  
25 Custodian" does not satisfy the requirements of a deferred deposit transaction as set forth under  
26 Financial Code section 23001(a).

27 ///

28 ///

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

C. Acceptance of a Blank Check, Instrument, or Form

22. The 2014 examination disclosed that ACE continues to accept checks, instruments, or forms in which blanks were left to be filled in after execution of the deferred deposit transaction in violation of Financial Code section 23037 (h).

D. Failure to Keep or Provide Records to the Commissioner

23. In response to the Commissioner’s request during the 2014 regulatory examination, on or about April 21, 2014, ACE sent the Commissioner a document entitled “Post Acquisition Structure,” along with the names and titles of the officers, directors, and other persons that allegedly have direct responsibility for the conduct of the CDDTL. The Post Acquisition Structure ACE provided identified the individuals and entities affiliated to ACE that appeared to have ownership interests in ACE.

24. On November 5, 2014, in connection with the 2014 examination, the Commissioner sent an electronic mail to ACE requesting the names and titles of the controlling officers of the entities identified in ACE’s Post Acquisition Structure, including, the names and titles of individuals or entities that directly or indirectly own or control 10% or more of ACE’s outstanding equity securities. To date, the Commissioner has not received the information requested.

25. The Commissioner finds that by failing to provide the names and titles of the controlling officers of the entities identified in ACE’s Post Acquisition Structure, ACE has failed to keep records that would enable an examiner of the Commissioner to determine if the licensee is complying with the provisions of the CDDTL in violation of Financial Code section 23024. ACE’s failure to provide the information requested further impedes the Commissioner’s efforts to properly investigate ACE in accordance with Financial Code sections 23006 and 23008

By reason of the foregoing, ACE has violated Financial Code sections 23035 (a); 23036 (f); 23037 (h); 23024; and the 2010 Order.

///  
///  
///  
///



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

V

**AUTHORITY TO ISSUE ORDER SUSPENDING CDDTL LICENSE**

**Applicable Law**

23. Financial Code section 23052(a) – (c) provide in pertinent part:

The commissioner may suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

- (a) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.
- (b) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.
- (c) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

24. ACE has engaged in the business of deferred deposit transactions in violation of the CDDTL by making deferred deposit transactions without first obtaining a “customer’s personal check” in violation of Financial Code section 23035 (a); collecting unauthorized excess payments from customers in violation of Financial Code section 23036 (f); taking a check, instrument, or form in which blanks are left to be filled in after execution in violation Financial Code section 23037 (h); and failing to keep required documents and records that would enable the Commissioner to exercise the authority to investigate ACE in accordance with Financial Code sections 23008, and 23010 in violation of Financial Code section 23024.

25. Further, ACE engaged in the business of deferred deposit transactions in violation of the 2010 Order by collecting excessive amounts from customers in violation of Financial Code section 23036 (f) and conducting business in violation of additional provisions of the Financial Code including, Financial Code sections 23025(a), 23037(h), and 23024 referenced herein.

///

///

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

**VI  
Conclusion**

The Commissioner finds that, by reason of the foregoing, pursuant to Financial Code section 23052, grounds exist to revoke the California Deferred Deposit Transaction License of ACE Cash Express, Inc. for violations of Financial Code sections 23035 (a); 23036 (f); 23037 (h); 23024, and the 2010 Order.

WHEREFORE, IT IS PRAYED that pursuant to Financial Code section 23052, the California Deferred Deposit Transaction License of ACE Cash Express, Inc. be suspended for a period of up to 12 months.

Dated: March 24, 2015  
Los Angeles, California

JAN LYNN OWEN  
Commissioner of Business Oversight

By: \_\_\_\_\_  
Uche L. Enenwali  
Senior Counsel  
Enforcement Division