

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into as of March 11, 2008, by and between the Complainant, the California Corporations Commissioner ("Commissioner"), and Respondents, Martin B. Hoyt doing business as A-1 Check Cashing of Corning (File # 100-2589) Martin B. Hoyt doing business as A-1 Check Cashing of Orland (File # 100-1513) Martin B. Hoyt doing business as A-1 Check Cashing of Chico (File # 100-2018) Martin B. Hoyt doing business as Easy Cash Advance and Check Cashing (File # 100-2588) (hereinafter collectively "the Parties").

### **RECITALS**

This Agreement is made with reference to the following facts:

A. Martin B. Hoyt operates a sole proprietorship and has four principal places of business that include the following: A-1 Check Cashing of Corning is located at 1920 Solano Street, Suite C, Corning, CA 96021; A-1 Check Cashing of Orland is located at 801 Fourth Street, Suite B, Orland, CA 95963; A-1 Check Cashing of Chico is located at 493 East Avenue, Suite 3, Chico, CA 95928; and, Easy Cash Advance and Check Cashing is located at 649 Pearson Road, Paradise, CA 92969.

B. Martin B. Hoyt is now the only owner of Respondents and is authorized to enter into this Agreement on behalf of Respondents.

C. Respondents hold four licenses (File numbers 100-2589, 100-1513, 100-2018 and 100-2588) from the Commissioner under the California Deferred Deposit Transaction Law ("CDDTL") pursuant to California Financial Code sections 23005, 23008 and 23009.

D. On October 30, 2007, the Commissioner issued to Respondents a Desist and Refrain Order, Citations and Order To Void Deferred Deposit Transactions to Respondents for violations of California Financial Code 23000 et seq., served to Respondents on November 2, 2007. On March 4, 2008, the Commissioner prepared and served a Statement in Support of Desist and Refrain Order, Citations and Order To Void Deferred Deposit Transactions to Respondents. The foregoing documents will hereinafter be referred to as "Administrative Actions"). Copies of the Administrative Actions are attached and incorporated herein as Exhibit 1.

E. It is the intention of the parties to resolve this matter without the necessity of an administrative hearing or other litigation.

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

## TERMS AND CONDITIONS

1. Purpose. The purpose of this Agreement is to resolve the Administrative Actions expeditiously, avoid the expense of a hearing, and possible further court proceedings.
2. Waiver of Hearing Rights. Respondents acknowledge their right to a hearing under the CDDTL in connection with the Administrative Actions and hereby waive that right to a hearing, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CDDTL, the California Administrative Procedure Act ("APA"), the California Code of Civil Procedure, or any other provision of law, and by waiving such rights, consent to the agreement becoming final.
3. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it has received or been advised to seek independent legal advice from its attorneys with respect to the advisability of executing this Agreement. Respondents acknowledge that they consulted with attorney Frederick M. Ray, prior to entering into this Agreement.
4. Admissions. Respondents admit the FACTS stated below Roman numeral I. in the Statement in Support of Desist and Refrain Order, Citations and Order To Void Deferred Deposit Transactions to Respondents (Administrative Actions) solely for the limited purposes of this Agreement and any future proceeding(s) that may be initiated by or brought before the Commissioner or other agencies against Respondents.
5. Revocation. Respondents hereby voluntarily agree and consent to the issuance by the Commissioner of an Order Revoking Respondents' CDDTL (file number 100-1513) pursuant to Financial Code section 23052 ("Revocation"). The revocation precludes Respondents from engaging in any CDDTL activities including any with existing clients after revocation. This revocation does not preclude Respondents from engaging in pure collection activities that permit: (1) receipt of cash from customers for existing transactions entered into before March 29, 2008, (2) forwarding any checks received from Respondents' clients to Respondents' bank for deposit relating to transactions entered into before March 29, 2008, (3) responding to regulatory inquiries from the Department of Corporations or other agencies, (4) making refunds described in paragraph 6, below and (5) otherwise responding to customer inquiries concerning existing transactions. A copy of the Revocation is attached as Exhibit 2 and incorporated herein by reference.
6. Voiding of Transactions. Respondents hereby agree to void the transactions described in the Administrative Actions and to immediately refund all amounts to Respondents' clients that they paid to the Shasta County Office of the District Attorney ("DA"). Respondents agree to refund \$1,795 plus an additional \$88 paid by each client who participated in the DA's Bad Check Program and made payments to the DA's Office. Any amounts remaining unclaimed by clients on July 30, 2008, shall escheat to the State of California.
7. Citations. Respondents hereby agree to pay to the Commissioner seventy thousand Dollars (\$70,000) for the Citations ("Citation Payments"). The first citation payment in the amount of twenty-five thousand dollars (\$25,000) is due on or before April 1, 2008. The

second and final citation payment in the amount of forty-five thousand dollars (\$45,000) is due by July 1, 2008. If payment is not received by July 1, 2008, then the total amount (\$117,000) of Citations ordered in Exhibit 1 are immediately due and payable to the Department. Respondents' Citation Payments shall be payable to the California Department of Corporations and delivered to the Department of Corporations' San Francisco Office to the attention of the Complainant's Enforcement counsel, Joan Kerst, who will provide a document to Respondents that acknowledges the Department's receipt of the Payments.

8. Future Actions by the Commissioner. The Commissioner reserves the right to bring any future actions against Respondents or any of their partners, owners, employees or successors of Respondents for any and all unknown or future violations of the CDDTL. This Agreement shall not serve to exculpate Respondents or any of the partners, owners, employees or successors of Respondents from liability for any and all unknown or future violations of the CDDTL. If it is found, after the execution of this Agreement that Respondents have at any time violated any of the statutes and/or rules set forth in the CDDTL or Agreement, the Commissioner reserves the right to take further action against Respondents, including but not limited to, imposing penalties and requesting restitution of all CDDTL transactions originated in breach of this Agreement. Respondents acknowledge and agree that the Revocation provided for above in paragraph 5 shall not be the exclusive remedy available to the Commissioner in pursuing future violations but may be sought and employed in addition to any other remedy available pursuant to the CDDTL.

9. Failure to Make Consumer Refunds. Respondents acknowledge that during the month of April 2008 they will offer to make refunds to the consumers referred to in paragraph six (6) above, and that failure to do so shall be a breach of this Agreement and shall be cause for the Commissioner to revoke or deny, respectively, any Department of Corporations license or any pending application of Respondents and any company owned or controlled by Marin B. Hoyt, his successors and assigns, by whatever names they might be known. Respondents waive any notice and hearing rights to contest such revocations or denials, which may be afforded under the Financial Code, the APA, the Code of Civil Procedure, or any other legal provisions.

10. Settlement Agreement Coverage. The parties hereby acknowledge and agree that this Agreement is intended to constitute a full, final and complete resolution of this Administrative Actions. The parties further acknowledge and agree that nothing contained in this Agreement shall operate to limit the Commissioner's ability to assist any other agencies with any prosecution, administrative, civil or criminal, brought by any such agency against Respondents based upon any of the activities alleged in this matter or otherwise. This Agreement shall not become effective until signed by Respondents and delivered by all parties. Each of the parties represents, warrants, and agrees that in executing this Agreement it has relied solely on the statements set forth herein and the advice of its own counsel and has placed no reliance on any statement, representation, or promise of any other party, or any other person or entity not expressly set forth herein, or upon the failure of any party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to

execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

11. Full Integration. This Agreement, including the attached Administrative Actions is the final written expression and the complete and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the parties with respect to the subject matter hereof, and supercedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between and among the parties, their respective representatives, and any other person or entity.

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

13. Effective Date. This Agreement shall not become effective until signed by Respondents and delivered by all parties. The Commissioner shall file this Agreement with the Office of Administrative Hearings after execution by the parties.

14. Counterparts. This Agreement may be executed in any number of counter-parts by the Parties and when each Party has signed and delivered at least one such counterpart to the other Party, each counterpart shall be deemed an original and taken together shall constitute one and the same Agreement.

15. Modifications and Qualified Integration. No amendment, change or modification of this Agreement shall be valid or binding to any extent unless it is in writing and signed by all of the parties affected by it.

16. Headings and Governing Law. The headings to the paragraphs of this Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof. This Agreement shall be construed and enforced in accordance with and governed by California law.

17. Authority For Settlement. Each Respondents covenant that they possess all necessary capacity and authority to sign and enter into this Agreement. Each Party warrants and represents that such Party is fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and without limiting the generality of the foregoing, each Party warrants and represents that it is fully entitled to enter into the covenants, and undertake the obligations set forth herein.

18. Public Record. Respondents acknowledge that this Agreement is a public record.

19. Voluntary Agreement. The Parties each represent and acknowledge that he, she or it is executing this Agreement completely voluntarily and without any duress or undue influence of any kind from any source.

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

If to Respondents to: Frederick M. Ray, A Professional Corporation  
770 The City Drive, Suite 8100, Orange, California 92868

If to the Commissioner to: Steven C. Thompson, Special Administrator  
Financial Services Div. Department of Corporations  
320 W. 4<sup>th</sup> Street, Suite 750, Los Angeles, CA 90013-2344

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

Dated: 3-28-08

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
ALAN S. WEINGER  
Lead Corporations Counsel  
Enforcement Division

Dated: 3-28-08

By \_\_\_\_\_  
MARTIN B. HOYT  
an individual

MARTIN B. HOYT DBA A-1 CHECK CASHING OF CORNING

Dated: 3-28-08

By \_\_\_\_\_  
MARTIN B. HOYT  
Proprietor

MARTIN B. HOYT DBA A-1 CHECK CASHING OF ORLAND

Dated: 3-28-08

By \_\_\_\_\_  
MARTIN B. HOYT  
Proprietor

MARTIN B. HOYT DBA A-1 CHECK CASHING OF CHICO

Dated: 3-28-08

By MARTIN B. HOYT  
Proprietor

MARTIN B. HOYT DBA EASY CASH ADVANCE AND CHECK CASHING

Dated: 3-28-08

By MARTIN B. HOYT  
Proprietor

Dated: 3/28/08

Approved as to form by Respondents' counsel

By FREDERICK M. RAY, ESQ.  
A Professional Corporation

## EXHIBIT 1

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

TO: Martin B. Hoyt dba A-1 Check Cashing of Corning (File # 100-2589)  
1920 Solano Street, Suite C  
Corning, CA 96021

Martin B. Hoyt dba A-1 Check Cashing of Orland (File # 100-1513)  
801 Fourth Street, Suite B  
Orland, CA 95963

Martin B. Hoyt dba A-1 Check Cashing of Chico (File # 100-2018)  
493 East Avenue, Suite 3  
Chico, CA 95928

Martin B. Hoyt dba Easy Cash Advance and Check Cashing (File # 100-2588)  
649 Pearson Road  
Paradise, CA 92969

**DESIST AND REFRAIN ORDER**

(For violations of California Financial Code section 23037)

**CITATIONS**

(California Financial Code section 23058)

**ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS**

(California Financial Code section 23060)

The California Corporations Commissioner ("Commissioner") finds that:

1. The California Department of Corporations ("Department") is responsible for enforcing provisions of the California Deferred Deposit Transaction Law ("CDDTL") found in California Financial Code section 23000 et seq. The Commissioner is authorized to pursue administrative actions and remedies against licensees who engage in violations of the CDDTL.

2. In 2004 and 2005 the Commissioner issued a CDDTL license to each of the following:  
Martin B. Hoyt dba A-1 Check Cashing of Corning (Department File # 100-2589);  
Martin B. Hoyt dba A-1 Check Cashing of Orland (Department File # 100-1513);  
Martin B. Hoyt dba A-1 Check Cashing of Chico (Department File # 100-2018); and,  
Martin B. Hoyt dba Easy Cash Advance and Check Cashing (Department File # 100-2588).

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Desist And Refrain Order and Order Voiding Deferred Deposit Transactions



1           3. Martin B. Hoyt, an individual and owner of the above-described businesses, during all  
2 relevant times, operated his businesses under their respective business names. There is such a  
3 unity of interest, ownership, dominion and control of the foregoing businesses by Martin B. Hoyt  
4 that any separation between them should be disregarded and hereinafter all the foregoing are  
5 referred to as the "Licensees."

6           4. Since January 1, 2005, the Department's Licensees engaged in the business of deferred  
7 deposit transactions by offering, originating and making deferred deposit transactions.

8           5. A deferred deposit transaction is a written transaction whereby one person gives funds  
9 to another person upon receipt of a personal check along with an agreement that the personal  
10 check shall not be deposited until a later date. These transactions are also referred to as "payday  
11 advances" or "payday loans."

12           6. The Licensees had knowledge of the CDDTL and had sworn declarations in which they  
13 represented that they would comply with all provisions of the CDDTL and other laws.

14           7. After giving advance written and oral notice of the Department's scheduled examination,  
15 the Department's examiner visited the Licensees' business locations. Notwithstanding their sworn  
16 declarations to comply with the CDDTL, the Licensees willfully and knowingly engaged in CDDTL  
17 violations as the Department's examiner discovered during the regulatory examination.

18           8. Licensees are required to comply with all CDDTL requirements and are prohibited  
19 from directly or indirectly subjecting or threatening to subject any customers to a criminal penalty  
20 for failure to comply with the terms of the agreement for the deferred deposit transaction.

21           9. Section 23035, subdivisions (b), (c), (d) and (e) mandate the specific content of notices,  
22 disclosures and written agreements for deferred deposit transactions and, in relevant part states:

23           (b) A customer who enters into a deferred deposit transaction and offers a  
24 personal check to a licensee pursuant to an agreement shall not be subject to any  
25 criminal penalty for the failure to comply with the terms of that agreement.

26           (c) Before entering into a deferred deposit transaction, licensees shall distribute to  
27 customers a notice that shall include, but not be limited to, the following: . . .

28                   (3) That the customer cannot be prosecuted in a criminal  
action in conjunction with a deferred deposit transaction for  
a returned check or be threatened with prosecution.

(6) That the check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provisions of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear.

(d) The following notices shall be clearly and conspicuously posted in the unobstructed view of the public by all licensees in each location of a business providing deferred deposit transactions in letters not less than one-half inch in height: . . .

(1) The licensee cannot use the criminal process against a consumer to collect any deferred deposit transaction. . . .

(e) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following: . . .

(8) Disclosure of any returned check charges.

(9) That the customer cannot be prosecuted or threatened with prosecution to collect. . . .

10. Subdivisions (a), (e) and (f) of section 23036, limit the type and amount of fees and charges that customers can be required to pay. These subdivisions, in relevant part, state:

(a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check. . . .

(e) A fee not to exceed fifteen dollars (\$15) may be charged for the return of a dishonored check by a depository institution in a deferred deposit transaction. A single fee charged pursuant to this subdivision is the exclusive charge for a dishonored check. No fee may be added for late payment.

(f) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a licensee pursuant to a deferred deposit transaction.

11. Financial Code section 23037 limits a licensee's transactions and activities stating:

In no case shall a licensee do any of the following: . . .

(f) engage in any unfair, unlawful, or deceptive conduct, or make any statement that is likely to mislead in connection with the business of deferred deposit transactions.

1           12. When questioned by the Department's examiner about the customers' checks that  
2 were returned unpaid to the licensees due to non-sufficient funds ("NSF"), the Licensees stated  
3 that they filed reports or complaints about their customers' NSF checks with the District Attorney  
4 ("DA") in various counties in accordance with the DA's bad check or restitution programs. The  
5 Licensees identified themselves as the "victim" in bad check reports filed with the DA's Offices  
6 certifying that the "report is true, accurate and complete." The report specifically asks for  
7 information about each NSF check and if there was "AGREEMENT TO HOLD?" In almost all  
8 cases, the Licensees falsely answered "NO."

9           13. As a direct result of the Licensees' false bad check reports filed with DA's offices  
10 the Licensee' customers received from the DA's Offices letters threatening customers with criminal  
11 prosecution if they failed to make restitution in accordance with the DA's bad check program.

12           14. A customer whose NSF check is processed in accordance with the DA's bad check  
13 program may also be assessed an additional fee for administrative costs and diversion programs.

14           15. During the Department's examination in June 2007, the Department's examiner  
15 requested that Licensee provide books and records that documented details about consumers' NSF  
16 checks and amount recovered from the DA's offices. In response, the Licensees provided  
17 information that revealed they had sent at least forty-seven (47) checks to DA Offices in 2005.

18           16. Although the Licensees posted the required notice pursuant to Financial Code section  
19 23035, subdivision (d) they were not operating in accordance with their unqualified representations  
20 to the public rendering the required notice with consumers deceptive and misleading, in violation of  
21 Financial Code section 23037, subdivision (f)

22           17. Additionally, although the Licensees distributed the required notice to consumers, the  
23 Licensee' actions contradicted their disclosures in their notices given to consumers, which renders  
24 their notices and disclosures deceptive and misleading in violation of Financial Code section 23037,  
25 subdivision (f).

26           18. Similarly, although the Licensees' written agreements contained all the necessary  
27 disclosures required by Financial Code section 23035, subdivision (e), the Licensees did not  
28 operate in accordance with their written agreements rendering the agreements with consumers

1 deceptive and misleading, in violation of Financial Code section 23037, subdivision (f).

## 2 **DESIST AND REFRAIN ORDER**

3 By reason of the foregoing, the Licensees have engaged in the deceptive and misleading  
4 deferred deposit transactions in violation of the California Financial Code section 23037.

5 California Financial Code section 23050 provides in pertinent part:

6 Whenever, in the opinion of the commissioner, any person is engaged in the  
7 business of deferred deposit transactions, as defined in this division, without  
8 a license from the commissioner, or any licensee is violating any provision of  
9 this division, the commissioner may order that person or licensee to desist  
10 and to refrain from engaging in the business or further violating this division.  
If, within 30 days, after the order is served, a written request for a hearing is  
filed and no hearing is held within 30 days thereafter, the order is rescinded.

11 Pursuant to Financial Code section 23050, the Licensees are hereby ordered to desist and  
12 refrain from violating Financial Code section 23037. This Order is necessary for the protection  
13 of consumers and consistent with the purposes, policies and provisions of the CDDTL. This  
14 Order shall remain in full force and effect until further order of the Commissioner.

## 15 **CITATIONS**

16 For at least 47 of the Licensees' violations discovered during the Department's CDDTL  
17 examination, the Commissioner is issuing Citations 1 through 47, inclusive. The Citations are  
18 being issued for deceptive and misleading transactions with the 47 consumers that the Licensees  
19 identified to the Department.

20 Financial Code section 23058 gives the Commissioner's authority to issue citations for  
21 CDDTL violations stating:

22 (a) If, upon inspection, examination or investigation, based upon a  
23 complaint or otherwise, the department has cause to believe that a  
24 person is engaged in the business of deferred deposit transactions  
25 without a license, or a licensee or person is violating any provision of  
26 this division or any rule or order thereunder, the department may issue a  
27 citation to that person in writing, describing with particularity the basis  
28 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.

Pursuant to Financial Code section 23058, the Licensees are hereby ordered to pay to the Commissioner within 30 days from the date, as shown below, for these Citations, an administrative penalty of two thousand five hundred dollars (\$2,500) for each of the 47 citations for the total amount of one hundred seventeen thousand five hundred dollars (\$117,500).

#### **ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS**

The Licensees willfully violated Financial Code section 23037 of the CDDTL by entering into deceptive and misleading deferred deposit transactions with at least (47) consumers. The amount of the deceptive and misleading transactions total at least \$11,714. Therefore, the Commissioner also seeks to void the Licensee's transactions with 47 consumers and order the return of the respective consumers' funds in an amount that aggregates at least \$11,714.

California Financial Code section 23060 states:

- (a) If any amount other than, or in excess of, the charges or fees permitted by this division is willfully charged, contracted for, or received, a deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive the principal amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

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1 (b) If any provision of this division is willfully violated in the making  
2 or collection of a deferred deposit transaction, the deferred deposit  
3 transaction contract shall be void, and no person shall have any right to  
4 collect or receive any amount provided in the deferred deposit  
5 transaction, any charges, or fees in connection with the transaction.

6 Pursuant to Financial Code section 23060 the Licensees' above described deferred  
7 deposit transactions for 47 consumers totaling at least \$11,714 are declared void.

8 Pursuant to Financial Code section 23060 the Licensees have no right to collect or receive  
9 any amount provided in the deferred deposit transaction, any charges, or fees in connection with 47  
10 deferred deposit transactions totaling at least \$11,714 and are hereby ordered to forfeit and return  
11 all charges, fees and other amounts received on the 47 deferred deposit transactions within 30 days  
12 from the date of this Order, as shown below.

13 Dated: October 30, 2007  
14 Los Angeles, California

15 PRESTON DuFAUCHARD  
16 California Corporations Commissioner

17 By \_\_\_\_\_  
18 ALAN S. WEINGER  
19 Lead Corporations Counsel  
20 Enforcement Division  
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25  
26  
27  
28

PRESTON DuFAUCHARD  
California Corporations Commissioner  
WAYNE STRUMPFER  
Deputy Commissioner  
ALAN S. WEINGER (CA BAR NO. 86717)  
Lead Corporations Counsel  
JOAN E. KERST (CA BAR NO. 1233051)  
Senior Corporations Counsel  
Department of Corporations  
71 Stevenson Street, Ste. 2100  
San Francisco, California 94102  
Telephone: (415) 972-8547  
Facsimile: (415) 972-8550  
Attorneys for Complainant

BEFORE THE DEPARTMENT OF CORPORATIONS  
OF THE STATE OF CALIFORNIA

California Corporations Commissioner	)	OAH Case No. 2007120051
	)	
Complainant,	)	STATEMENT IN SUPPORT OF DESIST AND
	)	REFRAIN ORDER, CITATIONS AND
vs.	)	ORDER TO VOID DEFERRED DEPOSIT
	)	TRANSACTIONS
Martin Hoyt dba A-1 Check Cashing et al.	)	
	)	
	)	
Respondents.	)	
	)	

Complainant, the California Corporations Commissioner, ("Commissioner") of the Department of Corporations ("Department") is informed and believes, and based upon such information and belief, alleges and charges Respondents as follows:

INTRODUCTION

Respondents include Martin B. Hoyt dba A-1 Check Cashing of Corning (File # 100-2589) Martin B. Hoyt dba A-1 Check Cashing of Orland (File # 100-1513) Martin B. Hoyt dba A-1 Check Cashing of Chico (File # 100-2018) Martin B. Hoyt dba Easy Cash Advance and Check Cashing (File # 100-2588)

ACCUSATION TO SUSPEND LICENSE AND STATEMENT IN SUPPORT OF DESIST AND REFRAIN ORDER, CITATIONS AND ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS



1 The Department is responsible for enforcing the California Deferred Deposit Transaction  
2 Law ("CDDTL") set forth in California Financial Code section 23000 et seq.<sup>1</sup> Respondents violated  
3 significant provisions of the CDDTL rules and regulations thereunder. To protect the public  
4 pursuant to section 23050 the Commissioner issued a Desist and Refrain Order (D& R) and seeks  
5 affirmation of his D&R Order. Pursuant to section 23058 the Commissioner issued 47 citations in  
6 the amount of \$2,500 per citation for the violations discovered during a 2007 CDDTL examination  
7 that involve deceptive and misleading deferred deposit transactions with consumers and he seeks  
8 affirmation of his 47 citations. Lastly, the Commissioner seeks an order voiding the 47 transactions  
9 made by Respondents pursuant to section 23060 and order of restitution to Respondents' clients.

10 I

11 FACTS

12 1. The Department is responsible for enforcing provisions of the CDDTL and authorized  
13 to pursue a variety of administrative actions and remedies against licensees who violate it.

14 2. Respondents are all owned, controlled and managed by Martin Hoyt ("Hoyt") who during  
15 all relevant times operated his business under various fictitious business names in California. Such a  
16 unity of interest, ownership, dominion and control of Respondents and Hoyt exists that any entity or  
17 proprietorship formed should be disregarded and considered Hoyt's alter egos. All the foregoing  
18 will be referred to as "Respondents," except where a specific name is relevant. Respondents do  
19 business and derive income from their check cashing business and have a high net worth.

20 3. Since at least January 1, 2005, Respondents have engaged in the business of deferred  
21 deposit transactions by offering, originating and making deferred deposit transactions.

22 4. A deferred deposit transaction is a written transaction whereby one person gives funds  
23 to another person in exchange for a personal check and an agreement that the personal check  
24 shall not be deposited until a later date. These transactions (commonly referred to as "payday  
25 advances," "cash advances", "payday loans" and "micro loans") generate significant interest  
26 revenue for Respondents who charge an annual percentage rate ("APR") of 215% to 460 %.

27  
28 <sup>1</sup> All future references to sections are to the California Financial Code unless indicated otherwise.



1           5. The maximum legal amount of funds that individuals seeking such payday loans may  
2 obtain in a deferred deposit transaction is usually \$255 for which they are usually charged \$45 for a  
3 two week loan. In many cases the individuals seeking such micro loans for which they are paying  
4 over 400% interest are desperate, have limited income are disabled, senior citizens or individuals  
5 who have fallen on difficult times financially.

6           6. Respondents filed with the Department an application for a license to make deferred  
7 deposit transactions that included a Declaration, designated as "Exhibit K" to the application. On  
8 behalf of the applicants Hoyt stated under penalty of perjury:

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

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

16           Respondents' execution page to their application Hoyt signed states that "by signing this  
17 declaration" "the applicant hereby agrees (or attests) or declares understanding of the following:"

- 18                   1. That the applicant will submit to periodic examinations by the  
19 Commissioner of Corporations as required by the California Deferred  
20 Deposit Transaction Law.
- 21                   2. That the applicant will keep and maintain all records for 2 years  
22 following the last entry on a deferred deposit transaction and will  
23 enable an examiner to review the record keeping and reconcile each  
24 consumer deferred deposit transaction with documentation maintained  
25 in the consumer's file records.
- 26                   3. That the applicant understands the examination process involving the  
27 reconciliation of records will be facilitated if the applicant maintains,  
28 at minimum, a ledger or listing of the following current and undated  
information for each deferred deposit transaction (as specified in  
Financial Code section 23035): customer's name and address, account  
number, check number, amount provided, fee, amount of check,  
corresponding annual percentage rate (e.g. 14-day or 30-day) and the  
deferred due date.
4. That the applicant will maintain a file of all advertising for a period of  
90 days from the date of its use, which will be available to the  
Commissioner of Corporations upon request.

- 1 5. That the applicant will file with the Commissioner of Corporations an  
2 amendment to this application prior to any material change in the  
3 information contained in the application for licensure, including,  
4 without limitation, the plan of operation.
- 5 6. That the applicant will file with the Commissioner of Corporations  
6 any report required by the Commissioner.
- 7 7. That the applicant hereby attests that the applicant (including officers,  
8 directors and principals) has not engaged in conduct that would be  
9 cause of denial of a license.

10 Respondents completed an additional Declaration designated as "Exhibit L" to their CDDTL  
11 application, which Hoyt signed under penalty of perjury stating:

12 **The applicant will comply with all federal and state laws and**  
13 **regulations (including Division 10, commencing with Section**  
14 **23000, of the Financial Code), if it offers, arranges, acts as an**  
15 **agent for, or assists a deferred deposit originator in the making of**  
16 **a deferred deposit transaction (Financial Code Section 23037(i).)**  
17 **(Emphasis added.)**

18 7. On December 31, 2004, a letter accompanied the Commissioner's issuance of a CDDTL  
19 license to Respondents, which informed Respondents of the following facts:

20 [T]here are certain obligations and responsibilities that a licensee must  
21 comply with. The following information about a licensee's obligations  
22 and responsibilities regarding certain requirements of the California  
23 Deferred Deposit Transaction Law is provided for your reference . . .  
24 a licensee should review and become familiar with all provisions of  
25 the law and rules and regulations. . . . (Underlining added.)

26 5. A licensee is subject to statutory books and records requirements . . .

27 8. Notwithstanding Respondents' knowledge and multiple sworn declarations to comply  
28 with the requirements for licensure, they engaged in numerous CDDTL violations since January 1,  
2005. On July 6, 2006, the Commissioner's examiner visited Respondents' business location after  
giving Respondents both written and oral advance notice of the Department's examination. The  
examiner discovered violations of section 23035(e), 23036 and 23064. Respondents were aware of  
the requirements to post the proper notices for consumer at their business locations. Section 23035  
(d) unequivocally states:

(d) The following notices shall be clearly and conspicuously posted in the unobstructed view of the public by all licensees in each location of a business providing deferred deposit transactions in letters not less than one-half inch in height:

(1) **The licensee cannot use the criminal process against a consumer to collect any deferred deposit transaction.** (Emphasis added.)

(2) The schedule of all charges and fees to be charged on those deferred deposit transactions with an example of all charges and fees that would be charged on at least a one-hundred-dollar (\$100) and a two-hundred-dollar (\$200) deferred deposit transaction, payable in 14 days and 30 days, respectively, giving the corresponding annual percentage rate. The information may be provided in a chart as follows: . . .

Respondents were aware that section 23035 (e) requires disclosures be provided by the licensee to the customer in the written agreement given to the customer. Section 23035, in part, states:

(e) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following:

(1) A full disclosure of the total amount of any fees charged for the deferred deposit transaction, expressed both in United States currency and as an APR as required under the Federal Truth In Lending Act and its regulations. (Emphasis added.)

(2) A clear description of the customer's payment obligations as required under the Federal Truth In Lending Act and its regulations. . . .

(7) An itemization of the amount financed as required under the Federal Truth In Lending Act and its regulations.

(8) Disclosure of any returned check charges.

(9) That the customer cannot be prosecuted or threatened with prosecution to collect . . . .

**(11) That the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.** (Emphasis added.)

During the 2006 examination it was evident that Respondents violated section 23036(f), which prohibits excess charges and states:

**(a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check.** (Emphasis added.)

(b) A licensee may allow an extension of time, or a payment plan, for repayment of an existing deferred deposit transaction but may not charge any additional fee or charge of any kind in conjunction with the extension or payment plan. A licensee that complies with the provisions of this subdivision shall not be deemed to be in violation of subdivision (g) of Section 23037.

(c) A licensee shall not enter into an agreement for a deferred deposit transaction with a customer during the period of time that an earlier written agreement for a deferred deposit transaction for the same customer is in effect.

(d) A licensee who enters into a deferred deposit transaction agreement, or any assignee of that licensee, shall not be entitled to recover damages for that transaction in any action brought pursuant to, or governed by, Section 1719 of the Civil Code.

(e) A fee not to exceed fifteen dollars (\$15) may be charged for the return of a dishonored check by a depository institution in a deferred deposit transaction. A single fee charged pursuant to this subdivision is the exclusive charge for a dishonored check. No fee may be added for late payment.

**(f) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a licensee pursuant to a deferred deposit transaction. (Emphasis added.)**

(g) A licensee shall be subject to the provisions of Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code.

Respondents violated section 23027, which prohibits false or deceptive information states:

(a) No licensee shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed or broadcast, in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating deferred deposit transactions, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive.

(b) No licensee shall place an advertisement disseminated primarily in this state for a deferred deposit transaction unless the licensee discloses in the printed text of the advertisement, or the oral text in the case of a radio or television advertisement, that the licensee is licensed by the department pursuant to this division.

(c) The commissioner may require that rates of charges or fees, if stated by the licensee, be stated fully and clearly in the manner that the commissioner deems necessary to give adequate information to, or to prevent misunderstanding by, prospective customers.

1 Additionally, Respondents violated section 23037 that, with emphasis added states:

2 In no case shall a licensee do any of the following:

3 (a) Accept or use the same check for a subsequent transaction, or permit a  
4 customer to pay off all or a portion of one deferred deposit transaction with the  
5 proceeds of another.

6 (b) Accept any collateral for a deferred deposit transaction.

7 (c) Make any deferred deposit transaction contingent on the purchase of  
8 insurance or any other goods or services.

9 (d) Enter into a deferred deposit transaction with a person lacking the capacity  
10 to contract.

11 (e) Alter the date or any other information on a check.

12 **(f) Engage in any unfair, unlawful, or deceptive conduct, or make any**  
13 **statement that is likely to mislead in connection with the business of**  
14 **deferred deposit transactions.**

15 (g) Accept more than one check for a single deferred deposit transaction.

16 (h) Take any check, instrument, or form in which blanks are left to be filled in  
17 after execution.

18 **(i) Offer, arrange, act as an agent for, or assist a deferred deposit**  
19 **originator in any way in the making of a deferred deposit transaction**  
20 **unless the deferred deposit originator complies with all applicable federal**  
21 **and state laws and regulations, including the provisions of this division.**

22 Respondents also violated California Code of Regulations, title 10, section 2025, subdivision (c)(1)  
23 that specifies that books and records must be maintained for two (2) years.

24 9. Hoyt certified as true and correct the Department's questionnaire he completed for  
25 Respondents in advance of the July 2006 examination. Hoyt falsely answered the questionnaire and  
26 did not disclose that Respondents' collection efforts took place outside the licensed locations.  
27 Nowhere in the questionnaire did Respondent disclose that they had also referred non-sufficient  
28 funds ("NSF") checks to the DA's Offices. Hoyt made additional untrue statements in the  
questionnaire. For example, Respondents answered "NO" when asked if they transfer, sell or  
assigned any DDT to an unaffiliated entity. When questioned what repayment methods do you use

1 to collect payments due Respondents did not mention of the DA's Office.

2 10. Furthermore, at no time during the 2006 examination did Respondents disclose to  
3 the Commissioner's examiner that they had referred customers' NSF checks to several county  
4 District Attorneys ("DA"). Respondents' bank had returned the customers' checks unpaid due to  
5 NSF. In fact, Respondents concealed information from the Department that they had referring  
6 NSF returned checks to and received repayment of NSF checks from DAs.

7 11. Hoyt was aware of the prohibition against referring NSF checks to the DA's  
8 Office in view of his declarations made under penalty of perjury in his CDDTL application.  
9 Hoyt agreed to comply with this CDDTL provision, but repeatedly failed to do so.

10 12. Respondents, as a condition of licensure, are required to comply with all CDDTL  
11 requirements, including the prohibition on threatening to prosecute any customer in a criminal  
12 action for failure to comply with the terms of the agreement for the deferred deposit transaction.  
13 What makes Respondents' referrals to DA's Offices particularly egregious is the fact that  
14 multiple CDDTL sections unmistakably and unambiguously state a customer cannot be  
15 prosecuted in connection with a returned check. For example, section 23035, subdivisions (b),  
16 (c), (d) and (e) mandate the specific content of notices, disclosures and written agreements for  
17 deferred deposit transactions and, in relevant part with emphasis added, states:

18 (b) A customer who enters into a deferred deposit transaction and offers a personal  
19 check to a licensee pursuant to an agreement **shall not be subject to any criminal  
20 penalty for the failure to comply with the terms of that agreement.**

21 (c) Before entering into a deferred deposit transaction, licensees shall distribute to  
22 customers a notice that shall include, but not be limited to, the following: . . .

23 (3) That the **customer cannot be prosecuted** in a criminal  
24 action in conjunction with a deferred deposit transaction for  
25 a returned check **or be threatened with prosecution.**

26 (6) That the check is being negotiated as part of a deferred  
27 deposit transaction made pursuant to Section 23035 of the  
28 Financial Code and is **not subject to the provisions of  
Section 1719 of the Civil Code. No customer may be  
required to pay treble damages if this check does not  
clear.**



(d) The following notices shall be clearly and conspicuously posted in the unobstructed view of the public by all licensees in each location of a business providing deferred deposit transactions in letters not less than one-half inch in height: . . .

**(1) The licensee cannot use the criminal process against a consumer to collect any deferred deposit transaction. . . .**

(e) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following: . . .

(8) Disclosure of any returned check charges.

**(9) That the customer cannot be prosecuted or threatened with prosecution to collect. . . .**

Additionally subdivisions (a), (c) and (f) of section 23036, limit the type and amount of fees and charges that customers can be required to pay. These subdivisions, in relevant part, state:

(a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check. . . .

(e) A fee not to exceed fifteen dollars (\$15) may be charged for the return of a dishonored check by a depository institution in a deferred deposit transaction. A single fee charged pursuant to this subdivision is the exclusive charge for a dishonored check. No fee may be added for late payment.

(f) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a licensee pursuant to a deferred deposit transaction.

Section 23037 limits a licensee's transactions and activities stating:

In no case shall a licensee do any of the following: . . .

(f) engage in any unfair, unlawful, or deceptive conduct, or make any statement that is likely to mislead in connection with the business of deferred deposit transactions.

13. Despite the statutory prohibitions against prosecuting customers to collect the unpaid amounts of deferred deposit transactions, Respondents filed complaints or crime reports with DA offices in counties in Northern California that resulting in Respondents' customers receiving from the DA's Offices letters threatening customers with criminal prosecution.

1           14. Only after questioning by the Department's examiner about the specific customers'  
2 checks that were returned unpaid did Respondents admitted that they filed numerous NSF or Bad  
3 Check Reports with DA's Offices. Respondents consistently identified themselves as the  
4 "victim" on each NSF or Bad Check Report filed with DA's Offices in various counties such as  
5 Tehama and Glenn. Respondents certified that the "report is true, accurate and complete." Each  
6 NSF and Bad Check Report asks, either "Was there an agreement to hold this check?" or  
7 "AGREEMENT TO HOLD?" Respondents falsely answered "NO," rather than "YES" to the  
8 question.

9           15. During the Department's subsequent examination in June 2007, the Department's  
10 examiner requested that Respondents provide books and records that documented details about  
11 consumers' NSF checks and amount recovered from the DA's offices. In response, the  
12 Respondents provided documents and bad check reports that indicate the following:  
13 Martin Hoyt dba A-1 Check Cashing of Corning (File # 100-2589) referred thirty-one (31) NSF  
14 checks to the DA's offices;  
15 Martin Hoyt dba A-1 Check Cashing of Orland (File # 100-1513) referred sixteen (16) NSF checks  
16 to the DA's offices;  
17 Martin Hoyt dba A-1 Check Cashing of Chico (File # 100-2018) and Martin Hoyt dba A-1 Check  
18 Easy Cash Advance and Check Cashing (File # 100-2588) both attempted to referred NSF checks  
19 to the DA's offices but were told by the DA's offices that deferred deposit transaction checks are a  
20 civil matter. In sum, the combined total number the Respondents referred is 47 NSF checks.

21           16. Significantly, Respondents were put on notice by DA's Offices that they should not  
22 Refer NSF checks for criminal prosecution. Documents received from DA's Offices about  
23 Respondents' referrals and recovery of funds involving NSF checks appears to differ from the  
24 information Respondents provided to the examiner in 2007.

25           17. A customer whose NSF check is processed in accordance with the DA's NSF and  
26 Bad Check Program is assessed various fees for administrative costs and diversion programs.  
27 The cost varies in each county but the fees range from \$80 to \$88. Thus, Respondents indirectly  
28 charged amounts in excess of what is permitted by section 23036.



1           18. Notwithstanding the Respondents' distribution the statutory notice containing the  
2 requisite disclosures to consumers before entering into written agreements, the Respondents'  
3 actions contradicted their disclosures in their notices given to consumers, which renders their  
4 notices and disclosures deceptive and misleading in violation of section 23037 (f).

5           19. Respondents' written agreements with customers lacked all the necessary language  
6 required by section 23035 (c) but it did contain language that customers cannot be criminally  
7 prosecuting or threatening with criminal prosecution any customer to collect an unpaid deferred  
8 deposit obligation. Respondents' failure to operate in accordance with their written agreements  
9 renders their written agreements with consumers deceptive and misleading and violates section  
10 23037 (f).

11           20. In 2007 during the examiner's review of Respondents' documents it became apparent  
12 that in some cases Respondents inaccurately completed the Bad Check Reports sent to a DA's  
13 Office by claiming that Respondents were owed more that they were entitled to receive from  
14 particular consumers. This Court may take official notice of Penal Code sections 148.5 and 72.

15           21. DA Offices in several counties threatened Respondents consumers with prosecution  
16 because their checks were returned NSF. Any claim that Respondents were unaware of the  
17 prohibition against threatening prosecution lacks credibility for several reasons. First,  
18 Respondents completed the CDDTL application and exhibits unequivocally stating that they had  
19 obtain, read, was familiar with, understood and would comply with CDDTL. Second  
20 Respondents filed a NSF Check Report for every NSF check with DA's that unmistakably states  
21 "the check(s) in question is (are) submitted for investigation of **criminal prosecution**". Third,  
22 Respondents certified that this report is true and accurate and complete. Fourth, Respondents  
23 were notified that "check will be retained as evidence." Fifth, Respondents acknowledged that  
24 the check in question is "pre criminal prosecution . . . **If prosecution is not possible and you**  
25 **wish to pursue civil proceedings, this check will be returned to you.**" Sixth, Respondents in  
26 completing multiple crime/ bad check reports they filed with DA's falsely stated that there was  
27 no agreement to hold the NSF check, which renders the check a promissory note and requires use  
28 of civil proceedings for the purpose of collection. Lastly, Respondents were regularly informed

by the DA's office on the status of their investigation of Respondents' crime/bad check reports.

22. The letters to consumers from DA's Offices about NSF checks unequivocally state:

**A CRIME REPORT has been filed accusing you of a violation of Penal Code Section 476(a) (Passing Bad checks), . . . This report is currently under investigation. . . . If you wish to suspend this criminal investigation, . . . FAILURE TO RESOND to this notice will result in further investigation and possible issuance of a criminal complaint and arrest warrant. . . .**

23. Respondents consistently identified themselves as the "victim" on each NSF or Bad Check Report they filed with DA's Offices and certified that the "report is true, accurate and complete." Respondents' NSF and Bad Check Reports falsely stated there was no agreement to hold this check. This Court may take official notice of Penal Code sections 148.5 and 72.

24. It appears that Respondents took advantage of the fact that their fictitious business names, A-1 Check Cashing and Easy Cash Advance and Check Cashing was also used for Respondents' check cashing business and that a check casher returned NSF checks may be lawfully prosecuted by a DA's Office.

25. Respondents stated in 2007 that they ceased referrals to DA's Office to collect NSF checks. Yet, Hoyt signed Respondents' CDDTL application under penalty of perjury in 2004 that that he read, understood and would comply with the CDDTL. Thus, Respondents did not comply in 2003 as they represented they would with the CDDTL.

26. During the examination in 2007 in addition to discovering that Respondents had provided false information to the Department about how they conducted their CDDTL business it was evident that they are not maintaining their books and records in a manner that will permit an examiner to review and reconcile Respondents' CDDTL records, which is a violation of section 23024 and the California Code of Regulations 2025. Respondents' records produced for the customers' NSF referred to the DA's Office appear inconsistent with records from the DA's Offices. These discrepancies may potentially change the number of actual transactions in violation of the CDDTL. Thus, Respondents' failed to accurately maintain customers' records on a regular

1 basis to enable an examiner could determine the remaining balances of a customer's account, in  
2 particular those involving NSF checks.

3 27. The Department has repeatedly emphasized the importance of good record keeping,  
4 during the application process, at the time of license and thereafter. Since licensure Respondents  
5 received communications from the Department regarding compliance with the CDDTL. For  
6 example, in March 2006 the Department mailed to the Respondents the Department's 18 page  
7 Deferred Deposit Originator Bulletin. In February 2007 the Department mailed to Respondent  
8 the Department's 10 page Deferred Deposit Originator Bulletin. All licensees were sent a copy of  
9 each of these bulletins that contained detailed and specific information on how to comply with the  
10 CDDTL. Furthermore, the bulletins contain multiple references to the Department's website and  
11 toll free telephone number (866) ASK-Corp (275-2777). Respondent had ample opportunity to  
12 contact the Department for clarification or information to comply with any and all provisions of  
13 the CDDTL.

14 27. Notwithstanding Respondents' statements under penalty of perjury they would  
15 comply with the CDDTL, Respondents violated the following sections: 23024, 23027, 23035;  
16 23036, 23037 and California Code of Regulations, title 10, section 2025.

17 29. Without question Respondents willfully violated the CDDTL. Courts permit use of  
18 Penal Code definition of "willful" to define terms in other codes where such terms are otherwise  
19 undefined. (*Brown v. State Dept. of Health* (1978) 86 Cal. App.3d 548, 554.) Penal Code  
20 section 7 states in relevant part: "1. The word 'willfully,' when applied to the intent with which  
21 an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the  
22 omission referred to. It does not require any intent to violate law, or to injure another, or to  
23 acquire any advantage." The Commissioner's precedential decision of *In Re: Stacy Ann Masper*  
24 (2003) OAH # L2002090534 "willfully" does not mean an intent to violate the law, but simply is  
25 "a purpose or willingness to commit the act, or make the omission referred to."

26 30. Hoyt is well aware of state regulation of payday lenders and the deferred deposit  
27 transaction industry since he has been employed in the business since 2002.

28 31. Section 23026 and California Code of Regulations, title 10, section 2030 each

1 licensee shall file an annual report with the Commissioner. A review of Respondents' 2005  
2 annual report shows that during 2005 they made loans over \$2,888,186 that consisted of 11,602  
3 transactions with 1,490 customers. Respondents' 2006 annual report shows that during 2006  
4 they made loans over \$3,024,892 that consisted of 12,186 transactions with 1,849 customers.  
5 Respondents' annual reports reflect they have many repeat customers and Respondents' revenue  
6 was over \$426,728 in 2005, and over \$447,434 in both 2006. It is evident from these reports  
7 that customers require numerous cash advances throughout the year for which they pay  
8 approximately 400% to Respondents for every one of these transactions. It should be noted that  
9 Respondents' customers have limited incomes, receive social security payments or are disabled.  
10 32. On October 30, 2007, the Commissioner issued a Desist and Refrain Order, Citations  
11 and Voiding Deferred Deposit Transactions to Respondents and they timely requested a hearing.

## 12 II

### 13 DEFERRED DEPOSIT TRANSACTION LAW

14 33. Respondents are required to comply with legal requirements imposed on all CDDTL  
15 licensees that include maintaining accurate books and records and not subjecting or threatening  
16 any customers with a criminal penalty for failure to comply with the terms of the agreement.

17 34. Section 23024 mandates that every licensee comply with the following requirement:

18 Each licensee shall keep and use books, accounts, and records that will  
19 enable the commissioner to determine if the licensee is complying with the  
20 provisions of this division and with the rules and regulations promulgated  
21 by the commissioner. Each licensee shall maintain any other records as  
22 required by the commissioner. The commissioner or a designee of the  
23 commissioner may examine those records at any reasonable time. Upon  
24 the request of the commissioner, a licensee shall file an authorization for  
25 disclosure of financial records of the licensed businesses pursuant to  
26 Section 7473 of the Government Code. All records shall be kept for two  
27 years following the last entry on a deferred deposit transaction and shall  
28 enable an examiner to review the recordkeeping and reconcile each  
consumer deferred deposit transaction with documentation maintained in  
the consumer's deferred deposit transaction file records.

California Code of Regulations, title 10 section 2025 supplements section 23224 and  
states, in relevant part:

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

35. Section 23035, subdivisions (c), (d) and (e) specify the essential requirements for deferred deposit transaction written agreements stating, in relevant part with emphasis added:

(c) Before entering into a deferred deposit transaction, licensees shall distribute to customers a notice that shall include, but not be limited to, the following: . . .

**(3) That the customer cannot be prosecuted in a criminal action in conjunction with a deferred deposit transaction for a returned check or be threatened with prosecution.**

**(6) That the check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provisions of Section 1719 of the Civil Code.** No customer may be required to pay treble damages if this check does not clear.

(d) The following notices shall be clearly and conspicuously posted in the unobstructed view of the public by all licensees in each location of a business providing deferred deposit transactions in letters not less than one-half inch in height: . . .

**(1) The licensee cannot use the criminal process against a consumer to collect any deferred deposit transaction. . . .**

(e) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following: . . .

(8) Disclosure of any returned check charges.

**(9) That the customer cannot be prosecuted or threatened with prosecution to collect. . . .**

36. Subdivisions (a), (e) and (f) of section 23036, limit the type and amount of fees and charges that customers can be required to pay. These subdivisions, in relevant part, state:

(a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check. . . .

(e) A fee not to exceed fifteen dollars (\$15) may be charged for the return of a dishonored check by a depository institution in a deferred deposit transaction. A single fee charged pursuant to this subdivision is the exclusive charge for a dishonored check. No fee may be added for late payment.

(f) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a licensee pursuant to a deferred deposit transaction.

37. Section 23037 limits a licensee's transactions and activities and in relevant part states:  
In no case shall a licensee do any of the following: . . .

(f) engage in any unfair, unlawful, or deceptive conduct, or make any statement that is likely to mislead in connection with the business of deferred deposit transactions.

### III

#### RESPONDENTS' DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

38. Prior to the 2006 examination Respondents answered and returned a completed questionnaire to the Department that included information about whether it uses an outside collection service. Respondents did not disclosed to the Department on their returned questionnaire that they had used the DA's Office to performing collection.

39. When questioned by the Commissioner's representative about the NSF checks, Respondents stated that they filed complaints about their customers' NSF checks with the Office of the District Attorney ("DA") in several counties in accordance with the DA's Bad Check Program. Respondents' complaints filed with the DA's Office about NSF checks require declaring under penalty of perjury the reports are true and correct. Respondents filed at least 47 reports about NSF checks under penalty of perjury with DA's Offices.

40. As a direct result of the Respondents' criminal complaints about NSF checks their customers received from DA's Offices letters threatening customers with criminal prosecution if they failed to make restitution in accordance with the DA's Bad Check Program



1           41. Each customer whose NSF checks that are processed by the Bad Check Program are  
2 also assessed various fees such as administrative, diversion and NSF. The total fees ranged from  
3 \$80-\$88.

4           42. During the 2007 examination the Commissioner's examiner requested Respondents  
5 provide books and records that documented details about the NSF consumers' checks they  
6 received and amount recovered. In response Respondents provided information that revealed  
7 Respondents had sent at least 47 checks to the DA's Office in 2005 that aggregate 11,714.

8           43. Respondents' information concerning NSF checks is inconsistent with various  
9 reports provided by DA's Offices, thus Respondents' books and records are inaccurate.

10          44. Respondents were not operating in accordance with their unqualified representations  
11 in their notices given to consumers. Respondents' actions contradicted the disclosure in the  
12 written notice rendering it false and misleading. Respondents were not operating in accordance  
13 with their written agreements, thus also rendering Respondents' written agreements with  
14 consumers false and misleading.

15          44. Respondents' violations include the following CDDTL sections: 23024, 23027,  
16 23035, 23036, 23037 and California Code of Regulations section 2025. For at least 47 of  
17 Respondents' violations discovered during the Department's regulatory examination and review  
18 of records, the Commissioner is issuing Citations 1 through 47, inclusive. The Citations are being  
19 issued for false and misleading transactions with these 47 consumers.

#### 20 21 IV

#### 22 DESIST AND REFRAIN ORDER

23          46. Respondents failed to make the required disclosure in advertisements and to post proper  
24 notices to inform consumers of their rights and protections under California law in violation of the  
25 requirements found in section 23027, 23035. Respondents have violated sections 23024 and 23036  
26 and California Code of Regulations section 2025 by failing to keep accurate records and by  
27 overcharging consumers. Furthermore, Respondents have also engaged in deceptive and misleading  
28 deferred deposit transactions in violation of the section 23037.

1 47. Section 23050 provides in part:

2 Whenever, in the opinion of the commissioner, any person is engaged in  
3 the business of deferred deposit transactions, as defined in this division,  
4 without a license from the commissioner, or any licensee is violating any  
5 provision of this division, the commissioner may order that person or  
6 licensee to desist and to refrain from engaging in the business or further  
violating this division. If, within 30 days, after the order is served, a  
written request for a hearing is filed and no hearing is held within 30  
days thereafter, the order is rescinded.

7 Pursuant to section 23050, Respondents were ordered to desist and refrain from the CDDTL for  
8 violations of sections 23035 and 223037. These Court may take official notice of sections  
9 23024, 23027, 23036 and the California code of Regulations, title 10 section 2025, and make  
10 findings of facts concerning Respondents violations of these sections in addition to sections  
11 23035 and 23037. A Desist and Refrain Order is necessary for the protection of consumers and  
12 consistent with the purposes, policies and provisions of the CDDTL. The Commissioner seeks  
13 affirmation of his Desist and Refrain Order.

14 V

15 CITATIONS

16 47. Section 23058 gives the Commissioner's authority to issues citations and, in part, states:

17 (a) If, upon inspection, examination or investigation, based upon a  
18 complaint or otherwise, the department has cause to believe that a person  
19 is engaged in the business of deferred deposit transactions without a  
20 license, or a licensee or person is violating any provision of this division  
21 or any rule or order thereunder, the department may issue a citation to that  
22 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). . .

23 (c) If within 30 days from the receipt of the citation of the person cited  
24 fails to notify the department that the person intends to request a hearing  
25 as described in subdivision (d), the citation shall be deemed final.

26 (d) Any hearing under this section shall be conducted in accordance with  
27 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of  
28 Title 2 of the Government Code, and in all states the commissioner has  
all the powers granted therein.



## VI

## VOID TRANSACTIONS

49. Respondents willfully violated sections 23024, 23027, 23035, 23036 and 23037 of the CDDTL by: (1) failing to maintain accurate books and records as required; (2) make the required disclosures in advertisements and to consumers; (3) charging excessive or unauthorized fees and (4) entering into fraudulent transactions with at least 47 consumers. The Commissioner seeks to void Respondents' transactions with 47 consumers and order the return of the consumers' funds obtained from the DA's office in the amount of at least \$1,795.

50. Section 23060 states:

(a) If any amount other than, or in excess of, the charges or fees permitted by this division is willfully charged, contracted for, or received, a deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive the principal amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

(b) If any provision of this division is willfully violated in the making or collection of a deferred deposit transaction, the deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive any amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

51. Pursuant to section 23060 the Commissioner seeks an order that voids the described deferred deposit transactions for the 47 consumers and prevents Respondents from receiving the amounts provided for in the deferred deposit transactions including any charges or fees in connection with these consumer transactions.

52. Therefore, the Commissioner seeks an order requiring restitution to Respondents'

1 customers. The amount of restitution would include at least \$1,795 that Respondents received  
2 for these transactions received from the DA's Office and return of fees consumers paid the DA's  
3 Office for collection.

#### 4 CONCLUSION

5 Respondents' were aware of requirements imposed on the deferred deposit industry in  
6 California by reason of the CDDTL application process and the regulatory activities. From  
7 January 1, 2005, Respondents' consumers were not provided with the proper written agreements  
8 even though the statutory requirements for deferred deposit transaction agreements was brought  
9 to Respondents' attention during the application process. Respondents also violated section  
10 23036 and 23064 as evident during the 2006 examination. Respondents omitted providing  
11 information their collection efforts by making criminal referrals to the DA's Office to the  
12 Department on required reports and to the Department examiner in July 2006.

13 Further, Respondents records of NSF checks referred to the DA's Offices and the  
14 amounts recovered by them appear inconsistent with DA's records and the amount of additional  
15 fees consumers were charged. Attempts to accurately determine the number of NSF checks  
16 referred and recovered and reconcile the accounts is not readily possible as a result of  
17 Respondents' deficient record keeping system. Complainant finds, due to the foregoing, that  
18 Respondents filed an untrue application and also violated sections 23024, 23027, 23035, 23036  
19 23037, 23064 as well as the California Code of Regulations section 2025.

20 The Commissioner believes to prevent future violations and protect the public a Desist  
21 and Refrain Order prohibiting violations of the CDDTL is warranted.

22 Citations are essential to deter other violators and hold Respondents accountable for  
23 their continuing violations including, but not limited to, the referrals to the DA's Office after  
24 being notified about CDDTL requirements that prohibits criminal referrals of NSF checks.

25 Additionally, Respondents' crime/bad check reports filed with the DA's offices were  
26 required to be true and accurate concerning whether there was an agreement to hold the check  
27 and the amount due to Respondents. The amount of the transactions for which Respondents  
28 received recovered funds should be voided and at least \$1,795 plus indirect fees charged for their

1 transactions through the DA's office should be reimbursed to compensate consumers and

2 Set Program Access and Defaults.Ink

ameliorate the damages suffered by them.

3 Pursuant to sections 23050, 23052, 23058 and 23060, respectively, the Commissioner is  
4 justified in issuing a Desist and Refrain Order and 47 citations to Respondents, and justified in  
5 voiding the 47 transactions and suspending Respondents' CDDTL license for a year.

6 WHEREFORE, Complainant, the California Corporations Commissioner prays that

- 7 a. Respondents, Martin Hoyt doing business as A-1 Check Cashing and Easy  
8 Cash Advance and Check Cashing, be ordered to pay to the Commissioner  
9 an administrative penalty in the total amount of four hundred twenty-two  
10 thousand five hundred dollars (\$117,500) for the above Citations 1 through  
11 47, inclusive within thirty days from the date set forth below;
- 12 b. Respondents, Martin Hoyt doing business as A-1 Check Cashing, and Easy  
13 Cash Advance and Check Cashing pursuant to Financial Code section  
14 23060, be ordered to pay restitution to the California consumers the total  
15 amount of at least thirteen thousand nine hundred eighty nine dollars and  
16 eighty three cents (\$1,795) for the above-described violations; and,
- 17 c. A Desist and Refrain Order to Respondents, Martin Hoyt doing business as  
18 A-1 Check Cashing and Easy Cash Advance and Check Cashing, be issued  
19 and affirmed pursuant to Financial Code section 23050, be affirmed for the  
20 above-described violations; and,

21 Dated: March 4, 2008  
22 San Francisco, California

Respectfully submitted,

23 PRESTON DuFAUCHARD  
24 California Corporations Commissioner

25 By \_\_\_\_\_  
26 Joan E. Kerst  
27 Senior Corporations Counsel  
28 Attorney for Complainant

EXHIBIT 2

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

BEFORE THE DEPARTMENT OF CORPORATIONS  
OF THE STATE OF CALIFORNIA

In the Matter of	)	
THE CALIFORNIA CORPORATIONS	)	File No.: 100-1513
COMMISSIONER,	)	
	)	ORDER REVOKING CALIFORNIA
Complainant,	)	DEFERRED DEPOSIT TRANSACTION
	)	LAW LICENSE PURSUANT TO
vs.	)	FINANCIAL CODE SECTION 23052
	)	
Martin Hoyt dba A-1 Check Cashing of Orland,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

Complainant, the California Corporations Commissioner, ("Commissioner") of the  
Department of Corporations ("Department") finds:

1. Respondent, Martin B. Hoyt dba A-1 Check Cashing of Orland (File # 100-1513) is  
located at 801 Fourth Street, Suite B, Orland, Ca 95963.

On December 31, 2004, and continuing thereafter the Commissioner issued to Respondent,  
a deferred deposit transaction originator license pursuant to the California Deferred Deposit  
Transaction Law ("CDDTL") set forth in California Financial Code section 23000 et seq. (All  
future references to sections are to the California Financial Code unless indicated otherwise.)

2. Since at least January 1, 2005, Respondents have engaged in the business of deferred

ORDER REVOKING CALIFORNIA DEFERRED DEPOSIT TRANSACTION LAW LICENSE  
PURSUANT TO FINANCIAL CODE SECTION 23052

1 deposit transactions by offering, originating and making deferred deposit transactions. A deferred  
2 deposit transaction is a written transaction whereby one person gives funds to another person upon  
3 receipt of a personal check along with an agreement that the personal check shall not be deposited  
4 until a later date. These transactions are also referred to as "payday advances" or "payday loans."

5 3. Complainant in his Desist And Refrain Order, Citations and Order To Void Deferred  
6 Deposit Transactions And In His Statement In Support Of Desist And Refrain Order, Citations And  
7 Order To Void Deferred Deposit Transactions alleged Respondent violated numerous provisions of  
8 the CDDTL rules and regulations thereunder. Thus, Respondent issued a Desist and Refrain Order  
9 pursuant to section 23050, issuance of citations and voiding of loans made pursuant to sections  
10 23058 and 23060, respectively.

11 4. Section 23058 gives the Commissioner authority to issues citations and, in part, states:

12 (a) If, upon inspection, examination or investigation, based upon a  
13 complaint or otherwise, the department has cause to believe that a person  
14 is engaged in the business of deferred deposit transactions without a  
15 license, or a licensee or person is violating any provision of this division  
16 or any rule or order thereunder, the department may issue a citation to that  
17 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 . . .

18 5. Section 23060 states:

19 (a) If any amount other than, or in excess of, the charges or fees permitted  
20 by this division is willfully charged, contracted for, or received, a deferred  
21 deposit transaction contract shall be void, and no person shall have any  
22 right to collect or receive the principal amount provided in the deferred  
23 deposit transaction, any charges, or fees in connection with the transaction.

24 (b) If any provision of this division is willfully violated in the making or  
25 collection of a deferred deposit transaction, the deferred deposit  
26 transaction contract shall be void, and no person shall have any right to  
27 collect or receive any amount provided in the deferred deposit transaction,  
28 any charges, or fees in connection with the transaction.

6. Section 23052 states:

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.

7. Respondents pursuant to a settlement agreement agree to, inter alia, the issuance by the Commissioner pursuant to section 23052 of an Order Revoking Respondent's CDDTL license, to be effective March 29, 2008. The settlement agreement is incorporated herein by reference.

NOW, BASED UPON THE FOREGOING, AND GOOD CAUSE APPEARING, it is hereby ORDERED under the provisions of section 23052 that Respondent's CDDTL license is revoked. This revocation precludes Respondent from engaging in any CDDTL transactions with either new or existing clients but does not preclude Respondent from engaging in collection activities that permit: (1) receipt of cash from customers for existing transactions entered into before March 29, 2008; (2) forwarding any checks received from Respondents' clients to Respondents' bank for deposit relating to transactions entered into before March 29, 2008; (3) responding to regulatory inquiries from the Department of Corporations or other agencies; (4) making the Citation Payment and Refunds described in the settlement agreement; and, (5) otherwise responding to customer inquiries concerning existing transactions.

Dated: March 28, 2008  
Los Angeles, California

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
ALAN S. WEINGER  
Lead Corporations Counsel  
Attorney for Complainant

ORDER SUSPENDING CALIFORNIA DEFERRED DEPOSIT TRANSACTION LAW LICENSE  
PURSUANT TO FINANCIAL CODE SECTION 23052