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10
11 BEFORE THE DEPARTMENT OF CORPORATIONS
12 OF THE STATE OF CALIFORNIA

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

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

24 INTRODUCTION

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

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.¹ 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 ¹ 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:

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

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

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

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

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

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

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

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

21 (8) Disclosure of any returned check charges.

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

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

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

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

1 (b) A licensee may allow an extension of time, or a payment plan, for
2 repayment of an existing deferred deposit transaction but may not charge any
3 additional fee or charge of any kind in conjunction with the extension or
4 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.

5 (c) A licensee shall not enter into an agreement for a deferred deposit
6 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.

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

10 (e) A fee not to exceed fifteen dollars (\$15) may be charged for the return of
11 a dishonored check by a depository institution in a deferred deposit
12 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.

13 (f) **No amount in excess of the amounts authorized by this section shall**
14 **be directly or indirectly charged by a licensee pursuant to a deferred**
15 **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.

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

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

25 (b) No licensee shall place an advertisement disseminated primarily in this
26 state for a deferred deposit transaction unless the licensee discloses in the
27 printed text of the advertisement, or the oral text in the case of a radio or
28 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
penalty for the failure to comply with the terms of that agreement.**

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

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

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

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

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

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

9 (8) Disclosure of any returned check charges.

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

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

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

15 (e) A fee not to exceed fifteen dollars (\$15) may be charged for the return
16 of a dishonored check by a depository institution in a deferred deposit
17 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.

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

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

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

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

25 13. Despite the statutory prohibitions against prosecuting customers to collect the unpaid
26 amounts of deferred deposit transactions, Respondents filed complaints or crime reports with DA
27 offices in counties in Northern California that resulting in Respondents' customers receiving
28 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 (e) 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

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

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

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

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

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

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

22 26. During the examination in 2007 in addition to discovering that Respondents had
23 provided false information to the Department about how they conducted their CDDTL business it
24 was evident that they are not maintaining their books and records in a manner that will permit an
25 examiner to review and reconcile Respondents’ CDDTL records, which is a violation of section
26 23024 and the California Code of Regulations 2025. Respondents’ records produced for the
27 customers’ NSF referred to the DA’s Office appear inconsistent with records from the DA’s
28 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:

1 (c)(1) Except as provided in subsection (e), records to be maintained at
2 each licensed business location for each deferred deposit transaction shall
3 include at least the following: the deferred deposit transaction agreement,
4 evidence of the check, written disclosure(s) used to provide notice in
5 compliance with subdivision (c) of Section 23035 of the Financial Code,
6 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.

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

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

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

13 (6) **That the check is being negotiated as part of a**
14 **deferred deposit transaction made pursuant to Section**
15 **23035 of the Financial Code and is not subject to the**
16 **provisions of Section 1719 of the Civil Code.** No customer
may be required to pay treble damages if this check does not
clear.

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

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

22 (e) An agreement to enter into a deferred deposit transaction shall be in
23 writing and shall be provided by the licensee to the customer. The written
24 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: . . .

25 (8) Disclosure of any returned check charges.

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

28 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:

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(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.

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IV

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DESIST AND REFRAIN ORDER

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

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47. Section 23050 provides in part:

Whenever, in the opinion of the commissioner, any person is engaged in the business of deferred deposit transactions, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or 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.

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

V

CITATIONS

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

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

(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.

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.lnk

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 though
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

23 Respectfully submitted,

24 PRESTON DuFAUCHARD
25 California Corporations Commissioner

26 By _____
27 Joan E. Kerst
28 Senior Corporations Counsel
Attorney for Complainant