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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. 2007120052
15 Complainant,)
16 vs.) ACCUSATION TO SUSPEND LICENSE AND
17 Scott Paul Dillingham dbas A-1 Check Cashing) STATEMENT IN SUPPORT OF DESIST AND
18) REFRAIN ORDER, CITATIONS AND
19 Respondents.) ORDER TO VOID DEFERRED DEPOSIT
20) TRANSACTIONS
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22)
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24)

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

23 INTRODUCTION

24 Respondents include Scott Paul Dillingham dba A-1 Check Cashing of Anderson
25 (Department File # 100-1476) Scott Paul Dillingham dba A-1 Check Cashing of Red Bluff
26 (Department File # 100-1477) Scott Paul Dillingham dba A-1 Check Cashing of Redding
27 (Department File # 100-2392) Scott Paul Dillingham dba A-1 Check Cashing of Marysville
28 (Department File # 100-2393).

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

1 The Commissioner of the Department of Corporations (“Department”) is responsible for
2 enforcing the California Deferred Deposit Transaction Law (“CDDTL”) set forth in California
3 Financial Code section 23000 et seq.¹ Respondents violated significant provisions of the CDDTL
4 rules and regulations thereunder. If the Commissioner had known Respondents were going to
5 engage in a scheme involving multiple instances of fraudulent conduct or had provided untrue
6 information to the Department, the Commissioner would have denied a license to Respondents. In
7 view of nature and extent of Respondents’ various violations the Commissioner seeks to suspend
8 Respondents’ CDDTL license pursuant to section 23052 to protect the public. Pursuant to section
9 23050 the Commissioner issued a Desist and Refrain Order and seeks amendment and affirmation of
10 that Order. Pursuant to section 23058 the Commissioner issued 169 citations in the amount of
11 \$2,500 per citation for the violations discovered during the 2007 CDDTL examination that involve
12 deceptive and misleading deferred deposit transactions with consumers and seeks affirmation of
13 those citations. Lastly, the Commissioner seeks an order voiding the 169 transactions made by
14 Respondents pursuant to section 23060 and order of restitution to Respondents’ clients.

I

FACTS

- 17 1. The Department is responsible for enforcing provisions of the CDDTL and authorized
18 to pursue a variety of administrative actions and remedies against licensees who violate it.
- 19 2. Respondents are all owned, controlled and managed by Scott Dillingham (“Dillingham”).
20 Dillingham was employed outside the deferred deposit industry for many years but since 2001 he
21 has been doing business under his fictitious business name, “A-1 Check Cashing” in Oregon and
22 several counties in Northern California. A unity of interest, ownership, dominion and control of the
23 businesses called “A-1 Check Cashing” and Dillingham exists such that any entity or proprietorship
24 formed should be disregarded and considered Dillingham’s alter egos. All the foregoing will be
25 referred to as “Respondents,” except where a specific name or designation is relevant. Respondents’
26 also do business and derive income from their check cashing business, possessing a high net worth.

28 ¹ All future references to sections are to the California Financial Code unless indicated otherwise.

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

3 4. A deferred deposit transaction is a written transaction whereby one person gives funds
4 to another person in exchange for a personal check and an agreement that the personal check
5 shall not be deposited until a later date. These transactions are also referred to as “payday
6 advances,” “cash advances”, “payday loans” and “micro loans.” These deferred deposit
7 transactions generate significant interest revenue for licensees who charge individual borrowers
8 an annual percentage rate (“APR”) of 215% - 460 %.

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

14 6. Respondents filed with the Department an application for a license to make deferred
15 deposit transactions that included a Declaration, designated as “Exhibit K” to the application. On
16 behalf of the applicants Dillingham stated under penalty of perjury:

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

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

22 Respondents’ execution page to their application Dillingham signed states that “by signing this
23 declaration” “the applicant hereby agrees (or attests) or declares understanding of the following:”

24 1. That the applicant will submit to periodic examinations by the
25 Commissioner of Corporations as required by the California Deferred
Deposit Transaction Law.

26 2. That the applicant will keep and maintain all records for 2 years
27 following the last entry on a deferred deposit transaction and will
28 enable an examiner to review the record keeping and reconcile each
consumer deferred deposit transaction with documentation maintained
in the consumer’s file records.

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3. That the applicant understands the examination process involving the reconciliation of records will be facilitated if the applicant maintains, 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.
5. That the applicant will file with the Commissioner of Corporations an amendment to this application prior to any material change in the information contained in the application for licensure, including, without limitation, the plan of operation.
6. That the applicant will file with the Commissioner of Corporations any report required by the Commissioner.
7. That the applicant hereby attests that the applicant (including officers, directors and principals) has not engaged in conduct that would be cause of denial of a license.

Respondents completed an additional Declaration designated as “Exhibit L” to their CDDTL application, which Dillingham signed under penalty of perjury stating:

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

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

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

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

1 8. Notwithstanding Respondents’ knowledge and multiple sworn declarations to comply
2 with the requirements for licensure, they willfully and knowingly engaged in numerous CDDTL
3 violations since January 1, 2005. On July 6, 2006, the Commissioner’s examiner visited
4 Respondents’ business location after giving Respondents both written and oral advance notice of
5 the Department’s examination. The examiner discovered the numerous violations of the CDDTL
6 described below. Respondents violated section 23035 by failing to post the proper notices at the
7 business locations. Section 23035 (d) unequivocally states:

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

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

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

20 Respondents violated section 23035 (e), which requires essential disclosures be provided by the
21 licensee to the customer in the written agreement that, in part, states:

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

26 (1) **A full disclosure of the total amount of any fees charged for the deferred
27 deposit transaction, expressed both in United States currency and as an
28 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.

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

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

5 Respondents violated section 23036(f), which prohibits excess charges and states:

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

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

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

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

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

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

28 (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.

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(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.

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

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

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

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

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

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

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

(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.

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

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

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

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

1 9. Dillingham certified as true and correct the Department’s questionnaire he completed for
2 Respondents in advance of the July 2006 examination. Dillingham did not disclose that
3 Respondents used collection efforts that included the DA’s Office, instead they reported they had
4 used a company, Legal Enforcement Procedures (“LEP”). (Respondents actually stopped using
5 LEP and later stated they were looking for another collection agency.) Nowhere in the
6 questionnaire did Respondent disclose that they had also referred non-sufficient funds (“NSF”)
7 checks to the DA’s Offices. Dillingham made additional untrue statements in the questionnaire.
8 For example, Respondents answered “NO” when asked if they transfer, sell or assigned any DDT to
9 an unaffiliated entity. When questioned what repayment methods do you use to collect payments
10 due Respondents did not mention of the DA’s Office.

11 10. Furthermore, at no time during the 2006 examination did Respondents disclose to
12 the Commissioner’s examiner that they had referred customers’ NSF checks to several county
13 District Attorneys (“DA”). Respondents’ bank had returned the customers’ checks unpaid due to
14 NSF. In fact, Respondents concealed information from the Department that they had referring
15 NSF returned checks to and received repayment of NSF checks from DAs.

16 11. Dillingham was aware of the prohibition against referring NSF checks to the DA’s
17 Office in view of his declarations made under penalty of perjury in his CDDTL application.
18 Dillingham agreed to comply with this CDDTL provision, but failed to do so.

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

27 (b) A customer who enters into a deferred deposit transaction and offers a personal
28 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.**

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

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

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

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

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

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

22 (8) Disclosure of any returned check charges.

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

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

27 (a) A fee for a deferred deposit transaction shall not exceed 15 percent of
28 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.

1 Section 23037 limits a licensee’s transactions and activities stating:

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

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

5 13. Despite the statutory prohibitions against prosecuting customers to collect the unpaid
6 amounts of deferred deposit transactions, the Respondents routinely filed complaints or crime
7 reports with DA offices in at least three counties in California. As direct result of the
8 Respondents’ false NSF and Bad Check Reports filed with DA’s offices Respondents’ customers
9 received from the DA’s Offices letters threatening customers with criminal prosecution if they
10 failed to make restitution in accordance with the DA’s NSF and Bad Check Programs.

11 14. Only after questioning by the Department’s examiner about the specific customers’
12 checks that were returned unpaid did Respondents admitted that they filed numerous NSF or Bad
13 Check Reports with DA’s Offices. Respondents consistently identified themselves as the
14 “victim” on each NSF or Bad Check Report filed with the Shasta, Tehama and Yuba County
15 DA’s Offices and certified that the “report is true, accurate and complete.” Each NSF and Bad
16 Check Report asks, either “Was there an agreement to hold this check?” or “AGREEMENT TO
17 HOLD?” In many cases Respondents falsely answered “NO,” rather than “YES” to the question.

18 15. During the Department’s subsequent examination in June 2007, the Department’s
19 examiner requested that Respondents provide books and records that documented details about
20 consumers’ NSF checks and amount recovered from the DA’s offices. In response, the
21 Respondents provided documents and bad check reports that indicate the following:
22 Scott Paul Dillingham dba A-1 Check Cashing of Anderson (File # 100-1476) referred twenty-nine
23 (29) NSF checks to the DA’s offices;
24 Scott Paul Dillingham dba A-1 Check Cashing of Red Bluff (File # 100-1477) referred sixty-one
25 (61) NSF checks to the DA’s offices;
26 Scott Paul Dillingham dba A-1 Check Cashing of Redding (File # 100-2392) referred twenty-four
27 (24) NSF checks to the DA’s offices; and,
28 Scott Paul Dillingham dba A-1 Check Cashing of Marysville (File # 100-2393) referred fifty-five

1 (55) NSF checks to the DA’s offices. In sum, the combined total number the Respondents referred
2 is 169 NSF checks.

3 16. Significantly, documents received from DA’s Offices about Respondents’ referrals and
4 recovery of funds involving NSF checks differ from the information Respondents provided to the
5 examiner in 2007.

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

10 18. Notwithstanding the Respondents’ distribution the statutory notice containing the
11 requisite disclosures to consumers before entering into written agreements, the Respondents’
12 actions contradicted their disclosures in their notices given to consumers, which renders their
13 notices and disclosures deceptive and misleading in violation of section 23037 (f).

14 19. Respondents’ written agreements with customers lacked all the necessary language
15 required by section 23035 (e) but it did contain language that customers cannot be criminally
16 prosecuting or threatening with criminal prosecution any customer to collect an unpaid deferred
17 deposit obligation. Respondents’ failure to operate in accordance with their written agreements
18 renders their written agreements with consumers deceptive and misleading and violates section
19 23037 (f).

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

24 21. DA Offices in several counties threatened Respondents consumers with prosecution
25 because their checks were returned NSF. Any claim that Respondents were unaware of the
26 prohibition against threatening prosecution lacks credibility for several reasons. First,
27 Respondents completed the CDDTL application and exhibits unequivocally stating that they had
28 obtain, read, was familiar with, understood and would comply with CDDTL. Second

1 Respondents filed a NSF Check Report for every NSF check with DA's that unmistakably states
2 the form must be completed **“for prosecution”**. Third, Respondents certified that this report is
3 true and accurate and complete. Fourth, Respondents were notified that “check will be retained
4 as evidence.” Fifth, Respondents acknowledged that the check in question is “pre criminal
5 prosecution . . . **If prosecution is not possible and you wish to pursue civil proceedings, this**
6 **check will be returned to you.”** Sixth, Respondents in completing multiple crime/ bad check
7 reports they filed with DA's falsely stated that there was no agreement to hold the NSF check,
8 which renders the check a promissory note and requires use of civil proceedings for the purpose
9 of collection. Lastly, Respondents were regularly informed by the DA's office on the status of
10 their investigation of Respondents' crime/bad check reports.

11 22. The letters to consumers from the Shasta DA's Office about NSF checks unequivocally
12 state:

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

17 23. Respondents also used other DA's Office, including Tehama and Yuba Counties to
18 collect funds from consumers. Respondents consistently identified themselves as the “victim” on
19 each NSF or Bad Check Report filed in the Shasta, Tehama and Yuba County DA's Offices and
20 certified that the “report is true, accurate and complete.” As mentioned above each NSF and
21 Bad Check Report filed with the Yuba County DA's Office falsely stated there was no agreement
22 to hold this check. Again this Court may take official notice of Penal Code sections 148.5 and
23 72.

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

27 25. Respondents stated in 2007 that they ceased referrals to DA's Office to collect NSF
28 checks. Yet, Dillingham signed Respondents' CDDTL application under penalty of perjury in May

1 2003 that that he read, understood and would comply with the CDDTL. Thus, Respondents did not
2 comply in 2003 as they represented they would with the CDDTL.

3 26. During the examination in 2007 in addition to discovering that Respondents had
4 provided false information to the Department about how they conducted their CDDTL business it
5 was evident that they are not maintaining their books and records in a manner that will permit an
6 examiner to review and reconcile Respondents' CDDTL records, a violation of section 23024 and
7 the California Code of Regulations 2025. Respondents' records produced for the customers' NSF
8 referred to the DA's Office is inconsistent with records from the DA's Offices. For example,
9 there's a discrepancy on the total number of checks referred to the Yuba County DA's office and
10 total number of checks recovered by DA's office when information from the DA is compared with
11 records provided by Respondents. These discrepancies may potentially change the number of
12 actual transactions in violation of the CDDTL. Thus, Respondents' failed to accurately maintain
13 customers' records on a regular basis to enable an examiner could determine the remaining balances
14 of a customer's account, in particular those involving NSF checks.

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

26 27. Notwithstanding Respondents' statements under penalty of perjury they would comply
27 with the CDDTL, they engaged in violations of the following sections: 23024, 23027, 23035;
28 23036, 23037 and California Code of Regulations, title 10, section 2025.

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

10 30. Dillingham is well aware of state regulation of payday lenders and the deferred
11 deposit transaction industry. In April 2001 the Department of Consumer and Business Services in
12 Salem, Oregon contacted Dillingham to advise him that Oregon required his business to be
13 licensed and regulated and that he should cease unlicensed activity or be subject to civil penalties.
14 This agency provided Dillingham with an application for an Oregon license. However, Dillingham
15 refused to become license. As a result the Oregon Department of Justice pursued the matter and
16 Scott P. Dillingham dba A-1 Check Cashing/Roseway signed “Consent to Entry of a Cease and
17 Desist Order and Agreement to Refund Interest” on March 7, 2002. The action taken by Oregon
18 provided grounds to deny Respondents’ license application pursuant to section 23011.1

19 31. According to Section 23026 and California Code of Regulations, title 10, section
20 2030 each licensee shall file an annual report with the Commissioner. A review of Respondents’
21 2005 annual report shows that during 2005 they made loans over \$3,870,924 that consisted of
22 14,501 transactions with 1,887 customers. Respondents’ annual reports reflect they have many
23 repeat customers and Respondents’ revenue was over \$550,000 in 2005, and over \$600,000 in
24 both 2006 and 2007. It is evident that because some consumers have limited incomes, receive
25 social security payments or are disabled they require numerous cash advances throughout the
26 year for which they pay approximately 400% to Respondents for every one of these transactions.

27 32. On October 30, 2007, the Commissioner issued a Desist and Refrain Order, Citations
28 and Voiding Deferred Deposit Transactions to Respondents and they timely requested a hearing.

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II

DEFERRED DEPOSIT TRANSACTION LAW

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

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

Each licensee shall keep and use books, accounts, and records that will enable the commissioner to determine if the licensee is complying with the provisions of this division and with the rules and regulations promulgated by the commissioner. Each licensee shall maintain any other records as required by the commissioner. The commissioner or a designee of the commissioner may examine those records at any reasonable time. Upon the request of the commissioner, a licensee shall file an authorization for disclosure of financial records of the licensed businesses pursuant to Section 7473 of the Government Code. All records shall be kept for two years following the last entry on a deferred deposit transaction and shall 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: . . .

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(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: . . .

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

4 III

5 RESPONDENTS’ DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

6 38. Prior to the 2006 examination Respondents answered and returned a completed
7 questionnaire to the Department that included information about whether it uses an outside
8 collection service. Respondents failed to disclose on their returned questionnaire that they had
9 used the DA’s Office to performing collection.

10 39. When questioned by the Commissioner’s representative about the NSF checks,
11 Respondents stated that they filed complaints about their customers’ NSF checks with the Office
12 of the District Attorney (“DA”) in several counties in accordance with the DA’s Bad Check
13 Program. Respondents’ complaints filed with the DA’s Office about NSF checks require
14 declaring under penalty of perjury the reports are true and correct. Respondents filed at least 169
15 reports about NSF checks under penalty of perjury with DA’s Offices.

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

19 41. Each customer whose NSF checks that are processed by the Bad Check Program are
20 also assessed various fees including but not limited to the following: \$35 administrative fee, a
21 \$60 diversion fee and a \$3 NSF fee. The total fees ranged from \$80-\$88 among counties.

22 42. On May 21, 2007, during the on site examination the Commissioner’s examiner
23 requested that Respondents provide books and records that documented details about the NSF
24 consumers checks they received and amount recovered. In response Respondents provided
25 information that revealed Respondents had sent at least 169 checks to the DA’s Office in 2005.

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

28 44. Respondents were not operating in accordance with their unqualified representations
in their notices given to consumers. Respondents’ actions contradicted the disclosure in the

1 written notice rendering it false and misleading. Respondents were not operating in accordance
2 with their written agreements, thus also rendering Respondents' written agreements with
3 consumers false and misleading.

4 45. Respondents' specific violations include the following CDDTL sections: 23024,
5 23027, 23035, 23036, 23037 and California Code of Regulations section 2025. For at least 169 of
6 Respondents' violations discovered during the Department's regulatory examination and review
7 of records, the Commissioner is issuing Citations 1 through 169, inclusive. The Citations are
8 being issued for false and misleading transactions with the 169 consumers

9 IV

10 DESIST AND REFRAIN ORDER

11 46. Respondents failed to make the required disclosure in advertisements and to post proper
12 notices to inform consumers of their rights and protections under California law in violation of the
13 requirements found in section 23027, 23035. Respondents have violated sections 23024 and 23036
14 and California Code of Regulations section 2025 by failing to keep accurate records and by
15 overcharging consumers. Furthermore, Respondents have also engaged in deceptive and misleading
16 deferred deposit transactions in violation of the section 23037. Section 23050 provides in part:

17 Whenever, in the opinion of the commissioner, any person is engaged in
18 the business of deferred deposit transactions, as defined in this division,
19 without a license from the commissioner, or any licensee is violating any
20 provision of this division, the commissioner may order that person or
21 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.

22 Pursuant to section 23050, Respondents were ordered to desist and refrain from the CDDTL for
23 violations of sections 23035 and 223037. However, Respondents have violated sections 23024,
24 23027, 23036 and the California code of Regulations, title 10 section 2025, in addition to
25 violating sections 23035 and 23037. Therefore, a Desist and Refrain Order for all the foregoing
26 sections is necessary for the protection of consumers and consistent with the purposes, policies
27 and provisions of the CDDTL. The Commissioner seeks amendment to and affirmation of the
28 Desist and Refrain Order.

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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.

48. Pursuant to section 23058, Respondents were ordered to pay to the Commissioner an administrative penalty of two thousand five hundred dollars (\$2,500) for 169 citations for the total amount of two hundred forty five thousand dollars (\$422,500). When applying for a CDDTL license Respondents were required to file a financial statement in accordance with Generally Accepted Accounting Principles (GAAP). Respondents have the adequate net worth as required by statute and they have the ability to pay citations.

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 169 consumers. The Commissioner seeks to void Respondents’ transactions with 169 consumers and order the return of the consumers’ funds obtained from the DA’s office in the amount of at least \$13,989.83.

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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 169 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' customers. The amount of restitution would include at least \$13,989.83 that Respondents received for these transactions received from the DA's Office and return of fees consumers paid the DA's Office for collection.

VII

COMMISSISONER'S AUTHORITY TO SUSPEND RESPONDENTS' CDDTL LICENSE

53. The Commissioner issues CDDTL licenses based on the information and sworn declarations provided by an applicant. The declarations state: (1) the information is truthful, (2) that the persons owning the applicant have not committed any act involving dishonesty, fraud, or deceit or violated any applicable provisions of the Financial Code; (3) the applicant will comply with the CDDTL and with all federal and state laws. Respondents' application contains untrue statements of material fact in that they did not comply with the CDDTL.

54. It appears that Respondents' actions involve both dishonesty and deceit as well as violations of provisions of federal and state law. The Commissioner had authority to deny licensure to Respondents in view of the enforcement action taken by the Oregon Department of Justice relating to Respondents' unlicensed deferred deposit activities and refusal to apply for a license.

1 Pursuant to section 23011, subdivisions (a)(1), (a)(2)(b) and (a)(3), the Commissioner would have
2 refused to issue Respondents a license if he knew their application was false, or that Respondents
3 would conduct their CDDTL business in a fraudulent manner or violate the CDDTL.

4 55. Section 23052 states the grounds for suspension of a CDDTL license:

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

8 (a) The licensee has failed to comply with any demand, ruling, or
9 requirement of the commissioner made pursuant to and within the
10 authority of this division.

11 (b) The licensee has violated any provision of this division or any
12 rule or regulation made by the commissioner under and within
13 the authority of this division.

14 (c) A fact or condition exists that, if it had existed at the time of the
15 original application for the license, reasonably would have warranted
16 the commissioner in refusing to issue the license originally.

17 56. Respondents have others sources of income in addition to the CDDTL business. As just
18 one example, Respondents also do business as a check casher. Additionally, Dillingham has
19 significant financial resources, was previously employed in a different industry and is still
20 employable such that the suspension would not by any means deprive Dillingham of a livelihood.

21 CONCLUSION

22 Respondents' were aware of requirements imposed on the deferred deposit industry both
23 in California and other states such as Oregon by reason of the CDDTL application process and
24 the prior regulatory action taken against Dillingham by Oregon Department of Justice. From
25 January 1, 2005 until at least July 2006 Respondents' consumers were not provided with the
26 proper disclosure in advertisements, proper disclosures in signage, notices and agreements, even
27 though these requirements were brought to Respondents' attention during the application
28 process. Respondents' omitted providing information their collection efforts via referrals to the
DA's Office on their questionnaire and they also failed to disclose it to the Department
examiner in July 2006.

1 Further, Respondents records of NSF checks referred to the DA’s Offices and the
2 amounts recovered by them are inconsistent with DA’s records and the amount of additional
3 fees consumers were charged. Attempts to accurately determine the number of NSF checks
4 referred and recovered and reconcile the accounts is not readily possible as a result of
5 Respondents’ deficient record keeping system. Complainant finds, due to the foregoing, that
6 Respondents filed an untrue application and violated sections 23024, 23027, 23035, 23036 and
7 23037 as well as the California Code of Regulations section 2025.

8 The Commissioner believes to prevent future violations and protect the public a Desist
9 and Refrain Order prohibiting violations of sections 23024, 23027, 23035, 23036 and 23037 as
10 well as the California Code of Regulations section 2025 and one year suspension of
11 Respondents’ four CDDTL licenses are warranted. Respondents have other sources of income
12 may continue to do business as a check casher.

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

16 Additionally, Respondents’ crime/bad check reports filed with the DA’s offices were
17 required to be true and accurate concerning whether there was an agreement to hold the check
18 and the amount due to Respondents. The amount of the transactions for which Respondents
19 received recovered funds should be voided and at least \$13,989.83 plus indirect fees charged for
20 their transactions through the DA’s office should be reimbursed to compensate consumers and
21 ameliorate the damages suffered by them.

22 Pursuant to sections 23050, 23052, 23058 and 23060, respectively, the Commissioner is
23 justified in issuing a Desist and Refrain Order and 169 citations to Respondents, and justified in
24 voiding the 169 transactions and suspending Respondents’ CDDTL license for a year.

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WHEREFORE, Complainant, the California Corporations Commissioner prays that

- a. Respondents, Scott Paul Dillingham doing business as A-1 Check Cashing, be ordered to pay to the Commissioner an administrative penalty in the total amount of four hundred twenty-two thousand five hundred dollars (\$422,500) for the above Citations 1 though 169, inclusive within thirty days from the date set forth below;
- b. Respondents, Scott Paul Dillingham doing business as A-1 Check Cashing, pursuant to Financial Code section 23060, be ordered to pay restitution to the California consumers the total amount of at least thirteen thousand nine hundred eighty nine dollars and eighty three cents (\$13,989.83) for the above-described violations; and,
- c. A Desist and Refrain Order to Respondents, Scott Paul Dillingham doing business as A-1 Check Cashing, be issued and affirmed pursuant to Financial Code section 23050, be affirmed for the above-described violations; and,
- d. The deferred deposit transaction license of Respondents, Scott Paul Dillingham doing business as A-1 Check Cashing, be suspended for one year pursuant to Financial Code section 23052.

Dated: February 27, 2008
San Francisco, California

Respectfully submitted,

PRESTON DuFAUCHARD
California Corporations Commissioner

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