

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
3 ALAN S. WEINGER (CA BAR NO. 86717)
Lead Corporations Counsel
4 JOAN E. KERST (CA BAR NO. 123351)
Senior Corporations Counsel
5 Department of Corporations
6 71 Stevenson Street, Ste. 2100
7 San Francisco, California 94102
8 Telephone: (415) 972-5847
9 Facsimile: (415) 972-8550
Attorneys for Complainant

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

12 In the Matter of the Accusation of)
13 THE CALIFORNIA CORPORATIONS) File No.: 100-2332
COMMISSIONER,)
14) ACCUSATION
15 Complainant,)
16 vs.)
17 James Yarbrough and Janet Applegarth-Yarbrough,)
18 doing business as Cash It Now,)
19 Respondents.)

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

22 INTRODUCTION

23 On December 31, 2004, the Commissioner of the Department of Corporations
24 (“Department”) issued to Respondents, James Yarbrough and Janet Applegarth-Yarbrough, doing
25 business as Cash It Now, a deferred deposit transaction originator license (File No. 100-2332)
26 pursuant to the California Deferred Deposit Transaction Law (“CDDTL”) set forth in California
27 Financial Code section 23000 et seq. (All future references to sections are to the California
28 Financial Code unless indicated otherwise.)

ACCUSATION

1 Respondents violated numerous provisions of the CDDTL rules and regulations thereunder.
2 If the Commissioner had known Respondents were going to engage in a scheme involving multiple
3 instances of fraudulent conduct, the Commissioner would have denied a license to Respondents. In
4 view of the extent, nature and duration of violations the Commissioner believes it in the best
5 interests of the public to revoke Respondents’ CDDTL license pursuant to section 23052. The
6 Commissioner also seeks to issue 98 citations in the amount of \$2,500 per citation and an order
7 voiding 98 loans totaling at least \$26,572.50 made by Respondents, pursuant to sections 23058 and
8 23060, respectively.

9 I

10 FACTUAL BACKGROUND

11 1. The Department is responsible for enforcing provisions of the CDDTL and authorized
12 to pursue administrative actions and remedies against licensees who engage in violations of the
13 CDDTL.

14 2. Respondents, James Yarbrough and Janet Applegarth-Yarbrough are individuals who
15 organized a general partnership in July 1, 2004. Later James Yarbrough and Janet Applegarth-
16 Yarbrough as registrants filed in Shasta County, California various documents for their fictitious
17 business name, “Cash It Now.” During all relevant times, James Yarbrough and Janet
18 Applegarth-Yarbrough were the owners of the CDDTL business that used their fictitious business
19 name and was located at 2664 Gateway Drive, Anderson, California. There is such a unity of
20 interest, ownership, dominion and control of the business Cash it Now by James Yarbrough and
21 Janet Applegarth-Yarbrough that any entity they formed should be disregarded. All the foregoing
22 will be referred to as “Respondents,” except where a specific name or designation is relevant.

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

25 4. A deferred deposit transaction is a written transaction whereby one person gives funds
26 to another person upon receipt of a personal check along with an agreement that the personal
27 check shall not be deposited until a later date. These transactions are also referred to as “payday
28 advances” or “payday loans.”

1 5. In December 2003 Respondents filed with the Department a false application for a
2 license to make deferred deposit transactions and included a Declaration, designated as “Exhibit K”
3 to the application. On behalf of the applicant James Yarbrough stated under penalty of perjury:

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

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

11 Respondents’ Declaration to the application signed by James Yarbrough states that “by signing this
12 declaration” “the applicant hereby agrees (or attests) or declares understanding of the following:”

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

6. Respondents were required and did complete another Declaration designated as “Exhibit L” to the application, which James Yarbrough signed under penalty of perjury stating:

1. 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).)

7. Both James Yarbrough and Janet Applearth-Yarbrough were listed in the CDDTL application as the persons who would be in charge of the place of business.

8. 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. . . .

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

9. Notwithstanding Respondents’ knowledge and multiple sworn declarations to comply with the requirements for licensure, they willfully and knowingly engaged in CDDTL violations. On April 20, 2007, the Commissioner’s examiner visited Respondents’ business location after giving the licensee written and oral advance notice of the Department’s examination.

10. In advance of a statutorily mandated examination each CDDTL licensee is required to complete and return a completed questionnaire to the Department. A licensee is to provide accurate information about whether it uses an outside collection service. Respondents completed and returned a questionnaire to the Department that contained false information about how they conducted their CDDTL business.

1 11. Before the Department’s on site examination the Commissioner’s representative
2 contacted Respondents by telephone in March 2007 and questioned them about customer checks
3 they received that were returned by financial institutions as unpaid because of non-sufficient
4 funds (“NSF”). Respondents stated to the Commissioner’s representative that the total number
5 of checks returned NSF during 2005 and 2006 were 12 and 30, respectively.

6 12. The Department examiner’s subsequent review of Respondents’ business reveals the
7 CDDTL violations described below warranting a revocation, penalties and restitution to consumers.

8 II

9 DEFERRED DEPOSIT TRANSACTION LAW

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(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. . . .

16. 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.

17. 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

18. Prior to the April 20, 2007, on site examination Respondents answered and returned a completed questionnaire to the Department that included information about whether it uses an outside collection service. Respondents falsely reported on their returned questionnaire that they were performing collection on their own transactions at their licensed location.

19. Also, in advance notice of the on site examination the Commissioner’s representative contacted Respondents by telephone in March 2007 and questioned them about checks they received that were returned for non-sufficient funds (“NSF”). Respondents stated to the Commissioner’s representative that the total number of checks returned NSF during 2005 and 2006 were 12 and 30, respectively.

20. 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 Shasta County in accordance with the DA’s Bad Check Program. The complaints filed with the DA’s Office about NSF checks require declaring under penalty of perjury that a complainant knows he or she is filing a criminal complaint. Respondents filed criminal complaints about NSF checks under penalty of perjury with the DA’s Office.

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

22. Each customer whose NSF checks that are processed by the Bad Check Program are also assessed the following: a \$35 administrative fee, a \$60 diversion fee and a \$3 NSF fee.

23. On April 20, 2007, during the on site examination the Commissioner’s examiner requested that Respondents provide books and records that documented details about the NSF consumers checks they received and amount recovered. In response Respondents provided a log, containing loan information about the bad debt/unpaid loans that revealed Respondents had sent

1 118 checks to the DA's Office in 2005, 137 in 2006 and 60 during the period January to April
2 20, 2007.

3 24. Respondents' information concerning NSF checks was inconsistent with information
4 provided in their Annual Report required and filed pursuant to section 23026. Respondents'
5 2005 annual report unequivocally states that the total number of returned checks totaled 106.
6 Respondents' 2006 annual report states the total number of returned checks totaled 178.

7 25. Thus, when comparing Respondents' annual report with Respondents' logs/
8 business records for the year 2005, a discrepancy of 12 loans or an over 11% is evident. For the
9 year 2006 when comparing the annual report with the log/business records, a discrepancy of 41,
10 or almost 30%, is apparent.

11 26. Further inconsistencies are evident when comparing other numbers of NSF checks
12 that Respondents reported before the examination, as show in paragraph 11, above. Specifically,
13 Respondents initially informed the Commissioner's representative there were 12 NSF checks
14 referred to the DA's Office in 2005 and 30 in 2006. However, Respondents' records for 2005,
15 2006 and 2007, respectively, show they referred 20, 53 and 25 NSF checks for a total of 98 to the
16 DA's Office.

17 27. In accordance with the Bad Check Program, consumers were charged additional fees
18 totaling \$83, as described in paragraph 22, above. Consequently, Respondents violated section
19 23036, subdivisions (e) and (f), due to the charging of excessive and unauthorized fees.

20 28. Although the licensee posted the required notice pursuant to section 23035,
21 subdivision (d) they were not operating in accordance with their unqualified representations to
22 the public. Respondents' actions contradicted the disclosure rendering the disclosure false and
23 misleading. Similarly, the licensee's written agreement contained all the required disclosures
24 required by violation of 23035, subdivision (e) but the licensee did not operate in accordance
25 with the written agreement rendering the agreements with consumers false and misleading.

26 29. Respondents' specific violations include the following CDDTL sections: 23024, 23036,
27 subdivisions (a), (e) and (f), and 23037, subdivision (f). For at least 98 of Respondents' violations
28 discovered during the Department's regulatory examination and review of records, the

1 Commissioner is issuing Citations 1 through 98, inclusive. The Citations are being issued for false
2 and misleading transactions with the 98 consumers shown in Exhibit A.

3 IV

4 COMMISSISONER’S AUTHORITY TO ISSUE CITATIONS

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

6 (a) If, upon inspection, examination or investigation, based upon a
7 complaint or otherwise, the department has cause to believe that a person
8 is engaged in the business of deferred deposit transactions without a
9 license, or a licensee or person is violating any provision of this division
10 or any rule or order thereunder, the department may issue a citation to that
11 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). . .

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

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

17 (e) After the exhaustion of the review procedures provided for in this
18 section, the department may apply to the appropriate superior court for a
19 judgment in the amount of the administrative penalty and order
20 compelling the cited person to comply with the order of the department.
21 The application, which shall include a certified copy of the final order of
the department, shall constitute a sufficient showing to warrant the
issuance of the judgment and order.

22 CITATIONS

23 31. Pursuant to Financial Code section 23058, Respondents are hereby ordered to pay to
24 the Commissioner within 30 days from the date of these Citations an administrative penalty of
25 two thousand five hundred dollars (\$2,500) for 98 citations for the total amount of two hundred
26 forty five thousand dollars (\$245,000).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V

COMMISSISONER’S AUTHORITY TO VOID TRANSACTIONS

32. Respondents willfully violated sections 23024, 23036 and 23037 of the CDDTL by failing to maintain accurate books and records as required, by charging excessive or unauthorized fees and by entering into fraudulent deferred deposit transactions with at least ninety-eight (98) consumers. The amount of the fraudulent transactions total at least \$26,572.50. Therefore, the Commissioner seeks to void Respondents’ transactions with 98 consumers and order the return of the consumers’ funds in an amount that aggregates at least \$26,572.50.

33. California Financial Code section 23060 states:

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

(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.

ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS

34. Pursuant to California Financial Code section 23060 the above described deferred deposit transactions for the ninety-eight consumers totaling at least \$26,572.50 are declared void.

35. Further, Respondents have no right to collect or receive any amount provided in the deferred deposit transactions or any charges or fees in connection with these consumer transactions and are hereby ordered to immediately return any amount and all charges and fees Respondents received for these transactions.

VI

COMMISSISONER’S AUTHORITY TO REVOKE RESPONDENTS’ CDDTL LICENSE

36. The Commissioner issues licenses based on the information and sworn declarations provided by an applicant that the information contained therein is truthful and that the persons owning the applicant have not committed any act involving dishonesty, fraud, or deceit or

1 violated any applicable provisions of the Financial Code. Respondents’ application contains
2 false statements of material fact. Moreover, Respondents have committed acts involving
3 dishonest, fraud or deceit and have engaged in numerous violations of provisions of the CDDTL.
4 Pursuant to section 23011, subdivisions (a)(1), (a)(2)(b) and (a)(3), the Commissioner would
5 have refused to issue Respondents a license if he knew Respondents’ application was false, or
6 that Respondents would conduct their CDDTL business in a fraudulent manner or violate the
7 CDDTL.

8 37. Section 23052 states the grounds for revocation of a CDDTL license:

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

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

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

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

21 CONCLUSION

22 Complainant finds, due to the foregoing, that Respondents filed a false application and
23 violated sections 23024, 23036 and 23037. Therefore, the Commissioner is justified in issuing 98
24 citations to Respondents, voiding the 98 transactions and revoking Respondents’ California deferred
25 deposit transaction license, pursuant to sections 23052, 23058 and 23060, respectively.

26 WHEREFORE, Complainant, the California Corporations Commissioner prays that

- 27 a. Respondents, James Yarbrough and Janet Applegarth-Yarbrough, doing
28 business as Cash It Now, be ordered to pay to the Commissioner an
administrative penalty in the total amount of two hundred forty five
thousand dollars (\$245,000) for the above Citations 1 though 98, inclusive
within thirty days from the date set forth below;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- b. Respondents, James Yarbrough and Janet Applegarth-Yarbrough, doing business as Cash It Now, pursuant to Financial Code section 23060, be ordered to pay restitution to the California consumers the total amount of twenty six thousand dollars five hundred seventy two dollars and fifty cents (\$26,572.50) for the above-described violations; and,
- c. The deferred deposit transaction license of Respondents, James Yarbrough and Janet Applegarth-Yarbrough, doing business as Cash It Now be revoked pursuant to Financial Code section 23052.

Dated: October 25, 2007
San Francisco, California

Respectfully submitted,

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____

Joan E. Kerst
Senior Corporations Counsel
Attorney for Complainant