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

TO: Michael Alan Dillingham dba A-1 Check Cashing and Payday Cash Advance
(File # 100-0916)
117 A South Orchard Ave.
Ukiah, CA 95482

Michael Alan Dillingham dba A-1 Check Cashing and Payday Cash Advance
(File # 100-0917)
1726-H South Main St.
Willits, CA 95490

Michael Alan Dillingham dba A-1 Check Cashing
(File # 100-0918)
3220 Broadway Unit A-9
Eureka, CA 95501

Michael Alan Dillingham dba A-1 Check Cashing
(File # 100-2647)
120 Main Street, Suite D
Woodland, CA 95695

Michael Alan Dillingham dba A-1 Check Cashing
(File # 100-2648)
1494 Bridge St. Suite A
Yuba City, CA 95993

DESIST AND REFRAIN ORDER

(For violations of California Financial Code sections 23035, 23036 and 23037)

CITATIONS

(California Financial Code section 23058)

ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS

(California Financial Code section 23060)

The California Corporations Commissioner (“Commissioner”) finds that:

1. The California Department of Corporations (“Department”) is responsible for

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

4 2. In 2004 and 2005 the Commissioner issued a CDDTL license to each of the
5 following:

6 Michael Alan Dillingham dba A-1 Check Cashing and Payday Cash Advance
7 (File # 100-0916)

8 Michael Alan Dillingham dba A-1 Check Cashing and Payday Cash Advance
9 (File # 100-0917)

10 Michael Alan Dillingham dba A-1 Check Cashing (File # 100-0918)

11 Michael Alan Dillingham dba A-1 Check Cashing (File # 100-2647)

12 Michael Alan Dillingham dba A-1 Check Cashing (File #100-2648)

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14 3. Michael Alan Dillingham, an individual and owner of the above-described
15 businesses, during all relevant times, operated his businesses under their respective business
16 names. There is such a unity of interest, ownership, dominion and control of the foregoing
17 businesses by Michael Alan Dillingham that any separation between them should be disregarded
18 and hereinafter all the foregoing are referred to as the “Licensees.”

19 4. Since January 1, 2005, the Department’s Licensees engaged in the business of
20 deferred deposit transactions by offering, originating and making deferred deposit transactions.

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

25 6. The Licensees had knowledge of the CDDTL and had sworn declarations in which
26 they represented that they would comply with all provisions of the CDDTL and other laws.
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1 7. After giving advance written and oral notice of the Department’s scheduled
2 regulatory examination, the Department’s examiner visited the Licensees’ business locations.
3 Notwithstanding their sworn declarations to comply with the CDDTL, the Licensees willfully and
4 knowingly engaged in CDDTL violations, as the Department’s examiner discovered during the
5 regulatory examinations conducted in 2007.

6 8. Licensees are required to comply with all CDDTL requirements and are prohibited
7 from prosecuting or threatening to prosecute any customer in a criminal action for failure to
8 comply with the terms of the agreement for the deferred deposit transaction.

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

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

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

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

20 (6) That the check is being negotiated as part of a deferred
21 deposit transaction made pursuant to Section 23035 of the
22 Financial Code and is not subject to the provisions of Section
23 1719 of the Civil Code. No customer may be required to pay
24 treble damages if this check does not clear.

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

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

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

(8) Disclosure of any returned check charges.

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

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

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

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

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

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

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

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

12. Despite the statutory prohibitions against prosecuting customers to collect the unpaid amounts of deferred deposit transactions, the Licensees routinely filed complaint or crime reports with District Attorney (“DA”) offices in at least four counties (Yolo, Sutter, Humboldt and Mendocino) in California in violation of Financial Code section 23035(b).

1 13. When questioned by the Department’s examiner about the specific customers’
2 checks that were returned unpaid to the Licensees due to non-sufficient funds (“NSF”), the
3 Licensees admitted that they filed numerous NSF or Bad Check Reports about their customers’
4 NSF checks in accordance with the each DA’s Bad Check or restitution program.

5 14. As a direct result of the Licensees’ NSF and Bad Check Reports filed with DA’s
6 offices the Licensees’ customers received from the DA’s Offices letters threatening customers with
7 criminal prosecution if they failed to make restitution in accordance with the DA’s NSF and Bad
8 Check Programs.

9 15. During the Department’s examination in July, 2007, the Department’s examiner
10 requested that Licensees provide books and records that documented details about consumers’
11 NSF checks and amount recovered from the DA’s offices. In response, the Licensees provided
12 documents and bad check reports that substantiate the following:

13 Michael Alan Dillingham dba A-1 Check Cashing and Payday Cash Advance (File # 100-
14 0916) at Ukiah, CA referred one (1) NSF check to the DA’s offices;

15 Michael Alan Dillingham dba A-1 Check Cashing and Payday Cash Advance (File # 100-
16 0917) at Willits, CA referred fifteen (15) NSF checks to the DA’s offices;

17 Michael Alan Dillingham dba A-1 Check Cashing (File # 100-0918) at Eureka, CA referred
18 twenty-three (23) checks to the DA’s offices;

19 Michael Alan Dillingham dba A-1 Check Cashing (File # 100-2647) at Woodland, CA
20 referred thirty-two (32) checks to the DA’s offices;

21 Michael Alan Dillingham dba A-1 Check Cashing (File # 100-2648) at Yuba City, CA
22 referred thirty-seven (37) checks to the DA’s offices.

23 In sum, the combined total number the Licensees referred is 108 NSF checks.

24 16. As a direct result of the Licensees’ false NSF and Bad Check Reports filed with
25 DA’s offices the Licensee’ customers received from the DA’s Offices letters threatening customers
26 with criminal prosecution if they failed to make restitution in accordance with the DA’s bad check
27 program.

1 for the protection of consumers and consistent with the purposes, policies and provisions of the
2 CDDTL. This Order shall remain in full force and effect until further order of the
3 Commissioner.

4 **CITATIONS**

5 The Department discovered at least 108 violations during the 2007 CDDTL examination
6 involving deferred deposit transactions with consumers identified by the Licensees. As a result,
7 the Commissioner is issuing Citations 1 through 108, inclusive for the 108 violations that involve
8 deceptive and misleading transactions with customers.

9 Financial Code section 23058 gives the Commissioner’s authority to issue citations for
10 CDDTL violations stating:

11 (a) If, upon inspection, examination or investigation, based upon a
12 complaint or otherwise, the department has cause to believe that a person
13 is engaged in the business of deferred deposit transactions without a
14 license, or a licensee or person is violating any provision of this division
15 or any rule or order thereunder, the department may issue a citation to that
16 person in writing, describing with particularity the basis of the citation.
17 Each citation may contain an order to desist and refrain and an assessment
18 of an administrative penalty not to exceed two thousand five hundred
19 dollars (\$ 2,500). All penalties collected under this section shall be
20 deposited in the State Corporations Fund.

21 (b) The sanctions authorized under this section shall be separate from, and
22 in addition to, all other administrative, civil, or criminal remedies.

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

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

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

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2 Pursuant to Financial Code section 23058, the Licensees are hereby ordered to pay to the
3 Commissioner within 30 days from the date of this Order, as shown below, for these Citations,
4 an administrative penalty of two thousand five hundred dollars (\$2,500) for each of the 108
5 citations for the total amount of two hundred and seventy-thousand dollars (\$270,000).

6 **ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS**

7 The Licensees willfully violated Financial Code sections 23035, 23036 and 23037 of the
8 CDDTL by engaging in deceptive and misleading deferred deposit transactions with at
9 least 108 California consumers. The sum of money involved in the deceptive and
10 misleading deferred deposit transactions with these 108 consumers aggregates \$29,061.10
11 California Financial Code section 23060 states:

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

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

22 The Commissioner finds the Licensees willfully violated Financial Code sections 23035,
23 23036 and 23037. Pursuant to Financial Code section 23060 the Commissioner declares void
24 each of the Licensees' above described deferred deposit transactions with 108 consumers
25 identified by the Licensees.

26 The Commissioner finds the Licensees have no right to collect or receive any amount
27 provided in the deferred deposit transactions, any charges, or fees, charged directly or indirectly, in
28 connection with 108 deferred deposit transactions that total \$29,061.10, plus any fees collected as
"victim fees" on behalf of Licensees by a District Attorney's office pursuant to a referral by
Licensees to a District Attorney's Bad Check program. Pursuant to Financial Code section 23060
the Commissioner hereby orders the Licensees to forfeit and return all charges, fees and

1 other amounts collected or received in connection with the 108 deferred deposit transactions within
2 30 days from the date of this Order, as shown below.

3 Dated: January 22, 2008

4 Los Angeles, California

5 PRESTON DuFAUCHARD
6 California Corporations Commissioner

7 By _____
8 ALAN S. WEINGER
9 Lead Corporations Counsel
10 Enforcement Division
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