

1 MARY ANN SMITH  
Deputy Commissioner  
2 MIRANDA LEKANDER  
Assistant Chief Counsel  
3 LINDSAY B. HERRICK (State Bar No. 224986)  
Counsel  
4 Department of Business Oversight  
1515 K Street, Suite 200  
5 Sacramento, California 95814  
Telephone: (916) 445-3682  
6 Facsimile: (916) 445-6985  
7 Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
11 OF THE STATE OF CALIFORNIA

13	In the Matter of:	)	CDDTL LICENSE NO.: 100-3843
14	THE COMMISSIONER OF BUSINESS	)	ACCUSATION TO REVOKE CALIFORNIA
15	OVERSIGHT,	)	DEFERRED DEPOSIT TRANSACTION LAW
16	Complainant,	)	LICENSE PURSUANT TO FINANCIAL
17	v.	)	CODE SECTION 23052
18	GUY HONG HWANG doing business as	)	
19	CHECK IN CASH OUT,	)	
20	Respondent.	)	

21 The Commissioner of Business Oversight (Commissioner) finds as follows:

22 I.

23 INTRODUCTION

24 1. Respondent Guy Hong Hwang doing business as Check In Cash Out (Hwang) is a  
25 deferred deposit transaction originator licensed by the Commissioner pursuant to the California  
26 Deferred Deposit Transaction Law (CDDTL) (Fin. Code, § 23000 et seq). Hwang’s principal place  
27 of business is 1111 W. El Camino Real, #119, Sunnyvale, California 94807, and was previously  
28 located in “#121” at that address.

## II.

## STATEMENT OF FACTS

1  
2  
3           2.       On or about July 24, 2013, the Commissioner commenced a regulatory examination of  
4 Hwang's books and records and commenced a follow-up examination on August 1, 2014. The  
5 regulatory examinations revealed that Hwang is making deferred deposit transactions (DDTs),  
6 commonly referred to as "payday loans," but is failing to enter written agreements with borrowers  
7 that are in compliance with the CDDTL. In addition, Hwang is failing to maintain evidence of  
8 customer checks, making DDTs greater than \$300.00, failing to post the DDTs in customer history  
9 transaction records, holding customer checks for greater than 31 days, making multiple DDTs to the  
10 same customer at the same time, has charged an excess fee under CDDTL, and has filed small claim  
11 actions against customers for amounts that are prohibited under the CDDTL.

12           3.       Thereafter, a third regulatory examination was commenced on September 10, 2015, at  
13 which time it was discovered that Hwang began segregating his business records to separate  
14 transactions greater than \$300.00, claiming they were check cashing activities. On July 27, 2016, the  
15 Department took possession of Hwang's files for further examination and investigation. Review of  
16 Hwang's documents and further investigation by the Department confirmed Hwang's violations to be  
17 ongoing.

A.       Regulatory Examination

18  
19           4.       The books and records that were reviewed during the examinations revealed that  
20 Hwang was not entering written agreements with customers for DDTs as required under Financial  
21 Code section 23035 and also failed to provide the notices required under subsections (c) and (e) of  
22 that provision. Financial Code section 23035 provides in pertinent part:

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

25                   (1) Information about charges for deferred deposit transactions.

26                   (2) That if the customer's check is returned unpaid, the customer  
27 may be charged an additional fee of up to fifteen dollars (\$15).

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

1 or be threatened with prosecution.

2 (4) The department's toll-free telephone number for receiving calls  
3 regarding customer complaints and concerns.

4 (5) That the licensee may not accept any collateral in conjunction  
5 with a deferred deposit transaction.

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

11 . . .

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

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

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

23 (3) The name, address, and telephone number of the licensee.

24 (4) The customer's name and address.

25 (5) The date to which deposit of check has been deferred (due date).

26 (6) The payment plan, or extension, if applicable as allowed under  
27 subdivision (c) of Section 23036.

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

(8) Disclosure of any returned check charges.

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

(10) That the licensee cannot accept collateral in connection with  
the transaction.

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

(12) Signature space for the customer and signature of the licensee  
or authorized representative of the licensee and date of the  
transaction.

1 (13) Any other information that the commissioner shall deem  
2 necessary by regulation.

3 5. Hwang entered loan agreements in violation of the CDDTL with customers who were  
4 not provided the above-stated notices, for amounts greater than \$300.00, often for amounts into the  
5 thousands of dollars, and often required customers to agree to pay “treble damages” under Civil Code  
6 section 1719. Hwang then sued these customers for and/or recovered such damages in small claims  
7 lawsuits along with attorney fees or court costs.

8 6. Financial Code section 23035, subdivision (a) states in pertinent part:

9 A licensee may defer the deposit of a customer’s personal check for  
10 up to 31 days, pursuant to the provisions of this section. The face  
11 amount of the check shall not exceed three hundred dollars (\$300).  
12 Each deferred deposit transaction shall be made pursuant to a  
13 written agreement as described in subdivision (e) that has been  
14 signed by the customer and by the licensee or an authorized  
15 representative of the licensee.

16 7. Further, Financial Code section 23036 prohibits a licensee from recovering treble  
17 damages from a customer and provides in subdivision (d):

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

22 8. In addition, the regulatory examinations further disclosed that Hwang failed to  
23 maintain copies of customer deferred checks for a period of two years from the date of the last  
24 transaction as required by Financial Code section 23024 and California Code of Regulations, title 10,  
25 section 2025, subdivision (c)(1). Financial Code section 23024 provides in pertinent part:

26 Each licensee shall keep and use books, accounts, and records that  
27 will enable the commissioner to determine if the licensee is  
28 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...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.

9. California Code of Regulations, title 10, section 2025, subdivision (c)(1) provides in

1 pertinent part:

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

8 B. Follow-Up Examinations and Investigation

9 10. It was revealed during the follow-up examinations of Hwang and through additional  
10 investigation by the Department that, in addition to the violations noted above, Hwang was also  
11 making multiple DDTs for the same customer in violation of Financial Code section 23036,  
12 subdivision (c), and transactions were not being recorded in the customers' transaction history  
13 records in violation of Financial Code section 23024 and California Code of Regulations, title 10,  
14 section 2025, subdivision (c)(1).

15 11. Financial Code section 23036, subdivision (c) provides in pertinent part:

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

19 12. Hwang has also collected an excess fee in violation of Financial Code section 23036,  
20 subdivision (f), which states in pertinent part: "No amount in excess of the amounts authorized by the  
21 section shall be directly or indirectly charged by a licensee pursuant to a deferred deposit  
22 transaction." Here, for example, Hwang entered into a deferred deposit transaction with a customer  
23 for \$275.00, of which \$233.73 was financed with a \$41.25 finance charge. Hwang, however,  
24 collected from the customer \$280.00 for the \$275.00 transaction.

25 13. In addition, the follow-up examinations revealed that Hwang was entering loan  
26 agreements that were not in writing as required by Financial Code section 23035, subdivision (e).

27 14. The follow-up examinations and investigations by the Department also revealed that  
28 Hwang has a history of suing his customers in small claims court on the loan agreements in violation

1 of the CDDTL, including bringing lawsuits seeking or recovering treble damages, which also violates  
2 the CDDTL.

3 15. Financial Code section 23037, subdivision (f) states in pertinent part: “In no case shall  
4 a licensee do any of the following:... (f) Engage in any unfair, unlawful, or deceptive conduct, or  
5 make any statement that is likely to mislead in connection with the business of deferred deposit  
6 transactions.” Hwang’s practice of entering loan agreements with customers for amounts greater than  
7 \$300.00, which fail to provide the required notices, are made while there is already another loan  
8 agreement in effect with the same customer, and/or which require the customer to pay treble damages  
9 is unfair, unlawful or deceptive conduct in connection with the business of deferred deposit  
10 transactions.

11 16. In addition, Hwang failed to file with the Commissioner the annual report required  
12 under Financial Code section 23026 for 2016. Mr. Hwang was required to file the report no later  
13 than March 15, 2017.

14 III.

15 REVOCATION

16 17. Hwang’s violations of the CDDTL found by the Commissioner support the revocation  
17 of his California Deferred Deposit Transaction Law license. Financial Code section 23052 provides  
18 in pertinent part:

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

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

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

25 IV.

26 CONCLUSION

27 18. The Commissioner finds that, by reason of the foregoing, Guy Hong Hwang doing  
28 business as Check In Cash Out has violated Financial Code sections 23024, 23026, 23035,

1 subdivisions (a), (c) and (e), 23036, subdivisions (c), (d) and (f), 23037, subdivision (f) and  
2 California Code of Regulations, title 10, section 2025, which violations are grounds to revoke his  
3 California Deferred Deposit Transaction Law license.

4 **WHEREFORE**, notice is hereby given of the Commissioner's intention to issue an order  
5 revoking the California Deferred Deposit Transaction Law license of Guy Hong Hwang doing  
6 business as Check In Cash Out pursuant to Financial Code section 23052.

7 Dated: May 4, 2017  
8 Sacramento, California

JAN LYNN OWEN  
Commissioner of Business Oversight

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

By: \_\_\_\_\_  
Lindsay Herrick  
Counsel