

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

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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:)	OAH Case No.: 2017060113
14 THE COMMISSIONER OF BUSINESS)	CDDTL LICENSE NO.: 100-3843
15 OVERSIGHT,)	
16 Complainant,)	SETTLEMENT AGREEMENT
17 v.)	
18 GUY HONG HWANG doing business as)	Date: August 28-29, 2017
19 CHECK IN CASH OUT,)	Time: 9:00 a.m.
20 Respondent.)	Place: 1515 Clay Street, Suite 206 Oakland, California 94612

21 This Settlement Agreement is entered between the Department of Business Oversight
22 (Department) through the Commissioner of Business Oversight (Commissioner), on the one hand,
23 and Guy Hong Hwang, doing business as Check In Cash Out (Hwang) on the other hand (hereafter,
24 the Parties), and is based on the following:

25 RECITALS

26 A. Hwang is a deferred deposit transaction originator licensed by the Commissioner
27 pursuant to the California Deferred Deposit Transaction Law (CDDTL) (Fin. Code, § 23000 et seq).
28 Hwang’s principal place of business is 1111 W. El Camino Real, #119, Sunnyvale, California 94807,

1 and was previously located in “#121” at that address.

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

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

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

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

26 F. In addition, the regulatory examinations further disclosed that Hwang failed to
27 maintain copies of customer deferred checks for a period of two years from the date of the last
28 transaction as required by Financial Code section 23024 and California Code of Regulations, title 10,

1 section 2025, subdivision (c)(1).

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

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

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

16 J. The follow-up examinations and investigations by the Department also revealed that
17 Hwang has a history of suing his customers in small claims court on the loan agreements in violation
18 of the CDDTL, including bringing lawsuits seeking or recovering treble damages, which also violates
19 the CDDTL.

20 K. Hwang's practice of entering loan agreements with customers for amounts greater than
21 \$300.00, which fail to provide the required notices, are made while there is already another loan
22 agreement in effect with the same customer, and/or which require the customer to pay treble damages
23 is unfair, unlawful or deceptive conduct in connection with the business of deferred deposit
24 transactions, in violation of Financial Code section 23037, subdivision (f).

25 L. In addition, Hwang failed to file with the Commissioner the annual report required
26 under Financial Code section 23026 for 2016. Hwang was required to file the report no later than
27 March 15, 2017.

28 M. On May 4, 2017, the Commissioner issued an Accusation to Revoke California

1 Deferred Deposit Transaction Law License Pursuant to Financial Code Section 23052 (Accusation)
2 and an Order to Desist and Refrain Including Forfeiture of All Charges and Fees Pursuant to
3 Financial Code Sections 23050 and 23062 (Order) against Hwang.

4 N. On May 23, 2017, Hwang requested a hearing on the Accusation and Order. A two-
5 day administrative hearing on August 28-29, 2017 is currently pending with the Office of
6 Administrative Hearings, Oakland facility (administrative hearing).

7 O. It is the intention of the Parties to resolve these matters without the necessity of a
8 hearing and/or other litigation.

9 NOW THEREFORE, in consideration of the forgoing, and the terms and conditions set forth
10 herein, the Parties agree as follows.

11 TERMS AND CONDITIONS

12 1. Purpose. This Settlement Agreement is entered into for the purpose of judicial
13 economy and efficiency, and to avoid the expense of a hearing and possible other court proceedings.

14 2. Surrender of CDDTL License. The Commissioner agrees to accept the surrender of
15 Hwang’s California Deferred Deposit Transaction Law license upon the following conditions:

16 a. Finality of Orders. Hwang stipulates to the finality of the Order to Desist and Refrain
17 Including Forfeiture of All Charges and Fees Pursuant to Financial Code Sections 23050 and 23062
18 (Order) issued by the Commissioner on May 4, 2017, and further stipulates to the finality of the
19 Order directing Hwang to desist and refrain from further violating Financial Code sections 23024,
20 23026, 23035, subdivisions (a), (c) and (e), 23036, subdivisions (c), (d) and (f), 23037, subdivision
21 (f) and California Code of Regulations, title 10, section 2025, subdivision (c)(1).

22 b. Waiver of Hearing Rights. Hwang agrees to waive all rights to hearing, appeal, or
23 judicial review of the Accusation and Order which may be afforded under the CDDTL, the
24 Administrative Procedures Act (APA) (Gov. Code, § 11400 et seq.), the California Code of Civil
25 Procedure, or any other law; and by doing so, Hwang effectively withdraws his request for hearing on
26 the Accusation and Order.

27 c. Payment of Outstanding Dues and Fees. Hwang hereby agrees to pay the
28 Commissioner within 15 days from the Effective Date of this Settlement Agreement the sum of

1 \$3,000.00 as payment in full of the outstanding amounts owed to the Department stemming from his
2 CDDTL license including but not limited to examination costs pursuant to Financial Code section
3 23046.

4 3. Future Actions by the Commissioner. The Parties hereby acknowledge and agree that
5 this Settlement Agreement is intended to constitute a full, final and complete resolution of this matter.
6 The Parties further acknowledge and agree that nothing contained in this Settlement Agreement shall
7 operate to limit the Commissioner's ability to assist any other agency, (county, state or federal) with
8 any prosecution, administrative, civil or criminal, brought by any such agency against Hwang based
9 upon any of the subject matter hereof or otherwise. This Settlement Agreement shall not limit the
10 ability of the Commissioner to bring any administrative or civil action to enforce compliance with the
11 Order or to seek penalties for its violation. Further, the Commissioner reserves the right to bring any
12 future action(s) against Hwang or any of the managers, officers, directors, shareholders or employees
13 of Hwang for all unknown or future violations of the CDDTL.

14 4. Failure to Comply with Agreement. Hwang agrees that if he fails to meet any
15 requirement of this Settlement Agreement, the CDDTL license of Hwang shall be immediately
16 revoked. Hwang hereby waives any notice and hearing rights to contest the immediate revocation
17 which may be afforded under the CDDTL, the APA, the California Code of Civil Procedure, or any
18 other law.

19 5. Independent Legal Advice. Hwang represents, warrants, and agrees that he has had
20 the opportunity to seek independent advice from legal counsel and/or representative with respect to
21 the advisability of executing this Settlement Agreement.

22 6. No Other Representation. Each of the Parties represents, warrants, and agrees that in
23 executing this Settlement Agreement each has relied solely on the statements set forth herein and the
24 advice of its own counsel and/or representative. Each of the Parties further represents, warrants, and
25 agrees that in executing this Settlement Agreement it has placed no reliance on any statement,
26 representation, or promise of any other party, or any other person or entity not expressly set forth
27 herein, or upon the failure of any party or any other person or entity to make any statement,
28 representation or disclosure of anything whatsoever. The Parties have included this clause: (1) to

1 preclude any claim that any party was in any way fraudulently induced to execute this Settlement
2 Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
3 contradict the terms of this Settlement Agreement.

4 7. Modifications and Qualified Integration. No amendment, change or modification to
5 this Settlement Agreement shall be valid or binding to any extent unless it is in writing and signed by
6 all the parties affected by it.

7 8. Full Integration. This Settlement Agreement is the final written expression and the
8 complete and exclusive statement of all the agreements, conditions, promises, representations, and
9 covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or
10 contemporaneous agreements, negotiations, representations, understandings, and discussions between
11 and among the Parties, their respective representatives, and any other person or entity, with respect to
12 the subject matter covered hereby.

13 9. No Presumption from Drafting. In that the Parties have had the opportunity to draft,
14 review and edit the language of this Settlement Agreement, no presumption for or against any party
15 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
16 relating to, connected, to, or involving this Settlement Agreement. Accordingly, the Parties waive the
17 benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of
18 uncertainty, language of a contract should be interpreted most strongly against the party who caused
19 the uncertainty to exist.

20 10. Future License. If Hwang applies for any license, permit or qualification under the
21 Commissioner's current or future jurisdiction, or is the subject of any future action or action by the
22 Commissioner to enforce this Settlement Agreement, then the subject matter hereof shall be admitted
23 for the purpose of such application(s) or enforcement proceedings(s).

24 11. Counterparts. This Settlement Agreement may be executed in one or more
25 counterparts, each of which shall be an original but all of which, together, shall be deemed to
26 constitute a single document.

27 12. Terms, Headings and Governing Law. All terms used, but not defined herein, shall
28 have the meaning assigned to them by the CDDTL. The headings to the paragraphs of this

1 Settlement Agreement are inserted for convenience only and will not be deemed a part hereof or
2 affect the construction or interpretation of the provisions hereof. This Settlement Agreement shall be
3 construed and enforced in accordance with, and governed by, the laws of the State of California.

4 13. Authority for Settlement. Each party warrants and represents that such party is fully
5 entitled and duly authorized to enter and deliver this Settlement Agreement. In particular, and
6 without limiting the generality of the foregoing, each party warrants and represents that it is fully
7 entitled to enter the covenants, and undertake the obligations set forth herein.

8 14. Public Record. Hwang acknowledges that this Settlement Agreement and the Order
9 referenced herein are public records.

10 15. Voluntary Agreement. The Parties each represent and acknowledge that in executing
11 this Settlement Agreement, each does so completely voluntarily and without any duress or undue
12 influence of any kind from any source.

13 16. Effective Date: This Settlement Agreement shall become effective when executed by
14 the Commissioner or her designee and transmitted by electronic mail (email) to Hwang at
15 repro4989@gmail.com.

16 Dated: 8/11/17

JAN LYNN OWEN
Commissioner of Business Oversight

17
18
19 By:

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

20
21
22 Dated: 8/11/17

GUY HONG HWANG, doing business as
CHECK IN CASH OUT

23
24 By:

GUY HONG HWANG individually and on behalf of
CHECK IN CASH OUT