

1 PRESTON DUFAUCHARD  
California Corporations Commissioner  
2 ALAN S. WEINGER  
Deputy Commissioner  
3 MARISA I. URTEAGA-WATKINS (SBN236398)  
4 Corporations Counsel  
1515 K Street, Suite 200  
5 Sacramento, California 95814  
6 Telephone: (916) 445-9626  
Fax: (916) 445-6985

7  
8 Attorneys for Complainant

9  
10 BEFORE THE DEPARTMENT OF CORPORATIONS  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of the Accusation of THE )  
CALIFORNIA CORPORATIONS ) File No.: 100-3622  
13 COMMISSIONER, )  
) **SETTLEMENT AGREEMENT**  
14 Complainant, )  
)  
15 vs. )  
)  
16 GREGORY & LISA NESBITT dba IMC )  
17 POSTAL EXPRESS, )  
)  
18 Respondent. )  
19 )  
20 )

21 This Settlement Agreement (“Agreement”) is entered into by and between the Complainant,  
22 the California Corporations Commissioner (“Commissioner”), and Respondents Gregory and Lisa  
23 Nesbitt (“Nesbitt’s”) doing business as IMC POSTAL EXPRESS (“IMC”) (hereinafter collectively  
24 “the Parties”).

25 **RECITALS**

26 This Agreement is made with reference to the following facts:

27 A. IMC is the fictitious business name for a sole proprietorship owned by the Nesbitt’s.  
28 IMC has its principal place of business located at 25320 Madison Avenue, Suite A, Murrieta,

1 California, 92562.

2 B. The Nesbitt's are the sole proprietors of IMC and are authorized to enter into this  
3 Agreement on their own behalf.

4 C. The Nesbitt's hold license number 100-3622 from the Commissioner under the  
5 California Deferred Deposit Transaction Law ("CDDTL") pursuant to California Financial Code  
6 section 23005.

7 D. On June 10, 2010, the Commissioner issued to IMC a Notice of Intention to Issue  
8 Order to Revoke CDDTL License; Accusation, Citations, Desist and Refrain Order and Order  
9 Voiding Loans and accompanying documents (collectively, the "Notice"). Copies of the Notice are  
10 attached and incorporated herein as "Exhibit 1". IMC submitted an administrative hearing request  
11 concerning the Notice on June 28, 2010.

12 E. It is the intention of the Parties to resolve this matter without the necessity of an  
13 administrative hearing or any other litigation.

14 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set  
15 forth herein, the Parties agree as follows:

16 **TERMS AND CONDITIONS**

17 1. Purpose. This Agreement is entered into for the purpose of judicial economy and  
18 expediency.

19 2. Waiver of Hearing Rights. IMC and the Nesbitt's acknowledge their right to a hearing  
20 under the CDDTL, and hereby waives the right to any appeal, or other right to review, if any, which  
21 may be afforded pursuant to the CDDTL, the California Administrative Procedure Act, the California  
22 Code of Civil Procedure, or any other provision of law. By waiving such rights, IMC and the  
23 Nesbitt's consent to the Agreement as final.

24 3. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it has  
25 received or been advised to seek independent legal advice from an attorney with respect to the  
26 advisability of executing this Agreement. IMC and the Nesbitt's acknowledge that they have  
27 willingly and knowingly decided to not seek the advice of legal counsel prior to entering into this  
28 Agreement.

1           4. Admissions. IMC and the Nesbitt's admit the facts recited in the Notice for the purpose of  
2 this Agreement and any future proceeding(s) that may be initiated by or brought before the  
3 Commissioner against them. It is the intent and understanding between the Parties that this  
4 Agreement, and particularly the admissions of IMC and the Nesbitt's herein, shall not be binding  
5 against them in any action(s) with third parties.

6           5. Consent to Issuance of Order Revoking CDDTL License. In complete and final resolution  
7 of the matters and penalties owed set forth in the Notice, the Parties hereby agree to the immediate  
8 issuance by the Commissioner of a Final Order Revoking CDDTL license number 100-3622 pursuant  
9 to Financial Code section 23052 ("Revocation Order"). A true and correct copy of the Revocation  
10 Order is attached and incorporated herein as "Exhibit 2". This Revocation Order will preclude IMC  
11 and the Nesbitt's from engaging in any CDDTL activities beginning on the date the Revocation Order  
12 is issued. This Revocation Order does not preclude IMC and the Nesbitt's from engaging in pure  
13 collection activities that permit: (1) receipt of cash from customers for existing transactions entered  
14 into before the date of revocation, (2) forwarding any checks received from clients to a bank for  
15 deposit relating to transactions entered into before the date of revocation, (3) responding to regulatory  
16 inquiries from the Department of Corporations or other agencies, (4) making refunds to customers,  
17 and (5) otherwise responding to customer inquiries concerning existing transactions.

18           6. Withdraw Of Hearing Request. Also in complete and final resolution of the matters and  
19 penalties owed set forth in the Notice, the Parties hereby agree that IMC and the Nesbitt's shall  
20 withdraw their request for administrative hearing upon the execution of this Agreement.

21           7. Desist and Refrain Order. The Desist and Refrain Order previously issued to GREGORY  
22 & LISA NESBITT dba IMC POSTAL EXPRESS on June 10, 2010 is final and shall remain in full  
23 force and effect.

24           8. Future Actions by the Commissioner. The Commissioner reserves the right to bring any  
25 future actions against IMC, the Nesbitt's, or any of his partners, employees or successors for any and  
26 all unknown or future violations of the CDDTL. This Agreement shall not serve to exculpate IMC,  
27 the Nesbitt's, or any of its partners, employees or successors from liability for any and all unknown  
28 or future violations of the CDDTL. If it is found, after the execution of this Agreement, that IMC or

1 the Nesbitt's have at any time violated any provision of the California Financial Code, the  
2 Commissioner reserves the right to take further action against IMC and the Nesbitt's, including but  
3 not limited to, imposing penalties and requesting restitution of all CDDTL transactions originated in  
4 breach of this Agreement. IMC and the Nesbitt's acknowledge and agree that the Revocation Order  
5 provided for above in Paragraph 5 shall not be the exclusive remedy available to the Commissioner in  
6 pursuing future violations but may be sought and employed in addition to any other remedy available  
7 pursuant to the CDDTL.

8       9. Settlement Agreement Coverage. The Parties hereby acknowledge and agree that this  
9 Agreement is intended to constitute a full, final and complete resolution of the Notice referenced  
10 above in Paragraph D. The Parties further acknowledge and agree that nothing contained in this  
11 Agreement shall operate to limit the Commissioner's ability to assist any other agencies with any  
12 administrative, civil or criminal prosecution brought by any such agency against IMC and the  
13 Nesbitt's based upon any of the activities alleged in this matter or otherwise. This Agreement shall  
14 not become effective until signed and delivered by all Parties. Each of the Parties represents,  
15 warrants, and agrees that in executing this Agreement it has relied solely on the statements set forth  
16 herein and has placed no reliance on any statement, representation, or promise of any other party, or  
17 any other person or entity not expressly set forth herein, or upon the failure of any party or any other  
18 person or entity to make any statement, representation or disclosure of anything whatsoever. The  
19 Parties have included this clause: (1) to preclude any claim that any party was in any way  
20 fraudulently induced to execute this Agreement; and (2) to preclude the introduction of parol  
21 evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

22       10. Full Integration. This Agreement, including the attached Exhibits, is the final written  
23 expression and the complete and exclusive statement of all the Agreements, conditions, promises,  
24 representations, and covenants between the Parties with respect to the subject matter hereof, and  
25 supercedes all prior or contemporaneous Agreements, negotiations, representations, understandings,  
26 and discussions between and among the Parties, their respective representatives, and any other person  
27 or entity.

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1           11. No Presumption From Drafting. In that the Parties have had the opportunity to draft,  
2 review and edit the language of this Agreement, no presumption for or against any party arising out  
3 of drafting all or any part of this Agreement will be applied in any action relating to, connected, to, or  
4 involving this Agreement. Accordingly, the Parties waive the benefit of California Civil Code  
5 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language  
6 of a contract should be interpreted most strongly against the party who caused the uncertainty to  
7 exist.

8           12. Effective Date. This Agreement shall not become effective until signed by the Nesbitt's  
9 and IMC and delivered by all Parties. The Commissioner shall file this Agreement with the Office of  
10 Administrative Hearings five (5) business days after execution by all Parties.

11           13. Counterparts. This Agreement may be executed in any number of counterparts by the  
12 Parties and when each party has signed and delivered at least one such counterpart to the other party,  
13 each counterpart shall be deemed an original and taken together shall constitute one and the same  
14 Agreement.

15           14. Modifications and Qualified Integration. No amendment, change or modification of this  
16 Agreement shall be valid or binding to any extent unless it is in writing and signed by all of the  
17 Parties affected by it.

18           15. Headings and Governing Law. The headings to the paragraphs of this Agreement are  
19 inserted for convenience only and will not be deemed a part hereof or affect the construction or  
20 interpretation of the provisions hereof. This Agreement shall be construed and enforced in accordance  
21 with and governed by California law.

22           16. Authority For Settlement. Each party covenants that they possess all necessary capacity  
23 and authority to sign and enter into this Agreement. Each party warrants and represents that such party  
24 is fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and without  
25 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to  
26 enter into the covenants, and undertake the obligations set forth herein.  
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17. Public Record. IMC and the Nesbitt's acknowledge that this Agreement is a public record.

18. Voluntary Agreement. The Parties each represent and acknowledge that he or it is execution this Agreement completely voluntarily and without any duress or undue influence of any kind from any source.

19. Notices. Notice shall be provided to each party at the following addresses:

If to Respondent to:

Gregory & Lisa Nesbitt dba IMC POSTAL EXPRESS  
25320 Madison Avenue, Suite A,  
Murrieta, California, 92562

If to the Commissioner to:

Steven C. Thompson, Special Administrator  
Department of Corporations  
320 W. 4<sup>th</sup> Street, Suite 750  
Los Angeles, California 90013-2344

20. Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

Dated: 10/6/10

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_

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ALAN S. WEINGER  
Deputy Commissioner  
Enforcement Division

Dated: 10/1/2010

IMC POSTAL EXPRESS

By \_\_\_\_\_

Gregory Nesbitt  
dba IMC POSTAL EXPRESS

By \_\_\_\_\_

Lisa Nesbitt  
dba IMC POSTAL EXPRESS