

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
OF THE STATE OF CALIFORNIA

11
12 In the Matter of the Request for a Hearing on)
Citations and Desist and Refrain Order issued by) File Nos.: 100-3295
13 CALIFORNIA CORPORATIONS)
14 COMMISSIONER,) Statement in Support of Citations and
Desist and Refrain Order
15 Complainant,)
16 v.)
17 Eric Walter Meister doing business as Payday)
18 Services Plus,)
19 Respondent.)

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

22 INTRODUCTION

23 On September 11, 2006, the Commissioner of the California Department of Corporations
24 (“Department”) issued Respondent, Eric Walter Meister (“Meister”) who does business as Payday
25 Services Plus, (“Payday”) a deferred deposit transaction originator license (File No. 100-3295)
26 pursuant to the California Deferred Deposit Transaction Law (“CDDTL”) set forth in California
27 Financial Code sections 23000 et seq. (All future references to sections are to the California
28 Financial Code unless indicated otherwise.)

1 The Commissioner has a mandatory duty and is responsible for enforcing all provisions of
2 the CDDTL. On July 23, 2007, the Commissioner pursuant to section 23050 and 23058 issued
3 Citations and a Desist and Refrain Order to Meister d.b.a. Payday Services Plus, (hereinafter
4 “Respondent”) for violations of the legal standards required of all deferred deposit transaction
5 originators. Respondents timely requested a hearing concerning the Department’s action.

6 **I**

7 **FACTS AND PROCEDUAL BACKGROUND**

8 1. Respondent Meister filed a fictitious business name statement in the county of Los
9 Angeles to do business under the name “Payday Services Plus.” Meister at all relevant times acted
10 as the sole owner of Payday.

11 2. Respondent engaged in CDDTL business at 40111 Hwy 41 #1, Oakhurst, CA after the
12 Commissioner issued a license (File No. 100-3295) pursuant to section 23005, subdivision (a).

13 3. Since at least September 2006 Respondent engaged in the business of deferred deposit
14 transactions by offering, originating and making deferred deposit transactions as described below.

15 4. A deferred deposit transaction is a written transaction whereby one person gives funds
16 to another person upon receipt of a personal check and it is agreed that the personal check shall
17 not be deposited until a later date. These transactions are sometimes referred to as “payday
18 advances” or “payday loans.”

19 5. Respondent filed with the Department an application for a license to make deferred
20 deposit transactions on June 4, 2006, and included a Declaration, designated as “Exhibit K” to the
21 application that Meister signed under penalty of perjury for Respondents, which states:

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

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

Respondent’s Declaration to the application also states that “by signing this declaration” “the
applicant hereby agrees (or attests) or declares understanding of the following items listed below:”

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1. That the applicant will submit to periodic examinations by the Commissioner of Corporations as required by the California Deferred Deposit Transaction Law.
2. That the applicant will keep and maintain all records for 2 years following the last entry on a deferred deposit transaction and will enable an examiner to review the record keeping and reconcile each consumer deferred deposit transaction with documentation maintained in the consumer’s file records.
3. That the applicant understands the examination process involving the reconciliation of records will be facilitated if the applicant maintains, at minimum, a ledger or listing of the following current and undated information for each deferred deposit transaction (as specified in Financial Code section 23035): customer’s name and address, account number, check number, amount provided, fee, amount of check, corresponding annual percentage rate (e.g. 14-day or 30-day) and the 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.
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. On June 4, 2006, Respondents completed another CDDTL required Declaration designated as “Exhibit L” to the application, which Meister 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..))

1 (b) No licensee shall place an advertisement disseminated primarily in this
2 state for a deferred deposit transaction unless the licensee discloses in the
3 printed text of the advertisement, or the oral text in the case of a radio or
4 television advertisement, that the licensee is licensed by the department
5 pursuant to this division.

6 13. Section 23035, subdivision (c) states:

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

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

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

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

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

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

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

25 14. Section 23035, subdivision (d), requires posting of required notices and in
26 relevant part states:

27 The following notices shall be clearly and conspicuously posted in the
28 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: . . .

15. Section 23035 subdivision (e) states:

(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:

(1) A full disclosure of the total amount of any fees charged for the
deferred deposit transaction, expressed both in United States

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- currency and as an APR as required under the Federal Truth In Lending Act and its regulations.
- (2) A clear description of the customer's payment obligations as required under the Federal Truth In Lending Act and its regulations.
- (3) The name, address, and telephone number of the licensee.
- (4) The customer's name and address.
- (5) The date to which deposit of check has been deferred (due date).
- (6) The payment plan, or extension, if applicable as allowed under subdivision (c) of Section 23036.
- (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.
- (13) Any other information that the commissioner shall deem necessary by regulation.

III
DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

16. On June 14, 2007, the Commissioner’s examiner visited Respondent’s business after giving the licensee advance notice of the examination.

17. The Commissioner’s examiner found Respondent violated section 23007 and that and that Respondent’s net worth was less than half the required \$25,000 statutory minimum.

18. Respondent also used the business names, “Payday Loans” and “Payday Plus Cash” in its agreements that Respondent was not authorized to use and which constituted a violation of section 23023.

19. The Commissioner’s examiner found Respondent violated section 23027, subdivision (b), because his advertisements failed to disclose the Department had issued him a CDDTL license.

1 20. Additionally, the Commissioner’s examiner found that Respondent failed to
2 distribute a written notice to consumers before entering into deferred deposit transactions with
3 consumers, which violates section 23035, subdivision (c).

4 21. Moreover, the Commissioner’s examiner found that Respondent’s schedule of
5 charges and fees for deferred deposit transactions did not comply with the requirements of
6 section 23035, subdivision (d).

7 21. Lastly, Respondent’s written agreements with consumers did not contain required
8 disclosures, which violates section 23035, subdivision (e).

9 22. The Respondent was informed about all of the above-described violations at the time of
10 the examination. On July 23, 2007, the Commissioner issued to Respondent “Citations and Desist
11 and Refrain Order” citing him for eight violations of the CDDTL. The Citations are set forth below:

12 **Citation A.** Licensee failed to distribute the notice to the customer prior to entering into the
13 agreement required by California Financial Code section 23035(c).

14 **Citation B.** Licensee failed to include disclosure that a customer cannot be prosecuted or
15 threatened with prosecution to collect a deferred deposit transaction in the Agreement in
16 violation of California Financial Code section 23035 (e)(9).

17 **Citation C.** Licensee failed to include disclosure that licensee cannot accept collateral in
18 connection with the deferred deposit transaction in the Agreement in violation of California
19 Financial Code section 23035 (e) (10).

20 **Citation D.** Licensee failed to include disclosure that licensee cannot make a deferred
21 deposit transaction contingent on the purchase of another product or service in the
22 Agreement in violation of California Financial Code section 23035 (e) (11).

23 **Citation E.** Licensee failed to maintain a net worth of \$25,000 in violation of Financial
24 Code section 23007.

25 **Citation F.** The notice required to be conspicuously posted in the unobstructed view of the
26 public in letters not less than ½ inch in height did not contain a schedule of all the fees and
27 charges that would be charged on deferred deposit transactions with an example of the fees
28 and charges that would be charged on at least a \$100 and \$200 deferred deposit transaction,
payable in 14 and 30 days, giving the corresponding annual percentage rate in violation of

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Financial Code section 23035 (d) (2)

Citation G. Licensee failed to conduct deferred deposit transaction business under the name in the license, in violation of Financial Code section 23023. Licensee conducted business under the name Payday Loans and Payday Plus Cash. Licensee is authorized to conduct deferred deposit business under the name Eric Walter Meister and/or Payday Services Plus.

Citation H. Licensee failed to include in advertising that licensee is licensed by the Department of Corporations pursuant to the California Deferred Deposit Transaction Law in violation of California Financial Code 23027 (b).

Pursuant to section 23058, Respondent was ordered to pay to the Commissioner a total penalty of \$15,000. The penalty for each of citation is shown below.

- Citation A.** \$2,500
- Citation B.** \$1,500
- Citation C.** \$1,500
- Citation D.** \$1,500
- Citation E.** \$2,500
- Citation F.** \$1,500
- Citation G.** \$1,500
- Citation H.** \$2,500

IV

COMMISSISONER’S AUTHORITY TO ISSUE CITATIONS

Section 23058 gives the Commissioner’s authority to issues citations and states:

(a) If, upon inspection, examination or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is engaged in the business of deferred deposit transactions without a license, or a licensee or person is violating any provision of this division or any rule or order thereunder, the department may issue a citation to that 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). All penalties collected under this section shall be deposited in the State Corporations Fund.

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

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

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of 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.

V

COMMISSISONER’S AUTHORITY TO ISSUE A DESIST AND REFRAIN ORDER

Respondent engaged in the business of deferred deposit transactions that violated the above provisions of the CDDTL.

California Financial Code section 23050 provides in pertinent part:

Whenever, in the opinion of the commissioner, any person is engaged in the business of deferred deposit transactions, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division.

Pursuant to section 23050, the Commissioner ordered Respondents to desist and refrain from engaging in the business of deferred deposit transactions in the State of California in violation of California Financial Code sections 23007; 23023; 23027, subdivision (b); 23035, subdivision (c); 23035, subdivision (d); 23035, subdivisions (e)(9), (e) (10) and (e) (11). The Commissioner’s Desist and Refrain Order was properly issued and necessary for the protection of consumers and consistent with the purposes, policies and provisions of the CDDTL.

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CONCLUSION

Complainant finds by reason of the foregoing that Respondent Eric Walter Meister (“Meister”) who does business as Payday Services Plus violated sections 23007; 23023; 23027, subdivision (b); 23035, subdivision (c); 23035, subdivision (d); 23035, subdivisions (e)(9), (e) (10) and (e) (11). Therefore, the Commissioner is justified in issuing Citations to Respondent pursuant to section 23058 and is also justified in issuing a Desist and Refrain Order to Respondent pursuant to section 23050.

THEREFORE IT IS PRAYED THAT:

- 1. Respondent be ordered to immediately pay to the Commissioner an administrative penalty in the total amount of fifteen thousand dollars (\$15,000) for Citations A through H described above; and,
- 2. The Desist and Refrain Order issued pursuant to Financial Code section 23050 be upheld to prohibit Respondent from violating Financial Code sections 23007; 23023; 23027, subdivision (b); 23035, subdivision (c); 23035, subdivision (d); 23035, subdivisions (e)(9), (e) (10) and (e) (11).

Dated: August 6, 2007
San Francisco, California

Respectfully submitted,

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____

Joan E. Kerst
Senior Corporations Counsel
Attorney for Complainant