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

12 In the Matter of the Request for a Hearing on the)
13 Desist and Refrain Order and Citations issued by) OAH No. 2007090758
the California Corporations Commissioner,)
14) Amended Statement in Support of
Complainant,) Desist and Refrain Order and Citations
15)
16 v.)
17 Lisa Sierra doing business as Merchant Check)
Cashing, Merchant Check Cashing and Payday)
18 Advance,)
19)
Respondents.)
20)

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

23 **INTRODUCTION**

24 The Commissioner of the Department of Corporations (“Department”) is responsible for
25 enforcing all provisions of the of the California Deferred Deposit Transaction Law (“CDDTL”) set
26 forth in California Financial Code sections 23000 et seq. (Section references are to the Financial
27 Code unless indicated otherwise.) Respondents, Lisa Sierra doing business as Merchant Check
28 Cashing, Merchant Check Cashing and Payday Advance, engaged in multiple CDDTL violations.

1 On August 24, 2007, the Commissioner issued a Desist and Refrain Order and Order
2 Voiding Deferred Deposit Transactions pursuant to sections 23050 and 23060 to Respondents for
3 their violations of the legal standards required of all deferred deposit transaction originators.
4 Respondents requested a hearing concerning the Department’s action. On April 22, 2008, the
5 Commissioner modified his enforcement action and issued a Desist and Refrain Order and Citations
6 pursuant to sections 23050 and 23058 to Respondents Lisa Sierra doing business as Merchant
7 Check Cashing, Merchant Check Cashing and Payday Advance.

8 **I**
9 **FACTS AND PROCEDUAL BACKGROUND**

10 1. Merchant Check Cashing, Merchant Check Cashing and Payday Advance are fictitious
11 business names owed and used by Lisa Sierra, hereinafter referred to as “MCC” or (Respondents”).
12 MCC does business at 13844 Rosecrans Avenue, Santa Fe Springs, California. Co-located with
13 MCC is Sierra Mortgage, the fictitious business name of BSLM Inc., a licensed real estate broker
14 with the California Department of Real Estate (license number 01224741). BSLM Inc. employs
15 Lisa Sierra as a salesperson (license number 1224741).

16 2. The Commissioner of the Department of Corporations (“Department”) is responsible
17 for enforcing the California Deferred Deposit Transaction Law (“CDDTL”) found in section
18 23000 et seq. The Commissioner has not issued a license to MCC to engage in the business of
19 deferred deposit transactions pursuant to section 23005. MCC is not exempt from the licensing
20 requirement of the CDDTL.

21 3. Since at least January 2005 MCC has engaged in the business of deferred deposit
22 transactions by offering, originating and making deferred deposit transactions as described below.

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

27 5. MCC was aware that a CDDTL license was required to lawfully engage in the
28 business of deferred deposit transactions. On May 19, 2003, MCC filed with the Department an
incomplete CDDTL application requesting a license pursuant to section 23005, subdivision (a). In

1 August 2004 and again in November 2004 the Department wrote to MCC requesting it provide
2 additional information to process its CDDTL application. MCC never provided the requested
3 information. As a result of MCC's failure to comply with the Department's requests, the CDDTL
4 application was abandoned. On March 10, 2005, the Department informed MCC that the license
5 had been withdrawn in accordance with section 23011, subdivision (b).

6 6. On April 17, 2007, the Commissioner's examiner visited MCC and posed as a potential
7 customer to MCC's manager, Lisa Sierra, who informed the examiner what she would need to
8 obtain a loan. Later Lisa Sierra informed the examiner that she could not give the examiner a loan
9 because there was a "problem with her license." Ms. Sierra stated that she had contacted the
10 Department because she needed to obtain a copy of her license.

11 7. The Commissioner's examiner later identified herself as an examiner with the
12 Department. Ms. Sierra admitted to the Commissioner's examiner that MCC engaged in the
13 business of deferred deposit transactions. When Ms. Sierra was asked about the number of MCC
14 loans provided to consumers during 2005 and 2006, she stated that approximately 30 customers
15 received loans on a biweekly basis (approximately two loans per month) resulting in about 720
16 loans for each year.

17 8. Thereafter, Ms. Sierra provided to the Department's examiner various records relating to
18 MCC's CDDTL activities.

19 9. A review of MCC's records show it failed to provide to consumers the written notice
20 required by section 23035. In addition, MCC's written agreements provided by Ms. Sierra do not
21 contain the required disclosures in violation of section 23035.

22 10. Ms. Sierra produced daily cash logs and a list of outstanding loans which revealed that
23 MCC engaged in transactions that exceed \$300 and that they charge fees that exceed the statutory
24 maximum found in sections 23035 and 23036, respectively. Ms. Sierra did not have evidence of
25 the check involved in closed loans and was unable to produce all the documentation requested in
26 violation of section 23024 and California Code of Regulations section 2025, subdivision (c)(1).

27 11. When the Commissioner's Corporations examiner questioned Ms. Sierra about MCC's
28 fees she stated that MCC charges \$30 and \$40 for consumer checks that are returned unpaid and
that late fees or fees to extend the due date must be paid by consumers. MCC's transactions are in

1 violation of sections 23036 and 23037.

2 12. The Department examiner obtained a list of customers and the daily cash logs since
3 January 1, 2005. According to MCC’s records it provided deferred deposit transaction to
4 approximately seventy-seven (77) consumers since January 1, 2005. The Department examiner
5 analyzed the daily cash logs for the years 2005, 2006 and 2007 provided by Ms. Sierra. For the
6 2005, 2006 and 2006 calendar years, MCC made hundred of loans. The extension fees alone
7 charged by MCC exceed \$58,000. MCC failed to maintain adequate records as required by the
8 CDDTL and engaged in other CDDTL violations.

9 13. Notwithstanding knowledge regarding the licensure requirement, MCC willfully
10 and knowingly engaged in deferred deposit business without a license from the Commissioner and
11 engaged in deferred deposit transactions that violated various statutory provisions of the CDDTL,
12 as described below.

13 **II**

14 **DEFERRED DEPOSIT TRANSACTION LAW**

15 14. Respondents are within the definition of a “licensee” under the CDDTL found in section
16 23001, subdivision (d). All CDDTL licensees are required to comply with basic legal requirements
17 imposed on all persons so defined concerning notices and advertisements.

18 15. Section 23050 provides in pertinent part:

19 Whenever, in the opinion of the commissioner, any person is engaged in
20 the business of deferred deposit transactions, as defined in this division,
21 without a license from the commissioner, or . . . violating any provision of
22 this division, the commissioner may order that person or licensee to desist
23 and to refrain from engaging in the business or further violating this
24 division. If, within 30 days, after the order is served, a written request for
25 a hearing is filed and no hearing is held within 30 days thereafter, the
26 order is rescinded.

27 16. Section 23005, in relevant part, states:

28 (a) No person shall offer, originate, or make a deferred deposit transaction,
arrange a deferred deposit transaction for a deferred deposit originator, act
as an agent for a deferred deposit originator, or assist a deferred deposit
originator in the origination of a deferred deposit transaction without first
obtaining a license from the commissioner and complying with the
provisions of this division. The requirements of this subdivision shall not

1 apply to persons or entities that are excluded from the definition of
2 "licensee" as set forth in Section 23001. Nothing in this division shall be
3 construed to require the commissioner to create separate classes of licenses.

4 (b) An application for a license under this division shall be in the form and
5 contain the information that the commissioner may by rule require and shall
6 be filed upon payment of the fee specified in Section 23006.

7 17. Section 23024 mandates that every licensee comply with the following requirement:

8 Each licensee shall keep and use books, accounts, and records that will
9 enable the commissioner to determine if the licensee is complying with the
10 provisions of this division and with the rules and regulations promulgated
11 by the commissioner. Each licensee shall maintain any other records as
12 required by the commissioner. The commissioner or a designee of the
13 commissioner may examine those records at any reasonable time. Upon
14 the request of the commissioner, a licensee shall file an authorization for
15 disclosure of financial records of the licensed businesses pursuant to
16 Section 7473 of the Government Code. All records shall be kept for two
17 years following the last entry on a deferred deposit transaction and shall
18 enable an examiner to review the recordkeeping and reconcile each
19 consumer deferred deposit transaction with documentation maintained in
20 the consumer's deferred deposit transaction file records.

21 18. Section 23035, in part, states:

22 (a) A licensee may defer the deposit of a customer's personal check for up
23 to 31 days, pursuant to the provisions of this section. The face amount of
24 the check shall not exceed three hundred dollars (\$ 300). Each deferred
25 deposit transaction shall be made pursuant to a written agreement as
26 described in subdivision (e) that has been signed by the customer and by
27 the licensee or an authorized representative of the licensee.

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

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

(1) Information about charges for deferred deposit transactions.

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

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

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

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

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

19. Section 23035, subdivision (d), requires posting of required notices and in part states:

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

20. 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 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.

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(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.

21. Section 23035 also states:

(f) The notice required by subdivision (c) shall be written and available in the same language principally used in any oral discussions or negotiations leading to execution of the deferred deposit agreement and shall be in at least 10-point type.

(g) The written agreement required by subdivision (e) shall be written in the same language principally used in any oral discussions or negotiations leading to execution of the deferred deposit agreement; shall not be vague, unclear, or misleading and shall be in at least 10-point type.

(h) Under no circumstances shall a deferred deposit transaction agreement include any of the following:

- (1) A hold harmless clause.
- (2) A confession of judgment clause or power of attorney.
- (3) Any assignment of or order for payment of wages or other compensation for services.
- (4) Any acceleration provision.
- (5) Any unconscionable provision.

(i) If the licensee sells or otherwise transfers the debt at a later date, the licensee shall clearly disclose in a written agreement that any debt or checks held or transferred pursuant to a deferred deposit transaction made pursuant to Section 23035 are not subject to the provisions of *Section 1719 of the Civil Code* and that no customer may be required to pay treble damages if the check or checks are dishonored.

22. Section 23036 limit fees and transactions stating:

- (a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check.
- (b) A licensee shall not enter into an agreement for a deferred deposit

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transaction with a customer during the period of time that an earlier written agreement for a deferred deposit transaction for the same customer is in effect.

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

(d) 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.

(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.

23. Section 23037 limits a licensee’s transactions and activities and in relevant part states:

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

(a) Accept or use the same check for a subsequent transaction, or permit a customer to pay off all or a portion of one deferred deposit transaction with the proceeds of another. . . .

(b) Accept any collateral for a deferred deposit transaction.

(c) Make any deferred deposit transaction contingent on the purchase of insurance or any other goods or services.

(d) Enter into a deferred deposit transaction with a person lacking the capacity to contract.

(e) Alter the date or any other information on a check.

(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.

(g) Accept more than one check for a single deferred deposit transaction.

1 (h) Take any check, instrument, or form in which blanks are left to be
2 filled in after execution.

3 (i) Offer, arrange, act as an agent for, or assist a deferred deposit
4 originator in any way in the making of a deferred deposit transaction
5 unless the deferred deposit originator complies with all applicable federal
6 and state laws and regulations, including the provisions of this division.

6 (1) The prohibition specified in this subdivision does not apply to
7 the arranger, agent, or assistant to a state or federally chartered
8 bank, thrift, savings association, or industrial loan company where
9 the state or federally chartered bank, thrift, savings association, or
10 industrial loan company satisfies all of the following:

10 (A) It initially advances the loan proceeds to the customer.

11 (B) It does not sell, assign, or transfer a preponderant
12 economic interest in the deferred deposit transaction to the
13 arranger, agent, or assistant, or an affiliate or subsidiary of the
14 state or federally chartered bank, thrift, savings association, or
15 industrial loan company, unless selling, assigning, or
16 transferring a preponderant economic interest is expressly
17 permitted by the primary regulator of the state or federally
18 chartered bank, thrift, savings association, or industrial loan
19 company.

17 (C) It develops the deferred deposit transaction product or
18 products on its own.

19 (2) If a licensee offers, arranges, acts as an agent for, or assists a
20 state or federally chartered bank, thrift, savings association, or
21 industrial loan company in any way in the making of a deferred
22 deposit transaction and the state or federally chartered bank, thrift,
23 savings association, or industrial loan company meets the
24 standards set forth in paragraph (1), the licensee shall comply with
25 all other provisions in this division to the extent they are not
26 preempted by other state and federal laws.

24 24. California Code of Regulations, title 10, section 2025, subdivision (c)(1) specifies that
25 books and records must be maintained for two (2) years, as set forth below.

26 (c)(1) Except as provided in subsection (e), records to be maintained at
27 each licensed business location for each deferred deposit transaction shall
28 include at least the following: the deferred deposit transaction agreement,
evidence of the check, written disclosure(s) used to provide notice in
compliance with subdivision (c) of Section 23035 of the Financial Code,

1 record of any and all extensions of time or payment plans for repayment
2 of an existing deferred deposit transaction, record of time periods for
3 each transaction, record of transaction fees and charges, and record of
transaction payments.

4 **III**

5 **COMMISSISONER’S AUTHORITY TO ISSUE A DESIST AND REFRAIN ORDER**

6 25. Respondents were informed about their violations at the time of the examination. On
7 August 24, 2007, the Commissioner issued to Respondents a “Desist and Refrain Order and Order
8 Voiding Deferred Deposit Transactions pursuant to section 23050, which states:

9 Whenever, in the opinion of the commissioner, any person is engaged in
10 the business of deferred deposit transactions, as defined in this division,
11 without a license from the commissioner, or any licensee is violating any
12 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.

13 26. Specifically, the Commissioner ordered Respondents to desist and refrain from
14 engaging in the business of deferred deposit transactions in the State of California in violation of
15 sections 23005, 23024, 23035, 23036 and 23037. It is apparent that Respondents also violated
16 California Code of Regulations, title 10, section 2025.

17 **IV**

18 **CITATIONS**

19 27. Respondents willfully violated section 23005, 23024, 23035, 23036 and 23037 of the
20 CDDTL and California Code of Regulations, title 10, section 2025 in connection with numerous
21 consumer deferred deposit transactions without a license and in violation of mandatory
22 provisions of the CDDTL. Section 23058 states:

23 (a) If, upon inspection, examination or investigation, based upon a
24 complaint or otherwise, the department has cause to believe that a person
25 is engaged in the business of deferred deposit transactions without a
26 license, or a licensee or person is violating any provision of this division
27 or any rule or order thereunder, the department may issue a citation to that
28 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.

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

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

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

8 (e) After the exhaustion of the review procedures provided for in this
9 section, the department may apply to the appropriate superior court for a
10 judgment in the amount of the administrative penalty and order
11 compelling the cited person to comply with the order of the department.
12 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.

13 28. Pursuant to section 23058 the Commissioner has issued to Respondent ten citations,
14 specifically Citations A through J, inclusive as described below.

15 **Citation A.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
16 and Lisa Sierra engaged in the business of deferred deposit transactions without a license in violation
17 of section 23005.

18 **Citation B.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
19 and Lisa Sierra originated deferred deposit transactions with customers but failed to maintain
20 adequate records that included the payments received from customers on loans in violation of
21 section 23024 and failed to preserve evidence of customer's checks in violation of California
22 Code of Regulations, title 10, section 2025, subdivision (c).

23 **Citation C.** Merchant Check Cashing, Merchant Check Cashing and Payday
24 Advance and Lisa Sierra originated deferred deposit transactions with customers that exceeded
25 \$300, in violation of section 23035, subdivision (a).

26 **Citation D.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
27 and Lisa Sierra failed to provide customers the required notices and disclosures before entering into
28 deferred deposit transactions in violation of section 23035, subdivision (c).

1 **Citation E.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
2 and Lisa Sierra failed to post the required notice in view of the public with letters that were at least
3 ½ inches in height in violation of section 23035, subdivision (d).

4 **Citation F.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
5 and Lisa Sierra failed to provide customers with written agreements containing all required
6 disclosure in violation of section 23035, subdivision (e).

7 **Citation G.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
8 and Lisa Sierra charged fees that exceed 15% in violation of section 23036, subdivision (a).

9 **Citation H.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
10 and Lisa Sierra customers fees for non-sufficient funds (NSF) that exceeded \$15 in violation of
11 section 23036, subdivision (e).

12 **Citation I.** Merchant Check Cashing, Merchant Check Cashing and Payday
13 Advance and Lisa Sierra originated deferred deposit transactions with customers and then
14 charged a late fees and fee to extend or rollover the due date in violation of 23036, subdivisions
15 (b) and (f).

16 **Citation J.** Merchant Check Cashing, Merchant Check Cashing and Payday
17 Advance and Lisa Sierra allowed customers to pay of all or a potion of a loan with another loan
18 in violation of section 23037, subdivision (a).

19 Thus, pursuant to section 23058, the Commissioner ordered Merchant Check Cashing,
20 Merchant Check Cashing and Payday Advance and Lisa Sierra to pay to the Commissioner
21 within 30 days from the date of these Citations an administrative penalty for the citations listed
22 below for the total amount of twenty five thousand dollars (\$25,000).

23 CITATION A. - \$2,500

24 CITATION B. - \$2,500

25 CITATION C. - \$2,500

26 CITATION D. - \$2,500

27 CITATION E. - \$2,500

28 CITATION F. - \$2,500

CITATION G. - \$2,500

1 CITATION H. - \$2,500

2 CITATION I. - \$2,500

3 CITATION J. - \$2,500

4 **V**

5 **CONCLUSION**

6 Complainant finds that Respondents, Lisa Sierra doing business as Merchant Check
7 Cashing, Merchant Check Cashing and Payday Advance violated sections 23005, 23024, 23035,
8 23036, 23037, and California Code of Regulations, title 10, section 2025.

9 Therefore, the Commissioner is justified in (1) issuing a Desist and Refrain Order to
10 Respondents pursuant to section 23050; and, (2) issuing citation and requiring payment pursuant
11 to section 23058.

12 **PRAYER**

13 **WHEREFORE**, Complainant, the California Corporations Commissioner prays that

14 1. The Desist and Refrain Order issued pursuant to Financial Code section
15 23050 be affirmed to prohibit Respondents from violating Financial Code
16 sections 23005, 23024, 23035, 23036, and 23037 and California Code of
17 Regulations section 2025; and

18 2. The Citations issued pursuant to Financial Code section 23058 be affirmed
19 and Respondents be ordered to pay to the California Corporations
20 Commissioner an administrative penalties in the amount of twenty-five
thousand dollars (\$25,000) for the above-described citations.

21 Dated: April 22, 2008
San Francisco, California

22 Respectfully submitted,

23 PRESTON DuFAUCHARD
California Corporations Commissioner

24 By _____

25 Joan E. Kerst
26 Enforcement Division
27 Attorney for Complainant
28