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BEFORE THE DEPARTMENT OF CORPORATIONS  
 OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of	)	File No.: 100-3246
THE CALIFORNIA CORPORATIONS	)	
COMMISSIONER,	)	ACCUSATION TO REVOKE LICENSE
	)	
Complainant,	)	
	)	
vs.	)	
	)	
Order Express, Inc.,	)	
	)	
Respondent	)	
	)	
	)	

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

INTRODUCTION

On July 21, 2009, the Commissioner of the Department of Corporations (“Department”) issued to Respondent, Order Express, Inc., a Desist and Refrain Order, Citations, and an Order Voiding Loans, pursuant to the California Deferred Deposit Transaction Law (“CDDTL”) set forth in California Financial Code section 23000 et seq. (All future references to sections are to the California Financial Code unless indicated otherwise.) These were issued by the Commissioner for violations of the CDDTL, which are described below. Respondent requested a hearing to challenge

1 the orders issued by the Commissioner. The hearing was scheduled for Friday, September 25, 2009  
2 at 9am. On the evening of Thursday, September 24, 2009, Respondent stated, through its attorney,  
3 that it stipulated to the orders and all violations and requirements thereof, and that it would sign a  
4 stipulation or settlement agreement to that effect. Respondent stated that it would not attend the  
5 hearing the next morning.

6       Upon such short notice, the Commissioner was unable to cancel the hearing. The  
7 Commissioner's representative attended the hearing Friday morning, September 25, 2009, and  
8 relayed to the judge that Respondent had agreed to stipulate to the Commissioner's orders and would  
9 not be attending the hearing. The Commissioner faxed a Settlement Agreement to Respondent, for  
10 its signature, on the following business day, Monday, September 28, 2009. Despite several demands  
11 by the Commissioner, the Agreement was never signed and returned to the Department.

12       The Desist and Refrain Order, Citations, and Order Voiding Loans remain in effect. The  
13 Citations, in the amount of fifteen thousand five hundred (\$15,500), were due on August 20, 2009.  
14 They have not been paid and therefore Respondent is in violation of the Citations. Respondent also  
15 has not provided any evidence of compliance with the Order Voiding Loans issued on July 21, 2009.  
16 Consequently, it is the Commissioner's belief that Respondent is also in violation of this Order.

17       Respondent has shown a lack of cooperation and an apparent failure to negotiate in good  
18 faith with the Department. As a result of this, its violations leading to the issuing of the Desist and  
19 Refrain Order, Citations, and Order Voiding Loans, and its violation of the order to pay Citations  
20 and Order Voiding Loans, the Commissioner now finds it necessary to revoke Respondent's license  
21 pursuant to section 23052.

## 22 I

### 23 FACTUAL BACKGROUND

24       1. The Department is responsible for enforcing provisions of the CDDTL and authorized  
25 to pursue administrative actions and remedies against licensees who engage in violations of the  
26 CDDTL.

27       2. Since at least September of 2006, Respondent has engaged in the business of deferred  
28 deposit transactions by offering, originating and making deferred deposit transactions.

3. A deferred deposit transaction is a written transaction whereby one person gives funds to another person upon receipt of a personal check along with an agreement that the personal check shall not be deposited until a later date. These transactions are also referred to as “payday advances” or “payday loans”.

4. On December 16, 2008, the Commissioner’s examiner visited Respondent’s store located at 2670 E. Florence Ave., Huntington Park, California 90255.

5. The Commissioner’s examiner verified with Respondent’s representative that Respondent was engaged in deferred deposit transactions at this location. After verification, the examiner requested information regarding CDDTL transactions made by Respondents.

6. The Department examiner’s review of Respondent’s information revealed the CDDTL violations described below, which warranted the issuing of an order to desist and refrain from such violations, penalties, and restitution to consumers.

## II

### DEFERRED DEPOSIT TRANSACTION LAW

7. Section 23005 of the CDDTL requires that any person who offers, originates or makes a deferred deposit transaction be licensed.

8. Deferred deposit originators are defined as “licensees” under the CDDTL, even if they do not obtain the required license from the Department for the location where they are doing business. Section 23001 defines “licensee” as any person who offers, originates, or makes a deferred deposit transaction.

9. Certain disclosures are required in each agreement between the licensee and its customer. These are detailed in section 23035(e) and include: that a customer cannot be prosecuted or threatened with prosecution, and that a licensee cannot accept collateral in connection with the transaction.

10. Prior to entering into an agreement with a customer, section 23035(c) requires that the licensee give the customer a notice with disclosures that include information about the charges on the transaction.

11. The licensee must also post in its store, pursuant to sections 23035(d), 23019, and

23018(a), respectively, a notice that the licensee cannot use the criminal process against customers, the schedule of fees charged by the licensee on transactions, and the license issued by the Department.

12. Section 23001(a) states that in a CDDTL transaction, the licensee takes a customer's personal check and defers the deposit of such check to a certain date. Section 23035(a) describes the amount of time a customer's personal check can be held by the licensee and limits the face value of the personal check in any transaction made under the CDDTL to three hundred dollars (\$300.00).

13. The fees charged by the licensee are strictly limited under the CDDTL. For example, section 23036(b) states that no fees may be charged for the extension of repayment time. In addition, under section 23036(e), late payment fees are prohibited.

14. Under section 23050, the Commissioner may order that any licensee who violates any provision of the CDDTL desist and refrain from further violating the CDDTL.

15. Section 23058 permits the Department to issue citations to any licensee who violates any provision of the CDDTL. Each citation may contain an assessment of an administrative penalty of up to two thousand five hundred dollars (\$2,500). This penalty is in addition to and separate from all other remedies available to the Department.

16. Pursuant to section 23060(a), if any amount other than, or in excess of, the charges or fees permitted by this division is willfully charged, contracted for, or received, a deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive the principal amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

### III

#### RESPONDENTS' DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

17. Respondent initially obtained a license from the Department on December 27, 2006.

18. During the Department's examinations of and discussions with Respondent in December 2008, the Commissioner's examiner obtained a spreadsheet maintained by Respondent with a history of loans it made. In addition, the Department's examiner obtained copies of agreements and payment receipts from Respondent.

1           19. These documents revealed that prior to obtaining a license, Respondent originated at  
2 least five deferred deposit transactions in violation of section 23005, with loans and fees totaling  
3 one thousand four hundred dollars (\$1,400.00).

4           20. The agreements entered into between Respondent and its customers did not include  
5 the disclosures required by section 23035(e).

6           21. The Department's examiner found that Respondent also did not provide notices  
7 required under section 23035(c).

8           22. In violation of sections 23018(a), 23035(d), and 23019, respectively, Respondent did  
9 not have posted as required in its store: its CDDTL license, a notice that it cannot use the  
10 criminal process against its customers, and its schedule of fees for all CDDTL transactions.

11           23. Respondent's representative informed the Department's examiner that it does not  
12 generally obtain customers' personal checks, which violates sections 23001(a) and 23035(a).

13           24. The Department's examiner found, in the information and documents provided by  
14 Respondent, that Respondent charged fees for the extension of repayment by some customers, in  
15 violation of section 23036(b).

16           25. The total amount of extension fees paid were one thousand nine hundred and five  
17 dollars (\$1,905.00) on twenty-seven (27) loans, with a total face value of seven thousand eight  
18 hundred and seventy dollars (\$7,870.00).

19           26. In addition, the examiner found that Respondent charged late payment fees on certain  
20 transactions, in violation of section 23036(e).

21           27. The total amount of late fees collected by Respondent was three hundred and seventeen  
22 dollars and fifteen cents (\$317.15) on seventeen (17) loans with total face values of four thousand  
23 eight hundred and seventy dollars (\$4,870.00).

24           28. Respondent's specific violations include the following CDDTL sections: 23005,  
25 23001(a), 23018, 23019, 23035, and 23036. For Respondents' violations discovered during the  
26 Department's regulatory examination and review of records, the Commissioner issued, on July 21,  
27 2009, an order to desist and refrain from further violations of the CDDTL, pursuant to section  
28 23050, an order voiding the twenty-seven (27) loans, for which Respondent charged illegal

1 extension and/or late fees, pursuant to section 23060, and seven Citations, pursuant to section 23058.  
2 The Citations were two thousand five hundred dollars (\$2,500) each, for: engaging in deferred  
3 deposit transactions without a license, in violation of section 23005; charging extension fees in  
4 violation of section 23036(b); failing to obtain customers' personal checks for each transaction, in  
5 violation of sections 23001(a) and 23035(a); failing to post notice with disclosures as required in  
6 sections 23019 and 23035(d); failing to include disclosures in the written agreement with customers,  
7 as required under section 23035(e); and failing to provide written notice to customers, prior to  
8 entering into a written agreement with them, as required under section 23035(c). In addition,  
9 Respondent received a citation of five hundred dollars (\$500) for failure to post its CDDTL license  
10 from the Department, as required under section 23018(a). The total citation amount was fifteen  
11 thousand five hundred dollars (\$15,500).

#### 12 IV

### 13 COMMISSIONER'S AUTHORITY TO ISSUE CITATIONS

#### 14 AND DESIST AND REFRAIN ORDER

15 29. Section 23058 gives the Commissioner's authority to issues citations, and states:

16 (a) If, upon inspection, examination or investigation, based upon a  
17 complaint or otherwise, the department has cause to believe that a person  
18 is engaged in the business of deferred deposit transactions without a  
19 license, or a licensee or person is violating any provision of this division  
20 or any rule or order thereunder, the department may issue a citation to that  
21 person in writing, describing with particularity the basis of the citation.  
22 Each citation may contain an order to desist and refrain and an assessment  
23 of an administrative penalty not to exceed two thousand five hundred  
24 dollars (\$ 2,500). All penalties collected under this section shall be  
25 deposited in the State Corporations Fund.

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

28 (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

1 Title 2 of the Government Code, and in all states the commissioner has all  
2 the powers granted therein.

3 (e) After the exhaustion of the review procedures provided for in this  
4 section, the department may apply to the appropriate superior court for a  
5 judgment in the amount of the administrative penalty and order  
6 compelling the cited person to comply with the order of the department.  
7 The application, which shall include a certified copy of the final order of  
8 the department, shall constitute a sufficient showing to warrant the  
9 issuance of the judgment and order.

### 10 CITATIONS

11 30. Pursuant to section 23058, Respondent was ordered to pay to the Commissioner  
12 within thirty (30) days from the date of these Citations an administrative penalty of fifteen  
13 thousand five hundred dollars (\$15,500) for the Citations described above. The Citations were  
14 issued on July 21, 2009. Consequently, thirty (30) days from this date, the final allowed date of  
15 payment, was August 20, 2009. The citation amounts have not been paid by Respondent, and  
16 Respondent is therefore in violation of section 23058 and in violation of the Commissioner's  
17 order and demand for payment.

### 18 DESIST AND REFRAIN ORDER

19 31. By reason of the foregoing, the licensee engaged in originating deferred deposit  
20 transactions without a license in violation of section 23005. In addition, Respondent charged  
21 extension and late fees in violation of sections 23036(b) and (e), failed to disclose to consumers  
22 disclosures as required under sections 23019 and 23035, failed to collect personal checks of  
23 consumers in violation of sections 23001(a) and 23035(a), and failed to post its license, in violation  
24 of 23018(a).

25 32. California Financial Code section 23050 provides in pertinent part:

26 Whenever, in the opinion of the commissioner, any person is engaged  
27 in the business of deferred deposit transactions, as defined in this  
28 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.

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## COMMISSIONER'S AUTHORITY TO VOID TRANSACTIONS

34. Respondent violated sections 23005 and 23036(b), (e) and (f) of the CDDTL by engaging in deferred deposit transactions prior to obtaining a license, and by charging extension and late fees on at least twenty-seven (27) deferred deposit transactions. These transactions totaled at least ten thousand, ninety-two dollars and fifteen cents (\$10,092.15). Therefore, the Commissioner demanded the voiding of at least twenty-seven (27) deferred deposit transactions, ordered Respondent to return any consumers' funds received, and ordered Respondent not to collect on any not collected by July 21, 2009, in an amount that aggregates at least ten thousand, ninety-two dollars and fifteen cents (\$10,092.15).

If any amount other than, or in excess of, the charges or fees permitted by this division is willfully charged, contracted for, or received, a deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive the principal amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

## ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS

36. Pursuant to section 23060 the above described twenty-seven (27) deferred deposit transactions, totaling at least ten thousand, ninety-two dollars and fifteen cents (\$10,092.15) were declared void on July 21, 2009, by order of the Commissioner. Respondent has not evidenced compliance with this demand by showing that it has returned any funds received to consumers, or by showing that it has denied the collection of any funds offered to it by consumers after July 21, 2009, on any loans made where extension or late fees were charged.

## ACCUSATION TO REVOKE LICENSE



VI

COMMISSISONER’S AUTHORITY TO REVOKE RESPONDENT’S CDDTL LICENSES

37. Section 23052 states the grounds for revocation of CDDTL licenses:

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

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

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

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

38. By reason of the foregoing, Respondent has failed to comply with demands of the Commissioner and has violated provisions of the CDDTL. Consequently, the Commissioner seeks to revoke Respondent’s license.

CONCLUSION

Complainant finds that Respondent violated sections 23005, 23001(a), 23018(a), 23019, 23035, and 23036. Complainant also finds that Respondent violated an order and demand of the Commissioner by failing to pay the Citations of fifteen thousand, five hundred (\$15,500), and by failing to comply with the Order Voiding Loans, both issued on July 21, 2009. Therefore, the Commissioner is justified in revoking Respondent’s CDDTL license pursuant to section 23052.

This Order is necessary for the protection of consumers and consistent with the purposes, policies and provisions of the CDDTL. This Order shall remain in full force and effect until further order of the Commissioner.

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1           WHEREFORE, Complainant, the California Corporations Commissioner prays that the  
2 deferred deposit transaction license number 100-3246 of Order Express, Inc. be revoked pursuant  
3 to Financial Code section 23052.

4 Dated: November 24, 2009  
5           Sacramento, California

6                           PRESTON DuFAUCHARD  
7                           California Corporations Commissioner

8                           By \_\_\_\_\_  
9                           Joanne Ross  
10                          Corporations Counsel