

1 PRESTON DuFAUCHARD  
California Corporations Commissioner  
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9 BEFORE THE DEPARTMENT OF CORPORATIONS  
10 OF THE STATE OF CALIFORNIA

11 In the Matter of the Accusation of ) File No.: 100-3067  
12 THE CALIFORNIA CORPORATIONS )  
COMMISSIONER, ) CITATIONS AND DESIST AND REFRAIN  
13 ) ORDER  
14 Complainant, )  
15 vs. )  
16 Robert Baber, Jr. and Peggy White, dba Payday )  
Services Today and Pay Day Today, )  
17 )  
18 Respondents. )  
19 )

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

22 INTRODUCTION

23 On December 31, 2004, the Commissioner of the Department of Corporations  
24 (“Department”) issued to Linda C. Kellum, dba Pay Day Financial, a deferred deposit transaction  
25 originator license (File No. 100-2318) pursuant to the California Deferred Deposit Transaction Law  
26 (“CDDTL”) set forth in California Financial Code section 23000 et seq. (All future references to  
27 sections are to the California Financial Code unless indicated otherwise.) On December 6, 2005,  
28 Kellum, dba Payday Services Today, received a CDDTL license for a second location at 2012 N. G

1 Street in Merced, California. (Hereinafter, the license holder for both locations will be referred to as  
2 “Kellum”.) Kellum stated in the license application for this second location that she would operate  
3 the business under the name Payday Services Today. In violation of the CDDTL, Respondents  
4 Robert Baber, Jr. and Peggy White operated this location without receiving a license in their names  
5 from the Department.

6 The Commissioner has issued a Desist and Refrain order and four citations against  
7 Respondents Robert Baber, Jr. and Peggy White, dba Payday Services Today and Pay Day Today, in  
8 the amount of two thousand five hundred (\$2,500) each, pursuant to CDDTL sections 23050 and  
9 23058 for this unlicensed activity and multiple additional violations of the CDDTL.

10 I

11 FACTUAL BACKGROUND

12 1. The Department is responsible for enforcing the CDDTL and pursuing administrative  
13 actions and remedies against parties who engage in the business of deferred deposit transactions  
14 without a license.

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

19 3. Since at least December 6, 2005, Respondents have engaged in activities such as  
20 accepting deferred deposit checks from customers and executing checks to customers, which  
21 show that they were engaged in the business of deferred deposit transactions.

22 4. In addition, Respondents held the lease for the payday lending business at 2012 N. G  
23 Street in Merced, California in the name of Respondent Robert Baber, Jr., dba Payday Services  
24 Today.

25 5. The activities engaged in by Respondents require a license in Respondents’ names pursuant  
26 to the section 23005 of the CDDTL.

27 6. Respondents have not obtained a license to engage in originating and making deferred  
28 deposit transactions under the CDDTL.

1 7. Kellum, who obtained the license for the location operated by Respondents, stated that she  
2 does not have a financial interest in and was not involved in the operation of the business at the  
3 2012 N. G Street location.

4 8. On February 21, 2008 and March 27, 2008, the Commissioner’s representative visited  
5 Respondents’ business.

6 9. The Department’s review of Respondents’ business revealed the CDDTL violations  
7 described below warranting penalties against Respondents.

8 II

9 DEFERRED DEPOSIT TRANSACTION LAW

10 10. Section 23005 of the CDDTL requires that any person who offers, originates or makes a  
11 deferred deposit transaction be licensed. In addition, any person arranging or assisting in the making  
12 of such transactions must be licensed pursuant to section 23005. This includes any person acting as  
13 an agent for a deferred deposit transaction originator.

14 11. Licenses issued by the Department under the CDDTL are not transferable or assignable, as  
15 stated in section 23018 of the CDDTL.

16 12. The Commissioner may order that any person who is engaged in the business of deferred  
17 deposit transactions without a license desist and refrain from engaging in the business or further  
18 violating the CDDTL, pursuant to section 23050 of the CDDTL.

19 13. Under section 23058 of the CDDTL, the Department may also issue a citation to any person  
20 it determines is engaged in deferred deposit transactions without a license. Each citation may  
21 contain an assessment of an administrative penalty of up to two thousand five hundred dollars  
22 (\$2,500). This penalty is in addition to and separate from all other remedies available to the  
23 Department.

24 14. Deferred deposit originators are defined as “licensees” under the CDDTL, even if they do  
25 not obtain the required license from the Department. Section 23001 defines “licensee” as “any  
26 person who offers, originates, or makes a deferred deposit transaction, arranges a deferred deposit  
27 transaction for a deferred deposit originator, who acts as an agent for a deferred deposit originator,  
28 or who assists a deferred deposit originator in the origination of a deferred deposit transaction.”

1 15. Licensees are required to include certain disclosures in agreements with customers. These  
2 disclosures are detailed in section 23035(e) and include: a clear description of payment of  
3 obligations, a disclosure of the APR being charged, an itemization of the amount financed, charges  
4 for returned checks, as well as others.

5 16. Section 23035(c) requires that the licensee also give to customers a written disclosure prior  
6 to customers entering into deferred deposit transactions with the licensee. This disclosure includes  
7 information such as the charges for transactions and the Department’s toll-free telephone number  
8 for consumer complaints or concerns.

9 17. Pursuant to section 23036(f), only the fees listed in section 23036 may be charged by a  
10 licensee, and only in the maximum amounts listed in that section. For example, section 23036(e)  
11 states that a fee for a returned check may not exceed fifteen dollars (\$15), may only be charged  
12 once for one check, and is the exclusive charge allowed for a dishonored check.

13 III

14 RESPONDENTS’ DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

15 18. Respondents operated the payday lending business under the name “Payday Services Today”  
16 and “Pay Day Today” at 2012 N. G Street in Merced, California.

17 19. Respondents were engaged in the business of deferred deposit transactions at this location.

18 20. Respondents were not licensed under the CDDTL, and therefore, their actions violated  
19 CDDTL section 23005.

20 21. The Commissioner has issued a Desist and Refrain order to Respondents for engaging the  
21 business of deferred deposit transactions without a license, pursuant to CDDTL section 23050.

22 22. Respondents charged customers “set-up fees”, which are not allowed under section  
23 23036(f). See Exhibit A.

24 23. In addition, Respondents charged customers non-sufficient funds or returned check fees  
25 in excess of what is allowed by section 23036(e). See Exhibit A.

26 24. Respondents also failed to use an agreement with customers that contained disclosures  
27 required by section 23035(e).

28 25. Additionally, Respondents failed to provide required disclosures to customers prior to

1 engaging in a deferred deposit transaction, in violation of section 23035(c).

2 26. The Commissioner is issuing four citations in the amount of two thousand five hundred  
3 dollars (\$2,500) each, pursuant to section 23058, for Respondents’ specific violations of sections  
4 23005, 23035(c), 23035(e), and 23036.

5 IV

6 COMMISSIONER’S AUTHORITY TO ISSUE CITATIONS AND  
7 DESIST AND REFRAIN ORDER

8 27. Section 23058 gives the Commissioner’s authority to issues citations, and states:

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

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

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

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

28 (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.

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**CITATIONS**

28. Pursuant to Financial Code section 23058, Respondents are hereby ordered to pay to the Commissioner within thirty (30) days from the date of these citations an administrative penalty of two thousand five hundred dollars (\$2,500) each for four citations, for the total amount of ten thousand dollars (\$10,000).

**DESIST AND REFRAIN ORDER**

29. 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. If, within 30 days, after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

30. By reason of the foregoing, the Respondents have engaged in operating a deferred deposit transaction business without a license, charging excessive and unauthorized fees to customers, and failing to provide disclosures to customers as required by the CDDTL. Pursuant to Financial Code sections 23050, Respondents are hereby ordered to desist and refrain from violating Financial Code sections 23005, 23035 and 23036.

**V**

**CONCLUSION**

Pursuant to Financial Code section 23050, Robert Baber, Jr. and Peggy White, dba Payday Services Today and Pay Day Today, are hereby ordered to desist and refrain from violating Financial Code sections 23005, 23035(c), 23035(e), and 23036, and to pay fines in the amount of ten thousand dollars (\$10,000) pursuant to Financial Code section 23058.

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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.

Dated: October 7, 2008  
Sacramento, California

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
ALAN S. WEINGER  
Acting Deputy Commissioner