





1 items listed below:”

- 2 1. That the applicant will submit to periodic examinations by the  
3 Commissioner of Corporations as required by the California Deferred  
4 Deposit Transaction Law.
- 5 2. That the applicant will keep and maintain all records for 2 years following  
6 the last entry on a deferred deposit transaction and will enable an examiner  
7 to review the record keeping and reconcile each consumer deferred deposit  
8 transaction with documentation maintained in the consumer’s file records.
- 9 3. That the applicant understands the examination process involving the  
10 reconciliation of records will be facilitated if the applicant maintains, at  
11 minimum, a ledger or listing of the following current and undated  
12 information for each deferred deposit transaction (as specified in Financial  
13 Code section 23035): customer’s name and address, account number, check  
14 number, amount provided, fee, amount of check, corresponding annual  
15 percentage rate (e.g. 14-day or 30-day) and the deferred due date.
- 16 4. That the applicant will maintain a file of all advertising for a period of 90  
17 days from the date of its use, which will be available to the Commissioner  
18 of Corporations upon request.
- 19 5. That the applicant will file with the Commissioner of Corporations an  
20 amendment to this application prior to any material change in the  
21 information contained in the application for licensure, including, without  
22 limitation, the plan of operation.
- 23 6. That the applicant will file with the Commissioner of Corporations any  
24 report required by the Commissioner.
- 25 7. That the applicant hereby attests that the applicant (including officers,  
26 directors and principals) has not engaged in conduct that would be cause of  
27 denial of a license.

28 7. Payday Advance Express was required to and did complete another Declaration  
designated as “Exhibit L” to the application, which was signed under penalty of perjury, stating:

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 17. Financial Code section 23035 provides, in relevant part:

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

- 4 1. Information about charges for deferred deposit transactions.
- 5 2. That if the customer's check is returned unpaid, the customer may be charged  
6 an additional fee of up to fifteen dollars (\$15).
- 7 3. That the customer cannot be prosecuted in a criminal action in conjunction  
8 with a deferred deposit transaction for a returned check or be threatened with  
9 prosecution.
- 10 4. The department's toll-free telephone number for receiving calls regarding  
11 customer complaints and concerns.
- 12 5. That the licensee may not accept any collateral in conjunction with a deferred  
13 deposit transaction.
- 14 6. That the check is being negotiated as part of a deferred deposit transaction  
15 made pursuant to Section 23035 of the Financial Code and is not subject to  
16 the provisions of Section 1719 of the Civil Code. No customer may be  
17 required to pay treble damages if this check does not clear.

18 (d) The following notices shall be clearly and conspicuously posted in the unobstructed  
19 view of the public by all licensees in each location of a business providing deferred  
20 deposit transactions in letters not less than one-half inch in height:

- 21 1. The licensee cannot use the criminal process against a consumer to collect any  
22 deferred deposit transaction.
- 23 2. The schedule of all charges and fees to be charged on those deferred deposit  
24 transactions with an example of all charges and fees that would be charged on  
25 at least a one-hundred-dollar (\$100) and a two-hundred-dollar (\$200) deferred  
26 deposit transaction, payable in 14 days and 30 days, respectively, giving the  
27 corresponding annual percentage rate....

28 (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.

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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 the 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.

18. Financial Code section 23036, subd. (b), provides that the licensee may extend the time for repayment of an existing deferred deposit transaction, but is prohibited from charging extension fees in connection therewith.

19. Financial Code section 23037 provides, in pertinent part:

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.
- ...
- (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.

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

20. Financial Code section 23038, subd. (a), incorporates Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109-364, which prohibits an APR higher than 36 percent for active military personnel.

21. The California Code of Regulations, title 10, section 2025, subd. (c)(1), requires the licensee to maintain certain records of every transaction, including evidence of the check, at the business location.

**IV.**

**DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS**

22. On or about September 18, 2007, after having given the licensee advance notice, the Commissioner commenced a regulatory examination of the books and records of Payday Advance Express.

23. The Commissioner’s examination revealed that while engaged in the business of deferred deposit transactions, Payday Advance Express violated provisions of the California Financial Code and the California Code of Regulations as more fully described below:

(A) Failed to conspicuously post the license in the licensed place of business in violation of Financial Code section 23018, subd. (a).

(B) Used unauthorized names, including “PaydayAdvanceExpress.com,” “MBA Enterprises, Inc.,” and “Payday Advance” on the Disclosure Statement and a customer check in violation of Financial Code section 23023.

(C) Placed an online advertisement in the San Diego Yellow Pages that failed to disclose that the licensee was licensed by the Department of Corporations, as required by Financial Code section 23027(b).

(D) Failed to distribute a written notice to the customer before entering into a deferred deposit transaction as required by Financial Code section 23035(c). A notice is

1 incorporated into the parties' written agreement, but fails to disclose:

- 2 a. Information about charges for deferred deposit transactions (§  
3 23035(c)(1));
- 4 b. That the customer may be charged up to \$15 for a returned check (§  
5 23035(c)(2));
- 6 c. That a customer cannot be prosecuted or threatened with criminal  
7 prosecution for a returned check (§ 23035(c)(3));
- 8 d. The Department's toll-free telephone number for receiving calls regarding  
9 customer complaints (§ 23035(c)(4));
- 10 e. That the licensee may not accept collateral for a deferred deposit  
11 transaction (§ 23035(c)(5)); and
- 12 f. That the check is being negotiated as part of a transaction pursuant to §  
13 23035 and is not subject to the provisions of Civil Code section 1719, and  
14 that no customer may be required to pay treble damages if the check does  
15 not clear (§ 23035(c)(6)).

16 (E) Failed to post the notices required by Financial Code section 23035, subd. (d):

17 there was no notice that the licensee cannot use the criminal process to collect a  
18 deferred deposit transaction (§ 23035(d)(1)) and the posted fee schedule did not  
19 disclose the charges and fees payable in 14 days and 30 days with corresponding  
20 APR (§ 23035(d)(2)). These notices also were not posted on the licensee's  
21 website located at [www.paeonline.com](http://www.paeonline.com).

22 (F) Failed to include, in the written agreement, the information required by Financial  
23 Code section 23035, subd. (e). The following were missing from the written  
24 agreement:

- 25 a. The address and telephone number of the licensee (§ 23035(e)(3));
- 26 b. The customer's address (§ 23035(e)(4));
- 27 c. An itemization of the amount financed (§ 23035(e)(7));
- 28 d. Disclosure of any returned check charges (§ 23035(e)(8));



- 1 e. That the customer cannot be prosecuted or threatened with prosecution to
- 2 collect (§ 23035(e)(9));
- 3 f. That the licensee cannot accept collateral for the transaction (§
- 4 23035(e)(10)); and
- 5 g. That the licensee cannot make a deferred deposit transaction contingent on
- 6 the purchase of another product or service (§ 23035(e)(11)).
- 7 (G) Issued disclosure statements, or written agreements, to at least eight customers
- 8 which contained inaccurate APRs in violation of Financial Code section 23035,
- 9 subd. (e)(1).
- 10 (H) Allowed at least four customers to use the same check to obtain a subsequent loan,
- 11 in violation of Financial Code section 23037, subd. (a).
- 12 (I) Allowed at least three customers to alter checks without initialing the alteration, in
- 13 violation of Financial Code section 23037, subd. (e).
- 14 (J) In violation of Financial Code section 23037(f), included in the written agreement
- 15 a reference to Civil Code section 1789.35, which, as of December 31, 2004, no
- 16 longer relates to deferred deposit transactions.
- 17 (K) Accepted disclosure statements from at least nine customers that included blanks
- 18 left to be filled in after execution, in violation of Financial Code section 23037,
- 19 subd. (h).
- 20 (L) Failed to keep evidence of the check, as required by title 10, section 2025, subd. (c)(1) of
- 21 the California Code of Regulations, in at least four transactions.

V.

**REVOCATION OF RESPONDENT’S CDDTL LICENSE**

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25 24. Section 23052 of the CDDTL gives the Commissioner authority to revoke  
26 Respondents’ CDDTL license:

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

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

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

5 25. By reason of the foregoing, Payday Advance Express has violated Financial Code  
6 sections 23018, 23023, 23027, 23035, 23036, 23037, and 23038, and California Code of Regulations,  
7 title 10, section 2025, giving the Commissioner grounds to revoke the deferred deposit transaction  
8 license of Payday Advance Express.

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10 **VI.**  
11 **CITATIONS**

12 26. Section 23058 gives the Commissioner authority to issue citations:

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

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

24 27. Pursuant to section 23058, Payday Advance Express is hereby ordered to pay to the  
25 Commissioner, within 30 days from the date of these Citations, administrative penalties in the  
26 amount of two thousand, five hundred dollars (\$2500) for each of the fifteen citations listed below,  
27 for a total of thirty-seven thousand, five hundred dollars (\$37,500):

28	CITATION A (violation of Financial Code § 23018, subd. (a)):	\$2500
	CITATION B (violation of § 23023):	\$2500
	CITATION C (violation of § 23027(b)):	\$2500

1	CITATION D (violation of § 23035(c)):	\$2500
2	CITATION E (violation of § 23035(d)):	\$2500
3	CITATION F (violation of § 23035(e)):	\$2500
4	CITATION G (violation of § 23035(e)(1)):	\$2500
5	CITATION H (violation of § 23036(b)):	\$2500
6	CITATION I (violation of § 23036(f)):	\$2500
7	CITATION J (violation of § 23037(a)):	\$2500
8	CITATION K (violation of § 23037(e)):	\$2500
9	CITATION L (violation of § 23037(f)):	\$2500
10	CITATION M (violation of § 23037(h)):	\$2500
11	CITATION N (violation of § 23038(a)):	\$2500
12	CITATION O (violation of 10 C.C.R. 2025(c)(1)):	\$2500

13 28. These Citations shall remain in full force and effect until further order of the  
 14 Commissioner.

15  
 16 **VII.**  
 17 **DESIST AND REFRAIN ORDER**

18 29. Financial Code section 23050 authorizes the Commissioner to order a licensee to  
 19 desist and refrain:

20  
 21 Whenever, in the opinion of the commissioner, any person is engaged in the business  
 22 of deferred deposit transactions, as defined in this division, without a license from the  
 23 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.

24 30. The Commissioner’s examination revealed that Payday Advance Express violated  
 25 fifteen different provisions of the CDDTL, as described in paragraph 20 above.

26 31. Pursuant to Financial Code sections 23050 and 23058, Payday Advance Express is  
 27 hereby ordered to desist and refrain from further violating Financial Code sections 23018, 23023,  
 28

1 23027, 23035, 23036, 23037, and 23038, and California Code of Regulations, title 10, section 2025.

2 32. The Desist and Refrain Order is necessary for the protection of consumers and  
3 consistent with the purposes, policies and provisions of the CDDTL. The Order shall remain in full  
4 force and effect until further order of the Commissioner.

5  
6 **VIII.**

7 **ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS**

8 33. Financial Code section 23060 provides:

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

14 (b) If any provision of this division is willfully violated in the making or collection  
15 of a deferred deposit transaction, the deferred deposit transaction contract shall be  
16 void, and no person shall have any right to collect or receive any amount provided in  
17 the deferred deposit transaction, any charges, or fees in connection with the  
18 transaction.

19 34. Payday Advance Express willfully violated Financial Code section 23036 in at least  
20 527 deferred deposit transactions, totaling \$143,241.25, by charging extension fees totaling  
21 \$21,312.56.

22 35. Pursuant to Financial Code section 23060, the above-described 527 transactions are  
23 declared void. Further, Payday Advance Express has no right to collect or receive any amount  
24 provided in those deferred deposit transactions or any charges or fees in connection with those  
25 transactions and is hereby ordered to immediately return the principal and all charges and fees  
26 received for those transactions.

27 36. Payday Advance Express willfully violated Financial Code section 23038 in at least  
28 three deferred deposit transactions, totaling \$898.89, with two active military personnel by charging  
more than 36 percent APR in each transaction.



1 totaling \$898.89, where the APR exceeded 36 percent, and refund all principal, fees, and charges to  
2 those customers.

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DATED: May 6, 2008  
San Diego, California

PRESTON DUFAUCHARD  
California Corporations Commissioner

By: \_\_\_\_\_  
Joyce Tsai  
Corporations Counsel  
Enforcement Division