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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.: 100-2580
12 THE CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) **ORDER REVOKING CALIFORNIA**
) **DEFERRED DEPOSIT TRANSACTION**
14 Complainant,) **LICENSE PURSUANT TO FINANCIAL**
15 vs.) **CODE SECTION 23052**
)
16 PAYDAY ADVANCE EXPRESS, INC.,)
)
17 Respondent.)
)
18)
)

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20 The California Corporations Commissioner (“Commissioner”) finds that:

21 The Commissioner of the Department of Corporations (“Department”) issued to
22 Respondent Payday Advance Express, Inc. (“Respondent”) a deferred deposit transaction
23 originator license pursuant to the California Deferred Deposit Transaction Law (“CDDTL”), Cal.
24 Fin. Code §§ 23000 *et seq.* Compliance with the CDDTL is essential to retain a deferred deposit
25 transaction originator license. At all times Respondent was required to comply with all law and
26 regulations enacted under this law, but failed to do so.
27
28

1 Respondent conducted business at 338 West Lexington Avenue, Suite 214B, El Cajon,
2 California 92020. Respondent’s owners are Ajit Ahooja and Daniel Leavitt.

3 Since at least September 2005, Respondent has engaged in the business of deferred
4 deposit transactions by offering, originating and making deferred deposit transactions, which is a
5 written transaction whereby one person gives funds to another person upon receipt of a personal
6 check and it is agreed that the personal check shall not be deposited until a later date. These
7 transactions are sometimes referred to as “payday advances” or “payday loans.”

8 In April 2005, Respondent filed with the Department an application for a license to make
9 deferred deposit transactions and included a Declaration designated as “Exhibit K” to the
10 application and signed under penalty of perjury by Daniel Leavitt, stating:

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

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

15 As a part of the application process Respondent was required to and did complete another
16 Declaration designated as “Exhibit L” to the application, which Daniel Leavitt signed under penalty
17 of perjury, stating:

18 The applicant will comply with all federal and state laws and regulations (including
19 Division 10, commencing with Section 23000, of the Financial Code), if it offers,
20 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).)

21 On September 27, 2005, a letter accompanied the Commissioner’s issuance of a CDDTL
22 license to Respondent, which in part informed Respondent of the following:

23 [T]here are certain obligations and responsibilities that a licensee must comply with.
24 The following information about a licensee’s obligations and responsibilities
25 regarding certain requirements of the California Deferred Deposit Transaction Law is
26 provided for your reference.... [A] licensee should review and become familiar with
all provisions of the law and rules and regulations.

26 ...

- 27 5. A licensee is subject to statutory books and records requirements . . .
28 (Section 23024.)

1
2 Notwithstanding knowledge regarding the licensure requirements, Respondent willfully
3 and knowingly engaged in violations of the CDDTL.

4 The CDDTL and the California Code of Regulations provide:

- 5 (1) The CDDTL license “shall be conspicuously posted in the place of business
6 authorized by the licensee.” Fin. Code § 23018(a).
- 7 (2) The licensee may not do business under any name other than the one shown on the
8 license. Fin. Code § 23023.
- 9 (3) Advertisements must disclose that the licensee is licensed by the Department of
10 Corporations. Fin. Code § 23027(b).
- 11 (4) Before entering into a deferred deposit transaction, licensees must distribute to
12 customers a notice that includes the following:

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

27 Fin. Code § 23035(c).

- 28 (5) 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

1 providing deferred deposit transactions in letters not less than one-half inch in
2 height:

- 3
- 4 1. The licensee cannot use the criminal process against a consumer to collect
5 any deferred deposit transaction.
 - 6 2. The schedule of all charges and fees to be charged on those deferred deposit
7 transactions with an example of all charges and fees that would be charged
8 on at least a one-hundred-dollar (\$100) and a two-hundred-dollar (\$200)
9 deferred deposit transaction, payable in 14 days and 30 days, respectively,
10 giving the corresponding annual percentage rate....

11 Fin. Code § 23035(d).

12 (6) An agreement to enter into a deferred deposit transaction shall be in writing and
13 shall be provided by the licensee to the customer. The written agreement shall
14 authorize the licensee to defer deposit of the personal check, shall be signed by
15 the customer, and shall include all of the following:

- 16 1. A full disclosure of the total amount of any fees charged for the deferred
17 deposit transaction, expressed both in United States currency and as an APR
18 as required under the Federal Truth In Lending Act and its regulations.
- 19 2. A clear description of the customer's payment obligations as required under
20 the Federal Truth In Lending Act and its regulations.
- 21 3. The name, address, and telephone number of the licensee.
- 22 4. The customer's name and address.
- 23 5. The date to which deposit of the check has been deferred (due date).
- 24 6. The payment plan, or extension, if applicable as allowed under subdivision
25 (c) of Section 23036.
- 26 7. An itemization of the amount financed as required under the Federal Truth In
27 Lending Act and its regulations.
- 28 8. Disclosure of any returned check charges.
9. That the customer cannot be prosecuted or threatened with prosecution to

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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.

Fin. Code § 23035(e).

(7) The licensee may extend the time for repayment of an existing deferred deposit transaction, but is prohibited from charging extension fees in connection therewith.

Fin. Code § 23036(b).

(8) A licensee is may not:

(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.

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

Fin. Code § 23037.

(9) In any transaction with active military personnel, a licensee may not charge an APR higher than 36 percent. Fin. Code § 23038(a).

(10) The licensee must maintain certain records of every transaction, including evidence of the check, at the business location. C.C.R. tit. 10, § 2025(c)(1).

On or about September 18, 2007, after having given Respondent advance notice, the Commissioner commenced a regulatory examination of the books and records of Respondent. The Commissioner’s examination revealed that while engaged in the business of deferred deposit

1 transactions, Respondent violated provisions of the California Financial Code and the California
2 Code of Regulations as more fully described below:

- 3 (1) Failed to conspicuously post the license in the licensed place of business in
4 violation of Financial Code section 23018, subd. (a).
- 5 (2) Used unauthorized names, including “PaydayAdvanceExpress.com,” “MBA
6 Enterprises, Inc.,” and “Payday Advance” on the Disclosure Statement and a
7 customer check in violation of Financial Code section 23023.
- 8 (3) Placed an online advertisement in the San Diego Yellow Pages that failed to
9 disclose that the licensee was licensed by the Department of Corporations, as
10 required by Financial Code section 23027(b).
- 11 (4) Failed to distribute a written notice to the customer before entering into a
12 deferred deposit transaction as required by Financial Code section 23035(c).
13 A notice is incorporated into the parties’ written agreement, but fails to
14 disclose:
 - 15 a. Information about charges for deferred deposit transactions (§
16 23035(c)(1));
 - 17 b. That the customer may be charged up to \$15 for a returned check (§
18 23035(c)(2));
 - 19 c. That a customer cannot be prosecuted or threatened with criminal
20 prosecution for a returned check (§ 23035(c)(3));
 - 21 d. The Department’s toll-free telephone number for receiving calls regarding
22 customer complaints (§ 23035(c)(4));
 - 23 e. That the licensee may not accept collateral for a deferred deposit
24 transaction (§ 23035(c)(5)); and
 - 25 f. That the check is being negotiated as part of a transaction pursuant to §
26 23035 and is not subject to the provisions of Civil Code section 1719, and
27 that no customer may be required to pay treble damages if the check does
28 not clear (§ 23035(c)(6)).

- 1 (5) Failed to post the notices required by Financial Code section 23035, subd. (d):
2 there was no notice that the licensee cannot use the criminal process to collect
3 a deferred deposit transaction (§ 23035(d)(1)) and the posted fee schedule did
4 not disclose the charges and fees payable in 14 days and 30 days with
5 corresponding APR (§ 23035(d)(2)). These notices also were not posted on the
6 licensee’s website located at www.paeonline.com.
- 7 (6) Failed to include, in the written agreement, the information required by
8 Financial Code section 23035, subd. (e). The following were missing from the
9 written agreement:
- 10 a. The address and telephone number of the licensee (§ 23035(e)(3));
 - 11 b. The customer’s address (§ 23035(e)(4));
 - 12 c. An itemization of the amount financed (§ 23035(e)(7));
 - 13 d. Disclosure of any returned check charges (§ 23035(e)(8));
 - 14 e. That the customer cannot be prosecuted or threatened with prosecution
15 to collect (§ 23035(e)(9));
 - 16 f. That the licensee cannot accept collateral for the transaction (§
17 23035(e)(10)); and
 - 18 g. That the licensee cannot make a deferred deposit transaction
19 contingent on the purchase of another product or service (§
20 23035(e)(11)).
- 21 (7) Issued disclosure statements, or written agreements, to at least eight customers
22 which contained inaccurate APRs in violation of Financial Code section
23 23035, subd. (e)(1).
- 24 (8) Allowed at least four customers to use the same check to obtain a subsequent
25 loan, in violation of Financial Code section 23037, subd. (a).
- 26 (9) Allowed at least three customers to alter checks without initialing the
27 alteration, in violation of Financial Code section 23037, subd. (e).
- 28 (10) In violation of Financial Code section 23037(f), included in the written

1 agreement a reference to Civil Code section 1789.35, which, as of December
2 31, 2004, no longer relates to deferred deposit transactions.

3 (11) Accepted disclosure statements from at least nine customers that included
4 blanks left to be filled in after execution, in violation of Financial Code
5 section 23037, subd. (h).

6 (12) Failed to keep evidence of the check, as required by title 10, section 2025, subd.
7 (c)(1) of the California Code of Regulations, in at least four transactions.

8 Financial Code section 23052 provides, in pertinent part:

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

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

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

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

18 On May 6, 2008, the Commissioner issued his Accusation to Revoke Deferred Deposit
19 Transaction License, Citations and Desist and Refrain Order, and Order Voiding Deferred
20 Deposit Transactions (“Accusation, Citations, and Orders”). The Commissioner also issued a
21 Notice of Intention to Revoke Deferred Deposit Transaction License pursuant to Financial Code
22 section 23052. The Accusation, Citations, and Orders and the Notice of Intention to Revoke
23 Deferred Deposit Transaction License were served on Respondent on May 8, 2008.

24 On July 2, 2008, Respondent and the Commissioner entered into a settlement agreement
25 whereby Respondent admitted the allegations made against it in the Accusation, Citations, and
26 Orders, for the limited purposes of these proceedings and any future proceeding(s) that may be
27 initiated by or brought before the Commissioner against Respondent. Pursuant to the settlement
28 agreement, Respondent agreed that its CDDTL license would be revoked effective August 1,
2008.

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THEREFORE, GOOD CAUSE APPEARING, pursuant to California Financial Code section
23052, the deferred deposit transaction originator license issued to Respondent Payday Advance
Express, Inc., is hereby revoked. This Order is effective as of the date hereof.

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Dated: August 1, 2008
Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
ALAN S. WEINGER
Acting Deputy Commissioner
Enforcement Division