

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Acting Deputy Commissioner
3 AFSANEH EGHBALDARI (CA BAR NO. 250107)
Corporations Counsel
4 Department of Corporations
1350 Front Street, Room 2034
5 San Diego, California 92101
Telephone: (619) 645-3166
6 Fax: (619) 525-4045

7 Attorneys for Complainant

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BEFORE THE DEPARTMENT OF CORPORATIONS

10

OF THE STATE OF CALIFORNIA

11

THE CALIFORNIA CORPORATIONS)
COMMISSIONER,)

OAH Case No. 2008060241

12

Complainant,)

SETTLEMENT AGREEMENT

14

vs.)

Date: October 27, 2008

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Yogesh Hiralal doing business as Pro Check)
Cashing, Inc. currently known as Pro Check)
16 Cashing and Financial, Inc.,)

Time: 9:00 a.m.

Place: 1350 Front Street, Room 6022
San Diego, CA 92101

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Respondent.)

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20 This Settlement Agreement (“Agreement”) is entered into by and between the Complainant,
21 the California Corporations Commissioner (“Commissioner”) and Respondent, Yogesh Hiralal doing
22 business as Pro Check Cashing, Inc. currently known as Pro Check Cashing and Financial, Inc.
23 (“Respondent”).

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RECITALS

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This Agreement is made with reference to the following facts:

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A. On September 15, 2005, the Commissioner issued to Respondent four deferred deposit
27 transaction originator licenses pursuant to the California Deferred Deposit Transaction Law
28 (“CDDTL”) set forth in California Financial Code section 23000 et seq.

1 B. Pro Check Cashing, Inc. was incorporated in California on January 2, 2003. On or
2 about September 23, 2005, subsequent to the issuance of the CDDTL licenses, Pro Check Cashing,
3 Inc. changed its name with the California Secretary of State to Pro Check Cashing and Financial, Inc.
4 Respondent did not notify the Commissioner of the name change.

5 C. Respondent's principal place of business is located at 2413 S. Fairview Street, #I,
6 Santa Ana, CA 92704 (license number 100-2890). Respondent has three additional licensed locations
7 at 707 N. Bristol, #F, Santa Ana, CA 92703 (license number 100-2891), 616 N. Anaheim Boulevard,
8 #C, Anaheim, CA 92805 (license number 100-2892), and 1440 S. Anaheim Boulevard, #A17,
9 Anaheim, CA 92805 (license number 100-2893).

10 D. Respondent violated numerous provisions of the CDDTL.

11 E. On May 1, 2008, the Commissioner issued the Citations and Desist and Refrain Order,
12 an Order Voiding 12 loans, and filed the Accusation to Revoke Respondent's licenses, Notice of
13 Intent to Revoke Respondent's CDDTL licenses and the accompanying documents (collectively,
14 "Accusation"). Respondent was personally served with the Accusation on May 14, 2008.

15 F. Respondent timely filed a Notice of Defense and the hearing is set for October 27,
16 2008.

17 G. It is the intention and desire of the Parties to resolve these matters without the
18 necessity of a hearing and or other litigation.

19 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
20 forth herein, the parties agree as follows:

21 **TERMS AND CONDITIONS**

22 1. **Purpose.** The purpose of this Agreement is for judicial economy and expediency, and to
23 avoid the expense of a hearing, and possible further court proceedings.

24 2. **Waiver of Hearing Rights.** Respondent acknowledges its right to a hearing and hereby
25 waives its right to a hearing, and to any reconsideration, appeal, or other right to review which may
26 be afforded pursuant to the CDDTL, the California Administrative Procedure Act ("APA"), the
27 California Code of Civil Procedure, or any other provision of law, and by waiving such rights,
28 consents to the agreement becoming final.

1 3. **Independent Legal Advice.** Each of the Parties represents, warrants, and agrees that he or
2 she has received or been advised to seek independent legal advice from his or her attorneys with
3 respect to the advisability of executing this Agreement. Respondent acknowledges that it consulted
4 with attorney Dean R. Kitano, prior to entering into this Agreement.

5 4. **Admissions.** Respondent hereby admits the allegations contained in the Accusation, Order
6 Revoking Deferred Deposit Transaction Licenses and the facts in the Recital, solely for the limited
7 purposes of this Agreement and any future proceeding(s) that may be initiated by or brought before
8 the Commissioner against Respondent. It is the intent and understanding between the Parties that this
9 Agreement, and particularly the admissions of Respondent herein, shall not be binding or admissible
10 against Respondent in any action(s) by third parties. A copy of the Accusation is incorporated as
11 Exhibit 1.

12 5. **Revocation.** Respondent hereby agrees to the Revocation of three out of four of its
13 CDDTL licenses. Respondent's CDDTL licenses located at 707 N. Bristol, #F, Santa Ana, CA
14 92703 (license number 100-2891), 616 N. Anaheim Boulevard, #C, Anaheim, CA 92805 (license
15 number 100-2892), and 1440 S. Anaheim Boulevard, #A17, Anaheim, CA 92805 (license number
16 100-2893) are hereby revoked. A copy of the Order Revoking Deferred Deposit Transaction
17 Licenses is incorporated as Exhibit 2.

18 6. **Assessment Fee.** Respondent hereby agrees to pay to the Commissioner the amount of
19 \$3,764.00 for the unpaid assessment fee. The payment amount of \$3,764.00 shall be delivered to
20 California Department of Corporations within five business days from the date this Agreement is
21 signed by Respondent. The payment shall be payable to the California Department of Corporations
22 and delivered to the California Department of Corporations' San Diego Office to the attention of
23 Afsaneh Eghbaldari.

24 7. **Citations.** Respondent hereby agrees to pay to the Commissioner the amount of
25 \$15,000.00. The payment amount of \$15,000.00 shall be delivered to the California Department of
26 Corporations within thirty days from the date this Agreement is signed by Respondent. The payment
27 shall be payable to the California Department of Corporations and delivered to the California
28 Department of Corporations' San Diego Office to the attention of Afsaneh Eghbaldari.

1 8. **Restitution.** Respondent hereby agrees to fully refund the overcharges and excess
2 charges to the consumers identified in the Commissioner's August 29, 2008 letter. Respondent
3 further agrees to escheat all returned and/or unclaimed refunds to the State of California Controller,
4 in compliance with California laws and regulations.

5 9. **Future Actions by the Commissioner.** The Commissioner reserves the right to bring any
6 future actions against Respondent or any of its partners, owners, employees or successors of
7 Respondent for any and all unknown or future violations of the CDDTL. This Agreement shall not
8 serve to exculpate Respondent or any of the partners, owners, employees or successors of Respondent
9 from liability for any and all unknown or future violations of the CDDTL. If it is found, after the
10 execution of this Agreement that Respondent violated any of the statutes and/or rules set forth in the
11 CDDTL or the Agreement, the Commissioner reserves the right to take further action against
12 Respondent, including but not limited to, imposing penalties, and revoking Respondent's remaining
13 CDDTL license (license number 100-2890) in breach of this Agreement.

14 10. **Failure to Comply with the Agreement.** Respondent acknowledges and agrees that its
15 failure to comply with the terms of this Agreement will be a breach of this Agreement and shall result
16 in an automatic revocation of Respondent's CDDTL license (license number 100-2890). Respondent
17 waives any notice and hearing rights to contest such revocation.

18 11. **Settlement Agreement Coverage.** The Parties hereby acknowledge and agree that this
19 Agreement is intended to constitute a full, final and complete resolution. The Parties further
20 acknowledge and agree that nothing contained in this Agreement shall operate to limit the
21 Commissioner's ability to assist any other agencies with any prosecution, administrative, civil or
22 criminal, brought by any such agency against Respondent based upon any of the activities alleged in
23 this matter or otherwise. This Agreement shall not become effective until signed by Respondent and
24 delivered by all parties. Each of the Parties represents, warrants, and agrees that in executing this
25 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel and
26 has placed no reliance on any statement, representation, or promise of any other party, or any other
27 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
28 entity to make any statement, representation or disclosure of anything whatsoever. The Parties have

1 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
2 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
3 supplement, or contradict the terms of this Agreement.

4 **12. Full Integration.** This Agreement, including the attached Accusation and Order
5 Revoking Deferred Deposit Transaction Licenses, is the final written expression and the complete
6 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
7 between the parties with respect to the subject matter hereof, and supersedes all prior or
8 contemporaneous agreements, negotiations, representations, understandings, and discussions between
9 and among the parties, their respective representatives, and any other person or entity.

10 **13. No Presumption From Drafting.** In that the parties have had the opportunity to draft,
11 review and edit the language of this Agreement, no presumption for or against any party arising out
12 of drafting all or any part of this Agreement will be applied in any action relating to, connected, to, or
13 involving this Agreement. Accordingly, the parties waive the benefit of California Civil Code
14 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language
15 of a contract should be interpreted most strongly against the party who caused the uncertainty to
16 exist.

17 **14. Effective Date.** This Agreement shall not become effective until signed by Respondent
18 and delivered by all Parties. The Commissioner shall file this Agreement with the Office of
19 Administrative Hearings after execution by the Parties.

20 **15. Counterparts.** This Agreement may be executed in any number of counterparts by the
21 Parties and when each Party has signed and delivered at least one such counterpart to the other Party,
22 each counterpart shall be deemed an original and taken together shall constitute one and the same
23 Agreement.

24 **16. Modifications and Qualified Integration.** No amendment, change or modification of
25 this Agreement shall be valid or binding to any extent unless it is in writing and signed by all of the
26 parties affected by it.

27 **17. Headings and Governing Law.** The headings to the paragraphs of this Agreement are
28 inserted for convenience only and will not be deemed a part hereof or affect the construction or

1 interpretation of the provisions hereof. This Agreement shall be construed and enforced in
2 accordance with and governed by California law.

3 **18. Authority For Settlement.** Respondent covenants that he, she or it possesses all
4 necessary capacity and authority to sign and enter into this Agreement. Each Party warrants and
5 represents that such Party is fully entitled and duly authorized to enter into and deliver this
6 Agreement. In particular, and without limiting the generality of the foregoing, each Party warrants
7 and represents that it is fully entitled to enter into the covenants, and undertake the obligations set
8 forth herein.

9 **19. Public Record.** Respondent acknowledges that this Agreement is a public record.

10 **20. Voluntary Agreement.** The Parties each represent and acknowledge that he, she or it is
11 executing this Agreement completely, voluntarily and without any duress or undue influences of any
12 kind from any source.

13 **21. Notices.** Notice shall be provided to each party at the following addresses:

14 If to Respondent to: Dean R. Kitano, Esq.
 2107 N. Broadway, Suite 204, Santa Ana, CA 92706

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16 If to the Commissioner to: Afsaneh Eghbaldari, Esq., Corporations Counsel
17 California Department of Corporations
18 1350 Front St, Room 2034. San Diego, CA 92101

19 IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on
20 the dates set forth opposite their respective signatures.

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22 PRESTON DuFAUCHARD
23 California Corporations Commissioner

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26 Dated: 10/27/08 By _____
27 Alan S. Weinger
28 Acting Deputy Commissioner

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PRO CHECK CASHING, INC. CURRENTLY KNOWN AS PRO CHECK CASHING AND FINANCIAL, INC.

Dated: 10/24/08 By _____
Yogesh Hiralal, President

Approved as to form

Dated: 10/24/08 By _____
Dean R. Kitano, Esq.