

## DEPARTMENT OF CORPORATIONS

PRESTON DUFAUCHARD

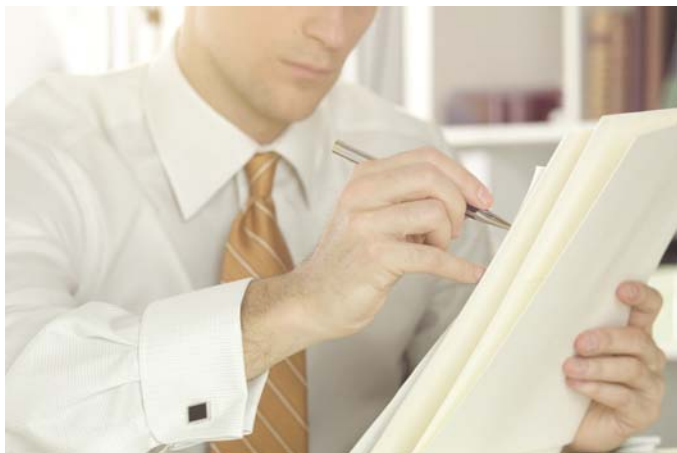
California Corporations Commissioner

Los Angeles, California

# Deferred Deposit Originator *Bulletin*

February 2007 Issue No. 3

## Survey/Report to Legislature



### Payday Loan Companies: Most Common Violations Found

Between December 31, 2004 and October 31, 2006, the Department of Corporations has conducted regulatory examinations of 179 companies and 96 additional licensed locations for a total of 275 licensed locations. The following discusses the most common violations discovered during the regulatory examinations of the licensees.

The written agreements did not contain all of the disclosures required in California Financial Code Section 23035 (e) (86% of the companies examined). The most common disclosures not included were; customer's address, address and phone number of the licensee, statement that the customer cannot be prosecuted or threatened with prosecution to collect, statement that the licensee cannot accept collateral in connection with the transaction, and statement that the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.

Written agreements failed to express the fees charged for the deferred deposit transactions as an annual percentage rate (APR) (7% of the companies examined). The APR was calculated incorrectly (33% of the companies examined).

Notices as required in California Financial Code Section 23035 (d) were not posted completely (45% of the companies examined). The notice provided to the borrowers prior to entering into the agreements did not contain all of the disclosures required in California Financial Code Section 23035 (c)

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On December 1, 2007, the California Corporations Commissioner (Commissioner) is required to report to the Governor and the Legislature on the implementation of the California Deferred Deposit Transaction Law (CDDTL). The Report to the legislature is required to include, at a minimum, information regarding the demand for deferred deposit transactions, the growth and trends in the industry, common practices for conducting the business of deferred deposit transactions, the advertising practices of the industry, including any violations of Section 23027, and any other information the Commissioner deems necessary to inform the Governor and the Legislature regarding potential legislation that may be necessary to protect the people of the State of California.

The Commissioner has determined that information regarding the customers' usage of the loan product is necessary in order to prepare a complete report with appropriate recommendations for legislative action. Specifically, the Commissioner is requesting all licensees to complete a Survey to determine if customers are using the loans to meet short term emergency cash needs or as a source of long term borrowing. The information will assist the Commissioner in determining, among other items, if changes should be made to the fees charged to the consumers, the length of time for deferred deposit transactions, the maximum amount provided to consumers, and the implementation of an installment loan product in lieu of or in addition to a deferred deposit transaction. Section 23057 of the California Financial Code requires the licensees to supply information to the Commissioner that is necessary to conduct the study and prepare the Report.

The Survey was mailed to all licensees in January 2007. The Survey requires the licensees to report the number of consecutive and multiple deferred deposit transactions that were made to borrowers during the period from January 1, 2006 to December 31, 2006. For purposes of the Survey, "Consecutive Deferred Deposit Transaction" is defined as the total number of deferred deposit transactions in which an individual borrower obtained a new deferred deposit transaction within five (5) calendar days of the original due date of the existing deferred deposit transaction. "Multiple Deferred Deposit Transactions" are the total number of deferred deposit transactions in which an individual borrower obtained a new deferred deposit transaction six (6) or more calendar days after the original due date of the existing deferred deposit transaction. The Survey also requires the licensees to report the number of

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## Regulatory Examination Exceptions and Violations

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(44% of the companies examined). The most common disclosures not included were: statement that the customer cannot be prosecuted in a criminal action in conjunction with a deferred deposit transaction for a returned check or be threatened with prosecution; the check is being negotiated as part of a deferred deposit transaction and is not subject to the provision of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear; the Department's toll free number. Evidence was not maintained to demonstrate that the borrowers received the notice prior to entering into the deferred deposit transactions (11% of the companies examined).

Advertising did not contain the disclosure that the company is licensed by the Department of Corporations under the California Deferred Deposit Transaction Law as required in Financial Code Section 23027 (39% of the companies examined). This exception was only taken for advertising established after the operative date of the law. For example, exceptions were not taken for yellow page advertisements taken out prior to December 31, 2004. Evidence of the check was not maintained as required by California Code of Regulations Section 2025 (c) (1) (37% of the companies examined). The term of the deferred deposit transactions exceeded 31 days in violation of Financial Code Section 23035 (a) (29% of the companies examined). The name of the company in the agreement was different than the legal name or fictitious business name the license was issued to in violation of Financial Code Section 23035 (e) (3) (26% of the companies examined). The license was not posted in conspicuous view of the public in the licensed place of business as required in Financial Code Section 23018 (a) (15% of the companies examined). Advertising was misleading in violation of Financial Code Section 23027 (a) (4% of the licensees examined).

The regulatory examinations also disclosed that a large percentage of the agreements contained clauses authorizing fees and charges in excess of what is allowed under the CDDTL, though the licensees were not requiring the customers to pay the unauthorized fees and charges. Financial Code Section 23027 prohibits agreements, disclosures and advertisements used by the licensees in connection with deferred deposit transactions from containing any false or misleading information.

The level of non-compliance with the CDDTL discovered during the regulatory examinations is a major concern to the Department. Of particular concern are the violations relating to disclosures and information the licensees are required to provide to the borrowers in connection with the deferred deposit transactions. The Legislature declared upon enactment

that a primary purpose of the new law was to ensure that the customers received adequate disclosures about the deferred deposit transactions.

Therefore, those companies that continue to commit the violations discussed above will be subject to disciplinary action by the Department. The disciplinary action may include, but not be limited to, a citation not to exceed \$2,500 for each violation and/or an order to discontinue the violations in accordance with the provisions of Financial Code section 23058. For more egregious violations or for those licensees that are found to have committed repeat violations (those licensees that failed to comply with a previous directive from the Department to discontinue the violations), disciplinary actions may also include suspension or revocation of the license in accordance with the provisions of Financial Code section 23052.

The Department required 16 companies to refund overcharges to customers totaling \$17,747.21. The unauthorized charges included fees that exceeded 15% of the face amount of the check, fees for extending the due dates of the loans, fees greater than \$15 for checks returned for non-sufficient funds, fees charged more than once for checks returned for non-sufficient funds, late payment charges and other excess charges. To date, the Department has only required the licensees to refund the overcharges to the customers. Those licensees that continue to charge customers amounts exceeding what is allowed under the CDDTL or are found to have committed willful violations of the CDDTL will be subject to the following disciplinary actions, in addition to the remedies previously discussed in this article.

Financial Code section 23060 provides that if any amounts other than, or in excess of, the charges or fees permitted under the CDDTL are **willfully** charged, contracted for or received, or if any provision of the CDDTL is **willfully** violated in the making or collection of a deferred deposit transaction, the deferred deposit agreement shall be void. If the deferred deposit transaction is void, no person shall have any right to collect or receive the principal amount or any charges or fees provided in the deferred deposit transaction agreement.

Financial Code section 23061 provides that if any amounts other than, or in excess of, the charges permitted by the CDDTL is charged, contracted for, or received in connection with a deferred deposit transaction, for any reason other than a willful act of the licensee, the licensee shall forfeit all charges and fees on the deferred deposit transaction and shall only collect the principal amount of the transaction. This will not apply to an error in computation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid that error,

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## Regulatory Examination Exceptions and Violations

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and (2) within 60 days of discovering the error the licensee notifies the customer of the error and makes what ever adjustments in the account are necessary to correct the error.

Financial Code section 23062 provides that if any provision of the CDDTL is violated in the making or collection of a deferred deposit transaction, for any reason other than a willful act of the licensee, the licensee shall forfeit all charges and fees on the deferred deposit and may collect or receive only the principal amount. This shall not apply to a violation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 30 days of discovering the error the licensee notified the customer of the error and rectified the error by making the appropriate changes in the documents or account and by taking other action necessary to correct the error.

The Department encourages all licensees to review their agreements, disclosures and operations to ensure compliance with the CDDTL, with emphasis placed on the violations discussed in this article. For additional guidance regarding disclosure requirements, refer to the March 2006 Deferred Deposit Originator Bulletin, which may be obtained from the Department's website at (<http://www.corp.ca.gov/pub/publications.htm>) or by calling the Department's toll free number at 1-866-ASK-CORP (1-866-275-2677). ■

## Survey/Report to Legislature

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payment plans entered into with customers and the number of deferred deposit transactions conducted over the Internet. The Survey must be completed and returned to the Department of Corporations by March 15, 2007, unless the Department grants an exemption. Failure to file the Survey by March 15, 2007 (if an exemption has not been granted) may result in revocation of the license(s).

Those licensees that could demonstrate that providing the information requested in the Survey for the period from January 1, 2006 to December 31, 2006 would create a substantial financial burden were permitted to request an exemption from the Commissioner. The request for the exemption was required to be in writing and describe in detail the additional costs the licensee would incur in order to provide the information requested in the survey for the period from January 1, 2006 to December 31, 2006. The request for the exemption was required to be filed with the Department no later

than January 31, 2007. Those licensees that were granted the exemption will be required to file the Survey for the period from January 1, 2007 to June 30, 2007. For those licensees granted the exemption, the survey for the period from January 1, 2007 to June 30, 2007 shall be due on July 31, 2007.

The Survey is available on the Department's website at <http://www.corp.ca.gov/pub/publications.htm> or by calling the Department's toll free number at 1-866-ASK-CORP (1-866-275-2677). **The Survey is in addition to the Annual Report that must be completed by all licensees and also filed with the Department by March 15, 2007.** ■

## Annual Report

**In addition to the Survey discussed in the previous article**, all licensees are required to submit an annual report to the Commissioner by March 15, 2007 providing specific information covering the period from January 1, 2006 to December 31, 2006. The report form and the instructions were mailed to all licensees in January 2007. The report must be filed even if no business was conducted under the license in 2006. Companies with multiple locations must file one report consolidating the information from all locations into one report. The licensee or an authorized representative of the licensee is required to sign the report.

The report form and instructions for completing the annual report is available on the Department's website at <http://www.corp.ca.gov/pub/publications.htm> or by calling the Department's toll free number at 1-866-ASK-CORP (1-866-275-2677). ■

## Annual Percentage Rate (APR) Calculation

The CDDTL requires a licensee to provide customers with annual percentage rates on the posted schedule of charges and fees Notice and on each deferred deposit transaction Agreement. Annual Percentage Rate (APR) is the effective yearly interest rate that will be paid on a loan, taking into account all fees and charges. The purpose of using APR is to calculate the total cost of borrowing. APR is intended to make it easier to compare lenders and loan options.

One formula for calculating APR on a deferred deposit transaction is:

$$\text{Finance Charge} \div \text{Amount Financed} \div \text{Number of Loan Days} \times 365 \text{ Days in a Year} \times 100 \text{ (for conversion to a percentage rate)} = \text{APR}$$

Examples using the formula are as follows:

1. Assume a loan of \$100 with a maximum fee charge of \$17.65 is given for 14 days. The APR calculation would be:

$$\$17.65 \div \$100 \div 14 \times 365 \times 100 = 460.16\%$$

2. Assume a loan of \$200 with a maximum fee charge of \$35.29 is given for 30 days. The APR calculation would be:

$$\$35.29 \div \$200 \div 30 \times 365 \times 100 = 214.68\%$$

This formula can be used with any deferred deposit transaction amount and number of loan days. APR is calculated using the amount financed (amount provided to the customer) and not the amount of the check. For additional information regarding the calculation and disclosure of the APR, refer to the Federal Truth In Lending Act and its regulations. ■



## Guidelines For Complying with the California Deferred Deposit Transaction Law



The following information about a licensee's obligations and responsibilities regarding certain requirements of the California Deferred Deposit Transaction Law (CDDTL) and the rules and regulations of the Commissioner is provided for your reference. This information is based on exceptions discovered during the regulatory examinations discussed in this article. This information does not enumerate all of a licensee's obligations and responsibilities under the law and the Commissioner's rules and regulations. Consequently, a licensee should be familiar with all provisions of the law and the rules and regulations.

The California Deferred Deposit Transaction Law is contained in Division 10 of the California Financial Code beginning at Section 23000 et seq. Regulations are contained in Chapter 3, Title 10 of the California Code of Regulations, beginning at Section 2020 et. seq. The California Deferred Deposit Transaction Law may be obtained from the Official California Legislative Information website at <http://www.leginfo.ca.gov/calaw.html>. The Regulations are available from the Office of Administrative Law's website at <http://www.oal.ca.gov/>. There are also other websites available which may provide this information, or it may be purchased from various vendors. Public libraries may also have copies of the law and regulations. For additional guidance, you may refer to the March 2006 Deferred Deposit Transaction Law Bulletin, which may be obtained at <http://www.corp.ca.gov/pub/publications.htm>

### Agreements, disclosures and notices

- A. A license, along with any currently effective order of the commissioner approving a different name, shall be conspicuously posted in the place of business authorized by the licensee (Financial Code Section 23027).
- B. The following notices are required to be clearly and conspicuously posted in the unobstructed view of the public by all licensees in each location of a business providing deferred deposit transactions in letters not less than one-half inch in height (Financial Code Section 23035 (d)):
  - 1. The licensee cannot use the criminal process against a consumer to collect any deferred deposit transaction.
  - 2. A complete, detailed, and unambiguous schedule of fees.
  - 3. The schedule of all charges and fees to be charged on those deferred deposit transactions with an example of all charges and fees that would be charged on at least a one-hundred-dollar (\$100) and a two-hundred-dollar (\$200) deferred deposit transaction, payable in 14 days and 30 days, respectively, giving the corresponding annual percentage rate. The information may be provided in a chart as follows:

Amount Provided	Fee	Amount of Check	14-day APR	30-day APR
\$100	XX	XXX	XXX	XXX
\$200	XX	XXX	XXX	XXX

- C. Before entering into a deferred deposit transaction, the licensee is required to distribute to the customers a notice that includes, but is not limited to, the following (Financial Code Section 23035 (c)):
  - 1. Information about charges for deferred deposit transactions.
  - 2. That if the customer's check is returned unpaid, the customer may be charged an additional fee of up to fifteen dollars (\$15).
  - 3. That the customer cannot be prosecuted in a criminal action in conjunction with a deferred deposit transaction for a returned check or be threatened with prosecution.

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4. The Department's toll-free telephone number, which is 1-(866) ASK-CORP (275-2677) for receiving calls regarding customer complaints and concerns.
5. That the licensee may not accept any collateral in conjunction with a deferred deposit transaction.
6. That the check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provisions of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear.

This notice is required to be written and available in the same language principally used in any oral discussions or negotiations leading to the execution of the deferred deposit agreement and must be in at least 10-point type. The licensee is responsible for maintaining evidence that the notice was provided to the customer *prior* to entering into the deferred deposit transaction.

- D. An agreement to enter into a deferred deposit transaction is required to be in writing and shall be provided by the licensee to the customer. The agreement is required to be written in the same language principally used in any oral discussions or negotiations leading to the execution of the deferred deposit agreement and must be in at least 10-point bold type. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer and the licensee (or an authorized representative of the licensee), and shall include all of the following (Financial Code Section 23035 (e)):
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.
  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 check has been deferred (due date).
  6. The payment plan, or extension, if applicable.
  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.
  12. Signature space for the customer and signature of the licensee or authorized representative of the licensee and date of the transaction.

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### **Advertising Requirements/Licensure Disclosure**

Licenses are not allowed to advertise, print, display, publish, distribute or broadcast or cause to be broadcast, in any manner, any statement or representation with regard to the deferred deposit transaction business, including the rates, terms, or conditions for making or negotiating deferred deposit transactions, that is false, misleading or deceptive or that omits material information that is necessary to make the statements not false, misleading or deceptive. Licenses are required to maintain a file of all advertising copy for a period of 90 days from the date of its use.

All advertising for a deferred deposit transaction must include a disclosure in the printed text of an advertisement, or the oral text in the case of radio or television advertisement, that the licensee is licensed by the Department of Corporations pursuant to the California Deferred Deposit Transaction Law. California and Department may be abbreviated. A licensee is not required to place the licensure disclosure on signs located on the exterior of the licensed location (Financial Code Section 23027).

### **Prohibited acts and limitations**

- A. The face amount of the customer's personal check or the electronic equivalent of the customer's personal check may not exceed \$300 and the fee charged may not exceed 15% of the face amount of the check (Financial Code Section 23035 (a) and 23036 (a)). For example, for a check in the amount of \$300, the licensee may charge a maximum fee of \$45, and the borrower would receive \$255. For a check in the amount of \$100, the licensee may charge a maximum fee of \$15, and the borrower would receive \$85. For a check in the amount of \$117.65, the licensee may charge a fee up to \$17.65, and the borrower would receive \$100.

A single fee not to exceed \$15 may be charged for a returned check. No additional fees may be added for late payments or returned checks. A licensee is prohibited from charging any fees directly or indirectly other than those fees allowed under the CDDTL (Financial Code Section 23036 (e) and (f)).

- B. There are no limitations on the number of deferred deposit transactions a licensee may make to a customer in any given period of time. A licensee cannot make a new deferred deposit transaction during the period an earlier deferred deposit transaction is in effect for the same customer (Financial Code Section 23036 (c) and the proceeds of a new deferred deposit transaction may not be used to pay off an existing deferred deposit transaction from the same licensee (Financial Code Section 23037 (a)).

A licensee cannot enter into a deferred deposit transaction with a customer during the period an earlier deferred deposit transaction is in effect for the same customer, including transactions where the existing deferred deposit transaction and the new deferred deposit transaction does not exceed the maximum amount allowed of \$300. Licensees with multiple locations cannot enter into a deferred deposit transaction with a customer during the period an earlier deferred deposit transaction is in effect for the same customer at any of the licensee's locations. Licensees with multiple locations cannot use the proceeds of a new deferred deposit transaction to pay of an existing deferred deposit transaction for the same customer at any of the other licensee's locations.

- C. A licensee is not permitted to accept or use a customer's personal check or a customer's electronic equivalent of a personal check received from a previous deferred deposit transaction for a new deferred deposit transaction. A licensee cannot accept more than one check for a single deferred deposit transaction (Financial Code Section 23037 (a) and (g)).
- D. A licensee cannot accept collateral in conjunction with a deferred deposit transaction and is not allowed to make deferred deposit transactions contingent on the purchase of other services or products (Financial Code Section 23037 (b) and (c)).
- E. A customer cannot be criminally prosecuted or threatened with criminal prosecution to collect a delinquent deferred deposit transaction (Financial Code Section 23035 (b)). A check that is being negotiated as part of a deferred deposit transaction is not subject to the provisions of Section 1719 of the Civil Code. Therefore, no person shall be required to pay treble damages if the check does not clear (23035 (b) (6)).

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- F. A licensee is prohibited from altering the date on a check or from taking any check, instrument or form in which blanks are left to be filled in after execution (Financial Code Section 23037 (g) and (h).
- G. Under no circumstances shall a deferred deposit transaction agreement include any of the following (Financial Code Section 23035 (h)):
  - 1. A hold harmless clause.
  - 2. A confession of judgment clause or power of attorney.
  - 3. Any assignment of or order for payment of wages or other compensation for services.
  - 4. Any acceleration provision.
  - 5. Any unconscionable provision. ■

## 2006 Licensing Statistics

The table below shows the number of licenses under the California Deferred Deposit Transaction Law (CDDTL) that were outstanding as of December 31, 2005 and December 31, 2006.

	Number of Licensed Companies	Additional Licensed Locations	Total Licensed Locations
12/31/05	473	1,972	2,445
12/31/06	478	2,015	2,493

The table below shows the licensing activity for 2006. The long form application refers to the first license a person applies for under the CDDTL and the short form application refers to a license for an additional location.

	Long-Form	Short-Form	Total
Applications Filed	107	263	370
Applications Denied	2		
Applications Abandoned	8	1	9
Applications Withdrawn	3	4	7
Applications Pending as of December 31, 2006	27	26	53
Licenses Surrendered	79	188	267
Licenses Revoked	14	8	22
Licenses Issued	88	235	323



## Enforcement Actions

The Department has taken the following disciplinary actions under the CDDTL. The orders are available on the Department's website at <http://www.corp.ca.gov>

Respondent	Effective Date	Order
Alan C. Nader doing business as Advance California	August 10, 2006	Order denying California Deferred Deposit Transaction Law license application
Neal M. Hanley doing business as Advance Checks	October 2, 2006	Order revoking California Deferred Deposit Transaction Law license pursuant to Financial Code Section 23016
Ameriloan; USFastCash.com; PreferredCashLoans.com; UnitedCashLoans.com; Clive L. Boulton; Internet Cash Advance Marketing, Inc.	August 22, 2006	Desist and Refrain Order (For violations of Section 23005(a) of the California Financial Code)
Mizyed Musuharbash doing business as Cash N Go	July 10, 2006	Order revoking California Deferred Deposit Transaction Law license pursuant to Financial Code Section 23053
Lisa Tsakonas doing business as Check 2 Payday	November 20, 2006	Order revoking California Deferred Deposit Transaction Law license pursuant to Financial Code Section 23016
Saverio Lani dba Check Exchange	October 16, 2006	Final Judgment of Permanent Injunction and Ancillary Relief
Bret Allen Bivins doing business as Check 'Til Payday	August 15, 2006	Order denying a California Deferred Deposit Transaction Law license application
Dollarworks, Inc. 3600 Wilshire Blvd., Suite 1010 Los Angeles, CA 90010	November 7, 2006	Order revoking Deferred Deposit Transaction license. Pursuant to settlement agreement, agreed to withdraw three short form license applications. Violations included unlicensed activity and violations under CFFL license. Also, the owner, David Walker, has agreed not to file applications for licensure under the CDDTL and CFFL for a period of ten years.
Wise Judgment Corporation doing business as Fast Payday Advance	July 10, 2006	Order revoking California Deferred Deposit Transaction Law licenses pursuant to Financial Code Section 23053 (two locations)
Willienne Pacello doing business as Instant Cash	July 24, 2006	Order revoking California Deferred Deposit Transaction Law license pursuant to Financial Code Section 23052 (two locations)
Jerry's Liquor Store, Inc.	July 24, 2006	Order revoking California Deferred Deposit Transaction Law License pursuant to Financial Code Section 23052
Military Financial, Inc.	December 28, 2006	Desist and Refrain Order (For violations of Section 23005 of the California Financial Code)

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Respondent	Effective Date	Order
Magnum Cash Advance, Inc.	December 28, 2006	Desist and Refrain Order (For violations of Section 23005 of the California Financial Code)
Payroll Advance, LLC	October 2, 2006	Order revoking California Deferred Deposit Transaction Law license pursuant to Financial Code Section 23016
Nabeel Slaieh TC Rebate Services, Inc. E-Z Cash Advance	January 3, 2007	Desist and Refrain Order (For violations of California Financial Code Section 22100)
Khalil Robbin XC Rebate Services, Inc. Fast Cash Rebate	January 3, 2007	Desist and Refrain Order (For violations of California Financial Code Section 22100)

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