

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 SEAN ROONEY
Assistant Chief Counsel
4 MARLOU de LUNA (State Bar No. 162259)
5 Senior Counsel
6 Department of Financial Protection and Innovation
320 W. 4th Street, Suite 750
7 Los Angeles, CA 90013-2344
8 (213) 503-3360
9 Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:) CDDTL LICENSE NO.: 1003421
14)
15 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) CONSENT ORDER AND ORDER TO DESIST
16) AND REFRAIN
17 Complainant,)
18 v.)
19)
20 BUCKEYE CHECK CASHING OF)
CALIFORNIA, LLC dba CASH 1,)
21)
22 Respondent.)
23)

24
25 This Consent Order is entered into between the Commissioner of Financial Protection and
26 Innovation (Commissioner) and Buckeye Check Cashing of California, LLC dba Cash 1 (BCC), and
27 is made with respect to the following facts:

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.
RECITALS

A. The Department of Financial Protection and Innovation (DFPI) through the Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of deferred deposits under the California Deferred Deposit Transaction Law (CDDTL) (Fin. Code, § 23000 et seq.).

B. BCC is a deferred deposit originator licensed by the Commissioner under license number 1003421 since March 28, 2007. As of November 2019, BCC had 33 branch locations in California, each with its own CDDTL license.

C. Based on the regulatory examination conducted in 2017 (2017 Examination), the Commissioner found the following:

1. Violations of Financial Code section 23037, subdivision (f), for collecting amounts from customers in excess of the amounts authorized by Financial Code section 23036. There were 554 deferred deposit transactions identified with overcollections with excess charges amounting to \$118,014.07.

2. Violations of Financial Code section 23024 and California Code of Regulations section 2025, subdivision (c)(1), for failure to maintain adequate books and records that will enable the Commissioner to determine if the licensee is complying with the provisions of this division and with the rules and regulations promulgated by the Commissioner.

D. Based on the examination conducted in 2019 (2019 Examination), the Commissioner found the following:

1. Violations of Financial Code section 23037, subdivision (f), for collecting amounts from customers in excess of the amounts authorized by Financial Code section 23036. There were 42 deferred deposit transactions identified with overcollections with excess charges amounting to \$9,443.23.

2. Evidence of refund issued to the customer was not maintained or made available for review. As a result, the department was unable to determine compliance with FC section 23024 and CCR 2025.

1 3. Thirty customers had more than one deferred deposit transaction, in violation
2 of Financial Code section 23036(c) for multiple deferred deposit transactions for the same customer
3 at the same time.

4 (a) One deferred deposit transaction was identified as violating Financial Code
5 section 23037(e) for alteration in the amount of a customer’s check without the customer’s initials.

6 (b) One deferred deposit transaction was identified as violating Financial Code
7 section 23001(a) for failure to obtain a customer’s personal check.

8 (c) One deferred deposit transaction was identified as violating Financial Code
9 section 23035 (a) for failure to obtain a personal check in the same name that appears on the written
10 agreement.

11 E. BCC’s point-of-sale software system would accept a cash payment from a customer at
12 a BCC branch location without alerting BCC store personnel that an Automatic Clearing House
13 (ACH) debit or deposit check was still pending. Consequently, when the ACH debit or check clears,
14 BCC has double-collected from the customer.

15 F. In cases where BCC has arranged a payment plan, BCC may still have deposited the
16 customer’s original repayment check, which in some instances caused an overcollection .

17 G. Pursuant to the Commissioner’s demand, BCC conducted a self-audit covering the
18 period from 2015 to mid-2020 to determine the number of deferred deposit transactions with
19 overcollections. The self-audit report provided in approximately June 2020 was reviewed by the
20 Commissioner’s staff and was deemed adequate.

21 H. BCC has submitted evidence it has made \$129,434.30 of refunds to borrowers for the
22 overcollections identified in the self-audit report covering the period from 2015 to mid-2020.

23 I. The Commissioner finds that entering into this Consent Order is in the public interest
24 and consistent with the purposes fairly intended by the policy and provisions of the CDDTL.

25 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
26 contained herein, the parties agree as follows:

27 ///

28 ///

1 II

2 TERMS AND CONDITIONS

3 1. Purpose. This Consent Order is entered into for the purpose of judicial economy and to
4 avoid the expense and uncertainty of a hearing or other litigation.

5 2. Finality of Consent Order. BCC agrees to comply with this Consent Order and stipulates
6 that this Consent Order is hereby deemed final.

7 3. Desist and Refrain Order. In accordance with Financial Code section 23050, BCC
8 stipulates that it is ordered to desist and refrain from violating Financial Code section 23001,
9 subdivision (a), Financial Code sections 23002, subdivision (a); 23024; 23035, subdivision (a);
10 23036, subdivision (c); 23037, subdivisions (e) and (f); California Code of Regulations, title 10,
11 section 2025, subdivision (c) (1).

12 4. Waiver of Hearing Rights. BCC acknowledges that the Commissioner is ready,
13 willing, and able to proceed with the filing of an administrative enforcement action on the findings
14 contained in this Consent Order. BCC hereby waives the right to any hearings and to any
15 reconsideration, appeal, or other right to review which may be afforded by the CDDTL, the
16 California Administrative Procedure Act (APA), the California Code of Civil Procedure (CCP), or
17 any other provision of law. BCC further expressly waives any requirement for the filing of an
18 accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,
19 BCC effectively consents to the finality of this Consent Order and the Desist-and-Refrain Order in it.

20 5. Administrative Penalty. BCC shall pay an administrative penalty of \$90,250.00 no
21 later than 10 days after the effective date of this Consent Order as defined in paragraph 25. BCC shall
22 pay in accordance with paragraph 6.

23 6. Payment of Fees and Penalties. BCC shall pay fees and penalties by cashier's check
24 or Automated Clearing House deposit to the Department of Financial Protection and Innovation and
25 transmitted to the attention of Accounting – Litigation, at the Department of Financial Protection and
26 Innovation, 2101 Arena Blvd, Sacramento, California 95834. Notice of payments must be
27 simultaneously sent to Marlou de Luna, Senior Counsel, in accordance with paragraph 26.

28 ///

1 7. Compliance Procedures. BCC has previously implemented certain changes to its
2 programs, policies, and procedures with respect to deferred deposits originated under its CDDTL
3 licenses (Changes). DFPI has reviewed the Changes and such Changes are adequate to address the
4 issues raised in the 2017 Examination and the 2019 Examination. BCC shall continue to comply with
5 the following Changes unless it receives written approval from the Commissioner to do otherwise:

6 (a) Software System. BCC shall use a software system that is able to recognize a
7 cash payment from a customer at any BCC branch location. In cases where BCC has arranged a
8 payment plan with the customer, the software system must also enable BCC to recognize a partial
9 payment from the customer. The software system must enable BCC to promptly provide to the
10 Commissioner details of its deferred deposit transactions, including the date, time, and amount of
11 proceeds, fees, charges, and payments. BCC represents that its point of sale software system meets
12 the foregoing requirements.

13 (b) Notice of Potential Overpayments. In those cases where a customer desires to
14 pay in cash after BCC has deposited the customer’s repayment check, or initiated an ACH or
15 electronic payment against the customer’s account, BCC shall notify the customer of the potential
16 overpayment prior to accepting the cash payment. BCC shall maintain evidence of such notification
17 provided to the customer.

18 (c) Review of Overpayments. At least once per week, BCC shall review all
19 deferred deposit transactions with cleared ACH payments and identify any overpayments.

20 (d) Refund Payments. No later than 10 business days after identifying an
21 overpayment, BCC shall refund the overpayment to the customer. BCC shall apply each refund as
22 follows:

23 i. For a current borrower whose account has an outstanding balance that
24 is greater than the refund amount, BCC shall reduce the loan’s principal balance by the refund
25 amount.

26 ii. For a current borrower whose account has an outstanding balance that
27 is less than the refund amount, BCC shall reduce the loan’s principal balance to zero dollars. BCC
28 shall notify the borrower of the difference between the outstanding balance and the refund amount,

1 and issue the remaining credit by cash, ACH, electronic credit, or check/money order.

2 iii. For a former borrower whose loan was paid in full and who does not
3 have any loans from BCC with an outstanding balance, BCC shall notify the borrower of the refund
4 payment by electronic mail or U.S. mail at the borrower’s last known address, and issue the refund
5 payment by cash, ACH, electronic credit, or check/money order.

6 iv. For a borrower whose loan was charged off and retained for internal
7 collection, BCC shall reduce the charged-off balance by the refund amount.

8 v. For a borrower whose loan was charged off and assigned for outside
9 collection, BCC shall direct the assignee to reduce the outstanding balance by the refund amount.
10 BCC or the assignee shall notify the borrower of the reduced outstanding balance by electronic mail
11 or U.S. mail at the borrower’s last known address.

12 (e) Reapplied Refunds. BCC shall clearly distinguish between refunds issued by
13 crediting an outstanding balance on a customer’s transaction from a cash payment made by the
14 customer.

15 (f) Written Disclosures of Refunds. BCC shall notify customers, in writing, that:

- 16 i. An overcollection occurred in their account.
- 17 ii. A refund was issued.
- 18 iii. The date the refund was issued.
- 19 iv. The method of the refund.
- 20 v. The amount of refund.

21 (g) Evidence of Refund Payments. BCC shall maintain evidence of refunds issued
22 to customers that will enable the Commissioner to determine whether BCC has complied with the
23 refund payments outlined in paragraph 7 (d), (e) and (f):

24 i. Reapplied Refunds. BCC shall maintain records that clearly indicate
25 the credit made to the outstanding balance of a deferred deposit transaction was a refund issued to the
26 customer, rather than a cash payment made by the customer.

27 ii. Cash Refunds. BCC shall maintain cash receipts signed by the
28 customer receiving the cash refund.

1 iii. ACH Refunds. BCC shall maintain records that the ACH credit was
2 sent or received by the customer. A screen print showing the ACH credit was entered in the system is
3 insufficient evidence of refund payment. A unique ACH transaction number generated by the ACH
4 initiator or processor indicating that the ACH refund was initiated is sufficient.

5 iv. Electronic Credit Refunds. BCC shall maintain electronic evidence
6 that BCC initiated a credit entry to a debit card, check card, or prepaid card account associated with
7 or used by the customer.

8 v. Check/Money Order Refunds. BCC shall maintain, or be able to obtain
9 from its bank, a copy of the front and back of the cashed check or money order.

10 (h) Unclaimed Refunds. BCC shall escheat any unclaimed refunds to the
11 California State Controller’s Office within the period provided by Code of Civil Procedure section
12 1520, subdivision (a) of the Unclaimed Property Law (Code of Civ. Proc., § 1500 et seq.) and prepare
13 a report (Unclaimed Refunds Report) that identifies the following:

- 14 i. The name and address of the customer.
- 15 ii. Whether the customer received a refund for overpayment.
- 16 iii. The date and amount of the refund.

17 (i) Unclaimed Refunds Report. No later than 90 days after unclaimed refunds
18 have been escheated as specified in paragraph 7 (h), BCC shall submit the CDDTL Unclaimed
19 Refunds Report to the Commissioner.

20 (j) Early Depositing. BCC shall not deposit a customer’s check before the date
21 specified in the written agreement unless it receives written authorization from the customer to do so.
22 BCC shall maintain documentation of all such customer authorization in its records.

23 (k) Payment Plans. BCC shall require customers on payment plans who repay by
24 check to write a new check for the current balance after each partial payment.

25 8. Proof of Compliance. The Commissioner may periodically review BCC’s compliance
26 with paragraph 7 and may request proof of such compliance. No later than 14 business days after any
27 such request, BCC shall provide evidence of compliance to the Commissioner’s satisfaction.

28 ///

1 9. Failure to Comply. If BCC fails to comply with any of the terms of this Consent
2 Order, other than through inadvertent and isolated errors that BCC corrects no later than 14 business
3 days after discovering or being notified of such errors and that BCC reports to the Commissioner no
4 later than five business days after such corrections, the Commissioner may summarily suspend BCC
5 from engaging in business under its CDDTL license until it provides evidence of compliance to the
6 Commissioner’s satisfaction. BCC hereby waives any notice or hearing rights afforded under the
7 Administrative Procedure Act, including Government Code section 11415.60, subdivision (b); Code
8 of Civil Procedure; or any other provision of law to contest the summary suspension.

9 10. Consideration. In consideration of BCC’s stipulation to the issuance of this Consent
10 Order, the Commissioner agrees not to initiate disciplinary proceedings against BCC because of this
11 action, except as provided in paragraph 9.

12 11. Full and Final Resolution. Except as provided in paragraph 9, this Consent Order is
13 intended to constitute a full and final resolution of the findings described in paragraph C through G of
14 the recitals. The Commissioner will not bring any further action or proceeding concerning those
15 findings unless he discovers new and further violations by BCC that do not form the basis for this
16 Consent Order, including violations knowingly or willfully concealed from the Commissioner. If the
17 Commissioner discovers that BCC knowingly or willfully withheld information used and relied on in
18 this Consent Order, the Commissioner may rescind this Consent Order and pursue all remedies
19 available under law against BCC.

20 12. Commissioner’s Duties. Nothing in this Consent Order limits the Commissioner’s
21 ability to assist any other governmental agency (city, county, state, or federal) with any
22 administrative, civil, or criminal prosecution brought by that agency against BCC or any other person
23 based upon any of the acts, omissions, or events described in this Consent Order.

24 13. Independent Legal Advice. Each party represents that it has received independent
25 advice from its counsel or representatives regarding the advisability of executing this Consent Order.

26 14. Reliance. Each party represents that in executing this Consent Order it has relied
27 solely on the statements set forth herein and on the advice of its counsel or representatives. Each
28 party also represents that it has not relied on any statement or promise not contained in this Consent

1 Order from any other person or on the failure of such person to make a statement or promise. The
2 parties have included this clause: (1) to preclude any claim that a party was fraudulently induced to
3 execute this Consent Order and (2) to preclude the introduction of parol evidence to vary, interpret,
4 supplement, or contradict the terms of this Consent Order.

5 15. Integration. This Consent Order is the final written expression and the complete and
6 exclusive statement of all the agreements, conditions, promises, representations, and covenants
7 between the parties concerning its subject matter and supersedes all prior or contemporaneous
8 agreements, negotiations, representations, understandings, and discussions between and among the
9 parties, their respective representatives, and any other person or entity, with respect to the subject
10 matter covered hereby. The parties have included this clause to preclude the introduction of parol
11 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

12 16. No Presumption Against Drafting Party. Each party acknowledges that it has had the
13 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
14 intend that no presumption for or against the drafting party will apply in construing any part of this
15 Consent Order. The parties waive the benefit of Civil Code section 1654 and corresponding
16 provisions of any successor statute, which provide that in cases of uncertainty, language of a contract
17 should be interpreted most strongly against the party that caused the uncertainty to exist.

18 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
19 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
20 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
21 provision.

22 18. Headings. The headings to the paragraphs of this Consent Order are inserted for
23 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
24 the provisions hereof.

25 19. Governing Law. This Consent Order will be governed by and construed in accordance
26 with California law. Each of the parties consents to the jurisdiction of a court in California, and
27 hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
28 forum to the maintenance of such action or proceeding in such court.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: October 11, 2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: October 11, 2022

BUCKEYE CHECK CASHING OF
CALIFORNIA, LLC dba CASH 1

By _____
GREGORY T.J. MADSON
General Counsel – Compliance