

**STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS**

TO: Scott Paul Dillingham dba A-1 Check Cashing of Anderson (File # 100-1476)
1709 Bruce Street
Anderson, CA 96007

Scott Paul Dillingham dba A-1 Check Cashing of Red Bluff (File # 100-1477)
420 S Main
Red Bluff, CA 96080

Scott Paul Dillingham dba A-1 Check Cashing of Redding (File # 100-2392)
2580 Bechelli Lane
Redding, CA 96002

Scott Paul Dillingham dba A-1 Check Cashing of Marysville (File # 100-2393)
407 5th Street
Marysville, CA 95901

DESIST AND REFRAIN ORDER

(For violations of California Financial Code sections 23035 and 23037)

CITATIONS

(California Financial Code section 23058)

ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS

(California Financial Code section 23060)

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

1. The California Department of Corporations (“Department”) is responsible for enforcing provisions of the California Deferred Deposit Transaction Law (“CDDTL”) found in California Financial Code section 23000 et seq. The Commissioner is authorized to pursue administrative actions and remedies against licensees who engage in violations of the CDDTL.

2. In 2004 and 2005 the Commissioner issued a CDDTL license to each of the following:
- Scott Paul Dillingham dba A-1 Check Cashing of Anderson (Department File # 100-1476)
 - Scott Paul Dillingham dba A-1 Check Cashing of Red Bluff (Department File # 100-1477)
 - Scott Paul Dillingham dba A-1 Check Cashing of Redding (Department File # 100-2392)
 - Scott Paul Dillingham dba A-1 Check Cashing of Marysville (Department File # 100-2393)

1 3. Scott Paul Dillingham, an individual and owner of the above-described businesses,
2 during all relevant times, operated his businesses under their respective business names. There is
3 such a unity of interest, ownership, dominion and control of the foregoing businesses by Scott Paul
4 Dillingham that any separation between them should be disregarded and hereinafter all the
5 foregoing are referred to as the “Licensees.”

6 4. Since January 1, 2005, the Department’s Licensees engaged in the business of deferred
7 deposit transactions by offering, originating and making deferred deposit transactions.

8 5. A deferred deposit transaction is a written transaction whereby one person gives funds
9 to another person upon receipt of a personal check along with an agreement that the personal
10 check shall not be deposited until a later date. These transactions are also referred to as “payday
11 advances” or “payday loans.”

12 6. The Licensees had knowledge of the CDDTL and had sworn declarations in which they
13 represented that they would comply with all provisions of the CDDTL and other laws.

14 7. After giving advance written and oral notice of the Department’s scheduled regulatory
15 examination, the Department’s examiner visited the Licensees’ business locations. Notwithstanding
16 their sworn declarations to comply with the CDDTL, the Licensees willfully and knowingly engaged
17 in CDDTL violations, as the Department’s examiner discovered during the regulatory examinations
18 conducted in 2006 and 2007.

19 8. Licensees are required to comply with all CDDTL requirements and are prohibited
20 from prosecuting or threatening to prosecute any customer in a criminal action for failure to
21 comply with the terms of the agreement for the deferred deposit transaction.

22 9. Section 23035, subdivisions (b), (c), (d) and (e) mandate the specific content of notices,
23 disclosures and written agreements for deferred deposit transactions and, in relevant part, states:

24 (b) A customer who enters into a deferred deposit transaction and offers a
25 personal check to a licensee pursuant to an agreement shall not be subject to any
26 criminal penalty for the failure to comply with the terms of that agreement.

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

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

(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.

(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.

(d) 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 providing deferred deposit transactions in letters not less than one-half inch in height: . . .

(1) The licensee cannot use the criminal process against a consumer to collect any deferred deposit transaction. . . .

(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: . . .

(8) Disclosure of any returned check charges.

(9) That the customer cannot be prosecuted or threatened with prosecution to collect. . . .

10. Subdivisions (a), (e) and (f) of section 23036, limit the type and amount of fees and charges that customers can be required to pay. These subdivisions, in relevant part, state:

(a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check. . . .

(e) A fee not to exceed fifteen dollars (\$15) may be charged for the return of a dishonored check by a depository institution in a deferred deposit transaction. A single fee charged pursuant to this subdivision is the exclusive charge for a dishonored check. No fee may be added for late payment.

(f) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a licensee pursuant to a deferred deposit transaction.

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

11. Financial Code section 23037 limits a licensee’s transactions and activities stating:

In no case shall a licensee do any of the following: . . .

(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.

12. During the July 2006 CDDTL regulatory examination the Licensees were informed that they were in violation of Financial Code section 23035, subdivision (d)(1) because they failed to conspicuously post a notice in view of the public in letters not less than ½ inch in height that the licensee cannot use the criminal process against a consumer in order to collect any deferred deposit transaction. However, the Licensee failed to correct this violation.

13. Additionally, despite the statutory prohibitions against prosecuting customers to collect the unpaid amounts of deferred deposit transactions, the Licensees routinely filed complaint or crime reports with District Attorney (“DA”) offices in at least three counties in California.

14. When questioned by the Department’s examiner about the specific customers’ checks that were returned unpaid to the Licensees due to non-sufficient funds (“NSF”), the Licensees admitted that they filed numerous NSF or Bad Check Reports about their customers’ NSF checks in accordance with the each DA’s bad check or restitution program. The Licensees consistently identified themselves as the “victim” on each NSF or Bad Check Report filed in the Shasta, Tehama and Yuba County DA’s Offices and certified that the “report is true, accurate and complete.” Each NSF and Bad Check Report asks, “Was there an agreement to hold this check?” or “AGREEMENT TO HOLD?”, respectively. In many all cases, the Licensees falsely answered by indicating or marking “NO” rather than “YES”.

15. As a direct result of the Licensees’ false NSF and Bad Check Reports filed with DA’s offices the Licensees’ customers received from the DA’s Offices letters threatening customers with criminal prosecution if they failed to make restitution in accordance with the DA’s NSF and Bad Check Programs.

///

1 16. During the Department’s examination in June 2007, the Department’s examiner
2 requested that Licensees provide books and records that documented details about consumers’
3 NSF checks and amount recovered from the DA’s offices. In response, the Licensees provided
4 documents and bad check reports that substantiate the following:
5 Scott Paul Dillingham dba A-1 Check Cashing of Anderson (File # 100-1476) referred twenty-nine
6 (29) NSF checks to the DA’s offices;
7 Scott Paul Dillingham dba A-1 Check Cashing of Red Bluff (File # 100-1477) referred sixty-one
8 (61) NSF checks to the DA’s offices;
9 Scott Paul Dillingham dba A-1 Check Cashing of Redding (File # 100-2392) referred twenty-four
10 (24) NSF checks to the DA’s offices; and,
11 Scott Paul Dillingham dba A-1 Check Cashing of Marysville (File # 100-2393) referred fifty-five
12 (55) NSF checks to the DA’s offices. In sum, the combined total number the Licensees referred is
13 169 NSF checks.

14 17. As a direct result of the Licensees’ false NSF and Bad Check Reports filed with DA’s
15 offices the Licensee’ customers received from the DA’s Offices letters threatening customers with
16 criminal prosecution if they failed to make restitution in accordance with the DA’s bad check
17 program.

18 18. A customer whose NSF check is processed in accordance with the DA’s NSF and
19 Bad Check Program may also be assessed an additional fee for administrative costs and diversion
20 programs.

21 19. Since the Licensees repeatedly failed to post the required signage in accordance with
22 CDDTL mandates they were in violation of Financial Code section 23035, subdivision (d)(1).

23 20. Although the Licensees distributed the statutory notice containing the requisite
24 disclosures to consumers before entering into written agreements, the Licensee’ actions
25 contradicted their disclosures in their notices given to consumers, which renders their notices and
26 disclosures deceptive and misleading in violation of Financial Code section 23037, subdivision
27 (f).

28 21. The Licensees’ written agreements with customers contained all the necessary

1 language required by Financial Code section 23035, subdivision (e), which prohibit a CDDTL
2 licensee from criminally prosecuting or threatening with criminal prosecution any customer to
3 collect an unpaid deferred deposit obligation. However, the Licensees did not operate in
4 accordance with their written agreements rendering their written agreements with consumers
5 deceptive and misleading, in violation of Financial Code section 23037, subdivision (f).

6 **DESIST AND REFRAIN ORDER**

7 By reason of the foregoing, the Licensees have failed to post the required signage to inform
8 consumers of their rights and protections under California law in violation of the requirements found
9 in Financial Code section 23035. The Licensees have also engaged in deceptive and misleading
10 deferred deposit transactions in violation of the Financial Code section 23037.

11 California Financial Code section 23050 provides in pertinent part:

12 Whenever, in the opinion of the commissioner, any person is engaged in
13 the business of deferred deposit transactions, as defined in this division,
14 without a license from the commissioner, or any licensee is violating any
15 provision of this division, the commissioner may order that person or
16 licensee to desist and to refrain from engaging in the business or further
17 violating this division. If, within 30 days, after the order is served, a
18 written request for a hearing is filed and no hearing is held within 30
19 days thereafter, the order is rescinded.

20 Pursuant to Financial Code section 23050, the Licensees are hereby ordered to desist and
21 refrain from violating Financial Code sections 23035 and 23037. This Order is necessary for the
22 protection of consumers and consistent with the purposes, policies and provisions of the CDDTL.
23 This Order shall remain in full force and effect until further order of the Commissioner.

24 **CITATIONS**

25 The Department discovered at least 169 violations during the 2007 CDDTL examination
26 involving deferred deposit transactions with consumers identified by the Licensees. As a result,
27 the Commissioner is issuing Citations 1 through 169, inclusive for the 169 violations that involve
28 deceptive and misleading transactions with customers.

Financial Code section 23058 gives the Commissioner's authority to issue citations for
CDDTL violations stating:

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

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

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

(c) If within 30 days from the receipt of the citation of the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and in all states the commissioner has all the powers granted therein.

(e) After the exhaustion of the review procedures provided for in this section, the department may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the department. The application, which shall include a certified copy of the final order of the department, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

Pursuant to Financial Code section 23058, the Licensees are hereby ordered to pay to the Commissioner within 30 days from the date, as shown below, for these Citations, an administrative penalty of two thousand five hundred dollars (\$2,500) for each of the 169 citations for the total amount of four hundred twenty two thousand five hundred dollars (\$422,500).

ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS

The Licensees willfully violated Financial Code sections 23035 and 23037 of the CDDTL by failing to post the legal notices at their business locations and by engaging into deceptive and misleading deferred deposit transactions with at least 169 California consumers. The sum of money involved in the deceptive and misleading deferred deposit transactions with these 169 consumers aggregates \$45,561.20.

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

California Financial Code section 23060 states:

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

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

The Commissioner finds the Licensees willfully violated Financial Code sections 23035 and 23037. Pursuant to Financial Code section 23060 the Commissioner declares void each of the Licensees' above described deferred deposit transactions with 169 consumers identified by the Licensees.

The Commissioner finds the Licensees have no right to collect or receive any amount provided in the deferred deposit transaction, any charges, or fees in connection with 169 deferred deposit transactions that total \$45,561.20. Pursuant to Financial Code section 23060 the Commissioner hereby orders the Licensees to forfeit and return all charges, fees and other amounts collected or received in connection with the 169 deferred deposit transactions within 30 days from the date of this Order, as shown below.

Dated: October 30, 2007
Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
ALAN S. WEINGER
Lead Corporations Counsel
Enforcement Division