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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA

In the Matter of:	)	
THE COMMISSIONER OF BUSINESS OVERSIGHT,	)	CDDTL License No.: 100-0910
Complainant,	)	DESIST AND REFRAIN ORDER PURSUANT TO FINANCIAL CODE SECTION 23058
v.	)	CITATIONS PURSUANT TO FINANCIAL CODE SECTION 23058; and,
VIRTUAL E, INC. d/b/a CHECKMATE	)	
Respondent.	)	

Complainant, the Commissioner of Business Oversight (“Commissioner”), is informed and believes, and based on such information and belief, finds as follows:

**I.**

**FACTUAL BACKGROUND**

1. The Commissioner has jurisdiction over deferred deposit transactions as set forth in the California Deferred Deposit Transaction Law (“CDDTL”) (Cal. Fin. Code § 23000 et seq.).

1           2.       “Deferred deposit transaction” as defined by section 23001, subdivision (a), “means a  
2 transaction whereby a person defers depositing a customer’s personal check until a specific date,  
3 pursuant to a written agreement for a fee or other charge.”

4           3.       Virtual E, Inc. doing business as Checkmate (“Virtual E” or “Respondent”) is a  
5 Nevada corporation with a principal place of business at 101 S. Coast Highway, Oceanside,  
6 California.

7           4.       On August 19, 2013, the Commissioner issued a deferred deposit transaction  
8 originator license (number 100-0910) to Virtual E pursuant to the CDDTL. Respondent engages in its  
9 payday lending business at 10 locations in California.

10          5.       On or about July 17, 2013, the Commissioner commenced a regulatory examination of  
11 Virtual E.

12          6.       The Commissioner found that Virtual E did not maintain an actual copy of a  
13 customer’s personal check for all transactions. Virtual E accepts Automated Clearing House (“ACH”)  
14 authorization as an “electronic equivalent” of a check.

15          7.       When customers use physical checks, the bank account holder name is printed on the  
16 check. When customers use electronic equivalents of a check, such as an ACH transaction, Virtual E  
17 records the customer’s name, but does not record the account holder’s name of the account being  
18 electronically debited.

19          8.       California Code of Regulations (“CCR”), title 10, section 2025, subdivision (c)(1),  
20 requires CDDTL licensees to maintain evidence of the check used in each deferred deposit  
21 transaction.

22          9.       Financial Code section 23024 provides:

23               Each licensee shall keep and use books, accounts, and records that will  
24               enable the commissioner to determine if the licensee is complying with the  
25               provisions of this division and with the rules and regulations promulgated  
26               by the commissioner. Each licensee shall maintain any other records as  
27               required by the commissioner. The commissioner or a designee of the  
28               commissioner may examine those records at any reasonable time. Upon  
               the request of the commissioner, a licensee shall file an authorization for  
               disclosure of financial records of the licensed businesses pursuant to  
               Section 7473 of the Government Code. All records shall be kept for two

1 years following the last entry on a deferred deposit transaction and shall  
2 enable an examiner to review the recordkeeping and reconcile each  
3 consumer deferred deposit transaction with documentation maintained in  
the consumer's deferred deposit transaction file records.

4 10. Section 23001, subdivision (a), expressly states that the check accepted in the deferred  
5 deposit transaction must be a "customer's personal check." Although a licensee may accept the  
6 "electronic equivalent" of a personal check, such as an ACH transaction, the licensee's record of the  
7 ACH transaction must constitute sufficient evidence of a "customer's personal check." The account  
8 holder name of the bank account being electronically debited is necessary to determine whether the  
9 account is the customer's personal account.

10 11. The Commissioner finds that by failing to record the bank account holders' name,  
11 Respondent has failed to maintain evidence of a "customer's personal check" for every deferred  
12 deposit transaction, in violation of section 2025, subdivision (c)(1).

13 12. Further, the Commissioner finds that Virtual E has failed to keep records "that will  
14 enable the Commissioner to determine if the licensee is complying with the provisions of [the  
15 CDDTL]" and "reconcile each consumer deferred deposit transaction with documentation maintained  
16 in the consumer's deferred deposit transaction file records," in violation of section 23024.

## 17 II.

### 18 **DESIST AND REFRAIN ORDER**

19 Where the Commissioner has cause to believe a person is violating any provision of the  
20 CDDTL, the Commissioner is further authorized under Financial Code section 23058 to issue, along  
21 with each citation, an order to desist and refrain.

22 On or about July 17, 2013, the Commissioner commenced a regulatory examination of Virtual  
23 E. The Commissioner found that Virtual E did not maintain an actual copy of a customer's personal  
24 check for all transactions. Virtual E accepts Automated Clearing House ("ACH") authorization as an  
25 "electronic equivalent" of a check. When customers use physical checks, the bank account holder  
26 name is printed on the check. When customers use electronic equivalents of a check, such as an ACH  
27 transaction, Virtual E records the customer's name, but does not record the account holder's name of  
28 the account being electronically debited.

1 The foregoing facts establish violations of the CDDTL by Virtual E. Pursuant to Financial  
2 Code section 23058, Virtual E is hereby ordered to desist and refrain from violating section 2025,  
3 subdivision (c)(1), of Title 10 of the California Code of Regulations and Financial Code section  
4 23024.

5 This Order is necessary for the protection of consumers and consistent with the purposes,  
6 policies, and provisions of the CDDTL. This Order shall remain in full force and effect until further  
7 order of the Commissioner.

### 8 III.

#### 9 CITATIONS

10 Financial Code section 23058 provides:

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

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

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

25 (d) Any hearing under this section shall be conducted in accordance with  
26 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2  
27 of the Government Code, and in all states the commissioner has all the powers  
28 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.

1 For violations of the CDDTL, the Commissioner hereby issues the following citations:  
 2 **CITATION A:** Virtual E failed to maintain “evidence of the check” used in each deferred deposit  
 3 transaction, in violation of CCR section 2025(c)(1); and,  
 4 **CITATION B:** Virtual E failed to keep records that enable the commissioner to determine if the  
 5 licensee is complying with the CDDTL and with the rules and regulations promulgated by the  
 6 Commissioner, in violation of section 23024.

7 Pursuant to section 23058, Virtual E is hereby ordered to pay the Commissioner an  
 8 administrative penalty of two thousand five hundred dollars (\$2,500.00) for each of the two citations  
 9 (Citations A and B) for the total amount of five thousand dollars (\$5,000.00) within 30 days from the  
 10 date these citations are deemed final pursuant to section 23058(c). The penalty payment shall be  
 11 made in the form of a cashier’s check payable to the “California Department of Business Oversight”  
 12 and mailed to the attention of Counsel Danielle Stoumbos at 320 West Fourth Street, Suite 750, Los  
 13 Angeles, California 90013.

14  
 15 DATED: July 17, 2015  
 16 Los Angeles, CA

JAN LYNN OWEN  
 Commissioner of Business Oversight

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 19 By \_\_\_\_\_  
 20 MARY ANN SMITH  
 21 Deputy Commissioner  
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