

1 PRESTON DuFAUCHARD  
California Corporations Commissioner  
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Acting Deputy Commissioner  
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8  
9 BEFORE THE DEPARTMENT OF CORPORATIONS  
10 OF THE STATE OF CALIFORNIA

11 In the Matter of THE CALIFORNIA ) File No.: 100-2467  
12 CORPORATIONS COMMISSIONER, )

13 Complainant, )

14 vs. )

15 CHECK MARK ENTERPRISES )

16 Respondent. )  
17 )  
18 )  
19 )

- 1) ACCUSATION TO REVOKE LICENSE;
- 2) CITATIONS AND DESIST AND REFRAIN ORDER;
- 3) ORDER VOIDING LOANS

20 Complainant, the California Corporations Commissioner, (“Commissioner”) is informed and  
21 believes, and based upon such information and belief, alleges and charges Respondent, Check Mark  
22 Enterprises (“Respondent”) as follows:

23 INTRODUCTION

24 On August 16, 2005, the Commissioner issued to Respondent a deferred deposit transaction  
25 originator license pursuant to the California Deferred Deposit Transaction Law (“CDDTL”) set forth  
26 in California Financial Code section 23000 et seq. (All future references to sections are to the  
27 California Financial Code unless indicated otherwise.)

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1 Respondent was incorporated in California with its place of business at 2400 Newport Blvd.,  
2 Suite A-5, Costa Mesa, California 92627.

3 Respondent violated numerous provisions of the CDDTL. If the Commissioner had known  
4 Respondent would engage in a scheme that violated multiple provisions of the California Financial  
5 Code, the Commissioner would have denied a license to Respondent. In view of the extent, nature  
6 and duration of the violations, the Commissioner believes it is in the best interests of the public to  
7 revoke Respondent’s CDDTL license pursuant to Financial Code section 23052. The Commissioner  
8 has issued a Desist and Refrain order, four (4) citations in the amount of \$2,500 per citation, and an  
9 order voiding loans made by Respondent, pursuant to Financial Code sections 23050, 23058 and  
10 23060, respectively.

11 I.

12 FACTUAL BACKGROUND

13 1. The Commissioner is responsible for enforcing provisions of the CDDTL and authorized  
14 to pursue administrative actions and remedies against licensees who engage in violations of the  
15 CDDTL.

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

20 3. On August 16, 2005, the Commissioner issued Respondent a California Deferred Deposit  
21 Transaction License. Respondent’s president is Mark McInerney.

22 4. When Respondent filed an application with the Commissioner for a license to make  
23 deferred deposit transactions Respondent included a Declaration, designated as “Exhibit K” to the  
24 application, signed by Mark McInerney under penalty of perjury for Respondent, stating:

25 **I (we) have obtained and read copies of the California Deferred Deposit**  
26 **Transaction Law (Division 10 of the California Financial Code) and the Rules**  
27 **(Chapter 3, Title, 10, California Code of Regulations) and am familiar with**  
28 **their content: and,**

**I (we) agree to comply with all the provision[s] of the California Deferred Deposit**  
**Transaction Law, including any rules or orders of the Commissioner of Corporations.**

1 5. On September 12, 2007, the Commissioner’s examiner (“Examiner”) visited  
2 Respondent’s business location.

3 6. The Examiner’s review of Respondent’s business revealed several CDDTL violations  
4 described below warranting a revocation, a Desist and Refrain order, penalties and restitution to  
5 consumers.

6 II

7 DEFERRED DEPOSIT TRANSACTION LAW

8 7. Financial Code section 23036(a) and (c), limit the type and amount of fees and charges  
9 that customers can be required to pay and state in relevant parts:

- 10 (a) A fee for a deferred deposit transaction shall not exceed 15 percent of  
11 the face amount of the check.  
12 (c) A licensee shall not enter into an agreement for a deferred deposit  
13 transaction with a customer during the period of time that an earlier  
14 written agreement for a deferred deposit transaction for the same  
15 customer is in effect.

16 8. Financial Code section 23035(a) limits a licensee’s transactions and activities and states in  
17 relevant part:

- 18 (a) A licensee may defer the deposit of a customer’s personal check for up to 31 days,  
19 pursuant to the provisions of this section. The face amount of the check shall not  
20 exceed three hundred dollars (\$300).

21 9. Financial Code section 23026 states:

22 On or before March 15 of each year, beginning March 2006, each licensee shall file  
23 an annual report with the commissioner pursuant to procedures that the commissioner  
24 shall establish. The licensee's annual report shall be kept confidential pursuant to  
25 Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the  
26 Government Code and any regulations adopted thereunder. The annual consolidated  
27 report shall be prepared by the commissioner and made available to the public. For  
28 the previous calendar year, these reports shall include the following:

- (a) The total number and dollar amount of deferred deposit transactions made by the  
licensee.  
(b) The total number of individual customers who entered into deferred deposit  
transactions.  
(c) The minimum, maximum, and average amount of deferred deposit transactions.  
(d) The average annual percentage rate of deferred deposits.

- 1 (e) The average number of days of deferred deposit transactions.
- 2 (f) The total number and dollar amount of returned checks.
- 3 (g) The total number and dollar amount of checks recovered.
- 4 (h) The total number and dollar amount of checks charged off.

III

RESPONDENT’S DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

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6 10. During the September 12, 2007 examination (“Examination”), the Examiner notified  
7 Respondent that Respondent made loans where the checks exceeded \$300. In violation of  
8 Financial Code section 23035(a), Respondent made 16 loans where the checks exceeded \$300.00  
9 totaling \$7,190.25.

10 11. The Examination also disclosed that a fee in excess of the 15% of the face amount of  
11 the check was charged for deferred deposit transactions. In violation of Financial Code section  
12 23036(a), Respondent charged customers excess finance fees on 16 loans in excess of the 15% of  
13 the face amount of the check. The excess fees charged totaled \$766.25, and the excess fees  
14 collected totaled \$723.75. Respondent was notified during the Examination and asked to refund  
15 the noted customers the excess fees charged and provide the Commissioner with proof of the  
16 refunds.

17 12. Fifteen (15) loans were in violation of Financial Code sections 23035(a) and  
18 23036(a). In addition, one loan was in violation of Financial Code section 23035(a); and another  
19 loan was in violation of Financial Code section 23036(a). Thus, seventeen (17) loans were in  
20 violation of Financial Code sections 23035(a) and 23036(a).

21 13. The Examination also revealed violations of Financial Code section 23036(c).  
22 Respondent entered into deferred deposit transactions with two customers while the same two  
23 customers had two outstanding loans. The Examination revealed that the two customers had  
24 multiple loans from August 16, 2005 to October 23, 2007. The loans to the two customers  
25 totaled \$1,200.00. Two (2) loans were in violation of section 23036(c).

26 14. In violation of Financial Code section 23026 and California Code of Regulations  
27 section 2030, Respondent filed false annual reports for the calendar years 2005, 2006 and 2007.  
28 Respondent reported the maximum loan amount made was \$255.00, when in fact the maximum  
loan exceeded \$300.00 in each of the years.

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15. For Respondent’s violations, the Commissioner is issuing four (4) Citations. The four Citations are being issued in connection with the violations of the Financial Code sections 23035(a), 23036(a) 23036(c), and 23026.

IV.  
COMMISSIONER’S AUTHORITY TO ISSUE CITATIONS AND DESIST AND REFRAIN  
ORDER

16. California Financial Code section 23058 states:

- (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.

17. California Financial Code section 23050 states:

Whenever, in the opinion of the commissioner, any person is engaged in the business of deferred deposit transactions, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or

1 licensee to desist and to refrain from engaging in the business or further  
2 violating this division. If, within 30 days, after the order is served, a  
3 written request for a hearing is filed and no hearing is held within 30  
4 days thereafter, the order is rescinded.

5 V.

6 COMMISSIONER’S AUTHORITY TO VOID TRANSACTIONS

7 18. California Financial Code section 23060 states:

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

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

20 CITATIONS

21 19. Pursuant to Financial Code section 23058, Check Mark Enterprises is hereby ordered  
22 to pay to the Commissioner within 30 days from the date of these Citations an administrative  
23 penalty of two thousand five hundred dollars (\$2,500) per Citation for the four Citations for the  
24 total amount of ten thousand dollars (\$10,000).

25 DESIST AND REFRAIN ORDER

26 20. By reason of the foregoing, the licensee has engaged in violation of the California  
27 Financial Code sections 23036, 23035 and 23026. Pursuant to Financial Code sections 23050  
28 and 23058, Check Mark Enterprises is hereby ordered to desist and refrain from violating  
California Financial Code sections 23036, 23035 and 23026.

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

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**ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS**

22. Pursuant to California Financial Code section 23060, Check Mark Enterprises is hereby ordered to void the above described deferred deposit transactions for 17 loans totaling at least \$7,325.25, which were in violation of Financial Code sections 23035(a) and 23036(a). Further, Check Mark Enterprises is hereby ordered to void the above described deferred deposit transactions for 2 loans totaling \$600.00, which were in violation of Financial Code section 23036(c).

23. Further, Respondent had no right to collect or receive any amount provided in the deferred deposit transactions or any charges or fees in connection with these consumer transactions. Accordingly, Check Mark Enterprises is hereby ordered to immediately return the principal amount and all charges and fees that Respondent directly or indirectly received for these transactions.

VI.

**COMMISSIONER’S AUTHORITY TO REVOKE RESPONDENTS’ CDDTL LICENSE**

24. Financial Code section 23052 states the grounds for revocation of a CDDTL license:

The commissioner may suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

- (a) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.
- (b) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.
- (c) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

CONCLUSION

The Commissioner finds, due to the foregoing, that Respondent violated sections 23036, 23035 and 23026. Therefore, the Commissioner is justified in revoking Respondent’s California deferred deposit transaction license pursuant to section 23052. The Commissioner was also

1 justified, based upon the foregoing, in issuing four (4) citations to Respondent, a Desist and Refrain  
2 order, and an order voiding at least 19 loans pursuant to sections 23058, 23050 and 23060,  
3 respectively.

4 WHEREFORE, Complainant, the California Corporations Commissioner prays that the  
5 deferred deposit transaction license of Check Mark Enterprises be revoked pursuant to Financial  
6 Code section 23052.

7  
8 Dated: September 16, 2008  
9 Los Angeles, California

PRESTON DuFAUCHARD  
California Corporations Commissioner

10  
11 By \_\_\_\_\_  
12 ALAN S. WEINGER  
13 Acting Deputy Commissioner  
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