

1 PRESTON DUFAUCHARD
California Corporations Commissioner
2 MICHAEL L. PINKERTON
Deputy Commissioner
3 ALAN S. WEINGER
Lead Corporations Counsel
4 AFSANEH EGHBALDARI (BAR NO. 250107)
Corporations Counsel
5 1350 Front Street, #2034
San Diego, California 92101
6 Telephone: (619) 645-3166

7 Attorneys for Complainant

8

9

BEFORE THE DEPARTMENT OF CORPORATIONS

10

OF THE STATE OF CALIFORNIA

11

THE CALIFORNIA CORPORATIONS)
COMMISSIONER,)

OAH Case No. 2008100216

12

Complainant,)

SETTLEMENT AGREEMENT

13

14

vs.)

15

CHECK MARK ENTERPRISES,)

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Respondent.)

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This Settlement Agreement (“Agreement”) is entered into by and between the Complainant,
20 the California Corporations Commissioner (“Commissioner”) and Respondent, Check Mark
21 Enterprises (“Respondent”).
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23

RECITALS

24

This Agreement is made with reference to the following facts:

25

A. On August 16, 2005, the Commissioner issued to Respondent a deferred deposit
26 transaction originator license pursuant to the California Deferred Deposit Transaction Law
27 (“CDDTL”) set forth in California Financial Code section 23000 et seq.
28

1 B. Respondent's principal place of business is located at 2400 Newport Blvd., Suite A-5,
2 Costa Mesa, California 92627.

3 C. Respondent violated numerous provisions of the CDDTL.

4 D. On September 16, 2008, the Commissioner issued the Citations and Desist and Refrain
5 Order, an Order Voiding loans, and filed the Accusation to Revoke Respondent's CDDTL license,
6 Notice of Intent to Revoke Respondent's CDDTL license and the accompanying documents
7 (collectively, "Accusation"). Respondent was served with the Accusation on September 19, 2008.

8 E. Respondent timely filed a Notice of Defense. The hearing set for January 7, 2009 was
9 continued so the Parties could settle this matter without a hearing.

10 F. It is the intention and desire of the Parties to resolve these matters without the
11 necessity of a hearing and or other litigation.

12 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
13 forth herein, the parties agree as follows:

14 **TERMS AND CONDITIONS**

15 1. **Purpose.** The purpose of this Agreement is for judicial economy and expediency, and to
16 avoid the expense of a hearing, and possible further court proceedings.

17 2. **Waiver of Hearing Rights.** Respondent acknowledges its right to a hearing and hereby
18 waives its right to a hearing, and to any reconsideration, appeal, or other right to review which may
19 be afforded pursuant to the CDDTL, the California Administrative Procedure Act ("APA"), the
20 California Code of Civil Procedure, or any other provision of law, and by waiving such rights,
21 consents to the Agreement becoming final.

22 3. **Independent Legal Advice.** Each of the Parties represents, warrants, and agrees that he or
23 she has received or been advised to seek independent legal advice from his or her attorneys with
24 respect to the advisability of executing this Agreement. Respondent acknowledges that it consulted
25 with attorney John J. Hamilton, prior to entering into this Agreement.

26 4. **Admissions.** Respondent hereby admits the allegations contained in the Accusation, Order
27 Suspending Deferred Deposit Transaction License and the facts in the Recital, solely for the limited
28 purposes of this Agreement and any future proceeding(s) that may be initiated by or brought before

1 the Commissioner against Respondent. It is the intent and understanding between the Parties that this
2 Agreement, and particularly the admissions of Respondent herein, shall not be binding or admissible
3 against Respondent in any action(s) by third parties. A copy of the Accusation is incorporated as
4 Exhibit 1.

5 **5. Suspension.** Respondent hereby agrees to the suspension of its CDDTL license.
6 Respondent's CDDTL license is hereby suspended for four consecutive weeks commencing on
7 February 2, 2009 through February 27, 2009. A copy of the Order Suspending Deferred Deposit
8 Transaction License is incorporated as Exhibit 2.

9 **6. Penalty.** Respondent hereby agrees to pay to the Commissioner the amount of \$10,000.00
10 for the penalty. The first payment amount of \$4,500.00 shall be delivered to the California
11 Department of Corporations within five days from the date this Agreement is signed by Respondent.
12 The second payment amount of \$4,500.00 shall be delivered to the California Department of
13 Corporations within thirty-five (35) days from the date this Agreement is signed by Respondent. The
14 final payment amount of \$1,000.00 shall be delivered to the California Department of Corporations
15 within sixty-five (65) days from the date this Agreement is signed by Respondent. The payments
16 shall be payable to the California Department of Corporations and delivered to the California
17 Department of Corporations' San Diego Office to the attention of Afsaneh Eghbaldari.

18 **7. Enforcement Costs.** Respondent hereby agrees to pay to the Commissioner the amount of
19 \$3,498.00 for the enforcement costs. The payment amount of \$3,498.00 shall be delivered to the
20 California Department of Corporations within sixty-five (65) days from the date this Agreement is
21 signed by Respondent. The payment shall be payable to the California Department of Corporations
22 and delivered to the California Department of Corporations' San Diego Office to the attention of
23 Afsaneh Eghbaldari.

24 **8. Future Actions by the Commissioner.** The Commissioner reserves the right to bring any
25 future actions against Respondent or any of its partners, owners, employees or successors of
26 Respondent for any and all unknown or future violations of the CDDTL. This Agreement shall not
27 serve to exculpate Respondent or any of the partners, owners, employees or successors of Respondent
28 from liability for any and all unknown or future violations of the CDDTL. If it is found, after the

1 execution of this Agreement that Respondent violated any of the statutes and/or rules set forth in the
2 CDDTL or the Agreement, the Commissioner reserves the right to take further action against
3 Respondent, including but not limited to, imposing penalties, and revoking Respondent's CDDTL
4 license in breach of this Agreement.

5 **9. Failure to Comply with the Agreement.** Respondent acknowledges and agrees that its
6 failure to comply with the terms of this Agreement will be a breach of this Agreement and shall result
7 in an automatic revocation of Respondent's CDDTL license. Respondent waives any notice and
8 hearing rights to contest such revocation.

9 **10. Settlement Agreement Coverage.** The Parties hereby acknowledge and agree that this
10 Agreement is intended to constitute a full, final and complete resolution. The Parties further
11 acknowledge and agree that nothing contained in this Agreement shall operate to limit the
12 Commissioner's ability to assist any other agencies with any prosecution, administrative, civil or
13 criminal, brought by any such agency against Respondent based upon any of the activities alleged in
14 this matter or otherwise. This Agreement shall not become effective until signed by Respondent and
15 delivered by all parties. Each of the Parties represents, warrants, and agrees that in executing this
16 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel and
17 has placed no reliance on any statement, representation, or promise of any other party, or any other
18 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
19 entity to make any statement, representation or disclosure of anything whatsoever. The Parties have
20 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
21 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
22 supplement, or contradict the terms of this Agreement.

23 **11. Full Integration.** This Agreement, including the attached Accusation and Order
24 Suspending Deferred Deposit Transaction License, is the final written expression and the complete
25 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
26 between the parties with respect to the subject matter hereof, and supersedes all prior or
27 contemporaneous agreements, negotiations, representations, understandings, and discussions between
28 and among the parties, their respective representatives, and any other person or entity.

1 **12. No Presumption From Drafting.** In that the Parties have had the opportunity to draft,
2 review and edit the language of this Agreement, no presumption for or against any party arising out
3 of drafting all or any part of this Agreement will be applied in any action relating to, connected, to, or
4 involving this Agreement. Accordingly, the Parties waive the benefit of California Civil Code
5 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language
6 of a contract should be interpreted most strongly against the party who caused the uncertainty to
7 exist.

8 **13. Effective Date.** This Agreement shall not become effective until signed by Respondent
9 and delivered by all Parties. The Commissioner shall file this Agreement with the Office of
10 Administrative Hearings after execution by the Parties.

11 **14. Counterparts.** This Agreement may be executed in any number of counterparts by the
12 Parties and when each party has signed and delivered at least one such counterpart to the other party,
13 each counterpart shall be deemed an original and taken together shall constitute one and the same
14 Agreement.

15 **15. Modifications and Qualified Integration.** No amendment, change or modification of
16 this Agreement shall be valid or binding to any extent unless it is in writing and signed by all of the
17 Parties affected by it.

18 **16. Headings and Governing Law.** The headings to the paragraphs of this Agreement are
19 inserted for convenience only and will not be deemed a part hereof or affect the construction or
20 interpretation of the provisions hereof. This Agreement shall be construed and enforced in
21 accordance with and governed by California law.

22 **17. Authority For Settlement.** Respondent covenants that he, she or it possesses all
23 necessary capacity and authority to sign and enter into this Agreement. Each party warrants and
24 represents that such party is fully entitled and duly authorized to enter into and deliver this
25 Agreement. In particular, and without limiting the generality of the foregoing, each party warrants
26 and represents that it is fully entitled to enter into the covenants, and undertake the obligations set
27 forth herein.
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1 18. **Public Record.** Respondent acknowledges that this Agreement is a public record.

2 19. **Voluntary Agreement.** The Parties each represent and acknowledge that he, she or it is
3 executing this Agreement completely, voluntarily and without any duress or undue influences of any
4 kind from any source.

5 20. **Notices.** Notice shall be provided to each party at the following addresses:

6 If to Respondent to: John J. Hamilton, Esq.
7 39 Chadwick, Irvine, CA 92618

8 If to the Commissioner to: Afsaneh Eghbaldari, Esq., Corporations Counsel
9 California Department of Corporations
10 1350 Front St, Room 2034. San Diego, CA 92101

11 IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on
12 the dates set forth opposite their respective signatures.

13
14 PRESTON DuFAUCHARD
15 California Corporations Commissioner

16
17 Dated: 1/21/09 By _____
18 Alan S. Weinger
19 Lead Corporations Counsel

20 Check Mark Enterprises

21
22
23 Dated: 1/21/09 By _____
24 Mark McInerney, President

25 Approved as to form

26
27 Dated: 1/21/09 By _____
28 John J. Hamilton, Esq.