

1 PRESTON DuFAUCHARD  
California Corporations Commissioner  
2 WAYNE STRUMPFER  
Deputy Commissioner  
3 ALAN S. WEINGER (CA BAR NO. 86717)  
Lead Corporations Counsel  
4 BRENT S.B. LINDGREN (CA BAR NO. 170306)  
Senior Corporations Counsel  
5 Department of Corporations  
6 1515 K Street, Ste. 200  
7 Sacramento, California 95814  
8 Telephone: (916) 322-8778  
9 Facsimile: (916) 445-6985  
Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF CORPORATIONS  
11 OF THE STATE OF CALIFORNIA

12	In the Matter of the Accusation of	)	
13	THE CALIFORNIA CORPORATIONS	)	File No.: 100-2597
14	COMMISSIONER,	)	
15	Complainant,	)	1) ACCUSATION TO REVOKE
16	vs.	)	LICENSE;
17	Brenda Middendorp, doing business as Cash	)	2) CITATIONS AND DESIST AND
18	Advance California,	)	REFRAIN ORDER;
19	Respondent	)	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 as follows:

22 INTRODUCTION

23 On August 16, 2005, the Commissioner of the Department of Corporations (“Department”)  
24 issued to Respondent, Brenda Middendorp, doing business as Cash Advance California, a deferred  
25 deposit transaction originator license (File No. 100-2597) pursuant to the California Deferred  
26 Deposit Transaction Law (“CDDTL”) set forth in California Financial Code section 23000 et seq.  
27 (All future references to sections are to the California Financial Code unless indicated otherwise.)  
28

1 Respondent violated numerous provisions of the CDDTL. If the Commissioner had known  
2 Respondent would engage in a scheme which violated multiple provisions of the California  
3 Financial Code, the Commissioner would have denied a license to Respondent. In view of the  
4 extent, nature and duration of violations the Commissioner believes it in the best interests of the  
5 public to revoke Respondent’s CDDTL license pursuant to section 23052. The Commissioner also  
6 seeks to issue 102 citations in the amount of \$2,500 per citation and an order voiding at least 102  
7 loans totaling at least \$26,266.00 made by Respondent, pursuant to sections 23058 and 23060,  
8 respectively.

9 I

10 FACTUAL BACKGROUND

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

14 2. Respondent, Brenda Middendorp, was the owner of “Cash Advance California”,  
15 located at 3645 Eureka Way, Redding, California. There is such a unity of interest, ownership,  
16 dominion and control of the business Cash Advance California by Brenda Middendorp that any  
17 entity she formed should be disregarded. The foregoing will be referred to as “Respondent,”  
18 except where a specific name or designation is relevant.

19 3. Since at least February 1, 2006, Respondent has engaged in the business of deferred  
20 deposit transactions by offering, originating and making deferred deposit transactions.

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

25 5. Respondent willfully engaged in CDDTL violations. On March 13, 2007, the  
26 Commissioner’s examiner visited Respondent’s business location after giving the licensee written  
27 and oral advance notice of the Department’s examination.  
28





1           14. Respondent filed criminal complaints about NSF checks under penalty of perjury with  
2 the DA's Office. As a direct result of Respondent's criminal complaints about NSF checks, its  
3 customers received letters from the Shasta County DA's Office threatening them with criminal  
4 prosecution if they failed to make restitution in accordance with the DA's Bad Check Program.

5           15. Each customer whose NSF checks are processed by the Bad Check Program are also  
6 assessed an administration fee of \$35.00 and a diversion fee of \$50.00 by the District Attorney.

7           16. On August 21, 2007, during a follow-up examination, the Commissioner's examiner  
8 requested that Respondent provide records that documented details about the NSF checks which  
9 they referred to the DA's office. In response, Respondent provided a log containing loan  
10 information about the bad debt/unpaid loans that revealed Respondent had sent 70 checks to the  
11 DA's Office in 2006 and 32 during the period January to June 25, 2007.

12           17. In accordance with the Bad Check Program, consumers were charged additional fees  
13 as described in paragraph 15, above. Consequently, Respondent violated section 23036 (a), (e),  
14 and (f) due to the charging of excessive and unauthorized fees.

15           18. Although the licensee posted the required notice pursuant to section 23035 (c) and  
16 (d), it was not operating in accordance with its representations to the public. Similarly, the  
17 licensee's written agreement contained all the disclosures required by section 23035 (e), but it  
18 did not operate in accordance with the written agreement, thereby rendering the agreements with  
19 consumers false and misleading. Thus Respondent's actions violated section 23037(f) which  
20 prohibits deceptive and misleading conduct.

21           19. Respondent's specific violations include the following CDDTL sections: 23036 (a), (e),  
22 (f), and 23037 (f). For 102 of Respondents' violations discovered during the Department's  
23 regulatory examination and review of records, the Commissioner is issuing Citations 1 through 102,  
24 inclusive. The Citations are being issued for false and misleading transactions with the 102  
25 consumers shown in Exhibit A.

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

IV

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

20. Section 23058 gives the Commissioner’s authority to issues citations and, in part, 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.

(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.

CITATIONS

21. Pursuant to Financial Code section 23058, Respondent is hereby ordered to pay to the Commissioner within 30 days from the date of these Citations an administrative penalty of two thousand five hundred dollars (\$2,500) for 102 citations for the total amount of two hundred fifty five thousand dollars (\$255,000).

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

**DESIST AND REFRAIN ORDER**

22. By reason of the foregoing, the licensees have engaged in charging excessive fees and in deceptive and misleading deferred deposit transactions in violation of the California Financial Code sections 23036 and 23037. California Financial Code section 23050 provides in pertinent part:

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

Pursuant to Financial Code sections 23050 and 23058, Brenda Middendorp dba Cash Advance California is hereby ordered to desist and refrain from violating Financial Code sections 23036 and 23037. This Order is necessary for the protection of consumers and consistent with the purposes, policies and provisions of the CDDTL. This Order shall remain in full force and effect until further order of the Commissioner.

V

**COMMISSIONER’S AUTHORITY TO VOID TRANSACTIONS**

23. Respondent willfully violated sections 23036 and 23037 of the CDDTL by charging excessive or unauthorized fees and by entering into fraudulent deferred deposit transactions with at least one hundred and two (102) consumers. Fraudulent transactions totaled \$18,129.75 in 2006 and \$8136.25 in 2007, for a total amount of \$26,266.00. Therefore, the Commissioner seeks to void Respondent’s transactions with at least 102 consumers and order the return of the consumers’ funds in an amount that aggregates at least \$26,266.00.

23. 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.

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

(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.

**ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS**

24. Pursuant to California Financial Code section 23060 the above described deferred deposit transactions for at least one hundred and two (102) consumers totaling at least \$26,266.00 are declared void.

25. 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 and are hereby ordered to immediately return any amount and all charges and fees that Respondent directly or indirectly received for these transactions.

VI

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

26. 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.

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

CONCLUSION

Complainant finds, due to the foregoing, that Respondent violated sections 23036 and 23037. Therefore, the Commissioner is justified in issuing a Desist and Refrain order, revoking Respondent’s California deferred deposit transaction license, issuing 102 citations to Respondent, and voiding at least 102 transactions pursuant to sections 23050, 23052, 23058 and 23060, respectively.

WHEREFORE, Complainant, the California Corporations Commissioner prays that the deferred deposit transaction license of Respondent, Brenda Middendorp, doing business as Cash Advance California, be revoked pursuant to Financial Code section 23052.

Dated: January 29, 2008  
Sacramento, California

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_

ALAN S. WEINGER  
Lead Corporations Counsel