

1 PRESTON DUFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
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Corporations Counsel
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9
10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

12 In the Matter of the Accusation of THE)
CALIFORNIA CORPORATIONS) File No.: 100-3622
13 COMMISSIONER,)
) **SETTLEMENT AGREEMENT**
14 Complainant,)
)
15 vs.)
)
16 GREGORY & LISA NESBITT dba IMC)
17 POSTAL EXPRESS,)
)
18 Respondent.)
19)
20)

21 This Settlement Agreement (“Agreement”) is entered into by and between the Complainant,
22 the California Corporations Commissioner (“Commissioner”), and Respondents Gregory and Lisa
23 Nesbitt (“Nesbitt’s”) doing business as IMC POSTAL EXPRESS (“IMC”) (hereinafter collectively
24 “the Parties”).

25 **RECITALS**

26 This Agreement is made with reference to the following facts:

27 A. IMC is the fictitious business name for a sole proprietorship owned by the Nesbitt’s.
28 IMC has its principal place of business located at 25320 Madison Avenue, Suite A, Murrieta,

1 California, 92562.

2 B. The Nesbitt's are the sole proprietors of IMC and are authorized to enter into this
3 Agreement on their own behalf.

4 C. The Nesbitt's hold license number 100-3622 from the Commissioner under the
5 California Deferred Deposit Transaction Law ("CDDTL") pursuant to California Financial Code
6 section 23005.

7 D. On June 10, 2010, the Commissioner issued to IMC a Notice of Intention to Issue
8 Order to Revoke CDDTL License; Accusation, Citations, Desist and Refrain Order and Order
9 Voiding Loans and accompanying documents (collectively, the "Notice"). Copies of the Notice are
10 attached and incorporated herein as "Exhibit 1". IMC submitted an administrative hearing request
11 concerning the Notice on June 28, 2010.

12 E. It is the intention of the Parties to resolve this matter without the necessity of an
13 administrative hearing or any other litigation.

14 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
15 forth herein, the Parties agree as follows:

16 **TERMS AND CONDITIONS**

17 1. Purpose. This Agreement is entered into for the purpose of judicial economy and
18 expediency.

19 2. Waiver of Hearing Rights. IMC and the Nesbitt's acknowledge their right to a hearing
20 under the CDDTL, and hereby waives the right to any appeal, or other right to review, if any, which
21 may be afforded pursuant to the CDDTL, the California Administrative Procedure Act, the California
22 Code of Civil Procedure, or any other provision of law. By waiving such rights, IMC and the
23 Nesbitt's consent to the Agreement as final.

24 3. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it has
25 received or been advised to seek independent legal advice from an attorney with respect to the
26 advisability of executing this Agreement. IMC and the Nesbitt's acknowledge that they have
27 willingly and knowingly decided to not seek the advice of legal counsel prior to entering into this
28 Agreement.

1 4. Admissions. IMC and the Nesbitt's admit the facts recited in the Notice for the purpose of
2 this Agreement and any future proceeding(s) that may be initiated by or brought before the
3 Commissioner against them. It is the intent and understanding between the Parties that this
4 Agreement, and particularly the admissions of IMC and the Nesbitt's herein, shall not be binding
5 against them in any action(s) with third parties.

6 5. Consent to Issuance of Order Revoking CDDTL License. In complete and final resolution
7 of the matters and penalties owed set forth in the Notice, the Parties hereby agree to the immediate
8 issuance by the Commissioner of a Final Order Revoking CDDTL license number 100-3622 pursuant
9 to Financial Code section 23052 ("Revocation Order"). A true and correct copy of the Revocation
10 Order is attached and incorporated herein as "Exhibit 2". This Revocation Order will preclude IMC
11 and the Nesbitt's from engaging in any CDDTL activities beginning on the date the Revocation Order
12 is issued. This Revocation Order does not preclude IMC and the Nesbitt's from engaging in pure
13 collection activities that permit: (1) receipt of cash from customers for existing transactions entered
14 into before the date of revocation, (2) forwarding any checks received from clients to a bank for
15 deposit relating to transactions entered into before the date of revocation, (3) responding to regulatory
16 inquiries from the Department of Corporations or other agencies, (4) making refunds to customers,
17 and (5) otherwise responding to customer inquiries concerning existing transactions.

18 6. Withdraw Of Hearing Request. Also in complete and final resolution of the matters and
19 penalties owed set forth in the Notice, the Parties hereby agree that IMC and the Nesbitt's shall
20 withdraw their request for administrative hearing upon the execution of this Agreement.

21 7. Desist and Refrain Order. The Desist and Refrain Order previously issued to GREGORY
22 & LISA NESBITT dba IMC POSTAL EXPRESS on June 10, 2010 is final and shall remain in full
23 force and effect.

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

1 the Nesbitt's have at any time violated any provision of the California Financial Code, the
2 Commissioner reserves the right to take further action against IMC and the Nesbitt's, including but
3 not limited to, imposing penalties and requesting restitution of all CDDTL transactions originated in
4 breach of this Agreement. IMC and the Nesbitt's acknowledge and agree that the Revocation Order
5 provided for above in Paragraph 5 shall not be the exclusive remedy available to the Commissioner in
6 pursuing future violations but may be sought and employed in addition to any other remedy available
7 pursuant to the CDDTL.

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

22 10. Full Integration. This Agreement, including the attached Exhibits, is the final written
23 expression and the complete and exclusive statement of all the Agreements, conditions, promises,
24 representations, and covenants between the Parties with respect to the subject matter hereof, and
25 supercedes all prior or contemporaneous Agreements, negotiations, representations, understandings,
26 and discussions between and among the Parties, their respective representatives, and any other person
27 or entity.

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1 11. 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 12. Effective Date. This Agreement shall not become effective until signed by the Nesbitt's
9 and IMC and delivered by all Parties. The Commissioner shall file this Agreement with the Office of
10 Administrative Hearings five (5) business days after execution by all Parties.

11 13. 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 14. Modifications and Qualified Integration. No amendment, change or modification of this
16 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 15. 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 accordance
21 with and governed by California law.

22 16. Authority For Settlement. Each party covenants that they possess all necessary capacity
23 and authority to sign and enter into this Agreement. Each party warrants and represents that such party
24 is fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and without
25 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to
26 enter into the covenants, and undertake the obligations set forth herein.
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17. Public Record. IMC and the Nesbitt's acknowledge that this Agreement is a public record.

18. Voluntary Agreement. The Parties each represent and acknowledge that he or it is execution this Agreement completely voluntarily and without any duress or undue influence of any kind from any source.

19. Notices. Notice shall be provided to each party at the following addresses:

If to Respondent to:

Gregory & Lisa Nesbitt dba IMC POSTAL EXPRESS
25320 Madison Avenue, Suite A,
Murrieta, California, 92562

If to the Commissioner to:

Steven C. Thompson, Special Administrator
Department of Corporations
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344

20. Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

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

Dated: 10/6/10

PRESTON DuFAUCHARD
California Corporations Commissioner

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ALAN S. WEINGER
Deputy Commissioner
Enforcement Division

Dated: 10/1/2010

IMC POSTAL EXPRESS

By _____

Gregory Nesbitt
dba IMC POSTAL EXPRESS

By _____

Lisa Nesbitt
dba IMC POSTAL EXPRESS