

State of California - Department of Corporations

1 PRESTON DuFAUCHARD
 California Corporations Commissioner
 2 WAYNE STRUMPFER
 Deputy Commissioner
 3 ALAN S. WEINGER (CA BAR NO. 86717)
 Lead Corporations Counsel
 4 MARLOU de LUNA (CA BAR NO. 162259)
 Senior Corporations Counsel
 5 320 West 4th Street, Ste. 750
 Los Angeles, California 90013-2344
 6

7 Attorneys for Complainant

8
 9 BEFORE THE DEPARTMENT OF CORPORATIONS
 10 OF THE STATE OF CALIFORNIA

11 CALIFORNIA CORPORATIONS)
 12 COMMISSIONER,)

File No.: 100-1765

13 Complainant,

) SETTLEMENT AGREEMENT

14 vs.

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 16 KASHIA GOMEZ, DBA, MAIN ST POSTAL
 PLUS,

17 Respondent.
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 23 This Settlement Agreement is entered into between the California Corporations
 24 Commissioner ("Commissioner") and Respondent Kashia Gomez doing business as Main St Postal
 25 Plus ("Main St Postal Plus"), and is made with respect to the following facts:

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RECITALS

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2 A. Kashia Gomez is, and was at all relevant times herein, an individual doing business as
3 Main St Postal Plus.

4 B. Main St Postal Plus is a deferred deposit originator licensed by the Commissioner
5 pursuant to Financial Code section 23005, subsection (a). Main St Postal Plus conducts business at
6 721 E. Main St., Santa Maria, California 93454.

7 C. On September 21, 2006, the Commissioner commenced a regulatory examination of
8 the books and records of Main St Postal Plus. During the regulatory examination, the following
9 violations were found:

10 1) Main St Postal Plus charged its customers fees for extending the time within which the
11 customer had to repay its deferred deposit transaction, in violation of California Financial Code
12 section 23036, subsections (b) and (c). Main St Postal Plus commenced charging its customers for
13 payment extensions on or about December 31, 2004 and continued doing so through at least August
14 31, 2006. During this period, Main St Postal Plus charged illegal extension fees on at least 267
15 occasions totaling \$11,132.00 . The illegal extension ranged from \$35 to \$45 per extension;

16 2) Main St Postal Plus routinely failed to disclose the annual percentage rate and customer
17 payment obligations, in violation of California Financial Code section 23035 subsections
18 (e)(1),(3),(4),(7),(9) and (11);

19 3) Main St Postal Plus failed to maintain a net worth of at least \$25,000 at all times as
20 provided for in California Financial Code section 23007;

21 4) Main St Postal Plus used the name "Postal Plus." Pursuant to California Financial Code
22 section 23023, Main St Postal Plus is required to conduct business under the name that is reflected
23 on its license issued by the Commissioner. At the present time, the only authorized names are
24 "Kashia Gomez" and "Main St Postal Plus";

25 5) A number of transactional documents contained blanks that were left to be filled in after
26 execution, in violation of California Financial Code section 23037, subsection (h);

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1 6) Main St Postal Plus's advertisement did not indicate that it was licensed by the
2 Department of Corporations pursuant to the California Deferred Deposit Transaction Law as required
3 by California Financial Code section 23027, subsection (b);

4 7) Main St Postal Plus failed to post the required notices clearly and conspicuously
5 according to California Financial Code section 23035, subsection (d) (1) and (2);

6 8) The fee schedule provided by Main St Postal Plus did not include the items required in
7 California Financial Code section 23035, subsection (c)(3), (4) and (6);

8 D. On or about November 14, 2006, a report of the regulatory examination was sent to
9 Main St Postal Plus requiring Main St Postal Plus to discontinue the violations and refund the
10 overcharges to its customers. Main St Postal Plus has failed to discontinue the violations and has
11 failed to refund the overcharges to its customers.

12 E. On or about November 21, 2006, an invoice for the costs of the regulatory
13 examination, conducted on September 21, 2006, in the amount of \$944.47, was mailed to Main St
14 Postal Plus requiring Main St Postal Plus to pay for the regulatory examination. To date, Main St
15 Postal Plus has failed to pay for the costs of the regulatory examination, in violation of California
16 Financial Code section 23046, subsection (b).

17 F. On or about January 8, 2007, the Commissioner notified Main St Postal Plus that its
18 surety bond, in the amount of \$25,000, was due to be cancelled on January 13, 2007. Main St Postal
19 Plus was instructed to file a new replacement bond immediately. Main St Postal Plus failed to
20 submit a replacement bond, in violation of California Financial Code section 23013.

21 G. On February 1, 2007, the Commissioner personally served Kashia Gomez with the
22 following: Cover letter dated January 31, 2007; Accusation; Statement to Respondent; Notice of
23 Intension to Issue Order Revoking California Deferred Deposit Transaction License; Government
24 Code Sections 11507.5, 11507.6 and 11507.7; and a blank form of Notice of Defense (documents
25 referenced hereinafter collectively as "Administrative Pleadings").

26 H. On February 21, 2007, the Department received the Notice of Defense from Main St
27 Postal Plus acknowledging receipt of copies of the Administrative Pleadings and Main St Postal
28 Plus's requests for a hearing in the administrative matter.

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1 I It is the intention and desire of the parties to resolve the administrative proceedings
2 without the necessity of a hearing and/or other litigation.

3 NOW THEREFORE, in consideration of the foregoing, and the terms and conditions set
4 forth herein, the parties agree as follows:

5 **TERMS AND CONDITIONS**

6 1. This Settlement Agreement is entered into for the purpose of judicial economy and
7 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

8 2. Main St Postal Plus admits the allegations contained in the Accusation. The
9 admissions of Main St Postal Plus are solely for the limited purposes of these proceedings and any
10 future proceeding(s) that may be initiated by or brought before the Commissioner against Main St
11 Postal Plus and no other purpose. It is the intent and understanding between the parties that this
12 Settlement Agreement, and particularly the admissions of Main St Postal Plus, shall not be binding
13 or admissible against Main St Postal Plus in any action(s) brought against Main St Postal Plus by
14 third parties.

15 3. Main St Postal Plus hereby agrees to the issuance by the Commissioner of an order
16 revoking Main St Postal Plus' deferred deposit originator license, to become effective upon the
17 execution of this Settlement Agreement. A true and correct copy of the revocation order is attached
18 hereto and incorporated herein by reference as Exhibit 1.

19 4. Main St Postal Plus further agrees that it will not apply, petition, or make any other
20 attempt to again obtain a deferred deposit originator license from the Commissioner. Main St Postal
21 Plus further agrees to waive its right to a hearing, and to any reconsideration, appeal, or other rights
22 which may be afforded pursuant to the California Deferred Deposit Transaction Law, the California
23 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
24 in connection with any application, petition, or any other effort it may make in attempting to regain a
25 deferred deposit originator license.

26 5. Main St Postal Plus further agrees to refund \$11,000 in customer fees, within 30 days
27 of the execution of this Settlement Agreement, otherwise Main St Postal Plus may be subject to
28 further action provided by law

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1 6. Main St Postal Plus further agrees to provide the Commissioner, within 45 days of the
 2 execution of this Settlement Agreement, with a list that includes: a) the name of the customers
 3 entitled to a refund from Main St Postal Plus; b) the names of customers whose monies were
 4 refunded, and c) copies of the following: the cover letter addressed to each customer entitled to a
 5 refund, the checks sent to said customers, and any checks returned to Main St Postal Plus. Main St
 6 Postal Plus further agrees to transmit any undelivered funds, to be escheated, to the State Controller's
 7 Office, in accordance with the provisions dealing with unclaimed property beginning in section 1530
 8 of the Code of Civil Procedure.

9 7. Main St Postal Plus hereby acknowledges its right to an administrative hearing under
 10 California Financial Code section 23052 in connection with the administrative proceeding and
 11 hereby waives its right to a hearing, and to any reconsideration, appeal, or other rights which may be
 12 afforded pursuant to the California Deferred Deposit Transaction Law, the California Administrative
 13 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
 14 with this administrative proceeding.

15 8. Main St Postal Plus agrees that the delivery by certified mail of the executed Order
 16 Revoking Deferred Deposit Originator License Pursuant to Financial Code section 23052, subsection
 17 (a) shall constitute valid service.

18 9. The parties hereby acknowledge and agree that this Settlement Agreement is intended
 19 to constitute a full, final and complete resolution of the administrative proceedings.

20 10. Each of the parties represents, warrants, and agrees that in executing this Settlement
 21 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel
 22 and/or representative. Each of the parties further represents, warrants, and agrees that in executing
 23 this Settlement Agreement it has placed no reliance on any statement, representation, or promise of
 24 any other party, or any other person or entity not expressly set forth herein, or upon the failure of any
 25 party or any other person or entity to make any statement, representation or disclosure of anything
 26 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
 27 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the
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1 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
2 Settlement Agreement.

3 11. The Commissioner shall cause this Settlement Agreement to be filed with the Office
4 of Administrative Hearings immediately upon its execution.

5 12. This Settlement Agreement is the final written expression and the complete and
6 exclusive statement of all the agreements, conditions, promises, representations, and covenants
7 between the parties with respect to the subject matter hereof, and supercedes all prior or
8 contemporaneous agreements, negotiations, representations, understandings, and discussions
9 between and among the parties, their respective representatives, and any other person or entity, with
10 respect to the subject matter covered hereby.

11 13. In that the parties have had the opportunity to draft, review and edit the language of
12 this Settlement Agreement, no presumption for or against any party arising out of drafting all or any
13 part of this Settlement Agreement will be applied in any action relating to, connected to, or involving
14 this Settlement Agreement. Accordingly, the parties waive the benefit of California Civil Code
15 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language
16 of a contract should be interpreted most strongly against the party who caused the uncertainty to
17 exist

18 14. This Settlement Agreement may be executed in one or more counterparts, each of
19 which shall be an original but all of which, together, shall be deemed to constitute a single document.

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

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4 Complainant THE CALIFORNIA CORPORATIONS
5 COMMISSIONER

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7 DATED: 7/13/07 By: _____
8 Alan S. Weinger
9 Lead Corporations Counsel
10 Enforcement Division

11 Respondent Kashia Gomez dba Main St Postal Plus

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14 DATED: 7/2/07 By: _____
15 Kashia Gomez
16 Sole Proprietor

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18 APPROVED AS TO FORM:
19 LAW OFFICE OF STEPHEN P. ANDERSON

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21 By: _____
22 STEPHEN P. ANDERSON, Attorney for Kashia Gomez

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24 PRESTON DU FAUCHARD
25 California Corporations Commissioner

26
27 By: _____
28 Marlou de Luna
Senior Corporations Counsel

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