

**STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS**

TO: MERCHANT CHECK CASHING
MERCHANT CHECK CASHING AND PAYDAY ADVANCE
13844 Rosecrans Avenue
Santa Fe Springs, California 90670

AMENDED

DESIST AND REFRAIN ORDER

(For violations of California Financial Code sections 23005, 23024, 23035, 23036, 23037)

CITATIONS

(California Financial Code section 23058)

The California Corporations Commissioner (“Commissioner”) on August 24, 2007, issued a Desist and Refrain Order and Order Voiding Deferred Deposit Transactions, which he is hereby amends by deleting the Order Voiding Transactions and adding Citations finding that:

STATEMENT OF FACTS

1. Merchant Check Cashing, Merchant Check Cashing and Payday Advance are fictitious business names owed and used by Lisa Sierra, hereinafter referred to as “MCC”. MCC does business at 13844 Rosecrans Avenue, Santa Fe Springs, California. Co-located with MCC is Sierra Mortgage, the fictitious business name of BSLM Inc., a licensed real estate broker with the California Department of Real Estate (license number 01224741). BSLM Inc. employs Lisa Sierra as a salesperson (license number 1224741).

2. The Commissioner of the Department of Corporations (“Department”) is responsible for enforcing the California Deferred Deposit Transaction Law (“CDDTL”) found in California Financial Code section 23000 et seq. The Commissioner has not issued a license to MCC to engage in the business of deferred deposit transactions pursuant to Financial Code section 23005. MCC is not exempt from the licensing requirement of the CDDTL.

3. Since at least January 2005 MCC has engaged in the business of deferred deposit transactions by offering, originating and making deferred deposit transactions as described below.

1 4. A deferred deposit transaction is a written transaction whereby one person gives funds
2 to another person upon receipt of a personal check and it is agreed that the personal check shall
3 not be deposited until a later date. These transactions are also referred to as “payday advances”
4 or “payday loans.”

5 5. MCC was aware that a CDDTL license was required to lawfully engage in the
6 business of deferred deposit transactions. On May 19, 2003, MCC filed with the Department an
7 incomplete CDDTL application requesting a license pursuant to Financial Code section 23005,
8 subdivision (a). In August 2004 and again in November 2004 the Department wrote to MCC
9 requesting it provide additional information to process its CDDTL application. MCC never
10 provided the requested information. As a result of MCC’s failure to comply with the
11 Department’s requests, the CDDTL application was abandoned. On March 10, 2005, the
12 Department informed MCC that the license had been withdrawn in accordance with Financial
13 Code section 23011, subdivision (b).

14 6. On April 17, 2007, the Commissioner’s examiner visited MCC and posed as a
15 potential customer to MCC’s manager, Lisa Sierra, who informed the examiner what she would
16 need to obtain a loan. Later Lisa Sierra informed the examiner that she could not give the
17 examiner a loan because there was a ‘problem with her license.’ Ms. Sierra stated that she had
18 contacted the Department because she needed to obtain a copy of her license.

19 7. The Commissioner’s examiner later identified herself as an examiner with the
20 Department. Ms. Sierra admitted to the Commissioner’s examiner that MCC engaged in the
21 business of deferred deposit transactions. When Ms. Sierra was asked about the number of MCC
22 loans provided to consumers during 2005 and 2006, she stated that approximately 30 customers
23 received loans on a biweekly basis (approximately two loans per month) resulting in about 720
24 loans for each year.

25 8. Thereafter, Ms. Sierra provided to the Department’s examiner various records relating
26 to the CDDTL activities of MCC.

27 9. A review of MCC’s records show it failed to provide to consumers the written notice
28 required by Financial Code section 23035. In addition, MCC’s written agreements provided by

1 Ms. Sierra do not contain the required disclosures in violation of Financial Code section 23035.

2 10. Ms. Sierra produced daily cash logs and a list of outstanding loans which revealed that
3 MCC engaged in transactions that exceed \$300 and that they charge fees that exceed the statutory
4 maximum found in Financial Code sections 23035 and 23036, respectively. Ms. Sierra did not have
5 evidence of the check involved in closed loans and was unable to produce all the documentation
6 requested in violation of Financial Code section 23024 and California Code of Regulations section
7 2025, subdivision (c)(1).

8 11. When the Commissioner’s Corporations examiner questioned Ms. Sierra about MCC’s
9 fees she stated that MCC charges \$30 and \$40 for consumer checks that are returned unpaid and
10 that late fees or fees to extend the due date must be paid by consumers. MCC’s transactions are in
11 violation of Financial Code sections 23036 and 23037.

12 12. An analysis of the daily cash logs for the years 2005, 2006 and 2007 provided by Ms.
13 Sierra reveal at least 1,364 loans totaling at least \$58,484.31.

14 13. Notwithstanding knowledge regarding the licensure requirement, MCC willfully
15 and knowingly engaged in deferred deposit business without a license from the Commissioner and
16 engaged in deferred deposit transactions that violated various statutory provisions of the CDDTL,
17 as described above.

18 14. California Financial Code section 23050 provides in pertinent part:

19 Whenever, in the opinion of the commissioner, any person is engaged in the
20 business of deferred deposit transactions, as defined in this division, without
21 a license from the commissioner, or . . . violating any provision of this
22 division, the commissioner may order that person or licensee to desist and to
23 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.

24 15. California Financial Code section 23058 states:

25 (a) If, upon inspection, examination or investigation, based upon a
26 complaint or otherwise, the department has cause to believe that a person
27 is engaged in the business of deferred deposit transactions without a
28 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

1 of an administrative penalty not to exceed two thousand five hundred
2 dollars (\$ 2,500). All penalties collected under this section shall be
deposited in the State Corporations Fund.

3 (b) The sanctions authorized under this section shall be separate from, and
4 in addition to, all other administrative, civil, or criminal remedies.

5 (c) If within 30 days from the receipt of the citation of the person cited
6 fails to notify the department that the person intends to request a hearing
as described in subdivision (d), the citation shall be deemed final.

7 (d) Any hearing under this section shall be conducted in accordance with
8 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
9 all the powers granted therein.

10 (e) After the exhaustion of the review procedures provided for in this
11 section, the department may apply to the appropriate superior court for a
12 judgment in the amount of the administrative penalty and order
13 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
14 the department, shall constitute a sufficient showing to warrant the
issuance of the judgment and order.

15 **DESIST AND REFRAIN ORDER**

16 By reason of the foregoing, Merchant Check Cashing, Merchant Check Cashing and
17 Payday Advance and Lisa Sierra have engaged in the business of deferred deposit transactions
18 without having first obtained a license from the Commissioner in violation of the California
19 Financial Code section 23005 and in violation of other provisions, including sections 23024,
20 23035, 23036 and 23037 in additional to California Code of Regulations, title 10, section 2025.

21 Pursuant to Financial Code section 23050, Merchant Check Cashing, Merchant Check
22 Cashing and Payday Advance, Lisa Sierra, Elizabeth Hernandez and Arimda Merchant are hereby
23 ordered to desist and refrain from (1) engaging in the business of deferred deposit transactions in
24 the State of California without licensure or exemption and (2) violating Financial Code sections
25 23005, 23024, 23035, 23036 and 23037 and California Code of Regulations, title 10, section
26 2025. This Order is necessary for the protection of consumers and consistent with the purposes,
27 policies and provisions of the CDDTL. This Order shall remain in full force and effect until
28 further order of the Commissioner.

CITATIONS

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2 **16. Citation A.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
3 and Lisa Sierra engaged in the business of deferred deposit transactions without a license in
4 violation of Financial Code section 23005.

5 **17. Citation B.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
6 and Lisa Sierra originated deferred deposit transactions with customers but failed to maintain
7 adequate records that included the payments received from customers on loans in violation of
8 Financial Code section 23024 and also failed to preserve evidence of customer’s checks in
9 violation of California Code of Regulations, title 10, section 2025, subdivision (c).

10 **18. Citation C.** Merchant Check Cashing, Merchant Check Cashing and Payday
11 Advance and Lisa Sierra originated deferred deposit transactions with customers that exceeded
12 \$300, in violation of Financial Code section 23035, subdivision (a).

13 **19. Citation D.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
14 and Lisa Sierra failed to provide customers the required notices and disclosures before entering into
15 deferred deposit transactions in violation of Financial Code section 23035, subdivision (c).

16 **20. Citation E.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
17 and Lisa Sierra failed to post the required notice in view of the public with letters that were at least
18 ½ inches in height in violation of Financial Code section 23035, subdivision (d).

19 **21. Citation F.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
20 and Lisa Sierra failed to provide customers with written agreements containing all required
21 disclosure in violation of Financial Code section 23035, subdivision (e).

22 **22. Citation G.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
23 and Lisa Sierra charged fees that exceed 15% in violation of Financial Code section 23036,
24 subdivision (a).

25 **23. Citation H.** Merchant Check Cashing, Merchant Check Cashing and Payday Advance
26 and Lisa Sierra customers fees for non-sufficient funds (NSF) that exceeded \$15 in violation of
27 Financial Code section 23036, subdivision (e).

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