

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

TO: Martin B. Hoyt dba A-1 Check Cashing of Corning (File # 100-2589)
1920 Solano Street, Suite C
Corning, CA 96021

Martin B. Hoyt dba A-1 Check Cashing of Orland (File # 100-1513)
801 Fourth Street, Suite B
Orland, CA 95963

Martin B. Hoyt dba A-1 Check Cashing of Chico (File # 100-2018)
493 East Avenue, Suite 3
Chico, CA 95928

Martin B. Hoyt dba Easy Cash Advance and Check Cashing (File # 100-2588)
649 Pearson Road
Paradise, CA 92969

DESIST AND REFRAIN ORDER
(For violations of California Financial Code section 23037)

CITATIONS
(California Financial Code section 23058)

ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS
(California Financial Code section 23060)

The California Corporations Commissioner (“Commissioner”) finds that:

1. The California Department of Corporations (“Department”) is responsible for enforcing provisions of the California Deferred Deposit Transaction Law (“CDDTL”) found in California Financial Code section 23000 et seq. The Commissioner is authorized to pursue administrative actions and remedies against licensees who engage in violations of the CDDTL.

2. In 2004 and 2005 the Commissioner issued a CDDTL license to each of the following:
Martin B. Hoyt dba A-1 Check Cashing of Corning (Department File # 100-2589);
Martin B. Hoyt dba A-1 Check Cashing of Orland (Department File # 100-1513);
Martin B. Hoyt dba A-1 Check Cashing of Chico (Department File # 100-2018); and,
Martin B. Hoyt dba Easy Cash Advance and Check Cashing (Department File # 100-2588).

1 3. Martin B. Hoyt, an individual and owner of the above-described businesses, during all
2 relevant times, operated his businesses under their respective business names. There is such a
3 unity of interest, ownership, dominion and control of the foregoing businesses by Martin B. Hoyt
4 that any separation between them should be disregarded and hereinafter all the foregoing are
5 referred to as the “Licensees.”

6 4. Since January 1, 2005, the Department’s Licensees engaged in the business of deferred
7 deposit transactions by offering, originating and making deferred deposit transactions.

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

12 6. The Licensees had knowledge of the CDDTL and had sworn declarations in which they
13 represented that they would comply with all provisions of the CDDTL and other laws.

14 7. After giving advance written and oral notice of the Department’s scheduled examination,
15 the Department’s examiner visited the Licensees’ business locations. Notwithstanding their sworn
16 declarations to comply with the CDDTL, the Licensees willfully and knowingly engaged in CDDTL
17 violations as the Department’s examiner discovered during the regulatory examination.

18 8. Licenses are required to comply with all CDDTL requirements and are prohibited from
19 directly or indirectly subjecting or threatening to subject any customers to a criminal penalty for
20 failure to comply with the terms of the agreement for the deferred deposit transaction.

21 9. Section 23035, subdivisions (b), (c), (d) and (e) mandate the specific content of notices,
22 disclosures and written agreements for deferred deposit transactions and, in relevant part states:

23 (b) A customer who enters into a deferred deposit transaction and offers a
24 personal check to a licensee pursuant to an agreement shall not be subject to any
25 criminal penalty for the failure to comply with the terms of that agreement.

26 (c) Before entering into a deferred deposit transaction, licensees shall distribute to
27 customers a notice that shall include, but not be limited to, the following: . . .

28 (3) That the customer cannot be prosecuted in a criminal
 action in conjunction with a deferred deposit transaction for
 a returned check or be threatened with prosecution.

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(6) That the check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provisions of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear.

(d) The following notices shall be clearly and conspicuously posted in the unobstructed view of the public by all licensees in each location of a business providing deferred deposit transactions in letters not less than one-half inch in height: . . .

(1) The licensee cannot use the criminal process against a consumer to collect any deferred deposit transaction. . . .

(e) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following: . . .

(8) Disclosure of any returned check charges.

(9) That the customer cannot be prosecuted or threatened with prosecution to collect. . . .

10. Subdivisions (a), (e) and (f) of section 23036, limit the type and amount of fees and charges that customers can be required to pay. These subdivisions, in relevant part, state:

(a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check. . . .

(e) A fee not to exceed fifteen dollars (\$15) may be charged for the return of a dishonored check by a depository institution in a deferred deposit transaction. A single fee charged pursuant to this subdivision is the exclusive charge for a dishonored check. No fee may be added for late payment.

(f) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a licensee pursuant to a deferred deposit transaction.

11. Financial Code section 23037 limits a licensee’s transactions and activities stating:

In no case shall a licensee do any of the following: . . .

(f) engage in any unfair, unlawful, or deceptive conduct, or make any statement that is likely to mislead in connection with the business of deferred deposit transactions.

1 12. When questioned by the Department’s examiner about the customers’ checks that
2 were returned unpaid to the licensees due to non-sufficient funds (“NSF”), the Licensees stated
3 that they filed reports or complaints about their customers’ NSF checks with the District Attorney
4 (“DA”) in various counties in accordance with the DA’s bad check or restitution programs. The
5 Licensees identified themselves as the “victim” in bad check reports filed with the DA’s Offices
6 certifying that the “report is true, accurate and complete.” The report specifically asks for
7 information about each NSF check and if there was “AGREEMENT TO HOLD?” In almost all
8 cases, the Licensees falsely answered “NO.”

9 13. As a direct result of the Licensees’ false bad check reports filed with DA’s offices
10 the Licensee’ customers received from the DA’s Offices letters threatening customers with criminal
11 prosecution if they failed to make restitution in accordance with the DA’s bad check program.

12 14. A customer whose NSF check is processed in accordance with the DA’s bad check
13 program may also be assessed an additional fee for administrative costs and diversion programs.

14 15. During the Department’s examination in June 2007, the Department’s examiner
15 requested that Licensee provide books and records that documented details about consumers’ NSF
16 checks and amount recovered from the DA’s offices. In response, the Licensees provided
17 information that revealed they had sent at least forty-seven (47) checks to DA Offices in 2005.

18 16. Although the Licensees posted the required notice pursuant to Financial Code section
19 23035, subdivision (d) they were not operating in accordance with their unqualified representations
20 to the public rendering the required notice with consumers deceptive and misleading, in violation of
21 Financial Code section 23037, subdivision (f)

22 17. Additionally, although the Licensees distributed the required notice to consumers, the
23 Licensee’ actions contradicted their disclosures in their notices given to consumers, which renders
24 their notices and disclosures deceptive and misleading in violation of Financial Code section 23037,
25 subdivision (f).

26 18. Similarly, although the Licensees’ written agreements contained all the necessary
27 disclosures required by Financial Code section 23035, subdivision (e), the Licensees did not
28 operate in accordance with their written agreements rendering the agreements with consumers

1 deceptive and misleading, in violation of Financial Code section 23037, subdivision (f).

2 **DESIST AND REFRAIN ORDER**

3 By reason of the foregoing, the Licensees have engaged in the deceptive and misleading
4 deferred deposit transactions in violation of the California Financial Code section 23037.

5 California Financial Code section 23050 provides in pertinent part:

6 Whenever, in the opinion of the commissioner, any person is engaged in the
7 business of deferred deposit transactions, as defined in this division, without
8 a license from the commissioner, or any licensee is violating any provision of
9 this division, the commissioner may order that person or licensee to desist
10 and to refrain from engaging in the business or further violating this division.
11 If, within 30 days, after the order is served, a written request for a hearing is
12 filed and no hearing is held within 30 days thereafter, the order is rescinded.

13 Pursuant to Financial Code section 23050, the Licensees are hereby ordered to desist and
14 refrain from violating Financial Code section 23037. This Order is necessary for the protection
15 of consumers and consistent with the purposes, policies and provisions of the CDDTL. This
16 Order shall remain in full force and effect until further order of the Commissioner.

17 **CITATIONS**

18 For at least 47 of the Licensees’ violations discovered during the Department’s CDDTL
19 examination, the Commissioner is issuing Citations 1 through 47, inclusive. The Citations are
20 being issued for deceptive and misleading transactions with the 47 consumers that the Licensees
21 identified to the Department.

22 Financial Code section 23058 gives the Commissioner’s authority to issue citations for
23 CDDTL violations stating:

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

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

Pursuant to Financial Code section 23058, the Licensees are hereby ordered to pay to the Commissioner within 30 days from the date, as shown below, for these Citations, an administrative penalty of two thousand five hundred dollars (\$2,500) for each of the 47 citations for the total amount of one hundred seventeen thousand five hundred dollars (\$117,500).

ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS

The Licensees willfully violated Financial Code section 23037 of the CDDTL by entering into deceptive and misleading deferred deposit transactions with at least (47) consumers. The amount of the deceptive and misleading transactions total at least \$11,714. Therefore, the Commissioner also seeks to void the Licensee’s transactions with 47 consumers and order the return of the respective consumers’ funds in an amount that aggregates at least \$11,714.

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.

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(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.

Pursuant to Financial Code section 23060 the Licensees' above described deferred deposit transactions for 47 consumers totaling at least \$11,714 are declared void.

Pursuant to Financial Code section 23060 the Licensees have no right to collect or receive any amount provided in the deferred deposit transaction, any charges, or fees in connection with 47 deferred deposit transactions totaling at least \$11,714 and are hereby ordered to forfeit and return all charges, fees and other amounts received on the 47 deferred deposit transactions within 30 days from the date of this Order, as shown below.

Dated: October 30, 2007
Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
ALAN S. WEINGER
Lead Corporations Counsel
Enforcement Division