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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

| | | | |
|----|----------------------------------|---|-----------------------------------|
| 11 | In the Matter of: |) | CDDTL LICENSE NO.: 100-3843 |
| 12 | THE COMMISSIONER OF BUSINESS |) | ORDER TO DESIST AND REFRAIN |
| 13 | OVERSIGHT, |) | INCLUDING FORFEITURE OF ALL |
| 14 | Complainant, |) | CHARGES AND FEES PURSUANT TO |
| 15 | v. |) | FINANCIAL CODE SECTIONS 23050 AND |
| 16 | GUY HONG HWANG doing business as |) | 23062 |
| 17 | CHECK IN CASH OUT, |) | |
| 18 | Respondent. |) | |

19 The Commissioner of Business Oversight (Commissioner) finds as follows:

20 I.

21 STATEMENT OF FACTS

22 1. Respondent Guy Hong Hwang doing business as Check In Cash Out (Hwang) is a
23 deferred deposit transaction originator licensed by the Commissioner pursuant to the California
24 Deferred Deposit Transaction Law (CDDTL) (Fin. Code, § 23000 et seq). Hwang’s principal place
25 of business is 1111 W El Camino Real, #119, Sunnyvale, California 94807, and was previously
26 located in “#121” at that address.

27 2. On or about July 24, 2013, the Commissioner commenced a regulatory examination of
28 Hwang’s books and records and commenced a follow-up examination on August 1, 2014. The

1 regulatory examinations revealed that Hwang is making deferred deposit transactions (DDTs),
2 commonly referred to as “payday loans,” but is failing to enter written agreements with borrowers
3 that are in compliance with the CDDTL. In addition, Hwang is failing to maintain evidence of
4 customer checks, making DDTs greater than \$300.00, failing to post the DDTs in customer history
5 transaction records, holding customer checks for greater than 31 days, making multiple DDTs to the
6 same customer at the same time, has charged an excess fee under CDDTL, and has filed small claim
7 actions against customers for amounts that are prohibited under the CDDTL.

8 3. Thereafter, a third regulatory examination was commenced on September 10, 2015, at
9 which time it was discovered that Hwang began segregating his business records to separate
10 transactions greater than \$300.00, claiming they were check cashing activities. On July 27, 2016, the
11 Department took possession of Hwang’s files for further examination and investigation. Review of
12 Hwang’s documents and further investigation by the Department confirmed Hwang’s violations to be
13 ongoing.

14 A. Regulatory Examination

15 4. The books and records that were reviewed during the examinations revealed that
16 Hwang was not entering written agreements with customers for DDTs as required under Financial
17 Code section 23035 and also failed to provide the notices required under subsections (c) and (e) of
18 that provision. Financial Code section 23035 provides in pertinent part:

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

21 (1) Information about charges for deferred deposit transactions.

22 (2) That if the customer's check is returned unpaid, the customer
23 may be charged an additional fee of up to fifteen dollars (\$15).

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

26 (4) The department's toll-free telephone number for receiving calls
regarding customer complaints and concerns.

27 (5) That the licensee may not accept any collateral in conjunction
28 with a deferred deposit transaction.

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

6 . . .

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

12 (1) A full disclosure of the total amount of any fees charged for the
13 deferred deposit transaction, expressed both in United States
14 currency and as an APR as required under the Federal Truth In
15 Lending Act and its regulations.

16 (2) A clear description of the customer's payment obligations as
17 required under the Federal Truth In Lending Act and its regulations.

18 (3) The name, address, and telephone number of the licensee.

19 (4) The customer's name and address.

20 (5) The date to which deposit of check has been deferred (due date).

21 (6) The payment plan, or extension, if applicable as allowed under
22 subdivision (c) of Section 23036.

23 (7) An itemization of the amount financed as required under the
24 Federal Truth In Lending Act and its regulations.

25 (8) Disclosure of any returned check charges.

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

28 (10) That the licensee cannot accept collateral in connection with
the transaction.

(11) That the licensee cannot make a deferred deposit transaction
contingent on the purchase of another product or service.

(12) Signature space for the customer and signature of the licensee
or authorized representative of the licensee and date of the
transaction.

(13) Any other information that the commissioner shall deem
necessary by regulation.

5. Hwang entered loan agreements in violation of the CDDTL with customers who were
not provided the above-stated notices, for amounts greater than \$300.00, often for amounts into the

1 thousands of dollars, and often required customers to agree to pay “treble damages” under Civil Code
2 section 1719. Hwang then sued these customers for and/or recovered such damages in small claims
3 lawsuits along with attorney fees or court costs.

4 6. Financial Code section 23035, subdivision (a) states in pertinent part:

5 A licensee may defer the deposit of a customer’s personal check for
6 up to 31 days, pursuant to the provisions of this section. The face
7 amount of the check shall not exceed three hundred dollars (\$300).
8 Each deferred deposit transaction shall be made pursuant to a
9 written agreement as described in subdivision (e) that has been
10 signed by the customer and by the licensee or an authorized
11 representative of the licensee.

12 7. Further, Financial Code section 23036 prohibits a licensee from recovering treble
13 damages from a customer and provides in subdivision (d):

14 A licensee who enters into a deferred deposit transaction
15 agreement, or any assignee of that licensee, shall not be entitled to
16 recover damages for that transaction in any action brought pursuant
17 to, or governed by, Section 1719 of the Civil Code.

18 8. In addition, the regulatory examinations further disclosed that Hwang failed to
19 maintain copies of customer deferred checks for a period of two years from the date of the last
20 transaction as required by Financial Code section 23024 and California Code of Regulations, title 10,
21 section 2025, subdivision (c)(1). Financial Code section 23024 provides in pertinent part:

22 Each licensee shall keep and use books, accounts, and records that
23 will enable the commissioner to determine if the licensee is
24 complying with the provisions of this division and with the rules
25 and regulations promulgated by the commissioner. Each licensee
26 shall maintain any other records as required by the
27 commissioner...All records shall be kept for two years following
28 the last entry on a deferred deposit transaction and shall enable an
29 examiner to review the recordkeeping and reconcile each consumer
30 deferred deposit transaction with documentation maintained in the
31 consumer’s deferred deposit transaction file records.

32 9. California Code of Regulations, title 10, section 2025, subdivision (c)(1) provides in
33 pertinent part:

34 Except as provided in subsection (e), records to be maintained at
35 each licensed business location for each deferred deposit
36 transaction shall include at least the following: the deferred deposit
37 transaction agreement, evidence of the check, written disclosure(s)

1 used to provide notice in compliance with subdivision (c) of
2 Section 23035 of the Financial Code, record of any and all
3 extensions of time or payment plans for repayment of an existing
4 deferred deposit transaction, record of time periods for each
5 transaction, record of transaction fees and charges, and record of
6 transaction payments.

7 B. Follow-Up Examinations and Investigation

8 10. It was revealed during the follow-up examinations of Hwang and through additional
9 investigation by the Department that, in addition to the violations noted above, Hwang was also
10 making multiple DDTs for the same customer in violation of Financial Code section 23036,
11 subdivision (c), and transactions were not being recorded in the customers' transaction history
12 records in violation of Financial Code section 23024 and California Code of Regulations, title 10,
13 section 2025, subdivision (c)(1).

14 11. Financial Code section 23036, subdivision (c) provides in pertinent part:

15 A licensee shall not enter into an agreement for a deferred deposit
16 transaction with a customer during the period of time that an earlier
17 written agreement for a deferred deposit transaction for the same
18 customer is in effect.

19 12. Hwang has also collected an excess fee in violation of Financial Code section 23036,
20 subdivision (f), which states in pertinent part: "No amount in excess of the amounts authorized by the
21 section shall be directly or indirectly charged by a licensee pursuant to a deferred deposit
22 transaction." Here, for example, Hwang entered into a deferred deposit transaction with a customer
23 for \$275.00, of which \$233.73 was financed with a \$41.25 finance charge. Hwang, however,
24 collected from the customer \$280.00 for the \$275.00 transaction.

25 13. In addition, the follow-up examinations revealed that Hwang was entering loan
26 agreements that were not in writing as required by Financial Code section 23035, subdivision (e).

27 14. The follow-up examinations and investigations by the Department also revealed that
28 Hwang has a history of suing his customers in small claims court on the loan agreements in violation
of the CDDTL, including bringing lawsuits seeking or recovering treble damages, which also violates
the CDDTL.

15. Financial Code section 23037, subdivision (f) states in pertinent part: "In no case shall

1 a licensee do any of the following:... (f) Engage in any unfair, unlawful, or deceptive conduct, or
2 make any statement that is likely to mislead in connection with the business of deferred deposit
3 transactions.” Hwang’s practice of entering loan agreements with customers for amounts greater than
4 \$300.00, which fail to provide the required notices, are made while there is already another loan
5 agreement in effect with the same customer, and/or which require the customer to pay treble damages
6 is unfair, unlawful or deceptive conduct in connection with the business of deferred deposit
7 transactions.

8 16. In addition, Hwang failed to file with the Commissioner the annual report required
9 under Financial Code section 23026 for 2016. Hwang was required to file the report no later than
10 March 15, 2017.

11 II.

12 ORDER TO DESIST AND REFRAIN AND FORFEIT CHARGES AND FEES

13 17. Financial Code section 23050 states in pertinent part, “Whenever, in the opinion of the
14 commissioner any person... or any licensee is violating any provision of this division, the
15 commissioner may order that person or licensee to desist and to refrain from engaging in the business
16 or further violating this division.”

17 18. Based on the foregoing, the Commissioner is of the opinion that Hwang has violated
18 multiple provisions of the CDDTL. Pursuant to Financial Code section 23050, Guy Hong Hwang
19 doing business as Check in Cash Out is hereby ordered to desist and refrain from further violating
20 Financial Code sections 23024, 23026, 23035, subdivisions (a), (c) and (e), 23036, subdivisions (c),
21 (d) and (f), 23037, subdivision (f) and California Code of Regulations, title 10, section 2025,
22 subdivision (c)(1).

23 19. In addition, the foregoing violations support forfeiture of all charges and fees on
24 deferred deposit transactions that were collected or received by Hwang in violation of the CDDTL.
25 Financial Code section 23062 states:

26 (a) If any provision of this division is violated in the making or collection
27 of a deferred deposit transaction, for any reason other than a willful act of
28 the licensee, the licensee shall forfeit all charges and fees on the deferred
deposit and may collect or receive only the principal amount.

(b) Subdivision (a) shall not apply to a violation if (1) the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 30 days of discovering the error the licensee notified the customer of the error and rectified the error by making the appropriate changes in the documents or account and by taking other action necessary to correct the error.

20. Based on the foregoing, the Commissioner finds that Hwang has violated Financial Code sections 23024, 23026, 23035, subdivisions (a), (c) and (e), 23036, subdivisions (c), (d) and (f), 23037, subdivision (f), and California Code of Regulations, title 10, section 2025, subdivision (c)(1) in the making or collection of a deferred deposit transaction. Pursuant to Financial Code section 23062, Guy Hong Hwang doing business as Check In Cash Out shall forfeit all charges and fees on any and all deferred deposits in violation of the CDDTL, including but not limited to those identified from regulatory examinations, investigation and any treble damages.

Dated: May 4, 2017
Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
Mary Ann Smith
Deputy Commissioner
Enforcement Division