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10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

12)
13 In the Matter of the Accusation of) File No.: 100-0990
THE CALIFORNIA CORPORATIONS)
14 COMMISSIONER,) AMENDED ACCUSATION
15)
Complainant,)
16)
vs.)
17)
Chi S. Oktabetz dba)
18 United Check Cashing,)
19)
Respondent.)
20

21 Complainant, the California Corporations Commissioner, is informed and believes, and
22 based upon such information and belief, alleges and charges Respondent as follows:

23 INTRODUCTION

24 The California Corporations Commissioner (“Complainant” or “Commissioner”) issued
25 Respondent, Chi S. Oktabetz doing business as United Check Cashing, a deferred deposit
26 transaction originator license (File No. 100-0990) pursuant to the California Deferred Deposit
27 Transaction Law (“CDDTL”) set forth in California Financial Code sections 23000 *et seq.*
28 (All future references to sections are to the California Financial Code unless indicated otherwise.)

AMENDED ACCUSATION

1 By reason of Respondent's numerous and continuing violations of the CDDTL, the
2 Commissioner seeks an order to revoke the deferred deposit transaction originator license of
3 Respondent pursuant to section 23052, seeks an order voiding Respondent's deferred deposit
4 transaction contracts pursuant to section 23060 and seeks an order requiring Respondent's forfeiture
5 all charges and fees on the deferred deposit transactions pursuant to sections 23061 and 23062.

6 I

7 PROCEDURAL AND FACTUAL BACKGROUND

8 On December 22, 2006, the Commissioner provided notice of his intention to revoke the
9 CDDTL license of Respondent, Chi S. Oktabetz, an individual doing business as United Check
10 Cashing ("Respondent"). On January 12, 2006, the Commissioner timely received Respondent's
11 request for a hearing.

12 Beginning in May 2003, Respondent filed an application with the Commissioner of the
13 California Department of Corporations ("Department") for a license to make deferred deposit
14 transactions.¹ Respondent's original application was incomplete and consequently Respondent
15 submitted another application on or about December 22, 2004. The application states that Chi Sun
16 Oktabetz is the only person in charge of the place of business. Respondent's application also states
17 that Platte River Insurance Company is the bonding agent to whom the Department can direct
18 questions regarding the surety bond required for Respondent's license. Respondent completed a
19 Declaration designated as "Exhibit K" to her application and signed under penalty of perjury that:

20
21 **I (we) have obtained and read copies of the California Deferred Deposit
22 Transaction Law (Division 10 of the California Financial Code) and the Rules
23 (Chapter 3, Title, 10, California Code of Regulations) and am familiar with
24 their content: and,**

25 **I (we) agree to comply with all the provision[s] of the California Deferred Deposit
26 Transaction Law, including any rules or orders of the Commissioner of
27 Corporations.**

28 ¹ A deferred deposit transaction is an agreement whereby one person gives funds to another person upon receipt of a personal check and it is agreed that the personal check shall not be deposited until a later date. A deferred deposit transaction is also referred to as a payday loan or cash advance.

1 Respondent’s Declaration to her application also states that “by signing this declaration” “the
2 applicant hereby agrees (or attests) or declares [her] understanding of the following items listed
3 below:”

- 4 1. That the applicant will submit to periodic examinations by the Commissioner of
5 Corporations as required by the California Deferred Deposit Transaction Law.
- 6 2. That the applicant will keep and maintain all records for 2 years following the last
7 entry on a deferred deposit transaction and will enable an examiner to review the
8 record keeping and reconcile each consumer deferred deposits transaction with
9 documentation maintained in the consumer’s file records.
- 10 3. That the applicant understands the examination process involving the reconciliation
11 of records will be facilitated if the applicant maintains, at minimum, a ledger or
12 listing of the following current and undated information for each deferred deposit
13 transaction (as specified in Financial Code section 23035): customer’s name and
14 address, account number, check number, amount provided, fee, amount of check,
15 corresponding annual percentage rate (e.g. 14-day or 30-day) and the deferred due
16 date.
- 17 4. That the applicant will maintain a file of all advertising for a period of 90 days
18 from the date of its use, which will be available to the Commissioner of
19 Corporations upon request.
- 20 5. That the applicant will file with the Commissioner of Corporations an amendment
21 to this application prior to any material change in the information contained in the
22 application for licensure, including, without limitation, the plan of operation.
- 23 6. That the applicant will file with the Commissioner of Corporations any report
24 required by the Commissioner.
- 25 7. That the applicant hereby attests that the applicant (including officers, directors
26 and principals) has not engaged in conduct that would be cause of denial of a
27 license.
- 28

Respondent was required to and did complete another Declaration designated as “Exhibit L”
to her application. This Declaration signed by Respondent under penalty of perjury states:

1. The applicant will comply with all federal and state laws and regulations
(including Division 10, commencing with Section 23000, of the Financial Code),
if it offers, arranges, acts as an agent for, or assists a deferred deposit originator in
the making of a deferred deposit transaction (Financial Code Section 23037(i).)

1 On December 31, 2004, a letter accompanied the Commissioner’s issuance of a CDDTL
2 license to Respondent, which informed Respondent of the following facts:

3 [T]here are certain obligations and responsibilities that a licensee must comply
4 with. The following information about a licensee’s obligations and
5 responsibilities regarding certain requirements of the California Deferred
6 Deposit Transaction Law is provided for your reference . . . a licensee should
7 review and become familiar with all provisions of the law and rules and
8 regulations.

9 . . .

10 4. A licensee is required to file an annual report by March 15th of each year. . .
11 The annual report shall include the following information for the previous
12 calendar year:

- 13 • The total number and dollar amount of deferred deposit transactions made by the
14 licensee.
- 15 • The total number of individual customers who entered into deferred deposit
16 transactions.
- 17 • The minimum, maximum and average amount of deferred deposit transactions.
- 18 • The average annual percentage rate of deferred deposit transactions.
- 19 • The average number of days of deferred deposits transactions.
- 20 • The total number and dollar amount of returned checks.
- 21 • The total number and dollar amount of checks recovered.
- 22 • The total number and dollar amount of checks charged off.

23 5. A licensee is subject to statutory books and records requirements . . . Section 23024.)

24 6. A licensee must maintain a surety bond at all times in the amount of \$25,000.

25 7. A licensee . . . must maintain a net worth at least \$25,000 at all times . . . Section 23007.)

26 On November 5, 2005, Complainant was notified that Respondent’s CDDTL bond with
27 Platte River Insurance Company was being cancelled because Respondent had not paid the renewal
28 premium. The Commissioner was notified about the bond cancellation by Platte River Insurance
Company, not Respondent. Thereafter, Complainant found it necessary to write to Respondent to
file a new replacement bond.

As a requirement of obtaining a license an applicant is required to file financial statements
with the Commissioner to determine if the applicant meets the minimum net worth requirement.
Respondent’s financial statements overstate the amount of assets and understate Respondent’s

1 liabilities rendering them inaccurate. Respondent has not met the statutory net worth requirement.

2
3 II

4 DEFERRED DEPOSIT TRANSACTION LAW

5 Respondent, as a licensee, was required to comply with basic legal requirements imposed on
6 all CDDTL licensees; including maintaining books and records and a minimum net worth.

7 Section 23024 requires:

8 Each licensee shall keep and use books, accounts, and records that will enable
9 the commissioner to determine if the licensee is complying with the
10 provisions of this division and with the rules and regulations promulgated by
11 the commissioner. Each licensee shall maintain any other records as required
12 by the commissioner. The commissioner or a designee of the commissioner
13 may examine those records at any reasonable time. Upon the request of the
14 commissioner, a licensee shall file an authorization for disclosure of financial
15 records of the licensed businesses pursuant to Section 7473 of the
16 Government Code. All records shall be kept for two years following the last
17 entry on a deferred deposit transaction and shall enable an examiner to review
18 the recordkeeping and reconcile each consumer deferred deposit transaction
19 with documentation maintained in the consumer's deferred deposit transaction
20 file records.

21 Section 23026 requires:

22 On or before March 15 of each year, beginning March 2006, each licensee shall
23 file an annual report with the commissioner pursuant to procedures that the
24 commissioner shall establish. The licensee's annual report shall be kept
25 confidential pursuant to Chapter 3.5 (commencing with Section 6250) of Division
26 7 of Title 1 of the Government Code and any regulations adopted thereunder. The
27 annual consolidated report shall be prepared by the commissioner and made
28 available to the public. For the previous calendar year, these reports shall include
the following:

- 23 (a) The total number and dollar amount of deferred deposit transactions
24 made by the licensee.
- 25 (b) The total number of individual customers who entered into deferred deposit
26 transactions.
- 27 (c) The minimum, maximum, and average amount of deferred deposit transactions.
- 28 (d) The average annual percentage rate of deferred deposits.
- (e) The average number of days of deferred deposit transactions.
- (f) The total number and dollar amount of returned checks.

1 (g) The total number and dollar amount of checks recovered.

2 (h) The total number and dollar amount of checks charged off.

3
4 An applicant for a CDDTL license is required to maintain a minimum net worth of
5 \$25,000 pursuant to section 23007, which states in relevant part:

6 The applicant shall file with the application financial statements **prepared in**
7 **accordance with generally accepted accounting principles and acceptable to**
8 **the commissioner** that indicate a net worth of at least twenty-five thousand
9 dollars (\$25,000). (Emphasis added.)

10 Section 23035 set forth the requirements of the written agreements for deferred deposit
11 transactions and states:

12 (a) A licensee may defer the deposit of a customer's personal check for up to 31
13 days, pursuant to the provisions of this section. The face amount of the check
14 shall not exceed three hundred dollars (\$300). Each deferred deposit transaction
15 shall be made pursuant to a written agreement as described in subdivision (e) that
16 has been signed by the customer and by the licensee or an authorized
17 representative of the licensee.

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

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

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

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

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

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

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

(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.

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

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

5 (2) The schedule of all charges and fees to be charged on those deferred
6 deposit transactions with an example of all charges and fees that would be
7 charged on at least a one-hundred-dollar (\$100) and a two-hundred-dollar
8 (\$200) deferred deposit transaction, payable in 14 days and 30 days,
respectively, giving the corresponding annual percentage rate. The
information may be provided in a chart as follows: . . .

9 (e) An agreement to enter into a deferred deposit transaction shall be in writing
10 and shall be provided by the licensee to the customer. The written agreement
11 shall authorize the licensee to defer deposit of the personal check, shall be
signed by the customer, and shall 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 currency and
as an APR as required under the Federal Truth In Lending Act and its
regulations.

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

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

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

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

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

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

22 (8) Disclosure of any returned check charges.

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

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

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

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

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

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(f) The notice required by subdivision (c) shall be written and available in the same language principally used in any oral discussions or negotiations leading to execution of the deferred deposit agreement and shall be in at least 10-point type.

(g) The written agreement required by subdivision (e) shall be written in the same language principally used in any oral discussions or negotiations leading to execution of the deferred deposit agreement; shall not be vague, unclear, or misleading and shall be in at least 10-point type.

(h) Under no circumstances shall a deferred deposit transaction agreement include any of the following:

- (1) A hold harmless clause.
- (2) A confession of judgment clause or power of attorney.
- (3) Any assignment of or order for payment of wages or other compensation for services.
- (4) Any acceleration provision.
- (5) Any unconscionable provision.

(i) If the licensee sells or otherwise transfers the debt at a later date, the licensee shall clearly disclose in a written agreement that any debt or checks held or transferred pursuant to a deferred deposit transaction made pursuant to Section 23035 are not subject to the provisions of Section 1719 of the Civil Code and that no customer may be required to pay treble damages if the check or checks are dishonored.

Fees a CDDTL licensee may charge a consumer is limited by section 23236, which states:

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

(b) A licensee may allow an extension of time, or a payment plan, for repayment of an existing deferred deposit transaction but may not charge any additional fee or charge of any kind in conjunction with the extension or payment plan. A licensee that complies with the provisions of this subdivision shall not be deemed to be in violation of subdivision (g) of Section 23037.

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

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

(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.

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

3 (g) A licensee shall be subject to the provisions of Title 1.6C (commencing
4 with Section 1788) of Part 4 of Division 3 of the Civil Code.

5 III

6 DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

7 On August 2, 2006, the Commissioner’s examiners commenced a regulatory examination of
8 the Respondent’s books and records at Respondent’s place of business located at 1955 Monument
9 Blvd., #4B, Concord, California 94520. The regulatory examination disclosed that Respondent had
10 failed to comply with legal requirements imposed on all CDDTL licensees. The Commissioner’s
11 examiners informed Respondent about her CDDTL violations at the conclusion of the examination.

12
13 Respondent’s specific violations include, but are not limited to, the following:

14 Respondent failed to maintain deferred deposit transaction records for a period of two years
15 from the date of the transactions as required by section 23024 and California Code of Regulations,
16 title 10, section 2025(c)(1).

17 Upon the completion of the transactions, Respondent routinely destroyed deferred deposit
18 transaction records, including evidence of checks in violation of section 23024 and California Code
19 of Regulations, title 10, section 2025(c)(1).

20 Respondent failed to enter into written agreements for deferred deposit transactions in
21 violation of section 23035, subdivision (a).

22 Respondent made multiple loans to customers while existing loans were outstanding in
23 violation of section 23036, subdivision (c).

24 Respondent made loans where the face amount of the checks exceeded \$300 in violation of
25 section 23035, subdivision (a).

26 Respondent failed to provide the required notice to customers prior to entering into deferred
27 deposit transactions as required in violation of section 23035, subdivision (c).

28 Respondent failed to post notice in conspicuous view of the public as required in violation of

1 section 23035, subdivision (d).

2 Respondent filed a false annual report in violation of section 23026 and California Code of
3 Regulations, title 10, section 2030.

4 Respondent charged customers excessive fees (\$25) for non-sufficient funds in violation of
5 section 23036, subdivision (b).

6 Respondent charged customers fees for extending the due dates of loans in violation of
7 section 23036, subdivision (b).

8 Respondent also charged customers late fees in violation of section 23036, subdivision (e).

9 Respondent failed to provide current financial statements to the Commissioner’s examiner
10 after they were requested in violation of sections 23024 and 23046.

11 Respondent does not meet the net worth requirement set forth in section 23007 because
12 Respondent’s financial statements filed earlier by Respondent reflect that they are not according to
13 generally accepted accounting principles and they overstate assets and understate liabilities.

14
15 IV

16 COMMISSISONER’S AUTHORITY TO REVOKE RESPONDENT’S CDDTL LICENSE

17 Section 23052 sets forth the grounds for a suspension or revocation of license and states:

18 The commissioner may suspend or revoke any license, upon notice and
19 reasonable opportunity to be heard, if the commissioner finds any of the
20 following:

21 (a) The licensee has failed to comply with any demand, ruling, or
22 requirement of the commissioner made pursuant to and within the
23 authority of this division.

24 (b) The licensee has violated any provision of this division or
25 any rule or regulation made by the commissioner under and
26 within the authority of this division.

27 (c) A fact or condition exists that, if it had existed at the time of
28 the original application for the license, reasonably would have
warranted the commissioner in refusing to issue the license
originally.

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V

COMMISSISONER’S AUTHORITY TO VOID RESPONDENT’S DEFERRED
DEPOSIT TRANSACTION CONTRACTS

Section 23060 provides for the voiding of deferred deposit transaction contracts and 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.

(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.

VI

COMMISSISONER’S AUTHORITY TO REQUIRE FORFEITURE OF ALL CHARGES
AND FEES ON THE DEFERRED DEPOSIT TRANSACTIONS

Section 23061 provides for forfeiture of any amount received in connection with a deferred deposit transaction other than amounts permitted by this division. Section 23061 states:

(a) If any amount other than, or in excess of, the charges permitted by this division is charged, contracted for, or received in connection with a deferred deposit transaction, for any reason other than a willful act of the licensee, the licensee shall forfeit all charges and fees on the deferred deposit transaction and may collect or receive only the principal amount of the transaction.

(b) Subdivision (a) shall not apply to an error in computation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid that error, and (2) within 60 days of discovering the error the licensee notifies the customer of the error and makes whatever adjustments in the account are necessary to correct the error.

1
2 Section 23062 similarly provides for forfeiture when any provision of the CDDTL is
3 violated in the making or collection of a deferred deposit transaction. Section 23062 states:

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

7 (b) Subdivision (a) shall not apply to a violation if (1) the licensee shows by a
8 preponderance of evidence that the violation was not intentional and resulted
9 from a bona fide error notwithstanding the maintenance of procedures
10 reasonably adapted to avoid any such error, and (2) within 30 days of
11 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.

12 CONCLUSION AND PRAYER

13 Complainant finds, by reason of the foregoing, that Respondent has violated sections 23007,
14 23024, 23026, 23035, 23036, as well as sections 2025 and 2030 of title 10 of the California Code of
15 Regulations. Therefore, the Commissioner is justified under California Financial Code section
16 23052 in revoking Respondent’s California deferred deposit transaction license.

17 Complainant finds that by reason of Respondent’s violation of section 23036 that the
18 Commissioner is justified under California Financial Code section 23060 in voiding Respondent’s
19 California deferred deposit transaction contracts.

20 Complainant finds that by reason of Respondent’s violations of sections 23007, 23024,
21 23026, 23035, 23036, as well as sections 2025 and 2030 of title 10 of the California Code of
22 Regulations the Commissioner is justified under California Financial Code sections 23061 and
23 23062 in requiring a forfeiture of all charges, fees and amounts Respondent received on the
24 deferred deposit transactions.

25 WHEREFORE IT IS PRAYED that:

- 26 (1) The deferred deposit transaction license of Respondent, Chi S. Oktabetz doing
27 business as United Check Cashing, be revoked pursuant to Financial Code section
28 23052;

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(2) An Order issue that voids the deferred deposit transactions of Respondent, Chi S. Oktabetz doing business as United Check Cashing, and prohibits Respondent’s right to collect or receive the principal amounts provided in the deferred deposit transactions, and any charges or fees in connection with transactions pursuant to Financial Code section 23060; and

(3) An Order issue pursuant to Financial Code section 23060 that requires Respondent, Chi S. Oktabetz doing business as United Check Cashing, forfeit all charges, fees and other amounts received by Respondent on all the deferred deposit transactions.

Dated: January 19, 2007
San Francisco, California

Respectfully submitted,

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____

Joan E. Kerst
Senior Corporations Counsel
Attorney for Complainant