

1 PRESTON DuFAUCHARD
California Corporations Commissioner
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Deputy Commissioner
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4 Department of Corporations
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7 Attorneys for Complainant
CALIFORNIA CORPORATIONS COMMISSIONER

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

11 In the Matter of the Orders Issued to:)
12)
13 EVEREST CASH ADVANCE, and EVEREST) DESIST AND REFRAIN ORDER (FIN CODE
14 CASH ADVANCE dba NXT DAY CASH, and) § 23050) AND ORDER VOIDING
15 dba MY NEXT DAY CASH, and dba) TRANSACTIONS AND TO DISGORGE ALL
16 WWW.MYNEXTDAYCASH.COM, and dba) CHARGES AND FEES (FIN CODE §23060)
17 WWW.EVERESTCASHADVANCE.COM, and)
18 dba SCS PROCESSING and dba SCS)
19 PROCESSING, LLC,)
20 Respondent.)
21)
22)
23)
24)

21 Complainant, the Commissioner of the Department of Corporations (“Commissioner” or
22 “Department”), is informed and believes, and based on such information and belief, finds as follows:

23 I
24 **FACTUAL BACKGROUND**

25 Everest Cash Advance, doing business as NXT DAY CASH, My Next Day Cash, located at
26 P.O. Box 636 Charlestown, Nevis, West Indies, and operating on the Internet at
27 www.mynextdaycash.com, using a phone number (877) 355-3915, offers “payday loans” to its
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1 customers.

2 Additionally, Everest Cash Advance also offers payday loans to its customers over the
3 Internet operating at www.everestcashadvance.com, using the telephone number of (866) 794-3244
4 and doing business as SCS Processing and SCS Processing, LLC, (hereinafter “Everest”) also located
5 at P.O. Box 636, Edith Solomon Bldg., Charleston, Nevis, West Indies.

6 Since at least September 18, 2008, Everest has engaged in the business of offering,
7 originating, or making deferred deposit transactions, as defined by the California Deferred Deposit
8 Transaction Law (“CDDTL”, Cal. Fin Code sections 23000 *et seq.*)¹, section 23001(a), whereby
9 Everest defers depositing the customer’s personal check until a specific date pursuant to a written
10 agreement for a fee or other charge.

11 Everest describes payday loans as providing cash in advance, between paydays, for those who
12 are facing a financial hardship or a “cash emergency”. Customers submit an application online and
13 are required to provide their checking account information from which Everest automatically deposits
14 loan monies and debits payments. Everest, however, then uses customers’ banking account
15 information to deduct additional fees and charges beyond what customers were told they would have
16 to pay, sometimes in excess of more than double the amount of the original loan.

17 Neither Everest, NXT DAY CASH, My Next Day Cash, www.mynextdaycash.com,
18 www.everestcashadvance.com, SCS Processing nor SCS Processing, LLC have been issued a
19 deferred deposit transaction originator license by the Commissioner pursuant to the CDDTL. As
20 such, none of them is authorized to engage in payday lending, or to offer, originate, or make a
21 deferred deposit transaction, arrange a deferred deposit transaction for a deferred deposit originator,
22 act as an agent for a deferred deposit originator, or assist a deferred deposit originator in the
23 origination of a deferred deposit transaction.

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27 ¹ All future references are the California Financial Code unless otherwise indicated.

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II

CDDTL VIOLATIONS AND ORDERS

The Department is responsible for enforcing all provisions of the CDDTL, including the regulation of deferred deposit transactions, which are also commonly referred to as “payday advances” or “payday loans.”

A. Desist and Refrain Order

The Commissioner is statutorily authorized to order any person to desist and refrain from engaging in violations of the CDDTL. Financial Code section 23050 provides:

Whenever, in the opinion of the commissioner, any person is engaged in the business of deferred deposit transactions, as defined in this division, without a license from the commissioner,...the commissioner may order that person...to desist and to 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.

The foregoing facts establish multiple violations of the CDDTL by Everest. The issuance of a Desist and Refrain Order, therefore, is necessary for the protection of consumers and is consistent with the purposes, policies, and provisions of the CDDTL.

Pursuant to section 23050, Everest Cash Advance, and Everest Cash Advance doing business as NXT DAY CASH, My Next Day Cash, www.mynextdaycash.com, www.everestcashadvance.com, SCS Processing and SCS Processing, LLC, is hereby ordered to desist and refrain from violating California Financial Code section 23036(b). This Order shall remain in full force and effect until further order of the Commissioner.

B. Order Voiding California Deferred Deposit Transactions

California Financial Code section 23060, subdivision (a), states:

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.

Everest willfully violated provisions of the CDDTL by repeatedly charging California

1 customers fees or charges without a license in violation of section 23005(a), including excess fees
2 and charges in violation of section 23036(a), in conjunction with deferred deposit transactions.
3 Because Everest willfully charged its customers unauthorized fees or charges, Everest is not entitled
4 to collect or receive the principal amounts provided in those deferred deposit transactions, nor is it
5 entitled to any of the charges or fees associated with the transactions.

6 Pursuant to California Financial Code sections 23060, any and all deferred deposit
7 transactions contracted with California customers or in this state are therefore void. Everest Cash
8 Advance, and Everest Cash Advance doing business as NXT DAY CASH, My Next Day Cash,
9 www.mynextdaycash.com, www.everestcashadvance.com, SCS Processing and SCS Processing,
10 LLC, is hereby ordered to immediately return the principal amounts provided in any and all
11 deferred deposit transactions contracted with California customers or in the state, and to disgorge
12 any and all charges or fees received in conjunction with the deferred deposit transactions.

13 Dated: May 13, 2011
14 Sacramento, California

15 PRESTON DuFAUCHARD
16 California Corporations Commissioner

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18 By: _____
19 ALAN S. WEINGER
20 Deputy Commissioner
21 Enforcement Division
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