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VIA EXPRESS MAIL

Robert A. Jones, Esq.
Acting State Labor Commissioner
and Chief Counsel
Division of Labor Standards Enforcement
P.O. Box 420603
San Francisco, CA 94142

Re: Money Network Check

Dear Mr. Jones:

We are counsel to Money Network, a subsidiary of First Data Corporation, which provides employers with a full complement of payroll distribution solutions (the "Money Network Service"). In particular, the Money Network Service allows employers to disburse their employees' salary and wages through the Money Network Service. Employees have the choice to access their wages either via a check product (the "Money Network Check") that can be negotiated for no fee at California locations or via a debit paycard.

Specifically, we seek confirmation from the Division of Labor Standards Enforcement (the "DLSE") that the Money Network Check complies with the requirements of Section 212(a)(1) of the Labor Code, where the instrument is cashable on demand and free of charge at any California location of ACE Cash Express, Inc. ("ACE") or Wal-Mart Stores, Inc. ("Wal-Mart"). The Money Network Check only bears an address for a single ACE location in California. However, the instrument's tagline will indicate that it can be cashed at more than one location:

"Cash at ACE Cash Express
1754 W. Slauson Ave.
Los Angeles, CA 90047
Or any ACE or Wal-Mart location".

A form of the Money Network Check is attached hereto as Exhibit 1.[1]

The Money Network Service and the Money Network Check

Clients (employers) of the Money Network Service disburse salary and wages to their employees by a Money Network Check and/or a debit paycard. Employee payroll is deposited into a pooled account established for the benefit of employees (the "Pooled Account") at MetaBank, a South Dakota federal savings association, pursuant to an irrevocable trust agreement between the employer and First Data Trust Company, LLC, as "Trustee". The Money Network Checks are issued by MetaBank and are, in effect, disbursements from the Pooled Account to the employee beneficiaries.

Employees can access their wages on the date they become due via a Money Network Check made out to the employee at any ACE or Wal-Mart location in California at no fee to the employee.

The Money Network Check is a self-issued check which can be used to access the full amount of an employee's salary and wages. Employees receive an initial stock of un-denominated Money Network Checks (and may order free replenishments) when their employers join the Money Network Service. On payday (or thereafter), an employee may call customer service to authorize a Money Network Check for his/her complete payroll amount (down to the penny) or a lesser amount. To access his/her pay as cash, the employee designates himself/herself as the payee.[2] The Money Network Check is authorized free of charge[3] and in California the Money Network Service has formal agreements with ACE and Wal-Mart to cash Money Network Checks for employees free of charge. The ACE name and an address for a California ACE location appear on the Money Network Check. Language on the check will indicate that the Money Network Check may be cashed at the ACE address indicated on the check "or any ACE or Wal-Mart location". In the future, another California checking cashing location and/or a network of locations (e.g., a bank and/or retailer) could augment or replace the ACE and Wal-Mart locations. In that instance, the Money Network Service would have a formal arrangement with such entity/entities and the Money Network Checks would continue to be cashed free of charge for employees.

The Money Network Check (formerly called TransChecks), has been around for over fifteen years with over 3.5 million cashed annually. It is an extremely well known product, which is important for easy employee check cashing.

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1 The attached form of the Money Network Check is a draft version, which is not to be substantially modified.

2 The Money Network Check can also be used to pay bills or give money to third parties. In such cases, the employee would designate a third party as the payee.

3 Employees may authorize one check free of charge per payroll period.

Alternatively, employees may use a Money Network debit paycard to withdraw their salary and wages through ATM transactions or cash-back point-of-sale debit transactions ("POS") or draw down such funds incrementally through ATM or POS transactions.

Section 212(a)(1) of the Labor Code and Application to The Money Network Check

Section 212(a)(1) of the California Labor Code requires that any check used to pay wages must be:

> "...negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment."

We contend that the Money Network Check complies with each of these statutory requirements as set forth below.

- **Negotiable.** The Money Network Check is negotiable - employees can use the Money Network Check by cashing, depositing or using it to pay third parties.

- **Payable in Cash on Demand.** The Money Network Check is payable in cash upon demand at any Ace or Wal-Mart location in California. Up to the total amount of wages due for an employee's pay period, or a lesser amount at the discretion of the employee, may be paid at all ACE locations and employees may cash up to $1,100 at the Wal-Mart locations (our system-wide paycheck average is $279 and less than 4.5% of our clients have paychecks greater than $1,100).

- **No Discount.** Employees are not charged any fee for the first Money Network Check authorized during a pay period. Further, employees are never charged check cashing fees at ACE or Wal-Mart locations. Therefore, an employee may access all wages due in a pay period without incurring a fee, by using the Money Network Check in each pay period to draw all of his/her wages.

- **Payable at Established California Place of Business.** The Money Network Check is payable at any California ACE or Wal-Mart location. Further, the name and address of a single ACE location appears on the Money Network Check. Language on the check will indicate that the Money Network Check may be cashed at the ACE address indicated on the check "or any ACE or Wal-Mart location". (As noted above, another California checking cashing location and/or a network of locations could augment or replace the ACE and Wal-Mart locations.) This wide-spread availability of encashment locations

goes above and beyond the one California encashment location requirement of the California Labor Code. As a result, California employees enjoy significantly increased convenience - instead of being limited to one pay-out location, California employees may cash their payroll checks at locations convenient to work, home or shopping venues.

- **Funds Sufficient for at Least 30 Days.** Payroll funds are maintained in the Pooled Account established at MetaBank for the benefit of employees pursuant to an irrevocable trust agreement between the employer and the Trustee. Pursuant to the irrevocable trust agreement, the employer relinquishes any right to the employee payroll funds and the funds are to be maintained in the Pooled Account for the benefit of the employees until (i) the payroll funds are reduced to zero by the employee (including any fees which the employee accrues), (ii) funds are disbursed to the employee by the Trustee in accordance with the terms and conditions of the Money Network Service or (iii) funds are distributed as otherwise required by applicable law (*e.g.,* abandoned property requirements). Once an employee completes the authorization process for a Money Network Check, the relevant amount of funds are immediately transferred from the Pooled Account to a MetaBank-owned clearing account maintained for the benefit of holders of the authorized Money Network Checks.

The Money Network Check Provides California Employees with Additional Benefits

The Money Network Check provides California employees with additional consumer convenience and protection benefits.

Convenience. As noted above, although the statute only requires that instruments be cashable at one established place of business in California, employees may cash their Money Network Checks at any of approximately 140 current ACE and 170 current Wal-Mart locations in California. Hence, California employees are provided with increased convenience and may cash Money Network Checks at locations convenient to work, home or shopping venues.

Protection. Additionally, the funding structure of the Money Network Check provides California employees with increased protections that ensure that their payroll funds are always "good funds". As described above, payroll funds due to employees are deposited into the Pooled Account established at MetaBank for the benefit of employees pursuant to an irrevocable trust agreement between the employer and the Trustee and these funds are FDIC insured. The employer relinquishes all claims to the payroll funds and the funds are to be maintained in the Pooled Account for the benefit of employees until (i) the payroll funds are reduced to zero by the employee (including any fees which the employee accrues), (ii) funds are disbursed to the employee by the Trustee in accordance with the terms and conditions of the Money Network Service or (iii) funds are distributed as otherwise required by applicable law (*e.g.,* unclaimed property requirements). Once an employee completes the authorization process for a Money Network Check, the relevant amount of funds are immediately transferred from the Pooled Account to a MetaBank-owned clearing account maintained for the benefit of holders of the

authorized Money Network Checks. In sum, employee payroll funds are held in a manner that protects employees in a manner beyond the statute's "30-day sufficient funds" requirement.

* * * * *

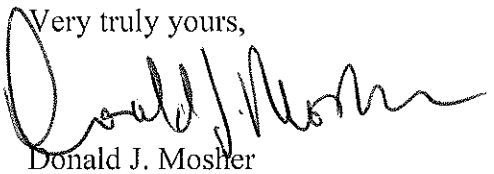
For the reasons above, we respectfully request that the DLSE confirm that the Money Network Check complies with Section 212(a)(1) of the California Labor Code.

We submit this request for an opinion, because we are unaware of any California decision or prior DLSE opinion on point. We have actively researched the DLSE website, including the DLSE Enforcement Policies and Interpretations Manual on the website.

This opinion is not sought in connection with anticipated or pending private litigation concerning the issue addressed in this request nor is the opinion sought in connection with an investigation or litigation between a client or firm and the DLSE.

Please do not hesitate to contact us if you require further information or have questions regarding any of the foregoing.

Very truly yours,



Donald J. Mosher

Attachment

money network™

7000 Goodlett Farms Parkway
Cordova, TN 38016-4916

Cash at ACE Cash Express
1754 W. Slauson Avenue
Los Angeles, CA 90047
or any ACE or Wal-Mart location

Check Number XXXXXXX Digit X

Date _____ 20____

PAY TO THE ORDER OF _____ $

THE SUM OF _____ DOLLARS

ISSUER NUMBER

TRANSACTION NUMBER

This check is not valid without a TRANSACTION NUMBER. For your protection, before cashing, collect the personal information requested on the back of this check and verify that the TRANSACTION NUMBER and dollar amount are valid by calling 1-866-845-9322.

John Doe

MetaBank

Issued by MetaBank, member FDIC, MetaBank, 7000 Goodlett Farms Parkway, Cordova, TN 38016-4916

Back Option

ENDORSE CHECK HERE

X

PRINTED NAME:

ID NUMBER:

PHONE NUMBER:

DO NOT WRITE/SIGN/STAMP BELOW THIS LINE

DEPOSITORY BANK ENDORSEMENT