

1 MARY ANN SMITH
2 Deputy Commissioner
3 EDWARD KELLY SHINNICK (CA Bar No. 96209)
4 Corporations Counsel
5 One Sansome Street, Suite 600
6 San Francisco, CA 94104
7 Tel: 415/972-8544
8 Fax: 415/972-8550

9 Attorneys for Complainant

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

13 In the Matter of the Orders Issued to:)
14)
15) DESIST AND REFRAIN ORDER PURSUANT
16 JD MARKETING GROUP, INC., and DENNIS) TO CALIFORNIA FINANCIAL CODE
17 C. BURKHARDT) SECTION 23005; and
18)
19) ORDER VOIDING TRANSACTIONS AND
20 Respondents.) DISGORGING ALL CHARGES AND FEES
21) PURSUANT TO CALIFORNIA FINANCIAL
22) CODE SECTION 23060
23)
24)
25)

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

28 **I.**

Facts

At all relevant times, JD Marketing Group, Inc. (“JD Marketing”) was formed as a corporation in Nevada on July 14, 2003, with a listed business address of 7473 West Lake Mead Blvd., Las Vegas, Nevada, 89128. Dennis C. Burkhardt was the President and Director of JD Marketing (“Respondents”). The Respondents have maintained a website at paydayloantop.us.

1 In its most common form, a deferred deposit transaction, also known as a “payday loan”, is a
2 written transaction wherein one person gives funds to another upon receipt of a personal check and it
3 is agreed that the check shall not be deposited until a later agreed upon date for a fee or other charge.
4 “Personal check,” as referenced in California Financial Code section 23001, includes “the electronic
5 equivalent of a personal check,” such as an Automated Clearing House (“ACH”) or debit card
6 transaction. A written agreement that one person will provide another person funds and then defer
7 making an agreed upon ACH deduction until a specific date, for fee or other charge, is also a deferred
8 deposit transaction.

9 Since at least January 2011, JD Marketing and Dennis C. Burkhardt have engaged in the
10 business of offering, originating, or making deferred deposit transactions, as defined by the California
11 Deferred Deposit Transaction Law (“CDDTL”), set forth in California Financial Code sections 23000
12 *et seq.*, to California residents by telephone (including telephone number 1-866-722-2136), email
13 (including info@jdmarketing1.com), and the internet.

14 In loan applications Respondents ask their customers to provide personal identifying data,
15 including bank account information and numbers. Respondents then provide California residents
16 payday advances or loans, in amounts exceeding \$300.00 the maximum loan amount allowed under
17 Financial Code section 23035, and at charges exceeding \$45.00 the maximum of charges allowed per
18 loan under Financial Code section 23036 of the CDDTL, no matter how late the repayments. For
19 example, between January 2011 and April 2012, JD Marketing and Dennis C. Burkhardt provided
20 one California resident four payday loans, one in excess of the \$300.00 maximum allowed, and made
21 an ACH deduction of between \$90.00 and \$105.00 every two weeks until the loans were repaid.
22 Respondents collected from that customer over \$630.00 in charges in excess of those allowed under
23 the CDDTL.

24 Respondents JD Marketing and Dennis C. Burkhardt have not been issued a deferred deposit
25 transaction originator license by the Commissioner pursuant to the CDDTL. As such, Respondents
26 are not authorized to engage in payday lending, or to offer, originate, or make a deferred deposit
27 transaction, arrange a deferred deposit transaction for a deferred deposit originator, act as an agent for
28

1 a deferred deposit originator, or assist a deferred deposit originator in the origination of a deferred
2 deposit transaction in California or to California residents.

3
4 **II.**

5 **Desist and Refrain Order for Violations of**
6 **Financial Code Sections 23005 and 23036**

7 The Department is responsible for enforcing all provisions of the CDDTL, including the
8 regulation of deferred deposit transactions. The Commissioner is statutorily authorized to order any
9 person to desist and refrain from engaging in violations of the CDDTL.

10 California Financial Code section 23005, subdivision (a), provides, in pertinent part: “No
11 person shall offer, originate, or make a deferred deposit transaction, arrange a deferred deposit
12 transaction for a deferred deposit originator, act as an agent for a deferred deposit originator, or assist
13 a deferred deposit originator in the origination of a deferred deposit transaction without first
14 obtaining a license from the commissioner and complying with the provisions of this division”

15 Financial Code Section 23035(a) reads in pertinent part: “A licensee may defer the deposit of
16 a customer’s personal check for up to 31 days, pursuant to the provisions of this section. The amount
17 of the check shall not exceed three hundred dollars (\$300).”

18 Financial Code Section 23036, in pertinent part provides as follows:

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

21 (b) A licensee may allow an extension of time, or a payment plan, for repayment of an
22 existing deferred deposit transaction but may not charge any additional fee or charge of any
23 kind in conjunction with the extension or payment plan....

24 California Financial Code section 23050 provides:

25 Whenever, in the opinion of the commissioner, any person is engaged in
26 the business of deferred deposit transactions, as defined in this division, without a
27 license from the commissioner, or any licensee is violating any provision of this
28 division, the commissioner may order that person or licensee 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 forgoing facts establish violations of the CDDTL by JD Marketing Group, Inc. and Dennis C. Burkhardt. 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 California Financial Code section 23050, JD Marketing Group, Inc. and Dennis C. Burkhardt are hereby ordered to desist and refrain from violating California Financial Code sections 23005 and 23036. This Order shall remain in full force and effect until further order of the Commissioner.

III.

**Order Voiding California Deferred Deposit Transactions
and Disgorging All Charges and Fees**

California Financial Code Section 23060 provides:

(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.

Respondents willfully violated provisions of the CDDTL, including Financial Code section 23005 when they engaged in this deferred deposit transaction activity without a license, Financial Code section 23036 when they loaned amounts in excess of the maximum amount allowed, and Financial Code section 20036 when they charged excess fees and charges in conjunction with deferred deposit transactions. Because Respondents willfully violated these provisions and over-

1 charged its customers, Respondents are not entitled to collect or receive the principal amounts
2 provided in those deferred deposit transactions, nor are they entitled to any of the charges or fees
3 associated with the transactions.

4 Pursuant to California Financial Code section 23060, any and all deferred deposit
5 transactions contracted with California customers or in the State of California by JD Marketing
6 Group, Inc. and Dennis C. Burkhardt are therefore void. JD Marketing Group, Inc. and Dennis C.
7 Burkhardt are hereby ordered to immediately cease collecting any and all principal and charges
8 (including fees and interest), and to disgorge and return to all customers in California all principal
9 and charges received, in conjunction with deferred deposit transactions.

10
11 Dated: September 10, 2012
12 Sacramento, California

JAN LYNN OWEN
California Corporations Commissioner

14 By: _____
15 MARY ANN SMITH
16 Deputy Commissioner
17 Enforcement Division

28