

1 MARY ANN SMITH  
Deputy Commissioner  
2 SEAN ROONEY  
Assistant Chief Counsel  
3 KENNY V. NGUYEN (State Bar No. 233385)  
Senior Counsel  
4 Department of Business Oversight  
1515 K Street, Suite 200  
5 Sacramento, California 95814  
Telephone: (916) 322-8781  
6 Facsimile: (916) 445-6985  
7 Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of: )  
13 THE COMMISSIONER OF BUSINESS ) CITATION: DESIST AND REFRAIN ORDER  
OVERSIGHT, ) (For violations of section 12200 of the Financial  
14 ) Code)  
15 Complainant, )  
16 v. )  
17 RICHARD F. MURKEY, SR.; DENNIS A. )  
MURKEY; NATIONAL CONSUMER )  
18 ADVOCATES, INC. )  
19 Respondents. )  
20 )  
21 )

22 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), finds the  
23 following:

24 I.

25 **STATEMENT OF FACTS**

26 1. National Consumer Advocates, Inc. (NCAI), a suspended corporation, was incorporated in  
27 California with the Secretary of State as a nonprofit entity on November 10, 2010.  
28

1           2.       At all relevant times, NCAI had business addresses in California at the following  
2 addresses: 9420 Reseda Boulevard # 830, Northridge, California 91324; 9420 Reseda Boulevard #  
3 603, Northridge, California 91324; and 9440 Reseda Boulevard # 205, Northridge, California 91324.  
4 NCAI also operated from a business address of 20 Misty Springs Court, Las Vegas, Nevada 89148.

5           3.       NCAI was incorporated by Richard F. Murkey, Sr. (R. Murkey), who was manager  
6 and principal of NCAI from 2010 to the present.

7           4.       In April 2004, R. Murkey pled guilty to four counts of criminal contempt for violating  
8 a federal court order banning R. Murkey from: (1) participating in the advertising, promoting,  
9 offering for sale, sale, performance, or distribution of any credit repair service; (2) representing that  
10 he can or will substantially improve consumers’ credit reports or profiles by effectuating the  
11 permanent lawful removal of bankruptcies, liens, judgments, charge-offs, late payments,  
12 foreclosures, repossessions, and other negative information from consumers' credit reports where  
13 such information is accurate and not obsolete; and (3) violating the Credit Repair Organization Act,  
14 which, in turn, prohibits making any untrue or misleading statement with respect to any consumer's  
15 credit worthiness, credit standing, or credit capacity to any consumer reporting agency as defined in  
16 15 U.S.C. A. § 1681a(f).

17           5.       Dennis A. Murkey (D. Murkey) began working for NCAI in December 2009, and was  
18 the company’s Treasurer, Secretary, and later, its President (from 2014 to 2015.) D. Murkey was  
19 terminated from NCAI in or around August 2015.

20           6.       NCAI purports to be in the business of assisting customers suffering financial  
21 hardship “to satisfy certain debts on which [the customer has] a good faith dispute.”

22           7.       Beginning in at least December 2013, NCAI offered its alleged services to at least  
23 three California residents. The agreements these customers signed with NCAI provided that NCAI  
24 will contact each one of the customers’ creditors “to assist [the customer] to determine the accuracy  
25 and legality of [the customer’s] debt, and if the amount of interest, late fees, and other charges have  
26 been properly assessed to [the customer’s] account.” Forty percent (40%) of the total outstanding  
27 debt owed by the customer would be withdrawn directly from the customer’s bank account through  
28 Automated Clearing House (ACH), either in a lump sum or on a prorated monthly basis and

1 deposited into a “trust account” managed by NCAI. NCAI claimed it would use a portion of the  
2 40% to pay back creditors and would keep the remainder as a service fee.

3 8. Despite agreeing in writing to contact the creditors on behalf of its customers, NCAI  
4 instead had the customers send a template letter to their creditors to directly negotiate the debt  
5 themselves. Regardless of the debt obligation (whether it was student loans, credit card debt, etc.)  
6 NCAI provided the same template letter for its customers to send to the creditor. The template letter  
7 always began by stating that the customer reviewed his/her latest statements and discovered that the  
8 creditor “recently increased the rate of interest that was charged to my account,” regardless of  
9 whether this was true or not. The template letter then stated that the customer considered cancelling  
10 “the card,” regardless of the fact that some of the debt obligations were student loans, not credit card  
11 debt. The template letter would then state that the customer was “disputing the accuracy of this debt  
12 in the amount of” xxx, and would request copies of the “original cardholder agreement” and other  
13 documents related to the bills. In response to one such letter, Sallie Mae, a student loan servicing  
14 company wrote “Please note that Loan [omitted for privacy] is an education loan, and not a  
15 credit card.”

16 9. Despite withdrawing money from its customers’ account, NCAI did not reduce its  
17 customers’ debt. When customers demanded the return of their monies, NCAI claimed it was  
18 entitled to keep the money as compensation for its services.

## 19 II.

### 20 VIOLATIONS OF THE LAW

21 10. The Department of Business Oversight has jurisdiction over and regulates bill payers  
22 and proraters under the Check Sellers, Bill Payers and Proraters Law set forth in California Financial  
23 Code section 12000 et seq. California Financial Code section 12200, states:

24 No person shall engage in the business, for compensation, of  
25 selling checks, drafts, money orders, or other commercial paper  
26 serving the same purpose, or of receiving money as agent of an  
27 obligor for the purpose of paying bills, invoices, or accounts of  
28 such obligor, or acting as a prorater, nor shall any person, without  
direct compensation and not as an authorized agent for a utility  
company, accept money for the purpose of forwarding it to others  
in payment of utility bills, without first obtaining a license from the  
commissioner.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

The definition of “prorater,” found in Financial Code section 12002.1, states:

A prorater is a person who, for compensation, engages in whole or in part in the business of receiving money or evidences thereof for the purpose of distributing the money or evidences thereof among creditors in payment or partial payment of the obligations of the debtor.

11. The Commissioner has not licensed NCAI, R. Murkey, or D. Murkey to conduct business as a prorater in and from the State of California.

12. At all relevant times, NCAI did not qualify for an exemption from licensing under Financial Code section 12104 as a nonprofit community service organization, in part, because it charged and received more than the maximum allowed fees to offset the organization’s actual and necessary expenses for its purported debt management or debt settlement services. NCAI provided little-to-no debt settlement services for its customers, but charged excessive fees of nearly 40% of the overall debt owed by customers.

13. Based on the foregoing findings, the Commissioner is of the opinion that National Consumer Advocates, Inc., Richard F. Murkey, Sr., and Dennis A. Murkey, in concert and/or in participation with others, have been engaging in business as a bill payer or prorater as defined in the Check Sellers, Bill Payers and Proraters Law without a license from the Commissioner, in violation of Financial Code section 12200.

//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**III.**

**CITATION: DESIST AND REFRAIN ORDER**

Pursuant to Financial Code section 12107, the Commissioner issues this citation against National Consumer Advocates, Inc., Richard F. Murkey, Sr., and Dennis A. Murkey and hereby orders National Consumer Advocates, Inc., Richard F. Murkey, Sr., and Dennis A. Murkey, individually, in concert and/or in participation with others, to desist and refrain from engaging in business as a bill payer and prorater unless and until they are licensed or exempt.

This Order is necessary, in the public interest, and for the protection of consumers.

Dated: May 17, 2018  
Sacramento, California

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division