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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SACRAMENTO

10 In the Matter of

CASE NO. 06CS01309

11 NATIONWIDE ASSET SERVICES, INC.,
12 a.k.a. NATIONWIDE ASSET SERVICES, and
13 UNIVERSAL NATIONWIDE, L.L.C., d.b.a.
UNIVERSAL DEBT REDUCTION,

RESPONDENT'S ANSWER TO THE
PETITION FOR A WRIT OF
ADMINISTRATIVE MANDAMUS

14 Petitioners,

15 v.

16 THE CALIFORNIA CORPORATIONS
17 COMMISSIONER,

Date: December 1, 2006
Time: 9:00
Dept.: 11
Judge: Honorable Gail D. Ohanesian

18 Respondent.

19 Respondent, California Commissioner of Corporations ("Commissioner") of the Department
20 of Corporations ("Department"), files this answer in response to the Petition for a Writ of
21 Administrative Mandamus ("Petition") filed with the this Court on September 1, 2006. The Petition
22 seeks a writ to vacate the Commissioner's Decision ("Decision") that adopted the proposed decision
23 issued by the California Office of Administrative Hearings. The Commissioner's Decision affirmed
24 a desist and refrain order issued to prohibit unlicensed activities in violation of the Check Sellers,
25 Bill Payers and Proraters Law ("CSBPPL") found in Financial Code section 12000 et seq.

26 Petitioners include Nationwide Asset Services, Inc., Universal Debt Reduction, Universal
27 Nationwide, LLC, and variants of these names such as "NAS" and "UDR". Hereinafter, all the
28 foregoing will be referred to as "Petitioners," except where a specific name is relevant.

1 The Petition seeks a writ from this court directing the Commissioner to vacate his Decision
2 and the Commissioner's Desist and Refrain Order ("Order") but Petitioners have failed to comply
3 with the California Code of Civil Procedure, California Rules of Court, Sacramento Local Rules and
4 Petitioners have failed to lodge an Administrative Record ("Record") with this Court. A discussion
5 of Petitioners' failures is set forth in the Respondent's Memorandum of Points and Authorities in
6 Support of the Answer and in Opposition to the Petition for a Writ of Administrative Mandamus,
7 ("Respondent's Memorandum.") filed concurrently with this Answer.

8 Petitioners, who did not file a separate opening brief, instead included points and authorities
9 in their Petition. However, neither Petitioners' points nor their authorities listed in the Tables of
10 Contents and Table of Authorities, respectively, appear on the pages stated in these tables.

11 A basic rule of code pleading requires that a Petition contain a statement of the facts
12 constituting the cause of action, in ordinary and concise language. In this case, the Petitioners
13 intertwine numerous factual allegations throughout the Petition's 22 pages. For example, factual
14 allegations without any support begin appearing in the Petition's section headed "Introduction and
15 Summary of Argument," additional facts appear in most of the sections of the Petition, including the
16 Conclusion. "Facts" as distinguished from law, argument, are required to be stated concisely. What
17 Petitioners represent to be "facts" in the Petition are not. Petitioners' section labeled, "Relevant
18 Factual Background" contains a mixture of evidentiary and ultimate facts, law, argument, legal
19 inference, hypotheses, etc. Obviously, the application of the law to the facts, and drawing of legal
20 inference or conclusions, is the province of this Court.

21 Considering the Petition's mixture of evidentiary and ultimate facts, law, argument, and legal
22 inference, the Commissioner will attempt to address all the factual allegations, wherever they appear.
23 To the extent allegations are not expressly admitted or denied in this Answer, then the Commissioner
24 has no information or belief upon the subject sufficient to enable him to answer the allegations and,
25 placing his denial on that ground, denies such allegations.

26 None of the paragraphs in the Petition have numbers; therefore, Respondent will generally
27 refer to the specific paragraphs in the Petition by using italics to refer to the page and to the sequence
28 or location of the paragraph as it appears on each page of the Petition.

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Respondent, Commissioner, answers:

1. The Commissioner admits the allegations *on Page 3 paragraph 1*, which identify the parties to this Petition and the administrative Decision that is the basis for the Petition. However, the Commissioner denies Petitioners' allegation that the Administrative Law Judge's Proposed Decision was "issued on May 12, 2006."
2. The Commissioner denies the allegations *on page 3 in paragraph 2* of the Petition and asserts that administrative jurisprudence has a long established and well-regarded history.
3. The Commissioner denies the allegations *on page 3 in paragraph 3* of the Petition and asserts that Department of Corporations is the only administrative agency charged by the California Legislature to enforce the Check Sellers, Bill Payers and Proraters Law in the State of California, set forth in California Financial Code section 12000 et seq. The Commissioner further asserts that the Decision speaks for itself and believes the Petition mischaracterizes the Decision.
4. The Commissioner denies the allegations *on page 3 in (partial) paragraph 4* of the Petition and asserts that, pursuant to the Administrative Procedures Act as set forth in California Government Code section 11500 et seq., the Commissioner has a right to adopt the Proposed Decision.
5. The Commissioner denies the allegations *on page 4 in (partial) paragraph 1* of the Petition. The Commissioner further asserts that the Decision speaks for itself and believes the Petition mischaracterizes the Decision.
6. The Commissioner denies the allegations *on page 4 in paragraph 2* of the Petition. The Commissioner further asserts that the Petition mischaracterizes the facts, the Record, what "the ALJ found" and the Decision. Petitioners lack any references to the Record or support for their assertions, as discussed in Respondent's Memorandum. The Commissioner further asserts that the Decision speaks for itself.
7. The Commissioner denies the allegations *on page 4 in (partial) paragraph 3* of the Petition. The Commissioner further asserts that the Decision speaks for itself and believes the Petition mischaracterizes it.

- 1 8. The Commissioner denies the allegations *on page 5 in (partial) paragraph 1*. The
2 Commissioner further asserts that the Decision speaks for itself and believes the Petition
3 mischaracterizes it.
- 4 9. The Commissioner denies the allegations *on page 5 in paragraph 2*. The Commissioner
5 further asserts that the Decision speaks for itself and believes the Petition mischaracterizes it.
- 6 10. The Commissioner denies the allegations *on page 5 in paragraph 3*. The Commissioner
7 further asserts that the Decision speaks for itself and believes the Petition mischaracterizes
8 the Decision. Petitioners refer to no evidence to support their assertions and cannot because
9 the assertions are false.
- 10 11. The Commissioner denies the allegations *on page 5 in (partial) paragraph 4* of the Petition
11 because at the time the Commissioner's Order was issued the California Secretary of State's
12 Office had no record of either NAS or Universal Nationwide LLC filing with it to do
13 business in California, as required by law. The Commissioner asserts that it was not until the
14 day before the hearing was scheduled to begin that Petitioners first filed with the California
15 Secretary of State's Office, which may be judicially noticed. The Commissioner admits that
16 Petitioners' headquarters were located in Sacramento.
- 17 12. The Commissioner denies the allegations *on page 6 in (partial) paragraph 1* of the Petition
18 because at the time the Commissioner's Desist and Refrain Order was issued the California
19 Secretary of State's Office had no record of UDR filing with it to do business in California,
20 as required by law. The Commissioner asserts that it was not until the day before the hearing
21 was scheduled to begin that Petitioners filed with the California Secretary of State's Office,
22 which may be judicially noticed. The Commissioner admits that Petitioners' headquarters
23 were located in Sacramento.
- 24 13. The Commissioner admits the allegations *on page 6 in paragraph 2* of the Petition.
- 25 14. The Commissioner admits the allegation *on page 6 in paragraph 3* of the Petition that the
26 Decision was rendered in Sacramento. The Commissioner denies the other allegations and
27 asserts that the violations of law occurred throughout the State of California.
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- 1 15. Although jurisdiction cannot be conferred by consent, the Commissioner recognizes as true
2 the allegation *on page 6 in paragraph 4* of the Petition that "jurisdiction in the Superior
3 Court is proper . . ."
- 4 16. The Commissioner admits the allegation *on page 6 in paragraph 5* of the Petition that
5 Petitioners are not required to seek reconsideration.
- 6 17. The Commissioner lacks sufficient information or belief to answer Petitioners' allegations *on*
7 *page 6 in paragraph 6* of the Petition and, placing his denial on that ground, denies that
8 paragraph.
- 9 18. There are no factual allegations *on page 6 in (partial) paragraph 7* of the Petition.
- 10 19. There are no factual allegations *on page 7 in (partial) paragraph 1* of the Petition.
- 11 20. There are no factual allegations *on page 7 in paragraph 2* of the Petition.
- 12 21. The Commissioner lacks sufficient information or belief to respond to the allegations *on*
13 *page 7 in paragraph 3* of the Petition inasmuch as it does not set forth with clarity the factual
14 and legal grounds and, placing his denial on that ground, denies that paragraph.
- 15 22. The Commissioner denies the factual allegations *on page 7 in (partial) paragraph 4* of the
16 Petition and that Petitioners have a "vested" right to conduct unlicensed activity.
- 17 23. There are no factual allegations *on page 8 in (partial) paragraph 1* of the Petition.
- 18 24. The Commissioner lacks sufficient information or belief to answer the allegation found *on*
19 *page 8 in paragraph 2* of the Petition inasmuch as it does not set forth with clarity the factual
20 and legal grounds and, placing his denial on that ground, denies that paragraph. The
21 Commissioner does not believe that any grounds exist for this Court to grant Petitioners'
22 Writ.
- 23 25. The Commissioner denies the factual allegations *on page 8 in paragraph 3* of the Petition
24 that the Commissioner did not proceed in the manner required by law and that the Decision is
25 not supported by the findings.
- 26 26. The Commissioner lacks sufficient information or belief to answer Petitioners' allegations *on*
27 *page 8 in paragraph 4* of the Petition and, placing his denial on that ground, denies that
28 paragraph. The Commissioner adds that the Petition contains a false proof of service that

- 1 states under penalty of perjury that on September 1, 2006, Preston DuFauchard, California
2 Corporations Commissioner of the California Department of Corporations was served at his
3 offices with the Petition for a Writ of Administrative Mandamus. The proof of service does
4 not indicate the time of this purported service of the Petition and Request for Judicial Notice.
5 On September 6, 2006, indirectly the undersigned received a copy of the Petition, with the
6 photocopied proof of service, which stated that Preston DuFauchard was personally served
7 with a copy of the Petition and Request for Judicial Notice. Neither Preston DuFauchard nor
8 anyone else from the Department was served at the Department's offices with a copy of the
9 Petition on September 1, 2006. At no time has Preston DuFauchard been personally served
10 with a copy of the Petition. (See Declaration of Joan E. Kerst.)
- 11 27. The Commissioner admits that Petitioners operate a debt settlement program but denies the
12 other allegations as written *on page 8 in (partial) paragraph 5* of the Petition. The Petition
13 mischaracterizes the evidence and lacks adequate references to the Record to support each of
14 these assertions.
- 15 28. The Commissioner denies the allegations as written *on page 9 in (partial) paragraph 1* of the
16 Petition. The Petition mischaracterizes the evidence and lacks references to the Record in
17 support each of its alleged facts. Petitioners' references are not to OAH Hearing Exhibits, as
18 discussed in Respondent's Memorandum.
- 19 29. The Commissioner denies the allegations as written *on page 9 in paragraph 2* of the Petition.
20 The Petition mischaracterizes the evidence and lacks references to the Record in support each
21 of its alleged facts. Petitioners' references are not to OAH Hearing Exhibits, as discussed in
22 Respondent's Memorandum.
- 23 30. The Commissioner denies the allegations as written *on page 9 in paragraph 3* of the Petition.
24 The Petition mischaracterizes the evidence and lacks references to the Record in support each
25 of its alleged facts. Petitioners' references are not to OAH Hearing Exhibits, as discussed in
26 Respondent's Memorandum.
- 27 31. The Commissioner denies the allegations *on page 9 in paragraph 4* of the Petition. The
28 Petition mischaracterizes the evidence and lacks references to the Record in support each of

- 1 its alleged facts. Petitioners' references are not to OAH Hearing Exhibits, as discussed in
2 Respondent's Memorandum.
- 3 32. The Commissioner denies the allegations as written *on page 10 in paragraph 1* of the
4 Petition. The Petition mischaracterizes the evidence and lacks references to the Record in
5 support each of its alleged facts. Petitioners' references are not to OAH Hearing Exhibits, as
6 discussed in Respondent's Memorandum.
- 7 33. The Commissioner denies the allegations as written *on page 10 in paragraph 2* of the
8 Petition. The Petition mischaracterizes the evidence and lacks references to the Record in
9 support each of its alleged facts. Petitioners' references are not to OAH Hearing Exhibits, as
10 discussed in Respondent's Memorandum.
- 11 34. The Commissioner denies the allegations as written *on page 10 in (partial) paragraph 3* of
12 the Petition. The Petition mischaracterizes the evidence and lacks references to the Record in
13 support each of its alleged facts. Petitioners' references are not to OAH Hearing Exhibits, as
14 discussed in Respondent's Memorandum.
- 15 35. The Commissioner denies the allegations as written *on page 11 in (partial) paragraph 1* of
16 the Petition. The Petition mischaracterizes the evidence and lacks references to the Record in
17 support each of its alleged facts, as discussed in Respondent's Memorandum.
- 18 36. The Commissioner denies the allegations as written *on page 11 in paragraph 2* of the
19 Petition. The Petition lacks references to the Record in support each of its alleged facts.
- 20 37. The Commissioner denies the allegations as written *on page 11 in paragraph 3* of the
21 Petition. The Petition mischaracterizes the Commissioner's Order and takes it out of context.
- 22 38. The Commissioner denies the allegations as written *on page 11 in paragraph 4* of the
23 Petition. The Petition mischaracterizes documents and events or takes them out of context.
24 Petitioners' references are not to OAH Hearing Exhibits, as discussed in Respondent's
25 Memorandum.
- 26 39. The Commissioner admits the allegations *on page 11 in (partial) paragraph 5* of the Petition
27 that Petitioners filed a Notice of Defense. The referenced documents speak for themselves.
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- 1 Petitioners' references are not to OAH Hearing Exhibits, as discussed in Respondent's
2 Memorandum.
- 3 40. The Commissioner denies the allegations as written *on page 12 in (partial) paragraph 1* of
4 the Petition. The referenced documents speak for themselves. Petitioners' references are not
5 to OAH Hearing Exhibits, as discussed in Respondent's Memorandum.
- 6 41. The Commissioner denies the allegations as written *on page 12 in paragraph 2* of the
7 Petition. The referenced documents speak for themselves. The Petition lacks references to
8 support each of its alleged facts. Petitioners' references are not to OAH Hearing Exhibits, as
9 discussed in Respondent's Memorandum.
- 10 42. The Commissioner denies the allegations as written *on page 12 in paragraph 3* of the
11 Petition. The Petition mischaracterizes evidence, documents and events or takes them out of
12 context. The Petition lacks references to support each of its alleged facts. Petitioners'
13 references are not to OAH Hearing Exhibits as discussed in Respondent's Memorandum.
- 14 43. The Commissioner denies the allegations as written *on page 13 in paragraph 1* of the
15 Petition. The Petition mischaracterizes evidence, documents and events or takes them out of
16 context. The Petition lacks references to support each of its alleged facts. Petitioners'
17 references are not to OAH Hearing Exhibits as discussed in Respondent's Memorandum.
- 18 44. The Commissioner denies the allegations as written *on page 13 in paragraph 2* of the
19 Petition. The Petition mischaracterizes the evidence, documents and events. The Petition
20 lacks references to support each of its alleged facts. Petitioners' references are not to OAH
21 Hearing Exhibits as discussed in Respondent's Memorandum.
- 22 45. The Commissioner denies the allegations as written *on page 13 in paragraph 3* of the
23 Petition. The Petition mischaracterizes events and the Commissioner's actions concerning
24 the proposed decision. The referenced documents speak for themselves. The Commissioner
25 asserts that pursuant to the Administrative Procedures Act, the Commissioner has a several
26 options available once a proposed decision is rendered. (Govt. Code § 11517.) The
27 Commissioner elected one of the options by adopting the proposed decision "in its entirety."
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- 1 46. The Commissioner denies the allegations as written *on page 14 in paragraph 1* of the
 2 Petition. The Petition takes out of context and mischaracterizes the Decision, which speaks
 3 for itself.
- 4 47. The Commissioner denies the allegations as written *on page 14 in paragraph 2* of the
 5 Petition. The Petition mischaracterizes the Decision, which speaks for itself.
- 6 48. The Commissioner denies the non-statutory allegations as written *on page 14 in (partial)*
 7 *paragraph 3* of the Petition. The Commissioner denies the “factual” allegation found in the
 8 sentence beginning, “Because the Decision in this case. . .” The Petition mischaracterizes
 9 the evidence and Decision, which speaks for itself.
- 10 49. The Commissioner denies the allegations *on page 15 in (partial) paragraph 1* of the Petition.
- 11 50. The Commissioner denies the non-statutory allegations *on page 15 in paragraph 2* of the
 12 Petition and the sentence beginning “The Commissioner . . .” The Commissioner has not
 13 misinterpreted or rewritten the prorater statutes.
- 14 51. The Commissioner denies the allegation *on page 15 on line 11* of the Petition.
- 15 52. There are no factual allegations *on page 15 in paragraph 3* of the Petition but the
 16 Commissioner denies Petitioners’ assertions regarding legislative intent and factual
 17 allegations found in the Petition’s footnote 5. The Petition mischaracterized the evidence and
 18 lacks references to support each of the alleged facts in footnote 5 as discussed in
 19 Respondent’s Memorandum.
- 20 53. The Commissioner denies the non-statutory “factual” allegations *on page 16 in paragraph 1*
 21 of the Petition regarding Petitioners’ status as being “established” by the “Prorater Statutes.”
 22 The Commissioner denies Petitioners’ allegations in their footnote 6, which mischaracterizes
 23 DOC closing brief. Respondent’s closing brief speaks for itself. Moreover, administrative
 24 hearing briefs, whether Petitioners’ or Respondents’, do not constitute evidence. The
 25 Commissioner denies Petitioners’ interpretation of the Prorater Statutes’ “three
 26 requirements” as discussed in Respondent’s Memorandum.
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- 1 54. The Commissioner denies the allegations *on page 17 in paragraph 1* of the Petition, which
2 quotes the Decision out of context. The Commissioner further asserts that the Decision
3 speaks for itself and believes the Petition mischaracterizes it.
- 4 55. The Commissioner denies the allegations as written *on page 17 in paragraph 2* of the
5 Petition. The Commissioner further asserts that the Decision speaks for itself and believes
6 the Petition mischaracterizes it.
- 7 56. The Commissioner denies the allegations as written *on page 17 in paragraph 3* of the
8 Petition, which takes the Decision out of context and inserts language not found therein. The
9 Commissioner further asserts that the Decision speaks for itself.
- 10 57. The Commissioner denies the allegations *on page 17 in paragraph 4* of the Petition.
- 11 58. The Commissioner denies the allegations as written *on page 17 in (partial) paragraph 5* of
12 the Petition. The Commissioner adds he does not believe this Court needs instruction on
13 what judges can and cannot do.
- 14 59. The Commissioner admits the statutory citations *on page 18 in (partial) paragraph 1* of the
15 Petition. The Commissioner adds he does not believe this Court needs instruction on what
16 judges can and cannot do or on the statutory construction or interpretation.
- 17 60. The Commissioner admits the allegations *on page 18 in paragraph 2* of the Petition, as it
18 appears to be a partial quotation from the Decision. However, the Decision speaks for itself.
- 19 61. The Commissioner denies the Petitioners' allegations *on page 18 in (partial) paragraph 3* of
20 the Petition beginning with the phrase "but it is nonetheless clear" . . . payment of debt". The
21 Commissioner denies all allegation following the sentence beginning "But, this expansion
22 cannot . . ." The Commissioner further asserts that the Decision speaks for itself.
- 23 62. The Commissioner denies the allegations *on page 19 in (partial) paragraph 1* of the Petition.
- 24 63. The Commissioner denies the allegations *on page 19 in paragraph 2* of the Petition.
25 The Petition mischaracterizes evidence and documents and the Decision. The Petition lacks
26 references in the Record in support each of its factual assertions.
- 27 64. The Commissioner denies the allegations *on page 19, lines 11-12 and lines 19-21* of the
28 Petition.

- 1 65. The Commissioner denies the allegations as written *on page 19* in (partial) *paragraph 4* of
2 the Petition and denies the allegation in Petitioners' footnote 7, which mischaracterizes
3 evidence, documents and events. The Petition lacks references in the Record in support each
4 of its alleged facts, as discussed in Respondent's Memorandum.
- 5 66. The Commissioner denies the allegations *on page 20* in (partial) *paragraph 1* of the Petition.
- 6 67. The Commissioner denies the allegations *on page 20* in *paragraph 2* of the Petition.
- 7 68. The Commissioner denies the allegations *on page 20* in *paragraph 3* of the Petition. The
8 Petition mischaracterizes evidence, documents, and events and takes them out of context.
9 The Petitioners lack references to the Record in support any of their alleged facts.
- 10 69. The Commissioner denies the allegations *on page 20* in *paragraph 4* of the Petition. The
11 Commissioner further asserts that the document to which Petitioners refer, namely the
12 Commissioner's Decision, *In the Matter of Positive Return, Inc.* speaks for itself and believes
13 that Petitioners have mischaracterized it. The Commissioner adds it is not the "only publicly
14 available decisions (sic)."
- 15 70. The Commissioner denies the allegations *on page 20* in (partial) *paragraph 5* of the Petition.
- 16 71. The Commissioner denies the allegations *on page 21* in (partial) *paragraph 1* of the Petition.
- 17 72. The Commissioner denies that the allegations *on page 21* in *paragraph 2* of the Petition are
18 applicable to the instant case and believes that the case cited, *Gallo v. Acuna*, (1997) 14
19 Cal.4th 1090, is quoted out of context and misquoted (";mot") and is not applicable to a
20 consideration of this writ petition.
- 21 73. The Commissioner denies the allegations *on page 21* in *paragraph 3* of the Petition.
22 Petitioners' assertions mischaracterize evidence and the applicable statutes. The Petition
23 lacks references in the Record to support each of its factual assertions. Petitioners' make no
24 reference to OAH Hearing Exhibits.
- 25 74. The Commissioner denies the allegations *on page 22* in *paragraph 1* of the Petition. The
26 Petition mischaracterizes evidence, events, applicable statutes and the Decision.
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1 CONCLUSION AND PRAYER

2 The Commissioner believes the Petition lacks legal authority to support its arguments and
3 factual specificity to substantiate the alleged error of law and abuse of discretion. Petitioners failed
4 to cite to evidence in the Record. Indeed, not only have Petitioners failed to lodge the Record with this
5 Court but they yet to requested a copy of it. Absent support in the Record for the relief they seek,
6 Petitioners instead resort to general and vague allegations and illogical legal arguments.

7 WHEREFORE, Based on the foregoing and the Record at hearing below, Respondent, the
8 Commissioner of the California Department of Corporation prays that:

- 9 (1) Petitioners' Writ for Administrative Mandamus be denied and they take nothing by their action;
10 (2) Respondent recovers costs in this action and other relief as this Court considers proper.

11 Dated: November 6, 2006
12 San Francisco, California

13 Respectfully submitted,

14 PRESTON DuFAUCHARD
15 California Corporations Commissioner

16 By _____

17 JOAN KERST
18 Senior Corporations Counsel
19 Attorney for Respondent
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