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

10 In the Matter of ) CASE NO.  
11 THE CALIFORNIA CORPORATIONS )  
12 COMMISSIONER, )  
13 Complainant, ) STATEMENT IN SUPPORT OF ORDER  
14 v. ) LEVYING ADMINISTRATIVE PENALTIES,  
15 NATIONWIDE ASSET SERVICES, INC., ) CLAIM FOR ANCILLARY RELIEF AND  
16 a.k.a. NATIONWIDE ASSET SERVICES, and ) RECOVERY OF COSTS PURSUANT TO  
17 UNIVERSAL NATIONWIDE, L.L.C., d.b.a. ) FINANCIAL CODE SECTIONS 12105 AND  
18 UNIVERSAL DEBT REDUCTION, ) 12106  
Respondents. )

19 Preston DuFauchard, the California Corporations Commissioner ("Commissioner") of the  
20 Department of Corporations ("Department"), alleges and charges as follows:

21 **INTRODUCTION AND JURISDICTION**

22 1. The Check Sellers, Bill Payers and Proraters Law (CSBPPL”), set forth in Financial  
23 Code<sup>1</sup> section 12000 et seq., contains provisions that govern persons who operate in the check  
24 sellers, bill payers and proraters industry. To ensure the protection of the public, the Legislature  
25 mandates that persons dealing with debtors follow explicit legal requirements. The Commissioner  
26 of the Department of Corporations (“Department”) enforces these legal requirements. To remedy  
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28 <sup>1</sup> Hereinafter all section references are to the Financial Code unless indicated otherwise.

1 unlawful bill paying and prorating practices, the Commissioner is authorized to seek to levy  
2 administrative penalties, claim ancillary relief and recover costs from Respondents pursuant to  
3 section 12105, subdivisions (c), (b) and (e) respectively and section 12106.

#### 4 **STATEMENT OF THE CASE**

5 2. Respondents, Nationwide Asset Services, Inc., also known as Nationwide Asset Services  
6 (“NAS”) and Universal Nationwide, L.L.C., d.b.a. Universal Debt Reduction (“UDR”), represented  
7 themselves to be “credit counseling and debt settlement companies” and via, the Internet, yellow  
8 pages, telemarketing or other advertisements solicited funds from California consumers  
9 (“consumers”) with the promise to offer them relief from harassment from creditors or bill collectors  
10 and to improve consumers’ finances by means of debt management services. Respondents received  
11 various fees for their services of obtaining funds from consumers to be disbursed later to the  
12 consumers’ creditors. These activities constitute engaging in the business as a prorater under the  
13 CSBPPL and requires a license from the Department pursuant to section 12200, which states:

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

21 3. At all relevant times, Respondents operated contrary to the CSBPPL in offices located  
22 in California and transacted business throughout California. NAS and UDR stated their  
23 headquarters were located at 4229 Northgate Blvd., Sacramento, California 95834, and they used  
24 Sacramento based telephone numbers to conduct business and sought membership in the Better  
25 Business Bureau (“BBB”) of Greater Sacramento

26 4. NAS solicited consumers via its website [www.nationwideasset.com](http://www.nationwideasset.com), stating its home  
27 office is in Sacramento and its telephone number is (916) 779-3700. NAS’s website states that  
28 readers can contact NAS by sending an e-mail to another entity, [webmaster@universaldr.com](mailto:webmaster@universaldr.com).  
UDR solicited consumers via its website [www.universaldr.com](http://www.universaldr.com), unsolicited e-mail and its toll-  
free telephone number (888) 839-2930.

1           5. Respondents' activities involve their advertisements, publications and toll-free telephone  
2 numbers promoting their services of receiving consumers' funds to provide prorating services to  
3 consumers' creditors. Respondents' advertisements solicit consumers to contact Respondents via  
4 the Internet. Respondents also solicited consumers via their Internet websites to enroll in their  
5 respective debt management plans online by use of interactive websites. Respondents' websites  
6 provide consumers the means of transacting business from their computers with Respondents.  
7 Respondents' activities conducted by means of websites are not passive, but rather are highly  
8 interactive and are systematic and continuous so as to support a finding of general jurisdiction over  
9 their activities in this State. During all relevant times, Respondents maintain systematic, continuous  
10 and substantial contacts with California consumers by their physical presence in this State and by  
11 their use of public advertisements and interactive websites.

12           6. At no time have Respondents been licensed to negotiate repayment plans with creditors  
13 of consumers, whereby Respondents and others, acting in concert or participation with them, will  
14 receive money from the consumer for the purpose of distributing the money among a consumer's  
15 creditors in payment of that consumer's obligations. Respondents' services involve the receipt of  
16 money as an agent of a consumer for the purpose of paying the debts of a consumer. The failure of  
17 Respondents to be licensed violates the CSBPPL.

18           7. Respondents received funds from consumers that were to be paid to consumers'  
19 creditors. These consumer funds were deposited into a bank account totally controlled by  
20 Respondents. In exchange for the Respondents' services, consumers paid Respondents a "set up"  
21 fee of up to \$299. Consumers' first three monthly payments are "enrollment/counseling fees."  
22 Consumers were charged additional amounts on a monthly basis. If a consumer was successful in  
23 completely paying one of their creditors, Respondents would retain funds from consumers  
24 amounting to approximately 29% of the settlement savings as a "negotiation fee." Thus,  
25 Respondents also charged a variety of fees, including "set up fees," "enrollment fees," "retainer  
26 fees," "settlement fees," "negotiation fees," "monthly administrative fees," "maintenance fees,"  
27 "ACH electronic check fees." and "cancellation" and "termination fees."

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1 8. Section 12314 limits the charges and fees that Respondents can charge consumers:

2 The total charges received by a prorater, or any other person for the prorater's  
3 services, may not exceed in the aggregate twelve percent (12%) for the first  
4 three thousand dollars (\$3,000), eleven percent (11%) for the next two  
5 thousand dollars (\$2,000), and ten percent (10%) for any of the remaining  
6 payments distributed by a prorater to the creditors of a debtor, except for  
7 payments made on recurrent obligations. Recurring obligations shall be  
8 defined for the purpose of this section as follows: current rent payments,  
9 current utility payments, current telephone bills, current alimony payments,  
10 current monthly insurance premium payments, and payments made on  
11 obligations which are secured by a first mortgage or first deed of trust on real  
12 property.

13 (a) Notwithstanding the provisions of Section 12315, upon compliance with  
14 the provisions of Sections 12315.1, and 12320, an origination fee of a sum not  
15 to exceed fifty dollars (\$50) may be charged;

16 (b) A fee not to exceed four dollars (\$4) per disbursement on recurring  
17 obligations, consisting of current rent payments or obligations which are  
18 secured by a first mortgage or first trust deed on real property, may be  
19 charged.

20 (c) A fee not to exceed one dollar (\$1) on other recurring obligations.

21 When a debtor has not canceled or defaulted on the performance of his  
22 contract with the prorater within 12 months after execution of the prorate  
23 contract, the prorater shall refund any origination fee charged to the debtor. At  
24 least once each month the prorater shall pay not less than 70 percent of all  
25 funds received from the debtor to the creditors of the debtor.

26 Thus, Respondents violated section 12314, by their method of charging consumers various fees.

27 9. Section 12314.1 prohibits a cancellation or termination fee and states “[a] cancellation  
28 fee or termination penalty may not be charged to a debtor.” Respondents routinely assessed a  
cancellation fee of \$250. In fact, when debtors would request a refund of the amounts paid to  
Respondents because of their unsatisfactory service or complete lack thereof, Respondents would  
frequently refer to the part of their contract that they claimed permitted them to assess their  
cancellation or termination fee.

10. Respondents consistently violated section 12315 by collecting an upfront “set up,”  
“enrollment” or “negotiation” fee before ever contacting a single creditor on behalf of consumers,

1 much less arranging for contracts with creditors concerning payments. Section 12315 states:

2 A prorater shall not receive any fee unless he has the consent of at least 51  
3 percent of the total amount of indebtedness and of the number of creditors  
4 listed in the prorater's contract with the debtor, or such like number of creditors  
have accepted a distribution of payment.

5 11. Section 12316 states that if a prorater charges in excess of the maximum permitted by  
6 law, the contract is void and the prorater shall refund the consumer's funds:

7 If a prorater contracts for, receives or makes any charge in excess of the  
8 maximum permitted by this division, except as the result of an accidental and  
9 bona fide error, the prorater's contract with the debtor shall be void and the  
prorater shall return to the debtor all charges received from the debtor.

10 Respondents universally overcharged debtors. Therefore, the contracts Respondents entered into  
11 with consumers are void and Respondents are required to refund all charges they have received from  
12 debtors-consumers.

13 12. Respondents violated section 12321 by failing to deliver a receipt to a debtor. Section  
14 12321 states, "[u]nless paid by check or money order a prorater shall deliver a receipt to a debtor  
15 for each payment within five (5) days after receipt of a payment.

16 13. Respondents also violated section 12322 by failing to render a proper accounting to  
17 debtors-consumers. Section 12322 states:

18 At least once in each six (6) months, the prorater shall render an accounting to the  
19 debtor which shall itemize the total amount received from the debtor, the total  
20 amount paid to each creditor, the total amount which any creditor has agreed to  
21 accept as payment in full on any debt owed him by the debtor, the amount of  
charges deducted, and any amount held in reserve. A prorater shall in addition  
render such an account to a debtor within seven days after written demand.

22 14. Administrative penalties and ancillary relief and recovery of costs are warranted and  
23 authorized by sections 12105 and 12106.

24 15. Financial Code section 12105, subdivision (b), states:

25 If the commissioner determines it is in the public interest, the commissioner may  
26 include in any action under this division a claim for ancillary relief, including, but  
27 not limited to, a claim for restitution or disgorgement or damages on behalf of the  
28 persons injured by the act or practice constituting the subject matter of the action,  
and the administrative or civil court shall have jurisdiction to award an additional  
relief.

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Financial Code section 12105, subdivision (c), states:

The commissioner may, after appropriate notice and opportunity for hearing, levy administrative penalties against any person or licensee who violates any provision of this division, or rule or order promulgated pursuant to this division, in an amount not to exceed two thousand five hundred dollars (\$2,500) per violation. Any hearing shall be held in accordance with the Administrative Procedure Act, Chapter 5 (commencing with [Section 11500](#)) of [Part 1 of Division 3 of Title 2 of the Government Code](#), and the commissioner shall have all of the powers granted under this act. If no hearing is requested within 30 days from the date of service of the order, the order shall become final.

Financial Code section 12105, subdivision (e), states:

In any action brought under this division, the commissioner is entitled to receive costs, which in the discretion of the administrative or civil court shall include an amount representing reasonable attorney's fees and any related expenses for services rendered.

In addition, Financial Code section 12106, subdivision (e), states:

The cost of any review, examination, audit, or investigation made by the commissioner under this section shall be paid to the commissioner by the person subject to the . . . investigation, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses, including overhead reasonably incurred in the performance of the work.

16. Respondents engaged in contracts with at least 3,118 consumers that are in violation of the CSBPPL and void. According to Respondents' documents they have obtained fees of at least \$1,000 from each of these clients. Consumers were required to pay a "set up" fee of \$299, and a "retainer" fee of at least \$250 per month for three months. If they remained as Respondents' clients, Respondents took "settlement fees" of at least 25% of the amount "saved" from consumers' funds.

17. In cases where consumers sought to terminate their agreement prior to settlement, usually because Respondents failed to perform the promised services, Respondents then charged consumers an additional \$250 "cancellation" or termination fee.

18. Respondents used their contracts as an excuse for not refunding fees and charges. The contracts violate the CSBPPL. Thus, the contracts are void and the amounts obtained were obtained

1 illegally. This Court can order that Respondents make restitution of the amount illegally obtained  
2 from California consumers. It is clear that Respondents profited from the use of consumers' funds,  
3 no consumer ever earned a cent of interest during the time Respondents had control of their funds.  
4 Moreover, it is clear from complaints from consumers filed with the Better Business Bureau  
5 ("BBB") that even after terminating their program, Respondents were very slow to pay. It is  
6 abundantly clear that it was only the result of inquiries made by the BBB on behalf of the  
7 consumers, that the consumers received any refunds at all. It is also appropriate to order interest  
8 paid to California consumers based upon the time Respondents had custody of the consumers' funds  
9 and the amount of those funds.

10 19. The Department requests an order of restitution for California customers in the manner  
11 described herein:

12 A. "Eligible Customer" shall be defined for purposes of restitution as a person  
13 who was a California resident while enrolled in a debt management or debt settlement  
14 program with Respondents and who paid fees to Respondents.

15 B. The amount of restitution should be based upon verifiable records from either  
16 consumers or Respondents set forth in a spreadsheet reflecting the historical account activity  
17 for each Eligible Customer. The Commissioner may seek to amend the total amount of  
18 restitution owed if the spreadsheet does not accurately represent either the number of Eligible  
19 Customers or the total amount of fees or amounts paid by the Eligible Customers to  
20 Respondents.

21 C. Respondents shall issue restitution checks to Eligible Customers in accordance  
22 with the schedule ordered by this Court. Each Eligible Customer shall receive the full  
23 amount of restitution to which he or she is entitled under this judgment in a single check  
24 (with an expiration date of 90 days after delivery to the last known mailing address of the  
25 Eligible Customer). Respondents shall mail via first class United States mail a check in the  
26 correct amount to the current address of each customer along with a copy of the letter, with  
27 language approved by this Court explaining the refund.

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1 D. Within 15 days of any check being returned as undeliverable or expiring (90  
2 days after delivery to the last known mailing address of the Eligible Customer) without  
3 being deposited, Respondents shall attempt to determine the current address of the Eligible  
4 Customer by checking the United States Post Office National Change of Address System.  
5 Where new address information is available, Respondents shall mail via first class United  
6 States mail a check in the correct amount to the new address along with a copy of the  
7 letter, with language approved by this Court explaining the refund. All funds not returned  
8 to Eligible Customers shall escheat to the State of California in accordance with California  
9 law.

10 E. Respondents shall establish or designate a toll-free telephone number for use  
11 by Eligible Customers in connection with the Restitution Program. The toll-free  
12 telephone number shall be prominently displayed on all correspondence and notices  
13 issued by Respondents regarding the restitution program. Respondents shall use their  
14 best effort to promptly and truthfully respond to Eligible Customers questions. Callers  
15 to the toll-free telephone number shall not be solicited for the sale of products or  
16 services. Respondents shall maintain a log of the date and time of each call to the toll-  
17 free telephone number, the Eligible Customer's name and telephone number (to the  
18 extent provided voluntarily by the Eligible Customer) and the subject matter of each  
19 call. The log shall be made available for one year in the State of California from the  
20 date of a Decision in this case for inspection by counsel for the Commissioner and/or his  
21 agents upon three (3) days written notice. Copies may be provided if requested by  
22 counsel for the Commissioner in lieu of personal inspection.

23 F. On the 90<sup>th</sup>, 150<sup>th</sup> and 240<sup>th</sup> day from a Decision in this case, Respondents shall  
24 provide an accounting of the checks cashed, checks returned as undeliverable, checks  
25 expired without being cashed, including an updated version of the spreadsheet referenced  
26 in Paragraph C, above, reflecting for each Eligible Customer the status of their restitution  
27 payment. Respondents shall make copies of canceled checks available for one year in the  
28 State of California from the date of a Decision in this case for inspection by the



1 Commissioner, and/or his agents upon three (3) days written notice. Copies may be  
2 provided if requested by counsel for the Commissioner in lieu of personal inspection.

3 G. Respondents shall meet and confer with counsel for the Commissioner as  
4 reasonably required to monitor and audit the Restitution Program properly. Problems that  
5 arise concerning the implementation of the Restitution Program may be resolved by  
6 agreement between the parties without further OAH orders. In the event a dispute arises that  
7 cannot be resolved between the parties, any party may petition OAH for a resolution or  
8 settlement of the dispute.

9 H. If requested in writing by counsel for the Commissioner after review of the  
10 records regarding mailing and payment provide by Respondents, Respondents shall hire a  
11 mutually agreed upon independent certified public accountant (“CPA”) to audit  
12 Respondents’ performance of the Restitution Program under a Decision in this case, and to  
13 issue a written audit report to the counsel for the Commissioner. If no agreement is reached  
14 concerning the CPA after thirty days after a request, the Commissioner shall have the  
15 authority to select a CPA and submit his selection to OAH to make a decision concerning  
16 the selection of a CPA. Costs of said audit by a CPA shall be the responsibility of  
17 Respondents.

18 I. Respondents shall assist in the implementation of any Restitution Program set  
19 forth in any Decision issued in this case.

20 The Department seeks an Order levying administrative penalties and costs to  
21 Respondents for their CSBPPL violations in the manner described herein:

22 A. On entry of a Decision, Respondents shall deliver to counsel for the Commissioner a  
23 check for CSBPPL violations in the amount of \$2,500 for each violation, or such amount as this  
24 Court may order.

25 B. On entry of a Decision, Respondents shall deliver to counsel for the Commissioner a  
26 check in the amount ordered by this Court after submission of its costs and attorneys’ fees to this  
27 Court in accordance with governing statute.

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**CONCLUSION AND PRAYER**

Complainant finds that, by reason of the foregoing, Respondents, Nationwide Asset Services, Inc., also known as Nationwide Asset Services, and Universal Nationwide, L.L.C., d.b.a. Universal Debt Reduction, in concert or in participation with others, violated the CSBPPL and deems that it is in the best interest of the public to issue an Order to Respondents Levying Administrative Penalties, Claim for Ancillary Relief and Recovery of Costs.

WHEREFORE, good cause showing, pursuant to section 12105, subdivision (c), the Commissioner shall levy administrative penalties in the amount of \$2,500 for each of Respondents' violations of the following sections:

- Section 12314;
- Section 12314.1;
- Section 12315;
- Section 12321; and
- Section 12324.

WHEREFORE, good cause showing, pursuant to section 12105, subdivision (c), the Commissioner hereby prays for an order of ancillary relief against Respondents consisting of:

- (1) Respondents shall return to the debtors all charges received from the debtors since pursuant to section 12316 Respondents' contracts with consumers are void and make restitution as set forth above;
- (2) Respondents pursuant to section 12322 shall render an accounting to consumers; and
- (3) recovery of costs, investigative expenses and attorney's fees in an amount of at least \$15,000 payable to the Department.

Dated July 05, 2006  
San Francisco, California

PRESTON DuFAUCHARD  
California Corporations Commissioner

By: \_\_\_\_\_  
JOAN E. KERST  
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Enforcement Division