

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
3 ALAN S. WEINGER
Lead Corporations Counsel
4 ALEX CALERO (SBN 238389)
Corporations Counsel
5 CALIFORNIA DEPARTMENT OF CORPORATIONS
1350 Front Street, Room 2034
6 San Diego, California 92101
Telephone: (619) 525-4044

7 Attorneys for the People of the State of California

8

9

SUPERIOR COURT OF THE STATE OF CALIFORNIA

10

FOR THE COUNTY OF SAN DIEGO

11

THE PEOPLE OF THE STATE OF
12 CALIFORNIA, by and through the
CALIFORNIA CORPORATIONS
13 COMMISSIONER,

14 Petitioner,

15 vs.

16 U.S. FINANCIAL MANAGEMENT, INC. and
U.S. FINANCIAL MANAGEMENT,

17 Respondents.

Case No.:

PETITION FOR ORDER TO COMPEL
COMPLIANCE WITH SUBPOENA DUCES
TECUM AND ORDER TO SHOW CAUSE
RE: SAME

(FIN. CODE § 12305; GOV. CODE, §§
11187-11188)

Hearing Date:
Hearing Time:
Dept:
18 Judge:

19

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21

YOU ARE HEREBY NOTIFIED that on the date and time and in the Department set forth
22 above, Petitioner, Preston DuFauchard, California Corporations Commissioner, acting in the name of
23 the People of the State of California, will submit the following PETITION FOR ORDER TO
24 COMPEL COMPLIANCE WITH SUBPOENA DUCES TECUM AND ORDER TO SHOW
25 CAUSE RE: SAME, pursuant to Government Code sections 11187 and 11188, Financial Code
26 section 12305, the accompanying Points and Authorities and evidence in support thereof:

27 ///

28 ///

1 Petitioner, the California Corporations Commissioner (“Commissioner”), by and through his
2 attorney, Alex Calero, Corporations Counsel, alleges:

3 1. Petitioner is head of the California Department of Corporations (“Department”).

4 2. The Department is the California agency responsible for administering and enforcing
5 the Check Sellers, Bill Payers and Proraters Law (“Proraters Law”) (Cal. Fin. Code, § 12000 *et seq.*),
6 which regulates “prorating.” The Proraters Law defines a prorater as “a person who, for
7 compensation, engages in whole or in part in the business of receiving money or evidences thereof
8 for the purpose of distributing the money or evidences thereof among creditors in payment or partial
9 payment of the obligations of the debtor.” (Cal. Fin. Code, § 12002.1.)

10 3. An individual or entity must first obtain a license from the Commissioner before
11 acting as a prorater, or be exempt. (Cal. Fin. Code, § 12200.) Further, a prorater must comply with
12 various statutes, rules and reporting requirements in order to maintain their license.

13 4. For the purpose of discovering violations of the Proraters Law, the Commissioner is
14 given broad authority to investigate the business and examine the books, accounts, records and files
15 used by any person who the commissioner has reason to believe is engaged in the business of
16 prorating. (Cal. Fin. Code, § 12305.) The Commissioner, as head of the Department, is authorized to
17 issue subpoenas for the production of papers, books, accounts, any writings or tangible thing
18 pertinent or material to any inquiry, investigation, hearing, proceeding, or any acts conducted in any
19 part of the state. (Cal. Gov. Code, §§ 11180 & 11181, subs. (a) & (e).)

20 5. Petitioner is informed and believes that U.S. Financial Management Inc., a California
21 corporation, and U.S. Financial Management, a San Diego County fictitious business name
22 (collectively “RESPONDENTS”), are a California based company engaged in prorating with both
23 California and out-of-state prorating client.

24 6. RESPONDENTS have not applied for or obtained a license, from the commissioner,
25 to act as a prorater.

26 7. On June 28, 2007, in the course of a lawful investigation into possible violations of the
27 Proraters Law, the Commissioner issued a Subpoena Duces Tecum on RESPONDENTS. The
28 Subpoena Duces Tecum required the production of certain documents, related to RESPONDENTS’

1 business activities and relevant to the Department's investigation, to Alex Calero, Corporations
2 Counsel, at 1350 Front Street, Suite 2034, San Diego, CA 92101, on or before August 2, 2007.

3 8. On July 6, 2007, the Subpoena Duces Tecum was personally served on
4 RESPONDENTS' registered agent for service of process, Mark Hirowaka at 3131 Camino Del Rio
5 North, Suite 800, San Diego, CA 92108, pursuant to California law.

6 9. On August 29, 2007, the Department received a letter dated August 28, 2007, via
7 facsimile, from RESPONDENTS' attorney admitting that RESPONDENTS engaged in unlicensed
8 prorating.

9 10. The Department granted RESPONDENTS several extensions to the date of
10 production, thereby establishing a date of production for September 14, 2007.

11 11. On September 14, 2007 the Department received, via facsimile, correspondence from
12 RESPONDENTS' attorney, entitled Responses and Objections to Subpoena Duces Tecum
13 (hereinafter "Reponses and Objections"). In the Responses and Objections, RESPONDENTS
14 indicated their refusal to produce certain documents based on claims of privileges and other
15 objections. In the Responses and Objections, RESPONDENTS also agreed to produce some
16 documents relating to the approximately 61 current California prorating clients. Other than a list of
17 officers, which appears to respond to Category 1 of the Subpoena Duces Tecum, RESPONDENTS
18 failed to produce any other documents whatsoever on September 14, 2007.

19 12. On September 27, 2007, the Department received some, but not all, documents
20 relating to RESPONDENTS' approximately 61 current California prorating clients.

21 13. Subsequent correspondence with RESPONDENTS' attorney have clearly identified
22 extensions to the date of production. The Department's September 20, 2007 letter clearly identified
23 September 24, 2007 as the final date of production for the documents RESPONDENTS agreed to
24 produce, with respect to the approximately 61 current California clients. Further, the Departments'
25 September 20 and 25, 2007 letters clearly identified October 15, 2007, as the final date of production
26 for all documents withheld based on erroneous claims of privileges and objections.

27 14. As of the date of this Petition, RESPONDENTS have failed and refused to produce all
28 documents relevant to current California prorating clients and, further, have failed and refused to

1 produce any documents relevant to past California prorating clients and past and current out-of-state
2 prorating clients. RESPONDENTS have also failed to contact the Department to seek a further
3 extension of time.

4 WHEREFORE, Petitioner respectfully requests that this Court:

5 1. Set an Order to Show Cause hearing, pursuant to Government Code section 11188, as
6 to why RESPONDENTS, U.S. Financial Management, Inc. and U.S. Financial Management, have
7 not complied with the Subpoena Duces Tecum, and

8 2. Order RESPONDENTS, U.S. Financial Management, Inc. and U.S. Financial
9 Management, to produce the documents described in the Subpoena Duces Tecum.

10 Dated: October 18, 2007

11 PRESTON DuFAUCHARD
12 California Corporations Commissioner

13 By: _____
14 ALEX CALERO
15 Corporations Counsel
16 Attorney for the People of California