

1 MARY ANN SMITH
Deputy Commissioner
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Assistant Chief Counsel
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4 Counsel
5 Department of Business Oversight
6 One Sansome Street, Suite 600
7 San Francisco, California 94104
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8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CRMLA LICENSE NO.: 413-1181
13)
14 THE COMMISSIONER OF BUSINESS) STIPULATION TO ORDER TO
OVERSIGHT,) DISCONTINUE VIOLATIONS PURSUANT
15) TO FINANCIAL CODE SECTION 50321
16 Complainant,)
17)
18 v.)
19)
20 AMERICAN NATIONWIDE MORTGAGE)
COMPANY, INC.,)
21 Respondent.)
)

22 This Stipulation is entered between American Nationwide Mortgage Company, Inc.
23 (American Nationwide) and the Commissioner of Business Oversight (Commissioner) (collectively,
24 the Parties), and is made with respect to the following facts:

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I.
Recitals

A. American Nationwide is a corporation in good standing, duly formed and existing pursuant to the laws of the State of Florida and authorized to conduct business in the State of California.

B. American Nationwide is a mortgage lender holding a license issued by the Commissioner pursuant to the California Residential Mortgage Lending Act (Financial Code Section 50000 et seq.), license number 413-1181. American Nationwide has its principal place of business at 3820 Northdale Boulevard, Suite 111A, Tampa, Florida 33624.

C. Edward Rogers is a director of American Nationwide and is authorized to enter this Stipulation on behalf of American Nationwide.

D. On or about October 23, 2017, the Commissioner, by and through her staff, commenced a regulatory examination conducted pursuant to Financial Code section 50302. The regulatory examination revealed that American Nationwide had provided California borrowers with per diem interest disclosure forms that included blank amounts where American Nationwide should have listed interest charges, and American Nationwide had borrowers sign those forms. This violates Financial Code section 50204, subdivision (e), which provides that a licensee may not obtain or induce an agreement or other instrument in which blanks are left to be filled after execution.

E. In 2017, the Commissioner informed American Nationwide that she would commence an administrative action to enforce American Nationwide’s compliance with the CRMLA (Enforcement Action).

F. Upon being informed of the Commissioner’s intent to commence the Enforcement Action, American Nationwide responded by indicating that it would cooperate with the Commissioner and agreed to the issuance of this Stipulation without the need to commence an administrative action.

G. It is the intention and desire of the parties to resolve this matter without the necessity of a hearing and/or other litigation.

1 H. The Commissioner finds that this action is appropriate, in the public interest, and
2 consistent with the purposes fairly intended by the policies and provisions of this law.

3 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
4 forth herein, the parties agree as follows:

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6 **II.**
Terms and Conditions

7 1. **1. Order to Discontinue.**

8 American Nationwide agrees to the issuance of a Final Order to Discontinue Violations
9 Pursuant to Financial Code section 50321 (Order to Discontinue Violations). A copy of the Order to
10 Discontinue Violations is attached and incorporated hereto as Exhibit A.

11 2. **Waiver of Hearing Rights.**

12 American Nationwide acknowledges that the Commissioner is ready, willing, and able to
13 proceed with the filing of an Enforcement Action on the charges contained in this Stipulation, and
14 American Nationwide hereby waives the right to a hearing, and to any reconsideration, appeal, or
15 other right to review which may be afforded pursuant to the CRMLA, including Financial Code
16 section 50323. American Nationwide further expressly waives any requirement that may be
17 afforded by the Administrative Procedure Act, the Code of Civil Procedure, or any other provision
18 of law; and by waiving such rights, American Nationwide effectively consents to this Stipulation
19 becoming final.

20 3. **Finality of Order.**

21 American Nationwide hereby agrees to comply with the Order to Discontinue Violations.
22 American Nationwide stipulates that, upon issuance by the Department, the Order to Discontinue
23 Violations shall be treated as a final and enforceable order issued pursuant to the Commissioner's
24 authority under Financial Code section 50321.

25 4. **Full and Final Settlement.**

26 The parties hereby acknowledge and agree that this Stipulation is intended to constitute a
27 full, final and complete resolution of the activities alleged in Paragraph D above between American
28 Nationwide and the Commissioner. The parties further acknowledge and agree that nothing

1 contained in this Stipulation shall operate to limit the Commissioner’s ability to assist any other
2 agency (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought
3 by any such agency against American Nationwide upon any of the activities alleged herein or
4 otherwise.

5 5. Effect of Stipulation on License.

6 In consideration of American Nationwide’s agreement to the issuance of the Order to
7 Discontinue Violations, the Commissioner hereby agrees that she shall not suspend the residential
8 mortgage lender license of American Nationwide or take any further action based upon the
9 violations discussed in Paragraph D above. Accordingly, this Stipulation does not affect the
10 licensing status of American Nationwide.

11 6. Full and Final Settlement.

12 The parties hereby acknowledge and agree that this Stipulation is intended to constitute a
13 full, final, and complete resolution of the violations discussed in Paragraph D above and that no
14 further proceedings or actions will be brought by the Commissioner in connection with those
15 matters either under the CRMLA, or any other provision of law, excepting therefrom any
16 proceeding to enforce compliance with the terms of this Stipulation, or a proceeding or action
17 based upon discovery of new and further violations of the CRMLA which do not form the basis for
18 this Stipulation or which American Nationwide knowingly concealed from the Commissioner.

19 7. Binding.

20 This Stipulation is binding on all of the Parties’ heirs, assigns, and/or successors in interest.

21 8. Commissioner’s Duties.

22 The parties further acknowledge and agree that nothing contained in this Stipulation shall
23 operate to limit the Commissioner’s ability to assist any other agency (city, county, state or federal)
24 with any prosecution, administrative, civil or criminal, brought by any such agency against
25 American Nationwide or any other person based upon any of the activities alleged in these matters
26 or otherwise.

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1 9. Future Actions by Commissioner.

2 This Stipulation may be revoked, and the Commissioner may pursue all remedies available
3 under the law against American Nationwide if the Commissioner later discovers that American
4 Nationwide knowingly or willfully withheld information used for and relied upon in this
5 Stipulation. Further, American Nationwide agrees that this Stipulation does not resolve any
6 penalties that may be assessed by the Commissioner upon discovery of new and further violations
7 of the CRMLA.

8 10. Independent Legal Advice.

9 Each of the parties represents, warrants, and agrees that it has received independent advice
10 from its attorney(s) and/or representatives with respect to the advisability of executing this
11 Stipulation.

12 11. Counterparts.

13 The parties agree that this Stipulation may be executed in one or more separate
14 counterparts, each of which when so executed, shall be deemed an original. Such counterparts
15 shall together constitute and be one and the same instrument.

16 12. Waiver, Modification, and Qualified Integration.

17 The waiver of any provision of this Stipulation shall not operate to waive any other
18 provision set forth herein. No waiver, amendment, or modification of this Stipulation shall be valid
19 or binding to any extent unless it is in writing and signed by all the parties affected by it.

20 13. Headings and Governing Law.

21 The headings to the paragraphs of this Stipulation are inserted for convenience only and
22 will not be deemed a part hereof or affect the construction or interpretation of the provisions
23 hereof. This Stipulation shall be construed and enforced in accordance with and governed by
24 California law.

25 14. Full Integration.

26 Each of the parties represents, warrants, and agrees that in executing this Stipulation it has
27 relied solely on the statements set forth herein and the advice of its own counsel. Each of the
28 parties further represents, warrants, and agrees that in executing this Stipulation it has placed no

1 reliance on any statement, representation, or promise of any other party, or any other person or
2 entity not expressly set forth herein, or upon the failure of any party or any other person or entity to
3 make any statement, representation or disclosure of anything whatsoever. The parties have
4 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced
5 to execute this Stipulation; and (2) to preclude the introduction of parol evidence to vary, interpret,
6 supplement, or contradict the terms of this Stipulation.

7 15. Presumption from Drafting.

8 In that the parties have had the opportunity to draft, review and edit the language of this
9 Stipulation, no presumption for or against any party arising out of drafting all or any part of this
10 Stipulation will be applied in any action relating to, connected to, or involving this Stipulation.
11 Accordingly, the parties waive the benefit of Civil Code section 1654 and any successor or
12 amended statute, providing that in cases of uncertainty, language of a contract should be interpreted
13 most strongly against the party who caused the uncertainty to exist.

14 16. Voluntary Agreement.

15 American Nationwide enters this Stipulation voluntarily and without coercion and
16 acknowledges that no promises, threats or assurances have been made by the Commissioner or any
17 officer, or agent thereof, about this Stipulation.

18 17. Effective Date.

19 This Stipulation shall not become effective until signed by all parties and delivered by the
20 Commissioner’s counsel by email to American Nationwide at sales@americannationwide.com
21 (“Effective Date”).

22 18. Public Record.

23 Respondent acknowledges that this Stipulation is a public record.

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19. Authority to Execute.

Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter this Stipulation.

Dated: 6/21/18

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 6/20/18

AMERICAN NATIONWIDE
MORTGAGE COMPANY, INC.

By _____
EDWARD ROGERS
Director

Exhibit A

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 CHARLES CARRIERE (State Bar No. 285837)
4 Counsel
5 Department of Business Oversight
6 One Sansome Street, Suite 600
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20 Respondent.)
21)

22 TO: AMERICAN NATIONWIDE MORTGAGE COMPANY, INC.
3820 Northdale Boulevard, Suite 111A
23 Tampa, Florida 33624

24 The Commissioner of Business Oversight finds that:

25 American Nationwide Mortgage Company, Inc. (American Nationwide) provided California
26 borrowers with per diem interest disclosure forms that included blank amounts where American
27 Nationwide should have listed interest charges, and American Nationwide had borrowers sign those
28 forms. This violates Financial Code section 50204, subdivision (e), which provides that a licensee

1 may not obtain or induce an agreement or other instrument in which blanks are left to be filled after
2 execution.

3 NOW, BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING, IT IS
4 HEREBY ORDERED under the provisions of California Financial Code section 50321 that
5 American Nationwide Mortgage Company, Inc. shall immediately discontinue the violations set
6 forth above.

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Dated: June ____, 2018
Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Counsel
Enforcement Division