

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 SEAN M. ROONEY
Assistant Chief Counsel
4 BLAINE A. NOBLETT (State Bar No. 235612)
5 Senior Counsel
6 Department of Financial Protection & Innovation
320 W. 4th Street, Suite 750
7 Los Angeles, California 90013-2344
8 Telephone: (213) 503-3747
9 Facsimile: (213) 576-7181
Email: blaine.nobleTT@dfpi.ca.gov

10 Attorneys for Complainant

11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
12 OF THE STATE OF CALIFORNIA

13 In the Matter of:) CRMLA LICENSE NO.: 413-1181
14)
15 THE COMMISSIONER OF FINANCIAL) ACCUSATION
PROTECTION AND INNOVATION,)
16)
Complainant,)
17)
18 v.)
19 AMERICAN NATIONWIDE MORTGAGE)
COMPANY, INC.,)
20)
Respondent.)
21)
22)

23 Clothilde V. Hewlett, the Commissioner of Financial Protection and Innovation
24 (Commissioner), is informed and believes, and based upon such information and belief, alleges and
25 charges Respondent American Nationwide Mortgage Company, Inc. (American Nationwide) as
26 follows.

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I.

Jurisdiction

1. The Commissioner brings this action under the provisions of Financial Code sections 50327 and 50513 and the rules and regulations promulgated thereunder.

2. The Commissioner is authorized to administer and enforce the provisions of the California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA) and the rules issued under title 10 of the California Code of Regulations (CCR) that regulate the business and activities of residential mortgage lenders and mortgage loan servicers.

II.

Statement of Facts

3. American Nationwide is a residential mortgage lender licensed by the Commissioner under the CRMLA. American Nationwide has its principal place of business located at 3820 Northdale Boulevard, Suite 111A, Tampa, Florida. At all relevant times herein, American Nationwide employed mortgage loan originators and operated branch locations throughout California.

2020 Regulatory Examination

4. The Commissioner commenced a regulatory examination of American Nationwide on September 25, 2020, from a remote office location.

5. The regulatory examination included a review of the company’s activities conducted under its CRMLA license from May 1, 2017 through May 31, 2020.

6. The examination disclosed that in eight out of the 19 originated loan files that staff reviewed, American Nationwide overcharged borrowers per diem interest in excess of one day prior to the disbursement of loan proceeds in violation of Financial Code section 50204, subdivision (o) (an exception rate of approximately 42 percent). In one instance the per diem interest disclosure was not applicable, and therefore it was not considered when calculating per diem interest charges.

7. The following is a summary of the eight loan files in which American Nationwide overcharged per diem interest.

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1 a. **Loan Number 2017092401**

2 Per the closing disclosure statement, American Nationwide charged the borrower nine days of
3 interest (from October 23 to November 1) with interest of approximately \$50.37 per day. The first
4 payment on the note was due December 1, 2017; therefore, interest began accruing beginning on the
5 loan on November 1. But the loan proceeds were actually disbursed on October 25, per escrow.
6 American Nationwide was only permitted to charge the borrower seven days of interest from October
7 25 to November 1, plus one additional day of interest per Civil Code section 2948.5, subdivision (a),
8 or \$402.90. American Nationwide overcharged the borrower one day of interest or \$50.37. The
9 company refunded the overcharge (plus 10 percent interest per annum) to the borrower on October
10 23, 2020.

11 b. **Loan Number 2018060802**

12 Per the closing disclosure statement, American Nationwide charged the borrower 26 days of
13 per diem interest (from July 6 to August 1) at \$103.46 interest per day. The first payment on the note
14 was due September 1, 2018; therefore, interest began to accrue beginning August 1. But the loan
15 proceeds were actually disbursed on July 9, per escrow. American Nationwide was only permitted to
16 charge the borrower 23 days of interest from July 9 to August 1, plus one additional day of interest
17 per Civil Code section 2948.5, subdivision (a), or \$2,483.01. American Nationwide overcharged the
18 borrower two days of interest or \$206.92. The company refunded the borrower the overcharge (plus
19 10 percent interest per annum) on October 23, 2020.

20 c. **Loan Number 2018070904**

21 Per the closing disclosure statement, American Nationwide charged the borrower one day of
22 per diem interest (from August 31 to September 1) at approximately \$35.36 interest per day. The first
23 payment on the note was due October 1, 2018; therefore, interest began to accrue on the loan
24 beginning September 1. The lender actually disbursed the loan proceeds on September 4, per title.
25 American Nationwide should have provided the borrower with a three-day interest credit, less one
26 day of additional interest per Civil Code section 2948.5, subdivision (a), or a credit of \$70.72.
27 American Nationwide overcharged the borrower three days of interest or \$106.08. The company
28 refunded the borrower the overcharge (plus 10 percent interest per annum) on October 23, 2020.

1 d. **Loan Number 2019022810**

2 Per the closing disclosure statement, American Nationwide charged the borrower 26 days of
3 per diem interest (from April 5 to May 1) at approximately \$50.74 interest per day. The first payment
4 on the note was due June 1, 2019; therefore, interest began to accrue on the loan beginning May 1.
5 But the loan proceeds were actually disbursed on April 8, per escrow. American Nationwide was only
6 permitted to charge the borrower 23 days of interest from April 8 to May 1, plus one additional day
7 of interest per Civil Code section 2948.5, subdivision (a), or \$1,217.65. American Nationwide
8 overcharged the borrower two days of interest or \$101.47. The company refunded the borrower the
9 overcharge (plus 10 percent interest per annum) on October 23, 2020.

10 e. **Loan Number 2019042312**

11 The borrower's closing disclosure statement shows American Nationwide charged the
12 borrower eight days of interest (from May 24 to June 1) at approximately \$67.53 per day. The first
13 payment on the note was due July 1, 2019; therefore, interest began accruing on the loan on June 1.
14 But the loan proceeds were actually disbursed on May 27, per escrow. American Nationwide was
15 only permitted to charge the borrower five days of interest from May 27 to June 1, plus one
16 additional day of interest per Civil Code section 2948.5, subdivision (a), or \$405.21. American
17 Nationwide overcharged the borrower two days of interest or \$135.06. The company refunded the
18 borrower the overcharge (plus 10 percent interest per annum) on October 23, 2020.

19 f. **Loan Number 2019040221**

20 The borrower's closing disclosure statement shows American Nationwide charged the
21 borrower three days of interest (from June 28 to July 1) at approximately \$62.43 per day. The first
22 payment on the note was due August 1, 2019; therefore, interest began to accrue beginning July 1.
23 But the loan proceeds actually disbursed on July 1, per title. American Nationwide was only
24 permitted to charge the borrower one additional day of interest (from June 30 to July 1) per Civil
25 Code section 2948.5, subdivision (a), or \$62.43. American Nationwide overcharged the borrower two
26 days of per diem interest or \$124.87. The company refunded the borrower the overcharge (plus 10
27 percent interest per annum) on October 23, 2020.

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1 g. **Loan Number 2019112604**

2 The borrower's closing disclosure statement shows American Nationwide charged the
3 borrower five days of per diem interest (from December 27 to January 1) at approximately \$46.29 per
4 day. The first payment on the note was due February 1, 2020; therefore, interest began accruing on
5 the loan on January 1. But the loan proceeds were actually disbursed on December 31, per escrow.
6 The per diem interest disclosure, signed by the borrower on December 27, indicated that the loan
7 proceeds were to be disbursed on December 27, a date that was neither a Monday nor a day
8 immediately following a bank holiday. The disbursement date, December 31, was neither a Monday
9 nor a day following a bank holiday. The per diem interest disclosure that the borrower signed was
10 therefore inapplicable and was excluded from the Commissioner's per diem interest calculation.
11 American Nationwide was only permitted to charge the borrower one day of interest from December
12 31 to January 1, plus one additional day of interest per Civil Code section 2948.5, subdivision (a), or
13 \$92.58. American Nationwide overcharged the borrower three days of per diem interest or \$138.86.
14 The company refunded the borrower the overcharge (plus 10 percent interest per annum) on October
15 23, 2020.

16 h. **Loan Number 2017101913**

17 The borrower's closing disclosure statement shows American Nationwide charged the
18 borrower 16 days of per diem interest (from January 16 to February 1) at approximately \$56.21 per
19 day. The first payment on the note was due March 1, 2018; therefore, interest began accruing on the
20 loan on February 1. But the loan proceeds were actually disbursed on January 18, per escrow.
21 American Nationwide was only permitted to charge the borrower 14 days of interest from January 18
22 to February 1, plus one additional day of interest per Civil Code section 2948.5, subdivision (a), or
23 \$843.13. American Nationwide overcharged the borrower one day of per diem interest or \$56.21. The
24 company refunded the borrower the overcharge (plus 10 percent interest per annum) on October 23,
25 2020.

26 **2020 Self-Audit Review**

27 8. Due to the high percentage of per diem interest overcharges found during the 2020
28 regulatory examination, the Commissioner directed American Nationwide to conduct a self-audit

1 review of all loans originated since the date of the prior examination, October 23, 2017, through to
2 the date of the self-audit review.

3 9. On November 10, 2020, American Nationwide provided the Commissioner with its
4 self-audit report, which included a review of 11 loans that the company had originated between
5 March 2017 through December 2019. Out of the 11 loans reviewed, nine, or 82 percent, were found
6 to have had per diem interest overcharges. The company promptly issued refunds to the affected
7 borrowers.

8 **2018 Regulatory Examination**

9 10. During the Commissioner’s prior examination of American Nationwide, which
10 commenced on October 23, 2017 and closed on May 16, 2018, the Commissioner cited the company
11 for per diem interest overcharges in one out of ten originated loan files reviewed during the exam.
12 Based on the findings of the 2018 regulatory examination, the Commissioner instructed American
13 Nationwide to implement such procedures as necessary to ensure that it would not overcharge per
14 diem interest in the future. American Nationwide acknowledged that it had complied with the
15 Commissioner’s demand.

16 **III.**

17 **Applicable Statutes**

18 11. Civil Code section 2948.5, provides:

19 (a) A borrower shall not be required to pay interest on a principal
20 obligation under a promissory note secured by a mortgage or deed of
21 trust on real property improved with between one to four residential
22 dwelling units for any period that meets any of the following
23 requirements:

24 (1) Is more than one day prior to the date that the loan proceeds are
25 disbursed from escrow.

26 (2) In the event of no escrow, if a request for recording is made in
27 connection with the disbursement, is more than one day prior to the
28 date the loan proceeds are disbursed to the borrower, to a third party on
behalf of the borrower, or to the lender to satisfy an existing obligation
of the borrower.

(3) In all other circumstances where there is no escrow and no request
for recording, is prior to the date funds are disbursed to the borrower, to

1 a third party on behalf of the borrower, or to the lender to satisfy an
2 existing obligation of the borrower.

3 (b) Interest may commence to accrue on the business day immediately
4 preceding the day of disbursement, for obligations described in
5 paragraphs (1) and (2) of subdivision (a) if both of the following occur:

6 (1) The borrower affirmatively requests, and the lender agrees, that the
7 disbursement will occur on Monday, or a day immediately following a
8 bank holiday.

9 (2) The following information is disclosed to the borrower in writing:

10 (A) the amount of additional per diem interest charged to facilitate
11 disbursement on Monday or the day following a holiday, as the case
12 may be, and (B) that it may be possible to avoid the additional per diem
13 interest charge by disbursing the loan proceeds on a day immediately
14 following a business day. This disclosure shall be provided to the
15 borrower and acknowledged by the borrower by signing a copy of the
16 disclosure document prior to placing funds in escrow.

17 (c) This section does not apply to a loan that is subject to subdivision
18 (c) of Section 10242 of the Business and Professions Code.

19 12. Financial Code section 50204, provides in pertinent part, “A licensee may not do any
20 of the following . . . (o) Commit an act in violation of Section 2948.5 of the Civil Code[.]”

21 13. Financial Code section 50327 provides:

22 (a) The commissioner may, after notice and a reasonable opportunity
23 to be heard, deny, decline to renew, suspend, or revoke any license if
24 the commissioner finds that:

25 (1) The licensee has violated any provision of this division or any rule
26 or order of the commissioner thereunder.

27 (2) Any fact or condition exists that, if it had existed at the time of the
28 original application for the license, reasonably would have warranted
the commissioner in refusing to issue the license originally.

(b) The power of investigation and examination by the commissioner
is not terminated by the denial, nonrenewal, surrender, suspension, or
revocation of any license issued by him or her.

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14. Financial Code section 50513 provides in pertinent part:

(a) The commissioner may do one or more of the following:

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

IV.

Prayer

The Commissioner finds that, by reason of the foregoing, American Nationwide has violated Financial Code section 50204, subdivision (o), and grounds exist to (i) suspend the residential mortgage lender license of American Nationwide under Financial Code section 50327, subdivision (a)(1) and (ii) assess penalties against American Nationwide under Financial Code section 50513, subdivision (b).

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WHEREFORE, IT IS PRAYED that:

Under Financial Code section 50327, the residential mortgage lender license of American Nationwide be suspended for a period of up to 12 months and, under Financial Code section 50513, subdivision (b), penalties be levied against American Nationwide for 17 violations of Financial Code section 50204, subdivision (o), overcharging per diem interest, according to proof, but in an amount of at least \$5,000.00 per violation.

Dated: March 4, 2022
Los Angeles, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection & Innovation

By _____
Blaine A. Noblett
Senior Counsel
Enforcement Division