

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
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5 Department of Financial Protection & Innovation
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Attorneys for Complainant

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

12 In the Matter of:)	OAH CASE NO. 2022040712
)	
13 THE COMMISSIONER OF FINANCIAL)	CRMLA LICENSE NO.: 413-1181
14 PROTECTION AND INNOVATION,)	
)	SETTLEMENT AGREEMENT
15 Complainant,)	
)	Hearing Dates: October 10 – 13, 2022
16 v.)	Hearing Time: 9:00 a.m.
)	Location: 320 West 4th Street, Suite 630
17)	Los Angeles, CA 90013
18 AMERICAN NATIONWIDE MORTGAGE)	Call-In No.: (669) 254-5252
19 COMPANY, INC.,)	Conf. ID: # 160 543 6043
)	Judge: Thomas Lucero
20 Respondent.)	
)	

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22 This Settlement Agreement (Settlement Agreement) is entered into between the
23 Commissioner of Financial Protection and Innovation (Commissioner) and American Nationwide
24 Mortgage Company, Inc. (American Nationwide), and is made with respect to the following facts.

25 **RECITALS**

26 A. The Department of Financial Protection and Innovation (Department), through the
27 Commissioner, is authorized to administer and enforce the provisions of the California Residential
28 Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA) and the rules issued under title 10 of

1 the California Code of Regulations (CCR) that regulate the business and activities of residential
2 mortgage lenders, mortgage loan servicers, and mortgage loan originators.

3 B. American Nationwide is a corporation in good standing, duly formed and existing
4 pursuant to the laws of the state of Florida and authorized to conduct business in the state of
5 California. American Nationwide has its principal place of business located at 3820 Northdale
6 Boulevard, Suite 111A, Tampa, Florida 33624.

7 C. American Nationwide is a residential mortgage lender licensed by the Commissioner
8 under the CRMLA with the assigned license number 413-1181. American Nationwide employs
9 mortgage loan originators in its business.

10 D. James Rogers is American Nationwide's president and, as such, authorized to enter
11 into the Settlement Agreement on behalf of the company.

12 E. The Commissioner commenced a regulatory examination of American Nationwide on
13 September 25, 2020, from a remote office location. The regulatory examination included a review of
14 the company's activities conducted under its CRMLA lender and servicer licenses from May 1, 2017
15 through May 31, 2020.

16 F. Under the 2020 regulatory examination, the Commissioner discovered the following
17 violations of the CRMLA and other applicable laws and regulations (Examination Findings):

18 (i) American Nationwide overcharged borrowers per diem interest in excess of
19 one day prior to disbursement of loan proceeds in violation of Financial Code section 50204,
20 subdivision (o) and Civil Code section 2948.5, which was a repeat violation that was discovered
21 during the 2018 regulatory examination.

22 G. On March 7, 2022, the Commissioner personally served American Nationwide with
23 the following documents: Statement to Respondent; Notice of Intention; and Accusation
24 (collectively, the Accusation).

25 H. American Nationwide timely filed with the Commissioner its Notice of Defense to
26 contest the Accusation. A hearing has been scheduled in this matter before the Los Angeles Office of
27 Administrative Hearings, which is to commence on October 10.

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

3 J. It is the intention and desire of the parties to resolve this matter without the necessity
4 of a hearing and other litigation.

5 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
6 forth herein, the parties agree as follows.

7 **TERMS AND CONDITIONS**

8 1. Purpose. The Settlement Agreement is entered into for the purpose of judicial
9 economy and expediency, and to avoid the expense of a hearing, and possible further court
10 proceedings.

11 2. Waiver of Hearing Rights. American Nationwide acknowledges its right to an
12 administrative hearing under the CRMLA in connection with the Accusation and hereby waives its
13 right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant
14 to the CRMLA, California Administrative Procedure Act, the California Code of Civil Procedure, or
15 any other provision of law in connection with these matters.

16 3. Per Diem Interest Calculation Revised Policies and Procedures. American Nationwide
17 has agreed to submit to the Commissioner a copy of the company's revised policies and procedures
18 that ensure compliance with Civil Code section 2948.5 and Financial Code section 50204,
19 subdivision (o) within 15 calendar days from the Effective Date of the Settlement Agreement),
20 subject to the approval of the Commissioner, which approval shall not be unreasonably withheld.
21 American Nationwide hereby agrees to immediately implement those policies and procedures once
22 approved by the Commissioner.

23 4. Administrative Penalty. American Nationwide agrees to pay to the Commissioner an
24 administrative penalty of \$25,000.00 (Penalty) as follows: (1) eleven (11) equal payments of two
25 thousand dollars (\$2,000) shall be made on or before the following dates: October 1, 2022, November
26 1, 2022, December 1, 2022, January 1, 2023, February 1, 2023, March 1, 2023, April 1, 2023, May 1,
27 2023, June 1, 2023, July 1, 2023, and August 1, 2023; (2) one (1) final payment of three thousand
28 dollars (\$3,000) shall be made on or before September 1, 2023. The Penalty shall be made payable in

1 the form of a cashier's check or Automated Clearing House deposit and transmitted to the attention of
2 Accounting – Enforcement Division, Department of Financial Protection & Innovation, 2101 Arena
3 Boulevard, Sacramento, California 95834. Notice of such payment shall be sent concurrently with the
4 submission of payment to the attention of Noah M. Bean, Senior Counsel, at noah.bean@dfpi.ca.gov.

5 5. Post-Examination Period Self-Audit. American Nationwide agrees to conduct a self-
6 audit (Self-Audit) of per diem interest charges for all California loans it originated during the period
7 of June 1, 2020 to June 1, 2022 (Post-Examination Period). The Self-Audit must cover all California
8 loans funded during the Post-Examination Period and must identify any borrower who was
9 overcharged per diem interest during that period.

10 (a) Scope of Post-Examination Period Self-Audit Report. American Nationwide
11 shall submit to the Department the results of its Post-Examination Period Self-Audit in a Self-Audit
12 report (Self-Audit Report) within 60 calendar days from the Effective Date of the Settlement
13 Agreement. The Self-Audit Report shall include, at a minimum, the total number of California loans
14 made during the Post-Examination Period; the total number of California loans made by American
15 Nationwide during the Post-Examination Period that contained a per diem interest charge in excess of
16 the amount permitted by Financial Code section 50204, subdivision (o) and Civil Code section
17 2984.5; provided, however, that the Self-Audit Report need not report excess interest charges
18 identified by American Nationwide through its normal post-closing process if the excess charges
19 were refunded to the borrower/s by American Nationwide within 30 calendar days of disbursement;
20 and for each loan, the report shall list the borrower's loan number, name, address, loan amount, loan
21 date, interest rate, disbursement date, date per diem interest commenced, per diem interest charged,
22 daily per diem interest amount, number of days per diem interest charged, number of days per diem
23 interest overcharged (if applicable), proof of refund (if applicable).

24 (b) Payment of Refunds of Overcharges. American Nationwide agrees to refund
25 any amounts of per diem interest charged in excess of that permitted under Financial Code section
26 50204, subdivision (o), and Civil Code section 2948.5, in connection with loans funded during the
27 Post-Examination Period as follows: a refund of the amount of per diem interest overcharged, plus

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1 interest at the rate of 10 percent per annum, shall be mailed to the last known address of each
2 borrower no later than 60 calendar days from the Effective Date of the Settlement Agreement.

3 (c) Administrative Penalties Based on Self-Audit Findings. American Nationwide
4 shall pay an administrative penalty in the amount of \$100.00 for each loan with a per diem
5 overcharge reported in the Self-Audit Report. American Nationwide need not pay the penalty if it
6 refunded any overcharge to the borrower/s within 30 calendar days of the disbursement date of the
7 loan. The payment of these penalties shall be made within 30 calendar days following delivery of the
8 Self-Audit Report in which the loan, day and/or failure is reported. All payments of penalties shall be
9 made in the form a cashier's check or an Automated Clearing House deposit and transmitted to the
10 attention of Accounting – Enforcement Division, Department of Financial Protection & Innovation,
11 2101 Arena Boulevard, Sacramento, California 95834. Notice of such payment shall be sent
12 concurrently with the submission of payment to the attention of Noah M. Bean, Senior Counsel, at
13 noah.bean@dfpi.ca.gov.

14 6. Escheatment. No later than 30 calendar days after the submission of the Self-Audit
15 Report, American Nationwide shall notify the Commissioner of any refund payment that has been
16 returned or remains outstanding for loans, as appropriate. American Nationwide shall be responsible
17 for ensuring that any outstanding refund payment owed to any borrower identified in the Self-Audit
18 Report is escheated to the California State Controller's Office within the period provided by and in
19 accordance with Code of Civil Procedure section 1519.5 of the Unclaimed Property Law (Code Civ.
20 Proc., § 1500 et seq.).

21 7. Remedies for Breach. American Nationwide agrees that, following 10 business days
22 from the receipt of notice from the Commissioner of American Nationwide's failure to comply with
23 any term of the Settlement Agreement, American Nationwide may be immediately suspended from
24 engaging in business under its CRMLA lenders license upon the issuance of an order from the
25 Commissioner until it provides evidence satisfactory to the Commissioner that the terms are met.
26 American Nationwide hereby waives any notice and hearing rights that may be afforded under the
27 CRMLA, Administrative Procedure Act, Code of Civil Procedure, or any other provision of law to
28 contest immediate suspension. American Nationwide further acknowledges and agrees that its failure

1 to comply with paragraphs 3. through 6. of the Settlement Agreement shall constitute a failure to
2 comply with the Settlement Agreement and be subject to this paragraph.

3 8. Notice and Opportunity To Cure. The Commissioner agrees that any such notice
4 under paragraph 7. will be in writing and will include reasonably sufficient detail for American
5 Nationwide to understand the nature of the Commissioner’s claims so that it has a reasonable
6 opportunity to cure any such failure within the 10-business day period provided therein and to
7 present evidence to the Department that no violation has occurred. Further, to avoid borrower harm,
8 American Nationwide may complete and fund during the suspension period called for in paragraph
9 7. any loans that were scheduled to close before the start of the suspension period, but American
10 Nationwide will not accept new loan applications or engage in any other activities pursuant to
11 CRMLA lenders license during the suspension period.

12 9. Full and Final Agreement. The parties hereby acknowledge and agree that the
13 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
14 Accusation, the Examination Findings, and the Self-Audit Report (Audit-Reported Violations). The
15 Commissioner hereby agrees that no further proceedings or actions will be brought by the
16 Department under the CRMLA, or any other provision of law, based upon either the Examination
17 Findings or the Audit-Reported Violations excepting therefrom any proceeding to enforce
18 compliance with the terms of the Settlement Agreement.

19 10. Exceptions to Full and Final Agreement. Nothing in paragraph 9., above, or anything
20 else in the Settlement Agreement shall be construed to prohibit or restrict or preclude the
21 Commissioner from taking any of the following actions:

- 22 (a) Bringing a proceeding to enforce compliance with the terms of the Settlement
23 Agreement;
- 24 (b) Bringing a proceeding based upon the discovery of violations of the CRMLA
25 occurring after the Effective Date of the Settlement Agreement;
- 26 (c) Bringing a proceeding based upon discovery of violations of the CRMLA that
27 do not form the basis of the Settlement Agreement;

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1 (d) Bringing a proceeding based upon the discovery of violations of the CRMLA
2 that American Nationwide knowingly concealed from the Commissioner.

3 11. Binding. The Settlement Agreement is binding on all heirs, assigns, and successors in
4 interest.

5 12. Commissioner's Duties. The parties acknowledge and agree that nothing contained in
6 the Settlement Agreement shall operate to limit the Commissioner's ability to assist any other agency
7 (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought by any
8 such agency against American Nationwide or any other person based upon any of the activities
9 alleged in these matters or otherwise.

10 13. Third Party Actions. It is the intent and understanding between the parties that the
11 Settlement Agreement does not create any private rights or remedies against American Nationwide,
12 create any liability for American Nationwide or limit defenses of American Nationwide for any
13 person or entity not a party to the Settlement Agreement.

14 14. Waiver and Modification. The waiver of any provision of the Settlement Agreement
15 shall not operate to waive any other provision set forth herein. No waiver, amendment, or
16 modification of the Settlement Agreement shall be valid or binding to any extent unless it is in writing
17 and signed by all of the parties affected by it.

18 15. Full Integration. Each of the parties represents, warrants, and agrees that in executing
19 the Settlement Agreement it has relied solely on the statements set forth herein and the advice of its
20 own counsel. Each of the parties further represents, warrants, and agrees that in executing the
21 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
22 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
23 party or any other person or entity to make any statement, representation or disclosure of anything
24 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in any
25 way fraudulently induced to execute the Settlement Agreement; and (2) to preclude the introduction
26 of parol evidence to vary, interpret, supplement, or contradict the terms of the Settlement Agreement.

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1 16. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
2 has received independent advice from its attorney(s) and representatives with respect to the
3 advisability of executing the Settlement Agreement.

4 17. Headings and Governing Law. The headings to the paragraphs of the Settlement
5 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
6 construction or interpretation of the provisions hereof. The Settlement Agreement shall be
7 construed and enforced in accordance with and governed by California law.

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

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

18 20. Authority to Execute. Each signatory hereto covenants that he or she possesses all
19 necessary capacity and authority to sign and enter into the Settlement Agreement.

20 21. Counterparts. The parties agree that the Settlement Agreement may be executed in one
21 or more separate counterparts, each of which when so executed, shall be deemed an original. Such
22 counterparts shall together constitute and be one and the same instrument.

23 22. Effective Date. The Settlement Agreement shall not become effective until signed by
24 all parties and delivered by the Commissioner's counsel by email to James Rogers, American
25 Nationwide's president at ckjj@americannationwide.com (Effective Date).

26 23. Notice. Any notices required under the Settlement Agreement shall be provided to
27 each party at the following addresses:

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If to Respondent to: James Rogers, President
American Nationwide Mortgage Company, Inc.
3820 Northdale Blvd., Suite 111A
Tampa, Florida 33624
Email: ckjj@americannationwide.com

If to the Commissioner to: Noah M. Bean, Senior Counsel
Department of Financial Protection & Innovation
2101 Arena Boulevard
Sacramento, California 95834
Email: noah.bean@dfpi.ca.gov

24. Public Record. American Nationwide acknowledges that the Settlement Agreement is a public record.

IN WITNESS WHEREOF, the parties hereto have approved and executed the Settlement Agreement on the dates set forth opposite their respective signatures.

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and
Innovation

Dated: August 29, 2022

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

AMERICAN NATIONWIDE MORTGAGE
COMPANY, INC.

Dated: August 29, 2022

By _____
JAMES ROGERS, President