

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 TAYLOR STEINBACHER (State Bar No. 285335)
Senior Counsel
4 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7632
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
9 OF THE STATE OF CALIFORNIA

10 In the Matter of:)	AGENCY FILE NO.: 27859
11 THE COMMISSIONER OF FINANCIAL)	
12 PROTECTION AND INNOVATION,)	CONSENT ORDER
13 Complainant,)	
14 v.)	
15 AMERIFED DOC PREP LLC,)	
16 Respondent.)	
17)	
18)	

19 This Consent Order is entered into between the Acting Commissioner of Financial
20 Protection and Innovation (Commissioner), and Respondent Amerifed Doc Prep LLC (Amerifed)
21 and Eric Caldwell (Caldwell) (collectively, the Parties).

22 I.

23 **RECITALS**

24 This Consent Order is made with reference to the following:

25 ***Legal Background***

26 A. The Commissioner has jurisdiction over the regulation of persons engaged in
27 offering or providing a consumer financial product or service in California and their affiliated
28

1 service providers under the California Consumer Financial Protection Law (CCFPL) (Fin. Code,
2 § 90000 et seq.).

3 B. Under the CCFPL, it is unlawful for a “covered person” to “[e]ngage, have engaged,
4 or propose to engage in any unlawful, unfair, deceptive, or abusive act or practice with respect to
5 consumer financial products or services.” (Fin. Code, § 90003, subd. (a)(1).)

6 C. A “covered person” is “[a]ny person that engages in offering or providing a
7 consumer financial product or service to a resident of this state.” (Fin. Code, § 90005, subd. (f)(1).)

8 D. A “consumer financial product or service” is generally a “financial product or
9 service that is delivered, offered, or provided for use by consumers primarily for personal, family,
10 or household purposes.” (Fin. Code, § 90005, subd. (e)(1).)

11 E. “Financial product or service” includes, among other things, “[p]roviding financial
12 advisory services . . . including . . . [p]roviding services to assist a consumer with debt management
13 or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure.” (Fin.
14 Code, § 90005, subd. (k)(8)(B).)

15 F. The Telemarketing Sales Rule (TSR) (16 C.F.R. §§ 310.1-310.9) is the
16 implementing regulation of the federal Telemarketing and Consumer Fraud and Abuse Prevention
17 Act (Telemarketing Act) (15 U.S.C. §§ 6101-6108). Pursuant to section 3(c) of the Telemarketing
18 Act (15 U.S.C. § 6102(c)) and section 18(d)(3) of the Federal Trade Commission Act (FTC Act)
19 (15 U.S.C. § 57a(d)(3)), a violation of the TSR constitutes an unfair or deceptive act or practice in
20 or affecting commerce in violation of section 5(a) of the FTC Act (15 U.S.C. § 45(a)).

21 G. It is a violation of the TSR for any seller or telemarketer to request or receive
22 payment of any fee or consideration for any debt-relief service until and unless: (1) the “seller or
23 telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt
24 pursuant to a settlement agreement, debt management plan, or other such valid contractual
25 agreement executed by the customer” and (2) the “customer has made at least one payment pursuant
26 to that settlement agreement, debt management plan, or other valid contractual agreement between
27 the customer and the creditor or debt collector.” (16 C.F.R. § 310.4(a)(5)(i).)

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1 v. From January 2020 to December 2020, over 1,000 California consumers
2 enrolled in Amerifed’s Debt Relief Services. Upon initial enrollment, consumers were required to
3 pay up-front servicing fees between \$799.00-\$899.00. Most consumers were also charged a
4 recurring monthly fee of \$39.00 while enrolled.

5 vi. For every customer who enrolled in Amerifed’s Debt Relief Services,
6 Amerifed requested and received all or a portion of the servicing fee before Amerifed negotiated,
7 reduced, or otherwise altered the terms of a customer’s existing student-loan debt.

8 vii. From January 1, 2020 through June 24, 2021, Amerifed received over
9 \$881,744.04 in fees for its Debt Relief Services from California consumers.

10 M. Based upon the Findings, the Commissioner made the following conclusions
11 (Conclusions):

12 i. Amerifed is a “covered person” under the CCFPL that engages in offering or
13 providing consumer financial products or services to California residents, including financial
14 advisory services such as assisting consumers with debt management or debt settlement and
15 modifying the terms of any extension of credit. (Fin. Code, § 90005, subd. (k)(8)(B).)

16 ii. Amerifed is a seller and telemarketer that provided, offered to provide, or
17 arranged for others to provide debt relief services within the meaning of the TSR.

18 iii. Amerifed requested and received from customers advance fees for debt relief
19 services in violation of 16 Code of Federal Regulations part 310.4(a)(5).

20 iv. Based on the above, the Commissioner is of the opinion that Amerifed
21 violated Financial Code section 90003, subdivision (a)(1), by engaging, having engaged, or
22 proposing to engage in unlawful practices (through its above-stated violations of the FTC Act) with
23 respect to consumer financial products or services.

24 N. It is the intention of the Parties to this Consent Order to resolve this matter without
25 the necessity of a hearing or other litigation.

26 NOW THEREFORE, in consideration of the foregoing, and the terms and conditions set
27 forth herein, the Parties agree as follows:
28

1 II.

2 **TERMS AND CONDITIONS**

3 1. **Purpose.** The Commissioner finds that entering into this Consent Order is in the
4 public interest and consistent with the purposes fairly intended by the policies and provisions of the
5 CCFPL.

6 2. **Desist and Refrain Order.** Pursuant to Financial Code section 90015,
7 subdivision (d)(1), Amerifed and Caldwell hereby agree to desist and refrain from violating
8 Financial Code section 90003, subdivision (a)(1), including without limitation by requesting and
9 receiving advance fees for debt relief services in violation of 16 Code of Federal Regulations
10 part 310.4(a)(5).

11 3. **Customer Refunds.** Pursuant to Financial Code section 90012, subdivision (b)(2),
12 Amerifed hereby agrees to issue refunds, pursuant to the instructions below, for all fees it collected
13 from California consumers from January 1, 2020 through the Effective Date (defined in Paragraph
14 28), and which Amerifed had not already provided a consumer refund, by no later than sixty
15 calendar days after the Effective Date (Refunds).

16 (a) All Refunds shall be paid to consumers by check. Amerifed, directly or through an
17 agent, shall send all refund checks by first class mail to the customer’s last known
18 postal mail address listed in Amerifed’s records, unless new address information has
19 been provided by the customer pursuant to Paragraph 4. Each Refund check shall be
20 mailed with a request for address correction on the outside of each envelope.

21 Amerifed, directly or through an agent, shall re-send all Refund checks returned by
22 the United States Postal Service with a forwarding or corrected address.

23 (b) No later than seventy calendar days after the Effective Date, notice of the refund
24 payments shall be sent to the Department at the Notice address in Paragraph 24.
25 With this notice, Amerifed shall also provide a report containing the customer’s
26 name, address, and amount of the refund.

27 4. **Notice to Consumers.** At least seven business days before the issuance of the
28 Refunds, Amerifed shall send a notice to each customer owned a refund for which Amerifed has

1 such contact information. Such notice shall be sent to the customer’s last known e-mail address.

2 The notice shall say:

3 Pursuant to a settlement with the California Department of Financial Protection
4 and Innovation, Amerifed Doc Prep LLC is issuing you a refund of all fees you
5 paid to Amerifed. This refund will be sent by check via U.S. Mail to the address
6 you provided to Amerifed. If you would like to update your address before the
7 refund is processed, or to confirm your existing address information, please
8 contact us immediately at 332-330-5008 or via e-mail at
9 ybrowser@shipkevich.com.

10 5. No Consumer Waiver. Payment of a refund to any consumer under this Consent
11 Order may not be conditioned on that consumer waiving any right.

12 6. Handling of Uncashed Checks. Amerifed shall escheat any returned or unclaimed
13 Refunds to the California State Controller’s Office within the period provided by Code of Civil
14 Procedure section 1520 of the Unclaimed Property Law (Code of Civ. Proc., § 1500 et seq.). In the
15 event of escheat, notice shall be sent within five business days to the Department at the Notice
16 address in Paragraph 24, and shall include a copy of any escheatment report(s) submitted to the
17 California State Controller.

18 7. Penalty. Pursuant to Financial Code section 90012, subdivision (c), Amerifed and
19 Caldwell, jointly and severally, shall pay the commissioner a total penalty of \$500,000.00 (Penalty)
20 no later than ten calendar days after the Effective Date. This Penalty shall be paid by wire transfer
21 or by Automated Clearing House (ACH) transfer, pursuant to instructions which shall be separately
22 provided, payable to the Department of Financial Protection and Innovation. Notice of payment
23 shall be forwarded contemporaneously to the Department at the Notice address in Paragraph 24.
24 Amerifed and Caldwell relinquish all dominion, control, and title to the Refunds and the Penalty to
25 the fullest extent permitted by law and no part of the Refunds or the Penalty may be returned to
26 Amerifed or Caldwell.

27 8. Rescission of Contracts. Pursuant to Financial Code section 90012,
28 subdivision (b)(1), all contracts Amerifed had with California consumers regarding its Debt Relief

1 Services (Contracts) are hereby rescinded. Amerifed shall not assign, sell, or transfer the Contracts
2 to any other entity, nor shall Amerifed charge or collect any additional payments pursuant to the
3 Contracts.

4 9. Full and Final Settlement. The Parties hereby acknowledge and agree that this
5 Consent Order is intended to constitute a full, final, and complete resolution of the Findings, and
6 that no further proceedings or actions will be brought by the Commissioner in connection with the
7 Findings under the CCFPL or any other provision of law, excepting therefrom any proceeding to
8 enforce compliance with the terms of this Consent Order.

9 10. Waiver of Hearing Rights. Amerifed and Caldwell acknowledge that the
10 Commissioner is ready, willing, and able to proceed with the filing of an enforcement action upon
11 the Findings contained in this Consent Order. Amerifed and Caldwell hereby waive the right to
12 any hearings, and to any reconsideration, appeal, or other right to review which may be afforded
13 pursuant to the CCFPL, the California Administrative Procedure Act, the California Code of Civil
14 Procedure, or any other provision of law. By waiving such rights, Amerifed and Caldwell
15 effectively consent to this Consent Order, and the Desist and Refrain Order contained herein,
16 becoming final.

17 11. Failure to Comply with Consent Order. Amerifed and Caldwell agree that, if they
18 fail to comply with the terms of this Consent Order, the Commissioner may avail himself of any
19 remedies he has under the CCFPL, or any other provision of law, until Amerifed and Caldwell are
20 in compliance. Amerifed and Caldwell waive any notice and hearing rights which may be afforded
21 under the CCFPL, the California Administrative Procedure Act, the California Code of Civil
22 Procedure, or any other provision of law, that the Commissioner may use to ensure compliance with
23 this Consent Order.

24 12. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
25 interest.

26 13. Information Willfully Withheld or Misrepresented. This Consent Order may be
27 rescinded by the Commissioner, and the Commissioner may pursue any and all remedies available
28 under the law against Amerifed and Caldwell, if the Commissioner discovers that Amerifed or

1 Caldwell have knowingly or willfully withheld or misrepresented information used for and relied
2 upon in this Consent Order.

3 14. Commissioner’s Duties. Nothing in this Consent Order limits the Commissioner’s
4 ability to assist any other government agency with any action brought by that agency (city, county,
5 state or federal) with any prosecution, administrative, civil, and/or criminal brought by any such
6 agency against Amerifed or Caldwell, including an action based on any of the acts, omissions, or
7 events described in this Consent Order.

8 15. Independent Legal Advice. Each party represents that it has received independent
9 advice from its counsel or representatives regarding the advisability of executing this Consent
10 Order.

11 16. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
12 Consent Order that it has relied solely on the statements set forth herein and the advice of its own
13 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
14 Order it has placed no reliance on any statement, representation, or promise of any other party, or
15 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
16 person or entity to make any statement, representation or disclosure of anything whatsoever. The
17 Parties have included this clause: (1) to preclude any claim that any party was in any way
18 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
19 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

20 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
21 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
22 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
23 provision. No waiver by either party of any breach of, or of compliance with, any condition or
24 provision of this Consent Order by the other party will be considered a waiver of any other condition
25 or provision or of the same condition or provision at another time.

26 18. Full Integration. This Consent Order is the final written expression and the complete
27 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
28 between the Parties with respect to the subject matter hereof, and supersedes all prior or

1 contemporaneous agreements, negotiations, representations, understandings, and discussions
2 between and among the Parties, their respective representatives, and any other person or entity, with
3 respect to the subject matter covered hereby.

4 19. No Presumption Against Drafting Party. Each party acknowledges that it has had the
5 opportunity to draft, review, and edit the language of this Order. Accordingly, the Parties intend
6 that no presumption for or against the drafting party will apply in construing any part of this
7 Consent Order. The Parties waive the benefit of Civil Code section 1654 as amended or
8 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
9 language of a contract should be interpreted most strongly against the party that caused the
10 uncertainty to exist.

11 20. Headings. The headings in this Consent Order are for convenience only and will not
12 be deemed a part hereof or affect the construction or interpretation of the provisions hereof.

13 21. Governing Law. This Consent Order will be governed by and construed in
14 accordance with the laws of the State of California.

15 22. Authority to Sign. Each party represents that the person signing this Consent Order
16 on its behalf has the authority and capacity to do so.

17 23. Voluntary Agreement. Amerifed and Caldwell enter into this Consent Order
18 voluntarily and without coercion and acknowledge that no promises, threats or assurances have
19 been made by the Commissioner or any officer, or agent thereof, about this Consent Order. The
20 Parties each represent and acknowledge that he, she, or it is executing this Consent Order
21 completely voluntarily and without any duress or undue influence of any kind from any source.

22 24. Notice. Any notice required under this Consent Order shall be provided to each party
23 at the following addresses.

24 [continued on next page]

1 (a) To Amerifed and/or Caldwell:

2 Felix Shipkevich, Esq.
3 Krystina Endara, Esq.
4 165 Broadway, Suite 2300
5 New York, NY 10006
6 fs@shipkevich.com
7 krystina@shipkevich.com

8 (b) To the Commissioner:

9 Taylor Steinbacher, Senior Counsel
10 Department of Financial Protection and Innovation
11 320 West 4th Street, Suite 750
12 Los Angeles, California 90013-2344
13 Taylor.Steinbacher@dfpi.ca.gov

14 25. Counterparts. This Consent Order may be executed in any number of counterparts,
15 each of which will be deemed an original when executed. All counterparts together will be deemed
16 to constitute a single document.

17 26. Signatures. A signature delivered by facsimile or email will be deemed an original
18 signature.

19 27. Public Record. Amerifed and Caldwell acknowledge that this Consent Order is and
20 will be a matter of public record.

21 28. Effective Date. This Consent Order will become effective on the date it is signed by
22 all Parties and delivered by the Commissioner to Amerifed and Caldwell’s counsel by electronic
23 mail at fs@shipkevich.com and krystina@shipkevich.com.

24 29. Authority to Sign. Each signatory hereto covenants that he or she possesses all
25 necessary capacity and authority to sign and enter into this Consent Order and undertake the
26 obligations set forth herein.

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Dated: August 9, 2021

CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection and
Innovation

By: _____
MARY ANN SMITH
Deputy Commissioner

Dated: August 4, 2021

AMERIFED DOC PREP LLC

By: _____
ERIC CALDWELL
Owner

Dated: August 4, 2021

By: _____
Eric Caldwell
In his individual capacity