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

12 In the Matter of: ) CRMLA LICENSE NO.: 415-0085  
13 )  
14 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, )  
15 Complainant, ) CONSENT ORDER  
16 v. )  
17 ONYX LENDING, LLC, )  
18 Respondent. )  
19 )  
20 )

21 The Commissioner of Business Oversight (Commissioner) and Onyx Lending, LLC (Onyx)  
22 enter this Consent Order with respect to the following facts:

23 I.  
24 RECITALS

25 A. The Commissioner has jurisdiction over the licensing and regulation of persons and  
26 entities engaged in the business of making residential mortgage loans under the California  
27 Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.).  
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1 B. Onyx is a limited liability company, with a principal place of business at 25152  
2 Springfield Court, Suite 200, Valencia, California 91355.

3 C. Onyx is licensed as a mortgage lender under the CRMLA under license number 415-  
4 0085.

5 D. On or about September 26, 2018, the Commissioner provided Onyx with a notice of  
6 its annual assessment pursuant to Financial Code 50401, subdivision (c).

7 E. Financial Code section 50401, subdivision (c) requires CRMLA licensees to pay their  
8 annual assessment within 20 days of receipt of their assessment notice.

9 F. Financial Code section 50401, subdivision (d) provides that if a CRMLA licensee  
10 does not pay its annual assessment on or before the 30th following the day upon which payment is  
11 due, the Commissioner may summarily suspend or revoke the license issued to the licensee.

12 F. Onyx did not pay its annual assessment on or before the 30th day following the  
13 assessment due date.

14 G. In accordance with Financial Code section 50401, subdivision (d), the Commissioner  
15 issued an order summarily revoking Onyx's CRMLA license (Summary Revocation Order) on  
16 November 28, 2018.

17 H. On December 17, 2018, Onyx paid its overdue annual assessment.

18 I. On December 31, 2018, Onyx contacted the Department to request that the  
19 Commissioner reinstate its license.

20 L. The Commissioner finds that entering this Consent Order is in the public interest and  
21 consistent with the purposes fairly intended by the policies and provisions of the CRMLA.

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

24 **II.**

25 **TERMS AND CONDITIONS**

26 1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy  
27 and expediency and without the uncertainty and expense of a hearing or other litigation.  
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1           2.       Waiver of Hearing Rights. Onyx acknowledges that the Commissioner is ready,  
2 willing, and able to proceed with the filing of an administrative enforcement action on the charges  
3 contained in this Consent Order. Onyx hereby waives the right to any hearings, and to any  
4 reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA, the  
5 California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
6 provision of law. Onyx further expressly waives any requirement for the filing of an Accusation  
7 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, Onyx  
8 effectively consents to this Consent Order becoming final.

9           3.       Order Rescinding Revocation Order. The Commissioner hereby rescinds the  
10 Summary Revocation Order issued on November 28, 2018.

11           4.       Administrative Penalty. Onyx shall pay an administrative penalty of \$2,500.00 no  
12 later than 30 days after the effective date of this Consent Order as defined in paragraph 19. The  
13 penalty must be made payable in the form of a cashier's check or Automated Clearing House deposit  
14 to the Department of Business Oversight and transmitted to the attention of Accounting – Litigation,  
15 at the Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814.  
16 Notice of the payment must be concurrently sent to Charles Carriere, Counsel, Department of  
17 Business Oversight, One Sansome Street, Suite 600, San Francisco, California 94104.

18           5.       Failure to Pay Administrative Penalty. If Onyx fails to comply with paragraph 4, the  
19 Commissioner may summarily suspend it from engaging in business under its license until it  
20 provides evidence of compliance to the Commissioner's satisfaction. Onyx hereby waives any notice  
21 or hearing rights afforded under the Administrative Procedure Act, including Government Code  
22 section 11415.60, subdivision (b); the Code of Civil Procedure; or any other provision of law to  
23 contest the summary suspension contemplated by this paragraph.

24           6.       Full and Final Resolution. Except as stated in paragraph 5, this Consent Order is  
25 intended to constitute a full and final resolution of the matter described in it. The  
26 Commissioner will not bring any further action or proceeding concerning the matter unless she  
27 discovers violations by Onyx that do not form the basis for this Consent Order, including violations  
28 knowingly concealed from the Commissioner.

1           7.       Information Willfully Withheld. This Consent Order may be revoked and the  
2 Commissioner may pursue any and all remedies available under law against Onyx if the  
3 Commissioner later discovers that Onyx knowingly or willfully withheld information used for and  
4 relied upon in this Consent Order.

5           8.       Commissioner’s Duties. Nothing in this Consent Order limits the  
6 Commissioner’s ability to assist any other government agency with any action brought by that  
7 agency against Onyx, including an action based on any of the acts, omissions, or events  
8 described in this Consent Order.

9           9.       Independent Legal Advice. Each of the parties represents, warrants, and agrees that it  
10 has had an opportunity to seek independent advice from its attorney(s) and/or representatives with  
11 respect to the advisability of executing this Consent Order.

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

22          11.       Full Integration. This Consent Order is the final written expression and the complete  
23 and exclusive statement of all the agreements, conditions, promises, representations, and covenants  
24 between the parties with respect to the subject matter hereof, and supersedes all prior or  
25 contemporaneous agreements, negotiations, representations, understandings, and discussions  
26 between and among the parties, their respective representatives, and any other person or entity, with  
27 respect to the subject matter covered hereby. The parties have included this clause to preclude the  
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1 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent  
2 Order.

3 12. No Presumption Against Drafter. In that the parties have had the opportunity to draft,  
4 review, and edit the language of this Consent Order, no presumption for or against any party arising  
5 out of drafting all or any part of this Consent Order will be applied in any action relating to,  
6 connected to, or involving this Consent Order. Accordingly, the parties waive the benefit of Civil  
7 Code section 1654 and any successor or amended statutes, providing that in cases of uncertainty,  
8 language of a contract should be interpreted most strongly against the party who caused the  
9 uncertainty to exist.

10 13. Voluntary Agreement. Onyx hereby enters in this Consent Order voluntarily and  
11 without coercion and acknowledges that no promises, threats, or assurances have been made by the  
12 Commissioner or any officer, or agent thereof, about this Consent Order.

13 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of  
14 this Consent Order will be valid or binding unless it is in writing and signed by all parties  
15 affected by it. Waiver of a provision of this Consent Order will not be deemed a waiver of  
16 any other provision.

17 15. Counterparts. The parties agree that this Consent Order may be executed in one or  
18 more separate counterparts, each of which when so executed, shall be deemed an original. A fax or  
19 electronic mail signature shall be deemed the same as an original signature. Such counterparts shall  
20 together constitute and be one and the same instrument.

21 16. Public Record. Onyx acknowledges that the Consent Order is public record.

22 17. Headings. The headings to the paragraphs of this Consent Order are inserted for  
23 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
24 the provisions hereof.

25 18. Governing Law. This Consent Order shall be construed and enforced in accordance  
26 with and governed by California law.

27 19. Effective Date. This Consent Order will become effective on the date it is  
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signed by all parties and delivered by the Commissioner to Onyx’s President Lucas Filinski by electronic mail.

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

21. Settlement Authority. Each party represents that the person signing this Consent Order on its behalf has the authority and capacity to do so.

Dated: 2/1/19

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: 1/25/19

ONYX Lending, LLC

By \_\_\_\_\_  
LUCAS FILINSKI  
President