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

10
11 In the Matter of:)
) CRMLA LICENSE NO.: 415-0085
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) CFL LICENSE No.: 60DBO32952 &
13) 60DBO60731
14 Complainant,)
)
15 v.) ACCUSATION
)
16 ONYX LENDING, LLC,)
17)
18 Respondent.)

19 The Commissioner of Financial Protection and Innovation (Commissioner) is informed and
20 believes, and based upon such information and belief, alleges and charges Respondent Onyx
21 Lending, LLC (Onyx) as follows:

22 I.

23 **Introduction**

24 1. Onyx is licensed by the Commissioner as a residential mortgage lender pursuant to
25 the California Residential Mortgage Lending Act ("CRMLA") (Fin. Code § 50000 et seq.). Onyx
26 has its principal place of business located at 2655 Van Ness Avenue, Suite 3, San Francisco,
27 California 94109. Onyx currently has 1 branch office location under its CRMLA license located in
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ACCUSATION

1 California. Onyx employs mortgage loan originators in its CRMLA business.

2 2. Onyx is also licensed by the Commissioner as a finance lender and broker pursuant to
3 the California Financing Law (CFL) (Fin. Code § 22000 et seq.). Onyx has its principal place of
4 business under the CFL also located at 2655 Van Ness Avenue, Suite 3, San Francisco, California
5 94109. Onyx currently has 1 branch office location under its CFL license located in California.
6 Onyx employs mortgage loan originators in its CFL business.

7 **II.**

8 **Failure to Enter into Written Loan Brokerage Agreements**

9 3. On or about August 17, 2020, the Commissioner, by and through staff, commenced a
10 regulatory examination of the books and records of Onyx under the CRMLA and CFL (2020
11 regulatory examination). The 2020 regulatory examination disclosed that in 6 of 21 loans reviewed,
12 or 28%, Onyx failed to enter into a written loan brokerage agreement with the borrower(s) prior to
13 offering brokerage services as required by Financial Code section 50700 and 50701 or failed to enter
14 into a written loan brokerage agreement that complied with the requirements of Financial Code
15 section 50701.

16 4. The loan log report provided by Onyx during the 2020 regulatory examination along
17 with annual reports filed by Onyx under the CRMLA and CFL disclosed that the subject loans were
18 all brokered under its CRMLA licenses.

19 5. The Commissioner had found that Onyx had failed to enter into a written loan
20 brokerage agreement with the borrower(s) prior to offering brokerage services as required by
21 Financial Code section 50700 and 50701 or failed to enter into a written loan brokerage agreement
22 that complied with the requirements of Financial Code section 50701 during the last regulatory
23 examination under the CRMLA that commenced in December 2016. Based upon the findings of the
24 2016 regulatory examination, the Commissioner instructed Onyx to implement such procedures as
25 necessary to ensure that proper written loan brokerage agreements were entered into with borrowers
26 prior to offering brokerage services.

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III.

Finance Lender/Broker Licenses

6. The violations of the CRMLA described above, if committed by Onyx on or before having originally sought a license from the Commissioner under the CFL, would have constituted grounds for the Commissioner to deny the license application of Onyx under Financial Code section 22109. Pursuant to Financial Code section 22714, the Commissioner may suspend any license if “a fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.” Pursuant to Financial Code section 22109, the Commissioner may refuse to issue a license if the “applicant . . . has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California . . .” Thus, a fact or condition now exists that, if it had existed at the time of the original application of Onyx for a license under the CFL, reasonably would have warranted the Commissioner in refusing to issue the license.

IV.

CRMLA Suspension/Penalty Statutes

- 7. Financial Code section 50327 provides in pertinent part:
 - (a) The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license, if the commissioner finds that:
 - (1) the licensee has violated any provision of this division or rule or order of the commissioner thereunder; or (2) any fact or condition exists that, if it had existed at the time of the original application for license, reasonably would have warranted the commissioner in refusing to issue the license originally.
- 8. 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

1 has violated or failed to comply with any requirement of this division or any
2 regulation prescribed by the commissioner under this division or order issued
3 under authority of this division.

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

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

8 **V.**

9 **Conclusion**

10 9. The Commissioner finds that, by reason of the foregoing, Onyx Lending, LLC has
11 repeatedly violated Financial Code sections 50700 and 50701, and a fact or condition now exists,
12 that if it had existed at the time of original licensure under the CFL, reasonably would have
13 warranted the Commissioner in refusing to issue the CFL license, and based thereon, grounds exist
14 to (i) suspend the residential mortgage lender licenses and the finance lender and broker licenses of
15 Onyx Lending, LLC, and (ii) assess penalties against Onyx Lending, LLC pursuant to Financial
16 Code section 50513, subdivision (b).

17 **VI.**

18 **Prayer**

19 WHEREFORE, IT IS PRAYED that:

20 1. Pursuant to Financial Code section 50327, the residential mortgage lender licenses of
21 Onyx Lending, LLC be suspended for a period of up to 12 months;

22 2. Pursuant to Financial Code section 22714, the finance lender and broker licenses of
23 Onyx Lending, LLC be suspended for a period of up to 12 months; and

24 3. Pursuant to Financial Code section 50513, subdivision (b), penalties be levied against
25 Onyx Lending, LLC for failing to enter into a written loan brokerage agreement with the borrower(s)
26 prior to offering brokerage services as required by Financial Code section 50700 and 50701 or
27 failing to enter into a written loan brokerage agreement that complied with the requirements of

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Financial Code section 50701 according to proof, but in an amount of at least \$500.00 per violation;

Dated: February 4, 2021
Los Angeles, CA

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation



By _____
Judy L. Hartley
Senior Counsel
Enforcement Division