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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
9 OF THE STATE OF CALIFORNIA
10

11 In the Matter of:)	
)	
12 THE COMMISSIONER OF FINANCIAL)	CRMLA LICENSE NO.: 415-0085
13 PROTECTION AND INNOVATION,)	
)	CFL LICENSE No.: 60DBO32952 &
14 Complainant,)	60DB060731
15 v.)	
)	
16 ONYX LENDING, LLC,)	SETTLEMENT AGREEMENT
)	
17 Respondent.)	

18
19 This Settlement Agreement is entered into by and between the Commissioner of Financial
20 Protection and Innovation formerly the Commissioner of Business Oversight (Commissioner) and
21 Onyx Lending, LLC (Onyx), and is made with respect to the following facts:

22 **I.**

23 **Recitals**

24 A. The Department of Financial Protection and Innovation formerly the Department of
25 Business Oversight (Department), through the Commissioner, has jurisdiction over the licensing and
26 regulation of persons and entities engaged in the business of residential mortgage lending and/or
27 servicing pursuant to the California Residential Mortgage Lending Act (Fin. Code §50000 et seq.)
28 (CRMLA) and lending and/or brokering pursuant to the California Financing Law (Fin. Code §22000

1 et seq.) (CFL).

2 B. Onyx is a limited liability company in good standing, duly formed and existing
3 pursuant to the laws of the State of Georgia and is authorized to conduct business in the State of
4 California. Onyx is a residential mortgage lender licensed by the Commissioner pursuant to the
5 CRMLA. Onyx has its principal place of business located at 2655 Van Ness Avenue, Suite 3, San
6 Francisco, California 94109. Onyx currently has 1 branch office location under its CRMLA license
7 located in California. Onyx employs mortgage loan originators in its CRMLA business.

8 C. Onyx is also licensed by the Commissioner as a finance lender and broker pursuant to
9 the CFL. Onyx has its principal place of business under the CFL also located at 2655 Van Ness
10 Avenue, Suite 3, San Francisco, California 94109. Onyx currently has 1 branch office location under
11 its CFL license located in California. Onyx employs mortgage loan originators in its CFL business.

12 D. Lukasz Filinski is president of Onyx and is authorized to enter into this Settlement
13 Agreement on behalf of Onyx.

14 E. On February 10, 2021, Onyx was personally served by the Commissioner with a
15 Notice of Intention to Issue Order Suspending Residential Mortgage Lender and Servicer and Finance
16 Lender and/or Broker Licenses and to Levy Penalties, Accusation and accompanying documents
17 dated February 4, 2021 (Accusation). In the Accusation, the Commissioner alleged that Onyx had
18 failed to enter into a written loan brokerage agreement with the borrower(s) prior to offering
19 brokerage services as required by Financial Code section 50700 and 50701 or failed to enter into a
20 written loan brokerage agreement that complied with the requirements of Financial Code section
21 50701 (Accusation Allegations).

22 F. On February 17, 2021, Onyx timely submitted a Notice of Defense to the
23 Commissioner requesting an administrative hearing on the Accusation Allegations.

24 G. The Commissioner acknowledges that Onyx has submitted information demonstrating
25 that it has adopted policies and procedures to ensure that the violations described in the Accusation
26 do not recur.

27 H. It is the intention of Onyx and the Commissioner (the Parties) to resolve the
28 Accusation Allegations without the necessity of a hearing.

1 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
2 contained herein, the Parties agree as follows:

3 II.

4 **Terms and Conditions**

5 1. **Purpose.** This Settlement Agreement resolves the Accusation Allegations in a
6 manner that avoids the expense of a hearing and other possible court proceedings, protects
7 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of
8 the Escrow Law.

9 2. **Order to Discontinue Violations (CRMLA).** Pursuant to Financial Code section
10 50321, Onyx Lending, LLC is hereby ordered to discontinue violating Financial Code sections 50700
11 and 50701 by its failure to enter into a written loan brokerage agreement with the borrower(s) prior to
12 offering brokerage services and/or by failing to enter into a written loan brokerage agreement that
13 complies with the requirements of Financial Code section 50701.

14 3. **Penalty.** Onyx shall pay to the Commissioner a penalty of \$5,000.00 (Penalty). The
15 Penalty is due within 5 business days of the Effective Date, as defined in Paragraph 24 below
16 (Effective Date) and should be made payable in the form of a cashier’s check or Automated Clearing
17 House deposit to the “Department of Financial Protection and Innovation” and transmitted to the
18 attention of: Accounting – Enforcement Division, Department of Financial Protection and
19 Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of such payment shall be
20 forwarded to Judy L. Hartley, Senior Counsel, Department of Financial Protection and Innovation,
21 Enforcement Division, 320 West 4th Street, Suite 750, Los Angeles, California 90013.

22 4. **Waiver of Hearing Rights.** Onyx acknowledges the Commissioner is ready,
23 willing, and able to proceed with the administrative enforcement action described in Paragraph E
24 above. Onyx hereby waives its right to any hearing, and to any reconsideration, appeal, or other right
25 to review which may be afforded pursuant to the CRMLA, the CFL, the California Administrative
26 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
27 herewith. Onyx further waives any right to an administrative hearing under Financial Code section
28 50321 in connection with the Order to Discontinue Violations agreed to herein. By waiving such

1 rights, Onyx effectively consents to this Settlement Agreement and the Order to Discontinue
2 Violations becoming final.

3 5. **Consideration.** Except as otherwise set forth herein, in consideration of Onyx’s
4 agreement to the issuance of an Order to Discontinue Violations and payment of penalties as
5 provided for in paragraphs 2 and 3 above, the Commissioner hereby agrees not to suspend the
6 CRMLA and/or CFL license(s) of Onyx as a result of this action.

7 6. **Failure to Comply.** Onyx agrees that if it fails to comply with the provisions of this
8 Settlement Agreement, the Commissioner may, in addition to all other available remedies under the
9 CRMLA and/or CFL, summarily suspend the CRMLA and/or CFL licenses of Onyx until Onyx is in
10 compliance. Onyx waives any notice and hearing rights to contest such summary suspension which
11 may be afforded under the CRMLA, the CFL, the Administrative Procedure Act, the Code of Civil
12 Procedure, or any other provision of law in connection therewith.

13 7. **Full and Final Settlement.** The Parties hereby acknowledge and agree that this
14 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
15 Accusation, and that no further proceedings or actions will be brought by the Commissioner in
16 connection with the Accusation under the CRMLA, the CFL or any other provision of law, excepting
17 therefrom any proceeding to enforce compliance with the terms of this Settlement Agreement.

18 8. **Information Willfully Withheld or Misrepresented.** This Settlement Agreement
19 may be revoked, and the Commissioner may pursue any and all remedies available under the law
20 against Onyx if the Commissioner discovers that Onyx knowingly or willfully withheld information
21 used for and relied upon in this Settlement Agreement.

22 9. **Assisting Other Agencies.** Nothing in this Settlement Agreement limits the
23 Commissioner’s ability to assist any other government agency (city, county, state, or federal) with
24 any administrative, civil or criminal prosecutions brought by that agency against Onyx or any other
25 person based upon any of the activities alleged in this matter or otherwise.

26 10. **Headings.** The headings to the paragraphs of this Settlement Agreement are for
27 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
28 the provisions hereof.

1 11. **Binding.** This Settlement Agreement is binding on all heirs, assigns, and/or
2 successors in interest.

3 12. **Reliance.** Each of the Parties represents, warrants, and agrees that in executing this
4 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its own
5 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Settlement
6 Agreement it has placed no reliance on any statement, representation, or promise of any other party,
7 or any other person or entity not expressly set forth herein, or upon the failure of any party or any
8 other person or entity to make any statement, representation or disclosure of anything whatsoever.
9 The Parties have included this clause: (1) to preclude any claim that any party was in any way
10 fraudulently induced to execute this Settlement Agreement; and (2) to preclude the introduction of
11 parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

12 13. **Waiver, Amendments, and Modifications.** No waiver, amendment, or modification
13 of this Settlement Agreement will be valid or binding unless it is in writing and signed by each of the
14 Parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver of
15 any other provision. No waiver by either party of any breach of, or of compliance with, any
16 condition or provision of this Settlement Agreement by the other party will be considered a waiver of
17 any other condition or provision or of the same condition or provision at another time.

18 14. **Full Integration.** This Settlement Agreement is the final written expression and the
19 complete and exclusive statement of all the agreements, conditions, promises, representations, and
20 covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or
21 contemporaneous agreements, negotiations, representations, understandings, and discussions between
22 and among the Parties, their respective representatives, and any other person or entity, with respect to
23 the subject matter covered hereby.

24 15. **Governing Law.** This Settlement Agreement will be governed by and construed in
25 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
26 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
27 forum to the maintenance of such action or proceeding in such court.

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1 16. **Counterparts.** This Settlement Agreement may be executed in one or more separate
2 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
3 together constitute a single document.

4 17. **Mandatory Disclosure in Future Applications.** Onyx agrees to disclose this
5 Settlement Agreement in any application for a license, permit, registration, or qualification under
6 the Commissioner’s current or future jurisdiction.

7 18. **Effect Upon Future Proceedings.** If Onyx is the subject of any future action by the
8 Commissioner to enforce this Settlement Agreement, then the subject matter hereof shall be admitted
9 for the purpose of such action.

10 19. **Third Parties.** This Settlement Agreement does not create or give rise to any private
11 rights or remedies against Onyx, create any liability for Onyx, or limit the defenses of Onyx for any
12 person or entity not a party to this Settlement Agreement.

13 20. **Voluntary Agreement.** Onyx enters into this Settlement Agreement voluntarily and
14 without coercion and acknowledges that no promises, threats or assurances have been made by the
15 Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties each
16 represent and acknowledge that he, she, or it is executing this Settlement Agreement completely
17 voluntarily and without any duress or undue influence of any kind from any source.

18 21. **Notice.** Any notice/report required under this Settlement Agreement shall be
19 addressed as follows:

20 To Onyx:	Sarah Powell Vice President Corporate Operations & Capital Markets ONYX Lending, LLC 2655 Van Ness Avenue, Suite 3 San Francisco, California 94109 spowell@onyxlending.com
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25 To the Commissioner:	Judy L. Hartley, Esq. Senior Counsel Department of Financial Protection and Innovation 320 W. 4 th Street, Suite 750 Los Angeles, California 90013-2344 judy.hartley@dfpi.ca.gov
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1 22. **Signatures.** A fax or electronic mail signature shall be deemed the same as an
2 original signature.

3 23. **Public Record.** Onyx hereby acknowledges that this Settlement Agreement is and
4 will be a matter of public record.

5 24. **Effective Date.** This Settlement Agreement shall become final and effective when
6 signed by all Parties and delivered by the Commissioner’s counsel via e-mail to the Onyx’s
7 representative, Sarah Powell, at spowell@onyxlending.com.

8 25. **Authority to Sign.** Each signatory hereto covenants that he or she possesses all
9 necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the
10 obligations set forth herein.

11 Dated: March 24, 2021

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

By _____
MARY ANN SMITH
Deputy Commissioner

15 Dated: March 22, 2021

ONYX LENDING, LLC

By _____
LUKASZ FILINSKI, President

18 APPROVED AS TO FORM:

19
20 By _____
21 SARAH POWELL, Vice President
22 Corporate Operations & Capital Markets,
23 ONYX LENDING, LLC
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