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11 Attorneys for Complainant

12 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
13 OF THE STATE OF CALIFORNIA

14 In the Matter of:) CFL LICENSE NO.: 60DBO-32952
15 THE COMMISSIONER OF FINANCIAL) CONSENT ORDER
16 PROTECTION AND INNOVATION,)
17 Complainant,)
18 v.)
19 ONYX LENDING LLC,)
20 Respondent.)
21)
22)

23 This Consent Order is entered into between the Commissioner of Financial Protection and
24 Innovation (Commissioner and Department) and Onyx Lending LLC (Onyx) (collectively, parties).

25 **I.**
26 **RECITALS**

27 This Consent Order is made with respect to the following facts:

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1 1. The Commissioner has jurisdiction over the licensing and regulation of persons and
2 entities engaged in the business of finance lending or brokering under the California Financing Law
3 (CFL) (Cal. Fin. Code § 22000 et seq.).

4 2. Onyx is a limited liability company with a principal place of business at 2655 Van
5 Ness Avenue, Suite #3, San Francisco, California 94109.

6 3. Onyx is licensed as a finance lender and broker under the CFL with main license
7 number 60DBO-32952.

8 4. Onyx operates a branch office in California.

9 5. Since March 2013, Onyx has brokered or originated consumer loans under its
10 (former) California Residential Mortgage Lending Act (CRMLA) and CFL licenses.

11 6. The Commissioner’s investigation reveals that since January 2022, Onyx has
12 brokered loans for California residents to unlicensed lenders. The unlicensed lenders were assigned
13 to fund—and indeed funded—certain loans at their respective settlement. This action is also known
14 as “table funding”. Consequently, Onyx failed to provide funding for the loans from sources
15 exclusive of funding advances received from these lenders, in violation of Section 1460 of Title 10
16 of the California Code of Regulations.

17 7. It is the intention of the parties to this Consent Order to resolve this matter without
18 the necessity of a hearing or other litigation.

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

21 **II.**

22 **TERMS AND CONDITIONS**

23 1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy
24 and expediency and without the uncertainty and expense of a hearing or other litigation. The agreed-
25 upon actions herein shall not be construed as approval for any actions outside the scope of this
26 Consent Order.

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1 2. Desist and Refrain. Onyx is hereby ordered to desist and refrain from violating the
2 California Financing Law (CFL) (Cal. Fin. Code § 22000 et seq.) and related regulations (10 C.C.R.
3 § 1404 et seq.), including Section 1460 of Title 10 of the California Code of Regulations.

4 3. Penalty. Onyx shall pay a penalty of \$7,500.00 (United States dollars) within 30
5 calendar days of the effective date of this Consent Order. The penalty shall be paid by check, wire
6 transfer, or Automated Clearing House transfer, pursuant to instructions which shall be separately
7 provided, to the Department of Financial Protection and Innovation and transmitted to the attention
8 of Accounting – Litigation, Department of Financial Protection and Innovation, 2101 Arena
9 Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to
10 Quincy Vien, Counsel, Department of Financial Protection and Innovation, via electronic mail at
11 Quincy.Vien@dfpi.ca.gov.

12 4. Failure to Pay Penalty. If Onyx fails to comply with any of the provisions in
13 Paragraph 3, the Commissioner may summarily suspend Onyx’s CFL license (no. 60DBO-32952)
14 until Onyx provides evidence of compliance to the Commissioner’s satisfaction. Onyx hereby
15 waives any notice or hearing rights afforded under the CFL, California Administrative Procedure
16 Act, California Code of Civil Procedure, or any other provision of law to contest the summary
17 suspension contemplated by this paragraph.

18 5. Waiver of Notice and Hearing Rights. Onyx acknowledges that the Commissioner is
19 ready, willing, and able to proceed with the filing of an enforcement action upon the findings
20 contained in this Consent Order. Onyx hereby waives the right to any hearings, and to any
21 reconsideration, appeal, or other right to review which may be afforded under the CFL, California
22 Administrative Procedure Act, California Code of Civil Procedure, or any other provision of law.
23 Onyx further expressly waives any requirement for the filing of an Accusation pursuant to California
24 Government Code section 11415.60, subdivision (b). By waiving such rights, Onyx effectively
25 consents to this Consent Order, and the Desist and Refrain Order contained herein, becoming final.

26 6. Full and Final Resolution. The parties hereby acknowledge and agree that this
27 Consent Order is intended to constitute a full and final resolution of the violations described herein,
28 and that no further proceedings or actions will be brought by the Commissioner in connection with

1 these matters except under the CFL or any other provision of law, or excepting therefrom any
2 proceeding to enforce compliance with the terms of this Consent Order.

3 7. Failure to Comply with this Consent Order. Onyx agrees that if it fails comply with
4 the terms of this Consent Order, the Commissioner may avail herself of any and all remedies
5 available to her under the CFL, California Administrative Procedure Act, California Code of Civil
6 Procedure, or any other provision of law.

7 8. Information Willfully Withheld or Misrepresented. If the Commissioner discovers
8 that Onyx knowingly or willfully withheld or misrepresented information used for and relied upon in
9 this Consent Order, after providing Onyx with due notice and an opportunity to be heard, this
10 Consent Order or any specific paragraphs herein, at the Commissioner’s sole discretion, may be
11 revoked, and the Commissioner may pursue any and all remedies available under law against Onyx.
12 Onyx reserves any and all rights and defenses should such an action be brought available under law,
13 including, but not limited to, all rights and defenses available under the CFL.

14 9. Future Actions by Commissioner. If, after providing Onyx with due notice and an
15 opportunity to be heard, the Commissioner determines that Onyx failed to comply with the terms of
16 the Consent Order, the Commissioner may institute proceedings for any and all matters otherwise
17 resolved under this Consent Order. The Commissioner reserves the right to bring any actions against
18 Onyx, or any of its partners, owners, officers, shareholders, directors, employees or successors for
19 any and all violations of the CFL or any other provision of law. Onyx reserves any and all of its
20 rights and defenses should such an action be commenced, including, but not limited to, all rights and
21 defenses available under the CFL.

22 10. Cooperation. Onyx agrees to cooperate in any and all enforcement matters of the
23 Commissioner, including any and all investigations, cases, and legal proceedings by or otherwise
24 involving the Commissioner. Onyx’s cooperation shall include, but is not limited to, testifying at
25 legal proceedings, providing sworn declaration(s), and producing documents and records within 10
26 calendar days of a request by the Commissioner. Onyx shall cooperate in good faith, including by
27 exercising due diligence in responding to any and all requests by the Commissioner and responding
28 to any and all requests on a priority basis.

1 11. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
2 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
3 administrative, civil, or criminal action brought by that agency against Onyx or any other person
4 based on any of the activities alleged in this matter or otherwise.

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

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

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

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

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

1 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
2 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
3 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
4 provision. No waiver by either party of any breach of, or of compliance with, any condition or
5 provision of this Consent Order by the other party will be considered a waiver of any other condition
6 or provision or of the same condition or provision at another time.

7 18. Full Integration. This Consent Order is the final written expression and the complete
8 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
9 between the parties with respect to the subject matter hereof, and supersedes all prior or
10 contemporaneous agreements, negotiations, representations, understandings, and discussions
11 between and among the parties, their respective representatives, and any other person or entity, with
12 respect to the subject matter covered hereby.

13 19. Governing Law. This Consent Order will be governed by and construed in
14 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court
15 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
16 forum to the maintenance of such action or proceeding in such court.

17 20. Counterparts. This Consent Order may be executed in one or more separate
18 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
19 together constitute a single document.

20 21. Effect Upon Future Proceedings. If Onyx applies for any license, permit or
21 qualification under the Commissioner’s current jurisdiction, or is the subject of any future action by
22 the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for
23 the purpose of such application(s) or enforcement proceeding(s). Notwithstanding the foregoing,
24 Onyx shall not be denied a license, permit, or qualification solely because it has entered into this
25 Consent Order.

26 22. Voluntary Agreement. Onyx hereby enters into this Consent Order voluntarily and
27 without coercion and acknowledges that no promises, threats, or assurances have been made by the
28 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent

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Dated: August 27, 2024

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By:

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: August 26, 2024

ONYX LENDING LLC

By:

LUKASZ FILINSKI
President