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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

11	In the Matter of:)	CRMLA License No.: 413-0638
12	THE COMMISSIONER OF BUSINESS)	STATEMENT OF FACTS IN SUPPORT OF
13	OVERSIGHT,)	ORDER TO DISCONTINUE VIOLATIONS
14	Complainant,)	PURSUANT TO FINANCIAL CODE
15	v.)	SECTION 50321 AND NOTICE OF INTENT
16	VAN DYK MORTGAGE CORPORATION)	TO MAKE ORDER FINAL
17	authorized to do business in California as)	
18	VANDYK MORTGAGE CORPORATION ,)	
19	Respondent.)	

20 The Complainant is informed and believes and based upon such information and belief,
21 alleges and charges as follows:

22 I

23 **Introduction**

24 1. Van Dyk Mortgage Corporation authorized to do business in California as VanDyk
25 Mortgage Corporation ("VanDyk") is licensed by the Commissioner of Business Oversight
26 ("Commissioner" or "Complainant") as a residential mortgage lender pursuant to the California
27 Residential Mortgage Lending Act ("CRMLA") (Fin. Code §50000 et seq.). VanDyk has its
28 principal place of business located at 2449 Camelot Court SE, Grand Rapids, Michigan 49546.

1 VanDyk currently has 12 branch office locations under its CRMLA license located in California and
2 elsewhere. VanDyk employs mortgage loan originators in its CRMLA business.

3 II

4 CRMLA Violations

5 2. On or about November 5, 2015, the Commissioner, by and through staff, commenced
6 a regulatory examination of the books and records of VanDyk under the CRMLA (“2015 regulatory
7 examination”). The 2015 regulatory examination disclosed that VanDyk (i) was failing to properly
8 reconcile certain of its trust accounts in violation of Financial Code section 50314 and California
9 Code of Regulations, title 10, section 1950.314.1; (ii) was commingling its own funds with trust
10 funds in violation of Financial Code section 50202, subdivision (a); (iii) was causing debit balances
11 (shortages) to exist in certain of its trust accounts in violation of California Code of Regulations, title
12 10, section 1950.314.6; (iv) had failed to properly designate one of its trust accounts as a trust
13 account in violation of Financial Code section 50502, subdivision (c); and (v) had charged borrowers
14 per diem interest in excess of one day prior to the disbursement of loan proceeds in violation of
15 Financial Code section 50204, subdivision (o).

16 Trust Account Violations

17 3. In 2015, VanDyk maintained its trust accounts at PNC Bank, which included a Fannie
18 Mae tax and insurance trust account (“FNMA T&I Account”), an account for impound/escrow and
19 FHA and VA mortgage insurance premium trust funds – California only - (“Escrow Account”), an
20 account for repair trust funds (“Repair Account”), and an account for appraisal and credit report fees
21 (“Upfront Fees Account”) (collectively referred to as the “PNC Trust Accounts”). The FNMA T&I
22 Account held borrower funds to be later paid for taxes and insurance; the Escrow Account held
23 funds to be paid for impounds along with FHA and VA mortgage insurance premiums; the Repair
24 Account held funds to be paid for repairs to mortgaged properties; and the Upfront Fees Account
25 held funds to pay for appraisals and credit reports used in making loan determinations. The trust
26 funds held in the PNC Trust Accounts are to be held until time for disbursement to the appropriate
27 investor, tax authority, insurance company, contractor, appraiser or credit report vendor.

1 4. A review of the reconciliations for the PNC Trust Accounts for July, August, and
2 September 2015 revealed that VanDyk:

3 (a) Failed to properly reconcile the FNMA T&I account for the periods ended July 31,
4 August 31, and September 30, 2015 due to \$3,108.44 in unallocated funds on deposit in the account,
5 i.e. funds that could not be tied to any specific loan on the liability ledger;

6 (b) Failed to properly reconcile the Escrow Account for the periods ended July 31, August
7 31, and September 30, 2015 due to undetected excess company funds on deposit in the account in
8 the respective amounts of \$1,901.35, \$5,034.21, and \$13,218.48 for the periods ended July 31,
9 August 31, and September 30, 2015. The existence of company funds on deposit in a trust account,
10 except as allowed to prevent a debit balance, also constitutes commingling;

11 (c) Failed to properly reconcile the Repair Account for the periods ended July 31 and
12 September 30, 2015 due to the receipt of repair trust funds from loans originated in July and
13 September 2015 that were posted to the liability ledger, but the funds were not transferred to the
14 Repair Account until the following month. VanDyk's failure to timely transfer repair funds into the
15 Repair Account caused a shortage to exist in the Repair Account in the respective amounts of
16 \$19,335.72 and \$47,318.96 for the periods ended July 31 and September 30, 2015. VanDyk also
17 failed to designate the Repair Account as a trust account, which VanDyk had previously been cited
18 for in the prior regulatory examination commenced in September 2011; and

19 (d) Failed to properly reconcile the Upfront Fees Account for the periods ended July 31,
20 August 31, and September 30, 2015 due to its failure to take numerous debit balances and
21 unallocated amounts into account. The numerous debit balances and unauthorized bank fees caused a
22 shortage to exist in the Upfront Fees Account in the respective amounts of \$32,323.83, \$19,025.64,
23 and \$6,697.74 for the periods ended July 31, August 31, and September 30, 2015.

24 **Per Diem Interest Overcharges**

25 5. The 2015 regulatory examination further disclosed that in three of the 25 funded
26 loans reviewed for per diem interest, or approximately 12%, VanDyk was charging the borrower per
27 diem interest in excess of one day prior to the disbursement of loan proceeds. A California
28 Additional Per Diem Interest Charge Disclosure was found in all three of the loans with per diem

1 interest overcharges. However, the disclosures were not prepared in accordance with Civil Code
2 section 2948.5(b), and therefore were not considered in calculating per diem interest charges. The
3 per diem interest overcharges averaged \$133.92 per loan. The range of per diem interest
4 overcharges was between \$45.03 and \$201.10. The range of days that interest was overcharged was
5 between two and six.

6 6. The Commissioner had found that VanDyk was overcharging per diem interest during
7 the last regulatory examination under the CRMLA that commenced in September 2011. Based upon
8 the findings of the 2011 regulatory examination, the Commissioner instructed VanDyk to implement
9 such procedures as necessary to ensure that per diem interest was not overcharged in the future.

10 7. By reason of the foregoing, VanDyk has violated Financial Code section 50202,
11 subdivisions (a) and (c), Financial Code section 50204, subdivision (o), and Financial Code section
12 50314, and California Code of Regulations, title 10, sections 1950.314.1 and 1950.314.6.

13 **III**

14 **Statutory Authority**

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16 8. Financial Code section 50321 provides in pertinent part:

17 If, after investigation, the commissioner has reasonable grounds
18 to believe that any licensee has violated its articles of incorporation or
19 any law or rule binding upon it, the commissioner shall, by written order
20 addressed to the licensee, direct the discontinuance of the violation. The
order shall be effective immediately, but shall not become final except
in accordance with the provisions of Section 50323.

21 9. Financial Code section 50323 provides:

22 (a) No order issued pursuant to Section 50321 or 50322 may become
23 final except after notice to the affected licensee of the commissioner's
24 intention to make the order final and of the reasons for the finding. The
25 commissioner shall also notify the licensee that upon receiving a
26 request the matter will be set for hearing to commence within 15 business
27 days after receipt. The licensee may consent to have the hearing
28 commenced at a later date. If no hearing is requested within 30 days
after the mailing or service of the required notice, and none is ordered
by the commissioner, the order may become final without hearing and

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the licensee shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all the powers granted under that act. If, upon the hearing, it appears to the commissioner that the licensee is conducting business in an unsafe and injurious manner or is violating its articles of incorporation or any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the licensee shall immediately discontinue the practices named in the order.

(b) The licensee has 10 days after an order is made final to commence an action to restrain enforcement of the order. If enforcement of the order is not enjoined within 10 days by the court in which the action is brought, the licensee shall comply with the order.

WHEREFORE, good cause showing, the Commissioner is issuing an Order to Discontinue Violations Pursuant to Financial Code Section 50321 and notifying VanDyk of her intention to make the order final.

Dated: May 11, 2016
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Judy L. Hartley
Senior Counsel
Enforcement Division