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8 Attorneys for Complainant

9  
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of: ) CFL LICENSE NO.: 603-G780  
13 )  
14 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, )  
15 )  
Complainant, ) AMENDED CONSENT ORDER  
16 )  
17 v. )  
18 GEMCAP LENDING I, LLC, )  
19 )  
Respondent. )  
20 )

21 This Amended Consent Order (Consent Order) is entered into between the Commissioner of  
22 Business Oversight (Commissioner) and GemCap Lending I, LLC (GemCap) (collectively, the  
23 Parties), and is made with respect to the following facts:

24 I.

25 **Recitals**

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons and  
27 entities engaged in the business of finance lending and/or brokering pursuant to the California  
28 Financing Law (CFL) (Fin. Code, § 22000 et seq.).

1 B. GemCap is a finance lender and broker licensed by the Commissioner, pursuant to the  
2 CFL.

3 C. GemCap has its primary place of business at 24955 Pacific Coast Highway, Suite  
4 A202, Malibu, California 90265.

5 D. Richard Kyle Ellis is the co-president of GemCap, and as such, is authorized to enter  
6 into this Consent Order on behalf of GemCap.

7 E. The Department of Business Oversight (Department) commenced a regulatory  
8 examination of GemCap’s books and records in July of 2018, which revealed it failed to maintain  
9 the required net worth at all times, in violation of Financial Code section 22104.

10 F. GemCap’s financial statements as of April 30, 2018, CFL Annual Report as of  
11 December 31, 2017 and CFL Annual Report as of December 31, 2016, show a net worth deficiency  
12 of \$3,012,058.17, \$2,123,463.00, and \$3,033,581.00, respectively.

13 G. In November of 2018, GemCap was notified that it must immediately cure all  
14 deficiencies, provide proof of the cure, and maintain the required net worth at all times.

15 H. The 2018 examination further revealed that GemCap had not maintained a list of  
16 current owners, officers, directors, partners, or any person owning 10% or more of GemCap.

17 I. In order to allow the Department to perform the investigation mandated by Financial  
18 Code section 22105, California Code of Regulations, title 10, section 1422 requires the CFL  
19 license applicants to complete and submit a Statement of Identity and Questionnaire (SIQ), certain  
20 forms and items, fingerprints, fees and other information for the applicant, its principal officers,  
21 directors, managing members, and persons owning or controlling, directly or indirectly, 10% or  
22 more of the outstanding interests, equity securities or any person responsible for the conduct of the  
23 applicant’s lending activities or for administering PACE programs for the applicant in California.  
24 It requires that an applicant, when a limited liability company, list the names of the president, chief  
25 executive officer, manager, each person who will be in charge of the place of business, each person  
26 who will be responsible for the conduct of the applicant’s lending activity, and each person who  
27 owns or controls, directly or indirectly, 10% or more of the applicant.

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1 J. Financial Code section 22108 provides that the Commissioner may by rule require  
2 licensees to file any changes in the information provided in an application for a CFL license.  
3 California Code of Regulations, title 10, section 1409 requires that licensees file an amendment to  
4 their CFL license application in the event of any change in the list of persons named in the CFL  
5 application. Licensees must file with the Commissioner an amendment to the application containing  
6 the same information in relation to such new person(s) as is required in the application, within 30  
7 days from the date of the change.

8 K. In November of 2018, the Department further notified GemCap that it must comply  
9 with Financial Code section 22105 and California Code of Regulations, title 10, sections 1409 and  
10 1422 and submit the required amendment, SIQ, forms, fingerprints, fees, and filings for each  
11 required person and entity.

12 L. The Department’s records, at the time, showed that Richard Kyle Ellis was the  
13 president of GemCap.

14 M. In December of 2018, GemCap notified the Department that Richard Kyle Ellis and  
15 David Ellis were co-presidents of GemCap. The Department was further notified that Gemelli  
16 Equities, LLC (Gemelli) owned 30% of, and Medley Opportunity Fund owned 70% of GemCap.  
17 Subsequently, GemCap submitted an organizational chart showing that Gemelli owned  
18 approximately 30% of, and MOF II Holdings, LLC (MOF II Holdings) owned approximately 70%  
19 of GemCap.

20 N. GemCap failed to timely submit any of the required SIQs, forms, fees, fingerprints, or  
21 required items for David Ellis or any of the general partners, officers, owners or principals of  
22 Gemelli or MOF II Holdings in order for the Department to conduct the background investigation  
23 mandated by Financial Code section 22105.

24 O. On February 13, 2020, GemCap submitted the SIQ and fingerprint form for David  
25 Ellis, a Texas resident.

26 P. On March 10, 2020, GemCap provided copies of the Statements of Information for  
27 Gemelli and MOF II Holdings that were filed with the California Secretary of State showing that  
28 Richard Kyle Ellis and Davis Ellis are co-owners and co-managers of Gemelli, and Brook Bulger

1 Taube is the only manager of MOF II Holdings.

2 Q. Based upon the foregoing, the Commissioner finds that GemCap violated Financial  
3 Code sections 22104 and 22105 and California Code of Regulations, title 10, sections 1409 and  
4 1422.

5 R. The Commissioner finds that this Consent Order is appropriate, in the public interest  
6 and consistent with the purposes fairly intended by the policy and provisions of the CFL.

7 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
8 forth herein, the Parties agree as follows:

9 **II.**

10 **Terms and Conditions**

11 1. Purpose. This Consent Order resolves the issues before the Commissioner, finding  
12 that GemCap violated the CFL, as set forth above in paragraphs A through R, in a manner that  
13 avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the  
14 public interest, and is consistent with the purposes, and provisions of the applicable law  
15 under the CFL.

16 2. Desist and Refrain Order. Pursuant to Financial Code section 22712, GemCap  
17 Lending I, LLC is hereby ordered to desist and refrain from violating Financial Code sections 22104  
18 and 22105 and California Code of Regulations, title 10, sections 1409 and 1422, set forth herein.  
19 This Desist and Refrain Order is final and effective from the Effective Date of this Consent Order, as  
20 defined in paragraph 25 (Effective Date).

21 3. Penalty. GemCap hereby acknowledges that it paid an administrative penalty in the  
22 amount of \$10,000.00 for the violation of the CFL. The penalty payment was received by the  
23 Department on March 27, 2020.

24 4. Compliance with Minimum Net Worth. GemCap agrees to comply with the net worth  
25 requirement of Financial Code section 22104. GemCap represents that its financials as of June 30,  
26 2020, show that GemCap is in compliance with the net worth requirement of Section 22104.

27 5. Surrender and Investigation Requirements. GemCap submitted a request to surrender  
28 its CFL license to the Department on August 14, 2020. The Commissioner hereby accepts the

1 surrender of GemCap’s CFL license, and waives the requirement for submission of the SIQs, forms,  
2 fingerprints, items, information and documentation for David Ellis, and Brook Bulger Taube.

3 GemCap agrees to comply with the requirements of Financial Code section 22105 and California  
4 Code of Regulations, title 10, sections 1409 and 1422, by submitting all the required SIQs, forms,  
5 fees, fingerprints, items, information and documentation for any person required to be investigated  
6 by the Commissioner, if GemCap or its respective affiliates, successors, or assigns requests a  
7 reinstatement of its CFL license or submits a new license application.

8         6.         Waiver of Hearing Rights. GemCap acknowledges the Commissioner is ready,  
9 willing, and able to proceed with the filing of an administrative enforcement action on the charges  
10 contained in this Consent Order. GemCap hereby waives the right to any hearings, and to any  
11 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the  
12 California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
13 provision of law. GemCap further expressly waives any requirement for the filing of an accusation  
14 or pleading pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,  
15 GemCap effectively consents to this Consent Order and the Desist and Refrain Order becoming  
16 final.

17         7.         Full and Final Settlement. The Parties hereby acknowledge and agree that this  
18 Consent Order is intended to constitute a full, final, and complete resolution of the violations and  
19 Desist and Refrain Order as identified herein. No further proceedings or actions will be brought by  
20 the Commissioner in connection with these matters under the CFL, or any other provision of law,  
21 excepting therefrom any proceeding to enforce compliance with the terms of this Consent Order.

22         8.         Failure to Comply with Consent Order. GemCap agrees that if it fails to comply with  
23 any terms of this Consent Order or the Desist and Refrain Order, the Commissioner may, summarily  
24 suspend/revoke any of GemCap’s license(s) and/or deny any pending license applications of  
25 GemCap and/or its respective affiliates, successors, and assigns, by whatever names they might be  
26 known, in addition to all other available remedies it may invoke under the CFL. GemCap waives any  
27 notice and hearing rights to contest such summary suspensions, revocation or denial which may be  
28 afforded under the CFL, the California Administrative Procedure Act, the California Code of Civil

1 Procedure, or any other provision of law in connection therewith.

2 9. Information Willfully Withheld. The Consent Order may be revoked, and the  
3 Commissioner may pursue any and all remedies available under law against GemCap if the  
4 Commissioner discovers that GemCap knowingly or willfully withheld or misrepresented  
5 information used for and relied upon in this Consent Order.

6 10. Future Actions by Commissioner. If GemCap fails to comply with any terms of the  
7 Consent Order or violates the Desist and Refrain Order, it agrees that the facts in this Consent Order  
8 and Desist and Refrain Order are admitted for the purpose of proving a violation of this Consent  
9 Order and Desist and Refrain Order. GemCap further agrees that the Commissioner may institute  
10 proceedings for any and all violations otherwise unresolved under this Consent Order. The  
11 Commissioner reserves the right to bring any future actions against GemCap, or any of its partners,  
12 owners, officers, shareholders, directors, employees, or successors for any and all unknown  
13 violations of the CFL.

14 11. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s  
15 ability to assist a government agency (whether city, county, state, or federal) with any  
16 administrative, civil or criminal action brought by that agency against GemCap or any other person  
17 based upon any of the activities alleged in this matter or otherwise.

18 12. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that  
19 he, she, or it has received independent advice from its attorney(s) or representative(s) with respect to  
20 the advisability of executing the Consent Order.

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

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

26 15. Reliance. Each of the Parties represents, warrants, and agrees that in executing this  
27 Consent Order it has relied solely on the statements set forth herein and the advice of its own  
28 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent

1 Order it has placed no reliance on any statement, representation, or promise of any other party, or  
2 any other person or entity not expressly set forth herein, or upon the failure of any party or any other  
3 person or entity to make any statement, representation or disclosure of anything whatsoever. The  
4 Parties have included this clause: (1) to preclude any claim that any party was in any way  
5 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol  
6 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

7 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of  
8 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.  
9 The waiver of any provision of this Consent Order will not be deemed a waiver of any other  
10 provision. No waiver by either party of any breach of, or of compliance with, any condition or  
11 provision of this Consent Order by the other party will be considered a waiver of any other condition  
12 or provision or of the same condition or provision at another time.

13 17. Full Integration. This Consent Order is the final written expression and the complete  
14 and exclusive statement of all the agreements, conditions, promises, representations, and covenant  
15 between the Parties with respect to the subject matter hereof, and supersedes all prior or  
16 contemporaneous agreements, negotiations, representations, understandings, and discussions  
17 between and among the parties, their respective representatives, and any other person or entity, with  
18 respect to the subject matter covered hereby.

19 18. Governing Law. This Consent Order will be governed by and construed in  
20 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,  
21 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient  
22 forum to the maintenance of such action or proceeding in such court.

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

26 20. Effect Upon Future Proceedings. If GemCap applies for any license, permit or  
27 qualification under the Commissioner's current or future jurisdiction, or seeks to reinstate its license,  
28 or is the subject of any future action by the Commissioner to enforce this Consent Order, then the

1 subject matter hereof shall be admitted for the purpose of such application(s) or enforcement  
2 proceeding(s).

3 21. Voluntary Agreement. GemCap enters into this Consent Order voluntarily and  
4 without coercion and acknowledges that no promises, threats, or assurances have been made by the  
5 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent  
6 and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and  
7 without any duress or undue influence of any kind from any source.

8 22. Notice. Any notice required under this Consent Order shall be provided to each party  
9 at the following addresses:

10 To GemCap Lending: GemCap Lending I, LLC  
11 Richard Kyle Ellis  
12 24955 Pacific Coast Highway, Suite A202  
Malibu, California 90265

13 To the Commissioner: Affi Eghbaldari, Counsel  
14 Department of Business Oversight  
15 1350 Front Street, #2034  
16 San Diego, California 92101  
Affi.Eghbaldari@dbo.ca.gov

17 23. Signatures. A fax or electronic mail signature shall be deemed the same as an original  
18 signature.

19 24. Public Record. GemCap acknowledges that this Consent Order is and will be a  
20 matter of public record.

21 25. Effective Date. This Consent Order shall become final and effective when signed by  
22 all parties and delivered by the Commissioner’s agent via e-mail to GemCap’s co-president, Richard  
23 Ellis at rellis@gemcapsolutions.com.

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26. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

Dated: August 31, 2020

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

GEMCAP LENDING I, LLC

Dated: August 28, 2020

By \_\_\_\_\_  
RICHARD KYLE ELLIS  
Co-President of GemCap Lending I, LLC