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

12 In the Matter of:) CFL LICENSE NO.: 60DBO-98215
13 THE COMMISSIONER OF BUSINESS) CONSENT ORDER
OVERSIGHT,)
14)
15 Complainant,)
16 v.)
17 KETTNER CAPITAL LLC,)
18 Respondent.)
19)

20 This Consent Order is entered into between the Commissioner of Business Oversight
21 (Complainant or Commissioner) and Respondent Kettner Capital LLC (Respondent) and is made
22 with respect to the following facts:

23 **I.**

24 **RECITALS**

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

1 B. Respondent is a limited liability company, with a principal place of business at 1775
2 Hancock Street, Suite 200, San Diego, California 92110.

3 C. Respondent is licensed as a finance lender under the CFL with main license number
4 60DBO-98215.

5 D. Respondent operates no branch offices in California.

6 E. In accordance with Financial Code section 22107, each finance lender, broker, or
7 program administrator licensee shall pay to the Commissioner its pro rata share of all costs and
8 expenses, including the costs and expenses associated with the licensing of mortgage loan
9 originators it employs, reasonably incurred in the administration of this division, as estimated by the
10 Commissioner, for the ensuing year and any deficit actually incurred or anticipated in the
11 administration of the program in the year in which the assessment is made. CFL licensees must pay
12 the annual assessment on or before the 31st day of October each year.

13 F. On September 30, 2019, the Commissioner sent Respondent the Assessment Notice
14 per invoice number CF3556. The notice was mailed to the address Respondent registered with the
15 Department (Registered Address): 1775 Hancock Street, Suite 210, San Diego, California 95814.
16 The notice stated that the annual assessment would become delinquent if not paid by October 31,
17 2019.

18 G. As of October 31, 2019, Respondent had not paid its annual assessment. The failure
19 to pay the annual assessment on or before October 31, 2019 represents a violation of Financial Code
20 section 22107.

21 H. As of November 6, 2019, Respondent had not paid its annual assessment. As a result,
22 the Commissioner sent to Respondent's Registered Address a Notice of Unpaid Assessment on
23 November 6, 2019. The notice warned that failure to pay the assessment would result in summary
24 revocation of Respondent's license. Respondent did not respond to the Commissioner's notice.

25 I. As of December 6, 2019, Respondent had not paid its annual assessment. As a result,
26 on December 6, 2019, the Commissioner issued an Order Summarily Revoking California Financing
27 Law License Pursuant to Financial Code Section 22107 for CFL License Number 60DBO-98215
28 (Revocation Order). The Department mailed the Revocation Order to Respondent's Registered

1 Address along with notice that it would become effective December 30, 2019 unless payment of the
2 annual assessment was received by close of business on December 27, 2019.

3 J. As of December 27, 2019, the assessment remained unpaid. As such, the Revocation
4 Order became effective December 30, 2019.

5 K. In connection with these proceedings, Respondent represented to the Commissioner
6 that it had taken no new applications under its license.

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 described
12 above in a manner that avoids the expense of a hearing and other possible court proceedings,
13 protects consumers, is in the public interest, and is consistent with the purposes, policies, and
14 provisions of the CFL.

15 2. Order Rescinding Revocation Order. The Commissioner hereby rescinds the
16 Revocation Order, which was issued on December 6, 2019, and became effective on December 30,
17 2019, as of the effective date of revocation.

18 3. Annual Assessment. Respondent shall pay \$250.00 to the Department of Business
19 Oversight for the 2019 – 2020 annual assessment. The annual assessment shall be paid to the
20 Commissioner no later than 30 days of the Effective Date of this Consent Order as defined in
21 paragraph 26. The annual assessment must be made payable in the form of a cashier’s check or
22 Automated Clearing House deposit to the Department of Business Oversight and transmitted to the
23 attention of Accounting, at the Department of Business Oversight, 1515 K Street, Suite 200,
24 Sacramento, California 95814. Notice of the payment must be concurrently sent to Trevor Carroll,
25 Counsel, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California
26 95814.

27 4. Administrative Penalty. Respondent shall pay an administrative penalty of \$2,500.00
28 no later than 30 days after the effective date of this Consent Order as defined in paragraph 26. The

1 penalty must be made payable in the form of a cashier's check or Automated Clearing House deposit
2 to the Department of Business Oversight and transmitted to the attention of Accounting – Litigation,
3 at the Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814.
4 Notice of the payment must be concurrently sent to Trevor Carroll, Counsel, Department of Business
5 Oversight, 1515 K Street, Suite 200, Sacramento, California 95814.

6 5. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
7 3, the Commissioner may summarily suspend Respondent from engaging in business under its
8 license until it provides evidence of compliance to the Commissioner's satisfaction. Respondent
9 hereby waives any notice or hearing rights afforded under the Administrative Procedure Act,
10 including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any
11 other provision of law to contest the summary suspension contemplated by this paragraph.

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

21 7. Full and Final Resolution. The parties hereby acknowledge and agree that this
22 Consent Order is intended to constitute a full and final resolution of the violations described herein,
23 and that no further proceedings or actions will be brought by the Commissioner in connection with
24 these matters except under the CFL or any other provision of law, excepting therefrom any
25 proceeding to enforce compliance with the terms of this Consent Order.

26 8. Failure to Comply with Consent Order. Respondent agrees that if it fails to comply
27 with the terms of this Consent Order, the Commissioner may, in addition to all other available
28 remedies it may invoke under the CFL, summarily suspend/revoke the CFL license of Respondent

1 until Respondent is in compliance. Respondent waives any notice and hearing rights to contest such
2 summary suspensions/revocations which may be afforded under the CFL, the California
3 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
4 in connection therewith.

5 9. Information Willfully Withheld or Misrepresented. This Consent Order may be
6 revoked, and the Commissioner may pursue any and all remedies available under law against
7 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
8 misrepresented information used for and relied upon in this Consent Order.

9 10. Future Actions by Commissioner. If Respondent fails to comply with the terms of the
10 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
11 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
12 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees, or
13 successors for any and all unknown violations of this CFL.

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

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

25 13. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
26 has received independent advice from its attorney(s) and/or representatives with respect to the
27 advisability of executing this Consent Order.
28

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

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

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

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

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

27 19. Governing Law. This Consent Order will be governed by and construed in
28 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court

1 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
2 forum to the maintenance of such action or proceeding in such court.

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

6 21. Effect Upon Future Proceedings. If Respondent applies for any license, permit or
7 qualification under the Commissioner’s current jurisdiction, or are the subject of any future action by
8 the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for
9 the purpose of such application(s) or enforcement proceeding(s).

10 22. Voluntary Agreement. Respondent hereby enters in this Consent Order voluntarily
11 and without coercion and acknowledges that no promises, threats, or assurances have been made by
12 the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each
13 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily
14 and without any duress or undue influence of any kind from any source.

15 23. Notice. Any notice required under this Consent Order be provided to each party at the
16 following addresses:

17 To Kettner Capital LLC: Kettner Capital LLC
18 c/o Amit Israni, Principal
19 1775 Hancock Street, Suite 200
20 San Diego, California 92110
21 amit@pacificacompanies.com

22 To the Commissioner: Trevor J. Carroll, Counsel
23 Department of Business Oversight
24 1515 K Street, Suite 200
25 Sacramento, California 95814
26 trevor.carroll@dbo.ca.gov

27 24. Signatures. A fax or electronic mail signature shall be deemed the same as an original
28 signature.

29 25. Public Record. Respondent hereby acknowledges that the Consent Order is and will
30 be a matter of public record.

1 26. Effective Date. This Consent Order shall become final and effective when signed by
2 all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following
3 email address: amit@pacificacompanies.com.

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

8 Dated: July 29, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

10 By _____
11 MARY ANN SMITH
12 Deputy Commissioner
13 Enforcement Division

14 Dated: July 28, 2020

KETTNER CAPITAL LLC

16 By _____
17 AMIT ISRANI
18 Principal

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