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

<p>11 In the Matter of:</p> <p>12 THE COMMISSIONER OF FINANCIAL 13 PROTECTION AND INNOVATION,</p> <p>14 Complainant,</p> <p>15 v.</p> <p>16 KUBER CAPITAL MANAGEMENT, LLC, 17 An entity,</p> <p>18 Respondent.</p>	<p>CRD NO.: 289514</p> <p>STATEMENT IN SUPPORT OF ORDER TO DISCONTINUE VIOLATIONS PURSUANT TO CORPORATIONS CODE SECTOIN 25249 AND COMMISSIONER'S INTENTION TO MAKE ORDER FINAL</p>
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21 The Acting Commissioner of Financial Protection and Innovation (Commissioner) alleges  
22 and charges as follows:

- 23 1. Kuber Capital Management, LLC (Kuber) is a limited liability company with its  
24 principal office located at 215 Masters View Court, Johns Creek, Georgia 30097.
- 25 2. Kuber currently holds a valid investment adviser certificate issued by the  
26 Commissioner pursuant to Corporations Code section 25230. Kuber is assigned Central Registration  
27 Depository (CRD) Number 289514.

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1           3.       Akhilesh Misra (Misra) (CRD Number 6841815) is the managing member, chief  
2 compliance officer and investment adviser representative of Kuber.

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4           4.       Corporations Code section 25241 provides, in relevant part:

5               (a) Every . . . investment adviser licensed under Section 25230 shall  
6 make and keep accounts, correspondence, memorandums, papers,  
7 books, and other records and shall file financial and other reports as  
8 the commissioner by rule requires . . . .

9               (b) All records so required shall be preserved for the time specified in  
10 the rule.

11              (c) All records referred to in this section are subject at any time and  
12 from time to time to reasonable periodic, special, or other  
13 examinations by the commissioner, within or without this state, as the  
14 commissioner deems necessary or appropriate in the public interest or  
15 for the protection of investors.

16 (Corp. Code, § 25241, subs. (a), (b), and (c).)

17           5.       On March 31, 2021, the Commissioner sent a notice to Kuber, at the email address  
18 designated by Kuber on the Investment Adviser Registration Depository (IARD), which instructed  
19 Kuber to submit responses to an online examination and provided a hyperlink to access the online  
20 examination. On April 15, 2021, Kuber was identified as not having yet completed or submitted the  
21 online examination.

22           6.       On April 30, 2021, the Commissioner sent a first reminder with instructions to  
23 complete and submit the online examination and an attached hyperlink. After April 30, 2021, the  
24 Commissioner sent two more follow-up emails reminding Kuber to complete and submit its online  
25 examination responses. By May 17, 2021, Kuber still had not completed the examination as required  
26 by the Commissioner.

27           7.       On May 17, 2021, and May 19, 2021, the Commissioner attempted telephonic contact  
28 with Kuber to remind Kuber to submit to the online examination. Despite making contact to inform  
Kuber to submit to the examination, Kuber failed to do so.

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8. On May 27, 2021, Kuber was provided a final email reminder to complete the examination. To date, Kuber still has not completed or submitted its online examination as the Commissioner required.

9. California Code of Regulations, title 10, section 260.241.4 provides, in relevant part:

(e) A licensed investment adviser shall file an annual updating amendment, in accordance with the instruction in Form ADV, with IARD in accordance with its procedures for transmission to the Commissioner within ninety (90) days of the end of the investment adviser's fiscal year.

(Cal. Code Reg., tit. 10 § 260.241.4 subd. (e).)

10. Kuber's fiscal year ends in December of each calendar year.

11. Kuber, as a licensed investment adviser, is required to file an annual updating amendment to Form ADV with IARD each year.

12. Kuber failed to file an annual updating amendment to Form ADV with IARD from 2019 to 2020.

13. Corporations Code section 25249 authorizes the Commissioner to issue an order directing any investment adviser to discontinue any violation of the Financial Code, Corporations Code, or any rules promulgated thereunder. Specifically, Corporations Code section 25249 provides, in relevant part, that:

If, after examination or investigation, the commissioner has reasonable grounds to believe that any broker-dealer or investment adviser has violated any law or rule binding upon it, the commissioner shall, by written order addressed to the broker-dealer investment adviser, 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 25251.

(Corp. Code, § 25249.)

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14. Corporations Code section 25251 provides, in relevant part, that:

(a) No order issued pursuant to Section 25249 or 25250 may become final except after notice to the affected broker-dealer or investment adviser of the commissioner’s intention to make the order final and of the reasons for the finding. The commissioner shall also notify the broker-dealer or investment adviser that upon receiving a request the matter shall be set for hearing to commence within 15 business days after receipt of the request. The broker-dealer or investment adviser may consent to have the hearing commence 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 a hearing and the broker-dealer or investment adviser shall immediately discontinue 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 of the powers granted under that act. If, upon the conclusion of the hearing, it appears to the commissioner that the broker-dealer or investment adviser is conducting business in an unsafe and injurious manner or is violating any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the broker-dealer or investment adviser shall immediately discontinue the practices named in the order.

(b) The broker-dealer or investment adviser may within 10 days after an order is made final commence an action to restrain enforcement of that order. If the enforcement of that order is not enjoined within 10 days by the court in which the action is brought, the broker-dealer or investment adviser shall comply with the order.

(Corp. Code, § 25251, subs. (a) and (b).)

15. By reason of the foregoing, Kuber violated Corporations Code section 25241 and California Code of Regulations, title 10, section 260.241.4, subdivision (e), justifying the issuance of an Order to Discontinue Violations. Kuber, as a licensed investment adviser, was obligated to have knowledge of, and to comply with, the provisions of the Corporations Code, and regulations promulgated thereunder.

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16. Therefore, pursuant to Corporations Code section 25249, the Commissioner has issued an order directing Kuber to discontinue violating Corporations Code section 25241 and California Code of Regulations, title 10, section 260.241.4, subdivisions (e).

WHEREFORE, good cause showing, and pursuant to Corporations Code section 25251, the Commissioner hereby notifies Kuber of his intention to make final the Order to Discontinue Violations. The Commissioner finds this action is appropriate, in the public interest, and consistent with the purposes fairly intended by the policies and procedures of the CSL.

Dated: November 23, 2021

CHRIS SHULTZ  
Acting Commissioner of Financial Protection and Innovation

By \_\_\_\_\_  
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