

1 CLOTHILDE V. HEWLETT  
Commissioner  
2 MARY ANN SMITH  
Deputy Commissioner  
3 DANIEL P. O'DONNELL  
Assistant Chief Counsel  
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Counsel  
5 Department of Financial Protection and Innovation  
6 2101 Arena Boulevard  
Sacramento, California 95834  
7 Telephone: (916) 576-4905  
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9 Attorneys for the Complainant

10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
11 OF THE STATE OF CALIFORNIA  
12

13 In the Matter of:

CRD NO.: 289514

14 THE COMMISSIONER OF FINANCIAL  
15 PROTECTION AND INNOVATION,

CONSENT ORDER

16 Complainant,

17 v.

18 KUBER CAPITAL MANAGEMENT, LLC, an  
19 entity,

20 Respondent.  
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23 This Consent Order is entered into between the Commissioner of Financial Protection and  
24 Innovation (Commissioner) and Kuber Capital Management, LLC (Kuber) and is made with respect  
25 to the following facts:

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**I.**

**RECITALS**

A. The Commissioner has jurisdiction over the licensing and regulation of persons engaged in the business of investment advising under the Corporate Securities Law of 1968 (Corporations Code section 25000 et seq.).

B. Kuber holds a valid and unrevoked investment adviser certificate issued by the Commissioner pursuant to Corporations Code section 25230 with assigned Central Registration Depository (CRD) Number 289514. Kuber is limited liability company with its principal office located at 215 Masters View Court, Johns Creek, Georgia 30097.

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

D. Corporations Code section 25241 requires every investment adviser licensed by the Commissioner to maintain books and records, file reports with the Commissioner, and submit to examination by the Commissioner, as the Commissioner deems necessary or appropriate in the public interest or for the protection of investors.

E. On March 31, 2021, the Commissioner began sending notices to Kuber, at the email address designated by Kuber on the Investment Adviser Registration Depository (IARD), which instructed Kuber to submit responses to an online examination. After multiple notices and reminders, Kuber still had not submitted to the online examination. During the examination of Kuber, the Commissioner also determined Kuber had not filed its annual updating amendment to Form ADV with IARD for years 2019 and 2020, as required by California Code of Regulations, title 10, section 260.241.4.

F. On November 23, 2021, the Commissioner issued an Order to Discontinue Violations pursuant to Corporations Code section 25249 against Kuber based upon the foregoing violations.

G. On or about December 5, 2021, Kuber regained compliance and submitted its online examination responses to the Commissioner and filed annual updating amendments to its Form ADV with IARD for years 2019 and 2020.

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1 H. The Commissioner finds that entering into this Consent Order is necessary, in the  
2 public interest, for the protection of investors and consistent with the purposes, policies, and  
3 provisions of the Corporate Securities Law of 1968.

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

6 **II.**

7 **TERMS AND CONDITIONS**

8 1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy  
9 and expediency and without the uncertainty and expense of a hearing or other litigation.

10 2. Rescission of Order to Discontinue Violations. The Commissioner hereby rescinds  
11 the Order to Discontinue Violations issued against Kuber on November 23, 2021.

12 3. Administrative Penalty. Kuber shall pay an administrative penalty of \$500.00 no  
13 later than 30 days after the effective date of this Consent Order as defined in paragraph 18. The  
14 penalty must be made payable in the form of a cashier's check or Automated Clearing House deposit  
15 to the Department of Financial Protection and Innovation and transmitted to the attention of  
16 Accounting – Litigation, at the Department of Financial Protection and Innovation, 2101 Arena  
17 Boulevard, Sacramento, California 95834. Notice of payment must be sent concurrently via email to:  
18 Taylor.Herrlinger@dfpi.ca.gov.

19 4. Waiver of Hearing Rights. Kuber acknowledges that the Commissioner is ready,  
20 willing, and able to proceed with administrative enforcement of the Order to Discontinue Violations  
21 based upon on the charges contained therein. With respect to the Order to Discontinue Violations  
22 and Consent Order, Kuber hereby waives the right to any hearings, and to any reconsideration,  
23 appeal, or other right to review which may be afforded pursuant to the Corporate Securities Law of  
24 1968, Administrative Procedure Act, including Government Code section 11415.60, subdivision (b);  
25 Code of Civil Procedure; or any other provision of law. By waiving such rights, Kuber effectively  
26 consents to this Consent Order and all the terms becoming final.

27 5. Failure to Pay Administrative Penalty. If Kuber fails to comply with paragraph 3, the  
28 Commissioner may summarily suspend Kuber from engaging in business under its investment

1 adviser certificate until it provides evidence of compliance to the Commissioner’s satisfaction.

2 Kuber hereby waives any notice or hearing rights afforded under the Administrative Procedure Act,  
3 including Government Code section 11415.60, subdivision (b), Code of Civil Procedure, or any  
4 other provision of law to contest the summary suspension contemplated by this paragraph.

5 6. Full and Final Resolution. This Consent Order is intended to constitute a full and final  
6 resolution of the matter described in it. The Commissioner will not bring any further action or  
7 proceeding concerning the matter unless she discovers violations by Kuber that do not form the basis  
8 for this Consent Order, including violations knowingly concealed from the Commissioner.

9 7. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s  
10 ability to assist any other government agency with any action brought by that agency against Kuber,  
11 including an action based on any of the acts, omissions, or events described in this Consent Order.

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

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

25 10. Full Integration. This Consent Order is the final written expression and the complete  
26 and exclusive statement of all the agreements, conditions, promises, representations, and covenant  
27 between the Parties with respect to the subject matter hereof, and supersedes all prior or  
28 contemporaneous agreements, negotiations, representations, understandings, and discussions

1 between and among the Parties, their respective representatives, and any other person or entity with  
2 respect to the subject matter covered hereby.

3 11. No Presumption Against Drafter. In that the parties have had the opportunity to draft,  
4 review, and edit the language of this Consent Order, no presumption for or against any party arising  
5 out of drafting all or any part of this Consent Order will be applied in any action relating to,  
6 connected to, or involving this Consent Order. Accordingly, the parties waive the benefit of Civil  
7 Code section 1654 and any successor or amended statutes, providing that in cases of uncertainty,  
8 language of a contract should be interpreted most strongly against the party who caused the  
9 uncertainty to exist.

10 12. Voluntary Agreement. Kuber hereby enters in this Consent Order voluntarily and  
11 without coercion and acknowledges that no promises, threats, or assurances have been made by the  
12 Commissioner or any officer, or agent thereof, about this Consent Order.

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

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

22 15. Public Record. Kuber acknowledges that the Consent Order is public record.

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

26 17. Governing Law. This Consent Order will be governed by and construed in  
27 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,  
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1 and hereby 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 18. Effective Date. This Consent Order will become effective on the date it is signed by  
4 all parties and delivered by the Commissioner to Kuber by electronic mail at  
5 akhilesh.misra@kubercapitalmgt.com.

6 19. Signatures. A fax or electronic mail signature shall be deemed the same as an original  
7 signature.

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

10 To Kuber Capital Management, LLC:

11 Kuber Capital Management, LLC  
12 Akhilesh Misra  
13 215 Masters View Court  
14 Johns Creek, Georgia 30097  
15 akhilesh.misra@kubercapitalmgt.com

16 To the Commissioner:

17 Taylor Herrlinger, Counsel  
18 Department of Financial Protection and Innovation  
19 Enforcement Division  
20 2101 Arena Boulevard  
21 Sacramento, California 95834  
22 taylor.herrlinger@dfpi.ca.gov

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

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Dated: January 25, 2022

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

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

Dated: January 25, 2022

By \_\_\_\_\_  
KUBER CAPITAL MANAGEMENT, LLC  
Akhilesh Misra, Chief Compliance Officer,  
In His Personal Capacity

