

1 CLOTHILDE V. HEWLETT
 Commissioner
 2 MARY ANN SMITH
 Deputy Commissioner
 3 DANIEL P. O'DONNELL
 Assistant Chief Counsel
 4 JEREMY F. KOO (State Bar No. 300225)
 Senior Counsel
 5
 6 Department of Financial Protection and Innovation
 2101 Arena Boulevard
 7 Sacramento, California 95834-2306
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 9
 10 Attorneys for Complainant

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

13 In the Matter of:)
)
 14 THE COMMISSIONER OF FINANCIAL PROTECTION) CONSENT ORDER
 AND INNOVATION,)
 15)
 16 Complainant,)
)
 17 v.)
)
 18 LOFTY AI, INC.,)
 19 JERRY CHU,)
 MAX JAMES BALL,)
 20)
 21 Respondents.)
)

1 This Consent Order (Consent Order) is entered into by and between the Commissioner of
2 Financial Protection and Innovation (Commissioner) and Respondents Lofty AI, Inc. (Lofty), Jerry
3 Chu (Chu), and Max James Ball (Ball).

4 **I.**

5 **RECITALS**

6 A. The Commissioner has jurisdiction over the administration and regulation of offers and
7 sales of securities in California under the Corporate Securities Law of 1968 (CSL) (Corp. Code, §
8 25100 et seq).

9 B. The CSL prohibits the offer or sale of any securities within, into, or from this state
10 unless a qualification or permit has been obtained from the Department or unless the security or
11 transaction is exempt from the qualification requirements.

12 C. At all relevant times, Lofty was a Delaware corporation headquartered in Los Angeles,
13 California.

14 D. At all relevant times, Chu is and was co-founder and Chief Executive Officer of Lofty.
15 Chu is duly authorized to enter into this Consent Order on behalf of Lofty.

16 E. At all relevant times, Ball is and was co-founder and Secretary of Lofty.

17 F. Beginning on or about April 30, 2021, and continuing to on or about March 1, 2022,
18 Lofty offered and sold in California, via general solicitation to the public, interests in at least 75
19 Delaware limited liability companies, each referred to hereinafter generally as a Lofty Holding LLC,
20 through its website, www.lofty.ai, offering for sale at least \$12,641,540.00 in such interests.

21 G. At all relevant times, Lofty was the manager of each Lofty Holding LLC.

22 **II.**

23 **FINDINGS**

24 H. The Commissioner is of the opinion that the Lofty Holding LLC interests offered and
25 sold by Lofty between April 1, 2021, to the present date are securities—in that each unit represents an
26 interest in a limited liability company and/or each Lofty Holding LLC investment scheme is an
27 investment contract (Corp. Code, § 25019)—subject to qualification under the CSL that have been
28 offered or sold without first being qualified in violation of Corporations Code section 25110.

1 I. Lofty offered or sold these securities in the form of interests in limited liability
2 companies and/or investment contracts in issuer transactions in California for at least 75 Lofty
3 Holding LLCs.

4 J. Corporations Code section 25110 prohibits the offer and/or sale of non-exempt
5 securities in this state that are subject to qualification. The Department has not issued a permit or other
6 form of qualification authorizing any person to offer and sell the described securities in this state.

7 K. Without admitting or denying the Commissioner’s findings as set forth in paragraphs F
8 – J, Lofty, Chu, and Ball desire to enter into this Consent Order, which the Commissioner finds is
9 appropriate, in the public interest, and consistent with the purposes fairly intended by the CSL.

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

12 **III.**

13 **TERMS AND CONDITIONS**

14 1. Purpose. This Consent Order resolves the issues before the Commissioner concerning
15 violations of Corporations Code section 25110 in a manner that avoids the expense of a hearing and
16 other possible court proceedings, protects investors, is in the public interest, and is consistent with the
17 purposes and provisions of the CSL.

18 2. Desist and Refrain Order from Further Offers or Sales. Pursuant to Corporations Code
19 section 25532, subdivision (a), Lofty, Chu, and Ball are hereby ordered to desist and refrain from the
20 further offer or sale of the Lofty Holding LLC interests until qualification has been made under the
21 CSL or the requirements of an exemption have been met.

22 3. Penalties. Pursuant to Corporations Code section 25252, subdivision (a), Lofty, Chu,
23 and Ball, jointly and severally, are ordered to pay a penalty for these violations in the amount of
24 \$37,500.00 no later than 15 days after the Effective Date of this Consent Order. The penalty payment
25 shall be in the form of a cashier’s check or Automated Clearing House deposit payable to the
26 “Department of Financial Protection and Innovation” and transmitted to the attention of “Accounting –
27 Litigation” at Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento,
28 California 95834. Notice of the payment shall be concurrently sent to Jeremy F. Koo, via email at:

1 Jeremy.Koo@dfpi.ca.gov.

2 4. Waiver of Hearing Rights. Lofty, Chu, and Ball acknowledge the Commissioner is
3 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
4 charges contained in this Consent Order. Lofty, Chu, and Ball hereby waive the right to any hearings,
5 and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the
6 CSL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
7 other provision of law. Lofty, Chu, and Ball further expressly waive any requirement for the filing of
8 an Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such
9 rights, Lofty, Chu, and Ball effectively consent to this Consent Order becoming final.

10 5. Full and Final Settlement. The parties hereby acknowledge and agree that this Consent
11 Order is intended to constitute a full, final, and complete resolution of the violations described herein,
12 namely, the violations of Corporations Code section 25110, and that no further proceedings or actions
13 will be brought by the Commissioner in connection with these violations of Corporations Code section
14 25110, excepting therefrom any proceeding to enforce compliance with the terms of this Consent
15 Order.

16 6. Information Willfully Withheld or Misrepresented. This Consent Order may be
17 rescinded, and the Commissioner may pursue any and all remedies available under law against Lofty,
18 Chu, or Ball, if the Commissioner discovers that Lofty, Chu, or Ball knowingly or willfully withheld
19 or misrepresented information used for and relied upon in this Consent Order.

20 7. Failure to Comply. If Lofty, Chu, or Ball fails to comply with any terms of the Consent
21 Order, the Commissioner may institute proceedings for any and all violations otherwise resolved under
22 this Consent Order. The Commissioner reserves the right to bring any future actions against Lofty,
23 Chu, Ball, or any of its partners, owners, officers, shareholders, directors, employees or successors for
24 any and all unknown violations of the CSL.

25 8. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
26 ability to assist any other government agency (city, county, state, or federal) or self-regulatory
27 organization with any prosecution, administrative, civil or criminal brought by that agency against
28 Lofty, Chu, Ball, or any other person based upon any of the activities alleged in this matter or

1 otherwise.

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

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

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

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

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

28 14. Governing Law. This Consent Order will be governed by and construed in accordance

1 with California law. Each of the parties hereto consents to the jurisdiction of the Superior Court of
2 California for the County of Los Angeles, and hereby irrevocably waives, to the fullest extent
3 permitted by law, the defense of an inconvenient forum to the maintenance of such action or
4 proceeding in such court.

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

8 16. Effect Upon Future Proceedings. If Lofty, Chu, or Ball apply for any license, permit or
9 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future
10 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
11 admitted for the purpose of such application(s) or enforcement proceedings(s). Provided, however,
12 that the fact of the existence of this Consent Order shall not, in and of itself, be the sole basis for any
13 denial of any such application so long as Lofty, Chu, and Ball each have complied with this Consent
14 Order.

15 17. Voluntary Agreement. Lofty, Chu, and Ball enter into this Consent Order voluntarily
16 and without coercion and acknowledge that no promises, threats or assurances have been made by the
17 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
18 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and without
19 any duress or undue influence of any kind from any source.

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

22 To Lofty, Chu, or Ball:

23 Nimi Aviad
24 Crowell & Moring LLP
25 515 South Flower Street, 40th Floor
26 Los Angeles, California 90071
27 NAviad@crowell.com

28 To the Commissioner:

Jeremy F. Koo
Counsel, Enforcement Division
Department of Financial Protection and Innovation
2101 Arena Boulevard

1 Sacramento, California 95834
2 Jeremy.Koo@dfpi.ca.gov

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

5 20. Public Record. Lofty, Chu, and Ball hereby acknowledge that this Consent Order is and
6 will be a matter of public record.

7 21. Effective Date. This Consent Order shall become final and effective when signed by all
8 parties and delivered by the Commissioner's agent via e-mail to the attorney for Lofty, Chu, and Ball
9 at Naviad@crowell.com.

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

13 Dated: November 14, 2022 CLOTHILDE V. HEWLETT
14 Commissioner of Financial Protection and
15 Innovation

16 By _____
17 MARY ANN SMITH
18 Deputy Commissioner
19 Enforcement Division

20 Dated: November 9, 2022 LOFTY AI, INC.
21 By _____
22 JERRY CHU
23 Chief Executive Officer of Lofty AI, Inc.

24 Dated: November 9, 2022 JERRY CHU
25 By _____
26 JERRY CHU

27 Dated: November 9, 2022 MAX JAMES BALL
28 By _____
MAX JAMES BALL