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

12 In the Matter of:)
13)
14 THE COMMISSIONER OF FINANCIAL) CFL LICENSE No: 60DBO-72346
PROTECTION AND INNOVATION,)
15) **CONSENT ORDER**
16 Complainant.)
17 v.)
18 KISO CAPITAL, LP,)
19 Respondent.)
20 _____)

21 This Consent Order is entered into between the Commissioner of Financial Protection and
22 Innovation (Complainant or Commissioner) and Respondent Kiso Capital, LP (Respondent) and is
23 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 or brokering under the California Financing Law

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1 (CFL) (Fin. Code, § 22000 et seq.).¹

2 B. KISO CAPITAL, LP (Respondent) is a Delaware limited partnership.

3 C. Respondent has a principal place of business at 99 Almaden Boulevard, Suite 333,
4 San Jose, California 95113.

5 D. Respondent is licensed as a finance lender and broker under the California Financing
6 Law (CFL) (Fin. Code, § 22000, et seq.) with license number 60DBO-72346.

7 E. Under Financial Code section 22150, Complainant may make general rules and
8 regulations and specific rulings, demands, and findings for the enforcement of, and within the
9 general purposes of, the CFL.

10 F. Pursuant to a Commissioner’s Order on Electronic Communications, dated November
11 22, 2013, each CFL licensee must establish an email address for communications from the
12 Commissioner (Designated Email Address).

13 G. Under California Code of Regulations, Title 10, Section 1422.4 (Regulation 1422.4),
14 which went into effect on October 1, 2021, all CFL licensees were required to transition to the
15 Nationwide Multistate Licensing System and Registry (NMLS) by December 31, 2021. On
16 December 16, 2021, Complainant extended the deadline to transition to NMLS to March 15, 2022.
17 On March 7, 2022, Complainant again extended the deadline to transition to NMLS to March 31,
18 2022.

19 H. Complainant provided notice of this requirement to Respondent – via email to the
20 Designated Email Address of each CFL licensee on July 20, 2021, September 16, 2021, October 14,
21 2021, November 8, 2021, and December 16, 2021. Complainant also provided notice via email to
22 each CFL licensee that had not yet transitioned to NMLS, including Respondent, on March 7, 2022,
23 and again via email and mail on March 28, 2022. Complainant provided further notice of this
24 requirement over the telephone – Complainant made at least two calls to the designated telephone
25 number provided by each CFL licensee, including Respondent – between February 1 and March 15,
26 2022.

27 _____
28 ¹ Cal. Fin. Code § 22000, *et seq.* All subsequent statutory references are to the California Financial Code unless otherwise specified.

1 I. Complainant determined that Respondent was in violation of Regulation 1422.4 and
2 had not transitioned management of its CFL license to NMLS as of July 29, 2022. Accordingly,
3 Complainant issued a Citation on that date pursuant to Financial Code section 22707.5, subdivision
4 (a). The Citation included an order to correct the violation and an order to pay an administrative fine
5 in the amount of \$2,500.00 to the Commissioner by September 27, 2022.

6 J. Complainant served the Citation on Respondent via certified mail on July 29, 2022
7 and by electronic mail at Respondent’s Designated Email Address on July 29, 2022.

8 K. To date, Respondent has neither complied with the order to correct the violation by
9 transitioning its license to NMLS nor paid the administrative fine.

10 L. The Commissioner finds that entering into this Consent Order is in the public interest
11 and consistent with the purposes fairly intended by the policies and provisions of the CFL.

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

14 **II.**

15 **TERMS AND CONDITIONS**

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

18 2. Transition to NMLS. Respondent shall complete the transition of its license to NMLS
19 as required by Regulation 1422.4 within 30 days of the effective date of this Consent Order as
20 defined in paragraph 24.

21 3. Administrative Penalty. Respondent shall pay an administrative penalty of \$2,500.00
22 no later than 30 days after the effective date of this Consent Order as defined in paragraph 24. The
23 penalty must be made payable in the form of a cashier’s check or Automated Clearing House deposit
24 to the Department of Financial Protection and Innovation and transmitted to the attention of
25 Accounting – Litigation, Department of Financial Protection and Innovation, 2101 Arena Boulevard,
26 Sacramento, California 95834. Notice of the payment must be concurrently sent to Ryan M. Cassidy,
27 Counsel, Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento,
28 California 95834/Ryan.Cassidy@dfpi.ca.gov.

1 4. Failure to Transition License to NMLS or Pay Administrative Penalty. If Respondent
2 fails to comply with paragraphs 2 or 3, the Commissioner may summarily revoke Respondent’s
3 license.

4 5. Waiver of Notice and Hearing Rights. Respondent acknowledges the Commissioner
5 is ready, willing, and able to file an accusation to revoke Respondent’s license pursuant to Financial
6 Code section 22714 and proceed with a hearing on the accusation. Respondent hereby waives the
7 right to any notice or hearings, and to any reconsideration, appeal, or other right to review which
8 may be afforded pursuant to the CFL, the California Administrative Procedure Act, the California
9 Code of Civil Procedure, or any other provision of law. By waiving such rights, Respondent
10 effectively consents to this Consent Order becoming final.

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

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

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

25 9. 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) with any prosecution,
27 administrative, civil or criminal action brought by that agency against Respondent or any other
28 person based on any of the activities alleged in this matter or otherwise.

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

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

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

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

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

25 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
26 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
27 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
28 provision. No waiver by either party of any breach of, or of compliance with, any condition or

1 provision of this Consent Order by the other party will be considered a waiver of any other condition
2 or provision or of the same condition or provision at another time.

3 16. Full Integration. This Consent Order is the final written expression and the complete
4 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
5 between the parties with respect to the subject matter hereof, and supersedes all prior or
6 contemporaneous agreements, negotiations, representations, understandings, and discussions
7 between and among the parties, their respective representatives, and any other person or entity, with
8 respect to the subject matter covered hereby.

9 17. Governing Law. This Consent Order will be governed by and construed in
10 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court
11 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
12 forum to the maintenance of such action or proceeding in such court.

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

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

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

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

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To Respondent: Kiso Capital, LP
Damon Doe
99 Almaden Boulevard, Suite 333
San Jose, California 95113
damon@kisocapital.com

To the Commissioner: Ryan M. Cassidy, Counsel
Department of Financial Protection and Innovation
2101 Arena Blvd
Sacramento, California 95691
Ryan.Cassidy@dfpi.ca.gov

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

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

24. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following email address: damon@kisocapital.com.

25. 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.

Dated: December 23, 2022
Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By _____
Mary Ann Smith
Deputy Commissioner
Enforcement Division

Dated: December 16, 2022

KISO CAPITAL, LP

By _____
Damon Doe, Manager of Kiso Capital Management I,
LLC, General Partner