

1 CLOTHILDE V. HEWLETT  
Commissioner  
2 MARY ANN SMITH  
Deputy Commissioner  
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5 Department of Financial Protection and Innovation  
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8 Attorneys for Complainant

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

12 In the Matter of: )  
13 )  
14 THE COMMISSIONER OF FINANCIAL ) CFL LICENSE No.: 6052302  
PROTECTION AND INNOVATION, )  
15 ) **CONSENT ORDER**  
16 Complainant. )  
17 )  
18 v. )  
19 )  
20 ATEL GROWTH CAPITAL, )  
Respondent. )

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1 This Consent Order is entered into between the Commissioner of Financial Protection and  
2 Innovation (Complainant or Commissioner) and Respondent ATEL Growth Capital (Respondent)  
3 and is made with respect to the following facts:

4 **I.**

5 **RECITALS**

6 A. The Commissioner has jurisdiction over the licensing and regulation of persons and  
7 entities engaged in the business of finance lending or brokering under the California Financing Law  
8 (CFL) (Fin. Code, § 22000 et seq.).<sup>1</sup>

9 B. Respondent is a California corporation.

10 C. Respondent has a principal place of business at 600 Montgomery Street, 9th Floor  
11 San Francisco, California 94111.

12 D. Respondent is licensed as a finance lender and broker under the California Financing  
13 Law (CFL) (Fin. Code, § 22000, et seq.) with license number 6052302.

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

17 F. Pursuant to a Commissioner’s Order on Electronic Communications, dated November  
18 22, 2013, each CFL licensee must establish an email address for communications from the  
19 Commissioner (Designated Email Address).

20 G. Under California Code of Regulations, Title 10, Section 1422.4 (Regulation 1422.4),  
21 which went into effect on October 1, 2021, all CFL licensees were required to transition to the  
22 Nationwide Multistate Licensing System and Registry (NMLS) by December 31, 2021. On  
23 December 16, 2021, Complainant extended the deadline to transition to NMLS to March 15, 2022.  
24 On March 7, 2022, Complainant again extended the deadline to transition to NMLS to March 31,  
25 2022.

26 H. Complainant provided notice of this requirement to Respondent – via email to the  
27 \_\_\_\_\_

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

1 Designated Email Address of each CFL licensee on July 20, 2021, September 16, 2021, October 14,  
2 2021, November 8, 2021, and December 16, 2021. Complainant also provided notice via email to  
3 each CFL licensee that had not yet transitioned to NMLS, including Respondent, on March 7, 2022,  
4 and again via email and mail on March 28, 2022. Complainant provided further notice of this  
5 requirement over the telephone – Complainant made at least two calls to the designated telephone  
6 number provided by each CFL licensee, including Respondent – between February 1 and March 15,  
7 2022.

8 I. Complainant determined that Respondent was in violation of Regulation 1422.4 and  
9 had not transitioned management of its CFL license to NMLS as of July 22, 2022. Accordingly,  
10 Complainant issued a Citation on July 22, 2022, pursuant to Financial Code section 22707.5,  
11 subdivision (a). The Citation included an order to correct the violation and an order to pay an  
12 administrative fine in the amount of \$2,500.00 to the Commissioner by September 20, 2022.

13 J. Complainant served the Citation on Respondent via certified mail on July 20, 2022.

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

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

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

20 **II.**

21 **TERMS AND CONDITIONS**

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

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

27 3. 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 24. 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 Financial Protection and Innovation and transmitted to the attention of  
3 Accounting – Litigation, Department of Financial Protection and Innovation, 2101 Arena Boulevard,  
4 Sacramento, California 95834. Notice of the payment must be concurrently sent to Sally Hong,  
5 Counsel, Department of Financial Protection and Innovation, One Sansome Street, Suite 600, San  
6 Francisco, CA 94104/Sally.Hong@dfpi.ca.gov.

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

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

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

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

26 8. Future Actions by Commissioner. If Respondent fails to comply with the terms of the  
27 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
28 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions

1 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees, or  
2 successors for any and all unknown violations of this CFL.

3 9. Assisting Other Agencies. Nothing in this Consent Order limits the  
4 Commissioner’s ability to assist any other government agency (city, county, state or federal) with  
5 any prosecution, administrative, civil or criminal action brought by that agency against Respondent  
6 or any other person based on any of the activities alleged in this matter or otherwise.

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

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

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

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

22 14. Reliance. Each of the parties represents, warrants, and agrees that in executing this  
23 Consent Order, it has relied solely on the statements set forth herein and the advice of its own legal  
24 counsel, if represented. Each of the parties further represents, warrants, and agrees that in executing  
25 this Consent Order it has placed no reliance on any statement, representation, or promise of any  
26 other party, or any other person or entity not expressly set forth herein, or upon the failure of any  
27 party or any other person or entity to make any statement, representation, or disclosure of anything  
28 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in

1 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of  
2 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

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

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

26 20. Voluntary Agreement. Respondent hereby enters into this Consent Order voluntarily  
27 and without coercion and acknowledges that no promises, threats, or assurances have been made by  
28 the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each

1 represent and acknowledge that he, she or it is executing this Consent Order completely voluntarily  
2 and without any duress or undue influence of any kind from any source.

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

5 To Respondent: ATEL Growth Capital  
6 Drew Waddell  
7 600 Montgomery Street, 9th Floor  
8 San Francisco, California 94111  
9 dwaddell@atel.com

10 To the Commissioner: Sally Hong, Counsel  
11 Department of Financial Protection and Innovation  
12 One Sansome Street, Suite 600  
13 San Francisco, California 94104  
14 Sally.Hong@dfpi.ca.gov

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

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

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

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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: January 27, 2023  
Sacramento, California

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation



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

Dated: January 27, 2023

ATEL GROWTH CAPITAL

By \_\_\_\_\_  
Drew Waddell, Vice President, Corporate Controller  
ATEL Growth Capital