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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.: 60DBO-141608
PROTECTION AND INNOVATION,)
15) **CONSENT ORDER**
16 Complainant.)
17)
18 v.)
19)
20 BALANCE POINT CAPITAL PARTNERS V,)
L.P.,)
21)
22 Respondent.)
23)
24)
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28)

This Consent Order is entered into between the Commissioner of Financial Protection and Innovation (Complainant or Commissioner) and Respondent Balance Point Capital Partners V, L.P. (Respondent) and is made with respect to the following facts:

I.

RECITALS

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

B. Respondent is a Delaware limited partnership.

C. Respondent has a principal place of business at 285 Riverside Ave, Suite 200, Westport, CT 06880.

D. Respondent was licensed as a finance lender under the California Financing Law (CFL) (Fin. Code, § 22000, et seq.) with license number 60DBO-141608 from October 18, 2021 through December 30, 2022.

E. In accordance with Section 22107, each finance lender, broker, or program administrator licensee shall pay to the Commissioner its pro rata share of all costs and expenses, including the costs and expenses associated with the licensing of mortgage loan originators it employs, reasonably incurred in the administration of this division, as estimated by the Commissioner, for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. CFL licensees must pay the annual assessment on or before the 31st day of October each year.

F. Under Section 22150, Complainant may make general rules and regulations and specific rulings, demands, and findings for the enforcement of, and within the general purposes of, the CFL.

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

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

H. In September, the Commissioner sent Respondent an Assessment Notice. The notice was mailed to the Respondent’s address on file with the Department (Registered Address) on September 26, 2022, and was emailed to the Respondent’s Designated Email Address on September 28, 2022. The notice stated that the annual assessment would become delinquent if not paid by October 31, 2022. The Commissioner also posted an invoice for the annual assessment on the Respondent’s account on the Nationwide Multistate Licensing System and Registry (NMLS) on September 30, 2022.

I. As of October 31, 2022, Respondent had not paid its annual assessment. The failure to pay the annual assessment on or before October 31, 2022, represents a violation of Section 22107.

J. As of November 22, 2022, Respondent had not paid its annual assessment. As a result, the Commissioner sent to Respondent’s Registered Address a Notice of Unpaid Assessment on November 22, 2022. The notice warned that failure to pay the assessment would result in summary revocation of Respondent’s license. Respondent did not respond to the Commissioner’s notice. The Commissioner also posted a license item regarding the past due annual assessment on the Respondent’s account on NMLS on November 23, 2022.

K. As of December 19, 2022, Respondent had not paid its annual assessment. As a result, on December 19, 2022, the Commissioner issued an Order Summarily Revoking California Financing Law License Pursuant to Financial Code Section 22107 for CFL license number 60DBO-141608 (Revocation Order). The Department mailed the Revocation Order to Respondent’s Registered Address along with notice that it would become effective December 30, 2022, unless payment of the annual assessment was received by close of business on December 27, 2022.

L. As of December 27, 2022, the assessment remained unpaid. As such, the Revocation Order became effective December 30, 2022.

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2 M. Respondent admits to the jurisdiction of the Commissioner and it is the intention of
3 the parties to resolve this matter without the necessity of a hearing and/or other litigation.

4 N. The Commissioner finds that entering into this Consent Order is in the public interest
5 and consistent with the purposes fairly intended by the CFL.

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

8 **II.**
9 **TERMS AND CONDITIONS**

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

12 2. Desist and Refrain Order. Pursuant to Section 22712, Respondent is hereby ordered to
13 desist and refrain from failing to timely pay the annual assessment in violation of Section 22107.

14 3. Order Rescinding Revocation Order. The Commissioner hereby rescinds the
15 Revocation Order, which was issued on December 19, 2022, and became effective on December 30,
16 2022, as of the effective date of revocation.

17 4. Order to Pay Annual Assessment. Pursuant to Section 22107, the Commissioner
18 hereby orders Respondent to pay \$250.00 to the Department of Financial Protection and Innovation
19 for the 2022 – 2023 annual assessment. The annual assessment shall be paid to the Commissioner
20 within 30 days of the Effective Date of this Consent Order as defined in paragraph 26. The annual
21 assessment shall be labeled “2022 – 2023 annual assessment” and made payable in the form of a
22 cashier’s check or Automated Clearing House deposit to the “Department of Financial Protection
23 and Innovation,” and transmitted to the attention of:

24 ATTN: Accounting
25 Department of Financial Protection and Innovation
26 2101 Arena Boulevard
27 Sacramento, California 95834

28 Notice of payment shall be made via email to Galen Yun, Counsel at Department of Financial
Protection and Innovation, at Galen.Yun@dfpi.ca.gov.

1 5. Administrative Penalties and Fines. Respondent shall pay administrative fines and
2 penalties in the amount of \$2,500.00 for the violations of the CFL enumerated herein. All fines and
3 penalties shall be labeled “fines and penalties” and made payable in the form of a cashier’s check or
4 Automated Clearing House deposit to the “Department of Financial Protection and Innovation,” and
5 transmitted to the attention of:

6 ATTN: Accounting
7 Department of Financial Protection and Innovation
8 2101 Arena Boulevard
9 Sacramento, California 95834

9 Notice of payment shall be made via email to Galen Yun, Counsel at Department of Financial
10 Protection and Innovation, at Galen.Yun@dfpi.ca.gov.

11 6. Failure to Pay Annual Assessment or Administrative Penalty. If Respondent fails to
12 comply with paragraphs 2, 4, or 5, the Commissioner may summarily revoke Respondent’s license.

13 7. Waiver of Notice and Hearing Rights. Respondent acknowledges the Commissioner
14 is ready, willing, and able to proceed with a hearing on the summary revocation order. Respondent
15 hereby waives the right to any notice or hearings, and to any reconsideration, appeal, or other right to
16 review which may be afforded pursuant to the CFL, the California Administrative Procedure Act, the
17 California Code of Civil Procedure, or any other provision of law. By waiving such rights,
18 Respondent effectively consents to this Consent Order becoming final.

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

24 9. Information Willfully Withheld or Misrepresented. This Consent Order may be
25 revoked, and the Commissioner may pursue any and all remedies available under law against
26 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
27 misrepresented information used for and relied upon in this Consent Order.
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1 10. Future Actions by Commissioner. If Respondent fails to comply with the terms of the
2 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
3 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
4 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees, or
5 successors for any and all unknown violations of this CFL.

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

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

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

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

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

25 16. Reliance. Each of the parties represents, warrants, and agrees that in executing this
26 Consent Order, it has relied solely on the statements set forth herein and the advice of its own legal
27 counsel, if represented. Each of the parties further represents, warrants, and agrees that in executing
28 this Consent Order it has placed no reliance on any statement, representation, or promise of any

1 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
2 party or any other person or entity to make any statement, representation, or disclosure of anything
3 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
4 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of
5 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

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

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

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

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

6 23. Notice. Any notice required under this Consent Order shall be provided to each party
7 at the following addresses:

8 To Respondent: Balance Point Capital PartnersV, L.P.
9 Dan Freshman
10 285 Riverside Avenue, Suite 200
11 Westport, CT 06880
12 dfreshman@balancepointcapital.com

13 To the Commissioner: Galen Yun, Counsel
14 Department of Financial Protection and Innovation
15 2101 Arena Blvd
16 Sacramento, California 95691
17 Galen.Yun@dfpi.ca.gov

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

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

22 26. Effective Date. This Consent Order shall become final and effective when signed by
23 all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following
24 email address: dfreshman@balancepointcapital.com.
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27. 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: February 23, 2023
Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: February 22, 2023

Balance Point Capital Partners V, L.P.

By _____
Seth Alvord, Managing Member of Balance Point Capital
Managers V, LLC, Managing Partner of Balance Point
Capital Partners V, L.P.