

1 CLOTHILDE V. HEWLETT
Commissioner
2 COLLEEN MONAHAN
Acting Deputy Commissioner
3 CECILIA RUBALCAVA PERCIVAL (283861)
Counsel
4 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7593
6

7 Attorneys for Complainant

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

11 In the Matter of:

12 THE COMMISSIONER OF FINANCIAL
13 PROTECTION AND INNOVATION,

14 Complainant,

15 v.

16 SARATOGA CAPITAL, INC. (a California
17 Corporation)

18 Respondent.

CONSENT ORDER

19
20
21 This Consent Order is entered into between the Commissioner of Financial Protection and
22 Innovation (Commissioner) and SARATOGA CAPITAL, INC. (Respondent) (collectively the
23 Parties) and is made with respect to the following facts:

24 I.

25 Recitals

26 A. The Commissioner is the head of the Department of Financial Protection and
27 Innovation (formerly the Department of Business Oversight) (Department) and has jurisdiction over
28

1 the offer and sale of securities in California under the Corporate Securities Law of 1968 (CSL)
2 (Corp. Code, § 25000 et seq.).

3 B. Respondent is a California corporation formed on May 26, 2011 and is authorized to
4 conduct business in California. At all relevant times, Respondent’s principal business address was
5 485 Alberto Way Suite 200, Los Gatos, CA 95032.

6 C. The Commissioner finds that Respondent offered and sold non-exempt, unqualified
7 securities in California on or about August 21, 2019, and September 25, 2020, on such dates permits
8 for the qualification of such securities under Corporations Code section 25110 were not in effect.

9 D. Respondent acknowledges and agrees with the Commissioner’s findings.

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

12 **II.**

13 **Terms and Conditions**

14 1. **Purpose.** This Consent Order resolves the issues before the Commissioner, described
15 in recital C above, in a manner that avoids the expense of a hearing and other possible court
16 proceedings, protects consumers, is in the public interest, and is consistent with the purposes and
17 provisions of the CSL.

18 2. **Desist and Refrain Order.** Pursuant to Corporations Code section 25532 Respondent
19 hereby agrees to desist and refrain from the offer or sale of unqualified non-exempt securities in the
20 State of California, including but not limited to guaranteed promissory notes, without a permit for
21 qualification under Corporations Code section 25110 being in effect, unless exempt.

22 3. **Penalties.** Respondent shall pay an administrative penalty of \$9,000 (Penalties) no
23 later than fifteen (15) days after the Effective Date of this Consent Order as defined in paragraph 21.
24 The Penalties must be made payable in the form of a cashier’s check or Automated Clearing House
25 deposit to the Department of Financial Protection and Innovation and transmitted to the attention of
26 Accounting – Litigation, at the Department of Financial Protection and Innovation, 2101 Arena
27 Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to
28 Cecilia Rubalcava Percival by email at Cecilia.Rubalcava@dfpi.ca.gov.

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

9 5. Failure to Comply with Order and Pay Penalties. Respondent agrees that if it fails to
10 comply with the Desist and Refrain Order in this Consent Order, and duly pay the penalties the
11 Commissioner may, in addition to all other available remedies it may invoke under the CSL,
12 summarily suspend, revoke, or deny its CSL qualification or permit. Respondent stipulates to the
13 finality of any such CSL suspensions, revocations, or denials that the Commissioner may order.
14 Respondent waives any notice and hearing rights to contest such summary suspensions,
15 revocations, or denials which may be afforded under the CSL, the California Administrative
16 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
17 therewith.

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

22 7. Future Actions by Commissioner. If Respondent fails to comply with any terms of
23 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
24 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
25 against Respondent or any of its partners, owners, officers, shareholders, directors, employees or
26 successors for any and all unknown violations of the CSL or any other law under the
27 Commissioner’s jurisdiction.
28

1 8. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
2 ability to assist any other government agency with any administrative, civil, or criminal action
3 brought by that agency against Respondent or any other person based upon any of the activities
4 alleged in this matter.

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

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

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

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

25 13. 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 14. Governing Law. This Consent Order will be governed by and construed in
4 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
5 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
6 forum to the maintenance of such action or proceeding in such court.

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

10 16. Effect Upon Future Proceedings. If Respondent applies for any license, registration,
11 permit, or qualification under the Commissioner’s current or future jurisdiction, or if Respondent is
12 the subject of any future action by the Commissioner to enforce this Consent Order, then the subject
13 matter hereof shall be admissible for the purpose of such application(s) or enforcement
14 proceeding(s).

15 17. Voluntary Agreement. Respondent enters into this Consent Order voluntarily and
16 without coercion and acknowledges 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
19 without 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
21 party at the following addresses:

22 To Respondent: Kirk E. Kozlowski, President
23 Saratoga Capital, Inc.
24 485 Alberto Way, Suite 200
25 Los Gatos, CA 95032
kkozlowski@scisj.net

26 To the Commissioner: Cecilia Rubalcava Percival, Counsel
27 Department of Financial Protection and
28 Innovation
320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344

Cecilia.Rubalcava@dfpi.ca.gov

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

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

21. 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’s agent, Kirk E. Kozlowski at kkozlowski@scisj.net.

22. 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 9, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By: Colleen Monahan Digitally signed by Colleen Monahan
Date: 2023.02.09 13:19:32 -08'00'
Colleen Monahan
Acting Deputy Commissioner

Dated: February 9, 2023

Saratoga Capital, Inc.

By: Kirk E. Kozlowski
Kirk E. Kozlowski
President

