

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
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Assistant Chief Counsel
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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.: 603C212
PROTECTION AND INNOVATION,)
15) **CONSENT ORDER**
16 Complainant.)
17)
18 v.)
19 CALIFORNIA ATTORNEY LENDING II, INC)
20 Respondent.)

21 This Consent Order is entered into between the Commissioner of Financial Protection and
22 Innovation (Complainant or Commissioner) and Respondent California Attorney Lending II, Inc.
23 (Respondent) and is made with respect to the following facts:

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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 New York corporation.

C. Respondent has a principal place of business at 500 Pearl St., Ste. 820 Buffalo, NY 14202.

D. Respondent is licensed as a finance lender under the California Financing Law (CFL) (Fin. Code, § 22000, et seq.) with license number 603C212.

E. In accordance with Financial Code section 22159, CFL licensees must file an annual report with the Commissioner by March 15 of each year (Annual Report).

F. On January 2, 2024, the Commissioner notified CFL licensees of the deadline of March 15, 2024, to file their annual reports by sending a notice to the email address each CFL licensee must establish for communications from the Commissioner (Designated Email Address) pursuant to the Commissioner’s Order on Electronic Communications, dated November 22, 2013. The notice warned that the Commissioner could assess monetary penalties for untimely filing or failing to file pursuant to Financial Code section 22715(b).

G. On March 1, 2024, the Commissioner again notified CFL licensees of the deadline to file their annual reports by sending a notice to the Designated Email Address of each CFL licensee. The notice warned that the Commissioner could assess penalties or summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

H. On March 11, 2024, the Commissioner again notified CFL licensees of the deadline to file their annual reports by sending a notice to the Designated Email Address of each CFL licensee. The notice warned that the Commissioner could assess penalties or summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

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

1 I. On March 12, 2024, the Commissioner again notified CFL licensees of the deadline
2 to file their annual reports by sending a notice to the Designated Email Address of each CFL
3 licensee. The notice again warned that the Commissioner could assess penalties or summarily revoke
4 licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

5 J. On March 13, 2024, the Commissioner again notified CFL licensees of the deadline
6 to file their annual reports by sending a notice to the Designated Email Address of each CFL
7 licensee. The notice again warned that the Commissioner could assess penalties or summarily revoke
8 licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

9 K. On March 15, 2024, the Commissioner notified CFL licensees via an email notice
10 sent to the Designated Email Address of each CFL licensee that the Commissioner had issued a one-
11 time extension of time to file the Annual Report to March 25, 2024.

12 L. On March 21, 2024, the Commissioner again notified CFL licensees of the deadline
13 to file their annual reports by sending a notice to the Designated Email Address each CFL licensee.
14 The notice again warned that the Commissioner could assess penalties and summarily revoke
15 licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

16 M. As of April 3, 2024, Respondent had not filed its Annual Report with the
17 Commissioner. As a result, the Commissioner issued a notice via email to Respondent’s Designated
18 Email Address advising Respondent that its Annual Report filing was past due, and that it would be
19 assessed a penalty and potentially summarily revoked pursuant to Financial Code section 22715 if it
20 did not promptly file its Annual Report (Notice Email).

21 N. As of April 12, 2024, Respondent had not filed its Annual Report with the
22 Commissioner. As a result, the Commissioner issued a notice via certified mail to Respondent’s
23 license address on file with the Commissioner advising Respondent that it should file its annual
24 report by or before April 26, 2024, or else its license would be summarily revoked pursuant to
25 Financial Code section 22715 (Notice Letter). Also, on April 17, 2024, the Commissioner notified
26 Respondent of the delinquent Annual Report through the Nationwide Multistate Licensing System
27 and Registry (NMLS) in the form of an NMLS license item and invoice.

28 O. As of April 26, 2024, Respondent had not filed its Annual Report with the

1 Commissioner as directed in the pre-deadline notices, the Notice Email, and the Notice Letter. As a
2 result, on May 8, 2024, the Commissioner issued an Order Summarily Revoking California Finance
3 Lenders License and/or Broker license pursuant to Financial Code Section 22715 for CFL license
4 number 603C212 (Summary Revocation Order).

5 P. Respondent notified the Commissioner that Respondent was requesting a hearing on
6 the Summary Revocation Order or reinstatement of the license on May 14, 2024.

7 Q. On May 15, 2024, Respondent submitted its Annual Report, which was due on March
8 25, 2024, 37 business days late. Pursuant to Financial Code Section 22715, the maximum penalty
9 that may be imposed for filing 37 business days late is \$16,500.00 (\$100 per business day for the
10 first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

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

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

15 **II.**

16 **TERMS AND CONDITIONS**

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

19 2. Order Rescinding Revocation Order. The Commissioner hereby rescinds the
20 Summary Revocation Order.

21 3. Administrative Penalty. Respondent shall pay an administrative penalty of \$5,000.00
22 no later than 30 days after the Effective Date of this Consent Order as defined in paragraph 25. 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 John King,
27 Counsel, Department of Financial Protection and Innovation, One Sansome St., Ste. 600, San
28 Francisco, CA 94102/john.king@dfpi.ca.gov.

1 4. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
2 3, the Commissioner may summarily suspend Respondent from engaging in business under its
3 license until it provides evidence of compliance to the Commissioner’s satisfaction. Respondent
4 hereby waives any notice or hearing rights afforded under the Administrative Procedure Act,
5 including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any
6 other provision of law to contest the summary suspension contemplated by this paragraph.

7 5. Waiver of Notice and Hearing Rights. Respondent acknowledges the Commissioner
8 is ready, willing, and able to proceed with a hearing on the Summary Revocation Order on the
9 charges contained in this Consent Order. Respondent hereby waives the right to any hearings, and to
10 any reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
11 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
12 provision of law. Respondent further expressly waives any requirement for the filing of an
13 Accusation pursuant to Government section 11415.60, subdivision (b). By waiving such rights,
14 Respondent effectively consents to this Consent Order and the Order Rescinding Revocation Order
15 becoming final.

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

21 7. Failure to Comply with Consent Order. Respondent agrees that if it fails to comply
22 with the terms of this Consent Order, the Commissioner may, in addition to all other available
23 remedies it may invoke under the CFL, summarily suspend/revoke the CFL license of Respondent
24 until Respondent is in compliance. Respondent waives any notice and hearing rights to contest such
25 summary suspensions/revocations which may be afforded under the CFL, the California
26 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
27 in connection therewith.
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1 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
2 revoked, and the Commissioner may pursue any and all remedies available under law against
3 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
4 misrepresented information used for and relied upon in this Consent Order.

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

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

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

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

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

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

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

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

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

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

26 19. Counterparts. This Consent Order may be executed in one or more separate
27 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
28 together constitute a single document.

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

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

10 22. Notice. Any notice required under this Consent Order shall be provided to each party
11 at the following addresses:

12 To Respondent: California Attorney Lending II, Inc.
13 Ryan Kagels
14 500 Pearl Street, Ste. 820
15 Buffalo, NY 14202
16 rkagels@counselfinancial.com

17 To the Commissioner: John King, Counsel
18 Department of Financial Protection and Innovation
19 One Sansome St., Ste. 600
20 San Francisco, California 94102
21 john.king@dfpi.ca.gov

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

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

26 25. Effective Date. This Consent Order shall become final and effective when signed by
27 all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following
28 email address: rkagels@counselfinancial.com.

 26. 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

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obligations set forth herein.

Dated: May 20, 2024
Sacramento, California



CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: May 20, 2024

CALIFORNIA ATTORNEY LENDING II, INC.

By _____
Ryan Kagels, Chief Financial Officer