

1 MARY ANN SMITH
Deputy Commissioner
2 DANIEL P. O'DONNELL
Assistant Chief Counsel
3 NOAH M. BEAN (State Bar No. 257657)
4 Senior Counsel
5 Department of Financial Protection and Innovation
6 2101 Arena Boulevard
7 Sacramento, CA 95834
8 Telephone: (916) 936-7478
9 Facsimile: (916) 928-7929
10 noah.bean@dfpi.ca.gov

11 Attorneys for Complainant

12
13 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
14 OF THE STATE OF CALIFORNIA
15

16 In the Matter of:) CONSENT ORDER
17)
18 THE COMMISSIONER OF FINANCIAL)
19 PROTECTION AND INNOVATION,)
20)
21 Complainant,)
22 v.)
23 JAMES JACOB BERRY, COMMUNITY)
24 SOLAR INC. DBA PREMIER COMMUNITY)
25 CONSTRUCTION, PACE CONSULTING)
26 AGENCY INCORPORATED DBA THE PACE)
27 PROGRAM OF CALIFORNIA, and PACE)
28 MARKETING & COMMUNICATIONS)
Respondents.)

29 Complainant, the Commissioner of Financial Protection and Innovation (Commissioner), and
30 respondents, (1) James Jacob Berry (Berry), (2) Community Solar Inc. DBA Premier Community
31 Construction (“Community Solar”), (3) PACE Consulting Agency Incorporated DBA The PACE
32 Program of California (“The PACE Program”), and (4) PACE Marketing & Communications
33 (collectively “Respondents”), enter into this Consent Order with respect to the following facts:

I. Recitals

1
2 A. Under the California Financing Law (CFL), PACE (Property Assessed Clean Energy)
3 programs provide a type of financing that allows owners of real property to finance improvements to
4 real property relating to energy efficiency, water conservation, and other environmentally beneficial
5 improvements through property tax assessments. (Fin. Code, § 22016.) The Commissioner regulates
6 PACE programs by licensing PACE program administrators, which administer PACE programs on
7 behalf of, and with the consent of, a public agency. (Fin. Code, §§ 22018, 22100.5.) In turn, each
8 program administrator authorizes (enrolls), trains, contracts with, and oversees PACE solicitors and
9 PACE solicitor agents—builders, consultants, and their agents who market PACE products to
10 property owners, facilitate PACE program applications processed by the program administrator,
11 contract directly with property owners, and complete the improvements and repairs financed through
12 the PACE program. (Fin. Code, §§ 22017, 22680 – 22683.)

13 B. The Commissioner has enforcement authority for any violations of the CFL by PACE
14 program administrators, enrolled PACE solicitors, and/or enrolled PACE solicitor agents under
15 Financial Code sections 22689 and 22690. Under Financial Code section 22690, the Commissioner
16 may demand in an administrative enforcement action that a PACE solicitor and/or a PACE solicitor
17 agent discontinue engaging in the business of soliciting property owners to enter into assessment
18 contracts related to any program administrator indefinitely.

19 C. PACE solicitors and PACE solicitor’s agents are subject to the CFL’s general and
20 specific prohibitions against fraud; materially misleading statements and representations; and unfair,
21 deceptive, untrue, or misleading advertising subject to the Unfair Competition Law (UCL), Business
22 and Professions Code section 17200. The UCL incorporates violations of the False Advertising Law
23 (FAL), Business and Professions Code sections 17500 et seq., including the prohibition under section
24 17533.6 against the use of “a seal, . . . trade or brand name, . . . or any other term, symbol, or content
25 that reasonably could be interpreted or construed as implying any federal, state, or local government .
26 . . connection, approval, or endorsement of any product or service”

27 D. Under the California Consumer Financial Protection Law (CCFPL), it is unlawful for
28 any “covered person” or “service provider” to engage in “unlawful, unfair, deceptive, or abusive act

1 or practice with respect to consumer financial products or services,” offers or provides to a consumer
2 “any financial product or service not in conformity with any consumer financial law,” or commits
3 “any act or omission in violation of a consumer financial law.” (Fin. Code, § 90003.) A “covered
4 person” includes “[a]ny person that engages in offering or providing a consumer financial product or
5 service to a resident of this state,” or their affiliate or service provider. (Fin. Code, § 90005.) A
6 “service provider” includes any person who “[p]articipates in designing, operating, or maintaining the
7 consumer financial product or service,” or “[p]rocesses transactions relating to the consumer financial
8 product or service”

9 E. The Commissioner has enforcement authority for any violations of the CCFPL under
10 Financial Code sections 90006 and 90012. Under Financial Code section 90006, the Commissioner
11 may bring an administrative enforcement action, and under Financial Code section 90012 the
12 Commissioner may demand, among other things, “[l]imits on the activities or functions of the
13 person.”

14 F. Berry is, and has been since at least February 19, 2020, the sole officer and owner of
15 three California-registered companies, Community Solar, The PACE Program, and PACE Marketing
16 & Communications. Community Solar is a contractor licensed with the California State Licensing
17 Board (CSLB Lic. No. 1045673), and it was enrolled with a program administrator as a PACE
18 solicitor on November 21, 2018. Berry enrolled with the program administrator as a PACE solicitor
19 agent for Community Solar on the same date. Berry and Community Solar were disenrolled by the
20 program administrator on November 24, 2020. The PACE Program is not a contractor licensed with
21 the CSLB, and it has never been enrolled with a PACE program administrator.

22 G. Berry, on behalf of The PACE Program, registered the URLs “pace-consulting-
23 agency-incorporated.business.site” and “pace-ca.us” in 2016 and 2018, respectively, and by April 14,
24 2020 was advertising PACE financing on the websites. Both websites displayed content soliciting
25 prospective customers to apply for construction financing and both continued to use the term
26 “PACE” in their business names, URLs, and/or in describing their operations. Both websites have
27 remained active and have used the term “PACE” in conjunction with construction or construction
28 finance until at least January 28, 2021.

1 H. In April of 2020, The PACE Program began mailing letters and fliers to homeowners
2 throughout Los Angeles County and San Bernardino County offering projects eligible for PACE
3 financing. The fliers prominently displayed a seal very similar to that of the State of California that
4 included the words “The PACE Program, “Public Works,” and “California.” They also displayed a
5 picture of a capitol building, a diagram showing the State of California and all of its counties, and the
6 “pace-ca.us” and “info@pace-ca.us” web and email addresses. Furthermore, they offered a “No-Cost
7 Efficiency Package” dubbed the “California Initiative.” The letters and website also identified as The
8 PACE Program’s headquarters and mailing address a location on Capitol Mall in Sacramento (500
9 Capitol Mall, Suite 2350, Sacramento, CA 95814) that is in fact a virtual office vendor’s address.
10 Additionally, each of the letters was purportedly signed by a person with the title “Regional
11 Administrator.”

12 I. The letters also state either that Los Angeles County or San Bernardino County “is
13 investing money back into your community” in the form of “no-cost programs” to make homes more
14 energy efficient. Moreover, some of the letters were sent to Los Angeles County homeowners after
15 April 3, 2020, the date that Los Angeles County officially terminated its contract with the PACE
16 program administrator that had enrolled Community Solar as a PACE solicitor and Berry as a PACE
17 solicitor agent. Notwithstanding the county’s termination of its PACE program in April, Community
18 Solar continued to accept and/or submit PACE financing applications for Los Angeles County
19 homeowners as late as September 22, 2020.

20 J. Consumers who reached out to The PACE Program in response to the mailers and
21 fliers, or who identified The PACE Program via its websites, were asked to schedule an in-person
22 appointment with a sales representative. In those appointments, the sales representatives identified
23 themselves as employees of The PACE Program. The sales representatives offered PACE-financed
24 home improvement projects, collected the consumers’ financial information and documents
25 (including tax returns and pay stubs), helped consumers fill out the PACE program administrator’s
26 financing applications, and served as consumers’ primary point-of-contact for their PACE-financed
27 projects. Once The PACE Program sales representatives collected customer information, the sales
28 representatives or Berry would then submit PACE financing applications to the DFPI-licensed PACE

1 program administrator solely in the name of the enrolled PACE solicitor, Community Solar.
2 However, The PACE Program's sales representatives identified Community Solar merely as a
3 contractor in contracts and in communications with consumers; the sales representatives did not
4 disclose the true nature of the relationship between the two entities or Berry's ownership of both
5 entities.

6 K. The Commissioner finds that entering into this Consent Order is in the public interest
7 and consistent with the purposes fairly intended by the policies and provisions of the CFL and
8 CCFPL.

9 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
10 contained herein, the parties agree as follows:

11 **II. Terms and Conditions**

12 1. Purpose. This Consent Order resolves the issues before the Commissioner described
13 above in a manner that avoids the expense of a hearing and other possible court proceedings, protects
14 consumers, is in the public interest, and is consistent with the purposes and provisions of the CFL and
15 CCFPL.

16 2. Waiver of Hearing Rights. The Respondents acknowledge that the Commissioner is
17 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
18 findings described in the Recitals above. The Respondents hereby waive the right to any hearings,
19 and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the
20 CFL, the CCFPL, the Administrative Procedure Act (APA) (Govt. Code, § 11370 et seq.), the Code
21 of Civil Procedure (CCP) (Code of Civ. Proc., § 1 et seq.), or any other provision of law. By waiving
22 such rights, the Respondents effectively consent to the finality of this Consent Order.

23 3. Order to Desist and Refrain. The Respondents hereby agree that in accordance with
24 Financial Code sections 22161, 22680, and 90003, Business and Professions Code sections 17200 et
25 seq. and 17500 et seq. (and particularly 17533.6), they will immediately and indefinitely desist and
26 refrain from the following:

- 27 a. Soliciting customers for PACE financing without enrolling with a PACE
28 program administrator;

- b. Operating a construction, construction consulting, or construction financing business with the term “PACE” in it;
- c. Using or distributing any construction, construction consulting, or construction financing marketing materials with the term “PACE” in them;
- d. Registering or maintaining any URL, or publishing or maintaining any website, for a construction, construction consulting, or construction financing business with the term “PACE” in it;
- e. Making materially false or misleading statements or representations in marketing materials, customer communications, and contracts;
- f. Misrepresenting, concealing, or engaging in fraudulent conduct intended to deceive consumers regarding the nature of the relationships between and among the Respondents.

4. Bar from Enrollment with Any PACE Program Administrator. Berry agrees not to seek enrollment as a PACE solicitor agent with any PACE Program Administrator, or to have any entity he owns, manages, or controls seek enrollment as a PACE solicitor with any PACE Program Administrator. Should the Commissioner make a finding that Berry or any entity Berry owns or controls has violated or is violating any provision of the CFL or CCFPL, or any rule, regulation, or law under the jurisdiction of the Commissioner, the state of California, the United States of America, and every state and foreign government (and political subdivision thereof), the Commissioner may, in his discretion, automatically revoke any enrollment or license held by or deny any pending application(s) of the Respondents or any entity Berry owns or controls. The Respondents hereby waive any notice and hearing rights to contest such revocation, demand for disenrollment, or denial, which may have been afforded them under the CFL, CCFPL, APA, CCP, or any other provision of law in connection with this matter.

5. Full and Final Settlement. The parties hereby acknowledge and agree that this Consent Order is intended to constitute a full, final, and complete resolution of the matter, and that no further proceedings or actions will be brought by the Commissioner in connection with the matter under the

1 CFL and CCFPL, the regulations promulgated thereunder, or any other provision of law, excepting
2 therefrom any proceeding to enforce compliance with the terms of this Consent Order.

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

7 7. Future Actions by Commissioner. If any of the Respondents fails to comply with any
8 terms of the Consent Order, the Commissioner may institute proceedings for any and all violations
9 otherwise resolved under this Consent Order. The Commissioner reserves the right to bring any
10 future actions against the Respondents for any and all unknown violations of the CFL, the CCFPL, or
11 the regulations promulgated thereunder.

12 8. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
13 ability to assist a government agency (whether city, county, state, or federal) or official self-
14 regulatory organization with any administrative, civil, or criminal prosecution brought by that agency
15 or official organization against the Respondents based upon any of the activities alleged in this matter
16 or otherwise.

17 9. 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 10. Reliance. Each of the parties represents, warrants, and agrees that in executing this
21 Consent Order he or it has relied solely on the statements set forth herein and the advice of his or its
22 own counsel. Each of the parties further represents, warrants, and agrees that in executing this
23 Consent Order he or it has placed no reliance on any statement, representation, or promise of any
24 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
25 party or any other person or entity to make any statement, representation or disclosure of anything
26 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
27 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of
28 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

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

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

20 15. Effect Upon Future Proceedings. If any of the Respondents apply for any license,
21 permit, qualification or enrollment under the Commissioner's current or future jurisdiction or are the
22 subject of any future action by the Commissioner to enforce this Consent Order, then the subject
23 matter hereof shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

24 16. Voluntary Agreement. The parties enter into this Consent Order voluntarily and
25 without coercion, and acknowledge that no promises, threats, or assurances have been made by the
26 Commissioner, or any officer or agent thereof, about this Consent Order. Each of the parties
27 represents and acknowledges that he or it is executing this Consent Order completely voluntarily and
28 without any duress or undue influence of any kind from any source.

1 17. Notice. Any notice/report required under this Consent Order shall be addressed as
2 follows:

3 To the Respondents: Benjamin Pugh, Esq.
4 Partner
5 Holland & Knight LLP
6 3 Park Plaza, Suite 1400
7 Irvine, CA 92614
8 Benjamin.Pugh@hkllaw.com

9 To the Commissioner: Noah M. Bean, Esq.
10 Senior Counsel
11 Department of Financial Protection and
12 Innovation
13 2101 Arena Blvd.
14 Sacramento, California 95834
15 noah.bean@dfpi.ca.gov

16 18. Signatures. An electronic signature, or a faxed, photocopied, or scanned copy of an
17 original signature, shall be deemed the same as an original signature.

18 19. Public Record. The parties hereby acknowledge that this Consent Order is and will be
19 a matter of public record.

20 20. Effective Date. This Consent Order shall become final and effective when signed by
21 each of the parties and delivered by the Commissioner’s counsel via e-mail to the Respondents’
22 counsel at Benjamin.Pugh@hkllaw.com.

23 21. Authority to Sign. Each signatory hereto covenants that he/she/they/it possess(es) all
24 necessary capacity and authority to sign and enter into this Consent Order and undertake(s) the
25 obligations set forth herein.

26 Dated: March 30, 2021

27 MANUEL P. ALVAREZ
28 Commissioner of Financial Protection and Innovation



By: _____
MARY ANN SMITH
Deputy Commissioner

1 Dated: March 17, 2021

JAMES JACOB BERRY

2

3

By: _____
JAMES JACOB BERRY

4

5 Dated: March 17, 2021

COMMUNITY SOLAR INC. DBA PREMIER
COMMUNITY CONSTRUCTION

6

7

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By: _____
JAMES JACOB BERRY, CEO

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10 Dated: March 17, 2021

PACE CONSULTING AGENCY INCORPORATED
DBA THE PACE PROGRAM OF CALIFORNIA

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By: _____
JAMES JACOB BERRY, CEO

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15 Dated: March 17, 2021

PACE MARKETING & COMMUNICATIONS

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By: _____
JAMES JACOB BERRY, CEO

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20 APPROVED AS TO FORM:

21

Dated: March 18, 2021

By: _____
BENJAMIN PUGH, ESQ.
ATTORNEY FOR JAMES JACOB BERRY,
PACE CONSULTING AGENCY
INCORPORATED DBA THE PACE PROGRAM
OF CALIFORNIA

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