State of California  
Department of Financial Protection and Innovation  

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Attorneys for Complainant

BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
OF THE STATE OF CALIFORNIA

In the Matter of:  
THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION,  
Complainant,  
v.  
JAMES JACOB BERRY, COMMUNITY SOLAR INC. DBA PREMIER COMMUNITY CONSTRUCTION, PACE CONSULTING AGENCY INCORPORATED DBA THE PACE PROGRAM OF CALIFORNIA, and PACE MARKETING & COMMUNICATIONS  
Respondents.

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

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

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

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

. . . connection, approval, or endorsement of any product or service . . . .”

D. Under the California Consumer Financial Protection Law (CCFPL), it is unlawful for any “covered person” or “service provider” to engage in “unlawful, unfair, deceptive, or abusive act
or practice with respect to consumer financial products or services,” offers or provides to a consumer “any financial product or service not in conformity with any consumer financial law,” or commits “any act or omission in violation of a consumer financial law.” (Fin. Code, § 90003.) A “covered person” includes “[a]ny person that engages in offering or providing a consumer financial product or service to a resident of this state,” or their affiliate or service provider. (Fin. Code, § 90005.) A “service provider” includes any person who “[p]articipates in designing, operating, or maintaining the consumer financial product or service,” or “[p]rocesses transactions relating to the consumer financial product or service . . . .”

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

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

G. Berry, on behalf of The PACE Program, registered the URLs “pace-consulting-agency-incorporated.business.site” and “pace-ca.us” in 2016 and 2018, respectively, and by April 14, 2020 was advertising PACE financing on the websites. Both websites displayed content soliciting prospective customers to apply for construction financing and both continued to use the term “PACE” in their business names, URLs, and/or in describing their operations. Both websites have remained active and have used the term “PACE” in conjunction with construction or construction finance until at least January 28, 2021.
H. In April of 2020, The PACE Program began mailing letters and fliers to homeowners throughout Los Angeles County and San Bernardino County offering projects eligible for PACE financing. The fliers prominently displayed a seal very similar to that of the State of California that included the words “The PACE Program, “Public Works,” and “California.” They also displayed a picture of a capitol building, a diagram showing the State of California and all of its counties, and the “pace-ca.us” and “info@pace-ca.us” web and email addresses. Furthermore, they offered a “No-Cost Efficiency Package” dubbed the “California Initiative.” The letters and website also identified as The PACE Program’s headquarters and mailing address a location on Capitol Mall in Sacramento (500 Capitol Mall, Suite 2350, Sacramento, CA 95814) that is in fact a virtual office vendor’s address. Additionally, each of the letters was purportedly signed by a person with the title “Regional Administrator.”

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

J. Consumers who reached out to The PACE Program in response to the mailers and fliers, or who identified The PACE Program via its websites, were asked to schedule an in-person appointment with a sales representative. In those appointments, the sales representatives identified themselves as employees of The PACE Program. The sales representatives offered PACE-financed home improvement projects, collected the consumers’ financial information and documents (including tax returns and pay stubs), helped consumers fill out the PACE program administrator’s financing applications, and served as consumers’ primary point-of-contact for their PACE-financed projects. Once The PACE Program sales representatives collected customer information, the sales representatives or Berry would then submit PACE financing applications to the DFPI-licensed PACE
program administrator solely in the name of the enrolled PACE solicitor, Community Solar. However, The PACE Program's sales representatives identified Community Solar merely as a contractor in contracts and in communications with consumers; the sales representatives did not disclose the true nature of the relationship between the two entities or Berry's ownership of both entities.

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

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

II. Terms and Conditions

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

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

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

   a. Soliciting customers for PACE financing without enrolling with a PACE 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
CFL and CCFPL, the regulations promulgated thereunder, or any other provision of law, excepting therefrom any proceeding to enforce compliance with the terms of this Consent Order.

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

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

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

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

10. **Reliance.** Each of the parties represents, warrants, and agrees that in executing this Consent Order he or it has relied solely on the statements set forth herein and the advice of his or its own counsel. Each of the parties further represents, warrants, and agrees that in executing this Consent Order he or it has placed no reliance on any statement, representation, or promise of any other party, or any other person or entity not expressly set forth herein, or upon the failure of any party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.
11. **Waiver, Amendments, and Modifications.** No waiver, amendment, or modification of this Consent Order will be valid or binding unless it is in writing and signed by each of the parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any other provision. No waiver by any party of any breach of, or of compliance with, any condition or provision of this Consent Order by any other party will be considered a waiver of any other condition or provision at another time.

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

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

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

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

16. **Voluntary Agreement.** The parties enter into this Consent Order voluntarily and without coercion, and acknowledge that no promises, threats, or assurances have been made by the Commissioner, or any officer or agent thereof, about this Consent Order. Each of the parties represents and acknowledges that he or it is executing this Consent Order completely voluntarily and without any duress or undue influence of any kind from any source.
17. **Notice.** Any notice/report required under this Consent Order shall be addressed as follows:

    To the Respondents: Benjamin Pugh, Esq.
    Partner
    Holland & Knight LLP
    3 Park Plaza, Suite 1400
    Irvine, CA 92614
    Benjamin.Pugh@hklaw.com

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

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

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

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

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

Dated: March 30, 2021

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

By: MARY ANN SMITH
Deputy Commissioner
CONSENT ORDER

Dated: March 17, 2021

JAMES JACOB BERRY

By: __________________________

JAMES JACOB BERRY

Dated: March 17, 2021

COMMUNITY SOLAR INC. DBA PREMIER COMMUNITY CONSTRUCTION

By: __________________________

JAMES JACOB BERRY, CEO

Dated: March 17, 2021

PACE CONSULTING AGENCY INCORPORATED DBA THE PACE PROGRAM OF CALIFORNIA

By: __________________________

JAMES JACOB BERRY, CEO

Dated: March 17, 2021

PACE MARKETING & COMMUNICATIONS

By: __________________________

JAMES JACOB BERRY, CEO

APPROVED AS TO FORM:

Dated: March 18, 2021

By: __________________________

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