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Deputy Commissioner
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4 Department of Business Oversight
5 One Sansome Street, Suite 600
San Francisco, California 94104
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7 Attorneys for Complainant
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9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA
11

12 In the Matter of:) CFL LICENSE NO. 603C664
13 THE COMMISSIONER OF BUSINESS)
14 OVERSIGHT,) **CONSENT ORDER**
15 Complainant,)
16 v.)
17 CLEAN ENERGY FINANCE, LLC)
18 Respondent.)
19

20 This Consent Order (Order) is entered into between the Commissioner of Business Oversight
21 (Commissioner) and Clean Energy Finance, LLC (Clean Energy) (collectively, the Parties), and is
22 made with respect to the following facts:

23 RECITALS

- 24 A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
25 engaged in the business of finance lending and/or brokering commercial loans pursuant to the
26 California Financing Law (CFL) (Fin. Code, § 22000 et seq.).
27 B. Clean Energy has been licensed by the Department of Business Oversight (DBO) since
28 January 18th, 2006 as a finance lender and broker under the CFL, license number 603C664. Clean

1 Energy has its principal place of business at 4675 MacArthur Court, Suite 800, Newport Beach,
2 California, 92660 and previously had its principal place of business at 3020 Old Ranch Parkway,
3 Suite 400, Seal Beach, California 90740.

4 C. During a regulatory examination of Clean Energy commenced February 13, 2018
5 (Examination) the Commissioner found multiple violations of the Financial Code including the
6 following: 1) Failure to respond to written request for records sent to Clean Energy's designated
7 email address and place of business registered with the DBO in violation of Financial Code sections
8 22156; 2) Failure to report to the DBO it had changed its place of business without informing the
9 DBO in violation of Financial Code section 22153; 3) Failure to respond to the request for records
10 once received at its new address in a timely and complete manner in violation of Financial Code
11 sections 22156, 22701, and 22709; 4) Failure to maintain minimum net worth requirements in
12 violation of Financial Code section 22104; 5) Failure to maintain the required surety bond in the
13 proper form in violation of Financial Code Section 22112; and 6) Failure to submit to the DBO a
14 current and accurate list of officer and directors and persons responsible and the documentation
15 required for their approval by the DBO in a timely manner in violation of Financial Code Section
16 22105 and California Code Of Regulations, Title 10 Section 1409. All violations were eventually
17 corrected by Clean Energy.

18 D. In or about April 11 of 2018, the case was referred to the Enforcement Division of the DBO to
19 assist with obtaining cooperation from Clean Energy during the Examination, and to bring an action
20 under the Financial Code for penalties for past violations and to enforce compliance with
21 regulations in the future. If proven, the potential remedies for those violations, authorized under the
22 CFL, include the issuance of administrative orders to discontinue violations, to pay penalties and to
23 suspend or revoke Clean Energy's CFL license (collectively, Enforcement Action).

24 E. Upon being informed of the DBO's intent to bring the Enforcement Action, Clean Energy
25 responded by indicating that, in order to avoid the time, expense and disruption resulting from the
26 filing of the Enforcement Action by the DBO, Clean Energy would cooperate fully with the
27 Commissioner's request to correct any violations, and consent to the issuance of this Order by the
28 Commissioner to pay penalties and discontinue violations.

1 F. It is the intention and desire of the parties to resolve this matter without the necessity of
2 a hearing and/or other litigation.

3 G. The Commissioner finds that this action is appropriate, in the public interest, and consistent
4 with the purposes fairly intended by the policy and provisions of this law.

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

7 TERMS

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

11 2. Order To Discontinue: Pursuant to Financial Code section 50321, Clean Energy is hereby
12 ordered and agrees to discontinue violations of the CFL including the following: 1) Failure to
13 respond to a requests for records from the DBO sent to its registered business address and/or to
14 produce requested records in a timely and complete manner in violation of Financial Code
15 sections 22156, 22701, and 22709; 2) Failure to report to the DBO it had changed its principal
16 place of business in violation of Financial Code section 22153; 3) Failure to maintain minimum
17 net worth requirements in violation of Financial Code section 22104; 4) Failure to maintain the
18 required surety bond in the proper form in violation of Financial Code Section 22112; and 5)
19 Failure to provide to the DBO a current and accurate list of officer and directors and persons
20 responsible and the documentation required for their approval by the DBO in a timely manner in
21 violation of Financial Code Section 22105 and California Code of Regulations, Title 10 Section
22 1409. Clean Energy agrees to discontinue such violations and stipulate to the finality of the
23 Commissioner’s Order to discontinue.

24 3. Payment of Penalties: Clean Energy shall pay \$20,000.00 in penalties for the above violations
25 which shall be due within 10 calendar days of the Effective Date of this Order, as defined in
26 Paragraph 24. The payments of penalties shall be made in the form of a cashier’s check or
27 Automated Clearing House deposit to the “Department of Business Oversight,” and transmitted to
28 the attention of: Accounting - Litigation, at the Department of Business Oversight located at 1515

1 K Street, Suite 200, Sacramento, California, 95814. Notice of all payments shall be sent to Kirk
2 Wallace, Senior Counsel, Enforcement Division, at the Department of Business Oversight located at
3 One Sansome Street, Suite 600, San Francisco, California, 94104.

4 4. Waiver of Hearing Rights: Clean Energy acknowledges that the Commissioner is ready,
5 willing, and able to proceed with the filing of an administrative enforcement action on the charges
6 contained in this Consent Order. Clean Energy hereby waives the right to any hearings, and to any
7 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
8 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
9 provision of law. Clean Energy further expressly waives any requirement for the filing of an
10 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such
11 rights, Clean Energy effectively consents to this Consent Order to discontinue violations and pay
12 penalties becoming final.

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

18 6. Failure to Comply with Consent Order: Clean Energy agrees that if they fail to meet any
19 requirement of this Consent Order, the Commissioner may, in addition to all other available
20 remedies he may invoke under the CFL, immediately revoke the license of Clean Energy. Clean
21 Energy hereby waives any notice and hearing rights to contest the immediate revocation which
22 may be afforded under the CFL, the California Administrative Procedure Act, the California Code
23 of Civil Procedure, or any other provision of law in connection therewith.

24 7. Information Willfully Withheld or Misrepresented: This Consent Order may be revoked and
25 the Commissioner may pursue any and all remedies available under law against Clean Energy if
26 the Commissioner discovers that Clean Energy knowingly or willfully withheld or misrepresented
27 information used for and relied upon in this Consent Order.

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1 8. Future Actions by the Commissioner: If Clean Energy fails to comply with any 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
4 actions against Clean Energy, or any of its partners, owners, officers, shareholders, directors,
5 affiliates, employees or successors for any and all unknown violations of the CFL.

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

10 10. Independent Legal Advice: Each of the Parties represents, warrants, and agrees that it has
11 received or been advised to seek independent legal advice from its attorneys with respect to the
12 advisability of executing this Consent Order.

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

16 12. Binding: This Consent Order is binding on all heirs, assigns, and/or successors in interest.

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

26 14. Waiver, Amendments, and Modification: No waiver, amendment, or modification of this
27 Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
28 The waiver of any provision of this Consent Order will not be deemed a waiver of any other

1 provision. No waiver by either Party of any breach of, or of compliance with, any condition or
2 provision of this Consent Order by the other Party will be considered a waiver of any other
3 condition or provision or of the same condition or provision at another time.

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

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

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

17 18. Effect Upon Future Proceedings: If Clean Energy applies for any license, permit or
18 qualification under the Commissioner's current or future jurisdiction, or are the subject of any
19 future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
20 shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

21 19. Voluntary Agreement: Clean Energy enter into this Consent Order voluntarily and without
22 coercion and acknowledges that no promises, threats or assurances have been made by the
23 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each
24 represent and acknowledge that he, she or it is executing this Consent Order completely
25 voluntarily and without any duress or undue influence of any kind from any source.

26 20. No Presumption Against Drafting Party: Each Party acknowledges that it has had the
27 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the Parties
28 intend that no presumption for or against the drafting Party will apply in construing any part of

1 this Consent Order. The Parties waive the benefit of Civil Code section 1654 as amended or
2 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
3 language of a contract should be interpreted most strongly against the Party that caused the
4 uncertainty to exist.

5 21. Notice: Any notice required under this Consent Order shall be provided to each Party at the
6 following addresses:

7 To Clean Energy:
8 J. Nathan Jensen, Esq.
9 Chief Legal Officer
10 Clean Energy
11 4675 MacArthur Court, Suite 800
12 Newport Beach, California 92660
13 Nate.Jensen@cleanenergyfuels.com

14 To the Commissioner:
15 Kirk Wallace, Senior Counsel
16 Department of Business Oversight
17 Enforcement Division
18 One Sansome Street, Suite 600
19 San Francisco, California 94104
20 kirk.wallace@dbo.ca.gov

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

23 23. Public Record: Clean Energy hereby acknowledge that this Consent Order will be a matter
24 of public record.

25 24. Effective Date: This Consent Order shall become final and effective when signed by all
26 Parties and delivered by the Commissioner's counsel by email to Clean Energy's counsel at
27 kklein@cleanenergyfuels.com.

28 25. Authority to Sign: Each signator hereto covenants that he/she possesses all necessary

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capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: October 22, 2019

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: October 18, 2019

By _____
ROBERT M. VREELAND
Chief Financial Officer, Clean Energy Finance, LLC