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Commissioner
2 MARY ANN SMITH
Deputy Commissioner
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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:) CFL LICENSE NOS. 603K710 and 6054798
13)
14 THE COMMISSIONER OF FINANCIAL) CONSENT ORDER
PROTECTION AND INNOVATION,)
15)
16 Complainant,)
17 v.)
18 SIERRA INCOME CORPORATION,)
19 Respondent.)
20

21 This Consent Order (Consent Order) is entered into by and between the Commissioner of
22 Financial Protection and Innovation (Commissioner) and Sierra Income Corporation (Sierra)
23 (collectively, Parties), and is made with respect to the following facts:

24 I.

25 **RECITALS**

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of finance lending or brokering under the California Financing Law
28 (CFL) (Fin. Code, § 22000 et seq.).

1 B. Sierra is a Maryland corporation with a principal place of business at 100 Park Avenue,
2 16th Floor, New York, New York 10017.

3 C. Sierra was licensed as a finance lender by the Commissioner under the CFL from May
4 2, 2014, to December 29, 2019, with the main license number 603K710.

5 D. Sierra operated one branch office located at 600 Montgomery Street, 35th Floor, San
6 Francisco, California 94111, under CFL license number 6054798.

7 E. In accordance with Financial Code section 22107, each finance lender, broker, or
8 program administrator licensee shall pay to the Commissioner its pro rata share of all costs and
9 expenses, including the costs and expenses associated with the licensing of mortgage loan originators
10 it employs, reasonably incurred in the administration of this division, as estimated by the
11 Commissioner, for the ensuing year and any deficit actually incurred or anticipated in the
12 administration of the program in the year in which the assessment is made. CFL licensees must pay the
13 annual assessment on or before the 31st day of October each year.

14 F. On September 30, 2019, the Commissioner sent Sierra the Assessment Notice per
15 invoice number CF2930. The notice was mailed to the address Sierra registered with the Department
16 (Registered Address): 280 Park Avenue, 6th Floor East, New York, New York 10017. The notice
17 stated that the annual assessment would become delinquent if not paid by October 31, 2019.

18 G. As of October 31, 2019, Sierra had not paid its annual assessment. The failure to pay
19 the annual assessment on or before October 31, 2019, represents a violation of Financial Code section
20 22107.

21 H. As of November 6, 2019, Sierra had not paid its annual assessment. As a result, the
22 Commissioner sent to Sierra's Registered Address a Notice of Unpaid Assessment on November 6,
23 2019. The notice warned that failure to pay the assessment would result in summary revocation of
24 Sierra's license. Sierra did not respond to the Commissioner's notice.

25 I. As of December 6, 2019, Sierra had not paid its annual assessment. As a result, on
26 December 6, 2019, the Commissioner issued an Order Summarily Revoking California Financing Law
27 License Pursuant to Financial Code Section 22107 for CFL License Numbers 603K710 and 6054798
28 (Revocation Orders). The Department mailed the Revocation Orders to Sierra's Registered Address

1 along with notice that they would become effective December 30, 2019, unless payment of the annual
2 assessment was received by close of business on December 27, 2019.

3 J. As of December 27, 2019, the assessment remained unpaid. As such, the Revocation
4 Orders became effective December 30, 2019.

5 K. In connection with these proceedings, Sierra represented to the Commissioner that after
6 its license had been revoked, it had renegotiated financing contracts and had made advances on
7 commercial lines of credit that it had originated prior to the date of license revocation. The
8 Commissioner finds that Sierra had engaged in the business of a finance lender in violation of
9 Financial Code section 22100.

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

12 **II.**

13 **TERMS AND CONDITIONS**

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

17 2. Order Rescinding Revocation Order. The Commissioner hereby rescinds the
18 Revocation Order, which was issued on December 6, 2019, and became effective on December 30,
19 2019, as of the effective date of revocation.

20 3. Annual Assessment. Sierra shall pay \$500.00 to the Department of Financial Protection
21 and Innovation for the 2019 – 2020 annual assessment. The annual assessment shall be paid to the
22 Commissioner no later than 30 days of the Effective Date of this Consent Order as defined in
23 paragraph 22. The annual assessment must be made payable in the form of a cashier’s check or
24 Automated Clearing House deposit to the Department of Financial Protection and Innovation and
25 transmitted to the attention of Accounting, Department of Financial Protection and Innovation, 2101
26 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to
27 Trevor Carroll, Counsel, Department of Financial Protection and Innovation, 2101 Arena Boulevard,
28 Sacramento, California 95834.

1 4. Administrative Penalty. Sierra shall pay an administrative penalty of \$2,500.00 to the
2 Commissioner (Penalty) within 30 days of the Effective Date of this Consent Order. The Penalty must
3 be made payable in the form of a cashier's check or Automated Clearing House deposit to the
4 Department of Financial Protection and Innovation and transmitted to the attention of Accounting –
5 Litigation, at the Department of Financial Protection and Innovation, 2101 Arena Boulevard,
6 Sacramento, California 95834. Notice of such payment must be concurrently sent to Trevor Carroll,
7 Counsel, Department of Financial Protection and Innovation, Enforcement Division, 2101 Arena
8 Boulevard, Sacramento, California 95834.

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

17 6. Failure to Comply with Consent Order. Sierra agrees that if it fails to comply with the
18 terms of this Consent Order, the Commissioner may, in addition to all other available remedies it may
19 invoke under the CFL, summarily suspend and/or revoke the CFL licenses of Sierra until Sierra is in
20 compliance. Sierra waives any notice and hearing rights to contest such summary suspensions, which
21 may be afforded under the CFL, the California Administrative Procedure Act, the California Code of
22 Civil Procedure, or any other provision of law in connection therewith.

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

27 8. Future Actions by Commissioner. If Sierra fails to comply with any terms of the
28 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise

1 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
2 against Sierra, or any of its partners, owners, officers, shareholders, directors, employees, or
3 successors for any and all unknown violations of the CFL.

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

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

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

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

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

28 14. Full Integration. This Consent Order is the final written expression and the complete

1 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
2 between the parties with respect to the subject matter hereof, and supersedes all prior or
3 contemporaneous agreements, negotiations, representations, understandings, and discussions between
4 and among the parties, their respective representatives, and any other person or entity, with respect to
5 the subject matter covered hereby.

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

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

13 17. Effect Upon Future Proceedings. If Sierra is the subject of any future action by the
14 Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for the
15 purpose of such enforcement proceeding(s).

16 18. Voluntary Agreement. Sierra enters into this Consent Order voluntarily and without
17 coercion and acknowledges that no promises, threats, or assurances have been made by the
18 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
19 and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and without
20 any duress or undue influence of any kind from any source.

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

23
24 To Sierra Income Corporation: John D. Fredericks, Esq.
25 101 The Embarcadero, Ste 200
26 San Francisco, California 94105
johnfredericks@frederickslawcorp.com

27 To the Commissioner: Trevor J. Carroll, Counsel
28 Department of Financial Protection and Innovation
2101 Arena Boulevard

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Sacramento, California 95834
trevor.carroll@dfpi.ca.gov

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

21. Public Record. Sierra acknowledges that the Consent Order shall be matters of public record.

22. 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 Sierra at johnfredericks@frederickslawcorp.com.

23. 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.

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

Dated: February 1, 2022

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

SIERRA INCOME CORPORATION

Dated: February 1, 2022

By: _____
DEAN CROWE
Chief Executive Officer

APPROVED AS TO FORM AND CONTENT

Dated: February 1, 2022

By: _____
JOHN D. FREDERICKS, ESQ.
Counsel for Sierra Income Corporation