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Commissioner  
2 MARY ANN SMITH  
Deputy Commissioner  
3 DANIEL P. O'DONNELL  
Assistant Chief Counsel  
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5 Department of Financial Protection and Innovation  
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6 Sacramento, California 95834  
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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.: 60DBO-118240  
PROTECTION AND INNOVATION, )  
15 ) **CONSENT ORDER**  
16 Complainant. )  
17 )  
18 v. )  
19 FIDELITY BANCORP FUNDING, INC., )  
20 Respondent. )

21 This Consent Order is entered into between the Commissioner of Financial Protection and  
22 Innovation (Complainant or Commissioner) and Respondent FIDELITY BANCORP FUNDING,  
23 INC. (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.).<sup>1</sup>

B. Respondent is a California corporation.

C. Respondent has a principal place of business at 1551 North Tustin Avenue, Suite 700, Santa Ana, California, 92705.

D. Respondent is licensed as a finance lender and broker under the California Financing Law (CFL) (Fin. Code, § 22000, et seq.) with license number 60DBO-118240.

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 3, 2023, the Commissioner notified CFL licensees of the deadline of March 15, 2023, 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 February 10, 2023, 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 1, 2023, 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 again warned that the Commissioner could assess penalties or summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

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

1 I. On March 13, 2023, 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 14, 2023, 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, 2023, the Commissioner again notified CFL licensees of the deadline  
10 to file their annual reports by sending a notice to the Designated Email Address each CFL licensee.  
11 The notice again warned that the Commissioner could assess penalties and summarily revoke  
12 licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

13 L. As of March 16, 2023, Respondent had not filed its Annual Report with the  
14 Commissioner. As a result, on March 16, 2023, the Commissioner issued a notice via email to  
15 Respondent’s Designated Email Address advising Respondent that it must file its annual report by  
16 March 30, 2023, or its license would be summarily revoked pursuant to Financial Code section  
17 22715 (Notice Email).

18 M. As of April 10, 2023, Respondent had not filed its Annual Report with the  
19 Commissioner. As a result, on April 12, 2023, the Commissioner issued a notice via certified mail to  
20 Respondent’s license address on file with the Commissioner advising Respondent that it should file  
21 its annual report by or before April 24, 2023, or else its license would be summarily revoked  
22 pursuant to Financial Code section 22715 (Notice Letter). Also on April 13, 2023, the Commissioner  
23 notified Respondent of the overdue filing through the Nationwide Multistate Licensing System and  
24 Registry (NMLS) in the form of an NMLS license item.

25 N. As of April 24, 2023, Respondent had not filed its Annual Report with the  
26 Commissioner as directed in the pre-deadline notices, the Notice Email, and the Notice Letter. As a  
27 result, on May 3, 2023, the Commissioner issued an Order Summarily Revoking California Finance  
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1 Lenders License and/or Broker license pursuant to Financial Code Section 22715 for CFL license  
2 number 60DBO-118240 (Summary Revocation Order).

3 O. Respondent notified the Commissioner that Respondent was requesting a hearing on  
4 the Summary Revocation Order on May 23, 2023.

5 P. On May 23, 2023, Respondent submitted its Annual Report, which was due on March  
6 15, 2023, 49 business days late. Pursuant to Financial Code Section 22715, the maximum penalty  
7 that may be imposed for filing 49 business days late is \$22,500.00 (\$100 per business day for the  
8 first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

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

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

13 **II.**

14 **TERMS AND CONDITIONS**

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

17 2. Order Rescinding Revocation Order. The Commissioner hereby rescinds the  
18 Summary Revocation Order.

19 3. Administrative Penalty. Respondent shall pay an administrative penalty of \$8,000.00  
20 no later than 30 days after the Effective Date of this Consent Order as defined in paragraph 25. The  
21 penalty must be made payable in the form of a cashier’s check or Automated Clearing House deposit  
22 to the Department of Financial Protection and Innovation and transmitted to the attention of  
23 Accounting – Litigation, Department of Financial Protection and Innovation, 2101 Arena Boulevard,  
24 Sacramento, California 95834. Notice of the payment must be concurrently sent to Noah M. Bean,  
25 Senior Counsel, Department of Financial Protection and Innovation, 2101 Arena Boulevard,  
26 Sacramento, California 95834/Noah.Bean@dfpi.ca.gov.

27 4. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph  
28 3, the Commissioner may summarily suspend Respondent from engaging in business under its

1 license until it provides evidence of compliance to the Commissioner’s satisfaction. Respondent  
2 hereby waives any notice or hearing rights afforded under the Administrative Procedure Act,  
3 including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any  
4 other provision of law to contest the summary suspension contemplated by this paragraph.

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

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

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

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

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

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

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

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

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

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

27 15. Reliance. Each of the parties represents, warrants, and agrees that in executing this  
28 Consent Order, it has relied solely on the statements set forth herein and the advice of its own legal

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

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

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

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

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

27       20.    Effect Upon Future Proceedings. If Respondent applies for any license, permit or  
28 qualification under the Commissioner’s current jurisdiction, or are the subject of any future action by

1 the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for  
2 the purpose of such application(s) or enforcement proceeding(s).

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

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

10 To Respondent: FIDELITY BANCORP FUNDING, INC.  
11 Adam Mikkelsen  
12 1551 North Tustin Avenue, Suite 700,  
13 Santa Ana, California, 92705  
accounting@fbloans.com

14 To the Commissioner: Noah M. Bean, Senior Counsel  
15 Department of Financial Protection and Innovation  
16 2101 Arena Blvd  
17 Sacramento, California 95691  
Noah.Bean@dfpi.ca.gov

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

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

22 25. Effective Date. This Consent Order shall become final and effective when signed by  
23 all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following  
24 email address: accounting@fbloans.com.

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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 obligations set forth herein.

Dated: June 6, 2023  
Sacramento, California

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation



By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: June 5, 2023

FIDELITY BANCORP FUNDING, INC.

By \_\_\_\_\_  
Adam Mikkelsen, CFO