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[REDACTED], State Bar No. 1 [REDACTED] 0
[REDACTED] LAW [REDACTED]
[REDACTED]
San Francisco, CA [REDACTED]
Telephone: (415) [REDACTED]
Facsimile: (415) [REDACTED]
[REDACTED]

T [REDACTED] [REDACTED] G, on behalf of himself
and all others similarly situated,

Claimants,

v.

MARIN CLEAN ENERGY, *et al.*

Defendant.

CLAIM AGAINST GOVERNMENT
ENTITY (Gov't Code § 910, *et seq.*)

CLAIM AGAINST MARIN CLEAN ENERGY AND RELATED INDIVIDUALS:

You are hereby notified that [REDACTED] g("Claimant"), on behalf of himself and all
others similarly situated, claims damages, restitution, declaratory relief, injunctive relief and other
relief from Marin Clean Energy, a California public agency established under the provisions of
the Government Code § 6500 *et seq.*), and its Chief Executive Officer Dawn Weisz (collectively,
"MCE").

A. Name and Post Office Address of the Claimant and Information About the Class:

T [REDACTED] G, on behalf of himself and the Class:

T [REDACTED] g
[REDACTED]
[REDACTED] Valley, CA [REDACTED]

1 Claimant T [REDACTED]g is an individual who is, and at all relevant times was, a citizen
2 of Marin County, California and a customer of MCE. Mr. [REDACTED]g purchases energy in the
3 form of electricity from MCE that is represented to have a particular renewable content, in Mr.
4 [REDACTED]g's case, "50% Renewable" energy.

5 Claimant makes this claim on behalf of himself and the following Class:

6 All persons who are customers of MCE who participated in MCE's Light Green
7 50% Renewable or Deep Green 100% Renewable energy programs from the date
8 one year prior to the date of this Claim through the present.

9 The members of the Class are so numerous that joinder of all members would be
10 impracticable. There are questions of law and fact common to the members of the Class that
11 predominate over any questions affecting only individual members, including:

- 12 • Whether MCE violated California law by failing to provide its customers with
13 energy produced from renewable sources in the appropriate minimum percentages
14 for each of its 50% Renewable and 100% Renewable programs;
- 15 • Whether the purchase of financial instruments known as unbundled renewable
16 energy credits ("RECs") by MCE fulfills MCE's obligation to its customers to
17 provide renewable energy under its 50% Renewable and 100% Renewable
18 programs;
- 19 • Whether MCE violated the contractual terms under which MCE provides energy
20 to its 50% Renewable and 100% Renewable program customers by using RECs to
21 meet its renewable obligations;
- 22 • Whether MCE properly disclosed the use of RECs to fulfill its obligation to
23 provide renewable energy to its 50% Renewable and 100% Renewable program
24 customers;
- 25 • Whether MCE disseminated untrue or misleading statements regarding its 50%
26 Renewable and 100% Renewable program, the true source of energy provided
27 under these programs, and the use of RECs as a surrogate for providing energy

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actually derived from renewable sources.

Claimant’s claims are typical of the claims of the members of the Class. Claimant has no interests antagonistic to the interests of the Class and is not subject to any unique defenses. Claimant will fairly and adequately protect the interest of all members of the Class and has retained attorneys experienced in class action and complex litigation. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because: (i) it is economically impractical for members of the Class to prosecute individual actions; (ii) the Class are readily definable and ascertainable; (iii) prosecution as a class action will eliminate the possibility of repetitious litigation; and (iv) a class action will enable claims to be handled in an orderly and expeditious manner, will save time and expense, and will ensure uniformity of decisions. Claimant does not anticipate any difficulty in the management of this litigation.

B. Post Office Address to Which the Person Presenting the Claim Desires Notices To Be Sent:

c/o [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Tel: (415) [REDACTED]

C. The Date, Place, and Other Circumstances of the Occurrence or Transaction Which Gave Rise to the Claim Asserted:

1. Factual Background

Renewable energy is energy generated by resources that either do not diminish when used or are naturally replenished on a short human timeframe. Renewable energy technologies have a positive impact on the environment and are considered environmentally preferable to fossil fuel or other conventional energy sources. When renewable energy replaces fossil fuel derived energy, it has a significant potential to reduce greenhouse gas emissions (“GHG”) and reduce global warming. Renewable sources of energy include solar (photovoltaic, solar thermal), wind, geothermal, wave, tidal and low-impact hydroelectricity. Acknowledged benefits of renewable energy include:

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- Generating energy that produces no greenhouse gas emissions from fossil fuels thereby mitigating global warming;
- Reducing air pollution and providing related benefits such as improved public health and environmental quality and reduced health care costs;
- Diversifying energy supply, reducing dependence on imported fuels and increasing energy security;
- Creating local economic development and jobs in manufacturing, installation and service
- Stabilizing energy prices and markets; and
- Supporting a more reliable and resilient energy system.

In 2002, the California State Legislature passed Assembly Bill 117, enabling Community Choice Aggregation (“CCA”). This law allows groups of communities to band together to purchase power on behalf of their residents and businesses using revenues rather than taxpayer subsidies. MCE is a public agency that was formed in December 2008 for the purposes of implementing a CCA energy program. In May 2010, MCE launched California’s first CCA program. MCE has continually provided electricity to customers since that time. MCE currently provides electricity in Marin County, unincorporated Napa Country and the cities of Benicia, El Cerrito, Richmond and San Pablo. Electricity customers in these locals are automatically enrolled as customers of MCE unless they opt-out.

Among MCE’s consumer power choices are two primary programs, MCE’s Light Green 50% Renewable Energy (“50% Renewable”) program and MCE’s Deep Green 100% Renewable Energy (“100% Renewable”) program. Customers that do not opt-out are automatically enrolled in the 50% Renewable program. Under the 50% Renewable program, MCE promises that at least 50% of the electricity provided comes from renewable sources such as wind, eligible hydroelectric, biomass and biowaste, geothermal and solar. MCE currently claims that this is more than twice the amount of renewable energy that is available from PG&E (27% vs 56%). <http://mcecleanenergy.org/faq/>, last visited Nov. 4, 2015. MCE also encourages all of its

1 customers to enroll in MCE’s 100% Renewable program. Class members that participate in the
2 100% Renewable program elect to pay more for their electricity based on the promise that the
3 electricity provided to them is derived from 100% renewable sources. MCE claims that under the
4 100% Renewable program, “all of the power you buy for your home or business comes from
5 100% non-polluting, Green-e Energy–certified wind power.” ([http://mcecleanenergy.org/100-
6 renewable/](http://mcecleanenergy.org/100-renewable/), last visited Nov. 4, 2015).

7 In MCE’s standard form Terms and Conditions of Service for the 50% Renewable
8 program, MCE promises and represents that fifty percent of the electricity provided is generated
9 from renewable energy sources. Similarly, in MCE’s standard form Deep Green Price, Terms &
10 Conditions for the 100% Renewable program, MCE promises and represents that 100% of the
11 electricity provided to customers is derived from renewable energy sources. MCE charges its
12 100% Renewable program customers more for the electricity they use.

13 One of MCE’s charter objectives is to reduce GHG emissions through the purchase and
14 provision of GHG free power. MCE claims that “In the calendar year 2014, renewable, carbon-
15 free energy supplies procured by MCE comprised approximately 63% of all customer energy
16 deliveries.” <http://mcecleanenergy.org/energy-procurement>, last visited Nov. 4, 2015.

17 Despite these promises, MCE does not provide Claimant or the members of the Class the
18 promised percentage of renewable or carbon free energy. MCE purchases most of its power from
19 Shell Energy North America under a long term contract. The energy provided by Shell Energy
20 North America is not derived from renewable sources and is not GHG free. It is considered
21 “System Power” by the California Air Resources Board (“CARB”) and is not eligible for
22 Renewable Portfolio Standard (“RPS”) or GHG credit under state law. The power purchased
23 from Shell Energy North America that MCE provides to its customers is considered “dirty
24 power” in the industry.

25 MCE does not vary the power that it purchases or provides to Claimant and the members
26 of the Class based on the percentage of customers that choose to participate in its 50% renewable
27 or 100% Renewable programs. MCE continues to purchase “dirty power” from Shell Energy
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1 North America in the same amounts as it would have regardless of the mix of Class members
2 purchasing 50% Renewable or 100% Renewable energy.

3 Rather than buy renewable power in sufficient quantities to meet all of its promises, MCE
4 instead purchases RECs. RECs are financial instruments—pieces of paper—purchased from a
5 renewable energy supplier that sells its renewable energy to other purchasers. A REC is a
6 certificate that is issued when one megawatt-hour of electricity is generated and delivered to the
7 grid from a qualifying renewable energy source, such as wind, solar or geothermal. The REC
8 certificate is a representation that an energy generator produced a megawatt hour of electricity
9 from renewable resources. Only one certificate is supposed to be issued for each one megawatt-
10 hour of renewable electricity produced. The electricity that was split from the REC is no longer
11 considered renewable and is not supposed to be counted as renewable or zero-emissions by the
12 purchaser.

13 With the purchase of RECs, MCE is attempting to buy the renewable *attributes* of a
14 specific renewable energy, not the actual renewable energy itself. MCE simply conveys a sum of
15 money to a renewable generator who in turn agrees that MCE can claim to have generated a given
16 quantity of renewable energy. MCE purchases the right to take credit for having produced a
17 given quantity of renewable generation. Thus, though MCE has promised to provide—and
18 Claimant and the members of the Class have paid for—a certain minimum percentage of
19 electricity that is generated from renewable sources, MCE is actually providing conventional
20 electricity that it calls green simply by purchasing RECs. MCE is not providing a renewable
21 energy product as the name and description of the program indicates, and as the terms of the
22 contracts provide.

23 Further, MCE purchases RECs after it provides the energy to its customers. MCE
24 generally waits until PG&E, the incumbent utility, publishes its Power Generation Mix for a
25 particular year. This often does not occur until months after the energy is provided to customers.
26 MCE then goes out in the open market and purchases RECs in an attempt to offset the non-
27 renewable energy that it provided to its customers in a prior year. Historically, MCE has

1 purchased these RECs from out of state energy producers, thus providing no benefit to the local
2 community.

3 The primary problem with MCE's use of RECs is that MCE is not fulfilling its promise to
4 provide Claimant and members of the Class with the promised minimum percentage of electricity
5 derived from renewable sources. Additional problems with the purchase of RECs by MCE
6 include:

- 7 • There is no tracking or quantification of the type of energy that was
8 displaced by the renewable energy related to the REC and thus no certainty
9 that any fossil fuel derived energy was displaced by the renewable energy
10 related to the REC. For example, if (as in the case of MCE) the REC was
11 purchased from an out of state wind farm, the wind energy may replace
12 hydro power in which case there is no net benefit in terms of the overall
13 mix of renewable versus conventional energy generated.
- 14 • Even if the renewable source underlying a REC replaced fossil fuel derived
15 energy, it cannot do so on a 1:1 basis. The REC does not take into account
16 the fact that the wind energy underlying MCE's RECs requires full-time
17 augmentation by a conventional source of power, which is usually gas (i.e.
18 a fossil fuel). Claims about the renewable nature of RECs are inaccurate to
19 the extent they do not take required augmentation by "dirty power" sources
20 into account.
- 21 • In an instance where hydroelectric power is displaced by wind, a net
22 increase in fossil fuel use and GHG production occurs despite the fact that
23 the purchaser of the REC (MCE in this case) claims a fossil fuel offset.
- 24 • The price paid by MCE for RECs is often substantially less than the
25 difference in cost of actually producing renewable energy versus non-
26 renewable energy. MCE wrongfully retains the difference in the price of
27 what it promises to deliver and what it actually delivers to its customers.

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Moreover, the cost of RECs is too low to create a real independent economic incentive to produce renewable energy.

- While MCE claims that the energy it provides to its customers through the 50% Renewable and 100% Renewable programs produce less GHG than the energy provided by PG&E, PG&E’s energy actually produces less GHG because over 20% of the power provided by PG&E is produced at the Diablo Canyon Nuclear facility and is thus GHG free.
- Claims by MCE that it is reducing GHG are false as the carbon produced by the actual non-renewable energy purchased and provided by MCE is not withdrawn from the atmosphere by the generation of renewable energy related to a REC at some other place and time.

2. Legal Claims

MCE has written contracts in place to cover the provision of energy to Claimant and members of the Class. The Terms and Condition of Service for the 50% Renewable program specifically refer to MCE’s provision of 50% renewable energy under the Light Green 50% Renewable Energy Service. Likewise, the MCE Deep Green Price, Terms and Conditions contract repeatedly states that MCE will provide customers with 100% renewable energy. The contract also specifies the higher rate that these customers agree to pay for the 100% renewable energy. Neither contract mentions RECs or the fact that MCE does not provide renewable energy in the promised percentages but simply buys RECs as a surrogate for actually providing the full contracted percentage of renewable energy to its customers.

In exchange for MCE’s promise to provide energy with a specific renewable content, Claimant and members of the Class agreed to pay a rate that includes MCE’s electric generation charge and Pacific Gas and Electric Company’s (PG&E) electric delivery services, including transmission and distribution as well as a variety of other fees. Claimant and members of the Class performed their obligations under the contracts by paying the applicable monthly charges for the energy provided by MCE. Nevertheless, MCE unjustifiably breached the contracts with

1 Claimant and members of the Class by providing non-renewable energy purchased primarily from
2 Shell Energy North America and failing to provide them with energy derived from 50% or 100%
3 renewable sources. Claimant and members of the Class were damaged, and continue to be
4 damaged, by MCE's breach of the contracts in that Claimant and the members of the Class have
5 not received energy derived from renewable sources in the percentages promised.

6 MCE's actions as described herein also support an independent claim for a breach of the
7 implied covenant of good faith and fair dealing. MCE entered into valid contracts with Claimant
8 and members of the class. Implied in that contract was an obligation on the part of MCE to
9 procure energy derived substantially from GHG free sources. Instead, MCE purchased energy
10 that is not GHG free and that released substantial amounts of carbon into the atmosphere. By
11 providing energy that released substantial amounts of carbon into the atmosphere, MCE breached
12 the implied covenant of good faith and fair dealing.

13 The California Public Utilities Code prohibits false and misleading advertising by
14 community choice aggregators. Specifically, the Public Utilities Code requires the governing
15 body of all community choice aggregators to "adopt a policy that expressly prohibits the
16 dissemination by the community choice aggregator of any statement relating to the community
17 choice aggregators rates or terms and conditions of service that is untrue or misleading, and that is
18 known, or that, by the exercise of reasonable care, should be known, to be untrue or misleading."
19 Public Utilities Code § 396.5. To the extent that MCE has not adopted this policy it is violating
20 the statute. To the extent that MCE has adopted such a policy, it is violating the statute by
21 making untrue and misleading representations about the renewable content of the energy it
22 provides to Claimant and the members of the Class. Claimant and members of the Class have
23 suffered damages as a result of MCE's untrue and misleading statements. Claimant and members
24 of the Class are thus entitled to damages and restitution.

25 Finally, by making the specific affirmative representations that the energy that it provides
26 is derived from either 50% or 100% renewable sources, MCE has intentionally or negligently
27 damaged Claimant and the members of the Class.

1 **D. General Description of the Obligation, Injury, Damages and Loss Incurred:**

2 As a direct and proximate result of MCE’s conduct as described herein, Claimant and the
3 members of the Class sustained and continue to sustain damages in the form of payment for
4 promised services they did not receive, in addition to other damages. Specifically Claimant and
5 the Class paid for energy that was promised to be derived from renewable sources. Rather than
6 deliver renewable energy in the percentages promised to Claimant and the members of the Class,
7 MCE provided them with non-renewable energy purchased primarily from Shell Energy North
8 America and purchased RECs at a fraction of the cost of providing energy actually derived from
9 renewable sources.

10 **E. Name of Public Employee Causing Injury, Damage, or Loss, if Known:**

11 MCE Chief Executive Officer Dawn Weisz. Other individuals are unknown at this time.

12 **F. The Amount Claimed Exceeds \$10,000:**

13 The amount claimed exceeds \$10,000 and the claim will not be a limited civil case.

14 **G. Additional Claims:**

15 In addition to the legal bases of the claims of Claimant and the members of the Class
16 discussed herein, the acts alleged herein give rise to causes of action on behalf of Claimant and
17 members of the Class that include, but are not limited to, specific performance, declaratory relief
18 and injunctive relief. Claimant also intends to seek recovery of his reasonable attorneys’ fees and
19 costs under California law.

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21 DATED: [REDACTED] 2015

Respectfully Submitted,

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23 _____
24 [REDACTED]
25 [REDACTED]
26 San Francisco, CA [REDACTED]
27 Telephone: (415) [REDACTED]
28 Facsimile: (415) [REDACTED]
[REDACTED]