

1 PRESTON DuFAUCHARD  
California Corporations Commissioner  
2 ALAN S. WEINGER  
Acting Deputy Commissioner  
3 MIRANDA L. MAISON (CA BAR NO. 210082)  
Senior Corporations Counsel  
4 Department of Corporations  
1515 K Street, Ste. 200  
5 Sacramento, California 95814  
Telephone: (916) 322-8730 Fax: (916) 445-6985

6 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF CORPORATIONS  
9 OF THE STATE OF CALIFORNIA

10	In the Matter of the Accusation of THE	)	File No.: 413-0612
11	CALIFORNIA CORPORATIONS	)	
12	COMMISSIONER,	)	ACCUSATION IN SUPPORT OF
13	Complainant,	)	REVOCAION OF CALIFORNIA
14	v.	)	RESIDENTIAL MORTGAGE LENDER AND
15	PERFORMANCE CREDIT CORPORATION,	)	RESIDENTIAL LOAN SERVICER LICENSE
16	Respondent.	)	
17		)	

18  
19 Complainant is informed and believes, and based upon such information and belief alleges  
20 and charges as follows:

21 I

22 Performance Credit Corporation, formerly known as Encore Credit Corporation,  
23 (“Respondent”) is a residential mortgage lender and residential mortgage loan servicer licensed by  
24 the Commissioner of Corporations of the State of California (“Commissioner” or “Complainant”)   
25 pursuant to the California Residential Mortgage Lending Act (“CRMLA”), which is codified at  
26 California Financial Code section 50000 *et seq.* Respondent’s main office is located at 2040 Main  
27 Street, Suite 800B, Irvine, CA 92614.

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## II

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2 1. On or about August 2, 2007, the Commissioner received a letter from Respondent  
3 dated July 31, 2007. Respondent's letter informed the Commissioner that Respondent had not been  
4 "actively lending" since February 9, 2007, had closed all loans, and that there were "no loans in the  
5 pipeline." Respondent advised that, due to "changes in its corporate business plan," it was  
6 surrendering its CRMLA license. Although the letter purported to return the actual license, no such  
7 license was enclosed with the letter.

8 2. On or about August 10, 2007, the Commissioner mailed a letter to Respondent. The  
9 letter informed that surrender of a CRMLA license could not be completed unless the licensee filed  
10 a proposed plan with the Commissioner outlining how it would conduct an orderly closing of its  
11 residential mortgage lending and loan servicing business. The letter included a list of documents  
12 needed and requested an explanation of Respondent's closure, as required by Financial Code  
13 section 50123.

14 3. On or about September 21, 2007, the Commissioner received a letter from  
15 Respondent dated September 4, 2007. In that letter, Respondent informed that it had no CRMLA  
16 business operations to close out. Respondent further asserted that since it had already returned the  
17 actual license to the Commissioner, it was of the belief that it had complied with all Financial Code  
18 requirements.

19 4. On or about October 1, 2007, the Commissioner mailed a letter to Respondent. The  
20 letter again advised Respondent that it was required to file a proposed plan with the Commissioner  
21 outlining how it would conduct an orderly closing of its CRMLA business in compliance with  
22 Financial Code section 50123.

23 5. On or about October 17, 2007, the Commissioner commenced a regulatory  
24 examination of the books and records of Respondent through his examination staff ("Examination  
25 Staff"). The regulatory examination revealed that Respondent's financial statements were not  
26 current as required by Financial Code section 50314. Respondent was advised that the statements  
27 were prepared through March 31, 2007 but should have been updated through at least August 31,  
28 2007.



1 business, and the plan shall include a timetable for the disposition of the  
2 business. The plan shall also include a closing audit, review, or other agreed  
3 upon procedures performed by an independent certified public accountant  
4 prescribed by rule or order of the commissioner. Upon receipt of the written  
5 notice and plan, the commissioner shall review the plan and, if satisfactory to  
6 the commissioner, shall accept the surrender of the license. A license is not  
7 surrendered until its tender is accepted in writing by the commissioner after a  
8 review, and a finding has been made on the licensee's plan required to be filed  
9 by this section, and a determination has been made that there is no violation of  
10 this law . . . .

11 Respondent has failed and refused to provide to the Commissioner the information and  
12 documents necessary to effectuate the surrender of its CRMLA license in violation of section 50123  
13 of the Financial Code.

14 IV

15 Financial Code section 50201 provides:

16 (a) A licensee issued a license for purposes of making or servicing residential  
17 mortgage loans shall maintain a minimum tangible net worth at all times of two  
18 hundred fifty thousand dollars (\$250,000).

19 (b) Tangible net worth shall be computed in accordance with generally  
20 accepted accounting principles.

21 Respondent has yet to submit a financial statement that evidences Respondent meets the  
22 tangible net worth requirements of Financial Code section 50201.

23 V

24 The Commissioner finds that, by reason of the foregoing, Respondent has violated  
25 California Financial Code sections 50314, 50123 and 50201.

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WHEREFORE, IT IS PRAYED that the residential mortgage lender and residential mortgage loan servicer license of Performance Credit Corporation be revoked.

Dated: June 19, 2008  
Sacramento, CA

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
Miranda L. Maison  
Senior Corporations Counsel