1 2 3 4	PRESTON DuFAUCHARD California Corporations Commissioner ALAN S. WEINGER Acting Deputy Commissioner MIRANDA L. MAISON (CA BAR NO. 210082) Senior Corporations Counsel Department of Corporations			
5	15Î5 K Street, Ste. 200 Sacramento, California 95814 Telephone: (916) 322-8730 Fax: (916) 445-6985			
6 7	Attorneys for Complainant			
8	BEFORE THE DEPARTMENT OF CORPORATIONS			
9	OF THE STATE OF CALIFORNIA			
10	In the Motter of the Association of THE			
11	In the Matter of the Accusation of THE			
12	COMMISSIONER,) ACCUSATION IN SUPPORT OF) REVOCATION OF CALIFORNIA			
13	Complainant,) RESIDENTIAL MORTGAGE LENDER AND			
14) RESIDENTIAL LOAN SERVICER LICENSE v.			
15	PERFORMANCE CREDIT CORPORATION,)			
16)			
17	Respondent.)			
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19	Complainant is informed and believes, and based upon such information and belief alleges			
20	and charges as follows:			
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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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1. On or about August 2, 2007, the Commissioner received a letter from Respondent dated July 31, 2007. Respondent's letter informed the Commissioner that Respondent had not been "actively lending" since February 9, 2007, had closed all loans, and that there were "no loans in the pipeline." Respondent advised that, due to "changes in its corporate business plan," it was surrendering its CRMLA license. Although the letter purported to return the actual license, no such license was enclosed with the letter.

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- 2. On or about August 10, 2007, the Commissioner mailed a letter to Respondent. The letter informed that surrender of a CRMLA license could not be completed unless the licensee filed a proposed plan with the Commissioner outlining how it would conduct an orderly closing of its residential mortgage lending and loan servicing business. The letter included a list of documents needed and requested an explanation of Respondent's closure, as required by Financial Code section 50123.
- 3. On or about September 21, 2007, the Commissioner received a letter from Respondent dated September 4, 2007. In that letter, Respondent informed that it had no CRMLA business operations to close out. Respondent further asserted that since it had already returned the actual license to the Commissioner, it was of the belief that it had complied with all Financial Code requirements.
- 4. On or about October 1, 2007, the Commissioner mailed a letter to Respondent. The letter again advised Respondent that it was required to file a proposed plan with the Commissioner outlining how it would conduct an orderly closing of its CRMLA business in compliance with Financial Code section 50123.
- 5. On or about October 17, 2007, the Commissioner commenced a regulatory examination of the books and records of Respondent through his examination staff ("Examination Staff"). The regulatory examination revealed that Respondent's financial statements were not current as required by Financial Code section 50314. Respondent was advised that the statements were prepared through March 31, 2007 but should have been updated through at least August 31, 2007.

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- 6. On or about January 23, 2008, Examination Staff returned to Respondent's office to review the financial statements. The examination disclosed the statements still were not current. Respondent was given 10 days to comply with Financial Code section 50314 and bring the financial statements current through November 30, 2007.
- 7. On or about February 4, 2008, the Examination Staff again returned to Respondent's office. Although Respondent had completed the update of the financial statements through November 30, 2007, the examination disclosed that Respondent did not have a tangible net worth of at least \$250,000.00, as required by Financial Code section 50201. The un-audited financial statements indicated that Respondent had a tangible net worth deficiency of \$35,332,948.00.
- 8. On or about April 18, 2008, the Commissioner mailed a letter to Respondent, advising that the regulatory examination of Respondent's un-audited financial statements had disclosed that, at least as early as November 30, 2007, Respondent did not meet the tangible net worth requirements. Respondent was asked to provide the Commissioner within 20 days a current financial statement demonstrating that it met the tangible net worth requirement of Financial Code section 50201.
- 9. On or about May 8, 2008, the Commissioner received a letter from Respondent dated May 8, 2008. Respondent's letter informed the Commissioner that it "intends on and is in the process of surrendering its residential mortgage license." Additionally, Respondent admitted that it does not meet the tangible net worth requirements of Financial Code section 50210.
- 10. To date, the Commissioner has not received from Respondent the closing documents required to effectuate the surrender of its CRMLA license in compliance with Financial Code section 50123.

III

Financial Code section 50123 provides in relevant part:

- (a) A license shall remain in effect until suspended, surrendered, or revoked.
- (b) A licensee that ceases to engage in the business regulated by this division and desires to no longer be licensed shall inform the commissioner in writing and, at that time, surrender the license and all other indicia of licensure to the commissioner. The licensee shall file a plan for the withdrawal from regulated

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

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

IV

Financial Code section 50201 provides:

- (a) A licensee issued a license for purposes of making or servicing residential mortgage loans shall maintain a minimum tangible net worth at all times of two hundred fifty thousand dollars (\$250,000).
- (b) Tangible net worth shall be computed in accordance with generally accepted accounting principles.

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

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

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	1	WHEREFORE, IT IS PRAYED that the residential mortgage lender and residential		
	2	mortgage loan servicer license of Performance Credit Corporation be revoked.		
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	4	Dated: June 19, 2008		
	5	Sacramento, CA	PRESTON DuFAUCHARD California Corporations Commissioner	
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	7		$\mathbf{R}_{\mathbf{V}}$	
	8		By Miranda L. Maison	
	9		Senior Corporations Counsel	
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