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8

9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA
11

12 In the Matter of THE CALIFORNIA) File Nos.: 413-0120 & 413-0331
CORPORATIONS COMMISSIONER,)
13) ORDER TO DISCONTINUE VIOLATIONS
14 Complainant,) AND UNSAFE AND INJURIOUS
15 vs.) PRACTICES PURSUANT TO CALIFORNIA
16 NEW CENTURY MORTGAGE) FINANCIAL CODE SECTIONS 50321 AND
CORPORATION and HOME123) 50322 AND STATEMENT OF FACTS IN
CORPORATION,) SUPPORT THEREOF
17)
18)
19 Respondent.)

20 TO: NEW CENTURY MORTGAGE CORPORATION
21 18400 Von Karman, Suite 1000
Irvine, California 92612
22
23 HOME123 CORPORATION
3351 Michelson Drive, Suite400
24 Irvine, California 92612

25
26 The California Corporations Commissioner (“Commissioner”) having determined that New
27 Century Mortgage Corporation (“New Century Mortgage” or “Company”) and Home123
28 Corporation (“Home123”) have engaged in, or are engaging in, or are about to engage in, acts or

1 practices constituting violations of the California Residential Mortgage Lending Act (Financial Code
2 sections 50000 et seq.) and applicable regulations (“CRMLA”) and is conducting business in an
3 unsafe and injurious manner, hereby issues the following Findings of Fact and Order To Discontinue
4 Violations and Unsafe and Injurious Practices Pursuant to Financial Code Sections 50321 and 50322
5 (“Order To Discontinue”).

6 **FINDINGS OF FACT**

7 1. The Department of Corporations (“Department”), through the Commissioner, has
8 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
9 residential mortgage lending and residential mortgage loan servicing pursuant the CRMLA.

10 2. New Century Mortgage is licensed by the Commissioner as a residential mortgage
11 lender and residential mortgage loan servicer under Chapters 2 and 3 of the CRMLA. According to
12 records maintained on file with the Department, the Commissioner initially issued a residential
13 mortgage lender and residential mortgage loan servicer license to New Century Mortgage to engage
14 in the business of residential mortgage lending and residential mortgage loan servicing in California
15 on or about December 10, 1996.

16 3. New Century Mortgage is, and at all relevant times, has been a corporation
17 conducting business in California. New Century Mortgage’s main office is located at 18400 Von
18 Karman, Suite 1000, Irvine, California 92612.

19 4. New Century Mortgage maintains additional branch office locations from which it
20 conducts residential mortgage lending and residential mortgage loan servicing business. According
21 to records maintained on file with the Department, New Century Mortgage has notified the
22 Commissioner pursuant to Financial Code section 50124(a)(10) of thirty-seven (37) additional
23 branch locations operated both in California as well as outside the State.

24 5. New Century Mortgage is a wholly owned subsidiary of New Century Financial
25 Corporation. New Century Financial Corporation is a publicly traded real estate investment trust
26 listed on the New York Stock Exchange.

27 6. Home123 is licensed by the Commissioner as a residential mortgage lender under
28 Chapter 2 of the CRMLA. According to records maintained on file with the Department, the

1 Commissioner initially issued a residential mortgage lender license to Home123 to engage in the
2 business of residential mortgage lending on September 28, 2000.

3 7. Home123 is, and at all relevant times, has been a corporation conducting business in
4 California. Home123's main office is located at 3351 Michelson Drive, Suite 400, Irvine, California
5 92612. Home123 is a subsidiary of New Century Mortgage.

6 8. Home123 maintains additional branch office locations from which it conducts
7 residential mortgage lending business. According to records maintained on file with the
8 Department, Home123 has notified the Commissioner pursuant to Financial Code section
9 50124(a)(10) of one hundred and twenty eight (128) additional branch locations operated both in
10 California as well as outside the State.

11 **A. Uncertainty of New Century Mortgage's Maintenance of the Minimum Financial**
12 **Requirements for Holding a Mortgage Lender License in California and Failure to**
13 **Provide Certain Requested Information**

14 9. On or about February 7, 2007, New Century Mortgage indicated it intended to report
15 a loss for the fourth quarter of 2006. New Century Mortgage additionally reported that the company
16 would be restating earnings, for the second, third, and fourth quarters of 2006.

17 10. Between the period of February 7 and February 8, 2007, New Century Financial
18 Corporation's stock price declined from \$30.16 per share to \$19.24 per share.

19 11. By February 26, 2007, New Century Financial Corporation's stock price had dropped
20 to \$15.24 per share at the close of trading.

21 12. On or about March 5, 2007, New Century Financial Corporation's stock had
22 decreased by as much as an additional 63% over the course of the prior seven days to \$5.41 per share
23 and had been trading as low as \$5.25.

24 13. At the end of the business day on March 5, 2007, New Century Financial
25 Corporation's stock price had closed at \$4.56 per share, which represented a deterioration in the
26 stock price of approximately 69% from the level at which the stock had traded on February 26, 2007.

27 14. On or about March 6, 2007, the Department became aware that several of New
28 Century Mortgage's warehouse lines of credit had been suspended.

1 15. On or about March 7, 2007, due, in part, to the concerns raised by the publicly
2 reported facts stated in Paragraphs 9 through 14, the Department contacted New Century Mortgage
3 to request information on the current condition of the Company. The requested information
4 included, but was not limited to, the following: a “pipeline report” of then-pending residential
5 mortgage loan applications relating to California properties; a summary of the conditions under
6 which New Century Mortgage had been required to repurchase the substantial loan portfolio from its
7 investors which resulted in the company’s undertaking of restating earnings for the last three
8 quarters of 2006; the status of the Company’s warehouse lending agreements; and the balances
9 outstanding on the lines of credit.

10 16. New Century Mortgage notified the Department that it would attempt to produce the
11 requested information within the next several business days.

12 17. Additionally, during the March 7, 2007 communications, New Century Mortgage
13 informed the Department that its accounting firm was working on restating their earnings and it did
14 not know when the December 31, 2006 financial statements would be available. New Century
15 Mortgage had previously indicated to Massachusetts’ state regulators that the December 31, 2006
16 restated financial statements would be available no later than March 15, 2007.

17 18. As of the date of this Order To Discontinue, New Century Mortgage has responded,
18 in part, to the information referenced in Paragraphs 15 and 17, but has failed to produce financial
19 statements for the period ending December 31, 2006 or, alternatively, to identify a date on which the
20 financial statements would be available.

21 19. Financial Code section 50201 requires all licensees under the CRMLA to maintain a
22 minimum tangible net worth at all times of \$250,000.00 to be computed in accordance with
23 generally accepted accounting principles.

24 20. Pursuant to Financial Code section 50307(b), New Century Mortgage is required to
25 submit to the Commissioner any and all special reports the Commissioner from time to time may
26 require. The information described in paragraphs 15 and 17 above were such special reports
27 required by the Commissioner under Section 50307(b).

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1 21. As a result of New Century Mortgage’s failure to produce the financial statements,
2 the Department is unable to measure the extent to which the recent market devaluations or
3 substantial repurchase obligations have impacted the company or to determine whether New Century
4 Mortgage has maintained the minimum net worth requirement for CRMLA licensees.

5 22. Due to the New Century Mortgage’s uncertainty regarding when the requested
6 financial statements will become available, a determination of when the Department would be able
7 to evaluate the financial condition of the Company likewise remains uncertain.

8 **B. Impairment of Lender Lines of Credit Used to Fund New Century Mortgage’s and**
9 **Home123’s Lending Operations**

10 23. On or about March 6, 2007, the Department became aware that due to New Century
11 Mortgage’s failure to timely file its 2006 annual report by March 1, 2007, the Company had been
12 required to obtain waivers from each of its lenders to maintain access to its lines of credit and that all
13 eleven of New Century Mortgage’s lines of credit remained in jeopardy of being suspended by the
14 respective lenders in the event that New Century Mortgage was unable to file its annual report by
15 March 15, 2007.

16 24. As of March 8, 2007, only eight of the eleven warehouse lines of credit remained
17 available and only five of the eight had given waivers that were good through March 15, 2007.

18 25. On or about Thursday, March 8, 2007, New Century Mortgage representatives, in
19 conversations with Department personnel, stated that the company had started losing its warehouse
20 lines of credit on Monday, March 5, 2007, and the Company was unsure it would be able to continue
21 to fund loans it had in the pipeline.

22 26. On or about Friday, March 9, 2007, New Century Mortgage representatives informed
23 Department personnel in a telephone conversation that both New Century Mortgage and Home123
24 had lost all but one warehouse line of credit, and this warehouse line of credit was insufficient to
25 fund all loans in the pipeline.

26 27. A line of credit used by a residential mortgage lender enables the entity to fund
27 residential mortgage loans prior to selling them to an investor. Without access to its lines of credit,
28 and in the absence of the residential mortgage lender independently maintaining sufficient reserves

1 and liquidity positions within the institution to fund such loans, the residential mortgage lender
2 would be unable to meet its funding commitments, negating its ability to meet contractual
3 obligations to fund residential mortgage loans.

4 28. On or about March 12, 2007, New Century Mortgage reported to the Department in a
5 telephone conference call that all trading in New Century Financial Corporation stock had been
6 halted and that all of New Century Mortgage’s lenders had cut off financing.

7 29. Financial Code section 50124(a)(4) requires all residential mortgage lenders to
8 disburse funds in accordance with its agreements and to make a good faith and reasonable effort to
9 effect closing in a timely manner.

10 **CONCLUSIONS OF LAW**

11 30. Based upon the information contained in Paragraphs 1 through 29, New Century
12 Mortgage has failed to submit special reports to the Commissioner in the form of a December 31,
13 2006 balance sheet and income statement in violation of Financial Code section 50307(b).

14 31. Based upon the information contained in Paragraphs 1 through 29, New Century
15 Mortgage has failed to disburse funds in accordance with its agreements with its borrowers and to
16 make a good faith and reasonable effort to effect closing in a timely manner in violation of Financial
17 Code section 50124(a)(4).

18 32. Based upon the information contained in Paragraphs 1 through 29, Home123 is
19 unable to disburse funds in accordance with its agreements with its borrowers and to make a good
20 faith and reasonable effort to effect closing in a timely manner in violation of Financial Code section
21 50124(a)(4).

22 33. Based upon the information contained in Paragraphs 1 through 29, New Century
23 Mortgage’s and Home123’s acts or practices of contracting with consumers for a purchase or
24 refinance mortgage loan, through the underwriting and subsequent execution of residential mortgage
25 loan closing documents relating to California residential property, and thereafter failing to fund the
26 residential mortgage loan(s), constitutes a violation of Financial Code section 50204(b) and an
27 unsafe and injurious practice.
28

1 34. Based upon the information contained in Paragraphs 1 through 29, New Century
2 Mortgage is unable to demonstrate that it is maintaining the minimum net worth requirements for
3 residential mortgage lenders and residential mortgage loan servicers in violation of the Financial
4 Code section 50201.

5 35. Based upon the information contained in Paragraphs 1 through 29, Home123, by
6 virtue of its status as a wholly owned subsidiary of New Century Mortgage, is unable to demonstrate
7 that it is maintaining the minimum net worth requirements for residential mortgage lenders in
8 violation of the Financial Code section 50201.

9 36. Based upon the information contained in Paragraphs 1 through 29, New Century
10 Mortgage and Home123 have failed to demonstrate the financial responsibility, character, and
11 general fitness that would support the belief that the business will be operated honestly, fairly, and in
12 accordance with the requirements of the CRMLA.

13 37. Based upon the information contained in Paragraphs 1 through 29, had the facts and
14 conditions found therein existed at the time of New Century Mortgage’s original residential
15 mortgage lender and residential mortgage loan servicer license application, the Commissioner would
16 have been warranted in refusing to issue such license. Further, the facts and conditions set forth in
17 paragraphs 1 through 29 present sufficient grounds for the revocation of New Century Mortgage’s
18 residential mortgage lender and residential mortgage loan servicer licenses pursuant to Financial Code
19 section 50327.

20 38. Based upon the information contained in Paragraphs 1 through 29, had the facts and
21 conditions found therein existed at the time of Home123’s original residential mortgage lender
22 license application, the Commissioner would have been warranted in refusing to issue such license.
23 Further, the facts and conditions set forth in paragraphs 1 through 29 present sufficient grounds for
24 the revocation of Home123’s lender licenses pursuant to Financial Code section 50327.

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1 mortgage loan under the same terms and conditions extended by New Century Mortgage and/or
2 Home123. In the event that no such placement can be made, New Century Mortgage and/or
3 Home123 shall either independently fund the residential mortgage loan under such terms and
4 conditions or buy down the residential mortgage loan offered by the lender so that the applicant does
5 not incur a loss as a result of such placement. New Century Mortgage and/or Home123 shall obtain
6 the prior approval of the Commissioner before placing such applications with qualified lender(s).

7 4. For those loan applications currently in the pipeline that have not been approved
8 and/or closed as of the effective date of this Order, New Century Mortgage shall within three
9 business days of the effective date of this Order either (i) obtain funding for and close the loans, (ii)
10 place with other qualified lenders with applicants' consent, or (iii) deny the applications for cause.
11 The term "deny for cause" shall mean that the underwriting guidelines of New Century Mortgage in
12 effect at the time of the application(s) would have provided grounds for New Century Mortgage to
13 deny the application(s) in the normal course of business.

14 5. No later than one (1) day after the effective date of this Order To Discontinue, New
15 Century Mortgage and Home123 shall separately submit to the Commissioner a detailed record,
16 prepared as of the date of submission, of all of their pending residential mortgage loan applications
17 on property located in California, including but not limited to: The names of all individuals from
18 whom they have accepted an application for a residential mortgage loan; the applicants' addresses
19 and telephone numbers; the loan number; the amount of all prepaid loan fees submitted by the
20 customer; rate lock status; the amount of each loan; application status (i.e. filed, cleared to close,
21 etc.); loan terms, if approved; scheduled closing dates; and the loan purpose (i.e. purchase or
22 refinance).

23 6. On each business day, by 5 p.m. pacific daylight time after the effective date of this
24 Order To Discontinue, New Century Mortgage and Home 123 shall separately provide the
25 Commissioner with an updated, written status report of the mortgage loan applications identified
26 above in paragraph 3. The form of the status report shall follow the format of the initial submission
27 under paragraph 3 and shall indicate the final disposition of the loan application and include the final
28 terms under which each approved loan is closed. The reporting requirement shall continue until each

1 of the approved applications is funded by New Century Mortgage and/or Home123, or withdrawn by
2 the applicant(s) or closed by another lender.

3 7. No later than five (5) days after the effective date of this Order To Discontinue, New
4 Century Mortgage and Home123 shall separately submit to the Commissioner a balance sheet and
5 year-to-date income statement, prepared as of the date of submission, and attested to by a duly
6 authorized officer of the company. The balance sheet should indicate the cash position of each
7 company at each of its depository banks as well as each company's bank account numbers.

8 8. No later than five (5) business days after the issuance of this Order To Discontinue,
9 New Century Mortgage and Home123 shall separately submit a net worth restoration plan to be
10 approved by the Commissioner.

11 9. The Department reserves all of its rights, duties and authority to enforce the CRMLA
12 against New Century Mortgage and Home123 in the future regarding all matters, including but not
13 limited to, those matters covered by this Order to Discontinue.

14 This Order To Discontinue shall become effective immediately and shall remain in effect
15 unless set aside by the Commissioner or by a court as provided in Financial Code section 50323.

16 It is the Commissioner's intention to make this Order final. A hearing will be scheduled on
17 this matter to determine whether or not this Order To Discontinue shall become final only upon
18 receipt of a written request for such a hearing from New Century Mortgage and/or Home123,
19 respectively, within thirty (30) days of the effective date of this Order To Discontinue. If no hearing
20 is requested within this thirty (30) day period, this Order To Discontinue shall become final until it is
21 modified or vacated by the Commissioner.

22 Dated: March 16, 2007
23 Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

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25 By _____
26 Alan S. Weinger
27 Lead Corporations Counsel
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