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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.: 603-9136 et al.  
CORPORATIONS COMMISSIONER, )  
13 ) DESIST AND REFRAIN ORDER PURSUANT  
Complainant, ) TO CALIFORNIA FINANCIAL CODE  
14 ) SECTION 22712 AND STATEMENT OF  
vs. ) FACTS IN SUPPORT THEREOF  
15 )  
16 NEW CENTURY MORTGAGE )  
CORPORATION, )  
17 )  
18 Respondent. )  
19 \_\_\_\_\_ )

20  
21 TO: NEW CENTURY MORTGAGE CORPORATION  
18400 Von Karman, Suite 1000  
22 Irvine, California 92612

23 The California Corporations Commissioner (“Commissioner”) having determined that New  
24 Century Mortgage Corporation (“New Century Mortgage” or “Company”) has engaged in, or is  
25 engaging in, or is about to engage in, acts or practices constituting violations of the California  
26 Finance Lenders Law (Financial Code sections 22000 et seq.) and applicable regulations (“CFL”),  
27 hereby issues the following Findings of Fact and Desist and Refrain Order Pursuant to Financial  
28 Code Section 22712 (“Order”).

**FINDINGS OF FACT**

1  
2 1. The Department of Corporations (“Department”), through the Commissioner, has  
3 jurisdiction over the licensing and regulation of persons and entities engaged in the business of  
4 lending pursuant to the CFLL.

5 2. New Century Mortgage is licensed by the Commissioner as a finance lender under  
6 Article 3 of the CFLL. According to records maintained on file with the Department, the  
7 Commissioner initially issued a finance lenders license to New Century Mortgage to engage in the  
8 business of finance lending, including residential mortgage lending, on or about May 22, 2003.

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

12 4. New Century Mortgage maintains additional finance lender licensed locations from  
13 which it conducts finance lending. According to records maintained on file with the Department,  
14 New Century Mortgage currently possesses twenty-six (26) additional finance lenders licenses from  
15 the Commissioner for locations operated both in California as well as outside the State.

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

19 **A. Uncertainty of New Century Mortgage’s Maintenance of the Minimum Financial**  
20 **Requirements for Holding a Mortgage Lender License in California and Failure to**  
21 **Provide Certain Requested Information**

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

25 7. Between the period of February 7 and February 8, 2007, New Century Financial  
26 Corporation’s stock price declined from \$30.16 per share to \$19.24 per share.

27 8. By February 26, 2007, New Century Financial Corporation’s stock price had dropped  
28 to \$15.24 per share at the close of trading.

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

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

7           11.       On or about March 6, 2007, the Department became aware that several of New  
8 Century Mortgage’s warehouse lines of credit had been suspended.

9           12.       On or about March 7, 2007, due, in part, to the concerns raised by the publicly  
10 reported facts stated in Paragraphs 6 through 11, the Department contacted New Century Mortgage  
11 to request information on the current condition of the Company. The requested information  
12 included, but was not limited to, the following: a “pipeline report” of then-pending residential  
13 mortgage loan applications relating to California properties; a summary of the conditions under  
14 which New Century Mortgage had been required to repurchase the substantial loan portfolio from its  
15 investors which resulted in the company’s undertaking of restating earnings for the last three  
16 quarters of 2006; the status of the Company’s warehouse lending agreements; and the balances  
17 outstanding on the lines of credit.

18           13.       New Century Mortgage notified the Department that it would attempt to produce the  
19 requested information within the next several business days.

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

25           15.       As of the date of this Desist and Refrain Order, New Century Mortgage has  
26 responded, in part, to the information referenced in Paragraphs 12 and 14, but has failed to produce  
27 financial statements for the period ending December 31, 2006 or, alternatively, to identify a date on  
28 which the financial statements would be available to the Department.

1           16.     Financial Code section 22104 requires all licensees under the CFLL to maintain a  
2 minimum net worth at all times of \$25,000.00 to be computed in accordance with generally accepted  
3 accounting principles.

4           17.     Pursuant to Financial Code section 22159(b), New Century Mortgage is required to  
5 submit to the Commissioner any and all special reports the Commissioner from time to time may  
6 require. The information described in paragraphs 12 and 14 above were such special reports  
7 required by the Commissioner under Section 22159(b).

8           18.     As a result of New Century Mortgage’s failure to produce the financial statements,  
9 the Department is unable to measure the extent to which the recent market devaluations or  
10 substantial repurchase obligations have impacted the company or to determine whether New Century  
11 Mortgage has maintained the minimum net worth requirement for CFLL licensees.

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

15           **B. Impairment of Lender Lines of Credit Used to Fund New Century Mortgage’s**  
16           **Lending Operations**

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

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

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



1 documents relating to California residential property, and thereafter failing to fund the residential  
2 mortgage loan(s), constitutes an unsafe and injurious practice.

3 30. Based upon the information contained in Paragraphs 1 through 26, New Century  
4 Mortgage is unable to demonstrate that it is maintaining the minimum net worth requirements for  
5 finance lenders in violation of the Financial Code section 22104.

6 31. Based upon the information contained in Paragraphs 1 through 26, New Century  
7 Mortgage has failed to demonstrate the financial responsibility, character, and general fitness that  
8 would support the belief that the business will be operated honestly, fairly, and in accordance with  
9 the requirements of the CFLL.

10 34. Based upon the information contained in Paragraphs 1 through 26, had the facts and  
11 conditions found therein existed at the time of New Century Mortgage’s original finance lender  
12 license applications, the Commissioner would have been warranted in refusing to issue such  
13 licenses. Further, the facts and conditions set forth in paragraphs 1 through 26 present sufficient  
14 grounds for the revocation of New Century Mortgage’s finance lender licenses pursuant to Financial  
15 Code section 22714.

16 **DESIST AND REFRAIN ORDER**

17 Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, it is  
18 hereby ORDERED that New Century Mortgage immediately desist and refrain from the violations  
19 described above as follows:

20 1. New Century Mortgage and any and all employees, and their successors or assigns,  
21 shall immediately cease soliciting or accepting, either directly or indirectly, any residential mortgage  
22 loan applications from consumers for residential property located in California, until further order of  
23 the Commissioner.

24 2. On each business day, by 5 p.m. pacific daylight time, after the effective date of this  
25 Order, New Century Mortgage shall submit to the Department a pipeline liquidity report on its  
26 remaining warehouse line of credit or any other warehouse line of credit that New Century Mortgage  
27 is able to obtain, and provide such information as will be necessary by the Department to determine  
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1 that New Century Mortgage will be able to fund current loans in its pipeline, while also maintaining  
2 the minimum net worth requirements set forth in Financial Code section 22104.

3           3.       That in the event that New Century Mortgage is unable to obtain warehouse lines of  
4 credit sufficient to fund all residential mortgage loans currently in the pipeline, New Century  
5 Mortgage shall immediately upon such determination, but in no event later than three business days  
6 after the effective date of this Order, place with one or more qualified lender(s), with applicants’  
7 consent and at no loss to applicants, the following: (a) New Century Mortgage’s entire portfolio of  
8 California residential mortgage loans which were closed by New Century Mortgage, as the case may  
9 be, and remain unfunded as of the issuance of this Order; and (b) New Century Mortgage’s entire  
10 pending approved application list of California residential mortgage loans. The term “no loss to the  
11 applicant” shall mean that any loan, which was closed by New Century Mortgage, as well as any  
12 application which was approved by New Century Mortgage, shall be placed with a lender willing to  
13 fund, or close, the residential mortgage loan under the same terms and conditions extended by New  
14 Century Mortgage. In the event that no such placement can be made, New Century Mortgage shall  
15 either independently fund the residential mortgage loan under such terms and conditions or buy  
16 down the residential mortgage loan offered by the lender so that the applicant does not incur a loss as  
17 a result of such placement. New Century Mortgage shall obtain the prior approval of the  
18 Commissioner before placing such applications with qualified lender(s).

19           4.       For those loan applications currently in the pipeline that have not been approved  
20 and/or closed as of the effective date of this Order, New Century Mortgage shall, within three  
21 business days of the effective date of this Order, either (i) obtain funding for and close the loans, (ii)  
22 place with other qualified lenders with applicants’ consent, or (iii) deny the applications for cause.  
23 The term “deny for cause” shall mean that the underwriting guidelines of New Century Mortgage in  
24 effect at the time of the application(s) would have provided grounds for New Century Mortgage to  
25 deny the application(s) in the normal course of business.

26           5.       No later than one (1) day after the effective date of this Order, New Century  
27 Mortgage shall submit to the Commissioner a detailed record, prepared as of the date of submission,  
28 of all of their pending residential mortgage loan applications on property located in California,

1 including but not limited to: The names of all individuals from whom they have accepted an  
2 application for a residential mortgage loan; the applicants' addresses and telephone numbers; the  
3 loan number; the amount of all prepaid loan fees submitted by the customer; rate lock status; the  
4 amount of each loan; application status (i.e. filed, cleared to close, etc.); loan terms, if approved;  
5 scheduled closing dates; and the loan purpose (i.e. purchase or refinance).

6         6.       On each business day, by 5 p.m. pacific daylight time after the effective date of this  
7 Order, New Century Mortgage shall provide the Commissioner with an updated, written status report  
8 of the mortgage loan applications identified above in paragraph 3. The form of the status report shall  
9 follow the format of the initial submission under paragraph 3 and shall indicate the final disposition  
10 of the loan application and include the final terms under which each approved loan is closed. The  
11 reporting requirement shall continue until each of the approved applications is funded by New  
12 Century Mortgage, or withdrawn by the applicant(s) or closed by another lender.

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

18         8.       No later than five (5) business days after the issuance of this Order, New Century  
19 Mortgage shall submit a net worth restoration plan to be approved by the Commissioner.

20         9.       The Department reserves all of its rights, duties and authority to enforce the CFLL  
21 against New Century Mortgage in the future regarding all matters, including but not limited to, those  
22 matters covered by this Order.

23         This Order shall become effective immediately and shall remain in effect unless set aside by  
24 the Commissioner or by a court as provided in Financial Code section 22718.

25         A hearing will be scheduled on this matter only upon receipt of a written request for such a  
26 hearing from New Century Mortgage within thirty (30) days of the effective date of this Order. If no  
27 hearing is requested within this thirty (30) day period, this Order shall become final until it is  
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modified or vacated by the Commissioner.

Dated: March 16, 2007  
Los Angeles, CA

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
Alan S. Weinger  
Lead Corporations Counsel