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BEFORE THE ARIZONA CORPORATION COMMISSION

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2016 AUG -1 P 4: 51

COMMISSIONERS

DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

In the matter of:

CONCORDIA FINANCING
COMPANY, LTD, a/k/a
"CONCORDIA FINANCE,"

ER FINANCIAL & ADVISORY
SERVICES, L.L.C.,

LANCE MICHAEL BERSCH, and

DAVID JOHN WANZEK and LINDA
WANZEK, husband and wife,

Respondents.

DOCKET NO. S-20906A-14-0063

SECURITIES DIVISION'S RESPONSE
TO Motion in Limine Number One:
Objection to Proposed Exhibit 176(a) and
Exhibit 176(b)

Arizona Corporation Commission

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AUG 01 2016

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I. Introduction

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") respectfully requests that this Tribunal deny the ER Respondents'¹ Motion in Limine Number One: Objection to Proposed Exhibit S-176(a) and Exhibit S-176(b). Proposed Exhibits S-176(a) and (b) are copies of a Desist and Refrain Order the State of California served on Respondents Lance Michael Bersch and David

¹ This response refers to the following Respondents as "the ER Respondents": ER Financial & Advisory Services, LLC ("ERF"), Lance Michael Bersch ("Bersch"), David John Wanzek ("Wanzek") and Linda Wanzek ("Mrs. Wanzek").

1 Wanzek in December 2013, and copies of the cover correspondence that accompanied
2 service of California's Order.²

3 Contrary to the ER Respondents' contentions, the Division does not seek to use
4 proposed Exhibits 176(a) and (b) for collateral estoppel or issue preclusion purposes.
5 Rather, California's Order, which accused Bersch and Wanzek of committing
6 securities fraud, is admissible as an adoptive admission by party opponents under Rule
7 801(d)(2)(B), Arizona Rules of Evidence. Bersch and Wanzek did not deny or
8 otherwise contest California's accusations that they committed securities fraud in
9 selling securities for Concordia Financing Co., Ltd. ("Concordia"). Accordingly,
10 under Arizona Evidence Rule 801(d)(2)(B), both California's Order and Bersch's and
11 Wanzek's "subsequent silence may be admissible as a 'tacit admission of the facts
12 stated.'" *State v. Van Winkle*, 229 Ariz. 233, 235, ¶ 7, 273 P.3d 1148, 1150 (2012)
13 (quoting *State v. Saiz*, 103 Ariz. 567, 569, 447 P.2d 541, 543 (1968)).

14 **II. Facts Material to the Consideration of Motion In Limine Number One**

15 In December 2013, the State of California served a Desist and Refrain Order on
16 Bersch and Wanzek that accused them of committing securities fraud in violation of
17 that state's anti-fraud provision, California Corporations Code § 25401.³ See proposed
18 Exhibits 176(a) and (b). The State of California alleged in relevant part:

19 ² Copies of proposed Exhibits 176(a) and (b) are attached to this Response at Tabs A
20 and B.

21 ³ California Corporations Code § 25401 provides:

22 It is unlawful for any person to offer or sell a security in this state, or to
23 buy or offer to buy a security in this state, by means of any written or oral
24 communication that includes an untrue statement of a material fact or
25 omits to state a material fact necessary to make the statements made, in
26 the light of the circumstances under which the statements were made, not
misleading.

- 1 • Bersch and Wanzek were Directors of Concordia, Kenneth Crowder was
2 Concordia's CEO, and Christopher Crowder was its President and COO.
3 Proposed Exhibits 176(a) and (b) at ¶¶ 1-5.
- 4 • Bersch, Wanzek and the Crowders "offered and sold to investors securities in
5 the form of investment contracts, which were unqualified, non-exempt
6 securities. These investment contracts were titled "Sale of Contracts and
7 Servicing Agreement," and were sold to approximately 178 investors totaling
8 approximately \$18 million." *Id.* at ¶ 6.
- 9 • In connection with the offer and sale of these investment contracts, Bersch,
10 Wanzek, the Crowders and Concordia "made material misrepresentations of
11 facts and also omitted to state material facts necessary in order to make the
12 statements made, in light of the circumstances under which they were made, not
13 misleading." *Id.* at ¶ 10. Those misrepresentations and omissions included:
- 14 a) Investors were told that their investments would be safe
15 because they would be individually secured by assigned
16 vehicle titles to Class 8 "big rig" trucks, when in actuality
17 the investments were never secured and the titles were never
18 assigned. *Id.* at ¶ 10(a).
- 19 b) Investors were told that the commercial truck drivers whose
20 loans were allegedly securing investments were subject to
21 credit checks. In actuality, these credit checks involved
22 neither background searches of the drivers nor a check of the
23 financial credit of the drivers. In actuality, credit checks
24 involved a telephone call to the drivers' former employers
25 to determine whether the drivers were punctual. *Id.* at ¶
26 10(b).
- c) Investors were told that these conditional sales contracts
were less risky than investing on the stock market or
maintaining a savings account or purchasing Certificates of
Deposit, when in actuality the conditional sales contracts
were unsecured and uninsured. *Id.* at ¶ 10(c).

- 1 d) Investors were told that their investments had 100%
2 liquidity, when in actuality investors attempted and were
3 unable to withdraw their money. *Id.* at ¶ 10(d).
4 e) Investors were told that Kansas City Life Insurance
5 Company insured their investments, when in actuality the
6 investments were not insured. *Id.* at ¶ 10(e).

7 The State of California ordered Bersch, Wanzek, Concordia and the
8 Crowders to desist and refrain from offering or selling any security in that state,
9 including but not limited to Concordia's investment contracts, by means of untrue
10 statements of material fact or misleading omissions of material facts. *Id.* at p. 3,
11 lines 17-23.

12 Enclosed with the correspondence serving Bersch and Wanzek with California's
13 Order was a copy of California Corporations Code § 25532 informing them: (1) of
14 their right to a hearing to challenge the Desist and Refrain Order; and (2) informing
15 them that if they did not timely request a hearing, the Order would be deemed a final
16 Order against them. *See* proposed Exhibits 176(a) and (b).

17 Bersch and Wanzek consciously decided not to challenge California's Order
18 accusing them of securities fraud and other violations of California's laws. *See* Motion
19 in Limine Number One at p. 3, lines 1-2.

20 **III. The California Order And Respondents' Silence In Response To Its
21 Fraud Accusations Are Admissible As Adoptive Admissions.**

22 **A. The Adoptive Admissions Rule.**

23 Under Rule 801(d)(2)(B), Arizona Rules of Evidence, a statement is admissible
24 against an opposing party if the statement is "one the party manifested that [he]
25 adopted or believed to be true." Silence may constitute an adoption or belief in the
26 truth of a statement if, under the circumstances, an innocent person would have
responded to the statement. *United States v. Schaff*, 948 F.2d 501, 505 (9th Cir. 1991).

1 This is the adoptive admissions rule: “When a statement adverse to a defendant’s
2 interests is made in his presence and he fails to respond, evidence of the statement and
3 the defendant’s subsequent silence may be admissible as a ‘tacit admission of the facts
4 stated.’” *State v. Van Winkle*, 229 Ariz. 233, 235, ¶ 7, 273 P.3d 1148, 1150 (2012)
5 (quoting *State v. Saiz*, 103 Ariz. 567, 569, 447 P.2d 541, 543 (1968)). “The defendant
6 must have been able to clearly hear the statement and the circumstances must have
7 been ‘such as naturally call for a reply if [the defendant] did not intend to admit such
8 facts.’” *Id.* at 235, ¶ 7, 273 P.3d at 1150 (quoting *Saiz*, 103 Ariz. at 569, 447 P.2d at
9 543)).⁴

10 The California Desist and Refrain Order, and Bersch’s and Wanzek’s silence in
11 response to its fraud accusations, are admissible as adoptive admissions.⁵ Bersch and
12 Wanzek clearly received the Desist and Refrain Order because they consciously
13 decided not to exercise their rights to challenge it. *See* Motion in Limine Number One
14 at p. 3, lines 1-2.

15 If the California Order’s fraud accusations were untrue, the circumstances
16 naturally called for Bersch and Wanzek to deny the accusations by requesting a
17 hearing under California Corporations Code § 25532. *See United States v. Henke*, 222
18 F.3d 633, 642 (9th Cir. 2000) (CEO’s response of “next question please” to accusation
19 during press conference that his corporation was “cooking the books” was admissible
20 as an adoptive admission; natural response to such an accusation would have been to
21 address or deny it); *United States v. Giese*, 597 F.2d 1170, 1196 (9th Cir.) (“In a non-
22 custodial atmosphere prior to indictment, most people would deny accusations of

23 ⁴ *See also United States v. Sears*, 663 F.2d 896, 904 (9th Cir. 1981) (“To constitute an
24 admission by silence, the statement must be made in the defendant’s presence and
25 hearing, and the defendant must actually understand what was said and have an
26 opportunity to deny it.”), *cert. denied*, 455 U.S. 1027 (1982).

⁵ The Division does not seek to have S-176(a) and (b) admitted against Concordia.

1 having participated in federal offenses, even after being told that they did not have to
2 respond.”), *cert. denied*, 444 U.S. 979 (1979); *Shell Offshore Inc. v. Greenpeace, Inc.*,
3 864 F.Supp.2d 839, 849 (D. Alaska 2012) (“This court finds that the natural response
4 by Greenpeace USA to Shell’s accusations against it would have been to deny any
5 intention to commit illegal or tortious acts against Shell. But no such response has
6 been made by Greenpeace USA in this record.”).

7 If they were innocent, Bersch’s and Wanzek’s natural response to California’s
8 accusations that they defrauded investors should have been to deny the accusations by
9 demanding a hearing. Instead, Bersch and Wanzek sat silent.

10 Although the Order did not seek restitution or penalties, it was still adverse to
11 Bersch’s and Wanzek’s interests. As certified public accountants, Bersch and Wanzek
12 may be subject to professional discipline if the Arizona State Board of Accountancy
13 learns of the Order. *See* A.R.S. § 32-741(A)(8) (subjecting CPAs to discipline by the
14 State Board of Accountancy based upon a final judgment or order in an “administrative
15 proceeding if the court or agency makes findings of violations of any fraud provisions
16 of the laws of any jurisdiction or federal securities laws.”); A.R.S. § 32-741(B)(2).⁶

17 Bersch and Wanzek did not have to self-report the Order to the Arizona State
18 Board of Accountancy, however. Under Arizona Administrative Code section R4-1-
19 456(A)(2), CPAs only have to report final administrative orders where the agency
20 finds violations of the “fraud provisions of this state or of federal securities laws.”

21
22 ⁶ A.R.S. § 32-741(B) provides in relevant part:

23 [T]he board may summarily suspend the certificate of any certified public
24 accountant or public accountant pending proceedings for revocation or
25 other disciplinary action on the receipt of ... (2) A final judgment or order
26 in a civil action or administrative proceeding in which the court or agency
made findings of violations of any fraud provisions of the laws of any
jurisdiction or federal securities laws.

1 (Emphasis added). When Bersch and Wanzek did not challenge the Order it became
2 final, but it only found violations of California's securities fraud provision. Thus,
3 Bersch and Wanzek did not have to self-report to the Arizona State Board of
4 Accountancy. They gambled that the Board would not learn of California's Order,
5 which apparently it has not. Nonetheless, the potential for professional discipline
6 based on California's Order against Bersch and Wanzek existed pursuant to A.R.S. §§
7 32-741(A)(8) and 32-741(B)(2).

8 Even putting aside the potential for professional discipline, California's Order
9 certainly damaged Bersch's and Wanzek's reputations. As certified public
10 accountants, Bersch and Wanzek were supposed to exhibit "an unswerving
11 commitment to honorable behavior." Preamble to Code of Professional Conduct (as
12 of June 1, 2013), American Institute of Certified Public Accountants. If California's
13 fraud accusations were untrue, one would expect Bersch and Wanzek to seek to
14 vindicate themselves rather than letting the accusations become permanent stains on
15 their reputations.

16 Under these circumstances, if California's fraud accusations were untrue,
17 Bersch and Wanzek should have requested a hearing and challenged them. Because
18 Bersch and Wanzek did not challenge the fraud accusations, both the California Order
19 and their silence in response to it are admissible as adoptive admissions. *See Henke*,
20 222 F.3d at 642; *Giese*, 597 F.2d at 1196; *State v. Saiz*, 103 Ariz. 567, 569, 447 P.2d
21 541, 543 (1968).

22
23 **B. The California Order is Relevant Evidence That Is Admissible Under**
24 **Arizona Rules of Evidence 402 and 403.**

25 "Evidence is relevant if: (a) it has any tendency to make a fact more or less
26 probable than it would be without the evidence; and (b) the fact is of consequence in

1 determining the action.” Rule 401, Ariz. R. Evid. California’s Order determined that
2 Bersch and Wanzek “made material misrepresentations of facts and also omitted to
3 state material facts necessary in order to make the statements made, in light of the
4 circumstances under which they were made, not misleading.” Exhibits 176(a) and (b)
5 at ¶ 10. That determination has become final because Bersch and Wanzek did not
6 challenge it. *See* California Corporations Code § 25532 (“If that person fails to file a
7 written request for a hearing within 30 days from the date of service of the order, the
8 order shall be deemed a final order of the commissioner and is not subject to review
9 by any court or agency....”).

10 A central issue in this case is whether in selling Concordia’s investment
11 contracts, Bersch and Wanzek “made untrue statements of material fact or omitted to
12 state material facts that were necessary in order to make the statements made not
13 misleading in light of the circumstances under which they were made,” in violation of
14 A.R.S. § 44-1991(A)(2). Amended Notice of Opportunity for Hearing at ¶ 88. The
15 antifraud provision that Bersch and Wanzek violated, California Corporations Code §
16 25401, is substantially similar to A.R.S. § 44-1991(A)(2). Thus, California’s Order,
17 and Bersch’s and Wanzek’s silence in response to it, tend to make more probable the
18 Division’s allegations that Bersch and Wanzek violated A.R.S. § 44-1991(A)(2) by
19 making material misrepresentations and misleading omissions to investors. As such,
20 California’s Order and Bersch’s and Wanzek’s silence constitute relevant evidence
21 that is admissible under Rule 402, Arizona Rules of Evidence.

22 In addition, the substantial similarity of A.R.S. § 44-1991(A)(2) and California
23 Corporations Code § 25401 disposes of Bersch’s and Wanzek’s argument that
24 admitting the California Order would confuse the issues. Both statutes address the
25 same fraudulent misconduct in nearly identical terms. There is no risk of confusing
26 the issues.

1 Bersch and Wanzek also argue that California's Order is unfairly prejudicial to
2 them and should be excluded under Rule 403, Arizona Rules of Evidence.⁷ Under
3 Rule 403, however, "[N]ot all harmful evidence is unfairly prejudicial. After all,
4 evidence which is relevant and material will generally be adverse to the opponent."
5 *State v. Schurz*, 176 Ariz. 46, 52, 859 P.2d 156, 162 (1993). While evidence that
6 makes a defendant look bad may be prejudicial in the eyes of the fact finder, it is not
7 necessarily unfairly so. *State v. Guarino*, 238 Ariz. 437, 440, ¶ 9, 362 P.3d 484, 487
8 (2015). Rather, "unfair prejudice" means an undue tendency to suggest a decision on
9 improper basis, such as emotion, sympathy or horror. *State v. Hardy*, 230 Ariz. 281,
10 290, ¶ 40, 283 P.3d 12, 21 (2012), *cert. denied*, 133 S.Ct. 935, 184 L.Ed.2d 732 (2013).

11 California's Order and Bersch's and Wanzek's silence in response to it are not
12 unfairly prejudicial. This evidence is "adversely probative in the sense that all good
13 relevant evidence is." *Schurz*, 176 Ariz. at 52, 859 P.2d at 162. It tends to show
14 Bersch and Wanzek made material misrepresentations and misleading omissions to
15 investors. "Adverse, yes; unfairly prejudicial, no." *Id.* at 52, 859 P.2d at 162.

16
17 **C. The Division Has No Objection If Bersch And Wanzek Want To**
18 **Introduce The Amended Desist And Refrain Order Against**
19 **Concordia.**

20 Relying on a court of appeals case that the Arizona Supreme Court recently
21 reversed and vacated,⁸ Bersch and Wanzek argue that introducing the California Order

22
23 ⁷ Rule 403, Arizona Rules of Evidence, provides: "The court may exclude relevant
24 evidence if its probative value is substantially outweighed by a danger of one or more
25 of the following: unfair prejudice, confusing the issues, misleading the jury, undue
26 delay, wasting time, or needlessly presenting cumulative evidence."

⁸ See *State v. Steinle*, 239 Ariz. 415, 372 P.3d 939 (2016), *reversing and vacating* 237
Ariz. 531, 354 P.3d 408 (App. 2015).

1 against them would violate the rule of completeness embodied in Rule 106, Arizona
2 Rules of Evidence, because California subsequently entered an Amended Desist and
3 Refrain Order against Concordia and the Crowders. Rule 106 provides “if a party
4 introduces all or part of a writing or recorded statement, an adverse party may require
5 the introduction, at that time, of any other part—or any other writing or recorded
6 statement—that in fairness ought to be considered at the same time.”

7 Rule 106 provides no basis to exclude proposed Exhibits 176(a) and (b), the
8 California Order against Bersch and Wanzek. “Rule 106 is a rule of inclusion rather
9 than exclusion.” *State v. Steinle*, 239 Ariz. 415, 418, ¶ 10, 372 P.3d 939, 942 (2016).
10 Rule 106 does not direct the exclusion of evidence in any circumstance. *Id.* at 418, ¶
11 10, 372 P.3d at 942.

12 If Bersch and Wanzek want to introduce the
13 Amended Desist and Refrain Order against Concordia, the Division has no objection.
14 Concordia and the Crowders stipulated to California’s entry of the Amended Desist
15 and Refrain Order, a copy of which is attached to this Response at Tab C. The
16 Amended Desist and Refrain Order provides that the original 2013 Order “shall remain
17 in full effect only as to David Wanzek and Michael Bersch.”⁹ The Amended Desist
18 and Refrain Order finds:

- 19 • “From 1998 to 2008, Concordia “offered and sold to investors securities in the
20 form of investment contracts entitled ‘Sale of Contracts and Servicing
21 Agreement,’ which were unqualified, non-exempt securities.” Amended Desist
22 and Refrain Order at ¶ 5.
- 23 • “In connection with the offer and sale of these investment contracts, Concordia
24 Financing, Kenneth Crowder and Christopher Crowder made material
25 misrepresentations of facts and/or omitted to state material facts necessary in

26 ⁹ Amended Desist and Refrain Order at ¶ 1.

1 order to make the statements made, in light of the circumstances under which
2 they were made, not misleading.” *Id.* at ¶ 9. Those misrepresentations and
3 omissions included:

- 4 a) “Investors were told that the conditional sales contracts were
5 less risky than investing on the stock market or maintaining
6 a savings account or purchasing Certificates of Deposit,
7 when in fact the conditional sales contracts were unsecured
8 and uninsured.” *Id.* at ¶ 9(a).
- 9 b) Investors were told that their investments had 100%
10 liquidity, when in fact investors attempted and were unable
11 to withdraw their money. *Id.* at ¶ 9(b).

12 The Amended Desist and Refrain Order further found that that Concordia’s
13 investment contracts were sold by means of “untrue statements of material fact” and
14 misleading omissions in violation of California Corporations Code section 25401. *Id.*
15 at p. 3, lines 6-11. The Division has no objection to the ER Respondents’ request to
16 introduce the Amended Desist and Refrain Order against Concordia.

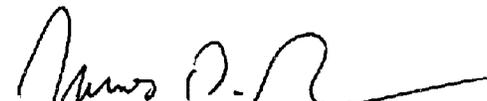
17 Finally, Bersch and Wanzek speculate that if they had challenged California’s
18 original Order against them, “the same modification would have been made as to
19 [them]” as Concordia and the Crowders received in the Amended Desist and Refrain
20 Order. Motion at p. 4, lines 27-28. Such speculation is not permissible. Bersch and
21 Wanzek made a conscious decision not to challenge California’s original Order,
22 including its accusations (now findings) that they defraud investors. Bersch and
23 Wanzek cannot contest California’s Order now. They must accept the consequences
24 of their decision. One of those consequences is that California’s Order, and Bersch’s
25 and Wanzek’s silence in response to it, are admissible as adoptive admissions under
26 Rule 801(d)(2)(B), Arizona Rules of Evidence.

1 **IV. Conclusion**

2 For all the foregoing reasons, the Division respectfully requests that this
3 Tribunal deny the ER Respondents' Motion in Limine Number One.

4 RESPECTFULLY SUBMITTED this 1ST day of August, 2016.

5 ARIZONA CORPORATION COMMISSION

6
7 By: 

8 James D. Burgess
9 Paul Kitchin
10 Attorneys for the Securities Division of
11 the Arizona Corporation Commission

12
13
14 ORIGINAL and 6 copies of the foregoing
15 filed this 1ST day of August, 2016, with:

16 Docket Control
17 Arizona Corporation Commission
18 1200 W. Washington St.
19 Phoenix, AZ 85007

20 COPY of the foregoing hand-delivered
21 this 1ST day of August, 2016, to:

22 The Honorable Mark H. Preny
23 Administrative Law Judge
24 Arizona Corporation Commission
25 1200 W. Washington St.
26 Phoenix, AZ 85007

1 COPIES of the foregoing mailed and emailed
2 this 1ST day of August, 2016, to

3 Alan S. Baskin
4 David E. Wood
5 Baskin Richards PLC
6 2901 N. Central Avenue, Suite 1150
7 Phoenix, Arizona 85012
8 Attorneys for Concordia Financing Company, Ltd.

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14 Attorneys for ER Financial & Advisory Services, LLC,
15 Lance Michael Bersch, David John Wanzek, and Linda Wanzek

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18 400 E. Van Buren St. #1900
19 Phoenix, AZ 85004
20 Attorneys for ER Financial & Advisory Services, LLC,
21 Lance Michael Bersch, David John Wanzek, and Linda Wanzek

22 *Karen Houle*
23 _____
24
25
26

TAB A

7009 1410 0002 1637 1253

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
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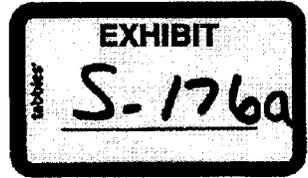
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Street, Apt. No., or PO Box No.

City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>[Signature]</i></p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p><i>Calla Emery</i> <i>12-19-07</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>1. Article Addressed to:</p> <p><i>DAVID WINZET, AN INDIVIDUAL</i></p> <p><i>[Redacted]</i></p> <p><i>[Redacted]</i> <i>112</i> <i>[Redacted]</i></p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number</p> <p>(Transfer from service label) 7009 1410 0002 1637 1253</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	



PROOF OF SERVICE BY MAIL

Re: Concordia Financing Co., Ltd

I declare that I am over the age of 18 years and not a party to the within cause, my business address is:

Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344

On December 17, 2013, I served the following documents:

Cover letter dated 12/13/13 from Michelle Lipton, Sr. Corporations Counsel to David Wanzek; Desist and Refrain Order dated 10/7/13 for violations of sections 25110 and 25401 of the Corporations Code; Copy of Corporations Code Section 25532

By placing, in the United States mail, at Los Angeles, California, the county in which I am employed, a true and correct copy thereof enclosed in a sealed envelope, with the postage therein fully prepaid, addressed as follows:

David Wanzek, An Individual

[REDACTED] AZ [REDACTED]

Certified Mail Article No.: 7009 1410 0002 1637 1253

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 17, 2013 at Los Angeles, California.

(Type or Print Name)

(Signature)

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a fair and secure financial services marketplace for all Californians*

December 13, 2013

VIA CERTIFIED MAIL

David Wanzek

AZ

Re: Desist and Refrain Order for violations of Corporations Code sections 25110 and 25401

Dear Mr. Wanzek:

Enclosed is a Desist and Refrain Order ("Order") for violations of Corporations Code sections 25110 and 25401 issued against you.

California Corporations Code section 25532 sets forth the authority of the Commissioner to issue the Order and the right to an Administrative Hearing if you challenge it.

A copy of Corporations Code section 25532 is attached.

Should you have any questions or concerns, please contact the undersigned at the number provided below.

Sincerely,

JAN LYNN OWEN

Commissioner of Business Oversight

By Michelle Lipton
 Michelle Lipton
 Senior Corporations Counsel
 Enforcement Division
 (213) 576-7591

enclosures

1515 K Street, Suite 200
 Sacramento, CA 95814-4052
 (916) 445-2705

1810 13th Street
 Sacramento, CA 95811
 (916) 322-5966

One Sansome Street, Suite 600
 San Francisco, CA 94104-4420
 (415) 972-8565

45 Fremont Street, Suite 1700
 San Francisco, CA 94105
 (415) 263-8500

320 West 4th Street, Suite 750
 Los Angeles, CA 90013-2344
 (213) 576-7500

300 S. Spring Street, Suite 15513
 Los Angeles, CA 90013
 (213) 897-2085

1350 Front Street, Room 2034
 San Diego, CA 92101-3697
 (619) 525-4233

7575 Metropolitan Drive, Suite 108
 San Diego, CA 92108
 (619) 682-7227

STATE OF CALIFORNIA
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF BUSINESS OVERSIGHT

TO: Kenneth Crowder, Chairman of the Board and CEO
Chris Crowder, President and COO
David Wanzek, Director
Michael Bersch, Director
Concordia Financing Co., Ltd.
9302 Pittsburgh Ave #220
Rancho Cucamonga, CA 91730

DESIST AND REFRAIN ORDER
(For violations of sections 25110 and 25401 of the Corporations Code)

The Commissioner of Business Oversight finds that:

1. At all relevant times herein, Concordia Financing Co., Ltd. ("Concordia Financing") was and is a corporation formed under the laws of California on April 18, 1994. It maintains an address at 9302 Pittsburgh Ave #220, Rancho Cucamonga, CA 91730.
2. At all relevant times herein, Kenneth Irwin Crowder ("Kenneth Crowder"), was Chairman of the Board and CEO of Concordia Financing.
3. At all relevant times herein, Christopher Kenneth Crowder ("Christopher Crowder") was President and COO of Concordia Financing.
4. At all relevant times herein, David Wanzek was a Director of Concordia Financing.
5. At all relevant times herein, Michael Bersch, was a Director of Concordia Financing.
6. Beginning in or about 1998 and continuing through at least 2008, Kenneth Crowder, Christopher Crowder, David Wanzek, and Michael Bersch offered and sold to investors securities in the form of investment contracts, which were unqualified, non-exempt securities. These investment contracts were titled "Sale of Contracts and Servicing Agreement," and were sold to approximately 178 investors totaling approximately \$18 million.
7. These securities were sold in order to purchase and service "Truck Conditional Sales Agreements" from commercial truck dealers. The "Truck Conditional Sales Agreements" were

1 allegedly factored, sold, and assigned to investors, and then serviced by Concordia Financing on
2 behalf of investors.

3 8. These securities were offered or sold in this state in issuer transactions. The
4 Department of Business Oversight has not issued a permit or other form of qualification authorizing
5 any person to offer and sell these securities in this state.

6 9. These securities are not exempt because they were sold to unaccredited and
7 unsophisticated investors.

8 10. In connection with the offer and sale of these securities, Concordia Financing,
9 Kenneth Crowder, Christopher Crowder, David Wanzek, and Michael Bersch made material
10 misrepresentations of facts and also omitted to state material facts necessary in order to make the
11 statements made, in the light of the circumstances under which they were made, not misleading.
12 These misrepresentations and omissions included, but are not limited to, the following:

13 a. Investors were told that their investments would be safe because they would be
14 individually secured by assigned vehicle titles to Class 8 "big rig" trucks, when in actuality the
15 investments were never secured and the titles were never assigned.

16 b. Investors were told that the commercial truck drivers whose loans were allegedly
17 securing investments were subject to credit checks. In actuality, these credit checks involved neither
18 background searches of the drivers nor a check of the financial credit of the drivers. In actuality,
19 credit checks involved a telephone call to the drivers' former employers to determine whether the
20 drivers were punctual.

21 c. Investors were told that these conditional sales contracts were less risky than investing
22 on the stock market or maintaining a savings account or purchasing Certificates of Deposit, when in
23 actuality the conditional sales contracts were unsecured and uninsured.

24 d. Investors were told that their investments had 100% liquidity, when in actuality
25 investors attempted and were unable to withdraw their money.

26 e. Investors were told that Kansas City Life Insurance Company insured their
27 investments, when in actuality the investments were not insured.

28

1 Based upon the foregoing findings, the Commissioner of Business Oversight is of the opinion
2 that the securities in the form of investment contracts titled "Sales of Contract and Servicing
3 Agreement" that are being or have been offered or sold by Concordia Financing, Kenneth Crowder,
4 Christopher Crowder, David Wanzek, and Michael Bersch are securities subject to qualification
5 under the California Corporate Securities Law of 1968 and are being or have been offered or sold
6 without being qualified in violation of Corporations Code section 25110.

7 Pursuant to Corporations Code section 25532, Concordia Financing, Kenneth Crowder,
8 Christopher Crowder, David Wanzek, and Michael Bersch are hereby ordered to desist and refrain
9 from the further offer or sale in the State of California of securities, including but not limited to
10 investment contracts, unless and until qualification has been made under the law or unless exempt.

11 Furthermore, the Commissioner of Business Oversight is of the opinion that the securities
12 offered and sold by Concordia Financing, Kenneth Crowder, Christopher Crowder, David Wanzek,
13 and Michael Bersch were offered and sold in this state by means of written or oral communications
14 that included untrue statements of material fact or omitted to state material facts necessary in order to
15 make the statements made, in the light of the circumstances under which they were made, not
16 misleading, in violation of Corporations Code section 25401.

17 Pursuant to Corporations Code section 25532, Concordia Financing, Kenneth Crowder,
18 Christopher Crowder, David Wanzek, and Michael Bersch are hereby ordered to desist and refrain
19 from offering or selling or buying or offering to buy any security in the State of California, including,
20 but not limited to, investment contracts by means of any written or oral communication which
21 includes an untrue statement of a material fact or omits to state a material fact necessary in order to
22 make the statements made, in the light of the circumstances under which they were made, not
23 misleading.

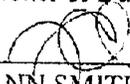
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This Order is necessary, in the public interest, for the protection of investors and consistent with the purposes, policies, and provisions of the Corporate Securities Law of 1968 and Corporations Code.

Dated: October 7, 2013
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By 
MARY ANN SMITH
Deputy Commissioner
Enforcement Division



Corporations Code Section 25532

(a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law or (2) the sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and the security is being or has been offered or sold without first meeting the requirements of those sections, the commissioner may order the issuer or offeror of that security to desist and refrain from the further offer or sale of the security until those requirements have been met.

(b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or investment adviser, or has been or is engaging in broker-dealer or investment adviser activities, in violation of Section 25210, 25230, or 25230.1, the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.

(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.

(d) If, after an order has been served under subdivision (a), (b), or (c), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under that chapter. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded.

If that person fails to file a written request for a hearing within 30 days from the date of service of the order, the order shall be deemed a final order of the commissioner and is not subject to review by any court or agency, notwithstanding Section 25609.

TAB B

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

7009 1410 0002 1637 1277

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To _____
 Street, Apt. No.,
 or PO Box No. _____
 City, State, ZIP+4 _____

PS Form 3811, February 2004

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MICHAEL BORSCH, AN INDIVIDUAL

[Redacted Address] AZ [Redacted City]

2. Article Number
(Transfer from ser)

7009 1410 0002 1637 1277

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
 MICHAEL BORSCH 12-19-13

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

EXHIBIT
 S-1766

PROOF OF SERVICE BY MAIL

Re: Concordia Financing Co., Ltd

I declare that I am over the age of 18 years and not a party to the within cause, my business address is:

Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344

On December 17, 2013, I served the following documents:

Cover letter dated 12/13/13 from Michelle Lipton, Sr. Corporations Counsel to Michael Bersch; Desist and Refrain Order dated 10/7/13 for violations of sections 25110 and 25401 of the Corporations Code; Copy of Corporations Code Section 25532

By placing, in the United States mail, at Los Angeles, California, the county in which I am employed, a true and correct copy thereof enclosed in a sealed envelope, with the postage therein fully prepaid, addressed as follows:

Michael Bersch, An Individual

 AZ

Certified Mail Article No.: 7009 1410 0002 1637 1277

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 17, 2013 at Los Angeles, California.

(Type or Print Name)

(Signature)

DEPARTMENT OF BUSINESS OVERSIGHT

Ensuring a fair and secure financial services marketplace for all Californians



December 13, 2013

VIA CERTIFIED MAIL

Michael Bersch

[Redacted], AZ [Redacted] or

[Redacted] Arizona [Redacted]

Re: Desist and Refrain Order for violations of Corporations Code sections 25110 and 25401

Dear Mr. Bersch:

Enclosed is a Desist and Refrain Order ("Order") for violations of Corporations Code sections 25110 and 25401 issued against you.

California Corporations Code section 25532 sets forth the authority of the Commissioner to issue the Order and the right to an Administrative Hearing if you challenge it.

A copy of Corporations Code section 25532 is attached.

Should you have any questions or concerns, please contact the undersigned at the number provided below.

Sincerely,
JAN LYNN OWEN
Commissioner of Business Oversight

By *Michelle Lipton*
Michelle Lipton
Senior Corporations Counsel
Enforcement Division
(213) 576-7591

enclosures

1515 K Street, Suite 200
Sacramento, CA 95814-4052
(916) 445-2705

One Sansome Street, Suite 600
San Francisco, CA 94104-4120
(415) 972-0565

320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344
(213) 576-7500

1350 Front Street, Room 2034
San Diego, CA 92101-3697
(619) 525-4233

1010 13th Street
Sacramento, CA 95811
(916) 322-5966

45 Front Street, Suite 1700
San Francisco, CA 94105
(415) 263-0500

300 S. Spring Street, Suite 15513
Los Angeles, CA 90013
(213) 897-2085

7575 Metropolitan Drive, Suite 100
San Diego, CA 92108
(619) 682-7227

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STATE OF CALIFORNIA
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF BUSINESS OVERSIGHT

TO: Kenneth Crowder, Chairman of the Board and CEO
Chris Crowder, President and COO
David Wanzek, Director
Michael Bersch, Director
Concordia Financing Co., Ltd.
9302 Pittsburgh Ave #220
Rancho Cucamonga, CA 91730

DESIST AND REFRAIN ORDER
(For violations of sections 25110 and 25401 of the Corporations Code)

The Commissioner of Business Oversight finds that:

1. At all relevant times herein, Concordia Financing Co., Ltd. ("Concordia Financing") was and is a corporation formed under the laws of California on April 18, 1994. It maintains an address at 9302 Pittsburgh Ave #220, Rancho Cucamonga, CA 91730.

2. At all relevant times herein, Kenneth Irwin Crowder ("Kenneth Crowder"), was Chairman of the Board and CEO of Concordia Financing.

3. At all relevant times herein, Christopher Kenneth Crowder ("Christopher Crowder") was President and COO of Concordia Financing.

4. At all relevant times herein, David Wanzek was a Director of Concordia Financing.

5. At all relevant times herein, Michael Bersch, was a Director of Concordia Financing.

6. Beginning in or about 1998 and continuing through at least 2008, Kenneth Crowder, Christopher Crowder, David Wanzek, and Michael Bersch offered and sold to investors securities in the form of investment contracts, which were unqualified, non-exempt securities. These investment contracts were titled "Sale of Contracts and Servicing Agreement," and were sold to approximately 178 investors totaling approximately \$18 million.

7. These securities were sold in order to purchase and service "Truck Conditional Sales Agreements" from commercial truck dealers. The "Truck Conditional Sales Agreements" were

1 allegedly factored, sold, and assigned to investors, and then serviced by Concordia Financing on
2 behalf of investors.

3 8. These securities were offered or sold in this state in issuer transactions. The
4 Department of Business Oversight has not issued a permit or other form of qualification authorizing
5 any person to offer and sell these securities in this state.

6 9. These securities are not exempt because they were sold to unaccredited and
7 unsophisticated investors.

8 10. In connection with the offer and sale of these securities, Concordia Financing,
9 Kenneth Crowder, Christopher Crowder, David Wanzek, and Michael Bersch made material
10 misrepresentations of facts and also omitted to state material facts necessary in order to make the
11 statements made, in the light of the circumstances under which they were made, not misleading.
12 These misrepresentations and omissions included, but are not limited to, the following:

13 a. Investors were told that their investments would be safe because they would be
14 individually secured by assigned vehicle titles to Class 8 "big rig" trucks, when in actuality the
15 investments were never secured and the titles were never assigned.

16 b. Investors were told that the commercial truck drivers whose loans were allegedly
17 securing investments were subject to credit checks. In actuality, these credit checks involved neither
18 background searches of the drivers nor a check of the financial credit of the drivers. In actuality,
19 credit checks involved a telephone call to the drivers' former employers to determine whether the
20 drivers were punctual.

21 c. Investors were told that these conditional sales contracts were less risky than investing
22 on the stock market or maintaining a savings account or purchasing Certificates of Deposit, when in
23 actuality the conditional sales contracts were unsecured and uninsured.

24 d. Investors were told that their investments had 100% liquidity, when in actuality
25 investors attempted and were unable to withdraw their money.

26 e. Investors were told that Kansas City Life Insurance Company insured their
27 investments, when in actuality the investments were not insured.

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1 Based upon the foregoing findings, the Commissioner of Business Oversight is of the opinion
2 that the securities in the form of investment contracts titled "Sales of Contract and Servicing
3 Agreement" that are being or have been offered or sold by Concordia Financing, Kenneth Crowder,
4 Christopher Crowder, David Wanzek, and Michael Bersch are securities subject to qualification
5 under the California Corporate Securities Law of 1968 and are being or have been offered or sold
6 without being qualified in violation of Corporations Code section 25110.

7 Pursuant to Corporations Code section 25532, Concordia Financing, Kenneth Crowder,
8 Christopher Crowder, David Wanzek, and Michael Bersch are hereby ordered to desist and refrain
9 from the further offer or sale in the State of California of securities, including but not limited to
10 investment contracts, unless and until qualification has been made under the law or unless exempt.

11 Furthermore, the Commissioner of Business Oversight is of the opinion that the securities
12 offered and sold by Concordia Financing, Kenneth Crowder, Christopher Crowder, David Wanzek,
13 and Michael Bersch were offered and sold in this state by means of written or oral communications
14 that included untrue statements of material fact or omitted to state material facts necessary in order to
15 make the statements made, in the light of the circumstances under which they were made, not
16 misleading, in violation of Corporations Code section 25401.

17 Pursuant to Corporations Code section 25532, Concordia Financing, Kenneth Crowder,
18 Christopher Crowder, David Wanzek, and Michael Bersch are hereby ordered to desist and refrain
19 from offering or selling or buying or offering to buy any security in the State of California, including,
20 but not limited to, investment contracts by means of any written or oral communication which
21 includes an untrue statement of a material fact or omits to state a material fact necessary in order to
22 make the statements made, in the light of the circumstances under which they were made, not
23 misleading.

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1 This Order is necessary, in the public interest, for the protection of investors and consistent
2 with the purposes, policies, and provisions of the Corporate Securities Law of 1968 and Corporations
3 Code.

4 Dated: October 7, 2013
5 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

6
7 By 
8 MARY ANN SMITH
9 Deputy Commissioner
10 Enforcement Division
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Corporations Code Section 25532

(a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law or (2) the sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and the security is being or has been offered or sold without first meeting the requirements of those sections, the commissioner may order the issuer or offeror of that security to desist and refrain from the further offer or sale of the security until those requirements have been met.

(b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or investment adviser, or has been or is engaging in broker-dealer or investment adviser activities, in violation of Section 25210, 25230, or 25230.1, the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.

(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.

(d) If, after an order has been served under subdivision (a), (b), or (c), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under that chapter. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded.

If that person fails to file a written request for a hearing within 30 days from the date of service of the order, the order shall be deemed a final order of the commissioner and is not subject to review by any court or agency, notwithstanding Section 25609.

TAB C

1 “investment contracts”), which were unqualified, non-exempt securities. As of 2012, these
2 investment contracts were sold to approximately 178 investors and totaled approximately \$18
3 million.

4 6. These investment contracts were sold in order to purchase and service “Truck
5 Conditional Sales Agreements” from commercial truck dealers. The “Truck Conditional Sales
6 Agreements” were allegedly factored, sold, and assigned to investors and then serviced by
7 Concordia Financing on behalf of investors.

8 7. These investment contracts were offered or sold in this State in issuer transactions.
9 The Department of Business Oversight has not issued a permit or other form of qualification
10 authorizing any person to offer or sell these securities in this State.

11 8. These investment contracts are not exempt because they were sold to unaccredited and
12 unsophisticated investors.

13 9. In connection with the offer and sale of these investment contracts, Concordia
14 Financing, Kenneth Crowder, and Christopher Crowder made material misrepresentations of facts
15 and/or omitted to state material facts necessary in order to make the statements made, in light of the
16 circumstances under which they were made, not misleading. These misrepresentations and/or
17 omissions include the following:

18 a) Investors were told that the conditional sales contracts were less risky than investing
19 on the stock market or maintaining a savings account or purchasing Certificates of Deposit, when in
20 fact the conditional sales contracts were unsecured and uninsured.

21 b) Investors were told that their investments had 100% liquidity, when in fact investors
22 attempted and were unable to withdraw their money.

23 Based on the foregoing findings, the Commissioner is of the opinion that the securities, in
24 the form of investment contracts entitled “Sales of Contract and Servicing Agreement,” that are
25 being or have been offered or sold by Concordia Financing, Kenneth Crowder, and Christopher
26 Crowder are securities and subject to qualification under the California Corporate Securities Law of
27 1968 (“CSL”) and are being or have been offered or sold without being qualified, in violation of
28 California Corporations Code section 25110 of the CSL.

1 Under California Corporations Code section 25532, Concordia Financing, Kenneth
2 Crowder, and Christopher Crowder are hereby ordered to desist and refrain from the further offer or
3 sale of securities in the State of California, including but not limited to, the investment contracts
4 entitled "Sale of Contracts and Servicing Agreement" described above, unless and until
5 qualification has been made under this law or unless exempt.

6 Further, the Commissioner is of the opinion that the investment contracts entitled "Sale of
7 Contracts and Servicing Agreement" offered or sold by Concordia Financing, Kenneth Crowder,
8 and Christopher Crowder were offered or sold in this state by means of written or oral
9 communications that included untrue statements of material fact or omitted to state material facts
10 necessary to make the statements made, in light of the circumstances under which they were made,
11 not misleading, in violation of California Corporations Code section 25401.

12 Under California Corporations Code section 25532, Concordia Financing, Kenneth
13 Crowder, and Christopher Crowder are hereby ordered to desist and refrain from offering or selling
14 or buying or offering to buy any security in the State of California, including but not limited to, the
15 investment contracts entitled "Sale of Contracts and Servicing Agreement" described above, by
16 means of any written or oral communication which includes an untrue statement of a material fact
17 or omits to state a material fact necessary in order to make the statements made, in light of the
18 circumstances under which they were made, not misleading.

19 This Order is necessary, in the public interest, for the protection of investors and consistent
20 with the purposes, policies, and provisions of the California Corporate Securities Law of 1968.

21 Dated: October 3, 2014
22 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

23
24
25 By 
26 MARY ANN SMITH
27 Deputy Commissioner
28 Enforcement Division

